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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 831

Procedures To Offset Debts Due the United States From Benefits Payable to a Debtor From the Civil Service Retirement and Disability

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations describing procedures to offset debts due the United States from benefits payable to a debtor from the Civil Service Retirement and Disability Fund (Fund). These regulations are necessary, in part, because of amendments in the Debt Collection Act of 1982 (Pub. L. 97–365, enacted October 25, 1982) and the revised Federal Claims Collection Standards (FCCS) published jointly by the General Accounting Office and the Department of Justice (4 CFR 101.1 *et seq.*, 49 FR 8889, dated March 9, 1984).

EFFECTIVE DATE: January 20, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia A. Rochester, (202) 632–1265.

SUPPLEMENTARY INFORMATION: On January 4, 1985, we published (50 FR 473) proposed amendments to our interim regulations (August 25, 1981, 46 FR 42835) for offsetting other Federal agencies' debts from the Fund. Interested parties were given until March 5, 1985, to submit comments.

We received comments from five Federal agencies and two labor organizations. The following summarizes the comments, suggestions, and actions taken.

1. Section 831.1803—Definitions

a. The definition of "debt" includes examples of items included in the scope of the term. One commenter suggested that we expand the list to include advanced sick or annual leave, travel advances, equipment not returned to the agency upon separation, and repayment of moving expenses if an employee doesn't stay with the agency for 1 year. We did not adopt the suggestion. The list is not intended to be exhaustive; and, we do not want to give the impression that we will reject a claim when the source of the debt is not specifically named. The controlling phrase in the definition is "an amount owed to the United States." A debt owed to the United States will be collected, if possible, regardless of its source.

b. The definition of "agency" is revised to be consistent with the definition of "agency" in 5 CFR 550.1104.

2. Section 831.1804—Conditions for requesting an offset

Paragraph (a) of this section formerly required that an agency's debt claim total at least $100 (unless it accrues because of an individual's failure to pay health benefits premiums while he or she is in nonpay status or while his or her salary is not sufficient to cover premiums) before we would make an offset from the Fund. A commenter suggested that we reduce the minimum to $50. After further consideration, we eliminated the $100 minimum. A debt claim will not be rejected because of the amount.

3. Section 831.1805—Creditor agency processing for non-fraud claims

a. Section 831.1805(b)(2) describes procedures for submitting a nonfraud claim that has been partially collected under the salary offset procedures in 5 U.S.C. 5514. One commenter requested that we specifically identify the "debt claim" mentioned in paragraph (b)(2)(ii). We amended the paragraph to show that Standard Form 2805 (Request for Recovery of Debt Due the United States) must be used.

b. Section 831.1805(b)(3) describes the normal procedures agencies must use to submit a debt claim, unless the claim is based on a court's judgment for a specified amount, was partially collected under section 5514, or is excepted from normal procedures by 5 CFR 831.1805(b)(4).

Another commenter noticed that the supplementary information says a claim can be filed even if the debtor does not respond to the notice that an offset will be made and suggested that this information be included in the regulatory text. We agree. The information is now included at paragraph (b)(3)(ii).

c. Section 831.1805(b)(34) lists debt claims that are excepted from the procedures described in § 831.1805 (b)(3). A commenter suggested that collections to which the debtor has consented in writing should be exempted from the procedures described in paragraph (b)(3) by including them in paragraph (b)(4).

We cannot agree with this suggestion. In our opinion, to have a valid consent, the creditor agency must inform the debtor of the intended action to offset his or her retirement and describe any available rights. Once informed, the debtor's election to waive these rights constitutes "consent." Therefore, the requirements described in §831.1805(b)(3) (i.e., that the agency notify the debtor of the intended collection and submit an SF 2805 with the necessary certifications) still apply, but there is less information to be certified if the agency submits the debtor's signed consent.

d. Proposed paragraph (b)(5) concerning the notice of debt is renumbered as paragraph (b)(6) and a new paragraph (b)(5) is inserted to cover general certification requirements for all debt claims against the Fund that have not been given special treatment under §831.1805(b)(4). One commenter noted that some of the items required by our regulations are not required by the FCCS at 4 CFR 102.4(b). The commenter suggested that an agency should only certify that all procedures have been followed.

This suggestion was not adopted for several reasons. First, §102.4(b) does not prohibit a request for certification of additional items. Second, we believe the additional information is required as a result of the class action suit involving our collection of debts for other Federal agencies (*Rhinehart v. Seneca, et al.*, CA No. 78–2472, (D.D.C.)). In 1981, we resolved one of the plaintiff's concerns—that agency certifications of completed notice and due process procedures were sometimes inaccurate—by establishing a procedure for verifying that notice and due process had been provided.

The original verification procedure involved asking the debtor if the certification was correct. If the debtor said no, we then asked the creditor agency to review its records, see that the required due process was indeed given and recertify the claim. This process created a substantial correspondence workload and delayed payment to the creditor agency until we received the requested information or the time period allotted to submit the information expired.

We believe the information now required by § 831.1805(b)(5)(vii) verifies the agency's certification and eliminates the need to ask the debtor for information. The result will be a reduced correspondence workload and prompter payments to creditor agencies.

Because we will provide a temporary form until we can revise Standard Form 2805, the creditor agency will merely have to check one or more boxes and insert a date(s) or attach a copy of the debtor's consent or acknowledgment. We think the end result is well worth the minimal increased effort required from the creditor agency.

e. Another one of the general certification requirements called for creditor agency certification of the number, amount, and commencing date of the installment deductions, and a statement as to whether additional interest accrues. One commenter felt that the creditor agency would not be in a position to know the installment information required. The commenter suggested that this requirement be deleted.

We adopted this suggestion in part. The requirement to specify the number and commencing date of the installments has been eliminated. However, the amount or percentage of the monthly installments *must* be provided by the creditor agency for all installment collections. We believe the responsibility for establishing and notifying the debtor of the amount of the proposed deduction and considering any claims of financial hardship it causes belong to the creditor agency. The appropriate place to suggest the amount of the intended deduction seems to be in the creditor agency's notice of intention to make the administrative offset. If the deduction will strain the debtor's finances, he or she may then advise the creditor agency and provide the necessary documentation to establish a more satisfactory deduction *before* the agency sends us the request to commence recovery action.

f. Section 831.1805(c) describes the time limits for submitting records and debt claims or notices. This provision is the same as it was in the proposal. A commenter suggested that OPM increase the 60-day time limit in paragraph (c)(2) to 90 days to allow agencies sufficient time to perform leave audits and complete closing actions.

We did not adopt this suggestion because we have already increased the time limit to 60 days. We do not feel that we can justify routinely holding the former employee's funds for additional 30 days.

4. Section 831.1806—OPM processing

a. Section 831.1806(b)(2) describes OPM procedures for processing a debt claim when the debtor has not applied for refund. A commenter suggested that we establish procedures for updating a debt claim we have been holding for future recovery. We are adding a new paragraph (b)(3) describing such procedures.

b. Section 831.1806(d) states the procedures for processing complete debt claims against annuities. A commenter was concerned that the provision for beginning annuity offset in the next available annuity payment would not give an annuitant enough time to show that, because of changed financial circumstances, the offset would result in undue hardship, or to offer a satisfactory repayment plan as an alternative to offset.

When an application comes in more than 1 year after OPM receives the creditor agency's claim, we have added § 831.1806(d)(2)(ii) allowing creditor agencies time to allow the debtor an opportunity to show changed financial circumstances or to offer an alternative repayment plan (see 4 CFR 102.3(c)). The agency may then give us revised instructions, if necessary, before we begin processing the claim.

5. Section 831.1807—Limitations on withholdings

Section 831.1807 proposed to limit the amount of the monthly deduction creditor agencies could deduct from an annuitant's benefits unless he or she consented to a larger deduction.

a. One commenter noted that the statutory 15 and 25 percent limitations on salary and judgment offsets, respectively, do not specifically apply to collections from civil service annuity. Further, in some instances, such a limitation will hinder collection of large debts when interest is being charged.

After further consideration, we have increased the amount of annuity that creditor agencies may deduct without the debtor's consent to a maximum of 50 percent of net annuity. However, there is no limitation on the deduction if the debt is based upon a civil judgment determining that a debt is due the United States and a higher percentage of annuity is necessary to recover the amount of the judgment within 3 years.

b. Another commenter asked us to include provisions for offsets authorized by specific laws such as the Internal Revenue Code and the Social Security Act.

We did not adopt this suggestion. The offsets we make under the Internal Revenue Code and the Social Security Act are specifically addressed in § 831.1805(b)(4). For the most part, we handle such collections by procedures specifically designed for the type of claim involved.

c. A third commenter asked us to include provisions for offsetting debts arising from travel, transportation, and training. Because there are special provisions for collecting these debts from pay (5 U.S.C. 4108, 5705, 5723, etc.), the commenter believes that special provisions should also be made for collecting these debts from the Fund.

We do not agree that special provisions are necessary to collect such debts from the Fund. In our regulations, special procedures are provided when a type of debt will be processed differently from normal procedures. Because none of the specific offset statutes the commenter mentioned contain procedures for making the collection, agencies must use the due process procedures in the FCCS (4 CFR 101.4). The majority of debts addressed by these final regulations will also be processed under the due process procedures in the FCCS; therefore, a special processing procedure is not necessary.

6. Section 831.1808—Special processing for fraud claims

Section 831.1808 describes special procedures for processing debts that involve possible fraud. One commenter asked whether we wanted agencies to send all potential fraud claims to the Department of Justice (Justice) regardless of the amount.

Agencies must continue to refer claims to Justice as provided in guidance published by the General Accounting Office and Justice. We have revised paragraph (a) slightly so it is clear that our procedures apply once an agency has decided that a claim must be referred to Justice for consideration as a fraud claim.

7. General editorial changes

In addition to the changes described above, we made general editorial changes throughout the regulatory text to clarify and strengthen its contents.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they concern administrative practices that will affect only the Federal Government.

List of Subjects in 5 CFR Part 831

Administrative practice and procedures, Claims, Disability benefits, Firefighters, Government employees, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is revising Subpart R of Part 831 of Title 5 of the Code of Federal Regulations to read as follows:

PART 831—RETIREMENT

* * * * *

Subpart R—Agency Requests to OPM for Recovery of a Debt from the Civil Service Retirement and Disability Fund

Sec.

831.1801 Purpose.
831.1802 Scope.
831.1803 Definitions.
831.1804 Conditions for requesting an offset.
831.1805 Creditor agency processing for non-fraud claims.
831.1806 OPM processing for non-fraud claims.
831.1807 Installment withholdings.
831.1808 Special processing for fraud claims.

Authority: 5 U.S.C. 8347.

Subpart R—Agency Requests to OPM for Recovery of a Debt from the Civil Service Retirement and Disability Fund

§ 831.1801 Purpose.

This subpart prescribes the procedures to be followed by a Federal agency when it requests the Office of Personnel Management (OPM) to recover a debt owed to the United States by administrative offset against money due and payable to the debtor from the Civil Service Retirement and Disability Fund (the Fund). This subpart also prescribes the procedures that OPM must follow to make these administrative offsets.

§ 831.1802 Scope.

This subpart applies to agencies, employees, and Members, as defined by § 831.1803.

§ 831.1803 Definitions.

For purposes of this subpart, terms are defined as follows—

"Act" means the Federal Claims Collection Act of 1966 as amended by the Debt Collection Act of 1982 and implemented by 4 CFR 101.1 *et seq.*, the Federal Claims Collection Standards (FCCS).

"Administrative offset" means withholding money payable from the Fund to satisfy a debt to the United States under 31 U.S.C. 3716.

"Agency" means (a) an Executive agency as defined in section 105 of title 5, United States Code, including the U.S. Postal Service and the U.S. Postal Rate Commission; (b) a military department, as defined in section 102 of title 5, United States Code; (c) an agency or court in the judicial branch, including a court as defined in section 610 of title 28, United States Code, the District Court for the Northern Mariana Islands, and the Judicial Panel on Multidistrict Litigation; (d) an agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives; and (e) other independent establishments that are entities of the Federal Government.

"Annuitant" has the same meaning as in section 8331(9) of title 5, United States Code.

"Annuity" means the monthly benefit payable to an annuitant or survivor annuitant.

"Compromise" has the same meaning as in 4 CFR Part 103.

"Consent" means the debtor has agreed in writing to administrative offset after receiving notice of all rights under 31 U.S.C. 3716 and this subpart.

"Creditor agency" means the agency to which the debt is owed.

"Debt" means an amount owed to the United States on account of loans insured or guaranteed by the United States, and other amounts due the United States from fees, duties, leases, rents, royalties, services, sales of real or personal property, overpayments, fines, penalties, damages, interests, taxes, forfeitures, etc.

"Debt claim" means an agency request for recovery of a debt in a form approved by OPM.

"Debtor" means a person who owes a debt, including an employee, former employee, Member, former Member, or the survivor of one of these individuals.

"Employee" has the same meaning as in section 8331(1) of title 5, United States Code, and includes reemployed annuitants and employees of the U.S. Postal Service.

"Fraud claim" means any debt designated by the Attorney General (or designee) as involving an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim.

"Fund" means the Civil Service Retirement and Disability Fund established under 5 U.S.C. 8348.

"Lump-sum credit" has the same meaning as in section 8331(8) of title 5, United States Code.

"Member" has the same meaning as in section 8331(2) of title 5, United States Code.

"Net annuity" means annuity after excluding amounts requried by law to be deducted. For example, Federal income tax is excluded up to the maximum amount that the individual is entitled to for all dependents. Other examples of exclusions are group health insurance premiums (including amounts deducted for Medicare) and group life insurance premiums.

"Paying agency" means the agency that employs the debtor and authorizes the disbursement of his or her current pay account.

"Refund" means the payment of a lump-sum credit to an individual who meets all requirements for payment and files application for it.

§ 831.1804 Conditions for requesting an offset.

An agency may request that money payable from the Fund be offset to recover any valid debt due the United States when all of the following conditions are met:

(a) The debtor failed to pay all of the debt on demand, or the creditor agency has collected as much as possible from payments due the debtor from the paying agency; and

(b) The creditor agency sends a debt claim to OPM (under § 831.1805(b) (1), (2), (3), or (4), as appropriate) after doing one of the following:

(1) Obtaining a court judgment for the amount of the debt;

(2) Following the procedures required by 31 U.S.C. 3716 and 4 CFR 102.4;

(3) Following the procedures required by 5 U.S.C. 5514 and § 550.1107 of this title; or

(4) Following the procedures agreed upon by the creditor agency and OPM, if it is excepted by § 831.1805(b)(4) from the completion of procedures prescribed by § 831.1805(b)(3).

§ 831.1805 Creditor agency processing for non-fraud claims.

(a) *Where to submit the debt claim, judgment or notice of debt*—(1) *Creditor agencies that are not the debtor's paying agency.* (i) If the creditor agency knows that the debtor is employed by

the Federal Government, it should send the debt claim to the debtor's paying agency for collection.

(ii) If some of the debt is unpaid after the debtor separates from the paying agency, the creditor agency should send the debt claim to OPM as described in paragraph (b) of this section.

(2) *Creditor agencies that are the debtor's paying agency.* Ordinarily, debts owed the paying agency should be offset under 31 U.S.C. 3716 from any final payments (salary, accrued annual leave, etc.) due the debtor. If a balance is due after offsetting the final payments or the debt is discovered after the debtor has been paid, the paying agency may send the debt claim to OPM as described in paragraph (b) of this section.

(b) *Procedures for submitting a debt claim, judgment or notice of debt to OPM*—(1) *Debt claims for which the agency has a court judgment.* If the creditor agency has a court judgment against the debtor specifying the amount of the debt to be recovered, the agency should send the debt claim and two certified copies of the judgment to OPM.

(2) *Debt claims previously processed under 5 U.S.C. 5514.* If the creditor agency previously processed the debt claim under section 5514, it should—

(i) Notify the debtor that the claim is being sent to OPM to complete collection from the Fund; and

(ii) Send the debt claim (on SF 2805) to OPM with two copies of the paying agency's certification of the amount collected and one copy of the notice to the debtor that the claim was sent to OPM.

(3) *Debt claims not processed under 5 U.S.C. 5514, reduced to court judgment, or excepted by paragraph (b)(4) of this section.* (i) If the debt claim was not processed under § 5514, reduced to court judgment or excepted by paragraph (b)(4) of this section, the creditor agency must—

(A) Comply with the procedures required by 4 CFR 102.4—issuing written notice to the debtor of the nature and amount of the debt, the agency's intention to collect by offset, the opportunity to inspect and copy agency records pertaining to the debt, the opportunity to obtain review within the agency of the determination of indebtedness, and the opportunity to enter into a written agreement with the agency to repay the debt; and

(B) Complete the appropriate debt claim

(ii) If the debtor does not respond to the creditor agency's notice within the allotted time and there is no reason to believe that he or she did not receive the notice, the creditor agency may submit the debt claim to OPM after certifying that notice was issued and the debtor failed to reply.

(iii) If the debtor responds to the notice by requesting a review (or hearing if one is available), the review (or hearing) must be completed before the creditor agency submits the debt claim.

(iv) If the debtor receives the notice and responds by consenting to the collection, the creditor agency must send a copy of the debtor's consent along with the debt claim.

(4) *Debt claims excepted from procedures described in paragraph (b)(3) of this section.* Creditor agencies follow specific procedures approved by OPM, rather than those described in paragraph (b)(3) of this section, for the collection of—

(i) Debts due because of the individual's failure to pay health benefits premiums while he or she was in nonpay status or while his or her salary was not sufficient to cover the cost of premiums;

(ii) Unpaid Federal taxes to be collected by Internal Revenue Service levy;

(iii) Premiums due because of the annuitant's election of Part B, Medicare coverage (retroactive collection limited to 6 months of premiums); or

(iv) Overpaid military retired pay an annuitant elects in writing to have withheld from his or her annuity.

(5) *General certification requirements for debt claims.* Creditor agencies submitting debt claims must certify—

(i) That the debt is owed to the United States;

(ii) The amount and reason for the debt and whether additional interest accrues;

(iii) The date the Government's right to collect the debt first accrued;

(iv) The agency has complied with the applicable statutes, regulations, and OPM procedures;

(v) That if a competent administrative or judicial authority issues an order directing OPM to pay a debtor an amount previously paid to the agency (regardless of the reasons behind the order), the agency will reimburse OPM or pay the debtor directly within 15 days of the date of the order (NOTE: OPM may, at its discretion, decline to collect other debt claims sent by an agency that does not abide by this certification.);

(vi) If the collection will be in installments, the amount or percentage of net annuity in each installment; and,

(vii) If the debtor does not (in writing) consent to the offset, or does not (in writing) acknowledge receipt of the required notices and procedures, or the creditor agency does not document a judgment offset or a previous salary offset, the action(s) taken to comply with 4 CFR 102.3, including any required hearing or review, and the date(s) the action(s) was taken.

(6) *Notice of debt.* When a creditor agency cannot send a complete debt claim, it should notify OPM of the existence of the debt so the lump-sum will not be paid before the debt claim arrives.

(i) The notice to OPM must include a statement that the debt is owed to the United States, the date the debt first accrued, and the basis for and amount of the debt, if known. If the amount of the debt is not known, the agency must establish the amount and notify OPM in writing as soon as possible after submitting the notice.

(ii) The creditor agency may either notify OPM by making a notation in column 8 [Remarks] under "Fiscal Record" on the Standard Form 2806 (Individual Retirement Record), if the SF 2806 is in its possession, or if not, by submitting a separate document identifying the debtor by name, giving his or her date of birth, social security number, and date of separation, if known.

(c) *Time limits for sending records and debt claims to OPM*—(1) *Time limits for submitting debt claims.* Unless there is an application for refund pending, there is no specific time for submitting a debt claim or notice of debt to OPM. Generally, however, agencies must file a debt claim before the statute of limitations expires (4 CFR 102.4(c)) or before a refund is paid. Time limits are imposed (see §831.1806(a)) when the debtor is eligible for a refund and OPM receives his or her application requesting payment. In the latter situation, creditor agencies must file a complete debt claim within 120 days (or 180 days if the agency requests an extension of time before the refund is paid) of the date OPM requests a complete debt claim.

(2) *Time limit for submitting retirement records to OPM.* A paying agency must send an individual's SF 2806 to OPM no later than 60 days after the separation, termination, or entrance on duty in a position in which the employee is not covered by the Civil Service Retirement System. § 831.1806 OPM processing for non-fraud claims.

(a) *Refunds—incomplete debt claims.* (1) If a creditor agency sends OPM a notice of debt or an incomplete debt claim against a refund OPM is processing for payment, OPM will withhold the amount of the debt but will not make any payment to the creditor agency. OPM will notify the creditor agency that the procedures in this subpart and 4 CFR 102.4 must be completed; and a debt claim must be completed and returned to OPM within 120 days of the date of OPM's notice to the creditor agency. Upon request, OPM will grant the creditor agency one extension of up to 60 days if the request for extension is received before the lump-sum payment has been made. The extension will commence on the day after the 120-day period expires so that the total time OPM holds payment of the refund will not exceed 180 days.

(2) During the period allotted the creditor agency for sending OPM a complete debt claim, OPM will handle the debtor's application for refund under section 8342(a) of title 5, United States Code, in one of two ways:

(i) If the amount of the debt is known, OPM will notify the debtor of the debt claim against his or her lump-sum credit, withhold the amount of the debt, and pay the balance to the debtor, if any.

(ii) If the amount of the debt is not known, OPM will not pay any amount to the debtor until the creditor agency certifies the amount of the debt, submits a complete debt claim, or the time limit for submission of the debt claim expires, whichever comes first.

(b) *Refunds—complete debt claims*—(1) *If OPM receives an application from the debtor prior to or at the same time as the agency's debt claim.* (i) If a refund has been paid, we will notify the creditor agency there are no funds available for offset. Except in the case of debts due because of the employee's failure to pay health benefits premiums while he or she is in nonpay status or while his or her salary was not sufficient to cover the cost of premiums, creditor agencies should refer to the instructions in the FCCS for other measures to recover the outstanding debt; however, OPM will retain the SF 2805 on file in the event the debtor is once again employed in a position subject to retirement deductions.

(ii) If a refund is payable, and the creditor agency submits a complete debt claim in accordance with § 831.1805(b)(1), (2), (3), or (4), the debt will be collected from the refund and any balance paid to the debtor. OPM will send the debtor a copy of the debt claim, judgment, consent, or other document, and notify him or her that the creditor agency was paid.

(2) *If OPM has not received an application from the debtor when the agency's debt claim is received.* If a debtor has not filed application for a refund, OPM will retain the debt claim for future recovery. OPM will make the collection whenever an application is received, provided the creditor agency *initiated* the administrative offset before the statute of limitations expired. (See 4 CFR 102.3(b)(3) and 102.4(c).) OPM will notify the creditor agency that it does not have an application from the debtor so that the agency may take other action to recover the debt. (Note: If the recovery action is successful, the creditor agency must notify OPM so it can void the debt claim).

(3) *Future recovery.* (i) If OPM receives an application for refund within 1 year of the date the agency's debt claim was received *and* the creditor agency does not indicate that interest is accruing on the debt, the debt will be processed as stated in paragraph (b)(1)(ii) of this section.

(ii) If OPM receives an application for refund within 1 year of the date the agency's debt claim was received and the creditor agency indicates that interest accrues on the debt, when necessary, OPM will contact the creditor agency to confirm that the debt is outstanding and request submission in writing, of the total additional accrued interest. OPM will not make interest computations for creditor agencies.

(iii) When OPM receives an application for refund more than 1 year after the creditor agency's debt claim was received, whether interest accrues or not, OPM will contact the creditor agency to see if the debt is still outstanding and, when necessary, request an update of the interest charges. If the debt is still due, the creditor agency must give the debtor an opportunity to establish that his or her changed financial circumstances, if any, would make the offset unjust. (See 4 CFR § 102.4(c).) If the creditor agency determines that offset as requested in the debt claim would be unjust because of the debtor's changed financial circumstances, the agency should permit the debtor to offer a satisfactory repayment plan in lieu of offset. If the agency decides to pursue the offset, it must submit to OPM the requested information and any new instructions within 60 days of the date of OPM's request or the claim may be voided and the balance paid to the individual.

(c) *Annuities—incomplete debt claims.* If a creditor agency sends OPM notice of a debt or an incomplete debt claim against a debtor who is receiving an annuity, OPM will not offset the annuity. OPM will notify the creditor agency that the procedures in this subpart and 4 CFR 102.4 must be completed; and a debt claim must be completed and sent to OPM. No time limit will be given for the submission of a debt claim against an annuity; however, a complete debt claim must be received within 10 years of the date the Government's right to collect first accrued (4 CFR 102.3(b)(3)).

(d) *Annuities—complete debt claims*—(1) *General*—(i) *Notice.* When OPM receives a complete debt claim and an application for annuity, OPM will offset the annuity, pay the creditor agency, and mail the debtor a copy of the debt claim along with notice of the payment to the creditor agency.

(ii) *Beginning deductions.* If OPM has already established the debtor's annuity payment, deductions will begin with the next available annuity payment. If OPM is in the process of establishing the annuity payments, deductions will not be taken from advance annuity payments, but will begin with the annuity payable on the first day of the month following the last advance payment.

(iii) *Updating accrued interest.* Once OPM has completed a collection, if there are additional accrued interest charges, the creditor agency must contact OPM regarding any additional amount due within 90 days of the date of the final payment.

(2) *Claims held for future recovery.* (i) If OPM receives an application for annuity within 1 year of the date the agency's debt claim was received, the debt will be processed as stated in paragraph (d)(1) of this section.

(ii) If OPM receives an application for annuity more than 1 year after the agency's debt claim was submitted, OPM will contact the creditor agency to see if the debt is still outstanding. If the debt is still due, the creditor agency should permit the debtor to offer a satisfactory repayment plan in lieu of offset if the debtor establishes that his or her changed financial circumstances would make the offset unjust. (See 4 CFR 102.4(c).) If the agency decides to pursue the offset, it must submit the requested information and any new instructions about the collection to OPM.

(3) *Limitations on OPM review.* In no case will OPM review—

(1) The merits of a creditor agency's decision with regard to reconsideration, compromise, or waiver; or

(2) The creditor agency's decision that a hearing was not required in any particular proceeding.

§ 831.1807 Installment withholdings.

(a) When possible, OPM will collect a creditor agency's full claim in one payment from the debtor's refund or annuity.

(b) If collection must be made from an annuity and the debt is large, the creditor agency must generally accept payment in installments. The

responsibility for establishing and notifying the debtor of the amount of the installments belongs to the creditor agency (see § 831.1805(b)(5)). Howaver, OPM will not make an installment deduction for more than 50 percent of net annuity, unless a higher percentage is needed to satisfy a judgment against a debtor within 3 years or the annuitant has consented to the higher amount in writing. All correspondence concerning installment deductions received by OPM will be referred to the creditor agency for consideration.

§ 831.1808 Special processing for fraud claims.

When an agency sends a claim indicating fraud, presentation of a false claim, misrepresentation by the debtor or any other party interested in the claim, or any claim based in whole or part on conduct violating the antitrust laws, to the Department of Justice (Justice) for possible treatment as a fraud claim (4 CFR 101.3), the following special procedures apply.

(a) *Agency processing.* If the debtor is separated or separates while Justice is reviewing the claim; the paying agency must send the SF 2806 to OPM, as required by § 831.1805(c)(2). The agency where the claim arose must send OPM notice that a claim is pending with Justice. (See § 831.1805(b)(6) for instructions on giving OPM a notice of debt.)

(b) *Department of Justice processing.* (1) The Attorney General or a designee will decide whether a debt claim sent in by an agency will be reserved for collection by Justice as a fraud claim. Upon receiving a possible fraud claim to be collected by offset from the Fund, the Attorney General or a designee must notify OPM. The notice to OPM must contain the following:

(i) The name, date of birth, and social security number of the debtor;

(ii) The amount of the possible fraud claim, if known;

(iii) The basis of the possible fraud claim; and

(iv) A statement that the claim is being considered as a possible fraud claim, the collection of which is reserved to Justice.

(2) When there is a pending refund application, the Attorney General or designee must file a complaint seeking a judgment on the claim and send a copy of the complaint to OPM; or as provided in 4 CFR 101.3, refer the claim to the agency where the claim arose and submit a copy of the referral to OPM within 180 days of the date of either notice from the agency that a claim is pending with Justice (paragraph (a) of this section) or notice from Justice that it has received a possible fraud claim (paragraph (b)(1) of this section) whichever is earlier. When the claim is referred to the agency where it arose, the agency must begin administrative collection action under 4 CFR 102.4 and send a complete debt claim to OPM as required in § 831.1805.

(c) *OPM processing against refunds.* (1) Upon receipt of a notice under paragraph (a) or (b)(1) of this section, whichever is earlier, OPM will withhold the amount of the debt claim, if known; notify the debtor that the amount of the debt will be withheld from the refund for at least 180 days from the date of the notice that initiated OPM processing; and pay the balance to the debtor. If the amount of the debt claim is not known, OPM will notify the debtor that a debt claim may be offset against his or her refund and that OPM will not pay any amount until either the amount of the debt claim is established, or the time limit for filing a complaint in court or submitting the debt claim expires, whichever comes first.

(2) If the Attorney General files a complaint and notifies OPM within the applicable 180-day period, OPM will continue to withhold payment of the lump-sum credit until there is a final judgment.

(3) If the Attorney General refers the claim to the agency where the claim arose (creditor agency) and notifies OPM within the applicable 180-day period, OPM will notify the creditor agency that the procedures in this subpart and 4 CFR 102.4 must be completed; and a debt claim must be sent to OPM within 120 days of the date of OPM's notice to the creditor agency. At the request of the creditor agency, one extension of time of not more than 60 days will be granted, as provided by § 831.1806(a).

(4) If OPM is not notified that a complaint has been filed or that the claim has been referred to the creditor agency within the applicable 180-day period, OPM will pay the balance of the refund to the debtor.

(d) *OPM processing against annuities.* If the debtor has filed an annuity claim, OPM will not take action against the annuity. OPM will continue to pay the annuity unless and until there is a final judgment for the United States or submission of a complete debt claim.

(e) *OPM collection and payment of the debt.* (1) If the United States obtains a judgment against the debtor for the amount of the debt or the creditor agency submits a complete debt claim, OPM will collect and pay the debt to the creditor agency as provided in §§ 831.1806 and 831.1807.

(2) If the suit or the administrative proceeding results in a judgment for the debtor without establishing a debt to the United States, OPM will pay the balance of the refund to the debtor upon receipt of a certified copy of the judgment or administrative decision.

[FR Doc. 86-28567 Filed 12-18-86; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 639]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 639 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period December 19–25, 1986. Such action is needed to balance the supply of fresh navel oranges with the demand for such period, due to the marketing situation confronting the orange industry.

DATE: Regulation 639 (§ 907.939) is effective for the period December 19–25, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202–447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their behalf. Thus, both statutes have small entity orientation and compatibility.

This rule is issued under Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1986–87 adopted by the Naval Orange Administrative Committee. The committee met publicly on December 16, 1986, in Visalia, California, to consider the current and prospective conditions of supply and demand and recommended, by a vote of 6 to 4, a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports that the market for navel oranges is very slow.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. To effectuate the declared purpose of the act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Agricultural marketing service, Marketing agreements and orders, California, Arizona, Oranges (navel).

PART 907—[AMENDED]

1. The authority citation for 7 CFR Part 907 continues to read:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.939 Navel Orange Regulation 639 is added to read as follows:

§ 907.939 Navel Orange Regulation 639.

The quantities of navel oranges grown in California and Arizona which may be handled during the period December 19 through December 25, 1986, are established as follows:

(a) District 1: 602,000 cartons;

(b) District 2: 98,000 cartons;

(c) District 3: Unlimited cartons;

(d) District 4: Unlimited cartons.

Dated: December 17, 1986.

Thomas R. Clark,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86-28663 Filed 12-18-86; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 910

[Lemon Regulation 540]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 540 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 275,000 cartons during the period December 21–27, 1986. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 540 (§ 910.840) is effective for the period December 21 through December 27, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1986–87. The committee met publicly on December 16, 1986, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a vote of 12 to 0, a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market for lemons is very strong.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, and Lemons.

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.840 is added to read as follows:

§ 910.840 Lemon Regulation 540.

The quantity of lemons grown in California and Arizona which may be handled during the period December 21 through December 27, 1986, is established at 275,000 cartons.

Dated: December 17, 1986.

Thomas R. Clark,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86-28662 Filed 12-18-86; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 985

Spearmint Oil Produced in the Far West

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule will amend procedures for issuing additional spearmint oil allotment base for a specified period of time during which existing small producers will be given priority when applying for additional allotment base. This amendment is intended to aid in bringing small producers' total supply up to a level comprising the minimum economic enterprise required for spearmint oil production. Additionally, this rule will provide that additional allotment base will not be available to replace allotment that had been transferred by a producer.

EFFECTIVE DATE: December 19, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202/447-5697.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "nonmajor" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This rule amends § 985.153(c)(2) of Subpart—Administrative Rules and Regulations by revising procedures for issuing additional allotment base to existing producers of spearmint oil.

It is estimated that nine handlers and 253 producers of Far West spearmint oil will be subject to regulation under the marketing order for spearmint oil produced in the Far West during the course of the current season and that the majority of these firms may be classified as small entities. It is anticipated that this action will be beneficial to small entities, and any costs incurred by producers are expected to be more than offset by the benefits to be derived. Issues which impact on small businesses are addressed in this final rule.

The Far West Spearmint Oil Administrative Committee met on June 4, 1986, and recommended amending § 985.153(c)(2) of Subpart—Administrative Rules and Regulations by revising the procedures for issuing additional allotment base to existing producers. The authority for this action is contained in § 985.53(d)(3) of the order which prescribes that the committee may, with the approval of the Secretary, establish rules and regulations to be used for determining the distribution of additional allotment base. In establishing such rules, the committee is required to take into account, among other things, the minimum economic enterprise requirements for spearmint oil production, the applicant's ability to produce spearmint oil, the area where the spearmint oil will be produced, and other economic and marketing factors.

This amendment of the procedures for issuing additional allotment base will provide that for a period of two years for Class I oil and one year for Class III oil, existing small producers will be given priority when applying for additional allotment base. This amendment is intended to help small producers increase their supply of spearmint oil to a level which will approximate the minimum economic enterprise level required for spearmint oil production. Additionally, this rule will provide that the additional allotment cannot be used to replace allotment which a producer has transferred away.

Section 985.53(d)(1) of the order provides for no more than 1 percent of the total allotment base for each class of oil to be issued annually and distributed equally as additional allotment base to both new and existing producers. This rule provides that the ½ percent of the additional allotment base, available to existing producers for the 1987–88 and 1988–89 seasons, will be issued first to small producers who apply. Existing producers applying for additional Class I oil allotment base with less than 2,000 pounds of base as of May 1, 1986, will be issued sufficient additional allotment base over a two year period (1987–88 and 1988–89) to bring them up to a level not to exceed 2,000 pounds. Existing producers applying for additional Class III oil allotment base with less than 2,200 pounds of base as of May 1, 1986, will be issued additional allotment base during the 1987–88 season, sufficient to bring them up to a level not to exceed 2,200 pounds.

This action is similar to a previous rule which provided that for the 1982–83, 1983–84, and 1984–85 seasons, additional allotment base would be issued to existing producers initially issued a base of less than 1,200 pounds of Class I oil or 1,800 pounds of Class III oil, respectively. In the 1985–86 and 1986–87 seasons, additional allotment bases were distributed equally to those producers requesting additional base who could demonstrate the ability to produce additional oil.

It has been determined that the approximate minimum economic enterprise level required for spearmint oil production should be higher than the 1,200 and 1,800 pound levels. For Class I oil the level has been increased from 1,200 to 2,000 pounds and for Class III oil from 1,800 to 2,200 pounds. The committee has recommended increased minimum economic enterprise levels because such increased amounts are roughly equal to those which are currently being issued to new producers who request allotment, and are considered to be a better measure of the minimum economic enterprise levels required for spearmint oil production.

The committee has estimated that 39 producers of Class I oil and 10 producers of Class III oil will be eligible for additional allotment base under the amendment. It is expected that existing producers of Class I oil that produce less than 2,000 pounds, will apply for the full amount of the additional allotment available to such producers of Class I oil over a two year period. However, the committee has estimated that existing producers of Class III oil who produce less than 2,200 pounds can be brought up to the minimum economic enterprise level in one year. If there is any unallocated additional allotment remaining for either Class I or Class III oil during the 1987–88 or 1988–89 seasons, such amounts would be distributed equally among other existing producers who apply.

A proposal was published in the August 14, 1986, issue of the Federal Register (51 FR 29109) and provided interested persons the opportunity for public comment. Comments were received from ten spearmint producers operating in the regulated area and from the U.S. Small Business Administration (SBA).

Comments received from two producers expressed opposition to marketing orders in general and to "quantity controls". They asserted that the operation of the spearmint oil order is detrimental to the small grower and only protects a few people. They also expressed opposition to the entry methods under the order for new producers. These comments, in substance, assert opposition to the order itself rather than to this rule and, therefore, cannot be addressed appropriately herein.

This rule does not affect entry or the allotment base issued to new producers. Essentially, it prioritizes the distribution of additional allotment base to existing producers whose current allotment levels are below the levels issued to new producers annually. Similar provisions to this amendment have been in effect in prior seasons and are consistent with the requirements of the order. The amendment is expected to assist 49 producers in increasing the size of their spearmint oil operations over a period of one to two years, and fulfills the requirement of the order that the minimum economic enterprise necessary for spearmint oil production be taken into account when formulating rules for the distribution of additional allotment base.

Commenters also questioned the economic viability of the minimum economic enterprise levels, i.e. 2,000 and 2,200 pounds. This issue was also raised by the SBA along with other questions regarding the determination of a viable economic size and the distribution of sizes of firms within the spearmint oil industry.

The viable economic enterprise levels are dependent on the total base quantity and the salable quantities and allotment percentages. The viable economic enterprise levels represent the amount of allotment, given the use of regulations (salable quantities and allotment percentages), that a producer would need to receive a profitable return. Such levels also take into account the inputs needed to produce spearmint oil, which require either a significant amount of capital investment, or the leasing of equipment from other producers/handlers in order to produce oil from spearmint root. Another factor the committee used in determining the minimum economic enterprise level was the size of fields normally available to growers in order to make it worthwhile to produce spearmint. Some comments received from producers state that they and other producers were successfully producing with a small amount of land and allotment, and they attribute such success to the establishment of the marketing order. Spearmint oil production is currently a profitable agricultural business. There are many people that requested new allotment to produce spearmint oil this year, which is likely attributable to spearmint's ability to yield a good return with a small amount of land. This is exemplified by the following information provided by the committee:

	Class I	Class III
Proposed base allotment.	2,000 pounds	2,200 pounds.
Average allotment	46 percent	47 percent.
Salable quantity	920 pounds	1,034 pounds.
Average yield/acre	70 pounds	122 pounds.
Number of acres needed.	13.1 acres	8.5 acres.
Average price/pound	$14.50	$9.50.
Gross/acre	$1,015.00	$1,159.00.

Although the allotment percentages are somewhat less this year, profitable production remains possible. Thus, the committee, in recommending these procedures for issuing additional allotment base, has given careful consideration to the levels established to ensure that producers are capable of producing spearmint oil and that they will benefit from such production.

The SBA also requested information on "what factors led the committee to determine that its current minimum allotments are insufficient and will the proposed increase in allotment be great enough to overcome these factors?" The proposal was initiated to bring existing small producers up to the level that is issued annually to new producers, which is a level that is established based on the allotment available and the current percentages. Bringing these producers up to the same economic level as new producers will give the existing small producers who have the ability to expand their production the opportunity to market more oil, and will ensure that they are not economically disadvantaged by new producers receiving a larger allotment.

Regarding the distribution of firms within the spearmint oil industry, such distribution is quite varied. There are 253 producers of spearmint oil who have allotment base. Of the 253, 164 producers have Class I oil allotment base and 132 producers have Class III oil allotment base. The producers' allotment bases range from 1,200 pounds to 181,902 pounds for Class I oil and 617 pounds to 82,167 pounds for Class III oil. The average allotment base held is 9,964 pounds and 13,695 pounds for Class I and Class III oil, respectively. Additionally, the number of producers with less than the average allotment is 117 for Class I oil and 90 for Class III oil. The 49 producers eligible for additional allotment represent approximately 20 percent of all allotment holding producers of spearmint oil.

Consequently, this amendment will not only affect but will significantly benefit a portion of the industry of which the clear majority are small producers.

The SBA also questioned the rationale related to the "failure rate" of spearmint oil producers. Detailed information on the failure of spearmint oil producers is not available, primarily because there are no known producers who rely on spearmint oil as their only source of income. Thus, in most if not all cases, if a producer of spearmint oil were to suffer economic failure there would not be any conclusive data showing that the failure occurred as a result of the production of spearmint oil. Since the net return to spearmint oil producers is high compared to other commodities, it is doubtful that the failure rate of farms that produce spearmint oil would be related to unprofitable spearmint oil production.

It is the agency's view that this action will not have a significant economic impact on a substantial number of small entities. The 49 eligible producers who may apply for and receive additional allotment base will be positively affected by this action. This rule is expected to benefit approximately 20 percent of the industry over a one to two year period. The amount of additional allotment to be received by this portion of the industry annually is only ½ percent of the total percent of the total base allotment available which is approximately 8,000 and 9,000 pounds for Class I and Class III oil, respectively, and is distributed to eligible producers to bring them up to the 2,000 and 2,200 pound levels. The total base available for both classes of spearmint oil totals approximately 2.5 million pounds.

The eight other comments received were from essentially small spearmint oil producers in the production area who are in favor of the marketing order and support the production of spearmint oil at the levels established in this document. These commenters assert that spearmint oil can be produced at the minimum economic enterprise levels set for existing producers of spearmint oil established in this document. They also comment that the amount of allotment base issued to new producers (which is almost identical to that established for existing producers under this rule) is not only economically viable, but can yield a good profit. These comments from small producers supported the marketing order because of the stability it provided the industry, and the profit maximization ability that can be realized on a small farm of five to ten acres.

This rule is issued under Marketing Order No. 985 regulating the handling of spearmint oil grown in the Far West. The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Far West Spearmint Oil Administrative Committee and upon other available information, including comments received on the proposal (51 FR 29109), and will prioritize the allocation of additional allotment base to small producers. It is hereby found that this action will tend to effectuate the declared policy of the Act.

It is further found that it is impracticable and contrary to the public interest to postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because: (1) Affected producers need to be informed of any changes in base allotment allocation in time for fall planting which usually begins in October; (2) the distribution of allotment bases to existing producers needs to be completed as soon as possible in order to provide producers adequate time to plan their operations for the 1987–88 season.

List of Subjects in 7 CFR Part 985

Marketing agreements and orders, Spearmint oil, Far west.

1. The authority citation for 7 CFR Part 985 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 985.153(c)(2) is revised to read as follows:

PART 985—SPEARMINT OIL PRODUCED IN THE FAR WEST

Subpart—Administrative Rules and Regulations

§ 985.153 Issuance of additional allotment base to new and existing producers.

* * * * *

(c) * * *

(2) *Existing Producers.* (i) The committee shall review all requests from existing producers for additional allotment base. With respect to the additional Class I allotment base for existing producers for the 1987–88 and 1988–89 marketing years, existing producers with less than 2,000 pounds of allotment as of May 1, 1986, who apply and who have the ability to produce additional quantities of spearmint oil shall be issued allotment base sufficient to bring them up to a level not to exceed 2,000 pounds: *Provided,* That all eligible producers with less than 2,000 pounds of allotment who apply shall receive ½ of the total amount of allotment base to which they are entitled, effective for the 1987–88 marketing year, and ½ of the total amount of allotment base to which they are entitled, effective for the 1988–89 marketing year: *Provided further,* That additional allotment base shall not be issued to any person that would replace all or part of allotment base such person has transferred. Additional allotment base in excess of the amount needed to bring eligible producers up to 2,000 pounds of allotment base for Class I oil shall be distributed equally among all existing producers who apply and who have the ability to produce additional quantities of spearmint oil. With respect to the additional Class III allotment base for existing producers for the 1987–88 marketing year, existing producers with less than 2,200 pounds of allotment base as of May 1, 1986, who apply and who have the ability to produce additional quantities of spearmint oil shall be issued additional allotment base sufficient to bring them up to a level not to exceed 2,200 pounds: *Provided,* That additional allotment base shall not be issued to any person that would replace all or part of allotment base such person has transferred. Additional allotment base in excess of the amount needed to bring eligible producers up to 2,200 pounds of allotment base for Class III oil shall be distributed equally among all existing producers who apply and who have the ability to produce additional quantities of spearmint oil, and;

(ii) For each marketing year after 1988–89 for Class I oil and 1987–88 for Class III oil, each existing producer of a class of spearmint oil who requests additional allotment base and who has the ability to produce additional quantities of that class of spearmint oil shall be eligible to receive a share of the additional allotment base for that class of oil. Additional allotment base to be issued by the committee for a class of oil shall be distributed equally among the eligible producers for that class of oil. The committee shall immediately notify each producer who is to receive additional allotment base by issuing that producer an allotment base in the appropriate amount.

* * * * *

Dated: December 15, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86-28467 Filed 12-18-86; 8:45 am]

BILLING CODE 3410-02-M

Rural Electrification Administration

7 CFR Part 1736

Electric Standards and Specifications; Issuance

AGENCY: Rural Electrification Administration, Agriculture.

ACTION: Final Rule.

SUMMARY: This action amends 7 CFR 1736.97, Electric Standards and Specifications, by adding a new REA Bulletin 50–4(D–801), Specifications and Drawings for 34.5/19.9 kV Distribution Line Construction. By issuing this standard, REA will provide borrowers with construction drawings and specifications for an additional choice of voltage for a particular electric distribution line. Depending on the results of a borrower's economic analysis, the use of 34.5/19.9 kV as a distribution voltage may be more economical than the use of REA's present distribution voltages, 12.5/7.2 kV and 24.9/14.4 kV. Therefore, use of this standard may provide savings to certain borrowers.

EFFECTIVE DATE: December 19, 1986. The incorporation by reference of REA Bulletin 50–4(D–801) was approved by the Director, Office of the Federal Register on December 19, 1986.

FOR FURTHER INFORMATION CONTACT: Harvey L. Bowles, Electric Staff Division, Rural Electrification Administration, Room 1256–S, Washington, DC 20250, telephone (202) 382–9082. The Final Impact statement describing the options considered in developing this rule and the impact of implementing the chosen option are available on request from Mr. Bowles at the above address.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act of 1936 (Act), as amended (7 U.S.C. 901 et seq.), the Rural Electrification Administration (REA) is amending 7 CFR 1736.97, Electric Standards and Specifications, by adding a new REA Bulletin 50–4(D–801), Specifications and Drawings for 34.5/19.9 kV Distribution Line Construction. This action has been reviewed in accordance with Executive Order 12291, Federal Regulation. This action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies; or (3) result in significant adverse effects on competition, employment, investment or productivity, and, therefore, has been determined to be "not major."

REA has concluded that promulgation of this rule will not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq. 1976) and, therefore, does not require an environmental impact statement or an environmental assessment.

This regulation contains no information or recordkeeping requirements which require approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 et seq.).

This action does not fall within the scope of the Regulatory Flexibility Act. This program is listed in the Catalog of Federal Domestic Assistance as 10.850, Rural Electrification Loans and Loan Guarantees.

For the reasons set forth in the final rule related Notice to 7 CFR Part 3015 Subpart V in 50 FR 47034, November 14, 1985, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

Background

The Rural Electrification Administration (REA) maintains a system of bulletins that contain construction standards and specifications for materials and equipment which are applicable to electric system facilities constucted by REA electric borrowers in accordance with the REA loan contract. These standards and specifications contain REA's requirements pertaining to routine financing for construction units and material and equipment items commonly used in REA electric borrowers' systems. REA Bulletin 50–4 (D–801), Specifications and Drawings for 34.5/19.9 kV Distribution Line Construction, contains the REA specifications and drawings for assembly units that will be used on 34.5/19.9 kV distribution lines. This standard will be similar to REA's present specifications and drawings for 24.9/14.4 kV line construction.

The issuance of this bulletin will standardize construction of units for 34.5 kV overhead distribution facilities and will eliminate some of the detailed review of plans and specifications now necessary.

Interested parties were given sixty (60) day sin which to express their views on the proposed rule. The January 16, 1984, notice in the **Federal Register** elicited five (5) comments on the proposed rule. Three of the comments were from REA electric borrowers, one was from a manufacturer, and one was from a local government agency.

One borrower offered several suggestions on equipment specifications. These suggestions will be considered as REA staff evaluates material and equipment for use on 34.5/19.9 kV distributions lines. A decision has been made to use post insulators instead of pin insulators because post insulators have a greater leakage distance and are less subject to puncture.

One borrower offered several suggestions concerning the drawings. Some of the clearances were questioned. These were checked and corrected where necessary. It was indicated that the drawings were cluttered with the use of dual dimensions (customary and metric). A decision to use dual dimensions was made rather than to use either customary or metric dimensions alone. The borrower questioned the number of suspension insulators used at deadend structures. Although it is common practice to use one additional insulator at deadend structures as compared to tangent structures, three 10-inch suspension insulators should be adequate for both tangent and deadend structures at this voltage. Therefore, three, not four suspension insulators are shown for deadend structures. The borrower questioned the use of certain structures in areas frequented by eagles and other large birds (raptors). In such areas, REA has made provisions for financial assistance with special structures in accordance with the provisions of 7 CFR 1729.10. The borrower also pointed out a spelling error which has been corrected.

One manufacturer suggested changing the specifications to require the use of inhibitor on all connections instead of only connections involving aluminum conductor. Although the Agency does not have an objection to the use of an inhibitor on copper conductor connectors, it was felt unnecessary to require the use of an inhibitor on all connections since the Agency has not received reports of problems with copper conductor connections.

One borrower commented that it supports adoption of the proposed Bulletin 50–4(D–801).

One local government agency made several comments that were not within the scope of this bulletin. One concerned the ratings of anchors. The ratings shown in Bulletin 50–4 are coordinated with those given in REA Bulletin 43–5, List of Materials Acceptable for Use on Systems of REA Electrification Borrowers. The value of additional helices on anchors was questioned. Multi-helix anchors are not shown in Bulletin 50–4 and, therefore, their use is not within the scope of this bulletin. One comment concerned downed current protection for high impedance faults. Such protection is discussed in REA Bulletin 61–2, Guide for Making a Sectionalizing Study on Rural Electric Systems, and is not within the scope of Bulletin 50–4. One question concerned the relative merits of insulated versus bare overhead conductors. This subject is not covered in Bulletin 50–4.

List of Subjects in 7 CFR Part 1736

Electric utilities, Engineering standards, Incorporation by reference.

PART 1736—[AMENDED]

In view of the above, REA hereby amends 7 CFR Part 1736 by adding a new bulletin 50–4.

1. The authority cited for 7 CFR Part 1736 is revised to read as follows:

Authority: 7 U.S.C. 901 et seq.; 7 U.S.C. 1021 et seq.

2. The table in § 1736.97 is amended by adding the entry 50–4 to read as follows:

§ 1736.97 Incorporation by reference of electric standards and specifications.

* * * * *

50–4	D–801	Nov. 1986	Specification and drawings for 34.5/19.9 kV distribution line construction.

* * * * *

Dated: November 20, 1986.

Jack Van Mark,

Acting Administrator.

[FR Doc. 86-28284 Filed 12-18-86; 8:45 am]

BILLING CODE 3410-15-M

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 86–084]

Tuberculosis in Cattle; State Designations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that raised the designation of Wisconsin from a modified accredited area to an accredited-free State for tuberculosis in cattle. This action is necessary because it has been determined that Wisconsin meets the criteria for designation as an accredited-free State.

EFFECTIVE DATE: December 19, 1986.

FOR FURTHER INFORMATION CONTACT:
Dr. Ralph L. Hosker, Cattle Diseases Staff, VS, APHIS, USDA, Room 818, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8715.

SUPPLEMENTARY INFORMATION:

Background

The interim rule published May 28, 1986 (FR 19161–19162), was effective on the date of publication in the **Federal Register**, and comments were solicited for 60 days ending July 28, 1986. No comments were received. The facts presented in the interim rule still provide a basis for the amendment.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined not to be a "major rule." Based on information compiled by the Department, we have determined that this rule will not have an effect on the economy of more than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have any significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of the State of Wisconsin will not cause a significant effect on marketing patterns and will not have a significant economic impact on those persons affected by this document.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 77

Animal diseases, Cattle, Transportation, Tuberculosis.

PART 77—TUBERCULOSIS IN CATTLE

Accordingly, we are adopting as a final rule the interim rule that amended 9 CFR Part 77 and that was published at 51 FR 19161–19162 on May 28, 1986.

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 16th day of December 1986.

J.K. Atwell,

Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 86–28464 Filed 12–18–86; 8:45 am]

BILLING CODE 3410–34–M

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9 CFR Part 78

[Docket No. 86–083]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that designates the portions of Mohave and Coconino Counties north of the Grand Canyon (also known as the "Arizona Strip") in Arizona, as Class Free under the Brucellosis regulations. This action is necessary because it has been determined that the Area consisting of these portions of Mohave and Coconino Counties meets the standards for Class Free Status. The effect of this action is to relieve certain restrictions on the interstate movement of cattle from the Area in Arizona redesignated as Class Free.

EFFECTIVE DATE: December 19, 1986.

FOR FURTHER INFORMATION CONTACT:
Dr. Hugh Metcalf, Program Planning Staff, VS, APHIS, USDA, Room 841, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8711.

SUPPLEMENTARY INFORMATION:

Background

The interim rule published May 28, 1986 (51 FR 19162–19163), was effective on the date of publication in the **Federal Register**, and comments were solicited for 60 days ending July 28, 1986. No comments were received. The facts presented in the interim rule still provide a basis for the amendment.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined not to be a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a signlficant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of a portion of the State of Arizona reduces certain requirements on the interstate movement of these cattle. Cattle from Certified Brucellosis-Free Herds moving interstate are not affected by the change in status. It has been determined that the change in brucellosis status made by this document will not affect marketing patterns and will not have a significant economic impact on those persons affected by this document.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 77

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule the interim rule that amended 9 CFR Part 78 and that was published at 51 FR 19162–19164 on May 28, 1986.

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 16th day of December 1986.

J.K. Atwell,

Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 86–28465 Filed 12–18–86; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8110]

Income Taxes; Sanctions on Issuers and Holders of Registration-Required Obligations Not in Registered Form

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the definition of the term "registration-required obligation" with respect to obligations issued to certain foreign persons. This document also contains final regulations on the imposition of sanctions on issuers issuing registration-required obligations in bearer form and on persons holding registration-required obligations in bearer form. This document provides final regulations with respect to the proposed regulations published in the **Federal Register** at 49 FR 33276 (Aug. 22, 1984) and 50 FR 33552 (Aug. 20, 1985).

EFFECTIVE DATE: The regulations apply generally to obligations issued after January 20, 1987.

FOR FURTHER INFORMATION CONTACT:
Carl Cooper of the Office of the Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T) (202–566–3388).

SUPPLEMENTARY INFORMATION:

Background

On August 22, 1984, the **Federal Register** published temporary regulations under T.D. 7965 (49 FR 33228) and proposed amendments (49 FR 33276) to the Income Tax Regulations (26 CFR Part 1) under sections 163, 165, and 1287 of the Internal Revenue Code of 1954. A number of written comments responding to the notice were received. A public hearing was held on January 28, 1985. On August 20, 1985, the **Federal Register** published T.D. 8046 (50 FR 33522), an amendment of the temporary regulations under T.D. 7965, and an amendment of the notice of proposed rulemaking (50 FR 33552). After consideration of all comments regarding the proposed regulations, these final regulations published in this document are adopted.

Section 310 of TEFRA added new sections 163(f), 165(j), and 1232(c) to the Code. The Tax Reform Act of 1984 (Pub. L. 98–369; 98 Stat. 552) redesignated section 1232(c) as section 1287. Section 163(f) disallows an interest deduction otherwise allowable under section 163(a), or any other provision of the Code, if the interest is attributable to a registration-required obligation that is held in bearer form. Section 165(j) disallows a deduction for any loss sustained on a registration-required obligation that is held in bearer form. Section 1287(a) provides that, if a registration-required obligation is held in bearer form, any gain on the sale or other disposition of such obligation shall be treated as ordinary income.

Explanation of Provisions

The final regulations contained in this document provide rules for determining whether an issuer may claim an interest deduction for interest paid on an obligation in bearer form, which is otherwise a registration-required obligation, because the issuer satisfies the conditions set forth in section 163(f)(2)(B). Under section 163(f)(2)(B), an obligation is not a registration-required obligation if it meets the following conditions: interest on the obligation is payable only outside the United States and its possessions; on the face of the obligation there is a statement that any person who holds the obligation will be subject to limitations under United States income tax laws; and there are arrangements reasonably designed to ensure its sale (or resale in connection with the original issue) only to a person who is not a United States person.

Section 1.163–5T(c)(1) of the former temporary regulations provides that an obligation cannot be considered to be issued pursuant to arrangements reasonably designed to ensure sale to non-United States persons if, once the obligation has been made payable to a named payee, the obligation may be made payable to bearer. A number of commenters raised questions concerning the scope of this rule (the conversion rule), such as its application to the voluntary recording of obligations under the laws of certain foreign countries. Other commenters questioned whether this rule is necessary to ensure tax compliance by United States taxpayers. In the final regulations, the conversion rule is deleted. Under section 103(j) and the regulations thereunder, an obligation that is otherwise considered to be in registered form is not considered to be in registered form as of a particular time if, at that time or at any time until its maturity, it can be transferred by a means other than the reissuance of the obligation, issuance of a new obligation, or a book-entry notation by the issuer (or its agent). Such an obligation (a convertible obligation) is therefore considered to be in bearer form. As a result of the deletion of the conversion rule, a convertible obligation can be foreign-targeted in the same manner as any other bearer obligation.

Section 1.163–5T(c)(1)(ii)(B) requires a legend on the face of any bearer obligation or on any detachable interest coupon for the purpose of notifying purchasers of the penalties imposed under the United States income tax laws on a United States person who purchases it. The final regulations clarify that the legend requirement applies to a bearer obligation evidenced by a book entry. With respect to such an obligation, the legend must appear in the book or record in which the book entry is made.

Section 1.163–5T(c)(1)(i) requires that there be arrangements reasonably designed to ensure that an obligation will be sold (or resold in connection with its original issuance) only to a person who is not a United States person or a United States person that is a financial institution that agrees to comply with certain requirements contained in section 165(j) and the regulations thereunder. Paragraph (c)(2)(i) of the regulations provides three alternative ways to satisfy this requirement. These methods, which are described in subdivisions (A), (B), and (C) of paragraph (c)(2)(i), impose certain requirements in connection with the original issuance of an obligation. The third method under subdivision (C) applies to an obligation that is issued outside the United States and its possessions by an issuer that does not significantly engage in interstate commerce with respect to the issuance of the obligation.

In applying the test of arrangements reasonably designed to ensure sale to non-United States persons, commenters asked for clarification of the meaning and duration of an "original issuance" or of an "issuance" for purposes of the issuer sanctions. Commenters have raised the question of whether an assumption or an assignment of an obligation is an event that requires the new obligor to comply with one of these alternative arrangements reasonably designed to ensure sale to non-United States persons or to certain United States persons. Commenters have also

asked whether a material change in an obligation's terms, which results in the recognition of gain or loss under section 1001, is an event that requires an obligor to comply with one of these alternative arrangements. Commenters have asked that the final regulations be clarified to state that the substitution of an obligation, even an obligation with materially different terms, does not impose a requirement to comply with one of these alternative arrangements as long as the obligation surrendered was issued under one of these alternative arrangements.

The final regulations do not define an original issuance in terms of a time period because the activities that constitute an original issuance are completed within different time frames depending on the circumstances of the transaction. However, the final regulations clarify that an exchange of one obligation for another is an original issuance only if the exchange constitutes a disposition of property for purposes of section 1001 of the Code. Thus, in connection with an exchange that does not constitute the disposition of an obligation under section 1001, an obligor does not have to comply with one of the alternative arrangements. In connection with an exchange of obligations that is defined as a disposition for purposes of section 1001, the final regulations do require an obligor to comply with one of the alternative arrangements. This requirement is imposed in order to provide more assurance that bearer obligations will not become readily available to United States persons.

In applying the test of arrangements reasonably designed to ensure sale to non-United States persons, commenters also asked whether this requirement applies to the issuance of a temporary global security. The final regulations contain a statement that a temporary global security need not satisfy the conditions of § 1.163–5(c)(2)(i).

Section 1.163–5(c)(2)(i)(A) provides that the test of arrangements reasonably designed to ensure sale to non-United States persons is met if the obligation is offered for sale and delivered only outside the United States and its possessions and need not be registered under the Securities Act of 1933 because it is intended for distribution to persons who are not United States persons. Commenters asked that this method of satisfying the test of arrangements reasonably designed be available to an issuer of an obligation that is registered under the Securities Act of 1933 or exempt from registration under section three or four of the Act or because the obligation does not qualify as a security. This change was not made in the final regulations because the evidence that this test has been satisfied is a written opinion of Counsel that the security need not be registered under the Securities Act of 1933 for the reason that it is intended for distribution to persons who are not United States persons. Although a commenter requested that the requirement of a written opinion of counsel be deleted on the basis of cost, the requirement was retained. Its purpose is to document the specific steps to be taken to place an obligation in the hands of non-United States persons, and such an analysis would be required in any event to ensure that an issuer would not violate the Securities Act of 1933.

Section 1.163–5(c)(2)(i)(B) provides that the test of arrangements reasonably designed to ensure sale to non-United States persons is met if the obligation is registered under the Securities Act of 1933, if it is exempt from registration under section 3 or 4 of the Act, or if the obligations does not qualify as a security and if five conditions are met, including the place of offer, sale, and delivery, the execution of a covenant by the issuer, each underwriter, and each member of the selling group, the delivery of a confirmation, the receipt of a certificate, and the requirement of no actual knowledge that the certificate is false. Several commenters noted that the certificate requirement contemplates purchase of a bearer obligation by a United States person acquiring through a financial institution but that the rest of the conditions of the test under paragraph (c)(2)(i)(B) do not specifically provide for the purchase by a United States person acquiring through a financial institution. These commenters also objected to the requirement of offer, sale, and delivery only outside the United States given that the purchase by United States persons through financial institutions is contemplated under this test.

Because of the statutory requirement of arrangements reasonably designed to ensure sale (or resale in connection with original issuance) only to non-United States persons, the Treasury Department does not have the authority to permit the offer, sale, or delivery of bearer obligations inside the United States in connection with their original issuance. Therefore, the regulation was not changed in this respect. However, the final regulations have been clarified to the effect that a bearer obligation may be offered and sold outside the United States to a financial institution purchasing for the account of a customer that is a United States person if the financial institution agrees as a condition of the purchase to provide on delivery a statement under penalties of perjury that it is a financial institution, that it will comply with the requirements in section 165(j)(3) (A), (B), or (C) and the regulations thereunder and that it is not purchasing for offer to resell or for resale inside the United States. The other conditions of this test have been revised to be consistent with this change.

In addition, the statement to be provided by any person under this test has been changed by the addition of the statement that the obligation is not being acquired for offer to resell or for resale to any person inside the United States.

In connection with the third test of compliance with arrangements reasonably designed to ensure sale to non-United States persons, the test applicable to issuers who are not significantly involved in interstate commerce with respect to the issuance of an obligation, commenters objected that the threshold of "significant" involvement in interstate commerce under the temporary regulations is too strict. Generally these commenters were concerned because failure to meet the interstate commerce test would subject an issuance of a certificate of deposit by a foreign branch of the United States bank or by a controlled foreign corporation engaged in the banking business to requirements stricter than the maintenance of documentary evidence of non-United States beneficial ownership. The interstate commerce test, as published in the former temporary regulations, has been retained.

As suggested by a commenter, documentary evidence has been defined using one reference point. The reference point selected is the definition under subdivision (iii) of A–5 of § 35a.9999-4T for consistency with the information reporting and backup withholding rules. Under the (C) alternative, a purchaser of an individual certificate of deposit whose status as a foreign person is not established by documentary evidence must provide a signed statement that the obligation is not being acquired by or on behalf of a United States person or that, if a beneficial interest in the obligation is being acquired by a United States person, such person is a financial institution or is acquiring through a financial institution and the obligation is held by a financial institution that has agreed to comply with section 165(j)(3) and the regulations thereunder.

The interstate commerce test has been retained. As in the temporary regulations published on August 22, 1984, foreign branches of United States banks and controlled foreign corporations engaged in the active conduct of the banking business outside the United States can satisfy this alternative only under the conditions described in § 1.163–5(c)(2)(i)(C) (2), (3), and (4).

In connection with the interstate commerce test, some commenters objected to the rule that substantially identical loans disqualify an obligation from the interstate commerce test and other commenters suggested that the rule be applied only where the obligations are identical. The regulations have not been changed because the existence of a substantially identical obligation of a United States shareholder may indicate the involvement of the shareholder in the issuance, and the interstate commerce test should be available only if the facts clearly indicate that the transaction takes place only outside the United States and between foreign persons.

Section 1.163–5(c)(2)(v) requires that interest, including original issue discount, be payable only outside the United States and its possessions. A commenter suggested that this requirement be considered satisfied even if a person presents an original issue discount obligation inside the United States provided an amount equal to the original issue discount is payable only outside the United States and its possessions. This suggestion was not adopted because the requirement that an obligation be presented outside the United States tends to reduce the convenience of disposing of bearer obligations by United States persons. At the request of a commenter, the place of payment rule was changed by the addition of language to the effect that the amount of interest to be considered payable only outside the United States and its possessions is not affected by the amount of market discount determined under section 1278(a).

A commenter suggested that the requirement that interest on a bearer obligation be payable only outside the United States be changed to a requirement that the issuer, underwriter, and members of the selling group must agree at the time of original issuance to pay interest only outside the United States. This suggestion was not adopted because the requirement to pay interest only outside the United States, like the requirement of a legend, applies throughout the term of the obligation.

The effective date provision of the issuer sanctions has been clarified by stating that the former temporary regulations under § 5f.163–1(c) and the former proposed regulations under § 1.163–5(c) published in September, 1983, only apply to an obligation issued after December 31, 1982 and on or before September 21, 1984. This change makes it clear that the Service will not apply the former temporary or proposed regulations to the determination of whether an obligation issued on or before December 31, 1982 satisfied section 163(f)(2)(B)(i) for the purpose of satisfying section 127(g)(3) of the Tax Reform Act of 1984. Consistent with the effective date change to the foreign-targeting regulations, the effective date provisions of the holder sanctions under § 1.165–12 and § 1.128–1 with respect to the definition of registered form have been changed to apply the definition to obligations issued after December 31, 1982.

The effective date of the definition of registered form was also changed to provide that the former temporary regulations under 5f.163–1 or the former proposed regulations published on September 2, 1983 apply to the definition of registered form with respect to obligations issued after September 21, 1984 pursuant to the exercise of a warrant or the conversion of a convertible obligation, which warrant or convertible obligation (including conversion privilege) was issued on or before September 21, 1984.

The holder sanctions under § 1.165–12 and § 1.1287–1 have been revised in a number of ways in response to suggestions by various commenters. First, a person holding a bearer obligation under § 1.165–12(c) (1) and qualifying as a registered broker-dealer (or a person exempt from such registration because it is a bank) is not required to hold the obligation outside the United States in connection with a trade or business conducted outside the United States, and a financial institution is not required to hold a bearer obligation outside the United States. A registered broker-dealer (or a person exempt from such registration because it is a bank) is allowed to hold a bearer obligation inside the United States for sale to customers in the ordinary course of its trade or business conducted inside or outside the United States. A financial institution is allowed to hold a bearer obligation inside the United States for sale to customers in the ordinary course of its trade or business conducted outside the United States only if the financial institution offers to sell, sells, and delivers the obligation outside the United States. Second, a broker-dealer holding an obligation under § 1.165–12(c)(1) is allowed to offer to sell and sell inside the United States in a transaction consisting of the purchase of a block of obligations with a total denomination of at least $1,000,000 to a financial institution that provides a statement under penalties of perjury that it is a financial institution purchasing for its own account or for the account of another financial institution or exempt organization as defined in section 501(c)(3) and that it will comply with section 165(j)(3) (A), (B), or (C) and the regulations thereunder. Similary, the final regulations provide that a financial institution holding for its own account under § 1.165–12(c)(2) or a person holding a bearer obligation through a financial institution under § 1.165–12(c)(3) is permitted to offer and resell the obligation inside the United States only to a financial institution for its own account or for the account of an exempt organization. Further, the requirement to report payments of interest and gross proceeds with respect to bearer bonds held through financial institutions has been expanded by requiring such reporting in the case of payments to exempt recipients under § 1.6049–4(c)(1)(ii).

Although some commenters asked for a change in the confirmation and documentary evidence requirements applicable to deliveries outside the U.S., the final regulations were not changed to eliminate the requirement of a confirmation on delivery to a financial institution and of documentary evidence on delivery to a person who is not a financial institution. These requirements were included in the former temporary regulations in lieu of the more stringent certificate requirement in the former proposed regulations issued in September of 1983. At the time the certificate requirement was deleted, the confirmation and documentary evidence requirements were viewed as workable and as minimizing the administrative burden while providing a degree of assurance that bearer obligations would not be readily available to United States persons; there is no reason to further relax these rules.

Non-Applicability of Executive Order 12291

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Regulatory Flexibility Act

Although a notice of proposed rulemaking that solicited public comment was issued, the Internal

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Revenue Service concluded when the notice was issued that the regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. did not apply. Accordingly, the final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Paperwork Reduction Act

The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB under Control No. 1545–0786.

Drafting Information

The principal author of this regulation is P. Ann Fisher of the Office of the Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service. Personnel from other offices of the Internal Revenue Service and Treasury Department, however, participated in developing the regulations, on matters of both substance and style.

List of Subjects

26 CFR 1.61–1 through 1.281–4

Income taxes, Taxable income, Deductions, Exemptions, Industrial development bonds, Registration requirements.

26 CFR 1.1201 through 1.1287–1T

Income taxes, Capital gains and losses, Recapture.

26 CFR Port 602

OMB control numbers, Paperwork Reduction Act.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 1 and 602 are amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Sections 1.165–12 and 1.1287–1 also issued under 26 U.S.C. 165 (j) (3).

§ 1.163–5T [Removed]

Par. 2. Section 1.163–5T is removed. New § 1.163–5 is inserted in its place, to read as follows:

§ 1.163–5 Denial of interest deduction on certain obligations issued after December 31, 1982, unless issued in registered form.

(a) [Reserved]

(b) [Reserved]

(c) *Obligations issued to foreign persons after September 21, 1984*—(1) *In general.* A determination of whether an obligation satisfies each of the requirements of this paragraph shall be made on an obligation-by-obligation basis. An obligation issued directly (or through affiliated entities) in bearer form by, or guaranteed by, a United States Government-owned agency or a United States Government-sponsored enterprise, such as the Federal National Mortgage Association, the Federal Home Loan Banks, the Federal Loan Mortgage Corporation, the Farm Credit Administration, and the Student Loan Marketing Association, may not satisfy this paragraph (c). An obligation issued after September 21, 1984 is described in this paragraph if—

(i) There are arrangements reasonably designed to ensure that such obligation will be sold (or resold in connection with its original issuance) only to a person who is not a United States person or who is a United States person that is a financial institution (as defined in § 1.165–12(c)(1)(v)) purchasing for its own account or for the account of a customer and that agrees to comply with the requirements of section 165(j)(3) (A),(B), or (C) and the regulations thereunder, and

(ii) In the case of an obligation which is not in registered form—

(A) Interest on such obligation is payable only outside the United States and its possessions, and

(B) Unless the obligation is described in subparagraph (2)(i)(C) of this paragraph or is a temporary global security, the following statement in English either appears on the face of the obligation and on any interest coupons which may be detached therefrom or, if the obligation is evidenced by a book entry, appears in the book or record in which the book entry is made: "Any United States person who holds this obligation will be subject to limitations under the United States income tax laws, including the limitations provided in sections 165(j) and 1287(a) of the Internal Revenue Code." For purposes of this paragraph, the term "temporary global security" means a security which is held for the benefit of the purchasers of the obligations of the issuer and interests in which are exchangeable for securities in definitive registered or bearer form prior to its stated maturity.

(2) *Rules for the application of this paragraph*—(i) *Arrangements reasonably designed to ensure sale to non-United States persons.* An obligation will be considered to satisfy paragraph (c)(1)(i) of this section if the conditions of subdivision (A), (B), or (C) of this subdivision (i) are met in connection with the original issuance of the obligation. An exchange of one obligation for another is considered an original issuance if and only if the exchange constitutes a disposition of property for purposes of section 1001 of the Code. Obligations that meet the conditions of subdivisions (A), (B) and (C) (other than certificates of deposit issued under the conditions of subdivision (C) by a United States person or by a controlled foreign corporation within the meaning of section 957(a) that is engaged in the active conduct of a banking business within the meaning of section 954(c)(3)(B) as in effect prior to the Tax Reform Act of 1986, and the regulations thereunder) may be issued in a single public offering. A temporary global security is not required to satisfy the conditions of this subdivision (i).

(A) In connection with the original issuance of an obligation, the obligation is offered for sale or resale only outside of the United States and its possessions, is delivered only outside the United States and its possessions and is not registered under the Securities Act of 1933 because it is intended for distribution to persons who are not United States persons. An obligation will not be considered to be required to be registered under the Securities Act of 1933 if the issuer, in reliance on the written opinion of counsel received prior to the issuance thereof, determines in good faith that the obligation need not be registered under the Securities Act of 1933 for the reason that it is intended for distribution to persons who are not United States persons. Solely for purposes of this subdivision (i)(A), the term "United States person" has the same meaning as it has for purposes of determining whether an obligation is intended for distribution to persons under the Securities Act of 1933.

(B) The obligation is registered under the Securities Act of 1933, the obligation is exempt from registration by reason of section 3 or section 4 of such Act, or the obligation does not qualify as a security under the Securities Act of 1933, and all the conditions set forth in paragraph (c)(2)(i)(B)(*1*), (*2*), (*3*), (*4*) and (*5*) are met with respect to such obligation.

(*1*) In connection with the original issuance of an obligation in bearer form, the obligation is offered for sale or resale only outside the United States and its possessions.

(*2*) The issuer does not, and each underwriter and each member of the selling group, if any, covenants that it will not, in connection with the original issuance of the obligation, offer to sell or resell the obligation in bearer form to any person inside the United States or to a United States person unless such United States person is a financial institution as defined in § 1.165–12(c)(v) purchasing for its own account or for the account of a customer, which financial institution, as a condition of the purchase, agrees to provide on delivery of the obligation (or on issuance, if the obligation is not in definitive form) the certificate required under paragraph (c)(2)(i)(B)(*4*).

(*3*) In connection with its sale or resale during the original issuance of the obligation in bearer form, each underwriter and each member of the selling group, if any, or the issuer, if there is no underwriter or selling group, sends a confirmation to the purchaser of the bearer obligation stating that the purchaser represents that it is not a United States person or, if it is a United States person, it is a financial institution as defined in § 1.165–12(c)(v) purchasing for its own account or for the account of a customer and that the financial institution will comply with the requirements of section 165(j)(3) (A), (B), or (C) and the regulations thereunder. The confirmation must also state that, if the purchaser is a dealer, it will send similar confirmations to whomever purchases from it.

(*4*) In connection with the original issuance of the obligation in bearer form, it is delivered in definitive form (or issued, if the obligation is not in definitive form) to the person entitled to physical delivery thereof only upon presentation of a certificate signed by such person to the issuer, underwriter, or member of the selling group, which certificate states that the obligation is not being acquired by or on behalf of a United States person, or for offer to resell or for resale to a United States person or any person inside the United States, or, if a beneficial interest in the obligation is being acquired by a United States person, that such person is a financial institution as defined in § 1.165–12(c)(v) or is acquiring through a financial institution and that the obligation is held by a financial institution that has agreed to comply with the requirements of section 165(j)(3) (A), (B), or (C) and the regulations thereunder and that is not purchasing for offer to resell or for resale inside the United States. When a certificate is provided by a clearing organization, it must be based on statements provided to it by its member organizations. A clearing organization is an entity which is in the business of holding obligations for member organizations and transferring obligations among such members by credit or debit to the account of a member without the necessity or physical delivery of the obligation. For purposes of paragraph (c)(2)(i)(B), the term "delivery" does not include the delivery of an obligation to an underwriter or member of the selling group, if any.

(*5*) The issuer, underwriter, or member of the selling group does not have actual knowledge that the certificate described in paragraph (c)(2)(i)(B)(*4*) of this section is false. The issuer, underwriter, or member of the selling group shall be deemed to have actual knowledge that the certificate described in paragraph (c)(2)(i)(B)(*4*) of this section is false if the issuer, underwriter, or member of the selling group has a United States address for the beneficial owner (other than a financial institution as defined in § 1.165–12(c)(v) that represents that it will comply with the requirements of section 165(j)(3) (A), (B), or (C) and the regulations thereunder) and does not have documentary evidence as described in subdivision (iii) of A–5 of § 35a.9999–4T that the beneficial owner is not a United States person.

(C) The obligation is issued only outside the United States and its possessions by an issuer that does not significantly engage in interstate commerce with respect to the issuance of such obligation either directly or through its agent, an underwriter, or a member of the selling group. In the case of an issuer that is a United States person, such issuer may only satisfy the test set forth in this paragraph (c)(2)(i)(C) if—

(*1*) It is engaged through a branch in the active conduct of a banking business, within the meaning of section 954(c)(3)(B) as in effect before the Tax Reform Act of 1986, and the regulations thereunder, outside the United States;

(*2*) The obligation is issued outside of the United States by the branch in connection with that trade or business;

(*3*) The obligation that is so issued is sold directly to the public and is not issued as a part of a larger issuance made by means of a public offering; and

(*4*) The issuer either maintains documentary evidence as described in subdivision (iii) of A–5 of § 35a.9999–4T that the purchaser is not a United States person (provided that the issuer has no actual knowledge that the documentary evidence is false) or on delivery of the obligation the issuer receives a statement signed by the person entitled to physical delivery thereof and stating either that the obligation is not being acquired by or on behalf of a United States person or that, if a beneficial interest in the obligation is being acquired by a United States person, such person is a financial institution as defined in § 1.165–12(c)(v) or is acquiring through a financial institution and the obligation is held by a financial institution that has agreed to comply with the requirements of 165(j)(3) (A), (B) or (C) and the regulations thereunder and that it is not purchasing for offer to resell or for resale inside the United States (provided that the issuer has no actual knowledge that the statement is false).

In addition, an issuer that is a controlled foreign corporation within the meaning of section 957 (a) that is engaged in the active conduct of a banking business outside the United States within the meaning of section 954(c)(3)(B) as in effect before the Tax Reform Act of 1986, and the regulations thereunder, can only satisfy the provisions of this paragraph (c)(2)(i)(C), if it meets the requirements of this paragraph (c)(2)(i)(C)(*2*), (*3*) and (*4*).

(ii) *Special rules.* An obligation shall not be considered to be described in paragraph (c)(2)(i)(C) of this section if it is—

(A) Guaranteed by a United States shareholder of the issuer;

(B) Convertible into a debt or equity interest in a United States shareholder of the issuer; or

(C) Substantially identical to an obligation issued by a United States shareholder of the issuer.

For purposes of this paragraph (c)(2)(ii), the term "United States shareholder" is defined as it is defined in section 951 (b) and the regulations thereunder. For purposes of this paragraph (c)(2)(ii)(C), obligations are substantially identical if the face amount, interest rate, term of the issue, due dates for payments, and maturity date of each is substantially identical to the other.

(iii) *Interstate commerce.* For purposes of this paragraph, the term "interstate commerce" means trade or commerce in obligations or any transportation or communication relating thereto between any foreign country and the United States or its possessions.

(A) An issuer will not be considered to engage significantly in interstate commerce with respect to the issuance of an obligation if the only activities with respect to which the issuer uses the means or instrumentalities of interstate commerce are activities of a preparatory or auxiliary character that do not involve communication between a prospective purchaser and an issuer, its agent, an underwriter, or member of the

selling group if either is inside the United States or its possessions. Activities of a preparatory or auxiliary character include, but are not limited to, the following activities:

(1) Establishment or participation in establishment of policies concerning the issuance of obligations and the allocation of funding by a United States shareholder with respect to obligations issued by a foreign corporation or by a United States office with respect to obligations issued by a foreign branch;

(2) Negotiation between the issuer and underwriters as to the terms and pricing of an issue;

(3) Transfer of funds to an office of an issuer in the United States or its possessions by a foreign branch or to a United States shareholder by a foreign corporation;

(4) Consultation by an issuer with accountants and lawyers or other financial advisors in the United States or its possessions regarding the issuance of an obligation;

(5) Document drafting and printing; and

(6) Provision of payment or delivery instructions to members of the selling group by an issuer's office or agent that is located in the United States or its possessions.

(B) Activities that will not be considered to be of a preparatory or auxiliary character include, but are not limited to, any of the following activities:

(1) Negotiation or communication between a prospective purchaser and an issuer, its agent, an underwriter, or a member of the selling group concerning the sale of an obligation if either is inside the United States or its possessions;

(2) Involvement of an issuer's office, its agent, an underwriter, or a member of the selling group in the United States or its possessions in the offer or sale of a particular obligation, either directly with the prospective purchaser, or through the issuer in a foreign country;

(3) Delivery of an obligation in the United States or its possessions; or

(4) Advertising or otherwise promoting an obligation in the United States or its possessions.

(C) The following examples illustrate the application of this subdivision (iii) of § 1.163–5(c)(2).

Example (1). Foreign corporation A, a corporation organized in and doing business in foreign country Z, and not a controlled foreign corporation within the meaning of section 957(a) that is engaged in the conduct of a banking business within the meaning of section 954(c)(3)(B) as in effect before the Tax Reform Act of 1986, issues its debentures outside the United States. The debentures are not guaranteed by a United States shareholder of A, nor are they convertible into a debt or equity interest of a United States shareholder of A, nor are they substantially identical to an obligation issued by a United States shareholder of A. A consults its accountants and lawyers in the United States for certain securities and tax advice regarding the debt offering. The underwriting and selling group in respect to A's offering is composed entirely of foreign securities firms, some of which are foreign subsidiaries of United States securities firms. A U.S. affiliate of the foreign underwriter communicates payment and delivery instructions to the selling group. All offering circulars for the offering are mailed and delivered outside the United States and its possessions. All debentures are delivered and paid for outside the United States and its possessions. No office located in the United States or in a United States possession is involved in the sale of debentures. Interest on the debentures is payable only outside the United States and its possessions. A is not significantly engaged in interstate commerce with respect to the offering.

Example (2). B, a United States bank, does business in foreign country X through a branch located in X. The branch is a staffed and operating unit engaged in the active conduct of a banking business consisting of one or more of the activities set forth in § 1.954–2(d)(2)(ii). As part of its ongoing business, the branch in X issues negotiable certificates of deposit with a maturity in excess of one year to customers upon request. The certificates of deposit are not guaranteed by a United States shareholder of B, nor are they convertible into a debt or equity interest of a United States shareholder of B, nor are they substantially identical to an obligation issued by a United States shareholder of B. Policies regarding the issuance of negotiable certificates of deposit and funding allocations for foreign branches are set in the United States at B's main office. Branch personnel decide whether to issue a negotiable certificate of deposit based on the guidelines established by the United States offices of B, but without communicating with the United States offices of B with respect to the issuance of a particular obligation. Negotiable certificates of deposits are delivered and paid for outside the United States and its possessions. Interest on the negotiable certificates of deposit is payable only outside the United States and its possessions. B maintains documentary evidence described in § 1.163–5(c)(2)(i)(C)(4). After the issuance of negotiable certificates of deposit by the foreign branch of B, the foreign branch sends the funds to a United States branch of B for use in domestic operations. B is not significantly engaged in interstate commerce with respect to the issuance of such obligation.

Example (3). The facts in Example (2) apply except that the foreign branch of B consulted, by telephone, the main office in the United States to request approval of the issuance of the certificate of deposit at a particular rate of interest. The main office granted permission to issue the negotiable certificate of deposit to the customer by a telex sent from the main office of B to the branch in X. B is significantly engaged in interstate commerce with respect to the issuance of the obligation as a result of involvement of B's United States office in the issuance of the obligation.

Example (4). The facts in Example (2) apply with the additional fact that a customer contacted the foreign branch of B through a telex originating in the United States or its possessions. Subsequent to the telex, the foreign branch issued the negotiable certificate of deposit and recorded it on the books. B is significantly engaged in interstate commerce with respect to the issuance of the obligation as a result of its communication by telex with a customer in the United States.

(iv) *Possessions.* For purposes of this section, the term "possessions" includes Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Wake Island, and Northern Mariana Islands.

(v) *Interest payable outside of the United States.* Interest will be considered payable only outside the United States and its possessions if payment of such interest can be made only upon presentation of a coupon, or upon making of any other demand for payment, outside of the United States and its possessions to the issuer or a paying agent. The fact that payment is made by a draft drawn on a United States bank account or by a wire or other electronic transfer from a United States account does not affect this result. Interest payments will be considered to be made within the United States if the payments are made by a transfer of funds into an account maintained by the payee in the United States or mailed to an address in the United States, if—

(A) The interest is paid on an obligation issued by either a United States person, a controlled foreign corporation as defined in section 957 (a), or a foreign corporation if 50 percent or more of the gross income of the foreign corporation from all sources of the 3-year period ending with the close of its taxable year preceding the original issuance of the obligation (or for such part of the period that the foreign corporation has been in existence) was effectively connected with the conduct of a trade or business within the United States; and

(B) The interest is paid to a person other than—

(1) A person who may satisfy the requirements of section 165 (j)(3) (A), (B), or (C) and the regulations thereunder; and

(2) A financial institution as a step in the clearance of funds and such interest is promptly credited to an account maintained outside the United States for such financial institution or for persons

for which the financial institution has collected such interest.

Interest is considered to be paid within the United States and its possessions if a coupon is presented, or a demand for payment is otherwise made, to the issuer or a paying agent (whether a United States or foreign person) in the United States and its possessions even if the funds paid are credited to an account maintained by the payee outside the United States and its possessions. Interest will be considered payable only outside the United States and its possessions notwithstanding that such interest may become payable at the office of the issuer or its United States paying agent under the following conditions: the issuer has appointed paying agents located outside the United States and its possessions with the reasonable expectation that such paying agents will be able to pay the interest in United States dollars, and the full amount of such payment at the offices of all such paying agents is illegal or effectively precluded because of the imposition of exchange controls or other similar restrictions on the full payment or receipt of interest in United States dollars. A lawsuit brought in the United States or its possessions for payment of the obligation or interest thereon as a result of a default shall not be considered to be a demand for payment. For purposes of this subdivision (v), interest includes original issue discount as defined in section 1273(a). Therefore, an amount equal to the original issue discount as defined in section 1273(a) is payable only outside the United States and its possessions. The amount of market discount as defined in section 1278(a) does not affect the amount of interest to be considered payable only outside the United States and its possessions.

(vi) *Rules relating to obligations issued after December 31, 1982 and on or before September 21, 1984.* Whether an obligation originally issued after December 31, 1982 and on or before September 21, 1984, or an obligation originally issued after September 21, 1984 pursuant to the exercise of a warrant or the conversion of a convertible obligation, which warrant or obligation (including conversion privilege) was issued after December 31, 1982 and on or before September 21, 1984, is described in section 163(f)(2)(B) shall be determined under the rules provided in § 5f.163–1(c) as in effect prior to its removal. Notwithstanding the preceding sentence, an issuer will be considered to satisfy the requirements of section 163(f)(2)(B) with respect to an obligation issued after December 31, 1982 and on or before September 21, 1984 or after September 21, 1984 pursuant to the exercise of a warrant or the conversion of a convertible obligation, which warrant or obligation (including conversion privilege) was issued after December 31, 1982 and on or before September 21, 1984, if the issuer substantially complied with the proposed regulations provided in § 1.163–5(c), which were published in the **Federal Register** on September 2, 1983 (48 FR 39953) and superseded by temporary regulations published in the **Federal Register** on August 22, 1984 (49 FR 33228).

(3) *Effective Date.* These regulations apply generally to obligations issued after January 20, 1987. A taxpayer may choose to apply the rules of § 1.163–5(c) with respect to an obligation issued after December 31, 1982 and on or before January 20, 1987.

If this choice is made, the rules of § 1.163–5(c) will apply in lieu of § 1.163–5T(c) except that the legend requirement under § 1.163–5(c)(l)(ii)(B) does not apply with respect to a bearer obligation evidenced exclusively by a book entry and that the certification requirement under § 5f.163–1(c)(2)(i)(B)(4) applies in lieu of the certification under § 1.163–5(c)(2)(i)(B)(4).

Par. 3. Section 1.165–12T is removed. New § 1.165–12 is inserted in its place, to read as follows:

§ 1.165–12 Denial of deduction for losses on registration-required obligations not in registered form.

(a) *In general.* Except as provided in paragraph (c) of this section, nothing in section 165(a) and the regulations thereunder, or in any other provision of law, shall be construed to provide a deduction for any loss sustained on any registration-required obligation held after December 31, 1982, unless the obligation is in registered form or the issuance of the obligation was subject to tax under section 4701. The term "registration-required obligation" has the meaning given to that term in section 163(f)(2), except that clause (iv) of subparagraph (A) thereof shall not apply. Therefore, although an obligation that is not in registered form is described in § 1.163–5(c)(1), the holder of such an obligation shall not be allowed a deduction for any loss sustained on such obligation unless paragraph (c) of this section applies. The term "holder" means the person that would be denied a loss deduction under section 165(j)(1) or denied capital gain treatment under section 1287(a).

(b) *Registered form—(1) Obligations issued after September 21, 1984.* With respect to any obligation originally issued after September 21, 1984, the term "registered form" has the meaning given that term in section 103(j)(3) and the regulations thereunder. Therefore, an obligation that would otherwise be in registered form is not considered to be in registered form if it can be transferred at that time or at any time until its maturity by any means not described in § 5f.103–1(c). An obligation that, as of a particular time, is not considered to be in registered form because it can be transferred by any means not described in § 5f.103–1(c) is considered to be in registered form at all times during the period beginning with a later time and ending with the maturity of the obligation in which the obligation can be transferred only by a means described in § 5f.103–1(c).

(2) *Obligations issued after December 31, 1982 and on or before September 21, 1984.* With respect to any obligation originally issued after December 31, 1982 and on or before September 21, 1984 or an obligation originally issued after September 21, 1984 pursuant to the exercise of a warrant or the conversion of a convertible obligation, which warrant or obligation (including conversion privilege) was issued after December 31, 1982 and on or before September 21, 1984, that obligation will be considered in registered form if it satisfied § 5f.163–1 or the proposed regulations provided in § 1.163–5(c) and published in the **Federal Register** on September 2, 1983 (48 FR 39953).

(c) *Registration-required obligations not in registered form which are not subject to section 165(j)(1).* Notwithstanding the fact that an obligation is a registration-required obligation that is not in registered form, the holder will not be subject to section 165(j)(1) if the holder meets the conditions of any one of the following subparagraphs (1), (2), (3), or (4) of this paragraph (c).

(1) *Persons permitted to hold in connection with the conduct of a trade or business.* (i) The holder is an underwriter, broker, dealer, bank, or other financial institution (defined in paragraph (c)(1)(v)) that holds such obligation in connection with its trade or business conducted outside the United States; or the holder is a broker-dealer (registered under Federal or State law or exempted from registration by the provisions of such law because it is a bank) that holds such obligation for sale to customers in the ordinary course of its trade or business.

(ii) The holder must offer to sell, sell and deliver the obligation in bearer form only outside of the United States except that a holder that is a registered broker-dealer as described in paragraph (c)(1)(i) may offer to sell and sell the obligation in bearer form inside the United States to a financial institution as defined in paragraph (c)(1)(v) for its own account or for the account of another financial institution or exempt organization as defined in section 501(c)(3) if the transaction consists of the purchases of a block of obligations the total denominations of which are at least $1,000,000.

(iii) If a financial institution purchases an obligation in bearer form that is offered or sold inside the United States, it must agree as a condition of the purchase to provide on delivery the statement described in paragraph (c)(1)(iv).

(iv) The holder may deliver an obligation in bearer form that is offered or sold inside the United States only if the holder delivers it to a financial institution that states that it is a financial institution as defined in § 1.165–12(c)(1)(v) that is purchasing for its own account or for the account of another financial institution or exempt organization, that will comply with the requirements of section 165(j)(3)(A), (B), or (C) and the regulations thereunder and the holder has no actual knowledge that the statement is false. The statement must contain the name and address of the person entitled to delivery and must be signed by such person under penalties of perjury. The holder may deliver an obligation in bearer form that is offered and sold outside the United States to a financial institution if it delivers to such person a confirmation stating that any United States taxpayer who holds this obligation in bearer form and who is not exempt under section 165(j)(3) (A), (B), or (C) and the regulations thereunder will, for purposes of the United States income tax, be denied a deduction for any loss incurred with respect to the obligation and will be denied capital gain treatment with respect to the obligation. The holder may deliver a registration-required obligation in bearer form that is offered and sold outside the United States to a person other than a financial institution only if the holder has documentary evidence as described in subdivision (iii) of A–5 of § 35a.9999–4T that the person is not a United States person. For purposes of this paragraph (c), the word "deliver" includes the transfer of an obligation evidenced by a book entry including a book entry notation by a clearing organization evidencing transfer of the obligation from one member of the organization to another member. For purposes of this paragraph (c), the word "deliver" does not include a transfer of an obligation to the issuer or its agent for cancellation or extinguishment. If a holder that is a member of a clearing organization (defined in § 1.163–5(c)(2)(i)(B)(*4*)) delivers an obligation to another member of the same or another clearing organization by transfer of the obligation between the clearing organization accounts of such members, the selling member shall receive the statement from the purchasing member (in the case of obligations offered or sold inside the United States) or send the confirmation to the purchasing member (in the case of obligations offered and sold outside the United States).

(v) For purposes of paragraph (c) of this section, the term "financial institution" means a person which itself is, or more than 50 percent of the total combined voting power of all classes of whose stock entitled to vote is owned by a person which is—

(A) Engaged in the conduct of a banking, financing, or similar business within the meaning of section 954(c)(3)(B) as in effect before the Tax Reform Act of 1986, and the regulations thereunder;

(B) Engaged in business as a broker or dealer in securities;

(C) An insurance company;

(D) A person that provides pensions or other similar benefits to retired employees;

(E) Primarily engaged in the business of rendering investment advice;

(F) A regulated investment company or other mutual fund; or

(G) A fiannce corporation a substantial part of the business of which consists of making loans (including the acquisition of obligations under a lease which is entered into primarily as a financing transaction), acquiring accounts receivable, notes or installment obligations arising out of the sale of tangible personal property or the performing of services, or servicing debt obligations.

(2) *Persons permitted to hold obligations for their own investment account.* The holder is a financial institution holding the obligation for its own investment account that satisfies the conditions set forth in subdivisions (i), (ii), (iii), and (iv) of his paragraph (c)(2).

(i) The holder reports on its Federal income tax return for the taxable year any interest payments received (including original issue discount includable in gross income for such taxable year) with respect to such obligation and gain or loss on the sale or other disposition of such obligation;

(ii) The holder indicates on its Federal income tax return that income, gain or loss described in paragraph (c)(2)(i) is attributable to registration-required obligations held in bearer form for its own account;

(iii) The holder of a bearer obligation that resells the obligation inside the United States resells the obligation only to another financial institution for its own account or for the account of another financial institution or exempt organization; and

(iv) The holder delivers such obligation in bearer form to any other person in accordance with paragraph (c)(1) (ii) and (iv) of this section.

(3) *Persons permitted to hold through financial institutions.* The holder is any person that purchases and holds a registration-required obligation in bearer form through a financial institution with which the holder maintains a customer, custodial or nominee relationship and such institution agrees to satisfy, and does in fact satisfy, the conditions set forth in subdivisions (i), (ii), (iii), (iv) and (v) of this paragraph (c)(3).

(i) The financial institution makes a return of information to the Internal Revenue Service with respect to any interest payments received. The financial institution must report original issue discount includable in the holder's gross income for the taxable year on any obligation so held, but only if the obligation appears in an Internal Revenue Service publication of obligations issued at an original issue discount and only in an amount determined in accordance with information contained in that publication. An information return for any interest payment shall be made on a Form 1099 for the calendar year. It shall indicate the aggregate amount of the payment received, the name, address and taxpayer identification number of the holder, and such other information as is required by the form. No return of information is required under this subdivision if the financial institution reports payments under section 6041 or 6049.

(ii) The financial institution makes a return of information on Form 1099B with respect to any disposition by the holder of such obligation. The return shall show the name, address, and taxpayer identification number of the holder of the obligation, Committee on Uniform Security Information Procedures (CUSIP), gross proceeds, sale date, and such other information as may be required by the form. No return of information is required under this subdivision if such financial institution reports with respect to the disposition under section 6045.

(iii) In the case of a bearer obligation offered for resale or resold in the United States, the financial institution may resell the obligation only to another financial institution for its own account or for the account of an exempt organization.

(iv) The financial institution covenants with the holder that the financial institution will deliver the obligation in bearer form in accordance with the requirements set forth in paragraph (c)(1) (ii) and (iv).

(v) The financial institution delivers the obligation in bearer form in accordance with paragraph (c)(1) (ii) and (iv) as if the financial institution delivering the obligation were the holder referred to in such paragraph.

(4) *Conversion of obligations into registered form.* The holder is not a person described in paragraph (c) (1), (2), or (3) of this section, and within thirty days of the date when the seller or other transferor is reasonably able to make the bearer obligation available to the holder, the holder surrenders the obligation to a transfer agent or the issuer for conversion of the obligation into registered form. If such obligation is not registered within such 30 day period, the holder shall be subject to sections 165(j) and 1287(a).

(d) *Effective Date.* These regulations apply generally to obligations issued after January 20, 1987. However, a taxpayer may choose to apply the rules of § 1.165–12 with respect to an obligation issued after December 31, 1982 and on or before January 20, 1987, which obligation is held after January 20, 1987.

Par. 4. Section 1.1287–1T is removed. New § 1.1287–1 is inserted in its place, to read as follows:

§ 1.1287–1 Denial of capital gains treatment for gains on registration-required obligations not in registered form.

(a) *In general.* Except as provided in paragraph (c) of this section, any gain on the sale or other disposition of a registration-required obligation held after December 31, 1982, that is not in registered form shall be treated as ordinary income unless the issuance of the obligation was subject to tax under section 4701. The term "registration-required obligation" has the meaning given to that term in section 163(f)(2), except that clause (iv) of subparagraph (A) thereof shall not apply. Therefore, although an obligation that is not in registered form is described in § 1.163–5(c)(1), the holder of such an obligation shall be required to treat the gain on the sale or other disposition of such obligation as ordinary income. The term "holder" means the person that would be denied a loss deduction under section 165(j)(1) or denied capital gain treatment under section 1287(a).

(b) *Registered form*—(1) *Obligations issued after September 21, 1984.* With respect to any obligation originally issued after September 21, 1984, the term "registered form" has the meaning given that term in section 103(j)(3) and the regulations thereunder. Therefore, an obligation that would otherwise be in registered form is not considered to be in registered form if it can be transferred at that time or at any time until its maturity by any means not described in § 5f.103–1(c). An obligation that, as of a particular time, is not considered to be in registered form because it can be transferred by any means not described in § 5f.103–1(c) is considered to be in registered form at all times during the period beginning with a later time and ending with the maturity of the obligation in which the obligation can be transferred only by a means described in § 5f.103–1(c).

(2) *Obligations–issued after December 31, 1982 and on or before September 21, 1984.* With respect to any obligation originally issued after December 31, 1982 and on or before September 21, 1984 or an obligation originally issued after September 21, 1984 pursuant to the exercise of a warrant or the conversion of a convertible obligation, which warrant or obligation (including conversion privilege) was issued after December 31, 1982 and on or before September 21, 1984 that obligation will be considered to be in registered form if it satisfied § 5f.163–1 or the proposed regulations provided in §1.163.–5(c) and published in the **Federal Register** on September 2, 1983 (48 FR 39953).

(c) *Registration-required obligations not in registered form which are not subject to section 1287(c).* Notwithstanding the fact than an obligation is a registration-required obligation that is not in registered form, the holder will not be subject to section 1287(a) if the holder meets the conditions of § 1.165–12(c).

(d) *Effective Date.* These regulations apply generally to obligations issued after January 20, 1987. However, a taxpayer may choose to apply the rules of § 1.1287–1 with respect to an obligation issued after December 31, 1982 and on or before January 20, 1987, which obligation is held after January 20, 1987.

PART 602—[AMENDED]

Par. 5. The authority citation for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.10 [Amended]

Par. 6. Section 602.101(c) is amended by inserting in the appropriate places in the table "§ 1.165–12 . . . 1545–0786" and "§ 1.1287–1 . . . 1545–0786."

Approved:

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

October 29, 1986.

J. Roger Mentz,

Assistant Secretary of the Treasury.

[FR Doc. 86–28168 Filed 12–16–86; 4:31 pm]

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26 CFR Parts 5f, 35a, and 602

[T.D. 8111]

Registration Requirements With Respect to Certain Debt Obligations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Amendment of temporary regulations.

SUMMARY: This document contains amendments to the temporary regulations issued under T.D. 7852 and T.D. 7967, which were published in the **Federal Register** beginning at 47 FR 51361 and 49 FR 33239, respectively. The temporary regulations issued under T.D. 7852 provide generally that a registration-required obligation issued after December 31, 1982 is required to be in registered form and provide a definition of registered form. This amendment clarifies the definition of "registered form" as applied to certain types of obligations. The temporary regulations issued under T.D. 7967 provide temporary regulations relating to the repeal of 30 percent withholding by the Tax Reform Act of 1984 and to the application of information reporting and backup withholding in light of such repeal. This amendment revises A–6, A–18, and A–19 of § 35a.9999–5 with respect to the application of the exception from 30 percent withholding for portfolio interest to obligations that would be considered registered if they were not convertible to bearer form and with respect to the certification requirements applicable to foreign-targeted registered obligations. In addition, this amendment revises A–1 and A–8 with respect to the requirement that an obligation must be a registration-required obligation. Finally, this

amendment adds new Q & A 22, providing additional rules with respect to the application of the repeal of 30 percent withholding to mortgage pass through certificates, and adds new paragraph (f) providing rules with respect to the exclusion from portfolio interest of interest received by related parties.

EFFECTIVE DATE: The amendment to temporary regulations § 5f.103–1 is effective after January 20, 1987.

The amendments to temporary regulations § 35a.9999–5 are effective after July 18, 1984, except for the following: Q and A–22 of paragraph (e) of § 35a.9999–5 is effective after December 31, 1986. Paragraph (f) of § 35a.9999–5 is effective after January 20, 1987.

FOR FURTHER INFORMATION CONTACT: Carl Cooper of the Office of the Associate Chief Counsel (International) within the Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (202–566–3388, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations under section 103(j) of the Internal Revenue Code provide that an obligation is in registered form in one or both of the following two situations. First, an obligation is in registered form if it is registered as to both principal and any stated interest and may be transferred only by the surrender of the old instrument and either the reissuance by the issuer of the old instrument to the new holder or the issuance by the issuer of a new instrument to the new holder. Second, an obligation is in registered form if the right to the principal of, and stated interest on, the obligation may be transferred only through a book entry system. An obligation shall be considered transferable through a book entry system if the ownership of an interest in the obligation is required to be reflected in a book entry, whether or not physical securities are issued. A book entry is a record of ownership that identifies the owner of an interest in the obligation.

Q and A–8 of § 35a.9999–5, provides in part that interest paid on an obligation issued 30 days after August 22, 1984 that would otherwise be in registered form but for the fact that it is convertible into bearer form is not portfolio interest and therefore not eligible for exemption from 30 percent withholding under section 871(h) or 881(c) of the Code. Q and A–18 of § 35a.9999–5 provides rules concerning the application of the portfolio interest exemption to the conversion of foreign-targeted bearer and registered obligations to registered obligations that are subject to Q and A–9 of § 35a.9999–5. Q and A–19 of § 35a.9999–5 describes the circumstances in which an ownership certificate (Form 1001) is required to be provided in the case of a payment of portfolio interest.

Q and A–1 and Q and A–8 provide in part that interest is portfolio interest if, in addition to other conditions, the obligations on which the interest is paid are registration-required obligations within the meaning of section 163(f)(2)(A) or would be registration-required obligations within the meaning of section 163(f)(2)(A) but for the fact that they are described in section 163(f)(2)(B). Q and A–20 also provides in part that a pass through certificate will be considered as issued after July 18, 1984, only to the extent that the obligations held by the fund or trust to which the pass through certificate relates are issued after July 18, 1984.

Section 871(h)(3) and section 881(c)(3) provide in part that the term "portfolio interest" shall not include any interest which would otherwise be portfolio interest that is received by a 10 percent shareholder of the issuer of the obligation on which interest is paid or by a controlled foreign corporation from a related party.

Need For Amendment

This amendment to the temporary regulations first provides that, to be in registered form, an obligation must be registered with the issuer (or its agent) if it is to be described in paragraph (c)(1)(i) of § 5f.103–1, and the right to the principal of, and stated interest on, an obligation must be transferred only through a book entry system maintained by the issuer if it is to be described in paragraph (c)(1)(ii) of § 5f.103–1. Second, this amendment provides that an obligation that would otherwise be considered registered under this definition of "registered form" is not in registered form if it may transferred by any means other than a book entry or the surrender and reissuance of the obligation to the new holder or the issuance of a new obligation to the new holder. Third, this amendment provides that an obligation that is not considered to be issued in registered form at one point in time is considered to be in registered form at a later time when it satisfies the requirements for registered form. This amendment to the definition of "registered form" clarifies and amplifies the meaning of the term under the temporary regulations.

This amendment to the temporary regulations also deletes the rule under A–8 of § 35a.9999–5 that interest cannot be eligible for the portfolio interest exemption from 30 percent withholding if it is interest with respect to an obligation that would be considered registered if it were not convertible into bearer form.

This amendment changes the conditions contained in A–18 of § 35a.9999–5 for satisfying the portfolio interest exemption in the case of an obligation converted from foreign-targeted bearer form into registered form. A–18 permitted the use of the certificate described in A–9 with respect to an obligation converted from foreign-targeted bearer form into registered form, but did not permit the use of the certificate described in A–14. As revised, A–18 permits the use of the certificate described in A–14 with respect to an obligation converted from foreign-targeted bearer form into registered form under certain circumstances. A new Q & A–19 has been added. New A–19 permits the use of the certificate described in A–14 with respect to a foreign-targeted registered obligation that satisfies the condition of A–12 with respect to an interest payment even if the obligation was previously subject to the certificate requirements of A–9.

This amendment changes the old A–19 (now A–20) by deleting the requirement that an ownership certification (Form 1001) must be provided with respect to a payment of portfolio interest on a registered obligation with respect to which the certificate described in A–9 is required. An additional subdivision is added consolidating the rules (also contained in Q & A's 9 and 15) regarding the filing of a 1042S with respect to portfolio interest on a registered obligation.

This amendment deletes the requirement under A–1 and A–8 that interest is portfolio interest if, in addition to other conditions, the obligations on which the interest is paid are registration-required obligations within the meaning of section 163(f)(2)(A) or would be registration-required obligations within the meaning of section 163(f)(2)(A) but for the fact that they are described in section 163(f)(2)(B).

This new amendment adds new A–22 providing an exception, in the case of certain mortgage pass through certificates, to the rule of A–20 that a pass through certificate will be considered as issued after July 18, 1984, only to the extent that the obligations held by the fund or trust to which the pass through certificate relates are issued after July 18, 1984.

Finally, this amendment adds new subdivision (f) containing Q & A–23 through Q & A–28 providing rules implementing the exclusion from portfolio interest of interest received by 10 percent shareholders of the issuer of the obligation on which the interest is paid and by controlled foreign corporations from related parties.

These clarifications and changes are intended to resolve questions raised by commenters to the temporary regulations of August 22, 1984, under section 163(f)(2)(B) and 871(h) regarding the treatment of obligations that are otherwise registered but that may be converted at the holder's option into an obligation payable to bearer, of obligations recorded with a recording agency at the option of a holder under the laws of a foreign country, and of foreign-targeted registered obligations.

A & As–1, 8 and 18 of § 35a.9999–5, which are being amended, and Q & A–19, and 22 through 28, which are being added, are not intended to address comprehensively the issues raised by the repeal of 30 percent withholding. Taxpayers may rely for guidance on these Q & As, which the Internal Revenue Service will follow in resolving issues expressly raised herein arising under section 127 of the Tax Reform Act of 1984 and the information reporting and backup withholding rules affected thereby. No inference, however, should be drawn regarding questions not expressly raised and answered.

Non-Applicability of Executive Order 12291

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Regulatory Flexibility Act

No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) for this regulation. Accordingly, the Regulatory Flexibility Act does not apply and no Regulatory Flexibility Analysis is required for this rule. There is a need for immediate guidance with respect to the provisions contained in this Treasury decision by reason of the repeal of 30% withholding on obligations issued after July 18, 1984. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Paperwork Reduction Act

The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1980. These requirements have been approved by OMB under Control No. 1545–0974.

Drafting Information

The principal authors of these regulations are P. Ann Fisher and Carl Cooper of the Office of Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service. Personnel from other offices of the Internal Revenue Service and the Treasury Department participated, however, in developing the regulations on matters of both substance and style.

List of Subjects

26 CFR Part 5F

Income taxes, Taxable income, Tax Equity and Fiscal Responsibility Act of 1982, Information reporting, Industrial development bonds, Registration requirements.

26 CFR Part 35a

Employment taxes, Income taxes, Backup withholding, Interest and Dividend Tax Compliance Act of 1983.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments To the Regulations

The following amendments to 26 CFR Parts 5f, 35a, and 602 are hereby adopted:

PART 5f—[AMENDED]

Paragraph 1. The authority for Part 5f continues to read in part:

Authority: 26 U.S.C. 7805 * * *; § 5f.103–1 also issued under 26 U.S.C. 103(j).

Par. 2. Section 5f.103–1 is amended by revising paragraph (c)(1), by revising the heading of paragraph (e), adding paragraphs (e)(1) through (e) (3), by revising Example (2) of paragraph (f), and by adding Examples (4), (5) and (6) to paragraph (f), all to read as follows:

§ 5f.103–1 Obligations issued after December 31, 1982, required to be in registered form.

* * * * *

(c) *Registered form*—(1) *General rule.* An obligation issued after January 20, 1987, pursuant to a binding contract entered into after January 20, 1987, is in registered form if—

(i) The obligation is registered as to both principal and any stated interest with the issuer (or its agent) and transfer of the obligation may be effected only by surrender of the old instrument and either the reissuance by the issuer of the old instrument to the new holder or the issuance by the issuer of a new instrument to the new holder,

(ii) The right to the principal of, and stated interest on, the obligation may be transferred only through a book entry system maintained by the issuer (or its agent) (as described in paragraph (c)(2) of this section), or

(iii) The obligation is registered as to both principal and any stated interest with the issuer (or its agent) and may be transferred through both of the methods described in subdivisions (i) and (ii).

* * * * *

(e) *Special rules.* The following special rules apply to obligations issued after January 20, 1987, pursuant to a binding contract entered into after January 20, 1987.

(1) An obligation that is not in registered form under paragraph (c) of this section is considered to be in bearer form.

(2) An obligation is not considered to be in registered form as of a particular time if it can be transferred at that time or at any time until its maturity by any means not described in paragraph (c) of this section.

(3) An obligation that as of a particular time is not considered to be in registered form by virtue of subparagraph (2) of this paragraph (e) and that, during a period beginning with a later time and ending with the maturity of the obligation, can be transferred only by a means described in paragraph (c) of this section, is considered to be in registered form at all times during such period.

(f) *Examples.* * * *

Example (2). Municipality Y issues a single obligation on January 4, 1983 to Bank M provided that (i) Bank M will not at any time transfer any interest in the obligation to any person unless the transfer is recorded on Municipality Y's records (except by means of a transfer permitted in (ii) of this example) and (ii) interests in the obligation that are sold by Bank M (and any persons who acquire interests from M) will be reflected in book entries. C, an individual, buys an interest in Y's obligation from Bank M. Bank M receives the interest or principal payments with respect to C's interest in the obligation as agent for C. Bank M records interests in the Municipality Y obligation as agent of Municipality Y. Any transfer of C's interest must be reflected in a book entry in accordance with Bank M's agreement with Municipality Y. Since C's interest can only be transferred through a book entry system

maintained by the issuer (or its agent), the obligation is considered issued in registered form. Interest received by C is excludable from gross income under section 103(a).

* * * * *

Example (4). Corporation A issues an obligation that is registered with the corporation as to both principal and any stated interest. Transfer may be effected by the surrender of the old instrument and either the reissuance by the issuer of the old instrument to the new holder or the issuance by the issuer of a new instrument to the new holder. The obligation can be converted into a form in which the right to the principal of, or stated interest on, the obligation may be effected by physical transfer of the obligation. Under § 5f.103–1 (c) and (e), the obligation is not considered to be in registered form and is considered to be in bearer form.

Example (5). Corporation B issues its obligations in a public offering in bearer definitive form. Beginning at X months after the issuance of the obligations, a purchaser (either the original purchaser or a purchaser in the secondary market) may deliver the definitive bond in bearer form to the issuer in exchange for a registration receipt evidencing a book entry record of the ownership of the obligation. The issuer maintains the book entry system. The purchaser identified in the book entry as the owner of record has the right to receive a definitive bearer obligation at any time. Under § 5f.103–1 (c) and (e), the obligation is not considered to be issued in registered form and is considered to be issued in bearer form. All purchasers of the obligation are considered to hold an obligation in bearer form.

Example (6). Corporation C issues obligations in bearer form. A foreign person purchases a definitive bearer obligation and then sells it to a United States person. At the time of the sale, the United States person delivers the bearer obligation to Corporation C and receives an obligation that is identical except that the obligation is registered as to both principal and any stated interest with the issuer or its agent and may be transferred at all times until its maturity only through a means described in § 5f.103–1(c). Under § 5f.103–1(e), the obligation is considered to be in registered form from the time it is delivered to Corporation C until its maturity.

PART 35a—[AMENDED]

Par. 3. The authority for Part 35a is added to read as follows and all of the authority citations at the end of the various sections are withdrawn:

Authority: 26 U.S.C. 7805; 35a.9999–1 also issued under 26 U.S.C. 3406 (a), (b), (c), (e), (g), (h), and (i), sec. 6042(a), sec. 6044(a), sec. 6045, sec. 6049 (a), (b), and (d), sec. 6103(q), sec. 6109, sec. 6302(c), sec. 6676; § 35a.9999–2 also issued under 26 U.S.C. 3406 (a), (b), (c), (e), (g), (h), and (i), sec. 6041, sec. 6041A(a), sec. 6042(a), sec. 6044(a), sec. 6045, sec. 6049 (a), (b), and (d), sec. 6103(q), sec. 6109, sec. 6302(c), sec. 6676; § 35a.9999–3 also issued under 26 U.S.C. 3406 (a), (b), (c), (e), (g), (h), and (i) and sec. 6045; 35a.9999–3A also issued under 26 U.S.C. 3406 (b), (g), (h), and (i), sec. 6045; § 35a.9999–4 also issued under 26 U.S.C. 3406, secs. 6041, 6045, 6049; 35a.9999–5 also issued under 26 U.S.C. 871, secs. 881, 1441, 1442, 3406, 6041, 6045, 6049.

Par. 4. In § 35a.9999–5:

1. Paragraph (a) is amended by revising Q and A–1.
2. Paragraph (b) is amended by revising Q and A–8.
3. Paragraph (c) is amended by revising Q and A–18 and by adding new Q and A–19.
4. Paragraph (d) is amended by revising and redesignating Q and A–19 as Q and A–20.
5. Paragraph (e) is amended by revising and redesignating Q and A–20 as Q and A–21 and by adding new Q and A–22.
6. Paragraph (f) consisting of Q and A–23 through Q and A–27 is added.

§ 35a.9999–5 Question and answers relating to repeal of 30 percent withholding by section 127 of the Tax Reform Act of 1984 and to the application of information reporting and backup withholding in light of such repeal.

* * * * *

(a) *Rules concerning obligations in bearer form.*

Q–1. When will interest qualify as porfolio interest within the meaning of section 871 (h) (2) (A) or section 881(c)(2)(A)?

A–1. Interest is portfolio interest within the meaning of section 871(h)(2)(A) or section 881(c)(2)(A) only if it paid with respect to an obligation issued after July 18, 1984, that is in bearer form and described in section 163 (f) (2) (B).

* * * * *

(b) *Rules Concerning Obligations in Registered Form.*

Q–8. When will interest qualify as portfolio interest within the meaning of section 871(h)(2)(B) or 881(c)?

A–8. To qualify as portfolio interest described in section 871(h)(2)(B) or 881 (c)(2)(B), the interest must be paid with respect to an obligation (i) that is in registered form (within the meaning of section 163 (f)), issued after July 18, 1984, and (ii) with respect to which the United States person (including a foreign paying agent of an issuer who is a United States person) who would otherwise be required to deduct and withhold tax from the interest under section 1441 (a) or 1442 (a) receives the statement described in A–9 (or described in A–14, in the circumstances described in A–12) from the beneficial owner or a financial institution described in section 871(b)(4)(B).

* * * * *

(c) *Convertibility of obligations*

Q–18. May a bearer obligation be converted into a registereed obligation that is subject to the certification requirements of A–9 or A–14 with respect to any interest payment?

A–18. A bearer obligation can be converted into a registered obligation that is subject to the certification requirements of A–9 or, if the requirements of A–12 are met with respect to an interest payment and the obligation has been targeted to foreign markets under A–13, to the certification requirements of A–14. That a certificate under A–9 was required to be provided with respect to a previous interest payment on the obligation is irrelevant to whether such a certificate (rather than a certificate under A–14) must be provided with respect to the present interest payment. Unless the certification requirements of A–14 apply, the general information reporting and backup withholding requirements of sections 6045, 6049, and 3406 apply to a registered obligation. An obligation that would otherwise be in registered form but for the fact that it is convertible into bearer form is considered to be in bearer form. See A–1 of § 35a.9999–5 (a) concerning the conditions that must be satisfied for interest with respect to a bearer obligation to qualify as portfolio interest.

Q–19. Under what circumstances is a certificate described in A–9 required with respect to a registered obligation that is considered to be targeted to foreign markets under A–12?

A–19. The certificate described in A–9 is required with respect to interest paid on a registered obligation that has been targeted to foreign markets under A–13 only if the requirements of A–12 are not satisfied. Provided that the requirements of A–12 are met with respect to an obligation at the time of an interest payment, that a certificate under A–9 was required to be provided with respect to a previous interest payment on the obligation is irrelevant to whether such a certificate must be provided with respect to the present interest payment. Also the general information reporting and backup withholding provisions of section 6045, 6049, and 3406 apply unless the certification requirements of A–14 apply.

(d) *Form 1042S requirements.*

Q–20. Is the owner of an obligation the interest on which qualifies as portfolio interest (within the meaning of section 871(h)(2) or section 881(c)(2)) required to file an ownership certificate described in § 1.1461–1(b) (Form 1001) with respect to the obligation or is the withholding agent required to file an information return on Form 1042S?

A–20. (i) The owner of an obligation the interest on which qualifies as portfolio interest is not required to file the certificate described in § 1.1461–1(b) (Form 1001). Pursuant to A–8, the statement described in A–9 (or described in A–14, in the circumstances described in A–12) is required to be provided to the withholding agent with respect to portfolio interest on a registered obligation.

(ii) If a statement is required pursuant to A–9 with respect to portfolio interest on a registered obligation, an information return on Form 1042S, accompanied by the statement (which may be a Form W–8) described in A–9, is required to be filed with the Internal Revenue Service for the calendar year in which the payment is made. See A–9 of this section. However, if a statement is required pursuant to A–14 with respect to portfolio interest on a registered obligation, an information return on Form 1042S is not required unless a Form W–8 (or substantially similar form completed under penalties of perjury) is provided. See A–15(ii)(A) of this section. With respect to a payment of portfolio interest on a bearer obligation, an information return on Form 1042S is not required to be filed.

(e) *Application of repeal of 30 percent withholding to pass-through certificates.*

Q–21. Will interest paid to a holder of a pass-through certificate as described in § 1.163–5T(d)(1) qualify as portfolio interest for purposes of the exemption from 30 percent withholding under section 871(h)(2) or section 881(c)(2)?

A–21. Interest paid to a holder of a pass-through certificate will qualify as portfolio interest under section 871(h)(2) or section 881(c)(2) for purposes of the exemption from 30 percent withholding if the interest satisfies the conditions described in A–1 or A–8 of this section. For purposes of A–or A–8 of this section and sections 871(h) and 881(c), interest is consitlered to be paid on or with respect to the pass-through certificate and not on or with respect to any obligations held by the fund or trust to which the pass-through certificate relates. Thus, except as set forth in the last sentence of this answer, interest paid to the holder of a pass-through certificate is portfolio interest if the pass-through certificate is described in A–1 or A–8 of this section, without regard to whether any obligation held by the fund or trust to which the pass-through certificate relates is described in A–1 or A–8 of this section. For example, a mortgage pass-through certificate in bearer form must meet the requirements set forth in A–1 of this section, but the obligations held by the fund or trust to which the mortgage pass-through certificate relates need not meet the requirements set forth in A–1 and A–8 of this section. However, for purposes of A–1 and A–8 of this section and section 127 of the Tax Reform Act of 1984, a pass-through certificate will be considered as issued after July 18, 1984 only to the extent that the obligations held by the fund or trust to which the pass-through certificate relates are issued after July 18, 1984.

Q–22. In the case of a mortgage pass-through certificate, under what circumstances will the mortgage obligations held by the fund or trust to which the mortgage pass-through certificate relates be considered to have been issued after July 18, 1984?

A–22. In general, a mortgage pass-through certificate will be considered to have been issued after July 18, 1984, if all of the mortgages held by the fund or trust were issued after July 18, 1984. If some of the mortgages held by the fund or trust were issued before July 19, 1984, then the portion of any interest payment which represents interest on those mortgages shall not be considered to be portfolio interest. The preceding sentence shall not apply, however, if all of the following conditions are satisfied:

(i) The mortgage pass-through certificate is issued after December 31, 1986;

(ii) Payment of the mortgage pass-through certificate is guaranteed by, and a guarantee commitment has been issued by, an entity that is independent from the issuer of the underlying obligation;

(iii) The guarantee commitment with respect to the mortgage pass-through certificate cannot have been issued more than 14 months prior to the date on which the mortgage pass-through certificate is issued.

(iv) The fund or trust to which the mortgage pass-through certificate relates cannot contain mortgage obligations on which the first scheduled monthly payment of principal and interest was made more than twelve months before the date on which the guarantee commitment was made.

(f) *Rules concerning the exclusion from portfolio interest of interest received by related parties.*

Q–23. Is the person who is required to deduct and withhold tax under section 1441(a) or 1442(a) ("the withholding agent") required to deduct and withhold such tax from interest which is otherwise portfolio interest within the meaning of section 871(h)(2) or 881(c)(2) if it is received by a 10 percent shareholder (within the meaning of section 871(h)(3)(B)) or received by a controlled foreign corporation from a related person (within the meaning of section 864(d)(4))?

A–23. The withholding agent is required to deduct and withhold tax from interest which is otherwise portfolio interest if the interest is received by a 10 percent shareholder or by a controlled foreign corporation from a related person. The withholding agent shall consider interest paid on an obligation issued after January 20, 1987, which would otherwise be portfolio interest to be received by a 10 percent shareholder or received by a controlled foreign corporation from a related person unless one of the exceptions set forth in A–24 is satisfied.

Q–24. When shall the withholding agent not consider interest that would otherwise qualify as portfolio interest to be received by a person who is a 10 percent shareholder or by a controlled foreign corporation from a related person?

A–24. The withholding agent shall not consider interest to be received by a 10 percent shareholder or by a controlled foreign corporation from a related person if the conditions of one of the following subdivisions are satisfied.

(i) The interest is paid on an obligation which is publicly issued, and the withholding agent does not have actual knowledge that the interest is received by a 10 percent shareholder or by a controlled foreign corporation from a related person.

(ii) The stock of both the issuer (if the issuer is a corporation) and the lender (if the lender is a corporation) is publicly traded, and the withholding agent does not have actual knowledge that the interest is received by a 10 percent shareholder or by a controlled foreign corporation from a related person.

(iii) The stock of one of the issuer (if the issuer is a corporation) or the lender (if the lender is a corporation) is publicly traded and the stock of the other (if the other is a corporation) is not publicly traded or the other is not a corporation, and the withholding agent has in its records a written statement (and does not have actual knowledge that such statement is false) made by the party which is not a publicly traded corporation or which is not a corporation that the interest is not received by a 10 percent shareholder or by a controlled foreign corporation from a related person.

(iv) Subdivisions (i), (ii), and (iii) do not apply and the withholding agent has in its records a written statement (and does not have actual knowledge that such statement is false) made by each of the issuer and the lender that such interest is not received by a 10 percent

shareholder or by a controlled foreign corporation from a related person.

Q–25. Under what circumstances shall the withholding agent consider an obligation to be publicly issued for purposes of A–24?

A–25. The withhholding agent shall consider an obligation to be publicly issued if:

(1) The obligation is listed on an exchange described in § 1.897–1(m) (1) or (2);

(2) The obligation is not subject to any restrictions on its offering, sale, or resale that may be required to comply with U.S. Federal securities law, other than restrictions relating to citizenship, nationality, residence, or jurisdiction of incorporation of the purchaser; and

(3) On original issuance either (A) the obligation is offered for sale to the public by means of an arrangement with a financial institution (as defined § 1.165–12(c)(1)(v)) that is in the business of underwriting the sale of obligations traded in a securities market (an "underwriter") which agrees with the issuer to make its best efforts to sell the obligation in exchange for a commission or other compensation,

(B) The obligation is sold to an underwriter and the issuer of the obligation has no reason to believe that such underwriter is not purchasing the obligation for resale to or for the account of another person who is not a 10 percent shareholder of the issuer or a controlled foreign corporation to which the issuer is a related party, or

(C) The issue of which the obligation is a part is sold to more than thirty-five purchasers each of which either (i) acquires an obligation or obligations in the issue for its own account or (ii) is an underwriter described in (A) or (B).

Q–26. Under what circumstances shall the withholding agent consider stock of a corporate issuer or lender to be publicly traded?

A–26. The withholding agent shall consider the stock of a corporate issuer or lender to be publicly traded if a substantial portion of each outstanding class of stock is regularly traded in an established securities market. A class of stock that is nonvoting, nonparticipating, limited and preferred as to dividends and in liquidation shall not be taken into account in determining whether the stock of a corporate issuer or lender is publicly traded for purposes of this paragraph (f). Stock is regularly traded if it is regularly quoted by brokers or dealers making a market in such stock. The term "established securities market" means an established securities market as defined in § 1.897–1(m). In determining whether stock of an issuer or lender is publicly traded the withholding agent may rely upon published market quotations listing the stock of the issuer or lender. Stock of an issuer or lender will not be considered to be publicly traded if the certificates representing interests in the issuer or the lender are bearer certificates or if bearer depository receipts are issued for such stock. If the issuer is a member of an affiliated group (within the meaning of section 1504(a)(4) (without regard to section 1504(b)(3)), and the ultimate parent corporation of the issuer is publicly traded, then the issuer will be considered to be publicly traded. If the lender is a member of an affiliated group (within the meaning of section 1504(a) (without regard to section 1504(b)(3))), and the ultimate parent corporation of the lender is publicly traded, then the lender will be considered to be publicly traded. However, stock of an issuer or lender will not be considered to publicly traded if the issuer and lender are members of an affiliated group and the issuer and the lender are members of the same affiliated group.

Q–27. What is the stotement that is required under A–24?

A–27. For purposes of A–24 (iii) and (iv) the written statement referred to therein must include: (i) A statement that the interest received with respect to the particular obligation is not received by a 10 percent shareholder or by a controlled foreign corporation from a related person; (ii) a declaration that the statement is made under penalties of perjury; (iii) the name and address of the person making the statement; and (iv) information sufficient on its face to confirm the validity of the statement. Such information must identify the ultimate individual beneficial owners of the person making the statement, and identify the stock or partnership interests in the other party held actually and constructively by the person making the statement. Constructive ownership shall be determined pursuant to section 871(h)(3)(C) for purposes of information regarding the determination whether interest is received by a 10 percent shareholder, and pursuant to section 881(c)(3)(C) for purposes of determining whether interest is received by a controlled foreign corporation from a related party. For purposes of applying section 871(h)(3)(C), stock held by a corporation shall not be attributed to the persons who actually or constructively own stock in that corporation if both of the following conditions are satisfied; (v) The corporation is a publicly traded corporation within the meaning of A–26; and (vi) The stock actually and constructively held by a shareholder in that publicly traded corporation possesses five percent or less of the total value of shares of all classes of stock of that corporation. Information with respect to ultimate individual beneficial owners is not required to be provided by a person whose principal function is providing pensions or other similar benefits to retired employees, a mutual insurance company (except such a company with fewer than 500 policyholders at the time the interest is paid), a foreign government (within the meaning of section 892), or a charitable organization (within the meaning of section 501(c)(3) without regard to section 508(a)). This information will be considered sufficient on its face to confirm the validity of the statement if the information, along with the information required to be provided in the statements of other parties to the transaction, discloses no common ownership between the issuer and the lender. If the information does disclose any common ownership between the issuer and the lender, then additional information clearly showing that the interest is not received by a 10 percent shareholder or by a controlled foreign corporation from a related person must be provided. Statements must be prepared, renewed, submitted and retained in accordance with the procedures prescribed in § 35a.9999–5(b)A–9. Once information sufficient to confirm the validity of the statement has been provided to the withholding agent, that information may be updated by providing to the withholding agent, with the statement, either the changes to that information or a statement that the information has not changed since the last statement was provided.

§ 602.101 [Amended]

Par. 5. Section 602.101(c) is amended by inserting in the appropriate places in the table § 5f.103–1 . . . 1545–0974 and § 35a.9999–5 . . . 1545–0974.

* * * * *

Approved:

Lawrence B. Gibbs,

Commissioner of Internol Revenue.

J. Roger Mentz,

Assistant Secretary of the Treasury.

October 29, 1986.

[FR Doc. 86–28109 Filed 12–18–86; 4:32 pm]

BILLING CODE 4830–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 765

Unofficial Use of the Seal, Emblem, Names, or Initials of the Marine Corps

AGENCY: Department of the Navy.

ACTION: Final rule.

SUMMARY: This rule sets forth regulations pertaining to the unofficial use of the seal, emblem, names, or initials of the Marine Corps for commercial and noncommerical activities. The rule outlines procedures to determine whether to grant permission for use of such Marine Corps items.

EFFECTIVE DATE: December 19, 1986.

FOR FURTHER INFORMATION CONTACT: Mrs. B.L. Thompson (MPI–60), Headquarters, U.S. Marine Corps, Washington, DC 20380–0001, Telephone: (202) 694–1452.

SUPPLEMENTARY INFORMATION: Pursuant to the 10 U.S.C. 7881, the Department of the Navy amends 32 CFR Part 765 derived from, the Marine Corps Order 5030.3 series, which implements within the Marine Corps the provisions of the Secretary of the Navy Instruction 5030.7 series, Protection of Marine Corps Names and Insignia. This rule is being published by the Department of the Navy for the guidance and interest of the public as required by 5 U.S.C. 552(a)(1). It has been determined that invitation of public comment on the regulation prior to adoption would be impracticable and unnecessary, and it is therefore not required under the public rulemaking provisions of 32 CFR Part 701, subpart E. Interested persons are invited to comment in writing on this regulation. Any written comments received will be considered in making subsequent amendments or revisions to 32 CFR Part 765 or the regulation upon which it is based. Changes may be initiated based on comments received. Written comments should be addressed to Mrs. B.L. Thompson (MPI–60), Headquarters, U.S. Marine Corps, Washington, DC 20380–0001. It has been determined that this final rule is not a major rule within the criteria specified in section 1(b) of Executive Order 12291 and does not have substantial impact on the public.

List of Subjects in 32 CFR Part 765

Rules applicable to the public.

PART 765—[AMENDED]

For the reasons set forth in the preamble, 32 CFR Part 765 is amended as follows:

1. The Authority citation for Part 765 revised to read as follows:

Authority: Secs. 5031, 6011, 70A Stat. 278, 375, as amended, sec. 133, 76 Stat. 517, sec. 301, 80 Stat. 379; 5 U.S.C. 301, 10 U.S.C. 133, 5031, 6011, 7881.

2. Section 765.14 is added to read as follows:

§ 765.14 Unofficial use of the seal, emblem, names, or initials of the Marine Corps.

(a) *Purpose.* To establish procedures to determine whether to grant permission to use or imitate the seal, emblem, names, or initials of the Marine Corps in connection with commercial and certain noncommercial activities pursuant to 10 U.S.C. 7881. The Secretary of the Navy, in Secretary of the Navy Instruction 5030.7, has provided the policy and delegated to the Commandant of the Marine Corps (CMC), power to subdelegate to certain subordinate officers in writing, the authority to grant permission required by section 7881(b) of 10 U.S.C. for such use or imitation.

(b) *Scope.* The provisions of this Order requiring prior approval of the Secretary of the Navy, CMC, or the designee apply only to the use or imitation of the seal, emblem, names, or initials of the Marine Corps that suggest official approval, endorsement, or authorization is in connection with a promotion, goods, services, or commercial activity.

(c) *Standards.*—(1) *No unofficial use or imitation of the Marine Corps seal.* Reproduction and use of the Marine Corps seal, as designated in Executive Order No. 10538 of June 22, 1954, is restricted to materials emanating from Headquarters Marine Corps. Except for manufacture of official letterhead stationery and related items of official Marine Corps use, reproduction and use of the Marine Corps seal is prohibited.

(2) *Unofficial use or imitation of the Marine Corps emblem, names, or initials.* Requests from civilian enterprises to use or imitate the Marine Corps emblem, names, or initials will ordinarily be approved where use or imitation merely provides a Marine Corps accent or flavor to otherwise fungible goods. Disapproval, however, usually may be expected where such use or imitation reasonably would:

(i) Imply any official or unofficial connection between the Marine Corps and the user;

(ii) Tend to create the impression that the Marine Corps or the United States is in any way responsible for any financial or legal obligation of the user;

(iii) Give the impression that the Marine Corps selectively benefits the particular manufacturer, commercial entity, or other user, as in displaying the Marine Corps emblem, names, or initials on musical instruments, weapons, or the like, and in using the emblem, names, or initials in connection with advertising, naming, or describing products and services such as insurance, real estate, or financial services; or

(iv) Tend to subject the Marine Corps to discredit or would be inimical to the health, safety, welfare, or morale of the members of the Marine Corps.

(3) *Acceptable use of imitation of the Marine Corps insignia.* No request for permission is required when a use or imitation of the Marine Corps emblem, names, or initials includes prominent display of the disclaimer, "Neither the United States Marine Corps nor any other component of the Department of Defense has approved, endorsed, or authorized this product (or promotion, or service, or activity)" as an integral part of the use of imitation. A "prominent display" is one located on the same page as the first use of the insignia, prominent in that use, and printed in letters at least one half the size and density of the insignia.

(d) *Action*—(1) *When permission required.* Commercial or noncommercial use or imitation of the Marine Corps emblem, names, or initials is prohibited unless permission is first obtained in writing from the CMC, except when such use does not suggest that the use or imitation is approved, endorsed, or authorized by the Marine Corps or any other component of the Department of Defense.

(2) *Redelegation of authority.* The CMC hereby redelegates, pursuant to the authorization in paragraph 4 of the Secretary of the Navy 5030.7, authority to grant written permission to use the Marine Corps emblem, names, or initials to the Director of Headquarters Support (CMC (HQSP)). Prior to granting approval for commercial usage of the Marine Corps insignia, the CMC (HQSP) shall forward such requests to the Head, Marine Corps Exchange Service Branch, Facilities and Services Division, Installations and Logistics Department (CMC) (LFE)) and to the Counsel for the Commandant (CMC (CL)) for comment and concurrence. All other requests shall be routed to the Director, Judge Advocate Division (CMC (JAR)) for comment and concurrence.

(3) *Procedures for obtaining written permission.* Requests for written permission to use or imitate the Marine Corps emblem, names, or initials shall be in writing and shall be directed to the CMC (HQSP). The request should, at a minimum, contain the following information:

(i) Name and address of the requester.

(ii) A description of the type of activity in which the requester is engaged or proposes to engage.

(iii) A statement of whether the requester considers the proposed use or imitation to be commercial or noncommercial, and why.

(iv) A brief description and illustration or sample of the proposed use or imitation, as well as a description of the product or service in connection with which it will be used. This description will provide sufficient detail to enable the Marine Corps to determine whether there is a reasonable tendency to suggest such use or imitation is approved, endorsed, or authorized by the Marine Corps or any other component of the Department of Defense.

(v) In the case of a noncommercial use of imitation, a copy of the charter, constitution, bylaws, and similar organizational documents of the requester, together with a detailed description of its function or purpose. insufficiently specific requests will be returned for additional information.

(e) *Reserve applicability.* This Order is applicable to the Marine Corps Reserve.

Dated: December 10, 1986.

Harold L. Stoller, Jr.,

Commander, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 86-28233 Filed 12-18-86; 8:45 am]

BILLING CODE 3810-AE-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-4-FRL-3125-7; NC-012]

Approval and Promulgation of Implementation Plans; North Carolina; Miscellaneous Editorial Changes

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is approving numerous editorial changes which North Carolina has made in its air pollution control regulations. The State submitted the changes as State Implementation Plan (SIP) revisions on December 17, 1984. The effect of the changes is to update, simplify and clarify the regulations; no substantive changes have been made.

EFFECTIVE DATE: January 20, 1987.

ADDRESSES: Copies of the material submitted by the State may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia

Air Quality Section, Division of Environmental Management, North Carolina Department of Natural Resources and Community Development, Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina 27611

Office of the Federal Register, 1100 L Street, NW., Room 8301, Washington, DC

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Janet Hayward of the EPA Region IV Air Programs Branch, at the above address and telephone (404) 347-3286 or FTS 257-3286.

SUPPLEMENTARY INFORMATION: On April 30, 1985 (50 FR 18274), EPA published a Notice of Proposed Rulemaking (NPR) for the miscellaneous rule changes which were submitted by the State of North Carolina on December 17, 1984. These changes were made in order to clarify and update the North Carolina air pollution control regulations. Since the changes submitted were minor and had no substantive effect on the air pollution control requirements in the State, EPA proposed to approve the revisions.

The revisions and the rationale for EPA's proposed approval were explained in the NPR. The explanation will not be restated here since neither the rule revisions nor EPA's rationale have changed since the proposal notice. No public comments were received on the NPR.

In the NPR, EPA noted that an error had inadvertently been introduced into one of the regulations (2D.0917—Volatile Organic Compound Emissions from Automobiles and Light-Duty Truck Manufacturing). EPA stated that final approval of the regulation would be withheld until the State revised the rule and submitted it for approval. On February 25, 1986, North Carolina submitted the necessary changes to regulation 2D.0917. EPA's final approval of the December 17, 1984, revisions therefore includes the revision to 2D.0917 which was submitted on February 25, 1986.

As stated in the NPR, EPA is approving only the portion of regulation 2D.0527 (Emissions from Spodumene Ore Roasting) which pertains to sulfur dioxide. EPA is also approving only that portion of regulation 2D.0517 (Emission from Plants Producing Sulfuric Acid) which pertains to sulfur dioxide. In addition, there are several other regulation changes contained in the December 17, 1984, package which today's final approval does not cover. The other rules not included in this action are 2D.0522 (Control and Prohibition of Odorous Emissions), 2D.0523 (Control of Conical Incinerators), 2D.0528 (Total Reduced Sulfur from Kraft Pulp Mills), and 2D.0529 (Fluoride Emissions from Primary Aluminum Reduction Plants).

The changes to regulation 2D.0522 have been returned to the State because EPA does not have the authority under the Clean Air Act to regulate odor that have no significant relationship to the attainment and maintenance of any NAAQS. The changes to Regulation 2D.0522 do not demonstrate such a significant relationship. Regulation 2D.0523 has not initially been approved by EPA. Thus, the changes to 2D.0523 which were submitted in December 1984 will be processed along with the original rule in a separate notice. The revisions to 2D.0528 and 2D.0529 are changes to rules which regulate designated (section 111(d)) pollutants (TRS and fluorides).

These two rules are not a part of the SIP, but rather are parts of the State's section 111(d) plans for controlling existing pulp mills and primary aluminum reduction plants. EPA is processing these 111(d) plan revisions in a separate **Federal Register** notice.

Final Action

EPA is approving the miscellaneous rule changes submitted by the State of North Carolina on December 17, 1984, except for the changes stated above. This approval also includes the revision to 2D.0917, as submitted on February 25, 1986.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 17, 1987. This action may not be challenged later in proceedings to enforce its requirements.

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference.

Note.—Incorporation by reference of the State Implementation Plan for the State of North Carolina was approved by the Director of the Federal Register on July 1, 1982.

Dated: November 28, 1986.

Lee M. Thomas,

Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

Subpart II—North Carolina

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.1770 is amended by adding paragraphs (c)(47) and (c)(48) as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

(47) Revisions to Title 15 of the North Carolina Administrative Code (15 NCAC) which were submitted to EPA on December 17, 1984.

(i) *Incorporation by reference.* (A) Letter of December 17, 1984, from the North Carolina Division of Environmental Management and amendments to the following regulations which were adopted by the North Carolina Environmental Management Commission on November 8, 1984:

2D.0501—Compliance with Emission Control Standards
2D.0506—Control of Particulates from Hot Mix Asphalt Plants
2D.0507—Particulates from Chemical Fertilizer Manufacturing Plants
2D.0508—Control of Particulates from Pulp and Paper Mills
2D.0509—Particulates from Mica or Feldspar Processing Plants
2D.0510—Particulates: Sand, Gravel, Crushed Stone Operations
2D.0511—Particulates, SO_2 from Lightweight Aggregate Processes
2D.0512—Particulates from Wood Products Finishing Plants
2D.0513—Control of Particulates from Portland Cement Plants
2D.0514—Control of Particulates from Ferrous Jobbing Foundries
2D.0515—Particulates from Miscellaneous Industrial Processes
2D.0516—Sulfur Dioxide Emissions from Fuel-Burning Installations
2D.0517—Emissions from Plants Producing Sulfuric Acid (Except revision to paragraph 2)
2D.0519—Control of Nitrogen Dioxide Emissions
2D.0520—Control and Prohibition of Open Burning
2D.0521—Control of Visible Emissions
2D.0527—Emissions from Spodumene Ore Roasting (Except revision to paragraph 2)
2D.0530—Prevention of Significant Deterioration
2D.0531—Sources in Nonattainment Areas
2D.0532—Sources Contributing to an Ambient Violation
2D.0901—Definitions (Volatile Organic Compounds)
2D.0903—Recordkeeping, Reporting, Monitoring (Volatile Organic Compounds)
2D.0905—Petition for Alternative Controls
2D.0906—Circumvention
2D.0907—Equipment Installation Compliance Schedules
2D.0908—Equipment Modification Compliance Schedules
2D.0909—Low Solvent Content Coating Compliance Schedules
2D.0910—Alternate Compliance Schedules
2D.0912—General Provisions on Test Methods and Procedures
2D.0913—Determination of Volatile Content of Surface Coating
2D.0914—Determination of VOC Emission Control System Efficiency
2D.0915—Determination of Solvent Metal Cleaning VOC Emissions
2D.0916—Determination of VOC Emissions from Bulk Gasoline Terminals
2D.0918—Can Coating
2D.0919—Coil Coating
2D.0920—Paper Coating
2D.0921—Fabric and Vinyl Coating
2D.0922—Metal Furniture Coating
2D.0923—Surface Coating of Large Appliances
2D.0924—Magnet Wire Coating
2D.0925—Petroleum Liquid Storage In Fixed Roof Tanks
2D.0926—Bulk Gasoline Plants
2D.0927—Bulk Gasoline Terminals
2D.0928—Gasoline Service Stations Stage I
2D.0929—Petroleum Refinery Sources
2D.0930—Solvent Metal Cleaning
2D.0931—Cutback Asphalt
2D.0932—Gasoline Truck Tanks and Vapor Collection Systems
2D.0933—Petroleum Liquid Storage In External Floating Roof Tanks
2D.0934—Coating of Miscellaneous Metal Parts and Products
2D.0935—Factory Surface Coating of Flat Wood Paneling
2D.0936—Graphic Arts
2D.0937—Manufacture of Pneumatic Rubber Tires
2D.0938—Perchloroethylene Dry Cleaning System
2D.0939—Determination of Volatile Organic Compound Emissions
2D.0940—Determination of Leak Tightness and Vapor Leaks
2H.0601—Purpose and Scope (Permits)
2H.0604—Final Action on Permit Applications
2H.0605—Issuance, Revocation and Enforcement of Permits

(ii) *Additional material.* (A) Regulation 2D.0609 (Monitoring Condition in Permit) was repealed by the Environmental Management Commission on November 8, 1984.

(48) Revision to the North Carolina Administrative Code (15 NCAC) which was submitted to EPA on February 25, 1986.

(i) *Incorporation by reference.* (A) Letter of February 25, 1986, from the North Carolina Division of Environmental Management and the amendment to regulation 2D.0917 (Automobiles and Light-Duty Truck Manufacturing) which was adopted by the North Carolina Environmental Management Commission on February 13, 1986.

(ii) *Additional material*—none.

[FR Doc. 86-27707 Filed 12-18-86; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[A-4-FRL-3121-1; AL-015]

Approval and Promulgation of Implementation Plans; Alabama: Volatile Organic Compound Emissions

AGENCY: Environental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA today approves the revisions to Chapter 6—Control of Volatile Organic Compounds (VOC) of the Alabama Air Pollution Control Rules and Regulations as submitted by the Alabama Department of Environmental Management. The intent of these revisions is to apply the provisions of the entire chapter to those counties that are not attaining the ozone standard; to keep in effect those regulations for which sources have complied, regardless of location or attainment status; and to exempt those attainment and unclassified counties from further regulation. This action specifies discrete areas for which these regulations will still apply and formally revokes any remaining accommodative aspect of Alabama's Ozone State Implementation Plan (SIP).

DATE: This action is effective January 20, 1987, for all items.

ADDRESSES: Copies of the materials submitted by Alabama may be examined during normal business hours at the following locations:

Environental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365;

Air Division, Alabama Department of Environental Management, 1751 Federal Drive, Montgomery, Alabama 36130;

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460;

Library, Office of the Federal Register, 1100 L Street, NW., Room 8301, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jill Thomas, Air Programs Branch, EPA Region IV, at the above address and telephone number 404/347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: On November 26, 1979 (44 FR 67375) EPA announced conditional approval of the Alabama Ozone SIP. On June 3, 1980 (45 FR 37430) EPA approved corrections to deficiencies cited in the notice above and gave approval to the Alabama SIP. The Alabama SIP was considered to be an "accommodative" ozone SIP. An accommodative SIP is one which provides for new source growth without emission offsets by requiring RACT on existing 100 ton per year (TPY) Group I and II VOC sources in areas not normally required to have controls (i.e., attainment and unclassified areas). In other words, controls were to be applied on a statewide basis. At that time, EPA had not issued guidance on Group II VOC categories. Therefore, a commitment to implement Group II VOC regulations upon receipt of the guidance from EPA was required in the 1979 SIPs. The accommodative aspect of the Alabama Ozone SIP was modified on October 29, 1981 (46 FR 53408) when EPA approved a request by the State to eliminate the requirement that VOC controls be installed by existing sources located in attainment areas which did not include an urban area with a population greater than 200,000. On February 12, 1982, Alabama submitted their Group II VOC regulations. EPA approved Alabama's Group II VOC regulations on April 19, 1984 (49 FR 15549).

On September 23, 1985, the Alabama Department of Environmental Management (ADEM) submitted revisions to the Air Pollution Control Commission Rules and Regulations. Specifically, these revisions were made to revoke the applicability of two Group I VOC regulations and all Group II VOC regulations from counties on a statewide basis. These revisions do not apply to any county currently or previously designated nonattainment for ozone. The Group I and II VOC regulations will remain applicable for Etowah, Jefferson, Mobile, and Russell Counties.[1]

This action effectively revokes the accommodative aspect of the Alabama Ozone SIP. Since many areas designated as attainment or unclassified do not have monitored data, revocation of the accommodative SIP means that future new source construction in these areas may require either performance of preconstruction monitoring or compliance with Appendix S, Part 51, including the application of lowest achievable emission reduction (LAER), statewide compliance, and offsets.

On August 7, 1985, the revisions to Chapter 6 were subject to public hearing and on September 18, 1985, the Alabama Environmental Management Commission adopted the revisions. The pertinent regulations are organized in the following manner: Applicability (6.1); Group I (6.4–6.8, 6.11.1–6.11.8, 6.12–6.13); and Group II (6.11.10–6.11.11, 6.17–6.23). The revisions proposed to Chapter 6 are listed below.

6.1.1(a) The entire paragraph "sources located in an ozone attainment area which does not include an urban (greater than 200,000 population) area (Adopted March 24, 1981)" is deleted and reserved for future use.
6.1.2 Recodified from 6.1.1(d).
6.1.3 Recodified from 6.1.2.
6.1.4 A new section 6.1.4 is added as follows:
6.1.4 The provisions of section 6.11.6 shall not apply to any sources except those located in Jefferson County and those sources in the State which manufacture audio or video recording tape.
6.1.5 A new section 6.1.5 is added as follows:
6.1.5 The provisions of Parts 6.17, 6.18, 6.19, 6.20, 6.21, 6.22, 6.23, and sections 6.11.2, 6.11.10, and 6.11.11 shall not apply to any source except those located in Etowah, Jefferson, Mobile, and Russell Counties.

For a more detailed discussion, please refer to the July 9, 1986, **Federal Register** (51 FR 24853). This document is available for inspection at the EPA Region IV office.

On July 9, 1986, EPA proposed to approve the revisions to Chapter 6 of the Alabama Air Pollution Control Rules and Regulations. At that time the public was invited to submit written comments on the proposed action. However, no comments were received.

Final Action

These regulations meet EPA requirements. Therefore, EPA is today approving the revisions to the Alabama Air Pollution Control Rules and Regulations.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 17, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Hydrocarbons, Ozone, Incorporation by reference.

Note.—The Director of the Federal Register approved the incorporation by reference of the Alabama State Implementation Plan on July 1, 1982.

Dated: November 17, 1986.

Lee M. Thomas,
Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart B—Alabama

2. Section 52.50 is amended by adding paragraph (c)(44) as follows:

§ 52.50 Identification of plan.

* * * * *

(c) * * *

(44) Volatile Organic Compound regulation changes were submitted to EPA on September 23, 1985.

(i) *Incorporation by reference.* (A) Letter of September 23, 1985 to EPA from Alabama Department of Environmental Management and changes to Chapter 6 of the Alabama Air Pollution Control Rules and Regulations (Control of Volatile Organic Compounds) which were adopted by the Alabama Environmental Management Commission on September 18, 1985, specifically, the revisions to 6.1.1(a), 6.1.2, and 6.1.3 and the addition of 6.1.4 and 6.1.5.

(ii) Other material—none.

[FR Doc. 86-28379 Filed 12-18-86; 8:45 am]

BILLING CODE 6560-50-M

[1] On April 14, 1986, EPA granted a request to redesignate Russell County to attainment; EPA is currently proposing to redesignate Etowah & Mobile Counties to attainment for ozone based on three years of ambient air data.

Proposed Rules

Federal Register
Vol. 51, No. 244
Friday, December 19, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 831

Retirement

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OMP) proposes to revise its regulations implementing special retirement provisions for law enforcement officers and firefighters employed under the civil service retirement law (5 U.S.C. 8331, *et seq.*). The revised regulations would improve administration of the program by clarifying the methods and criteria for obtaining coverage under the special provisions.

DATE: Comments must be received on or before February 17, 1987.

ADDRESS: Send written comments to Reginald M. Jones, Jr., Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or deliver to OPM, Room 4351, 1900 E. Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Raymond J. Kirk, (202) 632-4682.

SUPPLEMENTARY INFORMATION: Section 8336(c) of title 5, United States Code, authorizes immediate retirement benefits at age 50 for Federal employees who have completed 20 years of Federal civilian service as a law enforcement officer or firefighter. Employees who are eligible to retire under this provision are mandatorily separated at age 55, or, under limited circumstances that warrant an extension of service, at age 60. Employees and their agencies each contribute an extra half percent of pay for this benefit.

Section 8331 *et seq.* and these regulations promulgated at Subpart I of Part 831 of Title 5, Code of Federal Regulations, are applicable to the Civil Service Retirement System (CSRS) only. This section of law and these regulations do *not* apply to employees covered by the "new" retirement system—the Federal Employees Retirement System (FERS)—established by Pub. L. 99-335.

Definitions

The proposed regulations would provide detailed defintions of the following terms that are not defined in the current regulations: "detention duties," "frequent direct contact," "primary duties," "primary position," and "secondary position."

The proposed regulations would establish criteria for deciding whether a law enforcement officer position requires "frequent direct contact" with individuals in detention. The contacts must be regularly assigned, must be personal and immediate, and must be repeated and continual over a typical work cycle. In applying its judgment to this definition, OPM will give due deference, as is implicit in the law, to the initial determination of the proper administrative authority of the employing agency.

The definition of the term "first-level supervisor" in these proposed regulations is the same as that contained in the "Position-Classification Standard for Supervisory Grade Evaluation Guide," TS-23, January 1976. First-level supervisors are employees classified as supervisors who have direct and regular contact with the employees they supervise. First-level supervisors do *not* have subordinate supervisors.

Transfers From Primary Positions to Secondary Positions

The law provides for continued coverage under the special retirement provisions when the employee transfers from a primary position to a secondary position. Sections 8331 (20) and (21) of title 5, United States Code, require that an employee in a primary position transfer directly into a secondary position for coverge to continue. The current regulations go beyond the statute by permitting an employee who has met the transfer requirement once to be covered in a secondary position even following a subsequent voluntary break in service. To follow the statutory requirement stated above, the proposed conditions for continued coverage in secondary positions would require that employees be continuously employed in secondary positions with no voluntary breaks in service.

Position and Coverage Determinations

The proposed regulations would clarify the role of an agency in seeking OPM approval of a position as a primary or secondary position and establish the procedure to be followed for all requests whether initiated by the agency or an employee. The proposed regulations would establish the roles of the individual, the employing agency, and OPM in determining whether a questionable or disputed period of past service in an unapproved position is creditable toward early retirement. Also, the proposed regulations would specify who can submit requests for position or coverage determinations. Presently, many requests are forwarded to OPM without the knowledge and/or endorsement of the agency headquarters. To eliminate this problem, all agency requests for position or coverage determinations must be signed by the agency head or his or her designated representative. In no instance, however, may a person below the level of the agency personnel director be designated as the agency head's representative.

The current regulations state that the OPM determination of coverage will be based on the official position description for the position. This document is not always sufficient for this purpose, and the proposed regulations contain a list of the basic evidence that OPM requires in order to decide whether to approve a position. In the past, OPM has received requests for a coverage determination many years after an employee has left a position. Frequently, this delay resulted in only stale, secondary evidence—such as affidavits from two employees, each "remembering" what the other person's job duties were 20 years ago—being available. This was created administrative problems for both the agencies and OPM in verifying the exact duties of the position in question. Therefore, to allow determinations based on current, primary evidence, the new regulations would also establish a 1-year time limit for requesting a determination of coverage for past service.

Requirements for Decisions

A new section sets forth the basic requirements for OPM's decisions on requests from agencies for a determination of coverage. The decision must be in writing, and, if adverse, must fully set forth the basis for the decision and state any applicable reconsideration or appeal rights. The proposed regulations would establish the right to reconsideration of a decision by OPM under these regulations. The proposed regulations would tie review of these decisions to the rules that govern review of OPM's retirement decisions generally, 5 CFR 831.109.

Withholdings

The employing agency has no implied or stated authority to make a binding coverage decision under the retirement law. Therefore, an agency would be barred from withholding the extra half percent until OPM (or a competent appeals forum) has decided that the service in question meets the requisite definition. In the case of an occupied position, the extra withholding (and matching contributions) would become effective retroactively on the effective date the employee was assigned to the position approved by OPM. The retroactive deductions constitute a debt due the Government and must be collected under established due process procedures. The regulations would also clarify that the agency is responsible for payint (to OPM) both the employee's share as well as the agency's share of the additional contributions. Underwithholding of employee retirement contributions results in a two-tiered liability: the individual owes the paying agency and the paying agency owes the Civil Service Retirement and Disability Fund. Even if the agency fails to collect the debt because of waiver or otherwise, the agency must make the required payment to the Fund.

Additionally, if an agency wishes to recommend that a covered position be dropped from coverage, the agency should continue to withhold the extra half percent until OPM (or a competent appeals forum) has decided that the service in question does not meet the requisite definition. Procedures are to be established at the agency level to refund to the employee the extra half percent withheld retroactive to the date of the change in duties that led to elimination of coverage.

The regulations would also clarify that the 7½ percent withholding would not be made by the agency in the case of an employee who is not a primary or secondary law enforcement officer or firefighter but is detailed to a primary or secondary position. Because the employee continues to hold the position from which detailed, the employee's withholding rate should not be increased during the detail.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that within the scope of the Regulatory Flexibility Act, these regulations will not have a significant economic impact on a substantial number of small entities because they affect Federal employees and retirees only.

List of Subjects in 5 CFR Part 831

Government employees, Administrative practice and procedure, Claims, Firefighters, Law enforcement officers, Pensions, Retirement.

Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM proposes to revise Subpart I of 5 CFR Part 831 to read as follows:

PART 831—RETIREMENT

Subpart I—Law Enforcement Officers and Firefighters

Sec.

831.901 Applicability and purpose.
831.902 Definitions.
831.903 Conditions for coverage in primary positions.
831.904 Conditions for coverage in secondary positions.
831.905 Agency requests for OPM determination of primary positions.
831.906 Agency requests for OPM determination of secondary positions.
831.907 Evidence.
831.908 Requests from individuals.
831.909 OPM decisions.
831.910 Review of approved positions and certification to OPM.
831.911 Withholdings and contributions.
831.912 Mandatory separation.
831.913 Reemployment.
831.914 Review of decisions.

Authority: 5 U.S.C. 8347.

Subpart I—Law Enforcement Officers and Firefighters

§ 831.901 Applicability and purpose.

(a) This subpart contains regulations of the Office of Personnel Management (OPM) to supplement 5 U.S.C. 8336(c), which establishes special retirement eligibility for law enforcement officers and firefighters employed under the Civil Service Retirement System; 5 U.S.C. 8331(3) (C) and (D), pertaining to basic pay; 5 U.S.C. 8335 (a)(1) and (c), pertaining to deductions, contributions, and deposits; 5 U.S.C. 8335(b), pertaining to mandatory retirement; and 5 U.S.C. 8339(d), pertaining to computation of annuity.

(b) The regulations in this subpart are issued pursuant to the authority given to OPM in 5 U.S.C. 8347 to administer and prescribe regulations to carry out Subchaper III of Chapter 83, United States Code.

§ 831.902 Definitions.

In this subpart—

"Detention duties" means duties that require frequent direct contact in the detention, direction, supervision, inspection, training, employment, care, transportation, or rehabilitation of individuals suspected or convicted of offenses against the criminal laws of the United States or the District of Columbia or offenses against the punitive articles of the Uniform Code of Military Justice (Chapter 47 of title 10, United States Code). (See 5 U.S.C. 8331(20).)

"Firefighter" means an employee whose duties are primarily to perform work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment. Also included in this definition is an employee engaged in this activity who is transferred to a supervisory or administrative position. (See 5 U.S.C. 8331(21).) An employee whose primary duties are the performance of routine fire prevention inspections is excluded from this definition.

"First-level supervisors" are employees classified as supervisors who have direct and regular contact with the employees they supervise. First-level supervisors do *not* have subordinate supervisors.

"Frequent direct contact" means personal, immediate, and regularly-assigned contact with detainees while performing detention duties, which is repeated and continual over a typical work cycle.

"Law enforcement officer" means an employee whose duties are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, including an employee engaged in this activity who is transferred to a supervisory or administrative position. (See 5 U.S.C. 8331(20).) The definition does not include an employee whose primary duties involve maintaining law and order, protecting life and property, guarding against or inspecting for violations of law, or investigating persons other than persons who are suspected or convicted of offenses the criminal laws of the United States.

"Primary duties" are those duties of a position that—

(a) Are paramount in influence or weight; that is, constitute the basic reasons for the existence of the position;

(b) Occupy a substantial portion of the individual's working time over a typical work cycle; and

(c) Are assigned on a regular and recurring basis. Duties that are of an emergency, incidental, or temporary nature cannot be considered "primary" even if they meet the substantial portion of time criterion. In general, if an employee spends an average of at least 50 percent of his or her time performing a duty or group of duties, they are his or her primary duties.

"Primary position" means a position whose primary duties are (a) to perform work directly connected with controlling and extinguishing fires or maintaining and using firefighting apparatus and equipment; or (b) investigating, apprehending, or detaining individuals suspected or convicted of offenses against the criminal laws of the United States.

"Secondary position" means a position that (a) is clearly in the law enforcement of firefighting field; (b) is in an organization having a law enforcement or firefighting mission; and (c) is either—

(1) Supervisory; i.e., a position in which the primary duties are as a first-level supervisor of law enforcement officers or firefighters in primary positions; or

(2) Administrative; i.e., an executive, managerial, technical, semiprofessional, or professional position for which experience in a primary position as a law enforcement officer or firefighter is a mandatory prerequisite.

§ 831.903 Conditions for coverage in primary positions.

An employee's service in a position that has been approved as a primary position by OPM or its predecessor, the U.S. Civil Service Commission, is automatically covered under the provisions of 5 U.S.C. 8336(c). An employee who is not in a primary or secondary position and is detailed to a primary position is not covered under the provisions of 5 U.S.C. 8336(c).

§ 831.904 Conditions for coverage in secondary positions.

(a) An employee's service in an approved secondary position is covered under the provisions of 5 U.S.C. 8336(c) if the employee meets the following criteria:

(1) Employee is transferred directly (i.e. without a break in service exceeding 3 days) from a primary position to a secondary position; and

(2) If applicable, the employee has been continuously employed in secondary positions since transferring from a primary position without a break in service exceeding 3 days, except that a break in employment in secondary positions that begins with an involuntary separation (not for cause), within the meaning of section 8336(d)(1) of title 5, United States Code, is not considered in determining whether the service in secondary positions is continuous for this purpose.

(b) This requirement for continuous employment in a secondary position applies only to voluntary breaks in service beginning after [effective date of regulations].

(c) An employee who is not in a primary or secondary position and is detailed to a secondary position is not covered under the provisions of 5 U.S.C. 8336(c).

§ 831.905 Agency requests for OPM determination of primary positions.

(a) After its analysis of the evidence required under § 831.907(a)(1) through (7) for a current position, an agency will submit a request to OPM for a determination that the duties of the position qualify the position as a primary position. The request for OPM approval must include the required evidence and a detailed statement of the agency's reasons why it believes the position meets the statutory and regulatory requirements.

(b) If the agency request is based on a finding that the primary duties of the position are detention duties that require the incumbent to have frequent direct contact with detainees, the agency will submit to OPM—in addition to the information required under paragraph (a) of this section—the evidence required under § 831.907 (b)(1) through (5) and also a statement supporting its initial determination of "frequent direct contact."

§ 831.906 Agency requests for OPM determination of secondary positions.

After its analysis of the evidence listed under § 831.907(c)(1) through (3) for a current position, an agency will submit a request to OPM for a determination that the position meets the criteria for a secondary position. The request for OPM approval must include the required evidence and a detailed statement of the agency's reasons why it believes the position meets the statutory and regulatory requirements.

§ 831.907 Evidence.

(a) When an agency makes a request to OPM for a determination that a position is a primary position, the request must be signed by the agency head or his or her representative. In no instance, however, may a person below the level of the agency personnel director be designated as the agency head's representative. The following documentation must be included in the request:

(1) The official position description annotated to show the percentage of time spent performing the various duties; or, if a position description is not required for the position or the position description is not current, a detailed narrative description of the duties and responsibilities including the knowledges, skills, and abilities required to perform the duties, and all other current agency documents describing the official duties of the position. In addition, if the position description is not current, an explanation as to why the position description has not been revised as well as a timetable for the proposed revision;

(2) The functional statement for the organization where the position is located and an organization chart showing at least two levels above and below the level of the position;

(3) The critical and non-critical elements and performance standards for the position established by the agency under Part 430 of this chapter (or, if the position is not subject to Part 430, a statement to that effect);

(4) The evaluation statement, if any, explaining the classification of the position;

(5) The agency qualification and medical standards for entry and retention, or a statement that the standards are the same as the X–116 handbook standards;

(6) A statement concerning the current or proposed maximum entry age, if any; and

(7) For law enforcement officers, a list of the provisions of Federal criminal law the incumbent is responsible for enforcing.

(b) If the agency request for an OPM determination as to whether a position is a primary position is based on an agency finding that the primary duties of the position are detention duties, the agency will include a statement supporting its initial determination of "frequent direct contact" and request OPM concurrence with its

determination. This statement must include—

(1) The incumbent's worksite and official duty station, with a description of where contact with detainees occurs;

(2) The frequency of contact with detainees over a daily, weekly, monthly, or quarterly work cycle;

(3) The average duration of these contacts;

(4) The nature of the assigned duties that require the contacts (training, care, rehabilitation, etc.); and

(5) Any other pertinent information.

(c) When an agency makes a request for a determination that a position is a secondary position, the request must be signed by the agency head or his or her representative. In no instance, however, may a person below the level of the agency personnel director be designated as the agency head's representative. The following documentation must be included in the request:

(1) The documentation required under paragraph (a)(1) through (7) of this section; and

(2) For administrative positions, certification that the position requires experience as a Federal law enforcement officer or firefighter and a statement as to whether experience in a primary position is essential to the organization's mission; and

(3) For supervisory positions, certification that the position meets the requirements for a first-level supervisor.

(d) When OPM notifies the agency that offical documentation is lacking or insufficient to meet the requirements under paragraphs (a), (b), and (c) of this section, agencies will submit the requested information and may submit any other materials deemed appropriate (e.g., awards, certificates, job applications, affidavits, job announcements, etc.). If the information requested is not received by OPM in a timely manner, OPM will make a decision based on the information contained in the file.

§ 831.908 Requests from individuals.

(a) The employee bears the burden of proof with respect to coverage under 5 U.S.C. 8336(c). The employee must provide the agency, or OPM, with all pertinent information regarding duties performed to include, for law enforcement officers, a list of the provisions of Federal criminal law the incumbent is responsible for enforcing and arrests made; and, for firefighters, number of fires fought, names of fires fought, dates of fires, and position occupied while on firefighting duty.

(b) An employee who is currently serving in a position that has not been approved by OPM as a primary or secondary position, but who believes that his or her position meets the definition of a primary or secondary position and that he satisfies the conditions for coverage set forth above may ask the employing agency to request an OPM determination as to whether the position qualifies as a primary or secondary position. A request for a determination made directly to OMP by an employee, however, will not be accepted. The request will be returned by OPM to the employee for submission to the employee's agency for action. After its analysis of the evidence provided by the employee, the agency will submit a request to OPM for a determination and must include an advisory opinion to OPM as to whether it believes the position should or should not be covered and if it qualifies, whether it should be a prmary or secondary position. The agency's submission must include all evidence required under § 831.907 for a determination of primary and secondary positions.

(c) A current or former employee (or the survivor of a former employee) who believes that a period of past service in an unapproved position qualifies as service in a primary of secondary position and meets the conditions for coverage must follow the procedures in paragraph (b) except that the request must be made to the agency where the claimed service was performed (except as provided in paragraph (d)). Based upon its analysis of official records and the individual's submissions, the agency will submit a request for a determination to OPM along with an advisory opinion as to whether the service should or should not be covered and, if covered, whether it qualifies as service in a primary or secondary position. The agency's submission must include all evidence required under § 831.907.

(d) For a current or former employee who performed service at an agency that is no longer in existence and there is no successor agency, OPM will accept, directly from the current or former employee (or the survivor of a former employee), a request for a determination as to whether a period of past service qualifies as service in a primary or secondary position and meets the conditions for coverage.

(e) The maximum time period that coverage in a position may be granted is for the period 1 year prior to the date that the request for coverage from an individual is received by the employing agency, or OPM. Requests received by the employing agency, or OPM, prior to December 31, 1987, may include any periods of previous service. OPM may extend the time limits for filing when, in its judgment, the individual shows that he or she was prevented by circumstances beyond his or her control from making the request within the time limit.

§ 831.909 OPM decisions.

(a) OPM's decision on an agency request for a determination under §§ 831.905, 831.906, and 831.908(a) or (b) will be issued in writing to the agency following submission of all evidence required by § 831.907 and any other evidence requested by OPM. If OPM approves the position, the position will be designated as a primary position or as a secondary position.

(b) OPM's decision on the request from an individual submitted under § 831.908(c) will be issued in writing to the individual following submission of all evidence requested by OPM.

(c) OPM may withdraw approval of a position under paragraph (a) of this section if it determines, through an on-site evaluation, classification review, information provided by the agency, or from any other source, that the formerly approved position no longer meets the requisite definition. OPM must inform the employing agency of the withdrawal of approval. If the agency disagrees, it may resubmit the evidence prescribed under § 381.907 and request OPM approval of the position as provided under § 381.905 or § 831.906.

(d) An adverse OPM decision will include an explanation of the basis for the decision and a statement of the applicable reconsideration rights. When OPM's decision is directed to the agency, the agency must inform each employee whose rights or interests under Subchapter III of chapter 83, United States Code, are affected, that the decision of OPM may be individually reconsidered by OPM in accordance with § 831.109. The notice to each affected employee must include a copy of OPM's decision showing the time limit for requesting reconsideration. A copy of OPM's written decision and the agency's duly dated notice to each affected employee must be entered as a permanent record in the employee's official personnel file. If OPM's decision is later reversed, the copy in the official personnel file must be removed.

(e) Agencies may not represent in any way (e.g. position descriptions, vacancy announcements, etc.) that a position is a primary or secondary position if OPM has not so determined.

§ 831.910 Review of approved positions and certification to OPM.

(a) An agency must review a currently approved primary or secondary position whenever there is a significant change in the position that may affect the designation of a postion as primary or secondary to assess whether, in its opinion, the position continues to warrant approval. Each agency with approved primary and secondary positions must provide certification of the results of the agency review to OPM.

(b) If an agency finds that a currently approved primary or secondary position no longer warrants coverage, it must request that OPM withdraw the approval. The request must fully explain the material change(s) in the position and state the date the change(s) occurred. Upon OPM approval of the request, the effective date of the withdrawal of approval is retroactive to the date of the change in the positon. Beginning with the effective date of the withdrawal of approval, the agency must stop withholding the additional deductions and must inform each affected employee of OPM's action. The notice to the employee(s) must include a full explanation of the basis for OPM's determination, and state the right to request reconsideration of the determination and the time limits for requesting reconsideration in accordance with § 831.109. Any excess deductions must be refunded to the employee after the expiration of the time limits for requesting reconsideration or exhaustion of the administrative remedies.

(c) If the agency abolishes a primary or secondary position, the agency must notify OPM.

§ 831.911 Withholdings and contributions.

(a) Prior to the receipt of OPM's decision that a position is a primary or secondary position, the additional employee withholding for the incumbent of such a position and the agency contribution required by 5 U.S.C. 8334(a)(1) must not be made. Upon receipt of OPM approval of the position, the effective date of the additional withholding and agency conribution is retroactive to the beginning date of covered service in the primary or secondary position.

(b) Whenever it is finally determined that past service of a current or former employee was covered by the provisions of 5 U.S.C. 8336(c), retroactive employee deductions and matching agency contributions due for such service must be made. The underwithholding of civil service retirement contributions from the employee's pay results in an overpayment of pay. The employing agency must pursue collection under appropriate procedures. The agency is responsible for submitting to OPM the employee's share as well as the agency's share of the additional contributions to the Civil Service Retirement and Disability fund. Regardless of whether the agency is able to collect the employee's overpayment debt, the agency must make the required payment to the Fund. This payment must be made within 30 days of the final decision that past service was covered.

(c) The additional employee withholding and agency contribution for covered service properly made as required under 5 U.S.C. 8334(a)(1) or deposited under 5 U.S.C. 8334(c) are not separately refundable, even in the event that the employee or his or her survivor does not qualify for a special annuity computation under 5 U.S.C. 8339.

(d) An employee, upon proper application to the agency, or a former employee or eligible survivor, upon proper application to OPM, will be paid a refund, without interest, of erroneous additional withholdings or deposits for service that was not covered service.

(e) While an employee who does not hold a primary or secondary position is detailed to a primary or secondary position, the additional withholdings and agency conributions will not be made.

§ 831.912 Mandatory separation.

(a) The mandatory separation provisions of 5 U.S.C. 8335(b) apply to all law enforcement officers and firefighters in primary and secondary positions. A mandatory separation under section 8335(b) is not an adverse action under Part 752 of this chapter. Section 831.503 provides the procedures for requesting an exemption from mandatory separation.

(b) In the event an employee is separated mandatorily under 5 U.S.C. 8335(g), or is separated for optional retirement under 5 U.S.C. 8336(c), and OPM finds that all or part of the minimum service required for entitlement to immediate annuity was in a position that did not meet the requirements of a primary or secondary position and the conditions set forth in this subpart, such separation will be considered erroneous.

§ 831.913 Reemployment.

An employee who has been mandatorily separated under 5 U.S.C. 8335(b) is not barred from reemployment in any position except a primary position after age 60. Service by a reemployed annuitant is not covered by the provisions of 5 U.S.C. 8336(c).

§ 831.914 Review of decisions.

(a) An initial OPM decision under this subpart issued to an agency as to whether an encumbered position is a primary or secondary position or whether the service of a current or former employee meets the conditions for coverage is subject to reconsideration under § 831.109, upon timely request for reconsideration. The 30-day time limit for requesting reconsideration begins on the date of the agency's notification to the affected individual in accordance with § 831.909(d).

(b) An initial OPM decision issued to an employee, former employee, or survivor as to whether a period of service met the requirements of this subpart as service of a law enforcement officer or firefighter during any period of service is subject to reconsideration under § 831.109.

[FR Doc. 86-28566 Filed 12-18-86; 8:45 am]
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 1987-88 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal would establish the quantity of spearmint oil produced in the Far West, by class, that may be purchased from or handled for producers, by handlers during the 1987-88 marketing year which begins June 1, 1987. This action is recommended under the marketing order for spearmint oil produced in the Far West in order to avoid extreme fluctuations in supplies and prices and thus stabilize the market for spearmint oil.

DATE: Comments due January 20, 1987.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2085, South Building, Washington, DC 20250. Comments should reference the date and page number of this issue of the Federal Register and will be available for public inspection in the office of the Docket Clerk during regular working hours.

BEST COPY AVAILABLE

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, Washington, DC 20250. Telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act (AMAA), and rules issued thereunder, are unique in that they are brought about through the group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Although handlers and/or marketers will be affected by the establishment of salable quantities and allotment percentages, the intent of the AMAA is to benefit agricultural producers. The Far West spearmint oil industry is characterized by primarily small producers whose farming operations generally involve more than one commodity and whose income from farming operations is not exclusively dependent on the production of spearmint oil. The production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (the area covered under the marketing order). Spearmint oil is also produced in the Midwest. The production area covered by the marketing order usually accounts for over 75 percent of U.S. production of spearmint oil.

The Spearmint Oil Administrative Committee reports that there are 9 handlers and 253 producers of spearmint oil under the marketing order for spearmint oil produced in the Far West. Of the 253 producers, 164 producers hold Class I oil (Scotch) allotment base and 132 producers hold Class III oil (native) allotment base. As of June 1, 1986, the producers' allotment bases ranged from 1,200 to 181,902 pounds for Class I oil and 617 to 82,167 pounds for Class III oil. The average total allotment base held is 9,964 pounds and 13,695 pounds for Class I and Class III oil, respectively.

Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.1 (1985)) as those having average annual gross revenues for the last three years of less than $100,000. Handlers are considered small entities if gross annual revenues are less than $3.5 million. The most recent three years sales for spearmint oil from the marketing order area averaged $20.4 million. Thus, the average gross revenue from the sale of spearmint oil per producer (based on 253 producers) would be approximately $80,550. Therefore, it appears that the majority of Far West spearmint oil producers can be classified as small entities.

The Administrator of the Agricultural Marketing Service has considered the impact on small entities. The regulatory action in this instance is a proposal to establish salable quantities and allotment percentages for spearmint oil produced in the Far West, by class, such that the amount of spearmint oil that may be purchased from or handled for producers, by handlers, during the 1987-88 marketing year, which begins June 1, 1987, will be limited. Such salable quantities and allotment percentages have been placed into effect each season since the order's inception in 1980. The establishment of salable quantities and allotment percentages, as proposed, will likely result in the production of less than half of the total allotment base available for production of spearmint oil. However, the amounts recommended for sale are based on the average sales over the past six years, and are not expected to cause a shortage of spearmint oil supplies. Any unanticipated or additional market needs which may develop can be more than satisfied by current reserve stocks which are equal to more than 50 percent of the volume of spearmint oil utilized by the market on a yearly basis. In addition, those producers who produce more than their annual percentage of allotment may transfer such excess spearmint oil to a producer with a deficiency in spearmint oil production, or such excess spearmint oil will be placed into reserve stocks.

This proposed regulation, if adopted, would be similar to that which has been issued in prior seasons. Costs to producers and handlers as a result of this proposed action are expected to be offset by the benefits derived from improved returns to such producers and handlers while at the same time maintaining ample supplies of spearmint oil to be marketed.

Based on available information, the Administrator has concluded that this proposed action will not have a significant economic impact on a substantial number of small entities.

The proposed salable quantity and allotment percentage for each class of spearmint oil would be established in accordance with the provisions of Marketing Order No. 985, regulating the handling of spearmint oil produced in the Far West. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The proposal was recommended by the Spearmint Oil Administrative Committee, at its August 13, 1986, meeting.

The salable quantity and allotment percentage for each class of spearmint oil for the 1987-88 marketing year, which begins June 1, 1987, is based upon recommendations of the committee and the following data and estimates:

(1) Class I Oil (Scotch Spearmint)

(A) Estimated carryin on June 1, 1987—60,382 pounds.

(B) Estimated trade demand (domestic and export) for the 1987-88 marketing year, based on an average of producer sales for the past six marketing years, beginning with the 1980-81 marketing year through the 1985-86 marketing year—758,914 pounds.

(C) Recommended desirable carryout on May 31, 1988—0 pounds.

(D) Salable quantity required from 1987 production—698,532 pounds.

(E) Total allotment bases for Class I oil—1,650,497 pounds.

(F) Computed allotment percentage—42.3 percent.

(G) The committee's recommended salable quantity—693,209 pounds.

(H) Recommended allotment percentage—42 percent.

(2) Class III Oil (Native Spearmint)

(A) Estimated carryin on June 1, 1987—179,599 pounds.

(B) Estimated trade demand (domestic and export) for the 1987-88 marketing year, based on an average of producer sales for the past six marketing years, beginning with the 1980-81 marketing year through the 1985-86 marketing year—859,648 pounds.

(C) Recommended desirable carryout on May 31, 1988—0 pounds.

(D) Salable quantity required from 1987 production—680,049 pounds.

(E) Total allotment bases for Class III oil—1,826,673 pounds.

(F) Computed allotment percentage—37.2 percent.

(G) The committee's recommended salable quantity—675,869 pounds.

(H) Recommended allotment percentage—37 percent.

The salable quantity is the total quantity of each class of oil which handlers may purchase from or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class.

The establishment of these salable quantities and allotment percentages will allow for anticipated market needs based on historical sales and provide spearmint oil producers with information on the amount of oil which should be produced for next season. Spearmint oil has an extremely inelastic demand and excess production normally is placed into the industry's reserves. Current reserves are equal to more then 50 percent of the volume of spearmint oil utilized by the market on a yearly basis. These reserve stocks are sufficient to meet any unanticipated marketing opportunities in the coming season. The regulation this season should aid the industry in reducing its burdensome and price depressing reserves.

Pursuant to the order, the committee is expected to issue additional allotment bases to both new and existing producers for the 1987-88 marketing year. The distribution of additional allotment base for existing producers is proposed to be provided to small producers first. Rulemaking to accomplish this will be completed prior to the distribution of additional allotment base to existing producers. The issuance of the additional allotment base to both new and existing producers is expected to slightly increase the total supply of Class I and Class III oil available for sale.

List of Subjects in 7 CFR Part 985

Marketing agreements and orders Far West, Spearmint oil.

1. The authority citation for 7 CFR Part 985 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

. It is proposed to add a new § 985.207 under Subpart—Salable Quantities and Allotment Percentages to read as follows: [The following provisions will not be published in the Code of Federal Regulations).

PART 985—SPEARMINT OIL PRODUCED IN THE FAR WEST

Subpart—Salable Quantities and Allotment Percentages

§ 985.207 Salable quantities and allotment percentages—1987-88 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year which begins June 1, 1987, shall be as follows:

(a) Class I oil—a salable quantity of 693,209 pounds and an allotment percentage of 42 percent.

(b) Class III oil—a salable quantity of 675,869 pounds and an allotment percentage of 37 percent.

Dated: December 15, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division.

[FR Doc. 86-28466 Filed 12-18-86; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Parts 1000 and 1140

[Docket No. AO-387]

Milk in the Hawaii Marketing Area; Termination of Proceeding on Proposed Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination of proceeding on proposed marketing agreement and order.

SUMMARY: This action terminates a proceeding that was initiated to consider a proposed Federal milk order to regulate the marketing of milk in parts of the State of Hawaii. The hearing was scheduled to begin on December 11, 1985, and was postponed until an indefinite later date on December 3, 1985, at the request of the parties proposing the order. Since the postponement of the hearing date, none of the interested parties has requested that the hearing be rescheduled.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U. S. Department of Agriculture, Washington, DC 20250, (202) 447-7183.

SUPPLEMENTARY INFORMATION: Prior Documents in this proceeding:

Notice of Hearing: Issued August 6, 1985; published August 12, 1985 (50 FR 32426).

Rescheduling of Hearing: Issued September 24, 1985; published September 30, 1985 (50 FR 39711).

Postponement of Hearing: Issued December 3, 1985; published December 11, 1985 (50 FR 50622).

This termination of proceeding is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq*). This proceeding was initiated by a notice of hearing published in the **Federal Register** on August 12, 1985 (50 FR 32426) concerning a proposed Federal milk order for the purpose of regulating the marketing of milk in portions of the State of Hawaii. The hearing was rescheduled at a later date in a document published September 30, 1985 (50 FR 39711), and postponed until an indefinite later date in a document published December 11, 1985 (50 FR 50622). Proponents of the proposed order requested the postponement in order to extend the time for preparing testimony and evidence to better support the need for an order and justify its proposed provisions. Since the postponement of the hearing, none of the interested persons has requested that the hearing be rescheduled.

In view of the time that has elapsed since the hearing was postponed, conditions in the marketing area have undoubtedly changed, and the provisions of the proposed order would need to be re-evaluated before any hearing would be scheduled. In this regard, the proposed milk order for the Hawaii marketing area contains provisions to facilitate a production quota plan similar to one which the Department recently refused to consider for inclusion in the Oregon-Washington and Puget Sound-Inland milk orders. Therefore, some of the order provisions proposed for the Hawaii marketing area are not now considered appropriate for inclusion in any Federal milk order.

Accordingly, the proceeding initiated by the notice of hearing issued August 6, 1985, and published at 50 FR 32426, August 12, 1985, is hereby terminated.

Signed at Washington, DC, on: December 15, 1986.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 86-28468 Filed 12-18-86; 8:45 am]

BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Parts 312 and 381

[Docket Number 85-024P]

Official Marks for Sealing Samples

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Federal meat and poultry products inspection regulations to incorporate an official mark for use in sealing containers of samples of meat or poultry products or production-related articles collected for examination and/or testing at establishments or laboratories. Any seal approved by the Administrator for applying such mark would be an official device. The seal helps assure that the identity and integrity of such samples will be maintained until completion of testing. The device would be supplied by the United States Department of Agriculture.

DATE: Comments must be received on or before February 17, 1987.

ADDRESS: Written comments should be submitted to the Policy Office, ATTN: Linda Carey, FSIS Hearing Clerk, Food Safety and Inspection Service, U.S. Department of Agriculture, Room 3168, South Building, Washington, DC 20250. Oral comments as provided under the Poultry Products Inspection Act should be directed to Dr. Ronald J. Prucha, (202) 447–8803. (See also "Comments" under Supplementary Information.)

FOR FURTHER INFORMATION CONTACT: Dr. Ronald J. Prucha, Deputy Administrator, Meat and Poultry Inspection Operations, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–8803.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule is issued in conformance with Executive Order 12291, and has been determined not to be a "major rule." The proposed rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises or export markets. The proposal would not impact upon any segment of the industry.

Effect on Small Entities

The Administrator has determined that this action will not have a significant economic impact upon a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601). This proposed rule would impose no requirements on industry, and would incorporate an official mark for sealing samples collected by FSIS inspectors, compliance officers, or other designated Agency officials for examination and/or testing.

Comments

Interested persons are invited to submit comments concerning the proposal. Comments must be sent in duplicate to the Policy Office and must reference the docket number located in the heading of this document. Any person desiring opportunity for an oral presentation of views should make such request to Dr. Prucha so that arrangements may be made for the presentation. A transcript shall be made of all comments presented orally. Comments submitted pursuant to this document will be made available for public inspection in the Policy Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Background

In order to assure compliance with Agency regulations promulgated under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*), FSIS inspectors, compliance officers, or other designated Agency officials are required to periodically collect samples of meat or poultry products (e.g., specimens or frankfurter samples) for inplant examination and testing and/or submission for laboratory testing. Samples of production-related articles, such as water, spices, and chemicals, are also collected.

Samples of products, water, dyes, chemicals, preservatives, spices, or other articles in an official establishment are taken as often as necessary for the efficient conduct of inspection (9 CFR 318.9 and 381.146). Furthermore, samples may be collected from any person, firm, or corporation that engages, for commerce, in the business of (1) slaughtering cattle, sheep, goats, horses, mules, or other equines or preparing, freezing, packaging, or labeling any carcasses or parts or products thereof; (2) buying, selling, or transporting in commerce, or storing in or for commerce, or importing such carcasses or parts or products thereof; and (3) buying, selling, or transporting, or importing any dead, dying, disabled, or diseased cattle, sheep, swine, goats, horses, mules or other equines, or poultry or parts or products of the carcasses of any such animals that died otherwise than by slaughter (9 CFR 320.4). A similar provision exists in the poultry products inspection regulations (9 CFR 381.178). Normally, FSIS inspectors collect samples at official establishments and FSIS compliance officers collect samples at locations other than official establishments.

Examination and testing of meat and poultry samples are conducted to determine, for example, the protein, moisture, fat, and salt content, or levels of drug or chemical residues and added substances. If a non-compliant meat or poultry product is found, FSIS takes appropriate action against the product and/or person, firm, or corporation involved. This action may range from requiring that the product be condemned or reprocessed to filing a criminal charge or a civil complaint in Federal court. Likewise, if any production-related article does not comply with existing standards and/or regulations, FSIS action is necessary to resolve the problem. In light of this, samples must be handled with great care to maintain their identity and integrity.

The use of sample seals helps to prevent tampering pending completion of examination and testing. The official mark on sample seals would consist of the words "Sample Seal" accompanied by the official USDA logo. Any seal approved by the Administrator for applying such mark would be considered an official device, the unauthorized handling thereof is prohibited under section 11 of the FMIA (21 U.S.C. 611) and section 9 of the Poultry Products Inspection Act (21 U.S.C. 458). Such a device would be supplied by the United States Department of Agriculture.

Proposed Rule

Part 312 of the Federal meat inspection regulations (9 CFR Part 312) and Part 381 of the poultry products inspection regulations (9 CFR Part 381) would be revised as set fourth below.

List of Subjects

9 CFR Part 312

Meat inspection, Official inspection marks, devices.

9 CFR Part 381

Official inspection marks, devices, Poultry products inspection.

PART 312—[AMENDED]

1. The authority citation for Part 312 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 436; 21 U.S.C. 71 *et seq.*, 33 U.S.C. 1254.

2. Part 312 would be amended by adding a new § 312.10 to read as follows:

§ 312.10 Official mark for maintaining the identity and integrity of samples.

The official mark for use in sealing containers of samples submitted under any requirements in this subchapter and section 202 of the Federal Meat Inspection Act shall bear the designation "Sample Seal" accompanied by the official USDA logo as shown below. Any seal approved by the Administrator for applying such mark shall be deemed an official device for purposes of the Act. Such device shall be supplied to inspectors, compliance officers, and other designated Agency officials by the United States Department of Agriculture.

SAMPLE SEAL

PART 381—[AMENDED]

3. The authority citation for Part 381 continues to read as follows:

Authority: 71 Stat. 441, 82 Stat. 791, as amended, 21 U.S.C. 451 *et seq.*; 76 Stat. 663 (7 U.S.C. 450 *et seq.*), unless otherwise noted.

4. Part 381 would be amended by adding a new § 381.112 to Subpart M to read as follows:

§ 381.112 Official mark for maintaining the identity and integrity of samples.

The official mark for use in sealing containers of samples submitted under any requirements in this part and section 11(b) of the Poultry Products Inspection Act shall bear the designation "Sample Seal" accompanied by the official USDA logo as shown below. Any seal approved by the Administrator for applying such mark shall be deemed an official device for purposes of the Act. Such device shall be supplied to inspectors, compliance officers, and other designated Agency officials by the United States Department of Agriculture.

SAMPLE SEAL

Done at Washington, DC, on November 28, 1986.

Lester M. Crawford,

Acting Administrator, Food Safety and Inspection Service.

[FR Doc. 86–28131 Filed 12–18–86; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 645

[FHWA Docket No. 86–15]

Accommodation of Utilities; Longitudinal Utility Use of Freeway Right-of-Way

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FHWA proposes to revise its regulation on the accommodation of utility facilities and private lines on the right-of-way of Federal-aid and direct Federal highway projects to clarify requirements regarding utility use of Federal-aid highway right-of-way and modify the conditions under which certain types of utilities such as fiber optics may be located longitudinally on Federal-aid freeways (Interstate Highways).

DATE: Comments must be received on or before February 17, 1987.

ADDRESS: Submit written comments, preferably in triplicate, to the Federal Highway Administration, HCC–10, FHWA Docket No. 86–15, Room 4205, 400 Seventh Street, SW., Washington, DC 20590. All comments and suggestions received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: James A. Carney, Office of Engineering, 202–366–4652, or Michael J. Laska, Office of the Chief Counsel, 202–366–1383, Federal Highway Administration, 400 Seventh Street, Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t. Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Background

FHWA's current regulations controlling utility use of Federal-aid highway right-of-way is contained in 23 CFR Part 645, Subpart B. This regulation recognizes the need for allowing utility installations to cross over or under Federal-aid highway right-of-way provided certain conditions are satisfied. Existing policy is designed so that Federal-aid highway systems do not act as barriers to necessary and orderly land use and development. For example, although the existing regulation strongly discourages longitudinal utility use of freeway (Interstate) right-of-way within the access control limits, it does not prohibit such use. Longitudinal installations are permitted when certain conditions are met.

FHWA's utilities accommodation regulation is based on standards that were established in cooperation with the States. Highway officials have long recognized that control of access is materially affected by the extent and manner in which utilities are permitted to cross or otherwise occupy the rights-of-way of highways. Both the Interstate and most freeways are designed for full control of access and access control continues to be recognized as one of the most significant design features contributing to the safety of freeway facilities. In order to preserve this full control of access feature, it is necessary to have uniform national standards which establish the conditions under which publicly and privately owned utilities can be accommodated on Interstate rights-of-way.

In 1959 AASHTO issued "A Policy on the Accommodation of Utilities on the National System of Interstate and Defense Highways" and the FHWA adopted the AASHTO policy as a standard for Interstate projects.

Over the years AASHTO has reviewed its policy regarding utility use of Interstate right-of-way and also expanded it to cover all freeway type highway facilities. After each of these reviews, the latest in 1982, AASHTO has reaffirmed its policy. FHWA and AASHTO follow that same policy today.

Under the current FHWA regulation, longitudinal utility use of freeway right-of-way is permitted only when such use is clearly justified due to special and unique circumstances. In reviewing a specific proposal for freeway right-of-way use, the FHWA uses the criteria from Item 2 of AASHTO's "A Policy on

the Accommodation of Utilities within Freeway Right-of-Way" (See § 645.209(c) of the existing regulation) to determine whether an installation should be approved. The AASHTO criteria are:

- The proposed longitudinal utility use will not adversely affect the safety, design, construction, operation, maintenance or stability of the freeway.
- The proposed utility facility will not be constructed and/or serviced by direct access from the through traffic roadways or connecting ramps. (The existing FHWA regulation does allow an exception in this regard for proposed lines within interchange areas provided the means of access is approved by the State under controlled conditions.)
- The proposed utility location will not interfere with or impair the present use or future expansion of the freeway.
- Any alternate location would be contrary to the public interest. This determination would include an evaluation of the direct and indirect environmental and economic effects which would result from the disapproval of the use of such right-of-way for the accommodation of the utility facility.

It should be noted that section 109(1) which was added to Title 23 by the Surface Transportation Assistance Act of 1978 (Pub. L. 95-599, 92 Stat. 2689) requires that before any right-of-way on any Federal-aid system is considered for accommodating utilities, the Secretary shall ascertain the effect such use will have on highway traffic safety and evaluate the direct and indirect environmental and economic effects of any loss of agricultrual land or impairment of the productivity of any agricultural land which might result form the disapproval of such accommodation. Even though 109(1) envisions that safety, impairment of the use of the highway, and agricultural impacts be considered, it requires that in no case shall any use be authorized if it is determined that the accommodation would adversely affect safety. FHWA's existing regulation reflects both the requirements of Section 109(1) as well as the current AASHTO criteria.

Since all of the AASHTO conditions to installation must be satisfied under the current regulation before an exception will be approved, few utility installations have been permitted within the control of access of Federal-aid freeway projects. It is estimated that since 1960 the FHWA has approved approximately 250 requests nationwide for longitudinal utility use of Federal-aid freeway projects. Where such approval has been granted, it has generally been for very short segments of several thousand feet or less, all under strictly controlled conditions.

Review of Existing Regulation

During the past 3 years, there has been considerable interest expressed by the telecommunication industry to gain access to the Interstate System for the installation of underground fiber optics cable systems. Additionally, proposals have arisen concerning installation of State and privately owned fiber optics systems along Federal-aid highways, principally the Interstate Highway System. Some elements of State government also see leasing of freeway right-of-way to fiber optic telecommunication carriers as a means of raising additional revenues at the State level or as a means for spurring regional economic development. Basically, these proposals envision extensive longitudinal use of the Interstates which would represent a departure from current practice.

AASHTO is again reviewing its freeway utility accommodation policy with special emphasis being given to the issue of fiber optics installations. However, it is expected that the AASHTO review will not be completed until early next year. In light of the rapid advances in fiber optic technology and in response to many requests to have FHWA reexamine its policy, FHWA published a notice in the Federal Register on April 1, 1986 (51 FR 11055) announcing its intention to initiate a reexamination of its regulation and policy on this issue. This document reflects the results of that review.

In undertaking this review, FHWA has acknowledged the longstanding State/Federal partnership in the development of policies and procedures affecting the highway program and utilities accommodation. The existing FHWA regulation and procedures on utilities accommodation reflect this partnership in three key ways:

1. FHWA's existing regulation with respect to longitudinal installations has incorporated by reference the 1982 AASHTO utilities accommodation policy as an essential factor for maintaining the control of access Interstate design standard that has been adopted by FHWA under 23 U.S.C. 109.
2. Each State is required to develop its own policy and procedures setting forth the manner in which the State will control utility use of Federal-aid highway right-of-way.
3. Each State's policy and procedures, when approved by FHWA, govern utility installations on Federal-aid highways within that State without further referral to FHWA except when the proposed installation is not in accord with the approved plan, or the installation would involve the need for an exception as described in AASHTO policy, or the longitudinal installation would involve private lines.

During its review, FHWA has identified and considered questions in several key areas. Some of these issues are directly reflected in the proposed regulatory changes that follow. Other issues, while not currently reflected in the proposed rule, may be incorporated in the final rule. Therefore, FHWA invites public comments on each of the issues discussed in this preamble.

Justification of Freeway Use by Utilities. FHWA is proposing several clarifications/modifications to the conditions for installation on freeways. Section 645.209(c) of the proposed rule is modified to clarify the conditions required to obtain approval for longitudinal installations within freeways. Item 2 of the 1982 AASHTO policy is no longer incorporated by reference. Instead those sections of Item 2 that FHWA wishes to incorporate appear in full in the rule. Section 645.209(c) is also broken down into paragraphs and subparagraphs for easier reference.

In summary, FHWA is proposing that two major conditions be applied to approval of installations within freeway access control lines:

1. Is the installation warranted because alternate locations are either:
   a. Unreasonably costly, or
   b. Extremely difficult to implement, or
   c. Adversely impacting agricultural lands, and,
2. Is the installation safe and does it not adversely affect the operation of the freeway?

Proposed § 645.209(c)(1)(i) covers the matter of alternate locations and reiterates, with some modification, the thrust of the conditions contained in Item 2D of the AASHTO policy. The current AASHTO policy requires a showing that alternate locations would not be in the public interest. This determination currently includes an evaluation of the direct and indirect environmental and economic effects that would result from disapproval.

FHWA now administratively applies three tests to determine whether Item 2D has been met:

- Alternate locations (outside freeway right-of-way) are extremely difficult to implement;
- Alternate locations are unreasonably costly to the utility consumer;
- Alternate locations adversely affect productive agricultural land (reference 23 U.S.C. 109(1)).

It is proposed to incorporate these tests with some modification into the regulation. Instead of demonstrating that alternate locations are not in the public interest, the proposed rule requires the State highway agency to show that other alternate locations would be unreasonably costly, extremely difficult to implement, or would adversely impact or impair agricultural lands. Specifically:

1. Proposed § 645.209(c)(1)(i)(A) would allow freeway locations where it can be shown that other locations are unreasonably costly. Costs to the utility consumer and company and the highway agency could be considered in making this determination. These could include not only costs to install the utility facility but also costs associated with operating, servicing and maintaining it. This determination should be based upon the overall net cost to the affected parties. This is a somewhat broader test than the one currently employed.
2. Proposed § 645.209(c)(1)(i)(B) would allow freeway locations where it can be shown that other locations are extremely difficult to implement. This warrant deals mostly with consideration of physical, technical and environmental constraints which may limit the number of available alternate locations.
3. Proposed § 645.209(c)(1)(i)(C) provides that the installation must be justified as necessary to mitigate damage to agriculture lands under the provisions of 23 U.S.C. 109(1). Installations under this warrant will be considered only where it is clear that there would be significant economic or environmental damage to the adjacent farm lands if the freeway location is denied and there are no other reasonable and practical alternate locations available.

The purpose for evaluating alternatives is to assure FHWA that freeway right-of-way is not being used for such installations when other locations are available to the utility which could be utilized in a timely manner within reasonable, expected, and normally acceptable limits of level of effort and costs. While it is FHWA's intent to adopt a policy which does not hinder the advancement of new utility installations, it is also FHWA's intent to ensure that freeway right-of-way is not chosen for installations when other reasonable alternates may be used. Safety considerations and control of access issues obviously dictate that the least obtrusive alternates should be favored. The burden for developing and demonstrating these warranting conditions is placed upon the State highway agency.

In addition to reviewing proposed alternates to a freeway location, proposed § 645.209(c)(1)(ii) requires the State highway agency to be able to demonstrate that the accommodation will not affect the safety, design, construction, operation, maintenance or stability of the freeway. Section 645.209(c)(1)(ii) is a restatement of the first condition to approval of an installation as it appears in Item 2A of the AASHTO policy. This condition includes consideration of safety, design, and operational features of the roadway prior to approving an installation. FHWA believes this first condition is of utmost importance and should include a showing that the installation meets all relevant safety concerns—including a demonstration that the utility will not interfere with the planned expansion of the roadway or safe use of the highway now or in the future (AASHTO Item 2C). In addition, this condition cannot be met unless control of access issues are addressed (AASHTO Item 2B). The singular most effective safety feature of a freeway facility is full control of access. For this reason, FHWA believes that access control must be considered as an essential condition for approval. Thus, the thrust of Items 2B and 2C of the AASHTO policy have been incorporated into proposed § 645.209(c)(1)(ii).

Safety. Several important questions are being considered in this area:

1. What are the safety and operational impacts of longitudinal use of freeway right-of-way?
2. How do the impacts vary from one kind of utility versus another?
3. What conditions and controls are needed for location of and service access to utility facilities if they are permitted on freeway right-of-way?
4. Is there a rationale for permitting only certain utilities to use the right-of-way?

It is FHWA's vew that extensive and unrestricted longitudinal utility use of freeways could adversely affect the safety of the freeway facility as it would be difficult to maintain the full access control feature. Thus, modifications of current policy that allow for easier access to freeway right-of-way by utilities must protect against excessive proliferation of utility uses within the access control lines and must provide for adequate restrictions for those utilities permitted.

Under current regulation, prior to approval of a longitudinal installation within the control of access lines, the utility owner must show that it will be constructed and/or serviced from off the through roadway or connecting ramps. This provision is designed to preserve the access control features of the freeway. However, FHWA currently permits, under strictly controlled conditions, construction and/or servicing from through roadways and ramps of utility facilities that are located within interchange areas.

It is FHWA's view that with appropriate restrictions, highway safety can be adequately protected and maintained coincidentally with the longitudinal accommodation of certain utilities within access control lines under special circumstances requiring construction and/or servicing from the through roadways or ramps. Therefore, FHWA has determined pursuant to 23 U.S.C. 109(1) that the safety of the roadway and the objectives of control of access can be adequately maintained so long as strict and limited permitting procedures are imposed and enforced upon certain utility installations requiring direct access from the roadway. This determination is based on the fact that some modern utilities, such as fiber optics, require very little maintenance and cause minimal disruption to the roadway during installation and thus require minimal direct access. Therefore, FHWA proposes to expand its present practice of allowing access via permit from the through roadway or connecting ramps in interchange areas, to allow for essential direct access from through roadways along the freeway for construction and/or servicing of utilities under certain conditions. This expanded practice is conditioned upon the provision of sufficient controls and enforcement to protect the safety of the traveling public and a finding that no other practical alternative exists for accessing the facility. Thus, FHWA proposes to modify § 645.209(c) to allow approval of certain longitudinal installations that may have to be constructed and/or serviced from the through roadway, with the condition that sufficient controls are placed on such access through the issuance of permits by the States.

If this access position is adopted by a State, the terms and conditions of such permitting practices must be included in its utility accommodation plan. FHWA does not intend to approve State plans that would allow access from the through roadway or ramps unless very strict operational and safety standards are imposed and enforced by the States through these permits to ensure a safe traffic environment for the traveling public. These standards may include such items as pre-selected and established access points, prohibition on parking vehicles and equipment on the shoulders of the highway, limiting hours

of operation to periods of low traffic flow, requiring special signing or police control of traffic, limitations on the frequency of the access, and the like. Persons should comment on whether these or similar standards should be incorporated into the rule to suggest alternatives. To ensure that the access permit contains all appropriate requirements to provide for the necessary traffic safety measures, specific access site conditions and permit requirements should be carefully evaluated by competent traffic safety engineers.

FHWA does not intend to approve installations that require direct access for construction and/or servicing if alternate means exist for such activity. Therefore, the proposed rule requires a showing that no other means of access is practically available. Such a showing could potentially be made, for example, in urbanized areas where it is not possible to construct a utility maintenance strip or where space is limited or in rural mountainous areas where the only reasonable road access is from the freeway.

FHWA solicits comments on its proposed change in policy which permits access from the through roadway or ramps for construction and/or servicing under certain conditions. FHWA also solicits comments on the nature, type and extent of operations controls and safety standards which should be required where utilities are allowed access from the freeway through roadways. In addition, FHWA seeks comments on the types of utilities that should be permitted direct access from the highway due to their low maintenance capabilities or the minimal disruption that they may cause during installation or servicing. Since FHWA recently received requests to reconsider its policy for fiber optics' use of the right-of-way, commenters should address whether this particular type of utility should be permitted direct access from the highway and provide supporting data. Specifically, commenters should address the long-term maintenance requirements of this technology indicating what they believe would be an appropriate maintenance frequency.

It is also FHWA's view that not all utilities would have an equal effect on safety. Of the two broad classes, above ground and below ground, underground utility facilities which require little maintenance or servicing would obviously have less impact then above ground utility installations which are more subject to environmental deterioration and may create a safety hazard as a roadside obstacle. Due to this consideration, FHWA proposes to add a new paragraph (e) to § 645.211 that permits the States to establish class approval procedures for certain utilities meeting the several conditions to installation. This proposal should serve to accelerate the installation approval process as well as ease the burden of meeting certain conditions on a case-by-case basis for many utilities.

This class approval process will be implemented at the State's option in its utilities accommodation plan. Once the plan is approved by FHWA, applications for longitudinal installation, which under current policy must be approved by FHWA, will no longer require such approval. Thus, it is apparent that this change could serve to expedite the approval process. Commenters should address whether the State-adopted approval process should be implemented in the final rule or phased-in over a period of one one or two years for each new technology until the States and Federal Government become more familiar with specific types of utility installations.

The same conditions to installations will apply to the approval of a State plan that contains class approval procedures as apply to individual applications for approval. Thus, every installation will have to meet new conditions established in this rule. The difference between the two processes is that for installations falling under a State approved class procedure, FHWA approval of individual applications will not be required. In those instances where the State does not choose to adopt the class approval process, longitudinal installation applications will still require FHWA approval.

Both the conditions to approval and FHWA's participation in the approval process have been significantly modified in the proposed rule. Prior to approval of a State plan that incorporates the class approval or expedited procedures concept, FHWA will have to make a determination as to whether the State plan incorporates sufficient terms and conditions to installation that ensure that each of the regulatory conditions to approval will be met in each case. For example, in reviewing a plan that establishes class approval for fiber optics installations, FHWA will have to make a determination as to whether all of the conditions to approval have been considered and sufficiently met. This would include a determination as to whether the State has adequately provided for strict safety controls in those situations where direct access from the roadway will be permitted. An examination of the permit conditions and how the State intends to enforce such conditions would be included in this determination.

It is anticipated that even with class approval, case-by-case analysis will still be conducted by the States making the determination whether the conditions for approval have been met. This is so because some of the conditions require demonstrations that are particular to each project. For example, showing that alternate locations are difficult to implement will require case-by-case analysis of installation applications. Section 645.211(e) as proposed, will permit States to adopt step-by-step procedures for meeting each of the conditions to approval. Once a State plan that contains these procedures is approved by FHWA, no further FHWA action will be necessary on those applications that fall under the State class approval process.

In considering the requirements that should be applied to each class of utility in order to meet the conditions to approval, each of the following concerns must be weighed:

- The utility's effect on the safety and operations of the highway.
- The extent of interference with highway maintenance activities that the installation may impose.
- The possible conflict with future planned highway uses that the particular utility may impose.
- Adverse effects on highway users imposed by the installation such as visual impacts.
- The possible physical impairment to the highway facility.

The various classes of utility may affect these concerns in different ways under varying conditions. As a consequence, it would not be equitable to prejudge and exclude certain types of utilities from use of highway right-of-way. In this respect, it is recognized that the evaluation criteria and justification process may vary due to the extent of the longitudinal installation. For example, the nature of the justification may be substantially different for a 500-mile installation as compared to a 1-mile installation for the same class of utility but both may well be equally warranted.

FHWA solicits comments on the types of terms and conditions that should be imposed on the various utilities and which types are sufficient to warrant FHWA approval of class approval procedures in a State's plan. In addition, FHWA solicits comments on the types of utilities that warrant approval status and those utilities that should not be granted such status. Finally, FHWA solicits comments on the types of utilities that should be permitted to use freeway right-of-way, whether through the class or individual approval process. Commenters also should provide information and data regarding the impacts of permitting the various types of utilities on the highway system.

In any case where utility use of freeway right-of-way is permitted, FHWA believes the utility facility should be constructed of long lasting material and protected to preclude damage from roadway maintenance activities. The facilities should be placed as far from the travel lanes as possible, preferably along the right-of-way line. In addition, it is FHWA's position, that access for construction and maintenance activities should be strictly controlled and not be allowed from a freeway's through roadways or ramps unless absolutely necessary, and even then only under permit.

Competition. Many utility types and companies may find themselves in direct competition with each other for the rights to use freeway right-of-way. It is envisioned that, if adopted, the proposed rule will open Interstate and freeway right-of-way to increased utility use. It is also anticipated that limited numbers of utilities will be permitted to use any given right-of-way. Therefore, increased use of right-of-way will directly impact the market relationship between the competing utilities within any given area. Comments should address this issue.

FHWA is not proposing regulatory requirements pertaining to the competitive issues involved in providing increased use of freeway right-of-way for utilities accommodation. However, FHWA seeks comments regarding the necessity or desirability of assuring access to both interstate and intrastate transmissions or distribution. If necessary, FHWA intends to address this issue through future rulemaking.

Governmentol Usage of Telecommunications Facilities. Another question that has arisen during the FHWA review of existing policy is whether utility service and/or its usage should be made available at reduced, or without charge to the Federal and/or State government in return for permission to use a State's highway right-of-way. The Federal Government may also have a need to locate various telecommunication facilities containing specific enhancements for national security emergency preparedness purposes in selected geographic areas and for certain enhanced installations to support National Security/Emergency Preparedness (NSEP) services. This particular concept is currently under review by the National Security Council in cooperation with the National Communication System, and Departments of Defense and Transportation. A related issue is the extent that the value of highway right-of-way or freeway location could be traded for governmental usage or enhancements or whether the Government should sell or lease highway rights-of-way and purchase those services that it requires. Additionally, State governments may have a need for telecommunication services for official State or civil defense purposes. Long distance fiber optic telecommunication systems typically have large capacities available or additional capacity can be added at minimal cost.

FHWA is not proposing regulatory requirements pertaining to the dedicated use issue by either Federal or State governments. However, FHWA solicits comments on whether dedicated use or specific defense enhancements such as cable type, hardening, burial depth or special protection for repeater stations should be required prior to approving fiber optics cable installations. FHWA also seeks comments regarding the manner in which such free capacity or enhancements can be valued. In addition, comments are solicited as to whether FHWA is the appropriate authority to impose such requirements on the States. Based upon the comments received, FHWA may address this issue in future rulemaking.

Fees for Use of Right-Of-Woy. The longitudinal utility use of freeways and other highways by certain types of utilities, such as fiber optics, raises an issue concerning fees for the use of such rights. The highway right-of-way is publicly owned land, which was acquired to fulfill a public need. Permitting the use of this asset perhaps should be accompanied by the imposition of fees. However, the fee issue is not merely a question of imposing and collecting a set amount. In other utility right-of-way use instances most States have not charged a fee except in some cases to cover administrative costs for permits. Because of the complexity of a fee system, and the myriad of State laws, commenters should address if and how such a fee system could be implemented, how the fees should be set, and from a public policy perspective if such a system is justified. Commenters should also address whether the right-of-way should be leased for a specific period of time or purchased outright. Specifically, if fees are to be imposed, who should collect them? Should, and if so, how should the revenue obtained be apportioned between the States and the Federal Government? Should revenues be earmarked for highway purposes? Commenters also should address how valuable the highway right-of-way benefit is and what, if any, are the potential savings to the industry if fees are imposed vis-a-vis the purchase for use of other rights-of-way. Commenters should address how the value of the public right-of-way (or cost of a private right-of-way) compares with the total cost of installing and maintaining these utility lines. Imposing fees also may dissuade utilities from using these rights-of-way and commenters should address the level of fees imposed, and their effect on use of the right-of-way.

Public comment on the proposed rule and all questions identified in this preamble is solicited.

Regulatory Impact

The FHWA has determined that this document is not a major rule under Executive Order 12291. However, it is considered a significant regulation under the Department of Transportation's regulatory policies and procedures. The proposed regulation modifies and clarifies existing FHWA policy and procedures for accommodating utility facilities and private lines on the right-of-way of Federal-aid and direct Federal highway projects. Specifically, policy and procedural clarifications are being proposed concerning application of the regulation to placement of new utility facilities on highway right-of-way, particularly longitudinal use of freeway right-of-way.

The proposed revisions will not impose any significant or substantial additional reporting or recordkeeping requirement on the States. Only the conditions under which certain types of utilities may be located longitudinally on Federal-aid freeways will be modified. The modified conditions will merely be incorporated in the States' existing utility accommodation policies.

The regulatory impacts are addressed in more detail in a Regulatory Evaluation/Regulatory Flexibility Analysis which has been prepared and is available for inspection in the public docket and may be obtained by contacting Mr. James A. Carney at the address provided under the heading "For Further Information Contact."

For the above reasons, and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action, if promulgated, will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (P.L. 96-511), the

reporting or recordkeeping provisions that are included in this regulation are being submitted for approval to the OMB.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

In consideration of the foregoing, the FHWA hereby proposes to amend Part 645, Subpart B to Chapter I of Title 23, Code of Federal Regulations, as set forth below.

List of Subjects in 23 CFR Part 645

Grant programs—transportation, Highways and roads, Incorporation by reference, Reporting and recordkeeping requirements, Utilities.

Issued on: December 16, 1986.

R.D. Morgan,

Executive Director, Federal Highway Administration.

PART 645—UTILITIES

Subpart B—Accommodation of Utilities

The FHWA proposes to amend 23 CFR Part 645, Subpart B as follows:

1. The authority citation for Part 645, Subpart B continues to read as follows:

Authority: 23 U.S.C. 109 and 116; 23 CFR 1.23 and 1.27; and 49 CFR 1.48(b); Executive Order 11990, 42 FR 26961 (May 24, 1977).

2. Section 645.209 is amended by revising paragraph (c) to read as follows:

§ 645.209 General Requirements.

* * * * *

(c) *Installations within freeways.* (1) Since the preservation of the control of access feature of freeways is essential to the safe and efficient use of such highways, new longitudinal utility installations within the access control lines of a freeway may be permitted only under strictly controlled conditions. Such installations may be considered for approval only in special cases where the following two conditions are met.

(i) The State highway agency can show that the accommodation within the control of access lines is the most feasible and prudent location available. This includes a showing that:

(A) Alternate locations would be unreasonably costly from the standpoint of providing efficient utility services in a manner conducive to safety, durability and economy of maintenance and operations, or

(B) Alternate locations are not available or would be extremely difficult to implement, or

(C) Alternate locations would adversely impact or impair the productivity of agricultural land.

(ii) The State highway agency is able to demonstrate that the accommodation will not adversely affect the safety, design, construction, operation, maintenance and stability of the freeway. This includes a showing that:

(A) There is adequate right-of-way available which is not needed for planned highway expansion,

(B) The proposed installation will not interfere with the present and future use of the freeway, and

(C) The installation will not be constructed and/or serviced by direct access from the through traffic roadways or connecting ramps, except that utilities may be constructed and/or serviced from through roadways and ramps within interchange and other areas provided that all of the conditions of this subpart are met, that other means of access are not practically available, and that such access is controlled by permits issued by the highway agency setting forth the conditions for policing and other controls to protect highway users.

(2) Utility installations on freeway right-of-way shall conform to the provisions of the AASHTO publication "A Policy on the Accommodation of Utilities Within Freeway Right-of-Way" 1982, except as modified herein. (With the exception of Item 2, this publication is incorporated by reference and is on file at the Office of the Federal Register in Washington, DC. It is available for inspection from the FHWA Washington Headquarters and all FHWA Division and Regional Offices as prescribed in 49 CFR Part 7, Appendix D. Copies of current AASHTO publications are available for purchase from the American Association of State Highway and Transportation Officials, Suite 225, 444 North Capitol Street, NW., Washington, DC 20001.

(3) Nothing in this part shall be construed as prohibiting a highway agency from adopting a more restrictive policy than that contained herein with regard to longitudinal utility installations along freeway right-of-way and access for constructing and/or servicing such installations.

* * * * *

3. Section 645.211 is amended by adding a new paragraph (e) as follows:

§ 645.211 State highway agency accommodation policies.

* * * * *

(e) At the State highway agency's option, it may establish terms and conditions and/or procedures for longitudinal installations on Federal-aid freeways, that provide for class approval of certain utilities that meet each of the conditions set forth in § 645.209(c) of this part. Where this occurs, the State highway agency's utility accommodation policy must clearly set forth the criteria and performance standards necessary for a utility to qualify for such approval or procedures.

4. Section 645.215 is amended by revising paragraph (d)(2) to read as follows:

§ 645.215 Approvals.

* * * * *

(d) * * *

(2) Longitudinal installations on Federal-aid freeways meeting the conditions cited in § 645.209(c) of this part except for those installations approved by the State under the procedures established by § 645.211(e) of this part.

* * * * *

[FR Doc. 86-28569 Filed 12-18-86; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-53-86]

Registration Requirements With Respect to Certain Debt Obligations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross reference to temporary regulations.

SUMMARY: This document provides notice of proposed rulemaking relating to the definition of the term "registration-required" with respect to certain types of obligations, and relating to the repeal of the 30 percent withholding tax on certain types of interest by the Tax Reform Act of 1984. In the Rules and Regulations portion of this **Federal Register**, the Internal Revenue Service is issuing temporary income tax regulations relating to the definition of the term "registration-required" with respect to certain obligations, and the repeal of 30 percent withholding by the Tax Reform Act of 1984. The text of those temporary regulations serves as the comment document for this notice of proposed rulemaking.

DATE: Written comments and requests for a public hearing must be delivered or mailed before February 17, 1987.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (INTL-53-86).

FOR FURTHER INFORMATION CONTACT: Carl Cooper of the Office of the Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 Attention: CC:LR:T [INTL-53-86], (202-566-3388).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** amend existing temporary regulations. Section 5f.103-1 is amended by revising paragraph (c)(1), by adding a new paragraph (e), by revising example (2) of paragraph (f), and by adding examples to paragraph (f). Section 35a.9999-5 is amended by revising Q & As-1, 8, 18 and 20, by inserting new Q & As-19 and 22 through 28, and by renumbering existing Q & A-20 as Q & A-21. For the text of the temporary regulations, see FR Doc. 86-28169 [T.D. 8111] published in the rules and regulations portion of this issue of the **Federal Register**.

Regulatory Flexibility Act and Executive Order 12291

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Although this document is a notice of a proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations as final regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**. The collection of information requirements contained herein have been submitted to OMB for review under the Paperwork Reduction Act, and comments on them should be sent to the Office of Information and Regulatory Affairs of OMB, Attn: Desk Officer for the Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests persons submitting comments to OMB to also send copies of the comments to the Service.

Drafting Information

The principal authors of this regulation are P. Ann Fisher and Carl Cooper of the Office of the Associate Chief Counsel (International) within the office of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other Offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of substance and style.

List of Subjects

26 CFR 1.61-1 through 1.281-4

Income taxes, Taxable income, Deductions, Exemptions.

26 CFR 1.861-1 through 1.997-1

Income taxes, Aliens, Exports, DISC, Foreign investments in U.S., Foreign tax credit, FSC, Sources of income, United States investments abroad.

Proposal of Regulations

The temporary regulations, FR Doc. 86-28169 [T.D. 8111] published in the Rules and Regulations portion of this issue of the **Federal Register**, are hereby also proposed as final regulations under sections 103, 871, and 881 of the Internal Revenue Code of 1954.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 86-28170 Filed 12-18-86; 4:33 pm]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-3130-5]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Extension of Comment Period

AGENCY: U.S. Environmental Protection Agency.

ACTION: Extension of public comment period for notice of availability and request for comment.

SUMMARY: Today's notice announces the extension of the public comment period for the Agency's previously published notice of data availability and request for comments published in 51 FR 37767, October 24, 1986. Today's extension responds to requests received on October 30 and 31, 1986 from the petitioners referenced in that notice. The previously published notice announced the justification for denying the petitions submitted by two petitioners. These petitions were submitted to the Agency under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provisions of Parts 260 through 265, 124, 270, and 271 of Title 40 of the code of regulations, and specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste list. The Agency had previously proposed to deny the exclusion of certain wastes generated at two particular facilities from listing as hazardous waste under 40 CFR Part 260. The proposed denials previously published were for one facility of the Rock Island Refining Corporation (see 51 FR 2526, January 17, 1986) and one facility of the Yabucoa Sun Oil Company (see 50 FR 47763, November 20, 1985). Yabucoa originally submitted their petition on July 13, 1983. The Agency requested additional information on November 28, 1984; January 26, 1984; and March 6, 1984. No additional information was received and the Agency proposed to deny Yabucoa's petition for lack of information on November 20, 1985 (see 50 FR 47763). On December 20, 1985 additional information was submitted by the facility. This information was not sufficient to complete Yabucoa's petition, and a written request for the additional information required was forwarded to Yabucoa (see letter from Myles Morse, OSW to Louis Comas,

October 22, 1986, available in the public docket).

The comment period for the notice of availability and request for comment was scheduled to end on October 31, 1986. Today's notice extends this comment period.

DATES: EPA will accept public comments on the previously proposed notice of availability until January 20, 1987. This date reflects an extension of the original comment period as cited in the notice of availability. Comments postmarked after the close of the extended comment period will be stamped "late".

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (WH–562), 401 M Street, SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variance Section, Assistance Branch, PSPD/OSW (WH–563), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. All comments must be identified at the top with the appropriate docket number. Comments addressing the notice of availability should be identified using docket number "F–86–ORJN–FFFFF".

The public docket where the information can be viewed for the proposed rules and notice of availability is located at the U.S. Environmental Protection Agency, 401 M. Street, SW. (sub-basement), Washington, DC 20460. The docket is open from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding Federal holidays. Call Mia Zmud at (202) 475–9327 or Kate Blow at (202) 382–4675 for appointments.

The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $0.20 per page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information, contact Ms. Lori DeRose, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382–5096.

SUPPLEMENTARY INFORMATION: The Agency published a notice of availability and request for comment on the justification for denying exclusions for wastes generated at two facilities in 51 FR 27767, October 24, 1986. These justifications included the Agency's basis for compiling the list of constituents requested to be analyzed for petroleum refinery waste petitioners. The Agency proposed to deny these wastes generated at two facilities from hazardous waste control in response to delising petitions submitted under 40 CFR 260.20 and 260.22. These facilities included: (1) Rock Island Refining Corporation, located in Indianapolis, Indiana (see 51 FR 2526, January 17, 1986); (2) Yabucoa Sun Oil Company, located in Yabucoa, Puerto Rico (see 51 FR 47763, November 20, 1986). The public comment period for the notice of availability was originally scheduled to end on October 31, 1986.

During the original public comment period for the notice of availability the Agency received requests for both Rock Island Refining Corporation and Yabucoa Sun Oil Company to extend the public comment period to allow additional time for submission of comments. The Agency has agreed to extend the comment period for this notice and will not accept public comments until January 20, 1987.

Dated: December 12, 1986.

Susan D. Sawtelle,

Acting Director, Office of Solid Waste.

[FR Doc. 86–28493 Filed 12–18–86; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 704

[OPTS–82013A; FRL–3130–6]

Proposed Comprehensive Assessment Information Rule; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Extension of the Comment Period.

SUMMARY: EPA is extending the comment period on the proposed Comprehensive Assessment Information Rule (CAIR) by 60 days. EPA is taking this action to give all interested parties an additional opportunity to comment.

DATE: Comments on the proposed rule must be received no later than March 6, 1987.

ADDRESS: Written comments must bear the docket control number OPTS–82013A. An original and two copies of the comments should be sent to: TSCA Public Information Office (TS–790), Office of Toxic Substances, Environmental Protection Agency, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

All written comments on the proposed rule will be available for public inspection in Rm. NE–G004 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 7, 1986 (51 FR 35762), EPA proposed a model information-gathering rule. This rule was proposed under the authority of the Toxic Substances Control Act and would establish: Uniform reporting and recordkeeping requirements, and a list of questions from which specific information requests would be assembled on a chemical-by-chemical basis. The rule would be used by EPA and other Federal agencies to support the assessment and regulation of chemical substances and mixtures. EPA proposed specific reporting requirements for 47 chemicals and would add other chemicals to the model rule after the model rule is promulgated.

EPA extensively involved the public and the potentially regulated community in the development of this proposed rule. Prior to proposing the model rule, EPA held public meetings on the concept, circulated a revised rule and form for review, and met with a number of trade associations. During this preproposal stage EPA was requested to allow for a 90-day comment period. EPA complied with that request.

Recently, however, EPA received comments from three trade organizations and one company requesting an extension of the comment period. The commentors wrote that this significant new approach for gathering information and the comprehensiveness of the proposal requires more time to review than what was allotted. Further, the current reporting requirements of the inventory Update rule have been given top priority and, therefore, has left little available time to review CAIR.

In the interest of promoting informed and well reasoned comments, EPA has decided to grant a 60-day extension to the comment period.

In addition to requesting an extension to the comment period, the Chemical Manufacturers Association requested that EPA place certain documents in the public record. These documents, the draft CAIR implementation outlines and the chemical substance nomination sheet, have been placed in the public record.

List of Subjects in 40 CFR Part 704

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements.

Dated: December 15, 1986.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 86–28494 Filed 12–18–86; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 799

[OPTS–42087A; FRL–3094–1]

2-Ethylhexanol; Proposed Test Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing that manufacturers and processors of 2-ethylhexanol (EH; CAS No. 104–76–7) be required, under section 4 of the Toxic Substances Control Act (TSCA), to conduct 2-year oral oncogenicity bioassays in rats and mice.

DATES: Submit written comments on or before February 17, 1987. If persons request an opportunity to submit oral comment by February 2, 1987, EPA will hold a public meeting on this rule in Washington, DC. For further information on arranging to speak at the meeting see Unit VIII of this preamble.

ADDRESS: Submit written comments, identified by the document control number (OPTS–42087A), in triplicate to: TSCA Public Information Office (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. NE–G004, 401 M St., SW., Washington, DC. 20460.

A public version of the administrative record supporting this action (with any confidential business information deleted) is available for inspection at the above address from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Rm. E-543, 401 M St., SW., Washington, DC 20460, (202–554–1404).

SUPPLEMENTARY INFORMATION: EPA is proposing oncogenicity testing of EH for the reasons described below.

I. Introduction

A. Chemical Recommendation

Oncogenicity testing for 2-ethylhexanol (EH) was planned by the National Toxicology Program (NTP); however, NTP has indicated that it no longer plans to conduct the bioassay for EH. The Agency also has an established interest in obtaining data on this chemical. EPA believes that the 2-ethylhexyl moiety, which occurs in EH and in other chemical substances, may be an active oncogenic agent to which people may be exposed. In addition, the Agency's general interest in alkyl phthalates which are subject to testing under a negotiated testing agreement (47 FR 53775; October 30, 1981 and 47 FR 335; January 5, 1982), and its final test rule on 2-ethylhexanoic acid (EHA), which proposed to utilize the NTP testing of EH to assess the oncogenic potential of EHA (51 FR 40318; November 6, 1986), support the need for this testing. The Agency proposes to use the testing authority of section 4 of TSCA to obtain data needed to better assess the oncogenic potential of EH.

Additional testing of EH beyond the oncogenicity testing proposed here may be warranted. However, in the interest of obtaining the oncogenicity test results as soon as possible, the Agency has limited this proposed test rule to oncogenicity testing only. Once oncogenicity testing is under way the Agency can evaluate the need for additional testing and, if necessary, initiate a separate rulemaking to require such testing of EH.

B. Test Rule Development Under TSCA

Under section 4(a) of TSCA, EPA shall by rule require testing of a chemical substance or mixture to develop appropriate test data if the Agency finds that:

(A) (i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment.

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B) (i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture.

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

EPA uses a weight-of-evidence approach in making a section 4(a)(1)(A)(i) finding; both exposure and toxicity information are considered in determining whether available data support a finding that the chemical may present an unreasonable risk. For the finding under section 4(a)(1)(B)(i), EPA considers only production, exposure, and release information to determine if there is or may be substantial production and significant or substantial human exposure or release to the environment. For the findings under sections 4(a)(1) (A)(ii) and (B)(ii), EPA examines toxicity and fate studies to determine if existing information is adequate to reasonably determine or predict the effects of human exposure to, or environmental release of, the chemical. In making the finding under section 4(a)(1) (A)(iii) or (B)(iii) that testing is necessary, EPA considers whether ongoing testing will satisfy the information needs for the chemical and whether testing which the Agency might require would be capable of developing the necessary information.

EPA's approach to determining when these findings apply is described in detail in its first and second proposed test rules, published in the **Federal Register** of July 18, 1980 (45 FR 48524) and June 5, 1981 (46 FF 30300). The section 4(a)(1)(A) findings are discussed at 46 FR 48524 and 46 FR 30300, and the section 4(a)(1)(B) findings are discussed at 46 FR 30300.

In evaluating the need for oncogenic testing of EH, EPA considered all readily available relevant information, including published and unpublished data available to the Agency. From its evaluation, EPA is proposing oncogenicity testing requirements for EH under TSCA sections 4(a)(1) (A) and (B).

II. Review of Relevant Data

A. Human Exposure and Environmental Release

1. Use Profile and Production

EH is a colorless liquid with a musty odor. It has molecular weight of 130, a vapor pressure of 0.5 torr at 20 °C, boils at 181–183 °C at 743 mm Hg and is 0.1 percent soluble in water. Approximately 60 percent of the production is used as an intermediate for the production of the ester derivatives of various acids, such as, phthalic, adipic, and phosphoric acid which are used as plasticizers. Approximately 10 percent is used as an intermediate to make ethylhexyl acrylate. The remaining 10 percent is used for miscellaneous purposes including use as a wetting agent in the mercerization of cotton, as a defoamer in textile printing, as a solvent for gums and resins, as a solvent extractant, and

as a miscellaneous chemical intermediate.

There are 10 domestic manufacturers and 8 importers of EH (Ref. 1). Domestic manufacturers include Eastman Kodak Co., Tenn-USS Chemical Co., Dow Badische Co., Shell Oil Co., Oxochem Enterprise, Union Carbide Corp., Alcolac Inc., and Cochran Chemical Co. Two other manufacturers have claimed their identities as Confidential Business Information [CBI]. Importers include BASF Wyandotte Corp., Mitsubishi International Corp., Ciba-Geigy Corp., Henkel, Inc., EM Laboratories, Inc., Miljac Inc., Sandoz Colors and Chemicals, and Celex Services, Inc. The annual U.S. supply (domestic production plus imports) of EH is currently over 635 million pounds (Ref. 2). The annual growth rate is estimated at 4.2 percent through 1988 (Pef. 2).

2. Exposure During Manufacturing and Processing

The National Occupational Hazard Survey (NOHS) done by the National Institute for Occupational Safety and Health (NIOSH) estimated that 45,000 workers in 62 occupations are potentially exposed to 2-ethylhexanol or products containing EH (Ref. 3). The more recent National Occupational Exposure Survey (NOES), a survey that more closely represents actual observations, estimates that approximately 11,550 workers may be exposed to EH (Ref. 4).

EPA believes that exposure will result from the widespread and variable conditions under which the large volume of EH is manufactured, processed, and used (e.g., transferring, drumming, undrumming, maintenance, cleaning, sampling reactor loading, unloading, and possible spray application) (Ref. 5). The various conditions under which the large volume of EH is encountered include variations in industrial hygiene practices and engineering controls at hundreds of sites. These variations may affect exposure to thousands of workers. The physico-chemical properties of EH do not force workers to avoid its contact. The major potential exposure is expected to occur dermally. However, because EH is moderately volatile (Ref. 5) there may be some inhalation exposure. Inhalation exposure is more likely to be significant during manufacturing and during use as a solvent, particularly during packaging and in spray applications. The Agency has conducted a detailed exposure analysis which further supports its section 4 findings (Ref. 5).

3. Exposure Associated With Consumer Goods

In addition to its use as an intermediate for commercial purposes, EH is believed to be used in a variety of products, such as paints, lacquers, inks, and lubricants, which some consumers may use (Ref. 2). These uses may result in potential dermal and/or inhalation exposure to consumers (Pef. 5).

4. Environmental and General Population Exposure.

The literature suggests that EH may be widespread in the environment. It is discharged in plant effluents. In samples taken in 1976 from the Delaware River, a major source of drinking water for many surrounding cities EH was detected in the concentration range of 3 to 5 ppb (Ref. 7).

EH has been detected in ground water samples near disposal sites in the United States and Japan (Refs. 6, 7, and 8), indicating the potential for ground water and drinking water contamination which may lead to general population exposure.

Use of EH in defoaming agents for manufacture of paper products, and use as a lubricant may also contribute to environmental and general population exposure (Ref. 1). The Agency is uncertain as to the extent to which environmental and general population exposure results from the hydrolysis of di(2-ethylhexyl) phthalate (DFHP) to EH or from the use of EH as an inert ingredient in pesticide products. EH is a hydrolysis product of the commonly found plasticizer DEHP, and DEHP enters the environment in a myriad of ways—as manufacturing waste, from food packaging materials, and other phthalate-based plasticizers (Ref. 1).

5. Summary

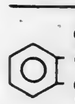
The Agency believes that dermal, oral, and inhalation exposure to EH may be of significant concern as a result of the manufacturing, processing, distribution in commerce, use, and disposal of EH.

B. Health Effects—Carcinogenic Potential

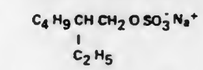
From an initial review of available information, EPA has concluded that EH may have oncogenic potential. Presently the Agency is unaware of any epidemiological data or long-term bioassays on this chemical. However, chemicals containing the 2-ethylhexyl moiety have been shown to have oncogenic potential. These chemicals are expected to metabolize to EH which is hypothesized to be the oncogenic agent.

Included among these chemicals are DEHP, DEHA, TEHP, and EHS. The chemical structures for these and for EH appear below:

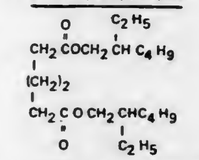
1. Di (2-ethylhexyl) phthalate (DEHP)



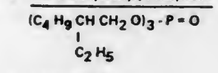
2. Sodium 2-Ethylhexyl Sulfate (EHS)



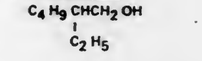
3. Di (2-ethylhexyl) adipate (DEHA)



4. Tris (2-ethylhexyl) Phosphate (TEHP)



5. 2-Ethylhexanol (EH)



Three of these chemicals (DEHP, DEHA, and TEHP) have been shown by NTP bioassays to cause increased occurrence of hepatocellular tumors, principally carcinomas, in female mice (Refs. 9 through 13). DEHP and DEHA also caused hepatocellular tumors in male mice. In addition, DEHP caused hepatocellular tumors in both male and female rats. Preliminary data on the fourth chemical (EHS) suggests that it may be oncogenic at the female mouse liver as well.

Additional supporting evidence may come from the fact that EH causes peroxisomal proliferation. There is evidence suggesting an association between peroxisomal induction and hepatocarcinogenicity in rats and mice (Refs. 14 through 17). However, there is currently insufficient information to understand the nature and importance of this association.

The Agency has conducted a detailed oncogenicity hazard analysis which further supports its 4(a)(1)(A) findings (Ref. 14).

III. Findings

EPA is basing its proposed oncogenicity testing requirements for EH on the authority of sections 4(a)(1) (A) and (B) of TSCA.

1. Under section 4(a)(1)(A)(i), EPA finds that the manufacture, processing, distribution in commerce, use, and disposal of EH may present an unreasonable risk of injury to human health because of potential oncogenic effects for the reasons presented in Unit II.B. above.

The finding for oncogenicity is based on studies conducted on other chemical substances containing the 2-ethylhexyl moiety which suggest that EH may possess some carcinogenic hazard.

Data available to EPA indicate that more than 635 million pounds of EH are produced annually for intermediate uses and for merchant sale. An estimated 11,550 workers are exposed to EH in its manufacture, processing, distribution, and use. Potential for consumer and general population exposure also exists through use and disposal.

2. Under section 4(a)(1)(B)(i), EPA finds that EH is produced in substantial quantities and that there may be substantial human exposure from its manufacture, processing, and use. As stated above, approximately 635 million pounds of EH are produced annually (Ref. 1). In addition, according to the National Occupational Exposure Survey of 1985 (NOES), 11,550 workers are estimated to have actual exposure to EH. EH is used as an intermediate for the manufacture of acrylates, phthalates, and the octyl ester of 2,4-dichlorophenoxyacetic acid. It is also used as a defoaming agent, a cellophane lubricant, a solvent in coatings, inks, and dyes; a wetting agent in ceramics and paper coatings; and a mercerizing agent in textiles.

3. Under sections 4(a)(1) (A)(ii) and (B)(ii), EPA finds that there are insufficient data and experience from which the potential oncogenic effects of the manufacture, processing, distribution, use, and disposal of EH can reasonably be determined or predicted.

4. Under sections 4(a)(1) (A)(iii) and (B)(iii), EPA finds that testing EH for oncogenicity is necessary to develop such data.

IV. Proposed Rule

A. Proposed Testing and Test Standards

EPA is proposing that oncogenicity testing be conducted on EH in accordance with the TSCA test guidelines for oncogenicity specified in 40 CFR 798.3300, published in the **Federal Register** of September 27, 1985 (50 FR 39252) and modified as proposed in the **Federal Register** of January 14, 1986 (51 FR 1522). This testing shall be performed with the Fisher 344 rat and B6C3F1 mouse, because of their demonstrated sensitivity to other ethylhexyl compounds; the route of exposure shall be oral. Furthermore, based upon experience at NTP, the EH shall be microencapsulated in the diet (Ref. 18). A subchronic study should be conducted to sufficiently determine dose levels and characterize subchronic effects for the bioassay.

B. Test Substance

The proposed test substance is 2-ethylhexanol (EH; CAS No. 104–76–7) of at least 99.0-percent purity, which is a commercially available grade.

C. Persons Required To Test

Section 4(b)(3)(B) of TSCA specifies that the activities for which the Agency makes section 4(a) findings (manufacture, processing, distribution, use and/or disposal) determine who bears the responsibility for testing. Manufacturers are required to test if the findings are based on manufacturing ("manufacture" is defined in section 3(7) of TSCA to include "import"). Processors are required to test if the findings are based on processing ("process" is defined in section 3(10) of TSCA as the preparation of a chemical substance or mixture, after its manufacture, for distribution in commerce). Both manufacturers and processors are required to test if the exposures giving rise to the potential risk occur during use, distribution, or disposal.

Because EPA has found that existing data and experience are insufficient to reasonably determine or predict the potential oncogenic effects of the manufacture, processing, distribution in commerce, use, or disposal of EH, the Agency is proposing that persons who manufacture and/or process, or who intend to manufacture and/or process, EH at any time from the effective date of the final test rule to the end of the reimbursement period be subject to the testing requirements in this proposed rule. The end of the reimbursement period will be 5 years after the last final report is submitted or an amount of time after the submission of the last final report required under the test rule equal to that which was required to develop data, if more than 5 years.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to the rule to designate one such person or a qualified third person to conduct the tests and submit data on their behalf. Section 4(c) provides that any person required to test may apply to EPA for an exemption from the requirement. EPA promulgated procedures for applying for TSCA section 4(c) exemptions in 40 CFR Part 790.

Manufacturers (including importers) subject to this rule are required to submit either a letter of intent to perform testing or an exemption application within 30 days after the effective date of the final test rule. The required procedures for submitting such letters and applications are described in 40 CFR Part 790.

Processors subject to this rule, unless they are also manufacturers, will not be required to submit letters of intent or exemption applications, or to conduct testing unless manufacturers fail to submit notices of intent to test or later fail to sponsor the required tests. The Agency expects that the manufacturers will pass an appropriate portion of the costs of testing on to processors through the pricing of their products or reimbursement mechanisms. If manufacturers perform all the required tests, processors will be granted exemptions automatically. If manufacturers fail to submit notices of intent to test or fail to sponsor all the required tests, the Agency will publish a separate notice in the **Federal Register** to notify processors to respond; this procedure is described in 40 CFR Part 790.

EPA is not proposing to require the submission of equivalence data as a condition for exemption from the proposed testing for EH. As noted in Unit IV. B. above, EPA is interested in evaluating the effects attributable to EH itself and has specified a nearly pure substance for testing.

Manufacturers and processors who are subject to this test rule must comply with the test rule development and exemption procedures in 40 CFR Part 790 for single-phase rulemaking.

D. Reporting Requirements

EPA is proposing that all data developed under this rule be reported in accordance with its TSCA Good Laboratory Practice (GLP) standards which appear in 40 CFR Part 792.

In accordance with 40 CFR Part 790 under single-phase rulemaking procedures, test sponsors are required to submit individual study plans no later

than 45 days before the start of each study.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. The Agency is proposing that the oncogenicity testing shall be completed and the final report submitted to EPA within 53 months of the effective date of this test rule. Progress reports for the proposed test are required at 6-month intervals starting 6 months from the effective date of the final test rule.

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will publish a notice of receipt in the **Federal Register** as required by section 4(d).

Persons who export a chemical substance or mixture which is subject to a section 4 test rule are subject to the export reporting requirements of section 12(b) of TSCA. Final regulations interpreting the requirements of section 12(b) appear in 40 CFR Part 707. In brief, as of the effective date of this test rule, an exporter of EH must report to EPA the first annual export or intended export of EH to any one country. EPA will notify the foreign country about the test rule for the chemical.

E. Enforcement Provisions

The Agency considers failure to comply with any aspect of a section 4 rule to be a violation of section 15 of TSCA. Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to: (1) Establish or maintain records, (2) submit reports, notices, or other information, or (3) permit access to or copying of records required by the Act or any regulation or rule issued under TSCA.

Additionally, TSCA section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by section 11. Section 11 applies to any "establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce * * *." The Agency considers a testing facility to be a place where the chemical is held or stored, and therefore, subject to inspection. Laboratory inspections and data audits will be conducted periodically in accordance with the authority and procedures outlined in TSCA section 11 by duly designated EPA representatives to determine compliance with any final rule for EH. These inspections may be conducted for purposes which include verification that testing has begun, that schedules are being met, and that reports accurately reflect the underlying raw data and interpretations and evaluations to determine compliance with TSCA GLP standards and the test standards established in the rule.

EPA's authority to inspect a testing facility also derives from section 4(b)(1) of TSCA, which directs EPA to promulgate standards for the development of test data. These standards are defined in section 3(12)(B) of TSCA to include those requirements necessary to assure that data developed under testing rules are reliable and adequate, and such other requirements as are necessary to provide such assurance. The Agency maintains that laboratory inspections are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties which may be calculated as if they never submitted their data. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 for each violation with each day of operation in violation constituting a separate violation. This provision would be applicable primarily to manufacturers that fail to submit a letter of intent or an exemption request and that continue manufacturing after the deadlines for such submissions. This provision would also apply to processors that fail to submit a letter of intent or an exemption application and continue processing after the Agency has notified them of their obligation to submit such documents (see 40 CFR 790.46(b)). Intentional violations could lead to the imposition of criminal penalties of up to $25,000 for each day of violation and imprisonment for up to 1 year. In determining the amount of penalty, EPA will take into account the seriousness of the violation and the degree of culpability of the violator as well as all the other factors listed in section 16. Other remedies are available to EPA under section 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4.

Individuals as well as corporations could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies themselves. In particular, this includes individuals who report false information or who cause it to be reported. In addition, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

V. Issues for Comment

1. Should EPA require that two species be tested in the oncogenicity study in conformance with the Agency's normal test guidelines or are adequate data now available to indicate that the mouse is the most sensitive species and that testing should be limited to that species? In addition, are the Fisher 344 rat and B63CF1 mouse the most appropriate strains in which to perform the bioassay?

2. The Agency solicits comments on alternative dosing strategies.

3. The Agency solicits comments on its using 7.3 percent as the real cost of borrowed capital in the economic analysis for this testing (see unit VI).

VI. Economic Analysis of Proposed Rule

To assess the potential economic impact of this rule, EPA has prepared an economic analysis (Ref. 2) that evaluates the potential for significant economic impacts on the industry as a result of the required testing. The economic analysis estimates the costs of conducting the required testing and evaluates the potential for significant adverse economic impact as a result of these test costs by examining four market characteristics of EH: price sensitivity of demand, industry cost characteristics, industry structure, and market expectations. If there is no indication of adverse effect, no further economic analysis will be performed; however, if the first level of analysis indicates a potential for significant economic impact, a more comprehensive and detailed analysis is conducted which more precisely predicts the magnitude and distribution of the expected impact.

Total testing costs for the final rule are estimated to range from $783,000 to $1,073,000. In order to predict the financial decision-making practices of manufacturing firms, these costs have been annualized. Annualized costs are compared with annual revenue as an indication of potential impact. The annualized costs represent equivalent constant costs which would have to be recouped each year of the payback period in order to finance the testing expenditure in the first year.

The annualized costs range from $88,000 to $120,000. In calculating these annualized costs, EPA has utilized a 7.3 percent real (i.e., net of inflation) cost of capital and a 15-year cost recovery period. In previous section 4 testing rules, the direct testing costs of subject chemicals were annualized using a 25 percent real cost of capital, in accordance with comments submitted by E.I. DuPont de Nemours in response to the first proposed test rule (45 FR 48524). Subsequent comments from the chemical industry have led to a reexamination of the cost of capital to the chemical industry.

An analysis of publicly-available financial data on the chemical industry has led EPA to the tentative determination that 7.3 percent represents a more appropriate measure of the real, after-tax cost of capital for this industry. EPA intends to utilize this figure in future test rule economic analyses where more specific data are not available.

Based on the 1984 production volume for EH of 635 million pounds, the unit test costs will be about 0.02 cent per pound. In relation to the selling price of 32 cents per pound of EH, these costs are equivalent to 0.06 percent of price.

Based on these costs, the economic analysis indicates that the potential for significant adverse economic impact as a result of this test rule is extremely low.

Refer to the economic analysis for a complete discussion of test cost estimation and the potential for economic impact resulting from these costs.

VII. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider "the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules. Copies of the study, "Chemical Testing Industry: Profile of Toxicological Testing," can be obtained through the NTIS (PB 82-140773). On the basis of this study, the Agency believes that there will be available test facilities and personnel to perform the testing in this proposed rule.

VIII. Public Meetings

If persons indicate to EPA that they wish to present oral comments on this proposed rule to EPA officials who are directly responsible for developing the rule and supporting analyses, EPA will hold a public meeting subsequent to the close of the public comment period in Washington, DC. Persons who wish to attend or to present comments at the meeting should call the TSCA Assistance Office (TAO): (202-554-1404) by February 2, 1987. A meeting will not be held if members of the public do not indicate that they wish to make oral presentations. While the meeting will be open to the public, active participation will be limited to those persons who arranged to present comments and to designated EPA participants. Attendees should call the TAO before making travel plans to verify whether a meeting will be held.

Should a meeting be held, the Agency will transcribe the meeting and include the written transcript in the public record. Participants are invited, but not required, to submit copies of their statements prior to or on the day of the meeting. All such written materials will become part of EPA's record for this rulemaking.

IX. Rulemaking Record

EPA has established a record for this rulemaking (docket number OPTS-42087A). This record contains the basic information considered by the Agency in developing this proposal and appropriate **Federal Register** notices.

This record includes the following information:

Supporting Documentation

(1) **Federal Register** notices pertaining to this proposed rule consisting of:

(a) Notice of final rule on EPA's TSCA Good Laboratory Practice Standards (48 FR 53922; November 29, 1983).

(b) Notice of interim final rule on procedures governing Testing Consent Agreements and Test Rules and Exemption Procedures (51 FR 23706; June 30, 1986).

(c) Notice of final rule on data reimbursement policy and procedures (48 FR 31786; July 11, 1983).

(d) Toxic Substances Control Act Test Guidelines; Final Rules (50 FR 39252; September 27, 1985).

(e) Revisions to the Toxic Substances Control Act Test Guidelines; Proposed Rule (51 FR 1522; January 14, 1986).

(2) Communications before proposal; contact reports of telephone conversations.

References

(1) National Toxicology Program (NTP). "Summary of Data for Chemical Selection" prepared for The National Cancer Institute by SRI International under contract No. N01-CP-95607 9/80, Rev. (April 1981).

(2) U.S. Environmental Protection Agency (USEPA). Economic Impact Analysis of Proposed Test Rule for 2-Ethylhexanol. Mathtech, Inc. Contract number 68-02-4235. Washington, DC, Office of Pesticides and Toxic Substances. (September 3, 1986).

(3) National Institute for Occupational Safety and Health (NIOSH). National Occupational Hazard Survey Data Base (NOHS), Washington, DC, U.S. Department of Health and Human Services. Computer print out. (August 8, 1984).

(4) NIOSH. National Occupational Exposure Survey Data Base (NOES). Washington, DC, U.S. Department of Health and Human Services. Computer print out. (July 16, 1984).

(5) USEPA. 2-Ethylhexanol Worker Exposure Analysis. Washington, DC, Office of Pesticides and Toxic Substances. (August 13, 1986).

(6) Samolloff, M.R., Bell, J., Birkholz, D.A., Webster, G.R.B., Arnott, E.G., Pulak, R., Madrid, A. "Combined bioassay-chemical fractionation scheme for the determination and ranking of toxic chemicals in sediments." *Environmental Science and Technology*. 17:329-34. (1983).

(7) Sheldon, L.S. and Hites, P.A. "Organic Compounds in the Delaware River." *Environmental Science and Technology*. 12:1188-94. (1978).

(8) Yasuhara, A., Shiraishi H., Tsuji, M., and Okuno, T. "Analysis of organic substance in highly polluted water by mass spectometry." *Environmental Science and Technology*. 15:570-3. (1981).

(9) U.S. Department of Health and Human Services. Public Health Service. National Institutes of Health. Carcinogenesis Bioassay of Di(2-ethylhexyl) phthalate (CAS No. 117-81-7) in F344 Rats and B6C3F mice (Feeding Study). National Toxicology Program. Technical Report Series No. 217.

(10) U.S. Department of Health and Human Services. Public Health Service. National Institutes of Health Carcinogenesis Bioassay of Di(2-ethylhexyl) Adipate (CAS No. 103-23-1) F344 Rats and B6C3F mice (Feed Study). National Toxicology Program Technical Report Series No. 212.

(11) U.S. Department of Health and Human Services. Public Health Service. National Institutes of Health. Carcinogenesis Bioassay of Sodium 2-Ethylhexyl Sulfate (CAS No. 126-92-1) in F344N Rats and B6C3F Mice (Feed Study). Draft NTP Technical Report. Prepared for the Board of Scientific Counselors. (September 2, 1982).

(12) U.S. Department of Health and Human Services. Public Health Service. National Institutes of Health. NTP Technical Report on the Toxicity and Carcinogenicity of Tris(2-ethylhexyl) Phosphate (CAS No. 78-42-2) in F344N Rats and B6C3F Mice (Gavage Study). Draft NTP Technical Report. (September 8, 1983).

(13) U.S. Department of Health and Human Services. Public Health Service. National Institutes of Health. Memorandum with Attachment from W. Kluwe to 12 Addressees. Attachment: Comparative Chronic Toxicities and Carcinogenic Potentials of Four 2-Ethyhexyl-Containing Compounds in Rats and Mice. (December 19, 1983).

(14) USEPA. Memorandum. Testing Agreement on 2-Ethylhexanol. From Karl P. Baetcke, Health and Environmental Review Division to Frank Benenati Test Rules Development Branch. Office of Pesticides and Toxic Substances, Washington, DC (October 22, 1986).

(15) Moody, D.E. and Reddy, J.K. "Hepatic Peroxisome (Microbody) proliferation in Rats Fed plasticizers and Related Compounds."

Toxicology and Applied Pharmocology. 45:497–507. (1978).

(16) Moody, D.E. and Reddy J.K. "Serum Triglyceride and Cholesterol Contents in Male Rats Receiving Diets Containing Plasticizers and Analogues of the Ester 2-Ethylhexanol." *Toxicology Letters* 10:379–383. (1982).

(17) Warren, J.R., Lalwani, N.D., and Reddy, J.K. "Phthalate Esters as Peroxisome Proliferator Carcinogens." *Environmental Health Perspectives* 45:35–40. (1982).

(18) National Institute of Environmental Health Sciences (NIEHS). Microencapsulation Report: 2-Ethyl-1-hexanol—Conformance of Microencapsulated Chemical to Specifications. Midwest Research Institute. (July 3, 1986).

X. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major", and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that this test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order, i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major increase in prices and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

This proposed regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (15 U.S.C. 601 *et seq.*, Pub. L. 96–354, September 19, 1980), EPA is certifying that this test rule, if promulgated, will not have a significant impact on a substantial number of small businesses because: (1) They are not expected to perform testing themselves, or to participate in the organization of the testing effort; (2) they will experience only very minor costs in securing exemption from testing requirements; and (3) they are unlikely to be affected by reimbursement requirements.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2070–0033. Submit comments on these requirements to the Office of Information and Regulatory Affairs: OMB; 726 Jackson Place, NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 799

Testing, Environmental protection, Hazardous substances, Chemicals, Recordkeeping and reporting requirements.

Dated: December 9, 1986.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR Part 799 be amended as follows:

PART 799—[AMENDED]

1. The authority citation for Part 799 would continue to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. By adding § 799.1645 to read as follows:

§ 799.1645 2-Ethylhexanol.

(a) *Identification of test substance.* (1) 2-Ethylhexanol (CAS No. 104–76–7) shall be tested in accordance with this section.

(2) 2-Ethylhexanol of at least 99.0-percent purity shall be used as the test substance.

(b) *Persons required to submit study plans, conduct tests, and submit data.* All persons who manufacture or process, or intend to manufacture or process 2-ethylhexanol, other than as an impurity, from the effective date of this rule (44 days after the publication date of the final rule in the **Federal Register** to the end of the reimbursement period shall submit letters of intent to conduct testing, submit study plans, conduct tests, and submit data as specified in this section, Subpart A of this part, and Parts 790 and 792 of this chapter or exemption applications in accordance with Part 792 of this chapter for single-phase rulemaking.

(c) *Health effects*—(1) *Oncogenic effects*— (i) *Required testing.* Oncogenicity tests shall be conducted in Fisher 344 rats and B6C3F1 mice by the oral route with 2-ethylhexanol, in accordance with § 798.3300 of this chapter.

(ii) *Modification.* 2-Ethylhexanol shall be microencapsulated before being added to the diet.

(iii) *Reporting requirements.* (A) The study plan for the oncogenicity test shall be submitted at least 45 days before the initiation of testing.

(B) The oncogenicity testing shall be completed and final results submitted to the Agency within 53 months of the effective date of the final rule.

(C) Progress reports shall be submitted at 6-month intervals beginning 6 months after the effective date of the final rule.

(2) [Reserved]

(Reporting and recordkeeping requirements contained in paragraph (c) were approved by the Office of Management and Budget under control number 2070–0033.)

[FR Doc. 86–28242 Filed 12–18–86; 8:45 am]

BILLING CODE 6560–50–M

Notices

Federal Register

Vol. 51, No. 244

Friday, December 19, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Packers and Stockyards Administration

Certification of Central Filing System, Nebraska

The Statewide central filing system of Nebraska is hereby certified, pursuant to section 1324 of the Food Security Act of 1985, on the basis of information submitted by Allen J. Beermann, Secretary of State, for farm products produced in that State as follows:

Corn	Eggs
Wheat	Honey
Sorghum Grain	Milk
Soybeans	Wool
Oats	Bees
Barley	Apples
Rye	Artichokes
Dry Beans	Asparagus
Popcorn	Canteloupe
Flax Seed	Carrots
Potatoes	Cucumbers
Sugar Beets	Grapes
Sunflower Seeds	Honey Dew Melon
Triticale	Muskmelon
Vetch	Onions
Seed Crops	Pumpkins
Silage	Raspberries
Hay	Squash
Cattle & Calves	Strawberries
Hogs	Sweet Corn
Sheep & Lambs	Tomatoes
Horses	Trees
Chickens	Walnuts
Turkeys	Watermelon
Fish	

This is issued pursuant to authority delegated by the Secretary of Agriculture.

Authority: Sec. 1324(c)(2), Pub. L. 99–198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR 2.17(e)(3), 2.56(a)(3), 51 FR 22795.

Dated: December 16, 1986.

B.H. (Bill) Jones,

Administrator, Packers and Stockyards Administration.

[FR Doc. 86–28409 Filed 12–8–86; 8:45 am]

BILLING CODE 3410–KD–M

Certification of Central Filing System of North Dakota

The Statewide central filing system of North Dakota is hereby certified, pursuant to section 1324 of the Food Security Act of 1985, on the basis of information submitted by Ben Meier, Secretary of State, for all farm products produced in that State.

This is issued pursuant to authority delegated by the Secretary of Agriculture.

Authority: Sec. 1324(c)(2), Pub. L. 99–198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR 2.17(e)(3), 2.56(a)(3), 51 FR 22795.

Dated: December 16, 1986.

B.H. (Bill) Jones,

Administrator, Packers and Stockyards Administration.

[FR Doc. 86–28538 Filed 12–18–86; 8:45 am]

BILLING CODE 3410–KD–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census

Title: Survey of Income and Program Participation 1985 Panel Wave 8; 1986 Panel Wave 5

Form Number: Agency—SIPP–5800; SIPP–6500; SIPP–58/6503; SIPP–58/6505(L) OMB—0607–0425

Type of Request: Revision of a currently approved collection

Burden: 23,520 respondents; 23,520 reporting hours

Needs and Uses: To provide the executive and legislative branches with improved statistics on income distribution and data not previously available ineligibility for and participation in government programs. Changes in States and participation will be measured over time. The data will support policy and program planning.

Affected Public: Individuals or households

Frequency: One time only

Respondent's Obligation: Voluntary

OMB Desk Officer: Timothy Sprehe, 395–4814

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: December 12, 1986.

Ed Michals,

Departmental Clearance Officer, Information Management Division, Office of Information Resources Management.

[FR Doc. 86–28527 Filed 12–18–86; 8:45 am]

BILLING CODE 3510–07–M

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration

Title: Marine Fisheries Initiative

Form Number: Agency—N/A; OMB—0648–0175

Type of Request: Extension of the expiration date of a currently approved collection

Burden: 100 respondents; 700 reporting hours

Needs and Uses: Public Law 99–180 authorizes a program for research and development projects to enhance the Fishery Resources in the Gulf Region. Information will be used to evaluate proposals and determine funding priorities.

Affected Public: Individuals; state or local governments; businesses or other for-profit institutions; non-profit institutions; small businesses or organizations

Frequency: Quarterly and annually

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Sheri Fox, 395–3785

Agency: National Oceanic and Atmospheric Administration

Title: Sea Grant Project Summary

Form Number: Agency—NOAA–902; OMB—0648–0019

Type of Request: Extension of the expiration date of a currently approved collection
Burden: 40 respondents; 240 reporting hours
Needs and Uses: The Office of Sea Grant and Extramural Programs awards both single and multi-project grants. Project information provided is used to evaluate and control Sea Grant Projects. The summaries show objectives, benefits, and funding summaries.
Affected Public: Non-profit institutions
Frequency: Annually
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Sheri Fox, 395–3785

Agency: National Oceanic and Atmospheric Administration
Title: Logbook Family of Forms-Amendment 13
Form Number: Agency—N/A; OMB—0648–0016
Type of Request: Revision of a currently approved collection
Burden: 4,621 respondents; 8,809 reporting hours
Needs and Uses: Alaskan groundfish catcher/processor and mothership/processor vessels will be required to submit weekly reports of catches to the National Marine Fisheries Service. The information will be used to monitor the fishery and to make in-season fishery management decisions
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: Weekly
Respondent's Obligation: Mandatory
OMB Desk Officer: Sheri Fox, 395–3785

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Sheri Fox, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: December 12, 1986.

Ed Michals,

Departmental Clearance Officer, Information Management Division, Office of Information Resources Management.

[FR Doc. 86–28528 Filed 12–18–86; 8:45 am]

BILLING CODE 3510-CW-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration
Title: Commodity Classification and Information Requests
Form Number: Agency EAR–370.11, 372.6 and 399.1; OMB N/A
Type of Request: New collection
Burden: 3,600 respondents; 1,800 reporting hours
Need and Uses: Exporters having questions about the applicablity of the Export Administration Regulations to a proposed transaction must provide technical information to the Department. The information will be used to aid exporters in determining the need to apply for an export license.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Sheri Fox, 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Sheri Fox, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: December 12, 1986.

Edward Michals,

Departmental Clearance Officer, Information Management Division, Office of Information Resources Management.

[FR Doc. 86–28529 Filed 12–18–86; 8:45 am]

BILLING CODE 3510-CW-M

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Patent and Trademark Office
Title: Patent Maintenance Fees
Form Number: Agency—PTO–1536; OMB—0651–0016
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 6,250 respondents; 500 reporting hours
Needs and Uses: The requirement to pay maintenance fees in order to maintain a patent in force was written into law by Public Laws 96–517 and 97–247. Certain information is required in order to insure proper crediting of such payments.
Affected Public: Individuals; businesses or other for-profit institutions; federal agencies or employees; non-profit institutions; small businesses or organizations
Frequency: Once every four years
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Sheri Fox 395–3785

Agency: Patent and Trademark Office
Title: Miscellaneous Patent Provisions
Form Number: Agency—N/A; OMB—0651–0018
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 12,000 respondents; 2,331 reporting hours
Needs and Uses: The Patent and Trademark rules were amended in 1985 as a result of the passage of Public law 98–622. Information is required for publication of a Statutory Invention Registration. Other information is required relating to inventors of the subject matter, patent claims, etc.
Affected Public: Individuals; businesses or other for-profit institutions; small businesses or organizations
Frequency: On occasion
Respondent's obligation: Required to obtain or retain a benefit
OMB Desk Officer: Sheri Fox 395–3785

Agency: Patent and Trademark Office
Title: Patent Processing
Form Number: Agency—Multiple; OMB—0651–0011
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 128,000 respondents; 1,099,189 reporting hours
Needs and Uses: The information collected is used by the Patent and Trademark Office to process patent applications and assess the propriety of granting United States patents.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Sheri Fox 395-3785

Agency: Patent and Trademark Office
Title: Trademark Processing
Form Number: Agency—Multiple; OMB—0651–0009
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 70,800 respondents; 35,115 reporting hours
Needs and Uses: The information collected is used to administer the trademark law pursuant to Title 15 of the U.S. Code. It is used in the processing of trademark applications and in assessing the merits of registering trademarks.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Mandatory
OMB Desk Officer: Sheri Fox 395–3785

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Sheri Fox, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: December 12, 1986.

Ed Michals,

Departmental Clearance Officers, Information Management Division, Office of Information Resources Management.

[FR Doc. 86–28530 Filed 12–18–86; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

[A–588–019]

Cyanuric Acid and its Chlorinated Derivatives From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On September 15, 1986, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty orders on cyanuric acid and its chlorinated derivatives from Japan. The review covers two manufacturers of this merchandise exported to the United States and the period November 18, 1983 through March 31, 1984.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, we have changed the final results from those presented in our preliminary results of review.

EFFECTIVE DATE: December 19, 1986.

FOR FURTHER INFORMATION CONTACT: Kathleen Kelleher or Linnea Bucher, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2923/5255.

SUPPLEMENTARY INFORMATION:

Background

On September 15, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 32676) the preliminary results of its administrative review of the antidumping duty orders on cyanuric acid and its chlorinated derivatives from Japan (49 FR 18148, April 27, 1984). We began this review under our old regulations. After the promulgation of our new regulations, the respondents, Nissan Chemical Industries, Ltd. ("Nissan") and Shikoku Chemicals Corporation ("Shikoku"), requested in accordance with § 353.53a(a) of the Commerce Regulations that we complete the administrative review. We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of cyanuric acid (also known as isocyanuric acid) and its chlorinated derivatives (dichloro isocyanurates, *i.e.*, sodium dichloro isocyanurate, potassium dichloro isocyanurate, and sodium dichloro isocyanurate dihydrate, and trichloro isocyanuric acid), used in the swimming pool trade.

We have categorized this merchandise as cyanuric acid, dichloro isocyanurates, and trichloro isocyanuric acid, which we determine are separate classes or kinds of merchandise. These products are sold in three basic consistencies: powder, granular, and tablet. The merchandise is currently classifiable under item number 425.1050 of the Tariff Schedules of the United States Annotated.

The review covers two manufacturers of Japanese cyanuric acid and its chlorinated derivatives exported to the United States and the the period November 18, 1983 through March 31, 1984.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received comments from the petitioner and both respondents. We received a comment from one respondent concerning a programming error. We have corrected that error.

Petitioner's Comments

Comment 1: Monsanto contends that the Department failed to verify fully Nissan's production costs so the best information otherwise available should be used for the final results. Monsanto claims verification was hasty and incomplete in the areas of offsetting credits to raw materials costs for the production of certain intermediate materials, labor and factory overhead transferred within company divisions, research and development costs, and intracompany freight expenses. Because reported costs of production figures were not formally submitted until after verification (April 29, 1985) Monsanto was denied an opportunity to comment. The Department's refusal to reverify is to deny them their statutory rights.

Department's Position: Close examination of the verification report and proprietary documents obtained at verification indicate that Nissan was fully verified. Though cost of production information for three intermediate materials was not formally submitted until after verification (April 29, 1985), this information merely clarified data already verified. We are satisfied that Nissan's production costs were thoroughly verified.

Comment 2: Monsanto fully expected the Department to reverify Nissan's cost of production response after its visit to Monsanto's Luling, Louisiana plant.

Department's Position: The Department's visit should not be interpreted by the petitioner as an indication that we were reconsidering our decision not to reverify. Domestic firm plant tours are performed for the Department's own benefits to obtain information pertaining to the products under review.

Comment 3: Nissan's methodology for valuing a by-product of the production process is erroneous. Monsanto refers to *Titanium Sponge from Japan* (49 FR 38687, 38689, October 1, 1984) for the distinction between a by-product and an intermediate product and contents that if the Department allows the production of ammonia as an offset to raw materials cost, we should deduct from the credit amount the expense of purifying the waste materials.

Department's Position: In *Titanium Sponge*, titanium tetrachloride was considered an intermediate product because titanium sponge cannot be produced without first manufacturing

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titanium tetrachloride. However, in this case, the merchandise under review can be produced without first producing the input in question. Therefore, we have treated that input as a by-product. The value derived from the by-product is an allowable credit to the process which produces the wet cyanuric acid, which is an intermediate product in production of the merchandise under review. Nissan's costs in using the by-product were included in its reported cost of wet cyanuric acid production and were verified by the Department.

Comment 4: The Department should not have accepted Nissan's standard cost methodology because the alleged by-product is more reasonably valued as a co-product.

Department's Position: We are satisfied with the respondent's methodology for reporting production costs for wet cyanuric acid, an intermediate material, and ammonia, a by-product in the production of the merchandise under review. The accounting methodology utilized by Nissan in preparing its financial reports is consistent with the generally accepted accounting principles in both Japan and the United States.

Comment 5: For Nissan's cost of production estimates the Department should allocate general and administrative expenses on the basis of cost of manufacture rather than sales value for each product under review.

Department's Position: We agree with Monsanto and have recalculated general and administrative expenses for both dichloro isocyanurates and trichloro isocyanuric acid, on the basis of cost of manufacture.

Comment 6: Interest income not directly related to Nissan's production of cyanuric acid should not be used as an offset to interest expense for purposes of calculating selling, general and administrative expenses.

Department's Position: We have reconsidered these expenses. Nissan used interest income as an offset to interest expense without demonstrating how such income is directly related to production and sales of the products under review. Nothing on the record from either Nissan or the petitioner indicates that the claimed interest income is directly related to these sales. Therefore, we have recalculated the selling, general and administrative expenses for each product under review, disallowing the offset for the full amount of interest earned claimed by Nissan.

Comment 7: The Department should release under administrative protective order all verification exhibits that do not merely "support" the questionnaire response, but that materially supplement the record.

Department's Position: The numerous cost of manufacture reports to which the petitioner seeks access are Nissan's internal documents. These merely clarify the verified cost of manufacture data. It is Department policy not to release these documents under administrative protective order.

Comment 8: Shikoku's inland freight costs were improperly allocated because it used a general allocation method when freight costs vary by form of the products.

Department's Position: We are satisfied that verification of freight costs was representative of the actual costs incurred. Shikoku has consistently acknowledged that the costs of transporting granular, powdered, and tabletized cyanuric acid and its derivatives are identical, because they are determined solely on the basis of product weight and distance to be shipped. Reverification in July 1986 confirmed the reported freight costs.

Comment 9: Freight costs incurred by Shikoku are of two types; shipment from the plant to a warehouse and shipment from the warehouse to the customer. Monsanto contends that shipment from the plant to a warehouse, prior to identification of a particular sale, is an overhead cost and not directly related to sales under consideration. It is not an allowable deduction.

Department's Position: A purchase order is received by Shikoku which then issues shipping instructions to the plant. The plant ships the merchandise directly to the customers, or on rare occasions, to a warehouse. When shipped to a warehouse, the merchandise is destined for a particular customer and sale. The cost incurred in shipping from the warehouse to the customer is an allowable freight expense.

Comment 10: Reverification failed to ensure that Shikoku uses the same drums for export packing without incurring any additional packing expense for its sales to the United States.

Department's Position: Shikoku's original questionnaire response described the packing for both home market and export sales. The reported packing expenses were verified so there was no justification to question anew the validity of the reported packing costs for either market.

Comment 11: Shikoku's use of an average target quantity rebate figure distorts the true price of the product and distorts the below cost of production analysis. Rebates should be calculated on an individual basis rather than on an average basis and should not be allocated to all sales subject to the adjustment.

Department's Position: Shikoku averaged the total amount of rebates over sales where the rebate was paid. The rebate figures were verified. We did not require Shikoku to quantify the rebate on a transaction-by-transaction basis because a significant number of adjustments to prices would be required.

Comment 12: Revised advertising expenses were insufficiently verified and are not directly related to sales of the granular product as opposed to other forms sold in the home market. These expenses are not an allowable deduction for purposes of determining foreigh market value.

Department's Position: At the original verification Shikoku was asked to amend its initial claim for home market advertising expenses so that only those costs directly allocable to swimming pool sales were included. Shikoku complied and allocated its swimming pool industry advertising costs across all its sales for swimming pool use. None of the advertising was specifically directed to any particular form of cyanuric acid or its chlorinated derivatives. The Department saw no justification for reverifying a reported expense that we verified the first time.

Comment 13: The Department is urged to reverse its position from that taken in the original less than fair value investigation and, on the basis of section 773(a) of the Tariff Act, base foreign market value on sales of "such or similar" mechandise sold "in the ordinary course of trade" in Japan. The "ordinary course of trade" should be defined as sales of the product to the swimming pool trade rather than sales of the product to all users in Japan.

Department's Position: The term "ordinary course of trade" is defined in section 771(15) of the Tariff Act and refers to commercial practices in the market used for determining foreign market value. It is intended to allow the Department of disregard sales in that market if the sales are not "normal in the trade under consideration." We find in this review, as we did in the less than fair value investigation, that sales to non-swimming pool users in Japan are in the ordinary course of trade.

Comment 14: Alternatively, the Department should adjust foreign market value pursuant to § 353.15(a) of the Commerce Regulations for differences in circumstances of sales, namely differences in the class of customer or course of trade in which the merchandise was sold.

Department's Position: As in the Department's ruling in the less than fair value investigation, we disagree that a circumstance-of-sale adjustment is warranted in this situation. There is no indication that the price differential between sales of such or similar merchandise to two different markets (the swimming pool and non-pool markets) is due to greater direct selling expenses or to an addition in the value of the physical product itself purchased in a higher priced market. The alleged difference in value has not been quantified adequately by petitioner in order to justify a circumstance-of-sale adjustment to foreign market value for sales in the pool and non-pool market (see *Cyanuric Acid and its Chlorinated Derivatives from Japan* (49 FR 7426, February 29, 1984).

Respondent's Comments

Comment 1: Shikoku contends that the Department improperly used the dates of the purchase orders rather than "calculation sheet dates" in determining U.S. sales transactions subject to this review proceeding. Shikoku sells to the United States through Mitsubishi (an unrelated trading company). Mitsubishi sets a dollar price to the U.S. customer and Shikoku then can choose among many options for setting the exchange rate that determines the yen amount it will receive for the U.S. sale.

Shikoku claims the exchange rate is not fixed until the merchandise is exported to the United States, at which time Mitsubishi generates a "calculation sheet" which indicates the exchange rate provided by Shikoku. Because an "agreed upon" price does not exist until this worksheet is prepared, there is not a fixed irrevocable price, so a sale has not occurred. Only after Mitsubishi prepares the worksheet that is then sent to Shikoku, is the price established and, therefore, that sale has taken place.

Department's Position: We disagree. The purchase order date is the appropriate date of sale because all the essential terms of sale are set forth at that time, including the method for determining the total yen price. When the purchase order is produced, an agreement already exists between Shikoku and Mitsubishi regarding Shikoku's sales to the United States. Pricing terms do not change between the date of the purchase order and the calculation sheet date.

Comment 2: Shikoku maintains that the Department should consider the home market price revisions in determining home market sales prices because the price adjustments were given to home market customers during the review period. It would be inappropriate and inequitable not to recognize them. Alternatively, they should be allowed as an adjustment for differences in circumstances of sales for meeting competition as after-sale rebates.

Department's Position: Due to the obvious implications for administration of the antidumping law, in our sales comparisons we are reluctant to reflect changes that are made subsequent to the initiation of an antidumping review, particularly when these changes would retroactively affect the sales prices of merchandise sold during the review period. The burden must be placed on the respondent to demonstrate clearly that these changes are normal in the trade. Shikoku has conceded that these one-time post-sale rebates are not normal in the trade. Therefore, we did not make the requested adjustments.

Further, we will not allow an adjustment for the after-sale rebates because the terms and conditions of the rebates were not known at or prior to the date of sale.

Comment 3: Shikoku believes that the Department improperly disallowed a claim for competitive discounts. These "free samples" are directly related to its home market sales during the period of review and should, therefore, be allowed as an adjustment to foreign market value.

Department's Position: We agree with Shikoku and have recalculated foreign market values with regard to the competitive discount claim. The free samples are a selling expense directly related to sales of the merchandise under review and, therefore, an allowable deduction to foreign market value.

Final Results of the Review

Based on our analysis of the comments received, we have revised our preliminary results of Shikoku, and we determine that the following weighted-average margins exist for the period of November 18, 1983 through March 31, 1984.

Manufacturer	Margin (percent)
Nissan Chemical Industries, Ltd.:	
Dichloro isocyanurates	0
Trichloro isocyanuric acid	0
Shikoku Chemicals Corporation:	
Cyanuric Acid	1.74
Dichloro isocyanurates	9.66
Trichloro isocyanuric acid	0.66

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for in section 751(a)(1)(B) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. For any future entries of this merchandise from a new exporter not covered in this administrative review, whose first shipments occurred after March 31, 1984 and who is unrelated to any reviewed firm, a cash deposit of 1.74 percent for cyanuric acid, 9.66 percent for dichloro isocyanurates, and 0.66 percent for trichloro isocyanuric acid shall be required. These deposit requirements are effective for all shipments of Japanese cyanuric acid and its chlorinated derivatives (except cyanuric acid produced by Nissan Chemical Industries, Ltd.) entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53(a)).

Dated: December 12, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-28533 Filed 12-18-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-029]

Certain Castor Oil Products From Brazil; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On October 9, 1986, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on certain castor oil products from Brazil. The review covers the period January 1, 1984 through December 31, 1984 and 15 programs.

We gave interested parties an opportunity to comment on the preliminary results. After reviewing all of the comments received, the Department has determined the net subsidy to be 2.66 percent *ad valorem*.

EFFECTIVE DATE: December 19, 1986.

FOR FURTHER INFORMATION CONTACT: Richard C. Henderson or Lorenza Olivas, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On October 9, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 36282) the preliminary results of its administrative review of the countervailing duty order on certain castor oil products from Brazil (41 FR 8634, March 16, 1976). We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Brazilian hydrogenated castor oil and 12-hydroxystearic acid. Such merchandise is currently classifiable under items 178.2000, 490.2650, and 490.2670 of the Tariff Schedules of the United States Annotated.

The review covers the period January 1, 1984 through December 31, 1984 and 15 programs: (1) CACEX export financing; (2) an income tax exemption for export earnings; (3) the export credit premium for the IPI; (4) CIC–CREGE 14–11 financing; (5) incentives for trading companies (Resolution 643); (6) accelerated depreciation for Brazilian-made capital goods; (7) BEFIEX; (8) CIEX; (9) FINEX; (10) duty-free treatment and tax exemption on equipment used in export production ("CDI"); (11) FUNPAR; (12) exemption from state-administered value added taxes on domestic sales ("ICM"); (13) PROEX; (14) PROSIM; and (15) financing for the storage of merchandise destined for export (Resolution 330).

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from the petitioner, the American Manufacturers of Castor Oil Products ("AMCOP"), the Brazilian government, and an exporter, Sociedade Algodoeira do Nordeste Brasileiro, S.A., ("SANBRA").

Comment 1: The Brazilian government argues that the Department should use for its short-term loan benchmark the annualized interest rate in effect on the date that each loan was obtained instead of the average annual rate in effect during the review period. In a high-inflation economy, such as exists in Brazil, an average rate calculated over the review period distorts the actual interest differentials. Further, since the number of loans in this case is small, this approach will not create an unworkable administrative burden.

Department's position: We disagree. An average benchmark over the review period may understate or overstate the benefit on individual loans, but it will accurately reflect the aggregate benefit from preferential loans over the review period because each company borrows at a more or less constant rate throughout the year.

Comment 2: The Brazilian government contends that the Department should use as its short-term loan benchmark the average commercial bank lending rates published by Morgan Guaranty Trust Company in its *World Financial Markets* instead of the average of weekly trade bill discount figures published in *Anolise/Business Trends*. Commercial bank lending practices are most similar to Resolution 674/882 financing, the source of Morgan Guaranty's figures.

Department's position: We disagree. The average commercial bank lending rates published by Morgan Guaranty Trust Company are lending rates to prime borrowers. As stated in the Subsidies Appendix to the notice of final affirmative countervailing duty determination and order on certain cold-rolled carbon steel flat-rolled products from Argentina (49 FR 18006, April 26, 1984), we use a national-average benchmark based on short-term financing available to all firms, not just to prime borrowers. We have found that trade bill discounting more accurately reflects the actual borrowing practice of most Brazilian firms.

Comment 3: The Brazilian government argues that the Department overstated the short-term loan benchmark by compounding monthly rates. If the Department continues to use the annual average for discounts of accounts receivable, it should calculate a daily rate, compound it for a 30-day period and then multiply this rate by 12 to annualize the benchmark. This calculation would take into account the monthly rollover of the principal.

Department's Position: We disagree. We have found that commercial lending in Brazil generally does not exceed 30 days and that most loans are rolled over monthly. It is inappropriate to use compounded daily rates, even if such rates were available, because loans are rolled-over monthly, not daily.

Comment 4: The Brazilian government believes that the Department should use the guidelines interest rates established by the resolutions regarding the short-term preferential export financing programs instead of the actual interest rates on each loan contract. Although the actual lending experience of certain firms may result in interest rates that are lower than the guideline interest rates, the lower rates are the result of commercial practices, such as the large volume of business conducted between certain firms and banks, and not any government action. Furthermore, since a higher lending volume generates higher costs for the firm, the Department should include these costs in calculating the effective preferential interest rate.

Department's position: We disagree. Regardless of whether the costs of these loans is higher or lower than the guideline rates, the benefit received by the companies' borrowing under this program is the difference between what they are paying and what they otherwise would pay. Further, the Brazilian government has provided no evidence that an increased volume of loans causes higher effective costs.

Comment 5: The Brazilian government argues that, in determining the cash deposit rate for CACEX export financing (Resolution 1009), the Department should base its calculation on historic loan use instead of maximum eligibility. The Department verified that companies did not borrow the legal maximum amount. The Department has not taken into account the program-wide change caused by Resolution 1009, which should reduce the cash deposit rate considerably.

Department's position: We normally take into account program-wide changes in calculating cash deposit rates when we can adequately assess the effects of those changes. In this case, Resolution 950 and 1009 altered the CACEX export financing program to such an extent that we do not believe that the use rate in the review period is indicative of the current benefit from this program. At verification, we did not receive adequate information on each company's use of Resolution 950 and 1009 loans because the program had only recently been implemented. Further, since eligibility rates vary from year to year, it would be inappropriate to use 1984 loan eligibility rates to set a current cash deposit rate. Therefore, we used the maximum loan eligibility rate to set the current cash deposit rate.

Comment 6: The Brazilian government argues that, in calculating the cash deposit rate for CACEX export financing, the Department incorrectly assumed that the loan eligibility rate is the same for all products. The Department should use the 15 percent maximum eligibility rate for castor oil products rather than the 20 percent maximum eligibility rate available in Brazil. Failing that, the Department should use a weighted average of the eligibility rates of all products exported by the companies.

Department's position: We disagree. CACEX export loans are tied to general exports whose eligibility rates vary, not to exports of only castor oil. In addition, we do not have sufficient information to weight average the eligibility rates of all products exported by the companies.

Comment 7: The Brazilian government claims that, in calculating the short-term interest rate benchmark, the Department should not include the tax on financing transactions ("the IOF"). The IOF is an indirect tax on the financing of physically incorporated inputs. Considering the IOF tax to be an integral part of the commercially-available rate (*i.e.*, considering exemption from the tax to be a subsidy) is contrary to the General Agreement on Tariffs and Trade and U.S. law, both of which permit the non-excessive rebate of indirect taxes.

Department's position: We have considered and rejected this argument in other Bazilian countervailing duty cases. *See, e.g., Certain Castor Oil Products from Brazil* (48 FR 40534, September 8, 1983).

Comment 8: The Brazilian government and SANBRA argue that the Department overstated the cash deposit rate by assuming both maximum use of the CACEX export financing program and historic use of the incentives for trading companies program. Since both financing programs are mutually exclusive, the Department should either weight the cash deposit rate for the CACEX export financing program by the volume of exports made by each producer during the review period or eliminate the incentive for trading companies financing program from the calculation of the cash deposit rate.

Department's position: We agree. We have eliminated the incentives for trading companies program's rate of 0.85 percent *ad valorem* from the calculation of the cash deposit rate.

Comment 9: The Brazilian government contends that since one company, Braswey, provided proof on its tax form and financial statements that it had made investments in specified companies and funds, the department should use the effective tax rate for that company to calculate the benefit from the income tax exemption program.

Department's Position: We disagree. At verification, Braswey did not provided proof that it had made investments in the specified companies and funds. Therefore, we used the nominal tax rate to calculate Braswey's benefit from the income tax exemption for export earnings program.

Comment 10: The Brazilian government claims that the Department incorrectly allocated the benefits from the icome tax exemption for export earnings program over export sales instead of total sales. Since the program rebates direct taxes, it is a domestic subsidy, which requires the Department to allocate the benefit over total sales.

Department's Position: We disagree. When the amount of benefit received under a program is tied directly or indirectly to a company's level of exports, that program is an export subsidy. Under this program, exports are necessary to receive a benefit, and the level of exports determines the level of benefit. Therefore, we will continue to allocate benefits from this program over export sales instead of total sales.

Comment 11: The Brazilian government argues that CIC-CREGE 14–11 loans are not countervailable because they are non-government loans granted in accordance with commercial considerations. Although the nominal interest rates on these loans during the review period were somewhat below the commercial interest rates, commission costs, collateral and foreign exchange requirements effectively increased nominal rates to the range of commercial rates. Further, the Department should not calculate a cash deposit rate for this program because the nominal rates on these loans now approximate commercial rates.

Department's Position: The Brazilian government has not provided adequate information to allow us to consider this loan program to be provided without government direction or to be provided on terms consistent with commercial loans.

Comment 12: The Brazilian government believes that the Industrial Development Council's ["CDI") Decree Law 1137, which provides for accelerated depreciation for Brazilian-made capital goods, is not limited to an industry or group of industries, and is therefore not countervailable. If the program were countervailable, the Brazilian government believes that the department should not calculate a cash deposit rate for this program because the companies' 1985 tax forms showed that the amount of accelerated depreciation claimed was exceeded by the amount of accelerated depreciation "recaptured" (*i.e.*, added back to the net profit in an amount equal to that claimed in prior years). The recapture eliminates any net tax effect.

Department's Position: We disagree. We have found that CDI benefits are provided by the government to specific industries. *See, Certain Carbon Steel Products from Brazil* (49 FR 17988, April 26, 1984).

We agree that we should adjust the cash deposit rate by subtracting the amount of recapture attributable to CDI from the amount of accelerated depreciation attributable to CDI. However, since the company did not provide the relevant verification documents that would allow us to make this calculation, we cannot adjust the cash deposit rate.

Comment 13: The Brazilian government contends that the department took into account only a portion of the export tax imposed by the Brazilian government and paid by the companies on exports of certain castor oil products. Beginning November 1, 1984, the Brazilian government began to phase-out the IPI export credit premium but did not make corresponding reductions in the offset tax. Therefore, the companies paid offset taxes greater than the amount of premium received. Since section 771(6) of the Tariff Act requires the Department to consider the full amount of export taxes paid during the review period, the Department should count the overpayments as an offset against the total subsidy received on the exported product.

Department's Position: We disagree. Section 771(6)(C) of the Tarrif Act provides that:

> for the purpose of determining the net subsidy, the administering authority may subtract from the gross subsidy the amount of . . . export taxes, duties or other charges levied on the export of the merchandise to the United States *specifically intended to offset the subsidy received.* (emphasis added)

The statute gives the Department the authority to take into account a tax which is specifically intended to offset the subsidy received. In this case, the offset tax was specifically intended to offset the subsidy received by each company from the IPI export credit premium. Therefore, we have offset completely the subsidy received by each company only from the IPI export credit premium program.

Comment 14: SANBRA contends that the Department should have published company-specific rates instead of a country-wide rate. SANBRA argues that there are significant differences in the programs used by each company, the individual rates for each company, and that no administrative burden would result from the use of company-specific rates. Further, SANBRA believes that this case is similar to the final affirmative countervailing duty determination and order on portland hydraulic cement and cement clinker

from Mexico (48 FR 43063, September 21, 1983), in which the Department set company-specific rates based on product characteristics such as price sensitivity and market conditions.

Department's Position: We disagree. We have addressed this issue at length in our notice of final results of countervailing duty administrative review on portland hydraulic cement and cement clinker from Mexico (50 FR, 51732, December 19, 1985).

Section 607 of the Trade and Tariff Act of 1984 directs the Department to apply a country-wide rate unless a significant differential is found between companies receiving benefits. We do not find any significant differentials between companies in this case. *See, Phillip Brothers, Inc. v. United States* (CIT Slip Op. 86–107).

Final Results of Review

After reviewing all of the comments received, we determine the net subsidy to be 2.66 percent *ad valorem* for the period of review.

The Department will therefore instruct the Customs Service to assess countervailing duties of 2.66 percent of the f.o.b. invoice price on all shipments of this merchandise exported on or after January 1, 1984 and on or before December 31, 1984.

The changes noted in the analysis of comments section and the change in the CACEX export financing program increase the total duty deposit rate to 3.82 percent *ad valorem*. Therefore, the Department will instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 3.82 percent of the f.o.b. invoice price on all shipments of certain castor oil products from Brazil entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (19 CFR 355.10).

Dated: December 16, 1986.

Gilbert B Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86–28534 Filed 12–18–86; 8:45am]

BILLING CODE 3510-DS-M

Short Supply Review on Certain Steel Slabs: Request for Comments

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short supply determination under Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products and the U.S.-Brazil Arrangement Concerning Trade in Certain Steel Products, and Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products, with respect to certain carbon and alloy steel slabs.

DATE: Comments must be submitted no later than ten days from publication of this notice.

ADDRESS: Send all comments to Nicholas C. Tolerico, Acting Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230, Room 3099.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230, Room 3099, (202) 377–0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products and the U.S.-Brazil Arrangement Concerning Trade in Certain Steel Products, and Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products, provide that if the U.S. ". . . determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the U.S.A. for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product. . . ."

We have received a short supply request for the following types of continuously cast carbon and alloy steel:

1. Carbon steel slabs in widths of 24 and 34.5 inches, with a carbon content ranging between 0.24 and 0.36 percent and a manganese content ranging between 1.25 and 1.50 percent, all to be calcium treated, which may or may not contain boron or molybdenum, to be used in the manufacture of oil country tubular goods;

2. Carbon steel slabs in widths ranging between 24 and 60.5 inches, with a carbon content ranging between 0.08 and 0.28 percent and a manganese content ranging between 0.30 and 1.30 percent, to be used in the manufacture of light flat rolled products, line pipe and specialty tubing;

3. Slabs in grades 10B30, 1030, 1035, 1040, 1050, 1060, 15B21, 1524, 1526, 4118, 4130, 4137, 4140, 5046, 5120, 5130, 8620 and 8630, in widths ranging between 24 and 60.5 inches, but primarily in 24 and 34.5 inch widths, for use in manufacturing light flat rolled products and specialty tubing.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than ten days from publication of this notice. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify that portion of their submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B–099 at the above address.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

December 15, 1986.

[FR Doc. 86–28535 Filed 12–18–86; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Permits; Foreign Fishing

This document publishes for public review a summary of applications received by the Secretary of State requesting permits for foreign vessels to fish in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*)

Send comments on applications to:

Fees, Permits and Regulations Division (F/M12), National Marine Fisheries Service, Department of Commerce, Washington, DC 20235

or, send comments to the Fishery Management Council(s) which review the application(s), as specified below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906, 617/231–0422

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building Room 2115, 320 South New Street, Dover, DE 19901, 302/674–2331

Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407, 803/571–4366

Omar Munoz-Roure, Executive Director, Caribbean Fishery Management Council, Banco De Ponce Building, Suite 1108, 809/753–4926

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Blvd., Tampa, FL 33609, 813/228–2815

Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, Metro Building, Suite 420, 2000 S.W. First Avenue, Portland, OR 97201, 503/221–6352

Jim H. Branson, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, 907/274–4563

Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813, 808/523–1368

For further information contact John D. Kelly or Shirley Whitted (Fees, Permits, and Regulations Division, 202–673–5319).

The Magnuson Act requires the Secretary of State to publish a notice of receipt of all applications for such permits summarizing the contents of the applications in the **Federal Register**. The National Marine Fisheries Service, under the authority granted in a memorandum of understanding with the Department of State effective November 29, 1983, issues the notice on behalf of the Secretary of State.

Individual vessel applications for fishing in 1987 have been received from the Governments shown below.

Dated: December 15, 1986.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

Fishery codes and designation of Regional Fishery Management Councils which review applications for individual fisheries are as follows:

Code and fishery	Regional fishery management councils
ABS—Atlantic Billfishes and Sharks.	New England, Mid Atlantic, South Atlantic, Gulf of Mexico, Caribbean.
BSA—Bering Sea and Aleutian Islands Groundfish.	North Pacific.
GOA—Gulf of Alaska	North Pacific.
NWA—Northwest Atlantic Ocean.	New England, Mid-Atlantic.
SNA—Snails (Bering Sea)	North Pacific
WOC—Pacific Groundfish, (Washington, Oregon and California).	Pacific.
PBS—Pacific Billfishes and Sharks.	Western Pacific.

Activity codes which specify categories of fishing operations applied for are as follows:

Activity code	Fishing operations
1	Catching, processing and other support.
2	Processing and other support only.
3	Other support only.
*	Vessel(s) in support of U.S. vessels Joint Venture.
**	Cargo transport vessels with fish finding equipment on board will receive an activity code 2 to enable them to perform both scouting as well as support activities.

Nation, Vessel name, and Vessel type	Application number	Fishery	Activity
***Government of Japan:			
Sumi Maru No. 15, Longliner	JA–87–1329	ABS	1
Akashi Maru No. 66, Pair Trawler	JA–87–0166	BSA, GOA	1*
Akashi Maru No. 67, Pair Trawler	JA–87–0169	BSA, GAO	1*
Akashi Maru No. 68, Pair Trawler	JA–87–0170	BSA, GAO	1*
Akashi Maru No. 69, Pair Trawler	JA–87–0171	BSA, GAO	1*
Akashi Maru No. 71, Pair Trawler	JA–87–0172	BSA, GAO	1*
Akashi Maru No. 72, Pair Trawler	JA–87–0173	BSA, GAO	1*
Akashi Maru No. 77, Pair Trawler	JA–87–0177	BSA	1
Akebono Maru No. 22, Medium Stern Trawler	JA–87–0317	BSA, GAO	1*
Akebono Maru No. 27, Medium Stern Trawler	JA–87–0306	BSA, GAO	1*
Akebono Maru No. 32, Medium Stern Trawler	JA–87–0307	BSA, GAO	1*
Akebono Maru No. 72, Medium Stern Trawler	JA–87–0338	BSA, GAO	1*
Akebono Maru No. 77, Medium Stern Trawler	JA–87–0157	BSA, GAO	1
Akebono Maru No. 1, Medium Stern Trawler	JA–87–1153	BSA, GAO	1*
Anyo Maru No. 11, Medium Stern Trawler	JA–87–0541	BSA	1*
Anyo Maru No. 18, Medium Stern Trawler	JA–87–1175	BSA, GAO	1*
Anyo Maru No. 15, Medium Stern Trawler	JA–87–0104	BSA	1*
Chikubu Maru, Large Stern Trawler	JA–87–0336	BSA, GAO	1*
Daian Maru No. 166, Medium Stern Trawler	JA–87–0553	BSA	1*
Daikoh Maru, Cargo Transport Vessel	JA–87–0021	BSA, GAO, NWA	3
Dairyo Maru, Cargo/Transport Vessel	JA–87–1002	BSA, GAO, NWA	2**
Daishin Maru No. 28, Large Stern Trawler	JA–87–0569	BSA, GAO	1*
Eastern Reefer, Cargo/Transport Vessel	JA–87–0600	BSA, GAO, NWA, SNA	3
Fukuho Maru No. 18, Medium Stern Trawler	JA–87–0526	BSA	1*
Fukushin Maru No. 8, Medium Stern Trawler	JA–87–0555	BSA	1*
Fukuyoshi Maru No. 38, Medium Stern Trawler	JA–87–0304	BSA, GAO	1*
Fuyo Maru, Cargo/Transport Vessel	JA–87–0925	BSA, GAO, NWA, SNA	3
Habomai Maru No. 58, Longliner	JA–87–0159	ABS	1
Hakurei Maru, Pair Trawler	JA–87–0013	BSA, GAO	1*
Haruna Maru, Large Stern Trawler	JA–87–0350	BSA, GAO	1*
Hokkai Maru, Pair Trawler	JA–87–0012	BSA, GAO	1*
Hokushin Maru, Pair Trawler	JA–87–0014	BSA, GAO	1*
Hokuto Maru, Pair Trawler	JA–87–0015	BSA, GAO	1*
Hoyo Maru, Factory Ship	JA–87–0190	BSA, GAO	2*
Kaiyo Maru No. 11, Medium Stern Trawler	JA–87–0313	BSA, GAO	1*
Kakuyo Maru No. 1, Pair Trawler	JA–87–0210	BSA, GOA	1*
Kakuyo Maru No. 11, Pair Trawler	JA–87–2008	BSA, GOA	1*
Kakuyo Maru No. 12, Pair Trawler	JA–87–2009	BSA, GOA	1*
Kakuyo Maru No. 2, Pair Trawler	JA–87–0211	BSA, GOA	1*
Kakuyo Maru No. 7, Pair Trawler	JA–87–0214	BSA, GOA	1*
Kakuyo Maru No. 8, Pair Trawler	JA–87–0215	BSA, GOA	1*
Kashima Maru, Factory Ship	JA–87–0001	BSA, GOA	2*
Kashima Maru No. 8, Small Stern Trawler	JA–87–0183	BSA	1
Koei Maru No. 15, Medium Stern Trawler	JA–87–1396	BSA	1
Kongo Maru, Large Stern Trawler	JA–87–0341	BSA, GOA	1*
Koshin Maru No. 18, Medium Stern Trawler	JA–87–0425	BSA, GOA	1*
Koyo Maru No. 3, Large Stern Trawler	JA–87–0343	BSA, GOA	1*
Kunashiri, Cargo/Transport Vessel	JA–87–1151	BSA, GOA, NWA	3

Nation, Vessel name, and Vessel type	Application number	Fishery	Activity
Kureha Maru, Pair Trawler	JA-87-0011	BSA, GOA	1*
Mineshima Maru, Factory Ship	JA-87-0080	BSA, GOA	2*
Mito Maru No. 82, Longline Fishing Vessel	JA-87-0611	BSA, GOA	1
Miyajima Maru, Factory Ship	JA-87-1540	BSA, GOA	2*
Jinkyu Maru No. 21, Longliner	JA-87-0191	ABS	1
Ohtori Maru, Large Stern Trawler	JA-87-0342	BSA, GOA	1*
Otoha Maru, Pair Trawler	JA-87-0010	BSA, GOA	1*
Rikuzeq Maru, Large Stern Trawler	JA-87-0340	BSA, GOA	1*
Ryuho Maru No. 51, Small Stern Trawler	JA-87-1572	BSA	1*
Ryuyo Maru, Large Stern Trawler	JA-87-0280	BSA, GOA	1*
Koei Maru No. 8, Longliner	JA-87-0188	ABS	1
Koryo Maru No. 32, Longliner	JA-87-0189	ABS	1
Koryo Maru No. 6, Longliner	JA-87-1241	ABS	1
Southern Reefer, Cargo/Transport Vessel	JA-87-0145	BSA, GOA, NWA, SNA	3
Soyo Maru, Factory Ship	JA-87-0240	BSA, GOA	2*
Takachiho Maru, Large Stern Trawler	JA-87-0291	BSA	1*
Teisho Maru No. 18, Medium Stern Trawler	JA-87-0535	BSA	1*
Tenyo Maru, Large Stern Trawler	JA-87-0352	BSA, GOA	1*
Tenyo Maru No. 2, Large Stern Trawler	JA-87-0332	BSA, GOA	1*
Tenyo Maru No. 3, Large Stern Trawler	JA-87-0333	BSA, GOA	1*
Tenyo Maru No. 5, Large Stern Trawler	JA-87-0334	BSA, GOA	1*
Tomi Maru No. 58, Medium Stern Trawler	JA-87-0643	BSA, GOA	1*
Tomi Maru No. 83, Medium Stern Trawler	JA-87-1170	BSA, GOA	1*
Nanwa Maru No. 36, Tanker	JA-86-0596	BSA, GOA, SNA	3
Tomi Maru No. 85, Medium Stern Trawler	JA-87-0282	BSA, GOA	1*
Tsuda Maru, Large Stern Trawler	JA-87-0337	BSA, GOA	1*
Western Reefer, Cargo/Transport Vessel	JA-87-0599	BSA, GOA, NWA, SNA	3
Yamato Maru, Large Stern Trawler	JA-87-0339	BSA, GOA	1*
Yayoi Maru, Cargo/Transport Vessel	JA-87-0018	BSA, GOA, NWA, SNA	3
Zao Maru, Large Stern Trawler	JA-87-0361	NWA	1*
Zuhoo Maru No. 28, Medium Stern Trawler	JA-87-0565	BSA	1*
Zuiyo Maru, Large Stern Trawler	JA-87-0335	BSA, GOA	1*
Zuiyo Maru, No. 2, Large Stern Trawler	JA-87-0351	BSA, GOA	1*
Zuiyo Maru No. 3, Large Stern Trawler	JA-87-0331	BSA, GOA	1*
Government of the Republic of Korea:			
No. 501 Dong Soo, Cargo/Transport Vessel	KS-87-0119	ABS, BSA, GOA	3
Government of the Netherlands:			
Alida, Large Stern Trawler	NL-87-0006	NWA	1*
Annie Hillina, Medium Stern Trawler	NL-87-0027	NWA	1*
Ariadne, Medium Stern Trawler	NL-87-0009	NWA	1*
Astrid, Large Stern Trawler	NL-87-0028	NWA	1*
Cornelis Vrolijk FZN, Medium Stern Trawler	NL-87-0014	NWA	1*
Dirk Dirk, Large Stern Trawler	NL-87-0026	NWA	1*
Hendrika Johanna, Medium Stern Trawler	NL-87-0025	NWA	1*
Holland, Large Stern Trawler	NL-87-0023	NWA	1*
Peer Sluis, Medium Stern Trawler	NL-87-0024	NWA	1*
Prins Bernhard, Large Stern Trawler	NL-87-0007	NWA	1*
Zeeland, Large Stern Trawler	NL-87-0022	NWA	1*
Government of the U.S.S.R.:			
18 Syezd Vlksm, Large Stern Trawler	UR-87-0617	BSA, GOA	1*
Alexandr Kraev, Large Stern Trawler	UR-87-0003	BSA, GOA	1*
Altayskie Gory, Cargo/Transport Vessel	UR-87-0259	BSA, GOA	3
Amurskiy Bereg, Cargo/Transport Vessel	UR-87-0750	BSA, GOA	3
Baganova, Large Stern Trawler	UR-87-0758	BSA, GOA	1*
Bereg Mechty, Cargo/Transport Vessel	UR-87-0753	BSA, GOA	3
Chukotskyi Bereg, Cargo/Transport Vessel	UR-87-0749	BSA, GOA	3
Dalniy Vostok, Factory Ship	UR-87-0783	BSA, GOA	2*
Danko, Large Stern Trawler	UR-87-0001	BSA, GOA, NWA	1*
Fyodor Krainov, Large Stern Trawler	UR-87-0206	BSA, GOA	1*
Galifan Batarshin, Large Stern Trawler	UR-87-0190	BSA, GOA	1*
Izumrudnyi, Large Stern Trawler	UR-87-0747	BSA, GOA	1*
Kalinovo, Large Stern Trawler	UR-87-0600	BSA, GOA	1*
Kamenka, Medium Stern Trawler	UR-87-0791	BSA, GOA	1*
Kargat, Large Stern Trawler	UR-87-0198	BSA, GOA	1*
Khrustalnyi Bereg, Cargo/Transport Vessel	UR-87-0732	BSA, GOA	3
Korenga, Large Stern Trawler	UR-87-0215	BSA, GOA	1*
Lauma, Medium Stern Trawler	UR-87-0802	BSA, GOA	1*
Lesogorsk, Large Stern Trawler	UR-87-0230	BSA, GOA	1*
Lukomorye, Tanker Fuel/Water	UR-87-0763	BSA, GOA	3
Mys Chasovoy, Large Stern Trawler	UR-87-0178	BSA, GOA	1*
Mys Grotovyi, Large Stern Trawler	UR-87-0092	BSA, GOA	1*
Mys Ilmovyy, Large Stern Trawler	UR-87-0204	BSA, GOA	1*
Mys Kuritskiy, Large Stern Trawler	UR-87-0711	BSA, GOA	1*
Mys Kuznetsova, Large Stern Trawler	UR-87-0211	BSA, GOA	1*
Mys Orekhova, Large Stern Trawler	UR-87-0017	BSA, GOA	1*
Mys Silina, Large Stern Trawler	UR-87-0183	BSA, GOA	1*
Mys Yudina, Large Stern Trawler	UR-87-0025	BSA, GOA	1*
Nadezhda, Large Stern Trawler	UR-87-0061	BSA, GOA	1*
Okhaneft, Tanker Fuel/Water	UR-87-0730	BSA, GOA	3
Ostrov Karaginskiy, Cargo/Transport Vessel	UR-87-0255	BSA, GOA	3
Ostrov Lisyanskogo, Cargo/Transport Vessel	UR-87-0254	BSA, GOA	3
Ostrov Shokalskogo, Cargo/Transport Vessel	UR-87-0257	BSA, GOA	3
Planerist, Large Stern Trawler	UR-87-0715	BSA, GOA	1*
Pogranichnik Strelnikov, Large Stern Trawler	UR-87-0225	BSA, GOA	1*
Polevod, Large Stern Trawler	UR-87-0626	BSA, GOA	1*
Rovolutsioner, Large Stern Trawler	UR-87-0187	BSA, GOA	1*
Rubinovyi, Large Stern Trawler	UR-87-0718	BSA, GOA	1*
Sajanskie Gory, Cargo/Transport Vessel	UR-87-0262	BSA, GOA	3
Sekuschii, Medium Stern Trawler	UR-87-0792	BSA, GOA	1*
Solnechnyi, Bereg, Cargo/Transport Vessel	UR-87-0485	BSA, GOA	3
Sovetsk, Factory Ship	UR-87-0777	NWA	2*
Sovgavanj, Large Stern Trawler	UR-87-0234	BSA, GOA	1*
Sulak, Factory Ship	UR-87-0238	BSA, GOA	2*
Taejnyi Bereg, Cargo/Transport Vessel	UR-87-0770	BSA, GOA	3
Tainiki, Cargo/Transport Vessel	UR-87-0741	BSA, GOA	3

Nation, Vessel name, and Vessel type	Application number	Fishery	Activity
Tarkhansk, Cargo/Transport Vessel	UR-87-0795	BSA, GOA	3
Ternei, Large Stern Trawler	UR-87-0202	BSA, GOA	1*
Tigil, Large Stern Trawler	UR-87-0162	BSA, GOA	1*
Titovsk, Cargo/Transport Vessel	UR-87-0794	BSA, GOA	3
Tulek, Cargo/Transport Vessel	UR-87-0793	BSA, GOA	3
Tymovsk, Large Stern Trawler	UR-87-0046	BSA, GOA	1*
Ussuriskaia Taiga Cargo/Transport Vessel	UR-87-0782	BSA, GOA	3
Vasilyevsk, Medium Stern Trawler	UR-87-0801	BSA, GOA	1*
Victor Kingisepp, Factory Ship	UR-87-0799	NWA	2*
Vladivostok, Factory Ship	UR-87-0786	BSA, GOA	2*
Vostochnyi Bereg, Cargo/Transport Vessel	UR-87-0761	BSA, GOA	3
Zvezdnyi Bereg, Cargo/Transport Vessel	UR-87-0726	BSA, GOA	3
Government of Spain: ***			
Altasa IV, Medium Stern Trawler	SP-87-0189	NWA	1*
Ana Maria Gandon, Medium Stern Trawler	SP-87-0057	NWA	1*
Ancora D'Ouro, Medium Stern Trawler	SP-87-0090	NWA	1*
Anguiecho, Medium Stern Trawler	SP-87-0118	NWA	1*
Area Cova, Side Trawler	SP-87-0013	NWA	1*
Arpon, Medium Stern Trawler	SP-87-0186	NWA	1*
Axeso, Side Trawler	SP-87-0104	NWA	1*
Beiramar Doe, Medium Stern Trawler	SP-87-0179	NWA	1*
Beiramar Tres, Medium Stern Trawler	SP-87-0182	NWA	1*
Campa de Torres, Medium Stern Trawler	SP-87-0178	NWA	1*
Cantion de Cora, Medium Stern Trawler	SP-87-0030	NWA	1*
Chicha Touza, Medium Stern Trawler	SP-87-0025	NWA	1*
Codeside, Medium Stern Trawler	SP-87-0185	NWA	1*
Conbaroya II, Medium Stern Trawler	SP-87-0015	NWA	1*
Conbaroya III, Medium Stern Trawler	SP-87-0047	NWA	1*
Costa Del Cabo, Medium Stern Trawler	SP-87-0159	NWA	1*
Cruna, Medium Stern Trawler	SP-87-0124	NWA	1*
Egunsentia, Medium Stern Trawler	SP-87-0062	NWA	1*
Farpesca IV, Medium Stern Trawler	SP-87-0093	NWA	1*
Fragana, Medium Stern Trawler	SP-87-0046	NWA	1*
Freire Lopez, Medium Stern Trawler	SP-87-0106	NWA	1*
Frescachon, Medium Stern Trawler	SP-87-0187	NWA	1*
Isla Alegranza, Medium Stern Trawler	SP-87-0126	NWA	1*
Isla Graciosa, Medium Stern Trawler	SP-87-0127	NWA	1*
Isla Montana Clara, Medium Stern Trawler	SP-87-0128	NWA	1*
Izarra, Medium Stern Trawler	SP-87-0064	NWA	1*
Kanbope, Medium Stern Trawler	SP-87-0056	NWA	1*
Laxe Dos Picos, Medium Stern Trawler	SP-87-0095	NWA	1*
Medroa, Small Stern Trawler	SP-87-0024	NWA	1*
Manuel Nores, Medium Stern Trawler	SP-87-0107	NWA	1*
Maria Eugenia G, Medium Stern Trawler	SP-87-0170	NWA	1*
Maria Teresa Rodriguez, Medium Stern Trawler	SP-87-0167	NWA	1*
Martorres, Medium Stern Trawler	SP-87-0190	NWA	1*
Mayi Castro, Medium Stern Trawler	SP-87-0073	NWA	1*
Mirador Del Frio, Medium Stern Trawler	SP-87-0171	NWA	1*
Monte Agudo, Medium Stern Trawler	SP-87-0111	NWA	1*
Monte de Vios, Medium Stern Trawler	SP-87-0191	NWA	1*
Monte Faro, Medium Stern Trawler	SP-87-0054	NWA	1*
Morsadina, Small Stern Trawler	SP-87-0180	NWA	1*
Mouta, Medium Stern Trawler	SP-87-0040	NWA	1*
Nache, Medium Stern Trawler	SP-87-0133	NWA	1*
Nuska, Medium Stern Trawler	SP-87-0043	NWA	1*
Orballo, Medium Stern Trawler	SP-87-0036	NWA	1*
Peixino, Medium Stern Trawler	SP-87-0106	NWA	1*
Perca, Medium Stern Trawler	SP-87-0045	NWA	1*
Pescamiro Uno, Medium Stern Trawler	SP-87-0034	NWA	1*
Pescapuerta Segundo, Large Stern Trawler	SP-87-0112	NWA	1*
Pescapuerta Tercero, Medium Stern Trawler	SP-87-0020	NWA	1*
Pineiro Correa, Medium Stern Trawler	SP-87-0066	NWA	1*
Playa de Cadiz, Medium Stern Trawler	SP-87-0136	NWA	1*
Playa de Menduina, Small Stern Trawler	SP-87-0137	NWA	1*
Playa de Mogor,	SP-87-0021	NWA	1*
Playa de Pesmar, Medium Stern Trawler	SP-87-0113	NWA	1*
Puente Belesar, Medium Stern Trawler	SP-87-0186	NWA	1*
Puente de Gondomar, Medium Stern Trawler	SP-87-0077	NWA	1*
Puente Minor, Medium Stern Trawler	SP-87-0023	NWA	1*
Puente Pereiras, Medium Stern Trawler	SP-87-0185	NWA	1*
Puente Toralla, Small Stern Trawler	SP-87-0052	NWA	1*
Punta de Robaleira, Small Stern Trawler	SP-87-0148	NWA	1*
Rio Verdugo, Medium Stern Trawler	SP-87-0065	NWA	1*
Suemar Dos, Small Stern Trawler	SP-87-0143	NWA	1*
Suemar Uno, Medium Stern Trawler	SP-87-0059	NWA	1*
Tasarte, Medium Stern Trawler	SP-87-0114	NWA	1*
Teucro, Medium Stern Trawler	SP-87-0101	NWA	1*
Tito Marquez, Medium Stern Trawler	SP-87-0038	NWA	1*
Ur Ertza, Medium Stern Trawler	SP-87-0110	NWA	1*
Vilachan, Medium Stern Trawler	SP-87-0078	NWA	1*
Villa Ana, Side Trawler	SP-87-0145	NWA	1*
Villa de Marin, Medium Stern Trawler	SP-87-0051	NWA	1*
Vixiador, Medium Stern Trawler	SP-87-0029	NWA	1*
Xeitoxino, Medium Stern Trawler	SP-87-0022	NWA	1*
Zamanes, Side Trawler	SP-87-0053	NWA	1*

[FR Doc 86-28459 Filed 12-18-86; 8:45 am]
BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Limits for Certain Cotton And Man-Made Fiber Textile Products Produced or Manufactured in Macau

December 10, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on December 17, 1986. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

Background

A CITA directive dated December 10, 1985 (50 FR 50934) established limits for certain specified categories of cotton, wool and man-made fiber textile products, including Categories 333/334/335, 347/348, 641 and 647/648, produced or manufactured in Macau and exported during the agreement year which began on January 1, 1986 and extends through December 31, 1986. Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 29, 1983 and January 9, 1984 between the Governments of the United States and Macau, the restraint limits for the foregoing categories are being increased by application of swing for the 1986 agreement year. In the letter which follows this notice the CITA Chairman directs the Commissioner of Customs to implement the adjusted limits.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston III,
Chairman, Committee for the Implementation of Textiles Agreements.

Committee for the Implementation of Textile Agreements

December 10, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 10, 1985 from the Chairman, Committee for the Implementation of Textile Agreements, which established restraint limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in Macau and exported during the agreement year which began on January 1, 1986 and extends through December 31, 1986.

Effective on December 17, 1986, the directive of December 10, 1985 is hereby further amended to adjust the previously established restraint limits for the following categories under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 29, 1983 and January 9, 1984, as amended:[1]

Category	Adjusted 12-Mo limit [2]
333/334/335	134,647 dozen of which not more than 69,273 dozen shall be in Category 333/335.
347/348	403,327 dozen.
641	99,550 dozen.
647/648	308,118 dozen.

[1] The agreement provides, in part, that: (1) Within the aggregate limit specific restraint limits may be exceeded by designated percentages; (2) specific limits may be increased for carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.
[2] The limits have not been adjusted to reflect any imports exported after December 31, 1985.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

William H. Houston, III,
Chairman, Committee for the Implementation of textile Agreements.

[FR Doc. 86–28525 Filed 12–18–86; 8:45 am]
BILLING CODE 3510-DR-M

Adjusting Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

December 16, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on December 17, 1986. For further information contact Kathy Davis, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 535–9480. For information on embargoes and quota re-openings, please call (202) 377–3715.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 27 and August 8, 1983 between the Governments of the United States and Thailand provides, among other things, for the borrowing of yardage from the succeeding year's level with the amount used being deducted from the level in the succeeding year, or restored, if deducted but not used (carryforward). At the request of the Government of Thailand, special carryforward is being applied to the restraint limit previously established for cotton and man-made fiber textile products in Categories 330–359 and 630–659, as a group, produced or manufactured in Thailand and exported during the agreement period which began on December 1, 1985, and extends through December 31, 1986. (See 50 FR 49438.) In the letter which follows this notice, the Chairman directs the Commissioner of Customs to increase the limit from 94,887,476 square yards to 99,887,476 square yards for the agreement year which began on December 1, 1985 and extends through December 31, 1986, to account for special carryforward.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston III,
Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 16, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of November 27, 1985, which prohibited entry into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Thailand and exported during the agreement period which began on December 1, 1985 and extends through December 31, 1986.

Effective on December 17, 1986, the directive of November 27, 1985 is hereby further amended to include an adjusted [1] restraint limit for Categories 330–359 and 630–659, as a group, to 99,887,476 square yards.[2]

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

William H. Houston, III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–28561 Filed 12–18–86; 8:45 am]
BILLING CODE 3510-DR-M

Adjusting the Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

December 16, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on December 22, 1986. For further information contact Kathy Davis, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202)377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

Background

A CITA directive (as amended), establishing import limits on specified categories of cotton, wool and man-made fiber textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1986, was published in the **Federal Register** on December 26, 1985 (50 FR 52825). Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 27 and August 8, 1983, as amended and extended, between the Governments of the United States and Thailand, the restraint limits for Categories 319 and 605 pt. (only TSUSA number 310.9500) are being increased by the application of carryforward for the agreement year which began January 1, 1986. Carryforward is an amount borrowed from the category limit for succeeding agreement year and, to the extent used, is deducted from the limit for the succeeding year. In addition, incorrect charges of 42,997 pounds will be deducted from the imports charged to the current agreement year's limit for Category 605pt. The limit is currently filled.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston III,
Chairman, Committee for the Implementation of Textiles Agreements.

Committee for the Implementation of Textile Agreements

December 16, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 19, 1985 from the Chairman of the Committee for the Implementation of Textile Agreements which established restraint limits for certain specified categories of cotton, wool and man-made fiber textile products, produced or manufactured in Thailand and exported during 1986.

Effective on December 22, 1986, the directive of December 19, 1985 if hereby further amended to increase the previously established restraint limits for the following categories under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 27, and August 8, 1983, as amended and extended, between the Governments of the United States and Thailand: [1]

Category	Adjusted 12-mo. restraint limit [1]
319	7,574,862 square yards.
605pt [2]	576,458 pounds.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1985.
[2] In Category 605, only TSUSA number 310.9500.

Also effective on December 22, 1986, imports charged to the current agreement year's limit for Category 605pt. should be reduced by 42,997 pounds.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

William H. Houston III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–28562 Filed 12–18–86; 8:45 am]
BILLING CODE 3510-DR-M

[1] According to the terms of the bilateral agreement of July 27 and August 8, 1983, administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.
[2] The limit has not been adjusted to account for any imports exported after November 30, 1985.

[1] The Agreement provides in part, that: (1) under certain specified conditions, certain specific limits or sublimits may be exceeded by not more than 7 percent for cotton and man-made fiber and 1 percent for wool products, provided that the amount of the increase is compensated for by an equal square yards equivalent decrease in another specific limit in the same group. (2) specific limits may be increased for carryover up to 11 percent and carryforward up to 6 percent of the applicable category limit; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

Adjusting the Import Limits for Certain Wool and Textile Products Produced or Manufactured in Uruguay

December 12, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on December 19, 1986. For further information contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202)377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

Background

The Bilateral Wool Textile Agreement, effected by exchange of notes dated December 30, 1983 and January 23, 1984, as amended, between the Governments of the United States and Uruguay establishes, among other things, specific limits for women's, girls', and infants' wool coats in Category 435 and wool skirts in Category 442, produced or manufactured in Uruguay and exported during the period which begin on July 1, 1986 and extends through June 30, 1987. The agreement provides for carryover of shortfalls in certain categories from the previous agreement year (carryover).

In the letter which follows this notice the Chairman of CITA directs the Commissioner of Customs to increase the specific limits for Categories 435 and

442 to 45,406 dozen and 30,270 dozen, respectively.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 CR 55709) as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25366) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston, III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 12, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: On August 7, 1986, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry of certain wool textile products exported during the twelve-month period beginning on July 1, 1986 and extending through June 30, 1987, produced or manufactured in Uruguay, in excess of designated restraint limits. The Chairman further advised you that the limits are subject to adjustment.[1]

Effective on December 19, 1986, paragraph 1 of the directive of August 7, 1986 is hereby amended to include the following adjusted restraint limits for wool textile products in Categories 435 and 442:

Category	Adjusted 12-mo restraint limit[1]
435	45,406 dozen.
442	30,270 dozen.

[1] The limits have not been adjusted to reflect any imports exported after June 30, 1986.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of U.S.C. 553.

Sincerely,

William H. Houston, III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-28526 Filed 12-18-86; 8:45am]

BILLING CODE 3510-DR-M

[1] The term "adjustment" refers to those provisions of the Bilateral Wool Textile Agreement of December 30, 1983 and January 23, 1984, as amended and extended, between the Governments of the United States and Uruguay, which provide, in part, that: (1) specific limits may be adjusted for carryover and carryforward; and (2) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1987, Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to Procurement List 1987 commodities to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: January 19, 1987.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On August 25, 1986 the Committee for Purchase for the Blind and Other Severely Handicapped published notice (51 FR 30263) of addition to Procurement List 1987, November 3, 1986 (51 FR 39946). Comments were received from two commercial firms, HLI Lordship Industries, Inc. (hereafter "Lordship") and Milspec Industries, Inc. (hereafter "Milspec"), which in the past had received contracts from the Government to produce one or more of the seven medals and medal sets. The major issues they raised were regarding the amount of production the workshop would actually perform, the workshop's qualification with respect to employing at least 75% severely handicapped direct labor in producing the items, the workshop's capability to produce the items including the reliability of its subcontractors, the relative benefit to severely handicapped workers in the workshop, the impact on the two firms, and the provision of inadequate notice by the Committee of the issues raised in this proceeding. Comments recommending approval of the action were also received from the workshop proposing to produce the medals and medal sets, Elwyn Institutes (hereafter "Elwyn"), and from the central nonprofit agency, the National Industries for the Severely Handicapped, representing the workshop.

Background

On January 27, 1984, the Committee approved the addition to the Procurement List of the medal and six medal sets listed below. On June 4, 1986, the United States Court of Appeals for the Fourth Circuit directed that the Committee's decision be set aside due to the inadequacy of the explanatory statement in the Committee's notice of January 27, 1984. The United States District Court for the Eastern District of Virginia, by order dated August 20, 1986, vacated the decision of the Committee which added the medal and six medal sets to the Procurement List. This action reflects the Committee's decision on the suitability of the addition of the seven medals and medal sets listed below to the Procurement list.

Production in Workshop

Lordship commented that the production of the medal pendant constitutes about 70% of the labor required to produce a complete medal or medal set and that the labor required to produce the medal pendant, which the workshop plans to subcontract, should be included in determining the workshop's ratio of severely handicapped direct labor in producing the medal and medal sets. The comment raises two issues. The first relates to how much of the manufacturing process a workshop must perform on a commodity in order for the work to qualify as production under Pub. L. 92-28 as amended (41 U.S.C. 46-48c). The second concerns whether any direct labor hours performed by subcontractors should be included in determining if the workshop will produce the commodity employing at least 75% blind or other severely handicapped direct labor.

The Committee has defined production in its regulations (41 CFR 51-4.5).

Those regulations clearly do not require that a workshop perform all of the manufacturing operations involved in order to qualify as a producer of a commodity. The definition of production in the Committee's regulations parallels that of a "manufacturer" contained in the regulations implementing the Walsh-Healey Public Contracts Act (41 U.S.C. 35-45). Those regulations (41 CFR 50-206.52) state in part:

"A firm which produces final items on its premises by assembling component parts, all or some of which have been purchased from others, will generally be considered to be a 'manufacturer' where it performs a series of assembly operations utilizing machines, tools and workers which constitute substantial and significant fabrication or production of the desired product."

Lordship has submitted data which shows that, using that firm's manufacturing processes, 70% of the total production time is involved in manufacturing the pendant, which operation the workshop plans to subcontract.

Elwyn reports that, based on the manufacturing times required under its method of operations to produce the drape and service bar and to package the completed medal set, and the times reported by its subcontractors to produce the pendant, between 64% and 80% of the total time required to produce the medal set, including the production of the pendant, would be performed in the workshop. If the total time is determined by using Elwyn's time to produce the drape and service ribbon and for packaging and Lordship's time to produce the pendant, at least 60% of the total production time would be performed in the workshop.

Based on Elwyn's manufacturing methods and the operations it would perform in producing the medals and medal sets, Elwyn clearly meets the definition of production both under the Committee's regulations and as a manufacturer under the Walsh-Healey regulations.

Qualification of Workshop

Lordship commented that the portion of the production performed by Elwyn's subcontractors should be considered in determining if Elwyn will produce the medals and medal sets employing 75% severely handicapped direct labor.

The definition of a qualified nonprofit agency for the blind or such agency for other severely handicapped under Pub. L. 92-28 (41 U.S.C. 48b (3) and (4) limits the direct labor hours used in determining the 75% criterion to the direct labor hours performed by individuals who are employed in the agency. Similarly, the Committee has required workshops proposing the addition of a commodity or service to the Procurement List, to report on the ratio of blind or other severely handicapped labor it expects to employ in the workshop in producing the commodity or providing the service if it is added to the Procurement List. In the case of a commodity, as long as the workshop meets the definition of production under Committee regulations, the number of hours performed by any subcontractors has no bearing whatsoever on the ratio of direct labor performed in the workshop, whether in the production of a particular commodity or in the overall direct labor hours used in the production or provision of commodities or services in the agency.

In the fiscal year ending September 30, 1985 (the most recent year for which the Committee has a report), Elwyn employed severely handicapped individuals for 97.8% of the total direct labor hours performed in the agency. Elwyn plans to employ severely handicapped persons to perform 100% percent of the direct labor required in the workshop to produce the seven medals and medal sets. Thus, Elwyn meets the requirements as a qualified agency for other severely handicapped.

Lordship has questioned Elwyn's estimates of handicapped labor to produce the seven medals and medal sets. The workshop determines productivity rates by comparing performance by the severely handicapped client with the timed actual performance of a non-handicapped employee. At this point, Elwyn has considerable experience in producing over 600,000 medals and medal sets and has adjusted its reported production times to reflect that experience.

Lordship has also questioned the basis for Elwyn's productivity factor in estimating the amount of severely handicapped labor used to produce the medals and medal sets.

Elwyn has submitted a letter which included a copy of a client payroll report selected at random, for a day in April 1986. The report shows that, on that date, Elwyn had 29 clients working in the production of medals and medal sets and their productivity ranged from a low of 8.6% to a high of 48.3% with an average of slightly less than 25%. Using that productivity factor, the total handicapped direct labor hours in the workshop would equate to about 25 handicapped man-years of labor. Thus, it appears that the 13.7 man-years estimated by the workshop is a very conservative number and, in reality, the addition of the seven medals and medal sets to the Procurement List would provide more than 20 man-years of severely handicapped employment.

Capability of Workshop to Produce

Lordship questioned the capability of the workshop to produce the medals and medal sets in compliance with Government specifications and delivery requirements and submitted documents concerning deficiencies reported by the procuring activity. The documents indicated that in one instance in December 1984, 2,240 medal sets were produced with the color sequence reversed on the ribbon drape which contained a number of colored stripes. The quantity of defective items still in the depot was returned to Elwyn for replacement. Elwyn was required to reimburse the Government for the full cost of the defective medals which had been issued.

Other documents submitted indicate that Elwyn was unable to meet the delivery date for first article samples for one medal and one medal set. In May and July of 1985, the workshop received conflicting instructions on the delivery of three medals and medal sets. When the discrepancies were pointed out to the procuring activity, the orders were amended to reflect the original delivery dates for the two items in question. The workshop met the required first delivery dates for both items.

A third point concerned the box marking and the pads used in packaging of first article samples submitted for approval. Elwyn had acknowledged in its transmittal letter that the markings were incorrect and that the pads were not the correct pads. The procuring activity found that the medal set sample met the requirements of the contract, except for the deficiencies which Elwyn had already pointed out, and accepted the samples subject to the corrections of the packaging by the workshop.

Between January 27, 1984 and October 15, 1986, Elwyn produced about 620,000 medals and medal sets for the Government. Except for the one instance in Elwyn's initial stages of production where the ribbon was reversed, the procuring activity has reported no other problems with respect to the quality of the medals and medal sets which Elwyn has produced.

Based on the data on recent shipments, Elwyn has generally been shipping ahead of schedule.

The Committee requested the procuring activity to inspect Elwyn to determine its capability to produce the items being proposed for addition to the Procurement List. The procuring activity has waived the inspection of the workshop, thus indicating its satisfaction with the quality and delivery of the items produced by the workshop. Based on the preceding, the workshop is determined capable of producing the medals and medal sets in compliance with the Government's specifications and delivery requirements.

Lordship has also questioned the reliability of the Elwyn's subcontractors who provide the pendant and has stated that the Committee regulations, specifically 41 CFR 51-2.6(h), require the workshop to prove the reliability of its subcontractors and that no such proof has been provided.

There is nothing in the referenced portion of the Committee's regulations which requires the workshop to certify or prove the capability of its subcontractors.

Based on Elwyn's performance in producing and shipping medals and medal sets to the Government during the period that the items were on the Procurement List, it is obvious that its

subcontractors for the pendant are providing that component in a timely manner which is the best proof of their reliability.

Lordship also questioned the workshop's capability to produce two of the medal sets at the Committee's new fair market prices. The workshop has provided assurances of its ability to manufacture the seven medals and medal sets at the new fair market prices. The fact that a workshop may produce one or more items of a group of items at a loss is not unusual. The Committee has interpreted the definition of suitability in its regulation to mean that the workshop has the capability to produce the commodity or provide the service *and is willing to do so at the fair market price established by the Committee.* In this regard, the Committee has, from time-to-time, approved the addition of commodities to the Procurement List which a workshop had planned to produce at a loss. However, in each case, the workshop has provided assurances that it agrees to produce the commodity at the Committee's fair market price similar to the assurances provided by Elwyn in this case.

Analysis of Procurements

Before considering the possible impact on commercial firms who have produced the seven medals and medal sets in the past, it is appropriate to review the awards of contracts for medals, medal sets and decorations which have been produced by the Defense Personnel Support Center (DPSC) from January 1, 1974 to September 30, 1986.

During the ten years from January 1, 1974 through December 31, 1983 (ending just prior to the addition of the seven medals and medal sets to the Procurement List on January 27, 1984), DPSC awarded contracts for those seven medals and medal sets totaling $1,687,937, or a yearly average of $168,794. During the five-year period from January 1, 1979 through December 31, 1983, awards for those medals and medal sets totaled $1,337,635 for an average of $267,528. The records show that the procurements of these items were made on a very irregular basis. In fact, during both the ten-year and five-year periods, on the average, fewer than half of the seven medals were procured in any calendar year.

In December 1982, an article entitled "Did You Get Your Medals" appeared in "Parade Magazine", which was carried by a number of major newspapers throughout the country. As the result of that article and similar articles in veterans publications, a large number of veterans, particularly World War II veterans have been requesting the medals to which they were entitled. By mid-1984, the Army was receiving requests from veterans at a rate of 1,450 per week or over 75,000 on an annual basis. Of the seven medals and medal sets, those primarily affected were the Army Good Conduct Medal Set, the Asiatic-Pacific Campaign Medal Set, the World War II Victory Medal Set, and the World War II Army of Occupation Medal Set. The increased demands for those medal sets resulted in orders to the workshop during 1984 and 1985 which were substantially above any previous experience. DPSC's current forecasts, which are based on recent demands for the seven medals and medal sets, reflect a reduction from the peak demand in 1984 and 1985, but overall, are still somewhat above the pre–1984 averages.

Orders placed by DPSC with Elwyn in 1984 and 1985 for the seven medals and medal sets totaled about $1,440,000.

Prior to the Court Order of August 20, 1986, the only procurement of any of the seven medals and medal sets planned during FY 1986 and FY 1987 was an order for 28,400 of the Asiatic-Pacific Campaign Medal Set with an estimated value of $48,280 scheduled for August 1986.

The medals and medal sets proposed for addition to the Procurement List, represent only seven of some 250 medals, medal sets and decorations procured by DPSC.

During the 10-year period ending December 31, 1983, DPSC awarded contracts with a total value of about $17,000,000 for all of the medals, medal sets, and decorations it procured. In calendar years 1984 and 1985 alone, DPSC awarded contracts valued at about $12,000,000 for all medals, medal sets, and decorations, an increase of two and one-half times the yearly average for the previous ten years.

Over the 12-year period, the procurements of the seven medals and medal sets represented about 10% of the total value of all the medals, medal sets, and decorations procured by DPSC.

Medals, medal sets, and decorations are a part of Federal Supply Class 8455 which also includes such items as ribbons, lapel buttons, emblems, and insignia. DPSC reports that its awarded contracts in FY 1986 totaling over $8,000,000 for all items in Class 8455.

Computing Impact

As the result of the addition of the seven medals and medal sets to the Procurement List in January 1984, during the past two and one-half years the Government's requirements for those items have been provided by Elwyn. As of November 20, 1986, no commercial firm had received an award for any of these items since September 1983, or more than three years earlier.

Since there have been no recent procurements of these items from commercial suppliers and the quantities which were last procured from commercial suppliers do not reflect the current requirements for the items, the Committee approved a procedure for computing impact for the medals and medal sets at its meeting on September 11, 1986. Under that procedure the contractor or contractors who received the last award for a particular medal or medal set prior to January 1984 ("last contractor"), is considered to be the "current contractor" and the value of impact for that medal or medal set is determined by multiplying the current estimated annual requirement by the current fair market price. The Committee has been provided information by DPSC, on the current requirements for each of the seven medals and medal sets.

An exception to that procedure is if an award was made for a medal or medal set before the Committee has acted on the proposed addition of the item. In that case, the firm receiving the award is considered to be the current contractor for the item and the impact is the value of that firm's contract divided by the number of years of requirements represented by the award.

The total impact on each firm would be determined by adding the values of each item, as determined above for which that firm had recently been awarded a contract, or, where there had been no recent procurement, was the last contractor for the item prior to January 1984.

As the result of the court order terminating DPSC procurements of medals and medal sets from Elwyn in August 1986, DPSC took action to procure from commercial sources the Asiatic-Pacific Campaign medal set and the Air Force Good Conduct medal set. DPSC issued solicitations for those two items in September 1986 which opened in October 1986, and awards are expected to be made shortly to the low bidder.

Lordship submitted the lowest bid for both items.

Applying the above procedures, the Committee has determined possible impact on the commercial firms which have received awards for the seven medals and medal sets during the past five years.

Impact on Lordship

Lordship claims that the proposed addition will have a serious impact on that firm's sales. Based on the data submitted by Lordship, that firm's sales in a recent 24–month period averaged about $5,200,000 on an annual basis. Applying the Committee's procedure for evaluating impact discussed above, and assuming that Lordship will be awarded the contracts for the two medal sets for which that firm was the low bidder, the impact of the addition of the seven medals would result in the possible loss of sales of $296,600 which is less than 6% of Lordship's annual sales. This is not considered to be serious impact, particularly in view of the fact that more than 95% of the Government's $8,000,000 market for medals, decorations, insignia and similar items in Federal Supply Class 8455 will continue to be available for competitive bidding by Lordship.

A more accurate assessment of the impact of the addition to the Procurement List of the seven medals and medal sets on Lordship's sales can be made by comparing the value of awards to Lordship of medals, medal sets and decorations in calendar years 1982 and 1983 (just prior to the addition of the seven items to the Procurement List) to awards it received during calendar years 1984 and 1985. The total value of Lordship's awards for medals, medal sets, and decorations in 1982 and 1983 was about $4,465,000. The total value of awards for the same items in 1984 and 1985 was about $7,787,000. Thus, after the seven items were added to the Procurement List in January 1984 the value of Lordship's awards for medals, medal sets and decorations *increased* by about $3,322,000, or by 74%, over the prior two years.

The fact that Lordship's awards have declined since April 1, 1986 cannot be attributed to the fact that the seven items were not available for competitive procurement. Prior to the issuance of the court order terminating orders to Elwyn, the only procurement the Government was expected to make in all of calendar year 1986 and the first 10 months of 1987 was for the Asiatic-Pacific Campaign medal set with an estimated value of about $48,000.

Based on awards to all contractors during the first nine months of 1986, it appears that DPSC's procurement of medals, medal sets and decorations in calendar year 1986 will be about $2,000,000, or the lowest figure in eight years.

Lordship states that the number of that firm's employees has dropped from 134 prior to 1984 to 102 at the present time. An analysis has been made of the contracts for the seven medals and medal sets awarded to Lordship in the four calendar years prior to January 1984 to determine the labor hours and man-years which those contracts represented. The analysis shows that:

a. Contracts awarded to Lordship for three of the seven items in 1980 totaled 129,400 units representing less than 8,000 man-hours of labor.

b. Lordship received no awards for any of the seven items in 1981.

c. Contracts awarded to Lordship for three of the seven items in 1982 totaled 158,480 units which represented less than 10,000 man-hours of labor.

d. Lordship received only one award for any of the seven items in 1983 for a quantity of 72,400 units which represented less than 5,000 man-hours of labor.

The above man-hours of labor show that Lordship's contracts for the seven items on the Procurement List represented less than 5 man-years of labor in 1983 and, averaged less than 3 man-years over the four years. Thus, Lordship's claim of the loss of 32 jobs cannot be attributed to the addition of the seven items to the Procurement List, but rather to the drop in the Government's procurement of medals, medal sets, and decorations during the first nine months of calendar year 1986.

Impact on Milspec

Milspec commented that the Committee approved the earlier addition of the seven medals and medal sets based on erroneous data and that the set-aside awards to Elwyn resulted in a projected loss of sales by Milspec of $336,000.

Milspec had received an award for only one of the seven medals or medal sets prior to January 1984. That award was for a portion of the procurement of the Air Force Good Conduct medal set in 1982. During the period between August 6 and September 20, 1982, DPSC made four procurements for a total quantity of 132,800 of those medal sets. The awards were divided between Milspec and Lordship. Since these awards were made in a very brief period of time, both firms are considered to be "last contractors" under the procedures for evaluating impact which the Committee approved at the Committee meeting on September 11, 1986. The value of impact was computed by dividing the total value of $63,240 for the Air Force Good Conduct medal set between the two firms based on the percentage of the total quantity which was awarded to each firm during that period. Using this procedure, the toal value of impact on Milspec's sales would be $30,725. Based on Milspec's projected annual sales of about $500,000 for 1986, the addition of the seven medals and medal sets to the Procurement List would result in a loss of sales of about 6% for that firm.

Milspec reports that it only bids on the procurements of medals, medal sets and decorations. DPSC procurements of these items between 1979 and 1985 averaged more than $3,000,000 annually. If the seven medals and medal sets are added to the Procurement List, 90% of the total value of medals, medal sets and decorations will continue to be available for competitive bidding by Milspec.

However, it is expected that Lordship will be awarded the contract as the result of the recent solicitation for the Air Force Good Conduct medal. In that case, Lordship would be the current contractor and the impact on Milspec would no longer be considered.

Benefits to Handicapped in Workshop

Both Lordship and Milspec commented that they have subcontrated a portion of the production of medals and medal sets to handicapped agencies, including the workshop which has proposed the addition of the items to the Procurement List. The data provided to the Committee by the agencies who have received the subcontracts addressed the total number of persons who have been employed on subcontract work for those contractors for the total quantities of medals, decorations, and insignia that they are producting for the Government, rather than the number of handicapped persons who have been involved with the seven items being considered for addition to the Procurement List.

Lordship has questioned the benefits to severely handicapped workers in the workshop in view of the fact that Lordship has subcontracted a portion of its production of the medals and medal sets to three handicapped agencies. Lordship also reported that since October 1985, Lordship has provided transitional employment in its plant for handicapped clients rather than subcontracting the work to a handicapped agency.

The Committee requested Lordship to provide certain specific information on any portion of the production of the seven medals and medal sets which Lordship and subcontracted in the past. Lordship has provided invoices and billing statements, covering subcontract work between April 1976 and September 1986 and client payroll sheets on Transitional Employment covering the past year. However, *Lordship has not identified any subcontract work which*

had been performed on any of the seven medals and medal sets.

A line-by-line review of the 338 invoices, billing statements, and client payroll sheets submitted by Lordship revealed the following:

a. Of the subcontract work, 90% of the total value of the subcontract work and transitional employment to the three agencies consisted of assembling boxes or the mounting of metal grade insignia or similar metal emblems on cards and packaging those items as distinguished from work on decorations, medals, or medal sets.

b. The only reference in the invoices to any of the seven medals and medal sets was one invoice for $18.36 for work (the type of work was not indicated) on 1,020 "Army Good Conduct" on October 6, 1983. In 1982, Lordship received awards for 84,560 Army Good Conduct medal sets and 43,920 Air Force Good Conduct medal sets with deliveries required between February 1983 and November 1983. This is the only record of Lordship's possibly having subcontracted work on the seven medals and medal sets to any of the three handicapped agencies.

c. Lordship did not begin to subcontract work on decorations, medals, and medal sets to the three handicapped agencies until October 1984, nine months after the seven medals and medal sets were added to the Procurement List and just prior to Lordship's filing suit against the Committee. The only possible exception was subcontract work on what appears to be two medals in October 1983 with a total value of $62.29. Prior to October 1984, the only subcontracted work relating to decorations, medals, and medal sets was for the assembly of the boxes for some of those items.

Lordship has also provided a listing of subcontracts to agencies employing the handicapped and submitted data comparing wages paid monthly to handicapped workers due to that firm's subcontracting over a recent 29-month period and the wages paid to Elwyn's severely handicapped workers during approximately the same period. The comparison is very misleading since almost 90% of the subcontracted work reported by Lordship represents the subcontracting by that firm for carding the packaging of metal insignia and similar items and is not related to decorations, medals, or medal sets. Furthermore, the portion of the work which Lordship has subcontracted on decorations, medals, and medal sets results from the millions of dollars of awards that that firm has received each year for those items and can not be related to approximately 10% of the total procurement of all decorations, medals and medal sets that is represented by the forecasted procurements of the seven medals and medal sets.

Lordship received awards for decorations, medal, and medal sets (excluding insignia, badges, ribbons, and lapel buttons) totaling more than $8,000,000 during the period from January 1, 1984 to August 31, 1986. Lordship's subcontracting of the production of decorations, medals and medal sets during that same period amounted to only $20,633. Thus, about ¼ of 1 per cent of the value of Lordship's total awards for decorations, medals and medal sets was subcontracted to handicapped agencies during that period. Applying that percentage to the total estimated impact on Lordship of $298,600 results in subcontract work valued at less than $800 annually. This is in comparison to about $47,500 annually in severely handicapped wages the workshop would expect to pay if the seven medals and medal sets added to the Procurement List.

Using the average dollar billing per patient hour of work of $0.38 per hour from data provided by one of the handicapped agencies to which Lordship is subcontracting work, the $800 per year equates to about 2,100 patient hours, or just over 1 man-year. This is in contrast to the 13 to 25 man-years of direct labor for severely handicapped persons which Elwyn plans to provide if the seven medals and medal sets are added to the Procurement List.

Lordship also commented that Elwyn is paying only 12.4% of the contract revenue for medals and medal sets to its handicapped workers.

The total severely handicapped pay to produce the forecasted requirements of the seven items is about $47,500. This represents over 17% of the total annual value of the procurment of the seven medals and medal sets.

This ratio of wages to total cost is considered to be completely acceptable for the type of production operation the workshop uses in the manufacturing of the seven medals and medal sets.

Milspec also commented that, since 1981, that firm had subcontracted the production of 350,000 service ribbons and 435,000 ribbon drapes to Elwyn.

As with any contract, the extent of subcontracting, if any, and to which source, is solely the prerogative of the prime contractor. Thus, there is no assurance that the workshop which has proposed to add these items to the Procurement List or any other agency employing severely handicapped individuals will continue to receive subcontracts from the current contractors. On the other hand, if the medal and medal sets are added to the Procurement List, the producing workshop's severely handicapped workers will perform the bulk of the work required to produce the seven items with the result that many more severely handicapped workers will be provided meaningful and consistent employment.

Lordship has submitted written offers which guarantee certain levels of subcontract work to Elwyn and the three handicapped agencies with which it has subcontracted work in the past. The offers are contingent upon there being no additions of "medals, medal sets and other Lordship products" to the Procurement List. A decision by the Committee not to add the seven medals and medal sets to the Procurement List on the basis of Lordship's commitments to subcontract with Elwyn and the three other organizations for the severely handicapped would constitute tacit agreement by the Committee that it would forego future additions to the Procurement List of the seven medals and medal sets and *any other items produced by Lordship.* Such agreement, in the Committee's view, would be contrary to the intent of Public Law 92-28 which gives to the Committee the responsibility for adding to the Procurement List any commodity or service which it determines is suitable for procurement by the Government pursuant to the Act.

In view of the fact that after January 1984 (when the Committee took its earlier action adding the seven medals and medal sets to the Procurment List), Lordship increased dramatically its subcontracting to the three handicapped agencies, these offers cannot be considered as genuine efforts to provide additional work for handicapped persons, but rather are intended to try to confuse further the issue of the relative benefit to handicapped workers. In fact, the letters to the three handicapped agencies to which Lordship has subcontracted work could be construed as implying that Lordship will curtail its subcontracting work to those agencies if the Committee adds the seven items to the Procurement List.

Lordship also commented that the benefits to severely handicapped workers are insignificant in comparison to the increased costs to the Government. The legislative history of Public Law 92-28 recognizes that the primary purpose of the Act is to create job opportunities for blind and other severely handicapped individuals and to assist in the rehabilitation of those individuals through work (House Report No. 92-228, May 25, 1971). The Act also assigns to the Committee the responsibility for establishing the fair market price for commodiates and services on its Procurement List. If a proposed addition to the Procurement List will create work for blind or other severely handicapped individuals and the proposed price meets the Committee's criteria as a fair market price, there is no requirement for the Committee to try to balance the trade-off between any added cost to the Government against the opportunities for the employment of blind or other severly handicapped persons.

As indicated above, Elwyn plans to use the medals and medal sets to provide from 13 to 25 man-years of employment for severely handicapped persons. Thus, the production of these medals and medal sets clearly meets the purpose of Public Law 92-28 by providing the opportunity for the employment of a significant number of severly handicapped individuals.

Adequacy of Notice

Lordship has commented that it has received inadequate notice of the Committee's standards with regard to several of the issues raised by the proposal. Lordship's counsel, in a series of letters between August 27 and October 3, 1986, raised questions relating to the requirements for 75% severely handicapped direct labor, the method for determining impact and the method for determining the net benefit to handicapped workers. The Executive Director responded promptly to each letter providing guidance with respect of each of the questions raised.

On September 19, 1986, Lordship's counsel was provided copies of the outline of the procedure for evaluating impact approved by the Committee at its meeting on September 11, 1986 as well as the procurement history of the seven medals and medal sets from 1974 through 1983, a listing of the annual requirements and current fair market prices to be used in evaluating impact. This was well before the deadline for submitting comments of October 15 which had been extended from September 26 at Lordship's request.

Responses to additional and clarifying questions were provided in letters dated September 30 and October 8, 1986 from the Executive Director. Finally, it was pointed out in the letter of September 30, that the Committee's procedures and standards for determining the suitability of commodities and services being considered for addition to the Procurement List are adequately covered in its regulations and numbered memoranda, copies of which had been made available to Lordship's counsel.

Additions

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6. I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities listed.

c. The actions will result in authorizing small entities to produce the commodities procured by the Government.

Accordingly, the following commodities are hereby added to Procurement List 1987:

Commodities

Medal

8455-00-261-4510 (Good Conduct, Marine Corps)

Medal Set

8455-00-082-5528 (Good Conduct, Air Force)
8455-00-269-5761 (Good Conduct, Army)
8455-00-269-5783 (Women's Army Corps)
8455-00-269-5763 (Army of Occupation, World War II)
8455-00-269-5764 (Asiatic-Pacific Campaign)
8455-00-269-5782 (World War II Victory)

C. W. Fletcher,
Executive Director.

[FR Doc. 86-28619 Filed 12-18-86; 8:45 am]
BILLING CODE 6820-33-M

COMMODITY FUTURES TRADING COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of information collection.

SUMMARY: The Commodity Futures Trading Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

ADDRESS: Persons wishing to comment on this information collection should contact Katie Lewin, Office of Management and Budget, Room 3235, NEOB, Washington, DC 20503, (202) 395-7231. Copies of the submision are available from Joseph G. Salazar, Agency Clearance Officer, (202) 254-9735.

Title: Information Concerning Warehouses.

Abstract: This data collection enables the Commission to obtain information on the deliverable supply of a commodity. Contract markets must provide the Commission with lists of warehouses which are regular for delivery and provide copies of delivery notices which are issued or stopped by members.

Control Number: 3038-0018.

Action: Extension.

Respondents: Businesses (excluding small businesses).

Estimated Annual Burden: 99 hours.

Estimated Number of Respondents: 11.

Agency Clearance Officer, (202) 254-9735.

Title: Copies of Crop and Market Information Reports.

Abstract: Each futures Commission merchant and each contract market, upon request, must furnish the Commission copies of crop and market information reports that affect or tend to affect the price of any commodity.

Control Number: 3038-0015.

Respondents: Businesses (excluding small businesses).

Estimated Annual Burden: 5 hours.

Estimated Number of Respondents: 30.

Issued in Washington, DC, on December 15, 1986.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 86-26447 Filed 12-18-86; 8:45 am]
BILLING CODE 6351-01-M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of information collection.

SUMMARY: The Commodity Futures Trading Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

ADDRESS: Persons wishing to comment on this information collection should contact Katie Lewin, Office of Management and Budget, Room 3235, NEOB, Washington, DC 20503, (202) 395-7231. Copies of the submision are available from Joseph G. Salazar,

Issued in Washington, DC, on December 15, 1986.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86-28448 Filed 12-18-86; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent to Prepare a Draft Environmental Impact Statement (DEIS) for the Agana Bay Typhoon and Storm-surge Flood Damage Reduction Study, Agana, Territory of Guam

AGENCY: Honolulu District, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY:

1. The U.S. Army Engineer District, Honolulu, is studying the water resource needs and related problems of the Agana Bay area of Guam and proposes to formulate various alternative measures to reduce flood damage caused by typhoon-induced storm-surge inundation in low-lying areas from Anigua to Dungca's Beach. Three alternatives are being examined; (a) Floodproofing; (b) Floodproofing with the addition of a levee constructed paralled to portions of Marine Drive; and (c) Floodproofing with the addition of an I-wall or New Jersey barrier constructed down the middle of portions of marine Drive. These alternatives are dependent on other planned Federal/local flood control and local interior drainage projects for effectiveness in reducing flood damages.

2. A field trip was conducted in March 1983 which included coordination with local Government of Guam agencies, review of available pertinent documents, and discussions with various individuals in Guam. No additional scoping meetings are currently scheduled prior to preparation of the DEIS: however, all interested government agencies, quasi-governmental planning advisory committees, and private organizations and individuals are encourged to provide input into the process of formulating alternative measures and identifying potential environmental and social concerns and effects. Environmental concerns, such as fish and wildlife resources and historic sites, are not expected to be as significant as aesthetics, traffic movement and institutional implementation.

3. The U.S. Fish and Wildlife Service will provide their opinion of the project effects on fish and wildlife resources for inclusion in the DEIS. Coordination will be completed during the study with the U.S. Environmental Protection Agency and particularly the following Guam agencies: Bureau of Planning (including the Guam Coastal Management Program), Civil Defense Office, Guam Environmental Protection Agengy, and Departments of Agriculture, Public Works, and Parks and Recreation (including the State Historic Preservation Officer).

4. The DEIS is expected to be available for public review in early 1987.

Questions about the proposed action and the DEIS can be addressed to: Mr. Hudson Kekaula, Project Manager, U.S. Army Engineer District, Honolulu, Building T-1, Fort Shafter, Hawaii 96858-5440, telephone: (808) 438-1307.

Date: December 2, 1986.

John D. French,

Lieutenant Colonel, Corps of Engineers, Deputy District Engineer.

[FR Doc. 86-28456 Filed 12-18-86; 8:45 am]

BILLING CODE 3710-NN-M

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs and Energy Emergencies

Atomic Energy Agreements; Proposed Subsequent Arrangement With European Atomic Energy Community

Pursuant to Section 131 of the Atomic Enegy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval for the supply of 4 kilograms of uranium, enriched to approximately 19.75 percent in the isotope uranium-235 for fabrication of fuel elements at Nukem, Hanau, the Federal Republic of Germany, and subsequent irradiation in the high flux reactor at Petten, The Netherlands, and at the BR-2 reactor at Mol, Belgium, in connection with the Reduced Enrichment Research and Test Reactor (RERTR) program. Contract No. WC-EU-287 has been assigned to this transaction.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: December 16, 1986.

George J. Bradley, Jr.

Principal Deputy Assistant Secretary for Internationol Affoirs and Energy Emergencies.

[FR Doc. 86-28479 Filed 12-18-86; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA C&E-87-15; OFP Case No. 61065-9336-20-24]

Acceptance of Petition for Exemption and Availability of Certification by the Oxy-Alkali Cogeneration Corporation

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of acceptance.

SUMMARY: On December 10, 1986, Oxy-Alkali Cogeneration Corporation (Oxy) filed, on behalf of B&D Cogen Funding Corporation (B&D), a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for a combined cycle powerplant consisting of two existing steam turbine generators and a single heat recovery steam generator. The name of the facility is the Battleground Cogeneration Facility. Ownership of the LaPorte, Texas, cogeneration facility, of approximately 210 MW, will be transferred, prior to January 1, 1987, to B&D.

Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.)* ("FUA" or "the Act") prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503.

Final rules governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701(c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register.**

DATE: Written comments are due on or before February 2, 1987. A request for a public hearing must be made within this same 45-day period.

ADDRESS: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-093, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585.

Docket No. ERA C&E-87-15 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Ellen Russell, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-093, Washington, DC 20585, Telephone (202) 252-9624;

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 252-6947.

SUPPLEMENTARY INFORMATION: For purposes of clarification, the cogeneration facility for which Oxy submitted this exemption petition is currently a non-boiler major fuel burning installation, and is not subject to the prohibitions of the Fuel Use Act because less than 50 percent of the electricity generated is sold or exchanged for resale. Prior to January 1, 1987, Oxy expects ownership of the facility to be changed to B&D, thus becoming subject to the prohibitions of FUA.

B&D will sell the majority of the output of electricity (206 MW) to Occidental Petroleum Corporation and to Houston Lighting and Power Company for resale. By virtue of this change in ownership, although the end user and operator of the generated electricity remains the same, B&D becomes a "powerplant" for purposes of the Fuel Use Act.

Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of 503.37(a)(1), Oxy has certified to ERA that:

1. The oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the proposed powerplant, where the calculation of savings is in accordance with 10 CFR 503.37(b); and

2. The use of a mixture of petroleum or natural gas and an alternate fuel in the cogeneration facility, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

On May 22, 1986, DOE published in the **Federal Register** (51 FR 18866) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or denial of a cogeneration FUA permanent exemption, is among the classes of actions that DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly affect the quality of the human environment. Oxy has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new unit under exemption.

DOE's Office of Environment, in consultation with the Office of General Counsel, will review the completed environmental checklist submitted by Oxy pursuant to 10 CFR 503.13, together with other relevant information. Unless it appears during the proceeding on Oxy's petition that the grant or denial of exemption will significantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

The acceptance of the petition by ERA does not constitute a determination that Oxy is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC, on December 17, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-28671 Filed 12-18-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA C&E-87-16; OFP Case No. 61065-9337-20-24]

Acceptance of Petition for Exemption and Availability of Certification by the Oxy-Alkali Cogeneration Corporation

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of acceptance.

SUMMARY: On December 10, 1986, Oxy-Alkali Cogeneration Corporation (Oxy) filed, on behalf of B&D Cogen Funding Corporation (B&D), a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for a combined cycle powerplant consisting of one gas turbine generator, one heat recovery steam generator, and three non-condensing steam turbines. The name of the facility is the Deer Park Cogeneration Facility. Ownership of the Deer Park, Texas, cogeneration facility, of approximately 89 MW, will be transferred, prior to January 1, 1987, to B&D.

Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act") prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503.

Final rules governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR § 503.37.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR § 501.3. A

review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701(c) and (d) of FUA and 10 CFR §§ 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the Federal Register.

DATE: Written comments are due on or before February 2, 1987. A request for a public hearing must be made within this same 45-day period.

ADDRESS: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-093, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585.

Docket No. ERA C&E-87-16 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Ellen Russell, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-093, Washington, DC 20585, Telephone (202) 252-9624;

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 252-6947.

SUPPLEMENTARY INFORMATION: For purposes of clarification, the cogeneration facility for which Oxy submitted this exemption petition is currently a non-boiler major fuel burning installation, and is not subject to the prohibitions of the Fuel Use Act because less than 50 percent of the electricity generated is sold or exchanged for resale. Prior to January 1, 1987, Oxy expects ownership of the facility to be changed to B&D, thus becoming subject to the prohibitions of FUA.

B&D will sell the majority of the output of electricity (89 MW) to Occidental Petroleum Corporation, and to Houston Lighting and Power Company for resale. By virtue of this change in ownership, although the end user and operator of the generated electricity remains the same, B&D becomes a "powerplant" for purposes of the Fuel Use Act.

Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of 503.37(a)(1), Oxy has certified to ERA that:

1. The oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the proposed powerplant, where the calculation of savings is in accordance with 10 CFR 503.37(b); and

2. The use of a mixture of petroleum or natural gas and an alternate fuel in the cogeneration facility, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

On May 22, 1986, DOE published in the Federal Register (51 FR 18866) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or denial of a cogeneration FUA permanent exemption, is among the classes of actions that DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement of an Environmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly affect the quality of the human environment. Oxy has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new unit under exemption.

DOE's Office of Environment, in consultation with the Office of General Counsel, will review the completed environmental checklist submitted by Oxy pursuant to 10 CFR 503.13, together with other relevant information. Unless it appears during the proceeding on Oxy's petition that the grant or denial of exemption will significantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

The acceptance of the petition by ERA does not constitute a determination that Oxy is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC, on December 17, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-28672 Filed 12-18-86; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Energy Research Advisory Board, Physics Review Panel; Open Meeting

Notice is hereby given of the following meeting:

Name: Physics Review Panel of the Energy Research Advisory Board (ERAB)

Date & Time: January 14, 1987—8:30 a.m.–5:00 p.m.

Place: O'Hare Hilton Hotel, Chicago O'Hare International Airport, Chicago, IL 60666, (312) 686-8000

Contact: William L. Woodard, Department of Energy, Office of Energy Research, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-5767

Purpose of the parent board: To advise the Department of Energy (DOE) on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Purpose of the panel: The Physics Review Panel is a subgroup of ERAB and reports to the parent Board. The Physics Review Panel will review the National Research Council's report, "Physics through the 1990's" and, in particular, assess its specific suggestions for initiatives that are recommended for the Department of Energy.

Tentative agenda:

January 14, 1987

- Review of draft report
- Public Comment (10 minute rule)

Public participation: The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William Woodard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes of the meeting: Available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Friday holidays.

Issued at Washington, DC, on December 12, 1986.

Charles E. Cathey,

Deputy Director, Science and Technology Affairs, Office of Energy Research.

[FR Doc. 86-28480 Filed 12-18-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER87-139-000 et al.]

Arkansas Power & Light Co. et al.; Electric Rate and Corporate Regulation Filings

December 10, 1986.

Take notice that the following filings have been made with the Commission:

1. Arkansas Power & Light Co.

[Docket No. ER87-139-000]

Take notice that Arkansas Power & Light Company (AP&L) filed on December 3, 1986, a proposed First Amendment to Peaking Power Agreement amending the Peaking Power Agreement dated August 28, 1985 which is a supplement to the Power Coordination, Interchange & Transmission Agreement between City of Conway, Arkansas and Arkansas Power & Light Company, dated March 1, 1982. The Amendment extends the term of the Peaking Power Agreement and allows the amount of Peaking Capacity and associated energy to vary for each annual period beginning October 1, 1991 and each year thereafter dependent on the City's peak demand in the previous peak period May through September.

The proposed Amended Agreement will effect a savings of approximately $3.6 million in the projected twelve month period ending September 30, 1992.

Comment date: December 23, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Boston Edison Company

[Docket No. ER87-140-000]

Take notice that on December 3, 1986, Boston Edison Company (Boston Edison) of Boston, Massachusetts, submitted Supplement II to its Rate Schedule No. 26 for the sale of unit power from its Pilgrim No. 1 Nuclear Unit to Montaup Electric Company (Montaup). The purpose of this filing is to increase the annual decommissioning charges under Rate Schedule No. 69 from $412,353 to $537,564.

Boston Edison requests waiver of the sixty day notice period and a July 11, 1986 effective date for the decommissioning rate change. Boston Edison states that copies of this filing have been served on Montaup and on the Massachusetts Department of Public Utilities.

Comment date: December 23, 1986, in accordance with Standard Paragraph E at the end of this document.

3. Commonwealth Electric Company

[Docket No. ER87-138-000]

Take notice that on December 3, 1986 Commonwealth Electric Company ("Commonwealth") filed, pursuant to Section 205 of the Federal Power Act and the implementing provisions of Section 35.13 of the Commission's Regulations, a proposed change in rate under its currently effective Rate Schedule FERC No. 6 (previously designated as Supplement No. 12 of rate Schedule FERC No. 34).

Said change in rate under Commonwealth's Rate Schedule ERC No. 6 has been computed according to the provisions of Section 8(b) of its Rate Schedule FERC No. 6. Such change is proposed to become effective January 1, 1986, thereby superseding the 23kv Wheeling Rate in effect during calendar 1985. Commonwealth has requested that the Commission's notice requirements be waived pursuant to Section 35.11 of the Commission's Regulations in order to allow the tendered rate change to become effective as of January 1, 1986.

Comment date: December 23, 1986, in accordance with Standard Paragraph E at the end of this document.

4. The Connecticut Light and Power Company, et al.

[Docket No. ER87-134-000]

Take notice that on December 1, 1986 the Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule with respect to Transmission Agreements dated July 1, 1985 [1] between CL&P, Western Massachusetts Electric Company (WMECO), Holyoke Water Power Company ("HWP") (together, the "NU Companies") and each of the following:

City of Chicopee Municipal Light Plant, Chicopee, MA (Chicopee)

City of Holyoke Gas & Electric Department, Holyoke, MA (HG&E)

South Hadley Electric Light Department, South Hadley, MA (South Hadley)

The United Illuminating Company, New Haven, CT (UI)

Westfield Gas & Electric Department, Westfield, MA (WG&E)

CL&P states that the Transmission Agreements provide for transmission services for the wheeling of each of the parties respective allocations of the New York Power Authority's hydroelectric power from the Niagara and St. Lawrence Projects.

The transmission charge rate is a monthly rate equal to one-twelfth of the annual average cost of transmission service on the Northeast Utilities system determined in accordance with Appendix 2 and Exhibits I, II, and III thereto of the Transmission Agreements. The monthly transmission charge is determined by the product of (i) the transmission charge rate ($/kW-month) and (ii) the number of kilowatts of capacity of New York Power Authority's hydroelectric power the party received that month pursuant to its respective Transmission Agreement.

CL&P requests that the Commission waive its standard notice period and permit the rate schedule to become effective as of July 1, 1985.

WMECO and HWP have filed Certificates of Concurrence in this docket.

CL&P states that copies of this rate schedule have been mailed or delivered to WMECO, HWP, Chicopee, HG&E, South Hadley, UI, and WG&E.

CL&P further states that the filing is in accordance with Section 35 of the Commission's Regulations.

Comment date: December 23, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. El Paso Electric Company

[Docket No. ER86-638-003, ER86-368-006]

Take notice that on October 28, 1986, El Paso Electric Company tendered for filing a compliance report revising a rate schedule for service to Rio Grande Electric Cooperative, Inc. (Rio Grande) which: (a) reduces rates to Rio Grande to take account of the sale leaseback of a portion of Palo Verde No. 2 and slippage in the service date of the unit as reflected in the cost of service study filed by the Company on October 16,

[1] The South Hadley Agreement is dated April 23, 1985.

BEST COPY AVAILABLE

1986; (b) provides for implementation of the Company's rate moderation plan through Section 205 filings; and (c) contains certain additional provisions to provide for recovery of deferred costs.

Comment date: December 24, 1986, in accordance with Standard Paragraph E at the end of this notice.

6. PacifiCorp Doing Business as Pacific Power & Light Company

[Docket No. ES87-17-000]

Take notice that on December 5, 1986, PacifiCorp doing business as Pacific Power & Light Company (Pacific) filed its application with the Federal Energy Regulatory Commission, pursuant to Section 204 of the Federl Power Act, seeking an order (1) authorizing it to borrow the proceeds of up to $20 million of Pollution Control Revenue Bonds to be issued by the City of Forsyth, Rosebud County, Montana (the "City"), (2) authorizing it to enter into such agreements or arrangements with the City and other entities as may be reasonably necessary to effect the borrowings, and (3) exempting the transactions from competitive bidding pursuant to 18 CFR 34.2(b)(2). The financing is related to certain pollution abatement facilities at Pacific's Colstrip Generating Plant.

Comment date: December 22, 1986, in accordance with Standard Paragraph E at the end of this notice.

7. Montana Power Company

[Docket No. ER86-637-001]

Take notice that on December 2, 1986, Montana Power Company tendered for filing a compliance report which entails the calculation of the average system cost of 19.32 mills/kWh in accordance with the Commission's order, issued November 7, 1986.

Comment date: December 23, 1986, in accordance with Standard Paragraph E at the end of this notice.

8. Public Service Company of New Hampshire

[Docket No. ER87-135-000]

Take notice that Public Service Company of New Hampshire (PSHN) on December 3, 1986 filed two notices of termination relative to the following rate schedule:

Rate schedule No.	Other party	Term
121	Central Maine Power	June 1, 1986 to Oct. 31, 1986.

PSNH states that the rate schedule has terminated in accordance with its own terms.

Comment date: December 23, 1986, in accordance with Standard Paragraph E at the end of this notice.

9. Indiana & Michigan Electric Company

[Docket No. ER87-131-000]

Take notice that American Electric Power Service Corporation (AEP) on November 28, 1986, tendered for filing on behalf of its affiliate Indiana & Michigan Electric Company (I&ME), which is an AEP affiliated operating subsidiary, Modification No. 18 dated September 15, 1986 to the Interconnection Agreement dated June 1, 1968 between Central Illinois Public Service Company (CIPSCO) and I&ME, I&ME's Rate Schedule FERC No. 67 and CIPSCO's Rate Schedule FERC No. 62.

This Modification changes the Parties' Non-Displacement energy provisions of Service Schedule D—Interchange Power by adding "up to" provisions to the Parties' 110% of out-of-pocket cost (OPC) energy rate and by the addition of a demand charge of up to 25 mills per kilowatthour. These up to rates are limited, however, by a total revenue floor for both demand and energy rates to 100% of OPC. In addition, this Modification changes the Parties Short Term Power demand and energy rates to "up to" $2.00 per kilowatt per week and to "up to" 110% of the out-of-pocket cost respectively when either party is the generating party. A statement has also been added that states that the sum of the demand charge and the energy charge will not be less than 110% of the out-of-pocket cost of supplying such Short Term energy. Finally, this Modification revises the Parties' Billing and Payments section to include provisions to address billing disputes. AEP has proposed that this Modification become effective as of January 1, 1987.

Copies of the filing were served upon Central Illinois Public Service Company, the Public Service Commission of Indiana, the Michigan Public Service Commission, and the Illinois Commerce Commission.

Comment date: December 23, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 28472 Filed 12-18-86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 4644-001]

Dahowa; Availability of Environmental Assessment and Finding of No Significant Impact

December 15, 1986.

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the application for major license listed below and has assessed the environmental impacts of the proposed development.

LICENSE

Project No.	Project name	State	Water body	Nearest town or county	Applicant
4644-001	Dahowa	NY	Batten Kill River	Greenwich	Stevens and Thompson Paper Company.

An environmental assessment (EA) was prepared for the above proposed project. Based on an independent analysis of the above action as set forth in the EA, the Commission's staff concludes that this project would not have significant effects on the quality of the human environment. Therefore, an environmental impact statement for this project will not be prepared. A copy of the EA is available for review in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-28512 Filed 12-18-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP87-95-000, et al.]

Colorado Interstate Gas Company, et al.; Natural Gas Certificate Filings

December 15, 1986.

Take notice that the following filings have been made with the Commission:

1. Colorado Interstate Gas Company

[Docket No. CP87-95-000]

Take notice that on November 25, 1986, Colorado Interstate Gas Company (Applicant), Post Office Box 1087, Colorado Springs, Colorado 80944, filed an application in Docket No. CP87-95-000 pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to transport up to 75,000 Mcf of natural gas per day on an interruptible basis for Tennessee Gas Pipeline Company, a Division of Tenneco, Inc. (Tennessee), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it is presently transporting volumes of natural gas pursuant to Part 284 of the Commission's Regulations and that the authority providing such transportation service would expire in the near term pursuant to § 284.105 of the Commission's Regulations. It is stated that the purpose of the certificate is to continue the transportation service which Applicant is currently providing Tennessee which would expire January 11, 1987; therefore, Applicant seeks authority to continue such service through December 31, 1987, and month-to-month thereafter until canceled by either party upon 30 days' advance written notice.

Applicant states that it would provide the proposed transportation service under its Rate Schedule GTI OFF-1, which is its Grandfathered Transportation Service-Interruptible Off-System tariff, effective subject to refund pursuant to a final resolution of Docket No. RP85-122-000. Rate Schedule GRI OFF-1 provides for a maximum rate of 32.62 cents per Mcf and a minimum rate of 1.43 cents Mcf, it is stated.

Applicant has included as Exhibit Z-1 of its application a copy of its Log of Requests for Transportation Service.

Comment date: January 5, 1987, in accordance with Standard Paragraph F at the end of this notice.

2. K N Energy, Inc.

[Docket No. CP86-642-001]

Take notice that on November 26, 1986, K N Energy, Inc. (K N), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP86-642-001 an amendment to its pending application in said docket for a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act to make a sale for resale of natural gas to Public Service Company of Colorado (PSCo) and to construct and operate certain facilities necessary to effectuate the proposed sale, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Specifically, K N proposes in the amendment that the Weld County, Colorado, meter station be connected to Colorado Interstate Gas Company (CIG) rather than to Colorado Gas Transmission Corporation. K N states that it now proposes to connect with CIG at the same location pursuant to an agreement between PSCo and CIG whereby CIG has agreed to transport the K N sales gas to PSCo. K N states that this is the only change requested in the amendment and the facilities sought in the original application and K N's request to make a sale for resale to PSCo remain unchanged.

Comment date: January 5, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Southern Natural Gas Company

[Docket No. CP87-96-000]

Take notice that on November 25, 1986, Southern Natural Gas Company (Southern), P. O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP87-96-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing the transportation of natural gas for Atlanta Gas Light Company (Atlanta) acting as agent for Georgia Kaolin Company, Inc. (Georgia Kaolin), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern proposes to transport up to 10 billion Btu equivalent of natural gas per day for Atlanta, acting as agent for Georgia Kaolin, on an interruptible basis, for a one-year term. It is indicated that Georgia Kaolin would purchase the gas from SNG Trading, Inc. Southern states that it would receive the gas for the account of Georgia Kaolin at various existing points on Southern's system onshore and offshore Louisiana. Southern proposes to redeliver equivalent volumes of gas, less 3.25 percent for compressor fuel and company-use gas, at existing delivery points to Atlanta in Macon and Sandersville, Georgia for use in Georgia Kaolin's plants.

Southern proposes to charge Atlanta a transportation rate of 48.2 cents per million Btu equivalent where the aggregate of the volumes transported by Southern for Atlanta under any and all transportation agreements between Southern and Atlanta, when added to the volumes of gas delivered under Southern's Rate Schedule OCD, does not exceed Atlanta's daily contract demand from Southern. For those volumes that exceed Atlanta's daily contract demand, Southern proposes to charge 77.6 cents per million Btu equivalent. In addition Southern proposes to collect the GRI surcharge of 1.35 cents per Mcf.

It is asserted that Southern would obtain take-or-pay credit for all volumes of gas transported.

Comment date: January 5, 1987, in accordance with Standard Paragraph F at the end of this notice.

4. Southern Natural Gas Company

[Docket No. CP87-97-000]

Take notice that on November 25, 1986, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP87-97-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing the transportation of natural gas for the Cullman-Jefferson Counties Gas District (Cullman), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern proposes to transport up to 10 billion Btu equivalent of natural gas per day, on an interruptible basis, for Cullman for a one-year term. It is stated that Cullman would purchase the gas from SNG Trading Inc., and Texican Natural Gas Company. Southern also states that it would receive the gas at various existing points on its system for redelivery of an equivalent quantity to Cullman at Cullman's Meter Station in Jefferson County, Alabama. Southern also explains that a 3.25 percentage of such gas amount would be accountable for compressor fuel and company-use gas including system accounted-for gas losses; less shrinkage, fuel or loss from processing; and for loss or vented gas.

Southern proposes to charge Cullman a transportation rate of 39.9 cents per million Btu equivalent where the aggregate of the volumes transported under any and all transportation agreements between Southern and Cullman, when added to the volumes of gas delivered under Southern's Rate Schedule OCD, does not exceed Cullman's daily contract demand from the Southern. For those volumes that exceed Cullman's daily contract demand, Southern proposes to charge 64.9 cents per million Btu equivalent. In addition, Southern proposes to collect the GRI surcharge of 1.35 cents per Mcf.

Southern alleges that the proposed transportation arrangement would enable Cullman to diversify its natural gas supply sources and to obtain gas at competitives prices. In addition Southern concludes that it would take-or-pay relief on all gas that Cullman may obtain from it suppliers.

Comment date: January 5, 1987, in accordance with Standard Paragraph F at the end of this notice.

5. Southern Natural Gas Company

[Docket No. CP87-98-000]

Take notice that on November 25, 1986, Southern Natural Gas Company (Southern), P.O. 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP87-98-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing the transportation of natural gas for the Utilities Commission of the City of Fort Valley, Georgia (Fort Valley), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern has agreed to transport for Fort Valley on an interruptible basis up to 5 billion Btu equivalent of natural gas per day purchased by Fort Valley from SNG Trading Inc. (SNG Trading). Southern requests that the Commission issue a limited-term certificate for a term expiring one year from the date of the Commission's order issuing the requested authorization.

It is stated that Fort Valley would cause gas to be delivered to Southern for transportation at the various existing points on Southern's contiguous pipeline system specified in Exhibit A to the transportation agreement. Southern indicates that it would redeliver to Fort Valley at the Utility Commission of the City of Fort Valley Meter Station in Crawford County, Georgia, an equivalent quantity of gas less 3.25 percent of such amount which would be deemed to have been used as compressor fuel and company-use gas (including system unaccounted-for gas losses); less any and all shrinkage, fuel or loss resulting from or consumed in the processing of gas; and less Fort Valley's pro-rata share of any gas delivered for its account which would be lost or vented for any reason.

Southern states that Fort Valley has agreed to pay Southern each month a transportation rate of 77.6 cents for each MMBtu equivalent of gas redelivered by Southern and that Southern would collect from Fort Valley the GRI surcharge of 1.35 cents per Mcf of natural gas.

Comment date: January 5, 1987, in accordance with Standard Paragraph F at the end of this notice.

6. Southern Natural Gas Company/ South Georgia Natural Gas Company

[Docket No. CP87-99-000]

Take notice that on November 25, 1986, Southern Natural Gas Company (Southern), P.O. 2563, Birmingham, Alabama 35202-2563 and South Georgia Natural Gas (South Georgia), 1217 Old Albany Road, Thomasville, Georgia 31792 hereinafter referred to as Applicants, filed in Docket No. CP87-99-000 an application pursuant to section 7(c) of the Natural Gas Act, for a limited-term certificate of public convenience and necessity as set forth in the application which is on file with the Commission and open to public inspection.

Applicants request a limited-term certificate of public convenience and necessity authorizing the transportation of gas on behalf of Procter and Gamble Paper Products Company (P&G). It is stated that P&G has acquired the right to purchase gas from SNG Trading Inc. (SNG Trading) and Shell Gas Trading Company (Shell) in order to serve the natural gas requirements of its plant in Albany, Georgia. It is further stated that in order to effectuate delivery of the gas, P&G has entered into an agreement with Southern dated October 15, 1986 (Southern Agreement), wherein Southern has agreed to transport P&G's gas for redelivery to South Georgia, and an agreement with South Georgia dated October 15, 1986 (South Georgia Agreement), wherein South Georgia has agreed to receive the gas from Southern and transport it for redelivery to the Water, Gas and Light Commission of Albany (Albany) for P&G's account.

Subject to the receipt of all necessary governmental authorizations, Applicants assert that they have agreed to transport on an interruptible basis up to 10 billion Btu equivalent of natural gas per day purchased by P&G from SNG Trading and Shell. Applicants request that the Commission issue a limited-term certificate for a term expiring one year from the date of the Commission's order issuing the requested authorization.

It is stated that the Southern Agreement provides that P&G will cause gas to be delivered to Southern for transportation at the various existing points of delivery on Southern's contiguous pipeline system specified in Exhibit A to the Southern Agreement. Southern asserts that it will redeliver to South Georgia at the existing point of interconnection between the pipeline facilities of Southern and those of South Georgia located in Lee County, Alabama (Lee County Redelivery Point), an equivalent quantity of gas less 3.25 percent of the volume transported for fuel use. It is stated that the South Georgia Agreement provides that P&G will cause gas to be delivered to South Georgia for transportation at the Lee County Redelivery Point and will be redelivered to Albany at the Albany No. 1 and No. 2 Meter Stations located in Dougherty County, Georgia. South Georgia asserts that it will redeliver an equivalent volume less 0.5 percent of the volume transported for fuel use.

It is stated that the Southern Agreement provides that South Georgia shall pay Southern each month for performing the transportation service rendered thereunder the following transportation rate:

(a) Where the aggregate of the volumes transported and redelivered by Southern on any day to South Georgia under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's OCD Rate Schedule on such day to South Georgia do not exceed the daily Contract Demand of South Georgia, the transportation rate shall be 39.9 cents per MMBtu; and

(b) Where the aggregate of the volumes transported and redelivered by Southern on any day to South Georgia under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's OCD Rate Schedule on such day to South Georgia exceed the Daily Contract Demand of South Georgia, the transportation rate for the excess volumes shall be 64.9 cents per MMBtu.

The South Georgia Agreement states that P&G has agreed to pay South Georgia each month the following transportation rate:

(a) Where the aggregate of the volumes transported and redelivered by South Georgia on any day to Albany under any and all transportation agreements with South Georgia, when added to the volumes of gas delivered under South Georgia's Rate Schedule G-2 on such day to Albany do not exceed the Maximum Daily Quantity of Albany, the transportation rate shall be 12.08 cents per MMBtu; and

(b) Where the aggregate of the volumes transported and redelivered by South Georgia on any day to Albany under any and all transportation agreements with South Georgia, when added to the volumes of gas delivered under South Georgia's Rate Schedule G-2 on such day to Albany exceed the Maximum Daily Quantity of Albany, the transportation rate for the excess volumes shall be 49.88 cents per MMBtu.

Southern states that the transportation arrangement will enable P&G to diversify its natural gas supply sources and to obtain gas at competitive prices. Indeed, it is averred that P&G has the installed capability to utilize fuel oil and had advised Southern and South Georgia that unless it is able to obtain the transportation services requested by Applicants, it will switch to fuel oil to the maximum extent possible causing a corresponding loss of throughput on Southern's and South Georgia's systems. Thus, it is stated that to the extent the transportation service proposed herein will enable P&G to obtain access to competitively priced natural gas, Southern's and South Georgia's entire systems will benefit by retaining P&G as a customer. In addition, Southern asserts that it will obtain take-or-pay credit on the gas P&G may obtain from its suppliers.

Comment date: January 5, 1987, in accordance with Standard Paragraph F at the end of this notice.

7. Southern Natural Gas Company/ South Georgia Natural Gas Company

[Docket No. CP87-100-000]

Take notice that on November 25, 1986, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, and South Georgia Natural Gas Company (South Georgia), P.O. Box 1279, Thomasville, Georgia 31729, filed as joint applicants in Docket No. CP87-100-000 and application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing Southern and South Georgia to transport gas on behalf of the City of Moultrie, Georgia (Moultrie), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern and South Georgia propose to transport natural gas for Moultrie in accordance with the terms and conditions of an October 22, 1986, transportation agreement between South Georgia (as Moultrie's agent) and Southern, and a related transportation agreement dated October 22, 1986, between South Georgia and Moultrie. Southern and South Georgia state that the agreements provide for them to transport on an interruptible basis up to 2.2 billion Btu equivalent of natural gas per day purchased by Moultrie from SNG Trading Inc. under a gas sales agreement dated July 8, 1986, subject to the receipt of all necessary governmental authorizations. It is explained that Moultrie has endeavored to assist its industrial and commercial customers (ten end-user customers are listed in the application) in obtaining the benefits of purchasing natural gas directly in the spot market and has undertaken to represent them as agent in purchasing and arranging for the transportation of such gas. It is requested that the Commission issue a limited-term certificate for a term expiring one year form the date of the Commission's order issuing the authorization.

Southern states that its transportation agreement provides for South Georgia to cause natural gas to be delivered to Southern for transportation at various existing points on Southern's contiguous pipeline system in the Main Pass and Mississippi Canyon Areas, offshore Louisiana, and St. Bernard, St. Mary and St. Martin Parishes, Louisiana. Southern states it would deliver to South Georgia in Lee County, Alabama, and equivalent quantity of natural gas less 3.25 percent of such amount which shall be deemed to have been used as compressor fuel and company-use gas (including system unaccounted-for gas losses), less any and all shrinkage, fuel or loss resulting from or consumed in the processing of gas, and less South Georgia's pro-rata share of any gas delivered for South Georgia's account which is lost or vented for any reason. South Georgia states it would redeliver to Moultrie at the City of Moultrie Meter Station Nos. 1 and 2, Colquitt County, Georgia, an equivalent quantity of natural gas less 0.5 percent of such amount for fuel use, among other things.

Southern states that South Georgia has agreed to pay Southern each month the following transportation rate:

(a) Where the aggregate of the volumes transported and delivered by Southern on any day to South Georgia under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's OCD Rate Schedule on such day to South Georgia do not exceed the daily contract demand of South Georgia, the transportation rate shall be 39.9 cents per MMBtu equivalent; and

(b) Where the aggregate of the volumes transported and redelivered by Southern on any day to South Georgia under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's OCD Rate Schedule on such day to South Georgia exceed the daily contract demand of South Georgia, the transportation rate for the excess volumes shall be 64.9 cents per MMBtu equivalent redelivered by Southern.

Additionally, Southern states it would collect from South Georgia the GRI surcharge of 1.35 cents per Mcf of gas or any such other GRI funding unit or surcharge as hereafter prescribed.

South Georgia states that Moultrie has agreed to pay South Georgia each month a transportation rate of 49.88 cents for each MMBtu equivalent of natural gas redelivered by South Georgia and to reimburse South Georgia for all transportation and fuel charges and other costs South Georgia pays Southern pursuant to the Southern agreement, including the GRI surcharge or any other GRI funding unit or surcharge as hereafter prescribed.

It is stated that the transportation arrangements would enable the end-users to diversify their natural gas supply sources and to obtain gas at competitive prices, which in turn would permit the retention of the end-users as customers on South Georgia's system. It is stated that all but two of the end-users have the installed capability to utilize fuel oil and propane, and that two of the end-users have switched to these alternate fuels for substantially all of their energy requirements. It is further stated that Moultrie has advised South Georgia that unless it is able to obtain the transportation services requested by Applicants, the remaining end-users which have alternate fuel capability will switch to fuel oil and propane to the maximum extent possible, which would cause a corresponding loss of throughput on Southern's and South Georgia's systems. Southern additionally states it would obtain take-or-pay relief for all volumes transported pursuant to the agreement.

Comment date: January 5, 1987, in accordance with Standard Paragraph F at the end of this notice.

8. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP84-441-022, Docket No. CP80-65-061, Docket No. CP82-358-002]

Take notice that on November 26, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Petitioner), P.O. Box 2511, Houston, Texas 77001, filed in Docket Nos. CP84-441-022,

CP80–65–061, and CP82–358–002 a petition to further amend the Commission's orders issued in Docket Nos. CP84–441, *et al.*, as amended, CP80–65, *et al.*, as amended and CP82–358–000, as amended, pursuant to section 7(c) of the Natural Gas Act so as to authorize firm and interruptible storage-related transportation services under Rate Schedules SST–E, SST–NE, FSST–E, FSST–NE, T–119, and T–130, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that certain of its customers receive firm storage transportation service under Petitioner's Rate Schedules SST–E SST–NE, FSST–E, and FSST–NE and interruptible storage transportation srevice under Petitioner's Rate Schedules ISST–NE, T–119, and T–130. Petitioner explains that these transportation services are related to storage services provided by Penn-York Energy Corporation, Honeoye Storage Corporation, and Consolidated Gas Transmission Corporation (Storage Contractors), and enable the customers to have gas purchased from Petitioner delivered to and transported from storage on a firm or interruptible basis, as appropriate.

Petitioner requests authorization to amend the orders in the referenced dockets, insofar as they relate to storage transportation service under Rate Schedules SST–E, SST–NE, FSST–E, FST–NE, ISST–NE, T–119, or T–130, to provide its customers with the ability to have (1) gas purchased from third-parties transported from storage upon request, and (2) 365-day utilization of the storage transportation service, subject to operating conditions on Petitioner's system.

Petitioner states that receipt points from the storage contractors and delivery points to the customers would remain unchanged, and that it does not propose to construct and operate new facilities. Petitioner also proposes to continue to charge the effective rates under Rate Schedules SST–E, SST–NE, FSST–E, FST–NE, ISST–NE, T–119, or T–130, as appropriate.

Comment date: January 5, 1987, in accordance with Standard Paragraph F at the end of this notice.

9. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP87–103–000]

Take notice that on November 26, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP87–103–000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant (1) to revise, effective April 1, 1987, the natural gas storage service under Applicant's Rate Schedules SS–E and SS–NE to permit each affected customer to use up to one-third of its total authorized winter storage quantity for gas not purchased from Applicant, and (2) to modify the monthly billing provisions of Applicant's current SE–E and SS–NE Contracted Demand (CD) Rate Schedules in order to provide for the storage service for third-party gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that the existing authorization limits storage service to quantities of gas purchased from Applicant. In order to provide each of the affected customers with more flexibility in utilizing its current authorized storage capability, Applicant requests authorization to revise, effective April 1, 1987, the natural gas storage service provided under Rate Schedules SS–E and SS–NE to give certain customers the option to use up to one-third of their total authorized winter storage quantity for gas not purchased from Applicant.

Applicant alleges that the proposed revision would have no effect on the total daily storage quantity or the total winter storage quantity authorized under Rate Schedules SS–E and SS–NE. Applicant avers that there would be no additions or deletions of receipt and delivery points associated with those services.

Applicant proposes to revise the billing provisions of Rate Schedules CD, SS–E and SS–NE when it receives authorization to provide the requested storage service for third-party gas. Accordingly, Applicant states that Rate Schedules CD, SS–E and SS–NE would be revised to provide that the effected customers would pay Applicant, at the time gas purchased from Applicant is injected into storage, the commodity and gas charges applicable to each customer's purchases under its contracted demand gas sales agreement with Applicant. Applicant further states that the revised Rate Schedule SS–E and SS–NE would provide for a one-time inventory charge to the customers on April 1, 1987, so that, when the authorization to provide storage service for third-party gas becomes effective, the customers would own all the gas in storage.

Comment date: January 5, 1987, in accordance with Standard Paragraph F at the end of this notice.

10. Texas Gas Transmission Corporation

Docket No. CP86–143–005

Take notice that on November 26, 1986, Texas Gas Transmission Corporation (Petitioner), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP86–143–005 a petition to amend the Commission's order issued February 14, 1986, 34 FERC ¶ 61,203, pursuant to section 7(c) of the Natural Gas Act so as to extend the term of transportation service authorized for the full period requested in the original application, all as more fully set fort in the petition to amend which is on file with the Commission and open to ublic inspection.

Petitioner states that by the order issued February 14, 1986, Petitioner received authorization to transport gas on an interruptible basis for 52 end-user customers for a period of one year. Petitioner states that it now seeks authority to extend the term of service authorized to be consistent with the requested term in the original application in this docket.

Petitioner states that one customer, Olin Corporation, claims that due to economic conditions, any interruption in transportation threatens the continued operation of Olin's Doe Run, Kentucky, plant and could possibly result in a total plant shutdown.

Comment date: January 5, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

11. Transcontinental Gas Pipe Line Corporation

[Docket No. CP87–102–000]

Take notice that on November 25, 1986, Transcontinental Gas Pipe Line Corporation (Applicant), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP87–102–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain offshore production facilities, all as more fully set fortin the application which is on file with the Commission and open for public inspection.

Specifically, Applicant proposes to abandon its South Marsh Island Block 66 "C" platform and appurtenant installations, located on its Southeast Louisiana gathering system, offshore Louisiana. Applicant states that these facilities served as a compressor platform until compression at this location was no longer necessary and to compressor units themselves were abandoned and removed, pursuant to Commission authorization issued in Docket No. CP86–539–000 on September 17, 1986.

Applicant further states that it would attempt to sell the facilities in their present location and condition, but that if a purchaser could not be located within a reasonable time, the facilities would be removed and may be brought to shore for sale, probably as scrap, or disposed of offshore as an artificial reef. Applicant avers that, in any event, it would comply with all applicable regulations of the Minerals Management Service, with regard to both the structures and the associated rights-of-way.

Comment date: January, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–28513 Filed 12–18–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF86–613–001]

Decker Energy International, Inc.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

December 16, 1986.

On December 1, 1986, Decker Energy International, Inc. (Applicant), of 1099 W. Morse Blvd., Winter Park, Florida 32789, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle cogeneration facility will be located in the Kern River Valley oil field near Bakersfield, California. The combined cycle facility will consist of a combustion turbine generator, a heat recovery steam generator and a partial extraction steam turbine generator. The steam recovered from the facility will be used for enhanced oil recovery. The electric power production capacity of the facility will be 28,130 kW. The primary energy source will be natural gas. The facility is scheduled for startup in the third quarter of 1988.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commissions rules of practice and procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–28514 Filed 12–18–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF87–113–000]

Hospital Energy Corp.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

December 18, 1986.

On December 1, 1986, Hospital Energy Corporation (Applicant), of 255 Main Street, 5th Floor, Hartford, Connecticut 06106 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Hartford, Connecticut. The facility will consist of two (2) reciprocating engine generators and one (1) waste heat recovery steam generator. Thermal energy recovered by the facility in the forms of steam and hot water will be utilized by the Mount Sinai Hospital. The net electric power production capacity will be 6.1 megawatts. The primary energy source will be natural gas. Construction of the facility is expected to begin on January 1, 1987.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kennneth F. Plumb,

Secretary.

[FR Doc. 86–28515 Filed 12–18–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA87–3–20–000,001]

Algonquin Gas Transmission Co.; Re Notice of Proposed Changes in FERC Gas Tariff

December 16, 1986.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on November 24, 1986, tendered

for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Eighteenth Revised Sheet No. 201
Eighteenth Revised Sheet No. 203
Twelfth Revised Sheet No. 204
Ninth Revised Sheet No. 205
Fifth Revised Sheet No. 324
Third Revised Sheet No. 388

Algonquin Gas states that the purpose of this filing is to include in its rates the Gas Research Institute ("GRI") surcharge as authorized by Opinion No. 252 for GRI funding of $0.0152 per Mcf, adjusted to $0.0147 per MMBtu, to reflect Algonquin Gas' Btu billing basis.

Algonquin Gas proposes that the effective date of the above-mentioned tariff sheets be January 1, 1987, as authorized by Opinion No. 252.

Algonquin Gas requests that the Commission accept the above-mentioned tariff sheets to become effective as proposed.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 23, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-28516 Filed 12-18-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP87-123-000

Northwest Pipeline Corp.; Application

December 16, 1986.

Take notice that on December 11, 1986, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP87-123-000, an application pursuant to section 7(c) of the Natural Gas Act requesting a permanent certificate of public convenience and necessity authorizing the construction and operation of a sales meter station and the sale of up to 2 billion Btu equivalent of gas per day, on a best efforts basis, to Exxon Company, U.S.A. (Exxon), and a temporary certificate authorizing the same, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Northwest and Exxon, by a gas sales agreement dated August 1, 1986 (Agreement), provided for the establishment of a sales delivery point near Walker Hollow, Uintah County, Utah. Northwest states that Exxon informed it that the gas would be used for line heating requirements in its oil field operations in the Walker Hollow area. The term of the Agreement is set at five years with year to year extensions therefter until cancelled by either party.

The specific facilities which Northwest seeks to construct and operate consist of a four-inch meter run and a metering and regulating station with appurtenances. Exxon is expected to install any additional facilities needed to effect the delivery of the volumes to its oil field operations. It is stated that Exxon has agreed to reimburse Northwest for all costs incurred in constructing the proposed meter station, estimated to be approximately $116,900.

Northwest states that for all volumes of natural gas delivered under the Agreement, it would charge Exxon a rate equivalent to its Rate Schedule DS-1 sales rate, exclusive of any special surcharges, plus the GRI charge. It is stated that such rate is currently 25.116 cents per therm. Finally, Northwest states that its PGA procedure ensures that non-jurisdictional sales related gas costs would not adversely impact the gas costs for its jurisdictional customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 30, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules and practice and procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by section 7 and 15 of the National Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northwest to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-28517 Filed 12-18-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-29-007]

Odeco Oil & Gas Co., Application

December 15, 1986.

Take notice that on December 3, 1986, Odeco Oil & Gas Company (Odeco), of P.O. Box 61780, New Orleans, Louisiana 70161, filed an application for amendment and extension of its certificate of public convenience and necessity to permit continuation of existing sales and allow blanket sales authority after March 31, 1987.

By order issued January 2, 1985 in Docket No. CI85-29-006 the Commission granted Odeco a certificate to implement an SMP and limited-term partial abandonment of existing sales under the Natural Gas Act. Such grant was to expire no later than October 31, 1985. Any sales made pursuant to Odeco's SMP certificate were subject to the conditions specified in Tenneco Oil Co., *et al.*, Docket Nos. CI83-269-000, *et al.* By subsequent orders issued the Commission extended the limited-term abandonments and Certificates of Public Convenience and Necessity through the period ending March 31, 1986 and again. in dockets issued March 28, 1986 the Commission extended the expiration date to March 31, 1987. Odeco states that it is currently making sales pursuant to the authority granted and that it must be in position to be able to make such sales after March 31, 1987 as it could be faced with large volumes of gas shut-in due to expiration of its limited certificate and abandonment authority. Odeco does not believe that the Commission's proposed rules issued in Docket RM85-1 will provide the necessary authority to continue existing sales or permit new sales from its reserves. Odeco states that loss of such authority could be detrimental not only to Odeco, but to the markets currently being served as well as those pipelines providing transportation service. Accordingly, Odeco is requesting extension of its certificate and associated limited-term abandonment authority to March 31, 1988.

Odeco requests continued permission to make sales to any willing purchaser and in light of the current Commission policy, requests permission to make sales from any NGPA category (i.e., sections 102, 104, 106, 108 and 109) as granted to others such as Transcontinental Gas Pipe Line Corporation and Transco Gas Supply Company by Order issued September 29, 1986 in Docket Nos. CI86-278-000 and CI86-296-000.

Any person desiring to be heard or to make any protest with reference to said application should, on or before December 29, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 365.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedures herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-28578 Filed 12-18-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST87-1-000 et al.]

ONG Transmission Co. et al.; Self-Implementing Transactions

December 15, 1986.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations, and sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA).[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's Regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's Regulations and section 311(a)(2) of the NGPA. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and the expiration date of the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a petition to intervene with the Secretary of the Commission.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's Regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G-S" indicates transportation by an interstate pipeline company on behalf of any shipper pursuant to a § 284.223 and a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G[LT]" or "G[LS]" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "G[HT]" or "G[HS]" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

Any person desiring to be heard or to make any protest with reference to a transaction reflected in this notice should on or before December 29, 1986, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date[2]	Transportation rate (¢/MMB tu)
87-0001	ONG Transmission Co	Natural Gas Pipeline Co of America	10-01-86	C	02-28-87	10.00
87-0002	ONG Transmission Co	Northern Natural Gas Co	10-01-86	C	02-28-87	10.00
87-0003	Arkla Energy Resources	Brooklyn Union Gas Co	10-01-86	B		
87-0004	Colorado Interstate Gas Co	Quivira Gas Co	10-01-86	B		
87-0005	Lawrenceburg Gas Transmission Corp	Lawrenceburg Gas Co	10-01-86	B		
87-0006	Enogex, Inc		10-01-86	C	02-28-87	30.45
87-0007	Panhandle Eastern Pipe Line Co	Indiana Gas Co	10-01-86	G		
87-0008	Trunkline Gas Co	Columbia Gas of Ky, Inc., et al	10-01-86	G		
87-0009	Arkla Energy Resources	Public Service Electric and Gas Co	10-01-86	B		
87-0010	Arkla Energy Resources	Memphis Light, Gas and Water Division	10-01-86	B		

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's Regulations.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMB tu)
87-0011	Arkla Energy Resources	Mississippi Valley Gas Co	10-01-86	B		
87-0012	Arkla Energy Resources	Niagara Mohawk Power Corp	10-01-86	B		
87-0013	United Gas Pipe Line Co	Consumers Power Co	10-02-86	B		
87-0014	Delhi Gas Pipline Corp	Natural Gas Pipeline Co of America	10-02-86	C	03-01-87	54.70
87-0015	Delhi Gas Pipeline Corp	Natural Gas Pipeline Co. of America	10-02-86	C	03-01-87	54.70
87-0016	United Gas Pipe Line Co	Clajon Industrial Gas, Inc	10-02-86	B		
87-0017	United Gas Pipe Line Co	City of Vicksburg	10-02-86	B		
87-0018	Transcontinental Gas Pipe Line Corp	FRM, Inc	10-02-86	B		
87-0019	Transcontinental Gas Pipe Line Corp	Philadelphia Electric Co	10-02-86	B		
87-0020	Transcontinental Gas Pipe Line Corp	South Carolina Pipeline Corp	10-02-86	B		
87-0021	Transcontinental Gas Pipe Line Corp	South Carolina Pipeline Corp	10-02-86	B		
87-0022	Transcontinental Gas Pipe Line Corp	Columbia Gas Of Ky, Inc., et al	10-02-86	B		
87-0023	ONG Transmission Co	Natural Gas Pipeline Co. of America	10-02-86	C	03-01-87	10.00
87-0024	ONG Transmission Co	Natural Gas Pipeline Co. of America	10-02-86	C	03-01-87	10.00
87-0025	Transwestern Pipeline Co	Valero Transmission Co	10-02-86	B		
87-0026	Panhandle Eastern Pipe Line Co	Indiana Gas Co	10-02-86	B		
87-0027	Panhandle Eastern Pipe Line Co	Indiana Gas Co	10-02-86	B		
87-0028	United Gas Pipe Line Co	Cincinnati Gas and Electric Co	10-02-86	B		
87-0029	Delhi Gas Pipeline Corp	Natural Gas Pipeline Co. of America	10-02-86	C	03-01-87	54.70
87-0030	Panhandle Eastern Pipe Line Co	Consumer Power Co	10-02-86	B		
87-0031	Trunkline Gas Co	Consumer Power Co	10-02-86	B		
87-0032	Transcontinental Gas Pipe Line Corp	Pontchartrain Natural Gas System	10-02-86	B		
87-0033	Transcontinental Gas Pipe Line Corp	Columbia Gas of Ky, Inc., et al	10-02-86	B		
87-0034	Transcontinental Gas Pipe Line Corp	Mississippi Fuel Co	10-02-86	B		
87-0035	Transcontinental Gas Pipe Line Corp	Atlanta Gas Light Co	10-02-86	B		
87-0036	United Gas Pipe Line Co	City of Armore	10-02-86	B		
87-0037	United Gas Pipe Line Co	Consumers Power Co	10-02-86	B		
87-0038	ANR Pipeline Co	Wisconsin Natural Gas Co	10-03-86	B		
87-0039	ANR Pipeline Co	Michigan Consolidated Gas Co	10-03-86	B		
87-0040	ANR Pipeline Co	Michigan Consolidated Gas Co	10-03-86	B		
87-0041	Texas Eastern Transmission Corp	Philadelphia Electric Co	10-03-86	B		
87-0042	Texas Gas Transmission Corp	City of Ripley	10-03-86	B		
87-0043	Texas Gas Transmission Corp	Indiana Gas Co	10-03-86	B		
87-0044	Texas Gas Transmission Corp	City of Covington	10-03-86	B		
87-0045	Texas Gas Transmission Corp	City of Covington	10-03-86	B		
87-0046	Panhandle Eastern Pipe Line Co	Central Illinois Public Service Co	10-03-86	B		
87-0047	Panhandle Eastern Pipe Line Co	Central Illinois Public Service Co	10-03-86	B		
87-0048	El Paso Natural Gas Co	Gas Co. NM (Div. Public Serv. Co. NM)	10-06-86	B		
87-0049	Channel Industries Gas Co	Columbia Gas of Ohio, Inc., et al	10-06-86	C		
87-0050	Columbia Gulf Transmission Co	Piedmon Natural Gas Co	10-06-86	B		
87-0052	Panhandle Eastern Pipe Line Co	Central Illinois Public Service Co	10-06-86	B		
87-0053	Panhandle Eastern Pipe Line Co	Missouri Public Service	10-06-86	B		
87-0054	Panhandle Eastern Pipe Line Co	Consumers Power Co	10-06-86	B		
87-0055	Panhandle Eastern Pipe Line Co	Consumers Power Co	10-06-86	B		
87-0056	Panhandle Eastern Pipe Line Co	Consumer Power Co	10-06-86	B		
87-0057	Superior Offshore Pipeline Co	Victoria Gas Corp	10-06-86	B		
87-0058	ANR Pipeline Co	Michigan Consolidated Gas Co	10-06-86	B		
87-0059	Panhandle Eastern Pipe Line Co	Central Illinois Public Service Co	10-06-86	B		
87-0060	Transwestern Pipeline Co	Southern California Gas Co	10-07-86	B		
87-0061	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	10-07-86	B		
87-0062	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	10-07-86	B		
87-0063	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	10-07-86	B		
87-0064	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	10-07-86	B		
87-0065	Transok, Inc	HNG Industrial Natural Gas Co	10-07-86	C	03-06-87	21.75
87-0066	Exxon Gas System, Inc		10-08-86	C	03-07-87	05.80/05.07/26.60
87-0067	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	10-08-86	B		
87-0068	Mountain Fuel Resources, Inc	Citizens Utilities Co	10-08-86	B		
87-0069	United Gas Pipe Line Co	Texas Gas Transmission Corp	10-08-86	G		
87-0070	United Gas Pipe Line Co	Industrial Pipeline Gas Co	10-08-86	B		
87-0071	United Gas Pipe Line Co	Rochester Gas & Electric Corp	10-08-86	B		
87-0072	United Gas Pipe Line Co	Louisiana State Gas Corp	10-08-86	B		
87-0073	Transok, Inc	United Gas Pipe Line Co	10-08-86	C	03-07-87	26.25
87-0074	Ohio River Pipeline Corp	Indiana Gas Co	10-08-86	B		
87-0075	Houston Pipe Line Co	Pulaski Natural Gas Dept., et al	10-08-86	C		
87-0076	Ohio River Pipeline Corp	Indiana Gas Co	10-08-86	B		
87-0077	Natural Gas Pipeline Co. of America	Illinois Power Co	10-09-86	B		
87-0078	Panhandle Eastern Pipe Line Co	Indiana Gas Co	10-09-86	B		
87-0079	United Gas Pipe Line Co	National Distribution Co	10-09-86	B		
87-0080	United Gas Pipe Line Co	Philadelphia Electric Co	10-09-86	B		
87-0081	United Gas Pipe Line Co	Louisville Gas & Electric Co	10-09-86	B		
87-0082	United Gas Pipe Line Co	Philadelphia Gas Works	10-09-86	B		
87-0083	United Gas Pipe Line Co	South Carolina Pipeline Corp	10-09-86	B		
87-0084	United Gas Pipe Line Co	Philadelphia Electric Co	10-09-86	B		
87-0085	Consolidated Gas Transmission Corp	North Penn Gas Co	10-09-86	B		
87-0086	Consolidated Gas Transmission Corp	Rochester Gas & Electric Corp	10-09-86	B		
87-0087	Consolidated Gas Transmission Corp	Peoples Natural Gas Co	10-09-86	B		
87-0088	Consolidated Gas Transmission Corp	Peoples Natural Gas Co	10-09-86	B		
87-0089	Consolidated Gas Transmission Corp	North Penn Gas Co	10-09-86	B		
87-0090	Consolidated Gas Transmission Corp	Peoples Natural Gas Co	10-09-86	B		
87-0091	Consolidated Gas Transmission Corp	River Gas Co	10-09-86	B		
87-0092	Consolidated Gas Transmission Corp	Hope Gas, Inc	10-09-86	B		
87-0093	Superior Offshore Pipeline Co	Citizens Resources	10-09-86	B		
87-0094	Columbia Gulf Transmission Co	Natural Gas Pipeline Co. of America	10-09-86	G		
87-0095	El Paso Natural Gas Co	El Paso Hydrocarbons Co	10-09-86	B		
87-0096	Consolidated Gas Transmission Corp	Hope Gas, Inc	10-09-86	B		
87-0097	Consolidated Gas Transmission Corp	Hope Gas, Inc	10-09-86	B		
87-0098	Consolidated Gas Transmission Corp	Hope Gas, Inc	10-09-86	B		
87-0099	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	10-09-86	B		
87-0100	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	10-09-86	B		
87-0101	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	10-09-86	B		
87-0102	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	10-09-86	B		
87-0103	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	10-09-86	B		
87-0104	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	10-09-86	B		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMB tu)
87-0105	Consolidated Gas Transmission Corp	Rochester Gas & Electric Corp	10-09-86	B		
87-0106	United Gas Pipe Line Co	J-W Gathering Co	10-10-86	B		
87-0107	United Gas Pipe Line Co	Bayou Industrial Gas Corp	10-10-86	B		
87-0108	El Paso Natural Gas Co	El Paso Hydrocarbons Co	10-10-86	B		
87-0109	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	10-10-86	B		
87-0110	ANR Pipeline Co	Michigan Consolidated Gas Co	10-10-86	B		
87-0111	Transok, Inc	Natural Gas Pipeline Co. of America	10-14-86	C	03-13-87	26.25
87-0112	Delhi Gas Pipeline Corp	Louisiana Industrial Gas Supply System	10-14-86	C	03-13-87	54.70
87-0113	Delhi Gas Pipeline Corp	Natural Gas Pipeline Co. of America	10-14-86	C	03-13-87	54.70
87-0114	Transcontinental Gas Pipe Line Corp	Public Service Co. of N. Carolina	10-14-86	B		
87-0115	Transcontinental Gas Pipe Line Corp	Consolidated Edison Co. of NY, Inc	10-14-86	B		
87-0116	Transcontinental Gas Pipe Line Corp	Frederick Gas Co	10-14-86	B		
87-0117	Transcontinental Gas Pipe Line Corp	Indiana Gas Co	10-14-86	B		
87-0118	Channel Industries Gas Co	Columbia Gas Transmission Corp	10-14-86	C		
87-0119	Arkla Energy Resources	Shreveport Intrastate Gas Trans., Inc	10-14-86	B		
87-0120	Arkla Energy Resources	Elizabethtown Gas Co	10-14-86	B		
87-0121	Delhi Gas Pipeline Corp	Columbia Gas Transmission Corp	10-14-86	C		
87-0122	Delhi Gas Pipeline Corp	Natural Gas Pipeline Co. of America	10-14-86	C	03-13-87	54.70
87-0123	Panhandle Eastern Pipe Line Co	Cimarron River-Quinque System	10-14-86	B		
87-0124	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	10-14-86	B		
87-0125	Panhandle Eastern Pipe Line Co	Village of Morton	10-14-86	B		
87-0126	Panhandle Eastern Pipe Line Co	Battle Creek Gas Co	10-14-86	B		
87-0127	Panhandle Eastern Pipe Line Co	Consumers Power Co	10-14-86	B		
87-0128	Trunkline Gas Co	Consumers Power Co	10-14-86	B		
87-0129	Panhandle Eastern Pipe Line Co	Illinois Power Co	10-14-86	B		
87-0130	Panhandle Eastern Pipe Line Co	Consumers Power Co	10-14-86	B		
87-0131	Panhandle Eastern Pipe Line Co	Cimarron River-Quinque System	10-14-86	B		
87-0132	Panhandle Eastern Pipe Line Co	Cimarron River-Quinque System	10-14-86	B		
87-0133	Panhandle Eastern Pipe Line Co	Northern Indiana Fuel & Light Co	10-14-86	B		
87-0134	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	10-14-86	B		
87-0135	Panhandle Eastern Pipe Line Co	Consumers Power Co	10-14-86	B		
87-0136	ANR Pipeline Co	Michigan Power Co	10-14-86	B		
87-0137	Colorado Interstate Gas Co	Greeley Gas Co	10-14-86	B		
87-0138	Colorado Interstate Gas Co	MGTC, Inc	10-14-86	B		
87-0139	Arkla Energy Resources	Arkansas Louisiana Gas Co	10-14-86	B		
87-0140	Texas Gas Transmission Corp	Indiana Gas Co	10-15-86	B		
87-0141	Texas Gas Transmission Corp	Quivira Gas Co	10-15-86	B		
87-0142	Texas Gas Transmission Corp	Central Hudson Gas and Electric Co	10-15-86	B		
87-0143	Texas Gas Transmission Corp	Indiana Gas Co	10-15-86	B		
87-0144	ONG Transmission Co	Panhandle Eastern Pipe Line Co	10-15-86	C	03-14-87	10.00
87-0145	ONG Transmission Co	Minnegasco, Inc	10-15-86	C	03-14-87	10.00
87-0146	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	10-15-86	B		
87-0147	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	10-15-86	B		
87-0148	Natural Gas Pipeline Co. of America	Transamerican Gas Transmission Corp	10-16-86	B		
87-0149	Natural Gas Pipeline Co. of America	Illinois Power Co	10-06-86	B		
87-0150	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	10-16-86	B		
87-0151	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	10-16-86	B		
87-0152	Natural Gas Pipeline Co. of America	Transamerican Gas Transmission Corp	10-16-86	B		
87-0153	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	10-16-86	B		
87-0154	Consolidated Gas Transmission Corp	Rochester Gas & Electric Corp	10-17-86	B		
87-0155	Consolidated Gas Transmission Corp	Dayton Power and Light Co	10-17-86	B		
87-0156	Consolidated Gas Transmission Corp	New Jersey Natural Gas Co	10-17-86	B		
87-0157	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	10-17-86	B		
87-0158	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	10-17-86	B		
87-0159	Panhandle Eastern Pipe Line Co	Consumers Power Co	10-20-86	B		
87-0160	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	10-20-86	B		
87-0161	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	10-20-86	B		
87-0162	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	10-20-86	B		
87-0163	ONG Transmission Co	ANR Pipeline Co	10-20-86	C	03-19-87	10.00
87-0164	El Paso Natural Gas Co	Endevco Pipeline Co	10-20-86	B		
87-0165	El Paso Natural Gas Co	Petrofina Gas Pipeline Co	10-20-86	B		
87-0166	Natural Gas Pipeline Co. of America	Wisconsin Southern Gas Co., Inc	10-20-86	B		
87-0167	El Paso Natural Gas Co	Pacific Gas and Electric Co	10-20-86	B		
87-0168	United Gas Pipe Line Co	Niagara Mohawk Power Corp	10-21-86	B		
87-0169	United Gas Pipe Line Co	Atlanta Gas Light Co	10-21-86	B		
87-0170	United Gas Pipe Line Co	South Carolina Pipeline Corp	10-21-86	B		
87-0171	United Gas Pipe Line Co	Texas Industrial Energy Co	10-21-86	B		
87-0172	United Gas Pipe Line Co	National Gas and Oil Corp	10-21-86	B		
87-0173	United Gas Pipe Line Co	Arkla Energy Resources, (La Intra. Seg.)	10-21-86	B		
87-0174	United Gas Pipe Line Co	East Ohio Gas Co	10-21-86	B		
87-0175	United Gas Pipe Line Co	Transamerican Natural Gas Transmission	10-21-86	B		
87-0176	United Gas Pipe Line Co	Rochester Gas & Electric Corp	10-21-86	B		
87-0177	United Gas Pipe Line Co	Union Gas Co	10-21-86	B		
87-0178	United Gas Pipe Line Co	Alabama Gas Corp	10-21-86	B		
87-0179	Transcontinental Gas Pipe Line Corp	Long Island Lighting Co	10-21-86	B		
87-0180	Transcontinental Gas Pipe Line Corp	Tejas Gas Corp	10-21-86	B		
87-0181	Transcontinental Gas Pipe Line Corp	North Carolina Natural Gas Corp	10-21-86	B		
87-0182	United Gas Pipe Line Co	Clajon Industrial Gas, Inc	10-21-86	B		
87-0183	United Gas Pipe Line Co	Louisville Gas & Electric Co	10-21-86	B		
87-0184	United Gas Pipe Line Co	South Carolina Pipeline Corp	10-21-86	B		
87-0185	United Gas Pipe Line Co	ONG Transmission Co	10-21-86	B		
87-0186	United Gas Pipe Line Co	Sarvic Gas Co	10-21-86	B		
87-0187	United Gas Pipe Line Co	Victoria Gas Corp	10-21-86	B		
87-0188	Natural Gas Pipeline Co. of America	Iowa-Illinois Gas & Electric Co	10-21-86	B		
87-0189	Transcontinental Gas Pipe Line Corp	Wisconsin Gas Co	10-21-86	B		
87-0190	Transcontinental Gas Pipe Line Corp	City of Richmond	10-21-86	B		
87-0191	Transcontinental Gas Pipe Line Corp	Town of Liberty	10-21-86	B		
87-0192	Transcontinental Gas Pipe Line Corp	Long Island Lighting Co	10-21-86	B		
87-0193	Transcontinental Gas Pipe Line Corp	Consolidated Edison Co. of NY, Inc	10-21-86	B		
87-0194	Transcontinental Gas Pipe Line Corp	South Jersey Gas Co	10-21-86	B		
87-0195	Transcontinental Gas Pipe Line Corp	Elizabethtown Gas Co	10-21-86	B		
87-0196	Transcontinental Gas Pipe Line Corp	Pennsylvania Gas and Water Co	10-21-86	B		
87-0197	Transcontinental Gas Pipe Line Corp	Piedmont Natural Gas Co	10-21-86	B		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMB tu)
87-0196	Transcontinental Gas Pipe Line Corp.	Elizabethtown Gas Co.	10-21-86	B		
87-0199	Transcontinental Gas Pipe Line Corp.	Atlanta Gas Light Co.	10-22-86	B		
87-0200	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co.	10-22-86	B		
87-0201	Panhandle Eastern Pipe Line Co.	Indiana Gas Co.	10-22-86	B		
87-0202	United Gas Pipe Line Co.	Consolidated Edison Co. of NY, Inc.	10-22-86	B		
87-0203	United Gas Pipe Line Co.	Brooklyn Union Gas Co.	10-22-86	B		
87-0204	Texas Eastern Transmission Corp.	Western Kentucky Gas Co.	10-22-86	B		
87-0205	Texas Eastern Transmission Corp.	Commonwealth Gas Services	10-22-86	B		
87-0206	Texas Eastern Transmission Corp.	Consumers Power Co.	10-22-86	B		
87-0207	Texas Eastern Transmission Corp.	UGI Corp.	10-22-86	B		
87-0208	Texas Eastern Transmission Corp.	Elizabethtown Gas Co.	10-22-86	B		
87-0209	Texas Eastern Transmission Corp.	Philadelphia Electric Co.	10-22-86	B		
87-0210	Texas Eastern Transmission Corp.	Dayton Power and Light Co.	10-22-86	B		
87-0211	Texas Eastern Transmission Corp.	Elizabethtown Gas Co.	10-22-86	B		
87-0212	Texas Eastern Transmission Corp.	Union Gas Co.	10-22-86	B		
87-0213	Texas Eastern Transmission Corp.	Connecticut Natural Gas Corp.	10-22-86	B		
87-0214	Texas Eastern Transmission Corp.	Bayou Industrial Gas Corp.	10-22-86	B		
87-0215	Texas Eastern Transmission Corp.	United Cities Gas Co.	10-22-86	B		
87-0216	Texas Eastern Transmission Corp.	City of Jasper	10-22-86	B		
87-0217	United Gas Pipe Line Co.	Delmarva Power and Light Co.	10-22-86	B		
87-0218	United Gas Pipe Line Co.	Suburban Fuel Gas Corp.	10-22-86	B		
87-0219	Natural Gas Pipeline Co. of America	Llano, Inc.	10-23-86	B		
87-0220	United Gas Pipe Line Co.	Rochester Gas and Electric Corp.	10-23-86	B		
87-0221	United Gas Pipe Line Co.	City of Citronelle	10-23-86	B		
87-0222	United Gas Pipe Line Co.	Philadelphia Electric Co.	10-23-86	B		
87-0223	United Gas Pipe Line Co.	Memphis Light, Gas and Water Division	10-23-86	B		
87-0224	United Gas Pipe Line Co.	Western Kentucky Gas Co.	10-23-86	B		
87-0225	Oasis Pipe Line Co.	Llano, Inc.	10-23-86	C		
87-0226	Oasis Pipe Line Co.	Pacific Gas and Electric Co.	10-23-86	C		
87-0227	United Gas Pipe Line Co.	South Carolina Pipeline Corp.	10-23-86	B		
87-0228	United Gas Pipe Line Co.	City of Brownsville—Utility Dept.	10-23-86	B		
87-0229	United Gas Pipe Line Co.	Public Service of North Carolina	10-23-86	B		
87-0230	United Gas Pipe Line Co.	South Carolina Pipeline Corp.	10-23-86	B		
87-0231	Texas Eastern Transmission Corp.	Washington Gas Light Co.	10-24-86	B		
87-0232	Texas Eastern Transmission Corp.	Ugi Corp.	10-24-86	B		
87-0233	Texas Eastern Transmission Corp.	Citizens Gas and Coke Utility	10-24-86	B		
87-0234	ANR Pipeline Co.	Wisconsin Fuel and Light Co.	10-24-86	B		
87-0235	ANR Pipeline Co.	Michigan Consolidated Gas Co.	10-24-86	B		
87-0236	Transcontinental Gas Pipe Line Corp.	Southern Indiana Gas and Electric Co.	10-24-86	B		
87-0237	Transcontinental Gas Pipe Line Corp.	Corpus Christi Industrial Pipeline Co.	10-24-86	B		
87-0238	Transcontinental Gas Pipe Line Corp.	Consolidated Edison Co. of NY, Inc.	10-24-86	B		
87-0239	Transcontinental Gas Pipe Line Corp.	Southern Indiana Gas and Electric Co.	10-24-86	B		
87-0240	Transcontinental Gas Pipe Line Corp.	Corpus Christi Industrial Pipeline Co.	10-24-86	B		
87-0241	Transcontinental Gas Pipe Line Corp.	Niagara Mohawk Power Corp., et al.	10-24-86	B		
87-0242	Transcontinental Gas Pipe Line Corp.	Atlanta Gas Light Co.	10-24-86	B		
87-0243	ANR Pipeline Co.	Michigan Consolidated Gas Co.	10-24-86	B		
87-0244	ANR Pipeline Co.	Michigan Consolidated Gas Co.	10-24-86	B		
87-0245	ANR Pipeline Co.	Michigan Consolidated Gas Co.	10-24-86	B		
87-0246	ANR Pipeline Co.	Michigan Consolidated Gas Co.	10-24-86	B		
87-0247	Natural Gas Pipeline Co. of America	Nebraska City	10-24-86	B		
87-0248	Transok, Inc.	United Gas Pipe Line Co.	10-24-86	C	03-23-87	21.75
87-0249	Superior Offshore Pipeline Co.	Brooks Perkins Co., et al.	10-24-86	G-EU		
87-0250	ONG Transmission Co.	Northern Natural Gas Co.	10-24-86	C	03-23-87	10.00
87-0251	ONG Transmission Co.	Natural Gas Pipeline Co. of America	10-24-86	C	03-23-87	10.00
87-0252	Natural Gas Pipeline Co. of America	Peoples Gas Light and Coke Co.	10-27-86	B		
87-0253	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co.	10-27-86	B		
87-0254	Panhandle Gas Co.	Pulaski Natural Gas Dept.	10-27-86	D		
87-0255	Panhandle Gas Co.	City of Long Beach	10-27-86	D		
87-0256	Houston Pipe Line Co.	Natural Gas Pipeline Co. of America	10-27-86	C		
87-0257	Panhandle Eastern Pipe Line Co.	Yankee Pipeline Co.	10-27-86	B		
87-0258	Consolidated Gas Transmission Corp.	East Ohio Gas Co.	10-27-86	B		
87-0259	Panhandle Eastern Pipe Line Co.	Illinois Power Co.	10-27-86	B		
87-0260	Texas Gas Transmission Corp.	Western Kentucky Gas Co.	10-27-86	B		
87-0261	Texas Gas Transmission Corp.	Rochester Gas and Electric Corp.	10-27-86	B		
87-0262	Texas Gas Transmission Corp.	City of Union	10-27-86	B		
87-0263	Texas Gas Transmission Corp.	Central Illinois Public Service Co.	10-27-86	B		
87-0264	Texas Gas Transmission Corp.	City of Elizabethtown	10-27-86	B		
87-0265	Texas Gas Transmission Corp.	Indiana Gas Co.	10-27-86	B		
87-0266	Texas Gas Transmission Corp.	Western Kentucky Gas Co.	10-27-86	B		
87-0267	Texas Gas Transmission Corp.	City of Brownsville—Utility Dept.	10-27-86	B		
87-0268	Texas Gas Transmission Corp.	Louisville Gas and Electric Co.	10-27-86	B		
87-0269	Texas Gas Transmission Corp.	Louisville Gas and Electric Co.	10-27-86	B		
87-0270	Texas Gas Transmission Corp.	City of Bells	10-27-86	B		
87-0271	Texas Gas Transmission Corp.	Indiana Gas Co.	10-27-86	B		
87-0272	Texas Gas Transmission Corp.	Indiana Gas Co.	10-27-86	B		
87-0273	Transcontinental Gas Pipe Line Corp.	Pontchartrain Natural Gas System	10-28-86	B		
87-0274	Transcontinental Gas Pipe Line Corp.	Iowa Electric Co., et al.	10-28-86	B		
87-0275	Transcontinental Gas Pipe Line Corp.	Iowa Electric Co., et al.	10-28-86	B		
87-0276	Transcontinental Gas Pipe Line Corp.	Iowa Electric Co., et al.	10-28-86	B		
87-0277	Colorado Interstate Gas Co.	Ohio Gas Co.	10-28-86	B		
87-0278	United Gas Pipe Line Co.	Caddo Natural Gas Co.	10-28-86	B		
87-0279	United Gas Pipe Line Co.	Endevco Industrial Gas Sale Co.	10-28-86	B		
87-0280	United Gas Pipe Line Co.	Dow Interstate Gas Co.	10-28-86	B		
87-0281	Sea Robin Pipeline Co.	Eastex Gas Transmission	10-28-86	B		
87-0282	United Gas Pipe Line Co.	IMC Pipeline Co.	10-28-86	B		
87-0283	United Gas Pipe Line Co.	Bridgeline Gas Distribution Co.	10-28-86	B		
87-0284	Consolidated Gas Transmission Corp.	Peoples Natural Gas Co.	10-28-86	B		
87-0285	Consolidated Gas Transmission Corp.	Niagara Mohawk Power Corp.	10-28-86	B		
87-0286	Consolidated Gas Transmission Corp.	Niagara Mohawk Power Corp.	10-28-86	B		
87-0287	Consolidated Gas Transmission Corp.	Niagara Mohawk Power Corp.	10-28-86	B		
87-0288	Consolidated Gas Transmission Corp.	Hope Gas, Inc.	10-28-86	B		
87-0289	Consolidated Gas Transmission Corp.	Peoples Natural Gas Co.	10-28-86	B		
87-0290	Consolidated Gas Transmission Corp.	Rochester Gas and Electric Corp.	10-28-86	B		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMB tu)
87-0291	Consolidated Gas Transmission Corp.	Rochester Gas and Electric Corp.	10-28-86	B		
87-0292	Consolidated Gas Transmission Corp.	Rochester Gas and Electric Corp.	10-28-86	B		
87-0293	Consolidated Gas Transmission Corp.	Peoples Natural Gas Co.	10-28-86	B		
87-0294	Consolidated Gas Transmission Corp.	Peoples Natural Gas Co.	10-28-86	B		
87-0295	Consolidated Gas Transmission Corp.	Peoples Natural Gas Co.	10-28-86	B		
87-0296	Consolidated Gas Transmission Corp.	Peoples Natural Gas Co.	10-28-86	B		
87-0297	Consolidated Gas Transmission Corp.	Niagara Mohawk Power Corp.	10-28-86	B		
87-0298	Consolidated Gas Transmission Corp.	Peoples Natural Gas Co.	10-28-86	B		
87-0299	Consolidated Gas Transmission Corp.	East Ohio Gas Co.	10-28-86	B		
87-0300	Consolidated Gas Transmission Corp.	East Ohio Gas Co.	10-28-86	B		
87-0301	Consolidated Gas Transmission Corp.	Peoples Natural Gas Co.	10-28-86	B		
87-0302	Consolidated Gas Transmission Corp.	Rochester Gas and Electric Corp.	10-28-86	B		
87-0303	Consolidated Gas Transmission Corp.	Rochester Gas and Electric Corp.	10-28-86	B		
87-0304	Consolidated Gas Transmission Corp.	Rochester Gas and Electric Corp.	10-28-86	B		
87-0305	Consolidated Gas Transmission Corp.	Rochester Gas and Electric Corp.	10-28-86	B		
87-0306	Consolidated Gas Transmission Corp.	Rochester Gas and Electric Corp.	10-28-86	B		
87-0307	Consolidated Gas Transmission Corp.	Rochester Gas and Electric Corp.	10-28-86	B		
87-0308	Consolidated Gas Transmission Corp.	Hope Gas, Inc.	10-28-86	B		
87-0309	Ong Transmission Co.	Natural Gas Pipeline Co. of America	10-29-86	C	03-28-87	10.00
87-0310	Sng Intrastate, Inc.	Various Local Distribution Cos.	10-29-86	C	03-28-87	49.50
87-0311	Colorado Interstate Gas Co.	Coastal States Gas Transmission Co.	10-29-86	B		
87-0312	Colorado Interstate Gas Co.	Missouri Public Service	10-29-86	B		
87-0313	United Gas Pipe Line Co.	Dow Intrastate Gas Co.	10-29-86	B		
87-0314	United Gas Pipe Line Co.	Clajon Transportation, Inc.	10-29-86	B		
87-0315	United Gas Pipe Line Co.	Imc Pipeline Co.	10-29-86	B		
87-0316	Texas Eastern Transmission Corp.	Philadelphia Electric Co.	10-29-86	B		
87-0317	Texas Eastern Transmission Corp.	Union Gas Co.	10-29-86	B		
87-0318	Texas Eastern Transmission Corp.	Lawrenceburg Gas Co.	10-29-86	B		
87-0319	Texas Eastern Transmission Corp.	Philadelphia Electric Co.	10-29-86	B		
87-0320	Natural Gas Pipeline Co. of America	United Texas Transmission Co.	10-29-86	B		
87-0321	Texas Eastern Transmission Corp.	Ugi Corp.	10-29-86	B		
87-0322	Valero Transmission Co.	Natural Gas Pipeline Co of America	10-30-86	C		
87-0323	Valero Transmission Co.	Transwestern Pipeline Co.	10-30-86	C		
87-0324	Oasis Pipe Line Co.	San Diego Gas and Electric Co.	10-30-86	C		
87-0325	Houston Pipe Line Co.	Consolidated Edison Co. of NY, Inc.	10-30-86	C		
87-0326	Houston Pipe Line Co.	Connecticut Natural Gas Corp.	10-30-86	C		
87-0327	El Paso Natural Gas Co.	Pacific Gas and Electric Co.	10-30-86	B		
87-0328	El Paso Natural Gas Co.	Pacific Gas and Electric Co.	10-30-86	B		
87-0329	El Paso Natural Gas Co.	Pacific Gas and Electric Co.	10-30-86	B		
87-0330	Consolidated Gas Transmission Corp.	Hope Gas, Inc.	10-30-86	B		
87-0331	Consolidated Gas Transmission Corp.	Hanley and Bird	10-30-86	B		
87-0332	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co.	10-30-86	B		
87-0333	Columbia Gulf Transmission Co.	Louisiana Intrastate Gas Corp.	10-30-86	B		
87-0334	Columbia Gulf Transmission Co.	Natural Gas Pipeline Co. of America	10-30-86	G		
87-0335	Northern Natural Gas Co.	Minnegasco, Inc.	10-30-86	B		
87-0336	Northern Natural Gas Co.	Minnegasco, Inc.	10-30-86	B		
87-0337	Northern Natural Gas Co.	Northern States Power Co.	10-30-86	B		
87-0338	Northern Natural Gas Co.	Norterhn States Power Co.	10-30-86	B		
87-0339	Northern Natural Gas Co.	Peoples Natural Gas Co.	10-30-86	B		
87-0340	Northern Natural Gas Co.	Northern Illinois Gas Co.	10-30-86	B		
87-0341	Northern Natural Gas Co.	Metropolitan Utils. Dist. of Omaha	10-30-86	B		
87-0342	Kentucky West Virginia Gas Co.	Baltimore Gas and Electric Co.	10-31-86	B		
87-0343	Natural Gas Pipeline Co. of America	Iowa Electric Light and Power Co.	10-31-86	B		
87-0344	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co.	10-31-86	B		
ST87-0345	Natural Gas Pipeline Co. of America	Delhi Gas Pipeline Corp.	10-31-86	B		
ST87-0346	Michigan Gas Storage Co.	Consumers Power Co.	10-31-86	B		
ST87-0347	Arkla Energy Resources	Intersearch Corp.	10-31-86	B		
ST87-0348	Arkla Energy Resources	Philadelphia Electric Co.	10-31-86	B		
ST87-0349	Brooklyn Union Gas Co.	New York State Electric and Gas Corp.	10-31-86	G(HT)		
ST87-0350	Cabot Pipeline Corp.	Southern California Gas Co.	10-31-86	C	03-30-87	57.48

Below are 24 revised petitions for rate approval. They are noticed at this time to give interested parties the appropriate 150-day comment period.

ST86-0931	Producer's Gas Co.	Southern California Gas Co.	10-07-86	D	03-06-87	25.20
ST86-1013	Producer's Gas Co.	Northern Intrastate Pipeline Co.	10-07-86	D	03-06-87	25.20
ST86-1598	Delhi Gas Pipeline Corp.	Michigan Consolidated Gas Co.	10-23-86	C	03-22-87	54.70
ST86-1597	Delhi Gas Pipeline Corp.	Consumers Power Co.	10-23-86	C	03-22-87	54.70
ST86-1599	Delhi Gas Pipeline Corp.	United Gas Pipe Line Co.	10-23-86	C	03-22-87	54.31
ST86-1601	Delhi Gas Pipeline Corp.	United Gas Pipe Line Co.	10-23-86	C	03-22-87	54.31
ST86-1602	Delhi Gas Pipeline Corp.	Panhandle Eastern Pipe Line Co.	10-23-86	C	03-22-87	54.70
ST86-1603	Delhi Gas Pipeline Corp.	Mississippi River Transmission Corp.	10-23-86	C	03-22-87	54.31
ST86-1643	Delhi Gas Pipeline Corp.	United Gas Pipe Line Co.	10-23-86	C	03-22-87	54.31
ST86-1796	Producer's Gas Co.	Consolidated Edison Co. of NY, Inc.	10-07-86	D	03-06-87	25.20
ST86-1915	Producer's Gas Co.	Michigan Consolidated Gas Co.	10-07-86	D	03-06-87	25.20
ST86-1916	Producer's Gas Co.	Cincinnati Gas and Electric Co.	10-07-86	D	03-06-87	25.20
ST86-1933	Delhi Gas Pipeline Corp.	Southern California Gas Co.	10-23-86	C	03-22-87	54.31
ST86-1934	Delhi Gas Pipeline Corp.	Colorado Intrastate Gas Co.	10-07-86	C	03-06-87	54.70
ST86-1937	Delhi Gas Pipeline Corp.	Texas Eastern Transmission Corp.	10-23-86	C	03-22-87	54.31
ST86-1965	Delhi Gas Pipeline Corp.	United Gas Pipe Line Co.	10-23-86	C	03-22-87	54.31
ST86-2265	Delhi Gas Pipeline Corp.	United Gas Pipe Line Co.	10-23-86	C	03-22-87	54.31
ST86-2317	Delhi Gas Pipeline Corp.	Washington Gas Light Co.	10-23-86	C	03-22-87	54.31
ST86-2318	Delhi Gas Pipeline Corp.	Northern Natural Gas Co.	10-23-86	C	03-22-87	54.70
ST86-2319	Delhi Gas Pipeline Corp.	Citizens Gas and Coke Utility	10-23-86	C	03-22-87	46.78
ST86-2320	Delhi Gas Pipeline Corp.	Anr Pipeline Co.	10-23-86	C	03-22-87	61.17
ST86-2321	Delhi Gas Pipeline Corp.	Panhandle Eastern Pipe Line Co.	10-23-86	C	03-22-87	54.70
ST86-2323	Delhi Gas Pipeline Corp.	Mississippi River Transmission Corp.	10-23-86	C	03-22-87	54.31
ST86-2428	Producer's Gas Co.	Southern California Gas Co.	10-07-86	D	03-06-87	25.20

[1] The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's Regulations.
[2] The Intrastate Pipeline has sought Commission Approval of its transporation rate pursuant to section 284.123(B)(2) of the Commission's Regulations (18 CFR 284.123(B)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.

[FR Doc. 86-28519 Filed 12-18-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP87-33-001]

Panhandle Eastern Pipe Line Co.; Amendment to Request Under Blanket Authorization

December 16, 1986.

Take notice that on December 12, 1986, Panhandle Eastern Pipe Line Company, (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP87-33-001 an amendment to the request filed on October 22, 1986, in Docket No. CP87-33-000 pursuant to §§ 157.205 and 157.212 of the Regulations under the Natural Gas Act (18 CFR 157.205). In that filing, Panhandle gave notification of its intent to construct, own, and operate, an additional delivery point for an existing sales customer, Kansas Power and Light Company (PKL) at a new sales point known as the Tipton No. 2 delivery point.

Panhandle states in its amendment that it has installed a measuring station and appurtenant facilities to provide an emergency service to KPL at the Tipton delivery point. Panhandle now states that it seeks authority to leave those facilities in place and to utilize them for the service proposed in Docket No. CP87-33-000. Panhandle also requests waiver of the Regulations as are necessary to permit its amendment to become effective.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request of October 22, 1986, as amended on December 12, 1986. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-28520 Filed 12-18-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER87-157-000]

Southern California Edison Co.; Filing

December 16, 1986.

Take notice that on December 12, 1986, Southern California Edison Company (Edison) tendered for filing as an initial rate schedule an Agreement, which has been executed by Edison and the City of Vernon, California, which Edison designates as the Edison-Vernon CDWR—Firm Transmission Service Agreement. Under the terms and conditions of the Agreement, Edison will make available to Vernon firm transmission service for its purchases of nonintegrated capacity and energy from the California Department of Water Resources ("CDWR") to the Point of Delivery at Vernon, California.

The Agreement is proposed to become effective when executed by the Parties and accepted for filing by the Commission; (without changes unacceptable to either party) and as such, Edison requests, to the extent necessary, waiver of notice requirements so that service can commence upon acceptance of the Agreement for filing by the Commission, without change unacceptable to either party.

Copies of this filing were served upon the Public Utilities Commission of the State of California and the City of Vernon, California.

Any person desiring to be heard or to protest this application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Section 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 22, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary

[FR Doc. 86-28521 Filed 12-18-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CI87-132-000 and CI87-142-000]

Tenneco Oil Co.; Applications for Permanent Abandonment for Certain Designated Properties, Limited-Term Abandonment for Other Designated Properties, and Blanket Limited-Term Certificate With Pre-Granted Abandonment

December 15, 1986.

Take notice that on November 24, 1986, Tenneco Oil Company (Applicant), P.O. Box 2511, Houston, Texas 77001, filed applications pursuant to sections 7(b) and 7(c) of the Natural Gas Act and §§ 2.77 and 157.30 of the Commission's Regulations thereunder for authorization: (1) To permanently abandon all sales and service obligations certificated in Docket No. CI82-261-000 and to cancel its related FERC Gas Rate Schedule No. 437, to permanently abandon in part its obligations certificated in Docket No. CI70-114, and to partially cancel its Rate Schedule No. 261 to the extent it covers the sale of production from one designated well, under which certificated sales have been made; (2) to abandon for a limited term deliverability (in some cases, excess deliverability; in other cases total deliverability) covered by sales authority originally certificated by the Commission in various dockets; and (3) for a blanket limited-term certificate with pre-granted abandonment to make sales for resale in interstate commerce of any of the gas abandoned pursuant to (1) and (2) above. Applicant states that all certificated sales for which permanent and limited-term abandonments are sought have been made from 10 fields and one offshore block to United Gas Pipe Line Company. The reasons for the proposed abandonment and limited-term sales authority are more fully set forth in the applications, which are on file with the Commission and open to public inspection.

Applicant states that because of a precipitous decline in takes from United, amounting to 14 percent of deliverability in 1985 and an estimated 6 percent for 1986, it sought and obtained from United a release of these supplies in exchange for contractual modification on price, take-or-pay, and quantity terms. Applicant states the resulting agreement with United provides for a limited-term release for most of these dedicated reserves and permanent release for a minor fraction. Accordingly, Applicant seeks limited-term abandonment of most of these supplies; it also seeks permanent abandonment for one well qualifying under section 108 of the Natural Gas Policy Act of 1978 (NGPA) from which reserves have been depleted, and of reserves underlying one offshore block (High Island Block 281) qualifying under NGPA section 102(d).

Applicant states that it is aware of United's applications in Docket Nos. CI86-447-000 and CI86-450-000 requesting blanket limited-term abandonment and certificate authority on behalf of its producer-suppliers. Applicant states that while United's generic application may cover portions of the requests herein, Applicant and United jointly negotiated the terms for the limited-term and permanent releases here involved, and that the requests herein should not be deferred to await consideration of United's generic applications.

Applicant seeks a limited-term abandonment for a two-year period for certain gas and a limited-term abandonment through July 1, 1988, for certain other gas. For certain contracts, it retains a right of first call during the entire term of the abandonment; for others, the right of first call is effective only during the period from November 1 to March 31 of each year. Applicant states that the affected contracts are broken down into two categories designated as Exhibit A and Exhibit B as set forth below. Exhibit A contracts share the following amended terms:

(a) Gas qualifying under NGPA sections 102, 103, 107, 108 and 109 will be permanently released; permanent abandonment is being sought for only a single NGPA section 108 well covered by the certificate issued in Docket No. CI70-114 which is depleted and was plugged and abandoned on March 7, 1984.

(b) Gas under NGPA sections 104 and 106(a) which is subject to the Commission's NGA sales and abandonment authority will be released for a two-year period from the date Applicant receives limited-term abandonment authority, with United retaining a right to call on such gas during the period November 1 through March 31 by giving Applicant not less than five days' notice;

(c) All previously accrued take-or-pay obligations associated with permanently released gas are waived; and

(d) All previously accrued take-or-pay obligations and potential take-or-pay obligations are waived on released gas not taken, commencing from the effective date of each contract until expiration of the two-year abandonment period for NGA gas.

EXHIBIT A

Tenneco Oil GSC No.	Location of sale	RS No./docket No.	Date of contract
665	Bethany Fld., Panola Co., TX	RS No. 289/CI64-1043, 1044, 1048	12/12/73
666	do	RS No. 89/CI64-1045	10/23/30
672	do	RS No. 100/CI64-1056	07/26/55
1065	Lake Gero Fld., Terrebonne Parish, LA	LL&E RS No. 12 CI72-641	09/20/78
1769	Bethany Fld., Panola Co., TX	RS No. 261/CI70-114	11/05/80
2032	Lake Gero Fld., Terrebonne Parish, LA	LL&E RS No. 11/CI72-636	06/09/82
2549	Normanna-So. Tuleta Fld., Bee Co., TX	RS No. 109/ CI64-1065	07/06/85

Exhibit B contracts share the following amended terms:

(a) Release of excess daily deliverability (*i.e.*, deliverability in excess of United's daily requirements) for gas qualifying under NGPA sections 102, 103, 107, 108 and 109 from June 2, 1986, until July 1, 1988;

(b) Release of excess daily deliverability (*i.e.*, deliverability in excess of United's daily requirements) for NGA gas qualifying under NGA 104 and 106(a) from the date Applicant receives necessary abandonment authority until July 1, 1988;

(c) For all NGA and non-NGA gas, all previously accrued or potential take-or-pay obligations are waived from the effective date of each contract until the date Applicant receives abandonment authorization for NGA gas; and

(d) Should United be required to make take-or-pay payments for obligations incurred during the period following Applicant's receipt of abandonment authority, United will be entitled to credit against the take-or-pay amounts, on an equivalent volume basis, released volumes sold or moved to another party.

EXHIBIT B

Tenneco Oil GSC No.	Location of sale	RS No./docket No.	Date of contract
671	Cotton Valley Fld., Webster Parish, LA	RS No. 92/CI64-1048	04/29/40
667	No. Pettus-Burnell Fld., Bee & Karnes Cos., TX	RS No. 86/CI64-1042	05/26/47
2606	Chauvin Fld., Terrebonne Parish, LA	RS No. 522/CI85-475	10/03/68
679	Mustang Island Fld., Nueces Co., TX	RS No. 2/G-3666	11/18/73
1271	Four Isle Dome Fld., Terrebonne Parish, LA.	RS No. 338/CI78-466	11/13/79
2164	Waskom Fld., Harrison Co., TX	RS No. 78/CI64-1034	06/23/83
2550	Chauvin Fld., Terrebonne Parish, LA	RS No. 481/CI85-260	07/05/85

Additionally, Applicant states that United also agreed to terminate one contract covering the sale of NGPA section 102(d) reserves from High Island Block 281, Offshore Texas, upon receipt of the requested abandonment.

Applicant further states that the total net deliverability subject to the requests herein amounts to 17,982 Mcf/d, and that the portion of such deliverability subject to the permanent abandonment is 4,050 Mcf/d.

In addition to the requested abandonment authority, Applicant states it seeks a limited-term blanket certificate to make sales for resale of the abandoned gas to other purchasers. Applicant proposes that the term of the blanket certificate be effective coextensive with the limited-term abandonment for the sales in Exhibits A and B and for a three-year period for gas permanently abandoned. Applicant also requests that the Commission waive rate schedule and blanket affidavit filing requirements as allowed in prior cases where blanket sales certificates have been issued.

The circumstances presented in the applications meet the criteria for

consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order No. 436 and 436–A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85–1–000, all as more fully described in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–28522 Filed 2–18–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. DP87–85–000]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Application

December 16, 1986.

Take notice that on November 18, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP87–85–000 an application pursuant to section 7(c) of the Natural Gas Act for authorization to (1) provide firm deliveries of firm Interim Natural Gas Services (INGS) volumes authorized by the Commission on September 26, 1986, in Docket Nos. CP86–251–000 and CP86–251–001 (36 FERC ¶ 31,370) at six delivery points on the Beverly-Salem lateral to Boston Gas Company (Boston Gas), and (2) construct and operate $4,086,000 in new facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it originally sought authority in Docket Nos. CP86–251–000 and CP86–251–001 to upgrade the Beverly-Salem lateral to provide firm service to Boston Gas. Applicant explains that on June 9, 1986, it withdrew that portion of the application seeking to upgrade the Beverly-Salem lateral because of the excess time required to resolve environmental concerns raised by parties located where the upgraded line would have been placed. In the September 26, 1986 order, the Commission authorized Applicant to increase its firm deliveries to Boston Gas by 10,460 Mcf of natural gas per day, but the firm deliveries to Boston Gas on the Beverly-Salem lateral was authorized on a best-efforts basis. Applicant now seeks authority in the subject application to upgrade the Beverly-Salem lateral to allow delivery of the authorized INGS best-efforts volumes on a firm basis.

Applicant requests authority to increase firm deliveries of INGS volumes to Boston Gas at the following delivery points located on the Beverly-Salem lateral:

Beverly-Salem delivery points	Maximum delivery (Mcf per day)
1. Reading	5,800
2. Lynnfield	200
3. Lynn	10,460
4. West Peabody	200
5. Beverly-Salem	4,700
6. Gloucester	500

Applicant states that total firm deliveries to Boston Gas of INGS volumes at the Beverly-Salem delivery points would not exceed the authorized level of 10,460 Mcf of natural gas per day.

To accomplish the increased deliveries for which authorization is sought by this application, Applicant proposes to replace 2.0 miles of its existing 12-inch Beverly-Salem lateral with new 24-inch pipe from Applicant's valve 270C–101.1 to mile post 260C–101.1 + 2.0 located in Middlesex County, Massachusetts. Applicant states in its Environmental Report, filed in Exhibit F–IV of its application, that it proposes installing the new 24-inch line parallel to and at a 10-foot offset from the existing 12-inch line except where route deviations would avoid obstacles or reduce the environmental impact of construction, and either remove or abandon the old line once the new replacement line is in service. Applicant estimates the total cost of these facilities to be $4,086,000.

The Commission Staff will be preparing an environmental assessment on Applicant's proposed Beverly-Salem lateral replacement. By separate notice, Commission Staff will request public comments concerning the scope of the environmental issues to be addressed in its environmental assessment.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 8, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–28523 Filed 12–18–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. SA87–15–000

TransAmerican Natural Gas Corp., f/k/a GHR Energy Corp.; Petition for Adjustment

December 16, 1986.

On November 4, 1986, TransAmerican Natural Gas Corporation (TransAmerican) filed with the Federal Energy Regulatory Commission a petition for adjustment pursuant to section 502(c) of the Natural Gas Policy Act of 1978 and Part 385 (Subpart K) of the Commission's regulations.

TransAmerican seeks an extention of its obligations under Commission Order Nos. 399, 399–A, and 399–B that require payment of Btu adjustment refunds by first sellers of natural gas not later than November 5, 1986. Should the Commission decide to grant the requested extention, TransAmerican also requests a waiver of any civil penalties imposed because of noncompliance with the above Commission orders.

TransAmerican is an operator and working interest owner of gas leases in Texas. On January 26, 1983, TransAmerican filed with the United States District Court for the Southern District of Texas a petition for relief under Chapter 11 of the United States Bankruptcy Code. Since that filing, TransAmerican has been operating as a debtor-in-possession pursuant to 11 U.S.C 1107–1108 (1982). Natural gas pipelines are requesting TransAmerican to pay Btu refunds for sales of gas made before and after its filing of a petition for relief under Chapter 11 of the United States Bankruptcy Code.

TransAmerican states that the majority of its income-producing assets are pledged to secure the debt owed to its secured creditors. Consequently, TransAmerican states it has no current source of unencumbered income.

Moreover, TransAmerican claims that it can pay no Btu refunds without the approval of the Bankruptcy Court. TransAmerican states that it will not know the extent or status of any Btu refund obligations until a decision is rendered by the bankruptcy court.

The procedures applicable to this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure (18 CFR 385.1101 through 385.1117 (1986)). Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register**.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–28524 Filed 12–18–86; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Notice of Cases Filed, week of October 31 Through November 7, 1986

During the Week of October 31 through November 7, 1986, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

December 8, 1986.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Oct. 31 Through Nov. 7, 1986]

Date	Name and Location of applicant	Case No.	Type of submission
Nov. 4, 1986	Tetzrow Oil Company, White Hall, IL	KEE–0064	Exception to the reporting requirements. If granted: Tetzrow Oil Company would not be required to file Form EIA–782B, "Resellers/Retailers Monthly Petroleum Products Sales Report."
Nov. 6, 1986	Carson Petroleum Co., Burr Ridge, IL	KEE–0066	Exception to the reporting requirements. If granted: Carson Petroleum Company would not be required to file Form EIA–782B, "Resellers/Retailers Monthly Petroleum Products Sales Report."
Do	Webb Oil Co., Mt. Pleasant, MI	KEE–0065	Exception to the reporting requirements. If granted: Webb Oil Company would not be required to file Form EIA–782B, "Resellers/Retailers Petroleum Products Sales Report."
Nov. 7, 1986	Imperial Oil Company, Inc., Mt. Pleasant, MI 48856	KEE–0067	Exception to the reporting requirements. If granted: Imperial Oil Company, Inc. would not be required to file Form EIA–782B, "Resellers/Retailers Petroleum Products Sales Report."

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/ name of refund applicant	Case No.
11/3/86	APCO/Lynn Vines APCO	RF83–156
11/3/86	Beacon/Dudley & Petty	RF238–77
11/3/86	Conoco/Cox Conoco	RF220–446
11/3/86	Conoco/Woody's Conoco	RF220–445
11/3/86	Conoco/Crest Fuel Oil Company.	RF220–450
11/3/86	Conoco/24th & Grand Conoco	RF220–449
11/3/86	Conoco/Harold E. Nichols	RF220–448
11/3/86	Conoco/Dennis Smiley	RF220–447
11/3/86	Aminoil/William Schauss & Son, Inc.	RF139–162
11/3/86	Petrolane-Lomita/William Schauss & Son, Inc.	RF208–10
11/3/86	Gull/Robert M. Eigell	RF260–9
11/3/86	Gull/Robert M. Eigell	RF259–11
11/3/86	Tenneco/Henoch Oil Company	RF7–155
11/3/86	Tenneco/Borst Oil Corporation	RF7–154
11/3/86	Luedtke Engineering Company	RF271–46
11/4/86	Amoco & Belridge/Turtle Mountain Band of Chippewa Indians.	RQ21–333 RQ6–334
11/4/86	OKC/Missouri	RQ13–332
11/4/86	Amoco/Missouri	RQ21–331
6/6/86	National Helium/Maryland	RQ3–335

REFUND APPLICATIONS RECEIVED—Continued

Date received	Name of refund proceeding/ name of refund applicant	Case No.
11/6/86	Amoco, Colins & OKC Corp./ Colorado.	RQ21–336 RQ2–337 RQ13–338
11/4/86	S.M. Lorusso & Sons, Inc	RF272–20
11/4/86	North Suburban Mass Transit District.	RF272–21
11/4/86	Lockheed/Trans Continental Airlines, Inc.	RF269–2
11/3/86	The Texas Mexican Railway Company.	RF271–45
10/31/86	Northeast/J&S Oil Company	RF264–3
11/4/86	Gull/Shane's Gull	RF260–10
11/4/86	Gull/Leathers Oil Company	RF260–11
11/4/86	Gull/Shane's Gull	RF259–12
11/4/86	Gull/Leathers Oil Company	RF259–13
11/4/86	Gull/Shane's Gull	RF258–7
11/4/86	Gull/Leathers Oil Company	RF258–8
11/7/86	Gull/McCall Oil & Chemical Corp.	RF258–9
11/7/86	Gull/McCall Oil & Chemical Corp.	RF260–13
11/6/86	LaGloria/Dale Perkins Oil Company.	RF263–9
11/7/86	Gull/Don's Truck Service	RF260–14
11/7/86	Gull/Don's Truck Service	RF258–10

REFUND APPLICATIONS RECEIVED—Continued

Date received	Name of refund proceeding/ name of refund applicant	Case No.
11/7/86	Lockheed/Hydro-Aire Div/ Crane Co.	RF269–4
11/7/86	Northeast/Gulf States Oil & Refining.	RF264–4
11/5/86	Gull/Steve Wescott	RF259–14
11/5/86	Gull/Steve Wescott	RF260–12
11/4/86	Conoco/Robinson's Conoco	RF220–451
11/5/86	Cooperative Power	RF272–23
10/23/86	Toledo Area Regional Transit	RF272–22
10/31/86	Lucia Lodge Arco/Lucia Lodge	RF268–1
11/6/86	Construction Aggregates Corp	RF271–47
11/6/86	Lockheed/Flying Figers	RF269–3
11/5/86	Systems Fuels, Inc	RF272–24
11/6/86	Husky/Wray Oil Company	RF161–99
11/6/86	Conoco/Wray Oil Company	RF220–452
10/31–11/7/86	Gulf Refund Applications	RF40–3538–RF40–3557
10/31–11/7/86	Mobil Refund Applications	RF225–10386–RF225–10397
10/31–11/7/86	Marathon Refund Applications	RF250–1715–RF250–1886
10/31–11/7/86	Getty Refund Applications	RF265–1–RF265–19
10/31–	Surface Transporters Appl	RF270–352–

REFUND APPLICATIONS RECEIVED—Continued

Date received	Name of refund proceeding/ name of refund applicant	Case No.
11/7/86		RF270-437

[FR Doc. 86-28481 Filed 12-18-86; 8:45 am]
BILLING CODE 6450-01-M

Notice of Issuance of Proposed Decisions and Orders, Week of October 20 Through October 24, 1986

During the week of October 20 through October 24, 1986, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact of law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

December 9, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Co-Op Supply of Lake County, Inc., Ronan, Montana, KEE-0035, Reporting Requirements

Co-Op Supply of Lake County, Inc., filed an Application for Exception from the requirement to file Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." On October 23, 1986, the Department of Energy issued a Proposed Decision and Order which determined that the exception request should be denied.

Mountain Oil Inc., Walla Walla, Washington, KEE-0018, Reporting Requirements

Mountain Oil, Inc. (Mountain Oil) filed an Application for Exception from the provisions of Form EIA-782B. The exception request, if granted, would permit Mountain Oil to be relieved from its obligation to submit Form EIA-782, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." On October 24, 1986, the Department of Energy issued a Proposed Decision and Order which determined that the exception request should be denied.

[FR Doc. 86-28482 Filed 12-18-86; 8:45 am]
BILLING CODE 6450-01-M

Notice of Issuance of Decisions and Orders, Week of October 27 Through October 31, 1986

During the week of October 27 through October 31, 1986, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Ashcroft & Gerel, 10/30/86, KFA-0058

Ashcraft & Gerel filed an Appeal from a partial denial by the Manager of the Nevada Operations Office of a request for information which the firm submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that an adequate search for responsive documents was performed, and that the Manager was not obligated to identify and provide agency documents that are made available to the public through a DOE facility. The Appeal was therefore denied.

Penberthy Electromelt International, Inc., 10/27/86, KFA-0055

Penberthy Electromelt International, Inc. (Penberthy) filed an Appeal from a partial denial by the Inspector General (IG) of a request for information which the firm submitted under the Freedom of Information Act (the FOIA). In his determination, the IG had withheld summaries of four interviews compiled during an investigation into allegations raised by the president of Penberthy. In considering the Appeal, the DOE found that release of the interviews would constitute an unwarranted invasion of privacy not outweighed by any public interest in disclosure. The DOE determined that the material was properly withheld pursuant to Exemption 7(C) of the FOIA. Accordingly, the Appeal was denied.

Remedial Order

Texaco Inc., 10/31/86, HRO-0032

Texaco Inc. objected to a Proposed Remedial Order alleging that it violated the refiner cost recovery rule in its calculating and reporting of cost recoveries on sales of propane, natural gasoline, isobutane and normal butane. The DOE rejected Texaco's claim that state statutes of limitation barred the proceeding. The DOE found that Texaco's objections to the PRO's retroactive application of the equal application/deemed recovery rule were moot since the ERA had elected not to seek retroactive enforcement of the rule. The DOE combined a bank adjustment and refund on the basis of ERA's revised cost recovery calculations. The DOE also determined that interest should be assessed on this refund and that Texaco should deposit the total amount into a suitable account for ultimate distribution pursuant to Subpart V Special Refund Procedures. Finally, the DOE determined that it would not be necessary for Texaco to recalculate its maximum allowable prices and that it would make any overcharges revealed by Texaco's bank adjustments the subject of a separate enforcement action.

Request for Exception

Molo Oil Company, 10/29/86, KEE-0060

Molo Oil Company filed an Application for Exception from the requirement to file Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Sales Report." In evaluating the request, the DOE found that the firm had not shown that it experienced a burden in filing Form EIA-782B sufficient to outweigh the public interest in obtaining the survey data. Accordingly, exception relief from filing Form EIA-782B was denied.

Reserve Petroleum Company, 10/31/86, KEE-0043

Reserve Petroleum Company filed an Application for Exception from the requirement to submit Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report," Form EIA-194, entitled "Monthly Alternative Fuel/ Incremental Price Monitoring Report," Form EIA-811, entitled "Monthly Bulk Terminal Report," and Form EIA-821, entitled "Annual Fuel Oil and Kerosene Sales Report." In considering the request, the DOE found that the firm had not shown that it was more adversely affected by the reporting requirements than other reporting firms. Accordingly, exception relief was denied.

Motion for Discovery

Corum Energy Corp., 10/27/86, HRD-0234, HRH-0234, KRZ-0039, KRZ-0040, KRZ-0041

The ERA issued a PRO to Corum Energy Corporation, alleging that the firm had violated the provisions of 10 C.F.R. §§ 212.183, the crude oil reseller price rule, and 212.186, the layering rule. On October 27, 1986, OHA issued an Interlocutory Order responding to certain motions pending in the case. First, OHA determined that the ERA should be permitted to amend the PRO in the following regards: (i) to add two additional layered transactions; (ii) to change the remedial provisions to require the payment of any interest due to the time that full payment is made; and (iii) to dismiss without prejudice allegations that Corum violated Section 212.183.

Secondly, OHA determined that all of Corum's discovery request, regarding the promulgation, interpretation and application of Section 212.186 be denied. This determination was based on a long line of cases dealing with requests identical to those made by Corum.

Thirdly, OHA determined that Corum should be allowed to present evidence in an evidentiary hearing regarding the services it claims to have provided with each of the transactions cited in the PRO. In this regard, OHA stated that this evidence should consist primarily of testimony by company officials with direct knowledge of Corum's trading activities.

Implementation of Special Refund Procedures

Howard Oil Company, Inc., 10/27/86, KEF-0008

The DOE issued a Decision implementing a plan for the distribution of $15,907,465.76 plus interest, received as a result of a 1985 Settlement Agreement between the DOE and Howard Oil Company, Inc. (Howard). The Decision sets forth refund application procedures for customers who purchased middle distillates and residual fuel oil from Howard during the period covered by the Settlement Agreement—August 19, 1973 through December 31, 1974. Specific information regarding the data to be included in refund applications is discussed in the Decision.

National Propane Corp., Conservative Gas Division, Parman Oil Corp., 10/27/86, HEF-0135, HEF-0145

The DOE issued a Decision implementing a plan for the distribution of $66,217 received through separate consent orders entered into by the DOE and National Propane Corporation/Conservative Gas Division, and Parman Oil Corporation. The DOE determined that the settlement funds should be distributed to customers that purchased refined petroleum products from the consent order firms during the relevant period in each case. In order to facilitate the distribution of refunds, the DOE adopted a small claims presumption of injury for applicants whose volumetrically allocated refund is below $5,000. In addition, for larger claims *i.e.*, those above the $5,000 threshold, the DOE determined that a detailed demonstration of injury will be necessary. Finally, end-users of both firms' products will be eligible to receive 100 percent of their volumetrically allocated refund amounts, provided they filed an application documenting their purchases. The specific information required in Applications for Refund is set forth in the Decision.

Refund Applications

Arkansas Louisiana Gas Co./Shreveport Oil Co. 10/27/86, RF154-21

The DOE issued a Decision and Order concerning an application for refund filed by Shreveport Oil Co., a reseller of motor gasoline, from a consent order funded by Arkansas Louisiana Gas Co./ The DOE found that Shreveport had banks of unrecouped product costs greater than the refund it was claiming. In addition, the DOE found that the prices it paid for Arkla motor gasoline were higher than average market prices reported in *Platt's*, except for unleaded gasoline during one month. Therefore, the DOE granted Shreveport a refund for all its Arkla purchases except the gallons purchased at below-market prices. Accordingly, the firm was granted a refund of $125,442 ($85,392 in principal plus $40,050 in interest).

Conoco Inc./Taynor Oil Co. et al., 10/27/86, RF220-188 et al.

The DOE issued a Decision and Order concerning 30 Applications for Refunds filed by purchasers of Conoco refined products. Each customer filed for a refund based upon the small claims procedures outlined in *Conoco Inc., 13 DOE ¶ 85,316 (1985). After examining the claims, the DOE concluded that all thirty customers should receive refunds based on the volumetric refund amount established in Conoco.* The total amount of refunds granted was $57,526.

Gulf Oil Corporation/Alps Tire & Service et al., 10/30/86, RF40-3371 et al.

The DOE issued a Decision concerning 15 Applications for Refund filed by resellers and retailers of Gulf Oil Corporation petroleum products. Each firm applied for a refund based upon the procedures outlines in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), governing the disbursement of settlement funds received from Gulf pursuant to a 1978 consent order. In accordance with those procedures, each applicant demonstrated that it would not have been required to pass through to its customers a cost reduction equal to the amount of the refund claimed. After examining the applications and supporting documentation submitted by the applicants, the DOE concluded that they should receive a total refund of $31,290, representing $25,623 in principal and $5,667 in accrued interest.

Gulf Oil Corporation/Kenneth R. Greive, Dist., et al., 10/29/86, RF40-985 et al.

The DOE issued a Decision and Order concerning the Applications for Refund filed by Kenneth R. Greive, Dist. and four other firms, each of which was both a purchaser of Gulf Middle distillates and a consignee of Gulf motor gasoline during the Gulf consent order period. Following the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), each applicant demonstated that it purchased a certain amount of distillates from Gulf, for which it will receive $0.00122 per gallon (the Gulf volumetric refund amount). Each applicant also demonstrated that overall gasoline consumption in the state in which it was located had increased during the consent order period, while its own total sales volume of consigned gasoline during that period had declined. The DOE therefore determined that each applicant was also injured in its role as a consignee by Gulf's allegedly uncompetitive prices. Each applicant's refund for consigned gallons was calculated by multiplying the number of gallons of gasoline Gulf consigned to it during the consent order period, its percent loss of potential sales, and the Gulf volumetric refund amount of $0.00122. Each applicant will receive the sum of its refund for purchased distillates and its refund for consigned gasoline, plus a share of accrued interest. The total refund granted in this case is $14,323 principal and $3,169 interest.

Gulf Oil Corporation/Preston's Gulf et al., 10/27/86, RF40-3279 et al.

The DOE granted refunds from the Gulf Oil Corporation deposit fund to 35 purchasers of Gulf refined petroleum products. The refund applicants are retailers who demonstrated that they would not have been required to reduce their selling prices to their customers by the amount of the refund received. The refunds to these firms totaled $84,468.

H.C. Lewis Oil Company/City of Gary et al., 10/30/86, RF266-1 et al.

The DOE issued a Decision concerning 18 Applicants for Refund filed by purchasers of refined product sold by H.C. Lewis Oil Company. Each customer filed for a refund based upon the small claims procedures outlined in *H.C. Lewis Oil Company*, 14 DOE ¶ 85,328 (1986). After examining the applications, the DOE concluded that all 18 applicants should receive refunds based on the volumetric refund amount established in *H.C. Lewis*. The total amount of refunds granted was $24,795.

Little America Refining Co./Siegel Oil Company, 10/30/86; RF112-192

Siegel Oil Company, a reseller of refined petroleum products, filed an Application for Refund seeking a portion of the funds remitted to the DOE by the Little America Refining Company (Larco). Siegel purchased Larco product directly from the consent order firm, and indirectly through Direct Sales Tire Co., Inc. (Direct Sales). In a previous decision, the DOE had granted Direct Sales a refund based on a finding that Direct Sales had absorbed all of the additional costs associated with Larco's alleged overcharges. Therefore, the DOE determined that Siegel could not have been injured as a result of its indirect purchases of Larco product through Direct Sales. However, the DOE found that Siegel's direct purchases were eligible for consideration. Since the volumetric share corresponding to Siegel's eligible purchase volumes did not exceed the small claims threshold, the DOE did not require a detailed showing of injury. Accordingly, Siegel was granted a refund of $1,342 in principal and $687 in interest from the Larco deposit escrow account.

Marathon Petroleum Co./A&H Marathon et al., 10/29/86; RF250-1434 et al.

The DOE issued a Decision and Order concerning 45 Applications for Refund filed by purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant demonstrated the volume of its Marathon purchases, and none requested a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decision is $30,073 in principal and $1,645 in interest.

Marathon Petroleum Co./Atlas Fuel Oil, et al., 10/27/86; RF250-1096 et al.

The DOE issued a Decision and Order concerning 42 Applications for Refund filed by purchasers of products covered by a

consent order that the agency entered into with Marathon Petroleum Company. Each applicant demonstrated the volume of its Marathon purchases, and none requested a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decision is $29,391 in principal and $1,540 in interest.

Marathon Petroleum Co./Barger Marathon, et al., 10/29/86; RF250–468 et al.

The DOE issued a Decision and Order concerning 50 Applications for Refund filed by purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant demonstrated the volume of its Marathon purchases, and none requested a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decision is $54,331 in principal and $2,975 in interest.

Marathon Petroleum Co./Hoosier Oil Inc., et al., 10/27/86; RF250–349 et al.

The DOE issued a Decision and Order concerning 12 Applications for Refund filed by purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant demonstrated the volume of its Marathon purchases, and none requested a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decision is $40,000 in principal and $2,096 in interest.

Marathon Petroleum Co./Jet Oil Co., et al., 10/28/86; RF250–453 et al.

The DOE issued a Decision and Order concerning 19 Applications for Refund filed by purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant demonstrated a volume of Marathon purchases corresponding to an allocable share greater than the $5,000 small claims threshold. None of the applicants, however, attempted to make a detailed showing of injury. Accordingly, the DOE limited each applicant's refund to $5,000. The sum of the refunds approved in this Decision is $45,000 in principal and $2,466 in interest.

Marathon Petroleum Co./Oils Inc., et al., 10/27/86; RF250–422 et al.

The DOE issued a Decision and Order concerning six Applications for Refund filed by purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant demonstrated a volume of Marathon purchases corresponding to an allocable share greater than the $5,000 small claims refund amount. Each applicant, however, declined to make a showing of injury, and accordingly was granted a refund of $5,000 in principal plus accrued interest. The sum of the refunds approved in this Decision is $15,000 in principal and $786 in interest.

Martin Oil Service, Inc./Buy-Rite Co., et al., 10/27/86; RF240–1 et al.

The DOE issued a Decision and Order concerning ten Applications for Refund filed by Buy-Rite Co., *et al.* Each of the applicants had purchased refined petroleum products from Martin Oil Service, Inc. and each sought a portion of the settlement fund obtained by the DOE through a consent order entered into with Martin. All of the ten firms were identified in the DOE's audit files as injured parties, and were listed in the Appendix to the Decision. *Martin Oil Service, Inc.*, 14 DOE ¶ 85,059 (1986). Since all of the applicants agreed with the amounts of injury listed in the Appendix, and each of these amounts was under the $5,000 threshold, the DOE concluded that each of the firms should receive the refund amount allotted to it in the Appendix, plus its share of accrued interest. The total amount of refunds granted was $18,173.

Mobil Oil Corp./Abdulaziz & Shirazaly et al., 10/31/86; RF225–6428 et al.

The DOE issued a Decision granting Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totaling $23,513.

Mobil Oil Corp./Amedee J. O'Gorman et al., 10/31/86; RF225–6697 et al.

The DOE issued a Decision granting 71 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totaling $47,463 ($39,589 principal plus $7,674 interest).

Mobil Oil Corp./Van Hoozer Oil, Inc., 10/29/86; RF225–4106; RF225–4109; RF225–4110; RF225–4111; RF225–10027

The DOE issued a Decision granting 5 Applications for Refund from the Mobil Oil Corporation escrow account filed by Van Hoozer Oil, Inc., a reseller/retailer of Mobil refined petroleum products. In each application, Van Hoozer elected to apply for a refund based upon the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶85,339 (1985). However, Van Hoozer also elected to limit their refund amount to the $5,000 small claims threshold. Therefore, the DOE granted refunds totalling $5,977 ($5,000 principal plus $977 interest).

Navajo Refining Co./E-Z Service, Inc., 10/30/86; RF203–7

E-Z Service, Inc. (E-Z) filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with Navajo Refining Company (Navajo). E-Z demonstrated that it purchased 6,154,158 gallons of refined petroleum covered products from Navajo during the consent order period. Using a volumetric methodology, the DOE determined that E-Z's claim was below the presumption of injury threshold refund level of $5,000. The DOE therefore granted E-Z a refund of $1,200.06 in principal and $655.42 in accrued interest for a total refund of $1,855.48.

Navajo Refining Co./The Atchison, Topeka and Santa Fe Railway Co., 10/29/86; RF203–8

The Atchison, Topeka and Santa Fe Company (Santa Fe) filed an Application for Refund in the Navajo special refund proceeding based upon the principles and procedures set forth in *Thompson Oil Co., Inc.* In considering the application, the DOE determined that Santa Fe purchased 98,949,083 gallons of diesel fuel from Navajo during the consent order period and that it was entitled to a refund of $19,295.07 in principal and $10,538.44 in accrued interest since it was an end-user of the Navajo diesel fuel in its railroads.

Petrolane-Lomita Gasoline Co./Dashner Gas Service Co., 10/30/86; RF208–3

Dashner Gas Service Company (Dashner) filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with Petrolane-Gasoline Company (Petrolane). Dashner demonstrated that it purchased 7,303,967 gallons of NGLs from Petrolane during the consent order period. Using a volumetric methodology, the DOE determined that Dashner's claim was below the presumption of injury threshold level of $5,000. The DOE therefore granted Dashner a refund of $3,359.82 in principal and $1,155.43 in accrued interest for a total refund of $4,515.25.

Quaker State Oil Refining Corp./Campbell Oil Co. Inc., 10/31/86; RF213–42

The DOE issued a Decision and Order concerning an Application for Refund filed by a reseller of Quaker State Oil Refining Corp. refined petroleum products. The applicant's level of refined petroleum products purchased from Quaker State during the consent order period would result in a refund over the $5,000 threshold amount. Based upon the bank and price information which the applicant submitted in connection with its middle distillate purchases, the DOE determined that the applicant was injured in two months during the Quaker State consent order period. Using the volumetric refund methodology sety forth in *Quoker State Oil Refining Corp.*, 13 DOE Para. 85,211 (1985), the applicant's refund was based on the volume of its Quaker State purchases in the two eligible months times the volumetric refund amount. Since the applicant failed to rebut the spot purchaser presumption with respect to its motor gasoline purchases, that portion of the Application was denied. The refund approved in this Decision totaled $4,051.

Standard Oil Co. (Indiana)/Florida, 10/31/86; RQ251–327

The DOE issued a Decision approving the second-stage refund plan of Florida for use of funds from the Standard Oil Co. (Indiana) escrow account. Florida stated that it planned to use $897.204 plus accrued interest to weatherize low-income housing. The DOE found that Florida's plan would complement the state's other expenditures of oil overcharge monies and would make restitution to injured consumers of refined petroleum products. Accordingly, Florida's refund application was granted.

Union Texas Petroleum Corp./Arrow Enterprises, Inc., 10/31/86; RR104–1

The DOE issued a Decision concerning a Request for Reconsideration of a Decision denying an Application for Refund filed by Arrow Enterprises, Inc. in one of the Union Texas Petroleum Corporation special refund proceedings. Arrow had requested a refund above the $5,000 small claims threshold set forth in *Union Texas Petroleum Corp.*, 12 DOE ¶ 85,166 (1984). In order to receive such a refund, Arrow was obligated to demonstrate that it was injured as a result of the alleged overcharges. Upon reconsideration, the DOE determined that the firm had not demonstrated that it had "banks of unrecouped increased product costs" equal to or greater than the amount of the refund requested. However, the DOE further determined that (i) the firm had made a bank showing to the extent of $2,412 and (ii) the firm was eligible for a refund based upon its purchases of Union Texas products during the period August 19–October 31, 1973. Because the total refund for which Arrow was eligible was less than the $5,000 threshold, no further showing of injury was required. Accordingly, the firm received a refund of $6,757, representing $3,886 in principal and $2,671 in interest.

Dismissals

The following submissions were dismissed:

Name	Case No.
BHP Petroleum Co., Inc.	KRO–0250, KRD–0250.
Duffy Oil Company	RF225–10199, RF225–10201.
Edward Carlson	RF225–10220.
Faulkton Farmers Elevator.	RF225–10216.
Franco Distributors, Inc.	FR40–3400.
Hensley's Inc	RF225–7700, RF225–7702.
Huffman's Gulf Service	RF40–3362.
Mas and Isamu's Service.	RF225–10063.
Ravenna Oil Company	RF225–10128.
Wm. R. Peterson Oil Co.	RF225–44.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

December 2, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 86–28483 Filed 12–18–86; 8:45 am]

BILLING CODE 6450–01–M

Notice of Issuance of Decisions and Orders, Week of November 3 through November 7, 1986

During the week of November 3 through November 7, 1986, the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Remedial Orders

Petrade International, Inc., 11/05/86, HRO–0208

On November 5, 1986, the Office issued a final Remedial Order (RO) to Petrade International, Inc., holding that Petrade had violated two separate provisions of the DOE's Mandatory Petroleum Price Regulations. First, the RO found that Petrade had violated the provisions of 10 CFR 212.186, by charging a price for crude oil in excess of its acquisition price without providing any service or other function traditionally associated with the resale of crude oil. The RO discusses in detail the procedural validity of Section 212.186, with particular attention to the fact that the regulation's promulgation fulfilled the "notice and comment" requirements of both the APA and the FEAA. The RO analyzes the services which Petrade claimed to have provided, and finds that in all but four instances they were of no economic benefit to the industry. Consequently, the RO orders Petrade to refund the amount of $648,177.44 plus interest which it realized through its improper reselling activities.

Second, the RO finds that Petrade violated the provisions of 10 CFR 212.183, by selling crude oil at prices in excess of its permissible average markup (PAM). In arriving at this determination, the RO rejected Petrade's claim that it could utilize a general industry survey in applying the "Safe Harbor" provision. Accordingly, the RO finds that Petrade was entitled to a $.20 per barrel average markup, and that it had overcharged its customers by $2,590,167.05. The RO orders the firm to refund that amount, plus interest.

Thetis Energy Corp., 11/5/86, KRO–0300

The Economic Regulatory Administration issued a Proposed Remedial Order to Thetis Energy Corporation alleging that Thetis Energy violated the Mandatory Petroleum Price Regulations by charging prices in excess of ceiling prices in first sales of domestically produced crude oil during the period June 1979 through December 1980. The PRO provides that Thetis Energy repay the total violation amounted of $145,240.19, plus interest accrued until the date of payment. Thetis Energy filed a Notice of Objection to the PRO. The Office of Hearings and Appeals determined that the PRO established a *prima facie* case of a violation, and that Thetis Energy had not rebutted that case in its Notice of Objection. Accordingly, the PRO was issued as a final Remedial Order of the Department of Energy.

Requests for Exception

Baribault Oil Company, Inc., Soctrick Corporation, 11/06/86, KEE–0062, KEE–0063

Baribault Oil Co., Inc. and ScotRick Corporation each filed an Application for Exception in which the firm sought relief from it obligation to submit Form EIA–782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering the applicants' requests, the DOE found that the firms failed to demonstrate that they were particularly adversely affected by the requirement that they file the Form. Accordingly, exception relief was denied to both firms.

Danielson Oil Co., Inc., 11/06/86, KEE–0081

Danielson Oil Co., Inc. filed an Application for Exception in which the firm sought relief from its obligation to submit Form EIA–782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering the applicant's request, the DOE found that the firm failed to demonstrate that it was particularly adversely affected by the requirement that it file the Form. Accordingly, exception relief was denied to the firm.

Motion for Discovery

Southwestern Gulf Petroleum Company, and J. Buford Langston 11/7/86, KRD–0200

Southwestern Gulf Petroleum Company and J. Buford Langston (Respondents) jointly filed a motion for discovery in connection with a Third Amended Proposed Remedial Order issued to them on April 22, 1986. The PRO alleges that Respondents violated 10 CFR 212.186; 210.62(c); and 205.202. Alternatively, the PRO alleges a violation of 10 CFR 212.183. The OHA denied Respondents' requests for discovery with regard to DOE jurisdiction over the subject transactions, and also denied administrative record and contemporaneous construction discovery of the regulations cited in the PRO. However, OHA granted Respondents' motion in part, requiring ERA to provide all workpapers pertaining to its allegation of a violation of § 212.183, or to explain how those violations were derived from workpapers already provided. In addition, OHA required ERA to explain notations on ERA work sheets and Attachments which Respondents claim contradicted ERA's theory of violation of § 212.186. All other audit and PRO-related discovery was denied.

Implementation of Special Refund Procedures

Mapco, Inc., 11/7/86, HEF–0577

The Department of Energy issued a Decision and Order implementing a plan to distribute $180,000 (plus accrued interest) received from MAPCO, Inc. The DOE determined that the monies should be distributed in accordance with the DOE's Statement of Modified Restitutionary Policy in Crude Oil Cases. In accordance with that Policy, 80 percent of the monies in this case will be divided between the State and Federal governments and 20 percent will be reserved for direct restitution to injured parties. The decision lists 6 elements which should be contained in applications for

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refund filed by purchasers of refined products.

Stephen R. Kent, d.b.a. Kent Oil & Trading Co., 11/6/86, HEF-0578

The DOE issued a Decision and Order implementing a plan for distribution of $75,000 (plus accrued interest) received as a result of a settlement agreement entered into by the DOE and Stephen R. Kent, d.b.a. Kent Oil & Trading Co. (Kent), a reseller of crude oil and motor gasoline. The DOE determined that the Kent settlement fund should be divided into two pools. The crude oil pool will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986), while the refined product pool will be distributed to customers of Kent refined products who were injured as a result of their purchases from Kent during the period covered by the settlement agreement. Specific information regarding the data to be included in refund applications is discussed in the Decision.

Refund Applications

Aminoil U.S.A., Inc., Otto's Gas Co., Inc., et al., 11/5/86, RF139-39, et al.

The DOE issued a Decision and Order concerning five Applications for Refunds filed by retailers who sought a portion of the fund obtained by the DOE through a consent order entered into with Aminoil U.S.A., Inc. The DOE reviewed the firms' banked costs and, where appropriate, calculated "approximated banks" for the applicant. The bank data indicated that each firm had substantial, unrecouped increased product costs throughout the regulatory period. In addition, the DOE found that the firms generally paid above-market average costs for their purchases of Aminoil natural gas liquid products (NGLPs) and, using the three-step competitive disadvantage methodology, the DOE determined the appropriate refund amounts for each applicant. The refunds granted totaled $504,436, representing $303,418 in principal and $201,018 in accrued interest.

Conoco Inc./American Airlines, Inc., et al., 11/6/86, RF220-278 et al.

The DOE issued a Decision and Order concerning eight Applications for Refund filed by American Airlines, Inc., *et al.* Each of the applicants had purchased refined petroleum products from Conoco Inc., and as end-users, sought a portion of the settlement fund obtained by the DOE through a consent order with Conoco based upon the procedures outlined in *Conoco Inc.*, 13 DOE ¶ 85,316 (1985). After examining the applications, the DOE concluded that all of the eight firms should receive refunds, based on their purchases from Conoco multipled by the volumetric per gallon refund amount, as described in the Appendix to the Decision. The total amount of refunds granted was $204,494.

Gulf Oil Corporation/Allen Winters Inc., et al., 11/6/86, RF40-993 et al.

The DOE issued a Decision and Order concerning the Applications for Refund filed by Allen Winters Inc. and seven other firms, each of which was both a purchaser of Gulf motor gasoline and/or middle distillates and a consignee of one or both of those products during the Gulf consent order period. Following the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), each applicant demonstrated that it purchased a certain amount of product from Gulf, for which it will receive principal of $0.00122 per gallon (the Gulf volumetric refund amount), plus $0.00027 per gallon in accrued interest. Each applicant failed to demonstrate, however, that it had been injured in its role as a consignee of Gulf motor gasoline or middle distillates. Each applicant had shown an increase in its gasoline sales greater than its state's rate of increased gasoline consumption. The total amount of refunds approved in this Decision is $31,875 principal and $7,055 interest.

Gulf Oil Corporation/Roberts Oil Co. et al., 11/5/86, RF40-996 et al.

The DOE issued a Decision and Order concerning the Applications for Refund filed by Roberts Oil Co. and 16 other firms, each of which was a consignee of Gulf motor gasoline and/or middle distillates during the Gulf consent order period. Each applicant attempted to make an injury showing for its consigned gasoline similar to that made in *Gulf Oil Corp./C.F. Canter Co.*, 13 DOE ¶ 85,388 (1986). In each case, the applicant failed to demonstrate injury.

Gulf Oil Corporation/Sylvan Park Service Station, et al., 11/6/86, RF225-3276 et al.

The DOE issued a Decision and Order concerning 9 Applications for Refund filed by retailers of Gulf motor gasoline. The claimants applied for a refund based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). After examining the evidence and supporting documentation submitted by the applicants, the DOE concluded that the claimants should receive refunds totalling $10,051 ($8,067 principal plus $1,984 interest.)

Marathon Petroleum Company/Albert R. Demeyer et al., 11/6/86, RF250-953 et al.

The DOE issued a Decision and Order concerning 46 Applications for Refund filed by purchasers or products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant demonstrated the volume of its Marathon purchases, and none requested a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decision is $27,784 in principal and $1,524 in interest.

Marathon Petroleum Company, Save-X, USA, Inc., Serv-N-Save, Inc., 11/6/86, RF250-1489, RF250-1490, and RF250-1491

The DOE issued a Decision and Order concerning three Applications for Refund filed by purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant demonstrated the volume of its Marathon purchases, and none requested a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decision is $1,013 in principal and $58 in interest.

Mobil Oil Corporation/A&C Canton Center Mobil et al., 11/4/86, RF225-5584 et al.

The DOE issued a Decision and Order granting 54 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $36,657. ($ 30,572 principal plus $6,085 interest).

Mobil Oil Corporation/A.R. Capen et al., 11/7/86, RF225-5184 et al.

The DOE issued a Decision granting 38 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $18,727 ($15,617 principal plus $3,110 interest).

Quaker State Oil Refining Corp./Modalyst Properties, et al., 11/4/86, RF213-231 et al.

The DOE issued a Decision and Order concerning three Applications for Refund filed by resellers of refined petroleum products covered by a consent order between the DOE and Quaker State Oil Refining Corp. Each applicant's level of refined petroleum products purchases from Quaker State during the consent order period would result in a refund under the $5,000 threshold for small claims. According to the methodology established in *Quaker State Oil Refining Corp.*, 13 DOE ¶ 85,211 (1985), each applicant was granted a refund based on the total volume of its Quaker State purchases times the volumetric refund amount. The refunds approved in this Decision totaled $8,447.

Sid Richardson Carbon and Gasoline Company and Richardson Products Company/Stanton Farm Service Co., 11/7/86, RF26-45

The DOE issued a Decision and Order concerning an Application for Refund filed in connection with a Consent order fund remitted to the DOE by the Sid Richardson Carbon and Gasoline Company and Richardson Products Company (Sid Richardson). The application was filed by Stanton Farm Service Co., a reseller and retailer of Sid Richardson propane. According to the application, the firm maintained large positive banks of unrecouped increased product costs from the beginning of the consent order period through January 27, 1981, indicating that the firm was unable to pass through any of the alleged Sid Richardson overcharges. Using a three-step competitive disadvantage methodology, the DOE determined that the firm should receive 100 percent of its allocable share for its entire volume of Sid Richardson purchases during the consent order period. Accordingly, the DOE granted to the firm a refund totalling $100,465 ($52,277 principal plus $48,188 interest).

DISMISSALS

[The following submissions were dismissed]

Name	Case No.
Big Four Shell	RF266-19
Exxon Co., U.S.A.	HRO-0013
Lewtex Oil and Gas Crop.	KQF-0017

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

December 8, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 86-28484 Filed 12-18-86; 8:45 am]

BILLING CODE 6450-01-M

Notice of Objection to Proposed Remedial Order, Period of October 27 through November 7, 1986

During the period of October 27 through November 7, 1986, the notice of objection to proposed remedial order listed in the Appendix to this Notice was filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial order described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in this proceeding should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

December 2, 1986.

Anchor Gasoline Corporation, Tulsa, Oklahoma, KRO-0330

On November 6, 1986, Anchor Gasoline Corporation (Anchor), 114 East Fifth Street, Tulsa, Oklahoma 74103, filed a Notice of Objection to a Proposed Remedial Order (PRO) which the Economic Regulatory Administration (ERA) issued to the firm on August 26, 1986. In the PRO, ERA determined that during the period August 1973 through December 1980, Anchor overcharged purchasers of distillates, gasoline condensate, natural gas liquids and natural gas liquid products. According to the PRO, the violation resulted in $6,812,852.17 in overcharges. The ERA proposes in the PRO that Anchor be required to refund this amount, plus interest of $12,313,309 computed through June 1986, and additional interest computed to the date of payment.

[FR Doc. 86-28489 Filed 12-18-86; 8:45 am]

BILLING CODE 6450-01-M

Proposed Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of $8,183,929 (plus accrued interest) obtained from Marion Corporation of Mobile, Alabama (Case No. KEF-0030), a refiner and producer of crude oil. The OHA has tentatively determined that the funds will be distributed in accordance with the DOE's Statement of Modified Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986).

DATE AND ADDRESS: Comments must be filed in duplicate within 30 days from the date of publication of this notice in the Federal Register and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should display a reference to the applicable case number.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy (DOE), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE hs tentatively formulated to distribute monies obtained from Marion Corporation of Mobile, Alabama, a crude oil producer and refiner. The firm remitted monies to the DOE to settle possible pricing violations with respect to their sales of crude oil. The firm's payments are being held in an interest-bearing escrow account pending distribution by the DOE.

The DOE has tentatively decided that distribution of the monies received from Marion will be governed by the DOE's Statement of Modified Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986). That policy states that crude oil overcharge monies will be divided among the states, the federal government, and eligible purchasers of petroleum products.

Under the plan we are proposing, refunds to the states would be distributed in proportion to each state's consumption of petroleum products. Refunds to eligible purchasers would be based on the number of gallons of crude oil or refined products which they purchased and the extent to which they can demonstrate injury.

Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments must be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1:00 p.m. and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: December 1, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

December 1, 1986.

Name of firm: Marion Coproration.
Date of filing: April 14, 1986.
Case No.: KEF-0030.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. *See* 10 C.F.R. Part 205, Subpart V. Such procedures enable the DOE to refund monies to those injured by alleged violations of the DOE pricing regulations.

This proceeding involves a Petition for the Implementation of Special Refund Procedures which the ERA filed with the OHA with respect to funds obtained from Marion Corporation (Marion), a "refiner" and "producer" of crude oil, pursuant to a Compromise Agreement approved by the United States Bankruptcy Court on December 10, 1985.[1] *In re Marion Corp.*, [Case No. 83–00373] (Bankr. S.D. Ala. Dec. 10, 1985). That Agreement settled certain DOE claims that Marion had violated the requirements of the Domestic Crude Oil Allocation Program set forth at 10 C.F.R. § 211.67. In addition, the Agreement settled the DOE's claim to an unpaid portion of a 1983 consent order (No. 6A0X00273) which also involved alleged crude oil violations. As a result of the Agreement, $8,183,929 was placed in escrow in an interest-bearing account administered by the Department of the Treasury, and is currently awaiting distribution.[1] This Decision and Order proposes procedures by which the OHA will distribute this fund. Comments are solicited on these proposed procedures.

The general guidelines which the OHA may use to formulate and implement a plan to distribute funds are set forth in 10 C.F.R. Part 205, Subpart V. The Subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of alleged or adjudicated violations or to ascertain the amount of each person's injuries. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

We have considered the ERA's request to implement Subpart V procedures with respect to the monies received from Marion and have determined that such procedures are appropriate. Accordingly, we will grant the ERA's request.

Since the monies which Marion remitted to the DOE settle alleged crude oil regulatory violations, we propose that the fund be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges issued on July 28, 1986. 51 Fed. Reg. 27899 (August 4, 1986) (hereinafter referred to as "the DOE Policy"). Under that policy, up to 20 percent of alleged crude oil violation amounts will be reserved to satisfy valid claims by eligible purchasers of crude oil and refined petroleum products. Remaining funds are to be disbursed to the state and federal governments for indirect restitution, also in accordance with the DOE Policy. In the present case, we have decided to reserve the full 20 percent—$1,636,785.80—of the alleged crude oil violation amount, plus a proportionate share of the accrued interest, for direct refunds to purchasers of refined petroleum products and crude oil who prove that they were injured by the alleged crude oil violations.[2] The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used to evaluate claims based on alleged refined product overcharges pursuant to 10 CFR Part 205, Subpart V. *see Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986).

As in non-crude oil cases, applicants will be required to document their purchase volumes and to prove that they were injured by the alleged violations (i.e., that they did not pass on alleged overcharges to their own customers). We propose to utilize the standards for showing injury which the OHA has developed in analyzing non-crude oil claims. *See, e.g., Dorchester Gas Corp.*, 14 DOE ¶ 85,240 (1986). These standards include a finding that end-users and ultimate consumers whose businesses are unrelated to the petroleum industry were injured by a consent order firm's alleged overcharges. Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the money available in each escrow subaccount by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). The principal volumetric refund amount in this proceeding is $0.0000003958. In addition, after all valid claims are paid, unclaimed funds from the 20 percent claims reserve will be divided equally between federal and state governments. The federal government's share of the unclaimed funds will ultimately be deposited into the general fund of the Treasury of the United States.

We propose that the remaining 80 percent of the funds—$6,547,143.20—be immediately disbursed to the federal and state governments for indirect restitution. We propose to direct the DOE's Office of the Controller to segregate this amount and distribute $1,636,785.80 plus appropriate interest to the states and $4,910,357.40 plus appropriate interest to the federal government.[3] Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The Appendix to this Decision lists the share (ratio) of the funds in the state account which each state will receive if these procedures are adopted.

It Is Therefore Ordered That:

The refund amounts remitted to the Department of Energy by Marion Corporation pursuant to Compromise Agreement approved on December 10, 1985, Consent Order Number N00S98136Z, shall be distributed in accordance with the foregoing Decision.

APPENDIX—CALCULATION OF RATIOS FOR DISTRIBUTION TO STATES AND TERRITORIES—M.D.L. 378

State	Consumption	Ratio
Alabama	626,803,520	0.01534512450
Alaska	156,047,980	0.00388926023
American Samoa	7,275,000	0.00017810331
Arizona	418,994,930	0.01025764719
Arkansas	519,611,670	0.01272579770
California	3,739,316,300	0.09154432453
Colorado	439,201,380	0.01075233249
Connecticut	993,599,220	0.01698259040
Delaware	193,932,730	0.00474777489
District of Columbia	97,574,660	0.00238877935
Florida	1,887,260,800	0.04620307312
Georgia	909,619,980	0.02226890661
Guam	60,196,000	0.00147369165
Hawaii	280,655,260	0.00687087703
Idaho	167,843,790	0.00410418057
Illinois	1,678,159,060	0.04593129065
Indiana	1,006,156,560	0.02463227660
Iowa	532,229,530	0.01302980621
Kansas	457,905,310	0.01121023378
Kentucky	523,901,010	0.01281856563
Louisiana	971,581,210	0.02378606310
Maine	300,279,730	0.00735131458
Maryland	731,363,020	0.01790490358
Massachusetts	1,398,309,100	0.03423278036
Michigan	1,391,772,090	0.03407274419
Minnesota	708,814,590	0.01735288297
Mississippi	557,786,510	0.01365548081
Missouri	806,514,320	0.01974472423
Montana	184,882,510	0.00452621123
Nebraska	301,217,700	0.00737427752
Nevada	165,454,200	0.00405057600
New Hampshire	190,375,390	0.00466068401
New Jersey	1,507,862,710	0.03691482302
New Mexico	267,574,480	0.00655063871
New York	3,162,994,520	0.07743502253

[1] This amount consists of the principal settlement amount of $8 million and interest which accrued between the date of settlement and the date of payment. As of October 31, 1986, the total amount in escrow equals $8,871,821.

[2] On July 7, 1986, the United States District Court for the District of Kansas approved the Settlement Agreement in *In Re: The Department of Energy Stripper Well Exemption Litigation*, MDL No. 378, 3 Fed. Energy Guidelines ¶ 26,563. That Settlement Agreement resolves a number of matters, including the distribution of funds collected by the Court and the distribution of alleged crude oil violation amounts collected by the DOE in other cases. Under the Settlement Agreement firms which apply for a portion of the Stripper Well Exemption Litigation funds generally must sign a waiver releasing their claims to a portion of the crude oil funds to be distributed by the OHA. Settlement Agreement, Part III.

[3] The Stripper Well Exemption Litigation Settlement Agreement provides that for amounts transferred by OHA to the federal and state governments in excess of $100 million, of the next $400 million, the DOE shall receive 75 percent and the States shall receive 25 percent. Settlement Agreement, Paragraph II.B.3.c.ii. On August 4, 1986, the OHA transferred $104,061,950.61 to the state and federal governments. *Stripper Well Exemption Litigation*, 14 DOE ¶ 85,382 (1986).

APPENDIX—CALCULATION OF RATIOS FOR DISTRIBUTION TO STATES AND TERRITORIES—M.D.L. 378—Continued

State	Consumption	Ratio
No. Mariana Islands	3,763,000	0.00009212409
North Caroline	916,900,780	0.02244470825
North Dakota	148,717,980	0.00366539708
Ohio	1,534,904,170	0.03757684000
Oklahoma	504,486,400	0.01235060023
Oregon	404,894,790	0.00991245364
Pennsylvania	1,901,863,900	0.04655058481
Puerto Rico	389,132,000	0.00952655624
Rhode Island	161,953,570	0.00396487514
South Caroline	486,978,850	0.01192199023
South Dakota	146,053,670	0.00357562067
Tennessee	860,820,850	0.01619636977
Texas	3,013,545,120	0.07377639991
Utah	240,978,330	0.00589952410
Vermont	97,782,860	0.00239336678
Virgin Islands	188,953,000	0.00462586316
Virginia	1,048,324,850	0.02566461699
Washington	623,786,920	0.01527127344
West Virginia	244,121,480	0.00597647330
Wisconsin	718,608,070	0.01759484593
Wyoming	166,569,650	0.00407788395
Totals	40,847,079,480	1.00000000000

[FR Doc. 86–28490 Filed 12–18–86; 8:45 am]
BILLING CODE 6450–01–M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy has adopted the procedures to be followed in refunding $348,614.19 in consent order funds to members of the public. This money is being held in escrow following the settlement of enforcement proceedings involving C.K. Smith & Company, Inc.

DATE AND ADDRESS: Applications for Refund must be filed within 90 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All applications should conspicuously display a reference to case number HEF–0172.

FOR FURTHER INFORMATION CONTACT: Virginia Lipton, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–2400.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the final Decision and Order set out below. The Decision and Order relates to a consent order entered into by C.K. Smith & Company, Inc. 44 FR. 39241 (July 5, 1979).

The Decision and Order sets forth the procedures and standards that the DOE has formulated to distribute the contents of an escrow account funded by Smith pursuant to the consent order. The DOE has decided that Applications for Refund should be accepted from firms and individuals that purchased No. 2 heating oil from Smith during the period November 2, 1973 through February 28, 1975. The Decision and Order provides that in order to receive a portion of the settlement funds, a reseller of Smith product must generally furnish the DOE with evidence of the volumes purchased and proof that it was injured by the allegedly unlawful prices for No. 2 heating oil charged by Smith. However, an end-user claimant, or a reseller applying for refunds of $5,000 or less need only submit proof of the amount of No. 2 heating oil purchased from Smith during the consent order period. According to the Decision and Order, the amount of the refund will generally be a pro rata share of the $348,614.19 fund made available by Smith, as well as a pro rata share of any interest accrued on those overcharges.

Applications for Refund filed by purchasers of Smith No. 2 heating oil must be filed within 90 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All applications and comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: December 3, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

December 3, 1986.

Name of firm: C.K. Smith & Company, Inc.

Date of filing: October 13, 1983.

Case No.: HEF–0172.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals formulate and implement special procedures to make refunds, in order to remedy the effects of alleged violations of the DOE regulations. 10 CFR Part 205, Subpart V.

In accordance with these regulatory provisions, the ERA filed a Petition for the Implementation of Special Refund Proceedings in connection with a consent order that the DOE entered into with C.K. Smith & Company, Inc. (Smith). Smith is a "reseller-retailer" of No. 2 heating oil as that term was defined in 10 CFR 212.31 and 6 CFR 150.352. An audit of Smith's records revealed possible pricing violations with respect to the firm's sales of that product during the period November 2, 1973 through February 28, 1975. On May 25, 1978, a Proposed Remedial Order (PRO) was issued to Smith in connection with these alleged violations. In order to settle all claims and disputes between Smith and the DOE regarding Smith's sales of No. 2 heating oil during the audit period, Smith and the DOE entered into a consent order on May 30, 1979, in which Smith agreed to pay $348,614.19 to the DOE. Notice of the consent order was published in the **Federal Register**. 44 FR 39241 (July 5, 1979).

Jurisdiction and Authority to Fashion Refund Procedures

The procedural regulations of the DOE set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process is intended to be used in situations where the DOE is unable to readily identify persons who are eligible for refunds or unable to readily ascertain the amounts that such persons are eligible to receive. For a more detailed discussion of Subpart V and the authority of the Office of Hearings and Appeals to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,553 (1983); Office of Enforcement, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

On November 4, 1983, the Office of Hearings and Appeals issued a Proposed Decision and Order tentatively setting forth the procedures to be used in disbursing the Smith consent order funds. *C.K. Smith & Company*, Case No. HEF–0172 (November 4, 1983) (proposed decision). The purpose of the present determination is to provide for the final procedures to be used in distributing those funds.

Proposed Refund Procedures

In the November 4 Proposed Order we suggested a method for allocating the Smith funds to successful refund applicants. We tentatively decided that we would generally follow a volumetric

approach. This approach permits a successful claimant to receive a pro rata share of the total available fund. We stated that we would multiply the number of gallons of Smith product purchased by a qualified applicant by a factor using the total amount of the consent order fund ($348,614.19) as the numerator and using Smith's total sales in gallons of No. 2 heating oil during the consent order period (15,876,925.3) as the denominator. Thus, a successful applicant's allocable share of the consent order funds would generally be equal to the number of gallons of No. 2 heating oil it purchased from Smith, multiplied by $.02196 ($348,614.19 divided by 15,976,925.3). A successful applicant would also receive a pro rata share of any interest accrued on the funds remitted by Smith.

In the Proposed Order, we stated that the consent order fund should be distributed to Smith customers who satisfactorily demonstrate that they have been adversely affected by the alleged Smith overcharges during the relevant period. While there are a variety of means by which a claimant could make a showing of injury, we suggested that a reseller should generally demonstrate that at the time it purchased the No. 2 heating oil from Smith, market conditions would not permit it to increase its prices so as to pass through the additional costs associated with the alleged overcharges. In addition, we stated that a reseller must show that it maintained a "bank" of unrecovered costs. The existence of banks, although not conclusive proof of injury, is a necessary element in proving that the reseller did not subsequently recover the alleged overcharges by increasing its prices.

In the Proposed Order, we also adopted a simplified procedure for considering relatively small refund claims. We stated that a detailed showing of injury might be too complicated and burdensome for resellers that purchased relatively small amounts of No. 2 heating oil from Smith. For example, such firms may lack the records necessary to prove that they did not pass on the alleged Smith overcharges to their own customers. Further, the cost of analyzing the additional information regarding injury might well outweigh the benefits obtained. We therefore stated that any firm claiming a refund based on average purchases of less than 50,000 gallons of No. 2 heating oil per month, or less than 600,000 gallons per year from Smith need not make a detailed showing of injury.

With respect to purchasers who were ultimate consumers of Smith product, we concluded that the above showing would not be necessary in order for a customer to qualify for a refund. Customers in this group might include government entities, businesses, and individuals that purchased Smith product to heat their offices or residences. We indicated that this type of purchaser need only demonstrate that it purchased a specific quantity of No. 2 heating oil which was sold by Smith during the relevant time period.

We sent a copy of the November 4 Proposed Order to Smith customers for whom addresses were available and informed them that they could request adjustments in the proposed refund mechanism. Further, we published a notice in the Federal Register announcing that we were seeking comments regarding the proposed refund procedures. 49 FR 2936 (January 24, 1984). We provided a 30 day period in which comments could be submitted. That period has now expired. We received no requests for adjustment in the proposed procedures and accordingly we are now prepared to adopt the final refund procedures regarding the Smith consent order funds.

Final Refund Plan

In general, we adopt the proposed refund procedures set forth in the November 4 determination, including the volumetric approach discussed above. However, while we believe that a volumetric approach will be appropriate in most instances, we wish to point out that any claimant may file an application based on a claim that it suffered a disproportionate share of the alleged overcharges. We find that one aspect of the proposed refund procedures warrants modification. Specifically, we find that an adjustment should be made with respect to the standard used in determining whether a refund application qualifies for consideration under our small claims refund procedures. Instead of the standard based on volumes purchased, as set forth in the Proposed Order, we will adopt the approach used in our most recent Subpart V cases, which is based on a dollar threshold level. *E.g., Marathon Oil Co.*, 14 DOE ¶ 85,269 (1986) (*Marathon*). Under that methodology, we will presume that applicants who are claiming a refund of $5,000 or less were injured as a result of their purchases from Smith. These applicants will therefore not be expected to provide the proof of injury referred to above.

In addition to the presumption of injury for claimants requesting refunds of $5,000 or less, we will adopt three further presumptions regarding injury. First, as we indicated in the Proposed Order, we will presume that end-users or ultimate consumers of Smith products whose businesses are unrelated to the petroleum industry were injured by the alleged overcharges. Second, we will presume that regulated utilities or cooperatives generally passed the alleged overcharges on to their end-user members or customers and that they are able to establish a mechanism for passing through refunds to them. These types of claimants will not be expected to establish injury, but will be required to certify that they will pass any refund received through to their members or customers. They will also be required to provide us with a full explanation of the manner in which they plan to accomplish this restitution, and to certify that they will notify the appropriate regulatory body of the receipt of refund money. Thirdly, we will adopt a rebuttable presumption that spot purchasers were not injured. Prior OHA decisions provide detailed explanations of the bases for these presumptions. *E.g., Marathon*, 14 DOE at 88,508-09, 88,515-16; *True Co.* DOE ¶ 85,178 at 88,484-85 (1985). A claimant will not be required to submit any evidence of injury beyond purchase volumes if its refund claim is based on one of the first three presumptions outlined above. The presumptions will permit claimants to apply for refunds without incurring disproportionate expenses and will enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

We also recognize that we may receive claims alleging that Smith violated DOE allocation regulations. Such claims would be based on Smith's alleged failure to furnish No. 2 heating oil that it was obliged to supply the claimant under 10 CFR Part 211. We will evaluate such claims by referring to standards such as those set forth in *OKC Corp./Town & Country Markets, Inc.*, 12 DOE ¶ 85,094 (1984) and *Aztex Energy Co.*, 12 DOE ¶ 85,116 (1984).

As in previous cases, we will establish a minimum refund amount of $15. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982).

Applications for Refund

Applications for refund will now be accepted from parties who purchased Smith No. 2 heating oil during the period November 2, 1973 through February 28, 1975. An application must be in writing, signed by the applicant, and specify that it pertains to the C.K. Smith Refund Proceeding, case number HEF-0172.

An applicant should indicate from whom the covered product was purchased and, if the applicant is not a direct purchaser from Smith, it should also indicate the basis for its belief that the petroleum product originated with Smith. Each applicant should report its volume of purchases by calendar quarter for the period of time for which it is claiming it was injured by the alleged overcharges. Each applicant should specify how it used the Smith petroleum product, such as whether it was a reseller or ultimate consumer.

If the applicant is a reseller applying for a refund of greater than $5,000, it should state whether it maintained banks of unrecouped product cost increases from the date of the alleged violation through June 30, 1976. An applicant who did maintain banks should furnish the OHA with a schedule of its cumulative banks calculated on a quarterly basis from November 1973 through June 30, 1976, the date on which No. 2 heating oil was decontrolled. The reseller applicant must submit evidence to establish that it did not pass on the alleged injury to its customers. For example, a firm may submit market surveys or information about changes in its profit margins or sales volume to show that price increases to recover alleged overcharges were infeasible. An applicant that was a Smith stockholder, officer, affiliate or subsidiary during the period November 2, 1973 through February 28, 1975 shall so indicate. Since the May 30, 1979 consent order directed Smith to make refunds to certain specified customers, a claimant must also state the amount of any refunds it has received from Smith pursuant to the consent order. The applicant should report any past or present involvement as a party in DOE enforcement actions. If these actions have terminated, the applicant should furnish a copy of a final order issued in the matter. If the action is ongoing, the applicant should briefly describe the action and its current status. The applicant is under a continuing obligation to keep the OHA informed of any change in status while its application for refund is being considered. *See* 10 CFR § 205.9(d).

Each application must also include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, the applicant should furnish us with the name, position title, and telephone number of a person who may be contacted by us for additional information concerning the application.

All applications for refund must be filed in duplicate. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E-234, 1000 Independence Avenue, SW, Washington, DC. Any applicant that believes that its application contains confidential information must so indicate on the first page of its application and submit two additional copies of its application from which the confidential information has been deleted, together with a statement specifying why any such information is privileged or confidential.

All applications should be sent to: C.K. Smith & Company, Special Refund Proceeding, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Applications for refund of a portion of the Smith consent order funds must be postmarked within 90 days after publication of this Decision and Order in the Federal Register. *See* 10 CFR 205.286. All applications for refund received within the time limit specified will be processed pursuant to 10 CFR 205.284.

Any funds remaining after all refund applications have been considered will be disbursed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986, H.R. 5300, Title III, 99th Cong. 2d Sess., Cong. Rec. H11319-21 (Daily Ed. October 17, 1986).

It Is Therefore Ordered That:

(1) Applications for Refunds from the funds remitted to the Department of Energy by C.K. Smith & Company, Inc. pursuant to the consent order executed on May 30, 1979 may now be filed.

(2) All applications must be filed within 90 days after publication of this Decision and Order in the Federal Register.

George B. Breznay,

Director, Office of Hearings and Appeals.

December 3, 1986.

[FR Doc. 86-28491 Filed 12-18-86; 8:45 a.m.]

BILLING CODE 6450-01-M

Proposed Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces proposed procedures for disbursement of $150,000 (plus accrued interest) obtained pursuant to a consent order between the DOE and Tresler Oil Company. The funds will be distributed to refund applicants who purchased motor gasoline from Tresler during the period May 1975 through April 1981 (the consent order period).

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the Federal Register and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should be filed in duplicate and display a conspicuous reference to Case Number KEF-0019.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-2383.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy (DOE), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth the procedures that the DOE has tentatively formulated to distribute monies obtained from Tresler Oil Company to settle possible pricing violations with respect to the firm's sales of motor gasoline during the consent order period. Under the terms of the consent order, Tresler remitted $150,000 which is being held in an interest-bearing escrow account pending determination of its proper distribution.

We propose to distribute these funds in two stages. In the first stage, we will accept claims from identifiable purchasers of motor gasoline who may have been injured by Tresler's pricing practices during the consent order period. The specific requirements which an applicant must meet in order to receive a refund are set out in Section II of the Proposed Decision. Claimants who meet these specific requirements will be eligible to receive refunds based on the number of gallons of motor gasoline which they purchased from Tresler. If any funds remain after meritorious claims are paid in the first stage, they may be used for indirect restitution in accordance with the Petroleum Overcharge Distribution and Restitution Act of 1986, Pub. L. No. 99-509, 1 Fed. Energy Guidelines ¶ 11,072.

Any member of the public may submit written comments regarding the

proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments must be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1:00 p.m. and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585.

Date: December 12, 1986.

George B. Breznay,

Director, Office of Hearing and Appeals.

Proposed Decision and Order of the Department Of Energy

Implementation of Special Refund Procedures

December 12, 1986.

Name of Firm: Tresler Oil Company.

Date of Filing: March 25, 1986.

Case Number: KEF–0019.

Under the procedural regulations of the Department of Energy (DOE), 10 CFR Part 205, Subpart V, the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate procedures to distribute funds received as a result of enforcement proceedings in order to remedy the effects of actual or alleged violations of DOE regulations. On March 25, 1986, in accordance with the provisions of Subpart V, the ERA filed a Petition for Implementation of Special Refund Procedures in connection with a consent order entered into with Tresler Oil Company (Tresler).

I. Background

Tresler was a "reseller-retailer" of refined petroleum products, as that term was defined in 10 CFR § 212.31. The firm's sales were primarily made in Ohio, Kentucky and Indiana. A DOE audit of Tresler's records revealed possible violations of the Mandatory Petroleum Price Regulations, 10 CFR Part 212, Subpart F. Based on the audit, the ERA issued a Proposed Remedial Order (PRO) on September 14, 1984, alleging that during the period May 1975 through April 1980, Tresler committed certain pricing violations in its sales of motor gasoline.

In order to settle all claims and disputes between Tresler and the DOE regarding the firm's sale of motor gasoline during the period covered by the audit, the parties entered into a consent order on October 9, 1985. Under the terms of the consent order, Tresler deposited $150,000 into an interest-bearing escrow account for ultimate distribution by the DOE. As of October 31, 1986, the total value of the Tresler escrow account was $160,835.04.

II. Proposed Refund Procedures

Subpart V sets forth general guidelines to be used by the OHA In formulating a plan for distributing funds received as a result of an enforcement proceeding. The Subpart V process may be used in situations like the present case where the DOE is unable to readily identify those persons who likely were injured by alleged overcharges or ascertain the amount of the refunds they should receive.

The distribution of refunds in this proceeding should take place in two stages. In the first stage, we will accept claims from identifiable purchasers of motor gasoline who may have been injured by Tresler's pricing practices during the period May 1975 through April 1980 (the consent order period). If any funds remain after all meritorious first-stage claims have been paid, they may be used for indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986, Pub. L. No. 99–509, 1 Fed. Energy Guidelines ¶ 11,702 *et seq.*

A. Refunds to Identifiable Purchasers

In the first stage of the Tresler refund proceeding, we propose to distribute the funds currently in escrow to claimants who demonstrate that they were injured by Tresler's alleged overcharges. While there is a variety of methods by which such a showing can be made, a refiner, reseller or retailer claimant is generally required to demonstrate (i) that it maintained a "bank" of unrecovered costs, in order to show that it did not pass the alleged overcharges through to its own customers, and (ii) that market conditions were the reason that it did not pass through those increased costs. For periods in which the DOE regulations did not require the computation of cost banks, a claimant in the oil business will only be required to make the latter showing, which might be made through a demonstration of lowered profit margins, decreased market shares, or depressed sales volume during the period of purchases from Tresler. *See, e.g., Dorchester Gas Corp.*, 14 DOE ¶ 85,240 at 88,451 (1986).

We propose to adopt presumptions of injury which have been used in many prior refund cases. These presumptions will enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available, while permitting applicants to participate in the refund process without incurring inordinate expense. *See* 10 CFR 205.282(e).

1. Applicants Claiming a Refund of $5,000 or Less

The first presumption we plan to use is that purchasers of Tresler motor gasoline seeking small refunds were injured by the firm's pricing practices. We recognize that making a detailed showing of injury may be too complicated and burdensome for resellers or retailers who purchased relatively small amounts of product from Tresler. We also are concerned that the cost to the applicants and to the government of compiling and analyzing information sufficient to make a detailed showing of injury not exceed the amount of the refund to be gained. In the past, we have adopted a small claims presumption to assure that the costs of filing a small claims presumption to assure that the costs of filing and processing a refund application do not exceed the benefits. *See, e.g., Marathon Petrolem Co.*, 14 DOE ¶ 85,289 at 88,515 (1986) and cases cited therein. Under the small-claims presumption, a claimant would not be required to submit any additional evidence of injury beyond volumes of Tresler motor gasoline purchased if its refund claim is below $5,000.[1]

2. Spot Purchasers

We propose to adopt a rebuttable presumption that resellers who made spot purchases from Tresler have suffered no injury. As we have previously noted, spot purchasers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of Tresler's product at increased prices unless they were able to pass through the full price of the purchases to their own customers. *Office of Enforcement*, 8 DOE ¶ 82,597 at 85,396–97 (1981). Therefore, a firm which made only spot purchases from Tresler will be ineligible to receive a refund, even one below the $5,000 threshold level, unless it presents evidence rebutting the spot purchaser presumption that they were not injured. Such evidence must establish that the spot purchaser was unable to recover the price it paid for Tresler's product and that it was forced by market conditions to make the purchases upon which its refund claim is based. *See, e.g., Marathon*, 14 DOE at 88,515; *Dorchester*, 14 DOE at 88,452.

[1] Firms potentially eligible for greater refunds may chose to limit their claims to $5,000 without being required to make a detailed demonstration of injury. *See* Office of Enforcement, 8 DOE ¶ 82,597 (1981).

3. End-Users

We also propose to adopt a presumption that end-users or ultimate consumers whose businesses were unrelated to the petroleum industry were injured by Tresler's alleged overcharges. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the audit period. They were therefore not required to base their pricing decisions on cost increases or to keep records which would show whether they passed through cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of goods and services which were not covered by the petroleum price regulations would be beyond the scope of a special refund proceeding. *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984). We therefore propose that end-users of Tresler motor gasoline need only document their purchase volumes from the firm to make a sufficient showing that they were injured by the alleged overcharges. On the other hand, refund applicants whose business operations were subject to the DOE regulatory program and who purchased Tresler products for consumption as fuel or raw materials will not be considered end-users for the purpose of the showing or injury. *Seminole Refining Inc.*, 12 DOE ¶ 85,186 at 88,576 (1985).[2]

B. Calculation of Refund Amounts

We plan to adopt a volumetric method to divide the Tresler escrow account among applicants who demonstrate that they are eligible to receive refunds. This method generally presumes that the alleged overcharges were spread equally over all the gallons of motor gasoline sold by Tresler during the consent order period. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. However, we also recognize that the impact on an individual purchaser might have been greater, and any purchaser may file a refund application based on a claim that it incurred a disproportionate share of alleged overcharges than the pro rata share calculated by the use of the volumetric presumption.

Under the volumetric method we plan to adopt, a claimant will be eligible to receive a refund equal to the number of gallons of Tresler motor gasoline that it purchased during the consent order period times the volumetric refund amount. The volumetric refund amount in this case will be $0.000291 per gallon.[3] In addition, successful claimants will receive a proportionate share of the accrued interest.

As in previous cases, we will establish a minimum refund amount of $15 for first stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982)

C. General Refund Application Requirements

Any purchaser claiming a portion of the consent order funds will be required to file an Application for Refund pursuant to 10 CFR 205.283. In its Application, a claiment must include a schedule of its monthly purchases of Tresler motor gasoline during the consent order period as well as all relevant information necessary to support its claim in accordance with the presumptions outlined above. A claimant must also state whether it has previously received a refund, from any source, with respect to the alleged overcharges underlying this proceeding. Each applicant must also state whether there has been a change in ownership of the firm since the consent order period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why a refund should be paid to the applicant rather than the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Finally, if an applicant has been involved in enforcement proceedings brought by the DOE, it must provide a summary of the present status of the proceeding, or if the matter is no longer pending, it must indicate how the proceeding was resolved. The applicant must keep the OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Tresler Oil Company pursuant to a consent order entered on October 9, 1985, will be distributed in accordance with the foregoing Decision.

[FR Doc. 86–28492 Filed 12–18–86; 8:45 am]

BILLING CODE 6450–01–M

[2] We propose to require end-user firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement to provide with their applications a full explanation of the manner in which any refunds which they receive would be passed through to their customers. They will also be required to indicate how the appropriate regulatory body or membership group will be advised of the applicant's receipt of refund money. *See Office of Special Counsel*, 9 DOE ¶ 82,538 at 85,203 (1982). We note that a cooperative's sales of Tresler's products to non-members will be treated in the same manner as sales by other resellers.

[3] This figure is computed by dividing the $150,000 received from Tresler by the 515,067,572 gallons of motor gasoline sold by the firm during the consent order period.

Issuance of Proposed Decisions and Orders; Week of November 3 through November 7, 1986

During the week of November 3 through November 7, 1986, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever, occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through

Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

George B. Breznay,

Director, Office of Hearings and Appeals.

December 8, 1986.

Belcher Oil Company, Inc., Murray, Kentucky; KEE-0065, Reporting Requirements.

Belcher Oil Company, Inc. filed an Application for Exception from the mandatory requirement to file Form EIA-782B, the "Reseller/Retailers' Monthly Petroleum Product Sales Report." The exception request, if granted, would relieve Belcher Oil from its obligation to file Form EIA-782B. On November 3, 1986, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted in part, allowing Belcher an extension of time in which to file Form EIA-782B.

Brooks Oil Co., Middlesboro, Kentucky; KEE-0069, Reporting Requirements.

Brooks Oil Company, filed an Application for Exception from the provisions of the Mandatory Reporting Requirements. The Exception request, if granted, would permit Brooks Oil Co. not to file Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." On November 6, 1986, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

Dodd's Wholesalers, Inc., Cutbank, Montana; KEE-0071, Reporting Requirements

Dodd's Wholesalers, Inc. filed an Application for Exception from the requirement that it file form EIA-782B, the "Reseller/Retailers Monthly Product Sales Report." The exception request, if granted, would permit Dodd's to discontinue filing form EIA-782B. On November 6, 1986, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

Paullina Grain Co., Inc., Paullina, Iowa; KEE-0074, Reporting Requirements.

Paullina Grain Co., Inc. filed an Application for Exception in which the firm sought relief from its obligation to submit Form EIA-782B, entitled "Reseller'/Retailers' Monthly Petroleum Product Sales Report." In considering the applicant's request, the DOE found that the firm failed to demonstrate that it was particularly adversely affected by the requirement that it file the Form. Accordingly, on November 5, 1986, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 86-28485 Filed 12-18-86; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decision and Order; Week of November 10 through November 14, 1986

During the week of November 10 through November 14, 1986, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except Federal holidays.

George B. Breznay,

Director, Office of Hearings and Appeals.

December 2, 1986.

Kennedy & Mitchell, Inc., Denver, Colorado, KEE-0002 Filing Requirements

Kennedy & Mitchell, Inc. filed an Application for Exception from the requirement that it file Form EIA-23. On November 10, 1986 the department of Energy issued a Proposed Decision and Order which determined that the request for exception be denied.

[FR Doc. 28486 Filed 12-18-86; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of November 10 through November 14, 1986

During the week of November 10 through November 14, 1986, the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

December 11, 1986.

Remedial Orders

Kaiser Aluminum International Corp., 11/10/86; HRO-0180

Kaiser Aluminum International Corporation objected to a Proposed Remedial Order alleging that the firm violated the layering rule. The rule prohibited crude oil resellers from applying a markup in any crude oil sales transaction in which they did not perform any service or function historically and traditionally performed by crude oil resellers. The DOE found no merit to the firm's argument that the layering regulation was not validly promulgated. In addition, the DOE found that Kaiser had not provided any tangible service which facilitated the movement of crude oil from the producer to the refiner, or which provided some other function of economic benefit to the crude oil market, as required by the layering rule. Accordingly, the PRO was issued as a final Order directing Kaiser to remit $2,399,552.61 to the DOE as restitution for this violation.

Marathon Oil Co., Economic Regulatory Administration, Growmark, Inc., 11/13/86; HRO-0024; KRR-0001; KRR-0002

Marathon Oil Company objected to a Proposed Remedial Order issued to it by the Economic Regulatory Administration. The PRO alleged that since Marathon improperly considered Growmark as a member of its wholesale reseller classes, rather than as a member of the Growmark contract class, Marathon improperly used the May 15, 1973 selling price to the wholesale reseller classes rather than the May 15, 1973, selling price to the Growmark contract class in calculating its prices to Growmark. The DOE sustained the PRO, finding that Marathon should have assigned Growmark to the Growmark contract class at four terminals at which the firm purchased product. The DOE based this conclusion on the fact that Marathon offered Growmark a discount on the basis of a contractual agreement pursuant to which Growmark agreed to purchase certain minimum volumes of specified products from those four Marathon terminals and on the fact that Growmark continued the pattern of purchases required by the contract even after the contract expired. The DOE found that Marathon was therefore required to calculate its prices to Growmark using as a base price the May 15, 1973 price of the Growmark contract class, rather than the May 15, 1973 price of the wholesale reseller classes. Accordingly, Marathon was directed to remit $7,779,490.21 plus interest to the DOE as restitution for this violation.

Request for Exception

Petro-Thermo Corp., 11/12/86; KCX-0011

In accordance with a remand order of the Federal Energy Regulatory Commission, the DOE considered an Application for Exception filed by Petro-Thermo Corporation. The DOE granted partial exception relief to the firm, retroactively permitting it to sell at market prices crude oil which it had reclaimed. As a result, the firm's refund obligation of $146,055.76, under a prior Remedial Order, was reduced by $59,590.83, the amount of overcharges attributable to the reclaimed crude oil portion of its total crude oil sales.

Implementation of Special Refund Procedures

O'Connell Oil Co., Key Oil Co., 11/14/86; HEF-0141; HEF-0106

The DOE issued a Decision and Order implementing a plan for the distribution of $76,330.45, plus accured interest, received as a result of separate consent orders it entered into with O'Connell Oil Company and Key Oil Company. The Decision states that in order to obtain a refund, a purchaser of motor gasoline from O'Connell or diesel fuel from Key must submit an application listing its purchase volumes during the consent order period, and demonstrate that it was injured by the alleged overcharges. With respect to the Key proceeding, identified purchasers may receive portions of the consent order fund in the amounts allotted by the ERA in its audit of Key, and unidentified purchasers may receive refunds based upon a volumetric allocation methodology. Refunds in the O'Connell proceeding will generally be allocated on a volumetric basis. The Decision sets forth the presumptions adopted regarding demonstration of injury and specific information to be provided in refund applications.

Perto Oil Marketing Corp., 11/12/86; HEF-0148

The DOE issued a Decision and Order implementing a plan for the distribution of $204,625.14 received pursuant to a Consent Order it entered into with Perta Oil Marketing Corporation. The DOE decided to allocate $69,802.04 of the consent order fund to a crude oil pool, and the remainder to a refined petroleum products pool. The refund pool associated with Perta's alleged crude oil violations will be distributed according to the DOE's Statement of Modified Restitutionary Policy in Crude Oil Cases. The balance of the consent order fund will be used to distribute refunds to customers that were injured as a result of their purchases of Perta refined petroleum products from August 1, 1973 to January 28, 1981. The presumptions adopted with respect to proof of injury and the specific information to be included in Applications for Refund are set forth in the Decision.

Refund Applications

Coline Gasoline Corp./Connecticut, National Helium Corp./Connecticut, Palo Pinto Oil and Gas/Connecticut, Belridge Oil Co./Connecticut, Perry Gas Processors, Inc./Connecticut, Standard Oil Co. (Indiana)/Connecticut, 11/14/86; RM2-39; RM3-40; RM5-41; RM8-42; RM 183-43; RQ251-329

The State of Connecticut filed Requests for Modification of the use of a portion of the second stage refunds previously allotted to it from funds made available through consent orders with Coline Gasoline Corp., National Helium Corp., Palo Pinto Oil and Gas, Belridge Oil Co., and Perry Gas Processors, Inc. Specifically, Connecticut requested permission to use the $146,582 in interest previously awarded to it for the purchase of seven vans, to be used to improve the mobility of Connecticut's elderly and handicapped citizens. Connecticut also filed a refund plan proposing to use $216,566 in second-stage refund money made available through a consent order with Standard Oil Co. (Indiana) to purchase 11 additional vans for the elderly and handicapped. Finding that these plans would disproportionately benefit a small segment of injured motor gasoline consumer's within the State, the OHA denied their approval, pending receipt of further justification from Conneciticut.

Crystol Oil Co./Crystal Petroleum Co., 11/14/86; RF233-32

The DOE issued a Decision and Order concerning an Application for Refund filed by a reseller of refined petroleum products, Crystal Petroleum Company (CPC), for a portion of the consent order fund remitted to the DOE by Crystal Oil Company (Crystal). CPC was a fully owned subsidiary of Crystal during the consent order period, but was sold afterwards. The new owners of CPC claimed that since CPC operated as a separate entity, was headquartered in a different city, and had a different president and officers, it should be considered a separate entity and thus eligible for a refund from the Crystal consent order fund. Since CPC was owned by Crystal during the consent order period, the DOE determined that CPC had no right to a refund. Thus, the Application for refund submitted by CPC was denied.

Gulf Oil Corp./Warner Oil Co., et al., 11/14/86; RF40-987, et al.

The DOE Issued a Decision and Order concerning the Applications for Refund filed by Warner Oil Co. and seven other firms. Each firm both purchased Gulf product and received Gulf product on consignment. Following the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), each applicant demonstrated the volume of Gulf product that it purchased, and was granted a refund based on the full volumetric amount. All the applicants failed to demonstrate, however, that they were injured as consignees of Gulf products. The DOE determined that the fact that each firm ceased receiving Gulf consignments as a result of a business decision to switch from marketing consigned Gulf products to purchasing and reselling those products did not demonstrate injury. Accordingly, no refund was granted for consigned volumes. The total amount of refunds approved for purchased product was $32,833 in principal and $7,265 in interst.

Little America Refining Co./Lakeland Oil and Tire Co., Allan's Sinclair, Best Oil and Gas Company, 11/10/86; RF112-194; RF112-196; RF112-197

The DOE issued a Decision and Order concerning three Applications for Refund filed by purchasers of products covered by a consent order that the agency entered into with Little America Refining Company. Each applicant demonstrated the volume of its Larco purchases, and none requested a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decision is $7,807 in principal and $4,015 in interest.

Dismissals

The following submissions were dismissed:

Name and Case No.
Home Petroleum Corp.—RF140-45
Lynn Vines Apco—RF1483-156
Mellon Enterprises, Inc.—RF140-46
Mobil Oil Corp.—RF140-16
Sun Company, Inc.—RF6-38; RF21-10398
Sun Company, Inc.—RF13-13

[FR Doc. 86-28487 Filed 12-18-86; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decisions and Orders; Week of November 17 through November 21, 1986

During the week of November 17 through November 21, 1986, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or

law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

George B. Breznay,

Director, Office of Hearings and Appeals.

December 2, 1986.

Idaho Petroleum, Inc., Lewiston, Idaho, KEE-0072 Reporting Requirements

Idaho Petroleum, Inc. filed an Application for Exception from the reporting requirements of the EIA. The exception request, if granted, would permit Idaho Petroleum to discontinue filing Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." Idaho Petroleum sought relief from its monthly obligation to submit the form because it allegedly lacks the office staff to complete the form. However, the Office of Hearings and Appeals found the firm's small size an insufficient basis for relief. Accordingly, on November 18, 1986, the Department of Energy issued a Proposed Decision and Order which tentatively determined that the exception request be denied.

Mitchell Fuel Company, Inc., South Windsor, Connecticut, KEE-0075 Reporting Requirements

Mitchell Fuel Company, Inc. filed for relief from the requirement to submit Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." Mitchell sought relief from its monthly obligation to submit the form because it allegedly lacks the office staff to complete the form. The Office of Hearings of the Department of Energy found, however, that Mitchell's small size is an insufficient basis for relief. Accordingly, on November 18, 1986, the OHA issued a Proposed Decision and Order tentatively denying Mitchell's request for relief.

Ultra Power Corporation, Monticello, New York, KEE-0076 Reporting Requirements

Ultra Power Corporation filed for relief from the requirement to submit Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." Ultra Power sought relief from its monthly obligation to submit the form because it allegedly lacks the office staff to complete the form. The Office of Hearings of the Department of Energy found, however, that Ultra Power's small size is an insufficient basis for relief. Accordingly, on November 18, 1986, the OHA issued a Proposed Decision and Order tentatively denying Mitchell's request for relief.

[FR Doc. 86-28488 Filed 12-18-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3130-3]

Environmental Impact Statements; Availability

NOTICE: The notice of availability normally scheduled for December 26, 1986 will be published in the Monday, December 29, 1986 **Federal Register** due to the closing of Government offices on December 26, 1986. For all environmental impact statements filed during the week of December 15 through December 19, 1986, the minimum 45 and 30 day comment periods will be calculated from Friday, December 26, 1986.

Responsible Agency: Office of Federal Activities, EPA, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements Filed December 08, 1986 Through December 12, 1986 Pursuant to 40 CFR 1506.9.

EIS No. 860501, Draft, SFW, VA, NC, Great Dismal Swamp National Wildlife Refuge Master Plan, Long-Range Management and Development, Due: February 20, 1987, Contact: Mary Parkin (917) 965-5100

EIS No. 860502, Draft, SCS, MS, South Delta Watershed Protection and Flood Prevention Plan, Humphreys, Sharkey and Yazoo Counties Due: February 2, 1987, Contact: L.P. Heard (601)

EIS No. 860503, Final, AFS, CO, Wolf Creek Valley Ski Area Development, Special Use Permit, San Juan National Forest, Mineral County, Due: January 20, 1987, Contact: John Kirkpatrick (303) 247-4874

EIS No. 860504, Final, FHW, NJ, NJ-147 Imporvement, US 9 to New Jersey and Spruce Avenues Intersection, Cape May County, Due: January 20, 1987, Contact: Paul Lariviere (609) 989-2274

EIS No. 860505, Draft, COE, MO, Coldwater Creek Watershed Flood Damage Reduction and Related Improvement Plan, St. Louis County, Due: February 2, 1987, Contact: James Zerega (314) 263-5600

EIS No. 860506, Final, FHW, MD, Great Seneca Highway Study, Middlebrook Road to MD-28, Construction, Montgomery County, Due: January 20, 1987, Contact: Edward Terry, Jr. (301) 962-4010

EIS No. 860507, Final, COE, NJ, Manasquan Reservoir System, Oak Glen Reservoir Construction, 404 and 10 Permits, Timber Swamp Lake and Manasquan River, Monmouth County, Due: January 20, 1987, Contact: Jerry Pasquale (215) 597-6840

EIS No. 860508, Final, FHW, OR, Cornell Road Improvements, 185th Avenue to NW 242nd Avenue, Washington County, Due: January 20, 1987, Contact: Dale Wilken (503) 399-5749

EIS No. 860509, DSuppl, USN, VA, ATL, EMPRESS II Operation, Electromagnetic Pulse Radiation Environmental Simulator for Ships, New Scientific Reports, Due: February 2, 1987, Contact: Robert Warren (804) 445-2334.

EIS No. 860510, DSuppl, SCS, LA, Bell City Watershed Protection and Flood Control, Additional Channel Work, Calcasieu, Cameron and Jefferson Davis Counties, Due: February 2, 1987, Contact: Horace Austin (318) 473-7751

Amended Notice

EIS No. 840407, Draft, DOE, TN, Oak Ridge Reservation Central Waste Disposal Facility for Low-Level Radioactive Waste, Published FR 9-14-84—Officially Withdrawn

Dated: December 16, 1986.

Richard E. Sanderson,

Director, Officer of Federal Activities.

[FR Doc. 86-28566 Filed 12-18-86; 8:45 am]

BILLING CODE 6560-01-M

[ER-FRL-3130-4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared December 1, 1986 through December 5, 1986 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act (CAA) and section 102(2)(c) of the National Environmental Policy Act (NEPA) as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated February 7, 1986 (51 FR 4804).

Draft EISs

ERP No. D-BLM-K03016-CA, Rating E02, San Joaquin Valley Pipeline and Ancillary Facilities Project, Construction, 404 Permit, Right-of-Way Grant, Weir Station to Martinez Oil Refinery, CA. SUMMARY: EPA expressed objections to the project due to: (1) Potential adverse impacts to water quality and sensitive habitats such as marshes and riparian areas; (2) compliance and consistency with State and local water quality management plans and Water Quality Standards; (3) air quality impacts from refinery operations in the San Francisco Bay Area; and (4) lack of mitigation measures for air and water quality impacts.

Final EISs

ERP No. F-AFS-F65014-MI, Hiawatha Nat'l Forest, Land and Resource Mgmt. Plan, MI. SUMMARY: The concerns EPA expressed in comments on the draft EIS have been adequately addressed.

ERP No. F-BLM-G60004-NM, Jackpile-Paguate Uranium Mine Reclamation Project, Approval, Laguna Indian Reservation, NM. SUMMARY: EPA has no objections to the proposed actions as described.

ERP No. F1-BLM-J65115-MT, Headwaters Resource Area, Black Sage and Yellowstone River Island Wilderness Study Areas, Wilderness Designation, MT. SUMMARY: EPA made no formal comments. In comments on the draft EIS on August 8, 1983, EPA did not disagree with the proposed and now final designations of the two Wilderness study areas addressed in this second final EIS.

ERP F-BLM-J70006-CO, Little Snake Resource Area, Resource Mgmt. Plan (RMP), CO. SUMMARY: EPA's review identified several improvements to the draft RMP/EIS regarding BLM management for water and air quality, and riparian area wetlands. However, EPA still has concerns regarding water quality, riparian-wetland areas, minerals, grazing, endangered species protection, and inter-agency coordination. EPA recommended additional and/or more complete responses to these concerns.

ERP No. F-BLM-K61060-CA, Clear Lake Resource Area, Cedar Roughs and Rocky Creek-Cache Creek Wilderness Study Areas, Wilderness Recommendations, CA. SUMMARY: EPA made no formal comments. EPA reviewed the final EIS and found the project to be satisfactory.

ERP No. F-BLM-L61146-ID, Owyhee Planning Area, Wilderness Study Areas, Wilderness Designation Suitability, ID. Summary: EPA made no formal comments. EPA reviewed the final EIS and found the project to be satisfactory.

ERP No. F-FHW-B40039-MA, US 44 Relocation, MA-58 to MA-3, 404 Permit, MA Summary: EPA believes that the project can still be refined to further reduce the amount of wetland taking. In addition, EPA believes that the creation of offsite wetlands will not compensate for the wetland losses and recommended that wetlands be created adjacent to the impacted wetland areas. EPA recommended that a meeting of affected agencies be held to address the wetland impacts.

Regulations

ERP No. R-FHA-A86224-00, 7 CFR Part 1940, Revision of Policies and Procedures for Considering the Environmental Impacts of Proposed Agency Actions (51 FR 33763). Summary: EPA supports the FmHA's initiative and feels that work is still needed on refining processing requirements, referencing the 1985 Food Security Act. The FmHA should increase the emphasis given to the protection of wetlands, water quality, and beneficial uses.

Dated: December 16, 1986.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 86-28565 Filed 12-18-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-00074; FRL-3/30-9]

Title III of the Superfund Amendments and Reauthorization Act of 1986; Notice of Public Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meetings.

SUMMARY: The EPA has scheduled two public meetings to discuss the major provisions, draft reporting form, and guidance under section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986.

DATES: The meetings will be held on Thursday, January 8, 1987, and on Friday, January 9, 1987, from 8:30 a.m. to 4 p.m.

ADDRESS: The meetings will be held in: EPA's North Conference Center, Room 3, 401 M St., SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, 401 M St., SW, Washington, DC 20460, Telephone: (202) 554-1404.

SUPPLEMENTARY INFORMATION: EPA has scheduled two public meetings to provide background information on section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) and to obtain public input on a draft emissions inventory reporting form and other materials as mandated under section 313 of Title III.

Title III of the recently enacted Superfund amendments contains chemical information-gathering provisions of widespread interest to the public, the industry, and to State and local governments. The EPA's Office of Toxic Substances (OTS) has specific responsibility for implementing section 313 of Title III. Under section 313, owners and operators of certain industrial facilities which manufacture, process, or otherwise use any of over 300 listed toxic chemicals must report annually their releases of such chemicals to all environmental media. The information gathered under this section must be made available to the public. In particular, EPA must develop a national computerized data base containing this "toxic chemical release inventory." Further, the information must be made accessible to the public through means of computer telecommunications.

Under Title III, EPA must publish the section 313 reporting form by June 1, 1987. Owners and operators of covered facilities must submit the first reports on or before July 1, 1988 for calendar year 1987 data. In order to publish a high quality form and associated instructions by June 1, 1987, EPA is seeking extensive early involvement by interested persons in the development of this material. To secure that early public involvement, EPA has made draft copies of (1) a preliminary form, (2) draft instructions, (3) a discussion paper on the form elements, and (4) the analysis of a data base simulation exercise available for public review and comment.

In addition, public meetings are scheduled for January 8 and 9. On each of the 2 days, the meetings will begin by providing background information on section 313 of Title III of SARA, followed by discussion and imput to the form and associated instructions. Persons interested in attending one or both of these meetings and/or in obtaining copies of the form and other materials should call the TSCA Assistance Office (TAO) at the telephone number listed under **"FOR FURTHER INFORMATION CONTACT".** EPA encourages anyone interested in attending the public meetings to review the draft documents in advance. Should EPA hold subsequent meetings after January 9, a separate notice of these meetings will not be published in the **Federal Register.** Therefore, anyone wishing to attend any future meetings should contact TAO by January 12 in order to be notified in advance of such meetings.

Dated: December 16, 1986.

Michael Shapiro,

Director, Economic and Technology Division.

[FR Doc. 86-28570 Filed 12-18-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-64006; FRL-3128-4]

Intent To Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to cancel.

SUMMARY: EPA is issuing a notice of intent to cancel certain pesticide registrations under section 6(b) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). The registrations which the Agency intends to cancel are held by registrants whom the Agency, after a good faith effort, has been unable to contact. Persons adversely affected by this notice may request a hearing in accordance with the provisions of 40 CFR Part 164.

DATES: All registrations will be cancelled at the end of 30 days from the date of publication or receipt of this notice by registrants, unless a hearing has been requested by a person adversely affected by this notice, or the Agency is provided with a correct and current address of an affected registrant.

A request for a hearing by an affected registrant or the registrant's correct and current address must be received by the Agency on or before January 20, 1987 or 30 days after receipt by mail by the affected registrant of this notice, whichever is the later date

A request for a hearing submitted by any other adversely affected person must be received on or before January 20, 1987.

ADDRESS: Hearing requests must be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail:

Stanley J. Austin, Registration Support and Emergency Response Branch, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716C, Crystal Mall Building #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-4360).

SUPPLEMENTARY INFORMATION: Over the years, EPA has been unable to contact certain pesticide registrants at the addresses of file at the Agency or appearing on current pesticide product labels. EPA's inability to communicate with these registrants impairs the Agency's ability to discharge its statutory mandate to regulate pesticide products and their impact on the environment. Furthermore, it creates an undesirable situation in that some registrants may unknowingly be in violation of the Act and escape burdens assumed by other registrants in compliance with the Act.

Section 6(b) of FIFRA allows the Administrator to issue a notice of intent to cancel a pesticide's registration if that ". . . pesticide or its labeling or other material required to be submitted does not comply with the provisions of this Act. . . ."

Section 3(c)(1)(A) of FIFRA and 40 CFR 162.10(a0(1)(ii) make it a condition of registration that a registrant's address be filed with the Agency and appear on the label of the registrant's pesticide product. In addition, section 12(a)(1)(E) of FIFRA makes it unlawful to distribute, sell, offer for sale, hold for sale, ship, deliver or offer for delivery to any person a misbranded pesticide. Under FIFRA section 2(q)(2)(C)(i), failure to have the registrant's correct address on the label of its pesticide product constitutes misbranding. Therefore, failure of a registrant to submit a correct and current address and include such address as part of the label of its pesticide products is in violation of the Act's provisions and is grounds for cancellation of that registrant's registrations.

EPA issued a policy statement, published in the **Federal Register** of March 5, 1986 (51 FR 7634), indicating that the Agency may decide to initiate cancellation proceedings for registrations held by registrants whom the Agency has, after good faith efforts, been unable to contact by mail. This notice implements that policy.

This notice will be sent to all affected registrants by certified mail to the most current addresses the Agency has in its files. For the purposes of this notice, the Agency will consider validated non-delivery as receipt and the date of validated non-delivery as the date of receipt in those instances where actual receipt is not accomplished.

The impact of these cancellations on the agricultural economy is difficult to determine. It is believed that some or all of the pesticide products subject to this cancellation action are no longer on the market. Some of the pesticide products have no agricultural uses. As worst, the impact on the agricultural economy is expected to be slight.

Pursuant to section 6(b), the Secretary of Agriculture has reviewed this notice and has no comments. The Science Advisory Panel has waived its right (under section 25(d)) to review this notice.

Registrations Subject to Cancellation

The following registrations are subject to cancellation under this notice.

Registrant and Registration Numbers

ACME Candle Company, 57-09 59th Street, Maspeth, NY 11378 (36493-01)
Advance Enterprises, Inc., 911 N.W. 21st Street, Miami, FL 33217 (40628-01)
All American Pool Stores, 11106 Southwest 184th St., Miami, FL 33157 (40809-01)
All FLA Distributors, Inc., 10980 Biscayne Blvd., Miami, FL 33161 (37567-01, 37567-10075, 37567-10108, 37567-10109)
American Pool, Inc., 8743 Southwest 129th St., Box 561074, Miami, FL 33158 (41225-01)
Aqua Laboratories and Chemical Co., Inc., 821 Alco Dr., Longview, TX 75604 (40266-01)
A.S.M. Maintenance Co., 2830 NW 55th Ave., Lauderhill, FL 33313 (42151-01)
Atlantis Pool Supplies, 8600 Cleveland Ave., Suite 18, Ft. Myers, FL 33907 (41687-01)
Bell Chemical Corporation, 23 Hamilton Street, New London, CT 06320 (40611-01, 40611-02, 40611-03)
Blackhawk Chemicals, Inc., Rt. 588 Fumbell Road, Fombell, PA 16123 (40895-01)
Buster Crabbe Pools of S. Florida, Inc., 2119 N. State Road 7, Hollywood, FL (47434-4062, 37434-4484)
Cardinal Pools, Inc., 1268 Clayton Rd., Ellisville, MO 63011 (40763-01)
Carter Page, Inc., 2771 West Henrietta Rd., Rochester, NY 14623 (41243-01)
Chemical Specialties Mfg. Co., 829 West Main Street, Mesa, AZ 85201 (42249-01, 42249-05)
Consumer Goods Intl., Inc., Jonathan Industrial Center, Chaska, MN 55319 (38474-02)
Custom Chemilene, 476 Hester St., San Leandro, CA 94577 (41987-01, 41987-02, 41987-03, 41987-04, 41987-05, 41987-06, 41987-07, 41987-08, 41987-09)
Dadco Products, Box 11546, Indianapolis, IN 46201 (41062-01)
Dane Pool Service, 8348 Griffin Road, Davie, FL 33328 (38438-01)
Dee & Cee Enterprises, 315 So. Waverly, Punca City, OK 74601 (40401-01)
Delta Pools Inc., 19 Jefferson Ave., Fairport, NY 14450 (42108-01)
Florsan Inc., Box 563, Ellensburg, WA 98926 (40764-01)
General Chemical Corp., 4545 S Street, NE, Washington, DC 20027 (40765-01)
Hydrotech Chemical Corp., 10 Banta Place, Hackensack, NJ 07601 (41248-01, 41248-02, 41248-03)
Jim Rodgers Pools, Inc., 805 N.E. 125th Street, North Miami, FL 33161 (41973-01)
Minway Company, Inc., 72 Oak Street, Clifton, NJ 07014 (43222-01, 43222-02, 43222-03)
Neptune Pools, 3765 Davis Blvd., Ft. Lauderdale, FL 33312 (37660-01, 37660-4059)
Newtech Company, 4985 Belleville Road, Canton, MI 48188 (40842-01, 40842-02)
Pargil, Inc., 2 Elm Street, Huntington, NY 11743 (41399-01)
Petrofax International, 1545 Marietta Blvd. NW, Atlanta, GA 30318 (43332-02)
Pietson Laboratories, Inc., 9515 Monrovta, Lenexa, KS 66215 (36864-01)
Pocono Pump & Pool Co., Box 53A. Rd. #2, Stroudsburg, PA 18360 (42232-01)
Pool Masters, Inc., 1500 East Atlantic Blvd., Pompano Beach, FL 33060 (43248-01)
RBS Distributors, Inc., 1818 Cortez Rd. West, Apt. #102A, Braenton, FL 33507 (40655-01)
Rule Pool Maintenance Co., Division of Rule Pool Co., 5780 N. Federal Hwy., Ft. Lauderdale, FL 33308 (38518-01, 38518-10212)
Seablue, 701 Plano Road, Richardson, TX 75080 (37517-01)
Singer Island Hardware and Gifts, 1217 Blue Heron Blvd., Singer Island, FL 33404 (41974-01)
Spartan Environmental Services, Inc., 43 Washington Ave., Brooklyn, NY 11205 (43392-01, 43392-02, 43392-03, 43392-04)
Splash Pool Service Center, 158 N.W. 20th Street, Boca Raton, FL 33432 (37711-7523)
Sunset Pools, Box 186, Perrine, FL 33157 (41232-01)
Swimming Pool Owners Assoc., 4730 N.E. 12 Avenue, Ft. Lauderdale, FL 33334 (37659-01)
Swimworld Pool Co., Box 2586, Stuart, FL 33494 (41063-02)
Treigle Chemical and Supply Company, 1551 Conti Street, New Orleans, LA 70130 (41610-01, 41610-02, 41610-03, 41610-04, 41610-05, 41610-06)
Tri-State Water Company, Inc., 310 East Fourth Street, Frederick, MD 21701 (43358-01, 43358-03, 43358-04, 43358-05, 43358-06, 43358-07, 43358-08, 43358-09)
UDDO Products, Div. of Napasco International, P.O. Box 29048, New Orleans, LA 70189 (1123-03, 1123-04, 1123-06)
United Pool Service Corp., 3438 N.E. 5th Terrace, Ft. Lauderdale, FL 33334 (37704-9678)
United Pool Service of Vero Beach, Inc., 1525 Dixie Avenue, Vero Beach, FL 32960 (37730-9517)
UR Industries, Inc., 170 Broadway, New York, NY 10038 (42895-02)
United States Candle Co, Box 25002, Chicago, IL 60625 (43323-01)
Universal/Landon of Florida Pool Products, 1014 N.E. 44th Street, Ft. Lauderdale, FL 33334 (41977-01)
Wales Chemical Co., 4126 28 Avenue, Astoria, NY 11103 (41193-01)
Wascon Products Inc., 1831 S. State College Blvd., Anaheim, CA 92806 (37644-01)
Water Safe International, Inc., Box 3014, Shawnee Mission, KS 66216 (40880-01)
West Boca Lawn and Garden Inc., 23001 S. State Rd. 7, Boca Raton, FL 33433 (41863-01)

Dated: December 5, 1986.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-28163 Filed 12-18-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067-0151.

Title: Project Performance—Project Report.

Abstract: Report consists essentially of standard construction progress schedule. No format is prescribed.

Type of Respondents: State or local governments, Non-profit institutions.

Number of Respondents: 10.

Burden Hours: 10.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street, SW., Washington, DC 20472.

Comments should be directed to Francine Picoult, (202) 395-7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Dated: December 12, 1986.

Wesley C. Moore,

Acting Director, Office of Administrative Support.

[FR Doc. 86-28497 Filed 12-18-86; 8:45 am]

BILLING CODE 6718-01-M

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067-0154.

Title: National Shelter Survey Program.

Abstract: Forms are used for the National Facility Survey to evaluate structures; change building information; report data to the FEMA Computer Center for the National Facility Survey

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067-0147.

Title: Right to Submit Technical or Scientific Data to Correct Mapping Deficiencies Unrelated to Community-wide Elevation Determinations.

Abstract: Any owner or lesee of property in the 19,075 communities with mapped special flood hazard areas (SFHAS) who believe his or her property has been incorrectly included on a SFHA has the right to submit technical or scientific data that shows the map to be deficient.

Type of Respondents: Individuals, or Households.

Number of Respondents: 1,200.

Burden Hours: 28,800.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street, SW., Washington, DC 20472.

Comments should be directed to Francine Picoult, (202) 395-7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Dated: December 12, 1986.

Wesley C. Moore,

Acting Director, Office of Administrative Support.

[FR Doc. 86-28498 Filed 12-18-86; 8:45 am]

BILLING CODE 6718-01-M

and Natural Hazard Vulnerability Survey data base.

Type of Respondents: State or local governments, Federal agencies or employees.

Number of Respondents: 1,907.

Burden Hours: 105,834.

Copies of the above information collection request and supporting documentation can be obtained by calling or writting the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C Street, SW., Washington, DC 20472.

Comments should be directed to Francine Picoult, (202) 395–7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Wesley C. Moore,

Acting Director, Office of Administrative Support.

[FR Doc. 86–28499 Filed 12–18–86; 8:45 am]

BILLING CODE 6718–01–M

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067–0148.

Title: Consultation with Local Officials to Assure Compliance with Sections 110 and 206 of the Flood Disaster Protection Act of 1973.

Abstract: The Federal Insurance Administrator collects information from community officials when a flood insurance study begins to (1) establish proposed base flood elevations and/or identify special flood hazard areas, (2) evaluate the accuracy of BFE's and flood hazard determinations, and (3) determine whether changes have occurred that warrant modifications to established BFE's and flood hazard determinations. Flood-risk zones and risk premium rates are determined by flood insurance studies of flood-prone communities.

Type of Respondents: State or local governments.

Number of Respondents: 1,010.

Burden Hours: 7,300.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202 646–2624, 500 C. Street, SW., Washington, DC 20472.

Comments should be directed to Francine Picoult, (202) 395–7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Dated: December 12, 1986.

Wesley C. Moore,

Acting Director, Office of Administrative Support.

[FR Doc. 86–28500 Filed 12–18–86; 8:45 am]

BILLING CODE 6718–01

FEDERAL HOME LOAN BANK BOARD

Guaranty Federal Bank, F.S.B. Casper, WY; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Guaranty Federal Bank, F.S.B., Casper, Wyoming on December 12, 1986.

Dated: December 16, 1986.

John F. Ghizzoni

Assistant Secretary.

[FR Doc. 86–28537 Filed 12–18–86; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreements pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–003924–001.

Title: Long Beach Terminal Agreement.

Parties:

City of Long Beach

Ocean Salt Co., Inc.

Synopsis: The proposed amendment would extend the basic agreement through July 31, 1990. The parties have requested a shortened review period.

Agreement No.: 224–011042.

Title: Galveston Terminal Agreement.

Parties:

Board of Trustees of the Galveston Wharves (Port)

Southern Stevedoring Company, Inc. (SSC).

Synopsis: The proposed agreement would relocate SSC's banana handling operations, currently being performed at the Port's Piers 19–21 under Agreement 224–004007, to Piers 16–18 in the Port's Upland Terminal. The agreement has an initial term of five years.

By Order of the Federal Maritime Commission.

Dated: December 16, 1986.

Joseph C. Polking,

Secretary.

[FR Doc. 86–28445 Filed 12–18–86; 8:45 am]

BILLING CODE 6730–01–M

Inactive Tariffs—Bureau of Tariffs; Order; Correction

By Order Served October 16, 1986 and Published in the **Federal Register** on October 21, 1986 (51 FR 37348), specific carriers were notified of cancellation of their tariffs which appeared to be inactive. Upon further review by the staff, however, it was revealed that cancellation of the specific tariffs listed below is in error.

Trans Intermodal Transport, FMC No. 1
Universal Shipping Agency, Inc. FMC No. 1
Westchese Ocean Systems FMC No. 1.

Therefore, it is ordered, That pursuant to section 14(b) of the Shipping Act of 1984 (46 U.S.C. app. 1713), the October 16, 1986 Order canceling the above-mentioned tariffs is modified to retain these tariffs in an active status in the Commission files.

It is further ordered, That this modification be published in the **Federal Register** and a copy thereof filed with the subject tariffs.

By the Commission pursuant to authority delegated by section 9.04 of Commission Order No. 1 (Revised) dated November 12, 1981.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 86–28443 Filed 12–18–86; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Applicants; Art International Forwarding, Inc. et al.

Notice is hereby given that the following persons have filed applications for licenses as ocean freight forwarders with the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and 46 CFR Part 510.

Persons knowing of any reason why any of the following persons should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Art International Forwarding, Inc., 5808 Walsh Street, St. Louis, MO 63109. Officer: R.D. Ammons, President

APEX Group, Inc., 3777 Coolheights Drive, Rancho Palos Verdes, CA 90274. Officers: Richard Fei, President; Frank Fei, Chief Financial Officer; Janet Y. Yang, Secretary

WTC Ocean Freight, Inc., 23740 Hawthorne Blvd., Torrance, CA 90505. Officers: Peter Thorrington-Smith, President/Director; Dennis W. Tons, Vice President/Secretary/Director; Roger T. Macfarlane, Chief Executive Officer/Director.

Dated: December 16, 1986.

Joseph C. Polking,

Secretary.

[FR Doc. 86–28446 Filed 12–18–86; 8:45 am]

BILLING CODE 6730–01–M

[C.O. 1, Amdt. No. 9]

Organization and Functions of the Federal Maritime Commission; Director of Agreements and Trade Monitoring

The following delegation of authority is made to the Director, Bureau of Agreements and Trade Monitoring in Commission Order 1, Section 8 *Specific Authorities Delegated to the Director, Bureau of Agreements and Trade Monitoring*, by amending subsection 8.12 to read as follows:

8.12. Authority to allow termination of the review period prescribed in section 6(c)(1) and shorten the review period under section 6(e) of the Shipping Act of 1984, in regard to unopposed modifications to terminal conference agreements and unopposed terminal leases, licenses, assignments, or other agreements of a similar character for the use of terminal property or facilities and unopposed terminal service agreements.

Dated: December 15, 1986.

Edward V. Hickey, Jr.,

Chairman.

[FR Doc. 86–28444 Filed 12–18–86; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

FISCAL YEAR 1987 TRANSACTIONS, TRANSACTIONS GRANTED EARLY TERMINATION, MONTH OF NOVEMBER

Name of acquiring person; name of acquired person; name of acquired entity	Transaction No.	Date terminated
(1) QBE Insurance Group Limited; Sequoia Insurance Company; Sequoia Insurance Company	870020	11–03–86
(2) Monsanto Company; Refaat El-Sayed; Fermenta Plant Protection Company	870138	11–03–86
(3) Wedtech Corporation; I C Industries, Inc.; Railways Products Group	870158	11–03–86
(4) The Rymer Company; Tommy J. Novotny; H & N Foods, Inc. and Queen City Foods, Inc	870159	11–03–86
(5) Carlisle Companies Incorporated; Data Electronics, Inc.; Data Electronics, Inc	870182	11–03–86
(6) Western Digital Corporation; Paradise Systems, Inc.; Paradise Systems, Inc	870183	11–03–86
(7) Rymer Company The; Holland Roy W; H & N Foods Inc. and Queen City Foods, Inc	870202	11–03–86
(8) Masco Corporation; Watkins Manufacturing Corporation; Watkins Manufacturing Corporation	870203	11–03–86
(9) Unigate PLC; E. Gene Street; Prufrock Restaurants, Inc	870209	11–03–86
(10) Wedtech Corp.; R L Consolidated, Inc.; R L Consolidated, Inc	870232	11–03–86
(11) The Liberty Corp.; NASCO, Inc.; KPLC–TV and KAIT–TV	870110	11–04–86
(12) Charlton H. Buckley; KFAB Broadcasting Co; KFAB–AM and KGOR–FM radio stations in Omaha, NE	870114	11–04–86
(13) Stephen W. Bershad; Vernitron Corporation; Vernitron Corporation	870189	11–04–86
(14) Eastern Utilities Associates; Bangor Hydro-Electric Company; Seabrook Nuclear Power Project	870193	11–04–86
(15) Eastern Utilities Associates; Maine Public Service Company; Seabrook Nuclear Power Project	870194	11–04–86
(16) Alfa-Laval AB; Owens-Corning Fiberglas Corporation; Tri-Clover, Division of Ladish Co	870206	11–04–86
(17) Dart & Draft, Inc.; Faris and Alice Craig; Craig Distributing Company	870211	11–04–86
(18) Gateway Medical Systems, Inc.; American Medical International Inc.; NC–GPCH, NC–PPMC, NC–WTH, NC–SGH, NC–CHT, NC–DGH, Inc's	870213	11–04–86
(19) Beneficial Corporation; First Union Corporation; American Express credit card accounts of First Union	870076	11–05–86
(20) Lee Enterprises, Incorporated; May Seed & Nursery Co.; TV Stations KMTV Omaha and KGUN–TV Tuscon	870115	11–05–86
(21) Craig Corporation; Stater Bros. Inc.; Stater Bros. Inc	870128	11–05–86
(22) Ryder System, Inc.; APL Limited Partnership; APL Limited Partnership	870134	11–05–86
(23) Eastern Utilities Associates; Central Vermont Public Service Corp.; Seabrook Nuclear Power Project	870173	11–05–86
(24) Eastern Utilities Power Company; Central Maine Power Company; Seabrook Nuclear Power Project	870195	11–05–86
(25) James M. Fail; UNAC International Corporation; Underwriters National Assurance Company	870069	11–06–86
(26) M. L. Media Partners, L. P.; Loyola University; KATC–TV, Lafayette, LA	870175	11–06–86
(27) Protective Life Corporation; Central Security Life Insurance Company; Central Security Life Insurance Company	870163	11–06–86
(28) CenTrust Savings Bank; Old American Insurance Company; Old American Insurance Company	870181	11–06–86
(29) The Coca-Cola Company; Robert W. Woodruff Foundation, Inc.; Guaranty Investment Company	870200	11–06–86
(30) Roy E. and Patricia A. Disney; International Broadcasting Corporation; Big Country TV of Abiline, Inc	870205	11–06–86
(31) Coniston Partners; Geico Corporation; Geico Corporation	870216	11–06–86
(32) McDonald's Corporation; Louis M. Groen; Louis M. Groen	870217	11–06–86
(33) The Dunn & Bradstreet Corporation; Majers Corporation; Adrian J. Scribante	870233	11–06–86
(34) Societe des Ciments Francais, A French Corporation; Denison Mines Limited, A Canadian Corporation; Lake Ontario Cement Ltd	870235	11–06–86
(35) The Coca-Cola Company; Piedmont Securities Company	870239	11–06–86
(36) The Coca-Cola Company; Robert W. Woodruff Foundation, Inc.; Guaranty Investment Company	870240	11–06–86
(37) Sonat Inc.; Global Marine Inc.; Challenger Minerals Inc	870244	11–06–86
(38) Group Financial Partners, Inc.; Allegheny International, Inc.; F. W. Bell, Inc. and Continental Testing Labs Inc	870002	11–07–86
(39) Santa Fe Healthcare Systems, Incorporated; National Medical Enterprises, incorporated; Management, Inc. and Av-Med, Inc	870083	11–07–86
(40) Louis J. Rousselt; Security Benefit Life Insurance Company; The First Pyramid Life Insurance Co. of America	870131	11–07–86
(41) Victory Financial Group, Inc., (Louis J. Rousselt, UPE); Louis J. Roussel III; Superfine Oil & Gas Company	870161	11–07–86
(42) Mercy Health System; Mercy Health Care Organization; Mercy Health Care Organization	870167	11–07–86
(43) Centel Corporation; Perry Cable Companies, Inc.; Perry Cable Companies, Inc	870180	11–07–86
(44) ARA Holding Company; Servisco; Servisco	870221	11–07–86

FISCAL YEAR 1987 TRANSACTIONS, TRANSACTIONS GRANTED EARLY TERMINATION, MONTH OF NOVEMBER—Continued

Name of acquiring person; name of acquired person; name of acquired entity	Transaction No.	Date terminated
(45) Whittaker Corporation; The Arlen Corporation; Technabit Division of the former partnership Whittar	870253	11-07-86
(46) Emhart Corporation; Planning Research Corporation; Planning Research Corporation	870260	11-07-86
(47) Emhart Corporation; Planning Research Corporation; Planning Research Corporation	870261	11-07-86
(48) Brush Wellman Inc.; Williams Gold Refining Co., Inc.; Williams Gold Refining Co., Inc	870270	11-07-86
(49) Randolph W. Lenz; Canadian Pacific Limited; The Cranes and Excavator Division and the Benton Harbor	870021	11-12-86
(50) Schnucks, Inc.; The Kroger Co.; The Kroger Co	870141	11-12-86
(51) Carena Holdings Limited; Macy Acquiring Corp.; Sunny Place Shopping Center Corp	870150	11-12-86
(52) Pergamon Holding Foundation; Voting Trust of the Providence Journal Company; Providence Gravura Holding, Inc	870152	11-12-86
(53) Reliance Group Holdings; Mercury International Group plc; Mercury International Group plc	870155	11-12-86
(54) Digital Development Corp., (Mr. W. Ardis Lowrey, UPE); Volkswagen AG; Periec Peripherals Corporation	870164	11-12-86
(55) Ward White Group plc; L.C.P. Holdings PLC; L.C.P. Holdings PLC	870166	11-12-86
(56) Archer-Daniels-Midland Co.; Lubar & Co., Incorporated; Kurth Malting Corporation	870191	11-12-86
(57) Borden, Inc.; Ranks Hovis McDougall PLC; RHM Pasta, Inc	870204	11-12-86
(58) Ray Corporation; W.R. Grace & Co.; J.B. Robinson Jewelers Incorporated	870207	11-12-86
(59) Envirodyne Industries, Inc; RJR Nabisco, Inc.; RJR Archer, Inc	870212	11-12-86
(60) JMB Realty Corporation; Aluminum Company of America; Aluminum Company of America	870215	11-12-86
(61) Evirodyne Industries, Inc.; Presto Industries, Inc.; Presto Industries, Inc	870288	11-12-86
(62) I C Industries; Ogden Corporation; Ogden Food Products Corporation	870162	11-13-86
(63) M. H. de Young Trust; Worcester Telegram & Gazette, Inc.; Worcester Telegram & Gazette, Inc	870254	11-13-86
(64) Howard, Weil, Labousse, Friedrichs Inc. E.S.O.P.; Legg Mason, Inc.; Legg Mason, Inc	870257	11-13-86
(65) Fuji Photo Film Co., Ltd.; Pyne Corporation; Pyne Corporation	870304	11-13-86
(66) Outrigger Hotels Hawaii; Roy T. Takeyama, Commr. in Hawaiian Circuit Court; Waikiki Hobron Condominium Hotel	870142	11-14-86
(67) The Edward W. Scripps Trust; Collier County Publishing Company; Collier County Publishing Company	870166	11-14-86
(68) Apache Corporation; Mr. Marvin Davis; Occidental Petroleum Corporation	870243	11-14-86
(69) Peter B. Bedford; Kaiser Aluminum & Chemical Corp.; Kaiser Development Company	870289	11-14-86
(70) Kemper Corporation; Kaiser Aluminum & Chemical Corporation; Kaiser Aluminum Corporation	870290	11-14-86
(71) Martin Naughton; First City Financial Corporation, Ltd.; Hamilton Beach, Incorporated	870292	11-14-86
(72) Consolidated Hydro, Inc.; Corporation Investments, Inc.; Booth Hydropower, Inc	870305	11-14-86
(73) Antelope Company; Philip F. Anschutz; The Anschutz Corporation	870323	11-14-86
(74) The Larnson & Sessions Co.; Thyssen-Bornemisza Continuity Trust; The Carlon Divi. and Carlon/Thyrocun Division	870339	11-14-86
(75) Mason Best Company; Safeguard Business Systems, Inc.; Safeguard Business Systems, Inc	870362	11-14-86
(76) JMB Realty Corporation; Macy Acquiring Corporation; Macy Acquiring Corporation	870394	11-14-86
(77) JMB Realty Corporation; Macy Acquiring Corporation; Macy Acquiring Corporation	870395	11-14-86
(78) Pilkington Brothers, P.L.C.; Swedlow, Inc.; Swedlow, Inc	870154	11-17-86
(79) Roxboro Investments (1976) Ltd; Public Service Company of Indiana Inc.; Public Service Company of Indiana Inc	870192	11-17-86
(80) Koch Industries Inc.; The C. Reiss Coal Company; The C. Reiss Coal Company	870224	11-17-86
(81) DeWayne B. Reinhart; Twin Parts Grocery Co.; Twin Parts Grocery Co	870255	11-17-86
(82) Herbert T. Kerr; USG Corporation; AP Green Refractories Co	870277	11-17-86
(83) G. Heilman Brewing Co., Inc.; Droguois Brands, Ltd.; Champale, Inc	870291	11-17-86
(84) John Labatt Limited; Neal L. Andrews, Jr.; Pasquale Food Company, Inc	870346	11-17-86
(85) John Labatt Limited; Neal L. Andrews, Jr.; Pasquale Food Company, Inc	870352	11-17-86
(86) TRW, Inc.; Teknekron Financial Systems, Inc.; Teknekron Financial Systems, Inc	870308	11-18-86
(87) John Labatt Limited; Louis V. Manzo; Green Spring Dairy Incorporated	870331	11-18-86
(88) Hargro Enterprises, Inc.; American Forest Products Company; American Box Division	870338	11-18-86
(89) Louis J. Rousset; Southern United Life Insurance Company; Southern United Life Insurance Company	870366	11-18-86
(90) Dayton Hudson Corporation; Lucky Stores, Inc.; GEMCO Department Stores	870176	11-18-86
(91) Merck & Co., Inc.; Chemed Corporation; Vestal Laboratories, Inc	870262	11-19-86
(92) James E. Ferrell; The Penn Central Corporation; Buckeye Gas Products Co., a partnership and Buckeye	870265	11-19-86
(93) Charles F. Dolan; John E. Fetzer Foundation, Inc.; Fetzer Broadcasting Company	870336	11-19-86
(94) Blue Circle Industries, PLC; Raia Industries, Inc.; Raia Industries, Inc	870372	11-19-86
(95) J.G.L. Investments Pty.; Chicago Markets Enterprises, Inc.; Chicago Markets Enterprises, Inc	870177	11-20-86
(96) Harcourt Brace Jovanovich, Inc.; CBS, Inc.; Certain assets plus all voting securities of 14 subs	870225	11-20-86
(97) Cencom Cable Income Partners, L.P.; First Carolina Communications, Inc.; South-Western Cable TV, Ltd	870229	11-20-86
(98) Gannett Co., Inc., Hugh B. Patterson, Jr.; Arkansas Gazette Company	870263	11-20-86
(99) The State-Record Company; Knight-Ridder, Inc.; Knight-Ridder, Inc	870264	11-20-86
(100) International Thomson Organisation Limited; Warburg, Pincus & Co.; South-Western Publishing Co	870265	11-20-86
(101) Amoco Corporation; Atlantic Richfield Company; Atlantic Richfield Company	870267	11-20-86
(102) Alfa Laval AB; Cooper Development Company; Cooper Technicon, Inc.'s Technicon Industrial Group	870296	11-20-86
(103) RPM, Inc.; Eleventh Article Trust and Inter Vivos Trust; William Zinsser & Co., Incorporated	870306	11-20-86
(104) Dofasco, Inc.; Whitaker Corporation; Whittar Steel Strip Corporation	870307	11-20-86
(105) Arvin Industries, Inc.; Dr. Fritz J. Russ & Mrs. Dolores H. Russ; Systems Research Laboratories, Inc	870313	11-20-86
(106) Minnesota Mining and Manufacturing Company; David L. Auld; The D. L. Auld Company	870322	11-20-86
(107) The Coca-Cola Company; The Coca-Cola Bottling Co. of New York; The Coca-Cola Bottling Co. of New York	870333	11-20-86
(108) Kerry Francis Bullmore Packer; George F. Valassis; Valassis coupon assets	870337	11-20-86
(109) Lincoln National Corporation; American Express Company; Fireman's Fund and Employers Insurance Company	870343	11-20-86
(110) United Parcel Service of America, Inc.; tl Morrow, Inc.; tl Morrow, Inc	870357	11-20-86
(111) Western Auto Supply Company; Robert W. Ewing, Jr.; Tire America, Inc	870377	11-20-86
(112) W. R. Grace & Company; Mr. Zack Pitossoph; VTR Incorporated	870384	11-20-86
(113) Volkswagen AG; Knute and Kjell Qualе; Audi Northwest, Inc. and Riviera Motors, Inc	870365	11-20-86
(114) Washington National Corporation; United Presidential Corporation; United Presidential Corporation	870367	11-20-86
(115) Getty Petroleum Corporation; J. R. Sousa & Sons, Inc.; J. R. Sousa & Sons, Inc	870408	11-20-86
(116) American Greetings Corporation; SMD Industries, Inc.; SMD Industries, Inc	870411	11-20-86
(117) Morgan Ventures III Limited Partnership; Carrols Corporation; Carrols Corporation	870419	11-20-86
(118) American Greetings Corporation; SMD Industries, Incorporated; SMD Industries, Incorporated	870426	11-20-86
(119) Bain Capital Limited Partnership; Firestone Tire & Rubber Company; Firestone Tire & Rubber Company	870459	11-20-86
(120) CenCor, Inc.; John J. Mehalchin; Highline Financial Services, Inc	870479	11-20-86
(121) Finevest Partners Limited Partnership; Lawrence Udell; Poultry, Inc	870187	11-21-86
(122) Dean Foods Company; Reiter Dairy, Inc; Reiter Dairy, Inc	870227	11-21-86
(123) Reliance Capital Group, L. P.; Norman Lear; Spanish American 13 Communications Corp	870266	11-21-86
(124) Compagnie Generale d' Electricite; Newly formed Joint Venture; Newly formed Joint Venture	870310	11-21-86
(125) ITT Corporation; Newly formed Joint Venture; Newly formed Joint Venture	870311	11-21-86
(126) John Labatt Limited; Neal L. Andrews, Jr.; Pasquale Food Company, Inc	870345	11-21-86
(127) Triton Energy Corporation; Nat. Coal Brd. Staff Superannuation Scheme Trstee Ltd.; Century Product, Inc	870462	11-21-86
(128) Maverick Management Partnership; May Department Stores Company; Associated Dry Goods Corporation	870471	11-21-86
(129) Royal Co., Ltd.; John E. Finney; Pentagram Corp. and Bread Brothers, Inc	870475	11-21-86
(130) Royal Co., Ltd.; Robert W. Pulley; Pentagram Corporation and Bread Brothers, Incf	870478	11-21-86
(131) Henry Schein, Inc.; Revco D.S., Inc.; Carter-Glogau Laboratories, Inc	870328	11-24-86
(132) Coleco Industries, Inc.; Tomy Kogyo Company, Inc.; Tomy Corporation and Tomy Canada, Inc	870340	11-24-86
(133) Louis J. Rousset; Southern United Life Insurance Company; Southern United Life Insurance Company	870365	11-24-86
(134) Varlen Corporation; MetCom, Inc.; MetCom, Inc	870460	11-24-86
(135) Settsu Corporation; Carsustar Industries, Inc.; Carsustar Industries, Inc	870234	11-25-86

FISCAL YEAR 1987 TRANSACTIONS, TRANSACTIONS GRANTED EARLY TERMINATION, MONTH OF NOVEMBER—Continued

Name of acquiring person; name of acquired person; name of acquired entity	Transaction No.	Date terminated
(136) The Henley Group; ACI International Inc.; ACI International Inc	870245	11-25-86
(137) Landmark Land Company Inc.; United Oklahoma Bankshares, Inc.; United Bankers Mortgage Corporation	870258	11-25-86
(138) W. Canning plc; American Medical International, Inc.; Inhalation Services, Inc	870273	11-25-86
(139) Cumberland Farms, Inc.; Chevron Corporation; Chevron in Ohio	870282	11-25-86
(140) Minnesota Mining & Manufacturing Company; Jack Cook, Ruth Cook and their minor children; Dorran Photonics, Inc	870297	11-25-86
(141) ASEB AB; I C Industries, Inc.; Denison Division of Abex Corporation	870316	11-25-86
(142) Mitsubishi Heavy Industries, Ltd.; Harnischfegar Industries, Inc.; Beloit Corporation	870347	11-25-86
(143) A B Electrolux; Emerson Electric Co.; Beaird-Poulan/Weed Eater Division	870363	11-25-86
(144) CenCor, Inc., United Education and Software, Inc.; The BOC Group plc; The BOC Group plc	870386	11-25-86
(145) Koninklijke Wessanen N.V.; Green's Dairy, Inc.; Green's Dairy, Inc	870396	11-25-86
(146) Phelps Dodge Corporation; Ladislaus von Hoffman; Omicron Holdings, Inc	870417	11-25-86
(147) S.C.R./-Sibelco S.A.; Industry Holdings, Inc.; Applied Industrial Materials, Inc	870441	11-25-86
(148) Aldo A. Croetti; Texas Industrial Services, Inc.; Texas Industrial Services, Inc	870458	11-25-86
(149) John D. DePaul; The Lehigh Press, Inc.; The Lehigh Press, Inc	870500	11-25-86
(150) Frank Lyon Company; Coca-Cola Bottling Company of Shreveport, Inc.; Coco-Cola Bottling Company of Shreveport, Inc	870206	11-26-86
(151) Central States Bottling Co., (S. K. Johnston, Jr., UPE); The Coca-Cola Bottling Works of Evansville, Inc; The Coca-Cola Bottling Works of Evansville, Inc	870354	11-26-86
(152) Pepsico, Inc.; Marriott Corporation; Straw Hat Restaurants, Inc	870398	11-26-86
(153) Bowater Incorporated; Star Forms, Inc.; Star Forms, Inc	870399	11-26-86
(154) American Can Company; Looart Press, Inc.; Looart Press, Inc	870400	11-26-86
(155) Computer Associates International, Inc.; General Electric Company; Software International Corporation	870413	11-26-86
(156) The Toro Company; Wheel Horse Products, Incorporated; Wheel Horse Products, Incorporated	870431	11-26-86
(157) Reuters Holdings PLC; Instinet Corporation; Instinet Corporation	870444	11-26-86
(158) The Dyson-Kissner-Moran Corporation; Mr. Sheldon Lubar, c/o Lubar & Co.; Leather Holdings, Inc. and PVL, Inc	870481	11-26-86
(159) The Dyson-Kissner-Moran Corporation; Lubar Partnership I, c/o Lubar & Co., Incorporated; A. L. Gebhardt Company, Inc	870482	11-26-86
(160) Reuters Holdings PLC; Instinet Corporation; Instinet Corporation	870484	11-26-86
(161) Quintana Minerals Acquisition Corporation; CSX Corporation; Assets of CSX; voting securities of New River	870486	11-26-86

FOR FURTHER INFORMATION CONTACT:
Sandra M. Peay, Legal Technician, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580, (202) 326–3100.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 86–28460 Filed 12–18–86; 8:45 am]

BILLING CODE 6750–01–M

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

FISCAL YEAR 1987 TRANSACTIONS, TRANSACTIONS GRANTED EARLY TERMINATION, MONTH OF OCTOBER

Name of acquiring person; name of acquired person; name of acquired entity	Transaction number	Date terminated
(1) Glenfed Incorporated; Merrill Lynch Mortgage Corporation; Merrill Lynch Mortgage Corporation	870015	10-09-86
(2) Borden, Inc.; Amfac, Incorporated; Fisher Cheese Company, Incorporated	870033	10-10-86
(3) Monarch Capital Corporation; Narragansett Capital Corporation; Narragansett Capital Corporation	870019	10-14-86
(4) First Pacific Enterprises, Limited; GPX, Incorporated; GPX, Incorporated;	870023	10-15-86
(5) Saratoga Partners, L. P.; Winston Network, Incorporated; Winston Network, Incorporated	870057	10-15-86
(6) Prudential Corporation plc; Jackson National Life Insurance Company; Jackson National Life Insurance Company	870011	10-20-86
(7) Centel Corporation; M/A-Com Inc.; MA-Com Information Systems Incorporated	870012	10-20-86
(8) Beverly Investment Properties Incorporated; Beverly Enterprises; Beverly Enterprises-Michigan, Incorporated	870013	10-20-86
(9) Dumez S A; Westburne International Industries Ltd; Westburne International Industries Ltd	870014	10-20-86
(10) Beverly Health Care Properties Limited; Beverly Enterprises; Beverly Enterprises	870022	10-20-86
(11) Brierley Investment Limited; CalMat Co.; CalMat Co	870026	10-20-86
(12) Prudential Corporation plc; Jackson National Life Insurance Company; Jackson National Life Insurance Company	870029	10-20-86
(13) Financial Holding Corporation; Donald R. Cooper; United Fidelity Life Insurance	870030	10-20-86
(14) Financial Holding Corporation; John Sharpe; United Fidelity Life Insurance	870031	10-20-86
(15) Dumez S A; Westburne International Industries Ltd; Westburne International Industries Ltd	870032	10-20-86
(16) Pergamon Holding Foundation; Webb Company; Webb Company	870036	10-20-86
(17) Pergamon Holding Foundation; Webb Company; Webb Company	870037	10-20-86
(18) Carlyle Real Estate Limited Partnership; Macy Acquiring Corporation; Calpark Shopping Center Corporation	870041	10-20-86
(19) The Dyson-Kissner-Moran Corporation; Conquest Exploration Company; Conquest Exploration Company	870053	10-20-86
(20) Edward J. DeBartolo; Macy Acquiring Company; B.S. Shipping Center Corporation	870067	10-20-86
(21) Pty-Gem Industries, Inc.; Ralph L. Ayers; Variform, Inc	870070	10-20-86
(22) Edward J. Debartolo, Sr.; Allied Stores Corporation; Allied Stores Corporation	870076	10-20-86
(23) Edward J. DeBartolo, Sr.; Allied Stores Corporation; Allied Stores Corporation	870079	10-20-86
(24) Barclays Bank (1964) Pension Trust Fund; Macy Acquiring Corporation; Lawrence Bridge Shopping Center Corporation	870088	10-20-86
(25) Azabu Building Company, Ltd.; The Fuji Bank Limited; Heller International Corporation	870093	10-20-86
(26) The Ohio Mattress Company; Slumber Products Corporation; Slumber Products Corporation	870009	10-22-86
(27) Ryder Systems, Incorporated; Robert Bush Trust; The Motor Transportation	870087	10-22-86
(28) S. C. Johnson & Son, Incorporated; Alvin Burger and Sandra Burger; Buga Burger Bug Killers, Incorporated	870005	10-23-86
(29) Brierley Investments Limited; Brockway Incorporated; Brockway Incorporated	870027	10-23-86
(30) Morgan Grenfell Group Plc; IMASCO Ltd; Genstar Stone Products Company	870034	10-23-86
(31) Redland PLC; IMASCO Ltd; Genstar Stone Products Company	870035	10-23-86
(32) Aancor Holdings, Incorporated; Lafarge Coppee S.A.; Lafarge Coppee S.A	870048	10-23-86

FISCAL YEAR 1987 TRANSACTIONS, TRANSACTIONS GRANTED EARLY TERMINATION, MONTH OF OCTOBER—Continued

Name of acquiring person; name of acquired person; name of acquired entity	Transaction number	Date terminated
(33) Sanyo Electric Co., Ltd.; Tokyo Sanyo Electric Co., Ltd.; Tokyo Sanyo Electric Co., Ltd.	870050	10-23-86
(34) The Gillette Company; Mr. and Mrs. Guenther Roth; Lustrasilk Corporation of America	870055	10-23-86
(35) Sun Chemical Corporation; Chromalloy American Corporation; Chromalloy American Corporation	870077	10-23-86
(36) Danaher Corporation; Western Pacific Industries, Inc.; Western Pacific Industries, Inc.	870096	10-23-86
(37) Templeton Energy, Inc.; Gaylen Simmons; Louisiana Energy and Development Corp.	870117	10-23-86
(38) Keith Rupert Murdoch; The Christian Broadcasting Network, Inc.; WXNE-TV, Inc.	870129	10-23-86
(39) Johnson & Johnson; LifeScan Incorporated; LifeScan Incorporated	870007	10-24-86
(40) TPR Investment Associates; Refaat El-Sayed; Cedar Chemical Corporation	870018	10-24-86
(41) Brierley Investments Limited; Everest and Jennings International; Everest and Jennings International	870044	10-24-86
(42) Aluminum Company of America; Allegheny International, Inc.; Illinois Water Treatment Company	870095	10-24-86
(43) Total Compagnie Francaise des Petroles; Lear Petroleum Partners Operating Company, L.P.; Lear Petroleum Partners Operating Company, L.P.	870122	10-24-86
(44) Merrill Lynch & Co., Inc.; Gelco Corporation; Gelco Corporation	870132	10-24-86
(45) Phelps Dodge Corporation; The British Petroleum Company, p.l.c.; Kennecott Santa Fe Corporation	870085	10-25-86
(46) Payless Cashways Incorporated; Knox Home Centers, Incorporated; Knox Home Centers, Incorporated	870082	10-27-86
(47) Dr. Pepper Holding Company; Philip Morris Companies, Inc.; The Seven-Up Company	870101	10-27-86
(48) E.I. du Pont de Nemours & Co.; Royal Dutch Petroleum Co.; Royal Dutch Petroleum Co.	8701119	10-27-86
(49) Country and New Town Properties. p.l.c.; Bay Financial Corporation; Bay Financial Corporation	870051	10-28-86
(50) David H. Murdock; Kaiser Cement Corporation; Kaiser Cement Corporation	870073	10-28-86
(51) Chesebrough-Pond's Incorporated; Spectrum Group Incorporated; Spectrum Group Incorporated	870081	10-28-86
(52) UAL, Incorporated; Utah Driv-Ur-Self System, Incorporated; Utah Driv-Ur-Self System, Incorporated	870084	10-28-86
(53) On-Line Software International, Incorporated; Martin Marietta Corporation; Martin Marietta Information Technology, Inc.	870086	10-28-86
(54) The Estate of Alfred L. Kaskel; Citicorp; Arrowwood of Westchester	870100	10-28-86
(55) The L.S. Starrett Co.; Masco Corp.; Evans Rule Company, Inc.	870111	10-28-86
(56) Koppers Company, Inc.; Herbert R. Imbt, Inc.; Herbert R. Imbt, Inc.	870113	10-28-86
(57) Holy Cross Health System Corp.; St. Benedict's Health System; St. Benedict's Health System	870118	10-28-86
(58) Mitsubishi Metal Corporation; Sitec Corporation; Sitec Corporation	870127	10-28-86
(59) Crystalate Holdings Inc; TRW Inc.; Resistive Products Division	870137	10-28-86
(60) Bertelsmann AG; General Electric Company; GE Subsidiary, Inc., 28 GE Subsidiary, Inc. et al	870054	10-29-86
(61) Century Communications Corporation; Persis Corporation; Coweltz Television Corp.	870059	10-29-86
(62) Bertlesmann AG, (R. Mohn and J. Mohn, UPE's); RCA/Ariola International; RCA/Ariola International	870064	10-29-86
(63) The Fulcrum Partnership; Gerlach Industries, Inc.; Gerlach Beverage Air Division	870149	10-29-86
(64) The Mennen Company; The Carmen Group, L.P.; C.A. Reed, Inc.	870151	10-29-86
(65) F.J. Spillman; Pizza Inn, Inc.; Pizza Inn, Inc.	870143	10-30-86
(66) Stephen C. Swid; CBS, Inc.; CBS, Songs	870145	10-30-86
(67) National Intergroup, Inc.; Revere Copper and Brass, Inc.; Revere's Aluminum Foil Division	870146	10-30-86
(68) Western Publishing Group, Inc.; Penn Corporation; Penn Corporation	870148	10-30-86
(69) Dominion International Group, Inc.; Transnational Computer Leasing; Transnational Computer Leasing	870175	10-30-86
(70) Low & Bonar PLC: Powertec, Inc.; Powertec, Inc.	870176	10-30-86
(71) Gulf & Western Inc.; Bank of Boston Corporation; Bank of Boston Corporation	870179	10-30-86
(72) Murphy Oil Corporation; Atlantic Richfield Company; Atlantic Richfield Company	870196	10-30-86
(73) Low & Bonar PLC: Powertec, Inc.; Powertec, Inc.	870198	10-30-86
(74) Keyes Offshore Ltd.; Keyes Offshore, Ltd., Keyes II, Keyes III, IV, V; Keyes Offshore, Ltd., Keyes II, Keyes III, VI, V	870218	10-30-86
(75) Giant Group, Ltd.; Barns Industries, Inc.; Barris Industries, Inc.	870226	10-30-86
(76) United Cities Gas Company; Tennessee-Virginia Energy Corporation; Tennessee-Virginia Energy Corporation	870010	10-31-86
(77) John J. Rigas; Americable Associates, Ltd.; Americable Associates, Ltd.	870038	10-31-86
(78) Murphy Oil Corporation; Fluor Corporation; Fluor Drilling Services, Inc.	870096	10-31-86
(79) McKesson Corporation; Morton H. Sigel; Millbrook Distributors, Inc.	870103	10-31-86
(80) E. I. du Pont de Nemours & Co.; Inland Steel Industries, Inc.; Inland Steel Coal Co	870109	10-31-86
(81) Bunzl plc; Seymour Grubman; Papercraft, Inc	870112	10-31-86
(82) U.S. Health Corp. of Columbus; Marion General Hospital; Marion General Hospital	870140	10-31-86
(83) Artra Group Incorporated; Sargent-Welch Scientific Company; Sargent-Welch Scientific Company	870171	10-31-86

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Legal Technician, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 86-28461 Filed 12-18-86; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on December 12, 1986.

Public Health Service

(Call Reports Clearance Officer on 202-245-2100 or copies of packages)

Office of the Assistant Secretary for Health

Subject: 1987 National Work Injury Followback Survey—NEW—

Respondents: Individuals or households;

Health Resources and Services Administration

Subject: A National Survey of Mental Health Professionals—NEW—

Respondents: Individuals or households;. Small businesses or organizations

Centers for Disease Control

Subject: Dioxin Morbidity and Reproductive Study of U.S. Chemical Workers—Extension—(0920-0183)

Respondents: Individuals or households

OMB Desk Officer: Bruce Artim

Health Care Financing Administration

(Call Reports Clearance Officer on 301-594-8650 for copies of package)

Subject: New York Billing Form—Existing—HCFA-234

Respondents: Businesses or other for-profit

Subject: Hospital and Hospital Health Care Complex Cost Report—Extension—(0938-0050)—HCFA-2552-85

Respondents: Businesses or other for-profit

Subject: Information Collection Requirements in Standards for Intermediate Care Facilities for the Mentally Retarded 45 CFR Part 442, Subpart G—Reinstatement—(0938-0366)—HCFA-R-47

Respondents: Small businesses or organizations

OMB Desk Officer: Fay S. Iudicello

Social Security Administration

(Call Reports Clearance Officer on 301-594-5706 for copies of package)

Subject: Request for Hearing—Extension—(0960-0269)

Respondents: Individuals or households

OMB Desk Officer: Judy Egan

Office of Human Development Services

(Call Reports Clearance Officer on 202-472-4415 for copies of package)

Subject: Independent Living Initiatives—NEW—

Respondents: State or local governments

Subject: Survey of Indian Child Welfare and Implementation of the Indian Child Welfare Act and section 428 of the Adoption Assistance and Child Welfare Act of 1980—NEW—

Respondents: State or local governments

OMB Desk Officer: Judy Egan

Office of the Secretary

(Call Reports Clearance Officer on 202-245-0569 for copies of package)

Subject: HHS Procurement Solicitation and Contracts—Extension—(0990-0115)

Respondents: State or local governments; Businesses or other for-profit institutions; Small businesses or organizations

OMB Desk Officer: Judy Egan

Copies of the above information collection clearance packages can be obtained by calling the Reports Clearance Officer on the number shown above.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

ATTN: (name of OMB Desk Officer)

Dated: December 15, 1986.

Barbara S. Wamsley,

Acting Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 86-28613 Filed 12-18-86; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 84F-0437]

Bernard Food Industries, Inc.; Amended Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending the filing notice for a food additive petition filed by Bernard Food Industries, Inc., to amend the food additive regulations to provide for the use of aspartame as a sweetener in ready-to-serve gelatin desserts. The previous filing notice is amended to include ready-to-serve gelatins, puddings, and fillings regardless of the setting system.

FOR FURTHER INFORMATION CONTACT: Carl L. Giannetta, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-5487.

SUPPLEMENTARY INFORMATION: In the Federal Register of May 18, 1984 (49 FR 21118), FDA published a notice announcing that a petition (FAP 4A3775) had been filed by Bernard Food Industries, Inc., 1125 Hartrey Ave., Evanston, IL 60204. The notice proposed to provide for the safe use of aspartame as a sweetener in ready-to-serve gelatin desserts. Subsequently, Bernard Food Industries, Inc., amended the petition to include ready-to-serve gelatins, puddings, and fillings regardless of the setting system.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: December 10, 1986.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-28452 Filed 12-18-86; 8:45 am]

BILLING CODE 4160-01-M

Monensin for Use in Goats; Availability of Data

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of target animal safety, effectiveness, tissue residue, and environmental data which may be used in support of a new animal drug application (NADA) for use of monensin in the feed of goats that are maintained in confinement. The data, contained in Public Master File (PMF) 5055, were compiled under Interregional Research Project No. 4 (IR-4), a national agriculture program for obtaining clearances for use of agricultural products for minor animal species use.

ADDRESS: Submit NADA's to the Document Control Section (HFV-16), Center for Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Adriano R. Gabuten, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: The use of monensin in feed for goats is a new animal drug use under section 201(w) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(w)). As a new animal drug, it is subject to section 512 of the act (21 U.S.C. 360b) requiring that its uses be the subject of an approved NADA. Rutgers University, IR-4 Project, Cook College, New Brunswick, NJ 08903, has provided information to demonstrate effectiveness, safety to the target animal, tissue residue, and environmental data for use of monensin in the feed of goats that are maintained in confinement for prevention of coccidiosis caused by *Eimeria crandallis, E. christenseni,* and *E. ninakohlyakimovae.* Rutgers also provided an environmental assessment of the proposed use.

The data and information are contained in PMF 5055. Sponsors of NADA's or supplemental NADA's may reference without further authorization the PMF to support approval. An NADA or supplemental NADA should include, in addition to a reference to the PMF, drug labeling and other information needed for approval, such as data concerning human food safety; manufacturing methods, facilities, and controls; and information addressing the potential environmental impacts of the manufacturing process. Persons desiring more information concerning the PMF or requirements for approval of an NADA may contact Adriano R. Gabuten (address above).

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21

BEST COPY AVAILABLE

CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information in this PMF may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Dated: December 15, 1986.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 86–28451 Filed 12–18–86; 8:45 am]

BILLING CODE 4160–01–M

Technical Electronic Product Radiation Safety Standards Committee; Rechartering

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration announces the rechartering of the Technical Electronic Product Radiation Safety Standards Committee by the Commissioner of Food and Drugs. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)).

DATE: Authority for this committee will expire on December 24, 1988, unless the Commissioner formally determines that rechartering is in the public interest.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2765.

Dated: December 15, 1986.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–28450 Filed 12–18–86; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

National Arthritis and Musculoskeletal and Skin Diseases Advisory Council et al.; Notice of Establishment and Restablishment

Pursuant to the Federal Advisory Committee Act of October 6, 1972 [Pub. L. 92–463, 86 Stat. 770–776] the Director, National Institutes of Health, announces the establishment by the Secretary, Department of Health and Human Services, on November 1, 1986, of the following Councils:

National Arthritis and Musculoskeletal and Skin Diseases Advisory Council

National Diabetes and Disestive and Kidney Diseases Advisory Council

Pursuant to the Federal Advisory Committee Act and the Health Research Extension Act of 1985, November 20, 1985 [Pub. L. 99–158, section 402(b)(6)], the Director, NIH, announces the establishment of the following committees, effective January 1, 1987:

Nursing Research Study Section

Acquired Immunodeficiency Syndrome Research Review Committee

The duration of these committees is continuing unless formally determined by the Director, NIH, that termination would be in the best public interest.

Dated: December 15, 1986.

James B. Wyngaarden,

Director, National Institutes of Health.

[FR Doc. 86–28462 Filed 12–18–86; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Superfund Hazardous Waste Worker Health and Safety Training Program Notice of Meeting

Notice is hereby given of a meeting to be held at the HHS North Auditorium, 330 Independence Avenue, SW., Washington, DC, on January 12, 1987. The meeting will begin at 10 a.m. and end at approximately 4 p.m. or at the conclusion of public comment if prior to 4 p.m. The meeting is open to the public.

Background

Congress authorized a new program of grants in Section 126 of the Superfund and Amendments and Reauthorization Act of 1986, which permits the National Institute of Environmental Health Sciences (NIEHS) to fund both classroom and field-based programs to assure that hazardous substances workers and their supervisors have been trained to meet health protection and safety standards and regulations. Such workers include those at Superfund sites, those at the scenes of environmental emergencies at hazardous waste management facilities and those engaged in transportation of hazardous wastes. Recipients of these grants are to be non-profit organizations with demonstrated ability to reach target worker populations and demonstrated experience in implementing and operating worker health and safety training and education programs. Up to $10 million per year for fiscal years 1987–1991 has been authorized to support this grant program. These dollar amounts are budget ceilings and actual amounts will be appropriated each year consistent with the Federal budget process.

The purpose of this meeting is to describe the new worker training program assigned to NIEHS under the new Superfund Amendments and Reauthorization Act of 1986 legislation and to receive oral and written comments and suggestions regarding this new initiative. These comments will be considered by NIEHS staff in the development of a program announcement which will solicit grant applications.

Topics to be discussed in the morning session may include but are not limited to an overview of section 126(a), Superfund Amendments and Reauthorization Act of 1986 legislation, Superfund Hazardous Waste Worker Health & Safety Training Program and possible approaches, and the NIH grants process and implementation plan. Those wishing to make oral presentations on the Worker Health & Safety Training Program will be given that opportunity following the overview. These presentations must be limited to 7 minutes. Oral presentations should be supported by written documents that can be left with NIEHS staff at the meeting.

A draft program description, which will be summarized at the meeting, is described below. Written comments are encouraged and it is requested that they be received by close of business January 9, 1987. Every effort will be made to consider comments received through January 16. In order to accommodate as many people wishing to speak as possible, persons wishing to make oral presentations should contact Ms. Riley at the address below no later than January 5, 1987.

Ms. Janet Riley, Administrative Office, OD, NIEHS, P.O. Box 12233, Research Triangle Park, NC 27709

Attendance is limited only by space available. For further information regarding the meeting, please contact Mrs. Riley at the above address or telephone 919–541–7621 or FTS 629–7621. The official Government representative for this meeting will be Dr. John Dement.

Program Description

I. Background

Hazardous waste workers include workers at active and inactive treatment, storage and disposal sites, hazardous waste clean-up and remedial action sites, emergency response personnel, and workers engaged in transportation of hazardous wastes. In addition to actual site workers and supervisors, Federal, state and local personnel may be involved with site investigation, remedial action or assessment of risk.

A variety of sites, particularly those sites involved with hazardous waste clean-up and remedial action, may pose severe health and safety concerns and are characterized by the large variety and number of substances present, presence of unkown substances and general uncontrolled condition of the site. Among the many potential hazards and potential exposures at these sites are:

(1) Chemical and radiation exposure.
(2) Exposure to biological hazards.
(3) Fire and explosion hazards.
(4) Safety hazards, including electrical, manual lifting, and heavy machinery operation hazards.
(5) Heat and cold exposure.
(6) Confined space hazards, including oxygen deficiency.

An important component of health and safety programs for hazardous waste workers is appropriate health and safety education and training. The Superfund Amendments and Reauthorization Act of 1986 contains important occupational health and safety provisions which address these needs. Section 126 requires that the Occupational Safety and Health Administration promulgate interim (by January 17, 1987) and final (by October 17, 1987) standards for the health and safety protection of employees engaged in hazardous waste operations. These standards must address the following worker protection provisions:

(1) Site Analysis.
(2) Training.
(3) Medical Surveillance.
(4) Protective Equipment.
(5) Engineering Controls.
(6) Maximum Exposure Limits.
(7) Information Programs.
(8) Handling.
(9) Programs for Introduction of New Technology.
(10) Decontamination Procedures.
(11) Emergency Response.

A minimum level of training for hazardous waste workers and supervisors is specified in section 126(d). General site workers are required to receive a minimum of 40 hours of initial instruction off-site and a minimum of three days of actual field experience under the direction of a trained, experienced supervisor at the time of assignment. Supervisors are required to receive the same training as general workers and a minimum of eight hours of specialized training in managing hazardous waste operations.

Superfund Amendments and Reauthorization Act of 1986 authorizes a program of grants for training and education of workers engaged in activities related to hazardous waste removal, containment or emergency response. Recipients of these grants are to be nonprofit organizations with demonstrated ability to identify, describe and access target worker populations and with demonstrated experience with implementing worker health and safety training and education programs. The Congress assigned responsibility for administering this grant program to the National Institute of Environmental Health Sciences (NIEHS) an Institute of the National Institutes of Health within the PHS. Congress authorized funds for this program for a five-year period beginning in October, 1986. Up to $10 million may be appropriated for this program in each fiscal year. Annual funding levels will be determined through the Federal budget process.

II. Description of the NIEHS Grants Program

The NIEHS hazardous waste worker protection program seeks grant applications from qualified nonprofit organizations to develop and administer health and safety education programs for hazardous waste workers. Target populations for this training are workers and supervisors engaged in:

(1) Waste handling and processing at active and inactive hazardous substance treatment, storage and disposal facilities.
(2) Clean-up, removal, containment or remedial actions at waste sites.
(3) Hazardous substance emergency response.
(4) Hazardous substance disposal site risk assessment and investigation, remedial actions or clean-up by State and local personnel.
(5) Transportatioan of hazardous wastes.

Training programs shall satisfy minimum requirements for hazardous waste workers as specified in Federal Occupational Safety and Health Administration Regulations which are or may be promulgated. Grants will be made for curriculum and training materials development, technical support of training, direct student training, and training program evaluation. It is intended that grant applications will address all of the above elements in order to achieve a fully integrated and effective program. Training and education programs for workers engaged in clean-up or remedial action at Superfund clean-up sites shall address each of the following elements, at a minimum, for all workers:

(1) Hazard recognition to include biology, chemistry, physics and the nature of hazardous materials as well as the practical application of this knowledge.
(2) Principles of toxicology, biological monitoring and risk assessment.
(3) Safe work practices and general site safety.
(4) Engineering controls and hazardous waste operations.
(5) Site safety plans, standard operating procedures.
(6) Decontamination practices and procedures.
(7) Emergency procedures, first aid and self rescue.
(8) Safe use of field equipment.
(9) Handling, storage, and transportation of hazardous wastes.
(10) Use, care and limitations of personnel protective clothing and equipment.
(11) Safe sampling techniques.
(12) Rights and responsibilities of workers under OSHA.

In addition to the above education and training, some foremen, supervisors and other general site workers with additional technical responsibilities shall be provided additional specific training to include topics such as:

(1) Site surveillance.
(2) Site safety plan development.
(3) Use of special instrumentation for site assessment.
(4) Safe use of specialized equipment.
(5) Use and decontamination of special personnel protective equipment.
(6) Other topics which may be specific for a particular work site.

Training programs for workers engaged in other hazardous waste operations such as emergency response (HAZMAT Teams) or work at hazardous waste treatment, storage or disposal facilities should be designed to meet the needs of the proposed target populations. The basic content of the curriculum should include all applicable elements mentioned above for Superfund clean-up site workers. To the maximum extent possible, health and safety training provided by NIEHS grants must be integrated with other specialized training already provided and should be designed to enhance and supplement such training. Applicants must demonstrate such integration in their grant application.

Applicants should have demonstrated experience with implementing and operating worker health and safety training programs and demonstrated ability to identify, describe, access, and train target populations of workers engaged in hazardous waste removal, containment, emergency response or transportation. A major goal of this grant program is to assist organizations with development of institutional competency to provide appropriate training and education to hazardous

waste workers. Two or more nonprofit organizations may join in a single application and share grant resources in order to maximize worker group coverage, enhance the effectiveness of training, and bring together appropriate academic disciplines and talents. Such arrangements are encouraged. Joint applications must have specific plans and mechanisms to implement the cooperative arrangements necessary for program integration and to insure effectiveness. Specific expertise, facilities or services to be provided by each participating member must be identified.

Worker training programs must include an appropriate combination of classroom instruction and hands-on demonstration and instruction which simulates site activities and conditions. It is intended that offsite instruction funded by the NIEHS grant program will be supplemented with onsite training under the direct supervision of trained, experienced personnel at the time of initial job assignment. Both initial and appropriate refresher training will be covered by NIEHS training grants.

Two types of grant awards will be made under the NIEHS worker training and education program: full program grants covering the full range of activities including program development, direct worker training and program evaluation and planning grants.

Planning grants are intended to assist organizations which demonstrate potential for providing hazardous worker training but need additional developmental efforts prior to initiation of full curriculum development and training activities. Planning grants will be funded for twelve months at a maximum level of $100,000. After successful completion of a year planning grant, a recipient may apply for a full program grant on a competitive basis. It is intended that only a limited number of planning grants will be awarded. Applicants must specify in their application whether or not they are applying for a planning grant or a full program grant.

Full program grants will be awarded to organizations with demonstrated past worker health and safety training and education capability and ability to identify, describe and access target populations. Full program grantees must be able to immediately initiate curriculum development and worker training activities. Grants will be for hazardous waste curriculum development, direct worker training, program evaluation, and related support activities. Grants will be made for up to a five year period with annual renewal based on availability of funds, staff review of progress toward achieving training objectives, and submission of copies of all training and educational materials developed under the grant to NIEHS. A detailed annual grant summary report is required with the renewal application. In addition, NIEHS plans an interim evaluation of all grants.

NIEHS recognizes the need for close coordination between grantees, governmental agencies and other training providers in developing training curricula. Such coordination will assure thorough and consistent curricula and will maximize use of training materials which have already been developed, tested and used. To facilitate exchange and coordination, NIEHS will sponsor a 3-day working meeting soon after initial award of grants.

III. Eligibility Requirements

Any public or private nonprofit organization providing worker health and safety education and training may apply. A nonprofit organization is any corporation, trust, foundation, agency or other organization which: (1) is entitled for exemption under section 501(c)(3) of the Internal Revenue Code, or (2) is not organized for profit and no part of the net earnings of which inure, or will inure upon disclosure, to the benefit of any private shareholder or individual.

IV. Characteristics of Hazardous Waste Worker Training Programs

Hazardous waste worker training programs to be funded by the NIEHS shall have the following characteristics:

(A) Demonstrated ability to identify, describe, access and train target worker populations, whether organized or not, engaged in hazardous waste clean-up, containment, emergency response, site evaluation or hazardous waste transportation.

(B) Demonstrated past success in development and implementation of worker safety and health training and education programs.

(C) An experienced Program Director with demonstrated capacity for providing leadership and assuring productivity of education programs. The Program Director shall have responsibility for general operation of the training program including quality assurance and program evaluation.

(D) Sufficient program staff with demonstrated training experience to assure curriculum development, training, and quality assurance. Appropriate technical expertise including but not limited to toxicology and industrial hygiene must be available.

(E) Availability of appropriate facilities and equipment to support the described education and training activities including hands-on instruction.

(F) A specific plan for preparing course curricula, distributing course materials, conducting direct worker training and conducting program evaluations. The plan shall include involvement of appropriate health and safety disciplines.

(G) A Board of Advisors or consultants representing user populations, labor, industry, governmental agencies, academic institutions or professional associations with interest and expertise in worker training and hazardous waste operations. The Board will meet regularly to evaluate training activities and will provide advice to the Program Director.

V. Review Procedures

Grant applications must address each point listed in Characteristics of Hazardous Waste Worker Training Programs. Applications will be reviewed on a competitive basis by a panel of outside experts. The following factors will be considered for applications for full program grants:

(1) Methods and techniques to be used for identifying, describing, and accessing target worker populations and anticipated impact of the proposed program. Applicants must provide information concerning the target hazardous waste worker population to be trained. This information must include size of the target population, worker profiles, trades and job categories to be trained, geographic locations of workers and degree of health and safety training already received.

(2) Evidence of management and procedures to effectively achieve elements described in Characteristics of Hazardous Waste Worker Training Programs.

(3) Evidence of the organization's performance and effectiveness in planning, implementing and operating training and education programs for workers. Technical and professional expertise of present or proposed staff shall be considered. Such expertise will be evaluated by resumes, minimum position qualifications and position descriptions.

(4) Methods proposed for evaluating appropriateness, quality and effectiveness of training including student feedback, course critiques and Board of Advisors evaluations and other appropriate evaluations and quality assurance procedures.

(5) Availability and continuing access to appropriate scientific and technical expertise.

(6) Likelihood that the program will continue beyond the grant period.

(7) Reasonableness of the requested operating budget and overhead in relation to proposed program activities.

Applications for planning grants shall demonstrate potential for providing hazardous waste worker training and education programs as detailed above for full program grants. Applications must address each of the elements described in Characteristics of Hazardous Waste Worker Training Programs describing plans for achieving the described characteristics. Planning grant applications must specify plans for hiring planning staff. It is important that the plans describe a set of tasks to be performed and specific time frames for each task leading to eligibility for a full program grant. Award of a planning grant does not entitle a grantee to a full program grant in following years. Full program grants will be awarded based on a competitive review of the merits of each application and availability of funds.

Dated: December 17, 1986.

James B. Wyngaarden,

Director, National Institutes of Health.

[FR Doc. 86-28644 Filed 12-18-86; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, D.C., 20503, telephone 202-395-7313.

Title: Alaska Townlot Deed Application (OMB No. 1004-0026)

Abstract: Non-native individuals, groups and businesses, and incorporated State of Alaska municipalities use the Alaska Townlot Deed Application to obtain title to Alaska Townsites (43 U.S.C. 732) from the Alaska Townsite Trustee. Applications are filed on each of the 79 townsites in rural communities. The municipal governments in Alaska villages are the principal applicants for townlot deeds using this application.

Bureau Form Number: AK 2564-19(1/84)

Frequency: On Occasion

Description of Respondents: Non-native individuals, groups, and businesses, and incorporated Alaskan municipalities

Annual Responses: 54

Annual Burden Hours: 27

Bureau Clearance Officer: Rebecca Daugherty 202-653-8853

Guy E. Baier,

Acting Assistant Director, Land and Renewable Resources.

December 10, 1986.

[FR Doc. 86-28474 Filed 12-18-86; 8:45 am]

BILLING CODE 4310-84-M

[AA-620-4211-022-24-10]

Revisions in the Oil and Gas Leasing Procedures To Incorporate Provisions of Section 2(a)(2)(A) of the Mineral Leasing Act of 1920

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of revisions in the oil and gas leasing procedures to incorporate changes required by Section 2(a)(2)(A) of the Mineral Leasing Act of 1920.

SUMMARY: The provisions of section 2(a)(2)(A) of the Mineral Leasing Act of 1920, as amended by section 3 of the Federal Coal Leasing Amendments Act of 1976, become effective December 31, 1986. Section 3 requires that any entity that holds or has held a Federal coal lease for 10 years beginning on or after August 4, 1976, and who is not producing coal in commercial quantities from each such lease, cannot qualify for issuance of any other lease granted under the Mineral Leasing Act. The date of August 4, 1986, was extended to December 31, 1986, by the Department of the Interior Appropriations Act, Fiscal Year 1986.

EFFECTIVE DATE: December 31, 1986.

ADDRESS: Director (620) Bureau of Land Management, 18th & C Streets, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Gloria J. Austin, Bureau of Land Management, (202) 653-2190.

SUPPLEMENTARY INFORMATION: Section 2(a)(2)(A) of the Mineral Leasing Act of 1920 was amended by Section 3 of the Federal Coal Leasing Amendments Act of 1976. Section 2(a)(2)(A) is a leasee-qualification requirement which mandates that any entity that holds or has held a Federal coal lease for 10 years beginning on or after August 4, 1976, and who is not producing coal in commercial quantities from each such lease, cannot be issued any leases for coal or any other mineral covered by the Mineral Leasing Act of 1920.

The purpose of this notice is to advise the public that steps are being taken to inform oil and gas offerors and applicants of the provision of section 2(a)(2)(A) and to require compliance. The current oil and gas lease from (3100-11) has been modified so that prospective noncompetitive and competitive oil and gas lessees will certify compliance with qualifications concerning Federal coal leases as provided by the statute. Notices announcing the requirements will be posted in the Public Room of each Bureau of Land Management State Office. Additionally, appropriate language has been inserted in the "Notice of Land Available for Simultaneous Oil and Gas Applications" and the "Detailed Notice of Competitive Oil and Gas Lease Offering" informing the public of the requirements.

Rulemaking amending the regulations in 43 CFR Groups 3100, 3400, and 3500 has been published in the **Federal Register.**

Dated: December 10, 1986.

James M. Parker,

Acting Deputy Director, Bureau of Land Management.

[FR Doc. 86-28449 Filed 12-18-86; 8:45 am]

BILLING CODE 4310-86-M

[CO-010-07-4410-08]

Proposed Decision To Designate Areas of Critical Environmental Concern; Final Piceance Basin Resource Management Plan, CO

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of proposed decision to designate five areas as areas of critical environmental concern (ACECs) in the Final Piceance Basin Resource Management Plan (RMP).

SUMMARY: The BLM's White River Resource Area Office has completed a re-analysis of twenty areas identified by the Nature Conservancy (TNC) for possible designation as ACECs. As a result of the re-analysis, five areas are proposed for designation as ACECs in the Final Piceance Basin RMP.

DATE: Comments must be received by February 17, 1987.

ADDRESS: Comments and/or questions should be directed to: Willy Frank, Project Coordinator, Bureau of Land Management, White River Resource Area, PO Box 928, Meeker, Colorado 81641. Telephone: (303) 878–3601.

SUPPLEMENTARY INFORMATION: The Piceance Basin RMP/Environmental Impact Statement (EIS), a comprehensive land use plan for the Piceance Basin Planning Unit of the White River Resource Area, was initiated in May 1982. A Draft RMP/EIS was completed and released for public comment in April 1984. After a 90-day comment period and response to public comments, a Proposed RMP/Final EIS (PRMP/FEIS) was completed and issued in March 1985.

In a report contracted for by BLM and prepared in conjunction with the RMP, TNC identified twenty areas for special management area designation. Eight of the identified areas were originally dropped from detailed consideration and analysis in the RMP as they did not meet the required identification criteria of relevance and importance. The remaining twelve areas were analyzed within the various RMP alternatives. In the preferred alternative/proposed plan, only a portion of one of these twelve areas, Soldier Creek, was proposed for designation as an ACEC. Five protests were received on the PRMP/FEIS which disagreed with the decisions regarding ACEC designations and protection of important plant resources in the Piceance Basin. In addition to protecting these decisions, the protesters also felt the proposed management policy and measures for conserving and protecting important plant resources, as put forth in the Draft and PRMP/FEIS, were inadequate.

Based upon refined guidance and direction received from BLM's Washington Office and in consideration of the protests, the BLM's White River Resource Area has completed a re-analysis of all twenty of the areas identified by TNC for possible designation as ACECs. This re-analysis was conducted pursuant to applicable planning regulations at 43 CFR Part 1600 and BLM Manual section 1617.6. The proposed new ACEC guidance and BLM Manual section 1617.6 changes were also considered in the course of the re-analysis.

Proposed Decisions

As a result of the re-analysis, the following decisions are proposed.

A. Five areas are proposed for designation as ACECs (two of the initially identified areas are combined into one ACEC). All areas are located in Rio Blanco County, Colorado.

1. Deer Gulch ACEC

1,809 acres contained within T3S, R94W, secs 19, 30, and 31; T4S, R94W, secs 5 and 6; T3S, R95W, secs 24, 25, and 36, 6th P.M.

Resource Values

This site contains the largest known concentration of *Festuca dasycloda* populations in the Piceance Basin. This rare grass, along with two other present plants, *Astragalus lutosus* and *Aquilegia barnebyi*, are federal candidate species. Four remnant vegetation associations, *Agropyron spicatum var. inerme, Pseudotsuga menziesii/Symphoricarpos oreophilus, Pseudotsuga menziesii/Symphoricarpos oreophilus/Carex geyeri*, and *Quercus gambellii-Cercocarpus montanus/Carex geyeri*, also occur within this area, as does the only known relatively undisturbed stream system flowing through the Green River Formation in the Piceance Basin.

Resource Use Limitations

An area containing *Festuca dasycloda* will be fenced as part of an ongoing monitoring plan.

2. Dudley Bluffs ACEC

1,620 acres contained within T2S, R97W, secs 3, 4, 9, 10, 15, 16, 22, and 23, 6th P.M.

Resource Values

This site contains the type locality for two very rare federal candidate plant species, *Physaria obcordata* and *Lesquerella congesta*. Three important remnant vegetation associations are also present—*Atriplex confertifolia/Agropyron spicatum var. inerme-Oryzopsis hymenoides, Juniperus osteosperma-Pinus edulis/Agropyron spicatum var. inerme*, and *Atriplex confertifolia/Oryzopsis hymenoides*.

3. Lower Greasewood Creek ACEC

203 acres contained within T2N, R98W, secs 16, 17, and 21, 6th P.M.

Resource Values

This site contains four of the six known populations in Colorado of *Gilia stenothyrsa*, a rare plant species. An important remnant vegetation association is also present—*Juniperus osteosperma-Pinus edulis/Agropyron spicatum var. inerme*.

4. South Cathedral Bluffs ACEC

316 acres contained within T3S, R99W, sec 19; T3S, R100W, secs 11, 12, 13, and 24, 6th P.M.

Resource Values

This site contains the type locality for two very rare federal candidate plant species, *Thalictrum heliophilum* and Lesquerella parviflora. Gentianella tortuosa, a very rare plant species in Colorado, is also present.

Resource Use Limitations

Selected plan populations will be fenced to ensure protection of important habitats from livestock trailing and grazing. Proposals involving development in the designated Cathedral Bluffs Utility Corridor within the ACEC will be analyzed on a case-by-case basis with priority given to protection and preservation of the important plant populations present.

5. Yanks Gulch/Upper Greasewood Creek ACEC

This area contains three separate units totalling 2,687 acres. Unit A is comprised of 1,882 acres contained within T2N, R99W, secs 27, 28, 29, 31, 32, 33, and 34, 6th P.M. Unit B is comprised of 250 acres contained within T1N, R99W, sec 6; T1N, R100W, sec 1; T2N, R99W, sec 31; T2N, R100W, sec 36, 6th P.M. Unit C is comprised of 555 acres contained within T1N, R99W, secs 3, 4, 9, and 10, 6th P.M.

Resource Values

This site contains a very rare federal candidate plant species, *Physaria obcordata*. In addition, it contains four important remnant vegetation associations—*Pinus edulis/Amelanchier utahensis-Arctostaphylos patula-Cercocarpus montanus/Carex pityphila, Juniperus osteosperma-Pinus edulis/Amelanchier utahensis-Cercocarpus montanus, Artemesia tridentata spp. wyomingensis-Symphoricarpos oreophilus/ Elymus cinereus*, and *Elymus cinereus*.

B. The Soldier Creek area is proposed for designation as an ACEC if the state designates their adjoining acreage. Designation of only that portion on BLM lands will not, by itself, ensure protection and perpetuation of the important values contained within the entire initially identified area.

C. The School Gulch area is proposed for designation as an ACEC if ongoing monitoring indicates the important values present require designation and special management attention in order to ensure their protection and perpetuation.

D. Twelve initially identified areas are not proposed for ACEC designation. The following resource use limitations are common to all proposed areas. Any additional limitations are listed above by site:

a. All uses, improvements, and surface-disturbing activities that are not consistent with the purpose of the ACEC and would affect the important values and quality of the ACEC will be excluded, with the exception of unmitigable valid existing rights.

b. An ACEC activity plan to specifically address detailed management and monitoring necessary on the ACEC consistent with the purpose of designation will be developed.

c. At the time of development of the ACEC activity plan, the need for off-road vehicle restrictions will be assessed.

d. Grazing allotment management plans will be developed or revised in concurrence with the ACEC activity plan to ensure maintenance of each area's significant elements.

e. A no surface occupancy (NSO) stipulation will be applied to selected important plant populations and vegetation association occurrences on new mineral leases. For existing leases, BLM will work with the lessee/operator on surface disturbing application plans to mitigate impacts to the resources for which the areas are designated.

f. Important values within the area will be protected from surface disturbing activities to the extent such protection does not unduly hinder or preclude the exercise of valid existing rights.

g. No harvesting of forest products will be allowed. Further information and a more detailed analysis of these proposed decisions is available at the previously listed BLM address.

Dated: December 8, 1986.

Neil F. Morck,

State Director, Colorado.

[FR Doc. 86–27972 Filed 12–18–86; 8:45 am]

BILLING CODE 4310–JB–M

[MT–930–07–4410–08]

Availability of Draft Resource Management

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Draft Resource Management Plan/ Environmental Impact Statement and Call for Comments.

SUMMARY: In accordance with section 202(f) of the Federal Land Policy and Management Act of 1976 and section 102(C) of the National Environmental Policy Act of 1969, a draft Resource Management Plan/Environmental Impact Statement (RMP/EIS) has been prepared for the Dickinson District. The RMP/EIS addresses future management options for approximately 67,520 surface acres and 4.8 million acres of Federal mineral estate administered by the Bureau of Land Management throughout North Dakota. The RMP/EIS includes the application of the coal unsuitability criteria (43 CFR 3461) to approximately 1 million acres of Federal coal having potential for development. Decisions generated during this planning process will supersede land use planning guidance previously presented in four separate Management Framework Plans (MFP): Golden Valley, West-Central North Dakota, McKenzie-Williams, and Southwest North Dakota MFPs.

PUBLIC PARTICIPATION: Copies will be available at each public library located in all counties of North Dakota. Copies of the draft RMP/EIS are also available from the Dickinson District Office, 202 East Villard, P.O. Box 1229, Dickinson, North Dakota 58602, phone (701) 225–9148. Public reading copies are available for review at the following locations:

BLM, Office of Public Affairs, Main Interior Building, Room 5600, 18th and C Streets, NW., Washington, DC 20240

BLM, Montana State Office, Public Affairs Office, 222 N. 32nd Street, Billings, Montana 59107

BLM, Dickinson District Office, 202 East Villard, Dickinson, North Dakota 58602

Background information, including maps and overlays used in applying the coal unsuitability criteria, is available for review at the Dickinson District Office.

The draft RMP/EIS will be available for review from December 22, 1986, through March 25, 1987. Written comments should be sent to: Mark Stiles, Project Manager, North Dakota RMP/EIS, Dickinson District Office, Bureau of Land Management, P.O. Box 1229, Dickinson, North Dakota 58602. Oral or written comments may also be provided at four public meetings to be held:

January 27, 1987, 7:00 to 9:00 pm, MST, BLM Conference Room, 202 East Villard, Dickinson, North Dakota

January 28, 1987, 7:00 to 9:00 PM CST, Williams County Courthouse, Williston, ND

January 29, 1987, 7:00 to 9:00 PM MST, Hazen City Hall, Hazen, ND

February 3, 1987, 7:00 to 9:00 PM MST, Four Seasons Pavilion, Bowman, ND

All comments received during the review period, whether written or oral, concerning the adequacy of the draft RMP/EIS will be considered in the preparation of the final RMP/EIS for BLM-administered lands and minerals in North Dakota.

SUPPLEMENTARY INFORMATION: The draft RMP/EIS analyzes four alternatives including "no action" or the continuation of present management. The other three alternatives provide a range from maximum production of commodity resources to the general protection of amenity resources.

Each alternative represents a complete management plan designed to respond to four broad resource management issues. The four issues identified during the initial phases of the planning process are: coal leasing, land pattern adjustment, oil and gas leasing, and off-road vehicle use designations.

The RMP/EIS includes the application of the four land use planning coal screens to approximately 4.2 million acres of federal coal. Also, preliminary categorizations of all BLM-administered lands in North Dakota for either retention or disposal, and methods to be used in adjusting the public land pattern are presented. Approximately 460,400 acres of federal oil and gas are reviewed in the RMP/EIS for necessary special leasing stipulations. The RMP/EIS also analyzes the need for off-road vehicle restrictions on BLM-administered surface lands in North Dakota.

FOR FURTHER INFORMATION CONTACT: Mark Stiles, Project Manager, North Dakota RMP/EIS, Dickinson District Office, 202 East Villard, P.O. Box 1229, Dickinson, North Dakota 58602, Telephone: (701) 225–9148.

Dean Stepanek,

State Director.

December 3, 1986.

[FR Doc. 86–27800 Filed 12–18–86; 8:45 am]

BILLING CODE 4310–DN–M

[OR–943–07–4520–10: GP7–043]

Filing of Plats of Survey; Oregon/ Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands have been officially filed in the Oregon State Office, Portland, Oregon on the dates hereinafter stated:

Willamette Meridian

Oregon

T. 29 S., R. 7 W.;
Accepted and officially filed September 19, 1986.
T. 34 S., R. 2 W., Accepted October 10, 1986;
T. 34 S., R. 3 W., Accepted September 30, 1986;
T. 17 S., R. 7 W., Accepted October 10, 1986;
The above-listed plats were officially filed October 15, 1986.
T. 40 S., R. 3 E., Accepted October 17, 1986;
T. 10 S., R. 10 W., Accepted October 16, 1986;
The above-listed plats were officially filed October 23, 1986.
T. 20 S., R. 9 W.,
Accepted October 31, 1986 and officially filed November 7, 1986.

Washington

T. 37 N., R. 4 W.;
Accepted and officially filed September 19, 1986.
T. 34 N., R. 2 E.;
Accepted October 31, 1986 and officially filed November 7, 1986.

The above-listed plats represent dependent resurvey, corrective dependent resurvey, subdivision of sections, metes-and-bounds and survey.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 825 N.E. Multnomah Street, P.O. Box 2965, Portland, OR 97208.

Dated: December 11, 1986.

Champ C. Vaughan, Jr.,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86-28453 Filed 12-18-86; 8:45 am]

BILLING CODE 4310-33-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-57 (Sub-No. 19X)]

Soo Line Railroad Co.; Abandonment Exemption; Between Marshfield and Vesper, WI

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by Soo Line Railroad Company of a 13.65-mile line of railroad between Marshfield (milepost 2.40) and Vesper (milepost 16.05) WI, subject to standard employee protective conditions, and a 180-day public use condition under 49 U.S.C. 10906.

DATES: This exemption is effective on January 20, 1987. Petitions to stay must be filed by December 29, 1986, and petitions for reconsideration must be filed by January 8, 1987.

ADDRESSES: Send pleadings referring to Docket No. AB-57 (Sub-No. 19X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioner's representative: Larry D. Starns, 804 Soo Line Building P.O. Box 530, 105 South Fifth Street, Minneapolis, MN 55449.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: December 11, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 86-28454 Filed 12-18-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-18, 397]

ASARCO, Inc., Amarillo Copper Refinery, Amarillo, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 20, 1986 in response to a worker petition received on October 7, 1986 which was filed on behalf of salaried workers engaged in employment related to the production of refined copper cathodes at ASARCO, Incorporated, Amarillo Copper Refinery, Amarillo, Texas.

The petitioning group of workers are subject to an ongoing investigation for which a determination has not yet been issued (TA-W-17,886). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 26th day of November 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-28536 Filed 12-18-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-18,441]

BWAB, Inc., Sidney, MT; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 27, 1986 in response to a worker petition received on October 9, 1986; and filed by employees on behalf of workers at BWAB, Incorporated, Sidney, Montana.

The petitioning group of workers are subject to an ongoing investigation for which a determination has not yet been issued (TA-W-18,032). Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 3rd day of November 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-28539 Filed 12-18-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-18,491]

Baker Packers, San Antonio, TEX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 3, 1986 in response to a worker petition received on October 20, 1986; and filed by employees on behalf of workers at Baker Packers, San Antonio, Texas.

A negative determination applicable to the petitioning group of workers was issued on November 13, 1986 (TA-W-17,848). No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 14th day of November 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-28540 Filed 12-18-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-18,423]

Brown and Root, Inc., Ingleside, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 20, 1986 in response to a worker petition which was filed on behalf of workers at Brown and Root, Incorporated, Ingleside, Texas.

A negative determination applicable to the petitioning group of workers was issued on November 13, 1986 (TA-W-18,394). No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 25th day of November 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-28541, Filed 12-18-86; 8:45 am]

BILLING CODE 4510-30-M

Cambridge Rubber Co. et al.; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other person showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 29, 1986.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 29, 1986.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 8th day of December 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Petitioner (union/workers firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Cambridge Rubber Co. (workers)	Taneytown, MD	12/1/86	11/18/86	TA-W-18,711	Rubber footwear.
Klaus & Son Machine & Engine (workers)	Hill City, KS	12/1/86	11/20/86	TA-W-18,712	Repair oilfield equipment.
Lamar Mfg. Co. (workers)	Millport, AL	12/1/86	11/19/86	TA-W-18,713	Men's slacks.
B.F. Goodrich Tire (Uniroyal Goodrich) (workers)	Akron, OH	12/1/86	10/31/86	TA-W-18,714	Tires.
Kuppenheimer Mfg (ACTWU)	Hillboro, OH	11/28/86	11/18/86	TA-W-18,715	Men's trousers and vest.
Eimco Mining Machinery (company and IAM)	Salt Lake City, UT	11/28/86	11/17/86	TA-W-18,716	LHD Machinery and dump trucks.
Rockwell International (UAW)	Ashtabula, OH	11/28/86	11/20/86	TA-W-18,717	Truck brake and axle components.
Salem Technical Services (workers)	Beloit, WI	12/5/86	11/26/86	TA-W-18,718	Paper making machinery.
American International Mfg., Corp. (workers)	Ft. Worth, TX	11/21/86	11/14/86	TA-W-18,719	Oil well pumping units.
Stedor Enterprises, Ltd (workers)	Taylors, SC	12/1/86	11/20/86	TA-W-18,720	Ladies' sportswear.
Bender Bros. Sportswear Inc. (ACTWU)	Bayonne, NJ	.12/1/86	11/20/86	TA-W-18,721	Ladies' sportswear.
McInnes Steel Co. (workers)	Corry, PA	12/3/86	11/24/86	TA-W-18,722	Steel forgings.
Carpenter Technology Corp. (USWA)	Union, NJ	12/3/86	11/10/86	TA-W-18,723	Welded steel tubular products.
Hazle Garment, Inc. (workers)	Hazleton, PA	12/1/86	11/21/86	TA-W-18,724	Children's dresses.
Harmony Mills (company)	Cumberland, RI	12/1/86	11/21/86	TA-W-18,725	Synthetic fabric.
Moreyette Foundations (ILGWU)	New York, NY	12/1/86	11/24/86	TA-W-18,726	Ladies' foundation.
Titan Perforators, Inc. (workers)	Refugio, TX	12/3/86	11/6/86	TA-W-18,727	Oil well lag and perforating.
Titan Perforators, Inc. (workers)	Carrizo Spgs, TX	12/3/86	11/6/86	TA-W-18,728	Oil well long and perforating.
Eastman Kodak, Co. (workers)	Windsor, CO	12/5/86	11/25/86	TA-W-18,729	Photografic films and paper.
Milwaukee Dye and Bleach (ACTWU)	Milwaukee, WI	12/5/86	11/25/86	TA-W-18,730	Dyeing of natural and synthetic fiber.
Kinder Apparel Corp. (workers)	Linden, TN	12/5/86	11/21/86	TA-W-18,731	Men's and boys casual slacks.
Celanese Fibers Operations (workers)	Greenville, SC	12/5/86	11/25/86	TA-W-18,732	Spinning of polyester yarn.
Westdale, Inc. (workers)	Crane, TX	12/5/86	11/21/86	TA-W-18,733	Oil and gas well service.
Welex (A Halliburton Co) (workers)	Snyder, TX	12/5/86	11/24/86	TA-W-18,734	Perforating wells.
Wilson Well Service (workers)	Many, LA	12/5/86	11/29/86	TA-W-18,735	Drilling of oil wells.
Four M. Trucking Co. (company)	Iowa Park, TX	12/5/86	7/11/86	TA-W-18,736	Hauling oil drilling rigs.
Kaiser Aluminum-Mead (USWA)	Spokane, WA	12/5/86	11/26/86	TA-W-18,737	Aluminum.
Kaiser Aluminum Trentwood (USWA)	Spokane, WA	12/5/86	11/26/86	TA-W-18,738	Rolling mill perforating.
AT&T Technology Systems (BCTW)	Reading, PA	12/5/86	11/26/86	TA-W-18,739	Optoelectronic devices.
Corning Glass Works (company)	Mustogee, OK	12/5/86	11/25/86	TA-W-18,740	Glassware.
Bucyrus Erie (USWA)	S. Milwaukee, WI	12/5/86	12/1/86	TA-W-18,741	Surface mining equipment.
Priscilla Dress Mfg. Corp. (ILGWU)	Fall River, MA	12/5/86	11/18/86	TA-W-18,742	Ladies' dresses.
Exxon Co. USA, Central Exploration Div. (workers)	Midland, TX	12/1/86	11/20/86	TA-W-18,743	Crude oil, natural gas.
Exxon Co. USA, Southwestern Div. (workers)	Midland, TX	12/3/86	11/24/86	TA-W-18,744	Crude oil, natural gas.
Pratt Mining, Co. (UMW)	Campbell Creek, WV	2/1/86	11/21/86	TA-W-18,745	Steam coal.
Katos-Kutzlown Sportswear (workers)	Kutztown, PA	12/5/86	11/19/86	TA-W-18,746	Ladies' sportswear.

[FR Doc. 86-28542 Filed 12-18-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-18,544]

Chevron Cleves, Ohio; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 20, 1986 in response to a worker petition which was filed on behalf of workers at the Cleves, Ohio refinery of Chevron.

The petitioning group of workers are subject to an ongoing investigation for which a determination has not yet been issued (TA-W-18,227). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 14th day of November 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-28543 Filed 12-18-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-18, 540]

D and I Fashions, Inc., Newark, NJ; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 3, 1986 in response to a worker petition received on October 27, 1986 in which was filed by the International Ladies' Garment Workers' Union on behalf of workers at D and I Fashions, Incorporated, Newark, New Jersey.

D and I Fashions, Incorporated, Newark, New Jersey term of operation was not sufficient to determine trends in sales or production which is essential in making a determination in this case. The subject firm was in operation from May 16, 1986 to September 15, 1986 (less than six months). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 26th day of November 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-28544 Filed 12-18-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-18,508]

Four Flags Drilling Co.; Corpus Christi, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 3, 1986 in response to a worker petition received on September 18, 1986; and filed by employees on behalf of workers at Four Flags Drilling Company, Corpus Christi, Texas.

A negative determination applicable to the petitioning group of workers was issued on September 12, 1986 (TA-W-17,764). No new information is evident which would result in a reversal of the Department's previous determination. Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 14th day of November 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-28545 Filed 12-18-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-18,467]

Halliburton Services Amarillo, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 27, 1986 in response to a worker petition received on October 16, 1986; and filed by employees on behalf of workers at Halliburton Services, Amarillo, Texas.

A negative determination applicable to the petitioning group of workers was issued on October 15, 1986 (TA-W-18-156). No new information is evident which would result in a reversal of the Department's previous determination. Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 3rd day of November 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-28546 Filed 12-18-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-17,711]

Mountrail Development Corp.; Stanley, ND; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on July 21, 1986 in response to a worker petition received on June 27, 1986 which was filed on behalf of workers at Mountrail Development Corporation, Stanley, North Dakota.

Mountrail Development Corporation, Stanley, North Dakota is a start-up company which produced a heater, designed to be used in arctic conditions. Production commenced in late August 1985 and ceased in January 1986.

Due to the short term of operation, statistical trends cannot be measured with respect to the impact of imports on sales and production declines at Mountrail Development Corporation. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 25th day of November 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-28547 Filed 12-18-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-18,264]

Dismissal of Application for Reconsideration, Murfin Drilling Co.

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the Murfin Drilling Company, Colby, Kansas. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-18, 264; Murfin Drilling Company, Colby, Kansas (December 4, 1986)

Signed at Washington, DC this 4th day of December 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-28548 Filed 12-18-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-18, 492]

Termination of Investigation, OWS Inc.

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on November 3, 1986 in response to a worker petition received on September 18, 1986; and filed by employees on behalf of workers at OWS Incorporated, Plainville, Kansas.

A negative determination applicable to the petitioning group of workers was issued on October 31, 1986 (TA-W-18,315). No new information is evident which would result in a reversal of the Department's previous determination. Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 14th day of November 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-28549 Filed 12-18-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-18,652]

Termination of Investigation, RCA Consumer Electronics

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 24, 1986 in response to a worker petition received on November 17, 1986 which was filed on behalf of workers at RCA Consumer Electronics, Indianapolis, Indiana.

The petitioning group of workers are subject to an ongoing investigation for which a determination has not yet been issued (TA-W-18,610). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 5th day of December 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-28550 Filed 12-18-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-18,067]

Dismissal of Application for Reconsideration; South Texas Drilling & Exploration Co.

Pursuant to 29 CFR 90.18 an application for administrative reconsideratrion was filed with the Director of the Office of Trade Adjustment Assistance for workers at the South Texas Drilling & Exploration Company, San Antonio, Texas. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-18,087; South Texas Drilling & Exploration Company, San Antonio, TX (December 2, 1986)

Signed at Washington, DC, this 4th day of December 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-28551 Filed 12-18-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-18,463]

Termination of Investigation; U-Joints, Inc.

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 27, 1986 in response to a worker petition received on October 14, 1986; and filed by the employees on behalf of workers at U-Joints, Incorporated, Odessa, Texas.

The petitioning group of workers are subject to an ongoing investigation for which a determination has not yet been issued (TA-W-18,382). Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 3rd day of November 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-28552 Filed 12-18-86; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates, determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

Florida:
FL86-1 (Jan. 3, 1986)—pp. 102-103
FL86-3 (Jan. 3, 1986)—pp. 109-111

Volume II

Michigan:
MI86-1 (Jan 3, 1986)—pp. 385-386, pp. 393-394
MI86-4 (Jan 3, 1986)—pp. 423-425
MI86-7 (Jan 3, 1986)—pp. 445-448, p. 458
MI86-17 (Jan 3, 1986)—p. 486
Oklahoma:

OK86-1 (Jan 3, 1986)—pp. 797–798
OK86-2 (Jan 3, 1986)—pp. 800–801

Volume III

California:
CA86-4 (Jan 3, 1986)—p. 70

General Wage Determination Publication

Genral wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the County. Subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. The subscription cost is $277 per volume. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 12th day of December 1986.

James L. Valin,

Assistant Administrator.

[FR Doc. 86-28295 Filed 12-18-86; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-86-171-C]

Blue Diamond Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Blue Diamond Coal Company, P.O. Box R, Cumberland, Kentucky 40823 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Scotia Mine (I.D. No. 15-02055) located in Letcher County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that all belt entries used as intake and return aircourses be separated from belt haulage entries and that belt haulage entries not be used to ventilate active working places.

2. As an alternate method, petitioner proposes to use air that has passed over conveyor belt haulage entries to ventilate the active working places.

3. In support of this request, petitioner proposes to install an early warning fire detection system. A low-level carbon monoxide (CO) detection system will be installed in all belt entries used as intake aircourses and at each belt drive and tailpiece located in intake air courses. The monitoring devices will be capable of giving warning of a fire for a minimum of four hours should the power fail; a visual alert signal will be activated when the CO level is 10 parts per million (ppm) above ambient air and an audible signal will sound at 15 ppm above ambient air. All persons will be withdrawn to a safe area at 10 ppm and evacuated at 15 ppm. The fire alarm signal will be activated at an attended surface location where there is two-way communication. The CO system will be capable of identifying any activated sensor and monitoring electrical continuity to detect any malfunctions.

4. The CO system will be visually examined at least once each coal producing shift and tested for functional operation weekly to insure the monitoring system is functioning properly. The monitoring system will be calibrated with known concentrations of CO and air mixtures at least monthly.

5. If the CO monitoring system is deenergized for routine maintenance or for failure of a sensor unit, the belt conveyor will continue to operate and qualified persons will patrol and monitor the belt conveyor using hand-held CO detecting devices.

6. The permanent stoppings separating the conveyor belt entries from the intake escapeway will be specifically approved in the Ventilation System and Methane and Dust Control Plan for the mine.

7. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 20, 1987. Copies of the petition are available for inspection at that address.

Dated: December 8, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-28553 Filed 12-18-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-172-C]

Blue Diamond Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Blue Diamond Coal Company, P.O. Box R, Cumberland, Kentucky 40823 has filed a petition to modify the application of 30 CFR 75.1103-4(a) (automatic fire sensor and warning device systems; installation; minimum requirements) to its Scotia Mine (I.D. No. 15-02055) located in Letcher County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that automatic fire sensor and warning device systems provide identification of fire within each belt flight.

2. In a separate petition (M-86-171-C), petitioner proposes to use the belt haulage air to ventilate active working places.

3. As an alternate method, petitioner proposes to install a carbon monoxide detection system which will provide identification of a fire within a distance of 2,000 feet or less.

4. In support of this request, petitioner states that the sensors will be of a type which will give early warning automatically when a fire occurs in the belt entry, and provide both audible and visual signs that will permit rapid location of the fire. The automatic fire detection system will be calibrated to activate the warning signals should the carbon monoxide concentration reach 10 parts per million (ppm) above ambient. The alarm will be activated at an attended surface location where there is two-way communication. The system will be capable of identifying any activated sensor. All persons will be withdrawn to a safe area.

5. If the automatic fire detection system is affected by a power interruption or other malfunction, the belt conveyors will continue to operate only if a qualified person continues to monitor for carbon monoxide at each section loading point in by the malfunctioning sensor.

6. Each carbon monoxide sensor will be visually examined at least once each day during production periods to ensure proper functioning. At least every month the monitors will be checked for operating accuracy with a known concentration of carbon monoxide gas and will be calibrated as necessary.

7. Permanent stoppings will be used to separate the conveyor belt from the intake escapeway.

8. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 20, 1987. Copies of the petition are available for inspection at that address.

Dated: December 9, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-28554 Filed 12-18-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-173-C]

Blue Diamond Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Blue Diamond Coal Company, P.O. Box R, Cumberland, Kentucky 40823 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Scotia Mine (I.D. No. 15-02055) located in Letcher County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly to the return.

2. In a separate petition (M-86-171-C), petitioner proposes to use the belt haulage air to ventilate active working places, and to install an early warning fire detection system using a low-level carbon monoxide system.

3. As an alternate method, petitioner proposes that underground substations, power centers, stationary battery charging stations, pumps, and rectifiers be ventilated with intake air. They will be housed in a fireproof structure equipped with fireproof doors and an automatic fire suppression system. When the temperature in the fireproof structure reaches 165° farenheit or when the carbon monoxide (CO) concentration reaches 15 parts per million (ppm) above the established ambient level for that area, the fireproof doors will close, incoming power to that structure will be deenergized, and a signal will be activated.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 20, 1987. Copies of the petition are available for inspection at that address.

Dated: December 9, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-28555 Filed 12-18-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-184-C]

Hickory Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Hickory Coal Company, R.D.#1, Box 479, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1714 (self-contained self-rescue devices) to its No. 1 Slope (I.D. No. 36-07783) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. The petition concerns the requirement that each operator make available to each person who goes underground a self-contained self-rescue device approved by the Secretary which is adequate to protect such person for one hour or longer.

2. The mine is always damp to wet. The only electrical equipment, which is a pump, is located at the foot of the slope.

3. Petitioner states that the distance from the mine portal to the actual working force is less than 2,000 feet. The mine can be evacuated in less than 15 minutes.

4. Petitioner states that the devices are too heavy, bulky, and cumbersome to be worn while working or in the narrow confines of the slope gun boat which serves as a mantrip at the mine.

5. Sections of the mine are subjected to freezing temperatures making constant availability of the devices questionable. In addition, the wet mine conditions make it difficult to locate a suitable dry storage location for the self-rescuers.

6. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 20, 1987. Copies of the petition are available for inspection at that address.

Dated: December 9, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-28556 Filed 12-18-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-183-C]

Hickory Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Hickory Coal Company, R.D. #1, Box 479, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its No. 1 Slope (I.D. No. 36-07783) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Petitioner states that no such safety catch or device is available for the steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of this anthracite mine.

3. Petitioner further believes that if "makeshift" safety devices were installed they would be activated on knuckles and curves when no emergency existed and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope, above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 20, 1987. Copies of the petition are available for inspection at that address.

Dated: December 9, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-28557 Filed 12-18-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-176-C]

Kanawha Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Kanawha Coal Company, Rt. 1, Box 420, Ashford, West Virginia 25009 has filed a petition to modify the application of 30 CFR 75.1707 (escapeways; intake air; separation from belt and trolley haulage entries) to its Mill Branch Mine (I.D. No. 46-07176) located in Boone County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the escapeway required to be ventilated with intake air be separated from the belt and trolley haulage entries for the entire length of such entries to the beginning of each working section.

2. As an alternative method, the company is projecting an eight entry system having the first five entries on intake air and the other three entries on the return air. The intake and return will be separated by permanent stoppings, allowing the mine to have two separate and distinct travelways to insure passage of workers. One designated escapeway will be maintained in the No. 6 return entry utilizing a life line cord continuous to the surface, and one will be maintained in the No. 4 intake track entry continuous to the surface. The track mounted equipment will be battery powered.

3. The belt conveyor will be suspended in the No. 4 track entry provided with the conspec carbon monoxide (CO) monitoring system with both surface and underground signaling. A competent person will be stationed on surface to respond to signals received at the base station.

4. The belt control starter boxes and electrical components will be housed in a dust proof and fireproof structure using concrete and cinder block. The belt conveyor will be provided with water sprays directed towards both top and bottom belts to control and eliminate coal dust being suspended and accumulated in the entry.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that Office on or before January 20, 1987. Copies of the petition are available for inspection at that address.

Dated: December 9, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-28558 Filed 12-18-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-178-C]

S and M Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

S and M Coal Company, 129 North Street, Lykens, Pennsylvania 17048 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Buck Mountain Slope (I.D. No. 36-02022) located in Dauphin County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Petitioner states that no such safety catch or device is available for the steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of this anthracite mine.

3. Petitioner further believes that if "makeshift" safety devices were installed they would be activated on knuckles and curves when no emergency existed and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope, above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope of Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 20, 1987. Copies of the petition are available for inspection at that address.

Dated: December 9, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-28559 Filed 12-18-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-76-C]

Southern Ohio Coal Co., Petition for Modification of Application of Mandatory Safety Standard

Southern Ohio Coal Company, P.O. Box 552, Fairmont, West Virginia 26554 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Martinka No. 1 Mine (I.D. No. 46-03805) located in Marion County, West Virginia. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A sumary of the petitioner's statements follows:

1. The petition concerns the requirement that the length of trailing cables used for shuttle cars (#4 AWG 3C 2KV flat) be limited to 600 feet.

2. The mains are nine entries wide, the advancing longwall sections are four entries wide. The position and angle (60°) of coal blocks necessitated by roof conditions, and the restricted length of trailing cables allowed to be used on developing sections requires moving the power centers on a frequent basis.

3. Petitioner states that application of the standard would result in a diminution of safety for the miners affected because it would require more pluging and unplugging of high voltage plugs and power receptacles, and more frequent manual relocation of a 6 ton power center by using employees and scoops. It would also require the installation of more distribution boxes on the section which creates possible shock hazards with metal boxes being located in a breakthrough or entry. In addition, it would create the possibility of other pieces of equipment (i.e. scoop bolter) runnning into distribution boxes. The additional wire termination points associated with the additional boxes could cause more frequent loose connections, high currents and cable heating.

4. As an alternate method, petitioner proposes to increase the length of the trailing cables to 900 feet. In support of this request, petitioner states that all shuttle car breakers will be calibrated to be accurate within 15% of any trip unit setting; breaker settings will be checked each shift; additional training programs to train the mechanics in breaker theory and setting, and training in cable maintence will be conducted more frequently; and cables will be inspected twice per week.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or recieved in that office on or before January 20, 1987. Copies of the petition are available for inpsection at that address.

Dated: December 9, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-28560 Filed 12-18-86; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Arts in Education Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Arts in Education Advisory Panel (State Arts in Education Grants Section) to the National Council on the Arts will be held on January 5-6, 1987 from 8:30 a.m.-9:00 p.m. and on January 7, 1987 from 8:30 a.m.-5:00 p.m. in room M-09 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on January 7, 1987 from 11:15 a.m.-5:00 p.m. to discuss policy issues.

The remaining sessions of this meeting on January 5-6, 1987 from 8:30 a.m.—9:00 p.m. on January 7, 1987 from 8:30 a.m.—11:00 a.m. are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Office, National Endowmnent for the Arts, Washington, DC 20506, or call 202/682-5433.

Arts in Education Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Arts in Education Advisory Panel (Arts in School Basic Education Grants Section) to the National Council on the Arts will be held on January 8, 1987 from 8:30 a.m.-9:00 p.m. and on January 9, 1987 from 8:30 a.m.-5:00 p.m. in room M-09 of th Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on January 7, 1987 from 11:15 a.m.-5:00 p.m. to discuss policy issues.

The remaining sessions of this meeting on January 8, 1987 from 8:30 a.m.-9:00 p.m. and on January 9, 1987 from 8:30 a.m.-11:00 a.m. are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidecne to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment of the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

December 15, 1986.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 86-28475 Filed 12-18-86; 8:45 am]

BILLING CODE 7537-01-M

December 15, 1986.
John H. Clark,
Director, Council and Panel Operations, National Endowment for the Arts.
[FR Doc. 86-28478 Filed 12-18-86; 8:45 am]
BILLING CODE 7537-01-M

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that a meeting of the Music Advisory Panel (Opera-Musical Theater Overview Section) to the National Council on the Arts that was to be held on January 5-6, 1987, from 9:00 a.m.-5:30 p.m. in room M-14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics for discussion will include guidelines, producers' grants, and five-year plan.

If you need accommodations due to a disability, please contact the Office for Special constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Office, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

John H. Clark,
Director, Office of Council and Panel Operations, National Endowment for the Arts.
December 15, 1986.
[FR Doc. 86-28477 Filed 12-18-86; 8:45 am]
BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget (OMB) review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Revision.
2. The title of the information collection: 10 CFR Part 100, Appendix A.
3. The form number is applicable: N/A.
4. How often the collection is required: As necessary in order for NRC to assess the adequacy of proposed seismic design bases and the design bases for other geological hazards for nuclear power plants constructed and licensed in accordance with the Atomic Energy Act of 1954, as amended (the Act).
5. Who will be required or asked to report: Licensees for nuclear power plants.
6. An estimate of the number of respondents: 3 annually.
7. An estimate of the total number of hours needed to complete the requirement or request: 50,000.
8. An indication of whether section 3504(h), Pub. L. 9696-511 applies: Not applicable.
9. Abstract: The regulations require utilities that propose to build and operate nuclear power plants to design, construct, and maintain those plants to withstand geologic hazards, such as faulting, seismic hazards, and the maximum credible earthquake, to protect the health and safety of the public and the environment.

ADDRESSES: Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, N.W., Washington, DC 20555.

FOR FURTHER INFORMATION: Comments and questions should be directed to the OMB reviewer: Jefferson B. Hill, (202) 395-7340.

NRC Clearance Officer is Brenda Jo Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 15th day of December 1986.

For the Nuclear Regulatory Commission.
Patricia G. Norry,
Directory, Office of Administration.
[FR Doc. 86-28503 Filed 12-18-86; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-369 and 50-370]

Issuance of Environmental Assessment and Finding of No Significant Impact, Duke Power Company

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of proposed amendments which would change the expiration date for the McGuire Nuclear Station, Unit 1, Operation License, NPF-9 from February 28, 2013, to June 12, 2021, and change the expiration date for the McGuire Nuclear Station Unit 2, Operating License, NPF-17, from February 28, 2013 to March 3, 2023.

Identification of Proposed Action

The currently licensed term for McGuire, Units 1 and 2, is 40 years commencing with issuance of the construction permits (February 28, 1973). Accounting for the time that was required for plant construction, this represents an effective operating license term of 31¾ years for Unit 1 and 30 years for Unit 2. The licensee's application dated December 16, 1985, requests a 40-year operating license term for McGuire, Units 1 and 2. Additional information in support of the request is provided by the licensee's letter for November 24, 1986.

Summary of Environmental Assessment

The Commission has reviewed the potential environmental impact of the proposed change and has issued "Environmental by the Office of Nuclear Reactor Regulation Relation to the Change in Expiration Dates of Facility Operating License Nos. NPF-9 and NPF-17, Duke Power Company, McGuire Nuclear Station, Unit Nos. 1 and 2." This evaluation considered the previous environmental studies, including the "Final Environmental Statement Related to Operation of William B. McGuire Nuclear Station, Units 1 and 2" (FES) April 1976, its addendum of January 1981, and more recent Commission policy.

Radiological Impacts

The population beyond a five mile radius of McGuire Units 1 and 2, based on the 1980 census, is lower than the population which was predicted in the FES based on the 1970 census. The population within the five-mile radius of the McGuire Station is greater than that predicted in the FES. The exclusion area and nearest population center are not changed and local land usage remains rural. The site will continue to meet the requirements of 10 CFR Part 100. Station radiological effluents to unrestricted areas during normal operation have been well within Commission regulations regarding as-low-as-is-reasonbaly-achievable (ALARA) limits, and are indicative of future releases. In addition, the proposed additional years of reactor operation do not increase the annual public risk from reactor operation. Thus, the higher-than-projected population growth rate within five miles of the site does not change the environmental impact findings in the FES becuse its effects are offset by favorable radiological exposure from

plant releases during normal operation and by low public risk from accidents. With regard to station personnel, the licensee complies with Commission guidance and requirements for keeping radiation exposures ALARA for occupational exposures and would continue to comply with these requirements during any additional years of facility operation and also apply advanced technology when availble and appropriate. Accordingly, radiological impacts on man, both onsite and offsite, are not significantly more severe than previously estimated in the FES and our previous cost-benefit conclusions remain valid.

The net annualized enviornmental impacts attributable to the uranium fuel cycle, which form the basis for Table S3 of 10 CFR 51, remain essentially unchanged from those addressed in the SER addendum. The environmental impacts attributable to transportation of fuel and waste to and from the McGuire Nuclear Station, with respect to normal conditions of transport and possible accidents in transport, would continue to be as set forth in Summary Table S-4 of 10 CFR 51.52, and the values in Table S-4 would continue to represent the contribution of transportation to the environmental costs associated with the reactor.

Non-Radiological Impacts

The licensee has conducted a demonstration project in accordance with Section 316(a) of the Clean Water Act which demonstrates that thermal discharges from the Station are such that the water quality and the indigenous biota of Lake Norman are protected. The demonstration project has been approved by the State of North Carolina, the National Pollutant Discharge Elimination System (NPDES) permitting authority.

The Commission's review of the requested extension concluded that all potential impacts have been identified, described and evaluated in its previously-issued environmental impact statements and/or appraisals and reviews by the NPDES permitting authority under the Clean Wate Act. All operational non-radiological impacts on aquatic biological resources have been assessed by the Commission on bases other than a life-of-plant basis; hence, the requested extensions will not alter previous Commission findings and conclusions. The NPDES permit provides additional environmental protection.

Finding of No Significant Impact

The Commission has reviewed the proposed change to the expiration dates of the McGuire Units 1 and 2 Facility Operating Licenses relative to the requirements set forth in 10 CFR Part 51. Based upon the environmental assessment, the Commission concluded that there are no significant adverse radiological or non-radiological impacts associated with the proposed action and that the proposed license amendments will not have a significant adverse effect on the quality of the human environment. Therefore, the Commission has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed amendments.

For further details with respect to this action, see (1) the application for amendments dated December 16, 1985, and supplemental letter of November 24, 1986 (2) the Final Enviornmental Statement Related to Operation of William B. McGuire Nuclear Station Units 1 and 2, April 1976, with its addendum dated January 1981, (3) licensee's letter of August 23, 1985 with report pursuant to Section 316(a) of the Clean Water Act, and (4) the Environmental Assessment dated December 16, 1986. These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW. Washington, DC, 20555 and at the Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Dated at Bethesda, Maryland, this 16th day of December 1986.

For the Nuclear Regulatory Commission.
B.J. Youngblood,
Director, PWR Project Directorate No. 4, Division of PWR Licensing-A.
[FR Doc. 86-28504 Filed 12-18-86; 8:45 am]
BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittees on General Electric Reactors (ABWR)/ Safety Philosophy, Technology, and Criteria; Meeting

The ACRS Subcommittees on General Electric Reactors (ABWR)/Safety Philosophy, Technology, and Criteria will hold a joint meeting on January 7, 1987, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, January 7, 1987—9:00 a.m. Until the Conclusion of Business

The GE Reactors Subcommittee will begin its review of the ABWR. This will be a preliminary session to explore the status of this project and to be briefed on efforts regarding a licensing basis agreement between GE and the NRC. A current description of the ABWR is sought as well as schedules from GE and the staff. The SPTC Subcommittee will review the status of the NRC Staff's work on the Safety Goal Policy and on USI A-17, "Systems Interactions on Nuclear Power Plants."

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Richard Major (telephone 202/634-1414), between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: December 15, 1986.

Morton W. Libarkin,
Assistant Executive Director for Project Review.
[FR Doc. 86-28501 Filed 12-18-86; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos.: 50-546 and 50-547]

Order Terminating Construction Permits

In the Matter of Public Service Company of Indiana, Inc.; Wabash Valley Power

Association, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2).

I.

Public Servie Company of Indiana, Inc., and Wabash Valley Power Association, Inc. are the holders of Construction Permits Nos. CPPR-170 and CPPR-171 which authorize construction of the Marble Hill Nuclear Generating Station, Units 1 and 2, in Jefferson County, Indiana. The construction permits were issued on April 4, 1978.

II.

On November 14, 1984, Public Service Company of Indiana, Inc., (PSI), announced the cancellation and abandonment of the Marble Hill plant. PSI informed the NRC of cancellation and provided a site stabilization plan on March 1, 1985. On November 3, 1986, the presiding Atomic Safety and Licensing Board issued a Memorandum and Order Terminating Operating License Proceeding.

For the reasons set forth in section II above, and pursuant to the directive of the Atomic Safety and Licensing Board in LBP-86-37, Construction Permits Nos. OPPR-170 and CPPR-171 are hereby terminated.

This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 16th day of December 1986.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 86-28505 Filed 12-18-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-546 and 50-547]

Public Service Company of Indiana, Inc. and Wabash Valley Power Association, Inc.; Withdrawal of Application for Operating Licenses

The Public Service Company of Indiana, Inc., and Wabash Valley Power Association, Inc., by their Motion To Terminate Proceedings dated April 4, 1985, have requested withdrawal of their application for licenses to operate the Marble Hill Nuclear Generating Station, Units 1 and 2, a two-unit pressurized water reactor at its site located in Saluda Township, Jefferson County, Indiana. A copy of the Motion To Terminate Proceedings is available for inspection in the NRC's Public Document Room, 1717 H Street, NW., Washington, DC. On November 3, 1986 the Atomic Safety and Licensing Board issued a memorandum and Order Terminating the Operating License Proceeding (LBP-86-37). The Nuclear Regulatory Commission grants the applicants' request for withdrawal of this application.

Notice of receipt of the application was published in the **Federal Register** on March 25, 1983 (48 FR 12609).

Dated at Bethesda, Maryland, this 16th day of December 1986.

For the Nuclear Regulatory Commission.

B. J. Youngblood,

Director, PWR Project Directorate No. 4, Division of PWR Licensing-A.

[FR Doc. 86-28506 Filed 12-18-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-289]

Three Mile Island Nuclear Station, Unit No. 1; Denial of Amendment to Facility Operating License and Opportunity for Hearing

Metropolitan Edison Company, Jersey Central Power and Light Company, Pennsylvania Electric Company, GPU Nuclear Corporation.

The U.S. Nuclear Regulatory Commission (the Commission) has denied in part, a request by GPU Nuclear Corporation, et al. (the licensees) for an amendment to Facility Operating License No. DPR-50 issued to GPU Nuclear Corporation, et al. for operation of the Three Mile Island Nuclear Station, Unit No. 1 (TMI-1) located in Dauphin County, Pennsylvania. Notice of consideration of issuance of this amendment was published in the **Federal Register** on October 22, 1986 (51 FR 37511).

The purpose of the licensee's amendment request was to incorporate new and revised Technical Specification (TS) requirements for operating and testing the Fuel Handling Building (FHB) Engineered Safety Feature (ESF) Air Treatment System and the Auxiliary and FHB Air Treatment System. Included in this request was a proposal to delete TS 4.12.3.2.d, which would eliminate the requirement for operating the Auxiliary and FHB Air Treatment System at least ten hours per month.

The licensee considered deletion of TS 4.12.3.2.d was justified because the Auxiliary and FHB Air Treatment System was not required to meet the Regulatory Guide (1.52) for ESF ventilation systems, and furthermore, the subject surveillance was not recommended in Regulatory Guide (1.140) for normal ventilation systems. However, due to the accident mitigation role maintained by the Auxiliary and FHB Air Treatment System, even after installation of the new FHB ESF Air Treatment System, the Commission has determined the licensee's justification is insufficient. Consequently, the requirements for operating both ventilation systems at least ten hours per month has been retained.

All other provisions of the amendment request have been approved by Amendment No. 122 dated December 12, 1986. Notice of Issuance of Amendment No. 122 will be published in the Commission's biweekly **Federal Register** notice.

The licensees were notified of the Commission's denial of the proposed Technical Specification change by letter dated December 12, 1986.

By January 20, 1987, the licensees may demand a hearing with respect to the denial described above and any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Ernest L. Blake, Jr., of Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensees.

For further details with respect to this action, see (1) the application for amendment dated August 25, 1986, as revised on October 1, 1986, (2) the Commission's letter to GPU Nuclear Corporation dated December 12, 1986, and (3) the Commission's Safety Evaluation issued with Amendment No. 122 to DPR-50 dated December 12, 1986 These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of PWR Licensing-B.

Dated at Bethesda, Maryland, this 12th day of December, 1986.

For the nuclear regulatory Commission.

John F. Stolz,

Director PWR Project Directorate No. 6, Division of PWR Licensing-B.

[FR Doc. 86-28502 Filed 12-18-86; 8:45 am]

BILLING CODE 7590-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area # 2258; Amdt. # 3]

Declaration of Disaster Area Missouri; Change of Interest Rates

The above-numbered Declaration (51 FR 37532), as amended (51 FR 40099), and (51 FR 41887) is hereby further amended to change the interest rate for nonprofit, eleemosynary and similar organizations from 10.5 percent to 9.5 percent. Any loans approved to an organization in this group between October 1, 1986, and this date, will be automatically adjusted to reflect the new rate. All other information remains the same.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: November 13, 1986.

Alfred E. Judd,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 86-28496 Filed 12-18-86; 8:45 am]

BILLING CODE 8025-01-M

STATE JUSTICE INSTITUTE

Institute Program Priorities, Conditions and Limitations on Awards; Policy Statement Availability

AGENCY: State Justice Institute.

ACTION: Notice.

SUMMARY: The State Justice Institute Act of 1984 (Pub. L. 98-620, Title II, sec. 203(f)) requires that interested parties be given notice and a reasonable opportunity to comment on Institute rules, regulations, guidelines and instructions prior to final issuance. Notice is hereby given that copies of a policy statement describing Institute program priorities, conditions and limitations on awards, and application and review procedures is available for review and comment from the State Justice Institute at the address given below.

DATE: Comments from interested parties on the policy statement must be received no later than January 12, 1987.

ADDRESS: Copies of the policy statement are available from and comments should be returned to:

State Justice Institute, Superior Court of the District of Columbia, Suite 5230, 500 Indiana Avenue, NW., Washington, DC 20001

FOR FURTHER INFORMATION CONTACT: John B. Pickett, Acting Executive Director, State Justice Institute at the address given above; telephone (202) 628-0001.

John B. Pickett,

Acting Executive Director.

[FR Doc. 86-28478 Filed 12-28-86; 8:45 am]

BILLING CODE 6820-SC-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 244
Friday, December 19, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION:

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 51 FR 44969, December 15, 1986.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: December 17, 1986, 10:00 a.m.

CHANGE IN THE MEETING: The following items have been added:

Item No., Docket Nos., and Companies

CAM-13—RM87-9-000, Confidential Treatment of Records and Documents Filed With the Commission
ER-1(A)—PL87———, Statement of Policy on Phased Electric Rate Filings
RP-5—RP86-92-000 and 003, Northwest Pipeline Corporation

Kenneth F. Plumb,
Secretary.
[FR Doc. 86-28616 Filed 12-17-86; 1:03 pm]
BILLING CODE 6717-02-M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The meeting is scheduled to be held at the offices of the Farm Credit Administration in McLean, Virginia, on December 18, 1986, from 10:00 a.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Auberger, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102-5090 (703-883-4010).

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). The matters to be considered at the meeting are:

1. Consideration of Final Regulations—Regulatory Accounting Practices and Requirements

Dated: December 16, 1986.

Kenneth J. Auberger,
Secretary, Farm Credit Administration Board.
[FR Doc. 86-28563 Filed 12-16-86; 4:39 pm]
BILLING CODE 6705-01-M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of a change in the date of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The meeting was scheduled to be held on January 6, 1987. The meeting has been rescheduled to be held at the offices of the Farm Credit Administration in McLean, Virginia, on January 15, 1987, from 10:00 a.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Auberger, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102-5090 (703-883-4010).

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of the meeting will be closed to the public. Notice of the matters to be considered at the meeting will be published in the **Federal Register** before January 15, 1987.

Dated: December 16, 1986.

Kenneth J. Auberger,
Secretary, Farm Credit Administration Board.
[FR Doc. 86-28564 Filed 12-16-86; 4:40 pm]
BILLING CODE 6705-01-M

Corrections

Federal Register
Vol. 51, No. 244
Friday, December 19, 1986

This section of the FEDERAL REGISTER contains editorial corrections of previously published Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1064, 1102, 1106, 1108, and 1126

[Docket Nos. AO-231-A54 et al.]

Milk in the Texas and Certain Other Marketing Areas; Order Amending Orders

Correction

In rule document 86-27870 beginning on page 44590 in the issue of Thursday, December 11, 1986, make the following corrections:

1. On page 44591, in the first column, in the sixth complete paragraph, third line, "or" should read "of".

§ 1106.52 [Corrected]

2. On page 44592,in the second column,in § 1106.52, the introductory text of paragraph (a)(6) was inadverently omitted. After the fifth line insert the following:

* * * * *

(6) For a plant located in any of the following territory in the State of Texas, the adjustment shall be as follows:

* * * * *

3. On the same page,in the same column, in § 1106.52 (a)(7)(i), in the fifth line, insert "price" between "I" and "effective".

§ 1106.52 [Corrected]

4. On page 44592, in the third column, in § 1106.52 (a)(1)(iii), in the first line, "country" should read "county".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1065 and 1079

[Docket Nos. AO-178-A40, AO-86-A44, and AO-295-A37]

Milk in the Upper Midwest, Nebraska-Western Iowa, and Iowa Marketing Areas; Decision on Proposed Amendments to Tentative Marketing Agreements and to Orders

Correction

In proposed rule document 86-27671 beginning on page 44617 in the issue of Thursday, December 11, 1986, make the following correction:

On page 44628, the last paragraph of the first column and the first paragraph of the second column should have read as follows:

"The exceptions filed by Mid-Am, Gillette and Wells, except for Wells' legal interpretation of the new legislation, raise points that were fully considered in the recommended decision and therefore are denied. However, in further response to Mid-Am's exceptions, it must be noted that the 1.7-cent rate adopted was not based on the cost of moving packaged milk. As stated earlier, this rate is appropriate to reflect price alignment resulting from certain of the Congressionally mandated differentials. Also, there is no need demonstrated for an incentive to move milk from Norfolk to Omaha. The record does not indicate that the Omaha-area plants have experienced difficulty in obtaining milk supplies. With respect to the new legislation, the Food Security Act of 1985 does not prescribe the narrow approach to setting these new location adjustments that Wells thinks Congress intended.

With respect to proposals for a location adjustment at Norfolk, it would be inconsistent to adopt a minus location adjustment at Norfolk because Norfolk is part of the base zone. The mandated Class I differentials, which became effective May 1, 1986, were minimums intended by Congress to be applicable to the existing base zones as of that date. Accordingly, it would appear to be inappropriate to lower the Class I differentials at any location within that base zone during the two-year period that the differentials were mandated under the 1985 Act."

BILLING CODE 3410-02-D

DEPARTMENT OF EDUCATION

[CFDA No. 84.116A]

Inviting Preapplications and Applications for New Awards Under the Comprehensive Program of the Fund for the Improvement of Postsecondary Education (FIPSE) for Fiscal Year 1987

Correction

In notice document 86-27927 appearing on page 44629 in the issue of Friday, December 12, 1986, make the following corrections:

1. In the first column, in the second paragraph, in the second line, "reapplications" should read "preapplications"; and

2. In the same column, in the third paragraph, in the second line, "preapplications" should read "applications".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[PP 5G3263/T533; FRL-3125-1]

Oxyfluorfen; Extension of Temporary Tolerance

Correction

In notice document 86-27658 beginning on page 44517 in the issue of Wednesday, December 10, 1986, make the following correction:

On page 44517, in the third column, under **SUPPLEMENTARY INFORMATION**, in the 15th line, the petition number should read "PP 5G3263". Also, the comma at the end of the line should be deleted.

BILLING CODE 1505-01-D

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 229, 239, 240, 249, and 270

[Release Nos. 33–6676; 34–23789; 35–24236; IC–15403; File No. S7–31–85]

Proxy Rules—Comprehensive Review

Correction

In rule document 86–25898 beginning on page 42048 in the issue of Thursday, November 20, 1986, make the following corrections:

1. On page 42052, in the third column, the heading for paragraph "*Q.*" should read "*Item 9, Independent Public Accountants*", and "Peer Review" should be a subordinate heading.

§ 229.601 [Corrected]

2. On page 42057, in the table, line (3) should read as set out below.

	Securities Act forms											Exchange Act forms			
	S–1	S–2	S–3	S–4	S–8	S–11	S–18	F–1	F–2	F–3	F–4	10	8–K	10–Q	10–K
(3) Articles of incorporation and by-laws.	X			X		X	X	X			X	X			X

3. In the same table, in footnote 2, the seventh word should be "or", and in footnote 3, "Forms S-4 of F-4" should read "Forms S-4 or F-4".

§ 240.14a-3 [Corrected]

4. On page 42060, in the first column, in the eighth line of § 240.14a-3(b)(10), "of" should read "on".

§ 240.14a-101 [Corrected]

5. On page 42064, in the second column, in § 240.14a–101, in the seventh line of paragraph (b) of the instructions to *Item 5.*, "§ 240.14a-11" should be removed.

6. On page 42070, in the second column, in the fifth line of *Item 17.*, "of the security holders" should read "of its security holders".

BILLING CODE 1505–01–D

federal register

Friday
December 19, 1986

Part II

Department of Agriculture

Food Safety and Inspection Service

9 CFR Parts 308, 318, 320, 327, and 381
Canning of Meat and Poultry Products; Final Rule

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 308, 318, 320, 327, and 381

[Docket No. 81-013F]

Canning of Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the Federal meat inspection regulations and the Federal poultry products inspection regulations by adding a number of provisions covering thermally (heat) processed meat and poultry products packed in hermetically sealed containers. The rule strengthens controls over the canning of meat and poultry products and updates the regulations in accordance with technological advances in the canning industry. Further, it makes Department of Agriculture (USDA) requirements for canned meat and poultry products more consistent with Food and Drug Administration (FDA) requirements for most other canned foods. In addition, the rule is based on many of the principles of the international code of practice for canned foods developed by the Codex Alimentarius Commission of the World Health Organization/Food and Agriculture Organization.

This regulation will reduce the risk of public health hazards associated with improperly processed canned product; provide more uniform application of canning requirements by FSIS employees; reduce the number of product retentions by FSIS without compromising consumer safety; and foster the application of recognized good manufacturing practices.

EFFECTIVE DATE: June 19, 1987, except for: § 318.305(h)(3) and § 381.305(h)(3), concerning the recycling and reuse of container cooling water, which are effective December 21, 1987; and § 318.310 and § 381.310, concerning the training of supervisors, which are effective December 19, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Dennis, Director, Processed Products Inspection Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3840.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

FSIS has determined that this rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State and local government agencies or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Effects on Small Entities

FSIS has determined that this rule does not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601). The facilities and equipment provisions of this rule reflect current "state-of-the-art" conditions in the canning industry and are not expected to impose any significant regulatory burden on small plants, in part, because most federally inspected canning establishments are not small entities. FSIS solicited comments from small plants that, because of unusual circumstances, would have to make large capital outlays in order to comply with the proposed rule. No comments on this aspect were received.

Background

The Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*) require the Secretary of Agriculture to administer an inspection program that assures consumers that meat and poultry products distributed in commerce are wholesome, not adulterated, and properly marked, labeled, and packaged. Consistent with that, on April 12, 1984, the Department published in the **Federal Register** a proposed rule titled, "Canning of Meat and Poultry Products" (49 FR 14636-72). The primary purpose of the proposal was to revise USDA regulations over the canning of meat and poultry products and update them in accordance with technological advances in the industry. The proposed regulations would replace existing USDA regulations governing the processing and production of thermally processed meat and poultry products packed in hermetically sealed containers.

The original comment period was to have ended July 1, 1984; however, because of the length and complexity of the proposal, several trade associations requested additional time to study the proposal and submit comments. FSIS therefore published a notice in the **Federal Register** (49 FR 28252) on July 11, 1984, granting an extension of the comment period to September 10, 1984. Because the July 11 notice contained additional information clarifying the types of products covered by the proposed rule, two trade associations requested an additional 30 days to study the proposal and submit comments. On September 10, 1984, FSIS again published a notice in the **Federal Register** (49 FR 35507) extending the comment period to October 10, 1984.

Before 1984, a decade of experience had proven the need for revising USDA's canning regulations. In 1971, botulinum toxin was found in canned chicken vegetable soup packed by a processing plant under USDA inspection. That incident raised questions within USDA about the effectiveness of existing canning regulations and inspection procedures. Then, in 1974 one person died from botulism attributed to a canned food packed under USDA inspection—the first reported death involving a USDA-inspected product. These incidents led to an indepth departmental review of USDA controls governing the canning of meat and poultry products. As a result of the review, the Department concluded that its regulations and inspection procedures were, in many ways, outmoded in terms of the technological changes taking place in the canning industry. In particular, the regulations did not fully address all the critical control points in the processing of meat and poultry products. Thus, in 1975 USDA decided that its canning regulations needed complete revamping. However, because of the urgency of the matter, the Department issued instructions and guidelines to canning establishments and USDA employees as an interim measure. These publications addressed many of the critical control points in canning operations.

On September 17, 1976, the Department published in the **Federal Register** a proposed rule to update its regulations for canned meat and poultry products (41 FR 40156). The proposal incorporated the existing regulations as well as the requirements in the interim instructions and guidelines. It also included certain generally recognized good manufacturing practices employed by the industry and contained in FDA regulations. The FDA regulations had been issued in January 1973 as Part 128b, "Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers," (21 CFR Part 128b). Part 128b was later recodified as Part 113 (21 CFR Part 113).

The public comment period on USDA's 1976 proposal ended on January 15, 1977. During the comment period, 13 written comments on the proposal were received. Commenters generally agreed

that the canning regulations needed revision, but they also believed that the 1976 proposal was not comprehensive. Upon review, USDA concurred and withdrew the proposal.

After this decision, the Department continued using its interim instructions and guidelines as a basis for ensuring that consumers were receiving a safe and wholesome product. In 1980, the task of drafting a new regulatory proposal was initiated. On September 18, 1981, the Department received a petition from the National Food Processors Association (NFPA) urging "early publication of a proposed regulation governing thermal processing of canned meat and poultry products, and prompt issuance of a final regulation taking into account the comments received." NFPA argued that the issuance of a regulation would strengthen consumer protection, reduce the cost of USDA inspection of meat and poultry processing plants, and provide fairer, more specific, and less burdensome processing rules governing canned meat and poultry products. USDA continued its work on a proposal and on April 12, 1984, issued a new notice of proposed rulemaking (49 FR 14636).

Discussion of Comments

FSIS received 16 comments on the April 1984 proposed rule. Six were from canning establishments; 7 were from trade associations of which 3 were requests for an extension on the comment period; 1 was from a consulting laboratory; 1 was from a foreign canning establishment; and 1 was from a foreign government meat inspection service. Most of the comments were technical in nature and were directed toward specific sections of the proposed regulations. Some of the comments, however, were of a general nature and affected the scope of the proposed regulations. The following discussion will first address the general comments and will then respond to the specific comments on a section-by-section basis.

General Comments

Types of Products Covered by the Rule

Four commenters argued that the final rule should not cover "keep-refrigerated" products because, by definition, these products are not shelf stable (commercially sterile). One commenter suggested that, if regulations are necessary, keep-refrigerated products should be covered in a separate rulemaking procedure. This commenter also pointed out that a separate rule could be directed specifically to product formulation, proper heat treatment, and proper refrigeration after processing.

FSIS agrees that keep-refrigerated products should not be included in the same rule as shelf stable products and has revised the final rule to exclude this class. The Agency will consider issuing regulations covering keep-refrigerated products at a later date, and there will be no further discussion of this subject hereafter.

One of the four commenters also argued that acidified low acid products should be excluded from the final rule because many of the requirements in the proposed rule are excessive if applied to these products. Another stated that the requirements were excessive but also believed that it is not inappropriate to include acidified low acid foods in a regulation covering low acid products because both are commercially sterile. If acidified products are retained in the final regulation, this commenter suggested incorporating additional language pertaining to the necessary controls for such products. The commenter also noted that comments should then be solicited on the revision.

FSIS agrees with the second commenter that it is appropriate for the final rule to include both low acid and acidified low acid canned products because both types of products are packaged in hermetically sealed containers and are intended to be shelf stable at room temperature. Like low acid canned products, acidified low acid canned products that are improperly processed can represent a major public health threat. Thus, acidified low acid products should be subject to the same stringent controls as low acid products. FSIS believes, however, that the rule is adequate to cover acidified low acid products and does not believe that additional language is necessary at this time.

The Use of Mandatory (Shalls) Versus Advisory (Shoulds) Statements

Four commenters expressed concern that the proposed rule contains only mandatory statements and noted that FDA regulations sometimes include advisory statements that are intended as recommended good manufacturing practices. They objected to USDA's use of mandatory statements in instances where FDA uses advisory language, arguing that advisory statements provide a flexibility that makes technological advances possible without the cumbersome procedure of amending the regulations. They also argued that USDA should not make advisory statements or recommendations mandatory.

One commenter also pointed out that basic canning principles are the same for meat and nonmeat products. The commenter urged uniformity between FDA and USDA regulations so that schools that train industry personnel in canning technology and procedures can use the same textbooks and other materials for employees in meat and nonmeat plants.

FSIS generally agrees with these arguments. For the most part, it has incorporated advisory statements or recommended practices in specific subsections of the regulations recommended by the commenters. FSIS believes, however, that it is necessary to retain mandatory language in certain instances to take into account the experience gained since the FDA regulations were adopted. These cases are addressed under the discussion of comments on specific subsections.

Request To Rescind Bulletins Relating to Canned Meat and Poultry Products

Three commenters pointed out that a final rule should supersede all existing FSIS bulletins and notices relating to canned products, and one also argued that the final rule should eliminate the need for future FSIS notices pertaining to canning. FSIS agrees that existing bulletins and notices relating to canned meat and poultry products can be rescinded and intends to rescind them after the effective date of this final rule. FSIS may find it necessary in the future, however, to issue additional instructions to field personnel regarding the implementation of the canning regulations, and these instructions could be issued as FSIS notices or directives.

Confidentiol Information

Noting that the proposed rule would have required that certain documents containing trade secrets be made available to inspectors, five organizations expressed concern that such confidential information might be copied and removed from plants. The commenters requested that the final rule indicate clearly that inspectors may not remove such materials unless the removal is justified and is authorized by FSIS supervisory personnel.

FSIS is concerned about maintaining the confidentiality of trade secrets—an issue that involves all aspects of inspection and is not restricted to canning establishments. Because confidentiality is a general issue, the Agency has issued FSIS Directive 4735.6, which addresses the safeguarding of confidential business information of all establishments and provides sufficient guidance on this matter.

Terminology

The proposed rule contains references to both FSIS program employees and inspectors. Several commenters urged that the final rule not include both terms and that uniform terminology be used throughout.

FSIS has examined all sections of the proposed rule and has found that the term "program employee" is used in almost all cases. The term "inspector" is used only in conjunction with routine inspection procedures in which other FSIS employees are not normally involved and indicates to establishments the appropriate FSIS employee to whom information should be provided. The term "inspector" has been retained in such instances.

Clarifications

Minor editorial changes have been made for clarity, but the changes do not alter the requirements.

Specific Comments

The following discussion deals with comments on specific subsections of the proposed rule. Subsections have been added and deleted from the proposal on the basis of some of the comments, and the final rule has been recodified to reflect these changes. In some instances, it was also necessary to relabel and transfer subsections within sections because of suggested changes accepted by FSIS.

Sections 318.300 and 381.300 Definitions

Two commenters suggested that the final rule include a definition of abnormal containers and also proposed the wording. FSIS has accepted the suggestion, and a definition of an abnormal container has been added to the final rule. In order to accomplish this inclusion, the definition appears in subsection (a) of §§ 318.300 and 381.300, and the other definitions have been recodified accordingly.

(a) *Acidified low acid product.* Five commenters said that the requirement to acidify products within 24 hours after the completion of the thermal process is unnecessarily restrictive. One suggested modifying the time requirement with the phrase "unless data are available to indicate that a longer time period is safe and appropriate." Some commenters also argued that the designated processing authority should be given the responsibility for determining the acidification time period. FSIS agrees with these suggestions and has modified the final rule accordingly.

(b) *Bleeders.* One commenter suggested that the definition include condensate as a possible discharge. FSIS concurs and has added condensate to the list of discharges.

(c) *Come-up time.* Six commenters suggested that the point at which come-up time ends be defined as the start of process timing. Another suggested qualifying "venting time" with the phrase "if applicable." These suggestions have been incorporated in the final rule.

(f) *Critical factor.* Three commenters stated that the proposed definition was too general and recommended that it be revised to indicate that a critical factor affects the *adequacy* of the process schedule. This change has been made. An explanatory phrase has also been added to indicate that critical factors are established by processing authorities.

(g) *Designated authority.* Four commenters noted that more than one designated authority can be used and suggested that this fact be acknowledged by inserting "(s)" after the words "person" and "organization." FSIS concurs and has revised the subsection accordingly. One commenter also pointed out that the term "processing authority" is more widely used in the industry and suggested that this term be substituted for "designated authority" throughout the final rule. FSIS agrees, and the term "designated authority" has been changed to "processing authority" and recodified as subsection (q). Language indicating that the processing authority is designated by the establishment has been retained.

(h) *Gross headspace.* Six commenters requested that the definition be changed to allow measurement of gross headspace from the flange of unsealed cans. They pointed out that this procedure is a widely accepted industry practice. FSIS agrees and has included this measurement in the definition.

(i) *Semirigid container.* Two commenters believed that the definition could be misinterpreted to include drawn-aluminum containers and suggested that the definition be revised. The Agency disagrees. It was intended that the definition be comprehensive enough to include some of these containers because new types of drawn-aluminum containers are considered semirigid. For example, thinly drawn aluminum trays have recently been developed for packaging shelf stable, low acid meat and poultry products. FSIS wants to make it clear, however, that the definition is not intended to include traditional drawn-aluminum containers currently being used to process shelf stable products such as those with pull tops used to pack Vienna sausages.

Flexible container. Two commenters pointed out that strict interpretation of the proposed definition could include large, rectangularly-shaped cans. They suggested that the adverb "significantly" be added before the verb "affected" to clarify the intent of the definition. FSIS concurs and has made this addition.

(k) *Incubation tests.* One commenter suggested that the definition be revised to indicate that samples of product are tested. FSIS has not accepted this suggestion because entire lots are sometimes tested; the proposed definition allows for both possibilities.

(l) *Initial temperature.* Five commenters suggested rewording the proposed definition to permit various methods of measurement, including measurement of unsealed containers. One suggested that FDA language be adopted. FSIS has made the definition in the final rule more general than the proposed definition to permit a variety of methods to be used, but has not adopted the FDA definition, which is too specific regarding methodology.

(m) *Low acid product.* Four commenters objected to the inclusion of a specific time requirement for measuring pH after thermal processing. FSIS has concluded that the use of a time period in the definition is indeed inappropriate because low acid products are not subjected to an acidification process. Thus, the pH of low acid products, by definition, is above 4.6 at all times during thermal processing and storage. For that reason, the time element has been eliminated in the final rule.

(n) *Maximum pH.* Two commenters suggested revising the definition to make the time when pH is measured flexible. Still another commenter suggested that the term be deleted because it provides no additional information. FSIS agrees that inclusion of the term is not needed and has deleted this definition from the final rule.

(p) *Process schedule.* One commenter suggested that the phrase "as specified by the designated authority" be added to the end of the definition. In the final rule, the definitions of the terms "critical factors" and "thermal process" indicate that these two factors are specified by the designated processing authority. Because the process schedule is made up of the two factors, FSIS believes that it would be redundant to add the suggested phrase to the definition of process schedule. The proposed definition, however, has been modified to reflect the elimination of keep-refrigerated products from the final rule.

(u) *Shelf stability.* Two commenters suggested that the term "commercial sterility" be substituted for the term "shelf stability," arguing that commercial sterility is widely used in the industry. FSIS has retained the terms "shelf stability" and "shelf stable" in the final rule. The Agency believes that these terms are more definitive than the suggested revision and are understandable to industry and consumers alike. The definition given in the final rule makes it clear that the terms are synonymous with commercial sterility and commercially sterile.

(v) *Sterilization temperature.* One commenter suggested that an "(s)" be added to the phrase "minimum temperature" because some process schedules list more than one processing temperature. Two commenters also suggested qualifying that phrase by adding "of the heating medium" to clarify the definition. FSIS concurs with these comments and has made the suggested changes.

A commenter suggested that subsection (w), "sterilization time," be called "process time." FSIS has accepted this change (see item (w) below). For consistency, subsection (v), "sterilization temperature," has also been redesignated as "process temperature" and recodified as subsection (o).

(w) *Sterilization time.* Six commenters recommended numerous changes in wording to make the definition applicable to different retort systems. In keeping with these suggestions, FSIS has simplified the definition so that it will be comprehensive enough to cover all processing systems. One commenter also suggested "sterilization time" be renamed "process time" to conform to industry usage. FSIS concurs. Subsection (w), "sterilization time," has been redesignated as "process time" and recodified as subsection (p) of the final rule.

(x) *Thermal process.* Two commenters suggested substituting the term "commercially sterile" for "shelf stable." FSIS has rejected these comments. (See discussion of comments to the definition of the term, "shelf stability.") Another commenter requested that an "(s)" be added to the words "time" and "temperature" because some process schedules list more than one time and temperature. FSIS concurs and has made the suggested change.

The same commenter recommended that a third item—any other factors specified by the processing authority—be added to the list of factors quantified. FSIS has rejected this comment as redundant because such wording is included in the definition of "critical factor", and that definition is incorporated in the definition of "process schedule."

(y) *Venting.* One commenter recommended that the phrase "and low temperature areas" be inserted after the word "air" in the proposed definition. FSIS believes that this addition would be redundant and thus has not accepted the suggestion.

Other Comments

One commenter suggested that a definition of an indicating temperature device be added to the final rule. This recommendation has not been accepted because §§ 318.305(a)(1) and 381.305(a)(1) give examples of these devices. Those subsections have been drafted in general terms to include devices that exist today or that may be developed in the future.

Another commenter suggested that the term "qualified individual" be substituted for "closure technician" throughout the final rule. The term "closure technician" appears only in §§ 318.301 and 381.301; thus, this recommendation is addressed under §§ 318.301(b)(1) and 381.301(b)(1).

Sections 318.301 and 381.301 Containers and Closures

(a) Examination and cleaning of empty containers.

(1) Four commenters recommended the addition of language to indicate that the section will not require the examination of all empty containers. One suggested adding the phrase "in accordance with an appropriate sampling plan."

FSIS agrees and has modified the final rule to clearly indicate that a 100% examination of empty containers, closures, and flexible rollstock is not required. The intent of this requirement is to increase the assurance that empty containers are clean and free of structural defects. Therefore, the Agency has added an advisory statement indicating that an examination based on a statistically-drawn sample of containers, closures or flexible rollstock would be acceptable. In addition, one of the four commenters suggested using the word "evaluated" rather than "examined" and making such evaluations a recommended practice. FSIS rejects both suggestions. The Agency has documented a significant number of spoilage incidents that were directly attributable to container manufacturing defects. Also, in the absence of any compelling reason put forth by the commenter to change the word "examined" to "evaluated", the suggested word change was not accepted.

Another commenter suggested qualifying the phrase "free from structural defects" with the clause "which may affect product or container integrity." While the commenter did not provide a rationale, the Agency believes the recommendation was meant to exclude those defects of containers, closures, and flexible pouch rollstock that are not likely to affect the integrity of the product or the hermetic condition of a filled and sealed container. FSIS agrees and has incorporated the proposed wording into the final rule.

(2) One commenter asked whether this subsection precludes the use of jumble storage bins for cans. It does not, but FSIS recommends against the use of this type of storage because it increases the possibility of damaging containers.

(3) Three commenters said that the language relating to methods of cleaning was too restrictive and would preclude alternative cleaning methods. One commenter suggested that the following wording be substituted: "Prior to filling, rigid containers shall be cleaned appropriately to prevent incorporation of foreign matter into the finished product." FSIS has accepted this language except that the word "appropriately" has been deleted as unnecessary and "prior to" has been rejected as too vague. The sentence in the final rule now reads "Just before filling, rigid containers shall be cleaned to prevent incorporation of foreign matter into the finished product."

(b) Closure examinations for rigid containers (cans).

(1) *Visual examinations.* One commenter requested that the definition of closure technician be expanded in the first sentence to include his/her designee. FSIS understands this need; however, if the comment is accepted as received, untrained individuals could be designated by the establishment to perform the duties of the closure technician. Therefore, a definition of a closure technician has been included in §§ 318.300 and 381.300. The definition provides for the establishment to designate any individuals to perform the duties of the closure technician provided such individuals have been identified by the establishment as being properly trained.

One commenter urged that the time interval between required visual examinations be changed from 30 minutes to 60 minutes. Two other commenters argued that requiring visual examinations every 30 minutes should be made a recommended practice. While it is the establishment's responsibility to visually examine cans for defects, the time interval between

examinations is dependent upon such factors as production volumes, line speeds, and equipment. Therefore, FSIS has accepted the latter suggestion and has incorporated language offered by one of the commenters into the final rule.

Two commenters also suggested that the first sentence of the subsection be reworded to indicate that the entire external can surface must be examined, including the double seams formed by each closing machine head. FSIS has accepted this suggestion and has incorporated it into the final rule. For clarification, FSIS has also added the requirement that such examinations must be performed on at least one container from each closing machine head and that the observations, along with any corrective actions taken, must be recorded by the closure technician.

Another commenter suggested that the phrase "container closure technician" be replaced by "qualified individual." Although the individual performing such functions should indeed be properly trained and supervised, FSIS has rejected this comment because the use of such a phrase would raise questions about appropriate qualifying criteria and who serves as the qualifying authority. Furthermore, a definition for a closure technician has been added to the final rule. The Agency believes that the definition would allow an establishment ample latitude in designating individuals to perform those activities required by this section.

(2) *Teardown examinations of double seams.* One commenter urged that the entire subsection be reserved and remain open for comment and modification until the industry position is finalized through the Can Manfacturers Institute/National Food Processors Association (CMI/NFPA) Container Integrity Task Force.

FSIS has rejected this comment because the Agency considers closure examinations for rigid containers a critical part of this rule and one that cannot be held in reserve. The requirements of this subsection are consistent with FDA regulations and Codex recommendations and are considered the minimum measures that must be taken by establishments to ensure container integrity. Once the CMI/NFPA Container Integrity Task Force completes its work, FSIS will evaluate the contents of this subsection to determine if changes are necessary.

Four commenters argued that the requirement that a seam teardown be conducted at least every 4 hours or within a coding period is excessive if, for example, the code changes by retort load. FSIS has accepted this comment and has revised the final rule to delete the reference to coding period.

Two commenters argued that can manufacturers' specifications are only guidelines and should not be considered as rigid "go" or "no-go" situations. The commenters suggested that the term "guidelines" be used in place of "specifications." FSIS agrees with this comment and has added the term "guidelines" to the final rule but has also retained the word "specifications" to indicate clearly that the guidelines are intended to be actual dimensional measurements of the various double seam components.

Three commenters argued that double seam teardown examinations of the can manufacturer's end (i.e., the end of the container completed by the can manufacturer) should not be required after the containers are filled and sealed when: (1) Double seam teardowns are conducted on the can manufacturer's end during incoming empty can inspection; or, (2) cans are self-manufactured (i.e., made by the official establishment) and the can plant records are made available for review. The commenters offered wording to clarify this requirement in the final rule. FSIS has accepted these comments and the substance of the proposed wording and has revised the final rule accordingly.

One commenter requested that FSIS consider the possibility that an ink code could be applied to the manufacturer's end of the can. FSIS has accepted this comment and has revised the subsection to distinguish between the "packer's end" and the "manufacturer's end" of the container. The "packer's end" is the end closed by the official establishment after the container is filled.

In addition to the above changes, FSIS has included in the final rule a good manufacturing practice recommendation using the word "should" which states that additional teardowns on the "packer's end" should be conducted at the beginning of production, immediately after a can jam, and after a closing machine adjustment.

(i)(*a*) *Micrometer measurement.* Five commenters recommended that only the maximum and minimum seam measurements be recorded. FSIS has accepted this recommendation and adjusted the language of the final rule accordingly. Can seam dimensions found to be within the manufacturer's specifications indicate that a double seam has been properly formed. However, dimensional measurements that approach or are beyond the upper or lower limits established by the manufacturer are a signal of a potential problem. Therefore, the Agency believes that while it is critical to record the maximum and minimum values, the recording of other values is unnecessary. One commenter correctly pointed out that seam measurements should be taken at least one-half inch from the side seam juncture. This language has been incorporated in the final rule. The same commenter suggested modifying the language to clarify that the measurement is applied to cylindrical cans. This suggestion has been accepted. In addition, the commenter proposed that the optional measurements and calculations of overlap be deleted as they may give inaccurate results because of container variables and other double seam characteristics. FSIS has accepted this recommendation and deleted the optional measurements.

Four commenters recommended that the measurement of end plate or cover thickness be deleted because the measurement is needed only for the calculation of overlap. FSIS agrees and has deleted the requirement from the final rule.

(i)(*b*) *Seamscope or seam projector.* One commenter recommended that optional measurements be deleted. FSIS has accepted this recommendation because these optional measurements are not considered critical when evaluating double seams by the micrometer method. The commenter also suggested adding wording to indicate that the measurement applies to cylindrical containers. This suggestion has been adopted.

(ii) *Seam tightness.* One commenter recommended changing the wording of the subsection to ". . . shall be stripped to assess the degree of wrinkle or otherwise evaluated to assess seam tightness." The commenter argued that complete pressure ridges are not always obtained in the case of certain closing machines or containers. While FSIS agrees with this argument, it believes that, at a minimum, the seams must be stripped to determine the degree of wrinkling. Moreover, the Agency believes the phrase "or otherwise evaluated to assess seam tightness" is ambiguous and unacceptable as an alternative to stripping the seam. Therefore, the language in the final rule has been revised to reflect the need to strip the seam.

(iii) *Side seam juncture rating.* One commenter suggested the substitution of more precise language concerning the rating of the juncture of cans having side seams. This suggestion has been incorporated into the final rule.

(iv) *Examination of rectangular and square containers.* One commenter said that it is premature for FSIS to attempt to establish fixed measurement points on irregular-shaped containers and recommended that the paragraph be deleted. In its place, the commenter suggested amending certain other subsections to include general methods of measuring noncylindrical containers.

Because of the variety of container types, FSIS agrees that it may be unwise to specify fixed measurement points for noncylindrical containers. Rather than amending other subsections as suggested by the commenter, FSIS has combined proposed subsections (b)(2)(iv) and (v) into a single subsection covering the examination of all noncylindrical containers. The combined subsection appears as subsection (b)(2)(iv) in the final rule. The intent of the commenter's suggested wording has been incorporated into this new subsection.

(v) *Examination of "D"-shaped and irregular-shaped containers.* This subsection has been combined with subsection (b)(2)(iv) and appears as subsection (b)(2)(iv) in the final rule. See comments under subsection (iv) above.

(c) Closure examinations for glass containers.

(1) *Visual examinations.* One commenter urged that the subsection be revised to require that visual examinations be conducted with sufficient frequency to ensure proper closure and that the requirement that these examinations be conducted at least every 30 minutes of continuous closing operation should be made a recommended practice. FSIS has accepted this comment and has incorporated this language into the final rule. An appropriate time interval between visual examinations will vary with production volumes, line speeds, and the like. Therefore, while the final rule will require visual examinations of glass containers, it will be the establishment's responsibility to determine the appropriate time interval that will ensure proper closure.

Another commenter suggested that the visual examinations be conducted of the entire container as well as the closure. FSIS agrees with this comment and has added language to the final rule to require that in addition to examining the closure, the container closure technician shall examine the entire container for defects likely to affect the hermetic condition of the container.

For consistency with the requirements of subsection (b)(1) in §§ 318.301 and 381.301, FSIS has added a requirement to this subsection that when closure defects are observed, corrective actions, such as adjusting or repairing the closing machine, shall be taken and recorded.

(2) *Closure examinations and tests.* One commenter questioned whether or not the closure examinations must be conducted before or after retorting. FSIS believes it is the responsibility of the establishment to determine whether a particular test is performed before or after thermal processing, and the final rule has been revised accordingly. Language indicating when additional closure examinations should be made has also been added for consistency with subsection (b)(2) above.

(d) Closure examinations for semirigid and flexible containers.

(1) *Heat seals*—(i) *Visual examinations.* One commenter argued that it is not necessary to record normal observations but only the type and number of defects. This comment is addressed at the beginning of the discussion of §§ 318.306 and 381.306.

One commenter argued that the adoption of this subsection should eliminate the need for MPI Bulletin 75-4. As stated in the General Comments section of this preamble, FSIS intends to rescind all MPI bulletins and notices on thermal processing after the effective date of this final rule.

Another commenter stated that the subsection could be interpreted as requiring 100 percent visual inspection of containers before and after thermal processing and requested that a statistical sampling be allowed. FSIS agrees with this comment and has revised the final rule to allow the use of appropriate sampling procedures. The intent of this requirement is to increase the assurance that semirigid and flexible containers are properly sealed and free of obvious defects. Therefore, the Agency has added an advisory statement indicating that an examination based on a statistically-drawn sample of containers would be acceptable.

Another commenter suggested that the term "closing machine" should be changed to "sealing machine." FSIS has accepted this comment and revised the final rule accordingly.

(ii) *Physical tests.* One commenter urged that the subsection be revised to indicate that physical tests shall be conducted with sufficient frequency to ensure consistent and reliable hermetic seals and that such tests should be conducted at intervals not to exceed 2 hours.

FSIS concurs with this comment and has revised the final rule accordingly because the change would make this subsection more uniform with other subsections that deal with physical examinations of containers. Also, for uniformity, FSIS has added a requirement to the final rule that the establishment's acceptance guidelines for each test performed shall be on file and shall be available for review by Program employees.

One commenter suggested that the term "burst strength" test be changed to "pressurization/hold" test, while a second commenter stated that the bond strength test is not necessary after thermal processing. FSIS has not accepted these comments because the tests are given in the final rule only as examples and are not intended to represent all possible tests that could or should be used to ensure the integrity of the hermetic seals.

(iii) Because of the revisions made to subsections (d)(1)(i) and (d)(1)(ii), subsection (d)(1)(iii) of the proposal has been deleted from the final rule.

(2) One commenter suggested that this subsection be revised by adding the phrase "plus any additional measurements specified by the container manufacturer." FSIS agrees because these new types of containers may require additional measurements, beyond those required for double seams on metal containers, to assess the adequacy of the double seams. The same commenter also recommended that the subsections be expanded to include flexible containers with double seams. While FSIS is not aware of any flexible containers with double seams, this fact does not preclude their development. Therefore, this suggestion has been accepted.

(e) Container coding.

Three commenters argued that the product name should not be required in the code mark if it is lithographed or printed on the container. FSIS agrees with this comment and has added language to the final rule to indicate that the code mark need not identify the product if the product name is lithographed or printed elsewhere on the container.

One commenter suggested that the phrase "each hermetically sealed container of low-acid processed food" be substituted for the word "container." FSIS has rejected this comment because the Agency believes that the word "container", as used in this rule, applies only to the immediate container (defined in §§ 301.2(xx) and 381.1(b)(22)) of hermetically sealed low acid and acidified low acid product.

Another commenter suggested that the phrase "as a minimum" be added to the second sentence to allow the packer the option of including additional information in the code. FSIS agrees and

has incorporated this phrase into the final rule.

(f) Handling of containers after closure.

(1) Five commenters argued that the proposed subsection contains vague requirements that may hinder normal operations if inspection personnel misinterpret it. The commenters requested that the subsection be either deleted or revised to make the requirements advisory. FSIS agrees in part with this comment and has made the second sentence of the subsection advisory. FSIS has retained the mandatory language in the first sentence, however, because the Agency believes that it is essential to protect containers and closures from damage that could affect the hermetic seal.

(2) One commenter argued that this subsection should be deleted because the commenter considers the time lapse between closure and the start of thermal processing a question of product quality rather than product safety. FSIS rejects this position because holding unprocessed products for extended periods may cause adulteration. There have been several documented incidents of incipient spoilage in canned products resulting in illnesses from staphylococcal enterotoxin. Holding product for an extended period of time could allow the growth of *Staphylococcus* and the production of enterotoxin.

Sections 318.302 and 381.302 Thermal Processing

Sections 318.302(b) and 381.302(b) Establishing process schedules.

Four commenters expressed concern that subsections (1) and (2) were too specific regarding procedures that must be followed to develop process schedules. One argued that the work of processing authorities is not within the scope of the regulation. All offered alternative versions for subsections (1) and (2). For example, two commenters suggested that the subsections be combined in the following general statement: "The establishment through its designated authority shall develop a process schedule for each of its canned meat products. Complete records concerning all aspects of the determination of the process schedule, including any associated incubation tests, shall be prepared and retained by the designated authority. These records shall be made available by the establishment upon request of the Administrator."

Two of the four commenters also addressed the proposed requirement that the processing authority evaluate the adequacy of the process schedule if any change is made in product formulation, ingredients, or treatments. One argued that the requirement should apply only to changes not already covered by the process design. The other suggested that any changes that may affect the adequacy of the process schedule could be verbally described to the processing authority, who could assess the significance of the change.

FSIS has revised subsections (1) and (2) to take into account the substance of most of the comments. The subsections have been condensed to reflect the general comments that the proposed subsection was too specific regarding the development of the process schedule. For clarity, a new subsection (3) has been added to the final rule; the subsection incorporates the provisions of subsection (2) of the proposed rule regarding maintenance of process data and the availability of the data to the Administrator of FSIS. However, FSIS rejects using the phrase ". . . shall be prepared and retained by the designated authority." The Agency's regulatory authority does not extend over work performed by independent processing authorities. Therefore, it is incumbent upon the establishment to make available, upon request, all records associated with the development or determination of a process schedule.

Sections 318.302(c) and 381.302(c) Submittal of process information.

Three commenters argued that it was an unnecessary burden to require establishments to provide inspectors with copies of process schedules and related documentation and suggested that the requirement be reworded to indicate that the establishment shall make available to the inspector for review a copy of the letter or other written communication from the processing authority recommending process schedules and associated critical factors.

FSIS agrees that copies of letters or other written communications from the establishment's processing authority need not be provided to the inspector but may be maintained on file by the establishment provided that the inspector has easy and ready access to them for review. The establishment, however, must provide the inspector with a list of process schedules for each product and each container size so that the inspector can monitor the firm's processing operation effectively. The list must include any alternate process schedules recommended by the firm's designated processing authority as well as any critical factors associated with the process schedule. Letters or other written communications maintained on file by the establishment would be used to verify the list of schedules provided.

Two commenters urged that establishments not be required to submit process schedules to the inspector for experimental products not intended for sale or distribution. FSIS agrees with this comment and has revised the final rule to reflect this concern. However, when experimental product is packed, the inspector must be informed of such work and all experimental product must be clearly marked and cannot be distributed in commerce. The commenters also suggested that the phrase "the retort venting procedures for pressure processing in steam or steam air" be replaced by "the retort come-up operating procedure." FSIS concurs with the commenters because the recommended change is more inclusive and covers other thermal processing systems besides those that use steam or steam/air under pressure.

Sections 318.303 and 381.303 Critical Factors and the Application of the Process Schedule

One commenter recommended that the list of critical factors be deleted from the final rule, arguing that the list is not complete and does not reflect the most common critical factors related to thermal process schedules.

FSIS has retained the list of critical factors in the final rule because the rule states that the items are given only as examples. FSIS is aware that there may be additional critical factors identified by processing authorities, but the Agency believes those included in the list are representative of factors associated with thermal processing. If additional factors are identified in a process schedule, the establishment must also measure, control, and record those factors to ensure that they remain within the limits specified in the process schedule.

A second commenter suggested that the air-flow rate and forced recirculation flow rate listed as critical factors for steam/air retorts be combined as the heating medium flow rate. FSIS has accepted this suggestion because the term is considered to be more encompassing than either "air-flow rate" or "forced recirculation flow rate."

Another commenter suggested that the maximum thickness of semirigid containers not be listed as a possible critical factor because, the commenter argued, the shape and contour of semirigid containers are not affected by the enclosed product and because the maximum thickness will not affect the process schedules. Again, the items in the list are given only as examples of critical factors. In the case of semirigid containers for which laminants are used as closures, it is possible that container thickness could be affected by thermal processing. In those cases, maximum thickness could be a critical factor. Thus, FSIS has retained the example in the final rule, although the Agency recognizes that it would not apply to all container types.

Sections 318.304 and 381.304 Operations in the Thermal Processing Area

(a) Posting of processes.

One commenter suggested that the rule be revised to allow the posting of operating processes instead of the process schedules recommended by the designated processing authority. FSIS has accepted this suggestion with the understanding that operating process schedules are more stringent than process schedules recommended by processing authorities.

Another commenter suggested that the phrase "retort operating procedures" be substituted for "venting procedures (where applicable)." Presumably, the comment was meant to make the rule apply to all types of retort systems rather than to steam retorts only. FSIS recognizes this need and has modified the language of the final rule to include all necessary operating procedures.

(b) Process indicators and retort traffic control.

One commenter argued that the use of process indicators should not be required for products in flexible containers that can be visibly identified as processed.

FSIS believes that this comment was meant to pertain to keep-refrigerated products, which have been removed from the final rule. The Agency is not aware of any transparent flexible containers currently in use for shelf stable meat and poultry products. If they are in use, process indicators are still appropriate as an added safeguard. Therefore, the proposed language has been retained in the final rule.

(c) Initial temperature.

A commenter argued that this subsection should not apply to canned cured meat products because the initial temperatures of such products generally do not vary before thermal processing. The commenter states that the requirement should be applied only to products for which initial temperatures are specified in the process schedule.

Although it may be true that the initial temperatures of some products do not vary, FSIS nevertheless considers the product initial temperature to be an essential part of all process schedules and requires that it be included in the schedules. The initial temperature must be monitored, controlled, and recorded frequently enough to ensure that it is never lower than the minimum initial temperature specified in the process schedule.

Four commenters asked that the word "thermometer" be replaced with the phrase "temperature-measuring device" to allow the use of temperature measuring devices such as resistance temperature devices and thermocouples. While FSIS understands the basis for this comment, after further consideration, the Agency has deleted reference to temperature measuring devices, including thermometers. It is the establishment's responsibility to select the equipment and methods necessary to properly determine product initial temperature as defined in §§ 318.300 and 381.300.

(d) Process timing.

For clarity, this section has been renamed "timing devices" in the final rule.

One commenter suggested that the reference to the use of digital clocks should contain a distinction between those that display seconds an those that do not. In the case of digital clocks that display seconds, the commenter argued that the 1-minute safety factor is not necessary. FSIS agrees with this comment and has changed the final rule to include this distinction; the safety factor is not required for digital clocks displaying seconds.

Another commenter suggested that the first sentence of the subsection be reworded to indicate that timing devices shall be accurate to the extent needed to measure process schedule times. FSIS has accepted the intent of this suggestion and has also clarified in the final rule that timing devices are used for other retort functions such as come-up time and venting.

The proposed rule requires that clock times on recording temperature charts correspond within 15 minutes to the time of day recorded on the written processing records to allow for correlation with these records. Two commenters noted that, although this procedure is desirable, a deviation from the time requirement would not affect the adequacy of thermal processing. Thus, they argued that the provision should be advisory rather than mandatory, particularly because FDA's provision in this area is advisory. FSIS agrees that deviations from this requirement do not affect the adequacy of thermal processing; however, FSIS believes that this provision must be mandatory so that plant employees and FSIS inspectors can correlate handwritten retort records with temperature recording charts.

(e) Measurement of pH.

One commenter recommended that pH measurement be required only when pH is a critical factor, such as in acidified low acid foods. FSIS has accepted this comment and has changed the final rule accordingly.

Sections 318.305 and 381.305 Equipment and Procedures for Heat Processing Systems

Comments that apply to several subsections of §§ 318.305 and 381.305 are addressed in groups below; the remaining comments are then addressed by subsection.

Requests That Subsections Be Amended To Allow Alternate Approaches

Several commenters urged that certain subsections of the proposed rule be changed to provide for the use of retort installations, retorting equipment, or operating procedures that are not provided for in the proposal. They suggested that variations should be acceptable if plants have on file heat distribution data or other documentation to verify the accuracy of alternative systems or procedures.

The requirements set forth in these sections are intended to encompass the more common thermal processing equipment, installations, and operating procedures. FSIS acknowledges that the regulations cannot totally address all variations that may exist within these installations or variations in their operating procedures. Of critical importance is to have assurance that such variations do not adversely affect the delivery of the intended process schedule. Such assurance is most commonly obtained through heat distribution tests to document the uniformity of temperatures within a system during a process. Therefore, FSIS has accepted these comments and has incorporated their substance into the language of the following subsections of §§ 318.305 and 381.305 of the final rule: (b)(1)(v); (b)(1)(vi); (b)(1)(vii); (b)(1)(ix)(*c*) and (*d*); (b)(2)(v); (b)(4)(v); (c)(1)(iv); (c)(1)(ix); and (c)(1)(x). These subsections of the final rule also provide that documentation concerning heat distribution shall be made available to Program employees for review.

Data Required To Verify Reliability of Mufflers on Bleeders and Vents

One commenter argued that the proposed subsections on bleeder and vent mufflers are too specific about the type of evidence necessary to document the suitability of mufflers and suggested

substituting wording that would make the requirement advisory. FSIS has not made this requirement of the subsections advisory because it is essential that establishments have on file documentation to verify that mufflers on bleeders and vents do not impede the removal of air from the retort. FSIS also believes that the appropriate sources of such documentation were included in the subsections as they were proposed.

To make the subsections consistent with other subsections that require documentation concerning heat distribution, FSIS has added the requirement that the documentation be made available to Program employees for review. Affected subsections of the final rule are (b)(1)(viii), (b)(2)(vii), (b)(3)(vii), and (b)(4)(vii).

Suggestions for Changing Terminology Used for Retort Valves

In subsections that refer to "gate, plug cock, or other type valve," one commenter suggested that the phrase "other full-flow valve" be substituted for "other type valve." FSIS agrees that the phrase "other type valve" could be misinterpreted to include the use of valves which may restrict the free flow of steam. Therefore, FSIS has substituted the suggested terminology in the following subsections of the final rule: (b)(1)(ix)(*a*); (b)(1)(ix)(*b*); (b)(1)(ix)(*e*)*(1); (b)(1)(ix)(e)*(2).

Subsection-by-Subsection Analysis.

(a) Instruments and controls common to different thermal processing systems.

(1) *Indicating temperature device.*—(i) *Mercury-in-glass thermometers.* One commenter argued that mercury-in-glass thermometers are less accurate and less reliable than resistance temperature devices (RTDs) and remarked that it was unfortunate that mercury-in-glass thermometers are encouraged in the proposal. FSIS disagrees with this comment. Over the course of many years, the mercury-in-glass thermometer has proven both accurate and reliable and is still considered the "reference instrument" by the canning industry. The final rule does, however, recognize the advances in temperature measurement technology by providing for the use of other temperature-measuring devices approved by the Administrator.

In the second sentence of the proposed subsection, three commenters urged that the phrase "by the establishment" be deleted to permit firms to choose someone else to conduct thermometer calibrations. One of the three commenters also suggested the addition of the phrase "and the person or testing authority performing the test" to the third sentence. FSIS concurs with these comments and has incorporated the proposed wording.

One commenter suggested that the requirement that establishments maintain records of thermometer testing on file be changed to a recommendation. FSIS disagrees with this comment because it is essential that firms have documentation that Program employees can review to ensure compliance with this subsection.

(ii) *Other devices.* Two commenters suggested the addition of wording that would allow a designated or testing authority other than the establishment to perform the required accuracy tests on temperature-measuring devices. FSIS concurs and has amended the final rule accordingly.

(2) *Temperature/time recording devices.* Seven commenters argued that the proposed requirement that the temperature recorder chart never read more than 1 Fahrenheit degree below the indicating temperature device is unnecessary. FSIS agrees because as long as the recorder temperature does not exceed the temperature on the reference indicating temperature device, the safety of the process will not be in question. Therefore, language has been added to the final rule making it a recommendation that the temperature recording device and the indicating temperature device are in agreement. This wording would allow the temperature recorder to read lower than the indicating temperature device. However, in no event shall the temperature recording device read higher than the indicating temperature device.

One commenter noted that the subsection does not provide a temperature reference for determining the accuracy of recorders and suggested adding the following phrase to the third sentence: "when compared to the accurate indicating temperature device." FSIS concurs and has accepted the proposed modification.

Another commenter suggested that the requirement concerning air filters on air-operated temperature controllers be changed to a recommendation. FSIS has rejected this suggestion. Air-operated temperature controllers must have adequate filters to stop debris from entering the control mechanism and causing malfunctions.

(i) *Chart-type devices* and (ii) *Other devices.* One commenter proposed that subsections (i) and (ii) be revised to read in part:

"The recorder shall print frequently enough to detect significant variations in temperature. The frequency of recording should not exceed 1-minute intervals. Intervals longer than 1 minute will be acceptable upon a showing that they will accomplish the desired purpose of detecting thermal processing inadequacies."

FSIS has accepted the substance of this comment because it is the responsibility of the establishment to identify the proper printing frequency to ensure that any temperature deviations are identified. Therefore, language has been added to the final rule to indicate that temperatures shall be printed at sufficient frequencies to ensure that the parameters of the process time and temperature have been met. The subsection has also been revised to indicate that the printing frequency should not exceed 1-minute intervals.

One commenter argued that the proposal to print temperatures every 30 seconds is excessive and recommended the use of a sliding scale for printing temperatures. For example, temperatures would be printed every minute for processes lasting 90 minutes or less and every 5 minutes for processes lasting over 90 minutes. FSIS has rejected this comment because it knows of no sliding scales with frequencies that ensure that all possible process deviations will be identified.

Another commenter urged that subsection (i) be revised to indicate that graduations on charts shall not exceed 2F degrees within a range of 10F degrees of the sterilization temperature. FSIS has accepted this comment and has added the proposed language to the final rule because the wording is consistent with FDA requirements.

(4) *Air valves.* and (5) *Water valves.* Four commenters pointed out that the term "sealing valve" used in the requirements for air valves and water valves is unclear. One suggested substituting the phrase "a globe valve or other equivalent-type or piping arrangement suitable to prevent leakage." FSIS concurs with these comments and has incorporated the recommended language into subsections (4) and (5) because it more clearly indicates that equivalent-type valves or piping arrangements must be adequate to prevent leakage of water or air into the thermal processing vessel.

(b) Pressure processing in steam.

(1) *Batch still retorts*—(iv) *Crate supports.* Two commenters urged that bottom crate supports should be required only if steam enters the bottom of the retort through a steam spreader. Presumably, the commenters consider crate supports necessary only to ensure that bottom-mounted steam spreaders are not damaged by retort crates. While FSIS agrees that this is an important function of crate supports, the Agency also believes that supports are needed in vertical retorts using bottom steam entry without spreaders. In this case, the supports would prevent the crates from blocking steam entry and would allow for a full flow of steam into the retort. For these reasons, the wording in these subsections has been revised to clearly indicate that crate supports will be required only when vertical retorts are equipped with bottom entry steam.

(vi) *Bleeders and condensate removal.* One commenter recommended that the next-to-the-last sentence of the proposed subsection be changed to read: "In retorts having a steam inlet above the level of lowest container, a bleeder . . ." FSIS agrees with this recommendation because it more accurately describes the Agency's intent to require condensate bleeders in vertical retorts when the steam inlet is in any location other than in the bottom of the retort.

For clarity, FSIS has added language to the subsection to indicate that heat distribution data or other documentation from a processing authority shall be maintained on file by the establishment and made available to Program employees for review. The subsection has also been modified based on comments to subsection (b)(2)(iv) of the proposed rule dealing with condensate removal and the use of automatic alarm systems.

(vii) *Stacking equipment.* Regarding subparagraph (a) two commenters said that the requirement that retort crate bottoms have perforations 1-inch in diameter on 2-inch centers should be made a recommendation. One argued that the precise design of stacking equipment is not material if adequate heat distribution can be achieved and demonstrated by heat distribution testing.

After reviewing these comments, FSIS has decided to retain the proposed requirements for retort stacking equipment because, for the most part, they are industry standards. The subsection, however, has been revised to incorporate the intent of the comments relating to the use of other designs.

Regarding subparagraph (*b*), four commenters argued that when divider plates are used, heat distribution data, as supporting evidence, should be sufficient. FSIS agrees with the intent of these comments and has revised the subparagraph to require that whenever one or more divider plates are used between any two layers of containers or used on the bottom of the retort basket, the establishment shall have heat distribution data on file.

(ix) *Vents. (e) Typical installations and operating procedures.* One commenter argued that specific venting schedules should not be recommended in the final rule because by so doing USDA is assuming responsibility for issuing venting schedules for still retorts. The commenter also urged that if the venting schedules are retained, each diagram should have a clear warning that the schedules are not designed for systems with divider plates or sheets.

FSIS has rejected both comments and has retained the venting schedules in the final rule. The final rule makes it clear that the schedules are intended merely as examples. The venting schedules have been recognized for many years by both industry and processing authorities as adequate for the specific retort installations described. The schedules may be of considerable value to small canning establishments without ready access to processing authorities, provided their retort installations are identical to those given in this subsection. FSIS expects plants to have documentation on file that verifies the adequacy of their retort venting procedures if their installations differ from the examples. This requirement is specified in subsection (b)(1)(ix)(*c*), which also applies to installations with retort divider plates.

A second commenter urged that the entire subsection be deleted; in its place, the commenter suggested that establishments be required to have heat distribution test data or other documentation on file for all retort systems. FSIS has rejected this comment for the reasons given above.

Two commenters suggested that the phrase "typical installation" be changed to "examples of typical installations" and that the schematic retort drawings be labeled with figure numbers. These suggestions have been accepted and incorporated in the final rule.

(2) *Batch agitating retorts*—(iv) *Bleeders.* One commenter said that the subsection appeared to prohibit other modes of retort operation and suggested that it be made advisory rather than mandatory. FSIS wants to point out that the subsection states that other installations are acceptable, provided the establishment has data on file documenting the adequacy of the installation. Because the requirements of the subsection are essential to ensure that air is adequately removed from the retort during the venting procedure and the process cycle, FSIS has rejected the suggestion that the subsection be made advisory.

The same commenter noted that the subsection does not allow for the intermittent removal of condensate. Another commenter provided a recommendation dealing with condensate bleeders. For clarity, FSIS has moved the reference to condensate removal from subsection (iv) to subsection (v). The two comments relating to condensate removal are addressed there.

(v) *Venting and condensate removal.* As noted in the preceding subsection, one commenter argued that the proposed rule did not allow for the intermittent removal of condensate. FSIS has added language to the final rule to allow for the use of intermittent condensate removal systems. In addition, an advisory statement has been included that bleeders for condensate removal should be visually checked at least every 15 minutes and the results recorded to ensure that such systems are functioning properly. Because intermittent condensate removal systems (equipped with automatic alarms) have been added to the final rule, the rule also requires that the alarms be tested at the beginning of each shift for proper functioning and the results recorded.

Under the preceding subsection one commenter argued that, in the context of retort design, the location of the vent has no relevance to the need for a condensate bleeder. The commenter suggested that this part of the proposed requirement be deleted and suggested alternative language. FSIS agrees with this argument; however, upon further consideration of this issue, the Agency believes that steam inlet location, likewise, is not relevant to the need for a condensate bleeder. Therefore, the final rule has been revised whereby a condensate bleeder is required in all batch agitating retorts using steam under pressure.

The same commenter also urged that the phrase "such as a letter or operating manual" be added to the second sentence of this subsection. FSIS has rejected adding the suggested phrase to the final rule. The Agency believes the words "other documentation" would cover many types of written documents such as letters and operating manuals from equipment manufacturers and processing authorities. In addition, to be consistent with other parts of the final rule, a requirement has been added whereby such data or other supporting documentation must be made available to Program employees for review.

(vi) *Retort or reel speed timing.* One commenter stated that other agitating-type systems covered in the proposal are not required to have a recording tachometer. A second commenter argued that allowing manual checks of

the reel speed would be more consistent with the FDA rules. While a third commenter supported the requirement for recording tachometers, it was suggested that tachometer accuracy need only to be verified every shift. FSIS agrees that manual checking of reel speed is acceptable, and has revised the final rule to reflect the comments received.

One of the commenters also argued that an establishment should have an option about what corrective action is taken if problems occur during the process cycle. Based on this comment, FSIS has deleted the language dealing with corrective actions. If a processing problem occurs, FSIS would expect the deviation to be handled in accordance with § 318.308 or § 381.308.

(3) *Continuous rotary retorts*—(iv) *Bleeders.* This subsection has been revised to be consistent with the language used in subsection (b)(2)(iv) dealing with batch agitating retorts. Comments received on the subsection regarding condensate removal are discussed in subsection (b)(3)(v) immediately below.

(v) *Venting and condensate removal.* One commenter stated that heat distribution data are not generally available from the manufacturers of processing vessels and asked what other documentation could be substituted. The commenter also questioned whether such documentation is necessary if the retort vessel has been used without incident for many years.

FSIS emphasizes that the equipment manufacturer and the plant are responsible for ensuring that the documentation is accurate. Even if retort systems have been used for many years, such documentation must still be on file and made available to Program employees so that they can verify the adequacy of the specific retort installation and operating procedures.

Other comments received on this subsection correspond to those received on subsection (b)(2)(v) dealing with batch agitating retorts. The final rule has been revised for consistency with that subsection.

(vi) *Retort speed timing.* One commenter believed that the proposed requirement that the reel speed be checked and recorded at least every 4 hours is excessive and suggested that it be changed to "at intervals of sufficient frequency to ensure that the speed is maintained as specified" and that checks should be made every 4 hours or less. FSIS has rejected this comment and has retained the proposed language in the final rule. FSIS believes that checking the reel speed at intervals not to exceed 4 hours is not excessive. This frequency is a generally accepted industry practice.

Another commenter suggested that the language giving the frequency of the monitoring and recording be moved to §§ 318.306(a)(3) and 381.306(a)(3) under recordkeeping. FSIS has not accepted this suggestion because the recordkeeping requirement is a logical extension of the other requirements of this subsection and would be out of place elsewhere.

(vii) *Emergency stops* and

(viii) *Temperature drops.* Two commenters suggested that these subsections be moved to §§ 318.308 and 381.308, which deal with deviations in processing. FSIS agrees with this suggestion and has made the change in the final rule. Other specific comments to these subsections have been addressed under proposed §§ 318.308(a)(1)(iv) and 381.308 (a)(1)(iv).

(4) *Hydrostatic retorts.*—(vi) *Conveyor speed.* One commenter argued that a process schedule from the processing authority should list only the sterilization time, and that the plant should calculate the required conveyor speed to meet the specified time. Thus, the commenter objected to the proposed requirement that the conveyor speed be listed in the process schedule. A second commenter made a similar suggestion. FSIS has accepted the intent of these comments and has revised the first sentence of the subsection to indicate that the correct conveyor speed shall be calculated to obtain the required process time and recorded by the establishment when the retort is started. FSIS has also deleted the fourth sentence of the proposed subsection from the final rule because processing deviations are more appropriately addressed in §§ 318.308 and 381.308.

(c) Pressure processing in water.

(1) *Batch still retorts.* (i) One commenter suggested that the proposed specifications on where the recorder/controller bulb is located in both vertical and horizontal retorts be deleted. Another urged the deletion of the proposed minimum distance that the indicating temperature device must extend into the water in both vertical and horizontal retorts. FSIS sees no need to delete either of these two specifications because they are recognized industry standards. Further, the requirements are consistent with those of FDA.

(ii) *Pressure recording device.* One commenter suggested that such devices are unnecessary and should not be required. FSIS disagrees and has retained the requirement in the final rule because it is essential that a record of retort pressure be maintained. Overriding pressure is critical in water processing to prevent damage to containers such as glass jars, retortable pouches, and semirigid containers. For retortable pouches and some semirigid containers, overriding pressure is also critical in maintaining the desired container dimensions during the thermal processing operation.

(iii) *Pressure relief valve.* A commenter urged that the subsection be eliminated from the final rule, noting that pressure relief valves are not required for other types of retort systems and that there is no basis requiring them on one system and not on another. FSIS agrees with this argument and has deleted the subsection from the final rule.

(vii) *Stacking equipment.* One commenter argued that the subsection is not necessary if adequate heat distribution is in fact achieved and documented. The commenter also argued that the proposed requirement concerning flexible containers belongs in another section, such as § 318.303. FSIS agrees with the first suggestion and has eliminated the first sentence regarding the construction of the stacking equipment. However, FSIS believes that the requirement concerning flexible containers is appropriate in this section of the regulations. Thus, FSIS has retained the language in the final rule and has clarified the fact that the subsection could also be applicable to semirigid containers.

(viii) *Drain valve.* One commenter suggested that the proposed requirement be changed to a recommendation, while another commenter argued that, because the drain valve does not materially affect the adequacy of the thermal process, its requirement should be eliminated from the final rule. FSIS disagrees with both commenters. Drain lines and valves are sometimes used as part of the recirculation system to maintain uniform heat distribution; it is essential that such systems be kept clear of debris. Thus, FSIS has retained the requirement in the final rule.

(ix) *Water level.* One commenter noted that the subsection does not take into account processing systems that use cascading water sterilization and proposed language for revising the subsection. FSIS has accepted the proposed language and has incorporated it into the final rule. FSIS believes that the revised subsection addresses the suggestions of other commenters. Those suggestions included allowing a device designed to sound an alarm when the water level falls as an acceptable alternative to checking and recording the water level; deleting the second sentence because the third sentence of the proposed subsection contains the words "proper level"; deleting the proposed requirement that water completely cover containers during the cooling process; and deleting the example of using petcocks to determine water level because they are no longer recommended.

(x) *Air supply and controls.* Two commenters urged that steam be added as a source of overpressure and that the reference to the rate of introducing compressed air or steam be deleted. FSIS concurs with these suggestions and has changed the final rule accordingly. While steam is not widely used to produce overpressure, it is just as effective as air for this purpose. In addition, the rate at which air or steam is added to the retort is not critical in achieving the required overpressure.

A third commenter argued that the entire subsection should be deleted because it sets forth equipment specifications that are beyond the scope of the regulation. FSIS disagrees with this comment because ensuring adequate water or air circulation is critical to the thermal process and is an appropriate area of regulation.

(xi) *Water recirculation.* One commenter recommended that the entire subsection be deleted arguing that detailed equipment specifications are beyond the scope of the regulation. FSIS disagrees with this comment because ensuring the adequacy of heat distribution throughout the retort during the thermal process is essential.

Another commenter suggested that the use of a flow-meter alarm system be accepted as an adequate safeguard for proper water circulation. FSIS agrees and has revised the final rule to allow the use of flow-meter alarm systems.

A third commenter argued that the proposed requirement that suction outlets have nonclogging screens be changed to a recommended practice. FSIS has rejected this proposal because clogged suction outlets could affect the uniformity of heat distribution during the thermal process. However, the word nonclogging has been deleted in this subsection and elsewhere in the final rule. Screens can, in time, become clogged and it will be the responsibility of the establishment to keep all required screens free of debris.

(xii) *Cooling water entry.* One commenter argued that the subsection is not germane to the adequacy of the thermal process and should be deleted. FSIS agrees in part that this proposed requirement does not specifically affect the adequacy of the thermal process; however, the improper entry of cooling water into the retort could damage glass containers. Therefore, FSIS has retained the current language but has made the subsection a recommendation as a good manufacturing practice.

(xiii) *Retort headspace.* Two commenters noted that this subsection discusses retort pressure rather than retort headspace. FSIS agrees and has established that retort pressure was adequately covered in proposed §§ 318.305(c)(2)(ix) and 381.305(c)(2)(ix). Therefore, in the final rule retort pressure control is addressed in §§ 318.305(c)(2)(viii) and 381.305(c)(2)(viii) titled, "Air supply and controls."

(2) *Batch agitating retorts.* Subsections (i) through (ix) and (xi) through (xiii): Comments received in response to these subsections were the same as those for identically titled subsections under (c)(1), batch still water retorts. The subsections for batch agitating retorts have been revised as indicated in the discussions under (c)(1).

(x) *Retort or reel speed timing.* One commenter argued that readjusting the reel speed may not be the best example of corrective action after a change in speed occurs because evaluation of product sterility is also necessary. Therefore, the commenter recommended that this example be deleted. FSIS concurs with this comment and has deleted the sentence from the final rule. The subsection has also been revised for consistency with (b)(2)(vi) covering batch agitating steam retorts.

(d) Pressure processing with steam/air mixtures in batch retorts.

(3) This subsection dealing with pressure relief valves has been deleted from the final rule. See subsection (c)(1)(iii) for discussion.

(e) Atmospheric cookers.

(2) *Stacking equipment.* and (3) *Temperature distribution.* Four commenters urged that the entire subsection be deleted on the grounds that the final rule should pertain only to shelf stable, low acid canned products. FSIS has not accepted the argument that the final rule should not cover acidified, low acid, shelf stable products (see the General Comments section of this preamble). Therefore, since atmospheric cookers can be used for the processing of acidified, low acid products, this subsection has been retained in the final rule.

Another commenter suggested that subsections (e) (2) and (3) be combined and suggested the wording for the combined subsection. FSIS agrees with this comment because subsection (e)(2) was proposed to assure that stacking equipment in atmospheric cookers would allow for uniform heat distribution. Since the proposed subsection (e)(3) dealt in general with heat distribution, the Agency considers the effect of stacking equipment as part of the overall need to assure adequate heat distribution. Therefore, the suggested language has been incorporated into the final rule, with the additional requirement that the data or other documentation on heat distribution be made available to Program employees for review.

(g) Equipment maintenance.

Three commenters questioned the meaning of the term "extended shutdown," which is used in the proposed rule in subsections (1) and (2) to prescribe when retort systems should be examined for proper functioning. One of the three suggested that an extended period of time be defined as more than 45 days. FSIS agrees that the phrase "extended shutdown" is vague; however, the Agency believes that thoroughly examining thermal processing systems before the resumption of operations following a lengthy shutdown is a good manufacturing practice. Therefore, the final rule has been revised to incorporate the Agency's position as a recommendation.

Two commenters questioned the need to check and test each retort system when it is empty. One noted that some retort systems may not function properly without containers. FSIS accepts these comments and has deleted this phrase from the final rule.

One commenter also argued that it is unnecessary to check and test systems that are operated on a year-round basis because general maintenance is performed daily. FSIS intended that the subsection require that retort systems be audited by someone other than the day-to-day operators in the retort area. This trained individual should be knowledgeable about the effects any changes might have on the adequacy of the thermal process. The language of the proposed rule has been revised to reflect this intent.

For further simplicity, FSIS has removed the phrase "at least once a year" in subsection (1) because the same requirement is contained in subsection (2). The two sentences in subsection (2) have also been combined.

(6) One commenter argued that the requirement to keep records of all maintenance conducted on the processing equipment is burdensome and unnecessary. The commenter suggested that only major maintenance items that could affect the adequacy of the thermal process, such as radical

alterations of the venting system, should be subject to the recordkeeping requirements. FSIS agrees with this comment and has revised the language in the final rule accordingly.

(h) Container cooling and cooling water.

(3) Two commenters objected to the requirement that systems designed to recycle cooling water be approved by the Administrator, arguing that the requirement adds an unnecessary burden. The commenters believe that it is sufficient to require that recycled cooling water be treated with a bactericide so that there is a measurable residual in the water after use.

FSIS does not agree that a bactericide alone is sufficient to prevent a buildup of bacterial spores in reused container cooling waters. Additionally, FSIS believes that these systems must be properly designed and maintained to adequately control the levels of organic and objectionable inorganic matter in the water.

Another commenter urged that a processing authority should be allowed to approve such systems and make the documentation available to the Program employee.

A fourth commenter stated that plants currently using recycled cooling water systems and that have procedures to prevent the excessive buildup of organic material should not be required to obtain approval. The commenter said that approval should be required when a system is substantially modified or a new system is installed.

FSIS agrees in principle with the overall thrust of the comments; i.e., that such systems need not be approved by the Administrator before use. However, the Agency remains concerned with the growing use of recycled and reused container cooling water, particularly water in systems that are poorly designed, operated, or maintained. This concern is centered on the belief that reused water of poor quality will lead to increased incidents of post-processing contamination of canned product. Thus, subparagraph (3) has been revised in the final rule to require that systems for recycling or reusing container cooling water must be designed, constructed, operated, and maintained to ensure that the recycled/reused water will be of a quality acceptable for the intended purpose. No prior approval by the Administrator will be required since minimum requirements have been included in the final rule and can be evaluated by Program employees. However, establishments must maintain a file of current information regarding all aspects of a system including details on design and construction, operation maintenance and water quality standards. Such information must be made available to Program employees for review.

Establishments recycling or reusing container cooling water as of the effective date of these regulations shall have the information required in §§ 318.305(h)(3) and 381.305(h)(3) on file and available for review by Program employees within 6 months of the date the regulations are effective. Establishments placing such systems into use after the effective date of these regulations shall have the required information on file and available for review within 6 months of the date a system is first used.

By dealing with cooling water reuse in new Subparts G and X, § 308.3(d)(2) has been revised. In the course of revising that subsection the Agency recognized that a strict interpretation of subsection 308.3(d)(3) would require that the reuse of water for the thermal processing of canned product be approved by the Administrator. While FSIS believes that reusing water in thermal processing equipment dictates that certain precautions be taken to protect the water, water quality has little consequence on the safety and stability of canned product. Therefore, § 308.3(d) has been revised to allow the circuit supervisor to approve the reuse of water that is used in the thermal processing of canned meat products. In a similar manner, a new paragraph (f) has been added to § 381.50 to allow for circuit supervisors to approve the reuse of water in the thermal processing of canned poultry products.

(i) Post-process handling of containers.

One commenter suggested that the proposal be revised to include a general requirement that containers be handled in a way to minimize the possible damage to containers or the exposure of hermetic seals to high levels of micro-organisms. In addition, the commenter suggested that the specific proposed requirements be made recommendations. A second commenter questioned how frequently equipment had to be cleaned and what standards had to be met. These questions were directed at the proposed requirement that, "All post-process container handling equipment shall be kept clean and sanitized . . ."

FSIS agrees with the recommendation to include a general requirement for handling containers because the recommended wording would encompass all types of container handling equipment and operations. It has also modified the final rule to make most other requirements recommended practices. FSIS, however, has retained the requirement that all worn and frayed belting, can retarders, cushions, and the like shall be replaced with nonporous materials because the Agency believes that it will minimize post-process contamination of containers. Furthermore, while the proposed requirement regarding the cleaning of post-process container handling equipment has been made a recommendation, FSIS believes that establishments should develop a plan for routinely cleaning and sanitizing all such equipment.

Sections 318.306 and 381.306 Processing and Production Records

Concerning the general requirements found at the beginning of §§ 318.306 and 381.306, a commenter suggested that it should not be necessary to record processing data found to be normal. FSIS disagrees with this suggestion. The recording of normal data is essential for three reasons. First, trends appearing in normal data may alert employees to developing problems and allow them to take corrective action before deviations occur. Second, records of normal data provide management with information necessary to ensure that all production is being monitored and controlled. And third, the recording of all data provides assurance to FSIS employees that an establishment is complying with USDA regulations. The recording of normal data has been a long-standing, generally-accepted practice in the U.S. canning industry.

Another commenter recommended that the production date be added to the list of information that is recorded. FSIS agrees with this suggestion and has modified the final rule accordingly.

(a) Processing in steam.

(1) *Batch still retorts.* Three commenters suggested that it is more appropriate to record the number of crates in the retort rather than the number of containers. However, because some retort systems do not make use of crates, FSIS has retained the proposed language but has included the recording of the number of crates as an alternative.

Two commenters suggested that recording the actual venting time be changed to recording the time the vent is closed. FSIS has accepted this suggestion because venting begins when steam is turned on, and that time must be recorded. Thus, by recording the vent closing time, the actual venting time is the elapsed time between steam on and vent closing.

Two commenters recommended substituting the phrase "start of process

timing" for "time sterilization temperature reached" in the list of data that must be recorded. FSIS agrees that the suggested terminology is more precise and has made the change in the final rule.

One commenter suggested modifying the phrase "time steam off" to "actual time steam off." FSIS has retained the proposed wording in the final rule because the final rule also requires the recording of actual (elapsed) processing time.

(2) *Batch agitating retorts.* One commenter suggested that this subsection include a cross-reference to subsection (a)(1) above. This addition has been made in the final rule, and the two sentences of the proposed subsection (a)(2) have been combined.

(3) *Continuous rotary retorts.* One commenter urged that the frequency at which readings of the indicating temperature device and temperature recorder are taken and recorded not be mandatory. In addition, the commenter believed that the recommended frequency should be changed from every 30 minutes to every hour. The commenter argued that the proposed requirement is excessive because most retorts are equipped with low-temperature alarms, and the temperature recording charts provide a record of the process temperature. Another commenter, however, suggested that the requirement should be retained, but that the frequency of comparing the indicating temperature device with the temperature recording device should be at least every hour of continuous retort operation rather than at least every 30 minutes.

In consideration of the comments received and to be consistent with wording found elsewhere in the final rule, this subsection has been revised to require comparative readings to be made and recorded at a frequency that will ensure that the actual retort temperature complies with the temperature specified in the process schedule.

Another commenter suggested that the final rule specify the frequency (at least every 4 hours) at which the retort or reel speed shall be observed and recorded. FSIS has accepted this recommendation because it reiterates a requirement found in §§ 318.305(b)(3)(vi) and 381.305(b)(3)(vi).

Two commenters stated that recording the times that the first container enters and the last container exits should be required. FSIS agrees that recording this information is necessary and the final rule has been modified accordingly. This information, in conjunction with other required records, will provide assurance that the proper retort temperature was attained before the first container entered and was maintained until the last container exited the retort.

For clarity, FSIS has retained the requirement that the functioning of the condensate bleeder be recorded but has added a cross-reference to the requirements of §§ 318.305 (b)(3)(v) and 381.305 (b)(3)(v).

FSIS has also changed "sterilization temperature" to "time process temperature reached" for consistency with §§ 318.300(n) and 381.300(n) and "actual venting time and temperature" to "the time and temperature vent closed" for consistency with §§ 318.306(a)(1) and 381.306(a)(1).

(4) *Hydrostatic retorts.* Two commenters argued that the requirement that the indicating temperature device in the steam dome must be read and recorded every 30 minutes is excessive. One suggested that hourly observations are sufficient for systems in which the temperature of the steam dome is monitored by a continuous temperature recording device. Another commenter argued that FSIS should only recommend and not prescribe the frequency of observing and recording the temperature.

After reviewing these comments, FSIS has retained the proposed language in the final rule requiring that a reading of the indicating temperature device in the steam dome shall be taken and recorded at the time the first container enters the steam dome. For consistency with §§ 318.306(a)(3) and 381.306(a)(3), FSIS has also added wording to require that after the initial reading, these instruments shall be read and the results recorded in order to ensure compliance with the temperature specified in the process schedule and that such readings should be made at least every hour of continuous retort operation.

Another commenter urged that the first sentence of the proposed subsection be revised to read: "Record the retort system number, the approximate total number of containers retorted, product initial temperature, time steam on, actual time and temperature vent closed, time at end of come-up, time first container enters retort, time last container exits retort, and if specified . . ." FSIS agrees with the comment; however, for consistency with §§ 318.300(n) and 381.300(n), FSIS has used the phrase "time process temperature reached" in the first sentence. The commenter also suggested that the last sentence be revised to require that for agitating hydrostatic retorts, the rotative chain speed be determined and recorded at intervals not to exceed 4 hours. FSIS concurs because maintaining a specified rotative chain speed is critical in assuring process schedule adequacy. Also, for consistency with §§ 318.306(a)(3) and 381.306(a)(3), FSIS has indicated that such readings shall be taken at intervals of sufficient frequency to ensure compliance with the process schedule and has recommended that readings be made at least every 4 hours.

(b) Processing in water.

(1) *Batch still retorts.* See subsection (a)(1) for a discussion of whether the number of containers or crates must be recorded.

A commenter suggested the following additions to the first sentence: *actual* time steam off; and actual *sterilization* time. FSIS has rejected the first suggestion because the Agency intends the term "time steam off" to mean the actual time the steam is turned off and not the predicted time. The second suggestion was obviated by a revision made in §§ 318.300 and 381.300 whereby the definition for "sterilization time" was replaced by "process time" as discussed previously in this preamble.

(2) *Batch agitating retorts.* One commenter suggested that this subsection include a cross-reference to subsection (b)(1). FSIS has accepted this comment and has revised the final rule accordingly.

(c) Processing in steam/air mixtures.

Two commenters noted that venting this type of retort system may not be necessary and suggested the addition of the qualifying phrase "if applicable." FSIS concurs with this comment and has added the phrase to the final rule. The phrase "venting time and temperature" has also been changed to "venting procedure" to allow the use of alternate venting methods that may be established by processing authorities.

One commenter suggested that the phrase "air flow rate" should either be omitted or changed to "air flow rate (if applicable)." The commenter also suggested changing the word "pressure" to "overriding pressure maintained." FSIS has revised the final rule to indicate that air flow rate shall be recorded only when it is identified as a critical factor in the process schedule. The suggestion to use the term "overriding pressure maintained" was accepted because it clearly identifies the pressure condition that must be recorded.

Three commenters urged that the last sentence of the subsection concerning critical factors be deleted, arguing that the requirement is out of place and redundant. FSIS concurs with this comment and has deleted the sentence

from the final rule because the controlling and recording of critical factors are required in §§ 318.303 and 381.303.

(d) Atmospheric cookers.

One commenter argued that subsections (1) and (2) should be deleted because the final rule should apply only to low acid canned meat and poultry products, which cannot be processed in atmospheric cookers. As noted in the General Comments section of this preamble, FSIS has retained the requirements for the processing of acidified, low acid foods. Because atmospheric cookers can be used for the processing of these foods, the recordkeeping requirements for atmospheric cookers have also been retained in the final rule.

One commenter suggested that the word "cooker" be inserted between the words "each" and "batch" in the first sentence of subsection (1). FSIS agrees and has revised the final rule accordingly.

Sections 318.307 and 381.307 Record Review and Maintenance

(a) Process records.

Three commenters argued that establishments should be required to provide Program employees only those processing and production records related to the process schedules. In light of these comments, FSIS has modified the proposed language to indicate that those processing and production records required by Subparts G and X must be made available to Program employees.

A commenter requested that the final rule include a clarification that the term "processing system number" could refer to the retort number, the hydrostatic cooker number, or other systems of identification. FSIS has accepted this suggestion and has substituted the wording proposed by the commenter.

Another commenter suggested that records relating to critical factors be added to the examples of records that must be signed or initialed and dated by the person who reviews process records for the plant. FSIS agrees that these records should be included in the examples and has modified the subsection accordingly.

(c) Container closure records.

Two commenters noted that the subsection does not specify how often representatives of plant management must review records on container closures. One commenter suggested that the subsection state that these reviews shall be conducted within 1 working day after the actual production. FSIS agrees that the frequency of reviews should be specified in the final rule. For consistency with §§ 318.307(a) and 381.307(a), FSIS has accepted the proposed language.

Sections 318.308 and 381.308 Deviations in Processing

(a) Shelf stable canned product.

(1) *Deviations identified in-process.* (i) Five commenters argued that decisions of designated processing authorities regarding the handling of products involved in deviations do not need to be reviewed and approved by FSIS before they are implemented. They contended that FSIS is responsible only for ensuring that the recommendations of processing authorities are properly implemented. The commenters recommended requiring only that the establishment provide copies of a processing authority's evaluation and recommendations for disposition of product to the inspector for review.

FSIS has provisions under the total and partial quality control regulations (9 CFR 318.4 and 9 CFR 381.145), that allow owners and operators of official establishments to handle process deviations in the manner suggested by the commenters. However, under traditional (non-TQC) inspection, FSIS has no statutory basis to extend authority to owners and operators to handle such inspection problems and responsibilities.

To date, FSIS has reviewed and approved more than 30 quality control programs for handling process deviations and welcomes the opportunity to consider more from other official establishments. Those that have been approved were submitted either as partial quality control programs or as part of total quality control systems. The programs state how each establishment will handle process deviations, and for the most part, eliminate the need for officially retaining products and submitting evaluations of process deviations to FSIS for review and approval each time a deviation occurs. Through the quality control program, the establishment and FSIS have agreed on procedures for handling deviations. FSIS has thus retained the intent of the proposal, but the final rule has been reorganized for clarity.

(ii) Three commenters argued that this subsection should be deleted from the final rule. FSIS has rejected this suggestion; see subsection (a)(1)(i) above for a discussion of the comments.

A fourth commenter observed that the subsection could be interpreted as requiring approval from FSIS before an establishment ships products that have been either fully reprocessed or processed under an approved alternate process schedule. FSIS believes that the commenter misinterpreted this subsection because there was a codification error in the published proposal. Because the Agency intended that it pertain only to subsection (a)(1)(i)(*c*) of the proposed rule, the final rule has been recodified to reflect this intent.

(iii) One commenter noted that the subsection applies only when alternate process schedules that are on file with the inspector are used.

The commenter suggested clarifying the subsection by adding the following clause to the beginning: "If an alternate schedule used is not on file with the inspector, the product involved . . ." FSIS concurs with this comment and has incorporated the intent of the suggestion into the final rule.

(iv) One commenter recommended that proposed §§ 318.305(b)(3) (vii) and (viii) and 381.305(b)(3) (vii) and (viii), which pertain to handling process deviations in continuous rotary retorts, be moved to this subsection. The commenter also argued that the subsection should apply to both hydrostatic retorts and continuous rotary retorts.

FSIS has accepted the first recommendation. The Agency agrees with the commenter that all requirements for handling process deviations should be located in §§ 318.308 and 381.308. Therefore, the handling of process deviations for continuous rotary retorts has been recodified as §§ 318.308(d)(1)(vi) and 381.308(d)(1)(vi). FSIS, however, has rejected the suggestion that the subsections be modified to include hydrostatic retorts because the commenter did not provide supporting data to demonstrate that all the procedures and requirements for handling deviations in continuous rotary retorts are also applicable to hydrostatic retorts. FSIS will consider amending the rule if supporting data are provided and found acceptable.

Three commenters argued that it is unnecessary and unworkable to require that the inspector supervise the reprocessing, repacking and reprocessing, or the destruction of products involved in process deviations, provided adequate records are maintained.

FSIS concurs, in part, with these comments. The intent of the proposal was to require that condemned product be destroyed under the direct supervision of the inspector. The final rule has been modified to clarify the Agency's intent. And while the phrase "discarded under the supervision of an inspector" has been deleted, FSIS has the statutory obligation to ensure that condemned product is destroyed. Therefore, language has been added to the final rule that will require that condemned product be destroyed in accordance with applicable regulations. However, the reprocessing or repacking and reprocessing of product would be subject to inspection comparable to that provided to other operations performed by the establishment. FSIS has also added to §§ 318.308(d)(1)(vi)(*a*)(*1*) and 381.308(d)(1)(vi)(*a*)(*1*) a requirement that the handling of the containers shall be fully documented by the establishment on the production records.

One commenter also urged that a provision be made for holding product involved in temperature drops of 10F degrees or more for a process deviation evaluation by the designated processing authority. FSIS agrees with the suggestion because it provides an acceptable alternate method for handling process deviations in continuous rotary retorts. Therefore, §§ 318.308(d)(1)(vi) and 381.308(d)(1)(vi) of the final rule have been revised to provide the option of handling product in accordance with §§ 318.308(d)(1) (iii) and (iv) and 381.308(d)(1) (iii) and (iv).

(3) Three commenters argued that the subsection should be changed to provide that the processing authority, rather than the inspector, determine whether products are safe and stable before they are shipped. FSIS rejects these comments; see subsection (a)(1)(i) for its rationale and a discussion of responsibilities for the handling of process deviations and the disposition of the affected production.

(c) Process deviation file.

One commenter argued that requiring a separate process deviation file is a needless duplication. The commenter suggested that a log indicating where the files on deviations are located would be an adequate record and offered the following revision to the subsection: "All process deviations . . . shall be recorded and made the subject of a separate file (or a log identifying the appropriate data) detailing those deviations and the actions taken." FSIS agrees with this comment and has provided an option in the final rule that allows plants to maintain a log identifying the location of the appropriate data.

Another commenter pointed out that the subsection does not give a time period for which the deviation file or log must be maintained. FSIS agrees and has added language to the final rule requiring that the file or log be retained in accordance with §§ 318.307(e) and 381.307(e).

Sections 318.309 and 381.309 Finished Product Inspection

(a) Incubation of shelf stable canned product.

One commenter argued that the adoption of the canning regulations should eliminate the need for incubation of finished products, except in cases of process deviations. In those cases, the commenter argued that sampling levels should be high; otherwise, no incubation should be required because, if the requirements of the regulations are met, the products can be presumed to be safe and stable. The commenter also noted that FDA regulations do not require the incubation of finished products.

FSIS disagrees with this argument. In the past USDA has identified numerous problems with finished products through incubation testing. Thus, FSIS believes that incubation testing is a valuable tool in providing increased assurance of the safety and stability of product entering the marketplace. Many companies have voluntarily adopted incubation testing procedures that are more rigorous than those contained in the final rule. This is additional testimony to the value of incubation testing.

Moreover, as stated in the proposal, an establishment can, as provided in §§ 318.4 or 381.145, develop a total or partial quality control program in which it assumes greater responsibility for handling product incubation. These responsibilities can include all aspects of incubation testing, the investigation of incubation failures, and the disposition of affected production. To further clarify this option, the opening paragraph in the proposal has been expanded in the final rule in a manner similar to the modifications made to §§ 318.308 and 381.308.

(2) *Incubation temperature.* Four commenters argued that brief temperature deviations above 103 °F should not be a reason for resampling and starting a new incubation test. One suggested qualifying the requirement to state that if the temperature reaches or exceeds 103 °F for more than 2 hours, the test must be restarted. FSIS agrees with the comments and has revised the final rule accordingly. It is the Agency's position that unless the temperature reaches or exceeds 103 °F for more than 2 hours, the validity of the incubation results will not be affected.

(4) *Incubation samples.* Two commenters noted that the proposed requirement that one container be sampled for each 1,000 containers processed in batch-type retort systems exceeds current USDA sampling requirements. The commenters suggested retaining the current requirement of one container for each retort load.

FSIS agrees that current sampling requirements for batch-type retort systems are adequate and has adopted those requirements in the final rule. Many plants, however, voluntarily sample more than one container per retort load; FSIS encourages this practice.

Another commenter suggested inserting the word "retort" between the words "each" and "batch" to distinguish retort batches from product batches. FSIS appreciates the comment; however, the Agency considers the term "thermal processing system" to be more inclusive and has revised the final rule to incorporate both the term and the commenter's concern.

(6) *Incubation checks and record maintenance.* One commenter argued that plant employees should not be required to visually check containers in incubation each working day if a plant does not have access to the incubator. The commenter suggested that this requirement be made discretionary.

FSIS believes it is essential that plant employees check the incubator every working day and notify the inspector when an abnormal container is detected. Sections 318.309(a)(1) and 381.309(a)(1) provide that the Program is responsible for the security of the incubator and for determining appropriate policies for access by plant employees. Plants should work with inspectors to determine when plant employees may have access to incubators.

A second commenter requested that a sentence be added to indicate that all containers that appear to be abnormal should be cooled to room temperature before a final decision about their condition is made. FSIS has accepted this suggestion because it is in line with current FSIS procedures.

This subsection of the proposed rule includes examples of abnormal containers. These examples have been removed from the final rule because a definition of abnormal containers has been added as §§ 318.300(a) and 381.300(a).

(8) *Shipping.* Three commenters requested that plants be allowed to notify the FSIS inspector rather than the area supervisor of their intention to ship product before samples have completed incubation. FSIS believes that this subsection has been misunderstood. It was intended that all future lots could be shipped without specific approval once the area supervisor approves a firm's proposal for shipping before the end of incubation. A clarifying sentence

to this effect has been added to the final rule.

(b) Container condition.

(1) *Normal containers.* One commenter pointed out that the proposed language could imply that 100 percent inspection is required at the time of shipping. Because this implication was not intended, the final rule has been revised to indicate that the condition of a lot shall be determined by the use of an appropriate sampling plan or other means acceptable to Program employees.

A second commenter suggested making this subsection a recommended practice rather than a requirement, arguing that compliance with this subsection is not possible without 100 percent inspection. Although FSIS recognizes that it is not possible to guarantee that all containers are normal, it rejects the idea of weakening this subsection by making it a recommended practice that only sound, normal-appearing containers be shipped. Such a change would allow the subsection to be interpreted as allowing plants to make decisions arbitrarily about the shipment of lots that include abnormal containers.

(2) *Abnormal containers.* Four commenters argued that, when abnormal containers are found by any means other than incubation, estblishments, rather than the USDA, should determine whether the product is safe and stable and may be shipped.

As with the case of handling process deviations discussed above, FSIS has provisions under the total and partial quality control regulations, 9 CFR 318.4 and 9 CFR 381.145, that allow owners and operators of official establishments to handle abnormal containers under approved procedures.

To date, FSIS has reviewed and approved more than 10 quality control programs for handling abnormal containers and welcomes the opportunity to consider more from other official establishments. Those that have been approved were submitted either as partial quality control programs or as part of total quality control systems. Each program states how the establishment will handle abnormal container incidents and, for the most part, eliminates the need for officially retaining product and submitting samples to an FSIS laboratory for analysis. Through the quality control program, the establishment and FSIS have agreed on procedures for handling such incidents. FSIS has thus retained the proposed language in the final rule but has reorganized the subsection for clarity.

Sections 318.310 and 381.310 Personnel and Training

One commenter argued that prior approval of the courses offered through the Better Process Control Schools is premature and should be withheld until the courses are changed to offer instruction in the differences between FDA and USDA canning regulations. FSIS agrees with this comment and has revised the final rule by deleting the reference to Better Process Control Schools. Moreover, in further considering this matter, FSIS has concluded that it will forgo official approval of any school because specific criteria are lacking. This does not mean, however, that FSIS is not concerned with the effectiveness of such schools. FSIS would expect the curricula to include such things as fundamentals of thermally processing products for shelf stability, function and proper operation of equipment involved, critical control points, and the regulatory requirements. The curricula of the Better Process Control Schools, approved by the FDA, cover those areas. They are generally recognized by experts in the canning industry and academia as being adequate to properly train canning plant personnel who supervise canning operations because of the curriculum; because ample time is spent on the subject matter; because of the manner in which they are conducted; and because they are conducted by highly trained experts. It should be noted that with appropriate modifications to reflect the unique requirements of this final rule, the Better Process Control Schools will satisfy the requirements of §§ 318.310 and 381.310 of the rule. Any organization interested in developing a school may wish to pattern the curriculum after that of the Better Process Control School, as modified.

FSIS personnel are available to consult with interested individuals or organizations concerning modifications to the curricula of the Better Process Schools, or developing a curriculum for other schools of instruction.

Many individuals associated with meat and poultry canning establishments, particularly those establishments that also pack FDA-regulated products, have satisfactorily completed courses of instruction required by that agency. Since these individuals have been taught the essential principles of thermal processing, and since FSIS has not previously required such individuals to complete such courses, and in order not to impose an unnecessary burden on the industry, further training of such persons will not be necessary in order to be in compliance with §§ 318.310 and 381.310. In addition, FSIS recognizes that ample time will be needed for Better Process Control Schools to make appropriate modifications to their curricula, for other interested parties to develop appropriate courses of instruction, and for establishment personnel to complete the required training. Therefore, within 2 years of publication of these regulations, establishments must provide proof to the Administrator that they have operators of thermal processing systems and container closure technicians under the direct operating supervision of a person who has successfully completed a school of instruction. This individual may only supervise those activities for which a school has identified the person as having successfully completed the prescribed courses of instruction.

Sections 318.311 and 381.311 Recall Procedure

Two commenters argued that, because USDA does not have the authority to require product recalls, it also does not have the authority to require that companies provide their recall procedures to USDA inspectors. The commenters noted, however, that it is important that plants have written recall procedures and that they maintain the procedures on file.

It is true that the enabling legislation does not explicitly authorize recalls. Even though FSIS is responsible for protecting consumers from potential hazards from products in commerce, which can be exercised in various ways, such as the use of the media, and even though any good establishment will have recall procedures on file, FSIS has eliminated the requirement that such procedures be filed with the inspector. Instead, the final rule provides that a current recall procedure must be maintained on file by the official establishment. To assure compliance with this section, the final rule also provides that, upon request, the recall procedure shall be made readily available to Program employees for review.

With regard to the required notification of the inspector and the Administrator, two commenters argued that the proposal should be revised to require that companies notify the inspector and the Administrator of a recall only when a company believes that the recall involves a potential public health threat. One also argued that notification before the actual recall may be impossible and that the time element should be deleted from the final rule.

FSIS recognizes the concerns. In many instances effective recalls are difficult to implement and coordinate, requiring the establishment's diligence and commitment to communicate with many parties to effect a recall. Moreover, the industry has a commendable record in this area. However, FSIS is responsible under the Acts to assure the consumer a safe product. Upon considering the industry's concerns, and recognizing that FSIS policies relating to recalls are included in FSIS Directive 8080.1, Recall of Inspected Meat and Poultry Products, dated August 4, 1983, FSIS has deleted the proposed sentence concerning notification from the final rule. This directive covers all FSIS-inspected products, including canned products. Two commenters, in fact, suggested that the substance of this directive be incorporated into §§ 318.311 and 381.311. FSIS has not accepted this suggestion because at a later date the Agency may desire to issue proposed rules incorporating the substance of the directive in the meat and poultry inspection regulations to cover all meat and poultry products.

Finally, a commenter suggested that, in the first sentence, the description of establishments should be changed from those engaged "in the thermal processing of canned product" to "in the packaging of thermally processed product." FSIS has not made this change but has deleted the original phrase from the final rule. To compensate, the sentence has been modified to indicate that establishments shall prepare and maintain on file a current procedure for recall of all products covered by this rule. Canned products are defined in §§ 318.300(d) and 381.300(d) of the final rule.

Final Rule

After careful consideration of the comments received on the proposed rule, FSIS is adopting the proposal as a final rule, with the modifications previously discussed in the preamble.

List of Subjects

9 CFR Parts 308, 320 and 327

Meat inspection.

9 CFR Part 318

Canning, Containers, Meat inspection.

9 CFR Part 381

Canning, Containers, Poultry inspection.

Accordingly, the Federal meat and poultry products inspection regulations are amended as set forth below:

1. The authority citation for Part 308 is revised to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, unless otherwise noted.

PART 308—[AMENDED]

2. Section 308.3, paragraphs (d) (2) and (3), are revised to read as follows:

§ 308.3 Establishments; sanitary condition; requirements.

* * * * *

(d)(1) * * *

(2) The circuit supervisor may permit the reuse of water in vapor lines leading from deodorizers used in the preparation of lard and similar edible product and in equipment where such water is used to thermally process canned product packed in hermetically sealed containers, provided:

(i) The reuse is for the identical original purpose.

(ii) All pipelines, reservoirs, tanks, cooling towers, and like equipment employed in handling the reused water are so constructed and installed so they can be cleaned and drained, and are kept clean.

(3) Approval for the reuse of water other than as specified in paragraph (d)(2) of this section or in § 318.305(h) shall be obtained from the Administrator in specific cases.

* * * * *

3. The authority citation for Part 318 continues to read as follows:

Authority: 34 Stat. 1260, 81 Stat. 584, as amended (21 U.S.C. 601 *et seq.*), 72 Stat. 862, 92 Stat. 1069, as amended (7 U.S.C. 1901 *et seq.*), 76 Stat. 663 (7 U.S.C. 450 *et seq.*).

PART 318—[AMENDED]

4. Part 318 is amended by designating existing §§ 318.1 through 318.10 and 318.12 through 318.20 as new Subpart A—General.

§ 318.11 [Removed and Reserved]

5. Section 318.11 is removed and reserved for future use. All references to "§ 318.11" are changed to read "§§ 318.300 through 318.311", wherever they occur in 7 CFR Chapter III.

6. Subparts B through F of Part 318 are reserved for future use. The Table of Contents is revised accordingly.

7. A new Subpart G—Canning and Canned Products, consisting of sections 318.300 through 318.311 is added to Part 318 to read as follows:

Subpart G—Canning and Canned Products

Sec.

318.300 Definitions.
318.301 Containers and closures.
318.302 Thermal processing.
318.303 Critical factors and the application of the process schedule.
318.304 Operations in the thermal processing area.
318.305 Equipment and procedures for heat processing systems.
318.306 Processing and production records.
318.307 Record review and maintenance.
318.308 Deviations in processing.
318.309 Finished product inspection.
318.310 Personnel and training.
318.311 Recall procedure.

Subpart G—Canning and Canned Products

§ 318.300 Definitions.

(a) *Abnormal container.* A container with any sign of swelling or product leakage or any evidence that the contents of the unopened container may be spoiled.

(b) *Acidified low acid product.* A canned product which has been formulated or treated so that every component of the finished product has a pH of 4.6 or lower within 24 hours after the completion of the thermal process unless data are available from the establishment's processing authority demonstrating that a longer time period is safe.

(c) *Bleeders.* Small orifices on a retort through which steam, other gasses, and condensate are emitted from the retort throughout the entire thermal process.

(d) *Canned product.* A meat food product with a water activity above 0.85 which receives a thermal process either before or after being packed in a hermetically sealed container. Unless otherwise specified, the term "product" as used in this Subpart G shall mean "canned product."

(e) *Closure technician.* The individual(s) identified by the establishment as being trained to perform specific container integrity examinations as required by this subpart and designated by the establishment to perform such examinations.

(f) *Code lot.* All production of a particular product in a specific size container marked with a specific container code.

(g) *Come-up time.* The elapsed time, including venting time (if applicable), between the introduction of the heating medium into a closed retort and the start of process timing.

(h) *Critical factor.* Any characteristic, condition or aspect of a product, container, or procedure that affects the adequacy of the process schedule. Critical factors are established by processing authorities.

(i) *Headspace.* That portion of a container not occupied by the product.

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(1) *Gross headspace.* The vertical distance between the level of the product (generally the liquid surface) in an upright rigid container and the top edge of the container (i.e., the flange of an unsealed can, the top of the double seam on a sealed can, or the top edge of an unsealed jar).

(2) *Net headspace.* The vertical distance between the level of the product (generally the liquid surface) in an upright rigid container and the inside surface of the lid.

(j) *Hermetically sealed containers.* Air-tight containers which are designed and intended to protect the contents against the entry of microorganisms during and after thermal processing.

(1) *Rigid container.* A container, the shape or contour of which, when filled and sealed, is neither affected by the enclosed product nor deformed by external mechanical pressure of up to 10 pounds per square inch gauge (0.7 kg/cm²) (i.e., normal firm finger pressure).

(2) *Semirigid container.* A container, the shape or contour of which, when filled and sealed, is not significantly affected by the enclosed product under normal atmospheric temperature and pressure, but can be deformed by external mechanical pressure of less than 10 pounds per square inch gauge (0.7 kg/cm²) (i.e., normal firm finger pressure).

(3) *Flexible container.* A container, the shape or contour of which, when filled and sealed, is significantly affected by the enclosed product.

(k) *Incubation tests.* Tests in which the thermally processed product is kept at a specific temperature for a specified period of time in order to determine if outgrowth of microorganisms occurs.

(l) *Initial temperature.* The temperature, determined at the initiation of a thermal process cycle, of the contents of the coldest container to be processed.

(m) *Low acid product.* A canned product in which any component has a pH value above 4.6.

(n) *Process schedule.* The thermal process and any specified critical factors for a given canned product required to achieve shelf stability.

(o) *Process temperature.* The minimum temperature(s) of the heating medium to be maintained as specified in the process schedule.

(p) *Process time.* The intended time(s) a container is to be exposed to the heating medium while the heating medium is at or above the process temperature(s).

(q) *Processing authority.* The person(s) or organization(s) having expert knowledge of thermal processing requirements for foods in hermetically sealed containers, having access to facilities for making such determinations, and designated by the establishment to perform certain functions as indicated in this subpart.

(r) *Program employee.* Any inspector or other individual employed by the Department or any cooperating agency who is authorized by the Secretary to do any work or perform any duty in connection with the Program (see § 301.2(f)).

(s) *Retort.* A pressure vessel designed for thermal processing of product packed in hermetically sealed containers.

(t) *Seals.* Those parts of a semirigid container and lid or of a flexible container that are fused together in order to hermetically close the container.

(u) *Shelf stability.* The condition achieved by application of heat, sufficient, alone or in combination with other ingredients and/or treatments, to render the product free of microorganisms capable of growing in the product at nonrefrigerated conditions (over 50 °F or 10 °C) at which the product is intended to be held during distribution and storage. Shelf stability and shelf stable are synonymous with commercial sterility and commercially sterile, respectively.

(v) *Thermal process.* The heat treatment necessary to achieve shelf stability as determined by the establishment's processing authority. It is quantified in terms of:

(1) Time(s) and temperature(s); or

(2) Minimum product temperature.

(w) *Venting.* The removal of air from a retort before the start of process timing.

(x) *Water activity.* The ratio of the water vapor pressure of the product to the vapor pressure of pure water at the same temperature.

§ 318.301 Containers and closures.

(a) *Examination and cleaning of empty containers.* (1) Empty containers, closures, and flexible pouch roll stock shall be evaluated by the establishment to ensure that they are clean and free of structural defects and damage that may affect product or container integrity. Such an examination should be based upon a statistical sampling plan.

(2) All empty containers, closures, and flexible pouch roll stock shall be stored, handled, and conveyed in such a manner that will prevent soiling and damage that could affect the hermetic condition of the sealed container.

(3) Just before filling, rigid containers shall be cleaned to prevent incorporation of foreign matter into the finished product. Closures, semirigid containers, preformed flexible pouches, and flexible pouch roll stock contained in original wrappings do not need to be cleaned before use.

(b) *Closure examinations for rigid containers (cans)—(1) Visual examinations.* A closure technician shall visually examine the double seams formed by each closing machine head. When seam defects (e.g., cutovers, sharpness, knocked down flanges, false seams, droops) are observed, necessary corrective actions, such as adjusting or repairing the closing machine, shall be taken. In addition to the double seams, the entire container shall be examined for product leakage or obvious defects. A visual examination shall be performed on at least one container from each closing machine head, and the observations, along with any corrective actions, shall be recorded. Visual examinations shall be conducted with sufficient frequency to ensure proper closure and should be conducted at least every 30 minutes of continuous closing machine operation. Additional visual examinations shall be made by the closure technician at the beginning of production, immediately following every jam in the closing machine and after closing machine adjustment (including adjustment for changes in container size).

(2) *Teardown examinations.* Teardown examinations of double seams formed by each closing machine head shall be performed by a closure technician at a frequency sufficient to ensure proper closure. These examinations should be made at intervals of not more than 4 hours of continuous closing machine operation. At least one container from each closing head shall be examined on the packer's end during each regular examination period. Examination results along with any necessary corrective actions, such as adjusting or repairing the closing machine, shall be promptly recorded by the closure technician. The establishment shall have container specification guidelines for double seam integrity on file and available for review by Program employees. A teardown examination of the can maker's end shall be performed on at least one container selected from each closing machine during each examination period except when teardown examinations are made on incoming empty containers or when, in the case of self-manufactured containers, the containers are made in the vicinity of the establishment and the container plant records are made available to Program employees. Additional teardown examinations on the packer's end should be made at the beginning of production, immediately following every jam in a closing machine and after closing machine adjustment (including adjustment for a change in container size). The following procedures shall be used in teardown examinations of double seams:

(i) One of the following two methods shall be employed for dimensional measurements of the double seam.

(*a*) *Micrometer measurement.* For cylindrical containers, measure the following dimensions (Figure 1) at three points approximately 120 degrees apart on the double seam excluding and at least one-half inch from the side seam juncture:

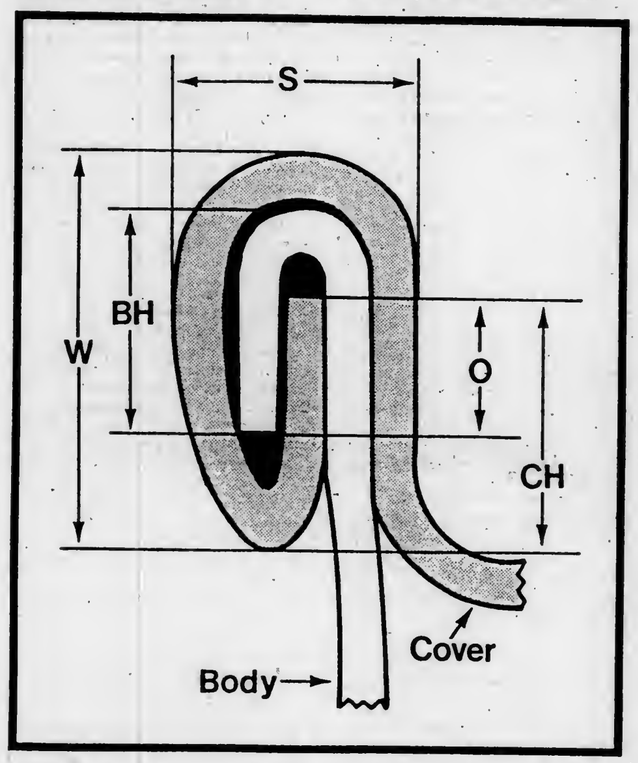
(*1*) Double seam length—W;

(*2*) Double seam thickness—S;

(*3*) Body hook length—BH; and

(*4*) Cover hook length—CH.

Maximum and minimum values for each dimensional measurement shall be recorded by the closure technician.



(*b*) *Seamscope or seam projector.* Required measurements of the seam include thickness, body hook, and overlap. Seam thickness shall be obtained by micrometer. For cylindrical containers, at least two locations, excluding the side seam juncture, shall be used to obtain the required measurements.

(ii) *Seam tightness.* Regardless of the dimensional measurement method used to measure seam dimensions, at a minimum, the seam(s) examined shall be stripped to assess the degree of wrinkling.

(iii) *Side seam juncture rating.* Regardless of the dimensional measurement method used to measure seam dimensions, the cover hook shall be stripped to examine the cover hook droop at the juncture for containers having side seams.

(iv) *Examination of noncylindrical containers.* Examination of noncylindrical containers (e.g., square, rectangular, "D"-shaped, and irregularly-shaped) shall be conducted as described in paragraphs (b)(2) (i), (ii), and (iii) of this section except that the required dimensional measurements shall be made on the double seam at the points listed in the establishment's container specification guidelines.

(c) *Closure examinations for glass containers—(1) Visual examinations.* A closure technician shall visually assess the adequacy of the closures formed by each closing machine. When closure defects, such as loose or cocked caps, fractured or cracked containers and low vacuum jars, are observed, necessary corrective actions, such as adjusting or repairing the closing machine shall be taken and recorded. In addition to the closures, the entire container shall be examined for defects. Visual examinations shall be made with sufficient frequency to ensure proper closure and should be conducted at least every 30 minutes of continuous closing machine operation. Additional visual examinations shall be made by the closure technician and the observations recorded at the beginning of production, immediately following every jam in the closing machine, and after closing machine adjustment (including adjustment for a change in container size).

(2) *Closure examinations and tests.* Depending upon the container and closure, tests shall be performed by a closure technician at a frequency sufficient to ensure proper closure. These examinations should be made either before or after thermal processing and at intervals of not more than 4 hours of continuous closing machine

operation. At least one container from each closing machine shall be examined during each regular examination period. Examination results along with any necessary corrective actions, such as adjusting or repairing the closing machine, shall be promptly recorded by the closure technician. The establishment shall have specification guidelines for closure integrity on file and available for review by Program employees. Additional closure examinations should be made at the beginning of production, immediately following every jam in the closing machine, and after closing machine adjustment (including adjustment for a change in container size).

(d) *Closure examinations for semirigid and flexible containers*—(1) *Heat seals*—(i) *Visual examinations.* A closure technician shall visually examine the seals formed by each sealing machine. When sealing defects are observed, necessary corrective actions, such as adjusting or repairing the sealing machine, shall be taken and recorded. In addition to examining the heat seals, the entire container shall be examined for product leakage or obvious defects. Visual examinations shall be performed before and after the thermal processing operation and with sufficient frequency to ensure proper closure. These examinations should be conducted at least in accordance with a statistical sampling plan. All defects noted and corrective actions taken shall be promptly recorded.

(ii) *Physical tests.* Tests determined by the establishment as necessary to assess container integrity shall be conducted by the closure technician at a frequency sufficient to ensure proper closure. These tests shall be performed after the thermal processing operation and should be made at least every 2 hours of continuous production. The establishment's acceptance guidelines for each test procedure shall be on file and available for review by Program employees. Test results along with any necessary corrective actions, such as adjusting or repairing the sealing machine, shall be recorded.

(2) Double seams on semirigid or flexible containers shall be examined and the results recorded as provided in paragraph (b) of this section. Any additional measurements specified by the container manufacturer shall also be made and recorded.

(e) *Container coding.* Each container shall be marked with a permanent, legible, identifying code mark. The mark shall, at a minimum, identify in code the product (unless the product name lithographed or printed elsewhere on the container) and the day and year the product was packed.

(f) *Handling of containers after closure.* (1) Containers and closures shall be protected from damage which may cause defects that are likely to affect the hermetic condition of the containers. The accumulation of stationary containers on moving conveyors should be minimized to avoid damage to the containers.

(2) The maximum time lapse between closing and initiation of thermal processing shall be 2 hours. However, the Administrator may specify a shorter period of time when considered necessary to ensure product safety and stability. A longer period of time between closing and the initiation of thermal processing may be permitted by the Administrator.

[Approved by the Office of Management and Budget under control number 0583–0015]

§ 318.302 Thermal processing.

(a) *Process schedules.* Prior to the processing of canned product for distribution in commerce, an establishment shall have a process schedule (as defined in § 318.300(n) of this subpart) for each canned meat product to be packed by the establishment.

(b) *Source of process schedules.* (1) Process schedules used by an establishment shall be developed or determined by a processing authority.

(2) Any change in product formulation, ingredients, or treatments that are not already incorporated in a process schedule and that may adversely affect either the product heat penetration profile or sterilization value requirements shall be evaluated by the establishment's processing authority. If it is determined that any such change adversely affects the adequacy of the process schedule, the processing authority shall amend the process schedule accordingly.

(3) Complete records concerning all aspects of the development or determination of a process schedule, including any associated incubation tests, shall be made available by the establishment to the Program employee upon request.

(c) *Submittal of process information.* (1) Prior to the processing of canned product for distribution in commerce, the establishment shall provide the inspector at the establishment with a list of the process schedules (including alternate schedules) along with any additional applicable information, such as the retort come-up operating procedures and critical factors.

(2) Letters or other written communications from a processing authority recommending all process schedules shall be maintained on file by the establishment. Upon request by Program employees, the establishment shall make available such letters or written communications (or copies thereof). If critical factors are identified in the process schedule, the establishment shall provide the inspector with a copy of the procedures for measuring, controlling, and recording these factors, along with the frequency of such measurements, to ensure that the critical factors remain within the limits used to establish the process schedule. Once submitted, the process schedules and associated critical factors and the procedures for measuring (including the frequency), controlling, and recording of critical factors shall not be changed without the prior written submittal of the revised procedures (including supporting documentation) to the inspector at the establishment.

[Approved by the Office of Management and Budget under control number 0583–0015]

§ 318.303 Critical factors and the application of the process schedule.

Critical factors specified in the process schedule shall be measured, controlled and recorded by the establishment to ensure that these factors remain within the limits used to establish the process schedule. Examples of factors that are often critical to process schedule adequacy may include:

(a) *General.* (1) Maximum fill-in weight or drained weight;

(2) Arrangement of pieces in the container;

(3) Container orientation during thermal processing;

(4) Product formulation;

(5) Particle size;

(6) Maximum thickness for flexible, and to some extent semirigid containers during thermal processing;

(7) Maximum pH;

(8) Percent salt;

(9) Ingoing (or formulated) nitrite level (ppm);

(10) Maximum water activity; and

(11) Product consistency or viscosity.

(b) *Continuous rotary and batch agitating retorts.* (1) Minimum headspace; and

(2) Retort reel speed.

(c) *Hydrostatic retorts.* (1) Chain or conveyor speed.

(d) *Steam/air retorts.* (1) Steam/air ratio; and

(2) Heating medium flow rate.

§ 318.304 Operations in the thermal processing area.

(a) *Posting of processes.* Process schedules (or operating process schedules) for daily production, including minimum initial temperatures and operating procedures for thermal processing equipment, shall be posted in a conspicuous place near the thermal processing equipment. Alternatively, such information shall be available to the thermal processing system operator and the inspector.

(b) *Process indicators and retort traffic control.* A system for product traffic control shall be established to prevent product from bypassing the thermal processing operation. Each basket, crate or similar vehicle containing unprocessed product, or at least one visible container in each vehicle, shall be plainly and conspicuously marked with a heat sensitive indicator that will visually indicate whether such unit has been thermally processed. Exposed heat sensitive indicators attached to container vehicles shall be removed before such vehicles are refilled with unprocessed product. Container loading systems for crateless retorts shall be designed to prevent unprocessed product from bypassing the thermal processing operation.

(c) *Initial temperature.* The initial temperature of the contents of the coldest container to be processed shall be determined and recorded by the establishment at the time the processing cycle begins to assure that the temperature of the contents of every container to be processed is not lower than the minimum initial temperature specified in the process schedule. Thermal processing systems which subject the filled and sealed containers to water at any time before process timing begins shall be operated to assure that such water will not lower the temperature of the product below the minimum initial temperature specified in the process schedule.

(d) *Timing devices.* Devices used to time applicable thermal processing operation functions or events, such as process schedule time, come-up time and retort venting, shall be accurate to assure that all such functions or events are achieved. Pocket watches and wrist watches are not considered acceptable timing devices. Analog and digital clocks are considered acceptable. If such clocks do not display seconds, all required timed functions or events shall have at least a 1-minute safety factor over the specified thermal processing operation times. Temperature/time recording devices shall correspond within 15 minutes to the time of the day recorded on written records required by § 318.306.

(e) *Measurement of pH.* Unless other methods are approved by the Administrator, potentiometric methods using electronic instruments (pH meters) shall be used for making pH determinations when a maximum pH value is specified as a critical factor in a process schedule.

[Approved by Office of Management and Budget under control number 0583–0015]

§ 318.305 Equipment and procedures for heat processing systems.

(a) *Instruments and controls common to different thermal processing systems*—(1) *Indicating temperature devices.* Each retort shall be equipped with at least one indicating temperature device that measures the actual temperature within the retort. The indicating temperature device, not the temperature/time recording device, shall be used as the reference instrument for indicating the process temperature.

(i) *Mercury-in-glass thermometers.* A mercury-in-glass thermometer shall have divisions that are readable to 1F° (or 0.5C°) and whose scale contains not more than 17F°/inch (or 4.0C°/cm) of graduated scale. Each mercury-in-glass thermometer shall be tested for accuracy against a known accurate standard upon installation and at least once a year to ensure its accuracy. Records that specify the date, standard used, test method, and the person or testing authority performing the test shall be maintained on file by the establishment and made available to Program employees. A mercury-in-glass thermometer that has a divided mercury column or that cannot be adjusted to the standard shall be repaired and tested for accuracy before further use, or replaced.

(ii) *Other devices.* In lieu of mercury-in-glass thermometers, the Administrator, upon request, will consider other indicating temperature devices, such as resistance temperature detectors. Any such device that is approved shall, upon installation and at least once a year thereafter, be tested for accuracy against a known accurate standard. Records that specify the date, standard used, test method, and the person or testing authority performing the test shall be maintained on file by the establishment and made available to Program employees. Any such device which cannot be adjusted to the standard shall be replaced, or repaired and tested for accuracy before further use.

(2) *Temperature/time recording devices.* Each thermal processing system shall be equipped with at least one temperature/time recording device to provide a permanent record of temperatures within the thermal processing system. This recording device may be combined with the steam controller and may be a recording/controlling instrument. When compared to the known accurate indicating temperature device, the recording accuracy shall be equal to or better than 1F° (or 0.5C°) at the process temperature. The temperature recording chart should be adjusted to agree with, but shall never be higher than, the known accurate indicating temperature device. A means of preventing unauthorized changes in the adjustment shall be provided. For example, a lock or a notice from management posted at or near the recording device warning that only authorized persons are permitted to make adjustments, are satisfactory means for preventing unauthorized changes. Air-operated temperature controllers shall have adequate filter systems to ensure a supply of clean, dry air. The recorder timing mechanism shall be accurate.

(i) *Chart-type devices.* Devices using charts shall be used only with the correct chart. Each chart shall have a working scale of not more than 55F°/inch (or 12C°/cm) within a range of 20F° (or 11C°) of the process temperature. Chart graduations shall not exceed 2F degrees (or 1C degree) within a range of 10F degrees (or 5C degrees) of the process temperature. Multipoint plotting chart-type devices shall print temperature readings at intervals that will assure that the parameters of the process time and process temperature have been met. The frequency of recording should not exceed 1-minute intervals.

(ii) *Other devices.* In lieu of chart-type devices, the Administrator will consider for approval other recording devices upon request.

(3) *Steam controllers.* Each retort shall be equipped with an automatic steam controller to maintain the retort temperature. This may be a recording/controlling instrument when combined with a temperature/time recording device.

(4) *Air valves.* All air lines connected to retorts designed for pressure processing in steam shall be equipped with a globe valve or other equivalent-type valve or piping arrangement that will prevent leakage of air into the retort during the process cycle.

(5) *Water valves.* All retort water lines that are intended to be closed during a process cycle shall be equipped with a globe valve or other equivalent-type valve or piping arrangement that

will prevent leakage of water into the retort during the process cycle.

(b) *Pressure processing in steam*—(1) *Batch still retorts.* (i) The basic requirements and recommendations for indicating temperature devices and temperature/time recording devices are described in paragraphs (a) (1) and (2) of this section. Additionally, bulb sheaths or probes of indicating temperature devices and probes of temperature/time recording devices shall be installed either within the retort shell or in external wells attached to the retort. External wells shall be connected to the retort through at least a ¾ inch (1.9 cm) diameter opening and equipped with a 1/16 inch (1.6 mm) or larger bleeder opening so located as to provide a constant flow of steam past the length of the bulb or probe. The bleeder for external wells shall emit steam continuously during the entire thermal processing period.

(ii) Steam controllers are required as described under paragraph (a)(3) of this section.

(iii) *Steam inlet.* The steam inlet to each retort shall be large enough to provide steam for proper operation of the retort, and shall enter at a point to facilitate air removal during venting.

(iv) *Crate supports.* Vertical still retorts with bottom steam entry shall employ bottom retort crate supports. Baffle plates shall not be used in the bottom of retorts.

(v) *Steam spreader.* Perforated steam spreaders, if used, shall be maintained to ensure they are not blocked or otherwise inoperative. Horizontal still retorts shall be equipped with perforated steam spreaders that extend the full length of the retort unless the adequacy of another arrangement is documented by heat distribution data or other documentation from a processing authority. Such information shall be maintained on file by the establishment and made available to Program employees for review.

(vi) *Bleeders and condensate removal.* Bleeders, except those for external wells of temperature devices, shall have 1/8 inch (or 3 mm) or larger openings and shall be wide open during the entire process, including the come-up time. For horizontal still retorts, bleeders shall be located within approximately 1 foot (or 30 cm) of the outermost locations of containers at each end along the top of the retort. Additional bleeders shall be located not more than 8 feet (2.4 m) apart along the top. Bleeders may be installed at positions other than those specified above, as long as the establishment has heat distribution data or other documentation from the manufacturer or from a processing authority demonstrating that the bleeders accomplish removal of air and circulate the steam within the retort. This information shall be maintained on file by the establishment and made available to Program employees for review. All bleeders shall be arranged in a way that enables the retort operator to observe that they are functioning properly. Vertical retorts shall have at least one bleeder opening located in the portion of the retort opposite the steam inlet. All bleeders shall be arranged so that the retort operator can observe that they are functioning properly. In retorts having a steam inlet above the level of the lowest container, a bleeder shall be installed in the bottom of the retort to remove condensate. The condensate bleeder shall be so arranged that the retort operator can observe that it is functioning properly. The condensate bleeder shall be checked with sufficient frequency to ensure adequate removal of condensate. Visual checks should be performed at intervals of not more than 15 minutes and the results recorded. Intermittent condensate removal systems shall be equipped with an automatic alarm system that will serve as a continuous monitor of condensate bleeder functioning. The automatic alarm system shall be tested at the beginning of each shift for proper functioning and the results recorded. If the alarm system is not functioning properly, it must be repaired before the retort is used.

(vii) *Stacking equipment.*

(a) *Equipment for holding or stacking containers in retorts.* Crates, trays, gondolas, carts, and other vehicles for holding or stacking product containers in the retort shall be so constructed to ensure steam circulation during the venting, come-up, and process times. The bottom of each vehicle shall have perforations at least 1 inch (2.5 cm) in diameter on 2 inch (or 5 cm) centers or the equivalent unless the adequacy of another arrangement is documented by heat distribution data or other documentation from a processing authority and such information is maintained on file by the establishment and made available to Program employees for review.

(b) *Divider plates.* Whenever one or more divider plates are used between any two layers of containers or placed on the bottom of a retort vehicle, the establishment shall have on file documentation that the venting procedure allows the air to be removed from the retort before timing of the thermal process is started. Such documentation shall be in the form of heat distribution data or documentation from a processing authority. This information shall be made available to Program employees for review.

(viii) *Bleeder and vent mufflers.* If mufflers are used on bleeders or vent systems, the establishment shall have on file documentation that the mufflers do not impede the removal of air from the retort. Such documentation shall consist of either heat distribution data or documentation from the muffler manufacturer or from a processing authority. This information shall be made available to Program employees for review.

(ix) *Vents.*

(a) Vents shall be located in that portion of the retort opposite the steam inlet and shall be designed, installed, and operated in such a way that air is removed from the retort before timing of the thermal process is started. Vents shall be controlled by a gate, plug cock, or other full-flow valve which shall be fully opened to permit rapid removal of air from retorts during the venting period.

(b) Vents shall not be connected to a closed drain system without an atmospheric break in the line. Where a retort manifold connects several pipes from a single retort, the manifold shall be controlled by a gate, plug cock, or other full-flow valve and the manifold shall be of a size such that the cross-sectional area of the manifold is larger than the total cross-sectional area of all connecting vents. The discharge shall not be connected to a closed drain without an atmospheric break in the line. A manifold header connecting vents or manifolds from several still retorts shall lead to the atmosphere. The manifold header shall not be controlled by a valve and shall be of a size such that the cross-sectional area is at least equal to the total cross-sectional area of all connecting retort manifold pipes from the maximum number of retorts to be vented simultaneously.

(c) Some typical installations and operating procedures are described below. Other retort installations, vent piping arrangements, operating procedures or auxiliary equipment such as divider plates may be used provided there is documentation that the air is removed from the retort before the process is started. Such documentation shall be in the form of heat distribution data or other documentation from the equipment manufacturer or processing authority. This information shall be maintained on file by the establishment and made available to Program employees for review.

(d) For crateless retort installations, the establishment shall have heat distribution data or other documentation from the equipment manufacturer or from a processing authority that demonstrates that the venting procedure used accomplishes the removal of air and condensate. This information shall be maintained on file by the establishment and made available to Program employees for review.

(e) Examples of typical installations and operating procedures that comply with the requirements of this section are as follows:

(1) Venting horizontal retorts.

(i) Venting through multiple 1 inch (2.5 cm) vents discharging directly to the atmosphere.

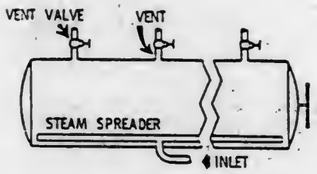


Figure 1.

Specifications (Figure 1): One, 1-inch (2.5 cm) vent for every 5 feet (1.5 m) of retort length, equipped with a gate, plug cock, or other full-flow valve and discharging to atmosphere. The end vents shall not be more than 2½ feet (or 75 cm) from ends of retort. *Venting method (Figure 1):* Vent valves shall be wide open for at least 5 minutes and to at least 225 °F (or 107 °C), or at least 7 minutes and to at least 220 °F (or 104.5 °C).

(ii) Venting through multiple 1 inch (2.5 cm) vents discharging through a manifold to the atmosphere.

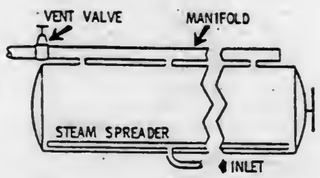


Figure 2.

Specifications (Figure 2): One, 1-inch (2.5 cm) vent for every 5 feet (1.5 m) of retort length; vents not over 2½ feet (or 75 cm) from ends of retort; size of manifold for retorts less than 15 feet (4.6 m) in length, 2½ inches (6.4 cm), and for retorts 15 feet (4.6 m) and over in length, 3 inches (7.6 cm).

Venting method (Figure 2): The manifold vent gate, plug cock, or other full-flow valve shall be wide open for at least 6 minutes and to at least 225 °F (or 107 °C) or for at least 8 minutes and to at least 220 °F (or 104.5 °C).

(iii) Venting through water spreaders.

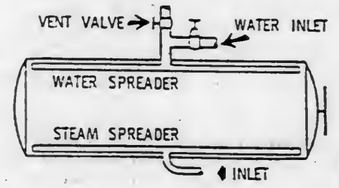


Figure 3.

Specifications (Figure 3): Size of vent and vent valve. For retorts less than 15 feet (4.6 m) in length, 2 inches (or 5 cm); for retorts 15 feet (4.6 m) and over in length, 2½ inches (6.4 cm).

Size of water spreader (Figure 3): For retorts less than 15 feet (4.6 m) in length, 1½ inches (3.8 cm); for retorts 15 feet (4.6 m) and over in length, 2 inches (or 5 cm). The number of holes shall be such that their total cross-sectional area is equal to the cross-sectional area of the vent pipe inlet.

Venting method (Figure 3): The gate, plug cock, or other full-flow valve on the water spreader vent shall be wide open for at least 5 minutes and to at least 225 °F (or 107 °C), or for at least 7 minutes and to at least 220 °F (or 104.5 °C).

(iv) Venting through a single 2½ inch (6.4 cm) top vent for retorts not exceeding 15 feet (4.6 m) in length.

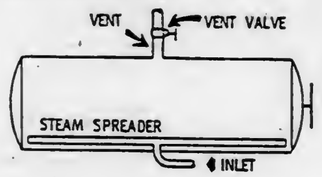


Figure 4.

Specifications (Figure 4): A 2½ inch (6.4 cm) vent equipped with a 2½ inch (6.4 cm) gate, plug cock, or other full-flow valve and located within 2 feet (61 cm) of the center of the retort.

Venting method (Figure 4): The vent valve shall be wide open for at least 4 minutes and to at least 220 °F (or 104.5 °C).

(2) Venting vertical retorts.

(i) Venting through a 1½ inch (3.8 cm) overflow.

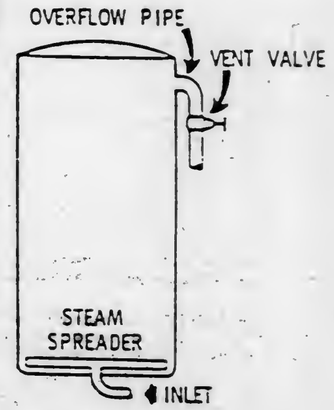
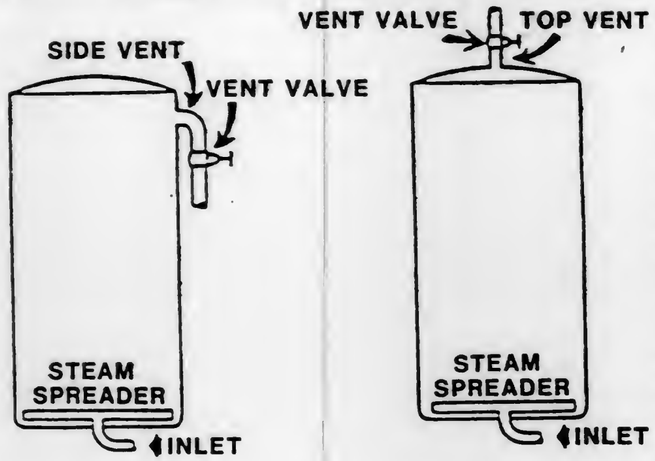


Figure 5.

Specifications (Figure 5): A 1½ inch (3.8 cm) overflow pipe equipped with a 1½ inch (3.8 cm) gate, plug cock, or other full-flow valve and with not more than 6 feet (1.8 m) of 1½ inch (3.8 cm) pipe beyond the valve before a break to the atmosphere or to a manifold header.

Venting method (Figure 5): The vent valve shall be wide open for at least 4 minutes and to at least 216 °F (or 103.5 °C), or for at least 5 minutes and to at least 215 °F (or 101.5 °C).

(ii) Venting through a single 1 inch (2.5 cm) side or top vent.



Specificotions (Figure 6 or 7): A 1 inch (2.5 cm) vent in lid or top side, equipped with a gate, plug cock, or other full-flow valve and discharging directly into the atmosphere or to a manifold header.

Venting method (Figure 6 or 7): The vent valve shall be wide open for at least 5 minutes and to at least 230 °F (110 °C), or for at least 7 minutes and to at least 220 °F (or 104.5 °C).

(2) *Batch agitating retorts.* (i) The basic requirements for indicating temperature devices and temperature/time recording devices are described in paragraphs (a) (1) and (2) of this section. Additionally, bulb sheaths or probes of indicating temperature devices and probes of temperature/time recording devices shall be installed either within the retort shell or in external wells attached to the retort. External wells shall be connected to the retort through at least a ¾ inch (1.9 cm) diameter opening and equipped with a 1/16 (1.6 mm) or larger bleeder opening so located as to provide a constant flow of steam past the length of the bulbs or probes. The bleeder for external wells shall emit steam continuously during the entire thermal processing period.

(ii) Steam controllers are required as described in paragraph (a)(3) of this section.

(iii) *Steam inlet.* The steam inlet to each retort shall be large enough to provide steam for proper operation of the retort and shall enter at a point(s) to facilitate air removal during venting.

(iv) *Bleeders.* Bleeders, except those for external wells of temperature devices, shall be ⅛ inch (or 3 mm) or larger and shall be wide open during the entire process including the come-up time. Bleeders shall be located within approximately 1 foot (or 30 cm) of the outermost location of containers, at each end along the top of the retort. Additional bleeders shall be located not more than 8 feet (2.4 m) apart along the top. Bleeders may be installed at positions other than those specified above, as long as the establishment has heat distribution data or other documentation from the manufacturer or from a processing authority that the bleeders accomplish removal of air and circulate the steam within the retort. This information shall be maintained on file by the establishment and made available to Program employees for review. All bleeders shall be arranged in a way that enables the retort operator to observe that they are functioning properly.

(v) *Venting and condensate removal.* The air in the retort shall be removed before processing is started. Heat distribution data or other documentation from the manufacturer or from the processing authority who developed the venting procedure shall be kept on file by the establishment and made available to Program employees for review. At the time the steam is turned on, the drain shall be opened to remove steam condensate from the retort. A bleeder shall be installed in the bottom of the retort to remove condensate during retort operation. The condensate bleeder shall be so arranged that the retort operator can observe that it is functioning properly. The condensate bleeder shall be checked with sufficient frequency to ensure adequate removal of condensate. Visual checks should be performed at intervals of not more than 15 minutes and the results recorded. Intermittent condensate removal systems shall be equipped with an automatic alarm system that will serve as a continuous monitor of condensate bleeder functioning. The automatic alarm system shall be tested at the beginning of each shift for proper functioning and the results recorded. If the alarm system is not functioning properly, it must be repaired before the retort is used.

(vi) *Retort or reel speed timing.* The retort or reel speed shall be checked before process timing begins and, if needed, adjusted as specified in the process schedule. In addition, the rotational speed shall be determined and recorded at least once during process timing of each retort load processed. Alternatively, a recording tachometer can be used to provide a continuous record of the speed. The accuracy of the recording tachometer shall be determined and recorded at least once per shift by checking the retort or reel speed using an accurate stopwatch. A means of preventing unauthorized speed changes on retorts shall be provided. For example, a lock or a notice from management posted at or near the speed adjustment device warning that only authorized persons are permitted to make adjustments are satisfactory means of preventing unauthorized changes.

(vii) *Bleeder and vent mufflers.* If mufflers are used on bleeders or vent systems, the establishment shall have documentation that the mufflers do not impede the removal of air from the retort. Such documentation shall consist of either heat distribution data or documentation from the muffler manufacturer or from a processing authority. This information shall be maintained on file by the establishment and made available to Program employees for review.

(3) *Continuous rotary retorts.* (i) The basic requirements for indicating temperature devices and temperature/time recording devices are described in paragraphs (a) (1) and (2) of this section. Additionally, bulb sheaths or probes of indicating temperature devices and probes of temperature/time recording devices shall be installed either within the retort shell or in external wells attached to the retort. External wells shall be connected to the retort through at least a ¾ inch (1.9 cm) diameter opening and equipped with a 1/16 inch (1.6 mm) or larger bleeder opening so located as to provide a constant flow of steam past the length of the bulbs or probes. The bleeder for external wells shall emit steam continuously during the entire thermal processing period.

(ii) Steam controllers are required as described in paragraph (a)(3) of this section.

(iii) *Steam inlet.* The steam inlet to each retort shall be large enough to provide steam for proper operation of the retort, and shall enter at a point(s) to facilitate air removal during venting.

(iv) *Bleeders.* Bleeders, except those for external wells of temperature devices, shall be ⅛ inch (3.2 mm) or larger and shall be wide open during the entire process, including the come-up time. Bleeders shall be located within approximately 1 foot (or 30 cm) of the outermost location of containers at each end along the top of the retort. Additional bleeders shall be located not more than 8 feet (2.4 m) apart along the top of the retort. Bleeders may be installed at positions other than those specified above, as long as the establishment has heat distribution data or other documentation from the manufacturer or a processing authority that the bleeders accomplish removal of air and circulate the steam within the retort. This information shall be maintained on file by the establishment and made available to Program employees for review. All bleeders shall be arranged so that the retort operator can observe that they are functioning properly.

(v) *Venting and condensate removal.* The air in the retort shall be removed before processing is started. Heat distribution data or other documentation from the manufacturer or from the processing authority who developed the venting procedure shall be kept on file by the establishment and made available to Program employees for review. At the time the steam is turned on, the drain shall be opened to remove steam condensate from the retort. A bleeder shall be installed in the bottom of the shell to remove condensate during the retort operation. The condensate bleeder shall be so arranged that the retort operator can observe that it is functioning properly. The condensate bleeder shall be checked with sufficient frequency to ensure adequate removal of condensate. Visual checks should be performed at intervals of not more than 15 minutes and the results recorded. Intermittent condensate removal systems shall be equipped with an automatic alarm system that will serve as a continuous monitor of condensate bleeder functioning. The automatic alarm system shall be tested at the beginning of each shift for proper functioning and the results recorded. If the alarm system is not functioning properly, it must be repaired before the retort is used.

(vi) *Retort speed timing.* The rotational speed of the retort shall be specified in the process schedule. The speed shall be adjusted as specified, and recorded by the establishment when the retort is started, and checked and recorded at intervals not to exceed 4 hours to ensure that the correct retort speed is maintained. Alternatively, a recording tachometer may be used to provide a continuous record of the speed. If a recording tachometer is used, the speed shall be manually checked against an accurate stopwatch at least once per shift and the results recorded. A means of preventing unauthorized speed changes on retorts shall be provided. For example, a lock or a notice from management posted at or near the speed adjustment device warning that only authorized persons are permitted to make adjustments are satisfactory means of preventing unauthorized changes.

(vii) *Bleeders and vent mufflers.* If mufflers are used on bleeders or vent systems, the establishment shall have documentation that the mufflers do not impede the removal of air from the retort. Such documentation shall consist of either heat distribution data or other documentation from the muffler manufacturer or from a processing authority. This information shall be maintained on file by the establishment and made available to Program employees for review. All bleeders shall be arranged so that the retort operator can observe that they are functioning properly.

(v) *Venting and condensate removal.* The air in the retort shall be removed before processing is started. Heat distribution data or other documentation from the manufacturer or from the processing authority who developed the venting procedure shall be kept on file by the establishment and made available to Program employees for review. At the time the steam is turned on, the drain shall be opened to remove steam condensate from the retort. A bleeder shall be installed in the bottom of the shell to remove condensate during the retort operation. The condensate bleeder shall be so arranged that the retort operator can observe that it is functioning properly. The condensate bleeder shall be checked with sufficient frequency to ensure adequate removal of condensate. Visual checks should be performed at intervals of not more than 15 minutes and the results recorded. Intermittent condensate removal systems shall be equipped with an automatic alarm system that will serve as a continuous monitor of condensate bleeder functioning. The automatic alarm system shall be tested at the beginning of each shift for proper functioning and the results recorded. If the alarm system is not functioning properly, it must be repaired before the retort is used.

(vi) *Retort speed timing.* The rotational speed of the retort shall be specified in the process schedule. The speed shall be adjusted as specified, and recorded by the establishment when the retort is started, and checked and recorded at intervals not to exceed 4 hours to ensure that the correct retort speed is maintained. Alternatively, a recording tachometer may be used to provide a continuous record of the speed. If a recording tachometer is used, the speed shall be manually checked against an accurate stopwatch at least once per shift and the results recorded. A means of preventing unauthorized speed changes on retorts shall be provided. For example, a lock or a notice from management posted at or near the speed adjustment device warning that only authorized persons are permitted to make adjustments are satisfactory means of preventing unauthorized changes.

(vii) *Bleeders and vent mufflers.* If mufflers are used on bleeders or vent systems, the establishment shall have documentation that the mufflers do not impede the removal of air from the retort. Such documentation shall consist of either heat distribution data or other documentation from the muffler manufacturer or from a processing authority. This information shall be maintained on file by the establishment and made available to Program employees for review.

(4) *Hydrostatic retorts.* (i) The basic requirements for indicating temperature devices and temperature/time recording devices are described in paragraphs (a) (1) and (2) of this section. Additionally, indicating temperature devices shall be located in the steam dome near the steam/water interface. Where the process schedule specifies maintenance of particular water temperatures in the hydrostatic water legs, at least one indicating temperature device shall be located in each hydrostatic water leg so that it can accurately measure water temperature and be easily read. The temperature/time recorder probe shall be installed either within the steam dome or in a well attached to the dome. Each probe shall have a 1/16 inch (1.6 mm) or larger bleeder opening which emits steam continuously during the processing period. Additional temperature/time recorder probes shall be installed in the hydrostatic water legs if the process schedule specifies maintenance of particular temperatures in these water legs.

(ii) Steam controllers are required as described in paragraph (a)(3) of this section.

(iii) *Steam inlet.* The steam inlets shall be large enough to provide steam for proper operation of the retort.

(iv) *Bleeders.* Bleeder openings ¼ inch (or 6 mm) or larger shall be located in the steam chamber(s) opposite the point of steam entry. Bleeders shall be wide open and shall emit steam continuously during the entire process, including the come-up time. All bleeders shall be arranged in such a way that the operator can observe that they are functioning properly.

(v) *Venting.* Before the start of processing operations, the retort steam chamber(s) shall be vented to ensure removal of air. Heat distribution data or other documentation from the manufacturer or from a processing authority demonstrating that the air is removed from the retort prior to processing shall be kept on file at the establishment and made available to Program employees for review.

(vi) *Conveyor speed.* The conveyor speed shall be calculated to obtain the required process time and recorded by the establishment when the retort is started. The speed shall be checked and recorded at intervals not to exceed 4 hours to ensure that the correct conveyor speed is maintained. A recording device may be used to provide a continuous record of the conveyor speed. When a recording device is used, the speed shall be manually checked against an accurate stopwatch at least once per shift by the establishment. A means of preventing unauthorized speed changes of the conveyor shall be provided. For example, a lock or a notice from management posted at or near the speed adjustment device warning that only authorized persons are permitted to make adjustments are satisfactory means of preventing unauthorized changes.

(vii) *Bleeders and vent mufflers.* If mufflers are used on bleeders or vent systems, the establishment shall have documentation that the muffler do not impede the removal of air from the retort. Such documentation shall consist of either heat distribution data or other documentation from the muffler manufacturer or from a processing authority. This information shall be maintained on file by the establishment and made available to Program employees for review.

(c) *Pressure processing in water*—(1) *Batch still retorts.* (i) The basic requirements for indicating temperature devices and temperature/time recording devices are described in paragraphs

(a)(1) and (2) of this section. Additionally, bulbs or probes of indicating temperature devices shall be located in such a position that they are beneath the surface of the water throughout the process. On horizontal retorts, the indicating temperature device bulb or probe shall be inserted directly into the retort shell. In both vertical and horizontal retorts, the indicating temperature device bulb or probe shall extend directly into the water a minimum of 2 inches (or 5 cm) without a separable well or sleeve. In vertical retorts equipped with a recorder/controller, the controller probe shall be located at the bottom of the retort below the lowest crate rest in such a position that the steam does not strike it directly. In horizontal retorts so equipped, the controller probe shall be located between the water surface and the horizontal plane passing through the center of the retort so that there is no opportunity for direct steam impingement on the controller probe. Air-operated temperature controllers shall have filter systems to ensure a supply of clean, dry air.

(ii) *Pressure recording device.* Each retort shall be equipped with a pressure recording device which may be combined with a pressure controller.

(iii) *Steam controllers* are required as described in paragraph (a)(3) of this section.

(iv) *Heat distribution.* Heat distribution data or other documentation from the equipment manufacturer or a processing authority demonstrating uniform heat distribution within the retort shall be kept on file at the establishment and made available to Program employees for review.

(v) *Crate supports.* A bottom crate support shall be used in vertical retorts. Baffle plates shall not be used in the bottom of the retort.

(vi) *Stacking equipment.* For filled flexible containers and, where applicable, semirigid containers, stacking equipment shall be designed to ensure that the thickness of the filled containers does not exceed that specified in the process schedule and that the containers do not become displaced and overlap or rest on one another during the thermal process.

(vii) *Drain valve.* A nonclogging, water-tight drain valve shall be used. Screens shall be installed over all drain openings.

(viii) *Water level.* There shall be a means of determining the water level in the retort during operation (i.e., by using a gauge, electronic sensor, or sight glass indicator). For retorts requiring complete immersion of containers, water shall cover the top layer of containers during the entire come-up time and thermal processing periods and should cover the top layer of containers during cooling. For retorts using cascading water or water sprays, the water level shall be maintained within the range specified by the retort manufacturer or processing authority during the entire come-up, thermal processing, and cooling periods. A means to ensure that water circulation continues as specified throughout the come-up, thermal processing, and cooling periods shall be provided. The retort operator shall check and record the water level at intervals to ensure it meets the specified processing parameters.

(ix) *Air supply and controls.* In both horizontal and vertical still retorts, a means shall be provided for introducing compressed air or steam at the pressure required to maintain container integrity. Compressed air and steam entry shall be controlled by an automatic pressure control unit. A nonreturn valve shall be provided in the air supply line to prevent water from entering the system. Overriding air or steam pressure shall be maintained continuously during the come-up, thermal processing, and cooling periods. If air is used to promote circulation, it shall be introduced into the steam line at a point between the retort and the steam control valve at the bottom of the retort. The adequacy of the air circulation for maintaining uniform heat distribution within the retort shall be documented by heat distribution data or other documentation from a processing authority, and such data shall be maintained on file by the establishment and made available to Program employees for review.

(x) *Water recirculation.* When a water recirculation system is used for heat distribution, the water shall be drawn from the bottom of the retort through a suction manifold and discharged through a spreader that extends the length or circumference of the top of the retort. The holes in the water spreader shall be uniformly distributed. The suction outlets shall be protected with screens to keep debris from entering the recirculation system. The pump shall be equipped with a pilot light or a similar device to warn the operator when it is not running, and with a bleeder to remove air when starting operations. Alternatively, a flow-meter alarm system can be used to ensure proper water circulation. The adequacy of water circulation for maintaining uniform heat distribution within the retort shall be documented by heat distribution or other documentation from a processing authority and such data shall be maintained on file by the establishment and made available to Program employees for review. Alternative methods for recirculation of water in the retort may be used, provided there is documentation in the form of heat distribution data or other documentation from a processing authority maintained on file by the establishment and made available to Program employees for review.

(xi) *Cooling water entry.* In retorts for processing product packed in glass jars, the incoming cooling water should not directly strike the jars, in order to minimize glass breakage by thermal shock.

(2) *Batch agitating retorts.* (i) The basic requirements and recommendations for indicating temperature devices and temperature/time recording devices are described in paragraphs (a) (1) and (2) of this section. Additionally, the indicating temperature device bulb or probe shall extend directly into the water without a separable well or sleeve. The recorder/controller probe shall be located between the water surface and the horizontal plane passing through the center of the retort so that there is no opportunity for steam to directly strike the controller bulb or probe.

(ii) *Pressure recording device.* Each retort shall be equipped with a pressure recording device which may be combined with a pressure controller.

(iii) Steam controllers are required as described in paragraph (a)(3) of this section.

(iv) *Heat distribution.* Heat distribution data or other documentation from the equipment manufacturer or a processing authority shall be kept on file by the establishment and made available to Program employees for review.

(v) *Stacking equipment.* All devices used for holding product containers (e.g., crates, trays, divider plates) shall be so constructed to allow the water to circulate around the containers during the come-up and thermal process periods.

(vi) *Drain valve.* A nonclogging, water-tight drain valve shall be used. Screens shall be installed over all drain openings.

(vii) *Water level.* There shall be a means of determining the water level in the retort during operation (i.e., by using a gauge, electronic sensor, or sight glass indicator). Water shall completely cover all containers during the entire come-up, thermal processing, and cooling periods. A means to ensure that water circulation continues as specified throughout the come-up, thermal processing, and cooling periods shall be provided. The retort operator shall check and record the adequacy of the water level with sufficient frequency to ensure it meets the specified processing parameters.

(viii) *Air supply and controls.* Retorts shall be provided with a means for introducing compressed air or steam at the pressure required to maintain container integrity. Compressed air and steam entry shall be controlled by an automatic pressure control unit. A nonreturn valve shall be provided in the air supply line to prevent water from entering the system. Overriding air or steam pressure shall be maintained continuously during the come-up, thermal processing, and cooling periods. If air is used to promote circulation, it shall be introduced into the steam line at a point between the retort and the steam control valve at the bottom of the retort. The adequacy of the air circulation for maintaining uniform heat distribution within the retort shall be documented by heat distribution data or other documentation from a processing authority, and such data shall be maintained on file by the establishment and made available to Program employees for review.

(ix) *Retort or reel speed timing.* The retort or reel speed timing shall be checked before process timing begins and, if needed, adjusted as specified in the process schedule. In addition, the rotational speed shall be determined and recorded at least once during process timing of each retort load processed. Alternatively, a recording tachometer can be used to provide a continuous record of the speed. The accuracy of the recording tachometer shall be determined and recorded at least once per shift by the establishment by checking the retort or reel speed using an accurate stopwatch. A means of preventing unauthorized speed changes on retorts shall be provided. For example, a lock or a notice from management posted at or near the speed adjustment device warning that only authorized persons are permitted to make adjustments are satisfactory means of preventing unauthorized changes.

(x) *Water recirculation.* If a water recirculation system is used for heat distribution, it shall be installed in such a manner that water will be drawn from the bottom of the retort through a suction manifold and discharged through a spreader which extends the length of the top of the retort. The holes in the water spreader shall be uniformly distributed. The suction outlets shall be protected with screens to keep debris from entering the recirculation system. The pump shall be equipped with a pilot light or a similar device to warn the operator when it is not running and with a bleeder to remove air when starting operations. Alternatively, a flow-meter alarm system can be used to ensure proper water circulation. The adequacy of water circulation for maintaining uniform heat distribution within the retort shall be documented by heat distribution data or other documentation from a processing authority, and such data shall be maintained on file by the establishment and made available to Program employees for review. Alternative methods for recirculation of water in the retort may be used provided there is documentation in the form of heat distribution data or other documentation from a processing authority maintained on file by the establishment and made available to Program employees for review.

(xi) *Cooling water entry.* In retorts for processing product packed in glass jars, the incoming cooling water should not directly strike the jars, in order to minimize glass breakage by thermal shock.

(d) *Pressure processing with steam/air mixtures in batch retorts* (1) The basic requirements for indicating temperature devices and temperature/time recording devices are described in paragraphs (a) (1) and (2) of this section. Additionally, bulb sheaths or probes for indicating temperature devices and temperature/time recording devices or controller probes shall be inserted directly into the retort shell in such a position that steam does not strike them directly.

(2) Steam controllers are required as described in paragraph (a)(3) of this section.

(3) *Recording pressure controller.* A recording pressure controller shall be used to control the air inlet and the steam/air mixture outlet.

(4) *Circulation of steam/air mixtures.* A means shall be provided for the circulation of the steam/air mixture to prevent formation of low-temperature pockets. The efficiency of the circulation system shall be documented by heat distribution data or other documentation from a processing authority, and such data shall be maintained on file by the establishment and made available to Program employees for review. The circulation system shall be checked to ensure its proper functioning and shall be equipped with a pilot light or a similar device to warn the operator when it is not functioning. Because of the variety of existing designs, reference shall be made to the equipment manufacturer for details of installation, operation, and control.

(5) The Administrator shall be notified immediately by the official establishment of any such system in use or placed into use on or after the effective date of this rule.

(e) *Atmospheric cookers*—(1) *Temperature/time recording device.* Each atmospheric cooker (e.g., hot water bath) shall be equipped with at least one temperature/time recording device in accordance with the basic requirements described in paragraph (a)(2) of this section.

(2) *Heat distribution.* Each atmospheric cooker shall be equipped and operated to ensure uniform heat distribution throughout the processing system during the thermal process. Heat distribution data or other documentation from the manufacturer or a processing authority demonstrating uniform heat distribution within the cooker shall be kept on file by the establishment and made available to Program employees for review.

(f) *Other systems* All other systems not specifically delineated in this section and used for the thermal processing of canned product will be evaluated on a case-by-case basis by the Adminstrator. Systems will be approved if they are found to conform to the applicable requirements of this section and to produce shelf stable products consistently and uniformly.

(g) *Equipment maintenance* (1) Upon installation, all instrumentation and controls shall be checked by the establishment for proper functioning and accuracy and, thereafter, at any time their functioning or accuracy is suspect.

(2) At least once a year each thermal processing system shall be examined by an individual not directly involved in daily operations to ensure the proper functioning of the system as well as all auxiliary equipment and instrumentation. In addition, each thermal processing system should be examined before the resumption of operation following an extended shutdown.

(3) Air and water valves that are intended to be closed during thermal processing shall be checked by the establishment for leaks. Defective valves shall be repaired or replaced as needed.

(4) Vent and bleeder mufflers shall be checked and maintained or replaced by the establishment to prevent any reduction in vent or bleeder efficiency.

(5) When water spreaders are used for venting, a maintenance schedule shall be developed and implemented to assure that the holes are maintained at their original size.

(6) Records shall be kept on all maintenance items that could affect the adequacy of the thermal process. Records shall include the date and type of maintenance performed and the person conducting the maintenance.

(h) *Container cooling and cooling water* (1) Potable water shall be used for cooling except as provided for in paragraphs (h) (2) and (3) of this section.

(2) Cooling canal water shall be chlorinated or treated with a chemical approved by the Administrator as having a bactericidal effect equivalent to chlorination. There shall be a measurable residual of the sanitizer in the water at the discharge point of the canal. Cooling canals shall be cleaned and replenished with potable water to prevent the buildup of organic matter and other materials.

(3) Container cooling waters that are recycled or reused shall be handled in systems that are so designed, operated, and maintained so there is no buildup of microorganisms, organic matter, and other materials in the systems and in the waters. System equipment, such as pipelines, holding tanks and cooling towers, shall be constructed and installed so that they can be cleaned and inspected. In addition, the establishment shall maintain, and make available to Program employees for review, information on at least the following:

(i) System design and construction;

(ii) System operation including the rates of renewal with fresh, potable water and the means for treating the water so that there is a measurable residual of an acceptable sanitizer, per paragraph (h)(2) of this section, in the water at the point where the water exits the container cooling vessel;

(iii) System maintenance including procedures for the periodic cleaning and sanitizing of the entire system; and

(iv) Water quality standards, such as microbiological, chemical and physical, monitoring procedures including the frequency and site(s) of sampling, and the corrective actions taken when water quality standards are not met.

(i) *Post-process handling of containers* Containers shall be handled in a manner that will prevent damage to the hermetic seal area. All worn and frayed belting, can retarders, cushions, and the like shall be replaced with nonporous materials. To minimize container abrasions, particularly in the seal area, containers should not remain stationary on moving conveyors. All post-process container handling equipment should be kept clean so there is no buildup of microorganisms on surfaces in contact with the containers.

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§ 318.306 Processing and production records.

At least the following processing and production information shall be recorded by the establishment: date of production; product name and style; container code; container size and type; and the process schedule, including the minimum initial temperature. Measurements made to satisfy the requirements of § 318.303 regarding the control of critical factors shall be recorded. In addition, where applicable, the following information and data shall also be recorded:

(a) *Processing in steam* (1) *Batch still retorts.* For each retort batch, record the retort number or other designation, the approximate number of containers or the number of retort crates per retort load, product initial temperature, time steam on, the time and temperature vent closed, the start of process timing, time steam off, and the actual processing time. The indicating temperature device and the temperature recorder shall be read at the same time at least once during process timing and the observed temperatures recorded.

(2) *Batch agitating retorts.* In addition to recording the information required for batch, still steam retorts in paragraph (a)(1) of this section, record the functioning of the condensate bleeder(s) and the retort or reel speed.

(3) *Continuous rotary retorts.* Record the retort system number, the approximate total number of containers retorted, product initial temperature, time steam on, the time and temperature vent closed, time process temperature reached, the time the first can enters and the time the last can exits the retort. The retort or reel speed shall be determined and recorded at intervals not to exceed 4 hours. Readings of the indicating temperature device(s) and temperature recorder(s) shall be made and recorded at the time the first container enters the retort and thereafter with sufficient frequency to ensure compliance with the process schedule. These observations should be made and recorded at intervals not exceeding 30 minutes of continuous retort operation. Functioning of the condensate bleeder(s) shall be observed and recorded at the time the first container enters the retort and thereafter as specified in § 318.305(b)(3)(v).

(4) *Hydrostatic retorts.* Record the retort system number, the approximate total number of containers retorted, product initial temperature, time steam on, the time and temperature vent(s) closed, time process temperature reached, time first containers enter the retort, time last containers exit the retort, and, if specified in the process schedule, measurements of temperatures in the hydrostatic water legs. Readings of the temperature indicating device, which is located in the steam/water interface, and the temperature recording device shall be observed and the temperatures recorded at the time the first containers enter the steam dome. Thereafter, these instruments shall be read and the temperatures recorded with sufficient frequency to ensure compliance with the temperature specified in the process schedule and should be made at least every hour of continuous retort operation. Container conveyor speed, and for agitating hydrostatic retorts, the rotative chain speed, shall be determined and recorded at intervals of sufficient frequency to ensure compliance with the process schedule and should be performed at least every 4 hours.

(b) *Processing in water*—(1) *Batch still retorts.* For each retort batch, record the retort number or other designation, the approximate number of containers or number of retort crates per retort load, product initial temperature, time steam on, the start of process timing, water level, water recirculation rate (if critical), overriding pressure maintained, time steam off, and actual processing time. The indicating temperature device and the temperature recorder shall be read at the same time at least once during process timing and the observed temperatures recorded.

(2) *Batch agitating retorts.* In addition to recording the information required in paragraph (b)(1) of this section, record the retort or reel speed.

(c) *Processing in steam/air mixtures.* For each retort batch, record the retort number or other designation, the approximate number of containers or number of retort crates per retort load, product initial temperature, time steam on, venting procedure, if applicable, the start of process timing, maintenance of circulation of the steam/air mixture, air flow rate or forced recirculation flow rate (if critical), overriding pressure maintained, time steam off, and actual processing time. The indicating temperature device and the temperature recorder shall be read at the same time at least once during process timing and the observed temperatures recorded.

(d) *Atmospheric cookers*—(1) *Batch-type systems.* For each cooker batch, record the cooker number or other designation and the approximate number of containers. In addition, record all critical factors of the process schedule such as cooker temperature, initial temperature, the time the thermal process cycle begins and ends, hold time, and the final internal product temperature.

(2) *Continuous-type systems.* Record the cooker number or other designation, the time the first containers enter and the last containers exit a cooker, and the approximate total number of containers processed. In addition, record all critical factors of the process schedule such as the initial temperature, cooker speed, and final internal product temperature.

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§ 318.307 Record review and maintenance.

(a) *Process records.* Charts from temperature/time recording devices shall be identified by production date, container code, processing vessel number or other designation, and other data as necessary to enable correlation with the records required in § 318.306. Each entry on a record shall be made at the time the specific event occurs, and the recording individual shall sign or initial each record form. No later than 1 working day after the actual process, the establishment shall review all processing and production records to ensure completeness and to determine if all product received the process schedule. All records, including the temperature/time recorder charts and critical factor control records, shall be signed or initialed and dated by the person conducting the review. All processing and production records required in this subpart shall be made available to Program employees for review.

(b) *Automoted process monitoring and recordkeeping.* When requested by an establishment, the Administrator will consider the approval of automated process monitoring and recordkeeping systems. An approved system, alone or in combination with written records, shall be designed and operated in a manner which will ensure compliance with the applicable requirements of § 318.306.

(c) *Container closure records.* Written records of all container closure examinations shall specify the container code, the date and time of container closure examination, the measurement(s) obtained, and any corrective actions taken. Records shall be signed or initialed by the container closure technician and shall be reviewed and signed by the establishment within 1 working day after the actual production to ensure that the records are complete and that the closing operations have been properly controlled. All container closure examination records required in this subpart shall be made available to Program employees for review.

(d) *Distribution of product.* Records shall be maintained by the establishment identifying initial distribution of the finished product to facilitate, if necessary, the segregation of specific production lots that may have been contaminated or are otherwise unsound for their intended use.

(e) *Retention of records.* Copies of all processing and production records required in § 318.306 shall be retained for no less than 1 year at the establishment, and for an additional 2 years at the establishment or other location from which the records can be made available to Program employees within 3 working days.

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§ 318.308 Deviations in processing.

(a) Whenever the actual process is less than the process schedule or when any critical factor does not comply with the requirements for that factor as specified in the process schedule, it shall be considered a deviation in processing.

(b) Deviations in processing (or process deviations) shall be handled under an approved quality control program as provided in paragraph (c) of this section or shall be handled in accordance with paragraph (d) of this section.

(c) Any partial quality control program or any portion of a total quality control system for handling process deviations shall be prepared and submitted to the Administrator for approval in accordance with § 318.4.

(d) Handling process deviations without an approved quality control program. (1) *Deviations identified in-process.* If a deviation is noted at any time before the completion of the intended process schedule, the establishment shall:

(i) Immediately reprocess the product using the full process schedule; or

(ii) Use an appropriate alternate process schedule provided such a process schedule has been established in accordance with § 318.302 (a) and (b) and is filed with the inspector in accordance with § 318.302(c); or

(iii) Hold the product involved and have the deviation evaluated by a processing authority to assess the safety and stability of the product. Upon completion of the evaluation, the establishment shall provide the inspector the following:

(*a*) A complete description of the deviation along with all necessary supporting documentation;

(*b*) A copy of the evaluation report; and

(*c*) A description of any product disposition actions, either taken or proposed.

(iv) Product handled in accordance with paragraph (d)(1)(iii) of this section shall not be shipped from the establishment until the Program has reviewed all of the information submitted and approved the product disposition actions.

(v) If an alternate process schedule is used that is not on file with the inspector or if an alternate process schedule is immediately calculated and used, the product shall be set aside for further evaluation in accordance with paragraphs (d)(1) (iii) and (iv) of this section.

(vi) When a deviation occurs in a continuous rotary retort, the product shall be handled in accordance with paragraphs (d)(1) (iii) and (iv) of this section or in accordance with the following procedures:

(*a*) Emergency stops.

(*1*) When retort jams or breakdowns occur during the processing operations, all containers shall be given an emergency still process (developed per § 318.302(b)) before the retort is cooled or the retort shall be cooled promptly and all containers removed and either reprocessed, repacked and reprocessed, or destroyed. Regardless of the procedure used, containers in the retort intake valve and in transfer valves between retort shells at the time of a jam or breakdown shall be removed and either reprocessed, repacked and reprocessed and or destroyed. Product to be destroyed shall be handled as "U.S. Inspected and Condemned", as defined in § 301.2(ee) of this subchapter, and disposed of in accordance with Part 314 of this subchapter.

(*2*) The time the retort reel stopped and the time the retort is used for an emergency still retort process shall be noted on the temperature/time recording device and entered on the other production records required in § 318.306.

(*b*) Temperature drops. When the retort temperature drops below the temperature specified in the process schedule, the reel shall be stopped and the following actions shall be taken:

(*1*) For temperature drops of less than 10 °F (or 5.5 °C) either, (*i*) all containers in the retort shall be given an emergency still process (developed per § 318.302(b)) before the reel is restarted; (*ii*) container entry to the retort shall be prevented and an emergency agitating process (developed per § 318.302(b)) shall be used before container entry to the retort is restarted; or (*iii*) container entry to

the retort shall be prevented and the reel restarted to empty the retort. The discharged containers shall be reprocessed, repacked and reprocessed, or destroyed. Product to be destroyed shall be handled as "U.S. Inspected and Condemned", as defined in § 318.2(ee) of this subchapter, and disposed of in accordance with Part 314 of this subchapter.

(2) For temperature drops of 10 °F (or 5.5 °C) or more, all containers in the retort shall be given an emergency still process (developed per § 318.302(b)). The time the reel was stopped and the time the retort was used for a still retort process shall be marked on the temperature/time recording device by the establishment and entered on the other production records required in § 318.306. Alternatively, container entry to the retort shall be prevented and the reel restarted to empty the retort. The discharged containers shall be either reprocessed, repacked and reprocessed, or destroyed. Product to be destroyed shall be handled as "U.S. Inspected and Condemned", as defined in § 301.2(ee) of this subchapter, and disposed of in accordance with Part 314 of this subchapter.

(2) *Deviations identified through record review.* Whenever a deviation is noted during review of the processing and production records required by § 318.307 (a) and (b), the establishment shall hold the product involved and the deviation shall be handled in accordance with paragraphs (d)(1) (iii) and (iv) of this section.

(e) Process deviation file. The establishment shall maintain full records regarding the handling of each deviation. Such records shall include, at a minimum, the appropriate processing and production records, a full description of the corrective actions taken, the evaluation procedures and results, and the disposition of the affected product. Such records shall be maintained in a separate file or in a log that contains the appropriate information. The file or log shall be retained in accordance with § 318.307(e) and shall be made available to Program employees upon request.

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§ 318.309 Finished product inspection.

(a) Finished product inspections shall be handled under an approved quality control program as provided in paragraph (b) or paragraph (c) of this section or shall be handled in accordance with paragraph (d) of this section.

(b) Any partial quality control program designed to ensure compliance with the requirements of this section (or any part thereof) shall be prepared and submitted to the Administrator for approval in accordance with § 318.4 of this subchapter.

(c) A total quality control system prepared and submitted to the Administrator for approval in accordance with § 318.4 of this subchapter shall be designed to ensure compliance with the requirements of this section.

(d) Handling finished product inspections without an approved quality control program.

(1) *Incubation of shelf stable canned product*—(i) *Incubator.* The establishment shall provide incubation facilities which include an accurate temperature/time recording device, an indicating temperature device, a means for the circulation of the air inside the incubator to prevent temperature variations, and a means to prevent unauthorized entry into the facility. The Program is responsible for the security of the incubator.

(ii) *Incubation temperature.* The incubation temperature shall be maintained at 95±5 °F (35±2.8 °C). If the incubation temperature falls below 90 °F (or 32 °C) or exceeds 100 °F (or 38 °C) but does not reach 103 °F (or 39.5 °C), the incubation temperature shall be adjusted within the required range and the incubation time extended for the time the sample containers were held at the deviant temperature. If the incubation temperature is at or above 103 °F (or 39.5 °C) for more than 2 hours, the incubation test(s) shall be terminated, the temperature lowered to within the required range, and new sample containers incubated for the required time.

(iii) *Product requiring incubation.* Shelf stable product requiring incubation includes:

(*a*) Low acid products as defined in § 318.300(m); and

(*b*) Acidified low acid products as defined in § 318.300(b).

(iv) *Incubation samples.* (*a*) From each load of product processed in a batch-type thermal processing system (still or agitation), the establishment shall select at least one container for incubation.

(*b*) For continuous rotary retorts, hydrostatic retorts, or other continuous-type thermal processing systems, the establishment shall select at least one container per 1,000 for incubation.

(*c*) Only normal-appearing containers shall be selected for incubation.

(v) *Incubation time.* Canned product requiring incubation shall be incubated for not less than 10 days (240 hours) under the conditions specified in paragraph (d)(1)(ii) of this section.

(vi) *Incubation checks and record maintenance.* Designated establishment employees shall visually check all containers under incubation each working day and the inspector shall be notified when abnormal containers are detected. All abnormal containers should be allowed to cool before a final decision on their condition is made. For each incubation test the establishment shall record at least the product name, container size, container code, number of containers incubated, in and out dates, and incubation results. The establishment shall retain such records, along with copies of the temperature/time recording charts, in accordance with § 318.307(e).

(vii) *Abnormal containers.* The finding of abnormal containers [as defined in § 318.300(a)] among incubation samples is cause to officially retain at least the code lot involved.

(viii) *Shipping.* No product shall be shipped from the establishment before the end of the required incubation period except as provided in this paragraph. An establishment wishing to ship product prior to the completion of the required incubation period shall submit a written proposal to the area supervisor. Such a proposal shall include provisions that will assure that shipped product will not reach the retail level of distribution before sample incubation is completed and that product can be returned promptly to the establishment should such action be deemed necessary by the incubation test results. Upon receipt of written approval from the area supervisor, product may be routinely shipped provided the establishment continues to comply with all requirements of this subpart.

(2) *Container condition*—(i) *Normal containers.* Only normal-appearing containers shall be shipped from an establishment as determined by an appropriate sampling plan or other means acceptable to Program employees.

(ii) *Abnormal containers.* When abnormal containers are detected by any means other than incubation, the establishment shall inform the inspector, and the affected code lot(s) shall not be shipped until the Program has determined that the product is safe and stable. Such a determination will take into account the cause and level of abnormals in the affected lot(s) as well as any product disposition actions either taken or proposed by the establishment.

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§ 318.310 Personnel and training.

All operators of thermal processing systems specified in § 318.305 and container closure technicians shall be under the direct supervision of a person who has successfully completed a school of instruction that is generally recognized as adequate for properly training supervisors of canning operations.

§ 318.311 Recall procedure.

Establishments shall prepare and maintain a current procedure for the recall of all canned product covered by this subpart. Upon request, the recall procedure shall be made available to Program employees for review.

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8. The authority citation for Part 320 is revised to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 930, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, unless otherwise noted.

PART 320—[AMENDED]

9. Section 320.1 is amended by adding a new paragraph (b)(6) to read as follows:

§ 320.1 Records required to be kept.

* * * * *

(b) * * *

(6) Records of canning as required by Subpart G of this Subchapter A, 9 CFR Chapter III.

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10. Section 320.3 is amended by designating the existing text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 320.3 Record retention period.

* * * * *

(b) Records of canning as required in Subpart G of this Subchapter A, 9 CFR Chapter III, shall be retained as required in § 318.307(e); except that records required by § 318.302 (b) and (c) shall be retained as required by those sections.

11. The authority citation for Part 327 is revised to read as follows:

Authority: 38 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*

PART 327—[AMENDED]

12. Section 327.8 (j), (l) and (m) are revised to read as follows:

§ 327.8 Products for importation; program inspection, time and place; application for approval of facilities as official import inspection establishment; refusal or withdrawal of approval; official numbers.

* * * * *

(j) Imported canned products are required to be sound, healthful, properly labeled, wholesome, and otherwise not adulterated at the time the products are offered for importation into the United States. Provided other requirements of this Part are met, the determination of the acceptability of the product and the condition of the containers shall be based on the results of an examination of a statistical sample drawn from the consignment as provided in paragraph (a) of this section. If the inspector determines, on the basis of the sample examination, that the product does not meet the requirements of the Act and regulations thereunder, the consignment shall be refused entry. However, a consignment rejected for container defects but otherwise acceptable may be reoffered for inspection under the following conditions:

(1) If the defective containers are not indicative of an unsafe and unstable product as determined by the Administrator;

(2) If the number and kinds of container defects found in the original sample do not exceed the limits specified for this purpose in FSIS guidelines; and

(3) If the defective containers in the consignment have been sorted out and exported or destroyed under the supervision of an inspector.

* * * * *

(l) Representative samples of canned product designated by the Administrator in instructions to inspectors shall be incubated under supervision of such inspectors in accordance with § 318.309 (d)(1)(ii), (d)(1)(iii), (d)(1)(iv)(*c*), (d)(1)(v), (d)(1)(vii) and (d)(1)(viii) of this subchapter. The importers or his/her agent shall provide the necessary incubation facilities in accordance with § 318.309(d)(1)(i) of this subchapter.

(m) Sampling plans and acceptance levels as prescribed in paragraphs (j) and (l) of this section may be obtained, upon request, from International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

13. The authority citation for Part 381 continues to read as follows:

Authority: 71 Stat. 441, 82 Stat. 791, as amended (21 U.S.C. 451 *et seq.*), 76 Stat. 663 (7 U.S.C. 450 *et seq.*), unless otherwise noted.

PART 381—[AMENDED]

14. Section 381.50 is amended by adding a new paragraph (f) to read as follows:

§ 381.50 Water supply.

* * * * *

(f) The circuit supervisor may permit the reuse of water in equipment where such water is used to thermally process canned product packed in hermetically sealed containers, provided:

(1) The reuse is for the identical original purpose.

(2) All pipelines, reservoirs, tanks, cooling towers, and like equipment employed in handling the reused water are so constructed and installed so they can be cleaned and drained, and are kept clean.

§ 381.149 [Removed and Reserved]

15. Section 381.149 is removed and reserved for future use.

16. Section 381.175 is amended by adding a new paragraph (b)(3) to read as follows:

§ 381.175 Records required to be kept.

* * * * *

(b) * * *

(3) Records of canning as required by Subpart X of this Part 381, of Subchapter C, 9 CFR, Chapter III.

* * * * *

17. Section 381.177 is amended by designating the existing text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 381.177 Record retention period.

* * * * *

(b) Records of canning as required by Subpart X of this Part 381, Subchapter C, 9 CFR Chapter III, shall be retained as required in § 381.307; except that records required by § 381.302 (b) and (c) shall be retained as required by those sections.

18. Section 381.199 is amended by adding a new paragraph (d) to read as follows:

§ 381.199 Inspection of imported poultry products.

* * * * *

(d) In addition to the provisions specified in paragraphs (a), (b), and (c) of this section, the following requirements apply to imported canned product.

(1) Imported canned products are required to be sound, healthful, properly labeled, wholesome, and otherwise not adulterated at the time the products are offered for importation into the United States. Provided other requirements of this Part are met, the determination of the acceptability of the product and the condition of the containers shall be based on the results of an examination of a statistical sample drawn from the consignment as provided in paragraph (a) of this section. If the inspector determines, on the basis of the sample

examination, that the product does not meet the requirements of the Act and regulations thereunder, the consignment shall be refused entry. However, a consignment rejected for container defects but otherwise acceptable may be reoffered for inspection under the following conditions:

(i) If the defective containers are not indicative of an unsafe or unstable product as determined by the Administrator;

(ii) If the number and kinds of container defects found in the original sample do not exceed the limits specified for this purpose in FSIS guidelines; and

(iii) If the defective containers in the consignment have been sorted out and exported or destroyed under the supervision of an inspector.

(2) Representative samples of canned product designated by the Administrator in instructions to inspectors shall be incubated under the supervision of such inspectors in accordance with § 381.309 (d)(1)(ii), (d)(1)(iii), (d)(1)(iv)(c), (d)(1)(v), (d)(1)(vii), and (d)(1)(viii) of this subchapter. The importer or his/her agent shall provide the necessary incubation facilities in accordance with § 381.309(d)(1)(i) of this subchapter.

(3) Sampling plans and acceptance levels as prescribed in paragraphs (d)(1) and (d)(2) of this section may be obtained, upon request, from International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

19. A new Subpart X—Canning and Canned Products, consisting of §§ 381.300 through 381.311 is added to Part 381 to read as follows:

Subpart X—Canning and Canned Products

Secs.

381.300 Definitions.
381.301 Containers and closures.
381.302 Thermal processing.
381.303 Critical factors and the application of the process schedule.
381.304 Operations in the thermal processing area.
381.305 Equipment and procedures for heat processing systems.
381.306 Processing and production records.
381.307 Record review and maintenance.
381.308 Deviations in processing.
381.309 Finished product inspection.
381.310 Personnel and training.
381.311 Recall procedure.

Subpart X—Canning and Canned Products

§ 381.300 Definitions.

(a) *Abnormal container.* A container with any sign of swelling or product leakage or any evidence that the contents of the unopened container may be spoiled.

(b) *Acidified low acid product.* A canned product which has been formulated or treated so that every component of the finished product has a pH of 4.6 or lower within 24 hours after the completion of the thermal process unless data are available from the establishment's processing authority demonstrating that a longer time period is safe.

(c) *Bleeders.* Small orifices on a retort through which steam, other gasses, and condensate are emitted from the retort throughout the entire thermal process.

(d) *Canned product.* A poultry food product with a water activity above 0.85 which receives a thermal process either before or after being packed in a hermetically sealed container. Unless otherwise specified, the term "product" as used in this Subpart G shall mean "canned product."

(e) *Closure technician.* The individual(s) identified by the establishment as being trained to perform specific container integrity examinations as required by this subpart and designated by the establishment to perform such examinations.

(f) *Code lot.* All production of a particular product in a specific size container marked with a specific container code.

(g) *Come-up time.* The elapsed time, including venting time (if applicable), between the introduction of the heating medium into a closed retort and the start of process timing.

(h) *Critical factor.* Any characteristic, condition or aspect of a product, container, or procedure that affects the adequacy of the process schedule. Critical factors are established by processing authorities.

(i) *Headspace.* That portion of a container not occupied by the product.

(1) *Gross headspace.* The vertical distance between the level of the product (generally the liquid surface) in an upright rigid container and the top edge of the container (i.e., the flange of an unsealed can, the top of the double seam on a sealed can, or the top edge of an unsealed jar).

(2) *Net headspace.* The vertical distance between the level of the product (generally the liquid surface) in an upright rigid container and the inside surface of the lid.

(j) *Hermetically sealed containers.* Air-tight containers which are designed and intended to protect the contents against the entry of microorganisms during and after thermal processing.

(1) *Rigid container.* A container, the shape or contour of which, when filled and sealed, is neither affected by the enclosed product nor deformed by external mechanical pressure of up to 10 pounds per square inch gauge (0.7 kg/cm²) (i.e., normal firm finger pressure).

(2) *Semirigid container.* A container, the shape or contour of which, when filled and sealed, is not significantly affected by the enclosed product under normal atmospheric temperature and pressure, but can be deformed by external mechanical pressure of less than 10 pounds per square inch gauge (0.7 kg/cm²) (i.e., normal firm finger pressure).

(3) *Flexible container.* A container, the shape or contour of which, when filled and sealed, is significantly affected by the enclosed product.

(k) *Incubation tests.* Tests in which the thermally processed product is kept at a specific temperature for a specified period of time in order to determine if outgrowth of microorganisms occurs.

(l) *Initial temperature.* The temperature, determined at the initiation of a thermal process cycle, of the contents of the coldest container to be processed.

(m) *Low acid product.* A canned product in which any component has a pH value above 4.6.

(n) *Process schedule.* The thermal process and any specified critical factors for a given canned product required to achieve shelf stability.

(o) *Process temperature.* The minimum temperature(s) of the heating medium to be maintained as specified in the process schedule.

(p) *Process time.* The intended time(s) a container is to be exposed to the heating medium while the heating medium is at or above the process temperature(s).

(q) *Processing authority.* The person(s) or organization(s) having expert knowledge of thermal processing requirements for foods in hermetically sealed containers, having access to facilities for making such determinations, and designated by the establishment to perform certain functions as indicated in this subpart.

(r) *Program employee.* Any inspector or other individual employed by the Department or any cooperating agency who is authorized by the Secretary to do any work or perform any duty in connection with the Program (see § 301.2(f)).

(s) *Retort.* A pressure vessel designed for thermal processing of product packed in hermetically sealed containers.

(t) *Seals.* Those parts of a semirigid container and lid or of a flexible container that are fused together in order to hermetically close the container.

(u) *Shelf stability.* The condition achieved by application of heat, sufficient, alone or in combination with other ingredients and/or treatments, to render the product free of microorganisms capable of growing in the product at nonrefrigerated conditions (over 50 °F or 10 °C) at which the product is intended to be held during distribution and storage. Shelf stability and shelf stable are synonymous with commercial sterility and commercially sterile, respectively.

(v) *Thermal process.* The heat treatment necessary to achieve shelf stability as determined by the establishment's processing authority. It is quantified in terms of:

(1) Time(s) and temperature(s); or

(2) Minimum product temperature.

(w) *Venting.* The removal of air from a retort before the start of process timing.

(x) *Water activity.* The ratio of the water vapor pressure of the product to the vapor pressure of pure water at the same temperature.

§ 381.301 Containers and closures.

(a) *Examination and cleaning of empty containers.* (1) Empty containers, closures, and flexible pouch roll stock shall be evaluated by the establishment to ensure that they are clean and free of structural defects and damage that may affect product or container integrity. Such an examination should be based upon a statistical sampling plan.

(2) All empty containers, closures, and flexible pouch roll stock shall be stored, handled, and conveyed in such a manner that will prevent soiling and damage that could affect the hermetic condition of the sealed container.

(3) Just before filling, rigid containers shall be cleaned to prevent incorporation of foreign matter into the finished product. Closures, semirigid containers, preformed flexible pouches, and flexible pouch roll stock contained in original wrappings do not need to be cleaned before use.

(b) *Closure examinations for rigid containers (cans).* (1) Visual examinations. A closure technician shall visually examine the double seams formed by each closing machine head. When seam defects (e.g., cutovers, sharpness, knocked down flanges, false seams, droops) are observed, necessary corrective actions, such as adjusting or repairing the closing machine, shall be taken. In addition to the double seams, the entire container shall be examined for product leakage or obvious defects. A visual examination shall be performed on at least one container from each closing machine head, and the observations, along with any corrective actions, shall be recorded. Visual examinations shall be recorded. Visual examinations shall be conducted with sufficient frequency to ensure proper closure and should be conducted at least every 30 minutes of continuous closing machine operation. Additional visual examinations shall be made by the closure technician at the beginning of production, immediately following every jam in the closing machine and after closing machine adjustment (including adjustment for changes in container size).

(2) *Teardown examinations.* Teardown examinations of double seams formed by each closing machine head shall be performed by a closure technician at a frequency sufficient to ensure proper closure. These examinations should be made at intervals of not more than 4 hours of continuous closing machine operation. At least one container from each closing head shall be examined on the packer's end during each regular examination period. Examination results along with any necessary corrective actions, such as adjusting or repairing the closing machine, shall be promptly recorded by the closure technician. The establishment shall have container specification guidelines for double seam integrity on file and available for review by Program employees. A teardown examination of the can maker's end shall be performed on at least one container selected from each closing machine during each examination period except when teardown examinations are made on incoming empty containers or when, in the case of self-manufactured containers, the containers are made in the vicinity of the establishment and the container plant records are made available to Program employees. Additional teardown examinations on the packer's end should be made at the beginning of production, immediately following every jam in a closing machine and after closing machine adjustment (including adjustment for a change in container size). The following procedures shall be used in teardown examinations of double seams:

(i) One of the following two methods shall be employed for dimensional measurements of the double seam.

(*a*) *Micrometer measurement.* For cylindrical containers, measure the following dimensions (Figure 1) at three points approximately 120 degrees apart on the double seam excluding and at least one-half inch from the side seam juncture:

(*1*) Double seam length—W;

(*2*) Double seam thickness—S;

(*3*) Body hook length—BH; and

(*4*) Cover hook length—CH.

Maximum and minimum values for each dimensional measurement shall be recorded by the closure technician.

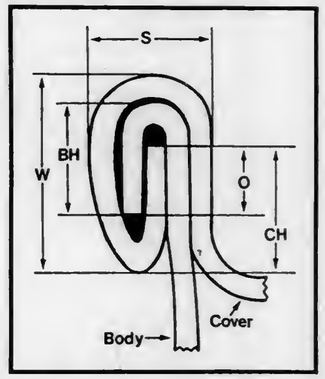


Figure 1

(*b*) *Seamscope or seam projector.* Required measurements of the seam include thickness, body hook, and overlap. Seam thickness shall be obtained by micrometer. For cylindrical containers, at least two locations, excluding the side seam juncture, shall be used to obtain the required measurements.

(ii) *Seam tightness.* Regardless of the dimensional measurement method used to measure seam dimensions, at a minimum, the seam(s) examined shall be stripped to assess the degree of wrinkling.

(iii) *Side seam juncture rating.* Regardless of the dimensional measurement method used to measure seam dimensions, the cover hook shall be stripped to examine the cover hook droop at the juncture for containers having side seams.

(iv) *Examination of noncylindrical containers.* Examination of noncylindrical containers (e.g., square, rectangular, "D"-shaped, and irregularly-shaped) shall be conducted as described in paragraphs (b)(2) (i), (ii), and (iii) of this section except that the required dimensional measurements shall be made on the double seam at the points listed in the establishment's container specification guidelines.

(c) *Closure examinations for glass containers.* (1) *Visual examinations.* A closure technician shall visually assess the adequacy of the closures formed by each closing machine. When closure defects, such as loose or cocked caps, fractured or cracked containers and low

vacuum jars, are observed, necessary corrective actions, such as adjusting or repairing the closing machine, shall be taken and recorded. In addition to the closures, the entire container shall be examined for defects. Visual examinations shall be made with sufficient frequency to ensure proper closure and should be conducted at least every 30 minutes of continuous closing machine operation. Additional visual examinations shall be made by the closure technician and the observations recorded at the beginning of production, immediately following every jam in the closing machine, and after closing machine adjustment (including adjustment for a change in container size).

(2) *Closure examinations and tests.* Depending upon the container and closure, tests shall be performed by a closure technician at a frequency sufficient to ensure proper closure. These examinations should be made either before or after thermal processing and at intervals of not more than 4 hours of continuous closing machine operation. At least one container from each closing machine shall be examined during each regular examination period. Examination results along with any necessary corrective actions, such as adjusting or repairing the closing machine, shall be promptly recorded by the closure technician. The establishment shall have specification guidelines for closure integrity on file and available for review by Program employees. Additional closure examinations should be made at the beginning of production, immediately following every jam in the closing machine and after closing machine adjustment (including adjustment for a change in container size).

(d) *Closure examinations for semirigid and flexible containers*—(1) *Heat seals*—(i) *Visual examinations.* A closure technician shall visually examine the seals formed by each sealing machine. When sealing defects are observed, necessary corrective actions, such as adjusting or repairing the sealing machine, shall be taken and recorded. In addition to examining the heat seals, the entire container shall be examined for product leakage or obvious defects. Visual examinations shall be performed before and after the thermal processing operation with sufficient frequency to ensure proper closure. These examinations should be conducted at least in accordance with a statistical sampling plan. All defects noted and corrective actions taken shall be promptly recorded.

(ii) *Physical tests.* Tests determined by the establishment as necessary to assess container integrity shall be conducted by the closure technician at a frequency sufficient to ensure proper closure. These tests shall be performed after the thermal processing operation and should be made at least every 2 hours of continuous production. The establishment's acceptance guidelines for each test procedure shall be on file and available for review by Program employees. Test results along with any necessary corrective actions, such as adjusting or repairing the sealing machine, shall be recorded.

(2) Double seams on semirigid or flexible containers shall be examined and the results recorded as provided in paragraph (b) of this section. Any additional measurements specified by the container manufacturer shall also be made and recorded.

(e) *Container coding.* Each container shall be marked with a permanent, legible, identifying code mark. The mark shall, at a minimum, identify in code the product (unless the product name is lithographed or printed elsewhere on the container) and the day and year the product was packed.

(f) *Handling of containers after closure.* (1) Containers and closures shall be protected from damage which may cause defects that are likely to affect the hermetic condition of the containers. The accumulation of stationary containers on moving conveyors should be minimized to avoid damage to the containers.

(2) The maximum time lapse between closing and initiation of thermal processing shall be 2 hours. However, the Administrator may specify a shorter period of time when considered necessary to ensure product safety and stability. A longer period of time between closing and the initiation of thermal processing may be permitted by the Administrator.

[Approved by the Office of Management and Budget under control number 0583–0015]

§ 381.302 Thermal processing.

(a) *Process schedules.* Prior to the processing of canned product for distribution in commerce, an establishment shall have a process schedule (as defined in § 381.300(n) of this subpart) for each canned poultry product to be packed by the establishment.

(b) *Source of process schedules.* (1) Process schedules used by an establishment shall be developed or determined by a processing authority.

(2) Any change in product formulation, ingredients, or treatments that are not already incorporated in a process schedule and that may adversely affect either the product heat penetration profile or sterilization value requirements shall be evaluated by the establishment's processing authority. If it is determined that any such change adversely affects the adequacy of the process schedule, the processing authority shall amend the process schedule accordingly.

(3) Complete records concerning all aspects of the development or determination of a process schedule, including any associated incubation tests, shall be made available by the establishment to the Program employee upon request.

(c) *Submittal of process information.* (1) Prior to the processing of canned product for distribution in commerce, the establishment shall provide the inspector at the establishment with a list of the process schedules (including alternate schedules) along with any additional applicable information, such as the retort come-up operating procedures and critical factors.

(2) Letters or other written communications from a processing authority recommending all process schedules shall be maintained on file by the establishment. Upon request by Program employees, the establishment shall make available such letters or written communications (or copies thereof). If critical factors are identified in the process schedule, the establishment shall provide the inspector with a copy of the procedures for measuring, controlling, and recording these factors, along with the frequency of such measurements, to ensure that the critical factors remain within the limits used to establish the process schedule. Once submitted, the process schedules and associated critical factors and the procedures for measuring (including the frequency), controlling, and recording of critical factors shall not be changed without the prior written submittal of the revised procedures (including supporting documentation) to the inspector at the establishment.

[Approved by the Office of Management and Budget under control number 0583–0015]

§ 381.303 Critical factors and the application of the process schedule.

Critical factors specified in the process schedule shall be measured, controlled and recorded by the establishment to ensure that these factors remain within the limits used to establish the process schedule. Examples of factors that are often critical to process schedule adequacy may include:

(a) *General.* (1) Maximum fill-in weight or drained weight;

(2) Arrangement of pieces in the container;

(3) Container orientation during thermal processing;

(4) Product formulation;

(5) Particle size;

(6) Maximum thickness for flexible, and to some extent semirigid containers during thermal processing;

(7) Maximum pH;

(8) Percent salt;

(9) Ingoing (or formulated) nitrite level (ppm);

(10) Maximum water activity; and

(11) Product consistency or viscosity.

(b) *Continuous rotary and batch agitating retorts.* (1) Minimum headspace; and

(2) Retort reel speed.

(c) *Hydrostatic retorts.* (1) Chain or conveyor speed.

(d) *Steam/air retorts.* (1) Steam/air ratio; and

(2) Heating medium flow rate.

(Approved by the Office of Management and Budget under control number 0583–0015)

§ 381.304 Operations in the thermal processing area.

(a) *Posting of processes.* Process schedules (or operating process schedules) for daily production, including minimum initial temperatures and operating procedures for thermal processing equipment, shall be posted in a conspicuous place near the thermal processing equipment. Alternatively, such information shall be available to the thermal processing system operator and the inspector.

(b) *Process indicators and retort traffic control.* A system for product traffic control shall be established to prevent product from bypassing the thermal processing operation. Each basket, crate or similar vehicle containing unprocessed product, or at least one visible container in each vehicle, shall be plainly and conspicuously marked with a heat sensitive indicator that will visually indicate whether such unit has been thermally processed. Exposed heat sensitive indicators attached to container vehicles shall be removed before such vehicles are refilled with unprocessed product. Container loading systems for crateless retorts shall be designed to prevent unprocessed product from bypassing the thermal processing operation.

(c) *Initial temperature.* The initial temperature of the contents of the coldest container to be processed shall be determined and recorded by the establishment at the time the processing cycle begins to assure that the temperature of the contents of every container to be processed is not lower than the minimum initial temperature specified in the process schedule. Thermal processing systems which subject the filled and sealed containers to water at any time before process timing begins shall be operated to assure that such water will not lower the temperature of the product below the minimum initial temperature specified in the process schedule.

(d) *Timing devices.* Devices used to time applicable thermal processing operation functions or events, such as process schedule time, come-up time and retort venting, shall be accurate to assure that all such functions or events are achieved. Pocket watches and wrist watches are not considered acceptable timing devices. Analog and digital clocks are considered acceptable. If such clocks do not display seconds, all required timed functions or events shall have at least a 1-minute safety factor over the specified thermal processing operation times. Temperature/time recording devices shall correspond within 15 minutes to the time of the day recorded on written records required by § 381.306.

(e) *Measurement of pH.* Unless other methods are approved by the Administrator, potentiometric methods using electronic instruments (pH meters) shall be used for making pH determinations when a maximum pH value is specified as a critical factor in a process schedule.

§ 381.305 Equipment and procedures for heat processing systems.

(a) *Instruments and controls common to different thermal processing systems.* (1) *Indicating temperature devices.* Each retort shall be equipped with at least one indicating temperature device that measures the actual temperature within the retort. The indicating temperature device, not the temperature/time recording device, shall be used as the reference instrument for indicating the process temperature.

(i) *Mercury-in-glass thermometers.* A mercury-in-glass thermometer shall have divisions that are readable to 1 °F (or 0.5 °C) and whose scale contains not more than 17 °F/inch (or 4.0 °C/cm) of graduated scale. Each mercury-in-glass thermometer shall be tested for accuracy against a known accurate standard upon installation and at least once a year to ensure its accuracy. Records that specify the date, standard used, test method, and the person or testing authority performing the test shall be maintained on file by the establishment and made available to Program employees. A mercury-in-glass thermometer that has a divided mercury column or that cannot be adjusted to the standard shall be repaired and tested for accuracy before further use, or replaced.

(ii) *Other devices.* In lieu of mercury-in-glass thermometers, the Administrator, upon request, will consider other indicating temperature devices, such as resistance temperature detectors. Any such device that is approved shall, upon installation and at least once a year thereafter, be tested for accuracy against a known accurate standard. Records that specify the date, standard used, test method, and the person or testing authority performing the test shall be maintained on file by the establishment and made available to Program employees. Any such device which cannot be adjusted to the standard shall be replaced, or repaired and tested for accuracy before further use.

(2) *Temperature/time recording devices.* Each thermal processing system shall be equipped with at least one temperature/time recording device to provide a permanent record of temperatures within the thermal processing system. This recording device may be combined with the steam controller and may be a recording/controlling instrument. When compared to the known accurate indicating temperature device, the recording accuracy shall be equal to or better than 1 °F (or 0.5 °C) at the process temperature. The temperature recording chart should be adjusted to agree with, but shall never be higher than, the known accurate indicating temperature device. A means of preventing unauthorized changes in the adjustment shall be provided. For example, a lock or a notice from management posted at or near the recording device warning that only authorized persons are permitted to make adjustments, are satisfactory means for preventing unauthorized changes. Air-operated temperature controllers shall have adequate filter systems to ensure a supply of clean, dry air. The recorder timing mechanism shall be accurate.

(i) *Chart-type devices.* Devices using charts shall be used only with the correct chart. Each chart shall have a working scale of not more than 55 °F/inch (or 12 °C/cm) within a range of 20 °F (or 11 °C) of the process temperature. Chart graduations shall not exceed 2 °F (or 1 °C) within a range of 10 °F (or 5 °C) of the process temperature. Multipoint plotting chart-type devices shall print temperature readings at intervals that will assure that the parameters of the process time and process temperature

have been met. The frequency of recording should not exceed 1-minute intervals.

(ii) *Other devices.* In lieu of chart-type devices, the Administrator will consider for approval other recording devices upon request.

(3) *Steam controllers.* Each retort shall be equipped with an automatic steam controller to maintain the retort temperature. This may be a recording/controlling instrument when combined with a temperature/time recording device.

(4) *Air valves.* All air lines connected to the retorts designed for pressure processing in steam shall be equipped with a globe valve or other equivalent-type valve or piping arrangement that will prevent leakage of air into the retort during the process cycle.

(5) *Water valves.* All retort water lines that are intended to be closed during a process cycle shall be equipped with a globe valve or other equivalent-type valve or piping arrangement that will prevent leakage of water into the retort during the process cycle.

(b) *Pressure processing in steam*—(1) *Batch still retorts.* (i) The basic requirements and recommendations for indicating temperature devices and temperature/time recording devices are described in paragraphs (a) (1) and (2) of this section. Additionally, bulb sheaths or probes of indicating temperature devices and probes of temperature/time recording devices shall be installed either within the retort shell or in external wells attached to the retort. External wells shall be connected to the retort through at least a ¾ inch (1.9 cm) diameter opening and equipped with a 1/16 inch (1.6 mm) or larger bleeder opening so located as to provide a constant flow of steam past the length of the bulb or probe. The bleeder for external wells shall emit steam continuously during the entire thermal processing period.

(ii) Steam controllers are required as described in paragraph (a)(3) of this section.

(iii) *Steam inlet.* The steam inlet to each retort shall be large enough to provide steam for proper operation of the retort, and shall enter at a point to facilitate air removal during venting.

(iv) *Crate supports.* Vertical still retorts with bottom steam entry shall employ bottom retort crate supports. Baffle plates shall not be used in the bottom of retorts.

(v) *Steam spreader.* Perforated steam spreaders, if used, shall be maintained to ensure they are not blocked or otherwise inoperative. Horizontal still retorts shall be equipped with perforated steam spreaders that extend the full length of the retort unless the adequacy of another arrangement is documented by heat distribution data or other documentation from a processing authority. Such information shall be maintained on file by the establishment and made available to Program employees for review.

(vi) *Bleeders and condensate removal.* Bleeders, except those for external wells of temperature devices, shall have 1/8 inch (or 3 mm) or larger openings and shall be wide open during the entire process including the come-up time. For horizontal still retorts, bleeders shall be located within approximately 1 foot (or 30 cm) of the outermost locations of containers at each end along the top of the retort. Additional bleeders shall be located not more than 8 feet (2.4 m) apart along the top. Bleeders may be installed at positions other than those specified above, as long as the establishment has heat distribution data or other documentation from the manufacturer or from a processing authority demonstrating that the bleeders accomplish removal of air and circulate the steam within the retort. This information shall be maintained on file by the establishment and made available to Program employees for review. All bleeders shall be arranged in a way that enables the retort operator to observe that they are functioning properly. Vertical retorts shall have at least one bleeder opening located in the portion of the retort opposite the steam inlet. All bleeders shall be arranged so that the retort operator can observe that they are functioning properly. In retorts having a steam inlet above the level of the lowest container, a bleeder shall be installed in the bottom of the retort to remove condensate. The condensate bleeder shall be so arranged that the retort operator can observe that it is functioning properly. The condensate bleeder shall be checked with sufficient frequency to ensure adequate removal of condensate. Visual checks should be performed at intervals of not more than 15 minutes and the results recorded. Intermittent condensate removal systems shall be equipped with an automatic alarm system that will serve as a continuous monitor of condensate bleeder functioning. The automatic alarm system shall be tested at the beginning of each shift for proper functioning and the results recorded. If the alarm system is not functioning properly, it must be repaired before the retort is used.

(vii) *Stacking equipment.* (a) Equipment for holding or stacking containers in retorts. Crates, trays, gondolas, carts, and other vehicles for holding or stacking product containers in the retort shall be so constructed to ensure steam circulation during the venting, come-up, and process times. The bottom of each vehicle shall have perforations at least 1 inch (2.5 cm) in diameter on 2 inch (or 5 cm) centers or the equivalent unless the adequacy of another arrangement is documented by heat distribution data or other documentation from a processing authority and such information is maintained on file by the establishment and made available to Program employees for review.

(b) *Divider plates.* Whenever one or more divider plates are used between any two layers of containers or placed on the bottom of a retort vehicle, the establishment shall have on file documentation that the venting procedure allows the air to be removed from the retort before timing of the thermal process is started. Such documentation shall be in the form of heat distribution data or documentation from a processing authority. This information shall be made available to Program employees for review.

(viii) *Bleeder and vent mufflers.* If mufflers are used on bleeders or vent systems, the establishment shall have on file documentation that the mufflers do not impede the removal of air from the retort. Such documentation shall consist of either heat distribution data or documentation from the muffler manufacturer or from a processing authority. This information shall be made available to Program employees for review.

(ix) *Vents.* (a) Vents shall be located in that portion of the retort opposite the steam inlet and shall be designed, installed, and operated in such a way that air is removed from the retort before timing of the thermal process is started. Vents shall be controlled by a gate, plug cock, or other full-flow valve which shall be fully opened to permit rapid removal of air from retorts during the venting period.

(b) Vents shall not be connected to a closed drain system without an atmospheric break in the line. Where a retort manifold connects several pipes from a single retort, the manifold shall be controlled by a gate, plug cock, or other full-flow valve and the manifold shall be of a size such that the cross-sectional area of the manifold is larger than the total cross-sectional area of all connecting vents. The discharge shall not be connected to a closed drain without an atmospheric break in the line. A manifold header connecting vents or manifolds from several still retorts shall lead to the atmosphere. The manifold header shall not be controlled by a valve and shall be of a size such that the cross-sectional area is at least equal to the total cross-sectional area of all connecting retort manifold pipes from the maximum number of retorts to be vented simultaneously.

(c) Some typical installations and operating procedures are described below. Other retort installations, vent piping arrangements, operating procedures or auxiliary equipment such as divider plates may be used provided there is documentation that the air is removed from the retort before the process is started. Such documentation shall be in the form of heat distribution data or other documentation from the equipment manufacturer or processing authority. This information shall be maintained on file by the establishment and made available to Program employees for review.

(d) For crateless retort installations, the establishment shall have heat distribution data or other documentation from the equipment manufacturer or from a processing authority that demonstrates that the venting procedure used accomplishes the removal of air and condensate. This information shall be maintained on file by the establishment and made available to Program employees for review.

(e) Examples of typical installations and operating procedures that comply with the requirements of this section are as follows:

(1) Venting horizontal retorts.

(i) Venting through multiple 1 inch (2.5 cm) vents discharging directly to the atmosphere.

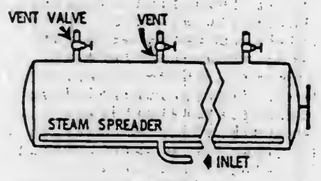


Figure 1.

Specifications (Figure 1): One, 1-inch (2.5 cm) vent for every 5 feet (1.5 m) of retort length, equipped with a gate, plug cock, or other full-flow valve and discharging to atmosphere. The end vents shall not be more than 2½ feet (or 75 cm) from ends of retort.

Venting method (Figure 1): Vent valves shall be wide open for at least 5 minutes and to at least 225 °F (or 107 °C), or at least 7 minutes and to at least 220 °F (or 104.5 °C).

(ii) Venting through multiple 1 inch (2.5 cm) vents discharging through a manifold to the atmosphere.

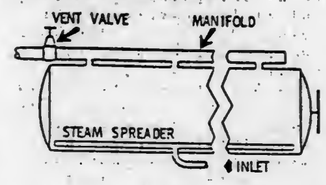


Figure 2.

Specifications (Figure 2): One, 1-inch (2.5 cm) vent for every 5 feet (1.5 m) of retort length; vents not over 2½ feet (or 75 cm) from ends of retort; size of manifold for retorts less than 15 feet (4.6 m) in length, 2½ inches (6.4 cm), and for retorts 15 feet (4.6 m) and over in length, 3 inches (7.6 cm).

Venting method (Figure 2): The manifold vent gate, plug cock, or other full-flow valve shall be wide open for at least 6 minutes and to at least 225 °F (or 107 °C) or for at least 8 minutes and to at least 220 °F (or 104.5 °C).

(iii) Venting through water spreaders.

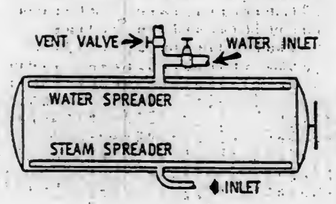


Figure 3.

Specifications (Figure 3): Size of vent and vent valve. For retorts less than 15 feet (4.6 m) in length, 2 inches (or 5 cm); for retorts 15 feet (4.6 m) and over in length, 2½ inches (6.4 cm).

Size of water spreader (Figure 3): For retorts less than 15 feet (4.6 m) in length, 1½ inches (3.8 cm); for retorts 15 feet (4.6 m) and over in length 2 inches (or 5 cm). The number of holes shall be such that their total cross-sectional area is equal to the cross-sectional area of the vent pipe inlet.

Venting method (Figure 3): The gate, plug cock, or other full-flow valve on the water spreader vent shall be wide open for at least 5 minutes and to at least 225 °F (or 107 °C), or for at least 7 minutes and to at least 220 °F (or 104.5 °C).

(iv) Venting through a single 2½ inch (6.4 cm) top vent for retorts not exceeding 15 feet (4.6 m) in length.

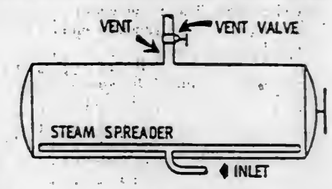


Figure 4.

Specifications (Figure 4): A 2½ inch (6.4 cm) vent equipped with a 2½ inch (6.4 cm) gate, plug cock, or other full-flow valve and located within 2 feet (61 cm) of the center of the retort.

Venting method (Figure 4): The vent valve shall be wide open for at least 4 minutes and to at least 220 °F (or 104.5 °C).

(2) Venting vertical retorts.

(i) Venting through a 1½ inch (3.8 cm) overflow.

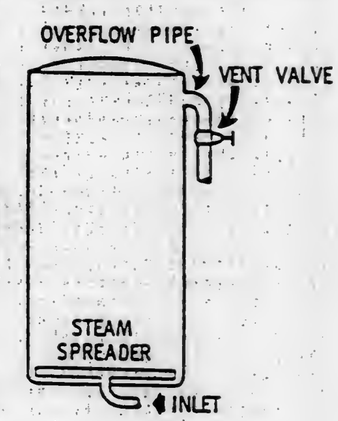


Figure 5.

Specifications (Figure 5): A 1½ inch (3.8 cm) overflow pipe equipped with a 1½ inch (3.8 cm) gate, plug cock, or other full-flow valve and with not more than 6 feet (1.8 m) of 1½ inch (3.8 cm) pipe beyond the valve before a break to the atmosphere or to a manifold header.

Venting method (Figure 5): The vent valve shall be wide open for at least 4 minutes and to at least 218 °F (or 103.5 °C), or for at least 5 minutes and to at least 215 °F (or 101.5 °C).

(ii) Venting through a single 1 inch (2.5 cm) side or top vent.

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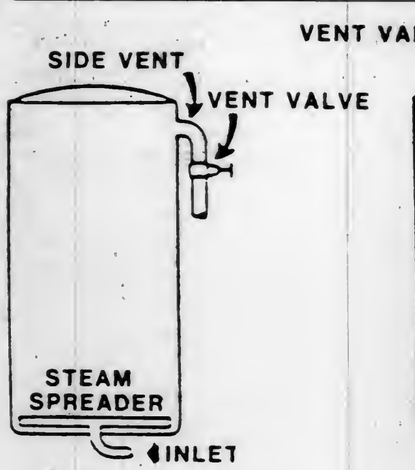


Figure 6.

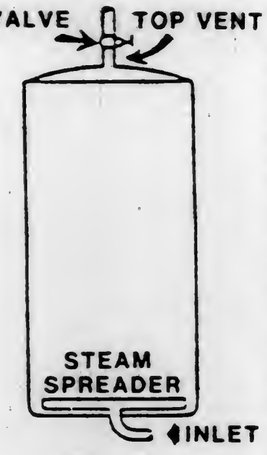


Figure 7.

Specifications (Figure 6 or 7): A 1 inch (2.5 cm) vent in lid or top side, equipped with a gate, plug cock, or other full-flow valve and discharging directly into the atmosphere or to a manifold header.

Venting method (Figure 6 or 7): The vent valve shall be wide open for at least 5 minutes and to at least 230 °F (110 °C), or for at least 7 minutes and to at least 220 °F (or 104.5 °C).

(2) *Batch agitating retorts.* (i) The basic requirements for indicating temperature devices and temperature/time recording devices are described in paragraphs (a) (1) and (2) of this section. Additionally, bulb sheaths or probes of indicating temperature devices and probes of temperature/time recording devices shall be installed either within the retort shell or in external wells attached to the retort. External wells shall be connected to the retort through at least a ¾ inch (1.9 cm) diameter opening and equipped with a 1/16 (1.6 mm) or larger bleeder opening so located as to provide a constant flow of steam past the length of the bulbs or probes. The bleeder for external wells shall emit steam continuously during the entire thermal processing period.

(ii) Steam controllers are required as described in paragraph (a)(3) of this section.

(iii) *Steam inlet.* The steam inlet to each retort shall be large enough to provide steam for proper operation of the retort and shall enter at a point(s) to facilitate air removal during venting.

(iv) *Bleeders.* Bleeders, except those for external wells of temperature devices, shall be ⅛ inch (or 3 mm) or larger and shall be wide open during the entire process including the come-up time. Bleeders shall be located within approximately 1 foot (or 30 cm) of the outermost location of containers, at each end along the top of the retort. Additional bleeders shall be located not more than 8 feet (2.4 m) apart along the top. Bleeders may be installed at positions other than those specified above, as long as the establishment has heat distribution data or other documentation from the manufacturer or from a processing authority that the bleeders accomplish removal of air and circulate the steam within the retort. This information shall be maintained on file by the establishment and made available to Program employees for review. All bleeders shall be arranged in a way that enables the retort operator to observe that they are functioning properly.

(v) *Venting and condensate removal.* The air in the retort shall be removed before processing is started. Heat distribution data or other documentation from the manufacturer or from the processing authority who developed the venting procedure shall be kept on file by the establishment and made available to Program employees for review. At the time the steam is turned on, the drain shall be opened to remove steam condensate from the retort. A bleeder shall be installed in the bottom of the retort to remove condensate during retort operation. The condensate bleeder shall be so arranged that the retort operator can observe that it is functioning properly. The condensate bleeder shall be checked with sufficient frequency to ensure adequate removal of condensate. Visual checks should be performed at intervals of not more than 15 minutes and the results recorded. Intermittent condensate removal systems shall be equipped with an automatic alarm system that will serve as a continuous monitor of condensate bleeder functioning. The automatic alarm system shall be tested at the beginning of each shift for proper functioning and the results recorded. If the alarm system is not functioning properly, it must be repaired before the retort is used.

(vi) *Retort or reel speed timing.* The retort or reel speed shall be checked before process timing begins and, if needed, adjusted as specified in the process schedule. In addition, the rotational speed shall be determined and recorded at least once during process timing of each retort load processed. Alternatively, a recording tachometer can be used to provide a continuous record of the speed. The accuracy of the recording tachometer shall be determined and recorded at least once per shift by checking the retort or reel speed using an accurate stopwatch. A means of preventing unauthorized speed changes on retorts shall be provided. For example, a lock or a notice from management posted at or near the speed adjustment device warning that only authorized persons are permitted to make adjustments are satisfactory means of preventing unauthorized changes.

(vii) *Bleeder and vent mufflers.* If mufflers are used on bleeders or vent systems, the establishment shall have documentation that the mufflers do not impede the removal of air from the retort. Such documentation shall consist of either heat distribution data or documentation from the muffler manufacturer or from a processing authority. This information shall be maintained on file by the establishment and made available to Program employees for review.

(3) *Continuous rotary retorts.* (i) The basic requirements for indicating temperature devices and temperature/time recording devices are described in paragraphs (a) (1) and (2) of this section. Additionally, bulb sheaths or probes of indicating temperature devices and probes of temperature/time recording devices shall be installed either within the retort shell or in external wells attached to the retort. External wells shall be connected to the retort through at least a ¾ inch (1.9 cm) diameter opening and equipped with a 1/16 inch

(1.6 mm) or larger bleeder opening so located as to provide a constant flow of steam past the length of the bulbs or probes. The bleeder for external wells shall emit steam continuously during the entire thermal processing period.

(ii) Steam controllers are required as described in paragraph (a)(3) of this section.

(iii) *Steam inlet.* The steam inlet to each retort shall be large enough to provide steam for proper operation of the retort, and shall enter at a point(s) to facilitate air removal during venting.

(iv) *Bleeders.* Bleeders, except those for external wells of temperature devices, shall be ⅛ inch (3.2 mm) or larger and shall be wide open during the entire process, including the come-up time. Bleeders shall be located within approximately 1 foot (or 30 cm) of the outermost location of containers at each end along the top of the retort. Additional bleeders shall be located not more than 8 feet (2.4 m) apart along the top of the retort. Bleeders may be installed at positions other than those specified above, as long as the establishment has heat distribution data or other documentation from the manufacturer or a processing authority that the bleeders accomplish removal of air and circulate the steam within the retort. This information shall be maintained on file by the establishment and made available to Program employees for review. All bleeders shall be arranged so that the retort operator can observe that they are functioning properly.

(v) *Venting and condensate removal.* The air in the retort shall be removed before processing is started. Heat distribution data or other documentation from the manufacturer or from the processing authority who developed the venting procedure shall be kept on file by the establishment and made available to Program employees for review. At the time the steam is turned on, the drain shall be opened to remove steam condensate from the retort. A bleeder shall be installed in the bottom of the shell to remove condensate during the retort operation. The condensate bleeder shall be so arranged that the retort operator can observe that it is functioning properly. The condensate bleeder shall be checked with sufficient frequency to ensure adequate removal of condensate. Visual checks should be performed at intervals of not more than 15 minutes and the results recorded. Intermittent condensate removal systems shall be equipped with an automatic alarm system that will serve as a continuous monitor of condensate bleeder functioning. The automatic alarm system shall be tested at the beginning of each shift for proper functioning and the results recorded. If the alarm system is not functioning properly, it must be repaired before the retort is used.

(vi) *Retort speed timing.* The rotational speed of the retort shall be specified in the process schedule. The speed shall be adjusted as specified, and recorded by the establishment when the retort is started, and checked and recorded at intervals not to exceed 4 hours to ensure that the correct retort speed is maintained. Alternatively, a recording tachometer may be used to provide a continuous record of the speed. If a recording tachometer is used, the speed shall be manually checked against an accurate stopwatch at least once per shift and the results recorded. A means of preventing unauthorized speed changes on retorts shall be provided. For example, a lock or a notice from management posted at or near the speed adjustment device warning that only authorized persons are permitted to make adjustments are satisfactory means of preventing unauthorized changes.

(vii) *Bleeders and vent mufflers.* If mufflers are used on bleeders or vent systems, the establishment shall have documentation that the mufflers do not impede the removal of air from the retort. Such documentation shall consist of either heat distribution data or other documentation from the muffler manufacturer or from a processing authority. This information shall be maintained on file by the establishment and made available to Program employees for review.

(4) *Hydrostatic retorts.* (i) The basic requirements for indicating temperature devices and temperature/time recording devices are described in paragraphs (a) (1) and (2) of this section. Additionally, indicating temperature devices shall be located in the steam dome near the steam/water interface. Where the process schedule specifies maintenance of particular water temperatures in the hydrostatic water legs, at least one indicating temperature device shall be located in each hydrostatic water leg so that it can accurately measure water temperature and be easily read. The temperature/time recorder probe shall be installed either within the steam dome or in a well attached to the dome. Each probe shall have a 1/16 inch (1.6 mm) or larger bleeder opening which emits steam continuously during the processing period. Additional temperature/time recorder probes shall be installed in the hydrostatic water legs if the process schedule specifies maintenance of particular temperatures in these water legs.

(ii) Steam controllers are required as described in paragraph (a)(3) of this section.

(iii) *Steam inlet.* The steam inlets shall be large enough to provide steam for proper operation of the retort.

(iv) *Bleeders.* Bleeder openings ¼ inch (or 6 mm) or larger shall be located in the steam chamber(s) opposite the point of steam entry. Bleeders shall be wide open and shall emit steam continuously during the entire process, including the come-up time. All bleeders shall be arranged in such a way that the operator can observe that they are functioning properly.

(v) *Venting.* Before the start of processing operations, the retort steam chamber(s) shall be vented to ensure removal of air. Heat distribution data or other documentation from the manufacturer or from a processing authority demonstrating that the air is removed from the retort prior to processing shall be kept on file at the establishment and made available to Program employees for review.

(vi) *Conveyor speed.* The conveyor speed shall be calculated to obtain the required process time and recorded by the establishment when the retort is started. The speed shall be checked and recorded at intervals not to exceed 4 hours to ensure that the correct conveyor speed is maintained. A recording device may be used to provide a continuous record of the conveyor speed. When a recording device is used, the speed shall be manually checked against an accurate stopwatch at least once per shift by the establishment. A means of preventing unauthorized speed changes of the conveyor shall be provided. For example, a lock or a notice from management posted at or near the speed adjustment device warning that only authorized persons are permitted to make adjustments are satisfactory means of preventing unauthorized changes.

(vii) *Bleeders and vent mufflers.* If mufflers are used on bleeders or vent systems, the establishment shall have documentation that the mufflers do not impede the removal of air from the retort. Such documentation shall consist of either heat distribution data or other documentation from the muffler manufacturer or from a processing authority. This information shall be maintained on file by the establishment and made available to Program employees for review.

(c) *Pressure processing in water*—(1) *Batch still retorts.* (i) The basic requirements for indicating temperature devices and temperature/time recording devices are described in paragraphs

(a)(1) and (2) of this section. Additionally, bulbs or probes of indicating temperature devices shall be located in such a position that they are beneath the surface of the water throughout the process. On horizontal retorts, the indicating temperature device bulb or probe shall be inserted directly into the retort shell. In both vertical and horizontal retorts, the indicating temperature device bulb or probe shall extend directly into the water a minimum of 2 inches (or 5 cm) without a separable well or sleeve. In vertical retorts equipped with a recorder/controller, the controller probe shall be located at the bottom of the retort below the lowest crate rest in such a position that the steam does not strike it directly. In horizontal retorts so equipped, the controller probe shall be located between the water surface and the horizontal plane passing through the center of the retort so that there is no opportunity for direct steam impingement on the controller probe. Air-operated temperature controllers shall have filter systems to ensure a supply of clean, dry air.

(ii) *Pressure recording device.* Each retort shall be equipped with a pressure recording device which may be combined with a pressure controller.

(iii) Steam controllers are required as described in paragraph (a)(3) of this section.

(iv) *Heat distribution.* Heat distribution data or other documentation from the equipment manufacturer or a processing authority demonstrating uniform heat distribution within the retort shall be kept on file at the establishment and made available to Program employees for review.

(v) *Crate supports.* A bottom crate support shall be used in vertical retorts. Baffle plates shall not be used in the bottom of the retort.

(vi) *Stacking equipment.* For filled flexible containers and, where applicable, semirigid containers, stacking equipment shall be designed to ensure that the thickness of the filled containers does not exceed that specified in the process schedule and that the containers do not become displaced and overlap or rest on one another during the thermal process.

(vii) *Drain valve.* A nonclogging, water-tight drain valve shall be used. Screens shall be installed over all drain openings.

(viii) *Water level.* There shall be a means of determining the water level in the retort during operation (i.e., by using a gauge, electronic sensor, or sight glass indicator). For retorts requiring complete immersion of containers, water shall cover the top layer of containers during the entire come-up time and thermal processing periods and should cover the top layer of containers during cooling. For retorts using cascading water or water sprays, the water level shall be maintained within the range specified by the retort manufacturer or processing authority during the entire come-up, thermal processing, and cooling periods. A means to ensure that water circulation continues as specified throughout the come-up, thermal processing, and cooling periods shall be provided. The retort operator shall check and record the water level at intervals to ensure it meets the specified processing parameters.

(ix) *Air supply and controls.* In both horizontal and vertical still retorts, a means shall be provided for introducing compressed air or steam at the pressure required to maintain container integrity. Compressed air and steam entry shall be controlled by an automatic pressure control unit. A nonreturn valve shall be provided in the air supply line to prevent water from entering the system. Overriding air or steam pressure shall be maintained continuously during the come-up, thermal processing, and cooling periods. If air is used to promote circulation, it shall be introduced into the steam line at a point between the retort and the steam control valve at the bottom of the retort. The adequacy of the air circulation for maintaining uniform heat distribution within the retort shall be documented by heat distribution data or other documentation from a processing authority, and such data shall be maintained on file by the establishment and made available to Program employees for review.

(x) *Water recirculation.* When a water recirculation system is used for heat distribution, the water shall be drawn from the bottom of the retort through a suction manifold and discharged through a spreader that extends the length or circumference of the top of the retort. The holes in the water spreader shall be uniformly distributed. The suction outlets shall be protected with screens to keep debris from entering the recirculation system. The pump shall be equipped with a pilot light or a similar device to warn the operator when it is not running, and with a bleeder to remove air when starting operations. Alternatively, a flow-meter alarm system can be used to ensure proper water circulation. The adequacy of water circulation for maintaining uniform heat distribution within the retort shall be documented by heat distribution data or other documentation from a processing authority and such data shall be maintained on file by the establishment and made available to Program employees for review. Alternative methods for recirculation of water in the retort may be used, provided there is documentation in the form of heat distribution data or other documentation from a processing authority maintained on file by the establishment and made available to Program employees for review.

(xi) *Cooling water entry.* In retorts for processing product packed in glass jars, the incoming cooling water should not directly strike the jars, in order to minimize glass breakage by thermal shock.

(2) *Batch agitating retorts.* (i) The basic requirements and recommendations for indicating temperature devices and temperture/time recording devices are described in paragraphs (a) (1) and (2) of this section. Additionally, the indicating temperature device bulb or probe shall extend directly into the water without a separable well or sleeve. The recorder/controller probe shall be located between the water surface and the horizontal plane passing through the center of the retort so that there is no opportunity for steam to directly strike the controller bulb or probe.

(ii) *Pressure recording device.* Each retort shall be equipped with a pressure recording device which may be combined with a pressure controller.

(iii) *Steam controllers* are required as described in paragraph (a)(3) of this section.

(iv) *Heat distribution.* Heat distribution data or other documentation from the equipment manufacturer or a processing authority shall be kept on file by the establishment and made available to Program employees for review.

(v) *Stocking equipment.* All devices used for holding product containers (e.g., crates, trays, divider plates) shall be so constructed to allow the water to circulate around the containers during the come-up and thermal process periods.

(vi) *Drain valve.* A nonclogging, water-tight drain valve shall be used. Screens shall be installed over all drain openings.

(vii) *Water level.* There shall be a means of determining the water level in the retort during operation (i.e., by using a gauge, electronic sensor, or sight glass indicator). Water shall completely cover all containers during the entire come-up, thermal processing, and cooling periods. A means to ensure that water circulation continues as specified throughout the come-up, thermal processing, and cooling periods shall be provided. The retort operator shall check and record the adequacy of the water level with sufficient frequency to ensure it meets the specified processing parameters.

(viii) *Air supply and controls.* Retorts shall be provided with a means for introducing compressed air or steam at the pressure required to maintain container integrity. Compressed air and steam entry shall be controlled by an automatic pressure control unit. A nonreturn valve shall be provided in the air supply line to prevent water from entering the system. Overriding air or steam pressure shall be maintained continuously during the come-up, thermal processing, and cooling periods. If air is used to promote circulation, it shall be introduced into the steam line at a point between the retort and the steam control valve at the bottom of the retort. The adequacy of the air circulation for maintaining uniform heat distribution within the retort shall be documented by heat distribution data or other documentation from a processing authority, and such data shall be maintained on file by the establishment and made available to Program employees for review.

(ix) *Retort or reel speed timing.* The retort or reel speed timing shall be checked before process timing begins and, if needed, adjusted as specified in the process schedule. In addition, the rotational speed shall be determined and recorded at least once during process timing of each retort load processed. Alternatively, a recording tachometer can be used to provide a continuous record of the speed. The accuracy of the recording tachometer shall be determined and recorded at least once per shift by the establishment by checking the retort or reel speed using an accurate stopwatch. A means of preventing unauthorized speed changes on retorts shall be provided. For example, a lock or a notice from management posted at or near the speed adjustment device warning that only authorized persons are permitted to make adjustments are satisfactory means of preventing unauthorized changes.

(x) *Water recirculation.* If a water recirculation system is used for heat distribution, it shall be installed in such a manner that water will be drawn from the bottom of the retort through a suction manifold and discharged through a spreader which extends the length of the top of the retort. The holes in the water spreader shall be uniformly distributed. The suction outlets shall be protected with screens to keep debris from entering the recirculation system. The pump shall be equipped with a pilot light or a similar device to warn the operator when it is not running and with a bleeder to remove air when starting operations. Alternatively, a flow-meter alarm system can be used to ensure proper water circulation. The adequacy of water circulation for maintaining uniform heat distribution within the retort shall be documented by heat distribution data or other documentation from a processing authority maintained on file by the establishment and made available to Program employees for review. Alternative methods for recirculation of water in the retort may be used provided there is documentation in the form of heat distribution data or other documentation from a processing authority maintained on file by the establishment and made available to Program employees for review.

(xi) *Cooling water entry.* In retorts for processing product packed in glass jars, the incoming cooling water should not directly strike the jars, in order to minimize glass breakage by thermal shock.

(d) *Pressure processing with steam/air mixtures in batch retorts.* (1) The basic requirements for indicating temperature devices and temperature/time recording devices are described in paragraphs (a) (1) and (2) of this section. Additionally, bulb sheaths or probes for indicating temperature devices and temperature/time recording devices or controller probes shall be inserted directly into the retort shell in such a position that steam does not strike them directly.

(2) Steam controllers are required as described in paragraph (a)(3) of this section.

(3) *Recording pressure controller.* A recording pressure controller shall be used to control the air inlet and the steam/air mixture outlet.

(4) *Circulation of steam/air mixture.* A means shall be provided for the circulation of the steam/air mixture to prevent formation of low-temperature pockets. The efficiency of the circulation system shall be documented by heat distribution data or other documentation from a processing authority, and such data shall be maintained on file by the establishment and made available to Program employees for review. The circulation system shall be checked to ensure its proper functioning and shall be equipped with a pilot light or a similar device to warn the operator when it is not functioning. Because of the variety of existing designs, reference shall be made to the equipment manufacturer for details of installation, operation and control.

(5) The Administrator shall be notified immediately by the official establishment of any such system in use or placed into use on or after the effective date of this rule.

(e) *Atmospheric cookers*—(1) *Temperature/time recording device.* Each atmospheric cooker (e.g., hot water bath) shall be equipped with at least one temperature/time recording device in accordance with the basic requirements described in paragraph (a)(2) of this section.

(2) *Heat distribution.* Each atmospheric cooker shall be equipped and operated to ensure uniform heat distribution throughout the processing system during the thermal process. Heat distribution data or other documentation from the manufacturer or a processing authority demonstrating uniform heat distribution within the cooker shall be kept on file by the establishment and made available to Program employees for review.

(f) *Other systems.* All other systems not specifically delineated in this section and used for the thermal processing of canned product will be evaluated on a case-by-case basis by the Adminstrator. Systems will be approved if they are found to conform to the applicable requirements of this section and to produce shelf stable products consistently and uniformly.

(g) *Equipment maintenance.* (1) Upon installation, all instrumentation and controls shall be checked by the establishment for proper functioning and accuracy and, thereafter, at any time their functioning or accuracy is suspect.

(2) At least once a year each thermal processing system shall be examined by an individual not directly involved in daily operations to ensure the proper functioning of the system as well as all auxiliary equipment and instrumentation. In addition, each thermal processing system should be examined before the resumption of operation following an extended shutdown.

(3) Air and water valves that are intended to be closed during thermal processing shall be checked by the establishment for leaks. Defective valves shall be repaired or replaced as needed.

(4) Vent and bleeder mufflers shall be checked and maintained or replaced by the establishment to prevent any reduction in vent or bleeder efficiency.

(5) When water spreaders are used for venting, a maintenance schedule shall be developed and implemented to

assure that the holes are maintained at their original size.

(6) Records shall be kept on all maintenance items that could affect the adequacy of the thermal process. Records shall include the date and type of maintenance performed and the person conducting the maintenance.

(h) *Container cooling and cooling water.* (1) Potable water shall be used for cooling except as provided for in paragraphs (h) (2) and (3), of this section.

(2) Cooling canal water shall be chlorinated or treated with a chemical approved by the Administrator as having a bactericidal effect equivalent to chlorination. There shall be a measurable residual of the sanitizer in the water at the discharge point of the canal. Cooling canals shall be cleaned and replenished with potable water to prevent the buildup of organic matter and other materials.

(3) Container cooling waters that are recycled or reused shall be handled in systems that are so designed, operated, and maintained so there is no buildup of microorganisms, organic matter, and other materials in the systems and in the waters. System equipment, such as pipelines, holding tanks and cooling towers, shall be constructed and installed so that they can be cleaned and inspected. In addition, the establishment shall maintain, and make available to Program employees for review, information on at least the following:

(i) System design and construction;

(ii) System operation including the rates of renewal with fresh, potable water and the means for treating the water so that there is a measurable residual of an acceptable sanitizer, per paragraph (h)(2) of this section, in the water at the point where the water exits the container cooling vessel;

(iii) System maintenance including procedures for the periodic cleaning and sanitizing of the entire system; and

(iv) Water quality standards, such as microbiological, chemical and physical, monitoring procedures including the frequency and site(s) of sampling, and the corrective actions taken when water quality standards are not met.

(i) *Post-process handling of containers.* Containers shall be handled in a manner that will prevent damage to the hermetic seal area. All worn and frayed belting, can retarders, cushions, and the like shall be replaced with nonporous materials. To minimize container abrasions, particularly in the seal area, containers should not remain stationary on moving conveyors. All post-process container handling equipment should be kept clean so there is no buildup of microorganisms on surfaces in contact with the containers.

[Approved by the Office of Management and Budget under control number 0583–0015]

§ 381.306 Processing and production records.

At least the following processing and production information shall be recorded by the establishment: date of production; product name and style; container code; container size and type; and the process schedule, including the minimum initial temperature. Measurements made to satisfy the requirements of § 381.303 regarding the control of critical factors shall be recorded. In addition, where applicable, the following information and data shall also be recorded:

(a) *Processing in steam*—(1) *Batch still retorts.* For each retort batch, record the retort number or other designation, the approximate number of containers or the number of retort crates per retort load, product initial temperature, time steam on, the time and temperature vent closed, the start of process timing, time steam off, and the actual processing time. The indicating temperature device and the temperature recorder shall be read at the same time at least once during process timing and the observed temperatures recorded.

(2) *Batch agitating retorts.* In addition to recording the information required for batch, still steam retorts in paragraph (a)(1) of this section, record the functioning of the condensate bleeder(s) and the retort or reel speed.

(3) *Continuous rotary retorts.* Record the retort system number, the approximate total number of containers retorted, product initial temperature, time steam on, the time and temperature vent closed, time process temperature reached, time first containers enter the retort, time last containers exit the retort, and, if specified in the process schedule, measurements of temperatures in the hydrostatic water legs. Readings of the temperature indicating device, which is located in the steam/water interface, and the temperature recording device shall be observed and the temperatures recorded at the time the first containers enter the steam dome. Thereafter, these instruments shall be read and the temperatures recorded with sufficient frequency to ensure compliance with the temperature specified in the process schedule and should be made at least every hour of continuous retort operation. Container conveyor speed, and for agitating hydrostatic retorts, the rotative chain speed, shall be determined and recorded at intervals of sufficient frequency to ensure compliance with the process schedule and should be performed at least every 4 hours.

(b) *Processing in water*—(1) *Batch still retorts.* For each retort batch, record the retort number or other designation, the approximate number of containers or number of retort crates per retort load, product initial temperature, time steam on, the start of process timing, water level, water recirculation rate (if critical), overriding pressure maintained, time steam off, and actual processing time. The indicating temperature device and the temperature recorder shall be read at the same time at least once during process timing and the observed temperatures recorded.

(2) *Batch agitating retorts.* In addition to recording the information required in paragraph (b)(1) of this section, record the retort or reel speed.

(c) *Processing in steam/air mixtures.* For each retort batch, record the retort number or other designation, the approximate number of containers or number of retort crates per retort load, product initial temperature, time steam on, venting procedure, if applicable, the start of process timing, maintenance of circulation of the steam/air mixture, air flow rate or forced recirculation flow rate (if critical), overriding pressure maintained, time steam off, and actual processing time. The indicating temperature device and the temperature recorder shall be read at the same time at least once during process timing and the observed temperatures recorded.

(d) *Atmospheric cookers*—(1) *Batch-type systems.* For each cooker batch, record the cooker number or other designation and the approximate

number of containers. In addition, record all critical factors of the process schedule such as cooker temperature, initial temperature, the time the thermal process cycle begins and ends, hold time, and the final internal product temperature.

(2) *Continuous-type systems.* Record the cooker number or other designation, the time the first containers enter and the last containers exit a cooker, and the approximate total number of containers processed. In addition, record all critical factors of the process schedule such as the initial temperature, cooker speed, and final internal product temperature.

[Approved by the Office of Management and Budget under control number 0583–0015]

§ 318.307 Record review and maintenance.

(a) *Process records.* Charts from temperature/time recording devices shall be identified by production date, container code, processing vessel number or other designation and other data as necessary to enable correlation with the records required in § 381.306. Each entry on a record shall be made at the time the specific event occurs, and the recording individual shall sign or initial each record form. No later than 1 working day after the actual process, the establishment shall review all processing and production records to ensure completeness and to determine if all product received the process schedule. All records, including the temperature/time recorder charts and critical factor control records, shall be signed or initialed and dated by the person conducting the review. All processing and production records required in this subpart shall be made available to Program employees for review.

(b) *Automated process monitoring and recordkeeping.* When requested by an establishment, the Administrator will consider the approval of automated process monitoring and recordkeeping systems. An approved system, alone or in combination with written records, shall be designed and operated in a manner which will ensure compliance with the applicable requirements of § 381.306.

(c) *Container closure records.* Written records of all container closure examinations shall specify the container code, the date and time of container closure examination, the measurement(s) obtained, and any corrective actions taken. Records shall be signed or initialed by the container closure technician and shall be reviewed and signed by the establishment within 1 working day after the actual production to ensure that the records are complete and that the closing operations have been properly controlled. All container closure examination records required in this subpart shall be made available to Program employees for review.

(d) *Distribution of product.* Records shall be maintained by the establishment identifying initial distribution of the finished product to facilitate, if necessary, the segregation of specific production lots that may have been contaminated or are otherwise unsound for their intended use.

(e) *Retention of records.* Copies of all processing and production records required in § 381.306 shall be retained for no less than 1 year at the establishment, and for an additional 2 years at the establishment or other location from which the records can be made available to Program employees within 3 working days.

[Approved by the Office of Management and Budget under control number 0583–0015]

§ 381.308 Deviations in processing.

(a) Whenever the actual process is less than the process schedule or when any critical factor does not comply with the requirements for that factor as specified in the process schedule, it shall be considered a deviation in processing.

(b) Deviations in processing (or process deviations) shall be handled under an approved quality control program as provided in paragraph (c) of this section or shall be handled in accordance with paragraph (d) of this section.

(c) Any partial quality control program or any portion of a total quality control system for handling process deviations shall be prepared and submitted to the Administrator for approval in accordance with § 381.145.

(d) Handling process deviations without an approved quality control program.

(1) *Deviations identified in-process.* If a deviation is noted at any time before the completion of the intended process schedule, the establishment shall:

(i) Immediately reprocess the product using the full process schedule; or,

(ii) Use an appropriate alternate process schedule provided such a process schedule has been established in accordance with § 381.302 (a) and (b) and is filed with the inspector in accordance with § 381.302(c); or,

(iii) Hold the product involved and have the deviation evaluated by a processing authority to assess the safety and stability of the product. Upon completion of the evaluation, the establishment shall provide the inspector the following:

(*a*) A complete description of the deviation along with all necessary supporting documentation;

(*b*) A copy of the evaluation report; and,

(*c*) A description of any product disposition actions, either taken or proposed.

(iv) Product handled in accordance with paragraph (d)(1)(iii) of this section shall not be shipped from the establishment until the Program has reviewed all of the information submitted and approved the product disposition actions.

(v) If an alternate process schedule is used that is not on file with the inspector or if an alternate process schedule is immediately calculated and used, the product shall be set aside for further evaluation in accordance with paragraphs (d)(1) (iii) and (iv) of this section.

(vi) When a deviation occurs in a continuous rotary retort, the product shall be handled in accordance with paragraphs (d)(1) (iii) and (iv) of this section or in accordance with the following procedures:

(*a*) Emergency stops.

(*1*) When retort jams or breakdowns occur during the processing operations, all containers shall be given an emergency still process (developed per § 381.302(b)) before the retort is cooled or the retort shall be cooled promptly and all containers removed and either reprocessed, repacked and reprocessed, or destroyed. Regardless of the procedure used, containers in the retort intake valve and in transfer valves between retort shells at the time of a jam or breakdown shall be removed and either reprocessed, repacked and reprocessed, or destroyed. Product to be destroyed shall be handled as "U.S. Inspected and Condemned", as defined in § 301.2(ee) of this chapter, and disposed of in accordance with Part 314 of this chapter.

(*2*) The time the retort reel stopped and the time the retort is used for an emergency still retort process shall be noted on the temperature/time recording device and entered on the other production records required in § 381.306.

(*b*) Temperature drops. When the retort temperature drops below the temperature specified in the process schedule, the reel shall be stopped and the following actions shall be taken:

(*1*) For temperature drops of less than 10 °F (or 5.5 °C) either (*i*) all containers in the retort shall be given an emergency still process (developed per § 381.302(b)) before the reel is restarted; (*ii*) container entry to the retort shall be prevented and an emergency agitating process

(developed per § 381.302(b)) shall be used before container entry to the retort is restarted; or (*iii*) container entry to the retort shall be prevented and the reel restarted to empty the retort. The discharged containers shall be reprocessed, repacked and reprocessed, or destroyed. Product to be destroyed shall be handled as "U.S. Inspected and Condemned", as defined in § 301.2(ee) of this chapter, and disposed of in accordance with Part 314 of this chapter.

(*2*) For temperature drops of 10 °F (or 5.5 °C) or more, all containers in the retort shall be given an emergency still process (developed per § 381.302(b)). The time the reel was stopped and the time the retort was used for a still retort process shall be marked on the temperature/time recording device by the establishment and entered on the other production records required in § 381.306. Alternatively, container entry to the retort shall be prevented and the reel restarted to empty the retort. The discharged containers shall be either reprocessed, repacked and reprocessed, or destroyed. Product to be destroyed shall be handled as "U.S. Inspected and Condemned" as defined in § 301.2(ee) of this chapter, and disposed of in accordance with Part 314 of this chapter.

(2) *Deviations identified through record review.* Whenever a deviation is noted during review of the processing and production records required by § 381.307 (a) and (b), the establishment shall hold the product involved and the deviation shall be handled in accordance with paragraphs (d)(1) (iii) and (iv) of this section.

(e) *Process deviation file.* The establishment shall maintain full records regarding the handling of each deviation. Such records shall include, at a minimum, the appropriate processing and production records, a full description of the corrective actions taken, the evaluation procedures and results, and the disposition of the affected product. Such records shall be maintained in a separate file or in a log that contains the appropriate information. The file or log shall be retained in accordance with § 381.307(e) and shall be made available to Program employees upon request.

[Approved by the Office of Management and Budget under control number 0583–0015]

§ 381.309 Finished product inspection.

(a) Finished product inspections shall be handled under an approved quality control program as provided in paragraph (b) or paragraph (c) of this section or shall be handled in accordance with paragraph (d) of this section.

(b) Any partial quality control program designed to ensure compliance with the requirements of this section (or any part thereof) shall be prepared and submitted to the Administrator for approval in accordance with § 381.145 of this subchapter.

(c) A total quality control system prepared and submitted to the Administrator for approval in accordance with § 381.145 of this subchapter shall be designed to ensure compliance with the requirements of this section.

(d) Handling finished product inspections without an approved quality control program.

(1) *Incubation of shelf stable canned product.*—(i) *Incubator.* The establishment shall provide incubation facilities which include an accurate temperature/time recording device, an indicating temperature device, a means for the circulation of the air inside the incubator to prevent temperature variations, and a means to prevent unauthorized entry into the facility. The Program is responsible for the security of the incubator.

(ii) *Incubation temperature.* The incubation temperature shall be maintained at 95±5 °F 35±2.8 °C). If the incubation temperature falls below 90 °F (or 32 °C) or exceeds 100 °F (or 38 °C) but does not reach 103 °F (or 39.5 °C), the incubation temperature shall be adjusted within the required range and the incubation time extended for the time the sample containers were held at the deviant temperature. If the incubation temperature is at or above 103 °F (or 39.5 °C) for more than 2 hours, the incubation test(s) shall be terminated, the temperature lowered to within the required range, and new sample containers incubated for the required time.

(iii) *Product requiring incubation.* Shelf stable product requiring incubation includes:

(*a*) Low acid products as defined in § 381.300(m); and

(*b*) Acidified low acid products as defined in § 381.300(b).

(iv) *Incubation samples.* (*a*) From each load of product processed in a batch-type thermal processing system (still or agitation), the establishment shall select at least one container for incubation.

(*b*) For continuous rotary retorts, hydrostatic retorts, or other continuous-type thermal processing systems, the establishment shall select at least one container per 1,000 for incubation.

(*c*) Only normal-appearing containers shall be selected for incubation.

(v) *Incubation time.* Canned product requiring incubation shall be incubated for not less than 10 days (240 hours) under the conditions specified in paragraph (d)(1)(ii) of this section.

(vi) *Incubation checks and record maintenance.* Designated establishment employees shall visually check all containers under incubation each working day and the inspector shall be notified when abnormal containers are detected. All abnormal containers should be allowed to cool before a final decision on their condition is made. For each incubation test the establishment shall record at least the product name, container size, container code, number of containers incubated, in and out dates, and incubation results. The establishment shall retain such records, along with copies of the temperature/time recording charts, in accordance with § 381.307(e).

(vii) *Abnormal containers.* The finding of abnormal containers (as defined in § 381.300(a)) among incubation samples is cause to officially retain at least the code lot involved.

(viii) *Shipping.* No product shall be shipped from the establishment before the end of the required incubation period except as provided in this paragraph. An establishment wishing to ship product prior to the completion of the required incubation period shall submit a written proposal to the area supervisor. Such a proposal shall include provisions that will assure that shipped product will not reach the retail level of distribution before sample incubation is completed and that product can be returned promptly to the establishment should such action be deemed necessary by the incubation test results. Upon receipt of written approval from the area supervisor, product may be routinely shipped provided the establishment continues to comply with all requirements of this subpart.

(2) *Container condition.* (i) *Normal containers.* Only normal-appearing containers shall be shipped from an establishment as determined by an appropriate sampling plan or other means acceptable to Program employees.

(ii) *Abnormal containers.* When abnormal containers are detected by any means other than incubation, the establishment shall inform the inspector and the affected code lot(s) shall not be shipped until the Program has determined that the product is safe and stable. Such a determination will take into account the cause and level of abnormals in the affected lot(s) as well as any product disposition actions either taken or proposed by the establishment.

[Approved by the Office of Management and Budget under control number 0583–0015]

§ 381.310 Personnel and training.

All operators of thermal processing systems specified in § 381.305 and container closure technicians shall be under the direct supervision of a person who has successfully completed a school of instruction that is generally recognized as adequate for properly training supervisors of canning operations.

§ 381.311 Recall procedure.

Establishments shall prepare and maintain a current procedure for the recall of all canned product covered by this subpart. Upon request, the recall procedure shall be made available to Program employees for review.

[Approved by the Office of Management and Budget under control number 0583–0015]

Done at Washington, DC, on: September 19, 1986.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 86–25911 Filed 12–18–86; 8:45 am]

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December 19, 1986

Part III

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Research; Advisory Committee Meeting and Proposed Actions Under Guidelines Notices

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes Of Health

Recombinant DNA Advisory Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee at the National Institutes of Health, Building 1, Wilson Hall, 9000 Rockville Pike, Bethesda, Maryland 20892, on February 2, 1987, from approximately 9 a.m. to adjournment at approximately 5 p.m. This meeting will be open to the public to discuss:

Amendment of Guidelines; and other matters to be considered by the Committee.

Attendance by the public will be limited to space available. Members of the public wishing to speak at the meeting may be given such an opportunity at the discretion of the Chair.

Dr. William J. Gartland, Executive Secretary, Recombinant DNA Advisory Committee, National Institutes of Health, Building 31, Room 3B10, Bethesda, Maryland, telephone (301) 496–6051, will provide materials to be discussed at the meeting, rosters of committee members, and substantive program informaton. A summary of the meeting will be available at a later date.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: December 10, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86–28441 Filed 12–8–86; 8:45 am]

BILLING CODE 4140–01–M

Recombinant DNA Research: Proposed Actions Under Guidelines

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of proposed actions under NIH guidelines for research involving recombinant DNA molecules.

SUMMARY: This notice sets forth proposed actions to be taken under the National Institutes of Health (NIH) Guidelines for Research Involving Recombinant DNA Molecules. Interested parties are invited to submit comments concerning these proposals. These proposals will be considered by the Recombinant DNA Advisory Committee (RAC) at its meeting on February 2, 1987. After consideration of these proposals and comments by the RAC, the Director of the National Institutes of Health will issue decisions on these proposals in accord with the Guidelines.

DATE: Comments received by January 22, 1987, will be reproduced and distributed to the RAC for consideration at its February 2, 1987, meeting.

ADDRESS: Written comments and recommendations should be submitted to the Director, Office of Recombinant DNA Activities, Building 31, Room 3B10, National Institutes of Health, Bethesda, Maryland 20892. All comments received in timely response to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION: Background documentation and additional information can be obtained from the Office of Recombinant DNA Activities, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–6051.

SUPPLEMENTARY INFORMATION: The NIH will consider the following actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules.

I. Proposed Amendments of Sections I–A and III–A of the NIH Guidelines

Dr. Bernard Talbot, Deputy Director, National Institute of Allergy and Infectious Diseases, has requested that the following proposed amendments of the NIH Guidelines and rationale be published for comment and considered by the RAC:

The current NIH Guidelines for Research Involving Recombinant DNA Molecules (Guidelines) contain the following text in section III–A of the Guidelines.

> If the experiments in this category are submitted for review to another Federal agency, the submitter shall notify ORDA: ORDA may then determine that such review serves the same purpose, and based on that determination, notify the submitter that no RAC review will take place, no NIH approval is necessary, and the experiment may proceed upon approval from the other Federal agency.

This text appears in section III–A of the Guidelines and is applicable only to experiments covered by Section III–A.

It requires that: (1) An investigator who has submitted a proposal to another Federal agency notify the NIH Office of Recombinant DNA Activities (ORDA); (2) ORDA determine if the review serves the same purpose (as NIH review); (3) and, if so, ORDA notify the submitter that the experiment may proceed upon approval from the other Federal agency.

On June 26, 1986, the Office of Science and Technology Policy published in the **Federal Register** (51 FR 23302) a "Coordinated Framework for Regulation of Biotechnology." It contains a Preamble, followed by Statements of Policy from the Food and Drug Administration, Environmental Protection Agency, U.S. Department of Agriculture, Occupational Safety and Health Administration, and the National Institutes of Health. The Preamble states that,

> . . . for contained federally funded research for biomedical and agricultural purposes, research approval will be granted by the funding agency. . . . Jurisdiction for release may be under S&E, NSF, APHIS, or EPA.

There is no mention in the June 26 **Federal Register** document of any requirement, once approval for a recombinant DNA experiment is obtained from a Federal agency other than NIH, for communication with the NIH Office of Recombinant DNA Activities. And indeed, I believe that the absence of such a requirement should be the case; not only for experiments covered by Section III–A of the Guidelines, but for all recombinant DNA experiments.

Therefore, I propose the following changes in the NIH Guidelines for Research Involving Recombinant DNA Molecules.

1. Delete from section III–A of the Guidelines the following paragraph:

> If the experiments in this category are submitted for review to another Federal agency, the submitter shall notify ORDA: ORDA may then determine that such review serves the same purpose, and based on that determination, notify the submitter that no RAC review will take place, no NIH approval is necessary, and the experiment may proceed upon approval from the other Federal agency.

2. Add at the end of section I–A of the Guidelines the following paragraph:

> Any recombinant DNA experiment which according to these Guidelines requires approval by the National Institutes of Health (NIH), may be sent by the submitter to the NIH or to another Federal agency that has jurisdiction for review and approval. Once approval for a recombinant DNA experiment has been given by a Federal agency other than the NIH (whether referred to that agency by the NIH, or sent directly there by the submitter), the experiment may proceed without the necessity for NIH review or approval.

II. Proposed Revision of Section III–A–2 of the NIH Guidelines

Section III–A–2 of the NIH Guidelines currently reads as follows:

III–A–2. Deliberate release into the environment of any organism containing recombinant DNA, except certain plants as described in Appendix L.

At its meeting on September 29, 1986, the RAC voted to recommend that section III–A–2 be revised to read as follows:

III–A–2. Deliberate release into the environment of any organism containing recombinant DNA except:

a. Certain plants as described in Appendix L.

b. Deletion derivatives not otherwise covered by these Guidelines.

c. Organisms covered in exemption III–D–2.

This recommendation has not yet been acted upon by the Director, NIH, and therefore has not yet been incorporated into the NIH Guidelines.

The RAC Working Group on Definitions met on December 5, 1986, and recommended that section III–A–2 be amended to read as follows:

III–A–2. Deliberate release into the environment of any organism containing recombinant DNA except those listed below. The term "deliberate release" is defined as a planned introduction of recombinant DNA-containing microorganisms, plants, or animals into the environment.

a. Introductions conducted under conditions considered to be accepted scientific practices in which there is adequate evidence of biological and/or physical control of the recombinant DNA-containing organisms. The nature of such evidence is described in Appendices L, M, N, and O.

b. Deletion derivatives not otherwise covered by these Guidelines.

c. Organisms covered in exemption III–D–2.

It was the intent of the working group that Appendix L would be the current Appendix L dealing with plants with future changes to be recommended by the RAC. Appendices M, N, and O would be parallel sections, to be written, covering respectively animals, microorganisms other than vaccines, and vaccines.

The minutes of the December 5, 1986, meeting of the working group will be available prior to the February 2, 1986, RAC meeting.

III. Proposed Revision of Section I–B or Section III–A–2 of the NIH Guidelines

The RAC Working Group on Definitions at its meeting on December 5, 1986, passed the following motion with regard to the definition of recombinant DNA:

The working group agreed with the concept that certain types of recombinant DNA experiments which do not involve the introduction of foreign DNA need not be subjected to special regulation as "recombinant DNA." The working group were split as to whether they preferred dealing with this problem by changing the definition of recombinant DNA or by further modifications of other sections of the Guidelines (e.g., those in III–A–2). Therefore, the working group presents the following two options for public comment and RAC consideration:

1. Change definition of recombinant DNA:

"The first paragraph of section I–B would be revised to read as follows (new words in italics):

In the context of these Guidelines, recombinant DNA molecules are defined as either (i) molecules which are constructed outside living cells by joining *foreign* natural or *foreign* synthetic DNA segments to DNA molecules that can replicate in a living cell, or (ii) DNA molecules that result from the replication of those described in (i) above.

The following new footnote would be added at the word "foreign":

> Rearrangements involving the introduction of DNA from different organisms or different strains of an organism will be considered recombinant DNA. Deletions, single-base changes and rearrangements within a single genome will not involve the introduction of foreign DNA and therefore would not be considered recombinant DNA.

2. Modify Section III–A–2 to read as follows:

III–A–2. Deliberate release into the environment of any organism containing recombinant DNA except those listed below. The term "deliberate release" is defined as a planned introduction of recombinant DNA-containing microorganisms, plants, or animals into the environment.

a. Introductions conducted under conditions considered to be accepted scientific practices in which there is adequate evidence of biological and/or physical control of the recombinant DNA-containing organisms. The nature of such evidence is described in Appendices L, M, N, and O.

b. Deletion derivatives and single base changes not otherwise covered by the Guidelines.

c. Rearrangements and amplification within a single genome. Rearrangements involving the introduction of DNA from different strains of the same organism would not be covered by this exemption.

The minutes of the December 5, 1986, meeting of the Working Group on Definitions will be available prior to the February 2, 1986, RAC meeting.

IV. Proposed Revisions of Appendices C–II, C–III, and C–IV

Dr. Frank E. Young, Commissioner of Food and Drugs, has submitted the following proposed revisions of Appendices C–II, C–III, and C–IV, and rationale:

On June 26, 1986, a major statement of federal policy, the "Coordinated Framework for Regulation of Biotechnolgy", was published (51 FR 23301–93). We believe that important clarifications of regulatory policy are to be found there, but that some minor changes in the NIH Guidelines are required for consistency and clarity.

As noted on page 23304 of the June 26 document, Appendices C–II, C–III, and C–IV of the NIH Guidelines contain the statement that:

> For large-scale (LS) fermentation experiments BL1–LS physical containment conditions are recommended. However, following review by the IBC of appropriate data for a particular host-vector system, some latitude in the application of BL1–LS requirements as outlined in Appendix K–II–A through K–II–F is permitted.

The document continues:

> The appropriate large-scale containment requirements for many low-risk [r]DNA derived industrial microorganisms will be no greater than those appropriate for the unmodified parental organisms.

Together, these statements imply that the actions of IBCs should ensure that requirements for physical containment of low-risk microorganisms should be appropriately minimal, i.e., only those that are employed routinely for organisms such as *E. coli K–12, B. subtilis*, or *Saccharomyces cerevisiae*. It should be noted that industrial

fermentation has a long and distinguished history and currently accounts for products valued at more than $2 billion annually (attachment, Tables 1–7). All but a minuscule proportion of this production employs non-pathogenic organisms and is carried out safely under conditions significantly less restrictive than the NIH Guidelines' BL1–LS, which requires that recombinant organisms be handled in a closed system, that culture fluids containing viable organisms not be removed from a closed system, that exhaust gases removed from a closed system be treated by filters equivalent to HEPA filters, etc.

To ensure compliance with the NIH Guidelines, the *E. coli* and *Saccharomyces cerevisiae* production organisms used to manufacture the five DNA-derived pharmaceuticals approved by FDA (human insulin, human growth hormone, two alpha-interferons, and hepatitis B vaccine), are indeed grown under containment conditions at least BL1–LS. This degree of containment is expensive, unwieldy and unnecessary.

Despite the interpretation discussed above of the language in the June 26 document, FDA has received numerous inquiries and requests from academics, industrial representatives, and others who have found the language in the June 26 document and the NIH Guidelines not explicit enough for purposes of strategic planning. Therefore, we propose the following amendment to the NIH Guidelines:

In Appendices C–II, C–III, and C–IV, delete the followinng language:

For these exempt laboratory experiments, BL1 physical containment conditions are recommended.

For large-scale (LS) fermentation experiments BL1–LS physical containment conditions are recommended. However, following review by the IBC of appropriate data for a particular host-vector system, some latitude in the application of BL1–LS requirements as outlined in Appendix K–II–A through K–II–F is permitted.

And substitute:

For these exempt laboratory experiments, the appropriate physical containment conditions need be no greater than those for the host organism unmodified by recombinant DNA techniques.

For large-scale (LS) fermentation experiments, the appropriate physical containment conditions need be no greater than those for the host organism unmodified by recombinant DNA techniques.

Thank you. We hope that this proposal will receive consideration by the RAC at the earliest opportunity.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual Programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: December 11, 1986.

Bernard Talbot,

Acting Director, Notionol Institute of Allergy and Infectious Diseases.

[FR Doc. 86–28442 Field 12–18–86; 8:45 am]

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Friday
December 19, 1986

Part IV

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910

Hazardous Waste Operations and Emergency Response; Interim Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S-760]

Hazardous Waste Operations and Emergency Response

AGENCY: Occupational Safety and Health Administration; Labor.

ACTION: Interim final rule.

SUMMARY: This interim final rule amends the Occupational Safety and Health Administration (OSHA) standards for hazardous materials in Subpart H of 29 CFR Part 1910 by adding a new § 1910.120 containing employee protection requirements for workers engaged in hazardous waste operations including emergency response to hazardous substance incidents.

Coverage includes employees involved in responses covered by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended (CERCLA or "Superfund" Act) [Pub. L. 96–510, 42 U.S.C. 9601 *et seq*, 94 Stat 2767] such as clean-up of hazardous waste sites, certain hazardous waste operations conducted under the Resource Conservation and Recovery Act of 1976 as amended (RCRA) [Pub. L. 94–580, 42 U.S.C. 6901 *et seq*, 90 Stat 2795], and emergency response to incidents involving the handling, processing and transportation of hazardous substances.

The issuance of this interim final rule is mandated by section 126(e) of the "Superfund Amendments and Reauthorization Act of 1986" (SARA) [Pub. L. 99–499]. The interim final rule will regulate employee safety and health at hazardous waste operations and during emergency response to hazardous substance incidents until a final standard, also mandated by section 126 of SARA, is issued by OSHA and becomes effective. The final OSHA standard also mandated by section 126 of SARA is the subject of a Notice of Proposed Rulemaking which will be published shortly.

DATES: Interim rule effective December 19, 1986; various start-up dates have been established in paragraph (p) of the standard. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 19, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, U.S. Department of Labor, Occupational Safety and Health Administration, Division of Consumer Affairs, Room S–4220, 200 Constitution Avenue, NW., Washington, DC 20210, 202–523–8151.

This interim final rule was prepared by Michael B. Moore and Chappell D. Pierce, Directorate of Safety Standards, Office of Fire Protection Engineering and Systems Safety Standards, (202) 523–7225.

SUPPLEMENTARY INFORMATION:

I. Background

On October 17, 1986, the President signed into law the "Superfund Amendments and Reauthorization Act of 1986" (SARA) [Pub. L. 99–499]. As part of SARA the Secretary of Labor ("Secretary") is directed to issue an interim final rule within 60 days after the date of enactment, which is to provide no less protection for workers engaged in covered operations than the protections contained in the Environmental Protection Agency's (EPA), "Health and Safety Requirements for Employees Engaged in Field Activities" manual (EPA Order 1440.2) dated 1981 and the existing OSHA standards under Subpart C of 29 CFR Part 1926. SARA also directs the Secretary to issue, within one year, a final standard under section 6(b) of the Occupational Safety and Health Act of 1970 for the health and safety of employees engaged in hazardous waste operations. SARA further indicates that certain specific areas of employee protection (i.e., medical surveillance, personal protective equipment, training, and others) contained in section 126(b) are relevant to protect employees engaged in hazardous waste operations.

The interim final rule issued today becomes effective immediately and will remain in effect until one year after issuance of the final OSHA standard, which will be proposed shortly. Congress has clearly directed in section 126(e) that these interim final rules become effective upon issuance and the standard provides this. Implementation is to commence immediately, however, various start-up dates are set forth in paragraph (p) of the standard which recognize that full implementation cannot be completed immediately for some provisions. In addition OSHA will, of course, recognize greater feasibility constraints in the first three months of the standard and take those constraints into account in enforcement.

This interim final rule has been adopted from the language of the EPA manual entitled "Health and Safety Requirements for Employees Engaged in Field Activities" (1981) and the language of OSHA's safety and health standards in Subpart C of 29 CFR Part 1926. The interim final rule also contains language taken from various documents issued either jointly or solely by the EPA, OSHA, the U.S. Coast Guard, and the National Institute for Occupational Safety and Health (NIOSH). OSHA has specifically used the joint OSHA/EPA/USCG/NIOSH document entitled, *"Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities"* (Preamble Reference 6), as an outline in preparing this interim rule. This four agency manual has been developed as a result of the collaborative efforts of professionals representing the four agencies. These professionals, who are knowledgeable in hazardous waste operations, worked with over 100 experts and organizations in the development of the criteria contained in this manual. The manual was published in October 1985 and is public information. The manual is a guidance document for managers responsible for occupational safety and health programs at inactive hazardous waste sites. The manual is intended for use by government officials at all levels and contractors involved with hazardous waste operations. The manual provides general guidance and is intended to be used as a preliminary basis for developing a specific health and safety program for hazardous waste operations. Further the major subject areas listed in SARA section 126(b) are nearly identical to these major chapters listed in the manual.

Congress indicated that reasonably comprehensive protection was intended for employees at hazardous waste operations, as discussed below, covering more than the minimum requirements specified in the EPA manual (EPA Order 1440.2) and Subpart C of 29 CFR Part 1926. In light of the short period of time Congress directed for issuance of this standard, OSHA's utilization of recognized sources of guidance which have been created by experts in the area and utilizing the resources of relevant agencies is appropriate.

In view of the brief period given for the issuance of this document, it may be necessary to issue minor corrections in the near future.

II. Summary and Explanation of the Standard

Paragraph (a)—Scope, Application, and Definitions

In paragraph (a)(1), *Scope*, OSHA has defined the scope of the standard to include:

(i) Hazardous substance response operations under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended (CERCLA) including initial investigations at CERCLA sites before the presence or absence of hazardous substances has been ascertained;

(ii) Major corrective actions taken in clean-up operations under the Resource Conservation and Recovery Act of 1976 as amended (RCRA);

(iii) Operations involving hazardous waste storage, disposal and treatment facilities regulated under 40 CFR Parts 264 and 265 pursuant to RCRA except for small quantity generators and those employers with less than 90 days accumulation of hazardous wastes as defined in 40 CFR 262.34;

(iv) Hazardous waste operations sites that have been designated for clean-up by state or local governmental authorities; and

(v) Emergency response operations for releases of or substantial threats of releases of hazardous substances and post-emergency response operations to such releases.

Thus this standard will cover hazardous waste clean-up operations at CERCLA sites, RCRA sites, emergency response sites and those sites designated by State or local governments. It will also cover other hazardous waste operations, such as storage, disposal or treatment of hazardous waste at RCRA facilities.

OSHA believes that Congress intended the interim rule to have a broad scope and application. This is indicated by the legislative intent as reflected in the language of SARA. The language of section 126(e) explicitly states that the Secretary "shall issue interim final regulations *under this section. . .*" (emphasis supplied). "Under this section" refers to the entire section 126 of SARA. And, as previously noted, section 126(a) mandates safety and health standards for the protection of employees engaged in hazardous waste operations. Thus, OSHA believes Congress intended the interim final rule to mirror section 126 and provide protective provisions to employees engaged in hazardous waste operations.

The argument is buttressed further by the fact that section 126(e) states that the interim final rule shall provide *no less* (emphasis added) protection for workers employed by contractors and emergency response workers than the protection contained in the Environmental Protection Agency Manual "Health and Safety Requirements for Employees Engaged in Field Activities" and exiting standards under Subpart C of 29 CFR Part 1926. The two sources cited in section 126(e) are not a limitation on the scope of the interim rule. Rather, this language establishes the minimum amount of protective provisions, with the broad parameters of employee protection delineated by the remainder of section 126.

This interpretation is reinforced because SARA is a freestanding statutory provision and not an amendment to CERCLA. The clear Congressional intent then is to provide protection to employees whenever they deal with hazardous wastes.

The hazards an employee faces at a RCRA, CERCLA, or emergency response site are the same hazards. The risk of exposure is to the same types of hazardous substances. The scope of the regulation fulfills the Congressional mandate: to effectively provide for employee health and safety at hazardous waste operations and emergency response incidents.

As indicated in the application provisions, different provisions of the standard apply to clean-up operations, regular hazardous waste operations and emergency response to take into account relevant differences.

Further the term "hazardous waste operation" is used in section 126(a) of SARA. "Hazardous waste" is also a term used in RCRA and there is no indication from SARA or its legislative history that RCRA facilities were to be excluded from coverage by this interim rule. This is a further reason why OSHA has included RCRA hazardous waste operations under the coverage of this interim final rule. However, small quantity generators; employers who have less than 90 days of hazardous waste accumulation; and solid waste disposal operations which do not involve hazardous waste are not covered by this interim final rule. Also, employees at hazardous waste sites who will not be exposed or do not have the potential to be exposed to hazardous substances are not covered by this interim final rule.

Emergency response employees who respond or will respond to incidents involving hazardous substances are covered by this interim final rule. Public employees of states that have agreements with OSHA under section 18 of the OSH Act must issue regulations at least as effective as these to protect public employees.

Municipal or other sanitary landfills that handle domestic wastes are not covered. Similar waste paper or scrap metal operations are generally not covered because of the type of wastes they handle. But they could be covered if they have clean-ups for or handle hazardous wastes meeting the scope provisions of the standard.

Operations with no exposure to on-site hazardous substances, i.e., road building for site access, construction of on-site or the setting up of temporary facilities in the clean zone or the closure of a RCRA site involving the building of a clay cap over hazard wastes, are considered to be construction activities covered by the standards in 29 CFR Part 1926.

The scope and application provisions carry out the intent of Congress and are consistent with good occupational safety and health policy. Employees performing clean-up operations under CERCLA, RCRA (corrective actions) and post emergency response, generally those employees likely to have the highest exposures to hazardous substances over a longer period, are covered by virtually all the provisions of the rule. Employees exposed to hazardous wastes in routine RCRA hazardous waste operations, who are regularly exposed to hazardous wastes but in a more controlled environment, are covered by the more limited requirements of paragraph (o) of the interim final rule. Emergency response workers, exposed usually for short periods to often unknown but possibly high levels of hazardous substances, have specific provisions directed towards this situation.

In paragraph (a)(2), *Application*, OSHA designates the requirements which apply to the specific work activities covered by this interim final rule. The requirements set forth in paragraph (1) of this section specifically apply to the work conducted by emergency response personnel, such as fire fighters, emergency medical system (EMS) employees and police, when they respond to hazardous substance incidents.

The requirements set forth in paragraph (o) of this section specifically apply to the hazardous waste operations at RCRA sites which are involved in disposal, treatment, storage and handling of hazardous waste. The exclusion of small quantity operators and less than 90-day accumulators excludes from coverage by the interim rule operators such as dry cleaners and gas stations which come within the purview of RCRA but are not hazardous waste operators in the normal meaning of the term. The approximately 4,000 RCRA sites where reasonably large quantities of hazardous wastes are regularly handled, treated and stored are covered by the rule. This reflects the legislative intent, meets the normal meaning of hazardous waste operations and covers the type of safety and health hazards that this regulation is designed to control.

Most of the requirements of the interim rule apply to clean-up activities of hazardous substances or hazardous wastes at CERCLA sites, corrective actions at RCRA sites, and clean-up operations of hazardous substances at emergency incidents after emergency response personnel have concluded their duties.

The employer must also comply with the standards in 29 CFR Parts 1910 and 1926, as well as with the requirements specifically covered in this interim rule. If there is a conflict or overlap, the more protective provisions are to apply. Since this interim rule does not cover all of the hazards present at hazardous waste operations, other OSHA standards in Parts 1910 and 1926 apply also. Other OSHA standards cover many other hazards, and OSHA wants to make clear that the other standards continue to apply. Also, hazardous waste operators who are not within the scope of this standard are covered by the Parts 1910 and 1926 standards.

In paragraph (a)(3), *Definitions*, OSHA has defined various terms used in this rulemaking. The definitions for hazardous substances and hazardous wastes have been taken from the U.S Environmental Protection Agency (EPA) and U.S. Department of Transportation (DOT) regulations. This has been done to assure consistency and compatibility between this interim rule and the rules and regulations of the EPA and DOT. The remaining definitions have been taken for the most part from SARA, the four agency manual (Reference 6) or existing OSHA standards.

The term "established permissible exposure limit" is defined to give direction as to the appropriate degree of protection needed to be achieved by personal protective equipment and other similar purposes.

Porograph (b)—General Requirements

In paragraph (b), *General requirements*, OSHA sets forth for the most part a summary of requirements which are specified in detail in later paragraphs. The preamble discussion for later paragraphs sets forth the reasons for the various provisions. Many of these requirements are part of the minimum requirements which Congress directed OSHA to issue in section 126(e) of SARA. The EPA manual (EPA Order 1440.2) referenced in section 126(e) requires extensive training and medical surveillance programs. Subpart C of 29 CFR Part 1926, also referenced, requires, in addition, accident prevention programs (§ 1926.20(b)), use of appropriate personal protective equipment (§ 1926.28), sanitation and illumination requirements (§§ 1926.26 and 1926.27), provisions on safe handling of toxic substances (§ 1926.21 (b)(5)), precautions in confined spaces (§ 1926.21(b)(6)) and similar provisions. Congress also directed additional provisions for the proposed regulation, which are considered relevant for the interim regulation. These include engineering controls, maximum exposure limits and monitoring, handling requirements, decontamination procedures and emergency response. Based on this comprehensive statutory direction OSHA believes that the intent of Congress is to have employers implement a safety and health program that will address the recognized serious hazards to employees involved in hazardous waste operations. Therefore, OSHA has incorporated the more important elements of section 126(b), along with the mandatory provisions of section 126(e) of SARA, into this rule. Each general requirement in paragraph (b) calls for employer action and directs the employer to the specific paragraph of this rule that contains the duties in greater detail.

OSHA believes that these requirements are necessary to assure adequate employee protection to the known hazards faced by employees. The language used in these requirements has been adapted from the various documents listed in the Reference section of this preamble.

Three of the subparagraphs in paragraph (b) do not reference other paragraphs in the regulation. Paragraph (b)(1) requires the employer to develop a safety and health program for hazardous waste operations. Such programs are part of the requirements mandated by SARA for the interim rule. Thus, Subpart C of 29 CFR Part 1926 requires such a program in § 1926.20(b) and EPA Order 1440.2 requires training in "safety plan development" (pg. 5). OSHA's experience also establishes that a safety and health program is necessary to protect employees so that hazards are assessed and control programs are systematically laid out. Prior OSHA section 6(b) health standards require a compliance plan to set forth a health program to protect employees from the hazard.

Paragraph (b)(14) requires compliance with Subpart P of 29 CFR Part 1926 which covers excavation. OSHA considers that those provisions already apply, but they are singled out because they are particularly important to monitor since much excavation activity occurs on hazardous waste sites.

Paragraph (b)(15) requires employers to notify contractors and subcontractors of the hazards identified by the employer at hazardous waste operations. Sections 126(b)(2) and (e) of SARA indicate Congress's specific interest in protecting employees of contractors and in involving contractors in the safe operation of hazardous waste sites. This provision assists the contractor to become aware of the risks so that the contractor's employees may be better protected.

Paragraph (c)—Site Characterization and Analysis

For an effective safety and health program, which Congress clearly intends for employees, the employer needs to know the hazards faced by employees in order to develop and implement effective control measures. Site characterization provides the information needed to identify site hazards and to select employee protection methods. The more accurate, detailed, and comprehensive the information available about a site, the more the protective measures can be tailored to the actual hazards that the employees may encounter. Congress clearly intended that such a requirement be included. Subpart C of 29 CFR Part 1926 referenced in section 126(e) of SARA requires "frequent and regular inspections of the job site" (29 CFR 1926.20(b)(2)). Also section 126(b)(1) of SARA provides for site analysis. Also item #9 of the EPA manual (EPA Order 1440.2) addresses this practice.

Site characterization generally proceeds in three phases:

1. Prior to site entry, gather information away from the site, conduct reconnaissance from the site perimeter and conduct offsite characterization.

2. Conduct onsite surveys. During this phase, restrict site entry only to reconnaissance personnel.

3. Once the site has been determined safe for commencement of other activities, continue monitoring to provide an updated source of information about site conditions.

It is important to recognize that site characterization is a continuous process. At each phase of site characterization, information shall be obtained and evaluated to define the potential hazards of the site. This assessment shall be used to develop a safety and health plan for the next phase of work. In addition to the formal information gathering that takes place during the phases of site characterization described here, all site personnel should be constantly alert for new information about site conditions. Other requirements of this section have been adopted from reference 6.

Paragraph (d)—Site Control.

As part of the employers' site safety and health plan, this paragraph requires the employer to consider site control to minimize potential contamination of employees. Several items need to be considered, such as establishing work zones, so that employees know the hazards in different areas and will keep out of hazardous areas where the employees' presence is not required. Use of a buddy system and good site communications will assist in rescue of employees who become unconscious, trapped or otherwise seriously disabled on site.

Site control is especially important in emergency situations. Paragraph (d) describes the basic components of a program to control the activities and movements of employees and equipment at a hazardous waste site.

Several site control procedures can be implemented to reduce employee exposure to chemical, physical, biological, and safety hazards. The degrees of site control necessary depends on site characteristics, site size, and the surrounding community. The site control program should be established in the planning stages of a project and modified based on new information and site assessments developed during site characterization. The appropriate sequence for implementing these measures should be determined on a site-specific basis. In many cases, it will be necessary to implement several measures simultaneously.

The text used in this paragraph has been adapted from Reference 6. Item 9 of the EPA manual (Order 1440.2) indicates the need for this. In addition Subpart C of 29 CFR Part 1926 provides for regular inspection of job sites so hazards on the site can be controlled.

Paragraph (e)—Training.

The interim final rule includes specific provisions for initial and review training of employees before they are permitted to engage in hazardous waste operations that could expose them to safety and health hazards. Both the EPA manual and 29 CFR 1926.21 and 1926.22 referred to in section 126(e) of SARA have training and information requirements. The EPA manual has specific provisions for basic, intermediate and advanced training. It requires 40 hours training for employees managing uncontrolled hazardous waste sites, 24 hours for employees engaged in routine activities and 32 hours for intermediate activities. Additionally, section 126 generally has requirements for extensive training programs. The clear congressional intent of the interim final rule training provisions is to provide employees with the knowledge and skills necessary to perform hazardous waste clean-up operations with minimal risk to their safety and health.

The provisions for employees include a minimum of 40 hours of initial instruction off the site, and a minimum of 3 days of actual field experience under the direct supervision of a trained and experienced supervisor, at the time of job assignment. This amount of training is specifically directed by Congress for the interim final rule by its reference to the EPA manual which basically requires this amount of training for hazardous waste operators and Congress has specifically imposed these hour and day requirements under section 126(d) of SARA for the proposed final standard. There are slight differences between the EPA manual and section 126(c) of SARA. But they are sufficiently slight so that OSHA believes it appropriate to make the interim final rule consistent with what Congress directs for the proposed final rule so that employers need not make minor modifications to their training programs after two years.

In addition there are often many hazards at a waste site. The employee needs to be trained to recognize the hazards and appropriate work practices to minimize those hazards. The employee also needs to be well trained in the use of respirators and other forms of PPE. Without training those may not be used effectively and will not provide adequate protection. An extensive training program is necessary to achieve these objectives. The paragraph specifies these and the other items needed for effective training to avoid hazards.

Managers and supervisors directly responsible for hazardous waste site operations are to receive the same training as that of employees and at least eight additional hours of specialized training on managing hazardous waste operations. Since these people are responsible for directing others, it is necessary to enhance their ability to provide guidance and to make informed decisions. Both the EPA manual and section 126(e) of SARA direct eight hours of additional training for supervisors and managers.

The provisions also state that employees shall be retrained on an annual basis on relevant matters such as review of health hazards and use of personal protective equipment. Employees at hazardous waste operations face serious health and safety risks. Reminders are needed of this and of work practices to avoid hazards. Personal protective equipment provides much of their protection. If there is no retraining in the use, care and maintenance of said equipment, such equipment is unlikely to be utilized in a manner to provide adequate protection. The regulation provides for eight hours of annual retraining. The EPA manual for refresher training (item #10) requires this amount of training.

In all areas of training, whether it be for general site employees, on-site supervisors or for the use of specific equipment, the level of training provided needs to be consistent with the worker's job function and responsibilities. The training information should be presented clearly and, as a further safeguard, refresher training should be supplied to reemphasize the initial training and to update employees on any new policies or procedures.

A less detailed training provision is provided for employees working at routine operation on RCRA sites. Those sites will have more stable working conditions and the hazards will be better identified and more carefully controlled. Therefore OSHA believes not as extensive training is needed for those employees for the interim rule. OSHA specifies 24 hours for the required training based on the EPA manual which specifies this as the basic level of training for most routine field activities. OSHA in the proposal document will request comment whether this or a greater amount of training is appropriate for the permanent rule.

Paragraph (f)—Medical Surveillance

The interim final rule both includes specific provisions for baseline and periodic medical examinations. The EPA manual referred to in section 126(e) of SARA has requirements for both initial or baseline and periodic medical examinations. The examinations are to be provided to those routinely exposed to hazardous substances, to those whose duties are physically taxing and those who routinely wear respirators. In addition section 126(b) provides that routine medical examinations are to be provided to workers engaged in hazardous waste operations. Although the language is slightly different, the clear intent is to provide a comprehensive medical surveillance program for employees engaged in hazardous waste operations where it is medically prudent.

The paragraph states medical surveillance is to be provided to employees who have been or are expected to be exposed to hazardous substances or health hazards above established permissible exposure limits

for 30 or more days in a 12-month period or who wear respirators 30 days during the year. These are the employees who will be at greater health risk and employees who wear respirators need to be examined to determine whether they can safely do so as a routine matter. Some dividing line is needed, because employees who might be present on a hazardous waste site only a few days a year or working in areas such as offices or the periphery where exposures are low would not normally benefit from medical surveillance as their likely cumulative exposures to toxic chemicals would be very low probably not significantly higher than the general population. The EPA manual indicates some dividing line is appropriate because it directs medical surveillance only for employees "routinely" exposed

Wearing respirators for any part of each of 30 days will require medical surveillance because it indicates routine exposure to toxic chemicals. There is no requirement that there be 240 hours of respirator use before medical surveillance is required. Similarly being exposed over established safe levels to several chemicals each for less than 30 days but totalling more than 30 days per year requires medical surveillance. This indicates routine exposures to hazardous substances and also combinations of chemicals may cause synergistic effects creating greater health hazards than an individual chemical.

OSHA has based many of the details of medical surveillance on its experience in issuing health standards under section 6(b) of the OSH Act and as directed by section 6(b)(7) of the Act. Congress would be knowledgable that medical surveillance requirements in these standards represent OSHA's expert judgement of what is an appropriate medical surveillance program.

The appropriate medical tests and examinations depend on the substances an employee is exposed to and whether the employee wears a respirator. As employees on hazardous waste sites will be exposed to differing substances, the paragraph can not specifically state the required tests. Consequently the paragraph states that the employer provide to the physician information on exposures, respirator use, and duties on the site. The physician is then to determine the appropriate medical surveillance protocol in terms of specific tests and examinations. By the employer specifying duties the physician also can judge whether the employee can handle the arduousness of the work.

In situations where most of the employees on the site have similar exposures the protocol may be similar for all employees. Where different groups of employees on the site have substantially different exposures, several different protocols may be appropriate for the site's workers depending on exposures.

There are a number of sources for guidance on specific medical examination protocols. Chapter 5 of Reference 6 provides such guidance by groups of chemicals likely to be present on a site. It references other authorities. The manual should be supplied to the physician. It is also a basis for the medical surveillance program required by this paragraph. In addition, the EPA medical monitoring program guidelines referenced by the EPA manual provides guidance on specific protocols.

The paragraph requires an initial or baseline medical examination either prior to the start up date for employees who are currently working at hazardous waste sites or prior to initial assignment to an area where medical examinations will be required. The purpose is to take a detailed medical history and where possible develop a health baseline prior to any exposures so as to be able to evaluate changes which may be connected to hazardous substance exposures. In addition the initial examination will permit evaluation of whether the employee can appropriately wear respirators and whether the employee has preexisting conditions which would make exposure to hazardous substances inappropriate. An initial examination has been required by other OSHA health standards and is recommended in Reference 6.

The physician must be informed of what type of respirators and personal protective equipment an employee is likely to wear. The medical examination is to include appropriate tests to evaluate the employee's ability to wear respirators and PPE.

The physician will also specify the protocol of the periodic examinations. These may be different from the initial examination, for example, only an updated medical history would be required. The periodic examinations are required yearly. OSHA's experience in other health standards has been that this is an appropriate period and it is also recommended by Reference 6. EPA's medical monitoring program guidelines cross referenced in the EPA manual recommends baseline annual examination generally and a termination examination. It is reasonable to determine periodically whether exposures have brought medical changes and to identify conditions caused by chemicals at an early stage to permit more effective treatment. In some circumstances, the physician may advise more frequent examinations.

Examinations are also to be provided when the employee brings to the employer's attention signs or symptoms indicating possible overexposure to hazardous substances. The employee is to be trained in recognizing what symptoms may indicate substances to which the employee is exposed. Examples may be dizziness or rashes. Examinations are also required, when medically appropriate, during emergencies when exposure to higher levels is possible. For example, a urinary phenol test is appropriate for employees exposed to high levels of benzene in an emergency.

Finally, a medical examination is required for employees who have been required to have medical examinations upon termination of employment or reassignment to an area where medical examinations are not required. This is to detect conditions which have developed prior to departure and is recommended by the EPA program.

The medical examination is to be provided under the supervision of a licensed physician, i.e., the person must be qualified to make medical judgements. As provided by section 6(b)(7) of the OSH Act, the employer is to pay the cost of the examination. In addition provisions are included so that the employee is not discouraged from taking the examination. The exam is to be given at a reasonable time and place. If given during regular working hours the employee shall receive the employer's normal pay for that time. If the exam is given outside regular working hours, the employee shall be paid his regular wages for the time spent taking and waiting for the examination.

The physician shall make a report to the employer of medical conditions which may make the employee at increased risk to work at the site and any recommendations on limitations on use of respirators and other PPE as a result of the medical conditions. This will provide guidance for the safe employment of the employee at the site. The physician shall not reveal diagnoses or conditions unrelated to employment, but shall inform the employee directly of those conditions and any and all occupationally related conditions.

The medical paragraph requires that appropriate records be kept to assist in future evaluation of the employee's health. Secondarily, this information may assist in research on occupational related disease. Records should be kept pursuant to the provisions of 29 CFR 1910.20. Full consideration was given in that standard to appropriate retention periods.

Paragraph (g)—Engineering Controls, Work Practices, and Personnel Protective Equipment

Anyone entering a hazardous waste site must be protected against potential hazards. The purpose of engineering controls, work practices, and PPE is to shield or isolate individuals from the chemical, physical, and biologic hazards that may be encountered at a hazardous waste site. Careful selection and use of adequate engineering controls, work practices and PPE should protect any employee from health and many other hazards including hazards to the respiratory system, skin, eyes, face, hands, feet, head, body, and hearing.

Requirements of both Subpart C of 29 CFR Part 1926 and the EPA manual mandated to be included in the standard by Congress cover the provision and use of personal protective equipment. See for example, 29 CFR 1926.28 and items 7(a), 9(a)(7) and 9(b)(2) of the EPA manual. In addition existing OSHA regulations which apply to hazardous waste operations, in 29 CFR Part 1910, Subpart Z require exposures to various toxic and hazardous substances to be controlled with engineering controls if feasible, otherwise with PPE. These requirements apply now to employers and workers on Superfund sites pursuant to EPA regulations in 40 CFR Part 300. Finally, Congress specified in section 126(b) that there should be both PPE and engineering control provisions for the permanent final standard.

Paragraph (g)(1) basically carries over the existing requirements of Subpart Z. OSHA regulated toxic and hazardous substances are to be controlled to the permissible exposure limit if feasible. If not feasible they are to be controlled with PPE.

Paragraph (g)(2) provides that to achieve established permissible exposures limits for substances not regulated by OSHA, the employer may use an appropriate combination of engineering controls, work practices, and PPE. As these are interim regulations, preference for engineering controls where not already required would not be appropriate because of the limited time frame of this regulation and the frequent inability to install such controls in a short period. In addition it is OSHA's experience that this is an appropriate approach based on the emergency temporary standards it has issued which are also in effect for a limited period. OSHA will ask for comment in these areas in the proposal document.

Examples of engineering controls which may be feasible are pressurized cabs on materials handling equipment or pressurized control rooms in materials handling areas. However, in many cases personal protective equipment will be the only feasible means for providing protection to employees engaged in hazardous waste operations. The selection of personal protective equipment (PPE) must be based on the information obtained during the site characterization and analysis, as is required by paragraph (g)(3)(i) of this standard. Once an estimate of the types of hazards and their potential concentration has been obtained, the proper respirators and protective clothing can be selected based on the performance characteristics of the PPE relative to the site hazards and work conditions, as is required by paragraph (g)(3)(ii) of the standard. These requirements are derived from Reference 6 and are also supported by a NIOSH document, "Personal Protective Equipment for Hazardous Materials Incidents: A Selection Guide." These two document also support the requirements of paragraphs (g)(2)(iii) and (g)(2)(iv) which require positive pressure respirators with escape provisions to be used in IDLH atmospheres and totally-encapsulating chemical protective suits to be used where contact of the skin by the substance would be an IDLH situation.

Proper respirator selection, as required by this standard and 29 CFR 1910.134, involves providing a sufficient protection factor through the type of respirator used, respirator fitting, work site conditions, and respirator selection and use program. Proper protective clothing selection, as required by this standard, involves choosing protective clothing made of materials and construction which will prevent breakthrough of hazardous substances by permeation and penetration, or reduce the level of exposure to a safe level during the employee's duration of contact. Information on the performance characteristics of PPE is available in test reports and manufacturer's literature. Appendix B provides non-mandatory guidelines on classifying substance hazards as four levels (A, B, C, and D), and matching four levels of appropriate protection provided by different protective ensembles. These guidelines may be used as a basis for protective clothing selection, and the selection further refined when more information is obtained, as provided for in paragraph (g)(2)(v) of the standard. (In certain circumstances, this standard does specify the appropriate level of protection. See paragraph (c)(4)(iii)). Paragraph (g)(3)(vi) cross reference the existing requirements to select and use PPE pursuant to the requirements of 29 CFR 1910, Subpart I.

Paragraph (g)(4) requires totally-encapsulating suit materials used for Level A protection (the highest level of protection) to provide protection from the specific hazards which have been identified as requiring that level of protection. The purpose of this requirement is to be certain that the suit selected is comprised of materials which will provide the necessary protection, since no one material will provide protection from all hazards. Paragraphs (g)(4)(ii) and (g)(4)(iii) require totally-encapsulating suits to be capable of maintaining positive air pressure to help prevent inward leakage of hazardous substances, and to be capable of preventing inward gas leakage of more than 0.5 percent. These requirements, which are based on testing of totally-encapsulating suits, are included to establish a minimum level of suit performance so that their level of protection can be quantified for proper selection. The example test methods in Appendix A for totally-encapsulating chemical protective suits were taken from draft American Society for Testing and Materials committee documents.

Paragraph (g)(5) requires a PPE program to be established. This requirement is based upon reference 6, 29 CFR 1926.28, EPA manual items 4 and 7(g), and is included, since, in most cases, PPE will be the only protection feasible for employee protection, and because the amount of protection afforded by PPE is dependent upon so many factors, such as selection, fit, work duration and conditions, and decontamination. The PPE program is required to insure that the level of protection afforded by PPE is sufficient and continues to be sufficient for employee safety during hazardous waste operations.

Paragraph (h)—Monitoring

It is essential that employers be provided with accurate information on employee exposures in order to implement the correct PPE, engineering controls, and work practices. Airborne contaminants can present a significant threat to employee safety and health. Thus, identification and quantification of these contaminants through air monitoring is an essential component of a safety and health program at a hazardous waste site. Reliable measurements of airborne contaminants are useful for selecting personal protective equipment, determining

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whether engineering controls can achieve permissible exposure limits and which controls to use, delineating areas where protection is needed, assessing the potential health effects of exposure, and determining the need for specific medical monitoring. As mentioned above, section 126(e) of SARA mandates the use of PPE by its direction that at a minimum the requirements of the EPA manual and Subpart C be followed. Those include requirements for use of PPE. But PPE cannot be effectively used unless monitoring has identified the type of PPE to be used. This is a further reason to include this provision in the interim final rule.

The language of this paragraph was adapted from reference 6.

Paragraph (i)—Informational Programs

In paragraph (i), *Informational Programs*, OSHA is requiring employers, as part of their safety and health program, to develop and implement a site specific safety and health plan for each hazardous waste operation site.

The site safety and health plan shall be developed by the employer, utilizing the other parts of the organizational plan and the employer's safety and health program. The site safety and health plan will address the anticipated safety and health hazards of each work operation or activity and the means to eliminate the hazards or to effectively control them to prevent injury or illness.

This site safety and health plan is to include: (1) The names of those responsible for assuring that safe and healthful practices and procedures are followed on the whole site; (2) risk analysis or systems analysis for specific work tasks or operations on the site; (3) employee training assignments both off site and on-the-job-training on site; (4) the list of required personal protective equipment needed for each work task and operation on site; (5) the employer's medical surveillance program for the site; (6) the methods for identification and characterization of safety and health hazards on the site including the monitoring procedures that will be done throughout the work on site; (7) site control measures including those for establishing work zones on the site; (8) the necessary decontamination procedures which are matched to the kinds of anticipated contaminants to be cleaned from employees and equipment; (9) the standard operating procedures to be used by employees on site; and (10) the contingency plan for emergencies and confined space entry procedures. Safety meetings and briefings and site inspections shall also be mentioned in the plan as well as the procedures to be followed in changing or modifying the plan.

The site safety and health plan is necessary to protect employee health. There are many hazards at a hazardous waste operation which need to be determined and addressed. The plan provides that this will be done in a systematic manner so that hazards will not be missed and so that needed protective action will not be overlooked. The approach used has be adapted from reference 6.

Paragraph (j)—Handling Drums and Containers

The handling of drums and containers at hazardous waste sites poses one of the greatest dangers to hazardous waste site employees. Hazards include detonations, fires, explosions, vapor generation, and physical injury resulting from moving heavy containers by hand and working around stacked drums, heavy equipment, and deteriorated drums. While these hazards are always present, proper work practices can minimize the risks to site personnel. Handling and storage of hazardous substances is addressed in item (a) of the EPA manual.

Containers are handled during characterization and removal of their contents and during other operations. Many of the hazards encountered during the handling of drums occur during the handling of containers. The relative size of a container when compared to the size of a drum is no indication of the degree of hazard posed by the container. They should be treated in accordance with the level of hazard posed by their contents not by their size. The language used in this paragraph was adapted from Reference 6.

Paragraph (k)—Decontamination

As part of the care of PPE required by this standard, decontamination is a necessary practice to properly protect those employees who may be exposed to hazardous substances. Decontamination provisions protect an employee from being exposed to hazardous substances which would otherwise be on the employee's PPE when it is removed. The standard requires that a decontamination plan be developed and implemented before any employees or equipment may enter areas on site where potential for exposure to hazardous substances exists.

As required by the standard, decontamination procedures and areas shall be developed to minimize hazardous exposures to employees whose equipment and PPE are being decontaminated, as well as to employees who are assisting in the decontamination of workers and equipment. These measures are required since without proper procedures and decontamination areas, employees may be unknowingly exposed to hazardous substances which have contacted, or otherwise adhered to equipment and clothing. The standard also requires that all employees, clothing, equipment and decontamination fluids and equipment be decontaminated or disposed of before leaving a contaminated area. These provisions are required so that contaminated persons and materials do not leave the "hot zone" and thereby expose other employees and persons to hazardous substances.

Decontamination methods and cleaning fluids must be matched to the particular hazardous substance at the site in order for the decontamination procedures to be effective in removing the hazards from PPE and other equipment. No one decontamination fluid will be effective for all hazardous substances. As required by the standard the decontamination program must be effective and it must be monitored by the site safety and health officer to maintain its effectiveness. These requirements are included so that employees are not exposed to hazardous substances by reusing PPE and other equipment which are still contaminated.

The language used in this paragraph was adapted from reference 6.

Paragraph (l)—Emergency Response

Section 126(e) of SARA specifically discusses protecting "emergency response workers," in addition in the EPA manual under items 4 and 9 and in 29 CFR 1926.23 and 1926.24 call for preparations and planning for emergencies. Congress made its intent clear that emergency planning and response is an important part of any employer's safety and health program and indicated that it is to be addressed in the interim final rule.

In paragraph (l)(1), *Emergency Response, General*, OSHA is requiring employers covered in paragraph (a)(2)(ii), who are involved in hazardous waste operations, as part of their on-site contingency planning to develop and implement an emergency response plan. These employers are to inform all their employees on the waste site about the emergency response plan. The plan is to be available for use prior to the start of work on the site. The plan will be a part of the site safety and health plan. The elements of the emergency response plan will include: (1) Recognition of emergencies; (2) methods or procedures for alerting employees on site; (3) evacuation procedures and routes to places of refuge or safe distances away from the danger area; (4) means and methods for emergency medical treatment and first aid; (5) line of authority for employees; and (6) on-site decontamination procedures; site control means and methods for evaluating the plan.

Employers whose employees will be responding to hazardous substance emergency incidents from their regular work location or duty station, such as a fire department, fire brigade or emergency medical service, will also be required to have an emergency response plan. These employees which may be called upon to respond to hazardous substance emergency incidents involving a railroad tank car, motor carrier tank truck or to a plant location are considered off-site emergency response activities under this section. The emergency response plan is to include the incident command system required in paragraph (l)(3) of this section.

In paragraph (l)(2), *Hazardous waste operations, on-site emergency response*, OSHA is requiring the training of on-site emergency response personnel to have the same basic training as for the other employees involved in on-site hazardous waste operations plus the training needed to develop and retain the necessary skills for anticipated emergency response activities. Also, the procedures for handling hazardous substances on-site emergency incidents are to be oriented to the specific site and made a part of the emergency response plan.

The requirement of paragraphs (l)(3) and (l)(4) apply more broadly to all employers whose employees respond to off-site emergency incidents. In paragraph (l)(3), *Off-site emergency response*, OSHA is mandating that employers, such as fire departments, emergency medical and first-aid squads, fire brigades, etc., conduct monthly training sessions for their employees totalling 24 hours annually.

Note.—OSHA does not have jurisdiction over state and local government employees. OSHA state plan states must issue regulations as effective as these to cover state and local government employees in the state.

Training activities, such as breathing apparatus use, training, hose handling and preplanning may be used as training subjects for the monthly sessions provided hazardous substance incident operations are included in the presentation, discussion or drill. These training sessions and drills must involve at least 24 hours of training on an annual basis.

The incident command system shall be established by these employers for the incidents that will be under their control and shall be interfaced with the other organizations or agencies who may respond to such an incident. The National Transportation Safety Board, as a result of its investigation of hazardous materials incidents, has consistently recommended that better state and local emergency response planning be done to reduce the loss of life and property and that a system using a command post and on-scene commander be implemented. (See *Special Investigation Report. On-scene Coordination Among Agencies at Hazardous Materials Accidents*, NTSB–HZM–79–3, September 13, 1979; and *Multiple Vehicle Collisions and Fire, Caldecott Tunnel near Oakland, California*, NTSB/HAR–83/01, National Transportation Safety Board, Washington, DC, April 7, 1982, for further information.) Where available, state and local district emergency response plans shall be utilized in developing the incident command system and the emergency response plan to assure compatability with the other emergency responding agencies or employers.

In paragraph (l)(4), *Hazardous materials teams*, OSHA is requiring employers, who utilize specially trained teams involved in intimate contact with controlling or handling hazardous substances, to provide special training for the affected employees in such areas as care and use of chemical protective clothing, techniques and procedures for stopping or controlling leaking containers and decontamination of clothing and equipment for anticipated hazardous substance incidents. The employer is to make available to each team member a physical examination by a licensed physician and to implement a medical surveillance program in accordance with the requirements of paragraph (f) of this section.

In paragraph (1)(5), OSHA is requiring employers covered in paragraphs (a)(2)(i) and (ii) of this section, who will be involved in cleaning up hazardous waste after the emergency response activities are concluded, to comply with the same requirements that apply to others involved with hazardous waste clean-up operations. These hazardous waste clean-up operations will be typically done by special contractors and not by those agencies involved in responding to the initial emergency incident.

Paragraph (m)—Illuminotion

OSHA is required by SARA in section 126(e) to cover lighting of the worksite. In paragraph (m), *Illumination*, OSHA requires certain minimum illumination levels for work areas that are occupied by employees. Section 126(e) of SARA requires as a minimum the inclusion of the requirements of Subpart C of 29 CFR Part 1926. Section 1926.26 of that Subpart requires the amount of illumination set forth in this paragraph.

Paragraph (n)—Sanitation for Temporary Worksites

In paragraph (n), *Sanitation for temporary worksites*, OSHA sets minimum requirements for potable and non-potable water supplies, toilet facilities, and other areas related to sanitation at temporary workplaces. OSHA is mandated by SARA in section 126(e) to include sanitation requirements in the interim final rule since it requires the incorporation of provisions of Subpart C.

Paragraph (o)—Operations Conducted Under the Resource Conservation and Recovery Act of 1976 (RCRA)

OSHA is providing a separate paragraph for operations conducted at worksites involving hazardous waste storage, disposal and treatment operating under the Resource Conservation and Recovery Act of 1976 (RCRA). This separate paragraph of requirements is appropriate because RCRA site operations, (not including major corrective actions and their associated hazards which are like CERCLA sites and are covered by the main part of the standard) generally are different from the operations and hazards found on a CERCLA clean-up site. For example, RCRA sites covered by this paragraph tend for the most part to be fixed on-going operations involving the receiving, processing, storage, treatment, and disposal of hazardous wastes or substance from outside sources. CERCLA sites on the other hand are temporary emergency clean-up operations involving often undefined and substantial quantities of hazardous substances.

Consequently hazards should be better controlled and more routine and stable for the RCRA sites covered by this paragraph and so less extensive requirements are appropriate.

Paragraph (p)—Start-up Dates

Section 126(e) of SARA directs that these interim final regulations take effect on issuance. Consequently, these regulations do become effective on issuance. However, completion of

implementation for some provisions is not feasible immediately. For these provisions, commencement of implementation must begin immediately, but completion of full compliance is required as soon as possible or feasible but in no case later than a specified date, which is no longer than three months.

It is OSHA's judgment that all provisions can be fully implemented by the periods specified. OSHA also believes that the immediate effectiveness provisions specifically apply to the mandatory requirements.

OSHA does not believe that Congress intended that work at current hazardous waste operations stop until implementation of all requirements can be feasibly completed. This paragraph so indicates. However, for new sites, these requirements can be completed in advance. It is not OSHA's intention that emergency actions necessary to protect the public safety and health be prevented because in a particular circumstance it is not feasible to carry out particular requirements of this standard in the time needed to respond to the emergency.

III. References

1. Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499.
2. Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA or "Superfund"), Pub. L. 96-510, December 11, 1980, 94 Stat. 2767.
3. Resource Conservation and Recovery Act of 1976 (RCRA), Pub. L. 94-580, October 21, 1976, 90 Stat. 2795.
4. "Health and Safety Requirements for Employees Engaged in Field Activities", Environmental Protection Agency Order 1440.2, U.S. Environmental Protection Agency, July 12, 1981.
5. Subparts C and D of 29 CFR Part 1926.
6. "Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities.", Occupational Safety and Health Administration, Environmental Protection Agency, U.S. Coast Guard, and National Institute for Occupational Safety and Health, DHHS (NIOSH) Publication No. 85-115, October 1985.

IV. Regulatory Impact Analysis, Regulatory Flexibility Analysis and Environmental Impact Analysis

OSHA anticipates that this interim final standard will have a significant impact upon employers and their employees who work at CERCLA sites and at some RCRA sites; and who respond to emergency clean-ups of hazardous substance spills. OSHA has had little time since the enactment of SARA to collect information concerning these industries. As a result, the currently available information is insufficient for OSHA to use to estimate the potential benefits and costs that would occur as a consequence of compliance with this interim final rule. OSHA is collecting additional information to be used in conjunction with the information from the comments that will be received in response to publication of the proposed rule covering hazardous waste operations. This information will be sufficient for OSHA to provide a complete Regulatory Impact Analysis for the final rule that will govern hazardous waste operations.

Regulatory Flexibility Act Analysis. The requirements of the Regulatory Flexibility Act are not applicable to this interim final rule, under 5 U.S.C. 603(a), because notice and comment proposed rulemaking under the Administrative Procedures Act, or any other statute, is not required.

Environmental Impact Analysis. The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq*), as implemented by the regulations (40 CFR Part 1500) of the Council on Environmental Quality (CEQ), requires that federal agencies assess their regulatory actions to determine if there is a potential for a significant impact on the quality of the human environment and, if necessary, to prepare an environmental impact statement.

In accordance with these requirements and DOL NEPA Compliance Procedures (29 CFR Part 11, Subpart B, section 11.10(a)(4)), OSHA has determined that due to the compressed rulemaking schedule imposed by the Congress in issuing the interim regulation, no environmental impact statement will be prepared for this interim rule.

In similar situations, for example, when an emergency temporary standard (ETS) has been issued, the courts have held that NEPA does not require advance preparation of an environmental statement for an ETS (*Dry Color Manufacturing Association v. U.S. Department of Labor*, 486 F. 2d 98, 107 [3rd Cir. 1973]). This interim final standard is similar in nature to an ETS issued for relatively brief periods for short notice pursuant to section 6(c) of the Occupational Safety and Health Act of 1970 and section 101(b) of the Federal Mine Safety and Health Act of 1977. The DOL NEPA regulations set forth in 29 CFR Part 11, Subpart B, section 11.10(a)(4), provide that in these situations the regulations set forth in 40 CFR Parts 1500 *et seq* may not be strictly observable.

OSHA, however, will assess the environmental effects of the proposed permanent regulation of hazardous waste sites. The possibility that increased training related to employee safety and health protection will also affect and reduce inadvertent environmental releases of hazardous substances at waste sites will be analyzed. The results of this study will be available for review and comment prior to the hearing on the proposed permanent standard and will be an appropriate issue for discussion at the public hearings scheduled for the proceeding.

In the interim, OSHA welcomes any comments on any environmental effects that might occur as a result of promulgation of a rule on hazardous waste sites.

V. International Trade

OSHA has preliminarily concluded that this interim final rule will not significantly affect international trade. The firms that will be primarily affected by this interim final rule deal with hazardous waste products and are not involved in international trade. In addition, the hazardous wastes to be handled under this interim final rule are primarily by, products from previously manufactured goods and consequently, any potential costs would not be borne by the goods that are currently being traded. Nevertheless, the information that OSHA is collecting and the information that will be supplied in response to the publication of the proposed rule covering Hazardous Waste Operations will be carefully reviewed and analyzed to establish the potential impacts of the final rule upon international trade.

VI. State Plan States

This **Federal Register** document adds an interim final rule (section 1910.120, "Hazardous Waste Operations and Emergency Response") to existing Subpart H of 29 CFR Part 1910, OSHA's general industry standards on hazardous materials. The 25 States with their own OSHA approved occupational safety and health plans must develop a comparable standard applicable to both the private and public (State and local government employees) sectors within six months of the publication date of this interim final rule or show OSHA why there is no need for action, e.g., because an existing state standard covering this area is already "at least as effective" as the new Federal standard. These states are Alaska, Arizona, California, Connecticut (for state and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (for state and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. Until such time as a state standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate, in these states.

List of Subjects in 29 CFR Part 1910

Containers, Drums, Emergency response, Flammable and combustible liquids, Hazardous materials, Hazardous substances, Hazardous wastes, Incorporation by reference, Materials handling and storage, Personal protective equipment, Storage areas, Training, Waste disposal.

VII. Immediate Effectiveness and Absence of Notice and Comment

Section 126(e) of SARA specifically provides that the "Secretary of Labor shall issue interim final regulations under this section within 60 days . . ." after date of enactment. The express use of the phrase "interim final regulations," which in the rulemaking context commonly describes a rule issued without notice and comment, in connection with the extremely limited time frame provided by this section, makes clear that Congress intended this rule to be issued without the time-consuming process of notice and comment. The Agency, therefore, concludes that neither the notice and comment rulemaking provisions of the OSH Act nor those of the Administrative Procedures Act are applicable to the issuance of this interim final rule. The Agency also expressly finds that "good cause" exists under 5 U.S.C. 553(b)(B) for not providing notice and comment because notice and comment procedures, under these circumstances, would be impractical and contrary to the public interest.

Section 126(e) also expressly provides that "Such interim final regulations shall take effect upon issuance. . . ." OSHA finds this specific direction of law requires the Agency to issue this rule with an immediate effective date and, further, constitutes good cause not to delay the effective date of this rule until 30 days after publication under 5 U.S.C. 553(d).

Authority

This document has been prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC. Pursuant to section 126(e) of the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499), Sections 6 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 657), Sections 3 and 4 of the Administrative Procedures Act (5 U.S.C. 552(a), 553), and Secretary of Labor's Order 9-83 (48 FR 35736), 29 CFR Part 1910 is amended by adding a new §1910.120, Hazardous Waste Operations, as set forth below, effective December 19, 1986.

Signed at Washington, DC this 16th day of December 1986.

John A. Pendergrass,

Assistant Secretary of Labor.

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The Authority citation for Subpart H of Part 1910 is amended by adding the following:

Authority: * * * Section 1910.120 issued under the authority of section 126(e) of the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499), Sections 6 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 657), sections 3 and 4 of the Administrative Procedure Act (5 U.S.C. 552(a), 533) and Secretary of Labor's Order 9-83 (48 FR 35736).

2. Part 1910 of Title 29 of the Code of Federal Regulations is amended by adding a new § 1910.120 to read as follows:

§ 1910.120 Hazardous waste operations and emergency response.

(a) *Scope, application, and definitions.*—(1) *Scope.* This section covers employers and employees engaged in the following operations:

(i) Hazardous substance response operations under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended (42 U.S.C. 9601 *et seq*) (CERCLA), including initial investigations at CERCLA sites before the presence or absence of hazardous substances has been ascertained;

(ii) Major corrective actions taken in clean-up operations under the Resource Conservation and Recovery Act of 1976 as amended (42 U.S.C. 6901 *et seq*) (RCRA);

(iii) Operations involving hazardous waste storage, disposal and treatment facilities regulated under 40 CFR Parts 264 and 265 pursuant to RCRA, except for small quantity generators and those employers with less than 90 days accumulation of hazardous wastes as defined in 40 CFR 262.34;

(iv) Hazardous waste operations sites that have been designated for clean-up by state or local governmental authorities; and

(v) Emergency response operations for releases of or substantial threats of releases of hazardous substances and post-emergency response operations for such releases.

(2) *Application.* (i) All requirements of Part 1910 and Part 1926 of Title 29 of the Code of Federal Regulations apply pursuant to their terms to hazardous waste operations (whether covered by this section or not). In addition the provisions of this section apply to operations covered by this section. If there is a conflict or overlap, the provision more protective of employee safety and health shall apply. 29 CFR 1910.5(c)(1) is not applicable.

(ii) All paragraphs of this section except paragraph (o) apply to hazardous substance response operations under CERCLA, major corrective actions taken in clean-up operations under RCRA, post-emergency response operations, and hazardous waste operations that have been designated for clean-up by state or local governmental authorities.

(iii) Only the requirements of paragraph (o) of this section apply to those operations involving hazardous waste storage, disposal, and treatment facilities regulated under 40 CFR Parts 264 and 265, except for small quantity generators and those employers with less than 90 days accumulation of hazardous wastes as defined in 40 CFR 262.34.

(iv) Paragraph (l) of this section applies to emergency response operations for releases of or substantial threats of releases of hazardous substances.

(3) *Definitions*—*"Buddy system"* means a system of organizing employees into work groups in such a manner that each employee of the work group is designated to observe the activities of at least one other employee in the work group. The purpose of the buddy system is to provide quick assistance to those other employees in the event of an emergency.

"Decontamination" means the removal of hazardous substances from employees and their equipment to the extent necessary to preclude the occurrence of foreseeable adverse health effects.

"Emergency response" means response to any occurrence which results, or is likely to result, in a release of a hazardous substance due to an unforeseen event.

"Established permissible exposure limit" means the inhalation or dermal permissible exposure limit specified in 29 CFR Part 1910, Subpart Z, or if none is specified the exposure limits in "NIOSH Recommendations for Occupational Health Standards" dated September 1986 incorporated by reference, or if neither of the above is specified, the standards specified by the American Conference of Governmental Industrial Hygienists in their publication "Threshold Limit Values and Biological Exposure Indices for 1986-87" dated

1986 incorporated by reference, or if none of the above is specified, a limit based upon a published study or manufacturers' safety data sheet brought to the employer's attention. The two documents incorporated by reference are available for purchase from the following:

NIOSH, Publications Dissemination, Division of Standards Development and Technology Transfer, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, Cincinnati, OH 45226, (513) 841–4287

American Conference of Governmental Industrial Hygienists, 6500 Glenway Ave., Building D–7, Cincinnati, OH, 45211–4438, (513) 661–7881

and are available for inspection and copying at the OSHA Docket Office, Docket No. S–760, Room N–3671, 200 Constitution Ave., NW., Washington, DC 20210.

"Hazardous substance" means any substance designated or listed under (i) through (iv) below, exposure to which results or may result in adverse effects on the health or safety of employees:

(i) any substance defined under section 101(14) of CERCLA,

(ii) any biological agent and other disease-causing agent as defined in section 104(a)(2) of CERCLA,

(iii) any substance listed by the U.S. Department of Transportation and regulated as hazardous materials under 49 CFR 172.101 and appendices, and

(iv) hazardous waste.

"Hazardous waste" means (i) a waste or combination of wastes as defined in 40 CFR 261.3, or (ii) those substances defined in 49 CFR 171.8.

Hazardous waste operation" means any operation involving employee exposure to hazardous wastes, hazardous substances, or any combination of hazardous wastes and hazardous substances that are conducted within the scope of this standard.

"Hazardous waste site" or *"site"* means any facility or location at which hazardous waste operations within the scope of this standard take place.

"Health hazard" means a chemical, mixture of chemicals or a pathogen for which there is statistically significant evidence based on at least one study conducted in accordance with established scientific principles that acute or chronic health effects may occur in exposed employees. The term "health hazard" includes chemicals which are carcinogens, toxic or highly toxic agents, reproductive toxins, irritants, corrosives, sensitizers, hepatotoxins, nephrotoxins, neurotoxins, agents which act on the hematopoietic system, and agents which damage the lungs, skin, eyes, or mucous membranes. Further definition of the terms used above can be found in Appendix A to 29 CFR 1910.1200.

"IDLH" or *"Immediately dangerous to life or health"* means any condition that poses an immediate threat to life, or which is likely to result in acute or immediate severe health effects. This includes oxygen deficiency conditions.

"Immediate severe health effects" means any acute clinical sign or symptom of a serious, exposure-related reaction manifested within 72 hours after exposure to a hazardous substance.

"Oxygen deficiency" means that concentration of oxygen by volume below which air supplying respiratory protection must be provided. It exists in atmospheres where the percentage of oxygen by volume is less than 19.5 percent oxygen.

"Site safety and health officer" means the individual located on a hazardous waste site who is responsible to the employer and has the authority and knowledge necessary to implement the site safety and health plan and verify compliance with applicable safety and health requirements.

(b) *General requirements*—(1) *Safety and health program.* Each employer shall develop and implement a safety and health program for its employees involved in hazardous waste operations. The program, as a minimum, shall incorporate the requirements of this section and be provided, as appropriate, to any subcontractor or its representative who will be involved with the hazardous waste operation. The program shall be designed to identify, evaluate, and control safety and health hazards and provide for emergency response for hazardous waste operations.

(2) *Site characterization and analysis.* Hazardous waste sites shall be evaluated in accordance with paragraph (c) of this section to identify specific site hazards and to determine the appropriate safety and health control procedures needed to protect employees from the identified hazards.

(3) *Site control.* Site control procedures shall be implemented in accordance with paragraph (d) of this section before clean-up work begins to control employee exposure to hazardous substances.

(4) *Training.* Initial or refresher or review training meeting the requirements of paragraph (e) of this section shall be provided to employees before they are permitted to engage in hazardous waste operations that could expose them to hazardous substances, safety, or health hazards.

(5) *Medical surveillance.* Medical surveillance shall be provided in accordance with paragraph (f) of this section for employees exposed or potentially exposed to hazardous substances or health hazards or who wear respirators.

(6) *Engineering controls, work practices and personal protective equipment.* Engineering controls, work practices, personal protective equipment, or a combination of these shall be implemented in accordance with paragraph (g) of this section to protect employees from exposure to hazardous substances and health hazards.

(7) *Monitoring.* Monitoring shall be performed in accordance with paragraph (h) of this section to assure proper selection of engineering controls, work practices and personal protective equipment so that employees are not exposed to levels which exceed established permissible exposure limits for hazardous substances.

(8) *Informational program.* Employees, contractors, and subcontractors or their representative shall be informed of the degree and nature of safety and health hazards specific to the work site by using the safety and health plan outlined in paragraph (i) of this section.

(9) *Material handling.* Hazardous substances and contaminated soils, liquids, and other residues shall be handled, transported, labeled, and disposed of in accordance with paragraph (j) of this section.

(10) *Decontamination.* Procedures for all phases of decontamination shall be developed and implemented in accordance with paragraph (k) of this section.

(11) *Emergency response.* Emergency response to hazardous waste operation incidents shall be conducted in accordance with paragraph (l) of this section.

(12) *Illumination.* Areas accessible to employees shall be lighted in accordance with the requirements of paragraph (m) of this section.

(13) *Sanitation.* Facilities for employee sanitation shall be provided in accordance with paragraph (n) of this section.

(14) *Site excavation.* Site excavations created during initial site preparation or during hazardous waste operations shall be shored or sloped to prevent accidental collapse and conducted in accordance with Subpart P of 29 CFR Part 1926.

(15) *Contractors and sub-contractors.* An employer who retains contractor or sub-contractor services for work in hazardous waste operations shall inform those contractors, sub-contractors, or their representatives of any potential fire, explosion, health or other safety hazards of the hazardous waste operation that have been identified by the employer.

(c) *Site characterization and analysis.* (1) A preliminary evaluation of a site's characteristics shall be performed prior to site entry by a trained person to aid in the selection of appropriate employee protection methods prior to site entry. During site entry, a more detailed evaluation of the site's specific characteristics shall be performed by a trained person to further identify existing site hazards and to further aid in the selection of the appropriate engineering controls and personal protective equipment for the tasks to be performed.

(2) All suspected conditions that may pose inhalation or skin absorption hazards that are immediately dangerous to life or health (IDLH) or other conditions that may cause death or serious harm shall be identified during the preliminary survey and evaluated during the detailed survey. Examples of such hazards include, but are not limited to, confined space entry, potentially explosive or flammable situations, visible vapor clouds, or areas where biological indicators such as dead animals or vegetation are located.

(3) The following information to the extent available shall be obtained by the employer prior to allowing employees to enter a site:

(i) Location and approximate size of the site.

(ii) Description of the response activity and/or the job task to be performed.

(iii) Duration of the planned employee activity.

(iv) Site topography.

(v) Site accessibility by air and roads.

(vi) Pathways for hazardous substance dispersion.

(vii) Present status and capabilities of emergency response teams that would provide assistance to on-site employees at the time of an emergency.

(viii) Hazardous substances and health hazards involved or expected at the site and their chemical and physical properties.

(4) Personal protective equipment (PPE) shall be provided and used during initial site entry in accordance with the following requirements:

(i) Based upon the results of the preliminary site evaluation, an ensemble of PPE shall be selected and used during initial site entry which will provide protection to a level of exposure below established permissible exposure limits for known or suspected hazardous substances and health hazards and will provide protection against other known and suspected hazards identified during the preliminary site evaluation.

(ii) An escape self-contained breathing apparatus of at least five minutes duration shall be carried by employees or kept available at their immediate work station if positive-pressure self-contained breathing apparatus is not used as part of the entry ensemble.

(iii) If the preliminary site evaluation does not produce sufficient information to identify the hazards or suspected hazards of the site an ensemble of Level B PPE shall be provided as minimum protection and direct reading instruments shall be carried for identifying IDLH conditions. (See Appendix B for guidelines on Level B protective equipment.)

(iv) Once the hazards of the site have been positively identified, the appropriate PPE shall be selected and used in accordance with paragraph (g) of this section.

(5) The following monitoring shall be conducted during site entry when the site evaluation produces information which show the potential for ionizing radiation or IDLH conditions, or when the site information is not sufficient to rule out these possible conditions:

(i) Monitoring for hazardous levels of ionizing radiation.

(ii) Monitoring the air with appropriate test equipment for IDLH and other conditions that may cause death or serious harm (combustible or explosive atmospheres, oxygen deficiency, toxic substances.)

(iii) Visually observe for signs of actual or potential IDLH or other dangerous conditions.

(6) Once the presence and concentrations of specific hazardous substances and health hazards have been established, the risks associated with these substances shall be identified. Employees who will be working on the site shall be informed of any risks that have been identified.

Note.—Risks to consider include, but are not limited to:

Exposures exceeding the appropriate Threshold Limit Values (TLVs), Permissible Exposure Limits (PELs), or Recommended Exposure Limits (RELs).

IDLH Concentrations.

Potential Skin Absorption and Irritation Sources.

Potential Eye Irritation Sources.

Explosion Sensitivity and Flammability Ranges.

(7) Any information concerning the chemical, physical, and toxicologic properties of each substance known or expected to be present on site that is available to the employer and relevant to the duties an employee is expected to perform shall be made available to all employees prior to the commencement of their work activities.

(8) An ongoing air monitoring program in accordance with paragraph (h) of this section shall be implemented after site characterization has determined the site is safe for the start-up of operations.

(d) *Site control.* (1) A site control program for preventing contamination of employees shall be developed during the planning stages of a hazardous waste operation clean-up.

(2) The site control program shall, as a minimum, include: A site map; site work zones; the use of a "buddy system"; site communications; the standard operating procedures or safe work practices; and, identification of nearest medical assistance.

(e) *Training.* (1) All employees (such as equipment operators and general laborers) exposed to hazardous substances, health hazards, or safety hazards shall be thoroughly trained in the following:

(i) Names of personnel and alternates responsible for site safety and health;

(ii) Safety, health and other hazards present on the site;

(iii) Use of PPE;

(iv) Work practices by which the employee can minimize risks from hazards;

(v) Safe use of engineering controls and equipment on the site;

(vi) Medical surveillance requirements including recognition of symptoms and signs which might indicate over exposure to hazards; and

(vii) Paragraphs (G) through (K) of the site safety and health plan set forth in paragraph (i)(2)(i) of this section.

(2) All employees shall at the time of job assignment receive a minimum of 40 hours of initial instruction off the site, and a minimum of three days of actual field experience under the direct supervision of a trained, experienced supervisor. Workers who may be exposed to unique or special hazards shall be provided additional training. The level of training provided shall be consistent with the employee's job function and responsibilities.

(3) On-site management and supervisors directly responsible for or who supervise employees engaged in hazardous waste operations shall receive training as provided in paragraph (e)(1) and (e)(2) of this section and at least eight additional hours of specialized training on managing such operations at the time of job assignment.

(4) Trainers shall have received a level of training higher than and including the subject matter of the level of instruction that they are providing.

(5) Employees shall not participate in field activities until they have been trained to a level required by their job function and responsibility.

(8) Employees and supervisors that have received and successfully completed the training and field experience specified in paragraphs (e)(1), (e)(2) and (e)(3) of this section shall be certified by their instructor as having completed the necessary training. Any person who has not been so certified or meets the requirements of paragraph (e)(1) of this section shall be prohibited from engaging in hazardous waste operations after March 16, 1987.

(7) Employees who are responsible for responding to hazardous emergency situations that may expose them to hazardous substances shall be trained in how to respond to expected emergencies.

(8) Employees specified in paragraph (e)(1) and managers specified in paragraph (e)(3) of this section shall receive eight hours of refresher training annually on the items specified in paragraph (e)(1) of this section and other relevant topics.

(9) Employers who can show by an employee's work experience and/or training that the employee has had initial training equivalent to that training required in paragraphs (e)(1), (e)(2), and (e)(3) of this section shall be considered as meeting the initial training requirements of those paragraphs. Equivalent training includes the training that existing employees might have already received from actual, on-site experience.

(f) *Medical surveillance*—(1) *Employees covered.* A medical surveillance program shall be instituted by the employer for:

(i) all employees who are or may be exposed to hazardous substances or health hazards at or above the established permissible exposure limits for these substances, without regard to the use of respirators, for 30 days or more a year, or

(ii) all employees who wear a respirator for 30 days or more a year, or

(iii) HAZMAT employees specified in paragraph (1)(4) of this section while engaged in hazardous waste operations covered by this section.

(iv) The employer shall make medical examinations or consultations available to all employees who may have been exposed in an emergency situation to hazardous substances at concentrations above the permissible exposure limits.

(2) *Frequency of medical examinations and consultations.* Medical examinations and consultations shall also be made available by the employer to each employee covered under paragraph (f)(1) of this section on the following schedules:

(i) Prior to assignment or for employees covered on the effective date of this standard as specified in paragraph (p) of this section.

(ii) At least once every twelve months for each employee covered.

(iii) At termination of employment or reassignment to an area where the employee would not be covered if the employee has not had an examination within the last six months.

(iv) As soon as possible, upon notification by an employee either that the employee has developed signs or symptoms indicating possible overexposure to hazardous substances or health hazards

(v) At more frequent times, if the examining physician determines that an increased frequency of examination is medically necessary.

(3) *Content of medical examinations and consultations.* (i) Medical examinations required by paragraph (f)(2) of this section shall include a medical and work history with special emphasis on symptoms related to the handling of hazardous substances and to fitness for duty including the ability to wear any required PPE under conditions (i.e., temperature extremes) that may be expected at the work site.

(ii) The content of medical examinations or consultations made available to employees pursuant to paragraph (f) shall be determined by the examining physician.

(4) *Examination by a physician and costs.* All medical examinations and procedures shall be performed by or under the supervision of a licensed physician, and shall be provided without cost to the employee, without loss of pay, and at a reasonable time and place.

(5) *Information provided to the physician.* The employer shall provide the following information to the examining physician:

(i) A copy of this standard and its appendices.

(ii) A description of the employee's duties as they relate to the employee's exposures,

(iii) The employee's exposure levels or anticipated exposure levels,

(iv) A description of any personal protective equipment used or to be used, and

(v) Information from previous medical examinations of the employee which is not readily available to the examining physician.

(6) *Physician's written opinion.* (i) The employer shall obtain and furnish the employee with a copy of a written opinion from the examining physician containing the following:

(A) The results of the medical examination and tests.

(B) The physician's opinion as to whether the employee has any detected medical conditions which would place the employee at increased risk of material impairment of the employee's health.

(C) The physician's recommended limitations upon the employees assigned work.

(D) A statement that the employee has been informed by the physician of the results of the medical examination and any medical conditions which require further examination or treatment.

(ii) The written opinion obtained by the employer shall not reveal specific findings or diagnoses unrelated to occupational exposure.

(7) *Recordkeeping.* (i) An accurate record of the medical surveillance required by paragraph (f)(1) of this section shall be retained. This record shall be retained for the period specified and meet the criteria of 29 CFR 1910.20.

(ii) The record required in paragraph (f)(5)(i) of this section shall include at least the following information:

(A) The name and social security number of the employee;

(B) Physicians' written opinions;

(C) Any employee medical complaints related to exposure to hazardous substances;

(D) A copy of the information which shall be provided to the examining physician by the employer, with the exception of the standard and its appendices.

(iii) The employer shall ensure that this record is retained for the period specified in 29 CFR 1910.20.

(g) *Engineering controls, work practices, and personal protective equipment for employee protection*—(1) *Engineering controls, work practices and PPE.* (i) Engineering controls and work practices shall be instituted to reduce and maintain employee exposure to or below the permissible exposure limits of those hazardous substances regulated by 29 CFR Part 1910, Subpart Z, except to the extent that such controls and practices are not feasible.

Note.—Engineering controls which may be feasible are the use of pressurized cabs or control booths on equipment, and/or the use of remotely operated material handling equipment. Work practices which may be feasible are removing all nonessential employees from potential exposure during opening of drums, wetting down dusty

operations and locating employees upwind of possible hazards.

(ii) Whenever engineering controls and work practices are not feasible, PPE shall be used to protect employees to reduce exposure to below established permissible exposure limits.

(iii) The employer shall not implement a schedule of employee rotation as a means of compliance with permissible exposure limits.

(2) *Engineering controls, work practices, and personal protective equipment for substances not regulated in Subpart Z.* An appropriate combination of engineering controls, work practices, and personal protective equipment shall be established to reduce and maintain employee exposure to or below the established permissible exposure limit for hazardous substances not regulated by 29 CFR Part 1910, Subpart Z and health hazards.

(3) *Personal protective equipment selection.* (i) Personal protective equipment (PPE) shall be selected and used which will protect employees from the hazards and potential hazards they are likely to encounter as identified during the site characterization and analysis.

(ii) Personal protective equipment selection shall be based on an evaluation of the performance characteristics of the PPE relative to the requirements and limitations of the site, the task-specific conditions and duration, and the hazards and potential hazards identified at the site.

(iii) Positive pressure self-contained breathing apparatus, or positive pressure air-line respirators equipped with an escape air supply shall be used in IDLH conditions.

(iv) Totally-encapsulating chemical protective suits (Level A protection) shall be used in conditions where contact of the skin by the hazardous substance may result in an IDLH situation.

(v) The level of protection provided by PPE selection shall be increased when additional information or site conditions show that increased protection is necessary to reduce employee exposure below established permissible exposure limits for hazardous substance and health hazards. (See Appendix B for guidance on selecting PPE ensembles.)

Note.—The level of protection provided may be decreased when additional information or site conditions show that decreased protection will not result in hazardous exposures to employees.

(vi) Personal protective equipment shall be selected and used to meet the requirements of 29 CFR Part 1910, Subpart I, and additional requirements specified in this section.

(4) *Totally-encapsulating chemical protective suits.* (i) Totally-encapsulating suit materials used for Level A protection shall protect employees from the particular hazards which are identified during site characterization and analysis.

(ii) Totally-encapsulating suits shall be capable of maintaining positive air pressure. (See Appendix A.)

(iii) Totally-encapsulating suits shall be capable of preventing inward test gas leakage of more than 0.5 percent. (See Appendix A.)

(5) *Personal protective equipment (PPE) program.* A personal protective equipment program shall be established for hazardous waste operations. The PPE program shall address the following elements:

(i) Site hazards,
(ii) PPE selection,
(iii) PPE use,
(iv) Work mission duration,
(v) PPE maintenance and storage,
(vi) PPE decontamination,
(vii) PPE training and proper fitting,
(viii) PPE donning and doffing procedures,
(ix) PPE inspection,
(x) PPE in-use monitoring,
(xi) Evaluation of the effectiveness of the PPE program, and
(xii) Limitations during temperature extremes.

(h) *Monitoring.* (1) Air monitoring shall be used to identify and quantify airborne levels of hazardous substances in order to determine the appropriate level of employee protection needed on site.

(2) As a first step, air monitoring shall be conducted to identify any IDLH and other dangerous situations, such as the presence of flammable atmospheres, oxygen-deficient environments, toxic levels of airborne contaminants, and radioactive materials.

(3) As a minimum, periodic monitoring shall be conducted when:

(i) Work begins on a different portion of the site.

(ii) Contaminants other than those previously identified are being handled.

(iii) A different type of operation is initiated (e.g., drum opening as opposed to exploratory well drilling.)

(iv) Employees are handling leaking drums or containers or working in areas with obvious liquid contamination (e.g., a spill or lagoon.)

(4) High-risk employees, e.g., those closest to the source of contaminant generation, shall receive personal monitoring sufficient to characterize employee exposure.

(i) *Informational programs*—(1) *General.* As part of the safety and health program required in paragraph (b)(1) of this section, the employer shall develop and implement a site safety and health plan meeting the requirements of paragraph (i)(2) of this section for each hazardous waste operation.

(2) *Site safety and health plan.* The site safety and health plan, which shall be available on the site for inspection by employees, their designated representatives, and OSHA personnel, shall address the safety and health hazards of each phase of site operation and include the requirements and procedures for employee protection.

(i) The site safety and health plan, as a minimum, shall address the following:

(A) Names of key personnel and alternates responsible for site safety and health and appointment of a site safety and health officer.

(B) A safety and health risk analysis for each site task and operation.

(C) Employee training assignments.

(D) Personal protective equipment to be used by employees for each of the site tasks and operations being conducted.

(E) Medical surveillance requirements.

(F) Frequency and types of air monitoring, personnel monitoring, and environmental sampling techniques and instrumentation to be used. Methods of maintenance and calibration of monitoring and sampling equipment to be used.

(G) Site control measures.

(H) Decontamination procedures.

(I) Site's standard operating procedures.

(J) A contingency plan meeting the requirements of paragraphs (1)(1) and (1)(2) of this section for safe and effective responses to emergencies including the necessary PPE and other equipment.

(K) Confined space entry procedures.

(ii) Pre-entry briefings shall be held prior to initiating any site activity and at such other times as necessary to ensure that employees are apprised of the site safety and health plan and that it is being followed.

(iii) Inspections shall be conducted by the site safety and health officer or, in the absence of that individual, another individual acting on behalf of the employer as necessary to determine the effectiveness of the site safety and health plan. Any deficiencies in the effectiveness of the site safety and health plan shall be corrected by the employer.

(j) *Handling drums and containers*—(1) *General.* (i) Drums and containers used during the clean-up shall meet the

appropriate DOT, OSHA, and EPA regulations for the wastes that they contain.

(ii) Drums and containers shall be inspected and their integrity shall be assured prior to being moved. Drums or containers that cannot be inspected before being moved because of inaccessible storage conditions shall be moved to an accessible location and inspected prior to further handling.

(iii) Unlabeled drums and containers shall be considered to contain hazardous substances and handled accordingly until the contents are positively identified and labeled.

(iv) Site operations shall be organized to minimize the amount of drum or container movement.

(v) Prior to movement of drums or containers, all employees exposed to the transfer operation shall be warned of the potential hazards associated with the contents of the drums or containers.

(vi) U.S. Department of Transportation specified salvage drums or containers and suitable quantities of proper absorbent shall be kept available and used in areas where spills, leaks, or ruptures may occur.

(vii) Where major spills may occur, a spill containment program shall be implemented to contain and isolate the entire volume of the hazardous substance being transferred.

(viii) Drums and containers that cannot be moved without rupture, leakage, or spillage shall be emptied into a sound container using a device classified for the material being transferred.

(ix) A ground-penetrating system or other type of detection system or device shall be used to estimate the location and depth of drums or containers.

(x) Soil or covering material shall be removed with caution to prevent drum or container rupture.

(xi) Fire extinguishing equipment meeting the requirements of 29 CFR Part 1910, Subpart L shall be on hand and ready for use to control small fires.

(2) *Opening drums and containers.* The following procedures shall be followed in areas where drums or containers are being opened:

(i) Where an airline respirator system is used, connections to the bank of air cylinders shall be protected from contamination and the entire system shall be protected from physical damage.

(ii) Employees not actually involved in opening drums or containers shall be kept a safe distance from the drums or containers being opened.

(iii) If employees must work near or adjacent to drums or containers being opened, a suitable shield that does not interfere with the work operation shall be placed between the employee and the drums or containers being opened to protect the employee in case of accidental explosion.

(iv) Controls for drum or container opening equipment, monitoring equipment, and fire suppression equipment shall be located behind the explosion-resistant barrier.

(v) Material handling equipment and hand tools shall be of the type to prevent sources of ignition.

(vi) Drums and containers shall be opened in such a manner that excess interior pressure will be safely relieved. If pressure cannot be relieved from a remote location, appropriate shielding shall be placed between the employee and the drums or containers to reduce the risk of employee injury.

(vii) Employees shall not stand upon or work from drums or containers.

(3) *Electrical material handling equipment.* Electrical material handling equipment used to transfer drums and containers shall:

(i) Be positioned and operated to minimize sources of ignition related to the equipment from igniting vapors released from ruptured drums or containers, or

(ii) Meet the requirements of 29 CFR 1910.307 and be of the appropriate electrical classification for the materials being handled.

(4) *Radioactive wastes.* Drums and containers containing radioactive wastes shall not be handled until such time as their hazard to employees is properly assessed.

(5) *Shock sensitive wastes.*

Caution: Shipping of shock sensitive wastes may be prohibited under U.S. Department of Transportation regulations. Employers and their shippers should refer to 49 CFR 173.21 and 173.50.

As a minimum, the following special precautions shall be taken when drums and containers containing or suspected of containing shock-sensitive wastes are handled:

(i) All non-essential employees shall be evacuated from the area of transfer.

(ii) Material handling equipment shall be provided with explosive containment devices or protective shields to protect equipment operators from exploding containers.

(iii) An employee alarm system capable of being perceived above surrounding light and noise conditions shall be used to signal the commencement and completion of explosive waste handling activities.

(iv) Continuous communications (i.e., portable radios, hand signals, telephones, as appropriate) shall be maintained between the employee-in-charge of the immediate handling area and the site safety officer or command post until such time as the handling operation is completed. Communication equipment or methods that could cause shock sensitive materials to explode shall not be used.

(v) Drums and containers under pressure, as evidenced by bulging or swelling, shall not be moved until such time as the cause for excess pressure is determined and appropriate containment procedures have been implemented to protect employees from explosive relief of the drum.

(vi) Drums and containers containing packaged laboratory wastes shall be considered to contain shock-sensitive or explosive materials until they have been characterized.

(6) *Laboratory waste packs.* In addition to the requirements of paragraph (j)(5) of this section, the following precautions shall be taken, as a minimum, in handling laboratory waste packs (lab packs):

(i) Lab packs shall be opened only when necessary and then only by an individual knowledgeable in the inspection, classification, and segregation of the containers within the pack according the hazards of the wastes.

(ii) If crystalline material is noted on any container, the contents shall be handled as a shock-sensitive waste until the contents are identified.

(7) *Sampling drums and containers.* Sampling of containers and drums shall be done in accordance with a sampling procedure which is part of the site safety and health plan developed for and available to employees and others at the specific worksite.

(8) *Shipping and transport.* (i) Drums and containers shall be identified and classified prior to packaging for shipment.

(ii) Drum or container staging areas shall be kept to the minimum number necessary to safely identify and classify materials and prepare them for transport.

(iii) Staging areas shall be provided with adequate access and egress routes.

(iv) Bulking of hazardous wastes shall be permitted only after a thorough characterization of the materials has been completed.

(9) *Tank and vault procedures.* (i) Tanks and vaults containing hazardous substances shall be handled in a manner similar to that for drums and containers, taking into consideration the size of the tank or vault.

(ii) Appropriate tank or vault entry procedures meeting paragraph (j)(2)(i)(K) of this section shall be followed whenever employees must enter a tank or vault.

(k) *Decontamination.* (1) A decontamination procedure shall be developed, communicated to employees and implemented before any employees or equipment may enter areas on site where potential for exposure to hazardous substances exists.

(2) Standard operating procedures shall be developed to minimize employee contact with hazardous substances or with equipment that has contacted hazardous substances.

(3) Decontamination shall be performed in areas that will minimize the exposure of uncontaminated employees or equipment to contaminated employees or equipment.

(4) All employees leaving a contaminated area shall be appropriately decontaminated; all clothing and equipment leaving a contaminated area shall be appropriately disposed of or decontaminated.

(5) Decontamination procedures shall be monitored by the site safety and health officer to determine their effectiveness. When such procedures are found to be ineffective, appropriate steps shall be taken to correct any deficiencies.

(6) All equipment and solvents used for decontamination shall be decontaminated or disposed of properly.

(7) Protective clothing and equipment shall be decontaminated, cleaned, laundered, maintained or replaced as needed to maintain their effectiveness.

(8) Impermeable protective clothing which contacts or is likely to have contacted hazardous substances shall be decontaminated before being removed by the employee.

(9) Employees whose non-impermeable clothing becomes wetted with hazardous substances shall immediately remove that clothing and proceed to shower. The clothing shall be disposed of or decontaminated before it is removed from the work zone.

(10) Unauthorized employees shall not remove protective clothing or equipment from change rooms.

(11) Commercial laundries or cleaning establishments that decontaminate protective clothing or equipment shall be informed of the potentially harmful effects of exposures to hazardous substances.

(12) Where the decontamination procedure indicates a need for showers and change rooms, they shall be provided and meet the requirements of 29 CFR 1910.141.

(l) *Emergency response*—(1) *General.* (i) An emergency response plan shall be developed and implemented to handle anticipated on-site emergencies prior to the commencement of hazardous waste operations. Emergency response activities to all other hazardous waste operations shall follow an emergency response plan meeting the requirements of this section.

(ii) *Elements of an emergency response plan.* The employer shall develop an emergency response plan for on-site and off-site emergencies which shall address, as a minimum, the following:

(A) Pre-emergency planning.

(B) Personnel roles, lines of authority, training, and communication.

(C) Emergency recognition and prevention.

(D) Safe distances and places of refuge.

(E) Site security and control.

(F) Evacuation routes and procedures.

(G) Decontamination.

(H) Emergency medical treatment and first aid.

(I) Emergency alerting and response procedures.

(J) Critique of response and follow-up.

(K) PPE and emergency equipment.

(2) *On-site emergency response*—(i) *Training.* Training for site emergency response shall be conducted in accordance with paragraph (e) of this section.

(ii) *Procedures for handling site emergency incidents.* (A) In addition to the elements for the emergency response plan required in paragraph (l)(1)(ii) above, the following elements shall be included for site emergency response plans:

(*1*) Site topography, layout, and prevailing weather conditions.

(*2*) Procedures for reporting incidents to local, state, and federal governmental agencies.

(B) The site emergency response plan shall be a separate section of the Site Safety and Health Plan.

(C) The site emergency response plan shall be compatible and integrated with the disaster, fire and/or emergency response plans of local, state, and federal agencies.

(D) The site emergency response plan shall be rehearsed regularly as part of the overall training program for site operations.

(E) The site emergency response plan shall be reviewed periodically and, as necessary, be amended to keep it current with new or changing site conditions or information.

(F) An employee alarm system shall be installed in accordance with 29 CFR 1910.165 to notify employees of an on-site emergency situation, to stop work activities if necessary, to lower background noise in order to speed communication, and to begin emergency procedures.

(G) Based upon the information available at time of the emergency, the employer shall evaluate the incident and the site response capabilities and proceed with the appropriate steps to implement the on-site emergency response plan.

(3) *Off-site emergency response*—(i) *Training.* Training for handling emergency responses involving hazardous substances shall be conducted on a monthly basis and shall be at least 24 hours annually. The training shall include as a minimum recognition of hazards, selection, care, and use of personal protective equipment and safe operating procedures to be used at the incident scene.

(ii) *Procedures for handling off-site emergency incidents.* (A) The senior officer responding to an incident involving a hazardous substance or waste shall establish an Incident Command System (ICS). All emergency responders and their communications shall be coordinated and controlled through the individual in charge of the ICS.

(B) The individual in charge of the ICS shall identify, to the extent possible, all hazardous substances or conditions present.

(C) Based on the hazardous substances and/or conditions present, the individual in charge of the ICS shall implement appropriate emergency operations, and assure that the personal protective equipment worn is appropriate for the hazards to be encountered. However, personal protective equipment shall meet, at a minimum, the criteria contained in 29 CFR 1910.156(e) when worn while performing fire fighting operations beyond the incipient stage.

(D) Self-contained breathing apparatus shall be worn at all times during emergency operations involving exposure to hazardous substances or health hazards. After October 18, 1988 only positive pressure self-contained respirators shall be used.

(E) The individual in charge of the ICS shall limit the number of emergency response personnel at the emergency site to those who are actively performing emergency operations. However, operations in hazardous areas shall be performed using the buddy system in groups of two or more.

(F) Back-up personnel shall be standing by with equipment ready to

provide assistance or rescue. Qualified basic life support personnel, as a minimum, shall also be standing by with medical equipment and transportation capability.

(G) The individual in charge of the ICS shall designate a safety officer, who is knowledgeable in fire fighting or rescue operations and hazardous substance handling procedures, with specific responsibility to identify and evaluate hazards and to provide direction with respect to the safety of operations for the emergency at hand.

(H) When activities are judged by the safety officer to be unsafe and/or to involve an imminent danger condition, the safety officer shall have the authority to alter, suspend, or terminate those activities. The safety officer shall immediately inform the individual in charge of the ICS of any actions taken to correct these hazards at an emergency scene.

(I) After emergency operations have terminated, the individual in charge of the ICS shall implement appropriate decontamination procedures.

(4) *Hazardous materials teams (HAZMAT).* (i) Employees who are members of the HAZMAT team, employees designated by the employer to plug, patch or otherwise temporarily control or stop leaks from containers which hold hazardous substances or health hazards shall be given training in accordance with paragraph (l)(3) of this section that includes the care and use of chemical protective clothing and procedures to be followed when working on leaking drums, containers, tanks, or bulk transport vehicles.

(ii) Members of HAZMAT teams shall receive an annual physical examination by a licensed physician and be provided medical surveillance as required in paragraph (f) of this section.

(iii) Personal protective clothing and equipment to be used by HAZMAT team members shall meet the requirements of paragraph (g) of this section.

(iv) Approved self-contained compressed air breathing apparatus may be used with approved cylinders from other approved self-contained compressed air breathing apparatus provided that such cylinders are of the same capacity and pressure rating. All compressed air cylinders used with self-contained breathing apparatus shall meet U.S. Department of Transportation and National Institute for Occupational Safety and Health criteria.

(5) *Post-emergency response operations.* Upon completion of the emergency response, if it is determined that it is necessary to remove hazardous substances, health hazards and materials contaminated with them such as contaminated soil or other elements of the natural environment, then such operations shall meet all the requirements of paragraphs (b) through (n) of this section.

(m) *Illuminotion.* Work areas shall be lighted to not less than the minimum illumination intensities listed in Table H-102.1 while any work is in progress:

TABLE H-102.1.—MINIMUM ILLUMINATION INTENSITIES IN FOOT-CANDLES

Foot-candles	Area or operations
5	General site areas.
3	Excavation and waste areas, accessways, active storage areas, loading platforms, refueling, and field maintenance areas.
5	Indoors: warehouses, corridors, hallways, and exitways.
5	Tunnels, shafts, and general underground work areas; (Exception: minimum of 10 foot-candles is required at tunnel and shaft heading during drilling, mucking, and scaling. Bureau of Mines approved cap lights shall be acceptable for use in the tunnel heading.
10	General shops (e.g., mechanical and electrical equipment rooms, active storerooms, barracks or living quarters, locker or dressing rooms, dining areas, and indoor toilets and workrooms.
30	First aid stations, infirmaries, and offices.

(n) *Sanitation at temporary workplaces.*—(1) *Potable water.* (i) An adequate supply of potable water shall be provided on the site.

(ii) Portable containers used to dispense drinking water shall be capable of being tightly closed, and equipped with a tap. Water shall not be dipped from containers.

(iii) Any container used to distribute drinking water shall be clearly marked as to the nature of its contents and not used for any other purpose.

(iv) Where single service cups (to be used but once) are supplied, both a sanitary container for the unused cups and a receptacle for disposing of the used cups shall be provided.

(2) *Nonpotable water.* (i) Outlets for nonpotable water, such as water for industrial or firefighting purposes shall be identified to indicate clearly that the water is unsafe and is not to be used for drinking, washing, or cooking purposes.

(ii) There shall be no cross-connection, open or potential, between a system furnishing potable water and a system furnishing nonpotable water.

(3) *Toilets facilities.* (i) Toilets shall be provided for employees according to Table H-102.2.

TABLE H-102.2.—TOILET FACILITIES

Number of employees	Minimum number of facilities
20 or fewer	One.
More than 20, fewer than 200.	One toilet seat and 1 urinal per 40 employees.

TABLE H-102.2.—TOILET FACILITIES—Continued

Number of employees	Minimum number of facilities
More than 200	One toilet seat and 1 urinal per 50 employees.

(ii) Under temporary field conditions, provisions shall be made to assure not less than one toilet facility is available.

(iii) Hazardous waste sites, not provided with a sanitary sewer, shall be provided with the following toilet facilities unless prohibited by local codes:

(A) Privies;

(B) Chemical toilets;

(C) Recirculating toilets; or

(D) Combustion toilets.

(iv) The requirements of this paragraph for sanitation facilities shall not apply to mobile crews having transportation readily available to nearby toilet facilities.

(4) *Food handling.* All employees' food service facilities and operations shall meet the applicable laws, ordinances, and regulations of the jurisdictions in which they are located.

(5) *Temporary sleeping quarters.* When temporary sleeping quarters are provided, they shall be heated, ventilated, and lighted.

(6) *Washing facilities.* The employer shall provide adequate washing facilities for employees engaged in operations where hazardous substances may be harmful to employees. Such facilities shall be in near proximity to the worksite, within controlled access work zones and shall be so equipped as to enable employees to remove hazardous substances.

(o) *Certain Operations Conducted under the Resource Conservation and Recovery Act of 1976 (RCRA).* Employers conducting operations specified in paragraph (g)(2)(iii) of this section shall:

(1) Implement a hazard communication program meeting the requirements of 29 CFR 1910.1200;

(2) Implement a medical surveillance program meeting the requirements of paragraph (f) of this section;

(3) Develop and implement a safety and health program for employees involved in hazardous waste operations. The program shall be designed to identify, evaluate and control safety and health hazards and provide for emergency response to their facilities for the purpose of employee protection;

(4) Develop and implement a decontamination procedure in accordance with paragraph (k) of this section, and

(5) Develop and implement a training program for employees involved with hazardous waste operations to enable each employee to perform their assigned duties and functions in a safe and healthful manner so as not to endanger themselves or other employees. The initial training shall be for 24 hours and refresher training shall be for eight hours annually.

(p) *Start-up dates.*—(1) *Training and medical provisions.* Initial training and medical surveillance as specified by paragraph (e) and (f) of this section shall be commenced on the effective date of this standard, and be fully implemented as soon as possible but no later than March 16, 1987. Employees may continue in their work assignments until March 16, 1987 though training and medical examinations have not been completed so long as all feasible training and examinations have been completed.

(2) *Safety and health program.* The employer shall develop and implement a safety and health program as required by paragraph (b)(1) of this section as soon as is feasible and have it completed and implemented no later than March 16, 1987.

(3) *Engineering controls, work practices, and personal protective equipment.* (i) The engineering controls, work practices and personal protective equipment required by paragraph (g)(2) of this section shall be implemented as soon as feasible and implementation shall be completed no later than March 16, 1987.

(ii) The engineering controls, work practices and personal protective equipment required by paragraph (g)(1) of this section are existing requirements of other OSHA standards and continues to be required from the effective date of this standard.

(4) *Site safety and health plan.* The site safety and health plan required by paragraph (i)(2) of this section shall be completed as soon as feasible but no later than February 16, 1987.

(5) *Certain operations conducted under RCRA.* The requirements specified by paragraph (o) of this section shall be instituted by March 16, 1987.

(6) *Other requirements.* Requirements of this standard which do not have a separate start-up date and have not been required by other OSHA standards shall be carried out from the effective date of this standard.

(7) *New operations.* Operations covered by this section which are started after March 16, 1987, shall be in compliance with this section from the start of their operation.

Appendices to § 1910.120—Hazardous Waste Operations and Emergency Response

Note.—*The following appendices serve as non-mandatory guidelines to assist employees and employers in complying with the appropriate requirements of this section.*

Appendix A—Personal Protective Equipment Test Methods

This appendix sets forth the non-mandatory examples of tests which may be used to evaluate compliance with paragraphs 1910.120(g)(4) (ii) and (iii). Other tests and other challenge agents may be used to evaluate compliance.

A. Fully-Encapsulated Suit Pressure Test

1.0—Scope

1.1 This practice measures the ability of a gas tight totally-encapsulating chemical protective suit material, seams, and closures to maintain a fixed positive pressure. The results of this practice allow the gas tight integrity of a total-encapsulating chemical protective suit to be evaluated.

1.2 Resistance of the suit materials to permeation, penetration, and degradation by specific hazardous substances is not determined by this test method.

2.0—Description of Terms

2.1 Totally-encapsulated chemical protective suit (TECP suit)—A full body garment which is constructed of protective clothing materials; covers the wearer's torso, head, arms, and legs; may cover the wearer's hands and feet with tightly attached gloves and boots; completely encloses the wearer by itself or in combination with the wearer's respiratory equipment, gloves, and boots.

2.2 Protective clothing material—Any material or combination of materials used in an item of clothing for the purpose of isolating parts of the body from direct contact with a potentially hazardous liquid or gaseous chemicals.

2.3 "Gas tight"—for the purpose of this practice the limited flow of a gas under pressure from the inside of a TECP suit to atmosphere at a prescribed pressure and time interval.

2.4 "Shall"—This term indicates a mandatory requirement.

2.5 "Should"—This term indicates a recommendation or that which is advised but not required.

2.6 "May"—This term is used to state a permissive use or an alternative method to a specific requirement.

3.0—Summary of Practice

3.1 The TECP suit is visually inspected and modified for the test. The test apparatus is attached to the suit to permit inflation to the pre-test suit expansion pressure for removal of suit wrinkles and creases. The pressure is lowered to the test pressure and monitored for three minutes. If the pressure drop is excessive, the TECP suit fails the tests and is removed from service. After leak location and repair the test is repeated.

4.0—Required Supplies

4.1 Source of compressed air.

4.2 Test apparatus for suit testing including a pressure measurement device with a sensitivity of at least ¼ inch water gauge.

4.3 Vent valve closure plugs or sealing tape.

4.4 Soapy water solution and soft brush.

4.5 Stop watch or appropriate timing device.

5.0—Safety Precautions

5.1 Care shall be taken to provide the correct pressure safety devices required for the source of compressed air used.

6.0—Test Procedure

6.1 Prior to each test, the tester shall perform a visual inspection of the suit. Check the suit for seam integrity by visually examining the seams and gently pulling on the seams. Ensure that all air supply lines, fittings, visor, zippers, and valves are secure and show no signs of deterioration.

6.1.1 Seal off the vent valves along with any other normal inlet or exhaust points (such as umbilical air line fittings or face piece opening) with tape or other appropriate means (caps, plugs, fixture, etc.). Care should be exercised in the sealing process not to damage any of the suit components.

6.1.2 Close all closure assemblies.

6.1.3 Prepare the suit for inflation by providing an improvised connection point or the suit for connecting an airline. Attach the pressure test apparatus to the suit to permit suit inflation from a compressed air source equipped with a pressure indicating regulator. The leak tightness of the pressure test apparatus should be tested before and after each test by closing off the end of the tubing attached to the suit and assuring a pressure of three inches water gauge for three minutes can be maintained. If a component is removed for the test, that component shall be replaced and a second test conducted with another component removed to permit a complete tests of the ensemble.

6.1.4 The pre-test expansion pressure (A) and the suit test pressure (B) shall be supplied by the suit manufacturer but in no case shall they be less than: A=3 inches water gauge and B=2 inches water gauge. The ending suit pressure (C) shall be no less than 80% (⅘) of the test pressure (B); i.e., the pressure drop shall not exceed 20% (⅕) of the test pressure (B).

6.1.5 Inflate the suit until the pressure inside is equal to pressure "A", the pre-test expansion suit pressure. Allow at least one minute to fill out the wrinkles in the suit. Release sufficient air to reduce the suit pressure to pressure "B", the suit test pressure. Begin timing. At the end of three minutes, record the suit pressure as pressure "C," the ending suit pressure. The difference between the suit test pressure and the ending suit test pressure (B−C) shall be defined as the suit pressure drop.

6.1.6 If the suit pressure drop is more than 20 percent (⅕) of the suit test pressure B during the three minute test period, the suit fails the test and shall be removed from service.

7.0—Retest Procedure

7.1 If the suit fails the test check for leaks by inflating the suit to pressure A and brushing or wiping the entire suit (including

seams, closures, lens gaskets, glove-to-sleeve joints, etc.) with a mild soap and water solution. Observe the suit for the formation of soap bubbles, which is an indication of a leak. Repair all identified leaks.

7.2 Retest the TECP suit as outlined in Test procedure 6.0.

8.0—Report

8.1 Each TECP suit tested by this practice shall have the following information recorded:

8.1.1 Unique identification number identifying brand name, date of purchase, material of construction, and unique fit features; e.g., special breathing apparatus.

8.1.2 The actual values for test pressures, A, B, and C shall be recorded along with the specific observation times. If the ending pressure (C) is less than 80% of the test pressure (B) the suit shall be identified as failing the test. When possible, the specific leak location shall be identified in the test records. Retest pressure data shall be recorded as an additional test.

8.1.3 The source of the test apparatus used shall be identified and the sensitivity of the pressure gauge shall be recorded.

8.1.4 Records shall be kept for each pressure test even if repairs are being made at the test location.

Caution

Visually inspect all parts of the suit to be sure they are positioned correctly and secured tightly before putting the suit back into service. Special care should be taken to examine each exhaust valve to make sure it is not blocked.

Care should also be exercised to assure that the inside and outside of the suit is completely dry before it is put into storage.

B. Fully-Encapsulated Suit Qualitative Leak Test

1.0—Scope

1.1 This practice semi-qualitatively tests gas tight totally-encapsulating chemical protective suit integrity by detecting inward leakage of ammonia vapor. Since no modifications are made to the suit to carry out this test, the results from this practice provide a realistic test for the integrity of the entire suit.

1.2 Resistance of the suit materials to permeation, penetration, and degradation is not determined by this test method.

2.0—Description of Terms

2.1 Totally-encapsulated chemical protective suit (TECP suit)—A full body garment which is constructed of protective clothing materials; covers the wearer's torso, head, arms, and legs; may cover the wearer's hands and feet with tightly attached gloves and boots; completely encloses the wearer by itself or in combination with the wearer's respiratory equipment, gloves, and boots.

2.2 Protective clothing material—Any material or combination of materials used in an item of clothing for the purpose of isolating parts of the body from direct contact with a potentially hazardous liquid or gaseous chemicals.

2.3 "Gas tight"—for the purpose of this practice the limited flow of a gas under pressure from the inside of a TECP suit to atmosphere at a prescribed pressure and time interval.

2.4 "Shall"—This term indicates a mandatory requirement.

2.5 "Should"—This term indicates a recommendation or that which is advised but not required.

2.6 "May"—This term is used to state a permissive use or an alternative method to a specific requirement.

2.7 Intrusion Coefficient—A number expressing the level of protection provided by a gas tight totally-encapsulating chemical protective suit. The intrusion coefficient is calculated by dividing the test room challenge agent concentration by the concentration of challenge agent found inside the suit. The accuracy of the intrusion coefficient is dependent on the challenge agent monitoring methods. The larger the intrusion coefficient the greater the protection provided by the TECP suit.

3.0—Summary of Recommended Practice

3.1 The volume of ammonia solution required to generate the test atmosphere is determined using the directions outlined in 6.1. The suit is donned by a person wearing the appropriate respiratory equipment (normally a self-contained breathing apparatus) and worn inside the enclosed test room. The ammonia solution is taken by the suited individual into the test room and poured into an open plastic pan. A two-minute evaporation period is observed before the test room concentration is measured using a high range ammonia length of stain detector tube. When the ammonia reaches a concentration of between 1000 and 1200 ppm, the suited individual starts a standardized exercise protocol to stress and flex the suit. After this protocol is completed the test room concentration is measured again. The suited individual exits the test room and his stand-by person measures the ammonia concentration inside the suit using a low range ammonia length of stain detector tube or other more sensitive ammonia detector. A stand-by person is required to observe the test individual during the test procedure, aid the person in donning and doffing the TECP suit and monitor the suit interior. The intrusion coefficient of the suit can be calculated by dividing the average test area concentration by the interior suit concentration. A colorimetric indicator strip of bromophenol blue is placed on the inside of the suit face piece lens so that the suited individual is able to detect a color change and know if the suit has a significant leak. If a color change is observed the individual should leave the test room immediately.

4.0—Required Supplies

4.1 A supply of concentrated ammonia (58 percent ammonium hydroxide by weight).

4.2 A supply of bromophenol/blue indicating paper, sensitive to 5–10 ppm ammonia or greater over a two-minute period of exposure.

4.3 A supply of high range (0.5–10 volume percent) and low range (5–700 ppm) detector tubes for ammonia and the corresponding sampling pump. More sensitive ammonia detectors can be substituted for the low range detector tubes to improve the sensitivity of this practice.

4.4 A plastic pan (PVC) at least 12":14":1" and a half pint plastic container (PVC) with tightly closing lid.

4.5 Volumetric measuring device of at least 50 milliliters in volume with an accuracy of at least ±1 milliliters.

5.0—Safety Precautions

5.1 Concentrated ammonia is a corrosive volatile liquid requiring eye, skin, and respiratory protection.

5.2 Since the threshold limit value for ammonia is 25 ppm, only persons wearing the appropriate respirator protection shall be in the chamber. Normally only the person wearing the total-encapsulating suit will be inside the chamber. A stand-by person shall have a self-contained breathing apparatus, or equivalent breathing apparatus, available to enter the test area should the suited individual need assistance.

5.3 A method to monitor the suited individual must be used during this test. Visual contact is the simplest but other methods using communication devices are acceptable.

5.4 The test room shall be large enough to allow the exercise protocol to be carried out and ventilated to allow for easy exhaust of the ammonia test atmosphere after the test(s) are completed.

5.5 Individuals shall be medically screened for the use of respiratory protection and checked for allergies to ammonia before participating in this test procedure.

6.0—Test Procedure

6.1.1 Measure the test area to the nearest foot and calculate its volume in cubic feet. Multiply the test area volume by 0.2 milliliters of ammonia per cubic foot of test area volume to determine the approximate volume of ammonia required to generate 1000 ppm in the test area.

6.1.2 Measure this volume from the supply of concentrated ammonia and place it into a closed plastic container.

6.1.3 Place the jar, several high range ammonia detector tubes and the pump in the clean test pan and locate it near the test area entry door so that the suited individual has easy access to these supplies.

6.2.1 In a non-contaminated atmosphere, open a presealed ammonia indicator strip and fasten one end of the strip to the inside of suit face shield lens where it can be seen by the wearer. Care shall be taken not to contaminate the detector part of the indicator paper by touching it. A small piece of masking tape or equivalent should be used to attach the indicator strip to the interior of the suit face shield.

6.2.2 If problems are encountered with this method of attachment the indicator strip can be attached to the outside of the respirator face piece being used during the test, assuming the face piece is worn within the TECP suit.

6.3 Don the respiratory protective device normally used with the suit; and then don the TECP suit to be tested. Check to be sure all openings which are intended to be sealed (zippers, gloves, etc.) are completely sealed. DO NOT, however, plug off any venting valves.

6.4 Step into the enclosed test room such as a closet, bathroom, or test booth, equipped with an exhaust fan. No air should be exhausted from the chamber during the test because this will dilute the ammonia challenge concentrations.

6.5 Open the container with the pre-measured volume of ammonia within the enclosed test room, and pour the liquid into the empty plastic test pan. Wait two minutes to allow for adequate volatilization of the ammonia. A small mixing fan can be used near the evaporation pan to increase the evaporation rate of ammonia.

6.6 After two minutes a determination of the ammonia concentration within the chamber should be made using the high range colorimetric detector tube. A concentration of 1000 ppm ammonia or greater shall be generated before the exercises are started.

6.7 To test the integrity of the suit the following four minute exercise protocol should be followed:

6.7.1 Raising the arms above the head with at least 15 raising motions completed in one minute.

6.7.2 Walking in place for one minute with at least 15 raising motions of each leg in a one-minute period.

6.7.3 Touching the toes with a least 10 complete motions of the arms from above the head to touching of the toes in a one-minute period.

6.7.4 Deep knee bends with at least 10 complete standing and squatting motions in a one-minute period.

6.8 At any time during the test should the colorimetric indicating paper change colors the test should be stopped and section 6.10 and 6.12 initiated.

6.9 After completion of the test exercise, the test area concentration should be measured again using the high range colorimetric detector tube.

6.10 Exit the test area.

6.11 The opening created by the suit zipper or other appropriate suit penetration should be used to determine the ammonia concentration in the suit with the low range length of stain detector tube or other ammonia monitor. The internal TECP suit air should be sampled far enough from the enclosed test area to prevent a false ammonia reading.

6.12 After completion of the measurement of the suit interior ammonia concentration the test is concluded and the suit is doffed and the respirator removed.

6.13 The ventilating fan for the test room should be turned on and allowed to run for enough time to remove the ammonia gas.

6.14 Any detectable ammonia in the suit interior (5 ppm NH_3 or more for the length of stain detector tube) indicates the suit fails the test. When other ammonia detectors are used, a lower level of detection is possible and it should be specified as the pass fail criteria.

6.15 By following this practice an intrusion coefficient of approximately 200 or more can be measured with the suit in a completely operational condition.

7.0—Retest Procedures

7.1 If the suit fails this test check for leaks by following the pressure test in test A above.

7.2 Retest the TECP suit as outlined in the test procedure 6.0.

8.0—Report

8.1 Each gas tight totally-encapsulating chemical protective suit tested by this practice shall have the following information recorded.

8.1.1 Unique identification number identifying brand name, date of purchase, material of construction, and unique suit features; e.g., special breathing apparatus.

8.1.2 General description of test room used for test.

8.1.3 Brand name and purchase date of ammonia detector strips.

8.1.4 Brand name, sampling range, and expiration date of the length of stain ammonia detector tubes. The brand name and model of the sampling pump should also be recorded. If another type of ammonia detector is used, it should be identified along with its minimum detection limit for ammonia.

8.1.5 Actual test results shall list the two test area concentrations, their average, the interior suit concentration, and the calculated intrusion coefficient. Retest data shall be recorded as an additional test.

8.2 The evaluation of the data shall be specified as "suit passed" or "suit failed" and the date of the test. Any detectable ammonia (5 ppm or greater for the length of stain detector tube) in the suit interior indicates the suit fails this test. When other ammonia detectors are used, a lower level of detection is possible and it should be specified as the pass fail criteria.

Caution

Visually inspect all parts of the suit to be sure they are positioned correctly and secured tightly before putting the suit back into service. Special care should be taken to examine each exhaust valve to make sure it is not blocked.

Care should also be exercised to assure that the inside and outside of the suit is completely dry before it is put into storage.

Appendix B—General Description and Discussion of the Levels of Protection and Protective Gear

This appendix sets forth information about personal protective equipment (PPE) protection levels which may be used to assist employers in complying with the PPE requirements of this section.

As required by the standard, PPE must be selected which will protect employees from the specific hazards which they are likely to encounter during their work on-site.

Selection of the appropriate PPE is a complex process which must take into consideration a variety of factors. Key factors involved in this process are identification of the hazards, or suspected hazards, their routes of potential hazard to employees (inhalation, skin absorption, ingestion, and eye or skin contact), and the performance of the PPE *materials* (and seams) in providing a barrier to these hazards. The amount of protection provided by PPE is material-hazard specific. That is, protective equipment materials will protect well against some hazardous substances and poorly, or not at all, against others. In many instances, protective equipment materials cannot be found which will provide continuous protection from the particular hazardous substance. In these cases the breakthrough time of the protective material should exceed the work durations, or the exposure after breakthrough must not pose a hazardous level.

Other factors in this selection process to be considered are matching the PPE to the employee's work requirements and task-specific conditions. The durability of PPE materials, such as tear strength and seam strength, in relation to the employee's tasks must be considered. The effects of PPE in relation to heat stress and task duration are a factor in selecting and using PPE. In some cases layers of PPE may be necessary to provide sufficient protection, or to protect expensive PPE inner garments, suits or equipment.

The more that is known about the hazards at the site, the easier the job of PPE selection becomes. As more information about the hazards and conditions at the site becomes available, the site supervisor can make decisions to up-grade or down-grade the level of PPE protection to match the tasks at hand.

The following are guidelines which an employer can use to begin the selection of the appropriate PPE. As noted above, the site information may suggest the use of combinations of PPE selected from the different protection levels (i.e., A, B, C, or D) as being more suitable to the hazards of the work. It should be cautioned that the listing below does not fully address the performance of the specific PPE material in relation to the specific hazards at the job site, and that PPE selection, evaluation and re-selection is an ongoing process until sufficient information about the hazards and PPE performance is obtained.

Part A. Personal protective equipment has been divided into four categories based on the degree of protection afforded and are as follows (See Part B of this appendix for further explanation of Levels A, B, C, and D hazards):

I. *Level A*—To be selected when the greatest level of skin, respiratory, and eye protection is required.

Level A equipment; used as appropriate

1. Pressure-demand, full face-piece self-contained breathing apparatus (SCBA), or pressure-demand supplied air respirator with escape SCBA, approved by the National Institute for Occupational Safety and Health (NIOSH).
2. Totally-encapsulating chemical-protective suit.
3. Coveralls.*
4. Long underwear.*
5. Gloves, outer, chemical-resistant.
6. Gloves, inner, chemical-resistant.
7. Boots, chemical-resistant, steel toe and shank.
8. Hard hat (under suit)*
9. Disposable protective suit, gloves and boots (Depending on suit construction, may be worn over totally-encapsulating suit).
10. Two-way radios (worn inside encapsulating suit).

*Optional, as applicable.

II. *Level B*—The highest level of respiratory protection is necessary but a lesser level of skin protection is needed.

Level B equipment; used as appropriate

1. Pressure-demand, full-facepiece self-contained breathing apparatus (SCBA), or pressure-demand supplied air respirator with escape SCBA (NIOSH approved).
2. Hooded chemical-resistant clothing (overalls and long-sleeved jacket; coveralls; one or two-piece chemical-splash suit; disposable chemical-resistant overalls).
3. Coveralls*.
4. Gloves, outer, chemical-resistant.
5. Gloves, inner, chemical-resistant.
6. Boots, outer, chemical-resistant steel toe and shank.
7. Boot-covers, outer, chemical-resistant (disposable)*.
8. Hard hat.
9. Two-way radios (worn inside encapsulating suit).
10. Face shield.*

*Optional, as applicable.

III. *Level C*—The concentration(s) and type(s) of airborne substance(S) is known and the criteria for using air purifying respirators are met.

Level C equipment; used as appropriate

1. Full-face or half-mask, air purifying, canisterequipped respirators (NIOSH approved).
2. Hooded chemical-resistant clothing (overalls; two-piece chemical-splash suit; disposable chemical-resistant overalls).
3. Coveralls*.
4. Gloves, outer, chemical-resistant.
5. Gloves, inner, chemical-resistant.
6. Boots (outer), chemical-resistant steel toe and shank*.
7. Boot-covers, outer, chemical-resistant (disposable)*.
8. Hard hat
9. Escape mask*
10. Two-way radios (worn under outside protective clothing).
11. Face shield*

*Optional, as applicable.

IV. *Level D*—A work uniform affording minimal protection: used for nuisance contamination only.

Level D equipment; used as appropriate

1. Coveralls.
2. Gloves*
3. Boots/shoes, chemical-resistant steel toe and shank.
4. Boots, outer, chemical-resistant (disposable)*.
5. Safety glasses or chemical splash goggles*.
6. Hard hat.
7. Escape mask*.
8. Face shield*.

*Optional, as applicable.

Part B. The types of hazards for which levels A, B, C, and D protection are appropriate are described below:

I. Level A—Level A protection should be used when:

1. The hazardous substance has been identified and requires the highest level of protection for skin, eyes, and the respiratory system based on either the measured (or potential for) high concentration of atmospheric vapors, gases, or particulates; or the site operations and work functions involve a high potential for splash, immersion, or exposure to unexpected vapors, gases, or particulates of materials that are harmful to skin or capable of being absorbed through the intact skin.
2. Substances with a high degree of hazard to the skin are known or suspected to be present, and skin contact is possible, or
3. Operations must be conducted in confined, poorly ventilated areas and the absence of conditions requiring Level A have not yet been determined.

II. Level B protection should be used when:

1. The type and atmospheric concentration of substances have been identified and require a high level of respiratory protection, but less skin protection.

Note.—This involves atmospheres with IDLH concentrations of specific substances that do not represent a severe skin hazard; or that do not meet the criteria for use of air-purifying respirators.

2. The atmosphere contains less than 19.5 percent oxygen, or
3. The presence of incompletely identified vapors or gases is indicated by a direct-reading organic vapor detection instrument, but vapors and gases are not suspected of containing high levels of chemicals harmful to skin or capable of being absorbed through the intact skin.

III. Level C protection should be used when:

1. The atmospheric contaminants, liquid splashes, or other direct contact will not adversely affect or be absorbed through any exposed skin,
2. The types of air contaminants have been identified, concentrations measured, and a canister respirator is available that can remove the contaminants, and
3. All criteria for the use of air-purifying respirators are met.

IV. Level D protection should be used when:

1. The atmosphere contains no known hazard, and
2. Work functions preclude splashes, immersion, or the potential for unexpected inhalation of or contact with hazardous levels of any chemicals.

Note.—As stated before combinations of personal protective equipment other than those described for Levels A, B, C, and D protection may be more appropriate and may be used to provide the proper level of protection.

Appendix C—Compliance Guidelines

1. *Occupational Safety and Health Program.* Each hazardous waste site clean-up effort will require a site specific occupational safety and health program headed by the site coordinator or the employer's representative. The program will be designed for the protection of employees at the site. The program will need to be developed before work begins on the site and implemented as work proceeds. The program is to facilitate coordination and communication among personnel responsible for the various activities which will take place at the site. It will provide the overall means for planning and implementing the needed safety and health training and job orientation of employees, who will be working at the site. The program will provide the means for identifying and controlling worksite hazards and the means for monitoring program effectiveness. The program will need to cover the responsibilities and authority of the site coordinator for the safety and health of employees at the site, and the relationships with contractors or support services as to what each employer's safety and health responsibilities are for their employees on the site. Each contractor on the site needs to have its own safety and health program so structured that it will smoothly interface with the program of the site coordinator.

Each site safety and health program will need to include the following: (1) Policy statements of the line of authority and accountability for implementing the program, the objectives of the program and the role of the site safety and health officer or manager and staff; (2) means or methods for the development of procedures for identifying and controlling workplace hazards at the site; (3) means or methods for the development and communication to employees of the various plans, work rules, standard operating procedures and practices that pertain to individual employees and supervisors; (4) the training of supervisors and employees to develop the needed skills and knowledge to perform their work in a safe and healthful manner; (5) means to anticipate and prepare for emergency situations and; (6) information feedback to aid in evaluating the program and for improving the effectiveness of the program. The management and employees should be trying continually to improve the effectiveness of the program thereby enhancing the protection being afforded those working on the site.

Accidents on the site should be investigated to provide information on how such occurrences can be avoided in the future. When injuries or illnesses occur on the site, they will need to be investigated to determine what needs to be done to prevent this incident from occurring again. Such information will need to be used as feedback on the effectiveness of the program and the information turned into positive steps to prevent any reoccurrence. Receipt of employee suggestions or complaints relating to safety and health issues involved with site activities is also a feedback mechanism that needs to be used effectively to improve the program and may serve in part as an evaluative tool(s).

2. *Training.* The employer is encouraged to utilize those training programs that have been recognized by the National Institute of Environmental Health Sciences through its training grants program. These training and educational programs are being developed for the employees who work directly with hazardous subatances. For further information about these programs contact: National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709.

Training programs for emergency service organizations are available from the U.S. National Fire Academy, Emittsburg, MD and the various state fire training schools. The International Society of Fire Service Instructors, Ashland, MA is another resource.

3. *Decontamination.* Decontamination procedures should be tailored to the specific hazards of the site and will vary in complexity, and number of steps, depending on the level of hazard and the employee's exposure to the hazard. Decontamination procedures and PPE decontamination methods will vary depending upon the specific substance, since one procedure or method will not work for all substances. Evaluation of decontamination methods and procedures should be performed, as necessary, to assure that employees are not exposed to hazards by reusing PPE. References in Appendix D may be used for guidance in establishing an effective decontamination program.

4. Emergency response plans. States, along with designated districts within the states, will be developing or have developed emergency response plans. These district and state plans are to be utilized in the emergency response plans called for in this standard. Each employer needs to assure that its emergency response plan is compatible with the local plan. In addition, the CAER program of the Chemical Manufacturers' Association (CMA) is another helpful resource in formulating an effective emergency response plan. Also the current Emergency Response Guidebook from the U.S. Department of Transportation, CMA's CHEMTREC and the Fire Service Emergency Management Handbook should be used as resources as well.

Appendix D—References to Appendix

The following references to the Appendix may be consulted for further information on the subject of this notice:

1. OSHA Instruction DFO CPL 2.70—January 29, 1986, *Special Emphasis Program: Hazardous Waste Sites.*

2. OSHA Instruction DFO CPL 2-2.37A—January 29, 1986, *Technical Assistance and Guidelines for Superfund and Other Hazardous Waste Site Activities.*

3. OSHA Instruction DTS CPL 2.74—January 29, 1986, *Hazardous Waste Activity Form, OSHA 175.*

4. *Hazardous Waste Inspections Reference Manual,* U.S. Department of Labor, Occupational Safety and Health Administration, 1986.

5. Memorandum of Understanding Among the National Institute for Occupational Safety and Health, the Occupational Safety and Health Administration, the United States Coast Guard, and the United States Environmental Protection Agency, *Guidance for Worker Protection During Hazardous Waste Site Investigations and Clean-up and Hazardous Substance Emergencies.* December 18, 1980.

6. *National Priorities List,* 1st Edition, October 1984; U.S. Environmental Protection Agency, Revised periodically.

7. *The Decontamination of Response Personnel,* Field Standard Operating Procedures (F.S.O.P.) 7; U.S. Environmental Protection Agency, Office of Emergency and Remedial Response, Hazardous Response Support Division, December 1984.

8. *Preparation of a Site Safety Plan,* Field Standard Operating Procedures (F.S.O.P.) 9; U.S. Environmental Protection Agency, Office of Emergency and Remedial Response, Hazardous Response Support Division, April 1985.

9. *Standard Operating Safety Guidelines;* U.S. Environmental Protection Agency, Office of Emergency and Remedial Response, Hazardous Response Support Division, Environmental Response Team; November 1984.

10. *Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities,* National Institute for Occupational Safety and Health (NIOSH), Occupational Safety and Health Administration (OSHA), U.S. Coast Guard (USCG), and Environmental Protection Agency (EPA); October 1985.

11. *Protecting Health and Safety at Hazardous Waste Sites: An Overview,* U.S. Environmental Protection Agency, EPA/625/9-85/006; September 1985.

12. *Hazardous Waste Sites and Hazardous Substance Emergencies,* NIOSH Worker Bulletin, U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, National Institute for Occupational Safety and Health; December 1982.

13. *Personal Protective Equipment for Hazardous Materials Incidents: A Selection Guide;* U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, National Institute for Occupational Safety and Health; October 1984.

14. *Fire Service Emergency Management Handbook,* Federal Emergency Management Agency, Washington, DC, January 1985.

15. *Emergency Response Guidebook,* U.S. Department of Transportation, Washington, DC, 1983.

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December 19, 1986

Part V

Department of Labor

Mine Safety and Health Administration

30 CFR Part 57

Ionizing Radiation Standards for Underground Metal and Nonmetal Mines; Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 57

Ionizing Radiation Standards for Underground Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the Mine Safety and Health Administration's (MSHA) existing standards for ionizing radiation at underground metal and nonmetal mines. The intent of this rulemaking is to improve protection for underground miners with standards that reflect current developments in the principles of radiation protection.

DATE: Comments must be received on or before February 17, 1987.

ADDRESS: Send comments to the Office of Standards, Regulations, and Variances; MSHA; Room 631; Ballston Tower #3; 4015 Wilson Boulevard; Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey; Associate Assistant Secretary for Mine Safety and Health: MSHA; (703) 235-1910.

SUPPLEMENTARY INFORMATION:

I. General

A. Background

Under the Federal Mine Safety and Health Act of 1977 (Mine Act), MSHA is examining its existing regulations for the metal and nonmetal mining industry to ensure that the Agency's standards appropriately address the hazards of ionizing radiation. Ionizing radiation in the metal and nonmetal mining industry includes alpha radiation from the short-lived decay products (daughters) of radon and thoron gases and gamma radiation from radioactive ores.

The existing mining standard for gamma radiation was set at 5 rems in 1977 (42 FR 29418). This level was based on the recommendations first made by the International Commission on Radiological Protection (ICRP) and the National Council on Radiation Protection and Measurements (NCRP) in the mid 1950's.

In 1970, MSHA's predecessor (the Bureau of Mines) established 12 working level months (WLM) as the Federal exposure limit for underground mines. In 1971, the Environmental Protection Agency (EPA) issued Federal radiation protection guidance for radon daughters, which specified a limit of 4 WLM per year. That annual limit applied to underground mines as a mandatory standard through 30 CFR 57.5042 (then § 57.5-42) which incorporates EPA radon daughter recommendations approved by the President. In 1976, the Mining Enforcement and Safety Administration (MSHA's immediate predecessor) explicitly adopted the current 4 WLM per year limit.

On April 21, 1980, MSHA received a petition requesting an emergency temporary standard to lower the Agency's limits for exposure to radon daughters. MSHA had requested the assistance of the National Institute for Occupational Safety and Health (NIOSH) to review the literature in this area. On July 14, 1980, MSHA received an interim NIOSH study which reviewed selected scientific papers. The study indicated that there is evidence of excess health risk at and below a 120 WLM cumulative lifetime exposure. This cumulative exposure would result from receiving the maximum allowable exposure of 4 WLM per year for each of 30 years. On January 29, 1985, after review of technical literature, scientific studies, and its enforcement experience, MSHA determined that the petition for an emergency temporary standard did not meet the statutory criteria for an emergency temporary standard under section 101(b)(1) of Mine Act and therefore denied the request. However, to ensure that an appropriate level of health protection is being maintained, MSHA published an advance notice of proposed rulemaking (50 FR 4144) requesting comments on the adequacy of the existing standards. On November 19, 1985, MSHA announced the availability of a preproposal draft of revisions to its existing standards (50 FR 47700). Among other responses to these advance notices of proposed rulemaking, MSHA received two documents from NIOSH: "Evaluation of Epidemiologic Studies Examining the Lung Cancer Mortality of Underground Miners" and "Quantitative Risk Assessment of Lung Cancer in U.S. Uranium Miners." In preparing this proposal, MSHA has carefully considered all comments received. The Agency is aware that the National Academy of Science Committee on the Biological Effects of Ionizing Radiation, "BEIR IV," is evaluating the potential health effects associated with internal alpha radiation. When a report becomes available, MSHA will study the applicability of the findings to mining.

NIOSH is developing a recommended standard for protection from radon daughters which will be accompanied by appropriate criteria for its implementation. Once MSHA receives this document, the Agency will solicit comment on the merits of the recommendations made.

A widely held, basic tenet for minimizing harm from radiation is that exposures to radiation should be kept as low as reasonably achievable (ALARA). Effective implementation of the principle of ALARA involves: education of workers concerning the health risks of exposure to radiation; training in regulatory requirements and procedures to control exposure; establishment of appropriate exposure limits; monitoring, assessment, and reporting of exposure levels and doses; and implementation of radiation control measures.

Several commenters pointed out the need to fully utilize training programs as a means of increasing miners' awareness of the hazards involved. MSHA agrees. The Mine Act specifically provides for training miners in the health and safety aspects of the tasks to which they are assigned. MSHA has specific regulations for training programs in 30 CFR Part 48. At mines where radiation hazards are present, radiation hazard training is an important component of an effective health program. This proposal would put in effect other facets of ALARA by setting requirements for monitoring and recordkeeping to permit assessment of the degree of hazard present and for the implementation of control measures to reduce the hazard.

For the convenience of the mining community, this proposal uses the traditional measurement units of working level (WL), working level month (WLM) and rems. However, conversion to the International System of Units (SI), involving joules and sieverts, can be accomplished with the following conversion factors:

$1.0\ WL = 2.08 \times 10^{-5}\ J/m^3$

$1.0\ WLM = 4.33 \times 10^{-3}\ J$

$1.0\ rem = 10\ mSv.$

B. Summary of Changes

The proposal would apply to underground areas of underground mines. This is consistent with the scope of the existing standards which deal with radon daughters and gamma radiation at underground mines. The proposal would also expand coverage to address the radiation hazard from thoron daughters. The scope of the preproposal draft included X-radiation and the mining and milling of uranium on the surface. However, commenters and MSHA's own field investigations indicate that radiation hazards in these areas are adequately addressed by the Nuclear Regulatory Commission (NRC) and appropriate State agencies.

The most significant departure from the Agency's existing ionizing radiation standards in this proposed rule is the establishment of a combined exposure limit or sum rule for radon daughters, thoron daughters, and gamma radiation. MSHA's existing radiation standards include separate annual limits of 4 working level months (WLM) for radon daughters and 5 rem for gamma radiation. There is no existing mining regulation for thoron daughters. The combined exposure limit would ensure that no miner who is exposed to more than one source of occupational ionizing radiation receives more than the equivalent risk presented by any single source of radiation included in the sum rule. The sum rule would set limits of 4 WLM for radon daughters, 14 WLM for thoron daughters, and 5 rem for gamma radiation.

The preproposal draft would have eliminated the existing ceiling limit of 1.0 working level (WL) for exposure to radon daughters (§ 57.5039) and the requirement for radon gas respirator protection in areas with radon daughter concentrations above 10 WL (§ 57.5046). MSHA agrees with commenters that these ceiling limits aid in keeping exposures as low as reasonably achievable by setting maximum atmospheric concentrations. Accordingly, the proposal includes ceiling limits for radon daughters and thoron daughters. Under the proposal, entry into areas with concentrations of radon daughters above 1.0 WL would require use of approved respiratory protection. A ceiling limit for thoron daughter concentrations would be set at 3.0 WL.

Among other changes to the existing standards, action levels at which exposure records are required would be lowered for certain mines. Posting and access-to-record provisions would be included where appropriate, as provided by the Mine Act. The existing incorporation by reference provisions concerning sampling equipment and procedures (§ 57.5037(a)), record retention (§ 57.5040(b)(4)) and gamma radiation surveys (§ 57.5047(b)) would be deleted. Record retention periods and performance criteria for sampling are included in the proposal. Initial gamma and airborne radiation surveys would be conducted by MSHA.

The preproposal draft would have removed the existing prohibition of smoking during work hours (§ 57.5041). Based on comments received, MSHA has retained a smoking prohibition in this proposed rule.

In the preproposal MSHA requested comment on the appropriateness of setting specific radiation exposure limits for pregnant workers. Most commenters favored such a provision and the proposal would set a 0.5 rem limit for gamma radiation during the term of pregnancy.

The proposal does not include a provision for medical surveillance. Some commenters suggested that regular sputum cytologic examinations of miners could detect cell abnormalities. However, NIOSH has stated that routine periodic chest X-rays and sputum cytologic examinations do not meet the criteria for a suitable screening test to prevent fatal radiation-induced lung cancer. In fact, lung cancer appears to be an unsuitable occupational disease for medical screening given the current state of knowledge about its early recognition and treatment. To date, there is not convincing evidence that routine periodic medical screening of miners would be an effective means of preventing deaths due to lung cancer. However, the Agency specifically solicits comment on this issue.

The preproposal draft contained a provision to require transfer of miners who exceed annual exposure limits to jobs which would not expose them to additional occupational radiation. Several commenters stated that such a provision would need substantial clarification before it could be effectively implemented. Among the problems cited were the difficulty in assigning a miner to a position where the miner would not be subject to further occupational radiation, in part due to the presence of background radiation at the mine site. Commenters also stated that the proposed exposure limits would keep cumulative exposures below levels where statistically significant risk of material impairment can be projected for an individual miner. In addition, they pointed out that the preproposal draft was based on section 101(a)(7) of the Mine Act which requires transfer, when appropriate, "where a determination is made that a miner may suffer material impairment of health or functional capacity" due to the exposure. The legislative history of the Mine Act indicates that such a transfer should be based on the findings of a medical examination. Given the state of medical surveillance and the nature of the health impairment (cancer), the extent of the benefits that could be derived from a transfer provision are unclear and questions remain as to how such a provision could be effectively implemented. The Agency has not included a transfer provision in the proposal at this time. However, MSHA is concerned that the employment of miners not be adversely affected if they exceed an exposure limit. MSHA requests suggestions on how a meaningful transfer provision could be structured for such situations and what the impact would be on the mining community.

II. Proposed Annual Exposure Limits

A. Sum Rule

MSHA's existing radon daughter limits are based on the limitation of lung-cancer risks. Radon daughters release primarily low-penetrating alpha radiation and therefore must be inhaled into the respiratory system to have a harmful effect on the body. The Agency's existing gamma limit is based on the prevention of significant risks to the "whole body". Gamma radiation is a penetrating ionizing radiation which can pose a health risk to the entire body.

This proposed rule would set a single annual limit which takes into account the potential for increased cancer risk if there is exposure to more than one source of radiation. The allowable exposure to any one type of radiation would be dependent on the concurrent annual exposure to the other types of radiation. The proposal uses the International Commission on Radiological Protection's concept of "effective-dose equivalents" which treats radiation doses from different types of radiation exposure in terms of equivalent fatal cancer risks as if the risks were due to uniform whole-body gamma exposure (ICRP Publication 26 "Recommendations of the International Commission of Radiological Protection", 1977). The guiding principle is that the *total risk* of radiation-induced fatal cancers for an individual should be limited.

The need and desirability for summation of doses to determine total risk has been recognized by the ICRP since 1959 (see ICRP Publication 2, "Report of Committee II on Permissible Dose from Internal Radiation", 1959). ICRP Publication 26 introduced the "effective-dose equivalent" concept to permit combining internal and external exposures. The Environmental Protection Agency (EPA), in its draft Federal radiation guidance, and the Nuclear Regulatory Commission, in its proposed revisions to Part 20 of the Code of Federal Regulations (51 FR 1092; January 9, 1986) propose adoption of ICRP's concept of summation of doses. ICRP specifically recommends this approach for mining in its Publication 32 "Limits for Inhalation of Radon Daughters" (1982) and Publication 47 "Radiation Protection of Workers in Mines" (1985). MSHA also believes that

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this approach is appropriate for the mining industry.

The combined limit (sum rule) proposed by MSHA is simplified from that used by the ICRP and NRC because only a few sources of radioactivity are present in underground mining (principally, radon daughters, thoron daughters, and gamma radiation). This combined exposure concept would provide equivalent protection for miners regardless of the ionizing radiation source. Under the sum rule, uranium miners, who receive both radon-daughter and gamma exposures, would not be permitted to receive a higher radiation risk than non-uranium miners, who receive little or no gamma radiation.

While there is a range of scientific opinion on the equivalence of rems to WLM's, MSHA has developed its proposal from ICRP's estimates that a 4.8 WLM radon daughter exposure per year and a 5 rem gamma dose per year present approximately equivalent fatal cancer risks. According to ICRP, an annual exposure to both 4.8 WLM of radon daughters and 5 rem of gamma radiation nearly doubles the risk of fatal cancer from either type of radiation exposure alone.

The ICRP combined limit recommendation allows an annual exposure to 4.8 WLM of radon daughters so long as there is no contribution from long-lived radionuclides, thoron daughters, or gamma or X-radiation. This recommendation for radon daughters recognizes that the lung cancer risk derived from epidemiologic studies of uranium miners includes the excess lung cancer risk from external gamma radiation, long-lived radionuclides, and other carcinogenic agents to which the miners may have been exposed. Canadian, French, and U.S. data indicate that long-lived radionuclides can account for up to approximately 20 percent of the airborne radiation exposure of miners. Therefore, MSHA proposes to include in its sum rule a limit of 4 WLM for radon daughters rather than 4.8 WLM to compensate for the presence of long-lived radionuclides and eliminate the necessity to sample and keep exposure records for them. The 4 WLM per year limit is also consistent with the current Federal radiation protection guidance for occupational exposure (36 FR 12921, July 9, 1971).

Based on the ICRP recommendations (Publications 32 and 47) and consistent with NRC's recent proposed rule, the MSHA's proposed limit for thoron daughters in the sum rule is 14 WLM. The proposed limit for gamma radiation is 5 rem, consistent with MSHA's existing limit for gamma radiation as well as with NRC, EPA, and Federal radiation protection guidelines.

B. Degree of Risk

Considerable evidence from epidemiologic studies relates cumulative exposures to radon daughters of greater than 100 WLM to an increased risk of lung cancer. Although some studies indicate that exposure to less than 100 WLM increases the risk of lung cancer, these data are less conclusive. Much of the data of the principal epidemiologic studies were derived from miner exposures during the 1940's and 1950's when the poor ventilation of mines resulted in high cumulative exposures, many over several hundred WLM. However, relatively few data are available for defining the effect of exposure at occupational levels typically experienced in the mining industry today.

Because the data on low cumulative exposures are too sparse to allow risk to be estimated directly, statistical modeling based on available epidemiologic data must be used to estimate risk. Such statistical models, however, are intended to show correlation, not necessarily causation. There continues to be divided opinion in the scientific community on which statistical model to use or even whether to extrapolate from the observed effects at high exposures to the probable effects at low exposures.

Each of the epidemiologic studies currently available has inherent deficiencies. For example, most studies of miners have involved relatively small populations. However, because the frequency of lung cancer is not relatively high, an analysis of the mathematical relation between exposure and incidence indicates the need for the study of sizable populations. Even when the overall number of miners in a study group is relatively large, the numbers in many subgroups (for example, nonsmokers) is often too small to effectively evaluate the many confounding variables which affect the group.

Epidemiologic studies are further complicated by uncertainties about the amount of the radon daughter exposure received by individuals. There is a lengthy latency period between the occupational exposure and the appearance of cancer. Frequently, studies attempt to reconstruct an individual miner's exposure from an annual average radon daughter exposure estimate for a particular mine or mine area. Thus, the individual's actual exposure could vary greatly from the estimated exposure. In the preproposal draft, MSHA relied in part on the study of the Swedish Malmberget iron miners. The Agency received extensive comments from two commenters who recently traveled to Sweden to consult with several individuals knowledgeable about the study. These commenters concluded that the risk estimates of the Malmberget study are unreliable because of uncertainties about past exposures.

MSHA also relied on a study of Ontario uranium miners in the preproposal draft. According to NIOSH, this study also has three limitations. First, the group has had only about 18 years of follow-up. The median attained age of the miners was 39 years in 1977. A short follow-up on a young group creates uncertainties because lung cancer is rarely manifested before age 40. Second, thoron daughters and gamma radiation levels sometimes occur at high levels in the Ontario mines, although the effect is a highly variable factor. Finally, the researchers' risk assessment failed to consider smoking. Out of a group of 57 uranium miners who died of lung cancer, only one was a nonsmoker; the rest smoked. Although correction for smoking may not substantively change the Ontario risk assessments, NIOSH has recommended that definitive conclusions regarding this study await a smoking history analysis.

For this proposal, MSHA has reassessed the available epidemiologic evidence and has concluded that the U.S Public Health Service study of Colorado Plateau miners and a study of Czechoslovakian miners by Sevc *et al.* are the most appropriate epidemiologic studies for assessment of radon daughter risk to U.S. miners. These studies incorporate a relatively large number of exposure measurements, detail individual information such as smoking habits and age at first exposure, and document followups. The Colorado Plateau study shows no statistically significant excess lung cancers below 120 WLM (BEIR III, 1980). In the Czech study, statistically significant differences between observed and expected cases of lung cancer emerged in the 100–149 WLM range and above (Sevc, Kunz, Placek, 1976). In reviewing available epidemiologic studies, the National Council on Radiation Protection and Measurements (NCRP) has stated that no study, so far, has produced data which show a statistically significant excess of lung cancer in the lowest exposure category of below 60 WLM (NCRP Report No. 78: Evaluation of Occupational and Environmental Exposures to Radon and Radon Daughters in the United States, 1984). Based on available 1984 data reported to MSHA by mine operators for 1528 uranium miners, the cumulative exposure of most of these miners was well below 60 WLM. The highest cumulative exposure reported was 70 WLM.

The lack of low level exposure-response data, however, does not exclude the possibility of an exposure threshold below which radiation will have no effect. Until such time as it becomes known what the exposure-response relationship at low levels is, it is prudent to assume a non-threshold linear relationship for low cumulative radon daughter exposures. Since the adoption of a 4 WLM radon daughter standard for mining in 1971, a number of risk assessments using this assumption have been completed and arrive at comparable estimates of lifetime risks per unit of dose: the BEIR I and III reports of the National Academy of Sciences (1972 and 1980) and studies by the United Nations Scientific Committee on the Effects of Atomic Radiation (UNSCEAR, 1977 and 1982), ICRP, NCRP, and the EPA. Based on these assessments, MSHA estimates the lifetime risk of fatal lung cancer to range from 1 to 6 cases per 10,000 miners per WLM. ICRP's estimate of risk is 1.7×10^{-4} and NCRP's estimate is 1.5×10^{-4}.

In February 1985, NIOSH submitted to MSHA a quantitative risk assessment of lung cancer in uranium miners in the United States. The report presented a statistical assessment of mortality from lung cancer among white male uranium miners working in the Colorado Plateau. For cumulative occupational exposures over a period of 30 years, the NIOSH study estimated a relative risk of 1.42 at an annual level of 1 WLM, 1.66 at 2 WLM, 1.88 at 3 WLM, and 2.07 at 4 WLM. Using this risk assessment, miners exposed to 4 WLM per year for 30 years would be projected to have slightly more than twice the normal risk of lung cancer. However, it should be noted that the mean cumulative exposure of the Colorado Plateau group was 821 WLM and the median exposure 430, considerably higher than the exposures experienced today. NIOSH states that their model provides a good fit to the data in the range of 60 to 6000 cumulative WLM. However, the existing radon daughter standard would allow no more than 120 cumulative WLM over a 30-year working life. As noted, the actual cumulative exposure of working U.S. uranium miners is considerably below 100 WLM. One commenter noted that NIOSH's choice of mathematical functions to resolve the problem of the small number effect in the study results in a risk model that is "very ill behaved as doses get smaller and smaller (Hamilton, Brookhaven National Laboratory)."

In an evaluation of risk of death or disability due to radon daughter exposure, the presence of other work place hazards must be recognized in order to allocate resources in a matter that optimizes the protection afforded to miners from all hazards. To put the risk of radiation into perspective, ICRP judged the acceptable level of occupational risk by comparing risk from exposure to radiation to risk in industries that do not involve radiation and which are recognized as having high standards of safety, ICRP Publication 27 (1977) and Publication 32 (1981). "Safe" industries were considered to be those having an average annual risk of fatal accident due to occupational hazards of 1×10^{-4}. This corresponds to a lifetime risk of occupation-related death of about 0.5 percent for 50 years of employment. However, mining industry data indicate that the majority of miners work no more than 10 years in underground uranium mines (Beverly 1981, Waxweiler 1981) where the highest radiation exposures in mining occur. NCRP has reported that if the limit of 4 WLM per year is observed, then the average exposure should be considerably less and the 4 WLM limit can be considered to be consistent with the 0.5 percent risk for 10 years of exposure. Actual annual average exposures in U.S. uranium mines are presently reported to be between 1 and 2 WLM per year (NCRP Report No. 78).

Given the current data from epidemiologic studies, the various risk assessments based on that data, the relatively short period of time most uranium miners work underground, the exposures of current-day miners, and the effect of the proposed sum rule on lowering exposure to radon daughters, MSHA believes that an annual limit based on 4 WLM is still appropriate. However, the Agency is considering setting a cumulative occupational exposure limit for radon daughters. Such a limit should ensure that an individual's cumulative occupational exposure would remain well below the levels at which excess lung cancer has been demonstrated. The Agency requests comments on the practicality and necessity of setting a cumulative limit, including data on the level this limit should be.

III. Section-by-Section Discussion

Section 57.5000 Definitions.

The proposal would include two definitions, "working level" and "working level month," which would appear at the beginning of Subpart D. These terms define units of measurement for the potential alpha radiation released by radon daughters and thoron daughters. The preproposal draft suggested changing the existing 173-hour work month to a 170-hour month for consistency with the NRC, NIOSH, and ICRP and to bring the U.S. mining industry under an internationally accepted standard for future epidemiologic studies. However, several commenters stated that the modification would only further limit exposures to radon daughters with little concurrent benefit to miners. They stated that a change would unnecessarily complicate calculations in epidemiologic studies. The proposed rule would retain the existing 173-hour work month.

Section 57.5700 Scope.

As with the existing radiation standards, the proposal would apply only to metal and nonmetal underground mines. The statement of scope would clarify that the standards apply to "occupational" exposure to ionizing radiation. Radiation exposure for medical reasons or environmental exposure would not be a factor in computing the exposure received at the mine. Under the preproposal draft, the radiation standards would have applied to underground areas of underground mines, the mining or milling of uranium on the surface, and the use of X-radiation equipment. MSHA is proposing to limit the scope to underground mines for several reasons. Exposure to radiation at uranium mills is already regulated by NRC. MSHA has a memorandum of understanding with NRC in this regard (45 FR 1315; January 4, 1980). Based on field experience and data, other surface areas have only minimal airborne radiation hazards. During the preproposal phase of this rulemaking, the Agency conducted a partial survey of surface operations to determine potential hazards from ionizing radiation. MSHA found no significant radiation hazard at surface operations which was not already adequately addressed by other State or Federal agencies. MSHA has not included coverage of X-radiation equipment in the proposed standard. Although X-radiation equipment is frequently used in laboratories at metal mines and cement plants as an analytical tool, commenters pointed out

that exposures from these types of equipment are usually low, isolated to specific parts of the body, and adequately regulated by State and local government agencies. The standards would not apply to radioactive sources, such as nuclear gauges, which are regulated by the Nuclear Regulatory Commission.

The proposed rule would also directly address for the first time exposure to thoron daughters in mines. Although no active mines in the United States presently have reported significant levels of thoron daughters, such levels have been found in U.S. mines which are now inactive. Therefore, MSHA believes that it is prudent to address the potential hazard and requests data on the thoron daughter levels in mines operating today. However, monitoring and recordkeeping would only be necessary when thoron daughters concentrations exceed the proposed action levels.

Section 57.5701 Control of exposure to radiation.

This section would revise §§ 57.5038, 57.5042, and 57.5047(d) which concern exposure limits for ionizing radiation. The proposal adopts a calendar-year exposure limit which combines exposure to radon daughters, thoron daughters, and gamma radiation and retains the existing ceiling limit for radon daughters. It does not contain the provision for a 3-year, 8 WLM cumulative radon daughter limit contained in the preproposal draft. Commenters generally stated that such an approach had little merit as a means of controlling exposure.

The preproposal draft would have eliminated the existing ceiling limit of 1.0 WL for exposure to radon daughters (§ 57.5039) and the requirement for additional protection against radon gas in areas with a radon daughter concentration above 10 WL (§ 57.5048). Most commenters stated that the provisions should be retained. After reviewing these comments, the Agency agrees that the ceiling limits are an important element in an overall radiation control program designed to keep exposures as low as reasonably achievable.

The proposed rule would prohibit any person from being exposed to air containing concentrations of radon daughters exceeding 1.0 WL or thoron daughters exceeding 3.0 WL unless wearing approved respiratory protection. Areas in which radon daughter concentrations are above 1.0 WL or thoron daughter levels are above 3.0 WL would have to be barricaded or posted to prohibit entry without respiratory protection. The barricading or posting requirement revises existing § 57.5045 and is intended to notify workers of the hazard of entering such areas without appropriate protection. If radon daughter concentrations exceed 10 WL, supplied-air respiratory protection would be required to protect against radon gas. Supplied-air respirators are necessary to protect workers from radon gas which cannot be removed by filter-type respirators.

The proposal would require mine operators to maintain exposures of all persons within permissible limits by the use of feasible engineering and administrative controls. Respiratory protection would have to be used when controls cannot reduce exposures to these levels. The principal means of controlling exposure are ventilation for radon daughters and thoron daughters and shielding or avoidance for gamma radiation. Administrative controls may also be used and most often entail rotation of personnel from areas of higher exposure to areas of lower exposure. The net effect of administrative controls alone would be a reduction of individual exposures but no reduction in the overall exposure of the work force. However, a combination of engineering controls, administrative controls, and other efforts to keep exposures as low as reasonably achievable is most typically used in the mining industry and has proven effective in recent years.

The Agency is reviewing its overall policy concerning methods of compliance for its health standards. However, MSHA wishes to limit comment in this rulemaking to the appropriateness of the proposed means of radiation control and to other radiation controls which could provide the necessary protection. The broader health issues involved in the Agency's overall policy on means of control are under review within the Department in the context of other rulemaking proceedings which will provide a more appropriate forum for comment. The final rule for ionizing radiation will be based on the comments submitted in this rulemaking and will reflect, to the extent possible, the Agency's overall policy review on means of control. The Agency will assure that the affected mining community will be provided with an adequate opportunity for comment on any subsequent policy decision which may affect relevant issues in this rulemaking.

Ventilation carrying needed fresh air into the workings of an underground mine is often the most effective means to limit the inhalation of airborne radiation. When additional steps are necessary, existing technology is readily available. Airborne radiation concentrations can be reduced by supplementing the air flow to increase dilution or using bulkheads to seal inactive areas. However, MSHA recognizes that some areas with elevated levels of airborne radiation must be entered on a short-term basis for the purposes of inspection, maintenance, or installation of controls. In these cases, respirators would have to be used. The standard would allow adjustment of exposure records to credit the protection provided by respirators during these short-term uses and when needed to supplement engineering and administrative controls.

There are limitations, however, when the use of respirators would result in the adjustment of exposure records. The process of extracting ore underground involves a high degree of physical exertion. A miner wearing an otherwise effective respirator may remove it at times to compensate for the additional effort that breathing through a respirator entails. This is particularly true when the respirator must be worn for long periods of time. Accordingly, under the proposal, adjustment of exposure records would not be routinely allowed. Further, respirators do not provide protection from gamma radiation; no adjustment would be allowed for gamma records. The respirators would have to be approved under 30 CFR Part 11 and used in accordance with the respiratory protection program requirements of § 57.5005(b). MSHA solicits comments on whether there are additional circumstances where respiratory protective equipment may provide the necessary protection.

As provided by section 103(c) of the Mine Act, the standard would require the mine operator to notify overexposed miners of their overexposure and the corrective action to be taken.

In the preproposal draft, MSHA requested comments on the appropriateness of a provision for limiting gamma radiation exposure during pregnancy. Commenters supported such a provision. The proposal would set a limit of 0.5 rem for women who inform the mine operator of their pregnancy. It is unclear how much shielding the mother's body provides the embryo or fetus, so MSHA is proposing a limit on the whole body dose to the mother.

The 0.5 rem limit proposed for the duration of the pregnancy is based on EPA's proposed radiation protection guidance and is consistent with NRC's January 9, 1986 proposed rule. If the occupational whole-body gamma dose of the pregnant woman has exceeded 0.5 rem between the estimated date of conception and the declaration of pregnancy to the mine operator, the woman would be prohibited from receiving an additional occupational whole-body gamma dose exceeding 0.05 rem during the remainder of the pregnancy.

Section 57.5702 Monitoring for airborne radiation.

This section would replace § 57.5037 and concerns monitoring for the presence of radon daughters and thoron daughters to determine exposures. It contains provisions for when, where, and how to measure these forms of airborne radiation.

It would replace an incorporation by reference of American National Standards requirements for sampling equipment and procedures (ANSI N13.8—1973) with a performance-oriented provision based on accuracy. These criteria reflect existing technology, allow the use of present methods of sampling, including the instant working level meter, and would permit the use of new methods of monitoring. They reflect the accuracy criteria for exposure estimates set forth in ANSI N13.8—1973, "Radiation Protection in Uranium Mines," paragraph 8.2. MSHA solicits comment on the accuracy and applicability of individual alpha dosimetry for radon daughters and thoron daughters.

The proposal would require that sampling be conducted in areas representative of exposures. Sampling or measuring would have to be done by a person trained or experienced in these tasks. Consistent with section 103(c) of the Mine Act, the proposal would allow miners or their representatives to observe the sampling and measuring used to determine their exposures.

Unlike the existing standard, MSHA would not require screening of all underground mines for the presence of radon daughters or gamma radiation or periodic screening of mines with radon daughter concentrations below 0.10 WL. The Agency currently does this screening and would continue to do so to ensure that mines with potential radiation hazards, including thoron daughters, are identified.

To monitor airborne radiation exposure at mines, MSHA would require sampling when concentrations of radon daughters exceed 0.2 WL or concentrations of thoron daughters exceed 0.6 WL. These action levels were derived by determining the average concentration which over the course of a year would exceed 30 percent of the annual limit and allowing approximately two standard deviations above the average to allow for fluctuation in levels and measurement (Schiager, *et al.*, "Radiation Monitoring for Uranium Mines: Evaluation and Optimization," 1981). ICRP recommends and NRC has proposed to require that all individuals who are likely to exceed 30 percent of their allowable annual limit be monitored.

When initially found, areas with concentrations of radon daughters and thoron daughters that exceed the action level but are promptly reduced and maintained below that level would not be required to be sampled periodically. Also, if areas above the action levels are posted against entry without respiratory protection or barricaded, there is no need for periodic monitoring to determine personal exposures unless miners enter the areas.

Sampling would be required initially on a weekly basis to ensure the accuracy of the exposure records. Under the proposal, the weekly sampling action level for radon daughters would be 0.20 WL. Under the existing rule, the action level for weekly sampling is 0.30 WL. The action level for thoron daughters would be 0.60 WL based on the risk ratio between radon daughters and thoron daughters used by the ICRP.

Areas with concentrations of 0.20 WL or less radon daughters or 0.60 WL or less thoron daughters which are entered by miners who are exposed to levels above 0.20 WL (or 0.60 WL, as appropriate) elsewhere in the mine would also have to be sampled. When records are kept for a miner, sampling becomes necessary in areas with concentrations less than the action level to account for all exposures received. Otherwise, the miner could be overexposed in the course of the year without an indication of the overexposure. The Agency, however, realizes that some areas may have such low concentrations that additional exposure in these areas may be minimal. MSHA requests comments on the level at which sampling in such areas should not be necessary.

Under the proposed rule, weekly sampling frequency may be changed to monthly and remain monthly in an area so long as the lowest and highest results of the last 4 samples (weekly or monthly) differ no more than 0.12 WL. Monthly sampling frequency may be changed to quarterly and remain quarterly in an area so long as the lowest and highest results of the last 4 samples (monthly or quarterly) in that area differ no more than 0.09 WL. If the range of the last 4 samples is more than 0.12 WL or 0.09 WL, sampling frequencies would have to revert to the original frequencies. MSHA has calculated that, if the range is 0.12 or less for monthly, or 0.09 or less for quarterly, there is 95 percent confidence that the concentration variation in the area is within the accuracy necessary to meet the exposure record criteria set out in ANSI N13.8—1973 for 4 WLM. The ANSI criteria ensure that annual individual exposure records have an accuracy of ±50 percent at the 95 percent confidence level. These provisions recognize that under some circumstances radon-daughter and thoron-daughter concentrations may remain relatively constant. This may occur in haulageways or intake airways where the incoming air is very effective in diluting concentrations or where the release of radon or thoron from the surrounding strata may be relatively constant. MSHA believes that longer intervals between sampling times should be allowed when sample results are uniform, since the accuracy of the exposure record would still be ensured.

Section 57.5703 Measurement of gamma radiation.

This section would revise § 57.5047 by requiring the mine operator to provide individual gamma radiation dosimeters for all persons whose whole-body dose to gamma radiation exceeds an average of 0.75 millirem per hour during any shift (typically an 8-hour period). This action level would prevent any miner from exceeding more than 30 percent of the allowable exposure without a record of the exposure being maintained. Because the fetus is more sensitive to gamma radiation, the action level for women who have informed the mine operator of their pregnancy would be 0.33 millirem per hour during any shift, based on the 0.5 rem allowable limit for the 9 months of the pregnancy. MSHA particularly solicits comments on the appropriateness of these action levels.

MSHA has not adopted NRC's approach of requiring dosimeters for individuals who could be expected to receive over 0.5 rem on an annual basis. The levels of natural gamma radiation encountered in mining can be expected to fluctuate more than those in controlled environments such as power plants and laboratories. MSHA believes that it is more prudent to set an action level based on the radiation received during any shift, rather than on that which could be received over the course of a year.

Section 57.5704 Records.

This section would revise §§ 57.5040 and 57.5047(c). For radon daughters, it would require that records be kept for

any person entering areas where radon daughter concentrations exceed 0.20 WL when gamma dosimetry is required for that person or 0.30 WL when gamma dosimetry is not required. If radon daughter records are kept for an individual, then the individual's exposure to concentrations less than these levels would also have to be recorded to ensure that the exposure limits are not exceeded. Currently, complete individual exposure records must be kept for all underground uranium mines, and for other underground mines at an action level of 0.30 WL. In most instances, the proposed action levels would provide a record of exposures that could result in an overexposure under the sum rule.

Under the proposed combined exposure limit, exposure to alpha and gamma radiations are summed together. MSHA is proposing two levels for radon daughter recordkeeping based on the level of gamma radiation present. If the level of gamma radiation is sufficiently high that dosimetry is necessary, then exposure to radon daughters above 0.2 WL could result in an individual's total exposure exceeding the combined exposure limit. If gamma levels are below that requiring dosimetry, exposure to slightly higher levels of radon daughters would be required to exceed the combined exposure limit, and therefore a level of 0.3 WL is proposed for such instances. Since non-uranium mines are likely to have a lower level of gamma radiation present than uranium mines, the 0.3 WL level would tend to apply most often in nonuranium mines. As a practical matter, these levels would also provide guidance to the operator in maintaining exposures as low as reasonably achievable. The action level for thoron daughter exposure records would be set at 0.60 WL.

As stated, § 57.5703 would require that individual gamma dosimeters be provided to miners whose average exposure to gamma radiation would exceed 0.75 millirem per hour during any shift (0.33 millirem per hour during pregnancy). The dosimetry results would be used to maintain individual calendar-year records and in determining compliance with the proposed combined exposure limit. Currently, gamma exposure dosimeters and records are required at an action level of 2.0 milliroentgens per hour. The proposal is based on an average shift dose (rems per hour) rather than a rate derived from instantaneous readings. Thus, it would allow short term excursions in high exposure rate areas without recordkeeping as long as the average dose rate during any shift does not exceed 0.75 millirem per hour (0.33 millirem per hour during pregnancy).

The proposal would change the existing requirement that exposure records be updated yearly to a requirement that individual exposure records for gamma and airborne radiation be updated within 60 days of the end of each calendar quarter. Under the sum rule, such periodic updating is necessary to ensure that the mine operator is aware of potential overexposures and can make appropriate changes in a timely manner. Updating exposure records would also assist the mine operator in maintaining exposures as low as is reasonably achievable. The Agency requests comments on the impact of this recordkeeping change.

This section provides for the discontinuance of individual exposure records for radon daughters or thoron daughters when a miner is no longer exposed to levels exceeding 0.20 WL for radon daughters or 0.60 WL for thoron daughters, as appropriate, for 4 consecutive weeks or more and the miner's prorated calendar year exposure falls below 30 percent of the prorated annual limit. For purposes of discontinuing recordkeeping, 30 percent of the prorated annual limit for radon daughters would be determined by multiplying the number of months of recorded exposure by 1/10 of a WLM; for thoron daughters, the number of months of recorded exposure would be multiplied by 3/10 of a WLM.

Except during pregnancy, gamma dosimetry may be discontinued for a person who is no longer exposed to an average of 0.75 millirem per hour during any shift provided that the person's calendar year dose has not exceeded 125 millirems multiplied by the number of months of recorded dose in that calendar year. This provision would ensure that gamma dosimetry is not discontinued unless the individual's prorated dose falls below 30 percent of the annual gamma limit.

This section would also provide for access to records and add a provision to require exposure records to be provided to the miner upon termination of employment. This provision assists miners in supplying future employers with a record of their past exposures. MSHA believes that these provisions reflect the intent of the access provisions of section 103(c) of the Mine Act.

The existing standard, through an incorporation by reference of paragraph 9.8 of ANSI N13.8—1973, requires that radon daughter exposure records for an individual be kept until the individual is 75 years of age or until 10 years after the known death of the individual. There is no retention period for gamma records. The proposed rule would require that all sampling data, individual occupancy records, and combined exposure records be retained at the mine or the nearest mine office for one calendar year past the calendar year to which they pertain. Copies of records would no longer have to be sent to MSHA or kept on an approved form, but would have to be made available to MSHA for examination. Under section 103(h) of the Mine Act, NIOSH may request such records for medical research.

Some commenters stated that the record retention should remain the same as the present requirement, in part to allow for future epidemiologic study. The Agency requests comment on the utility of a longer record retention period: in particular who should retain such records, the potential uses for such records, and the costs involved with a longer period of retention.

Section 57.5705 Calculation of exposure to individuals.

This section clarifies the methodology for calculating individual radon daughter exposures in existing § 57.5040 and contains provisions for calculating exposure to thoron daughters.

A new provision would allow adjustments in calculating individual exposures if approved respiratory protection is worn on a short-term basis for inspection, maintenance, or installation of controls or and when needed to supplement engineering and administrative controls. Although levels of airborne radiation may exceed ceiling limits during these activities, respirator credit is allowed because of the limited time of exposure and nature of the tasks. The adjustments proposed for each type of respirator are based on the degree of protection provided by the respirator when properly used. Positive-pressure supplied-air respirators and pressure-demand self-contained respirators furnish full protection if radon-free air is used. Air-purifying (negative-pressure) respirators are less effective because of inward leakage inherent to such respirators. The preproposal draft contained a provision for canister-type respirators for protection against radon. However, no canister-type respirators for radon have been approved to date. MSHA solicits comments on the appropriateness of an allowance for these types of respirators.

Section 57.5706 Smoking prohibition.

The preproposal draft would have deleted the existing requirement in § 57.5041 prohibiting smoking in all areas of a mine for which radon daughter exposure records are required. Most commenters indicated that removing the smoking prohibition would be a step back from sound health protection. Therefore, in the absence of evidence of the exact relationship of smoking to radiation-induced lung cancer, the proposed rule would ban smoking underground in any mine where airborne radiation exposure is sufficiently high so that it is necessary to maintain records of the exposure.

IV. Executive Order 12291 and Regulatory Flexibility Act

Under Executive Order 12291, MSHA has prepared an initial analysis to identify potential costs and benefits associated with proposed changes to its ionizing radiation standards for underground metal and nonmetal mines. The Agency has incorporated this analysis into the Initial Regulatory Flexibility Analysis required by the Regulatory Flexibility Act. MSHA has determined that the proposed rule would not result in major cost increases nor have an incremental effect of $100 million or more on the economy. The proposed rule does not meet the criteria for a major rule and therefore a Regulatory Impact Analysis is not necessary.

The Regulatory Flexibility Act requires that in developing regulatory proposals, agencies should evaluate and include, wherever possible, compliance alternatives that minimize any adverse impact on small business entities. The Mine Act mandates the promulgation of mandatory standards dealing with toxic substances and harmful physical agents which may affect the health or functional capacity of miners. The proposed rule would clarify the compliance responsibilities of mine operators in regard to protecting miners from ionizing radiation exposures. Where possible, MSHA has proposed performance-oriented language to enable the mine operator to implement the most flexible and least costly compliance methods. MSHA has eliminated the requirement to send annual reports showing individual miner's cumulative exposures and has allowed adjustments to the cumulative exposures for use of respirators during short-term assignments in areas above the ceiling limits and when necessary to supplement engineering controls. In this way, MSHA has taken into consideration the needs of small mines.

In the following summary of the Initial Regulatory Flexibility Analysis, MSHA has compared the costs and benefits associated with the proposed changes with the costs of existing requirements. A copy of the analysis is available upon request.

Both the existing and proposed ionizing radiation standards apply to all underground metal and nonmetal mines within MSHA's jurisdiction that contain levels of radon daughters or gamma radiation above specified action levels. The proposed rule would also address the presence of radiation from thoron daughters when action levels are exceeded.

Although metal and nonmetal mining in the United States is a diverse industry producing about 55 different mineral commodities, the primary focus of the existing and proposed rules is underground uranium mines. The underground uranium mining industry has undergone substantial changes in recent years due to declining demand and competition from low-cost foreign sources. The total number of underground mines fell from a peak of 300 in 1980 to only 16 by June 1986. The 16 operating mines employ a total of about 450 workers. This is a decline from 5,706 workers in 1979. Currently, all underground uranium mining in the United States takes place in the western United States.

Uranium mining involves the handling of large quantities of ore containing uranium and its decay products. The concentrations of the radionuclides in the ore may be up to one thousand times greater than their concentration in other rocks and soils. Underground uranium mines have generally accounted for about thirty to forty percent of the uranium oxide production in the United States.

In addition to uranium mines, MSHA's existing radiation standards apply to any underground metal or nonmetal mines which contain concentrations of radon daughters exceeding 0.1 WL. The proposal would apply at an action level of 0.2 WL. Generally, radiation levels in these mines are much lower than levels in uranium mines. Although thoron daughters have been found in nonuranium mines, there are currently no operating mines which contain significant levels. During fiscal year 1985, MSHA inspectors sampled for radon daughters at 254 non-uranium underground mines. Thirty-eight operating mines of the 254 nonuranium underground mines sampled had radon daughter readings in excess of 0.1 WL. Twenty-seven of these mines had samples which exceeded .2 WL. A review of the historical data regarding radon daughter exposure levels indicates that the commodities most likely to contain significant levels of radon daughters include gold-silver, lead-zinc, antimony, iron, molybdenum and tungsten for metal mines; and clay-shale, fluorspar, talc and limestone for the nonmetal mines. In June 1986, total employment in underground mines producing these commodities was 9,870 and the total number of full time producing mines was 160.

The primary health risk from radon daughters is lung cancer caused by their inhalation. Gamma radiation also contributes to lung cancer, but affects the whole body, potentially causing cancers in other parts of the body or genetic damage.

The existing standards provide for an individual limit of 4 WLM per year for radon daughters and a limit of 5 rem per year for gamma radiation. MSHA estimates a lifetime risk of 1 to 6 lung cancer cases per 10,000 workers for each WLM of exposure to radon daughters. For gamma radiation, MSHA accepts ICRP's projected expectation of radiation induced health damage of 1.65 cases per 10,000 workers per rem (ICRP Publications 26 and 32). This health damage includes both cancer risk and risk of serious hereditary damage in two generations of offspring.

The average exposure to radon daughters for currently operating underground mines was 1.22 WLM in 1985. The lifetime risk is associated with annual increments in exposure (WLM). At the current low levels of employment, the lifetime benefits in terms of reduced cases of fatal lung cancer for uranium and nonuranium mines is estimated to range between .06 and .37 cases. If the industry were to recover to previous levels of employment, the benefits would be substantially greater.

Under the proposed rule, the separate annual exposure limits for radon daughters and gamma radiation would not be changed. However, the sum rule would in effect keep the annual exposures for both below their individual limits when more than one type of radiation is present. The percentage of miners potentially over-exposed is an important factor in addressing costs and benefits. According to exposure data examined, approximately 10 percent of the individual workers would have been above the limit of the proposed sum rule in 1985. Preliminary data for 1986 indicate that mining of higher-grade ore could raise this percentage substantially; however, this data will not be finalized until early 1987.

Initially, if the 1985 percentage prevails, MSHA assumes operators would meet the proposed sum rule by reducing the concentration of radon daughters through increased ventilation. This procedure would lower the risk to the individuals having higher cumulative exposures as well as others in the mine. In addition, the proposed reduced action level for monitoring cumulative exposures for individuals is expected to have the effect of reduction of radon daughter concentrations in non-uranium mines through use of increased ventilation.

The estimated cost of the current standard, as well as the proposed rule, is dependent upon the number of mines and employees in the uranium industry and in the mining of other commodities. The annual cost of the current regulation is estimated to be $9.2 million. The annual incremental cost of the proposed regulation is estimated to be $1.7 million. The cost increase is mostly the result of estimated increases in ventilation requirements in uranium and non-uranium mines. The incremental cost does reflect a small savings due to changes in the frequency of monitoring at levels below 0.2 WL. A number of areas of increased flexibility and, therefore, potential savings have been identified in the cost analysis but are not estimated due to data constraints. The total estimated cost of the proposed rule would be $10.9 million. MSHA believes that due to these factors this constitutes a worst case estimate. The estimated increase does not represent a significant economic impact on a substantial number of small entities.

MSHA particularly requests information from the mining community on the economic impact of lowering radiation exposure limits, establishing a limit for the term of pregnancy, and implementing the sum rule, as well as the potential impact of a lifetime cumulative exposure.

V. Paperwork Reduction Act

The paperwork requirements contained in the proposed rule have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980. Comments on the proposed paperwork provisions should be sent directly to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for MSHA.

List of Subjects in 30 CFR Part 57

Mine safety and health, Radiation protection, Recordkeeping and recording requirements.

Accordingly, it is proposed to amend Chapter I of Title 30, Code of Federal Regulations as set forth below.

Dated: December 16, 1986.

David A. Zegeer,

Assistant Secretary for Mine Safety and Health.

PART 57—[AMENDED]

It is proposed to amend Subpart D, Part 57, Subchapter N, Chapter I, Title 30 of the Code of Federal Regulations as follows:

1. The table of contents of Subpart D is revised, the text of which appears below.

2. The definition of "Working level" in § 57.2 is redesignated under § 57.5000 and revised as "Working level" and "Working level month."

3. Section 57.5700 is added, the text of which appears below.

4. Section 57.5037 is redesignated and revised as § 57.5702, the text of which appears below.

5. Sections 57.5038, 57.5039, 57.5044, 57.5046 are redesignated and revised as § 57.5701, the text of which appears below.

6. Section 57.5040 is redesignated and revised as § 57.5702 and 57.5704, the text of which appears below.

7. Section 57.5041 is redesignated and revised as § 57.5706, the text of which appears below.

8. Section 57.5042 is removed.

9. Section 57.5046 is redesignated and revised as § 57.5703, the text of which appears below.

10. Section 57.5705 is added.

PART 57—SAFETY AND HEALTH STANDARDS—UNDERGROUND METAL AND NONMETAL MINES

* * * * *

Subpart D—Health Standards.

Sec.

57.5000 Definitions.
* * * * *
Radiation
57.5700 Scope.
57.5701 Control of exposure to radiation.
57.5702 Monitoring for airborne radiation.
57.5703 Measurement of gamma radiation.
57.5704 Records.
57.5705 Calculation of exposure to individuals.
57.5706 Smoking prohibition.

Authority: 30 U.S.C. 811.

* * * * *

§ 57.5000 Definitions.

Working level (WL). The standard measure of concentration for any combination of short-lived radon daughters (Po^{218}, Pb^{214}, Bi^{214}, and Po^{214}) or thoron daughters (Po^{216}, Pb^{212}, Bi^{212}, and Po^{212}) in 1 liter of air that will ultimately result in the emission of 1.3×10^5 MeV (million electron volts) of alpha energy.

Working level month (WLM). A unit of cumulative exposure equivalent to an exposure to 1.0 working level for 173 hours.

* * * * *

Radiation

§ 57.5700 Scope.

Sections 57.5701 through 57.5706 pertain to occupational exposure to ionizing radiation underground.

§ 57.5701 Control of exposure to radiation.

(a) *Ceiling limits.* (1) No person shall be exposed to air containing concentrations of radon daughters exceeding 1.0 WL or thoron daughters exceeding 3.0 WL unless wearing approved respiratory protection. Areas in which radon daughter concentrations are above 1.0 WL or thoron daughter levels are above 3.0 WL shall be barricaded or posted as areas where approved respirators are required.

(2) If radon daughter concentrations in an area exceed 10 WL, supplied-air respiratory protection shall be used.

(b) *Combined limit.* Combined radiation exposure shall not exceed 1.0 for any person during any calendar year as determined by the following formula:

$$\text{Combined Radiation Exposure} = \frac{R}{4\ \text{WLM}} + \frac{T}{14\ \text{WLM}} + \frac{G}{5\ \text{rem}}$$

where—

R = the recorded calendar-year radon-daughter exposure in WLM.

T = the recorded calendar-year thoron-daughter exposure in WLM.

G = the recorded calendar-year whole-body gamma dose in rems.

(c) *Declared pregnancy.* The occupational whole-body gamma dose of a declared pregnant woman shall not exceed 0.50 rem during the entire pregnancy. If the occupational whole-body gamma dose of the pregnant woman has exceeded 0.50 rem between the estimated date of conception and the declaration of pregnancy to the mine operator, the woman shall not receive an additional occupational whole-body gamma dose exceeding 0.05 rem during the remainder of the pregnancy. A declared pregnant woman means a woman who has voluntarily informed her employer in writing of her pregnancy and estimated date of conception.

(d) *Means of control.* The mine operator shall use feasible engineering or administrative controls to maintain exposure of all persons at or below the exposure limits in this section. When use of these controls alone does not reduce exposure to these limits, the controls shall be used to reduce exposure in so far as feasible and be supplemented with respiratory protection.

§ 57.5702 Monitoring for airborne radiation.

(a) *Action level.* When a mine is identified as having radon daughter concentrations above 0.20 WL or thoron daughter concentrations above 0.60 WL, the provisions of this section shall apply unless the concentrations can be promptly reduced and maintained below these levels or the areas are barricaded or posted against entry.

(b) *Frequency*—(1) *Weekly.* Areas where radon daughter concentrations exceed 0.20 WL or thoron daughter concentrations exceed 0.60 WL shall be sampled on a random basis at least once each calendar week that any person enters the area.

(2) *Monthly.* Areas with concentrations of radon daughters at or below 0.20 WL or thoron daughters at or below 0.60 WL that are entered by persons whose exposures are monitored because of their exposure in other areas in the mine shall be sampled on a random basis at least once each calendar month for inclusion in exposure records.

(3) *Changes in frequency.* (i) Weekly sampling frequency for airborne radiation may be changed to monthly and remain monthly in an area so long as the lowest and highest results of the last 4 samples (weekly or monthly) differ no more than 0.12 WL. If the difference is more than 0.12 WL, the sampling frequency shall revert to weekly.

(ii) Monthly sampling frequency may be changed to quarterly and remain quarterly in an area so long as the lowest and highest results of the last 4 samples (monthly or quarterly) differ no more than 0.09 WL. If the difference is more than 0.09 WL but less than 0.12 WL, the sampling frequency shall revert to monthly. If the difference is 0.12 WL or more, the sampling shall revert to weekly.

(c) *Procedures.* (1) Sampling shall be conducted by a person trained or experienced in the appropriate procedures.

(2) Radon daughter concentrations shall be sampled by a method that does not underestimate the radon daughter concentration by more than 30 percent at 0.33 WL with 84 percent confidence.

(3) Thoron daughter concentrations shall be sampled by a method that does not underestimate the thoron daughter concentration by more than 30 percent at 1.0 WL with 84 percent confidence.

(d) *Observation of monitoring.* The mine operator shall provide affected persons or their representatives with an opportunity to observe exposure monitoring pertinent to the affected persons' records.

§ 57.5703 Gamma dosimetry.

The mine operator shall provide individual gamma radiation dosimeters—

(a) For all persons whose whole-body dose rate from gamma radiation exceeds an average of 0.75 millirem/hour during any shift; and

(b) For the term of the pregnancy if the whole-body dose rate from gamma radiation of a declared pregnant woman exceeds an average of 0.33 millirem/hour during any shift.

§ 57.5704 Records.

(a) *Airborne radiation.* (1) The mine operator shall calculate and record the calendar-year individual radon daughter exposures for each person entering any area where radon daughter concentrations exceed 0.20 WL when gamma dosimetry is required for that person or 0.30 WL when gamma dosimetry is not required. Records shall include concentrations of radon daughters in each work area and the person's time to the nearest half-hour in each work area, including work areas where concentrations are at or below these levels;

(2) The mine operator shall calculate and record the calendar-year individual thoron daughter exposures for all person entering any area where thoron daughter concentrations exceed 0.60 WL. Records shall include concentrations of thoron daughters in each work area and the person's time to the nearest half-hour in each work area, including work areas where concentrations are at or below 0.60 WL; and

(3) The record shall indicate those exposures that reflect use of respirators.

(4) Recordkeeping may be discontinued for an individual if—

(i) The person is no longer exposed to radon daughter concentrations above 0.20 WL or thoron daughter concentrations above 0.60 WL; and

(ii) The individual's calendar year radon-daughter exposure does not exceed 1/10 of a WLM multiplied by the number of months of recorded exposure or thoron-daughter exposure does not exceed 3/10 of a WLM multiplied by the number of months of recorded exposure.

(b) *Gamma radiation.* (1) The mine operator shall maintain a record of the individual gamma dose for the current calendar year for each person for whom gamma dosimetry is required.

(2) Gamma dosimetry may be discontinued for a person whose dose rate is less than an average of 0.75 millirem/hour during any shift and the person's calendar year dose does not exceed 125 millirems multiplied by the number of months of recorded exposure in that calendar year.

(c) *Updating.* Calendar-year records for each individual shall be updated within 60 days of the end of each calendar quarter.

(d) *Retention of records.* All sampling data, individual occupancy records, and combined exposure records shall be retained at the mine or the nearest mine office for one calendar year past the calendar year to which they pertain.

(e) *Access to records.* Persons shall have access to their exposure records and the data used to compute those records. Miners' representatives shall have access to records of required exposure monitoring for persons whom they represent. Former employees shall have access to their exposure records. The mine operator shall provide a record of a person's exposures and doses to the person upon termination of employment.

(f) *Notification of overexposure.* Persons whose exposure exceeds any of the limits of § 57.5701 shall be promptly notified of their overexposure and the corrective action being taken.

§ 57.5705 Calculation of exposure to individuals.

Exposure of persons to radon daughter or thoron daughter concentrations shall be calculated in the following manner:

(a) For each area, the average radon daughter or thoron daughter concentration in WL (to the nearest hundredth) shall be determined by averaging two consecutive sampling results for the area. This average concentration shall be used for persons in that area during any portion of the time between samples. If the time of a sudden change in concentration

between two consecutive samples can be determined, the result of the first sample may be used as the average concentration for the time prior to the change and the result of the second sample may be used as the average concentration for the time subsequent to the change. A sample taken by a Federal or State mine inspector and reported to the operator within 3 days shall be included in calculating the average concentration; however, if the mine operator has sampled simultaneously with the inspector, the operator's own sampling results may be used.

(b) For each person—

(1) The exposure time in each area shall be rounded to the nearest half-hour.

(2) The exposure time (hours) in each area shall be multiplied by the applicable average concentration (WL) to calculate the person's exposure in working level hours (WLH) to the nearest hundredth.

(3) The working level hours (WLH) of exposure during the calendar quarter shall be added together and the sum divided by 173 to calculate the person's quarterly exposure in working level months (WLM). The quarterly exposures in WLM (to the nearest hundredth) for the calendar year shall be added together to calculate the person's calendar year exposure. Shorter periods of time than quarterly may be used to convert WLH to WLM as long as the quarterly WLM exposure is accurate to the nearest hundredth.

(c) When respiratory protective equipment is used for short-term entry into areas of radon daughter or thoron daughter concentrations for the purpose of inspection, maintenance, or installation of controls or to supplement feasible controls as required by § 57.5701(d), the following adjustments may be made in calculating exposure:

(1) For approved respirators that remove airborne radionuclides, the respirator wearer's exposure may be considered to be 10.0 percent of the last measured radon daughter and thoron daughter concentration in the area prior to respirator use for the time the respirator is worn.

(2) For approved supplied-air respirators, the respirator wearer's exposure may be calculated on the basis of the radon daughter and thoron daughter concentrations present in the supplied air for the time the respirator is worn.

§ 57.5706 Smoking prohibition.

Smoking shall be prohibited underground in any mine where airborne radiation exposure records are required.

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federal register

Friday
December 19, 1986

Part VI

Department of the Treasury

Internal Revenue Service

26 CFR Parts 1 and 602

Income Taxes: Unisex Annuity Tables; Final Regulations

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Income Taxes; Unisex Annuity Tables

26 Parts 1 and 602

[T.D. 8115]

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the annuity tables used to compute the portion of the amount received as an annuity that is includible in gross income. Questions have arisen concerning the gender distinction in the existing tables and the outdated mortality experience on which those tables are based. These regulations affect taxpayers receiving amounts as annuities under annuity, endowment, and life insurance contracts for which they have paid premiums or other consideration and provide them with the guidance needed to determine the amount includible in gross income with respect to such contracts. This document also contains final regulations relating to the computations necessary to determine the amount excludable from an employee's gross income by allocation of contributions when the actual employer contributions are not known. In addition, this document removes certain regulations relating to defined benefit plans that provided benefits for employees who were either self-employed or a shareholder-employee.

EFFECTIVE DATE: The final regulations relating to amounts received as an annuity under section 72 (§§ 1.72–4, 1.72–5, 1.72–6, 1.72–7, 1.72–9, and 1.72–11) are effective on July 1, 1986, and apply to amounts received as an annuity after June 30, 1986. The final regulations under § 1.72–6 provide transitional rules applicable to amounts received under certain contracts in which an amount is invested before July 1, 1986. The final regulations under section 403(b) (§ 1.403(b)–1(d)(4) are effective for taxable years beginning after July 1, 1986. The removal of §§ 1.401(a)–18 and 1.401(j)–1 through –6 are effective for plan years beginning after December 31, 1983. The amendment to § 602.101 is effective July 1, 1986.

FOR FURTHER INFORMATION CONTACT: For further information concerning the amendments relating to the annuity tables, contact Annettee J. Guarisco of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T). Telephone 202–566–3238 (not a toll-free call).

For further information concerning IRC sections 401(a)(18), 401(j), or 403(b), contact Monice Rosenbaum of the Employee Plans and Exempt Organizations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T:EE–114–82). Telephone 202–566–3422 (Not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On March 24, 1986, the Federal Register published proposed amendments (51 FR 9978) to the Income Tax Regulations (26 CFR Part 1) and the Table of OMB Control Numbers (26 CFR Part 602). The amendments were proposed to update and gender-neutralize the annuity tables used to determine the exclusion ratio applicable to amounts received as annuities under annuity, endowment, or life insurance contracts. The proposed amendments also contained transitional rules applicable to certain contracts in which amounts were invested prior to July 1, 1986.

The preamble to the proposed regulations discussed the data that served as the basis of the proposed annuity tables and requested comments on the appropriateness of the assumptions used to develop the proposed annuity tables.

Many comments on the proposed regulations were received addressing this and other issues. In addition, the proposed regulations were the subject of a public hearing held at the National Office of the Internal Revenue Service on May 21, 1986. After consideration of the comments received and the statements made at the public hearing, the proposed regulations are adopted as revised by this Treasury decision.

Revised Annuity Tables

In General

Section 72 permits a taxpayer to exclude from gross income that part of any amount received as an annuity which bears the same ratio to such amount as the investment in the contract as of the annuity starting date bears to the expected return under the contract as of such date. If the expected return depends in whole or in part on the life expectancy of one or more individuals, the statute requires that the expected return be computed by reference to actuarial tables prescribed by the Secretary of the Treasury. Soon after section 72 was enacted in 1954, the Secretary published regulations containing tables based on 1937 mortality and distinguished by gender (Tables I through IV of § 1.72–9). The effect of the gender distinction is that women are not entitled to exclude from gross income as high a proportion of the amount received as an annuity as men of the same age. The final regulations provide annuity tables that are not distinguished by gender and are based on more recent mortality experience.

Mortality data

The final regulations adopt the mortality assumptions used to develop the proposed annuity tables. Thus, the revised tables are based, as are Tables I through IV of § 1.72–9, on individual annuitant mortality. Commentators stated that the mortality used to develop the revised tables was appropriate and that they were unaware of any other data that would be more relevant for determining the life expectancies of taxpayers receiving amounts taxable under section 72.

Gender mix

The final regulations also retain the gender mix used to develop the proposed annuity tables. Thus, the revised annuity tables assume that the population mix of males and females expected to use the section 72 annuity tables is the same as that of the individual annuitants whose mortality is reflected in the Society of Actuaries study that serves as the basis of the revised annuity tables.

Some commentators stated that there is not necessarily a relationship between the gender mix of individuals expected to use the section 72 annuity tables and the gender mix of individuals whose mortality is reflected in the Society of Actuaries study. They suggested applying a 50–50 gender mix.

These same commentators admitted, however, that it is appropriate to use the mortality of individual annuitants to construct the annuity tables. In addition, the commentators did not provide any data indicating that a 50–50 gender mix more appropriately reflects the gender mix of taxpayers expected to apply the section 72 annuity tables than the gender mix of individual annuitants.

Table VI

Table VI of § 1.72–9 provides expected return multiples for ordinary joint life and last survivor annuitants. Commentators stated that the transition of multiples contained in Table VI of the proposed regulations was not as smooth as the transition of multiples contained in the other proposed annuity tables.

They suggested applying a different methodology to calculate the expected return multiples in Table IV to provide a smoother transition. The final regulations adopt this suggestion.

Transitional Rules

The proposed amendments contained two transitional rules applicable to certain contracts in which amounts were invested before July 1, 1986. The first rule applies to certain contracts in which no amount was invested after June 30, 1986, and provides that taxpayers must apply Tables I through IV of § 1.72–9 to amounts received under such contracts. The second proposed transitional rule applies to certain contracts in which an amount was invested both before July 1, 1986, and after June 30, 1986, and provides that taxpayers may elect to apply Tables I through IV to the extent of their pre-July 1, 1986 investment in the contract.

Some commentators stated that these transitional rules are contrary to a national policy against discrimination by government agencies and requested that they be removed from the regulations. The Service and Treasury carefully considered these comments, but believe that transitional relief is appropriate because taxpayers have relied on Tables I through IV in determining the extent to which they should invest in annuity contracts. Moreover, the Service and Treasury do not believe taxpayers currently receiving payment as annuities should be required to recalculate their exclusion ratios as would be the case if no transitional relief were provided.

The final regulations amend the proposed transitional rules to permit taxpayers to apply the gender-neutral annuity tables to amounts received after June 30, 1986, under contracts in which no amount was invested after June 30, 1986. Thus, taxpayers who purchased contracts before June 30, 1986, may apply the gender-neutral annuity tables to amounts received as annuities after June 30, 1986, regardless of when they first began receiving amounts as annuities under such contracts.

Effective Date

The final regulations retain the proposed effective date of July 1, 1986. Many charitable organizations requested a postponement until January 1, 1987, stating that they needed more time to revise their publications used in presentations to prospective charitable donors. The Service and Treasury believe that this concern is outweighed by the substantive tax consequences of a postponent.

Refund Feature of Joint and Survivor Annuity Contract

The final regulations provide a formula for valuing the refund feature of a joint and survivor annuity contract purchased after the effective date of the revised annuity tables. Commentators suggested that the existing section 72 rules are not appropriate for determining the value of a refund feature of a post-effective date annuity contract.

Section 403 (b) Regulations

The final regulations adopt without change the provisions of the proposed regulations (including the tables) relating to section 403(b).

Required Minimum Distributions

Commentators questioned whether taxpayers may apply the gender-neutral annuity tables to determine the required minimum distributions under sections 401(a)(9), 408(a)(6), and 408(b)(3). In response, the Service and Treasury have determined that taxpayers must apply the gender-neutral tables to calculate the amount of such distributions.

Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Although a notice of proposed rulemaking that solicited public comment was issued, the Internal Revenue Service concluded when the notice was issued that the regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 did not apply. Accordingly, the final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB.

Drafting Information

The principal author of the regulations under section 72 is Annette J. Guarisco of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. The principal author of the section 401 and 403 regulations is Monice Rosenbaum of the Employee Plans and Exempt Organizations Division, Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects

26 CFR 1.61–2–1.281–4

Income taxes, Taxable, income, Deductons, Exemptions.

26 CFR 1.401–0–1.425–1

Income taxes, Employee benefit plan, Pensions, Stock options, Individual retirement accounts, Employee stock ownership plans.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

For the reasons set out in the preamble, Subchapter A, Part 1 and Subchapter H, Part 602 of Title 26, Chapter 1 of the Code of Federal Regulations are amended as set forth below:

PART 1—INCOME TAX REGULATIONS

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Sections 1.72–4, 1.72–5, 1.72–6, 1.72–7, 1.72–9, and 1.72–11 also issued under 26 U.S.C. 72(c).

Par. 2. Section 1.72–4 is amended by revising paragraphs (a), (d), and (e) to read as follows:

§ 1.72–4 Exclusion ratio.

(a) *General rule.* (1) (i) To determine the proportionate part of the total amount received each year as an annuity which is excludable from the gross income of a recipient in the taxable year of receipt (other than amounts received under (*a*) certain employee annuities described in section 72(d) and § 1.72–13, or (*b*) certain annuities described in section 72(o) and § 1.122–1), an exclusion ratio is to be determined for each contract. In general, this ratio is determined by dividing the investment in the contract as found under § 1.72–6 by the expected return under such contract as found under § 1.72–5. Where a single consideration is given for a particular contract which provides for two or more annuity elements, an exclusion ratio shall be determined for the contract as a whole by dividing the investment in such contract by the aggregate of the expected returns under all the annuity

elements provided thereunder. However, where the provisions of paragraph (b)(3) of § 1.72–2 apply to payments received under such a contract, see paragraph (b)(3) of § 1.72–6. In the case of a contract to which § 1.72–6(d) (relating to contracts in which amounts were invested both before July 1, 1986, and after June 30, 1986) applies, the exclusion ratio for purposes of this paragraph (a) is determined in accordance with § 1.72–6(d) and, in particular, § 1.72–6(d)(5)(i).

(ii) The exclusion ratio for the particular contract is then applied to the total amount received as an annuity during the taxable year by each recipient. See, however, paragraph (e)(3) of § 1.72–5. Any excess of the total amount received as an annuity during the taxable year over the amount determined by the application of the exclusion ratio to such total amount shall be included in the gross income of the recipient for the taxable year of receipt.

(2) The principles of subparagraph (1) may be illustrated by the following example:

Example. Taxpayer A purchased an annuity contract providing for payments of $100 per month for a consideration of $12,650. Assuming that the expected return under this contract is $16,000 the exclusion ratio to be used by A is $12,650 ÷ 16,000; or 79.1 percent (79.06 rounded to the nearest tenth). If 12 such monthly payments are received by A during his taxable year, the total amount he may exclude from his gross income in such year is $949.20 ($1,200x79.1 percent).The balance of $250.80 ($1,200 less $949.20) is the amount to be included in gross income. If A instead received only five such payments during the year, he should exclude $395.50 (500x79.1 percent) of the total amounts received.

For examples of the computation of the exclusion ratio in cases where two annuity elements are acquired for a single consideration, see paragraph (b)(1) of § 1.72–6.

(3) The exclusion ratio shall be applied only to amounts received as an annuity within the meaning of that term under paragraph (b) (2) and (3) of § 1.72–2. Where the periodic payments increase in amount after the annuity starting date in a manner not provided by the terms of the contract at such date, the portion of such payments representing the increase is not an amount received as an annuity. For the treatment of amounts not received as an annuity, see section 72(e) and § 1.72–11. For special rules where paragraph (b) (3) of § 1.72–2 applies to amounts received, see paragraph (d)(3) of this section.

(4) After an exclusion ratio has been determined for a particular contract, it shall be applied to any amounts received as an annuity thereunder unless or until one of the following occurs:

(i) The contract is assigned or transferred for a valuable consideration (see section 72(g) and paragraph (a) of § 1.72–10);

(ii) The contract matures or is surrendered, redeemed, or discharged in accordance with the provisions of paragraph (c) or (d) of § 1.72–11;

(iii) The contract is exchanged (or is considered to have been exchanged) in a manner described in paragraph (e) of § 1.72–11.

* * * * * *

(d) *Exceptions to the general rule.* (1) Where the provisions of section 72 would otherwise require an exclusion ratio to be determined, but the investment in the contract (determined under § 1.72–6) is an amount of zero or less, no exclusion ratio shall be determined and all amounts received under such a contract shall be includible in the gross income of the recipient for the purposes of section 72.

(2) Where the investment in the contract is equal to or greater than the total expected return under such contract found under § 1.72–5, the exclusion ratio shall be considered to be 100 percent and all amounts received as an annuity under such contract shall be excludable from the recipient's gross income. See, for example, paragraph (f)(1) of § 1.72–5. In the case of a contract to which § 1.72–6(d) (relating to contracts in which amounts were invested both before July 1, 1986, and after June 30, 1986) applies, this paragraph (d)(2) is applied in the manner prescribed in § 1.72–6(d) and, in particular, § 1.72–6(d)(5)(ii).

(3)(i) If a contract provides for payments to be made to a taxpayer in the manner described in paragraph (b)(3) of § 1.72–2, the investment in the contract shall be considered to be equal to the expected return under such contract and the resulting exclusion ratio (100%) shall be applied to all amounts received as an annuity under such contract. For any taxable year, payments received under such a contract shall be considered to be amounts received as an annuity only to the extent that they do not exceed the portion of the investment in the contract which is properly allocable to that year and hence excludable from gross income as a return of premiums or other consideration paid for the contract. The portion of the investment in the contract which is properly allocable to any taxable year shall be determined by dividing the investment in the contract (adjusted for any refund feature in the manner described in paragraph (d) of § 1.72–7) by the applicable multiple (whether for a term certain, life, or lives) which would otherwise be used in determining the expected return for such a contract under § 1.72–5. The multiple shall be adjusted in accordance with the provisions of the table in paragraph (a)(2) of § 1.72–5, if any adjustment is necessary, before making the above computation. If payments are to be made more frequently than annually and the number of payments to be made in the taxable year in which the annuity begins are less than the number of payments to be made each year thereafter, the amounts considered received as an annuity (as otherwise determined under this subdivision) shall not exceed, for such taxable year (including a short taxable year), an amount which bears the same ratio to the portion of the investment in the contract considered allocable to each taxable year as the number of payments to be made in the first year bears to the number of payments to be made in each succeeding year. Thus, if payments are to be made monthly, only seven payments will be made in the first taxable year, and the portion of the investment in the contract allocable to a full year of payments is $600, the amounts considered received as an annuity in the first taxable year cannot exceed $350 ($600 × 7/12). See subdivision (iii) of this subparagraph for an example illustrating the determination of the portion of the investment in the contract allocable to one taxable year of the taxpayer.

(ii) If subdivision (i) of this subparagraph applies to amounts received by a taxpayer and the total amount of payments he receives in a taxable year is less than the total amount excludable for such year under subdivision (i) of this subparagraph, the taxpayer may elect, in a succeeding taxable year in which he receives another payment, to redetermine the amounts to be received as an annuity during the current and and succeeding taxable years. This shall be computed in accordance with the provisions of subdivision (i) of this subparagraph except that:

(*a*) The difference between the portion of the investment in the contract allocable to a taxable year, as found in accordance with subdivision (i) of this subparagraph, and the total payments actually received in the taxable year prior to the election shall be divided by the applicable life expectancy of the annuitant (or annuitants), found in accordance with the appropriate table in § 1.72–9 (and adjusted in accordance with paragraph (a)(2) of § 1.72–5), or by the remaining term of a term certain annuity, computed as of the first day of the first period for which an amount is received as an annuity in the taxable year of the election; and

(*b*) The amount determined under (*a*) of this subdivision shall be added to the portion of the investment in the contract allocable to each taxable year (as otherwise found). To the extent that the total periodic payments received under the contract in the taxable year of the election or any succeeding taxable year does not equal this total sum, such payments shall be excludable from the gross income of the recipient. To the extent such payments exceed the sum so found, they shall be fully includible in the recipient's gross income. See subdivision (iii) of this subparagraph for an example illustrating the redetermination of amounts to be received as an annuity and subdivision (iv) of this subparagraph for the method of making the election provided by this subdivision.

(iii) The application of the principles of paragraph (d)(3) (i) and (ii) of this section may be illustrated by the following example:

Example. Taxpayer A, a 64 year old male, files his return on a calendar year basis and has a life expectancy of 15.6 years on June 30, 1954, the annuity starting date of a contract to which § 1.72–2(b)(3) applies and which he purchased for $20,000. The contract provides for variable annual payments for his life. He receives a payment of $1,000 on June 30, 1955, but receives no other payment until June 30, 1957. He excludes the $1,000 payment from his gross income for the year 1955 since this amount is less than $1,324.50, the amount determined by dividing his investment in the contract ($20,000) by his life expectancy adjusted for annual payments, 15.1 (15.6–0.5), as of the original annuity starting date. Taxpayer A may elect, in his return for the taxable year 1957, to redetermine amounts to be received as an annuity under his contract as of June 30, 1956. For the purpose of determining the extent to which amounts received in 1957 or thereafter shall be considered amounts received as an annuity (to which a 100 percent exclusion ratio shall apply) he shall add $118.63 to the $1,324.50 originally determined to be receivable as an annuity under the contract, making a total of $1,443.13. This is determined by dividing the difference between what was excludable in 1955 and 1956, $2,649 (2 × $1,324.50) and what he actually received in those years ($1,000) by his life expectancy adjusted for annual payments, 13.9 (14.4–0.5), as of his age at his nearest birthday (66) on the first day of the first period for which he received an amount as an annuity in the taxable year of election (June 30, 1956). The result, $1,443.13, is excludable in that year and each year thereafter as an amount received as an annuity to which the 100% exclusion ratio applies. It will be noted that in this example the taxpayer received amounts less than the excludable amounts in two successive years and deferred making his election until the third year, and thus was able to accumulate the portion of the investment in the contract allocable to each taxable year to the extent he failed to receive such portion in both years. Assuming that he received $1,500 in the taxable year of his election, he would include $56.87 in his gross income and exclude $1,443.13 therefrom for that year.

(iv) If the taxpayer chooses to make the election described in subdivision (ii) of this subparagraph, he shall file with his return a statement that he elects to make a redetermination of the amounts excludable from gross income under his annuity contract in accordance with the provisions of paragraph (d)(3) of § 1.72–4. This statement shall also contain the following information:

(*a*) The original annuity starting date and his age on that date,

(*b*) The date of the first day of the first period for which he received an amount in the current taxable year,

(*c*) The investment in the contract originally determined (as adjusted for any refund feature), and

(*d*) The aggregate of all amounts received under the contract between the date indicated in (*a*) of this subdivision and the day after the date indicated in (*b*) of this subdivision to the extent such amounts were excludable from gross income.

He shall include in gross income any amounts received during the taxable year for which the return is made in accordance with the redetermination made under this subparagraph.

(v) In the case of a contract to which § 1.72–6(d) (relating to contracts in which amounts were invested both before July 1, 1986, and after June 30, 1986) applies, this paragraph (d)(3) is applied in the manner prescribed in § 1.72–6(d) and, in particular, § 1.72–6(d)(5)(iii). This application may be illustrated by the following example:

Example. B, a male calendar year taxpayer, purchases a contract which provides for variable annual payments for life and to which § 1.72–2(b)(3) applies. The annuity starting date of the contract is June 30, 1990, when B is 64 years old. B receives a payment of $1,000 on June 30, 1991, but receives no other payment until June 30, 1993. B's total investment in the contract is $25,000. B's pre-July 1986 investment in the contract is $12,000. If B makes the election described in § 1.72–6(d)(6), separate computations are required to determine the amounts received as an annuity and excludable from gross income with respect to the pre-July 1986 investment in the contract and the post-June 1986 investment in the contract. In the separate computations, B first determines the applicable portions of the total payment received which are allocable to the pre-July 1986 investment in the contract and the post-June 1986 investment in the contract. The portion of the payment received allocable to the pre-July 1986 investment in the contract is $480 ($12,000/$25,000 × $1,000). The portion of the payment received allocable to the post-June 1986 investment in the contract is $520 ($13,000/$25,000 × $1,000).

Second, B determines the pre-July 1986 investment in the contract and the post-June 1986 investment in the contract allocable to the taxable year by dividing the pre-July 1986 and post-June 1986 investments in the contract by the applicable life expectancy multiple. The life expectancy multiple applicable to pre-July 1986 investment in the contract is B's life expectancy as of the original annuity starting date adjusted for annual payments and is determined under Table I of § 1.72–9 [15.1 (15.6–0.5)]. The life expectancy multiple applicable to post-June 1986 investment in the contract is determined under Table V of § 1.72–9 (20.3 (20.8–0.5)). Thus, the pre-July 1986 investment in the contract allocable to each taxable year is $794.70 ($12,000 ÷ 15.1), and the post-June 1986 investment in the contract so allocable is $640.39 ($13,000 ÷ 20.3). Because the applicable portions of the total payment received in 1991 under the contract ($480 allocable to the pre-July 1986 investment in the contract and $520 allocable to the post-June 1986 investment in the contract) are treated as amounts received as an annuity and are excludable from gross income to the extent they do not exceed the portion of the corresponding investment in the contract allocable to 1991 ($794.70 pre-July 1986 investment in the contract and $640.39 post-June 1986 investment in the contract), the entire amount of each applicable portion of the total payment is excludable from gross income. B may elect, in the return filed for taxable year 1993, to redetermine amounts to be received as an annuity under the contract as of June 30, 1992. The extent to which the amounts received in 1993 or thereafter shall be considered amounts received as an annuity is determined as follows:

Pre-July 1986 investment in the contract allocable to taxable years 1991 and 1992 ($794.70 × 2)	$1,589.40
Less: Portion of total payments allocable to pre-July 1986 investment in the contract actually received as an annuity in taxable years 1991 and 1992	480.00
	1,109.40
Divided by: Life expectancy multiple applicable to pre-July 1986 investment in the contract for B, age 66 (14.4—0.5)	13.9
	79.81
Plus: Amount originally determined with respect to pre-July 1986 investment in the contract	794.70
Pre-July 1986 amount	874.51

Post-June 1986 investment in the contract allocable to taxable years 1991 and 1992 ($640.39 × 2)	$1,280.78
Less: Portion of total payments allocable to post-June 1986 investment in the contract actually received as an annuity in taxable years 1991 and 1992	520.00
	760.78
Divided by: Life expectancy multiple applicable to post-June 1986 investment in the contract for B, age 66 (19.2−0.5)	18.7
	40.68
Plus: Amount originally determined with respect to post-June 1986 investment in the contract	640.39
Post-June 1986 amount	681.07

(vi) The method of making an election to perform the separate computations illustrated in paragraph (d)(3)(v) of this section is described in § 1.72–6(d)(6).

(e) *Exclusion ratio in the case of two or more annuity elements acquired for a single consideration.* (1)(i) Where two or more annuity elements are provided under a contract described in paragraph (a)(2) of § 1.72–2, an exclusion ratio shall be determined for the contract as a whole and applied to all amounts received as an annuity under any of the annuity elements. To obtain this ratio, the investment in the contract determined in accordance with § 1.72–6 shall be divided by the aggregate of the expected returns found with respect to each of the annuity elements in accordance with § 1.72–5. For this purpose, it is immaterial that payments under one or more of the annuity elements involved have not commenced at the time when an amount is first received as an annuity under one or more of the other annuity elements.

(ii) The exclusion ratio found under subdivision (i) of this subparagraph does not apply to:

(*a*) An annuity element payable to a surviving annuitant under a joint and survivor annuity contract to which section 72(i) and paragraphs (b)(3) and (e)(3) of § 1.72–5 apply, or to

(*b*) A contract under which one or more of the constituent annuity elements provides for payments described in paragraph (b)(3) of § 1.72–2.

For rules with respect to a contract providing for annuity elements described in (*b*) of this subdivision, see subparagraph (2) of this paragraph.

(2) If one or more of the annuity elements under a contract described in paragraph (a)(2) of § 1.72–2 provides for payments to which paragraph (b)(3) of § 1.72–2 applies:

(i) With respect to the annuity elements to which paragraph (b)(3) of § 1.72–2 does not apply, an exclusion ratio shall be determined by dividing the portion of the investment in the entire contract which is properly allocable to all such elements (in the manner provided in paragraph (b)(3)(ii) of § 1.72–6) by the aggregate of the expected returns thereunder and such ratio shall be applied in the manner described in subdivision (i) of subparagraph (1); and

(ii) With respect to the annuity elements to which paragraph (b)(3) of § 1.72–2 does apply, the investment in the entire contract shall be reduced by the portion thereof found in subdivision (i) of this subparagraph and the resulting amount shall be used to determine the extent to which the aggregate of the payments received during the taxable year under all such elements is excludable from gross income. The amount so excludable shall be allocated to each recipient under such elements in the same ratio that the total of payments he receives each year bears to the total of the payments received by all such recipients during the year. The exclusion ratio with respect to the amounts so allocated shall be 100 percent. See paragraph (f)(2) of § 1.72–5 and paragraph (b)(3) of § 1.72–6.

(iii) In the case of a contract to which § 1.72–6(d) (relating to contracts in which amounts were invested both before July 1, 1986, and after June 30, 1986) applies, this paragraph (e) is applied in the manner prescribed in § 1.72–6(d) and, in particular, § 1.72–6(d)(5)(iv).

Par. 3. Section 1.72–5 is amended by revising paragraphs (a), (b), and (e), and adding a new paragraph (g) to read as follows:

§ 1.72–5 Expected return.

(a) *Expected return for but one life.* (1) If a contract to which section 72 applies provides that one annuitant is to receive a fixed monthly income for life, the expected return is determined by multiplying the total of the annuity payments to be received annually by the multiple shown in Table I or V (whichever is applicable) of § 1.72–9 under the age (as of the annuity starting date) and, if applicable, sex of the measuring life (usually the annuitant's). Thus, where a male purchases a contract before July 1, 1986, providing for an immediate annuity of $100 per month for his life and, as of the annuity starting date (in this case the date of purchase), the annuitant's age at his nearest birthday is 66, the expected return is computed as follows:

Monthly payment of $100×12 months equals annual payment of	$1,200
Multiple shown in Table I, male, age 66	14.4
Expected return (1,200×14.4)	17,280

If, however, the taxpayer had purchased the contract after June 30, 1986, the expected return would be $23,040, determined by multiplying 19.2 (multiple shown in Table V, age 66) by $1,200.

(2) (i) If payments are to be made quarterly, semiannually, or annually, an adjustment of the applicable multiple shown in Table I or V (whichever is applicable) may be required. A further adjustment may be required where the interval between the annuity starting date and the date of the first payment is less than the interval between future payments. Neither adjustment shall be made, however, if the payments are to be made more frequently than quarterly. The amount of the adjustment, if any, is to be found in accordance with the following table:

If the number of whole months from the annuity starting date to the first payment date is—	0–1	2	3	4	5	6	7	8	9	10	11	12
And the payments under the contract are to be made:												
Annually	+.5	+.4	+.3	+.2	+.1	0	0	−.1	−.2	−.3	−.4	−.5
Semiannually	+.2	+.1	0	0	−.1	−.2						
Quarterly	+.1	0	−.1									

Thus, for a male, age 66, the multiple found in Table I, adjusted for quarterly payments the first of which is to be made one full month after the annuity starting date, is 14.5 (14.4+0.1); for semiannual payments the first of which is to be made six full months from the annuity starting date, the adjusted multiple is 14.2 (14.4−0.2); for annual payments the first of which is to be made one full month from the annuity starting date, the adjusted multiple is 14.9 (14.4+0.5). If the annuitant in the example shown in subparagraph (1) of this paragraph were to receive an annual payment of $1,200 commencing 12 full months after his annuity starting date, the amount of the expected return would be $16,680 ($1,200×13.9 [14.4−0.5]). Similarly, for an annuitant, age 50, the multiple found in Table V, adjusted for quarterly payments the first of which is to be made one full month after the annuity starting date, is 33.2 (33.1+0.1); for semiannual payments the first of which is to be made six full months from the annuity starting date, the adjusted multiple is 32.9 (33.1−0.2); for annual payments the first of which is to be made one full month from the annuity starting date, the adjusted multiple is 33.6 (33.1+0.5).

(ii) Notwithstanding the table in subdivision (i) of this subparagraph, adjustments of multiples for early or other than monthly payments determined prior to February 19, 1958, under the table prescribed in paragraph 1(b)(4) of T.D. 6116 (19 FR 9897, C.B. 1955–1, 699), approved December 30, 1954, need not be redetermined.

(3) If the contract provides for fixed payments to be made to an annuitant until death or until the expiration of a specified limited period, whichever occurs earlier, the expected return of such temporary life annuity is determined by multiplying the total of the annuity payments to be received annually by the multiple shown in Table IV or VIII (whichever is applicable) of § 1.72–9 for the age (as of the annuity starting date) and, if applicable, sex of the annuitant and the nearest whole number of years in the specified period. For example, if a male annuitant, age 60 (at his nearest birthday), is to receive $60 per month for five years or until he dies, whichever is earlier, and there is no post-June 1986, investment in the contract, the expected return under such a contract is $3,456, computed as follows:

Monthly payments of $60×12 months equals annual payment of	$720
Multiple shown in Table IV for male, age 60, for term of 5 years	4.8
Expected return for 5 year temporary life annuity of $720 per year ($720×4.8)	$3,456

If the annuitant purchased the same contract after June 30, 1986, the expected return under the contract would be $3,528, computed as follows:

Monthly payments of $60×12 months equals annual payment of	$720.00
Multiple shown in Table VIII for annuitant, age 60, for term of 5 years	4.9
Expected return for 5-year temporary life annuity of $720 per year ($720×4.9)	$3,528.00

The adjustment provided by subparagraph (2) of this paragraph shall not be made with respect to the multiple found in Table IV or VIII (whichever is applicable).

(4) If the contract provides for payments to be made to an annuitant for the annuitant's lifetime, but the amount of the annual payments is to be decreased after the expiration of a specified limited period, the expected return is computed by considering the contract as a combination of a whole life annuity for the smaller amount plus a temporary life annuity for an amount equal to the difference between the larger and the smaller amount. For example, if a male annuitant, age 60, is to receive $150 per month for five years or until his earlier death, and is to receive $90 per month for the remainder of his lifetime after such five years, the expected return is computed as if the annuitant's contract consisted of a whole life annuity for $90 per month plus a five year temporary life annuity of $60 per month. In such circumstances, the expected return if there is no post-June 1986 investment in the contract is computed as follows:

Monthly payments of $90×12 months equals annual payment of	$1,080
Multiple shown in Table I for male, age 60	18.2
Expected return for whole life annuity of $1,080 per year	$19,656
Expected return for 5-year temporary life annuity of $720 per year (as found in subparagraph (3) of this paragraph (a))	$3,456
Total expected return	$23,112

If the annuitant purchased the same contract after June 30, 1986, the expected return would be $29,664, computed as follows:

Monthly payments of $90×12 months equals annual payment of	$1,080
Multiple shown in Table V for annuitant, age 60	24.2
Expected return for whole life annuity of $1,080 per year	$26,136
Plus: Expected return for 5-year temporary life annuity of $720 per year (as found in subparagraph (3) of this paragraph (a))	$3,528
Total expected return	$29,664

If payments are to be made quarterly, semiannually, or annually, an appropriate adjustment of the multiple found in Table I or V (whichever is applicable) for the whole life annuity should be made in accordance with subparagraph (2) of this paragraph.

(5) If the contract described in subparagraph (4) of this paragraph provided that the amount of the annual payments to the annuitant were to be increased (instead of decreased) after the expiration of a specified limited period, the expected return would be computed as if the annuitant's contract consisted of a whole life annuity for the larger amount minus a temporary life annuity for an amount equal to the difference between the larger and smaller amount. Thus, if the annuitant described in subparagraph (4) of this paragraph were to receive $90 per month for five years or until his earlier death, and to receive $150 per month for the remainder of his lifetime after such five years, the expected return would be computed by subtracting the expected return under a five year temporary life annuity of $60 per month from the expected return under a whole life annuity of $150 per month. In such circumstances, the expected return if there is no post-June 1986 investment in the contract is computed as follows:

Monthly payments of $150×12 months equals annual payment of	$1,800
Multiple shown in Table 1 (male, age 60)	18.2
Expected return for annuity for whole life of $1,800 per year	$32,760
Less expected return for 5-year temporary life annuity of $720 per year (as found in subparagraph (3))	$3 456
Net expected return	$29 304

If the annuitant purchased the same contract after June 30, 1986, the expected return would be $40,032, computed as follows:

Monthly payments of $150×12 months equals annual payments of	$1,800
Multiple shown in Table V (age 60)	24.2
Expected return for annuity for whole life of $1,800 per year	$43,560

Less expected return for 5-year temporary life annuity of $720 per year (as found in subparagraph (3) of this paragraph (a)):	$9,528
Net expected return	$40,032

If payments are to be made quarterly, semiannually, or annually, an appropriate adjustment of the multiple found in Table I or V (whichever is applicable) for the whole life annuity should be made in accordance with subparagraph (2) of this paragraph.

(b) *Expected return under joint and survivor and joint annuities.* (1) In the case of a joint and survivor annuity contract involving two annuitants which provides the first annuitant with a fixed monthly income for life and, after the death of the first annuitant, provides an identical monthly income for life to a second annuitant, the expected return shall be determined by multiplying the total amount of the payments to be received annually by the multiple obtained from Table II or VI (whichever is applicable) of § 1.72–9 under the ages (as of the annuity starting date) and, if applicable, sexes of the living annuitants. For example, a husband purchases a joint and survivor annuity contract providing for payments of $100 per month for life and, after his death, for the same amount to his wife for the remainder of her life. As of the annuity starting date his age at his nearest birthday is 70 and that of his wife at her nearest birthday is 67. If there is no post-June 1986 investment in the contract, the expected return is computed as follows:

Monthly payments of $100×12 months equals annual payment of	$1,200
Multiple shown in Table II (male, age 70, female, age 67)	19.7
Expected return ($1,200×19.7)	$23,640

If the annuitants purchased the same contract after June 30, 1986, the expected return would be $26,400, computed as follows:

Monthly payments of $100×12 months equals annual payment of	$1,200
Multiple shown in Table VI (ages 70, 67)	22.0
Expected return ($1,200×22.0)	$26,400

If payments are to be made quarterly, semiannually, or annually, an appropriate adjustment of the multiple found in Table II or VI (whichever is applicable) should be made in accordance with paragraph (a)(2) of this section.

(2) If a contract of the type described in subparagraph (1) of this paragraph provides that a different (rather than an identical) monthly income is payable to the second annuitant, the expected return is computed in the following manner. The applicable multiple in Table II or VI (whichever is applicable) is first found as in the example in subparagraph (1) of this paragraph. The multiple applicable to the first annuitant is then found in Table I or V (whichever is applicable) as though the contract were for a single life annuity. The multiple from Table I or V is then subtracted from the multiple obtained from Table II or VI and the resulting multiple is applied to the total payments to be received annually under the contract by the second annuitant. The result is the expected return with respect to the second annuitant. The portion of the expected return with respect to payments to be made during the first annuitant's life is then computed by applying the multiple found in Table I or V to the total annual payments to be received by such annuitant under the contract. The expected returns with respect to each of the annuitants separately are then aggregated to obtain the expected return under the entire contract.

Example (1). A husband purchases a joint and survivor annuity providing for payments of $100 per month for his life and, after his death, payments to his wife of $50 per month for her life. As of the annuity starting date his age at his nearest birthday is 70 and that of his wife at her nearest birthday is 67. There is no post-June 1986 investment in the

Multiple from Table II (male, age 70, female, age 67)	19.7
Multiple from Table I (male, age 70)	12.1
Difference (multiple applicable to second annuitant)	7.6
Portion of expected return, second annuitant ($600×7.6)	$4,560
Portion of expected return, first annuitant ($1,200×12.1)	$14,520
Expected return under the contract	$19,080

The expected return thus found, $19,080, is to be used in computing the amount to be excluded from gross income. Thus, if the investment in the contract in this example is $14,310, the exclusion ratio is $14,310÷$19,080, or 75 percent. The amount excludable from each monthly payment made to the husband is 75 percent of $100, or $75, and the remaining $25 of each payment received by him shall be included in his gross income. After the husband's death, the amount excludable by the second annuitant (the surviving wife) would be 75 percent of each monthly payment of $50, or $37.50, and the remaining $12.50 of each payment shall be included in her gross income.

Example (2). If the same contract were purchased after June 30, 1986, the expected return would be $22,800, computed as follows:

Multiple from Table VI (ages 70, 67)	22.0
Multiple from Table V (age 70)	16.0
Difference (multiple applicable to second annuitant)	6.0
Portion of expected return, second annuitant ($600×6.0)	$3,600
Plus: Portion of expected return, first annuitant ($1,200×16.0)	$19,200
Expected return under the contract	$22,800

If the investment in the contract is $14,310, the exclusion ratio is $14,310÷$22,800, or 62.8 percent. Thus, the husband would exclude $62.80 of each $100 payment received by him. After his death, his wife would exclude 62.8 percent, or $31.40, of each $50 monthly payment.

Example (3). If amounts were invested in the same contract both before July 1, 1986, and after June 30, 1986, and the election described in § 1.72–6(d)(6) were made, two exclusion ratios would be determined pursuant to § 1.72–6(d). Assume that the husband's total investment in the contract is $14,310 and that $7,310 is the pre-July 1986 investment in the contract. The pre-July 1986 exclusion ratio would be $7,310÷$19,080, or 38.3 percent. The post-June 1986 exclusion ratio would be $7,000÷$22,800, or 30.7 percent. The husband would exclude $69.00 ($38.30+$30.70) of the $100 monthly payment received by him. The remaining $31.00 would be included in his gross income. After the husband's death, the amount excludable by his wife would be $34.50 (38.3 percent of $50 plus 30.7 percent of $50). The remaining $15.50 would be included in gross income.

The same method is used if the payments are to be increased after the death of the first annuitant. Thus, if the payments to be made until the husband's death were $50 per month and his widow were to receive $100 per month thereafter until her death, the 7.6 multiple in example (1) above would be applied to the $100 payments, yielding an expected return with respect to this portion of the annuity contract of $9,120 ($1,200×7.6). An expected return of $7,260 ($600×12.1) would be obtained with respect to the payments to be made to the husband, yielding a total expected return under the contract of $16,380 ($9,120 plus $7,260). If payments are to be made quarterly, semiannually, or annually, an appropriate adjustment of the multiples found in Tables I and II or Tables V and VI (whichever are applicable) should be made in accordance with paragraph (a)(2) of this section.

(3) In the case of a joint and survivor annuity contract in respect of which the first annuitant died in 1951, 1952, or 1953, and the basis of the surviving annuitant's interest in the contract was determinable under section 113(a)(5) of the Internal Revenue Code of 1939, such basis shall be considered the "aggregate of premiums or other consideration paid" by the surviving annuitant for the contract. (For rules governing this determination, see 26 CFR (1939) 39.22(b)(2)–2 and 39.113(a)(5)–1 (Regulations 118).) In determining such an annuitant's investment in the contract, such aggregate shall be reduced by any amounts received under the contract by the surviving annuitant before the annuity starting date, to the extent such amounts were excludable from his gross income at the time of receipt. The expected return of the surviving annuitant in such cases shall be determined in the manner prescribed in paragraph (a) of this section, as though the surviving annuitant alone were involved. For this purpose, the appropriate multiple for the survivor shall be obtained from Table I as of the annuity starting date determined in accordance with paragraph (b)(2)(i) of § 1.72–4.

(4) If a contract involving two annuitants provides for fixed monthly payments to be made as a joint life annuity until the death of the first annuitant to die (in other words, only as long as both remain alive), the expected return under such contract shall be determined by multiplying the total of the annuity payments to be received annually under the contract by the multiple obtained from Table IIA or VIA (whichever is applicable) of § 1.72–9 under the ages (as of the annuity starting date) and, if applicable, sexes of the annuitants. If, however, payments are to be made under the contract quarterly, semiannually, or annually, an appropriate adjustment of the multiple found in Table IIA or VIA shall be made in accordance with paragraph (a)(2) of this section.

(5) If a joint and survivor annuity contract involving two annuitants provides that a specified amount shall be paid during their joint lives and a different specified amount shall be paid to the survivor upon the death of whichever of the annuitants is the first to die, the following preliminary computation shall be made in all cases preparatory to determining the expected return under the contract:

(i) From Table II or VI (whichever is applicable), obtain the multiple under both of the annuitants' ages (as of the annuity starting date) and, if applicable, their appropriate sexes;

(ii) From Table IIA or VIA (whichever is applicable), obtain the multiple applicable to both annuitants' ages (as of the annuity starting date) and, if applicable, their appropriate sexes;

(iii) Apply the multiple found in subdivision (i) of this subparagraph to the total of the amounts to be received annually after the death of the first to die; and

(iv) Apply the multiple found in subdivision (ii) of this subparagraph to the difference between the total of the amounts to be received annually before and the total of the amounts to be received annually after the death of the first to die.

If the original annual payment is in excess of the annual payment to be made after the death of the first to die, the expected return is the sum of the amounts determined under subdivisions (iii) and (iv) of this subparagraph. This may be illustrated by the following examples:

Example (1). A husband purchases a joint and survivor annuity providing for payments of $100 a month for as long as both he and his wife live, and, after the death of the first to die, payments to the survivor of $75 a month for life. As of the annuity starting date, his age at his nearest birthday is 70 and that of his wife at her nearest birthday is 67. If there is no post-June 1986 investment in the contract, the expected return under the contract is computed as follows:

Multiple from Table II (male age 70, female age 67)	19.7
Multiple from Table IIA (male age 70, female age 67)	9.3
Portion of expected return ($900×19.7—sum per year after first death)	$17,730
Plus: Portion of expected return ($300×9.3—amount of change in sum at first death)	$2,790
Expected return under the contract	$20,520

The total expected return in this example, $20,520, is to be used in computing the amount to be excluded from gross income. Thus, if the investment in the contract is $17,887, the exclusion ratio is $17,887÷$20,520, or 87.2 percent. The amount excludable from each monthly payment made while both are alive is 87.2 percent of $100, or $87.20, and the remaining $12.80 of each payment shall be included in gross income. After the death of the first to die, the amount excludable by the survivor shall be 87.2 percent of each monthly payment of $75, or $65.40, and the remaining $9.60 of each payment shall be included in gross income.

Example (2). Assume the same facts as in example (1), except that the contract is purchased after June 30, 1986.

The expected return under the contract is computed as follows:

Multiple from Table VI (ages 70, 67)	22.0
Multiple from Table VIA (ages 70, 67)	12.4
Portion of expected return ($900×22.0—sum per year after first death)	$19,800
Plus: Portion of expected return ($300×12.4—amount of change in sum at first death)	$3,720
Expected return under the contract	$23,520

Thus, if the investment in the contract is $17,887, the exclusion ratio is $17,887÷$23,520, or 76.1 percent. The amount excludable from each monthly payment made while both are alive would be 76.1 percent of $100, or $76.10, and the remaining $23.90 of each payment would be included in gross income. After the death of the first to die, the amount excludable by the survivor would be 76.1 percent of each monthly payment of $75, or $57.08, and the remaining $17.92 of each payment would be included in gross income.

Example (3). Assume the same facts as in examples (1) and (2), except that the total investment in the contract is $17,887, and that the pre-July 1986 investment in the contract is $8,000. Assume also that one of the annuitants makes the election described in § 1.72–6(d)(6). Separate computations shall be performed pursuant to § 1.72–6(d) to determine the amount excludable from gross income. The pre-July 1986 exclusion ratio would be $8,000÷$20,520, or 39 percent. The post-June 1986 exclusion ratio would be $9,887÷$23,520, or 42 percent. The amount excludable from each monthly payment made while both are alive would be $81 [(.39×100)+(.42×100)], and the remaining $19 would be included in gross income. After the death of the first to die, the amount excludable by the survivor would be $60.75 [(.39×75)+(.42×75)], and the remaining $14.25 would be included in gross income.

If the original annual payment is less than the annual payment to be made after the death of the first to die, the expected return is the difference between the amounts determined under subdivisions (iii) and (iv) of this subparagraph. If, however, payments are to be made quarterly, semiannually, or annually under the contract, the multiples obtained from both Tables II and IIA or Tables VI and VIA (whichever are applicable) shall first be adjusted in a manner prescribed in paragraph (a)(2) of this section.

(6) If a contract provides for the payment of life annuities to two persons during their respective lives and, after the death of one (without regard to which one dies first), provides that the survivor shall receive for life both his own annuity payments and the payments made formerly to the deceased person, the expected return shall be determined in accordance with paragraph (e)(4) of this section.

(7) If paragraph (b)(3) of § 1.72–2 applies to payments provided under a contract and this paragraph applies to such payments, the principles of this paragraph shall be used in making the computations described in paragraph (d)(3) of § 1.72–4. This may be illustrated by the following examples, examples (1) through (3) of which assume that there is no post-June 1986 investment in the contract:

Example (1). Taxpayer A, a male age 63, pays $24,000 for a contract which provides that the proceeds (both income and return of capital) from eight units of an investment fund shall be paid monthly to him for his life and that after his death the proceeds from six such units shall be paid monthly to B, a female age 55, for her life. The portion of the investment in the contract allocable to each taxable year of A is $955.20 and that allocable to each taxable year of B is $716.40. This is determined in the following manner:

Multiple from Table II (male, age 63, and female, age 55)	28.1
Number of units to be paid, in effect, as a joint and survivor annuity	×6
Number of total annual unit payments anticipatable with respect to the joint and survivor annuity element	168.6
Multiple from Table I (male, age 63)	16.2
Number of units to be paid, in effect, as a single life annuity	×2
Number of total annual unit payments anticipatable with respect to A alone	32.4
Total number of unit payments anticipatable	201
Portion of investment in the contract allocable to unit payments ($24,000÷201) on an annual basis	$119.40
Number of units payable to A while he continues to live	×8
Portion of the investment in the contract allocable to each taxable year of A	$955.20
Portion of investment in the contract allocable to unit payments ($24,000÷201) on an annual basis	$119.40
Number of units payable to B for her life after A's death	×6
Portion of the investment in the contract allocable to each taxable year of B	$716.40

For the purpose of the above computation it is immaterial whether or not A lives to or beyond the life expectancy shown for him in Table I.

Example (2). Assume that Taxpayer A in example (1) receives payments for five years which are at least as large as the portion of the investment in the contract allocable to such years, but in the sixth year he receives a total of only $626.40 rather than the $955.20 allocable to such year. A is 69 and B is 61 at the beginning of the first monthly period for which an amount is payable in the seventh taxable year. A makes the election in that year provided under paragraph (d)(3) of § 1.72–4. The difference between the portion of the investment in the contract allocable to the sixth year and the amount actually received in that year is $328.80 ($955.20 less $626.40). In this case, 139.2 unit payments are anticipatable (on an annual basis), since the appropriate multiple from Table II of § 1.72–9, 23.2, multiplied by the number of units payable, in effect, as a joint and survivor annuity yields this result (6×23.2). A's appropriate multiple from Table I of § 1.72–9 for the two units which will cease to be paid at his death is 12.6, and the total number of unit payments anticipatable (on an annual basis) is, therefore, 164.4 (2×12.6 plus 139.2). Dividing the difference previously found ($328.80) by the total number of unit payments thus determined (164.4) indicates that A will have an additional allocation of the investment in the contract of $16 to the seventh and every succeeding full taxable year (8 units×$2), and B will have an additional allocation of the investment in the contract of $12 (6 units×$2) to each taxable year in which she receives 12 monthly payments subsequent to the death of A. The total allocable to each taxable year of A is, therefore, $971.20, and that allocable to each taxable year of B will be $728.40.

Example (3). If, in example (2), A had died at the end of the fifth year, in the sixth year B would have received a payment of $460.80 (that portion of the $626.40 that A would have received which is in the same ratio that 6 units bear to 8 units) and would thus have received $246.60 less than the portion of the investment in the contract originally determined to be allocable to each of her taxable years. In these circumstances, B would be entitled to elect to redetermine the portion of the investment in the contract allocable to the taxable year of election and all subsequent years. The new amount allocable thereto would be found by dividing the $246.60 difference by her life expectancy as of the first day of the first period for which she received an amount as an annuity in the seventh year of the annuity contract, and adding the result to her originally determined allocation of $716.40.

Example (4). On July 1, 1986, Taxpayer C, age 60, pays $28,000 for a contract which provides that the proceeds (both income and return of capital) from 10 units of an investment fund shall be paid monthly to C for C's life and that after C's death the proceeds from 4 such units shall be paid monthly to D, age 57, for D's life. The portion of the investment in the contract allocable to each taxable year of C is $1,037.00 and that allocable to each taxable year of D is $414.80. This is determined as follows:

Multiple from Table VI (ages 60, 57)	31.2
Number of units to be paid, in effect, as a joint and survivor annuity	×4
Number of total annual unit payments anticipatable with respect to the joint and survivor annuity element	124.8
Multiple from Table V (age 60)	24.2
Number of units to be paid, in effect, as a single life annuity	×6
Number of total annual unit payments anticipatable with respect to C alone	145.2
Total number of unit payments anticipatable	270
Portion of investment in the contract allocable to unit payments ($28,000÷270) on an annual basis	103.70
Number of units payable to C while C continues to live	×10
Portion of the investment in the contract allocable to each taxable year of C	$1,037.00
Portion of investment in the contract allocable to unit payments ($28,000÷270) on an annual basis	$103.70
Number of units payable to D for D's life after C's death	×4
Portion of the investment in the contract allocable to each taxable year of D	$414.80

For purposes of the above computation it is immaterial whether or not C lives to or beyond the life expectancy shown in Table V.

Example (5). Assume the same facts as in example (4), except that C's total investment in the contract is $28,000, and C's pre-July 1986 investment in the contract is $16,000. If C makes the election described in § 1.72–6(d)(6), separate computations are required to determine the amount excludable from gross income with respect to the pre-July 1986 investment in the contract and the post-June 1986 investment in the contract. The annuitant shall apply the appropriate pre-July 1986 and post-June 1986 life expectancy multiples to the applicable portions of the units to be paid as a joint and survivor annuity, and as a single life annuity.

Pre-July 1986 Computation (all references to unit payments are to the pre-July 1986 applicable portion of such payments):

Multiple from Table II (male, age 60, female, age 57)	27.6
Number of units to be paid, in effect, as a joint and survivor annuity	×4
Number of total annual unit payments anticipatable with respect to the joint and survivor annuity element	110.40
Multiple from Table I (male, age 60)	16.2
Number of units to be paid, in effect, as a single life annuity	×6
Number of total annual unit payments anticipatable with respect to C alone	109.20
Total number of unit payments anticipatable	219.6
Portion of pre-July 1986 investment in the contract allocable to unit payments ($16,000÷219.60) on an annual basis	$72.86
Number of units payable to C while C continues to live	×10
Portion of pre-July 1986 investment in the contract allocable to each taxable year of C	728.60
Portion of pre-July 1986 investment in the contract allocable to unit payments ($16,000÷219.60) on an annual basis	72.86
Number of units payable to D for D's life after C's death	×4
Portion of pre-July 1986 investment in the contract allocable to each taxable year of D	$291.44

Post-June 1986 Computation (all references to unit payments are to the post-June 1986 applicable portion of such payments):

Multiple from Table VI (ages 60, 57)	31.2
Number of units to be paid, in effect, as a joint and survivor annuity	x4
Number of total annual unit payments anticipatable with respect to the joint and survivor annuity element	124.80
Multiple from Table V (age 60)	24.2
Number of units to be paid, in effect, as a single life annuity	×6
Number of total annual unit payments anticipatable with respect to C alone	145.20
Total number of unit payments anticipatable	270
Portion of post-June 1986 investment in the contract allocable to unit payments ($12,000÷270) on an annual basis	$44.44
Number of units payable to C while C continues to live	×10
Portion of post-June 1986 investment in the contract allocable to each taxable year of C	$444.40
Portion of post-June 1986 investment in the contract allocable to unit payments ($12,000÷270) on an annual basis	44.44
Number of units payable to D for D's life after C's death	×4
Portion of post-June 1986 investment in the contract allocable to each taxable year of D	$177.76
Total computation:	
Total portion of the investment in the contract allocable to each taxable year of C ($728.60+$444.40)	$1,173.00
Total portion of the investment in the contract allocable to each taxable year of D ($291.44+$177.76)	$469.22

Example (6). Assume that taxpayer C in example (4) receives payments for four years which are at least as large as the portion of the investment in the contract allocable to such years, but in the fifth year receives a total of only $600 rather than the $1,037 allocable to such year. C is 65 and D is 62 at the beginning of the first monthly period for which an amount is payable in the sixth taxable year. C makes the election in that year provided under paragraph (d)(3) of § 1.72–4. The difference between the portion of the investment in the contract allocable to the fifth year and the amount actually received in that year is $437 ($1,037—$600). In this case, 106 unit payments are anticipatable with respect to the joint and survivor annuity element, since the appropriate multiple from Table VI of § 1.72–9, 26.5, multiplied by the number of units payable, in effect, as a joint and survivor annuity yields this result (4 × 26.0). C's appropriate multiple from Table V of § 1.72–9 for the six units which will cease to be paid at C's death is 20.0, and the number of unit payments anticipatable with respect to C alone is 120 (6 × 20). The total number of unit payments anticipatable is, therefore, 226 (120 plus 106). Dividing the difference previously found ($437) by the total number of unit payments thus determined (226) indicates that C will have an additional allocation of the investment in the contract of $19.30 to the sixth and every succeeding full taxable year (10 units × $1.93), and D will have an additional allocation of the investment in the contract of $7.72 (4 units × $1.93) to each taxable year in which D receives 12 monthly payments subsequent to the death of C. The total allocable to each taxable year of C is, therefore, $1,056.30, and that allocable to each taxable year of D will be $422.52.

Example (7). If, in example (6), C had died at the end of the fourth year, in the fifth year D would have received a payment of $240 (that portion of the $600 that C would have received which is in the same ratio that 4 units bear to 10 units) and would thus have received $174.80 less than the portion of the investment in the contract allocable to each of D's taxable years. In these circumstances, D would be entitled to elect to redetermine the portion of the investment in the contract allocable to the taxable year of election and all subsequent years. The new amount allocable thereto would be found by dividing the $174.80 difference by D's life expectancy as of the first day of the first period for which D received an amount as an annuity in the sixth year of the annuity contract, and adding the result to D's originally determined allocation of $414.80.

* * * * *

(e) Expected return where two or more annuity elements providing for fixed payments are acquired for a single consideration. (1) In the case of a contract described in paragraph (a)(2) of § 1.72–2, which provides for specified payments to be made under two or more annuity elements, the expected return shall be found for the contract as a whole by aggregating the expected returns found with respect to each annuity element. If individual life annuity elements are involved (including joint and survivor annuities where the primary annuitant died before January 1, 1954) the expected return for each of them shall be determined in the manner prescribed in paragraph (a) of this section. If joint and survivor annuity elements are involved, the expected return for such elements shall be determined under the appropriate subparagraph of paragraph (b) of this section. If terms certain or amounts certain are involved, the expected returns for such elements shall be determined under paragraph (c) or (d) of this section, respectively.

(2) The aggregate expected return found in accordance with the rules set forth in subparagraph (1) of this paragraph shall constitute the expected return for the contract as a whole. The investment in the contract shall be divided by the amount thus determined to obtain the exclusion ratio for the contract as a whole. This exclusion ratio shall be applied to all amounts received as a annuity under the contract by any recipient (in accordance with the provisions of § 1.72–4), except in the case of amounts received by a surviving annuitant under a joint and survivor annuity element to which the provisions of section 72(i) and paragraph (b)(3) of this section would apply if it were a separate contract. See subparagraph (3) of this paragraph.

(3) In the case of a contract providing two or more annuity elements, one of which is a joint and survivor annuity element of the type described in section 72(i) and paragraph (b)(3) of this section, the general exclusion ratio for the contract as a whole, for the purpose of

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computations with respect to all the other annuity elements shall be determined in accordance with the principles of subparagraphs (1) and (2) of this paragraph. A special exclusion ratio shall thereafter be determined for the surviving annuitant receiving payments under the annuity element described in section 72(i) and paragraph (b)(3) of this section by using the investment in the contract and the expected return determined in accordance with the provisions of paragraph (b)(3) of this section.

(4) In the case of a contract providing for payments to be made to two persons in the manner described in paragraph (b)(6) of this section, the expected return is to be computed as though there were two joint and survivor annuities under the same contract, in the following manner. First, the multiple appropriate to the ages (as of the annuity starting date) and, if applicable, sexes of the annuitants involved shall be found in Table II or VI (whichever is applicable) of § 1.72–9 and adjusted, if necessary, in the manner described in paragraph (a)(2) of this section. Second, the multiple so found shall be applied to the sum of the payments to be made each year to both annuitants. The result is the expected return for the contract as a whole.

(5) For rules relating to expected return where two or more annuity elements are acquired for a single consideration and one or more of such elements does not specify a fixed payment for each period, see paragraph (f) of this section.

* * * * *

(g) *Expected return with respect to contracts subject to § 1.72–6(d).* In the case of a contract to which § 1.72–6(d) (relating to contracts in which amounts were invested both before July 1, 1986, and after June 30, 1986) applies, an expected return is computed using the multiples in Tables I through IV of § 1.72–9 with respect to the pre-July 1986 investment in the contract and a second expected return is computed using the multiples in Tables V through VIII of § 1.72–9 with respect to the post-June 1986 investment in the contract.

Par. 4. Section 1.72–6 is amended by revising paragraph (b) and adding a new paragraph (d) to read as follows:

§ 1.72–6 Investment in the contract.

* * * * *

(b) *Allocation of the investment in the contract where two or more annuity elements are acquired for a single consideration.* (1) In the case of a contract described in § 1.72–2(a)(2) which provides for two or more annuity elements, the investment in the contract determined under paragraph (a) shall be allocated to each of the annuity elements in the ratio that the expected return under each annuity element bears to the aggregate of the expected returns under all the annuity elements. The exclusion ratio for the contract as a whole shall be determined by dividing the investment in the contract (after adjustment for the present value of any or all refund features) by the aggregate of the expected returns under all the annuity elements. This may be illustrated by the following examples:

Example (1). If a contract provides for annuity payments of $1,000 per year for life (with no refund feature) to both A and B, a male and female, respectively, each 70 years of age as of the annuity starting date, such contract is acquired for consideration of $19,575 (without regard to whether paid by A, B, or both), and there is no post-June 1986 investment in the contract, the investment in the contract shall be allocated by determining the exclusion ratio for the contract as a whole in the following manner:

Expectancy of A under Table I and § 1.72–5(a)(2), 11.6 (12.1–0.5), multiplied by $1,000	$11,600
Plus: Expectancy of B computed in a similar manner ($1,000×14.5 [15.0−0.5])	14,500
Total expected return	26,100

The exclusion ratio for both A and B is then $19,575÷$26,100, or 75 percent. A and B shall each exclude from gross income three-fourths ($750) of each $1,000 annual payment received and shall include the remaining one-fourth ($250) of each $1,000 annual payment received in gross income.

Example (2). Assume the same facts as in example (1) except that of the total investment in the contract of $19,575, the pre-July 1986 investment in the contract is $10,000. If the election described in § 1.72–6(d)(6) is made with respect to the contract, the investment in the contract shall be allocated by determining an exclusion ratio for the contract as a whole based on separately computed exclusion ratios with respect to the pre-July 1986 investment in the contract and the post-June 1986 investment in the contract in the following manner:

Expectancy of A under Table I and § 1.72–5(a)(2), 11.6 (12.1–0.5), multiplied by $1,000	$11,600
Plus: Expectancy of B under Table I and § 1.72–5(a)(2), 14.5 (15.0–0.5), multiplied by $1,000	$14,500
Pre-July 1986 expected return	$26,100
Expectancy of A under Table V and § 1.72–5(a)(2), 15.5 (16.0–0.5), multiplied by $1,000	$15,500
Plus: Expectancy of B under Table V and § 1.72–5(a)(2), 15.5 (16.0–0.5), multiplied by $1,000	$15,500
Post-June 1986 expected return	$31,000
Pre-July 1986 exclusion ratio ($10,000÷$26,100)	38.3
Post-June 1986 exclusion ratio ($9,575÷31,000)	30.9

A and B shall each exclude from gross income $692 (38.3 percent of $1,000+30.9 percent of $1,000) of each $1,000 payment and include the remaining $308 in gross income

(2) In the case of a contract providing for specified annual annuity payments to be made to two persons during their joint lives and the payment of the aggregate of the two individual payments to the survivor for his life, the investment in the contract shall be allocated in accordance with the provisions of subparagraph (1) of this paragraph. For this purpose, the investment in the contract (without regard to the fact that differing amounts may have been contributed by the two annuitants) shall be divided by the expected return determined in accordance with paragraph (e)(4) of § 1.72–5. The resulting exclusion ratio shall then be applied to any amounts received as an annuity by either annuitant.

(3) In the case of a contract providing two or more annuity elements, one or more of which provides for payments to be made in a manner described in paragraph (b)(3) of § 1.72–2, the investment in the contract shall be allocated to the various annuity elements in the following manner.

(i) If all the annuity elements provide for payments to be made in the manner described in paragraph (b)(3) of § 1.72–2, the investment in the contract shall be allocated on the basis of the amounts received by each recipient by apportioning the amount determined to be excludable under that section to each recipient in the same ratio as the total of the amounts received by him in the taxable year bears to the total of the amounts received by all recipients during the same period; and

(ii) If one or more, but not all, of the annuity elements provide for payments to be made in a manner described in paragraph (b)(3) of § 1.72–2:

(*a*) With respect to all annuity elements to which that section does not apply, the investment in the contract for all such elements shall be the portion of the investment in the contract as a whole (found in accordance with the provisions of this section) which is properly allocable to all such elements; and

(*b*) With respect to all annuity elements to which paragraph (b)(3) of § 1.72–2 does apply, the investment in the contract for all such elements shall be the investment in the contract as a whole (found in accordance with the provisions of this section) as reduced by the portion thereof determined under (*a*) of this subdivision.

For the purpose of determining, pursuant to (*a*) of this subdivision, the portion of the investment in the contract as a whole properly allocable to a particular annuity element, reference shall be made to the present value of such annuity element determined in accordance with paragraph (e)(1)(iii) (*b*) of § 1.101–2.

(iii) In the case of a contract to which paragraph (d) of this section applies, this paragraph (b) is applied in the manner prescribed in paragraph (d) and, in particular, paragraph (d)(5)(v) of this section.

* * * * *

(d) *Pre-July 1986 and post-June 1986 investment in the contract.* (1) This paragraph (d) applies to an annuity contract if—

(i) The investment in the contract includes a pre-July 1986 investment in the contract and a post-June 1986 investment in the contract (both as defined in § 1.72–6(d)(3));

(ii) The use of a multiple found in Tables I through VIII of § 1.72–9 is required to determine the expected return under the contract; and

(iii) The election described in paragraph (d)(6) of this section is made with respect to the contract.

(2) In the case of annuity contract to which this paragraph (d) applies—

(i) All computations required to determine the amount excludable from gross income shall be performed separately with respect to the pre-July 1986 investment in the contract and the post-June 1986 investment in the contract as if each such amount were the entire investment in the contract;

(ii) The multiples in Tables I through IV shall be used for computations involving the pre-July 1986 investment in the contract and the multiples in Tables V through VIII shall be used for computations involving the post-June 1986 investment in the contract; and

(iii) The amount excludable from gross income shall be the sum of the amounts determined under the separate computations required by paragraph (d)(2)(i) of this section.

(3) For purposes of the regulations under section 72, the pre-July 1986 investment in the contract and post-June 1986 investment in the contract are determined in accordance with the following rules:

(i) (A) Except as provided in § 1.72–9, if the annuity starting date of the contract occurs before July 1, 1986, the pre-July 1986 investment in the contract is the total investment in the contract as of the annuity starting date;

(B) Except as provided in § 1.72–9, if the annuity starting date of the contract occurs after June 30, 1986, and the contract does not provide for a disqualifying form of payment or settlement, the pre-July 1986 investment in the contract is the investment in the contract computed as of June 30, 1986, as if June 30, 1986, had been the later of the annuity starting date of the contract or the date on which an amount is first received thereunder as an annuity;

(C) If the annuity starting date of the contract occurs after June 30, 1986, and the contract provides, at the option of the annuitant or of any other person (including, in the case of an employee's annuity, an option exercisable only by, or with the consent of, the employer), for a disqualifying form of payment or settlement, the pre-July 1986 investment in the contract is zero (i.e., the total investment in the contract is post-June 1986 investment in the contract).

(ii) The post-June 1986 investment in the contract is the amount by which the total investment in the contract as of the annuity starting date exceeds the pre-July 1986 investment in the contract.

(iii) For purposes of paragraph (d)(3)(i) of this section, a disqualifying form of payment or settlement is any form of payment or settlement (whether or not selected) that permits the receipt of amounts under the contract in a form other than a life annuity. For example, each of the following options provides for a disqualifying form of payment or settlement:

(A) An option to receive a lump sum in full discharge of the obligation under the contract.

(B) An option to receive an amount under the contract after June 30, 1986, and before the annuity starting date.

(C) An option to receive an annuity for a period certain.

(D) An option to receive payments under a refund feature (within the meaning of paragraphs (b) and (c) of this section) that is substantially equivalent to an annuity for a period certain.

(E) An option to receive a temporary life annuity (within the meaning of § 1.72–5 (a)(3)) that is substantially equivalent to an annuity for a period certain.

An option to receive alternative forms of life annuity is not a disqualifying option for purposes of paragraph (d)(3)(i) of this section. Thus, if the sole options provided under a contract are a single life annuity and a joint and survivor life annuity, paragraph (d)(3)(i) (C) of this section does not apply to such contract.

(iv) For purposes of paragraph (d)(3)(iii) of this section, a refund feature is substantially equivalent to an annuity for a period certain if its value determined under Table VII of § 1.72–9 exceeds 50 percent. Similarly, a temporary life annuity is substantially equivalent to an annuity for a period certain if the multiple determined under Table VIII of § 1.72–9 exceeds 50 percent of the maximum duration of the annuity.

(4) In any separate computation under this paragraph (d), only the applicable portion of other amounts (such as the total expected return under the contract, or the total amount guaranteed under the contract as of the annuity starting date) shall be taken into account if the use of the entire amount in such computation is inconsistent with the use in the computation of only a portion of the investment in the contract. For example, such use is generally inconsistent if the computation requires a comparison of the investment in the contract and such other amount for the purpose of using the greater (or lesser) amount or the difference between the two. For purposes of the first sentence of this paragraph (d)(4), the applicable portion is the amount that bears the same ratio to the entire amount as the pre-July 1986, investment in the contract or the post-June 1986 investment in the contract, whichever is applicable, bears to the total investment in the contract as of the annuity starting date.

(5) *Application to particular computations.* (i) In the case of a contract to which this paragraph (d) applies, the exclusion ratio for purposes of § 1.72–4 (a) is the sum of the exclusion ratios separately computed in accordance with this paragraph (d). The exclusion ratio with respect to the pre-July 1986 investment in the contract is determined by dividing the pre-July 1986 investment in the contract by the expected return as found under § 1.72–5 by applying the appropriate multiples of Tables I through IV of § 1.72–9. Similarly, the exclusion ratio with respect to the post-June 1986 investment in the contract is determined by dividing the post-June 1986 investment in the contract by the expected return as found under § 1.72–5 by applying the appropriate multiples in Tables V through VIII of § 1.72–9.

(ii) The applicability of § 1.72–4(d)(2) to a contract to which this paragraph (d) applies shall be determined separately with respect to the post-June 1986 investment in the contract and the pre-July 1986 investment in the contract and

in each such determination only the applicable portion of the total expected return under the contract shall be taken into account. If § 1.72–4(d)(2) applies with respect to either such investment in the contract, the separately computed exclusion ratio shall be considered to be the applicable portion of 100 percent.

(iii) If § 1.72–4(d)(3) applies to a contract to which this paragraph (d) applies—

(A) The applicable portions (as defined in paragraph (d)(4) of this section) of payments received under the contract for a taxable year shall be separately computed;

(B) The pre-July 1986 investment in the contract and the post-June 1986 investment in the contract shall be separately allocated to the taxable year; and

(C) The separate applicable portions of the payments received under the contract for the taxable year shall be considered to be amounts received as an annuity (for which the exclusion ratio is 100 percent) only to the extent they do not exceed the portions of the corresponding investments in the contract which are properly allocable to that year.

See the example in § 1.72–4(d)(3)(v).

(iv) If § 1.72–4(e) applies to a contract to which this paragraph (d) applies, the exclusion ratio shall be separately computed with respect to the pre-July 1986 investment in the contract and the post-June 1986 investment in the contract. For purposes of the separate computations under § 1.72–4(e)(2)(ii), only the applicable portion of payments received shall be taken into account and the exclusion ratio (100%) shall be applied to the separately computed portion allocated to each participant.

(v) If paragraph (b)(3) of this section applies to a contract to which this paragraph (d) applies, separate allocations are required with respect to the pre-July 1986 investment in the contract and the post-June 1986 investment in the contract.

For purposes of the separate computations required to determine the portion of the investment in the contract properly allocable to a particular annuity element, only the applicable portion of the present value of the annuity element determined in accordance with § 1.101–2(e)(1)(iii)(b) is taken into account.

(vi) If § 1.72–7 applies to a contract to which this paragraph (d) applies, separate computations are required to determine the adjustment to the pre-July 1986 investment in the contract and the post-June 1986 investment in the contract. For purposes of such separate computations, only the applicable portions of the amounts described in § 1.72–7 (b)(3)(ii), (c)(1)(ii)(B), (c)(2)(vii)(B), and (d)(1)(ii) are taken into account. Similarly, in the case of computations with respect to the guarantee of a specified amount under § 1.72–7(d)(1), only the applicable portion of such amount is taken into account.

(6) This paragraph (d) applies to a contract only if the first taxpayer to receive an amount as an annuity under the contract elects to perform separate computations with respect to the pre-July 1986 investment in the contract and the post-June 1986 investment in the contract as if each such amount were the entire investment in contract. If two or more annuitants receive an amount as an annuity under the contract at the same time (such as under a joint-and-last-survivorship annuity contract), an election by one of the annuitants is treated as an election by each of the annuitants. The election is made by attaching a statement to the first return filed by the taxpayer for the first taxable year in which an amount is received as an annuity under the contract. The statement must indicate that the taxpayer is electing to apply the provisions of paragraph (d) of § 1.72–6, and must also contain the name, address, and taxpayer identification number of each annuitant under the contract, and the amount of the pre-July 1986 investment in the contract.

(7) If the investment in the contract includes a post-June 1986 investment in the contract and the election described in paragraph (d)(6) of this section is not made—

(i) The amount excludable from gross income shall be determined without regard to the separate computations described in this paragraph (d); and

(ii) Only the multiples found in Tables V through VIII shall be used in determining the amount excludable from gross income.

Par. 5. Section 1.72–7 is amended by revising paragraphs (b), (c), (d), and (e), and adding a new paragraph (f) to read as follows:

§ 1.72–7 Adjustment in investment where a contract contains a refund feature.

* * * * *

(b) *Adjustment of investment for the refund feature in the case of a single life annuity.* Where a single life annuity contract to which section 72 applies contains a refund feature and the special rule of paragraph (d) of this section does not apply, the investment in the contract shall be adjusted in the following manner:

(1) Determine the number of years necessary for the guaranteed amount to be fully paid by dividing the maximum amount guaranteed as of the annuity starting date by the amount to be received annually under the contract to the extent such amount reduces the guaranteed amount. The number of years should be stated in terms of the nearest whole year, considering for this purpose a fraction of one-half or more as an additional whole year.

(2) Consult Table III or VII (whichever is applicable) of § 1.72–9 for the appropriate percentage under the whole number of years found in subparagraph (1) of this paragraph and the age (as of the annuity starting date) and, if applicable, sex of the annuitant.

(3) Multiply the percentage found in subparagraph (2) of this paragraph by whichever of the following is the smaller: (i) The investment in the contract found in accordance with § 1.72–6 or (ii) the total amount guaranteed as of the annuity starting date.

(4) Subtract the amount found in subparagraph (3) of this paragraph from the investment in the contract found in accordance with § 1.72–6.

The resulting amount is the investment in the contract adjusted for the present value of the refund feature without discount for interest and is to be used in determining the exclusion ratio to be applied to the payments received as an annuity. The percentage found in Tables III or VII shall not be adjusted in a manner described in paragraph (a)(2) of § 1.72–5. These principles may be illustrated by the following examples:

Example (1). On January 1, 1954, a husband, age 65, purchased for $21,053, an immediate installment refund annuity payable $100 per month for life. The contract provided that in the event the husband did not live long enough to recover the full purchase price, payments were to be made to his wife until the total payments under the contract equaled the purchase price. The investment in the contract adjusted for the purpose of determining the exclusion ratio is computed in the following manner:

Cost of the annuity contract (investment in the contract, unadjusted)	$21,053
Amount to be received annually	$1,200
Number of years for which payment guaranteed ($21,053 divided by $1,200)	17.5
Rounded to nearest whole number of years	18
Percentage located in Table III for age 65 (age of the annuitant as of the annuity starting date) and 18 (the number of whole years) (percent)	30
Subtract value of the refund feature to the nearest dollar (30 percent of $21,053)	$6,316
Investment in the contract adjusted for the present value of the refund feature without discount for interest	$14,737

Example (2). Assume the same facts as in example (1), except that the total investment in the contract was made after June 30, 1986. The investment in the contract adjusted for the purpose of determining the exclusion ratio is computed as follows:

Cost of the annuity contract (investment in the contract, unadjusted)	$21,053
Amount to be received annually	$1,200
Number of years for which payment guaranteed ($21,053÷$1,200)	17.5
Rounded to nearest whole number of years	18
Percentage in Table VII for age 65 and 18 years (percent)	15
Subtract value of the refund feature to the nearest dollar (15 percent of $21,053)	$3,158
Investment in the contract adjusted for the present value of the refund feature without discount for interest	$17,895

Example (3). Assume the same facts as in example (1), except that the pre-July 1986 investment in the contract is $10,000 and the post-June 1986 investment in the contract is $11,053. If the annuitant makes the election described in § 1.72–6(d)(6), separate computations must be performed pursuant to § 1.72–6(d) to determine the adjusted investment in the contract. The pre-July 1986 investment in the contract and the post-June 1986 investment in the contract adjusted for the purpose of determining the exclusion ratios are, respectively, $7,000 and $9,395, determined as follows:

Pre-July 1986 investment in the contract (unadjusted)	$10,000
Pre-July 1986 portion of the amount to be received annually ($10,000/$21,053×$1,200)	$570.00
Number of years for which payment guaranteed ($10,000÷$570)	17.50
Rounded to nearest whole number of years	18
Percentage in Table III for age 65 and 18 years (percent)	30
Subtract value of the refund feature to the nearest dollar (30 percent of $10,000)	$3,000
Pre-July 1986 investment in the contract adjusted for the present value of the refund feature without discount for interest	$7,000
Post-June 1986 investment in the contract (unadjusted)	$11,053
Post-June 1986 portion of the amount to be received annually ($11,053/$21,053×$1,200)	$630
Number of years for which payment guaranteed ($11,053÷$630)	17.54
Rounded to nearest whole number of years	18
Percentage in Table VII for age 65 and 18 years (percent)	15
Subtract value of the refund feature to the nearest dollar (15 percent of $11,053)	$1,658
Post-June 1986 investment in the contract adjusted for the present value of the refund feature without discount for interest	$9,395

If, in the above examples, the guaranteed amount had exceeded the investment in the contract (or applicable portion thereof), the percentage found in Table III or VII (whichever is applicable) should have been applied to the lesser of these amounts since any excess of the guaranteed amount over the investment in the contract (as found under § 1.72–6) would not have constituted a refund of premiums or other consideration paid. In such a case, however, a different multiple might have been obtained from Table III or VII (whichever is applicable) since the number of years for which payments were guaranteed would have been greater.

(c) *Adjustment of investment for the refund feature in the case of a joint and survivor annuity.* (1) Except as provided in paragraph (c)(2) of this section, if a joint and survivor annuity contract described in paragraph (b) (1), (2) or (6) of § 1.72–5 contains a refund feature and the special rule of paragraph (d) of this section does not apply, the investment in the contract shall be adjusted in the following manner:

(i) Find the percentage determined under the following formula:

$$V=\frac{\sum_{t=0}^{N-1}\frac{d_{x+t}}{l_x}\left[(N-\tfrac{1}{2}-t)-P\left(\frac{T_{y+t+1}-T_{y+t+M+1}}{l_y}\right)\right]}{N}$$

In which:

V = The percentage, rounded to the nearest whole percent,

x = The age at the nearest birthday of the primary annuitant,

y = The age at the nearest birthday of the survivor annuitant,

N = The guaranteed amount divided by the annual annuity payable to the primary annuitant, rounded to the nearest integer,

P = The annual annuity continued to the survivor annuitant divided by the annual annuity payable to the primary annuitant,

$$M=\frac{N-\tfrac{1}{2}-t,}{P}$$

l_x = The number of survivors at age x, $d=l_x-l_{x+1}$, and

$$T_x=\sum_{s=0}^{\infty}\tfrac{1}{2}(l_{x+s}+l_{x+s+1}).$$

(ii) Multiply the percentage found in paragraph (c)(1)(i) of this section by the lesser of (A) the investment in the contract found in accordance with § 1.72–6, or (B) the total amount guaranteed as of the annuity starting date.

(iii) Subtract the amount found in paragraph (c)(1)(ii) of this section from the investment in the contract found in accordance with § 1.72–6.

In the case of a contract providing for payments to be made to two persons in the manner described in paragraph (b)(6) of § 1.72–5, this paragraph (c)(1) is

applied as though the older person were the primary annuitant and the younger person were the survivor annuitant. For purposes of this paragraph (c)(1), the number of survivors at age, x (l_x) is determined under the following table:

x	lx
5	1000000.
6	999729.
7	999493.
8	999284.
9	999089.
10	998849.
11	998620.
12	998382.
13	998135.
14	997876.
15	997606.
16	997322.
17	997025.
18	996714.
19	996387.
20	996044.
21	995684.
22	995304.
23	994905.
24	994484.
25	994041.
26	993573.
27	993080.
28	992563.
29	992024.
30	991461.
31	990876.
32	990269.
33	989638.
34	988984.
35	988303.
36	987593.
37	986846.
38	986055.
39	985210.
40	984298.
41	983310.
42	982230.
43	981048.
44	979742.
45	978302.
46	976709.
47	974945.
48	972992.
49	970832.
50	968447.
51	966000.
52	963313.
53	960375.
54	957175.
55	953705.
56	949954.
57	945912.
58	941568.
59	936908.
60	931903.
61	926451.
62	920540.
63	914090.
64	907011.
65	899221.
66	890428.
67	880797.
68	870296.
69	858904.
70	846565.
71	832316.
72	816861.
73	800078.
74	781837.
75	762012.
76	740743.
77	717689.
78	692760.
79	665977.
80	637260.
81	607339.
82	575531.
83	541919.
84	506647.
85	469931.
86	432459.
87	394138.
88	355393.
89	316712.
90	278663.
91	242020.
92	207150.
93	174602.
94	144828.
95	116151.
96	94871.7
97	74863.6
98	58042.2
99	44176.1
100	32956.4
101	24044.8
102	17104.1
103	11815.5
104	7886.75
105	5054.94
106	3086.95
107	1778.82
108	955.465
109	470.955
110	208.668
111	80.7899
112	26.2340
113	6.69620
114	1.19385
115	.111460

(2) If the multiples in Tables I through IV of § 1.72–9 are used to determine any portion of the expected return under a contract described in paragraph (c)(1) of this section, only the post-June 1986 investment in the contract (if any) shall be adjusted in the manner described in paragraph (c)(1) of this section, and the pre-July 1986 investment in the contract shall, in the case of a contract described in paragraph (b) (1) or (6) of § 1.72–5, be adjusted in the following manner:

(i) Determine the number of years necessary for the guaranteed amount to be fully paid by dividing the maximum amount guaranteed as of the annuity starting date by the amount to be received annually under the contract. The number of years should be stated in terms of the nearest whole year, considering for this purpose a fraction of one-half or more as an additional whole year.

(ii) Consult Table III of § 1.72–9 for the appropriate percentages under the whole number of years found in subdivision (i) of this subparagraph and the age (as of the annuity starting date) and sex of each annuitant. If the annuitants are not of the same sex, substitute for the female annuitant a male annuitant 5 years younger, or for the male annuitant a female annuitant 5 years older, so that Table III will be entered in both cases with the ages of annuitants of the same sex.

(iii) Find the sum of the two percentages found in accordance with subdivision (ii) of this subparagraph.

(iv) To the age of the elder of the two annuitants (as determined under subdivision (ii) of this subparagraph), add the number of years (indicated in the table below) opposite the number of years by which such annuitants' ages differ:

Number of years difference in age (2 male annuitants or 2 female annuitants)	Addition to older age in years
0 to 1, inclusive	9
2 to 3, inclusive	8
4 to 5, inclusive	7
6 to 8, inclusive	6
9 to 11, inclusive	5
12 to 15, inclusive	4
16 to 20, inclusive	3
21 to 27, inclusive	2
28 to 42, inclusive	1
Over 42	0

(v) Consult Table III for the appropriate percentage under the whole number of years found in subdivision (i) of this subparagraph and the age and sex of the elder annuitant as adjusted under subdivision (iv) of this subparagraph.

(vi) Subtract the percentage obtained in subdivision (v) of this subparagraph from the sum of the percentages found under subdivision (iii) of this subparagraph. If the result is less than one, subdivisions (vii) and (viii) of this subparagraph shall be disregarded and no adjustment made to the investment in the contract.

(vii) Multiply the percentage found in subdivision (vi) of this subparagraph by whichever of the following is the smaller: (A) the investment in the contract found in accordance with § 1.72–6 or (B) the total amount guaranteed as of the annuity starting date.

(viii) Subtract the amount found in subdivision (vii) of this subparagraph from the investment in the contract found in accordance with § 1.72–6.

(3) The principles of this paragraph (c) may be illustrated by the following examples:

Exemple (1). Prior to July 1, 1986, Taxpayer A, a 70-year-old male, purchases a joint and last survivor annuity for $33,050. The contract provides for payments of $100 a month to be paid first to himself for life and then to B, his 40-year-old daughter, if she survives him. The contract further provides that in the event both die before ten years' payments have been made, payments will be continued to C, a beneficiary, or to C's estate, until ten years' payments have been made. If there is no post-June 1986 investment in the contract, the investment in the contract adjusted for the purpose of determining the exclusion ratio is computed in the following manner:

Cost of the annuity contract (investment in the contract unadjusted)	$33,050
Guaranteed amount ($1,200×10)	$12,000
Percentage in Table III for male, age 70 (or female, age 75) for duration of the guarantee (10)	21
Percentage in Table III for female, age 40 (or male, age 35) for duration of the guarantee (10)	2
Sum of percentages obtained	23
Difference in years of age between two males, aged 70 and 35 (or 2 females, aged 75 and 40)	35
Addition, in years, to older age	1
Percentage in Table III for male one year older than A	22
Difference between percentages obtained (23 percent less 22 percent)	1
Value of the refund feature to the nearest dollar (1 percent of $12,000)	$120
Investment in the contract adjusted for present value of the refund feature	$32,930

Example (2). The facts are the same as in example (1), except that the total investment in the contract was made after June 30, 1986, A is 73 years of age, and B is A's 70 year old spouse. The percentage determined under the formula in paragraph (c)(1)(i) of this section is two percent. Thus, the amount determined under paragraph (c)(1)(ii) of this section is $240 (2 percent of $12,000), and the investment in the contract adjusted for the present value of the refund feature is $32,810 ($33,050—$240).

(4) If an annuity described in paragraph (b) of § 1.72–5 contains a refund feature and the manner of determining the adjustment to the investment in the contract (or to any part of such investment) is not prescribed or requires use of the formula in paragraph (c)(1)(i) of this section, the Commissioner will determine the amount of the adjustment upon request. The request must contain the date of birth of each annuitant, the guaranteed amount, the annual annuity payable to each annuitant, and the annuity starting date. Send the request to the Commissioner of Internal Revenue, Attention: OP:E:EP:GA, Washington, D.C. 20224.

(d) *Adjustment of investment in the contract where paragraph (b)(3) of § 1.72–2 applies to payments.* (1) If paragraph (b)(3) of § 1.72–2 applies to payments to be made under a contract and this section also applies because of the provision for a refund feature, an adjustment shall be made to the investment in the contract in accordance with this paragraph before making the computations required by paragraph (d)(3) of § 1.72–4 and paragraph (d)(7) of § 1.72–5. In the case of the guarantee of a specified amount, the adjustment shall be made by applying the appropriate multiple from Table III or VII (whichever is applicable), as otherwise determined under this section, to the investment in the contract or the guranteed amount, whichever is the lesser. The guarantee period shall be found by dividing the amount guaranteed by the amount determined by placing the payments received during the first taxable year (to guaranteed amount) on an annual basis. Thus, if monthly payments are first received by a taxpayer on a calendar year basis in August, his total payments (to the extent that they reduce the guaranteed amount) for the taxable year would be divided by 5 and multiplied by 12. The guaranteed amount would then be divided by the result of this computation to obtain the guarantee period. If the contract merely guarantees that proceeds from a unit or units of a fund shall be paid for a fixed number of years or the life (or lives) of an annuitant (or annuitants), whichever is the longer, the fixed number of years is the guarantee period. The appropriate percentage in Table III or VII shall be applied to whichever of the following is the smaller: (i) the investment in the contract; or (ii) the product of the payments received in the first taxable year, placed on an annual basis, multiplied by the number of years for which payment of the proceeds of a unit or units is guaranteed.

(2) The principles of this paragraph may be illustrated by the following examples:

Example (1). Taxpayer A, a 50-year-old male purchases for $25,000 a contract which provides for variable monthly payments to be paid to him for his life. The contract also provides that if he should die before receiving payments for fifteen years, payments shall continue according to the original formula to his estate or beneficiary until payments have been made for that period. Beginning with the month of September, A receives payments which total $450 for the first taxable year of receipt. This amount, placed on an annual basis, is $1,350 ($450 divided by 4, or $112.50; $112.50 multiplied by 12, or $1,350). If there is no post-June 1986 investment in the contract, the guaranteed amount is considered to be $20,250 ($1,350×15), and the multiple from Table III (found in the same manner as in paragraph (b) of this section), 9 percent, applied to $20,250 (since this amount is less than the investment in the contract), results in a refund adjustment of $1,822.50. The latter amount, subtracted from the investment in the contract of $25,000, results in an adjusted investment in the contract of $23,177.50. If A dies before receiving payments for 15 years and the remaining payments are made to B, his beneficiary, B shall exclude the entire amount of such payments from his gross income until the amounts so received by B, together with the amount received by A and excludable from A's gross income, equal or exceed $25,000. Any excess and any payments thereafter received by B shall be fully includible in gross income.

Example (2). Assume the same facts as in example (1), except that the total investment in the contract was made after June 30, 1986. The applicable multiple found in Table VII is 3 percent. When this is applied to the guaranteed amount of $20,250, it results in a refund adjustment of $607.50. The adjusted investment in the contract in $24,392.50 ($25,000—$607.50).

(e) *Adjustment of the investment in the contract where more than one annuity element is provided for a single consideration.* In the case of contracts to which paragraph (b) of § 1.72–6 applies for the purpose of allocating the investment in the contract to two or more annuity elements which are provided for a single consideration, if one or more of such elements involves a refund feature, the portion of the investment in the contract properly allocable to each such element shall be adjusted for the refund feature before aggregating all the investments in order to obtain the exclusion ratio which is to apply to the contract as a whole.

Example (1). If taxpayer A, an insured 70 years of age, upon maturity of an endowment policy which cost him a net amount of $86,000, elected a dual settlement consisting of (1) monthly payments for his life aggregating $4,146 per year with 10 years' payments certain, and (2) monthly payments for his 60-year-old brother, B, aggregating $2,820 per year with 20 years' payments certain, the exclusion ratio to be used by both A and B if there is no post-June 1986 investment in the contract would be determined in the following manner:

A's expected return (A's payments per year of $4,146 multiplied by his life expectancy from Table 1 of 12.1)	$50,166.60
B's expected return (B's payments per year of $2,820 multiplied by his life expectancy from Table 1 of 18.2)	$51,324.00
Sum of expected returns to be used in determining exclusion ratio	$101,490.60
Percentage of total expected return attributable to A's expectancy of life ($50,166.60÷$101,490.60)	49.4

Percentage of total expected return attributable to B's expectancy of life ($51,324 ÷ $101,490.60)	50.6
Portion of investment in the contract allocable to A's annuity (49.4 percent of $86,000)	$42,484.00
Portion of investment in the contract allocable to B's annuity (50.6 percent of $86,000)	$43,516.00
Value of the refund feature with respect to A's annuity (percentage from Table III for male, age 70, and duration 10, or 21 percent, multiplied by lesser of guaranteed amount and allocable portion of investment in the contract, $41,460)	$8,707.00
A's allocable portion of the investment in the contract adjusted for refund feature ($42,484 less $8,707.00)	$33,777.00
Value of the refund feature with respect to B's annuity (percentage from Table III for male, age 60, and duration 20, or 25 percent, multiplied by lesser of guaranteed amount and allocable portion of investment in the contract, $43,516)	$10,879.00
B's allocable portion of the investment in the contract adjusted for refund feature ($43,516 less $10,879.00)	$32,637.00
Sum of A's and B's allocable portions of the investment in the contract after adjustment for the refund feature	$66,414.00
Exclusion ratio for the contract as a whole (total adjusted investment in the contract, $66,414, divided by the total expected return from above, $101,490.60) (percent)	65.4

Exmple (2). Assume the same facts as in example (1) except that the total investment in the contract was made after June 30, 1986. The exclusion ratio to be used by both A and B would be 56.9 percent, determined as follows:

A's expected return (A's payments per year of $4,146 multiplied by his life expectancy from Table V of 16.0)	$66,336.00
B's expected return (B's payments per year of $2,820 multiplied by his life expectancy from Table V of 24.2)	$68,244.00
Sum of expected returns to be used in determining exclusion ratio	$134,580.00
Percentage of total expected return attributable to A's expectancy of life ($66,336.00 ÷ $134,580.00)	49.3
Percentage of total expected return attributable to B's expectancy of life ($68,244.00 ÷ $134,580.00)	50.7
Portion of investment in the contract allocable to A's annuity (49.3 percent of $86,000)	$42,398.00
Portion of investment in the contract allocable to B's annuity (50.7 percent of $86,000)	$43,602.00
Value of the refund feature with respect to A's annuity (percentage from Table VII for age 70 and duration 10, or 11 percent, multiplied by lesser of the guaranteed amount and allocable portion of investment in the contract, $41,460)	$4,560.60
A's allocable portion of the investment in the contract adjusted for refund feature ($42,398 less $4,560.60)	$37,837.40
Value of the refund feature with respect to B's annuity (percentage from Table VII for age 60 and duration 20, or 11 percent, multiplied by lesser of guaranteed amount and allocable portion of investment in the contract, $43,602)	$4,796.22
B's allocable portion of the investment in the contract adjusted for refund feature ($43,602 less $4,796.22)	$38,805.78
Sum of A's and B's allocable portions of the investment in the contract after adjustment for the refund feature	$76,643.18
Exclusion ratio for the contract as a whole (total adjusted investment in the contract, $76,643.18, divided by the total expected return from above, $134,580.00) (percent)	56.9

(f) *Adjustment of investment in the contract with respect to contracts subject to § 1.72–6(d).* In the case of a contract to which § 1.72–6(d) (relating to contracts in which amounts were invested both before July 1, 1986, and after June 30, 1986) applies, this section is applied in the manner prescribed in § 1.72–6(d) and, in particular, § 1.72–6(d)(5)(vi).

Par. 6. Section 1.72–9 is amended by revising the introductory text preceding the tables and the concluding text following the tables and adding new Tables V, VI, VIA, VII, and VIII to read as follows:

§ 1.72-9 Tables.

The following tables are to be used in connection with computations under section 72 and the regulations thereunder. Tables I, II, IIA, III, and IV are to be used if the investment in the contract does not include a post-June 1986 investment in the contract (as defined in § 1.72–6(d)(3)). Tables V, VI, VIA, VII, and VIII are to be used if the investment in the contract includes a post-June 1986 investment in the contract (as defined in § 1.72–6(d)(3)).

In the case of a contract under which amounts are received as an annuity after June 30, 1986, a taxpayer receiving such amounts may elect to treat the entire investment in the contract as post-June 1986 investment in the contract and thus apply Tables V through VIII. A taxpayer may make the election for any taxable year in which such amounts are received by attaching to the taxpayer's return for such taxable year a statement that the taxpayer is electing under § 1.72–9 to treat the entire investment in the contract as post-June 1986 investment in the contract. The statement must contain the taxpayer's name, address, and taxpayer identification number. The election is irrevocable and applies with respect to all amounts that the taxpayer receives as an annuity under the contract in the taxable year for which the election is made or in any subsequent taxable year. (Note that for purposes of the examples in §§ 1.72–4 through 1.72–11 the election described in this section is disregarded (i.e., it assumed that the taxpayer does not make an election under this section).) See also § 1.72–6(d)(3) for rules treating the entire investment in a contract as post-June 1986 investment in a contract if the annuity starting date of the contract is after June 30, 1986, and the contract provides for a disqualifying form of payment or settlement, such as an option to receive a lump sum in full discharge of the obligation under the contract. In addition, see § 1.72–6(d) for special rules concerning the tables to be used and the separate computations required if the investment in the contract includes both a pre-July 1986 investment in the contract and a post-June 1986 investment in the contract and the election described in § 1.72–6(d)(6) is made with respect to the contract.

* * * * *

TABLE V—ORDINARY LIFE ANNUITIES ONE LIFE—EXPECTED RETURN MULTIPLES

Age	Multiple
5	76.8
6	75.8
7	74.7
8	73.7
9	72.7
10	71.7
11	70.7
12	69.7
13	68.8
14	67.8
15	66.8
16	65.8
17	64.8
18	63.9
19	62.9
20	61.9
21	60.9
22	59.9
23	59.0
24	58.0
25	57.0
26	56.0

TABLE V—ORDINARY LIFE ANNUITIES ONE LIFE—EXPECTED RETURN MULTIPLES—Continued

Age	Multiple
27	55.1
28	54.1
29	53.1
30	52.2
31	51.2
32	50.2
33	49.3
34	48.3
35	47.3
36	46.4
37	45.4
38	44.4
39	43.5
40	42.5
41	41.5
42	40.6
43	39.6
44	38.7
45	37.7
46	36.8
47	35.9
48	34.9
49	34.0
50	33.1
51	32.2
52	31.3
53	30.4
54	29.5
55	28.6
56	27.7

TABLE V—ORDINARY LIFE ANNUITIES ONE LIFE—EXPECTED RETURN MULTIPLES—Continued

Age	Multiple
57	26.8
58	25.9
59	25.0
60	24.2
61	23.3
62	22.5
63	21.6
64	20.8
65	20.0
66	19.2
67	18.4
68	17.6
69	16.8
70	16.0
71	15.3
72	14.6
73	13.9
74	13.2
75	12.5
76	11.9
77	11.2
78	10.6
79	10.0
80	9.5
81	8.9
82	8.4
83	7.9
84	7.4
85	6.9
86	6.5

TABLE V—ORDINARY LIFE ANNUITIES ONE LIFE—EXPECTED RETURN MULTIPLES—Continued

Age	Multiple
87	6.1
88	5.7
89	5.3
90	5.0
91	4.7
92	4.4
93	4.1
94	3.9
95	3.7
96	3.4
97	3.2
98	3.0
99	2.8
100	2.7
101	2.5
102	2.3
103	2.1
104	1.9
105	1.8
106	1.6
107	1.4
108	1.3
109	1.1
110	1.0
111	.9
112	.8
113	.7
114	.6
115	.5

TABLE VI.—ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES; TWO LIVES—EXPECTED RETURN MULTIPLES

Ages	5	6	7	8	9	10	11	12	13	14
5	83.8	83.3	82.8	82.4	82.0	81.6	81.2	80.8	80.6	80.3
6	83.3	82.8	82.3	81.8	81.4	81.0	80.6	80.3	79.9	79.6
7	82.8	82.3	81.8	81.3	80.9	80.4	80.0	79.6	79.3	78.9
8	82.4	81.8	81.3	80.8	80.3	79.9	79.4	79.0	78.6	78.3
9	82.0	81.4	80.9	80.3	79.8	79.3	78.9	78.4	78.0	77.6
10	81.6	81.0	80.4	79.9	79.3	78.8	78.3	77.9	77.4	77.0
11	81.2	80.6	80.0	79.4	78.9	78.3	77.8	77.3	76.9	76.4
12	80.8	80.3	79.6	79.0	78.4	77.9	77.3	76.8	76.3	75.9
13	80.6	79.9	79.3	78.8	78.0	77.4	76.9	76.3	75.8	75.3
14	80.3	79.6	78.9	78.3	77.6	77.0	76.4	75.9	75.3	74.8
15	80.0	79.3	78.6	77.9	77.3	76.6	76.0	75.4	74.9	74.3
16	79.8	79.0	78.3	77.6	76.9	76.3	75.6	75.0	74.4	73.9
17	79.5	78.8	78.0	77.3	76.6	75.9	75.3	74.6	74.0	73.4
18	79.3	78.5	77.8	77.0	76.3	75.6	74.9	74.3	73.6	73.0
19	79.1	78.3	77.5	76.8	76.0	75.3	74.6	73.9	73.3	72.6
20	78.9	78.1	77.3	76.5	75.8	75.0	74.3	73.6	72.9	72.3
21	78.7	77.9	77.1	76.3	75.5	74.8	74.0	73.3	72.6	71.9
22	78.6	77.7	76.9	76.1	75.3	74.5	73.8	73.0	72.3	71.6
23	78.4	77.6	76.7	75.9	75.1	74.3	73.5	72.8	72.0	71.3
24	78.3	77.4	76.6	75.7	74.9	74.1	73.3	72.6	71.8	71.1
25	78.2	77.3	76.4	75.6	74.8	73.9	73.1	72.3	71.6	70.8
26	78.0	77.2	76.3	75.4	74.6	73.8	72.9	72.1	71.3	70.6
27	77.9	77.1	76.2	75.3	74.4	73.6	72.8	71.9	71.1	70.3
28	77.8	76.9	76.1	75.2	74.3	73.4	72.6	71.8	70.9	70.1
29	77.7	76.8	76.0	75.1	74.2	73.3	72.5	71.6	70.8	70.0
30	77.7	76.8	75.9	75.0	74.1	73.2	72.3	71.5	70.6	69.8
31	77.6	76.7	75.8	74.9	74.0	73.1	72.2	71.3	70.5	69.6
32	77.5	76.6	75.7	74.8	73.9	73.0	72.1	71.2	70.3	69.5
33	77.5	76.5	75.6	74.7	73.8	72.9	72.0	71.1	70.2	69.3
34	77.4	76.5	75.5	74.6	73.7	72.8	71.9	71.0	70.1	69.2
35	77.3	76.4	75.5	74.5	73.6	72.7	71.8	70.9	70.0	69.1
36	77.3	76.3	75.4	74.5	73.5	72.6	71.7	70.8	69.9	69.0
37	77.2	76.3	75.4	74.4	73.5	72.6	71.6	70.7	69.8	68.9
38	77.2	76.2	75.3	74.4	73.4	72.5	71.6	70.6	69.7	68.8
39	77.2	76.2	75.3	74.3	73.4	72.4	71.5	70.6	69.6	68.7
40	77.1	76.2	75.2	74.3	73.3	72.4	71.4	70.5	69.6	68.6
41	77.1	76.1	75.2	74.2	73.3	72.3	71.4	70.4	69.5	68.6
42	77.0	76.1	75.1	74.2	73.2	72.3	71.3	70.4	69.4	68.5
43	77.0	76.1	75.1	74.1	73.2	72.2	71.3	70.3	69.4	68.5
44	77.0	76.0	75.1	74.1	73.1	72.2	71.2	70.3	69.3	68.4
45	77.0	76.0	75.0	74.1	73.1	72.2	71.2	70.2	69.3	68.4
46	76.9	76.0	75.0	74.0	73.1	72.1	71.2	70.2	69.3	68.3
47	76.9	75.9	75.0	74.0	73.1	72.1	71.1	70.2	69.2	68.3
48	76.9	75.9	75.0	74.0	73.0	72.1	71.1	70.1	69.2	68.2
49	76.9	75.9	74.9	74.0	73.0	72.0	71.1	70.1	69.1	68.2
50	76.9	75.9	74.9	73.9	73.0	72.0	71.0	70.1	69.1	68.2
51	76.8	75.9	74.9	73.9	73.0	72.0	71.0	70.1	69.1	68.1
52	76.8	75.9	74.9	73.9	72.9	72.0	71.0	70.0	69.1	68.1
53	76.8	75.8	74.9	73.9	72.9	71.9	71.0	70.0	69.0	68.1
54	76.8	75.8	74.8	73.9	72.9	71.9	71.0	70.0	69.0	68.1
55	76.8	75.8	74.8	73.9	72.9	71.9	70.9	70.0	69.0	68.0
56	76.8	75.8	74.8	73.8	72.9	71.9	70.9	69.9	69.0	68.0

TABLE VI.—ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES; TWO LIVES—EXPECTED RETURN MULTIPLES—Continued

Ages	5	6	7	8	9	10	11	12	13	14
57	76.8	75.8	74.8	73.8	72.9	71.9	70.9	69.9	69.0	68.0
58	76.8	75.8	74.8	73.8	72.8	71.9	70.9	69.9	68.9	68.0
59	76.7	75.8	74.8	73.8	72.8	71.9	70.9	69.9	68.9	68.0
60	76.7	75.8	74.8	73.8	72.8	71.8	70.9	69.9	68.9	67.9
61	76.7	75.7	74.8	73.8	72.8	71.8	70.9	69.9	68.9	67.9
62	76.7	75.7	74.8	73.8	72.8	71.8	70.8	69.9	68.9	67.9
63	76.7	75.7	74.8	73.8	72.8	71.8	70.8	69.9	68.9	67.9
64	76.7	75.7	74.7	73.8	72.8	71.8	70.8	69.8	68.9	67.9
65	76.7	75.7	74.7	73.8	72.8	71.8	70.8	69.8	68.9	67.9
66	76.7	75.7	74.7	73.7	72.8	71.8	70.8	69.8	68.9	67.9
67	76.7	75.7	74.7	73.7	72.8	71.8	70.8	69.8	68.8	67.9
68	76.7	75.7	74.7	73.7	72.8	71.8	70.8	69.8	68.8	67.9
69	76.7	75.7	74.7	73.7	72.7	71.8	70.8	69.8	68.8	67.8
70	76.7	75.7	74.7	73.7	72.7	71.8	70.8	69.8	68.8	67.8
71	76.7	75.7	74.7	73.7	72.7	71.8	70.8	69.8	68.8	67.8
72	76.7	75.7	74.7	73.7	72.7	71.8	70.8	69.8	68.8	67.8
73	76.7	75.7	74.7	73.7	72.7	71.7	70.8	69.8	68.8	67.8
74	76.7	75.7	74.7	73.7	72.7	71.7	70.8	69.8	68.8	67.8
75	76.7	75.7	74.7	73.7	72.7	71.7	70.8	69.8	68.8	67.8
76	76.6	75.7	74.7	73.7	72.7	71.7	70.8	69.8	68.8	67.8
77	76.6	75.7	74.7	73.7	72.7	71.7	70.8	69.8	68.8	67.8
78	76.6	75.7	74.7	73.7	72.7	71.7	70.7	69.8	68.8	67.8
79	76.6	75.7	74.7	73.7	72.7	71.7	70.7	69.8	68.8	67.8
80	76.6	75.7	74.7	73.7	72.7	71.7	70.7	69.8	68.8	67.8
81	76.6	75.7	74.7	73.7	72.7	71.7	70.7	69.8	68.8	67.8
82	76.6	75.7	74.7	73.7	72.7	71.7	70.7	69.8	68.8	67.8
83	76.6	75.7	74.7	73.7	72.7	71.7	70.7	69.8	68.8	67.8
84	76.6	75.7	74.7	73.7	72.7	71.7	70.7	69.8	68.8	67.8
85	76.6	75.7	74.7	73.7	72.7	71.7	70.7	69.8	68.8	67.8
86	76.6	75.7	74.7	73.7	72.7	71.7	70.7	69.8	68.8	67.8
87	76.6	75.7	74.7	73.7	72.7	71.7	70.7	69.8	68.8	67.8
88	76.6	75.7	74.7	73.7	72.7	71.7	70.7	69.8	68.8	67.8
89	76.6	75.7	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
90	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
91	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
92	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
93	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
94	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
95	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
96	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
97	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
98	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
99	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
100	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
101	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
102	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
103	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
104	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
105	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
106	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
107	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
108	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
109	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
110	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
111	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
112	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
113	76.8	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
114	76.6	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8
115	76.8	75.6	74.7	73.7	72.7	71.7	70.7	69.7	68.8	67.8

TABLE VI.—ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES; TWO LIVES—EXPECTED RETURN MULTIPLES

Ages	15	16	17	18	19	20	21	22	23	24
15	73.8	73.3	72.9	72.4	72.0	71.6	71.3	70.9	70.6	70.3
16	73.3	72.8	72.3	71.9	71.4	71.0	70.7	70.3	70.0	69.6
17	72.9	72.3	71.8	71.3	70.9	70.5	70.0	69.7	69.3	69.0
18	72.4	71.9	71.3	70.8	70.4	69.0	69.5	69.9	68.7	68.3
19	72.0	71.4	70.9	70.4	69.8	69.4	68.9	68.5	68.1	67.7
20	71.6	71.0	70.5	69.9	69.4	68.8	68.4	67.9	67.5	67.1
21	71.3	70.7	70.0	69.5	68.9	68.4	67.9	67.4	66.9	66.5
22	70.9	70.3	69.7	69.0	68.5	67.9	67.4	66.9	66.4	65.9
23	70.6	70.0	69.3	68.7	68.1	67.5	66.9	66.4	65.9	65.4
24	70.3	69.6	69.0	68.3	67.7	67.1	66.5	65.9	65.4	64.9
25	70.1	69.3	68.6	68.0	67.3	66.7	66.1	65.5	64.9	64.4
26	69.8	69.1	68.3	67.6	67.0	66.3	65.7	65.1	64.5	63.9
27	69.6	68.8	68.1	67.3	66.7	66.0	65.3	64.7	64.1	63.5
28	69.3	68.6	67.8	67.1	66.4	65.7	65.0	64.3	63.7	63.1
29	69.1	68.4	67.6	66.9	66.1	65.4	64.7	64.0	63.3	62.7
30	69.0	68.2	67.4	66.6	65.8	65.1	64.4	63.7	63.0	62.3
31	68.8	68.0	67.2	66.4	65.6	64.8	64.1	63.4	62.7	62.0
32	68.6	67.8	67.0	66.2	65.4	64.6	63.8	63.1	62.4	61.7
33	68.5	67.6	66.8	66.0	65.2	64.4	63.6	62.8	62.1	61.4
34	68.3	67.5	66.6	65.8	65.0	64.2	63.4	62.6	61.9	61.1
35	68.2	67.4	66.5	65.6	64.8	64.0	63.2	62.4	61.6	60.9
36	68.1	67.2	66.4	65.5	64.7	63.8	63.0	62.2	61.4	60.6
37	68.0	67.1	66.2	65.4	64.5	63.7	62.8	62.0	61.2	60.4
38	67.9	67.0	66.1	65.2	64.4	63.5	62.7	61.9	61.0	60.2
39	67.8	66.9	66.0	65.1	64.2	63.4	62.5	61.7	60.8	60.0
40	67.7	66.8	65.9	65.0	64.1	63.3	62.4	61.5	60.7	59.9

TABLE VI.—ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES; TWO LIVES—EXPECTED RETURN MULTIPLES—Continued

Ages	15	16	17	18	19	20	21	22	23	24
41	67.7	66.7	65.8	64.9	64.0	63.1	62.3	61.4	60.5	59.7
42	67.6	66.7	65.7	64.8	63.9	63.0	62.2	61.3	60.4	59.6
43	67.5	66.6	65.7	64.8	63.8	62.9	62.1	61.2	60.3	59.4
44	67.5	66.5	65.6	64.7	63.8	62.9	62.0	61.1	60.2	59.3
45	67.4	66.5	65.5	64.6	63.7	62.8	61.9	61.0	60.1	59.2
46	67.4	66.4	65.4	64.6	63.6	62.7	61.8	60.9	60.0	59.1
47	67.3	66.4	65.4	64.5	63.6	62.6	61.7	60.8	59.9	59.0
48	67.3	66.3	65.4	64.4	63.5	62.6	61.8	60.7	59.8	58.9
49	67.2	66.3	65.3	64.4	63.5	62.5	61.8	60.7	59.7	58.8
50	67.2	66.2	65.3	64.3	63.4	62.5	61.5	60.6	59.7	58.8
51	67.2	66.2	65.3	64.3	63.4	62.4	61.5	60.5	59.6	58.7
52	67.1	66.2	65.2	64.3	63.3	62.4	61.4	60.5	59.6	58.6
53	67.1	66.2	65.2	64.2	63.3	62.3	61.4	60.4	59.5	58.6
54	67.1	66.1	65.2	64.2	63.2	62.3	61.3	60.4	59.5	58.5
55	67.1	66.1	65.1	64.2	63.2	62.3	61.3	60.4	59.4	58.5
56	67.0	66.1	65.1	64.1	63.2	62.2	61.3	60.3	59.4	58.4
57	67.0	66.1	65.1	64.1	63.2	62.2	61.2	60.3	59.3	58.4
58	67.0	66.0	65.1	64.1	63.1	62.2	61.2	60.3	59.3	58.4
59	67.0	66.0	65.0	64.1	63.1	62.1	61.2	60.2	59.3	58.3
60	67.0	66.0	65.0	64.1	63.1	62.1	61.2	60.2	59.2	58.3
61	67.0	66.0	65.0	64.0	63.1	62.1	61.1	60.2	59.2	58.3
62	66.9	66.0	65.0	64.0	63.1	62.1	61.1	60.2	59.2	58.2
63	66.9	66.0	65.0	64.0	63.0	62.1	61.1	60.1	59.2	58.2
64	66.9	65.9	65.0	64.0	63.0	62.1	61.1	60.1	59.2	58.2
65	66.9	65.9	65.0	64.0	63.0	62.0	61.1	60.1	59.1	58.2
66	66.9	65.9	64.9	64.0	63.0	62.0	61.1	60.1	59.1	58.2
67	66.9	65.9	64.9	64.0	63.0	62.0	61.1	60.1	59.1	58.1
68	66.9	65.9	64.9	64.0	63.0	62.0	61.0	60.1	59.1	58.1
69	66.9	65.9	64.9	63.9	63.0	62.0	61.0	60.0	59.1	58.1
70	66.9	65.9	64.9	63.9	63.0	62.0	61.0	60.0	59.1	58.1
71	66.9	65.9	64.9	63.9	62.9	62.0	61.0	60.0	59.1	58.1
72	66.9	65.9	64.9	63.9	62.9	62.0	61.0	60.0	59.0	58.1
73	66.8	65.9	64.9	63.9	62.9	62.0	61.0	60.0	59.0	58.1
74	66.8	65.9	64.9	63.9	62.9	62.0	61.0	60.0	59.0	58.1
75	66.8	65.9	64.9	63.9	62.9	61.9	61.0	60.0	59.0	58.1
76	66.8	65.9	64.9	63.9	62.9	61.9	61.0	60.0	59.0	58.0
76	66.8	65.9	64.9	63.9	62.9	61.9	61.0	60.0	59.0	58.0
77	66.8	65.9	64.9	63.9	63.9	62.9	61.0	60.0	59.0	58.0
79	66.8	65.8	64.9	63.9	62.9	61.9	61.0	60.0	59.0	58.0
79	66.8	65.8	64.9	63.9	62.9	61.9	61.0	60.0	59.0	58.0
80	66.8	65.9	64.9	63.9	62.9	61.9	60.9	60.0	59.0	58.0
81	66.8	65.8	64.9	63.9	62.9	61.9	60.9	60.0	59.0	58.0
82	66.8	65.8	64.8	63.9	62.9	61.9	60.9	60.0	59.0	58.0
83	66.8	65.8	64.9	63.9	62.9	61.9	60.9	60.0	59.0	58.0
84	66.8	65.8	64.8	63.9	62.9	61.9	60.9	60.0	59.0	58.0
85	66.8	65.8	64.8	63.9	62.9	61.9	60.9	60.0	59.0	58.0
86	66.8	65.8	64.8	63.9	62.9	61.9	60.9	60.0	59.0	58.0
87	66.8	65.8	64.8	63.9	62.9	61.9	60.9	60.0	59.0	58.0
88	66.8	65.8	64.8	63.9	62.9	61.9	60.9	60.0	59.0	58.0
89	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
90	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
91	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
92	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
93	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
94	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
95	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
96	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
97	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
98	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
99	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
100	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
101	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
102	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
103	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
104	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
105	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
106	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
107	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
108	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
109	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
110	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
111	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
112	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
113	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
114	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0
115	66.8	65.8	64.8	63.9	62.9	61.9	60.9	59.9	59.0	58.0

TABLE VI.—ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES; TWO LIVES—EXPECTED RETURN MULTIPLES

Ages	25	26	27	28	29	30	31	32	33	34
25	63.9	63.4	62.9	62.5	62.1	61.7	61.3	61.0	60.7	60.4
26	63.4	62.9	62.4	61.9	61.5	61.1	60.7	60.4	60.0	59.7
27	62.9	62.4	61.9	61.4	60.9	60.5	60.1	59.7	59.4	59.0
28	62.5	61.9	61.4	60.9	60.4	60.0	59.5	59.1	58.7	58.4
29	62.1	61.5	60.9	60.4	59.9	59.4	59.0	58.5	58.1	57.7
30	61.7	61.1	60.5	60.0	59.4	58.9	58.4	58.0	57.5	57.1
31	61.3	60.7	60.1	59.5	59.0	58.4	57.9	57.4	57.0	56.5
32	61.0	60.4	59.7	59.1	58.5	58.0	57.4	56.9	56.4	56.0
33	60.7	60.0	59.4	58.7	58.1	57.5	57.0	56.4	55.9	55.5

TABLE VI.—ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES; TWO LIVES—EXPECTED RETURN MULTIPLES—Continued

Ages	25	26	27	28	29	30	31	32	33	34
34	60.4	59.7	59.0	58.4	57.7	57.1	56.5	56.0	55.5	54.9
35	60.1	59.4	58.7	58.0	57.4	56.7	56.1	55.6	55.0	54.5
36	59.9	59.1	58.4	57.7	57.0	56.4	55.8	55.1	54.6	54.0
37	59.6	58.9	58.1	57.4	56.7	56.0	55.4	54.8	54.2	53.6
38	59.4	58.6	57.9	57.9	56.4	55.7	55.1	54.4	53.8	53.2
39	59.2	58.4	57.7	56.9	56.2	55.4	54.7	54.1	53.4	52.8
40	59.0	58.2	57.4	56.7	55.9	55.2	54.5	53.8	53.1	52.4
41	58.9	58.0	57.2	56.4	55.7	54.9	54.2	53.5	52.8	52.1
42	58.7	57.9	57.1	56.2	55.5	54.7	53.9	53.2	52.5	51.8
43	58.6	57.7	56.9	56.1	55.3	54.5	53.7	52.9	52.2	51.5
44	58.4	57.6	56.7	55.9	55.1	54.3	53.5	52.7	52.0	51.2
45	58.3	57.4	56.6	55.7	54.9	54.1	53.3	52.5	51.7	51.0
46	58.2	57.3	56.5	55.6	54.8	53.9	53.1	52.3	51.5	50.7
47	56.1	57.2	56.3	55.5	54.6	53.8	52.9	52.1	51.3	50.5
48	56.0	57.1	56.2	55.3	54.5	53.6	52.8	51.9	51.1	50.3
49	57.9	57.0	56.1	55.2	54.4	53.5	52.6	51.8	51.0	50.1
50	57.8	56.9	56.0	55.1	54.2	53.4	52.5	51.7	50.8	50.0
51	57.8	56.9	55.9	55.0	54.1	53.3	52.4	51.5	50.7	49.8
52	57.7	56.8	55.9	55.0	54.1	53.2	52.3	51.4	50.5	49.7
53	57.6	56.7	55.8	54.9	54.0	53.1	52.2	51.3	50.4	49.6
54	57.6	56.7	55.7	54.8	53.9	53.0	52.1	51.2	50.3	49.4
55	57.5	56.6	55.7	54.7	53.8	52.9	52.0	51.1	50.2	49.3
56	57.5	56.5	55.6	54.7	53.8	52.8	51.9	51.0	50.1	49.2
57	57.4	56.5	55.6	54.6	53.7	52.8	51.9	50.9	50.0	49.1
58	57.4	56.5	55.5	54.6	53.6	52.7	51.8	50.9	50.0	49.1
59	57.4	56.4	55.5	54.5	53.6	52.7	51.7	50.8	49.9	49.0
60	57.3	56.4	55.4	54.5	53.6	52.6	51.7	50.8	49.8	48.9
61	57.3	56.4	55.4	54.5	53.5	52.6	51.6	50.7	49.8	48.9
62	57.3	56.3	55.4	54.4	53.5	52.5	51.6	50.7	49.7	48.8
63	57.3	56.3	55.3	54.4	53.4	52.5	51.6	50.6	49.7	48.7
64	57.2	56.3	55.3	54.4	53.4	52.5	51.5	50.6	49.6	48.7
65	57.2	56.3	55.3	54.3	53.4	52.4	51.5	50.5	49.6	48.7
66	57.2	56.2	55.3	54.3	53.4	52.4	51.5	50.5	49.6	48.6
67	57.2	56.2	55.3	54.3	53.3	52.4	51.4	50.5	49.5	48.6
68	57.2	56.2	55.2	54.3	53.3	52.4	51.4	50.4	49.5	48.6
69	57.1	56.2	55.2	54.3	53.3	52.3	51.4	50.4	49.5	48.5
70	57.1	56.2	55.2	54.2	53.3	52.3	51.4	50.4	49.4	48.5
71	57.1	56.2	55.2	54.2	53.3	52.3	51.3	50.4	49.4	48.5
72	57.1	56.1	55.2	54.2	53.2	52.3	51.3	50.4	49.4	48.5
73	57.1	56.1	55.2	54.2	53.2	52.3	51.3	50.3	49.4	48.4
74	57.1	56.1	55.2	54.2	53.2	52.3	51.3	50.3	49.4	48.4
75	57.1	56.1	55.1	54.2	53.2	52.2	51.3	50.3	49.4	48.4
76	57.1	56.1	55.1	54.2	53.2	52.2	51.3	50.3	49.3	48.4
77	57.1	56.1	55.1	54.2	53.2	52.2	51.3	50.3	49.3	48.4
78	57.1	56.1	55.1	54.2	53.2	52.2	51.3	50.3	49.3	48.4
79	57.1	56.1	55.1	54.1	53.2	52.2	51.2	50.3	49.3	48.4
80	57.1	56.1	55.1	54.1	53.2	52.2	51.2	50.3	49.3	48.3
81	57.0	56.1	55.1	54.1	53.2	52.2	51.2	50.3	49.3	48.3
82	57.0	56.1	55.1	54.1	53.2	52.2	51.2	50.3	49.3	48.3
83	57.0	56.1	55.1	54.1	53.2	52.2	51.2	50.3	49.3	48.3
84	57.0	56.1	55.1	54.1	53.2	52.2	51.2	50.3	49.3	48.3
85	57.0	56.1	55.1	54.1	53.2	52.2	51.2	50.2	49.3	48.3
86	57.0	56.1	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
87	57.0	56.1	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
88	57.0	56.1	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
89	57.0	56.1	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
90	57.0	56.1	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
91	57.0	56.1	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
92	57.0	56.1	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
93	57.0	56.1	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
94	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
95	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
96	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
97	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
98	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
99	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
100	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
101	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
102	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
103	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
104	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
105	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
106	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
107	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
108	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
109	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
110	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
111	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
112	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
113	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
114	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3
115	57.0	56.0	55.1	54.1	53.1	52.2	51.2	50.2	49.3	48.3

TABLE VI.—ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES; TWO LIVES—EXPECTED RETURN MULTIPLES

Ages	35	36	37	38	39	40	41	42	43	44
35	54.0	53.5	53.0	52.6	52.2	51.8	51.4	51.1	50.8	50.5
36	53.5	53.0	52.5	52.0	51.6	51.2	50.8	50.4	50.1	49.8
37	53.0	52.5	52.0	51.5	51.0	50.6	50.2	49.8	49.5	49.1

TABLE VI.—ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES; TWO LIVES—EXPECTED RETURN MULTIPLES—Continued

Ages	35	36	37	38	39	40	41	42	43	44
38	52.6	52.0	51.5	51.0	50.5	50.0	49.8	49.2	48.8	48.5
39	52.2	51.6	51.0	50.5	50.0	49.5	49.1	48.8	48.2	47.8
40	51.8	51.2	50.6	50.0	49.5	49.0	48.5	48.1	47.8	47.2
41	51.4	50.8	50.2	49.6	49.1	48.5	48.0	47.5	47.1	46.7
42	51.1	50.4	49.8	49.2	48.6	48.1	47.5	47.0	46.6	46.1
43	50.8	50.1	49.5	48.8	48.2	47.6	47.1	46.8	46.0	45.6
44	50.5	49.8	49.1	48.5	47.8	47.2	46.7	46.1	45.6	45.1
45	50.2	49.5	48.8	48.1	47.5	46.9	46.3	45.7	45.1	44.6
46	50.0	49.2	48.5	47.8	47.2	46.5	45.9	45.3	44.7	44.1
47	49.7	49.0	48.3	47.5	46.8	46.2	45.5	44.9	44.3	43.7
48	49.5	48.8	48.0	47.3	46.6	45.9	45.2	44.5	43.8	43.3
49	49.3	48.5	47.8	47.0	46.3	45.6	44.9	44.2	43.6	42.9
50	49.2	48.4	47.6	46.8	46.0	45.3	44.6	43.9	43.2	42.6
51	49.0	48.2	47.4	46.6	45.8	45.1	44.3	43.6	42.9	44.2
52	48.8	48.0	47.2	46.4	45.6	44.8	44.1	43.3	42.6	41.9
53	48.7	47.9	47.0	46.2	45.4	44.6	43.9	43.1	42.4	41.7
54	48.6	47.7	46.9	46.0	45.2	44.4	43.6	42.9	42.1	41.4
55	48.5	47.6	46.7	45.9	45.1	44.2	43.4	42.7	41.8	41.2
56	48.3	47.5	46.6	45.8	44.9	44.1	43.3	42.5	41.7	40.9
57	48.3	47.4	46.5	45.6	44.8	43.9	43.1	42.3	41.5	40.7
58	48.2	47.3	46.4	45.5	44.7	43.8	43.0	42.1	41.3	40.5
59	48.1	47.2	46.3	45.4	44.5	43.7	42.8	42.0	41.2	40.4
60	48.0	47.1	46.2	45.3	44.4	43.6	42.7	41.9	41.0	40.2
61	47.9	47.0	46.1	45.2	44.3	43.5	42.6	41.7	40.9	40.0
62	47.9	47.0	46.0	45.1	44.2	43.4	42.5	41.6	40.8	39.9
63	47.8	46.9	46.0	45.1	44.2	43.3	42.4	41.5	40.6	39.8
64	47.8	46.8	45.9	45.0	44.1	43.2	42.3	41.4	40.5	39.7
65	47.7	46.8	45.9	44.9	44.0	43.1	42.2	41.3	40.4	39.6
66	47.7	46.7	45.8	44.9	44.0	43.1	42.2	41.3	40.4	39.5
67	47.6	46.7	45.8	44.8	43.9	43.0	42.1	41.2	40.3	39.4
68	47.6	46.7	45.7	44.8	43.9	42.9	42.0	41.1	40.2	39.3
69	47.6	46.6	45.7	44.8	43.8	42.9	42.0	41.1	40.2	39.3
70	47.5	46.6	45.7	44.7	43.8	42.9	41.9	41.0	40.1	39.2
71	47.5	46.6	45.6	44.7	43.8	42.8	41.9	41.0	40.1	39.1
72	47.5	46.6	45.6	44.7	43.7	42.8	41.9	40.9	40.0	39.1
73	47.5	46.5	45.6	44.6	43.7	42.8	41.8	40.9	40.0	39.0
74	47.5	46.5	45.6	44.6	43.7	42.7	41.8	40.9	39.9	39.0
75	47.4	46.5	45.5	44.6	43.6	42.7	41.8	40.8	39.9	39.0
76	47.4	46.5	45.5	44.6	43.6	42.7	41.7	40.8	39.9	38.9
77	47.4	46.5	45.6	44.6	43.6	42.7	41.7	40.8	39.8	38.9
78	47.4	46.4	45.5	44.5	43.6	42.6	41.7	40.7	39.8	38.9
79	47.4	46.4	45.5	44.5	43.6	42.6	41.7	40.7	39.8	38.9
80	47.4	46.4	45.5	44.5	43.6	42.6	41.7	40.7	39.8	38.8
81	47.4	46.4	45.5	44.5	43.6	42.6	41.6	40.7	39.8	38.8
82	47.4	46.4	45.4	44.5	43.5	42.6	41.6	40.7	39.7	38.8
83	47.4	46.4	45.4	44.5	43.5	42.6	41.6	40.7	39.7	38.8
84	47.4	46.4	45.4	44.5	43.5	42.6	41.6	40.7	39.7	38.8
85	47.4	46.4	45.4	44.5	43.5	42.6	41.6	40.7	39.7	38.8
86	47.3	46.4	45.4	44.5	43.5	42.5	41.6	40.6	39.7	38.8
87	47.3	46.4	45.4	44.5	43.5	42.5	41.6	40.6	39.7	38.7
88	47.3	46.4	45.4	44.4	43.5	42.5	41.6	40.6	39.7	38.7
89	47.3	46.4	45.4	44.4	43.5	42.5	41.6	40.6	39.7	38.7
90	47.3	46.4	45.4	44.4	43.5	42.5	41.6	40.6	39.7	38.7
91	47.3	46.4	45.4	44.4	43.5	42.5	41.6	40.6	39.7	38.7
92	47.3	46.4	45.4	44.4	43.5	42.5	41.6	40.6	39.7	38.7
93	47.3	46.4	45.4	44.4	43.5	42.5	41.6	40.6	39.7	38.7
94	47.3	46.4	45.4	44.4	43.5	42.5	41.6	40.6	39.7	38.7
95	47.3	46.4	45.4	44.4	43.5	42.5	41.6	40.6	39.7	38.7
96	47.3	46.4	45.4	44.4	43.5	42.5	41.6	40.6	39.7	38.7
97	47.3	46.4	45.4	44.4	43.5	42.5	41.6	40.6	39.6	38.7
98	47.3	46.4	45.4	44.4	43.5	42.5	41.6	40.6	39.6	38.7
99	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
100	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
101	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
102	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
103	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
104	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
105	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
106	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
107	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
108	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
109	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
110	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
111	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
112	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
113	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
114	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7
114	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.8	38.7
115	47.3	46.4	45.4	44.4	43.5	42.5	41.5	40.6	39.6	38.7

TABLE VI.—ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES; TWO LIVES—EXPECTED RETURN MULTIPLES

Ages	45	46	47	48	49	50	51	52	53	54
45	44.1	43.6	43.2	42.7	42.3	42.0	41.6	41.3	41.0	40.7
46	43.6	43.1	42.6	42.2	41.8	41.4	41.0	40.6	40.3	40.0
47	43.2	42.6	42.1	41.7	41.2	40.8	40.4	40.0	39.7	39.3
48	42.7	42.2	41.7	41.2	40.7	40.2	39.8	39.4	39.0	38.7
49	42.3	41.8	41.2	40.7	40.2	39.7	39.3	38.8	38.4	38.1
50	42.0	41.4	40.8	40.2	39.7	39.2	38.7	38.3	37.9	37.5

TABLE VI.—ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES; TWO LIVES—EXPECTED RETURN MULTIPLES—Continued

Ages	45	46	47	48	49	50	51	52	53	54
51	41.6	41.0	40.4	39.8	39.3	38.7	38.2	37.8	37.3	36.9
52	41.3	40.8	40.0	39.4	38.8	38.3	37.8	37.3	36.8	36.4
53	41.0	40.3	39.7	39.0	38.4	37.9	37.3	36.8	36.3	35.8
54	40.7	40.0	39.3	38.7	38.1	37.5	36.9	36.4	35.8	35.3
55	40.4	39.7	39.0	38.4	37.7	37.1	36.5	35.9	35.4	34.9
56	40.2	39.5	38.7	38.1	37.4	36.8	36.1	35.5	35.0	34.4
57	40.0	39.2	38.5	37.8	37.1	36.4	35.8	35.2	34.6	34.0
58	39.7	39.0	38.2	37.5	36.8	36.1	35.5	34.8	34.2	33.6
59	39.6	38.8	38.0	37.3	36.6	35.9	35.2	34.5	33.9	33.3
60	39.4	38.6	37.8	37.1	36.3	35.6	34.9	34.2	33.6	32.9
61	39.2	38.4	37.8	36.9	36.1	35.4	34.6	33.9	33.3	32.6
62	39.1	38.3	37.5	36.7	35.9	35.1	34.4	33.7	33.0	32.3
63	38.9	38.1	37.3	36.5	35.7	34.9	34.2	33.5	32.7	32.0
64	38.8	38.0	37.2	36.3	35.5	34.8	34.0	33.2	32.5	31.8
65	38.7	37.9	37.0	36.2	35.4	34.6	33.8	33.0	32.3	31.6
66	38.6	37.8	36.9	36.1	35.2	34.4	33.6	32.9	32.1	31.4
67	38.5	37.7	36.8	36.0	35.1	34.3	33.5	32.7	31.9	31.2
68	38.4	37.6	36.7	35.8	35.0	34.2	33.4	32.5	31.8	31.0
69	38.4	37.5	36.6	35.7	34.9	34.1	33.2	32.4	31.6	30.8
70	38.3	37.4	36.5	35.7	34.8	34.0	33.1	32.3	31.5	30.7
71	38.2	37.3	36.5	35.6	34.7	33.9	33.0	32.2	31.4	30.5
72	38.2	37.3	36.4	35.5	34.6	33.8	32.9	32.1	31.2	30.4
73	38.1	37.2	36.3	35.4	34.6	33.7	32.8	32.0	31.1	30.3
74	38.1	37.2	36.3	35.4	34.5	33.6	32.8	31.9	31.1	30.2
75	38.1	37.1	36.2	35.3	34.5	33.6	32.7	31.8	31.0	30.1
76	38.0	37.1	36.2	35.3	34.4	33.5	32.6	31.8	30.9	30.1
77	38.0	37.1	36.2	35.3	34.4	33.5	32.6	31.7	30.8	30.0
78	38.0	37.0	36.1	35.2	34.3	33.4	32.5	31.7	30.8	29.9
79	37.9	37.0	36.1	35.2	34.3	33.4	32.5	31.6	30.7	29.9
80	37.9	37.0	36.1	35.2	34.2	33.4	32.5	31.6	30.7	29.8
81	37.9	37.0	36.0	35.1	34.2	33.3	32.4	31.5	30.7	29.8
82	37.9	36.9	36.0	35.1	34.2	33.3	32.4	31.5	30.6	29.7
83	37.9	36.9	36.0	35.1	34.2	33.3	32.4	31.5	30.6	29.7
84	37.8	36.9	36.9	35.0	34.2	33.2	32.3	31.4	30.6	29.7
85	37.8	36.9	36.0	35.1	34.1	33.2	32.3	31.4	30.5	29.6
86	38.8	36.9	36.0	35.0	34.1	33.2	32.3	31.4	30.5	29.6
87	37.8	36.9	35.9	35.0	34.1	33.2	32.3	31.4	30.5	29.8
88	37.8	36.9	35.9	35.0	34.1	33.2	32.3	31.4	30.5	29.6
89	37.8	36.9	35.9	35.0	34.1	33.2	32.3	31.4	30.5	29.8
90	37.8	36.9	35.9	35.0	34.1	33.2	32.3	31.3	30.5	29.6
91	37.8	36.8	35.9	35.0	34.1	33.2	32.2	31.3	30.4	29.5
92	37.8	36.8	35.9	35.0	34.1	33.2	32.2	31.3	30.4	29.5
93	37.8	36.8	35.9	35.0	34.1	33.1	32.2	31.3	30.4	29.5
94	37.8	36.8	35.9	35.0	34.1	33.1	32.2	31.3	30.4	29.5
95	37.8	36.8	35.9	35.0	34.0	33.1	32.2	31.3	30.4	29.5
96	37.8	36.8	35.9	35.0	34.0	33.1	32.2	31.3	30.4	29.5
97	37.8	36.8	35.9	35.0	34.0	33.1	32.2	31.3	30.4	29.5
98	37.8	36.8	35.9	35.0	34.0	33.1	32.2	31.3	30.4	29.5
99	37.8	36.8	35.9	35.0	34.0	33.1	32.2	31.3	30.4	29.5
100	37.8	36.8	35.9	35.0	34.0	33.1	32.2	31.3	30.4	29.5
101	37.8	36.8	35.9	35.0	34.0	33.1	32.2	31.3	30.4	29.5
102	37.8	36.8	35.9	35.0	34.0	33.1	32.2	31.3	30.4	29.5
103	37.7	36.8	35.8	34.9	34.0	33.1	32.2	31.3	30.4	29.5
104	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5
105	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5
106	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5
107	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5
108	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5
109	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5
110	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5
111	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5
112	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5
113	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5
114	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5
115	37.7	36.8	35.9	34.9	34.0	33.1	32.2	31.3	30.4	29.5

TABLE VI.—ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES; TWO LIVES—EXPECTED RETURN MULTIPLES

Ages	55	56	57	58	59	60	61	62	63	64
55	34.4	33.9	33.5	33.1	32.7	32.3	32.0	31.7	31.4	31.1
56	33.9	33.4	33.0	32.5	32.1	31.7	31.4	31.0	30.7	30.4
57	33.5	33.0	32.5	32.0	31.6	31.2	30.8	30.4	30.1	29.8
58	33.1	32.5	32.0	31.5	31.1	30.6	30.2	29.9	29.5	29.2
59	32.7	32.1	31.6	31.1	30.6	30.1	29.7	29.3	28.9	28.6
60	32.3	31.7	31.2	30.6	30.1	29.7	29.2	28.8	28.4	28.0
61	32.0	31.4	30.8	30.2	29.7	29.2	28.7	28.3	27.8	27.4
62	31.7	31.0	30.4	29.9	29.3	28.8	28.3	27.8	27.3	26.9
63	31.4	30.7	30.1	29.5	28.9	28.4	27.8	27.3	26.9	26.4
64	31.1	30.4	29.8	29.2	28.6	28.0	27.4	26.9	26.4	25.9
65	30.9	30.2	29.5	28.9	28.2	27.6	27.1	26.5	26.0	25.5
66	30.6	29.9	29.2	28.6	27.9	27.3	26.7	26.1	25.6	25.1
67	30.4	29.7	29.0	28.3	27.6	27.0	26.4	25.8	25.2	24.7
68	30.2	29.5	28.8	28.1	27.4	26.7	26.1	25.5	24.9	24.3
69	30.1	29.3	28.6	27.8	27.1	26.5	25.8	25.2	24.6	24.0
70	29.9	29.1	28.4	27.6	26.9	26.2	25.8	24.9	24.3	23.7
71	29.7	29.0	28.2	27.5	26.7	26.0	25.3	24.7	24.0	23.4
72	29.6	28.8	28.1	27.3	26.5	25.8	25.1	24.4	23.8	23.1
73	29.5	28.7	27.9	27.1	26.4	25.6	24.9	24.2	23.5	22.9
74	29.4	28.6	27.8	27.0	26.2	25.5	24.7	24.0	23.3	22.7
75	29.3	28.5	27.7	26.9	26.1	25.3	24.6	23.8	23.1	22.4

TABLE VI.—ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES; TWO LIVES—EXPECTED RETURN MULTIPLES—Continued

Ages	55	56	57	58	59	60	61	62	63	64
76	29.2	28.4	27.6	26.8	26.0	25.2	24.4	23.7	23.0	22.3
77	29.1	28.3	27.5	26.7	25.9	25.1	24.3	23.6	22.8	22.1
78	29.1	28.2	27.4	26.6	25.8	25.0	24.2	23.4	22.7	21.9
79	29.0	28.2	27.3	26.5	25.7	24.9	24.1	23.3	22.6	21.8
80	29.0	28.1	27.3	26.4	25.6	24.8	24.0	23.2	22.4	21.7
81	28.9	28.1	27.2	26.4	25.5	24.7	23.9	23.1	22.3	21.6
82	28.9	28.0	27.2	26.3	25.5	24.6	23.8	23.0	22.3	21.5
83	28.8	28.0	27.1	26.3	25.4	24.6	23.8	23.0	22.2	21.4
84	28.8	27.9	27.1	26.2	25.4	24.5	23.7	22.9	22.1	21.3
85	28.8	27.9	27.0	26.2	25.3	24.5	23.7	22.8	22.0	21.3
86	28.7	27.9	27.0	26.1	25.3	24.5	23.6	22.8	22.0	21.2
87	28.7	27.8	27.0	26.1	25.3	24.4	23.6	22.8	21.9	21.1
88	28.7	27.8	27.0	26.1	25.2	24.4	23.5	22.7	21.9	21.1
89	28.7	27.8	26.9	26.1	25.2	24.4	23.5	22.7	21.9	21.1
90	28.7	27.8	26.9	26.1	25.2	24.3	23.5	22.7	21.8	21.0
91	28.7	27.8	26.9	26.0	25.2	24.3	23.5	22.6	21.8	21.0
92	28.6	27.8	26.9	26.0	25.2	24.3	23.5	22.8	21.8	21.0
93	28.6	27.8	26.9	26.0	25.1	24.3	23.4	22.8	21.8	20.9
94	28.6	27.7	26.9	26.0	25.1	24.3	23.4	22.6	21.7	20.9
95	28.6	27.7	26.9	26.0	25.1	24.3	23.4	22.6	21.7	20.9
96	28.6	27.7	26.9	26.0	25.1	24.2	23.4	22.6	21.7	20.9
97	28.6	27.7	26.8	26.0	25.1	24.2	23.4	22.5	21.7	20.9
98	28.6	27.7	26.8	26.0	25.1	24.2	23.4	22.5	21.7	20.9
99	28.6	27.7	26.8	26.0	25.1	24.2	23.4	22.5	21.7	20.9
100	28.6	27.7	26.8	26.0	25.1	24.2	23.4	22.5	21.7	20.8
101	28.6	27.7	26.8	25.9	25.1	24.2	23.4	22.5	21.7	20.8
102	28.6	27.7	26.8	25.9	25.1	24.2	23.3	22.5	21.7	20.8
103	28.6	27.7	26.8	25.9	25.1	24.2	23.3	22.5	21.7	20.8
104	28.6	27.7	26.8	25.9	25.1	24.2	23.3	22.5	21.6	20.8
105	28.6	27.7	26.8	25.9	25.1	24.2	23.3	22.5	21.6	20.8
106	28.6	27.7	26.8	25.9	25.1	24.2	23.3	22.5	21.6	20.8
107	28.6	27.7	26.8	25.9	25.1	24.2	23.3	22.5	21.6	20.8
108	28.6	27.7	26.8	25.9	25.1	24.2	23.3	22.5	21.8	20.8
109	28.6	27.7	26.8	25.9	25.1	24.2	23.3	22.5	21.6	20.8
110	28.6	27.7	26.8	25.9	25.1	24.2	23.3	22.5	21.6	20.8
111	28.6	27.7	26.8	25.9	25.0	24.2	23.3	22.5	21.6	20.8
112	28.6	27.7	26.8	25.9	25.0	24.2	23.3	22.5	21.6	20.8
113	28.6	27.7	26.8	25.9	25.0	24.2	23.3	22.5	21.6	20.8
114	28.6	27.7	26.8	25.9	25.0	24.2	23.3	22.5	21.6	20.8
115	28.6	27.7	26.8	25.9	25.0	24.2	23.3	22.5	21.6	20.8

TABLE VI.—ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES; TWO LIVES—EXPECTED RETURN MULTIPLES

Ages	65	66	67	68	69	70	71	72	73	74
65	25.0	24.6	24.2	23.8	23.4	23.1	22.8	22.5	22.2	22.0
66	24.6	24.1	23.7	23.3	22.9	22.5	22.2	21.9	21.6	21.4
67	24.2	23.7	23.2	22.8	22.4	22.0	21.7	21.3	21.0	20.8
68	23.8	23.3	22.8	22.3	21.8	21.5	21.2	20.8	20.5	20.2
69	23.4	22.9	22.4	21.9	21.5	21.1	20.7	20.3	20.0	19.6
70	23.1	22.5	22.0	21.5	21.1	20.6	20.2	19.8	19.4	19.1
71	22.8	22.2	21.7	21.2	20.7	20.2	19.8	19.4	19.0	18.6
72	22.5	21.8	21.3	20.8	20.3	19.8	19.4	18.9	18.5	18.2
73	22.2	21.6	21.0	20.5	20.0	19.4	19.0	18.5	18.1	17.7
74	22.0	21.4	20.8	20.2	19.6	19.1	18.6	18.2	17.7	17.3
75	21.8	21.1	20.5	19.9	19.3	18.8	18.3	17.8	17.3	16.9
76	21.6	20.9	20.3	19.7	19.1	18.5	18.0	17.5	17.0	16.5
77	21.4	20.7	20.1	19.4	18.8	18.3	17.7	17.2	16.7	16.2
78	21.2	20.5	19.9	19.2	18.6	18.0	17.5	16.9	16.4	15.9
79	21.1	20.4	19.7	19.0	18.4	17.8	17.2	16.7	16.1	15.6
80	21.0	20.2	19.5	18.9	18.2	17.6	17.0	16.4	15.9	15.4
81	20.8	20.1	19.4	18.7	18.1	17.4	16.8	16.2	15.7	15.1
82	20.7	20.0	19.3	18.6	17.9	17.3	16.6	16.0	15.5	14.9
83	20.6	19.9	19.2	18.5	17.8	17.1	16.5	15.9	15.3	14.7
84	20.5	19.8	19.1	18.4	17.7	17.0	16.3	15.7	15.1	14.5
85	20.5	19.7	19.0	18.3	17.6	16.9	16.2	15.6	15.0	14.4
86	20.4	19.6	18.9	18.2	17.5	16.8	16.1	15.5	14.8	14.2
87	20.4	19.6	18.8	18.1	17.4	16.7	16.0	15.4	14.7	14.1
88	20.3	19.5	18.8	18.0	17.3	16.6	15.9	15.3	14.6	14.0
89	20.3	19.5	18.7	18.0	17.2	16.5	15.8	15.2	14.5	13.9
90	20.2	19.4	18.7	17.9	17.2	16.5	15.8	15.1	14.5	13.8
91	20.2	19.4	18.6	17.9	17.1	16.4	15.7	15.0	14.4	13.7
92	20.2	19.4	18.6	17.8	17.1	16.4	15.7	15.0	14.3	13.7
93	20.1	19.3	18.6	17.8	17.1	16.3	15.6	14.9	14.3	13.6
94	20.1	19.3	18.5	17.8	17.0	16.3	15.6	14.9	14.2	13.6
95	20.1	19.3	18.5	17.8	17.0	16.3	15.6	14.9	14.2	13.5
96	20.1	19.3	18.5	17.7	17.0	16.2	15.5	14.8	14.2	13.5
97	20.1	19.3	18.5	17.7	17.0	16.2	15.5	14.8	14.1	13.5
98	20.1	19.3	18.5	17.7	16.9	16.2	15.5	14.8	14.1	13.4
99	20.0	19.2	18.5	17.7	16.9	16.2	15.5	14.7	14.1	13.4
100	20.0	19.2	18.4	17.7	16.9	16.2	15.4	14.7	14.0	13.4
101	20.0	19.2	18.4	17.7	16.9	16.1	15.4	14.7	14.0	13.3
102	20.0	19.2	18.4	17.6	16.9	16.1	15.4	14.7	14.0	13.3
103	20.0	19.2	18.4	17.6	16.9	16.1	15.4	14.7	14.0	13.3
104	20.0	19.2	18.4	17.6	16.9	16.1	15.4	14.7	14.0	13.3
105	20.0	19.2	18.4	17.6	16.8	16.1	15.4	14.6	13.9	13.3
106	20.0	19.2	18.4	17.6	16.8	16.1	15.3	14.6	13.9	13.3
107	20.0	19.2	18.4	17.6	16.8	16.1	15.3	14.6	13.9	13.2
108	20.0	19.2	18.4	17.6	16.8	16.1	15.3	14.6	13.8	13.2
109	20.0	19.2	18.4	17.6	16.8	16.1	15.3	14.8	13.9	13.2

TABLE VI.—ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES; TWO LIVES—EXPECTED RETURN MULTIPLES—Continued

Ages	65	66	67	68	69	70	71	72	73	74
110	20.0	19.2	18.4	17.6	16.8	16.1	15.3	14.6	13.9	13.2
111	20.0	19.2	18.4	17.6	16.8	16.0	15.3	14.6	13.9	13.2
112	20.0	19.2	18.4	17.6	16.8	16.0	15.3	14.6	13.9	13.2
113	20.0	19.2	18.4	17.6	16.8	16.0	15.3	14.6	13.9	13.2
114	20.0	19.2	18.4	17.6	16.8	16.0	15.3	14.6	13.9	13.2
115	20.0	19.2	18.4	17.6	16.8	16.0	15.3	14.6	13.9	13.2

TABLE VI.—ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES; TWO LIVES—EXPECTED RETURN MULTIPLES

Ages	75	76	77	78	79	80	81	82	83	84
75	16.5	16.1	15.6	15.4	15.1	14.9	14.6	14.4	14.2	14.0
76	16.1	15.7	15.4	15.0	14.7	14.4	14.1	13.9	13.7	13.5
77	15.8	15.4	15.0	14.6	14.3	14.0	13.7	13.4	13.2	13.0
78	15.4	15.0	14.6	14.2	13.9	13.5	13.2	13.0	12.7	12.5
79	15.1	14.7	14.3	13.9	13.5	13.2	12.8	12.5	12.3	12.0
80	14.9	14.4	14.0	13.5	13.2	12.8	12.5	12.2	11.9	11.6
81	14.8	14.1	13.7	13.2	12.8	12.5	12.1	11.8	11.5	11.2
82	14.4	13.9	13.4	13.0	12.5	12.2	11.8	11.5	11.1	10.9
83	14.2	13.7	13.2	12.7	12.3	11.9	11.5	11.1	10.8	10.5
84	14.0	13.5	13.0	12.5	12.0	11.6	11.2	10.9	10.5	10.2
85	13.8	13.3	12.8	12.3	11.8	11.4	11.0	10.6	10.2	9.9
86	13.7	13.1	12.6	12.1	11.6	11.2	10.8	10.4	10.0	9.7
87	13.5	13.0	12.4	11.9	11.4	11.0	10.6	10.1	9.8	9.4
88	13.4	12.8	12.3	11.8	11.3	10.8	10.4	10.0	9.6	9.2
89	13.3	12.7	12.2	11.6	11.1	10.7	10.2	9.8	9.4	9.0
90	13.2	12.6	12.1	11.5	11.0	10.5	10.1	9.6	9.2	8.8
91	13.1	12.5	12.0	11.4	10.9	10.4	9.9	9.5	9.1	8.7
92	13.1	12.5	11.9	11.3	10.8	10.3	9.8	9.4	8.9	8.5
93	13.0	12.4	11.8	11.3	10.7	10.2	9.7	9.3	8.8	8.4
94	12.9	12.3	11.7	11.2	10.6	10.1	9.6	9.2	8.7	8.3
95	12.9	12.3	11.7	11.1	10.6	10.1	9.6	9.1	8.6	8.2
96	12.9	12.2	11.6	11.1	10.5	10.0	9.5	9.0	8.5	8.1
97	12.8	12.2	11.6	11.0	10.5	9.9	9.4	8.9	8.5	8.0
98	12.8	12.2	11.5	11.0	10.4	9.9	9.4	8.9	8.4	8.0
99	12.7	12.1	11.5	10.9	10.4	9.8	9.3	8.8	8.3	7.9
100	12.7	12.1	11.5	10.9	10.3	9.8	9.2	8.7	8.3	7.8
101	12.7	12.1	11.4	10.8	10.3	9.7	9.2	8.7	8.2	7.8
102	12.7	12.0	11.4	10.8	10.2	9.7	9.2	8.7	8.2	7.7
103	12.6	12.0	11.4	10.8	10.2	9.7	9.1	8.6	8.1	7.7
104	12.6	12.0	11.4	10.8	10.2	9.6	9.1	8.6	8.1	7.6
105	12.6	12.0	11.3	10.7	10.2	9.6	9.1	8.5	8.0	7.6
106	12.6	11.9	11.3	10.7	10.1	9.6	9.0	8.5	8.0	7.5
107	12.6	11.9	11.3	10.7	10.1	9.6	9.0	8.5	8.0	7.5
108	12.6	11.9	11.3	10.7	10.1	9.5	9.0	8.5	8.0	7.5
109	12.6	11.9	11.3	10.7	10.1	9.5	9.0	8.4	7.9	7.5
110	12.6	11.9	11.3	10.7	10.1	9.5	9.0	8.4	7.9	7.4
111	12.5	11.9	11.3	10.7	10.1	9.5	8.9	8.4	7.9	7.4
112	12.5	11.9	11.3	10.6	10.1	9.5	8.9	8.4	7.9	7.4
113	12.5	11.9	11.2	10.6	10.0	9.5	8.9	8.4	7.9	7.4
114	12.5	11.9	11.2	10.6	10.0	9.5	8.9	8.4	7.9	7.4
115	12.5	11.9	11.2	10.6	10.0	9.5	8.9	8.4	7.9	7.4

TABLE VI.—ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES; TWO LIVES—EXPECTED RETURN MULTIPLES

Ages	85	86	87	88	89	90	91	92	93	94
85	9.6	9.3	9.1	8.9	8.7	8.5	8.3	8.2	8.0	7.9
86	9.3	9.1	8.8	8.6	8.3	8.2	8.0	7.8	7.7	7.6
87	9.1	8.8	8.5	8.3	8.1	7.9	7.7	7.5	7.4	7.2
88	8.9	8.6	8.3	8.0	7.8	7.6	7.4	7.2	7.1	6.9
89	8.7	8.3	8.1	7.8	7.5	7.3	7.1	6.9	6.8	6.6
90	8.5	8.2	7.9	7.6	7.3	7.1	6.9	6.7	6.5	6.4
91	8.3	8.0	7.7	7.4	7.1	6.9	6.7	6.5	6.3	6.2
92	8.2	7.8	7.5	7.2	6.9	6.7	6.5	6.3	6.1	5.9
93	8.0	7.7	7.4	7.1	6.8	6.5	6.3	6.1	5.9	5.8
94	7.9	7.8	7.2	6.9	6.6	6.4	6.2	5.9	5.8	5.6
95	7.8	7.5	7.1	6.8	6.5	6.3	6.0	5.8	5.6	5.4
96	7.7	7.3	7.0	6.7	6.4	6.1	5.9	5.7	5.5	5.3
97	7.6	7.3	6.9	6.6	6.3	6.0	5.8	5.5	5.3	5.1
98	7.5	7.2	6.8	6.5	6.2	5.9	5.6	5.4	5.2	5.0
99	7.5	7.1	6.7	6.4	6.1	5.8	5.5	5.3	5.1	4.9
100	7.4	7.0	6.6	6.3	6.0	5.7	5.4	5.2	5.0	4.8
101	7.3	6.9	6.6	6.2	5.9	5.6	5.3	5.1	4.9	4.7
102	7.3	6.9	6.5	6.2	5.8	5.5	5.3	5.0	4.8	4.6
103	7.2	6.8	6.4	6.1	5.8	5.5	5.2	4.9	4.7	4.5
104	7.2	6.8	6.4	6.0	5.7	5.4	5.1	4.8	4.6	4.4
105	7.1	6.7	6.3	6.0	5.6	5.3	5.0	4.8	4.5	4.3
106	7.1	6.7	6.3	5.9	5.6	5.3	5.0	4.7	4.5	4.2
107	7.1	6.6	6.2	5.9	5.5	5.2	4.9	4.6	4.4	4.2
108	7.0	6.6	6.2	5.8	5.5	5.2	4.9	4.6	4.3	4.1
109	7.0	6.6	6.2	5.8	5.5	5.1	4.8	4.5	4.3	4.1
110	7.0	6.6	6.2	5.8	5.4	5.1	4.8	4.5	4.3	4.0
111	7.0	6.5	6.1	5.7	5.4	5.1	4.8	4.5	4.2	4.0
112	7.0	6.5	6.1	5.7	5.4	5.0	4.7	4.4	4.2	3.9
113	6.9	6.5	6.1	5.7	5.4	5.0	4.7	4.4	4.2	3.9
114	6.9	6.5	6.1	5.7	5.3	5.0	4.7	4.4	4.1	3.9

TABLE VI.—ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES; TWO LIVES—EXPECTED RETURN MULTIPLES—Continued

Ages	85	86	87	88	89	90	91	92	93	94
115	6.9	6.5	6.1	5.7	5.3	5.0	4.7	4.4	4.1	3.9

TABLE VI.—ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES; TWO LIVES—EXPECTED RETURN MULTIPLES

Ages	95	96	97	98	99	100	101	102	103	104
95	5.3	5.1	5.0	4.8	4.7	4.6	4.5	4.4	4.3	4.2
96	5.1	5.0	4.8	4.7	4.5	4.4	4.3	4.2	4.1	4.0
97	5.0	4.8	4.7	4.5	4.4	4.3	4.1	4.0	3.9	3.8
98	4.8	4.7	4.5	4.4	4.2	4.1	4.0	3.9	3.8	3.7
99	4.7	4.5	4.4	4.2	4.1	4.0	3.8	3.7	3.6	3.5
100	4.6	4.4	4.3	4.1	4.0	3.8	3.7	3.6	3.5	3.3
101	4.5	4.3	4.1	4.0	3.8	3.7	3.6	3.4	3.3	3.2
102	4.4	4.2	4.0	3.9	3.7	3.6	3.4	3.3	3.2	3.1
103	4.3	4.1	3.9	3.8	3.6	3.5	3.3	3.2	3.0	2.9
104	4.2	4.0	3.8	3.7	3.5	3.3	3.2	3.1	2.9	2.8
105	4.1	3.9	3.7	3.6	3.4	3.2	3.1	2.9	2.8	2.7
106	4.0	3.8	3.6	3.5	3.3	3.1	3.0	2.8	2.7	2.5
107	4.0	3.8	3.6	3.4	3.2	3.1	2.9	2.7	2.6	2.4
108	3.9	3.7	3.5	3.3	3.1	3.0	2.8	2.7	2.5	2.3
109	3.8	3.6	3.4	3.3	3.1	2.9	2.7	2.6	2.4	2.3
110	3.8	3.6	3.4	3.2	3.0	2.8	2.7	2.5	2.3	2.2
111	3.8	3.5	3.3	3.2	3.0	2.8	2.6	2.4	2.3	2.1
112	3.7	3.5	3.3	3.1	2.9	2.8	2.6	2.4	2.2	2.1
113	3.7	3.5	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.0
114	3.7	3.5	3.3	3.1	2.9	2.7	2.5	2.3	2.1	2.0
115	3.7	3.4	3.2	3.0	2.8	2.7	2.5	2.3	2.1	1.9

TABLE VI.—ORDINARY JOINT LIFE AND LAST SURVIVOR ANNUITIES; TWO LIVES—EXPECTED RETURN MULTIPLES

Ages	105	106	107	108	109	110	111	112	113	114	115
105	2.5	2.4	2.3	2.2	2.1	2.0	2.0	1.9	1.8	1.8	1.8
106	2.4	2.3	2.2	2.1	2.0	1.9	1.8	1.7	1.7	1.6	1.6
107	2.3	2.2	2.1	1.9	1.8	1.7	1.7	1.6	1.5	1.5	1.4
108	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.5	1.4	1.3	1.3
109	2.1	2.0	1.8	1.7	1.6	1.5	1.4	1.3	1.3	1.2	1.1
110	2.0	1.9	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.1	1.0
111	2.0	1.8	1.7	1.5	1.4	1.3	1.2	1.1	1.0	.9	.9
112	1.9	1.7	1.6	1.5	1.3	1.2	1.1	1.0	.9	.8	.8
113	1.8	1.7	1.5	1.4	1.3	1.1	1.0	.9	.8	.7	.7
114	1.8	1.8	1.5	1.3	1.2	1.1	.9	.8	.7	.6	.6
115	1.8	1.8	1.4	1.3	1.1	1.0	.9	.8	.7	.6	.5

TABLE VIA.—ANNUITIES FOR JOINT LIFE ONLY; TWO LIVES—EXPECTED RETURN MULTIPLES

Ages	5	6	7	8	9	10	11	12	13	14
5	89.5	89.0	88.4	87.9	87.3	86.7	86.1	85.5	84.8	84.1
6	89.0	88.5	88.0	87.5	86.9	86.4	85.8	85.1	84.5	83.8
7	88.4	88.0	87.5	87.0	86.5	86.0	85.4	84.8	84.2	83.5
8	87.9	87.5	87.0	86.6	86.1	85.5	85.0	84.4	83.8	83.2
9	87.3	86.9	86.5	86.1	85.6	85.1	84.6	84.0	83.4	82.8
10	86.7	86.4	86.0	85.5	85.1	84.6	84.1	83.6	83.0	82.5
11	86.1	85.8	85.4	85.0	84.6	84.1	83.6	83.1	82.6	82.1
12	85.5	85.1	84.8	84.4	84.0	83.6	83.1	82.7	82.2	81.7
13	84.8	84.5	84.2	83.8	83.4	83.0	82.6	82.2	81.7	81.2
14	84.1	83.8	83.5	83.2	82.8	82.5	82.1	81.7	81.2	80.7
15	83.4	83.1	82.9	82.6	82.2	81.9	81.5	81.1	80.7	80.2
16	82.7	82.4	82.2	81.9	81.6	81.3	80.9	80.5	80.1	79.7
17	81.9	81.7	81.5	81.2	80.9	80.6	80.3	79.9	79.6	79.2
18	81.2	81.0	80.7	80.5	80.2	80.0	79.7	79.3	79.0	78.6
19	80.4	80.2	80.0	79.8	79.5	79.3	79.0	78.7	78.4	78.0
20	79.6	79.4	79.2	79.0	78.8	78.6	78.3	78.0	77.7	77.4
21	78.8	78.7	78.5	78.3	78.1	77.8	77.6	77.3	77.1	76.8
22	78.0	77.8	77.7	77.5	77.3	77.1	76.9	76.6	76.4	76.1
23	77.2	77.0	76.9	76.7	76.5	76.4	76.1	75.9	75.7	75.4
24	76.3	76.2	76.1	76.0	75.8	75.6	75.4	75.2	75.0	74.7
25	75.5	75.4	75.2	75.1	75.0	74.8	74.6	74.4	74.2	74.0
26	74.6	74.5	74.4	74.3	74.1	74.0	73.8	73.7	73.5	73.3
27	73.8	73.7	73.6	73.4	73.3	73.2	73.0	72.9	72.7	72.5
28	72.9	72.8	72.7	72.6	72.5	72.4	72.2	72.1	71.9	71.7
29	72.0	71.9	71.8	71.7	71.6	71.5	71.4	71.3	71.1	71.0
30	71.1	71.0	71.0	70.9	70.8	70.7	70.6	70.4	70.3	70.2
31	70.2	70.2	70.1	70.0	69.9	69.8	69.7	69.6	69.5	69.3
32	69.3	69.3	69.2	69.1	69.0	69.0	68.8	68.8	68.6	68.5
33	68.4	68.4	68.3	68.2	68.2	68.1	68.0	67.8	67.7	67.7
34	67.5	67.5	67.4	67.4	67.3	67.2	67.1	67.0	67.0	66.8
35	66.6	66.6	66.5	66.5	66.4	66.3	66.3	66.2	66.1	66.0
36	65.7	65.7	65.6	65.6	65.5	65.4	65.4	65.3	65.2	65.1
37	64.8	64.7	64.7	64.6	64.6	64.5	64.5	64.4	64.3	64.3
38	63.8	63.8	63.8	63.7	63.7	63.6	63.6	63.5	63.5	63.4
39	62.9	62.9	62.9	62.8	62.8	62.7	62.7	62.6	62.6	62.5
40	62.0	62.0	62.0	61.9	61.9	61.8	61.8	61.7	61.7	61.6
41	61.1	61.1	61.0	61.0	61.0	60.9	60.9	60.8	60.8	60.7
42	60.2	60.1	60.1	60.1	60.1	60.0	60.0	59.9	59.9	59.8

TABLE VIA.—ANNUITIES FOR JOINT LIFE ONLY; TWO LIVES—EXPECTED RETURN MULTIPLES—Continued

Ages	5	6	7	8	9	10	11	12	13	14
43	39.2	39.2	39.2	39.2	39.1	39.1	39.1	39.0	39.0	39.0
44	38.3	38.3	38.3	38.3	38.2	38.2	38.2	38.1	38.1	38.1
45	37.4	37.4	37.4	37.3	37.3	37.3	37.3	37.2	37.2	37.2
46	36.5	36.5	36.5	36.4	36.4	36.4	36.4	36.3	36.3	36.3
47	35.6	35.6	35.5	35.5	35.5	35.5	35.5	35.4	35.4	35.4
48	34.7	34.7	34.6	34.6	34.6	34.6	34.6	34.5	34.5	34.5
49	33.8	33.8	33.7	33.7	33.7	33.7	33.7	33.7	33.6	33.6
50	32.9	32.9	32.8	32.8	32.8	32.8	32.8	32.6	32.7	32.7
51	32.0	32.0	31.9	31.9	31.9	31.9	31.9	31.9	31.9	31.8
52	31.1	31.1	31.1	31.0	31.0	31.0	31.0	31.0	31.0	30.8
53	30.2	30.2	30.2	30.2	30.1	30.1	30.1	30.1	30.1	30.1
54	29.3	29.3	29.3	29.3	29.3	29.2	29.2	29.2	29.2	29.2
55	28.4	28.4	28.4	28.4	28.4	28.4	28.4	28.3	28.3	28.3
56	27.5	27.5	27.5	27.5	27.5	27.5	27.5	27.5	27.5	27.5
57	26.7	26.7	26.7	26.6	26.6	26.6	26.6	26.6	26.6	26.6
58	25.8	25.8	25.8	25.8	25.8	25.8	25.8	25.8	25.7	25.7
59	24.9	24.9	24.9	24.9	24.9	24.9	24.9	24.9	24.9	24.9
60	24.1	24.1	24.1	24.1	24.1	24.0	24.0	24.0	24.0	24.0
61	23.2	23.2	23.2	23.2	23.2	23.2	23.2	23.2	23.2	23.2
62	22.4	22.4	22.4	22.4	22.4	22.4	22.3	22.3	22.3	22.3
63	21.5	21.5	21.5	21.5	21.5	21.5	21.5	21.5	21.5	21.5
64	20.7	20.7	20.7	20.7	20.7	20.7	20.7	20.7	20.7	20.7
65	19.9	19.9	19.9	19.9	19.9	19.9	19.9	19.9	19.9	19.9
66	19.1	19.1	19.1	19.1	19.1	19.1	19.1	19.1	19.1	19.1
67	18.3	18.3	18.3	18.3	18.3	18.3	18.3	18.3	18.3	18.3
68	17.5	17.5	17.5	17.5	17.5	17.5	17.5	17.5	17.5	17.5
69	16.8	16.8	16.8	16.7	16.7	16.7	16.7	16.7	16.7	16.7
70	16.0	16.0	16.0	16.0	16.0	16.0	16.0	16.0	16.0	16.0
71	15.3	15.3	15.3	15.3	15.3	15.3	15.3	15.3	15.3	15.2
72	14.6	14.6	14.5	14.5	14.5	14.5	14.5	14.5	14.5	14.5
73	13.9	13.9	13.8	13.8	13.8	13.8	13.8	13.8	13.8	13.8
74	13.2	13.2	13.2	13.2	13.2	13.2	13.2	13.2	13.2	13.2
75	12.5	12.5	12.5	12.5	12.5	12.5	12.5	12.5	12.5	12.5
76	11.9	11.9	11.8	11.8	11.8	11.8	11.8	11.8	11.8	11.8
77	11.2	11.2	11.2	11.2	11.2	11.2	11.2	11.2	11.2	11.2
78	10.6	10.6	10.6	10.6	10.6	10.6	10.6	10.6	10.6	10.6
79	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0
80	9.4	9.4	9.4	9.4	9.4	9.4	9.4	9.4	9.4	9.4
81	8.9	8.9	8.9	8.9	8.9	8.9	8.9	8.9	8.9	8.9
82	8.4	8.4	8.4	8.4	8.4	8.4	8.4	8.4	8.4	8.4
83	7.9	7.9	7.9	7.9	7.9	7.9	7.9	7.9	7.9	7.9
84	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4
85	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9
86	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5
87	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1
88	5.7	5.7	5.7	5.7	5.7	5.7	5.7	5.7	5.7	5.7
89	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3
90	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0
91	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7
92	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4
93	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1
94	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9
95	3.7	3.7	3.7	3.7	3.7	3.7	3.6	3.6	3.6	3.6
96	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4
97	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2
98	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0
99	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8
100	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7
101	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
102	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3
103	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1
104	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9
105	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8
106	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6
107	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4
108	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3
109	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
110	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
111	.9	.9	.9	.9	.9	.9	.9	.9	.9	.9
112	.8	.8	.8	.8	.8	.8	.8	.8	.8	.8
113	.7	.7	.7	.7	.7	.7	.7	.7	.7	.7
114	.6	.6	.6	.6	.6	.6	.6	.6	.6	.6
115	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5

TABLE VIA.—ANNUITIES FOR JOINT LIFE ONLY; TWO LIVES—EXPECTED RETURN MULTIPLES

Ages	15	16	17	18	19	20	21	22	23	24
15	59.8	59.3	58.8	58.2	57.6	57.0	56.4	55.8	55.1	54.5
16	59.3	58.8	58.3	57.8	57.2	56.7	56.1	55.5	54.8	54.2
17	58.8	58.3	57.8	57.3	56.8	56.3	55.7	55.1	54.5	53.9
18	58.2	57.8	57.3	56.9	56.4	55.9	55.3	54.7	54.2	53.5
19	57.6	57.2	56.8	56.4	55.9	55.4	54.9	54.4	53.8	53.2
20	57.0	56.7	56.3	55.9	55.4	54.9	54.5	53.9	53.4	52.8
21	56.4	56.1	55.7	55.3	54.9	54.5	54.0	53.5	53.0	52.4
22	55.8	55.5	55.1	54.7	54.4	53.9	53.5	53.0	52.5	52.0
23	55.1	54.8	54.5	54.2	53.8	53.4	53.0	52.5	52.1	51.6
24	54.5	54.2	53.9	53.5	53.2	52.8	52.4	52.0	51.6	51.1
25	53.8	53.5	53.2	52.9	52.6	52.2	51.8	51.5	51.1	50.6
26	53.0	52.8	52.5	52.3	52.0	51.6	51.3	50.9	50.5	50.1

TABLE VIA.—ANNUITIES FOR JOINT LIFE ONLY; TWO LIVES—EXPECTED RETURN MULTIPLES—Continued

Ages	15	16	17	18	19	20	21	22	23	24
27	52.3	52.1	51.8	51.6	51.3	51.0	50.7	50.3	50.0	49.6
28	51.5	51.3	51.1	50.8	50.6	50.3	50.0	49.7	49.4	49.0
29	50.8	50.6	50.4	50.2	49.9	49.7	49.4	49.1	48.8	48.4
30	50.0	49.8	49.6	49.4	49.2	49.0	48.7	48.4	48.1	47.8
31	49.2	49.0	48.9	48.7	48.5	48.3	48.0	47.8	47.5	47.2
32	48.4	48.2	48.1	47.9	47.7	47.5	47.3	47.1	46.8	46.5
33	47.6	47.4	47.3	47.1	47.0	46.8	46.6	46.3	46.1	45.9
34	46.7	46.6	46.5	46.3	46.2	46.0	45.8	45.6	45.4	45.2
35	45.9	45.8	45.7	45.5	45.4	45.2	45.1	44.9	44.7	44.4
36	45.0	44.9	44.8	44.7	44.6	44.4	44.3	44.1	43.9	43.7
37	44.2	44.1	44.0	43.8	43.6	43.6	43.5	43.3	43.2	43.0
38	43.3	43.2	43.1	43.0	42.9	42.8	42.7	42.5	42.4	42.2
39	42.4	42.4	42.3	42.2	42.1	42.0	41.9	41.7	41.6	41.4
40	41.6	41.5	41.4	41.3	41.2	41.1	41.0	40.9	40.8	40.6
41	40.7	40.6	40.5	40.5	40.4	40.3	40.2	40.1	40.0	39.8
42	39.8	39.7	39.7	39.6	39.5	39.4	39.4	39.3	39.1	39.0
43	38.9	38.9	38.8	38.7	38.7	38.6	38.5	38.4	38.3	38.2
44	38.0	38.0	37.9	37.9	37.8	37.7	37.7	37.6	37.5	37.4
45	37.1	37.1	37.0	37.0	36.9	36.9	36.8	36.7	36.6	36.5
46	36.2	36.2	36.2	36.1	36.1	36.0	35.9	35.8	35.8	35.7
47	35.3	35.3	35.3	35.2	35.2	35.1	35.1	35.0	34.9	34.9
48	34.5	34.4	34.4	34.4	34.3	34.3	34.2	34.2	34.1	34.0
49	33.6	33.5	33.5	33.5	33.4	33.4	33.4	33.3	33.2	33.2
50	32.7	32.7	32.6	32.6	32.6	32.5	32.5	32.4	32.4	32.3
51	31.8	31.8	31.8	31.7	31.7	31.7	31.6	31.6	31.5	31.5
52	30.9	30.9	30.9	30.9	30.8	30.8	30.8	30.7	30.7	30.6
53	30.0	30.0	30.0	30.0	30.0	29.9	29.9	29.9	29.8	29.8
54	29.2	29.2	29.1	29.1	29.1	29.1	29.0	29.0	29.0	28.9
55	28.3	28.3	28.3	28.3	28.2	28.2	28.2	28.2	28.1	28.1
56	27.4	27.4	27.4	27.4	27.4	27.3	27.3	27.3	27.3	27.2
57	26.6	26.6	26.5	26.5	26.5	26.5	26.5	26.5	26.4	26.4
58	25.7	25.7	25.7	25.7	25.7	25.6	25.6	25.6	25.6	25.6
59	24.9	24.9	24.8	24.8	24.8	24.8	24.8	24.8	24.7	24.7
60	24.0	24.0	24.0	24.0	24.0	23.9	23.9	23.9	23.9	23.9
61	23.2	23.2	23.1	23.1	23.1	23.1	23.1	23.1	23.1	23.0
62	22.3	22.3	22.3	22.3	22.3	22.3	22.3	22.2	22.2	22.2
63	21.5	21.5	21.5	21.5	21.5	21.4	21.4	21.4	21.4	21.4
64	20.7	20.7	20.7	20.6	20.6	20.6	20.6	20.6	20.6	20.6
65	19.9	19.8	19.8	19.8	19.8	19.8	19.8	19.8	19.8	19.8
66	19.1	19.0	19.0	19.0	19.0	19.0	19.0	19.0	19.0	19.0
67	18.3	18.3	18.3	18.3	18.2	18.2	18.2	18.2	18.2	18.2
68	17.5	17.5	17.5	17.5	17.5	17.5	17.5	17.5	17.4	17.4
69	16.7	16.7	16.7	16.7	16.7	16.7	16.7	16.7	16.7	16.7
70	16.0	16.0	16.0	16.0	16.0	16.0	15.9	15.9	15.9	15.9
71	15.2	15.2	15.2	15.2	15.2	15.2	15.2	15.2	15.2	15.2
72	14.5	14.5	14.5	14.5	14.5	14.5	14.5	14.5	14.5	14.5
73	13.8	13.8	13.8	13.8	13.8	13.8	13.8	13.8	13.8	13.8
74	13.2	13.1	13.1	13.1	13.1	13.1	13.1	13.1	13.1	13.1
75	12.5	12.5	12.5	12.5	12.5	12.5	12.5	12.5	12.5	12.5
76	11.8	11.8	11.8	11.8	11.8	11.8	11.8	11.8	11.8	11.8
77	11.2	11.2	11.2	11.2	11.2	11.2	11.2	11.2	11.2	11.2
78	10.6	10.6	10.6	10.6	10.6	10.6	10.6	10.6	10.6	10.6
79	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0
80	9.4	9.4	9.4	9.4	9.4	9.4	9.4	9.4	9.4	9.4
81	8.9	8.9	8.9	8.9	8.9	8.9	8.9	8.9	8.9	8.9
82	8.4	8.4	8.4	8.4	8.4	8.4	8.4	8.4	8.4	8.4
83	7.9	7.9	7.9	7.9	7.9	7.9	7.9	7.9	7.8	7.8
84	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4
85	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9
86	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5
87	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1
88	5.7	5.7	5.7	5.7	5.7	5.7	5.7	5.7	5.7	5.7
89	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3
90	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0
91	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7
92	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4
93	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1
94	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9
95	3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.6
96	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4
97	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2
98	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0
99	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8
100	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7
101	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
102	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3
103	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1
104	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9
105	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8
106	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6
107	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4
108	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3
109	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
110	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
111	.9	.9	.9	.9	.9	.9	.9	.9	.9	.9
112	.8	.8	.8	.8	.8	.8	.8	.8	.8	.8
113	.7	.7	.7	.7	.7	.7	.7	.7	.7	.7
114	.6	.6	.6	.6	.6	.6	.6	.6	.6	.6
115	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5

TABLE VIA.—ANNUITIES FOR JOINT LIFE ONLY; TWO LIVES—EXPECTED RETURN MULTIPLES

Ages	25	26	27	28	29	30	31	32	33	34
25	50.2	49.7	49.2	48.6	48.1	47.5	46.9	46.2	45.6	44.8
26	49.7	49.2	48.7	48.2	47.7	47.1	46.5	45.9	45.3	44.6
27	49.2	48.7	48.3	47.8	47.3	46.7	46.2	45.6	45.0	44.3
28	48.6	48.2	47.8	47.3	46.8	46.3	45.8	45.2	44.6	44.0
29	48.1	47.7	47.3	46.8	46.4	45.9	45.4	44.8	44.3	43.7
30	47.5	47.1	46.7	46.3	45.9	45.4	44.9	44.4	43.9	43.3
31	46.9	46.5	46.2	45.8	45.4	44.9	44.5	44.0	43.5	42.9
32	46.2	45.9	45.8	45.2	44.8	44.4	44.0	43.5	43.0	42.5
33	45.6	45.3	45.0	44.8	44.3	43.9	43.5	43.0	42.6	42.1
34	44.9	44.8	44.3	44.0	43.7	43.3	42.9	42.5	42.1	41.6
35	44.2	44.0	43.7	43.4	43.1	42.7	42.4	42.0	41.6	41.1
36	43.5	43.3	43.0	42.7	42.4	42.1	41.8	41.4	41.0	40.6
37	42.8	42.5	42.3	42.1	41.8	41.5	41.2	40.8	40.5	40.1
38	42.0	41.8	41.6	41.4	41.1	40.8	40.6	40.2	39.9	39.5
39	41.3	41.1	40.9	40.7	40.4	40.2	39.9	39.6	39.3	39.0
40	40.5	40.3	40.1	39.9	39.7	39.5	39.2	39.0	38.7	38.4
41	39.7	39.5	39.4	39.2	39.0	38.8	38.5	38.3	38.0	37.7
42	38.9	38.8	38.6	38.4	38.3	38.1	37.8	37.6	37.4	37.1
43	38.1	38.0	37.8	37.7	37.5	37.3	37.1	36.9	36.7	36.4
44	37.3	37.2	37.0	36.9	36.7	36.6	36.4	36.2	36.0	35.8
45	36.5	36.3	36.2	36.1	36.0	35.8	35.6	35.5	35.3	35.1
46	35.6	35.5	35.4	35.3	35.2	35.0	34.9	34.7	34.5	34.4
47	34.8	34.7	34.6	34.5	34.4	34.3	34.1	34.0	33.8	33.6
48	34.0	33.9	33.8	33.7	33.6	33.5	33.4	33.2	33.1	32.9
49	33.1	33.0	33.0	32.9	32.8	32.7	32.6	32.4	32.3	32.2
50	32.3	32.2	32.1	32.1	32.0	31.9	31.8	31.7	31.6	31.4
51	31.4	31.4	31.3	31.2	31.2	31.1	31.0	30.9	30.8	30.6
52	30.6	30.5	30.5	30.4	30.3	30.3	30.2	30.1	30.0	29.9
53	29.7	29.7	29.6	29.6	29.5	29.5	29.4	29.3	29.2	29.1
54	28.9	28.9	28.8	28.8	28.7	28.6	28.6	28.5	28.4	28.3
55	28.1	28.0	28.0	27.9	27.9	27.8	27.8	27.7	27.6	27.5
56	27.2	27.2	27.1	27.1	27.0	27.0	26.9	26.9	26.8	26.7
57	26.4	26.3	26.3	26.3	26.2	26.2	26.1	26.1	26.0	25.9
58	25.5	25.5	25.5	25.4	25.4	25.4	25.3	25.3	25.2	25.1
59	24.7	24.7	24.8	24.8	24.8	24.5	24.5	24.5	24.4	24.3
60	23.9	23.8	23.8	23.8	23.8	23.7	23.7	23.6	23.6	23.5
61	23.0	23.0	23.0	23.0	22.9	22.9	22.8	22.8	22.8	22.7
62	22.2	22.2	22.2	22.1	22.1	22.1	22.1	22.0	22.0	21.9
63	21.4	21.4	21.3	21.3	21.3	21.3	21.3	21.2	21.2	21.2
64	20.6	20.6	20.5	20.5	20.5	20.5	20.5	20.4	20.4	20.4
65	19.8	19.8	19.7	19.7	19.7	19.7	19.7	19.6	19.6	19.6
66	19.0	19.0	19.0	18.9	18.9	18.9	18.9	18.9	18.8	18.8
67	18.2	18.2	18.2	18.2	18.2	18.1	18.1	18.1	18.1	18.1
68	17.4	17.4	17.4	17.4	17.4	17.4	17.4	17.3	17.3	17.3
69	16.7	16.7	16.7	16.6	16.6	16.6	16.6	16.6	16.6	16.6
70	15.9	15.9	15.9	15.9	15.9	15.9	15.9	15.9	15.8	15.8
71	15.2	15.2	15.2	15.2	15.2	15.2	15.2	15.2	15.1	15.1
72	14.5	14.5	14.5	14.5	14.5	14.5	14.5	14.5	14.4	14.4
73	13.8	13.8	13.8	13.8	13.8	13.8	13.8	13.8	13.8	13.7
74	13.1	13.1	13.1	13.1	13.1	13.1	13.1	13.1	13.1	13.1
75	12.5	12.5	12.5	12.4	12.4	12.4	12.4	12.4	12.4	12.4
76	11.8	11.8	11.8	11.8	11.8	11.8	11.8	11.8	11.8	11.8
77	11.2	11.2	11.2	11.2	11.2	11.2	11.2	11.2	11.2	11.1
78	10.6	10.6	10.6	10.6	10.6	10.6	10.6	10.6	10.6	10.5
79	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0
80	9.4	9.4	9.4	9.4	9.4	9.4	9.4	9.4	9.4	9.4
81	8.9	8.9	8.9	8.9	8.9	8.9	8.9	8.9	8.9	8.9
82	8.4	8.4	8.3	8.3	8.3	8.3	8.3	8.3	8.3	8.3
83	7.8	7.8	7.8	7.8	7.8	7.8	7.8	7.8	7.8	7.8
84	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4
85	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9
86	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5
87	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1
88	5.7	5.7	5.7	5.7	5.7	5.7	5.7	5.7	5.7	5.7
89	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3
90	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0
91	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7
92	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4
93	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1
94	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9
95	3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.6
96	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4
97	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2
98	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0
99	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8
100	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7
101	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
102	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3
103	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1
104	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9
105	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8
106	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6
107	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4
108	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3
109	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
110	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
111	.9	.9	.9	.8	.9	.9	.9	.9	.8	.9
112	.8	.8	.8	.8	.8	.8	.8	.8	.8	.8
113	.7	.7	.7	.7	.7	.7	.7	.7	.7	.7
114	.8	.6	.6	.6	.6	.6	.6	.6	.6	.8
115	.5	.5	.5	.5	.5	.5	.5	.5	.6	.5

TABLE VIA.—ANNUITIES FOR JOINT LIFE ONLY; TWO LIVES—EXPECTED RETURN MULTIPLES

Ages	35	36	37	38	39	40	41	42	43	44
35	40.7	40.2	39.7	39.2	38.6	38.0	37.4	36.8	36.2	35.5
36	40.2	39.7	39.3	38.7	38.2	37.7	37.1	36.5	35.9	35.2
37	39.7	39.3	38.8	38.3	37.8	37.3	36.7	36.2	35.8	34.9
38	39.2	38.7	38.2	37.9	37.4	36.9	36.3	35.8	35.2	34.6
39	38.6	38.2	37.8	37.4	36.9	36.4	35.9	35.4	34.9	34.3
40	38.0	37.7	37.3	36.9	36.4	36.0	35.5	35.0	34.5	34.0
41	37.4	37.1	36.7	36.3	35.9	35.5	35.1	34.8	34.1	33.6
42	36.8	36.5	36.2	35.8	35.4	35.0	34.6	34.1	33.7	33.2
43	36.2	35.9	35.6	35.2	34.9	34.5	34.1	33.7	33.2	32.8
44	35.5	35.2	34.9	34.6	34.3	34.0	33.8	33.2	32.8	32.3
45	34.8	34.6	34.3	34.0	33.7	33.4	33.0	32.7	32.3	31.8
46	34.1	33.9	33.7	33.4	33.1	32.8	32.5	32.1	31.8	31.4
47	33.4	33.2	33.0	32.8	32.5	32.2	31.9	31.6	31.2	30.8
48	32.7	32.5	32.3	32.1	31.8	31.6	31.3	31.0	30.7	30.3
49	32.0	31.8	31.8	31.4	31.2	30.9	30.7	30.4	30.1	29.8
50	31.3	31.1	30.9	30.7	30.5	30.3	30.0	29.8	29.5	29.2
51	30.5	30.4	30.2	30.0	29.8	29.6	29.4	29.2	28.9	28.6
52	29.7	29.6	29.5	29.3	29.1	28.9	28.7	28.5	28.3	28.0
53	29.0	28.9	28.7	28.6	28.4	28.2	28.1	27.9	27.8	27.4
54	28.2	28.1	28.0	27.8	27.7	27.5	27.4	27.2	27.0	26.8
55	27.4	27.3	27.2	27.1	27.0	26.8	26.7	26.5	26.3	26.1
56	26.7	26.6	26.5	26.3	26.2	26.1	26.0	25.8	25.6	25.4
57	25.9	25.8	25.7	25.6	25.5	25.4	25.2	25.1	24.9	24.8
58	25.1	25.0	24.9	24.8	24.7	24.6	24.5	24.4	24.2	24.1
59	24.3	24.2	24.1	24.1	24.0	23.9	23.8	23.6	23.5	23.4
60	23.5	23.4	23.4	23.3	23.2	23.1	23.0	22.9	22.8	22.7
61	22.7	22.6	22.6	22.5	22.4	22.4	22.3	22.2	22.1	22.0
62	21.9	21.9	21.8	21.7	21.7	21.6	21.5	21.4	21.3	21.2
63	21.1	21.1	21.0	21.0	20.9	20.8	20.8	20.7	20.6	20.5
64	20.3	20.3	20.2	20.2	20.1	20.1	20.0	20.0	19.9	19.8
65	19.6	19.5	19.5	19.4	19.4	19.3	19.3	19.2	19.1	19.1
66	18.8	18.8	18.7	18.7	18.6	18.6	18.5	18.5	18.4	18.4
67	18.0	18.0	18.0	17.9	17.9	17.9	17.8	17.8	17.7	17.6
68	17.3	17.3	17.2	17.2	17.2	17.1	17.1	17.0	17.0	16.9
69	16.5	16.5	16.5	16.5	16.4	16.4	16.4	16.3	16.3	16.2
70	15.8	15.8	15.8	15.7	15.7	15.7	15.6	15.6	15.6	15.5
71	15.1	15.1	15.1	15.0	15.0	15.0	15.0	14.9	14.9	14.9
72	14.4	14.4	14.4	14.3	14.3	14.3	14.3	14.2	14.2	14.2
73	13.7	13.7	13.7	13.7	13.7	13.6	13.6	13.6	13.6	13.5
74	13.1	13.0	13.0	13.0	13.0	13.0	13.0	12.9	12.9	12.9
75	12.4	12.4	12.4	12.4	12.3	12.3	12.3	12.3	12.3	12.2
76	11.8	11.8	11.7	11.7	11.7	11.7	11.7	11.7	11.6	11.6
77	11.1	11.1	11.1	11.1	11.1	11.1	11.1	11.1	11.0	11.0
78	10.5	10.5	10.5	10.5	10.5	10.5	10.5	10.5	10.5	10.4
79	10.0	10.0	9.9	9.9	9.9	9.9	9.9	9.9	9.9	9.9
80	9.4	9.4	9.4	9.4	9.4	9.4	9.4	9.3	9.3	9.3
81	8.9	8.8	8.8	8.8	8.8	8.8	8.8	8.8	8.8	8.8
82	8.3	8.3	8.3	8.3	8.3	8.3	8.3	8.3	8.3	8.3
83	7.8	7.8	7.8	7.8	7.8	7.8	7.8	7.8	7.8	7.8
84	7.3	7.3	7.3	7.3	7.3	7.3	7.3	7.3	7.3	7.3
85	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9
86	6.5	6.5	6.5	6.5	6.4	6.4	6.4	6.4	6.4	6.4
87	6.1	6.0	6.0	6.0	6.0	6.0	6.0	6.0	6.0	6.0
88	5.7	5.7	5.7	5.7	5.7	5.7	5.7	5.6	5.6	5.6
89	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3
90	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0
91	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.6	4.6
92	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4
93	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1
94	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9
95	3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.6
96	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4
97	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2
98	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0
99	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8
100	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.6	2.6
101	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
102	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3
103	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1
104	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9
105	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8
106	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6
107	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4
108	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3
109	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
110	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
111	.9	.9	.9	.9	.9	.9	.9	.9	.9	.9
112	.8	.8	.8	.8	.8	.8	.8	.8	.8	.8
113	.7	.7	.7	.7	.7	.7	.7	.7	.7	.7
114	.6	.6	.6	.6	.6	.6	.6	.6	.6	.6
115	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5

TABLE VIA.—ANNUITIES FOR JOINT LIFE ONLY; TWO LIVES—EXPECTED RETURN MULTIPLES

Ages	45	46	47	48	49	50	51	52	53	54
45	31.4	30.9	30.5	30.0	29.4	28.9	28.3	27.7	27.1	26.5
46	30.9	30.5	30.0	29.6	29.1	28.5	28.0	27.4	26.9	26.3
47	30.5	30.0	29.6	29.2	28.7	28.2	27.7	27.1	26.6	26.0
48	30.0	29.6	29.2	28.7	28.3	27.8	27.3	26.8	26.3	25.7

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TABLE VIA.—ANNUITIES FOR JOINT LIFE ONLY; TWO LIVES—EXPECTED RETURN MULTIPLES—Continued

Ages	45	46	47	48	49	50	51	52	53	54
49	28.4	29.1	28.7	28.3	27.9	27.4	26.9	26.5	25.9	25.4
50	28.9	28.5	28.2	27.4	27.4	27.0	26.5	26.1	25.6	25.1
51	26.3	28.0	27.7	27.3	26.9	26.5	26.1	25.7	25.2	24.7
52	27.7	27.4	27.1	26.8	26.5	26.1	25.7	25.3	24.8	24.4
53	27.1	26.9	26.6	26.3	25.9	25.6	25.2	24.8	24.4	24.0
54	26.5	26.3	26.0	25.7	25.4	25.1	24.7	24.4	24.0	23.6
55	25.9	25.7	25.4	25.1	24.9	24.6	24.2	23.9	23.5	23.2
56	25.2	25.0	24.8	24.6	24.3	24.0	23.7	23.4	23.1	22.7
57	24.6	24.4	24.2	24.0	23.7	23.5	23.2	22.9	22.6	22.2
58	23.9	23.7	23.5	23.3	23.1	22.9	22.6	22.4	22.1	21.7
59	23.2	23.1	22.9	22.7	22.5	22.3	22.1	21.8	21.5	21.2
60	22.5	22.4	22.2	22.1	21.9	21.7	21.5	21.2	21.0	20.7
61	21.8	21.7	21.6	21.4	21.2	21.1	20.9	20.6	20.4	20.2
62	21.1	21.0	20.9	20.7	20.6	20.4	20.2	20.0	19.8	19.6
63	20.4	20.3	20.2	20.1	19.9	19.8	19.6	19.4	19.2	19.0
64	19.7	19.6	19.5	19.4	19.3	19.1	19.0	18.8	18.6	18.5
65	19.0	18.9	18.8	18.7	18.6	18.5	18.3	18.2	18.0	17.9
66	18.3	18.2	18.1	18.0	17.9	17.8	17.7	17.6	17.4	17.3
67	17.6	17.5	17.4	17.3	17.3	17.2	17.1	16.9	16.8	16.7
68	16.9	16.8	16.7	16.7	16.6	16.5	16.4	16.3	16.2	16.1
69	16.2	16.1	16.1	16.0	15.9	15.8	15.8	15.7	15.6	15.4
70	15.5	15.4	15.4	15.3	15.3	15.2	15.1	15.0	14.9	14.8
71	14.8	14.8	14.7	14.7	14.6	14.5	14.5	14.4	14.3	14.2
72	14.1	14.1	14.1	14.0	14.0	13.9	13.8	13.8	13.7	13.6
73	13.5	13.5	13.4	13.4	13.3	13.3	13.2	13.2	13.1	13.0
74	12.8	12.8	12.8	12.7	12.7	12.7	12.6	12.6	12.5	12.4
75	12.2	12.2	12.2	12.1	12.1	12.1	12.0	12.0	11.9	11.9
76	11.6	11.6	11.6	11.5	11.5	11.5	11.4	11.4	11.3	11.3
77	11.0	11.0	11.0	10.9	10.9	10.9	10.8	10.8	10.8	10.7
78	10.4	10.4	10.4	10.4	10.3	10.3	10.3	10.2	10.2	10.2
79	9.9	9.8	9.8	9.8	9.8	9.8	9.7	9.7	9.7	9.6
80	9.3	9.3	9.3	9.3	9.2	9.2	9.2	9.2	9.1	9.1
81	8.8	8.8	8.7	8.7	8.7	8.7	8.7	8.7	8.6	8.6
82	8.3	8.2	8.2	8.2	8.2	8.2	8.2	8.2	8.1	8.1
83	7.8	7.8	7.7	7.7	7.7	7.7	7.7	7.7	7.7	7.6
84	7.3	7.3	7.3	7.3	7.3	7.2	7.2	7.2	7.2	7.2
85	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.7
86	6.4	6.4	6.4	6.4	6.4	6.4	6.4	6.4	6.3	6.3
87	6.0	6.0	6.0	6.0	6.0	6.0	6.0	6.0	6.0	5.9
88	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6
89	5.3	5.3	5.3	5.3	5.3	5.3	5.2	5.2	5.2	5.2
90	5.0	4.9	4.9	4.9	4.9	4.9	4.9	4.9	4.9	4.9
91	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6
92	4.4	4.4	4.4	4.3	4.3	4.3	4.3	4.3	4.3	4.3
93	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1
94	3.9	3.9	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8
95	3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.6
96	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4
97	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2
98	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0
99	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8
100	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6
101	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
102	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3
103	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1
104	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9
105	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8
106	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6
107	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4
108	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3
109	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
110	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
111	.9	.9	.9	.9	.9	.9	.9	.9	.9	.9
112	.8	.8	.8	.8	.8	.8	.8	.8	.8	.8
113	.7	.7	.7	.7	.7	.7	.7	.7	.7	.7
114	.6	.6	.6	.6	.6	.6	.6	.6	.6	.6
115	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5

TABLE VIA.—ANNUITIES FOR JOINT LIFE ONLY; TWO LIVES—EXPECTED RETURN MULTIPLES

Ages	55	56	57	58	59	60	61	62	63	64
55	22.7	22.3	21.9	21.4	20.9	20.4	19.9	19.4	18.8	18.3
56	22.3	21.9	21.5	21.1	20.6	20.1	19.6	19.1	18.6	18.0
57	21.9	21.5	21.1	20.7	20.3	19.8	19.3	18.8	18.3	17.8
58	21.4	21.1	20.7	20.3	19.9	19.5	19.0	18.5	18.0	17.5
59	20.9	20.6	20.3	19.9	19.5	19.1	18.7	18.2	17.7	17.3
60	20.4	20.1	19.8	19.5	19.1	18.7	18.3	17.9	17.4	17.0
61	29.9	19.6	19.3	19.0	18.7	18.3	17.9	17.5	17.1	16.7
62	19.4	19.1	18.8	18.5	18.2	17.9	17.5	17.1	16.8	16.3
63	18.8	18.6	18.3	18.0	17.7	17.4	17.1	16.8	16.4	16.0
64	18.3	18.0	17.8	17.5	17.3	17.0	16.7	16.3	16.0	15.6
65	17.7	17.5	17.3	17.0	16.8	16.5	16.2	15.9	15.6	15.3
66	17.1	16.9	16.7	16.5	16.3	16.0	15.8	15.5	15.2	14.9
67	16.5	16.3	16.2	16.0	15.8	15.5	15.3	15.0	14.7	14.5
68	15.9	15.8	15.6	15.4	15.2	15.0	14.8	14.6	14.3	14.0
69	15.3	15.2	15.0	14.9	14.7	14.5	14.3	14.1	13.9	13.6
70	14.7	14.6	14.5	14.3	14.2	14.0	13.8	13.6	13.4	13.2
71	14.1	14.0	13.9	13.8	13.6	13.5	13.3	13.1	12.9	12.7
72	13.5	13.4	13.3	13.2	13.1	12.9	12.8	12.6	12.4	12.3

TABLE VIA.—ANNUITIES FOR JOINT LIFE ONLY; TWO LIVES—EXPECTED RETURN MULTIPLES—Continued

Ages	55	56	57	58	59	60	61	62	63	64
73	13.0	12.9	12.8	12.7	12.5	12.4	12.3	12.1	12.0	11.8
74	12.4	12.3	12.2	12.1	12.0	11.9	11.8	11.6	11.5	11.3
75	11.8	11.7	11.7	11.6	11.5	11.4	11.3	11.1	11.0	10.9
76	11.2	11.2	11.1	11.0	10.9	10.8	10.8	10.6	10.5	10.4
77	10.7	10.6	10.6	10.5	10.4	10.3	10.3	10.2	10.0	9.9
78	10.1	10.1	10.0	10.0	9.9	9.8	9.8	9.7	9.6	9.5
79	9.6	9.6	9.5	9.5	9.4	9.3	9.3	9.2	9.1	9.0
80	9.1	9.0	9.0	9.0	8.9	8.9	8.8	8.7	8.7	8.6
81	8.6	8.5	8.5	8.5	8.4	8.4	8.3	8.3	8.2	8.1
82	8.1	8.1	8.0	8.0	8.0	7.9	7.9	7.8	7.6	7.7
83	7.6	7.6	7.6	7.5	7.5	7.5	7.4	7.4	7.3	7.3
84	7.2	7.1	7.1	7.1	7.1	7.0	7.0	7.0	6.9	6.9
85	6.7	6.7	6.7	6.7	6.6	6.6	6.6	6.5	6.5	6.5
86	6.3	6.3	6.3	6.3	6.2	6.2	6.2	6.2	6.1	6.1
87	5.9	5.9	5.9	5.9	5.9	5.8	5.8	5.8	5.8	5.7
88	5.6	5.5	5.5	5.5	5.5	5.5	5.5	5.4	5.4	5.4
89	5.2	5.2	5.2	5.2	5.2	5.1	5.1	5.1	5.1	5.1
90	4.9	4.9	4.9	4.9	4.9	4.8	4.8	4.8	4.8	4.8
91	4.6	4.6	4.6	4.6	4.6	4.6	4.5	4.5	4.5	4.5
92	4.3	4.3	4.3	4.3	4.3	4.3	4.3	4.2	4.2	4.2
93	4.1	4.1	4.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0
94	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.7
95	3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.5	3.5
96	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.3	3.3	3.3
97	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.1	3.1
98	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0
99	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8
100	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6
101	2.5	2.4	2.4	2.4	2.4	2.4	2.4	2.4	2.4	2.4
102	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.2
103	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1
104	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9
105	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8
106	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6
107	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4
108	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3
109	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
110	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
111	.9	.9	.9	.9	.9	.9	.9	.9	.9	.9
112	.8	.8	.8	.8	.8	.8	.8	.8	.8	.8
113	.7	.7	.7	.7	.7	.7	.7	.7	.7	.7
114	.6	.6	.6	.6	.6	.6	.6	.6	.6	.6
115	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5

TABLE VIA.—ANNUITIES FOR JOINT LIFE ONLY; TWO LIVES—EXPECTED RETURN MULTIPLES

Ages	65	66	67	68	69	70	71	72	73	74
65	14.9	14.5	14.1	13.7	13.3	12.9	12.5	12.0	11.6	11.2
66	14.5	14.2	13.8	13.4	13.1	12.6	12.2	11.8	11.4	11.0
67	14.1	13.8	13.5	13.1	12.8	12.4	12.0	11.6	11.2	10.8
68	13.7	13.4	13.1	12.8	12.5	12.1	11.7	11.4	11.0	10.6
69	13.3	13.1	12.8	12.5	12.1	11.8	11.4	11.1	10.7	10.4
70	12.9	12.6	12.4	12.1	11.8	11.5	11.2	10.8	10.5	10.1
71	12.5	12.2	12.0	11.7	11.4	11.2	10.9	10.5	10.2	9.9
72	12.0	11.8	11.6	11.4	11.1	10.8	10.5	10.2	9.9	9.6
73	11.6	11.4	11.2	11.0	10.7	10.5	10.2	9.9	9.7	9.4
74	11.2	11.0	10.8	10.6	10.4	10.1	9.9	9.6	9.4	9.1
75	10.7	10.5	10.4	10.2	10.0	9.6	9.5	9.3	9.1	8.8
76	10.3	10.1	9.9	9.8	9.6	9.4	9.2	9.0	8.8	8.5
77	9.8	9.7	9.5	9.4	9.2	9.0	8.6	8.6	8.4	8.2
78	9.4	9.2	9.1	9.0	8.8	8.7	6.5	8.3	8.1	7.9
79	8.9	8.8	8.7	8.6	8.4	8.3	8.1	8.0	7.8	7.6
80	8.5	8.4	8.3	8.2	8.0	7.9	7.8	7.6	7.5	7.3
81	8.0	8.0	7.9	7.9	7.7	7.5	7.4	7.3	7.1	7.0
82	7.6	7.5	7.5	7.4	7.3	7.2	7.1	6.9	6.8	6.7
83	7.2	7.1	7.1	7.0	6.9	6.8	6.7	6.6	6.5	6.4
84	6.8	6.7	6.7	6.6	6.5	6.4	6.4	6.3	6.2	6.0
85	6.4	6.4	6.3	6.2	6.2	6.1	6.0	5.9	5.8	5.7
86	6.0	6.0	5.9	5.9	5.8	5.8	5.7	6.6	5.5	5.4
87	5.7	5.6	5.6	5.6	5.5	5.4	5.4	5.3	5.2	5.2
88	5.3	5.3	5.3	5.2	5.2	5.1	5.1	5.0	5.0	4.9
89	5.0	5.0	5.0	4.9	4.9	4.8	4.8	4.7	4.7	4.6
90	4.7	4.7	4.7	4.6	4.6	4.6	4.5	4.5	4.4	4.4
91	4.5	4.4	4.4	4.4	4.3	4.3	4.3	4.2	4.2	4.1
92	4.2	4.2	4.1	4.1	4.1	4.1	4.0	4.0	3.9	3.9
93	3.9	3.9	3.9	3.9	3.9	3.8	3.8	3.8	3.7	3.7
94	3.7	3.7	3.7	3.7	3.6	3.6	3.6	3.6	3.5	3.5
95	3.5	3.5	3.5	3.5	3.4	3.4	3.4	3.4	3.3	3.3
96	3.3	3.3	3.3	3.3	3.3	3.2	3.2	3.2	3.2	3.1
97	3.1	3.1	3.1	3.1	3.1	3.1	3.0	3.0	3.0	3.0
98	2.9	2.9	2.9	2.9	2.9	2.9	2.9	2.9	2.8	2.8
99	2.8	2.8	2.8	2.7	2.7	2.7	2.7	2.7	2.7	2.6
100	2.6	2.6	2.6	2.6	2.6	2.5	2.5	2.5	2.5	2.5
101	2.4	2.4	2.4	2.4	2.4	2.4	2.4	2.4	2.3	2.3
102	2.2	2.2	2.2	2.2	2.2	2.2	2.2	2.2	2.2	2.2
103	2.1	2.1	2.1	2.1	2.1	2.0	2.0	2.0	2.0	2.0
104	1.9	1.9	1.9	1.9	1.8	1.8	1.8	1.9	.18	1.9
105	1.7	1.7	1.7	1.7	.17	1.7	1.7	1.7	1.7	1.7
106	1.6	1.6	.16	1.6	1.6	1.6	1.6	1.6	1.5	1.5

TABLE VIA.—ANNUITIES FOR JOINT LIFE ONLY; TWO LIVES—EXPECTED RETURN MULTIPLES—Continued

Ages	85	86	87	88	89	70	71	72	73	74
107	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4
108	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3
109	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
110	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
111	.9	.9	.9	.9	.9	.9	.9	.9	.9	.9
112	.8	.8	.8	.8	.8	.8	.8	.8	.8	.8
113	.7	.7	.7	.7	.7	.8	.8	.8	.8	.8
114	.6	.6	.6	.6	.6	.6	.5	.5	.5	.5
115	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5

TABLE VIA.—ANNUITIES FOR JOINT LIFE ONLY; TWO LIVES—EXPECTED RETURN MULTIPLES

Ages	75	76	77	78	79	80	81	82	83	84
75	8.6	8.3	8.0	7.7	7.4	7.1	6.9	6.5	6.2	5.9
76	8.3	8.0	7.8	7.5	7.2	6.9	6.7	6.4	6.1	5.8
77	8.0	7.8	7.5	7.3	7.0	6.8	6.5	6.2	5.9	5.7
78	7.7	7.5	7.3	7.0	6.8	6.6	6.3	6.0	5.8	5.5
79	7.4	7.2	7.0	6.8	6.6	6.3	6.1	5.9	5.8	5.4
80	7.1	6.9	6.8	6.6	6.3	6.1	5.9	5.7	5.5	5.2
81	6.8	6.7	6.5	6.3	6.1	5.9	5.7	5.5	5.3	5.1
82	6.5	6.4	6.2	6.0	5.9	5.7	5.5	5.3	5.1	4.9
83	6.2	6.1	5.9	5.8	5.8	5.5	5.3	5.1	4.9	4.7
84	5.9	5.8	5.7	5.5	5.4	5.2	5.1	4.9	4.7	4.6
85	5.6	5.5	5.4	5.3	5.2	5.0	4.9	4.7	4.6	4.4
86	5.4	5.3	5.1	5.0	4.9	4.8	4.7	4.5	4.4	4.2
87	5.1	5.0	4.9	4.8	4.7	4.6	4.4	4.3	4.2	4.1
88	4.8	4.7	4.6	4.5	4.4	4.3	4.2	4.1	4.0	3.9
89	4.5	4.5	4.4	4.3	4.2	4.1	4.0	3.9	3.8	3.7
90	4.3	4.2	4.2	4.1	4.0	3.9	3.8	3.8	3.7	3.5
91	4.1	4.0	4.0	3.9	3.8	3.7	3.7	3.6	3.5	3.4
92	3.9	3.8	3.7	3.7	3.6	3.8	3.5	3.4	3.3	3.2
93	3.7	3.6	3.6	3.5	3.4	3.4	3.3	3.2	3.2	3.1
94	3.5	3.4	3.4	3.3	3.3	3.2	3.2	3.1	3.0	3.0
95	3.3	3.2	3.2	3.2	3.1	3.1	3.0	3.0	2.9	2.8
96	3.1	3.1	3.0	3.0	3.0	2.9	2.9	2.8	2.8	2.7
97	2.9	2.9	2.8	2.9	2.8	2.8	2.7	2.7	2.6	2.6
98	2.8	2.8	2.7	2.7	2.7	2.6	2.8	2.6	2.5	2.5
99	2.6	2.8	2.8	2.6	2.5	2.5	2.5	2.4	2.4	2.3
100	2.5	2.5	2.4	2.4	2.4	2.4	2.3	2.3	2.3	2.2
101	2.3	2.3	2.3	2.3	2.2	2.2	2.2	2.2	2.1	2.1
102	2.2	2.1	2.1	2.1	2.1	2.1	2.0	2.0	2.0	2.0
103	2.0	2.0	2.0	2.0	1.9	1.9	1.9	1.9	1.9	1.8
104	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.7	1.7	1.7
105	1.7	1.7	1.7	1.7	1.6	1.6	1.6	1.6	1.6	1.6
106	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.4
107	1.4	1.4	1.4	1.4	1.4	1.4	1.3	1.3	1.3	1.3
108	1.3	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2
109	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
110	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
111	.9	.9	.9	.9	.9	.9	.9	.9	.9	.9
112	.8	.8	.8	.7	.7	.7	.7	.7	.7	.7
113	.8	.8	.8	.8	.8	.8	.6	.8	.8	.8
114	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5
115	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5

TABLE VIA.—ANNUITIES FOR JOINT LIFE ONLY; TWO LIVES—EXPECTED RETURN MULTIPLES

Ages	85	86	87	88	89	90	91	92	93	94
85	4.2	4.1	3.9	3.8	3.6	3.4	3.3	3.2	3.0	2.9
86	4.1	3.9	3.8	3.6	3.5	3.3	3.2	3.1	2.9	2.8
87	3.9	3.8	3.6	3.5	3.4	3.2	3.1	3.0	2.8	2.7
88	3.8	3.6	3.5	3.4	3.2	3.1	3.0	2.9	2.8	2.6
89	3.6	3.5	3.4	3.2	3.1	3.0	2.9	2.8	2.7	2.6
90	3.4	3.3	3.2	3.1	3.0	2.9	2.8	2.7	2.6	2.5
91	3.3	3.2	3.1	3.0	2.9	2.8	2.7	2.6	2.5	2.4
92	3.2	3.1	3.0	2.9	2.8	2.7	2.6	2.5	2.4	2.3
93	3.0	2.9	2.8	2.8	2.7	2.6	2.5	2.4	2.3	2.3
94	2.9	2.8	2.7	2.6	2.6	2.5	2.4	2.3	2.3	2.2
95	2.8	2.7	2.6	2.5	2.5	2.4	2.3	2.2	2.2	2.1
96	2.8	2.8	2.5	2.4	2.4	2.3	2.2	2.2	2.1	2.0
97	2.5	2.5	2.4	2.3	2.3	2.2	2.2	2.1	2.0	2.0
98	2.4	2.4	2.3	2.2	2.2	2.1	2.1	2.0	2.0	1.9
99	2.3	2.2	2.2	2.1	2.1	2.0	2.0	1.9	1.9	1.8
100	2.2	2.1	2.1	2.0	2.0	1.9	1.9	1.9	1.8	1.8
101	2.1	2.0	2.0	1.9	1.9	1.8	1.8	1.8	1.7	1.7
102	1.9	1.9	1.9	1.8	1.8	1.8	1.8	1.7	1.7	1.6
103	1.8	1.8	1.8	1.7	1.7	1.7	1.6	1.6	1.6	1.5
104	1.7	1.7	1.6	1.6	1.6	1.5	1.5	1.5	1.5	1.4
105	1.6	1.5	1.5	1.5	1.5	1.4	1.4	1.4	1.4	1.3
106	1.4	1.4	1.4	1.4	1.4	1.3	1.3	1.3	1.3	1.2
107	1.3	1.3	1.3	1.3	1.2	1.2	1.2	1.2	1.2	1.2
108	1.2	1.2	1.2	1.1	1.1	1.1	1.1	1.1	1.1	1.1
109	1.1	1.1	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
110	.9	.9	.9	.9	.9	.9	.9	.9	.9	.9
111	.8	.8	.8	.8	.8	.8	.8	.8	.8	.8
112	.7	.7	.7	.7	.7	.7	.7	.7	.7	.7

TABLE VIA.—ANNUITIES FOR JOINT LIFE ONLY; TWO LIVES—EXPECTED RETURN MULTIPLES—Continued

Ages	85	86	87	88	89	90	91	92	93	94
113	.6	.6	.6	.6	.6	.6	.6	.6	.6	.6
114	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5
115	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5

TABLE VIA.—ANNUITIES FOR JOINT LIFE ONLY; TWO LIVES—EXPECTED RETURN MULTIPLES

Ages	95	96	97	98	99	100	101	102	103	104
95	2.0	2.0	1.9	1.8	1.8	1.7	1.6	1.6	1.5	1.4
96	2.0	1.9	1.9	1.8	1.7	1.7	1.6	1.5	1.5	1.4
97	1.9	1.9	1.8	1.7	1.7	1.8	1.6	1.5	1.4	1.3
98	1.8	1.8	1.7	1.7	1.6	1.8	1.5	1.5	1.4	1.3
99	1.8	1.7	1.7	1.6	1.6	1.5	1.5	1.4	1.4	1.3
100	1.7	1.7	1.6	1.6	1.5	1.5	1.4	1.4	1.3	1.3
101	1.6	1.6	1.6	1.5	1.5	1.4	1.4	1.3	1.3	1.2
102	1.6	1.5	1.5	1.5	1.4	1.4	1.3	1.3	1.2	1.2
103	1.5	1.5	1.4	1.4	1.4	1.3	1.3	1.2	1.2	1.1
104	1.4	1.4	1.3	1.3	1.3	1.3	1.2	1.2	1.1	1.1
105	1.3	1.3	1.3	1.2	1.2	1.2	1.2	1.1	1.1	1.0
106	1.2	1.2	1.2	1.2	1.1	1.1	1.1	1.1	1.0	1.0
107	1.1	1.1	1.1	1.1	1.1	1.0	1.0	1.0	1.0	.9
108	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	.9	.9
109	1.0	.9	.9	.9	.9	.9	.9	.9	.9	.8
110	.9	.9	.8	.8	.8	.8	.8	.8	.8	.8
111	.8	.8	.8	.8	.8	.8	.8	.8	.8	.8
112	.8	.8	.8	.8	.8	.8	.7	.7	.7	.7
113	.7	.7	.7	.7	.7	.7	.7	.7	.6	.6
114	.6	.6	.6	.6	.6	.6	.6	.6	.6	.6
115	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5

TABLE VIAA.—ANNUITIES FOR JOINT LIFE ONLY; TWO LIVES—EXPECTED RETURN MULTIPLES

Ages	105	106	107	108	109	110	111	112	113	114	115
105	1.0	1.0	.9	.9	.8	.7	.7	.8	.8	.5	.5
106	1.0	.9	.9	.8	.8	.7	.7	.8	.8	.5	.5
107	.9	.9	.8	.9	.7	.7	.7	.6	.6	.5	.5
108	.9	.8	.8	.8	.7	.7	.6	.5	.5	.5	.5
109	.8	.8	.7	.7	.7	.7	.6	.5	.5	.5	.5
110	.7	.7	.7	.7	.7	.7	.6	.8	.5	.5	.5
111	.7	.7	.7	.8	.8	.8	.6	.6	.5	.5	.5
112	.6	.6	.6	.6	.8	.8	.8	.5	.5	.5	.5
113	.6	.6	.6	.5	.5	.5	.5	.5	.5	.5	.5
114	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5
115	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5

TABLE VII.—PERCENT VALUE OF REFUND FEATURE; DURATION OF GUARANTEED AMOUNT

Age	Years—									
	1	2	3	4	5	6	7	8	9	10
5	0	0	0	0	0	0	0	0	0	0
6	0	0	0	0	0	0	0	0	0	0
7	0	0	0	0	0	0	0	0	0	0
8	0	0	0	0	0	0	0	0	0	0
9	0	0	0	0	0	0	0	0	0	0
10	0	0	0	0	0	0	0	0	0	0
11	0	0	0	0	0	0	0	0	0	0
12	0	0	0	0	0	0	0	0	0	0
13	0	0	0	0	0	0	0	0	0	0
14	0	0	0	0	0	0	0	0	0	0
15	0	0	0	0	0	0	0	0	0	0
16	0	0	0	0	0	0	0	0	0	0
17	0	0	0	0	0	0	0	0	0	0
18	0	0	0	0	0	0	0	0	0	0
19	0	0	0	0	0	0	0	0	0	0
20	0	0	0	0	0	0	0	0	0	0
21	0	0	0	0	0	0	0	0	0	0
22	0	0	0	0	0	0	0	0	0	0
23	0	0	0	0	0	0	0	0	0	0
24	0	0	0	0	0	0	0	0	0	0
25	0	0	0	0	0	0	0	0	0	0

TABLE VII.—PERCENT VALUE OF REFUND FEATURE; DURATION OF GUARANTEED AMOUNT—Continued

Age	Years—									
	1	2	3	4	5	6	7	8	9	10
26	0	0	0	0	0	0	0	0	0	0
27	0	0	0	0	0	0	0	0	0	0
28	0	0	0	0	0	0	0	0	0	0
29	0	0	0	0	0	0	0	0	0	0
30	0	0	0	0	0	0	0	0	0	0
31	0	0	0	0	0	0	0	0	0	0
32	0	0	0	0	0	0	0	0	0	0
33	0	0	0	0	0	0	0	0	0	0
34	0	0	0	0	0	0	0	0	0	0
35	0	0	0	0	0	0	0	0	0	0
36	0	0	0	0	0	0	0	0	0	0
37	0	0	0	0	0	0	0	0	0	1
38	0	0	0	0	0	0	0	0	0	1
39	0	0	0	0	0	0	0	0	1	1
40	0	0	0	0	0	0	0	1	1	1
41	0	0	0	0	0	0	0	1	1	1
42	0	0	0	0	0	0	1	1	1	1
43	0	0	0	0	0	0	1	1	1	1
44	0	0	0	0	0	1	1	1	1	1
45	0	0	0	0	0	1	1	1	1	1
46	0	0	0	0	1	1	1	1	1	1
47	0	0	0	0	1	1	1	1	1	1
48	0	0	0	0	1	1	1	1	1	1
49	0	0	0	1	1	1	1	1	1	2
50	0	0	0	1	1	1	1	1	1	2
51	0	0	0	1	1	1	1	1	2	2
52	0	0	0	1	1	1	1	1	2	2
53	0	0	1	1	1	1	1	2	2	2
54	0	0	1	1	1	1	1	2	2	2
55	0	0	1	1	1	1	2	2	2	2
56	0	0	1	1	1	1	2	2	2	3
57	0	0	1	1	1	2	2	2	3	3
58	0	1	1	1	1	2	2	2	3	3
59	0	1	1	1	1	2	2	3	3	4
60	0	1	1	1	2	2	2	3	3	4
61	0	1	1	1	2	2	3	3	4	4
62	0	1	1	2	2	2	3	4	4	5
63	0	1	1	2	2	3	3	4	5	5
64	0	1	1	2	2	3	4	4	5	6
65	0	1	2	2	3	3	4	5	6	6
66	1	1	2	2	3	4	5	5	6	7
67	1	1	2	3	3	4	5	6	7	8
68	1	1	2	3	4	5	6	7	8	9
69	1	1	2	3	4	5	6	7	8	10
70	1	2	3	4	5	6	7	8	9	11
71	1	2	3	4	5	6	8	9	10	12
72	1	2	3	4	6	7	8	10	11	13
73	1	2	4	5	6	8	9	11	13	14
74	1	3	4	5	7	9	10	12	14	16
75	1	3	4	6	8	9	11	13	15	17
76	2	3	5	7	9	10	12	15	17	19
77	2	4	5	7	9	12	14	16	18	21
78	2	4	6	8	10	13	15	18	20	23
79	2	4	7	9	11	14	17	19	22	25
80	2	5	7	10	13	15	18	21	24	27
81	3	5	8	11	14	17	20	23	26	29
82	3	6	8	12	15	18	22	25	28	32
83	3	7	10	13	17	20	24	27	31	34
84	4	7	11	15	19	22	26	30	33	37
85	4	8	12	16	20	24	28	32	36	40
86	4	9	13	18	22	27	31	35	39	42
87	5	10	15	20	24	29	33	37	41	45
88	5	11	16	21	26	31	36	40	44	48
89	6	12	18	23	28	33	38	43	47	50
90	7	13	19	25	31	36	41	45	49	53
91	7	14	21	27	33	38	43	48	52	55
92	8	15	22	29	35	40	45	50	54	58
93	9	17	24	31	37	43	46	52	56	60
94	9	18	26	33	39	45	50	54	58	62
95	10	19	27	35	41	47	52	57	60	64
96	11	20	29	38	43	49	54	59	62	66
97	11	21	30	38	45	51	56	61	64	68
98	12	23	32	40	47	53	58	63	66	69
99	13	24	34	42	49	55	60	65	68	71
100	14	26	36	44	52	58	63	67	70	73
101	14	27	38	47	54	60	65	69	72	75
102	15	29	40	49	56	62	67	71	74	77
103	17	31	42	52	59	65	69	73	76	78
104	18	33	45	55	62	67	72	75	78	80
105	19	36	48	58	65	70	74	77	80	82
106	21	38	51	61	68	73	77	79	82	84
107	23	42	55	64	71	75	79	81	84	85
108	25	45	58	67	73	78	81	83	85	87
109	28	49	62	71	76	80	83	85	87	88
110	31	52	66	74	79	82	85	87	88	89
111	34	57	70	77	82	85	87	88	90	91
112	37	61	73	80	84	87	88	90	91	92
113	41	66	77	83	86	88	90	91	92	93
114	45	70	80	85	88	90	92	93	93	94

TABLE VII.—PERCENT VALUE OF REFUND FEATURE; DURATION OF GUARANTEED AMOUNT—Continued

Age	Years—									
	1	2	3	4	5	6	7	8	9	10
115	50	75	83	88	90	92	93	94	94	95

TABLE VII.—PERCENT VALUE OF REFUND FEATURE; DURATION OF GUARANTEED AMOUNT

Age	Years—									
	11	12	13	14	15	16	17	18	19	20
5	0	0	0	0	0	0	0	0	0	0
6	0	0	0	0	0	0	0	0	0	0
7	0	0	0	0	0	0	0	0	0	0
8	0	0	0	0	0	0	0	0	0	0
9	0	0	0	0	0	0	0	0	0	0
10	0	0	0	0	0	0	0	0	0	0
11	0	0	0	0	0	0	0	0	0	0
12	0	0	0	0	0	0	0	0	0	0
13	0	0	0	0	0	0	0	0	0	0
14	0	0	0	0	0	0	0	0	0	0
15	0	0	0	0	0	0	0	0	0	0
16	0	0	0	0	0	0	0	0	0	0
17	0	0	0	0	0	0	0	0	0	0
18	0	0	0	0	0	0	0	0	0	0
19	0	0	0	0	0	0	0	0	0	0
20	0	0	0	0	0	0	0	0	0	0
21	0	0	0	0	0	0	0	0	0	0
22	0	0	0	0	0	0	0	0	0	1
23	0	0	0	0	0	0	0	0	1	1
24	0	0	0	0	0	0	0	0	1	1
25	0	0	0	0	0	0	0	1	1	1
26	0	0	0	0	0	0	0	1	1	1
27	0	0	0	0	0	0	1	1	1	1
28	0	0	0	0	0	0	1	1	1	1
29	0	0	0	0	0	1	1	1	1	1
30	0	0	0	0	0	1	1	1	1	1
31	0	0	0	0	1	1	1	1	1	1
32	0	0	0	0	1	1	1	1	1	1
33	0	0	0	0	1	1	1	1	1	1
34	0	0	0	1	1	1	1	1	1	1
35	0	1	1	1	1	1	1	1	1	1
36	0	1	1	1	1	1	1	1	1	1
37	1	1	1	1	1	1	1	1	1	1
38	1	1	1	1	1	1	1	1	1	1
39	1	1	1	1	1	1	1	1	1	1
40	1	1	1	1	1	1	1	1	1	2
41	1	1	1	1	1	1	1	1	2	2
42	1	1	1	1	1	1	1	2	2	2
43	1	1	1	1	1	1	2	2	2	2
44	1	1	1	1	1	2	2	2	2	2
45	1	1	1	1	2	2	2	2	2	3
46	1	1	2	2	2	2	2	2	3	3
47	1	2	2	2	2	2	2	2	3	3
48	2	2	2	2	2	2	2	3	3	3
49	2	2	2	2	2	2	3	3	3	4
50	2	2	2	2	2	3	3	3	3	4
51	2	2	2	2	3	3	3	3	4	4
52	2	2	2	3	3	3	3	3	4	4
53	2	2	3	3	3	3	3	4	4	5
54	2	3	3	3	3	4	4	4	5	5
55	3	3	3	3	4	4	4	4	5	5
56	3	3	3	4	4	4	4	5	5	6
57	3	3	4	4	4	4	5	5	6	7
58	3	4	4	4	5	5	5	6	7	7
59	4	4	4	5	5	5	6	6	7	8
60	4	4	5	5	5	6	6	7	8	8
61	4	5	5	6	6	6	7	8	9	9
62	5	5	6	6	6	7	8	9	9	10
63	5	6	6	7	7	8	8	9	10	10
64	6	6	7	8	8	9	9	10	10	11
65	7	7	8	8	9	9	10	10	11	12
66	7	8	8	9	9	10	10	11	12	13
67	8	9	9	10	10	11	11	12	13	14
68	9	10	10	11	11	12	12	13	14	15
69	10	11	11	12	12	13	13	14	15	16
70	11	12	12	13	13	14	14	15	16	17
71	12	13	13	14	14	15	15	16	17	18
72	13	14	14	15	15	16	16	17	18	19
73	14	15	15	16	16	17	17	18	19	20
74	15	16	16	17	17	18	18	19	20	21
75	16	17	17	18	18	19	19	20	21	22
76	17	18	18	19	19	20	20	21	22	23
77	18	19	19	20	20	21	21	22	23	24
78	19	20	20	21	21	22	22	23	24	25
79	20	21	21	22	22	23	23	24	25	26
80	21	22	22	23	23	24	24	25	26	27
81	22	23	23	24	24	25	25	26	27	28
82	23	24	24	25	25	26	26	27	28	29
83	24	25	25	26	26	27	27	28	29	30
84	25	26	26	27	27	28	28	29	30	31
85	26	27	27	28	28	29	29	30	31	32
86	27	28	28	29	29	30	30	31	32	33
87	28	29	29	30	30	31	31	32	33	34
88	29	30	30	31	31	32	32	33	34	35
89	30	31	31	32	32	33	33	34	35	36
90	31	32	32	33	33	34	34	35	36	37
91	32	33	33	34	34	35	35	36	37	38
92	33	34	34	35	35	36	36	37	38	39
93	34	35	35	36	36	37	37	38	39	40
94	35	36	36	37	37	38	38	39	40	41
95	36	37	37	38	38	39	39	40	41	42
96	37	38	38	39	39	40	40	41	42	43
97	38	39	39	40	40	41	41	42	43	44
98	39	40	40	41	41	42	42	43	44	45
99	40	41	41	42	42	43	43	44	45	46
100	41	42	42	43	43	44	44	45	46	47
101	42	43	43	44	44	45	45	46	47	48
102	43	44	44	45	45	46	46	47	48	49
103	44	45	45	46	46	47	47	48	49	50
104	45	46	46	47	47	48	48	49	50	51
105	46	47	47	48	48	49	49	50	51	52
106	47	48	48	49	49	50	50	51	52	53
107	48	49	49	50	50	51	51	52	53	54
108	49	50	50	51	51	52	52	53	54	55
109	50	51	51	52	52	53	53	54	55	56
110	51	52	52	53	53	54	54	55	56	57
111	52	53	53	54	54	55	55	56	57	58
112	53	54	54	55	55	56	56	57	58	59
113	54	55	55	56	56	57	57	58	59	60
114	55	56	56	57	57	58	58	59	60	61
115	56	57	57	58	58	59	59	60	61	62
116	57	58	58	59	59	60	60	61	62	63
117	58	59	59	60	60	61	61	62	63	64
118	59	60	60	61	61	62	62	63	64	65
119	60	61	61	62	62	63	63	64	65	66
120	61	62	62	63	63	64	64	65	66	67

TABLE VII.—PERCENT VALUE OF REFUND FEATURE; DURATION OF GUARANTEED AMOUNT—Continued

Age	Years—									
	11	12	13	14	15	16	17	18	19	20
85	43	46	49	52	55	57	59	62	63	65
86	46	49	52	55	57	60	62	64	66	67
87	48	52	55	57	60	62	64	66	68	69
88	51	54	57	60	62	64	66	68	70	71
89	54	57	60	62	65	67	68	70	72	73
90	56	59	62	64	67	69	70	72	74	75
91	59	62	64	67	69	71	72	74	75	76
92	61	64	66	69	71	72	74	75	77	78
93	63	66	68	70	72	74	75	77	78	79
94	65	68	70	72	74	75	77	78	79	80
95	67	69	72	74	75	77	78	79	81	82
96	69	71	73	75	77	78	80	81	82	83
97	70	73	75	77	78	80	81	82	83	84
98	72	74	76	78	79	81	82	83	84	85
99	74	76	78	79	81	82	83	84	85	86
100	75	78	79	81	82	83	84	85	86	86
101	77	79	81	82	83	84	85	86	87	87
102	79	81	82	83	84	85	86	87	88	88
103	80	82	83	85	86	87	87	88	89	89
104	82	84	85	86	87	88	88	89	90	90
105	84	85	86	87	88	89	89	90	90	91
106	85	86	87	88	89	90	90	91	91	92
107	87	88	89	89	90	91	91	92	92	93
108	88	89	90	90	91	92	92	93	93	93
109	89	90	91	92	92	93	93	93	94	94
110	90	91	92	92	93	93	94	94	94	95
111	92	92	93	93	94	94	95	95	95	95
112	93	93	94	94	95	95	95	96	96	96
113	94	94	95	95	95	96	96	96	96	97
114	95	95	95	96	96	96	97	97	97	97
115	95	96	96	96	97	97	97	97	97	96

TABLE VII.—PERCENT VALUE OF REFUND FEATURE; DURATION OF GUARANTEED AMOUNT

Age	Years—									
	21	22	23	24	25	26	27	28	29	30
5	0	0	0	0	0	0	0	0	0	0
6	0	0	0	0	0	0	0	0	0	0
7	0	0	0	0	0	0	0	0	0	0
8	0	0	0	0	0	0	0	0	0	1
9	0	0	0	0	0	0	0	0	1	1
10	0	0	0	0	0	0	0	1	1	1
11	0	0	0	0	0	0	1	1	1	1
12	0	0	0	0	0	0	1	1	1	1
13	0	0	0	0	0	1	1	1	1	1
14	0	0	0	0	1	1	1	1	1	1
15	0	0	0	1	1	1	1	1	1	1
16	0	0	1	1	1	1	1	1	1	1
17	0	0	1	1	1	1	1	1	1	1
18	0	1	1	1	1	1	1	1	1	1
19	1	1	1	1	1	1	1	1	1	1
20	1	1	1	1	1	1	1	1	1	1
21	1	1	1	1	1	1	1	1	1	1
22	1	1	1	1	1	1	1	1	1	1
23	1	1	1	1	1	1	1	1	1	1
24	1	1	1	1	1	1	1	1	1	1
25	1	1	1	1	1	1	1	1	1	1
26	1	1	1	1	1	1	1	1	1	1
27	1	1	1	1	1	1	1	1	1	2
28	1	1	1	1	1	1	1	1	2	2
29	1	1	1	1	1	1	1	2	2	2
30	1	1	1	1	1	1	2	2	2	2
31	1	1	1	1	1	2	2	2	2	2
32	1	1	1	1	2	2	2	2	2	2
33	1	1	2	2	2	2	2	2	2	2
34	1	1	2	2	2	2	2	2	2	3
35	1	2	2	2	2	2	2	2	3	3
36	2	2	2	2	2	2	2	3	3	3
37	2	2	2	2	2	2	3	3	3	3
38	2	2	2	2	2	3	3	3	3	4
39	2	2	2	2	36	3	3	3	4	4
40	2	2	3	3	3	3	3	4	4	4
41	2	3	3	3	3	3	4	4	4	5
42	3	3	3	3	3	4	4	4	5	5
43	3	3	3	4	4	4	4	5	5	6
44	3	3	4	4	4	4	5	5	6	6
45	3	4	4	4	5	5	5	6	6	7
46	4	4	4	5	5	5	6	6	7	7
47	4	4	5	5	5	6	6	7	7	8
48	4	5	5	5	6	6	7	7	8	9
49	5	5	5	6	6	7	8	8	9	10
50	5	5	6	6	7	8	8	9	10	10
51	5	6	6	7	8	8	9	10	11	11
52	6	7	7	8	8	9	10	11	11	12
53	7	7	8	8	9	10	11	12	13	14
54	7	8	8	9	10	11	12	13	14	15

TABLE VII.—PERCENT VALUE OF REFUND FEATURE; DURATION OF GUARANTEED AMOUNT—Continued

Age	Years—									
	21	22	23	24	25	26	27	28	29	30
55	8	9	9	10	11	12	13	14	15	16
56	9	9	10	11	12	13	14	15	16	18
57	9	10	11	12	13	14	15	16	18	19
58	10	11	12	13	14	15	17	18	19	21
59	11	12	13	15	16	17	18	19	21	22
60	12	14	15	16	17	19	20	21	23	24
61	14	15	16	17	19	20	22	23	25	26
62	15	16	18	19	20	22	23	25	27	28
63	16	18	19	21	22	24	25	27	29	30
64	18	19	21	23	24	26	28	29	31	33
65	20	21	23	25	26	28	30	31	33	35
66	21	23	25	27	28	30	32	34	35	37
67	23	25	27	29	31	32	34	36	38	40
68	25	27	29	31	33	35	37	39	40	42
69	26	29	31	33	35	37	39	41	43	44
70	30	32	34	36	38	40	42	43	45	47
71	32	34	36	38	40	42	44	46	47	49
72	35	37	39	41	43	45	46	48	50	51
73	37	39	41	43	45	47	49	51	52	54
74	40	42	44	46	48	50	51	53	54	56
75	42	44	46	48	50	52	54	55	57	58
76	45	47	49	51	53	54	56	58	59	60
77	47	50	51	53	55	57	58	60	61	62
78	50	52	54	56	57	59	61	62	63	64
79	53	55	56	58	60	61	63	64	65	66
80	55	57	59	60	62	63	65	66	67	68
81	58	59	61	63	64	66	67	68	69	70
82	60	62	63	65	66	68	69	70	71	72
83	62	64	65	67	68	70	71	72	73	74
84	65	66	68	69	70	71	72	73	74	75
85	67	68	70	71	72	73	74	75	76	77
86	69	70	72	73	74	75	76	77	77	78
87	71	72	73	75	76	76	77	78	79	80
88	73	74	75	76	77	78	79	80	80	81
89	74	76	77	78	79	79	80	81	81	82
90	76	77	78	79	80	81	81	82	83	83
91	78	78	79	80	81	82	83	83	84	84
92	79	80	81	82	82	83	84	84	85	85
93	80	81	82	83	83	84	85	85	86	86
94	81	82	83	84	84	85	85	86	86	87
95	82	83	84	85	85	86	86	87	87	88
96	83	84	85	86	86	87	87	88	88	88
97	84	85	86	86	87	87	88	88	89	89
98	85	86	87	87	88	88	89	89	89	90
99	86	87	87	88	88	89	89	90	90	90
100	87	88	88	89	89	90	90	90	91	91
101	88	89	89	90	90	90	91	91	91	92
102	89	89	90	90	91	91	91	92	92	92
103	90	90	91	91	91	92	92	92	93	93
104	91	91	91	92	92	92	93	93	93	93
105	91	92	92	92	93	93	93	94	94	94
106	92	93	93	93	93	94	94	94	94	95
107	93	93	94	94	94	94	95	95	95	95
108	94	94	94	94	95	95	95	95	95	96
109	94	95	95	95	95	95	96	96	96	96
110	95	95	95	96	96	96	96	96	96	96
111	96	96	96	96	96	96	97	97	97	97
112	96	96	96	97	97	97	97	97	97	97
113	97	97	97	97	97	97	97	97	96	96
114	97	97	97	98	98	98	98	96	96	96
115	96	96	96	96	96	96	96	96	96	96

TABLE VII.—PERCENT VALUE OF REFUND FEATURE; DURATION OF GUARANTEED AMOUNT

Age	Years—									
	31	32	33	34	35	36	37	38	39	40
5	0	1	1	1	1	1	1	1	1	1
6	0	1	1	1	1	1	1	1	1	1
7	1	1	1	1	1	1	1	1	1	1
8	1	1	1	1	1	1	1	1	1	1
9	1	1	1	1	1	1	1	1	1	1
10	1	1	1	1	1	1	1	1	1	1
11	1	1	1	1	1	1	1	1	1	1
12	1	1	1	1	1	1	1	1	1	1
13	1	1	1	1	1	1	1	1	1	1
14	1	1	1	1	1	1	1	1	1	1
15	1	1	1	1	1	1	1	1	1	1
16	1	1	1	1	1	1	1	1	1	1
17	1	1	1	1	1	1	1	1	1	1
18	1	1	1	1	1	1	1	1	1	2
19	1	1	1	1	1	1	1	1	2	2
20	1	1	1	1	1	1	1	2	2	2
21	1	1	1	1	1	1	2	2	2	2
22	1	1	1	1	1	2	2	2	2	2
23	1	1	1	1	1	2	2	2	2	2
24	1	1	2	2	2	2	2	2	2	2

TABLE VII.—PERCENT VALUE OF REFUND FEATURE; DURATION OF GUARANTEED AMOUNT—Continued

Age	Years—									
	31	32	33	34	35	36	37	38	39	40
25	1	2	2	2	2	2	2	2	2	3
26	2	2	2	2	2	2	2	2	3	3
27	2	2	2	2	2	2	2	3	3	3
28	2	2	2	2	2	2	3	3	3	3
29	2	2	2	2	2	3	3	3	3	4
30	2	2	2	3	3	3	3	3	4	4
31	2	2	3	3	3	3	3	4	4	4
32	2	3	3	3	3	3	4	4	4	5
33	3	3	3	3	3	4	4	4	5	5
34	3	3	3	3	4	4	4	5	5	5
35	3	3	3	4	4	4	5	5	5	6
36	3	4	4	4	4	5	5	5	6	6
37	4	4	4	4	5	5	6	6	6	7
38	4	4	5	5	5	6	6	7	7	8
39	4	5	5	5	6	6	7	7	8	8
40	5	5	5	6	6	7	7	8	8	9
41	5	5	6	6	7	7	8	9	9	10
42	6	6	6	7	7	8	9	9	10	11
43	6	7	7	8	8	9	9	10	11	12
44	7	7	8	8	9	10	10	11	12	13
45	7	8	8	9	10	10	11	12	13	14
46	8	8	9	10	11	11	12	13	14	15
47	9	9	10	11	12	12	13	14	15	16
48	9	10	11	12	13	14	15	16	17	18
49	10	11	12	13	14	15	16	17	18	19
50	11	12	13	14	15	16	17	18	20	21
51	12	13	14	15	16	17	19	20	21	22
52	13	14	15	17	18	19	20	21	23	24
53	15	16	17	18	19	20	22	23	24	26
54	16	17	18	19	21	22	23	25	26	28
55	17	18	20	21	22	24	25	27	28	30
56	19	20	21	23	24	26	27	29	30	32
57	20	22	23	25	26	28	29	31	32	34
58	22	24	25	27	28	30	31	33	34	36
59	24	25	27	29	30	32	33	35	36	38
60	26	27	29	31	32	34	35	37	38	40
61	28	29	31	33	34	36	37	39	40	42
62	30	32	33	35	36	38	40	41	42	44
63	32	34	35	37	39	40	42	43	45	46
64	34	36	38	39	41	42	44	45	47	48
65	37	38	40	42	43	45	46	47	49	50
66	39	41	42	44	45	47	48	50	51	52
67	41	43	45	46	48	49	50	52	53	54
68	44	45	47	48	50	51	52	54	55	56
69	46	48	49	51	52	53	54	56	57	58
70	48	50	51	53	54	55	57	58	59	60
71	51	52	54	55	56	57	59	60	61	62
72	53	54	56	57	58	59	60	62	62	63
73	55	57	58	59	60	61	62	63	64	65
74	57	59	60	61	62	63	64	65	66	67
75	58	61	62	63	64	65	66	67	68	68
76	62	63	64	65	66	67	68	69	69	70
77	64	65	66	67	68	68	69	70	71	72
78	66	67	68	68	69	70	70	71	72	73
79	67	68	69	70	71	72	73	73	74	75
80	69	70	71	72	73	74	74	75	76	76
81	71	72	73	74	74	75	76	76	77	78
82	73	74	74	75	76	77	77	78	78	79
83	74	75	76	77	77	78	79	79	80	80
84	76	77	77	78	79	79	80	80	81	81
85	78	78	79	79	80	81	81	82	82	83
86	79	80	80	81	81	82	82	83	83	84
87	80	81	81	82	83	83	83	84	84	85
88	82	82	83	83	84	84	85	85	86	86
89	83	83	84	84	85	85	86	86	86	87
90	84	84	85	85	86	86	86	87	87	87
91	85	85	86	86	87	87	87	88	88	88
92	86	86	87	87	87	88	88	88	88	89
93	87	87	87	88	88	88	89	89	89	90
94	87	88	88	88	89	89	89	90	90	90
95	88	88	89	89	89	90	90	90	91	91
96	89	89	89	90	90	90	91	91	91	91
97	89	90	90	90	91	91	91	91	92	92
98	90	90	91	91	91	91	92	92	92	92
99	91	91	91	92	92	92	92	92	93	93
100	91	92	92	92	92	93	93	93	93	94
101	92	92	92	93	93	93	93	94	94	94
102	92	93	93	93	93	94	94	94	94	94
103	93	93	94	94	94	94	94	94	95	95
104	94	94	94	94	94	95	95	95	95	95
105	94	94	95	95	95	95	96	95	95	95
106	95	95	95	95	95	96	96	96	96	96
107	95	96	96	96	96	96	96	96	96	96
108	96	96	96	96	96	96	96	96	97	97
109	96	96	97	97	97	97	97	97	97	97
110	97	97	97	97	97	97	97	97	97	97
111	97	97	97	97	97	97	98	98	98	98
112	97	97	98	98	98	98	98	98	98	98
113	98	98	98	98	98	98	98	98	98	98
114	98	98	98	98	98	98	98	98	98	98

TABLE VII.—PERCENT VALUE OF REFUND FEATURE; DURATION OF GUARANTEED AMOUNT—Continued

Age	Years—									
	31	32	33	34	35	36	37	38	39	40
115	98	98	98	99	99	99	99	99	99	99

TABLE VIII.—TEMPORARY LIFE ANNUITIES; [1] ONE LIFE—EXPECTED RETURN MULTIPLES

[See footnote at end of tables]

Temporary Period—Maximum Duration of Annuity

Age	Years—									
	1	2	3	4	5	6	7	8	9	10
5	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
6	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
7	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
8	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
9	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
10	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
11	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
12	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
13	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
14	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
15	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
16	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
17	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
18	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
19	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
20	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
21	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
22	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
23	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
24	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
25	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
26	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
27	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
28	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
29	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
30	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
31	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
32	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
33	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
34	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
35	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
36	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
37	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
38	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	9.9
39	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	9.9
40	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	9.9
41	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	8.9	9.9
42	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	8.9	9.9
43	1.0	2.0	3.0	4.0	5.0	6.0	7.0	7.9	8.9	9.9
44	1.0	2.0	3.0	4.0	5.0	6.0	7.0	7.9	8.9	9.9
45	1.0	2.0	3.0	4.0	5.0	6.0	7.0	7.9	8.9	9.9
46	1.0	2.0	3.0	4.0	5.0	6.0	6.9	7.9	8.9	9.9
47	1.0	2.0	3.0	4.0	5.0	6.0	6.9	7.9	8.9	9.9
48	1.0	2.0	3.0	4.0	5.0	6.0	6.9	7.9	8.9	9.9
49	1.0	2.0	3.0	4.0	5.0	5.9	6.9	7.9	8.9	9.8
50	1.0	2.0	3.0	4.0	5.0	5.9	6.9	7.9	8.9	9.8
51	1.0	2.0	3.0	4.0	5.0	5.9	6.9	7.9	8.9	9.8
52	1.0	2.0	3.0	4.0	5.0	5.9	6.9	7.9	8.8	9.8
53	1.0	2.0	3.0	4.0	5.0	5.9	6.9	7.9	8.8	9.8
54	1.0	2.0	3.0	4.0	4.9	5.9	6.9	7.8	8.8	9.8
55	1.0	2.0	3.0	4.0	4.9	5.9	6.9	7.8	8.8	9.7
56	1.0	2.0	3.0	4.0	4.9	5.9	6.9	7.8	8.8	9.7
57	1.0	2.0	3.0	4.0	4.9	5.9	6.9	7.8	8.8	9.7
58	1.0	2.0	3.0	4.0	4.9	5.9	6.9	7.8	8.7	9.7
59	1.0	2.0	3.0	4.0	4.9	5.9	6.8	7.8	8.7	9.6
60	1.0	2.0	3.0	3.9	4.9	5.9	6.8	7.8	8.7	9.6
61	1.0	2.0	3.0	3.9	4.9	5.9	6.8	7.7	8.7	9.6
62	1.0	2.0	3.0	3.9	4.9	5.8	6.8	7.7	8.6	9.5
63	1.0	2.0	3.0	3.9	4.9	5.8	6.8	7.7	8.6	9.5
64	1.0	2.0	3.0	3.9	4.9	5.8	6.7	7.6	8.5	9.4
65	1.0	2.0	3.0	3.9	4.9	5.8	6.7	7.6	8.5	9.3
66	1.0	2.0	2.9	3.9	4.9	5.8	6.7	7.6	8.4	9.3
67	1.0	2.0	2.9	3.9	4.8	5.7	6.6	7.5	8.4	9.2
68	1.0	2.0	2.9	3.9	4.8	5.7	6.6	7.5	8.3	9.1
69	1.0	2.0	2.9	3.9	4.8	5.7	6.6	7.4	8.2	9.0
70	1.0	2.0	2.9	3.9	4.8	5.6	6.5	7.3	8.1	8.9
71	1.0	2.0	2.9	3.8	4.7	5.6	6.5	7.3	8.1	8.8
72	1.0	2.0	2.9	3.8	4.7	5.6	6.4	7.2	8.0	8.7
73	1.0	2.0	2.9	3.8	4.7	5.5	6.3	7.1	7.9	8.6
74	1.0	1.9	2.9	3.8	4.6	5.5	6.3	7.0	7.7	8.4
75	1.0	1.9	2.9	3.8	4.6	5.4	6.2	6.9	7.6	8.3
76	1.0	1.9	2.8	3.7	4.6	5.4	6.1	6.8	7.5	8.1
77	1.0	1.9	2.8	3.7	4.5	5.3	6.0	6.7	7.3	7.9
78	1.0	1.9	2.8	3.7	4.5	5.2	5.9	6.6	7.2	7.7
79	1.0	1.9	2.8	3.6	4.4	5.1	5.8	6.4	7.0	7.5
80	1.0	1.9	2.8	3.6	4.4	5.1	5.7	6.3	6.8	7.3
81	1.0	1.9	2.8	3.6	4.3	5.0	5.6	6.1	6.6	7.0

TABLE VIII.—TEMPORARY LIFE ANNUITIES;[1] ONE LIFE—EXPECTED RETURN MULTIPLES—Continued

[See footnote at end of tables]

Temporary Period—Maximum Duration of Annuity

Age	Years—									
	1	2	3	4	5	6	7	8	9	10
82	1.0	1.9	2.7	3.5	4.2	4.9	5.4	6.0	6.4	6.8
83	1.0	1.9	2.7	3.5	4.1	4.8	5.3	5.8	6.2	6.5
84	1.0	1.8	2.7	3.4	4.1	4.6	5.2	5.6	6.0	6.3
85	1.0	1.8	2.6	3.3	4.0	4.5	5.0	5.4	5.7	6.0
86	1.0	1.8	2.6	3.3	3.9	4.4	4.8	5.2	5.5	5.7
87	.9	1.8	2.5	3.2	3.8	4.3	4.7	5.0	5.3	5.5
88	.9	1.8	2.5	3.1	3.7	4.1	4.5	4.8	5.0	5.2
89	.9	1.8	2.5	3.1	3.6	4.0	4.3	4.6	4.8	4.9
90	.9	1.7	2.4	3.0	3.4	3.8	4.1	4.4	4.5	4.7
91	.9	1.7	2.4	2.9	3.3	3.7	4.0	4.2	4.3	4.4
92	.9	1.7	2.3	2.8	3.2	3.5	3.8	4.0	4.1	4.2
93	.9	1.7	2.3	2.7	3.1	3.4	3.6	3.8	3.9	4.0
94	.9	1.6	2.2	2.7	3.0	3.3	3.5	3.6	3.7	3.8
95	.9	1.6	2.2	2.6	2.9	3.1	3.3	3.4	3.5	3.6
96	.9	1.6	2.1	2.5	2.9	3.0	3.2	3.3	3.3	3.4
97	.9	1.6	2.1	2.4	2.7	2.9	3.0	3.1	3.2	3.2
98	.9	1.5	2.0	2.4	2.6	2.8	2.9	3.0	3.0	3.0
99	.9	1.5	2.0	2.3	2.5	2.6	2.7	2.8	2.8	2.8
100	.9	1.5	1.9	2.2	2.4	2.5	2.6	2.6	2.6	2.7
101	.8	1.4	1.8	2.1	2.3	2.4	2.4	2.5	2.5	2.5
102	.8	1.4	1.8	2.0	2.1	2.2	2.3	2.3	2.3	2.3
103	.8	1.4	1.7	1.9	2.0	2.1	2.1	2.1	2.1	2.1
104	.8	1.3	1.6	1.8	1.9	1.9	1.9	1.9	1.9	1.9
105	.8	1.3	1.5	1.7	1.7	1.8	1.8	1.8	1.8	1.8
106	.8	1.2	1.4	1.5	1.6	1.6	1.6	1.6	1.6	1.6
107	.7	1.1	1.3	1.4	1.4	1.4	1.4	1.4	1.4	1.4
108	.7	1.1	1.2	1.3	1.3	1.3	1.3	1.3	1.3	1.3
109	.7	1.0	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
110	.7	.9	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
111	.6	.8	.9	.9	.9	.9	.9	.9	.9	.9
112	.6	.7	.8	.8	.8	.8	.8	.8	.8	.8
113	.6	.6	.7	.7	.7	.7	.7	.7	.7	.7
114	.5	.6	.6	.6	.6	.6	.6	.6	.6	.6
115	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5

TABLE VIII.—TEMPORARY LIFE ANNUITIES;[1] ONE LIFE—EXPECTED RETURN MULTIPLES

[See footnote at end of tables]

Temporary Period—Maximum Duration of Annuity

Age	Years—									
	11	12	13	14	15	16	17	18	19	20
5	11.0	12.0	13.0	14.0	15.0	16.0	17.0	18.0	19.0	19.9
6	11.0	12.0	13.0	14.0	15.0	16.0	17.0	18.0	19.0	19.9
7	11.0	12.0	13.0	14.0	15.0	16.0	17.0	18.0	19.0	19.9
8	11.0	12.0	13.0	14.0	15.0	16.0	17.0	18.0	18.9	19.9
9	11.0	12.0	13.0	14.0	15.0	16.0	17.0	18.0	18.9	19.9
10	11.0	12.0	13.0	14.0	15.0	16.0	17.0	18.0	18.9	19.9
11	11.0	12.0	13.0	14.0	15.0	16.0	17.0	17.9	18.9	19.9
12	11.0	12.0	13.0	14.0	15.0	16.0	17.0	17.9	18.9	19.9
13	11.0	12.0	13.0	14.0	15.0	16.0	17.0	17.9	18.9	19.9
14	11.0	12.0	13.0	14.0	15.0	16.0	16.9	17.9	18.9	19.9
15	11.0	12.0	13.0	14.0	15.0	16.0	16.9	17.9	18.9	19.9
16	11.0	12.0	13.0	14.0	15.0	16.0	16.9	17.9	18.9	18.9
17	11.0	12.0	13.0	14.0	15.0	15.9	16.9	17.9	18.9	18.9
18	11.0	12.0	13.0	14.0	15.0	15.9	16.9	17.9	18.9	18.9
19	11.0	12.0	13.0	14.0	15.0	15.9	16.9	17.9	18.9	18.9
20	11.0	12.0	13.0	14.0	14.9	15.9	16.9	17.9	18.9	18.9
21	11.0	12.0	13.0	14.0	14.9	15.9	16.9	17.9	18.9	18.9
22	11.0	12.0	13.0	14.0	14.9	15.9	16.9	17.9	18.9	18.9
23	11.0	12.0	13.0	13.9	14.9	15.9	16.9	17.9	18.9	18.9
24	11.0	12.0	13.0	13.9	14.9	15.9	16.9	17.9	18.9	18.9
25	11.0	12.0	13.0	13.9	14.9	15.9	16.9	17.9	18.9	18.9
26	11.0	12.0	12.9	13.9	14.9	15.9	16.9	17.9	18.9	18.9
27	11.0	12.0	12.9	13.9	14.9	15.9	16.9	17.9	18.9	18.9
28	11.0	12.0	12.9	13.9	14.9	15.9	16.9	17.9	18.9	18.8
29	11.0	12.0	12.9	13.9	14.9	15.9	16.9	17.9	18.9	18.8
30	11.0	11.9	12.9	13.9	14.9	15.9	16.9	17.9	18.9	18.8
31	11.0	11.9	12.9	13.9	14.9	15.9	16.9	17.9	18.8	18.8
32	11.0	11.9	12.9	13.9	14.9	15.9	16.9	17.8	18.8	18.8
33	11.0	11.9	12.9	13.9	14.9	15.9	16.9	17.8	18.8	18.8
34	10.9	11.9	12.9	13.9	14.9	15.9	16.8	17.8	18.8	18.8
35	10.9	11.9	12.9	13.9	14.9	15.9	16.8	17.8	18.8	18.7
36	10.9	11.9	12.9	13.9	14.9	15.8	16.8	17.8	18.8	18.7
37	10.9	11.9	12.9	13.9	14.9	15.8	16.8	17.8	18.7	18.7
38	10.9	11.9	12.9	13.9	14.8	15.8	16.8	17.8	18.7	18.7
39	10.9	11.9	12.9	13.9	14.8	15.8	16.8	17.7	18.7	18.6
40	10.9	11.9	12.9	13.8	14.8	15.8	16.7	17.7	18.7	18.6
41	10.9	11.9	12.9	13.8	14.8	15.8	16.7	17.7	18.6	18.6
42	10.9	11.9	12.8	13.8	14.8	15.7	16.7	17.6	18.6	18.5
43	10.9	11.9	12.9	13.8	14.8	15.7	16.7	17.6	18.6	18.5
44	10.9	11.8	12.8	13.8	14.7	15.7	16.6	17.6	18.5	18.4
45	10.9	11.8	12.8	13.8	14.7	15.7	16.6	17.5	18.5	18.4

TABLE VIII.—TEMPORARY LIFE ANNUITIES;[1] ONE LIFE—EXPECTED RETURN MULTIPLES—Continued

[See footnote at end of tables]

Temporary Period—Maximum Duration of Annuity

Age	Years—									
	11	12	13	14	15	16	17	18	19	20
46	10.9	11.8	12.8	13.7	14.7	15.6	16.6	17.5	18.4	19.3
47	10.8	11.8	12.8	13.7	14.7	15.6	16.5	17.5	18.4	19.3
48	10.8	11.8	12.7	13.7	14.6	15.6	16.5	17.4	18.3	19.2
49	10.8	11.8	12.7	13.7	14.6	15.5	16.4	17.4	18.3	19.2
50	10.8	11.7	12.7	13.6	14.6	15.5	16.4	17.3	18.2	19.1
51	10.8	11.7	12.7	13.6	14.5	15.4	16.3	17.2	18.1	19.0
52	10.8	11.7	12.6	13.6	14.5	15.4	16.3	17.2	18.0	18.9
53	10.7	11.7	12.6	13.5	14.4	15.3	16.2	17.1	18.0	18.8
54	10.7	11.6	12.6	13.5	14.4	15.3	16.2	17.0	17.9	18.7
55	10.7	11.6	12.5	13.4	14.3	15.2	16.1	16.9	17.8	18.6
56	10.7	11.6	12.5	13.4	14.3	15.1	16.0	16.8	17.6	18.4
57	10.6	11.5	12.4	13.3	14.2	15.1	15.9	16.7	17.5	18.3
58	10.6	11.5	12.4	13.3	14.1	15.0	15.8	16.6	17.4	18.1
59	10.6	11.4	12.3	13.2	14.0	14.9	15.7	16.4	17.2	17.9
60	10.5	11.4	12.3	13.1	13.9	14.7	15.5	16.3	17.0	17.7
61	10.5	11.3	12.2	13.0	13.8	14.6	15.4	16.1	16.8	17.5
62	10.4	11.3	12.1	12.9	13.7	14.5	15.2	15.9	16.6	17.2
63	10.3	11.2	12.0	12.8	13.6	14.3	15.0	15.7	16.3	17.0
64	10.3	11.1	11.9	12.7	13.4	14.1	14.8	15.5	16.1	16.7
65	10.2	11.0	11.8	12.5	13.2	13.9	14.6	15.2	15.8	16.3
66	10.1	10.9	11.6	12.4	13.1	13.7	14.4	14.9	15.5	16.0
67	10.0	10.8	11.5	12.2	12.9	13.5	14.1	14.7	15.2	15.6
68	9.9	10.6	11.4	12.0	12.7	13.3	13.8	14.3	14.8	15.3
69	9.8	10.5	11.2	11.8	12.4	13.0	13.5	14.0	14.4	14.8
70	9.6	10.3	11.0	11.6	12.2	12.7	13.2	13.7	14.0	14.4
71	9.5	10.2	10.8	11.4	11.9	12.4	12.9	13.3	13.6	13.9
72	9.4	10.0	10.8	11.2	11.7	12.1	12.5	12.9	13.2	13.5
73	9.2	9.8	10.4	10.9	11.4	11.6	12.1	12.5	12.7	13.0
74	9.0	9.6	10.1	10.6	11.0	11.4	11.7	12.0	12.3	12.5
75	8.8	9.4	9.9	10.3	10.7	11.0	11.3	11.6	11.8	12.0
76	8.6	9.1	9.6	10.0	10.3	10.6	10.9	11.1	11.3	11.4
77	8.4	8.9	9.3	9.7	10.0	10.2	10.5	10.6	10.8	10.9
78	8.2	8.6	9.0	9.3	9.6	9.8	10.0	10.2	10.3	10.4
79	7.9	8.3	8.7	9.0	9.2	9.4	9.5	9.7	9.8	9.8
80	7.7	8.0	8.3	8.6	8.8	9.0	9.1	9.2	9.3	9.3
81	7.4	7.7	8.0	8.2	8.4	8.5	8.6	8.7	8.8	8.8
82	7.1	7.4	7.6	7.8	8.0	8.1	8.2	8.2	8.3	8.3
83	6.8	7.1	7.3	7.4	7.5	7.6	7.7	7.8	7.8	7.8
84	6.5	6.7	6.9	7.0	7.1	7.2	7.3	7.3	7.3	7.4
85	6.2	6.4	6.6	6.7	6.7	6.8	6.8	6.9	6.9	6.9
86	5.9	6.1	6.2	6.3	6.4	6.4	6.4	6.5	6.5	6.5
87	5.6	5.8	5.9	5.9	6.0	6.0	6.0	6.1	6.1	6.1
88	5.3	5.4	5.5	5.6	5.6	5.6	5.7	5.7	5.7	5.7
89	5.1	5.1	5.2	5.3	5.3	5.3	5.3	5.3	5.3	5.3
90	4.6	4.9	4.9	4.9	5.0	5.0	5.0	5.0	5.0	5.0
91	4.5	4.6	4.6	4.6	4.7	4.7	4.7	4.7	4.7	4.7
92	4.3	4.3	4.3	4.4	4.4	4.4	4.4	4.4	4.4	4.4
93	4.0	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1
94	3.8	3.8	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9
95	3.6	3.6	3.6	3.8	3.7	3.7	3.7	3.7	3.7	3.7
96	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4
97	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2
98	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0
99	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8
100	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7
101	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
102	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3
103	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1
104	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9
105	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8
106	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6
107	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4
108	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3
109	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
110	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
111	.9	.9	.9	.9	.9	.9	.9	.9	.9	.9
112	.8	.8	.8	.8	.8	.8	.8	.8	.8	.8
113	.7	.7	.7	.7	.7	.7	.7	.7	.7	.7
114	.6	.6	.6	.6	.6	.6	.6	.6	.6	.6
115	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5

TABLE VIII.—TEMPORARY LIFE ANNUITIES;[1] ONE LIFE—EXPECTED RETURN MULTIPLES

[See footnote at end of tables]

Temporary Period—Maximum Duration of Annuity

Age	Years—									
	21	22	23	24	25	26	27	28	29	30
5	20.9	21.9	22.9	23.9	24.9	25.9	26.9	27.9	28.9	29.9
6	20.9	21.9	22.9	23.9	24.9	25.9	26.9	27.9	28.9	29.9
7	20.9	21.9	22.9	23.9	24.9	25.9	26.9	27.9	28.9	29.9
8	20.9	21.9	22.9	23.9	24.9	25.9	26.9	27.9	28.9	29.9
9	20.9	21.9	22.9	23.9	24.9	25.9	26.9	27.9	28.9	29.8

TABLE VIII.—TEMPORARY LIFE ANNUITIES; [1] ONE LIFE—EXPECTED RETURN MULTIPLES—Continued

[See footnote at end of tables]

Temporary Period—Maximum Duration of Annuity

Age	Years—									
	21	22	23	24	25	26	27	28	29	30
10	20.9	21.9	22.9	23.9	24.9	25.9	26.9	27.9	28.8	29.8
11	20.9	21.9	22.9	23.9	24.9	25.9	26.9	27.9	28.8	29.8
12	20.9	21.9	22.9	23.9	24.9	25.9	26.9	27.8	28.8	29.8
13	20.9	21.9	22.9	23.9	24.9	25.9	26.9	27.8	28.8	29.8
14	20.9	21.9	22.9	23.9	24.9	25.9	26.8	27.8	28.8	29.8
15	20.9	21.9	22.9	23.9	24.9	25.9	26.8	27.8	28.8	29.8
16	20.9	21.9	22.9	23.9	24.9	25.8	26.8	27.8	28.8	29.8
17	20.9	21.9	22.9	23.9	24.9	25.8	26.8	27.8	28.8	29.8
18	20.9	21.9	22.9	23.9	24.8	25.8	26.8	27.8	28.8	29.7
19	20.9	21.9	22.9	23.9	24.8	25.8	26.8	27.8	28.8	29.7
20	20.9	21.9	22.9	23.8	24.8	25.8	26.8	27.8	28.7	29.7
21	20.9	21.9	22.9	23.8	24.8	25.8	26.8	27.8	28.7	29.7
22	20.9	21.9	22.8	23.8	24.8	25.8	26.8	27.7	28.7	29.7
23	20.9	21.9	22.8	23.8	24.8	25.8	26.7	27.7	28.7	29.7
24	20.9	21.8	22.8	23.8	24.8	25.8	26.7	27.7	28.7	29.6
25	20.9	21.8	22.8	23.8	24.8	25.7	26.7	27.7	28.6	29.6
26	20.8	21.8	22.8	23.8	24.8	25.7	26.7	27.7	28.6	29.6
27	20.8	21.8	22.8	23.8	24.7	25.7	26.7	27.8	28.6	29.5
28	20.8	21.8	22.8	23.7	24.7	25.7	26.8	27.8	28.6	29.5
29	20.8	21.8	22.8	23.7	24.7	25.7	26.8	27.8	28.5	29.5
30	20.8	21.8	22.7	23.7	24.7	25.8	26.8	27.5	28.5	29.4
31	20.8	21.8	22.7	23.7	24.8	25.8	26.8	27.5	28.4	29.4
32	20.8	21.7	22.7	23.7	24.8	25.8	26.5	27.5	28.4	29.3
33	20.8	21.7	22.7	23.6	24.8	25.5	26.5	27.4	28.4	29.3
34	20.7	21.7	22.7	23.6	24.8	25.5	26.4	27.4	28.3	29.2
35	20.7	21.7	22.6	23.6	24.5	25.5	26.4	27.3	28.2	29.2
36	20.7	21.8	22.6	23.5	24.5	25.4	26.3	27.3	28.2	29.1
37	20.7	21.8	22.6	23.5	24.4	25.4	26.3	27.2	28.1	29.0
38	20.6	21.6	22.5	23.4	24.4	25.3	26.2	27.1	28.0	28.9
39	20.6	21.5	22.5	23.4	24.3	25.2	26.1	27.0	27.9	28.8
40	20.6	21.5	22.4	23.3	24.3	25.2	26.1	27.0	27.8	28.7
41	20.5	21.4	22.4	23.3	24.2	25.1	26.0	26.9	27.7	28.6
42	20.5	21.4	22.3	23.2	24.1	25.0	25.9	26.8	27.6	28.5
43	20.4	21.3	22.2	23.2	24.0	24.9	25.8	26.8	27.5	28.3
44	20.4	21.3	22.2	23.1	24.0	24.8	25.7	26.5	27.3	28.2
45	20.3	21.2	22.1	23.0	23.9	24.7	25.6	26.4	27.2	28.0
46	20.2	21.1	22.0	22.9	23.8	24.6	25.4	26.2	27.0	27.8
47	20.2	21.1	21.9	22.8	23.6	24.5	25.3	26.1	26.8	27.6
48	20.1	21.0	21.8	22.7	23.5	24.3	25.1	25.9	26.6	27.4
49	20.0	20.9	21.7	22.6	23.4	24.2	25.0	25.7	26.4	27.1
50	19.9	20.8	21.6	22.4	23.2	24.0	24.8	25.5	26.2	26.9
51	19.9	20.7	21.5	22.3	23.1	23.8	24.6	25.3	25.9	26.6
52	19.7	20.6	21.4	22.1	22.9	23.6	24.3	25.0	25.7	26.3
53	19.6	20.4	21.2	22.0	22.7	23.4	24.1	24.7	25.3	25.9
54	19.5	20.3	21.0	21.8	22.5	23.2	23.8	24.4	25.0	25.6
55	19.3	20.1	20.8	21.6	22.2	22.9	23.5	24.1	24.6	25.2
56	19.2	19.9	20.6	21.3	22.0	22.6	23.2	23.7	24.3	24.7
57	19.0	19.7	20.4	21.1	21.7	22.3	22.8	23.4	23.8	24.3
58	18.8	19.5	20.2	20.8	21.4	21.9	22.5	22.9	23.4	23.8
59	18.6	19.3	19.9	20.5	21.1	21.6	22.0	22.5	22.9	23.2
60	18.4	19.0	19.6	20.2	20.7	21.2	21.6	22.0	22.4	22.7
61	18.1	18.7	19.3	19.8	20.3	20.7	21.1	21.5	21.8	22.1
62	17.8	18.4	18.9	19.4	19.9	20.3	20.6	21.0	21.2	21.5
63	17.5	18.1	18.5	19.0	19.4	19.8	20.1	20.4	20.6	20.8
64	17.2	17.7	18.1	18.6	18.9	19.3	19.5	19.8	20.0	20.2
65	16.8	17.3	17.7	18.1	18.4	18.7	18.9	19.2	19.3	19.5
66	16.5	16.9	17.3	17.6	17.9	18.1	18.3	18.5	18.7	18.8
67	16.1	16.4	16.8	17.1	17.3	17.5	17.7	17.9	18.0	18.1
68	15.8	16.0	16.3	16.5	16.7	16.9	17.1	17.2	17.3	17.4
69	15.2	15.5	15.7	16.0	16.1	16.3	16.4	16.5	16.6	16.7
70	14.7	15.0	15.2	15.4	15.5	15.7	15.8	15.8	15.9	15.9
71	14.2	14.4	14.6	14.8	14.9	15.0	15.1	15.2	15.2	15.2
72	13.7	13.9	14.1	14.2	14.3	14.4	14.4	14.5	14.5	14.5
73	13.2	13.3	13.5	13.6	13.7	13.7	13.8	13.8	13.8	13.9
74	12.8	12.8	12.9	13.0	13.0	13.1	13.1	13.1	13.2	13.2
75	12.1	12.2	12.3	12.4	12.4	12.5	12.5	12.5	12.5	12.5
76	11.5	11.6	11.7	11.8	11.8	11.8	11.8	11.9	11.9	11.9
77	11.0	11.1	11.1	11.2	11.2	11.2	11.2	11.2	11.2	11.2
78	10.4	10.5	10.5	10.6	10.6	10.6	10.6	10.6	10.6	10.6
79	9.9	9.9	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0
80	9.4	9.4	9.4	9.4	9.5	9.5	9.5	9.5	9.5	9.5
81	8.9	8.9	8.9	8.9	8.9	8.9	8.9	8.9	8.9	8.9
82	8.3	8.4	8.4	8.4	8.4	8.4	8.4	8.4	8.4	8.4
83	7.8	7.9	7.9	7.9	7.9	7.9	7.9	7.9	7.9	7.9
84	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4
85	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9
86	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5
87	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1
88	5.7	5.7	5.7	5.7	5.7	5.7	5.7	5.7	5.7	5.7
89	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3
90	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0
91	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7
92	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4
93	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1
94	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9
95	3.7	3.7	3.7	3.7	3.7	3.7	3.7	3.7	3.7	3.7
96	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4

TABLE VIII.—TEMPORARY LIFE ANNUITIES; [1] ONE LIFE—EXPECTED RETURN MULTIPLES—Continued

[See footnote at end of tables]

Temporary Period—Maximum Duration of Annuity

Age	Years—									
	21	22	23	24	25	26	27	28	29	30
97	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2
98	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0
99	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8
100	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7
101	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
102	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3
103	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1
104	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9
105	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8
106	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6
107	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4
108	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3
109	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
110	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
111	.9	.9	.9	.9	.9	.9	.9	.9	.9	.9
112	.8	.8	.8	.8	.8	.8	.8	.8	.8	.8
113	.7	.7	.7	.7	.7	.7	.7	.7	.7	.7
114	.6	.6	.6	.6	.6	.6	.6	.6	.6	.6
115	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5

TABLE VIII.—TEMPORARY LIFE ANNUITIES; [1] ONE LIFE—EXPECTED RETURN MULTIPLES

[See footnote at end of tables]

Temporary Period—Maximum Duration of Annuity

Age	Years—									
	31	32	33	34	35	36	37	38	39	40
5	30.8	31.8	32.8	33.8	34.8	35.8	36.8	37.7	38.7	39.7
6	30.8	31.8	32.8	33.8	34.8	35.8	36.8	37.7	38.7	39.7
7	30.8	31.8	32.8	33.8	34.8	35.8	36.7	37.7	38.7	39.7
8	30.8	31.8	32.8	33.8	34.8	35.7	36.7	37.7	38.7	39.7
9	30.8	31.8	32.8	33.8	34.8	35.7	36.7	37.7	38.7	39.6
10	30.8	31.8	32.8	33.8	34.7	35.7	36.7	37.7	38.6	39.6
11	30.8	31.8	32.8	33.8	34.7	35.7	36.7	37.7	38.6	39.6
12	30.8	31.8	32.8	33.7	34.7	35.7	36.7	37.7	38.6	39.6
13	30.8	31.8	32.7	33.7	34.7	35.7	36.7	37.8	38.6	39.6
14	30.8	31.8	32.7	33.7	34.7	35.7	36.6	37.8	38.6	39.5
15	30.8	31.8	32.7	33.7	34.7	35.7	36.6	37.8	38.6	39.5
16	30.8	31.7	32.7	33.7	34.7	35.6	36.6	37.8	38.5	39.5
17	30.7	31.7	32.7	33.7	34.8	35.6	36.6	37.5	38.5	39.4
18	30.7	31.7	32.7	33.7	34.8	35.6	36.5	37.5	38.5	39.4
19	30.7	31.7	32.8	33.8	34.8	35.5	36.5	37.5	38.4	39.4
20	30.7	31.7	32.8	33.8	34.8	35.5	36.5	37.4	38.4	39.3
21	30.7	31.8	32.8	33.8	34.5	35.5	36.4	37.4	38.3	39.3
22	30.6	31.8	32.8	33.8	34.5	35.5	36.4	37.4	38.3	39.2
23	30.6	31.8	32.8	33.5	34.5	35.4	36.4	37.3	38.2	39.2
24	30.6	31.8	32.5	33.5	34.4	35.4	36.3	37.3	38.2	39.1
25	30.6	31.5	32.5	33.5	34.4	35.3	36.3	37.2	38.1	39.0
26	30.6	31.5	32.5	33.4	34.3	35.3	36.2	37.1	38.1	39.0
27	30.5	31.5	32.4	33.4	34.3	35.2	36.2	37.1	38.0	38.9
28	30.5	31.4	32.4	33.3	34.2	35.2	36.1	37.0	37.9	38.8
29	30.5	31.4	32.3	33.3	34.2	35.1	36.0	36.9	37.8	38.7
30	30.4	31.4	32.3	33.2	34.1	35.0	35.9	36.8	37.7	38.6
31	30.4	31.3	32.2	33.1	34.1	35.0	35.8	36.7	37.6	38.5
32	30.3	31.2	32.2	33.1	34.0	34.9	35.8	36.6	37.5	38.3
33	30.3	31.2	32.1	33.0	33.9	34.8	35.8	36.5	37.4	38.2
34	30.2	31.1	32.0	32.9	33.8	34.7	35.5	36.4	37.2	38.0
35	30.1	31.0	31.9	32.8	33.7	34.8	35.4	36.2	37.1	37.9
36	30.1	31.0	31.8	32.7	33.6	34.4	35.3	36.1	36.9	37.7
37	30.0	30.9	31.7	32.6	33.5	34.3	35.1	35.9	36.7	37.4
38	29.9	30.8	31.6	32.5	33.3	34.1	34.9	35.7	36.5	37.2
39	29.8	30.7	31.5	32.3	33.2	34.0	34.7	35.5	36.2	37.0
40	29.7	30.5	31.4	32.2	33.0	33.8	34.5	35.3	36.0	36.7
41	29.6	30.4	31.2	32.0	32.8	33.6	34.3	35.0	35.7	36.4
42	29.4	30.2	31.0	31.8	32.6	33.3	34.1	34.7	35.4	36.0
43	29.3	30.1	30.9	31.6	32.4	33.1	33.8	34.4	35.1	35.7
44	29.1	29.9	30.7	31.4	32.1	32.8	33.5	34.1	34.7	35.3
45	28.9	29.7	30.5	31.2	31.9	32.5	33.2	33.8	34.3	34.9
46	28.8	29.5	30.2	30.9	31.6	32.2	32.8	33.4	33.9	34.4
47	28.5	29.3	30.0	30.6	31.3	31.9	32.4	33.0	33.5	33.9
48	28.3	29.0	29.7	30.3	30.9	31.5	32.0	32.5	33.0	33.4
49	28.1	28.7	29.4	30.0	30.6	31.1	31.6	32.1	32.5	32.9
50	27.8	28.4	28.9	29.6	30.2	30.7	31.1	31.5	31.9	32.3
51	27.5	28.1	28.7	29.2	29.7	30.2	30.6	31.0	31.4	31.7
52	27.2	27.8	28.3	28.8	29.3	29.7	30.1	30.4	30.7	31.0
53	26.8	27.4	27.9	28.4	28.8	29.2	29.5	29.8	30.1	30.3
54	26.5	27.0	27.4	27.9	28.3	28.6	28.9	29.2	29.4	29.6
55	26.1	26.5	27.0	27.4	27.7	28.0	28.3	28.5	28.7	28.9
56	25.9	26.1	26.5	26.8	27.1	27.4	27.6	27.8	28.0	28.1
57	25.2	25.6	25.9	26.2	26.5	26.7	26.9	27.1	27.2	27.3
58	24.7	25.0	25.3	25.6	25.9	26.0	26.2	26.3	26.5	26.5
59	24.1	24.4	24.7	25.0	25.2	25.3	25.5	25.6	25.7	25.7
60	23.6	23.8	24.1	24.3	24.4	24.6	24.7	24.8	24.9	24.9
	23.0	23.2	23.4	23.6	23.7	23.8	23.9	24.0	24.0	24.1

TABLE VIII.—TEMPORARY LIFE ANNUITIES;[1] ONE LIFE—EXPECTED RETURN MULTIPLES—Continued

[See footnote at end of tables]

Temporary Period—Maximum Duration of Annuity

Age	Years—									
	31	32	33	34	35	36	37	38	39	40
61	22.3	22.5	22.7	22.9	23.0	23.1	23.1	23.2	23.2	23.3
62	21.7	21.9	22.0	22.1	22.2	22.3	22.3	22.4	22.4	22.4
63	21.0	21.1	21.3	21.4	21.4	21.5	21.5	21.6	21.6	21.6
64	20.3	20.4	20.5	20.6	20.6	20.7	20.7	20.7	20.6	20.6
65	19.6	19.7	19.8	19.8	19.9	19.9	19.9	19.9	19.9	20.0
66	18.9	19.0	19.0	19.1	19.1	19.1	19.1	19.1	19.1	19.1
67	18.2	18.2	18.3	18.3	18.3	18.3	18.3	18.3	18.4	18.4
68	17.4	17.5	17.5	17.5	17.6	17.6	17.6	17.6	17.6	17.6
69	16.7	16.7	16.8	16.8	16.8	16.8	16.8	16.8	16.8	16.8
70	16.0	16.0	16.0	16.0	16.0	16.0	16.0	16.0	16.0	16.0
71	15.3	15.3	15.3	15.3	15.3	15.3	15.3	15.3	15.3	15.3
72	14.6	14.6	14.6	14.6	14.6	14.6	14.6	14.6	14.6	14.6
73	13.9	13.9	13.9	13.9	13.9	13.9	13.9	13.9	13.9	13.9
74	13.2	13.2	13.2	13.2	13.2	13.2	13.2	13.2	13.2	13.2
75	12.5	12.5	12.5	12.5	12.5	12.5	12.5	12.5	12.5	12.5
76	11.9	11.9	11.9	11.9	11.9	11.9	11.9	11.9	11.9	11.9
77	11.2	11.2	11.2	11.2	11.2	11.2	11.2	11.2	11.2	11.2
78	10.6	10.6	10.8	10.8	10.6	10.6	10.6	10.6	10.8	10.6
79	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0
80	9.5	9.5	9.5	9.5	9.5	9.5	9.5	9.5	9.5	9.5
81	8.9	8.9	8.9	8.9	8.9	8.9	8.9	8.9	8.9	8.9
82	8.4	8.4	8.4	8.4	8.4	8.4	8.4	8.4	8.4	8.4
83	7.9	7.9	7.9	7.9	7.9	7.9	7.9	7.9	7.9	7.9
84	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4
85	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9
86	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5
87	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1	6.1
88	5.7	5.7	5.7	5.7	5.7	5.7	5.7	5.7	5.7	5.7
89	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3
90	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0
91	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7	4.7
92	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4
93	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1
94	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9
95	3.7	3.7	3.7	3.7	3.7	3.7	3.7	3.7	3.7	3.7
96	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4	3.4
97	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2
98	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0
99	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8
100	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7
101	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
102	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3
103	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1
104	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9
105	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8
106	1.6	1.8	1.8	1.8	1.6	1.6	1.6	1.8	1.8	1.8
107	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4
108	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3
109	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
110	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
111	.9	.9	.9	.9	.9	.9	.9	.9	.9	.9
112	.8	.8	.8	.8	.8	.8	.8	.8	.8	.8
113	.7	.7	.7	.7	.7	.7	.7	.7	.7	.7
114	.6	.6	.6	.6	.6	.6	.6	.6	.6	.6
115	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5

[1] The multiples in this table are not applicable to annuities for a term certain; for such cases see paragraph (c) of § 1.72–5.

If (a) the terms of the contract involve a life or lives, and are such that the above tables cannot be correctly applied, and (b) the amounts received under the contract are at least partly "amounts received as an annuity" under a contract to which section 72 applies, the taxpayer may submit with his return an actuarial computation based upon the applicable annuity table (described below) with ages set back one year, showing the appropriate factors applied in his case, subject to the approval of the Commissioner upon examination of such return. The applicable annuity table is the 1937 Standard Annuity Table (if the investment in the contract does not include a post-June 1986 investment in the contract) or the gender-neutral version of the 1983 Basic Table (if the investment in the contract includes a post-June 1986 investment in the contract). In the case of a contract to which § 1.72–6(d) (relating to contracts in which amounts were invested both before July 1, 1986, and after June 30, 1986) applies, the actuarial computation shall be based on both tables in accordance with the principles of § 1.72–6(d). Computations involving factors to compensate for the effects of contingencies other than mortality, such as marriage or remarriage, re-employment, recovery from disability, or the like, will not be approved.

Par. 7. Section § 1.72–11 is amended by revising paragraph (c) to read as follows:

§ 1.72–11 Amounts not received as annuity payments.

* * * * *

(c) *Amounts received in the nature of a refund of the consideration under a contract and in full discharge of the obligation thereof.* (1) Any amount received under a contract to which section 72 applies, if it is at least in part a refund of the consideration paid, including amounts payable to a beneficiary after the death of an annuitant by reason of a provision in the contract for a life annuity with minimum period of payments certain or with a minimum amount which must be paid in any event, shall be considered an amount received in the nature of a refund of the consideration paid for such contract. If such an amount is in full discharge of an obligation to pay a fixed amount (whether in a lump sum or otherwise) or to pay amounts for a fixed number of years (including amounts described in paragraph (b)(3)(i) of § 1.72–2), it shall be included in the gross income of the recipient only to the extent that it, when added to amounts previously received under the contract which were excludable from gross income under the law applicable at the time of receipt, exceeds the aggregate of premiums or other consideration paid. See section 73(e)(2)(A). This paragraph shall not apply if the total of the amounts to be paid in discharge of the obligation can in any event exceed the total of the annuity payments which would otherwise fully discharge the obligation. For rules to be applied in such a case, see paragraph (e) of this section.

(2) The principles of subparagraph (1) of this paragraph may be illustrated by the following examples:

Example (1). A, a male employee, retired on December 31, 1954, at the age of 60. A life annuity of $75 per month was payable to him beginning January 31, 1955. The annuity contract guaranteed that if A did not live for at least ten years after his retirement his beneficiary, B, would receive the monthly payments for any balance of such ten-year period which remained at the date of A's death. Under section 72, A was deemed to have paid $3,600 toward the cost of the annuity. A lived for five years after his retirement receiving a total of $4,500 in annuity payments. After A's death, B began receiving the monthly payments of $75 beginning with the January 31, 1960 payment. B will exclude such payments from his gross income throughout 1960, 1961, and 1962, and will exclude only $18 of the first payment in 1963 from his gross income for that year. Thereafter, B will include the entire amount of all such payments in his gross income for the taxable year of receipt. This result is determined as follows:

A's investment in the contract (unadjusted)	$3,600
Multiple from Table III of § 1.72–9 for male, age 60, where duration of guaranteed amount is 10 years (percent)	11
Subtract value of the refund feature to the nearest dollar (11 percent of $3,600)	396
Investment in the contract adjusted for the present value of the refund feature without discount for interest	3,204
Aggregate of premiums or other consideration paid	3,600
A's exclusion ratio ($3,204÷$16,380 [$900×18.2]) (percent)	19.6
Subtract amount excludable during five years A received payments (19.6 percent of $4,500 [$900×5])	882
Remainder of aggregate of premiums or other consideration paid excludable from gross income of B under section 72(e)	2,716

As a result of the above computation, the number of payments to B which will exhaust the remainder of consideration paid which is excludable from gross income of the recipient is 36⅔s ($2,718÷$75) and B will exclude the payments from his gross income for three years, then exclude only $18 of the first payment for the fourth year from his gross income, and thereafter include the entire amount of all payments he receives in his gross income.

Example (2). The facts are the same as in example (1), except that B, the beneficiary, elects to receive $50 per month for his life in lieu of the payments guaranteed under the original contractual obligation. Since such amounts will be received as an annuity and may, because of the length of time B may live, exceed the amount guaranteed, they are not amounts to which this paragraph applies. See paragraph (e) of this section.

Example (3). The facts are the same as in example (1), except that B, the beneficiary, elects to receive the remaining guaranteed amount in installments which are larger or smaller than the $75 per month provided until, under the terms of the contract, the guaranteed amount is exhausted. The rule of subparagraph (1) of this paragraph and the computation illustrated in example (1) apply to such installments since the total of such installments will not exceed the original amount guaranteed to be paid at A's death in any event.

Example (4). C pays $12,000 for a contract providing that he is to be paid an annuity of $1,000 per year for 15 years. His exclusion ratio is therefore 80 percent ($12,000÷$15,000). He directs that the annuity is to be paid to D, his beneficiary, if he should die before the full 15-year period has expired. C dies after 5 years and D is paid $1,000 in 1960. D will include $200 ($1,000—$800 [80 percent of $1,000]) in his gross income for the taxable year in which he receives the $1,000 since section 72(e) and this section do not apply to the annuity payments made in accordance with the provisions and during the term of the contract. D will continue with the same exclusion ratio used by C (80 percent).

Example (5). In 1954, E paid $50,000 into a fund and was promised an annual income for life the amount of which would depend in part upon the earnings realized from the investment of the fund in accordance with an agreed formula. The contract also specified that if E should die before ten years had elapsed, his beneficiary, F, would be paid the amounts determined annually under the formula until ten payments had been received by E and F together. E died in 1960, having received five payments totaling $30,000. Assuming that $22,000 of this amount was properly excludable from E's gross income prior to his death, F will exclude from his gross income the payments he receives until the taxable year in which his total receipts from the fund exceed $28,000 ($50,000—$22,000). F will include any excess over the $28,000 in his gross income for that taxable year. Thereafter, F will include in his gross income the entire amount of any payments made to him from the fund.

Example (6). Assume the facts are the same as in example (1), except that the total investment in the contract is made after June 30, 1986, that A is to receive payments under the life annuity contract beginning on January 31, 1987, and that B will begin to receive the monthly payments on January 31, 1992. B will exclude the $75 monthly payments from gross income throughout 1992, 1993, and 1994. B will exclude only the first two monthly payments and $21 of the third monthly payment in 1995. This is determined as follows:

A's investment in the contract (unadjusted)	$3,600
Multiple from Table VII, age 60, 10 years (percent)	4
Subtract value of the refund feature (4 percent of $3,600	$144
Investment in the contract adjusted for the present value of the refund feature without discount for interest	$3,456
Aggregate of premiums or other consideration paid	$3,600.00
A's exclusion ratio ($3,456÷$21,780 [$900×24.2]) (percent)	15.9
Subtract amount excludable during five years A received payments (15.9 percent of $4,500 [$900×5])	$715.50
Remainder of aggregate of premiums or other consideration paid excludable from gross income of B under section 72(e)	$2,884.50

As a result of the above computation, the number of payments to B which will exhaust the remainder of consideration paid which is excludable from gross income of the recipient is 38 23/50 ($2,884.50÷75) and B will exclude the payments from gross income for three years, then exclude only the first two monthly payments and $34.50 of the third. Thereafter B shall include the entire amount of all payments received in gross income.

(3) For the purpose of applying the rule contained in subparagraph (1) of this paragraph, it is immaterial whether the recipient of the amount received in full discharge of the obligation is the same person as the recipient of amounts previously received under the contract which were excludable from gross income, except in the case of a contract transferred for a valuable consideration, with respect to which see paragraph (a) of § 1.72–10. For the limit on the tax, for taxable years beginning before January 1, 1964, attributable to the receipt of a

lump sum to which this paragraph applies, see paragraph (g) of this section.

* * * * *

§ 1.403 [Amended]

Par. 8. Section 1.403(b)–1 (d)(4) is amended by adding the words "to a defined benefit plan" following the words "employer contributions" in the first sentence.

Par. 9. Section 1.403(b)–1 (d)(4)(ii) is amended by removing the words "the employee's sex and the".

Par. 10. Section 1.403(b)–1 (d)(4) is amended by revising Tables I and II and paragraph (d)(4)(iv) to read as follows:

§ 1.403(b)–1 Taxability of beneficiary under annuity purchased by section 501(c)(3) organization or public school.

* * * * *

(d) *Exclusion allowance*—(1) * * *

(4) *Determination of excludable amounts by allocation of contributions.* * * *

(iv) The lesser of the number of years of service credited through the end of the taxable year or the number of years that the plan has been in existence at such time.

TABLE I.—VALUE AT NORMAL RETIREMENT AGES OF ANNUITY OF $1.00 PER ANNUM PAYABLE IN EQUAL MONTHLY INSTALLMENTS DURING THE LIFE OF THE EMPLOYEE

[For taxable years beginning after July 1, 1986]

Ages	Values
40	11.49
41	11.40
42	11.31
43	11.22
44	11.12
45	11.01
46	10.91
47	10.79
48	10.68
49	10.56
50	10.43
51	10.30
52	10.18
53	10.04
54	9.89
55	9.75
56	9.60
57	9.44
58	9.28
59	9.13
60	8.96
61	8.79
62	8.62
63	8.44
64	8.25
65	8.08
66	7.88
67	7.70
68	7.50
69	7.29
70	7.10
71	6.88
72	6.68
73	6.46
74	6.25
75	6.03
76	5.82
77	5.61
78	5.40
79	5.20
80	4.99

TABLE I.—VALUE AT NORMAL RETIREMENT AGES OF ANNUITY OF $1.00 PER ANNUM PAYABLE IN EQUAL MONTHLY INSTALLMENTS DURING THE LIFE OF THE EMPLOYEE—Continued

[For taxable years beginning after July 1, 1986]

Ages	Values
69	7.29
70	7.10
71	6.88
72	6.68
73	6.46
74	6.25
75	6.03
76	5.82
77	5.61
78	5.40
79	5.20
80	4.99

Note.—If the normal form of retirement benefit under the plan is other than a straight life annuity, the value from Table I above should be divided by the figure set forth below opposite the normal form of retirement benefit provided by the plan:

Annuity for 5 years certain and life thereafter	0.97
Annuity for 10 years certain and life thereafter	0.90
Annuity for 15 years certain and life thereafter	0.80
Annuity for 20 years certain and life thereafter	0.70
Life annuity with installment refund	0.80
Life annuity with cash refund [1]	0.75

[1] The term "cash refund" refers to refund of accumulated employer contributions, and does not refer to refund of employee contributions only, often referred to as "modified cash refund".

TABLE II.—LEVEL ANNUAL CONTRIBUTION WHICH WILL ACCUMULATE TO $1.00 AT END OF NUMBER OF YEARS

[For taxable years beginning after July 1, 1986]

Number of years	Amounts
1	$1.0000
2	.4808
3	.3080
4	.2219
5	.1705
6	.1363
7	.1121
8	.0940
9	.0801
10	.0690
11	.0601
12	.0527
13	.0465
14	.0413
15	.0368
16	.0330
17	.0298
18	.0267
19	.0241

TABLE II.—LEVEL ANNUAL CONTRIBUTION WHICH WILL ACCUMULATE TO $1.00 AT END OF NUMBER OF YEARS—Continued

[For taxable years beginning after July 1, 1986]

Number of years	Amounts
20	.0219
21	.0198
22	.0180
23	.0164
24	.0150
25	.0137
26	.0125
27	.0114
28	.0105
29	.0096
30	.0088
31	.0081
32	.0075
33	.0069
34	.0063
35	.0058
36	.0053
37	.0049
38	.0045
39	.0042
40	.0039
41	.0036
42	.0033
43	.0030
44	.0028
45	.0026
46	.0024
47	.0022
48	.0020
49	.0019
50	.0017

§ 1.401(a)–18 [Removed]

Par. 11. Section 1.401(a)–18 is removed.

§ 1.401(j)–1 through 1. 401(j)–6) [Removed]

Par. 12. Sections 1.401(j)–1 through 1.401(j)–6 are removed.

PART 602—REPORTING AND RECORDKEEPING REQUIREMENTS

Par. 13. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 14. Section 602.101(c) is amended by inserting in the appropriate places in the table "§ 1.72–6. . . .1545–0074" and "§ 1.72–9. . . .1545–0074".

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: November 28, 1986.

J. Roger Mentz,

Assistant Secretary of the Treasury.

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Part VII

Department of Commerce

Economic Development Administration

Availability of Funds in Fiscal Year 1987 for Economic Development Assistance Programs; Notice

DEPARTMENT OF COMMERCE

Economic Development Administration

Availability of Funds in Fiscal Year 1987 for Economic Development Assistance Programs

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: Notice.

SUMMARY: The Economic Development Administration (EDA) announces its policies and application procedures for funds available in FY 1987 to support projects designed to alleviate conditions of substantial and persistent unemployment and underemployment in economically distressed areas and regions of the Nation and to address economic dislocations resulting from sudden, major job losses. The purpose of this announcement is to communicate to potential applicants for EDA funds the policies and procedures that will be used to administer the Agency's programs during FY 1987.

I. General Policies

Areas containing approximately 90 percent of the U.S. population are eligible for EDA assistance, while the level of funding available is under $200 million. Therefore, priority consideration for funding must and will be given only to those projects having exceptional potential to benefit areas experiencing or threatened with the most severe economic distress. EDA is particularly interested in projects located in areas recognized by state and local governments as enterprise zones, especially projects in rural enterprise zones.

Distress may exist in a variety of forms, including exceptionally high unemployment rates, extremely low income levels, abnormally large concentrations of low income families, particularly low labor force participation rates, unusually large numbers (or high rates) of business failures or farm loan foreclosures, high farm credit delinquencies, sudden major layoffs and/or plant closures, and drastically reduced tax bases. Potential applicants are responsible for demonstrating to EDA through the provision of statistics and other appropriate information the nature and level of the distress their efforts are intended to alleviate. In the absence of evidence of exceptionally high levels of distress, EDA funding is unlikely. In considering proposals to benefit severely distressed area, EDA will give special consideration to those that address the needs of rural communities, particularly aid directed toward the economic diversification of such areas.

EDA expects substantial state and local support for proposed projects. Proposals that do not provide evidence of strong state and local leadership and financing are unlikely to receive EDA aid.

EDA funding will not be used directly or indirectly to assist employers who transfer one or more jobs from one commuting area to another. EDA nonrelocation requirements (see 13 CFR 309.3) apply to grants involving construction, rehabilitation or repair and other financial assistance under Titles I, II, IV, IX, and section 301(f) of the Public Works and Economic Development Act of 1965, as amended, PWEDA (Pub. L. 89–136; 42 U.S.C. 3121–3246h).

Applicants who have delinquent accounts receivable with the Department of Commerce will not receive new awards until these debts have been paid or arrangements to pay them have been approved by the Department of Commerce. Applicants may be subject to a pre-award accounting system survey by the Department of Commerce's Office of Inspector General.

The following material describes other policies and procedures associated with each of EDA's programs.

II. Program: Planning Assistance for Economic Development Districts, Indian Tribes, and Redevelopment Areas

(Catalog of Federal Domestic Assistance: 11.302 Economic Development—Support for Planning Organizations)

Summary

Funds under the District, Indian and Area Planning Program are awarded to defray administrative expenses in support of the economic development planning efforts of Economic Development Districts (Districts), Redevelopment Areas (Areas) and Indian Tribes. This program is authorized under section 301(b) of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3151(b).

Eligibility

Eligible applicants are Economic Development Districts, Redevelopment Areas, organizations representing Redevelopment Areas (or parts of such Areas), and Indian Tribes.

Program Objective

The primary objective of planning assistance for administrative expenses under section 301(b) is to support the formulation and implementation of economic development programs designed to create or retain full-time permanent jobs and income, particularly for the unemployed and underemployed in the most distressed areas served by the applicant. Planning activities supported with this aid must be part of a continuous process involving significant leadership by public officials and private citizens.

Funding Availability

Funds in the amount of $19 million are available in two categories: Districts and Areas (Category A)—$16 million; and Indian Tribes (Category B)—$3 million.

Funding Instrument

Grant assistance may be provided for up to 75 percent of project costs for Category A grants. Under Category A, the applicant will be required to provide them the remaining share. Category B grant assistance may be provided for up to 100 percent of project costs.

Project Duration

Both Category A and Category B assistance will normally be for a period of twelve months.

Selection Criteria

Priority consideration will be given to currently funded District and Indian grantees with proposals which are eligible under section 301(b), 42 U.S.C. 3151(b). Category A Area grantees are not likely to continue receiving funds unless they are experiencing severe economic distress. Any remaining funds will be used for new proposals from other eligible applicants under both Categories A and B and/or for special economic development activities that benefit one or more 301(b) grantees and cannot be financed with other resources. It is possible that no funds, or very limited funds, will be available to support special activity grants. Information on application procedures for any funds available for special activity grants will be provided by EDA's Regional Offices or Headquarters staff after February 28, 1987. EDA will consider the following factors in evaluating proposals:

1. The responsiveness of the proposed work program to the program regulations contained in 13 CFR 307.22;
2. The economic distress of the area served by the applicant;
3. For currently funded grantees, past performance (including information in scheduled progress reports); and
4. Local leaders' involvement in applicant economic development activities.

Proposal Submission Procedures

Currently funded grantees and other eligible applicants under both Categories A and B should submit proposals which include:

1. A letter signed by the chief elected official (Chairman of the Board, Tribal Chairman) or another authorized official of the District, Area or Indian tribe stating the organization's desire to receive funds to carry out the types of planning and administrative activities eligible under the 301(b) program.
2. Information on the level of economic distress in the area. This information should include data presented in the most recent Overall Economic Development Program (OEDP) or Annual Report (where they exist), as well as updated data as appropriate. While Category B grantees do not have access to published distress data, they should submit any available information on their economies. Examples of information that might help illustrate the economic distress of Category A grantees include:
   a. Population changes over time;
   b. Employment and unemployment data, such as 24-month seasonally adjusted unemployment rates, six-month seasonally unadjusted unemployment rates, changes over time in total employment and employment by major industry, and labor force participation rates;
   c. Income levels, such as per capita income figures and data on percentages of families and individuals with incomes below the national poverty level;
   d. Trends in business starts and failures, structural changes in the area economy, credit ratings, tax base declines, and sudden economic displacements; and
   e. If an area's economy is significantly dependent upon agriculture, farm loan statistics from the Farm Credit System, local banks and Farmers Home Administration (FmHA). These statistics should be as current as possible and should include the number of borrowers with loans, dollars outstanding, number of borrowers delinquent on payments, dollars delinquent, and foreclosures and bankruptcies in progress.

   Except as explained and justified, the information provided on population, employment, unemployment, and income should be derived by standard Bureau of the Census and/or Bureau of Labor Statistics methodologies. Data sources and the period measured should be identified for each variable.
3. A work program outlining the specific development activities that will be carried out under the grant and explaining how they relate to the problems identified in the area OEDP, annual report, or other documents. New applicants should submit proposals to the appropriate EDA Regional Office no later than March 31, 1987. Proposals postmarked after this date may not receive consideration.

Formal Application Procedures

EDA Regional Offices will contact currently funded grantees to inform them of the procedures for submitting applications for additional funding. Except in cases where work program changes or other factors dictate a different approach, EDA expects to offer new grants to currently funded grantees selected for additional assistance.

Following review of the proposals submitted by other entities, EDA will invite those selected for funding consideration to submit formal applications, which will include an SF–424 or similar form as currently approved by the Office of Management and Budget and other required application materials.

EDA will evaluate applications for conformance with published, statutory, regulatory, and policy requirements. Applications proposed for funding under this program are subject to the requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs." Unsuccessful applicants will be notified of the status of their applications when all of EDA's funds for this program have been awarded.

Further Information

For further information contact the appropriate EDA Regional Office (see list below) or Luis F. Bueso, Director, Planning Division, Economic Development Administration, Room 7866, U.S. Department of Commerce, Washington, DC 20230; telephone, 202–377–2873.

III. Program: Planning Assistance for States and Urban Areas

(Catalog of Federal Domestic Assistance: 11.305 Economic Development—State and Urban Area Economic Development Planning)

Summary

The Economic Development Administration announces its policies and application procedures for funds available for the State and Urban Planning Program operated under the authority of section 302(a) of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3151a.

Eligibility

Eligible applicants under this program are states, territories, cities and urban counties.

Program Objective

The primary objective of planning assistance under section 302(a) is to strengthen the economic development planning and policy-making capabilities of states, territories, cities and urban counties to ensure a more effective use of available resources in addressing economic problems, particularly those resulting in high unemployment and low incomes. Planning activities conducted under this assistance must be part of a continuous process involving significant local leadership from public officials and private citizens.

Funding Availability

Funds in the amount of $5 million ($2 million for states and $3 million for urban areas) as available for providing grant assistance under this program.

Funding Instrument

Grant assistance will be provided for up to 75 percent of project costs. Applicants will be required to provide the remaining share.

Project Duration

Assistance under this program normally will be for a period of twelve months.

Selection Criteria

Because of the substantial reduction in program funds, consideration for FY 1987 support under this program will only be given to entities currently receiving EDA 302(a) planning funds. Among the factors EDA expects to consider in evaluating proposals from current grantees are the following:

1. The responsiveness of the proposed work program to the program regulations contained in 13 CFR 307.52(a)(1) and (2);
2. The economic distress of the area served by the applicant;
3. Past performance, including information on that performance reflected in progress reports submitted under previous grants;
4. Other appropriate factors determined by EDA.

Proposal Submission Procedures

EDA staff will contact currently funded grantees to explain additional project selection criteria and FY 1987 proposal submissions procedures, including proposal submission dates. It is expected that those entities selected to submit proposals will be asked to

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include at least the following items as part of the proposal package:

1. A letter signed by the head of the applicant organization or another authorized official indicating a desire to receive funds to carry out the types of planning activities eligible under the 302(a) program.

2. Information on the level of economic distress in the area. Such information must include:

a. Population: for the years 1970, 1975, 1980, and 1984.

b. Employment/Unemployment:

(1) seasonally adjusted unemployment rate for the most recent 24-month period;

(2) seasonally unadjusted unemployment rate for the most recent 6-month period;

(3) total employment and employment by major industry for 1980, 1981, 1982, 1983, 1984, 1985 (cities may use county data); and

(4) 1984 labor force participation rate.

c. Income:

(1) per capita income (1984 for states and counties, and 1979 for cities);

(2) percentage of persons with incomes below the national poverty level.

If more current data are available at the time of proposal submission, they should be included.

The information provided should be derived by standard Bureau of the Census and/or Bureau of Labor Statistics methodologies. Data sources and the period measured should be identified for each variable. Applicants should also provide other information on the area's economy, such as trends in business starts and failures, structural changes, higher or lower credit ratings, declines in the tax base, foreclosures, and sudden economic displacements. For states whose economies are significantly dependent upon agriculture, farm loan statistics from the Farm Credit System, local banks and Farmers Home Administration (FmHA) should be provided. These statistics should be as current as possible and include the number of borrowers with loans, dollars outstanding, number of borrowers delinquent on payments, dollars delinquent, and foreclosures and bankruptcies in progress.

3. A work program outlining the specific development activities that will be carried out under the grant to address the problem(s) identified.

Proposals should be submitted to the appropriate EDA Regional Office (see list below) or, if so advised by EDA staff, to Beverly L. Milkman, Deputy Director for Grant Programs, Economic Development Administration, Room 7866, U.S. Department of Commerce, Washington, DC 20230.

Formal Application Procedures

EDA will evaluate proposals using the selection criteria cited above and others to be developed and subsequently explained to grantees. Following the review of proposals, EDA will invite those whose proposals are selected for funding consideration to submit formal applications, which will include an SF-424 or similar form as currently approved by the Office of Management and Budget and other application materials.

EDA will evaluate applications for conformance with published statutory, regulatory, and policy requirements. Except in cases where work program changes or other factors dictate a different approach, EDA expects to offer new grants to those currently funded grantees selected for additional assistance.

Applications proposed for funding under this program are subject to the requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs." Unsuccessful applicants will be notified of the status of their applications when all of EDA's funds for this program have been awarded.

Further Information

For further information contact the appropriate EDA Regional Office (see list below) or Luis F. Bueso, Director, Planning Division, Economic Development Administration, Room 7866, U.S. Department of Commerce, Washington, DC 20230; telephone, 202-377-2873.

IV. Program: Local Area Technical Assistance Projects and University Center Projects

(Catalog of Federal Domestic Assistance: 11.303 Economic Development—Technical Assistance)

Summary

Funds for local area technical assistance projects and university center projects are awarded to eligible applicants to provide a wide range of assistance to assure the successful initiation and implementation of area and state development efforts designed to alleviate economic distress. In the case of basic university center projects, funds are to be used as seed money to help selected colleges and universities mobilize their own and other resources to assist in the economic development of distressed areas. The economic development efforts to such colleges and universities could involve aid to public bodies, nonprofit organizations, and private firms. In addition, funds are used for projects which assist the overall goals of the University Center Program. Support for these types of projects is authorized under section 301(a) of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3151(a).

Policy Changes for University Center Basic Grants

EDA expects to publish a **Federal Register** announcement regarding changes in University Center Program policies within the next 60 days. The changes will not affect currently funded Centers in FY 1987.

Eligibility

Eligible applicants for local area technical assistance grants or cooperative agreements include public or private nonprofit, state, area, district, or local organizations; public and private colleges and universities (including EDA-funded university centers); and other suitable institutions (including Indian tribes, cities, and state agencies). Working relationships among the parties will determine whether a grant or cooperative agreement is most appropriate. Other eligible applicants for local area technical assistance cooperative agreements include private individuals; partnerships; firms; and corporations. Eligible applicants for university center grants are public and private colleges and universities.

Program Objective

The objective of these projects is to provide technical assistance useful in alleviating or preventing conditions of excessive unemployment or underemployment and problems of distressed populations in individual states or sub-state areas. In the case of university center grants, an additional purpose is to stimulate colleges and universities to mobilize their resources to overcome such conditions and problems.

Funding Availability

Funds in the amount of $5.8 million are available for local area technical assistance projects and university center projects.

Funding Instrument

Local area technical assistance and university center project funds will be awarded through grants and cooperative agreements to cover a portion of project costs. The amount covered will not exceed 75 percent of proposed project costs.

In the case of university center grants, recipients are expected to gradually increase their share to match the EDA grant dollar-for-dollar by the fifth year of support. Waiving or reducing the university or college overhead can be considered as a cash contribution.

Project Duration

Grants and cooperative agreements will be for the period of time required to complete the scope of work. Generally this will not exceed twelve months.

Selection Criteria

A. University Center Basic Grant Proposals

In judging proposals from existing and potential university centers for basic grants, EDA will consider whether the proposed center programs:

1. Serve areas of significant economic distress.

2. Address the development needs of the service area.

3. Complement the activities of other organizations engaged in economic and business development. (Where applicable, the proposal must identify how it differs from the services provided by a local Small Business Development Center, Trade Adjustment Assistance Center (TAAC) or a Minority Business Development Center.)

4. Possess the commitment, as evidenced by financial support and other resources, of the university leadership at the highest levels to the mission and purpose of the university center.

5. Possess the capacity to provide the proposed technical and other types of assistance to jurisdictions and organizations within the service area.

6. Complement and support the local, regional or state economic development strategies in the service area.

7. Complement and support the EDA Regional Office Strategy. (Information on Regional Office Strategies must be obtained from the appropriate Regional Office.)

In the event funds are available to start new centers, EDA will also consider the following factors in evaluating proposals for basic grants from potential centers:

1. The presence of another EDA-funded center in the state.

2. The presence of an SBA- or MBDA-funded center or a TAAC in the service area.

3. The extent to which the center proposes to serve the economic development needs of economically distressed jurisdications and community-based organizations.

B. Local Area Technical Assistance Proposals

Preference will be given to those local area technical assistance proposals (including those submitted by university centers) which:

1. Produce strong evidence that the proposed project will lead to the near-term (between one and five years) generation and/or retention of private sector jobs.

2. Stimulate significant private and non-Federal public capital formation and investment for economic development purposes.

3. Are consistent with the EDA approved Overall Economic Development Program (OEDP) for the area in which the projects are, or will be, located and have been recommended by the OEDP Committee.

4. Will benefit severely distressed areas, particularly rural counties and communities.

5. Contribute to achieving the objectives of the EDA Regional Offices' Strategies. Proposals will also be judged on the quality of the proposed work program and the qualifications of the applicant to carry out that work program.

Proposal Submission Procedures

A. Basic Grants for Existing University Centers

Existing centers that have been selected to receive consideration for continued basic funding will be notified by the EDA Regional Offices of all application procedures. These procedures will include the requirement that each center's proposed scope of work include the development of a specific plan for raising funds to support its economic development program. Any existing centers not selected to receive consideration for continued support will be so notified.

B Basic Grants for New Centers

1. *Letters of interest.* Colleges and universities interested in participating in the University Center Program should submit letters of interest, signed by the president or another authorized official, to the appropriate EDA Regional Office with a copy to the EDA Economic Development Representative (EDR). The letter should describe the center's proposed service area; the economic distress of that area; the relationship of the center's program to state, regional and local economic development strategies, as appropriate; and the activities to be undertaken with the EDA assistance. In addition, the letter should indicate that the college or university leadership understands that EDA expects substantial cash and other support for the program from the institution itself.

2. *Deadlines.* February 16, 1987. Letters received after this date may not be considered.

3. *Proposals.* Colleges and universities selected by EDA for consideration as new centers will be invited by March 30, 1987 to submit detailed proposals. The appropriate Regional Office will provide instructions for preparing such a proposal. EDA will use the previously described selection criteria to evaluate these proposals. Those submitting unsuccessful proposals will be notified as soon as possible.

C. Local Area Technical Assistance Projects

Interested parties, including university centers, must contact the EDR for the area for a proposal package. This package may contain additional information on procedures and selection criteria. The EDA Regional Office can provide the name, address and telephone number of the EDR for the applicant's area.

Proposals should be submitted to the appropriate EDR as early as possible, but no later than March 15, 1987. Proposals postmarked after that date may not receive consideration.

EDA will evaluate all proposals and will authorize formal applications for those which best satisfy the selection criteria. EDA will evaluate the proposals on a bi-monthly basis, commencing two months after the date of this announcement. Potential applicants are encouraged to submit their proposals early. Those whose proposals are unsuccessful will be notified as soon as possible.

Formal Application Procedures

The appropriate EDA Regional Office will ask entities whose proposals for local area technical assistance projects and new basic university center grants are selected for further consideration to complete formal application packages. EDA will evaluate applications for conformance with published statutory, regulatory, and policy requirements. Applications proposed for funding under this program are subject to the requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs." Unsuccessful applicants will be notified of the status of their applications as soon as possible.

Further Information

For further information, contact the appropriate EDA Regional Office (see list below), the appropriate EDR (whose name, address, and telephone number may be obtained from the EDA Regional Office), or Tony Meyer, Technical

Assistance and Research Division, Economic Development Administration, Room 7866, U.S. Department of Commerce, Washington, DC 20230; telephone, 202–377–2812.

V. Program: National Technical Assistance Projects

(Catalog of Federal Domestic Assistance: 11.303 Economic Development—Technical Assistance)

Summary

Funds under the National Technical Assistance Program are used to provide technical assistance that will benefit more than one region of the country. Typically, funds are awarded to organizations that demonstrate a national outreach capability. Projects affecting only one area or region will not be considered unless there is clear evidence that the project merits testing to determine its appropriateness for replication elsewhere. This program is authorized under the authority of section 301(a) of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3151(a).

Eligibility

Eligible applicants for grants or cooperative agreements under this program include: public and private nonprofit national, state, area, district or local organizations; and other suitable institutions (including indian tribes, cities, state agencies and educational institutions). Working relationships among the parties will determine whether a grant or cooperative agreement is most appropriate. Other eligible applicants for cooperative agreements under this program include: private individuals; partnerships; firms; and corporations.

Program Objective

The objective of this program is to provide technical assistance useful in alleviating or preventing conditions of excessive unemployment or underemployment in distressed rural and urban areas, with special attention to the problems of economically distressed populations. Grants and cooperative agreements will be awarded to:

1. Address topical economic development issues and problems, such as those related to the restructuring of the agriculture and energy sectors of the economy.
2. Demonstrate innovative approaches to stimulating economic development in depressed areas.
3. Disseminate to the appropriate audiences information and products (including the materials and data developed under items 1 and 2) designed to help promote economic development in distressed areas.
4. Strengthen the capability of state and local organizations and institutions to undertake and promote effective economic development programs.

Funding Availability

Funds totalling approximately $1.2 million are available for use in funding projects proposed by eligible entities and projects initiated by EDA through Solicitations of Applications for specific economic development technical assistance activities.

Funding Instrument

EDA will provide grants and cooperative agreements that will normally cover up to 75 percent of proposed project costs. Applicants are expected to provide the remaining share.

Project Duration

Assistance will be for the period of time required to complete the scope of work. Generally this will not exceed twelve months.

Selection Criteria

Preference will be given to proposals which:

1. Address the National Technical Assistance Program objectives (or if appropriate, the objectives outlined in the Solicitation of Applications).
2. Present an appropriate and clear project design.
3. Are sponsored by organizations with the capacity and qualifications and staff specified to undertake the proposed activities.
4. Present a reasonable budget for the proposed activities.
5. Have a near-term (one- to five-year) impact and do not depend upon further EDA assistance to achieve results. Additional information on selection criteria for this program will be provided to prospective applicants by EDA.

Proposal Submission Procedures

Potential applicants may obtain an additional criteria and application information package from Richard E. Hage, National Technical Assistance Program Coordinator, Economic Development Administration, Room 7866, U.S. Department of Commerce, Washington, DC 20230; telephone 202–377–2127. Entities seeking funds must submit proposals, which should not exceed 10 double-spaced pages, exclusive of budget, vitae and organizational capability statement.

Proposals must provide:

1. A title.
2. Complete name and address of proponent organization, contact person and telephone number, and legal status of organization.
3. Description of activities to be undertaken with technical assistance funding.
4. Vitae of principal individuals that will undertake the proposed activities.
5. Capability statement of the proponent organization or individual.
6. Project budget (by proposed task) for both the proposed EDA assistance and applicant share.

Proposals should be submitted to Beverly L. Milkman, Deputy Director for Grant Programs, Attn: National Technical Assistance Program, Economic Development Administration, Room 7866, U.S. Department of Commerce, Washington, DC 20230. Organizations or individuals located outside the Washington, DC metropolitan area should submit a copy of the letter transmitting their proposal to the Economic Development Representative (EDR) for the area in which they are located. The EDA Regional Office (see list below) can furnish the name and address of the appropriate EDR. Proposals must be submitted by February 16, 1987. Proposals postmarked after this date may not be considered.

Formal Application Procedures

EDA will evaluate the proposals using the selection criteria described both in this announcement and in the additional criteria and application information package. Those whose projects are selected for additional consideration will be invited to submit formal applications. Organizations and individuals whose proposals are unsuccessful will be notified as soon as possible, as will those whose proposals receive further consideration but are not subsequently funded.

EDA will review these applications for conformance with published statutory, regulatory and policy requirements. Applications proposed for funding under this program involving substantial on-site work in a single state are subject to the requirement of Executive Order 12372, "Intergovernmental Review of Federal Programs."

Eligibility for Solicitations of Applications

EDA may identify specific economic development technical assistance activities it wishes to have conducted. Organizations and individuals interested in being invited to respond to these Solicitations of Applications (SOAs) to conduct such work should submit information on their capabilities and experience to Beverly L. Milkman at the above address by January 30, 1987.

Applicants submitting information after that date may not be considered. EDA will review this information to determine eligibility to compete for projects under specific SOAs.

Further Information

For further information contact Richard E. Hage, National Technical Assistance Program Coordinator, Economic Development Administration, Room 7866, U.S. Department of Commerce, Washington, DC 20230; telephone, 202–377–2127.

VI. Program: Research and Evaluation Projects

(Catalog of Federal Domestic Assistance: 11.312 Economic Development—Research and Evaluation Program)

Summary

Funds under the Research and Evaluation Program are used to support studies that will increase knowledge about the causes of economic distress and approaches to alleviating such problems. This program is authorized under the authority of section 301(c) of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3151(c).

Eligibility

Eligible applicants are private individuals, partnerships, corporations, associations, colleges and universities, and other suitable organizations.

Project Objective

The objectives of section 301(c) grants and cooperative agreements are the following:

1. To determine the causes of unemployment, underemployment, underdevelopment, and chronic depression in various areas and regions of the Nation.
2. To assist in the formulation and implementation of national, state, and local progams that will raise employment and income levels and otherwise produce solutions to problems resulting from the above conditions.
3. To evaluate the effectiveness of programs, projects, and techniques used to (a) alleviate economic distress and (b) promote economic development.

Funding Availability

Funds in the amount of $1 million are available for this program. Funds will be used both for projects selected through the application procedures cited below and for EDA-initiated solicitations.

Funding Instrument

EDA will provide grants and cooperative agreement awards covering up to 100 percent of project costs.

Project Duration

Assistance under this program will normally be for a period of up to 15 months.

Selection Criteria

EDA will use the following criteria to evaluate research and evaluation proposals:

1. Suitability of the subject.
2. Qualifications of principal investigator(s) and, where appropriate, performing organization(s).
3. Potential usefulness of the research to state and local economic development practitioners.
4. General quality and clarity of the proposal.
5. Soundness and completeness of the research methodology.
6. Total cost, and value of product in relation to cost. EDA is interested in receiving proposals dealing with:
1. Employment and unemployment;
2. Income and poverty;
3. Rural and other nonmetropolitan economic development;
4. Regional and local growth;
5. Industrial location;
6. Job creation methods;
7. State and local economic development efforts;
8. Private sector economic development efforts;
9. Developmental effects of public works and other infrastructure;
10. Capital markets and development finance;
11. Industrial competitiveness;
12. Minority business and minority jobs; and
13. Productivity and technology.

Requested grants and awards should be for specific, well-defined, one-time research projects. EDA research grants are not intended for support of continuing programs (ongoing research programs, publication and information programs, periodic forecasts, etc.) or for non-research activities. Some research proposals deal with, or involve samples drawn from, only one part of the United States. EDA normally prefers research that is not limited in geographic scope or that at least covers a very large multi-state region, as opposed to research covering (in declining order of preference) a small region, a state, a multi-county area, or a single city or county. In general, EDA prefers cause-and-effect research and descriptive analyses to theoretical studies, modeling (other than for hypothesis testing), and the like. Economic development planning assistance and technical assistance for specific places will not be funded under the research program; the Planning and Technical Assistance Programs are for those purposes.

Proposal Submission Procedures

Potential applicants should submit a brief and concise proposal. Proposals should avoid long background discussions and literature surveys, but should be reasonably detailed, particularly in explaining methodology. Econometric studies should include a preliminary list of variables to be used. Each proposal should include (1) a cover page giving a short descriptive project title, the name and address of the performing organization, the names and phone numbers of the project proposals postmarked after February 16, 1987, may not be considered.

Formal Application Procedures

EDA will evaluate the proposals using the selection criteria described above. Organizations and individuals whose proposals are selected for further consideration will be invited to submit the additional materials required for a grant or cooperative agreement award. Organizations and individuals whose proposals are not selected will be notified as soon as possible, as will those whose proposals receive further consideration but are not subsequently funded. Applications proposed for funding under this program may be subject to the requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs."

Eligibility for Specific Solicitations

In addition to using research and evaluation funds to support proposals submitted under the procedures described above, EDA may during the fiscal year identify other studies, including program evaluation, it wishes to sponsor.

Organizations and individuals interested in being invited to respond to Solicitations of Applications (SOAs) to conduct such studies should submit information on their capabilities and experience to the address listed above.

This information will be used to determine eligibility to compete for projects under specific SOAs. Those who submit information postmarked after January 30, 1987, may not be invited to respond to SOAs this fiscal year.

Further Information

For further information, contact David H. Geddes, Director, Technical

Assistance and Research Division, Economic Development Administration, Room 7866, U.S. Department of Commerce, Washington, DC 20230; telephone, 202-377-4085.

VII. Program: Economic Adjustment Assistance (Title IX)

(Catalog of Federal Domestic Assistance No.: 11.307 Special Economic Development and Adjustment Assistance Program—Long-Term Economic Deterioration (LTED) and Sudden and Severe Economic Dislocation (SSED))

Summary

Funds under the Economic Adjustment Program are used to assist areas experiencing long-term economic deterioration (LTED) and areas threatened or impacted by sudden and severe economic dislocation (SSED). This program is authorized under Title IX of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3241-3245.

Program Objective

The LTED Program assists eligible applicants in implementing strategies that halt and reverse the long-term decline of their economies. Grants for Revolving Loan Funds (RLF) are usually provided under the LTED/RLF Program.

The SSED Program assists eligible applicants to respond to actual or threatened major job losses (dislocations) and other severe economic adjustment problems. It is designed to help communities prevent a sudden, major job loss; to reestablish employment opportunities as quickly as possible after one occurs; or to meet special needs resulting from severe changes in economic conditions. SSED assistance is intended to respond to permanent rather than temporary job losses. Assistance may be in the form of a grant to develop a strategy to respond to the dislocation (Strategy Grant) or a grant to implement an EDA approved strategy (Implementation Grant).

In light of the current high level of economic distress in rural areas, EDA is particularly interested in Title IX projects designed to mitigate serious rural economic adjustment problems.

Funding Availability

Funds in the amount of $26 million are available for the Economic Adjustment Program in FY 1987. Of the amount, $13 million will be available for the SSED Program and $13 million will be available to fund RLFs.

Funding Instrument

Title IX funds are awarded through grants which provide a maximum of 75 percent of the project cost. Acceptable sources of the local share include, but are not limited to, local government general revenue funds; Community Development Block Grant (CDBG) entitlement funds or balance of state awards; Urban Development Action Grants; and other public and private donations. The full amount of the local share need not be in hand at the time of application; however, the applicant must have a legally binding commitment from the identified source(s). If such commitments are not honored and the proportionate local cash share is unavailable at the time of an individual loan closing, EDA funds will not be disbursed.

In addition, these commitments cannot be encumbered in any way that would preclude their use, or the use of loan repayments, according to the requirements of the grant agreement. The local share for the RLF Program must be in cash. The local share for the SSED Program may be in cash and/or in-kind.

Eligible Applicants

Eligible applicants within areas meeting the EDA eligibility criteria described below include a redevelopment area or economic development district established under Title IV of this Act, 42 U.S.C. 3161; an Indian tribe; a state; a city or other political subdivision of a state, or a consortium of such political subdivisions; a Community Development Corporation defined in the Community Economic Development Act, 42 U.S.C. 9801; or a nonprofit organization determined by EDA to be the representative of a redevelopment area.

Eligible Areas

A. LTED

In order to receive priority consideration for funding under the LTED/RLF Program, an area must be experiencing at least one of three economic problems: very high unemployment; low per capita income; or chronic distress (i.e., failure to keep pace with national economic growth trends over the last five years). Eligibility is determined statistically. Further information is available from EDA's Regional Offices.

B. SSED

In order to receive priority consideration for funding under the SSED Program, an area must show actual or threatened permanent job losses that exceed the following threshold criteria, unless otherwise determined by the Assistant Secretary:

1. For areas not in Metropolitan Statistical Areas:

a. If the unemployment rate of the Labor Market Area exceeds the national average, the dislocation must amount to the lesser of two (2.0) percent of the employed population, or 500 direct jobs.

b. If the unemployment rate of the Labor Market Area is equal to or less than the national average, the dislocation must amount to the lesser of four (4.0) percent of the employed population, or 1,000 direct jobs.

2. For areas within Metropolitan Statistical Areas:

a. If the unemployment rate of the Metropolitan Statistical Area exceeds the national average, the dislocation must amount to the lesser of one-half (0.5) percent of the employed population, or 4,000 direct jobs.

b. If the unemployment rate of the Metropolitan Statistical Area is equal to or less than the national average, the dislocation must amount to the lesser of one (1.0) percent of the employed population, or 8,000 direct jobs.

In addition, fifty (50) percent of the job loss must result from the action of a single employer, or eighty (80) percent of the job loss must occur in a single industry classification (i.e., two digit SIC code).

In the case of a Presidentially declared natural disaster, the area eligibility criteria are waived. In other similarly exceptional circumstances, the criteria may be partially waived at the discretion of the Assistant Secretary.

Actual dislocations must have occurred within one year and threatened dislocations must be anticipated to occur within two years of the date EDA is contacted.

Selection Criteria

Proposals will be evaluated based on conformance with statutory and regulatory requirements, the economic adjustments needs of the area, the merits of the proposed project in addressing those needs and the potential applicant's ability to manage the grant effectively.

A. LTED/RLF Selection Criteria

Key factors in EDA's selection of proposed LTED/RLF projects include:

1. *Economic and Financial Needs of the Project Area.* a. Areas with the highest levels of economic distress (high unemployment, low per capita income, vacant plants, deteriorating infrastructure, and declining farm economy, etc.) will receive priority consideration.

b. Need for RLF financing will be evaluated based on the applicant's analysis of the local capital market and how clearly this analysis defines the financial problems to be addressed by the RLF project.

c. Potential applicant's need for grant funds to carry out the project will be based on an assessment of its financial resources (e.g., budget deficit or surplus).

2. *Objectives and Benefits of Proposed Projects.* Priority will be given to projects which can:

a. Stimulate private sector employment. The number and types of jobs to be created/retained will be key factors in project selection along with the job/cost ratio established for the RLF portfolio as a whole;

b. Target assistance to meet program objectives and to support specific economic adjustment activities planned or underway in the area, particularly those identified in the OEDP, Title IX strategy, or other plans developed to deal with specific economic adjustment problems affecting the area. This may include target areas, industries, types of employers or other criteria that maximize the impact of assistance on specific needs within the area;

c. Leverage higher ratios of private investment than the required minimum ratio of two private sector investment dollars to one RLF dollar (Note: the local share or other funds provided by the RLF to finance loans cannot be counted as "leveraged" dollars);

d. Direct new job opportunities to the long-term unemployed and underemployed;

e. Assist minorities, women and members of other economically disadvantaged groups in obtaining RLF loans;

f. Provide technical and management assistance for RLF borrowers, in addition to loan funds;

g. Use creative financing techniques to overcome specific gaps in the local capital market;

h. Make loans on a timely basis. The implementation schedule for RLF projects will normally require that RLF loans in the initial round be closed (and all EDA funds disbursed) within three years of grant approval with no less than 50 percent disbursed within eighteen months and 80 percent within two years;

i. Include a larger matching share than the required 25 percent or secure commitments for future funding from other public or private sources; and

j. Coordinate activities with other economic development organizations, loan programs, employment training programs and private lenders in the area.

3. *Effective Management of the RLF.* EDA will also evaluate proposed projects to determine that the RLF will be properly managed. Key factors include:

a. A strong and effective Loan Administrative Board with broad community representation, including appropriate public, private sector, minority and women's representation;

b. Staff capacity in program and policy development, finance, law, marketing, credit analysis, loan packaging, processing and servicing;

c. Efficient procedures for loan selection, approval, and servicing which emphasize the economic development potential of loans as well as sound management and financing practices;

d. Adequate resources to cover administrative costs of the RLF; and

e. The potential applicant's experience and capacity for administering economic and business loan programs. If the potential applicant has designated another organization to administer the project, EDA will evaluate the experience and capacity of that organization, rather than the potential applicant.

Nongovernment (excluding Economic Development Districts) organizations seeking funds must be sponsored by the local or state government having jurisdiction over the project area, and the sponsor must be willing to assume responsibility for operating the RLF should the nongovernment entity no longer be able to administer the project.

B. SSED Evaluation Criteria

Key factors in EDA's selection of proposed SSED projects include:

1. The severity of the dislocation as measured by, but not limited to, the following factors:

a. The degree to which the number of dislocated workers exceeds the eligibility threshold;

b. The proportion of the total job loss represented by a single employer;

c. The proportion of employment in a single industry classification represented by the firm(s) closing; and

d. The potential applicant's need for grant funds to carry out the project based on an assessment of its financial resources (e.g., budget deficit or surplus).

2. The objectives and benefits of proposed activities as measured by the extent to which:

a. *For Implementation Grants.* (1) Job creation or retention in the near term is emphasized versus more long-term, general economic development;

(2) The jobs to be created and/or retained are permanent, will directly benefit the dislocated workers, and are new employment opportunities and not transferred from one area of the United States to another;

(3) The response to the problem is timely;

(4) EDA assistance will be complemented by, or will complement, appropriate state and local efforts, for example, training and job placement services, other Federal investments, such as Urban Development Action Grants, and private sector support;

(5) The adjustment strategy and implementation activities proposed demonstrate an appropriately creative approach to addressing the dislocation;

(6) The cost per job created or retained is minimized;

(7) In the case of a Revolving Loan Fund, the recycled loan proceeds generate economic development benefits; and

(8) The local share exceeds the required 25 percent.

b. *For Strategy Grants.* (1) The applicant has demonstrated the capacity to manage the planning process and subsequent implementation activities;

(2) The proposed scope of work is responsive to the problem;

(3) The focus of the planning effort is on the generation of practical and implementable solutions; and

(4) The local share exceeds the required 25 percent.

Proposal Submission Procedures

Interested parties should contact the Economic Development Representative for the area or the appropriate EDA Regional Office for a proposal package. The EDA Regional Office can furnish the name, address and telephone number of the Economic Development Representative for the area. Project proposals, submitted by eligible entities, will be evaluated by EDA on the basis of:

1. conformance with the evaluation criteria mentioned above and statutory, regulatory and policy requirements; and

2. the availability of funds.

Formal Application Procedures

Following a review of project proposals, EDA will invite those whose projects are selected for funding consideration to submit formal applications. Potential applicants whose project proposals are not selected for funding consideration will be so advised as soon as possible EDA will evaluate applications for conformance with published statutory, regulatory and policy requirements. Applications proposed for funding under this program are subject to the requirements of Executive Order 12372

"Intergovernmental Review of Federal Programs." When all of EDA's funds for SSED and LTED programs have been awarded, unsuccessful applicants will be notified of the status of their applications as soon as possible.

Further Information

For further information about this program, contact the appropriate EDA Regional Office or Paul J. Dempsey, Director, Economic Adjustment Division, Economic Development Administration, Room 7217, U.S. Department of Commerce, Washington, DC 20230, telephone 202-377-2659.

VIII. Program: Public Works and Development Facilities Assistance

(Catalog of Federal Domestic Assistance: 11.300 Economic Development Grants and Loans for Public Works and Development Facilities. 11.304 Economic Development Public Works Impact Program (PWIP))

Summary

Funds available under the Public Works Program are used to finance public works and development facilities that contribute to the economic development of depressed areas. EDA's public works expenditures are authorized by Titles I and IV of the Public Works and Economic Development Act of 1965, as amended (PWEDA), 42 U.S.C. 3131 and 42 U.S.C. 3171(a)(3).

Eligibility

Eligible applicants under this program are any state, or political subdivision thereof, Indian tribe, or private or public nonprofit organization or association representing any redevelopment area or part thereof, if the project is located within an EDA-designated redevelopment area. Further information on the areas which are eligible for this EDA program is available from EDA's Regional Offices.

Program Objective

The purpose of the Public Works Grant Program is to assist communities with the funding of public works and development facilities that contribute to the creation or retention of private sector jobs and to the alleviation of unemployment and underemployment. Such assistance is designed to help communities achieve lasting improvement by establishing stable and diversified local economies, and improving local living conditions and the economic environment of the area. In view of the current rural distress, applications from rural communities will be reviewed with particular interest.

Funding Availability

Funds in the amount of $122.443 million are available for this program.

Funding Instrument

EDA may provide grants with maximum EDA participation normally ranging from 50 percent to 80 percent of project costs. Applicants will be required to provide the local share. Acceptable sources of the local share include but are not limited to local government general revenue funds; Community Development Block Grant (CDBG) entitlement funds or balance of state award; Urban Development Action Grants; and other public and private donations.

The local share need not be in hand at the time of application; however, the local share must be firm and readily available. The local share must not be encumbered in any way that would preclude its use consistent with the requirements of the grant agreement. Priority will be given to applications which maximize the local share's percentage of the project cost. Supplementary grant assistance to finance more than 50 percent of project costs will only be approved by EDA for projects in areas of high distress. Decisions on such assistance shall be based on the nature of the project, the amount of fair user charges or other revenues the project may reasonably be expected to generate and the relative needs of the project (see 13 CFR 305.5).

Selection Criteria

For both regular public works projects and Public Works Impact Program (PWIP) projects, priority consideration will be given to those which are the most competitive based upon the project selection criteria set forth below, that best meet the needs of eligible areas, and that are located in areas of severe economic distress.

A. Public Works Projects

Factors that will be taken into account in considering projects eligible under section 101(a)(1)(A)–(C) of PWEDA, 42 U.S.C. 3131(a)(1)(A)–(C), include whether and to what extent the project:

1. Improves opportunities for the successful establishment or expansion of industrial or commercial plants or facilities in the area where such project will be located;

2. Assists in creating or retaining private sector jobs in the near term and assists in the creation of additional long-term employment opportunities, provided the jobs are not transferred from any other area of the United States, and will result in a low cost per job in relation to total EDA project cost;

3. Benefits the long-term unemployed and members of low-income families who are residents of the area to be served by the project;

4. Fulfills a pressing need of the area, or part thereof, in which it will be located;

5. Is consistent with the EDA approved Overall Economic Development Program (OEDP) for the area in which it is, or will be, located, and has broad community support;

6. Is supported by significant private sector investment;

7. Has adequate local share of funds with evidence of firm commitment and availability;

8. Supports developments taking place in designated enterprise zones, particularly in rural areas; and

9. Demonstrates that necessary permits, land acquisitions or options on land and rights-of-way have been obtained and that all other legal requirements of the application process have been satisfied.

B. Public Works Impact Program

Factors that will be taken into account in considering projects under the Public Works Impact Program (PWIP) authorized by section 101a(1)(D) of PWEDA, 42 U.S.C. 3131(a)(1)(D), include whether and to what extent the project:

1. Directly assists in creating immediate useful work (i.e., construction jobs) for the unemployed and underemployed residents in the project area;

2. Improves the economic or community environment in areas of severe economic distress;

3. Includes a specific plan (i.e., PWIP Employment Strategy) for hiring the unemployed and underemployed persons in the project area to work on the construction of the project;

4. Assists in certain long-term employment opportunities or other economic benefits for the unemployed and underemployed in the project area;

5. Primarily benefits low-income families by providing essential services, or satisfying a pressing public need;

6. Can begin construction quickly (normally within 90 days after acceptance of the grant by the applicant); and

7. Has substantial labor intensity, where labor intensity is the proportion of labor costs to the total project costs.

C. Industrial Park Projects

Projects which will primarily serve an industrial park or site will be evaluated on such additional factors as:

1. A detailed analysis of existing industrial park capacity and utilization; occupancy rates for existing developed industrial acres currently available within a 25-mile radius of the project site. For cities with populations over 50,000, the prescribed area may be determined by an analysis of industrial sites within an established industrial area, which may be less than a 25-mile radius. Contact the Economic Development Representative for the area or the appropriate EDA Regional Office for guidance;

2. Commitments in writing from identified tenants to locate in the industrial park or site. Commitments must include description of the industry, the number of jobs created or saved, and an implementation schedule; and

3. The existence of a concrete marketing strategy and demonstrated financial ability to market space in the industrial park or site. Strong emphasis will be placed upon this requirement.

D. Favorable Consideration Is Not Likely for Projects Which

1. Are in areas with unemployment rates below the national average, unless it can be demonstrated to EDA's satisfaction by other more appropriate measures that the area is suffering substantial distress and economic hardship.

2. Do not benefit the long-term unemployed or members of low-income families or otherwise substantially further the objectives of the Economic Opportunity Act of 1964.

3. Cannot be implemented within a reasonable period of time;

4. Involve substantial land purchase;

5. Involve public buildings such as hospitals, jails, court houses, theaters, fire stations, etc.;

6. Do not have the applicant's share of project funding readily available;

7. Support tourism or recreational activities, unless it can be demonstrated to EDA's satisfaction that tourism is the major industry in the area or that the project will assist in creating a significant number of jobs. In that case, the project must directly assist in providing job opportunities for unemployed and underemployed persons of the area and otherwise support the long-term growth of the area;

8. Involve industrial parks where there is evidence of excessive vacancies in existing developed industrial parks or sites in close proximity to the proposed project, unless there is evidence the proposed project is targeted to types of firms not readily accommodated or served by the existing industrial parks and firm commitments to locate in the industrial park exist; or

9. Require a mortgage to be placed on the real property or the facility to be constructed/improved with EDA funds.

E. Prohibited Projects

No support will be provided for proposals such as parking garages; pedestrian walkways; non-industrial street repairs; beautification improvements; or land reclamation, subsurface demolition and site clean-up activities.

Proposal Submission Procedures

To establish the merits of project proposals, interested parties should first contact the Economic Development Representative for the area. The EDA Regional Office can provide the name, address and telephone number of the Economic Development Representative for the area who will provide a preapplication form and arrange for conferences to discuss the proposal. EDA will screen proposals before inviting the submission of a formal application. Proposals will be evaluated based upon:

1. Conformance with statutory and other legal requirements and with the selection criteria mentioned above;

2. The merits of the proposal in addressing the relative economic development needs of the eligible area; and

3. The availability of funds as allocated to the Regional Offices.

Processing time for project proposals will depend on the completeness of information provided in the preapplication form and supporting documents at the time of submission.

Project proposals that require additional information from applicants or other sources will be returned to correct deficiencies and the official application receipt dates will be adjusted accordingly.

Formal Application Procedures

Following a review of project proposals, EDA will invite entities whose projects are selected for funding consideration to submit formal applications. Those submitting project proposals not selected for funding consideration will be so advised as soon as possible. EDA will evaluate applications for conformance with published statutory, regulatory and policy requirements, including the project selection criteria set forth above. Proposals for funding under this program are subject to the requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs."

When all of EDA's public works funds have been awarded, unsuccessful applicants will be notified of the status of their applications as soon as possible.

Previous Applications

Project applications invited but not funded in FY 1986 remain eligible for funding consideration. Those applications which were received by September 30, 1986 will be processed and evaluated in accordance with the project selection criteria published for FY 1986, current legal requirements, and EDA's revised nonrelocation policy which was published in the Federal Register on September 15, 1986. Those applications not received by EDA by September 30, 1986 must be consistent with the project selection criteria and requirements published in this notice and submitted on application forms issued by EDA for FY 1987. Applicants whose projects were invited but not submitted to EDA in FY 1986 should obtain FY 1987 application forms from EDA's Regional Offices.

Further Information

For further information contact the appropriate EDA Regional Office [see list below).

IX. Program: Guaranteed Loans

(Catalog of Federal Domestic Assistance: 11.301 Economic Development—Business Development Assistance)

Summary

Pursuant to Public Law 89-136 (42 U.S.C. 3142-3246 (h)) (the Act), EDA is prepared to guarantee up to eighty percent (80%) of the principal and interest of loans to be made to private borrowers for the purchase of fixed assets and/or for working capital purposes for projects located in areas eligible for EDA assistance. EDA loan guarantees are made available to help businesses expand, establish, or maintain operations in both urban and rural eligible areas throughout the Nation. Guarantees offered under this program are made at the discretion of the Assistant Secretary for Economic Development based upon data from the borrower and lender current at the time the guarantee is offered.

Preapplication Procedures

Applicants should contact the appropriate EDA Regional Office Business Loans Division to discuss their proposals. EDA will screen proposals before inviting a formal application. Proposals will be evaluated based upon conformance with the following:

1. Statutory requirements contained in the Act;

2. Regulatory requirements contained in 13 CFR Parts 306 and 309; and restated in this notice; and

3. Provisions of Office of Management and Budget (OMB) Revised Circular A–70, dated August 24, 1984 (A–70).

OMB Circular A–70 (Revised) Requirements

All loan guarantees must conform to the requirements of A–70, without exception. The most significant requirements of A–70 are as follows:

1. Loans must be secured by first priority, unsubordinated liens on collateral having value in excess of the full amount of the loan.

2. An annual guarantee fee, payable quarterly, equal to one-half percent of the outstanding EDA contingent liability will be charged. This fee is subject to change at any time prior to approval of a guarantee.

3. Not more than eighty percent (80%) of the principal and the interest on a loan may be guaranteed.

4. The lender must bear a significant portion of the risk of loss on the loan. No other security, guarantees or any other arrangement that would not inure ratably to EDA for that portion of the loan not guaranteed by EDA will be permitted.

5. No loan directly involved with tax-exempt obligations, such as industrial revenue bonds, will be guaranteed.

Supplementary Information

A. Amount of Funding Available

EDA is authorized to commit up to $150 million to guarantee contingent liability for loan principal in FY 1987, which ends September 30, 1987.

B. Type of Financial Assistance

EDA will consider proposals for the guarantee of loans made by private lending institutions to private borrowers to finance the costs of fixed assets or for working capital purposes. EDA will not accept applications for projects which involve real estate development for either investment or speculation, or refinancing of current debt.

C. Who May Apply

Formal applications will be invited by EDA only after review and acceptance of satisfactory project proposals. Applications will be accepted only from private lending institutions (the "applicant") for the guarantee of loans to private business enterprises. EDA's relationship is essentially with the lender applicant, not the borrower.

D. Long-Term Employment

EDA seeks to assist in the creation or retention of permanent private-sector jobs in EDA eligible areas. Accordingly, the project for which the applicant seeks financial assistance must be reasonably calculated to provide more than a temporary alleviation of unemployment or underemployment within the eligible area where the project is or will be located.

E. Repayment Ability

The private lender and EDA must find that there is reasonable assurance of repayment of the guaranteed loan.

F. EDA Guarantee Required

No loan will be guaranteed by EDA unless the application is supported by evidence that the financial assistance applied for is not otherwise available to the prospective borrower from either private lenders without a guarantee or from other Federal agencies on terms which, in the opinion of EDA, will permit accomplishing the project. In the event the borrower is a large corporation which would normally have funds available to finance the project, such corporation must certify that it would not locate the proposed project within the EDA-designated area without the benefits of EDA's financial assistance.

G. Relocation

Nonrelocation requirements apply to guaranteed loans under Section 202, Title II of PWEDA. EDA's regulations at 13 CFR 309.3 (51 FR 32628, September 15, 1986) prohibit transferring jobs from one commuting area to another. Certificates of nonrelocation will be required.

General Conditions of Assistance

A. Amount of Loan

EDA will not ordinarily approve an application for a guarantee of a loan with a face value under $600,000.

B. Term of Loan

The term of a guaranteed fixed asset loan cannot exceed the weighted average estimated useful economic life of the project fixed assets, but in no event can the term of such a loan exceed twenty-five (25) years. The term of a guaranteed working capital loan ordinarily may not exceed five (5) years, and the loan should be fully amortized during its term. EDA will not ordinarily guarantee revolving-type or open-end working capital loans.

C. Guarantee Percentage and Interest Rate

Pursuant to A–70, EDA may guarantee up to eighty percent (80%) of the face value of a loan. However, applicants requesting an eighty percent (80%) guarantee will be required to justify why a lesser guarantee percentage would not be acceptable. As a general rule, EDA will not offer to guarantee a loan in excess of the following percentages and interest rates:

1. 80% guarantee—Lender prime rate plus 1.50%.

2. 75% guarantee—Lender prime rate plus 1.75%.

3. 70% guarantee—Lender prime rate plus 2.0%.

4. 60% guarantee—Lender prime rate plus 2.5%.

D. Guarantee Fee

Pursuant to A–70, EDA will charge the lender an annual guarantee fee, payable quarterly, equal to one-half percent of the outstanding contingent liability. EDA reserves the right to change this fee at any time prior to approval of the guarantee.

E. Application Fee

EDA may charge an application processing fee to cover the costs of application processing and review.

F. Lender's Risk

That portion of the loan not guaranteed by EDA must be at risk to the applicant throughout the term of the loan. This precludes the applicant from obtaining any additional security, guarantee, or compensating balances to separately secure the unguaranteed portion of the loan. This does not preclude normal loan participation arrangements by the lender, provided that any such participation is acceptable to EDA. EDA will be obligated to deal only with the applicant, and all participants must be eligible as applicants.

G. Other Lender-Borrower Relationships

Where an applicant has other creditor/debtor relationships with the prospective borrower, EDA will seek assurances that these relationships will not create conflicts with EDA's interest in the applicant's servicing of the loan for which a guarantee is sought. Ordinarily, EDA will not accept an application from an applicant who has existing short-term revolving working capital financing extended to the borrower.

H. EDA Investment Per Job

EDA will consider only those projects that have an EDA investment exposure of $20,000 or less per permanent job to be created or saved.

I. Repayment Ability

Only projects that demonstrate reasonable assurance of repayment are eligible to receive EDA financial assistance. The applicant must demonstrate why it is reasonably certain the borrower will be able to repay the loan. As a minimum, the application must include:

1. Applicant's normal detailed credit analysis, including a narrative discussion of company history, management, product, production capability, market conditions, finances, collateral, and repayment ability (with ratio analyses compared to industry standards);

2. Three (3) years' financial statements, audited and certified by a public accountant, if available, or certified by a responsible officer of the prospective borrower; if in operation less than three years, financial statements since inception;

3. Financial statements of the prospective borrower, current within ninety (90) days of the date of the application;

4. Pro forma balance sheets, income and cash flow statements of the prospective borrower on a month-by-month basis for the first year after the loan is made and on a quarterly basis for the next two (2) years;

5. One copy of the proposed note and loan agreement between the applicant and the prospective borrower with attachments.

J. Adequate Collateral

The lender must perfect and maintain perfected liens against and security interests in collateral adequate to permit full recovery of the loan in the case of default by the borrower. Collateral must be of such nature that repayment of the loan is reasonably assured when considered with the integrity and ability of project management, soundness of the project and borrower's prospective earnings. The applicant must document why it is reasonably certain that adequate collateral coverage exists. Only projects that demonstrate that the full amount of the loan is covered exclusively by an unsubordinated first priority security interest on collateral offered by the borrower will be considered. There will be no exceptions to this requirement. Proof and documentation of collateral coverage shall include but not be limited to current appraisals as to the fair market and liquidation value of the collateral that will support the loan. If the purchase of new machinery and equipment constitutes all or part of the prospective project cost, current cost data for such assets may be submitted in lieu of an appraisal. Where real property is to be pledged as collateral, a description and evidence of ownership must be included with appraisals acceptable to EDA.

K. Guarantees

Unconditional personal/corporate guarantees (of full and timely payment and performance by the borrower) will be required from all persons or entities which hold or control 10 or more percent of the ownership interests in a borrower unless:

1. The borrower has a profitable historical performance of no less than three out of the most recent five years, abundant collateral, adequate cash flow and meets key industry standards (i.e. Robert Morris Associates);

2. Borrower's stock is so widely held that no one individual/family/entity can exercise control;

3. Borrower's parent, subsidiary, or affiliate that is required to guarantee is legally restricted from guaranteeing, or such guarantee would conflict with other existing contractual obligations of the prospective guarantor.

In addition, cross guarantees may also be required from related corporate entities.

EDA will require current (not over ninety days old at the time the application is filed) personal financial statements signed by the prospective guarantor, and where appropriate and necessary to support the guarantee by the guarantor's spouse, and disclosing community and individual assets and indebtedness when applicable.

L. Equity Requirements

All applications for EDA financial assistance shall be supported by adequate existing and/or proposed equity so as to enhance the success of the proposed project and lessen EDA's potential exposure. The following minimum equity will be required:

1. For guaranteed working capital loans, the prospective borrower must have existing, or must provide, net working capital equal to not less than fifteen pecent (15%) of its total working capital needs.

2. For guaranteed fixed asset loans, the prospective borrower must provide an equity investment in the loan project of at least fifteen percent (15%) of the aggregate loan project cost.

3. The prospective borrower must provide twenty-five percent (25%) of the aggregate loan project cost for:

a. New businesses with no operating history;

b. Loans without full personal and/or corporate guarantee of stockholders owning ten percent (10%) or more of the borrower;

c. Energy-related businesses;

d. Ventures which EDA determines to have above-average risk.

M. Feasibility Report

An independent technical, financial, and economic feasibility report by a firm acceptable to EDA will be required for all applications for new ventures involving a total project cost of $1 million or more and for projects involving tourism or recreational facilities. Such a report must be related to the pro forma operating statements associated with the application. Independent feasibility studies may also be required for other applications, as deemed necessary by EDA.

N. Tax-Exempt Obligations

The EDA project cannot share collateral with or include elements financed with tax-exempt obligations, such as industrial revenue bonds.

O. Other Requirements

1. Hazard Insurance with a standard mortgage clause naming the lender as beneficiary will be required in an amount at least equal to the lesser of the depreciated replacement value of the property being insured or the amount of the loan.

2. Keyman life insurance, which may be decreasing term insurance, normally will be required for principals and key employees of the borrower, pledged or assigned to the lender.

Applicant Servicing Responsibilities

A. Upon approval of a guaranteed loan, the applicant's responsibilities shall include, but are not limited to, executing such care and diligence in the disbursement, servicing, collection, and liquidation of the guaranteed loan as would be exercised by a reasonable and prudent commercial lender in dealing with a loan of its funds without the EDA guarantee.

B. In the event of subsequent default on the loan, unless EDA elects otherwise, the applicant will have full responsibility for servicing and liquidating the loan prior to making demand on EDA for payment under the EDA guarantee. EDA shall be obligated to pay that portion of the loan guaranteed after the deduction of all proceeds of the

liquidation less reasonable expenses directly attributable to the liquidation. Failure to perform these responsibilities satisfactorily may preclude EDA from honoring its guarantee. EDA will examine the applicant's records before honoring any guarantee.

Application Requirements

A. The application shall include the following:

1. A signed statement by the borrower assuring that it will not use the EDA financial assistance to relocate jobs from one labor area to another or to close facilities involved in the EDA-guaranteed project;

2. Approval of the application by the appropriate agency or instrumentality of the state or political subdivision in which the project is located, together with a signed statement by that local authority that the project is consistent with an Overall Economic Development Program approved by EDA;

3. Full disclosure of the amount and nature of all fees charged to the borrower by the lender, attorneys, agents or other persons to expedite the application. Appropriate fees and charges may include services such as accounting, legal, engineering and appraisals. Packaging and/or lobbying expenses are not allowable project costs and no proceeds of the loan may be used indirectly for attorneys' or consultants' fees in connection with securing EDA's guarantee. EDA may permit reasonable fees and charges as allowable project costs. EDA will not permit any fees or charges that are contingent upon project approval.

4. An agreement that neither the borrower nor the applicant will employ or retain for professional services any person who on behalf of EDA occupied a position or engaged in activities which EDA determines involves discretion with respect to the granting of the assistance under the Act. This agreement shall remain in effect for two years after EDA grants assistance to the applicant.

5. An application for character/integrity investigation (Name Check Form DC-346) for each officer, the chief financial manager, and for each individual owning or controlling at least twenty percent (20%) of the borrower.

6. Documentation satisfactory to EDA to substantiate that the guaranteed loan will not create unfair competition within the meaning of Section 702 of the Act. Section 702 unfair competition results if the project would increase the production of goods, materials, or commodities, or the availability of services or facilities, when there is not sufficient demand for such goods, materials, commodities, services, or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises. Applicants are encouraged to submit borrower's data for this requirement prior to or within thirty (30) days of receiving authorization to apply for EDA financial assistance to expedite processing of the loan guarantee. Applicants and borrowers should understand that expenses incurred prior to formal offering of a loan guarantee are made solely at the applicant's or borrower's expense.

7. A description of state/or local government assistance to the project.

B. Loan guarantees are also subject to the following statutes:

1. Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251-1376;

2. Davis-Bacon Act, as amended, 40 U.S.C. 276a-276a-5; see 13 CFR 309.6;

3. The Architectural Barriers Act of 1954, as amended, 42 U.S.C. 4151-4157; see 13 CFR 309.14;

4. The National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321-4370; see CFR 309.18;

5. The National Historic Preservation Act of 1966, 16 U.S.C. 470-470W-6;

6. The Wild and Scenic River Act, as amended, 16 U.S.C. 1271-1287;

7. The Clean Air Act, as amended, 42 U.S.C. 7401-7626;

8. The Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4001-4128.

Application Submission

Proposals should be submitted to the appropriate EDA Regional Office at the earliest practical date, but in no event later than May 30, 1987. Business Loan proposals from the Denver region will be processed by the Chicago Regional Office. Proposals received after this date may not be considered during FY 1987. Completed applications for authorized projects should be submitted no later than June 30, 1987. Incomplete applications or applications that do not conform to program requirements will be rejected by EDA.

The EDA National Office will review all loans recommended for approval by a Regional Office. National Office review will encompass credit as well as program objectives, priorities and interest. All guarantees require approval by the Assistant Secretary of Commerce for Economic Development.

For Further Information Contact

For further information contact the Chief of the Business Loans Division of the Regional Office that services your state (see list below). In the case of projects located in the Denver region, the Chicago Regional Office Business Loans Division Chief is the appropriate contact.

X. EDA Regional Offices

The EDA Regional Offices and the States they cover are:

Philadelphia Regional Office, Liberty Square Building, 105 South 7th Street, First Floor, Philadelphia, Pennsylvania 19106, Telephone: (215) 597-4603; serving Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virginia, Virgin Islands, and West Virginia.

Atlanta Regional Office, Suite 750, 1365 Peachtree Street, NE, Atlanta, Georgia 30309, Telephone (404) 347-7401; serving Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

Chicago Regional Office, Suite A-1630, 175 West Jackson Boulevard, Chicago, Illinois 60604, Telephone: (312) 353-7707; serving Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

Austin Regional Office, Suite 201, Grant Building, 611 East Sixth Street, Austin, Texas 78701, Telephone (512) 482-5461; serving Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.

Denver Regional Office, Suite 200, Tremont Center, 333 West Colfax Avenue, Denver, Colorado 80204, Telephone (303) 844-4714; serving Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.

Seattle Regional Office, Suite 500, Lake Union Building, 1700 Westlake Avenue, North Seattle, Washington 98109, Telephone (206) 442-0596; serving Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, and Washington.

Dated: December 16, 1986.

Orson G. Swindle, III,

Assistant Secretary for Economic Development.

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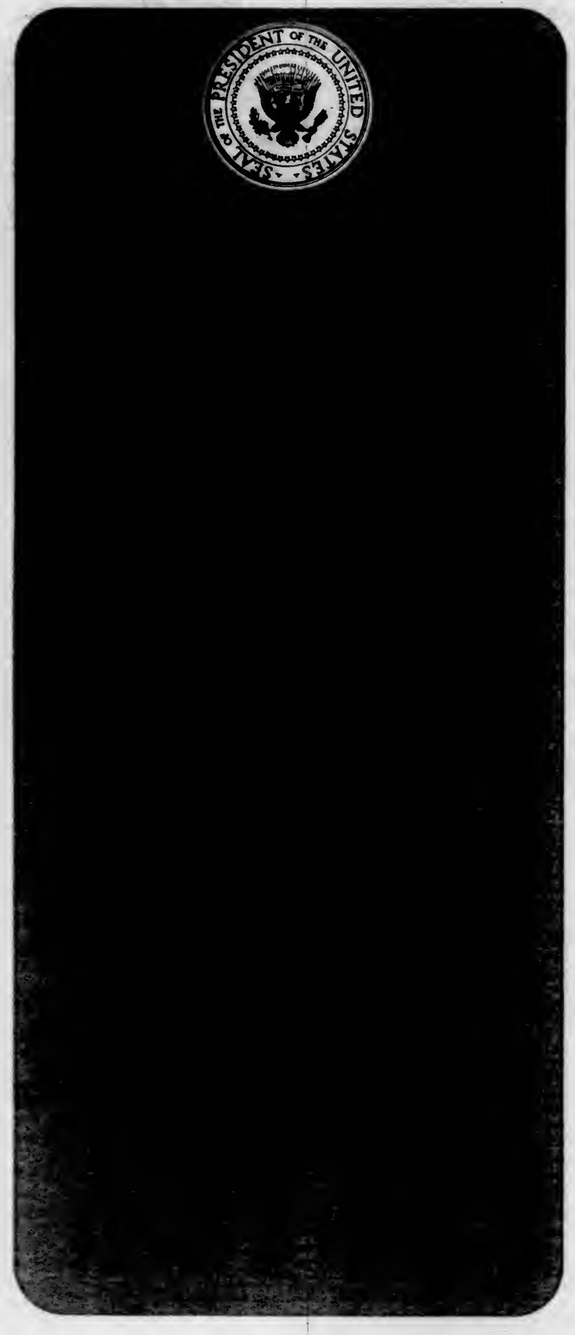
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Parts 2422, 2423, and 2429

Processing of Cases; Miscellaneous and General Requirements

AGENCY: Federal Labor Relations Authority and the General Counsel of the Federal Labor Relations Authority.

ACTION: Final rules.

SUMMARY: Sections of Parts 2422, 2423, and 2429 concerning (1) computation of time for filing papers (§ 2429.24), and (2) the place and method of filing (§ 2429.24) are amended.

EFFECTIVE DATE: December 31, 1986.

FOR FURTHER INFORMATION CONTACT:
Harold D. Kessler, (202) 382-0715;
David L. Feder, Office of the General Counsel, Federal Labor Relations Authority, (202) 382-0834.

SUPPLEMENTARY INFORMATION: On September 23, 1986, the Federal Labor Relations Authority published proposed amendments to its rules and regulations (51 FR 33838) concerning computation of time for filing papers and place and method of filing. The Authority now adopts those proposed revisions as final amendments to §§ 2429.21 and 2429.24.

Several questions were raised about the effect of these changes on the time for a party to file documents after receipt from another party. The changed provision only establishes date of mailing as a filing date with the Authority. Section 2429.27 requiring service on parties, including the General Counsel/Regional Director where appropriate, to be by certified mail or in person is unchanged, as is the § 2429.22 provision for additional time for filing after service by mail.

A request for an extension of time under § 2429.23(a) is excluded from the revised regulation on computation of time for filing papers because it is essential that the existence of the request be known before a due date. This could not be controlled if a request were deemed filed on the date mailed.

With respect to the exclusion of filing of unfair labor practice charges under § 2423.6 and representation petitions under § 2422.21 from the revised regulation, of the nine Federal agencies and three labor organizations submitting comments on the proposed changes in the regulations, only one labor organization opposed the exclusion of the filing of unfair labor practice charges from the proposed change. The commenting labor organization did not oppose the exclusion of the filing of representation petitions from the proposed change. It was concluded that the method for determining the filing date of an unfair labor practice charge should be the same as that of a representation petition. Further, no commenting labor organization or agency has suggested that the method for determining when an unfair labor practice charge is filed for purposes of determining timeliness under 5 U.S.C. 7118(a)(4) has denied any persons of rights guaranteed under the Federal Service Labor-Management Relations Statute or has caused any hardship on parties filing unfair labor practice charges with the Regional Offices. Almost 8 years of experience of designating charges and representation petitions as having been filed when received by the Regional Offices has resulted in an established practice recognized by all participants in the Federal service labor-management relations program encompassing the sequential numbering of charges and petitions as received in the Regional Offices. No commenting labor organization or agency has provided any rationale for changing the method of determining when unfair labor practice charges and representation petitions are deemed to be filed. It was therefore concluded that changing the determination as to the filing date for unfair labor practice charges and representation petitions, and discarding the sequential numbering of charges and petitions as received in the Regional Office, would serve no purpose and possibly lead to confusion.

List of Subjects in 5 CFR Parts 2422, 2423, and 2429

Administrative practice and procedure, Government employees, Labor-management relations.

For the reasons set out in the preamble, 5 CFR is amended as follows:

PART 2422—REPRESENTATION PROCEEDINGS

1. The authority citation for Part 2422 continues to read as follows:

Authority: 5 U.S.C. 7134.

2. 5 CFR Part 2422 is amended by adding § 2422.2(e)(4) to read as follows:

§ 2422.2 Contents of petition; procedures for consolidation of existing exclusively recognized units; filing and service of petition; challenges to petition.

* * * * *

(e) * * *

(4) A petition will be deemed to be filed when it is received by the appropriate Regional Director in accordance with the requirements in paragraphs (e) (1), (2), and (3) of this section.

* * * * *

PART 2423—UNFAIR LABOR PRACTICE PROCEEDINGS

1. The authority citation for Part 2423 continues to read as follows:

Authority: 5 U.S.C. 7134.

2. 5 CFR Part 2423 is amended by adding § 2423.6(c) to read as follows:

§ 2423.6 Filing and service of copies.

* * * * *

(c) A charge will be deemed to be filed when it is received by the appropriate Regional Director in accordance with the requirements in paragraph (a) of this section.

PART 2429—MISCELLANEOUS AND GENERAL REQUIREMENTS

1. The authority citation for Part 2429 continues to read as follows:

Authority: 5 U.S.C. 7134.

2. 5 CFR Part 2429 is amended by revising § 2429.21 to read as follows:

§ 2429.21 Computation of time for filing papers.

(a) In computing any period of time prescribed by or allowed by this

subchapter, except in agreement bar situations described in § 2422.3 (c) and (d) of this subchapter, and except as to the filing of exceptions to an arbitrator's award under § 2425.1 of this subchapter, the day of the act, event, or default from or after which the designated period of time begins to run shall not be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or a Federal legal holiday in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or a Federal legal holiday. *Provided, however,* in agreement bar situations described in § 2422.3 (c) and (d), if the 60th day prior to the expiration date of an agreement falls on Saturday, Sunday, or a Federal legal holiday, a petition, to be timely, must be filed by the close of business on the last official workday preceding the 60th day. When the period of time prescribed or allowed is 7 days or less, intermediate Saturdays, Sundays, and Federal legal holidays shall be excluded from the computations.

(b) Except when filing an unfair labor practice charge pursuant to § 2423.6 of this subchapter, a representation petition pursuant to § 2422.2 of this subchapter, and a request for an extension of time pursuant to § 2429.23(a) of this part, when this subchapter requires the filing of any paper with the Authority, the General Counsel, a Regional Director, or an Administrative Law Judge, the date of filing shall be determined by the date of mailing indicated by the postmark date. If no postmark date is evident on the mailing, it shall be presumed to have been mailed 5 days prior to receipt. If the filing is by personal delivery, it shall be considered filed on the date it is received by the Authority or the officer or agent designated to receive such matter.

(c) All documents filed or required to be filed with the Authority shall be filed in accordance with § 2429.24(a) of this subchapter.

3. 5 CFR Part 2429 is amended by revising § 2429.23(a) to read as follows:

§ 2429.23 Extensions; waiver.

(a) Except as provided in paragraph (d) of this section, and notwithstanding § 2429.21(b) of this subchapter, the Authority or General Counsel, or their designated representatives, as appropriate, may extend any time limit provided in this subchapter for good cause shown, and shall notify the parties of any such extension. Requests for extensions of time shall be in writing and received by the appropriate official not later than five (5) days before the established time limit for filing, shall state the position of the other parties on the request for extension, and shall be served on the other parties.

* * * * *

4. 5 CFR Part 2429 is amended by revising § 2429.24 (a) and (e) to read as follows:

§ 2429.24 Place and method of filing; acknowledgment.

(a) All documents filed or required to be filed with the Authority pursuant to this subchapter shall be filed with the Director of Case Management, Federal Labor Relations Authority, Docket Room, 500 C Street SW., Washington, DC 20424 (telephone: FTS 382-0748; Commercial (202) 382-0748) between 8 a.m. and 5 p.m., Monday through Friday (except Federal holidays). Documents hand-delivered for filing must be presented in the Docket Room not later than 5 p.m. to be accepted for filing on that day.

* * * * *

(e) All documents filed pursuant to this section shall be filed in person or by mail.

* * * * *

Dated: December 17, 1986.

Jerry L. Calhoun,
Chairman.
Henry B. Frazier III,
Member.
Jean McKee,
Member.
John C. Miller,
General Counsel.

[FR Doc. 86-28608 Filed 12-19-86; 8:45 am]
BILLING CODE 6727-01-M

5 CFR Part 2423

Unfair Labor Practice Proceedings

AGENCY: Federal Labor Relations Authority and the General Counsel of the Federal Labor Relations Authority.

ACTION: Final rule.

SUMMARY: The Authority and the General Counsel have decided not to adopt the regulation as proposed regarding the disclosure of witnesses and proposed exhibits ten (10) days prior to an unfair labor practice hearing. Rather, the Authority and General Counsel are adopting a modified version of the proposed regulation which requires that the exchange of witness lists and copies of proposed exhibits occur at a prehearing conference at the site of the unfair labor practice hearing just prior to the opening of the hearing, rather than ten (10) days prior to the opening of the hearing. Thus, § 2423.14 of the regulations is revised accordingly.

EFFECTIVE DATE: December 31, 1986.

FOR FURTHER INFORMATION CONTACT: David L. Feder, (202) 382-0834.

SUPPLEMENTARY INFORMATION: On September 23, 1986, the Federal Labor Relations Authority and the General Counsel of the Authority published a proposed amendment to its rules and regulations (51 FR 33839). The proposed change required all parties to exchange proposed witness lists and documentary evidence ten (10) days prior to the opening of an unfair labor practice hearing [§ 2423.14].

One labor organization and eight agencies submitted comments on the proposed regulation. The vast majority of comments received opposed the regulation as proposed contending in essence that the expenditure of resources required to comply with the proposed regulation would not offset any compensating benefits derived from the proposed change. The commentators further suggested that the regulation as proposed would have the opposite effect of that intended in that it would raise more questions than it answers and would result in more complex hearings and burdened records regarding whether a particular witness or exhibit was known or was available more than ten (10) days prior to the hearing. Agencies commented that it would create an unfair advantage for the General Counsel.

In view of the comments received, the Authority and General Counsel have determined not to adopt the regulation as proposed regarding the disclosure of witnesses and proposed exhibits ten (10) days prior to an unfair labor practice hearing. Rather, the Authority and General Counsel adopting a modified version of the proposed regulation which alleviates the difficulties envisioned by the commenting agencies and labor organizations. Accordingly, the final regulation would require the exchange of witness lists and copies of proposed exhibits, with index, at a prehearing conference at the site of the unfair labor practice hearing just prior to the opening of the hearing. This proposal would alleviate the concerns of the commenting parties involving additional travel to the site of the unfair labor practice, unfair advantage to the General Counsel and collateral issues which may arise regarding compliance with the regulation as originally proposed. The modified regulation would still continue to afford the parties an opportunity to review all documentations to be submitted as exhibits prior to the commencement of the hearing thus facilitating the introduction of evidence at the hearing, the original intent of the proposed regulation. Further, any issues concerning the calling of witnesses or introduction of exhibits not exchanged prior to the hearing would be subject to the discretion of the Administrative Law Judge presiding, as is the current practice concerning the calling of witnesses and introduction of evidence.

List of Subjects in 5 CFR Part 2423

Administrative practice and procedure, Government employees, Labor-management relations.

For the reasons set out in the preamble, 5 CFR Part 2423 is amended as follows:

PART 2423—UNFAIR LABOR PRACTICE PROCEEDINGS

1. The authority citation for Part 2423 continues to read as follows:

Authority: 5 U.S.C. 7134.

2. 5 CFR 2423.14 is amended by revising the section heading, redesignating paragraphs (a) and (b) as paragraphs (b) and (c) and adding a new paragraph (a) to read as follows:

§ 2423.14 Prehearing disclosure, Conduct of hearing.

(a) Parties will exchange proposed witness lists and copies of documents, with index, intended to be offered into evidence at the hearing at a prehearing conference at the site of the unfair labor practice hearing. The calling of witnesses or introduction of exhibits not exchanged prior to the hearing will be subject to the discretion of the Administrative Law Judge presiding.

* * * * *

Dated: December 17, 1986.

Jerry L. Calhoun,
Chairman.
Henry B. Frazier III,
Member.
Jean McKee,
Member.
John C. Miller,
General Counsel.

[FR Doc. 86-28612 Filed 12-19-86; 8:45 am]
BILLING CODE 6727-01-M

5 CFR Part 2424

Expedited Review of Negotiability Issues

AGENCY: Federal Labor Relations Authority.

ACTION: Final rules.

SUMMARY: The Authority amends its rules concerning (1) the content of a petition for review of negotiability issues (§ 2424.4(a)(2)) and the filing of an incomplete petition for review (§ 2424.4(c)); and (2) the content of the agency statement of position (§ 2424.6(a)(3)).

EFFECTIVE DATE: December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Harold D. Kessler, (202) 382-0715.

SUPPLEMENTARY INFORMATION: On September 23, 1986, the Federal Labor Relations Authority published proposed amendments to its rules and regulations (51 FR 33845) concerning the content of a petition for review of an incomplete negotiability issue [§ 2424.4(a)(2)] and the filing of an incomplete petition for review [§ 2424.4(c)]; (2) the content of the agency statement of position (§ 2424.6(a)(3)); and (3) procedures which the Authority may follow if the record created by the parties is not of sufficient quality to enable it to expeditiously reach a reasoned decision.

The comments received by the Authority with respect to the proposed regulations concerning settlement meetings and hearings to clarify deficient records generally reflected uncertainty or lack of confidence in the effectiveness of such procedures in resolving negotiability issues. In view of this widespread feeling that evidence is lacking to justify adopting the procedures at this time, the Authority has decided that the proposed regulations regarding them will not be implemented. Instead, the Authority has decided to develop an experimental project to assist parties in reaching voluntary settlements of negotiability disputes.

List of Subjects in 5 CFR Parts 2424

Administrative practice and procedures, Government employees, Labor-management relations.

PART 2424—EXPEDITED REVIEW OF NEGOTIABILITY ISSUES

1. The authority citation for 5 CFR Part 2424 continues to read:

Authority: 5 U.S.C. 7134.

2. Section 2424.4 is amended by revising paragraph (a)(2) and by adding paragraph (c) as follows:

§ 2424.4 Content of petition; service.

(a) * * *

(2) An explicit statement of the meaning attributed to the proposal by the exclusive representative including:

(i) Explanation of terms of art, acronyms, technical language, or any other aspect of the language of the proposal which is not in common usage; and

(ii) Where the proposal is concerned with a particular work situation, or other particular circumstances, a description of the situation or circumstances which will enable the Authority to understand the context in which the proposal is intended to apply;

* * * * *

(c) (1) Filing an incomplete petition for review will result in the exclusive representative being asked to provide the missing or incomplete information. Noncompliance with a request to complete the record may result in dismissal of the petition.

(2) The processing priority accorded to an incomplete petition, relative to other pending negotiability appeals, will be based upon the date when the petition is completed—not the date it was originally filed.

3. Section 2424.6 is amended by revising paragraph (a)(2) as follows:

§ 2424.6 Position of the agency; time limits for filing; service.

(a) * * *

(2) Setting forth in full its position on any matters relevant to the petition which it wishes the Authority to consider in reaching its decision, including a full and detailed statement of its reasons supporting the allegation. The statement shall cite the section of any law, rule or regulation relied upon as a basis for the allegation and shall contain a copy of any internal agency rule or regulation so relied upon. The statement shall include:

(i) Explanation of the meaning the agency attributes to the proposal as a whole, including any terms of art, acronyms, technical language or any other aspect of the language of the proposal which is not in common usage; and

(ii) Description of a particular work situation, or other particular circumstance the agency views the proposal to concern, which will enable the Authority to understand the context in which the proposal is considered to apply by the agency.

* * * * *

Dated: December 17, 1986.

Jerry L. Calhoun,
Chairman.
Henry B. Frazier III,
Member.
Jean McKee,
Member.

[FR Doc. 86-28609 Filed 12-19-86; 8:45 am]
BILLING CODE 6727-01-M

5 CFR Parts 2425 and 2429

Processing of Cases; Exceptions to Arbitration Awards

AGENCY: Federal Labor Relations Authority.

ACTION: Final rules.

SUMMARY: These amendments revoke § 2429.8 of the rules and regulations pertaining to the filing of requests for stays of arbitration awards; and add to § 2425.2 a requirement that the party filing exceptions to an award shall include the name and address of the arbitrator with the exceptions.

EFFECTIVE DATE: December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Harold D. Kessler, Director, Office of Case Management, 500 C Street SW., Washington, DC 20424, (202) 382-0715.

SUPPLEMENTARY INFORMATION:

Stay of Arbitration Award. On September 23, 1986, the Federal Labor Relations Authority republished a proposal to revoke § 2429.8 which provided for the filing of requests for stays of arbitration awards (51 FR 33846). The Authority based the proposed action on its interpretation of 5 U.S.C. 7122(b), which provides that if an exception to an arbitration award is not filed with the Authority within the prescribed time period then the award becomes final and binding. The Authority interprets 5 U.S.C. 7122(b) to mean that if timely exceptions to an award are filed with the Authority then the award is not final and binding for compliance purposes until the Authority resolves the exceptions. The Authority therefore determined that if a party files timely exceptions to an award it is not necessary to also file a request for a stay of the award. Consequently, the Authority concluded that § 2429.8 of the rules and regulations governing such requests is unnecessary and should be revoked.

The agency commentators supported the proposed revision and recommended its adoption. The labor organization commentators disagreed with the Authority's interpretation of 5 U.S.C. 7122(b). They also indicated concern that revocation of the stay provision would lead to the filing of frivolous exceptions and contribute to delay in Authority resolution of arbitration cases. The labor organizations also expressed a preference for maintaining the Authority's stay procedures based on views of judicial and administrative agency practice.

These comments reflect a misunderstanding of the action proposed by the Authority. First, revocation of the stay request procedure will not create an automatic stay provision. An arbitration award to which timely exceptions have been filed is not final and binding for compliance purposes. There is no need to request a stay of an award that is not final and binding for compliance purposes. This conclusion is premised on the Authority's view of what Congress intended in the Statute. The plain language and legislative history of 5 U.S.C. 7122(b), as explained more fully in the September 23, 1986, notice of proposed amendments persuade the Authority that an arbitration award is not final and binding for compliance purposes until exceptions to the award are resolved.

Furthermore, the Authority has promptly denied and will continue to promptly deny all exceptions that fail to establish that an award is deficient on any of the grounds provided in 5 U.S.C. 7122(a). Prompt Authority action on exceptions should deter the filing of frivolous exceptions and avoid delays in the processing of cases. A recent examination of the Authority's arbitration case docket supports the view that the union's concern as to delay are unfounded. The Authority's arbitration case docket on October 1, 1986, was 71 cases, as compared to 248 cases on October 1, 1983. During Fiscal Year 1986, the average number of days to close an arbitration case was 189 days, as compared to 359 days during FY 1984. Accordingly, it does not appear that the Authority's case processing procedures will unduly delay arbitration awards from becoming final and binding for compliance purposes where appropriate under the Authority's view of section 7122(b). The Authority is also committed to resolving all other exceptions as expeditiously as possible and that commitment is not altered by revocation of the request procedures. In any event, it should be noted that such concerns would not properly govern an interpretation of the Statute. *AFGE* v. *FLRA*, 778 F.2d 80, 851, 861 n.17 (D.C. Cir. 1985).

Finally, the comments concerning judicial and other agency stay procedures are not persuasive. For example, one union asserted essentially that the Authority's view of stays of arbitration awards should be governed by the practice in this area concerning Merit Systems Protection Board (MSPB) decisions. It is argued that MSPB decisions must be expressly stayed pending judicial review in order for an agency to avoid being required to comply with the decision during the review process. Congress created provisions in section 7122(b) of the Statute concerning arbitration awards which are not found elsewhere. The language and legislative history concerning section 7122(b) of the Statute discussed above have no counterpart concerning MSPB decisions. In addition, any party to an arbitration award within the Authority's jurisdiction may obtain review of that award from the Authority under section 7122(b). Review of an MSPB decision, on the other hand, is restricted in the case of employer agencies to a petition for review by the Director of the Office of Personnel Management to the Federal Circuit under 5 U.S.C. 7703(d), which the court may in its discretion deny.

Furthermore, union claims that adoption of the proposed revocation would result in the Authority's occupying a unique status in terms of interlocutory stays of decisions under review are without merit. Various agency orders, including those of the National Labor Relations Board and the Authority, as well as private sector arbitration awards, are not self-enforcing and need not be stayed pending their review. In short, the Authority finds no support for the view that Congress intended the necessity for a stay provision for arbitration awards to be governed by MSPB or other administrative or judicial practice.

A union also contended that the procedures governing stays under Executive Order 11491 should continue to be followed under the Statute. The Authority does not find this argument persuasive. There are major differences between E.O. 11491 and the Statute concerning arbitration in the Federal sector. Most significantly, there was no provision in the Executive Order comparable to section 7122(b) of the Statute. We believe that the differences clearly indicate Congress' intent that the practice followed under E.O. 11491 must be changed.

Content of exception. The Authority proposed to amend § 2425.2 to require that a party filing exceptions to an arbitration award must include the name and address of the arbitrator with the exceptions. The Authority proposed to add the requirement to enable the Authority to mail a copy of its decision on the exceptions in each case to the arbitrator. Only one comment was received expressing no objection on the proposed amendment. The Authority has decided to adopt the amendment as proposed.

List of Subjects in 5 CFR Parts 2425 and 2429

Administrative practice and procedure, Government employees, Labor-management relations.

Accordingly, the final rules and regulations of the Authority are amended as follows:

PART 2425—REVIEW OF ARBITRATION AWARDS

1. The authority citation for 5 CFR Parts 2425 and 2429 continues to read:

Authority: 5 U.S.C. 7134.

2. Section 2425.2(e) is added to read as follows:

§ 2425.2 Contents of exceptions.

* * * * *

(e) The name and address of the arbitrator.

PART 2429—MISCELLANEOUS AND GENERAL REQUIREMENTS

§ 2429.8 [Removed and Reserved]

Section 2429.8 is removed and reserved.

Dated: December 17, 1986.

Jerry L. Calhoun,

Chairman.

Henry B. Frazier III,

Member.

Jean McKee,

Member.

[FR Doc. 86-28610 Filed 12-19-86; 8:45 am]

BILLING CODE 6727-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 337

Unsafe and Unsound Banking Practices; Extension of Compliance Deadline

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Final rule.

SUMMARY: On June 16, 1986, the Board of Directors of the FDIC granted the request of several petitioners that the FDIC reconsider the provisions of the FDIC's rule governing securities subsidiaries and affiliates of insured nonmember banks which deal with the use of a common name or logo and separate offices. A request for comment on whether or not these provisions should be retained, modified, or eliminated was published in the Federal Register on August 20, 1986. Insured nonmember banks that prior to December 28, 1984 became affiliated with a securities company, or prior to that date established or acquired a subsidiary that engages in securities activities, are presently required to comply with the common name or logo and separate office restrictions of the regulation by December 31, 1986. The Board of Directors is extending the compliance deadline with these provisions of the regulation until June 30, 1987 for institutions currently subject to the December 31, 1986 deadline in order to provide staff further time to consider the comments and formulate a recommendation to the Board of Directors.

EFFECTIVE DATE: December 16, 1986.

FOR FURTHER INFORMATION CONTACT: Pamela E.F. LeCren, Senior Attorney, Legal Division, (202) 898-3743, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: On November 19, 1984, the FDIC adopted § 337.4 of its regulations (12 CFR 337.4) (49 FR 46722, November 28, 1984), governing certain securities activities of subsidiaries of insured nonmember banks and the affiliation of insured nonmember banks with certain types of securities companies. The regulation requires, among other things, that certain securities subsidiaries meet the definition of "bona fide subsidiary." That definition in turn requires, among other things, that a bank and its securities subsidiary must operate out of separate offices that share no common entrance if the subsidiary engages in securities activities prohibited to the bank by the Glass-Steagall Act. The subsidiary is also prohibited from sharing a common name or logo with the bank. The regulation imposes similar requirements upon a bank affiliated with a securities company if that securities company conducts securities activities that would be prohibited to the bank by the Glass-Steagall Act. Banks that were affiliated with such a securities company prior to December 28, 1984, or that established or acquired such a securities subsidiary prior to December 28, 1984, were required to comply with the name and office restrictions as soon as practicable, but not more than one year from December 28, 1984 without the FDIC's consent.

In December 1985 several banks filed petitions with the FDIC requesting that the FDIC reconsider the requirement in the regulation that a bank and its securities subsidiary or affiliate must have separate offices that share no common entrance and the prohibition on the use by a bank of a common name or logo with its securities subsidiary or affiliate. In order to permit sufficient time for the FDIC to fully consider the petitions, the Board of Directors extended the above-described compliance deadline with the common name and separate office provisions of the regulation until June 30, 1986. (51 FR 880, January 9, 1986). Inasmuch as staff has not yet completed its review of the comments, the Board of Directors voted to extend the compliance deadline for another six months (June 30, 1987) which time should permit staff to prepare its recommendation for the Board of Director's consideration.

On June 16, 1986 the Board of Directors granted the request to reconsider the common name or logo prohibition and the separate office and separate entrance requirement. A document soliciting comment on whether or not to modify or retain these restrictions was published for public comment on August 20, 1986. (51 FR 29657). At the same meeting, and in conjunction with its vote to solicit public comment, the Board of Directors voted to extend the June 30, 1986 compliance deadline for the name and office restrictions until December 31, 1986 for institutions with preexisting affiliate and subsidiary relationships. (51 FR 23405, June 27, 1986). Inasmuch as staff has not yet completed its review of the comments and formulated a recommendation to the Board of Directors, the Board of Directors' voted to extend the compliance deadline until June 30, 1987 which time should permit staff to prepare its recommendation for the Board of Directors' consideration.

In accordance with 5 U.S.C. 553, the FDIC has found that prior notice and a delayed effective date with respect to this amendment are unnecessary as the amendment delays the imposition of requirements that are already imposed by existing regulation. Since the amendment only provides for an extension of time for compliance with certain portions of the regulation and imposes no burden upon banks, securities affiliates or the public, it is not subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) or the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

List of Subjects in 12 CFR Part 337

Banks, banking, Securities, State nonmember banks.

In consideration of the foregoing, the FDIC hereby amends Part 337 of Title 12 of the Code of Federal Regulations as follows:

PART 337—UNSAFE AND UNSOUND BANKING PRACTICES

1. The authority citation for Part 337 continues to read as follows:

Authority: Sec. 6, 64 Stat. 876, 12 U.S.C. 1816; sec. 8(e), section 2[8(a)] of the Act of September 21, 1950, (Pub. L. No. 797; 64 Stat. 897), effective September 21, 1950, as amended by section 204 of title II of the Act of October 16, 1966 (Pub. L. No. 89-695; 80 Stat. 1054), effective October 16, 1966; section

6(c)(14) of the Act of September 17, 1978 (Pub. L. No. 95-396; 92 Stat. 818), effective September 17, 1978; and section 113(g) of title I of the Act of October 15, 1982 (Pub. L. No. 97-320; 96 Stat. 1473 and 1474), effective October 15, 1982; 12 U.S.C.1818(a); sec. 8(b), section 2[8(b)] of the Act of September 21, 1950 (Pub. L. No. 797), as added by section 202 of title II of the Act of October 16, 1966 (Pub. L. No. 89-695; 80 Stat. 1046), as amended by section 110 of title I of the Act of October 28, 1974 (Pub. L. No. 93-495; 88 Stat. 1506), section 11 of the Act of September 17, 1978 (Pub. L. No. 95-369; 92 Stat. 624); sections 107(a)(1) and 107(b) of title I of the Act of November 10, 1978 (Pub. L. No. 95-630; 92 Stat. 3649 and 3653); and sections 404(c), 425(b) and 425(c) of title IV of the Act of October 15, 1982 (Pub. L. 97-320; 96 Stat. 1512 and 1524); 12 U.S.C. 1818(b); sec. 9, 64 Stat. 881-882, 12 U.S.C. 1819; sec. 18(j)(2), 92 Stat. 3664, 12 U.S.C. 1828(j)(2), sec. 422, 96 Stat. 1469 (Pub. L. No. 97-320); sec. 11(a), section 2[11(a)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 884), effective September 21, 1950 as amended by section 301(c) of title III of the Act of October 16, 1966 (Pub. L. No. 89-695; 80 Stat. 1055), effective October 16, 1966; section 7(a)(3) of title I of the Act of December 23, 1969 (Pub. L. No. 91-151; 83 Stat. 375), effective December 23, 1969; sections 101(a)(3) and 102(a)(3) of title I of the Act of October 28, 1974 (Pub. L. No. 93-495; 88 Stat. 1500 and 1502), effective November 27, 1974; section 1401(a) of title XIV of the Act of November 10, 1978 (Pub. L. No. 95-630; 92 Stat. 3712), effective March 10, 1979; section 323 of title III of the Act of December 21, 1979 (Pub. L. No. 96-153; 93 Stat. 1120); section 308 of title III of the Act of March 31, 1980 (Pub. L. No. 96-221; 94 Stat. 147), effective March 31, 1980; and section 103 of title I of the Act of December 28, 1981 (Pub. L. No. 97-110; 95 Stat. 1541), effective December 28, 1981; sec. 11(f), section 2[11(f)] of the Act of September 21, 1950 (Pub. L. 797; 64 Stat. 885), effective September 21, 1950, as amended by section 6(c)(20) of the Act of September 17, 1978 (Pub. L. No. 95-369; 92 Stat. 619), effective September 17, 1978, 12 U.S.C. 1821(f).

2. Part 337 is amended by revising paragraph (h)(3) of § 337.4 to read as follows:

§ 337.4 Securities activities of subsidiaries of insured nonmember banks: Bank transactions with affiliated securities companies.

* * * * *

(h) * * *

(3) An insured nonmember bank described in § 337.4(h)(1) shall comply with the requirements imposed by § 337.4(a)(2)(ii) and (iii) and by § 337.4(c)(1) and (5) as soon as practicable (but not later than June 30, 1987 without the FDIC's consent).

* * * * *

By Order of the Board of Directors.

Dated at Washington, DC, this 16th day of December 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-28639 Filed 12-19-86; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-NM-218-AD, Amdt. 39-5496]

Airworthiness Directives; De Havilland DHC-8-101 and -102 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to de Havilland Model DHC-8-101 and -102 airplanes, which requires inspection of the fore rudder upper and lower mounting brackets and spar web for cracks, modification of mounting brackets and repair of the spar web if necessary. This amendment is prompted by recent reports of cracked upper mounting brackets. This condition, if not corrected, could result in failure of the main hinge portion of the fore rudder mounting bracket and/or loss of the structural integrity of the rear spar.

EFFECTIVE DATE: January 5, 1987.

ADDRESSES: The applicable service information may be obtained from the de Havilland Aircraft Company of Canada, a Division of Boeing of Canada, Ltd., Downsview, Ontario M3K 1Y5, Canada. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Vito A. Pulera, Aerospace Engineer, Airframe Branch, ANE-172, New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-6220.

SUPPLEMENTARY INFORMATION: There have been recent reports of cracks in the fore rudder upper mounting brackets on de Havilland DHC-8-100 series airplanes. The mounting brackets, upper and lower, are attached to the fin rear spar. Each mounting bracket has two hinges attached to it. Cracks have been discovered at the lower portion of the upper bracket where it attaches to the spar. The cracking has been attributed to the use of thin material at the mounting bracket attachment point to the spar chord. This condition, if not corrected, could result in failure of the main hinge portion of the fore rudder mounting bracket and/or loss of the structural integrity of the fin rear spar.

The manufacturer has issued Service Bulletin Number 8-55-7, dated October 3, 1986, which describes the inspections, modifications and repair of the mounting brackets. It does not describe the repair to the spar web. Transport Canada, which is the airworthiness authority of Canada, is currently drafting a Canadian airworthiness directive to require compliance with the service bulletin.

This airplane is manufactured in Canada and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since this situation is likely to exist or develop on other airplanes of this same type design, this AD requires inspection of the mounting brackets (upper and lower) for cracks, in accordance with the accomplishment instructions of the service bulletin previously mentioned, and reinforcement of the mounting bracket by installation of de Havilland Modification 8/0647. If a mounting bracket is cracked, the upper spar web in the vicinity of the upper bracket must be inspected for cracks; cracked spar webs must be replaced before further flight with a new spar web or installation of an FAA-approved repair.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under the Department of Transportation Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket

(otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

De Havilland Aircraft Company of Canada, a Division of Boeing of Canada, Ltd.: Applies to all Model DHC-8-101 and -102 series airplanes, certificated in any category, equipped with upper and lower fore rudder mounting brackets, P/N's 85530097-105 and -107. Compliance required as indicated, unless previously accomplished.

To prevent the failure of the fore rudder upper and lower mounting brackets and fin rear spar web, accomplish the following:

A. Within the next 100 hours time-in-service after the effective date of this AD, and thereafter at intervals not to exceed 200 hours time-in-service, conduct a visual inspection of the upper and lower fore rudder mounting brackets in accordance with the Accomplishment Instructions of de Havilland Aircraft Company of Canada Service Bulletin No. 8-55-7, dated October 3, 1986.

1. If cracks are found in the mounting brackets, prior to further flight:

a. Conduct a visual inspection of the upper spar web for cracks in the vicinity of the mounting brackets in accordance with the Accomplishment Instructions of de Havilland Aircraft Company of Canada Service Bulletin No. 8-55-7, dated October 3, 1986.

b. Reinforce the fore rudder mounting brackets by installing de Havilland Modifications 8/0647 in accordance with the Accomplishment Instructions of de Havilland Aircraft Company of Canada Service Bulletin No. 8-55-7, dated October 3, 1986.

2. If, after accomplishing the visual inspection required by paragraph A.1.a. above, cracks are found in the spar web, prior to further flight, replace the racked spar web with a new web in accordance with de Havilland Dash 8 Maintenance Manual (PSM 1-8-2), or accomplish an FAA-approved repair.

B. Within 500 hours time-in-service after the effective date of this AD, install de Havilland Modification 8/0647 in accordance with the Accomplishment Instructions of de Havilland Aircraft Company of Canada Service Bulletin No. 8-55-7, dated October 3, 1986. Prior to installation of Modification 8/0647, conduct the visual inspections required by paragraph A., above, and perform the repair required by paragraph A.2., above, if necessary.

C. Incorporation of de Havilland Modification 8/0647 constitutes terminating action for the repetitive inspection of paragraph A., above.

D. An alternative means of compliance or adjustment of the compliance time, which provides an acceptable level of safety may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to The de Havilland Aircraft Company of Canada, A Division of Boeing of Canada Ltd., Downsview, Ontario M3K 1Y5, Canada.

These documents may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581.

This amendment becomes effective January 5, 1987.

Issued in Seattle, Washington, on December 12, 1986.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-28563 Filed 12-19-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 86-AEA-11]

Designation of Transition Area, College Park, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will designate a 700 foot transition area at College Park, MD. A new RNAV instrument approach procedure has been developed to the College Park, MD, Airport. The transition area is to provide protected airspace for aircraft departing/arriving under instrument flight rules (IFR).

EFFECTIVE DATE: 0901 UTC, February 12, 1987.

FOR FURTHER INFORMATION CONTACT: Glenn A. Bales, Airspace and Planning Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Fitzgerald Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Telephone: (718) 917-1228.

SUPPLEMENTARY INFORMATION:

History

On September 19, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a transition area at College Park, MD, to provide protected airspace for aircraft departing/arriving under instrument flight rules (IFR). (50 FR 38012). Interested parties were invited to participate in this proposed rulemaking proceeding by submitting written comments on the proposal to the FAA. The FAA received comments on the proposed RNAV approach. Commenters expressed concern that additional air traffic could be accommodated by air traffic approach control based upon their belief that air traffic in the proposed location was too great to accommodate the approach. The FAA believes that such a point argues strongly for the establishment of controlled airspace rather than the converse. The FAA recognizes that some delays are expected. However, delays caused by a new procedure are transitory in nature in that actual delays will be reduced as pilots and controllers become familiar with the approach procedure. For these reasons, the FAA finds that this action would be in the best public interest. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7460.6 dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates a 700 foot transition area at College Park, MD. The FAA has determined that this amendment only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.181 is amended as follows:

College Park, MD [NEW]

That airspace extending upward from 700 feet above the surface within a five statute mile radius of the College Park Airport (lat. 38°58'50" N., long. 76°55'22" W.); and within two miles each side of a 330° bearing from the airport extending from the five mile radius to seven miles northwest of the airport, excluding that portion which overlaps the Washington, DC, and Baltimore, MD, transition area.

Issued in Jamaica, New York, on February 2, 1987.

Edmund Spring,

Manager, Air Traffic Division.

[FR Doc. 86-28591 Filed 12-19-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 85-AEA-5]

Designation of Transition Area, Sutton, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will designate a 700 foot transition area at Sutton, WV. A new NDB instrument approach procedure has been developed to the Braxton County, WV Airport. The transition area will provide protected airspace for aircraft departing/arriving under Instrument Flight Rules (IFR).

EFFECTIVE DATE: 0901 UTC, February 12, 1987.

FOR FURTHER INFORMATION CONTACT: Glenn A. Bales, Airspace and Planning Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Fitzgerald Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Telephone: (718) 917-1228.

SUPPLEMENTARY INFORMATION:

History

On November 8, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a transition area at Braxton County, WV. This action was taken to provide protected airspace for aircraft departing/arriving under Instrument Flight Rules (IFR) (50 FR 46452). Interested parties were invited to participate in this proposed rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7460.6 dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates a 700 foot transition area at Braxton County, Sutton, WV. The FAA has determined that this amendment only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.181 is amended as follows:

Sutton, WV [New]

That airspace extending upward from 700 feet above the surface within an eight statute mile radius of the center (lat. 38°41'00" W., Long. 80°39'02" W.), of the Braxton County, WV Airport.

Issued in Jamaica, New York, on February 2, 1987.

Edmund Spring,

Manager, Air Traffic Division.

[FR Doc. 86-28592 Filed 12-19-86; 8:45 am]

BILLING CODE 4910-13-M

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86-AWP-32]

Revision to Livermore, CA, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the description of the Livermore, California, transition area and extends the 700 foot transition area to the southeast of the Livermore Municipal Airport, California. This will provide controlled airspace for aircraft executing the Instrument Landing System (ILS) Runway 25 approach to the Livermore Municipal Airport.

EFFECTIVE DATE: 0901 UTC, April 9, 1987.

FOR FURTHER INFORMATION CONTACT: Frank T. Torikai, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90260; telephone (213) 297-1648.

SUPPLEMENTARY INFORMATION:

History

On October 17, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Livermore, California, transition area (51 FR 37042). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revises the Livermore, California, transition area and extends the 700 foot transition area to the southeast of the Livermore Municipal Airport, California. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 25, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Livermore, CA—[Revised]

That airspace extending upward from 700 feet above the surface bounded by a line beginning at lat. 37°44'00" N., long. 121°52'00" W.; to lat. 37°48'15" N., long 121°40'00" W.; to lat. 37°41'30" W., long 121°34'00" W.; to lat. 37°37'15" N., long. 121°32'00" W., to lat. 37°38'00" N., long. 121°52'00" W.; thence, to the point of beginning.

Issued in Los Angeles, California, on December 9, 1986.

James A. Holweger,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 86-28585 Filed 12-19-86; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1 and 3

Temporary Licenses for Guaranteed Introducing Broker Applicants

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has adopted amendments to Part 1 and Part 3 of its regulations to authorize the National Futures Association ("NFA") to issue temporary licenses to apparently qualified applicants for registration with the Commission as an introducing broker, on essentially the same terms that temporary licenses currently may be issued to applicants for registration as an associated person of a Commission registrant.

EFFECTIVE DATE: January 2, 1987.

FOR FURTHER INFORMATION CONTACT: Michael A. Watkins, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION: On November 10, 1986, the Commission published in the **Federal Register** proposed amendments to Part 3 of the Commission's regulations, 17 CFR Part 3 (1986), to authorize the National Futures Association to issue temporary licenses to apparently qualified applicants for registration with the Commission as an introducing broker. 51 FR 40814. This authorization is limited to introducing broker applicants guaranteed by a futures commission merchant ("FCM") pursuant to § 1.10(j) of the Commission's regulations, 17 CFR 1.10(j) (1986). The Commission's proposal authorizes temporary licenses for applicants for registration as an introducing broker on essentially the same terms as those governing the issuance of temporary licenses to associated persons of Commission registrants.

As explained in the **Federal Register** release accompanying the proposed amendments, by letter dated August 28, 1986, NFA had submitted for Commission approval, pursuant to section 17(j) of the Commodity Exchange Act ("Act"), 7 U.S.C. 21(j) (1982), proposed amendments to NFA Bylaw 305, Schedule A, Section I for this same purpose. The Commission reviewed the proposed NFA rule amendments, and additional information provided by NFA in connection therewith, and was satisfied that the amendments are consistent with the bases for issuing temporary licenses as adopted by the Commission. However, because current Commission regulations permit the issuance of temporary licenses only to applicants for registration as an associated person,[1] NFA rules authorizing the issuance of temporary licenses for introducing broker applicants would conflict with Commission regulations. In addition, the NFA amendments provide that a guarantee agreement will become effective upon the issuance of a temporary license to an introducing broker applicant, in conflict with the provisions of Commission rule § 1.10(j)(3), 17 CFR 1.10(j)(3) (1986), which provides, among other things, that the guarantee agreement will become effective upon registration being granted to the introducing broker. Therefore, the Commission's own rules in this regard must be amended before the proposed rules submitted by NFA can be approved by the Commission. *See* 51 FR 40815.

The Commission received no comments on its proposed rules. After careful consideration, the Commission has determined to adopt the proposed rules essentially as proposed, with one exception.[2] As noted above, the NFA amendments provide that a guarantee agreement will become effective upon the issuance of a temporary license to an introducing broker applicant, in conflict with the provisions of Commission rule § 1.10(j)(3), which provide that the guarantee agreement will become effective upon registration being granted. The Commission had proposed to resolve this conflict in proposed rule § 3.44(b). Upon reconsideration, however, the Commission has determined to amend rule § 1.10(j)(3) directly.[3]

[1] *See* Commission rules §§ 3.40 through 3.43, 17 CFR 3.40-3.43 (1986).

[2] Concurrently, the Commission has approved the amendments to NFA Bylaw 305, Schedule A, Section I, as proposed by NFA. The Commission has been advised that NFA will implement its program to issue temporary licenses to guaranteed introducing broker applicants after January 1, 1987. NFA will separately notify its members of the effective date of this program.

[3] As amended, therefore, Commission rule § 1.10(j)(3) provides in pertinent part:

A guarantee agreement filed in connection with an application for initial registration as an introducing broker in accordance with the provisions of § 3.15(a) of this chapter shall become effective upon the granting of registration or, if appropriate, a temporary license, to the introducing broker. A guarantee agreement filed other than in connection with an application for initial registration as an introducing broker shall become effective as of the date agreed to by the parties.

I. Related Matters

A. Paperwork Reduction Act

The Commission previously submitted to the Director of the Office of Management and Budget ("OMB"), pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), an explanation and details of the information collection and recordkeeping requirements which would be necessary to implement these proposals. Part 3 of the Commission's regulations has previously been assigned OMB control number 3038–0023.

Copies of the OMB information collection submission associated with this rule may be obtained from Katie Lewin, Office of Management and Budget, Room 3235, NEOB, Washington, DC 20503. Telephone: (202) 395–7231.

B. Regulatory Flexibility Act

The Commission has previously determined that futures commission merchants should not be considered small entities for purposes of the Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.* Specifically, the Commission found that with respect to FCMs, based upon the fiduciary nature of FCM/customer relationships, as well as the requirement that FCM's meet minimum financial requirements, FCMs should be excluded from the definition of a small entity.[4] Accordingly, the requirement of the RFA do not apply to FCMs. Moreover, when the Commission first adopted rules governing introducing brokers, it stated that it would "evaluate within the context of a particular rule proposal whether all or some introducing brokers should be considered to be small entities and, if so, to analyze the economic impact on introducing brokers of any such rule at the time."[5] In this connection, these rules impose no additional requirements on applicants for registration as an introducing broker. Therefore, pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

C. Effective Date

Section 4(c) of the Administrative Procedure Act, 5 U.S.C. 553(d), provides that rules promulgated by an agency may not be made effective less than thirty days after publication in the Federal Register except, *inter alia*, "a substantive rule which grants or recognizes an exemption or relieves a restriction." In proposing these amendments, the Commission stated that, because they essentially relieved a restriction, the Commission may determine that the amendments may take effect on less than thirty days notice. In this connection, NFA has advised the Commission that it will be prepared to issue temporary licenses shortly after January 2, 1987. Therefore, the Commission, pursuant to 5 U.S.C. 553(d), has determined that these rules shall take effect on that date.

List of Subjects

17 CFR Part 1

Contract markets, Futures commission merchants, Guarantee agreements, Guaranteed accounts, Introducing brokers, Minimum financial requirements, Standard fluctuation factor.

17 CFR Part 3

Registration requirements, Conditional registration, Temporary licenses, Statutory disqualifications, Authority delegations, Fingerprinting, Associated persons, Floor brokers, Introducing brokers, Commodity trading advisors, Commodity pool operators, Futures commission merchants, Leverage transaction merchants, Petitions for review.

In consideration of the foregoing, the Commission hereby amends Part 1 and Part 3 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 continues to read as follows:

Authority: Secs. 2(a)(1), 2(a)(2), 4, 4a, 4b, 4c, 4d, 4e, 4f, 4g, 4h, 4i, 4k, 4m, 4n, 4o, 4p, 6, 8, 8a, 14, 15, 17 and 19 of the Commodity Exchange Act, 7 U.S.C. 2, 4, 4a, 6, 6a, 6b, 6c, 6d, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 12a, 13a, 13a-1, 13a-2, 19, 21 and 23.

2. Section 1.10 is amended by revising paragraph (j)(3) to read as follows:

§ 1.10 Financial reports of Futures Commission merchants and introducing brokers.

* * * * *

(j) * * *

(3) A guarantee agreement filed in connection with an application for initial registration as an introducing broker in accordance with the provisions of § 3.15(a) of this chapter shall become effective upon the granting of registration or, if appropriate, a temporary license, to the introducing broker. A guarantee agreement filed other than in connection with an application for initial registration as an introducing broker shall become effective as of the date agreed to by the parties.

* * * * *

PART 3—REGISTRATION

3. The authority citation for Part 3 continues to read as follows:

Authority: Secs. 2(a)(1), 4, 4b, 4c, 4d, 4e, 4f, 4g, 4h, 4i, 4k, 4m, 4n, 4o, 4p, 6, 8, 8a, 14, 15, 17 and 19 of the Commodity Exchange Act, 7 U.S.C. 2 and 4, 4a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 8p, 8, 9, 9a and 13b, 12, 12a, 18, 19, 21 and 23 (1982).

4. Sections 3.44 through 3.47 are added to Subpart B to read as follows:

Subpart B—Temporary Licenses

* * * * *

§ 3.44 Temporary licensing of applicants for guaranteed introducing broker registration.

(a) Notwithstanding any other provisions of these regulations, and pursuant to the terms and conditions of this subpart, the National Futures Association may grant a temporary license to any applicant for registration as an introducing broker upon the contemporaneous filing with the National Futures Association of:

(1) A properly completed guarantee agreement (Form 1–FR Part B) from a futures commission merchant which is eligible to enter into such an agreement pursuant to § 1.10(j)(2) of this chapter;

(2) A Form 7–R properly completed in accordance with the instructions thereto, the Disciplinary History portion of which contains no "Yes" answers indicating that the applicant may be subject to a statutory disqualification under sections 8a(2) through 8a(4) of the Act;

(3) A Form 8–R for the applicant, if a sole proprietor, and each principal (including each branch office manager) thereof, properly completed in accordance with the instructions thereto, the Disciplinary History portion of which contains no "Yes" answers indicating that the applicant may be subject to a statutory disqualification under sections 8a(2) through 8a(4) of the Act;

(4) A signed and dated certification from the futures commission merchant that has executed the guarantee agreement required by paragraph (a)(1) of this section, signed by an appropriate person as defined in § 1.10(j)(1) of this chapter, stating that:

(i) The futures commission merchant has verified the information on the Forms 8–R filed pursuant to paragraph (a)(3) of this section which relate to education and employment history of the applicant's principals (including each branch office manager) thereof during the preceding five years; and

(ii) To the best of the futures commission merchant's knowledge, information, and belief, all of the publicly available information supplied by the applicant and its principals and each branch office manager of the applicant on the Form 7–R and Forms 8–R, as appropriate, is accurate and complete; and

(5) The fingerprints of the applicant, if a sole proprietor, and of each principal (including each branch office manager) thereof on fingerprint cards provided by the National Futures Association for that purpose: *Provided*, That a principal who has a current Form 8–R or Form 94 on file with the Commission or the National Futures Association is not required to submit a fingerprint card if the principal is not otherwise required to be registered as an associated person of the applicant.

(b) The effective date of a guarantee agreement filed in accordance with paragraph (a)(1) of this section is the date upon which the temporary license is granted by the National Futures Association.

(c) An applicant that fails to respond timely to a request by the National Futures Association for clarification or explanation of any information set forth in the application of the applicant or any principal (including any branch office manager) thereof or for the resubmission of a fingerprint card will be deemed to have withdrawn its registration application and the temporary license issued to such applicant and any associated person thereof shall terminate immediately.

§ 3.45 Restrictions upon activities.

(a) Subject to the provisions of § 3.46 of this subpart and all of the obligations imposed on such registrants under the Act (in particular, section 14 thereof) and the rules, regulations and orders thereunder, an applicant for registration as an introducing broker who has received written notification that a temporary license has been granted may act in the capacity of a guaranteed introducing broker.

(b) An applicant for registration as an introducing broker who has received a temporary license may be guaranteed by a futures commission merchant other than the futures commission merchant which provided the initial guarantee agreement described in § 3.44(a)(1) of this subpart: *Provided*, That, at least 10 days prior to the effective date of the termination of the existing guarantee agreement in accordance with the provisions of § 1.10 (j)(4)(ii) or (j)(5) of this chapter, or such other period of time as the National Futures Association may allow for good cause shown, the applicant files with the National Futures Association (1) written notice of such termination and (2) a new guarantee agreement with another futures commission merchant effective the day following the last effective date of the existing guarantee agreement.

§ 3.46 Termination.

(a) A temporary license shall terminate:

(1) Five days after service upon the applicant of a notice by the National Futures Association that the applicant for registration may be found subject to a statutory disqualification from registration; or

(2) Immediately upon termination of the applicant's guarantee agreement in accordance with § 1.10(j)(4)(ii) or (j)(5) of this chapter, unless a new guarantee agreement is filed in accordance with § 3.45(b) of this subpart; or

(3) Upon failure of an applicant to respond timely to a request by the National Futures Association for clarification of information set forth in the application of the applicant or any principal (including any branch office manager) thereof or for the resubmission of a fingerprint card pursuant to § 3.44(c) of this subpart.

(b) Upon termination, the applicant may not engage in any activity which requires registration as an introducing broker.

§ 3.47 Relationship to registration.

(a) A temporary license shall not be deemed to be a registration or to confer any right to such registration.

(b) Unless a temporary license has terminated, a temporary license shall become a registration upon the earlier of:

(1) A determination by the National Futures Association that the applicant is qualified for registration as an introducing broker; or

(2) The expiration of six months from the date of its issuance.

§§ 3.48 through 3.49 [Reserved]

Issued in Washington, DC on December 16, 1986, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86–28599 Filed 12–19–86; 8:45 am]

BILLING CODE 6351–01–M

[4] *See* 47 FR 18618, 18619 (April 30, 1982).

[5] *See* 48 FR 35248, 35276 (August 3, 1983).

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 111, 171, and 178

[T.D. 86–161]

Customs Regulations Amendments Relating to Customs Brokers; Correction

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule; correction.

SUMMARY: In FR Doc. 86–19256, published as T.D. 86–161 on August 26, 1986 (51 FR 30336), Parts 111, 171 and 178, Customs Regulations (19 CFR Parts 111, 171, 178), were extensively revised to implement the statutory changes made by the Trade and Tariff Act of 1984, relating to customs brokers. Corrections were made to T.D. 86–161 on September 5, 1986, in 51 FR 31760, on September 10, 1986, in 51 FR 32208 and on October 9, 1986, in 51 FR 36221. It has come to our attention that another correction is necessary. On page 30346 of T.D. 86–161, it states that § 171.12(b), Customs Regulations (19 CFR 171.12(b)), is amended by removing the words "paragraph (c)" and inserting, in their place, "paragraph (c) or (d)".

It has now been determined that this change is unnecessary because of another change to § 171.12. By T.D. 85–195, published in the Federal Register on December 10, 1985 (50 FR 50287), various sections in Parts 162 and 171, Customs Regulations (19 CFR Parts 162, 171), relating to fines, penalties, and forfeiture procedures, were amended. One of the changes made by T.D. 85–195 was to revise § 171.12 in its entirety. As revised, § 172.12(b) no longer contains a reference to paragraph (c).

Accordingly, the change made to § 171.12(b) by T.D. 86–161, which cannot now be made because of the change made by T.D. 85–195, is no longer needed.

To avoid any further confusion in this regard, the change made to § 171.12(b) by T.D. 86–161, is withdrawn.

EFFECTIVE DATE: September 25, 1986.

FOR FURTHER INFORMATION CONTACT: Steven I. Pinter or Fred Burns O'Brien, Entry, Licensing and Restricted Merchandise Branch (202–566–5765).

Dated: December 16, 1986.

B. James Fritz,

Director, Regulations Control and Disclosure Law Division.

[FR Doc. 86–28623 Filed 12–19–86; 8:45 am]

BILLING CODE 4820–02–M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 200

[T.D. ATF-244, RE: Notice No. 597]

Rules of Practice in Permit Proceedings

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: This final rule amends the regulations for conducting permit proceedings. The amendments will provide a more efficient use of agency and administrative law judge (ALJ) time in uncontested proceedings. The amendments will also require that an appeal to the Director be made prior to court review of agency action.

EFFECTIVE DATE: January 21, 1987.

FOR FURTHER INFORMATION CONTACT: Bradley A. Buckles, Office of Chief Counsel, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226 (202) 566–7774.

SUPPLEMENTARY INFORMATION:

Background

Under current regulations, all citations for suspension, revocation, or annulment of permits held by the regulated industry are referred to an ALJ for a hearing. A hearing is held even if the proceeding is uncontested and the permit holder or applicant does not appear. In May 1985, the ALJ position in ATF became vacant and ATF has elected not to fill this position.

Current regulations also permit, but do not require, an appeal to be taken to the Director from an initial decision of an ALJ or regional director (compliance).

Notice of Proposed Rulemaking

In the interests of administrative consistency and judicial economy and to provide a mechanism to expedite treatment of uncontested proceedings, ATF published a notice of proposed rulemaking on July 3, 1986 [Notice No. 597, 51 FR 24383]. During the comment period, which closed August 4, 1986, no comments were received. Accordingly, this document amends Part 200 as published in the notice.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291 of February 17, 1981, the Bureau has determined that this final rule is not a major rule since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule, because no requirement to collect information is imposed.

Drafting Information

The principal author of this document is Bradley A. Buckles, Office of Chief Counsel, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 200

Administrative practice and procedure, Alcohol and alcoholic beverages, Tobacco.

Authority

PART 200—[AMENDED]

27 CFR Part 200—Rules of Practice in Permit Proceedings is amended as follows:

Paragraph 1. The authority citation for Part 200 is revised to read as follows:

Authority: 26 U.S.C. 7805, 27 U.S.C. 204.

Par. 2. The table of contents for 27 CFR Part 200 is amended to reflect the addition of §§ 200.63 and 200.107a, and the revision in the titles of § 200.60, § 200.71, and § 200.116 to read as follows:

Sec.

* * * * * *

200.60 Suspension, revocation, or annulment proceedings.

* * * * * *

200.63 Suspension, revocation, or annulment proceedings.

* * * * * *

200.71 Adjudication based upon written submissions.

* * * * * *

200.107a Regional director's decision.

* * * * * *

200.118 Court review.

* * * * * *

Par. 3. Section 200.5 is amended to revise the definition of *Initial decision* to read as follows:

§ 200.5 Meaning of terms.

* * * * * *

Initial decision. The decision of the regional director (compliance) or administrative law judge in a proceeding on the suspension, revocation or annulment of a permit.

* * * * * *

Par. 4. Section 200.36 is revised to permit the regional director (compliance) to dismiss proceedings when a satisfactory settlement is reached between the parties to read as follows:

§ 200.36 General.

In all proceedings in which a permittee is cited to show cause why the permit should not be suspended, revoked or annulled, the permittee shall be afforded opportunity for the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment, where time, the nature of the proceeding, and the public interest permit. Such submittals should be made to the regional director (compliance), but may be made through the attorney for the Government. Where necessary, the date of the hearing may be postponed, pending consideration of such proposals, when they are made in good faith and not for the purpose of delay. If proposals of settlement are submitted, and they are considered unsatisfactory, the regional director (compliance) may reject the proposals and may, either directly or through the attorney for the Government, inform the permittee of any conditions on which the alleged violations may be settled. If the proposals of settlement are considered satisfactory to the regional director (compliance), the permittee shall be notified thereof and the proceeding shall be dismissed, unless such proposals of settlement include a monetary offer in compromise considered satisfactory to the regional director (compliance), in which event the proceeding shall be held in abeyance pending final action on such monetary offer in compromise.

Par. 5. Section 200.37 is amended by revising the last sentence by eliminating the requirement of a hearing to read as follows:

§ 200.37 Notice of contemplated action.

* * * Where informal settlement is not reached promptly because of inaction of the permittee or proposals are made for the purpose of delay, a citation shall be issued in accordance with §§ 200.55 and 200.56.

Par. 6. Section 200.55 is revised to require a request for a hearing before a hearing will be scheduled to read as follows:

§ 200.55 Content.

(a) Citation for the suspension, revocation or annulment of a permit shall be issued by the regional director (compliance) and shall set forth (1) the sections of law and regulations relied upon for authority and jurisdiction, (2) in separate paragraphs, the matters of fact constituting the violations specified, dates, places, section of law and regulations violated, and (3) the permittee has 15 days within which to request a hearing before an administrative law judge.

(b) Citations for the disapproval of an application for a permit shall set forth (1) the sections of law and regulations relied upon for authority and jurisdiction, (2) in separate paragraphs, the matters of fact and law relied upon for the contemplated disapproval of the application, and (3) that the application will be disapproved unless a hearing is requested within 15 days.

§ 200.56 [Amended]

Par. 7. Section 200.56(a) is amended by replacing the words "Form 1430–A" with the words "Form 5000.6." Section 200.56(b) is amended by replacing the words "Forms 1430–C" with the words "Forms 5000.17."

Par. 8. Section 200.57 is revised to reflect the optional nature of the hearing to read as follows:

§ 200.57 Execution and disposition.

Forms 5000.6 and 5000.17 shall be executed in quintuplicate. A signed duplicated original shall be served on the permittee. If a hearing is requested, one copy shall be sent to the administrative law judge designated to conduct the hearing. The original copy containing the certificate of service shall be placed in the official record of the proceeding; and the remaining copies shall be retained for the office of the regional director (compliance).

Par. 9. Section 200.60 is revised to provide procedures for requesting a hearing before an administrative law judge in suspension, revocation, or annulment cases to read as follows:

§ 200.60 Suspension, revocation, or annulment proceedings.

(a) If a hearing is desired, the respondent shall file a request, in writing, with the regional director (compliance) within 15 days after receipt of the citation or within such time as the regional director (compliance) may allow.

(b) Where a respondent requests a hearing, the regional director (compliance) shall forward a copy of the request together with a copy of the citation to the Director for the assignment of an administrative law judge.

(c) After the Director notifies the regional director (compliance) of the assignment of the administrative law judge, the regional director (compliance) shall serve a notice of designation of the administrative law judge on the respondent.

(d) The administrative law judge shall set a time and place for a hearing and shall serve notice thereof on the parties at least 10 days in advance of the hearing date.

Par. 10. A new § 200.63 is added under "Non-Request for Hearing" to provide that in the case of the failure to request a hearing in a suspension, revocation or annulment case the regional director (compliance) shall make the initial decision to read as follows:

§ 200.63 Suspension, revocation, or annulment proceedings.

If the respondent does not request a hearing within the time specified in § 200.60, and does not file an answer as required in § 200.64, the regional director (compliance) shall make the initial decision in the case in accordance with § 200.79.

Par. 11. Section 200.64 is revised to reflect the optional nature of a hearing and to require an answer in all contested proceedings to read as follows:

§ 200.64 When required.

(a) Where the respondent requests a hearing in accordance with § 200.60, a written answer shall be filed with the administrative law judge and served on the regional director (compliance) within 15 days after service of the designation of the administrative law judge.

(b) Where no hearing is requested, the respondent shall file a written answer with the regional director (compliance) within 15 days after service of a citation.

(c) An answer shall contain a concise statement of the facts that constitute his grounds for defense. The hearing may be limited to the issues contained in the citation and the answer. The administrative law judge, or regional director (compliance) as the case may be, may, as a matter of discretion, waive any requirement of this section.

(d) Answers need not be filed in application proceedings.

Par. 12. Section 200.65 is revised to eliminate the reference to the administrative law judge to read as follows:

§ 200.65 Answer admitting facts.

If the respondent desires to waive the hearing on the allegations of fact set forth in the order to show cause, and does not contest the facts, the answer may consist of a statement that the respondent admits all material allegations of fact charged in the citation to be true. The regional director (compliance) shall thereupon base the decision on the citation and such answer although such an answer shall not affect the respondent's right to submit proposed findings of fact and conclusions of law, or the right to appeal.

Par. 13. Section 200.71 is amended by repealing the existing section as unnecessary, and adding a new procedure for adjudicating citations without a hearing. The revised § 200.71 reads as follows:

§ 200.71 Adjudication based upon written submissions.

The respondent may waive the hearing before the administrative law judge, and stipulate that the matter will be adjudicated by the regional director (compliance) based upon written submissions. Written submissions may include stipulations of law or facts, proposed findings of fact and conclusions of law, briefs, or any other documentary material. The pleadings together with the written submissions of both the attorneys for the Government and the respondent shall constitute the record on which the initial decision shall be based. The election to contest the citation without a hearing under this section does not affect the respondent's right to appeal.

Par. 14. Section 200.72 is amended by revising the second sentence to remove the reference to § 200.71 and by removing the last sentence. As revised § 200.72 reads as follows:

§ 200.72 Before citation.

If a respondent surrenders the permit before citation, the regional director (compliance) may accept the surrender. But if the evidence, in the opinion of the regional director (compliance), warrants citation for suspension, revocation or annulment, the surrender shall be refused and the regional director (compliance) shall issue the citation.

Par. 15. Section 200.73 is revised to allow the regional director (compliance) to move to dismiss the proceeding as moot and by removing the last sentence to read as follows:

§ 200.73 After citation.

If a respondent surrenders the permit after citation and prior to an initial decision, the regional director (compliance) may accept the surrender of the permit and dismiss the proceeding as moot. If, however, in the opinion of the regional director (compliance), the evidence is such as to warrant suspension, revocation or annulment, as the case may be, the surrender of the permit shall be refused, and the proceeding shall continue.

Par. 16. Section 200.77 is revised to reflect the optional nature of the hearing to read as follows:

§ 200.77 General.

If a hearing is requested, it shall be held at the time and place stated in the notice of hearing unless otherwise ordered by the administrative law judge.

Par. 17. Section 200.79 is revised to reflect the alternative decisionmaking options available to the respondent to read as follows:

§ 200.79 Suspension, revocation, or annulment.

(a) The administrative law judge who presides at the hearing in proceedings for the suspension, revocation and annulment of permits shall make the initial decision.

(b) If no hearing is requested, the regional director (compliance) shall make the initial decision.

Par. 18. A new § 200.107a is added describing the contents of an initial decision rendered by the regional director (compliance) to read as follows:

§ 200.107a Regional director's decision.

(a) When the regional director (compliance) issues an initial decision in accordance with § 200.79, the decision shall become a part of the record. The decision shall consist of (1) a brief statement of the issues involved in the proceedings; (2) the regional director's findings and conclusions, as well as the reasons therefor; and (3) the regional director's determination on the record.

Par. 19. Section 200.108 is amended by designating the current section as paragraph (a) and adding a new paragraph (b) covering cases where the regional director (compliance) renders the initial decision to read as follows:

§ 200.108 Suspension, revocation, or annulment proceedings.

* * * * *

(b) In a case where the initial decision is made by the regional director (compliance) in accordance with § 200.79, the regional director will also issue an order suspending, revoking or annulling the permit (on Form 5000.5), or dismissing the proceedings in accordance with his initial decision. A signed duplicated original of the decision and order of the regional director (compliance) shall be served upon the respondent and the original copy placed in the official record of the proceeding. In all proceedings in which a suspension is imposed, the regional director's order shall state the time when the suspension period set forth in the initial decision shall commence and terminate.

Par. 20. Section 200.110 is revised to clarify that the regional director issuing a permit will have jurisdiction to respond to violations even if they occur outside the region to read as follows:

§ 200.110 Proceedings involving violations not within region of issuance of permit.

In the event violations occurred at a place not within the region of issuance of a permit, the regional director (compliance) of the region of issuance will take jurisdiction over any proceeding including issuing the citation, and taking appropriate action in accordance with § 200.108.

Par. 21. Section 200.115 is revised to require an appeal to the Director prior to seeking court review to read as follows:

§ 200.115 Appeal on petition to the Director.

An appeal to the Director is required prior to application to the Federal courts for review. An appeal may be taken by the applicant or respondent or by the regional director (compliance). Such appeal shall be taken by filing a petition for review on appeal with the Director within 15 days of the service of the order disapproving an application for a permit or the initial decision suspending, revoking or annulling a permit. The petition must set forth facts tending to show action of an arbitrary nature, or action without reasonable warrant in fact, or action contrary to law and regulations. A copy of the petition shall be filed with the regional director (compliance) or served on the respondent or applicant as the case may be. In the event of such appeal, the regional director (compliance) shall immediately certify and forward the complete original record, by certified mail, to the Director, for his consideration and review.

Par. 22. Section 200.118 is combined with § 200.119 to conform with current court practices. As revised, § 200.118 reads as follows:

§ 200.118 Court review.

If an applicant or respondent files an appeal in Federal court of the Director's decision, the Director, upon notification that an appeal has been taken, shall prepare the record for submission to the court in accordance with the applicable court rules.

§ 200.119 [Removed]

Par. 23. Section 200.119 is removed.

§ 200.126 [Amended]

Par. 24. Section 200.126 is amended by replacing the words "Form 1644" with the words "Form 5600.10" and by replacing the words "Form 1645" with the words "Form 5600.11."

Signed: November 10, 1986.

Stephen E. Higgins,

Director.

Approved: December 3, 1986.

Michael H. Lane,

Acting Assistant Secretary (Enforcement).

[FR Doc. 86-28600 Filed 12-22-86; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD8 86-05]

Safety Zone Regulations; Mississippi River Gulf Outlet

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its Safety Zone Regulations, 33 CFR Part 165, by disestablishing the safety zone in the Mississippi River Gulf Outlet (MRGO). Improvements to the navigational channel since the safety zone's establishment (**Federal Register** Vol. 46, No. 107/4 June 1981) and the ability of the U.S. Army Corps of Engineers to deal quickly with critical shoaling, have made this safety zone unnecessary. Its removal will provide economic benefits to the shipping industry and the Port of New Orleans without reducing navigation safety.

EFFECTIVE DATE: January 21, 1987.

FOR FURTHER INFORMATION CONTACT: LTJG Robert Holzman at (504) 589-7127.

SUPPLEMENTARY INFORMATION: On Monday, September 8, 1986 the Coast Guard published a notice of proposed rule making in the **Federal Register** for these regulations. Interested persons were requested to submit comments and no comments were received.

Drafting Information

The drafters of these regulations are LTJG Robert Holzman, project officer, Chief Waterways Safety Branch and LCDR James Vallone project attorney, Coast Guard District Legal Office.

Discussion of Comments

No comments were received.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. Ships will be able to call at the Port of New Orleans with fewer restrictions on their sailing schedules. Any economic impact would be beneficial due to reduced vessel operating costs.

Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Final Regulations

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5.

§ 165.801 [Removed]

2. Section 165.801 is removed.

Dated: November 28, 1986.

J. E. Lindak,

Captain, U.S.Coast Guard. Captain of the Port.

[FR Doc. 28827 Filed 12-19-86; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 209

Administrative Procedures; Removal of Obsolete Requirements

AGENCY: Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The regulations which prescribe the procedures used by the Corps of Engineers in the review and promulgation of regulations governing navigable waters are amended to remove obsolete and unnecessary requirements.

EFFECTIVE DATE: January 21, 1987.

ADDRESS: USACE, DAEN-CWO-N, Washington, DC. 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph T. Eppard or Mr. Sam Collinson at (202) 272-0199.

SUPPLEMENTARY INFORMATION: Regulations which establish the procedures to be used by the Corps of Engineers in implementing several navigation laws are promulgated in 33 CFR Part 209. These regulations govern the use, administration and navigation of the navigable waters of the United States. We are amending the regulations in Part 209 only to remove obsolete references and requirements and eliminate duplication where the regulations are repromulgated in the Corps permit regulations in 33 CFR Parts 320 through 330. Sections 209.110 *Purpose* and 209.132 *Permits for work in navigable waters relating to the trans-Alaska pipeline* are obsolete and removed. Section 209.310 *Representation of submarine cables and pipelines on Government charts* is amended to clarify that specific requirements apply only to charts published by the Corps of Engineers. However, district engineers are to furnish permit drawings for submarine cables and pipelines directly to the National Oceanic and Atmospheric Administration's (NOAA) National Ocean Service (NOS) for their use as appropriate for NOAA nautical charts. (Note: Decisions to publish these cables and pipelines of NOAA nautical charts will lie solely within NOAA's discret.)

This regulation is not a major rule within the meaning of E.O. 12291 requiring preparation of a regulatory impact analysis because it will not result in an annual effect on the economy of $100 million or more and it will not result in a major increase in costs or prices.

Pursuant to 5 U.S.C. section 605(b) I hereby certify that this regulation will not have a significant economic impact on a substantial number of entities.

We have determined that notice of proposed rulemaking in this matter is unnecessary since it involves interpretive rules, general statements of policy and Agency practice and procedures.

List of Subjects in 33 CFR Part 209

Navigation, Navigable waterways, Waterways.

Dated: December 11, 1986.
Approved.

Robert K. Dawson,

Assistant Secretary of the Army (Civil Works).

PART 209—[AMENDED]

33 CFR Part 209 is amended as follows:

1. The authority citation for Part 209 is revised to read as follows:

Authority: 5 U.S.C. 301, 33 U.S.C. 1, 3, 403, 407, 409, 410, 412, 413, 414, 415, 417, 499, 628, 646, 661, 709, 1323, 1413, 16 U.S.C. 797(e), 10 U.S.C. 3012, 43 U.S.C. 1333(e), Pub. L. 79-526, Pub. L. 85-480, Pub. L. 90-483, Pub. L. 91-611, Pub. L. 92-405, Pub. L. 95-91, Pub. L. 78-534, Pub. L. 93-153, 16 U.S.C. 1456, Pub. L. 92-532, 42 U.S.C. 4321-4347, 16 U.S.C. 472 a *et seq*, 16 U.S.C. 760c, 760g, 16 U.S.C. 661-666c, Pub. L. 93-205, 16 U.S.C. 470.

§§ 209.110 and 209.132 [Removed]

2. Sections 209.110 *Purpose* and 209.132 *Permits for work in navigable waters relating to the trans-Alaska pipeline* are removed.

§ 209.310 [Amended]

3. The heading for § 209.310 is revised to read "§ 209.310 Representation of submarine cables and pipelines on nautical charts."

§ 209.170 [Amended]

4. Section 209.170 *Violations of laws protecting navigable waters* is amended by removing paragraphs (a) and (e) and redesignating paragraph (b) as (a); redesignating paragraph (c) as (b); redesignating paragraph (d) as (c); redesignating paragraph (f) as (d); and redesignating paragraph (g) as (e), as follows:

5. Section 209.200 *Regulations governing navigable waters* is amended by revising paragraphs (a), removing paragraphs (d) and (f) and redesignating paragraph (e) as (d), paragraph (g) as (c) and redesignating paragraph (h) as (f), as follows:

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§ 209.200 Regulations governing navigable waters.

(a) *Publication of regulations.* (1) Regulations prescribed by or under the direction of the Secretary of the Army to govern navigation and navigable waters, are contained in the Code of Federal Regulations, Title 33, Navigation and Navigable Waters, Chapter II.

(2) District engineers (or division engineers if considered preferable by the latter to avoid duplication in cases where the regulations involved apply to more than one district) will distribute copies of departmental regulations to all known interested parties as soon as their publication has been noted in the Federal Register. In the case of regulations applicable to more than one division, distribution will be handled as agreed upon by the division engineers concerned. Under the Administrative Procedure Act (5 U.S.C. 551–553), publication in the Federal Register shall be not less than 30 days prior to the effective date except as otherwise provided upon good cause found and published with the regulations.

* * * * *

(c) *Dumping grounds.* * * *

(e) *Public notice and consultatin with interested parties.* (1) When applications are received for the promulgation of regulations as outlined in this section, district engineers will issue public notices to all parties deemed likely to be interested and specifically to the agencies referred to in these paragraphs. The notice should fix a limiting date within which comments will be received, normally a period not less than 30 days after the actual mailing of the notice. If time is an essential element when adequately explained by the applicant, the district engineer is authorized to give interested parties a minimum of 10 days after receipt of the notice in which to present protests.

(2) Copies of the notices sent to interested parties, together with a list of parties to whom sent, will accompany reports on all applications for promulgation of regulations submitted to the Chief of Engineers for necessary action.

(3) In all instances when response to a public notice has been received from a Member of Congress, the district engineer will inform the Member of Congress of the final action taken on the application.

(f) *Public hearings.* (1) It is the policy of the Chief of Engineers to conduct his civil works activities in an atmosphere of public understanding, trust, and mutual cooperation and in a manner responsive to public needs and desires. To this end, public hearings are helpful and will be held whenever there appears to be sufficient public interest to justify such action.

(2) The policy, practice and procedures contained in Part 327 of this chapter shall be followed in the conduct of public hearings.

* * * * *

6. Section 209.310 *Representation of submarine cables and pipelines on Government charts* is revised in its entirety as follows:

§ 209.310 Representation of submarine cables and pipelines on nautical charts.

(a) The policy of the Corps of Engineers with respect to showing the locations of submarine cables and pipelines on nautical charts published by the Corps of Engineers is as follows:

(1) Within protected waters such as harbors, rivers, bays, estuaries or other inland waterways the location of submarine cables and pipelines is to be indicated by shaded areas marked "Pipeline area" or "Cable area". The extent of the limits of the area will be governed by local conditions but shall include the immediate area which overlies the cable or pipeline.

(2) Ordinarily, the shaded area on a chart which depicts a cable area or pipeline area should not exceed 500 feet on each side of the location of the cable or pipeline except on small scale charts where an area of that width would not be of sufficient prominence.

(3) The shaded area will be designated "cable area" or "pipeline area" as appropriate, but no other information as to the character or ownership of the installation will appear on the chart.

(b) District engineers will furnish copies of all permits issued for submarine cable and pipelines to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service, ATTN: N/CG222, Rockville, MD 20852, with his/her recommendation of whether or not the installation should be shown on NOAA nautical charts. National Ocean Service must be notified of the commencement and completion dates for all permitted activities under this section. (Note: Decisions to publish these cables and pipelines on NOAA nautical charts lie solely within NOAA's discretion.)

[FR Doc. 86–28457 Filed 12–19–86; 8:45 am]

BILLING CODE 3710-92-M

VETERANS ADMINISTRATION

38 CFR Part 21

Changes in the Levels of Review for Authorization of Expenditures for Training and Rehabilitation Services

AGENCY: Veterans Administration.

ACTION: Final regulatory amendment.

SUMMARY: The amendment of 38 CFR 21.430 increases the amounts which Veterans Administration (VA) staff may approve for a program of training and rehabilitation services. The amendment is based upon cost increases since present levels were established.

EFFECTIVE DATE: December 22, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. Karen Boies, Assistant Director for Policy and Program Development, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420 (202) 233–2886.

SUPPLEMENTARY INFORMATION: On page 17795 of the Federal Register of May 16, 1986, the VA published a proposed amendment to increase the amounts which may be authorized for training and rehabilitation services under 38 CFR 21.430. Interested persons were given 30 days in which to submit their comments, suggestions or objections to the proposed amendment. No comments, suggestions or objections were received, and the amendment is hereby adopted as final without change.

This final regulatory amendment has been found to be nonmajor under Executive Order 12291, Federal Regulation. The final regulatory amendment will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant effect on the economy.

The Administrator hereby certifies that this final regulatory amendment will not, when promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), this final rule is therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that the amendments only concern VA staff levels at which expenditures for training and rehabilitation services must be approved. Thus, no regulatory burdens are imposed on small entities by these amendments.

The Catalog of Federal Domestic Assistance Number is 64.116.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: December 8, 1986.

By direction of the Administrator.

Thomas E. Harvey,

Deputy Administrator.

PART 21—[AMENDED]

38 CFR Part 21, Vocational Rehabilitation and Education, is amended by revising § 21.430, paragraphs (c)(1), (2) and (3) to read as follows:

§ 21.430 Accountability for authorization and payment of training and rehabilitation services.

* * * * *

(c) Limitations. * * *

(1) The DVB case manager may not authorize payment or program costs which will exceed $3,200 per year. If program costs for a year exceed $3,200, additional concurrence is required as specified in paragraph (c)(2) through (4) of this section;

(2) Program costs which will be greater than $3,200 but not more than $9,500 per year, may be approved by the Vocational Rehabilitation and Counseling Officer;

(3) Program costs which will be greater than $9,500 per year, but not more than $15,000 per year, may be approved by the Director, VA Regional Office; and

* * * * *

(38 U.S.C. 1515(a)(4))

[FR Doc. 86–28575 Filed 12–19–86; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 117 and 302

[SW.H-FRL-3129-6]

Superfund Programs; Reportable Quantity Adjustments; Correction

AGENCY: Environmental Protection Agency.

ACTION: Final rule; correction.

SUMMARY: This document corrects the amendatory language revising the list of hazardous substances and reportable quantities, as set forth in the final rule adjusting 102 reportable quantities under section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"). The final rule adjusting reportable quantities was published on September 29, 1986 (51 FR 34534). In that rule the Agency incorrectly identified its action as "revising" the list of hazardous substances, resulting in a potential deletion of substances from the Table, rather than revising only certain entries in the list. This action is necessary to correctly codify the list of hazardous substances and reportable quantities in Table 302.4 of 40 CFR Part 302.

DATE: The final rule adjusting reportable quantities will be effective on December 29, 1986.

ADDRESSES: The toll-free telephone number of the National Response Center is 1–800/424–8802; in the Washington, DC metropolitan area, the number is 1–202–426–2675. Docket: Copies of materials relevant to this rulemaking are contained in Room LG at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The docket is available for inspection between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Dr. K. Jack Kooyoomjian, Senior Project Officer, Response Standards and Criteria Branch, Emergency Response Division (WH–548B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, or the RCRA/Superfund Hotline at 1–800/424–9346; in Washington, DC, at 1–202/382–3000.

SUPPLEMENTARY INFORMATION: The following correction is made in SW–H–FRL 3032–9 published in the Federal Register on September 29, 1986 (51 FR 34534):

1. On page 34541, column 2, the text of numbered paragraph 2 is corrected to read "2. Section 302.4 is amended by (1) revising the introductory note to Table 302.4, (2) adding the following hazardous substances to Table 302.4 and Appendix A: (waste streams F020, F021, F022, F023, F026, F027, F028, K111, K112, K113, K114, K115, K116, K117, K118, K136; o-toluidine, p-toluidine, and 2-ethoxyethanol), and (3) revising the entries for certain other hazardous substances in Table 302.4 and Appendix A as listed below, to read as follows (all other entries not listed below remain unchanged):".

Dated: December 11, 1986.

J.W. McGraw,

Acting Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 86–28383 Filed 12–19–86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

Grants to Schools of Medicine, Osteopathy, Dentistry, Public Health, Veterinary Medicine, Optometry, Pharmacy, and Podiatry for Support of Their Education Programs

AGENCY: Public Health Service, HHS.

ACTION: Final regulation.

SUMMARY: These final regulations revise existing regulations governing capitation grants to health professions schools to incorporate amendments made to sections 770–772 of the Public Health Service Act (the PHS Act) by the Health Professions Training Assistance Act of 1985, Pub. L. 99–129, enacted October 22, 1985.

EFFECTIVE DATE: These regulations are effective December 22, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. Howard L. Kelly, Public Health Professions Branch, Division of Associated and Dental Health Professions Branch, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fisher Lane, Room 8–95, Rockville, Maryland 20857; 301–443–6896.

SUPPLEMENTARY INFORMATION: These regulations implement amendments made in the Health Professions Capitation Grant legislation (sections 770–772 of the PHS Act) by the Health Professions Training Assistance Act of 1985 (Pub. L. 99–129) enacted on October 22, 1985. These regulations incorporate into the existing regulations revisions which are technical and ministerial in nature to conform the regulations to the amendments made by Pub. L. 99–129. These revisions are summarized below according to the section numbers and titles of the regulations.

1. Revise the title of 42 CFR Part 57, Subpart JJ from "Grants to Schools of Medicine, Osteopathy, Dentistry, Public Health, Veterinary Medicine, Optometry, Pharmacy, and Podiatry for Support of Their Education Programs" to "Capitation Grants for Schools of Public Health."

2. Revise the Table of Contents to reflect new section designations.

3. Revise § 57.3501, *"To whom do these regulations apply?"*, and § 57.3503, *"Who is eligible for health professions capitation grants?"*, to delete references to schools of medicine, osteopathy, dentistry, veterinary medicine,

optometry, pharmacy, and podiatry throughout the text.

4. Revise § 57.3502, *"Definitions."*, to add statutory definitions for "Accredited" and "School of public health"; to delete definitions for "Ambulatory care setting", "Dental specialty program", "Medically underserved population", and "Resident of a State"; and to amend the definition of "State" to correct the name of the Northern Mariana Islands.

5. Revise § 57.3503, *"Who is eligible to apply for health professions capitation grants?"*, to amend the title and text to specify only schools of public health as eligible applicants.

6. Revise § 57.3504, *"What assurances are required of all applicants for capitation grants?"* to amend paragraph (a) to delete the current enrollment requirements and add the new statutory requirement to assure maintenance of the 1983 level of enrollment of full-time equivalent students; and to add a new paragraph (c) to reflect the statutory provision authorizing the Secretary to waive this requirement.

7. Delete in their entirety sections: 57.3505, 57.3506, 57.3507, 57.3508, 57.3509, 57.3510, 57.3511, and 57.3512, entitled *"What additional requirements apply to schools of: [medicine, osteopathy, dentistry, public health, veterinary medicine, optometry, podiatry, and pharmacy]?"*, respectively.

8. Redesignate § 57.3513, *"How will the number of students at each school be determined?"*, as § 57.3505, and amend paragraphs (a) and (b) to reflect the statutory requirements that the enrollment of full-time equivalent students will be the sum of the number of full-time students and the number of full-time equivalents of part-time students in graduate degree programs. In the case of a new school, the enrollment shall be the number of full-time students which the school assures will be enrolled in the fiscal year after the fiscal year in which the grant is to be made.

9. Redesignate § 57.3514, *"Under what circumstances and in what amount may these grants be made?"*, as § 57.3506, and amend paragraph (b) to replace general references to health profession schools and health profession categories with specific references to schools of public health.

10. Redesignate § 57.3515, *"What expenses are allowable under these capitation grants?"*, as § 57.3507 and § 57.3516, *"What additional Department regulations apply to grantees?"*, as § 57.3508 and § 57.3518, *"Additional conditions."*, as § 57.3510.

11. Redesignate § 57.3517, *"What audit inspection and reporting requirements apply to grantees?"*, as § 57.3509; and delete "and reporting" from the heading, the letter "(a)" from the first paragraph, and paragraph (b) which was removed by section 708(c) of Pub. L. 99–129.

Regulatory Flexibility Act and Executive Order 12291

These regulations govern a financial assistance program in which participation is voluntary. The rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291. For these reasons, the Secretary has determined that this rule is not a major rule under Executive Order 12291, and a regulatory impact analysis is not required. Further, because the rule does not have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980 is not required.

Paperwork Reduction Act of 1980

The information collection requirements contained in § 57.3504 and § 57.3509 (formerly § 57.3517) have been approved by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1980 under control number 0915–0089.

Justification for Omitting Notice of Proposed Rulemaking

These technical amendments conform the final regulation in 42 CFR Part 57, Subpart JJ, to amendments made by Pub. L. 99–129. The Secretary has therefore determined, according to 5 U.S.C. 553 and Department policy, that it is unnecessary to follow proposed rulemaking procedures or to delay the effective date of these regulations.

List of Subjects in 42 CFR Part 57

Educational study programs, Grant programs—health, Health professions, Institutional support, Public health.

Accordingly, Subpart JJ of 42 CFR, Part 57 is amended and adopted as set forth below.

(*Catalog of Federal Domestic Assistance*, No. 13.339—Health Professions Capitation Grants)

Dated: October 3, 1986.

Robert E. Windom,

Assistant Secretary for Health.

Approved: October 28, 1986.

Otis R. Bowen,

Secretary.

1. The heading of Subpart JJ is revised to read as follows:

Subpart JJ—Capitation Grants for Schools of Public Health

2. The table of contents is revised to read as follows:

Subpart JJ—Capitation Grants for Schools of Public Health

Sec.
57.3501 To whom do these regulations apply?
57.3502 Definitions.
57.3503 Who is eligible to apply for a public health capitation grant?
57.3504 What assurance are required of all applicants for capitation grants?
57.3505 How will the number of students at each school be determined?
57.3506 Under what circumstances and in what amounts may these grants be made?
57.3507 What expenses are allowable under these capitation grants?
57.3508 What additional Department regulations apply to grantees?
57.3509 What audit inspection requirements apply to grantees?
57.3510 Additional conditions.

3. The authority citation for Subpart JJ is revised to read as follows:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 [42 U.S.C. 216]; secs. 770–772, Public Health Service Act, 90 Stat. 2290, as amended by 91 Stat. 391 and 1503, 92 Stat. 3456 and 3457, as amended by 99 Stat. 537–539 (42 U.S.C. 295f).

4. Section 57.3501 is revised to read as follows:

§ 57.3501 To whom do these regulations apply?

The regulations in this subpart apply to the award of annual grants to schools of public health for the support of the educational program of the schools.

5. Section 57.3502 is amended to remove the terms "Ambulatory care setting", "Dental specialty program", Medically underserved population", and "Resident of a State"; revise the definition of "School" and "State"; and add the definition of "Accredited" to read as follows:

§ 57.3502 Definitions.

"Accredited" means a school or program that is accredited by a recognized body or bodies approved for such purpose by the Secretary of Education, except that a new school or program that by reason of an insufficient period of operation is not, at the time of application for a grant, eligible for accreditation by such a recognized body or bodies, shall be deemed accredited if the Secretary of Education finds, after consultation with the appropriate body or bodies, that there is reasonable assurance that the school or program will meet accreditation standards prior to the academic year following the normal graduation date of the first entering class.

* * * * *

"School of public health" means an accredited public or nonprofit private school in a State that provides training leading to a graduate degree in public health or an equivalent degree.

* * * * *

"State" means, in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

6. The heading and text of § 57.3503 is revised as follows:

§ 57.3503 Who is eligible to apply for a public health capitation grant?

Any school of public health may apply for a grant under this subpart.

7. Section 57.3504 is amended by revising paragraph (a), and adding a new paragraph (c) and the OMB control number to read as follows:

§ 57.3504 What assurances are required of all applicants for capitation grants?

* * * * *

(a) The enrollment of full-time equivalent students enrolled in degree programs in the school, in the school year beginning in the fiscal year in which the grant applied for is to be made, will not be less than the enrollment of such students in degree programs in the school in the school year beginning in the fiscal year ending September 30, 1983.

* * * * *

(c) The Secretary may waive (in whole or in part) application to a school of public health of the requirement of enrollment of full-time equivalent students. Application may be waived if the Secretary determines, after receiving the written recommendation of the appropriate accreditation body or bodies (approved for such purpose by the Secretary of Education), that compliance by the school with such requirement will prevent it from maintaining its accreditation.

(Approved by the Office of Management and Budget under control number 0915–0089)

§§ 57.3505 through 57.3512 [Removed]

8. Section 57.3505 *What additional requirements apply to schools of medicine?* is removed in its entirety.

9. Section 57.3506 *What additional requirements apply to schools of osteopathy?* is removed in its entirety.

10. Section 57.3507 *What additional requirements apply to schools of dentistry?* is removed in its entirety.

11. Section 57.3508 *What additional requirements apply to schools of public health?* is removed in its entirety.

12. Section 57.3509 *What additional requirements apply to schools of veterinary medicine?* is removed in its entirety.

13. Section 57.3510 *What additional requirements apply to schools of optometry?* is removed in its entirety.

14. Section 57.3511 *What additional requirements apply to schools of podiatry?* is removed in its entirety.

15. Section 57.3512 *What additional requirements apply to schools of pharmacy?* is removed in its entirety.

16. Section 57.3513 is redesignated as § 57.3505 and revised to read as follows:

§ 57.3505 How will the number of students at each school be determined?

(a) The number of full-time equivalent students enrolled in a school of public health will be the sum of the number of full-time students and the number of full-time equivalents of part-time students (determined in accordance with section 770(a)(3) of the Act) enrolled in graduate degree programs in the school on September 15 of the fiscal year in which the grant is made. The Secretary may, upon application, approve a date other than September 15 as the official counting date for schools whose academic calendars make the September 15 date inappropriate.

(b) In the case of a new school of public health which applies for a grant in the fiscal year preceding the fiscal year in which it will admit its first class, the enrollment shall be the number of full-time students, as determined by the Secretary, based on assurances provided by the school, who will be enrolled in the school in the fiscal year after the fiscal year in which the grant is to be made.

17. Section 57.3514 is redesignated as § 57.3506 and paragraph (b) is revised to read as follows:

§ 57.3506 Under what circumstances and in what amounts may these grants be made?

* * * * *

(b) The amount of each capitation grant will be an amount computed in accordance with the formula set forth in section 770(a) of the Act. If the aggregate of the amounts of the grants to be made for any fiscal year to schools of public health with approved applications exceeds the total of the amounts appropriated for such grants for such schools, the amount of a school's grant for such fiscal year shall be an amount which bears the same ratio to the amount determined for the school as the total of the amounts appropriated for that year for grants to schools of public health bears to the amount required to make grants to each of the schools of public health with approved applications.

§ 57.3515 [Redesignated as § 57.3507]

18. Section 57.3515 is redesignated as § 57.3507.

§ 57.3516 [Redesignated as § 57.3508]

19. Section 57.3516 is redesignated as § 57.3508 to read as follows:

§ 57.3517 [Redesignated as § 57.3509]

20. Section 57.3517 is redesignated as § 57.3509, the heading is revised, paragraph (b) is removed, the "(a)" designation is removed from the text and the OMB control number is added. As revised, § 57.3509 reads as follows:

§ 57.3509 What audit inspection requirements apply to grantees?

Each school which receives a capitation grant must, in addition to the requirements of 45 CFR Part 74, meet the requirements of section 705 of the Act, concerning audit and inspection.

(Approved by the Office of Management and Budget under control number 0915–0089)

§ 57.3518 [Redesignated as § 57.3510]

21. Section § 57.3518 is redesignated as § 57.3510.

[FR Doc. 86–28614 Filed 12–19–86; 8:45 am]
BILLING CODE 4160–15–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1801, 1803 through 1808, 1812, 1815, 1822, 1827, 1836, 1837, 1839, 1842, 1845, 1846, 1852, and 1853

[NASA FAR Supplement Directive 85–6]

Miscellaneous Changes to NASA FAR Supplement

AGENCY: Office of Procurement, Procurement Policy Division, NASA.

ACTION: Final rule.

SUMMARY: This document amends the NASA Federal Acquisition Regulation Supplement (NFS) to reflect a number of miscellaneous changes implementing higher level issuances or dealing with NASA internal or administrative matters, including physical consolidation of long-standing regulations.

EFFECTIVE DATE: December 31, 1986.

FOR FURTHER INFORMATION CONTACT: W.A. Greene, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: (202) 453-2119.

SUPPLEMENTARY INFORMATION:

Background

The major changes involve procedures for compliance with Federal Acquisition Circulars 84-16 and 84-18 on voiding and rescinding contracts, synopsis preparation, make or buy thresholds, and priorities and allocations.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. All regulations in NFSD 85-6 fall in the exempted category. These regulations deal with internal NASA policies and procedures. Therefore, NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The regulations impose no burdens on the public within the ambit of the Paper Work Reduction Work Act, as implemented at 5 CFR Part 1320.

List of Subjects in 48 CFR Parts 1801, 1803 through 1808, 1812, 1815, 1822, 1827, 1836, 1837, 1839, 1842, 1845, 1846, 1852, and 1853

Government procurement.

S.J. Evans,

Assistant Administrator for Procurement.

1. The authority citation for 48 CFR Parts 1801, 1803-1808, 1812, 1815, 1822, 1827, 1836, 1837, 1839, 1842, 1845, 1846, 1852, and 1853 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1801—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Subpart 1801.2 is amended by adding 1801.271 to read as follows:

1801.271 NASA procedures for FAR changes.

(a) NASA is represented on the Defense Acquisition Regulatory Council (DARC) by a Policy member and a Legal member, assigned from the Procurement Policy Division (Code HP) and the Office of General Counsel (Code GK), respectively. NASA staff members are also assigned to standing and *ad hoc* DARC committees in their areas of expertise. The DARC policies and procedures for initiating and reviewing FAR changes shall be followed by the assigned individuals.

(b) Any NASA element or individual may suggest a revision to the FAR. Such suggestions should be in writing and contain, at a minimum: a concise description of the problem the suggested revision is designed to cure or ameliorate; the revision in the form of a marked up copy of the current FAR language or the text of any additional FAR language; the consequences of making no change and the benefits to be expected from a change; and any other information necessary for understanding the actual situation. All suggested FAR revisions shall be sent to the Director, Procurement Policy Division (Code HP).

PART 1803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

1803.101-2 [Amended]

3. Section 1803.101-2 is amended by placing a period after "Inspector General" and removing the remainder of the sentence.

1803.203 [Amended]

4. In Subpart 1803.2, 1803.203 is amended by placing a period after "Inspector General" and removing the remainder of the sentence.

5. Subpart 1803.7 is added to read as follows:

Subpart 1803.7—Voiding and Rescinding Contracts

Sec.
1803.704 Policy.
1803.705 Procedures.

Subpart 1803.7—Voiding and Rescinding Contracts

1803.704 Policy.

The Assistant Administrator for Procurement has been delegated the authority to void or rescind contracts where there is a final conviction for violation of 18 U.S.C. 201-224, Bribery, Graft and Conflicts of Interest, relating to such contracts.

1803.705 Procedures.

(a) The official to whom reports shall be sent pursuant to FAR 3.705(a) is the Assistant Administrator for Procurement. Reports shall be sent by the Procurement Officer.

(b) The Assistant Administrator for Procurement is responsible for the actions and notices required at FAR 3.705 (c) and (d) and the final agency decision required by FAR 3.705(e).

PART 1804—ADMINISTRATIVE MATTERS

6. Subpart 1804.2 is amended by revising 1804.202 to read as follows:

1804.202 Agency distribution requirements.

(a) In addition to the requirements in FAR 4.201, for R&D projects the contracting officer shall distribute one copy of the contract, including the Statement of Work, to the NASA Scientific and Technical Information Facility, Attention: Document Processing Section, P.O. Box 8757, Baltimore/Washington International Airport, MD 21240.

(b) For all contracts and modifications requiring approval of the Assistant Administrator for Procurement, one executed copy will be retained by the Office of Procurement, NASA Headquarters. Upon approval (or disapproval) of the proposed contract or modification, the Assistant Administrator for Procurement will forward the original and two executed copies of the contract or modification together with the contract file to the Procurement Officer or other official as deemed appropriate.

PART 1805—PUBLICIZING CONTRACT ACTIONS

7. Subpart 1805.2 is amended by revising 1805.207 to read as follows:

1805.207 Preparation and transmittal of synopses.

(a) Within NASA, each notice publicizing procurement of architect-engineer services shall be headed "R. Architect-Engineer Services." In addition to other requirements of FAR 5.207(c)(2), the project shall be listed with a brief statement concerning the relative order of importance the Government attaches to the significant evaluation criteria and the date by which responses to the notice must be received, including submission of Standard Form 255, Architect-Engineer and Related Services Questionnaire for Specific Project, if required. Appropriate statements shall be made concerning any specialized qualifications, security classifications, and limitations on eligibility for consideration. Qualifications or performance data required from architect-engineer firms shall be described. If the procurement is to be set aside for small business, the notice shall so state, indicating the specific size standard to be used and requiring that eligible responding firms submit a small business certification statement.

Provisions of Note 62 shall apply to this notice except that in the second paragraph of the note: (a) the 'National Aeronautics and Space Administration' is substituted for the 'Department of Defense' wherever the reference appears, and (b) the fourth additional consideration listed is changed to read: '(4) past experience, if any, of the firm with respect to performance on contracts with NASA, other Government agencies, and private industry.'

(b) All options must be included in the description required by FAR 5.207(c)(2)(viii); or there must be a separate synopsis of the option as a new procurement prior to its exercise. (See FAR 17.207(c)(4).)

(c) FAR 5.207(b)(4) requires that each synopsis be identified by a Federal Information Processing Standards (FIPS) number. The numbers assigned to NASA installations by FIPS-95 are:

Headquarters, NASA	8001
Ames Research Center	8020
Goddard Space Flight Center	8026
Johnson Space Center	8032
Kennedy Space Center	8035
Langley Research Center	8038
Lewis Research Center	8041
Marshall Space Flight Center	8044
NASA Residence Office-JPL	8029
National Space Tech. Lab	8047

8. Subpart 1805.3 is amended by revising 1805.303-71(b)(1) introductory text to read as follows:

1805.303-71 Notification of the Public Affairs Office.

* * * * *

(b) *Definitive contracts and supplemental agreements.* (1) This subparagraph pertains to contracts and supplemental agreements which do not require the approval of the Assistant Administrator for Procurement pursuant to 1804.7205 and are in an amount of $5,000,000 or over for the National Space Technology Laboratory, Headquarters Contracts and Grants Division and the NASA Resident Officer-JPL and $10,000,000 or over for the Ames Research Center, Goddard Space Flight Center, Johnson Space Center, Kennedy Space Center, Langley Research Center, Lewis Research Center, and the Marshall Space Flight Center. The above approvals exclude supplemental agreements covering overruns or incremental funding actions. Such contracts and supplemental agreements will not be distributed, nor information be given to any source outside NASA that the contractual instrument has been signed by both parties, until the following procedures are carried out:

* * * * *

PART 1806—COMPETITION REQUIREMENTS

9. Subpart 1806.3 is amended by adding 1806.302-270 and 1806.303-271 to read as follows:

1806.302-270 Support service contracts.

It may become necessary to extend the period of performance of an existing support services contract to avoid a lapse in services pending the completion of a full and open competition for the succeeding period. Under these circumstances, the authority at FAR 6.302-1 is not appropriate because of the pending competition and because it does not cover follow-on contracts for services. However, if the contemplated action otherwise conforms to the requirements at FAR 6.302-2, then the existing support services contract may be extended under this authority provided the additional documentation at NFS 1806.303-271 is included in the Justification for Other Than Full and Open Competition.

1806.303-271 Use of unusual and compelling urgency authority.

When the authority at FAR 6.302-2 is used for extending contracts under the circumstances described at 1806.302-270, the JOFOC shall contain the following information in addition to that required by FAR 6.303-2:

(a) Documentation that the procurement process for the successor contract was started in sufficient time to allow for adequately planning and conducting a full and open competition together with a description of the circumstances that prevented award in a timely manner.

(b) Documentation of the reason(s) no other source could practicably compete for the interim requirement.

PART 1807—ACQUISITION PLANNING

10. Subpart 1807.1 is amended as set forth below:

a. Section 1807.102 is revised to read as follows:

1807.102 Policy.

(a) In R&D procurements over $100,000, when three or fewer sources are known, the contracting officer shall have the requirements office query the Defense Technical Information Center (DTIC) IR&D Database to identify additional sources conducting IR&D in the area of the instant procurement. This is in addition to any other market survey techniques. Where needed, specific information concerning access to and use of the DTIC IR&D Database by a particular NASA Center may be obtained from that Center's designated IR&D Focal Point.

(b) NASA uses several methods to document its acquisition planning. These include the Project Plan, Program Operation Plan (POP), normal budget submissions, and procurement plan. The procurement plan is the only one of these coordinated documents that is a direct procurement responsibility. Instructions and requirements for completing the other documents are in various NMI's. The thresholds and requirements for NASA procurement plans are at 1807.103 below. As authorized in FAR 7.102, NASA will continue to use its existing procurement planning system in lieu of the criteria in FAR Subpart 7.1. However, all procurement plans will comply with FAR 7.104(c), 7.105(b)(2), and when appropriate, 7.106. Regardless of the method employed, all acquisitions shall be adequately planned to allow sufficient time to complete the competitive procurement process and award a contract by the required date.

1807.103 [Amended]

b. In 1807.103(b)(1)(i) (A), (B) and (ii) (A) and (B), the dollar amounts "$1,250,000", "$2,500,000", and "$5,000,000" are revised to read "$2,500,000", "$5,000,000", and "$10,000,000", respectively, wherever they appear.

1807.170 [Amended]

c. In 1807.170-1, the word "and" is added to the end of paragraph (a)(1)(iii); paragraph (a)(1)(iv) is removed; and paragraph (a)(1)(v) is redesignated (a)(1)(iv).

11. Subpart 1807.71 is amended as set forth below:

a. Section 1807.7102(c) is revised to read as follows:

1807.7102 Applicability.

* * * * *

(c) The following are monetary limitations under the Master Buy Plan procedures.

(1) $5,000,000:

(i) National Space Technology Laboratories,

(ii) Headquarters Contracts and Grants Division,

(iii) NASA Resident Office—JPL.

(2) $10,000,000:

(i) Ames Research Center,

(ii) Goddard Space Flight Center,

(iii) Johnson Space Center,

(iv) Kennedy Space Center,

(v) Langley Research Center,

(vi) Lewis Research Center,

(vii) Marshall Space Flight Center.

* * * * *

1807.7105 [Amended]

b. In 1807.7105(a), the dollar amounts "$2,500,000" and "$5,000,000" are revised to read "$5,000,000" and "$10,000,000", respectively, wherever they appear.

PART 1808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

1808.802 [Amended]

12. Section 1808.802 is amended by revising the reference "NPD" to read "NMI".

PART 1812—CONTRACT DELIVERY OR PERFORMANCE

13. Part 1812 is amended by revising Subpart 1812.3 to read as follows:

Subpart 1812.3—Priorities and Allocations

Sec.
1812.302 General.
1812.303 Procedures.
1812.303-70 NASA procedures.

Subpart 1812.3—Priorities and Allocations

1812.302 General.

(a) The Department of Defense is the "Delegate Agency" for NASA. The Headquarters Procurement Policy Division, Code HP, shall coordinate with DOD, as necessary, to ensure that any DOD imposed requirements are met.

(b) Additional regulatory guidance is available in "DPAS, Defense Priorities and Allocations System," Department of Commerce, International Trade Administration, Office of Industrial Resource Administration, Washington, DC 20250, October 1984, 66 pages. (Copies available from Department of Commerce.) This DOC booklet contains the pertinent parts of 15 CFR Part 350 and is the recommended guidance on the DPAS to contractors and suppliers receiving rated orders.

1812.303 Procedures.

1812.303-70 NASA procedures.

(a) The use of priority ratings on NASA contracts and purchase orders is mandatory except as noted in (d) below. Priority ratings are assigned on individual contracts and purchase orders by the contracting officer.

(b) Except where no rating is issued as provided in (d) below, all NASA orders shall be assigned a DO rating, unless NASA has obtained a DX rating from the Delegate Agency. Currently, NASA has no programs with a DX rating.

(c) The program identification numbers (DPAS, 15 CFR Part 350, SCH I.) to be used by NASA are as follows:

A1 Aircraft
A2 Missiles
A3 Ships
A5 Weapons
A6 Ammunition
A7 Electronic and Communications Equipment
B1 Military Building Supplies
B6 Production Equipment (For Contractor's Account)
B9 Production Equipment Government Owned)
C2 Construction
C3 Maintenance, Repair and Operating Supplies for Facilities
C9 Miscellaneous/Other

(d) Priority ratings will not be issued for the following:

(1) Items ordered or requisitioned from the GSA Federal Supply Service.

(2) Items for plant improvement, expansion or construction, unless they will be physically incorporated into a construction project covered by a rated order, or unless NASA has obtained specific priority rating authority.

(3) Production or construction equipment or items to be used for the manufacture of production equipment, unless NASA has obtained specific priority rating authority.

(4) Items which fall under the jurisdiction of delegate agencies other than NASA'S delegate agency. These are: petroleum, gas, solid fuel, electric power, and all other forms of energy; food; civil transportation and the movement of persons and property by all modes; minerals; water; housing facilities; health facilities; radio-isotopes, stable isotopes, source material and special nuclear material produced in government-owned plants or facilities operated by or for the Department of Energy; communication services; copper raw materials; crushed stone; gravel; sand; scrap; slag; central steam heat; and waste paper.

(e) The Headquarters Procurement Policy Division (Code HP) is responsible for coordinating DPAS matters with the delegate agency and the Department of Commerce, as necessary. Installation requests regarding assignment of ratings, special priorities assistance, controlled materials, and other related DPAS topics shall be directed to Code HP.

PART 1815—CONTRACTING BY NEGOTIATION

§ 1815.570 [Amended]

14. Section 1815.570 is amended by revising the reference "NPD" to read "NMI".

§ 1815.613-71 [Amended]

15. Section 1815.613-71(a)(1) introductory text is amended by revising the three dollar amounts of "$5 million" to read "$10,000,000".

16. Subpart 1815.7 is amended by revising 1815.704 to read as follows:

§ 1815.704 Items and work included.

Make or buy programs should not include items or work efforts estimated to cost less than $500,000.

PART 1822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

17. Subpart 1822.11 is amended by revising 1822.1103(a) to read as follows:

§ 1822.1103 Policy, procedures, and solicitation provisions.

(a) The instructions in paragraph (a) of the clause at FAR 52.222-46, Evaluation of Compensation for Professional Employees, shall be augmented in Section M of the solicitation with an explanation of how the Government will evaluate the offeror's plan. The Government's assessment of the plan shall be a weighted and scored evaluation criterion under a Mission Suitability Factor in order to assure that the plan reflects a sound management approach and understanding of the contract requirements. This criterion shall be accorded sufficient weight and relative order of importance to be effective under the particular circumstances involved. When there is a significant number of professional employees involved, the period of performance is lengthy, and the cost relatively large or there is continuity of the same or similar services at the same location, the weight and relative importance of the criterion shall be in the "most important" or "very important" category, as deemed appropriate. The lesser weighting should be employed only after careful consideration of the possible impact on labor stability.

* * * * *

PART 1827—PATENTS, DATA, AND COPYRIGHTS

18. Subpart 1827.4 is amended as set forth below:

a. 1827.474(b)(2) is revised to read as follows:

§ 1827.474 Procedures—acquisition of data.

* * * * *

(b) Specifying data delivery requirements.

* * * * *

(2)(i) The contractor normally should be required to furnish reports of work performed under all research and development contracts (fixed-price and cost reimbursable), and also may be required to furnish such reports in cost-reimbursable supply contracts if considered desirable for monitoring contract performance. This should be achieved by including, at a minimum, the following general requirements, modified as needed to meet the particular requirements of the contract, in the section of the contract specifying data delivery requirements:

(A) *Monthly progress reports.* The contractor shall submit separate monthly progress reports of all work accomplished during each month of contract performance. Reports shall be in narrative form and brief and informal in content. They shall include a quantitative description of overall progress, an indication of any current problems which may impede performance and proposed corrective action, and a discussion of the work to be performed during the next monthly reporting period. (Normally, this requirement should not be used in contracts with non-profit organizations.)

(B) *Quarterly progress reports.* The contractor shall submit separate quarterly reports of all work accomplished during each three-month period of contract performance. In addition to factual data, these reports shall include a separate analysis section which interprets the results obtained, recommends further action, and relates occurrences to the ultimate objectives of the contract work. Sufficient diagrams, sketches, curves, photographs, and drawings shall be included to convey the intended meaning.

(C) *Final report.* The contractor shall submit a final report which documents and summarizes the results of the entire contract work, including recommendations and conclusions based on the experience and results obtained. The final report shall include tables, graphs, diagrams, curves, sketches, photographs, and drawings in sufficient detail to comprehensively explain the results achieved under the contract.

(D) *Report Documentation Page.* The contractor shall include a completed Report Documentation Page (NASA Form 1626) as the final page of each report submitted pursuant to paragraphs (b)(2)(i)(A) through (C).

(E) *Submission.* The required numbers of copies of the reports specified in paragraphs (b)(2)(i)(A) through (C) shall be submitted to the technical monitor of the contract (in the absence of other instructions from the requesting activity). In addition, a reproducible copy and a printed (or reproduced copy) shall be sent to: NASA Scientific and Technical Information Facility, Attn: Accessioning Department, P.O. Box 8757, Baltimore/Washington International Airport, MD 21240.

(ii) Consideration should be given to the desirability of providing reports on the completion of significant units or phases of work, in addition to periodic reports and reports on the completion of the entire contract. The data delivery requirements section of the contract should also list other data to be delivered under the contract and provide, as necessary, specific instructions regarding delivery, submission dates, report numbering, numbers of copies to be submitted, distribution lists, and any other information to assure appropriate distribution of the required reports of work.

* * * * *

1827.475-10 [Removed]

b. 1827.475-10 is removed.

PART 1836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

19. In Subpart 1836.6, 1836.602-71(b) is revised to read as follows:

1836.602-71 Conflict of interest.

* * * * *

(b) The chairman, members, or other participants shall promptly report any activity that would give rise to a real or apparent conflict of interest situation, including any indications of extraneous influences being brought to bear on the selection or evaluation process.

PART 1837—SERVICE CONTRACTING

20. Subpart 1837.2 is amended by revising 1837.204-70 (d) and (e) to read as follows:

1837.204-70 NASA policy.

* * * * *

(d) Consulting service tasks assigned to the Jet Propulsion Laboratory and amendments to the contract between the California Institute of Technology and NASA for the operations of the JPL facility must be reviewed and approved by the Associate Administrator for Management Operations (Code N).

(e) Persons or organizations employed as NASA consultants must be free from conflict of interest as delineated in FAR Subpart 9.5 and NFS 1809.5. Caution will also be exercised when considering former Government employees for consulting-service arrangements in order to avoid potential post-employment statutory prohibition (18 U.S.C. 207).

PART 1839—MANAGEMENT ACQUISITION AND USE OF INFORMATION RESOURCES

21. Subpart 1839.70 is amended by revising 1839.7005(a) to read as follows:

1839.7005 Coordination.

(a) Installation APR's are subject to general review, comparison with acquisition plans and discussion between Codes HP and NT prior to the forwarding of an APR to GSA.

* * * * *

PART 1842—CONTRACT ADMINISTRATION

22. Subpart 1842.2 is amended as set forth below:

a. In 1842.202-70, paragraph (a)(1), the reference to "(a)(7)" is revised to read "(a)(6)".

b. Paragraph (b) is revised to read as follows:

1842.202-70 Delegations to contract administration offices.

* * * * *

(b) *Reliability and quality assurance.* When special instructions for reliability or quality assurance are necessary, the requirements shall be clearly identified by the NASA installation personnel responsible for the reliability and quality assurance function and shall be furnished to the contracting officer on NASA Form 1430A for inclusion in the letter of delegation. The procedures for arranging, preparing, and finalizing such delegations and the requirements for NASA direction and management of these functions are contained in installation procedures. The latest edition of NHB 5300.4(2B), Quality Assurance Provisions for Delegated Government Agencies, describes the requirements for agencies or NASA representatives performing quality assurance functions under NASA contracts.

* * * * *

1842.202-71 [Amended]

c. In 1842.202-71, paragraph (b)(2) is removed, and paragraphs (b)(3) and (4) are redesignated (b)(2) and (3), respectively.

23. Subpart 1842.3 is amended by revising 1842.302 to read as follows:

1842.302 Contract administration functions.

The following are additional normal contract administration functions to be performed by the cognizant CAO:

(a) Determine billing rates and final indirect cost rates.

1807.7105 [Amended]

b. In 1807.7105(a), the dollar amounts "$2,500,000" and "$5,000,000" are revised to read "$5,000,000" and "$10,000,000", respectively, wherever they appear.

PART 1808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

1808.802 [Amended]

12. Section 1808.802 is amended by revising the reference "NPD" to read "NMI".

PART 1812—CONTRACT DELIVERY OR PERFORMANCE

13. Part 1812 is amended by revising Subpart 1812.3 to read as follows:

Subpart 1812.3—Priorities and Allocations

Sec.
1812.302 General.
1812.303 Procedures.
1812.303–70 NASA procedures.

Subpart 1812.3—Priorities and Allocations

1812.302 General.

(a) The Department of Defense is the "Delegate Agency" for NASA. The Headquarters Procurement Policy Division, Code HP, shall coordinate with DOD, as necessary, to ensure that any DOD imposed requirements are met.

(b) Additional regulatory guidance is available in "DPAS, Defense Priorities and Allocations System," Department of Commerce, International Trade Administration, Office of Industrial Resource Administration, Washington, DC 20250, October 1984, 66 pages. (Copies available from Department of Commerce.) This DOC booklet contains the pertinent parts of 15 CFR Part 350 and is the recommended guidance on the DPAS to contractors and suppliers receiving rated orders.

1812.303 Procedures.

1812.303–70 NASA procedures.

(a) The use of priority ratings on NASA contracts and purchase orders is mandatory except as noted in (d) below. Priority ratings are assigned on individual contracts and purchase orders by the contracting officer.

(b) Except where no rating is issued as provided in (d) below, all NASA orders shall be assigned a DO rating, unless NASA has obtained a DX rating from the Delegate Agency. Currently, NASA has no programs with a DX rating.

(c) The program identification numbers (DPAS, 15 CFR Part 350, SCH L.) to be used by NASA are as follows:

A1 Aircraft
A2 Missiles
A3 Ships
A5 Weapons
A6 Ammunition
A7 Electronic and Communications Equipment
B1 Military Building Supplies
B8 Production Equipment (For Contractor's Account)
B9 Production Equipment Government Owned)
C2 Construction
C3 Maintenance, Repair and Operating Supplies for Facilities
C9 Miscellaneous/Other

(d) Priority ratings will not be issued for the following:

(1) Items ordered or requisitioned from the GSA Federal Supply Service.

(2) Items for plant improvement, expansion or construction, unless they will be physically incorporated into a construction project covered by a rated order, or unless NASA has obtained specific priority rating authority.

(3) Production or construction equipment or items to be used for the manufacture of production equipment, unless NASA has obtained specific priority rating authority.

(4) Items which fall under the jurisdiction of delegate agencies other than NASA'S delegate agency. These are: petroleum, gas, solid fuel, electric power, and all other forms of energy; food; civil transportation and the movement of persons and property by all modes; minerals; water; housing facilities; health facilities; radio-isotopes, stable isotopes, source material and special nuclear material produced in government-owned plants or facilities operated by or for the Department of Energy; communication services; copper raw materials; crushed stone; gravel; sand; scrap; slag; central steam heat; and waste paper.

(e) The Headquarters Procurement Policy Division (Code HP) is responsible for coordinating DPAS matters with the delegate agency and the Department of Commerce, as necessary. Installation requests regarding assignment of ratings, special priorities assistance, controlled materials, and other related DPAS topics shall be directed to Code HP.

PART 1815—CONTRACTING BY NEGOTIATION

§ 1815.570 [Amended]

14. Section 1815.570 is amended by revising the reference "NPD" to read "NMI".

§ 1815.613–71 [Amended]

15. Section 1815.613–71(a)(1) introductory text is amended by revising the three dollar amounts of "$5 million" to read "$10,000,000".

16. Subpart 1815.7 is amended by revising 1815.704 to read as follows:

§ 1815.704 Items and work included.

Make or buy programs should not include items or work efforts estimated to cost less than $500,000.

PART 1822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

17. Subpart 1822.11 is amended by revising 1822.1103(a) to read as follows:

§ 1822.1103 Policy, procedures, and solicitation provisions.

(a) The instructions in paragraph (a) of the clause at FAR 52.222–46, Evaluation of Compensation for Professional Employees, shall be augmented in Section M of the solicitation with an explanation of how the Government will evaluate the offeror's plan. The Government's assessment of the plan shall be a weighted and scored evaluation criterion under a Mission Suitability Factor in order to assure that the plan reflects a sound management approach and understanding of the contract requirements. This criterion shall be accorded sufficient weight and relative order of importance to be effective under the particular circumstances involved. When there is a significant number of professional employees involved, the period of performance is lengthy, and the cost relatively large or there is continuity of the same or similar services at the same location, the weight and relative importance of the criterion shall be in the "most important" or "very important" category, as deemed appropriate. The lesser weighting should be employed only after careful consideration of the possible impact on labor stability.

* * * * *

PART 1827—PATENTS, DATA, AND COPYRIGHTS

18. Subpart 1827.4 is amended as set forth below:

a. 1827.474(b)(2) is revised to read as follows:

§ 1827.474 Procedures—acquisition of data.

* * * * *

(b) Specifying data delivery requirements.

* * * * *

(2)(i) The contractor normally should be required to furnish reports of work performed under all research and development contracts (fixed-price and cost reimbursable), and also may be required to furnish such reports in cost-reimbursable supply contracts if considered desirable for monitoring contract performance. This should be achieved by including, at a minimum, the following general requirements, modified as needed to meet the particular requirements of the contract, in the section of the contract specifying data delivery requirements:

(A) *Monthly progress reports.* The contractor shall submit separate monthly progress reports of all work accomplished during each month of contract performance. Reports shall be in narrative form and brief and informal in content. They shall include a quantitative description of overall progress, an indication of any current problems which may impede performance and proposed corrective action, and a discussion of the work to be performed during the next monthly reporting period. (Normally, this requirement should not be used in contracts with non-profit organizations.)

(B) *Quarterly progress reports.* The contractor shall submit separate quarterly reports of all work accomplished during each three-month period of contract performance. In addition to factual data, these reports shall include a separate analysis section which interprets the results obtained, recommends further action, and relates occurrences to the ultimate objectives of the contract work. Sufficient diagrams, sketches, curves, photographs, and drawings shall be included to convey the intended meaning.

(C) *Final report.* The contractor shall submit a final report which documents and summarizes the results of the entire contract work, including recommendations and conclusions based on the experience and results obtained. The final report shall include tables, graphs, diagrams, curves, sketches, photographs, and drawings in sufficient detail to comprehensively explain the results achieved under the contract.

(D) *Report Documentation Page.* The contractor shall include a completed Report Documentation Page (NASA Form 1626) as the final page of each report submitted pursuant to paragraphs (b)(2)(i)(A) through (C).

(E) *Submission.* The required numbers of copies of the reports specified in paragraphs (b)(2)(i)(A) through (C) shall be submitted to the technical monitor of the contract (in the absence of other instructions from the requesting activity). In addition, a reproducible copy and a printed (or reproduced copy) shall be sent to: NASA Scientific and Technical Information Facility, Attn: Accessioning Department, P.O. Box 8757, Baltimore/Washington International Airport, MD 21240.

(ii) Consideration should be given to the desirability of providing reports on the completion of significant units or phases of work, in addition to periodic reports and reports on the completion of the entire contract. The data delivery requirements section of the contract should also list other data to be delivered under the contract and provide, as necessary, specific instructions regarding delivery, submission dates, report numbering, numbers of copies to be submitted, distribution lists, and any other information to assure appropriate distribution of the required reports of work.

* * * * *

1827.475–10 [Removed]

b. 1827.475–10 is removed.

PART 1836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

19. In Subpart 1836.6, 1836.602–71(b) is revised to read as follows:

1836.602–71 Conflict of interest.

* * * * *

(b) The chairman, members, or other participants shall promptly report any activity that would give rise to a real or apparent conflict of interest situation, including any indications of extraneous influences being brought to bear on the selection or evaluation process.

PART 1837—SERVICE CONTRACTING

20. Subpart 1837.2 is amended by revising 1837.204–70 (d) and (e) to read as follows:

1837.204–70 NASA policy.

* * * * *

(d) Consulting service tasks assigned to the Jet Propulsion Laboratory and amendments to the contract between the California Institute of Technology and NASA for the operations of the JPL facility must be reviewed and approved by the Associate Administrator for Management Operations (Code N).

(e) Persons or organizations employed as NASA consultants must be free from conflict of interest as delineated in FAR Subpart 9.5 and NFS 1809.5. Caution will also be exercised when considering former Government employees for consulting-service arrangements in order to avoid potential post-employment statutory prohibition (18 U.S.C. 207).

PART 1839—MANAGEMENT ACQUISITION AND USE OF INFORMATION RESOURCES

21. Subpart 1839.70 is amended by revising 1839.7005(a) to read as follows:

1839.7005 Coordination.

(a) Installation APR's are subject to general review, comparison with acquisition plans and discussion between Codes HP and NT prior to the forwarding of an APR to GSA.

* * * * *

PART 1842—CONTRACT ADMINISTRATION

22. Subpart 1842.2 is amended as set forth below:

a. In 1842.202–70, paragraph (a)(1), the reference to "(a)(7)" is revised to read "(a)(6)".

b. Paragraph (b) is revised to read as follows:

1842.202–70 Delegations to contract administration offices.

* * * * *

(b) *Reliability and quality assurance.* When special instructions for reliability or quality assurance are necessary, the requirements shall be clearly identified by the NASA installation personnel responsible for the reliability and quality assurance function and shall be furnished to the contracting officer on NASA Form 1430A for inclusion in the letter of delegation. The procedures for arranging, preparing, and finalizing such delegations and the requirements for NASA direction and management of these functions are contained in installation procedures. The latest edition of NHB 5300.4(2B), Quality Assurance Provisions for Delegated Government Agencies, describes the requirements for agencies or NASA representatives performing quality assurance functions under NASA contracts.

* * * * *

1842.202–71 [Amended]

c. In 1842.202–71, paragraph (b)(2) is removed, and paragraphs (b)(3) and (4) are redesignated (b)(2) and (3), respectively.

23. Subpart 1842.3 is amended by revising 1842.302 to read as follows:

1842.302 Contract administration functions.

The following are additional normal contract administration functions to be performed by the cognizant CAO:

(a) Determine billing rates and final indirect cost rates.

(b) Issue cure and show cause letters after approval of the NASA Contracting Officer.

(c) Monitor the contractor's system for control of overtime.

(d) Assure that overtime compensation is in accordance with the terms of the contract, or in the absence of contractual coverage, that any excepted overtime charged is reasonable and properly allocable.

(e) Negotiate changes to interim billing prices when authorized by the NASA Contracting Officer.

PART 1845—GOVERNMENT PROPERTY

24. Subpart 1845.70 is amended by revising 1845.7105, Section II, Block 16, to read as follows:

1845.7105 Instructions for the preparation of DD Form 1419.

. . . . .

Block 16. Enter the Defense Priority and Allocations System (DPAS) Rating that is assigned to the contract or anticipated purchase order, if applicable.

. . . . .

PART 1846—QUALITY ASSURANCE

25. Subpart 1846.6 is amended by revising 1846.673(a) to read as follows:

1846.673 Distribution of DD Form 250 and DD Form 250c.

(a) DD Forms 250 and 250c shall be distributed in accordance with the procedures prescribed by the installation.

. . . . .

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

26. Subpart 1852.2 is amended as follows:

1852.227-82 [Removed]

a. 1852.277-82 is removed.

b. 1852.235-70 is revised to read as follows:

1852.235-70 Scientific and Technical Information Service.

Insert the following clause as prescribed in 18-35.070(a):

Scientific and Technical Information Service (September 1986)

(a) The contractor should make the fullest practicable use of the services provided by the NASA Scientific and Technical Information Facility (STIF) during the conduct of research under this contract. The contractor, if not already registered with STIF, is encouraged to do so by executing express registration forms which will be provided by STIF. Registration forms will informs the contractor of the products and services available in support of work under the contract.

(b) NASA reserves the right, in the event of the unavailability of any scientific and technical information requested, to notify the Contractor of such unavailability.

Failure of NASA to furnish any information requested shall not entitle the Contractor to any adjustment in the price, cost (estimated or target), fee, time required for performance, or delivery schedule of the contract.

(End of clause)

PART 1853—FORMS

27. Subpart 1853.1 is amended by revising 1853.107 to read as follows:

1853.107 Obtaining forms.

(a) NASA installations and offices may obtain forms prescribed in the FAR or in this Part from Goddard Space Flight Center, Code 853.9. Orders should be placed on a NASA Form 2.

(b) Contracting officers, at the time of contract award, shall assure that contractors are notified of or are otherwise aware of the procedures for obtaining NASA forms and the source within the installation of such forms required for performance under the contract.

28. Subpart 1853.2 is amended as shown:

1853.212 [Removed]

a. Section 1853.212 is removed.

b. Sections 1853.223 and 1853.227 are revised to read as follows:

1853.223 Environment, conservation, and occupational safety (NF 566).

NASA Form 566, Application for Radio Frequency Assignment, prescribed at 1823.7102(a), shall be used to request all frequency assignments.

1853.227 Patents, data, and copyrights (NF 1626)

NASA Form 1626, Report Documentation Page, NF 1626, prescribed at 1827.474(b)(2)(i)(D), shall be submitted with contractors' reports.

c. In 1853.251, the title is revised to read as set forth below:

1853.251 Contractor Employee Air Transportation (SF 1169, NF 1622).

[FR Doc. 28670 Filed 12-26-86; 8:45 am]

BILLING CODE 7510-01-M

Proposed Rules

Federal Register
Vol. 51, No. 245
Monday, December 22, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Parts 2423, 2429, and Ch. XIV

Processing of Cases; Unfair Labor Practice

AGENCY: Federal Labor Relations Authority (including the General Counsel of the Federal Labor Relations Authority).

ACTION: Withdrawal of proposed amendment of rules and regulations.

SUMMARY: The Authority has decided to retain the existing procedures for processing unfair labor practice cases contained in Part 2423 of the rules and regulations, codified at 5 CFR Part 2423, and not to delegate decision-making in such cases as earlier proposed.

FOR FURTHER INFORMATION CONTACT: Harold D. Kessler, Director of Case Management, Federal Labor Relations Authority, 500 C Street SW., Washington, DC 20424, (202) 382-0715.

SUPPLEMENTARY INFORMATION: On September 23, 1986, the Federal Labor Relations Authority published proposed amendments to its rules and regulations (51 FR 33840) concerning the delegation of decision-making authority in unfair labor practice cases under 5 U.S.C. 7105 (e) and (f) to its Administrative Law Judges, subject to discretionary review by the Authority. The Authority has decided to retain the existing procedures for processing unfair labor practice cases.

The proposed amendments as published on September 23, 1986, stemmed from suggestions made by various parties in 1984 urging the Authority to delegate decision-making responsibility in unfair labor practice cases to its Administrative Law Judges. The proponents of such delegation believed that it would allow the Authority to utilize its limited resources more efficiently and result in the expeditious processing of cases. In publishing the proposed amendments, the Authority anticipated that the delegation of decision-making would expedite the process by which unfair labor practice cases are resolved. However, after reviewing all the comments received concerning the proposed amendments and considering the recent advances made by the Authority in reducing its case inventory, the Authority finds that a departure from the existing case processing procedures is inadvisable.

Since the delegation of decision-making authority was suggested in 1984, the Authority has made significant improvements in reducing the number of pending unfair labor practice cases and in reducing the average amount of time such cases remain before the Authority. At the beginning of Fiscal Year 1985, there were 281 unfair labor practice cases pending with the Authority. By the end of Fiscal Year 1986, that number had been reduced to 115 cases. Equally significant is the reduction in the age of cases pending before the Authority and the number of "old" cases still awaiting resolution. From October 1985 to October 1986, the number of unfair labor practice cases pending with the Authority for more than 24 months was reduced by more than 50%—from 11 to 5 cases. From December 31, 1985, to October 1986, the average age of pending unfair labor practice cases measured from the date of filing was reduced from 533 to 277 days. Thus, in the past 10 months alone, the average age of pending unfair labor practice cases was cut almost in half (48%). This downward trend is consistent with the Authority's goal of processing all cases within 180 days after their filing. The Authority fully expects to further reduce the existing unfair labor practice case inventory and meet the overall timeliness goal in the near future. The Authority is confident that the purposes behind the proposed delegation of decision-making responsibility can better be achieved through the use of the existing unfair labor practice case processing procedures.

The parties commenting on the proposed delegation expressed widespread concern that authorizing delegation could lead to inconsistent case law and an inability for parties to develop a systematic approach to their day-to-day labor-management relationships. Concern also was expressed about the precedential nature of the decisions issued and their enforceability. Finally, there were questions raised about the bases for accepting review of Administrative Law Judges' decisions and whether there was a need for all unfair labor practice cases to be decided by Judges. These concerns and the considerable improvement in issuing timely unfair labor practice decisions, persuaded the Authority not to authorize delegation of unfair labor practice decision-making responsibility to its Administrative Law Judges.

The Authority is grateful to all the parties who appeared in person or provided written submissions concerning this matter.

The proposed amendment to 5 CFR Part 2424 published in the Federal Register on September 23, 1986, page 33845 is withdrawn.

Dated: December 17, 1986.

Jerry L. Calhoun,
Chairman.

Henry B. Frazier III,
Member.

Jean McKee,
Member.

[FR Doc. 86-28611 Filed 12-19-86; 8:45 am]

BILLING CODE 6727-01-M

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

7 CFR Part 656

Procedures for the Protection of Archeological and Historical Properties Encountered in SCS-Assisted Programs

AGENCY: Soil Conservation Service, USDA.

ACTION: Withdrawal of Proposed Rule.

SUMMARY: On August 15, 1986 the Soil Conservation Service published a proposed rule on Procedures for the Protection of Archeological and Historical Properties Encountered in SCS-Assisted Programs (7 CFR Part 656). This proposed rule was inadvertently processed and signed without the benefit of Office of Management and Budget review required by Executive Order 11291. Accordingly, this proposed rule is being withdrawn. The Soil Conservation Service intends to republish the proposed rule after it has been properly processed.

DATE: This withdrawal is effective December 22, 1986.

FOR FURTHER INFORMATION CONTACT: Gail Updegraff, Director, Economics and Social Sciences Division, Soil Conservation Service, U.S. Department of Agriculture, P.O. Box 2890, Washington, DC 20013. Telephone (202) 447-2367.

J.C. Hytry,
Associate Deputy Chief for Administration.

[FR Doc. 86-28607 Filed 12-19-86; 8:45 am]
BILLING CODE 3410-16-M

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket 86-095]

Brucellosis; Documentation of Animal Identification on Certificates

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We propose to amend the brucellosis regulations to give those who complete certificates an alternative to transcribing individual animal identification or ownership brands directly onto certificates. Under the proposed rule, those who complete certificates could attach to certificates a document already listing this information. The proposed rule would reduce the paperwork burden for those who complete certificates while continuing to ensure adequate identification of animals moved under certificates.

DATE: We will consider your comments if we receive them on or before February 20, 1987.

ADDRESS: Send written comments to Steven R. Poore, Acting Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 86-095. Comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. W.E. Ketter, Chief Staff Veterinarian, Regulatory Communications and Compliance Staff, VS, APHIS, USDA, Room 829, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301-436-8565.

SUPPLEMENTARY INFORMATION:

Background

As part of a program to prevent the interstate spread of brucellosis, the regulations in 9 CFR Part 78 require a certificate for certain interstate movements of cattle and bison. A final rule published in the Federal Register on September 12, 1986 (51 FR 32574-32600) defines "certificate" in § 78.1(as follows:

An official document issued by a Veterinary Services representative, State representative, or accredited veterinarian at the point of origin of a movement of animals. It must show the official eartag number, individual animal registered breed association registration tattoo, individual animal registered breed association registration brand, individual animal registered breed association registration number, or similar individual identification of each animal to be moved; the number of animals covered by the document; the purpose for which the animals are to be moved; the points of origin and destination; the consignor; and the consignee. Ownership brands may be used as identification on certificates for cattle moved interstate when no official test is required under this part, provided the ownership brands are registered with the official brand recording agency and the cattle are accompanied by official brand inspection certificates.

Under this definition, the individual identification or, in certain cases, ownership brands for each animal to be moved under the certificate must be listed on the certificate. This record helps ensure that the animals moved are, in fact, the same animals that were released for movement under the certificate. However, some individuals who complete certificates have indicated that listing identification on certificates for each animal to be moved can be time consuming, especially at markets that handle many animals. So, we are proposing to allow them to attach to certificates, under conditions specified below, a document that already lists this information.

Individual Identification

When individual identification of animals is required on a certificate, we propose to allow individuals completing certificates to provide this information by attaching to the certificate another document, such as a brucellosis test record (VS Form 4-33), that already lists this information. However, the document could be attached only under the following conditions:

- —The document must be a State or Veterinary Services form that requires individual identification of animals;
- —The document must be imprinted with a serial number;
- —The name of the document and the serial number on the document must be written in ink in the identification column on each copy of the certificate, and this information must be boxed or circled, also in ink, on each copy of the certificate so that no numbers may be added;
- —The document must identify each animal to be moved under the certificate, but no other animals; and
- —A copy of the document must be attached to each copy of the certificate.

These conditions would make it difficult to substitute or add other documents. A document attached to a certificate as proposed would provide reliable and adequate identification of animals to be moved under a certificate and, at the same time, would reduce the paperwork burden for individuals completing certificates. Allowing use of a document as proposed also could facilitate the interstate movement of animals by shortening the waiting time for certificates.

Ownership Brands

Ownership brands identify animals to a particular herd. As prescribed in the definition of certificate, they may be used as identification on certificates for cattle moved interstate when no official test is required under this part, if the ownership brands are registered with the official brand recording agency and the cattle are accompanied by official brand inspection certificates. Cattle that may be identified on certificates by ownership brands are cattle from certified brucellosis-free herds or Class Free States. These cattle present a very low risk of spreading brucellosis. The official brand inspection certificates that must accompany these cattle are forms issued by an official brand inspection agency that certify that a specified number of animals, identifiable by a specific ownership brand, may be moved to another location to be sold. They may be used in conjunction with certificates, under the conditions stated above, when the animals are to be moved interstate to be sold. Official brand inspection certificates are issued by State officials only after the officials have inspected the cattle to be moved and have verified that the cattle are marked with the brand listed on the official brand inspection certificate.

When ownership brands are permitted as identification on certificates, we propose to allow those who provide this information to attach to the certificate the official brand inspection certificate for the cattle to be moved. However, the official brand inspection certificate could be attached only under the following conditions:

- —The serial number of the official brand inspection certificate must be written in ink in the identification column on each copy of the certificate, and this number must be circled or boxed, also in ink on each copy of the certificate so that no numbers may be added; and
- —A copy of the official brand inspection certificate must be attached to each copy of the certificate.

We believe that an official brand inspection certificate attached to a certificate as proposed would provide adequate identification of the cattle to be moved and would, at the same time, help reduce the paperwork burden for those who complete certificates.

Official Brand Inspection Certificate

Department officials believe that all official brand inspection certificates are serially numbered. However, the present definition of the term "official brand inspection certificate" does not require that such documents be serially numbered. This proposal would amend the definition of "official brand inspection certificate" to require that they be serially numbered so that any "official brand inspection certificate" could be attached to a certificate under the conditions described above.

Executive Order 12291 and Regulatory Flexibility Act

This proposed rule is issued in conformance with Executive Order 12291 and has been determined not to be a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule would not change the types of information required for certificates, would not increase the risk of brucellosis spreading interstate, and would not affect procedures for enforcing the interstate movement requirements in Part 78. Rather, the proposed rule would alleviate some of the paperwork burden on those who prepare certificates for the interstate movement of cattle and bison and could, as a result, facilitate the movement of cattle and bison by decreasing the waiting time for certificates.

Under the circumstances explained above, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 0570-0064.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are proposing to amend Part 78 as follows:

1. The authority citation would continue to read as follows:

Authority: 21 U.S.C. 111-114a-1, 114g, 115, 117, 120, 121, 123-126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 78.1, the definition of "certificate" would be revised to read as follows:

§ 78.1 Definitions.

* * * * *

Certificate. An official document issued by a Veterinary Services representative, State representative, or accredited veterinarian at the point of origin of a movement of animals. It must show the official eartag number, individual animal registered breed association registration tattoo, individual animal registered breed association registration brand, individual animal registered breed association registration number, or similar individual identification of each animal to be moved; the number of animals covered by the certificate; the purpose for which the animals are to be moved; the points of origin and destination; the consignor; and the consignee. Ownership brands may be used in place of individual animal identification on certificates for cattle moved interstate when no official test for brucellosis is required under this part, provided the ownership brands are registered with the official brand recording agency and the cattle are accompanied by official brand inspection certificates. As an alternative to listing ownership brands on a certificate, the official brand inspection certificate for the cattle to be moved may be attached to the certificate, but only under the following conditions: The serial number of the official brand inspection certificate must be written in ink in the identification column on each copy of the certificate, and this number must be circled or boxed, also in ink, on each copy of the certificate so that no numbers may be added; and a copy of the official brand inspection certificate must be attached to each copy of the certificate. Also, as an alternative to writing individual animal identification on a certificate, another document that lists the individual animal identification may be attached to the certificate, but only under the following conditions: The document must be a State form or Veterinary Services form that requires individual identification of animals; the document must be imprinted with a serial number; the name of the document and the serial number on the document must be written in ink in the identification column on each copy of the certificate, and this information must be boxed or circled, also in ink, on each copy of the certificate so that no numbers may be added; the document must identify each animal to be moved under the certificate, but no other animals; and a copy of the document must be attached to each copy of the certificate.

* * * * *

3. In § 78.1, the definition of "official brand inspection certificate" would be revised to read as follows:

* * * * *

Official brand inspection certificate. A serially numbered document issued by an official brand inspection agency in any State which requires such document for movement of cattle.

* * * * *

Done in Washington, DC, this 17th day of December.

J.K. Atwell,
Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 86-28605 Filed 12-19-86; 8:45 am]
BILLING CODE 3410-34-M

9 CFR Part 92

[Docket No. 86-036]

Importation of Cattle From Canada; Calfhood Vaccination Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We propose to amend the animal import regulations to reflect new Canadian calfhood vaccination requirements. Currently, our regulations permit female cattle under 18 months of age to be imported from Canada without being tested for brucellosis if, among other things, they were vaccinated against brucellosis, according to Canadian regulations, when they were from 2 to 6 months of age if dairy cattle or from 2 to 10 months of age if beef cattle. Recently, the Canadian government changed its regulations to require a reduced dosage *Brucella* vaccine for calfhood vaccination, to be administered when the cattle (whether dairy or beef) are from 4 to 8 months of age. The proposed amendment is necessary to continue to allow certain female cattle to be imported from Canada without being tested for brucellosis.

DATE: Written comments must be received on or before February 20, 1987.

ADDRESS: Send your comments concerning this proposed rule to Steven R. Poore, Acting Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that they are in response to Docket Number 86-036. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Harvey A. Kryder, Jr., Import-Export and Emergency Planning Staff, APHIS, USDA, Room 806, Federal Building, 6505 Belcrest Road, Hyattsville MD 20782; (301) 436-8695.

SUPPLEMENTARY INFORMATION:

Background

The conditions under which cattle may be imported into the United States from Canada are set forth in 9 CDR Part 92. One of the conditions required for most cattle is that they test negative for brucellosis within 30 days before entry into the United States. Certain cattle, however, are exempted from testing. Section 92.20(c)(5) provides that female cattle under 18 months of age may be imported from Canada without a test for brucellosis if, among other things, they were vaccinated against brucellosis, according to Canadian regulations, when they were from 2 to 6 months of age if dairy cattle or from 2 to 10 months of age if beef cattle.

Effective January 1, 1986, Canadian regulations changed. Canada now requires use of a "reduced dosage" *Brucella* vaccine, to be administered to cattle (whether dairy or beef) between the ages of 4 and 8 months. The reduced dosage vaccine is a *Brucella abortus* Strain 19 vaccine, diluted so as to contain at least 3 billion but not more than 10 billion live cells per 2 ml dose. Before July 1, 1985, Canada required use of a "standard dosage" *Brucells abortus* Strain 19 vaccine, which contained 25 billion live cells per 3 ml dose. During a transition period from July 1, 1985, through December 31, 1985, Canada permitted calfhood vaccination against brucellosis with either the standard dosage or the reduced dosage vaccine.

Our regulations concerning the importation of cattle from Canada are intended to prevent the importation of cattle which may spread brucellosis and other contagious cattle diseases. Cattle vaccinated against brucellosis are more resistant to the disease and are less likely to transmit brucellosis to other animals than cattle that are not vaccinated. Test data indicate that cattle given the reduced dosage *Brucella* vaccine develop approximately the same level of resistance to brucellosis as cattle given the standard dosage. Furthermore, tests show that the reduced dosage vaccine given to calves from 4 to 8 months of age would cause fewer blood serum titers than the standard dosage vaccine. Persistent titers sometimes interfere with diagnosis of brucellosis and may result in improper disease classification of vaccinated cattle tested for brucellosis. Based on this evidence, we believe the reduced dosage *Brucella* vaccine, administered to female cattle between the ages of 5 and 8 months, would provide adequate immunization against brucellosis.

We therefore propose to revise § 92.20(c)(5) to allow female cattle under 18 months of age to be imported into the United States from Canada without being tested for brucellosis if, among other things, they were vaccinated after June 30, 1985, while from 4 to 8 months of age, with a reduced dosage *Brucella* vaccine, according to Canadian regulations. However, female cattle under 18 months of age and vaccinated before January 1, 1986, could still be imported under this section if they were vaccinated with a standard dosage *Brucella* vaccine while from 2 to 8 months of age if dairy cattle or from 2 to 10 months of age if beef cattle.

We also propose to revise § 92.20(d) to require that, if cattle are to be imported in accordance with § 92.20(c)(5), the date of vaccination, dosage of vaccine used, and age of each animal on the date of vaccination be stated on the certificate which must accompany the animal to the U.S. port of entry. This will enable Department officials to determine if the provisions in proposed § 92.20(c)(5) have been met.

Executive Order 12291 and Regulatory Flexibility Act

This proposed rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." We have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The effect of this action would be to retain a provision in our regulations which allows certain female cattle under 18 months of age to be imported into the United States from Canada without being tested for brucellosis. We have determined that this proposed rule would not have any affect on the number of cattle imported into the United States from Canada.

Under the circumstances explained above, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Information collection requirements contained in this document have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act (44.U.S.C. Chapter 35) and have been assigned OMB control number 0579-0040.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, the Animal and Plant Health Inspection Service proposes to amend 9 CFR Part 92 as follows:

1. The authority citation for Part 92 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 92.20, paragraphs (c)(5) and (d) would be revised and the OMB control number would be added at the end of the sector to read as follows:

§ 92.20 Cattle from Canada.

* * * * *

(c) * * *

(5) Female cattle under 18 months of age may be imported without being tested for brucellosis if they meet all of the following conditions: (i) They were born and remained prior to importation in a herd that meets the requirements of paragraphs (c)(1), (c)(2), or (c)(3)(i) of this section; and (ii) They are accompanied by a certificate issued or endorsed by a salaried veterinarian of the Canadian government stating that they were vaccinated against brucellosis, according to Canadian regulations, as follows: (A) After June 30, 1985, while from 4–8 months of age, with a reduced dosage *Brucella* vaccine; or (B) Before January 1, 1986, while from 2–6 months of age if dairy cattle or from 2–10 months of age if beef cattle, with a standard dosage *Brucella* vaccine.

* * * * *

(d) The certificates prescribed in paragraphs (b) and (c) of this section shall state: (1) The names of the consignor and consignee; (2) a description of the cattle to be imported, including the breed, ages, markings, and tattoo and eartag numbers of each animal; (3) the dates and places of each test required by paragraphs (b) and (c) of this section; and (4) the date of vaccination, dosage of vaccine used, and the age of each animal on the date of vaccination for each vaccination conducted in accordance with paragraph (c)(5) of this section.

(Approved by the Office of Management and Budget under control number 0579-0040)

Done in Washington, DC, this 17th day of December, 1986.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 85-28606 Filed 12-19-85; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 70-CE-1-AD]

Airworthiness Directive; Cessna Models T310P, T310Q, 320D, 320E and 320F Airplanes With Teledyne Continental TSIO-520B Engines and Models 401, 401A, 401B, 402, 402A, and 402B Airplanes With Teledyne Continental TSIO-520E Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This revision of AD 70-03-04 will limit the required repetitive inspection of the turbosupercharger turbine housing of those airplanes equipped with the stainless steel turbine heat shields in place of the insulating turbine blanket. This action is being taken because a review has revealed no problems on those airplanes having turbosuperchargers equipped with the stainless heat shields. This revision would limit the required repetitive inspection to those turbosuperchargers equipped with the turbosupercharger turbine blanket.

DATES: Comments must be received on or before January 16, 1987.

ADDRESSES: Cessna Multi-engine Service Letters Nos. ME70-3, dated January 9, 1970, ME70-3 Supplement 1, dated February 9, 1970, and ME72-4, dated March 24, 1972, applicable to this AD may be obtained from the Cessna Aircraft Company, Customer Services, Post Office Box 1521, Wichita, Kansas 67201; or the Rules Docket at the address below. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 70-CE-1-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Charles D. Riddle, Federal Aviation Administration, Wichita Aircraft Certification Office, ACE-140W, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4427.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 70-CE-1-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

AD 70-03-04, applicable to Cessna Models T310P, T310Q, 320D, 320E, and 320F Series airplanes with the Continental Model TSIO-520B engines installed and Models 401, 401A, 401B, 402, 402A, and 402B Series airplanes with the Continental Model TSIO-520E engines installed was published on January 31, 1970 (35 FR 1279) in the **Federal Register**. This AD calls for inspection to detect incipient failure of the turbosupercharger housing installed in the above listed airplanes. This inspection is conducted within 25 hours time-in-service after the effective date of the AD, on airplanes with turbosupercharger turbine housings having 400 hours or more time-in-service (TIS), or at or before 425 hours TIS on turbosupercharger turbine housings having less than 400 hours TIS and thereafter at intervals not to exceed 100

hours TIS, unless already accomplished. The inspection consists basically of removing the engine top cowling and the turbosupercharger turbine insulation blanket and visually inspecting the surface of the turbine housing for cracks, bulging and burned areas. Subsequent to the issuance of AD 70–03–04, the FAA has determined that relief from the repetitive inspection requirements of AD 70–03–04 is in order for those airplanes equipped with stainless steel turbine heat shields.

Prior to 1972 the affected aircraft were manufactured with an insulating blanket covering the turbine housing of the turbosupercharger. Beginning with the 1972 models, the insulation blanket was replaced with stainless steel heat shields. These shields improved the heat dissipation of the turbosupercharger thereby increasing the turbine housing life. Cessna Multi-engine Service Letter ME72–4, dated March 24, 1972, announced the availability of stainless steel heat shields and also recommended that they be installed whenever field replacement of components was required.

A review of service difficulty reports was made pertaining to the turbosupercharger turbine housing. This review did not reveal any problems on those airplanes having turbosuperchargers equipped with the stainless steel heat shields.

In light of the foregoing, the FAA proposes to revise AD 70–03–04 by: (1) Specifying the serial numbered airplanes that had the insulating turbine blanket as original equipment; (2) eliminating any reporting requirements and; (3) deleting repetitive inspections once stainless steel heat shields are installed as field replacements.

Because the potential cost reduction made available by the proposal is small, and the limited number of affected airplanes is distributed among a small number of owners, few if any small entities are expected to experience a significant economic impact as the result of this proposal. Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By revising and reissuing AD 70–03–04 as follows:

Cessna: Applies to the following serial numbered Model T310P, T310Q, 320D, 320E, and 320F airplanes equipped with Teledyne Continental Model TSIO–520B engines, and to the following serial numbered Model 401, 401A, 401B, 402, 402A, and 402B airplanes equipped with Teledyne Continental Model TSIO–520E engines.

Model	Serial No.
T310P	T310P0001 thru T310P0240.
T310Q	T310Q0001 thru T310Q0291.
320D	320D0001 thru 320D0130.
320E	320E0001 thru 320E0110.
320F	320F0001 thru 320F0045.
401	4010001 thru 4010322.
401A	401A0001 thru 401A0132.
401B	401B0001 thru 401B0121.
402	4020001 thru 4020322.
402A	402A0001 thru 402A0129.
402B	402B0001 thru 402B0122.

Compliance: Within 25 hours time-in-service after the effective date of this AD, on airplanes with turbosupercharger turbine housings having 400 hours or more time-in-service (TIS), or at or before 425 hours TIS on turbosupercharger turbine housings having less than 400 hours TIS and thereafter at intervals not to exceed 100 hours TIS, unless already accomplished.

To detect incipient failure of turbosupercharger turbine housings installed in the above airplanes, accomplish the following:

(a) Remove the engine top cowling and the turbosupercharger turbine insulation blanket and visually inspect the complete surface of the turbine housing of the TCM turbosupercharger assembly P/N 632729 (AID P/N 406610) for cracks, bulges and burnt areas. Remove and reinstall the turbosupercharger insulation blanket in accordance with applicable Cessna Service Manuals.

(b) If cracks, bulges or burnt areas are found during the inspection required by paragraph (a) of this AD, prior to further flight replace the defective part with an airworthy part.

(c) Replacement of the turbosupercharger turbine insulation blanket with stainless steel heat shields in accordance with Cessna Multi-Engine Service Letter ME 72–4, dated March 24, 1972, will terminate further time interval repetitive inspections required by this AD. However, the inspection cited in paragraph (a) above and any necessary corrective action in paragraph (b) above must be completed at the time of the heat shield installation.

(d) Any equivalent method of compliance with this AD, if used, must be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Cessna Aircraft Company, Customer Services, Post Office Box 1521, Wichita, Kansas 67201; or the FAA, Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Note 1.—Cessna Multi-engine Service Letter No. ME70–3, dated January 9, 1970, ME70–3 Supplement I, dated February 9, 1970, and ME72–4, dated March 24, 1972, relate to this subject.

Note 2.—Time-in-service on turbosupercharger turbine housings may be determined from the engine maintenance records.

Issued in Kansas City, Missouri, on December 2, 1986.

Edwin S. Harris,

Director, Central Region.

[FR Doc. 86–28594 Filed 12–19–86; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 86–AWP–30]

Revision to the Santa Rosa, CA, Control Zone and Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Santa Rosa, California, transition area and provide controlled airspace for aircraft executing a new instrument approach procedure to the Sonoma County airport. This notice also revises the Santa Rosa control zone and deletes any reference to the Santa Rosa Coddington Airport which no longer exists.

DATES: Comments must be received on or before February 5, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace and Procedures Branch, AWP–530, Docket No. 86–AWP–30, Air Traffic Division, P.O. Box 90027, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6W14, 15000 Aviation Boulevard, Lawndale, California.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace and Procedures Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Frank T. Torikai, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP–530, Air Traffic Division, Western Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90260, telephone (213) 297–1648.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86–AWP–30." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Airspace and Procedures Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90260, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace and Procedures Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of the NPRM. Person interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to §§ 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Santa Rosa, California, control zone and transition area. Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore — (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Transition areas.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Santa Rosa, CA—[Revised]

Within a 5-mile radius of Sonoma County Airport (lat. 38°30'33" N., long. 122°48'42" W.). This control zone shall be effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/ Facility Directory.

§ 71.181 [Amended]

3. Section 71.181 is amended as follows:

That airspace extending upward from 700 feet above the surface bounded by a line beginning at lat. 38°54'45" N., long. 122°52'33" W.; to lat. 38°27'00" N., long. 122°39'05" W., to lat. 38°22'45" N., long. 122°52'22" W.; to lat. 38°49'30" N., long. 123°08'28" W.; thence to the point of beginning.

Issued in Los Angeles, California, on December 11, 1986.

Wayne C. Newcomb,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 86–28584 Filed 12–19–86; 8:45 am]

BILLING CODE 4910–13–M

POSTAL SERVICE

39 CFR Part 111

Supplements to Second-Class Publications; Extension of Time for Comment

AGENCY: Postal Service.

ACTION: Proposed rule; extension of time.

SUMMARY: On December 12, 1986, the Postal Service published in the **Federal Register** (51 FR 44801) a proposed rule change intended to clarify and improve current postal regulations and procedures concerning the mailing of supplements to second-class publications. The Postal Service requested comments on the proposed rule change on or before January 11, 1987.

Certain mailer representatives requested a fifteen day extension of the comment period in order to make a more complete assessment of the proposal and its potential effects.

The Postal Service believes that the requested extension is reasonable and will serve the public interest in this case. Accordingly, the Postal Service is extending the deadline for comments on the proposed rule change until January 26, 1987.

DATE: Comments on the proposed rule change must be received on or before January 26, 1987.

ADDRESS: Written comments should be mailed or delivered to the Director, Office of Classification and Rates Administration, U.S. Postal Service, 475 L'Enfant Plaza West, SW., Washington, DC 20260–5360. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, in Room 8430, at the above address.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Young (202) 268–5321.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 86–28636 Filed 12–19–86; 8:45 am]

BILLING CODE 7710–12–M

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39 CFR Part 111

Solicitations in the Guise of Bills, Invoices, or Statements of Account

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposal would amend the regulation implementing statutory provisions on the mailing of solicitations in the guise of bills, invoices, or statements of account. It would clarify an existing regulation by removing possible ambiguity and make more specific and prominent a required warning regarding the true nature of solicitations which resemble bills.

DATE: Comments must be received on or before January 21, 1987.

ADDRESS: Written comments should be directed to the Assistant General Counsel, Consumer Protection Division, Law Department, U.S. Postal Service, Washington, DC 20260–1112. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday in Room 6319, U.S. Postal Service Headquarters, 475 L'Enfant Plaza SW., Washington, DC 20260–1112.

FOR FURTHER INFORMATION CONTACT: George C. Davis, (202) 268–3076.

SUPPLEMENTARY INFORMATION: Under 39 U.S.C. 3001(d) and implementing postal regulations, i.e., the Domestic Mail Manual, a solicitation in the guise of a bill, invoice, or statement of account is "nonmailable" unless certain warnings are printed on its face making it clear that the solicitation is merely an offer and not a bill that has to be paid. These warnings must be in capital letters of a color prominently contrasting with the background against which they appear.

These regulations specify alternative methods of displaying these warnings. One alternative is to center the warning diagonally across the face of the solicitation. However, experience with the part of the regulation that provides this alternative suggests that it is potentially ambiguous, and that the warning would be more effective if placed close to every part of the solicitation which could be construed as specifying a monetary amount due and owing by the recipient.

In addition, some solicitations have been printed with the warning in ink that does not duplicate on ordinary office copiers, reducing the likelihood that bookkeeping personnel will be made aware of the true nature of the solicitation.

Consequently, the Postal Service proposes to revise the requirement concerning the placement of the warning, in order to improve the likelihood that recipients understand they have received solicitations and not bills; and to add the requirement the warning be printed in ink that does duplicate on ordinary office copiers.

In view of the above, the Postal Service invites comment on the following proposed revisions to the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 404, 407, 408, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. Revise 123.4 to read as follows:

123.4 Nonmailable Written, Printed or Graphic Matter Generally.

.41 Solicitations in the Guise of Bills, Invoices, or Statements of Account (39 U.S.C. 3001(d); 39 U.S.C. 3005). Any otherwise mailable matter which reasonably could be considered a bill, invoice, or statement of account due, but is in fact a solicitation for an order, is nonmailable unless it conforms to .41a through .41f below. A nonconforming solicitation constitutes prima facie evidence of violation of 39 U.S.C. 3005. However, compliance with this section will not avoid violation of Section 3005 if any portion of the solicitation or any accompanying information misrepresents a material fact to the addressee. For example, misleading the adressee as to the identity of the sender of the solicitation or as to the nature or extend of the goods or services offered may constitute a violation of section 3005.

a. The solicitation must bear on its face the disclaimer prescribed by 39 U.S.C. 3001(d)(2)(A) or, alternatively, the notice: THIS IS NOT A BILL. THIS IS A SOLICITATION, YOU ARE UNDER NO OBLIGATION TO PAY THE AMOUNT STATED ABOVE UNLESS YOU ACCEPT THIS OFFER. The statutory disclaimer or the alternative notice must be displayed in conspicuous boldface capital letters of a color prominently contrasting (see .41e below) with the background against which it appears, including all other print on the face of the solicitation, and that are at least as large, bold and conspicuous as any other print on the face of the solicitation but not smaller than 30-point type.

b. The notice or disclaimer required by this section must be displayed conspicuously apart from other print on the page immediately below each portion of the solicitation which reasonably could be construed to specify a monetary amount due and payable by the recipient. It must not be preceded, followed, or surrounded by words, symbols, or other matter that reduces its conspicuousness or that introduces, modifies, qualifies, or explains the prescribed text, such as "Legal notice required by law." See example following paragraph f.

c. The notice or disclaimer must not, by folding or any other device, be rendered unintelligible or less prominent than any other information on the face of the solicitation.

d. If a solicitation consists of more than one page or if any page is designed to be separated into portions (e.g., by tearing along a perforated line), the notice or disclaimer required by this section must be displayed in its entirety on the face of each page or portion of a page that might reasonably be considered a bill, invoice, or statement of account due as required by paragraphs .41a and .41b, *supra*.

e. For purposes of this section, the phrase "color prominently contrasting" excludes any color, or any intensity of an otherwise included color, which does not permit legible reproduction by ordinary office photocopying equipment used under normal operating conditions, and which is not at least as vivid as any other color on the face of the solicitation. For the purposes of this section the term "color" includes black.

f. Any solicitation which states that it has been approved by the Postal Service or by the Postmaster General or that it conforms to any postal law or regulation is nonmailable.

An appropriate amendment to 39 CFR Part 111 to reflect these changes will be published if the proposal is adopted.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 86–28604 Filed 12–19–86; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 264, and 270

[SW FRL 3131–1]

Hazardous Waste Management System; Standards for Owners and Operators of Miscellaneous Units

AGENCY: Environmental Protection Agency (EPA).

EXAMPLE

SOLICITATIONS INCORPORATED

RETAIL STORES

CAR-RT-SORT
** CR 43
RETAIL STORE
1515 MAIN STREET
ANYWHERE, USA

___ CHECK ENCLOSED
___ BILL ME LATER

X_____
SIGNATURE

IMPORTANT THIS FORM MUST BE RETURNED TO ENSURE YOUR CORRECT DIRECTORY LISTING. Please correct listing and ZIP Code if necessary.

FOLD HERE

MAKE CHECK PAYABLE TO: Solicitations Incorporated, P.O. Box 10000, City, State, ZIP Code

BUSINESS LISTINGS TO APPEAR IN THE 1987 SOLICITATIONS INCORPORATED DIRECTORY

AMOUNT $50.00 FOR EACH LISTING.

THIS IS NOT A BILL.
THIS IS A SOLICITATION.
YOU ARE UNDER NO OBLIGATION
TO PAY THE AMOUNT STATED ABOVE
UNLESS YOU ACCEPT THIS OFFER.

ACTION: Extension of the comment period.

SUMMARY: The purpose of this notice is to announce a 30 day extension to the comment period for the proposed rule published on November 7, 1986 (51 FR 40728). The Environmental Protection Agency (EPA) proposed a new set of standards under Subpart X of Part 264 that are applicable to owners and operators of new and existing hazardous waste management units not covered under existing regulations. EPA has received a request to extend the comment period that currently ends on December 22, 1986, because of the complexity of the proposed rule. However, in view of the need to finalize the rule as quickly as possible we will extend the period by only 30 days.

DATES: The Agency will accept comments on the proposed rule on or before January 21, 1987.

ADDRESSES: Send original comments plus two copies to: Docket Clerk, Office of Solid Waste (WH–562), U.S. Environmental Agency, 401 M Street SW., Washington, DC 20460. Comments should be identified as follows: F–86–SPXX–FFFFF.

The public docket for this proposed rule is located at the U.S. Environmental Protection Agency, in room MLG100, 401 M Street SW., Washington, DC, and is available for viewing from 9:00 a.m. to 3:30 p.m., Monday through Friday, excluding holidays. Call Mia Zmud at (202) 475–9327 or Kate Blow at (202) 382–4675 for appointments.

FOR FURTHER INFORMATION CONTACT: OSSI MEYN (202) 382–7597 or RCRA Hotline at (800) 424–9346 (in Washington, DC, call (202) 382–3000).

Dated: December 16, 1986.

J.W. McGraw,

Acting Assistant Administrator.

[FR Doc. 86–28678 Filed 12–19–86 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR PART 160

[CGD 81–010]

Servicing of Inflatable Liferafts; Notice of Public Meeting and Extension of Comment Period

AGENCY: Coast Guard, DOT.

ACTION: Advance notice of proposed rulemaking: Notice of public meeting and extension of comment period.

SUMMARY: This is a notification to the public that the Coast Guard will hold a public meeting to discuss some of the issues raised by its Advance Notice of Proposed Rulemaking (ANPRM) published on August 14, 1986. This ANPRM generated comments from all facets of the industry. The responses were mixed, raising new issues, and some of the respondents requested a public meeting. Accordingly, the Coast Guard has extended the comment period to February 10, 1987, and will hold a public meeting to allow participants to present data, views, and comments, on the issues.

DATES: 1. *Comment Period:* The comment period is hereby extended until February 10, 1987.

2. *Meeting:* The public meeting will be held on January 27, 1987.

3. Notice of attendance to the officer listed in **FOR FURTHER INFORMATION CONTACT** should be received by January 16, 1987.

ADDRESSES: 1. The public meeting will be held in room 2415, at U.S. Coast Guard Headquarters, 2100 Second St. SW., Washington, DC, 20593, from 9:30 a.m. to 3:00 p.m.

FOR FURTHER INFORMATION CONTACT: LCDR Timothy M. Keegan, Office of Marine Safety, Security and Environmental Protection (G-MVI-3/14), U.S. Coast Guard Headquarters, 2100 Second St. SW., Washington, DC 20593, Telephone: (202) 267-1444. Normal office hours are between 7:00 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: On August 14, 1986, the Coast Guard published an ANPRM (51 FR 29117) that discussed a proposed revision to the regulations governing the servicing of Coast Guard approved inflatable liferafts used on U.S. inspected merchant vessels. The Coast Guard invited the public to participate in the earliest stages of this rule making by submitting written views, data or arguments. The Coast Guard also agreed to hold a public meeting, at a time and place to be set in a later notice in the **Federal Register**, if it was requested by a sufficient number of interested persons raising genuine issues and the Coast Guard determined that an opportunity to make oral presentations will aid in the rule making process. Since issues were raised and requests for the public meeting were received, the Coast Guard will hold the public meeting on the date, time, and at the place discussed above. It is requested that all persons interested in attending make their plans known as indicated above.

The Coast Guard intends to limit the discussions at the public meeting to the issues presented in the ANPRM and the following new issues presented by a number of commentors:

a. The training and use of vessel or MODU personnel as manufacturer authorized servicing technicians.

b. The authority to replace, during the annual servicing of an inflatable liferaft outside the continental United States, damaged or expired Coast Guard approved containers of water, provisions, and pyrotechnics with similar equipment approved by another flag state signatory to SOLAS.

c. The extent of authority or influence the manufacturers should have in the selection and retention of servicing facilities authorized to service their inflatable liferafts.

J.W. Kime,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

December 17, 1986.

[FR Doc. 86-28628 Filed 12-19-86; 8:45 am]

BILLING CODE 4910-14-M

Notices

Federal Register
Vol. 51, No. 245
Monday, December 22, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-122-605]

Initiation of Antidumping Duty Investigation; Color Picture Tubes from Canada

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether color picture tubes from Canada are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before January 12, 1987, and we will make ours on or before May 5, 1987.

EFFECTIVE DATE: December 22, 1986.

FOR FURTHER INFORMATION CONTACT: John Brinkmann, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave. NW., Washington, DC 20230; telephone (202) 377-3965.

SUPPLEMENTARY INFORMATION:

The Petition

On November 26, 1986, we received a petition in proper form filed by: The International Association of Machinists and Aerospace Workers; International Brotherhood of Electrical Workers; International Union of Electronics, Electrical, Technical, Salaried & Machine Workers, AFL-CIO-CLC; United Steelworkers of America, AFL-CIO; Industrial Union Department, AFL-CIO. In compliance with the filing requirements of §353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Canada are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury to a United States industry.

Petitioners based foreign market value on the delivered sales price of color picture tubes sold to original equipment manufacturers in Canada.

Petitioners based United States price on the weighted-average f.o.b. import price of Canadian color picture tubes derived from both Department of Commerce import statistics and price quotes to United States color picture tube manufacturers.

Based on the above comparisons, petitioners allege dumping margins of 4.62 to 12.78 percent.

After analysis of petitioners' allegations and supporting data, we conclude that a formal investigation is warranted.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioners supporting the allegations.

We examined the petition on color picture tubes and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether the merchandise subject to this investigation from Canada is being, or is likely to be, sold in the United States at less than fair value.

If our investigation proceeds normally, we will make our preliminary determination no later than May 5, 1987.

Scope of Investigation

The products covered by this investigation are color picture tubes which are provided for the Tariff Schedules of the United States Annotated (TSUSA) items 687.3512, 687.3513, 687.3514, 687.3516, 687.3518, 687.3520.

Color picture tubes are defined as cathode ray tubes suitable for use in the manufacture of color television receivers or other color entertainment display devices intended for television viewing.

Petitioners have also requested that the Department examine color picture tubes which are imported as part of color television receiver kits which contain all parts necessary for assembly into complete television receivers, or as part of an incomplete television receiver assembly that has a color picture tube as well as additional components. Color television receiver kits are provided for in TSUSA item 684.9655, while incomplete television receiver assemblies are provided for in TSUSA items 684.9656, 684.9658, and 684.9660. In accordance with petitioners' request, we are tentatively including color picture tubes in these kits and assemblies in the scope of this investigation. In the course of this proceeding we will determine whether to continue to include imports of picture tubes in these kits and assemblies in the scope of this investigation.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will also allow the ITC access to all privileged and business proprietary information in our files, provided it confirms that it will not disclose such information either publicly or under administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by January 12, 1987, whether there is a reasonable indication that imports of the merchandise subject to this investigation from Canada are causing material injury, or threaten material injury, to a United States industry. If its determination is negative, the investigation will terminate; otherwise,

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it will proceed according to the statutory procedures.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

December 16, 1986.

[FR Doc. 86-28653 Filed 12-19-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-609]

Initiation of Antidumping Duty Investigation; Color Picture Tubes From Japan

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether color picture tubes from Japan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before January 12, 1987, and we will make ours on or before May 5, 1987.

EFFECTIVE DATE: December 22, 1986.

FOR FURTHER INFORMATION CONTACT: John Brinkmann, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-3965.

SUPPLEMENTARY INFORMATION:

The Petition

On November 26, 1986, we received a petition in proper form filed by: The International Association of Machinists and Aerospace Workers; International Brotherhood of Electrical Workers; International Union of Electronic, Electrical, Technical, Salaried & Machine Workers, AFL-CIO-CLC; United Steelworkers of America, AFL-CIO; Industrial Union Department, AFL-CIO. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry.

Petitioners based foreign market value on the delivered sales price of color price tubes sold to original equipment manufacturers in Japan.

Petitioners based United States price on the weighted-average f.o.b. import price of Japanese color picture tubes derived from both Department of Commerce import statistics and price quotes to United States color picture tube manufacturers.

Based on the above comparisons, petitioners allege dumping margins of 17.95 to 44.11 percent.

After analysis of petitioners' allegations and supporting data, we conclude that a formal investigation is warranted.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioners supporting the allegations.

We examined the petition on color picture tubes and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether the merchandise subject to this investigation from Japan is being, or is likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination no later than May 5, 1987.

Scope of Investigations

The products covered by this investigation are color picture tubes which are provided for in the Tariff Schedules of the United States Annotated (TSUSA) items 687.3512, 687.3513, 687.3514, 687.3516, 687.3518, and 687.3520.

Color picture tubes are defined as cathode ray tubes suitable for use in the manufacture of color television receivers or other color entertainment display devices intended for television viewing.

Petitioners have also requested that the Department examine color picture tubes which are imported as part of color television receiver kits which contain all parts necessary for assembly into complete television receivers, or as part of an incomplete television receiver assembly that has a color picture tube as well as additional components. Color television receiver kits are provided for in TSUSA item 684.9655, while incomplete television receiver assemblies are provided for in TSUSA items 684.9656, 684.9658 and 684.9660. In accordance with petitioners' request, we are tentatively including color picture tubes in these kits and assemblies in the scope of this investigation. In the course of this proceeding we will determine whether to continue to include imports of color picture tubes in these kits and assemblies in the scope of this investigation. Should we determine such imports fall within the scope of this investigation, we will resolve the issue of any potential overlap in coverage resulting from the outstanding antidumping duty order on television receiving sets from Japan (36 FR 4597, March 10, 1971).

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will also allow the ITC access to all privileged and business proprietary information in our files, provided it confirms that it will not disclose such information either publicly or under administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by January 12, 1987, whether there is a reasonable indication that imports of the merchandise subject to this investigation from Japan are causing material injury, or threaten material injury, to a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

December 16, 1986.

[FR Doc. 85-28654 Filed 12-19-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-605]

Initiation of Antidumping Duty Investigation; Color Picture Tubes From the Republic of Korea

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether color picture tubes from the Republic of Korea (Korea) are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before January 12, 1987, and we will make ours on or before May 5, 1987.

EFFECTIVE DATE: December 22, 1986.

FOR FURTHER INFORMATION CONTACT: John Brinkmann, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-3965.

SUPPLEMENTARY INFORMATION:

The Petition

On November 26, 1986, we received a petition in proper form filed by: The International Association of Machinists and Aerospace Workers; International Brotherhood of Electrical Workers; International Union of Electronic, Electrical, Technical, Salaried & Machine Workers, AFL-CIO-CLC; United Steelworkers of America, AFL-CIO; Industrial Union Department, AFL-CIO. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Korea are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry.

Petitioners based foreign market value on the constructed value of CPTs in Korea since they are unable to obtain home market or third country prices. Constructed value was calculated using Unites States producers' cost of producing CPTs, adjusted for Korean material and labor costs. The statutory minimum of 10 percent for general, selling and administrative expenses and 8 percent for profit were used.

Petitioners based United States price on the weighted-average f.o.b. import price of Korean color picture tubes derived from Department of Commerce import statistics and price quotes to United States color picture tube manufacturers.

Based on the above comparisons, petitoners allege dumping margins of 7.91 to 50.57 percent.

After analysis of petitioners' allegations and supporting data, we conclude that a formal investigation is warranted.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioners supporting the allegations.

We examined the petition on color picture tubes and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether the merchandise subject to this investigation from Korea is being, or is likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminaty determination no later than May 5, 1987.

Scope of Investigation

The products covered by this investigation are color picture tubes which are provided for in the Tariff Schecules of the United States Annotated (TSUSA) items 687.3512, 687.3513, 687.3514, 687.3516, 687.3518, and 687.3520.

Color picture tubes are defined as cathode ray tubes suitable for use in the manufacture of color television receivers or other color entertainment display devices intended for television viewing.

Petitioners have also requested that the Department examine color picture tubes which are imported as part of color television receiver kits which contain all parts necessary for assembly into complete television receivers, or as part of an incomplete television receiver assembly that has a color picture tube as well as additional components. Color television receiver kits are provided for in TSUSA item 684.9655, while incomplete television receiver assemblies are provided for in TSUSA items 684.9656, 684.9658 and 684.9660. In accordance with petitioners' requests, we are tentatively including color picture tubes in these kits and assemblies in the scope of this investigation. In the course of this proceeding we will determine whether to continue to include imports of color picture tubes in these kits and assemblies in the scope of this investigation. Should we determine such imports fall within the scope of this investigation, we will resolve the issue of any potential overlap in coverage resulting from the outstanding antidumping duty order on color television receivers from Korea (49 FR 18336, April 30, 1984.)

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will also allow the ITC access to all privileged and business proprietary information in our files, provided it confirms that it will not disclose such information either publicly or under administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by January 12, 1987, whether there is a reasonable indication that imports of the merchandise subject to this investigation from Korea are causing material injury, or threaten material injury, to a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

December 16, 1986.

[FR Doc. 86-28655 Filed 12-19-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-559-601]

Initiation of Antidumping Duty Investigation; Color Picture Tubes From Singapore

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether color picture tubes from Singapore are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before January 12, 1987, and we will make ours on or before May 5, 1987.

EFFECTIVE DATE: December 22, 1986.

FOR FURTHER INFORMATION CONTACT: John Brinkmann, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377–3965.

SUPPLEMENTARY INFORMATION:

The Petition

On November 26, 1986, we received a petition in proper form filed by: The International Association of Machinists and Aerospace Workers; International Brotherhood of Electrical Workers; International Union of Electronic, Electrical, Technical, Salaried & Machine Workers, AFL–CIO–CLC; United Steelworkers of America, AFL–CIO; Industrial Union Department, AFL–CIO. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Singapore are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry.

Petitioners based foreign market value on the constructed value of color picture tubes in Singapore since they were unable to obtain home market or third country prices. Constructed value was calculated using United States producers' cost of producing color picture tubes, adjusted for Singapore material and labor costs. The statutory minimum of 10 percent for general, selling and administrative expenses and 8 percent for profit were used.

Petitioners also calculated a foreign market value by applying the "special rule for certain multinational corporations" contained in section 773(d) of the Act, 19 U.S.C. 1677b(d). In this instance, the delivered sales prices of color picture tubes sold to original equipment manufacturers in Japan, by the Singapore producer's related affiliate in Japan, were used as the basis for foreign market value.

Petitioners based United States price on the weighted-average f.o.b. import price of Singapore color picture tubes derived from both Department of Commerce import statistics and price quotes to United States color picture tube manufacturers.

Based on the above comparisons, petitioners allege dumping margins of 19 to 94.39 percent.

After analysis of petitioners' allegations and supporting data, we conclude that a formal investigation is warranted.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioners supporting the allegations.

We examined the petition on color picture tubes and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether the merchandise subject to this investigation from Singapore is being, or is likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination no later than May 5, 1987.

Scope of Investigation

The products covered by this investigation are color picture tubes which are provided for in the Tariff Schedules of the United States Annotated (TSUSA), items 687.3512, 687.3513, 687.3514, 687.3516, 687.3518, and 687.3520.

Color picture tubes are defined as cathode ray tubes suitable for use in the manufacture of color television receivers or other color entertainment display devices intended for television viewing.

Petitioners have also requested that the Department examine color picture tubes which are imported as part of color television receiver kits which contain all parts necessary for assembly into complete television receivers, or as part of an incomplete television receiver assembly that has a color picture tube as well as additional components. Color television receiver kits are provided for in TSUSA items 684.9655, while incomplete television receiver assemblies are provided for in TSUSA items 684.9656, 684.9658, and 684.9660. In accordance with petitioners' request, we are tentatively including color pictures tubes in these kits and assemblies in the scope of this investigation. In the course of this proceeding, we will determine whether to continue to include imports of color picture tubes in these kits and assemblies in the scope of this investigation.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will also allow the ITC access to all privileged and business proprietary information in our files, provided it confirms that it will not disclose such information either publicly or under administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by January 12, 1987, whether there is a reasonable indication that imports of the merchandise subject to this investigation from Singapore are causing material injury, or threaten material injury, to a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

December 16, 1986.

[FR Doc. 86–28656 Filed 12–19–86; 8:45 am]

BILLING CODE 3510–DS–M

[C-533-063]

Certain Iron-Metal Castings From India; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Final Results of Countervailing Duty Administrative Review.

SUMMARY: On October 7, 1986, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on certain iron-metal castings from India. The review covers the period January 1, 1984 through December 31, 1984 and ten programs.

We gave interested parties an opportunity to comment on the preliminary results. After reviewing all of the comments received, we have determined the net subsidy for the period of review to be 8.08 percent *ad valorem.*

EFFECTIVE DATE: December 22, 1986.

FOR FURTHER INFORMATION CONTACT: Susan Silver or Paul McGarr, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On October 7, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 35676) the preliminary results of its administrative review of the countervailing duty order on certain iron-metal castings from India (October 16, 1980, 46 FR 16921). We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Indian manhole covers and frames, clean-out covers and frames, and catch basin grates and frames. Such merchandise is currently classifiable under items 657.0950 and 657.0990 of the Tariff Schedules of the United States Annotated.

The review covers the period January 1, 1984 through December 31, 1984 and ten programs: (1) The International Price Reimbursement Scheme ("IPRS"); (2) a rebate upon export of indirect taxes under the Cash Compensatory Support program ("CCS"); (3) pre-shipment export loans; (4) income tax deductions; (5) grants through the Market Development Assistance program; (6) the sale of Import Replenishment Licenses; (7) extension of the free trade zones; (8) supply of raw materials at preferential prices; (9) preferential freight rates; and (10) import duty exemptions available to 100 percent export-oriented units.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. At the request of the petitioner, Pinkerton Foundry, Inc., and other domestic producers of certain iron metal castings ("the domestic industry"), and the responding exporters, RSI (India) Pvt., Ltd., Kajaria Castings Pvt., Ltd., Kejriwal Iron & Steel Works, Serampore Industries Pvt., Ltd., Uma Iron & Steel Co., Commex Corp., Govind Steel Co., and East Coast Manufacturing & Marketing Pvt., Ltd. ("the exporters"), we held a public hearing on November 6, 1986.

Comment 1: The exporters argue that the IPRS program is not a subsidy because: (1) The program is the functional equivalent of a duty drawback system and does not distort the market process "by artificially increasing revenues or decreasing costs," part of the definition of a countervailable subsidy described in "Identifying and Measuring Subsidies Under the Countervailing Duty Law" (from the publication the *Commerce Department Speaks on Import Administration and Export Administration 1984,* PLI 1984 at 315); (2) the IPRS is consistent with the substance, if not the letter, of item (d) of the Illustrative List of Export Subsidies annexed to the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade ("the Subsidies Code") and the precedents established in *Certain Steel Wire Nails from Korea,* (47 FR 39549, September 8, 1982) and *Oil Country Tubular Goods from Taiwan* (51 FR 19583; May 30, 1986); (3) the Illustrative List cannot be disregarded in the context of countervailing duty cases since there is no distinction between countervailing duty and dispute settlement provisions in the Subsidies Code, and because section 771(5) of the Tariff Act incorporates the Illustrative List into its definition of subsidies; and (4) the GATT (General Agreement on Tariffs and Trade) draft panel report on pasta, which concerned restitution payments under the Common Agricultural Policy ("CAP") of the European Community, is inapposite because the CAP is a comprehensive, market regulating system that functions differently from the IPRS.

Department's Position: We disagree. Given the facts of how the IPRS program operates, we cannot conclude that the IPRS rebates only the difference between domestic and international prices for pig iron consumed in castings exports. The international price used to calculate the rebate is based on a government contract purchase price for pig iron from an earlier period, and we do not know to what extent it reflects current international prices for pig iron. In addition, the rebate formula is based on a standard factor of 70 percent of the exported castings by weight (110 percent during the latter part of the review period), *i.e.*, the rebate was calculated as if pig iron constituted 70 percent of the total volume of pig iron and scrap consumed in the manufacture of castings. Among the exporters we verified, however, we found that the actual consumption of pig iron was significantly lower than this standard factor.

In the precedents concerning exports from Korea and Taiwan cited by the exporters, we determined that the two-tier pricing policies of producers of the relevant input (depending on whether the input was used for domestic or export sale) were commercial responses to segmented markets and the price differentials were a direct function of the amount of import duties on the input. In India, the Joint Plant Committee, a government-directed organization comprised largely of pig iron and steel producers, regulates the domestic pig iron price and determines the rate of rebate, with no apparent relationship existing between the amount of rebate and the actual consumption of pig iron.

Because of these difficulties, we cannot determine whether the IPRS is non-distortive of market forces, a functional equivalent of duty drawback, or consistent with item (d) of the Illustrative List.

Therefore, we have determined that the IPRS rebate is a direct export subsidy and countervailable in its entirety.

Comment 2: The domestic industry maintains that, because the exporters submitted a deficient response, the Department should use the best information available with respect to the IPRS program. In particular, the domestic industry (citing examples from the verification report) noted that: (1) The questionnaire response did not include the value of all IPRS rebates received as well as the date of application, receipt and use of those rebates (*e.g.*, RSI failed to report a claim received during 1984, and Govind failed to report any claims or payments made during 1984); (2) merchant exporters failed to provide complete information regarding the IPRS benefits received by both manufacturer and exporter, which led to the underreporting of such countervailable benefits (*e.g.*, Kajaria did not report the IPRS benefits received by its supplier; Commex failed to report the benefits it received from Uma, its manufacturer; and East Coast reported no benefits at all); (3) the exporters failed to establish any correlation between the date that IPRS payments are received and the date that castings

are exported, without which the Department cannot be sure it has complete information with regard to the total amount of IPRS benefits received. Failure to use the best information available under these circumstances would reward the exporters for lack of cooperation and incomplete questionnaire responses.

The exporters claim that, if the Department considers the IPRS to be a subsidy, it should revise its calculations for three companies because their reported IPRS benefits were based on their total castings exports, not just the castings subject to the order. Since the exporters raised this issue for the first time at the hearing, the domestic industry objects to such a revision because it would be based on untimely and inverified information.

Department's Postion: We consider the data we received sufficient with respect to the IPRS program and are, therefore, not resorting to the best information othewise available in calculating the country-wide rate. With the excepton of the IPRS benefits received by Kajaria's supplier, the deficiencies in the response were corrected during verification.

We were able to determine at verification all of RSI's IPRS receipts during 1984. We also verified that Govind did not receive any IPRS payments in 1984. The merchant exporter, Uma, Commex' supplier, reported the benefits it had received, and Commex was able to demonstrate the amount it received from Uma. We considered the IPRS benefits received by both Uma and Commex in the calculation of the country-wide IPRS benefit for the review period. Because Kajaria was unable to provide information concerning the IPRS benefit received by its supplier, we have increased the amount attributed to castings exported by Kajaria. We based this adjustment on the average differential between the domestic and "international" prices for pig iron that were used when calculating the IPRS benefit. We multiplied this differential by 70 percent of the total tonnage of castings exported to the United States by Kajaria and divided the result in half, since this was the average percentage of the benefit passed from manufacturer to exporter that we verified with other suppliers/exporters. We also revised the calculations for Serampore by allocating the IPRS benefits over its total exports of castings because we verified that this was the basis used for reporting the company's benefits. In calculating the benefit from the IPRS program, we weighted each company's *ad valorem* benefit by its share of exports to the United States, excluding East Coast (see explanation in the response to Comment 10), and we now find the 1984 benefit from the IPRS program to be 7.31 percent *ad valorem*.

Comment 3: The exporters argue that the benefit from the IPRS program is overstated, claiming that it should be offset by the cost of the Rs. 75/metric ton for the Engineering Goods Export Assistance Fund ("EGEAF") levy collected on purchases of pig iron.

Department's Position: We disagree. The EGEAF levy is a tax paid by all consumers of pig iron, not just exporters. It is not a payment required to qualify for the IPRS benefit and, therefore, does not constitute an offset to the IPRS benefit as defined in section 771(6) of the Tariff Act.

Comment 4: The domestic industry claims that, in calculating the permissible amount of the indirect tax rebate in its determination on the CCS program, the Department overstated the average indirect tax incidence per metric ton of finished castings by using the gross price of pig iron. Since the IPRS rebate effectively lowers the price of pig iron, the Department should use the net price of pig iron, after the IPRS payments have been deducted, when calculating the indirect tax incidence on castings.

Department's Position: We disagree. We verified that exporters paid indirect taxes on the published (gross) price of pig iron, not on the net price. Therefore, the basis for our calculation of indirect tax incidence is correct.

Comment 5: The domestic industry argues that the administrative record does not show that castings exporters paid the Freight Equalization Fund ("FEF") levy during the review period. Therefore, the Department should not include the levy as an allowable indirect tax in its CCS rebate calculations.

The Department verified that the EGEAF levy was not collected between April 1982 and June 1984. Since the FEF levy and excise duties are, along with the EGEAF levy, elements included in the pig iron price, it is probable that they were not collected as well. Therefore, these taxes should not be considered an allowable part of the CCS rebate to castings exporters during calendar year 1984.

Department's Position: We disagree. The domestic industry has erroneously assumed that, because EGEAG levies were not collected through June 1984, the FEF levies were also not collected for the same period. The FEF levy was included in the price of pig iron, and we have correctly included the FEF levy as an allowable tax in the CCS rebate.

Comment 6: The exporters claim that the Department overstated the benefit from the pre-shipment financing program by using an incorrect commercial benchmark of 18 percent to calculate the benefit. The commercial rate which the Department verified varied between 16.5 percent and 18 percent during 1984, depending on the level of borrowing. Using the maximum rate penalizes the exporters for no reason, and the Department should instead have used an average rate of 17.25 percent.

Department's Position: We chose a commerical benchmark of 18 percent because we were not able to verify with any accuracy a national average interest rate for short-term commercial loans. Information obtained from commercial banks indicates that rates on non-preferential loans ranged between 16.5 and 18 percent, depending on the size of the loan. We chose the high end of the range for short-term financing because we could not know what the rate would be to the exporters.

Comment 7: The exporters argue that the Department should deduct the cost of export credit insurance from the benefit received under pre-shipment financing because the cost to credit insurance is mandatory in order to receive the pre-shipment financing.

Department's Position: We disagree. The cost of export credit insurance is not an offset to a benefit as defined by section 771(6)(A) of the Tariff Act. Credit insurance is part of the cost of obtaining pre-shipment financing and, as such, would be part of the calculation of the effective interest on these loans. However, we lack sufficient information to determine an effective interest rate benchmark. Therefore, we can only compare a nominal interest rate benchmark to a nominal preferential interest rate.

Comment 8: The domestic industry claims that the Department erroneously determined that the exporters did not use Market Development Assistance ("MDA") grants during 1984. The domestic industry had specifically requested that the Department verify the receipt of a grant by S–K Iron Foundry & Engineering Company received in 1983, yet the Department failed to verify this company.

Department's Position: We received questionnaire responses from exporters that covered over 85 percent of exports of the merchandise covered by the order, but S–K Iron Foundry & Engineering Company was not among the respondents. None of the respondents reported receipt of an MDA grant in 1984, and we verified that this was accurate. We also reviewed a statement issued by the Indian Ministry of Commerce that no exporters of this merchandise received MDA grants during 1984.

Comment 9: The domestic industry argues that the Department should establish company-specific rates, rather than a weighted-average country-wide rate, and cites *Phillip Brothers, Inc. v. United States*, 10 CIT, Slip Op. 86–16 at 11 (February 14, 1986), in which the Court required company-specific rates if the company rates were materially different.

The exporters argue that the request for company-specific rates should be denied because it runs counter to the Department's stated policy in setting a country-wide rate. Contrary to the domestic industry's claim, *Phillip Brothers, Inc. v. United States* actually supports country-wide rates and allows company-specific rates only if the differential between the company-rate and the weighted-average rate was significant, a test not met in this case. The Court held that the purpose of the company-specific provision was to allow importers to obtain lower company-specific rates if they bought from less subsidized suppliers, not to allow a U.S. industry to request company-specific rates at its discretion.

Department's Position: We only establish company-specific rates under section 706(a)(2) of the Tariff Act if the rates between companies are significantly different. After recalculating the rates for individual exporters, we find that the rates are not significantly different and will apply countervailing duties on a country-wide basis.

Comment 10: The domestic industry asserts that the responses from Kajaria, Govind, and East Coast are insufficient and contends that, if the Department calculates a weighted-average country-wide rate, the exports from other companies to the United States should not be included in calculating that average.

Department's Position: We used the information from Kajaria and Govind because we remedied the deficiencies at verification. Since we did not verify the response from the East Coast and consider that response inadequate, we have not used the information in that response for calculating the benefits from any of the programs.

Final Results of Review

After considering all of the comments received, we determine that net subsidy for the period January 1, 1984 through December 31, 1984 to be 8.08 percent *ad valorem*.

The Department will instruct the Customs Service to assess countervailing duties of 8.08 percent of the f.o.b. invoice price on all shipments of this merchandise exported on or after January 1, 1984, and on or before December 31, 1984.

The Department will also instruct the Customs Service to collect cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 8.08 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (19 CFR 355.10).

Dated: December 16, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86–28657 Filed 12–19–86; 8:45 am]

BILLING CODE 3510-DS-M

Massachusetts Institute of Technology, Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 86–331. Applicant: Massachusetts Institute of Technology, Cambridge, MA 02139. Instrument: Atom Probe/Field Ion Microscope, Model FIM 100. Manufacturer: VG Scientific Limited, United Kingdom. Intended use: See notice at 51 FR 37623.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument is capable of measuring manganese in the presence of iron and chromium at levels in the 0.5–2% range and provides a guaranteed resolution (full-width half max) of 1000. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–28658 Filed 12–19–86; 8:45 am]

BILLING CODE 3510-DS-M

Purdue University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 86–178. Applicant: Purdue University, West Lafayette, IN 47907. Instrument: Flash Analog to Digital Converter and Computer Interface, Model DL 300. Manufacturer: Dr. B. Struck, West Germany. Intended use: See notice at 51 FR 15821.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument is an accessory which provides a 100 megacycle sampling rate and over 1000 parallel channels for processing sub-atomic collision products. The National Bureau of Standards advises in its memorandum dated October 9, 1986 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–28659 Filed 12–19–86; 8:45 am]

BILLING CODE 3510-DS-M

University of Kansas; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651,

80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 86-334. Applicant: University of Kansas, Lawrence, KS 66045. Instrument: Mass Spectrometer, Model VG Sector with Accessories. Manufacturer: VG Isotopes Limited, United Kingdom. Intended use: See notice at 51 FR 37623.

Comments: None received.

Decision: Approved. No domestic manufacturer was both "able and willing" to manufacture an instrument or apparatus of equivalent scientific value to the foreign instrument for such purposes as the instrument was intended to be used, and have it available to the applicant without unreasonable delay in accordance with § 301.5(d)(2) of the regulations, at the time the foreign instrument was ordered (June 9, 1986).

Reasons: The foreign instrument is equipped with a fully automated multiple (6) collector system capable of providing an external precision on Neodymium (300 ng) of 0.003%. This capability is pertinent to the applicant's intended purposes. We know of no domestic manufacturer both able and willing to provide an instrument with the required features at the time the foreign instrument was ordered.

As to the domestic availability of instruments, § 301.5(d)(2) of the regulations provides that, in determining whether a U.S. manufacturer is able and willing to produce an instrument, and have it available without unreasonable delay, "the normal commercial practices applicable to the production and delivery of instruments of the same general category shall be taken into account, as well as other factors which in the Director's judgment are reasonable to take into account under the circumstances of a particular case." This subsection also provides that, if "a domestic manufacturer was formally requested to bid an instrument, without reference to cost limitations and within a leadtime considered reasonable for the category of instrument involved, and the domestic manufacturer failed formally to respond to the request, for the purposes of this section the domestic manufacturer would not be considered willing to have supplied the instrument."

The regulations require that domestic manufacturers be both "able and willing" to produce an instrument for the purposes of comparison with the foreign instrument. Where an applicant, as in this case, received no bid response to a formal request for quotation sent to the Nuclide Corporation, it is apparent that the domestic manufacturer was either not able or not willing to produce an instrument of equivalent scientific value to the foreign instrument for such purposes as the foreign instrument was intended to be used at the time the foreign instrument was ordered.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-28660 Filed 12-19-86; 8:45 am]

BILLING CODE 3510-DS-M

Veterans Administration Medical Center et al; Application for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a)(3) and (a)(4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 86-321R. Applicant: Veterans Administration Medical Center, Clinical Laboratory (113), 2100 Ridgecrest Drive, SE., Albuquerque, NM 87108. Instrument: Electron Microscope, Model EM-10-CR. Manufacturer: Carl Zeiss Inc., West Germany. INTENDED USE: The instrument is intended to be used for the following ongoing scientific research:

(1) Immunocytochemical investigations of endocrine cells;

(2) Ultrastructural identification of the lymphatic distribution in normal, diseased and neoplastic gastric mucosa;

(3) Immunoelectron-cytochemical marking of lecithins, and

(4) Studies of effects of cis-platinum and the nervous system.

Application received by Commissioner of Customs: September 22, 1986.

Docket Number: 87-053. Applicant: University of Pennsylvania, 415 S. University Avenue, Philadelphia, PA 19104. Instrument: 3-Dimensional Hydraulic Micromanipulator, Model MO-103M-R. Manufacturer: Narishige Scientific Instrument Laboratory, Japan. Intended Use: The instrument will be used in scientific experiment with the aim of understanding the cell—all interaction that occurs during embryonic development. Application Received by Commissioner of Customs: November 24, 1986.

Docket Number: 87-054. Applicant: Howard Hughes Medical Institute, Baylor College of Medicine, HHMI Business Office, room M904, 1200 Moursund Avenue, Houston, TX 77030. Instrument: Mass Spectrometer, Model ZAB-SEQ. Manufacturer: VG Analytical Ltd., United Kingdom. Intended use: The instrument is intended to be used for mass spectrometry in the following studies:

(1) Increased sensitivity of detection of derivatized amino acids cleared from proteins/peptides by the gas phase microsequencer.

(2) Structural identification of unusual amino acids and unknown products from conventional protein/peptide microsequencing.

(3) FAB-ZAB-Q analysis and sequencing of low molecular weight peptides or selectively fragmented proteins in the range of 10,000 to 15,000 daltons, particularly biological proteins available in very small quantities.

(4) Comparison of peptide mixtures of similar or identical composition.

(5) Comparisons of domain structure of hydrolyzed molecules to provide insight into the structural basis of the differences in the size of the polypeptide backbone of various MHC class I molecules.

(6) Improved and more rapid structural analyses of proteins and peptides with blocked amino or carboxy termini.

(7) Comparison of peptides structures for changes in neutral amino acids. Application received by Commissioner of Customs: November 25, 1986.

Docket Number: 87-055. Applicant: Bates College, Chemistry Department, 220 Andrews Road, Lewiston, ME 04240. Instrument: Rapid Kinetics Accessory for UV/VIS Spectrophotometers and Spectrofluorimeters, Model SFA-11. Manufacturer: Hi-Tech Scientific Ltd., United Kingdom. Intended use: The instrument is intended to be used for studies of rapid chemical kinetics reactions in the course Chem 306 Physical Chemistry. Application received by Commissioner of Customs: November 25, 1986.

Docket Number: 87-056. Applicant: Argonne National Laboratory, 9700 South Cass avenue, Argonne, IL 60439-4837. Instrument: EMG-201 Excimer Laser and FL 3002 Dye Laser. Manufacturer: Lambda Physik, West Germany. Intended use: The instrument is intended to be used to provide laser

photothermal (e.g. photoacoustic, thermal lensing, photodeflection) and laser induced fluorescence techniques for characterization of ground water solutions of actinides (e.g. U, Pu, Am, Np). Information generated in the experiments shall provided a data base for thermodynamic properties of these elements under conditions relevant to nuclear waste repositories. Application received by Commissioner of Customs: November 25, 1986.

Docket Number: 87-058. Applicant: Hunter College of the City University of New York and Dormitory Authority, 895 Park Avenue, New York, NY 10021. Instrument: Electron Microscope, Model H-600 with Accessories. Manufacturer: Nissei Sangyo (Hitachi Ltd.), Japan. Intended use: The instrument will be used for studies of a variety of tissues, cells and subcellular structures down to the macromolecular level. The experiments to be conducted include the isolation of subcellular structures by means of fractionation techniques (e.g., microtubule arrays, ribosomes, photosynthetic membranes), the localization and identification of protein components by means of antibody labelling and the monitoring of internal and external cellular structural changes which accompany physiological activities, genetic anomalies and cellular differentiation. In addition, the instrument will be used for teaching purposes in the courses: Cell Fine Structure, Laboratory in Cytology and Fine Structure, Cell Biology, Research Tutorial, Honors Research and Masters and Doctoral Research Tutorials. Application received by Commissioner of Customs: November 26, 1986.

Docket Number: 87-059. Applicant: Hawaii Institute of Geophysics, 2525 Correa Road, Honolulu, HI 96822. Instrument: X-Ray Mode Unit, Model H-7011. Manufacturer: Nissei Sangyo, Japan. Intended use: The instrument is an accessory to an existing electron microscope being used for various associated experiments. Of particular interest are studies of the ultrastructure of organisms and the chemical identity and mineralogy of suspended marine particulates, geothermal deposits and soils. The instrument will also be used to teach practical and theoretical electron microscopy to graduate and exceptional undergraduate students in the course "Analytical Electron Microscopy." Application received by Commissioner of Customs: December 2, 1986.

Docket Number: 87-060. Applicant: Hawaii Institute of Geophysics, 2525 Correa Road, Honolulu, HI 96822. Instrument: EDX Interface Parts Kit, Model H-6015. Manufacturer: Nissei Sangyo, Japan. Intended use: The instrument is an accessory to an existing electron microscope being used for various associated experiments. Of particular interest are studies of the ultrastructure of organisms and the chemical identity and mineralogy of suspended marine particulates, geothermal deposits and soils. The instrument will also be used to teach practical and theoretical electron microscopy to graduate and exceptional undergraduate students in the course "Analytical Electron Microscopy." Application received by Commissioner of Customs: December 2, 1986.

Docket Number: 87-061. Applicant: Hawaii Institute of Geophysics, 2525 Correa Road, Honolulu, HI 96822. Instrument: Digital Scan Interface, Model EMO-0500. Manufacturer: Nissei Sangyo, Japan. Intended use: The instrument is an accessory to an existing electron microscope being used for various associated experiments. Of particular interest are studies of the ultrastructure of organisms and the chemical identity and mineralogy of suspended marine particulates, geothermal deposits and soils. The instrument will also be used to teach practical and theoretical electron microscopy to graduate and exceptional undergraduate students in the course "Analytical Electron Microscopy." Application received by Commissioner of Customs: December 2, 1986.

Docket Number: 87-062. Applicant: University of Florida, Department of Chemistry, Gainesville, FL 32611. Instrument: Nanosecond Fluorescence Spectrometer System 2000. Manufacturer: Photochemical Research Associates, Canada. Intended use: The instrument is intended to be used for the study of molecules which have been specially synthesized to undergo intramolecular excited state electron transfer reactions and for study of the interaction of biologically relevant molecules [amino acids and peptides) with membrane model systems (e.g., surfactant micelles and vesicles. The objectives of the research are: (1) To provide fundamental information regarding the mechanism of charge transfer processes in biological and chemical systems and (2) to understand at a basic level the interaction of biomolecules with lipid membranes. Application received by Commissioner of Customs: December 2, 1986.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-28661 Filed 12-19-86; 8:45 am]

BILLING CODE 3510-DS-M

National Technical Information Service

Intent to Grant Exclusive Patent License, Agri-Tech Industries, Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Agri-Tech Industries, Inc., having a place of business at Gibson City, IL, an exclusive right in the United States and certain foreign countries to manufacture, use and sell products embodied in the inventions entitled "Degradable Starch-Based Agricultural Mulch Films," U.S. Patent 3,949,145, "Biodegradable Starch-Based Films," U.S. Patent 4,133,784 and "Biodegradable Starch-Based Blown Films," U.S. Patent 4,337,181. The patent rights in these inventions have been assigned to the United States of America, as represented by the Secretary of Agriculture.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted within the above specified 60-day period and should be addressed to Douglas J. Campion, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Patent Licensing Specialist, Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 86-28675 Filed 12-19-86; 8:45 am]

BILLING CODE 3510-04-M

Intent To Grant Exclusive Patent License; Coal Dynamics Corp.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Coal Dynamics Corporation, having a place of business at Camp Hill, PA, an exclusive right in the United States to practice methods embodied in the invention entitled "Method for Controlled Burnout of Abandoned Coal Mines and Waste Banks," U.S. Patent 4,387,655. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of the Interior.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted within the above specified 60-day period and should be addressed to Douglas J. Campion, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Patent Licensing Speciolist, Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Informotion Service.

[FR Doc. 86-28676 Filed 12-19-86; 8:45 am]

BILLING CODE 3510-04-M

Intent to Grant Exclusive Patent License, Digital/Analog Design Associates

The National Technical Informaton Service (NTIS), U.S. Department of Commerce, intends to grant to Digital/Analog Design Associates, having a place of business at New York, NY, an exclusive right in the United States to manufacture, use and sell products embodied in the invention entitled "Image Processor," U.S. Patent 4,611,055. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted within the above specified 60-day period and should be addressed to Douglas J. Campion, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Potent Licensing Specialist, U.S. Department of Commerce, Notionol Technical Informotion Service.

[FR Doc. 86-28677 Filed 12-19-86; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Import Restraint Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Costa Rica, Effective on January 1, 1987

December 16, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1987. For further information contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 7 and 8, 1984 between the Governments of the United States and Costa Rica establishes a restraint limit of 2,528,526 dozen for man-made fiber brassieres in Category 649, produced or manufactured in Costa Rica and exported during the twelve-month period beginning on January 1, 1987 and extending through December 31, 1987. The letter to the Commissioner of Customs which follows this notice establishes this limit.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1986).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

William H. Houston III,

Chairman, Committee for the Implementotion of Textile Agreements.

December 16, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Woshington, DC 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 7 and 8, 1984, between the Governments of the United States and Costa Rica; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 649, produced or manufactured in Costa Rica and exported during the twelve-month period which begins on January 1, 1987 and extends through December 31, 1987 in excess of 2,528,526 dozen.

In carrying out this directive, entries of textile products in Category 649, produced or manufactured in Costa Rica, which have been exported to the United States on and after January 1, 1986 and extending through December 31, 1986, shall to the extent of any unfilled balance, be charged against the limit established for such goods during that twelve-month period. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the limit set forth in this letter.

The limit set forth above is subject to adjustment in the future according to the provisions of the bilateral agreement of February 7 and 8, 1984, which provide, in part, that: (1) The specific limit may be increased for carryover and carryforward and (2) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607, December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-28846 Filed 12-19-86; 8:45 am]

BILLING CODE 3510-DR-M

Import Limit for Certain Cotton Textile Products Produced or Manufactured in Haiti

December 16, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on December 22, 1986. For further information contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

Background

A CITA directive dated December 12, 1985 (50 FR 51448) established limits for certain categories of cotton and man-made fiber textile products, including Category 350 (cotton dressing gowns), produced or manufactured in Haiti and exported during the agreement year which began on January 1, 1986 and extends through December 31, 1986.

Effective on December 22, 1986 the limit for Category 350 is being increased from 32,149 dozen to 32,501 dozen by the application of carryover from the previous agreement year, as provided under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 14 and May 4, 1984, between the Government of the United States and Haiti.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textiles Agreements.

December 16, 1986.

Committee For The Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Woshington, DC 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 12, 1985 from the Chairman of the Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton and man-made fiber textile products, produced or manufactured in Haiti and exported during the twelve-month period which began on January 1, 1986.[1]

Effective on December 22, 1986 paragraph 1 of the directive of December 12, 1985 is hereby amended to included an adjusted twelve-month limit of 32,501 dozen [2] for Category 350.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-28846 Filed 12-19-86; 8:45 am]

BILLING CODE 3510-DR-M

Import Restraint Limits for Certain Wool Textile Products From the Hungarian People's Republic Effective on January 1, 1987

December 16, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1987. For further information contact Kathryn Cabral, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

Background

The Bilateral Wool Textile Agreement of February 15 and 25, 1983, as amended, between the Governments of the United States and the Hungarian People's Republic establishes specific limits for wool textile products in Categories 433, 435, 443, 444, 445/446 and 448, produced or manufactured in Hungary and exported during the twelve-month period beginning on January 1, 1987 and extending through December 31, 1987. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of wool textile products in Categories 433, 435, 443, 444, 445/446 and 448 in excess of the designated restraint limits.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26822), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

December 16, 1986.

Committee For the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Woshington, DC 20229.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Wool Textile Agreement of February 15 and 25, 1983, as

[1] The agreement provides, in part, that: (1) Specific limits shall be increased by seven percent annually; (2) a specific limit may be exceeded in any agreement year by not more than seven percent of its square yards equivalent total, provided that the amount of the increase is compensated for by a decreased in equivalent square yards in one or more specific limits; (3) specific limits may also be increased for carryover and carryforward up to 11 percent of the applicable category limit; and (4) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

[2] The limit has not been adjusted to account for any imports exported after December 31, 1985.

amended, between the Governments of the United States and the Hungarian People's Republic; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in the following categories, produced or manufactured in Hungary and exported during the twelve-month period beginning on January 1, 1987 and extending through December 31, 1987, in excess of the following restraint limits:

Category	12-mo. restraint limit (dozen)
433	7,649
435	10,045
443	7,276
444	5,169
445/446	[1] 40,804
448	19,576

[1] Dozen of which not more than 30,603 dozen shall be in Category 445 and not more than 30,603 dozen shall be in Category 446.

In carrying out this directive, entries of wool textile products in the foregoing categories, produced or manufactured in Hungary, which have been exported to the United States on and after January 1, 1986 and extending through December 31, 1986, shall to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during that period. In the event the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter.

The levels set forth above are subject to adjustment in the future pursuant to the provisions of the bilateral agreement of February 17 and 25, 1983, as amended, between the Governments of the United States and the Hungarian People's Republic, which provide, in part, that: (1) With the exception of Category 433, the levels of restraint may be exceeded by not more than five percent during an agreement year provided the increase is compensated for by an equal decrease in equivalent square yards in another specific limit, other than Category 433, (2) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of The United States Annotated (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-28649 Filed 12-19-86; 8:45 am]

BILLING CODE 3510-DR-M

Import Restraint Limits for Certain Cotton Textile Products Produced or Manufactured in Nepal Effective on January 1, 1987

December 16, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1987. For further information contact Ann Fields, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 337-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

Background

The Bilateral Cotton Textile Agreement of May 30 and June 1, 1986 establishes specific import limits for cotton textile products in Categories 377, 340, 341 and 342, produced or manufactured in Nepal and exported during the twelve-month period beginning on January 1, 1987 and extending through December 31, 1987. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of cotton textile products in the foregoing categories in excess of the designated twelve-month restraint limits.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

December 16, 1986.

Committee For the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and pursuant to the Bilateral Cotton Textile Agreement of May 30 and June 1, 1986, between the Governments of the United States and Nepal; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 337, 340, 341 and 342, produced or manufactured in Nepal and exported during the twelve-month period beginning on January 1, 1987 and extending through December 31, 1987, in excess of the following restraint limits:

Category	12-mo. restraint limit
337	79,500 dozen.
340	190,800 dozen.
341	636,000 dozen.
342	106,000 dozen.

In carrying out this directive, entries of textile products in Categories 337, 340, 341 and 342, produced or manufactured in Nepal, which have been exported to the United States, in the case of Category 337 on and after October 1, 1985, and in the case of Categories 340, 341 and 342 on and after January 1, 1986, and extending through December 31, 1986, shall to the extent of any unfilled balances, be charged against the limits established for such goods during those restraint periods. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the limits set forth in this letter.

The limits set forth above are subject to adjustment pursuant to the provisions of the bilateral agreement of May 30 and June 1, 1986 between the Governments of the United States and Nepal which provide, in part, that: (1) Restraint limits may be exceeded by designated percentages; (2) restraint limits may be increased by carryover and carryforward up to 11 percent of the applicable category limit; and (3) administrative arrangements or adjustments may be made to resolve minor problems

arising in the implementation of the agreement. Any appropriate future adjustments under the foregoing provisions of the bilateral agreement will be made to you by letter.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-28647 Filed 12-19-86; 8:45 am]

BILLING CODE 3510-DR-M

Import Limits for Certain Man-Made Fiber Textile Products Produced or Manufactured in the Socialist Republic of Romania

December 16, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on December 22, 1986. For further information contact Kathryn Cabral, International Trade Specialist Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212. For information on the quota status of this limit please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

Background

The Governments of the United States and the Socialist Republic of Romania have exchanged letters dated September 2, 1986 and October 15, 1986 further amending their Bilateral Wool and Man-Made Fiber Textile Agreement of November 7 and 18, 1984, as amended, to increase the designated consultation level for man-made fiber shirts in Category 640 to 75,000 dozen for goods produced or manufactured in Romania and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986. This change will apply only to the 1986 agreement year.

Accordingly, in the letter which follows this notice the Chairman of CITA directs the Commissioner of Customs to control the level for Category 640 for the first time in 1986 at the designated amount.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

William H. Houston III,

Chairman, Committee for the Implementation of Textiles Agreements.

December 16, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the letter of December 20, 1985 which directed you to prohibit entry for consumption or withdrawal from warehouse for consumption in the United States of certain wool and man-made fiber textile products, produced or manufactured in Romania and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986.

Effective on December 22, 1986, the directive of December 20, 1985 is hereby amended to include an adjusted restraint limit of 75,000 dozen [1] for man-made fiber textile products in Category 640.

Textile products in Category 640 which have been exported to the United States prior to January 1, 1986 shall not be subject to this directive.

Textile products in Category 640 which have been released from custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

The Committee for the Implementation of Textile Agreements had determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

[1] The level has not been adjusted to reflect any imports exported after December 31, 1985.

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-28650 Filed 12-19-86; 8:45 am]

BILLING CODE 3510-DR-M

Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Singapore Effective on January 1, 1987

December 16, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1987. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 31 and June 5, 1986, as amended, between the Governments of the United States and Singapore establishes specific limits for cotton, wool and man-made fiber textile products in Categories 331, 334, 335, 337, 338/339, 340, 341, 342, 347/348, 435, 604, 631, 634, 635, 638, 639, 640, 641, 645/646, 647, 648 and 659-I (infants' sets in TSUSA numbers 384.2105, 384.2115, 384.2120, 384.2125, 384.2646, 384.2647, 384.2648, 384.2649, 384.2652, 384.8651, 384.8652, 384.8653, 384.8654, 384.9356, 384.9357, 384.9358, 384.9359, 384.9365), produced or manufactured in Singapore and exported during the twelve-month period which begins on January 1, 1987 and extends through December 31, 1987. The agreement also includes a group limit for cotton, wool and man-made fiber textile products in Categories 300-301, 310/318, 311-317, 319-330, 332, 333/633, 336, 345, 349, 350, 351/651, 352/652, 353/354/653/654, 359-389, 400-434, 436-444, 445/446, 447, 448, 459-469, 600-603, 605-630, 632, 636, 637, 642-644, 659-S (swimwear in TSUSA numbers 381.2340, 381.3170, 381.9100, 381.9570, 384.1920, 384.2339, 384.8300, 384.8400 and 384.9353), 659-V (vests in TSUSA numbers 381.2836, 381.3332, 381.9224,

381.9837, 384.2250, 384.2251, 384.2663, 384.2664, 384.8677, 384.9472 and 384.9473), 659–O (all TSUSA numbers except Infants' sets, swimwear and vests), 665–670 and individual categories within the group, produced or manufactured in Singapore and exported during the twelve-month period which beings on January 1, 1987 and extends through December 31, 1987. In accordance with the bilateral agreement, the factor for converting Category 352/652 from dozens to equivalent square yards will be 13.5 square yards equivalent per dozen.

In the letter published below, the CITA Chairman directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of textile products in the aggregate and individual limits which are in excess of those limits.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1986).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 16, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 31 and June 5, 1986, between the Governments of the United States and Singapore; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Singapore and exported during the twelve-month period beginning on January 1, 1987 and extending through December 31, 1987, in excess of the following limits:

Category	12-mo. restraint limit
300–301, 332, 333/633, 336, 310/316, 311–317, equivalent, 319–330, 345, 349, 350, 351/651, 352/652, 353/354/653/654, 356–369, 400–434, 436–444, 445/446, 447, 448, 459–469, 600–603, 605–630/, 632, 636, 637, 642–644, 659–S, [1] 659–V, [2] 659–O, [3] 665–670, as a group.	45,000,000 square yards.
300/301	434,783 pounds.
310/316	2,000,000 square yards.
331	312,000 dozen pairs.
333/633	41,500 dozen.
334	51,500 dozen.
335	159,650 dozen.
336	70,000 dozen.
337	60,320 dozen.
351/651	38,462 dozen.
352/652	148,148 dozen.
359	434,783 pounds.
338/339	775,865 dozen of which not more than 440,649 dozen shall be in Category 338 and not more than 518,476 dozen shall be in Category 339.
340	542,850 dozen.
341	136,500 dozen.
342	84,000 dozen.
347/348	741,600 dozen of which not more than 463,500 dozen shall be in Category 347 and not more than 360,500 dozen shall be in Category 348.
434	6,000 dozen.
435	6,060 dozen.
442	10,000 dozen.
445/446	20,000 dozen.
447	8,333 dozen.
448	6,333 dozen.
459	75,000 pounds.
604	1,462,600 pounds.
631	315,000 dozen pairs.
634	163,770 dozen.
635	242,050 dozen.
636	200,000 dozen.
637	93,897 dozen.
638	437,750 dozen.
639	3,111,000 dozen.
640	115,500 dozen.
641	189,000 dozen.
642	112,360 dozen.
645/646	113,300 dozen.
647	260,000 dozen.
648	1,515,000 dozen.
659–I [4]	315,000 pounds
659–S	320,000 pounds
659–V	320,000 pounds
659–O	320,000 pounds
669	256,410 pounds
670	1,000,000 pounds

[1] In Category 659, only TSUSA number 381.2340, 381.3170, 381.9100, 381.9570, 384.1920, 384.2339, 384.8300, 384.8400 and 384.9363.

[2] In Category 659, only TSUSA number 381.2836, 381.3332, 381.9224, 381.9637, 384.2250, 384.2251, 384.2663, 384.2664, 384.8677, 384.9472 and 384.9473.

[3] In Category 659, all TSUSA numbers except those listed in Footnotes 1 and 2 and TSUSA numbers 384.2105, 384.2115, 384.2120, 384.2125, 384.2646, 384.2647, 384.2648, 384.2649, 384.2652, 384.8651, 384.8652, 384.8653, 384.8654, 384.9356, 384.9357, 384.9358, 384.9359, 384.9365.

[4] In Category 659, only TSUSA numbers 384.2105, 384.2115, 384.2120, 384.2125, 384.2646, 384.2647, 384.2648, 384.2649, 384.2652, 384.8651, 384.8652, 384.8653, 384.8654, 384.9356, 384.9357, 384.9358, 384.9359, 384.9365.

In carrying out this directive, entries of textile products in the foregoing categories, which have been exported to the United States on and after January 1, 1986 and extending through December 31, 1986, shall, to the extent of any unfilled balances, be charged against the levels established for such goods during that period. In the event the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter.

The limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of August 21, 1961, as amended, and extended, between the Government of the United States and the Republic of Singapore, which provide, in part, that: (1) Specific limits may be exceeded by certain designated percentages; (2) specific limits may be increased by carryover and carrforward up to 11 percent of the applicable category limit; and (3) administrative arrangements or adjustments may be made to resolve problem arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement, referred to above, will be made to you by letter.

A description of the cotton, wool and man-made fiber textile cartegories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumptioin into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely.

William H. Houston III,

Chairman, Committee for the Implementotion of Textile Agreements.

[FR Doc. 86–28651 Filed 12–19–86; 8:45 am]

BILLING CODE 3510–DR–M

Request for Public Comment on Bilateral Textile Consultations With the Government of Sri Lanka to Review Trade in Categories 350 and 636

December 16, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on December 22, 1986. For further information contact Kathryn Cabral, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715. For information on Categories on which consultations have been requested call (202) 377–3740.

Background

On October 31, 1986, the Government of the United States requested consultations with the Government of Sri Lanka with respect to Categories 350 (cotton dressing gowns and robes) and 636 (man-made fiber dresses). This request was made under the agreement between the Governments of the United States and Sri Lanka of May 10, 1983, as amended, relating to trade in cotton, wool and man-made fiber textile products which permits the United States to request consultations when imports from Sri Lanka threaten or cause market disruption.

According to the terms of the bilateral agreement, if no mutually satisfactory solution is reached during consultations, the United States may establish prorated specific limits for the period which began on October 31, 1986 and extends through May 31, 1987 at levels of 21,825 dozen for Category 350 and 76,982 for Category 636.

The Government of the United States has decided, pending a mutually satisfactory solution, to control imports in Categories 350 and 636 exported during the ninety-day consultation period which began on October 31, 1986 and extends through January 28, 1987 at the prescribed limits of 10,908 dozen for Category 350 and 38,476 dozen for Category 636.

In the event the limits established for the ninety-day period are exceeded, such excess amounts, if allowed to enter, may be charged to the prorated specific limits specified above.

The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of Sri Lanka, further notice will be published in the **Federal Register.**

Summary market statements for these categories follow this notice.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

Anyone wishing to comment or provide data or information regarding the treatment of Categories 350 and 636 under the agreement with Sri Lanka, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in these categories, is invited to submit such comments or information in ten copies to Mr. William H. Houston III, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230.

Because of the exact timing of the consultations is not yet certain, comments should be submitted in response to this notice will be available for public inspection on the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Sri Lanka—Market Statement

Category 350—Cotton Dressing Gowns and Robes

October 1986.

Summary and Conclusions

U.S. imports of Category 350 from Sri Lanka were 35,977 dozen during the year ending August 1986, nearly twice the 18,820 dozen imported a year earlier. During the first eight months of 1986, imports from Sri Lanka were 25,051 dozen, an 85 percent increase over the 13,527 dozen imported during the same period of 1985 and more than the amount imported during the full year 1985.

The U.S. market for Category 350 has been disrupted by imports. The sharp and substantial increase of imports from Sri Lanka has contributed to this disruption.

U.S. Production and Market Share

U.S. production of cotton dressing gowns and robes declined by 11 percent from 680 thousands dozen in 1983 to 605 thousand dozen in 1985. The U.S. producers' share of the market fell from 60 percent in 1983 to 47 percent in 1985.

U.S. Imports and Import Penetration

U.S. imports of Category 350 grew from 461 thousand dozen in 1983 to 676 thousand dozen in 1985, a 47 percent increase. Imports continue to grow in 1986. Category 350 imports are up 21 percent in the first eight months of 1986. The ratio of imports to domestic production increased from 68 percent in 1983 to 112 percent in 1985.

Duty-Paid Value and U.S. Producers' Price

Approximately 75 percent of Category 350 imports from Sri Lanka during the first eight months of 1986 entered under TSUSA No. 384.0920—women's and infants' cotton woven dressing gowns and robes, and TSUSA No. 384.4000—women's, girls' infants' cotton woven dressing gowns and robes, except corduroy, not ornamented. These garments entered the U.S. at duty-paid landed values below the U.S. producers' prices for comparable garments.

Sri Lanka—Market Statement

Category 636—Man-made Fiber Dresses

October 1986.

Summary and Conclusions

U.S. imports of Category 636 from Sri Lanka were 114,600 dozen during the year ending August 1986, 88 percent above the level imported a year earlier. During the first eight months of 1986, imports from Sri Lanka were 94,740 dozen, 75 percent above the level imported during the same period of 1985 and 28 percent above the amount imported during the full year 1985.

The U.S. market for Category 636 has been disrupted by imports. The sharp and substantial increase of imports from Sri Lanka has contributed to this disruption.

U.S. Production and Market Share

U.S. production of man-made fiber dresses declined ten percent from 15,806 thousands dozen in 1983 to 14,233 thousand dozen in 1985. The U.S. producers' share of the market declined from 90 percent in 1983 to 85 percent in 1985.

U.S. Imports and Import Penetration

U.S. imports of Category 636 grew from 1,177 thousand dozen in 1983 to 2,539 thousand dozen in 1985, a 43 percent increase. During the year ending August 1986, imports of Category 636 were three million dozen, 30 percent above the level imported during the year ending August 1985. Category 636 imports are up 28 percent through the first eight months of 1986 compared to the same period in 1985. The ratio of imports to domestic production increased from 11 percent in 1983 to 18 percent in 1985.

Duty Paid Value and U.S. Producer's Price

Approximately 65 percent of the imports of Category 636 from Sri Lanka during the first eight months of 1986 entered under TSUSA No. 384.8620—women's man-made fiber knit dresses, not ornamented; and 384.9425—women's man-made fiber woven dresses, other than yarn dyed, not ornamented. These dresses entered the U.S. at duty paid landed values below U.S. producers' prices for comparable dresses.

December 16, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 10, 1983, as amended, between the Governments of the United States and Sri Lanka; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on December 22, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 350 and 636, produced or manufactured in Sri Lanka and exported during the ninety-day period which began on October 31, 1986 and extends through January 28, 1987, in excess of the following restraint levels:

Category	90-day restraint level [1]
350	10,980 dozen.
636	38,476 dozen.

[1] The limits have not been adjusted to account for any imports exported after October 30, 1986.

Textile products in Categories 350 and 636 which have been exported to the United States prior to October 31, 1986 shall not be subject to this directive.

Textile products in Categories 350 and 636 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26822), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

William H. Houston III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-28652 Filed 12-19-86; 8:45 am]
BILLING CODE 3510-DR-M

DEPARTMENT OF ENERGY

Atomic Energy Agreements; Proposed Subsequent Arrangement With European Atomic Energy Community and Canada

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Canada concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval for the international exchange of obligations applicable to approximately 195,350 pounds of natural uranium. This quantity of material currently located in the European Community and subject to the terms and conditions of the U.S.-EURATOM Agreement, will become subject to the Canada-EURATOM Agreement for Cooperation, and an identical quantity of material currently located in Canada, will become subject to the terms and conditions of the U.S.-Canada Agreement.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: December 16, 1986.

George J. Bradley,
Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 86-28620 Filed 12-19-86; 8:45 am]
BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA-C&E-87-06; OFP Case No. 61064-9332-20,21,22,-24]

Acceptance of Petition for Exemption and Availability of Certification By Cogen Technologies NJ Venture, Bayonne, NJ

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of acceptance of petition.

SUMMARY: On November 3, 1986, Cogen Technologies NJ Venture (Cogen Technologies or the petitioner) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent exemption based on the "lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum" for three (3) proposed combined cycle gas turbine generators to be located at the Bayonne, New Jersey site of International Matex Tank Terminals, from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act").

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701(c) and (d) of FUA, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue SW, Room 1E-190, Washington, DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the Federal Register.

DATES: Written comments are due on or before February 5, 1987. A request for a public hearing must be made within this same 45-day period.

ADDRESS: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-093, Forrestal Building, 1000 Independance Avenue SW., Washington, DC 20585.

Docket No. ERA-C&E-87-06 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Ellen Russell, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA-093, Washington, DC 20585 Phone (202) 252-9624

Steven Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue SW., Washington, DC 20585 Phone (202) 252-6947

SUPPLEMENTARY INFORMATION: Cogen Technologies proposes to install a combined cycle powerplant, consisting of 3 gas turbines, 3 heat recovery steam generators and 1 steam turbine, designed to generate 165 MW and 125,000 pounds per hour of process steam at its Bayonne, New Jersey, facility.

Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules setting forth criteria and procedures for petitioning for this type of exemption from the prohibitions of Title II of FUA are found in 10 CFR 503.37.

The planned facility is expected to produce approximately 165 MW electrical power which will be sold to Jersey Central Power and Light Company for distribution. In addition, the facility will produce steam which will be sold to the International Matex Tank Terminals for use in its storage of petroleum products as well as to Exxon Company, U.S.A., for industrial uses in its Bayonne refinery.

Section 212(a)(1)(A)(ii) of the Act provides for a permanent exemption due to lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. To qualify the petitioner must certify that:

(1) A good faith effort has been made to obtain an adequate and reliable supply of an alternate fuel for use as a primary energy source of the quality and quantity necessary to conform with the design and operational requirements of the proposed unit;

(2) The cost of using such a supply would substantially exceed the cost of using imported petroleum as a primary energy source during the useful life of the proposed unit as defined in § 503.6 (cost calculation) of the regulations;

(3) No alternate power supply exists, as required under § 503.8 of the regulations;

(4) Use of mixture is not feasible, as required under § 503.9 of the regulations; and

(5) Alternative sites are not available, as required under section § 503.11 of the regulations.

In accordance with the evidentiary requirements of § 503.32(b) (and in addition to the certifications discussed above), the petitioner has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council of Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.*; and DOE guidelines implementing these regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment.

If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the Federal Register as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that Cogen Technologies is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for this notice.

Issued in Washington, DC, on December 3, 1986.

Robert L. Davies,
Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-28621 Filed 12-19-86; 8:45 am]
BILLING CODE 6450-01-M

Energy Information Administration

Agency Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of submission of request for clearance to the Office of Management and Budget.

SUMMARY: The Department of Energy (DOE) has submitted the energy information collections listed at the end of this notice to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not contain information collection requirements contained in regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by DOE.

Each entry contains the following information and is listed by the DOE sponsoring office: (1) The collection number(s); (2) Collection title; (3) Type of request, e.g., new, revision, or extension; (4) Frequency of collection; (5) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (6) Affected public; (7) An estimate of the number of respondents annually; (8) Annual respondent burden, i.e., an estimate of the total number of hours needed to respond to the collection; and (9) A brief abstract describing the proposed collection and, briefly, the respondents.

DATES: Comments must be filed within 30 days of publication of this notice. Last notice published Thursday, December 11, 1986.

ADDRESS: Address comments to Mr. Vartkes Broussalian, Department of Energy Desk Officer, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503.

(Comments may also be addressed to, and copies of the submissions obtained from, Mr. Gross at the address below.)

FOR FURTHER INFORMATION CONTACT: John Gross, Director, Data Collection Service Division (EI-73), Energy Information Administration, M.S. 1H-023, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585, (202) 252-2308.

SUPPLEMENTARY INFORMATION: If you anticipate commenting on a collection, but find that time to prepare these comments will prevent you from submitting comments promptly, you should advise Mr. Brousssalian of your intent as early as possible.

Statutory Authority: (Sec. 13(b), 5(b), 5(a), and 52, Pub. L. 93-275, Federal Energy Administration Act of 1974, (15 U.S.C. 772(b), 764(b), 764(a), and 790(a).

Issued in Washington, DC., December 15, 1986.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

DOE ENERGY INFORMATION COLLECTIONS UNDER REVIEW BY OMB

Collection No.(s)	Collection title	Type of request	Response frequency	Response obligation	Affected public	Number of respondents annually	Respondent burden hrs. annually	Abstract
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
CE CE-63A/B	Annual Solar Thermal Collector Manufacturers Survey, CE-63A; Annual Photovoltaic Module Manufacturers Survey, CE-63B.	New collection	Annually	Mandatory	Business or other for profit...	300	1,200	DE-63A/B will collect data about the solar energy industry, e.g., which companies are manufacturing collectors, the type of collectors being manufactured, the quantity, use, and change in the industry. Data will be published. Respondents are manufacturers, importers, and exporters of solar thermal collectors and companies manufacturing photovoltaic modules.
FERC FERC-581	Management and Procurement Reporting and Recordkeeping Requirements.	Extension	As specified	Required to obtain or retain a benefit	Businesses or other for profit, Federal agencies or employees, non-profit institutions, small businesses or organizations.	126	4,158	Used to fulfill management accountability requirements and to oversee use of funds for procurements.
IE IE-411	Coordinated Regional Bulk Power Supply Program.	Extension (through 4/30/87)	Annually	Voluntary	Businesses or other for profit.	702	20,000	The IE-411 provides a single, comprehensive source of information on current and planned electric power supply for the U.S. The data are used to evaluate the current and projected reliability of bulk electric power supply, and the effects of unforseen changes in powerplant construction schedules. The nine Regional Electric Reliability Councils submit the report.

[FR Doc. 86-28622 Filed 12-19-86; 8:45 am]
BILLING CODE 6450-01-M

Publication of Alternative Fuel Price Ceilings and Incremental Price Threshold for High Cost Natural Gas

The Natural Gas Policy Act of 1978 (NGPA) (Pub. L. 95-621) signed into law on November 9, 1978, mandated a new framework for the regulation of most facets of the natural gas industry. In general, under Title II of the NGPA, interstate natural gas pipeline companies are required to pass through certain portions of their acquisition costs for natural gas to industrial users in the form of a surcharge. The statute requires that the ultimate costs of gas to the industrial facility should not exceed the cost of the fuel oil which the facility could use as an alternative.

Pursuant to Title II of the NGPA, section 204(e), the Energy Information Administration (EIA) herewith publishes for the Federal Energy Regulatory Commission (FERC) computed natural gas ceiling prices and the high cost gas incremental pricing threshold which are to be effective January 1, 1987. These prices are based on the prices of alternative fuels.

For further information contact: Leroy Brown, Jr., Department of Energy, Energy Information Administration, 1000 Independence Avenue SW., Room BE-034, Washington, DC 20585, Telephone: (202) 252-6077.

Section I

As required by FERC Order No. 50, computed prices are shown for the 48 contiguous States. The District of Columbia's ceiling is included with the ceiling for the State of Maryland. FERC, by an Interim Rule issued on April 2, 1981, in Docket No. RM79-21, revised the methodology for calculating the monthly alternative fuel price ceilings for State regions. Under the revised methodology, the applicable alternative fuel price ceiling published for each of the contiguous States shall be the lower of the alternative fuel price ceiling for the State or the alternative fuel price ceiling for the multistate region in which the State is located.

The price ceiling is expressed in dollars per million British Thermal Units (BTU's). The method used to determine the price ceilings is described in Section III.

State	Dollars per million BTU's
Alabama [1]	$2.03
Arizona [1]	1.70
Arkansas	1.96
California [1]	1.70
Colorado [1]	1.74
Connecticut [1]	1.88
Delaware [1]	2.14
Florida	1.88
Georgia	2.01
Idaho [2]	1.74
Illinois	1.87
Indiana [1]	1.89
Iowa	2.00
Kansas	1.95
Kentucky [1]	1.89
Louisiana	1.99
Maine [1]	1.88
Maryland [1]	2.14
Massachusetts	1.79
Michigan [1]	1.89
Minnesota [1]	2.07
Mississippi [1]	2.03
Missouri	1.72
Montana [2]	1.74
Nebraska [1]	2.07
Nevada [1]	1.70
New Hampshire	1.84
New Jersey	1.84
New Mexico [1]	2.00
New York [1]	2.14
North Carolina [1]	2.03
North Dakota [1]	2.07

State	Dollars per million BTU's
Ohio	1.81
Oklahoma [1]	2.09
Oregon	1.68
Pennsylvania [1]	2.14
Rhode Island [1]	1.88
South Carolina [1]	2.03
South Dakota [1]	2.07
Tennessee	1.93
Texas [1]	2.00
Utah [2]	1.74
Vermont [1]	1.88
Virginia	2.01
Washington	1.81
West Virginia	1.85
Wisconsin [1]	1.89
Wyoming [2]	1.74

[1] Region based price as required by FERC Interim Rule, issued on April 2, 1981, in Docket No. RM-79-21.
[2] Region based price computed as the weighted average price of Regions E, F, G, and H.

Section II. Incremental Pricing Threshold for High Cost Natural Gas

The EIA has determined that the volume-weighted average price for No. 2 distillate fuel oil landed in the greater New York City Metropolitan area during October 1986 was $17.07 per barrel. The EIA has implemented a procedure to partially compensate for the two-month lag between the end of the month for which data are collected and the beginning of the month for which the incremental pricing threshold becomes effective. The prices found in *Platt's Oilgram Price Report* are given for each trading day in the form of high and low prices for No. 2 fuel oil in Metropolitan New York and Northern New Jersey. A lag adjustment factor was calculated using the average of the low posted price for these two areas for the ten trading days ending December 12, 1986, and dividing that price by the corresponding average price computed from prices published by Platt's for the month of October 1986. This lag adjustment factor was applied to the October price yielding $18.26 per barrel. In order to establish the incremental pricing threshold for high cost natural gas, as identified in the NGPA, Title II, section 203(a)(7), this price was multiplied by 1.3 and converted to its equivalent in millions of BTU's by dividing by 5.8. Therefore, the incremental pricing threshold for high cost natural gas, effective January 1, 1987, is $4.09 per million BTU's.

Section III. Method Used To Compute Price Ceilings

The FERC, by Order No. 50, issued on September 29, 1979, in Docket No. RM79-21, established the basis for determining the price ceiling required by the NGPA. FERC also, by Order No. 107, issued in Docket No. RM81-27 on July 24, 1981, made permanent the rule that established that only the price paid for No. 6 high sulfur content residual fuel oil would be used to determine the price ceilings. In addition, the FERC, by Order No. 181, issued on November 6, 1981, in Docket No. RM81-28, established that price ceilings should be published for only the 48 contiguous States on a permanent basis.

A. Data Collected

The following data were required from all companies identified by the EIA as sellers of No. 6 high sulfur content (greater than 1 percent sulfur content by weight) residual fuel oil: for each selling price, the number of gallons sold to large industrial users in the months of August 1986, September 1986, and October 1986.[3] All reports of volume sold and price were identified by the State into which the oil was sold.

B. Method Used To Determine Alternative Price Ceilings

(1) Calculation of Volume-Weighted Average Price

The prices which will become effective January 1, 1987, (show in section I) are based on the reported price of No. 6 high sulfur content residual fuel oil, for each of the 48 contiguous States, for each of the 3 months, August 1986, September 1986, and October 1986. Reported prices for sales in August 1986 were adjusted by the percent change in the nationwide volume-weighted average price from August 1986 to October 1986. Prices for September 1986 were similarly adjusted by the percent change in the nationwide volume-weighted average price from September 1986 to October 1986. The volume-weighted 3-month average of the adjusted August 1986 and September 1986, and the reported October 1986 prices were then computed for each State.

(2) Adjustment for Price Variation

States were grouped into the regions identified by the FERC (see section III.C.). Using the adjusted prices and associated volumes reported in a region during the 3-month period, the volume-weighted standard deviation of prices was calculated for each region. The volume-weighted 3-month average price (as calculated in section III.B. (1) above) for each State was adjusted downward by two times this standard deviation for the region to form the adjusted weighted average price for the State.

[3] Large Industrial User—A person/firm which purchases No. 6 fuel oil in quantities of 4,000 gallons or greater for consumption in a business, including the space heating of the business premises. Electric utilities, governmental bodies (Federal, State, or Local), and the military are excluded.

(3) Calculation of Ceiling Price

The lowest selling price within the State was determined for each month of the 3-month period (after adjusting up or down by the percent change in oil prices at the national level as discussed in section III.B(1) above). The products of the adjusted low price for each month times the State's total reported sales volume for each month were summed over the 3-month period for each State and divided by the State's total sales volume during the 3 months to determine the State's average low price. The adjusted weighted average price (as calculated in section III.B(2)) was compared to this average low price, and the highest of the values was selected as the base for determining the alternative fuel price ceiling for each State. For those States which had no reported sales during one or more months of the 3-month period, the appropriate regional volume-weighted alternative fuel price was computed and used in combination with the available State data to calculate the State alternative fuel price ceiling base. The State's alternative fuel price ceiling base was compared to the alternative fuel price ceiling base for the multistate region in which the State is located and the lower of these two prices was selected as the final alternative fuel price ceiling case for the State. The appropriate lag adjustment factor (as discussed in Section III.B.4) was then applied to the alternative fuel price ceiling base. The alternative fuel price (expressed in dollars per gallon) was multiplied by 42 and divided by 6.3 to estimate the alternative fuel price ceiling for the State (expressed in dollars per million BTU's).

There were insufficient sales reported in Region G for the months of August 1986, September 1986, and October 1986. The alterantive fuel price ceilings for the States in Region G were determined by calculating the volume-weighted average price ceilings for Region E, Region F, Region G, and Region H.

(4) Lag Adjustment

The EIA has implemented a procedure to partially compensate for the two-month lag between the end of the month for which data are collected and the beginning of the month for which ceiling prices become effective. It was determined that *Platt's Oilgram Price Report* publication provides timely information relative to the subject. The prices found in *Platt's Oilgram Price Report* publication are given for each trading day in the form of high and low prices for No. 6 residual oil in 20 cities throughout the United States. The low

period prices for No. 6 residual oil in these cities were used to calculate a national and a regional lag adjustment factor. The national lag adjustment factor was obtained by calculating a weighted average price for No. 6 high sulfur residual fuel oil for the ten trading days ending December 12, 1986, and dividing that price by the corresponding weighted average price computed from prices published by Platt's for the month of October 1986. A regional lag adjustment factor was similarly calculated for four regions. These are: one for FERC Regions A and B combined; one for FERC Region C; one for FERC Regions D, E, and G combined; and one for FERC Regions F and H combined. The lower of the national or regional lag factor was then applied to the alternative fuel price ceiling for each State in a given region as calculated in Section III.B.(3).

Listing of States by Region

States were grouped by the FERC to form eight distinct regions as follows:

Region A	*Region B*
Connecticut	Delaware
Maine	Maryland
Massachusetts	New Jersey
New Hampshire	New York
Rhode Island	Pennsylvania
Vermont	

Region C	*Region D*
Alabama	Illinois
Florida	Indiana
Georgia	Kentucky
Mississippi	Michigan
North Carolina	Ohio
South Carolina	West Virginia
Tennessee	Wisconsin
Virginia	

Region E	*Region F*
Iowa	Arkansas
Kansas	Louisiana
Missouri	New Mexico
Minnesota	Oklahoma
Nebraska	Texas
North Dakota	
South Dakota	

Region G	*Region H*
Colorado	Arizona
Idaho	California
Montana	Nevada
Utah	Oregon
Wyoming	Washington

Issued in Washington, DC, December 17, 1986.

L.A. Pettis,

Deputy Administrator, Energy Information Administration.

[FR Doc. 86-28696 Filed 12-19-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER87-151-000 et al.]

Arizona Public Service Co. et al.; Electric Rate and Corporate Regulation Filings

December 17, 1986.

Take notice that the following filings have been made with the Commission:

1. Arizona Public Service Company

[Docket No. ER87-151-000]

Take notice that on December 10, 1986, Arizona Public Service Company ("APS") tendered for filing a Notice of Termination of the Loop Flow Agreement between the Western Systems Coordinating Council (WSCC) and its participating members and APS, FERC Rate Schedule No. 101.

APS requests termination of said Agreement as of August 31, 1985, pursuant to its terms. APS states that it has served copies of its filing upon the California Public Utilities Commission, the Arizona Corporation Commission and the members of the WSCC.

2. Arizona Public Service Company

[Docket No. ER87-152-000]

Take notice that on December 10, 1986, Arizona Public Service Company ("APS") tendered for filing a Notice of Cancellation of the Power Coordination Agreement between Nevada Power Company ("NPC") and APS, FERC Rate Schedule No. 43, which provides for power coordination with NPC.

APS requests to cancel said Agreement effective January 31, 1987.

Copies of this filing have been served upon NPC, the Public Service Commission of Nevada and the Arizona Corporation Commission.

Comment date: December 31, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Cincinnati Gas & Electric Company

[Docket No. ER87-62-000]

Take notice that on December 10, 1986, Cincinnati Gas & Electric Company (CG&E) tendered for filing in this docket a modification of its earlier filing in this docket. CG&E states that its original filing in this docket encompassed a proposed change to FERC Electric Tariff, First Revised Volume No. 1, Rider F, Fuel Cost Adjustment. The proposed change to the Fuel Cost Adjustment in the initial filing encompassed the Villages of Bethel, Blanchester, Georgetown, Hamersville and Ripley (Villages), municipalities in the State of Ohio; The Union Light, Heat and Power Company (Union Light) and the West Harrison Gas and Electric Company (West Harrison), wholly owned subsidiaries of CG&E serving retail customers within the Commonwealth of Kentucky and the State of Indiana, respectively. CG&E states that in response to the earlier filing the Villages contacted CG&E, contending that the application violated CG&E's covenant not to file for a base rate increase until after January 2, 1988. CG&E states that while it disagrees with the Villages' contention that this tariff change is a change in base rates, it appreciates the Villages' position and to avoid an objection by the Villages to the filing and an argument concerning the intent and interpretation of the covenant, it is hereby withdrawing the proposed tariff change from being applicable to the Villages.

By this modification CG&E proposes that two fuel cost adjustment riders be maintained. The present First Revised Sheet No. 7 shall remain in effect and be applicable to the Villages. The Second Revised Sheet No. 7, which reflects the criteria regarding recovery of capacity and demand charges of economic power purchases, as submitted in the initial filing in this docket, shall now be identified as Original Sheet No. 7A and will be applicable to Union Light and West Harrison.

CG&E states that it has served a copy of its filing upon each person receiving a copy of its original filing in this docket.

Comment date: December 31, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Commonwealth Edison Company

[Docket No. ER 87-150-000]

Take notice that on December 10, 1986, Commonwealth Edison Company tendered for filing tariff changes providing for three sequential decreases in rates under its FERC Electric Service Tariff Rates 80 and 81, applicable to third party service to the Cities of Geneva and Rock Falls, Illinois, respectively. Based on the twelve months ended December 31, 1985, the proposed changes would successively decrease current revenues by approximately $102,000, $44,000 and $32,000. Edison proposes, by means of the second and third decreases, to reflect the effects of the Tax Reform Act of 1986.

Edison seeks an effective date of December 9, 1986 for the first decrease applicable to Rock Falls and of December 10, 1986 for the first decrease applicable to Geneva; of January 1, 1987 for the second decrease for both Cities; and of January 1, 1988 for the third decrease for both Cities. Accordingly, Edison seeks waiver of the Commission's notice requirements.

Copies of the filing were served upon the Cities of Geneva and Rock Falls, Illinois, and the Illinois Commerce Commission.

Comment date: December 31, 1986, in accordance with Standard Paragraph E at the end of this notice.

Idaho Power Company

[Docket No. ER87-147-000]

Take notice that on December 9, 1986, Idaho Power Company tendered for filing in compliance with the Federal Energy Regulatory Commission's Order of October 7, 1987, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, Volume No. 1 (Supersedes Original Volume No. 1) during October 1986, along with cost justification for the rate charged. This filing includes the following supplements:

Utah Power & Light Company.	Supplement No. 59.
Sierra Pacific Power Company.	Supplement No. 56.
Washington Water Power Company.	Supplement No. 43.
Montana Power Company.....	Supplement No. 44.
Puget Sound Power & Light Company.	Supplement No. 24.
Portland General Electric Company.	Supplement No. 49.
Southern California Edison Company.	Supplement No. 39.

Comment date: December 31, 1986, in accordance with Standard Paragraph E at the end of this notice.

6. Florida Power & Light Company

[Docket No. ER87-142-000]

Take notice that on December 5, 1986, Florida Power & Light Company (FPL) tendered for filing a document entitled Amendment Number Seven to Revised Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and Orlando Utilities Commission (Rate Schedule FERC No. 66) and a document entitled Schedule TX Operating Agreement Between Florida Power & Light Company and Orlando Utilities Commission, which document supplements Amendment Number Seven.

FPL states that under Amendment Number Seven, FPL will transmit power and energy for Orlando Utilities Commission as is required in the implementation of its interchange agreements with The Florida Municipal Power Agency, City of Gainesville, Fort Pierce Utilities Authority, Jacksonville Electric Authority, and Seminole Electric Cooperative, Inc.

FPL further states that the Schedule TX Operating Agreement defines the methodology used to determine the additional incremental cost under Section I.4 of Amendment Number Seven. FPL requests that waiver of Section 35.3 of the Commission's Regulations be granted and that the proposed Amendment and the proposed Operating Agreement be made effective immediately. FPL states that copies of the filing were served on Orlando Utilities Commission.

Comment date: December 31, 1986, in accordance with Standard Paragraph E at the end of this notice.

7. Pacific Power and Light Company

[Docket No. ER85-757-000]

Take notice that on December 8, 1986, Pacific Power and Light Company (Pacific) tendered for filing a compliance report showing the revision of the Average System Cost (ASC) Rate for the state of Washington applicable to the exchange of power between Bonneville and Pacific.

Comment date: December 31, 1986, in accordance with Standard Paragraph E at the end of this notice.

8. Pacific Gas and Electric Company

[Docket No. ER87-153-000]

Take notice that on December 11, 1986, Pacific Gas and Electric Company (PGandE) tendered for filing what PGandE describes as an initial schedule for firm system sales to the Cities of Anaheim, Azusa, Banning, Colton, and Riverside (Cities).

Service under these five agreements is intended to commence on February 1, 1987. Service shall continue until such time as the agreement is terminated, by one year's advance written notice from either party to the other, effective as of March 1, 1988, or as of any March 1 thereafter.

The system sale agreements provide for PGandE to sell 39 MW of firm capacity and associated energy to the Cities at the Midway substation. The rates are negotiated rates. Capacity rates were negotiated under a split-the-savings principle. The energy charge is divided into three tiers corresponding with capacity factors of zero through 24 percent, 25 through 50 percent, and greater than 50 percent.

Comment date: December 31, 1986, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Power & Light Company

[Docket No. ER87-18-000]

Take notice that on December 11, 1986, Wisconsin Power & Light Company (WP&L) tendered for filing additional information concerning its filing in this docket. The additional information relates to the monthly carrying charge on the excess investment costs paid by the customer for establishment of a second delivery point.

WP&L states that copies of its supplemental filing have been mailed to the Public Service Commission of Wisconsin and to the affected customer, the Village of Prairie du Sac, Wisconsin.

Coment date: December 31, 1986, in accordance with Standard Paragraph E at the end of this notice.

10. Philadelphia Electric Company

[Docket No. ER87-149-000]

Take notice that on December 10, 1986, Philadelphia Electric Company (PECo) tendered for filing on behalf of the parties to the Extra High Voltage Transmission System (EHV) Agreement, Revision No. 1 to Schedule 1 of the Transmission Enhancement Facilities (TEF) Agreement which is filed as a supplement to the EHV Agreement, and revised Schedules 1.03, 2.04, 3.04, 4.04, 6.03, 7.03, 8.05 and 11.05 of the EHV Agreement. The parties to both Agreements are a number of electric utilities operating in the States of New Jersey, Pennsylvania, Delaware and Maryland and the District of Columbia.

PECo states that the purpose of revising the schedule of the TEF Agreement is to add the 500 kV capacitors to be installed by Pennsylvania Power & Light Company (PP&L) at its Alburtis Substation to the facilities included in the cost-sharing provisions of that Agreement. An effective date of January 1, 1987 has been requested for this revision since the Alburtis capacitors may be in service by that date and a waiver of notice requirement has been requested in order not to deprive PP&L of the cost-sharing provisions of the TEF Agreement.

PECo states that copies of the filing have been sent to the regulatory commissions of Pennsylvania, New Jersey, Maryland, Delaware, Virginia and the District of Columbia.

Coment date: December 31, 1986, in accordance with Standard Paragraph E at the end of this document.

11. Portland General Electric Company

[Docket No. ER87-146-000]

Take notice that on December 9, 1986, Portland General Electric Company

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(PGE) tendered for filing its revised Average System Cost (ASC) which reflects PGE's Power Cost Adjustment (PCA) rate change which became effective with meter readings on and after May 1, 1986. This filing includes a revised Schedule 4 to Appendix 1, Exhibit C of the Residential Purchase and Sale Agreement along with the authorization to implement this rate change from the Public Utility Commissioner of Oregon.

PGE states that the filing shows that the second quarter PCA adjustment to the current base ASC is 3.46 mills/kWh credit, which when added with the base ASC results in a net ASC rate effective for this period.

Comment date: December 31, 1986, in accordance with Standard Paragraph E at the end of this notice.

12. Potomac Electric Power Company

[Docket No. ER87-148-000]

Take notice that on December 9, 1986, Potomac Electric Power Company (PEPCO) and Virginia Electric and Power Company (Virginia Power) jointly tendered for filing a proposed new Schedule 3 to the Interconnection Agreement between PEPCO and Virginia Power, providing for PEPCO to provide certain full requirements electricity service to Virginia Power in the vicinity of Rosslyn, Virginia.

The new Schedule 3 would convert an existing service rendered by PEPCO to Virginia Power pursuant to the Northern Virginia Services Agreement between the Parties (PEPCO FERC No. 38) from repayment-in-kind to cash payment commencing with the completion of Phase I as defined in PEPCO FERC No. 38, expected to occur during December, 1986. Prior to the completion of Phase I, the new Schedule 3 would permit separate accounting for the existing service. The referenced service is PEPCO's supply of Virginia Power's electricity requirements via specified borderline points of interconnection supplied from PEPCO's Georgetown Substation at approximately 13 kilovolts, for resale to a Virginia Power traction power customer. No new facilities will be installed or existing facilities modified in connection with this service; rather, the requirements service by PEPCO is intended to avoid the construction burden on Virginia Power to provide alternate supply to its customer.

The parties request that the requirements of prior notice be waived for an effective date as of June 17, 1986.

Comment date: December 31, 1986, in accordance with Standard Paragraph E at the end of this notice.

13. West Penn Power Company

[Docket No. ER87-156-000]

Take notice that on December 12, 1986, West Penn Power Company tendered for filing proposed changes in its FERC Electric Tariff, Original Volume Nos. 1 and 2. The proposed changes would increase revenues from jurisdictional sales and service by $1,694,000, based on the twelve-month period ending December 31, 1987. The proposed effective date for the increased rates is February 1, 1987. A rate reduction is scheduled to occur, effective July 1, 1987, to reflect the lower corporate Federal Income Tax rate to become effective on that date under the Tax Reform Act of 1986, which would reduce the annual increase to approximately $1,229,000.

The changes proposed are for the purpose of recovering increased costs incurred by the Company, as well as to add two new customers and to correct and revise its tariff language.

Copies of the filing were served upon the jurisdictional customers and the Pennsylvania Utility Commission.

Comment date: December 31, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-28634 Filed 12-19-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER87-145-000 et al.]

Electric Rate and Corporate Regulation Filings; Minnesota Power & Light Co. et al.

Take notice that the following filings have been made with the Commission:

1. Minnesota Power & Light Company

[Docket No. ER87-145-000]

December 15, 1986.

Take notice that on December 8, 1986, Minnesota Power & Light Company tendered for filing a Participation Power Interchange Service Agreement between Minnesota Power & Light Company and Northern States Power Company. Under this Agreement, Minnesota Power & Light Company will sell participation power from its Clay Boswell steam electric station Unit No. 3 to Northern States Power Company on a participation power interchange basis in acccordance with the Mid-Continent Area Power Pool Agreement, Service Schedule A. This Agreement provides for energy sales only during the period from May 1, 1957 through October 31, 1987 inclusive. The parties request an effective date of the date next following the Commission's 60 day filing period for this Agreement.

Comment date: December 29, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Arkansas Power & Light Company

[Docket No. ER87-141-000]

December 15, 1986.

Take notice that on December 4, 1986, Arkansas Power & Light Company (AP&L) tendered for filing a proposed Agreement for purchase of electric service by the City of Benton, Arkansas (City) from AP&L.

The proposed Agreement, signed by AP&L and City, covers sales of power and energy by AP&L to City for the period from November 1, 1986 to October 31, 1996. Accordingly, AP&L has requested waiver of the Commission's notice requirements as well as waiver of various cost support filing requirements.

Comment date: December 29, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Idaho Power Company

[Docket Nos. ER86-215-001, ER86-522-001]

December 16, 1986.

Take notice that on November 24, 1986, Idaho Power Company (the Company) tendered for filing a compliance report in response to the Commission's order of November 7, 1986, in Docket Nos. ER86-215-000 and ER86-522-000.

The compliance report includes a revision of Bonneville Power Association's (BPA) determination of Average System Cost (ASC) Rates for the Company's Idaho exchange jurisdiction effective April 16, 1985 and October 16, 1985. The Company states that these modified ASC determinations have been filed with BPA on November 20, 1986.

Comment date: December 30, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-28617 Filed 12-19-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP87-108-000 et al.]

Columbia Gas Transmission Corp. et al.; Natural Gas Certificate Filings

Take notice that the followings filiings have been made with the Commission:

1. Columbia Gas Transmission Corporation

[Docket No. CP87-108-000]

December 12, 1986.

Take notice that on December 4, 1986, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP87-108-000 an application pursuant to Section 7(c) of the Natural Gas Act for authorization for service to two new wholesale customers and construction and operation of certain natural gas facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization for new service agreements with Delmarva Power and Light Company (Delmarva) and South Jersey Gas Company (South Jersey). It is stated that Delmarva and South Jersey have requested certain firm natural gas services from Applicant. Delmarva has requested 10,000 dt equivalent of natural gas per day of contract demand service (CDS) and 10,000 dt equivalent of natural gas per day firm transportation service (FTS) and South Jersey has requested 25,000 dt equivalent of natural gas per day of CDS. Both Delmarva and South Jersey have requested that service commence July 1, 1987, or as soon thereafter as the necessary facilities have been constructed. Applicant states that in order to provide the requested service it proposes to extend its main transmission system from Applicant's Downingtown compressor station located in Chester County, Pennsylvania, to the vicinity of Swedesboro, Gloucester County, New Jersey. It is further stated that this extension would consist of the construction of 32.9 miles of 20-inch and 16-inch pipelines and two interconnecting measuring facilities at a total estimated investment cost of $25,968,100.

Specifically, Applicant requests the following authorizations:

SL-1 Initiation of service to Delmarva under Rate Schedule CDS providing for a contract demand of up to 10,000 dt equivalent of natural gas per day effective July 1, 1987;

SL-2 Initiation of service to South Jersey under Rate Schedule CDS providing for a contract demand of up to 25,000 dt equivalent of natural gas per day effective July 1, 1987;

1(a) The construction and operation of approximately 23.7 miles of 20-inch pipeline located in Chester and Delaware Counties, Pennsylvania, and New Castle County, Delaware;

1(b) The construction and operation of approximately 1.2 miles of 16-inch pipeline crossing the Delaware River from New Castle County, Delaware, to Gloucester County, New Jersey;

1(c) The construction and operation of approximately 8.0 miles of 16-inch pipeline located in Gloucester County, New Jersey;

2(a) The construction and operation of an interconnecting measuring facility for a point of delivery (POD) to Delmarva located in New Castle County, Delaware; and

2(b) The construction and operation of an interconnecting measuring for a POD to South Jersey located in Gloucester County, New Jersey.

Comment date: December 29, 1986, in accordance with Standard Paragraph F at the end of this notice.

2. ANR Pipeline Company

[Docket No. CP87-116-000]

December 16, 1986.

Take notice that on December 8, 1986, ANR Pipeline Company (Applicant), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP87-116-000 an application pursuant to Section 7 of the Natural Gas Act for authorization to provide interruptible transportation services for Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), along with pregranted abandonment upon termination of the contract, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authority to transport up to 50,000 dt equivalent of natural gas on an interruptible basis from an existing point of interconnection between the pipeline systems of Applicant and Colorado Interstate Gas Company in Beaver County, Oklahoma, to either the interconnection of the pipeline systems of Applicant and Midwestern Gas Transmission Company in Will County, Illinois, and/or to Mobil Oil Corporation's Lowry Plant in Cameron Parish, Louisiana. Applicant states that it currently provides service for Tennessee pursuant to section 311 of the Natural Gas Policy Act. Applicant's authority to provide such Section 311 service would expire on January 17, 1987. In order to insure continuation of the transportation service of these system supply volumes Tennessee has requested Applicant to file for authority to extend the service pending completion of the Commission's review of Applicant's application to provide long term firm service for Tennessee as proposed in Docket No. CP84-572-000. Applicant proposes to charge Tennessee the following rates for service: for delivery to Will County, Illinois, $0.309 per dt; and for delivery to Cameron Parish, Louisiana, $0.341 per dt. No additional facilities would be required to provide the service. Applicant proposes to provide the service through December 31, 1987.

Comment date: January 6, 1987, in accordance with Standard Paragraph F at the end of this notice.

3. Canyon Creek Compression Company

[Docket No. CP87-109-000]

December 16, 1986.

Take notice that on December 4, 1986, Canyon Creek Compression Company (Canyon Creek), 701 East 22nd Street, P.O. Box 1208, Lombard, Illinois 60148, filed in Docket No. CP87-109-000 an application pursuant to Section 7(c) of the Natural Gas Act for authorization to transport and compress up to a maximum of 10,000 Mcf of natural gas per day on an interruptible basis for Columbia Gas Transmission Corporation (Columbia), all as more

fully set forth in the application which is on file with the Commission and open to public inspection.

Canyon Creek states that it is presently performing a limited-term transportation for Columbia pursuant to Part 284, Subpart G of the Commission's Regulations at Docket No. ST83-371-000. It is stated that such transportation service would expire on December 30, 1986.

Canyon Creek requests authority to provide an interruptible transportation service for Columbia for a period of two years from the date of first delivery and month-to-month thereafter. Canyon Creek states that it would provide such service pursuant to the terms and conditions contained in a gas transportation agreement between Canyon Creek and Columbia dated November 6, 1986. Canyon Creek states that it has been informed by Columbia that said gas would be used for Columbia's system supply. It is stated that Columbia would cause volumes of natural gas to be delivered to Canyon Creek at the outlet of Amoco Production Company's processing plant located in Section 16, Township 17 North, Range 119 West, Uinta County, Wyoming. Canyon Creek proposes to transport on a fully interruptible basis, compress and deliver said volumes, less Columbia's pro rata share of fuel gas, unaccounted for gas and gas vented, to Overthrust Pipeline Company located in Section 16, Township 17 North, Range 119 West, Uinta County, Wyoming.

Canyon Creek proposes to charge Columbia a negotiated transportation rate based on a 100 percent load factor of Canyon Creek's current Rate Schedule C transportation and compression rate adjusted each month for the workings of Canyon Creek's electric power tracker and interest expense tracker.

Canyon Creek states that no new facilities would be required for this service. Canyon Creek requests authorization to add or delete additional receipt points in the future that may be necessary to support this service.

Comment date: January 6, 1987, in accordance with Standard Paragraph F at the end of this notice.

4. Canyon Creek Compression Company

[Docket No. CP87-111-000]

December 16, 1986.

Take notice that on December 4, 1986, Canyon Creek Compression Company (Applicant), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP87-111-000 an application pursuant to Section 7 of the Natural Gas Act for authorization to transport and compress up to a maximum of 25,000 Mcf of natural gas per day on an interruptible basis for Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it had performed a limited-term transportation for Tennessee pursuant to Part 284, Subpart G of the Commission's Regulations at Docket No. ST83-284-000. Such transportation service will expire on January 23, 1987.

Applicant requests authority to provide an interruptible transportation service for Tennessee for a period of two years from the date of first delivery and month-to-month thereafter. Applicant would provide such service pursuant to the terms and conditions contained in a gas transportation agreement between Applicant and Tennessee dated November 5, 1986. Applicant has been informed by Tennessee that said gas would be used for Tennessee's system supply.

Applicant states that it would cause its gas sellers to deliver for Tennessee' account volumes of natural gas to Applicant at the outlet of Amoco Production Company's processing plant located in Section 16, Township 17 North, Range 119, West, Uinta County, Wyoming.

Applicant proposes to transport on a fully interruptible basis, compress and deliver said volumes, less Tennessee's pro rata share of fuel gas, unaccounted for gas and gas vented, to Overthrust Pipeline Company located in Section 16, Township 17 North, Range 119 West, Uinta County, Wyoming for Tennessee's account for further transportation and exchange.

Applicant proposes to charge Tennessee a negotiated transportation rate of 11.7 cents per Mcf which is based on a 100 percent load factor of Applicant's current Rate Schedule C transportation and compression electric power tracker and interest expense tracker.

Applicant states that no new facilities would be requires for this service. Applicant requests authorization to add or delete additional receipt points in the future that may be necessary to support this service.

Comment date: January 6, 1987, in accordance with Standard Paragraph F at the end of this notice.

5. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP87-113-000]

December 16, 1986.

Take notice that on December 4, 1986, Northern Natural Gas Company, Division of Enron Corp. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP87-113-000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to operate and maintain a delivery point and appurtenant facilities necessary to deliver natural gas to Peoples Natural Gas Company, Division of UtiliCorp United Inc. (Peoples), under the certificate authorization issued in Docket No. CP82-401-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern states that the delivery point would be used to deliver natural gas to Kan-Tex Feeders, Inc. (Kan-Tex), in Grant County, Kansas, who would be served by Peoples. It is states that Kan-Tex's estimated peak day and annual requirements are 180 Mcf and 42,100 Mcf, respectively. Northern states that the cost of the facilities was $5,766 and that Peoples would not be required to make a contribution in aid of construction.

Northern states that its field employees inadvertently relied on the mistaken assumption that Kan-Tex was a right-of-way grantor and therefore installed the small volume delivery point without prior authorization under Section 157.211(a) of the Regulations. Northern states that the delivery point was placed in service and natural gas deliveries to Kan-Tex commenced on April 14, 1986.

Consequently, Northern requests authority to continue to operate and maintain such delivery point to Kan-Tex through Peoples pursuant to Section 157.212 of the Regulations. Northern states that the volumes delivered would be within Peoples current Argus firm entitlement authorized by Commission order issued February 12, 1986, in Docket No. CP86-192-001 and that such deliveries would have no impact on Northern's peak day and annual deliveries. Further, Northern states that the required volumes would be served from the firm entitlement designated by Peoples for delivery to Moscow, Kansas.

Comment date: January 30, 1987, in accordance with Standard Paragraph G at the end of this notice.

6. Southern Natural Gas Company/ South Georgia Natural Gas Company

[Docket No. CP87-101-000]

December 16, 1986.

Take notice that on November 25, 1986, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202, and South Georgia Natural Gas Company (South Georgia), P.O. Box 1279, Thomasville, Georgia 31792 hereinafter referred to as Applicants, filed in Docket No. CP87-101-000 an application pursuant to Section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity with pre-granted abandonment authorization, authorizing the transportation of natural gas on behalf of the City of Thomasville Water and Light Department (Thomasville) all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants request a limited-term certificate, expiring one year from the date of the order, authorizing the transportation of gas on behalf of Thomasville. It is stated that Thomasville has acquired the right to purchase gas from SNG Trading Inc. (SNG Trading). In order to effectuate delivery of the gas, Thomasville has entered into an agreement with South Georgia dated November 10, 1986, (South Georgia Agreement) wherein South Georgia has agreed to transport Thomasville's gas and to act as agent in arranging for the transportation of the gas through Southern's pipeline system. South Georgia, as agent for Thomasville, and Southern entered into a transportation agreement dated November 10, 1986, (Southern Agreement), which sets forth the terms under which Southern will transport gas purchased by Thomasville.

Applicants propose to transport on an interruptible basis up to 3 billion Btu of gas per day purchased by Thomasville from SNG Trading. Applicants state that the Southern Agreement provides that South Georgia would cause gas to be delivered to Southern for transportation at the various existing points of delivery on Southern's contiguous pipeline system specified in Exhibit A to the Southern Agreement. Southern would redeliver to South Georgia at the existing point of interconnection between the pipeline facilities of Southern and those of South Georgia located in Lee County, Alabama (Lee County Redelivery point), an equivalent quantity of gas less 3.25 percent of the volume transported for fuel use, less shrinkage, and less South Georgia's pro-rata share of gas delivered for South Georgia's account which is lost or vented. The South Georgia Agreement provides that Thomasville would cause gas to be delivered to South Georgia for transportation at the Lee County Redelivery Point and would be redelivered to Thomasville at the city of Thomasville Meter Station located in Thomas County, Georgia. South Georgia would redeliver an equivalent volume less 0.5 percent of the volume transported for fuel use, less Thomasville's pro-rata share of gas delivered for Thomasville which is lost or vented.

The Southern Agreement provides that South Georgia would pay Southern each month for performing the transportation service rendered thereunder the following transportation rate:

(a) Where the aggregate of the volumes transported and redelivered by Southern on any day to South Georgia under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's Rate Schedule OCD on such day to South Georgia do not exceed the daily contract demand of South Georgia the transportation rate shall be 39.9 cents per million Btu; and

(b) Where the aggregate of the volumes transported and redelivered by Southern on any day to South Georgia under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's Rate Schedule OCD on such day to South Georgia exceed the daily contract demand of South Georgia, the transportation rate for the excess volumes would be 64.9 cents per million Btu.

The South Georgia Agreement states that Thomasville has agreed to pay South Georgia each month a transportation rate of 101.02 cents per million Btu redelivered by South Georgia and reimburse South Georgia for all transportation and fuel charges and other costs South Georgia pays Southern pursuant to the Southern Agreement. The Agreements also provide for collection of the GRI surcharge.

Southern states that the transportation arrangement would enable Thomasville to diversify its natural gas supply sources and to obtain gas at competitive prices. In addition, Southern would obtain take-or-pay credit on the gas Thomasville may obtain from its suppliers.

Comment date: January 6, 1987, in accordance with Standard Paragraph F at the end of this notice.

7. Tennessee Gas Pipeline Company a Division of Tenneco Inc.

[Docket No. CP87-115-000]

December 16, 1986.

Take notice that on December 8, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP87-115-000 an application pursuant to Section 7(c) of the Natural Gas Act and Section 284.221 of the Commission's Regulations (18 CFR 284.221) for a blanket certificate of public convenience and necessity authorizing transportation of natural gas on behalf of others, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Tennessee states that it intends to transport natural gas on behalf of others and elects to become a transporter under the terms and conditions of the Commission's Order No. 436, issued October 9, 1985, in Docket No. RM85-1-000. Tennessee also requests pregranted authorization to abandon transportation services as provided in Subpart G of Part 284 of the Commission's Regulations. Tennessee states that it would accept and comply with the conditions in paragraph (c) of Section 284.221 of the Commission's Regulations which paragraph refers to Subpart A of Part 284 of the Commission's Regulations provided the Commission excludes Tennessee's storage facilities and service from the open access conditions of Order Nos. 436, *et al.*

Comment date: January 6, 1987, in accordance with Standard Paragraph F at the end of this notice.

8. Trailblazer Pipeline Company

[Docket No. CP87-110-000]

December 16, 1986.

Take notice that on December 4, 1986, Trailblazer Pipeline Company (Applicant), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP87-110-000 an application pursuant to Section 7 of the Natural Gas Act for authorization to transport up to a maximum of 75,000 Mcf of natural gas per day on an interruptible basis for Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it had performed a limited-term transportation for Tennessee pursuant to Part 284, Subpart G of the Commission's Regulations at Docket No. ST83-184-000. Such transportation service expired on October 25, 1986.

Applicant requests authority to provide an interruptible transportation service for Tennessee for a period of two years from the date of first delivery and month-to-month thereafter. Applicant would provide such service pursuant to the terms and conditions contained in an interruptible gas transportation agreement between Applicant and Tennessee dated November 5, 1986. Applicant has been informed by Tennessee that said gas would be used for Tennessee's system supply.

Applicant proposes to receive natural gas for the account of Tennessee at an existing interconnection between the facilities of Applicant and Wyoming Interstate Company, Ltd. located near Rockport in Section 5, Township 11 North, Range 66 West, Weld County, Colorado.

Applicant proposes to transport on a fully interruptible basis and would redeliver volumes of gas for the account of Tennessee to: (1) Natural Gas Pipeline Company of America (Natural) at an existing point of interconnection between the facilities of Applicant and Natural located near Beatrice in Section 15, Township 4 North, Range 6 East, Gage County, Nebraska; and (2) Northern Natural Gas Company (Northern) at an existing point of interconnection between the facilities of Applicant and Northern located near Beatrice in Section 9, Township 4 North, Range 5 East, Gage County, Nebraska.

Applicant proposes to charge Tennessee a transportation rate of 32.34 cents per Mcf.

Applicant states that no new facilities would be required for this service. Applicant requests authorization to add or delete additional receipt points in the future that may be necessary to support this service.

Comment date: January 6, 1987, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20428, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-28635 Filed 12-19-86; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 9066-001 et al.]

Surrender of Preliminary Permits; Burlington Energy Development Associates et al.

December 16, 1986.

Take notice that the following preliminary permits have been surrendered effective as described in Standard Paragraph I at the end of this notice.

1. Burlington Energy Development Associates

[Project No. 9066-001]

Take notice that the Burlington Energy Development Associates, permittee for the Conway Dam Project No. 9066, has requested that the preliminary permit be terminated. The preliminary permit for Project No. 9066 was issued on December 18, 1985, and would have expired on November 30, 1988. The project would have been located on the South River, in Franklin County, Massachusetts.

The permittee filed the request on November 13, 1986.

2. Burlington Energy Development Associates

[Project No. 9287-001]

Take notice that the Burlington Energy Development Associates, permittee for the Stearns Reservoir Project No. 9287, has requested that the preliminary permit be terminated. The preliminary permit for Project No. 9287 was issued on November 7, 1985, and would have expired on November 30, 1988. The project would have been located on the Sudbury River, in Middlesex County, Massachusetts.

The permittee filed the request on November 13, 1986.

3. Burlington Energy Development Associates

[Project No. 9288-001]

Take notice that the Burlington Energy Development Associates, permittee for the Saxonville Dam Project No. 9288, has requested that the preliminary permit be terminated. The preliminary permit for Project No. 9288 was issued on November 7, 1985, and would have expired on November 30, 1988. The project would have been located on the Sudbury River, in Middlesex County, Massachusetts.

The permittee filed the request on November 13, 1986.

4. Burlington Energy Development Associates

[Project No. 9329-001]

Take notice that the Burlington Energy Development Associates, permittee for the Leeds Dam Project No. 9329, has requested that the preliminary permit be terminated. The preliminary permit for Project No. 9329 was issued on December 30, 1985, and would have expired on November 30, 1988. The project would have been located on the Mill River, in Hampshire County, Massachusetts.

The permittee filed the request on November 13, 1986.

5. Burlington Energy Development Associates

[Project No. 9330-001]

Take notice that the Burlington Energy Development Associates, permittee for the Nonotucket Street Dam Project No. 9330, has requested that the preliminary permit be terminated. The preliminary permit for Project No. 9330 was issued on December 11, 1985, and would have expired on November 30, 1988. The project would have been located on the Mill River, in Hampshire County, Massachusetts.

The permittee filed the request on November 13, 1986.

6 Burlington Energy Development Associates

[Project No. 9331-001]

Take notice that the Burlington Energy Development Associates, permittee for the Spring Street Dam Project No. 9331, has requested that the preliminary permit be terminated. The preliminary permit for Project No. 9331 was issued on December 30, 1985, and would have expired on November 30, 1988. The project would have been located on the Mill River, in Hampshire County, Massachusetts.

The permittee filed the request on November 13, 1986

7. Burlington Energy Development Associates

[Project No. 9332-001]

Take notice that the Burlington Energy Development Associates, permittee for the Paradise Pond Project No. 9332, has requested that the preliminary permit be terminated. The preliminary permit for Project No. 9332 was issued on December 30, 1985, and would have expired on November 30, 1988. The project would have been located on the Mill River, in Hampshire County, Massachusetts.

The permittee filed the request on November 13, 1986.

8. Burlington Energy Development Associates

[Project No. 9333-001]

Take notice that the Burlington Energy Development Associates, permittee for the Cochrane Dam Project No. 9333, has requested that the preliminary permit be terminated. The preliminary permit for Project No. 9333 was issued on December 13, 1985, and would have expired on November 30, 1988. The project would have been located on the Charles River, in Norfolk County, Massachusetts.

The permittee filed the request on November 13, 1986.

Standard Paragraphs

I. The preliminary permit shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007 in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-28618 Filed 12-19-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-58-000 et al.]

El Paso Natural Gas Co.; Filing

December 17, 1986.

Take notice that on December 9, 1986, El Paso Natural Gas Company (El Paso) filed its notice that no change in rates is required as of January 1, 1987, due to the change in the statutory Federal income tax rate. El Paso states that this filing is made pursuant to Article XII, *Tracking of Changes in Federal Taxes*, of the "Stipulation and Agreement in Settlement of Rate Proceedings" approved by the Federal Energy Regulatory Commission's letter order dated August 14, 1985 in the above-captioned proceeding.

In compliance with Article XII of the Stipulation and Agreement, El Paso states that it has calculated the impact on its rates of the 1986 Tax Reform Act. The reduction in the statutory corporate income tax rate lowers El Paso's revenue requirement but when offset by other changes in the Federal tax Legislation, such revenue requirement is increased resulting in a change of less than one (1) mill to El Paso's jurisdictional rates. Therefore, El Paso states that its current rates will not change as of January 1, 1987. El Paso claims that it will review the rate impact of the 1986 Tax Reform Act and the Internal Revenue Code again before January 1, 1988 to determine any effect on El Paso's jurisdictional rates at that time pursuant to Article XII of the Stipulation and Agreement.

El Paso has served copies of this filing on all parties of record in Docket No. RP85-58-000, all its interstate pipeline system customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before December 29, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-28636 Filed 12-19-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA87-1-53-002 and TA87-2-53-002]

K N Energy, Inc.; Compliance Filing

December 17, 1986.

Take notice that on December 11, 1986, K N Energy, Inc. (K N) tendered for filing Substitute Twenty-Fifth Revised Sheet No. 4, and Substitute Fourth Revised Sheet No. 4B to its FERC Gas Tariff, Third Revised Volume No. 1, pursuant to its gas cost adjustment provision (section 19), to comply with Ordering Paragraph (A)(1) of the Commission's Order issued November 28, 1986, in Docket No. TA87-1-53-000. The effective date for these sheets is December 1, 1986.

K N also filed Substitute Twenty-Sixth Revised Sheet No. 4 and Substitute Fifth Revised Sheet No. 4B to its FERC Gas Tariff, Third Revised Volume No. 1, pursuant to its Gas Research Institute (GRI) charge adjustment provision (section 22). The revised rates required by the Commission's November 28, 1986 order have been reflected in these substitute tariff sheets which had previously been filed in K N's GRI filing in Docket No. TA87-2-53-000. The effective date for these sheets is January 1, 1987.

Any person desiring to be heard or to protest said filing should file a motion to intervane or a protest with the Federal Energy Regulatory Commission. 825 North Capitol Street, NE., Washington, DC 20428, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before December 29, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to

become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-28637 Filed 12-19-86; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Proposed Statement of Policy; Special Purpose Finance Subsidiaries

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of withdrawal of proposed policy statement.

SUMMARY: The FDIC hereby gives notice that it has withdrawn its proposed Statement of Policy on Finance Subsidiaries that was published in the **Federal Register** on April 11, 1986 (51 FR 12560). The policy statement, as proposed, would seek to minimize the potential for inappropriate uses of special purpose finance subsidiaries by setting forth specific policy guidelines that state nonmember banks and insured savings banks would be encouraged to consider when evaluating plans to establish finance subsidiaries.

The proposal was issued for a 45-day public comment period, which expired on May 27, 1986. After further review of the policy statement proposal, including the public comments that were received in response to the FDIC's request for comments, the FDIC Board of Directors has determined that it is appropriate to withdraw the proposed policy statement from further consideration.

Although inappropriate uses of finance subsidiaries are possible, the FDIC believes that such situations should be handled on a case-by-case basis by using existing supervisory powers rather than by trying to address potential problems through the issuance of specific guidelines. Nonetheless, bank management still has the responsibility to carefully consider the impact of finance subsidiary transactions on the bank's overall financial position. In those situations where finance subsidiary transactions are conducted in an unsafe or unsound manner, the FDIC will seek appropriate supervisory remedies.

DATE: The withdrawal of the proposed Statement of Policy on Special Purpose Finance Subsidiaries is effective December 22, 1986.

FOR FURTHER INFORMATION CONTACT: Stephen G. Pfeifer, Examination Specialist, Division of Bank Supervision, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429, telephone (202) 898-6894.

SUPPLEMENTARY INFORMATION: On April 7, 1986, the FDIC Board of Directors approved the issuance for public comment of a proposed Statement of Policy on Special Purpose Finance Subsidiaries. The policy statement, as proposed, would attempt to address the safety and soundness considerations associated with finance subsidiaries through the adoption of policy guidelines pertaining to:

(1) Establishment and structure of finance subsidiaries;

(2) Investment and collaterialization limitations;

(3) Notification requirements; and

(4) Call Report and capital adequacy treatment for finance subsidiary transactions.

The intent of the proposed policy statement was to facilitate the prudent use of finance subsidiaries that are economically advantageous to state nonmember banks and insured savings banks while minimizing the potential for abusive or unsafe and unsound transactions. In an attempt to achieve these dual objectives, the policy statement would encourage banks to provide timely information to FDIC Regional Directors as to the nature and extent of finance subsidiary transactions. The policy statement would also provide bankers with more definitive guidance as to appropriate methods for structuring and reporting these financing transactions.

Nature of Finance Subsidiaries

Finance subsidiaries are generally established in order to provide funds to the parent bank at favorable borrowing rates. However, based on several of the comment letters received by the FDIC, the subsidiaries can also be used solely for the purpose of generating arbitrage profits rather than for the purpose of obtaining an additional source of funds. For example, a subsidiary might issue collateralized mortgage obligations (CMOs) and use the proceeds to simultaneously buy the mortgage-related collateral that will secure the CMO issue. Thus, no additional funds would be received by the parent bank since the proceeds of the securities issuance are used to purchase the underlying collateral.

Two basic types of finance subsidiaries exist—those that issue preferred stock and those that issue CMOs or other forms of debt securities. The preferred stock usually has a short-term adjustable rate that is repriced every 49 days through an auction bidding process among an organized group of existing and/or potential investors. The CMOs or other debt instruments are generally long-term fixed-rate obligations, although some banks are interested in issuing short-term commercial paper through such subsidiaries.

Except for the arbitrage transactions mentioned above, the parent bank transfers a sufficient amount of its assets to the finance subsidiary in order to collateralize or otherwise support the subsidiary's preferred stock or debt issue. Although the collateral required for CMOs usually is less than 110 percent of the amount received from the CMO issuance, the support required for preferred stock issues usually is 150 percent or more. The above precentages are based on the market value of the underlying collateral rather than the collateral's book value.

Policy Statement Issues

Several important policy issues were considered in the decision to withdraw the policy statement proposal. These issues are discussed below, along with the public comments received on this proposal.

Applicability

In their comment letters, both the U.S. League of Savings Institutions and the National Council of Savings Institutions objected to the inclusion of federally chartered savings banks within the scope of the proposed policy statement. Not only did they contend that the Federal Home Loan Bank Board (FHLBB) should have jurisdiction over all federal savings banks for rules affecting finance subsidiaries owned by these savings banks, since the FHLBB is the primary supervisory authority for federal savings banks, but the U.S. League and National Council also believed that the FDIC has no statutory authority to apply such a policy statement to FHLBB-chartered institutions.

The above objection has become a moot point since the FDIC has decided to withdraw the policy statement proposal. Rather than establishing specific guidelines, the FDIC will consider the safety and soundness of finance subsidiary transactions, and their overall impact on the parent bank, during the course of regular onsite examinations and in conjunction with other activities over which the FDIC has supervisory authority, including the review and approval of certain merger and branch applications.

Investment Limitation

The policy statement as proposed would establish a guideline limiting a bank's aggregate investments in finance subsidiaries to 10 percent of a bank's total assets. This contrasts with the FHLBB regulation, which allows investments in finance subsidiaries equal to 30 percent of total assets. Of the 13 comment letters received in response to the FDIC policy statement proposal, 10 respondents commented on the investment limitation and all of these commentators believed the limitation was too restrictive. While some of the respondents indicated that the investment limitation should be increased to 20 or 30 percent, others viewed a numerical or percentage limit as unnecessary and suggested that more flexibility be allowed by simply indicating that investments should be subject to prudential limits.

Several respondents also stated that transfers of assets by the parent bank to the subsidiary should not be included in the investment limitation if the bank does not make an investment in the finance subsidiary, but rather actually sells some of its assets to the subsidiary at fair market value in exchange for cash. In such a transaction, no overcollateralization occurs and the respondents therefore believed that the need for an asset transfer limitation to cover such transactions is not necessary.

Based upon further analysis of the issues, the Board of Directors has determined that a 10 percent investment limitation, or any other arbitrary figure, may prove to be inappropriate as a guideline. Such a figure may quickly become irrelevant due to the accelerating pace at which the market for asset securitization is evolving. As a consequence, it is possible that case-by-case exceptions would need to be made to any arbitrary investment limitation in order to allow reasonably structured finance subsidiary transactions to be consummated. In addition, an overall constraint on the volume of finance subsidiary transactions would still exist via existing regulatory requirements, since these transactions would normally be reflected as additional assets and liabilities on the bank's consolidated FDIC Report of Condition balance sheet. Because the transactions would result in an increase in total assets with no increase in capital, the potential negative impact on the capital to assets ratio would effectively limit the total dollar volume of such transactions.

Overcollateralization

The proposed policy statement indicated that the assets transferred to the finance subsidiary should not exceed 200 percent of the gross proceeds raised by the finance subsidiary from the securities issuance, net of underwriting costs and related expenses. The FHLBB limit for overcollateralization is 250 percent rather than 200 percent.

Although the market value of the collateral required for CMOs is normally less than 110 percent of the gross proceeds raised, the assets needed to support a finance subsidiary's issuance of preferred stock can easily exceed 150 percent of the gross proceeds raised and in some cases might require more than 200 percent for a favorable investment rating from a nationally recognized rating service. At least seven respondents addressed the 200 percent collateralization limit proposed by the FDIC and all of these commentators believed that this collateral limitation would be unduly restrictive in at least some cases.

While some respondents believed that raising the limit to 250 percent is appropriate, others suggested that the limit should be whatever is customary and necessary in order to obtain a favorable investment rating. Other respondents believed that the policy statement should simply indicate that overcollateralization should be maintained within "prudential" limits or that waivers of overcollateralization limitations should be allowed if any numerical restriciton or guideline is imposed.

The FDIC believes that as the market for securitized assets continues to evolve, there may be changes in the levels of overcollateralization that are deemed customary or necessary for various transactions and these levels can vary based on a number of considerations, including the overall credit quality of the underlying collateral. Establishing one overcollateralization limit to cover the myriad of securities transactions that could be initiated might very well result in a guideline that has little or no relevance when compared to the manner in which actual finance subsidiary transactions might need to be structured in order to be accepted by the marketplace.

Presently, the FDIC has no arbitrary overcollateralization limit for collateralized borrowings that are initiated directly at the bank level. Rather, existing practice and overcollateralization levels are normally reviewed on a case-by-case basis during onsite examinations to ensure that the transactions have been conducted in a safe and sound manner. The FDIC believes it is appropriate for finance subsidiary transactions to be analyzed on a similar basis—that is, examiner judgment should provide a sufficient basis for analyzing the safety and soundness of the finance subsidiary transaction without a need to refer to an arbitrary overcollateralization limitation.

Notification Requirements

The proposed policy statement would have required both 30-day prior notification and subsequent confirmation of finance subsidiary transactions. The prior notification would include a description of the transaction, the intended use of proceeds, and financial projections as to the impact on capital and earnings. The subsequent confirmation would include information on the amount of assets transferred to the subsidiary, the gross proceeds raised, the net proceeds transferred to the parent bank, and an itemized reconciliation of the difference between the gross proceeds raised and the net proceeds transferred to the bank.

Five respondents addressed the notification requirements as being too burdensome. Alternative suggestions ranged from imposing a prior notification of only five days to no notification requirement. Other commentators believed that notification requirements should apply only to problem banks or that sound well-run banks should be able to receive specific waivers or exemptions from the notification requirements.

Based on further evaluation, the FDIC believes it appropriate to minimize the notification provisions. Although it might be of some benefit to the FDIC Regional Office for a bank to submit a prior notification, the FDIC does not believe that a policy statement should be instituted for the sole purpose of mandating such a prior notification, especially since many other forms of collateralized borrowings, securitized asset sales, and other asset-backed transactions do not require prior notification.

Consolidation and Capital Adequacy Requirements

For Reports of Income and Condition filed with the FDIC, subsidiaries that meet any one of the "significance" tests set forth in the Call Report instructions must be consolidated. Thus, securities issued to outside parties by a finance subsidiary that is wholly owned by the parent bank generally would be

reported as a liability on the bank's consolidated financial statements. The FHLBB allows such liabilities to be excluded from total liabilities for regulatory capital purposes if the securities issued by the finance subsidiary are "duration-matched" with the underlying collateral. Five of the respondents indicated that they believe the FDIC should also ignore duration-matched liabilities when viewing capital adequacy requirements for regulatory purposes.

With the exception of securities subsidiaries that fall within the definitions set forth in § 337.4 of the FDIC rules and regulations, all subsidiaries that are required to be consolidated for Call Report purposes are also consolidated for capital adequacy purposes under the FDIC's Part 325 capital maintenance regulation. Although the investment in such a § 337.4 securities subsidiary is not consolidated for capital adequacy purposes, Part 325 requires the amount of the investment to be deducted directly from capital.

The FDIC believes that rather than attempting to unilaterally revise the interagency Call Report instructions as they pertain to consolidation of subsidiaries, the existing instructions should continue to be followed. Thus, subsidiaries, including finance subsidiaries that meet the "significant subsidiaries" test in the Call Report Instructions, should continue to be consolidated for Reports of Income and Condition filed with the FDIC. With the exception of securities subsidiaries that are established pursuant to § 337.4 of the FDIC rules and regulations, all subsidiaries that are consolidated for Call Report purposes are also required to be consolidated for the purposes of evaluating capital adequacy under the FDIC's Part 325 capital maintenance regulation.

The above criteria are presently followed for any Call Reports filed with the FDIC and for any capital adequacy evaluations that the FDIC is authorized or required to make in conjunction with its supervisory responsibilities. Based on further evaluation of the issues, the FDIC believes it appropriate to continue to follow these criteria.

Other Provisions

The policy statement also proposed that 100 percent of the finance subsidiary should be owned by the parent bank and that all proceeds from the finance subsidiary's issuance of securities should be transferred to the parent bank. However, several respondents indicated that a requirement for all proceeds to be transferred to the parent bank should not apply to situations where the subsidiary uses the proceeds to purchase the underlying collateral for the securities issuance or where the bank's finance subsidiary is part of a conduit program involving several other finance subsidiaries that pool their resources to allow for the issuance of a larger block of securities on more favorable terms. Another commenter suggested that the FDIC clarify that the 100 percent stock ownership requirement would not need to include other forms of equity such as preferred stock.

The FDIC believes that rather than setting explicit guidelines with regard to ownership and asset transfers, these aspects of a finance subsidiary's activities, along with those mentioned above, should be evaluated on a case-by-case basis during the course of regular onsite examinations.

Withdrawal of Proposed Policy Statement

After considering the issues relating to finance subsidiaries, the evolving nature of the market for asset securitization, and the responses provided during the public comment period, the FDIC has decided to withdraw from consideration the proposed Statement of Policy on Special Purpose Finance Subsidiaries. As a consequence, finance subsidiary transactions, as well as other forms of collateralized transactions in which the bank pledges assets or provides a senior or preferred claim to others, such as securitized asset transactions, sales of assets with puts, and collateralized standby letters of credit, will continue to be evaluated as to their safety and soundness on a case-by-case basis.

By Order of the Board of Directors.

Dated at Washington, DC, this 16th day of December, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Security.

[FR Doc. 86-28641 Filed 12-19-86; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM

ASB Corp. et al.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank holding company. The factors that are considered in action on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than January 9, 1987.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *ASB Corporation*, Scarsdale New York; to become a bank holding company by acquiring 100 percent of the voting shares of Prime Savings Bank, Mamaroneck, New York (a *de novo bank*).

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *WIN Bancorp, Inc.*, Winchester, Illinois; to become a bank holding company by acquiring 100 percent of voting shares of Winchester National Bank, Winchester, Illinois.

2. *First State Bancshares, Inc.*, Farmington, Missouri; to acquire 100 percent of the voting shares of Iron County Security Bank, Ironton, Missouri.

Board of Governors of the Federal Reserve System, December 16, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-28571 Filed 12-19-86; 8:45 am]

BILLING CODE 6210-01-M

Bank of Montreal et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Act (12 U.S.C. 1843(c)(8)) and §225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are indispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than January 2, 1987.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Bank of Montreal*, Montreal, Canada; Bankmont Financial Corporation, New York, New York; and Harris Bankcorp, Inc., Chicago Illinois; to acquire Harris Brokerage Services, Inc., Chicago Illinois, and thereby engage in providing securities brokerage services pursuant to § 225.25(b)(15) of Regulation Y.

Board of Governors of the Federal Reserve System, December 16, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-28572 Filed 12-19-86; 8:45 am]

BILLING CODE 6210-01-M

Donald Helgeson et al.; Acquisitions of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 31, 1986.

A. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Donald Helgeson*, St Cloud, Minnesota; to acquire 34.86 percent of the voting shares of Chisago Bancorporation, Chisago City, Minnesota; and thereby indirectly acquire Chisago State Bank, Chisago City, Minnesota.

2. *Mr. Stanley Nemer*, Minneapolis, Minnesota; to acquire the general partnership interests in D.L. Shares Limited Partnership, Detroit Lakes, Minnesota; and therby acquire D.L. Bancshares, Inc., Detroit Lakes, Minnesota, and thereby indirectly acquire The First National Bank of Detroit Lakes, Detroit Lakes, Minnesota.

Board of Governors of the Federal Reserve System, December 16, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-28573 Filed 12-19-86; 8:45 am]

BILLING CODE 6210-01-M

Signet Banking Corp. et al.; Application To Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under §225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and §225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in §225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 9, 1986.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Signet Banking Corporation*, Richmond, Virginia; to engage *de novo* through its subsidiary, Landmark Financial Services, Inc., Silver Spring, Maryland, in acting as principal, agent, or broker for insurance that is: (a) directly related to an extension of credit by the bank holding company or any of its subsidiaries; and (b) limited to assuring the repayment of the outstanding balance due on the extension of credit in the event of the death, disability, or involuntary unemployment of the debtor pursuant ot §225.25(b)(8)(i) of Regulation Y.

2. *South Carolina National Corporation*, Columbia, South Carolina; to engage *de novo* through its subsidiary, Provident Financial Corporation, Columbia, South Carolina, in providing consumer finance activities which may include the extension of direct loans to consumers, the discount of retail and installment notes of contracts, servicing loans and other extensions of credit for the account of others, and acting as agent for sales of credit life, credit accident and health, and property and casualty insurance directly related to its extensions of credit pursuant to §225.25(b)(1) and (8)(i)(A). Property and casualty insurance will be offered pursuant to section 4(c)(8)(D) of the Bank Holding Company Act.

Board of Governors of the Federal Reserve System, December 16, 1986.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 86-28574 Filed 12-19-86; 8:45 am]
BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee Meetings

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings

The following advisory committee meetings are announced:

Circulatory System Devices Panel

Date, time, and place. January 16, 8:30 a.m., Rm. 703-727A, Hubert H. Humphrey Bldg., 200 Independence Ave., SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9 a.m.; open committee discussion, 9 a.m. to 2 p.m.; closed committee deliberations, 2 p.m. to 4 p.m.; Keith Lusted, Center for Devices and Radiological Health (HFZ-450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7594.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of medical devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 2, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss premarket approval applications (PMA's) for an external dual chamber pacemaker, a laser catheter, and possibly a pulse generator system.

Closed committee deliberations. If necessary, the committee may discuss trade secret or confidential commercial or financial information regarding the PMA's listed above. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Immunology Devices Panel

Date, time, and place. January 29 and 30, 9 a.m., Rm. 703-727A, 200 Independence Ave., SW., Washington, DC.

Type of meeting and contact person. Open public hearing, January 29, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 12 m.; closed presentation of data, 1 p.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 5 p.m.; open committee discussion, January 30, 9 a.m. to 10 a.m.; closed committee deliberations, 10 a.m. to 12 m.; open committee discussion, 1 p.m. to 5 p.m.; S. K. Vadlamudi, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7550.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 16, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a premarket approval application (PMA) for an in vitro diagnostic tumor marker assay.

Closed presentation of data. Trade secret or confidential commercial information will be presented to the committee regarding the PMA for the in vitro diagnostic tumor marker assay. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Closed committee deliberations. The committee will discuss trade secret or confidential commercial information regarding the above PMA. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Vaccines and Related Biological Products Advisory Committee

Date, time, and place. January 29, 9 a.m., and January 30, 8:30 a.m., Bldg. 29, Rm. 115, 8800 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Closed committee deliberations, January 29, 9 a.m. to 5 p.m.; open public hearing, January 30, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 2:30 p.m.; Jack Gertzog, Center for Drugs and Biologics (HFN-31), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5455.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of vaccines and related biological products intended for use in the diagnosis, prevention, or treatment of human diseases. The committee also reviews and evaluates the quality and relevance of FDA's research program which provides scientific support for the regulation of these products.

Agenda—Open public hearing. Interested persons who wish to present data, information, or views, orally or in writing on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. The committee will discuss influenza vaccine formulation for the 1987-1988 influenza season.

Closed committee deliberations. The committee will review trade secret and/or confidential commercial information relevant to pending license applications and investigational new drug (IND's). This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b.(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA-305), Rm. 4-62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94-409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: December 16, 1986.
Frank E. Young,
Commissioner of Food and Drugs.
[FR Doc. 86-28596 Filed 12-19-86; 8:45 am]
BILLING CODE 4160-01-M

Health Care Financing Administration

[HOA-005-N]

Meeting of the Task Force on Long-Term Health Care Policies

AGENCY: Health Care Financing Administration (HCFA), HHS.
ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), this notice announces a meeting of the Task Force on Long-Term Health Care Insurance Policies.

DATE: The meeting will be held on January 22, 1987 from 8:00 a.m. to 4:30 p.m., and on January 23, 1987 from 8:00 a.m. to 3:00 p.m., M.S.T. The meeting will be open to the public.

ADDRESS: The meeting will be held in the Ramada Valley Ho Resort, 6850 Main Street, Scottsdale, Arizona.

FOR FURTHER INFORMATION CONTACT: Dennis DeWitt, 202-245-0063.

SUPPLEMENTARY INFORMATION:

Purpose

The Task Force on Long-Term Health Care Policies, established under section 9601 of the Consolidated Omnibus Budget Reconciliation Act of 1985, will evaluate current issues relating to private long-term care insurance. To ensure the evolution of sound private long-term care policies and to help foster consumer confidence in them, the Task Force will develop guidelines that can be used by State regulators, persons involved in the insurance industry, and consumers who may wish to purchase such policies.

The term "long-term health care policy" means an insurance plan, or similar health benefits plan, that is designed for or marketed as providing (or making payment for) health care services (such as nursing home care and home health care) or related services (which may include home and community-based services), or both, over an extended period of time.

The Task Force on Long-Term Health Care Policies will advise the Secretary of Health and Human Services and the Administrator of the Health Care Financing Administration concerning the development of insurance policies for long-term care that are privately marketed to individuals or groups. The Task Force will develop recommendations for long-term health care policies, including recommendations designed to: (1) Limit marketing and agent abuse for those policies; (2) assure the dissemination of

information to consumers necessary to permit informed choice in purchasing the policies and to reduce the purchase of unnecessary or duplicative coverage; (3) assure that benefits provided under the policies are reasonable in relationship to premiums charged; and (4) promote the development and availability of long-term health care policies that meet these recommendations.

Agenda

Agenda items for the meeting will include Task Force discussion on long-term care insurance benefits and cost control including the definition of long-term care, the definition of long-term care insurance, level of care, service definition, management of care, employer reluctance to offer the long-term care insurance benefit and the portability of this benefit.

Agenda items are subject to change as priorities dictate.

(Sec. 10(a)(2) of Pub. L. 92-463, as amended (5 U.S.C. App. I, Sec. 1-15))

Dated: December 16, 1986.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 86-28645 Filed 12-19-86; 8:45 am]

BILLING CODE 4120-01-M

National Institutes of Health

National Institute of Dental Research; Meeting of the National Advisory Dental Research Council

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the National Advisory Dental Research Council, National Institute of Dental Research, on January 26-27, 1987, Conference Room 10, Building 31C, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public from 9 a.m. to recess on January 26 for general discussion and program presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting of the Council will be closed to public on January 27 from 9 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Marie U. Nylen, Executive Secretary, National Advisory Dental Research Council, and Director, Extramural Programs, National Institute of Dental Research, National Institutes of Health, Westwood Building, Room 503, Bethesda, Maryland 20892, (telephone 301-496-7723) will furnish a roster of committee members, a summary of the meeting, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program Nos. 13.121—Diseases of the Teeth and Support Tissues; Caries and Restorative Materials; Periodontal and Soft Tissue Diseases; 13.122—Disorders of Structure, Function, and Behavior; Craniofacial Anomalies, Pain Control, and Behavioral Studies; 13.845—Dental Research Institutes; National Institutes of Health.)

Dated: December 15, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86-28578 Filed 12-19-86; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cancer Biology-Immunology Contract Review Committee, National Cancer Institute, National Institutes of Health.

This meeting will be open to the public to discuss administrative details. Attendance by the public will be limited to space available.

This meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, NCI, Building 31, Room 10A06, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892 (301-496-5708), will provide a summary of the meeting and a roster of the committee members upon request. Other information pertaining to the meeting can be obtained from the Executive Secretary indicated.

Name of Committee: Cancer Biology—Immunology Contract Review Committee.

Executive Secretary: Wilna A. Woods, Ph.D., National Cancer Institute, DEA, CRB, 5333 Westbard Avenue, Room 807, Bethesda, Maryland 20892, (301) 496-7153.

Date of Meeting: January 9, 1987.

Place of Meeting: National Institutes of Health, 9000 Rockville Pike, Building 31A, Conference Room 2, Bethesda, Maryland 20892.

Open: January 9, 1987, 9 a.m.-9:30 a.m.

Agenda: To discuss administrative details.

Closed: January 9, 1987, 9:30 a.m.—adjournment.

Closure Reason: Contract proposals review.

Dated: December 15, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86-28579 Filed 12-19-86; 8:45 am]

BILLING CODE 4140-01-M

National Library of Medicine; Meetings of the Board of Regents, the Extramural Programs Subcommittee, the Lister Hill Center Subcommittee, and the Program Outreach Subcommittee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Regents of the National Library of Medicine on Jan. 29-30, 1987, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland, the meetings of the Lister Hill Center and the Extramural Programs Subcommittees of the Board of Regents on the preceding day, Jan. 28, from 1:00 to 2:00 p.m., in the 7th floor Conference Room, and from 1:00 to 2:00 p.m. in the 5th floor Conference Room of the Lister Hill Center Building, respectively, and the Program Outreach Subcommittee on Jan. 28 from 2:00 to 3:00 p.m. in Conference Room "B" of the Library.

The meeting of the Board will be open to the public from 9:00 a.m. to 5:15 p.m. on Jan. 29 and from 9:00 to approximately 11:15 a.m. on Jan. 30 for administrative reports and program discussions. The entire meetings of the Lister Hill Center and the Program Outreach Subcommittees will be open to the public. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4), 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the entire meeting of the Extramural Programs Subcommittee on Jan. 28, will be closed to the public, and the regular Board meeting on Jan. 30 will be closed from approximately 11:15 a.m. to adjournment for the review, discussion, and evaluation of individual

grant applications. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Robert B. Mehnert, Chief, Office of Inquiries and Publications Management, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, Telephone Number: 301-496-6308, will furnish a summary of the meeting, rosters of Board members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.879—Medical Library Assistance, National Institutes of Health)

Dated: December 15, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86-28580 Filed 12-19-86; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Biometry and Epidemiology Contract Review Committee, National Cancer Institute, National Institutes of Health.

This meeting will be open to the public to discuss administrative details. Attendance by the public will be limited to space available.

This meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, NCI, Building 31, Room 10A06, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892 (301/496-5708), will provide a summary of the meeting and a roster of the committee members upon request. Other information pertaining to the meeting can be obtained from the Executive Secretary indicated.

Name of Committee: Biometry and Epidemiology Contract Review Committee.

Executive Secretary: Harvey P. Stein, Ph.D., National Cancer Institute, DEA, CRB, 5333 Westbard Avenue, Room 804, Bethesda, Maryland 20892 301/496-7030.

Date of Meeting: January 30, 1987.

Place of Meeting: National Institutes of Health, Conference Room 2, Building 31A, 9000 Rockville Pike, Bethesda, Maryland 20892.

Open: January 30, 1987, 9 a.m.-10 a.m.

Agenda: To discuss administrative details.

Closed: January 30, 1987, 10 a.m.—adjournment.

Closure Reason: Contract proposals review.

Dated: December 15, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86-28581 Filed 12-19-86; 8:45 am]

BILLING CODE 4140-01-M

National Institute on Aging; Meeting of National Advisory Council on Aging

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Council on Aging, National Institute on Aging, (NIA), on February 5-6, 1987, in Building 31, Conference Room 6, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public on Thursday, February 5, from 10:30 a.m. until noon for a status report by the Director, National Institute on Aging, and the annual review for the NIA Epidemiology, Demography, and Biometry Program. It will be open to the public on Friday, February 6, from 9:00 a.m. until adjournment for a report on the ad hoc Committee on Program, a report on the Director's Advisory Committee Meeting, and a report on the NIA Centennial Activities. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting of the Council will be closed to the public on February 5 from 1:00 p.m. to recess for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Because this meeting is scheduled so far in advance, it is suggested that you contact Mrs. June McCann, Council Secretary for the National Institute on Aging, National Institutes of Health, Building 31, Room 2C05, Bethesda, Maryland 20892, (301/496-9322), for specific information.

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health)

Dated: December 15, 1986.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 86-28582 Filed 12-19-86; 8:45 am]

BILLING CODE 4140-01-M

Division of Research Resources; Meeting of the National Advisory Research Resources Council

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Research Resources Council (NARRC), Division of Research Resources (DRR), February 2-3, 1987, 9:00 a.m., Conference Room 10, Building 31, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on February 2 from 9:00 a.m. until recess and from 9:00 a.m. until approximately 10:45 a.m. on February 3 during which time there will be discussions on administrative matters such as previous meeting minutes; the Report of the Director, DRR; review of the Council Operating Procedures; and budget and legislative updates. The film, "What's NIH," will be shown, and Mr. Geoffrey Grant, Grants Policy Officer, Office of Extramural Research and Training, NIH, will present an overview of the NIH Study of Escalation of Costs in Research Grants. In addition, the General Clinical Research Centers Program, DRR, will be the highlighted DRR Program at this meeting. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 522b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on February 3 from approximately 10:45 a.m. until adjournment for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, DRR, Building 31, Room 5B10, National Institutes of Health, Bethesda, Maryland 20892, 301/496-5545, will provide a summary of the meeting and a

roster of the Council members upon request. Dr. James F. O'Donnell, Deputy Director, DRR, Building 31, Room 5B03, National Institutes of Health, Bethesda, Maryland 20892, 301/496-6023, will furnish substantive program information upon request, and will receive any comments pertaining to this announcement.

(Catalog of Federal Domestic Assistance Program Nos. 13.306, Laboratory Animal Sciences and Primate Research; 13.333, Clinical Research; 13.337, Biomedical Research Support; 13.371, Biomedical Research Technology; 13.375, Minority Biomedical Research Support, National Institutes of Health)

Dated: December 15, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86-28583 Filed 12-19-86; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meeting

Notice is hereby given of the meeting of the Interagency Technical Committee (IATC) Working Group on Lung Diseases, sponsored by the National Heart, Lung, and Blood Institute on February 17, 1987, from 9 a.m. to 4 p.m., Building 31, C Wing, Conference Room 10, at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting is open to the public. The Interagency Technical Committee (IATC) Working Group on Lung Diseases Coordinates Federally-supported research and research training concerning pulmonary diseases. This meeting will address mechanical ventilation of patients in the home, with emphasis on research needs and possible areas of collaboration. Attendance by the public will be limited to space available.

For program information, agenda, and minutes of the meeting, contact: Dr. William Sanslone, Office of the Director, Division of Lung Diseases, National Heart, Lung, and Blood Institute, National Institutes of Health, Westwood Building, Room 6A16, 5333 Westbard Avenue, Bethesda, Maryland 20892, (301) 496-7208.

Dated: December 17, 1986.

James B. Wyngaarden,

Director, NIH.

[FR Doc. 86-28643 Filed 12-19-86; 8:45 am]

BILLING CODE 4140-01-M

Public Health Services

National Commission on Orphan Diseases; Public Meeting

AGENCY: Office of the Assistant Secretary for Health.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (DHHS) and the Office of the Assistant Secretary for Health are announcing a forthcoming meeting of the National Commission on Orphan Diseases scheduled to meet on January 22 and 23, 1987.

DATE: Date, Time and Place: January 22, 1987, at 1 p.m.; January 23, 1987, 9 a.m., Room 703A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. The entire meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Written requests to participate should be sent to: Stephen C. Groft, Pharm. D., Executive Director, National Commission on Orphan Diseases, Office of the Assistant Secretary for Health, 5600 Fishers Lane, Room 18-38, Rockville, MD 20857, 301-443-6156.

Agenda: Open Public Hearing

Interested persons may present data, information, or views orally or in writing on issues pending before the Commission or on any of the duties and responsibilities of the Commission as described below. Those desiring to make formal presentations should notify the contact person before January 9, 1987 and submit a brief statement of the information they wish to present to the Commission. Those requests should include the names and addresses of proposed participants and an indication of the approximate time required to make their comments. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting will be allowed to make an oral presentation at the conclusion of the meeting, if time permits, at the chairperson's discretion.

Open Commission Discussion

Discussion will center on the organizational structure of the Commission, definition of the problem, role of the Commission, charges to the Commission, and election of the chairperson. The primary focus of the meeting will center on the identification of the issues to be addressed in future meetings and methods to respond to these issues.

SUPPLEMENTARY INFORMATION: Public Law 99-91 (Orphan Drug Amendments of 1985) established the National Commission on Orphan Diseases. The Commission shall assess the activities of the National Institutes of Health (NIH), the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), the Food and Drug Administration (FDA), other public agencies, and private entities in connection with:

(1) Basic research conducted on rare diseases;

(2) The use in research on rare disease of knowledge developed in other research;

(3) Applied and clinical research on the prevention, diagnosis, and treatment of rare diseases; and

(4) The dissemination to the public, health care professionals, researchers, and drug and medical device manufacturers of knowledge developed in research on rare diseases and other diseases which can be used in the prevention, diagnosis, and treatment of rare diseases.

In assessing the activities of the NIH, ADAMHA, and FDA in connection with research on rare diseases, the Commission shall review the following:

(1) The appropriateness of the priorities currently placed on research on rare diseases;

(2) The relative effectiveness of grants and contracts when used to fund research on rare diseases;

(3) The appropriateness of specific requirements applicable to applications for funds for research on rare diseases taking into consideration the reasonable capacity of applicants to meet such requirements;

(4) The adequacy of the scientific basis for such research, including the adequacy of the research facilities and research resources used in such research and the appropriateness of the scientific training of the personnel engaged in such research;

(5) The effectiveness of activities undertaken to encourage such research;

(6) The organization of the peer review process applicable to applications for funds for such research to determine if the organization of the peer review process could be revised to improve the effectiveness of the review provided to proposals for research on rare diseases;

(7) The effectiveness of the coordination between the national research institutes of the National Institutes of Health, the institutes of the Alcohol, Drug Abuse, and Mental Health Administration, the Food and Drug Administration, and private entities in supporting such research; and

(8) The effectiveness of activities undertaken to assure that knowledge developed in research on nonrare diseases is, when appropriate, used in research on rare diseases.

The Commission shall transmit to the Secretary and to each House of the Congress a report on the activities of the Commission. The report shall contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for:

(1) A long range plan for the use of public and private resources to improve research into rare diseases and to assist in the prevention, diagnosis, and treatment of rare diseases; and

(2) Such legislation or administrative actions as it considers appropriate.

Meetings of the Commission shall be conducted, insofar as is practical, in accordance with the agenda published in the **Federal Register** notices. Changes in the agenda will be announced at the beginning of the open portion of the meeting.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of Commission members and the charter of the Commission will be available at the meeting. Those unable to attend the meeting may request this information from the contact person. Summary minutes of the meeting will be made available upon request from the contact person.

This notice is issued under 10(a) (1) and (2) of the Federal Advisory Committee Act, Pub. L. 92-463 (5 U.S.C. Appendix I).

Dated: December 10, 1986.

Lowell T. Harmison,

Acting Assistant Secretary for Health.

[FR Doc. 86-28615 Filed 12-19-86; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Theodore Salas, Englewood, CO—PRT-713869

The applicant requests a permit to import 4 male and 2 female bar-tailed pheasants (*Syrmoticus humoie*), 2 male and 2 female white eared pheasants (*Crossoptilon crossoptilon*), 2 male Edward's pheasants (*Lophura edwardsi*), 4 male and 2 female Elliot's pheasants (*Syrmoticus elliotl*), 2 male and 2 female Mikado pheasants (*Syrmoticus mikodo*), 1 male Palawan peacock pheasant (*Polyplectron emphanum*), and 2 male Hawaiian (-nene) geese (*Nesochen* (-Branta) sandvicensis) from South View Aviaries in Burnaby B. C. for the purpose of breeding.

Applicant: Henry Doorly Zoo, Omaha, NE—PRT-714109

The applicant requests a permit to import one female captive born maned wolf (*Chryscocyon brachyurus*) from St. Martin-la-Plaine, Rive de Gier, France, for the purpose of captive propagation.

Applicant: Varnadoe Nurseries, Inc., Colquitt, GA—PRT-713917

The applicant requests a permit to sell in interstate commerce artificially propagated specimens of Chapman rhododendron (*Rhododendron chapmanii*) for enhancement of propagation.

Applicant: White Oak Plantation, Yulee, FL—PRT-713938

The applicant requests a permit to import one male maned wolf (*Chrysocyon brachyurus*) from Parc Zoologique, St. Martin-la-Plaine, Rive de Gier, France, for the purpose of breeding. Import of this captive born specimen will improve the genetic variability of the applicant's breeding group.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: December 16, 1986.

R.K. Robinson,

Acting Chief, Federal Wildlife Permit Office.

[FR Doc. 86-28624 Filed 12-19-86; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the telephone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395-7313, with copies to Norman J. Hess; Acting Chief, Rules, Orders, and Standards Branch; Offshore Rules and Operations Division; Mail Stop 646, Room 6A110; Minerals Management Service; 12203 Sunrise Valley Drive; Reston, Virginia 22091.

Title: Applying for Notices or Permits, 30 CFR 251.5.

Abstract: Respondents are required to apply for permits or file notices in order to conduct activities offshore. The information is necessary to evaluate applications to conduct prelease exploration offshore and to monitor activities of scientific exploration conducted under notices to ensure there is no environmental degradation, personnel harm, damage to historical or cultural sites, or interference with other uses.

Bureau Form Number: Form MMS-327
Frequency: On Occasion
Description of Respondents: Federal offshore permittees
Annual Responses: 405
Annual Burden Hours: 6,440
Bureau Clearance Officer: Dorothy Christopher, (703) 435-6213

Dated: December 4, 1986.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 86-28673 Filed 12-19-86; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Tenneco Oil Exploration and Production

AGENCY: Minerals Management Service.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Tenneco Oil Exploration and Production has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5409, Block 96, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the

development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATES: The subject DOCD was deemed submitted on December 12, 1986. Comments must be received on or before January 6, 1987 or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico Region, Minerals Management Service, 1201 Wholesalers Pkwy., Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certificate are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section; Exploration/Development Plans Unit, Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: December 15, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 28674 Filed 12-19-86; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Intention To Negotiate Concession Contract; Oregon Inlet Fishing Center, Inc.

Pursuant to the provisions of section 5 of the Act of October 9, 1965, (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Oregon Inlet Fishing Center, Inc. authorizing it to continue to provide a fishing center and charter boat booking service at Cape Hatteras National Seashore for a period of ten years from January 1, 1987, through December 31, 1996.

This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1986, and, therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Southeast Region, National Park Service, 75 Spring Street SW., Atlanta, Georgia 30303, for information as to the requirements of the proposed contract.

Dated: May 5, 1986.

C.W. Ogle,

Acting Regional Director, Southeast Region.

[FR Doc. 86-28601 Filed 12-19-86; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 13, 1986. Pursuant to § 60.13 of 36 CFR Park 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by January 6, 1987.

Carol D. Shull,

Chief of Registration, National Register.

CONNECTICUT

Fairfield County

Stamford, *Long Ridge Village Historic District,* Old Long Ridge Rd. bounded by the New York State Line, Rock Rimmon Rd., and Long Ridge Rd. (CT 104)

FLORIDA

Charlotte County

Punta Gorda, *Freemon, A. C., House,* 639 E. Hargreaves Ave.

Duval County

Jacksonville, *Springfield Historic District,* Roughly bounded by Twelfth, Clark, and First Sts., Hogans Creek and Boulevard

MINNESOTA

Jackson County

Jackson vicinity, *Moore, George M., Farmstead,* CR 4

Watonwan County

La Salle vicinity, *Nelson and Albin Cooperative Mercantile Association Store,* CR 6 St. James, *Watonwan County Courthouse,* Seventh St., S and Second Ave., S

MISSISSIPPI

Harrison County

Deer Island-Deer Island Shell Midden Site (22HR500)

Leake County

Steep Mound Site (22LK526)

Tunica County

Canon Site (22-Tu-523)
Dundee Site (22-Tu-501)
Evansville Mounds (22-Tu-502)
Johnson Cemetery Site (22-Tu-516)
Owens Site (22-Tu-512)

NEW MEXICO

Rio Arriba County

Adams Canyon Site (LA 55824) (Navajo—Refuge Pueblo TR)
Adolfo Canyon Site (LA 5665) (Novajo—Refuge Pueblo TR)
Boulder Fortress (LA 55828) (Navajo—Refuge Pueblo TR)
Cabresto Mesa Tower Complex (LA 2138) (Novajo—Refuge Pueblo TR)
Cagle's Site (LA 55826) (Navajo—Refuge Pueblo TR)
Canyon View Ruin (LA 55827) (Navajo—Refuge Pueblo TR)
Casa Mesa Diablo (LA 11100) (Navajo—Refuge Pueblo TR)
Citodel, The (LA 55828) (Navajo—Refuge Pueblo TR)
Compressor Station Ruin (LA 5858) (Novajo—Refuge Pueblo TR)
Crevice Ruin (LA 13218) (Navajo—Refuge Pueblo TR)
Crow Canyon Site (LA 20219) (Navajo—Refuge Pueblo TR)
Deladito Pueblito (LA 5649) (Navajo—Refuge Pueblo TR)
Foothold Ruin (LA 9073) (Navajo—Refuge Pueblo TR)
Frances Canyon Ruin (LA 2135) (Navajo—Refuge Pueblo TR)
Garcia Canyon Pueblito (LA 38606) (Navajo—Refuge Pueblo TR)
Gomez Canyon Ruin (LA 55831) (Navajo—Refuge Pueblo TR)
Gomez Point Site (LA 58832) (Navajo—Refuge Pueblo TR)
Gould Pass Ruin (LA 5659) (Navajo—Refuge Pueblo TR)
Hill Rood Ruin (LA 55833) (Navajo—Refuge Pueblo TR)
Hooded Fireplace Ruin (LA 5862) (Navajo—Refuge Pueblo TR)
Kin Nao doo (Maize House) (LA 1872) (Navajo—Refuge Pueblo TR)
Kin Yazhi (Little House) (LA 2433) (Navajo—Refuge Pueblo TR)
Largo School Ruin (LA 5857) (Navajo—Refuge Pueblo TR)
Old Fort (LA 1869) (Navajo—Refuge Pueblo TR)
Overlook Site (LA 10732) (Navajo—Refuge Pueblo TR)
Pointed Butte Ruin (LA 10733) (Navajo—Refuge Pueblo TR)
Pork Chop Poss Site (LA 5661) (Navajo—Refuge Pueblo TR)
Pueblito Canyon Ruin (LA 1684) (Navajo—Refuge Pueblo TR)
Pueblito East Ruin (LA 55834) (Navajo—Refuge Pueblo TR)
Ridge Top House (LA 6287) (Navajo—Refuge Pueblo TR)
Rincon Largo Ruin (LA 2436 and LA 2435) (Navajo—Refuge Pueblo TR)
Rincon Rockshelter (LA 55835) (Navajo—Refuge Pueblo TR)
Romine Canyon Ruin (LA 55836) (Navajo—Refuge Pueblo TR)
Romine Ranch Site (LA 55837) (Navajo—Refuge Pueblo TR)
Shoft House (LA 5660) (Navajo—Refuge Pueblo TR)
Split Rock Ruin (LA 5664) (Navajo—Refuge Pueblo TR)
Tapicito Ruin (LA 2298) (Novajo—Refuge Pueblo TR)
Three Corn Ruin (LA 1871) (Navajo—Refuge Pueblo TR)
Tower of the Standing God (LA 55839) (Novajo—Refuge Pueblo TR)
Truby's Tower (LA 2434) (Navajo—Refuge Pueblo TR)
Unreachable Rockshelter (LA 55841) (Navajo—Refuge Pueblo TR) (also in San Juan County)
Wall, The (LA 55840) (Navajo—Refuge Pueblo TR)

San Juan County

Christmas Tree Ruin (LA 11097) (Navajo—Refuge Pueblo TR)
Cottonwood Divide Site (LA 55829) (Navajo—Refuge Pueblo TR)
Hadlock's Crow Canyon #1 (LA 55830) (Navajo—Refuge Pueblo TR)
Prieto Mesa Site (LA 11251) (Navajo—Refuge Pueblo TR)
Simon Canyon (LA 5047) (Navajo—Refuge Pueblo TR)
Star Rock Refuge (LA 55838) (Navajo—Refuge Pueblo TR)

NORTH CAROLINA

Pender County

Wilmington vicinity, *Moore's Creek National Military Park (Boundary Increase),* NW of Wilmington on NC 210

OREGON

Multnomah County

Bonneville, *Bonneville Dam Historic District,* Roughly bounded by Mitchell Creek Bypass, SW District boundary, Union Pacific right-of-way, and hatchery service rd.

TEXAS

Bowie County

Tilson Mounds—Summerhill Lake Place (41BW14)

VIRGINIA

King George Country

Port Conway, *Emmanuel Church,* US 301

Loudoun County

Ashburn vicinity, *Janelia,* N side of VA 7, 6 mi E of Leesburg

Pulaski County

Snowville, *Snowville Historic District,* Along VA 693

WISCONSIN

Milwaukee County

Whitefish Bay, *Ullius, Fred W. Jr., House (Ernest Flagg Stone Masonry Houses of Milwaukee County TR),* 5775 N. Santa Monica Blvd.

Waukesha County

Waukesha, *Arlington Apartments (Waukesha MRA),* 300 Arlington St.

Waukesha, *Wisconsin Industrial School for Boys (Waukesha MRA),* 621 and 627 W. College Ave.

[FR Doc. 86-86602 Filed 12-19-86; 8:45 am]

BILLING CODE 4310-70-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted on or before January 21, 1987.

ADDRESSES: Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506 (202-786-0233) and Ms. Judy McIntosh, Office of Management and Budget, New Executive Office Building, 728 Jackson Place, NW., Room 3208, Washington, DC 20503 (202-395-6880).

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Foreman, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202-786-0233) from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) and estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Revisions

Title: Applications and Instruction Forms for the Editions Category
Form Number: Not applicable
Frequency of Collection: Annual
Respondents: Humanities researchers and institutions
Use: Application for funding
Estimated Number of Respondents: 79
Estimated Hours for Respondents to Provide Information: 52 per respondent

Susan Metts,

Director of Administration.

[FR Doc. 86-28642 Filed 12-19-86; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-286]

Power Authority of the State of New York Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of Appendix R to 10 CFR 50 to Power Authority of the State of New York (the licensee), for the Indian Point Nuclear Generating Unit No. 3, located in Westchester County, New York.

Environmental Assessment

Identification of proposed action: The exemption relieves the technical requirements of 10 CFR 50 Appendix R in the areas of the Primary Auxiliary Building, Cable Tunnel, Auxiliary Feedwater Pump Room, 8-hour battery powered emergency lighting in the yard area and Yard Areas-Service Water Pumps based on the provision of an equivalent level of fire safety in the affected areas.

The need for the proposed action: The proposed exemption is needed because the features described in the licensee's requests regarding the existing fire protection at the plant for these items are the most practical means for meeting the intent of Appendix R and literal compliance would not significantly enhance the fire protection capability.

Environmental impacts of the proposed action: The proposed exemption will provide a degree of fire protection that is equivalent to that required by Appendix R for the affected areas of the plant such that there is no increase in the risk of fires at this facility. Consequently, the probability of fires has not been increased and the post-fire radiological releases will not be greater than previously determined nor does the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternative use of resources: This action involves no use of resources not previously considered in the Final Environmental Statement (construction permit and operating license) for the Indian Point Nuclear Generating Unit No. 3.

Agencies and persons consulted: The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the applications for exemption dated August 16, 1985, and June 14 and September 19, 1985, and supplemented on March 15, 1985, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Local Public Document Room, White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Dated At Bethesda, Maryland, this 15th day of December, 1986.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, PWR Project Directorote #3, Divsion of PWR Licensing-A.

[FR Doc. 86-28631 Filed 12-19-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-344]

Portland General Electric Co. (Trojan Nuclear Power Plant); Receipt of Petition for Director's Decision

Notice is hereby given that by a Petition pursuant to 10 CFR 2.206 dated November 3, 1986, Petitioners Forelaws on Board, Elaine Kelley and Lloyd K. Marbet sought suspension of the operating license for the Trojan Nuclear Power Plant operated by the Portland General Electric Company (Licensee). The Petition alleged that the Licensee had failed to disclose to the NRC conditions that undermine the safety of the reactor in case of a seismic event. Specifically, it was alleged that the licensee had failed to disclose the magnitude and extent of structural deficiencies in the walls of the Trojan facility and, that as a consequence, the facility could not withstand the Safe Shutdown Earthquake. The Petition, in addition to alleging a failure on part of the licensee to disclose information to the NRC generally, also alleged that the licensee had failed to comply with the Commission's regulations calling for the reporting of defects, specifically 10 CFR Part 21.

The Petition is being treated pursuant to 10 CFR 2.206 of the Commission's regulations, and accordingly, appropriate action will be taken on the request within a reasonable time. The Petition is being temporarily withheld from placement in the Commission's Public Document Room, 1717 H Street NW, Washington, DC 20555 and the Local Public Document Room for the Trojan Facility, Multnomah County Library, 801 SW. 10th Avenue, Portland, Oregon, pending a review of the Petition by the licensee and the Bechtel Corporation. The Petition suggests that a number of documents which were attached to the Petition were the subject of a non-disclosure agreement in litigation between the Licensee and Bechtel Corporation. Consequently, these parties have been provided an opportunity to review the Petition and determine whether or not they wish to request withholding in accordance with the standards of the Commission's regulations regarding withholding, specifically 10 CFR 2.790. For further information as to whether or not all or part of the Petition will be placed in the Public Document Rooms, please contact Terence L. Chan, Office of Nuclear Reactor Regulation, 301-492-7136.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

Dated at Bethesda, Maryland, this 16 day of December, 1986.

[FR Doc. 86-28633 Filed 12-19-86; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-15478 812-6500]

Metropolitan Life Insurance Co. et al.; Application for Exemption Under Investment Grouping Act

December 15, 1986.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Metropolitan Life Insurance Company ("Metropolitan"), Metropolitan Variable Account B of Metropolitan Life Insurance Company ("Separate Account B"), Metropolitan Life Variable Account C ("Separate Account C") and Metropolitan Life Variable Account D ("Separate Account D"), collectively the "Accounts," Metropolitan Life Separate Account E ("Separate Account E") and Metropolitan Series Fund, Inc. (the "Fund"), (collectively "Applicants").

Relevant 1940 Act Sections: Exemption requested under section 17(b) from section 17(a) and approval of the terms of a joint venture requested under section 17(d) and Rule 17d-1.

Summary of Application: Applicants seek an order exempting and approving to the extent necessary, the proposed reorganization of the Accounts into Separate Account E, a separate account of Metropolitan registered with the Commission as a unit investment trust, and the issuance of shares of the Fund in exchange for the assets of the Accounts.

Filing Date: The application was filed on October 14, 1986, and an amendment thereto on November 24, 1986.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on January 9, 1987. request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 1 Madison Avenue, New York, New York 10010.

FOR FURTHER INFORMATION CONTACT: Staff Attorney David S. Goldstein (202) 272-2622 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations and Statements:

1. Metropolitan is a mutual life insurance company, registered with the Commission as an investment adviser and as a broker-dealer, which acts as the investment adviser for and principal underwriter of the Accounts and the Fund and as sponsor-distributor for Separate Account E. State Street Research & Management Company ("State Street Research"), a wholly-owned subsidiary of Metropolitan, is the sub-investment manager for the Fund (other than the Fund's Money Market Portfolio) and of each of the Accounts.

2. Separate Account B was established by Metropolitan in 1969 under the insurance laws of New York and is registered under the Act as an open-end diversified management investment company. In 1970 Metropolitan commenced a public offering of variable annuity contracts funded by Separate Account B. The investment objectives of Separate Account B are long-term growth of capital primarily and income secondarily. In March 1985, Metropolitan discontinued sales of contracts funded by Separate Account B.

3. Separate Accounts C and D were established by Metropolitan under the insurance laws of New York in 1974, and each registered under the Act as an open-end diversified management investment company. In 1975, Metropolitan commenced a public offering of contracts funded by Separate Accounts C and D, designed as a retirement program for persons not entitled to special tax benefits under the Code. The investment objectives of Separate Accounts C and D are long-term growth of capital primarily and income secondarily. In June 1978, Metropolitan ceased to offer the contracts funded by Separate Accounts C and D.

4. The Fund, a Maryland corporation, registered under the Act as an open-end diversified management investment company in November, 1982. The Fund is a series investment company currently with five portfolios, including the Growth Portfolio. The investment objectives of the Growth Portfolio are to achieve long/term growth of capital and income, and moderate current income, by investing primarily in common stocks that are believed to be of good quality or to have good growth potential or which are considered to be undervalued based on historical investment standards.

5. The Fund is the funding vehicle for contracts, which are combination fixed and variable annuity contracts, the variable portion being funded by Separate Account E, a unit investment trust registered under the Act. Payments under the contracts may be allocated to the five investment divisions of Separate Account E, investing in the corresponding portfolios of the Fund.

6. The Board of Directors of Metropolitan and of the Fund, and the *Committees* (functioning as directors of the Accounts under the Act) have adopted an Agreement and Plan of Reorganization (the "Plan") under which the assets of each of the Accounts will be transferred to Separate Account E. Separate Account E will immediately transfer the assets received from the Accounts to the Growth Portfolio of the Fund, which will immediately issue shares of the Growth Portfolio to Separate Account E in an amount equal to the value of the assets received.

7. Under the Plan, Metropolitan will assume all costs and expenses associated with effecting the Plan.

8. The transaction will not have any adverse economic impact on contract holders of the Accounts, Separate Account E or shareholders of the Fund, and Metropolitan represents that the charges provided for in any contract affecting any of them will not increase as a result of the reorganization.

9. The charges for investment management for the contracts funded by Separate Account C and Separate Account D will be reduced since Metropolitan will waive any portion of the investment advisory fee exceeding the annual investment advisory fee paid by the Fund for investment advisory services provided by Metropolitan. Sales, administrative and mortality and expense charges under the contracts will remain unchanged, and no sales charge is imposed upon the issuance of the Fund's shares to Separate Account E.

10. No portfolio securities will be liquidated in connection with the proposed transaction. Applicants do not expect any tax liability to arise from the reorganization, but Metropolitan will bear any such expense which may arise.

11. Metropolitan votes all the Fund shares held by Separate Account E based upon instructions received from persons having the voting interests in the contracts participating in Separate Account E. Metropolitan votes all Fund shares held by Separate Account E for which no timely voting instructions are received in proportion to voting instructions received.

12. The terms of the proposed transaction and the consideration to be paid are reasonable and fair and do not involve overreaching.

13. The exchange of assets and related liabilities of the Accounts for the Fund shares of the Growth Portfolio will be

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made on the basis of the current value of the assets of the Accounts.

14. The Board of Directors of the Fund and the Committees of the Accounts, including a majority of those who are not interested persons of such investment companies, have determined that the participation of the investment companies in the transaction is in the best interests of the investment companies and of existing contractholders. That determination was based in part on the fact that contractholders will benefit from being combined into what will be a larger, more viable investment vehicle, rather than continuing to be managed as separate smaller portfolios of assets allocated to the Accounts, for which contracts are no longer being issued. A broader diversification of investments possible in a combined and presumably increasingly larger portfolio will tend to lessen overall investment risk, and perhaps will also enhance investment performance.

15. The economic interests of contractholders will not be adversely affected by the transaction, since the contract charges will remain the same or be slightly reduced in the cases of Separate Accounts C and D.

16. Although phrased differently, the investment objectives and policies of the Growth Portfolio of the Fund are consistent with the investment objectives and policies of the Accounts and the investment manager and the sub-investment manager of the Accounts and the Growth Portfolio are the same.

17. While voting rights in the Fund will be shared by contractholders with other persons, the persons holding voting interests under the contracts funded by the Accounts will be given an opportunity to vote on the reorganization and can weigh the benefits from broader diversification against this change.

18. The terms of the reorganization are fair and reasonable and consistent with the provisions, policies and purposes of the Act. The investment companies involved will not be participating in the reorganization on a basis less advantageous than any other participant.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-28668 Filed 12-19-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23888; File No. SR-OCC-86-23]

Self-Regulatory Organizations; Order Granting Accelerated Approval to a Proposed Rule Change Filed by Options Clearing Corporation

On November 19, 1986, the Options Clearing Corporation ("OCC") filed a proposed rule change with the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") to enable certain customers of OCC Clearing Members to settle foreign currency option exercises and assignments directly with OCC's agent bank. To allow Clearing Members' customers to use the procedures contemplated by the proposal for exercises and assignments in the December series of foreign currency options, OCC requested accelerated approval of the proposed rule change. The Commission published notice of the proposal in the **Federal Register** on December 3, 1986.[1] This Order approves the proposal on an accelerated basis.

I. Description

The proposal would enable certain customers of OCC Clearing Members to settle their foreign currency option exercises and assignments directly with OCC's correspondent bank, instead of through their Clearing Member. Those customers would include banks that act as agents for OCC Clearing Members or customers whose custodian banks also act as agents for OCC Clearing Members. The proposal would establish procedures to identify exercises and assignments that are to be settled directly by the customer's agent and mechanisms for settling those exercises and assignments.

More specifically, the proposal would revise OCC's Rules to enable Clearing Members' customers to use the delivery-versus-payment ("DVP") settlement procedures set forth in OCC Rule 1606A.[2] The proposal also would adjust OCC's Rules concerning Clearing Member settlement of exercises and assignments to require Clearing Members to settle remaining exercises and assignments (for proprietary and all other account positions) in whole or in part through the DVP system or in accordance with OCC Rule 1606.[3]

Under the proposal, a customer wishing to use the DVP procedures would instruct its Clearing Member to submit DVP authorizations [4] to OCC on its behalf. On the business day after an exercise notice in respect of a foreign currency option is properly tendered to OCC, OCC will issue to each Foreign Currency Clearing Member, before 7:00 a.m.,[5] an Exercise and Assignment Report. That report lists all exercises and assignments by account and shows projected net obligations both within and across accounts.[6] On the basis of that report and the customer's instructions, Clearing Members than can instruct OCC to settle specific exercises and assignments through the DVP system, by submitting DVP authorizations. Clearing Members must submit DVP authorizations by 12:00 noon on the date of issuance of the Exercise and Assignment Report, together with any other DVP authorizations that are to apply to the Clearing Members' remaining net settlement obligations. Clearing Members must adjust any DVP authorizations covering the net settlement obligations, of course, to reflect any exercises and assignments that are to be settled directly by customers ("adjusted net obligations").[7]

[1] Securities Exchange Act Rel. No. 23840 (November 24, 1986), 51 FR 43699.

[2] The DVP system was approved in Securities Exchange Act Rel. No. 21359 (September 27, 1984), 49 FR 39136. DVP settlement procedures involve contractual commitments directly between the Clearing Member's agent bank and OCC's correspondent bank. The DVP system reduces a Clearing Member's financing costs by relying on a guarantee by a Clearing Member's agent bank rather than on advance payment by the Clearing Member, to protect OCC from the member's failure to pay its U.S. dollar settlement amount or to deliver a designated quantity of foreign currency.

[3] Under Rule 1606, deliveries of foreign currency are made between the Clearing Member's agent bank and OCC's correspondent bank on the exercise settlement date. Settlement of related dollar obligations occurs between OCC and the Clearing Member. If the Clearing Member has a net dollar payment obligation, the Clearing Member must settle that obligation two business days before the exercise settlement date, because OCC must give irrevocable instructions to its correspondent bank to deliver foreign currencies at that time. Two business days following issuance of the Exercise Settlement Report, a Delivering Clearing Member must cause its agent bank to guarantee delivery of foreign currency on the exercise settlement date. On exercise settlement date, OCC delivers foreign currency to a Receiving Clearing Member's account at its agent bank (providing such Clearing Member has paid its net U.S. dollar settlement amount) and pays a Collecting Clearing Member or its agent bank any settlement amount.

[4] A DVP authorization constitutes an instruction from the Clearing Member to its agent bank directing the agent bank to guarantee to OCC's correspondent bank, via international bank wire, delivery on the exercise settlement date in immediately available funds of either (i) a designated quantity of foreign currency against payment of U.S. dollars, or (ii) a sum in U.S. dollars against delivery of a designated quantity of a foreign currency.

[5] All times referred to herein are Central Time.

[6] *See* OCC Rule 1605(a)(4)

[7] *See* OCC Rule 1606A (b) and (c). Paragraph (c) further provides that any combination of DVP authorizations may be submitted so long as the total currency and dollars deliverable under DVP

Continued

OCC will process the DVP authorizations and apply accepted customer-related DVP authorizations [8] against the Clearing Member's non-netted totals.[9] OCC then nets the Clearing Member's remaining obligations (if any) and applies the DVPs accepted for the Clearing Member's net obligations to calculate the Clearing Member's net delivery and payment obligations. At or before 3:00 p.m., OCC would issue the Exercise Settlement Report, reflecting accepted DVP authorizations, the netting process, and net settlement and delivery obligations. The Clearing Member must settle any remaining payment or delivery obligations, as indicated in the Exercise Settlement Report, under Rule 1606.[10]

To accommodate the procedures described above, the proposed rule change also makes several technical and conforming changes to other OCC rules.[11] In particular, because certain exercises and assignments would be excluded from OCC's net delivery system, they would also be excluded from OCC's net margin system and must be margined separately.[12] In addition, with respect to exercised option contracts of a suspended Clearing Member, the proposal would clarify that, if a bank defaulted in its DVP settlement obligation, OCC would have the authority to execute or direct a buy-in or a sell-out of the foreign currency.

II. OCC's Rationale

OCC believes the proposed rule change is consistent with the purposes and requirements of the Act. OCC believes that the proposal promotes prompt and accurate customer-side settlement of foreign currency option exercises and fosters cooperation and coordination with institutions that regularly engage in such settlements.

In its filing, OCC indicates that several Clearing Members' agent banks purchase foreign currency options through OCC Clearing Members or act as agents for other customers who purchase foreign currency options. OCC that Clearing Members and their customers have expressed an interest in settling exercises and assignments directly with OCC's correspondent bank.

III. Discussion

The Commission believes that the proposal will promote the efficient clearance and settlement of securities transactions. Although the proposal would increase the number of foreign currency settlements with OCC's agent bank, the proposal would eliminate the need for separate street-side and customer-side settlements of foreign currenty option exercises and assignments in circumstances where the Clearing Member's agent bank also acts as agent for a Clearing Member's customer. Moreover, by combining street-side and customer-side settlement, the proposal would reduce, somewhat, settlement credit risks associated with the use of multiple financial intermediaries to settle foreign currency option exercises and assignments.[13] Accordingly, the Commission believes that the proposal is consistent with the Act.[14]

The Commission is concerned that five hours may not be sufficient time for Clearing Members to review Exercise and Assignment Reports and file necessary DVP authorizations with OCC. Under the procedures set out above, OCC will deposit the Exercise and Assignment Report in Clearing Members' lock boxes by 7:00 a.m.[15] Clearing Members would have until 12:00 noon to submit DVP authorizations that would specify whether a specific authorization applies to the Clearing Member's gross activity or to the projected net obligation.

Nevertheless, OCC has assurred the Commission that it will monitor Clearing Members' performance and revise these time frames if necessary. OCC currently offers electronic dissemination of these reports to its Data Service subscribers and has agreed to consider ways to expand automated dissemination of these reports in order to permit more efficient Clearing Member processing and to reduce potential processing delays. Moreover, OCC has noted that a Clearing Member's failure to file DVP authorizations on a timely basis will result in net settlement of all exercises and assignments under Rule 1606.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the Act and, in particular, section 17A.

The Commission finds good cause for approving the proposed rule change on an accelerated basis, before the thirtieth day after notice of the proposed rule change appeared in the **Federal Register**. OCC is prepared to implement the proposed service enhancements in connection with exercises and assignments on foreign currency option contracts that expire December 13, 1988. Based on the increased volume of trading in foreign currency options in recent months, OCC has indicated that it expects a high volumn of foreign currency deliveries associated with this expiration date. Accordingly, as discussed above, OCC Clearing Members would benefit from immediate implementation of the proposed rule change.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-

authorizations against the Clearing Member's adjusted net obligations does not exceed the respective amount of those net obligations. Previously, Rule 1606A(c) required that dollars delivered or received via DVP equal the net exercise price payable or receivable against the net quantity of foreign currency covered by the DVP. Revised paragraph (c) recognizes that this restriction applies only with respect to gross DVPs, rather than to net settlement obligations.

[8] Rule 1606A(d) provides that OCC will endorse its acceptance and return an accepted DVP authorization to the Clearing Member if: (i) it is consistent with OCC's records as to the initiating Clearing Member's settlement obligations on the applicable exercise settlement date; (ii) it is addressed to an agent bank approved by OCC; and (iii) it would not, when aggregated with other outstanding DVP Authorizations addressed to the same bank, cause the bank's obligations to OCC's correspondent bank to exceed such credit limits as the latter may from time to time impose.

[9] *See* OCC Rule 1605(b)(1). The interpretation and Policy to Rule 1605 would also be revised to clarify that, an addition to performing the operations described in Rule 1605, OCC may issue the reports described in Rule 1605 on a day other than that specified in the Rule if necessary or desirable because of holidays or unforeseen circumstances.

[10] *See* OCC Rule 1605(b)(2).

[11] Proposed changes to Rule 1602 would delete present paragrapb (b), the subject matter of which is covered in amended Rule 1605, and would conform paragraph (a) to reflect the nomenclature used in amended Rule 1605. An amendment to Rule 1603(b) reflects the previous adoption of Rule 602A and the revised terminology used in that Rule. Finally, changes to Rule 1606 (a) and (e) and 1606A (b) and (h) conform the provisions of those Rules to reflect the revised settlement procedures described above.

[12] *See* OCC 602A(f)(3).

[13] Previously, the Clearing Member settled foreign currency option exercises and assignments on a net basis with OCC and then effected settlement with each of its customers. Accordingly, the customer was exposed to the risk of the Clearing Member's insolvency. By effecting settlement directly with OCC's agent bank, as provided in this rule change, that risk to the customer can be reduced. The risk is not eliminated entirely, however, because OCC's obligation as an issuer runs only to its Clearing Members. If OCC's agent bank were to default on a customer-initiated DVP settlement, only the customer's Clearing Member could demand performance from OCC, and to that extent the customer would again be relying on its broker.

[14] *See* sections 6(b)(5), 11A(a)(1)(C), and 17A(b) of the Act.

[15] Depositing notices in Clearing Members' lockboxes is OCC's customary method of communicating with its Clearing Members. *See* OCC Rules 201 and 205.

OCC-86-23) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

Dated: December 12, 1986.

[FR Doc. 86-28669 Filed 12-19-86 8:45 am]
BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments should be submitted within 21 days of this publication in the **Federal Register**. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Elizabeth M. Zaic, Small Business Administration, 1441 L Street NW., Room 200, Washington, DC 20416, Telephone: (202) 653-6623

OMB Reviewer: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395-7340.

Title: Submission of Business Financial Statements

Form No. SBA 1532

Frequency: On occasion

Description of Respondents: This form is required from each applicant to determine if they have the necessary elements of responsibility to perform the contract and can be certified to the procuring activity.

Annual Responses: 5,000

Annual Burden Hours: 10,000

Type of Request: New.

Elizabeth M. Zaic,
Deputy Director, Office of Administrative Services, Small Business Administration.

[FR Doc. 86-28597 Filed 12-19-86; 8:45 am]
BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area 2263]

Washington; Declaration of Disaster Area

As a result of the President's major disaster declaration on December 15, 1986, I find that the Counties of King, Lewis, Pierce and Snohomich in the State of Washington consitute a disaster loan area because of heavy rains, flooding, slides and winds occurring on November 22-29, 1986. Eligilbe persons, firms and organizations may file applications for physical damage until the close of business on February 13, 1987, and for economic injury until the close of businesss on September 15, 1987, at:

Disaster Area 4 Office,
Small Business Administration,
77 Cadillac Drive, Suite 158,
Sacramento, California 95825

or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	7.500
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	9.500

The number assigned to this disaster is 226306 for physical damage and for economic injury the number is 647700.

(Calalog of Federal Domestic Assistance Programs Nos. 59002 and 59008).

Dated: December 16, 1986.

Bernard Kulik,
Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 86-28598 Filed 12-19-86; 8:45 am]
BILLING CODE 8025-01-M

[License No. 01/01-0337]

Pioneer Ventures Limited Partnership; Issuance of a Small Business Investment Company License

On June 19, 1986, a notice was published in the **Federal Register** (VOL. 51-22372) stating that an application has been filed by Pioneer Ventures Limited Partnership, 60 State Street, Boston, Massachusetts 02109 with the Small Business Administration (SBA) pursuant to §107.102 of the Relations governing small business investment companies (13 CFR 107.102 (1986)) for a license as a small business investment company.

Interested parties were given until close of business July 21, 1986, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 01/01-0337 on November 20, 1986, to Pioneer Ventures Limited Partnership to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.001, Small Business Investment Companies)

Dated: December 15, 1986.

Robert G. Lineberry,
Deputy Associate Administrator for Investment.

[FR Doc. 86-28603 Filed 12-19-86; 8:45 am]
BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending December 12, 1986

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

Docket No. 44552

Parties: USAir Group, Inc., PS Group, Inc., and Pacific Southwest Airlines
Date Filed: December 12, 1986
Subject: Joint Application of USAir Group, Inc., PS Group, Inc., and Pacific Southwest Airlines, requests an exemption from Section 416(b) of the Act to permit USAir Group, Inc. to Acquire control of PSA.

Docket No. 44552

Parties: USAir Group, Inc., and Pacific Southwest Airlines, Inc.
Date Filed: December 9, 1986

Subject: Application of USAir Group, Inc. request the Department to approve a voting trust agreement that would permit Group's purchase of up to: (A) 51 percent of the common shares of Pacific Southwest Airlines, Inc. and (B) 51 percent of the common shares of PS Group, Inc., the parent corporation of PSA, on the condition that Group, Inc. (PS Group), the parent corporation of PSA, on condition that Group place all shares of PSA's or PS Group's stock that it acquires in excess of 9.9 percent in either PSA or PS Group into an independent voting trust pending the Department's approval process.

Phyllis T. Kaylor,
Chief, Documentary Services Division.

[FR Doc. 86-28576 Filed 12-19-86; 8:45 am]
BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended December 12, 1986

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each applicaton. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 44547

Dated Filed: December 8, 1986
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 5, 1987.
Description: Application of Pakistan International Airlines Corporation, pursuant to section 402 of the Act and Subpart Q of the Regulations, for amendment of its foreign air carrier permit to engage in foreign air transportation to points between the United States and Pakistan.

Docket No. 44554

Date Filed: December 9, 1986
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: January 6, 1987.
Description: Application of Rich International Airways, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing it to engage in interstate and overseas scheduled air transportation of persons, property and mail.

Docket No. 44556

Date Filed: December 9, 1986
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: January 6, 1987.
Description: Application of International Parcel Express, Inc. pursuant to section 401 (d)(3) of the Act and Subpart Q of the Regulations, requests that it be issued a certificate of public convenience and necessity authorizing IPX to engage in foreign charter air transportation of property and mail on a worldwide basis.

Docket No. 44555

Date Filed: December 9, 1986
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: January 6, 1987.
Description: Application of Austin Airways Limited, pursuant to section 402 of the Act and Subpart Q of the Regulations, to engage in foreign scheduled air transportation of persons, property and mail between Minneapolis, Minnesota and Kenora, Ontario, Canada.

Phyllis, T. Kaylor,
Chief, Documentary Services Division.

[FR Doc. 86-28577 Filed 12-19-86; 8:45 am]
BILLING CODE 4910-62-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 86-077]

Houston/Galveston Navigation Safety Advisory Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of the thirteenth meeting of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, January 22, 1987 in the conference room of the Houston Pilots Office, 8150 South Loop East, Houston, Texas. The meeting is scheduled to begin at approximately 9:30 a.m. and end at approximately 5:00 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Discussion of previous recommendations made by the Committee.
3. Presentation of any additional new items for consideration of the Committee.
4. Adjournment.

The purpose of this Advisory Committee is to provide recommendations and guidance to the Commander, Eighth Coast Guard District on navigation safety matters affecting the Houston/Galveston area.

Attendance is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Commander D.F. Withee, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (mps), Room 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130-3396, telephone number (504) 589-6901.

Dated: December 8, 1986.

Peter J. Rots,
Rear Admiral, U.S. Coast Guard, Commander Eighth Coast Guard District.

[FR Doc. 86-28630 Filed 12-19-86; 8:45 am]
BILLING CODE 4910-14-M

[CGD 86-068]

Alcohol-Blended Gasoline Used in Recreational Boats; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of Open Meeting.

SUMMARY: The Recreational Boating Safety Act of 1988 (Pub. L. 99-626) requires the Coast Guard to submit a report to Congress on the use and effect of alcohol-blended gasoline in recreational boats. The Coast Guard will hold a meeting of a Subcommittee of the National Boating Safety Advisory Council to discuss information and recommendations required to be included in the report. Attendance is open to the interested public.

DATES: The meeting will be held on January 27, 1987, beginning at 9:00 a.m. To ensure that space is available, those desiring to attend should contact Mr. Richard Bergen by January 5, 1987, at the address or telephone number listed under **FOR FURTHER INFORMATION CONTACT.** Persons wishing to present oral statements at the meeting should notify Mr. Bergen, at the address or telephone number listed under **FOR FURTHER INFORMATION CONTACT,** no later than January 20, 1987. In addition, interested persons may submit written comments on the topics required to be included in the report. Written comments should be received by January 5, 1987.

ADDRESSES: The meeting will be held in room 6319, U.S. Coast Guard

Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. Written comments should be mailed or delivered to Mr. Bergen at the address listed under for **FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Mr. Richard Bergen at the Office of Boating, Public, and Consumer Affairs (G–BC), Room 4224, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC 20593–0001. Phone toll-free at 800–368–5647 (267–0972 in the Washington, DC area). Normal office hours are between 7:30 a.m. and 4:00 p.m. eastern time, Monday thru Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The Recreational Boating Safety Act of 1986 (Pub. L. 99–626) requires the Coast Guard to prepare a report to Congress relating to the use and effect of alcohol-blended gasoline in recreational boats. Section 2(a) of the Act requires that the report must include the following:

(a) The results of (1) testing performed and (2) a review of fire and explosion boating incidents, under the recreational boating safety program of the Coast Guard.

(b) A survey of published test data performed in the private sector.

(c) A listing of sales of alcohol-blended gasoline by State and type of alcohol.

(d) A listing of State requirements for labeling of alcohol-blended gasoline including type of alcohol, percent of alcohol, label requirements, alcohol test standards, enforcement and compliance measures, and any other relevant data.

(e) An assessment of the effectiveness of State labeling requirements in promoting recreational boating safety and in providing information to the consumer regarding alcohol-blended gasoline.

(f) A listing of Federally mandated requirements that require labeling of alcohol-blended gasoline or regulate or concern the use of alcohol in gasoline.

(g) A recommendation as to whether further Federal legislation or regulations are required to promote recreational boating safety or advance consumer information regarding the use of alcohol-blended gasoline.

(h) Any other relevant data or information.

To provide assistance and advice in the preparation of the report, the Coast Guard has formed a special subcommittee from among members of the National Boating Safety Advisory Council. The Council is a 21 member advisory committee that advises the Coast Guard on significant boating safety matters.

The members of the Council are drawn equally from the three principal sectors of the boating community: the marine industry, State boating officials, and the boating public. Members of the Alcohol Fuels Report Subcommittee are: Mr. Richard H. Lincoln (industry), Mr. Kim Elverum (State), and Mr. Don Webster (public). In preparing the report, the Coast Guard is also consulting with members of the general public having experience and expertise with alcohol-blended gasolines.

Interested persons are invited to provide information or comments to the Subcommittee in writing prior to the meeting. Written comments should refer to this notice (CGD 86–068). Oral presentations may also be offered at the meeting with advance notice to the Coast Guard.

The purpose of the meeting is to provide the Subcommittee with an opportunity to discuss information gathered on alcohol-blended gasoline and provide advice to the Coast Guard on the recommendations required to be included in the report.

Issued in Washington, DC, December 17, 1986.

T.T. Matteson,

Chief, Office of Boating, Public, and Consumer Affairs.

[FR Doc. 86–28629 Filed 12–19–86; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA) Special Committee 147—Traffic Alert and Collision Avoidance System; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 147 on Traffic Alert and Collision Avoidance Suystem to be held on January 7–9, 1987, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW, Suite 500, Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Twentieth Meeting; (3) Status Report on the FAA Notice of Proposed Rulemaking for TCAS II; (4) Briefing on Air-to-Air Coordination Tests; (5) Open Discussion on Future Committee Work Program; (6) Review of Pilot Working Group Activities; (7) Status Report on FAA TCAS Program; (8) Review and Consideration of TCAS I Working Group Report on Minimum Operational Performance Standard for an Active TCAS I; (9) Review of Change 4 Working Group Activities; (10) Review and Consideration of Change 4 to RTCA/DO–185 for TCAS II; (11) Working Group Meetings in Separate Session; (12) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 12, 1986.

Wendie F. Chapman,

Designated Officer.

[FR Doc. 86–28595 Filed 12–19–86; 8:45 am]

BILLING CODE 4910–13–M

Flight Service Station at Ottumwa, IA; Closure

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Flight Service Station at Ottumwa, Iowa; Closure.

SUMMARY: Notice is hereby given that on December 15, 1986, the Flight Service Station at Ottumwa, Iowa, will be closed. Thereafter services to the general public at Ottumwa, Iowa, will be provided by the Flight Service Station at Fort Dodge, Iowa. This information will be reflected in the next issue of the FAA Organizational Statement.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Kansas City, Missouri, on December 11, 1986.

T.R. Beckloff, Jr.,

Manager, Air Traffic Division.

[FR Doc. 86–28586 Filed 12–19–86; 8:45 am]

BILLING CODE 4910–13–M

Flight Service Station at Vichy, MO; Closure

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Flight Service Station at Vichy, Missouri; Closure.

SUMMARY: Notice is hereby given that on January 3, 1987, the Flight Service Station at Vichy, Missouri, will be closed. Thereafter services to the general public at Vichy, Missouri, will be provided by the Flight Service Station at Columbia, Missouri. This information will be reflected in the next issue of the FAA Organizational Statement.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Kansas City, Missouri, on December 11, 1986.

T.R. Beckloff, Jr.,

Manager, Air Traffic Division.

[FR Doc. 86–28589 Filed 12–19–86; 8:45 am]

BILLING CODE 4910–13–M

Flight Service Station at Omaha, NE; Closure

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Flight Service Station at Omaha, Nebraska; Closure.

SUMMARY: Notice is hereby given that on December 15, 1986, the Flight Service Station at Omaha, Nebraska, will be closed. Thereafter services to the general public at Omaha, Nebraska, will be provided by the Flight Service Station at Columbus, Nebraska. This information will be reflected in the next issue of the FAA Organizational Statement.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354).

Issued in Kansas City, Missouri, on December 11, 1986.

T.R. Beckloff, Jr.,

Manager, Air Traffic Division.

[FR Doc. 86–28587 Filed 12–19–86; 8:45 am]

BILLING CODE 4910–13–M

Flight Service Station at Sidney, NE; Closure

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Flight Service Station at Sidney, Nebraska; Closure.

SUMMARY: Notice is hereby given that on December 15, 1986, the Flight Service Station at Sidney, Nebraska, will be closed. Thereafter services to the general public at Sidney, Nebraska, will be provided by the Flight Service Station at Columbus, Nebraska. This information will be reflected in the next issue of the FAA Organizational Statement.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354).

Issued in Kansas City, Missouri, on December 11, 1986.

T.R. Beckloff, Jr.,

Manager Air Traffic Division.

[FR Doc. 86–28588 Filed 12–19–86; 8:45 am]

BILLING CODE 4910–13–M

Flight Service Station at Chadron, NE; Closure

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Flight Service Station at Chadron, Nebraska; Closure.

SUMMARY: Notice is hereby given that on January 3, 1987, the Flight Service Station at Chadron, Nebraska, will be closed. Thereafter services to the general public at Chadron, Nebraska, will be provided by the Flight Service Station at Columbus, Nebraska. This information will be reflected in the next issue of the FAA Organizational Statement.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Kansas City, Missouri, on December 11, 1986.

T.R. Beckloff, Jr.,

Manager, Air Traffic Division.

[FR Doc. 86–28590 Filed 12–19–86; 8:45 am]

BILLING CODE 4910–13–M

Definitions of Small Entity and Significant Economic Impact for Making Determinations Required by the Regulatory Flexibility Act of 1980

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final notice and response to public comment on additional definitions of small entity and significant economic impact for making determinations required by the Regulatory Flexibility Act of 1980.

Background and Purpose

Under the Regulatory Flexibility Act of 1980 (RFA), Federal agencies considering and promulgating regulations relating to small businesses generally utilize small business size criteria developed pursuant to the Small Business Act. Because FAA's regulations are specific to particular products or services, these industries require standards that apply to specialized products and services defined more precisely than 4-digit Standard Industrial Classification (SIC) categories. But the SBA's final rule on small business size standards (49 FR 5024) is limited to 4-digit SIC codes. Therefore, the SBA size standards are not appropriate to the FAA's needs. In this case the agency is permitted, after consultation with the SBA Office of Advocacy, to establish small business definitions which are more appropriate to the activities of the FAA. Such standards regarding size of firm and value of significant impact have been adopted by the FAA.

This is the fourth notice to appear in the **Federal Register** describing FAA's efforts to specify its size and significant economic impact standards for making Regulatory Flexibility Act determinations. Previous notices were: (1) Public Notice, July 29, 1982, 47 FR 32825; (2) Public Notice, August 23, 1984, 49 FR 34597; (3) Public Notice, March 21, 1986, 5 FR 9914.

FAA's first notice proposed definitions of small entity and significant economic impact for several aviation industries, and guidance for making determinations required by the RFA. That notice solicited public comment on the proposed definitions and guidance.

The second notice explained FAA's responses to the public comments and published FAA Order 2100.14, FAA's guidance for the conduct of regulatory flexibility analyses and reviews. It also defined the criteria for use by rulemaking officials to determine if a proposed or existing rule has a significant economic impact on a substantial number of small entities.

The third notice proposed to amend the FAA's definitions of small entity and significant economic impact by incorporating into FAA Order 2100.14, threshold values for twenty-nine (29) additional entity types that were not specified in the order. That notice solicited public comment on the proposal.

Response to Public Comment and Final Notice of Order 2100.14A

This notice informs the public that the FAA received no public comment in response to its solicitation of public comment. FAA's expanded set of standards for "size" and "significant" economic impact is contained in FAA Order 2100.14A for SIC codes and/or product lines which FAA regulations affect. This order carries forward the FAA's guidance for the conduct of regulatory flexibility analyses and reviews. It also maintains the criteria for use by rulemaking officials to determine if a proposed or existing rule has a significant economic impact on a substantial number of small entities. FAA Order 2100.14A, "Regulatory Flexibility Criteria and Guidance," September 16, 1986, is presented below.

FOR FURTHER INFORMATION CONTACT: Leonard Oberlander, Regulatory Analysis Branch, APO–210, Systems Analysis Division, Office of Aviation Policy and Plans, Federal Aviation Administration, Department of Transportation. Federal Office Building 10–A, 800 Independence Avenue, SW., Washington, DC 20591, telephone 202–

267–3289. Additional copies of this notice may be obtained from the same address.

[2100.14A]

Order

September 16, 1986.

SUBJ: Regulatory flexibility criteria and guidance.

1. Purpose

This order provides guidance on FAA's procedures for implementing the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, September 19, 1980). The order provides guidance for the conduct of regulatory flexibility analyses and reviews. It also provides criteria for rulemaking officials to apply when determining if a proposed or existing rule has a significant economic impact on a substantial number of small entities.

2. Distribution

This order is distributed to the division level in Washington, the regions, and the Mike Monroney Aeronautical Center.

3. Cancellation

Order 2100.14, Regulatory Flexibility Criteria and Guidance, of July 15, 1983, is canceled.

4. Explanation of Changes

This change incorporates threshold values for size and annualized cost levels for twenty-nine (29) entity types not previously specified in the order. It also adjusts all cost values formerly expressed in 1981 dollars to 1983 dollars.

5. General Provisions

An FAA official exercising regulatory issuance authority, who must determine whether an existing Federal Aviation Regulation or a proposed change has a significant economic impact on a substantial number of small entities, shall use the definitions and criteria in paragraphs 6 through 11. However, if paragraph 10 does not contain a small entity definition for the type of entity the proposed or existing regulation affects, the official shall use the Small Business Administration's (SBA) definition in Title 13 of the Code of Federal Regulations. Also, if paragraph 11 does not contain a significant cost threshold for the type of entity the proposed or existing regulation affects, the official shall adopt one using appropriate judgment. When, using these criteria, an FAA rulemaking official finds or believes that a proposed rule would have, or an existing rule has, a significant economic impact on a substantial number of small entities, the official shall prepare a regulatory flexibility analysis or review of that rule and follow paragraph 9.

6. Small Entities

Small entities are those small businesses and small not-for-profit organizations which are independently owned and operated and have no more employees or own no more aircraft than the threshold levels listed in paragraph 10; and airports operated by small governmental jurisdictions which have no more population than the threshold level listed in paragraph 10.

7. Substantial Number of Small Entities

A substantial number of small entities means a number which is not less than eleven and which is more than one-third of the small entities subject to a proposed or existing rule, or any number of small entities subject to the rule which is substantial in the judgment of the rulemaking official.

a. Small entities subject to the rule

A small entity subject to the rule is one required by the rule to alter its practices. Included are those small entities already in voluntary compliance with a proposed rule and those small entities prevented by the rule from engaging in an aviation activity.

b. Notices of proposed rulemaking or final rules containing multiple unrelated rule changes

A notice of proposed rulemaking (NPRM) or final rule may include two or more substantive rule changes so unrelated that each affects different small entities. A substantial number of small entities subject to that NPRM or final rule means a substantial number of small entities subject to any one of the changes.

8. Significant Economic Impact on a Small Entity

A significant economic impact on a small entity means annualized net compliance cost to that entity, which when adjusted for inflation is greater than or equal to the threshold significant cost level for the entity type shown in paragraph 11. Annualized net compliance cost includes uniform annualized costs for purchase of capital items. An NPRM or final rule may include two or more substantive rule changes so closely related that they affect the same small entities. If, for any entity, the total annualized net compliance cost, adjusted for inflation, of all rule changes proposed in that NPRM or final rule equals or exceeds the threshold significant cost level for that entity, each such rule change in that NPRM or final rule has a significant economic impact on that small entity.

9. Small Entity Impact Considered in a Regulatory Flexibility Analysis or Review

Whenever an FAA rulemaking official conducts a regulatory flexibility analysis or review, the official shall, in that analysis or review, consider the effects of the rule not only on the small entities directly subject to the rule, but also on other small entities with a direct economic relationship (i.e. customer relationship where money, goods or services are exchanged) to those small entities directly subject to the rule.

10. Size Thresholds For Small Entities.

Size thresholds for entity types and Standard Industrial Classifications are:

Standard industrial classification	Entity type	Size threshold
3721	Aircraft and aircraft parts manufacturers	75 employees.
3724	Aircraft engine and engine parts manufacturers	375 employees.
3728	Manufacturers of aircraft parts and auxiliary equipment not elsewhere classified.	175 employees.
4511	Operators of aircraft for hire [1]	9 aircraft owned, but not necessarily operated.
4582	Airports	49,999 [2] [3] population in town, city or county which operates the airport.
4582, 7629, 7699.	Aircraft repair facilities	200 employees.
8299	Pilot schools	10 employees.
Does not apply.	Non-for-profit aviation organizations	The same standard applicable to an equivalent for profit aviation enterprise.
0721	Aerial Agricultural and Pest Control	30
2399	Parachutes	500
	Aircraft Seat Belts, Except Leather	1,000
	Aircraft Tie Down Strap Assemblies, Except Leather	1,000
2531	Aircraft Seats	450
3011	Aircraft Tires and Inner Tubes	1,000
3069	Rubberized Survival Equipment	500
3537	Pallets and Containers	300
3585	Aircraft Environmental Control Equipment	150
3592	Fuel Control Equipment Including Carburetors	750
	Aircraft Piston and Piston Rings	50
	Aircraft Engine Valves	50
3599	Other Aircraft Valves, N.E.C.	1,000
3647	Aircraft Lighting Systems and Fixtures	300
3662	Aircraft Communications Equipment	750
	Aircraft Navigational Equipment	750
3691	Aircraft Batteries	1,000
3694	Engine Starting and Electrical Generating Equipment	250
	Spark Plugs for Internal Combustion Engines	1,000
	Voltage Regulators	1,000
3811	Aircraft Flight Instruments	250
3829	Aircraft Fuel System Instruments	1,000
	Aircraft Engine Instruments	200
	Aircraft Measuring Instruments, N.E.C.	450
	Air Traffic Control Equipment	1,000
7622	Aircraft Radio Equipment Repair	30
7319	Aerial Advertising, Including Skywriting	10
8299	Aircraft Maintenance Technician Schools	150
7999	Parachute Lofts	90

[1] Entity types are those entities to which FAA regulations apply in 14 CFR Parts 121, 127, and 135.

[2] If two or more towns, cities, or counties operate an airport jointly, the populations should be totaled to determine whether the airport is small.

[3] Privately owned, public-use airports are considered small.

11. Threshold Significant Regulatory Costs.

Threshold annualized cost levels for entity types and Standard Industrial Classifications are:

Standard industrial classification	Entity type	Threshold annualized costs levels (in December 1983 dollars)
3721	Aircraft and aircraft parts manufacturers	$13,100
3724	Aircraft engine and engine parts manufacturers	20,700
3728	Manufacturers of aircraft parts and auxiliary equipment not elsewhere classified	9,800
4511	Operators of aircraft for hire:	
	Scheduled (Entire fleet has a seating capacity of over 60) [1]	83,900
	Other scheduled [1]	46,900
	Unscheduled	3,300
4582	Airports	5,400
4582	Aircraft repair facilities	
7629		
7699		
8299	Pilot schools	
Does not apply.	Not-for-profit aviation organizations	
0721	Aerial Agriculutural and Pest Control	1,600
2399	Parachutes	800
	Aircrafts Seat Belts, Except Leather	7,400
	Aircraft Tie Down Strap Assembles, Except Leather	4,700
2531	Aircraft Seats	14,200
3011	Aircraft Tires and Inner Tubes	
3069	Rubberized Survival Equipment	23,100
3537	Pallets and Containers	10,800
3585	Aircraft Environmental Control Equipment	15,600
3592	Fuel Control Equipment, Including Carburetors	16,900
	Aircraft Pistons and Piston Rings	2,800
	Aircraft Engine Valves	2,800
3599	Other Aircraft Valves, N.E.C.	35,500
3647	Aircraft Lighting Systems and Fixtures	10,600
3662	Aircraft Communications Equipment	9,900
	Aircraft Navigational Equipment	20,600
3691	Aircraft Batteries	

Standard industrial classification	Entity type	Threshold annualized costs levels (in December 1983 dollars)
3694	Engine Starting and Electrical Generating Equipment	11,900
	Spark Plugs for Internal Combustion Engines	2,900
	Voltage Regulators	23,800
3811	Aircraft Flight Instruments	11,300
3829	Aircraft Fuel System Instruments	35,900
	Aircraft Engine Instruments	1,600
	Aircraft Measuring Instruments, N.E.C.	4,900
	Air Traffic Control Equipment	36,400
7622	Aircraft Radio Equipment Repair	1,200
7319	Aerial Advertising, Including Skywriting	4,700
8299	Aircraft Maintenance Technician School	22,400
7999	Parachute Lofts	900

[1] A scheduled operator is one holding out to the public air transportation service for passengers from identified air terminals at a set time announced timetable or schedule published in a newspaper, magazine, or other advertising medium.

Donald D. Engen,

Administrator.

Issued at Washington, DC, on September 16, 1986.

Ellen Kranidas,

Director, Office of Aviation Policy and Plans.

[FR Doc. 86-28300 Filed 12-19-86; 8:45 am]

BILLING CODE 4910-13-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 245
Monday, December 22, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

December 16, 1986.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Tuesday, December 23, 1986, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Agenda, Item No., and Subject

General—1—Title: Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985. Summary: The Commission will consider whether to adopt a Report and Order implementing new legislation which authorized the Commission to collect charges for certain regulatory services it provides to the public.

Common Carrier—1—Title: Regulatory Policies and International Telecommunications. Summary: The Commission will consider whether to institute a rulemaking proceeding concerning the role that the telecommunications policies of foreign governments should play in the formulation of Commission regulations concerning the provision of telecommunications goods and services within the United States and the provision of telecommunications services between the United States and foreign countries.

Common Carrier—2—Title: Separation of costs of regulated telephone service from costs of nonregulated activities. Amendment of Part 31, the Uniform System of Accounts for Class A and Class B Telephone Companies, to provide for nonregulated activities and to provide for transactions between telephone companies and their affiliates. Summary: The FCC will consider whether to adopt a Report and Order regarding accounting and allocation methodologies for separation of costs incurred in the provision of regulated and nonregulated activities by telephone companies.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Sarah Lawrence, FCC Office of Congressional and Public Affairs, telephone number (202) 632-5050.

Issued: December 16, 1986.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-28756 Filed 12-18-86; 2:59 pm]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Tuesday, December 16, 1986, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C. C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of Haymarket Co-operation Bank, an operating noninsured co-operative bank located at 280 Atlantic Avenue, Boston, Massachusetts, for Federal deposit insurance.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,802-NR (Amendment)
Bank of Commerce and Trust Company, Tulsa, Oklahoma

Recommendation regarding the Corporation's assistance agreement with an insured bank.

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: December 17, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-28723 Filed 12-18-86; 12:40 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Tuesday, December 16, 1986, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,616-NR
Penn National Bank, National Association, Oklahoma City, Oklahoma
Case No. 46,618
The Bowery Savings Bank, New York City (Manhattan), New York
Case No. 46,621-L (Amendment)
City and County Bank of Knox County, Knoxville, Tennessee
Case No. 46,822-L (Amendment)
Midland Consolidated Office, Midland, Texas
Case No. 46,824-NR
Security National Bank of Lubbock, Lubbock, Texas
Case No. 46,826-SR
The Bank of Bronson, Bronson, Kansas
Case No. 46,830-NR
Penn Square Bank, National Association, Oklahoma City, Oklahoma
Memorandum and Resolution re:
Heritage Bank, Anaheim, California
Memorandum and Resolution re:
The First National Bank of Midland, Midland, Texas

Memorandum regarding a request for funding for 1987 for two contractors for LAMIS Project.

Memorandum regarding upgrading the FDIC computer.

Personnel Matters:

Resolution establishing an Office of Consumer Affairs.

Appointment of Janice M. Smith to the position of Director of the Office of Consumer Affairs.

Appointment of James O. Foster to the position of Deputy Regional Director (Atlanta Region), Division of Bank Supervision.

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable.

Dated: December 17, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-28724 Filed 12-18-86; 12:41 pm]

BILLING CODE 6714-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION:

December 16, 1986.

TIME AND DATE: 10:00 a.m., Thursday, December 18, 1986.

PLACE: Room 600, 1730 K St., NW., Washington, DC.

STATUS: Closed (Pursuant to 5 U.S.C. 552b(c)(10)).

MATTERS TO BE CONSIDERED: In addition to the previously announced item, the Commission will consider and act upon the following:

2. *Kelley Trucking Co.*, Docket No. CENT 85-109. Issues include consideration of Kelley Trucking's request for relief from a final order of the Commission.

3. *Leo Klimczak v. General Crushed Stone Co.*, 5 FMSHRC 684 (1983) (ALJ), *aff'd mem.*, No. 83-4122 (2nd Cir. March 9, 1984). Issues include consideration of Leo Klimczak's request for a new hearing.

It was determined by a unanimous vote of Commissioners that these items be included on the agenda and no earlier announcement of the additions was possible.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 86-28684 Filed 12-18-86; 10:44 am]

BILLING CODE 6735-01-M

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Wednesday, January 7, 1987.

PLACE: Board Hearing Room 8th Floor, 1425 K. Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of December, 1986.

2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Charles R. Barnes, Executive Director, Tel: (202) 523-5920.

Date of notice: December 15, 1986.

Charles R. Barnes,

Executive Director, National Mediation Board.

[FR. Doc. 86-28705 Filed 12-18-86; 12:42 pm]

BILLING CODE 7550-01-M

SECURITIES AND EXCHANGE COMMISSION

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW. Washington, DC.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission held a closed meeting on Friday, December 12, 1986, at 3:00 p.m., to consider the following items:

Settlement of administrative proceeding of an enforcemnet nature.

Commissioner Peters, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Judith Axe at (202) 272-2092.

Jonathan Katz,

Secretary.

December 12, 1986.

[FR Doc. 86-28822 Filed 12-18-86; 3:51 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register

Vol. 51, No. 245

Monday, December 22, 1986

This section of the FEDERAL REGISTER contains editorial corrections of previously published Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1446

Peanut Warehouse Storage Loans and Handler Operations for the 1986 Through 1990 Crops

Correction

In rule document 86-27953 beginning on page 44758 in the issue of Friday, December 12, 1986, make the following corrections:

§ 1446.72 [Corrected]

1. On page 44766, in the first column, in § 1446.72(o), in the first line, "to" should read "or".

2. On page 44766, in the third column, in § 1446.72(bb), in the third line, "of" should read "or".

§ 1446.105 [Corrected]

3. On page 44773, in the second column, in § 1446.105(b), in the fifth line, "provide evidence" should read "provide written evidence".

§ 1446.124 [Corrected]

4. On page 44778, in the third column, in § 1446.124, in the ninth line, "peanuts products" should read "peanuts or peanut products".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3125-8;FIFRA Docket No.59]

Pesticide Products Containing Dinoseb

Correction

In notice document 86-27709 appearing on page 44513 in the issue of Wednesday, December 10, 1986, make the following correction:

On page 44513, in the second column, after the "Dated" paragraph, the signature and title was omitted. It should read as follows:

J. F. Greene,

Administrative Law Judge.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPO-056-GNC]

Medicare Program; Criteria and Standards for Evaluating Intermediary and Carrier Performance During Fiscal Year 1987

Correction

In notice document 86-27698 beginning on page 44524 in the issue of Wednesday, December 10, 1986, make the following corrections:

1. On page 44528, in the third column, in the fifth line from the bottom, "Respond" was misspelled.

2. On page 44529, in the second column, in the eighth paragraph, in the first line, "accurate" was misspelled.

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Monday
December 22, 1986

Part II

Department of Labor

Employment and Training Administration

20 CFR Part 617
29 CFR Part 91

Trade Adjustment Assistance for Workers; Final Rules

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 617

29 CFR Part 91

Trade Adjustment Assistance for Workers

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: This document contains final regulations for implementing the program of trade adjustment assistance for workers provided under Chapter 2 of Title II of the Trade Act of 1974 (Pub. L. 93–618). The final regulations implement the amendments to the Trade Act of 1974 made by Title XXV of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) and by section 2 of Pub. L. 98–120. The final regulations also reorganize and revise the existing rules affecting the rights and obligations of workers for services and allowances, and further clarify the respective responsibilities of the Department of Labor and the State agencies. Inclusion of these revisions and clarifications conform to the recent practice in writing regulations for unemployment compensation and related benefit programs. The final regulations incorporate the substantive changes and improvements set forth in the published proposal. The proposal was published in the **Federal Register** on March 4, 1983, and was numbered Part 635. The final rule in this document revises and replaces the regulations at 29 CFR Part 91. The Department is currently drafting regulations implementing amendments to the Trade Act of 1974 made by the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272). These latter amendments as of their effective dates take precedence over any inconsistent provisions in these final regulations.

EFFECTIVE DATE: January 21, 1987.

FOR FURTHER INFORMATION CONTACT: Carolyn M. Golding, Director, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 601 "D" Street, NW., Washington, DC 20213. Telephone: (202) 376–6636 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Trade Act of 1974 made major changes in the Trade Adjustment Assistance (TAA) Program for workers displaced by increased imports of articles like or directly competitive with articles produced by the workers. 19 U.S.C. 2271 *et seq.* On the filing of a petition by a group of workers or their representative, the Department of Labor conducts an investigation of adverse impact of imports, and if it is found that the workers of a firm or a subdivision of a firm have been adversely affected by import competition, a certification is issued declaring that the adversely affected workers are eligible to apply for TAA.

Title XXV of the Omnibus Budget Reconciliation Act of 1981 made major changes in the TAA Program and extended the termination date of the TAA Program to September 30, 1983. Pub. L. 97–35. Section 2 of Pub. L. 98–120 made no further changes in the benefit provisions of the TAA Program but extended the termination date of the TAA Program to September 30, 1985.

The amended TAA provisions are designed to assist adversely affected workers to return to work in equivalent or better employment as quickly as possible. The Act provides for TAA in the form of weekly trade readjustment allowances (TRA), reemployment services, training, and job search and relocation allowances.

The 1981 amendments change the TAA Program to strengthen the emphasis of getting workers reemployed as soon as possible, and to modify the TRA provisions as to the qualifying requirements, the weekly and maximum amounts of TRA payable, and the eligibility periods in which TRA is payable. Most of the 1981 amendments were effective on October 1, 1981.

Under the 1981 amendments, workers separated from employment adversely affected by imports are eligible for reemployment services, training, and job search and relocation allowances immediately after the Department of Labor issues a certification of eligibility to apply for TAA. They are not eligible for weekly TRA payments until after they have exhausted all rights to State or Federal unemployment insurance (UI).

In addition, the 1981 amendments increase the amounts of subsistence and transportation allowances payable to a worker in training approved under the Act, and the amounts of job search and relocation allowances. They also reduce the weekly and maximum amounts of TRA payments and the eligibility periods for receipt of TRA payments. The amount of the weekly TRA payment will be equal to the UI weekly benefit amount. Generally, workers are now eligible to receive a combination of UI (including Extended Benefits (EB) and (until 1985) Federal Supplemental Compensation (FSC)) and TRA not to exceed an amount derived by multiplying the TRA weekly benefit amount by 52. In addition, workers receiving TRA are required to apply for and accept offers of work and actively seek work in accordance with the work test provisions of State law which apply to EB claimants, except when the workers are engaged in training approved under the Trade Act or training approved under State law.

Workers in training approved under the Act may receive up to 26 additional weeks of TRA to complete such training.

Additional weeks of TRA, previously payable to workers solely because they reached age 60 on or before their separation from adversely affected employment, are no longer payable for any weeks beginning after September 30, 1981.

Note.—The Deficit Reduction Act of 1984, Pub. L. 98–369, §§ 2671 and 2672, contained amendments to the Trade Act of 1974, to specify an alternative eligibility period for payment of additional weeks of TRA to workers in approved training (Section 233), and to increase the aggregate amount of job search allowances payable and the lump sum portion of a relocation allowance (Sections 237 and 238). These changes are not reflected in these final regulations, but are being implemented effective from their enactment on July 18, 1984. The amended sections will take precedence over the counterpart sections in these final regulations in accordance with their effective dates as prescribed by the amended Act. The Department thus is proceeding to put these final regulations in place, and concurrently publishing final amendments to the regulations to incorporate the amendments made in the Deficit Reduction Act of 1984.

Note.—The Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, signed by the President April 7, 1986, contained further amendments to the Trade Act of 1974. Sections 221 and 222 are changed to include agricultural firms in the definition of a firm. Section 231 is changed to reflect that a worker must participate in a job search program to be eligible to receive TRA. Section 231 is further modified to allow the use of more weeks of specified types of leave to make up the 26 qualifying weeks of employment needed to qualify for TRA.

Section 233 is changed to extend the 52-week eligibility period for receiving basic TRA to 104 weeks and to provide that no TRA may be paid to a worker for a week in which the worker received on-the-job training. Section 236 is changed with respect to the Secretary's approval of training and to provide that no training costs may be paid by the Secretary if they have been paid under any other Federal law. Also various types of training programs which may be approved are specified and certain restrictions are placed on on-the-job training under this revised section 236.

Section 237 is changed to permit a worker to be reimbursed for necessary expenses for participation in a job search program. Section 239 is changed to allow the Secretary to have agreements with one or more States or local agencies to carry out the program. Section 239 is also changed to provide that each adversely affected worker who applies for TRA be advised to file for training and that within 60 days after applying for training, the applicant will be interviewed regarding training opportunities.

Section 285 is changed to extend the TAA program through September 30, 1991. The program is made retroactive to December 18, 1985.

The amended sections will take precedence over the counterpart sections in these final regulations in accordance with their effective dates as prescribed by the amended Act. The Department will proceed to put these final regulations in place, and subsequently amend the regulations to incorporate the amendments made in the Consolidated Omnibus Budget Reconciliation Act of 1985.

The proposal to revise the regulations was published in the **Federal Register** on March 4, 1983 (48 FR 9444) and was numbered Part 635. The **SUPPLEMENTARY INFORMATION** section of the published proposal is hereby incorporated in this preamble by reference. This document contains the final regulations and is renumbered Part 617. Part 635 was one in a series of numbers assigned to regulations for implementing programs under the Job Training Partnership Act. Comments on the proposal published on March 4, 1983, were solicited through July 28, 1983.

Discussion of Comments and Changes

The Department received timely written responses to the proposal from five State agencies and three labor organizations. The commentators were the California Employment Development Department, the Michigan Employment Security Commission, the New York State Department of Labor, the Ohio Bureau of Employment Services, the West Virginia Department of Employment Security, the Amalgamated Clothing and Textile Workers Union, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), and the United Steelworkers of America. The Department gave careful consideration to all comments and suggested changes received before drafting the final regulations.

Following is a summary of the comments received and the Department's response in order of Subpart. References are made to Part 635 as it was published as a proposal. In these final regulations the part number is changed to 617, and section numbers are correspondingly redesignated.

Subpart A—General

1. The proposed regulation at § 635.3(c) defines an "adversely affected worker." The UAW suggests that the definition should include a reference to a "bumped" worker and one who has been transferred less than six months to non-adversely affected employment prior to being laid off. The definition used in the proposed regulation is quoted *verbatim* from section 247(2) of the Act, and includes a worker bumped by a worker who transfers from adversely affected employment. 19 U.S.C. 2319(2). To include in this definition a worker transferred less than six months previously would require a change in the law. Therefore, no change is made in the final regulations.

2. The proposed regulation at § 635.3(h) defines a "benefit period." The UAW suggests that the definition should be clarified to indicate that the "52-week TRA benefit period" commences with the first week following exhaustion of regular UI benefits. However, in accordance with the 1981 amendments to section 247(15) of the Act, the definition of "benefit period" applies only to a UI benefit period, not a TRA eligibility period. 19 U.S.C. 2319(15). The latter is defined separately under the proposed regulation at § 635.3(m). Therefore, no change is made in the final regulations.

3. Although not related to a specific comment received, the proposed regulation at § 635.3(t) which defines "first separation" has been expanded to include "first qualifying separation." This expansion of the definition was made to reflect a recognition that a worker may not necessarily qualify for TRA on the "first separation" from adversely affected employment.

4. Although not related to a specific comment received, the proposed definition of "State agency" at § 635.3(ee) has been amended to include the following language: "and any other agency or authority with which the Secretary has an agreement to carry out any of the provisions of the Act." The reason for modifying the definition of "State agency" is to reflect the function of State Employment Services under amendments to the Wagner-Peyser Act (Pub. L. 97–300) and the discretion afforded Governors in the selection of service delivery area grant recipients under the Job Training Partnership Act (Pub. L. 97–300).

5. Although not related to a specific comment received, the proposed definition of "unemployment insurance" at § 635.3(kk) has been amended to include "federal supplemental compensation." Also, "federal supplemental compensation" has been defined.

6. Although not related to a specific comment received, a new § 617.4 has been added to cover benefit information to workers, in accordance with the requirements of new section 225 of the Act added by section 2502 of the Omnibus Budget Reconciliation Act of 1981. 19 U.S.C. 2275.

Subpart B—Trade Readjustment Allowances (TRA)

7. The proposed regulation at § 635.10(b) describes "good cause" for late filing of initial TRA claims. The UAW objects on the grounds that there is no statutory time limit for filing such claims. However, this requirement accords with the Act and administrative practice since the beginning of the TRA Program, and this practice was left undisturbed by the Omnibus Budget Reconciliation Act of 1981. Section 234 of the Act provides that the availability and disqualification provisions of a State law shall apply to a worker filing claims for TRA unless inconsistent with the provisions of the Act. 19 U.S.C. 2294. Section 234 also applies to the filing of claims and payments of TRA. Thus. State time limits on the filing of initial claims for unemployment benefits apply to the filing of initial claims tor TRA except where the result would be inconsistent with the Act. Those State time limits can reasonably be applied to workers separated after a certification covering them has been published, but to apply such time limits to workers separated prior to publication of a certification would result in disqualification for TRA in a great many cases. Therefore, the administrative practice of allowing late filing of initial claims for TRA was instituted and was followed by all States. This practice was followed until one State departed from it and disqualified a worker who had filed a late initial claim for TRA. This case resulted in a Department ruling, on June 11, 1976, in *Louis Signoretti* Decision No. 75–TRA–4, that individuals must be provided a reasonable period of time following publication of a certification to become aware of the certification and to file an initial claim for TRA. This ruling established the precedential rule followed to this day, which did no more than formalize the administrative practice followed since the beginning of the program. The current regulations at 29 CFR Part 91 were published on April 11, 1975. The promulgation of new regulations affords the Department the opportunity to set forth in the regulations the long-standing administrative practice and precedent.

This section has also been revised to further clarify the rights of claimants. Therefore, the Department does not concur with the UAW comment that applicants should have an unlimited time to file initial claims for TRA, and therefore does not change the basic thrust of § *635.10(b)*.

8. The proposed regulation at § 635.11(a)(2) provides that to qualify for TRA, a worker's separation must be on or after the impact date of the certification. The UAW comments that workers should be allowed to qualify even though they were separated before the impact date. The 1981 amendments did not have any effect on establishing the impact date of a certification. The impact date has always been and continues to be a date not more than one year before the date the petition was filed. Section 223(b) of the Act, 19 U.S.C. 2273(b). The statute was unchanged in not permitting an individual whose separation occurred before the impact date to be eligible for TRA for any week of unemployment. Therefore, no change is made in the final regulations.

9. The proposed regulation at § 635.11(a)(3)(ii) provides that, for purposes of the 26 weeks of employment qualifying requirement for TRA, any week a worker: (a) Is on employer-authorized leave for purposes of vacation, sickness, injury, maternity, or inactive duty or active duty military service for training; (b) does not work because of a disability that is compensable under a State or Federal workers' compensation law or plan; or (c) has had employment interrupted to serve as a full-time representative of a labor organization in the firm or subdivision; shall be treated as a week of employment at wages of $30 or more. The Amalgamated Clothing and Textile Workers Union suggests that an additional exemption should be added to this section to include involuntary layoff weeks because this requirement will unfairly harm workers who have already suffered from long unemployment.

The 1981 amendments to section 231 of the Act added a listing of non-work weeks which may be counted as qualifying weeks for TRA purposes, which were incorporated in the proposed rule as noted above. 19 U.S.C. 2291. Weeks of involuntary layoff were not included among the weeks that may be counted and thus were not listed in § 635.11(a)(3)(ii). There is no indication in the legislative history that this circumstance was omitted by inadvertence or because it was overlooked or unforeseen. Exemption-like provisions are narrowly construed: where, as here. Congress made specific mention of exemptions all independent of the employee's economic circumstance, it is a reasonable inference that Congress intended to exclude the proposed exemption. Accordingly, to add such weeks to qualifying weeks would require a further change in the law. Therefore, no change is made in the final regulations.

10. The proposed regulation at § 635.13(c)(2) provides that an amount of TRA payable for any week shall be reduced by the amount of a training allowance under any Federal law other than for the training of workers that the worker receives for such week. The Ohio Bureau of Employment Services requests an interpretation and example of such a training allowance. Section 232(a)(1) of the Act provides that TRA payable to a worker for a week shall be reduced by any training allowance deductible under section 232(c) (formerly 232(d)) of the Act. 19 U.S.C. 2292. Such a training allowance has been interpreted to mean a training allowance other than for the training of workers. Examples of training allowances under Federal laws other than for the training of workers are listed in § 635.13(c)(2). They include Veterans Education Assistance, Basic Educational Opportunity Grants,. and Supplemental Educational Opportunity Grants. Basic Educational Opportunity Grants are now Pell Grants and this change is reflected in the final regulations.

11. The proposed regulation at § 635.14(a) provides that the maximum amount of TRA payable to an individual is the amount determined by multiplying by 52 the weekly amount of TRA payable and subtracting from such product the total sum of UI to which the individual was entitled in the individual's first UI benefit period. While no comment was received regarding this provision, the Department feels there is a need to ensure that its position on the "total sum of UI entitlement" to be subtracted from the product of 52 times the TRA weekly amount is clearly understood.

The Department's position requires all the UI to which the individual was entitled in the individual's first benefit period to be subtracted *regardless* of when the individual first exhausts UI (regular, additional, EB or FSC). Reduction of UI entitlement from the maximum amount of TRA payable should be made *initially* at the point the individual first exhausts entitlement to UI benefits and establishes entitlement to TRA. After the individual's entitlement to TRA is established, the maximum amount of TRA payable should be further reduced by any *subsequent* entitlement to UI in the individual's first UI benefit period. This position is consistent with the legislative intent to limit an individual's maximum TRA entitlement including UI to 52 weeks.

12. The proposed regulation at § 635.14(b)(1) provides that the maximum amount of TRA payable to an individual under § 635.14(a) will not include the amount of dependents' allowances paid as a supplement to the base weekly amount (in a State which calculates weekly UI benefits in this manner). The Ohio Bureau of Employment Services comments that this provision is contrary to § 635.13(a) which provides that where a State calculates a base amount of UI and calculates dependents' allowances on a weekly supplemental basis. TRA weekly benefits shall be calculated on the same basis. This confusion is understandable because of the proposed wording in § 635.14(b) that "The maximum amount of TRA *payable to an individual* under paragraph (a) of this section will not include . . .." (emphasis added), although the last sentence in paragraph (b) clearly intends that such payment will be made "but nothing in this paragraph (b) shall affect an individual's eligibility for such supplemental . . . allowances." This section is clarified in renumbered § 617.14(b) by substituting the word *"determined"* for *"payable to an individual"* (emphasis added).

13. The proposed regulation at § 635.15(b)(1) provides that additional weeks of TRA to assist a worker to complete training approved under the Act are payable during the 26-week eligibility period following the last week of the worker's entitlement to basic TRA. The United Steelworkers of America suggests that the proposed rule should be revised to permit workers in approved training to be eligible for up to an additional 26 weeks of benefits beginning with the week the approved training program commences. The Amalgamated Clothing and Textile Workers Union suggests that the additional 26-week period of benefits for training purposes should not begin immediately following the basic TRA entitlement period if training funds or programs are not available at the time of additional entitlement.

While the Department recognizes that the additional 26-week eligibility period for receiving TRA during training may expire before a worker has an opportunity to apply for training, the limitation in § 635.15(b)(1) is compelled by legislative judgment set forth in the 1981 amendments to Section 233(a)(3) of the Act, 19 U.S.C. 2293. Any modification to § 635.15(b)(1) would require a change in the law. Therefore, no change is made in the final regulations. However, as noted above, the Deficit Reduction Act of 1984 amended section 233(a)(3) in this respect, effective July 18, 1984, and the regulation will be amended.

14. The proposed regulation at § 635.18(b)(2) provides that a worker who, without good cause, refuses to accept or continue or fails to make satisfactory progress in approved training shall not be entitled to any payment under the Act for the week of such occurrence and any week thereafter until the week the worker enters or resumes and makes satisfactory progress in such training. "Good cause" is defined as such reasons as would justify an individual's conduct when measured by conduct expected of a reasonable individual in like circumstances, including but not limited to reasons beyond the individual's control and reasons related to the individual's capability to make satisfactory progress in or continue training. The Michigan Employment Security Commission comments that this definition introduces the concept of what a reasonable person might do in terms of not making satisfactory progress in training (to include reasons beyond the person's control and capability). The Michigan agency comments further that the State could no longer use its unconditional standard of full time attendance (and 2.0 grade point average) for continuation of training. The definition of "good cause" has not changed from such definition in the regulations published on April 11, 1975. (Refer to 29 CFR 91.3(a)(17).) States must apply the national standard for determining "good cause" established in the existing regulations and continued in these final regulations. Therefore, no change is made in the final regulations.

15. Section 231(b) of the Act, as amended by the Omnibus Budget Reconciliation Act of 1981, provides that if the Secretary determines that in a particular labor market area a high level of unemployment exists, suitable employment opportunities are not available, and there are facilities available for training in new or related job classifications, then the Secretary may require all adversely affected workers in that area to accept training under section 236 or to search actively for work outside the area after the first 8 weeks of their eligibility for TRA. 19 U.S.C. 2291(b). No mention of this statutory provision was made in the proposed regulations. However, since this section is discretionary, and not mandatory, the Department chose not to prescribe regulations because it believes that implementation of the "8-week" test will not be effective in promptly returning most TRA recipients to work. Also, the test will be expensive and cumbersome to administer. Therefore, since these discretionary regulations were not prescribed, the "8-week" test is not applicable to TRA recipients.

Subpart C—Reemployment Services

16. Although not related to a specific comment received, all references in this regulation to the Comprehensive Employment and Training Act (CETA), other than for reason of historical perspective, have been deleted and replaced by the Job Training Partnership Act (JTPA), since CETA has been repealed. *See* Pub. L. 97–300, §§ 183 and 184(a).

17. Although not related to a specific comment received, the proposed regulation at § 635.22(c), which provides that no reimbursement shall be authorized for any costs of training incurred for any period prior to the approval of training, has been amended to provide "except in the case of a redetermination or decision reversing a determination denying approval of training." When fraud or misrepresentation does not exist, an individual initially denied eligibility for TAA benefits who later is determined eligible, either by a redetermination or a decision reversing the determination denying eligibility, should be treated as if the initial determination had been correct in approving training.

18. The proposed regulation at § 635.22(e) provides that selection for, approval of, or referral of an individual to training under Subpart C, or a decision with respect to any specific training or non-selection, non-approval, or non-referral for any reason shall be a determination to which §§ 635.50 (determinations of entitlement) and 635.51 (appeals and hearings) apply. The Ohio Bureau of Employment Services recommends the deletion of this section because the issuance of determinations concerning non-selection, non-referral or non-approval of training would provide the worker with appeal rights. The Ohio agency argues that the Trade Act language has always utilized the term "may" as it relates to the provision of training, establishing such as a benefit and not a right.

While the term "may" establishes the noncontractual nature of the training language in the statute and establishes no right to training, this factor does not remove training from the category of a benefit to be considered for potentially eligible workers. The contractual or noncontractual nature of a program benefit cannot serve as the determinative which governs a worker's right to a notice of determination in connection with an appropriately filed application for the program benefit. While training is not a contractual entitlement, it is, nevertheless, a program benefit under the Trade Act of 1974 and, as such, is subject to the statutory provisions of section 239(d) of the Act which provides that: "A determination by a cooperating State agency with respect to entitlement to program benefits under an agreement is subject to review in the same manner and to the same extent as determinations under the applicable State law and only in that manner and to that extent." 19 U.S.C. 2311(d). Therefore, no change is made in the final regulations.

19. The proposed regulation at § 635.22(h) provides that no training shall be approved for which the individual is required to pay a fee. The UAW suggests that self-financed training should be approved when Federal funding is not available with the possibility of future Federal reimbursement. The 1981 amendments to section 236(a) of the Act, however, do not permit self-financed training to be approved, and funds must be available before training can be approved. Section 236(a) states in the pertinent part: "The Secretary may approve such training for the worker. Upon such approval, the worker shall be entitled to have payment of the costs of such training paid on his behalf by the Secretary." 19 U.S.C. 2296(a). The Secretary may not do by regulation what Congress has failed to authorize by statute. Therefore, no change is made in the final regulation.

20. The proposed regulation at § 635.23(b) provides that a State agency shall consult with an individual's adversely affected firm for the purpose of developing a retraining program. The UAW suggests that this provision should be clarified to permit firms to provide retraining and restrict such training to their own workforce. Since the language in the proposed regulation does not put a requirement on the firm to open its retraining program to individuals outside its workforce, a change in wording is not necessary. Therefore, no change is made in the final regulation.

21. The proposed regulation at § 635.23(d) refers to standards and procedures which a State agency may

use to approve training. The UAW suggests that a qualification should be added to reflect that a reasonable expectation of employment does not mean a guarantee of employment. The Department accepts this suggestion. The final regulation is modified to reflect this change.

22. The proposed regulation at § 635.23(d)(1) describes standards for approving training. The UAW suggests that the standards are too restrictive. These standards, however, reflect the full flexibility allowed by the provisions of section 236(a)(1) of the Act. 19 U.S.C. 2296(a)(1). Therefore, no change is made in the final regulation.

23. The proposed regulation at § 635.23(d)(3)(iii) excludes self-employment and commission-paid occupations from approved training programs. The UAW contends that there is no public policy rationale for this exclusion and that if an unemployed worker can be gainfully reemployed in any occupation the public purpose is served. The Department agrees and has deleted the exclusionary provision pertaining to self-employment and commission-paid occupations.

24. The proposed regulation at § 635.28(e) provides that no transportation payment shall be made to a worker for any day of unexcused absence from training as certified by the responsible training facility. The Michigan Employment Security Commission points out that the above language implies that, while transportation payments could not be made for unexcused absences, such payments could be made for excused absences. The Michigan agency's point is well made. The eligibility conditions covering the payment of transportation expenses are well defined in renumbered § 617.28 and need not be further clarified under an "unexcused absences" addendum. Consequently, paragraph (e) in § 635.28 covering "unexcused absences" is deleted from the final regulations. Note: Paragraph (d) in § 635.27 remains unchanged to permit payment of subsistence allowances where such expenses are incurred when the individual had an excused absence from training.

Subpart D—Job Search Allowances

25. The proposed regulation at § 635.32(a)(3) provides that, for an individual to be eligible for a job search allowance, the State agency shall determine that the individual has no reasonable expectation of securing suitable employment in the commuting area, and has a reasonable expectation of obtaining suitable employment of long-term duration outside the commuting area and in the area where the job search will be conducted. The Ohio Bureau of Employment Services suggests that a clause be added requiring that an individual receive a "bona fide referral" to suitable employment in order to be eligible for the job search. To adopt this suggestion may preclude a worker from seeking employment on the worker's own initiative outside the commuting area so long as the job search can meet the approval criteria of the regulation. Therefore, no change is made in the final regulation.

Subpart E—Relocation Allowances

26. The proposed regulation at § 635.43(b) provides that a reasonable time for beginning a relocation shall be 182 days after the date of application or after conclusion of approved training. The Michigan Employment Security Commission suggests that because of this provision there should be a definition of when a relocation begins. The beginning of a relocation should be readily identifiable by the individual or a member of the individual's family leaving for the place of relocation or the beginning date of the movement of household goods. Therefore, the Department sees no necessity for further elaboration on this issue in the final regulation.

27. The proposed regulation at § 635.44(b)(2) provides that the State agency of the State of intended relocation make the determination that suitable employment has been obtained or a bona fide offer of suitable employment has been extended to the individual. The California Employment Development Department suggests that the State paying for a relocation allowance verify directly with the employer regarding the obtaining of suitable employment, or a bona fide offer thereof, where the State has effective procedures for such direct verification. The Department agrees with this suggestion and this section is modified accordingly.

28. The proposed regulation at § 635.45(a)(2) provides for payment of 90 percent of the expenses for moving household goods and personal effects not to exceed 11,000 pounds for an individual and family and not to exceed 5,000 pounds for an individual without a family. The Michigan Employment Security Commission suggests that the 11,000 pound limit apply to an individual whether or not the individual has a family. This was the provision under the regulations for the Trade Act of 1974 before the 1981 amendments. The current Federal travel regulations, after undergoing a change on which the proposal was based, provide for movement of 11,000 pounds regardless of whether the individual has a family. This limit has subsequently been raised to 18,000 pounds. Rather than specify a pound limit for moving household goods and personal effects which is subject to change, Subpart E is modified to provide for the pound limit not to exceed the maximum number of pounds net weight authorized under the Federal travel regulations. *See* 41 CFR Part 101–7.

29. The proposed regulation at § 635.45(b) provides that a relocation allowance otherwise payable shall be reduced by any amount the individual is entitled to be paid or reimbursed for such expenses from any other source. The California Employment Development Department questions the application of this provision in the case in which an employer has a provision for paying a relocation allowance but provides that it will not be paid when the allowance is payable under the TAA or other similar programs. The Department's intention in providing for the reduction of the relocation allowance by any other relocation allowance payable for the same move was to prevent duplicate payments for the same relocation expenses. If an individual is not entitled to receive an employer's relocation allowance, then the full TAA relocation allowance is payable. Therefore, no change is made in the final regulations.

30. The proposed regulation at § 635.47 provides the guidelines for payment of moving allowances. The California Employment Development Department requests that additional guidelines be provided on allowable costs covering crating, specialized packing and shipment of pets. Costs involving such things as specialized packing which are normally associated with the moving of household goods are covered, but the Department does not feel it is necessary to itemize each of the accessorial charges which are allowed under this section. There is, however, no provision for the payment of special allowances for moving pets under this section, since it covers only moving household goods and personal effects. Therefore, no change is made in the final regulations.

31. The proposed regulation at § 635.47(a) provides for payment of 90 percent of the costs allowable for (a) a commercial carrier, (b) a trailer or rental truck, *or* (c) a house trailer. The California Employment Development Department comments that this section is unclear as to whether an individual must choose one method of moving, either a commercial carrier, rental truck, or house trailer, or could use a combination of these. This wording could be interpreted as meaning that an individual could receive reimbursement for a combination of commercial carriers and rental equipment, but that if the individual moved by house trailer or mobile home, then such a move would preclude payment to a commercial carrier or a rental firm. It is the Department's intention that an individual should be reimbursed for one method of moving household goods and personal effects, either by commercial carrier, by truck or trailer rental, or by house trailer. This is clarified in the final regulations.

32. The proposed regulation at § 635.47(a)(3)(v) provides for the reimbursement for costs of disconnecting and connecting utilities for a house trailer which is moved. The Ohio Bureau of Employment Services contends that this expense should not be reimbursed since individuals who have other homes or apartments are not covered for this expense except under the lump sum payment covering miscellaneous expenses. Federal travel regulations which cover movement of house trailers do not allow an additional expense for disconnecting and connecting utilities. The Department agrees with the suggestion that disconnecting and connecting utilities should not be separately covered and the paragraph pertaining to this is deleted from the final regulations.

33. The proposed regulation at § 635.48(c) provides that payment of the lump sum payment may not be made more than 10 days before the anticipated date of shipment of household goods and personal effects. The California Employment Development Department comments that this could inconvenience someone who moved but delayed shipment of household goods. The Department agrees that more flexibility is needed here. The final regulations are modified to allow the lump sum payment to be made no earlier than 10 days before the anticipated date of the beginning of travel to the new location by the individual or a member of the individual's family or the anticipated date of the shipment of household goods and personal effects.

Subpart F—Administration by Applicable State Agencies

34. The proposed regulation at § 635.50(f) provides that full payment of TAA when due shall be made with the greatest promptness that is administratively feasible. The UAW comments that this definition of promptness with respect to issuing determinations is too amorphous and that an outside time limit of 30 days should be added to the definition. As stated above, promptness in § 635.50(f) refers to making payments of TAA and not to issuing determinations. The regulations governing the TAA program have always provided that a State agency shall make full payment of TAA when due with the greatest promptness that is administratively feasible. While a specific time limit, such as 30 days, for making payments or for issuing determinations might be practicable for recurring types of TAA payments, such as weekly TRA and transportation and subsistence payments while in training, it would be impracticable for nonrecurring types of TAA payments, such as job search and relocation allowances, because of the differences in the eligibility requirements and supporting statements for the various types of TAA payments. Therefore, no change is made in the final regulations.

35. The proposed regulation at § 635.52 provides the procedures for ensuring uniform interpretation and application of the Act and regulations. The UAW comments that the Secretary should acknowledge that guidelines and instructions issued by the Secretary (and intended to be implemented by the States under threat of loss of contract) are subject to review in the appropriate Federal court. The primary purpose of this section is to assure that the State agencies are interpreting and applying the Act and regulations uniformly throughout the United States as reflected in their determinations, redeterminations, and appeals decisions ruling on entitlement of individuals to TAA. Section 239(d) of the Act provides that an eligibility determination by the State agency to program benefits is "subject to review in the same manner and to the same extent as determinations under the applicable State law and only in that manner and to that extent." 19 U.S.C. 2311(d). The proper forum for review of a State agency's interpretation and application of the Act and regulations is through the State administrative and judicial system. Therefore, no change is made in the final regulations.

36. The Michigan Employment Security Commission requests that the regulations at §§ 635.52(c)(4)(ii) and 635.52(c)(5) be more definitive regarding a State agency's right to reconsideration and the mechanism for providing such reconsideration in cases where the State is required to restore funds to the Federal Treasury because of the payment of benefits under conditions which were contrary to Federal law. The Department agrees that clarification would be useful, and, accordingly, a proviso has been added in the final regulations for reconsideration as outlined in renumbered § 617.52(c)(5).

37. The proposed regulation at § 635.55(a)(2)(i)(A) provides factors which shall be considered in determining whether fault exists for the purpose of waiver of recovery of a TAA overpayment.

Note.—Section 635.55(a)(1) tracks section 243(a)(1), 19 U.S.C. 2315(a)(1), of the Act in providing that a State agency *may* waive a TAA overpayment. It has been determined that the word "may" leaves to each State's decision the election whether or not to waive overpayments. This is clarified by the addition of a phrase at the end of § 635.55(a)(3). Any State which elects to waive TAA overpayments must strictly follow the guidelines in § 635.55 which are adopted under the authority of section 233(a)(1), 19 U.S.C. 2293(a)(1).)

One of the factors concerns whether a statement or representation of a material nature was made by the individual in connection with the application for TAA that resulted in the overpayment, and whether the individual knew or should have known that the statement or representation was inaccurate. While no comment was received regarding this factor, the Department feels that the phrase "material nature" is unclear and would be difficult to apply. Its impreciseness would provide State agencies a broad latitude in determining whether or not to waive recovery of an overpayment. Therefore, this factor has been revised by deleting the phrase "material nature" and modifying "statement or representation" by the word "material." This revision will provide State agencies flexibility in determining whether the statement or representation played an important or significant role in the payment of TAA, without having to be concerned with the meaning of "nature" or excluding representations that occur from the omission of the statement.

Two other factors concern (a) whether the individual failed or caused another to fail to disclose a material fact, in connection with an application for TAA that resulted in the overpayment, and whether the individual knew or should have known that the fact was material, and (b) whether the individual knew or could have been expected to know that the individual was not entitled to the TAA payment. The UAW questions how the Secretary possibly intends to establish when an individual should have known an undisclosed fact was material or when an individual should have known that he or she was not

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entitled to a TAA payment. State agencies through the regular methods they follow for prevention and detection of overpayments of UI under State law should be able to establish that an individual failed to disclose a material fact and that the individual should have known that the fact was material, or that an individual should have known that he or she was not entitled to a TAA payment.

A fourth factor concerns whether, for any other reason, the overpayment resulted directly or indirectly, and partially or totally, from any action or omission of the individual or of which the individual had knowledge, and which was erroneous or inaccurate or otherwise wrong. The Amalgamated Clothing and Textile Workers Union comments that this statement is overly broad and can lead to abuses by State agencies in its application. The UAW questions how an overpayment might result indirectly or partially from any action or omission of the individual. It is true that the factors preceding the one in question, in most instances, would be adequate for determining whether or not fault exists. However, the Department is concerned about those possible situations where fault, in fact, did exist but was not covered by the other factors. The Department's position is that, in any case where fault exists, recovery of the overpayment should not be waived. With few exceptions the State agencies administering the State unemployment insurance laws have traditionally not allowed for waiver of overpayments when fault exists. Not allowing waiver of overpayments when fault exists is a deterrent to fraudulent claims. This position is consistent with the Department's overall effort to improve UI program quality and reduce errors in the payment of UI program benefits. Therefore, no change is made in the final regulations.

38. The proposed regulation at § 635.55(a)(2)(ii)(B) provides factors which shall be considered in determining whether equity and good conscience exists for the purpose of waiver of recovery of a TAA overpayment. One of the factors concerns whether recovery of the overpayment will not cause extraordinary and lasting financial hardship to the individual. The UAW comments that the requirement of "extraordinary and lasting financial hardship" goes far beyond any fair or humane definition of "equity and good conscience." If the income and cash resources of the individual and the individual's family are such that to repay the overpayment would not cause the individual extraordinary and lasting financial hardship, then requiring such repayment is fully consistent with the statutory equity and good conscience provision. Therefore, no change is made in the final regulations.

39. The proposed regulation at § 635.55(a)(2)(ii)(C), regarding whether equity and good conscience exists for the purpose of waiver of recovery of a TAA overpayment, provides that: "In making financial hardship determinations, the State agency shall take into account all potential income of the individual and the individual's family and all cash resources available or potentially available to the individual and the individual's family in the time period being considered." The California Employment Development Department comments that the wording is extremely general (no relationship between the number of family members and amounts of income or what financial and cash resources are to be included) and that the phrases "potential income" and "cash resources" are vague (very difficult to estimate). The California agency states that its waiver guidelines contain specific items about family members and their incomes and assets and that its waiver determinations are based on past, rather than potential, income. The California agency suggests that a clause be added to the provision cited above to permit State agencies to use their own guidelines and procedures in determining financial hardship. The Department rejects the California agency comments and retains the existing wording for the guidelines for determining financial hardship to ensure uniformity among all State agencies. State guidelines can not be used for the TAA Program; national rules must be applied uniformly by all States as set out in the final regulations. Therefore, no change is made in the final regulations.

40. The proposed regulation at § 635.55(a)(3) provides that a request for waiver of recovery of a TAA overpayment shall be made on a form approved by the Secretary, which shall be furnished to the worker by the State agency. The California Employment Development Department suggests that no new form be created for this purpose and that existing State agency procedure, if applicable, be used. The Ohio Bureau of Employment Services suggests that the proposed form include information concerning the waiver provisions in the regulations so that States can use the form as an attachment to overpayment notices. The Department agrees to delete the proposed form and permit State agencies to prescribe their own forms for handling waiver determinations. Thus, the final regulation at § 617.55(a)(3) no longer requires a form approved by the Secretary for requesting a waiver determination. However, it is essential that a uniform, national rule be applied in making waiver determinations; so in this regard the regulations are unchanged in requiring that information be provided to workers about the waiver provisions.

41. The proposed regulation at § 635.55(a)(4) forecloses recovery of TAA overpayments from State UI benefits. Although the 1981 amendments to section 243 of the Act provide the Secretary the option to require State agencies to recover TAA overpayments from such benefits, the Secretary chose not to do so. The California Employment Development Department suggests that § 635.55(a)(4) be clarified to at least include a statement naming State UI benefits as a source of TAA overpayment recovery. Accordingly, the Department agrees and has incorporated a statement in the final regulations to the effect that State agencies *may* recover a TAA overpayment from State UI benefits payable to a worker.

42. The proposed regulation at § 635.62(b)(3) provides that individuals who have had self-financed training approved prior to October 1, 1981, shall not be reimbursed for training and related expenses incurred while in such training, unless such training is approved under the amended law and Part 635. The Michigan Employment Security Commission suggests that this section is unclear and asks "Under what conditions shall an agency approve such training?" This section has a "two-fold" meaning and is clarified in renumbered § 617.62(b) to accurately reflect both meanings. First, this section recognizes the fact that the 1981 amendments to the Act impose no legal obligation on the Secretary to finance tuition and other training expenses resulting from training approvals issued prior to October 1, 1981. Second, this section means that the prior approval of training under the provisions of the Act, does not constitute an automatic approval under the 1981 amendments for the purpose of paying tuition and other training related expenses since the approval criteria are different. Workers whose training was approved prior to October 1, 1981, can have their requests for training considered under the criteria in section 236 of the amended Act, and, if approved, training costs incurred after such approval will be paid. 19 U.S.C. 2296.

43. The proposed regulation at § 635.64(c) provides that no training under the Act shall be approved unless a determination regarding the approval of such training was made, and such training commenced, on or before September 30, 1983, and that no payment shall be authorized for any training costs incurred after September 30, 1983. The California Employment Development Department, the Michigan Employment Security Commission, and the West Virginia Department of Employment Security express concern with the above language which could have the effect of prematurely terminating training contracts for workers in approved training. To insure clarity and adherence to the statutory requirement of section 236(a)(1) of the Act and the reauthorization of the program under Pub. L. 98–120, renumbered § 617.64(c) is modified to reflect the proper treatment of workers who enter approved training prior to the termination of the program.

Section 236(a)(1) of the amended Act provides that, upon approval, the worker shall be entitled to have payment of the costs of such training paid on his behalf by the Secretary. 19 U.S.C. 2296(a)(1). This means that a worker whose training is approved and who enters training on or before the termination date specified in the Act should have appropriate tuition related training expenses set aside as resources—on-order to cover the costs of the approved training. However, there is no statutory or other authority to obligate funds or pay for costs of tuition or other training expenses where the obligation to pay such costs arises after the termination date specified in the Act. Similarly, no trade readjustment allowance (basic or additional) or transportation or subsistence expenses may be obligated or paid for any period beginning after the termination date specified in the Act, irrespective of the worker's continuation in training approved on or before such termination date.

44. The Amalgamated Clothing and Textile Workers Union makes a general comment that the regulations should clearly specify that they take precedence over any relevant State regulations which may be contrary to or in conflict with these regulations. This concern was adequately covered in §§ 635.5(d), 635.52 and 635.54, which will remain unchanged in the final regulations except for a minor clarification in renumbered § 617.52. Therefore, no change is made in the final regulations.

45. The Michigan Employment Security Commission requested that "when adopted, the regulations not be made retroactive" on the premise that to do so "would cause numerous administrative problems and negatively impact on the rights of TRA recipients." The provisions of Title XXV of the Omnibus Budget Reconciliation Act of 1981 were, for the most part, implemented on October 1, 1981, as required by the amendments. The final regulations merely support that implementation and take effect as provided in the statute. Retroactivity should present no problem because the States should have been operating in accordance with the implementing instructions. The only operational change in the final regulations is in regard to waiver of recovery of overpayments, and there is no flexibility in this area.

46. The proposed regulations require that all applications for TAA Program benefits shall be made in accordance with instructions and on forms approved by the Secretary, which shall be furnished to the individual by the State agency. (See §§ 635.10(c), 635.22(d), 635.27(c), 635.28(d), 635.31(a) and 635.41(a).) In all instances, the words *approved by the Secretary* have been deleted. Although no comment was received on this point, with these changes the Secretary's approval of State agency forms designed for these purposes is not required in the final regulations.

47. In addition to the comments and changes discussed above, a few minor proofing and technical errors were made in the proposed document as published in the **Federal Register** on March 4, 1983. These errors have been corrected.

Drafting Information

This document was prepared under the direction and control of the Director of the Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 601 "D" Street, NW., Washington, DC 20213; telephone: (202) 376–6636 (this is not a toll-free number).

Classification—Executive Order 12291

The final rule in this document is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. While several of the provisions may entail some costs, for example, the work test provisions, they will be more than offset by the budgetary savings that result from the lower weekly and maximum benefits and tightened eligibility requirements. In addition, any added costs, to the extent that they exist, do not represent new burdens imposed by the final regulations, but rather are direct statutory obligations. Accordingly, no regulatory impact analysis is required.

Trade Sensitive Activity

The Department believes that the final regulations do *not* involve trade sensitive activities. This determination is predicated upon the fact that the TAA Program is a domestic program designed to provide assistance to workers adversely affected by import competition and, as such, does not fall within the scope of the Office of Management and Budget's definition of a trade sensitive activity.

Paperwork Reduction Act

The Department has complied with the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. Ch. 35. Approval of the recordkeeping requirement contained at § 617.57 is under OMB control number 1205–0016, which is for the reporting form ETA 563. OMB control number 1205–0222 applies to §§ 617.52(c) and 617.54 under a previous approval.

Regulatory Flexibility Act

The Department believes that this final rule will have no "significant economic impact on a substantial number of small entities" within the meaning of 5 U.S.C. 605(b), as provided in the Regulatory Flexibility Act. This rule will affect those agencies in small States that administer the TAA Program. However, current TAA Program recipients are concentrated in larger industrial States, where jobs have been "hardest hit" by foreign import competition. States may find some increased administrative costs as a result of the provisions to implement work tests in accordance with State provisions applicable to extended benefit claimants. However, most of the operating mechanisms needed for the TAA Program are in place through the UI system, including benefit payments, appeals, work search and work test procedures and relocation and training assistance. This will assure that any additional administrative costs are minimal. Moreover, these costs will

decline over time as adversely affected workers find reemployment in substantially equivalent jobs. The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory flexibility analysis is required.

Catalogue of Federal Domestic Assistance Number

This program is listed in the *Catalogue of Federal Domestic Assistance* at No. 17.245, "Trade Adjustment Assistance—Workers."

List of Subjects in 29 CFR Part 617

Job search assistance, Labor, Reemployment services, Relocation assistance, Trade adjustment assistance, Trade readjustment allowances, Unemployment compensation, Vocational education.

For the reasons set out in the preamble, Part 91 of Title 29, Code of Federal Regulations, is redesignated as Part 617 of Title 20, Code of Federal Regulations, and is revised as set forth below.

Signed at Washington, D.C., on December 12, 1986.

Roger D. Semerad,

Assistant Secretary of Labor.

PART 617—TRADE ADJUSTMENT ASSISTANCE FOR WORKERS UNDER THE TRADE ACT OF 1974

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Appendix A—Standard for Claim Determinations—Separation Information
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Authority: 19 U.S.C. 2320; Secretary's Order No. 3–81, 46 FR 31117.

Subpart A—General

§ 617.1 Scope.

The regulations in this Part 617 pertain to:

(a) Adjustment assistance, such as counseling, testing, training, placement, and other supportive services for workers adversely affected under the terms of Chapter 2 of Title II of the Trade Act of 1974, as amended (hereafter referred to as the Act);

(b) Trade readjustment allowances (hereafter referred to as TRA) and other allowances such as allowances while in training, job search and relocation allowances; and

(c) Administrative requirements applicable to State agencies to which such individuals may apply.

§ 617.2 Purpose.

The Act created a program of trade adjustment assistance (hereafter referred to as TAA) to assist individuals, who became unemployed as a result of increased imports, return to suitable employment. The TAA program provides for reemployment services and allowances for eligible individuals. The regulations in this Part 617 are issued to implement the Act.

§ 617.3 Definitions.

For the purposes of the Act and this Part 617:

(a) "Act" means Chapter 2 of Title II of the Trade Act of 1974, Pub. L. 93–618, 88 Stat. 1978, 2019–2030 (19 U.S.C. 2271–2322), as amended.

(b) "Adversely affected employment" means employment in a firm or appropriate subdivision of a firm if workers of such firm or appropriate subdivision are certified under the Act as eligible to apply for TAA.

(c) "Adversely affected worker" means an individual who, because of lack of work in adversely affected employment:

(1) Has been totally or partially separated from such employment; or

(2) Has been totally separated from employment with the firm in a subdivision of which such adversely affected employment exists.

(d) "Appropriate week" means the week in which the individual's first separation occurred.

(e) "Average weekly hours" means a figure obtained by dividing:

(1) Total hours worked (excluding overtime) by a partially separated individual in adversely affected employment in the 52 weeks (excluding weeks in such period during which the individual was sick or on vacation) preceding the individual's first qualifying separation, by

(2) The number of weeks in such 52 weeks (excluding weeks in such period during which the individual was sick or on vacation) in which the individual actually worked in such employment.

(f) "Average weekly wage" means one-thirteenth of the total wages paid to an individual in the individual's high quarter. The high quarter for an individual is the quarter in which the total wages paid to the individual were highest among the first four of the last five completed calendar quarters preceding the individual's appropriate week.

(g) "Average weekly wage in adversely affected employment" means a figure obtained by dividing:

(1) Total wages earned by a partially separated individual in adversely affected employment in the 52 weeks (excluding the weeks in that period the individual was sick or on vacation)

preceding the individual's first qualifying separation, by

(2) The number of weeks in such 52 weeks (excluding the weeks in that period the individual was sick or on vacation) the individual actually worked in such employment.

(h) "Benefit period" means, with respect to an individual:

(1) The benefit year and any ensuing period, as determined under the applicable State law, during which the individual is eligible for regular compensation, additional compensation, extended compensation, or federal supplemental compensation as these terms are defined by paragraph (kk) of this section; or

(2) The equivalent to such a benefit year or ensuing period provided for under the Federal unemployment insurance law.

(i) "Bona fide application for training" means an individual's signed and dated application for training filed with the State agency administering the TAA training program, on a form necessarily containing the individual's name, petition number, local office number, and specific occupational training. This form shall be signed and dated by a State agency representative upon receipt.

(j) "Certification" means a certification of eligibility to apply for TAA issued under the Act with respect to a group of workers.

(k) "Commuting area" means the area in which an individual would be expected to travel to and from work on a daily basis as determined under the applicable State law.

(l) "Date of separation" means:

(1) With respect to a total separation—

(i) For an individual in employment status, the last day worked; and

(ii) For an individual on employer-authorized leave, the last day the individual would have worked had the individual been working; and

(2) With respect to a partial separation, the last day of the week in which the partial separation occurred.

(m) "Eligibility period" means, for purposes of paying TRA:

(1) *Basic weeks.* The 52-week period beginning with the first week following the week with respect to which the individual first exhausts all rights to regular compensation (as defined in paragraph (kk)(1) of this section); and

(2) *Additional weeks.* The 26-week period immediately following the last week of entitlement to basic TRA, to assist an individual, to complete training approved under Subpart C of this Part 617.

(n) "Employer" means any individual or type of organization, including the Federal government, a State government, a political subdivision, or an instrumentality of one or more governmental entities, with one or more individuals performing service in employment for it within the United States.

(o) "Employment" means any service performed for an employer by an officer of a corporation or an individual for wages.

(p) "Exhaustion of UI" means exhaustion of all rights to UI in a benefit period by reason of:

(1) Having received all UI to which an individual was entitled under the applicable State law or Federal unemployment compensation law with respect to such benefit period; or

(2) The expiration of such benefit period.

(q) "Family" means the following members of an individual's household whose principal place of abode is with the individual in a home the individual maintains or would maintain but for unemployment:

(1) A spouse;

(2) An unmarried child, including a stepchild, adopted child, or foster child, under age 21 or of any age if incapable of self-support because of mental or physical incapacity; and

(3) Any other person whom the individual would be entitled to claim as a dependent for income tax purposes under the Internal Revenue Code of 1954.

(r) "First benefit period" means the benefit period established after the individual's first qualifying separation or in which such separation occurs.

(s) "First exhaustion of UI" means the first time in an individual's first benefit period that the individual exhausts all rights to UI; first exhaustion shall be deemed to be complete at the end of the week the exhaustion occurs.

(t) "First separation" means an individual's first total or partial separation from adversely affected employment on or most closely following the impact date of the certification under which the individual is covered, and occurs before or within the individual's first benefit period. For purposes of TRA entitlement, "first qualifying separation" means an individual's first total or partial separation from adversely affected employment on the basis of which the individual qualifies for TRA.

(u) "Head of family" means an individual who maintains a home for a family. An individual maintains a home if over half the cost of maintenance is furnished by the individual or would be furnished but for unemployment.

(v) "Impact date" means the date stated in a certification issued under the Act on which total or partial separations began or threatened to begin in a firm or a subdivision of a firm.

(w) "Layoff" means a suspension of or separation from employment by a firm for lack of work, initiated by the employer, and expected to be for a definite or indefinite period of not less than seven consecutive days.

(x) "Liable State" means the State against which an interstate claim is filed.

(y) "Partial separation" means that during a week ending on or after the impact date specified in the certification under which an adversely affected worker is covered, the individual had:

(1) Hours of work reduced to 80 percent or less of the individual's average weekly hours in adversely affected employment; and

(2) Wages reduced to 80 percent or less of the individual's average weekly wage in such adversely affected employment.

(z) "Regional Administrator" means the appropriate Regional Administrator of the Employment and Training Administration, United States Department of Labor (hereafter Department).

(aa) "Remuneration" means remuneration as defined in the applicable State law.

(bb) "Secretary" means the Secretary of Labor of the United States.

(cc) "Separate maintenance" means maintaining another (second) residence, in addition to the individual's regular place of residence, while attending a training facility outside the individual's commuting area.

(dd) "State" means the States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico, and the term "United States" when used in a geographical sense includes such Commonwealth.

(ee) "State agency" means the State Employment Security Agency of a State which administers the State law, and any other agency or authority with which the Secretary has an agreement to carry out any of the provisions of the Act.

(ff) "State law" means the unemployment compensation law of a State approved by the Secretary under section 3304 of the Internal Revenue Code of 1954 (26 U.S.C. 3304).

(gg) "Suitable work" means, with respect to an individual:

(1) Suitable work as defined in the applicable State law for claimants for

regular compensation (as defined in paragraph (kk)(1) of this section); or

(2) Suitable work as defined in the applicable State law provisions consistent with section 202(a)(3) of the Federal-State Extended Unemployment Compensation Act of 1970; whichever is applicable, but does not in any case include self-employment or employment as an independent contractor.

(hh) "Total separation" means a layoff or severance of an individual from employment with a firm in which, or in a subdivision of which, adversely affected employment exists.

(ii) "Trade adjustment assistance" ("TAA") means the services and allowances provided for achieving reemployment of adversely affected workers, including TRA, training and other reemployment services, and job search allowances and relocation allowances.

(jj) "Trade readjustment allowance" ("TRA") means a weekly allowance payable to an adversely affected worker with respect to such worker's unemployment under Subpart B of this Part 617.

(kk) "Unemployment insurance" ("UI") means the unemployment compensation payable to an individual under any State law or Federal unemployment compensation law, including chapter 85, title 5 of the United States Code, and the Railroad Unemployment Insurance Act. "UI" includes "regular compensation," "additional compensation," "extended compensation," and "federal supplemental compensation," defined as follows:

(1) "Regular compensation" means unemployment compensation payable to an individual under any State law, and, when so payable, includes unemployment compensation payable pursuant to chapter 85, title 5 of the United States Code, but does not include extended compensation, additional compensation, or federal supplemental compensation;

(2) "Additional compensation" means unemployment compensation totally financed by a State and payable under a State law by reason of conditions of high unemployment or by reason of other special factors and, when so payable, includes unemployment compensation payable pursuant to chapter 85, title 5 of the United States Code; and

(3) "Extended compensation" means the extended unemployment compensation payable to an individual for weeks of unemployment which begin in an Extended Benefit Period, under those provisions of a State law which satisfy the requirements of the Federal-State Extended Unemployment Compensation Act of 1970 and regulations governing the payment of extended unemployment compensation, and, when so payable, includes unemployment compensation payable pursuant to chapter 85, title 5 of the United States Code, but does not include regular compensation, additional compensation, or federal supplemental compensation. Extended compensation is also referred to in this Part 617 as Extended Benefits or EB.

(4) "Federal supplemental compensation" means the supplemental unemployment compensation payable to an individual under the Federal Supplemental Compensation Act of 1982. Federal supplemental compensation is also referred to in this Part 617 as FSC.

(ll) "Wages" means all compensation for employment for an employer, including commissions, bonuses, and the cash value of all compensation in a medium other than cash.

(mm) "Week" means a week as defined in the applicable State law.

(nn) "Week of unemployment" means a week of total, part total, or partial unemployment as determined under the applicable State law or Federal unemployment compensation law.

§ 617.4 Benefit information to workers.

(a) *Providing information to workers.* State agencies shall provide full information to workers about the benefit allowances, training, and other employment services available under Subparts B through E of this Part 617 and about the petition and application procedures, and the appropriate filing dates, for such allowances, training and services.

(b) *Providing assistance to workers.* State agencies shall provide whatever assistance is necessary to enable groups of workers, including unorganized workers, to prepare petitions or applications for program benefits.

(c) *Providing information to State vocational education agencies.* State agencies shall inform the State Board for Vocational Education or equivalent agency and other public or private agencies, institutions, and employers, as appropriate, of each certification issued under section 223 of the Act and of projections, if available, of the needs for training under section 236 of the Act as a result of such certification.

Subpart B—Trade Readjustment Allowances (TRA)

§ 617.10 Applications for TRA.

(a) *Before and after certification.* An individual covered under a certification or a petition for certification may apply to a State agency for TRA. A determination shall be made at any time to the extent necessary to establish or protect an individual's entitlement to TRA or other TAA, but no payment of TRA or other TAA may be made by a State agency until a certification is made and the State agency determines that the individual is covered thereunder.

(b) *Timing of applications.* An initial application for TRA, and applications for TRA for weeks of unemployment beginning before the initial application for TRA is filed, may be filed within a reasonable period of time after publication of the determination certifying the appropriate group of workers under section 223 of the Act. However, an application for TRA for a week of unemployment beginning after the initial application is filed shall be filed within the time limit applicable to claims for regular compensation under the applicable State law. For purposes of this paragraph (b), a reasonable period of time means such period of time as the individual had good cause for not filing earlier, which shall include, but not be limited to, the individual's lack of knowledge of the certification or misinformation supplied the individual by the State agency.

(c) *Applicable procedures.* Applications shall be filed in accordance with this Subpart B and on forms which shall be furnished to individuals by the State agency. The procedures for reporting and filing applications for TRA shall be consistent with this Part 617 and the Secretary's "Standard for Claim Filing, Claimant Reporting, Job Finding and Employment Services", *Employment Security Manual*, Part V, sections 5000 *et seq.* which is available at all State Employment Security agencies.

§ 617.11 Qualifying requirements for TRA.

(a) *Basic qualifying requirements for entitlement.* To qualify for TRA for any week of unemployment, an individual must meet each of the following requirements of paragraphs (a)(1) through (a)(6) of this section:

(1) *Certification.* The individual must be an adversely affected worker covered under a certification.

(2) *Separation.* The individual's first qualifying separation before application for TRA must occur:

(i) On or after the impact date;

(ii) Before the expiration of the two-year period beginning on the date of the certification; and

(iii) Before the termination date, if any, of the certification.

(3) *Wages and employment.* (i) In the 52-week period ending with the week of the individual's first qualifying separation, the individual must have had at least 26 weeks of employment at wages of $30 or more a week in adversely affected employment with a single firm or subdivision of a firm. Evidence that an individual meets this requirement shall be obtained as provided in § 617.12. Employment and wages covered under more than one certification can not be combined to qualify for TRA.

(ii)(A) For purposes of this paragraph (a)(3), any week in which such individual:

(*1*) Is on employer-authorized leave from such adversely affected employment for purposes of vacation, sickness, injury, maternity, or inactive duty or active duty military service for training;

(*2*) Does not work in such adversely affected employment because of a disability compensable under a workers' compensation law or plan of a State or the United States; or

(*3*) Had adversely affected employment interrupted to serve as a full-time representative of a labor organization in such firm or subdivision; shall be treated as a week of employment at wages of $30 or more;

(B) *Provided.* That not more than the following number of weeks may be treated as such weeks of employment—

(*1*) 3 weeks if no weeks described in paragraph (a)(3)(ii)(A)(*2*) of this section occurred during the 52-week period concerned; or

(*2*) 7 weeks if all are weeks described in paragraph (a)(3)(ii)(A)(*2*) of this section; or

(*3*) 7 weeks in the case of weeks described in Paragraphs (a)(3)(ii)(A) (*2*) and (*1*) or (*3*) of this section, or both, except that not more than 3 of such weeks may be other than weeks described in paragraph (a)(3)(ii)(A)(*2*) of this section.

(iii) Wages and employment creditable under paragraph (a)(3) of this section shall not include employment or wages earned or paid for employment, which is contrary to or prohibited by any Federal law.

(4) *Entitlement to UI.* The individual must have been entitled to (or would be entitled to if the individual applied therefor) UI for a week within the benefit period:

(i) In which the individual's first qualifying separation occurred; or

(ii) Which began (or would have begun) by reason of the filing of a claim for UI by the individual after such first qualifying separation.

(5) *Exhaustion of UI.* The individual must:

(i) Have exhausted all rights to any UI to which the individual was entitled (or would be entitled if the individual applied therefor); and

(ii) Not have an unexpired waiting period applicable to the individual for any such UI.

(6) *EB work test.*

(i) The individual must:

(A) Accept any offer of suitable work, as defined in § 617.3(gg), and actually apply for any suitable work the individual is referred to by the State agency; and

(B) Actively engage in seeking work and furnish the State agency tangible evidence of such efforts each week; and

(C) Register for work and be referred by the State agency to suitable work in accordance with the provisions of the applicable State law which apply to EB claimants and which are consistent with section 202(a)(3) of the Federal-State Extended Unemployment Compensation Act of 1970.

(ii) The EB work test shall apply to an individual only for weeks beginning after the date the individual files an initial TAA application.

(b) *First week of eligibility.* The first week of eligibility for TRA shall be the later of:

(1) The first week beginning more than 60 days after the date of the filing of the petition which resulted in the certification under which the individual is covered; or

(2) The first week beginning after the individual's first exhaustion of UI (as provided in paragraph (a)(5) of this section) following the individual's first qualifying separation (as provided in paragraph (a)(2) of this section).

§ 617.12 Evidence of qualification.

(a) *State agency action.* When an individual applies for TRA, the State agency having jurisdiction under § 617.50(a) shall obtain information necessary to establish:

(1) Whether the individual meets the qualifying requirements in § 617.11;

(2) The individual's average weekly wage; and

(3) For an individual claiming to be partially separated, the average weekly hours and average weekly wage in adversely affected employment.

(b) *Insufficient data.* If information specified in paragraph (a) of this section is not available from State agency records or from any employer, the State agency shall require the individual to submit a signed statement setting forth such information as may be required for the State agency to make the determinations required by paragraph (a) of this section.

(c) *Verification.* A statement made under paragraph (b) of this section shall be certified by the individual to be true to the best of the individual's knowledge and belief and shall be supported by evidence such as Forms W–2, paycheck stubs, union records, income tax returns, or statements of fellow workers, and shall be verified by the employer.

(d) *Determinations.* The State agency shall make the necessary determinations on the basis of information obtained pursuant to this section, except that if, after reviewing information obtained under paragraph (b) of this section against other available data, including agency records, it concludes that such information is not reasonably accurate, it shall make appropriate adjustments and shall make the determination on the basis of the adjusted data.

§ 617.13 Weekly amounts of TRA.

(a) *Regular allowance.* The amount of TRA payable for a week of total unemployment (including a week of training approved under Subpart C of this Part 617 or under the provisions of the applicable State law) shall be an amount equal to the most recent weekly benefit amount of UI (including dependents' allowances) payable to the individual for a week of total unemployment preceding the individual's first exhaustion of UI following the individual's first qualifying separation: *Provided,* that in a State in which weeks of UI are paid in varying amounts related to wages with separate employers, the weekly amount of TRA shall be calculated as it would be to pay extended compensation: *Provided, further,* that where a State calculates a base amount of UI and calculates dependents' allowances on a weekly supplemental basis. TRA weekly benefit amounts shall be calculated in the same manner and under the same terms and conditions as apply to claimants for UI, except that the base amount shall not change.

(b) *Increased allowance.* An individual in training approved under Subpart C of this Part 617 who is thereby entitled for any week to TRA and a training allowance under any other Federal law for the training of workers shall be paid in the amount computed under paragraph (a) of this section or, if greater, the amount to which the individual would be entitled under such other Federal law if the individual applied for such allowance, as provided in section 232(b) of the Act. A payment under this paragraph (b) shall be in lieu of any training allowance

to which the individual is entitled under such other Federal law.

(c) *Reduction of amount.* An amount of TRA payable under paragraph (a) or (b) of this section for any week shall be reduced (but not below zero) by:

(1) Income that is deductible from UI under the disqualifying income provisions of the applicable State law or Federal unemployment compensation law;

(2) The amount of a training allowance (other than a training allowance referred to in paragraph (b) of this section) under any Federal law that the individual receives for such week, as provided in section 232(c) of the Act. This paragraph (c) shall apply to Veterans Education Assistance, Pell Grants, Supplemental Educational Opportunity Grants, and other training allowances under any Federal law other than for the training of workers; and

(3) Any amount that would be deductible from UI for days of absence from training under the provisions of the applicable State law which apply to individuals in approved training.

§ 617.14 Maximum amount of TRA.

(a) *General rule.* Except as provided under paragraph (b) of this section, the maximum amount of TRA payable to an individual under a certification shall be the amount determined by:

(1) Multiplying by 52 the weekly amount of TRA payable to such individual for a week of total unemployment, as determined under § 617.13(a); and

(2) Subtracting from the product derived under paragraph (a)(1) of this section, the total sum of UI to which the individual was entitled (or would have been entitled if the individual had applied therefor) in the individual's first benefit period described in § 617.11(a)(4).

(b) *Exceptions.* The maximum amount of TRA determined under paragraph (a) of this section will not include:

(1) The amount of dependents' allowances paid as a supplement to the base weekly amount determined under § 617.13(a);

(2) The amount of the difference between the individual's weekly increased allowances determined under § 617.13(b) and the individual's weekly amount determined under § 617.13(a); and

(3) The amounts paid for additional weeks determined under § 617.15(b); but nothing in this paragraph (b) shall affect an individual's eligibility for such supplemental, increased or additional allowances.

(c) *Reduction for Federal training allowance.* (1) If a training allowance referred to in § 617.13(c)(2) is paid to an individual for any week of unemployment with respect to which the individual would be entitled (determined without regard to any disqualification under § 617.18(b)(2)) to TRA, if the individual applied for TRA for such week, each week shall be deducted from the total number of weeks of TRA otherwise payable to the individual.

(2) If the training allowance referred to in paragraph (c)(1) of this section is less than the amount of TRA otherwise payable to the individual for such week, the individual shall, when the individual applies for TRA for such week, be paid TRA in an amount not to exceed the amount equal to the difference between the individual's regular weekly TRA amount, as determined under § 617.13(a), and the amount of the training allowance paid to the individual for such week, as provided in section 232(c) of the Act.

§ 617.15 Duration of TRA.

(a) *Basic weeks.* An individual shall not be paid basic TRA for any week after the 52-week eligibility period beginning with the first week following the first week in the period covered by the certification with respect to which the individual has first exhausted (as determined under § 617.11(a)(5)) all rights to regular compensation.

(b) *Additional weeks.* (1) TRA payments may be paid for up to 26 additional weeks in the 26-week eligibility period following the last week of entitlement to basic TRA otherwise payable under this Part 617 to an individual, to assist the individual to complete training approved under Subpart C of this Part 617. However, TRA shall not be paid for a week under the provisions of this paragraph (b) unless the individual attends training during such week.

(2) To be eligible for TRA for additional weeks, an individual must make a bona fide application for such training:

(i) Within 210 days after the date of the first certification under which the individual is covered; or

(ii) If later, within 210 days after the date of the individual's first qualifying separation.

(3) No payment of TRA shall be made for any additional week unless the individual is actually engaged in training during the week and has not been determined under § 617.18(b)(2) to be failing to make satisfactory progress in the training.

(c) *Limit.* In no case may an individual receive TRA for any week which begins after the 78-week period following the week the individual has first exhausted (as determined under § 617.11(a)(5)) all rights to regular compensation.

§ 617.16 Applicable State law.

(a) *What law governs.* The applicable State law for purposes of this Subpart B is the State law under which the individual:

(1) Is currently entitled to UI (or would be entitled if the individual applied therefor); or

(2) Has most recently exhausted all rights to any UI to which the individual was entitled (or would be entitled if the individual applied therefor).

(b) *Change of law.* (1) A State law determined under paragraph (a) of this section shall remain applicable to an individual unless the individual becomes entitled to UI (or would be entitled if the individual applied therefor) under another State law.

(2) If a State law ceases to apply to an individual, the applicable State law thereafter shall be the law of the State under which the individual became entitled to UI (or would be entitled if the individual applied therefor).

(c) *UCFE–UCX claimants.* If an individual is entitled to UI under chapter 85, title 5 of the United States Code, the applicable State law for purposes of paragraphs (a) and (b) of this section is the law of the State to which the individual's Federal service and wages were assigned or transferred under Part 609 or Part 614 of this chapter.

(d) *RRUI claimants.* If an individual is entitled to UI under the Railroad Unemployment Insurance Act, the applicable State law for purposes of paragraphs (a) and (b) of this section is the law of the State in which the individual's first qualifying separation occurs.

§ 617.17 Availability and active search for work.

An individual shall not be paid TRA for any week of unemployment during which the individual is not able to work or is unavailable for work under the applicable State law, or if the individual fails or refuses to make an active search for work or to apply for or accept work or to accept a referral to work under the applicable State law, including the provisions of the applicable State law which apply to EB claimants and which are consistent with section 202(a)(3) of the Federal-State Extended Unemployment Compensation Act of 1970. This section shall not apply to weeks during which the individual is actually undergoing training approved under the provisions of the applicable State law or under Subpart C of this Part 617, unless the individual is determined to be ineligible for such week under the applicable State law or § 617.18(b)(2).

§ 617.18 Disqualifications.

(a) *State law applies.* Except as stated in paragraph (b) of this section and § 617.55(b), an individual shall not be paid TRA for any week of unemployment the individual is or would be disqualified to receive UI under the disqualification provisions of the applicable State law, including the provisions of the applicable State law which apply to EB claimants and which are consistent with section 202(a)(3) of the Federal-State Extended Unemployment Compensation Act of 1970.

(b) *Disqualification of trainees.* (1) A State law shall not be applied to disqualify an individual from receiving either UI or TRA because the individual:

(i) Is undergoing training approved under Subpart C of this Part 617; or

(ii) Refuses work to which the individual has been referred by the State agency if such work would require the individual to discontinue training or, if added to hours of training, would occupy the individual more than 8 hours a day or 40 hours a week, except that this paragraph (b)(1)(ii) does not apply to an individual who has been given notice of a determination of ineligibility under paragraph (b)(2) of this section unless and until the individual enters or resumes and makes satisfactory progress in such training; or

(iii) Quits work if the individual was employed in work which was not suitable employment, as described in § 617.22(a)(1), and it was reasonable and necessary for the individual to quit work to begin or continue training, except that this paragraph (b)(1)(iii) does not apply to an individual who has been given notice of a determination of ineligibility under paragraph (b)(2) of this section unless and until the individual enters or resumes and makes satisfactory progress in such training.

(2) An individual who, without good cause, refuses to accept or continue or fails to make satisfactory progress in training approved under Subpart C of this Part 617 shall not be eligible for basic or additional TRA, or any other payment under this Part 617, for the week of such occurrence and any week thereafter until the week in which the individual enters or resumes and makes satisfactory progress in such training. For purposes of this paragraph (b), good cause means such reasons as would justify an individual's conduct when measured by conduct expected of a reasonable individual in like circumstances, including but not limited to reasons beyond the individual's control and reasons related to the individual's capability to make satisfactory progress in or continue training.

Subpart C—Reemployment Services

§ 617.20 Responsibilities for the delivery of reemployment services.

(a) *State agency referral.* The State agency shall be responsible for referring adversely affected workers to the appropriate office for reemployment services when such individual:

(1) Expresses interest in any reemployment services while receiving UI; or

(2) Exhausts all rights to UI and becomes entitled to TRA.

(b) *State agency responsibilities.* State agency responsibilities under this Subpart C include, but are not limited to:

(1) Registering adversely affected workers for work;

(2) Informing adversely affected workers of the reemployment services and allowances available under the Act, the application procedures, and the filing date requirements for such reemployment services and allowances;

(3) Determining whether suitable employment, as described in § 617.22(a)(1), is available;

(4) Developing, reviewing, and updating, when necessary, reemployment plans for adversely affected workers;

(5) Providing counseling, testing, placement, and supportive services;

(6) Providing or procuring self-directed job search training;

(7) Providing out-of-area job search and relocation assistance;

(8) Making referrals to training;

(9) Locating, approving and procuring training;

(10) Monitoring the provisions of the approved training program;

(11) Determining which occupations and training institutions offer, in a cost effective manner, a reasonable expectation of employment following such training; and

(12) Documenting the standards and procedures used to select occupations and training institutions in which training is approved.

§ 617.21 Reemployment services and allowances.

Reemployment services and allowances under this Subpart C shall include, as appropriate, the following:

(a) *Employment registration.* To ensure, so far as practical, that individuals are placed in jobs which utilize their highest skills and that applicants qualified for job openings are appropriately referred, applications for registration shall be taken on adversely affected workers who apply for reemployment services.

(b) *Employment counseling.* When local job opportunities are not readily available, counseling shall be used to assist individuals to gain a better understanding of themselves in relation to the labor market so that they can more realistically choose or change an occupation or make a suitable job adjustment.

(c) *Vocational testing.* Testing shall be used to determine which individual skills or potentials can be developed by appropriate training.

(d) *Job development.* A State agency shall develop jobs for individuals by soliciting job interviews from public or private employers and shall work with potential employers to customize or restructure particular jobs to meet individual needs.

(e) *Supportive services.* Supportive services shall be provided so individuals can obtain or retain employment or participate in employment and training programs leading to eventual placement in permanent employment. Such services may include work orientation, basic education, communication skills, and any other services necessary to prepare an individual for full employment in accordance with the individual's capabilities and employment opportunities.

(f) *On-the-job training (OJT).* OJT is training, in the public or private sector, and may be provided to an individual who meets the conditions for approval of training, as provided in § 617.22(a), and who has been hired by the employer, while the individual is engaged in productive work which provides knowledge or skills essential to the full and adequate performance of the job.

(g) *Classroom training.* This training activity is any training of the type normally conducted in an institutional setting, including vocational education, and may be provided to individuals who meet the conditions for approval of training, as provided in § 617.22(a), to impart technical skills and information required to perform a specific job or group of jobs. Training designed to enhance the employability of individuals by upgrading basic skills, through the provision of courses such as remedial education or English-as-a-second-language, shall be considered as supportive services under paragraph (e) of this section.

(h) *Self-directed job search.* Self-directed job search programs shall be initiated to assist individuals in

developing skills and techniques for finding a job. Such programs vary in design and operation and call for a carefully structured approach to individual needs. There are basic elements or activities common to all approaches. These include:

(1) *Job search workshop.* A short (1–3 days) seminar designed to provide participants with knowledge on how to find jobs, including labor market information, applicant resume writing, interviewing techniques, and finding job openings.

(2) *Job finding club.* Encompasses all elements of the Job Search Workshop plus a period (1–2 weeks) of structured, supervised application where participants actually seek employment.

(i) *Job search allowances.* The individual, if eligible, shall be provided job search allowances under Subpart D of this Part 617 to defray the cost of seeking employment outside of the commuting area.

(j) *Relocation allowances.* The individual, if eligible, shall be provided relocation allowances under Subpart E of this Part 617 to defray the cost of moving to a new job outside of the commuting area.

§ 617.22 Approval of training.

(a) *Conditions for approval.* Subject to the availability of funds allocated by the Department to the State to pay for the full costs of training, training may be approved for an individual adversely affected worker only if the State agency determines that:

(1) No suitable employment including technical and professional employment is available. For purposes of this section, the term "suitable employment" means, with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment, and wages for such work at not less than 80 percent of the individual's average weekly wage;

(2) The individual would benefit from appropriate training;

(3) There is a reasonable expectation (not necessarily a prior guarantee) of employment following completion of training;

(4) Approved training is available to the individual from governmental agencies or private sources, which may include area vocational education schools (as defined in section 521(3) of the Carl D. Perkins Vocational Education Act) and employers; and

(5) The individual is qualified to undertake and complete such training.

(b) *Time limits for commencing training.* An individual must commence approved training within 60 days after the approval date, except that for good cause shown, as described in § 617.18(b), such period may be extended up to a maximum of 120 days after the date of such approval.

(c) *Approval of training under State law.* Training approved by a State agency under State law is not approved training under this Part 617. If the State agency subsequently determines that the individual and course of training meet the requirements of this Part 617 and training is approved, the costs of such training incurred after such approval shall be paid under this Part 617. No reimbursement shall be authorized for any costs incurred for any period prior to the approval of training, under this Part 617, except in the case of a redetermination or decision reversing a determination denying approval of training under this Part 617.

(d) *Applications.* Applications for, selection for, approval of, or referral to training shall be filed in accordance with this Subpart C and on forms which shall be furnished to individuals by the State agency.

(e) *Determinations.* Selection for, approval of, or referral of an individual to training under this Subpart C, or a decision with respect to any specific training or non-selection, non-approval, or non-referral for any reason shall be a determination to which §§ 617.50 and 617.51 apply.

(f) *Length of training and hours of attendance.* The State agency shall determine the appropriateness of the length of training and the hours of attendance as follows:

(1) The training shall be of suitable duration to achieve the desired skill level in the shortest possible time;

(2) No approved training program shall exceed 104 weeks; and

(3) The hours and days in a week of attendance shall be in accordance with procedures established by the State agency and with established hours and days commensurate with the course as determined by the training facility.

(g) *Training of reemployed workers.* Adversely affected workers who obtain new employment which is not suitable employment, as described in § 617.22(a)(1), and have been approved for training may elect to:

(1) Terminate their jobs, or

(2) Continue in full- or part-time employment, to undertake such training, and shall not be subject to ineligibility or disqualification for UI or TRA as a result of such termination or reduction in employment.

(h) *Fees prohibited.* In no case shall an individual be approved for training under this Subpart C for which the individual is required to pay a fee or tuition.

§ 617.23 Selection of training methods and programs.

(a) *State agency responsibilities.* If suitable employment as described in § 617.22(a)(1), is not otherwise available to an individual or group of individuals, it is the responsibility of the State agency to explore, identify, develop and secure training opportunities and to establish linkages with other public and private agencies, Private Industry Councils (PICs), employers, and Job Training Partnership Act (JTPA) service delivery area (SDA) grant recipients, as appropriate, which return adversely affected workers to employment as soon as possible.

(b) *Firm-specific retraining program.* To the extent practicable before referring an adversely affected worker to approved training, the State agency shall consult with the individual's adversely affected firm and certified or recognized union, or other authorized representative, to develop a retraining program that meets the firm's staffing needs and preserves or restores the employment relationship between the individual and the firm. The fact that there is no need by other employers in the area for individuals in a specific occupation for which training is undertaken shall not preclude the development of an individual retraining program for such occupation with the adversely affected firm.

(c) *Methods of training.* Adversely affected workers may be provided either one or a combination of the following methods of training:

(1) Insofar as possible, priority will be given to on-the-job training, which includes related education necessary to acquire skills needed for a position within a particular occupation, in the firm or elsewhere pursuant to §§ 617.24, 617.25, and 617.26, including training for which the firm pays the costs. This ensures that on-the-job training provides the skills necessary for the individual to obtain employment in an occupation rather than a particular job at a specific site; and

(2) Institutional training, with priority given to providing the training in public area vocational education schools if it is determined that such schools are at least as effective and efficient as other institutional alternatives, pursuant to §§ 617.24, 617.25, and 617.26.

(d) *Standards and procedures.* The State agency shall document the standards and procedures used to select occupations and training institutions in which training is approved. Such occupations and training shall offer a reasonable expectation (not necessarily a prior guarantee) of employment following such training.

(1) *Standards.* The State agency shall approve training in occupations for which an identifiable demand exists either in the local labor market or in other labor markets for which relocation planning has been implemented. If practicable, placement rates and employer reviews of curriculum shall be used as guides in the selection of training institutions.

(2) *Procedures.* In determining the types of training to be provided, the State agency shall consult with local employers, appropriate labor organizations, Job Service Improvement Program Committees, JTPA SDA grant recipients, PICs, local educational organizations, local apprenticeship programs, local advisory councils established under the Carl D. Perkins Vocational Education Act, and post-secondary institutions.

(3) *Exclusions.* In determining suitable training the State agency shall exclude certain occupations, where:

(i) Lack of employment opportunities exist as substantiated by job orders and other pertinent labor market data; or

(ii) The occupation provides no reasonable expectation of permanent employment.

§ 617.24 Preferred training.

When a State agency refers an adversely affected worker for training, the State agency shall attempt to obtain such training at no cost through:

(a) On-the-job training offered by an employer;

(b) Area vocational education schools, as defined in section 521(3) of the Carl D. Perkins Vocational Education Act;

(c) The JTPA SDA grant recipient; or

(d) Any other applicable law, if preferred training under paragraph (a), (b) or (c) of this section cannot be provided within a reasonable period of time.

§ 617.25 Purchased training.

If the State agency determines that placement of an adversely affected worker in preferred training under § 617.24 cannot be accomplished, the State agency shall attempt to make arrangements or enter into agreements to purchase training or provide for reimbursement of the cost of training through:

(a) On-the-job training offered by an employer;

(b) Area vocational education schools, as defined in section 521(3) of the Carl D. Perkins Vocational Education Act;

(c) The JTPA SDA grant recipient; or

(d) Any other applicable law, if purchased training under paragraph (a), (b) or (c) of this section cannot be provided within a reasonable period of time.

§ 617.26 Approval of other training, including interstate.

(a) *Liable State.* A State may approve and purchase for an adversely affected worker any other training, including on-the-job training or institutional vocational training, if:

(1) Circumstances preclude referral to training under § 617.24 or § 617.25; and

(2) If institutional vocational training, the training has been approved by the State vocational education agency as meeting the standards of adequacy required by the applicable law; and

(3) The approval conditions in § 617.22 are met.

(b) *Agent State.* The State agency performing as an agent State shall be responsible for selection and approval of training under §§ 617.22, 617.24, and 617.25. The agent State agency will pay any training related cost, including subsistence and transportation. The liable State agency is responsible for determining eligibility for TRA, and job search and relocation allowances. The agent State shall assist the individual in applying for such allowances.

§ 617.27 Subsistence payments.

(a) *Eligibility.* A trainee under this Subpart C shall be afforded supplemental assistance necessary to pay costs of separate maintenance when the training facility is located outside the commuting area, but may not receive such supplemental assistance for any period for which the trainee receives such a payment under the JTPA, or any other law, or for any day referred to under § 617.28(c)(3) pursuant to which a transportation allowance is payable to the individual, or to the extent the individual is entitled to be paid or reimbursed for such expenses from any other source.

(b) *Amount.* Subsistence payments shall not exceed the lesser of:

(1) The individual's actual per diem expenses for subsistence; or

(2) 50 percent of the prevailing per diem rate authorized under the Federal travel regulations (*see* 41 CFR Part 101–7) for the locale of the training.

(c) *Applications.* Applications for subsistence payments shall be filed in accordance with this Subpart C and on forms which shall be furnished to trainees by the State agency. Such payments shall be made on completion of a week of training, except that at the beginning of a training project a State agency may advance a payment for a week if it determines that such advance is necessary to enable a trainee to accept training. An adjustment shall be made if the amount of an advance is less or more than the amount to which the trainee is entitled under paragraph (b) of this section. A determination as to an application made under this section shall be subject to §§ 617.50 and 617.51.

(d) *Unexcused absences.* No subsistence payment shall be made to an individual for any day of unexcused absence as certified by the responsible training facility.

§ 617.28 Transportation payments.

(a) *Eligibility.* A trainee under this Subpart C shall be afforded supplemental assistance necessary to pay transportation expenses if the training is outside the commuting area, but may not receive such assistance if transportation is arranged for the trainee as part of a group and paid for by the State agency or to the extent the trainee receives a payment of transportation expenses under another Federal law, or to the extent the individual is entitled to be paid or reimbursed for such expenses from any other source.

(b) *Amount.* A transportation allowance shall not exceed the lesser of:

(1) The actual cost for travel by the least expensive means of transportation reasonably available between the trainee's home and the training facility; or

(2) The cost per mile at the prevailing mileage rate authorized under the Federal travel regulations. *See* 41 CFR Part 101–7.

(c) *Travel included.* Travel for which a transportation allowance shall be paid includes travel:

(1) At the beginning and end of the training program;

(2) When the trainee fails for good cause, as described in § 617.18(b)(2), to complete the training program; and

(3) For daily commuting, in lieu of subsistence, but not exceeding the amount otherwise payable as subsistence for each day of commuting.

(d) *Applications.* Applications for transportation payments shall be filed in accordance with this Subpart C and on forms which shall be furnished to trainees by the State agency. Payments may be made in advance. An adjustment shall be made if the amount of an advance is less or more than the amount to which the trainee is entitled under paragraph (b) of this section. A determination as to an application made under this section shall be subject to §§ 617.50 and 617.51.

§ 617.29 Application of EB work test.

(a) *Registration for employment.* Adversely affected workers who have exhausted all rights to UI and who otherwise qualify for TRA under § 617.11, shall, except as provided in paragraph (b) of this section:

(1) Register for work and be referred to work by the State agency in the same manner as required for EB claimants under the applicable State law provisions which are consistent with section 202(a)(3) of the Federal-State Extended Unemployment Compensation Act of 1970; and

(2) Be subject to the work test requirements for EB claimants under the applicable State law provisions which are consistent with section 202(a)(3) of the Federal-State Extended Unemployment Compensation Act of 1970.

(b) *Exceptions.* Paragraph (a) of this section shall not apply to any week an individual is undergoing training approved under this Subpart C.

Subpart D—Job Search Allowances

§ 617.30 General.

A job search allowance shall be granted an adversely affected worker to assist the individual in securing a job within the United States as provided in this Subpart D.

§ 617.31 Applications.

(a) *Forms.* Applications for job search allowances shall be filed in accordance with this Subpart D and on forms which shall be furnished to individuals by the State agency.

(b) *Submittal.* An application may be submitted to a State agency at any time by an individual who has been totally or partially separated whether or not a certification covering the individual has been made. However, an application must be submitted to a State agency before the job search begins for the job search allowance to be granted, and the job search may not be approved until after the individual is covered under a certification.

(c) *Time limits.* Notwithstanding paragraph (b) of this section, a job search allowance application may be approved only if submitted before:

(1) The 365th day after the date of the certification under which the individual is covered, or the 365th day after the date of the individual's last total separation, whichever is later; or

(2) The 182d day after the concluding date of training approved under Subpart C of this Part 617, or approved under the regulations superseded by this Part 617.

§ 617.32 Eligibility.

(a) *Conditions.* Job search allowance eligibility requires:

(1) A timely filed application;

(2) Total separation from adversely affected employment at the time the job search commences;

(3) Registration with the State agency which shall furnish the individual such reemployment services as are appropriate under Subpart C of this Part 617.

(4) A determination by the State agency that the individual has no reasonable expectation of securing suitable employment in the computing area, and has a reasonable expectation of obtaining suitable employment of long-term duration outside the commuting area and in the area where the job search will be conducted. For purposes of this section, the term "suitable employment" means suitable work as defined in § 617.3(gg) (1) or (2), whichever is applicable to the individual; and

(5) Completion of the job search within a reasonable period not exceeding 30 days after the day on which the job search began.

(b) *Completion of job search.* A job search is deemed completed when the individual either secures employment or has contacted each employer to whom referred by the State agency in connection with a job search.

(c) *Verification of employer contacts.* The State agency shall verify contacts with employers certified by the individual.

§ 617.33 Findings required.

Before final payment of a job search allowance may be approved, the following findings shall be made:

(a) The State agency having jurisdiction under § 617.50(a) must find that the individual meets the eligibility requirements for a job search allowance specified in § 617.32(a).

(b) The State agency of the State where the individual resides must find that:

(1) The application for a job search allowance was submitted within the time limits specified in § 617.31(c);

(2) The individual meets the eligibility requirements for a job search allowance specified in § 617.32(a)(4); and

(3) The individual completed the job search within the time limits stated in § 617.32(a)(5).

§ 617.34 Amount.

(a) *Computation.* The amount of a job search allowance shall be 90 percent of the total costs of each of the following allowable transportation and subsistence items:

(1) *Travel.* The cost allowable for travel shall not exceed the lesser of:

(i) The actual cost of round trip travel by the most economical public transportation the individual reasonably can be expected to take from the individual's residence to the area of job search; or

(ii) The cost per mile at the prevailing mileage rate authorized under the Federal travel regulations (*see* 41 CFR Part 101–7) for such roundtrip travel by the usual route from the individual's residence to the area of job search.

(2) *Lodging and meals.* The cost allowable for lodging and meals shall not exceed the lesser of:

(i) The actual cost to the individual of lodging and meals while engaged in the job search; or

(ii) 50 percent of the prevailing per diem allowance rate authorized under the Federal travel regulations (*see* 41 CFR Part 101–7) for the locality where the job search is conducted.

(b) *Limit.* The total job search allowances paid to an individual under a certification may not exceed $600, regardless of the number of job searches undertaken by the individual. The amounts otherwise payable under paragraph (a) of this section shall be reduced by any amounts the individual is entitled to be paid or reimbursed for such expenses from any other source.

§ 617.35 Time and method of payment.

(a) *Determinations.* A State agency shall promptly make and record determinations necessary to assure entitlement of an individual to a job search allowance at any time, before or after a certification covering the individual is made. No job search allowance may be paid or advanced to an individual until the State agency determines that the individual is covered under a certification. A State agency shall make payment as promptly as possible upon determining that the individual is covered under a certification and is otherwise eligible.

(b) *Payment.* Unless paragraph (a) of this section applies, a job search allowance shall be paid promptly after an individual completes a job search and complies with paragraph (d) of this section.

(c) *Advances.* A State agency may advance an individual (except an individual not yet covered under a certification) 60 percent of the estimated amount of the job search allowance payable on completion of the job search, but not exceeding $360, within 5 days prior to commencement of a job search. Such advance shall be deducted from any payment under paragraph (b) of this section.

(d) *Worker evidence.* On completion of a job search, the individual shall certify on forms furnished by the State agency as to employer contacts made and amounts expended daily for lodging and meals. Receipts shall be required for all lodging and purchased transportation expenses incurred by the individual pursuant to the job search. An adjustment shall be made if the amount of an advance is less or more than the amount to which the individual is entitled under § 617.34.

Subpart E—Relocation Allowances

§ 617.40 General.

A relocation allowance shall be granted an adversely affected worker to assist the individual and the individual's family, if any, to relocate within the United States as stated in this Subpart E. A relocation allowance may be granted an individual only once under a certification. A relocation allowance shall not be granted to more than one member of a family with respect to the same relocation. If applications for a relocation allowance are made by more than one member of a family as to the same relocation, the allowance shall be paid to the head of the family if otherwise eligible.

§ 617.41 Applications.

(a) *Forms.* Applications for a relocation allowance shall be filed in accordance with this Subpart E and on forms which shall be furnished by the State agency.

(b) *Submittal.* An application may be submitted to the State agency at any time by an individual who has been totally or partially separated regardless of whether a certification covering the individual has been made. However, an application must be submitted to a State agency before the relocation begins for the relocation allowance to be granted, and the relocation may not be approved until after the individual is covered under a certification.

(c) *Time limits.* Notwithstanding paragraph (b) of this section, an application for a relocation allowance may not be approved unless submitted before:

(1) The 425th day after the date of the certification under which the individual is covered, or the 425th day after the date of the individual's last total separation, whichever is later; or

(2) The 182d day after the concluding date of training approved under Subpart C of this Part 617, or approved under the regulations superseded by this Part 617.

§ 617.42 Eligibility.

(a) *Conditions.* Eligibility for a relocation allowance requires:

(1) A timely filed application;

(2) Total separation from adversely affected employment at the time relocation commences;

(3) No prior receipt of a relocation allowance under the same certification;

(4) Relocation within the United States and outside the individual's present commuting area;

(5) Registration with the State agency which shall furnish the individual such reemployment services as are appropriate under Subpart C of this Part 617;

(6) A determination by the State agency that the individual has no reasonable expectation of securing suitable employment in the commuting area, and has obtained suitable employment affording a reasonable expectation of employment of long-term duration, or a bona fide offer of such suitable employment, outside the commuting area and in the area of intended relocation. For purposes of this section, the term "suitable employment" means suitable work as defined in § 617.3(gg) (1) or (2), whichever is applicable to the individual; and

(7) Relocation beginning within a reasonable period, as determined under § 617.43(b), and completion of such relocation within a reasonable period of time as determined in accordance with Federal travel regulations and § 617.43(a).

(b) *Job search.* Applications for a relocation allowance and a job search allowance may not be approved concurrently, but the prior payment of a job search allowance shall not otherwise preclude the payment of a relocation allowance.

§ 617.43 Time of relocation.

(a) *Applicable considerations.* In determining whether an individual's relocation is completed in a reasonable period of time, a State agency, among other factors, shall consider whether:

(1) Suitable housing is available in the area of relocation;

(2) The individual can dispose of the individual's residence;

(3) The individual or a family member is ill; and

(4) A member of the individual's family is attending school and when the member can best be transferred to a school in the area of relocation.

(b) *Time limits.* The reasonable period for actually beginning a relocation move shall expire 182 days after the date of application for a relocation allowance, or 182 days after the conclusion of training approved under Subpart C of this Part 617, or approved under the regulations in former 29 CFR Part 91, in effect prior to its redesignation as this 20 CFR Part 617 and its concurrent revision.

§ 617.44 Findings required.

The following findings shall be made before final payment of a relocation allowance may be approved:

(a) *Intrastate relocations.* If the area of relocation is in the State where the individual resides, the State agency of that State shall make all determinations under this Subpart E.

(b) *Interstate relocations.* If the area of relocation is not in the State where the individual resides:

(1) The State agency of the State where the individual resides shall make the determinations under this Subpart E; and

(2) The State agency of the State where the individual resides shall verify directly with the employer, or shall request the State agency of the State of intended relocation to verify, that the individual has obtained suitable employment affording a reasonable expectation of employment of long-term duration, or a bona fide offer of such suitable employment, in accordance with § 617.42(a)(5)(i).

§ 617.45 Amount.

(a) *Items allowable.* The amount payable as a relocation allowance shall include the following items:

(1) 90 percent of the travel expenses for the individual and family, if any, from the individual's place of residence to the area of relocation, as determined under § 617.46;

(2) 90 percent of the expenses of moving household goods and personal effects of the individual and family, if any, not to exceed the maximum number of pounds net weight authorized under the Federal travel regulations (*see* 41 CFR Part 101-7), between such locations, as determined under § 617.47; and

(3) A lump sum payment, equal to 3 times the individual's average weekly wage, not to exceed $600.

(b) *Reduction.* The amount otherwise payable under paragraphs (a)(1) and (a)(2) of this section shall be reduced by any amount the individual is entitled to be paid or reimbursed for such expenses from any other source.

§ 617.46 Travel allowance.

(a) *Computation.* The amount of travel allowance (including lodging and meals) payable under § 617.45(a)(1) shall be 90 percent of the total costs of each of the

following allowable transportation and subsistence items:

(1) *Transportation.* The cost allowable for transportation shall not exceed the lesser of:

(i) The actual cost of transportation for the individual and family, if any, by the most economical public transportation the individual and family reasonably can be expected to take from the individual's old residence to the individual's new residence in the area of relocation; or

(ii) The cost per mile at the prevailing mileage rate authorized under the Federal travel regulations (*see* 41 CFR Part 101-7) for the usually traveled route from the individual's old residence to the individual's new residence in the area of relocation. No additional mileage shall be payable for family members traveling on the same trip in the same vehicle.

(2) *Lodging and meals.* The cost allowable for lodging and meals for an individual or each member of the individual's family shall not exceed the lesser of:

(i) The actual cost to the individual for lodging and meals while in travel status; or

(ii) 50 percent of the prevailing per diem allowance rate authorized under the Federal travel regulations (*see* 41 CFR Part 101-7) for the locality to which the relocation is made.

(b) *Separate travel.* If, for good cause, a member or members of an individual's family must travel separately to the individual's new residence, 90 percent of the total costs of such separate travel, computed in accordance with paragraph (a) of this section, shall be included in calculating the total amount the individual is entitled to be paid under this Subpart E. For purposes of this paragraph (b), good cause means such reasons as would justify the family member's inability to relocate with the other members of the individual's family, including but not limited to reasons related to the family member's health, schooling or economic circumstances.

(c) *Limitation.* In no case may the individual be paid a travel allowance for the individual or a member of the individual's family more than once in connection with a single relocation.

§ 617.47 Moving allowance.

(a) *Computation.* The amount of a moving allowance payable under § 617.45(a)(2) shall be 90 percent of the total of the allowable costs under either (1), (2), or (3) of this paragraph, and 90 percent of the total allowable costs under (4) of this paragraph:

(1) *Commercial carrier.* Allowable costs for moving household goods and personal effects of an individual and family, if any, shall not exceed the maximum number of pounds net weight authorized under the Federal travel regulations (*see* 41 CFR Part 101-7) by commercial carrier from the individual's old residence to the individual's new residence in the area of relocation, including reasonable and necessary accessorial charges, by the most economical commercial carrier the individual reasonably can be expected to use. Before undertaking such move, the individual must submit to the State agency an estimate from a commercial carrier as to the cost thereof. Accessorial charges shall include the cost of insuring such goods and effects for their actual value or $10,000, whichever is least, against loss or damage in transit, if a bid from a licensed insurer is obtained by the individual and approved by the State agency before departure. If a State agency finds it is more economical to pay a carrier an extra charge to assume the responsibility of a common carrier for such goods and effects, 90 percent of such extra charge, but not exceeding $50, shall be paid in lieu of the cost of insurance.

(2) *Trailer or rental truck*—(i) *Trailer.* If household goods and personal effects are moved by trailer, the allowable costs shall be:

(A) If the trailer is hauled by private vehicle, the cost per mile for the use of the private vehicle at the prevailing mileage rate authorized under the Federal travel regulations (*see* 41 CFR Part 101-7) for the usually traveled route from the individual's old residence to the individual's new residence in the area of relocation; and

(B) If the trailer is rented, and of the type customarily used for moving household goods and personal effects, the rental fee for each day reasonably required to complete the move; or

(C) The actual charge if hauling is by commercial carrier,

(ii) *Rental truck.* If household goods and personal effects are moved by rental truck of the type customarily used for moving household goods and personal effects, the allowable costs shall be:

(A) The rental fee for each day reasonably required to complete the move; and

(B) The necessary fuel for such rental truck paid by the individual.

(3) *House trailer.* If a house trailer or mobile home was used as the individual's place of residence in the old area and will be so used in the new area, the allowable costs of moving such house trailer or mobile home shall be:

(i) The commercial carrier's charges for moving the house trailer or mobile home;

(ii) Charges for unblocking and reblocking;

(iii) Ferry charges, bridge, road, and tunnel tolls, taxes, fees fixed by a State or local authority for permits to transport the unit in or through its jurisdiction, and retention of necessary flagmen; and

(iv) The cost of insuring the house trailer or mobile home, and the personal effects of the individual and family, against loss or damage in transit, in accordance with the provisions in paragraph (a)(1) of this section.

(4) *Temporary storage.* If temporary storage of household goods and personal effects is necessary, the cost of such temporary storage for a period not to exceed 60 days.

(b) *Travel.* Payments under this section shall be in addition to payments for travel expenses for the individual and family, if any, under § 617.45(a)(1), except that the allowable cost for a private vehicle used to haul a trailer may not be paid under this section if any cost with respect to such private vehicle is payable under any other provisions of this Subpart E.

§ 617.48 Time and method of payment.

(a) *Determinations.* A State agency shall promptly make and record determinations necessary to assure an individual's entitlement to a relocation allowance at any time, before or after a certification covering the individual is made. No relocation allowance may be paid or advanced to an individual until the State agency determines that the individual is covered under a certification. A State agency shall make payment as promptly as possible upon determining that the individual is covered under a certification and is otherwise eligible.

(b) *Travel and moving allowances.* Allowances computed under §§ 617.46 and 617.47 shall be paid as follows:

(1) *Travel*—(i) *Transportation and subsistence.* The amounts estimated under § 617.46 at 90 percent of the lowest allowable costs shall be paid in advance at the time an individual departs from the individual's residence to begin relocation or within 10 days prior thereto. An amount payable for a family member approved for separate travel shall be paid to the individual at the time of such family member's departure or within 10 days prior thereto.

(ii) *Worker evidence.* On completion of a relocation, the individual shall certify on forms furnished by the State agency as to the amount expended daily for lodging and meals. Receipts shall be required for all lodging and purchased transportation expenses incurred by the individual and family, if any, pursuant to the relocation. An adjustment shall be made if the amount of an advance is less or more than the amount to which the individual is entitled under § 617.46.

(2) *Moving.* The amount estimated under § 617.47 at 90 percent of the lowest allowable costs shall be paid:

(i) *Commercial carrier.* (A) If household goods and personal effects are moved by commercial carrier, 90 percent of the amount of the estimate submitted by the individual under § 617.47(a)(1) and approved by the State agency for covering the cost of such move, and 90 percent of the other charges approved by the State agency under § 617.47(a)(1) shall be advanced by check or checks payable to the carrier and insurer, and delivered to the individual at the time of the scheduled shipment or within 10 days prior thereto. On completion of the move, the individual shall promptly submit to the State agency a copy of the bill of lading prepared by the carrier, including a receipt evidencing payment of moving costs. The individual shall with such submittal reimburse the State agency the amount, if any, by which the advance made under this paragraph (b)(2)(i) exceeds 90 percent of the actual moving costs approved by the State agency. The individual shall be paid the difference if the amount advanced was less than 90 percent of the actual moving costs approved by the State agency.

(B) If more economical, a State agency may make direct arrangements for moving and insuring an individual's household goods and personal effects with a carrier and insurer selected by the individual and may make payment of 90 percent of moving and insurance costs directly to the carrier and insurer. No such arrangement shall release a carrier from liability otherwise provided by law or contract for loss or damage to the individual's goods and effects. The United States shall not be or become liable to either party for personal injury or property loss damage under any circumstances.

(ii) *Trailer or rental truck*—(A) *Private vehicle with trailer.* If the move is by private vehicle and trailer, the allowable cost for the use of the private vehicle shall be made at the time payment is made under paragraph (b)(1) of this section.

(B) *Rental trailer or rental truck.* If the move is by rental trailer or rental truck:

(*1*) The individual shall submit an estimate of the rental cost from the rental agency; and

(*2*) 90 percent of such estimated rental cost may be advanced by check payable to the order of the individual and the rental agency at the time payment is made under paragraph (b)(1) of this section; and

(*3*) On completion of the move the individual shall submit promptly to the State agency a receipted bill itemizing and evidencing payment of the rental charges for the trailer or truck and fuel costs, and shall reimburse the State agency for the amount, if any, by which the advance made for the trailer or truck exceeds 90 percent of the rental charges approved by the State agency. If the amount of the advance was less than 90 percent of the rental charges, the individual shall be paid the difference.

(iii) *House trailer.* If a house trailer or mobile home is moved by commercial carrier, the individual shall submit to the State agency an estimate of the cost of the move by the commercial carrier. A check for 90 percent of the amount of the estimate, if approved, payable to the individual and the carrier, may be delivered to the individual at the time of the scheduled move or within 10 days prior thereto.

(c) *Lump sum allowance.* The lump sum allowance provided in § 617.45(a)(3) shall be paid when arrangements are completed for relocation of the individual and family, if any, but not more than 10 days before the earlier of the individual's anticipated departure from the individual's residence to begin relocation or the anticipated date of shipment of the individual's household goods and personal effects.

(d) *Relocation completed.* A relocation is completed when an individual and family, if any, and their household goods and personal effects arrive at the individual's residence in the area of relocation. If no household goods and personal effects are moved, a relocation is completed when the individual and family, if any, arrive in the area of relocation and establish a residence in the new area. The later arrival of a family member approved for separate travel shall not alter the date a relocation was completed.

Subpart F—Administration by Applicable State Agencies

§ 617.50 Determinations of entitlement; notices to individuals.

(a) *Determinations of initial applications for TRA or other TAA.* The State Agency whose State law is the applicable State law under § 617.16, or the State agency as provided in § 617.26(d), shall upon the filing of an initial application for TRA or other TAA promptly determine the individual's entitlement to such TRA or other TAA under this Part 617, and may accept for such purpose information and findings supplied by another State agency under this Part 617.

(b) *Determinations of subsequent applications for TRA or other TAA.* The State agency shall, upon the filing of an application for payment of TRA, or subsistence and transportation under §§ 617.27 and 617.28, with respect to a week, promptly determine whether the individual is eligible for a payment of TRA, or subsistence and transportation, with respect to such week, and, if eligible, the amount of TRA, or subsistence and transportation, for which the individual is eligible. In addition, the State agency promptly shall, upon the filing of a subsequent application for job search allowances (where the total of previous job search allowances paid the individual was less than $600), determine whether the individual is eligible for job search allowances, and, if eligible, the amount of job search allowances for which the individual is eligible.

(c) *Redeterminations.* The provisions of the applicable State law concerning the right to request, or authority to undertake, reconsideration of a determination pertaining to a claim for UI under the applicable State law shall apply to determinations pertaining to all forms of TAA under this Part 617.

(d) *Use of State law.* In making determinations or redeterminations under this section, or in reviewing such determinations or redeterminations under § 617.51, a State agency, a hearing officer, or a State court shall apply the regulations in this Part 617 and the substantive provisions of the Act. As to matters committed by the Act and this Part 617 to the applicable State law, a State agency, a hearing officer, or a State court shall apply the applicable State law and regulations thereunder, including procedural requirements of such State law or regulations, except so far as such State law or regulations are inconsistent with the Act or this Part 617 or the purpose of the Act or this Part 617.

(e) *Notices to individual.* The State agency shall notify the individual in writing of any determination or redetermination as to entitlement to TAA. Each determination or redetermination shall inform the individual of the reason for the determination or redetermination and of the right to reconsideration or appeal in the same manner as determinations of

entitlement to UI are subject to redetermination or appeal under the applicable State law.

(f) *Promptness.* Full payment of TAA when due shall be made with the greatest promptness that is administratively feasible.

(g) *Procedure.* Except where otherwise required by the Act or this Part 617, the procedures for making and furnishing determinations and written notices of determinations to individuals, shall be consistent with the Secretary's "Standard for Claim Determinations—Separation Information," *Employment Security Manual*, Part V, sections 6010–6015 (Appendix A of this part).

§ 617.51 Appeals and hearings.

(a) *Applicable State law.* A determination or redetermination under this Part 617 shall be subject to review in the same manner and to the same extent as determinations and redeterminations under the applicable State law, and only in that manner and to that extent. Proceedings for review of a determination or redetermination may be consolidated or joined with proceedings for review of a determination or redetermination under the State law where convenient or necessary. Procedures as to the right of appeal and opportunity for fair hearing shall be consistent with sections 303(a)(1) and (3) of the Social Security Act (42 U.S.C. 503(a)(1) and (3)).

(b) *Appeals promptness.* Appeals under paragraph (a) of this section shall be decided with a degree of promptness meeting the Secretary's "Standard on Appeals Promptness—Unemployment Compensation" (Part 650 of this chapter). Any provisions of the applicable State law for advancement or priority of UI cases on judicial calendars, or otherwise intended to provide for prompt payment of UI when due, shall apply to proceedings involving entitlement to TAA under this Part 617.

§ 617.52 Uniform interpretation and application.

(a) *First rule of construction.* The Act and the implementing regulations in this Part 617 shall be construed liberally so as to carry out the purpose of the Act.

(b) *Second rule of construction.* The Act and the implementing regulations in this Part 617 shall be construed so as to assure insofar as possible the uniform interpretation and application of the Act and this Part 617 throughout the United States.

(c) *Effectuating purpose and rules of construction.* (1) To effectuate the purpose of the Act and this Part 617 and to assure uniform interpretation and application of the Act and this Part 617 throughout the United States, a State agency shall forward, not later than 10 days after issuance, to the Department a copy of any judicial or administrative decision ruling on an individual's entitlement to TAA under this Part 617. On request of the Department, a State agency shall forward to the Department a copy of any determination or redetermination ruling on an individual's entitlement to TAA under this Part 617.

(2) If the Department believes that a determination, redetermination, or decision is inconsistent with the Department's interpretation of the Act or this Part 617, the Department may at any time notify the State agency of the Department's view. Thereafter, the State agency shall issue a redetermination or appeal if possible, and shall not follow such determination, redetermination, or decision as a precedent; and, in any subsequent proceedings which involve such determination, redetermination, or decision, or wherein such determination, redetermination, or decision is cited as precedent or otherwise relied upon, the State agency shall inform the claims deputy or hearing officer or court of the Department's view and shall make all reasonable efforts, including appeal or other proceedings in an appropriate forum, to obtain modification, limitation, or overruling of the determination, redetermination, or decision.

(3) If the Department believes that a determination, redetermination, or decision is patently and flagrantly violative of the Act or this Part 617, the Department may at any time notify the State agency of the Department's view. If the determination, redetermination, or decision in question denies TAA to an individual, the steps outlined in paragraph (c)(2) of this section shall be followed by the State agency. If the determination, redetermination, or decision in question awards TAA to an individual, the benefits are "due" within the meaning of section 303(a)(1) of the Social Security Act (42 U.S.C. 503(a)(1)), and therefore must be paid promptly to the individual. However, the State agency, shall take the steps outlined in paragraph (c)(2) of this section, and payments to the individual may be temporarily delayed if redetermination or appeal action is taken not more than one business day following the day on which the first payment otherwise would be issued to the individual; and the redetermination action is taken or appeal is filed to obtain a reversal of the award of TAA and a ruling consistent with the Department's view; and the redetermination action or appeal seeks an expedited redetermination or appeal within not more than two weeks after the redetermination action is taken or the appeal is filed. If redetermination action is not taken or appeal is not filed within the above time limit, or a redetermination or decision is not obtained within the two-week limit, or any redetermination or decision or order is issued which affirms the determination, redetermination, or decision awarding TAA or allows it to stand in whole or in part, the benefits awarded must be paid promptly to the individual.

(4) (i) If any determination, redetermination, or decision, referred to in paragraph (c)(2) or paragraph (c)(3) of this section, is treated as a precedent for any future application for TAA, the Secretary will decide whether the Agreement with the State entered into under the Act and this Part 617 shall be terminated and § 617.59(f) applied.

(ii) In the case of any determination, redetermination, or decision that is not legally warranted under the Act or this Part 617, including any determination, redetermination, or decision referred to in paragraph (c)(2) or paragraph (c)(3) of this section, the Secretary will decide whether the State shall be required to restore the funds of the United States for any sums paid under such a determination, redetermination, or decision, and whether, in the absence of such restoration, the Agreement with the State shall be terminated and § 617.59(f) applied and whether other action shall be taken to recover such sums for the United States.

(5) A State agency may request reconsideration of a notice issued pursuant to paragraph (c)(2) or paragraph (c)(3) of this section, and shall be given an opportunity to present views and arguments if desired. Such request shall be made to the Secretary and may include views and arguments on the matters to be decided by the Secretary under paragraph (c)(4) of this section.

(6) Concurrence of the Department in a determination, redetermination, or decision shall not be presumed from the absence of a notice issued pursuant to this section.

(Approved by the Office of Management and Budget under control number 1205–0222)

§ 617.53 Subpoenas.

A State agency may issue subpoenas for attendance of witnesses and production of records on the same terms and conditions as under the State law. Compliance may be enforced on the same terms and conditions as under the State law, or, if a State court declines to enforce a subpoena issued under this section, the State agency may petition for an order requiring compliance with such subpoena to the United States District Court within the jurisdiction of which the relevant proceeding under this Part 617 is conducted.

§ 617.54 State agency rulemaking.

A State agency may establish supplemental procedures not inconsistent with the Act or this Part 617 or procedures prescribed by the Department to further effective administration of this Part 617. The exact text of such supplemental procedure or procedures, certified as accurate by a responsible official, employee, or counsel of the State agency, shall be submitted to the Department, on a form supplied by the Department. No supplemental procedure shall be effective unless and until approved by the Department. Approval may be granted on a temporary basis, not to exceed 90 days, in cases of administrative necessity. On reasonable notice to a State agency, approval of a supplemental procedure may be withdrawn at any time. If public notice and opportunity for hearing would be required under a State law for adoption of a similar or analogous procedure involving UI, such public notice and opportunity for hearing shall be afforded by the State agency as to the supplemental procedure.

(Approved by the Office of Management and Budget under control number 1205–0222)

§ 617.55 Overpayments; penalties for fraud.

(a) *Determination and repayment.* (1) If a State agency or a court of competent jurisdiction determines that any individual has received any payment under the Act and this Part 617 to which the individual was not entitled, including a payment referred to in paragraph (b) or paragraph (c) of this section, such individual shall be liable to repay such amount to the State agency, and the State agency shall recover any such overpayment in accordance with the provisions of this Part 617; except that the State agency may waive the recovery of any such overpayment if the State agency determines, in accordance with the guidelines prescribed in paragraph (a)(2) of this section, that:

(i) The payment was made without fault on the part of such individual; and

(ii) Requiring such repayment would be contrary to equity and good conscience.

(2)(i) (A) In determining whether fault exists for purposes of paragraph (a)(1)(i) of this section, the following factors shall be considered:

(*1*) Whether a material statement or representation was made by the individual in connection with the application for TAA that resulted in the overpayment, and whether the individual knew or should have known that the statement or representation was inaccurate.

(*2*) Whether the individual failed or caused another to fail to disclose a material fact, in connection with an application for TAA that resulted in the overpayment, and whether the individual knew or should have known that the fact was material.

(*3*) Whether the individual knew or could have been expected to know, that the individual was not entitled to the TAA payment.

(*4*) Whether, for any other reason, the overpayment resulted directly or indirectly, and partially or totally, from any act or omission of the individual or of which the individual had knowledge, and which was erroneous or inaccurate or otherwise wrong.

(*5*) Whether there has been a determination of fraud under paragraph (b) of this section or section 243 of the Act.

(B) An affirmative finding on any one of the factors in paragraphs (a)(2)(i)(A) (*1*)–(*5*) of this section precludes waiver of overpayment recovery.

(ii) (A) In determining whether equity and good conscience exists for purposes of paragraph (a)(1)(ii) of this section, the following factors shall be considered:

(*1*) Whether the overpayment was the result of a decision on appeal, whether the State agency had given notice to the individual that the case has been appealed and that the individual may be required to repay the overpayment in the event of a reversal on appeal, and whether recovery of the overpayment will not cause extraordinary and lasting financial hardship to the individual.

(*2*) Whether recovery of the overpayment will not cause extraordinary financial hardship to the individual, and there has been no affirmative finding under paragraph (a)(2)(ii)(A) of this section with respect to such individual and such overpayment.

(B) An affirmative finding on either of the foregoing factors in paragraphs (a)(2)(ii)(A) (*1*)–(*2*) of this section precludes waiver of overpayment recovery.

(C) (*1*) For the purpose of this paragraph (a)(2)(ii), an extraordinary financial hardship shall exist if recovery of the overpayment would result directly in the individual's loss of or inability to obtain minimal necessities of food, medicine, and shelter for a substantial period of time; and an extraordinary and lasting financial hardship shall be extraordinary as described above and may be expected to endure for the foreseeable future.

(*2*) In applying this test in the case of attempted recovery by repayment, a substantial period of time shall be 30 days, and the foreseeable future shall be at least three months. In applying this test in the case of proposed recoupment from other benefits, a substantial period of time and the foreseeable future shall be the longest potential period of benefit entitlement as seen at the time of the request for a waiver determination. In making these determinations, the State agency shall take into account all potential income of the individual and the individual's family and all cash resources available or potentially available to the individual and the individual's family in the time period being considered.

(*3*) Determinations granting or denying waivers of overpayments shall be made only on request for a waiver determination. Such request shall be made on a form which shall be furnished to the individual by the State agency. Notices of determination of overpayments shall include an accurate description of the waiver provisions of paragraph (a) of this section, if the State agency has elected to allow waivers of TAA overpayments.

(*4*) (*i*) Unless an overpayment is otherwise recovered, or is waived under paragraph (a) of this section, the State agency shall recover the overpayment by deductions from any sums payable to such individual under:

(A) The Act and this Part 617;

(B) Any Federal unemployment compensation law administered by the State agency; or

(C) Any other Federal law administered by the State agency which provides for the payment of unemployment assistance or an allowance with respect to unemployment.

(ii) In addition, a State agency may recover the overpayment from unemployment insurance payable to such individual under the State law.

(iii) No single deduction under this paragraph (a)(4) shall exceed 50 percent of the amount otherwise payable to the individual, and when a deduction is made it shall be 50 percent of the amount actually payable.

(b) *Fraud.* If a State agency or a court of competent jurisdiction finds that an individual:

(1) Knowingly has made, or caused another to make, a false statement or representation of a material fact; or

(2) Knowingly has failed, or caused another to fail, to disclose a material fact; and as a result of such false statement or representation, or of such nondisclosure, such individual has received any payment under the Act and this Part 617 to which the individual was not entitled, such individual shall, in addition to any other penalty provided by law, be ineligible for any further payments under the Act and this Part 617.

(c) *Training, job search and relocation allowances.* (1) If an individual fails, with good cause, to complete training, a job search, or a relocation, any payment or portion of a payment made under the Act and this Part 617 to such individual, that is not properly and necessarily expended in attempting to complete such training, job search, or relocation, shall constitute an overpayment.

(2) If an individual fails, without good cause, to complete training, a job search, or a relocation, any payment made under the Act and this Part 617 to or on behalf of such individual shall constitute an overpayment.

(3) Such overpayments shall be recovered or waived as provided in paragraph (a) of this section.

(d) *Final determination.* Except for overpayments determined by a court of competent jurisdiction, no repayment may be required, and no deduction may be made, under this section until a determination under paragraph (a) of this section by the State agency has been made, notice of the determination and an opportunity for a fair hearing thereon has been given to the individual concerned, and the determination has become final.

(e) *Deposit.* Any amount recovered by a State agency under this section shall be deposited into the fund from which payment was made.

(f) *Procedural requirements.* (1) The provisions of paragraphs (a), (e), and (g) of § 617.50 shall apply to determinations and redeterminations made pursuant to this section.

(2) The provisions of § 617.51 shall apply to determinations and redeterminations made pursuant to this section.

(g) *Fraud detection and prevention.* State procedures for the detection and prevention of fraudulent overpayments of TAA shall be, as a minimum, commensurate with the procedures adopted by the State with respect to State unemployment compensation and consistent with the Secretary's "Standard for Fraud and Overpayment Detection," *Employment Security Manual*, Part V, sections 7510–7515 (Appendix B of this part).

(h) *Debts due the United States or Others.* (1) Notwithstanding any provision of this Part 617, TAA payable to an individual under the Act and this Part 617 shall be applied by the State agency for the recovery by offset of any debt due the United States from the individual.

(2) TAA shall not be applied or used by the State agency in any manner for the payment of any debt of the individual to any State or any other entity or person, except that TRA payable to an individual shall be payable to someone other than the individual if required by State law and Federal law to satisfy the individual's obligations for child support or alimony.

§ 617.56 Inviolate rights to TAA.

Except as specifically provided in this Part 617, the rights of individuals to TAA shall be protected in the same manner and to the same extent as the rights of persons to UI are protected under the applicable State law. Such measures shall include protection of applicants for TAA from waiver, release, assignment, pledge, encumbrance, levy, execution, attachment, and garnishment of their rights to TAA, except as provided in § 617.55. In the same manner and to the same extent, individuals shall be protected from discrimination and obstruction in regard to seeking, applying for, and receiving any right to TAA.

§ 617.57 Recordkeeping; disclosure of information.

(a) *Recordkeeping.* Each State agency will make and maintain records pertaining to the administration of the Act as the Secretary requires and will make all such records available for inspection, examination and audit by such Federal officials as the Secretary may designate or as may be required by law. Such recordkeeping will be adequate to support the reporting of TAA activity on reporting form ETA 563, approved under OMB control number 1205–0016.

(b) *Disclosure of information.* Information in records maintained by a State agency in administering the Act shall be kept confidential, and information in such records may be disclosed only in the same manner and to the same extent as information with respect to UI and the entitlement of individuals thereto may be disclosed under the applicable State law. Such information shall not, however, be disclosed to an employer or any other person except to the extent necessary to obtain information from the employer or other person for the purposes of this Part 617. This provision on the confidentiality of information maintained in the administration of the Act shall not apply, however, to the Department or for the purposes of § 617.55 or paragraph (a) of this section, or in the case of information, reports and studies required pursuant to § 617.61, or where the result would be inconsistent with the Freedom of Information Act (5 U.S.C. 552), the Privacy Act of 1974 (5 U.S.C. 552a), or regulations of the Department promulgated thereunder (*see* 29 CFR Parts 70 and 70a).

§ 617.58 Unemployment insurance.

Unemployment insurance payable to an adversely affected worker shall not be denied or reduced for any week by reason of any right to a payment of TAA under the Act and this Part 617.

§ 617.59 Agreements with State agencies.

(a) *Authority.* Before performing any function or exercising any jurisdiction under the Act and this Part 617, a State or a State agency shall execute an Agreement with the Secretary meeting the requirements of the Act.

(b) *Execution.* An Agreement under paragraph (a) of this section shall be signed on behalf of a State by an authorized official of the State and the signature shall be dated. The authority of the official shall be certified by the Attorney General of the State or counsel for the State agency, unless the Agreement is signed by the Governor of the State. An Agreement will be executed on behalf of the United States by the Secretary.

(c) *Public access to Agreements.* The State agency will make available to any individual or organization an accurate copy of the Agreement with the Agency for inspection and copying. Copies of an Agreement may be furnished on request to any individual or organization upon payment of the same charges, if any, as apply to the furnishing of copies of other records of the State agency.

(d) *Amended Agreement.* A State or State agency shall execute an amended Agreement with the Secretary prior to administering any amendments to the TAA provisions of the Trade Act of 1974.

(e) *Agent of United States.* In making determinations, redeterminations, and in connection with proceedings for review thereof, a State or State agency which has executed an Agreement as provided in this section shall be an agent of the United States and shall carry out fully the purposes of the Act and this Part 617.

(f) *Breach.* If the Secretary finds that a State or State agency has not fulfilled its commitments under its Agreement under this section, section 3302(c)(3) of the Internal Revenue Code of 1954 shall apply. A State or State agency shall receive reasonable notice and opportunity for hearing before a finding is made under section 3302(c)(3) whether there has been a failure to fulfill the commitments under the Agreement.

(g) *Secretary's review of State agency compliance.* The appropriate Regional Administrator shall be initially responsible for the periodic monitoring and reviewing of State and State agency compliance with the Agreement entered into under this section.

§ 617.60 Administration absent State Agreement.

In any State in which no Agreement under § 617.59 is in force, the Secretary shall administer the Act and this Part 617 and pay TAA hereunder through appropriate arrangements made by the Department, and for this purpose the Secretary or the Department shall be substituted for the State agency wherever appropriate in this Part 617. Such arrangements shall include the requirement that TAA be administered in accordance with the Act and this Part 617, and the provisions of the appropriate State law except to the extent that such State law is inconsistent with any provision of the Act or this Part 617 or section 303 of the Social Security Act (42 U.S.C. 503) or section 3304(a) of the Internal Revenue Code of 1954 (26 U.S.C. 3304(a)), and shall also include provision for a fair hearing for any individual whose application for TAA is denied. A final determination under this section as to entitlement to TAA shall be subject to review by the courts in the same manner and to the same extent as is provided by section 205(g) of the Social Security Act (42 U.S.C. 405(g)).

§ 617.61 Information, reports, and studies.

A State agency shall furnish to the Secretary such information and reports and conduct such studies as the Secretary determines are necessary or appropriate for carrying out the purposes of the Act and this Part 617.

§ 617.62 Transitional procedures.

The procedures for administering the Trade Act of 1974 before and after the amendments made by Title XXV of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) are as follows:

(a) *TRA.* The provisions contained in Subpart B of this Part 617 shall apply with respect to the qualifying requirements for TRA for adversely affected workers who are separated on or after October 1, 1981, and were not entitled to TRA for any week of unemployment beginning before October 1, 1981. In addition, such provisions shall apply to TRA payable for weeks of unemployment beginning after September 30, 1981, to adversely affected workers separated before October 1, 1981. Any adversely affected worker entitled to TRA for any week of unemployment beginning before October 1, 1981, shall be entitled to TRA as follows:

(1) *Weeks before October 1, 1981.* For weeks of unemployment beginning before October 1, 1981, TRA eligibility shall be determined under the provisions of the law and regulations in effect before the amendments made by Title XXV of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35).

(2) *Weeks after September 30, 1981.* (i) *Basic weeks (UI exhaustion).* For any week of unemployment beginning after September 30, 1981, TRA eligibility for an individual who has exhausted all rights to UI prior to such week shall be determined under Subpart B of this Part 617, except that the maximum amount of basic TRA payable to the individual for any such week of unemployment shall be an amount equal to the product of the amount of TRA payable to the individual for a week of total unemployment (as determined under § 617.13(a)) multiplied by a factor determined by subtracting from fifty-two the sum of:

(A) The number of weeks preceding the first week which begins after September 30, 1981, including all weeks in the individual's first benefit period, and which are within the period covered by the same certification as such week of unemployment, for which the individual was entitled to a payment of TRA or UI (or would have been entitled to a payment of TRA or UI if the individual had applied therefor); plus

(B) The number of weeks preceding such first week that are deductible under section 232(d) of the Trade Act of 1974 in effect before the amendments made by the Omnibus Budget Reconciliation Act of 1981.

(C) The amount of TRA payable to an individual under this paragraph (a)(2)(i) shall be subject to adjustment on a week-to-week basis as may be required by § 617.13(b).

(ii) *Basic weeks UI entitlement.* For any week of unemployment beginning after September 30, 1981, TRA eligibility for an individual who still has entitlement to UI shall be discontinued until the individual exhausts all rights to UI as provided in § 6.17.11(a)(5). After exhaustion of all rights to UI, payment of TRA shall be determined under Subpart B of this Part 617, except that the maximum amount of basic TRA payable to the individual for ensuing weeks of unemployment shall be an amount equal to the remainder of:

(A) The maximum amount of basic TRA as computed under paragraph (a)(2)(i) of this section; *minus*

(B) The total sum of UI to which the individual was entitled (or would have been entitled if the individual had applied therefor) for weeks beginning after September 30, 1981.

(iii) *Additional weeks.* With respect to any week of unemployment beginning after September 30, 1981, for an individual who is in training approved under section 236 of the Trade Act of 1974, and who was receiving TRA for basic or additional weeks beginning before October 1, 1981, the weekly amount of TRA for any additional weeks beginning after September 30, 1981, shall be determined under Subpart B of this Part 617.

(3) *Transitional eligibility period.* (i) *Basic weeks.* Any individual who was eligible for a basic TRA payment for any week beginning before October 1, 1981, shall not be eligible for a basic TRA payment for any week beginning after September 30, 1981, and which begins more than 52 weeks after the individual has exhausted all rights to regular compensation in the first benefit period (as provided in § 617.15(a)).

(ii) *Additional weeks.* Any individual who was eligible for a TRA payment for an additional week beginning before October 1, 1981, shall not be eligible for a TRA payment for any additional week beginning after September 30, 1981, unless such additional week begins within:

(A) 26 weeks after the last week of the individual's entitlement to basic TRA, or

(B) 78 weeks after the individual exhausted regular compensation in the first benefit period, whichever occurs first (as provided in § 617.15).

(b) *Training, other reemployment services, and allowances.* (1) Applications for training filed before October 1, 1981, concerning the approval of such training after September 30, 1981, shall be determined under Subpart C of this Part 617.

(2) Applications for transportation and subsistence payments while in training, and job search and relocation allowances filed after September 30, 1981, shall be determined under the applicable Subpart C, D, or E of this Part 617.

(3) Individuals who have had self-financed training approved prior to October 1, 1981, shall not be reimbursed for training and related expenses

incurred while in such training. However, such individuals may have their eligibility for approved training considered under the criteria outlined in the amended section 236 of the Act and in § 617.22, and, if approved, shall be entitled to have post-approval training costs paid.

(c) *Fraud and recovery of overpayments.* The fraud and overpayment recovery provisions of this Subpart F shall take effect on August 13, 1986, and shall apply to all overpayments outstanding on that date or determined on or after that date.

(d) *Required amendments to State law.* The provisions of section 2514(a)(2)(D) of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35) (relating to amendment of State laws) shall apply to State laws for the purposes of certifications under section 3304(c) of the Internal Revenue Code of 1954 on October 31 of any taxable year after 1981; except that, in any State in which the legislature of that State—

(1) Does not meet in a session which begins after August 13, 1981, and before September 1, 1982, and

(2) If in session on August 13, 1981, and does not remain in session for at least 25 calendar days thereafter, the date of "1981" in this paragraph (d) shall be deemed to be "1982."

§ 617.62 Savings clause.

The amendments to the Act made by Title XXV of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35) shall not abate or otherwise affect entitlement to TAA under the Trade Act of 1974, or any appeal which was pending on October 1, 1981, or on the date of enactment of any such amendment, as applicable, or prevent any appeal from any determination thereunder which did not become final prior to such applicable date if appeal or petition is filed within the time allowed for appeal or petition.

§ 617.64 Termination of TAA Program Benefits.

The following rules are applicable to the termination of TAA benefits under the Act:

(a) No application for TRA, or transportation or subsistence payment while in training approved under Subpart C of this Part 617, shall be approved, and no payment of TRA, or transportation or subsistence, shall be made, for any week which begins after the termination date specified in the Act.

(b) No payment of job search or relocation allowances shall be made after the termination date specified in the Act, unless an application for such allowances was approved, and such job search or relocation was completed, on or before such termination date.

(c) No training under Subpart C of this Part 617 shall be approved unless a determination regarding the approval of such training was made, and such training commenced, on or before the termination date specified in the Act. Consistent with the requirements of section 236(a)(1) of the Act, the availability of funds stipulation in § 617.22(a), and the termination provisions of this paragraph (c), resources may be committed on or before the termination date specified in the Act to cover tuition related expenses which are obligated on or before such termination date.

Appendix A—Standard for Claim Determinations—Separation Information

6010 *Federal Law Requirements.* Section 303(a)(1) of the Social Security Act requires that a State law include provision for:

"Such methods of administration . . . as are found by the Secretary to be reasonably calculated to insure full payment of unemployment compensation when due."

Section 303(a)(3) of the Social Security Act requires that a State law include provision for:

"Opportunity for a fair hearing before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied."

Section 3304(a)(4) of the Federal Unemployment Tax Act and section 303(a)(5) of the Social Security Act require that a State law include provision for:

"Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation, . . .

Section 3306(h) of the Federal Unemployment Tax Act defines "compensation" as "cash benefits payable to individuals with respect to their unemployment."

6011 *Secretary's Interpretation of Federal Law Requirements:* The Secretary interprets the above sections to require that a State law include provisions which will insure that:

A. Individuals who may be entitled to unemployment compensation are furnished such information as will reasonably afford them an opportunity to know, establish, and protect their rights under the unemployment compensation law of such State; and

B. The State agency obtains and records in time for the prompt determination and review of benefit claims such information as will reasonably insure the payment of benefits to individuals to whom benefits are due.

6012. *Criteria for Review of State Law Conformity with Federal Requirements:*

In determining the conformity of a State law with the above requirements of the Federal Unemployment Tax Act and the Social Security Act as interpreted by the Secretary, the following criteria will be applied:

A. Is it required that individuals who may be entitled to unemployment compensation be furnished such information of their potential rights to benefits, including the manner and places of filing claims, the reasons for determinations, and their rights of appeal, as will insure them a reasonable opportunity to know, establish, and protect their rights under the law of the State?

B. Is the State agency required to obtain, in time for prompt determination of rights to benefits such information as will reasonably insure the payment of benefits to individuals to whom benefits are due?

C. Is the State agency required to keep records of the facts considered in reaching determinations of rights to benefits?

6013 *Claim Determinations Requirements Designed To Meet Department of Labor Criteria:*

A. *Investigation of claims.* The State agency is required to obtain promptly and prior to a determination of an individual's right to benefits, such facts pertaining thereto as will be sufficient reasonably to insure the payment of benefits when due.

This requirement embraces five separate elements:

1. It is the responsibility of the agency to take the initiative in the discovery of information. This responsibility may not be passed on to the claimant or the employer. In addition to the agency's own records, this information may be obtained from the worker, the employer, or other sources. If the information obtained in the first instance discloses no essential disagreement and provides a sufficient basis for a fair determination, no further investigation is necessary. If the information obtained from other sources differs essentially from that furnished by the claimant, the agency, in order to meet its responsibility, is required to inform the claimant of such information from other sources and to afford the claimant an opportunity to furnish any further facts he may have.

2. Evidentiary facts must be obtained as distinguished from ultimate facts or conclusions. That a worker was discharged for misconduct is an ultimate fact or conclusion; that he destroyed a machine upon which he was working is a primary or evidentiary fact, and the sort of fact that the requirement refers to.

3. The information obtained must be sufficient reasonably to insure the payment of benefits when due. In general, the investigation made by the agency must be complete enough to provide information upon which the agency may act with reasonable assurance that its decision is consistent with the unemployment compensation law. On the other hand, the investigation should not be so exhaustive and time-consuming as unduly to delay the payment of benefits and to result in excessive costs.

4. Information must be obtained promptly, so that the payment of benefits is not unduly delayed.

5. If the State agency requires any particular evidence from the worker, it must give him a reasonable opportunity to obtain such evidence.

B. *Recording of facts.* The agency must keep a written record of the facts considered in reaching its determinations.

C. *Determination notices:*

1. The agency must give each claimant a written notice of:

a. Any monetary determination with respect to his benefit year;

b. Any determination with respect to purging a disqualification if, under the State law, a condition or qualification must be satisfied with respect to each week of disqualification; but in lieu of giving written notice of each determination for each week in which it is determined that the claimant has met the requirements for purging, the agency may inform the claimant that he has purged the disqualification for a week by notation on his applicant identification card or otherwise in writing.

c. Any other determination which adversely affects his rights to benefits, except that written notice of determination need not be given with respect to:

(1) A week in a benefit year for which the claimant's weekly benefit amount is reduced in whole or in part by earnings if, the first time in the benefit year that there is such a reduction, he is required to be furnished a booklet or leaflet containing the information set forth below in paragraph 2f(1). However, a written notice of determination is required if: (a) there is a dispute concerning the reduction with respect to any week (e.g., as to the amount computed as the appropriate reduction, etc.); or (b) there is a change in the State law (or in the application thereof) affecting the reduction; or

(2) Any week in a benefit year subsequent to the first week in such benefit year in which benefits were denied, or reduced in whole or in part for reasons other than earnings, if denial or reduction for such subsequent week is based on the same reason and the same facts as for the first week, and if written notice of determination is required to be given to the claimant with respect to such first week, and with such notice of determination, he is required to be given a booklet or pamphlet containing the information set forth below in paragraph 2f(2) and 2h. However, a written notice of determination is required if: (a) there is a dispute concerning the denial or reduction of benefits with respect to such week; or (b) there is a change in the State law (or in the application thereof) affecting the denial or reduction; or (c) there is a change in the amount of the reduction except as to the balance covered by the last reduction in a series of reductions.

Note.—This procedure may be applied to determinations made with respect to any subsequent weeks for the same reason and on the basis of the same facts: (a) that claimant is unable to work, unavailable for work, or is disqualified under the labor dispute provision; and (b) reducing claimant's weekly benefit amount because of income other than earnings or offset by reason of overpayment.

2. The agency must include in written notices of determinations furnished to claimants sufficient information to enable them to understand the determinations, the reasons therefor, and their rights to protest, request reconsideration, or appeal.

The written notice of monetary determination must contain the information specified in the following items (except h) unless an item is specifically not applicable. A written notice of any other determination must contain the information specified in as many of the following items as are necessary to enable the claimant to understand the determination and to inform him of his appeal rights. Information specifically applicable to the individual claimant must be contained in the written notice of determination. Information of general application such as (but not limited to) the explanation of benefits for partial unemployment, information as to deductions, seasonality factors, and information as to the manner and place of taking an appeal, extension of the appeal period, and where to obtain information and assistance may be contained in a booklet or leaflet which is given the claimant with his monetary determination.

a. *Base period wages.* The statement concerning base-period wages must be in sufficient detail to show the basis of computation of eligibility and weekly and maximum benefit amounts. (If maximum benefits are allowed, it may not be necessary to show details of earnings.)

b. *Employer name.* The name of the employer who reported the wage is necessary so that the worker may check the wage transcript and know whether it is correct. If the worker is given only the employer number, he may not be able to check the accuracy of the wage transcript.

c. *Explanation of benefit formula—weekly and maximum benefit amounts.* Sufficient information must be given the worker so that he will understand how his weekly benefit amount, including allowances for dependents, and his maximum benefit amount were figured. If benefits are computed by means of a table contained in the law, the table must be furnished with the notice of determination whether benefits are granted or denied.

The written notice of determination must show clearly the weekly benefit amount and the maximum potential benefits to which the claimant is entitled.

The notice to a claimant found ineligible by reason of insufficient earnings in the base period must inform him clearly of the reason for ineligibility. An explanation of the benefit formula contained in a booklet or pamphlet should be given to each claimant at or prior to the time he receives written notice of a monetary determination.

d. *Benefit year.* An explanation of what is meant by the benefit year and identification of the claimant's benefit year must be included in the notice of determination.

e. *Information as to benefits for partial unemployment.* There must be included either in the written notice of determination or in a booklet or pamphlet accompanying the notice an explanation of the claimant's rights to partial benefits for any week with respect to which he is working less than his normal customary full-time workweek because of lack of work and for which he earns less than his weekly benefit amount or weekly benefit amount plus earnings, whichever is provided by the State law. If the explanation is contained in the notice of determination, reference to the item in the notice in which his weekly benefit amount is entered should be made.

f. *Deductions from weekly benefits:*

(1) *Earnings.* Although written notice of determinations deducting earnings from a claimant's weekly benefit amount is generally not required (see paragraph 1 c (1) above), where written notice of determination is required (or given) it shall set forth the amount of earnings, the method of computing the deduction in sufficient detail to enable the claimant to verify the accuracy of the deduction, and his right to protest, request redetermination, and appeal. Where a written notice of determination is given to the claimant because there has been a change in the State law or in the application of the law, an explanation of the change shall be included.

When claimant is not required to receive a written notice of determination, he must be given a booklet or pamphlet the first time in his benefit year that there is a deduction for earnings which shall include the following information:

(a) The method of computing deductions for earnings in sufficient detail to enable the claimant to verify the accuracy of the deduction;

(b) That he will not automatically be given a written notice of determination for a week with respect to which there is a deduction for earnings (unless there is a dispute concerning the reduction with respect to a week or there has been a change in the State law or in the application of the law affecting the deduction) but that he may obtain such a written notice upon request; and

(c) A clear statement of his right to protest, request a redetermination, and appeal from any determination deducting earnings from his weekly benefit amount even though he does not automatically receive a written notice of determination; and if the State law requires written notice of determination in order to effectuate a protest, redetermination, or appeal, he must be so advised and advised also that he must request a written notice of determination before he takes any such action.

(2) *Other deductions:*

(a) A written notice of determination is required with respect to the first week in claimant's benefit year in which there is a reduction from his benefits for a reason other than earnings. This notice must describe the deduction made from claimant's weekly benefit amount, the reason for the deduction, the method of computing it in sufficient detail to enable him to verify the accuracy of such deduction, and his right to protest, request redetermination, or appeal.

(b) A written notice of determination is not required for subsequent weeks that a deduction is made for the same reason and on the basis of the same facts, if the notice of determination pursuant to (2) (a), or a booklet or pamphlet given him with such notice explains (i) the several kinds of deductions which may be made under the State law (e.g., retirement pensions, vacation pay, and overpayments); (ii) the method of computing

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each kind of deduction in sufficient detail that claimant will be able to verify the accuracy of deductions made from his weekly benefit payments; (iii) any limitation on the amount of any deduction or the time in which any deduction may be made; (iv) that he will not automatically be given a written notice of determination for subsequent weeks with respect to which there is a deduction for the same reason and on the basis of the same facts, but that he may obtain a written notice of determination upon request; (v) his right to protest, request redetermination, or appeal with respect to subsequent weeks for which there is a reduction from his benefits for the same reason, and on the basis of the same facts even though he does not automatically receive a written notice of determination; and (vi) that if the State law requires written notice of determination in order to effectuate a protest, redetermination, or appeal, he must be so advised and advised also that he must request a written notice of determination before he takes any such action.

g. *Seasonality factors.* If the individual's determination is affected by seasonality factors under the State law, an adequate explanation must be made. General explanations of seasonality factors which may affect determinations for subsequent weeks may be included in a booklet or pamphlet given claimant with his notice of monetary determinations.

h. *Disqualification or ineligibility.* If a disqualification is imposed, or if the claimant is declared ineligible for one or more weeks, he must be given not only a statement of the period of disqualification or ineligibility and the amount of wage-credit reductions, if any, but also an explanation of the reason for the ineligibility or disqualification. This explanation must be sufficiently detailed so that he will understand why he is ineligible or why he has been disqualified, and what he must do in order to requalify for benefits or purge the disqualification. The statement must be individualized to indicate the facts upon which the determination was based, e.g., state, "It is found that you left your work with Blank Company because you were tired of working; the separation was voluntary, and the reason does not constitute good cause," rather than merely the phrase "voluntary quit." Checking a box as to the reason for the disqualification is not a sufficiently detailed explanation. However, this statement of the reason for the disqualification need not be a restatement of all facts considered in arriving at the determination.

i. *Appeal rights.* The claimant must be given information with respect to his appeal rights.

(1) The following information shall be included in the notice of determination:

(a) A statement that he may appeal or, if the State law requires or permits a protest or redetermination before an appeal, that he may protest or request a redetermination.

(b) The period within which an appeal, protest, or request for redetermination must be filed. The number of days provided by statute must be shown as well as either the beginning date or ending date of the period. (It is recommended that the ending date of the appeal period be shown, as this is the more understandable of the alternatives.)

(2) The following information must be included either in the notice of determination or in separate informational material referred to in the notice:

(a) The manner in which the appeal, protest, or request for redetermination must be filed, e.g., by signed letter, written statement, or on a prescribed form, and the place or places to which the appeal, protest, or request for redetermination may be mailed or hand-delivered.

(b) An explanation of any circumstances (such as nonworkdays, good cause, etc.) which will extend the period for the appeal, protest, or request for redetermination beyond the date stated or identified in the notice of determination.

(c) That any further information claimant may need or desire can be obtained together with assistance in filing his appeal, protest, or request for redetermination from the local office.

If the information is given in separate material, the notice of determination would adequately refer to such material if it said, for example, "For other information about your (appeal), (protest), (redetermination) rights, see pages ____ to ____ of the ____ (name of pamphlet or booklet) heretofore furnished to you."

6014 *Separation Information Requirements Designed To Meet Department of Labor Criteria:*

A. *Information to agency.* Where workers are separated, employers are required to furnish the agency promptly, either upon agency request or upon such separation, a notice describing the reasons for and the circumstances of the separation and any additional information which might affect a claimant's right to benefits. Where workers are working less than full time, employers are required to furnish the agency promptly, upon agency request, information concerning a claimant's hours of work and his wages during the claim periods involved, and other facts which might affect a claimant's eligibility for benefits during such periods.

When workers are separated and the notices are obtained on a request basis, or when workers are working less than full time and the agency requests information, it is essential to the prompt processing of claims that the request be sent out promptly after the claim is filed and the employer be given a specific period within which to return the notice, preferably within 2 working days.

When workers are separated and notices are obtained upon separation, it is essential that the employer be required to send the notice to the agency with sufficient promptness to insure that, if a claim is filed, it may be processed promptly. Normally, it is desirable that such a notice be sent to the central office of the agency, since the employer may not know in which local office the worker will file his claim. The usual procedure is for the employer to give the worker a copy of the notice sent by the employer to the agency.

B. *Information to worker:*

1. *Information required to be given.* Employers are required to give their employees information and instructions concerning the employees' potential rights to benefits and concerning registration for work and filing claims for benefits.

The information furnished to employees under such a requirement need not be elaborate; it need only be adequate to insure that the worker who is separated or who is working less than full time knows he is potentially eligible for benefits and is informed as to what he is to do or where he is to go to file his claim and register for work. When he files his claim, he can obtain more detailed information.

In States that do not require employers to furnish periodically to the State agency detailed reports of the wages paid to their employees, each employer is required to furnish to his employees information as to (a) the name under which he is registered by the State agency, (b) the address where he maintains his payroll records, and (c) the workers' need for this information if and when they file claims for benefits.

2. *Methods for giving information.* The information and instructions required above may be given in any of the following ways:

a. *Posters prominently displayed in the employer's establishment.* The State agency should supply employers with a sufficient number of posters for distribution throughout their places of business and should see that the posters are conspicuously displayed at all times.

b. *Leaflets.* Leaflets distributed either periodically or at the time of separation or reduction of hours. The State agency should supply employers with a sufficient number of leaflets.

c. *Individual notices.* Individual notices given to each employee at the time of separation or reduction in hours.

It is recommended that the State agency's publicity program be used to supplement the employer-information requirements. Such a program should stress the availability and location of claim-filing offices and the importance of visiting those offices whenever the worker is unemployed, wishes to apply for benefits, and to seek a job.

6015 *Evaluation of Alternative State Provisions with Respect to Claim Determinations and Separation Information.* If the State law provisions do not conform to the suggested requirements set forth in sections 6013 and 6014, but the State law contains alternative provisions, the Bureau of Employment Security, in collaboration with the State agency, will study the actual or anticipated effects of the alternative provisions. If the Administrator of the Bureau concludes that the alternative provisions satisfy the criteria in section 6012, he will so notify the State agency. If the Administrator of the Bureau does not so conclude, he will submit the matter to the Secretary. If the Secretary concludes that the alternative provisions satisfy the criteria in section 6012, the State agency will be so notified. If the Secretary concludes that there is a question as to whether the alternative provisions satisfy the criteria, the State agency will be advised that unless the State law provisions are appropriately revised, a notice of hearing will be issued as required by the Code of Federal Regulations, title 20, § 601.5.

Appendix B—Standard for Fraud and Overpayment Detection

7510 *Federal Law Requirements.* Section 303(a)(1) of the Social Security Act requires that a State law include provision for:

"Such methods of administration . . . as are found by the Secretary to be reasonably calculated to insure full payment of unemployment compensation when due."

Section 1603(a)(4) of the Internal Revenue Code and section 3030(a)(5) of the Social Security Act require that a State law include provision for:

"Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation . . ."

Section 1607(b) of the Internal Revenue Code defines "compensation" as "cash benefits payable to individuals with respect to their unemployment."

7511 *The Secretary's Interpretation of Federal Law Requirements.* The Secretary of Labor interprets the above sections to require that a State law include provision for such methods of administration as are, within reason, calculated (1) to detect benefits paid through error by the agency or through willful misrepresentation of error by the claimant or others, and (2) to deter claimants from obtaining benefits through willful misrepresentation.

7513 *Criteria for Review of State Conformity With Federal Requirements.* In determining State conformity with the above requirements of the Internal Revenue Code and the Social Security Act, as interpreted by the Secretary of Labor, the following criteria will be applied:

A. *Are investigations required to be made after the payment of benefits, (or, in the case of interstate claims, are investigations made by the agent State after the processing of claims) as to claimants' entitlement to benefits paid to them in a sufficient proportion of cases to test the effectiveness of the agency's procedures for the prevention of payments which are not due? To carry out investigations, has the agency assigned to some individual or unit, as a basic function, the responsibility of making or functionally directing such investigations?*

Explanation: It is not feasible to prescribe the extent to which the above activities are required; however, they should always be carried on to such an extent that they will show whether or not error or willful misrepresentation is increasing or decreasing, and will reveal problem areas. The extent and nature of the above activities should be varied according to the seriousness of the problem in the State. The responsible individual or unit should:

1. Check paid claims for overpayment and investigate for willful misrepresentation or, alternatively, advise and assist the operating units in the performance of such functions, or both;

2. Perform consultative services with respect to methods and procedures for the prevention and detection of fraud; and

3. Perform other services which are closely related to the above.

Although a State agency is expected to make a full-time assignment of responsibility to a unit or individual to carry on the functions described above, a small State agency might make these functions a part-time responsibility of one individual. In connection with the detection of overpayments, such a unit or individual might, for example:

(a) Investigate information on suspected benefit fraud received from any agency personnel, and from sources outside the agency, including anonymous complaints;

(b) Investigate information secured from comparisons of benefit payments with employment records to detect cases of concurrent working (whether in covered or noncovered work) and claiming of benefits (including benefit payments in which the agency acted as agent for another State).

The benefit fraud referred to herein may involve employers, agency employees, and witnesses, as well as claimants.

Comparisons of benefit payments with employment records are comonly made either by post-audit or by industry surveys. The so-called "post-audit" is a matching of central office wage-record files against benefit payments for the same period. "Industry surveys" or "mass audits" are done in some States by going directly to employers for payroll information to be checked against concurrent benefit lists. A plan of investigation based on a sample post-audit will be considered as partial fulfillment of the investigation program; it would need to be supplemented by other methods capable of detecting overpayments to persons who have moved into noncovered occupations or are claiming interstate benefits.

B. *Are adequate records maintained by which the results of investigations may be evaluated?*

Explanation. To meet this criterion, the State agency will be expected to maintain records of all its activities in the detection of overpayments, showing whether attributable to error or willful misrepresentation, measuring the results obtained through various methods, and noting the remedial action taken in each case. The adequacy and effectiveness of various methods of checking for willful misrepresentation can be evaluated only if records are kept of the results obtained. Internal reports on fraudulent and erroneous overpayments are needed by State agencies for self-evaluation. Detailed records should be maintained in order that the State agency may determine, for example, which of several methods of checking currently used are the most productive. Such records also will provide the basis for drawing a clear distinction between fraud and error.

C. *Does the agency take adequate action with respect to publicity concerning willful misrepresentation and its legal consequences to deter fraud by claimants?*

Explanation. To meet this criterion, the State agency must issue adequate material of claimant eligibility requirements and must take necessary action to obtain publicity on the legal consequences of willful misrepresentation or willful nondisclosure of facts.

Public announcements on convictions and resulting penalties for fraud are generally considered necessary as a deterrent to other persons, and to inform the public that the agency is carrying on an effective program to prevent fraud. This alone is not considered adequate publicity. It is important that information be circulated which will explain clearly and understandably the claimant's rights, and the obligations which he must fulfill to be eligible for benefits. Leaflets for distribution and posters placed in local offices are appropriate media for such information.

*7515 *Evaluation of Alternative State Provisions with Respect to Erroneous and Illegal Payments.* If the methods of administration provided for by the State law do not conform to the suggested methods of meeting the requirements set forth in section 7511, but a State law does provide for alternative methods of administration designed to accomplish the same results, the Bureau of Employment Security, in collaboration with the State agency, will study the actual or anticipated effect of the alternative methods of administration. If the Bureau concludes that the alternative methods satisfy the criteria in section 7513, it will so notify the State agency. If the Bureau does not so conclude, it will submit to the Secretary the results of the study for his determination of whether the State's alternative methods of administration meet the criteria.

[FR Doc. 86-28396 Filed 12-19-86; 8:45 am]
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20 CFR Part 617

Trade Adjustment Assistance for Workers

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: This document contains a final rule amending the regulations implementing the program of trade adjustment assistance for workers (TAA Program) provided under Chapter 2 of Title II of the Trade Act of 1974 (Pub. L. 93-618). This final rule implements the amendments to the Trade Act of 1974 in sections 2671 and 2672 of the Deficit Reduction Act of 1984 (Pub. L. 98-369).

Sections 2671 and 2672 of Pub. L. 98-369 amended the Trade Act of 1974 (1) to enable workers to receive up to 26 additional weeks of trade readjustment allowances (TRA) by beginning the additional 26-week period with the first week the worker is in training, if such training is approved after the last week of basic TRA entitlement, and (2) to increase the maximum amount payable for job search allowances and the maximum lump sum amount payable for relocation allowances from $600 to $800.

The proposal was published in the Federal Register on April 15, 1985, 50 FR

14720, and was numbered Part 635. The final rule is renumbered Part 617.

Note.—Chapter 2 of Title II of the Trade Act of 1974 was further amended by Title XIII, Subtitle A, Part 1 of Pub. L. 99–272, The Consolidated Omnibus Budget Reconciliation Act of 1985, April 7, 1986. The Title XIII amendments do not affect the provisions in this final rule. However, the Department is currently drafting changes to Part 617 implement the 1986 amendments to the statute. At this time, the changes in this document are being made to Part 617 as published elsewhere in today's issue, and become effective on the day following the date on which Part 617 becomes effective.

EFFECTIVE DATE: January 21, 1987.

FOR FURTHER INFORMATION CONTACT: Marvin M. Fooks, Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington DC 20213; telephone (202) 376–2646 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Trade Act of 1974 made major changes in the TAA Program for workers displaced from employment because of increased imports of articles like or directly competitive with articles produced by the workers. 19 U.S.C. 2271 et seq. On the filing of a petition by a group of workers or their representative, the Department of Labor (Department) conducts a factfinding investigation of adverse impact of imports and if it finds that the workers of a firm or a subdivision of a firm have been adversely affected by import competition, a certification is issued declaring that the adversely affected workers are eligible to apply for Trade Adjustment Assistance (TTA). In the Deficit Reduction Act of 1984 further changes were made in the TAA Program. Pub. L. 98–369, §§ 2671 and 2672. These final regulations implement those changes.

The amended TAA provisions are designed to help certified workers who apply for occupational training and additional weeks of TRA on a timely basis to avoid losing weeks of TRA because of delays in the approval of training for reasons beyond workers' control. The amendments are also designed to pay higher job search allowances and relocation allowances.

Discussion of Comments and Changes

The Department received timely written responses from six State employment security agencies. Puerto Rico and Colorado endorsed the proposed regulations. West Virginia and Nevada raised issues and questions that are applicable to proposed regulations issued on March 4, 1983, 48 FR 9444, to implement amendments to the Trade Act of 1974 in Title XXV of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) and, therefore, are outside the scope of these regulations. These issues and questions will be addressed in separate correspondence.

Michigan and New York submitted comments and suggested changes which were given full consideration before preparing final regulations.

1. The proposed regulation at § 635.15(b) concerns the payment of 26 additional weeks of TRA in the 26-week period that follows the last week of entitlement to basic TRA otherwise payable to the individual; or begins with the first week of such training, if the training is approved after the last week of entitlement to basic TRA. The New York Department of Labor suggests that the phrase ". . . if the training commences after the last week . . ." be substituted for " . . . if the training is approved after the last week . . ." since it would better serve the intent of the statutory amendment by assuring that workers' weeks of eligibility for additional TRA are not diminished while waiting for approved training to begin. New York points out that training approval must precede the start date of such training by several weeks to allow for negotiation and processing of financial agreements with training facilities. The rule as published would, consequently, restrict the worker's eligibility for additional weeks of TRA in those cases where training is approved before the last week of entitlement to basic TRA but training is scheduled to start after that week.

The Department does not concur with the suggestion since the language of the regulation concerning the approval of training after the last week of basic TRA entitlement corresponds with the specific language of section 233(a)(3)(B) of the Trade Act as amended by section 2671 of Pub. L. 98–369 and is not subject to change by regulation. 19 U.S.C. 2293(a)(3)(B).

2. The proposed regulation at § 635.65(a) concerns the applicability of the new provision contained in § 635.15(b) for additional weeks of TRA when training begins after the last week of basic TRA entitlement. This new provision applies to workers who applied for training on or after December 18, 1983, and whose training applications were approved on or after July 18, 1984. The Michigan Employment Security Commission (MESC) points out that the amendment is intended to prevent workers from losing additional weeks of TRA because of delays in placing them in training. If this is the intent, then the provision should apply " . . . if the training is approved to begin after July 18, 1984."

As the proposed rule is now written, MESC claims that workers who begin training on the same date could have different eligibility for additional weeks of TRA depending on their approval date. MESC also claims that the inequity would be eliminated if the regulation is revised to read ". . . approved to begin after July 18, 1984."

The Department does not concur with the suggestion because use of the term "approved" corresponds to section 223(a)(3)(B) of the Trade Act as amended by section 2671 of Pub. L. 98–369 and is not subject to change by regulation. 19 U.S.C. 2293(a)(3)(B).

3. MESC also claims the December 18, 1983 date used in the proposed rule is not in the law and produces, unnecessarily, another inequity for workers who apply for training before December 18, 1983 and were not approved until on or after July 18, 1984. These workers would be ineligible for additional weeks of TRA under the new legislation because of delays in approving their training. MESC claims the intent of the law would be better served by removing the December 18, 1983 date from the proposed rule since the July 18, 1984 date will sufficiently limit applicability of the new provision.

The Department agrees that the December 18, 1983, date is not required by statute and, therefore, is deleted.

4. The proposed regulations at § 635.65(b) increases the maximum amount payable to eligible workers whose application for job search allowances are approved after July 18, 1984. The MESC recommends that the rule be changed to be made effective for applications ". . . that are filed on or after July 18, 1984." It claims the change would conform to the transition for changes in the proposed TAA rule published in the **Federal Register** on March 4, 1983 (48 FR 9444) [proposed regulation implementing the amendments to the Trade Act of 1974 made by Title XXV of the Omnibus Budget Reconciliation Act of 1981] which are effective based on job search application filing date. To use the approval date, the MESC claims, presents operational problems because it is not clear what constitutes approval of a job search application. It stated that a job search is not actually approved until it is paid, after the job search is ended and all verifications and receipts are received.

The Department does not concur in the recommended change. The term "approved" was used because it encompasses a larger universe of eligible workers than the term "filed." Moreover, the proposed regulation at § 635.31(c) establishes time limits for filing for job search allowances but not for approval. Anticipated operational problems on what constitutes approval can be alleviated by following standard contracting procedures which require written approval prior to incurring expenditures of program funds. However, one clarifying change is made in § 635.65(b)(2) relating to eligibility for the increase in aggregate job search allowances if the full $600 had not been approved prior to July 18, 1984.

5. The proposed regulation at § 635.65(c) increases the lump sum amount payable to eligible workers whose applications for relocation are approved on or after July 18, 1984. MESC recommended the same change as presented for item 4 above, *i.e.*, ". . . filed on or after July 18, 1984."

The Department does not concur in the recommended change for the same reasons as given in response to Item 4 above.

Classification—Executive Order 12291

The final rule is not classified as a "major rule" under Executive Order 12291, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets. Any added costs to the extent that they exist do not represent new burdens imposed by the final rule, but rather are direct statutory obligations. Accordingly, no regulatory impact analysis is required.

Trade Sensitive Activity

The Department believes that the final regulations do not involve trade sensitive activities. This determination is predicated upon the fact that the TAA Program is a domestic program designed to provide assistance to workers adversely affected by import competition and, as such, does not fall within the scope of the Office of Management and Budget's definition of a trade sensitive activity.

Regulatory Flexibility Act

The Department believes that this final rule will have no "significant economic impact on a substantial number of small entities" within the meaning of 5 U.S.C. 605(b), as provided in the Regulatory Flexibility Act. While this rule may affect those agencies in small States that administer the TAA Program, most current TAA Program recipients are generally concentrated in larger industrial States, where jobs have been "hardest hit" by foreign import competition.

States may find some increased administrative costs for reviewing worker applications for training and TRA payments on file when the statutory changes are implemented. However, most of the operating mechanisms needed for the proposed TAA program are in place through the State employment security agencies, including benefit payments, appeals, work search and work test procedures and relocation allowances payment and approval of training assistance. This will assure that any additional administrative cost are minimal. The Secretary of Labor has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory flexibility analysis is required.

Catalogue of Federal Domestic Assistance Number

This program is listed in the *Catalogue of Federal Domestic Assistance* as No. 17.245, "Trade Adjustment Assistance—Workers."

List of Subjects in 20 CFR Part 617

Job search assistance, Labor, Reemployment services, Relocation assistance, Trade adjustment assistance, Trade readjustment allowances, Unemployment compensation, Vocational education.

Words of Issuance

For the reasons set out in the preamble, Part 617 of Title 20 of the Code of Federal Regulations, is amended as set forth below.

Signed at Washington, DC, on December 12, 1986.

Roger D. Semerad,

Assistant Secretary of Labor.

PART 617—TRADE ADJUSTMENT ASSISTANCE FOR WORKERS UNDER THE TRADE ACT OF 1974

1. The authority for Part 617 continues to read as follows:

Authority: 19 U.S.C. 2320; Secretary's Order No. 3–81, 46 FR 3117.

2. Paragraphs (b) and (c) of § 617.15 are revised to read as follows:

§ 617.15 Duration of TRA.

* * * * * * *

(b) *Additional weeks.* (1) To assist an individual to complete training approved under Subpart C of this Part 617, payments may be made as TRA for up to 26 additional weeks in the 26-week period that—

(i) Follows the last week of entitlement to basic TRA otherwise payable under this Part 617 to the individual; or

(ii) Begins with the first week of such training, if the training is approved after the last week described in paragraph (b)(1)(i) of this section.

(2) To be eligible for TRA for additional weeks, as individual must make a bona fide application for such training—

(i) Within 210 days after the date of the first certification under which the individual is covered; or

(ii) If later, within 210 days after the date of the individual's first qualifying total or partial separation.

(3) Payment of TRA for additional weeks may be made only for those weeks in the 26-week period during which the individual is actually engaged in training and has not been determined under § 617.18(b)(2) of this Part to be failing to make satisfactory progress in the training.

(c) *Limit.* In no case may an individual receive TRA for more than 78 weeks on the basis of a single certification of eligibility to apply for adjustment assistance.

3. Paragraph (b) of § 617.34 is revised to read as follows:

§ 617.34 Amount.

* * * * * * *

(b) *Limit.* The total job search allowances paid to an individual under a certification may not exceed $800, regardless of the number of job searches undertaken by the individual. The amounts otherwise payable under paragraph (a) of this section shall be reduced by any amounts the individual is entitled to be paid or reimbused for such expenses from any other source.

4. In § 617.45, the introductory text of (a) is republished, and paragraph (a)(3) is revised to read as follows:

§ 617.45 Amount.

(a) *Items allowable.* The amount payable as a relocation allowance shall include the following items:

* * * * * * *

(3) A lump sum payment, equal to 3 times the individual's average weekly wage, not to exceed $800.

* * * * * * *

5. Section 617.65 in added as follows:

§ 617.65 Transition procedures for amendments in sections 2671 and 2672 of Pub. L. 98-369 (Deficit Reduction Act of 1984).

The procedures for administering the Trade Act of 1974 as amended by the Deficit Reduction Act of 1984 are as follows:

(a) *TRA.* (1) The provisions in Subpart B of this Part 617 shall apply to workers who would lose additional weeks of TRA payments because of delays in approving applications for training. Workers who filed timely, bona fide applications for training shall be eligible to receive additional weeks of TRA payments beginning the first week of training when their applications for training are approved on or after July 18, 1984, and the first week of such training begins later than the first week which follows the last week of entitlement to basic TRA.

(2) Workers whose applications for training were approved prior to July 18, 1984, are covered under the provisions of the Trade Act of 1974 as in effect prior to July 18, 1984, and are not entitled to additional weeks of TRA by reason of the amendment in section 2671 of the Deficit Reduction Act of 1984 or § 617.15(b) of this Part.

(b) *Job Search Allowances.* (1) The provisions in Subpart D of this Part 617 shall apply to timely applications for job search allowances that are approved on or after July 18, 1984.

(2) Workers whose applications for job search allowances that were filed timely but were approved before July 18, 1984, in the aggregate authorized amount of $600, are covered under the provisions of the Trade Act of 1974 in effect prior to July 18, 1984, and are not entitled to receive the increase in the allowance level provided in section 2672(a) of the Deficit Reduction Act of 1984 and § 617.34(b) of this Part.

(c) *Relocation allowances.* (1) The provisions in Subpart E of this Part 617 shall apply to timely applications for relocation allowances that are approved on or after July 18, 1984.

(2) Workers whose applications for relocations allowances were filed timely but were approved before July 18, 1984, are covered under the provisions of the Trade Act of 1974 in effect prior to July 18, 1984, and are not entitled to receive the increase in the lump sum allowance level provided in section 2672(b) of the Deficit Reduction Act of 1984 and § 617.45(a)(3) of this Part.

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Note: The listing of public laws enacted during the second session of the 99th Congress has been completed.

Last listing: November 20, 1986.

The listing will be resumed when bills are enacted into public law during the first session of the 100th Congress which convenes on January 6, 1987.

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[1] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1986. The CFR volume issued as of Apr. 1, 1980, should be retained.

[2] No amendments to this volume were promulgated during the period July 1, 1984 to June 30, 1986. The CFR volume issued as of July 1, 1984, should be retained.

[3] No amendments to this volume were promulgated during the period July 1, 1985 to June 30, 1986. The CFR volume issued as of July 1, 1985 should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[6] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

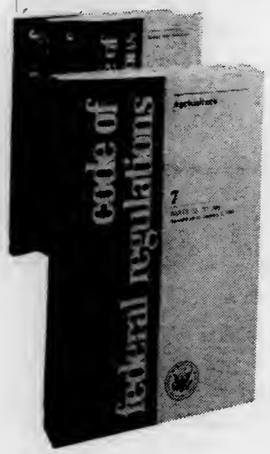
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Title 3—

The President

Proclamation 5592 of December 18, 1986

National Burn Awareness Week, 1987

By the President of the United States of America

A Proclamation

Burns continue to be one of the leading causes of accidental death and injury in our Nation. Each year, burns kill approximately 12,000 Americans and injure more than two million, of whom 70,000 need hospitalization. Tragically, children, the elderly, and the disabled are especially vulnerable to burn injuries, and almost one-third of all burn victims are under age 15. Further, survivors may experience serious scarring, loss of muscle tissue over joints, and accompanying physical disabilities and adjustment difficulties.

Thankfully, significant research advances have improved burn surgery and treatment, aided rehabilitation, shortened hospital stays, and much increased the burn survival rate. Among the most important therapeutic advances are techniques for early burn excision and wound closure, the development of artificial skin to cover large burn areas, better ways to prevent and control infection, and improved ways to restore fluid balance and provide adequate nutrition.

Much remains to be learned, however, about the body's underlying responses to burn injury—for instance, the body's infection-fighting system, factors leading to tissue breakdown and energy loss, hormonal changes, and the life-threatening effects of shock.

The best approach to burn injury, of course, is prevention. Because a great number of burns could be prevented, there is a great need for national attention to all aspects of burn prevention.

We can all be truly grateful to the many Americans who devote themselves to treating, caring for, and rehabilitating burn victims; to all those involved in the vital work of burn research; to the dedicated fire fighters who risk their own lives daily to protect others; and to everyone who promotes burn awareness and prevention.

The Congress, by Public Law 99–538, has designated the week of February 9 through February 15, 1987, as "National Burn Awareness Week" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of February 9 through February 15, 1987, as National Burn Awareness Week. I call upon all government agencies, health organizations, communications media, and the people of the United States to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of December, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 86-28940
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Billing code 3195-01-M

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 86-080]

Deletion of Certain Canadian Border Ports

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the animal import regulations by removing Ogdensburg and Rooseveltown, New York, from the list of ports designated for the importation of animals from Canada. The limited use of these two ports makes their continued operation impractical. Therefore, because we cannot justify the expense of inspecting animals entering this country at either Ogdensburg or Rooseveltown, we are closing these ports.

EFFECTIVE DATE: January 22, 1987.

FOR FURTHER INFORMATION CONTACT: Dr. Harvey A. Kryder, Jr., Senior Staff Veterinarian, Import-Export and Emergency Planning Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 806, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; (301) 436-8695.

SUPPLEMENTARY INFORMATION:

Background

In a document published in the **Federal Register** on July 2, 1986 (51 FR 24154-24155), we proposed to amend the regulations in 9 CFR Part 92 (referred to below as the regulations) by deleting Ogdensburg and Rooseveltown, New York, from the list of border ports designated for animals entering the United States from Canada. During fiscal year 1985, animal inspections took place on 68 days at the Ogdensburg port; at Rooseveltown, on 4 days. Periods of inactivity clearly outnumbered those requiring the services of a Veterinary Services-approved inspector. This ratio was reversed at Alexandria Bay and Champlain, where animal importers made use of the border inspection services most days of the year. Alexandria Bay and Champlain will remain on the list of border ports in § 92.3(b), and are expected to provide the inspection services previously available at Ogdensburg and Rooseveltown for animals entering New York State from Canada.

During the 60-day public comment period that ended September 2, 1986, one party responded. The commenter, a private individual, objected to the closing of the port at Ogdensburg, citing the inconvenience of traveling to Alexandria Bay or Champlain to transact routine business.

We agree that the removal of locally available services could cause some inconvenience, but the low volume of animal traffic entering from Canada at Ogdensburg does not justify the expense of our maintaining personnel to inspect animals there.

We are therefore amending the regulations as proposed.

On August 12, 1986, a final rule published in the **Federal Register** amended the regulations by relieving restrictions on the importation of cattle from brucellosis certified free provinces of Canada. The amended § 92.20(c)(2) revised the list of approved ports of entry for cattle from Canada. Included on that list were Ogdensburg and Rooseveltown, New York. Because Ogdensburg and Rooseveltown are now being deleted from the list of border ports for the importation of animals, we are simultaneously deleting them from the list of ports of entry for cattle from brucellosis certified free provinces of Canada.

This document also introduces nonsubstantive editorial changes not addressed in this supplementary information.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this final rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this rulemaking action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Deletion of Ogdensburg and Rooseveltown, New York, from the list of animal importation ports should change neither the number of animals entering the United States from Canada nor the number of persons importing them. Animal importers previously accommodated at Ogdensburg and Rooseveltown will find veterinary inspection services available at the Canadian border ports of Alexandria Bay and Champlain, New York. Personnel now at the Alexandria Bay and Champlain ports should have no difficulty responding to the increased demand for their services.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, 9 CFR Part 92 is amended as follows:

1. The authority citation for Part 92 continues to read:

Authority: 7 U.S.C. 1622; 19 U S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 7 CFR 2.17, 2.51, and 371.2(d).

2. Paragraph (b)(1) of § 92.3 is revised to read as follows:

§ 92.3 Ports designated for the importation of animals and birds.

* * * * *

(b) *Canadian border ports.* (1) The following land border ports are designated as having the necessary inspection facilities for the entry of animals from Canada: Eastport, Idaho; Houlton and Jackman, Maine; Detroit, Port Huron, and Sault Ste. Marie, Michigan; Opheim, Raymond, and Sweetgrass, Montana; Alexandria Bay, Buffalo, and Champlain, New York; Dunseith, Pembina, and Portal, North Dakota; Derby Line and Highgate Springs, Vermont; Blaine, Lynden, Oroville, and Sumas, Washington.

* * * * *

§ 92.20 [Amended]

3. In § 92.20, the sixth sentence of paragraph (c)(2), "Ogdensburg, and Rooseveltown," is removed.

Done in Washington, DC, this 17th day of December 1986.

J.K. Atwell,

Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 86–28664 Filed 12–22–86; 8:45 am]

BILLING CODE 3410–34–M

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9 CFR Parts 161 and 162

[Docket No. 86–072]

Standards for Accredited Veterinarians

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulations concerning accreditation of veterinarians and the suspension or revocation of such accreditation to: (1) Add a "Statement of Purpose"; (2) clarify that accreditation of veterinarians is on a State-by-State basis; (3) require, as a condition for being accredited or reaccredited, that a veterinarian must be licensed to practice without supervision in the State in which he or she wishes to be accredited; and (4) require, as a condition for obtaining accreditation, that a veterinarian pass an examination administered by the Animal and Plant Health Inspection Service within 5 years prior to applying for accreditation in the State in which he or she wishes to be accredited. These amendments appear to be necessary to clarify the regulations, and to help ensure that veterinarians acting as accredited veterinarians are qualified to perform their duties.

EFFECTIVE DATE: December 23, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. William A. Ketter, Regulatory Communications and Compliance Policy Staff, VS, APHIS, USDA, Room 829, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8565.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR, Subchapter I (referred to below as the regulations), contain provisions concerning the accreditation of veterinarians and the suspension or revocation of such accreditation.

A document published in the **Federal Register** on April 29, 1986 (51 FR 15913–15915), proposed to amend the regulations to: (1) Add a "Statement of Purpose"; (2) clarify that accreditation of veterinarians is on a State-by-State basis; (3) require, as a condition for being accredited or reaccredited, that a veterinarian be licensed to practice without supervision in the State in which he or she wishes to be accredited; and (4) require, as a condition of obtaining accreditation, that a veterinarian pass an examination administered by the Animal and Plant Health Inspection Service within 5 years prior to applying for accreditation in the State in which he or she wishes to be accredited.

Comments were solicited in response to the proposal for a 60-day period ending June 30, 1986. Nine comments were received. They were from State governments, veterinary medical associations, and other interested persons.

One comment was positive, six comments suggested changes in the proposed regulations, and two comments did not address the proposed amendments.

All of the comments were carefully considered. Except for the comment indicating unqualified approval and those which did not address the proposed amendments, all the comments are discussed below. Based on the rationale set forth in the proposal and in this document, the provisions of the proposal are adopted as a Final Rule.

Accreditation

Section 161.1(a) of the regulations sets forth criteria for the accreditation of veterinarians. Section 161.1(b) of the regulations sets forth corresponding criteria for the reaccreditation of veterinarians whose accreditation has been revoked.

Prior to the date of this document, 161.1(a) of the regulations provided as follows:

(a) The Deputy Administrator is hereby authorized to accredit a veterinarian when he determines that such veterinarian (1) is a graduate of a college of veterinary medicine; (2) is licensed to practice veterinary medicine in the State in which he wishes to be accredited; (3) has made formal application for accreditation on Form 1–36A, "Application for Veterinary Accreditation"; (4) has passed an examination administered by the Service; and (5) has been jointly recommended by the State Animal Health Official and the Veterinarian-in-Charge for the State in which the veterinarian is licensed and wishes to be accredited.

In the document of April 29, 1986, it was proposed to amend these provisions in several ways.

One amendment was proposed to clarify the intent of the regulations that an accredited veterinarian perform official duties as an accredited veterinarian only in the State or States in which the veterinarian is accredited. Three comments were received on this issue. One suggested that Federal accreditation should be transferable from State to State if the veterinarian performed satisfactorily in the first State. Another suggested that accreditation should be transferable from State to State after the veterinarian has been practicing as an accredited veterinarian for 5 years. The third comment stated that Federal accreditation should be granted on a national basis only, not a State basis, and that federally accredited veterinarians should merely be required to "register" with State officials when they move to a new State.

No changes are made in the proposal based on these comments. Federal accreditation is granted on a State-by-State basis because the knowledge and skills needed by accredited veterinarians are different in different States. Different livestock diseases and pests are prevalent in different parts of the country. Different species of livestock and other animals dominate the animal population in different parts of the country. In addition, different aspects of agriculture are dominant in different parts of the country. For example, a large volume of import and export business is conducted in some States, while very little is conducted in other States. Finally, acceptable procedures vary from State to State. These differences mean that an accredited veterinarian in one State needs different knowledge and skills than an accredited veterinarian in another State. Therefore, in order to help ensure that accredited veterinarians have the knowledge and skills needed to perform satisfactorily as accredited veterinarians in the State or States in which they wish to be accredited, it appears to be necessary to grant Federal accreditation on a State-by-State basis. For these same reasons, Federal accreditation cannot simply be transferred to another State if the accredited veterinarian moves, even if the veterinarian has been satisfactorily practicing as an accredited veterinarian for some period of time. Only a new qualifying examination can demonstrate that the veterinarian is prepared to practice successfully as an accredited veterinarian in his or her new State.

Another amendment in the document of April 29, 1986, proposed to require, as a condition of being accredited or reaccredited, that a veterinarian must be licensed to practice without supervision in the State in which he or she wishes to be accredited. Three comments were received on this issue. One comment stated that "[t]here should be no Federal requirement to be licensed by the States." The other two comments expressed concern that veterinarians holding temporary State licenses could not receive accreditation under the proposed rule.

No changes are made in the regulations based on these comments. Veterinarians who perform the functions of accredited veterinarians are practicing veterinary medicine. However, the accreditation examination conducted by the Service does not test the medical skills and knowledge of practitioners, but only their knowledge of applicable Federal regulations and policies. Instead, the Service relies on State licensing requirements to ensure that veterinarians who apply for accreditation possess the requisite medical skills and knowledge. For this reason, it is necessary to require that applicants for accreditation be licensed to practice veterinary medicine in the State in which they wish to be accredited. However, any veterinarian who applies for accreditation and meets the requirements for accreditation, including the requirement that he or she be licensed to practice veterinary medicine without supervision in the State in which he or she wishes to be accredited, will be accredited by the Service. Receipt of accreditation does not depend on whether the veterinarian's license is temporary or permanent, but on whether it allows the veterinarian to practice without supervision.

Finally, an amendment was proposed to require that an applicant for accreditation must have passed an examination administered by the Service within 5 years prior to applying for accreditation in the State in which he or she wishes to be accredited. Two comments addressed this issue. One apparently misunderstood the proposal to mean that retesting would be required every 5 years. This commenter suggested that an "accreditation seminar" dealing with the day-to-day problems facing accredited veterinarians would be more valuable than an examination to "the livestock industry and to the veterinary profession". The other commenter stated that the examination should be no more than 2–3 years prior to the date the veterinarian applies for accreditation.

No changes are made based on these comments. The Service agrees that an "accreditation seminar" would be a valuable experience for veterinarians applying for accreditation. However, a seminar would not provide the Service with any concrete information as to the skills and knowledge of the veterinarians applying for accreditation. The Service needs this information to determine whether a veterinarian is qualified to be accredited. Only an examination can provide this information. An examination administered more recently than 5 years prior to application for accreditation might provide more accurate information to the Service concerning the applicant's skills and knowledge. However, as stated in the document of April 29, 1986 (51 FR 15914), this period of time appears to be adequate "to ensure that the test is relevant concerning the applicant's current skills and knowledge of procedures" necessary to practice as an accredited veterinarian. In addition, this period of time is consistent with the length of time most State veterinary medical boards accept other test results, such as those from the National Examinations in veterinary medicine, to be accurate and relevant.

Three of the comments received did not address the proposed amendments directly, but instead addressed related issues.

One of these comments asked why federally employed veterinarians are not required to be accredited, yet are allowed to perform the functions of accredited veterinarians. Under the accreditation program, veterinarians in private practice who are accredited are authorized to perform certain activities on behalf of the Service (see the document of April 29, 1986, 51 FR 15913).

These accredited veterinarians represent the Federal government, though they are not Federal employees. They perform various functions on behalf of the Service without, under most circumstances, the direct supervision of any Federal personnel. It is therefore important that accredited veterinarians be carefully selected for the greatest possible skill, knowledge, and integrity. The only method available to the Service to make this selection is to require that veterinarians meet certain standards in order to be accredited. Federally employed veterinarians also need to be carefully selected. However, a different method is used to select them. They must meet requirements for Federal employment designed by the Office of Personnel Management to ensure that veterinarians hired by the government are knowledgeable and competent. These two systems, one for accrediting veterinarians in private practice and one for hiring Federal veterinarians, are different because of the basically different circumstances under which each group must be selected and must perform. However, both systems are designed to ensure that the veterinarians are competent and knowledgeable.

The other two comments which raised an issue related to the proposed amendments both suggested that accredited veterinarians should be periodically retested to maintain their accreditation. One of these comments also suggested that accredited veterinarians should be divided into two groups—those serving "export and interstate market functions" and those serving "on-the-farm functions"—and that the two groups should be separately accredited.

No changes are made in the regulations based on these comments. At this time the Service believes that periodic retesting of accredited veterinarians is unnecessary. Consistent, effective practice should maintain a veterinarian's knowledge and skills. Veterinarians who do not fulfill their responsibilities may have their accreditation revoked or suspended, and are then subject to reaccreditation procedures. Also, at this time, the Service does not believe that dividing accredited veterinarians into

two separately accredited groups, as suggested by the commenter, is necessary or desirable, given the tremendous overlap in functions for the two suggested groups. However, if it appears in the future that periodic retesting would better serve the needs of the Service, or that accredited veterinarians should be tested and accredited based on specialized areas of practice, amendments to the existing regulations can be proposed.

Executive Order and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." The Department has determined that this rule will not have a significant annual effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will have no significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It appears that the requirements contained in this document are consistent with the current practices of the vast majority of accredited veterinarians and applicants for accreditation.

Under the circumstances explained above, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the information collection provisions that are included in this rule have been approved by the Office of Management and Budget (OMB) and have been given the OMB control number 0579–0032.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 9 CFR Parts 161 and 162

Administrative practice and procedures, Veterinarians.

PART 161—REQUIREMENTS AND STANDARDS FOR ACCREDITED VETERINARIANS AND SUSPENSION OR REVOCATION OF SUCH ACCREDITATION

1. The authority citation for Part 161 continues to read as follows:

Authority: 15 U.S.C. 1828; 21 U.S.C. 105, 111–114, 114a, 114a–1, 116, 120, 121, 125, 134b and 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§§ 161.2, 161.3 and 161.4 [Redesignated from §§ 161.1, 161.2 and 161.3]

2. Sections 161.1, 161.2, and 161.3 are redesignated as §§ 161.2, 161.3, and 161.4, and a new § 161.1 is added to read as follows:

§ 161.1 Statement of purpose.

This subchapter concerns a program administered by the Service to accredit veterinarians and thereby authorize them to perform, on behalf of the Service, certain activities specified in this chapter. This program is intended to ensure that an adequate number of qualified veterinarians are available in the United States to perform such activities.

3. In redesignated § 161.2, paragraphs (a) and (b) are revised to read as follows:

§ 161.2 Requirements for accreditation.

(a) The Deputy Administrator is hereby authorized to accredit a veterinarian in a given State when he or she determines that such veterinarian:

(1) Is a graduate of a college of veterinary medicine;

(2) Is licensed to practice veterinary medicine without supervision in the State in which he or she wishes to be accredited;

(3) Has made formal application for accreditation on Form 1–36A, "Application for Veterinary Accreditation";

(4) Within five years prior to applying for accreditation, has passed an examination administered by the Service for the State in which he or she wishes to be accredited; and

(5) Has been jointly recommended by the State Animal Health Official and Veterinarian in Charge for the State in which the veterinarian is licensed and wishes to be accredited.

(b) The Deputy Administrator is hereby authorized to reaccredit a veterinarian whose accreditation has been revoked when the revocation has been in effect for not less than two years and he or she determines that such veterinarian:

(1) Is licensed to practice veterinary medicine without supervision in the State in which he or she wishes to be accredited;

(2) Has made formal application for accreditation on Form 1–36A, "Application for Veterinary Accreditation";

(3) Has been jointly recommended by the State Animal Health Official and the Veterinarian-in-Charge for the State in which the veterinarian is licensed and wishes to be accredited;

(4) Has furnished adequate assurance that he or she will faithfully fulfill the duties of an accredited veterinarian in the future; and

(5) Has passed an examination administered by the Service for the State in which he or she wishes to be accredited.

* * * * *

4. In redesignated § 161.3, the introductory text revised to read as follows:

§ 161.3 [Amended]

* * * * *

An accredited veterinarian shall perform the functions of an accredited veterinarian only in the State or States in which such veterinarian is accredited. An accredited veterinarian shall perform the functions of an accredited veterinarian subject to the supervision and direction of the Veterinarian-in-Charge and the State Animal Health Official and shall observe the following specific standards: * * *

* * * * *

§ 161.4 [Amended]

5. In paragraph (a) of redesignated § 161.4, the reference to "§ 161.2" is changed to "§ 161.3".

PART 162—RULES OF PRACTICE GOVERNING REVOCATION OR SUSPENSION OF VETERINARIANS' ACCREDITATION

6. The authority for Part 162 continues to read as follows:

Authority: 15 U.S.C. 1828; 21 U.S.C. 105, 111, 114a–1, 115, 116, 120, 121, 125, and 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 162.10 [Amended]

7. In § 162.10, the reference to "9 CFR 161.2" is changed to "§ 161.3 of this chapter".

§ 162.11 [Amended]

8. In § 162.11, the reference to "9 CFR 161.2" is changed to "§ 161.3 of this chapter".

Done at Washington, DC, this 17th day of December 1986.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 86–28665 Filed 12–22–86; 8:45 am]

BILLING CODE 3410–34–M

FEDERAL RESERVE SYSTEM

12 CFR Part 265

[Docket No. R–0593]

Rules for Delegation of Authority; Change in Bank Control Act

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending its Rules Regarding Delegation of Authority, 12 CFR Part 265, to delegate authority to the Director of the Division of Banking Supervision and Regulation with the concurrence of the Board's General Counsel, and to the Reserve Banks, with the concurrence of the Director of the Division of Banking Supervision and Regulation and the Board's General Counsel, to waive the publication and solicitation of public comment requirements of the Change in Bank Control Act, 12 U.S.C. 1817(j), as amended by the Anti-Drug Abuse Act of 1986, No. 99–750 (October 27, 1986), where it is determined in writing that such disclosure or solicitation would seriously threaten the safety or soundness of a bank. The Board has delegated similar authority to waive, dispense with or modify the procedural requirements, including publication requirements, of the Bank Holding Company Act, 12 U.S.C. 1841 *et seq.*, where expeditious action is required. 12 CFR 262.3(k)(1); 265.2(c)(30).

EFFECTIVE DATE: December 15, 1986.

FOR FURTHER INFORMATION CONTACT: J. Virgil Mattingly, Deputy General Counsel (202/452–3430) or Scott G. Alvarez, Senior Counsel (202/452–3583), Legal Division, Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired *only*, Earnestine Hill or Dorothea Thompson, Telecommunication Device for the Deaf (202/452–3544).

SUPPLEMENTARY INFORMATION: The Anti-Drug Abuse Act of 1986 ("Act"), which was signed into law on October 27, 1986, included certain provisions amending the Change in Bank Control Act ("CBC Act") to require that the federal banking agencies publish notice of any filing under the CBC Act, including the name of the parties seeking control and the name of the target bank, and solicit public comment on the proposed acquisition, in particular from persons in the geographic area in which the bank to be acquired is located. The CBC Act did not previously contain any requirement for public notice or solicitation of comment from the public regarding a proposed acquisition.

The Act authorizes the federal banking agencies to dispense with publication and solicitation of public comments if "the agency determines in writing that such disclosure or solicitation would seriously threaten the safety or soundness" of a bank.

The amendment to the Board's Delegation Rules would allow for expeditious processing of notices where public notice would otherwise threaten the safety or soundness of a bank.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. No. 96–354, 5 U.S.C. 601 *et seq.*), the Board certifies that the proposed amendment will not have a significant economic impact on a substantial number of small entities. The proposed amendment is a change to agency procedures and practice and does not have a particular effect on small entities.

Public Comment

The provisions of 5 U.S.C. § 553 relating to notice, public participation, and deferred effective date, have not been followed in connection with the adoption of this amendment because the change affects the Board's internal procedures and practices and does not constitute a substantive rule subject to the requirements of that section. The Board's expanded rulemaking procedures have not been followed for the same reason.

List of Subjects in 12 CFR Part 265

Authority, Delegations (Government agencies), Banks, banking, Federal Reserve System.

For the reasons set forth above, 12 CFR Part 265 is amended as follows:

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

1. The authority citation for 12 CFR Part 265 continues to read as follows:

Authority: Section 11(k), 38 Stat. 261 and 80 Stat. 1314; 12 U.S.C. 248(k).

2. Section 265.2 is amended by adding new paragraphs (c)(35) and (f)(48) to read as follows:

§ 265.2 Specific functions delegated to Board employees and to Federal Reserve Banks.

* * * * *

(c) * * *

(35) Under section 1817(j)(2) of the Change in Bank Control Act (12 U.S.C. 1817(j)), and with the concurrence of the Board's General Counsel, to waive, dispense with, modify, or excuse the failure to comply with the requirement for publication and solicitation of public comment regarding a notice filed under the Change in Bank Control Act provided that a written finding is.made that such disclosure or solicitation would seriously threaten the safety or soundness of a bank holding company or bank."

* * * * *

(f) * * *

(48) Under section 1817(j)(2) of the Change in Bank Control Act (12 U.S.C. 1817(j)) and with the concurrence of the Board's Director of Banking Supervision and Regulation and the Board's General Counsel or their designees, to waive, dispense with, modify, or excuse the failure to comply with the requirement for publication and solicitation of public comment regarding a notice filed under the Change in Bank Control Act provided that a written finding is made that such disclosure or solicitation would seriously threaten the safety or soundness of a bank holding company or bank."

By order of the Board of Governors of the Federal Reserve System, December 15, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86–28692 Filed 12–22–86; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 505a

[No. 86–1240]

Privacy Act of 1974; New System of Records

December 15, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974 ("Privacy Act") (5 U.S.C. 552a) (1982 & Supp. II 1984), the Federal Home Loan Bank Board ("Board") is exempting a new system of records that will contain information concerning enforcement actions, crimes, and suspected crimes from meeting certain requirements of the Privacy Act.

EFFECTIVE DATE: December 23, 1986.

FOR FURTHER INFORMATION CONTACT: John Downing, Attorney, (202) 653–2604 or Rosemary Stewart, Director, (202) 653–2626, Office of Enforcement, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On February 21, 1986, the Board published a notice of a proposed new system of records that would contain information concerning enforcement actions, crimes and suspected crimes involving financial institutions, and change of control applications filed by, and other significant business transactions with, individuals concerning institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation ("FSLIC"). On the same date the Board published a proposed rule that would provide for an exemption under 5 U.S.C. 552a(k)(2) (1982) from certain requirements of the Privacy Act.[1] Because the notice of the proposed system and the proposed rule deal with the same subject matter, they are both discussed herein.

Three comments were submitted, one each by a savings and loan association, a federal savings bank, and a state agency regulating savings and loans. Two of the three commenters offered a strong endorsement for the proposals, stating that their personal experience demonstrates that the system and the exemption are necessary to prevent a criminal or suspected criminal from moving from one financial institution to another after he is detected. The third commenter also recognized the need to maintain records concerning individuals that have been convicted of crimes or have been subject to enforcement or other civil actions, but had concerns about maintaining records of persons who have not been convicted or against whom final civil action has not been taken. The same commenter asked how an individual could have his name removed from the system.

Both these concerns are addressed in the Privacy Act itself. The Privacy Act allows records of law enforcement investigatory material to be maintained. 5 U.S.C. 552a(k)(2)(1982). Thus it is not limited to records of final adjudications or convictions. However, the Privacy Act requires that all records used in making a determination be as accurate, relevant, timely and complete as is reasonably necessary to assure fairness to the individual in the determination and provides a civil remedy in some circumstances in which an adverse determination is made based on information that does not comply. 5 U.S.C. 552a(e)(5) and (g)(1)(C)(1982). Thus the system of records will reflect any final action on a criminal referral or enforcement matters that were not yet complete when entered into the system. Consistent with the Privacy Act, all efforts reasonably necessary to confirm the contents of records to assure fairness to the individual will be taken before any adverse determination based on the records is made. Moreover, agency personnel having access to the records will be instructed that the mere institution of an enforcement action or referral of a possible criminal action by itself is insufficient grounds for the Board to make an adverse determination on an individual. Personnel would be required to review the underlying facts giving rise to a referral or initiation of an enforcement action before basing an adverse determination on such action.

Although the Privacy Act does not contain specific provisions for the removal of an individual's name or records from the system, it does require that each agency have procedures in place by which an individual can request amendment of records pertaining to him. An individual whose request is not granted is permitted to file a statement of his reasons for disagreeing with the agency's refusal, which statement must be provided when any disclosure of the disputed portion of the record is disclosed. 5 U.S.C. 552a(b)(1982). The Board has formulated such procedures, which are contained in 12 CFR Part 505a (1986). Although the proposed rule would provide an exemption to these provisions when appropriate under 5 U.S.C. 552a(k)(2)(1982), that exemption would not apply to any individual who is denied any right, privilege or benefit to which he is entitled by Federal law, or for which he would otherwise be eligible, except to the extent necessary to protect the identity of a confidential source. Thus, the Privacy Act balances the right of the individual to object to inclusion of data pertaining to him in a system with the need of the agency to maintain confidential files of investigatory materials for law enforcement purposes, affording the individual greater protection when his interests are most directly affected.

Having considered the comments, the Board has determined to adopt the proposed rule providing for an exemption from certain requirements of the Privacy Act without change. For these same reasons the Board is establishing the system of records by republishing the system notice without change in the Notice Section of this **Federal Register**.

Final Regulatory Flexibility Analysis

Pursuant to Section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Board is providing the following regulatory flexibility analysis:

1. *Need for and objectives of the rule.* These elements are incorporated above in **SUPPLEMENTARY INFORMATION.**

2. *Issues raised by comments and agency assessment and response.* These elements are incorporated above in **SUPPLEMENTARY INFORMATION.**

3. *Significant alternatives minimizing small-entity impact and agency response.* The Small Business Administration defines a small financial institution as "a commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed $100 million." 13 CFR 121.13(a) Therefore, small entities to which the final rule applies are the 1,742 insured institutions that had assets totaling $100 million or less as of December 31, 1985.

The only alternative to the rule would be not to establish the system of records, or not to exempt the system of records from certain provisions of the Privacy Act. Such an alternative would impede the gathering of material for law enforcement purposes, as described in the proposed rule. Moreover, because the rule governs internal agency procedures, and so does not require action by small entities, the alternative would not lessen any burden on small entities.

Pursuant to 12 CFR 508.11 and 508.14, the Board finds that, because the final rule is a matter of internal agency procedure and because the Board believes that the information is critical to the performance of its examination, supervisory, and enforcement functions, the Board has determined that there is good cause to make the rule effective upon publication in the **Federal Register** and to waive the 30-day delay of the effective date.

List of Subjects in 12 CFR Part 505a

Privacy.

Accordingly, the Board hereby amends Part 505a, Subchapter A, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

[1] As described in the proposed rule, the system contains law enforcement investigatory records and would be exempt from certain provisions of the Privacy Act relating to accountings and disclosure of records, the right to be notified of and examine records, the publication of sources of records in each system, and the limitation of the records to those that are relevant and necessary to accomplish a purpose of the agency required by statute or Executive Order.

SUBCHAPTER A—GENERAL

PART 505A—RECORDS MAINTAINED ON INDIVIDUALS

1. The authority citation for Part 505a is revised to read as follows:

Authority: 5 U.S.C. 552a; Section 17, Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 402, 48 Stat. 1256, as amended (12 U.S.C. 1725); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

2. Add new § 505a.13 to read as follows:

§ 505a.13 Exemptions of records containing investigatory material compiled for law enforcement purposes.

(a) *Scope.* The Board has established a new system of records, entitled the "Confidential Individual Information System." The purpose of this system is to assist the Board in the accomplishment of its statutory and regulatory responsibilities in connection with the supervision of financial institutions. This system will be exempt from certain provisions of the Privacy Act of 1974 for the reasons set forth in paragraph (c) of this section.

(b) *Exemptions Under 5 U.S.C. 552a(k)(2).* (1) Under 5 U.S.C. 552a(k)(2), the head of an agency may issue rules to exempt any system of records within the agency from certain provisions of the Privacy Act of 1974 if the system contains investigatory material compiled for law enforcement purposes.

(2) Provisions of the Privacy Act of 1974 from which exemptions will be made under 5 U.S.C. 552a(k)(2) are as follows:

(i) 5 U.S.C. 552a(c)(3);
(ii) 5 U.S.C. 552a(d)(1), (2), (3), and (4);
(iii) 5 U.S.C. 552a(e)(1);
(iv) 5 U.S.C. 552a(e)(4) (G), (H), and (I); and
(v) 5 U.S.C. 552a(f).

(c) *Reasons for exemptions under 5 U.S.C. 552a(k)(2).* (1) 5 U.S.C. 552a(c)(3) requires that an agency make accountings of disclosures of records available to individuals named in the records at their request. These accountings must state the date, nature, and purpose of each disclosure of the record and the name and address of the recipient. The application of this provision would make known to subjects of an investigation that an investigation is taking place and that they are the subjects of it. Release of such information could result in the alteration or destruction of documentary evidence, improper influencing of witnesses, and reluctance of witnesses to offer information, and could otherwise impede or compromise an investigation.

(2) 5 U.S.C. 552a (c)(4), (d)(1), (2), (3), and (4), (e)(4)(G) and (H), and (f), relate to an individual's right to be notified of the existence of, and the right to examine, records pertaining to such individual. Notifying an individual at the individual's request of the existence of records and allowing the individual to examine an investigative file pertaining to such individual, or granting access to an investigative file, could: (i) Interfere with investigations an enforcement proceedings; (ii) constitute an unwarranted invasion of the personal privacy of others; (iii) disclose the identity of confidential sources and reveal confidential information supplied by those sources; or (iv) disclose investigative techniques and procedures.

(3) 5 U.S.C. 552a(e)(4)(I) requires the publication of the categories of sources of records in each system. Application of this provision could disclose investigative techniques and procedures and cause sources to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality, thus compromising the agency's ability to conduct investigations and to identify, detect, and apprehend violators.

(4) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only information about an individual that is relevant and necessary to accomplish a purpose of the agency required by statute or Executive Order. Limiting the system as described would impede enforcement activities because:

(i) It is not always possible to determine the relevance or necessity of specific information in the early stages of an investigation; and

(ii) In any investigation the Board may obtain information concerning violations of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, the Board should retain this information to aid in establishing patterns of criminal activity, and to provide leads for those law enforcement agencies charged with enforcing criminal or civil laws.

(d) *Documents exempted.* Exemptions will be applied only when appropriate under 5 U.S.C. 552a(k).

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Acting Secretary.

[FR Doc. 86–28784 Filed 12–22–86; 8:45 am]

BILLING CODE 6720–01–M

12 CFR Part 535

[No. 86–12499]

Prohibited Consumer Credit Practices; Request for Exemption by State of Wisconsin

Dated: December 16, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: Exemption from consumer credit regulation.

SUMMARY: The Federal Home Loan Bank Board ("Board") hereby publishes its decision to grant the State of Wisconsin and exemption from the Board's consumer credit regulation on Prohibited Consumer Credit Practices, 12 CFR 535 ("Credit Practices Rule" or "Rule"), as to transactions subject to the Wisconsin Consumer Act.

EFFECTIVE DATE: December 23, 1986.

FOR FURTHER INFORMATION CONTACT: Stephen D. Johnson, Attorney/Advisor, Division of Consumer and Civil Rights, Office of Community Investment, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. (202) 653–2692.

SUPPLEMENTARY INFORMATION: The Board's Credit Practices Rule provides that, with respect to the extension of credit to consumers after January 1, 1986, it is an unfair act or practice for an institution subject to the Rule to include in a consumer credit contract any of the following clauses: a confession of judgment, a waiver or limitation of exemption from attachment or execution, an assignment of wages (with specified exceptions), or a clause granting a nonpossessory security interest in household goods other than a purchase money security interest.[1] The Rule also prohibits a lender from engaging in any practice which results in the pyramiding of late charges in connection with the collection of consumer credit debt. Lastly, the Rule prohibits lenders from directly or indirectly misrepresenting the nature or extent of a cosigner's liability, and requires that a cosigner be provided a written cosigner disclosure statement

[1] The Credit Practices Rule promulgated by the Federal Home Loan Bank Board applies to member institutions, which by definition are those engaged in the business of providing credit to consumers and which are members of a Federal Home Loan Bank (including service corporations specified in the Rule). This rule became effective January 1, 1986. The Federal Reserve Board and the Federal Trade Commission have adopted substantially similar rules which apply to banks, lenders, and retail installment sellers within their respective jurisdictions. See 12 CFR Part 227 and 16 CFR Part 444.

which outlines the cosigner's potential liability.

The Credit Practices Rule provides, at 12 CFR 535.5, that if a state applies on behalf of insured institutions in that state for an exemption from a provision of the Rule, such exemption will be granted if it is determined by the Director of the Office of Community Investment, in consultation with the General Counsel, that: (1) There is in effect a state requirement or prohibition that applies to any transactions to which a provision of the Rule applies; and (2) the state requirement or prohibition affords a level of protection to consumers that is substantially equivalent to, or greater than, the protection afforded by the Rule. If such an exemption is granted, the exempted provision of the Rule is not in effect in that state, and the exemption will continue as long as the state effectively administers and enforces its law.

The requirement set forth at 12 CFR 535.5(a)(2) that the state requirement or prohibition be "substantially equivalent" to the Board's Rule does not require that a state's rule mirror the Rule's provisions exactly. Any differences that exist, however, should be so minor as to ensure that consumers are afforded a level of protection equal to or greater than that guaranteed by the Rule without significantly complicating compliance by interstate creditors.

In its petition for exemption, the State of Wisconsin asserted that the Wisconsin Consumer Act ("Act") and the State's enforcement procedure for the Act afford a level of protection to consumers that is substantially equivalent to, or greater than, the protection afforded by the Rule. Therefore, the State of Wisconsin requested that its state-chartered savings and loan associations be exempt from the operation of the Rule, and that the Board consider that an exemption be applied to federally chartered associations located in Wisconsin as well.

Wisconsin provided a copy of the relevant state statutes and a narrative statement comparing state law with the corresponding provisions of the Rule. The statement also explained how state law and the Rule would apply to the same transaction. The Annual Reports of the Commissioner of Banking for each of the past three years were also provided. They contained summaries of cases brought under the Act and showed what the Commissioner of Banking has done to enforce the Act during the last three years. The petition was signed by the Commissioner of Savings and Loan. Although the Administrator of the Act is the Commissioner of Banking, the Administrator is required by Wisconsin statute to consult and assist any state official having supervisory authority over a supervised financial organization in maintaining compliance with the Act. The State of Wisconsin also submitted information regarding the number and types of complaints received by the Commissioner of Savings and Loan for the last three years which are relevant to practices covered by the Rule. This latter submission also included background information on the state's procedures for handling consumer complaints.

The Board published in the **Federal Register** an announcement of the Wisconsin request for exemption, an analysis of Wisconsin law, and a request for public comment on April 16, 1986, in 51 FR 12865. No comments were received perhaps because this request is the third in a series of requests by the State of Wisconsin to federal agencies responsible for the enforcement of the Credit Practices Rule. The Board did have access to the analysis and commentary of the Federal Trade Commission and the Federal Reserve Board in preparing its response to the exemption request.

Based on the uncontradicted analysis published on April 16, 1986, additional staff analysis, and concurrence by the Board's Office of General Counsel, the Board believes that the State of Wisconsin has in place a comprehensive consumer credit regulatory scheme containing protections against the specific abuses that the Board's Rule is intended to eliminate. The scheme provides effective enforcement mechanisms including compliance audits and litigation. The Board is further of the opinion that the Wisconsin consumer protection scheme is substantially equivalent to the Board's Rule.

The Board does not have the authority, pursuant to 12 CFR 535.5, to grant an exemption for consumer credit transactions that exceed $25,000, because Wisconsin does not have a consumer protection provision applicable to such transactions which it administers and enforces effectively. However, if Wisconsin examiners conclude that such transactions meet the requirements set forth in the Wisconsin Act for transactions involving $25,000 or less, these transactions will be deemed to satisfy the requirements of the Board's Rule.

The second exception to the grant of exemption concerns federally chartered associations. The Board's grant of the exemption request may be extended with respect to state-chartered savings and loan associations in Wisconsin, but it may not be extended with respect to federally chartered associations located in the state. It is well established that the Board has exclusive authority to regulate all aspects of the operations of federally chartered associations under section 5 of the Home Owner's Loan Act of 1933, 12 U.S.C. 1464. *See, e.g.*, 12 CFR 545.2. Federally chartered associations will therefore continue to be subject to the rule rather than the Wisconsin Act, and the Board will continue to examine them for compliance with the Rule.

Therefore, pursuant to the authority delegated to the Director of the Office of Community Investment by 12 CFR 535.5(c) and pursuant to the requirements of 12 CFR 535.5, the Director, with the concurrence of the General Counsel, hereby finds and determines with the exceptions noted below: (1) That there is a State of Wisconsin requirement or prohibition in effect that applies to any transactions of $25,000 or less to which a provision of the Board's Rule applies; and (2) the State of Wisconsin requirements and provisions afford a level of protection to consumers that is substantially equivalent to, or greater than, the protection afforded by the Board's Rule. This finding does not and shall not apply to: (1) Federally chartered associations under section 5 of the Home Owner Loan Act of 1933, 12 U.S.C. 1464; and (2) consumer credit transactions that exceed $25,000; however, if Wisconsin examiners conclude that such transactions meet the requirements set forth in the Wisconsin Act for transactions involving $25,000 or less, these transactions shall be deemed to satisfy the requirements of the Board's Rule.

The exemption will continue only for so long as the State of Wisconsin effectively administers and enforces its law. To ensure that the conditions for an exemption continue to be met, the State of Wisconsin shall provide notice to the Board of any change in its law, policies or procedures, including court decisions, that would significantly affect whether the state law continues to afford substantially equivalent protection and whether the state is effectively enforcing the Act. The Board reserves the right to revise this reporting requirement at a later date if circumstances warrant or to request additional information if the Board determines that this is needed.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Acting Secretary.

[FR Doc. 86-28783 Filed 12-22-86; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 86F-0151]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to permit the use of hydrogen peroxide solution to sterilize ethylene-acrylic acid copolymer food-contact surfaces. This action responds to a petition filed by the Dow Chemical Co.

DATES: Effective December 23, 1986; objections by January 22, 1987.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Leonard C. Gosule, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 7, 1986 (51 FR 16696), FDA announced that a petition (FAP 6B3928) had been filed by the Dow Chemical Co., Midland, MI 48674, proposing that § 178.1005 *Hydrogen peroxide solution* (21 CFR 178.1005) be amended to provide for the safe use of hydrogen peroxide solution to sterilize food-contact surfaces prepared from ethylene-acrylic acid copolymers complying with § 177.1310 (21 CFR 177.1310).

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the food additive is safe, and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before January 22, 1987, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. In § 178.1005 by revising paragraph (e)(1) to read as follows:

§ 178.1005 Hydrogen peroxide solution.

* * * * *

(e) *Conditions of use.* (1) Hydrogen peroxide solution identified in and complying with the specification in this section may be used by itself or in combination with other processes to treat food-contact surfaces prepared from ethylene-acrylic acid copolymers complying with § 177.1310 of this chapter, ionomeric resins complying with § 177.1330 of this chapter, ethylene-methyl acrylate copolymer resins complying with § 177.1340 of this chapter, ethylene-vinyl acetate copolymers complying with § 177.1350 of this chapter, olefin polymers complying with § 177.1520 of this chapter, polyethylene terephthalate polymers complying with § 177.1630 of this chapter (excluding polymers described in § 177.1630(c)), and polystyrene and rubber-modified polystyrene polymers complying with § 177.1640 to attain commercial sterility at least equivalent to that attainable by thermal processing for metal containers as provided for in Part 113 of this chapter.

* * * * *

Dated: December 15, 1986.

Richard J. Ronk,

Acting Director, Center for Food Safety ond Applied Nutrition.

[FR Doc. 86-28717 Filed 12-22-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 210 and 216

Royalty Management; Forms and Reports

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: The Minerals Management Service (MMS) is amending 30 CFR Parts 210 and 216 to add references to three informational handbooks. These

handbooks provide royalty payors or production reporters on Federal and Indian leases with specific guidelines on how to prepare and submit required forms and reports to MMS.

EFFECTIVE DATE: December 23, 1986.

ADDRESS: Handbooks may be obtained from: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, Minerals Management Service, P.O. Box 25165, MS 628, Denver Federal Center, Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Dennis Whitcomb, (303) 231–3432.

SUPPLEMENTARY INFORMATION:

I. Description of Handbooks

These amendments to 30 CFR add references to three informational handbooks that provide specific guidance to payors or reporters on how to prepare and submit reports or forms required by MMS to meet congressionally mandated accounting and audit responsibilities relating to Federal and Indian mineral royalty management.

A new section is added to Part 210, Subpart B—Oil and Gas, General, to reference an *Auditing and Financial System (AFS) Oil and Gas Payor Handbook* and a *Production Accounting and Auditing System (PAAS) Reporter Handbook* which are available from MMS. The AFS Oil and Gas Payor Handbook consists of two volumes and is distributed to all oil and gas lease payors. Volume I contains an overview of the AFS reporting structure and detailed instructions for completing a required Payor Information Form MMS–4025. Volume II contains detailed instructions, by transaction code, on how to complete a required Report of Sales and Royalty Remittance Form MMS–2014. Both volumes of this handbook contain numerous examples to assist payors in their preparation of the two required AFS forms.

The *PAAS Reporter Handbook* consists of four volumes and is distributed to reporters who are subject to production reporting requirements as appropriate. The volumes contain detailed instructions and examples on how to complete various required PAAS forms and reports.

A new section is added to Part 210, Subpart E—Solid Minerals, General, to reference an *Auditing and Financial System (AFS) Solid Minerals Payor Handbook* and the *PAAS Reporter Handbook*, described above. The *AFS Solid Minerals Payor Handbook* consists of one volume and is distributed to all solid minerals lease payors. The handbook provides detailed instructions for completing a required Payor Information Form MMS–4030 and a required Report of Sales and Royalty Remittance Form MMS–4014. The handbook contains numerous examples to assist solid minerals payors in their preparation of the required AFS forms and reports.

A new section is also added to Part 216, Subpart A—General Provisions, to reference the *PAAS Reporter Handbook*, described above.

A copy of any of the above referenced handbooks will be provided to interested persons upon request. If a handbook is desired, contact Dennis Whitcomb at the address shown in the **"ADDRESS"** section of this preamble. Only one copy of any individual handbook will be provided to a requestor.

II. Procedural Matters

Administrative Procedure Act

The changes included in this rulemaking are additions to reference supplemental information available from MMS and not substantive changes. Accordingly, pursuant to 5 U.S.C. 553(b), it has been determined that it is unnecessary to issue proposed regulations before the issuance of this final regulation. For the same reason, it has been determined that in accordance with 5 U.S.C. 553(d), there is good cause to make this regulation effective upon publication in the **Federal Register.**

Executive Order 12291 and Regulatory Flexibility Act

Because the amendments merely reference supplemental information available from MMS, the Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act of 1980

The information collection requirements contained in the three Handbooks have been approved by the Office of Management and Budget under 44 U.S.C 3504(h) and assigned clearance numbers 1010–0022, 0033, 0040, 0063, and 0064.

National Environmental Policy Act of 1969

The Department of the Interior has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required under the National Environmental Policy Act of 1969 [42 U.S.C. 4332(2)(C)].

List of Subjects

30 CFR Part 210

Continental shelf, Geothermal energy, Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 216

Mineral production, Mineral royalties, Reporting and recordkeeping requirements, Oil and gas, Solid minerals.

Dated: November 20, 1986.

J. Steven Griles,

Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR Parts 210 and 216 are amended as follows:

SUBCHAPTER A—ROYALTY MANAGEMENT

PART 210—[AMENDED]

1. The authority citation for Part 210 is revised to read as follows:

Authority: 25 U.S.C. 396 *et seq.;* 25 U.S.C. 396a *et seq.;* 25 U.S.C. 2101 *et seq.;* 30 U.S.C. 181 *et seq.;* 30 U.S.C. 351 *et seq.;* 30 U.S.C. 1001 *et seq.;* 30 U.S.C. 1701 *et seq.;* 43 U.S.C. 1301 *et seq.;* 43 U.S.C. 1331 *et seq.;* and 43 U.S.C. 1801 *et seq.*

§ 210.54 [Redesignated from § 210.53]

2. Section 210.53 is redesignated as § 210.54.

3. A new § 210.53 is added to Subpart B to read as follows:

§ 210.53 Reporting instructions.

(a) Specific guidance on how to prepare and submit required information collection reports and forms to MMS is contained in an *Auditing and Financial System (AFS) Oil and Gas Payor Handbook* and a *Production Accounting and Auditing System (PAAS) Reporter Handbook* which are available from: Minerals Management Service, Attention: Lessee (or Reporter) Contact Branch, P.O. Box 5760, TA, Denver, Colorado 80217.

(b) Royalty payors or production reporters should refer to these handbooks for specific guidance with respect to oil and gas reporting requirements. If additional information is required, the payor or reporter should contact the MMS Lessee Contact Branch with respect to royalty reporting, or the MMS Reporter Contact Branch with respect to production reporting at the above address. The appropriate telephone numbers are listed in the handbooks.

4. A new § 210.204 is added to Subpart E to read as follows:

§ 210.204 Reporting instructions.

(a) Specific guidance on how to prepare and submit required information collection reports and forms to MMS is contained in an *Auditing and Financial System (AFS) Solid Minerals Payor Handbook* and a *Production Accounting and Auditing System (PAAS) Reporter Handbook* which are available from: Minerals Management Service, Attention: Lessee (or Reporter) Contact Branch, P.O. Box 5760, TA, Denver, Colorado 80217.

(b) Royalty payors or production reporters should refer to these handbooks for specific guidance with respect to solid minerals reporting requirements. If additional information is required, the payor or reporter should contact the MMS Lessee Contact Branch with respect to royalty reporting, or the MMS Reporter Contact Branch with respect to production reporting at the above address. The appropriate telephone numbers are listed in the handbooks.

PART 216—[AMENDED]

1. The authority citation for Part 216 is revised to read as follows:

Authority: 25 U.S.C. 396 *et seq.;* 25 U.S.C. 396a *et seq.;* 25 U.S.C. 2101 *et seq.;* 30 U.S.C. 181 *et seq.;* 30 U.S.C. 351 *et seq.;* 30 U.S.C. 1001 *et seq.;* 30 U.S.C. 1701 *et seq.;* 43 U.S.C. 1301 *et seq.;* 43 U.S.C. 1331 *et seq.;* and 43 U.S.C. 1801 *et seq.*

2. A new § 216.15 is added to Subpart A to read as follows:

§ 216.15 Reporting instructions.

(a) Specific guidance on how to prepare and submit required information collection reports and forms to MMS is contained in a *Production Accounting and Auditing System [PAAS] Reporter Handbook,* which is available from: Minerals Management Service, Attention: Reporter Contact Branch. P.O. Box 17110, Denver, Colorado 80217.

(b) Production reporters should refer to this handbook for specific guidance with respect to production reporting requirements. If additional information is required, the reporter should contact the MMS Reporter Contact Branch at the above address. The telephone number is listed in the handbook.

[FR Doc. 86–28706 Filed 12–22–86; 8:45 am]

BILLING CODE 4310–MR–M

PANAMA CANAL COMMISSION

35 CFR Part 103

General Provisions Governing Vessels

AGENCY: Panama Canal Commission.

ACTION: Final rule.

SUMMARY: The Panama Canal Commission is today adopting an interim final rule amending 35 CFR 103.8, concerning preference in transit schedulings and order of transiting vessels. These changes take into account the agency's experience with the Panama Canal Transit Booking System over the preceding three years and the needs of the shipping community.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Rhode, Jr., Secretary, Panama Canal Commission, telephone: (202) 634–6441, or Mr. John L. Haines, Jr., General Counsel, telephone in Balboa Heights, Republic of Panama, 011–507–52–7511.

SUPPLEMENTARY INFORMATION: On July 30, 1986, an interim rule was published in the **Federal Register** (51 FR 27174) setting forth several changes to the booking system regulations based on numerous requests from Canal users that the Canal Commission revise the arrival time requirements in the prior rules. The revisions take into account the need to better serve our customers, without adversely affecting Canal operations. Interested parties were given the opportunity to submit written comments by August 29, 1986. During that time period, the agency received a single comment relating to the decision to clarify the term *force majeure* by rephrasing the grounds to be considered in waiving a forfeiture of the booking fee. The writer expressed a preference for the term *force majeure* as a generally accepted marine term. Since, however, the change was initiated in response to customer confusion with the term, the Commission believes that clarification better serves Canal users.

Following is a summary of how the rules published today modify the rules which have been in effect concerning preference in the transit schedule and order of transiting vessels:

The Commission's regulations, in § 103.8(f)(1), require that booked vessels which are subject to transit restrictions arrive at a terminus of the Canal by midnight (2400 hours) of the day prior to the intended transit. Booked vessels which are not subject to transit restrictions must arrive prior to noon of the day of the intended transit. This section is revised to allow both classes of vessels to arrive at a Canal terminus one hour later. Under this revision, restricted vessels must arrive not later than 0100 hours of the day of the transit, and non-restricted vessels must arrive not later than 1300 of the day of the transit.

In addition to the arrival time changes, the agency has revised the rules concerning forfeiture of the booking fee. The present rules provide that a vessel which does not arrive by the specified arrival time forfeits the booking fee unless its arrival has been delayed by *force majeure*. As stated above, the term *force majeure* has caused some confusion in the past, and accordingly, the grounds for waiving a forfeiture have been rephrased. Under the revised rule no forfeiture will occur, if the vessel's arrival is delayed by a natural event of major proportions, not caused by the intervention of man, which could not reasonably be predicted in advance. Heavy seas are not considered such a major natural event.

The amendment concerning the arrival times is a *de minimis* change that liberalizes current rules for booked vessels. The revision of the *force majeure* rule is not substantive, but is intended to clarify the rule.

The Commission has determined that this rule does not constitute a major rule within the meaning of Executive Order 12291 dated February 17, 1982 (47 FR 13193). The bases for that determination are, first, that the rule, when implemented would not have an effect on the economy of $100 million or more per year, and secondly, that the rule would not result in a major increase in costs or prices for consumers, individual industries, local governmental agencies or geographic regions. Further, the agency has determined that implementation of the rule will have no adverse effect on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Finally, the Commission has determined that this rule is not subject to the requirements of sections 603 and 604 of Title 5, United States Code, in that its promulgation will not have a significant impact on a substantial number of small entities, and the Administrator of the Commission so certifies pursuant to 5 U.S.C. 605(b).

List of Subjects in 35 CFR Section 103.8

Panama Canal, Vessels, Booking system, Navigation (Water).

BEST COPY AVAILABLE

PART 103—[AMENDED]

Accordingly, the interim rule amending 35 CFR Part 103 which was published at 51 FR 27174 on July 30, 1986, is adopted as a final rule without change.

Authority: 22 U.S.C. 3811, E.O. 12215, 45 FR 36043 and 44 U.S.C. 3501.

Dated: December 3, 1986.

D.P. McAuliffe,

Administrator, Panama Canal Commission.

[FR Doc. 86-28755 Filed 12-22-86; 8:45 am]

BILLING CODE 3640-04-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-3131-3]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of final rulemaking.

SUMMARY: USEPA announces final approval of a revision to the Wisconsin State Implementation Plan (SIP) that was enacted in Wisconsin by means of Natural Resources Board Order Number A-33-84, and that took effect on May 1, 1985. The revision creates a new section of the Wisconsin Administrative Code, section NR 154.015, entitled "Department Review Times." This revision also establishes time limits for review and action by the Wisconsin Department of Natural Resources on three types of air permit applications. A public hearing was held on Board Order A-33-84 on August 31, 1984. USEPA's action is based on a SIP revision request that was submitted by the State of Wisconsin on June 14, 1985. A notice of proposed rulemaking on this revision appeared in the April 16, 1986 (51 FR 12884), **Federal Register.**

EFFECTIVE DATE: This final rulemaking becomes effective on January 22, 1987.

ADDRESSES: Copies of the SIP revision and other materials related to this rulemaking are available for review at the following addresses: (It is recommended that you telephone Colleen W. Comerford, at (312) 886-6034, before visiting the Region V office.) U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Copies of this revision to the Wisconsin SIP are available for inspection at:

The Office of the Federal Register, 1100 L Street, NW., Room 8301, Washington, DC

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460

Wisconsin Department of Natural Resources, Bureau of Air Management (AIR/3), 101 South Webster, Madison, Wisconsin 53707

FOR FURTHER INFORMATION CONTACT: Colleen W. Comerford, (312) 886-6034.

SUPPLEMENTARY INFORMATION: On June 14, 1985, the State of Wisconsin submitted a SIP revision request to USEPA. The SIP revision was identified as Natural Resources Board Order Number A-33-84, which creates a new section of the Wisconsin Administrative Code, section NR 154.015, entitled "Department Review Times." The revision establishes time limits for review and action by the Wisconsin Department of Natural Resources (WDNR) on three types of air permit applications, as specified below:

(1) Alternate fuel variances under section NR 154.02(4)—10 business days;

(2) Temporary excess emissions plans under section NR 154.09(1)(b)—65 business days; and

(3) Use of emergency or reserve equipment under section NR 154.09(1)(c)—65 business days.

Unless another time period is specified by law, the WDNR is required to complete its review and make a determination on the permit applications specified above within the number of business days indicated, based on the date of receipt of the application. If the WDNR does not meet the specified deadlines, then the Department has to file a report with the Wisconsin Department of Development stating why the deadline was missed, and what future action will take place concerning the permit in question. The WDNR is required to do this under the provisions of 227.0105, Statutes, as created by 1983 Wisconsin Act 91. This clarifies the State's intent that failure to meet the provision's deadline does not result in the automatic issuance of a permit.

Conclusion

On April 16, 1986 (51 FR 12884), USEPA published a notice proposing to approve this SIP revision in the **Federal Register.** No public comments were received on this action. Based on this proposal, USEPA is taking final action to approve this revision to the Wisconsin Administrative Code, section NR 154.015, Department Review Times, as a part of the Wisconsin SIP.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 337(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 23, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2)).

List of Subjects in 40 CFR Part 52

Intergovernmental relations, Air pollution control, Incorporated by reference.

Note.—Incorporation by reference of the State Implementation Plan for the State of Wisconsin was approved by the Director of the Federal Register on July 1, 1982.

Dated: November 28, 1986.

Lee M. Thomas,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart YY—Wisconsin

Title 40 of the Code of Federal Regulations, Chapter I, Part 52 is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.2570 is amended by adding new paragraph (c)(49) as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(49) Submittal from the State of Wisconsin, dated June 14, 1985, revising the Wisconsin Administrative Code to include section NR 154.015, Department Review Times.

(i) *Incorporation by reference.* (A) Letter from the Wisconsin Department of Natural Resources, dated June 14, 1985, and section NR 154.015 of the Wisconsin Administrative Code as a revision to the Wisconsin SIP, effective on May 1, 1985. Section NR 154.015 is entitled "Department Review Times", and it establishes time limits for review and action by the Wisconsin Department of Natural Resources on three types of air permit applications.

[FR Doc. 86-28742 Filed 12-22-86; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 52 and 81

[A-1-FRL-3113-5]

Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; Maine; Thomaston Attainment Status Designation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a request by the State of Maine to redesignate the Town of Thomaston from secondary nonattainment to attainment of the National Ambient Air Quality Standards (NAAQS) for total suspended particulates (TSP). Under section 107 of the Clean Air Act, the designation of attainment status may be changed where warranted by the available data. In conjunction with the redesignation, EPA is deleting the listing of Thomaston from the section in Maine's state implementation plan (SIP) regulating growth offsets in nonattainment areas. These actions acknowledge an improvement in air quality in the town of Thomaston due to an implemented control strategy at the Dragon Products Company, Inc., a cement manufacturer.

This action also corrects an error in listing the State of Maine in a July 12, 1985, notice at 50 FR 28544.

EFFECTIVE DATE: This action will be effective February 23, 1987, unless notice is received within 30 days from publication, that adverse or critical comments will be submitted.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, Rm. 2311, JFK Federal Bldg., Boston, MA 02203. Copies of the submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2311, JFK Federal Building, Boston, MA 02203; and the Main Department of Environmental Protection, Ray Building, Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Susan Kulstad (617) 565-3226; FTS 835-3226.

SUPPLEMENTARY INFORMATION: On February 20, 1986, the Commissioner of the Maine Department of Environmental Protection (DEP) submitted a request to redesignate the Town of Thomaston. The redesignation formally acknowledges the attainment of the secondary NAAQS for TSP in Thomaston.

Background

On March 3, 1978, EPA designated Thomaston as nonattainment for secondary TSP (43 FR 8964). A cement manufacturing facility then owned by Martin Marietta Cement and now owned and operated by Dragon Products Company, Inc. (Dragon Products) is the single significant source of TSP emissions in the designated area.

On February 19, 1980, EPA published approval of a plan for the attainment of the secondary TSP standards (45 FR 10766) that required controls on fugitive sources of particulate emissions at Dragon Products. This control plan employed the roll-back method to estimate a needed reduction in TSP emissions of 28%, and planned for an estimated 40% reduction (951 TPY) by requiring the following controls:

(1) Chemical stabilization of the quarry haul roads; (2) recycling and reclamation of dust in the kiln dust waste storage area; and (3) reclamation in the waste rock storage area.

In conjunction with the redesignation of Thomaston to attainment, Maine has revised its growth offsets regulation, 29 M.R.S.A. Chapter 113, by deleting Thomaston from Section 1.A. which lists the municipalities to which the regulation applies.

On July 12, 1985, at 50 FR 28544, EPA promulgated Federal visibility monitoring and new source review requirements for the State of Maine. These requirements were incorrectly listed in revisions to the Code of Federal Regulations for Maine. Today's notice corrects this error.

Redesignation

Upon a State's request for the redesignation of an area, EPA reviews all available information relative to the attainment status of the area. EPA will approve TSP redesignations where: (1) Eight consecutive quarters of the most recent, quality assured ambient air quality data reveal no violations of the TSP NAAQS; (2) an EPA-approved control strategy has been implemented; (3) emissions reductions are not temporary or merely the result of economic downturn; and (4) unallowable dispersion techniques are not responsible for the improvement in air quality.

The State's request addresses all of the EPA requirements, including: (A) Eleven consecutive quarters (January, 1983-September, 1985) of ambient air quality data from four TSP monitoring sites in Thomaston that show no violations of the secondary standards. Monitoring was conducted on a daily basis over this period.

(B) The control strategy for the area, which EPA approved on February 19, 1980, was required under the terms of an air emissions license issued by the Maine Department of Environmental Protection on March 28, 1979. The controls were implemented on significant fugitive emission sources at Dragon Products by early 1983. The State's submission contains a memorandum documenting that Dragon Products is complying with the control strategy.

A trend analysis of monitored air quality data in Thomaston performed by EPA clearly shows decreasing trends and supports the reduction estimate made in the attainment plan.

EPA's revised stack height regulations (50 FR 27892) are not an issue here since no stack heights at Dragon Products exceed the *de minimis* height of 65 meters and the attainment plan addresses only fugitive (non-stack) emissions.

EPA has reviewed the Maine DEP's request with its supporting data and has determined that the redesignation should be approved. For more details on EPA's review, see the technical support document available at the locations listed in the **ADDRESSES** section of this notice.

Associated SIP Action

EPA is approving the associated SIP revision to Maine's growth offsets regulation by deleting Thomaston from the list of the municipalities to which the regulation applies. Federal approval of this regulation that included the listing of Thomaston was published on February 19, 1980 (45 FR 10766).

The submission contains certification that opportunity for a public hearing was provided and includes a copy of the public notice inviting comment, as well as evidence that the hearing was held and no adverse comments were received.

Final Action

EPA is approving this redesignation to attainment of the secondary NAAQS for TSP in the Town of Thomaston, Maine, submitted on February 20, 1986.

Additionally, EPA is approving the associated SIP revisions to Maine's growth offsets regulation, 29 M.R.S.A. Chapter 113, by deleting Thomaston from the list in section 1.A. of the municipalities to which the regulation applies.

Since EPA views the redesignation and associated SIP action as noncontroversial, we are taking this action without prior proposal. This action will be effective February 23,

1987. However, if EPA is notified within 30 days of publication that adverse or critical comments will be submitted, we will withdraw this action and publish a new rulemaking proposing the action and establishing a comment period.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 23, 1987. This action may not be challenged later in proceedings to enforce its requirements.

(See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Air pollution control, Particulate matter.

40 CFR Part 81

Air pollution control.

Dated: October 5, 1986.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart U—Maine

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Section 52.1020 is amended by adding paragraph (c)(21) to read as follows:

§ 52.1020 Identification of plan.

* * * * *

(c) * * *

(21) A revision to approve the deletion of Thomaston from the list of applicable municipalities in Maine regulation 29 M.R.S.A. Chapter 113, submitted by the Commissioner on February 20, 1986.

3. Section 52.1031 is amended by adding the entry to the table in numerical order to read as follows:

§ 52.1031 EPA-approved Maine regulations.

* * * * *

TABLE 52.1031.—EPA-APPROVED REGULATIONS

State citation	Title and subject	Date adopted by State	Date approved by EPA	FEDERAL REGISTER citation	Section 52.1020	Comments and unapproved sections
113	Growth Offset Regulation.	12/18/85	12/23/86	51 FR	(c)(21)	Deletes Thomaston.

4. Section 52.1032 is added to read as follows:

§ 52.1032 Visibility protection.

(a) The requirements of section 169A of the Clean Air Act are not met because the plan does not include approvable procedures meeting the requirements of 40 CFR 51.305 and 51.307 for protection of visibility in mandatory Class I Federal areas.

(b) Regulations for visibility monitoring and new source review. The provisions of §§ 52.26 and 52.27 are hereby incorporated and made part of the applicable plan for the State of Maine.

§ 52.1031 [Duplicate section removed]

5. Part 52 is amended by removing the second § 52.1031 entitled "Visibility protection."

PART 81—[AMENDED]

Part 81 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. In § 81.320 the TSP table for Maine is amended by revising the entry for "AQCR 107 (Central ME)" to read as follows:

§ 81.320 Maine.

MAINE—TSP

Designated areas	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
AQCR 107 (Central ME):				
Augusta		X		
Lewiston/Auburn			X	
Rockland			X	
Remainder of AQCR				X

[FR Doc. 86-28750 Filed 12-22-86; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 201-1, 201-2, 201-23, and 201-24

[FIRMR Temp. Reg. 13]

Temporary Implementation of Title VIII, Paperwork Reduction Reauthorization Act of 1986, Pub. L. 99-500 Regarding Automatic Data Processing Equipment

AGENCY: Information Resources Management Service, GSA.

ACTION: Temporary regulation.

SUMMARY: This Temporary regulation implements applicable portions of the Paperwork Reduction Reauthorization Act of 1986. The statute provides a new definition of automatic data processing equipment under Pub. L. 89-306 (Brooks Act). The intent of this regulation is to implement the statute.

DATES: *Effective date:* December 23, 1986.

Expiration date: December 23, 1987.

Comments are due: March 23, 1987.

ADDRESS: Comments should be addressed to: General Services Administration (KMPR), Project 87.09T, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Roger W. Walker, William R. Loy, or Phillip R. Patton, Regulations Branch (KMPR), Office of Information Resources Management Policy, telephone (202) 566-0194 or FTS 566-0194.

SUPPLEMENTARY INFORMATION: 1. Concerns have been expressed as to whether the Brooks Act now requires Federal contractors acquiring ADP resources to obtain delegations of procurement authority ("DPAs") from the General Services Administration. As discussed in the conference report accompanying the new definition, contractors and vendors are not required as a result of the new definition to seek authorities from GSA before they acquire ADPE goods and services (Congressional Record H 10897, October 15, 1986). Rather, under the new definition, as under previous definitions, Federal agencies must have GSA authority to enter into contracts for ADP services.

2. The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adequate information concerning the need for, and the consequences of the rule. The rule is written to ensure maximum benefits to Federal agencies. This is a Governmentwide management regulation that will have little or no cost effect on society. The temporary rule is therefore not likely to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

3. Pursuant to 41 U.S.C. 418b(d), the publication of a proposed rule has been waived because of urgent and compelling circumstances requiring the issuance of a temporary regulation to immediately implement applicable portions of Title VIII of Pub. L. 99-500, which was effective as of October 18, 1986.

List of Subjects in 41 CFR Parts 201-1, 201-2, 201-23 and 201-24

Computer technology, Government procurement, Government property management, Information resources activities, Competition.

In 41 CFR Chapter 201, the following temporary regulation is added to Appendix A at the end of the chapter.

[FIRMR Temporary Regulation 13]

November 28, 1986.

To: Heads of Federal agencies.

Subject: FIRMR Implementation of the "Paperwork Reduction Reauthorization Act of 1986" (Title VIII, Public Law 99-500).

1. *Purpose.* This regulation implements certain provisions of Title VIII—The Paperwork Reduction Reauthorization Act of 1986, Pub. L. 99-500 signed October 18, 1986.

2. *Effective date.* This temporary regulation is effective December 23, 1986. The provisions shall be applied to solicitations for the acquisition of certain automatic data processing equipment issued on and after the effective date. The delegations of authority provision addressed in paragraph 5c. applies retroactively to the enactment of Pub. L. 99-500; i.e., October 18, 1986.

3. *Expiration date.* This temporary regulation expires December 23, 1987.

4. *Background.* Among other purposes, Title VIII of Pub. L. 99-500 provides a statutory definition of automatic data processing equipment under Public Law 89-306 (Brooks Act), as amended (40 U.S.C. 759). (See Congressional Record, Part II, H 10701, October 15, 1986.) Pending a more comprehensive rulemaking, the intent of this temporary regulation is to promptly implement this legislation.

5. *Explanation of changes.*

PART 201-1—[AMENDED]

a. The following changes are made in Part 201-1.

(1) Section 201-1.000-1 is amended by revising paragraph (c) to read as follows:

§ 201-1.000-1 Information resources management.

* * * * *

(c) The Paperwork Reduction Reauthorization Act of 1986, Pub. L. 99-500 [44 U.S.C. 3502(13)] defines the term "information resources management" to mean ". . . the planning, budgeting, organizing, directing, training, promoting, controlling, and management activities associated with the burden, collection, creation, use, and dissemination of information by agencies, and includes the management of information and related resources such as automatic data processing equipment (as such term is defined in section 111(a) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(a))." The Office of Management and Budget has broad Governmentwide authorities and functions [44 U.S.C. 3504] for accomplishing all purposes of the Act.

* * * * *

(2) Section 201-1.102-3 is amended by removing and reserving the text to read as follows:

§ 201-1.102-3 Exclusions [Reserved]

(3) Section 201-1.103 is amended by revising paragraph (b) to read as follows (current 201-1.103(b)(2) is redesignated as 201-24.202(a) in the amendment in paragraph 5b of this temporary regulation):

§ 201-1.103 Applicability.

* * * * *

(b) *ADP activities.* (1) The FIRMR applies to the management, acquisition, and use of automatic data processing equipment as the term is defined in Pub. L. 99-500 (40 U.S.C. 759(a)(1)). For the purpose of this § 201-1.103(b), the term "automatic data processing equipment" means any equipment or interconnected system or subsystems of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching interchange, transmission, or reception of data or information—

(i) By a Federal agency, or
(ii) Under a contract with a Federal agency which—
(A) Requires the use of such equipment, or
(B) Requires the performance of a service or the furnishing of a product which is performed or produced making significant use of such equipment.
(2) The term automatic data processing equipment includes—
(i) Computers;
(ii) Ancillary equipment;
(iii) Software, firmware, and similar procedures;
(iv) Services, including support services; and
(v) Related resources as defined by regulations issued by the Administrator of General Services.
(3) The term automatic data processing equipment does not apply to—
(i) Automatic data processing equipment acquired by a Federal contractor which is incidental to the performance of a Federal contract;
(ii) Radar, sonar, radio, or television equipment;
(iii) The procurement by the Department of Defense of automatic data processing equipment or services if the function, operation, or use of which—
(A) Involves intelligence activities;
(B) Involves cryptologic activities related to national security;
(C) Involves the command and control of military forces;
(D) Involves equipment which is an integral part of a weapon or weapons system; or
(E) Is critical to the direct fulfillment of military or intelligence missions, provided that this exclusion shall not include automatic data processing equipment used for routine administrative and business applications such as payroll, finance, logistics, and personnel management; or
(iv) The procurement of automatic data processing equipment or services by the Central Intelligence Agency.
(4) Automatic data processing equipment as described in paragraph (b) of this § 201–1.103 is subject to GSA's exclusive procurement authority under 40 U.S.C. 759.

* * * * *

PART 201-204—[AMENDED]

§ 201-24.2.2 [Amended]

b. The following change is made in Subpart 201–24.2. Section 201–24.202 is amended by redesignating existing paragraphs (a) and (b) as paragraphs (b) and (c), respectively, and by redesignating the existing codified paragraph (b)(2) of § 201–1.103 as paragraph (a) of § 201–24–202.

c. *Delegations of authority.* Paragraph 5a(3). of this temporary regulation (new FIRMR § 201–1.103(b)) makes the FIRMR applicable to "automatic data processing equipment" as defined in Pub. L. 99–500. Agencies shall continue to follow existing FIRMR provisions to the extent that the FIRMR, prior to the enactment of Pub. L. 99–500, required a specific acquisition delegation of procurement authority (see FIRMR Part 201–23). In all other cases where the Brooks Act, as amended, is now applicable to the acquisition, agencies are hereby granted a blanket regulatory delegation of procurement authority.

6. *Agency actions.* Pending the issuance of an amendment of the FIRMR, agencies shall follow the policies and procedures in this temporary regulation.

7. *GSA actions.* GSA will initiate rulemaking activity to amend the FIRMR to implement, on a comprehensive basis, applicable portions of Title VIII of Pub. L. 99–500.

8. *Information and assistance.* Inquiries regarding this regulation should be directed to Roger W. Walker, William R. Loy, or Phillip R. Patton, Regulations Branch, Office of Information Resources Management Policy, Telephone (202) 566–0194 or FTS, 566–0194.

9. *Submission of comments.* The views of agencies and other interested parties are invited regarding the effect or impact of this regulation and the policy and procedures that should be adopted in the future. All comments received within 90 days of the publication of this regulation in the **Federal Register** will be considered. Comments should be addressed to the General Services Administration (KMPR), Project 87.09T, Washington, DC 20405.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c) and Sec. 101(f), 100 Stat. 2128; 40 U.S.C. 751(f))

T.C. Golden,

Administrator of General Services.

[FR Doc. 86–28752 Filed 12–22–86; 8:45 am]

BILLING CODE 6820–25–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 1

[FCC 86–516]

Practice and Procedure; FCC Record

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the Commission's rules by replacing the FCC Reports with the FCC Record as the official source of FCC decisions. This document will serve as the archival source of the Commission's actions in conformance with section 4(m) of the Communications Act of 1934. The action also amends the Commission's rules to indicate that only adjudicatory decisions and orders are mailed directly to the parties.

EFFECTIVE DATE: December 23, 1986.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Brent Weingardt, tele: 202–632–3906.

SUPPLEMENTARY INFORMATION:

Order

Adopted: November 14, 1986.

Released: December 9, 1986.

By the Commission.

1. By this Order we amend our rules to change the name of the Commission's official published record of decisions, the *FCC Reports*, to the *FCC Record*. In addition, we expand the contents of this document to reflect its increased role in our public information program. Finally, we amend 0.445(a) of the rules to indicate that only adjudicatory opinions and orders are mailed to the parties.[1]

2. Certain decisions of the FCC are currently published in the *FCC Reports*. This document now serves as the official citable source to Commission decisions. *See* 47 CFR 1.14. This publication is intended to serve as an archival source of the Commission's actions in conformance with the section 4(m) mandate of the Communications Act of 1934.[2] The *FCC Reports* also complements the mandatory publication of certain Commission actions in the **Federal Register** as required by the Administrative Procedure Act. *See* 5 U.S.C. 552(a) and 553(b).

3. Because of budgetary constraints, in recent years the *FCC Reports* has contained only documents with precedential or historical significance. Today, many decisions of the Commission are available only in the **Federal Register** or private sector publications. In response to the recent Gramm-Rudman-Hollings budget cuts, the Commission further limited the *FCC Reports* to documents published in summary form in the **Federal Register** and not published in a "nationally distributed, comprehensive reporter of FCC decisions."[3]

[1] By a separate decision we will be acting on Petitions for Reconsideration to our decision to publish summaries of rule making documents and policy statements in the **Federal Register**. *See* note 3 *infra*. To the extent that the rules discussed herein impact on the issue of **Federal Register** summaries, our Memorandum Opinion and Order on that subject should be reviewed.

[2] Section 4(m) reads: "The Commission shall provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use, and such authorized publications shall be competent evidence of the reports and decisions of the Commission therein contained in all courts of the United States and of the several states without further proof or authentication thereof." 47 U.S.C. 154(m).

[3] *See* Commission Order of February 21, 1986, FCC 86–86, 51 FR 7443 (March 4, 1986).

4. The new official source of Commission decisions—the *FCC Record*—will provide the public with a comprehensive, timely, and cost effective source of FCC actions.[4] The *FCC Record* will contain all texts released to the public on a daily basis through the Office of Congressional and Public Affairs. In addition, it will contain certain public notices, speeches, and staff papers. The publication will be mailed to subscribers every two weeks in soft cover form.[5] Each biweekly edition will also contain a table of contents and an index based on the Commission's rules as set out in the Code of Federal Regulations (a consolidated index will be published on a periodic basis).

5. Because of the expense of mailing opinions and decisions directly to the parties, we are amending 0.445(a) of the rules to state that only adjudicatory opinions and orders are mailed to the parties. Parties and other interested members of the public will continue to have access to Commission opinions and orders through several sources. The "Daily Releases" from OCPA, which include all documents made available to the public, are available for purchase from private contractors or for viewing and copying in the FCC library or our field offices. Decisions may also be viewed in the Public Reference Room at our Washington headquarters. Documents are also available in the **Federal Register** (in summary form), and, in the near future, in the new *FCC Record*.

6. Prior notice and public comment procedures are not required because this action pertains to procedure and practice. *See* 5 U.S.C. 553(b)(3)(A)

7. Because a notice of proposed rule making is not required, an initial and final regulatory flexibility analysis is not required. *See* the Regulatory Flexibility Act of 1980, 5 U.S.C. 603 and 604.

8. Accordingly, it is ordered, pursuant to authority provided by sections 4(i), 4(j), 4(m), and 303(r) of the Communications Act, 47 U.S.C. 154(i), 154(j), 154(m), and 303(r), Parts 0 and 1 of the Commission's Rules are amended as shown below.

9. It is further ordered that this Order is effective upon publication in the **Federal Register** in order to allow the Commission to immediately provide the public with a more timely and cost effective source of its decisions.

List of Subjects

47 CFR Part 0

Commission organization.

47 CFR Part 1

Practice and procedure.

Rule Changes

Parts 0 and 1 of the Code of Federal Regulations are amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read.

Authority: 47 U.S.C. 154, 303, unless otherwise noted. Implement; 5 U.S.C. 552, unless otherwise noted.

2. Section 0.416 is revised in its entirety to read as follows:

§ 0.416 The Federal Communications Commission Record.

Texts adopted by the Commission or a member of its staff on delegated authority and made available to the public through the Office of Congressional and Public Affairs are published in the FCC Record. The FCC Record is published biweekly in pamphlet form. The pamphlets are available on a subscription basis from the Superintendent of Documents. Each biweekly pamphlet contains a table of contents and current index. A consolidated index is published on a periodic basis.

3. Section 0.445 is amended by revising paragraphs (a), (b), (d), (e), and (f), to read as follows:

§ 0.445 Publication, availability and use of opinions, orders, policy statements, interpretations, administrative manuals, and staff instructions.

(a) Adjudicatory opinions and orders of the Commission, or its staff acting on delegated authority, are mailed to the parties, and as part of the record, are available for inspection in accordance with § 0.453 and § 0.455.

(b) Texts adopted by the Commission or a member of its staff on delegated authority and made available to the public through the Office of Congressional and Public Affairs are published in the FCC Record. Older materials of this nature are available in the FCC Reports. In the event that such older materials are not published in the FCC Reports, reference should be made to the **Federal Register** or Pike and Fischer Radio Regulation.

* * * * *

(d) Formal policy statements and interpretations designed to have general applicability and legal effect are published in the **Federal Register**, the FCC Record, FCC Reports, or Pike and Fischer. Commission decisions and other Commission documents not entitled formal policy statements or interpretations may contain substantive interpretations and statements regarding policy, and these are published as part of the document in the FCC Record, FCC Reports or Pike and Fischer. General statements regarding policy and interpretations furnished to individuals, in correspondence or otherwise, are not ordinarily published.

(e) If the documents described in paragraphs (a) through (d) of this section are published in the **Federal Register**, the FCC Record, FCC Reports, or Pike and Fischer Radio Regulation, they may be relied upon, used or cited as precedent by the Commission or private parties in any manner. If they are not so published, they may not be relied upon, used or cited as precedent, except against persons who have actual notice of the document in question or by such persons against the Commission. No person is expected to comply with any requirement or policy of the Commission unless he has actual notice of that requirement or policy or a document stating it has been published as provided in this paragraph. Nothing in this paragraph, however, shall be construed as precluding a reference to the rationale set forth in a recent document that is pending publication if the requirment or policy to which the rationale relates is contained in a published document or if actual notice of that requirement or policy has been given.

(f) The **Federal Register**, the FCC Record, FCC Reports and Pike and Fischer Radio Regulation are indexed. If the documents described in paragraphs (a)–(d) of this section are not published, they are neither indexed nor relied upon, except as provided in paragraph (e) of this section.

PART 1—PRACTICE AND PROCEDURE

4. The authority citation for Part 1 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 145, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

5. Section 1.14 is revised to read as follows:

[4] Documents released to the public prior to October 1, 1986 may be cited to the *FCC Reports*, first or second series.

[5] The *FCC Record* will be available by subscription from the Superintendent of Documents for $173. New subscribers should direct inquiries to the Government Printing Office, Superintendent of Documents, Washington, DC 20402–9371b (202) 783–3238. Current subscribers to the *FCC Reports* have been or will be contacted with details on how to switch to the *FCC Record*.

§ 1.14 Citation of Commission documents.

The appropriate reference to the FCC Record shall be included as part of the citation to any document that has been printed in the Record. The citation should provide the volume, page number and year, in that order (e.g., 1 FCC Rcd. 1 (1986). Older documents may continue to be cited to the FCC Reports, first or second series, if they were printed in the Reports (e.g., 1 FCC 2d 1 (1965)).

Federal Communications Commission.
William J. Tricarico,
Secretary.

[FR Doc. 86-28757 Filed 12-22-86; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 43

[CC Docket No. 85-346; FCC 86-512]

Reports of Communication; Common Carriers and Certain Affiliates; Reduction in Reporting Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The FCC has reduced or eliminated certain carrier reporting requirements no longer necessary for regulatory purposes. These rule revisions eliminate the requirement that non-dominant carriers subject to forbearance file with the FCC contracts and agreements and reports of negotiations regarding foreign communication matters, reports regarding services not covered by a tariff, and reports of services rendered free or at reduced rates.

EFFECTIVE DATE: February 9, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jacqueline Holmes or Thomas Elcan, Common Carrier Bureau, (202) 632-6917 or 632-6550.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission Report and Order, CC Docket No. 85-346, adopted November 12, 1986, and released December 4, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

On November 21, 1985, the FCC released a Notice of Proposed Rulemaking (*Notice*) in CC Docket 85-346, 102 FCC 2d 531 (1985), proposing to revise Part 43 of the Rules, 47 CFR Part 43, to eliminate the requirement that contracts be filed by non-dominant carriers treated with forbearance and that reports of negotiations regarding foreign communications matters, reports regarding services not covered by a tariff, and reports of services rendered free or at reduced rates be filed by all carriers. By this Report and Order, the FCC adopts the proposals with certain modifications.

The text of the *Notice* proposes to eliminate contract filing requirements for non-dominant carriers treated with forbearance so as to limit the routine filing of contracts not useful to us in the performance of monitoring. Because the material filed by carriers subject to streamlined regulations may be useful in the performance of our monitoring duties, we revise proposed § 43.51 to clarify that only non-dominant carriers treated with forbearance are not required to file contracts described in that section. With respect to contracts between telephone carriers and connecting carriers, since our intent is to reduce unnecessary routine reporting requirements and administrative burdens, we modify proposed § 43.51(a)(1) to continue the filing exemption now allowed by existing § 43.51(a)(2). The proposed revisions also retain the requirement that carriers file contracts resulting from negotiations involving foreign communications matters and, within 30 days, reports on international toll arrangements, but eliminate the filing requirement for reports of negotiations regarding foreign communications matters. In addition, this Order eliminates the filing requirements of §§ 43.74 and 43.54 related to reports of services not covered by a tariff, services rendered free or at reduced rates and services performed by telegraph carriers.

Ordering Clauses

Accordingly, it is ordered, in accord with sections 2(a), 4(i), 4(j), 201-105, 211, 218, and 220 of the Communications Act of 1934, 47 U.S.C. 152(a), 152(i), 154(j), 201-205, 211, 218, and 220, that Part 43 of the Commission's Rules and Regulations, 47 CFR Part 43, is amended as specified below.

It is further ordered that CC Docket No. 85-346 is terminated.

List of Subjects

47 CFR Part 31

Communication common carriers, Reporting and recordkeeping requirements, Telephone.

47 CFR Part 69

Communicaton common carriers, Reporting and recordkeeping requirements, Telephone.

William J. Tricarico,
Secretary.

PART 43—[AMENDED]

Part 43, Title 47, Chapter I of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 43 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted.

2. Section 43.51 is revised to read:

§ 43.51 Contracts and concessions.

(a) Any communications common carrier engaged in domestic or foreign communication, or both, which has not been classified as non-dominant pursuant to § 61.21(e) of the Commission's Rules, 47 CFR 61.12(e), is not treated under the regulatory forbearance policies established by the Commission, and which enters into a contract with another carrier must file with the Commission, within thirty (30) days of execution, a copy of each contract, agreement, concession, license, authorization or other arrangement to which it is a party and amendments thereto with respect to the following: (1) The exchange of services; (2) except as provided in paragraph (c) of this section, the interchange or routing of traffic and matters concerning rates, division of tolls, or the basis of settlement of traffic balances; and (3) the rights granted to the carrier by any foreign government for the landing, connection, installation, or operation of cables, land lines, radio stations, offices, or for otherwise engaging in communication operations.

(b) If the agreement referred to in this section is made other than in writing, a certified statement covering all details thereof must be filed by at least one of the parties to the agreement. Each other party to the agreement which is also subject to these provisions may, in lieu of also filing a copy of the agreement, file a certified statement referencing the filed document. The Commission may, at any time and upon reasonable request, require any communication common carrier classified as non-dominant and treated with forbearance, and therefore not subject to the provisions of this section, to submit the documents referenced herein.

(c) With respect to contracts coming within the scope of paragraph (a)(2) of this section between subject telephone carriers and connecting carriers, except those contracts related to communications with foreign or overseas points, such documents shall not be filed with the Commission; but each subject telephone carrier shall maintain a copy of such contracts to which it is a party in appropriate files at a central location upon its premises, copies of which shall be readily accessible to Commission staff and members of the public upon reasonable request therefor; and upon request by the Commission, a subject telephone carrier shall promptly forward individual contracts to the Commission.

§ 43.52 [Removed]

3. Section 43.52 is removed.

4. Section 43.53 is revised to read:

§ 43.53 Reports regarding division of international toll communication charges.

(a) Each communication common carrier engaged directly in the transmission or reception of communications between the United States and any foreign jurisdiction must file a report with the Commission within thirty (30) days of the date of any arrangement concerning the division of the total toll charges, including accounting rate, settlement rate and currency data, on such communications other than transiting. A carrier first becoming subject to the provisions of this section must, within thirty (30) days thereafter, file with the Commission a report covering any such existing arrangements.

(b) In the event that any change is made which affects data previously filed, a revised page incorporating such change or changes must be filed with the Commission not later than thirty (30) days from the date the change is made, provided, however, that any change in the amount of foreign participation in charges for outbound communications or in the respondent's participation in charges for inbound communications must be filed not later than thirty (30) days from the date the change is agreed upon.

(c) A single copy of each such report must be filed in a format that contains a clear, concise and definite statement of the arrangements.

§ 43.54 [Removed]

5. Section 43.54 is removed.

§ 43.74 [Removed]

6. Section 43.74 is removed.

[FR Doc. 86-28758 Filed 12-22-86; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

AM Groundwave Curves

AGENCY: Federal Communications Commission.

ACTION: Order deferring effective date.

SUMMARY: By this action, the Commission defers, to February 1, 1987, the effective date of the new metric AM groundwave curves found in 47 CFR 73.184. Because of unexpected delays in making those curves and associated materials available, there is insufficient time for interested station licensees and applicants to prepare to begin using the new curves by the previously established effective date of January 1, 1987. All studies filed with the FCC on or after February 1, 1987 must use the new curves.

EFFECTIVE DATE: February 1, 1987.

ADDRESS: Federal Communications Commission, Washington, DC, 20554.

FOR FURTHER IMFORMATION CONTACT: William Meintel, Policy & Rules Division, Mass Media Bureau, (202) 254-3394.

SUPPLEMENTARY INFORMATION:

List of Subject affected in 47 CFR Part 73

Radio broadcast services.

Groundwave field strength graphs, 47 CFR 73.184 (MM Docket No. 84-752, published May 2, 1985 (50 FR 18818)).

James C. McKinney,
Chief, Mass Media Bureau.

[FR Doc. 86-28759 Filed 12-22-86; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-153; RM-5185]

Radio Broadcasting Services; Kingsville, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 248C1 for Channel 249A at Kingsville, Texas, and modifies the license of Station KDUV (FM) to specify operation on the new frequency, at the request of Whitlock Communications, Inc. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 22, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-153, adopted October 30, 1986, and released December 8, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202, paragraph (b), the Table of FM Allotments is amended, under Texas, by revising Channel 249A to 248C1 for Kingsville.

Ralph A. Haller,
Acting Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-28761 Filed 12-22-86; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 97

Radio Services, Special; Announcement of the 1987 Maximum Reimbursement Allowed for an Amateur Operator Examination

AGENCY: Federal Communications Commission.

ACTION: Notice announcing reimbursement fee.

SUMMARY: The public notice announces the maximum allowable reimbursement fee that may be paid by an examinee to volunteer examiners and volunteer-examiner coordinators for out-of-pocket expenses in preparing, processing or administering an examination for an Amateur service license above Novice operator. This action is necessary to comply with section 4(f), 4(j), of the Communications Act of 1934, as amended which requires that the reimbursement fee be adjusted annually for changes in the Department of Labor Consumer Price Index. The effect of the action is to establish the maximum

reimbursement for the calender year 1987.

EFFECTIVE DATE: January 1, 1987.

FOR FURTHER INFORMATION CONTACT: John Small, Private Radio Bureau, (202) 632–4964.

William J. Tricarico,
Secretary, Federal Communicotions Commission.

Maximum Fee for Amateur Operator Examination

Effective January 1, 1987 the maximum allowable reimbursement for out-of-pocket costs for an amateur operator examination will be $4.37. This amount is based on a 1.87% increase in the Department of Labor Consumer Price Index between October 1, 1985 and September 30, 1986.

Volunteer examiners and volunteer-examiner coordinators may be reimbursed by examinees for out-of-pocket expenses incurred in preparing, processing or administrating examinations for Technician, General, Advanced, or Amateur Extra operator licenses. The reimbursement fee from any examinee for any one examination at a particular examination session, regardless of the number of examination elements taken, must not exceed $4.37.

This announcement is made pursuant to § 97.36 of the FCC rules for the Amateur service.

[FR Doc. 86–28760 Filed 12–22–86; 8:45 am]
BILLING CODE 8712–01–M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 501, 513, 552 and 553

[APD 2800.12 CHGE 35]

General Services Administration Acquisition Regulation; Miscellaneous Changes

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR), Chapter 5, is amended (1) to revise Part 501 to limit the dollar value of purchases that can be paid through the imprest fund and made by individuals who are not warranted contracting officers, to delete references to the National Archives which is no longer part of GSA, to reflect current organizational titles and to make minor editorial changes for clarity; (2) to revise Part 513 to clarify the requirement for obtaining approval of a warranted contracting officer before placing orders of $150 or more under Blanket Purchase Agreements (BPA's), to authorize contracting officers to deviate from the FAR requirements for invoicing under BPA's under certain circumstances, to provide guidance on processing invoices under BPA's, to establish a per transaction limitation of $500 for imprest fund payments charged to the Federal Buildings Fund and to provide a per transaction limitation of $150 ($300 under emergency conditions) for all other imprest fund payments, to provide for use of the Standard Form 1164, Claim for Reimbursement for Expeditures on Official Business or the Standard Form 1165, Receipt for Cash—Subvoucher, as the authorized purchase requisition under FAR 13.405(a), to increase the dollar limitation for use of the certified invoice procedures to $2,000, to emphasize the need for soliciting competition when making purchases over $1,000 using certified invoice procedures and to emphasize the need to time-stamp invoices upon receipt and to forward the invoices for payment within 5 workdays; (3) to revise Part 552 to amend the text of the clauses at 552.212–72, Availability for Inspection and Testing, and Shipment/Delivery, to delete references to the Quality Approved Manufacturers Agreement and substitute a reference to the Contractor Inspection Requirements clause; and (4) to revise Part 553 to illustrate the November 1986 edition of the GSA Form 3504, Service Contract Clauses, to illustrate the May 1986 edition of the GSA Form 300, Order for Supplies and Services, to add instructions for completing the GSA Form 300, to illustrate the August 1986 edition of the GSA Form 2010, Small Purchase Tabulation Source List/Abstract and to illustrate the November 1986 edition of the GSA Form 3521, Blanket Purchase Agreement. Acquisition Circulars AC–86–1 and AC–86–4 are canceled. The intended effect is to improve the regulatory coverage and provide uniform procedures for contracting under the regulatory system.

EFFECTIVE DATE: December 15, 1986.

FOR FURTHER INFORMATION CONTACT: Ms. Ida M. Ustad, Office of GSA Acquisition Policy and Regulations (VP), (202) 566–1224.

SUPPLEMENTARY INFORMATION:

Background

On August 14, 1986, the General Services Administration (GSA) published in the **Federal Register** (51 FR 29131) GSAR Notice No. 5–147 inviting comments from interested parties on these changes to the regulation. No public comments were received. Comments from various GSA offices have been reconciled and incorporated, when appropriate, in the final rule.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain procurement regulations from Executive Order 12291. The exemption applies to this rule. The GSA certifies that this document will not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rule primarily relates to the internal operations of the agency and will not have a significant impact on contractors and offerors. Therefore, no flexibility analysis has been prepared. The rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

List of Subjects in 48 CFR Parts 501, 513, 552 and 553

Government procurement.

1. The authority citation for 48 CFR Parts 501, 513, 552 and 553 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

2. Section 501.602–1 is amended by revising the GSAR section referenced in the paragraph to read as follows:

501.602–1 Authority.

Contracting officers designated by name on Standard Form 1402, Certificates of Appointment, are authorized to exercise contracting officer authority, subject to all requirements and limitations set forth in the certificate of appointment (501.603–3(b)) and existing delegations of authority. Contracting officers shall exercise reasonable care, skill and judgement in all actions.

3. Section 501.603 is amended by revising paragraphs (a), (b)(1), (b)(2) (i) and (ii), by deleting paragraph (b)(2)(viii), by renumbering paragraphs (b)(2) (ix) thru (xiii) as (b)(2) (viii) thru (xii), and by revising paragraphs (c)(2), (c)(4) and (c)(6) to read as follows:

501.603 Selection, appointment, and termination of appointment.

(a) *General.* This section establishes the uniform policy and procedures for warranting contracting officers (CO). The objective of the COWP is to appoint as contracting officers only those officials who are fully qualified to obligate the Government to the expenditure of public funds for the acquisition of property or services,

based on a valid organizational need and appropriate workload. In order to provide for signatures on obligating documents to be checked by the appropriate Finance Division, a GSA Form 19, Designation of Authorized Representative, must be submitted to the appropriate Finance Division upon receipt of a Standard Form 1402, Certificate of Appointment. In the event of a change, suspension, or termination of a contracting officer's appointment, the appropriate Finance Division must be promptly notified. No obligation or authorization for the expenditure of funds will be accepted by the Finance Division unless a GSA Form 19 is on file.

(b) *Applicability.* (1) The GSA Contracting Officer Warrant Program applies to all services, staff offices, and regions, except for those contracting officers appointed pursuant to the Inspector General Act (Pub. L. 95–452).

(2) A warrant is not required for:

(i) Individual purchases under $150, regardless of the method of procurement;

(ii) Any imprest fund transactions less than $150 (purchases of $150 or more must be approved in advance by a contracting officer unless the transaction is otherwise exempt from the warrant program by this GSAR 501.603(b)(2));

* * * * *

(viii) The processing/procuring of a telephone service authorization or a communication service authorization issued to regulated/public utility common carriers. Emergency communications coordinators shall be authorized in their warrants to procure emergency communications equipment and services during Presidentially declared emergency or disasters;

(ix) The ordering by inventory managers of stock replenishment under established source contracts that are machine loaded. Current GSA Form 19 signature cards must be on file in the appropriate Finance Division;

(x) Delivery orders (machine generated) for motor vehicle procurements that are written against definite quantity contracts need not be signed as the contract is the obligating document in this case;

(xi) Entering into a Memorandum of Agreement with another Federal agency and to authorize the transfer of funds to that agency for services rendered; and

(xii) The authorization of interagency transfers of funds via a GSA 2957, Work Authorization.

(c) *Definitions.*

* * * * *

(2) "Designating official" means the Administrator or Associate Administrator for Acquisition Policy, who is authorized to appoint contracting officers in GSA.

(3) * * *

(4) "Delivery order" means placing an order for supplies and/or services against an already established contract under the terms and conditions of the established contract.

(5) * * *

(6) "GSA established source contracts" means contracts established by GSA and other Federal agencies when GSA is required by regulation to use those contracts as Government supply sources. (See Part 8 of the FAR.)

4. Section 501.603–1 is revised to read as follows:

501.603–1 General.

The authority to appoint contracting officers is delegated to the Associate Administrator for Acquisition Policy. See the Delegation of Authority Manual (ADM P 5450.39B).

5. Section 501.603–2 is amended by revising paragraph (c) to make the last sentence a separate paragraph designated as paragraph (d) to read as follows:

501.603–2 Selection.

* * * * *

(c) Warrant boards will evaluate candidates for CO warrants based on supervisory recommendations, experience, education, training, business acumen, judgement, character, ethics, and reputation. Warrant boards may establish additional qualification requirements, as appropriate. Minimum qualifications of contracting officers (purchasing contracting officers (PCO's) and administrative contracting officers (ACO's)) are based on a combination of training and experience with consideration of relevant academic credit or degrees earned.

(d) The following warrant levels are equated with dollar value of individual transactions (e.g., contract, modification, supplemental agreement, etc.) and not the aggregate contract value.

* * * * *

6. The table of contents for Part 513 is amended by adding two new entries to read as follows:

PART 513—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE AGREEMENTS

Subpart 513.4—Imprest Fund

Sec.
513.404 Conditions for use.
513.405 Procedures.

7. Section 513.203–1 is revised to read as follows:

513.203–1 General.

(a) *Provisions required.* Blanket purchase agreements (BPA's) must be documented on a purchase order form or on a GSA 3521, Blanket Purchase Agreement. In addition to the requirements of FAR 13.203–1(j), each blanket purchase agreement should when appropriate, specify the geographic area to be served under the BPA.

(b) *Requesting deliveries.* Only the contracting officer (CO) and officials authorized by a CO and designated in the BPA are permitted to request deliveries. Employees designated in the BPA to place orders, who are not warranted contracting officers, may not place orders of $150 or more without first obtaining the approval of a warranted contracting officer. Delivery (call) orders will be made by telephone or in person. Before placing calls against the BPA, each requirement must be screened for availablility from mandatory sources of supply. Necessary controls must be maintained by the person placing call orders under the BPA to ensure that any limitation stated therein is not exceeded. The BPA identification and requisition number, if any, should be specified each time a delivery is requested.

(c) *Delivery or service tickets.* Each delivery ticket, in addition to the requirements of FAR 13.203–1(j)(6), must contain the requisition number, if any, and the name of the person placing the call. Upon receipt of items or services ordered, the delivery ticket must be signed and dated by the individual receiving them, and one copy of the delivery ticket provided to the supplier, and one copy retained by the receiving office.

(d) *Invoicing.* One of the invoicing statements outlined in FAR 13.203(j)(7) must be included in the BPA. If a supplier will not accept a BPA with any of the FAR invoicing statements, the contracting officer is authorized to deviate from FAR 13.203(j)(7) in order to permit the submission and payment of invoices for each delivery under the BPA. Before including such a statement in a BPA, the contracting officer must make every effort to get the supplier to accept one of the FAR invoicing statements. The BPA file should document the contracting officer's efforts and the suppliers refusal to accept the FAR invoicing statements when the BPA is written to authorize submission and payment of invoices for individual deliveries.

(e) *Processing invoices.* Invoices must be time-stamped by the ordering office to indicate the date of receipt. Unless

the BPA provides for the accumulation of invoices as outlined in FAR 13.203(j)(7)(iii), the ordering office must forward the invoice to the appropriate Finance Division for payment within 5 workdays of receipt of the invoice or acceptance of the supplies or services, whichever is later. If the BPA provides for accumulation of invoices by the ordering office for a specified period, the ordering office must forward the accumulated invoices to the appropriate Finance Division for payment within 5 workdays after the specified period for accumulation. All invoices should be marked to indicate that purchases were made under a BPA.

8. Section 513.403 is revised to read as follows:

513.403 Agency responsibilities.

Imprest fund cashiers must be designated and will function in accordance with HB, Accounting Users Guide—Imprest Fund and Travelers Checks (COM P 4268.1) and the requirements of FAR Subpart 13.4.

9. Section 513.404 is added to read as follows:

513.404 Conditions for use.

The per transaction spending limitation for cash payments made through imprest funds for purchases charged to the Federal Buildings Fund (192X) is $500. The per transaction limitation for all other payments made through the imprest funds is $150 ($300 under emergency conditions). In addition, the conditions for use of imprest funds outlined in FAR 13.404 (b) and (c) apply.

10. Section 513.405 is added to read as follows:

513.405 Procedures.

The SF 1164, Claim for Reimbursement for Expenditures on Official Business, or SF 1165, Receipt for Cash—Subvoucher, will serve as the authorized purchase requisition referred to in FAR 13.405(a) for purchases made by offices maintaining their own imprest funds, e.g., Public Building Service Field Offices. Purchase requisitions such as the GSA Form 49, Requisition for Equipment, Supplies or Services, may be used if required by contracting activity directives. If the GSA Form 49 is used, it must be endorsed "Payment to be made from imprest fund."

11. Section 513.501 is revised to read as follows:

513.501 General.

The Finance Divisions will not accept facsimile signatures on machine-produced purchase orders to obligate funds. An original (carbon copy but not photocopied) handwritten signature is required for obligation purposes on individual purchase orders or an original handwritten signature on a listing that references individual machine-produced purchase orders and dollar amounts.

12. Section 513.505–2 is amended by revising paragraphs (a) and (b) to read as follows:

513.505–2 Agency order forms in lieu of Optional Forms 347 and 348.

(a) Unless another form is prescribed, the GSA Form 300, Order for Supplies and Services, must be used instead of the OF 347, Order for Supplies or Services, when making purchases payable through the National Electronic Accounting and Reporting (NEAR) System. The GSA Form 300 must be prepared and processed in accordance with the instructions at GSAR 553.370–300–I.

(b) The GSA Form 1458, Motor Vehicle Shop Work Order, Repair and Purchase Order, shall be used instead of the OF 347, Order for Supplies or Services, when making purchases in connection with the maintenance, servicing or repair of GSA fleet management vehicles.

* * * * * *

13. Section 513.505–3 is amended by revising paragraph (b) to read as follows:

513.505–3 Standard Form 44, Purchase Order-Invoice-Voucher.

(a) * * *

(b) *Authorization for using the form.* Where necessary, designated employees may be authorized to make small purchases under $150 using Standard Form 44 in accordance with this subpart. Purchases of $150 or more using SF 44 may be made only by contracting officers.

* * * * * *

14. Section 513.7001 is amended by revising paragraph (a) and subparagraph (b)(1), by renumbering subparagraphs (d) (2) and (3) as (3) and (4), by adding a new paragraph (d)(2), and by amending paragraph (g) to read as follows:

513.7001 Certified invoice procedure.

(a) When advantageous to the Government, supplies or services may be acquired on the open market from local suppliers at the site of the work or use point using vendors' invoices instead of purchase orders. Certified invoice procedures may not be used to place orders under established contracts unless specific authorization of their use is included in the contract document.

(b) * * *

(1) The amount of any one purchase is $2,000 or less.

* * * * * *

(d) * * *

(1) * * *

(2) Solicit competitive quotations in accordance with FAR 13.106(a);

(3) Certify that the quality and quantity of items/services furnished are in accordance with the verbal agreement made with the vendor;

(4) Document the record in accordance with FAR 13.106(c) and GSAR 513.106(e).

* * * * * *

(g) Upon receiving the invoice, the contracting officer shall time-stamp the invoice to indicate the date of receipt, verify the arithmetic accuracy of the invoiced amount, and verify that the supplies and/or services have been received and accepted. The contracting officer shall obtain a certification of receipt and acceptance from the individual that actually inspected and accepted the supplies and/or services before certifying the invoice and forwarding to the appropriate Finance Division for payment. Supplies and/or services should be inspected and accepted or rejected within 5 workdays of delivery. The invoice must be forwarded to the appropriate Finance Division for payment within 5 workdays after receipt of the invoice or acceptance of the supplies and/or services, whichever is later. Before forwarding the invoice to Finance, the contracting officer shall place the following statement on the invoice along with the gummed ACT label and accounting information:

"I certify that these goods and/or services were received on _____ (date) and accepted on _____ (date). Oral purchase was authorized and no confirming order has been issued."

_____

Signature of Contracting Officer

_____

Print the Contracting Officer's name

_____

Date Approved

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

15. Section 552.212–72 is amended by revising the dates of the clauses, by revising paragraph (a) of the clause contained in paragraph (a) of the section, and by revising paragraph (a) of the clause contained in paragraph (b) of the section to read as follows:

552.212–72 Availability for Inspection and Testing, and Shipment/Delivery.

(a) * * *

Availability for Inspection and Testing, and Shipment (Sept. 1986)

(a) The Government requires that the supplies listed herein be made available for inspection and testing within _____ calendar days after receipt of order, and be shipped within _____ calendar days after notice of approval and release by the appropriate Government inspection representative. If the point of inspection is changed to destination, or shipment is made under the Contractor Inspection Requirements clause, shipment is required within _____ days after receipt of order.

* * * * * *

(b) * * *

Availability for Inspection and Testing, and Delivery* (Sept. 1986)

(a) The Government requires that the supplies listed herein be made available for inspection and testing within _____ calendar days after receipt of order, and be shipped within _____ calendar days after notice of approval and release by the appropriate Government inspection representative. If the point of inspection is changed to destination, or shipment is made under the Contractor Inspection Requirements clause, shipment is required within _____ * _____ days after receipt of order.

* * * * * *

16. The table of contents for Part 553 is amended by adding a new entry for § 553.370–300–I to read as follows:

PART 553—FORMS

Sec.

Subpart 553.3—Illustration of Forms

* * * * * *

553.370–300–I Instructions for using the GSA Form 300, Order for Supplies and Services.

Editorial Note.—The forms listed above are illustrated in and made a part of the regulation. However, the forms are not illustrated in the **Federal Register** or the Code of Federal Regulations. Individual copies may be obtained from any GSA contracting activity or the Director of the Office of GSA Acquisition Policy and Regulations (VP), 18th and F Streets, NW., Washington, DC 20405.

17. Section 553.270–3 is amended by revising paragraph (b) to read as follows:

553.270–3 Contract clauses.

(a) * * *

(b) GSA Form 3504, Service Contract Clauses, is for use in connection with sealed bid and negotiated contracts for services, except small purchases.

* * * * * *

18. Section 553.272 is amended by revising paragaraphs (a), (b) and (d) to read as follows:

553.272 Purchase/Delivery orders.

* * * * *

(a) The GSA Form 300, Order for Supplies and Services, is used in accordance with the instructions at GSAR 553.370–300–I for making purchases payable through the National Electronic Accounting and Reporting (NEAR) System. This form may also be used in other situations, unless a specific form is prescribed for use. GSA Form 300–A, Order for Supplies or Services (Continuation), is available for use with GSA Form 300.

(b) The GSA Form 1458, Motor Vehicle Shop Work Order, Repair and Purchase Order, is used to procure services and/or repairs of GSA fleet management vehicles.

(c) * * *

(d) The GSA Form 8002, Motor Vehicle Delivery Order, is used to order fleet management vehicles. This form is not intended for use as a purchase order for small purchases and does not include provisions and clauses on the reverse.

19. Section 553.273 is revised to read as follows:

553.273 Receiving reports.

GSA Form 3025, Receiving Reports, must be used in conjunction with the GSA Form 300, Order for Supplies and Services, when required by the instructions for use of the GSA–300 at GSAR 553.370–300–1. The GSA Form 3025 may also be used when prescribed in GSA handbooks or other directives.

20. Section 553.275 is amended by revising paragraph (a) to read as follows:

553.275 Contract summaries.

(a) To provide an abstract of pricing and other pertinent information applicable to requirements contracts for stock replenishment, contracting officers shall prepare GSA Form 1584, Contract Summary, in accordance with instructions in GSAR 553.370–1584–I. GSA Form 1584–A, Contract Summary—Continuation, shall be used as necessary. The completed form shall be duplicated and distributed as soon as possible after award to inventory managers, paying offices, quality assurance specialists, and other interested personnel, in accordance with distribution instructions established by the Federal Supply Service.

* * * * * *

Dated: December 15, 1986.

Patricia A. Szervo,

Associate Administrator for Acquisition Policy.

[FR Doc. 86–28687 Filed 12–22–86; 8:45 am]

BILLING CODE 6820–61–M

48 CFR Parts 509, 513, 514, and 553

[APD 2800.12 CHGE 36]

General Services Administration Acquisition Regulation, Miscellaneous Forms

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR), Chapter 5, is amended to revise § 509.105–1 to clarify when the GSA Form 527, Contractor's Qualifications and Financial Information, may be used and to provide for the use of GSA Form 353, Plant Facilities Report by the Federal Supply Service for preaward surveys; to revise § 513.203–1 to provide for the use of GSA Form 2877, Non-Depot Item Requisition/Order/Receiving/Payment Record; to revise § 514.403 to require that aggregate totals be recorded on the Abstract of Bids when the solicitation specifies aggregate awards, and to provide for the use of GSA Form 3471, Abstract of Offers, by the Public Buildings Service to record offers for building service contracts; to revise § 553.173 to include the GSA Forms 353, 2877 and 3471, and to change the responsible office for the GSA Form 3521; to revise § 553.273 to provide for use of the GSA Form 2877; to illustrate the GSA Form 353 and instructions, and to illustrate GSA Forms 2877 and 3471.

EFFECTIVE DATE: December 16, 1986.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Scott, Office of GSA Acquisition Policy and Regulations on (202) 523–4765.

SUPPLEMENTARY INFORMATION: This rule will not have a significant cost or administrative impact on contractors or offerors. Therefore, it was not published for public comment in the **Federal Register.**

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. The General Services Administration (GSA) certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.). The rule primarily provides for the use of new and updated GSA forms which pertain to the internal operations of the agency and will not have a significant impact on contractors and offerors. Therefore, no regulatory flexibility analysis has been prepared.

This rule does not contain any information collection requirements which are subject to OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 et. seq.).

List of Subjects in 48 CFR Parts 509, 513, 514, and 553

Government procurement.

1. The authority citation for 48 CFR Parts 509, 513, 514, and 553 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 509—CONTRACTOR QUALIFICATIONS

2. Section 509.105–1 is amended by revising paragraphs (a) and (c) to read as follows:

509.105–1 Obtaining information.

(a) In making a determination of responsibility, the contracting officer may use the GSA Form 527, Contractor's Qualifications and Financial Information, to obtain information regarding financial capability from a prospective contractor. A preaward survey should be requested when the conditions in FAR 9.106–1 apply.

* * * * *

(c) Preaward surveys shall be conducted in accordance with FAR 9.105 and 9.106 and this subpart. The contracting officer or his/her designee shall forward a preaward survey request to the surveying activity(ies) using Standard Form 1403, Preaward Survey of Prospective Contractor (General), accompanied by the appropriate subparts of the preaward survey (Standard Forms 1404 through 1408). The Federal Supply Service is authorized to use GSA Form 353, Plant Facilities Report, for preaward surveys instead of Standard Forms 1403 through 1406. The contracting officer shall complete Section I of the GSA Form 353 in accordance with instructions in section 553.370–353.

PART 513—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

3. Section 513.203–1 is amended by revising paragraph (b) to read as follows:

513.203–1 General.

* * * * *

(b) *Requesting deliveries.* Only the contracting officer (CO) and officials authorized by a CO and designated in the BPA are permitted to request deliveries. Employees designated in the BPA to place orders, who are not warranted contracting officers, may not place orders of $150 or more without first obtaining the approval of a warranted contracting officer. Delivery (call) orders will be made by telephone or in person. The GSA Form 2877, Non-Depot Item Requisition/Order/Receiving/Payment Record, is authorized for use by the Federal Supply Service in placing orders against BPA's for customer supply center items that are not available from Government supply depots. Before placing calls against the BPA, each requirement must be screened for availability from mandatory sources of supply. Necessary controls must be maintained by the person placing call orders under the BPA to ensure that any limitation stated therein is not exceeded. The BPA identification and requisition number, if any, should be specified each time a delivery is requested.

* * * * *

PART 514—SEALED BIDDING

4. Section 514.403 is revised to read as follows:

514.403 Recording of bids.

(a) The abstracting and tabulating of bids normally are completed within 24 hours after bid opening, and a copy delivered immediately to the appropriate Business Service Center where it is made available for public examination for a minimum period of 30 calendar days. Late bids determined eligible for consideration must be included on the bid abstract form. However, if eligibility is established after delivery of the original tabulation, the bids are recorded separately, identified as an amendment to the original tabulation, and delivered to the Business Service Center.

(b) Abstracts involving aggregate awards must record unit prices, weight factors and aggregate totals for each aggregate group in addition to any other information required for bid evaluation.

(c) The GSA Form 3471, Abstract of Offers, is authorized for use by contracting activities in the Public Buildings Service (PBS) instead of the Standard Form 1409, Abstract of Offers, when recording offers for building services.

5. The table of contents for Part 553 is amended to add new entries for §§ 553.370–353, 553.370–353–I, 553.370–2877 and 553.370–3471 as set forth below:

PART 553—FORMS

Sec.

Subpart 553.3—Illustrations of Forms

553.370–353 GSA Form 353, Plant Facilities Report.
553.370–353–I Instructions for completing Section I, GSA Form 353, Plant Facilities Report.
* * * * *
553.370–2877 GSA Form 2877, Non-Depot Item Requisition/Order Receiving/Payment Record.
* * * * *
553.370–3471 GSA Form 3471, Abstract of Offers.
* * * * *

Editorial Note.—The forms listed above are illustrated and made a part of the regulation. However, the forms are not illustrated in the **Federal Register** or the Code of Federal Regulations. Individual copies may be obtained from any GSA contracting activity or the Director of the Office of GSA Acquisition Policy and Regulations (VP), 18th and F Street, NW., Washington, DC 20405.

6. Section 553.173 is amended by adding or revising the following entries to the table in paragraph (c) to read as follows:

553.173 Responsibility for the maintenance of forms.

(c) * * *

GSA Form Number	Responsible Office
* * * * *	
353	F
2877	F
3471	P
3521	V
* * * * *	

7. Section 553.273 is revised to read as follows:

553.273 Receiving Reports.

(a) GSA Form 3025, Receiving Report, must be used in conjunction with GSA Form 300, Order for Supplies and Services, when required by the instructions for use of the GSA–300 at 553.370–300–I. The GSA Form 3025 may also be used when prescribed in GSA handbooks and other directives.

(b) GSA Form 2877, Non-Depot Item Requisition/Order/Receiving Payment Record, is used to receive customer supply center items from sources other than Government supply depots.

Dated: December 16, 1986.

Richard H. Hopf III,

Deputy Associate Administrator for Acquisition Policy.

[FR Doc. 86–28688 Filed 12–22–86; 8:45 am]
BILLING CODE 6820–61–M

48 CFR Parts 514 and 552

[APD 2800.12 CHGE 37]

General Services Administration Acquisition Regulation; Bid Acceptance Time

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR), Chapter 5, is amended to revise Parts 514 and 552 to incorporate the substance of an approved class deviation which provides for the use of a Minimum Bid Acceptance Period provision that deviates from the Provision at FAR 52.214–16. The intended effect is to improve the regulatory coverage and provide uniform procedures for contracting under the regulatory system.

EFFECTIVE DATE: December 16, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Sanders, Office of GSA Acquisition Policy and Regulations on (202) 523–4740.

SUPPLEMENTARY INFORMATION:

Background

On August 28, 1986, the General Services Administration (GSA) published in the **Federal Register** (51 FR 30681) GSAR Notice No. 5–139 inviting comments from interested parties on these proposed changes to the regulation and provided a 30-day comment period. No comments were received from the public. Comments received from various GSA offices have been reviewed, reconciled, and incorporated, when appropriate, in this final rule.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain procurement regulations from Executive Order 12291. The exemption applies to this rule. The GSA certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rule incorporates an approved deviation to the FAR provision which is designed to eliminate a problem with nonresponsive bids that resulted when bidders misinterpreted the language in the FAR provision at 52.214.16, Minimum Bid Acceptance Period. Therefore, no regulatory flexibility analysis has been prepared. The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Parts 514 and 552

Government procurement.

1. The authority citation for 48 CFR Parts 514 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 514—SEALED BIDDING

2. Section 514.270–1 is revised to read as follows:

514.270–1 Standard Form 33.

(a) The Standard Form 33, Solicitation, Offer and Award, provides for the insertion by bidders of a number of calendar days after bid opening by which their bids must be accepted by the Government. However, FAR 14.201–6(j) authorizes contracting officers to specify a minimum bid acceptance period by including in the solicitation the provision at FAR 52.214–16. A class deviation has been approved for the use of the provision at 552.214–16, Minimum Bid Acceptance period, instead of the provision at FAR 52.214–16.

(b) When the provision at 552.214–16 is used, paragraph (b) of the provision supersedes Item 12 of the SF 33. However, a problem would result if a bidder overlooked the fact that the provision was included in the solicitation, and inserted in Item 12 a figure that was less than that stipulated by the Government in paragraph (c) of the provision. To avoid such problems, the contracting officer shall insert in Item 12 of SF 33 the entries shown below when the provision at 552.214–16 is included in the solicitation.

Note.—Item 12 does not apply if the solicitation includes the provisions at 52.214.16, Minimum Bid Acceptance Period.

12. In compliance with the above, the undersigned agrees, if this offer is accepted within _____ N/A* calendar days (60 calendar days unless a different period is inserted by the offeror) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

*SEE PROVISION 552.214–16.

3. Section 514.270–2 is amended by revising paragraphs (b), (c)(1)(ii), (c)(2), (c)(2)(iv) and (c)(2)(v) to read as follows:

514.270–2 Specifying a required bid acceptance period.

(a) * * *

(b) *Use of the provision in 552.214–16.* The 60-day period stipulated in the parenthetical statement in Item 12 of SF 33 is neither a "standard" nor a request to bidders to allow such period. However, most bidders customarily offer a 60-day bid acceptance time, although they rarely offer more than 60 days, and sometimes offer less than that period. Consequently, the provision in 552.214–16 should be used whenever the contracting officer determines (1) that a period of more than 60 days will be needed to finalize award(s), or (2) that a period of 60 days or less will be adequate to complete the award process, but that one or more bidders may specify an acceptance period which is less than the projected time needed to finalize award(s).

(c) * * *

(1) * * *

(ii) Contingencies such as late bids, mistakes in bids, protests, SBA Certificate of Competency requirements, and Walsh-Healy eligibility requirements should not be anticipated in projecting an appropriate bid acceptance period. The procedure of requesting extensions of bid acceptance time (see 514.407–72) is to provide for unexpected delays which may arise during the award process.

(2) The stipulated bid acceptance period should usually be a minimum of 30 days, should be stated in increments of 15 calendar days, and normally should not exceed 90 calendar days.

* * * * *

(iv) A period of 75 or 90 days may be reasonable when the determination of the apparent low bidder(s) involves a complex evaluation process (e.g., evaluating f.o.b. origin bids to overseas ports of debarkation), and actions or reports of the type described in the preceding paragraph are also required.

(v) A period exceeding 90 days may be necessary in cases involving security clearances or cost comparisons under OMB Circular A–76.

4. The table of contents for Part 552 is amended to add a new entry as set forth below:

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.

Subpart 552.2—Text of Provisions and Clauses

552.214–16 Minimum bid acceptance period.

5. Section 552.214–16 is added to read as follows:

552.214–16 Minimum bid acceptance period.

(a) As prescribed in § 514.270–1(a), insert the following provision:

Minimum Bid Acceptance Period (Oct 1985) (Deviation FAR 52.214–16)

(a) "Acceptance period," as used in this provision, means the number of calendar days available to the Government for awarding a contract from the date specified in this solicitation for receipt of bids.

(b) This provision supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.

(c) The Government requires a minimum acceptance period of _____* calendar days.

(d) In the space provided immediately below, bidders may specify a longer acceptance period than the Government's minimum requirement. *(Insert any number equal to or greater than the minimum requirement stated in paragraph (c) of this provision. Failure to insert any number means the offeror accepts the minimum in paragraph (c)).*

The bidder allows the following *total* acceptance period: _____ calendar days.

(e) A bid allowing less than the Government's minimum acceptance period will be rejected.

(f) The bidder agrees to execute all that it has undertaken to do, in compliance with its bid, if that bid is accepted in writing within (1) the acceptance period stated in paragraph (c) above, or (2) any longer acceptance period stated in paragraph (d) above, or (3) any extension of the offered acceptance period as may be subsequently agreed to by the bidder.

(End of provision)

*The contracting officer shall insert an appropriate number of days. See guidelines in 514.270–2(c).

Dated: December 16, 1986.

Patricia A. Szervo,

Associate Administrator for Acquisition Policy.

[FR Doc. 86–28689 Filed 12–22–86; 8:45 am]

BILLING CODE 6820–61–M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1039, 1312, and 1313

[Ex Parte No. 387]

Railroad Transportation Contracts

AGENCY: Interstate Commerce Commission.

ACTION: Notice of new interim rules for railroad transportation contracts made under 49 U.S.C. 10713 and request for comments.

SUMMARY: The Commission is issuing new, consolidated interim rules under 49 CFR 1313.1 *et seq.* for railroad transportation contracts made under 49 U.S.C. 10713. These rules replace and modify those at 49 CFR 1039.1 through 1039.6 and 1039.19; 1312.41; and former 1300.310.[1] This is necessitated by new legislation [section 4051 of the Conrail Privatization Act, embraced in Omnibus Budget Reconciliation Act, Public Law 99–509, enacted October 21, 1986] and by experience with the prior interim rules issued July 13, 1984, implementing 1300.31(b)(1)–(4).

The new interim rules modify: (1) The information required in the contract summary to afford the public additional disclosure of essential rail contract terms; and (2) Commission standards for discovery of contract terms beyond those released in the contract summary. The rules are attached, as are derivation and redesignation tables.

DATES: Effective date: January 22, 1987. Notices of intent to participate must be filed by January 12, 1987. A service list will then be issued. An original and 15 copies of comments will be due 20 days after that date. Replies will be due 20 days thereafter. Both comments and replies must be served on the parties to the service list.

ADDRESS: Send an original and 15 copies of comments to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Thomas Dahl, (202) 275–6448 or 275–7246.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC metropolitan area) or toll free (800) 424–5403.

Regulatory Flexibility Act Analysis

New interim rules are being issued because of legislative changes adding new provisions in 49 U.S.C. 10713(b)(2)(A) and (B). These changes affect Commission regulations at 49 CFR 1039, 1312.42, and 1300.310(b). (The latter regulations were not renumbered and published at 1312.42.) Further, other existing rules for contract discovery, issued July 13, 1984, in this proceeding pursuant to the remand in *Water Transport Assn'n.* v. *ICC*, 722 F.2d 1025 (2d Cir. 1983), need to be revised. The new interim rules address these issues.

The rules update and make more comprehensive the standards and procedures for filing contracts, contract summaries, contract complaints and contract discovery. We are also consolidating the various CFR sections into one section for easier use of the rules. Small entities that may be affected by these rules include railroads, governmental bodies, small businesses purchasing transportation.

These rules do not duplicate, overlap or conflict with other federal rules.

Except as noted below, the Regulatory Flexibility Act Analysis is unchanged from our prior decision at 367 I.C.C. 9, 36–37.

There are slight additional reporting requirements for the publicly-available contract summaries. These additional reporting requirements have been imposed by both new legislation and by our concern that the rules assist small shippers as well as other parties.

As stated in the prior decision, 367 I.C.C. at 36, as with any contract, specialized assistance from the legal and accounting professions may be required. While that decision stated that little additional professional assistance for instituting complaints against rail contracts was needed, the 1984 interim complaint and discovery rules apparently created additional expenses because of the requirement for simultaneous filing of complaints and discovery petitions. The expense of compiling an adequate formal complaint was incurred even if discovery was not granted, or, if granted, the shipper determined that it should not continue prosecution of the complaint. The new rules reduce this expense.

This action should not significantly affect the quality of the human environment or energy conservation. Comments on this matter are also invited.

List of Subjects in 49 CFR Part 1313

Agricultural commodities, Forests and forest products, Railroads.

Decided: December 15, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Vice Chairman Simmons and Commissioner Andre dissented in part with separate expressions. Commissioner Lamboley dissented in part, and will submit a separate expression at a later date.

Noreta R. McGee,

Secretary.

[1] In the revision of Part 1300 of 49 CFR as new Part 1312(49 FR 38615, October 1, 1984), § 1300.310(b)(1)–(4) was inadvertently removed, although the rules still apply.

Appendix

A. Railroad Contract Rules
B. Redesignation Table
C. Derivation Table

A. Railroad Contract Table

Title 49 of the CFR is amended as follows:

1. The authority citation for 49 CFR Part 1039 is revised to read as follows:

Authority: 49 U.S.C. 10321, 10505, 10708, 10762, and 11105; and 5 U.S.C. 553.

2. The heading for Part 1039 is revised to read:

PART 1039—EXEMPTIONS

3. Sections 1039.1 through 1039.6 and § 1039.19 are removed.

PART 1312—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS, SCHEDULES, AND RELATED DOCUMENTS

4. The authority citation for 49 CFR Part 1312 continues to read as follows:

Authority: 49 U.S.C. 10762; and 5 U.S.C. 553.

§ 1312.41 [Removed]

5. Section 1312.41 is removed.

6. A new Part 1313 is added to read as follows:

PART 1313—RAILROAD CONTRACTS ENTERED INTO PURSUANT TO 49 U.S.C. 10713

Sec.

1313.1 Definitions of the terms "contract" and "amendment."
1313.2 Jurisdiction; contract approval/disapproval.
1313.3 Contract implementation date.
1313.4 Common carrier responsibility; limitations on future contracts.
1313.5 Remedies for breach of approved contracts.
1313.6 Limitation on equipment; and relief.
1313.7 Contract filing, title pages, and numbering.
1313.8 Contract and contract summary availability.
1313.9 Formats for initial and amended contract summaries.
1313.10 Contract summary content—agricultural commodities.
1313.11 Contract summary content—forest products and paper.
1313.12 Contract summary content—port traffic (other than agricultural commodities, forest products, and paper.)
1313.13 Contract summary content—other commodities or services not involving a port.
1313.14 Informal discovery.
1313.15 Contract discovery.
1313.16 Procedures for contract discovery and complaints.
1313.17 Grounds for contract review and complaints.

Authority: 49 U.S.C. 10321 and 10713; and 5 U.S.C. 553.

§ 1313.1 Definitions of the terms "contract" and "amendment."

(a) A contract made pursuant to 49 U.S.C. 10713 is a written agreement, including any amendment, entered into by one or more rail carriers with one or more purchasers of rail service, to provide specified services under specified rates, charges and conditions.

(b) A contract filed under these rules must:

(1) Specify that the contract is made pursuant to 49 U.S.C. 10713, and

(2) Be signed by duly authorized parties.

(c) The term "amendment" includes written contract modifications signed by the parties.

(d) An amendment is deemed to be a separate and new contract. To the extent contract extensions or amendments change any term of the contract, remedies are revived and review is again available. An amendment is lawful only if it is filed and approved in the same manner as the original contract and is consistent with these rules, including the filing of a complete contract summary.

§ 1313.2 Jurisdiction; contract approval/disapproval.

(a) *Jurisdiction.* The contract or amendment and transportation are subject to Commission jurisdiction until Commission approval under 49 U.S.C. 10713 and applicable regulations.

(b) *Contract approval date.* Except as provided in § 1313.7(a)(2):

(1) The contract is approved on the 30th day after the filing of the contract if the Commission does not institute a proceeding to review the contract.

(2) If the Commission institutes a proceeding to review a contract, it has jurisdiction for 60 days after the contract is filed. Under these circumstances the contract will be approved:

(i) On the date the Commission approves the contract, if the date of approval is 31 or more days after the filing date of the contract;

(ii) On the 31st day after the contract filing date if the Commission denies the complaint against the contract by the 30th day after the contract filing date; or

(iii) On the 60th day after the contract filing date, if the Commission fails to disapprove the contract.

(c) *Contract disapproval.* If the Commission finds that the contract violates the provisions of 49 U.S.C. 10713, it will:

(1) Disapprove the contract: or

(2) In the case of agricultural contracts (including forest products and paper) where the Commission finds unreasonable discrimination by a carrier in accordance with 49 U.S.C. 10713 and § 1313.8, allow the carriers the option to:

(i) Provide rates and services substantially similar to the contract at issue, with such differences in terms and conditions as are justified by the evidence; or

(ii) Cancel the contract.

(d) *Applicable rates/charges if contract disapproved.* If the Commission disapproves or rejects the contract or amendment, the appropriate non-contract tariffs or the contract provisions otherwise in effect under previously approved contracts will be applicable.

§ 1313.3 Contract implementation date.

(a) Transportation or service performed under a contract or amendment may begin, without specific Commission authorization, on or after the date the contract (or amendment) and contract summary or (amended contract summary) are filed and before Commission approval as defined in 49 CFR 1313.2, subject to the following conditions:

(1) The contract or contract amendment shall specifically state that the transportation or service may begin on the date of filing.

(2) The contract summary shall separately reflect the date of commencement of service.

(b) Except as provided under subparagraph (c) of this section, transportation or service may not begin under a contract or an amendment to a contract before the filing date of either the contract or the amendment, respectively.

(c) Railroad transportation or service is exempt from the requirements of 49 U.S.C. 10761, 11902, 11903, and 11904 to the extent that a railroad may apply a contract or amended contract rate rather than an otherwise applicable tariff rate and pay reparations or waive undercharges under the following conditions:

(1) A transportation contract under 49 U.S.C. 10713 has been filed with the Commission and has been approved by the Commission or by operation of law;

(2) The shipment at issue falls within the terms of the contract; and

(3) The shipment was transported before the contract was approved but:

(i) After the contract was signed; or

(ii) After the parties agreed on the rate to be charged and they either agreed to be bound by the contract or intended the movement to be covered by it.

(d) Except as provided elsewhere in this section, all transportation under the contract may begin only in accordance with 49 CFR 1313.2.

§ 1313.4 Common carrier responsibility; limitations on future contracts.

(a) The terms of a contract approved by the Commission determine completely the obligations of the parties to the contract with respect to the services provided under the contract. The contract does not affect the parties' responsibilities for any services which are not included in the contract.

(b) Service under a contract approved by the Commission is deemed a separate and distinct class of service and the equipment used to fulfill the contract shall not be subject to car service limitations under 49 U.S.C. 11123.

(c) *Limitation of rail carrier rights to enter future contracts.* The Commission may limit the right of a rail carrier to enter into future contracts if the Commission determines that additional contracts would impair the ability of the rail carrier to fulfill its common carrier obligations under 49 U.S.C. 11101. The Commission will handle these determinations on a case-by-case basis and may investigate, either on its own initiative or upon the filing of a verified complaint by a shipper which demonstrates that it individually had been or will be harmed by a carrier's inability to fulfill its common carrier obligations as a result of existing contracts.

§ 1313.5 Remedies for breach of approved contracts.

(a) The exclusive remedy for an alleged breach of a contract approved by the Commission shall be an action in the appropriate State Court or United States District Court, unless the parties otherwise agree in the contract.

(b) The Commission may not require a rail carrier to violate the terms of a contract that has been approved under 49 CFR 1313.2, except to the extent necessary to comply with 49 U.S.C. 11128.

§ 1313.6 Limitation on equipment; and relief.

(a) A rail carrier may enter into contract for the transportation of agricultural commodities (including forest products but not including wood pulp, wood chips, pulpwood, or paper) that involve the use of carrier owned or leased equipment not in excess of 40 percent of the total number of the carrier's owned or leased equipment, by major car type, except as provided in paragraph (b) of this section.

(b) In the case of a proposed contract between a class I carrier and a shipper originating an average of 1,000 cars or more per year during the prior 3-year period by major car type on a particular carrier, not more than 40 percent of carrier owned or leased equipment used on the average during the prior 3-year period may be used for the contract without prior Commission authorization.

(c) If the rail equipment standards of 49 U.S.C. 10713(k) are exceeded, prior relief must be obtained from the Commission and must be specifically identified in the contract summary.

(d) The Commission may grant relief from the limitations of paragraphs (a) and (b) of this section if:

(1) A rail carrier or other party requests such relief; or the Commission on its own initiative considers granting such relief; and

(2) The Commission determines that making additional equipment available does not impair the rail carrier's ability to meet its common carrier obligations under 49 U.S.C. 11101.

§ 1313.7 Contract filing, title pages, and numbering.

(a) *Filing of Rail Contracts.* (1) Rail carriers providing transportation subject to Subchapter I of Chapter 105 of Title 49, United States Code, must file with the Commission an original contract (or amendment) entered into with one or more purchasers of rail service. The contract (or amendment) must be accompanied by three copies of a contract summary (or amended contract summary) of the non-confidential elements of the contract as specified in §§ 1313.10, 1313.11, 1313.12, or 1313.13.

(2) A contract (or amendment) and contract summary (or amended contract summary) may be rejected for noncompliance with applicable statutes and regulations.

(3) Contracts and contract summaries must not be filed in the same package with standard tariff filings.

(4) The confidential contract shall not be attached to the contract summary.

(5) The outside envelope or wrapper containing the contract and summary must be prominently marked "Confidential, Rail Contract."

(6) A contract and summary must be accompanied by a transmittal letter identifying the submitted documents, and the name and telephone number of a contact person.

(b) *Contract and contract summary title pages.* (1) The title page of every contract and amendment must contain only the following information:

(i) In the upper right corner, the contract number (see paragraph (c) of this section).

(ii) In the center of the page, the issuing carrier's name, followed by the word "CONTRACT" in large print.

(iii) Amendments to the contract must also show in the upper right corner, the amendment number (see paragraph (c) of this section).

(iv) A solid one inch black border down the right side of the title page.

(vi) Date of issue and date to be effective.

(2) The title page of every contract summary and amended contract summary must contain only the following information:

(i) (A) If contract summary, in the upper right corner, the contract summary number (see paragraph (c) of this section).

(B) If amended contract summary, in the upper right corner, the contract summary number, followed by the corresponding contract amendment number.

(ii) (A) In the center of the page, the issuing carrier's name, followed by the words "CONTRACT SUMMARY". in large print.

(B) If a contract summary for an amendment to a contract: in the center of the page, the issuing carrier's name, followed by the words "AMENDED CONTRACT SUMMARY"

(iii) Date of issue and date to be effective.

(iv) In the center lower portion, the issuing individual's name and address. The name of the individual for service of complaints and petitions for discovery must also appear, if different from the issuing individual. If not otherwise noted, a complainant/petitioner may rely on service to the issuing individual.

(c) *Contract and contract summary numbering system.* (1) Each issuing carrier shall sequentially number each contract and contract summary (and amendment and amended contract summary) it issues. The contract and contract summary identification number must include the word "ICC," the industry standard alphabet code for the issuing railroad (limited to four letters), the letter "C," and the sequential number, with each separated by a hyphen. The following is an example: the 357th contract filed by Conrail would have the following identification number: "ICC–CR–C–0357."

(2) Amendments to contracts shall be reflected in a corresponding amended contract summary.

(3) At the carrier's option, it may issue contracts with nonconsecutive numbers if it assigns blocks of numbers to different departments. An index to the blocks of reserved numbers shall be filed with the Commission.

(4) Contract amendments and amended contract summaries must be sequentially numbered.

§ 1313.8 Contract and contract summary availability.

(a) (1) Except as provided in paragraph (2) of this section, the contract filed under these rules shall not be available to persons other than the parties to the contract and authorized Commission personnel, except by informal discovery under 49 CFR 1313.14 and/or by Commission decision.

(2) A contract and its summary filed under 49 U.S.C. 10713 may be labeled "nonconfidential." Such a designation will permit the general public to inspect the entire contract.

(b) (1) The contract summary filed under these rules shall be available from the Commission's Bureau of Traffic and Contract Advisory Service.

(2) The contract summary filed under these rules shall not be required to be posted in any stations, but shall be made available upon reasonable request from the carriers participating in the contract.

§ 1313.9 Formats for initial and amended contract summaries.

(a) The contract summary must enumerate and have each item completed. When the item does not pertain to the contract, the term "Not Applicable" ("NA") shall be used.

(b) (1) Changes in prior contract summaries must be underscored and must be followed by the words "addition," "deletion," "extension," "cancellation," or other appropriate descriptive phrase in parentheses. If the change to the contract is only in confidential matter, a statement to that effect must be made in the amended contract summary and must indicate the particular feature to which the change applies (i.e., rate, special feature, etc.).

(2) Amended contract summaries filed under this provision may not substitute phrases such as "not applicable" or "no change" where disclosure was required in the original contract (such as in the commodity description); amended contract summaries must set forth *all* non-confidential terms in the contract, whether amended or not.

§ 1313.10 Contract summary content—agricultural commodities.

(a) Contract summaries for agricultural commodities (excluding forest products and paper) must contain the following information which includes that required to be disclosed under 49 U.S.C. 10713(b)(2)(A). These requirements also apply to amended contract summaries.

(b) (1) *Carrier names.* A list, alphabetically arranged, of the corporate names of all carriers that are parties to the contract plus the addresses for service of complaints must be provided.

(2) *Specific commodity.* The specific commodity or commodities to be transported under the contract must be identified. Vague commodity descriptions such as "grain" are not permitted, even if that is the commodity description in the contract.

(3) *Shipper identity.* The specific identity of the shipper must be disclosed. A shipper acting on behalf of another party must identify the other party.

(4) *Specific origins, destinations, transit points, and other shipper facilities.* (i) Each specific origin and destination point to and from which the contract applies must be shown. References to tariffs for identification of origins and destinations are not permitted; neither are overly broad descriptions such as "various [or all] points in Kansas."

(ii) Each port must be identified.

(iii) Each transit point must be identified.

(iv) Each shipper facility used for contract origins, destinations, transit points, or otherwise subject to the contract must be identified. "Shipper facility" also includes a reference to shipper equipment to be used in the contract for storage, for example, although the details of the arrangement need not be in the summary.

(5) *Contract duration.* (i) If applicable, the date on which the transportation service has begun under a contract before the date such contract is filed with or approved by the Commission.

(ii) The date on which the contract became applicable to the transportation services provided under the contract.

(iii) Termination date of the contract.

(iv) Provisions for optional extension.

(6) *Rail car data* provide, by number of dedicated cars, or, at the carrier's option, car days:

(i) By major car type used to fulfill the contract or contract options:

(A) Available and owned by the carrier(s) listed in paragraph (b)(1) of this section;

(B) Available and lease by the carrier(s) with average number of bad-order cars identified;

(C) (Optional) On order (for ownership or lease) along with delivery dates; and

(D) In the event a complaint is filed involving common carrier obligation and carrier furnished cars, the carrier(s) shall immediately submit to the Commission and the complainant additional data on cars used to fulfill the challenged contract. Data shall include (by major car type used to fulfill the contract):

(A) Total bad-car orders;

(B) Assigned car obligations; and

(C) Free-running cars.

(ii) In addition to subparagraph (b)(6)(i) of this subsection if agricultural commodities (including forest products but not including woodpulp, wood chips, pulpwood or paper) the carrier must submit a certified statement:

(A) That the cumulative equipment total for all contracts does not exceed 40 percent of the capacity of carrier owned and leased cars by applicable major car type; and

(B) In the case of an agricultural shipper which originated an average 1,000 cars or more per year during the prior 3-year period by major car type, that the equipment used does not exceed 40 percent of the carrier owned or leased cars used on the average by that shipper during the previous 3 years.

(iii) Rail car data need not be furnished if:

(A) The shipper furnishes the rail cars, unless the rail cars are leased from the carrier; or,

(B) The contract is restricted to certain services which do not entail car supply.

(7) *Base rates and charges.* (i) Identify the specific base rates and/or charges. This is satisfied by identifying the specific tariff provisions which would apply without the contract.

(ii) Summarize escalation provisions.

(8) *Volume.* Identify all volume, car and/or train size requirements as set forth in the contract including:

(i) Movement type (single car, multiple car, unit train).

(ii) Minimum and actual volume requirements under the contract for the applicable period(s) (annual, quarterly, etc.).

(iii) Volume breakpoints affecting the contract.

(iv) Amount of guaranteed percentage, if any.

(9) *Special features.* Identify existence (but not the terms or amount) of special features such as transit time commitments, credit terms, discounts.

§ 1313.11 Contract summary content—forest products and paper.

(a) Contract summaries for forest products and paper must contain the following terms in the order named. These requirements also apply to amended contract summaries.

(b) (1) *Carrier names.* A list, alphabetically arranged, of the corporate names of all carriers that are parties to the contract plus the addresses for service of complaints must be submitted.

(2) *Specific commodity.* The specific commodities to be transported under the contract must be identified. Vague commodity descriptions such as "forest products" are not permitted, even if that is the commodity description in the contract.

(3) *Specific origins and destinations.* (i) Each specific origin and destination point to and from which the contract applies must be shown. References to tariffs for identification of origins and destinations are not permitted; neither are vague or overly broad descriptions such as "various [or all] points in Oregon."

(ii) Each port must be identified.

(4) *Contract duration.* (i) If applicable, the date on which the transportation service has begun under a contract before the date such contract is filed with or approved by the Commission.

(ii) The date on which the contract services became applicable to the transportation services provided under the contract.

(iii) Termination date of the contract.

(iv) Provisions for optional extension.

(5) *Rail car data.* The information required under § 1313.10(b)(6) must be provided.

(6) *Base rates and charges.* (i) Identify the specific base rates and/or charges. This is satisfied by identifying the specific tariff provisions which would apply without the contract.

(ii) Summarize escalation provisions.

(iii) Identify minimum volume requirements and movement type (*e.g.*, single car, multiple car, unit train) as required by the contract.

(7) *Special features.* Identify existence (but not the terms or amount) of special features such as transit time commitments, guaranteed car supply, minimum percentage of traffic requirements, credit terms, discounts.

§ 1313.12 Contract summary content—port traffic (other than agricultural commodities, forest products, and paper).

Contract summaries for other commodities or services involving a port must contain the information required in § 1313.11(b) (1), (2), (4), (6), and (7) and 1313.10(b)(6). In addition, the port shall be named and the tariff mileage rounded to the nearest 50 miles shall be disclosed (or, at the contracting parties' option, the origin and destination shall be specified). The required information shall be disclosed for each movement involving multiple origins and destinations. These requirements also apply to amended contract summaries.

§ 1313.13 Contract summary content—other commodities or services not involving a port.

Contract summaries for other commodities not involving a port must contain the information required in § 1313.11(b)(1), (2), (4), and 1313.10(b)(6). Paragraph (b)(7) of § 1313.11 is applicable only to the extent that service requirements are placed in the contract. These requirements also apply to amended contract summaries.

§ 1313.14 Informal discovery.

(a) Prior to filing a petition for formal discovery under 49 CFR 1313.15, a petitioner shall request discovery from the carrier in the same manner and with the same data as would be presented to the Commission under § 1313.15.

(b)(1) The carrier must promptly grant or deny the request.

(2) The carrier must act in good faith in determining whether a petitioner has standing and is an affected party, defined as an actual or potential participant in the relevant market.

§ 1313.15 Contract discovery.

(a) *Petition.* A petition to discover contract provisions must show that petitioner is a shipper or port, has standing to file a complaint under 49 U.S.C. 10713(d)(2) (A) or (B), and that petitioner is affected by the contract. The following information will be considered in making a determination on whether to permit discovery.

(1) *Standing.* Identify the provision(s) in 49 U.S.C. 10713(d) under which petitioner has standing to file a complaint.

(2) *Affected party.* An affected party is one which is an actual or potential participant in the relevant market. The following information is relevant to making that determination.

(i) Nature and size of petitioner's business;

(ii) Relevant commodities petitioner ships or receives;

(iii) Comparisons between petitioner's commodities, actual or potential traffic patterns and serving carrier(s), with the traffic patterns and serving carrier(s) identified in the contract summary.

(iv) Showing of an ability to ship the commodity in question at a time generally simultaneous with the contract at issue.

(v) Any additional information petitioner considers appropriate to support its request.

(vi) A showing of injury is not required to satisfy this rule.

(3) *Demonstrated need.* (i) With regard to the grounds for complaint under 49 U.S.C. 10713(d)(2)(B), the demonstrated need test does not apply to agricultural commodity contracts (excluding forest products and paper).

(ii) A petitioner seeking disclosure of non-agricultural contract information must show that the contract terms it seeks are relevant to its potential challenge to the contract.

(iii) As car data is published in the contract summary, a petition for further disclosure on the basis that the contract may impair the contracting carrier's common carrier obligation must establish a nexus between the information sought and the common carrier obligation. Before information regarding special features will be disclosed, a petitioner must show how the special feature or certain forms of that special feature could impair the contracting carrier's common carrier obligation. On receiving such a petition, the carrier must furnish to the petitioner and the Commission the data required by § 1313.10(b)(6)(i)(D).

§ 1313.16 Procedures for contract discovery and complaints.

(a) *Complaints, discovery petitions, replies, and appeals.* (1) Discovery petitions and/or skeletal complaints must be filed no later than the 18th day after the contract and summary are properly filed.

(2) Petitions must note on the front page "Petition for Discovery of Rail Contract" and note the contract and amendment numbers.

(3) A skeletal complaint as required under subparagraph (b) of this section must accompany the petition.

(4) Petitioner must certify that copies of the petition and complaint have been sent to the contracting carrier(s) either by hand, express mail, or other overnight delivery service the same day as filed at the Commission. Replies shall be served in the same manner on complainant/petitioner.

(5) Replies to the petition are due within 5 days from the date of filing of the petition and in no event later than noon on the 23rd day following filing of the contract.

(6) An original and 6 copies of the petition, skeletal complaint and replies plus 2 transmittal letters must be filed with the Commission in an envelope labeled "Suspension/Special Permission Board—Confidential Contract Material."

(7) An appeal of a Suspension/Special Permission Board's decision must be made in accordance with 49 CFR 1132.2, subject to the following:

(i) An appeal must be received within 2 days of the Board's decision (anticipated by day 26 after the contract filing date), but in no event later than the 28th day after the contract filing date.

(ii) The appeal shall be filed with the Suspension/Special Permission Board for handling and will be considered by the entire Commission.

(iii) Telegraphic notice or its equivalent must be given to the opposing party.

(iv) Replies to the appeal must be received within one day after the appeal is filed.

(8) *Protective order*—If confidential contract data or data disclosed pursuant to § 1313.15, 1313.16, or 1313.17 are filed with the Commission in a complaint, petition, reply or other pleading, the party filing these data should submit them as a separate package, clearly marked on the outside "Confidential Material Subject to Protective Order." The order in paragraph (a)(9) of this section applies to the parties specified in the order who receive confidential information through proceedings before the Commission or through informal discovery.

(9) *Order.* Petitioner and carriers, and their duly authorized agents agree to limit to the discovery/complaint proceeding involving the contract, the use of contract information or other confidential commercial information which may be revealed in the contract, the complaint, reply, or any other pleading relating to the contract. This agreement shall be a condition to release of any contract term by a petitioner/complainant and shall operate similarly on a carrier in possession of confidential information which may be contained in a complaint, petition for discovery, or request for informal disclosure. Any information pertaining to parties to the contract, or subject to the contract (including consignors, consignees and carriers), or pertaining to the terms of the contract, or relating to the petitioner's/complainant's confidential commercial information, must be kept confidential. Neither the information nor the existence of the information shall be disclosed to third parties, except for: (a) Consultants or agents who agree, in writing, to be bound by this regulation; (b) information which is publicly available; (c) information which, after receipt, becomes publicly available through no fault of the party seeking to disclose the information after it has become publicly available, or is acquired from a third party free of any restriction as to its disclosure. The petitioner/complainant or carrier must take all necessary steps to assure that the information will be kept confidential by its employees and agents. No copies of the contract terms or other confidential information are to be retained by the parties not originally privy to the data subsequent to the termination of the proceeding or the expiration of Commission jurisdiction under 49 CFR 1313.2.

(b) (1) *Complaint proceedings, complainants and replies.* On receipt of a skeletal complaint by the 18th day after the contract filing date, a complaint proceeding will be instituted to extend this Commission's jurisdiction to 60 days after the contract filing date regardless whether a petition for discovery is filed or approved. The decision will provide for automatic dismissal of the proceeding and approval of the contract if complainant(s) fail to submit the case-in-chief by the due date established in subparagraph (b)(5) of this section.

(2) The skeletal complaint must contain the correct, unabbreviated names and addresses of the complainant(s) and defendant. The complainant must set out the statutory provisions under which it has standing to file a complaint.

(3) If discovery is granted, the carrier must furnish the required information by the 1st working day after the Commission issues a final decision.

(4) Upon institution of a complaint proceeding, approval of the contract is postponed to 60 days after the contract filing date or until the Commission issues a decision approving the contract, if earlier.

(5) The amended complaint and case-in-chief are due 39 days after the filing of the contract.

(6) Replies of the carrier defendant(s) are due 46 days after the filing of the contract.

§ 1313.17 Grounds for contract review and complaints.

(a) Within 30 days of the contract filing date, the Commission may, on its own motion or on complaint, begin a proceeding to review the contract. Review can be based only on allegation of violations as described in paragraph (b) of this section.

(b) A contract may be reviewed only on the following grounds:

(1) In the case of a contract, other than a contract for the transportation of agricultural commodities (including forest products and paper), a complaint may be filed:

(i) By a shipper only on the grounds that the shipper individually will be harmed because the proposed contract unduly impairs the ability of the contracting carrier to meet common carrier obligations under 49 U.S.C. 11101; or

(ii) By a port on the grounds that the port individually will be harmed because the proposed contract will result in unreasonable discrimination against the port.

(2) In the case of a contract for the transportation of agricultural commodities (including forest products and paper), in addition to the grounds for a complaint described in paragraph (b)(1)(i) of this section, a complaint may be filed on the grounds that the shipper individually will be harmed because:

(i) the rail carrier(s) unreasonably discriminated by refusing to enter into a similar contract with the shipper for rates and services for the transportation of the same type of commodity under similar conditions to the contract at issue and that the shipper was ready, willing, and able to enter into such a contract at a time essentially contemporaneous with the period during which the contract was offered; or

(ii) The proposed contract constitutes a destructive competitive practice.

(3) "Unreasonable discrimination" as used in these rules means, when applied to shippers of agricultural commodities (including forest products and paper), that the railroad has refused to enter into a contract with the shipper for rates and services for the transportation of the same type of commodity under similar conditions to the contract at issue, and that the shipper was ready, willing, and able to enter into such a contract at a time essentially contemporaneous with the period during which the contract at issue was offered; and, when applied to a port, has the same meaning as the term has under 49 U.S.C. 10741.

(4) The definitions for "agricultural commodities," "forest products," and "paper" will be decided on a case-by-case basis.

B. Redesignation Table

Old section	New section
Part 1309	Part 1313
1039.1	1313.1
1039.2	1313.3(a)
1039.2(a)	1313.3(a)
1039.2(b)	1313.5(c)
1039.2(c)	1313.2(c)
1039.2(d)	1313.2(a)
1039.2(e)	1313.3(b)
1039.3(a)	1313.7(a)
1039.3(b)–(c)	1313.17
1039.3(d)	1313.16
1039.3(e)	1313.17
1039.3(e), (e)(1) and (2)	1313.2(d)
1039.3(f)	1313.2(b)
1039.3(g)	1313.4(c)
1039.4	1313.4(a)
1039.5	1313.5
1039.6	1313.8 (a), (b), and (d)
1039.19	1313.3(c)
Part 1300: [1]	
1300.310(b)(1)	1313.8(b)(1) and 1313.15(a)
1300.310(b)(2)	1313.15(a)
1300.310(b)(3)	1313.16

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Old section	New section
1300.310(b)(4)	1313.16(a)
1300.311(b)	1313.7(b)
Part 1312.41:	
1312.41(a)(1)	1313.7(a)
1312.41(a)(2)–(4)	1313.8
1312.41(b)	1313.7(b)
1312.41(c)	1313.7(c)
1312.41(d)	1313.10–1313.13
1312.41(d)(4)	1313.9(a)
1312.41(e)	1313.8(b)(1)
1312.41(f)	1313.3
1312.41(g)	1313.3(d)

[1] Appendix to July 13, 1984 decision (49 FR 28718–28720) and not recodified at Part 1312.41.

C. Derivation Table

New section	Old section [1]
Part 1313:	
1313.1	1039.1
1313.2(a)	1039.2(d)
1313.2(b)	1039.3(f)
1313.2(c)	1039.3(e), (e) (1) and (2)
1313.2(d)	1039.2(c)
1313.3(a)	1039.2, (2)(a); 1312.41(f)
1313.3(b)	1039.2(e)
1313.3(c)	1039.19
1313.3(d)	1312.41(g)
1313.4 (a) and (b)	1039.4
1313.4(c)	1039.3(g)
1313.5	1039.5
1313.6 (a) and (b)	1039.6
1313.6(c)	1039.2(b)
1313.6(d)	1039.6
1313.7(a)	1039.3(a); 1312.41(a)(1)
1313.7(b)	1300.311(b); 1312.41(b)
1313.7(c)	1312.41(c)
1313.8(a)	1312.41(a)(2)–(4)
1313.8(b)	1300.310(b)(1); 1312.41(e)
1313.9(a)	1312.41(d)(4)
1313.9(b)	New
1313.10	1312.41(d)
1313.11	1312.41(d)
1313.12	1312.41(d)
1313.13	1312.41(d)
1313.14	New
1313.15	1300.310(b) (1) and (2)
1313.16	1039.3(d); 1300.310 (b)(3) and (b)(4)
1313.17	1039.3 (b)–(c) and (e)

[1] Appendix to July 13, 1984 decision (49 FR 28718–28720) and not recodified at Part 1312.41.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Eryngium constancei (Loch Lomond Coyote-Thistle)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Eryngium constancei* (Loch Lomond coyote-thistle) to be an endangered species. This plant is restricted to the bed of a 7-acre vernal lake near the montain community of Loch Lomond in southern Lake County, California. Potential dredging and filling of this seasonal wetland threatens the species with extinction. To a lesser extent, off-road vehicle (ORV) use and trash dumping threaten the species. Moreover, routine highway maintenance adjacent to the vernal lake and trampling of the lake bed by hikers impact the plant and its habitat. This final rule will implement the full protection provided by the Endangered Species Act of 1973, as amended.

DATE: The effective date of this rule is January 22, 1987.

ADDRESS: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Regional Office, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, at the above address (503/231–6131 or FTS 429–6131).

SUPPLEMENTARY INFORMATION:

Background

Eryngium constancei (Loch Lomond coyote-thistle), a perennial herb of the parsley family, annually produces slender, weak scapes (leafless flowering stalks) up to 30 centimeters (12 inches) in height from its over-wintering rootstock (Sheikh 1978 and 1983). The basal leaves, divided by septa (internal partitions), range from 10 to 20 centimeters (4 to 8 inches) in length. Slender petioles, 8 to 12 centimeters (3 to 5 inches) in length and usually longer than the leaf blade, bear diminutive spines. A dense "down" of minute hairs, unique to *Eryngium constancei*, covers the leaves and especially the scapes. This character together with the species' sparse flowers distinguish *Eryngium constancei* from its closest relative, *Eryngium aristulatum* var. *aristulatum*, and all other species of western North American *Eryngium* (Sheikh 1978 and 1983).

This species was first collected by Robert Hoover in 1941. M. Yusuf Sheikh and Lincoln Constance recollected *Eryngium constancei* from the vernal lake near the community of Loch Lomond in southern Lake County, California in 1973. Later Sheikh (1983) described *Eryngium constancei* along with two other *Eryngium* taxa. Sheikh, as part of his doctoral study completed in 1978, intensively searched for and failed to discover additional populations of the plant at other localities. Subsequent searches made in 1984 by two botanists employed by the State of California did not reveal any new populations of the plant.

Eryngium constancei grows abundantly within the borders of the meadow-like bed of the Loch Lomond lake at an elevation of 2,800 feet (853 meters). Cabins and a paved road (State Route 175) largely encircle the southern and eastern sides of the lake bed. A forest of ponderosa pine (*Pinus ponderson*) and California black oak (*Quercus kelloggii*) surrounds the periphery of the lake. Plants associated with the coyote-thistle on the vernal lake bed include *Cuscuta howelliana* (Boggs Lake dodder), *Eleocharis* (spikerush), *Downingia* (downingia), *Gratiola ebracteato* (hedge hyssop), *Lilaea scilloides* (flowering quillwort), *Minulus tricolor* (three-colored monkeyflower), *Plagiabothrys* (alloarya), and two Federal candidate species, *Navarretio pauciflora* (few-flowered navarretia) and *Navarretio plieantha* (many-flowered navarretia). The latter species is listed as endangered by the State of California Department of Fish and Game (CDFG). The soil of the lake bed consists of a fine, powdery, volcanic, silty clay. The terrain about the lake to the south and west generally faces the northeast and attains an elevation of 3,300 feet (990 meters). The unusual combination of edaphic (soil-related), topographic, and hydrologic features of the vernal lake and its watershed may explain the unique presence of the species at Loch Lomond.

On December 15, 1980, the Service published a revised notice of review for plants in the **Federal Register** (45 FR 82508). *Eryngium constancei*, an unpublished new species (see Sheikh 1978), was included in this notice as a category-1 species. Category 1 includes taxa for which the Service has sufficient biological information to support proposing to list as endangered or threatened. After Sheikh (1983) published the description of this plant, the Service reevaluated the biological information supporting the listing of *Eryngium constoncei*. The species was moved into category 2 (includes species for which information indicates that listing is possibly appropriate, but for which further information is required to support a proposal) in 1983 (48 FR 53650) due to the absence of any perceived threat to the species at the time and because data from outside sources had not yet been fully analyzed. In the **Federal Register** of August 1, 1985 (50 FR 31187), the Service published an emergency rule listing *Eryngium constoncei* as an endangered species because: (1) Significant portions (15 percent) of this species' only known habitat had been adversely modified, (2)

protection provided under laws and regulations did not not preclude modification of the remainder of the vernal lake, and (3) field searches in 1984 confirmed no new populations of this plant at other sites in the area. On March 26, 1986, the Service proposed the Loch Lomond coyote-thistle as an endangered species (51 FR 10412) prior to the expiration of the emergency rule on March 29, 1986. The Service now determines this plant to be endangered with the publication of this final rule.

Summary of Comments and Recommendations

In the March 26, 1986, proposed rule (51 FR 10412) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final decision on the proposed rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in the *Oakland Tribune* and *Santa Rosa Press-Democrat* on April 17, 1986, and the *San Francisco Examiner* on April 18, 1986.

Eight comments were received during the open comment period: one from a private individual, two from conservation organizations, two from other Federal agencies, and three from State and local government agencies. Five comments expressed support for listing and three offered no position. CDFG, one of the five commenters voicing support for listing, concurred with the Service regarding the desirability of not designating critical habitat at this time. In its comment letter, CDFG noted that shortly the plant will be proposed for listing as an endangered species by the California Fish and Game Commission. In June 1986, the California Fish and Game Commission did propose *Eryngium constancei* for addition to the State list.

In 1984, the owner of the species' habitat dredged and filled about 15 percent of the lake bed. One commenter claimed that *Eryngium constancei* no longer grew in this portion of the lake bed. The Service responds that a survey by Lake County biologists in late May revealed the presence of small, widely scattered plants in the disturbed area.

The California Department of Transportation (Caltrans), although supporting listing, commented that occasional culvert replacement and associated routine road maintenance for State Route 175 will impact a few individuals of *Eryngium constancei*. Because such activities would necessitate formal section 7 consultation with the Federal Highway Administration, Caltrans recommended the final rule acknowledge the need for highway maintenance. The Service recognizes that listings and subsequent section 7 consultations may affect activities planned by State agencies via the authorities and funding provided by other Federal agencies. Nevertheless, the Service has found that modifications or alternative designs typically allow projects to proceed while providing adequate protection for the species. Specific procedures for conflict resolution are provided in sections 7 and 10(a) of the Act.

One comment from an owner of property within the watershed of the vernal lake near Lock Lomond expressed neither support nor opposition to the listing. The commenter indicated, however, that no actions should be undertaken favoring *Eryngium constancei* that limit the landowner's use of the property. The commenter further noted that the lake bed property, which includes a resort, has had a long history of recreational use and that the community of Loch Lomond is part of a rapidly growing area providing urban services and homesites. The Service responds that a recovery plan will be prepared specifying all actions necessary to preserve, enhance, and eventually recover the Loch Lomond coyote-thistle. These tasks must be based on the best available biological data. The Service will seek comments from all affected parties during the development of the recovery plan for *Eryngium constancei* and will incorporate pertinent comments in the final plan. The Service recognizes that under certain circumstances the presence of an endangered plant species may affect a private landowner's planned activities, if such actions require Federal funding or approval. Under the section 7 process, however, planned activities can proceed as long as plans or alternative designs provide sufficient protection for the specifies.

Although the Service acknowledges that impacts may result to certain activities as a result of listing a species as endangered, the Service cannot consider such impacts in making a decision on a listing proposal. The Service may base its final listing decision solely on "the best available scientific and commerial information regarding a species' status without reference to possible economic or other impacts of such determination" (50 CFR 424.11(b) (1985)). Therefore, the potential impacts raised by Caltrans and the private property owner were not considered by the Service in reaching a final decision on this listing.

Summary of Factors Affecting the Species

After a thorough review and consideration of the best scientific and commercial information available, the Service has determined that *Eryngium constancei* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Eryngium constoncei* Sheikh (Loch Lomond coyote-thistle) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtoilment of Its Habitat or Range

The predominant threat facing *Eryngium constancei* is the action planned by the landowner of the species' habitat to dredge and fill Loch Lomond lake, the only known habitat for this species. The portion of the lake bed dredged and filled in 1984 contained only a few individuals of *Eryngium constancei* in the summer of 1985. After the landowner graded the disturbed portion of the bed to restore its original topography, the area was reseeded with the coyote-thistle in late 1985. Lake County biologists observed small, widely scattered individuals in the rehabilitated area in late May 1986. The species, which abundantly covers the undisturbed portion of the lake bed, flourished in the disturbed area prior to the dredge and fill action in 1984. Consequently, any additional dredging and filling of the vernal lake basin would fill part of the lake, deepen the remaining portion, and would likely result in the extinction of the species.

Although in the emergency rule the Service noted that approximately 85 percent of the lake bed remains habitat for the plant, an inspection of the vernal lake on September 16, 1985, revealed that ORV use has impacted nearly all of this portion of the lake bed. Moreover, hikers walking on the lake bed and routine highway maintenance adjacent to the lake impact the plant and its habitat. Trash dumped on the lake basin further threatens the species.

A shallow manmade ditch dug from the approximate center of the lake empties through the outflow of the lake, Cole Creek, to the north. This ditch may reduce the potential storage of the Loch Lomond lake, resulting in a more

ephemeral, shallow body of water, which would otherwise flood the cabins and road surrounding the lake in the winter and spring. Although it is unknown whether the construction of this ditch directly impacted *Eryngium constancei* in the past, the presence of this ditch may reduce the size and quality of the habitat for the species.

Prior to the purchase of this site by the current owner, the Loch Lomond vernal lake or lake bed was used by the adjoining resort for baseball (Crane and Malloch 1985), softball, ice skating, volley ball, horseback riding, picnicking, and camping (Frank Mattina, G.T. Enterprises, pers. comm., May 27, 1986). The Service is uncertain what effect these activities might have had on this plant or its habitat.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Not applicable to this species.

C. Disease or Predation

Although it is unknown whether grazing by livestock occurs within the lake bed, the Service believes the effects of such grazing would be negligible.

D. The Inadequacy of Existing Regulatory Mechanisms

Although *Eryngium constancei* was emergency listed as an endangered species on August 1, 1985, this rule expired on March 29, 1986. The species is not listed by the State of California at this time, although it has been formally proposed for endangered status. Moreover, because the species is restricted to privately-owned land, existing laws provide limited protection for it.

E. Other Natural or Manmade Factors Affecting its Continued Existence

None known at this time.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Eryngium constancei* as endangered. Endangered as opposed to threatened status is appropriate because of the threat of physical alternation of the lake bed, the only known habitat for the plant, which would likely result in the extinction of *Eryngium constancei*. In addition, ORVs continue to use the lake bed and trash dumping remains a problem. Hikers trampling the lake basin and routine highway maintenance adjacent to the lake also impact the species. Critical habitat is not being designated at this time for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that determination of critical habitat is not prudent for this species at this time. Because this plant is highly vulnerable (see Factor A in "Summary of Factors Affecting the Species"), lacks Federal protection from taking on non-Federal lands, and is easily accessible, this finding is appropriate. Listing of the species as endangered publicizes its rarity and can make the plant attractive to collectors of rare plants, researchers, and vandals. Publication of precise maps and descriptions of critical habitat in the **Federal Register** would make this herb even more vulnerable and could contribute to the decline of the species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibition against collecting are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 (see revision at 51 FR 19926; June 3, 1986). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The only Federal involvement anticipated with respect to the listing of *Eryngium constancei* is the issuance of dredge and/or fill permits (33 CFR Parts 323 and 325) by the U.S. Army Corps of Engineers for the vernal lake at Loch Lomond and the funding by the Federal Highway Administration of any maintenance activities for State Route 175 affecting the species.

The Act and its implementing regulations found at 50 CFR 17.61 and 17.62 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. International and interstate trade in *Eryngium constancei* is not known to exist. The Service anticipates few trade permits would ever be sought or issued because the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC. 20240 (703/235–1903).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Crane, N.L. and B.S. Malloch. 1985. A study of the rare plants for the Geysers-Calistoga Known Geothermal Resources Area. Pacific Gas and Electric Report. 129 pp.

Sheikh, M.Y. 1978. A systematic study of west North American *Eryngium* (Umbelliferae-Apiaceae) Ph.D. dissertation, Univ. California, Berkeley.

Sheikh, M.Y. 1983. New taxa of western North American *Eryngium* (Umbelliferae). Madroño 30:93–101.

Author

The primary author of this rule is Jim A. Bartel, Sacramento Endangered Species Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E–1823, Sacramento, California 95825 (916/978–4866 or FTS 460–4866).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (18 U.S.C. 1513 *et seq.*).

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Apiaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Apiaceae—Parsley family:						
Eryngium constancei	Loch Lomond coyote-thistle	U.S.A. (CA)	E	194E, 248	NA	NA

Dated: November 28, 1986.

P. Daniel Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86–28731 Filed 12–22–86; 8:45 am]

BILLING CODE 4310-SS-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Ringed Sawback Turtle (Graptemys Oculifera)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the ringed sawback turtle (*Graptemys oculifera*) to be a threatened species. This basking turtle is found only in the Pearl River system of Mississippi and Louisiana. It seems to prefer wide sand beaches and a narrow channel with at least moderate current, and characteristically spends many hours basking in open sunshine on logs and debris over deep water. Some of its former habitat has been modified by reservoir construction and flood control, while other areas are marginal habitat due to water quality degradation and corresponding loss of its molluscan food supply. Most of the remaining habitat is threatened by flood control projects. This determination implements the needed protection of the Endangered Species Act of 1973, as amended.

EFFECTIVE DATE: The effective date of this rule is January 22, 1987.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Endangered Species Field Office, U.S. Fish and Wildlife Service, Jackson Mall Office Center, Suite 316, 300 Woodrow Wilson Avenue, Jackson, Mississippi 39213.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis B. Jordan at the above address (601/965–4900 or FTS 490–4900).

SUPPLEMENTARY INFORMATION:

Background

The ringed sawback turtle was described by Baur in 1890 as *Malacoclemmys oculifera* and renamed *Graptemys oculifera* in 1893. The type specimens were a group of turtles acquired for the United States National Museum by Gustave Kohn and reportedly came from Mandeville, Louisiana, and Pensacola, Florida (Cagle 1953). On the basis of a 1900 statement to this effect by George E. Beyer, then Curator of the Tulane Museum, Cagle said they were probably purchased in the French Quarter Market in New Orleans, Louisiana. Due to the absence of ringed sawback turtles from collections in southern Alabama and Florida, Cagle considers the Pensacola record to be erroneous, although Kohn had accepted the locality data of the individual from whom the purchase was made. The Mandeville record is probably from the Pearl River, 26 miles to the east, since there is no suitable habitat near Mandeville.

The ringed sawback turtle is a small turtle having a yellow ring bordered inside and outside with dark olive-brown on each shield of the upper shell or carapace and a yellow undershell or plastron. The head has a large yellow spot behind the eye, two yellow stripes from the orbit backwards and a characteristic yellow stripe covering the whole lower jaw (Cagle 1953). Males grow to 4 inches (10 centimeters) and females to 7 inches (18 cm) in plastron length.

The ringed sawback turtle's habitat is typically riverine with a moderate current and numerous basking logs. The river must be wide enough to allow sun penetration for several hours. Nesting habitat consists of large, high sand and gravel bars adjacent to the river. Good water quality is necessary for the production of snails and other mollusks on which the ringed sawback turtle feeds. This basking turtle is not able to inhabit large lake areas or polluted waters.

Information from herpetologists and museum curators reflecting several decades of sustained collecting effort, as well as its own field studies, provided the Service with strong evidence that this species is restricted to the main channels of the Pearl and Bogue Chitto Rivers of Mississippi and Louisiana. No survey respondent had recorded the ringed sawback turtle from outside this river system. Cagle (1953) examined 51 specimens taken from unspecified sites on the Pearl River and considered the ringed sawback turtle to be restricted to the Pearl and Bogue Chitto Rivers, noting that it was absent from streams to the east. It occurs in most reaches of the Pearl River upstream to Neshoba County, Mississippi (Cliburn 1971), and in the Bogue Chitto River upstream to Franklinton, Louisiana (James Dobie, Auburn University, personal communication). The Amite and Tangipahoa Rivers to the west appear to have suitable habitat but, when searched, have not produced any

specimens of the ringed sawback turtle. Cliburn (1971) collected 37 representatives of this species in his study of *Graptemys* in Mississippi, and found the species in the Pearl River up to Neshoba County. He concluded that, in Mississippi, it was restricted to the mainstem Pearl River.

McCoy and Vogt (1980) established 14 observation stations in the Pearl River system and one in the Wolf River, a small coastal stream to the east. They found no turtles of this species in the Wolf River. In the Pearl River they observed ringed sawback turtles at 8 stations, with 20 or more individuals observed at two of these stations. These two stations, representing population centers, are more than 100 river miles (rmi) or 161 river kilometers (rkm) apart. McCoy and Vogt (1980) established three trap sites at which they caught only 3 ringed sawback turtles in 15 trap days. At these same stations, Cliburn (1971) had captured 21 individuals. McCoy and Vogt (1980) reported one sight record and one other casual observation of this species in smaller tributary streams of the Pearl River, but the Service considers these reports to be very doubtful in light of its own survey results.

Service biologists in 1984 and 1985 surveyed various river reaches in the Pearl River from Edinburg, Mississippi, downstream. In one river reach upstream they identified 75 percent of the *Graptemys* as *G. oculifera*, which compares favorably with Cliburn's collections. Comparing Cliburn's data with the Service survey suggests that the ringed sawback turtle population has remained stable in the Pearl River above Ross Barnett Reservoir and in a reach of the Pearl River near Monticello and Columbia. The Service survey below Ross Barnett Reservoir observed only 41 *Graptemys* in a 7-mile (11.3-km) reach, with most of these turtles large enough to be adults. Cagle's (1953, 1954) studies indicated a population comprised of 80 percent juveniles. Based on this comparison, the population near Jackson appears to be declining. Service survey of the Pearl River at Columbia found a river reach almost devoid of any turtle species. While the ringed sawback turtle is still abundant at some locales, it is almost extirpated from some other river reaches, with little evidence of a healthy population in those areas.

Virtually all the land adjacent to the Pearl and Bogue Chitto Rivers is privately owned. The National Park Service administers public land on a short river reach of the Pearl above Ross Barnett Reservoir. The Service administers Bogue Chitto National Wildlife Refuge, consisting of several thousand acres at the confluence of the Pearl and Bogue Chitto Rivers. Pearl River Valley Management District controls Ross Barnett Reservoir, the only impoundment on the Pearl River.

The Service published a notice of review of the status of twelve species of turtles, including the ringed sawback turtle, in the **Federal Register** on June 6, 1977 (42 FR 28903). Seventy percent of those responding to the notice recommended listing the ringed sawback turtle as threatened. One agency commented that the available information did not indicate the ringed sawback warranted protection. Another agency stated that it considered the most significant threat to basking turtles to be wanton shooting, but did not address the ringed sawback specifically.

Summary of Comments and Recommendations

In the January 21, 1986, proposed rule (51 FR 2741) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published on February 7, 1986, in the *Clarion Ledger* and the *Jackson Daily News;* on February 8, 1986, in the *Hattiesburg American;* on February 9, 1986, in the *Bogalusa Daily News;* and on February 10, 1986, in the *Times Picayune,* and all notices invited general public comment. A public hearing was not requested. The Mississippi Department of Wildlife Conservation, one professional biologist, one professional organization, and one interested individual provided comments in support of the proposal. One professional biologist provided information on a closely related species without taking a position on the proposal. No other comments were received.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the ringed sawback turtle (*Graptemys oculifera*) should be classified as a threatened species.

Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the ringed sawback turtle (*Graptemys oculifera*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The survival of the ringed sawback turtle is presently threatened by habitat modification for flood control and navigation. The ringed sawback turtle must have structures on which it can bask and be safe from predation, and it must have suitable nesting habitat. These structures are generally logs, snags, and other debris commonly occurring in streams. Navigation and flood control measures often require the removal of logs, snags, and river bars to facilitate water flows. Flood control projects also contribute to sedimentation in downstream river reaches. This is especially true where flood control measures consist of floodplain clearing and channelization of tributary streams to facilitate water flow. Increased turbidity and siltation impact the snails and other mollusks on which the ringed sawback turtle feeds.

The ringed sawback turtle has been impacted by habitat modification in 21 percent of the historic range in the Pearl River by construction of Ross Barnett Reservoir, 30 rmi (48 rkm), West Pearl channel to Bogalusa, 58 rmi (93 rkm), and the floodplain clearing at Jackson, Mississippi, 8 rmi (13 rkm) (U.S. Army Corps of Engineers 1983). Projects planned or authorized by the Corps of Engineers (Corps) will impact up to 28 percent of the remaining Pearl River habitat. These planned or authorized projects are: (1) a navigation channel in the East Pearl up to Picayune (about 30 rmi or 48 rkm); (2) a channel 5 feet (ft) (1.5 meters (m)) deep from Jackson to Carthage 100 rmi (161 rkm); (3) a channel 2 ft (0.6 m) deep from Carthage to Edinburg, 28 rmi (45 rkm); (4) Shoccoe Dam (up to 70 rmi or 113 rkm); and (5) a channel 3200 ft (1000 m) long through the Old Jackson Sanitary Landfill. In addition, the Corps has flood control studies on-going or planned for Pearl River reaches at Slidell, Louisiana, and Pearlington, Morgantown, Monticello, Foxworth, Columbia, Carthage, and Leake County, Mississippi. A channel is authorized for 100 rmi (161 rkm) of the Bogue Chitto River and flood control studies are planned for Bogue Chitto River reaches at Franklinton, Louisiana, and Tylertown, Mississippi. This authorized project would eliminate the Bogue Chitto River as suitable habitat for the ringed sawback turtle. The Corps has flood control studies on-going or planned for Canal A at Pearl-Flowood, Caney Creek, Three-Mile Creek, Dry Creek, Webb Creek, and Sellers Creek in the Pearl River basin.

The U.S. Soil Conservation Service (1983) has constructed 25 watershed structures and 49.5 mi (80 km) of drainage ditches in the Pearl River basin, and is continuing this type of construction. These projects impact the ringed sawback turtle by increased sedimentation from drainage ditches. Also, where these ditches drain agricultural fields, the runoff of pesticides contributes to water quality degradation.

Legislation has been introduced to allow local funding of flood control measures, including the Edinburg and Shoccoe dams. The City of Jackson has accomplished some flood plain clearing and is studying the feasibility of a parkway levee that would contain flood waters below Ross Barnett Reservoir. County supervisors throughout the Pearl River basin have proposed numerous flood control measures.

Impoundments obviously eliminate the ringed sawback turtle's required habitat by inundation. Flood control and navigation channel modifications in ringed sawback turtle habitat may eliminate basking sites and nesting sites, change water flows, harm the food source, and increase turbidity and siltation to the detriment of the ringed sawback turtle. Channel modification in tributary streams can increase turbidity and siltation in the Pearl River and impact snails and mollusks. Authorized and planned projects, sand and gravel dredging, and the result of navigation and flood control studies could modify most, if not all, of the known ringed sawback turtle habitat.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Wanton shooting (use of the basking turtles for target practice) and collecting pose a threat to the ringed sawback turtle. This threat becomes more serious as the population declines owing to impacts of habitat alteration. The threat from collecting for scientific and educational purposes is declining. In previous years, relatively large numbers of ringed sawback turtles were collected for museums. A changing awareness on the part of many scientists seems to be reducing this threat. Collecting for commercial purposes is a more serious threat. This very attractive turtle is advertised for retail sale at $28 each. The turtle is quite vulnerable to knowledgeable collectors, who can seriously decimate a local population in a short period of collecting.

C. *Disease and predation.* There is no known threat from disease. While this species is subject to some natural predation, the only serious direct threat is wanton shooting as discussed in Factor "B" above. The alteration of habitat as discussed in Factor "A" could make the ringed sawback turtle more susceptible to natural predators.

D. *The inadequacy of existing regulatory mechanisms.* The ringed sawback turtle is listed as endangered under Mississippi Department of Wildlife Conservation Public Notice 2408. Because of this State protection, the Federal Lacey Act applies to the taking and transportation of the ringed sawback turtle from Mississippi. Louisiana does not recognize the ringed sawback turtle as a protected species, thereby increasing the difficulty of enforcing the Lacey Act because the capture locale must be proven. Both states require permits to collect the ringed sawback turtle for scientific purposes, but compliance is extremely difficult to enforce. The loss or alteration of habitat is the greatest threat to the ringed sawback turtle, but previous regulations did not require consideration of this species during project planning. Listing under the Endangered Species Act provides additional protection through sections 7 and 9 of the Act and through the recovery process.

E. *Other natural or manmade factors affecting its continued existence.* Water quality degradation also poses a serious threat to the ringed sawback turtle. This impact includes bioaccumulation of toxic materials and the loss of food organisms. The total effects of pollution and siltation upon the ringed sawback turtles themselves have not been documented. However, the effects on snails and other mollusks are well documented, and this group of organisms is the primary food source of the ringed sawback turtle. Thus, water quality degradation can reduce or eliminate the turtle's food supply. The reduced population of ringed sawback turtles in river reaches that have otherwise suitable habitat, but are polluted from some source, tends to support this conclusion.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the ringed sawback turtle as threatened. A threatened species is any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Threatened status was chosen because, even though the Pearl River population of ringed sawback turtles appears presently stable, the potential modification of the Pearl River for flood control appears to pose serious threats to the species' survival. Endangered status is not appropriate because the species is not faced with imminent extinction, unless the Pearl River is modified greatly. Critical habitat is not being proposed for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. There are two good population centers in the Pearl River and to designate these as critical habitat would make this species more susceptible to collectors as discussed under Factor "B" in the "Summary of Factors Affecting the Species." Publication of critical habitat descriptions would make this species even more vulnerable and increase law enforcement problems. All involved parties will be notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard. Therefore, it would not be prudent to determine critical habitat for the ringed sawback turtle at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species

that is listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 (see revision at 51 FR 19926; June 3, 1986). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Expected Federal involvement with the ringed sawback turtle includes U.S. Army Corps of Engineer projects for flood control and navigation, activities permitted by the Corps, and Soil Conservation Service (SCS) watershed projects. The lower Pearl River requires maintenance dredging for navigation. Corps projects and plans for flood control include significant Pearl River reaches from Edinburg to the Mississippi coast and most of the Bogue Chitto River in Louisiana and Mississippi. The SCS has at least 10 watershed projects planned or in operation within the Pearl River basin.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Cagle, F.R. 1953. The Status of the turtle *Graptemys oculifera* (Baur). Zoologica 83:137–144.

Cagle, F.R. 1954. Two new species of the genus *Graptemys*. Tulane Studies in Zoology 1:166–186.

Cliburn, J.W. 1971. The ranges of four species of *Graptemys* in Mississippi. J. Mississippi Acad. Sci. 16:16–19.

McCoy, C.J., and R.C. Vogt. 1980. Distribution and population status of the ringed sawback *Graptemys oculifera* (Baur) in Mississippi and Louisiana. A status survey report for the U.S. Fish and Wildlife Service.

U.S. Army Corps of Engineers. 1983. Project Maps. Vicksburg District.

U.S. Soil Conservation Service. 1983. Watershed Progress Report. U.S. Department of Agriculture, Jackson, Mississippi.

Author

The primary author of this final rule is James Stewart (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.11(h) by adding the following, in alphabetical order under Reptiles, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
REPTILES							
Turtle, ringed sawback	*Graptemys oculifera*	U.S.A. (LA, MS)	Entire	T	249	NA	NA

Dated: November 28, 1986.

P. Daniel Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86–28732 Filed 12–22–86; 8:45 am]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 51, No. 246
Tuesday, December 23, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86–ASO–25]

Proposed Alteration of Federal Airways—GA and AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the descriptions of two Federal Airways in the states of Georgia and Alabama to correct a potentially confusing situation that exists with two unrelated airway segments.

DATES: Comments must be received on or before January 8, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Southern Region, Attention: Manager, Air Traffic Division, Docket No. 86–ASO–25, Federal Aviation Administration, P.O. Box 20636, Atlanta, Ga 30320.

The official docket may be examined in the Rules Docket, Weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Dvision.

FOR FURTHER INFORMATION CONTACT: William C. Davis, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Oprations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86–ASO–25." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All coments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend Federal Airways V–311 and V–168. In concert with the FAA's policy of eliminating alternate airways, Federal Airway V–51W between Corce Intersection, GA, and Hinch Mountain, TN, was renumbered V–311. That action resulted in V–311 having two starting and two ending points that are logically unrelated. This action proposes to resolve this potentially confusing situation by extending V–168 from La Grange, GA, along one of the unrelated V–311 segments to Wiregrass, AL. V–311 would therefore no longer exist between these two points. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that his proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal Airways.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-311 [Amended]

By removing the words "From Wiregrass, AL, via INT Wiregrass 002° and La Grange, GA, 191° radials; to La Grange."

V-168 [Revised]

From Vulcan, AL; La Grange, GA; INT La Grange 191°T(190°M) and Wiregrass, AL, 002°T(360°M) radials; to Wiregrass.

Issued in Washington, DC, on December 16, 1986.

Harold H. Downey,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 86-28679 Filed 12-22-86; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL MARITIME COMMISSION

46 CFR Part 580

[Docket No. 86-29]

Filing of Service Contracts and Availability of Essential Terms

AGENCY: Federal Maritime Commission.

ACTION: Availability of findings of no significant impact.

SUMMARY: The Commission has completed an environmental assessment of a proposed rule in Docket No. 86-29 and found that its resolution of this proceeding will not have a significant impact on the quality of the human environment.

DATES: Petitions for review are due on or before January 2, 1987.

ADDRESS: Petitions for review (Original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573.

FOR FURTHER INFORMATION CONTACT: Edward R. Meyer, Office of Special Studies, 1100 L Street, NW., Washington, DC 20573, (202) 523-5835.

SUPPLEMENTARY INFORMATION: Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Special Studies has determined that Docket No. 86-29 will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and that preparation of an environmental impact statement is not required.

In Docket No. 86-29 the Commission proposes to amend its rules governing service contract recordkeeping. The proposed rule would require ocean common carriers and conferences to maintain service contract records in the United States in an organized, readily accessible manner; to identify the location of records and recordkeeper(s); and to produce service contract records within 15 days from the date of a Commission request.

This Finding of No Significant Impact (FONSI) will become final within 10 days of publication of this notice in the **Federal Register** unless a petition for review is filed pursuant to 46 CFR 504.6(b).

The FONSI and related environmental assessment are available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, DC 20573, telephone (202) 523-5725.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 86-28701 Filed 12-22-86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 61 and 69

[CC Docket No. 86-467; FCC 86-537]

Regulation of Small Telephone Companies

AGENCY: Federal Communications Commission (FCC).

ACTION: Notice of proposed rulemaking.

SUMMARY: This action initiates a rulemaking proceeding which proposes to reduce the administrative and regulatory burdens on small telephone companies. The United States Telephone Association petitioned the Commission to institute this rulemaking in order to further reduce the burdens on small telephone companies.

DATES: Comments due on or before January 26, 1987 and reply comments due on or before February 25, 1987.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Carolyn J. Veal, Tariff Division, Common Carrier Bureau, (202) 632-6917 or Dan Grosh, (202) 632-6387.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking*, CC Docket No. 86-467, adopted, December 4, 1986 and released December 12, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's Copy Contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rulemaking

1. On February 18, 1986 the United States Telephone Association (USTA) filed a Petition for Rulemaking (USTA Petition) which requested that the Commission institute a rulemaking proceeding to reduce the administrative and regulatory burdens on small telephone companies (defined by USTA as those which serve 20,000 or fewer access lines) and to amend Part 61 of the Commission's Rules, especially with regard to the tariff support provisions in § 61.38 of the Commission's Rules, 47 CFR 61.38, as applied to interstate access tariffs.

2. USTA's Petition specifically requested that the Commission declare small local exchange carriers (LECs) non-dominant with respect to their traffic-sensitive access tariffs and accord them the streamlined regulation applicable to non-dominant carriers, that is, the tariff filings would be presumptively lawful, could be filed on 14 days' notice and need not be accompanied by extensive economic cost support data.

3. The Commission's present rules allow small telephone companies to avoid all direct access tariff filing burdens by participating in the voluntary cost and revenue pools associated with the access tariff filed by the National Exchange Carrier Association (NECA). NECA calculates and files rates based on overall pool costs of over 1200 local companies, who in turn share in pool revenues in proportion to their costs. The Commission reviews the NECA rates as it does rates in other access tariffs.

4. The Commision proposes a proposal developed by USTA which allows a small companies to qualify for reduced regulation if it files rates which in the first year use the amount of the company's most recent settlement from the NECA Pool or the company's most recent cost study. Any subsequent filing would be required to propose rates using the company's most recent cost study, most recent average schedule settlement, or the most recent average schedule rate developed by NECA. The Commission recognizes that there will be some lag in the process of rate-setting because the rates would be based on past rather than projected date, but does not anticipate any systematic bias upward since the lag should be corrected at the company's next cost study or the next average settlement

calculation. The Commission believes that such an approach will be both rate neutral, that is, reasonable since the rates are based on the company's own costs and pooling neutral, neither encouraging nor discouraging participation in the NECA pools.

5. In addition, the Commission proposes rule changes which would allow small companies to reduce the burdens of filing tariff terms and conditions. The Commission proposes to direct NECA to file a simplified access tariff for small carriers which would contain only tariff terms and conditions. A small carrier could then indicate its rates for the services it offers in a separate rate schedule filing, referring to the terms and conditions applicable to those services. The Commission believes that this further step beyond the USTA proposal should further reduce the burdens upon small carriers not only by minimizing additional administrative costs, but also by giving the carriers rate flexibility.

6. The USTA proposal only deals with the costs of access. In order to set access rates, the carrier must also calculate its demand. Because the Commission proposes to have the carriers calculate their costs based on past year costs, it also proposes to have the carriers use past demand to set access rates. This should produce a further reduction in tariff filing burdens since the carriers will not be required to project figures into the future period in which the rates will be in effect.

7. Because both the cost and demand figures should be actual figures, the issues presented by such filings should be greatly reduced. Although the rates will be somewhat inaccurate, because they would not reflect changed circumstances, filings for the next period should correct this distortion. For those reasons, the Commission proposes that small company filings which use actual past period cost and demand figures or average schedules to compute access tariff rates be considered *prima facie* reasonable. Such rates would not be suspended absent a substantial showing that the rates are unreasonable, that there would not be any practical or sufficient opportunity to correct the unreasonable rates in a subsequent filing, and that irreparable injury would result.

8. Rates based on historical costs and demand or average scheduled also would not present the concern that the rates could exceed the allowed rate of return because of faulty projections. Subsequent filings based upon current costs and demand, or revised average schedules, should automatically correct the rates. For this reason, the Commission also proposes to eliminate the data filing requirements and the liability for automatic refunds established in Docket 84-800 for small companies that elect to use this approach.

9. In addition to the USTA proposal, as modified by USTA and as expanded above, the Commission is also proposing other approaches to reducing small telephone company burdens.

10. The Commission is proposing to further reduce the burdens on small telephone companies by reducing the frequency of access tariff filings. Currently, each company filing an access tariff is required to file new rates annually based upon studies of costs and demands for the most recent year and for the future year. The Commission proposes that small company filings be required only every other year, coinciding with the beginning of the 84-800 accounting period. Small companies would retain the option of filing revisions within the two-year period, but there would be no requirement that they do so.

11. The proposal that the small telephone companies file in alternate years is independent of whether the companies use historical costs and demand calculations as discussed above. Small companies electing to use historical costs would not be subject to automatic refund liabilities. Thus, the Commission is willing to accept comment on a longer interval between filings for those companies.

12. The Commission also believes that it is desirable to establish a threshold for treatment as a small telephone company of 50,000 lines. A threshold of 50,000 lines would conform the definition in this area with the existing 50,000 line threshold used for determining eligibility for the small company contributions from the Universal Service Fund. The Commission proposes that this threshold be applied at the study level area, rather than at the narrower exchange level or the wider holding company level, consistent with the definition in the Separations Manual for purposes of the Universal Service Fund.

13. The Commission declined to find the small telephone companies non-dominant at this time because the companies continue to have the ability and incentive to file excessive access rates.

14. This is a non-restricted notice and comment rulemaking proceeding. *See* § 1.1231 of the Commission's rules, 47 CFR 1.231, for rules governing permissible *ex parte* contacts.

15. The collection of information requirement contained in this proposed rule has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act. Persons wishing to comment on this collection of information requirement should direct their comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Federal Communications Commission.

16. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, this proceeding will not, if promulgated, have a significant economic impact on a substantial number of small entities because the local exchange carriers do not qualify as small entities because they have a monopoly regarding the provision of ubiquitious access to the subscribers in their service area.

17. Pursuant to applicable procedures set forth in 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before January 26, 1987, and reply comments on or before February 25, 1987. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

Ordering Clause

18. Accordingly, it is ordered, that, pursuant to the authority contained in sections 2(a), 4(i), 4(j), 201-205, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 152(a), 154(i), 154(j), 201-205 and 403, a rulemaking is instituted to determine whether it would be in the public interest to reduce the administrative and regulatory burdens on small telephone companies and amend the Commission's Rules as indicated at the end of this document.

List of Subjects

47 CFR Part 1

Communications common carrier, Practice and procedure, Petitions.

47 CFR Part 61

Communications common carrier, Tariffs.

47 CFR Part 69

Communications common carrier, Access charges, Reporting and recordkeeping requirements, Telephone.

Parts 1, 61, and 69 of Title 47 of the Code of Federal Regulations are proposed to be amended as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for Part 1 would continue to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

2. Sec. 1.773 is proposed to be amended by adding paragraph (a)(1)(iii) to read as follows:

§ 1.773 Petitions for suspension or rejection of new tariff filings.

(a) * * *

(1) * * *

(iii) For the purpose of this section, any tariff filing by a local exchange carrier filed pursuant to the requirements of § 61.39 will be considered prima facie lawful and will not be suspended by the Commission unless the petition requesting suspension shows that the cost and demand studies or average schedule information was not provided upon reasonable request. If such a showing is not made, then the filing will be considered prima facie lawful and will not be suspended by the Commission unless the petition requesting suspension shows each of the following:

(A) That there is a high probability the tariff would be found unlawful after investigation;

(B) That any unreasonable rate would not be corrected in a subsequent filing;

(C) That irreparable injury will result if the tariff filing is not suspended; and

(D) That the suspension would not otherwise be contrary to the public interest.

* * * * *

PART 61—TARIFFS

3. The authority citation for Part 61 would continue to read as follows:

Authority: Sec. 4, 48 stat 1066, as amended; 47 U.S.C. 154.

4. Section 61.12 is proposed to be amended by redesignating existing paragraphs (e) and (f) as new paragraphs (f) and (g), and adding a new paragraph (e) to read as follows:

§ 61.12 Carriers.

* * * * *

(e) *Local Exchange Carrier.*

A telephone company that provides telephone exchange service as defined in section 3(r) of the Communications Act of 1934. .

* * * * *

5. Section 61.33 is proposed to be amended by redsignating existing paragraphs (b)–(d) as paragraphs (c)–(e), revising newly redesignated paragraph (c) new paragraph (b) to read as follows:

§ 61.33 Letters of transmittal.

* * * * *

(b) In addition to the requirements set forth in (a), any local exchange carrier choosing to file an Access Tariff under § 61.39 must include in the transmittal (1) a summary of the filing's basic rates, terms and conditions; (2) a statement concerning whether any prior Commission facility authorization necessary to the implementation of the tariff has been obtained; and (3) a statement that the filing is made pursuant to § 61.39.

(c) In addition to the requirements set forth in (a) and (b), the letter of transmittal must specifically reference by number any special permission necessary to implement the tariff publication. Special permission must be granted prior to the filing of the tariff publication, and may not be requested in the transmittal letter.

* * * * *

6. Section 61.38 is proposed to be amended by revising paragraph (a) to read as follows:

§ 61.38 Supporting information to be submitted with letters of transmittal.

(a) *Scope.* This section applies to dominant carriers whose gross annual revenues exceed $500,000 for the most recent 12 month period of operations or are estimated to exceed $500,000 for a representative 12 month period. Local exchange carriers serving 50,000 or fewer access lines may submit Access Tariff filings pursuant to either this section or § 61.39. However, the Commission may require any carrier to submit such information as may be necessary for review of a tariff filing.

* * * * *

7. Section 61.39 is proposed to be added as follows:

§ 61.39 Optional supporting information to be submitted with letters of transmittal for Access Tariff filings by local exchange carriers serving 50,000 or fewer access lines.

(a) *Scope.* This section provides for an optional method of filing for any local exchange carrier who elects to issue its own Access Tariff and who serve 50,000 or fewer access lines in a study area as determined under § 67.611 of the Commission's Rules. However, the Commission may require any carrier to submit such informatioin as may be necessary for review of a tariff filing.

(b) *Explanation and data supporting tariff changes.* The material to be submitted for either a tariff change or a new tariff which affects rates or charges must include an explanation of the filing in the transmittal as required by § 61.33. The basis for ratemaking must comply with the following requirements. It is not necessary to submit this supporting data at the time of the filing. However, the local exchange carrier should be prepared to submit the date promptly upon reasonable request by the Commission or interested parties.

(1) For a tariff change, the local exchange carrier which is a cost schedule carrier must propose rates based on the following:

(i) For the first year, a cost of service study for all elements for the most recent 12 month period with related demand for the same period.

(ii) For subsequent filings, a cost of service study for all elements for the total period since the local exchange carrier's last annual filing, with related demand for the same period.

(2) For a tariff change, the local exchange company which is an average schedule carrier must propose rates based on the following:

(i) For the first year, the local exchange carrier's most recent settlement from the National Exchange Carrier Association pool.

(ii) For subsequent filings, the local exchange carrier's most recent average schedule settlement or the most recent average schedule rates development by the National Exchange Carrier Association, whichever is most recent.

(c) *Maximum allowable rate of return.* Local exchange carriers filing tariffs under this section are not required to comply with §§ 65.700 through 65.703, inclusive, of the Commission's Rules. However, costs must be calculated based on the local exchange carrier prescribed rate of return applicable to the period of the cost study required in paragraph (b) of this section.

PART 69—ACCESS CHARGES

8. The authority citation for Part 69 would continue to read as follows:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1072, 1077, 1094, as amended; 47 U.S.C. 154, 201, 203, 205, 218, 403, unless otherwise noted.

9. Section 69.3 is proposed to be amended by revising paragraph (a) to read as follows:

§ 69.3 Filing of access service tariffs.

(a) A tariff for access service shall be filed with this Commission for an annual period. Such tariffs shall be filed so as to provide a minimum of 90 days notice with a scheduled effective date of January 1. A tariff for access service provided by telephone companies with 50,000 lines or fewer in a study area, as determined under Section 67.611 of this chapter, may be filed for a biennial period, with a minimum of 90 days notice, to begin on January 1 of any odd-numbered year. For purposes of computing end user charge access elements and carrier's carrier charges other than for the Carrier Common Line element to be effective on January 1 of any even-numbered year, the association may propose rate changes based upon statistical methods which represent a reasonable equivalent to the cost support information otherwise required under Part 61 of this chapter.

* * * * *

10. Section 69.603 is proposed to be amended by adding new paragraph (c) to read as follows:

§ 69.603 Association functions.

* * * * *

(c) The association shall also prepare and file an access charge tariff containing terms and conditions for access service and a form for the filing of rate shedules by telephone companies that choose to reference these terms and conditions while filing their own access rates.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86–28763 Filed 12–22–86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Parts 31 and 32

[CC Docket 86–322; RM 4966]

Common Carrier Services; Petition of the Mountain States Telephone and Telegraph Co., Northwestern Bell Telephone Co. and Pacific Northwest Bell Telephone Co.

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission has decided to issue a Notice of Proposed Rulemaking to amend §§ 31.235 and 31.607 of Part 31 in response to the Petition of the Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company and Pacific Northwest Bell Telephone Company.

DATES: Comments are due by January 26, 1987; reply Comments are due by February 2, 1967.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John T. Curry, Accounting Systems Branch, Accounting and Audits Division, Common Carrier Bureau, (202) 634–1881.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking* adopted July 29, 1986, and released August 8, 1986.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140 Washington, DC 20037.

Summary of Notice of Proposed Rulemaking

On April 11, 1985, The Mountain States Telephone and Telegraph Company (MTN), Northwestern Bell Telephone Company (NWB) and Pacific Northwest Bell Telephone Company (PNB) filed a petition for rulemaking to amend §§ 31.235 and 31.607 of Part 31 of our Rules (Uniform System of Accounts for Class A and Class B Telephone Carriers). The requested amendments would permit (1) the expensing of costs related to the installation and removal of coin stations, including premises wiring (station connections) and (2) amortization of the embedded investment in coin station premises wiring over one year.

Currently the Rules require that the original cost of public telephone equipment and the original cost of premises wiring installed for use by public telephones shall be capitalized and recorded in Account 235, Public Telephone Equipment. Expenses associated with this equipment are recorded in Account 607, Repairs of Public Telephone Equipment. The Petitioners claim that significant and growing competition now exists, and that increasing numbers of telephone company coin stations are being removed and replaced by customer provided coin stations. As a result, telephone company coin stations are being removed before the cost of installation is fully recovered. They maintain that the Commission's premise for capitalization is no longer valid and that the installation cost should be expensed because cost recovery from future users is no longer assured. The Petitioners also request that embedded costs of installation be amortized over one year because the expected life of the asset has been shortened and this approach is similar to the treatment prescribed for ordinary station connection costs.

In the case of semi-public locations there may be a cost-causative customer from whom costs may be immediately recovered. Accordingly we are proposing an amendment of §31.235 which would allow the expensing of installation and removal costs of coin operated telephones in semi-public locations while requiring capitalization of these costs for telephone company provided coin stations in public locations. We would, of course, propose to amend Part 32, which will become effective in 1988, to conform with any amendments we adopt in Part 31 (proposed amendments are as shown in the Appendices). If there has been a significant change affecting the overall expected life of the equipment in the account, or its separate subclasses, precipitated by competition or otherwise, a factual showing of such changes could indicate that relief is appropriate. We also seek comment on an appropriate time period for the amortization of embedded installation costs in semi-public locations, as well as information concerning the amount of this investment and its impact on ratepayers.

Other factors may be relevant to this proceeding and interested parties are invited to comment on any other factors for our consideration in reaching a final determination on this subject, but we specifically seek comments on the following: (1) Whether a distinction should be made between public and semi-public coin operated telephones; (2) whether the Commission should amend Parts 31 and 32 to permit the expensing of the installation and removal costs of all coin operated telephone equipment; (3) whether the Commission should amend Parts 31 and 32 to permit the expensing of the installation and removal costs of any or all credit card operated telephone equipment; and (4) whether changes in circumstances warrant different amortization of embedded costs of coin station connections in semi-public areas; and if so, whether they should be amortized over one year, ten years or some other reasonable interval.

List of Subjects

47 CFR Part 31

Uniform System of Accounts for Class A and Class B telephone companies.

47 CFR Part 32

Uniform System of Accounts for telecommunications companies.

1. The authority citation for Part 31 would continue to read as follows:

Authority: Sec. 4(i), 4(j), 201, 202, 203, 204, 205, 214, 220, 221, and 403 of the Communications Act of 1934, as amended,

sec. 553 of the Administrative Procedure Act, 5 U.S.C. and § 1.411 *et seq.* of the Commission's Rules.

Parts 31 and 32 of Title 47 of the CFR are proposed to be amended as follows:

2. Section 31.235 would be revised as shown below:

§ 31.235 Public and semi-public telephone equipment.

(a) This account shall include the original cost of coin-operated and coinless public telephones and semi-public coin-operated and coinless telephones in separate subclasses, "Public Telephone Equipment Coin-Operated", "Public Telephone Equipment Coinless", "Semi-Public Telephone Equipment Coin-Operated" and "Semi-Public Telephone Equipment Coinless". The public telephone equipment subclasses shall also include the original cost of the premises wiring installed for use by the public telephones. The semi-public telephone equipment subclasses shall not include the original cost of the premises wiring installed for use by the semi-public telephones. This amount shall be included in Account 31.607 "Repairs of Public and Semi-Public Telephone Equipment".

(b) This account shall also include the original cost of operating spares that are required to provide a continuity of service for public and semi-public telephones. The operating spares shall not exceed a six months supply in terms of turnover and availability to installers from locations in reasonable proximity to the location of the installed equipment.

Items

(Note section 31.01–8)

Enclosure—a complete installation with or without booth, directory hangers and shelves, shield and public or semi-public telephone signs.

Mounting—(pedestal, post or wall)—a complete installation with or without a base plate.

Directory stand or shelf (in proximity to public or semi-public telephones)—a complete installation with or without directory hangers.

Telephone sets—a complete item (coin operated and credit card).

Note A.—The cost of replacing operating spares shall be charged to Account 607, "Repairs of Public and Semi-Public Telephone Equipment".

3. Section 1.607 would be revised as shown below:

§ 31.607 Repairs of public and semi-public telephone equipment.

This account shall include the cost of repairs of public and semi-public telephone equipment. This account shall also include the cost of the premises wiring installed for use by the semi-public telephones. Carriers shall maintain the cost of repairs for coinless public and semi-public telephones in separate subaccounts.

Items

Note section 31.01–8

Cleaning public and semi-public telephone equipment.

House service for public and semi-public telephone equipment.

Inspecting, testing, and reporting on condition of equipment to determine the need for repairs or replacements.

Installation of premises wiring for use by semi-public telephones.

Materials normally used as repair parts for public and semi-public telephone equipment.

Moves or relocations of items of public or semi-public telephone equipment (within the same accounting area).

Repainting and other repairs on booths, including those owned by others.

Repairing used public and semi-public telephone equipment for re-use.

Replacing defective public and semi-public telephone equipment (labor only). (See Note A of this account.)

Supply expense applicable to public and semi-public equipment.

Testing for, locating and clearing trouble in public and semi-public equipment. (See also Account 603.)

Note A.—The material cost of operating spares shall be charged to Account 235. However, the installation labor and repair cost of this equipment shall be charged to this account.

4. The authority citation for Part 32 continues to read as follows:

Authority: 47 U.S.C. 154; 47 U.S.C. 219, 220.

5. Section 32.2351 would be revised as shown below:

§ 32.2351 Public and semi-public telephone terminal equipment.

(a) This account shall include in separate subclasses for public and semi-public telephones, the original cost of coinless, coin-operated, credit card and pay telephones installed for use by the public. The original cost of semi-public telephone equipment shall not include the original cost of installing premises wiring. This amount shall be included in Account 635, Public Telephone Terminal Equipment Expense.

William J. Tricarico,

Secretory.

[FR Doc. 86–28762 Filed 12–22–86; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 574

[Docket No. 70–12; Notice 26]

Tire Identification and Recordkeeping; Changes to Voluntary Tire Registration Procedures

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This notice announces NHTSA's plans to initiate rulemaking intended to result in a significant increase in the registration of the name and address of the purchasers of tires sold by independent dealers. Tire registration is the process by which tire manufacturers collect the names and addresses of the first purchasers of new tires. The purpose of tire registration is to allow the tire manufacturers to directly notify first purchasers in the event of a recall of their tires. Independent dealers are those tire dealers and distributors whose business is not owned or controlled by a tire manufacturer. These independent dealers are currently required to fill in the tire identification number(s) of the tire(s) sold to a purchaser on a registration form provided by the tire manufacturer and give the form to the tire purchaser. The tire purchaser may then fill in his or her name and address, affix a stamp to the registration form, and return it to the tire manufacturer.

NHTSA has completed an evaluation examining whether voluntary registration increased the number of tires sold by independent dealers that are registered with the tire manufacturers. That evaluation concluded that registration fell from 18.1 percent under mandatory registration to 10.8 percent under voluntary registration. Accordingly, the agency has determined that additional steps should be taken to increase the number of tires registered with tire manufacturers.

The agency believes that the following changes might significantly increase tire registration by independent dealers:

1. Tire manufacturers would be required to include prepaid postage on the registration forms. This would eliminate the need for tire purchasers to affix a stamp before mailing the forms back to the manufacturer. The convenience and reduced costs for tire purchasers could encourage more of them to return the registration form.

2. Tire manufacturers are presently required to distribute tire information pamphlets to their dealers, showing the grades the manufacturer has assigned to its tires under the Uniform Tire Quality Grading Standards. NHTSA would require that those information pamphlets be expanded to inform the public of the tire registration process and to ask the dealer for a tire registration form. If more consumers were to ask dealers for registration forms, the dealers would provide those forms to more tire purchasers. This could lead to more tires being registered with the manufacturers.

3. All tire registration forms would be required to have the same return address, that of a single clearinghouse. These forms would be used for all tire sales, regardless of the company that manufactured the tire. This would allow independent dealers to keep a single group of registration forms, instead of a separate group for each manufacturer whose brands were sold by the dealer. This approach would reduce the burden for the dealers to provide the appropriate registration form to the purchaser, and could increase the number of dealers that provide those forms to purchasers.

4. The agency would rely on the statutory requirement that tire manufacturers "cause the establishment and maintenance of records of the name and address of the first purchaser of each tire produced by such manufacturer." Under this approach, the agency would eliminate the tire registration requirements of Part 574. The tire manufacturers would then be free to choose any means of satisfying their statutory obligation, and would be responsible for seeing that their dealers and distributors complied with the chosen means. The tire manufacturers would file compliance plans with the agency to indicate the means they had chosen for affecting the establishment and maintenance of these records. NHTSA believes that this approach could improve tire registration rates by allowing the tire manufacturers the greatest flexibility to collect those names and addresses with an approach specifically chosen to impose the least burden on themselves and their dealers.

This notice is intended to give the public an opportunity to comment on each of these alternative approaches before the agency proposes a rule, and to give the public an opportunity to suggest other approaches that might be included in the proposal for increasing the number of first purchasers of tires whose names and addresses are registered with the tire manufacturers.

DATE: Comments on this notice must be received by the agency no later than February 6, 1987.

ADDRESS: All comments should refer to Docket No. 70–12; Notice 26 and be submitted to: Docket Section, NHTSA, Room 5109, 400 Seventh Street SW., Washington, DC 20590. Docket hours are 8:00 am to 4:00 pm Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Cook, Crash Avoidance Division, NHTSA, 400 Seventh Street SW., Washington, DC 20590 (202–366–4805).

SUPPLEMENTARY INFORMATION:

History of Tire Registration Requirements

A. Mandatory Registration and its Statutory Basis

Prior to the 1982 amendments to the National Traffic and Motor Vehicle Safety Act (the Safety Act; 15 U.S.C. 1831 *et seq.*), all tire dealers were subject to mandatory tire registration procedures. Under the mandatory registration procedures, a tire dealer would record the purchaser's name and address on a registration form, along with the tire identification number(s) of the tire(s) sold to the purchaser and an identification of the selling dealer. It was not necessary for the tire purchaser to take any action to assist in registering the tire(s). The dealer would return the completed registrations to the tire manufacturers at specified intervals.

The mandatory registration procedures had their roots in a May 22, 1970 amendment to the Safety Act. Among other things, this amendment added a new section 113(f) to the Safety Act, which read as follows:

> Every manufacturer of motor vehicles or tires shall maintain records of the names and addresses of the first purchaser (other than a dealer or distributor) of motor vehicles or tires produced by that manufacturer. The [NHTSA] may establish, by order, procedures to be followed by manufacturers in establishing and maintaining such records, including procedures to be followed by distributors and dealers to assist manufacturers to secure the information required by this subsection which will not affect the obligation of manufacturers under this subsection. Such procedures shall be reasonable for the particular type of motor vehicle or type of tires for which they are prescribed.

This statutory language gave NHTSA authority to issue regulations requiring dealers and distributors to comply with some tire registration procedures, but did not require the agency to do so. It also explicitly provided that the ultimate responsibility for gathering and maintaining the record of first purchasers of tires remained with the tire manufacturers, even if NHTSA were to issue a regulation requiring dealers and distributors to take some actions to help the tire manufacturers obtain those records.

NHTSA proposed to exercise this new statutory authority by establishing a new Part 574, *Tire Identification and Recordkeeping*, at 35 FR 11800, July 23, 1970. The significant tire registration requirements in this proposal were as follows:

1. Each tire manufacturer, brand name owner, and retreader "shall provide every distributor and dealer of his product . . . a means by which the distributor or dealer shall record" the registration information.

2. Each tire manufacturer would be required to maintain the registration information provided to it by the dealers.

3. Tire manufacturers would be required to include a contractual provision for each of their distributors or dealers obligating the distributors or dealers to record the registration information.

4. Tire manufacturers would be required to keep a record of the tire identification numbers of all tires they sold to dealers that sell tires directly to tire consumers.

The comments filed in response to this proposal alleged that implementing the third and fourth items set forth above would impose serious burdens and hardships for both tire manufacturers and dealers. After analyzing the comments received on this proposal, NHTSA published a final rule setting forth the mandatory tire registration requirements (35 FR 17257, November 10, 1970). The final rule required dealers and distributors of new and retreaded tires to record the names and addresses of the first purchasers of those tires on the means provided by the tire manufacturer or retreader for doing so, together with the tire identification number(s) of the tire(s) sold and the name and address of the tire seller. The completed registrations had to be promptly forwarded by the dealers and distributors to the manufacturers and retreaders. The proposals that tire manufacturers include contractual provisions to require dealers and distributors to comply with tire

registration and that tire manufacturers keep records of every tire shipped to a dealer or distributor by tire identification number were not adopted in this rule.

The requirement that tire manufacturers and retreaders provide "a means" for recording the required information resulted in a multiplicity of different registration forms and techniques. These differences created problems for tire dealers selling a number of manufacturers' tires, since the dealer had a number of different registration forms and techniques and had to decide which were the proper ones to use in a sale of a particular manufacturer's tires. This proliferation caused confusion among these dealers and resulted in the registration information often being incorrectly recorded.

To address this problem, NHTSA proposed to require tire manufacturers and retreaders to use a standardized registration form (38 FR 6398, March 9, 1973). Additionally, this proposal would have required tire dealers and distributors to give the first purchaser a copy of the tire registration information, so that the purchaser would know that the tire had been registered.

All new tire manufacturers and the retreaders' association objected to the proposed requirement to give the first purchaser a copy of the registration form, alleging that this would increase the burdens associated with tire registration without giving any added benefits. NHTSA found these objections meritorious. Therefore, the final rule for this action amended Part 574 only by implementing the first proposed change. This June 3, 1974 final rule (39 FR 19482) specified that tire manufacturers should provide a standardized registration form, and that dealers and distributors could print their own registration forms, provided that they complied with the standardized format requirements.

B. Legislative Changes to Tire Registration Before 1982

On October 27, 1974, the Safety Act was amended to include a new section 158, and to delete section 113(f). This new section 158 included a subsection (b) which read as follows:

> Each manufacturer of . . . tires shall cause the establishment and maintenance of records of the names and addresses of the first purchaser of each . . . tire produced by such manufacturer. . . . The Secretary may, by rule, specify the records to be established and maintained, and reasonable procedures to be followed by manufacturers in establishing and maintaining such records, including procedures to be followed by distributors and dealers to assist manufacturers to secure the information required by this subsection; . . .

By substituting "shall cause the establishment and maintenance" for "shall establish and maintain", this new subsection removed the requirement of section 113(f) that the tire manufacturer *itself* keep the records. Under the amended statutory language in the new section 158(b), the manufacturer was responsible only for causing the establishment and maintenance of the records; a third party could actually keep the records if the tire manufacturer preferred.

On November 6, 1978, section 158(b) was amended to exempt retreaders from the tire registration requirements applicable to tire manufacturers. This change was made because only 8 retreaded tires had been recalled since 1972, while 66 million tires had been retreaded in that time. In light of this statistic, Congress determined that the burden of retreaded tire registration was not necessary. *See* 124 Cong. Rec. 32145 (September 28, 1978).

C. Motor Vehicle Safety and Cost Savings Authorization Act of 1982

This legislation amended the Safety Act to require NHTSA to change its tire registration requirements insofar as they applied to independent dealers and distributors. Independent dealers and distributors are those dealers and distributors whose business is not owned or controlled by a tire manufacturer. Congress noted that these independent dealers, who now account for about two-thirds of replacement tires sales annually, registered only about 20 percent of the tires they sold. Those dealers whose business was owned or controlled by a tire manufacturer registered between 80 and 90 percent of the tires they sold. Given the wide disparity in tire registrations, Congress determined that an alternative method of tire registration should be instituted for tires sold by independent dealers.

Accordingly, section 158 of the Safety Act was amended to prohibit NHTSA from requiring independent dealers to comply with the mandatory registration requirements. Given the high registration rates for tires sold by non-independent dealers, Congress did not mandate any changes in the mandatory registration, section 158 directed that independent dealers comply with a voluntary registration process. Under this voluntary registration process, the primary responsibility for registering tires sold by independent dealers is borne by the purchaser instead of the dealer. Section 158(b)(2)(B) directed NHTSA to require that independent dealers (1) fill in the tire identification number(s) of the tire(s) sold to a purchaser on a registration form and then (2) give the form to the purchaser. If the purchaser chose to register the tires, he or she could do so by filling in his name and address, affixing a 13¢ stamp, and mailing the form to the tire manufacturer or its designee.

Because of the uncertainties that the new voluntary tire registration procedures to be followed by independent dealers would achieve the desired effect of increasing the registration rate of tires sold by those dealers, section 158(b)(3) of the Safety Act directed NHTSA to conduct an evaluation after two years of voluntary registration to determine the extent to which the voluntary registration procedures for independent dealers were successful in facilitating the establishment and maintenance of tire registration records. Upon completion of the evaluation, that section directs NHTSA to determine the extent to which independent dealers have encouraged purchasers to register their tires and the extent to which those dealers have complied with the voluntary registration procedures. Further, that section requires the agency to determine whether to impose any additional requirements on the independent dealers or the tire manufacturers to produce higher levels of tire registration.

D. NHTSA's Preliminary Evaluation Report on Voluntary Tire Registration

NHTSA prepared a preliminary evaluation report on the voluntary tire registration system. A notice seeking public comment on the preliminary report was published at 50 FR 39214, September 27, 1985. The tentative conclusions of that report were as follows:

1. Registration rates for tires sold by independent dealers dropped from 18.1 percent under mandatory procedures to 10.8 percent under voluntary procedures. There was no comparable decline for tires sold by non-independent dealers still subject to mandatory registration procedures.

2. The registration rates under voluntary procedures may have declined to as little as 8.4 percent because many of the registrations by independent dealers were due to a computer-assisted registration system and to some independent dealers continuing to follow the mandatory procedures.

3. Tire manufacturers and brand name owners provided the independent dealers with a sufficient number of registration forms.

4. There are no records of any registrations for tires sold by more than 70 percent of all independent dealers. Many of the other independent dealers had very low registration rates.

Five commenters responded to the request for comments on this preliminary evaluation report. The Tire Industry Safety Council stated that NHTSA had done a good job on the preliminary evaluation. The National Tire Dealers & Retreaders Association (NTDRA) asked the agency to conduct "an in-depth cost benefit analysis of tire registration." If that study were to conclude that tire registration was not cost beneficial, the commenter asked NHTSA to "lead efforts to repeal the tire registration requirements." The Armstrong Rubber Company supported NTDRA's comment.

The Rubber Manufacturers Association, a trade association representing domestic tire manufacturers, supported the continuation of a tire registration system. This comment stated that NHTSA should "aggressively stress enforcement through a public education campaign of voluntary registration throughout the various distribution channels." The American Automobile Association (AAA) also strongly urged that tire registration be continued. AAA suggested that NHTSA require pre-paid postage on the voluntary registration forms to ensure that consumers will return the forms. This comment also suggested that the agency step up its enforcement efforts against independent dealers who are not giving the forms to first purchasers and initiate a public education campaign to better inform the public about the voluntary registration system.

E. Possible Actions To Improve Registration Rates for Independent Dealers

NHTSA has tentatively concluded that further action is necessary to improve the registration rates for those new tires sold by independent dealers. Congress clearly expressed its belief that mandatory registration procedures for gathering the names and addresses of first purchasers of new tires were not working well, and that a change from mandatory to voluntary registration procedures for tires sold by independent dealers would increase the number of tires registered with the manufacturers. *See* H.R. Rep. No. 97-576, 97th Cong., 2d Sess., at 8 (1982); S. Rep. No. 97-505, 97th Cong., 2d Sess., at 7 (1982). In fact, the number of tires sold by independent dealers that are registered with manufacturers has declined from 18.1 percent under mandatory registration to 10.8 percent under voluntary registration. Thus, the voluntary registration procedures now in place have not successfuily carried out the Congressional purpose of increasing tire registration.

This situation leaves the agency with two separate problems to address. First, the agency believes it is appropriate to announce the steps it will take to improve compliance with the voluntary registration procedures currently in place for tires sold by independent dealers. Second, this notice asks for public comment on possible rulemaking actions that would improve the registration rates for such tires.

1. Improvements to Current Voluntary Registration Procedures

The voluntary registration procedures cannot work if the independent dealers do not provide the registration forms which purchasers can complete and return to the tire manufacturers. NHTSA's evaluation showed that only about 22 percent of the consumers purchasing new tires from independent dealers recalled receiving the voluntary registration forms from their tire dealer. The evaluation also showed that more than 70 percent of all independent tire dealers for the largest tire manufacturer have not had even a single tire registered under the voluntary registration procedures. From these facts, the agency concludes that many independent dealers are not routinely providing registration forms to tire purchasers.

One means of increasing the distribution of registration forms is for the agency to begin enforcement actions to ensure that independent dealers are distributing these forms to the public. NHTSA would like to make clear that it does not believe that this is the best use it can make of its limited enforcement budget. Ordinarily, the agency concentrates its enforcement efforts under the Safety Act in those areas most directly related to vehicle or equipment safety. This approach has resulted in NHTSA directing its enforcement efforts related to tires toward actual testing the tires for compliance with the applicable safety standards and examination of the number of reports of tire failure while in service. Tire registration is an important factor *after* a determination has been made that a group of tires should be recalled and it is necessary to notify the purchasers of the recall. In this regard, NHTSA would like to note that there have been very few tires recalled recently. In 1983, 96,546 tires were recalled, in 1984, 80,766 tires were recalled, and in 1985, 25,799 tires were recalled. Since about 175,000,000 tires are produced annually, the percentage of tires recalled was about 6/100 of one percent in 1983, 5/100 of one percent in 1984, 1/100 of one percent in 1985, and 4/100 of one percent for the three year period. This low recall rate indicates that the low tire registration rates have not resulted in the public frequently and unknowingly driving on tires that have been recalled by the manufacturer.

As noted above, only 10.8 percent of the tires sold by independent dealers are registered with the manufacturers. In the event of a recall involving a serious safety hazard, the tire manufacturer would have no way of directly notifying most purchasers of unregistered tires. However, the manufacturer could provide indirect notification. The 1982 amendments to the Safety Act also amended section 153(c) of the Safety Act (15 U.S.C. 1413(c)) to give the agency authority to order tire manufacturers to give public notice of a tire recall in appropriate circumstances. NHTSA will not hesitate to use this authority should those circumstances arise. The need for such public notice would increase if the vast majority of tires involved in a recall are not registered with the manufacturer of such tires.

2. Possible Future Improvements to Voluntary Registration Procedures

Increased enforcement by the agency of the voluntary registration procedures and the agency's use of its authority to order public notice of tire recalls in appropriate circumstances do not obviate the need for improvements to the current voluntary tire registration procedures. In fact, they merely highlight the failure of the voluntary registration procedures to improve registration rates over the low levels achieved under mandatory tire registration requirements.

Section 158(b)(3)(iii) specifies that the agency may order by rule additional requirements to the voluntary registration procedures "only if the [NHTSA] determines that such requirements are necessary to reduce the risk to motor vehicle safety, after considering (I) the cost of such requirements to manufacturers and the burden of such requirements upon dealers and distributors, as compared to the additional percentage of first purchasers of tires with respect to whom records would be established and maintained as a result of the imposition of such requirements; and (II) the extent to which dealers and distributors have encouraged first purchasers to register the tires, and the extent to which

dealers and distributors have compiled with the [voluntary registration procedures]."

The only purpose of tire registration is to allow tire manufacturers to notify the first purchasers of the tires about any recall of the tires. Given the very low recall rate of tires in recent years, the risk to motor vehicle safety as a result of the low registration of tires is small. However, if there were a recall of tires that posed a significant safety hazard, the owners of those tires whose names and addresses were not registered with the tire manufacturer could not be promptly and directly notified of the recall. In those circumstances, NHTSA believes that the low registration rate would pose a risk to motor vehicle safety. Since both houses of Congress referred to the "relationship of tire registration to highway safety" in their Committee reports, it appears that Congress agrees with the agency's conclusion.

The agency is *not* at this time considering any action to reimpose mandatory registration requirements for tires sold by independent dealers. Mandatory registration of tires by all dealers was required by this agency for more than 10 years, yet consistently achieved registration rates of only about 20 percent of the tires sold by independent dealers. With a 20 percent registration rate, tire manufacturers would still be unable to directly notify 80 percent of the first purchasers about the recall. Thus, the potential increase in registrations associated with a reimposition of mandatory registration requirements does not appear to be significant.

The burdens associated with mandatory registration requirements are set forth at length in the Congressional hearings held on the 1982 amendments to the Safety Act and need not be repeated here. Suffice it to say that the agency is unable to determine that the possible slight increase in registrations would compare favorably with the significant additional burdens that would be associated with a mandatory registration provision applicable to independent dealers. NHTSA is interested in receiving public comment on this tentative decision.

NHTSA tentatively believes that there are four steps which might significantly increase the registration rates for tires sold by independent dealers, and this notice solicits comments on each of these steps. The first possible step would be to amend Part 574 to require the tire manufacturers to include prepaid postage on the registration forms. The advantage of prepaid postage would be that it would encourage more consumers to return the registration forms. The NTDRA noted in its comment to the preliminary evaluation that fewer than 40 percent of consumers that receive the voluntary registration forms are returning those forms to the tire manufacturers. The agency is aware of studies that show that prepaid postage increases the return rate of such items substantially above the rate when prepaid postage is not used. *See* Paul L. Erdos, *Professional Mail Surveys*, at 111, 121, and 242 (1983); C. William Emory, *Business Research Methods*, at 309, 310 (1980); Don A. Dillman, *Mail and Telephone Surveys: The Total Design Method*, at 178, 179 (1978).

Further, a requirement for prepaid postage would not impose any further burdens on dealers and distributors than the current voluntary registration procedures. The manufacturers would incur slightly higher costs. However, if the manufacturers use business reply mail, they would not be charged postage for forms not mailed back to them.

The potential disadvantage of such an approach is that it would not increase the number of first purchasers that are given the registration forms by independent dealers. If the preliminary evaluation's conclusion that only 22 percent of first purchasers are given registration forms is correct, a requirement for tire manufacturers to pay postage on those registrations could not achieve a higher registration than 22 percent, assuming that every consumer who receives the registration form completes it and returns it to the manufacturer. This action could improve tire registration rates over the levels currently achieved, however.

The second step which the agency is considering would consist of a public education campaign, coupled with a requirement that manufacturers include a brief explanation of the purpose of tire registration in the tire information pamphlets they distribute. The Uniform Tire Quality Grading Standards (UTQGS; 49 CFR Part 575) currently require tire manufacturers to provide each of their dealers with tire information pamphlets. These information pamphlets contain brief explanations of each performance area for which tires are graded under the UTQGS, and a listing of the grades assigned in each performance area to all of the manufacturer's tires sold by that dealer. The agency is considering amending this requirement so that these pamphlets would also include a brief explanation of the purpose of tire registration and advice to the consumer to ask the tire dealer for a registration form. Additionally, the agency would include information on the purpose and importance of tire registration in its general consumer education activities.

The agency's evaluation of tire registration shows that most consumers do not understand the purpose of tire registration. By more widely disseminating information about tire registration and its purpose, the agency and the tire manufacturers should be able to significantly enhance the public's understanding of the tire registration process. The agency believes that as more consumers better understand the tire registration process, they will ask the independent dealers for a tire registration form when the dealer does not provide a form as part of the sale. Wider distribution of the forms by the dealers to first purchasers should result in more first purchasers returning the forms to the tire manufacturers.

The disadvantages associated with this approach include the time it would necessarily take for such a consumer education to result in increased tire registration. That is, assuming that informed consumers will ask the dealers for registration forms, it will take some time for this agency and the tire manufacturers to disseminate the information. During this time, there would be no change to the voluntary registration procedures, which have yielded low tire registration rates.

Additionally, if this approach is to be effective, those tire dealers who did not originally provide the purchaser with a registration form must, when asked by the customer, both furnish a registration form and take the time to fill in the correct tire identification number(s). Even assuming that all independent dealers would furnish a registration form when asked to do so by the customer, NHTSA's evaluation showed that several tire dealers have as a practice filled in the same valid tire identification number on all tire registration forms, regardless of the actual tire identification number on the tire they had just sold. These dealers viewed this action as a timesaving way to appear to comply with the tire registration procedures. In fact, this practice results in tire manufacturers getting names and addresses of first purchasers, but not being able to match those names and addresses to the tires they have actually purchased. Consequently, the manufacturer would not be able to directly notify these first purchasers if their tires were recalled. If dealers were to follow this practice generally, the purpose of tire registration would not be furthered, even if the consumer information program were successful and more registration forms were returned to the tire manufacturers.

The third step under consideration is a requirement that there be a central clearing house for all registration forms distributed to consumers by independent dealers. All registration forms provided by tire manufacturers to independent dealers would be addressed to this clearing house, regardless of which manufacturer's tires were being registered. The clearing house would then forward the forms it received to the appropriate manufacturer or its designee. Such a requirement would allow the independent dealers to keep just one type of registration form for *all* types of tires he or she sold. Under the current voluntary registration procedures, a dealer that sells tires produced by six different manufacturers must keep six different groups of registration forms, and provide the purchaser with the proper registration form for a particular tire. It is possible that this is an unnecessary complexity that discourages independent dealers from providing first purchasers with any registration forms. If this is true, the single registration form for all manufacturer's tires would remove this burden, and might result in more dealers providing first purchasers with the registration forms.

Adopting this approach would, however, raise some significant issues. These would include the manner in which a single clearing house would be designated for all tire registrations and by whom, since there are now at least two clearing houses in operation. The existing clearing houses service only a limited number of tire brands. Comments are specifically requested on how a single clearing house should be designated and by whom, if this approach were adopted.

In addition, the agency's tentative belief that a single central clearing house might significantly improve the registration rates under voluntary registration is based on some anecdotal suggestions in the dealer survey included in the preliminary evaluation and on the intuitive reasonableness of the suggestion. The data in the preliminary evaluation do not, however, provide a basis for concluding that this step would significantly increase the registration rates under voluntary registration.

Finally, the agency is considering rescinding the regulatory requirements of Part 574 relating to tire registration by dealers and distributors, and requiring the tire manufacturers to devise their own methods of complying with the statutory requirement that the tire manufacturers "cause the establishment and maintenance of records of the name and address of the first purchaser of each tire produced by the manufacturer." NHTSA believes there would be several advantages associated with this approach.

First, the agency has exercised its statutory authority to promulgate tire registration requirements applicable to all independent dealers. These regulatory requirements have failed to achieve the goal of increasing tire registration. NHTSA has no reason to believe after 15 years of regulation that it can devise a registration system that will be more effective than one each tire manufacturer designs for itself and its dealers. The flexibility each manufacturer would have to devise a registration system specifically tailored to its own circumstances should increase registration rates over those achieved under Part 574, regardless of their differing circumstances.

Second, the vehicle manufacturers are subject to the same statutory duty under section 158 of the Safety Act as the tire manufacturers. The vehicle manufacturers have records of a much higher percentage of the first purchasers than do the tire manufacturers, although NHTSA has never issued a regulation specifying how the vehicle manufacturers are to collect those names and addresses. Absent any regulation, the vehicle manufacturers have devised a workable system for themselves and their dealers that is signficantly more effective than the systems that have been imposed under Part 574. NHTSA is aware that there are significant differences in the distribution and sale of vehicles and tires and in the frequency of recalls and warranty claims involving vehicles and tires. Nonetheless, the substantially higher percentage of registrations of vehicle owners with the manufacturers appears to indicate that successful registration is not necessarily dependent on some regulatory requirement that certain actions be taken by dealers and distributors.

Third, this approach would give the tire manufacturers greater incentive to ensure an effective tire registration system. At present, the tire manufacturers have only a limited incentive to ensure an effective tire registration system; i.e., their desire to notify as many first purchasers as possible in the event of a recall. This is because NHTSA has assumed the responsibility for designing and enforcing the tire registration requirements would be transferred from this agency to the tire manufacturers.

Finally, the enforcement burden for the agency would be substantially lessened if it were directed against only the 50 or so tire manufacturers and brand name owners instead of the 50,000 or so independent tire dealers. This would allow NHTSA to use its enforcement budget for tire safety on issues more directly related to tire safety, rather than examining whether or not tire dealers and distributors were helping the tire manufacturers satisfy their statutory obligation.

The tire manufacturers could use the flexibility given them by rescission of the registration requirements in a variety of ways. The preliminary evaluation showed that the computerized registration system used by Goodyear for some of its independent dealers resulted in registrations of more than 85 percent of the tires sold by those dealers during the voluntary registration period. If the tire registration regulations were rescinded, Goodyear might choose to make its computerized registration available to all its independent dealers. Other manufacturers could devise different approaches that would achieve registrations well in excess of 20 percent. For instance, tire manufacturers could include provisions in their contracts with their independent dealers requiring the registration of tires, offer incentives to independent dealers for registering the tires that they sell, conduct education campaigns to inform tire purchasers of the importance of voluntarily returning their registration forms, require duplicates of the registration form to be given by the independent dealers to purchasers of their tires, or any other approach the manufacturers believe will increase the number of tires registered with them.

If this action were proposed, the agency would include a proposal to require each tire manufacturer to file a compliance plan with NHTSA explaining what steps it or the brand name owner would take to improve the registration rate of its tires sold by independent dealers, and why the manufacturer or brand name owner believed those steps would improve the registration rate. These plans would be considered to be approved by the agency, unless NHTSA made an express determination that it is unlikely that the plan would result in the tire manufacturer or brand name owner collecting the names and addresses of a significant percentage of first purchasers of its tires. The plans would be used primarily to inform NHTSA of the manufacturer or brand name owner's efforts to comply with its statutory

obligation. This would allow the agency to direct its enforcement efforts towards ensuring that the tire manufacturers are in fact taking the actions to collect the names and addresses of first purchasers that they said they would take in the plan that was filed.

A possible disadvantage associated with this action is that dealers and consumers might be confused by different registration procedures for tires sold by different manufacturers. It is possible that some tire manufacturers would require consumers to take some affirmative steps to register their tires, while other manufacturers would not. Similarly, an independent dealer selling six different brands of tires might have to follow six different registration procedures. This potential confusion and uncertainty could work to reduce tire registrations.

The agency would like to get further information on the costs and operating procedures now used by tire manufacturers and brand name owners to register tires under the procedures specified in 49 CFR Part 574. Specifically, the agency requests that tire manufacturers and brand name owners address the following areas in their comments on this notice:

1. The precise process, including each step, used by the manufacturer or brand name owner to register tires, above and beyond the steps specified in 49 CFR Part 574;

2. For each step of the process listed in response to number 1 above, indicate the cost to the manufacturer or brand name owner;

3. State any problems experienced by the manufacturer or brand name owner in connection with its tire registration process.

Potentiol Regulotory Impacts

NHTSA has considered the potential burdens and benefits associated with each of the four options set forth above. This advance notice of proposed rulemaking is not subject to Executive Order 12291, since that applies only to notices of proposed rulemaking and final rules. However, NHTSA believes that this advance notice of proposed rulemaking does concern a matter in which there is substantial public interest, which makes it a "significant" rulemaking action under the Department of Transportation regulatory policies and procedures.

It is difficult to develop quantified estimates of the burdens associated with the four potential actions on which this notice seeks public comment, because the precise requirements to implement any of those actions have not been developed. Additionally, changes may be made to any of these courses of action in response to the comments received on this notice. Furthermore, one cannot estimate the burdens associated with these courses of action unless one assumes a certain level of registrations that will be achieved under each course of action.

For the purposes of this discussion, NHTSA assumes that each of these courses of action will result in 15 percent of the tires sold by independent dealers being registered with the tire manufacturers, an increase of 4.2 percentage points above the current level of 10.8 percent. This figure was chosen solely because some assumption of effectiveness is necessary to allow the agency to estimate the potential burdens associated with these options. In fact, the agency believes that any change it proposes to the current voluntary registration procedures would result in a significantly higher percentage of tires being registered with the manufacturers. At this time, however, NHTSA cannot precisely quantify the anticipated registration rates under any of these courses of action. With these caveats, NHTSA estimates the following additional burdens would be associated with the four courses of actions on which this notice seeks comments. Note that all of these costs are over and above the costs currently associated with voluntary tire registration.

If prepaid postage were required on tire registration forms for independent dealers, additional costs of $1,150,000 would be imposed, with $70,000 of that total being a one-time cost, while $1,080,000 would be an annual additional cost. This estimate was derived as follows: tire manufacturers would have to reprint new forms. About 70 million voluntary registration forms are distributed each year, and it costs about 1/10 of a cent to have each form printed. Once the necessary changes were made to the existing forms, it would not increase the costs to print the forms. However, it would be necessary for tire manufacturers to change their existing forms to accommodate the requirement for prepaid postage. Therefore, printing new forms would impose one-time costs of about $70,000. Prepaid postage would cost the manufacturers 16¢ for each form that was returned, and these costs would recur each year. Multiplying 70 million registration forms by 15 percent (the assumed return rate) by 16¢ yields estimated postage costs of $1,680,000.

The increased registration rates would also result in additional tire manufacturer handling and computer costs. For the purposes of this estimate, NHTSA assumes such costs to be 5¢ for each returned registration form. At 15 percent registration, additional handling would impose costs of $230,000 on the tire manufacturers. Total annual costs imposed on tire manufacturers by a requirement for prepaid postage would thus be estimated at $1,910,000. To estimate total costs of this option, one must subtract the costs of postage currently borne by consumers to register their tires. At current rates, consumer-paid postage costs $830,000 annually. Thus, the overall costs associated with this option are estimated at $1,080,000 per annum.

The option of implementing a public education campaign, coupled with a requirement that tire manufacturers include a brief explanation of the purpose of tire registration in tire information pamphlets would impose annual additional costs of $520,000, estimated as follows. NHTSA estimates that it would prepare and distribute information to the media at an annual cost of $30,000. There are about 50 tire manufacturers and brand name owners. NHTSA assumes that the five largest would spend $25,000 on fact sheets and promotions, the next five would spend $10,000, the next 10 would spend $5,000, and the 30 smallest would spend $1,000 under this option. Total costs for the industry would be $260,000. Adding the additional handling and computer costs of $230,000, calculated by assuming it costs 5¢ for manufacturers to handle each returned form, yields an overall additional annual cost estimate of $520,000 for this option.

The requirement to address all registration forms to a single clearing house would require the tire manufacturers to print new forms. This would impose a one-time cost of $70,000, as explained in the section estimating costs for prepaid postage on registration forms. In addition, additional annual costs of $440,000 would be imposed. Assuming that it costs a clearing house 2¢ per registration form to forward it to the tire manufacturer, additional costs of $210,000 would be imposed. The additional handling and computer costs for the additional registrations would impose the remaining $230,000 of annual costs.

Finally, if the agency rescinded the tire registration requirements of Part 574, there would be a one-time requirement for the tire manufacturers and brand name owners to prepare and file compliance plans. NHTSA estimates this would cost an average of $1,000 for the 50 affected parties, resulting in a total one-time cost of $50,000. NHTSA assumes that the manfacturers would incur costs of $1,400,000 to enforce and/or promote its registration plans for independent dealers. This assumes it would cost tire manufacturers one cent for each tire sold through these dealers. Adding the additional handling and computer costs for increased tire registration of $230,000 used throughout these estimates yields overall annual costs of $1,630,000.

As noted above, the agency cannot quantify the benefits associated with increased tire registration at this time. If there were a recall of tires that posed a significant safety hazard, the owners of those tires whose names and addresses were not registered with the tire manufacturer could not be promptly and directly notified of the recall. In those circumstances, increasing the rate of tire registration would reduce the risk to motor vehicle safety. Both houses of Congress referred to the "relationship of tire registration to highway safety" in their Committee reports, indicating that Congress agrees with the agency's conclusion. However, such benefits cannot be quantified at this time.

NHTSA solicits public comments on its estimates of the burdens and benefits of each of these alternatives. Any data or information available to commenters with respect to these estimates would be particularly useful to the agency in determining what changes should be proposed to the current voluntary registration procedures.

This notice solicits comments on each of these approaches and any other approaches commenters believe would significantly increase registration rates for tires sold by independent dealers. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the notice will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to a notice of proposed rulemaking will be considered in connection with any final rule. Comments on the notice will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

(15 U.S.C. 1392, 1407, 1418; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on December 18, 1986.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 86-28825 Filed 12-18-86; 5:08 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for the Puerto Rican Crested Toad

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine the Puerto Rican crested toad *(Peltophryne lemur)* to be a threatened species. Critical habitat is not proposed. The species is endemic to two islands on the Puerto Rican Shelf, but is presently thought to exist only on the main island of Puerto Rico, where a single large population is known from the southwest coast and a few small populations are believed to survive on the north coast. The threats include filling and drainage of its breeding sites, and direct loss of adults and their habitat during land development. This proposal, if made final, would implement the protection and recovery provisions of the Endangered Species Act of 1973, as amended, for this toad. The Service seeks data and comments from the public on this proposal.

DATES: Comments for all interested parties must be received by February 23, 1987. Public hearing requests must be received by February 6, 1987.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622. Comments and materials received will be available for public inspection, by appointment, at this office during normal business hours, and at the Service's Southeast Regional Office, Suite 1282, 75 Spring Street SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Mr. David Densmore at the Caribbean Field Office address (809/851-7297) or Mr. Richard P. Ingram at the Atlanta Regional Office address (404/331-3583 or FTS 242-3583).

SUPPLEMENTARY INFORMATION:

Background

The Puerto Rican crested toad *(Peltophryne lemur)* was first described in 1868 by E.D. Cope, and was later placed in the genus *Bufo* (Stejneger 1904). Recently, the native bufonids of the Greater Antilles have been regrouped under the genus *Peltophryne*, in recognition of their presumed monophyletic origin (Pregill 1981). *Peltophryne lemur* is a medium-sized toad, 64 to 120 millimeters (2.5 to 4.5 inches) in snout-vent length, yellowish-olive to blackish-brown in color, with prominent supraorbital crests and a distinctive long, upturned snout. Males are considerably smaller than females, and exhibit less prominent crests.

The Puerto Rican crested toad is endemic to two islands on the Puerto Rican Shelf (the main island of Puerto Rico and the island of Virgin Gorda in the British Virgin Islands). The known historic distribution on Virgin Gorda is very limited, and the species has not been observed there for at least two decades; it is assumed to have been extirpated from that island. It has historically been considered rare on Puerto Rico, and for several years before 1966 (García Díaz 1967) was even feared to be extinct there. From better knowledge of its habitat, the toad is now believed to be confined to certain areas on the coastal plain of Puerto Rico. It has been found as single individuals or very small populations at several locations on the north coastal plain, and

BEST COPY AVAILABLE

is known from two areas on the south coastal plain. Since 1975 it has been known to occur in Guánica Commonwealth Forest on the southern coast (Richard Thomas, University of Puerto Rico, pers. comm. 1976), and a large breeding aggregation estimated to contain more than a thousand individuals was found there is 1984 (Moreno 1985). The species has also been in captive propagation (Paine 1985), and approximately 850 toadlets were released in Cambalache Commonwealth Forest on the north coast in 1984 and 1985.

The Puerto Rican crested toad occurs at low elevations (below 200 meters or 660 feet) where there is exposed limestone or porous, well-drained soil offering an abundance of fissures and cavities. Adult toads are semifossorial and widely dispersed when not breeding. Although not completely understood, breeding appears to be sporadic and highly dependent upon occasional heavy rains (Rivero *et al.* 1980, Moreno 1985). When rainfall and surface water are adequate, more than one breeding event may occur in a single season. Breeding is concentrated in a very short period, and within a few weeks the toadlets metamorphose and quickly disperse. Breeding shows a high fidelity to sites that offer the right combination of elevation, topography, and ponded fresh water.

The Puerto Rican crested toad appears to be susceptible to a variety of threats at various stages of its life cycle. Because of their cryptic behavior, the location or even presence of adult toads in an area being developed is difficult to detect in advance. More importantly, destruction of its breeding sites by filling or alternation of drainage may indirectly destroy even a large population. Many breeding sites are known to have been eliminated on both the north and south coasts of Puerto Rico, and with so few breeding sites known to remain, further losses could place the species in danger of extinction.

The Puerto Rican crested toad was included as a category 2 species in a notice of vertebrate wildlife review on December 30, 1982 (47 FR 58454). Category 2 comprises taxa for which information in the possession of the Service indicates that proposing to list the species is possibly appropriate, but for which available data are not judged sufficient to support such proposal. The Puerto Rico Department of Natural Resources petitioned the Service to list the Puerto Rican crested toad as endangered on December 27, 1984. On August 20, 1986 (51 FR 29671), the Service announced a 12-month finding that the action requested by the petitioner was warranted but precluded by other listing actions in accordance with section 4(b)(3)(B)(iii) of the Endangered Species Act of 1973, as amended, and that available evidence indicated the species should be listed as threated. This proposed rule constitutes an additional required petition finding, and indicates that the action requested by the petitioner is warranted.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Puerto Rican crested toad (*Peltophryne lemur*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its habitat or Range

Although the Puerto Rican crested toad has historically been rare, the species has undoubtedly declined further as its coastal lowland habitats have been destroyed by agricultural and urban development. In particular, known breeding sites have been filled or drained for construction, cultivation, and mosquito control. The Puerto Rico Department of Natural Resources is presently considering construction of a visitors parking lot within the species' only known major breeding area in Guánica Commonwealth Forest. In addition, a major resort development has recently been proposed for a tract of private land adjacent to this site. This sudden acceleration of development pressure where the only known healthy toad population survives has increased concern over the species' continued existence. However, discussions between Federal and Commonwealth agencies have been initiated in an effort to find alternatives to the proposed developments that will avoid destruction of toad breeding habitat.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The taking of toads has occurred for the purpose of captive breeding (Paine 1985), although only a few adults have been taken. However, overcollecting of other species of Puerto Rican herpetofauna is known to have occurred, and may become a factor affecting the continued existence of this species. This would be more likely if collectors were aware of the location of breeding sites end were present during breeding when large numbers of toads may be concentrated in a small area.

C. Disease or Predotion

Disease and predation have not been documented as factors in the decline of this species. Predation on dispersing toadlets is heavy, particularly from wading birds (Miguel Canales, Guanica Commonwealth Forest, pers. comm. 1986), and could become a significant factor with poplations reduced too greatly by other problems.

D. The Inadequacy of Existing Regulatory Mechanism

The Commonweath of Puerto Rico has recently adopted a regulation that recognizes and provides protection for certain Commonwealth listed species. The Puerto Rican crested toad is classed as threatened on the Commonwealth list. Federal listing would enhance this protection and apply the recovery and enforcement provisions of the Endangered Species Act to this species.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Reproduction in this species appears to rely on climatic events that occur at irregular intervals. Such reliance may create natural fluctuations in numbers of this toad that could interact with reduced availability of breeding sites to increase the likelihood of whole population segments being eliminated. Both extremes in sex ratios among breeding animals have also been reported, a low incidence of males in one area by Rivero *et al.* (1980), and a low incidence of females at another locality by Moreno (1985), but the significance of these observations is difficult to assess without more information about the normal reproductive biology of this species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the Puerto Rican crested toad as a threatened species. Threatened status is proposed because of the species' low numbers, restricted distribution, and apparent susceptibility to extirpation. Endangered status is not appropriate, since the species does not appear to be faced with imminent extinction. Critical habitat is not being proposed for reasons discussed in the following section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the Puerto Rican crested toad at this time. As discussed under threat Factor B in the "Summary of Factors Affecting the Species," collecting could threaten the toad's continued existence. The publication of critical habitat maps and other publicity accompanying critical habitat designation could increase collecting pressure and enforcment problems. The Service believes that Federal involvement in the areas where this species occurs can be identified without the designation of critical habitat. All involved parties and landowners will be notified of the location and importance of protecting this species's habitat. Protection of this species' habitat will also be addressed through the recovery process and through the section 7 jeopardy standard.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the Commonwealth and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and were recently revised at 51 FR 19926 (June 3, 1986). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No critical habitat is being proposed for the Puerto Rican crested toad, as discussed above, and no Federal involvement is known or expected to occur.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and Commonwealth conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Caribbean Field Office, P.O. Box 491, Boquerón, Puerto Rico 00622.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Polciy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

García Díaz, J. 1967. Rediscovery of *Bufo lemur* (Cope) and additional records of reptiles from Puerto Rico. Stahlia 10:1–6.

Moreno, J.A. 1985. Notes on *Peltphryne lemur*. Unpublished report. 6 pp.

Paine, F.L. 1985. International studbook of the Puerto Rican crested toad (*Peltophryne lemur*). Buffalo Zoological Gardens, New York. 33 pp.

Pregill, G. 1981. Cranial morphology and the evolution of West Indian toads (Salientia: Bufonidae): Resurrection of the genus *Peltophryne* Fitzinger. Copeia 1981(2):273–285.

Rivero, J.A., H. Mayorga, E. Estremera, and I. Izquierdo. 1980. Sobre el *Bufo lemur* (Cope) (Amphibia, Bufonidae). Carib. J. Sci. 15:33–40.

Stejneger, L. 1904. The herpetology of Porto Rico. Rept. U.S. Nat. Mus., 1902:549–724.

Author

The primary author of this proposed rule is Mr. David Densmore, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622 (809/851-7297).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under "Amphibians", to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangerd or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
AMPHIBIANS							
Toad, Puerto Rican	*Peltophryne lemur* crested	U.S.A. (PR) and British Virgin Islands.	Entire	T		NA	NA

* * * * *

Dated: November 28, 1986.

P. Daniel Smith,

Acting Assistant Scretary for Fish and Wildlife and Parks.

[FR Doc. 86-28733 Filed 12-22-86; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 51, No. 246
Tuesday, December 23, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Packers and Stockyards Administration

Proposed Posting of Stockyards; Limestone Co. Pig Assn., Inc., et al.

The Packers and Stockyards Administration, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in section 302 of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 202), and should be made subject to the provisions of the Act.

AL-166 Limestone Co. Feeder Pig Assn., Inc., Athens, Alabama
AL-169 Northeast Ala. Feeder Pig Assn., Inc., Section, Alabama
AL-170 Upper Coastal Plains Feeder Pig Assn., Fayette, Alabama
AL-171 Cullman Feeder Pig Assoc., Hanceville, Alabama
AL-172 Northwest Alabama Feeder Pig Assn., Russellville, Alabama
AL-173 Sand Mountain Feeder Pig Assn., Albertville, Alabama
AL-174 Central Ala. Feeder Pig Assn., Clanton, Alabama
AL-175 Sand Mountain Horse Auction, Horton, Alabama
AR-163 Ward Livestock Auction, Ward, Arkansas
IN-163 White Livestock Auction, Brookville, Indiana
KY-173 Gateway Livestock Auction, Inc., Mt. Sterling, Kentucky
MN-183 Auction Center Livestock, Frazee, Minnesota
MO-263 Lyle Stockyards, Savannah, Missouri
MO-264 MFA Livestock Association, Inc., Centerview, Missouri
MO-265 Hwy. 47 Auction, St. Clair, Missouri
MS-162 Glenwild Livestock Auction, Grenada, Mississippi
WI-140 Great Northern Investments, Fond du Lac, Wisconsin

Notice is hereby given that pursuant to authority under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), it is proposed to designate the stockyards named above as posted stockyards subject to the provisions of the Act as provided in section 302 thereof.

Any person who wishes to submit written data, views, or arguments concerning the proposed designation, may do so by filing them with the Director, Livestock Marketing Division, Packers and Stockyards Administration, United States Department of Agriculture, Washington, DC 20250, by January 7, 1987.

All written submissions made pursuant to this notice shall be made available for public inspection in the office of the Director of the Livestock Marketing Division during normal business hours.

Done at Washington DC, this 9th day of December 1986.

Harold W. Davis,

Director, Livestock Marketing Division.

[FR Doc. 86-28735 Filed 12-22-86; 8:45 am]

BILLING CODE 3410-KD-M

Facility No., name, and location of stockyard	Date of posting
AL-102 Pickens County LS Comm., Inc., Aliceville, Alabama.	June 19, 1962.
AL-108 Atmore Truckers Association, Inc., Atmore, Alabama.	May 16, 1959.
AL-111 Cherokee County Stockyard, Inc., Centre, Alabama.	May 18, 1959.
AL-119 Enterprise Livestock Co., Enterprise, Alabama.	Jul. 11, 1959.
AL-130 Kennamer Livestock Co., Inc., Gurterville, Alabama.	Jul. 10, 1959.
AL-132 Headland Stock Yards, Inc., Headland, Alabama.	May 18, 1959.
AL-133 Madison County Livestock Market, Huntsville, Alabama.	Jul. 13, 1959.
AL-135 Walker County Livestock, Jasper, Alabama.	Dec. 8, 1961.
AL-139 Marion Stockyard, Marion, Alabama.	Mar. 29, 1960.
AL-142 Aaron-Calvert Stockyard, Inc., Morris, Alabama.	May 1, 1957.
AL-149 Casey Stock Yards, Selma, Alabama.	Jan. 14, 1936.
AL-160 Leighton Stockyard, Leighton, Alabama.	Apr. 5, 1976.

Deposting of Stockyards; Pickens Co. LS Comm., Inc., et al.

It has been ascertained, and notice is hereby given, that the livestock markets named herein, originally posted on the respective dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et* seq.), no longer come within the definition of a stockyard under said Act and are, therefore, no longer subject to the provisions of the Act.

Facility No., name, and location of stockyard	Date of posting
AL-163 Southeast Feeder Pig Assoc., Brundidge, Alabama.	Aug. 29, 1979.
AL-164 Farmers Livestock Auction, Russellville, Alabama.	Mar. 9, 1981.
AL-165 Southeastern LS Service & Aution, Inc., Phenix City, Alabama.	Oct. 24, 1983.
AR-135 River Valley Livestock Market, Ola, Arkansas.	Dec. 15, 1958.
FL-110 Live Oak Stockyard, Live Oak, Florida.	Mar. 2, 1960.
FL-123 Jacksonville Livestock Auction Co., Inc., Whitehouse, Florida.	June 18, 1962.
FL-126 Trenton Livestock Market, Inc., Trenton, Florida.	Apr. 14, 1961.
FL-130 Sparr Farm & Home Auction, Sparr, Florida.	Jul. 30, 1962.
GA-100 Union Stock Yards, Albany, Georgia.	Dec. 22, 1937.
GA-103 Arlington Stockyards, Arlington, Georgia.	May 21, 1959.
GA-107 Flint River Livestock Auction, Bainbridge, Georgia.	May 15, 1959.
GA-119 The Pony Express Livestock Market, Covington, Georgia.	Feb. 2, 1971.
GA-122 Peoples Stockyards, Cuthbert, Georgia.	May 20, 1959.
GA-123 Dawson Livestock Company, Dawson, Georgia.	May 14, 1959.
GA-130 Dodge County Livestock Market, Inc., Eastman, Georgia.	May 22, 1959.
GA-131 Fitzgerald Livestock Market, Fitzgerald, Georgia.	May 15, 1959.
GA-132 Gainsville Livestock Center, Gainsville, Georgia.	Dec. 12, 1969.
GA-136 Pulaski Stockyard, Inc., Hawkinsville, Georgia.	June 2, 1959.
GA-143 Farmer's Stockyard of McRae, Inc., McRae, Georgia.	Apr. 29, 1966.
GA-148 Farmers Livestock Auction Company, Inc., Nashville, Georgia.	May 18, 1959.
GA-149 Irwin County Livestock Company, Inc., Ocilla, Georgia.	May 13, 1959.
GA-154 County Stock Barn, Sandersville, Georgia.	June 12, 1959.
GA-157 Effingham County Stockyards, Springfield, Georgia.	June 20, 1959.
GA-159 Southeast Georgia Stockyard, Inc., Statesboro, Georgia.	May 23, 1959.
GA-163 Worth County Livestock Company, Sylvester, Georgia.	Aug. 20, 1959.
GA-167 Tifton Stockyards, Inc., Tifton, Georgia.	May 14, 1959.
GA-168 Toccoa Livestock Auction & Speedway, Inc., Toccoa, Geogia.	Feb. 1, 1968
GA-186 Tri-State Livestock Company, Valdosta, Georgia.	Mar. 1, 1979.
GA-188 Tattnal County Feeder Pig Sale, Glennsille, Georgia.	Aug. 13, 1979.
GA-190 Triple T Livestock Co., Dalton, Georgia.	Mar. 24, 1961.
ID-119 Valley Livestock Commission Co., Rupert, Idaho.	Mar. 11, 1957.
IN-104 White Livestock Auction, Brookville, Indiana.	Apr. 23, 1959.
KY-151 Somerest and Pulaski County Livestock Market, Inc., Somerset, Kentucky.	Jan. 25, 1966.
KY-156 Winchester Stockyards, Inc., Winchester, Kentucky.	Feb. 27, 1931.
MD-113 Hunter's Sale Barn, Inc., Rising Sun, Maryland.	July 26, 1961.
MO-156 Mansfield Livestock Auction, Mansfield, Missouri.	June 8, 1959.
OH-149 Hoppel Brothers Auction Pavilion, Inc., West Point, Ohio.	June 11, 1986.
SC-109 Greenwood Livestock Market, Inc., Greenwood, South Carolina.	Feb. 8, 1960.
SC-118 Dorchester Marketing Association, St. George, South Carolina.	July 26, 1961.
SC-127 Springfield Stockyards & Auction Co., Inc., Neese, South Carolina.	Mar. 25, 1976.
TX-284 Wichita Livestock Auction, Wichita Falls, Texas.	May 22, 1950.

Facility No., name, and location of stockyard	Date of posting
WV-102 Bridgeport Stockyards, Bridgeport, West Virginia.	Nov. 9, 1959.

Notice or other public procedure has not preceded promulgation of the foregoing rule. There is no legal justification for not promptly deposting a stockyard which is no longer within the definition of that term contained in the Act.

The foregoing is in the nature of a change relieving a restriction and may be made effective in less than 30 days after publication in the **Federal Register**. This notice shall become effective upon publication in the **Federal Register**.

(42 Stat. 159, as amended and supplemented; 7 U.S.C. 181 *et seq.*)

Done at Washington, DC, this 12th day of *December* 1985.

Harold W. Davis,

Director, Livestock Marketing Division.

[FR Doc. 86-28736 Filed 12-22-86; 8:45 am]

BILLING CODE 3210-KD-M

Posted Stockyards; White Horse and Mule Co. et al.

Pursuant to the authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), it was ascertained that the livestock markets named below were stockyards within the definition of that term contained in section 302 of the Act, as amended (7 U.S.C. 202), and notice was given to the owners and to the public by posting notices at the stockyards as required by said section 302, on respective dates specified below.

Facility No., name, and location of stockyard	Date of posting
AL-166 White Horse and Mule Company, Holly Pond, Alabama.	Aug. 25, 1986.
AL-167 Kenneth Hinkle Feeder Pig Sale, Piedmont, Alabama.	Aug. 28, 1986.
IA-260 Bingley and Dykstra Sale Co., Knoxville, Iowa.	Aug. 11, 1986.
IN-162 Hahn's Horse Auction, Marengo, Indiana.	Aug. 18, 1986.
KY-172 Casey County Feeder Pig Market, Liberty, Kentucky.	Aug. 18, 1986.
NY-165 Angelica Feeder Sales Cooperative, Inc., Angelica, New York.	Sept. 5, 1986.
TX-330 Four County Auction Center, Inc., Industry, Texas.	Aug. 26, 1986.
TX-332 Arrowhead Livestock Sales Co., Wichita Falls, Texas.	Aug. 27, 1986.
VA-156 Culpepper Agricultural Enterprises, Inc., Culpepper, Virginia.	Aug. 18, 1986.

Done at Washington, DC, this 9th day of December 1986.

Harold W. Davis,

Director, Livestock Marketing Division.

[FR Doc. 86-28737 Filed 12-22-86; 8:45 am]

BILLING CODE 3410-KD-M

Soil Conservation Service

Barton and Clyde Rivera Watershed, VT; Environmental Impact Statement

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Barton and Clyde Rivers Watershed, Orleans, Caledonia, and Essex, Counties, Vermont.

FOR FURTHER INFORMATION CONTACT: John C. Titchner, State Conservationist, Soil Conservation Service, 69 Union Street, Winooski, Vermont 05404, telephone (802) 951-6795.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, John C. Titchner, State Conservationist has determined that the preparation and review of an environmental impact statement are not needed for this project

The project concerns a plan for watershed protection and water quality improvement. The planned works of improvement include conservation land treatment and agricultural waste management practices.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting John C. Titchner, State Conservationist

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

[FR Doc. 86-28681 Filed 12-22-86; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

[Application # 86-00008]

Issuance of an Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of issuance of an export trade certificate of review.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to Streamline Shippers Association, Inc. This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97-290) authorizes the Secretary of Commerce to issue export trade certificate of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

This Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring on an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

(a) *Products:* All products.

(b) *Consulting Services:* Consulting; and market research and analysis.

(c) *Transportation Services (As They Relate to the Export of Products)* Include: Overseas freight transportation; inland freight transportation to a U.S. export terminal, port or gateway; packing and crating; leasing of transportation equipment and facilities; terminal or port storage; wharfage and handling; forwarder services; insurance; warehousing; foreign exchange; financing and financial services; export sale and trade documentation and services; oversees distribution; paying or charging commissions; marketing; advertising; communication and processing of foreign orders; accounting; clerical services; consulting; customs services; feasibility studies; investment services; legal services; management services; and translation services.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Definitions

(a) "SSA Members" means those entities who are members within the meaning of the by-laws of SSA.

(b) "Independent management" means officers, employees and agents of SSA who are not directors, officers or employees of any company which buys or sells goods for which SSA provides Transportation Services.

(c) "Export Intermediary" means an entity who, for the export of Products, acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including arranging for the provision of Transportation Services.

Export Trade Activities and Methods of Operation

SSA, acting through its independent management, may:

1. Consolidate and distribute the freight of SSA Members for goods exported or in the course of being exported;

2. Negotiate, procure, provide and administer Transportation Services to SSA Members;

3. Obtain and arrange for the services of Export Intermediaries for SSA Members. SSA may enter into exclusive agreements with Export Intermediaries whereby:

(a) SSA agrees to obtain Transportation Services only through the Export Intermediary(ies) in particular Export Markets, and/or

(b) The Export Intermediary(ies) agrees not to provide Transportation Services to SSA's competitors;

4. Enter into exclusive or nonexclusive agreements with persons, including SSA Members, in the Export Markets whereby SSA procures and provides Consulting Services to such persons;

5. Negotiate charges and other terms and enter into contracts which provide for Transportation Services to SSA Members including, but not limited to, the chartering and space chartering of vessels, the entering into of service contracts with ocean common carriers, the negotiation and utilization of through intermodal rates with common and contract carriers for inland freight transportation for export shipments to a U.S. export terminal, port, or gateway; and the combination and consolidation of container and less than containerload shipments into full containerized shipments. SSA may conduct this activity on behalf of SSA Members. For the purpose of fulfilling SSA's volume obligations with carriers or conferences, SSA may also accept for Transportation Service shipments from other shippers' associations.

6. Meet and discuss with SSA Members ideas, methods and information solely concerning Export Trade, including trade opportunities, selling strategies, sales, projected demands and business growth, customary terms of sale, and legal agreements for conducting business in the Export Markets, and expenses of exporting to specific points in the Export Markets;

7. Prescribe the following conditions with respect to membership for export purposes in, and withdrawal and expulsion from, SSA:

(a) Membership in SSA shall be initiated by application and shall be restricted to responsible firms whose shipping activities and products are of such a nature as to permit consolidation of shipments with other SSA Members without impeding the purposes of shipping economies and efficiencies intended by the formation of SSA;

(b) All SSA Members shall be approved by the Board of Directors (or by a committee thereof);

(c) SSA shall have two classes of SSA Members: (1) Individual members, and (2) group members, and may prescribe the eligibility requirements for each class of member;

(d) The Board of Directors may expel any SSA member at any duly convened meeting for failing to patronize SSA for a continuous period of six months;

(e) The Board of Directors may expel any SSA Member for failure to comply with the Articles of Incorporation, the by-laws, or any rules or regulations of SSA, provided SSA supplies that Member with prior notice and the opportunity to appear before the Board of Directors;

(f) The privileges of any SSA Member may be suspended by the Board of Directors if the Member does not pay all freight charges on its freight shipments within the credit terms allowed by SSA; if upon suspension and notification to the Member of the action the charges remain unpaid, then such Member shall be automatically expelled from membership; and

(g) Any SSA Member may withdraw from membership by written notice to the principal office of SSA, but such withdrawal shall not affect the existing liabilities of the withdrawing member to SSA.

Provided, however, that the right of each SSA Member to obtain Consulting Services and Transportation Services from other than SSA is at all times guaranteed. However, SSA Members may be required to commit to tendering a specified volume through SSA prior to SSA's negotiating with a carrier or conference or under a volume contract SSA has in effect with a carrier or conference, and further provided that the specified volume of the SSA Member is not so large as to represent a total or near total commitment of the Member's transportation volume.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Dated: December 17, 1986.

James V. Lacy,

Director, Office of Export Trading Company Affairs.

[FR Doc. 86-28821 Filed 12-22-86; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Scientific Advisory Committee

AGENCY: Defense Intelligence Agency Scientific Advisory Committee.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92-463, as amended by section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been scheduled as follows:

DATE: Wednesday, 14 January 1987, 9:00 a.m. to 5:00 p.m..

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Colonel Duarte A. Lopes, USAF, Acting

Executive Secretary, DIA Scientific Advisory Committee, Washington, DC 20301 (202/373–4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on Wing-in-Ground Effect vehicle developments.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

December 17, 1986.

[FR Doc. 86–28714 Filed 12–22–86; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on the National Aerospace Plane (NASP)

ACTION: Change in date and location of advisory committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on the National Aerospace Plane (NASP) scheduled for January 14–15, 1987 as published in the **Federal Register** (Vol. 51, No. 236, Page 44331–44332, Tuesday, December 9, 1986, FR Doc. 86–27581) will be held on January 7–8, 1987 at the Defense Advanced Research Projects Agency in Arlington, Virginia. In all other respects the original notice remains unchanged.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

December 17, 1986.

[FR Doc. 86–28711 Filed 12–22–86; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Special Systems Subgroup, Pacific Command Air Defense

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Pacific Command Air Defense, Special Systems Subgroup will meet in closed session on January 13, 1986 at the Center for Naval Analyses, Alexandria, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acqusition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will examine systems related to defense capabilities for shore installations in the Pacific Command and assess relevant technology, equipment, and modernization plans.

In accordance with section 10(d) of the Federal Advisory Committee Act (Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

December 17, 1986.

[FR Doc. 86–28712 Filed 12–22–86; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Technological and Operational Surprise

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Technological and Operational Surprise in the U.S.-Soviet Military Competition will meet in closed session on January 23, 1987 at the DIAC Building, Bolling AFB, Washington, DC.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will evaluate the potential for technological and operational surprise in the U.S.-Soviet military competition.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and accordingly this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

December 17, 1986.

[FR Doc. 86–28713 Filed 12–22–86; 8:45 am]

BILLING CODE 3810–01–M

Defense Logistics Agency

Announcement of Commerical Activities (CA) Program Studies

AGENCY: Defense Logistics Agency (DLA), DOD.

ACTION: Notice of announcement of commerical activities program studies.

SUMMARY: The publication of CA program studies is required by Supplement to OMB Circular No. A–76 (Revised) and DoD Instruction 4100.33, "Commercial Activities Program Procedures." The following comprises DLA's commercial activity cost comparison studies currently in progress.

Activity	Function
Defense Contract Administration Services, Region. Los Angeles, CA Motor Pool Operation.	Printing and Reproduction, Installation Services: Base Supply Operations, Warehousing and Distribution of Publications, Other Installations Services, Audiovisual Services, Audiovisual Production, Administrative Services, Reference and Technical Libraries, Internal Mail and Messenger Services.
Defense Contract Administration Services, Region, Atlanta, GA.	Installation Services: Motor Vehicle Operation, Base Supply Operations, Printing and Reproduction, Audiovisual Services, Audiovisual Production, Reference and Technical Libraries, Internal Mail and Messenger Services, Publication Distribution Centers, Buildings and Structures, Automated Data Processing and Telecommunications.
Defense Logistics Services Center, Battle Creek, MI.	Installation Services, Audiovisual, Photo, Library, Vehicle Operation/Maintenance, Base Supply, Mail, Woodworking.
Defense Reutilization and Marketing Service, Battle Creek, MI.	Preparation and Disposal of Excess and Surplus Property at the following :Defense Reutilization and Marketing Offices and Offsite Branches: CT, Groton, NJ, Bayonne; NJ, Dover; NJ, Lakehurst; NJ, McGuire; PA, Chambersburg; PA, Mechanicsburg; PA, Philadelphia; PA, Tobyhanna.
Defense Reutilization and Marketing Service, Battle Creek, MI.	Preparation and Disposal of Excess and Surplus Property at the following Defense Reutilization and Marketing Offices and Offsite Branches; MA, Ayer; MA, Chicopee Falls; ME, Burnswick; ME, Limestone; NH, Portsmouth; NY, Plattsburgh; NY, Rome; NY, Romulus; NY, Watervliet; RI, Davisville.
Defense Reutilization and Marketing Service, Battle Creek, MI.	Preparation and Disposal of Excess and Surplus Property at the following Defense Reutilization and Marketing Offices and Offsite Branches: AR, Fort Smith; AR, Little Rock; AR, Pine Bluff; LA, Barksdale; LA, England; LA, Fort Polk; MS, Keesler; MS, Shelby; OK, Fort Sill; OK, McAlister; OK, Oklahoma City; TX, Texarkana.
Defense Reutilization and Marketing Service, Battle Creek, MI.	Preparation and Disposal of Excess and Surplus Property at the following Defense Reutilization and Marketing Offices and Offsite Branches: AZ, Yuma; CA, Barstow; CA, China Lake; CA, Edwards; CA, El Toro; CA, North Island; CA, Norton; CA, Pendleton; CA, Port Hueneme; CA, San Diego (Imperial Beach) CA, Terminal Island; CA, Twenty Nine Palms; CA, Vanderburg.
Defense Reutilization and Marketing Service, Battle Creek, MI.	Preparation and Disposal of Excess and Surplus Property at the following Defense Reutilization and Marketing Offices and Offsite Branches: MD, Aberdeen; MD, Fort Meade; MD, Brandywine; MD, Patuxent; VA, Norfolk; VA, Camp Allen; VA, Norfolk Shipyard; VA, Richmond; VA, Williamsburg; VA, Dahlgren; KS, Riley; KS, Leavenworth; KS, McConnell; IL, Great Lakes; IN, Crane; OH, Columbus; OH, Wright Patterson.

Interested commerical concerns should refer to subsequent FRs for specific announcements to be made as part of the contract solicitation process.

For further information contact Mr. Lewis Patterson, Defense Logistics Agency Commerical Activity Program Office (DCAPO), Cameron Station, Alexandria, VA 22304–6100, (202)274–5800.

William J. Cassell,

Comptroller, Defense Logistics Agency.

[FR Doc. 86–28707 Filed 12–22–86; 8:45 am]

BILLING CODE 3820–01–M

Department of the Navy

Privacy Act of 1974; Amended Three Systems of Records

AGENCY: Department of the Navy, DOD.

ACTION: Notice of three amended systems of records subject to the Privacy Act.

SUMMARY: The Department of the Navy proposes to amend three systems of records in its inventory of record systems subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

DATES: This proposed action will be effective without further notice January 22, 1987, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to Mrs. Gwen Aitken, Privacy Act Coordinator, Office of the Chief of Naval Operations (OP–09B30), Department of the Navy, The Pentagon, Washington, DC 20350–2000, telephone: 202–697–1459, autovon: 227–1459.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices subject to the Privacy Act of 1974 have been published in the **Federal Register** as follows:.

FR Doc 86–8485 (51 FR 12908) April 18, 1986
FR Doc 86–10763 (51 FR 18086) May 16, 1986 (Compilation)
FR Doc 86–12448 (51 FR 19884), June 3, 1986
FR Doc 86–19207 (51 FR 30377) August 26, 1986
FR Doc 86–19208 (51 FR 30393) August 26, 1986

The proposed amendments are not within the purview of the provision of 5 U.S.C. 552a(o) which requires the submission of an altered systems report.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

December 18, 1986.

N01070–3

System name: Navy Personnel Records System (51 FR 19884) June 3, 1986.

Changes

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: At the end of the fifth paragraph, delete the period and add the following: "* * * or related to assistance previously furnished such individuals, without regard to whether the individual assisted or his/her sponsor continues to be a member of the Navy."

N06150–2

System name: Health Care Treatment Record System (51 FR 18186) May 16, 1986.

Changes

Categories of records in the system: In line 3, after the phrase: "* * * Navy and Marine Corps* * *" add the following: "* * * and civilian personnel * * *"

Purpose(s): In line 24, after the phrase: "* * * communicable disease control program * * *," add the following: "* * * tracking workmen's compensation claims for civilians, and tracking individuals for environmental health and occupational exposures * * *"

Record source categories: At the end of the entry, add the following: "Information is also derived from the civilian personnel records systems."

N06320–2

System name: Family Advocacy Program System (51 FR 18191) May 16, 1986.

Changes

Categories of records in the system: Delete lines one and two and substitute with: "Medical records of suspected, unsubstantiated, substantiated and at risk cases* * *"

N01070–3

System Name: Navy Personnel Records System.

* * * * *

Routine Uses of Records Maintained in the System, including Categories of Users and the Purposes of Such Uses

To officials and employees of other Departments and Agencies of the Executive Branch of government, upon request, in the performance of their official duties related to the management, supervision and administration of military personnel and the operation of personnel affairs and functions.

To officials and employees of the National Research Council in Cooperative Studies of the National History of Disease; of Prognosis and of Epidemology. Each study in which the records of members and former members of the naval service are used must be approved by the Commander, Naval Military Personnel Command.

To officials and employees of the Department of Health and Human Services, Veterans Administration, and Selective Service Administration in the performance of their official duties related to eligibility, notification and assistance in obtaining benefits by members and former members of the Navy.

To officials and employees of the Veterans Administration in the performance of their duties relating to approved research projects.

To officials and employees of the Navy Relief and the American Red Cross in the performance of their duties relating to assistance of the members and their dependents and relatives, or related to assistance previously

furnished such individual, without regard to whether the individual assisted or his/her sponsor continues to be a member of the Navy.

To duly appointed Family Ombudsmen in the performance of their duties related to the assistance of the members and their families.

To state and local agencies in performance of their official duties related to verification of status for determination of eligibility for Veterans Bonuses and other benefits and entitlements.

To officials and employees of the Office of the Sergeant at Arms of the United States House of Representatives in the performance of their official duties related to the verification of the active duty naval service of members of Congress.

Information as to current military addresses and assignements may be provided to military banking facilities who provide banking services overseas and who are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged or retired from the Armed Forces information as to last known residential or home of record address may be provided to the military banking facility upon certifcation by a banking facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan and that if restitution is not made by the individual the United States Government will be liable for the losses the facility may incur.

To state, local, and foreign (within Status of Forces agreements) law enforcement agencies or their authorized representatives in connection with litigation, law enforcement, or other matters under the jurisdiction of such agencies.

When required by Federal statute, by Executive Order, or by treaty, personnel record information will be disclosed to the individual, organization, or governmental agency as necessary.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

* * * * *

System Name: Health Care Treatment Record System.

* * * * *

Categories of Records in the System

Service medical (health and dental) records for active duty, Navy and Marine Corps and civilian personnel: System is made up of records pertaining to the member or former member's medical history; physical, dental and mental examinations; consultation; innoculations; outpatient treatment, including laboratory and x-ray reports; report of medical boards; summaries of periods of hospitalization, dental evaluation and treatment, reports of exposure to environmental and radiation hazards, results of special diagnostics and clinical studies; recommendations regarding requests for waivers of established physical standards.

Inpatient and outpatient treatment records: File contains a multiplicity of prescribed forms documenting health evaluations, medical/dental care and treatment for any health or medical condition or problem provided an eligible individual on an outpatient and/or impatient status. The records contain history and physical examinatons or health evaluation, reports of exposure to ionizing radiation, consultation reports and medical care and treatment provided, including procedures utilized such as surgery, drugs, dietary, x-ray laboratory, nursing notes, physical therapy and other specialty care applicable to the medical diagnosis or condition found. The records also contain patients demographic data, family health history data, length of inpatient stay, disease nomenclatue, discharge summary of inpatient care. Documentation of health history, diagnosis, care and treatment provided and the recording thereof conform with the standards prescribed by the joint commission on accreditation of hospital. In addition to, and based on individual medical record files, there are subsidiary records such as registers of patients; patient health care, medical board and death statistics; environmental health data; operation room schedules, tumor registers; appointment registers; sick call and treatment logs; x-ray files; laboratory files and logs; pharmacy records; EKG's; EEG's; neuropsychiatric evaluations; physical therapy records; other patient evalation records, etc.

* * * * *

Purpose(s):

This system is used by officials and employees of the Department of the Navy (and members of the National Red Cross in Navy Health Care Facilities) in the performance of their official duties relating to the health and medical treatment of Navy and Marine Corps individuals; determining physical qualifications and suitability of candidates for various programs; personnel assignments; adjudicating claims and appeals before the Council of Personnel Boards, and the Board for Correction of Naval Records; rendering opinions regarding member's physical fitness for continued naval service; litigation involving medical care provided those categories of individuals are covered by this record system; performance of research studies and compilation of statistical data; implementing preventive medicine, dentistry, and communicable disease control programs; tracking workmen's compensation claims for civilians; and tracking individuals for environmental health and occupational exposures. Officials and employees of other components of the Department of Defense in the performance of their official duties relating to determining the physical qualifications of applicants; in providing medical care to those categories of individuals covered by this record system; and in the conduct of analyses and research studies.

* * * * *

Record Source Categories

Reports from attending and previous physicians and other medical personnel regarding the results of physical, dental and mental examinations, treatment, evaluation, consultation, laboratory, x-ray and special studies conducted to provide health care to the individual or to determine the individual's physical and dental qualifications. Information is also derived from the civilian personnel records system.

* * * * *

N06320–2

System Name: Family Advocacy Program System.

* * * * *

Categories of Records in the System

Medical records of suspected, unsubstantiated, substantiated and at risk cases of family member abuse or neglect, also, investigative reports, correspondence, family advocacy committee reports, follow-up and evaluative reports, and any other supportive data assembled relevant to individual family advocacy program files.

* * * * *

[FR Doc. 86–28835 Filed 12–22–86; 8:45 am]

BILLING CODE 3810–01–M

Privacy Act of 1974; Amendment to a System of Records

AGENCY: Department of the Navy (U.S. Marine Corps), DOD.

ACTION: Notice of an amendment to a system of records.

SUMMARY: The U.S. Marine Corps proposes to amend a system of records in its inventory of systems of records subject to the Privacy Act of 1974. The specific changes to the record system being amended are set forth followed by the record system notice, as amended, published in its entirety.

DATES: The proposed action will be effective without further notice January 22, 1987, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to the system manager identified in the record system notice.

FOR FURTHER INFORMATION CONTACT: Mrs. B.L. Thompson, Privacy Act Coordinator, Headquarters, U.S. Marine Corps, Washington, DC 20380–0001, telephone: (202) 694–1452.

SUPPLEMENTARY INFORMATION: The U.S. Marine Corps systems notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a) Pub. L. 93–579 were published in the **Federal Register** as follows:

FR Doc. 85–10237 (50 FR 22674) May 29, 1985
FR Doc. 85–22610 (50 FR 35548) October 6, 1986

The proposed amendment is not within the purview of the provisions of 5 U.S.C. 552a(o) which required the submission of an altered system report.

Patricia H. Means,

OSD Federal Register Liaison Office, Department of Defense.

December 18, 1986.

MMN00006

System name: Marine Corps Military Personnel Records (OQR/SRB) (50 FR 22710) May 29, 1985.

Changes

Categories of individuals covered by the system

Delete the entire entry and substitute the following entry:

"All Marine Corps military personnel (enlisted/officer): active duty, reserve, retired and discharged or otherwise separated."

Categories of records in the system: Delete the entire entry and substitute the following entry:

"The system contains the Official Military Personnel File, SRB and OQR."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: In paragraph three, line two, delete the word "undre" and substitute the word "under." In paragraph six, line two delete "Hourse" and substitute the word "House."

Add the following paragraph to the end of the entry:

"To officials and employees of the Veterans Administration, Department of Health and Human Services, and Selective Service Administration in the performance of their official duties related to eligibility, notification and assistance in obtaining benefits by members and former members of the Marine Corps.

To a private organization under contract with the Veterans Administration for use in conducting a study of post-traumatic stress disorder and other post-war psychological problems of Vietnam veterans as mandated by Public Law 98–160.

To officials and employees of other Departments and Agencies of the Executive Branch of government, upon request, in the performance of their official duties related to the management, supervision and administration of members and former members of the Marine Corps."

Retrievability: Starting at line three, delete the first phrase which reads "all temporary disability retired records."

Delete the last two sentences in the paragraph and substitute the following sentence:

"All other Marine Corps records retired to St. Louis, Missouri are accessed by the MSN and/or SSN and are retrieved by an assigned registry number."

Safeguards: Delete the entire entry and substitute the following paragraph:

"Restricted access to building and all areas where data is maintained. Records are maintained in areas accessible only by authorized personnel who have been properly screened, cleared, and trained."

Retention and disposal: In the second line, delete the word "matintained" and substitute the word "maintained."

System manager(s) and address: After the words "Commandant of the Marine Corps" add the code "MMRB."

Notification procedure: In the first paragraph, starting at line 4, delete the words "(Code MS)" and substitute the code "MMRB."

In the third paragraph, starting at line 5, delete the words "Standard Navy Distribution List—Part 1 (OPNAV P09B3–107)" and substitute the words "Directory of Department of the Navy Mailing Addresses."

In the fourth paragraph, delete the last sentence and substitute the following sentence:

"Proof of identification may consist of an individual's active, reserve or retired identification card, Armed Forces Report of Transfer or Discharge (DD Form 214), discharge certificate, driver's license or other data sufficient to insure the individual is the subject of the record."

Record access procedures: Starting at line 2, change "Code MS" to read "MMRB." In the last line change the numbers "1043" to read "1535."

Record source categories: Add at the end of the entry: "The individual of record."

MMN00006

System Nome: Marine Corps Military Personnel Records (OQR/SRB).

System Location

Primary system-The Commandant of the Marine Corps, Headquarters, U.S. Marine Corps, Washington, DC 20380.

Decentralized segments-Custody of the commanding officer of the organization to which the Marine officer or enlisted individual is assigned for duty or administration of official records (OQR/SRB).

Decentralized segments-National Personnel Records Center, 9700 Page Blvd., St. Louis, Missouri 63132.

Categories of Individuals Covered by the System

All Marine Corps military personnel (enlisted/officer): active duty, reserve, retired and discharged or otherwise separated.

Categories of Records in the System

The system contains the Official Military Personnel File, SRB and OQR.

Authority for Maintenance of the System

Title 5, U.S. Code 301; Title 10, U.S. Code 5031.

Purpose(s)

To provide a record of all Marine Corps military personnel for use in management of resources, screening and selection for promotion, training and educational programs, administration of appeals, grievances, discipline, litigations and adjudication of claims and determination of benefits and entitlements.

Routine Uses of Records Maintained in the System, including Categories of Users and the Purposes of Such Use

See the Blanket Routine Uses at the head of the published Marine Corps systems notices in the **Federal Register**. In addition tothe Blanket Uses, the following routine uses apply.

By officials and employees of the Coast Guard and National Guard in the

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performance of their official duties relating to screening members who have expressed a positive interest in an inter-service transfer, enlistment, appointment or acceptance.

By agents of the Secret Service in connection with matters under the jurisdiction of that agency upon presentation of credentials.

By private organizations under government contract to perform random analytical research into specific aspects of military personnel management and administrative procedures.

By officials and employees of the American Red Cross and Navy Relief Society in the performance of their duties. Access will be limited to those portions of the member's record required to effectively assist the member.

By officials and employees of the Sergeant at Arms of of the U.S. House of Representatives in the performance of official duties related to the verification of Marine Corps service of Members of Congress. Access will be limited to those portions of the member's record required to verify service time, active and reserve.

The Attorney General of the United States or his authorized representatives in connection with litigation, law enforcement, or other matters under the direct jurisdiction of the Department of Justice or as carried out as the legal representative of the Executive Branch agencies.

State, local and foreign (within Status of Forces agreements) law enforcement agencies or their authorized representatives in connectionwith litgation, law enforcement, or other matters under the jurisdiction of such agencies.

To officials and employees of the Veterans Administration, Department of Health and Human Services, and Selective Service Administration in the performance of their official duties related to eligibility, notification and assistance in obtaining benefits by members and former members of the Marine Corps.

To a private organization under contract with the Veterans Administration for use in conducting a study of post-traumatic stress disorder and other post-war psychological problems of Vietnam veterans as mandated by Pub. L. 98–160.

To officials and employees of other Departments and Agencies of the Executive Branch of government, upon request, in the performance of their official duties related to the management, supervision and administration of members and former members of the Marine Corps.

Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in the System

Storage

Records are stored on paper in file folders and on microfiche.

Retrievability

The records at Headquarters, U.S. Marine Corps (all active and reserve officer records, all temporary disability retired records, all active and organized reserve and Fleet Marine Corps Reserve enlisted records of personnel joined/transferred to these components subsequent to 30 June 1974, all former Commandants, all living retired officers (who served in a General Officer grade, records of all personnel separated/retired four months or less) are retrieved by social security number (SSN) and name. Except for OQRs and SRBs of participating members, all other categories of Marine Corps military personnel records are maintained at the National Personnel Records Center, St. Louis, Missouri. Those retired to St. Louis prior to 1 January 1964 and/or those with military service numbers (MSN) below 1800000 are retrieved by MSN and name. All other Marine Corps records retired to St. Louis, Missouri are accessed by MSN and/or SSN and are retrieved by an assigned registry number.

Safeguards

Restricted access to building and all areas where data is maintained. Records are maintained in areas accessible only by authorized personnel who have been properly screened, cleared, and trained.

Retention and Disposal

Records are permanent. Records maintained at Headquarters, U.S. Marine Corps are transferred to the National Personnel Records Center, 9700 Page Boulevard, St. Louis, Missouri 63132 four months after separation, placement on the Permanent Disability Retired List, retirement, retirement from Fleet Marine Corps Reserve, death of an officer who served in a General Officer grade and former Marines no longer considered of newsworthy status.

System Manager(s) and Address

Commandant of the Marine Corps, MMRB, Headquarters, U.S. Marine Corps, Washington, DC 20360

Notification Procedure

Correspondence pertaining to records maintained by Headquarters, U.S. Marine Corps should be addressed to: Commandant of the Marine Corps, MMRB, Headquarters, U.S. Marine Corps, Washington, DC 20380, Telephone: Area Code 202/694–1043.

Correspondence pertaining to records maintained by National Personnel Records Center should be addressed to: Director, National Personnel Records Center, 9700 Page Boulevard, St. Louis, Missouri 63132, Telephone: Area Code 314/268–7155.

Correspondence pertaining to OQR and SRB records maintained by the respective commanding officer should be addressed to the command concerned as is shown the Directory of Department of the Navy Mailing Addresses.

Correspondence should contain the full name, Social Security Number and signature of the requester. The individual may visit any of the above activities for review of records. Proof of identification may consist of an individual's active, reserve or retired indentification card, Armed Forces Report of Transfer or Discharge (DD Form 214), discharge certificate, driver's license or other data sufficient to insure that the individual is the subject of the record.

Record Access Procedures

Information may be obtained from: Commandant of the Marine Corps, MMRB, Headquarters, U.S. Marine Corps, Columbia Pike & Arlington Ridge Road, Arlington, Virginia 20380 Telephone: Area Code 202/694–1535.

Contesting Record Procedures

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be otained from the SYSMANAGER.

Record Source Categories

Staff agencies and subdivisions of Headquarters, U.S. Marine Corps.

Marine Corps Commonds and Organizations

Other agencies of federal, state, and local governments.

Medical Reports

Correspondence from financial and other commercial enterprises.

Correspondence and records of educational institutions.

Correspondence of private citizens addressed directly to the Marine Corps or via the U.S. Congress and other agencies.

Investigations to determine suitability for enlistment, security clearances, and special assignments.

Investigations related to disciplinary proceedings.

The individual of record.

Exemptions Claimed for the System

None.

[FR Doc. 86–28837 Filed 12–23–86; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Handicapped Children's Early Education Program; Extension of Closing Date

AGENCY: Department of Education.

ACTION: Extension of Closing Date for Transmittal of Applications for New Awards for the Handicapped Children's Early Education Program (HCEEP) for Fiscal Year 1987.

Programmatic and fiscal information: The Secretary announces the extension of the closing date for transmittal of applications for three notices under the Handicapped Children's Early Education Program for Fiscal Year 1987. The date applications are due is changed from January 17, 1987 to February 16, 1987. On August 27, 1986, the Secretary published in the **Federal Register** a Notice for Transmittal of Applications for the Handicapped Children's Early Education Program for Fiscal Year 1987 (51 FR 30530), for CFDA 84.024L and T. On September 23, 1986, the Secretary published in the **Federal Register** a Notice for Transmittal of Applications for the Handicapped Children's Early Education Program for Fiscal Year 1987 (51 FR 33850) for CFDA 84.086P.

FURTHER INFORMATION: For further information contact Dr. Thomas Finch, Chief, Early Childhood Branch, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 4611, Switzer Building), Washington, DC 20202. Telephone: (202) 732–1084.

Program Authority: 20 U.S.C. 1423.

(Catalog of Federal Domestic Assistance Number 84.024; Handicapped Children's Early Education Program)

Dated: December 17, 1986.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 86–28702 Filed 12–22–86; 8:45 am]

BILLING CODE 4000–01–M

Office for Civil Rights; Annual Operating Plan

AGENCY: Department of Education.

ACTION: Notice of Final Annual Operating Plan for Fiscal Year 1987.

SUMMARY: The Office for Civil Rights (OCR) issues its Fiscal Year (FY) 1987 Annual Operating Plan (AOP). The AOP describes the activities that OCR plans to conduct in FY 1987 with respect to compliance and enforcement, technical assistance, and program management.

FOR FURTHER INFORMATION CONTACT: Fred Tate, (202) 732–1479.

SUPPLEMENTARY INFORMATION: The proposed FY 1987 Annual Operating Plan for the Office for Civil Rights was published in the **Federal Register** on July 10, 1986 (51 FR 25091) with an invitation to comment. A summary of the comments received and the Secretary's responses to those comments are included below.

I. Introduction

The Office for Civil Rights (OCR) is responsible for ensuring that no person is unlawfully discriminated against on the basis of race, color, national origin, sex, handicap, or age, in the delivery of services or the provision of benefits in programs or activities receiving financial assistance from the Department of Education (ED). The jurisdictional authorities under which OCR operates are Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

These authorities cover ED-funded programs and activities carried out by 50 State educational and rehabilitation agencies and those of their subrecipients, as well as those of the District of Columbia and the territories and possessions of the United States, approximately 16,000 local educational agencies, and approximately 3,300 institutions of higher education. In addition, OCR's civil rights authorities cover progress and activities in other institutions that receive ED funds, such as libraries and museums.

OCR ensures compliance with Federal civil rights statutes by the recipients of ED financial assistance through two basic types of activities: compliance activities and technical assistance activities. Most of OCR's time frames for compliance activities (including complaint investigations, compliance reviews, and monitoring the implementation of some voluntary compliance plans) are covered by the *Adams* court orders. However, OCR has some discretion over where it will conduct its compliance review and other monitoring activities and what those activities will cover. For the most part, OCR concentrates its compliance review activities on those recipients that have been identified as having possible compliance problems. OCR also provides technical assistance, including the transfer of information, material, and skills to facilitate ED recipients' voluntary compliance with civil rights laws and to inform beneficiaries of their rights.

Compliance activities and technical assistance activities also may be combined. OCR may provide technical assistance to recipients at any time after the initiation of a compliance review or complaint investigation, or following its conclusion, either in response to a request from a recipient or after an inquiry by investigative staff as to whether a recipient would be interested in such assistance. As a result, compliance issues may be resolved in a nonconfrontational manner that facilitates closer cooperation at the recipient level, while assuring that the rights of beneficiaries are protected.

During FY 1987, OCR will continue to use two operational techniques designed to improve the efficiency of the case-handling process. The first, Early Complaint Resolution (ECR), is a process in which OCR acts as a mediator between the complainant and the recipient to negotiate a settlement between them. If the mediation is successful, OCR closes the complaint without an investigation. If the parties cannot reach an agreement, OCR investigates the complaint. During FY 1986, ECR was offered in 177 complaints (12 of the 177 offers were still pending as of September 30), accepted and attempted in 94 complaints (60 percent) and completed in 94 complaints (one of which had been initiated before the beginning of the fiscal year). Of the 94 cases in which ECR was completed, 61 (65 percent) were resolved successfully through mediation.

The second technique is pre-letter of findings (LOF) settlement. With this process OCR reviews its findings with the recipient on each of the issues raised in the complaint or covered by the compliance review, in an attempt to reach a settlement prior to the issuance of an LOF addressing areas of noncompliance. When settlement is reached, OCR sets forth the terms of the settlement, along with the applicable statutory requirements, in an LOF sent to the recipient. Where the settlement results from a complaint, the complainant is also sent a copy of the LOF. If an area of noncompliance has been resolved, the LOF cites the basis for the violation findings and the remedy adopted by the recipient. OCR then

monitors the implementation of these agreements.

The activities planned by OCR in FY 1987, and outlined below, are projected to be consistent with the appropriations authorized by Congress and approved by the President.

The following narrative describes the activities that OCR plans for FY 1987.

II. Compliance and Enforcement Activities

OCR's compliance and enforcenent responsibilities are divided into three general categories: Complaint investigations, compliance reviews, and monitoring activities.

A. Complaint Investigations

OCR's primary compliance activity is the investigation and resolution of complaints alleging discrimination. Each timely, complete complaint must be resolved in accordance with established procedures and time frames.

OCR received 2,648 complaints and closed 2,788 (some of which had been filed before the beginning of the fiscal year) during FY 1986. OCR had 887 pending complaints as of September 30, 1986. Alleged discrimination against handicapped persons was the basis of approximately 43 percent of complaints received; sex, race, multiple bases, national origin, and age complaints followed in descending order of frequency. The complaints received involving elementary and secondary institutions comprised 53 percent of the FY 1986 complaints. Forty percent of the complaints received involved postsecondary institutions, while 2 percent involved vocational rehabilitation institutions, and 5 percent involved other institutions. During FY 1986, 83 percent of the complaints received involved issues of service delivery to students, 10 percent involved various employment issues, 3 percent involved both, and 4 percent involved other issues.

B. Compliance Reviews

OCR's compliance review program complements its complaint investigation activities. Compliance reviews differ from complaint investigations in that OCR has some discretion in selecting the issues and institutions for review. This permits OCR to target resources on compliance problems that appear to be serious or national in scope and that may not have been raised by complaints.

During FY 1986, OCR initiated 196 compliance reviews. OCR closed 209 reviews, some of which had been initiated before the beginning of FY 1986. OCR had 115 open compliance reviews as of September 30, 1986.

During FY 1987, pursuant to the December 29, 1977, *Adams* order (*Adams* v. *Califano*, No. 3095–70 (D.D.C. December 29, 1977)), OCR intends to conduct an appropriate number of compliance reviews to ensure the enforcement of the civil rights laws.

While some review activities are required by the *Adams* order, most compliance reviews are discretionary. OCR has flexibility to choose the institutions to be investigated, the issues to be examined, and the dates on which the reviews will begin. Selection of review sites is based on various sources of information, including survey data indicating potential compliance problems and information provided by complainants, interest groups, the media, and the general public.

C. Monitoring Activities

OCR closes many of the complaints and compliance reviews in which it has identified violations of civil rights statutes on the basis of a commitment by the recipient institution to complete remedial action at a future date. OCR has a responsibility to ensure that agreements to complete such remedial actions are carried out. To fulfill that responsibility, OCR may require a recipient to submit one or more progress reports detailing efforts to come into compliance with applicable laws. In some cases, OCR may go on-site to monitor a recipient's compliance with a negotiated remedial action plan. Other types of OCR monitoring activities include monitoring of higher education desegregation plans pursuant to the March 24, 1983, *Adams* order (*Adams* v. *Bell*, No. 3095–70 (D.D.C. March 24, 1983)) and vocational education Methods of Administration. In FY 1987, OCR will monitor activities such as:

- Implementation by recipient institutions of remedial action plans resulting from OCR complaint investigations and compliance reviews;
- Implementation of *Adams* higher education desegregation plans;
- Review and implementation of corrective action plans to provide educational opportunities to national origin minority students who are limited-English-proficient (*i.e.*, Title VI *Lau* plans); and
- Activities of 50 States, four territories, and the District of Columbia, to ensure that they fulfill their Methods of Administration responsibilities under the Vocational Education Guidelines and the July 1979 Memorandum of Procedures regarding the civil rights compliance of their vocational education subrecipients.

III. Technical Assistance Activities

Technical assistance complements OCR's compliance activities because it encourages voluntary compliance. Through technical assistance, OCR is able to reach a far greater number of recipients than it could solely through complaint investigations or compliance reviews. OCR provides technical assistance to recipients to inform them of their responsibilities under the civil rights statutes and the ED implementing regulations and of means to meet these responsibilities. OCR provides technical assistance to beneficiaries to inform them of their rights under the civil rights statutes and to explore voluntary methods of securing those rights. During FY 1986, in addition to responding to requests for technical assistance; OCR regional offices were encouraged to provide the maximum level of technical assistance outreach efforts based on existing staff resources and ongoing assessments of recipient and beneficiary needs.

In FY 1987, OCR will conduct the following technical assistance activities:

- Continue development and implementation of Memoranda of Understanding with State and local educational and human rights agencies to facilitate meeting mutual civil rights compliance objectives and to promote the sharing of information;
- Coordinate with other ED program offices on the provision of civil rights-related technical assistance;
- Facilitate the exchange of information, materials, technical assistance strategies, techniques, and successful compliance practices and procedures among OCR staff providing technical assistance;
- Provide materials and courses to OCR regional investigators and legal staff to facilitate the provision of technical assistance training to educational institutions and State and local governments;
- Provide training to State and local educational agencies to enhance their capabilities to carry out civil rights activities; and

Prepare materials for dissemination to recipients and beneficiaries, summarizing and explaining OCR policies and regulations.

IV. Program Management Activities

In conducting its compliance, enforcement, and technical assistance activities, OCR continues to implement a comprehensive program that includes—

- Formulating or updating regulations, policies, and investigative manuals,
- Providing technical guidance on complaints and compliance reviews referred from regional offices;
- Conducting hearings before Administrative Law Judges on the compliance of Federal financial recipients with civil rights requirements;
- Meeting with congressional staffs, school district representatives, college and university officials, complainants, and civil rights groups to discuss OCR activities;
- Conducting and evaluating OCR surveys and data collection projects to obtain information on recipients and beneficiary populations for enforcement purposes;
- Providing in-house programmatic training to investigators and legal staff engaged in civil rights compliance activities;
- Conducting a quality assurance program to ensure that a high level of quality is maintained in OCR compliance activities; and
- Operating a Management-by-Objectives program designed to enhance management planning and to track performance in meeting organizational goals.

V. Summary

While regional programs will vary due to considerations such as the number and type of complaints received, compliance reviews conducted, and requests for technical assistance, all OCR activities will be guided by national policies, priorities, and direction. As in previous years, each Regional Director will be responsible for timely fulfillment of OCR's obligations in handling complaint investigations and compliance reviews, monitoring compliance plans, and providing technical assistance to recipients and beneficiaries of ED financial assistance. A large part of each region's compliance program will involve the investigation of complaints of discrimination. Compliance reviews initiated in FY 1987 will include, as appropriate, each of OCR's civil rights jurisdictions in the geographic area served by each regional office. Monitoring activities will focus on ensuring that recipients comply with voluntary compliance plans and fulfill their vocational education Methods of Administration responsibilities. OCR will design technical assistance activities to respond to recipient and beneficiary needs.

Comments and Responses on Proposed AOP for FY 1987

Comment: The AOP does not describe how OCR will continue to enforce civil rights under the interpretation of the *Grove City* decision given by outgoing Assistant Secretary Harry M. Singleton.

Response: No change has been made to the AOP. OCR will continue to enforce civil rights statutes for which it has authority within the confines of existing statutes, regulations, and case law. OCR's AOP generally does not include a discussion of the impact of individual judicial decisions.

Comment: The proposed AOP does not mention a Memorandum of Understanding to exchange information on complaints between OCR and the Office of Special Education Programs.

Response: No change has been made. OCR has established formal procedures for ongoing information exchange with a number of program offices within the Education Department. However, procedures between OCR and other components of the Department are internal operational activities not routinely discussed in the AOP.

Comment: A clear policy statement is needed from OCR that the protections of Pub. L. 94–142 follow the handicapped student into the regular classroom and that failure of regular educators to make accommodations written into the Individual Education Plan (IEP) is a violation of Pub. L. 94–142 and grounds for withnolding Federal funds under that law.

Response: No change has been made. The AOP is not an appropriate vehicle for communicating OCR's policy position on specific legal issues. The Acting Assistant Secretary, who establishes national policy and program goals and direction, communicates these policy decisions/directives through policy memoranda issued to OCR offices.

Paperwork Reduction Act of 1980

The information collection activity to be undertaken pursuant to this plan is the Fall 1986 Elementary and Secondary School Civil Rights Survey. A notice was published in the **Federal Register** in the fall of 1985, prior to submission of the survey to OMB, notifying the public of OCR's intention to gather these data. This survey was approved by OMB on April 11, 1986 (OMB control number 1870–0500). Distribution to selected local educational agencies is now in progress. In addition to the above survey, OCR jointly sponsors two surveys with the Center for Statistics, the Fall Enrollment Survey (OMB control number 1850–0582), and the Completions of the Integrated Postsecondary Education Data System (OMB control number 3086–0238).

Dated: December 17, 1986.

William J. Bennett,

Secretary of Education.

[FR Doc. 86–28703 Filed 12–22–86; 8:45 am]

BILLING CODE 4000–01–M

Office of Elementary and Secondary Education

Indian Education Act—Part B—Indian Fellowship Program

AGENCY: Department of Education.

ACTION: Notice of Amendment to Notice for Transmittal of New Applications for Fiscal Year 1987 under the Indian Fellowship Program.

SUMMARY: This notice amends the fiscal year 1987 notice inviting applications for new awards under the Indian Fellowship Program (CFDA No. 84.087), published in the **Federal Register** on September 17, 1986 (51 FR 33007), to reflect recent statutory changes to this program enacted as part of the Drug-Free Schools and Communities Act of 1986 (Title IV, Subtitle B of Pub. L. 99–570). The deadline for transmittal of these applications remains the same as under the original notice (February 6, 1987).

FOR FURTHER INFORMATION CONTACT: Dorothea Perkins, Indian Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2177, FOB–6, Washington, DC 20202.

SUPPLEMENTARY INFORMATION: Section 4133(b)(2) of the Drug-Free Schools and Communities Act of 1986 amended section 423 of the Indian Education Act in two respects. First, clinical psychology has been added to the Indian Fellowship Program as a separate field. Second, section 4133(b)(2)(B) provides that "[n]ot more than 10 percent of the fellowships [under the Indian Fellowship Program] shall be awarded, on a priority basis, to persons receiving training in guidance counseling with a specialty in the area of alcohol and substance abuse counseling and education."

The purpose of this notice is to inform potential applicants of these statutory changes and specifically to invite applications in these areas. In order to receive priority consideration for funding, it is important that applicants receiving training in the priority area indicate in their applications not only the allowable field of study, such as education or psychology, in which they are seeking a degree, but also that they are "receiving training in guidance

counseling with a specialty in the area of alcohol and substance abuse counseling and education".

Program Authority: 20 U.S.C. 3385b.

Dated: December 17, 1986.

Lawrence F. Davenport,

Assistant Secretary, Elementary and Secondary Education.

[FR Doc. 86-28704 Filed 12-22-86; 8:45 am]

BILLING CODE 4000-01-M

Fund for the Improvement of Postsecondary Education

AGENCY: Department of Education.

ACTION: Notice of Final Priority for the Fund for the Improvement of Postsecondary Education (FIPSE) Lectures Program for Fiscal Year 1987.

SUMMARY: The Secretary announces a Lectures Program to be conducted by the Fund for the Improvement of Postsecondary Education (FIPSE) on important issues in postsecondary education.

EFFECTIVE DATE: This priority takes effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of this priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Russell Y. Garth, Fund for the improvement of Postsecondary Education, Office of Postsecondary Education, (Room 3100, ROB-3), Department of Education, 400 Maryland Avenue, SW., Mail Stop 3331, Washington, DC 20202, Telephone number (202) 245-8091.

SUPPLEMENTARY INFORMATION: Grants for the FIPSE Lectures Program are authorized by Title X of the Higher Education Act of 1965, as amended (20 U.S.C. 1135). Program regulations are established at 34 CFR Part 630. This program will be conducted as a Special Focus competition under 34 CFR 630.11(b)(1) of the program regulations. The purpose of the FIPSE Lectures Program is to provide modest sponsorship for promising work on key issues in postsecondary education, and to promote dissemination and discussion of this work among educational leaders, policy makers, faculty, students and the general public.

The program will enable individuals to devote at least a month to the development of ideas for presentation in lecture form at educational and other conferences, or in the context of established lecture programs such as those at colleges and universities.

Priority

In accordance with Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), under this final priority the Secretary will give an absolute preference to applications that will carry out the FIPSE Lectures Program.

Summary of Comments and Responses

The Fund received six letters of comment regarding the FIPSE Lectures Program. All were generally supportive of the program to support lectures on important issues in postsecondary education. The commenters made a number of suggestions regarding the program, and their comments are summarized and answered below.

Comment: Two commenters suggested that the Fund publish or otherwise disseminate the lectures more broadly.

Response: No change has been made. The Fund intends to work with publishers and broadcasters to ensure wide distribution of the lectures.

Comment: Two commenters suggested specific topic areas for funding priority within the FIPSE Lectures Program, including international education, the balance between teaching and research, evaluation of teaching effectiveness, graduate student teachers, and uses of technology.

Response: No change has been made. The Fund does not intend to give priority to proposals on the suggested topics this year. However, all proposals addressing significant issues in postsecondary education are eligible for funding.

Comment: One commenter suggested that the Lectures Program be widely publicized.

Response: No change has been made. In addition to the publication of the Application Notice in the **Federal Register** the Fund has mailed the Notice to institutional and disciplinary associations, as well as to all college and university presidents.

Comment: One commenter suggested that grantees under this program should have a mininum of seven years of prior involvement with the particular issue they will address.

Response: No change has been made. The Fund will consider the qualifications of the candidates for lecture grants in its review of applications. To require a specific number of years of experience in an area, however, might prevent some meritorious candidates from receiving grants.

Comment: One commenter suggested that the competition for grants be held in the spring to allow sufficient time for advance planning by conference organizers.

Response: No change has been made. For the initial year of this program, two competitions are planned—one in the fall of 1986, and one in the spring of 1987. Should this competition be held annually, the Fund anticipates it will be conducted in the spring.

Comment: One commenter suggested that additional funds be allocated for this program.

Response: No change has been made. The Fund thinks this is an appropriate level of funding for this initiative. Future funding for this program is contingent upon an assessment of the program's success and the availability of funds.

Comment: One commenter suggested that FIPSE funding not be limited to only the Lectures Program.

Response: No change has been made. The Fund intends to use approximately $60,000 to implement the Lectures Program in fiscal year 1987. The major portion of FIPSE funding will continue to be allocated to the Comprehensive Program.

(20 U.S.C. 1135)

(Catalog of Federal Domestic Assistance No. 84.116G Fund for the Improvement of Postsecondary Education)

Dated: December 11, 1986.

William J. Bennett,

Secretary of Education.

[FR Doc. 86-28700 Filed 12-22-86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Solicitation for Cooperative Agreement Proposal (SCAP); Florida; Correction

AGENCY: Albuquerque Operations Office, DOE.

ACTION: Notice of solicitation for cooperative agreement proposal (SCAP), correction.

SUMMARY: In Volume 51, No. 170 of the **Federal Register** dated September 3, 1986, page 31355, we advertised the availability of a competitive SCAP to design, fabricate, assemble, install, and operate an Agricultural Commodities Irradiation Research Center in central Florida. As a result of the Energy and Water Development Act, 1987, this has been changed from a competitive SCAP to a noncompetitive SCAP. The Act stipulates that the project sponsor for the Florida Irradiation Research Center is the Florida Department of Agriculture & Consumer Services. Their address is Post Office Box 1269, Gainesville, FL 32602.

FOR FURTHER INFORMATION CONTACT: Barbara N. Moore, U.S. Department of Energy, Albuquerque Operations Office, Contracts & Industrial Relations Division, P.O. Box 5400, Albuquerque, NM 87115, (505) 844-4229.

Issued in Albuquerque, NM, November 25, 1986.

V.V. Berniklau,

Assistant Manager for Administration.

[FR Doc. 86-28738 Filed 12-22-86; 8:45 am]

BILLING CODE 6450-01-M

Solicitation for Cooperative Agreement Proposal (SCAP); Oklahoma—Correction

AGENCY: Albuquerque Operations Office, DOE.

ACTION: Notice of solicitation for cooperative agreement proposal (SCAP), correction.

SUMMARY: In Volume 51, No. 170 of the **Federal Register** dated September 3, 1986, page 31355, we advertised the availability of a competitive SCAP to design, fabricate, assemble, install, and operate an Agricultural Commodities Irradiation Research Center in southeastern Oklahoma. As a result of the Energy and Water Development Appropriations Act, 1987, this has been changed from a competitive SCAP to a noncompetitive SCAP. The Act stipulates that the project sponsor for the Oklahoma Irradiation Research Center is Red-Ark Development Authority. Their address is First National Center, Suite 103, 3rd & Choctaw, P.O. Box 1650, McAlester, OK 74502.

FOR FURTHER INFORMATION CONTACT: Barbara N. Moore, U.S. Department of Energy, Albuquerque Operations Office, Contracts & Industries Relations Division, P.O. Box 5400, Albuquerque, NM 87115, (505) 844-4229.

Issued in Albuquerque, NM, November 25, 1986.

V.V. Berniklau,

Assistant Manager for Administration.

[FR Doc. 86-28739 Filed 12-22-86; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Proposed Remedial Order to T.E. Reserve Corp. and James G. Allison, Jr.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Proposed Remedial Order to: T.E. Reserve Corporaton and James G. Allison, Jr.

SUMMARY: Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to T.E. Reserve Corporation, formerly Texas Energy Reserve Corporation and James G. Allison, Jr. This Proposed Remedial Order alleges pricing violations in the amount of $111,528,620.17 plus interest in connection with the purchase and resale of crude oil during the period October 1, 1979 through Janaury 28, 1981. The impact of the alleged violation is nationwide. .

A copy of the Proposed Remedial Order may be obtained from the Office of Freedom of Information Reading Room; U.S. Department of Energy; Forrestal Building; 1000 Independence Avenue, SW.; Room 1E-190; Washington, DC 20585. Within fifteen (15) days of publication of this Notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals; U.S. Department of Energy; Forrestal Building; 1000 Independence Avenue, SW.; Room 6F-078; Washington, DC 20585, in accordance with 10 CFR 205.193.

Issued in Dallas, Texas on the 10th day of December 1986.

Ben Lemos,

Director, Office of Field Operations, Economic Regulatory Administration.

[FR Doc. 86-28827 Filed 12-22-86; 8:45 am]

BILLING CODE 6450-01-M

Proposed Remedial Order to William Valentine and Sons, Inc., et al., and Opportunity for Objection

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Issuance of Proposed Remedial Order to William Valentine and Sons, Inc., Valentine Construction, Inc., Dale L. Valentine, Verna L. Valentine and James L. Marchant (Respondents) and notice of opportunity for objection.

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration of the Department of Energy (DOE) hereby gives notice of a Proposed Remedial Order which was issued to William Valentine and Sons, Inc., Valentine Construction, Inc., Dale L. Valentine, Verna L. Valentine and James L. Marchant (Respondents) of Glenrock, Wyoming. This Proposed Remedial Order (PRO) finds Respondents jointly and severally liable with Big Muddy Oil Processors, Inc., (Big Muddy) for overcharges in crude oil sales under 10 CFR Part 212, Subpart L during the period May 1979 through December 1980 (the audit period). OHA previously issued a Remedial Order to Big Muddy for the overcharges herein. 13 DOE ¶ 83,043 (1985). ERA alleges that there existed such a unity of interest and ownership among the corporate Respondents and Big Muddy that the corporate veils of these entities should be pierced and they should be held jointly and severally liable for Big Muddy's overcharges; that the individual Respondents, as owners and officers of Valentine and Sons, Valentine Construction and Big Muddy, are also liable, jointly and severally with the corporate Respondents, for Big Muddy's overcharges, on the basis of piercing the corporate veil; and that the individual Respondents were the central figures in Big Muddy's business in that they authorized, participated in, and approved Big Muddy's conduct of its reseller activities, and therefore, are liable for Big Muddy's overcharge on the basis of tortious conduct. The total violation amount is $1,454,876.35 plus interest. The impact of these overcharges was ultimately borne by the consumers of covered products refined from this crude oil.

A copy of the PRO, with confidential information deleted, if any, may be obtained from the DOE Freedom of Information Reading Room, U.S. Department of Energy, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585.

Within fifteen (15) days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, Room 6F-055, 1000 Independence Avenue, SW., Washington, DC 20585, in accordance with 10 CFR 205.193. A person who fails to file a Notice of Objections shall be deemed to have admitted the findings of fact and conclusions of law stated in the PRO. If a Notice of Objection is not filed in accordance with §205.193, the PRO may be issued as a final Remedial Order by the Office of Hearings and Appeals.

Issued in Washington, DC on the 12th day of December 1986.

Marshall A. Staunton.

Administrator.

[FR Doc. 86-28828 Filed 12-22-86; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Availability of Tertiary Incentive Annual Report

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of Intent to Continue Use of Form ERA–424D "Tertiary Incentive Annual Report of Prepaid Expenses," and Solicitation of Comments.

SUMMARY: The Department of Energy seeks comments on the continued use of Form ERA–424D, "Tertiary Incentive Annual Report of Prepaid Expenses."

DATES: Written comments must be submitted by January 22, 1987.

ADDRESS: Comments should be sent to Seymour Kleiman, at the address listed below.

FOR FURTHER INFORMATION OR COPY OF FORM CONTACT: Seymour Kleiman, RG–44, Forrestal, Case Review and Litigation Support, Office of the Solicitor, U.S. Department of Energy, Washington, DC 20585 (202) 252–2674.

SUPPLEMENTARY INFORMATION:

I. Background
II. Request for Comments

I. Background

The basis for Form ERA 424D has been noted in the **Federal Register.** As stated in 46 FR 20508 (April 3, 1981):

10 CFR 212.78(h)(5) requires a producer to file an annual report with respect to prepaid expenses attributed to that producer until the actual use of the item for which these expenses were incurred and paid. Since this report is necessary to confirm the satisfaction of a condition subsequent to the recovery of prepaid expenses, this requirement will be retained indefinitely.

In accordance with 10 CFR 212.78, an operator shall file an annual prepaid expenses report each year until the operator has reported the actual use of all the goods and services for which a prepaid expense had been incurred and paid.

Forms submitted to DOE thus far state that producers will utilize prepaid expenses beyond 1987. This indicates the continuing necessity for the form.

II. Request for Comments

The ERA invites all interested parties to comment on the proposed use of this form through March 30, 1990. The following general guidelines are provided to assist in the preparation of any comments.

(a) Are the instructions clear and sufficient?

(b) Do you have any suggestions for improving the form?

(c) Can the data be submitted using the definitions included in the instructions?

(d) How many hours, including time for preparation and administrative review, will your organization require to complete and submit the form?

(e) What is the estimated cost of completing the form, including the direct and indirect costs associated with the data collection? Direct costs should include all one-time and recurring costs, such as development, assembly, equipment, ADP, and other administrative costs directly to providing this information.

(f) Do you know of any Federal, State or local agencies that collect the same types of data? If yes, please identify the agency form number(s) and explain how the data are duplicative.

(g) What are your views concerning the need for the collection of the data specified on Form ERA–424D?

Summaries and/or comments submitted in response to this notice will be included in the request for Office of Management and Budget approval of this form and will become a matter of public record.

Statutory Authority

(Sections 13(b), 5(b), 5(a), and 52 of the Federal Energy Administration (FEA) Act of 1974. [15 U.S.C. 772(b), 764(b), 764(a) and 790(a)]).

Issued in Washington, DC on December 17, 1986.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 86–28740 Filed 12–22–86; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS–59798; FRL 3132–2]

Office of Pesticides and Toxic Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of five such PMNs and provides a summary of each.

DATES: Close of Review Period:

Y 87–58—December 25, 1986.
Y 87–59—December 29, 1986.
Y 87–60—December 30, 1986.
Y 87–62—December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street, SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: Effective with this notice, a non-substantive change in format is being initiated for information published under section 5(d)(2) and 5(h)(6) of the Toxic Substances Control Act. Toxicity data will only appear in the notice when submitted with the PMN. Exposure and environmental release/disposal information will no longer be published in the notice. The following notice contains information extracted from the non-confidential version of the PMNs received by EPA. The complete non-confidential PMNs are available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 87–58

Manufacturer. Confidential.
Chemical. (G) Modified epoxy resin.
Use/Production. (S) Site-limited component of metal coating formulation. Prod. range: 50,000 to 100,000 kg/yr.

Y 87–58

Importer. Confidential.
Chemical. (G) Polyamide of C_{18} fatty acids, dimer with substituted alkylenediamines.
Use/Import. (G) Industrial adhesive. Import range: Confidential.

Y 87–60

Importer. Confidential.
Chemical. (G) Water-reducible methacryl—styrene copolymer.
Use/Import. (G) Open, non-dispersive. Import range: Confidential.

Y 87–61

Importer. Confidential.
Chemical. (G) Polyether polyurethane.
Use/Import. (G) Open, non-dispersive. Import range: Confidential.

Y 87–62

Importer. Confidential.

Chemical. (G) Acrylamide acrylate copolymer.
Use/Import. (S) Site-limited and industrial auxiliary for the agglomeration of dispersed polymer particles in injection molding materials.

Dated: December 16, 1986.

Denise Devoe,

Acting Division Director, Information Management Division.

[FR Doc. 86–28748 Filed 12–22–86; 8:45 am]

BILLING CODE 6560–50–M

[OPPE–FRL–3133–6]

Meeting of the Advisory Committee Negotiating the Hazardous Waste Injection Restrictions Rulemaking

As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), we are giving notice of an open two-day meeting of the Advisory Committee negotiating Hazardous Waste Injection Restrictions.

The meeting will be held on Thursday and Friday, January 8 and 9, 1987, at the Airport Holiday Inn, 3702 North Belt East, Houston, Texas. On Thursday, the meeting will begin at 9:00 a.m. and will run until 5:00 p.m. On Friday, the meeting will start at 9:00 a.m. and will run until 12:00 noon. The purpose of the meeting is to continue work on the substantive issues which the Committee has identified for resolution.

If interested in more information, please contact Kathy Tyson at (202) 382–5479.

Dated: December 18, 1986.

Milton Russell,

Assistant Administrator for Policy, Planning and Evaluation.

[FR Doc. 86–28892 Filed 12–22–86; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

December 15, 1986.

The Federal Communications Commission has submitted the following information collection requirement to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

Copies of the submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on these submissions contact Jerry Cowden, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on these information collections should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: None.

Title: Section 76.58, Disputes concerning carriage.

Action: New collection.

Respondents: Broadcast television stations and cable television systems

Estimated Annual Burden: 1,055 Responses; 9,811 Hours.

Needs and Uses: Provides a mechanism by which disputes involving carriage of television signals by cable television systems can be resolved. If no carriage agreement is reached between the parties, a ruling on the matter may be requested from the Commission.

OMB Number; None.

Title: Section 76.66, Input selector switches.

Action: New collection.

Respondents: Cable television system operators.

Estimated Annual Burden: 4,000,000 Responses; 68,000 Hours.

Needs and Uses: Requires cable television system operators to provide written installation instructions to existing subscribers who choose to install their own input selector switches rather than having the cable system operator make the installation. The instructions will enable subscribers to properly install the switches.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86–28769 Filed 12–22–86; 8:45 am]

BILLING CODE 6712–01–M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

December 11, 1986.

The Federal Communications Commission has submitted the following information collection requirement to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Jerry Cowden, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0169.

Title: Sections 43.51 and 43.53, Reports and Records of Communications.

Common Carriers and Certain Affiliates.

Action: Revision.

Respondents: Communications common carriers.

Estimated Annual Burden: 374. Responses; 6,030 Hours.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86–28768 Filed 12–22–86; 8:45 am]

BILLING CODE 6712–01–M

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

December 17, 1986.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on these submissions contact Jerry Cowden, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on these information collections should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEBO, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0170

Title: Section 73.1030, Notifications concerning interference to radio astronomy, research and receiving installations

Action: Extension

Respondents: Broadcast licensees

Estimated Annual Burden: 30 Responses; 30 Hours

OMB Number: 3060–0180

Title: Section 73.1610, Equipment tests

Action: Extension

Respondents: Permittees of new broadcast stations

Estimated Annual Burden: 609 Responses; 305 Hours

OMB Number: 3060–0184

Title: Section 73.1740, Minimum operating schedule

Action: Extension

Respondents: Licensees of commercial broadcast stations

Estimated Annual Burden: 302 Responses; 151 Hours

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86–28767 Filed 12–22–86; 8:45 am]

BILLING CODE 6712–01–M

Information Collection Requirement Approved by Office of Management and Budget

December 17, 1986.

The following information collection requirement has been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632–7513.

OMB No.: 3060–0028

Title: Application for Authorization in the Auxiliary Radio Broadcast Services

Form No.: FCC 313

A revised application form FCC 313 has been approved for use through 10/31/89. The May 1984 edition with a previous expiration date of 10/31/86 will remain in use until revised forms are available.

Federal Communications Commission.

William J. Tricario,

Secretary.

[FR Doc. 86–28766 Filed 12–22–86; 8:45 am]

BILLING CODE 6712–01–M

[Report No. 1633; MM Docket No. 85–260; RM–4955]

Petitions for Reconsideration of Actions in Rulemaking Proceedings; FM Broadcast Stations; Eldon, MO

December 16, 1986.

Petitions for reconsideration have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202–857–3800). Oppositions to these petitions must be filed within 15 days after publication of this Public Notice in the **Federal Register**. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Eldon, Missouri) (MM Docket No. 85–260, RM–4955) Number of Petitions received: 1.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86–28772 Filed 12–22–86; 8:45 am]

BILLING CODE 6712–01–M

[File Nos. BPH–841025IA, et al; MM Docket No. 86–462]

Applications for Consolidated Hearing; T. Bette Addington, et al

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant and city/state	File No.	MM docket No.
A. T. Bette Addington; Green Acres, CA.	BPH–841025IA	86–462
B. Bogsteria Randis; Green Acres, CA.	BPH–841231MG	.....
C. Rose Marie Ramirez; Green Acres, CA.	BPH–841231MI	.....
D. Freedom Broadcasting Network, Inc.; Green Acres, CA.	BPH–841231MJ	.....

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Financial Qualifications, D
2. Air Hazard, B
3. Comparative, All Applicants
4. Ultimate, All Applicants

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 86–28773 Filed 12–22–86; 8:45 am]

BILLING CODE 6712–01–M

[File Nos. BPH–850313MC et al.; Docket No. 86–465]

Applications for Consolidated Hearing; AJB Broadcasting Inc, et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant and city/state	File No.	MM docket No.
A. AJB Broadcasting, Inc.; Mt. Bullion, CA.	BPH–850313MC	86–465
B. New Life Enterprises, Inc.; Mt. Bullion, CA.	BPH–850509MC	.....
C. Rosalie Lopez Bustos; Mt. Bullion, CA.	BPH–850530MG	.....
D. Mt. Bullion Community Broadcasting, Inc.; Mt. Bullion, CA.	BPH–850531MA	.....
E. Edward E. Abramson; Mt. Bullion, CA.	BPH–850531MO	.....
F. Peter E. Baird; Mt. Bullion, CA.	BPH–850531MP	.....

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Financial Qualificaitions, D
2. Comparative, A,B,C,D,E,F
3. Ultimate, A,B,C,D,E,F

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 86–28774 Filed 12–22–86; 8:45 am]

BILLING CODE 6712–01–M

[File Nos. BPCT–860702KJ and BPCT–860820KI; MM Docket No. 86–461]

Applications for Consolidated Hearing; Roland Bushland and Family Group Ltd. III

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant and city/state	File No.	MM docket No.
A. Roland Bushland d/b/a Bushland Specialties/ CWFW, Chippewa Falls, WI.	BPCT–860702KJ	86–461
B. Family Group Ltd., III, Chippewa, Falls, WI.	BPCT–860820KI	.....

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

Multiple Ownership, A
Comparative, A, B
Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 86–28775 Filed 12–22–86; 8:45 am]

BILLING CODE 6712–01–M

[File Nos. BPH–860161 MI et al.; MM Docket No. 86–468]

Applications for Consolidated Hearing; Leonard James Giacone, et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant and city/state	File No.	MM Docket No.
A. Leonard James Giacone; Laurel, MI.	BPH–860116MI	86–468
B. Minority Broadcasting Corp.; Laurel, MI.	BPH–860122MK	.....
C. Gordon L. Bostic, et al., d/b/a Bostic Broadcasting; Laurel, MI.	BPH–860123MY	.....
D. Radio Laurel, Ltd.; Laurel, MI.	BPH–860123MZ	.....
E. Dorothy Sue Smith; Laurel, MI.	BPH–860123ND	.....
F. FM Laurel, Inc.; Laurel, MI.	BPH–860123NE	.....

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at FR, April 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Air Hazard, A,B,C,D,E,F
2. Comparative, A,B,C,D,E,F
3. Ultimate, A,B,C,D,E,F

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 86–28776 Filed 12–22–86; 8:45 am]

BILLING CODE 6712–01–M

File Nos. BPCT–860623KE and BCPT–860820KK; MM Docket No. 86–450

Applications for Consolidated Hearing; Joneco Broadcasting and Tower Broadcasting Corp.

1. The Commission had before it the following mutually exclusive applications for a new TV station:

Applicant and city/state	File No.	MM docket No.
A. Melvin Jones, d/b/a Joneco Broadcasting, Sonora, TX.	BPCT–860623KE	86–458
B. Tower Broadcasting Corp. Sonora, TX.	BPCT–860820KK	.....

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

Site Availability, A
Misrepresenttion, A
Air Hazard, B
Comparative, A,B
Ultimate, A,B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 86–28777 Filed 12–22–86; 8:45 am]

BILLING CODE 6717–01–M

[File Nos. BPCT-860623KH et al; Docket No. 86-459]

Applications for Consolidated Hearing; Joneco Broadcasting et al.

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant and city/state	File No.	MM docket No.
A. Joneco Broadcasting; Rio Grande City, TX.	BPCT-860623KH	86-459
B. Robert Gonzalez; Rio Grande City, TX.	BPCT-860619KQ	
C. Kathy Young; Rio Grande City, TX.	BPCT-860620KG	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

Air Hazard, A,B,C
Comparative, A,B,C
Ultimate, A,B,C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 86-28778 Filed 12-22-86; 8:45 am]

BILLING CODE 6712-01-M

[File Nos. BPET-860616 KL and BPET-860820KH; MM Docket No. 86-460]

Applications for Consolidated Hearing; Christ Center of Central Florida Educational Television, Inc.

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant and city/state	File No.	MM docket No.
A. Christ Center of Central Florida, Inc. d/b/a The Kings Academy; Leeburg, FL.	BPET-860616KL	86-460
B. Central Florida Educational Television, Inc.; Leesburg, FL.	BPET-860820KH	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

Air Hazard, B
Comparative-Noncommercial Educational TV, A, B
Ultimate, A,B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC the complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 86-28779 Filed 12-22-86; 8:45 am]

BILLING CODE 6712-01-M

[File Nos. BPH-841204MA et al; MM Docket No. 86-464]

Applications for Consolidated Hearing; Ogden Broadcasting of Virginia, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant and city/state	File No.	MM Docket No.
A. Ogden Broadcasting of Virginia, Inc.; Staunton, VA.	BPH-841204MA	86-464
B. Sterling Broadcasting Corp.; Staunton, VA.	BPH-850225MA	
C. John D. Verstandig; Staunton, VA.	BPH-850226MC	
D. Gail Goodrow Brown et al., d/b/a The Staunton Group; Staunton, VA.	BPH-850228MG	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Human Safety (See Appendix), A, B
2. Air Hazard, A, B
3. Comparative, A, B, C, D
4. Ultimate, A, B, C, D

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix

Additional Issue Paragraph

1. To determine whether the proposed sites of A (Ogden) and B (Sterling) pose a threat to human safety.

[FR Doc. 86-28780 Filed 12-22-86; 8:45 am]

BILLING CODE 6712-01-M

[File Nos. BPED-841113 MH and BPED-841128MB; MM Docket No. 86-463]

Applications for Consolidated Hearing; State University of New York and Mars Hill Broadcasting Co., Inc.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant and city/state	File No.	MM Docket No.
A. State University of New York (WBSU-FM); Brockport, NY.	BPED-841113MH	86-463
B. Mars Hill Broadcasting, Co., Inc.; Webster, NY.	BPED-841128MB	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. 307(b)—Noncommercial Educational, A, B
2. Contingent Comparative—Noncommercial Educational, A, B
3. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. [Telephone (202) 857-3800].

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 86-28781 Filed 12-22-86; 8:45 am]

BILLING CODE 6712-01-M

[FCC 86-482]

FM Transmitter Site Map Submissions Required by FCC Forms 301 and 340

AGENCY: Federal Communications Commission (FCC).

ACTION: Requirements established for transmitter site maps submitted with FM applications.

SUMMARY: This action affirms the requirements of FCC Forms 301 and 340 for FM transmitter site maps established by the staff in April 1985. Because adequate notice of these requirements was not given to the public, applicants who appealed the Commission action returning their applications for failure to comply with the new transmitter site map requirements shall receive *nunc pro tunc* reconsideration. This action is designed to provide sufficient notice of the transmitter site map requirements of FCC Forms 301 and 340 to future FM applicants.

EFFECTIVE: December 30, 1986.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC, 20554.

FOR FURTHER INFORMATION CONTACT: Roxanne McElvane, FM Branch, Mass Media Bureau, (202) 632-3954.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order,* FCC 86-482, adopted October 24, 1986 and released November 4, 1986.

The full text of this Commission decision is available for inspection and copying during normal business hours in the Audio Services Division (Room 302), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's Copy Contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Memorandum Opinion and Order

1. In this *Memorandum Opinion and Order (MO&O),* we are considering the requirements established in a *Public Notice,* mimeo 3693, (released April 5, 1985) concerning FM transmitter site map submissions. These requirements of FCC Forms 301 and 340 are specifically designed to enable the staff to independently verify the stated geographic coordinates and topographic features of the proposed site and are an indispensable requisite under the new "hard look", limited amendment processing procedures applicable to FM applications.

2. While we agree that the requirements of FCC Forms 301 and 340 established in the April 5, 1985 *Public Notice* are necessary to the efficient processing of FM applications, we believe that the Administrative Procedure Act at 5 U.S.C. 552(a)(1)(C) requires that the contents of that *Public Notice* should have been published in the **Federal Register** in order to provide adequate notice to the public of requirements of FCC Forms 301 and 340 set forth therein. Having failed to provide adequate notice to the public, it would not be proper to impose the requirements set forth in that *Public Notice* upon applicants who were not provided adequate notice thereof.

3. Accordingly, it is ordered That, as to all applicants who have preserved their rights at various levels of appeal, the staff is directed to reinstate *nunc pro tunc* those applications returned for failure to comply with the requirements of the *Public Notice.*[1]

4. It is further ordered That, given the necessity of the information called for in the *Public Notice* and in order to avoid further delay in the processing of FM applications, the requirements set forth in the *Public Notice,* Mimeo 3693 (released April 5, 1985), appended hereto, shall be effective seven days after publication in the **Federal Register.**

Appendix

[This *Public Notice* has been modified to clarify that the requirements set forth herein are called for in FCC Forms 301 and 340.]

Public Notice

[3693]

April 5, 1985.

Clarification of FM Transmitter Site Map Requirements of FCC Forms 301 and 340

This notice is part of the Commission's continuing effort to expedite the processing of FM applications in order to bring new

[1] All applications pending as of the effective date of this *Memorandum Opinion and Order* that do not comply with the requirements for FM transmitter site maps set forth in the attached Appendix shall be retained and the applicants will be permitted to amend their applications to correct this deficiency only.

broadcast service to the public as rapidly as possible.

When applying for an FM station construction permit, one of the submissions required by FCC forms 301 and 340 is a 7.5 minute series U.S. Geological Survey topographical quadrangle map upon which is marked the transmitter site.

In order to allow the Commission's processing staff to verify the correctness of the geographic coordinates provided in an application, FCC Forms 301 and 340 now require that this site map show along the printed margin of both axes at least two coordinate markings, specifically labeled by the USGS, one on either side of the marked site. Additionally, a scale of kilometers or miles (kilometers, if available) and all of the identifying map information must be included. The site should be plotted on a full scale map, and all of the contour lines must be clearly visible. Faded, smudged or otherwise illegible maps are unacceptable. Photocopies are acceptable in lieu of actual USGA Maps, provided they are clear, dark and legible. It is not necessary to submit an entire map (although this is perfectly acceptable), but only as much as is necessary to fully comply with the requirements described above.

In certain cases it may be inconvenient to provide a full scale photocopy which includes both the site and the margins. This can occur when the site lies towards the center of the map. In this case the following alternative is acceptable. Provide a full scale copy of the section of the map containing the site. This copy must include either four of the standard printed cross-marks or one margin and two cross-marks. Fine lines should be drawn between the marks in such a fashion as to enclose the site. Each of these lines should be labeled with the appropriate latitude or longitude. This full scale map section must include all the information specified in the previous paragraph. In addition, a reduced copy of the entire map must be included to allow the Commission's staff to verify that the lines have been correctly labeled.

If the above requirements are not met, the application will be returned without further review. Prospective applicants should understand that the Commission cannot process an application to grant without being able to verify the correctness of the site elevation and site coordinates. These coordinates serve as the reference point for all calculations of spacing, coverage and interference.

Questions concerning the above should be directed to Bob Greenberg, FM Branch, (202) 632-6908.

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 86-28771 Filed 12-22-86; 8:45 am]
BILLING CODE 6712-01-M

Radio Broadcasting; AM Daytime Stations; Freeze on Acceptance of Applications

AGENCY: Federal Communications Commission.

ACTION: Freeze on acceptance of applications for AM daytime stations.

SUMMARY: This action imposes a temporary freeze on the acceptance of applications for AM daytime stations. This action is necessary to limit the number of new AM daytime stations authorized and is designed to eliminate the preclusive effect new AM daytime stations have on the ability of other applicants seeking authority to broadcast on a full-time basis and existing AM daytime stations that want to broadcast on a full-time basis.

EFFECTIVE DATE: December 11, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leonore Cunningham, Audio Services Division, Mass Media Bureau, (202) 632-6485.

SUPPLEMENTARY INFORMATION: None.

Federal Communications Commission.
William J. Tricarico,
Secretary.
December 12, 1986.

Freeze Imposed on Filing of Applications for New AM Daytime Stations

Over the last several years, the Commission has repeatedly recognized the need for extensive modifications in our AM policies and rules governing such broadcasters. *See Report on the Status of the AM Broadcast Rules,* (Submitted to the Federal Communications Commission, prepared by the staff of the Mass Media Bureau April 3, 1986). The difficulties facing AM daytime stations are compounded by the limitations on their hours of operation and the attendant inability to effectively compete with full-time radio broadcasters. In this regard, the Commission has adopted procedures which make it possible for many existing AM daytime stations that operate on foreign clear channels to broadcast with limited power at night. *In re Nighttime Operation on Canadian, Mexican and Bahamian AM Clear Channels* (MM Docket 84-251), 59 RR 2d 655 (1985), reconsideration granted in part, denied in part, 59 RR 2d 1187 (1986). However, applicants proposing new AM daytime stations are not permitted to apply for these foreign clear channels because such proposals could preclude the establishment of fulltime stations on these channels and/or impede our efforts to provide relief for existing daytime stations.

For these same reasons, we believe that the restrictions on filing applications for new AM daytime stations with respect to foreign clear channels should apply to all channels in the AM band. In continuing to authorize new AM daytime stations we not only complicate the task of offering relief to such existing stations, but we also perpetuate the very problem we are seeking to address. Moreover, we believe that it is in the public interest to restrict future applicants to proposing full-time operation since this generally results in more efficient use of scarce spectrum space.

Accordingly, until further notice we are imposing a temporary freeze on the acceptance of applications for new AM daytime stations received after the adoption date of this Public Notice. This action is taken in contemplation of a formal rulemaking proceeding to propose a permanent ban on acceptance of applications for new Am daytime stations. Applications for new daytime stations on file before the adoption date of this Public Notice and applications filed after the adoption date that are mutually exclusive with applications listed on an "A" cut-off list shall be processed as usual. This action will not restrict the ability of existing AM daytimers to apply to modify their facilities.

Action by the Commission December 11, 1986 (FCC 86-541). Commissioners Fowler (Chairman), Quello, Dawson, Patrick and Dennis.

For further information contact Lenore Cunningham at (202) 632-6485.

[FR Doc. 86-28770 Filed 12-22-86; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

[No. 86-1253]

FSLIC Insurance Premium

Dated: December 15, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The Federal Home Loan Bank Board, as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), has adopted a resolution pursuant to which the Corporation ordered the assessment against each insured institution of an additional premium for FSLIC insurance in an amount equal to one thirty-second of one percent of the total amount of the accounts of the insured members of each insured institution determined as of September 30, 1986.

EFFECTIVE DATE: December 23, 1986.

FOR FURTHER INFORMATION CONTACT: Mary A. Creedon, Director, Insurance Division, Office of the FSLIC, (202) 377-6620; or JoAnne Morris, Attorney, Office of General Counsel (202) 377-7396, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: Whereas, The Federal Home Loan Bank Board ("Bank Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("Corporation" or "FSLIC"), may authorize the Corporation, pursuant to section 404(c) of the National Housing Act, as amended ("NHA"), 12 U.S.C. 1727(c) (1982), to assess against each institution the accounts of whcih are insured by the Corporation pursuant to section 403 of the NHA, 12 U.S.C. 1726 (1982) ("insured institution"), additional premiums for such insurance until the amount of such premiums equals the amount of all losses and expenses of the Corporation, *Provided* that the total amount so assessed in any one year against any insured institution shall not exceed one eighth of one per centum of the total amount of the accounts of the insured members of such institution; and

Whereas, the Bank Board, as operating head of the Corporation, by Resolution No. 85-142, dated February 22, 1985, by Resolution No. 85-437, dated June 5, 1985, by Resolution No. 85-770, dated August 28, 1965, by Resolution No. 85-1142, dated December 9, 1985, by Resolution No. 86-213, dated March 6, 1986, by Resolution No. 86-582, dated June 10, 1986, and by Resolution No. 86-941, dated September 2, 1986, ordered assessments against each insured institution of an additional premium for insurance in an amount equal to one thirty-second of one per centum of the total amount of the accounts of the insured members of each insured institution determined as of December 31, 1984, for the first assessment, as of March 31, 1985, for the second, as of June 30, 1985, for the third, as of September 30, 1985, for the fourth, as of December 31, 1985, for the fifth, as of March 31, 1986, for the sixth, and as of June 30, 1986, for the seventh; and

Whereas, The Bank Board has considered memoranda of the Corporate Accounting Branch and the Chief Financial and Administrative Officer, Office of the FSLIC, (a copy of which memoranda are in the Minute Exhibit file), describing the impact of the collection of the additional premiums for insurance assessed pursuant to Resolution No. 85-142, dated February 22, 1985, Resolution No. 85-437, dated June 5, 1985, Resolution No. 85-770, dated August 28, 1985, Resolution No. 85-1142, dated December 9, 1985, Resolution No. 86-213, dated March 6, 1986, Resolution No. 86-582, dated June 10, 1986, and Resolution No. 86-941, dated September 2, 1986, upon the Corporation's insurance reserves:

Now, therefore, it is resolved, That on the basis of the administrative record, the Bank Board finds and determines that the Corporation has incurred substantial losses during calendar years 1981 through 1985 and the first three quarters of 1986; and

Resolved further, That the Bank Board finds and determines that:

1. Losses and expenses incurred by the Corporation, as defined in Resolution No. 85-142, require the assessment of additional insurance premiums pursuant to section 404(c) of the NHA in addition to the additional insurance premiums assessed pursuant to Resolutions No. 85-142, No. 85-437, No. 85-770, No. 85-1142, No. 86-213, No. 86-582, and No. 86-941 in order to maintain the insurance reserves of the Corporation at a level adequate to meet in part the Corporation's losses and expenses and to protect the insured members of insured institutions;

2. It is appropriate, therefore, to provide for the assessment of an additional insurance premium at this time, pursuant to section 404(a)(2) of the NHA, by order of the Corporation; and

Resolved further, That the Corporation hereby orders the assessment against each insured institution of an additional premium for insurance for the fourth quarter of 1986, in an amount equal to one thirty-second of one per centum of the total amount of the accounts of the insured members of such insured institution determined as of September 30, 1986; and

Resolved further, That the additional insurance premium assessed pursuant to this Resolution shall be payable on or about December 31, 1986; and

Resolved further, That the Director or Deputy Director, Office of the FSLIC ("Director"), shall determine the amount of the additional premium due to be paid on December 31, 1986, by each insured institution and shall notify each insured institution of such amount at least fifteen (15) days prior to the date such amount is due; and

Resolved further, That the Director, on behalf of the Corporation, is hereby authorized to take all other actions necessary or appropriate to determine and collect the additional insurance premium authorized and ordered by this Resolution; and

Resolved further, That the Secretary shall forward this Resolution for publication in the **Federal Register.**

By the Federal Home Loan Bank Board.
Nadine Y. Washington,
Acting Secretary.
[FR Doc. 86-28785 Filed 12-22-86; 8:45 am]
BILLING CODE 6720-01-M

[No. 86-1239]

Privacy Act of 1974; New System of Records

December 15, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final notice of new system of records.

SUMMARY: Pursuant to the requirements of the Privacy Act of 1974 ("Privacy Act") (5 U.S.C. 552) (1982 & Supp. II 1984)), the Federal Home Loan Bank Board ("Board") is establishing a new system of records in order to collect information on known or suspected criminal violations and enforcement actions taken against persons in connection with the operation of financial institutions, their holding companies or service corporations, as well as change-of-control applications filed by, and other significant business transactions with, individuals concerning institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation ("Corporation" or "FSLIC"). Comments on the Notice of Proposed New System of Records published at 51 FR 6316 (Feb. 21, 1986), which would establish the system, and the Proposed Rule published at 51 FR 6281 (Feb. 21, 1986), which would exempt the system of records from certain requirements of the Privacy Act, have been considered and are jointly discussed in the Rules and Regulations Section of the **Federal Register.** As stated therein the Board is establishing the system of records without change from its earlier notice.

EFFECTIVE DATE: December 23, 1986.

FOR FURTHER INFORMATION CONTACT: John Downing, Attorney, (202) 653-2604 or Rosemary Stewart, Director, (202) 653-2626, Office of Enforcement, Federal

Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

Authority: 5 U.S.C. 552a.

FHLBB–29

SYSTEM NAME:

Confidential Individual Information System.

SYSTEM LOCATION:

Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

These records may contain information concerning individuals who have filed notices of intention to acquire control of an insured institution, controlling persons of companies that have filed applications to acquire control of an insured institution, organizers of institutions seeking FSLIC insurance of accounts or federal charters, individuals who have been the subject of administrative enforcement actions or other civil actions by any agency with authority to supervise or regulate federally insured financial institutions, those who have been named in criminal referrals by such agencies or by federally insured institutions or who have been referred to professional societies, licensing authorities or ethics committees for disciplinary purposes, individuals identified as the subjects of criminal investigations by the Department of Justice or state law enforcement authorities in connection with the operation of federally insured financial institutions, and persons engaging in significant business transactions with FSLIC-insured institutions. This system also contains the identity of the custodian of any documents describing the specific event causing entry into the system.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records identify the individual involved and his relationship to the institution, service corporation or holding company; the event causing entry of information into the system (e.g., a change-of-control filing, an enforcement action, a criminal referral naming an individual or a referral of information to a professional group for disciplinary action, or receipt of information concerning a criminal or civil violation involving an insured institution); any regulatory or judicial action taken as a result; and the location and nature of any additional records concerning the specific event.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1464 and 1730.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING THE CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(a) To provide the Board's Office of Regulatory Policy, Oversight and Supervision ("ORPOS") and Office of Enforcement ("Enforcement") and the Federal Home Loan Banks with information concerning the current status of suspected criminal violations in connection with institutions the accounts of which are insured by the FSLIC, their holding companies, and service corporations, which have been referred to the Department of Justice or other law enforcement agencies for possible investigation and prosecution.

(b) To provide information to government agencies that supervise or regulate any of the operations of financial institutions concerning whether persons connected with these institutions have been the subject of administrative or civil enforcement actions.

(c) To provide information concerning a violation or potential violation of civil or criminal law, rule, order or regulation to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or implementing the statute, rule regulation, or order.

(d) To provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

(e) To respond to requests from the Congress.

(f) To provide information to the Office of General Counsel ("OGC"), ORPOS and the Federal Home Loan Banks concerning groups or individuals applying for permission to organize a Federal association and/or making *de novo* applications for FSLIC insurance and the officers and directors of those proposed institutions, and concerning officers and directors of existing financial institutions applying for FSLIC insurance for use in considering those applications.

(g) To provide information to OGC, ORPOS, Enforcement, and the Federal Home Loan Banks concerning persons who have filed notices of intention to acquire control of insured institutions and controlling persons of companies filing applications to acquire control of insured institutions to determine if any agency action is required.

(h) To provide information (1) to ORPOS, Enforcement and the Federal Home Loan Banks' examining and supervisory staffs with regard to persons transacting business with or for savings institutions in connection with the Board's examination and supervision of insured institutions, service corporations and savings and loan holding companies, and (2) to persons designated by the Board as representatives of the Corporation to conduct investigations of insured institutions, their service corporations, or their holding companies.

(i) To provide information to receivers or conservators of insured institutions or formerly insured institutions for use in determining the background and reliability of persons with whom they are considering entering into transactions or with whom the institution previously has entered into transactions.

(j) To provide information to OGC, Enforcement and persons representing the Board in legal matters, and to other persons having access to legal papers connected with such matters.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE:

Records are maintained on fixed disks.

RETRIEVABILITY:

Records are retrievable by name of individual or by the individual's relationship to the insured institution involved.

SAFEGUARDS:

Access to the system will be available only to Board employees and agents who have been issued the system passwords, which will be revealed only to those persons who have need for information from the system in the performance of their duties.

RETENTION AND DISPOSAL:

Records will be retained for up to 25 years after the date of entry. Records will then be sent to the Federal Records Center.

SYSTEM MANAGER AND ADDRESS:

Database Administrator, Office of Regulatory Policy Oversight and Supervision, 900 Nineteenth Street NW., Washington, DC. 20006.

NOTIFICATION PROCEDURES:

This system will be exempt from notification and record-access requirements and requirements that an individual be permitted to contest its content under 5 U.S.C. 552a(k)(2) because it contains investigatory material compiled for law enforcement purposes.

RECORD ACCESS PROCEDURES:

See Notification procedures.

CONTESTING RECORDS PROCEDURES:

See Notification procedures.

RECORD SOURCE CATEGORIES:

This system will be exempt under 5 U.S.C. 552a(k)(2) from the requirement that the sources of records used in the system be published, because it contains investigatory material compiled for law enforcement purposes.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Acting Secretary.

[FR Doc. 86–28786 Filed 12–22–86; 8:45 am]

BILLING CODE 6720–01–M

[No. 86–1247]

Approval of Application To Withdraw Securities From Listing and Registration on the American Stock Exchange

Dated: December 15, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: On July 29, 1986, Mercury Savings and Loan Association, Huntington Beach, California (the "Association") (FHLBB No. 6649) filed with the Federal Home Loan Bank Board ("Board") an application, ("Application"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) thereunder, for the withdrawal from listing and registration on the American Stock Exchange ("Exchange"), of the Association's Common Stock, $1.00 Par Value, (the "Stock"). The Association's Stock was approved for listing and registration on the New York Stock Exchange, on August 1, 1986, and concurrently therewith such stock was suspended from trading on the Exchange.

Notice is hereby given that the Office of General Counsel of the Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the Application for withdrawal from listing and registration on the Exchange, effective as of the opening of business on November 3, 1986.

SUPPLEMENTARY INFORMATION: The reasons stated in the Association's application for withdrawing the securities from the listing and registration on the American Stock Exchange include the following:

1. The Association has complied with Rule 18 of the Exchange by filing with the Exchange a certified copy of preambles and resolutions adopted by the Association's Board of Directors authorizing the withdrawal of the Stock from listing on the Exchange.

2. The direct and indirect costs and expenses attendant on maintaining the dual listing of the Stock on the New York Stock Exchange and the Exchange are not justified.

3. The belief that dual listing would fragment the market for the Stock without offsetting benefits.

4. The Exchange has no objection to the withdrawal of the Association's Stock from listing on the Exchange.

5. The withdrawal for listing of the Association's Stock from the Exchange shall have no effect upon the continued listing of the Stock on the New York Stock Exchange.

6. By reason of Section 12(b) of the Securities Exchange Act of 1934 and the rules and regulations thereunder, the Association shall continue to be obligated to file reports under section 13 of that Act with the Federal Home Loan Bank Board and the New York Stock Exchange.

Notice of the application for withdrawal from listing and an opportunity for hearing was published in the **Federal Register** on September 30, 1986 and interested persons were invited to submit written data, views and arguments within 15 days. See Board Resolution No. 86–1045 dated September 24, 1986 (51 FR 34687, September 30, 1986). The Board received no comments on the application.

Accordingly, pursuant to section 12(d) of the Act and Rule 12d2–2(d) thereunder, the Office of General Counsel of the Board, acting pursuant to the authority delegated to the General Counsel or his designee, having considered the facts stated in the Application and having due regard for the public interest and protection of investors, approved the Application for withdrawal from listing and registration on the AMEX, effective as of the opening of business on November 3, 1986.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Acting Secretary.

[FR Doc. 86–28790 Filed 12–22–86; 8:45 am]

BILLING CODE 6720–01–M

[No. AC–536]

The Benjamin Franklin Federal Savings and Loan Association, Portland, OR; Final Action Approval of Conversion Application

Dated: December 15, 1986.

Notice is hereby given that on October 17, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of The Benjamin Franklin Federal Savings and Loan Association, Portland, Oregon for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Seattle, 1501 4th Avenue, 19th Floor, Seattle, Washington 98101–1693.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Acting Secretary.

[FR Doc. 86–28791 Filed 12–22–86; 8:45 am]

BILLING CODE 6720–01–M

[No. 86–1248]

Approval of Application for Unlisted Trading Privileges and Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

Dated: December 15, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: On August 25, 1986, The Cincinnati Stock Exchange, Inc. filed with the Federal Home Loan Bank Board ("Board") an application ("Application"), pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f–1 [17 CFR 240.12f–1] thereunder, for unlisted trading privileges in the following securities which are listed on one or more national securities exchange: Columbia Savings and Loan Association, Beverly Hills, California (FHLBB No. 6325), Series "A" Preferred Stock, 1.00 Par Value.

Notice of the Application and opportunity for hearing was published in the **Federal Register** on September 30, 1986, and interested persons were invited to submit written data, views and arguments within 15 days. See Board Resolution No. 86–1043, dated

August 24, 1986. (51 FR 34685, September 30, 1986). The Board received no comments with respect to the Application. Notice is hereby given that the Office of General Counsel of the Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the Application for unlisted trading privileges in these securities on October 30, 1986.

SUPPLEMENTARY INFORMATION: The Board finds that the approval of the Application for unlisted trading privileges in these securities is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange registered with the Securities and Exchange Commission ("Commission") pursuant to section 6 of the Act, the Cincinnati Stock Exchange is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under sections 17 and 19 of the Act and the rules and regulations thereunder. Transactions in the subject securities, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 11Aa3–1 under the Act [17 CFR 240.11Aa3–1]. The availability of last sale information for the subject securities should contribute to pricing efficiency and to ensuring that transactions on the Cincinnati Stock Exchange are executed at prices which are reasonably related to those occurring in other markets. Further, the approval of the Application will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system. Finally, the Board received no comments indicating that the granting of the Application would not be consistent with the maintenance of fair and orderly markets and the protection of investors.

Accordingly, pursuant to section 12(f)(1)(B) of the Act, the Office of General Counsel of the Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the Application for unlisted trading privileges in the above named securities on October 30, 1986.

By the Federal Home Loan Bank Board.
Nadine Y. Washington,
Acting Secretary.

[FR Doc. 86–28788 Filed 12–22–86; 8:45 am]
BILLING CODE 6720–01–M

[No. 86–1244]

Approval of Application for Unlisted Trading Privileges; Midwest Stock Exchange, Inc.

December 15, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: On September 2, 1986, The Midwet Stock Exchange, Inc. filed with the Federal Home Loan Bank Board ("Board") an application ("Application"), pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f–1 [17 CFR 240.12f–1] thereunder, for unlisted trading privileges in the following securities which are listed on one or more national securities exchange: Mercury Savings and Loan Association, Huntington Beach, California, (FHLBB No. 6649), Common Stock, $1.00 Par Value.

Notice of the Application and opportunity for hearing was published in the **Federal Register** on September 30, 1986, and interested persons were invited to submit written data, views and arguments within 15 days. See Board Resolution No. 86–1042 dated September 24, 1986. (51 FR 3486, September 30, 1986). The Board received no comments with respect to the Application. Notice is hereby given that the Office of General Counsel of the Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the Application for unlisted trading privileges in these securities on November 3, 1986.

SUPPLEMENTARY INFORMATION: The Board finds that the approval of the Application for unlisted trading privileges in these securities is consistent with the mintenance of fair and orderly markets and the protection of investors. As a national securities exchange registered with the Securities and Exchange Commission ("Commission") pursuant to section 6 of the Act, the Midwest Stock Exchange is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under sections 17 and 19 of the Act and the rules and regulations thereunder. Transactions in the subject securities, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 11Aa3–1 under the Act [17 CFR 240.11Aa3–1]. The availability of last sale information for the subject securities should contribute to pricing efficiency and to ensuring that transactions on the Midwest Stock Exchange are executed at prices which are reasonably related to those occurring in other markets. Further, the approval of the Application will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system. Finally, the Board received no comments indicating that the granting of the Application would not be consistent with the maintenance of fair and orderly markets and the protection of investors.

Accordingly, pursuant to section 12(f)(1)(B) of the Act, the Office of General Counsel of the Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the Application for unlisted trading privilegs in the above named securities on November 3, 1986.

By the Federal Home Loan Bank Board.
Nadine Y. Washington,
Acting Secretary.

[FR Doc. 86–28789 Filed 12–22–86; 8:45 am]
BILLING CODE 6720–01–M

[No. AC–534]

Citizens Savings Bank, F.S.B., Silver Spring, MD; Final Action; Approval of Conversion Application

Dated: December 15, 1986.

Notice is hereby given that on October 30, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Citizens Savings Bank, F.S.B., Silver Spring, Maryland for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, DC 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Atlanta, Post Office Box 105565, Atlanta, Georgia 30348.

By the Federal Home Loan Bank Board.
Nadine Y. Washington,
Acting Secretary.

[FR Doc. 86–28792 Filed 12–22–86; 8:45 am]
BILLING CODE 6720–01–M

[No. AC–525]

Fidelity Federal Savings and Loan Association of Seymour, Seymour, IN; Final Action; Approval of Conversion Application

Dated: December 15, 1986.

Notice is hereby given that on September 12, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Fidelity Federal Savings and Loan Association of Seymour, Seymour, Indiana for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Indianapolis, Post Office Box 60, Indianapolis, Indiana 46204.

By the Federal Home Loan Bank Board.
Nadine Y. Washington,
Acting Secretary.

[FR Doc. 86–28793 Filed 12–22–86; 8:45 am]
BILLING CODE 6720–01–M

[No. AC–535]

First Federal Savings and Loan Assoc. of Waterbury, CT; Final Action; Approval of Conversion Application

Dated: December 15, 1986.

Notice is hereby given that on November 6, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings and Loan Association of Waterbury, Waterbury, Connecticut, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Boston, Post Office Box 9106, Boston, Massachusetts 02205.

By the Federal Home Loan Bank Board.
Nadine Y. Washington,
Acting Secretary.

[FR Doc. 86–28800 Filed 12–22–86; 8:45 am]
BILLING CODE 6720–01–M

[No. AC–527]

First Federal Savings and Loan Assoc. of LaGrange, GA; Final Action; Approval of Conversion Application

Dated: December 15, 1986.

Notice is hereby given that on November 4, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings and Loan Association of LaGrange, LaGrange, Georgia for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Atlanta, Post Office Box 105565 Atlanta, Georgia 30348.

By the Federal Home Loan Bank Board.
Nadine Y. Washington,
Acting Secretary.

[FR Doc. 86–28797 Filed 12–22–86; 8:45 am]
BILLING CODE 6720–01–M

[No. AC–523]

First Federal Savings and Loan Association, Honolulu, HI; Final Action; Approval of Conversion Application

Dated: December 15, 1986.

Notice is hereby given that on September 22, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings and Loan Association, Honolulu, Hawaii, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Seattle, 1501 4th Avenue, Seattle, Washington 98101.

By the Federal Home Loan Bank Board.
Nadine Y. Washington,
Acting Secretary.

[FR Doc. 86–28795 Filed 12–22–86; 8:45 am]
BILLING CODE 6720–01–M

[No. AC–544]

First Federal Savings and Loan Association of Vincennes, IN; Final Action; Approval of Conversion Application

Dated: December 15, 1986.

Notice is hereby given that on October 15, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings and Loan Association of Vincennes, Vincennes, Indiana for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Indianapolis, P.O. Box 60, Indianapolis, Indiana 46206–0060.

By the Federal Home Loan Bank Board.
Nadine Y. Washington,
Acting Secretary.

[FR Doc. 86–28799 Filed 12–22–86; 8:45 am]
BILLING CODE 6720–01–M

[No. AC–540]

First Federal Savings and Loan Assoc. of Salt Lake City, UT; Final Action; Approval of Conversion Application

Dated: December 15, 1986.

Notice is hereby given that on October 15, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings and Loan Association of Salt Lake City, Salt Lake City, Utah for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Seattle, 1501 4th Avenue, Seattle, Washington 98101–693.

By the Federal Home Loan Bank Board.
Nadine Y. Washington,
Acting Secretary.

[FR Doc. 86–28798 Filed 12–22–86; 8:45 am]
BILLING CODE 6720–01–M

[No. AC–531]

First Federal Savings and Loan Association of Chattanooga, Chattanooga, TN; Final Action; Approval of Conversion Application

Dated: December 15, 1986.

Notice is hereby given that on October 28, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings and Loan Association of Chattanooga, Chattanooga, Tennessee for permission to convert to the stock form of organization. Copies of the application are available for inspection at the

Secretariat of the Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Cincinnati, Post Office Box 598, Cincinnati, Ohio 45201.

By the Federal Home Loan Bank Board.
Nadine Y. Washington,
Acting Secretary.
[FR Doc. 86-28796 Filed 12-22-86; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-543]

First Federal Savings Bank, Decatur, AL; Final Action, Approval of Conversion Application

Dated: December 15, 1986.

Notice is hereby given that on November 12, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the aplication of First Federal Savings Bank, Decatur, Alabama, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Atlanta, Post Office Box 105565, Atlanta, Georgia 30348.

By the Federal Home Loan Bank Board.
Nadine Y. Washington,
Acting Secretary.
[FR Doc. 86-28794 Filed 12-22-86; 8:45am]
BILLING CODE 6720-01-M

FEDERAL HOME LOAN BANK BOARD

First Savings of America, Orland Park, Illinois; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(2) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(2) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for First Savings of America, Orland Park, Illinois, on December 12, 1986.

Dated: December 17, 1986.
Jeff Sconyers,
Secretary.
[FR Doc. 86-28787 Filed 12-22-86; 8:45am]
BILLING CODE 6720-01-M

[No. AC-538]

Home Federal Savings and Loan Assoc., Xenia, OH; Final Action, Approval of Conversion Application

Dated: December 15, 1986.

Notice is hereby given that on October 14, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Home Federal Savings and Loan Association, Xenia, Ohio for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Cincinnati, Post Office Box 598, Cincinnati, Ohio 45201.

By the Federal Home Loan Bank Board.
Nadine Y. Washington,
Acting Secretary.
[FR Doc. 86-28801 Filed 12-22-86; 8:45am]
BILLING CODE 6720-01-M

[No. AC-533]

Home Savings Assoc. of Pennsylvania, Tamaqua, PA; Final Action, Approval of Conversion Application

Dated: December 15, 1986.

Notice is hereby given that on October 29, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Home Savings Association of Pennsylvania, Tamaqua, Pennsylvania for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Pittsburgh, One Riverfront Center, Twenty Stanwix Street, Pittsburgh, Pennsylvania 15222-4893.

By the Federal Home Loan Bank Board.
Nadine Y. Washington,
Acting Secretary.
[FR Doc. 86-28802 Filed 12-22-86; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-528]

Iron Federal Savings and Loan Assoc., Iron River, MI, and D&N Savings Bank, F.S.B., Detroit, MI; Final Action, Approval of Conversion Application

Notice is hereby given that on October 30, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Iron Federal Savings and Loan Association, Iron River, Michigan, ("Iron Federal") and D&N Savings Bank, F.S.B., Detroit, Michigan, for permission to convert Los Angeles Federal to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Indianapolis, Post Office Box 60, Indianapolis, Indiana 46206-0060.

By the Federal Home Loan Bank Board.
Nadine Y. Washington,
Acting Secretary.
[FR Doc. 86-28803 Filed 12-22-86; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-541]

Johnstown Savings Bank, F.S.B., Johnstown, PA; Final Action, Approval of Conversion Application

Dated: December 15, 1986.

Notice is hereby given that on September 10, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Johnstown Savings Bank. F.S.B., Johnstown, Pennsylvania for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Pittsburgh, 11 Stanwix Street, 4th Floor, Gateway Center, Pittsburgh, Pennsylvania 15222.

By the Federal Home Loan Bank Board.
Nadine Y. Washington,
Acting Secretary.
[FR Doc. 86-28804 Filed 12-22-86; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-537]

Loyola Federal Savings and Loan Assoc., Baltimore, MD; Final Action, Approval of Conversion Application

Notice is hereby given that on October 15, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Loyola Federal Savings and Loan Association, Baltimore, Maryland, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Atlanta, Post Office Box 56527, Peachtree Center Station, Atlanta, Georgia 30343.

By the Federal Home Loan Bank Board.
Nadine Y. Washington,
Acting Secretary.
[FR Doc. 86-28805 Filed 12-22-86; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-530]

Mid Maine Mutual Savings Bank, F.S.B., Auburn, ME; Final Action, Approval of Conversion Application

Notice is hereby given that on October 30, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Mid Maine Mutual Savings Bank, F.S.B., Auburn, Maine for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Boston, Post Office Box 9106, Boston, Massachusetts 02205-9106.

By the Federal Home Loan Bank Board.
Nadine Y. Washington,
Acting Secretary.
[FR Doc. 86-28806 Filed 12-22-86; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-532]

Orange Federal Savings and Loan Assoc., Chapel Hill, NC; Final Action, Approval of Conversion Application

Dated: December 15, 1986.

Notice is hereby given that on October 21, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Orange Federal Savings and Loan Association, Chapel Hill, North Carolina for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Atlanta, P.O. Box 56527, Peachtree Center Station, Atlanta, Georgia 30343.

By the Federal Home Loan Bank Board.
Nadine Y. Washington,
Acting Secretary.
[FR Doc. 86-28807 Filed 12-22-86; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-526]

Robeson Savings and Loan Assoc., Lumberton, NC: Final Action, Approval of Conversion Application

Dated: December 15, 1986.

Notice is hereby given that on November 4, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Robeson Savings and Loan Association, Lumberton, North Carolina for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, DC 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Atlanta, Post Office Box 56527, Peachtree Center Station, Atlanta, Georgia 30343.

By the Federal Home Loan Bank Board.
Nadine Y. Washington,
Acting Secretary.
[FR Doc. 86-28808 Filed 12-22-86; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-542]

Roosevelt Savings and Loan Assoc., Chesterfield, MO; Final Action, Approval of Conversion Application

Dated: December 15, 1986.

Notice is hereby given that on November 10, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Roosevelt Federal Savings and Loan Association, Chesterfield, Missouri for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Des Moines, 907 Walnut Street, Des Moines, Iowa 50309.

By the Federal Home Loan Bank Board.
Nadine Y. Washington,
Acting Secretary.
[FR Doc. 86-28809 Filed 12-22-86; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-539]

Security Federal Savings and Loan Assoc. of Billings, MT; Final Action, Approval of Conversion Application

Dated: December 15, 1985.

Notice is hereby given that on October 15, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Security Federal Savings and Loan Association of Billings, Billings, Montana for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Seattle, 1501 4th Avenue, Seattle, Washington 98101-1693.

By the Federal Home Loan Bank Board.
Nadine Y. Washington,
Acting Secretary.
[FR Doc. 86-28810 Filed 12-22-86; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-529]

Standard Federal Bank, Troy, MI; Final Action, Approval of Conversion Application

Dated: December 15, 1986.

Notice is hereby given that on October 27, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Standard Federal Bank, Troy, Michigan, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G

BEST COPY AVAILABLE

Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Indianapolis, Post Office Box 60, Indianapolis, Indiana 46206.

By the Federal Home Loan Bank Board.
Nadine Y. Washington,
Acting Secretary.
[FR Doc. 86-28811 Filed 12-22-86; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-524]

Wilmington Savings Fund Society, F.S.B., Wilmington, DE; Final Action, Approval of Conversion Application

Dated: December 15, 1986.

Notice is hereby given that on October 6, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Wilmington Savings Fund Society, FSB, Wilmington, Delaware for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Pittsburgh, 20 Stanwix Street, One Riverfront Center, Pittsburgh, Pennsylvania 15222.

By the Federal Home Loan Bank Board.
Nadine Y. Washington,
Acting Secretary.
[FR Doc. 86-28812 Filed 12-22-86; 8:45 am]
BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under OMB Review

December 17, 1986.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

For Further Information Contact:
Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822)
OMB Desk Officer—Robert Neal—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-6880)

Proposal to approve under OMB delegated authority the extension with revision of the following reports:

1. Report title: Annual Report of Foreign Banking Organizations; Foreign Banking Organization Confidential Report of Operations
Agency form number: FR Y-7; FR 2068.
OMB Docket number: 7100-0125.
Frequency: annual.
Reporters: Foreign Banking Organizations.
Small businesses are not affected.
General description of report.
This information collection is mandatory [12 U.S.C. 1844(c), 3106, 3108(a)] and is given confidential treatment [5 U.S.C. 552(b)(8)].
These annual reports request financial and structural information on foreign banking organizations in order to assess their ability to serve as a source of strength to their U.S. operations and to determine compliance with the BHC Act and the IBA.

Board of Governors of the Federal Reserve System, December 17, 1986.
William W. Wiles,
Secretary of the Board.
[FR Doc. 86-28691 Filed 12-22-86; 8:45 am]
BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation; Buy American Act

AGENCY: Public Buildings Service, GSA.
ACTION: Notice of proposed determination under Buy American Act.

SUMMARY: This notice invites written comments on the proposed determination under § 25.202(a)(3) of the Federal Acquisition Regulation that for purposes of the Buy American Act, microprocessor chips which are brought onto a Government construction site as separate units to be incorporated into building systems during construction or repair and alteration of real property are not produced or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. If the proposed determination is made, nondomestic microprocessor chips, when required to be incorporated into an end product or construction material manufactured in the United States, would be treated as domestic materials.

DATE: Comments are due in writing no later than January 15, 1987.

ADDRESS: Comments should be addressed to Mr. William L. Newman, Office of Procurement, PBS, PPB, 18th and F Streets, NW, Room 7311, Washington DC.

FOR FURTHER INFORMATION CONTACT: Mr. William L. Newman Office of Procurement, PBS, on (202) 566-1385.

SUPPLEMENTARY INFORMATION: The Public Buildings Service of GSA has found that microprocessor chips are incorporated into a variety of environmental and systems control devices during construction, repair and alteration of Government real property. These microprocessor chips represent a minor portion of the control units they are incorporated into. However, in many cases they are brought on to the construction site as a separate unit prior to final assembly. The initial production of commercial or industrial-grade microprocessor chips (or wafers), as opposed to military and aerospace products, is generally accomplished in domestic manufacturing facilities; the wafer is given an initial test to identify and mark defective circuits; the wafers are then exported for package assembly, wire bonding and encapsulation; and finally, the completed device is reimported for sale to domestic control manufactures. This packaging, wire bonding and encapsulation process in foreign countries causes the chips to be classified as a foreign product under the Buy American Act when they are reimported. This information was developed by means of a survey of private industry sources and Government personnel familiar with the industry.

Dated: December 5, 1986.
Brian K. Polly,
Assistant Commissioner, Office of Procurement.
[FR Doc. 86-28686 Filed 12-22-86; 8:45 am]
BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 86F-0458]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for additional uses of *N,N'*-hexamethylenebis (3,5-di-*tert*-butyl-4-hydroxyhydrocinnamamide) as an antioxidant for polymers.

FOR FURTHER INFORMATION CONTACT: Mary Lipien, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (7B3969) has been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for additional uses of *N,N'*-hexamethylenebis (3,5-di-*tert*-butyl-4-hydroxyhydrocinnamamide) as an antioxidant for polymers.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Dated: December 15, 1986.
Richard J. Ronk,
Acting Director, Center for Food Safety and Applied Nutrition.
[FR Doc. 86-28719 Filed 12-22-86; 8:45 am]
BILLING CODE 4160-01-M

[Docket No. 86G-0459]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of maleic anhydride, polymer with ethyl acrylate and vinyl acetate, hydrolyzed, as a deposit control additive for use in the manufacture of paper and paperboard in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 7B3973) has been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the safe use of maleic anhydride, polymer with ethyl acrylate and vinyl acetate, hydrolyzed, as a deposit control additive for use in the manufacture of paper and paperboard intended for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: December 15, 1986.
Richard J. Ronk,
Acting Director, Center for Food Safety and Applied Nutrition.
[FR Doc. 86-28720 Filed 12-22-86; 8:45 am]
BILLING CODE 4160-01-M

[Docket No. 86F-0435]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a petition has been filed by Ciba-Geigy Corp. proposing that the food additive regulations be amended to provide for the safe use of N,N'-1,3-propanediylbis(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamamide) as an antioxidant in closures with sealing gaskets for containers intended to contact food and in rubber articles intended for repeated use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 7B3970) has been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe use of N,N'-1,3-propanediylbis(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamamide) as an antioxidant in closures with sealing gaskets intended to contact food and in rubber articles intended for repeated use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: December 15, 1986.
Richard J. Ronk,
Acting Director, Center for Food Safety and Applied Nutrition.
[FR Doc. 86-28721 Filed 12-22-86; 8:45 am]
BILLING CODE 4160-01-M

[Docket No. 86G-0457]

Towa Chemical Industry Co., Ltd.; Filing of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a petition (GRASP 6G0319) has been filed on behalf of Towa Chemical Industry Co., Ltd., proposing to affirm that maltitol is generally recognized as safe (GRAS) as a direct food ingredient for use in certain foods.

DATE: Comments by February 23, 1987.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John W. Gordon, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-9463.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that a

petition (GRASP 6G0319) has been filed on behalf of Towa Chemical Industry Co., Ltd., c/o 1150 17th St. NW., Suite 1000, Washington, DC 20036, proposing to affirm that maltitol is GRAS as a direct food ingredient for use in certain foods.

The petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the format requirements outlined in § 170.35 is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Interested persons may, on or before February 23, 1987, review the petition and/or file comments (two copies, identified with the docket number found in brackets in the heading of this document) with the Dockets Management Branch (address above). Comments should include any available information that would be helpful in determining whether this substance is, or is not, GRAS. A copy of the petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 15, 1986.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-28718 Filed 12-22-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OK NM 58607]

Recreation and Public Purposes Classification; Dewey County, OK

AGENCY: Bureau of Land Management, Interior.

ACTION: R&PP Classification.

SUMMARY: The following described lands have been examined and are hereby classified as suitable for sale under the Recreation and Public Purposes (R&PP) Act of June 14, 1926, (44 Stat. 741; 43 U.S.C. 869), as amended, and the regulations thereunder Title 43 Code of Federal Regulations (CFR) 2740 and 2912:

Indian Meridian, Oklahoma

Tracts	Legal description	Acres plus accretions
DW 14 to 17..... DW 18 and 19.....	T. 18 N., R. 17 W., Sec. 28: Lots 1, 2, 3, and 4 Sec. 33: Lots 8 and 9.	82.71
DW 21 to 25.....	T. 18 N., R. 20 W., Sec. 26: Lots 1 and 2, SW¼SE¼ Sec. 27: Lots 3 and 4.	120.51

Aggregating 203.22 acres plus accretions.

The Oklahoma Department of Wildlife Conservation (ODWC) propose to use the identified lands for wildlife habitat and recreation. Use areas for wildlife habitat and recreation are in great demand, and it is anticipated that the need will increase in the future. The porposed use is in the public interest and is consistent with the Bureau's planning for the lands involved in this action.

Patent, when issued, will contain the following reservations:

1. All minerals will be reserved to the U.S. Government.
2. The sale will be subject to all valid existing rights and reservations of record.
3. The transfer of the identified Tracts will be subject to a floodplain restriction and a wetland reservation under Executive Orders 11988 and 11990.
4. The transfer of the identified Tracts will be subject to existing grazing rights, authorizations 0751 and 0754.

The classification will segregate the lands from all appropriation under the public land laws, except as to application under the mineral leasing laws and the Recreation and Public Purposes Act. Segregation will terminate upon issuance of a patent, or 18 months from the date of this Notice; or upon publication of a Notice of Termination.

DATE: For a period of 45 days after the date of publication of this Notice, all persons who wish to submit comments may do so in writing to the District Manager, Bureau of Land Management, 9522-H East 47th Place, Tulsa, Oklahoma, 74145. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Hans Sallani, telephone, (405) 231-5491.

Jim Sims,

District Manager.

[FR Doc. 86-28716 Filed 12-22-86; 8:45 am]

BILLING CODE 4310-FB-M

[CO-010-07-4332-09]

Craig, Colorado District Advisory Council; Meeting

In accordance with Pub. L. 94-579, notice is hereby given that there will be a meeting of the Craig District Advisory Council on January 7, 1987, at 10 a.m. at the Little Snake Resource Area office, 1280 Industrial Avenue, Craig, Colorado.

Agenda items will include:

1. Roles and responsibilities of BLM concerning off-road vehicles;
2. Proposed Sand Wash races;
3. Protests on the Little Snake Resource Management Plan; and
4. Craig District Wilderness EIS.

The meeting will be open to the public; interested persons may make oral statements at 10:30 a.m. Summary minutes of the meeting will be maintained in the Craig District Office.

Dated: December 8, 1986.

William J. Pulford,

District Manager.

[FR Doc. 86-28683 Filed 12-22-86; 8:45 am]

BILLING CODE 4310-JB-M

[NV-930-07-4212-14; N-42974]

Realty Action; Modified Competitive Sale of Public Land in Lincoln County, NV; (Amendment)

This Notice of Realty Action amends the Notice of June 10, 1986 (published 6/19/86, FR, Vol. 51, No. 118, pg. 22359 and 60, pertaining to the sale of public lands under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713) to describe the parcel by aliquot parts, which increases the acreage from 147.87 acres to 155.48 acres. The parcel is described as follows:

T. 1N., R. 68 E., M.D.M.

Sec. 36, S½SE¼SW¼SW¼, S½SE¼SW¼, S½N½SE¼SW¼.

T. 1S., R. 69 E.,

Sec. 6, lots 3, 4, 5; SE¼NW¼, N½N½NE¼SW¼.

Containing 155.48 acres.

Dated: December 15, 1986.

Ben F. Collins,

District Manager

[FR Doc. 86-28682 Filed 12-22-86; 8:45 am]

BILLING CODE 4310-HC-M

[NV-030-07-4212-14; N-42719]

Realty Action, Competitive Sale; Public Lands in Storey County, NV

The following described lands comprising 160 acres have been identified as suitable for disposal through sale under section 203 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1713, at no less than fair market value:

Mt. Diablo Meridian

T. 20 N., R. 23 E.,
Sec. 22, S½S¼.

The lands are hereby segregated from appropriation under the public land laws including the mining laws but not from sale under the above cited statute. The segregative effect will end upon the issuance of the patent or 270 days from the date of publication of the notice in the **Federal Register** whichever occurs first.

The sale is consistent with local government plans. The lands are not needed for support of any resource programs and are not suitable for management by another Federal agency. There are no known values for locatable, saleable or leasable minerals. In accordance with section 209(b)(1)(1) of Pub. L. 94-579, mineral interests will be conveyed simultaneously with the surface estate upon submission of a non-refundable filing fee of $50.00.

The patent when issued will contain the following reservation to the United States:

1. A right-of-way thereon for ditches and canals constructed by authority of the United States, under the Act of August 30, 1890, 26 Stat. 391; U.S.C. 945.

Bid Information

The bids will be accepted for no less than the appraised fair market value. The lands have been appraised at $150.00 per acre, for a total of $24,000.00. Bidders must be either: (1) Citizens of the United States, 18 years of age or older, (2) corporations subject to the laws of any state or of the United States, (3) other entities such as associations and partnerships capable of holding lands or interests therein under the laws of the state within which the lands are located, or (4) states, state instrumentalities or political subdivisions authorized to hold title to real property.

Sealed bids may be made by a principal or duly qualified agent. Sealed bids shall be considered only if received at the Carson City District Office, Bureau of Land Management, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89701, prior to 9:00 a.m., February 27, 1987. The written sealed bids will be opened and publicly declared at the sale, which will be held on February 27 at 10:00 a.m.

Each bid shall be accompanied by a certified check, postal money order or cashier's check made payable to the Department of the Interior—BLM for not less than twenty (20) percent of the amount of the bid and the $50.00 filing fee to purchase the mineral interest and shall be enclosed in a sealed envelope marked in the lower left hand corner, Bid for Public Land Sale N-42719, February 27, 1987. If two or more sealed bids containing valid bids of the same amount are received, the determination of whom is to be considered the highest bidder shall be by oral bidding following opening of the sealed bids. If the tract does not sell at the first offering, sealed bids will be accepted at the Carson City District Office during business hours (7:30 to 4:15) every Wednesday following the date of the sale until the tract is sold or withdrawn from sale.

The remainder of the full bid price shall be paid within 180 days of the sale. Failure to submit the full bid price within 180 days shall disqualify the apparent high bidder and the deposit shall be forfeited and disposed of as other receipts of sale. All bids will either be returned or rejected within 30 days of the sale date. Conveyance of available mineral estates having no known mineral values will occur simultaneously with sale of the lands in accordance with section 209(b)(1)(1) of Pub. L. 94-579.

BLM may reject any and all offers or withdraw the lands from sale, up to the point of receiving the balance of the bid amount, if the authorized officer determines that sale would not be fully consistent with the Federal Land Policy and Management Act or other applicable law.

The lands will not be offered for sale for at least 60 days after the date of this notice. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Carson City District Office, Bureau of Land Management, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89701. Any adverse comments will be evaluated and this notice upheld, modified or vacated.

Dated this 17th day of December 1986.

Norman L. Murry,

Acting District Manager.

[FR Doc. 86-28690 Filed 12-22-86; 8:45 am]

BILLING CODE 4310-HC-M

[NV-030-07-4212-14; N-42719]

Realty Action, Competitive Sale; Public Lands in Storey County, NV

The following described lands comprising 160 acres have been identified as suitable for disposal through sale under section 203 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1713, at no less than fair market value:

Mt. Diablo Meridian

T. 20 N., R. 23 E.,
Sec. 22, S½S¼.

The lands are hereby segregated from appropriation under the public land laws including the mining laws but not from sale under the above cited statute. The segregative effect will end upon the issuance of the patent or 270 days from the date of publication of the notice in the **Federal Register** whichever occurs first.

The sale is consistent with local government plans. The lands are not needed for support of any resource programs and are not suitable for management by another Federal agency. There are no known values for locatable, saleable or leasable minerals. In accordance with section 209(b)(1)(1) of Pub. L. 94-579, mineral interests will be conveyed simultaneously with the surface estate upon submission of a non-refundable filing fee of $50.00.

The patent when issued will contain the following reservation to the United States:

1. A right-of-way thereon for ditches and canals constructed by authority of the United States, under the Act of August 30, 1890, 26 Stat. 391; U.S.C. 945.

Bid Information

The bids will be accepted for no less than the appraised fair market value. The lands have been appraised at $150.00 per acre, for a total of $24,000.00. Bidders must be either: (1) Citizens of the United States, 18 years of age or older, (2) corporations subject to the laws of any state or of the United States, (3) other entities such as associations and partnerships capable of holding lands or interests therein under the laws of the state within which the lands are located, or (4) states, state instrumentalities or political subdivisions authorized to hold title to real property.

Sealed bids may be made by a principal or duly qualified agent. Sealed bids shall be considered only if received at the Carson City District Office, Bureau of Land Management, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89701, prior to 9:00 a.m., February 27, 1987. The written sealed bids will be opened and publicly declared at the sale, which will be held on February 27 at 10:00 a.m.

Each bid shall be accompanied by a certified check, postal money order or cashier's check made payable to the Department of the Interior—BLM for not less than twenty (20) percent of the amount of the bid and the $50.00 filing fee to purchase the mineral interest and shall be enclosed in a sealed envelope marked in the lower left hand corner, Bid for Public Land Sale N–42719, February 27, 1987. If two or more sealed bids containing valid bids of the same amount are received, the determination of whom is to be considered the highest bidder shall be by oral bidding following opening of the sealed bids. If the tract does not sell at the first offering, sealed bids will be accepted at the Carson City District Office during business hours (7:30 to 4:15) every Wednesday following the date of the sale until the tract is sold or withdrawn from sale.

The remainder of the full bid price shall be paid within 180 days of the sale. Failure to submit the full bid price within 180 days shall disqualify the apparent high bidder and the deposit shall be forfeited and disposed of as other receipts of sale. All bids will either be returned or rejected within 30 days of the sale date. Conveyance of available mineral estates having no known mineral values will occur simultaneously with sale of the lands in accordance with section 209(b)(1)(1) of Pub. L. 94–579.

BLM may reject any and all offers or withdraw the lands from sale, up to the point of receving the balance of the bid amount, if the authorized officer determines that sale would not be fully consistent with the Federal Land Policy and Management Act or other applicable law.

The lands will not be offered for sale for at least 60 days after the date of this notice. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Carson City District Office, Bureau of Land Management, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89701. Any adverse comments will be evaluated and this notice upheld, modified or vacated.

Dated this 12th day of December 1986.

James W. Elliott,

District Manager.

[FR Doc. 86–28708 Filed 12–22–86; 8:45 am]

BILLING CODE 4310–HC–M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ARCO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 3810, Block 107, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Amelia, Louisiana.

DATE: The subject DOCD was deemed submitted on December 12, 1986.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Wholesalers Pkwy., Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: December 15, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86–28709 Filed 12–22–86; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination; Conoco Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed developrent operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Conoco Inc., Unit Operator of the Green Canyon Block 184 Federal Unit Agreenent No. 14–08–0001–20257, has submitted a DOCD describing the activities it proposes to conduct on the Green Canyon Block 184 Federal unit. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Grand Isle, Louisiana.

DATE: The subject DOCD was deemed submitted on December 8, 1986.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Wholesalers Parkway, Rocm 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Al Durr; Minerals Managerent Service; Gulf of Mexico OCS Region; Production and Developnment; Development and Unitization Section; Unitization Unit; Phone (504) 736–2659.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendnents of 1978, that the Minerals Managenent Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested larties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised Section.250.34 of Title 30 of the CFR.

Dated: December 15, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86–28680 Filed 12–22–86; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 86–2]

Apotheca, Inc.; Stay of Revocation of Registration

On December 5, 1985, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Apotheca, Inc., Respondent, of 1622 North 16th Street, Phoenix, Arizona, proposing to revoke that firm's DEA Certificate of Registration, PA0021179, and to deny its pending application for renewal of its registration as a distributor of controlled substances, executed on May 20, 1985. The statutory basis for seeking the revocation of Respondent's DEA Certificate of Registration and the denial of its pending application for renewal is that Respondent's continued registration is inconsistent with the public interest, as evidenced by, but not limited to, the fact that Respondent has repeatedly violated DEA reporting, recordkeeping and security statutes and regulations.

Respondent requested a hearing on the issues raised in the Order to Show Cause. Following prehearing procedures, an administrative hearing was held on July 8, 1986, in Phoenix, Arizona. Administrative Law Judge Francis L. Young presided at the hearing.

In his Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision, the Administrative Law Judge found that Respondent is a wholesale distributor of pharmaceuticals and medical equipment. In addition, Respondent also repackages and relabels non-controlled substances. Respondent holds a DEA Certificate of Registration as a distributor of controlled substances. Approximately ten percent of Respondent's business involves controlled substances.

The Administrative Law Judge further found that in June 1973, the DEA Phoenix District Office conducted an in-depth audit and inspection of that facility. This was the first time DEA had inspected Respondent's facility. During the inspection and audit, DEA investigators found various recordkeeping and security violations. These violations were discussed with management and Respondent was told to take corrective measures to bring the facility in compliance with applicable regulations.

In October 1975, DEA conducted a follow-up inspection and audit of Respondent's business. The inspection revealed that Respondent failed to maintain complete and accurate records; that records were not readily retrievable; that no biennial inventory had been taken; that the facility did not comply with physical security requirements; and that Respondent failed to report consummated transactions relating to Schedule III narcotic controlled substances under ARCOS requirements. These violations were explained to Respondent's president, William Akins, in a letter from the DEA Phoenix District Office, dated November 6, 1975. In a December 2, 1975 letter to DEA, William Akins acknowledged and agreed to correct the cited violations.

Another follow-up inspection of Respondent's premises and records was performed by the DEA Phoenix District Office about one year later, in October 1976. Although investigators found that most of the recordkeeping and security violations had been corrected, they also found that Respondent had not submitted any of the required ARCOS reports. In light of these continuing problems with ARCOS reporting, Respondent told DEA that it would discontinue the handling of Schedule III narcotics, so as to obviate the need for these reports.

The Administrative Law Judge further found that the DEA Phoenix District Office conducted an in-depth accountability investigation of Respondent's records and premises in May 1980. The accountability audit for the period from June 30, 1979 to May 28, 1980 revealed unexplained shortages of controlled substances, failure to maintain complete and accurate records of controlled substance receipts, distributions and inventory and a continuing failure to maintain adequate security to prevent the diversion of controlled substances. The investigation also revealed that Respondent had continued to distribute Schedule III narcotic controlled substances, although such distribution was no longer authorized by Respondent's registration. Based upon the violations cited in this investigation, an informal hearing was held. Respondent's President, William Akins, and personnel from the DEA Phoenix District Office participated. Following the informal hearing, Mr. Akins executed a Memorandum of Understanding on behalf of Respondent company. In this memorandum, Respondent agreed to take specific actions to bring itself into compliance with all Federal controlled substance laws and regulations.

In December 1984, DEA conducted a routine, in-depth investigation of Respondent's controlled substances operation. An audit of Respondent's controlled substances records again revealed significant recordkeeping violations and shortages for the period from June 30, 1984 to December 10, 1984. DEA investigators found that Respondent had failed to maintain on a current basis complete and accurate records of all controlled substances received, distributed or otherwise disposed of, as required by 21 U.S.C. 827(a)(3) and 21 CFR 1304.21(a), in that nine of the ten drugs audited for accountability revealed deviations ranging from overages of 17.8% to shortages of 29.4%; Respondent's most recent inventory of controlled substances was undated and incomplete, in violation of 21 CFR 1304.11(a), 1304.11(d) and 1304.21(a); Respondent's sales and distribution records were not readily retrievable and did not contain the customer's DEA registration number, in violation of 21 CFR 1304.04(f)(2) and 1304.23(g); Respondent failed to maintain adequate controls against the diversion of controlled substances by keeping a key to the controlled substances room in a location accessible to all employees and visitors, in violation of 21 CFR 1301.71(b)(8) and 1301.72(d); and Respondent failed to maintain adequate controls against the diversion of controlled substances by failing to verify customers' DEA registration numbers, in violation of 21 CFR 1301.74(a). These most recent findings led to the initiation of these proceedings.

The Administrative Law Judge further found that Mitchell Akins, the son of Respondent company's president, became active in the management of the company's operations in 1983. He became vice-president of the company in 1985. He did not become aware of the extent of Respondent's violations of DEA reporting, recordkeeping and security requirements until after the most recent audit and investigation. Since the December 1984 audit and investigation, Mitchell Akins has taken measures to ensure Respondent's compliance with DEA regulations. Only one employee is now responsible for the receipt of shipments of controlled substances. The controlled substances room key is now only available to Mitchell Akins and the employee handling controlled substances. Only Mitchell Akins and one other employee

remove controlled substances from the controlled substances room with each removal carefully logged on a sheet which can be checked against the shipping invoices. Invoices are now readily retrievable. The company has also implemented a plan to ensure that ARCOS reports are properly submitted to DEA. In addition, controlled substances are now inventoried at frequent intervals.

Finally, the Administrative Law Judge found that William Akins, president of Respondent company, owns all of its corporate stock. Mitchell Akins does not own any stock of Respondent company.

After the Administrative Law Judge made his findings of fact, he recommended, based upon the recent efforts of Mitchell Akins to improve Respondent's compliance with DEA regulations, that Respondent's DEA Certificate of Registration be maintained and renewed for Schedule III, IIIN, IV and V controlled substances.

The Administrator accepts the Administrative Law Judge's findings of fact in their entirety, but does not accept his recommended decision.

Based upon the facts presented, the Administrator finds that Respondent has historically demonstrated a lack of appreciation for its duties and lawful responsibilties as a distributor of controlled substances. The administrative record is replete with serious, repeated recordkeeping, reporting and security violations. These violations have been noted since 1973. These numerous and repeated violations clearly constitute lawful grounds for the revocation of Respondent's current DEA Certificate of Registration and for the denial of its pending application for renewal. 21 U.S.C. 824(a)(4), 823(e)(1), 823(e)(2), 823(e)(4) and 823(e)(5). A renewal of Respondent's DEA Certificate of Registration, without restriction, would fail to adequately serve the public interest.

Although there are lawful grounds for the absolute revocation of the Respondent's registration, the Administrator feels that the recent efforts of Mitchell Akins to bring the Respondent company into compliance with DEA regulations should be given a chance to succeed. Accordingly, although the Administrator concludes that Respondent's registration should be revoked, based on its long history of non-compliance, he will stay the revocation and impose a one-year probationary period to determine whether Respondent can now fully comply with all DEA recordkeeping, reporting and security requirements. During the one-year probationary period, DEA will conduct unannounced inspections and audits to review Respondent's compliance with all applicable controlled substance regulations. If the inspections or audits reveal either new or repeated violations, the Administrator will remove the stay and the DEA Certificate of Registration will be revoked immediately. All pending applications for renewal will be summarily denied. If, on the other hand, Respondent's efforts to improve are successful, the Administrator will withdraw this order and permit Respondent to be registered in the normal manner.

Therefore, having concluded that there are lawful grounds for the revocation of Respondent's DEA Certificate of Registration and for the denial of its pending application for renewal, and having further concluded that such registration should be revoked and its pending application should be denied, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him, pursuant to 21 U.S.C. 823 and 824 and 21 CFR 0.100(b), orders that DEA Certificate of Registration, PA0021179, previously issued to Apotheca, Inc., be, and it hereby is revoked; it is further ordered that the pending application for renewal, executed by Apotheca, Inc. on May 20, 1985, be, and it hereby is, denied. The Administrator further orders that the revocation of Respondent's registration and denial of its pending application for renewal be stayed for a period of one year; if during the one year probationary period, Respondent is found to have violated any DEA reporting, recordkeeping or security requirement, the previously imposed stays will be removed and Respondent's DEA Certificate of Registration will be revoked and any pending applications for renewal will be summarily denied.

This order is effective December 23, 1986.

Dated: December 17, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86-28699 Filed 12-22-86; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 86-60]

Dewey G. Archambault, M.D.; North Chelmsford, MA; Hearing

Notice is hereby given that on July 1, 1986, the Drug Enforcement Administration, Department of Justice, issued to Dewey G. Archambault, M.D., an Order To Show Cause as to why the Drug Enforcement Administration should not revoke his DEA Certificate of Registration, AA1955220, and deny any pending application for registration as a practitioner under 21 U.S.C. 823(f).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Friday, January 9, 1987, in Courtroom No. 10, Room 309, U.S. Claims Court, 717 Madison Place, NW., Washington, DC.

Dated: December 16, 1986.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 86-28697 Filed 12-22-86; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 86-57]

Gaston Bouquett, M.D.; Dayton, OH; Hearing

Notice is hereby given that on July 1, 1986, the Drug Enforcement Administration, Department of Justice, issued to Gaston Bouquette, M.D., an Order To Show Cause as to why the Drug Enforcement Administration should not revoke his DEA Certificate of Registration, AB5441910, and deny any pending application for registration as a practitioner under 21 U.S.C. 823(f).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Thursday, January 8, 1987, in Courtroom No. 10, Room 309, U.S. Claims Court, 717 Madison Place, NW., Washington, DC.

Dated: December 16, 1986.

John C. Lawn,

Administrator, Drug Enforcement Administration

[FR Doc. 86-28696 Filed 12-22-86; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M-86-177-C]

Mountain Top Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Mountain Top Coal Company, P.O. Box 71, Tower City, Pennsylvania 17980 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity, and velocity) to its Buck Mountain Slope (I.D. No. 36-07359) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the minimum quantity of air reaching the last open crosscut in any pair or set of developing entries and the last open crosscut in any pair of set of rooms be 9,000 cubic feet a minute, and the minimum quantity of air reaching the intake end of a pillar line by 9,000 cubic feet a minute. The minimum quantity of air in any coal mine reaching each working face shall be 3,000 cubic feet a minute.

2. Air sample analysis history reveals that harmful quantities of methane are nonexistent in the mine. Ignition, explosion, and mine fire history are nonexistent for the mine. There is no history of harmful quantities of carbon monoxide and other noxious or poisonous gases.

3. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

4. Extremely high velocities in small cross sectional areas of airways and manways required in friable Anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners and cause extremely uncomfortable damp and cold conditions in the mine.

5. As an alternate method, petitioner proposes that:

a. The minimum quantity of air reaching each working face be 1,500 cubic feet per minute;

b. The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries by 5,000 cubic feet per minute; and

c. The minimum quantity of air reaching the intake end of a pillar line be 5,000 cubic feet per minute, and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 22, 1987. Copies of the petition are available for inspection at that address.

Dated: December 16, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-28829 Filed 12-22-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-179-C]

T. & T. Energy, Inc.; Petition for Modification of Application of Mandatory Safety Standard

T. &. T. Energy, Inc., P.O. Box 206, Bruceton Mills, West Virginia 26525 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its No. 1 Mine (I.D. No. 46-01822) located in Preston County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of a locked padlock to secure battery plugs to machine-mounted battery receptacles on permissible, mobile battery-powered machines.

2. As an alternate method, petitioner proposes to use a spring-loaded locking device in lieu of padlocks. The spring-loaded device will be designed, installed and used to prevent the threaded rings that secure the battery plugs to the battery receptacles from unintentionally loosening and will be attached to prevent accidental loss. In addition, the fabricated metal brackets will be securely attached to the battery receptacles to prevent accidental loss of the brackets.

3. Petitioner states that the spring-loaded metal locking devices will be easier to maintain than padlocks because there are no keys to be lost and dirt cannot get into the workings as with a padlock.

4. Operators of permissible, mobile, battery-powered machines affected by this modification will be trained in the proper use of the locking device, the hazards of breaking battery-plug connections under load, and the hazards of breaking battery-plug connections in areas of the mine where electric equipment is required to be permissible.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 22, 1987. Copies of the petition are available for inspection at that address.

Dated: December 16, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-28830 Filed 12-22-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-180-C]

TAG Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

TAG Coal Company, R.D. #4, Box 149, Sunbury, Pennsylvania 17801 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Slope No. 11 (I.D. No. 36-07018) located in Northumberland County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Petitioner states that no such safety catch or device is available for the steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of this anthracite mine.

3. Petitioner further believes that if "makeshift" safety devices were installed they would be activated on knuckles and curves when no emergency existed and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope, above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 22, 1987. Copies of the petition are available for inspection at that address.

Dated: December 15, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-28831 Filed 12-22-86; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

Federal Advisory Council on Occupational Safety and Health; Meeting

Notice is hereby given that the Federal Advisory Council on Occupational Safety and Health, established under section 1-5 of Executive Order 12196 of February 26, 1980, published in the **Federal Register**, February 27, 1980 (45 FR 12769), will meet on January 14, 1987, starting at 10:00 a.m. in Room N3437 ABCD, of the Frances Perkins Department of Labor Building, 200 Constitution Avenue NW., Washington, DC. The meeting will be open to the public.

The agenda provides for:

I. Call to Order.

II. Approval of Minutes of October 8, 1986.

III. President's 3% Goal.

IV. Hazard Communication Program.

V. Office of Federal Agency Programs—Evaluation Schedule.

VI. Office of Federal Agency Programs—Compliance Procedures.

VII. New Business.

VIII. Adjournment.

The Council welcomes written data, views or comments concerning safety and health programs for Federal employees, including comments on the agenda items. All such submissions received by close of business January 9, 1987, will be provided to the members of the Council and included in the record of the meeting.

The Council will consider oral presentations relating to agenda items. Persons wishing to orally address the Council at the meeting should submit a written request to be heard by close of business January 9, 1987. The request must include the name and address of the person wishing to appear, the capacity in which appearance will be made, a short summary of the intended presentation and an estimate of the amount of time needed.

All communications regarding this Advisory Council should be addressed to John E. Plummer, Director, Office of Federal Agency Programs, Department of Labor, OSHA, Frances Perkins Building, 200 Constitution Avenue NW., Room N3601, Washington, DC 20210, telephone (202) 523-9329.

Signed at Washington, DC this 17th day of the December 1986.

John A. Pendergrass,

Assistant Secretary.

[FR Doc. 86-28832 Filed 12-22-86; 8:45 am]

BILLING CODE 4510-26-M

Pension and Welfare Benefits Administration

[Application No. D-6282 et al.]

Proposed Exemptions; Phelps Time Lock Security Corp. et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice of Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Phelps Time Lock Security Corporation Employees Profit Sharing Plan (the Plan) Located in Miami, Florida

[Application No. D-6282]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale of certain real property by the Plan to the Phelps Time Lock Security Corporation (the Employer) provided that the terms of the proposed sale are as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party on the date of its consummation.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with five participants. The Plan had total assets of $345,241 as of June 30, 1985. The trustee of the Plan is Mr. Robert Gilbert (the Trustee), the sole shareholder of the Employer. The Employer is engaged in the business of installing security locks.

2. On March 15, 1974, the Plan acquired certain real property located at 2417 Hollywood Boulevard, Hollywood, Florida (the Property) from an unrelated party. The purchase price was $85,000. Upon its acquisition, the Property was leased to the Employer pursuant to an oral lease whose term began in April of 1974 (the Lease). The applicant represents that the Lease was a month-to-month lease with rental payments of $1,000 per month during the early years of the Lease. Beginning in 1981, the monthly rental rate was increased to $1,500 per month.[1] Pursuant to the Lease, the Employer continues to Lease the Property at a monthly rental rate of $1,500.

3. The applicant now proposes that the property be sold by the Plan to the Employer.[2] The proposed sales price is $140,000. This amount will be paid in cash, and no commissions will be paid in connection with the sale. An independent appraisal of the Property was performed by Mr. Virgil Slev of Alamo Properties, Inc. located in Ft. Lauderdale, Florida. Mr. Slev determined that the fair market value of the Property was $140,000 as of April 22, 1985.

4. By letter dated March 10, 1986, Robert W. Codling of Alamo Properties, Inc. updated the appraisal of April 22, 1985. Mr. Codling stated the fair market value of the Property remains at $140,000. He notes further that with the large number of offices and strip stores presently under construction, the vacancy rates for commercial buildings are rising, and this will definitely diminish the opportunity for the Property to appreciate in value.

5. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408(a) because:

(1) This will be a one-time cash transaction;

(2) The Plan will receive fair market value for the Property;

(3) There will be no commissions paid in connection with the proposed transaction; and

(4) The Trustee has determined that the proposed transaction is in the interests of and protective of the Plan and its participants and beneficiaries.

For Further Information Contact: Ms. Linda M. Hamilton of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

[1] The applicant represents that the Lease was not a prohibited transaction because it was covered by section 414 of the Act through June 30, 1984. The Department expresses no opinion as to the applicability of section 414 in this instance. The applicant further represents that it will pay any excise tax which may be due as a result of the Lease with 60 days after a final determination of such liability by the appropriate governmental or judicial entity.

[2] The Department notes that the original exemption application requested retroactive Relief for the Lease. This notice of pendency, however, relates only to the proposed sale of the Property and no exemptive relief is being proposed by the Department concerning the Lease.

The Justin Industries, Inc. Pension Plan (the Justin Plan); the H.J. Justin and Sons, Inc. Pension Plan for Employees represented by the United Shoeworkers of America, Fort Worth, Texas (the Justin Union Plan); the Acme Brick Company Pension Plan for Employees represented by the United Brick and Clay Workers of America, Perla, Arkansas (the Perla Plan); and the Acme Brick Company Pension Plan for Employees represented by the United Brick and Clay Workers of America, Malvern, Arkansas (the Malvern Plan; collectively, the Plans) Locted in Fort Worth, Texas

[Application Nos. D-6790, D-6795, D-6796, D-6797]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(a)(1) (A) through (E) of the Code shall not apply to the proposed purchase by the Plans of certain commercial real property from Justin Industries, Inc. (Justin), a party in interest with respect to the Plans; provided that such transaction is on terms at least as favorable to the Plans as the Plans could obtain in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plans are defined benefit pension plans, the assets of which are commingled solely for investment purposes under one master trust (the Master Trust). The Justin Plan, with 3,078 participants as of January 1, 1986, and the Justin Union Plan, with 333 participants as of January 1, 1986, are sponsored by Justin, a Texas public corporation engaged primarily in the manufacture and sale of boots and belts and of building materials, with its principal place of business at 2821 West Seventh Street in Fort Worth, Texas. The Perla Plan, with 88 participants as of January 1, 1986, and the Malvern Plan, with 27 participants as of January 1, 1986, are sponsored by the Acme Brick Company, a wholly-owned subsidiary of Justin with its principal place of business in Fort Worth, Texas. The trustee of the Master Trust is Texas American Bank—Fort Worth, N.A. (the Trustee). As of March 31, 1986, the Master Trust had assets with a total fair market value of $39,895,713. Investment decisions on behalf of the Plans are made by an investment committee (the Committeee) comprised of Jon M. Bennett, Ernest Blank (Blank) and David E. Houseman, each of whom is an officer of Justin.

2. In order to achieve better diversification of the Plans' assets, the Committee desires that the Plans invest in real property. The Committee proposes that the Plans purchase certain commercial real property (the Property) from Justin and is requesting an exemption to permit such purchase. The Property is located in the 2900 block of West Seventh Street in Fort Worth, Texas and consists of twenty-eight city lots, a total of 180,000 square feet. The Property formerly housed a major automobile dealership and is improved with showrooms, offices, repair shops and auxiliary buildings. The Property consists of two parcels: (1) Eight city lots on the north side of Seventh Street, totalling 50,000 square feet, essentially unimproved and covered with asphalt paving; and (2) twenty city lots on the south side of Seventh Street, totalling 130,000 square feet, improved with several structures. Portions of the Property are currently subject to commercial leases (the Leases) and are occupied by lessees unrelated to Justin and the Plans. Justin purchased the Property from unrelated parties on December 1, 1985 for $4,564,785. Justin represents that the Property is not subject to any mortgage. The Property was appraised by G. Lance Wetherill, SRA (Wetherill), an unrelated

professional real estate appraiser with Crosson Dannis Appraisers of Dallas, Texas, who found that as of May 14, 1986 the Property had a fair market value of $4,320,000. The Property was also appraised by J.R. Kimball, MAI and Michael O'Connell, SRA, unrelated professional real estate appraisers with the firm of J.R. Kimball, Inc. in Forth Worth, Texas, who found that as of June 2, 1986 the Property had a fair market value of $4,675,000. It is proposed that the Plans pay Justin cash for the Property in the amount of the Property's fair market value according to Wetherill's appraisal, less six percent representing savings in real estate commissions, for a final cash purchase price of $4,060,800. Justin will pay all transfer and other sales costs and expenses arising from the proposed transaction. Ownership interests in the Property will be allocated among the Plans in proportion to each Plan's participation in the Master Trust.

3. The Trustee has accepted responsibility as an independent fiduciary on behalf of the Plans to determine whether the proposed transaction is in the best interests and protective of the participants and beneficiaries of the Plan. The Trustee represents that it has substantial fiduciary experience under the Act and that it is sufficiently independent of Justin to act as an independent fiduciary on behalf of the Plan's participants and beneficiaries. The Trustee has total deposits and loans to Justin constituting less than one percent of the Trustee's total deposits and loans. In its capacity as trustee or other fiduciary, the Trustee currently holds five percent of the total voting stock of Justin, but the Trustee owns no stock of Justin for its own account. One director of the Trustee, Blank, is also an officer of Justin and a member of the Committee. However, Blank represents that he has not and will not participate in the proposed transaction and that he will not use any authority, control or influence in any manner relating to the proposed transaction. The Trustee represents that it has investigated, reviewed and analyzed the proposed transaction extensively, specifically considering the diversification requirements of the Act, the liquidity needs of the Plans and the Property's current and future income and appreciation potentials. The Trustee has determined that the property features significant long-term appreciation potential due to its location in an area experiencing growth and redevelopment and its close proximity to the downtown section of the city. The Trustee notes that as the Plan's sole investment in real property, which will constitute less than 10.8 percent of the Plan's total assets, the Property will contribute diversification to the Plan's assets. The Trustee has also considered the Leases and their effect on the Property's value as an investment for the Plan. Noting that the Leases will provide revenue for the Plan while the Committee investigates methods of realizing the Property's appreciation potential for the Plan, the Trustee represents that the Property's long-term appreciation potential outweighs any short-term negative consequences of the Leases. In conclusion, the Trustee represents that the Plans' purchase of the Property from Justin under the terms described herein will be in the best interests and protective of the participants and beneficiaries of the Plans.

4. In summary, the applicant represents that the criteria of section 408(a) of the Act are satisfied in the proposed transaction for the following reasons: (1) The interests of the Plans are represented by an independent fiduciary, the Trustee, which has determined that the proposed transaction will be in the best interests and protective of the participants and beneficiaries of the Plans; (2) The Plans will not incur any sales costs or incidental expenses in the proposed transaction and will realize a savings of six percent in the purchase price due to the absence of a brokerage commission; and (3) The Plans will pay a cash purchase price for the Property based on Wetherill's appraisal of its fair market value, which is the lower of two unrelated professional valuations of the Property obtained by Justin.

For Further Information Contact: Mr. Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Pottsville Orthopedic Associates Pension Plan (the Plan) Located in Pottsville, Pennsylvania

[Application No. D–6845]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 406(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale by the Plan of six units (the Units) representing limited partnership interests in the American Rehab Center-Pottsville (the Partnership) to Pottsville Orthopedic Associates (the Employer), the sponsor of the Plan, provided that the sales price is the higher of either the fair market value of the Units or the Plan's total costs in connection with the acquisition and holding of the Units at the time the sale is consummated.

Summary of Facts and Representations

1. The Plan is a defined benefit plan which, as of September 1, 1985, had 14 participants and total net assets of $739,497. The trustees of the Plan are Landis C. Heistand, M.D. (Dr. Heistand) and Mary N. Heistand, who is the wife of Dr. Heistand (the Trustees). The Trustees are the decision-makers with respect to Plan investments. Dr. Heistand currently owns all of the stock of the Employer. The Employer is a Pennsylvania professional corporation engaged in the practice of orthopedic medicine.

2. The Partnership is a Pennsylvania limited partnership with its principal place of business located at Suite 210, Medical Arts Building, 890 Poplar Church Road, Camp Hill, Pennsylvania. The Partnership was established on April 9, 1985 in order to conduct, for profit, a comprehensive outpatient rehabilitation facility in the Pottsville, Pennsylvania area (the Pottsville CORF). The general partner of the Partnership is American Rehab, Inc. (ARI), which has its main office at Suite 202, Medical Arts Building, 890 Poplar Church Road, Camp Hill, Pennsylvania. The Plan purchased the Units from ARI on September 16, 1985 for $84,000 in cash (i.e. $14,000 for each of the six Units). The Plan did not assume any obligations of the Partnership as a result of the purchase of the Units.

The applicant represents that a total of 35 Units were offered for sale by ARI to medical doctors, medical professional corporations, and pension plans sponsored by such doctors or corporations in the Pottsville area.[1] The applicant states that the offering was made to these individuals and entities because ARI believed that the Pottsville CORF would be profitable and that medical doctors in the area would be more inclined to refer patients to the CORF if they, or their corporations or pension plans, had an interest in the CORF.

[1] In this proposed exemption the Department expresses no opinion as to whether the acquisition and holding of the Units violated any provision of Part 4 of Title I of the Act.

3. The Trustees initially decided that the Plan should purchase the Units because the Partnership's Offering Circular described the Units as a suitable investment for a pension plan. The applicant states that no parties in interest with respect to the Plan currently own any of the Units. The Trustees now believe that it would be in the Plan's best interest to sell the Units to the Employer.

4. The Employer proposes to purchase the Units from the Plan for cash at the higher of either the fair market value of the Units or the Plan's total cash expenditure in connection with the acquisition and holding of the Units. In addition, the Plan will be paid interest on its investment in the Units at an appropriate rate.

5. Frank W. Jackson, M.D. (Dr. Jackson), who is currently the President of ARI and was primarily responsible for organizing the Pottsville CORF has appraised the Units and has determined that the fair market value of the Units, as of October 7, 1986, is no more than $14,000 per Unit, or $84,000 for the six Units which the Plan presently holds. Dr. Jackson based his valuation on the following factors: (a) Another nearby CORF, which had been in operation for about a year, was not profitable even though it was expected to be so and is expected to be profitable in the future, (b) the Pottsville CORF has not yet begun operations and will not do so until December 1986, and (c) while the Pottsville CORF might be expected to be profitable, the ultimate market for the sale of the Units will be extremely narrow. Dr. Jackson states that there have been no sales or purchases of the Units since the initial offering of the Units. Under the terms of the Partnership Agreement, the Units can be sold only to the Partnership or the other limited partners and only in certain circumstances. However, ARI has agreed to arrange the sale of the Units by the Plan to the Employer. The Plan will not incur any fees or other expenses in connection with the proposed sale.

6. In summary, the applicant represents that the proposed transaction will meet the statutory criteria of section 408(a) of the Act because: (a) The sale will be a one-time transaction for cash; (b) the Plan will receive the greater of either the fair market value for the Units as established by Dr. Jackson, an independent appraiser, or the original purchase price for the Units paid by the Plan plus an appropriate rate of interest; and (c) the Plan will not pay any commissions or other expenses in connection with the sale.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Consolidated Steel and Supply Company Employees' Retirement Income, Savings and Stock Investment Plan (the Plan) Located in Elk Grove Village, IL

[Application No. D–6877]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale by the Plan of a parcel of unimproved real property (the Property), for the total cash consideration of $280,000 to J and J Investment Company (J and J), a party in interest with respect to the Plan, provided this amount is not less than fair market value at the time the transaction is consummated.

Preamble

This proposed exemption is requested in an application filed with the Department by J and J. The application incorporates by reference the facts and representations contained in Exemption Application No. D–2732, which comprised the record underlying Prohibited Transaction Exemption (PTE) 82–98 (47 FR 26950, June 22, 1982). Although PTE 82–98 would have permitted the cash sale of the Property by the Plan to J and J, the transaction was never consummated due to high closing costs and interest rates which made the purchase economically infeasible for J and J. In consideration of the passage of time and certain changed facts, the Department has determined that it would be appropriate to repropose the requested exemption in a form which reflects these factual changes.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with nine participants and total assets of $1,480,030 as of September 30, 1985. Consolidated Steel and Supply Company (the Employer) is the sponsor of the Plan. J and J is a general partnership in which Messrs. Joseph L. Straus and James Cole (Messrs, Straus and Cole) are equal partners. Messrs. Straus and Cole together own 100% of the stock of the Employer and serve as the Plan trustees. They are also the decision-makers with respect to Plan investments.

2. On December 9, 1975, the Plan purchased the Property from Centex Industrial Park, an unrelated party, for approximately $81,000. The Property is an unimproved parcel of land consisting of two acres. It is located in an industrial park at 1100 East Devon, Elk Grove Village, Illinois. At the time of acquisition, Messrs. Straus and Cole intended that the Property be held as an investment of the Plan until it substantially appreciated in value at which time it would be sold.

3. On October 1, 1984, the Plan began leasing a portion of the Property for parking purposes to Mapes and Sprowl. Ltd., an unrelated party, for a monthly rental of $1,000. The lease expires on March 31, 1989 and it requires the lessee to assume all utility costs. With the exception of the lease, there are no other encumbrances on the Property. In addition, the Property has never been used or occupied by a party in interest.

Since it has owned the Property, the Plan has paid real estate taxes of approximately $38,898. It has not incurred any other costs.

4. J and J requests an exemption in order to purchase the Property from the Plan. J and J owns a parcel of land that is adjacent to the Property which it currently leases to the Employer. Subsequent to the sale of the Property, J and J contemplates leasing the Property to the Employer for certain parking and storage uses of the Employer.

5. The sale of the Property will be for the cash sum of $280,000. This price was determined to be the fair market value of the Property as of August 15, 1986 by Mr. Donald A. Engel (Mr. Engel), M.A.I., an independent real estate appraiser from Chicago, Illinois. In addition to appraising the Property, Mr. Engel represents that the Property has no unique value to J and J or the Employer by virtue of its proximity to the adjacent parcel of real estate owned by J and J. The Plan will pay no sales commissions or other fees and expenses in connection with the proposed sale.

6. In summary, it is represented that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because: (a) The sale will be a one-time transaction for cash; (b) the sales price for the Property has been determined by an independent appraiser; (c) the Plan will not be required to pay any real estate fees or commissions in connection with the sale; and (d) the Plan will be able to

divest itself of an asset producing little income.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

Pennfield Precision Machining, Inc. Profit Sharing Plan (the Plan) Located in Sellersville, Pennsylvania

[Application No. D–6900]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 [40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale by the Plan of certain unimproved real property (the Property) to John F. Matczak [Matczak) and Carl F. Tate (Tate), parties in interest with respect to the Plan; provided that such sale is on terms not less favorable to the Plan than those which the Plan could obtain in an arm's length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with 109 participants and total assets of approximately $480,000 as of August 13, 1986. The Plan is sponsored by the Pennfield Precision Machining, Inc. (the Employer), a Pennsylvania corporation which is a precision machine shop. The trustees of the Plan are Matczak and Tate, who are both also officers and shareholders of the Employer.

2. Among the assets of the Plan is the Property, a parcel of 59.4 acres of unimproved land located in rural Charleston Township, Tioga County, Pennsylvania, Deed Book 359 page 438. The Plan purchased the Property from an unrelated party for $29,000 cash in 1973. There are no encumbrances on the Property. The Property adjoins several parcels owned by Matczak. In addition to the purchase price, the Plan's only other expenditures on the Property consist of the expenses related to the 1973 purchase totalling $469.50, real estate taxes of approximately $100 per year and appraisal fees of approximately $75 per year. The Employer represents that the Property has not been leased to or used by anyone and has remained vacant and no-incoming producing during the holding period. The applicants represent further that the Plan purchased the Property with the expectation that the Property would appreciate substantially in value. However, since its acquisition by the Plan, the Property has decreased in value. As of August 4, 1986, the Property had a fair market value of $27,000, according to John H. Miller, P.E., GRI Realtor (Miller), a professional real estate appraiser with Homestead Realty in Mansfield, Pennsylvania, who represents himself to be independent of an unrelated to the Employer. By update of October 28, 1986, Miller appraised the Property to lack any special value to Matczak as adjoining landowner.

3. In order to provide the Plan with liquidity and the ability to invest in income-producing assets, Matczak and Tate propose to purchase the Property from the Plan and are requesting an exemption to permit such purchase. Matczak and Tate propose to pay the Plan cash for the Property in the amount of the greater of its fair market value as of the date of sale or the price originally paid by the Plan plus all expenses over and above the original purchase price paid by the Plan, in connection with the acquisition and holding of the Property, including, but not limited to 1973 closing expenses, taxes, appraisal fees, and maintenance expenses. The Plan will incur no costs with respect to the proposed transaction.

4. In summary, the applicants represent that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (a) The proposed sale of the Property will be a one-time transaction for cash; (b) The Plan will be reimbursed for all expenses it has incurred in connection with the acquisition and holding of the Property; (c) The proposed transaction will enable the investment of the cash proceeds of the proposed sale in income-producting assets; and (d) No expenses will be incurred by the Plan with respect to the proposed sale.

For Further Information Contact: Betsy Scott of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 18th day of December 1986.

Elliot I. Daniel,

Associate Director for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 86–28833 Filed 12–22–86; 8:45 am]

BILLING CODE 4510–29–M

[Prohibited Transaction Exemption 86–144; Exemption Application No. D–1918 et al.]

Grant of Individual Exemptions; Trammell Crow Co. et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Trammell Crow Company, Inc. Employees Profit Sharing Plan and Trust (the Plan) Located in Dallas, TX

[Prohibited Transaction Exemption 86–144; Exemption Application No. D–1918]

Exemption

Section I—Specific Exemption Involving Disposition of Pre-ERISA Real Estate Investments to Parties in Interest

The restrictions of section 406(a), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale to parties in interest with respect to the Plan (Parties in Interest) of any or all of certain real estate investments (the Pre-ERISA Real Estate Investments), including certain parcels of improved real property (the Improved Real Property) directly held by the Plan, the undivided interests in real estate (the Undivided Interests), and partnership interests (the Partnership Interests) owned by the Plan, if the following conditions are met:

(a) The sales price is the fair market value as determined by an independent qualified appraiser; and

(b) The conditions as set forth below in Section III of this exemption are met.

Section II—Specific Exemption for Transactions Involving Reinvestments in Parties in Interest

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to reinvestments (the Reinvestments) by the Plan in, including any capital contributions (the Capital Contributions) by the Plan to, the Pre-ERISA Real Estate Investments, which are or become Parties in Interest with respect to the Plan under section 3(14) of the Act and section 4975(e)(1) of the Code, if the following conditions are met:

(a) Any Capital Contributions made by the Plan represent an equity investment and are in proportion to the Plan's existing equity ownership interest in any of the partnerships (the Partnerships) in which the Plan owns Partnership Interests or in other entities which comprise the Pre-ERISA Real Estate Investments; and

(b) The conditions set forth in Section III of this exemption are met.

Section III—General Conditions

(a) An independent qualified real estate investment manager (the Independent Qualified Real Estate Investment Manager) for the Plan who may not be removed except for "good cause," reviews and approves or initiates such transactions;

(b) At the time such transactions are entered into by the Plan, the terms of the transactions are not less favorable to the Plan than the terms generally available in arm's length transactions between unrelated parties;

(c) The total amount of the Reinvestments (including any Capital Contributions) made by the Plan with respect to Pre-PRISA Real Estate Investments throughout the term of this proposed exemption, do not exceed the greater of four million dollars ($4,000,000) or an amount equal to twenty percent (20%) of the value of the Plan's Pre-ERISA Real Estate Investments, as determined on December 31, 1986;

(d) Subject to review by the Independent Qualified Real Estate Investment Manager, at least eighty percent (80%) of the investment proceeds (the Investment Proceeds) of the Plan will be invested in non-real estate related investments (the non-Real Estate Related Investments);

(e) The Plan will not be subject to discrimination with respect to its ability to make (or forebear from making) Reinvestments or Capital Contributions in a manner and to the extent available to all partners who invest on the same terms as the Plan in the Partnerships;

(f) The Plan does not invest in any new Partnership Interests;

(g) The Plan does not purchase any additional common or preferred shares of stock in Trammell Crow Company Employees Inc. (Employee's Inc.). However, Employee's Inc. may invest the internally generated profits of Employee's Inc. (the Internally Generated Profits) in the purchase of interests in newly formed Partnerships;

(h) The Plan does not purchase stock or any ownership interest in any corporation, partnership, or other entity directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Trammell Crow Company (TCC), Trammell Crow Partners, Ltd. (TCP), or any partner of TCP, which entity engages in the ownership and development of real estate through the purchase of interests in commercial real estate; and

(i) The trustees of the Plan (the Trustees) maintain, for a period ending three years after the term of this exemption, records and all documents necessary to enable the persons described below in paragraph (a) of this section III (i) to determine whether the conditions of this exemption have been met. Specifically, these records and documents shall include but not be limited to: (1) Written minutes of all meetings in which the Independent Qualified Real Estate Investment Manager takes part which include an explanation as to why decisions were made by the Independent Qualified Real Estate Investment Manager with respect to all transactions under his responsibility; and (2) records which will permit identification of the assets owned by Employee's Inc., and the Plan's proportionate interest therein. However, (1) a prohibited transaction

will not be considered to have occurred if, due to circumstances beyond the control of the applicants, the records are lost or destroyed prior to the end of the period ending three years after the term of this exemption, and (2) no Parties in Interest shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (a) below.

(a)(1) Except as provided in section (2) of this paragraph (a) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (i) of this section III are unconditionally available at the office of the Trustees for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(B) Any fiduciary of the Plan and/or the Independent Qualified Real Estate Investment Manager of the Plan and any duly authorized employee or representative of such fiduciary or Independent Qualified Real Estate Investment Manager;

(C) TCC, or any duly authorized employee or representative of TCC; and

(D) Any participant or beneficiary of the Plan or any duly authorized employee or representative of such participant or beneficiary.

(a)(2) None of the persons described in subparagraphs (B) through (D) of this paragraph (a) shall be authorized to examine trade secrets of the applicants, or commercial or financial information which is privileged or confidential.

Section IV—Definitions

For the purposes of this exemption:

(a) "Affiliates" of TCC include—

(1) Any of the owners of TCC;

(2) TCP or any partner of TCP;

(3) Any management company under TCC control which provides services to the Partnerships; or

(4) Any TCC sponsored entity (including the Partnerships) which is involved in commercial real estate development and is not a publicly held organization.

(b) "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) "Good cause" means any act or refusal to act in such a manner that the consequence thereof will:

(1) Be a violation of any significant duty or obligation imposed on him as the Independent Qualified Real Estate Investment Manager of the Plan; or

(2) Result in material and substantial harm or damage to the Plan or its assets or result in any consequence which is adverse to the best interests of the Plan participants and beneficiaries; or

(3) Be the inability of the Independent Qualified Real Estate Investment Manager to perform his usual duties in the normal course of affairs because of any physical, mental, disability, or other condition.

(d) "Independent Qualified Real Estate Investment Manager" means a fiduciary who has acknowledged in writing that he is a fiduciary with respect to the Plan and is qualified to serve with respect to the real estate transactions described herein and in the notice of proposed exemption. The Independent Qualified Real Estate Investment Manager will have the power to engage in any transaction related to the holding and disposition of the Pre-ERISA Real Estate Investments, including sufficient control to enable him to discharge his responsibility with respect to the management and disposition of all of the Pre-ERISA Real Estate Investments of the Plan. The Independent Qualified Real Estate Investment Manager will be independent in that he is not an owner, director, or employee of TCC or of any of the Affiliates of TCC, as defined in Section IV(a). Also, he will earn no more than 5% of his gross income during any calendar year in the form of direct or indirect compensation, fees, or payments for services in an advisory capacity to TCC or any of the Affiliates (including his duties as the Independent Qualified Real Estate Investment Manager for the Plan).

(e) "Internally Generated Profits" means income minus expenses plus depreciation and other non-cash charges deducted in determining such net profit plus other cash amounts in excess of reasonable corporate needs as determined by the Board of Directors of Employee's Inc., minus amounts distributed to the Plan as a shareholder.

(f) "Investment Proceeds" means contributions to the Plan by TCC, plus net cash income, plus net disposition proceeds derived from all Plan assets (including net proceeds from the disposition of all of the Pre-ERISA Real Estate Investments and distributions to the Plan from Employee's Inc.).

(g) "Parties in Interest" means persons as defined by section 3(14) of the Act.

(h) "Partnership Interests" means any general or limited partnership interest owned by the Plan in real estate Partnerships that are conceived and sponsored by TCC;

(i) "Pre-ERISA Real Estate Investments" means the Improved Real Property, the Undivided Interests, and the Partnership Interests which the Plan either purchased, or incurred a binding obligation to purchase, prior to the effective date of the Act.

(j) "Real Estate Related Investments" means any interests in unimproved or improved real property, undivided interests in real property, and partnership interests in partnerships which own real property.

Temporary Nature of Exemption

The Department has determined that the exemption will be temporary in nature and, unless extended pursuant to timely application made following substantial compliance with the real estate divestiture and diversification program described in the notice of the proposed exemption, will expire on the earlier of (i) ten years from its effective date or (ii) upon the disposition of all properties and interests subject to the exemption and the initial investment of all proceeds pursuant to the exemption.

Effective Date

This exemption will be effective on the date of publication of the grant of this exemption in the **Federal Register** and will expire on the earlier of (i) ten (10) years from its effective date or (ii) upon the disposition of all properties and interests subject to the exemption and the initial investment of all proceeds pursuant to the exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 14, 1986 at 51 FR 36613.

For Further Information Contact: Angelena C. Le Blanc of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

Additional Securities Benefit Fund (the Fund) and Plumbers Local Union No. 1 of Brooklyn and Queens (the Union) Located in Howard Beach, NY

[Prohibited Transaction Exemption 86–145; Exemption Application No. D–6308]

Exemption

The restrictions of section 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the loan of $575,672 by the Fund to the Union provided that the terms of such loan are as favorable to the Fund as those obtainable in an arm's-length transaction with an unrelated party.

Effective Date: August 26, 1985.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 12, 1986 at 51 FR 32549.

For Further Information Contact: Ms. Linda M. Hamiltion of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

West End Studios, Inc., Aspen Graphics, Inc. Profit Sharing Plan (the Plan) Located in Los Angeles, CA

[Prohibited Transaction Exemption 86–146; Exemption Application No. D–6470]

Exemption

The restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale by the Plan for cash of certain real property (the Real Property) to Aspen Graphics, Inc., the Plan sponsor (the Plan Sponsor), and to the assumption by the Plan Sponsor of all obligations under an existing trust deed on the Real Property, provided that the price received for the Real Property is not less than the greater of its fair market value on the date of sale or the price originally paid by the Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 10, 1986 at 51 FR 36498.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Neurological Associates of Tulsa, Inc. Profit Sharing Plan (the Plan) Located in Tulsa, OK

[Prohibited Transaction Exemption 86–147; Exemption Application No. D–6632]

Exemption

The restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale by Dr. Michael J. Haugh (Dr. Haugh) of an interest (the Interest) in certain real property, for $70,000, to Dr. Haugh's individual account in the Plan, provided the amount paid for the Interest is not greater than its fair market value at the time the transaction is consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 31, 1986 at 51 FR 39821.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 18th day of December 1986.

Elliot I. Daniel,

Associate Director for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 86–28834 Filed 12–22–86; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Meeting; National Council on the Arts; Media Arts Advisory Panel (AFI Section)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (AFI Section) to the National Council on the Arts will be held on January 6, 1987, from 9:00 a.m.–5:30 p.m. and on January 7, 1987, from 9:00 a.m.–1:00 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the pubic pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

John H. Clark,

Director, Council and Ponel Operations, Notional Endowment for the Arts.

December 17, 1986.

[FR Dec. 86–28722 Filed 12–22–86; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Information, Robotics, and Intelligence Systems (IRIS); Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463 as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Information, Robotics, and Intelligent Systems (IRIS).

Date and time: January 8, 1987 8:30 A.M. to 5:30 P.M.; January 9, 1987 8:30 A.M. to 3:30 P.M.

Place: Room 1243, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of meeting: All Open—January 8, 1987—9:00 A.M. to 5:30 P.M.; January 9, 1987—9:00 A.M. to 3:30 P.M.

Contact person: Dr. Y.T. Chien, Acting Division Director, Division of Information, Robotics, and Intelligent Systems, Room 310, National Science Foundation, 1800 G Street, NW., Washington, DC, 20550. Telephone: 202/357–9572. Anyone planning to attend this meeting should notify Dr. Chien no later than December 31, 1986.

Purpose of committee: To provide advice and recommendations concerning support of research in Information, Robotics, and Intelligent Systems.

Summary minutes: May be obtained from the contact person at the above address.

Agenda

Thursday, January 8, 1987

- Remarks by Director, NSF.
- Status and Plans of CISE Directorate.
- Overview of the Division.
- Presentations by Representatives from other Federal Agencies on activities related to IRIS.
- Presentations and discussion on industrial research and technology transfer in areas related to IRIS.
- Program Review and Discussion.

Friday, January 9, 1987

- Discussion of long-range plans, issues, and concerns.
- Subcommittee meetings on developing a research agenda and action plans for IRIS programs.
- Subcommittee reports and summary.

M. Rebecca Winkler,

Committee Management Officer.

December 18, 1986.

[FR Doc. 86–28751 Filed 12–22–86; 8:45 am]

BILLING CODE 7555–01–M

Population Biology and Physiology Ecology Advisory Panel; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Population Biology and Physiological Ecology.

Date and Time: January 15 & 16, 1987—8:30 a.m.to 5:00 p.m. each day.

Place: Room 643, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. John L. Brooks, Acting Program Director, Population Biology and Physiological Ecology (202) 357–7332, Room 215, National Science Foundation, Washington, DC 20550.

Summary Minutes: May be obtained from the Contact Person at the above address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in population biology and physiological ecology.

Agenda: Review and evaluation of research proposals and projects as part of the selection process of awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c). Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

December 18, 1986.

[FR Doc. 86–28753 Filed 12–22–86; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the full Committee, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published November 20, 1986 (51 FR 42028). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that the sessions of the full Committee meeting designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee meetings begin at 8:30 a.m. and Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during full Committee meetings and when Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the January 1987 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone: 202/634-3265, ATTN: Barbara Jo White) between 8:15 a.m. and 5:00 p.m., Eastern Time.

ACRS Subcommittee Meetings

Joint General Electric Reactors (ABWR)/Safety Philosophy, Technology, and Criteria, January 7, 1987, Washington, DC. The GE Reactors Subcommittee will begin its review of the ABWR. This will be a preliminary session to explore the status of this project and to be briefed on efforts regarding a licensing basis agreement between GE and the NRC. A current description of the ABWR is sought as well as schedules from GE and the Staff. The SPTC Subcommittee will review the status of the NRC Staff's work on the Safety Goal Policy on USI A–17, "Systems Interactions on Nuclear Power Plants," and on steam generator overfill.

Regulatory Policies and Practices, January 14, 1987, Washington, DC. The Subcommittee will begin its current review of the nuclear plant regulatory process.

Metal Components, January 15 and/or 16, 1987, Washington, DC. The Subcommittee will: (1) Hear a report of the Whipjet program (application of broad scope GDC–4 criteria) as applied to a lead plant, Beaver Valley Unit 2, (2) review public comments on NUREG–0313, Revision 2 (long range fix for BWR–IGSCC problems), (3) discuss component support margins as a result of proposed modifications to GDC–4, and (4) other related matters, i.e., Surry feedwater suction piping failure.

Standardization of Nuclear Facilities, January 21, 1987, Washington, DC. The Subcommittee will relview the NRC evaluation of Chapter I ("Overall Requirements") of the EPRI Advanced Light Water Reactor Program.

Structural Engineering, January 21 and 22, 1987, Albuquerque, NM. The Subcommittee will review the NRC safety research programs on containment integrity and Category I structures, and visit the contractor's test facilities.

Decay Heat Removal Systems (tentative), January 22, 1987, Washington, DC. The Subcommittee will continue its review of the NRR Resolution Position for USI A–45.

Joint Occupationol and Environmental Protection Systems/ Severe Accidents/Seabrook, January 27, 1987, Washington, DC. The Subcommittee will review Brookhaven National Laboratory's Draft report of the Seabrook Emergency Planning Sensitivity Study.

Advanced Reactor Designs, February 4, 1987, Washington, DC. The Subcommittee will review DOE advanced non-LWR designs regarding the use of proven technology and standardization.

Waste Management, February 12 and 13, 1987, Washington, DC. The Subcommittee will review several pertinent nuclear waste management topics, which are to be determined during an agenda planning session with the NMSS and RES Staffs on January 21, 1987.

Humon Factors, February 18, 1987, Washington, DC. The Subcommittee will review "Safety Conscience" concept at utilities.

AC/DC Power Systems Reliability, Date to be determined (February/ March), Washington, DC. The Subcommittee will review the proposed Station Blackout rule.

Regional and I&E Programs, Date to be determined (mid-March), Washington, DC. The Subcommittee will continue its review of the activities of the Office of Inspection and Enforcement.

Thermal Hydraulic Phenomena, Date to be determined (2-day meeting, March/April), INEL, Idaho Falls, ID. The Subcommittee will review: (1) the Final ECCS Rule and associated documentation, and (2) TIC activities at INEL.

Seabrook Unit 1, Date to be determined, Washington, DC. The Subcommittee will review the application for a full power operating license for Seabrook Unit 1.

Regional and I&E Programs, Date to be determined (May), Region IV, Arlington, TX. The Subcommittee will continue its review of the activities under the control of the Region IV Office.

ACRS Full Committee Meeting

January 8–10, 1987: Items are *tentatively* scheduled.

*A. *Meeting with NRC Executive Director for Operations*—Briefing regarding proposed NRC staff reorganization.

*B. *Safety Goal Policy Implementotion*—Briefing regarding proposed NRC implementation plan for Commission Safety Goal policy.

*C. *Meeting with NRC Commissioners*—Discuss topics for future meeting with NRC Commissioners.

*D. *Systems Interactions*—Discuss proposed resolution of USI A–47, Systems Interactions in Nuclear Plants.

*E. *Improved Light-Water Reactors*—Discuss proposed ACRS comments and recommendations regarding the characteristrics of improved light-water reactors.

F. *Appointment of New ACRS members (Closed)*—Discuss candidates for appointment to the Committee.

*G. *NRC Safety Research Program (tentative)*—Discuss proposed ACRS comments and recommendations regarding the proposed NRC Safety Research Program for FY 1988 and 1989.

*H. *Meeting with Director of NRC Office of Reactor Regulation*—Discuss topics of mutual interest.

*I. *Suppression Pool Bypass*—Briefing and discussion of priority for resolution of Generic Issue 61–SRV Discharge Line Break in the Airspace of the Suppression Pool for Mark I and Mark II containments.

*J. *ACRS Subcommittee Activities*—Briefing and status reports of ACRS subcommittee activities regarding safety related matters including seismic reevaluation of the Diablo Canyon Nuclear Plant, activities of NRC regional offices, performance of solid state devices in instrument and control systems, severe accident independent plant evaluations (IPE's), and TVA management problems.

*K. *Future Activities*—Discuss anticipated subcommittee activities and items proposed for full Committee consideration.

February 5–7, 1987—Agenda to be announced.

March 5–7, 1987—Agenda to be announced.

Dated: December 17, 1986.

John C. Hoyle,

Advisory Committee Monagement Officer.

[FR Doc. 86–28818 Filed 12–22–86; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–334]

Duquesne Light Co., Beaver Valley Generating Station Unit 1; Issuance of Environmental Assessment and Finding of no Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–66, issued to Duquesne Light Company (the licensee), for operation of the Beaver Valley Power Station, Unit 1 (BVPS–1), located in Shippingport, Beaver County, Pennsylvania.

Identification of Proposed Action

The amendment would consist of changes to the operating license authorizing an extension to the expiration date for the BVPS–1 Operating License DPR–66 from June 25, 2010 to January 29, 2016.

The amendment to the license is responsive to the licensee's application dated November 7, 1985. The NRC staff has prepared an environmental assessment of the proposed action, dated December 17, 1986.

Summary of Environmental Assessment

The NRC staff has reviewed the potential environmental impact of the proposed change in the expiration date of the Operating License for BVPS–1. The staff considered previous environmental studies, including the "Final Environmental Statement" for BVPS–1 dated July 1973, and documents submitted by Duquesne Light Company to support licensing of Beaver Valley Power Station, Unit 2.

Radiological Impacts

The population in the vicinity of BVPS–1 has decreased slightly and the site requirements of 10 CFR Part 100 are still met with regard to exclusion area boundary, low population zone, and nearest population center distances. The proposed additional years of reactor operation do not increase the annual public risk from reactor operation.

With regard to normal plant operation, the licensee complies with NRC guidance and requirements for keeping radiation exposures "as low as is reasonably achievable" (ALARA) for occupational exposures and for radioactivity in effluents. The licensee will continue to comply with these requirements during any additional years of facility operation and also apply advanced technology when available and appropriate.

Non-Radiological Impacts

The NRC review identified no additional degradation of the habitat surrounding BVPS–1 with regard to indigenous plant and animal species for the additional years of facility operation. In addition, the National Pollutant Discharge Elimination System permit, administered by the Environmental Protection Agency, provides additional environmental protection.

Finding of no Significant Impact

The staff has reviewed the proposed change to the expiration date of the BVPS–1 Facility Operating License relative to the requirements set forth in 10 CFR Part 51. Based upon the environmental assessment, the staff concluded that there are no significant radiological or nonradiological impacts associated with the proposed action and that the proposed license amendment will not have a significant effect on the quality of the human environment. Therefore, the staff has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this action, see (1) the application for amendment dated November 7, 1985, (2) the Final Environmental Statement Relating to Operation of Beaver Valley Power Station Unit 1, issued July 1973, and (3) the Environmental Assessment dated December 17, 1986. These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, 20555 and at the B.F.

Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Dated at Bethesda, Maryland, this 17th day of December 1986.

For the Nuclear Regulatory Commission.

Lester S. Rubenstein,

Director, Project Directorate #2, Division of PWR Licensing-A.

[FR Doc. 86-28814 Filed 12-22-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-461]

Illinois Power Co., Clinton Power Station, Unit No. 1; Environmental Assessment and Finding of no Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) plans to issue an amendment to an exemption from certain requirements of 10 CFR Part 50 to the Illinois Power Company (the Licensee) for the Clinton Power Station, Unit No. 1, (the facility) located in DeWitt County, Illinois.

Environmental Assessment

Deferral of Preoperational Test Related to a Portion of the Fuel Handling System

Identification of Proposed Action: The proposed action would extend the duration of an exemption, which permits the licensee to defer completion of that portion of the preoperational test for the fuel handling system related to the transfer of fuel bundles under wet loading conditions.

The Code of Federal Regulations, Title 10, Part 50, (10 CFR Part 50) Appendix A, General Design Criterion (GDC) 61 requires, in part, that the fuel handling system be designed to prevent significant reduction in fuel storage coolant inventory under accident conditions.

By letter dated March 12, 1986, the licensee requested authorization to defer that portion of the fuel handling system preoperational test related to the transfer of fuel bundles under wet conditions until prior to exceeding five percent of rated power. Additionally, in a letter dated March 27, 1986, the licensee requested an exemption from 10 CFR Part 50, Appendix A, GDC 61, for operation of the fuel handling system under wet conditions. The staff, in NUREG-0853, Supplement 6, Appendix N, section 2.7 and in section 2.D of the Clinton low power operating license, granted a schedular exemption from the requirements of GDC 61 until prior to exceeding five percent of rated power or before removal of the reactor pressure vessel head after initial criticality. An environmental assessment was performed and a final finding of no significant impact was made and published in the **Federal Register** (51 FR 25274) on July 11, 1986.

The licensee by letter dated October 24, 1986, requested an extension to the schedular exemption from 10 CFR Part 50, Appendix A, GDC 61, for the fuel handling system to permit a further deferral of the preoperational testing of this system under wet loading conditions until prior to off-loading of irradiated fuel. The supporting justification for the extension of the schedular exemption is contained in the licensee's October 24, 1986 submittal.

Need for Proposed Action: The extension to the schedular exemption is required so that the licensee may continue power operation beyond five percent of rated power without having to perform this test. Performance of this test requires breaking of primary containment integrity and the operability of the fuel pool cooling system to flood the containment fuel storage pool. To satisfy both these conditions would delay completion of the startup test and power ascension programs. Preoperational testing of that portion of the fuel handling system required to transfer fuel bundles under wet loading conditions will be completed prior to off-loading irradiated fuel.

Environmental Impact of the Proposed Action: The proposed extension to the schedular exemption would allow the licensee to defer preoperational testing of the portion of the fuel handling system related to the transfer of fuel bundles under wet loading conditions. Since the preoperational testing of that portion of the fuel handling system required to transfer fuel bundles under wet loading conditions can be performed anytime prior to off-loading irradiated fuel, requiring this portion of the system to be fully operational prior to exceeding five percent of rated power would create a hardship for the licensee without any compensatory increase in safety. The licensee, in its evaluation has considered the potential for events which could require emergency off-loading of irradiated fuel and determined that there are no such events within the bounds of the design basis analysis contained in Chapter 15 of the Final Safety Analysis Report that would preclude completion of this test prior to the off-loading process.

The staff concludes that the probability of an accident will not be increased and the post-accident radiological releases will not be greater than previously determined due to the proposed relief. Moreover, the proposed relief will not otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise, the proposed relief does not affect non-radiological plant effluents and has no environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with this proposed relief.

Alternative to the Proposed Action: The staff has concluded that there is no measurable environmental impact associated with the proposed exemption. Any alternatives to the exemption will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested relief and exemption. Such action would not reduce environmental impacts of the Clinton Power Station, Unit No. 1 operations and would result in reduced operational flexibility and unwarranted delays in power ascension.

Alternative Use of Resources: The action associated with the granting of the proposed exemption as detailed above does not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of the Clinton Power Station, Unit No. 1" dated May 1982.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's submittal that supports the requested exemption. The NRC staff did not consult other agencies or persons.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for the exemption as listed herein, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555 and at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Dated at Bethesda, Maryland, this 18th day of December 1986.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, BWR Project Directorate No. 4, Division of BWR Licensing.

[FR Doc. 86-28815 Filed 12-22-86; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittee on Regulatory Policies and Practices; Meeting

The ACRS Subcommittee on Regulatory Policies and Practices will hold a meeting on January 14, 1987, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, January 14, 1987—9:00 a.m. until the conclusion of business.

The Subcommittee will begin its current review of the nuclear plant regulatory process.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hold discussions with representatives of the nuclear industry regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Gary Quittschreiber (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: December 18, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86-28816 Filed 12-22-86; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittee on Structural Engineering; Meeting

The ACRS Subcommittee on Structural Engineering will hold a meeting on January 21 and 22, 1986, at the AMFAC Hotel, 2910 Yale Blvd., SE., Albuquerque, NM.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, January 21, 1987—8:30 a.m. until the conclusion of business.

Thursday, January 22, 1987—8:30 a.m. until the conclusion of business.

The Subcommittee will review containment integrity and Category I structures, and other related programs.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Elpidio G. Igne (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: December 18, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86-28817 Filed 12-22-86; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Reopening of Public Comment on Certain Recommendations To Amend the Columbia River Basin Fish and Wildlife Program

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council.

ACTION: Columbia River Basin Fish and Wildlife Program: Notice of Reopening of Public Comment on an Application for Amendment.

SUMMARY: In this notice, the Pacific Northwest Electric Power and Conservation Planning Council ("the Council") gives notice that it is reopening the period in which public comment will be received on proposals of the U.S. Army Corps of Engineers to amend the Columbia River Basin Fish and Wildlife Program, specifically, proposals to alter the Program's schedules for the development of mechanical bypass systems at certain Columbia and Snake dams, and to amend the Program's policy regarding transportation of anadromous fish on the Columbia and Snake Rivers.

DATES: Comments on the U.S. Army Corps of Engineers' application to amend the Columbia River Basin Fish and Wildlife Program must be received in the Council's central office by 5 p.m. Tuesday, January 30, 1987.

ADDRESS: 850 Southwest Broadway, Suite 1100, Portland, Oregon 97205.

FOR FURTHER INFORMATION CONTACT: Rick Applegate, at 850 Southwest Broadway, Suite 1100, Portland, Oregon 97205, (503) 222-5161.

SUPPLEMENTARY INFORMATION: On November 15, 1982, the Council adopted a program designed to protect, mitigate and enhance fish and wildlife affected by the development and operation of hydroelectric projects in the Columbia River Basin. It adopted the program in accordance with its authority under the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839 *et seq.* ("The Northwest Power Act"). The Council amended the Program on October 10, 1984. It received applications for further amendment of

BEST COPY AVAILABLE

the program on February 18, 1986, and will act on those applications by February 18, 1987. The Council has previously distributed to the public copies of the amendment applications, conducted consultations, held hearings, and received written and oral public comment on them. The public comment period on these applications closed on December 15, 1986.

The Council hereby gives notice that the public comment period is reopened until 5:00 p.m. on Tuesday, January 30, 1987, for the limited purpose of conducting further consultations on the applications submitted by the U.S. Army Corps of Engineers, which propose that the Council amend the Columbia River Basin Fish and Wildlife Program: (1) To postpone the development and installation of mechanical bypass systems certain dams on the lower Columbia and Snake Rivers; and (2) to adopt certain policies regarding the transportation of anadromous fish on the Columbia and Snake Rivers. This reopening of public comment is prompted by the Corps of Engineers' recent statements that it intends to delay the development of mechanical bypass systems further than is proposed in its amendment applications. Although the primary purpose of this reopening of public comment is to allow the Council to conduct further oral consultations with interested parties, the Council also will receive any additional written comment that is submitted regarding these limited issues.

After the close of this comment period, the Council will deliberate in a public meeting and make its decision on the amendment application.

Edward Sheets,

Executive Director.

[FR Doc. 86-28730 Filed 12-22-86; 8:45 am]

BILLING CODE 0000-00-M

PHYSICIAN PAYMENT REVIEW COMMISSION

Public Hearing

AGENCY: Physician Payment Review Commission.

ACTION: Call for testimony.

SUMMARY: During its meeting on January 8, 1987, the Commission will hear testimony from those interested in physician payment reform under the Medicare program. Oral statements will be limited to five minutes. Written statements may be submitted either to supplement oral testimony or in lieu of it. Those wishing to testify should notify the Commission staff by December 30, 1986. The Commission was established by section 9305 of Pub. L. 99272.

ADDRESSES: The Commission's office in the Mary E. Switzer Buildling; 330 C Street, SW., Washington, DC 20201 in Suite 7033. Its telephone number is 202/472-1364.

FOR FURTHER INFORMATION CONTACT: Lauren LeRoy, Deputy Director for Management and External Relations, 202/472-1384.

SUPPLEMENTARY INFORMATION: Issues of particular interest to the Commission include inherent reasonableness of charges, geographic variation in payments, the Medicare Economic Index, data needs, standardization of coding, financial protection for beneficiaries, the participating physician program, assignment, program administration, and methodologies for determining relative values.

Paul B. Ginsburg,

Executive Director.

[FR Doc. 86-28710 Filed 12-22-86; 8:45 am]

BILLING CODE 6820-SE-M

POSTAL RATE COMMISSION

[Docket Nos. C86-2 and MC87-2; Order No. 731]

Complaint of the Sacramento Bee, et al.; Institution of Docket No. MC87-2 and Consolidation of Docket Nos. C86-2 and MC87-2; Order Designating Officer of the Commission and Fixing Date for Intervention

Issued: December 16, 1986.

Before Commissioners: Janet D. Steiger, Chairman; Bonnie Guiton, Vice-Chairman; John W. Crutcher; Henry R. Folsom; Patti Birge Tyson.

Notice is hereby given that pursuant to 39 U.S.C. 3623(b), the Commission has instituted a mail classification case to consider certain issues pertaining to Plus publications and has consolidated existing Docket No. C86-2, Complaint of the Sacramento Bee *et al.*, with the new classification proceeding.

The Commission's decision to return to Plus publication questions relatively soon after having expressed, in *Complaint of Advo-System, Inc.*, Docket No. C85-1, basic policy as to their appropriate place in the classification schedule is based, in part, on the variety of criticisms leveled against the Postal Service's rule and on the filing of a rate complaint by the Sacramento Bee on behalf of itself and several other newspaper publishers.

The Commission's views on the status of the rate complaint and of the necessity for a classification inquiry are explained at length in Order No. 724. (51 FR 44166 *et seq.)* That order was issued in these dockets on December 2, 1986, and sent to all participants of record; it should be consulted for further details regarding the potential classification issues herein.

As indicated in Order No. 724, the focus of the combined proceeding is on the question of framing a Domestic Mail Classification Schedule (DMCS) provision that is unmistakably clear; covers reasonably likely future attempts to use second class for Plus-issue-type products essentially directed toward market areas regardless of subscription levels; and responds to publishers' legitimate concerns about content-based regulation. Order at 13-14. The legality of Postal Service rules earlier published in connection with Plus issues is expressly excluded from consideration in the proceeding. Order at 1. As indicated at pp. 4-6 of Order No. 724, the policy expressed in the *Advo* opinion forms the background to our consideration of the Bee *et al.'s* rate complaint.

Order No. 724 accorded participant status in Docket No. MC87-2 to all participants of record in Docket No. C86-2. Other persons interested in participating in the consolidated proceedings are invited to file notices of intervention by January 12, 1987.

Stephen A. Gold of the Commission's Office of the Consumer Advocate is hereby designated Officer of the Commission to represent the interests of the general public in the combined proceedings.

It Is Ordered

(1) Interested persons who have not already been accorded participant status in Docket No. C86-2 shall file notices of intervention in the consolidated proceeding by January 12, 1987.

(2) Stephen A. Gold is designated Officer of the Commission to represent the interests of the general public.

By the Commission.

Charles L. Clapp,

Secretary.

[FR Doc. 86-28695 Filed 12-22-86; 8:45 am]

BILLING CODE 7715-01-M

POSTAL SERVICE

Privacy Act of 1974; System of Records

AGENCY: Postal Service.

ACTION: Final notice of modification to an existing system of records.

SUMMARY: The purpose of this document is to publish final notice to add a new routine use to an existing system of records description that recently appeared for public comment in the **Federal Register.**

EFFECTIVE DATE: December 23, 1986.

FOR FURTHER INFORMATION CONTACT: Rubenia Carter (202) 268-4872.

SUPPLEMENTARY INFORMATION: On November 13, 1986, the Postal Service published in the **Federal Register** (51 FR 41181) advance notice of a proposed routine use to Postal Service system USPS 200.030—Non-Mail Monetary Claims—Tort Claims Records. The purposes of this change appeared in the proposal and will not be repeated here. Interested persons were invited to comment on the proposed routine use. No comments regarding this system modification were received. Accordingly, after a review of the proposed text, the Postal Service has determined to give final notice of the following modification. The specific change for the records system description for USPS 200.030 follows: Add a new Routine Use to Read:

"11. May be disclosed to independent contractors retained by the Postal Service to provide advice in connection with the settlement or defense of claims filed against USPS." A complete statement of the revised system appears below:

Fred Eggleston,

Assistant General Counsel, Legislative Division.

USPS 200.030

SYSTEM NAME:

Non-Mail Monetary Claims—Tort Claims, Records, 200.030

SYSTEM LOCATION:

Law Department at Headquarters and regions, Postal Inspection Service.

Division Headquarters, Post Offices and Post Data Centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons involved in accident as a result of postal operations or alleging money damages under the provisions of the Federal Tort Claims Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Accident reports, tort claims filed, documentary evidence in support of tort claims and litigation arising out of tort claims.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 2671-80, 39 U.S.C. 409(c).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Purpose—Used by attorneys and other employees of the Postal Service to consider, settle and defend against tort claims made against the USPS under the Federal Tort Claims Act.

Use—

1. Transferred to Department of Justice, other governmental agencies, and other persons involved in a claim against the Postal Service, or use in adjudication, civil litigation and criminal prosecution.

2. To provide members of the American Insurance Association Index System with certain information related to accidents and injuries.

3. Provide information to USPS accident prevention and safety officers.

4. Furnish information to insurance companies that have named the United States as an additional insured or coinsured in liability insurance policies.

5. Provide information to equipment manufacturers and their insurers for claims considerations and possible improvement of equipment.

6. To respond to a subpoena dueces tecum and other appropriate court order and summons.

7. Pursuant to the National Labor Relations Act, records from this system may be furnished to a labor organization upon its request when needed by that organization to perform properly its duties as the collective bargaining representative of postal employees in an appropriate bargaining unit.

8. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

9. Disclosure may be made from the record of an individual, where pertinent, in any legal proceeding to which the Postal Service is a party before a court or administrative body.

10. Inactive records may be transferred to a GSA Federal Records Center prior to destruction.

11. May be disclosed to independent contractors retained by the Postal Service to provide advice in connection with the settlement or defense of claims filed against USPS.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ASSESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper form, original or copies, preprinted or handwritten forms.

RETRIEVABILITY:

Information may be retrieved by person's name or Postal Inspection Service case number.

SAFEGUARDS:

Records are maintained in ordinary filing equipment under general scrutiny of postal personnel.

RETENTION AND DISPOSAL:

Paid claims records are retained for seven years after payment. All other files are retained for five years after closing. All records are destroyed by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

(1) General Counsel, Law Department, Headquarters; (2) Chief Postal Inspector, Headquarters.

NOTIFICATION PROCEDURE:

Furnish person's name, data and place of occurrence giving rise to a claim under the Federal Tort Claims Act, to the head of the facility where the claim was filed.

RECORD ACCESS PROCEDURE:

See NOTIFICATION above.

CONTESTING RECORD PROCEDURES:

See NOTIFICATION above.

RECORD SOURCE CATEGORIES:

Claimants making demand for money damages, reports, of postal employees involved in accidents, local police reports, Inspection Service investigative reports and American Insurance Association Index reports.

[FR Doc 86-28754 Filed 12-22-86; 8:45 am]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-23890; File No. SR-PSE-86-21]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change

On September 24, 1986, the Pacific Stock Exchange, Inc. ("PSE" or the "Exchange") submitted to the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b-4 thereunder,[2] a proposed rule change to

[1] 15 U.S.C. 78s(b)(1) (1984).

[2] 17 CFR 240.19b-4 (1986).

allow vocalization of bids or offers specifying a required minimum number of options contracts to be purchased or sold.

The proposed rule change was noticed in Securities Exchange Act Release No. 23711 (October 15, 1986), 51 FR 37995 (October 27, 1986). No comments were received on the proposed rule change.

The proposed amendments to PSE Options Floor Procedure Advice ("OFPA") D–4 and PSE Rule VI, section 48 will permit bids and offers for a specified number of options contracts and no less. In the absence of any specific volume requirement accompanying a bid or offer, the bid or offer will still be presumed to be for one contract. These changes will permit the vocalization of such orders known as "All or None" or "Fill or Kill." The proposed change to OFPA D–4 will also require diligence on the part of brokers vocalizing such orders to ensure that the posted market does not reflect such bid or offer.

Although current Exchange rules do not prohibit the entry of orders requiring that a minimum number of options contracts be purchased or sold, OFPA D–4 specifically prohibits vocalization of such orders. The proposed rule change is designed to correct this inconsistency and to allow representation of minimum contract orders.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and, in particular, the requirements of Section 6 [3] and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[4] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 15, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–28726 Filed 12–22–86; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. 78f (1984).

[4] 15 U.S.C. 78s(b)(2) (1984).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

December 16, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Circle K Corporation
Common Stock, $1.00 Par Value (File No. 7–9398)

Atari Corporation
Common Stock, $.01 Par Value (File No. 7–9399)

Deluxe Check Printers, Incorporated
Common Stock, $1.00 Par Value (File No. 7–9401)

Genuine Parts Company
Common Stock, $1.00 Par Value (File No. 7–9402)

Novo Industri A/S
American Depository Shares (File No. 7–9403)

Teradyne Inc.
Common Stock, $0.125 Par Value (File No. 7–9404)

Computer Associates International Inc.
Common Stock, 0.10 Par Value (File No. 7–9405)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 9, 1987, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan. G. Katz,

Secretary.

[FR Doc. 86–28727 Filed 12–22–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–15482 ; File No. 812–6525]

Fuji Bank Canada; Notice of Application

December 16, 1986.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: Fuji Bank Canada ("Fuji Canada").

Relevant 1940 Act Section: Exemption requested under section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicant seeks an order exempting it from all provisions of the 1940 Act in connection with the issuance and sale of its U.S. dollar denominated certificates of deposit and other debt securities in the United States ("Securities"). Payment of principal and interest on the Securities will be unconditionally guaranteed by The Fuji Bank, Limited, New York Branch ("Fuji New York") or The Fuji Bank, Limited ("Fuji").

Filing Date: The application was filed on November 6, 1986.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on January 9, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Fuji Canada, c/o Peter Figdor, Esq., Wender Murase & White, 400 Park Avenue, New York, NY 10022.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Esq., (202) 272–3046, or H.R. Hallock, Jr., Special Counsel, (202) 272–3030 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations:

(1) Fuji Canada is a Canadian chartered bank constituted and licensed under the Bank Act, S.C. 1980, Chap. 40 (the "Canadian Bank Act"), that commenced operations as a foreign bank subsidiary under the Canadian Bank Act in February 1982. All of Fuji Canada's outstanding capital stock, currently consisting of 208,427 shares of common stock, is owned by Fuji and wholly-owned subsidiaries of Fuji.

(2) Fuji Canada offers full banking services through its head office in Toronto, including short and medium term commercial lending; deposit-taking; investing in commercial paper, bank instruments and government obligations; discounting trade bills; issuing letters of credit; and foreign exchange trading. As of April 30, 1986, its total assets were equivalent to approximately U.S. $335 million, with authorized capital stock consisting of 300,000 shares of no-par value common stock and paid up capital of Can. $24,000,000.

(3) As a Canadian bank chartered under the Canadian Bank Act, various aspects of Fuji Canada's business, including, deposit reserves and insurances, permissible powers, loan volume and dividend policy, are subject to regulation under the Canadian Bank Act and the Canada Deposit Insurance Corporation Act, as amended. The Canadian Inspector General of Banks (the "Inspector General") is responsible generally for the administration of the Canadian Bank Act and more particularly for the day-to-day regulation of Canadian banks to ensure compliance with Canadian banking law. Canadian banks are required to file with the Inspector General, and publish annual statements in prescribed form comprised of statements of assets and liabilities, income, appropriations for contingencies and changes in shareholders' equity of the bank together with a report of the bank's auditors thereon. The Inspector General is permitted to examine the Applicant as often as it is deemed necessary or expedient, and in no event less than once a year, and the Inspector General has power to issue subpoenas and similar processes compelling attendance of any person to give testimony in respect of any matter under investigation and to produce documents, books and papers under such person's control. The Canadian Bank Act also governs matters such as liquidity requirements.

(4) Fuji ranked as the 2nd largest bank in the free world in terms of deposits as of December 31, 1985. As of September 30, 1985, Fuji had worldwide assets equivalent to approximately U.S. $145.4 billion, worldwide customer deposits equivalent to approximately U.S. $105.6 billion, worldwide loans and bills discounted equivalent to approximately U.S. $71.4 billion and total stockholders' equity equivalent to approximately U.S. $3.1 billion.

(5) Fuji is presently engaged in the conduct of a commercial banking business in Japan, which includes receiving deposits, making loans, discounts and security investments, conducting domestic and foreign exchange transactions and performing such other related services as safekeeping, money exchange, collections and issuing guarantees, acceptances and letters of credit. Fuji is engaged in the banking business through 242 domestic branches which are located throughout Japan and it maintains branches, agencies and representative offices in seven other countries and banking subsidiaries in nine other countries.

(6) Fuji is extensively regulated under Japanese banking laws and the regulations promulgated thereunder. The Japanese Ministry of Finance audits Fuji once every two or three years and the Bank of Japan conducts field checks once every two or three years. The Japanese Ministry of Finance supervises the lending ratios and lending limits of Japanese banks. In addition, the Japanese Ministry of Finance exercises supervisory control over Japanese banks by reason of the necessity of obtaining the approval of the Japanese Ministry of Finance with respect to such matters as the establishment of additional offices, reductions in capital, mergers, liquidations or discontinuations of business. The Japanese Ministry of Finance also has the authority to instruct Japanese banks to remove directors, to direct a Japanese bank to submit certain property to be held for the protection of depositors or to issue such other orders as may be deemed necessary.

(7) Fuji has been licensed by the New York State Superintendent of Banks to maintain a branch office in New York State since October 1985 and, under its present branch license, Fuji New York is authorized to engage in "the business of buying, selling, paying or collecting bills of exchange, or of issuing letters of credit or of receiving money for transmission or transmitting the same by draft, check, cable or otherwise, or of making loans, or of receiving deposits."

(8) Fuji New York, as a New York branch of a foreign bank, is subject to extensive Federal and New York State regulation. It must maintain daily records of assets and liabilities that are payable at or through Fuji New York. Its loans, purchases and discounts of notes, bills of exchange, bonds, debentures and other obligations and extension of credit and acceptances are subject to the same limitations as to amount in relation to the capital stock, surplus fund and undivided profits of Fuji as are applicable to New York State banks and trust companies. In addition, Fuji New York must maintain on deposit with a bank, trust company, private banker or national bank which it has selected assets the aggregate value of which is equal to 5% of its total liabilities (excluding liabilities owed to other offices and subsidiaries of Fuji). Fuji New York is also subject to regulation under the International Banking Act of 1978.

(9) Securities to be publicly offered by Fuji Canada in the United States will be sold in minimum denominations of U.S. $100,000 through major dealers, will be sold only to institutional and other sophisticated investors, will have varying maturities not exceeding five years and will not include any provision for extension, renewal or automatic rollover.

(10) Payment of principal of, and interest on, the Securities will be unconditionally guaranteed by Fuji New York, or provided that Fuji shall have obtained an order of the Commission pursuant to Section 6(c) of the 1940 Act exempting it from all the provisions of the 1940 Act in connection with the issuance of such guarantees by Fuji. Consequently, holders of the Securities will look to Fuji New York or Fuji, as the case may be, as the ultimate obligor. The Securities will have received one of the three highest investment grade ratings from at least one nationally recognized statistical rating organization and Fuji Canada undertakes that, prior to the issuance of any Securities, its United States counsel shall have certified that such rating has been received and is in effect as of such time. The Securities will rank *pari passu* among themselves, and the guarantees in respect thereof will rank *pari passu* among themselves; the Securities will rank equally with all other unsecured indebtedness of Fuji Canada (except to the extent indebtedness to Canada or any province thereof is preferred by operation of law) including deposit liabilities, and superior to rights of shareholders; and the guarantees of the Securities will rank equally with all other unsecured indebtedness of Fuji New York or Fuji, as the case may be (except to the extent such indebtedness is preferred by operation of law), including deposit liabilities, and superior to rights of shareholders.

(11) Any offering in the United States of Securities will be made only pursuant to a registration statement under the Securities Act of 1933 ("1933 Act"), or pursuant to an applicable exemption from the registration requirements of the 1933 Act. Any such offering will be done on the basis of disclosure documents that are appropriate and customary for

such registration or exemption, and in any event at least as comprehensive as those used in offerings of similar securities in the United States by United States issuers, and which include a memorandum describing the business of Fuji and Fuji Canada and containing the most recent publicly available annual financial statements of Fuji and Fuji Canada (including a balance sheet and income statement), audited in accordance with Japanese and Canadian accounting principles, respectively. Such memorandum will include brief paragraphs highlighting the material differences between generally accepted accounting principles applicable to United States banks and (i) Japanese accounting principles applicable to Japanese banks and used by Fuji and (ii) Canadian accounting principles applicable to Canadian banks and used by Fuji Canada. Such memorandum will be updated promptly to reflect material changes in the business and financial condition of Fuji or Fuji Canada. Such disclosure documents will be provided to each offeree who has indicated an interest in purchasing Securities prior to any sale of such Securities to such offeree; except that, in the case of an offering being made pursuant to a registration under the 1933 Act, such disclosure documents will be provided to such persons and in such manner as may be required by the 1933 Act.

(12) In connection with any offering of Securities in the United States, Fuji Canada will expressly accept the jurisdiction of any state or federal court in the City and State of New York in respect to any action based on such Securities. Further, it will appoint an agent located in the City and State of New York (which may be Fuji New York) to accept any process which may be served in any such action. Such consent to jurisdiction and appointment of an agent for service of process will be irrevocable so long as such Securities remain outstanding and until all amounts due and to become due in respect of such Securities have been paid.

(13) Fuji Canada will not offer any Security unless (i) it shall have registered such Security pursuant to the 1933 Act, or (ii) if it offers such Security without registration pursuant to an applicable exemption from registration under the 1933 Act, either (x) it shall have received an opinion of its United States legal counsel to the effect that, under the circumstances of the proposed offering, such Security will be entitled to an exemption provided under the 1933 Act, or (y) the Staff of the Commission shall have stated in writing that it will not recommend enforcement action to the Commission under the circumstances of the proposed offering or the Commission shall have issued a policy statement indicating that an offering of securities under circumstances substantially similar to that of the proposed offering will not be the subject of an enforcement action.

(14) Fuji Canada will not offer any Security (i) in the case of any Security to be guaranteed by Fuji New York, unless it shall receive an opinion of Japanese legal counsel to Fuji to the effect that the obligation of Fuji New York pursuant to such guarantee also constitutes the legal, valid and binding obligation of Fuji enforceable against Fuji in accordance with its terms, and (ii) in the case of any Security to be guaranteed by Fuji, unless Fuji shall have obtained an order of the Commission pursuant to section 6(c) of the 1940 Act exempting it from all the provisions of the 1940 Act in connection with the issuance of such guarantee.

Applicant's Conditions: Fuji Canada consents to any order issued pursuant to section 6(c) of the 1940 Act granting the relief requested being expressly conditioned upon its compliance with the representations and undertakings set forth in the application.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-28728 Filed 12-22-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15481; 812-6478]

NEL Growth Fund, Inc., et al.; Application

Date: December 16, 1986.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: NEL Growth Fund, Inc., NEL Equity Fund, Inc., NEL Retirement Equity Fund, Inc., NEL Income Fund, Inc. and NEL Tax Exempt Bond Fund, Inc.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from section 19(b) and Rule 19b-1.

Summary of Application: Applicants seek an order to allow extraordinary distributions of long-term capital gains in connection with each Applicant's reorganization into a separate series of The New England Funds, a registered management investment company.

Filing Date: The application was filed on September 11, 1986 and amended December 16, 1986.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC no later than 5:30 p.m., on January 8, 1987. Request a hearing in writing giving the nature of your interest, the reasons for the request, and the issues contested. Serve Applicants with the request, either personally or by mail, and also send it to the Secretary, SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary, SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicants, 501 Boylston Street, Boston, MA 02117.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Meryl Dewey (202)272-3038 or Special Counsel H.R. Hallock, Jr. (202)272-3030 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or at the SEC's commercial copier (800)231-3282 (in Maryland (301)258-4300).

Applicants' Representations:

1. Each Applicant is a Massachusetts corporation and is a diversified, open-end, management investment company registered under the 1940 Act. Each Applicant intends to reorganize ("Reorganizations") into a separate series of The New England Funds ("Trust"), a Massachusetts trust registered under the 1940 Act as a diversified, open-end, management investment company. Currently, the Trust offers one series, the New England Government Securities Fund.

2. The Reorganizations have been approved by the board of directors of each Applicant and the Trust, are subject to approval by each Applicant's shareholders, and are expected to be effected in January, 1987.

3. Under the Reorganizations, each Applicant will transfer all its assets and liabilities to a separate, newly-created Trust series in exchange for shares of that series. Such shares would be distributed immediately to each Applicant's shareholders in complete liquidation of the respective Applicant.

4. The Reorganizations would reduce operating costs as Applicants would realize savings in state excise taxes and by not holding annual shareholders' meetings or paying fees for authorizing additional shares of capital stock.

5. Applicants and the Trust believe that the Reorganizations will be treated as five separate tax-free reorganizations under section 368(a)(1)(F) of the Internal Revenue Code of 1954, as amended ("Code"); however, they might be treated as a single reorganization under section 368(a)(1)(C) of the Code. To protect shareholders against that possibility, which would terminate each Applicant's fiscal year and preclude distribution of net long-term capital gains after the effective date of the Reorganizations ("Effective Date"), each Applicant contemplates making one or two extraordinary distributions of net long-term capital gains shortly before the Effective Date. The amount of the first such distribution would be calculated at the last date before the Effective Date which would practicably permit Applicants to make the distribution before the Effective Date. A second extraordinary distribution may be made, on or immediately prior to the Effective Date, if the amount already distributed was materially less than the amount of long-term capital gains actually realized by the respective Applicant.

6. Section 19(b) of the 1940 Act provides that it shall be unlawful in contravention of rules, regulations, or orders prescribed by the SEC for a registered investment company to distribute long-term capital gains more often than once every twelve months. Rule 19b-1 under the 1940 Act prohibits registered investment companies from making more than one capital gains distribution with respect to any taxable year, with certain exceptions. The requested order would permit Applicants to make a distribution necessitated by the possible applicability of section 368(a)(1)(C) of the Code, without disabling them (i) from making an additional distribution to adjust the amount of the first distribution, if necessary, and (ii) from distributing the gains relating to the period between the Effective Date and each Applicant's usual respective fiscal year end.

7. It is unlikely that the contemplated distributions of long-term capital gains would cause Applicants' shareholders to confuse such extraordinary distributions with regular dividend distributions. Further, Applicants will clearly differentiate between the proposed distributions and distributions out of net investment income in the notice to shareholders accompanying each extraordinary distribution.

8. Since the extraordinary distributions will occur only once, there will be little additional administrative expense.

9. Section 19(b) of the 1940 Act and Rule 19b-1 thereunder were devised in part to prevent investment companies from churning their portfolios in contravention of their goal of long-term capital appreciation. The proposed extraordinary distributions will be one-time distributions of net long-term capital gains made in response to a technical federal tax concern arising from the transfer of all the assets and liabilities of each Applicant to a separate series of the Trust, and will not result in churning of Applicants' portfolios nor affect their investment decisions.

10. Applicants submit that the requested order does not contravene the purposes underlying section 19(b) of the 1940 Act or Rule 19b-1 thereunder, is in the public interest, and is consistent with the protection of investors and the purposes and policies of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-28729 Filed 12-22-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23891; File No. SR-Phlx-86-33]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change

On September 19, 1986, the Philadelphia Stock Exchange, Inc. ("Phlx" or the "Exchange") submitted to the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b-4 thereunder,[2] a proposal to amend the rules relating to order and decorum on the trading floor.

The proposed rule change was noticed in Securities Exchange Act Release No. 23717 (October 15, 1986), 51 FR 37996 (October 27, 1986). No comments were received on the proposed rule change.

Phlx Rule 60 and the regulations thereunder relate to the disciplining of members for violations of regulations relating to matters of order and decorum and administration of the Exchange. Violations are currently punished by a pre-set fine of up to $500. First, the proposed rule change will increase the limit from $500 to $1,000. Second, the proposal will provide discretion to two floor officials to refer violations to the Business Conduct Committee, where the matter will proceed in accordance with exchange Rules 960.1-960.12 regarding procedure in disciplinary actions, and where higher fines and other sanctions may be imposed. Last, the proposed rule change will amend the assessment schedule by prohibiting firearms on the trading floor an exacting a fine of $1,000 for each violation, prohibiting the use of another person's Exchange identification and exacting a fine of $250 for the first violation and $500 for each subsequent violation, and increasing the fine for fighting from $500 to $1,000.

The Commission finds that the proposed rule change is consistent with requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and, in particular, the requirements of Section 6 [3] and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[4] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 15, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-28823 Filed 12-22-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23889; File No. SR-Phlx-86-48]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Accelerated Approval to Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 12, 1986, the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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[1] 15 U.S.C. 78s(b)(1) (1984.

[2] 17 CFR 240.19b-4 (1986).

[3] 15 U.S.C. 78f (1984).

[4] 15 U.S.C. 78s(b)(2) (1984).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") proposes to revise certain of its strike price policies to permit the orderly introduction of one-half point ($.005) strike price intervals for Canadian dollar option contracts.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

The proposed rule change would enable the Exchange to add one-half point exercise prices in Canadian dollar option contracts, either singly or at the same time as the next exercise price is added. The Canadian dollar, relative to the United States dollar, is not violatile as compared to other foreign currencies. The availability of additional strike prices would enhance the opportunity of participants in the Canadian dollar foreign currency options to trade and hedge their currency risk more effectively. The ability of the PHLX to offer $.005 strike price intervals in the Canadian dollar will enable the PHLX, which trades a similar product, to be competitive with the Chicago Board Options Exchange ("CBOE") which has applied to the Commission to add one-half point exercise prices in its Canadian dollar option contracts. (See Release No. 23811, November 26, 1986.) In addition, introduction of one-half point strike prices on the same day as the CBOE will reduce investor confusion.

The proposed rule change is based on section 6(b)(5) of the Securities Exchange Act ("Act") in that it is designed to facilitate transactions in Canadian dollar foreign currency options.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not forsee that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the 1934 Act because the rule change is substantively identical to a proposed rule change previously filed by the Chicago Board Options Exchange, Incorporated ("CBOE") and approved by the Commission.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof because the rule change, substantively identical to a rule change filed previously by the CBOE and approved by the Commission,[1] will enable the Phlx to compete effectively in trading Canadian Dollar options. In addition, similar strike prices among exchanges will help to reduce investor confusion in trading these options.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 12, 1986.

It is therefore ordered, pursuant to section 19(b)(2) of the Act that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 15, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-28824 Filed 12-22-86; 8:45 am]

BILLING CODE 8010-01-M

[1] *See* Securities Exchange Act Release No. 23886, (December 12, 1986).

SMALL BUSINESS ADMINISTRATION

[License No. 04/04-5240]

Pro-Med Investment Corporation; Issuance of a Small Business Investment Company License; Application

On July 23, 1986, a notice was published in the **Federal Register** (51 FR 141), stating that an application had been filed by Pro-Med Investment Corporation, 1380 NE. Miami Gardens Drive, N. Miami Beach, Florida 33179, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1986)) for a license as a small business investment company.

Interested parties were given until close of business on August 23, 1986, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(d) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 04/04-5240 on November 28, 1986, to Pro-Med Investment Corporation to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 15, 1986.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 86-28694 Filed 12-22-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 990]

South African Parastatal Organizations

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Requests have been submitted to the Department of State to review the classification of the following firms as South African "parastatal organizations" for purposes of the Comprehensive Anti-Apartheid Act of 1986, as amended (Pub. L. 99-440): Sasol Ltd.; Tecnetics (Pty) Ltd.; Putco Ltd.; Siemens Ltd.; Computer Technology (Pty) Ltd. (Comtec); Klein Karoo Landboukooperaise Ltd.; and Mercedes Datakor (Pty) Ltd. Interested persons are invited to submit any written comments relevant to the Department's review of the status of these firms.

DATE: Comments must be received no later than January 5, 1987.

ADDRESS: Comments should be sent to the Office of Southern African Affairs, Room 4238, Department of State, Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Eric Benjaminson, Office of Southern African Affairs (202) 647-8433, or Lynda Clarizio, Office of the Legal Adviser (202) 647-4110.

SUPPLEMENTARY INFORMATION: State Department Public Notice No. 983, published on November 19, 1986 (51 FR 41912), identified which South African firms are deemed to be "parastatal organizations" for purposes of the Comprehensive Anti-Apartheid Act of 1986. The notice provided that any person believing that, due to unique circumstances, a firm should be included or excluded from the list of parastatal organizations can request that the Department review the particular case. All requests must be submitted in writing to the Office of Southern African Affairs. Any submission should contain detailed information as to the stock ownership and composition of the board of directors of the particular firm as well as the amount of preferential financial assistance received by such firm from the South African Government. The notice stipulated that the Department of State may invoke the authorities set forth in section 603(b) of the Act in conducting a review. Any person who willfully makes a false or misleading statement in a submission to the Department will be subject to the civil and criminal penalties set forth in section 603(b) and (c) of the Act and 18 U.S.C. 1001.

Requests have been submitted to the Department to review the classification of the following firms as South African parastatal organizations: Sasol Ltd.; Tecnetics (Pty) Ltd.; Putco Ltd; Siemens Ltd.; Computer Technology (Pty) Ltd. (Comtec); and Mercedes Datakor (Pty) Ltd. Interested persons are invited to submit any written comments relevant to the Department's review of the status of these firms by January 5, 1987.

Dated: December 17, 1986.

Chas W. Freeman, Jr.,

Deputy Assistant Secretary for African Affairs.

[FR Doc. 86-28782 Filed 12-22-86; 8:45 am]

BILLING CODE 4710-26-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

National Motor Carrier Advisory Committee

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FHWA announces that the National Motor Carrier Advisory Committee will hold a meeting on January 12 and 13, 1987, in Washington, DC, at the U.S. Department of Transportation headquarters, 400 7th Street, SW., Washington, DC. The meeting will begin at 12:30 p.m. on January 12 and at 9:00 a.m. on January 13. The meeting will be in room 2300 and it is open to the public.

The agenda will include: various motor carrier safety issues, a report on the status of the National Governors' Association Working Groups' recommendations on Uniform State Motor Carrier Procedures, the Commercial Drivers' Licensing program, the issue of "reasonable access", and the status of various legislative proposals affecting the motor carrier industry.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph S. Toole, Executive Director, National Motor Carrier Advisory Committee, Federal Highway Administration, HOA-1, Room 4218, 400 7th Street, SW., Washington, DC 20590, (202) 366-2238, office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

Issued on December 18, 1986.

Robert E. Farris,

Deputy Federal Highway Administrator, Federal Highway Administration.

[FR Doc. 86-28826 Filed 12-22-86; 8:45 am]

BILLING CODE 4910-22-M

Urban Mass Transportation Administration

UMTA Sections 3 and 9; Grant Obligations

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice.

SUMMARY: Pub. L. 99-500 signed into law by President Reagan on October 18, 1986, contained a provision requiring the Urban Mass Transportation Administration to publish an announcement in the **Federal Register** each time a grant is obligated pursuant to Sections 3 and 9 of the Urban Mass Transportation Act of 1964, as amended. The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant. This notice provides the information as required by statute.

FOR FURTHER INFORMATION CONTACT: Edward R. Fleischman, Chief, Resource Management Division, (202) 366-2053, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The Section 3 program was established by the Urban Mass Transportation Act of 1964 to provide capital assistance to eligible recipients in urban areas. Funding for this program is distributed on a discretionary basis. The Section 9 formula program was established by the Surface Transportation Assistance Act of 1982. Funds appropriated to this program are allocated on a formula basis to provide capital and operating assistance in urbanized areas. Pursuant to Pub. L. 99-500, UMTA reports the following grant information:

Transit property	Grant No.	Grant amount	Date obligated
UMTA Section 3 Grants:			
Metropolitan Transportation Authority—New York City Transit Authority.	NY-03-0218	$60,000,000	12-01-86
Regional Transportation Authority—Chicago Transit Authority.	IL-03-0124-01	$6,678,522	12-04-86
Regional Transportation Authority—Commuter Rail Division.	IL-03-012	$6,000,000	12-04-86

Transit property	Grant No.	Grant amount	Date obligated
Regional Transportation Authority—Commuter Rail Division.	IL-03-0129	$3,570,000	12-04-86
Regional Transportation Authority—Commuter Rail Division.	IL-03-0127-01	$1,116,300	12-04-86
UMTA Section 9 Grants: Metropolitan Transportation Authority—New York City Transit Authority.	NY-90-X102	$73,269,600	12-04-86

Issued on December 16, 1986.

Ralph L. Stanley,

Administrator.

[FR Doc. 86-28693 Filed 12-22-86; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: December 15, 1986.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7313, 1201 Constitution Avenue, NW., Washington, DC 20220.

Alcohol, Tobacco and Firearms

OMB Number: 1512-0378
Form Number: ATF REc 5530/1
Type of Review: Extension
Title: Applications and Notices—Manufacturers of Nonbeverage Products
Clearance Officer: Robert G. Masarsky, (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7202, Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Internal Revenue Service

OMB Number: 1545-0720
Form Number: IRS Forms 8038 and 8038-G
Type of Review: Revision
Title: Information Return for Tax-Exempt Private Activity Bonds Issues (8038); and Information Return for Tax-Exempt Governmental Bonds Issues (8038-G)
OMB Number: 1545-0797
Form Number: None
Type of Review: Extension
Title: Definition of a Brother-Sister Group of Controlled Corporations or Businesses (LR-35-82)
Clearance Officer: Garrick Shear, (202) 566-6150, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Douglas J. Colley,

Departmental Reports Management Office.

[FR Doc. 86-28819 Filed 12-22-86; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: December 17, 1986.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, P.L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7313, 1201 Constitution Avenue, NW., Washington, DC 20220.

Alcohol, Tobacco and Firearms

OMB Number: 1512-0001
Form Number: ATF F 1600.1 and ATF F 1600.8
Type of Review: Reinstatement
Title: Requisition for Forms or Publications (ATF F 1600.1); Requisition for Firearms/Explosives Forms (ATF F 1600.8)
OMB Number: 1512-0025
Form Number: ATF F 2 (5320.2)
Type of Review: Extension
Title: Notice of Firearms Manufactured or Imported
OMB Number: 1512-0292
Form Number: ATF REC 5120/2
Type of Review: Extension
Title: Letterhead Applications and Notices Relating to the Wine
OMB Number: 1512-0357
Form Number: ATF REC 5170/6
Type of Review: Extension
Title: Wholesale Dealers Application, Letterheads, and Notices Relating to Operations (Variations in Format or Preparation of Records)
Clearance Officer: Robert G. Masarsky, (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7202, Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Douglas J. Colley,

Departmental Reports Management Office.

[FR Doc. 86-28820 Filed 12-22-86; 8:45 am]

BILLING CODE 4810-25-M

Office of the Secretary

[Department Circular—Public Debt Series—No. 41-86]

Treasury Notes of January 15, 1994, Series D-1994, Washington, December 17, 1986

1. Invitation of Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $7,250,000,000 of United States securities, designated Treasury Notes of January 15, 1994, Series D-1994 (CUSIP No. 912827 UL 4), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated January 5, 1987, and will accrue interest from that date, payable on a semiannual basis on July 15, 1987, and each subsequent 6 months on January 15 and June 15 through the date that the principal becomes payable. They will mature January 15, 1994, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable

(without additional interest) on the next-succeeding business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Standard Time, Tuesday, December 30, 1986. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, January 5, 1987, and received no later than Monday, January 5, 1987.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.250. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, whenever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Monday, January 5, 1987. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations govering United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Wednesday, December 31, 1986. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes alloted for their own accounts and for accounts of customers by credit to their Teasury Tax and Loan Note Accounts on or before Monday, January 5, 1987. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has

been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretay of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendment do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 86-28865 Filed 12-19-86; 11:34 am]

BILLING CODE 4810-40-M

VETERANS ADMINISTRATION

Veterans' Advisory Committee on Rehabilitation; Meeting

The Veterans Administration gives notice that a meeting of the Veterans' Advisory Committee on Rehabilitation, authorized by 38 U.S.C. 1521, will be held in Room 1010 of the Veterans Administration Central Office, . . 810 Vermont Avenue, NW., Washington, DC 20420, January 13 and 14, 1987. The sessions will begin at 8:30 a.m. The purpose of the meeting will be to review the administration of veterans' rehabilitation programs and provide recommendations to the Administrator.

The meeting will be open to the public up to the seating capacity of the conference room. Because of the limited seating capacity, it will be necessary for those wishing to attend to contact Dr. Carole J. Westerman, Executive Secretary, Veterans' Advisory Committee on Rehabilitation (phone 202-233-2886) prior to January 6, 1987.

Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before or within 10 days after meeting. Oral statements will be heard at 9:30 a.m. on January 14, 1987.

Dated: December 12, 1986.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 86-28685 Filed 12-22-86; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 51, No. 246

Tuesday, December 23, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COUNCIL ON ENVIRONMENTAL QUALITY

DATES, TIMES AND PLACE: Thursday, January 8, 1987, 2:00 p.m., Monday, January 12, 1987, 10:00 a.m., Thursday, February 5, 1987, 10:00 a.m., Council on Environmental Quality Conference Room, First Floor, 722 Jackson Place, NW., Washington, DC.

DATE: December 18, 1986.

STATUS: Open.

MATTERS TO BE CONSIDERED: Under the Council's NEPA regulations, Federal agencies may refer to the Council federal interagency disagreements concerning proposed major federal actions that might cause unsatisfactory environmental effects. (40 CFR Part 1504 *et seq.*) In accordance with this provision the Environmental Protection Agency has referred the proposed amendments of the Corps of Engineers' regulations implementing the National Environmental Policy Act. The purpose of these meetings is to aid the council in seeking a resolution of the referral.

The first and second meetings will be limited to briefings and discussions among the Council and other Federal agencies. The third meeting is being called to provide the public with an opportunity to present their views.

For the first meeting, January 8, the General Counsel of CEQ will brief the Council on the issues raised in the referral.

For the second meeting, January 12, representatives of the Corps of Engineers, the Environmental Protection Agency and any other interested Federal agencies, will present information and discussion regarding the referral.

For the third meeting, February 5, members of the public will have an opportunity to present views on the issues raised in the referral. Organizations and individuals wishing to make oral presentations at the public meeting on February 5, must request time in writing from CEQ by January 28, 1987. In addition interested parties may submit written comments for the record.

FOR FURTHER INFORMATION CONTACT: Dinah Bear, General Counsel, Council on Environmental Quality, 722 Jackson Place, NW., Washington, DC 20006 (202) 395-5754.

A Alan Hill,

Chairman.

[FR Doc. 86-28925 Filed 12-19-86; 3:23 pm]

BILLING CODE 3125-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of December 22, 29, 1986, January 5, and 12, 1987.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of December 22

No Commission meetings.

Week of December 29—Tentative

No Commission meetings.

Week of January 5—Tentative

Thursday, January 8

10:00 a.m.

Briefing on Status of Safety Goal Implementation (Public meeting)

2:00 p.m.

Discussion/Possible Vote on Full Power Operating License for Shearon Harris (Public meeting)

Friday, January 9

10:00 a.m

Affirmation/Discussion and Vote (Public meeting)

a. Proposed Order on Shearon Harris (Tentative)

Week of January 12—Tentative

Thursday, January 15

10:00 a.m.

Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

2:00 p.m.

Briefing on Status of Palisades (Public meeting)

3:30 p.m.

Affirmation/Discussion and Vote (Public meeting) (if needed)

ADDITIONAL INFORMATION: Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6) *moved* from December 17 to December 18. Affirmation of "Final Rulemaking on Revisions to Operator Licensing—10 CFR 55 and Conforming Amendments" (Public meeting) scheduled for December 18, *postponed.*

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Andrew Bates (202) 634-1410.

Andrew L. Bates,

Office of the Secretary.

December 18, 1986.

[FR Doc. 86-28928 Filed 12-19-86; 3:38 pm]

BILLING CODE 7590-01-M

Corrections

Federal Register
Vol. 51, No. 246
Tuesday, December 23, 1986

This section of the FEDERAL REGISTER contains editorial corrections of previously published Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2910

[AA-320-06-4211-02-2410; Circular No. 2590]

Airport Leasing Procedures; Amendments

Correction

In rule document 86-25222 beginning on page 40807 in the issue of Monday, November 10, 1986, make the following corrections:

§ 2911.2-3 [Corrected]

1. On page 40810, in § 2911.2-3(b), in the third column, in the third line, "conveyance of" should read "conveyance or".

§ 2911.2-4 [Corrected]

2. On page 40810, in § 2911.2-4, in the third column, in the section heading, "Executive" should read "Execution"; and in the first line, "receipt the" should read "receipt of the".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-07-NCBC; CA-19159]

Realty Action; Exchange of Public and Private Lands in Riverside and San Diego Counties, CA

Correction

In notice document 86-25131 appearing on page 40359 in the issue of Thursday, November 6, 1986, make the following corrections:

1. In the first column, in the legal description for Riverside County, in T. 7S., R. 3E., in Sec. 18, remove the comma between "E½" and "SE¼".

2. In the same column, in the legal description for San Diego County, in T.18S., R. 7E., in the first line of Sec. 2, remove the comma between "NW¼" and "SW¼".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 36

Alaska National Wildlife Refuges, Management Regulations

Correction

In rule document 86-27901 beginning on page 44791 in the issue of Friday, December 12, 1986, make the following correction:

§ 36.2 [Corrected]

On page 44793, in the third column, in the amendment to § 36.2, remove the phrase "immediately after the words 'as defined in this section' " from the end of paragraph (h).

BILLING CODE 1505-01-D

federal register

Tuesday
December 23, 1986

Part II

Department of Defense

48 CFR Ch. 2

Department of Defense; Federal Acquisition Regulation Supplement; Final Rule

DEPARTMENT OF DEFENSE

48 CFR Ch. 2

Department of Defense; Federal Acquisition Regulation Supplement

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: The Federal Acquisition Regulation (FAR) and the DoD FAR Supplement (DFARS) became effective for solicitations issued on or after April 1, 1984. The 1984 edition of the DFARS was issued at that time. This document contains the 1986 edition of the DFARS, which replaces the 1984 edition.

EFFECTIVE DATE: December 23, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OASD(A&L), Room 3C841, the Pentagon, Washington, DC 20301-3062, telephone (202) 697-7266.

SUPPLEMENTARY INFORMATION: This 1986 edition of the Department of Defense Supplement to the Federal Acquisition Regulation (FAR) is issued under the statutory authorities of the Secretary of Defense. The FAR and the DoD FAR Supplement (DFARS) became effective for solicitations issued on or after 1 April 1984.

The FAR and the DFARS contain direction to DoD contracting personnel as to (i) what provisions, clauses and cost principles are authorized for DoD contracts and (ii) what other procedures and actions must be followed in awarding and administering DoD contracts. The DFARS contains material that implements the FAR, as well as supplementary material that is unique to the Department of Defense. This Supplement is not a stand-alone document and must be read in conjunction with FAR.

The new edition incorporates Defense Acquisition Circulars (DACs) 84-1 through 84-14 and reflects coverage that is now in the field and being utilized. The last DAC issued in the former edition, 1984, is 84-14. No further DACs will be issued to that edition. The first change to this edition will be Number 86-1 and later DACs will be numbered in sequence (e.g., 86-2, 86-3, etc.) (Note: The changes made by DAC 86-1 have been incorporated into this Federal Register publication).

Appendices which are currently in effect are included in this edition and are listed in the Table of Contents. (Note: DFARS (former DAR) manuals and supplements referenced in the Table of Contents are not included in the subscription to the DFARS and must be purchased separately from the Government Printing Office.)

Interested parties may submit proposed revisions to this Supplement directly to the DAR Council.

Note.—Copies of the DoD FAR Supplement in the Federal Register, looseleaf, and CFR form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

The DoD FAR Supplement is codified in Chapter 2, Title 48 of the Code of Federal Regulations.

List of Subjects in 48 CFR Ch. 2

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Title 48 of the Code of Federal Regulations is amended by revising Chapter 2 to read as follows:

CHAPTER 2—DEPARTMENT OF DEFENSE

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Part 201—Federal Acquisition Regulations System
Part 202—Definitions of Words and Terms
Part 203—Improper Business Practices and Personal Conflicts of Interest
Part 204—Administrative Matters

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

Part 205—Publicizing Contract Actions
Part 206—Competition Requirements
Part 207—Acquisition Planning
Part 208—Required Sources of Supplies and Services
Part 209—Contractor Qualifications
Part 210—Specifications, Standards, and Other Purchase Descriptions
Part 211—Acquisition and Distribution of Commercial Products
Part 212—Contract Delivery or Performance

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

Part 213—Small Purchase and Other Simplified Purchase Procedures
Part 214—Sealed Bidding
Part 215—Contracting by Negotiation
Part 216—Types of Contracts
Part 217—Special Contracting Methods
Part 218—Reserved in FAR

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

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Part 220—Labor Surplus Area Concerns
Part 221—Reserved in FAR
Part 222—Application of Labor Laws to Government Acquisitions
Part 223—Environment, Conservation, and Occupational Safety
Part 224—Protection of Privacy and Freedom of Information
Part 225—Foreign Acquisition
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Part 235—Research and Development Contracting
Part 236—Construction and Architect-Engineer Contracts
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Part 238—Federal Supply Schedule Contracting
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ASPR Supplement No. 2—Contract File Maintenance, Closeout, and Disposition (ASPS No. 2) (1 APR 70)
ASPR Supplement No. 3—Property Administration (ASPS No. 3) (1 OCT 75)
ASPR Supplement No. 4—Procedures for Submission of Applications To Be Placed on Research and Development Bidders Mailing Lists (ASPS No. 4) (1 APR 68)
ASPR Supplement No. 5—Procurement of Utility Services (ASPS No. 5) (1 OCT 74)
DAR Supplement No. 6—DoD Replenishment Parts Breakout Program (DARS No. 6) (1 JUN 83)

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SUBCHAPTER A—GENERAL

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 201.1—Purpose, Authority, Issuance

201.101 Purpose.

The Department of Defense FAR Supplement is issued by the Assistant Secretary of Defense for Acquisition and Logistics by direction of the Secretary of Defense and in coordination with the Secretaries of the Army, Navy and Air Force, and the Director of the Defense Logistics Agency. It establishes for the Department of Defense uniform policies and procedures, implementing and supplementing the Federal Acquisition Regulation.

201.103 Applicability.

(a) This supplement applies to all purchases and contracts made within and outside the United States (but see 201.405) for the procurement of supplies or services which obligate appropriated funds (including available contract authorizations). This supplement and the FAR also apply to purchases and contracts made in support of foreign military sales without regard to the nature or sources of funds obligated, unless otherwise specified in this regulation.

(b) Neither the FAR nor this supplement applies to transportation services purchased by transportation requests, transportation warrants, bills of lading, and similar transportation forms. Purchase of these excepted transportation services shall be in accordance with specific regulations and instructions issued by the Military Traffic Management Command, Military Sealift Command, Military Airlift Command, and the Departments.

201.104 Issuance.

201.104-1 Publication and code arrangement.

This regulation is issued as Chapter 2 of Title 48, CFR. Other chapters are reserved for Departmental acquisition regulations that implement or

supplement this regulation. It is also available in a loose-leaf edition.

201.104-2 Arrangement of regulations.

(a) This regulation is numbered according to whether the information implements or supplements the FAR. The differentiation is made by using the numbers 70–89 as new parts, subparts, sections, or subsections when supplementation is required. Implementing coverage uses the same numbers as the FAR material implemented. Numbers 1–69 have been reserved to the FAR. A series of numbers beginning with 7000 is used for provisions and clauses.

(1) A new Part 270 is used in the DoD FAR Supplement for new material which is not covered by the FAR and is a distinct part only applicable to the Department of Defense.

(2) A new Subpart 225.72 could be used as the third subpart supplementing FAR Part 25, with Subparts 225.70 and 225.71 having preceded it.

(3) A new section 225.173 could be used as the fourth section supplementing FAR sections that begin with 225.101. In this case, the FAR can only be numbered through 225.169.

(4) A new subsection 225.101–79 could be used as the 10th subsection supplementing FAR subsections that begin with FAR 225.101–1.

(5) A new subsection 252.225–7001 could be used as the second clause supplementing the FAR clauses prescribed by Part 25 beginning with 52.225–1. The number 7000 is used because of the potential existence of more than 20 clauses supplementing a given part over the lifetime of the FAR.

(6) Departmental supplementation of the FAR or this regulation will use the same rules, except that numbers 90 and above are reserved for supplementary material, and 9000 and above are reserved for supplementary clauses.

(c) *References and citations.*

(2) This regulation may be referred to as the Department of Defense Federal Acquisition Regulation Supplement, the DoD FAR Supplement, or the DFARS. Cross reference to the FAR in this regulation will cite "FAR" followed by the appropriate part, subpart, etc. References to this regulation will be without a name or acronym prefix. References to FAR citations in this supplement should be read to include the corresponding paragraphs of this supplement and any additional authorizations, restrictions, policies or procedures they may contain. For example, the words ". . . when authorized under FAR Part 25 . . ." include authorities granted under both FAR Part 25 and Part 225 of this supplement.

201.104-3 Copies.

Copies of the DoD FAR Supplement in loose-leaf and CFR form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

Subpart 201.2—Administration

201.201 Maintenance of the FAR.

201.201-1 The two councils.

(a) The Defense Acquisition Regulatory (DAR) Council shall maintain the FAR and the DoD FAR Supplement.

(c) The composition and operation of the DAR Council shall be as prescribed by DoD Directive 5000.35.

Subpart 201.3—Agency Acquisition Regulations

201.301 Policy.

(S–70) *Defense Acquisition Circulars.*

(1) In accordance with the authority in FAR 1.301, a Defense Acquisition Circular, supplementary to this regulation, shall be published as often as may be necessary or advisable for distribution to all recipients of this regulation. Material to be published in each Defense Acquisition Circular shall first be approved by the Defense Acquisition Regulatory Council.

(2) The purposes of the Defense Acquisition Circular are:

(i) To promulgate as rapidly as possible selected material revising this regulation.

(ii) To disseminate material applicable to procurement which is not suitable for insertion in this regulation, but which may have the effect of a directive to, or be of importance and interest to its recipients; and

(iii) To supplement this regulation as may be necessary to reduce the size and frequency of issue of subsidiary Departmental procurement instructions.

(3) Unless otherwise indicated in the introductory language preceding an item, each item in Defense Acquisition Circulars will remain in effect until specifically canceled.

(4) Statements in Defense Acquisition Circulars to the effect that the material published therein is "effective upon receipt" or upon a specified date, or that changes set forth in the circular are "to be used upon receipt," mean that any new or revised clauses or forms included in the circular shall be included in invitations for bids and requests for proposal issued thereafter, unless a different meaning is expressed in the circular. However, unless otherwise provided in the circular, the new or revised clauses or forms need not be included in solicitations already in process of preparation where their inclusion would cause an undue delay in the solicitation.

(5) As a convenience to the Departments and to insure early and wide dissemination, selected DoD policy promulgations of general interest to contracting activities are republished as DAC items. Unless otherwise indicated, subsequent cancellation of such DAC items is not to be construed as cancellation of the underlying policy. Cancellation of such policy will normally be accomplished by separate and specific OSD action.

201.304 Agency control and compliance procedures.

(b) (1) The Departments and their subordinate organizations shall not issue instructions (including directives, regulations, policies, or procedures), contract forms or contract clauses implementing or supplementing the FAR or this regulation, unless permitted by one of the following and if consistent with (b)(2) below:

(i) Internal procurement management instructions, such as designations and delegations of authority, assignments of responsibilities; work flow procedures, and internal reporting requirements;

(ii) Any special contract clause of a nonrepetitive nature designed specifically to accomplish the peculiar requirements of an individual procurement, provided a clause relating to the subject matter is not set forth in the FAR or this regulation.

(iii) A variation of any contract clause which is set forth in the FAR or this regulation but not for use verbatim, provided that such variation is not inconsistent with the intent, principle and substance of the FAR or DoD FAR Supplement clause or related coverage of the subject matter;

(iv) Interim instructions, including service test of new techniques or methods of procurement, having an effective duration not exceeding six months (unless approved for a longer period by the DAR Council) which are essential:

(A) To meet current operational needs, provided the instructions are submitted prior to issuance or immediately thereafter for consideration by the DAR Council; or

(B) To effect greater efficiency in procurement management, provided the instructions authorized are submitted for approval of the DAR Council prior to issuance;

(v) Procurement procedures specifically identified as being essential for carrying out the peculiar needs of specialized commodity areas when authorized by: for the Army, Deputy Assistant Secretary (Acquisition Office of the Assistant Secretary of the Army (Research, Development and Acquisition); for the Navy, Office of the Assistant Secretary of the Navy (Shipbuilding & Logistics), Director, Contracts & Business Management; for the Air Force, Director of Contracting and Manufacturing, Office of the Deputy Chief of Staff (Research, Development and Acquisition); for the Defense Logistics Agency, Executive Director, Contracting, or the Executive Director for Contract Management; for the National Security Agency, the Director; for the Defense Communications Agency, the Director; for the Defense Nuclear Agency, the Deputy Director, Operations and Administration; for the Defense Mapping Agency, the Staff Director of Logistics; and notification is given to the DAR Council immediately upon such authorization for the purpose of determining whether such procedures should be included in this regulation, or the FAR;

(vi) Procurement instructions specifically identified as being essential for carrying out the peculiar needs of overseas commands when authorized by the cognizant unified commander and notification is given to the DAR Council immediately upon such authorization for the purpose of determining whether such instructions should be included in this regulation or the FAR;

(vii) Material expressly determined by the DAR Council to be inappropriate for FAR or DoD FAR Supplement coverage, but appropriate for inclusion in Departmental publications.

(2) Instructions issued in accordance with FAR 1.304(a) shall not contain material which unnecessarily duplicates, is inconsistent with, or increases or restricts the use of, any authority contained in this regulation or the FAR.

(c) Each Department shall establish procedures to screen all instructions (including directives, regulations, policies or procedures), contract forms, and contract clauses issued pursuant to FAR 1.304(a) and (b) above to assure strict compliance with this paragraph, and to determine if the subject matter is appropriate for inclusion in this regulation or the FAR.

201.371 USEUCOM Supplement.

A supplement, entitled USEUCOM Supplement, is applicable to all purchasing offices of the Department of Defense in the North Atlantic-Mediterranean area, including all of Europe. The USEUCOM Supplement and changes thereto are developed by USEUCOM and concurred in by the Joint Acquisition Coordinating Board-Europe representing the purchasing offices in that area and, after adoption and approval by the Defense Acquisition Regulatory Council, are published and distributed by the Headquarters, United States European Command, as an integral part of this Regulation. In addition, Headquarters USEUCOM publishes Tabs to the USEUCOM Supplement which contain source and informational material (such as government-to-government agreements and tax information) and which do not require approval by the DAR Council.

Subpart 201.4—Deviations From the FAR

201.402 Policy.

(a) The FAR and the DoD FAR Supplement are not intended to stifle the development of new techniques or methods of procurement. Innovation to attain desirable objectives will occasionally necessitate deviations from this regulation and the FAR, and it is the responsibility of contracting officers to request such deviations whenever they are required in the best interest of the Government. For the purpose of this paragraph, a deviation shall be considered to be any of the following:

(1) When a contract clause is set forth in the FAR or DoD FAR Supplement for use verbatim, use of a contract clause covering the same subject matter which varies from the FAR or DoD FAR Supplement coverage, or use of a collateral provision which modifies either the clause or its prescribed application constitutes a deviation; however, in the case of a purchase or contract of an offshore contracting activity with a foreign contractor made outside the United States, its possessions, or Puerto Rico, such contract clauses may (subject to the direction of authority above the level of the contracting officer) be modified if no change in intent, principle, or substance is made (offshore contracting activities shall keep the cognizant unified commander advised of significant deviations effected under this subparagraph (1));

(2) When a contract clause is set forth in the FAR or this regulation but not for use verbatim, use of a contract clause covering the same subject matter which is inconsistent with the intent, principle and substance of the FAR or DoD FAR Supplement clause or related coverage of the subject matter;

(3) Omission of any mandatory contract clause;

(4) When a Standard, DD, or other form is prescribed by the FAR or a Department of Defense Directive, use of any other form for the same purpose;

(5) Alteration of a Standard, DD, or other form (other than Departmental forms), except as authorized by the FAR, this regulation, or a Department of Defense Directive;

(6) When limitations are imposed in FAR, this regulation, or a Department of Defense Directive, upon the use of a contract clause, form, procedure, type of contract, or any other procurement action, including but not limited to the making or amendment of a contract, or actions taken in connection with the solicitation of bids or proposals, award, administration or settlement of contracts, the imposition of lesser or greater limitations;

(7) When a policy, procedure, method or practice of conducting procurement actions of any kind at any stage of the procurement process is covered by the FAR or this regulation, any policy, procedure, method or practice which is inconsistent with that set forth;

(8) Issuance of any instructions described in 201.304 (including an instruction for any additional contract clause, form, or type, or additional procurement policy, procedure, method of practice, not covered in the FAR, this regulation or in Department of Defense Directives) unless permitted under 201.304;

(9) A contract saving clause whereby the parties are committed to a contract modification in the event of changes in controlling statutes or regulations during the term of the contract. Any such saving clause shall require approval pursuant to 201.404.

(b) Requests for approval of any deviation from the FAR or this regulation shall be forwarded to the approving authority through procurement channels. Each submission shall contain as a minimum:

(1) Identification of the FAR or DoD FAR Supplement requirement from which deviation is sought;

(2) A full description of the deviation and the circumstances in which it will be used;

(3) A description of the intended effect of the deviation;

(4) A copy of any pertinent document, including forms or clauses and the proposed contractor's request, if any;

(5) A statement of the period of time for which the deviation is needed; and

(6) Detailed reasons supporting the request.

201.403 Individual deviations.

(a) Except where elsewhere prohibited, deviations from the FAR or this supplement or a Department of Defense Directive which affect only one contract or procurement may be made or authorized in accordance with Departmental procedures, provided such circumstances justify a deviation, and written notice of such deviation, describing its nature and the basis for its justification, is furnished to each of the following:

The Deputy Assistant Secretary of Defense (Procurement), OASD(A&L) Attention: DAR Council, Washington, DC 20301-3062
The Assistant Secretary of the Army (RDA), Attn: DAR Council Policy Member—The Pentagon, Washington, DC 20310
The Assistant Secretary of the Navy (S&L), Attn: DARS Staff, Crystal Plaza, Bldg. 5, Washington, DC 20360
The Director of Contracting and Manufacturing Policy, Attn: AF/RDC (DAR)—The Pentagon, Washington, DC 20330
Executive Directorate, Contract Management, Defense Logistics Agency, Attn: DLA-AA—Cameron Station, Alexandria, VA 22314

Such written notice shall be given in advance of the effective date of such deviations unless exigency of the situation requires immediate action.

(b) Examples of deviations from certain provisions of the FAR or this regulation not permitted under (a) above, although affecting only one contract or procurement, are:

(1) Provisions required by statute or executive order;
(2) Subpart 227.4;
(3) Subpart 231.1;
(4) Subpart 231.2;
(5) Part 232 (except 232.7, 232.8, and the Payment clauses in 232.1).

201.404 Class deviations.

Except as authorized in 201.403, deviations from this supplement or a Department of Defense Directive will not be effected unless approved in advance by the Assistant Secretary of Defense (Acquisition and Logistics) (ASD(A&L)); provided, however that unanimous approval by the members of the DAR Council will constitute approval of the ASD(A&L) of all matters except those involving major policy. Written requests for such approval will be submitted to the ASD(A&L) through the DAR Council as far in advance as exigencies of the situation will permit.

201.405 Deviations pertaining to treaties and executive agreements.

(b) and (c) Notwithstanding 201.403 and 201.404, deviations from the FAR or this supplement that are required in order to comply with a treaty or executive agreement to which the United States is a party are authorized in accordance with FAR 1.405(b) and (c).

(d) A copy of the text of any deviation authorized under FAR 1.405(b) or (c) shall be submitted to the DAR Council.

(e) If a deviation required to comply with a treaty or an executive agreement is not authorized by FAR 1.405 (b) or (c), the request for deviation shall be submitted to the DAR Council for consideration.

Subpart 201.6—Contracting Authority and Responsibilities

201.601 Responsibility of each contracting activity.

Except as otherwise prescribed by procedures of each respective Department, the Head of a Contracting Activity is responsible for acquisitions under or assigned to that activity.

201.602 Authority of contracting officers.

201.602-1 Authority.

(a) Contracting officers at contracting offices are authorized to enter into contracts for supplies or services on behalf of the Government, and in the name of The United States of America, by sealed bidding, by negotiation, or by coordinated or interdepartmental acquisition; and, when authorized under FAR Part 42, to administer such contracts. This authority is subject to the requirements, consistent with this supplement and the FAR, imposed by the appointing authority. Contracting officers at contract administration offices are, except as provided in FAR Part 42, authorized to perform the applicable contract administration functions and to perform additional acquisition functions when delegated by the contracting office.

(b) Business clearances or approvals shall be obtained as prescribed by applicable departmental procedures.

201.603-3 Appointment.

Certificates of Appointment which were issued under the purview of the Armed Services Procurement Regulation and its successor, the Defense Acquisition Regulation, will have the same effect as if they had been issued under the Federal Acquisition Regulation.

201.670 Ratification of unauthorized commitments.

201.670-1 Authority.

Only contracting officers acting within the scope of their authority (see FAR 1.602) may enter into contracts on behalf of the Government. Subject to the limitations in 201.670-4 below, the Head of the Contracting Activity may ratify an unauthorized commitment, *provided:*

(a) The Government has obtained a benefit resulting from the unauthorized commitment;

(b) The Head of the Contracting Activity could have granted authority to enter into the commitment at the time it was made and still has the power to do so; and

(c) The resulting contract would otherwise have been proper if made by an authorized contracting officer.

201.670-2 Definitions.

"Ratification," as used in this section, means the act of approving an unauthorized commitment, by an official who has the authority to do so, for the purpose of paying for supplies or services provided to the Government as a result of the unauthorized commitment.

"Unauthorized commitment," as used in this section, means an agreement that is not binding solely because the Government representative who made it lacked the authority to enter into a contract on behalf of the Government.

201.670-3 Procedures.

(a) The authority of 201.670-1 above may be delegated in accordance with Departmental procedures, *provided*, that in no case shall this authority be delegated below the Chief of the Contracting Office.

(b) DoD components shall process unauthorized commitments using the ratification authority set forth herein in lieu of referral of such actions to the General Accounting Office for resolution as "quantum meruit/quantum valebat" claims.

201.670-4 Limitations on exercise of authority.

The authority in 201.670-1 above may be exercised only where—

(a) Supplies or services have been provided to and accepted by the Government;

(b) The contracting officer determines the price to be fair and reasonable;

(c) The contracting officer recommends payment and legal counsel concurs in the recommendation;

(d) Funds are available and were available at the time the unauthorized commitment was made;

(e) Administrative settlement of the unauthorized commitment would not involve a claim subject to resolution under the Contract Disputes Act of 1978.

201.670-5 Nonratifiable commitments.

Cases that are not ratifiable under this section may be subject to resolution as recommended by the General Accounting Office under its claim procedure (4 GAO 5.1), or as authorized by FAR Part 50. Legal advice should be obtained in these cases.

Subpart 201.7—Determinations and Findings

201.702 General.

(a) As an example of reasonable variations in estimated quantities, if at the time a D&F is submitted for approval, historical evidence indicates the possibility of increased quantities, e.g., requirements of other Departments, and Military Assistance Program requirements, the supporting data and the D&F may provide for limited additional quantities. Similarly, a provision may be included authorizing increased quantities if the acquisition process reveals that additional quantities can be acquired under the approved program and within available funds.

201.704 Content.

Additional guidance to that contained in FAR 1.704 for the preparation of a D&F is set forth with the appropriate subject matter. Where a format for a D&F is set forth with the appropriate subject matter, the D&F should conform generally to that format.

201.707 Signatory authority.

The Agency Head may make any of the determinations, and written findings in support thereof, that may be made by the head of any contracting activity signing as a chief officer responsible for contracting or by a contracting officer. Determinations, and findings in support thereof, not required to be made by higher authority may be made by the head of a contracting activity signing as chief officer responsible for contracting.

PART 202—DEFINITIONS OF WORDS AND TERMS

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 202.1—Definitions

202.101 Definitions.

"Department of Defense" means the Office of the Secretary of Defense and the Military Departments.

"Department" or "Military Department" includes the Department of the Army, the Department of the Navy, the Department of the Air Force, the Defense Logistics Agency, the Defense Communications Agency, the Defense Mapping Agency, the Defense Nuclear Agency, and the National Security Agency.

"Head of the Agency" means the Secretary of Defense, the Assistant Secretary of Defense (Acquisition and Logistics), the Secretary, Under Secretary or any Assistant Secretary of the Army, Navy and Air Force, and the Director and Deputy Director of Defense agencies, except to the extent that any law or executive order limits the exercise of authority to specific individuals at the Secretarial level. In the latter situation, the Assistant Secretary of Defense (Acquisition and Logistics), unless specifically restricted to the Secretary of Defense, shall exercise the authority for Defense agencies.

"Senior Procurement Executive" means for the:

Department of Defense, Deputy Secretary of Defense;

Army, The Assistant Secretary of the Army (Research, Development and Acquisition);

Navy, The Assistant Secretary of the Navy (Shipbuilding and Logistics);

Air Force, The Assistant Secretary of the Air Force (Research, Development and Logistics);

Defense Logistics Agency, the Deputy Director (Acquisition Management);

Defense Communications Agency, The Director, Defense Communications Agency;

Defense Mapping Agency, The Director of Acquisition;

Defense Nuclear Agency, The Director, Acquisition Management; and

National Security Agency, The Deputy Director, National Security Agency.

(a) *Contracting Activities* include:

For the Army:
Office of the Assistant Chief of Staff for Information Management;
Office of the Director, Contracting and Production, ODCSLOG;
Office of the Deputy Chief of Staff for Procurement and Production, Headquarters, U.S. Army Materiel Command;
U.S. Army Armament Munitions and Chemical Command;
U.S. Army Missile Command;
U.S. Army Electronics Research and Development Command;
U.S. Army Communications-Electronics Command;
U.S. Army Troop Support Agency;
U.S. Army Troop Support Command;
U.S. Army Tank-Automotive Command;
U.S. Army Aviation Systems Command;
U.S. Army Training and Doctrine Command;
U.S. Army Test and Evaluation Command;
U.S. Army Forces Command;
U.S. Army Health Services Command;
Military District of Washington, U.S. Army;
U.S. Army, Europe;
National Guard Bureau;
Office of the Chief of Engineers;
U.S. Army Information Systems Command;
U.S. Army Medical Research and Development Command;
U.S. Army Western Command;
Military Traffic Management Command;
U.S. Army Strategic Defense Command;
Eighth U.S. Army;
U.S. Army Depot Systems Command; and
U.S. Army Intelligence and Security Command.

For the Navy:
Office of Acquisition and Contract Policy, Office of the Assistant Secretary of the Navy, Shipbuilding and Logistics;
Director, Contracts and Business Management;
Naval Air Systems Command;
Naval Data Automation Command;
Naval Electronic Systems Command;
Naval Facilities Engineering Command;
Naval Sea Systems Command;
Naval Supply Systems Command;
Office of Naval Research;
Navy Aviation Supply Office;
Military Sealift Command;
Strategic Systems Project Office;
Ships Parts Control Center;
Headquarters, United States Marine Corps; and
Installations and Logistics Department, Headquarters, U.S. Marine Corps.

For the Air Force:
HQ USAF, Director of Contracting and Manufacturing Policy;
Air Force Logistics Command;
Air Force Systems Command;
Strategic Air Command;
Tactical Air Command;
Air Force Communications Command;
Military Airlift Command;
Air Training Command;
Pacific Air Forces;
United States Air Forces in Europe;
Alaskan Air Command; and
Space Command.

For the Defense Logistics Agency:
Office of the Executive Director, Contract Management;
Office of the Executive Director, Contracting;
Defense Supply Centers; and
Defense Personnel Support Center.

For the Defense Communications Agency:

Headquarters, Defense Communications Agency; and
Defense Commercial Communications Office.

For Defense Mapping Agency:
Headquarters, Defense Mapping Agency, Logistics Office.

For the Defense Nuclear Agency:
Headquarters, Defense Nuclear Agency.

For the National Security Agency:
Headquarters, National Security Agency.

For the Defense Supply Service—Washington:
Director, Defense Supply Service—Washington.

(b) "Contracting activity" also includes any other contracting activity hereafter established. The number and designation of particular contracting activities of any Military Department may be changed by directive of the Secretary.

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

203.000 Scope of part.

Reports of suspected criminal conduct, noncompetitive practices, kickbacks, and other procurement irregularities shall be made by each Department in accordance with procedures set forth in 209.472 and Departmental procedures. Such reports are specified by 203.103–2, 203.203, 203.301, 203.409, and 203.502 of this Part.

Subpart 203.1—Safeguards

203.101 Standards of conduct.

203.101–3 Agency regulations.

The applicable Department of Defense directive on Standards of Conduct is DODD 5500.7. See AR 600–50 for the Army; SECNAV Instr. 5370.2G of 4 August 1977, for the Navy; AFR 30–30, for the Air Force; DLAR 5500.1, for the Defense Logistics Agency; DCA Inst. 220–50–1, for the Defense Communications Agency; DNA Inst. 5500.7A, for the Defense Nuclear Agency; and DMA Inst. 5500.1, for the Defense Mapping Agency.

203.103 Independent pricing.

203.103–2 Evaluating the certification.

(b) (3) Whenever an offer is rejected under FAR 3.103–2(b) (1) or (2), or the certificate is suspected of being false, the matter shall be reported in accordance with 203.000 as well as being reported to the Attorney General in accordance with FAR 3.303.

Subpart 203.2—Contractor Gratuities to Government Personnel

203.203 Reporting suspected violations of the Gratuities clause.

Suspected violations of the Gratuities clause shall be reported in accordance with 203.000 and Departmental procedures.

203.204 Treatment of violations.

Procedural requirements for hearings under the Gratuities clause are set out in Appendix D.

Subpart 203.3—Reports of Suspected Antitrust Violations

203.301 General.

(b) Suspected antitrust violations shall be reported in accordance with 203.000 and Departmental procedures.

Subpart 203.4—Contingent Fees

203.409 Misrepresentations or violations of the convenant against contingent fees.

(b) When the chief of the contracting office has reviewed the facts and found evidence or basis for suspicion of fraud or other criminal conduct, the matter shall be reported in accordance with 203.000 and Departmental procedures.

203.410 Records.

Where the receipt of a new Standard Form 119 makes previously received information obsolete, the obsolete information may be destroyed if its retention is no longer needed for enforcement purposes.

Subpart 203.5—Other Improper Business Practices

203.502 Subcontractor kickbacks.

Suspected violations of the Anti-Kickback Act shall be reported in accordance with 203.000 and Departmental procedures.

203.570 Implied endorsement by military resale activities.

The contracting officer shall include the clause at 252.203–7000 in all solicitations and contracts for supplies purchased for resale to preclude any implied endorsement by military resale activities of commercially advertised products.

PART 204—ADMINISTRATIVE MATTERS

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 204.1—Contract Execution

204.170 Contracting Officer or Point of Contact Telephone Number.

The name and telephone number of the contracting officer or point of contact at the office awarding the contract shall be identified in the contract. The name and telephone number of the contracting officer or point of contact at the office which issues a modification shall be identified in the modification.

Subpart 204.2—Contract Distribution

204.201 Procedures.

(e) One copy of each of the following type contracts and of each modification thereto shall be distributed to the appropriate Defense Contract Audit Agency (DCAA) field audit office (listed in the DCAA Directory—Headquarters and Field Offices):
(1) Cost reimbursement
(2) Time-and-materials
(3) Labor-hour
(4) Fixed price contracts with provisions for redetermination, incentives, economic price adjustment, or cost allowability
(5) Any other contract which requires audit service. (If there is a question as to the appropriate DCAA field audit office, contracting officers may request the assistance of the DCAA procurement liaison auditor or the nearest DCAA field audit office.)

(f) Two copies shall be distributed directly to the contract administration office cognizant of each manufacturing location where contract administration services will be required (see DoD Directory of Contract Administration Services Components 4105.59H), when administration of the contract is performed at other than the place of manufacture.

204.202 DoD distribution requirements.

(a) The contracting officer executing a contract or modification is responsible for complete distribution of the document.

(b) Except as provided in this paragraph and FAR 4.201(a), the procuring contracting officer shall maintain the original executed procurement document in the official contract file. The original of each modification executed by the ACO or TCO shall be provided to the PCO. Unless otherwise directed by the Department concerned, the original executed copies of orders under Basic Ordering Agreements and the original executed provisioning orders shall be maintained by the office issuing the orders.

(c) In addition to the distribution in FAR 4.201, copies of contracts (including agreements) shall be distributed as specified below:
(1) Four copies to the contract administration office (distribution shall be effected simultaneously with the copy furnished under FAR 4.201(b));
(2) One copy to each consignee indicated in the contract (a transshipping terminal is not a consignee);
(3) One copy to the appropriate transportation office when required by FAR 42.1402, and additional copies as required by Departmental regulations;
(4) Ten copies to the MIPR initiating activity in the case of coordinated procurement;
(5) One copy to the CAO ADP point, except when the DoDAAD code (see DoD Directory 4105.59H) is the same as that of either the CAO or payment office.

(d) When a payment office is added to, or changed under, an existing contract by modification, a copy of the basic contract and all modifications thereto shall be furnished to the added/new payment office. A copy of the modification affecting such addition or change shall also be furnished to the original or losing payment office. When a contract administration office, an accounting office and finance office (funding office), a consignee or other activity is added by a modification, the contracting officer shall determine the extent to which each activity is concerned with the basic contract and modifications and make distribution accordingly.

(e) Distribution of modifications issued pursuant to 204.7004–3(a)(2)(B) and 204.7004–4(b)(2) may be limited to the following:
(1) Contractor;
(2) Receiving Activity;
(3) Contract Administration Office;
(4) Payment Office;
(5) CAO ADP point in accordance with (c)(5) above.

(f) Distribution of overhead rate agreements may be limited to the contractor and the executing contracting officer.

(g) Distribution of contract modifications generated by mechanical means (computer program) may be limited to the following:
(1) Contractor, one copy;
(2) CAO, one copy;
(3) New Payment Office, one copy;
(4) PCO, one copy;
(5) Funding Activities, one copy to each.

Subpart 204.6—Contract Reporting

204.670–1 Scope.

This section prescribes uniform reports which are required to be prepared by purchasing and contract administration offices in order to meet the requirements of the Federal Procurement Data System and provide management with necessary information to help formulate, change or measure the effectiveness of acquisition policy.

204.670–2 Definitions.

As used in 204.671 and 204.672, the following terms have the meanings stated below.

"Contract Administration Office" means the office which awards or executes a contracting action as defined below when such action is accomplished by an ACO on behalf of the Contracting Officer who assigned contract administration responsibility to that office, including actions taken by a TCO relating to the settlement of terminated contracts.

"Contracting Action" means any written action obligating or deobligating funds in connection with the purchasing, renting, leasing, or otherwise obtaining supplies, services, or construction. The term includes: preliminary contractual instruments; letter contracts; definitive contracts, including notices of award; purchase orders; BPA calls; imprest fund purchases; SF 44 purchases; job orders; task orders; delivery orders; contingency orders; administrative notices; communication services authorizations (CSA's); production lists; priced exhibits; other orders against existing contracts; and contract modifications such as change orders or agreements, supplemental agreements, funding changes, option exercises, and notices of termination or cancellation.

"Contracting Office" means any office which awards or executes a contracting action when that action is accomplished by the Contracting Officer. Included in the term are activities which place orders under DoD contracts, under another agency contract, or under GSA Federal Supply Schedule, when such action is not taken in conjunction with an assigned contract administration responsibility.

204.670–3 DUNS number.

Contracting Officers shall insert in solicitations exceeding the small purchase limit the provision at 252.204–7004 to request the offeror to supply his Data Universal Numbering System (DUNS) Number.

204.670–4 Distribution of defense subcontracts placed oversees.

To assist DoD monitoring of arms cooperation agreements with friendly governments, the clause at 252.204–7005 shall be inserted in any contract in excess of $500,000, or when any modification increases the amount of a contract to more than $500,000. In the latter case, the reporting requirement will not be retroactive to require the reporting of subcontracts awarded prior to the modification. This clause shall not be inserted in contracts for ores, natural gas, utilities, petroleum products and crudes, timber (logs) and subsistence.

204.671 Individual Contracting Action Report (DD Form 350).

204.671–1 Scope.

This section prescribes the reporting on DD Form 350 of individual contracting actions in excess of $25,000. This reporting requirement has been assigned Report Control Symbol: DD–DR&E(M) 1014.

204.671–2 Purpose.

The DD Form 350 is used to collect data on contract placement statistics within DoD. The data gathered by means of the DD Form 350 are used for reporting the size and distribution of DoD contracting actions; types of contracts used; methods used in contracting; numbers and amount of contracts placed with categories of contractors such as small, small disadvantaged, and women-owned small business concerns; the extent of competition achieved; and other essential facts about contract actions over $25,000 written by DoD. In many respects, the data summarized from the DD Form 350 are used to measure the efficiency and adequacy of the way in which the DoD acquisition program is executed. The data serve as the basis for internal DoD reports as well as reports to other departments of the executive branch, Congress, GAO, etc. They frequently provide a basis for new or revised acquisition policies. Therefore, it is most important that accurate and complete data be reported in a timely manner through the DD Form 350.

204.671–3 Applicability and coverage.

(a) DD Form 350 consists of 6 parts. Part A identifies the report and the reporting activity. Part B identifies the transaction: contract number, contractor, dollars, product, etc. Part C gathers data concerning contracting procedures and methodology. Part D gathers data relating to the placement of the contract and to several statutory

requirements relating to DoD acquisitions. Part E is set aside for departmental or higher authority use. Part F identifies the cognizant reporting official.

(b) DD Form 350 shall be prepared (typewritten or machine produced equivalent) for each contracting action obligating or deobligating more than $25,000 which is executed by a Component of the Department of Defense except as indicated in (d) below. At the option of the headquarters of the Departments, contracting offices may submit an automated record in lieu of a DD Form 350; *Provided*, that the contract file reflects such information on a separate worksheet or printout for each individual contracting action in excess of $25,000.

(c) Multiple reports are required for a single action when both the Foreign Military Sales Program and other programs are involved (see 204.671–5(b)(12)). Multiple reports may be required if more than one type of contract is involved (see 204.671–5(c)(6)(ii)).

(d) DD Form 350 shall not be prepared for the following contracting actions:

(1) Transactions which cite nonappropriated funds, such as funds belonging to the Army and Air Force Exchange Service. Funds held in trust accounts for foreign governments shall be treated as appropriated funds.

(2) Transactions for leased communications placed by the Defense Communications Agency, Defense Commercial Communications Office (DECCO).

(3) Transactions for purchase of land, or rental or lease of real property.

(4) Orders from GSA Stock and the GSA Consolidated Purchase Program.

(5) Transactions which involve Government bills of lading or transportation requests.

(6) Grants for basic research with educational institutions and other nonprofit organizations.

(7) Orders placed against indefinite delivery type contracts entered into by the Defense Fuel Supply Center, the Defense General Supply Center (for petroleum and petroleum products), and the Military Sealift Command. The estimated value of the orders to be placed in each fiscal year against each Military Sealift Command contract shall be reported on a separate DD Form 350 in the appropriate fiscal year. The total estimated value of the orders to be placed against each Defense Fuel Supply Center contract, and each Defense General Supply Center contract for petroleum and petroleum products, shall be reported at the time of contract award.

(8) Awards to individuals in support of dependent schools, e.g., principals and teachers. These transactions shall be consolidated monthly and the cumulative dollar amount reported on a single DD Form 350.

(9) Military Airlift Command awards for international airlift services. These actions shall be reported at the end of each operating month by the issuance of one master DD Form 350 for each airlift contract.

(10) Orders placed by the Services for resale items in excess of $25,000 against brand name contracts entered into by the Defense Logistics Agency and published in Supply Bulletin Series 10–500. Orders under each such contract shall be consolidated monthly by the Services and cumulative dollar amounts reported on a single DD Form 350 in accordance with departmental regulations. DLA activities shall submit individual rather than consolidated reports.

(11) Vouchers processed by the U.S. Army Contracting Agency, Europe (USACAE), for the purchase of utilities from municipalities, such as gas, electricity, water, sewage, steam, snow removal, and garbage collection. These transactions shall be consolidated monthly and the cumulative dollar amount reported on a separate DD Form 350 in accordance with departmental regulations.

204.671–4 Due date and distribution.

(a) The signed original of each DD Form 350 shall be forwarded by the contracting office within 3 working days after the date on which the dollars were actually obligated or deobligated by the contracting office, with the following exceptions:

(1) For those Defense Fuel Supply Center major petroleum acquisitions which result in multiple awards, the signed original of the DD Form 350 shall be forwarded within 10 working days.

(2) For actions executed in the month of September only, prescribed due dates may be extended 10 calendar days for the forwarding of reports in order to assure complete coverage of all contracting actions occurring in the fiscal year at the option of the activity set forth in 204.671–4(d) below.

(b) Corrected reports shall be distributed in exactly the same manner as original reports.

(c) DD Forms 350 shall be submitted as unclassified documents. If necessary, the commodity description (Item B8B) may be omitted and the word "classified" inserted in lieu thereof. In addition, enter 9999 in Block B8A and zeros (000) in Blocks B8B and B8C. Should further modification of coding of items on DD Form 350 be deemed necessary for security classification purposes, the appropriate departmental offices identified in (d) below shall be contacted for special instructions.

(d) Distribution of DD Form 350 shall be as follows:

(1) Army contracting offices (including Corps of Engineers Civil Works) to HQDA(JDHQ–SV–W–P), Washington, DC 20310–0600.

(2) [Reserved]

(3) Navy contracting offices as directed by COMNAVSUP(SUP–024).

(4) Air Force contracting offices as directed by HQ USAF.

(5) Defense Logistics Agency contracting offices as directed by HQ DLA.

(6) All other contracting offices of the Department of Defense shall forward the signed originals to HQDA(JDHQ–SV–W–P), Washington, DC 20310–0600.

(e) Contracting offices shall prepare DD Form 350 for contracting actions in excess of $25,000 which are reportable in accordance with 204.671–3 and are accomplished by contract administration offices. To facilitate such reporting, the ACO or TCO, within one working day after the action date, shall transmit to the contracting office on whose behalf the action was taken a copy of the contractual instrument clearly annotated in the heading in large block letters as the "DD FORM 350 REPORTING COPY." The contracting office shall prepare and submit the DD Form 350 within 3 working days after the receipt of this "REPORTING COPY."

204.671–5 Instructions for completion of DD Form 350.

(a) *Part A of DD Form 350*—(1) *Item A1, Type of report.* (i) If this is an original report, enter code zero in Item A1 and complete sections A through F as appropriate.

(ii) If it is necessary to cancel a previously submitted report in its entirety, i.e., the report should not have been submitted, then enter Code 1 in Item A1 and complete Items A2, A3, and B1 only.

(iii) To change any data elements on a previously submitted report, enter Code 2 in Item A1, enter in Items A2, A3, and B1 the same codes that were entered on the report being changed, and enter the corrected codes in each other item being corrected. Leave all other items blank. If it is necessary to change Item A2, A3, or B1 on a previously submitted report because a code was incorrect, that report must be canceled and a new "original" report submitted.

(2) *Item A2, Report number.* (i) Each contracting office shall assign to DD Form 350 a unique 4-position number with alpha or numeric characters. If more than one activity within a contracting office utilizes the same reporting office code, the contracting office shall assign separate blocks of numbers to each such activity in order to prevent duplication of report numbers.

(ii) If Item A1 is coded 1 or 2 (a canceling or correcting action), then enter the report number assigned to the report being canceled or corrected.

(3) *Item A3, Contracting office code.* Enter in Item A3 the code assigned to the contracting office in accordance with DoD Procurement Coding Manual, Volume III.

(4) *Item A4, Name of contracting office.* Enter in the space provided sufficient detail to establish the identity of the contracting office submitting the report.

(b) *Part B, DD Form 350*—(1) *Item B1, Contract number.* Enter, left justified, either the Department of Defense contract number or, for orders under contracts awarded by other Federal agencies, the contract number of that Federal agency.

(i) For DoD contracts, enter the basic (13 alpha-numeric character) procurement instrument identification number (PIIN) that was assigned in accordance with 204.70. Contracts numbered under exceptions permitted by 204.7001 shall include the identification of the contracting office and the fiscal year in accordance with 204.7003–1 (a) and (b) and Appendix N, plus 5 characters. Do not enter other supplementary procurement instrument numbers as part of the contract number; such numbers shall be entered in Item B2. Also, do not enter dashes, slants, or similar punctuation marks, and do not show spaces between numbers or letters in the PIIN.

(ii) For other agency contracts, enter the contract number of the Federal agency as it appears in the contractual instrument, except that spaces between characters shall not be shown, and dashes, slants, and other punctuation marks shall not be entered (e.g., for GS–00S–27773, enter GS00S27773; for GP–16251 A, enter GP16251A, etc.).

(2) *Item B2, Modification, order or other supplementory procurement instrument identification number.* If applicable, enter the supplementary procurement instrument identification number (up to 13 characters) that was assigned in accordance with 204.7004 or other identification permitted by 204.7001.

(3) *Item B3, Action date.* Enter the year, month and day when a mutually binding agreement was reached. This shall be the effective date for fiscal obligation purposes. As a general rule, this occurs when a notice of award or fully executed document is manually delivered or placed in the mail to the contractor. Enter each segment as a 2-digit number using 01 through 12 for January through December. For example, enter 2 January 1984 as 840102. For contracts awarded in one fiscal year and not effective until a subsequent fiscal year because they are contingent on the availability of funds or for other reasons, the date shall be the date of the fund availability or the date when the contract becomes effective (see 204.671–5(b)(13) (iii) and (viii)).

(4) *Item B4, Contractor identification information*—(i) *Item B4A, DUNS number.* Enter the 9-position number assigned by Dun and Bradstreet, Inc. (excluding dashes) that identifies the contractor establishment receiving the award. This DUNS Contractors Establishment Number should be for the division or plant identified. For contracts placed with the Small Business Administration pursuant to the Small Business Act—Pub. L. 85–536, section 8(a), or orders placed against a contract awarded by another agency, enter the DUNS code for the contractor establishment which will be performing under the contract. The DUNS Contractor Establishment Number is available from one of the following sources:

(A) The offeror's response to the solicitation;

(B) If not provided with the offer, the successful offeror shall be contacted and requested to supply his applicable 9-digit number;

(C) If not provided by the successful offeror, the Federal Procurement Data Center (FPDC) DUNS Contractor Identification File, Alphabetical Listing shall be consulted.

(D) If this listing has no entry or has multiple DUNS codes for the establishment, the applicable 9-digit number shall be obtained by contacting a Dun and Bradstreet, Inc., representative at the following commercial telephone numbers: 215–776–4388/4389/4390/4391. All requesters should provide the following information:

(*1*) Name of requesting contracting office;

(*2*) Contracting location (city/town; state/country) and commercial telephone number (including area code);

(*3*) Name of individual making the request;

(*4*) The total number of requests, if more than one; and

(*5*) Contractor establishment name, street address (and/or P.O. Box), city/town, state/country, and ZIP code, if applicable, as displayed in Items B4B and B4C.

(ii) *Item B4B, Contractor name.* In the space provided, enter the name (including division name) of the contractor.

(iii) *Item B4C, Contractor address.* In the space provided, enter the address of the contractor. Include street address (and/or P.O. Box), city/town, state/country, and ZIP code, if applicable.

(5) *Item B5, Principal place of performance.*

(i) Principal place of performance, in general, refers to the prime contractor's final assembly point of a manufactured article, construction site, place of mining, or place where a service is performed for the Government, including military installations. If more than one location is involved, show the location involving the largest dollar amount of the acquisition. Do not show more than one location in Item B5. Do not leave the "name" portion of Item B5 blank.

(A) For purchase from regular dealers (FAR 22.601), the place of performance shall be the dealer's location if shipment is made from stock, or the subcontractor's location if shipment is made from a subcontractor's plant.

(B) For construction contracts, report the actual site of construction.

(C) For architect-engineering contracts, report the planned site of the construction.

(D) In cases where the places of performance will be varied or unknown, enter the home office location of the contractor.

(E) Where labor surplus area set-aside preference is given, the principal place of performance shall be the city and state of the area which determined the preference.

(ii) *Item B5A.* Enter the city or place code from Federal Information Processing Standard (FIPS) Publication 55, "Names of Populated Places and Related Entities of the States of The United States," of the principal place of performance. If the city or locality is not listed in FIPS Publication 55, find the nearest county in FIPS Publication 55, and enter the 3-digit numeric county code, preceded by 2 zeros. Leave this item blank for Washington, DC and foreign countries.

(iii) *Item B5B.* Enter the state or country code from the list published by the Director, Federal Procurement Data Center for the principal place of performance. For Washington, DC, enter "11" and leave Item B5A blank.

(iv) *Item B5C.* Enter the name of the principal place of performance. If the

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location is the same as for Item B4C, enter the word "same".

(6) *Item B6, Type of obligation.* This item is used to identify the nature of the amount to be entered in Item B7. Enter Code 1 to show an obligation; Code 2 to show a deobligation; if reporting the award of an unfunded contract, e.g., unobligated requirements type contract, enter Code 3 and leave Item B7 blank. Do not enter Code 3 to establish a Basic Ordering Agreement (BOA). Only orders against BOAs are reportable, and then only under Codes 1 or 2.

(7) *Item B7, Total dollars (obligated/deobligated).* Enter the net amount of funds obligated or deobligated by the contractual instrument being reported. Enter whole dollars only. Leave blank if Item B6 is Coded 3.

(8) *Item B8, Principal product or service.*

(i) *Item B8A, FSC or service code.* Enter a Federal Supply Classification Code, a Research, Development, Test and Evaluation (RDT&E) Code, or a Service Code in accordance with section I, Volume I of the Department of Defense Procurement Coding Manual (DoD 4105.61M). Each DD Form 350 must contain a 4-character entry for this item. If more than one classification is applicable to the contracting action, enter the one accounting for the largest dollar volume of acquisition.

(A) *Research, development, test, and evaluation.* (RDT&E) is defined in FAR 35.001. Each DD Form 350 action for RDT&E shall be assigned a code beginning with the letter "A" in accordance with Section I, Part A of the referenced coding manual. Do not assign RDT&E codes for the acquisition (including rental or lease) of equipment, supplies, or services separately purchased in support of RDT&E work. Acquisition of services or supplies that is incidental to the fulfillment of RDT&E work, but does not require contractor RDT&E performance, shall be coded in accordance with Parts B and C, Section I of the referenced coding manual, even though such purchases are in support of RDT&E work and RDT&E funds are cited. In no case shall RDT&E codes be assigned for orders under GSA Federal Supply Schedule contracts.

(B) *Services.* All services (except RDT&E actions) and lease or rental of equipment or facilities shall be coded in accordance with Part B, Section I of the referenced coding manual. Each category is assigned a series of 4-character codes for specific types of services and construction.

(C) *Supply.* Acquisition of supply items shall be assigned a Federal Supply Classification (all numeric) Code from Part C, section I of Volume I of the referenced coding manual. The Department of Defense Federal Supply Classification Cataloging Handbooks H2–1, H2–2, and H2–3 also may be used as a reference in identifying the correct 4-character code. Lease or rental of equipment/facilities should be coded as a service in accordance with Part B, Section I of the referenced coding manual.

(ii) *Item B8B, DD claimant program code.* Enter the appropriate DDCP code that identifies the commodity described in Item B8D. Claimant Program Codes are defined in section III, Volume I of the referenced coding manual. If the description in Item B8D is for research and development, the objective of the research and development shall control the DDCP code to be entered; e.g., if the objective of the research and development is a guided missile, enter Code A20. If the description in Item B8D is for research that cannot be identified with a particular claimant program, enter Code S10. Contracts for ship repair, inspection, and repair as necessary (IRAN), modification of aircraft, overhaul of engines, and like maintenance, repair or modification services shall be identified with a particular claimant program where possible. Equipment rental (including rental of automated data processing equipment (as defined at Part 270)) and utility services shall be coded S10. If a particular claimant program cannot be identified, enter Code S10 for services and code C9E for supplies or equipment.

(iii) *Item B8C, System or equipment code.* Enter the appropriate weapons system or equipment code in accordance with section II, Volume I of the referenced coding manual. If a weapon system or equipment code is not applicable, enter 3 zeros. This reporting requirement is not applicable to the Defense Logistics Agency.

(iv) *Item B8D, Name or description.* Enter the name or brief description of commodity or service. When the description of a commodity or service is classified, enter only the word "Classified;" however, do not specify "Classified" if a code name, such as Minuteman, Polaris, Trident, Pershing, etc., or an identifying program number; e.g., WS–107A, can be used without classifying the report.

(9) *Item B9, Consulting services contract.* Enter Code 1 if the services being acquired are consulting services as defined in FAR 37.201; otherwise enter Code 2.

(10) *Item B10, Multi-year contract.* Enter Code 1 if this report concerns multiyear contracting for supplies or services pursuant to FAR 17.1; otherwise, enter Code 2.

(11) *Item B11, Total multi-year value.* Enter the estimated multiyear contract value if Item B10 is coded 1 and Item B13 is coded 1 or 3; otherwise, leave blank.

(12) *Item B12, Foreign military sales.* Enter Code 1 if the contracting action is under foreign military sales arrangements, or under any other arrangements whereby a foreign country or international organization undertakes to bear the cost of the procurement. If not, enter Code 2. If only part of a contracting action is for foreign military sales, that part (if in excess of $25,000) shall be reported on one DD Form 350, and the other part (if in excess of $25,000) shall be reported on a second DD Form 350. Any part of $25,000 or less shall be reported on the DD Form 1057. If this item is coded 1, do not complete Parts C and D.

(13) *Item B13, Kind of contracting action.* Enter one of the available codes as appropriate. Do not complete Part D of DD Form 350 if Item B13 is coded 6, 7, or 8. For pre-CICA contracting actions, if Item B13 is coded 6, 7, or 8, do not complete Part C of DD Form 350. For post-CICA contracting actions, if B13 is coded 7, complete only Items C9 and C10 of Part C.

(i) *Code 1. Initial letter contract*—Enter this code when a new letter contract is executed. (For a letter contract which is designated as a modification of an existing contract, enter Code A.)

(ii) *Code 2. Definitive contract superseding letter contract*—Enter this code when applicable. (For a definitive modification which supersedes a letter contract designated as a modification of an Existing contract, enter Code A.)

(iii) *Code 3. Definitive contract (including notice of award)*—Enter this code when the first binding document is the instrument containing all the terms and conditions of the agreement. Also enter code 3 for a modification which is the initial citation and obligation of funds for a contract awarded in one fiscal year but not effective until a subsequent fiscal year because it was contingent on the availability of funds or for other reasons. Use this code for definitive contract awards under the Small Business Administration 8(a) Program.

(iv) *Code 4. Order under DoD basic ordering agreement*—Enter this code when reporting orders under basic ordering agreements, priced exhibits and production lists entered into by a DoD Component. Use Codes A–G, as appropriate, for modifications of such orders.

(v) *Code 5. Order under DoD contract*—Enter this code when reporting orders against indefinite delivery type contracts, DLA schedules, job orders, task orders, and the like where firm obligations are created by the issuance of such documents and where the basic contract was awarded by a DoD Component. Use this code for orders placed under DoD contracts with the Small Business Administration 8(a) Program. Also use this code for contracting actions from Workshops for the Blind or Other Severely Handicapped. Use Codes A–G, as appropriate, for modifications of such orders.

(vi) *Code 6. Order under mandatory GSA Federal Supply Schedule*—Enter this code for all contracting actions (including modifications) under mandatory GSA Federal Supply Schedule contracts (see FAR 8.401). Also enter this code for all contracting actions (including modifications) under mandatory GSA ADP Schedule contracts and mandatory GSA Area Contracts for Utility Services.

(vii) *Code 7. Action with another Federal agency*—Enter this code for all contracting actions (including definitive contracts, orders, and contract modifications) from or through other Federal agencies (except General Services Administration), such as the Government Printing Office, Federal Prison Industries, Veterans Administration, Tennessee Valley Authority, and the Departments of Treasury, Agriculture and Energy.

(viii) *Code 8. Order under optional GSA Schedule*—Enter this code for all nonmandatory contracting actions (including modifications) under GSA Federal Supply Schedule contracts (see FAR 8.402). Also enter this code for all contracting actions (including modifications) under nonmandatory GSA ADP Schedule contracts and nonmandatory GSA Area Contracts for Utility Services.

(ix) *Code A. Additional work, new agreement*—Enter this code when additional work is acquired by means of a supplemental agreement as follows:

(A) Bilateral modifications which increase the scope existing contracts, including letter contracts.

(B) Modifications which are the initial citation and obligation of funds for a supplemental agreement to increase quantities or extend performance that was awarded in one fiscal year but not effective until a subsequent fiscal year because it was contingent on the availability of funds or for other reasons.

(x) *Code B, Additional work, other*—Enter this code when additional work is acquired by means of modification to the basic contract as follows:

(A) Exercise of options for increased quantities or extended performance.

(B) Incremental yearly buys under multiyear contracts.

(C) Amendments to letter contracts, supplemental agreements, and other modifying actions which add work and are made pursuant to the terms of existing contracts.

(xi) *Code C. Funding action*—Enter this code for amendments to letter contracts and other contract modifications which do not change the scope of work of the existing contract but obligate or deobligate funds. This includes, by way of illustration, incremental funding (other than incremental yearly buys under multiyear contracts), increasing the estimated cost on cost-reimbursement contracts, and repricing actions covering incentive price revision, and economic price adjustment. Do not use this code for a modification which is the initial citation and obligation of funds for a contract/modification awarded in one fiscal year but not effective until a subsequent fiscal year because it was contingent on the availability of funds or for other reasons (see (iii) and (ix)(B) above). For funding actions involving the kinds of contracting actions covered in (iv), (v), (vi), and (vii) above, codes 4, 5, 6, and 7 shall be used as appropriate.

(xii) *Code D. Change order*—Enter this code when reporting change orders issued pursuant to the "Changes," "Differing Site Conditions," or similar provisions of existing contracts.

(xiii) *Code E*—Enter this code for termination for default.

(xiv) *Code F*—Enter this code for termination for convenience.

(xv) *Code G*—Enter this code for cancellation.

(c) *Part C of DD Form 350—Solicitations issued prior to 1 April 1985 (pre-CICA) (see 4.671–5(d) for solicitations issued on 1 April 1985 or later (post-CICA)).* The following rules apply to each of the items listed in Part C of DD Form 350: If Item B12 is coded 1 or if Item B13 is coded 6, 7, or 8 leave all items in this Part C blank. If Item B13 is coded 1 through 4 or A, coding of all items in this Part C shall be accomplished in accordance with the coding instructions for that item. If Item B13 is coded 5, or B through G, enter the same code in each item in Part C that was reported on the DD Form 350 to the original contract governing this transaction except as provided for by Code 0 in (2) below. If a DD Form 350 to the original contract was not submitted because a DD Form 350 was not required, enter the code which is applicable to the original contract governing this transaction.

(1) *Item C1, Synopsis in Commerce Business Daily.* Enter Code 1 if a synopsis of the proposed action was prepared and transmitted in accordance with FAR 5.2. If not, enter Code 2.

(2) *Item C2, Reason not synopsized.* Enter the applicable code as follows:

Code and Reason	
0	Original estimate less than $10,000, or contract made outside the United States, its possessions and Puerto Rico, or the reason for the original exemption is no longer coded;
1	The contracting action for security reasons is of a classified nature;
2	Contracting action of perishable subsistence when made by placement of an order under a contract covered by FAR 16.5;
3	Contracting action is for utility services and only one source is available;
4	Contracting action which is of such unusual and compelling urgency that the Government would be seriously injured by the delay involved in permitting the date set for receipt of bids, proposals, or quotations to be more than the time periods specified at FAR 5.203;
5	Contracting action to be made by an order placed under an existing contract covered by FAR 16.5;
6	Contracting action to be made from another Government department or agency, including contracting actions with SBA using the authority of section 8(a) of the Small Business Act, or a mandatory source of supply such as an agency for the blind under the blind-made products program;
7	Contracting action that results from acceptance of a proposal pursuant to the Small Business Innovation Development Act of 1982 or an unsolicited proposal that demonstrates a unique or innovative research concept and publication of such unsolicited proposal would improperly disclose the originality of thought or innovativeness of the proposed research;
8	Contracting action for which a foreign government reimburses the Department for the cost of the contracting action for the property, supplies, or services for such government and only one source is available, or the terms of an international agreement or treaty between the United States and a foreign government authorize or require that all such acquisition shall be from sources specified within such international agreement or treaty;
9	When it has been determined in writing by the Secretary, with the concurrence of the Administrator of the Small Business Administration, that advance notice is not appropriate or reasonable.

(3) *Item C3, Method of contracting.* Enter Code 1 when accomplished by formal advertising; enter Code 2 when accomplished by negotiation, including restricted advertising actions and

modifications made pursuant to the provisions of Pub. L. 85–804. When Code 1 is entered, no entries shall be made in Items C4 and C5.

(4) *Item C4, Negotiation authority.* This item shall be completed where Item C3 was coded 2. Enter the code below which corresponded to the negotiation exception of 10 U.S.C. 2304(a) (see FAR 15.201–15.217) cited as the negotiation authority in effect when the solicitation was issued.

Code and Negotiation Authority

0101 Labor Surplus Area Set-Aside
0102 Unilateral Small Business Set-Aside
0200 Public Exigency
0400 Personal or Professional Services
0500 Services of Educational Institutions
0600 Purchases Outside the United States
0700 Medicines or Medical Supplies
0801 Supplies Purchased for Authorized Resale
0900 Perishable or Nonperishable Subsistence Supplies
1001 Sole Source of Supply
1002 Patent Rights or Copyrights
1003 No Responsive Bids Received
1004 Remaining Requirements
1005 Public Utility Services
1006 Films, Motion Pictures, Manuscripts
1007 Technical Nonpersonal Services
1008 Studies or Surveys
1009 Nature or Amount of Work Unknown
1010 Stevedoring, Terminal, Warehousing, or Switching Services
1011 Commercial Transportation
1012 Services Relating to Perishable Subsistence
1013 Inadequate Specifications
1014 Storage of Household Goods
1015 Replacement Parts
1016 Sole Source Facilities Contract
1017 Additional Construction Same Site
1018 Foreign Military Sales
1019 Reserved for Departmental Instructions
1020 Reserved for Departmental Instructions
1021 Reserved for Departmental Instructions
1022 Reserved for Departmental Instructions
1023 Reserved for Departmental Instructions
1024 Reserved for Departmental Instructions
1025 Reserved for Departmental Instructions
1026 Not otherwise applicable
1100 Experimental, Developmental or Research Work
1200 Classified Purchases
1300 Standardization and Interchangeability of Parts
1400 Substantial Initial Investment or Extended Preparation
1500 Negotiation After Advertising
1600 In the Interest of National Defense
1701 Joint Small Business Set-Aside
1702 Otherwise Authorized by Law
1703 Repurchase Following Default

(5) *Item C5, Extent of competition.*

(i) This item shall be completed where Item C3 was coded 2. Enter the code below which corresponds to the extent of competition in the negotiated action:

Code and Extent of Competition

1 Price competition
2 Design or technical competition
3 Follow-on after price competition
4 Follow-on after design or technical competition
5 Other noncompetition
6 Noncompetition based on catalog or market price
7 Competition not applicable

(ii) Definitions of the extent of competition codes:

(A) *Price competition, Code 1.*

(*1*) A contract shall be reported as "price competition" if offers were solicited and received from at least two responsible offerors capable of satisfying the Government's requirements wholly or partially, and the award or awards were made to the offeror or offerors submitting the lowest evaluated prices (including catalog or market prices). In addition, a contract may also be reported as "price competition" even though only one offer is received, when offers are solicited from at least 2 responsible offerors who normally contend for contracts for the same or similar items. Where only one responsive offer was received and the solicitation was restricted to a prime contractor and his subcontractor for that item, use Code 5. Actions shall not be reported as "price competition" solely on the basis of the number of solicitations made. Contracting officers shall consider the content of the response of the solicitation, the contract history of the items purchased, and other relevant information, and shall exercise sound judgment in reporting actions as "price competition." In no case shall cost-reimbursement type contracts be coded 1. Even though catalog or market prices were offered, if the criteria for "price competition" as specified here have been met, then enter Code 1.

(*2*) Multiple awards in such areas as subsistence, clothing, and equipage, and other commodities where several awards normally result from one solicitation may be reported as "price competition," even though the total quantity of the solicitation is not awarded, if in the judgment of the contracting officer there are sufficient facts to support a valid finding of "price competition".

(B) *Design or technical competition, Code 2.* Design or technical competition is present when 2 or more qualified sources of supply are invited to submit design or technical proposals, with the subsequent contract award based primarily on this factor, rather than on a price basis. Many research and development contracts and many initial contracts for new military weapons fall into the category of design or technical competition.

(C) *Follow-on after price competition, Code 3, and follow-on after design/technical competition, Code 4.* A follow-on contract means a new acquisition (whether placed by a separate new contract or by a supplemental agreement) placed with a particular contractor which continues or augments a specific military program in instances where such placement was necessitated by prior acquisition decisions. An example of a follow-on contract is one which by force of circumstances was awarded to a contractor who was just completing a research and development contract in the same program. Other examples of follow-on contracts include those for support equipment, maintenance support, technical representatives or spare parts which have been awarded without competition to the contractor furnishing the original equipment. Follow-on contracts in which the selection of the contractor at the inception of the program was on a competitive basis (i.e., price or design or technical) shall be reported as Code 3 or 4, as appropriate. Follow-on contracts in which the selection of the contractor at the inception of the program was on a noncompetitive basis shall be reported as Code 5.

(D) *Other noncompetition, Code 5.* A contracting action shall be reported other noncompetition if there was no competition in the award, the work involved was not a follow-on acquisition reportable as Code 3 or 4 above, and the reasonableness of price was not based on established catalog or market prices reportable as Code 6. Also, use this code to report actions where only one responsive offer was received and the solicitation was restricted to a prime contractor and his subcontractor for that item.

(E) *Noncompetition and based on catalog or market price, Code 6.* A contracting action shall be reported Code 6 if there was no competition in the award and the reasonableness of price was based on established catalog or market prices of commercial item sold in substantial quantities to the general public as defined in FAR 15.804–3(c). If the award involves catalog or market prices and the criteria for "price competition" as specified in (ii)(A) above have been met, enter Code 1 versus Code 6.

(F) *Not applicable, Code 7.* The following actions shall be entered as Code 7:

(*1*) Awards for brand name items for commissary resale;

(*2*) Awards to nonprofit organizations, including educational institutions;

(*3*) Awards to regulated monopolies for utilities "where the price negotiated is based on prices set by law or regulation"; and

(*4*) Awards made pursuant to section 8(a), Small Business Act (15 U.S.C. 637(a)).

(*5*) Awards coded 7 in B13.

(*6*) Awards requiring investment of Government funds for the purpose of establishing a competitive second source where (*i*) Item C10 is coded 1a or 1g, and (*ii*) the justification required by 6.302–1(c) is on an individual basis and not a class basis; includes a determination that there is only one source in addition to the existing source and that to solicit the additional source would increase or maintain competition and likely result in reduced overall costs for the acquisition, or for any anticipated acquisition, of the supplies or services; and includes a description of the estimated reduction in overall costs and how the estimate was derived.

(6) *Item C6, Type of contract.*

(i) Enter the code below which corresponds to the type of contract provided for in the provisions of the action reported.

Code and Type of Contract

A Fixed Price Redetermination: Type A
B Fixed Price Redetermination: Type B
J Firm Fixed Price
K Fixed Price economic price adjustment
L Fixed Price incentive with performance incentive
M Fixed Price incentive without performance incentive
R Cost Plus Award Fee
S Cost Contract
T Cost Sharing
U Cost Plus Fixed Fee
V Cost Plus incentive fee—with performance incentive
W Cost Plus incentive fee—without performance incentive
Y Time and materials
Z Labor Hour

(ii) *Multiple contract types.* Where the action involves more than one type of contract, the predominant type based on dollars shall be entered. However, if any nonpredominant portion of a multi-type contract exceeds $500,000, a separate DD Form 350 shall be used to report each such portion of the action. The total of the DD Forms 350 so reported shall equal the total contract action.

(iii) *Letter contracts.* When reporting original letter contracts and amendments thereto, enter the code for the type of contract that will be used when the letter contract is converted to a definitive contract.

(7) *Item C7, Number of offerors solicited.* Do not complete this item.

(8) *Item C8, Number of offers received.* Do not complete this item.

(9) *Item C9, Competitive solicitation procedures.* Do not complete this item.

(10) *Item C10, Authority for other than full and open competition.* Do not complete this item.

(d) *Part C of DD Form 350—Solicitations issued on 1 April 1985 or later (post-CICA) (see 204.671.5(c) for solicitations issued prior to 1 April 1985 (pre-CICA)).* The following rules apply to each of the items listed in Part C of DD Form 350: If Item B12 is coded 1, leave all items in this Part C blank. If Item B13 is coded 1 through 4, 8 or A, coding of all items in this Part C shall be accomplished in accordance with the coding instructions for that item. If Item B13 is coded 7, enter N in Item C9, enter 5A in Item C10 and leave all other items in this Part C blank. If Item B13 is coded 5, or B through G, enter the same code in each item in Part C that was entered on the DD Form 350 to report the original contract governing this transaction except as provided for by Code Z in (2) below. If the DD Form 350 was not required to report the original contract governing this transaction, enter the code which is applicable to the original contract. If Item B13 is coded 6, items in this Part C shall be coded (manually or by automation) as follows:

C1, enter Code 2;
C2, enter Code F;
C3 and C4, do not complete;
C5, enter Code 1;
C6, enter appropriate code;
C7, enter Code 2;
C8, enter Code 2;
C9, enter Code F for multiple award schedules or Code B for single award schedules; and
C10, do not complete.

(1) *Item C1, Synopsis in Commerce Business Daily.* Enter Code 1 if a synopsis of the proposed action was prepared and transmitted in accordance with FAR 5.2. If not, enter Code 2.

(2) *Item C2, Reason not synopsized.* Enter the applicable code as follows (see FAR 5.202):

Code and Reason

A The contracting action is of a classified nature and the synopsis cannot be worded to preclude the disclosure of classified information; or disclosure of the agency's needs would compromise the national security. (FAR 5.202(a)(1))
B The contracting action is to fulfill a need for supplies or services that is of such unusual and compelling urgency that the Government would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals and not comply with the time periods specified in 205.203. (FAR 5.202(a)(2))
C The contracting action is one for which either the written direction of a foreign government reimbursing the agency for the cost of the acquisition of the supplies or services for such government, or the terms of an international agreement or treaty between the United States and a foreign government, have the effect of requiring that the acquisition shall be from specified sources. (FAR 5.202(a)(3))
D The contracting action is expressly authorized or required by the statute to be made through another Government agency, including acquisitions from the SBA using the authority of section 8(a) of the Small Business Act, from a specified source such as a workshop for the blind under the rules of the Committee for the Purchase from the Blind and Other Severely Handicapped. (FAR 5.202(a)(4))
E The contracting action is for utility services and only one source is available. (FAR 5.202(a)(5))
F The contracting action is an order placed under a requirements contract, or a mandatory GSA Federal Supply Schedule contract. (FAR 5.202(a)(6))
G The contracting action results from acceptance of a proposal under the Small Business Innovation Development Act of 1982 (Pub. L. 97–219), or an unsolicited research proposal that demonstrates a unique and innovative research concept and publication of any notice would improperly disclose the originality of thought or innovativeness of the proposed research. (FAR 5.202(a)(7))
H The contract is made for perishable subsistence supplies, and advance notice is not appropriate or reasonable. (FAR 5.202(a)(8))
I Reserved. ("I" and "O" are normally reserved to eliminate confusion with the numbers "1" and "0" during data entry.)
J The contract action is made under conditions described in FAR 6.302–5 with regard to brand-name commercial items for authorized resale and advance notice is not appropriate or reasonable. (FAR 5.202(a)(9))
K The contracting action is made under the terms of an existing contract which was previously synopsized in sufficent detail to comply with the requirements of 5.207 with respect to the current contracting action. (FAR 5.202(a)(10))
L The head of the agency determines in writing, after consultation with the Administrator of the Small Business Administration and the Administrator for Federal Procurement Policy, that advance notice is not appropriate or reasonable. (FAR 5.202(b))

7 Original estimate less than $10,000 or the reason for the original exemption is no longer coded or the contract is made outside the United States, its possessions and Puerto Rico.

(3) *Item C3, Method of contracting.* Enter Code 1 when accomplished by sealed bidding; enter Code 2 when accomplished by negotiation, including a combination of sealed bidding and negotiation, and modifications pursuant to the provisions of Pub. L. 85–80.

(4) *Item C4, Negotiation authority.* Do not complete this item.

(5) *Item C5, Extent of competition.*

(i) Enter the code below which corresponds to the extent of competition in the action:

Code and Extent of Competition

1 Price competition
2 Design or technical competition
3 Follow-on after price competition
4 Follow-on after design or technical competition
5 Other noncompetition
6 Noncompetition based on catalog or market price
7 Competition not applicable

(ii) Definitions of the extent of competition codes:

(A) *Price competition, Code 1.*

(*1*) A contract shall be reported as "price competition" if offers were solicited and received from at least two responsible offerors capable of satisfying the Government's requirements wholly or partially, and the award or awards were made to the offeror or offerors submitting the lowest evaluated prices (including catalog or market prices). In addition, a contract may also be reported as "price competition" even though only one offer is received, when offers are solicited from at least 2 responsible offerors who normally contend for contracts for the same or similar items. Where only one responsive offer was received and the solicitation was restricted to a prime contractor and his subcontractor for that item, use Code 5. Actions shall not be reported as "price competition" solely on the basis of the number of solicitations made. Contracting officers shall consider the content of the response of the solicitation, the contract history of the items purchased, and other relevant information, and shall exercise sound judgment in reporting actions as "price competition." In no case shall cost-reimbursement type contracts be coded 1. Even though catalog or market prices were offered, if the criteria for "price competition" as specified here have been met, then enter Code 1. If B13 is coded 6, enter Code 1.

(*2*) Multiple awards in such areas as subsistence, clothing, and equipage, and other commodities where several awards normally result from one solicitation may be reported as "price competition," even though the total quantity of the solicitation is not awarded, if in the judgment of the contracting officer there are sufficient facts to support a valid finding of "price competition."

(B) *Design or technical competition, Code 2.* Design or technical competition is present when 2 or more qualified sources of supply are invited to submit design or technical proposals, with the subsequent contract award based primarily on this factor, rather than on a price basis. Many research and development contracts and many initial contracts for new military weapons fall into the category of design or technical competition.

(C) *Follow-on after price competition, Code 3, and follow-on after design/technical competition, Code 4.* A follow-on contract means a new acquisition (whether placed by a separate new contract or by a supplemental agreement) placed with a particular contractor which continues or augments a specific military program in instances where such placement was necessitated by prior acquisition decisions. An example of a follow-on contract is one which by force of circumstances was awarded to a contractor who was just completing a research and development contract in the same program. Other examples of follow-on contracts included those for support equipment, maintenance support, technical representatives or spare parts which have been awarded without competition to the contractor furnishing the original equipment. Follow-on contracts in which the selection of the contractor at the inception of the program was on a competitive basis (i.e., price or design or technical) shall be reported as Code 3 or 4, as appropriate. Follow-on contracts in which the selection of the contractor at the inception of the program was on a noncompetitive basis shall be reported as Code 5.

(D) *Other noncompetition, Code 5.* A contracting action shall be reported other noncompetition if there was no competition in the award, the work involved was not a follow-on acquisition reportable as Code 3 or 4 above, and the reasonableness of price was not based on established catalog or market prices reportable as Code 6. Also, use this code to report actions where only one responsive offer was received and the solicitation was restricted to a prime contractor and his subcontractor for that item.

(E) *Noncompetition and based on catalog or market price, Code 6.* A contracting action shall be reported Code 6 if there was no competition in the award and the reasonableness of price was based on established catalog or market prices of commercial items sold in substantial quantities to the general public as defined in FAR 15.804–3(c). If the award involves catalog or market prices and the criteria for "price competition" as specified in (ii)(A) above have been met, enter Code 1 versus Code 6.

(F) *Not applicable, Code 7.* The following actions shall be entered as Code 7:

(*1*) Awards for brand name items for commissary resale;

(*2*) Awards to nonprofit organizations, including educational institutions;

(*3*) Awards to regulated monopolies for utilities "where the price negotiated is based on prices set by law or regulation;"

(*4*) Awards made pursuant to section 8(a), Small Business Act (15 U.S.C. 637(a)); and

(*5*) Awards coded 7 in B13.

(6) *Item C6, Type of contract.*

(i) Enter the code below which corresponds to the type of contract provided for in the provisions of the action reported.

Code and Type of Contract

A Fixed Price Redetermination: Type A
B Fixed Price Redetermination: Type B
J Firm Fixed Price
K Fixed Price Economic Price Adjustment
L Fixed Price Incentive With Performance Incentive
M Fixed Price Incentive Without Performance Incentive
R Cost Plus Award Fee
S Cost Contract
T Cost Sharing
U Cost Plus Fixed Fee
V Cost Plus Incentive Fee—With Performance Incentive
W Cost Plus Incentive Fee—Without Performance Incentive
Y Time and Materials
Z Labor Hour

(ii) *Multiple contract types.* Where the action involves more than one type of contract, the predominant type based on dollars shall be entered. However, if any nonpredominant portion of a multi-type contract exceeds $500,000, a separate DD Form 350 shall be used to report each such portion of the action. The total of the DD Form 350 so reported shall equal the total contract action.

(iii) *Letter contracts.* When reporting original letter contracts and amendments thereto, enter the code for the type of contract that will be used when the letter contract is converted to a definitive contract.

(7) *Item C7, Number of offerors solicited.* Enter the code below which describes the number of offerors solicited. If B13 is coded 6, enter Code 2. Code 1 is used when only one offeror was solicited. Code 2 is used when more than one offeror was solicited.

(8) *Item C8, Number of Offers Received.* Enter the code below which describes the number of offers received. If B13 is coded 6, enter Code 2. Code 1 is used where only one offer was received. Code 2 is used when more than one offer was received.

(9) *Item C9, Solicitation procedures.* Enter the code below which accurately describes the action. This item pertains to the requirements of FAR Part 6, Subparts 6.1, 6.2, and 6.3, with the exception of the statutory authorities for other than full and open competition (Subpart 6.3) which are reported in Item C10 below. Codes A through K designate the full and open competition requirements set forth in FAR Part 6. Codes L and M designate actions which do not require the application of these requirements. Code N designates a statutory exception to full and open competition. Modifications within the scope of a contract and delivery orders under requirements or definite quantity contracts shall be reported the same as the initial contract. Delivery orders under indefinite quantity contracts shall be reported the same as the initial contract when the conditions in FAR 6.001(f) are met. If these conditions are not met, the delivery order shall be reported pursuant to the conditions applicable to that order. If B13 is coded 6, for post-CICA contracts, enter Code B for single award schedules or Code F for multiple award schedules.

If Item B13 is coded 8, for post-CICA contracting actions, enter only Code B or N as appropriate.

Code A—Full and open competition—sealed bidding is entered when the action resulted from an award pursuant to FAR 6.102(a).

Code B—Full and open competition—competitive proposals is entered when the action resulted from an award pursuant to FAR 6.102(b).

Code C—Full and open competition—combination is entered when action resulted from an award using a combination of competitive procedures (e.g., Two-Step Sealed Bidding) pursuant to FAR 6.102(c).

Code D—Architect-engineer is entered if the action resulted from selection of sources for architect-engineer contracts pursuant to FAR 6.102(d)(1).

Code E is entered if the action resulted from competitive selection of basic research proposals pursuant to FAR 6.102(d)(2).

Code F—Multiple award schedule is entered if the action is an award of a multiple award schedule pursuant to FAR 6.102(d)(3). Orders against such schedules are also Coded F. Do not use this code if Item 13 is coded 6. (Use either B or N as appropriate.)

Code G—Alternate source—reduced cost is entered if the action resulted from use of procedures to reduce overall costs pursuant to FAR 6.202(a)(1).

Code H—Alternate source—mobilization is entered if the action resulted from use of procedures for having a facility available for national defense or industrial mobilization pursuant to FAR 6.202(a)(2).

Code J—Alternate source—Eng./R&D capability is entered if the action resulted from use of procedures for establishing or maintaining an essential engineering, research, or development capability pursuant to FAR 6.202(a)(3).

Code K—Set-aside is entered if the action resulted from use of procedures for set-asides pursuant to FAR 6.203.

Code L—8(a) program.

Code M—Otherwise authorized by statute is entered when the agency uses contracting procedures that are expressly authorized by statute and not addressed in FAR Part 6 (See FAR 6.001(c).) Code M should not be used for statutes addressed in FAR 6.302–5; these statutes require Code N in Item C9 and Code 5A in Item C10.

Code N—Other than full and open competition is entered if the action resulted from use of other than full and open competition pursuant to FAR 6.301. When this code is used, an entry is required in Item C10.

(10) *Item C10, Authority for other than full and open competition.* Enter the appropriate code below when Item C9 is coded N. Explanations of the authorities are set forth in FAR 6.302.

Code 1A—Unique source is entered when action was justified pursuant to FAR 6.302–1(b)(1).

Code 1B—Follow-on contract is entered when action was justified pursuant to FAR 6.302–1(b)(2).

Code 1C—Unsolicited research proposal is entered when action was justified pursuant to FAR 6.302–1(b)(3).

Code 1D—Patent/data rights is entered when action was justified pursuant to FAR 6.302–1(b)(4).

Code 1E—Utilities is entered when action was justified pursuant to FAR 6.302–1(b)(5).

Code 1F—Standardization is entered when action was justified pursuant to FAR 6.302–1(b)(6).

Code 1G—Only one source—other is entered when the action was justified pursuant to FAR 6.302–1 in a situation other than the examples cited in Codes 1A through 1F above.

Code 2A—Urgency is entered when action was justified pursuant to FAR 6.302–2.

Code 3A—Mobilization is entered when action was justified pursuant to FAR 6.302–3(a)(2)(i).

Code 3B—Essential R&D capability is entered when action was justified pursuant to FAR 6.302–3(a)(2)(ii).

Code 4A—International agreement/foreign military sales is entered when action was justified pursuant to FAR 6.302–4.

Code 5A—Authorized by statute is entered when action was justified pursuant to FAR 6.302–5(a)(2)(i).

Code 5B—Authorized resale is entered when action was justified pursuant to FAR 6.302–5(a)(2)(ii).

Code 6A—National security is entered when action was justified pursuant to FAR 6.302–6.

Code 7A—Public interest is entered when action was taken pursuant to FAR 6.302–7.

(e) *Port D of DD Form 350.* The following rules apply to each of the items listed in Part D of DD Form 350: If Item B12 is coded 1 or if Item B13 is coded 6, 7, or 8, leave all items in this part blank. If Item B13 is coded 1 through 4, or A, (i) coding of all items in this Part D shall be accomplished in accordance with the coding instructions for that item, and (ii) the status of the concern, such as its size or ownership, shall be determined as of the date of the award. If Item B13 is coded 5, or B through G, enter the same code in each item in Part D that was reported on the DD Form 350 to the original contract governing this transaction. If a DD Form 350 to the original contract was not submitted because a DD Form 350 was not required, enter the code which is applicable to the original contract governing this transaction.

(1) *Item D1, Type of business.*

(i) Enter Code 1 if the award was made to a domestic large business concern, and the place of performance (Item B5C) is within the United States, its possessions, Puerto Rico, or the Trust Territory of the Pacific Islands.

(ii) Enter Code 2 if the award was made to a small business concern as defined in FAR 19.101 and the place of performance (Item B5C) is within the United States, its possessions, Puerto Rico, or the Trust Territory of the Pacific Islands.

(iii) Enter Code 3 if the award is made to a foreign concern (FAR 25.101), including non-US chartered nonprofit institutions as defined in (v) below.

(iv) Enter Code 4 if the award is made to a domestic large or small business concern and the place of performance (Item B5C) is outside the United States, its possessions, Puerto Rico or the Trust Territory of the Pacific Islands.

(v) Enter Code A, B, C, D, or E if the award was made to a domestic nonprofit institution and the place of performance (Item B5C) was within the United States, its possessions, Puerto Rico, or the Trust Territory of the Pacific Islands. If an award is made to a non-US chartered nonprofit institution, enter Code 3, Foreign Concern. A nonprofit institution is defined as any corporation, foundation, trust, or institution not organized for profit, no part of the net earnings of which inure to the benefit of any private shareholder or individual.

Included are educational and scientific institutions of a nonprofit nature, and state, local, and other non-Federal Government agencies. Enter Code A if the contractor is an educational institution, Code B if a hospital, Code C if a workshop for the blind or other severely handicapped and the action is an acquisition from the Procurement List (see FAR 8.703), Code D if a workshop for the blind or other severely handicapped and the action is not an acquisition from the Procurement List (Optional Placement) (see FAR 8.713), and Code E for all other nonprofit institutions.

(2) *Item D2, reason not awarded to small business concern.* If the action was not awarded to a small business concern, enter an appropriate code from the available codes below. Otherwise, leave blank.

(i) Use Code 1 if there was no known small business source.

(ii) Use Code 2 if there was a known small business source but it was not solicited for a bid or proposal.

(iii) Use Code 3 if a small business concern was solicited, but no bid or proposal was received from such concern, or the concern did not offer sufficient quantity to cover the total requirement but received a separate award for the portion bid on under this solicitation.

(iv) Use Code 4 if a small business concern was solicited but the low or most advantageous offer was not from small business. Enter Code 4 if a small business concern was not willing to accept award of a set-aside portion of an action at the price offered as determined by the price the Government would otherwise have had to pay.

(v) Use Code 5 if not awarded to small business for any other reason.

(3) *Item D3, Small disadvantaged business.*

(i) Enter Code 1 if the contractor is not a small disadvantaged business concern in accordance with the representation required in FAR 19.304(a).

(ii) Enter Code 2 if the contract was awarded to the U.S. Small Business Administration (SBA) pursuant to section 8(a) of the Small Business Act (FAR 19.8).

(iii) Enter Code 3 if the award is not an SBA 8(a) award but is made to a firm determined to be a small disadvantaged business concern in accordance with the representation required in FAR 19.304(b).

(4) *Item D4, Reason not awarded to small disadvantaged business concern.* If the action was not awarded to a small disadvantaged business concern, enter an appropriate code from the available codes below. Otherwise, leave blank.

(i) Use Code 1 if there was no known small disadvantaged business source.

(ii) Use Code 2 if there was a known small disadvantaged business source but it was not solicited for a bid or proposal.

(iii) Use Code 3 if a small disadvantaged business concern was solicited, but no bid or proposal was received from such concern, or the concern did not offer sufficient quantity to cover the total requirement but received an award for the portion bid on.

(iv) Use Code 4 if a small disadvantaged business concern was solicited but the low or most advantageous offer was not from a small disadvantaged business concern.

(v) Use Code 5 if not awarded to a small disadvantaged business for any other reason.

(5) *Item D5, Women-owned small business.*

(i) Enter Code 1 if the contractor's response to FAR 52.219–3 indicates the firm is not a women-owned small business.

(ii) Enter Code 2 if the response to FAR 52.219–3 indicates in the affirmative that the contractor is a women-owned small business.

(iii) Enter Code 3 if the information is not available because the contractor did not complete the certification under FAR 52.219–3.

(6) *Item D6, Small business set-aside preference.*

(i) Enter Code 1 if the solicitation/award was not totally or partially set aside for small business pursuant to FAR 19.502–2, FAR 19.502–3, and 220.70.

(ii) Enter Code 2 if the solicitation/award was totally set aside for small business pursuant to FAR 19.502–2.

(iii) Enter Code 3 if the solicitation/award was partially set aside for small business pursuant to FAR 19.502–3 and 220.70.

(7) *Item D7, Subcontracting plan for small and small disadvantaged businesses.* Enter the appropriate code as follows:

(i) Enter Code 1 if a subcontracting plan was not included in the contract because subcontracting possibilities do not exist (FAR 19.706).

(ii) Enter Code 2 if the subcontracting plan was not required for other reasons, e.g., the action was awarded to a small business firm or the dollar value of the award was less than the cited threshold (FAR 19.708(b)).

(iii) Enter Code 3 if the subcontracting plan was required but the incentive provisions referenced in FAR 19.708(c) were not included.

(iv) Enter Code 4 if the subcontracting plan was required and incentive provisions specifically pertaining to subcontracting with small and small disadvantaged business referenced in FAR 19.708(c) were included.

(8) *Item D8, Small Business Innovation Research (SBIR) Program.* Enter the appropriate code as follows:

(i) Enter Code 1 if the action is not in support of the Small Business Innovation Research Program (Pub. L. 97–219).

(ii) Enter Code 2 if the action is related to a Phase I contract in support of the Small Business Innovation Research Program (Pub. L. 97–219).

(iii) Enter Code 3 if the action is related to a Phase II contract in support of the Small Business Innovation Research Program (Pub. L. 97–219).

(9) *Item D9, Labor Surplus Area (LSA) preference.* The Department of Labor publication "Listing of Eligible Labor Surplus Areas Under Defense Manpower Policy No. 4B and Executive Orders 10582 and 12073" defines all areas classified as labor surplus areas. If Code 2, 3, 4, 5, or 6 is entered, the entry in Item B5C must be a location which on the date of the action is located within a labor surplus area.

(i) Enter Code 1 if no preference was given to labor surplus area concerns.

(ii) Enter Code 2 when reporting the labor surplus portion of a combined set-aside (219.502–70).

(iii) Enter Code 3 if the action was awarded to a concern in a labor surplus area wherein preference was given under partial labor surplus area set-aside procedures (220.7003), except if set-aside preference resulted from a combined small business/labor surplus area set-aside as set forth in (ii) above.

(iv) Enter Code 4 if the action was awarded to a concern in a labor surplus area and tie bid preference (FAR 15.407–8) was given.

(v) Enter Code 5 when reporting an award that is totally set-aside for labor surplus areas, but with no further preference as to whether it is a large or small business firm.

(vi) Enter Code 6 when reporting an award that is totally set-aside for labor surplus area concerns which are also small business concerns.

(10) *Item D10, Subject to labor standards statutes.* Enter the appropriate code as follows:

(i) Enter Code 1 if subject to the provisions of the Walsh-Healey Act, manufacturer (see FAR 22.6).

(ii) Enter Code 2 if subject to the provisions of the Walsh-Healey Act, regular dealer (see FAR 22.6).

(iii) Enter Code 3 if subject to the provisions of the Service Contract Act, as amended (see FAR 22.6).

(iv) Enter Code 4 if subject to the Davis-Bacon Act.

(v) Enter Code 5 if not subject to any of the statutory requirements above.

(11) *Item D11, Certificate of current cost or pricing data.* Enter Code 1 if a certificate of current cost or pricing data (see FAR 15.804–4) was obtained, Code 2 if the certificate was not obtained, or Code 3 if the requirement was waived.

(12) *Item D12, Trade data relating to products or components not manufactured in the United States or services performed by foreign concerns.*

(i) *Item D12A, Number of offerors.* Enter the number of offerors of end-products not manufactured in the United States, its possessions, Puerto Rico, or the Trust Territory of the Pacific Islands. If zero, enter 0; if greater than 9, enter 9.

(ii) *Item D12B, Buy American Act percent difference.* If the evaluation factor under the Buy American Act is used and results in an award to a firm offering a domestic product, enter the percent difference between the award price and low firm offering a foreign end product, computed before application of the Buy American Act differential; i.e., the difference divided by the price of the low firm offering a foreign end product. Enter the percentage as a whole number (i.e., for 5%, enter 05; for 11%, enter 11). If the evaluation factor under the Buy American Act is not used, enter 2 zeros (00).

(iii) *Item D12C, Country of origin.* Enter appropriate country code shown as follows:

(A) If the product shown in Item B8D is manufactured in the U.S. and more than 50% of the cost of all its components is not manufactured in the U.S., enter the letter A and the 2-digit code of the country/area providing the greatest part of such components, as shown in the list published by the Director, Federal Procurement Data Center.

(B) If the product is manufactured, mined, or grown outside the U.S., enter the letter B and the 2-digit code of the country/area of origin, as shown in the list published by the Director, Federal Procurement Data Center.

(C) If a service shown in Item B8A is performed by a foreign concern (see FAR 25.101), enter the letter B and the country/area code of the concern, as shown in the list published by the Director, Federal Procurement Data Center.

(D) In all other cases, leave this item blank.

(13) *Item D13, Contract financing (progress payments or advance payments).* Enter the appropriate code as follows if Item C6 is coded A, B, J, K, L, or M.

(i) Enter Code 1 if the action contains the clause at FAR 52.232–16 or Alternate I.

(ii) Enter Code 2 if the action contains the clause at 252.232–7004.

(iii) Enter Code 3 if the action is for either shipbuilding or construction and percentage-of-completion-progress-payment financing is provided (see FAR 32.102(e)).

(iv) Enter Code 4 if the action provides Unusual Progress Payments or Advance Payments (see FAR 32.4, and FAR 32.501–2).

(v) Enter code 5 if none of the above apply.

(f) *Part E, DD Form 350.* For departmental or higher authority use.

(g) *Part F, DD Form 350.*

(1) *Item F1, Name of contracting officer or representative.* Enter name (Last, First, MI) of the contracting officer or representative.

(2) *Item F2, Signature.* Contracting officer or representative.

(3) *Item F3, Telephone number.* Installations serviced by the Automatic Voice Network shall enter the AUTOVON number plus extension.

(4) *Item F4, Date.* Enter date (Yr./Mo./Da.) that DD Form 350 Report is submitted.

204.671–6 Instructions for preparing magnetic tape of DD Form 350 actions, DD–DR&E(M)1014.

A magnetic tape as prescribed by the Office of the Deputy Under Secretary of Defense for Acquisition Management will be submitted to DIOR–WHS by the Departments to cover individual DD Form 350 transactions for each month (noncumulative). The instructions for preparing the tape are developed by DIOR–WHS with the agreement of the Departments.

204.672 Monthly contracting summary of actions $25,000 or less (DD Form 1057).

204.672–1 Scope.

This section prescribes the reporting on DD Form 1057 of contracting actions of $25,000 or less each. This form in conjunction with DD Form 350 is used to prepare recurring and special reports as indicated in 204.671–2. This reporting requirement has been assigned Report Control Symbol: DD–DR&E(M) 1015.

204.672–2 Applicability and coverage.

(a) A DD Form 1057 shall be prepared (typewritten or machine reproduced) by each contracting office of the Department of Defense to which a reporting office code has been assigned in the DoD Procurement Coding Manual, Volume III. The DD Form 1057 shall cover all contracting actions of $25,000 or less. Separate codes may be assigned to an installation, base, or activity by Volume III of the DoD Procurement Coding Manual in order to distinguish between various types of acquisition, such as base and central contracting, or RDT&E and non-RDT&E acquisition. Subject to the approval of the organizations listed in 204.672–3, a machine printout or other machine product containing the information on the DD Form 1057 may be submitted in lieu of the form.

(b) DD Form 1057 shall include all debit or credit contracting actions of $25,000 or less involving:

(1) Appropriated funds;

(2) Contract authorizations;

(3) Stock or other revolving funds which are replenished or reimbursed from appropriated funds;

(4) Appropriated funds transferred to the Departments, such as Military Assistance Program funds; and,

(5) Appropriated funds obligated pursuant to provisions of Pub. L. 85–804.

(c) The report shall exclude actions of $25,000 or less which:

(1) Involve nonappropriated funds;

(2) Are delivery orders against indefinite delivery type contracts entered into by the Defense Fuel Supply Center; Defense Fuel Supply Center or the Defense General Supply Center for Petroleum or Petroleum Products; these offices shall report the estimated total cost of indefinite delivery type contracts;

(3) Are requisitions transferring supplies within and among the Departments and Agencies of the Department of Defense;

(4) Are placed by the Defense Communications Agency, Defense Commercial Communications Office (DECCO). These actions are covered by other reporting instructions;

(5) Are orders on GSA stores depots;

(6) Involve Government bills of lading or transportation requests; and,

(7) Are for purchase of land, or rental or lease of real property.

204.672–3 Due date and distribution.

(a) In addition to instructions given in (b) through (f) below for contracting offices of specified Departments and Agencies, the following instructions are applicable to all contracting offices.

(1) Reports shall be submitted in time to reach the recipient within three (3) working days after the close of each month. To meet this due date, contracting offices are authorized to cut off no earlier than the 25th calendar day of the month reported. For the month of September only, the due date may be extended by 10 additional calendar

days, but the cut-off date must be as of 30 September.

(2) Negative reports shall be submitted if a contracting office has not transacted a reportable action during the month.

(3) Letter of transmittal is not required.

(b) Army contracting offices shall distribute DD Form 1057 as follows:

(1) The original (except from Army Engineer Civil Works Contracting offices) shall be forwarded to HQDA (JDHQ–SV–W–P), Washington, DC 20310–0600.

(2) Army Engineer Civil Works Contracting offices shall forward the original to HQDA (DAEN–PRP), Washington, D.C. 20314–1000. A copy is not required for HQDA.

(c) Navy contracting offices shall forward the original DD Form 1057 as directed by COMNAVSUP (SUP–024).

(d) Air Force contracting offices shall forward the original DD Form 1057 as directed by HQ USAF/RDC.

(e) Defense Logistics Agency contracting offices shall forward the original DD Form 1057 as directed by HQ DLA.

(f) All other contracting offices of the Department of Defense shall forward the original DD Form 1057 to HQDA (JDHQ–SV–W–P), Washington, D.C. 20310–0600.

(g) Contracting actions of $25,000 or less which are reportable in accordance with 204.672–2 and are accomplished by contract administration offices shall be handled as follows:

(1) When the contractual instrument is being distributed, a copy shall be clearly annotated "DD Form 1057 Reporting Copy" and shall be forwarded to the appropriate contracting office listed in Appendix N.

(2) Contracting offices shall include data for such instruments in their reports on DD Form 1057.

204.672–4 Terms used.

The terms used on DD Form 1057 will, in all cases, have the same meaning as they do for the purpose of preparing DD Form 350.

204.672–5 Instructions for completion of the DD Form 1057.

(a) *Heading.*

(1) *Month ending*—Enter the year, month and day indicating the ending date of the month reported. Enter each segment as a 2-digit number using 01 through 12 for January through December. For example, for the month ending 30 April 1984, enter 840430.

(2) *Contracting office and mailing address*—Enter sufficient detail to establish the identity of the contracting office submitting the report.

(3) *Reporting office code*—Enter the code assigned to the contracting office pursuant to Volume III of the DoD Procurement Coding Manual. This is the same code that is used for Item A3 of DD Form 350.

(4) *Number of actions.*

(i) Only transactions that obligate or deobligate funds shall be counted. Except as provided in (ii) below, each call or order under a blanket purchase agreement, imprest fund, requirements type contract, or indefinite delivery indefinite quantity contract shall be counted as an action. A definite quantity indefinite delivery contract shall be counted once at the time of award, and orders under such contracts shall not be counted. If it is not possible to determine the price of an order or call when it is placed, it may be counted when the voucher is paid, but care shall be exercised to avoid double counting of such actions.

(ii) For the following transactions, each voucher paid during the report period shall be counted as one action, and no other count shall be reported. (If the voucher is in excess of $25,000, the action shall be reported on DD Form 350 rather than DD Form 1057):

(A) Meals and lodging;

(B) Automatic deliveries, such as, bread, milk, and ice cream;

(C) Utilities, such as, electricity, gas, and telephone. (Headquarters, Naval Facilities Engineering Command, will submit consolidated reports on utilities contracts for all Naval Shore Establishments).

(5) *Dollar value.* All dollar amounts shall be entered in whole dollars. Do not enter cents. For example, $2,510.10 or $2,510.90 shall be reported as $2,510. Do not enter $2,510.00 or $2,510.—. If the net amount is a decrease, enter the symbol "—" immediately preceding the amount to signify a credit entry. Do not enter parentheses.

(b) *Section A, Contracting actions.*

(1) Enter under Lines 1 through 4, the number and value of actions of $25,000 or less according to type of contractor (i.e., small business, large business, educational and nonprofit institutions), and for work outside the U.S., in accordance with instructions in (2), (3), (4), (5), and (6) below.

(2) Enter on Lines 1.a., 2.a., 3.a., and 4.a., the number and dollar amount of those contracting actions accomplished through sealed bid procedures.

(3) Enter on Lines 1.b., 2.b., and 4.b., the number and dollar amount of those negotiated contracting actions considered for competition where price competition or design or technical competition was present in accordance with the criteria set forth in 204.671–5(c)(5)(ii) (A) and (B). Small business-small purchase set-asides shall be reported as competitive awards.

(4) Enter on Lines 1.c., 2.c., and 4.c., the number and dollar amount of those negotiated contracting actions accomplished where competition was not present as covered in 204.671–5(c)(5)(ii) (C), (D), and (E). These actions shall also be reported in section B, as appropriate.

(5) Enter on Lines 1.d., 2.d., and 4.d., the number and dollar amount of those negotiated contracting actions meeting the requirements of 204.671–5(C)(5)(ii)(F) which are excluded from the competition base.

(6) Enter on Line 3.b., the number and dollar amount of contracting actions accomplished by negotiation.

(7) Enter under Line 5, and on Lines 6 and 7, the number and dollar amount of contracting actions as appropriate.

(c) *Section B, Set-Aside and local use data.*

Line and Description

B01a Labor Surplus Area or Industry Set-Aside
B01b Small Business Set-Aside (Unilateral)
B02 For local use
B03a Small Purchases Set-Aside for Small Business
B03b For local use
B04 For local use
B05 For local use
B06 For local use
B07 For local use
B08 For local use
B09 For local use
B10 For local use
B11 For local use
B12 For local use
B13 For local use
B14 For local use
B15 For local use
B16 For local use
B17a Small Business Set-Aside (Joint)
B17b For local use

Enter on Lines B01a, B01b, B03a and B17a the number and dollar value of actions of $25,000 or less which were awarded under the type of set-aside indicated. The other lines will be completed as directed by the appropriate Departmental office identified in 204.672–3(a)(3).

(d) *Section C, Research development, test and evaluation actions.* (These actions are also reported in Sections A and B.) Enter the number and dollar amount of contracting actions of $25,000 or less for research, development, test and evaluation work on Lines 1 through 4. Do not include purchases of supplies or services that are incidental to the fulfillment of RDT&E work but do not require contractor RDT&E performance.

(e) *Section D, Selected other actions.*

(1) Enter on Line 1.a., the number and dollar amount of awards made to small disadvantaged business concerns that were made through the Small Business Administration pursuant to the Small Business Act— Pub. L. 85–536, section 8(a). Entries on this line shall also be reflected on Line 17.b. of Section B.

(2) Enter on Line 1.b., the number and dollar amount of awards made directly to small disadvantaged business concerns.

(3) Enter on Line 2, the number and dollar amount of awards shown in Section A that were made to women-owned small businesses.

(f) *Adjustments.* Revised DD Form 1057 reports shall not be submitted; but the amounts of corrections or adjustments, if required, shall be included in the report of the following month. If the correction or adjustment results in a net reduction of either action or dollar amounts, enter the symbol "CR" following the amount to signify a credit entry.

204.672–6 Instructions for preparing summary punched cards or tape of DD Form 1057 actions, DD–DR&E(M)1015.

Summary of punched cards or tape as prescribed by the Office of the Deputy Assistant Secretary of Defense for Procurement will be submitted to DIOR–WHS by the Departments to cover DD Form 1057 transactions for each month (noncumulative). The instructions for preparing the punched cards or tape are developed by DIOR–WHS with the agreement of the Departments.

204.673 Report of individual contract profit plan (DD Form 1499).

204.673–1 Scope.

This section prescribes the reporting on DD Form 1499 of cost and profit plans on contract actions of $500,000 or more, negotiated by specified contracting offices. The form provides a basis for analyzing profit patterns and weighted guidelines objectives on defense contracts. As used in this section, the term *cost* includes target cost as well as estimated cost, and the term *profit* includes fee.

204.673–2 Applicability.

DD Form 1499 shall be prepared by each contracting office of the—

(a) Army Materiel Command, Ballistic Missile Defense Systems Command, Defense Supply Service, Washington, and U.S. Army Corps of Engineers;

(b) Air Force Logistics and Systems Commands; and

(c) Naval Air, Sea, and Electronic Systems Commands, Naval Facilities Engineering Command, Naval Regional Contracting Office, Philadelphia. The form also shall be prepared by the following Navy activities of the Naval Supply Systems Command: Navy Aviation Supply Office, Philadelphia; Navy Ships Parts Control Center, Mechanicsburg; and Naval Regional Contracting Office, Long Beach. Contracting offices located outside the United States, its possessions, and Puerto Rico, under the jurisdiction of the above-mentioned commands, are exempt from this reporting requirement.

204.673–3 Coverage.

(a) A DD Form 1499 shall be prepared by the contracting offices described in 204.673–2 for each negotiation of a contractual agreement involving a separate cost and profit that together total $500,000 or more. This negotiated total may agree, but not necessarily, with the amount obligated by the contractual instrument. The instrument may be a new definitive contract, an indefinite delivery-type contract, the definitization of a letter contract, or order under a basic ordering agreement, a supplemental agreement, or any other action in which the contracting officer and contractor negotiate an estimated cost and profit. If, in connection with a fixed-price-type contract or contract modification, the contracting officer requires the contractor to submit cost or pricing data pursuant to FAR 15.804–2, a DD Form 1499 shall be prepared showing the contracting officer's best estimate of cost and profit.

(b) If more than one profit rate applies to a negotiation and the amount for each rate is $500,000 or more, a separate DD Form 1499 shall be used to report data for each rate. If the dollar amount for any profit rate of a multirate negotiation is less than $500,000, the data for the amount below $500,000 shall not be reported. If the separation of a contract into different rates produces no portion of $500,000 or more, a report on DD Form 1499 shall not be submitted.

(c) If any reportable negotiation includes a cost or cost-sharing portion or a firm fixed-price portion not reportable pursuant to (a) above, that portion shall not be reported on DD Form 1499. If the application of this provision fragments an action so that an otherwise reportable portion is less than $500,000, that portion shall not be reported on DD Form 1499.

(d) A DD Form 1499 shall be submitted if the above conditions are met, even though price competition was used, weighted guidelines were not used, or a supplemental agreement involving cost and profit was executed without changing the profit rate applicable to the basic contract.

204.673–4 Due date and distribution.

(a) Contracting offices shall prepare DD Form 1499 as soon as possible after the date of action, assemble the reports for the month of action, and forward the reports in duplicate within 10 days after the close of the month as follows:

(1) Army: HQDA (JDHQ–SV–W–P), Washington, DC 20310–0600:

(i) Contracting offices under the jurisdiction of AMC and the BMDS Command shall report through U.S. Army Materiel Command, Attn: DRCPP–SC, 5001 Eisenhower Avenue, Alexandria, VA 22333;

(ii) Contracting offices under the jurisdiction of the U.S. Army Corps of Engineers shall report through the Office, Chief of Engineers, HQDA (DAEN–PRP), Washington, DC 20314–1000.

(2) Navy: Naval Supply Systems Command (SUP–024B), Washington, DC 20376. Navy contracting offices shall forward the original DD Form 1499 as directed by COMNAVSUP (SUP–024).

(3) Air Force: AFLC/ACOCDLSORS, Wright-Patterson Air Force Base, OH 45433.

(b) Prior to submission of DD Form 1499, contracting offices shall review the form and associated contract files sufficiently to insure that all reportable transactions are reported and that reports are complete and accurate.

(c) DD Form 1499 shall be submitted as an unclassified document. If the reporting office considers it necessary to apply a security classification to a DD Form 1499, a communication relating the reasons for the classification shall be submitted to the Office of the Assistant Secretary of Defense (Comptroller), Attn: Directorate for Information Operations and Control, through the appropriate organization in (a) above. In no case shall security classification be considered a reason for not reporting on DD Form 1499.

(d) The reporting requirements of this part are assigned RCS:DDR&E(M)1215.

204.673–5 Specific entries on DD Form 1499.

(a) *Department.* Enter Army, Navy, or Air Force, as appropriate.

(b) *Item 1, Report no.* Each contracting office identified by a separate number in the item 5 code block shall enter a four-digit number assigned consecutively starting with 0001 at the beginning of each fiscal year. This number shall be followed by the last two digits of the fiscal year. Numbers with less than four significant digits shall be preceded by zeros; for example, the fourth report in fiscal year 1984 would be numbered 0004–84. This number identifies a

specific DD Form 1499 and is not related to any DD Form 350 number.

(c) *Item 2, Contract no.* Enter the contract number in items 2.a., b., c., and d., in the manner prescribed for DD Form 350 in 204.671–5(e).

(d) *Item 3, SPIIN.* Enter in item 3 any order, supplemental agreement, or other modification number in the manner prescribed in 204.671–5(b)(2).

(e) *Item 4, Date of action.* Enter in numeric terms the year and month (e.g., 84–03 for 1984 March) when a mutually binding agreement was reached on the estimated cost and profit. For example, this may be the date when—

1) A new definitive contract was awarded,

(2) A letter contract was definitized,

(3) A supplemental agreement was executed,

(4) A change order was definitized, etc.

(f) *Item 5, Contracting office name.* Enter the name of the contracting office submitting the report, and enter in the item 5 code space, the symbol or number assigned to that contracting office in the DoD Procurement Coding Manual, Volume III.

(g) *Item 6, Type of pricing action.* Enter in the item 6 code space Code A for the first reportable action pertaining to a contract, i.e., the award of a new definitive contract, a definitive contract superseding a letter contract, or an indefinite delivery-type contract. Enter Code B for all other types of actions, including orders under basic ordering agreements.

(h) *Item 7, Contractor identification.* Enter the complete name of the concern and, if applicable, the name of the division to which the award was made. Enter in the item 7 code space the first six digits of the contractor code as shown in the DoD Procurement Coding Manual, Volume II DUNS number. If the contractor is not listed in the manual, no code shall be entered by the contracting office.

(i) *Item 8, Principal place of performance.* Enter the actual location of the plant or place of business where the items will be produced or the service rendered in accordance with instructions in 204.671–5(b)(5). Enter in the item 8 code space the city and state codes shown for the contractor at the specified location in the DoD Procurement Coding Manual, Volume II. If the contractor's name is not listed in the manual, or is listed for a location or locations other than the one reported, no code shall be entered by the contracting office.

(j) *Item 9, Federal Supply Class or Service Code.* Enter the appropriate Federal Supply Class or Service Code from the DoD Procurement Coding Manual, Volume I, in accordance with instructions prescribed for item 10A of DD Form 350 in 204.671–5(b)(8)(i).

(k) *Item 10, DD claimant program No.* Enter in the item 10 code space the code from the DoD Procurement Coding Manual, Volume I, Section III, that describes the commodity or service called for by the contract.

(l) *Item 11, Weighted guidelines category.* Enter in the item 11 code space only one of the Codes A, B, C, or D, to identify the weighted guidelines applicable to the reported action.

(m) *Item 12, Type of contract.* Enter in the item 12 code space only one of the codes A, J, K, L, R, U, or V to show the pricing provisions applicable to the reported action. If more than one type of pricing applies to a single negotiation, the provisions of 204.673–3 (c) and (d) apply. That is, separate DD Forms 1499 shall be prepared for each type of pricing involving a cost and profit totaling $500,000 or more. DD Forms 1499 shall not be prepared for types of pricing with less than aggregate cost and profit of $500,000, cost-no-fee, or firm fixed-price without a negotiated cost and profit.

(n) *Item 13, Negotiation summary.*

(1) Enter dollar amounts applicable to lines a. through f. as proposed by the contractor, the Government's objective, and the negotiated amounts. These entries shall be to the nearest whole dollar; do not show cents, or make entries involving cent positions. For example, $568,035.54 shall be entered as $568,036 and not as $568,036.00; $500,500.49 shall be entered as $500,500.

(2) The dollar entries shall reflect the entire reportable amounts negotiated in the contractual agreement, not merely the portion obligated. Thus, awards contemplating incremental funding shall be reported as total negotiated cost and profit at the time of initial award, not as the amounts initially obligated. However, amounts applicable to options for additional quantities shall be excluded unless the options are exercised. When options are exercised, a report shall be submitted if the amounts meet the dollar threshold of 204.673–3.

(3) For cost-plus-award-fee (CPAF) contracts, only the base fee shall be reported.

(4) For indefinite delivery-type contracts, the amounts reported shall reflect the best estimate of the annual requirement on the first reportable delivery order.

(5) Enter on line g. the cost of money percentage rate proposed by the contractor, obtained from block 1 of the CASB–CMF form. The objective and negotiated rate will be the cost of money percentage rate used on the DD Form 1861.

(o) *Item 14, Weighted guidelines profit factors (see DD Form 1547).* If weighted guidelines are used, show the measurement base and profit/fee dollars in whole numbers in accordance with (n) above. If the weighted guidelines are not used to develop the prenegotiation profit objective, enter the measurement bases on line a. and complete only lines e., f., and g. The manufacturing guidelines adjustment, line a. (11), shall be completed only for contracts coded A in item 11 and must equal 30 percent of the amount entered on line a. (10). The cost of money adjustment, line e., shall be completed for all contracts coded B, C, or D in item 11 and must equal the objective amount in item 13.b.

Subpart 204.7—Contractor Records Retention

204.706 Microfilming records.

204.706–1 General.

(d)(2) The ACO, with advice of DCAA, may agree to a lesser retention period where the contractor has established adequate internal controls including continuing surveillance over the microfilm system.

Subpart 204.8—Contract Files

204.801 General.

(c)(3) Purchasing and contract administration offices shall file in the contractor general file those documents accumulated or created by them which pertain in general to a contractor or prospective contractor, and those which relate to two or more contracts and which due to their nature should not or need not be filed with an individual contract file. (As appropriate, however, copies of such documents are filed with or cross-referenced in the related contract files.) This file shall include, as applicable, preaward surveys, reports, correspondence, and other records documenting the contractor's capabilities, past performance, accounting system, pricing method, quality assurance procedures, labor policies, insurance programs, and equal opportunity and comparable policies, programs, and systems that serve as a general source of information on a contractor's current and future capability or responsibility.

(c)(S–70) *Contract cross reference/locator file.* This file consists of Contract Cross Reference Data Forms (DD Forms 1592) maintained as prescribed in 204.802–73.

204.802 Contract files.

(a)(1) Authenticated or conformed copies of contractual instruments and signed or official record copies of correspondence, memoranda, and other documents shall be used in compiling the official files. Authenticated copies are documents shown to be genuine by certification as a true copy by signature of an authorized person or by official seal. Except to the extent that contract clauses or specifications are incorporated by reference, conformed copies are complete and accurate copies of the contractual instrument, including the date of execution and the names and titles of signatories. Documents reproduced by fast-copy process that deteriorates when exposed to excessive heat or light shall not be included in the official file.

(c)(4) When the bulk of the material is unclassified, classified material relating to the same contract shall be maintained in a separate file folder and container, and the unclassified folder marked or cross-referenced to indicate the location of the classified material. The front and back of each folder containing classified material shall be marked with the highest classification assigned to any of the documents in the folder.

204.802–70 Use of standard file folders for drawer and shelf filing.

(a) For all short duration contracts and for small purchase files, standard letter-size folders shall be used. For complex long-duration high-dollar value contracts, heavy individual or 6-part partitioned folders, with front and back flaps, two dividers, expansion gussets between flaps and dividers, and fasteners mounted at the top of the insides of the flaps and on each side of the dividers, may be used.

(b) Loose dividers (file inserts), pre-punched at the top for fastening documents, may be used for subdividing material within the same folder when special folders are not used.

204.802–71 Filing of documents.

(a) Documents relating to a specific contract and described in FAR 4.803 (a), (b) and (c) should normally be placed in chronological order in an "OFFICIAL FILE" folder or folders. Each folder shall be marked or labeled with the procurement instrument identification number and, when more than one folder is required for the same contract, with information as to the file segment. Other identifying data, such as the contractor's name, should be added only when needed to facilitate filing and locating.

(1) A separate folder need not be established for each subcontract, mechanized small purchase, or small dollar value contract, on which little or no administration is required; these should be filed in numerical sequence within the same folder.

(2) When a single folder is used, basic procurement documents and all modifications ordinarily should be filed on the left side of the folder and all other material on the right side. As volume warrants, a contract file may be subdivided further, either within the folder or by using additional folders, as appropriate. The following are examples:

(i) For the purchasing office, by pre-contract documents, basic contract, contract modifications, termination documents, general correspondence, and other; and

(ii) For the contract administration office, by basic contract, contract modifications, quality assurance and progressing and production surveillance, property administration and plant clearance, termination documents, and general correspondence. Documents shall be arranged chronologically within each section or folder.

(3) When it is impractical to file certain documents in the official case folder because of their bulk or use, they may be maintained separately in other suitable containers, but they shall be handled as "OFFICIAL FILES" and cross-referenced in the contract case file.

(4) Documents relating to two or more contracts may be filed in one contract file and cross-referenced in the others, or enough copies reproduced to provide for filing one in each related contract file. Other pertinent documents of a more general nature may be filed separately in the contractor general file and cross-referenced in the contract file.

(b) Documents described in 204.801(c)(3) and relating generally to the contractor rather than to a specific contract shall be placed in a folder labeled with the contractor s name. When necessary, additional folders may be used and the material subdivided by subject, such as general, production, termination, property control, and performance.

204.802–72 Arrangement of files.

(a) Contract file folders normally should be arranged numerically by contract serial number. Under the Department of Defense uniform procurement instrument identification numbering system (see 204.70), the 10th through the 13th digits are the serial number. Large numbers of contract files (10,000 or more) are best arranged by the terminal digit filing method, using the four-digit serial number. When special circumstances warrant, contract folders may be arranged alphabetically by contractor's name, by commodity, or by type of contract, and thereunder numerically.

(b) Contractor general file folders shall be arranged alphabetically by name of the contractor.

204.802–73 Contract cross reference/locator system.

(a) Contract administration offices shall maintain a contract cross reference/locator system, manual or mechanized as appropriate. For a manual system, Contract Cross Reference Data (DD Form 1592), which is a two-part carbon interleaved form, shall be used as follows:

(1) For a prime contract, one set shall be prepared, the original filed alphabetically by contractor's name, and the duplicate filed numerically by contract number, using the terminal digit filing method when contract files are so maintained;

(2) For a subcontract, two sets shall be prepared, one set filed as in (1) above, and the other set filed by subcontractor's name and subcontract number;

(3) Additional information as necessary shall be included under "Remarks," such as dollar value, contract type, brief description of item or service, special or limited administration requirements, secondary inspection office, and security classification.

(b) Offices, other than contract administration offices, which require a contract cross-reference/locator system to meet reference requirements or other special needs also shall use the system prescribed in (a) above.

204.803 Contents of contract files.

(a) *Contracting office contract file.*

(a)(8) Drawings and specifications should be included with the solicitation or referenced therein.

(a)(23) Exceptions or exemptions from the Buy American Act or appropriations act restrictions.

(a)(37) When applicable, a Contract Completion Statement (DD Form 1594) shall be included.

(a)(38) Termination documents include—

(i) Recommendation or request to terminate together with reason for terminating, and, in the case of major contracts, plans therefor.

(ii) Review board actions accomplished by the purchasing office.

(iii) Copy of termination notice.

(iv) Documents supporting termination actions taken when terminated for default, such as notice of possible

termination, show cause letter and reply, and record of conferences, if any.

(v) Record of repurchase, including written demand to contractor for excess costs.

(a)(S–70) *Verification of requirements.*

(b) *Contract administration office contract file.* The extent to which the following list shall apply depends upon the type of contract, dollar value, and functions assigned to the contract administration office.

(b)(3) This includes the Contract Security Classification Specification (DD Form 254).

(b)(14) Progressing, expediting, and production surveillance records (these are to be maintained separately to facilitate their early disposal as prescribed in FAR 4.805(g)). They include such records as—

(i) Production plans and delivery schedules.

(ii) Progress or status reports.

(iii) Advice of delays or delinquencies, and of corrective and production follow-up actions.

(iv) Documents reflecting deliveries or production completion.

(b)(15) Quality assurance/control (inspection) records used in planning, conducting, and recording product verifications, testing, reviewing quality programs and plans, evaluating procedures and processes or technical performance, and effecting corrective actions, where required (these records are to be maintained separately for earlier disposal); they include:

(i) Quality assurance records, such as:

(A) Reference to Contractor's Quality Program document, and disapproval, if any.

(B) Subcontract inspection control records (request for source inspection, and waiver of usual inspection procedure).

(C) Inspection requests, agreements, and assignments.

(D) Requests for waivers and deviations, and copy of approvals or disapprovals, if any (including Material Review Board decisions).

(E) Required inspection and test reports.

(ii) Quality control (inspection) records, such as:

(A) Quality program review reports (procedures and processes evaluation, periodic quality assurance survey).

(B) Government inspection and test reports.

(C) Authority to ship and acceptance documents (e.g., DD Form 1384, Transportation Control and Movement Document; DD Form 250, Material Inspection and Receiving Report; DD Form 1155, Order for Supplies or Services/Request for Quotations); routing requests and orders, and shipment copies of bills of lading (DD Form 250 may be excluded when maintained in paying office file and paying office is located at the contract administration office).

(D) Reports of unsatisfactory material and corrective actions, and reports of damaged or improper shipments.

(E) Other papers necessary to document the quality control or inspection function.

(b)(16) Property administration records used in the administration of Government property provisions of the contract (these are to be maintained separately for disposition). These include—

(i) Contract number, type of contract, and contractor name and address.

(ii) Name and dates of tenure of administrative contracting officer(s) and property administrator(s).

(iii) End item(s) and points of inspection and acceptance.

(iv) Record of contract clauses, amendments and changes pertaining to Government property.

(v) Record of contract clauses pertaining to contractor's liability.

(vi) Record of written approval of contractor's property control system or withdrawal of approval and cause, dates system approval reinstated, and deviations granted.

(vii) Listing and type of subcontracts which involve Government property or reference to location of such information.

(viii) Record of secondary administration assignments.

(ix) Record of system surveys performed, deficiencies found and corrective action taken.

(x) Record of property audits and inspections.

(xi) Record of findings and determination that inventory adjustments are reasonable.

(xii) Records of investigation and recommendations of the property administrator, and written advice of the administrative contracting officer on cases involving contractor's liability for Government property lost, damaged, destroyed, or consumed in unreasonable quantities.

(xiii) Original of final property administration clearance statement executed by the property administrator or other relief from assignment documentation.

(xiv) Reports relating to Government property.

(xv) Correspondence, messages, memoranda of calls and visits, and any additional documents pertinent to Government property.

(b)(17) Documentation regarding termination actions for which the contract administration office is responsible, including, as appropriate—

(i) Termination authority and instructions.

(ii) Copy of termination notice.

(iii) Record of initial meeting with contractor.

(iv) Contractor's request, and approval thereof if other than inventory basis is to be used.

(v) Settlement Proposal.

(vi) Application for Partial Payment and approval thereof, together with record of security required.

(vii) Record of the examination of prime contractor and subcontractor proposals, including engineering analysis, audit report or waiver, and request therefor.

(viii) Request to plant clearance office for action on inventory schedules.

(ix) Request from prime contractor for authority to settle subcontractor proposals without approval or ratification of contracting officer, and actions thereon.

(x) Recommendations by prime contractor covering subcontractor's proposal.

(xi) Approval of subcontractor's proposed settlements.

(xii) Record of plant clearance actions, such as verification of and determination of allocability and allowability of inventory schedules, record of inventory redistribution and disposal actions including diversion, screening, scrap determination, sale, abandonment, donation, and storage, as appropriate.

(xiii) Contracting officer's negotiations memorandum (presentation to Settlement Review Board).

(xiv) Required approvals by Settlement Review Board or others.

(xv) Settlement agreement, including record of any exceptions and, when agreement was not reached, a copy of determination by the contracting officer and written supporting evidence.

(xvi) Documents supporting termination actions taken when termination for default, such as notice of possible termination, copy of show cause letter and reply, and record of conference.

(b)(20) When applicable, this includes the Contract Completion Statement (DD Form 1594).

(c) *Paying office contract file.*

(2) Supporting documents may include:

(i) Shipment, acceptance, or receiving reports, such as DD Forms 250 and 1155 (Note.—File DD Forms 250 and 1155 as a separate file series when it will facilitate compilation of contract status and statistical reports), and

(ii) Authorizations for advance and progress payments.

204.804–1 Closeout by the office administering the contract.

(a)(S–70) *Closed Contracts.* Firm Fixed Price Unilateral Purchase Orders are closed when evidence of physical completion is received by the PCO. All other contracts are closed when they are physically complete and when all administrative actions are taken, including the accomplishment of one of the two Contract Completion Statements, DD Form 1594 or MILSCAP Format Identifier PK9.

(a)(S–71) Time standards established in FAR 4.804–1(a) are based upon the time required for closing the majority of contracts. It is recognized that delays beyond the above standards may occur (such as in the case of terminations). Where delays occur, contracts shall be reported in accordance with 204.804–4.

204.804–4 Physically completed contracts.

Status of Physically Completed Unclosed Contracts. Contract Administration Offices shall advise the appropriate procuring contracting officers within 15 days after the end of the month following the month in which a physically completed contract has not been closed within the time periods specified in FAR 4.804–1. This advice shall include the reasons for the delay, and the target date which has been set for closing. If the contract is not closed by the target date specified, the contract administration office shall, unless information is requested earlier by the PCO, advise the PCO of the reasons for the further delay and the new target date. MILSCAP Format Identifier PKX, Unclosed Contract Status, shall be used to provide this advice to the PCO when MILSCAP procedures apply.

204.804–5 Detailed procedures for closing out contract files.

(a)(S–70) *When purchasing office administers the contract.* When the purchasing office administers a contract, that office is responsible for insuring that all required purchase actions and contract administration have been completed, utilizing as necessary DD Form 1597, Contract Closeout Check-List, and DD Form 1593, Contract Administration Completion Record. When all required actions have been completed, the purchasing office shall prepare DD Form 1594, or MILSCAP Format Identifier PK9, Contract Completion Statement, for all contracts in excess of $10,000. The Contract Completion Statement shall be made a part of the official contract file. For all contracts not in excess of $10,000, the contracting officer shall include in the contract file a statement that all contract actions have been completed. The completed form or statement is authority for closing out of the contract file. The file shall be closed out as provided in 204.804–70(a)(2).

(a)(S–71) *When purchasing office does not administer the contract.* When the purchasing office does not administer a contract, that office, upon receipt of DD Form 1594, or MILSCAP Format Identifier PK9, Contract Completion Statement, from the Contract Administration Office (see 204.804–5(b)(3)) shall insure that all actions required of the Purchasing Office have been completed, shall then complete Item 10 of the DD Form 1594, or where the MILSCAP PK9 is used, prepare a statement that all contract actions have been completed, and shall make the completed form or statement a part of the official contract file. The completed form or statement is authority for closing out the purchasing office contract file. Closeout of the file shall be effected as provided in 204.804–70(a)(2). The date in Item 9d of DD Form 1594, or Columns 59–65 of the MILSCAP Format Identifier PK9, Contract Completion Statement, shall be used as the closeout date for file purposes, except that the date in Item 10e of DD Form 1594 or the date of the closeout statement when the MILSCAP PK9 is received shall be used when completion of any pending significant purchasing office action extends more than three months beyond the date shown in Item 9d of DD Form 1594 or Columns 59–65 of the MILSCAP PK9. In the latter case, the purchasing office shall advise the contract administration office of the revised closeout date by sending a reproduced copy of the completed DD Form 1594, or by preparation of MILSCAP Format Identifier PKZ, Contract Closeout Extension.

(b) With respect to all contracts which the contract administration office administers, that office is responsible for insuring that all contract administration has been completed and for initiating closeout action. The organizational element to which this responsibility is assigned shall proceed as follows upon determination or advice (such as by final DD Form 250 or other final report) that the contract has been fully performed (including final payment) or has been terminated completely:

(1) Prepare DD Form 1597, Contract Closeout Check List, when necessary to determine that all required actions have been accomplished.

(2) If appropriate, initiate DD Form 1593, Contract Administration Completion Record, to obtain statements from other organizational elements certifying completion of actions required of each (normally a single copy should be routed in turn to offices concerned, but separate forms may be routed when necessary, such as when closeout actions may be complex and extensive or when offices are at different locations).

(3) Upon determination of final completion, process MILSCAP Format Identifier PK9 or complete Items 1 through 9 of DD Form 1594 certifying that all contract administration office actions have been fully and satisfactorily accomplished, and forward the original of the form to the purchasing office (which will utilize it to close out its contract file).

(4) Retain one copy of the completed form, which is authority for closing out the contract administration file.

204.804–70 Review, separation, and retirement of completed contract files.

(a) Upon determination of contract completion under the procedures outlined in FAR 4.804 and 204.804 above, each office shall review all files pertaining to the individual contract as described below. For disposal criteria, see FAR 4.805.

(1) *Duplicate or working contract case file*—remove any original or official file copies of documents and place them in the appropriate "official" file; destroy immediately any remaining material, or segregate and mark it for early disposal.

(2) *Official contract case file*—remove folder for completed contract from the active file series, mark each folder or folder tab "Completed *(Date)*" and place folder in completed (inactive) contract file series; separate series should be established for contracts of $10,000 or less and for contracts of more than $10,000, to facilitate later disposal.

(3) *Cross reference/locater files*—remove any contract cross-reference data forms relating to the completed contract, mark each "Completed *(Date)*" and place them in completed (inactive) cross reference/locater file series for later disposal.

(b) *Review of contractor general files.* Each office shall review contractor general files at least once annually and—

(1) Remove obsolete and superseded documents relating generally to the contractor (e.g., documents no longer pertinent to any aspect of contractor's current or future capability, performance, or programs, and documents relating to a contractor who

is no longer a possible source of supplies, services, or technical assistance) and dispose as authorized.

(2) Remove any documents pertaining only to completed contracts, place those not routine in nature in inactive contractor file for later disposal and immediately dispose of routine documents as authorized.

(c) *Retirement of completed files.* Completed files series shall be cut off at least annually, and new series begun to facilitate destruction in blocks—normally annual blocks. The cut-off series shall be held in the office maintaining the records for an additional period not to exceed one year and then stored locally in recordholding or staging areas, if available, until they are eligible for destruction (see FAR 4.805); when such space is not available, the files shall then be transferred to the General Services Administration Federal Records Center servicing the area. Completed cross reference/locator files shall be held locally until eligible for destruction.

204.805-70 Disposal of duplicate or working contract or contractor files.

Duplicate copies of official file documents and extraneous materials not required or appropriate for filing in official files shall be destroyed as soon as they have served their purpose, when actions which the file facilitated have been taken, or upon physical completion or final payment under the contract, as appropriate. In no case shall such copies be retained for longer than one year after final payment under the contract. However, pricing review files containing documents related to reviews of contractor price proposals, subject to certification of cost or pricing data (see FAR 15.804-2), shall not be destroyed before the expiration of 6 years from the date of final payment under the contract. If conditions exist, however, which do not permit cross-referencing the pricing review file to the official contract file to determine the date of final payment, the pricing review file will, in that case, be retained for 9 years following completion of the proposal review.

204.805-71 Disposal of contract cross reference/locator files.

Completed contract cross reference/locator files shall be destroyed at the same time as the related contract file, or when they are no longer required as contract cross-reference/locator.

Subpart 204.70—Uniform Procurement Instrument Identification Numbers

204.7001 Scope.

This subpart prescribes procedures for assigning identifying numbers to all contracts and to other instruments related thereto, including solicitation documents and delivery orders, issued pursuant to this supplement. This subpart does not apply to procurement instruments issued by the Defense Commercial Communications Office, Defense Communications Agency. The provisions of this subpart are optional where the procurement instrument will be completely administered by the purchasing office or the consignee, except that as a minimum such instrument numbers shall not exceed 19 characters (excluding hyphens) for the procurement instrument identification number including any supplemental modification or other identification number, and such instrument numbers shall commence with the identification of the purchasing office and the fiscal year, in accordance with 204.7003-2 (a) and (b) and Appendix N.

204.7002 Policy.

(a) The uniform procurement instrument identification (hereafter referred to as PII) numbering system as prescribed in this subpart shall be used for instruments of the types listed in 204.7003-1(c), 204.7004-2, 204.7004-3, and 204.7004-4.

(b) Numbers, including Federal Supply Contract Numbers and any prescribed supplementary numbers, shall be placed in spaces provided on the applicable procurement forms, with major elements separated by dashes; for example, DABE01-66-M-0001. If a space is not otherwise provided, the prescribed numbers shall be placed in the upper righthand corner of the form.

(c) Alpha-numeric characters, other than those prescribed in this subpart, shall not be used as a part of the PII numbering system. If other identification is required in accordance with Departmental procedures, it shall be placed on the procurement instrument in such a location as to clearly separate it from the PII number prescribed herein.

204.7003 Basic procurement instrument identification number.

204.7003-1 Elements of number.

The basic PII number should be retained unchanged for the life of the particular instrument and shall consist of 13 alpha-numeric characters positioned as follows:

(a) The first 6 positions shall commence with the capital letters assigned to the Department preparing the instrument as follows:

DA Department of the Army
F Department of the Air Force
DCA Defense Communications Agency
N Department of the Navy (except Marine Corps)
MO, M1 Marine Corps
M2, M6:
DLA Defense Logistics Agency
DNA Defense Nuclear Agency
DMA Defense Mapping Agency
MDA Miscellaneous Defense Activities

The remainder of the first 6 positions shall be the alpha-numeric characters which, together with the Departmental identification shown above, identify the activity preparing the instrument. All 6 positions shall be used. If necessary, nonsignificant zeros shall be placed between the Department identifier and the activity identifier. A listing of applicable numbers is contained in Appendix N.

(b) The 7th and 8th positions shall be the last two digits of the fiscal year in which the PII number is assigned.

(c) The 9th position shall be a capital letter assigned to indicate the type of instrument code, as follows:

A Blanket Purchase Agreements
B Invitation for Bid
C Contracts, including Letter Contracts, contracts incorporating basic agreements, and contracts providing subsequent provisioning, but excluding Indefinite Delivery Type Contracts
D Indefinite Delivery Type Contracts
E Facilities Contract
F Delivery orders placed with or through other Government Departments or agencies or against contracts placed by such Departments or agencies (i.e., outside the Department of Defense and including blind-made supplies)
G Basic Ordering Agreements
H Agreements, including Basic Agreements
K Short Form Research Contract
L Lease Agreement
M Purchase Order—manual (assign W when numbering capability of M becomes exhausted during a fiscal year
N Notice of Intent to Purchase
P Purchase Order—automated (assign V when numbering capability of P becomes exhausted during a fiscal year)
Q Request for Quotation—manual
R Request for Proposal
S Sales Contract
T Request for Quotation—automated (assign U when numbering capability of T becomes exhausted during a fiscal year).

The letters X, Y and Z are reserved for Departmental use.

(d) The 10th through 13th positions shall be the serial number of the instrument. A separate series of serial numbers may be used for any type of instrument listed in (c) above. Each such series of PII numbers for the same activity shall commence with the number 0001 at the start of each fiscal year. Alpha-numeric serial numbers shall be used when more than 9,999 numbers are required. Alpha-numeric numbers shall be serially assigned with an alpha in the first (or first and second) position followed by the three (or two) position numeric serial number. The following alpha-numeric sequence shall be used (the letters I and O shall not be used):

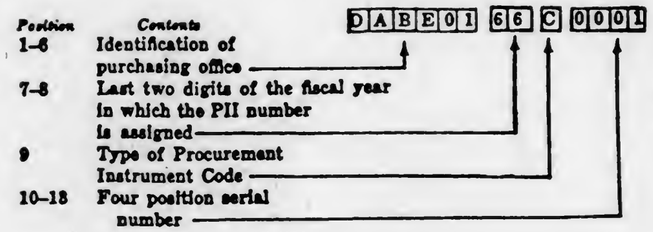
A001 through A999, B001 through B999, and so on to Z001 through Z999;

then AA01 through AA99, AB01 through AB99, and so on to AZ01 through, AZ99; then BA01 through BA99, BB01 through BB99, and so on to BZ01 through BZ99; and so on to

ZA01 through ZA99, ZB01 through ZB99, and so on to Z001 through ZZ99.

204.7003-2 Illustration of number.

The following illustrates the configuration of the PII number as prescribed in 204.7003.



204.7004 Supplementary procurement instrument identification numbers.

204.7004-1 Uses of the number.

Supplementary numbers, used in conjunction with basic PII numbers, shall be employed to identify:

(a) Amendments to solicitation documents;

(b) Modifications of contracts and agreements (Provisioned Item Orders will be treated and numbered as modifications); and

(c) Calls/orders under contracts (except Federal Supply Schedule contracts), under basic ordering agreements and under blanket purchase agreements.

204.7004-2 Amendments to solicitation documents.

Amendments to each solicitation document shall be sequentially numbered by use of a four position numeric serial number supplementary to the basic PII number, commencing with 0001.

204.7004-3 Modifications of contracts and agreements.

(a) Contract modifications, as defined in FAR Subpart 43.1, and modifications to agreements shall be numbered by use of a six-position alpha-numeric number supplementary to the 13-position basic PII number as follows:

(1) The first position shall be a capital letter identifying the issuing office and the type of modification as indicated below:

A Contract Administration Office modifications
P Purchasing Office modifications

(2) The second through sixth positions shall be a serial number. The second and third positions may be alpha or numeric, except that the letters K, L, M, N, P, S, T, U, V, W, X, Y and Z are excluded and reserved for the express purposes as follows:

(i) For a definitized letter contract the second position shall be a Z; in other words, the letter Z will be used only for that modification which represents the definitized contract. The serial numbers of modifications occurring after the definitization will continue the sequence in the manner provided in this paragraph, without the letter Z.

(ii) Only the letters T, U, V, W, X, or Y may be used in the second position when a modification is issued providing initial shipping instructions or amending those shipping instructions previously issued in those cases in which the contract provides delivery FOB origin and no price change is involved. Modifications shall be serially numbered by each issuing activity. The foregoing is not mandatory on purchase offices that issue and control all modifications.

(iii) The letter S only may be used in the second position when a modification is issued providing initial or amended shipping instructions in those cases in which the contract provides delivery FOB destination or the contract provides delivery FOB origin and a price change is involved. Each modification shall be serially numbered.

(iv) The letters K, L, M, N, P, and Q are reserved for the exclusive use of the Air Force only in the second position for a Provisioned Items Order. Provisioned Items Orders shall be serially numbered by each issuing activity.

(v) The fourth through sixth positions shall always be numeric. A separate series of serial numbers shall be used for each type modification listed in (1) and (2) (ii), (iii), and (iv) above. The modifications issued by an activity for a contract shall be numbered as set forth below:

Normal modification	Provisioned items order (reserved for exclusive use by the Air Force only)	Shipping instructions
00001–99999	K0001–K9999	S0001–S9999
then	KA001–KZ999	SA001–SZ999
A0001–A9999	L0001–L9999	T0001–T9999
B0001–B9999	LA001–LZ999	TA001–TZ999
and so on to	M0001–M9999	U0001–U9999
H0001–H9999	MA001–MZ999	UA001–UZ999
then	N0001–N9999	V0001–V9999
J0001–J9999	NA001–NZ999	VA001–VZ999
then	P0001–P9999	W0001–W9999
R0001–R9999	PA001–PZ999	WA001–WZ999
then	Q0001–Q9999	X0001–X9999
AA001–HZ999	QA001–QZ999	XA001–XZ999
then		Y0001–Y9999
JA001–JZ999		YA001–YZ999
RA001–RZ999		

(3) ARZ999 is the six-position alpha-numeric number to be utilized the first time the office of administration or disbursement is being changed by use of computer generated modifications initiated by a CAO. The second change will utilize ARZ998, the third change ARZ997, and so forth. This method will only be utilized when mass changes are required.

(b) Supplementary identification numbers for modifications shall be assigned in consecutive chronological sequence by each issuing office authorized to issue modifications. To assure chronological assignment, modification numbers shall be assigned only after it has been determined that a modification is to be issued.

204.7004-4 Delivery orders under indefinite delivery type contracts, orders under basic ordering agreements, and calls under blanket purchase agreements.

(a) Delivery orders under indefinite delivery type contracts (orders), orders under basic ordering agreements (orders), and calls under blanket purchase agreements (calls) shall be identified by a four-position alpha-numeric "call/order serial number" which is supplementary to the 13-position basic PII number.

(1) Calls/orders issued by the purchasing office identified in the basic PII number shall be assigned numeric call/order serial numbers, beginning with 0001 through 9999.

(2) Calls/orders issued by an office other than the purchasing office identified in the basic PII number shall be assigned alphanumeric call/order serial numbers as follows:

(i) The first and second position shall be the alpha-numeric call/order serial number assigned to Appendix N to the activity issuing the call/order. The letters A, I, O, and P shall not be used in the first position; however, A and P may be used in the second position.

(ii) The third and fourth positions shall be a serial number assigned by the issuing activity. The first call or order issued each contract or agreement shall be numbered 01. After the serial number 99 is used, a uniform series of numeric/alpha, alpha/numeric, and finally alpha serial numbers shall be assigned as follows (the letters I and O shall not be used):

1A, 1B, and so on to 1Z, then 2A, 2B, and so on to 2Z, and so on to
9A, 9B, and so on to 9Z, followed by
A1, A2, and so on to A9, then B1, B2, and so on to B9, and so on to
Z1, Z2, and so on to Z9, followed by
AA, AB, and so on to AZ, then BA, BB, and so on to BZ, and so on to
ZA, ZB, and so on to ZZ.

(b) If it is necessary to modify a call/order, a two-position alpha-numeric suffix (known as the call/order modification indicator) shall be added to the supplementary PII number as follows (the letters I and O shall not be used):

(1) Modification to a call/order—issued by the purchasing office, excluding any modification providing shipping instructions in those cases described in (2) and (3) below—01, 02, and so on through 99, then B1–B9, BA–BZ, C1, and so on through NZ and Z1 through ZZ;

(2) Modification to a call/order issued by a purchasing office providing initial or amended shipping instructions in those cases in which the call/order provides for delivery FOB destination or delivery FOB origin and a price change is involved—P1, P9, PA–PZ, Q1–Q9, QA–QZ, etc., through TZ;

(3) Modification to a call/order issued by a purchasing office providing initial shipping instructions or amending those shipping instructions previously issued in those cases in which the call/order provides delivery FOB origin and no price change is involved—U1–U9, UA–UZ, V1–V9, VA–VZ, and so on through YZ; and

(4) Modifications to a call/order issued by a Contract Administration Office (CAO) will begin with 1A, 1B, and so on to 1Z; then 2A, 2B, and so on to 2Z; and so on to 9A, 9B, and so on to 9Z, followed by A1, A2, and so on to A9; then AA, AB, and so on through AZ. AZ will be utilized the first time a modification is generated by mechanical means (computer program) to change the name of the administration office or disbursing office. The second change will utilize AY, the third change AX, and so forth. This method will only be utilized when mass changes are required.

Subpart 204.71—Uniform Contract Line Item Numbering System

204.7101 Scope of subpart.

This subpart prescribes procedures for establishing and numbering all items of supplies or services set forth in contracts and in other documents related thereto issued pursuant to this supplement.

204.7102 Policy.

(a) These procedures provide criteria for establishing and numbering contract line items, contract subline items, exhibits, exhibit line items, and exhibit subline items.

(b) The procedures prescribed in this subpart shall be used in contracts (as defined in FAR 2.1) and in provisioning and other documents which are expected to become parts of contracts.

(c) When practicable, these procedures also shall be used in solicitations and other contractual documents.

(d) These procedures are mandatory for all contracts except as follows:

(1) When no postaward contract administration function on the specific contract is assigned to any office listed in DoD Directory of Contract Administration Services Components;

(2) Indefinite delivery type contracts for petroleum products under which posts, camps, and stations issue delivery orders for such products for their own use; or

(3) Communication Service Authorizations issued by the Defense Commercial Communications Office, Defense Communications Agency.

(e) For cost-reimbursement type contracts, the provisions of this subpart apply except for the requirements in 204.7103-1(a)(1) and 204.7104.2(c)(2) for a single unit price or single total price or amount for each contract line or subline item.

(f) For maintenance and repair service type contracts in which firm prices for elements of the total price of an item are established but the number and quantity of such elements performed in order to determine the final item price to be paid are not known until performance (for example, a labor-hour contract), the provisions of this subpart apply except for the requirements in 204.7103-1(a)(1) and 204.7104-2(c)(2) for separate contract line items or subline items because of unit price differences for individual quantities of a line item or subline item. In lieu of establishing separate contract line items or subline items because of price differences, contractual documents for these types of contracts may be structured to reflect a firm or estimated total item amount for each such line or subline item only (omitting unit price).

204.7103 Contract line items.

204.7103-1 Criteria for establishing.

(a) Requirements for supplies or services shall be established as contract line items. Each contract line item shall:

(1) Have, or be anticipated to have, a single unit price or, if no unit price is established, a single total price or amount (unless associated subline items of other than an informational nature are separately priced in accordance with 204.7104-2(c)(2), in which case, no price shall be assigned to the contract line item, except for informational purposes unit prices and/or amounts may be entered in parentheses within the item description block); however, the unit price may be entered as "NSP" (not separately priced); *Provided*, the price of this item is included in the unit price of another contract line item;

(2) Be separately identifiable, i.e., no more than one National Stock Number, one item description, one Manufacturer's Part Number, etc., for a supply line item, or no more than one Scope of Work, one Description of Services, etc., for a services line item (unless this identification is provided by associated subline items of other than an informational nature; in which case, a general narrative description shall be assigned to the contract line item number and the subline item shall include the actual detailed identification in accordance with 204.7104-2(c)(3)); and

(3) Have a separate delivery schedule, period of performance or completion date expressly stated in the procurement instrument ("as required" is an expressly stated delivery schedule) unless there are associated subline items of other than an informational character that meet this requirement. (When a requirement has multi-delivery dates or multi-destinations or multi-performance dates/points, that factor alone shall not require but does not preclude establishment of more than one contract line item. However, when more than one delivery date and/or more than one destination are identified to a single contract line item, the delivery schedule will specify delivery dates for the item by the destination when established, or individual contract line items may be established for each destination and/or delivery date and/or requisition.)

(b) As an alternative to setting forth in the Schedule an extensive list of contract line items, they may be shown in a contract exhibit as exhibit line items (see 204.7105 and 204.7106). In these cases, a Contract Line Item Number (CLIN) which references the exhibit will be assigned in the Schedule and shall specify the exhibit identifier. Contract line items for provisioned spares shown on a contract exhibit and data items shown on DD Form 1423, Contract Data Requirements List, when used as an exhibit, shall specify the exhibit identifiers.

(c) Requirements for test model approval under the development phase or for first article approval under the production phase (whether the requirement is for first article delivery for Government testing or for first article approval test report delivery based on contractor testing) shall require the establishment of a separate contract line or subline item for each item of supply or service (one Scope of Work, one Performance Description, one National Stock Number, one Manufacturer's Part Number, one drawing and piece number) unless the test model or first article consists of a lot composed of a mixture of items, in which case a single contract line or subline item may be established for the lot.

(d) Requirements expressing contractor responsibilities for which a separate price is not established or contained in the price of a supply or service line item but for which the contractor may be entitled to payment, shall not be assigned a contract line or subline item number, but shall be identified in the contract schedule. Examples of such requirements are transportation, packaging and handling, reusable containers, and state and/or local taxes. If it is determined that a separate price is to be established for these requirements, they shall meet the criteria in (a) above or in 204.7104-2(c) and shall be established as a line or subline item.

204.7103-2 Procedures for numbering.

(a) Contract line items within a contract shall consist of 4 numeric digits 0001 through 9999 and shall be numbered sequentially but not necessarily consecutively. Unless there is a valid reason to the contrary, the identical line item number assigned to an item in a solicitation pursuant to 204.7102(c) shall be assigned to that item when an award is made. Any given contract line item number shall not be assigned more than once in a contract, and line item numbers beyond "9999" shall not be used.

(b) When a contract line item contains subline items, each such subline item shall be numbered by adding to the basic line item number, two alphabetic or two numeric characters as specified in 204.7104.

204.7104 Contract subline items.

204.7104-1 General.

Contract subline items provide a further subdivision of the basic contract line item when it is necessary for contract performance or administration purposes to separately identify subordinate requirements. There are only two categories of contract sublines.

(a) The first category comprises those subline items that are included in the procurement instrument for information purposes only and are identified by a numeric suffix. These subline items are an integral part of the associated contract line item but shall not be scheduled separately for delivery, separately identified for shipment or performance, or separately priced for payment purposes.

(b) The second category comprises those subline items that have a separate delivery schedule, require separate identification at the time of shipment or performance and/or are separately priced for payment purposes. These subline items are identified by an alpha suffix.

204.7104-2 Criteria for establishing.

(a) Subline items included in procurement instruments for informational purposes only (numeric suffix) shall be established at the discretion of the contracting officer. This type of subline item identifies information that relates directly to and is an integral part of the contract line item; e.g., parts of an assembly or parts of a kit. Such subline items shall not have a separate delivery schedule, a separate price for payment purposes or require separate identification at the time of shipment or performance. Informational quantities, prices or amounts determined by the contracting officer as necessary to satisfy management requirements may be identified to such subline items; *Provided*, that such quantities, prices or amounts are set forth in parentheses within the Supplies/Services (item description) column of the contractual document (i.e., not within the quantity and price columns).

(b) Subline items that have a separate delivery schedule, require a separate identification at the time of shipment, and/or are separately priced for payment purposes (alpha suffix) shall be established in lieu of line items at the discretion of the contracting officer. This category subline item shall be established whenever a capability must be provided to accumulate separately identified price and/or quantity data at the contract line item level. For instance, this category subline may be used to identify:

(1) Identical items that are to be paid from more than one accounting classification (unless separate contract line items have been established for each accounting classification or accounting classifications have been identified to each consignee in the contract line item delivery schedule in accordance with 204.7108);

(2) Items of an identical nature where different sizes have been assigned discrete Federal supply stock numbers and/or different prices;

(3) Individually payable items such as packaging costs that pertain to a contract line item but are not included in the contract line item price (in this case, item description, price and quantity data for the line item also are to be entered as a separate subline item);

(4) Individual delivery dates and/or destinations and/or requisitions when multiple delivery dates, destinations and/or requisitions are designated in the procurement instrument for a contract line item; or

(5) Parts of an assembly or parts of a kit when the parts have a separate delivery schedule, require separate identification at the time of shipment or performance, and are separately priced for payment purposes.

Whenever subline items of this category (alpha suffix) are established, the associated contract line item shall serve only as a common denominator for the accumulation of management data by the procuring activity and all

requirements for the associated contract line item will be identified as subline items. (All shipments and payments will be made at the subline item level.)

(c) Subline items in the alpha suffix category ((b) above) shall:

(1) Have a separate (i.e., subline item level) delivery schedule, period of performance or completion date expressly stated in the procurement instrument ("as required" is an expressly stated delivery schedule); and

(2) Have or be anticipated to have a single unit price or, if no unit price is established, a single total price or amount (When all subline items for a particular contract line item are identical services or supply items that have identical unit prices, the unit price and total amount (extended unit price for all subline items) may be shown at the contract line item level, or the unit price may be shown at the contract line item level and the extended amounts shown at subline item level, or the unit price and total amounts may be shown at subline item level, but only one of these methods may be used for a contract line item and its associated subline items. However, if any subline item has a different unit price than the remainder of the subline items, all subline items shall be separately priced and the contract line item shall not be priced. In this latter instance, subline items that are not separately priced but must be separately identified for shipment and management purposes may indicate a unit price of "NSP" (not separately priced); *provided*, the price of this item is included in the unit price of another subline item or different contract line item. The clause set forth in 252.204-7000 shall be inserted in applicable contracts when in the opinion of the contracting officer because of dollar value or other considerations it is necessary to preclude payment for a subline item until all related subline items identified as not separately priced have been delivered. In no instance will the contract line item/subline item structure be constructed in such a way as to require the identification of contractor products or services (shipment or performance) at the subline item level and contractor payment at the contract line item level); and

(3) Be separately identifiable (i.e., no more than one National Stock Number, one Item Description, one Manufacturer's Part Number, etc., for a supply subline item, or no more than one Scope of Work, one Description of Services, etc.) for a services subline item.

204.7104-3 Procedures for numbering.

(a) When contract subline items are established within a contract line item, the total effort shall be assigned a contract line item number and each subline item shall be assigned a contract subline item number.

(b) Contract subline items established within a contract line item for information purposes only (204.7104-1(a) and 204.7104-2(a)) shall be numbered by adding to the contract line item number two numeric characters commencing with "01" and continuing through "99." No such designation shall be assigned more than once to the same contract line item number within a procurement instrument. The two supplemental numeric characters shall be placed immediately following the contract line item number without separation by spaces or special characters. Example follows:

Item No.	Supplies/Services	Quantity	Unit	Unit price	Amount
0002	15B/EE Periscope Adapter System, NSN-2040-00-916-2842, including one set of the following for each system:	12	EA	$72,831.00	$873,972.00
000201	Indicator and Control Box (1 ea.)				
000202	Well Junction Box (1 ea.)				
000203	Remote Indicator Box (ECM RM) (1 ea.)				
000210	Set Dip Loop Cables (1 ea.)				

NOTE.—In the above instance, the delivery schedule will identify the contract line item (not the subline items) and all shipments and payments will be at the contract line item level. Shipment documents and payment vouchers will not identify subline items.

(c) Contract subline items established to identify contractual requirements that have a separate delivery schedule, require identification at the time of shipment or accomplishment and/or are separately priced for payment purposes (see 204.7104-1(b) and 204.7104-2(b) shall:

(1) Be numbered by adding to the contract line item number two alphabetic characters commencing with "AA" and continuing through "ZZ." (The letters "I" and "O" shall not be used.) Contract sublines shall be numbered sequentially but not necessarily consecutively. No such designation shall be assigned more than once to the same contract line item number within a contract;

(2) Be sequenced within a contract line item as follows: AA, AB, AC through AZ; then BA, BB, BC through BZ; and continuing, if necessary, through ZZ; and

(3) Be constructed by placing the two supplemental alphabetic characters immediately following the contract line item without separation by spaces or special characters. For example, with contract line item number "0001" the first three contract subline items, if consecutive, would be numbered "0001AA," "0001AB," and "0001AC."

Examples of correct line item structures in this category are shown below:

Example 1.—Subline items structured to identify destinations for identical items, identically priced (Delivery schedule shall be established for each subline item, not the contract line item.).

Item No.	Supplies/services	Quantity	Unit	Unit price	Amount
0001	NSN 1615-00-591-6620 Shim, Aluminum Alloy, . . . Appl, Rotor, Helicopter PRON A1-9-63821-M1-M1 ACR: AA				
0001AA	A3168R-9030-4025 A2537M IPD: 2 RDD: 334 PROJ: 501	10	Ea	$100.00	$1,000.00
0001AB	A3168R-9030-4026 A51AXBM IPD: 2 RDD: 325 PROJ: 502	10	Ea	$100.00	$1,000.00
0001AC	A3168R-9030-4027 A67KBCM IPD: 2 RDD: 349 PROJ: 503	15	Ea	$100.00	$1,500.00

Example 2.—Subline items structured to identify destinations for identical items, not identically priced (Delivery schedule shall be established for each subline item, not the contract line item.).

Item No.	Supplies/services	Quantity	Unit	Unit price	Amount
0001	NSN 1615-00-591-6620 Shim, Aluminum Alloy, . . . Appl, Rotor, Helicopter PRON A1-9-63821-M1-M1 ACR: AA				
0001AA	A3168R-9030-4025 A2537M IPD: 2 RDD: 334 PROJ: 501	10	Ea	$100.00	$1,000.00
0001AB	A3168R-9030-4026 A51AXBM IPD: 2 RDD: 325 PROJ: 502	20	Ea	$99.00	$1,980.00
0001AC	A3168R-9030-4027 A67KBCM IPD: 2 RDD: 349 PROJ: 503	30	Ea	$98.00	$2,940.00

NOTE.—Difference in prices for identical items is due to separate destinations for FOB destination delivery.

Example 3.—Subline items structured to identify different sizes of an item that are identically priced (Delivery schedule shall be established for each subline item, not the contract line item.).

Item No.	Supplies/services	Quantity	Unit	Unit price	Amount
0013	Boots Insulated, Cold Weather White, Type II, Class 1		Pr	$38.35	$13,422.50
0013AA	8430-00-655-5541 Size 5N	50			
0013AB	8430-00-655-5544 Size 8N	70			
0013AC	8430-00-655-5551 Size 9N	30			
0013AD	8430-00-655-5535 Size 9R	200			

NOTE.—Unit price and total amount shown at line item level rather than at subline level, as authorized by 204.7104-2(c)(2), when all subline items of a line item identically priced.

Example 4.—Subline items structured to identify different sizes of an item that are not identically priced (Delivery schedule shall be established for each subline item, not the contract line item.).

Item No.	Supplies/services	Quantity	Unit	Unit price	Amount
0002	Body, Armor Ground Troops Variable Type Small Arms, Fragmentation Protective Nylon Felt Vest, Front and Back Plates, Ceramic Plate, Type I				
0002AA	First Article	1	LO	NSP	
0002AB	8470-00-141-0935, Medium Regular	1936	SE	$331.77	$642,306.72
0002AC	8470-00-141-0936, Large Regular	625	SE	355.77	222,356.25
0002AD	8470-00-141-0937, Medium Long	1237	SE	346.77	428,954.49
0002AE	8470-00-141-0938, Large Long	804	SE	365.77	294,079.08

NOTE.—First Article entered as "Lot" in accordance with 204.7103-1(c).

Example 5.—Subline items structured to provide the capability for relating subordinate separately priced packaging costs to the overall contract line item (Separate delivery schedules shall be established for the subline item identifying the contractor's product and for the subline item identifying packaging. No schedule will be established for the contract line item.)

Item No.	Supplies/services	Quantity	Unit	Unit price	Amount
0001	6105-00-635-6568 50380 Ref. No. 63504-WZ Armature Motor ACR: AA				
0001AA	6105-00-635-6568 50380 Ref. No. 63504-WZ Armature Motor	2	EA	$2,895.87	$5,791.74
0001AB	Packaging	2	EA	289.58	579.16

Example 6.—Subline items structured to identify different accounting classifications for identical items (Delivery schedule shall be established for each subline item, not the contract line item.).

AJ: 17X1505183503150691000000192B0000000000000000000

AK: 17X1505183703175691000000192B0000000000000000000

AL: 17X1505193503143691000000192B0000000000000000000

Item No.	Supplies/services	Quantity	Unit	Unit price	Amount
0002	Pulse Decoder KY-312/A5Q-19		EA	$3,037.40	
0002AA	Pulse Decoder KY-312/A5Q-19 ACR: AJ	2			$6,074.80
0002AB	Pulse Decoder KY-312/A5Q-19 ACR: AK	6			18,224.40
0002AC	Pulse Decoder KY-312/A5Q-19 ACR: AL	2			6,074.80

NOTE.—Unit price may be shown at line item level and total amounts shown at subline item level, as authorized by 204.7104-2(c)(2), when all subline items of a line item are identically priced.

Example 7.—Subline items structured to identify parts of an assembly (Delivery schedule and price shall be established for each identified part at the subline item level, not for the assembly at the contract line item level.).

Item No.	Supplies/services	Quantity	Unit	Unit price	Amount
0003	Automatic Degausing System Consisting of: (2 ea. @ $52,061; $104,122 total)				
0003AA	Switchboard	2	EA	$52,601.00	$104,122.00
0003AB	Remote Control Panel	2	EA	NSP	
0003AC	Power Supply (M Coil) SSM Type (145 Amps, 220 V DC)	2	EA	NSP	
0003AF	Power Supply (A Coil) SSM Type (118 Amps, 220 V DC)	2	EA	NSP	

NOTE.—In the above instance, the price of all other subline items indicated by "NSP" is included in the Switchboard. The clause set forth at 252.204-7000 shall be inserted in applicable contracts when in the opinion of the contracting officer because of dollar value or other considerations, it is necessary to preclude payment for a subline item until all related subline items identified as not separately priced have been delivered.

Example 8.—Subline items structured to identify parts of a kit (Delivery schedule and price shall be established for each identified part at the subline item level, not for the kit at the contract line item level.).

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Item No.	Supplies/services	Quantity	Unit	Unit price	Amount
0031	Conversion Kit to Convert Torpedo MK 45 Mod 0 to Torpedo MK 45 Mod 1 (50 Kt @ $10,868.52; $543,426 total).				
0031AA	Integrator Assy. LD 620106	50	EA	$10,868.52	$543,426.00
0031AB	Pulse Generator Assy. LD 587569	50	EA	NSP	
0031AC	Drive Shaft Assy. LD 587559	50	EA	NSP	
•	•	•		•	•
0031BF	Actuator Panel Assy. LD 542924	50	EA	NSP	

NOTE.—In the above instance, the price of all other subline items indicated by "NSP" is included in the Integrator Assembly. The clause set forth at 252.204-7000 shall be inserted in applicable contracts when, in the opinion of the contracting officer because of dollar value or other considerations, it is necessary to preclude payment for a subline item until all related subline items identified as not separately priced have been delivered.

204.7105 Contract exhibits.

204.7105–1 Definition.

"Exhibit" means a document attached to a procurement instrument, referenced by its capital letter identifier in a line or subline item in the procurement instrument Schedule, which establishes deliverable requirements in the attached document as an alternative to establishing an extensive list of line or subline items in the procurement instrument Schedule.

204.7105–2 Criteria for establishing.

(a) As an alternative to setting forth in the Schedule an extensive list of contract line or subline items (e.g., spare parts lists), a contract line item may be established referencing a document attached to the contract which shall be designated an exhibit. The exhibit shall set forth as exhibit line items what would otherwise be shown as contract line items. When exhibits are used, the following shall apply:

(1) Each exhibit shall apply to one contract line or subline item only; however, more than one exhibit may apply to a single contract line item.

(2) DD Form 1423 (Contract Data Requirements List) may be used as an exhibit or as an attachment. If used as an exhibit, the exhibit identifier (204.7105–3) shall be entered in the "TO EXHIBIT" line in the upper left corner of the form (the "ATCH NR" line shall be left blank), one contract line or subline item shall be established in the Schedule which reflects the exhibit, and the standard procedures for identifying exhibits prescribed in 204.7105–3 below and for numbering exhibit line and subline items prescribed in 204.7106 shall be followed. If the DD Form 1423 is used as an attachment, a numeric attachment number shall be entered in the "ATCH NR" line in the upper left corner of the form (the "TO EXHIBIT" line shall be left blank) and a separate contract line or subline item shall be established in the Schedule for, and which references, each deliverable sequence number of data on the DD Form 1423.

(3) Contract line or subline items in the Schedule which reference an exhibit shall not contain unit prices or total amounts, except when necessary to reflect the amount of funds for actual or estimated requirements to satisfy the management needs of the individual procuring activity. When unit prices or total amounts are shown to satisfy a management need, such prices or amounts shall be set forth in parentheses within the item description block of the contractual document (i.e., not within the unit price or amount columns).

(b) As an alternative to setting forth in the Schedule an extensive list of contract subline items, a contract subline item may be established which references an exhibit in the same manner as for a contract line item.

(c) The term "Exhibit" shall not be used to identify any other attachment to a procurement instrument. When contract line items or subline items refer to a document attached to a procurement instrument which establishes a deliverable requirement, such as spare parts or data on a DD Form 1423, this document shall be termed an Exhibit. When other types of documentation are appended to or incorporated by reference in a procurement instrument, such documentation shall be referred to as an "Attachment" or other term identifying it as appended documentation. Such documentation may be attached to a contract exhibit, provided such documentation does not identify a deliverable requirement which is not established by a contract or exhibit line or subline item.

204.7105–3 Procedures for identifying.

Exhibits shall be identified by either a single or double capital letters. The letters "I" and "O" shall not be used. Exhibit identifiers need not be assigned consecutively, nor sequentially, but they shall not be duplicated within a procurement instrument and shall always appear in the first or first and second positions of all applicable "Exhibit Line Item Numbers" (see 204.7106). Each page of the exhibit shall have the procurement instrument identification number, exhibit identifier, and applicable contract line or subline item number cited thereon.

204.7106 Exhibit line and subline items.

204.7106–1 Criteria for establishing.

Criteria for the establishment of exhibit line and subline items shall be the same as for establishing contract line and subline items (see 204.7103–1 and 204.7104–2, respectively).

204.7106–2 Procedures for numbering.

(a) Exhibit line items within an exhibit shall be assigned four-position numbers. The exhibit identifier (see 204.7105–3) is used for the first or first and second positions; the remaining positions are assigned sequentially within each exhibit using alpha and numeric characters. The letters "I" and "O" shall not be used. Exhibit line item numbers shall be sequenced as set forth in 204.7106–3, except that numeric numbering may be employed in those cases where such numbering is adequate to meet the criteria established by 204.7106–1.

(b) Exhibit subline items shall be numbered in the same manner as specified for contract subline items (see 204.7104–3).

204.7106–3 Sequence of exhibit line item numbers.

Cumulative No. of line items	Two-position serial No. for double-letter exhibit identifier—serial No. sequence
1–33	01 thru 09, then 0A thru 0Z, then
34–67	10 thru 19, then 1A thru 1Z, then
68–101	20 thru 29, then 2A thru 2Z, then
102–135	30 thru 39, then 3A thru 3Z, then
136–169	40 thru 49, then 4A thru 4Z, then
170–203	50 thru 59, then 5A thru 5Z, then
204–237	60 thru 69, then 6A thru 6Z, then
238–271	70 thru 79, then 7A thru 7Z, then
272–305	80 thru 89, then 8A thru 8Z, then
306–339	90 thru 99, then 9A thru 9Z, then
340–373	AO thru A9, then AA thru AZ, then
374–407	BO thru B9, then BA thru BZ, then
408–441	CO thru C9, then CA thru CZ, then
442–475	DO thru D9, then DA thru DZ, then
476–509	EO thru E9, then EA thru EZ, then
510–543	FO thru F9, then FA thru FZ, then
544–577	GO thru G9, then GA thru GZ, then
578–611	HO thru H9, then HA thru HZ, then
612–645	JO thru J9, then JA thru JZ, then
646–679	KO thru K9, then KA thru KZ, then
680–713	LO thru L9, then LA thru LZ, then
714–747	MO thru M9, then MA thru MZ, then
748–781	NO thru N9, then NA thru NZ, then
782–815	PO thru P9, then PA thru PZ, then
816–849	QO thru Q9, then QA thru QZ, then
850–883	RO thru R9, then RA thru RZ, then
884–917	SO thru S9, then SA thru SZ, then
916–951	TO thru T9, then TA thru TZ, then
952–985	UO thru U9, then UA thru UZ, then
986–1019	VO thru V9, then VA thru VZ, then
1020–1053	WO thru W9, then WA thru WZ, then
1054–1087	XO thru X9, then XA thru XZ, then
1088–1121	YO thru Y9, then YA thru YZ, then
1122–1155	ZO thru Z9, then ZA thru ZZ.

Cumulative No. of line items	Three-position serial No. for double-letter exhibit identifier—serial No. sequence
1–33	001 thru 009, then 00A thru 00Z, then
34–67	010 thru 019, then 01A thru 01Z, then
68–101	020 thru 029, then 02A thru 02Z, then
102–135	030 thru 039, then 03A thru 03Z

Cumulative No. of line items	Three-position serial No. for double-letter exhibit identifier—serial No. sequence
136–305	and so on to
306–339	090 thru 099, then 09A thru 09Z, then
340–373	0A0 thru 0A9, then 0AA thru 0AZ, then
374–407	0B0 thru 0B9, then 0BA thru 0BZ, then
408–441	0C0 thru 0C9, then 0CA thru 0CZ
442–1121	and so on to
1122–1155	0Z0 thru 0Z9, then 0ZA thru 0ZZ, then
1156–1189	100 thru 109, then 10A thru 10Z, then
1190–1223	110 thru 119, then 11A thru 11Z, then
1224–1257	120 thru 129, then 12A thru 12Z
1258–1461	and so on to
1462–1495	190 thru 199, then 19A thru 19Z, then
1496–1529	1A0 thru 1A9, then 1AA thru 1AZ, then
1530–1563	1B0 thru 1B9, then 1BA thru 1BZ
1564–2277	and so on to
2278–2311	1Z0 thru 1Z9, then 1ZA thru 1ZZ, then
2312–2345	200 thru 209, then 20A thru 20Z, then
2346–2379	210 thru 219, then 21A thru 21Z, then
2380–2413	220 thru 229, then 22A thru 22Z
2414–2617	and so on to
2618–2651	290 thru 299, then 29A thru 29Z, then
2652–2685	2A0 thru 2A9, then 2AA thru 2AZ, then
2686–2719	2B0 thru 2B9, then 2BA thru 2BZ
2720–3433	and so on to
3434–3467	3Z0 thru 3Z9, then 3ZA thru 3ZZ, then
3468–3501	300 thru 309, then 30A thru 30Z
3502–10,403	and so on to
10,404–10,437	900 thru 909, then 90A thru 90Z, then
10,438–10,471	910 thru 919, then 91A thru 91Z
10,472–10,709	and so on to
10,710–10,743	990 thru 999, then 99A thru 99Z, then
10,744–10,777	9A0 thru 9A9, then 9AA thru 9AZ, then
10,778–10,811	9B0 thru 9B9, then 9BA thru 9BZ
10,812–11,525	and so on to
11,526–11,559	9Z0 thru 9Z9, then 9ZA thru 9ZZ

204.7107 Contract modifications.

Items of supplies or services set forth in contract or exhibit modifications shall reflect the applicable line or subline item numbers, if any, appearing in the basic contract, except in those instances when the nature of the modification necessitates re-identification of a partial quantity of an existing contract line item or exhibit line item. Situations described below are intended to furnish guidance as to when a new line or subline item number should or should not be assigned as the result of a contract modification.

(a) Modification applying to definitized items (firm price of item is included in the contract or, if this modification establishes additional quantities of items already included in the contract, the price of the item in the modification is the same as in the contract or, if this is a new item, the modification contains a firm price):

(1) If the modification applies to the total quantity of the existing line or subline item, the original line or subline item number may be retained.

(2) If the modification changes the specification of a partial quantity of the existing contract or exhibit line or subline item, but the specification change is not of sufficient magnitude to make the partial quantity separately identifiable (e.g., new National Stock Number or item description, see 204.7103–1(a)(2) and 204.7104–2(c)(3)), and the unit price change is averaged to provide a revised single unit price for the total quantity on the line or subline item, the original contract or exhibit line or subline item number may be retained.

(3) If the modification adds a new item of supply or services to the contract or exhibit, the new item shall be assigned the next unused contract or exhibit line or subline item number.

(4) If the modification affects only a partial quantity of an existing contract or exhibit line item or subline item and changes other than delivery date and/or, ship to/mark for data, the unchanged portion shall retain the original contract or exhibit line or subline item number. The changed portion shall be assigned the next unused contract or exhibit line or subline item number.

(b) Modifications applying to undefinitized items (although a requirement for this item has already been included in the contract or previous exhibit a firm price has not been negotiated or, if this modification establishes additional quantities of an item, the price of the item in the modification is not firm or if this modification adds a new item for which the firm price has not been established):

(1) If the modification applies to the total quantity of the existing line or subline item, the original line or subline item number may be retained.

(2) If the modification changes the specification of a partial quantity of the existing contract or exhibit line or subline item, but the specification change is not of sufficient magnitude to make the partial quantity separately identifiable (e.g., new National Stock Number or item description, see 204.7103–1(a)(2) and 204.7104–2(c)(3)), and the unit price change is averaged to provide a revised single estimated unit price for the total quantity on the line or subline item, the original contract or exhibit line or subline item number may be retained.

(3) If the modification adds a new item of supply or service to the contract or exhibit, the new item shall be assigned the next unused contract or exhibit line or subline item number.

(4) If the modification is undefinitized (price) and increases the quantity of an existing definitized (price) contract or exhibit line or subline item, the next unused contract or exhibit line or subline item number will be assigned to the increased quantity.

(5) If the modification increases the quantity of an existing but undefinitized (price) contract or exhibit line or subline item, the original line item number may be retained if the same unit price applies to the total quantity (existing plus increase) of the line item; if the unit price of the increased quantity differs from that of the existing quantity, the next unused contract or exhibit line item or subline item number will be assigned to the increased quantity.

(6) If the modification affects only a partial quantity of an existing contract or exhibit line or subline item and definitizes price, the definitized portion shall retain the original contract or exhibit line or subline item number. The undefinitized portion shall be assigned the next unused contract or exhibit line or subline item number; however, if the same item on another existing contract or exhibit line or subline item has already been definitized and the newly definitized quantity is definitized at the same unit price as the existing definitized quantity, or an average definitized unit price is established for the new and the existing definitized quantities, then the undefinitized portion may retain its existing line item number and the newly definitized quantity may be added to the contract or exhibit line item for the previously definitized quantity.

(7) If the modification affects only a partial quantity of an existing contract or exhibit line or subline item and does not change the delivery schedule nor definitize price, the unchanged portion shall retain the original contract or exhibit line or subline item number. The changed portion shall be assigned the next unused contract or exhibit line or subline item number.

(c) In any event, all items of supplies or services appearing in modifications and exhibits shall be established and numbered in accordance with the uniform numbering procedures prescribed in this subpart. If subline numbers are assigned, all requirements for the associated contract or exhibit line item will be identified as subline items, and the contract or exhibit line item will serve only as a common denominator for the accumulation of management data.

204.7108 Contract Accounting Classification Reference Number (ACRN).

204.7108–1 General.

As a method of relating the long line accounting classification citation number to detail line item scheduled information, the Accounting Classification Reference Number (ACRN) shall be utilized in all contracts assigned for the contract administration to the Defense Contract Administration Services, DLA, and to Plant Cognizance Representatives of the Military Departments and Agencies.

204.7108–2 Criteria for establishing.

This two position alpha/numeric control code is required for Military

Standard Contract Administration Procedures (MILSCAP) processing, and may also be used in contracts administered by each Service/Agency. Under MILSCAP, the ACRN is required to associate the Accounting Classification Trailer Record, the Supplies Schedules Data Record and the Services Line Item Data Record with the long line accounting classification. The reference number is also used to associate the various record formats of the Contract Payment Notice as described in Chapter 9 of the MILSCAP Manual, DoD 4105.63–M.

204.7108–3 Procedures for using the Accounting Classification Reference Number (ACRN).

(a) The ACRN will be any combination of a two position alpha/numeric code assigned discretely to each accounting classification within each contract. The letters "I" and "O" shall not be used.

(b) This code will be shown as a detached prefix to the long line accounting classification number in the Accounting and Appropriation Data block and/or Section K (Contract Administration Data) of the contract, except that accounting classification numbers included in the contract only for the information of the Transportation Officer for citation on Government bills of lading for shipment at Government expense of items on an f.o.b. origin contract need not be prefixed with an ACRN. In the case of modifications to contracts/orders which have been previously assigned a long line accounting classification number(s), only the ACRN(s) assigned to that number(s) need be shown in the Accounting and Appropriations Data block and/or Continuation Sheet(s) of the modification.

(c) If more than one ACRN is assigned in the contract, the ACRN shall also be shown in the contract Schedule as follows:

(1) The ACRN shall be shown adjacent to the identity code of each "Ship To/Mark For," unless the procedure in (2) or (3) below is used. Only one ACRN may be assigned to the same "Ship To/Mark For" within the same contract line or subline item number, except in rare cases when multiple accounting classifications apply to a single unit so the quantity cannot be subdivided to relate to a single accounting classification. In such case, the contract shall provide sufficient information under the heading "Payment Instructions for Multiple Fund Accounting Citations" to permit proper payment and fund accounting;

(2) If only one accounting classification applies to a subline item, the ACRN may be shown in the Supplies/Services column near the subline item description;

(3) If only one accounting classification applies to a line item, the ACRN may be shown in the Supplies/Services column near the line item description;

(4) The ACRN shall be shown in the contract and Schedule in the following manner: ACR:1D.

(5) For cost-reimbursement type contracts, the provisions of this paragraph (c) do not apply.

(d) The purchasing office executing a contract, basic ordering agreement, or blanket purchase agreement is responsible for control of assignment of ACRNs pertaining thereto. Contract or agreement provisions which provide for the issuance of contract modifications (including provisioned item order modifications), calls, orders, or work requests by organizations other than the purchasing office executing the contract or agreement will contain instructions for ACRN assignment. This may be accomplished by individual assignments as funds are cited, by assignment of blocks of ACRNs to offices authorized to issue contract modifications, calls, orders or work requests or by some other appropriate method. In no case, however, will an ACRN apply to more than one long line accounting classification in a contract. The authority to control ACRN assignment shall not be delegated to another office by the purchasing office issuing the contract or agreement.

204.7109 Indefinite delivery type contracts.

(a) When an indefinite delivery type contract includes provisions wherein the price of an item is determined at the time a delivery order is issued based on such factors as the quantity to be ordered (e.g., 10–99 at $1.00, 100–249 at $.98, and 250 or more at $.95), the FOB provision, the destination, or the type pack required in the delivery order, it shall not be necessary to assign a separate line item number in the indefinite delivery type contract to each price for the same item. Each line or subline item in the individual delivery order, however, shall cite only one of the unit prices in the indefinite delivery type contract.

(b) Except as noted in (a) above, criteria for contract line item assignment (see 204.7103) shall be applicable to indefinite delivery type contracts.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 205—PUBLICIZING CONTRACT ACTIONS

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

205.002 Policy.

(c) Small business specialists in each purchasing office are responsible for screening all proposed contract actions and for recommending action to be taken with respect to publicizing such actions in accordance with the requirements of this subpart. In those offices where no small business specialist is assigned, the contracting officer or other designated representative shall accomplish the foregoing.

Subpart 205.1—Dissemination of Information

205.101 Methods of disseminating information.

(a)(2) *Displaying in public place.* A copy of each solicitation for an unclassified contract action in excess of $5,000 which provides at least 10 calendar days for submission of offers shall be displayed at the contracting office and, if appropriate, at some additional public place from the date issued until 7 days after bids or proposals have been opened. But see Part 213 for small purchases.

205.102 Availability of solicitations.

(a)(1) In determining the "reasonable number" of copies to be maintained, the contracting officer shall consider, among other things, the extent of initial solicitation, reproduction costs, the nature of the acquisition, whether access to classified matter is involved, the anticipated requests for copies based upon responses to synopses and other means of publication in previous similar situations, and the fact that publishers and others who disseminate information regarding proposed acquisitions normally do not require voluminous specifications or drawings. With regard to classified acquisitions, the foregoing instructions apply to the extent consistent with Departmental security instructions and procedures.

(4)(i) When the purchasing activity is not in possession of complete sets of specifications, plans, and drawings (as in some acquisitions for airframes, shipbuilding, or major weapons systems), or the drawings and specifications are classified, or are so voluminous that display and distribution

in accordance with prescribed procedures is impracticable, the solicitation shall contain notice of this fact and of the location at which the specifications, plans, or drawings may be examined.

Subpart 205.2—Synopses of Proposed Contract Actions

205.201 General.

(b) *Commodity assignments.* When an item is assigned or is within a Federal Supply Class assigned for acquisition in FAR Subpart 17.5 and is purchased by other than the assigned Department, the synopsis shall cite the applicable purchase exclusion number from 208.7101–1 or 208.7101–2.

(S–70) *Publication of contract actions less than $10,000.* When recommended by contracting personnel or the small business specialist, and approved by the contracting officer, proposed contract actions less than $10,000 may be publicized in the *Commerce Business Daily.*

205.202 Exceptions.

(a)(6) Use of nonmandatory automatic data processing (ADP) Schedules covered in Part 270 is not included in this exception and requires synopsizing.

205.204 Presolicitation notices.

See FAR 14.205–4(c) and 215.404(b).

205.205 Special situations.

(c)(1) Each contract action to be made in the United States, its possessions, or Puerto Rico for which the total fee (including phases and options) is expected to be $10,000 or more shall be synopsized in accordance with 205.207(d)(S–71).

(c)(2) A notice of contract actions with fees expected to be less than $10,000, or to be made outside the United States, its possessions, or Puerto Rico, shall be displayed at the contracting office and need not be publicized in the *Commerce Business Daily.*

205.207 Preparation and transmittal of synopses.

(b)(1) The first line of the text will state the number of the synopses being sent. Synopses will be numbered consecutively by the reporting activity during the calendar year, using a new series of numbers for each year.

(d)(2) When referenced, Numbered Note 12 will appear in the *Commerce Business Daily* as follows:

Note 12.—One or more of the items under this acquisition may be subject to the requirements of the Agreement on Government Procurement approved and implemented in the United States by the Trade Agreements Act of 1979. All offers shall be in the English language and in U.S. dollars. The solicitation procedure is open; that is, all interested, suppliers may submit an offer.

(End of Note)

(d)(S–70) If the synopsis is for a sole source contract action, as authorized by one of the exceptions in FAR 6.302, the synopsis shall include reference to Numbered Note 22. The Numbered Note will appear in the *Commerce Business Daily* as follows:

Note 22.—This contract action is for supplies or services for which the Government intends to solicit and negotiate with only one source under authority of FAR 6.302. Interested persons may identify their interest and capability to respond to the requirement or submit proposals. This notice of intent is not a request for competitive proposals. However, all proposals received within forty-five days after the date of publication of this synopsis will be considered by the Government. A determination by the Government not to open the requirement to competition based upon responses to this notice is solely within the discretion of the Government. Information received as a result of the notice of intent will normally be considered solely for the purpose of determining whether to conduct a competitive procurement.

(End of Note)

(d)(S–71) Each notice publicizing a contract action for architect-engineer services shall be headed *"R. Architect-Engineer Services".* The project shall be listed with a brief statement concerning the location, scope of service required, the significant evaluation criteria and their relative order of importance to the Government, the estimated construction cost range (see FAR 36.204), the construction cost limitation (see FAR 36.205), the type of contract proposed, the estimated start and completion dates, and the date by which responses to the notice must be received, including submission of Standard Form 255, if required. Appropriate statements shall be made concerning any specialized qualifications, security classifications, and limitations on eligibility for consideration. Qualifications or performance data required from architect-engineer firms shall be described. The foregoing data shall be followed by the statement *"Firms desiring consideration shall submit appropriate data as described in Numbered Note 62."* The name of the responsible procurement office should follow together with the complete address and telephone number. The numbered note will appear in one issue each week of the *Commerce Business Daily* as follows:

Note 62.—Architect-engineer firms which meet the requirements described in this announcement are invited to submit: (1) a Standard Form 254, Architect-Engineer and Related Services Questionnaire; (2) a Standard Form 255, Architect-Engineer and Related Services Questionnaire for Specific Project, when requested; and (3) any requested supplemental data to the procurement office shown. Firms having a current Standard Form 254 on file with the procurement office are not required to resubmit this form. Firms responding to this announcement before the closing date will be considered for selection, subject to any limitations indicated with respect to size and geographic location of firm, specialized technical expertise or other requirements as listed. Following an initial evaluation of the qualification and performance data submitted, three or more firms considered to be the most highly qualified to provide the services required will be chosen for interview. The Department of Defense procedure for selection of architect-engineer firms is a competitive procedure which includes consideration of the professional qualifications necessary for the satisfactory performance of the professional services required, subject to the following additional considerations: (1) specialized experience of the firm in the type of work required; (2) capacity of the firm to accomplish the work in the required time; (3) past experience, if any, of the firm with respect to performance on Department of Defense contracts; (4) location of the firm in the general geographical area of the project, *provided* that there is an appropriate number of qualified firms therein for consideration; and (5) volume of work previously awarded to the firm by the Department of Defense, with the object of effecting an equitable distribution of contracts among qualified architect-engineer firms including minority-owned firms and firms that have not had prior Department of Defense contracts. Firms desiring to register for consideration for future projects administered by the procurement office (subject to specific requirements for individual projects) are encouraged to submit annually a statement of qualifications and performance data, utilizing Standard Form 254, Architect-Engineer and Related Services Questionnaire.

(End of Note)

Note 62 is a *Commerce Business Daily* standard Numbered Note which applies to all DoD notices publicizing contract actions for architect-engineer services. When the notice is used in accordance with FAR 5.205(c), the substance of the Numbered Note shall be included.

Subpart 205.3—Synopses of Contract Awards

205.302 Preparation and transmittal of synopses of awards.

(b) The synopsis of contract awards shall also contain the following information:

(2) Size status ((S) for small business and (L) for large business) of the contractor;

205.303 Announcement of contract awards.

(a) *Public announcement.* Information on proposed contractual actions over $3 million shall be submitted in writing in accordance with Departmental/Agency procedures. Report Control Symbol DD–LA(AR)1279 applies. Departments will submit reports to the Office of the Assistant Secretary of Defense (Public Affairs) by the close of business the day before contract award is proposed.

(S–70) *Congressional notification.* In accordance with Departmental procedures, Departments shall notify the appropriate Members of Congress (Senators and Representatives in whose state and district the proposed contractor is located and, if different, in whose state and district the work is to be performed) of contract awards of over $3 million concurrent with the public announcement described in (a) above.

Subpart 205.4—Release of Information

205.404–1 Release procedures.

(b)(1) Classified information shall be released through existing security channels in accordance with DoD Industrial Security Regulation (DoD 5220.22R).

205.404–2 Announcements of long-range acquisition estimates.

Activities publishing long-range procurement estimates shall publicize them in the *Commerce Business Daily* by forwarding to the address listed in FAR 5.207 an announcement reflecting the fact that a long-range procurement estimate has been published and citing the address of the office from which a copy of the estimate can be obtained. Each announcement should be prepared substantially as the following example.

The Defense Personnel Support Center has published an estimate of equipment and footwear procurement requirements for _____ and _____ Quarters FY _____. These estimates, *which are subject to revision and are in no way binding on the Government,* may be obtained, by request, from the Defense Personnel Support Center (ATTN: Procurement and Production Directorate), 2800 South 20th Street, Philadelphia, Pennsylvania 19101.

Subpart 205.5—Paid Advertisements

205.501 Definitions.

(a) *Media* means any vehicle used to convey an advertising message; it includes newspapers, magazines, trade and professional journals, special printed media, radio and television;

(b) *Newspaper* means a publication printed and distributed at stated intervals to convey news and includes trade journals which carry news in addition to technical matter.

(c) *Space* means the space purchased for advertising messages in printed media, and the time purchased for advertising messages on radio or television broadcasts;

205.502 Authority.

(a) The authorization shall specify the limitations, if any, of the authority granted. Administrative duties involved in accomplishing the advertising may be delegated in writing, personally signed by the delegate, setting forth the extent of the administrative duties involved. A copy of the instrument delegating authority to advertise and a copy of the instrument assigning administrative duties thereunder will either be attached to the first voucher submitted for payment or shall be forwarded immediately upon issuance to the General Accounting Office address to which records of the Department are submitted for audit purposes. When authority to advertise has been delegated by the Secretary of the Department concerned, a reference to the authorizing directive on the advertisement order is acceptable in lieu of attaching a copy of the authority to the payment voucher. Copies of such instruments also shall be attached to the duplicate voucher submitted to the paying office.

(1) Special or general authority to place advertisements in newspapers must be secured in advance by the use of DD Form 1535, Request/Approval for Authority to Advertise. Special authority permits the publication of a given advertisement a specified number of times in designated newspapers. General authority permits the publication of such advertisements during a designated fiscal year as may be required.

(2) Requests for authority to place advertisements in newspapers shall be submitted through channels to the Secretary or his designee.

(b) Unless the Secretary of the Department concerned determines otherwise, DD Form 1535 is not required as authority to place advertisements in media other than newspapers. Paid advertisements to recruit civilian personnel shall be subject to the limitations in section 332–1–9 of the Federal Personnel Manual.

205.504 Use of advertising agencies.

(b) The services of the advertising agencies include but are not limited to counseling as to the selection of the media for insertion of the advertisement; contacting the media in the interest of the Government agency concerned; placing of insertion orders; selection and ordering of typography; copywriting; and preparation of rough layouts.

PART 206—COMPETITION REQUIREMENTS

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 206.2—Full and Open Competition After Exclusion of Sources

206.202 Establishing or maintaining alternative sources.

(a) This authority may be used, as appropriate, to totally or partially exclude a particular source from a contract action.

(b)(S–70) *Additional instructions and formats for agency head determination and findings for exclusion of a particular source.*

(i) When the authority of FAR 6.202(a) is proposed for use, it must be shown clearly that the necessity for excluding a particular source arises from genuine considerations pertinent to the authority of FAR 6.202(a)(1), (2), or (3). The supporting data, as well as the determination and findings, must name the source to be excluded from the contract action. Additionally, the supporting documents shall include the following information as applicable, and such other information as may be pertinent:

(A) The specific purpose to be served (i.e. to increase or maintain competition, the interest of national defense in case of a national emergency or industrial mobilization, or the interest of national defense in establishing or maintaining an essential engineering, research or development capability) by excluding a particular source from the contract action;

(B) The acquisition history of the supplies or services, including sources, prices, quantities, and dates of award;

(C) The circumstances which make it necessary to exclude a particular source from the contract action:

(*1*) The reasons for lack of, or potential loss of, alternative sources; e.g., the technical complexity and criticality of the item;

(*2*) The current annual requirement and prospective needs for the supplies or services;

(*3*) Address projected future requirements as justification for the exclusion of a particular source from the contract action;

(D) Explain whether the existing source must be totally excluded from a contract action or whether a partial exclusion of the existing source from a contract action is sufficient;

(E) Describe the potential effect of exclusion on the excluded source in terms of any loss of capability to furnish the supplies or services in subsequent contract actions;

(F) When the authority of FAR 6.202(a)(1) is cited:

(*1*) Provide basis for assumption of future competition;

(*2*) Provide the basis for the determination that exclusion of a particular source will likely result in reduced overall costs either for the current acquisition, or for anticipated future acquisitions, including (as a minimum) discussion of start-up costs, facilitization costs, duplicative administration costs (additional inspection, testing, etc.), economic order quantities, and life cycle cost considerations;

(G) When the establishment of an additional source(s) is necessary to provide production capacity to meet current and mobilization requirements, the following:

(*1*) The current annual and the mobilization requirements for the item, citing the source of, or the basis for, such planning data;

(*2*) The comparison of current production capacity necessary to meet mobilization requirements; and

(*3*) The hazards of relying on the present source and the time required for a new source(s) to acquire the necessary facilities and skills and achieve the production capacity necessary to meet mobilization requirements.

(ii) Set forth below is the sample format for D&Fs citing the authority of FAR 6.202(a)(1).

(Military Department or Agency)

Determination and Findings

Authority to Exclude a Source

Upon the basis of the following and determination which I hereby make as agency head pursuant to 10 U.S.C. 2304(b)(1), the proposed contract action described below may be awarded using full and open competition after exclusion of (1).

1. It is proposed that the following requirement be acquired using full and open competition after exclusion of the aforementioned source.

2. The aforementioned source is the source which can be expected to receive an award for the above requirement.

3. It is necessary to establish or maintain an alternative source or sources through the use of full and open competition after exclusion of the aforementioned source.

4. The exclusion of the aforementioned source will increase or maintain competition and is likely to result in reduction of (2) in overall costs for the acquisition, or for any anticipated acquisition, of such supplies or services. This estimate is based on (3).

Alternate: The exclusion of the aforementioned source will be in the interest of national defense to have a supplier available for furnishing the above supplies or services in case of a national emergency or industrial mobilization, because (4).

Alternate: The exclusion of the aforementioned source will be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center, because (5).

Determination

The exclusion of a source from the proposed contract action will increase or maintain competition and is likely to result in reduced overall costs for the acquisition or any anticipated acquisition of such supplies or services.

Alternate: It is in the interest of national defense to exclude a source from the proposed contract action in order to have a supplier available for furnishing the above supplies or services in case of a national emergency or industrial mobilization.

Alternate: It is in the interest of national defense to exclude a source from the proposed contract action in order to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center.

Date _____

1. Name of source to be excluded.

2. Description of estimated reduction in overall costs.

3. Description of how estimate was derived.

4. 5. Description of circumstances necessitating the exclusion of source.

Subpart 206.3—Other Than Full and Open Competition

206.302 Circumstances permitting other than full and open competition.

206.302–1 Only one responsible source.

(b)(S–70) When acquiring test articles and associated support services from a designated foreign source under the DoD Foreign Weapons Evaluation Program, the authority of FAR 6.302–1 may be used.

(c)(S–70) The authority of FAR 206.302–1(a) shall not be used in the case of acquisitions described in FAR 206.302–1(b)(6) unless the equipment or parts have been adopted as standard items of supply in accordance with DODD Standardization Program (see DODD 4120.3 and Departmental procedures). This authority shall not be used for initial acquisitions of equipment or spare parts, or to select arbitrarily the equipment or parts of certain suppliers. (If supplies might subsequently be standardized see FAR 15.407(b)).

206.302–2 Unusual and compelling urgency.

(b) *Application.* The following are illustrative of circumstances with respect to which the authority of 10 U.S.C. 2304(c)(2) may be used and are not intended to be all inclusive:

(1) Supplies, services, or construction needed at once because of fire, flood, explosion, or other disaster;

(2) Essential equipment for, or repair to, a ship when such equipment repair is needed at once for compliance with the orders of the ship;

(3) Essential equipment for, or repair to, aircraft grounded or about to be grounded, when such equipment or repair is needed at once for the performance of the operational mission of such aircraft;

(4) Construction needed at once to preserve a structure or its contents from damage;

(5) Essential equipment for, or repair to, missiles or missile support equipment, when such equipment or repair is needed at once to preclude impairment of launch capabilities or mission performance; or

(6) Purchase requests citing an issue priority designator under the Uniform Material Movement and Issue Priority System (UMMIPS) of 4 or higher, or citing "Electronic Warfare QRC Priority" may justify other-than-full and open competition, but in such cases the specific circumstances must be set forth in the justification required by FAR 6.303.

206.303 Justifications.

206.303–1 Requirements.

(b)(S–70) Any recommendation by technical and requirements personnel for other than full and open competition must have been reviewed and approved at an appropriate management level in accordance with agency procedures prior to submittal to the contracting officer.

PART 207—ACQUISITION PLANNING

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 207.1—Acquisition Plans

207.103 Agency-head responsibilities.

(c)(1) The formal acquisition planning provided for herein and in FAR Subpart 207.1 applies to the more complex and costly programs to procure hardware developed and produced to satisfy the need for modern military equipment. These acquisition planning requirements may also be adapted to the acquisition of all supplies and services.

(c)(2) Written acquisition plans shall be prepared for—

(i) Development acquisitions (see FAR 35.001) whose total contractual cost is estimated at $2,000,000 or more, and

(ii) Production and service acquisitions whose contractual cost is estimated at $15,000,000 for all years or $5,000,000 for any fiscal year. These plans shall include the contents described in FAR 7.105, as appropriate.

(c)(3) Acquisition plans for acquisitions described in (c)(2) (i) and (ii) above should be keyed to the Department of Defense Five Year Defense Program, applicable budget submissions, and the Decision Coordinating Paper/Program Memorandum, as appropriate.

(c)(4) The criteria and thresholds in (c)(2) above do not preclude the preparation of written acquisition plans for any acquisition, whether short-range or long-range, when determined necessary by the Departments.

(c)(5) Acquisitions which represent a final buyout or a one-time buy are exempt from the requirements of (c) (2) and (4) above.

(d) Written acquisition plans meeting the criteria and thresholds of (c)(2) above, shall be prepared on a system basis covering the major items of hardware/equipment to be developed/produced including Government-furnished equipment and system support. Other acquisition plans may be written on either a system or individual contract basis.

(e) The Departments shall ensure that the principles of FAR Subpart 7.1 and this Subpart are used as appropriate.

(f) The program manager, or other official responsible for the program concerned has overall responsibility for the requisite acquisition planning as this official has for all other planning for the program. The contracting officer or the contracting officer's designee shall support this official by preparing and maintaining the acquisition plan. The contracting officer shall enlist the aid of cognizant engineering, production, logistics, quality assurance, maintenance and other functional staff business management personnel at command and subordinate buying activity levels as required. The head of the contracting activity, or the chief contracting official of the buying activity, in coordination with the program manager, must ensure that the objectives of the acquisition plan are realistic and achievable and that solicitations and contracts will be appropriately structured to equitably distribute technical, financial, and economic or business risks, consistent with the program phase of the acquisition, the technical requirements and needs of the specific program, and salient business and legal constraints. All personnel engaged in the management of the acquisition process, including program, technical and financial personnel, are essential to the comprehensive acquisition planning and preparations necessary to achieve the acquisition objectives. These personnel must be made cognizant of their responsibilities and actively participate in the development and preparation of the acquisition plan, if acquisition planning is to be successful.

(g) Acquisition plans shall be reviewed and approved in accordance with Departmental procedures.

(h)(1) *Design-to-cost criterio and thresholds.*

(i) Design-to-cost principles shall be applied—

(A) in all acquisitions for major defense systems (DoD Directive 5000.1) unless exempted by the Secretary of Defense, and

(B) to the acquisition of systems, subsystems, and components below the thresholds for major defense systems to the extent prescribed in DoDD 4245.3, "Design to Cost", and in accordance with Departmental procedures.

(ii) In solicitations and contracts including design-to-cost principles, consideration should be given to prescribing and tailoring the required cost, technical and schedule parameters to the particular program, and to providing the contractor with flexibility to identify unnecessary or marginally cost effective technical and schedule features susceptible to trade-offs (see DoDD 4105.62). This is to facilitate product development at the lowest life-cycle-cost consistent with mandatory schedule and performance requirements. (For the relationship of design-to-cost to value engineering, see FAR 48.105)

(2) *Life-cycle-cost criterio.*

(i) Since the cost of operating and supporting a system or equipment over its useful life is substantial and, in many cases, greater than the acquisition cost, it is essential that such costs be considered in development and acquisition decisions in order that proper consideration can be given to those systems or equipments that will result in the lowest life-cycle-cost to the Government. Guidelines, including representative detailed procedures for implementing life-cycle-costing are contained in the following documents:

(A) LCC–1, DoD Life-Cycle-Costing Procurement Guide (Interim);

(B) LCC–2, DoD Life-Cycle-Costing Casebook; and

(C) LCC–3, Life-Cycle-Costing Guide for System Acquisitions (Interim).

(i) The following format is illustrative of an acquisition plan and is designed merely to give guidance in the preparation of acquisition plans. It may be modified to suit the acquisition being planned as well as the phase of program formulation. The narrative portion of the acquisition plan should be brief but comprehensive. It should provide not only the background necessary to understand the acquisition but also a plan for contracting for the item or system, including the rationale and assumptions upon which the plan is predicated. It should reference other documents where applicable. The milestone chart introduces discipline into the planning process by identifying in graphic form the points at which critical decisions must be made and time factors that must be observed when action is necessary to produce an item or to make a competitive buy possible. The chart not only forces consideration of all factors involved but it also provides a visual portrayal of the decisions necessary to achieve objectives and indicates the time at which they should be made. The milestone chart portrays the step-by-step planning and normally covers the period from advance development through delivery of the production items. The chart tells the story of time, cost and quantity of required items, illustrating milestones which must be recognized in the decision making process. However, it is important to recognize that the format of the milestone chart is flexible, because the same milestones may not be present in every acquisition program.

Illustrative Acquisition Plan Format

Acquisition Plan No. _____

Program _____

Program Manager _____

Description of Program/System/Commodity, etc. _____

_____

_____

Approved: Contracting Representative _____ Date _____ Program Manager _____ Date _____

(Address each of plan content elements in FAR 7.105 (a) and (b) and 207.105, as appropriate.)

Illustrative Milestone Chart Format

(Reserved)

207.105 Contents of written acquisition plans.

In addition to the contents prescribed by the FAR, acquisition plans should include the following, as appropriate:

(a) *Acquisition background and objectives.*

(a)(3) *Cost.*

(i) *Life cycle cost.* Indicate the provisions/clauses that will be used to impose Life Cycle Cost and Cost/Schedule Control System Criteria (see 234.005–70).

(ii) *Design-to-cost.* Indicate the provisions/clauses that will be used to impose Design-to-Cost and Cost/Schedule Control System Criteria (see 234.005–70).

(a)(7) *Risks.* As appropriate, discuss the effect of business base changes of major contractors' workload on program cost.

(a)(S–70) *Applicability of a Decision Coordinating Paper (DCP), Program Memorandum Defense System Acquisition Review Council (DSARC), and/or internal service reviews.* Describe the options set forth in the DCP/Program Memorandum and delineate which option the acquisition plan supports. Delineate the DSARC and/or internal service reviews on the milestone chart.

(a)(S–71) *Approval for operational use.* Indicate the date approval for operational use has been or will be obtained. If waivers are requested, describe the need for the waivers.

(a)(S–72) *Milestone chart attachment depicting the objectives of the acquisition.* Provide a chart in general accordance with the sample milestone chart at 207.103(i).

(a)(S–73) *Milestones for updating the acquisition plan.* Indicate when the plan will be updated. Updates should be scheduled to coincide with DSARC reviews and the transition from one phase to another (full-scale development to production).

(b) *Plan of action.*

(b)(5) *Authority for other than full and open competition.* See FAR 6.303–2 for the information required to be included in the acquisition plan if the plan is to be used to support a justification and approval or a determination and findings under Part 206.

(b)(6) *Budgeting and funding.* Include specific references to budget line items and program elements, where applicable, estimated production unit cost, and the total cost for remaining production.

(b)(13) *Logistics considerations.*

(i) Describe the extent of integrated logistic support planning to date, including references to approved plans.

(ii) In discussing the reliability and maintainability (R&M) objective, including warranties, discuss the mission profile, R&M program plan, R&M predictions, redundancy, qualified parts lists, parts and material qualification, R&M requirements imposed on vendors, failure analysis, corrective action and feedback, and R&M design reviews and trade-off studies.

(iv) See DoDD 4120.3 for procedures relative to standardization.

(b)(S–70) *Acquisition approach for each proposed contract.* If not elsewhere described in the plan, describe the acquisition approach for each proposed contract, including the following, as appropriate.

(i) Item description.

(ii) Estimated cost.

(iii) Proposed sources and basis for selection.

(iv) Source selection procedures. If formal source selection procedures will be used, discuss milestones for development of the plan and provide a general overview of how the selection is to be conducted.

(v) Contract type. Provide rationale for recommendation of contract type.

(vi) Other than full and open competition authority recommended. Discuss basis for recommendation of other than full and open competition exception (see FAR 7.105(b)(2)).

(vii) Repurchase data. Provide a complete discussion of use of repurchase data to increase competition, including funding available for repurchase data and the contractual approach to acquiring such data, including proprietary rights and patent considerations.

(viii) Incentives. When appropriate, discuss plans for providing for incentives to contractors to improve productivity through investment in capital facilities, equipment, and advanced technology.

(ix) Alternative acquisition approaches considered. Briefly discuss the merits and shortcomings of other approaches.

(x) Milestones for the contract cycle. Address those steps in FAR 7.105(b)(18) and any others, as appropriate.

(xi) Other considerations, as applicable.

Subpart 207.3—Contractor Versus Government Performance

207.302 General.

(d) DoD activities shall not convert a commercial activity to performance by a private contractor without having first conducted a full cost comparison which demonstrates that contract performance is more economical unless:

(1) The commercial activity is performed exclusively by military personnel, there is adequate competition and reasonable prices can be obtained from qualified commercial sources, or

(2) The commercial activity involves 40 or less DoD civilian employees. (See Section 502, Pub. L. 96–342, as amended by Section 1112, Pub. L. 97–252 and Section 1234, Pub. L. 99–145.) When this situation applies, refer to DoDD 4100.5 and DoDI 4100.33 for further guidance.

207.304 Procedures.

(a)(3) In addition to the FAR requirement for the contracting officer to review the Performance-Oriented Work Statement (PWS), the contracting officer shall work in conjunction with the functional activity in the preparation of the PWS.

207.307 Appeals.

(b) The contracting officer shall forward requests for review of any discrepancy in the cost comparison to the preparer of the in-house cost estimate, for consideration in accordance with departmental procedures.

Subpart 207.4—Equipment Lease or Purchase

207.401 Acquisition considerations.

(a) The contracting officer shall obtain rationale, as prescribed by FAR 7.401 and 7.402, supporting the decision to lease or purchase from the requiring activity. This rationale shall be retained in the contract file.

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

208.002 Use of other government supply sources.

(f) The GSA has responsibility for the disposition of strategic and critical materials which are in excess of national stockpile requirements. These materials are primarily metals, ores, chemicals and similar raw material items, and are listed and described in a GSA Bulletin which is disseminated to contracting activities through Departmental channels. Prior to initiating acquisitions of materials which are listed as being available for transfer from the GSA, the contracting activity should screen the list to determine whether the requirement may be met through transfer of materials from the GSA. Due consideration should be given to the quantity, quality and location of the material, and to the timeliness of its availability. Detailed information on these excess materials is available from the Property Management and Disposal Service, General Services Administration, Washington, DC 20405.

(g) It is the policy of the Department of Defense (see Pub. L. 86–777) to obtain its requirement of helium as follows:

(1) Bulk helium requirements (tank car lots) shall be acquired either directly from the Department of Interior (Bureau of Mines) or from private helium distributors which establish and maintain their eligibility in accordance with Bureau of Mines Regulations. Copies of the current list of eligible private helium distributors may be obtained from the Bureau of Mines, Helium Operations, P.O. Box H4372 Herring Plaza, Amarillo, Texas 79101;

(2) Helium in cylinders or trailers shall be acquired from the Department of Interior (Bureau of Mines) either direct or through General Services Administration Federal Supply Schedule contracts. Department of Defense activities will make a determination annually as to whether or not helium in cylinders and trailers will be obtained directly from the Bureau of Mines or through Federal Supply Schedules. If a determination is made that it is more economical to obtain such helium through Federal Supply Schedules, the estimated requirements will be processed to GSA. Once estimated requirements are processed to GSA, the resultant Federal Supply Schedule (FSG 68, Part III, Section G) is mandatory on the requiring activities for the contract period.

208.002-70 Acquisition from the Department of Energy (DOE).

(a) *General.* This subpart covers the acquisition of material and supplies from the DOE.

(b) *Acquisition of radioisotopes and enriched stable isotopes.*

(1) DOE F Form 5400.3, "U.S. DOE Isotope Order Blank", and NRC Form 313, "NRC Application for Byproduct Material License", shall be used for the acquisition of radioisotopes and enriched stable isotopes from any of the DOE laboratories. No other type of order blank, purchase order, or contract shall be used in lieu of these forms.

(2) In the acquisition of radioisotopes, NRC Form 313 shall be filed with the Chief, Materials Licensing Branch Division of Fuel Cycle and Material Safety, Office of Nuclear Material Safety and Safeguards, United States Nuclear Regulatory Commission, Washington, DC 20555. If the application meets all regulatory requirements and applicable standards, NRC Form 374, "U.S. Nuclear Regulatory Commission Byproduct Materials License," will be issued to the applicant by the Radioisotopes Licensing Branch, Nuclear Regulatory Commission. After receipt of the NRC Form 374, a complete DOE F Form 5400.3 (in duplicate, if the contracting office desires to receive an accepted copy of the form back from the supplier), the license (NRC Form 374), and a Standard Form 1103, "U.S. Government Bill of Lading", shall be sent to the appropriate DOE laboratory. If a bill of lading is not furnished, shipment shall be made collect on a commercial bill of lading, to be converted at destination.

(3) The "Terms and Conditions" on the reverse side of the DOE F Form 5400.3 shall control all requisitions for radioisotopes and enriched stable isotopes acquired by the Departments from the DOE National Laboratories.

(4) NRC Form 313, "NRC Application for Byproduct Material License", shall be requisitioned directly from: United States Nuclear Regulatory Commission, Attn: Radioisotopes Licensing Branch, Division of Fuel Cycle and Material Safety, Washington, DC 20555. DOE F Form 5400.3 shall be requisitioned directly from: Oak Ridge National Laboratory, Isotope Distribution Office, P.O. Box X, Oak Ridge, TN 37830 (commercial telephone 615-574-6984) or Mound Facility, Monsanto Research Corporation, P.O. Box 32, Miamisburg, OH 45342 (commercial telephone 513-865-3501).

208.070 Industrial preparedness production planning.

(a) *Scope of subpart.* This subpart establishes uniform procurement policy guidance and procedures for the Department of Defense in planning with industry for the establishment and retention of industrial base capability essential to national defense for production during periods of national emergencies.

(b) *Definitions.*

"Emergency (National)" means a condition declared by the President or Congress by virtue of powers previously vested in them which authorizes certain emergency actions to be undertaken in the national interest. Actions to be taken may include partial or total mobilization of national resources.

"Industrial Base" means that part of the total privately-owned and Government-owned industrial production and maintenance capacity of the United States, its territories and possessions, as well as capacity located in Canada, expected to be available during emergencies to manufacture and repair items required by the military services.

"Industrial Preparedness Planning" means planning designed to maintain an adequate industrial base to support DoD requirements for selected essential military items in a national emergency.

"Planned (or Planning) Item" means any item selected for industrial preparedness planning under the criteria of DoD Instruction 4005.3, "Industrial Preparedness Production Planning Procedures."

"Planned Producer" means an industrial firm which has indicated its willingness to produce specified military items in a national emergency by completing an Industrial Preparedness Program Production Planning Schedule (DD Form 1519).

(c) *General.* The Industrial Preparedness Production Planning (IPPP) program is conducted jointly among DoD components and industry to provide a means for correlating industrial capabilities and military requirements for the orderly retention, improvement, and rapid application of industrial capability to military production during an emergency.

(d) *Policy.*

(1) The Department of Defense will conduct Industrial Preparedness Production Planning to assure capability for the sustained production of essential military items to meet the needs of the U.S. and Allied Forces during an emergency.

(2) In planning for the production of selected items, preference shall be given to the use of privately-owned facilities, so as to minimize the need for Government investment. Government-owned production facilities will be included in the industrial base only when:

(i) private industry is unable or unwilling to provide the facilities necessary to support DoD requirements; or

(ii) they are determined to be necessary for reasons of national security or to assure a quick response capability to meet fluctuating or job lot demands.

(3) Current procurements will be integrated, when applicable, with Industrial Preparedness Production Planning requirements.

(e) *Limitations.*

(1) Industrial Preparedness Production Planning will be limited to those weapon systems and items selected by the Military Departments and DLA in accordance with policy established in DoDI 4005.3, "Industrial Preparedness Production Planning Procedures."

(2) Industrial Preparedness Production Planning with foreign sources, except Canada, is prohibited.

(f) *Existing authority affecting the industrial base.* Specific authority under current contracting procedures to accomplish industrial planning actions includes the following:

(1) Leasing of Government-owned property to planned emergency producers under the authority of the Military Leasing Act of 1947 as codified in 10 U.S.C. 2667;

(2) Acquisitions in the interest of national defense under FAR 6.202(a)(2), or in case of a national emergency or to achieve industrial mobilization under FAR 6.302-3.

(3) Obtaining Jewel Bearings, Miniature and Instrument Ball Bearings, Precision Components for Mechanical Time Devices, High Purity Silicon, and High Carbon Ferrochrome (HFC) (see FAR 8.2, and 208.73, 208.74, 208.75 and 208.76 of this Supplement).

(4) Use of multiyear contracts (see FAR 17.1 and 206.202(a)(2) and 206.302-3);

(5) Providing Government production and research property to contractors (see FAR 45.302-1); and

(6) Preservation of domestic industrial base (see FAR Part 25).

(g) *Applicable procedures.* To assure the most effective planning approach, each DoD component will determine the specific type and depth of Industrial Preparedness Production Planning for each planning item. One or more of the authorities listed above may be appropriate to accomplish a particular planning action. Specific procedures as applicable to a current contract action include:

(1) Solicitation of Planned Producers in all acquisitions over $10,000 of items for which they have signed industrial preparedness agreements (but see FAR 19.5 and 220.7003 of this Supplement as pertain to partial set-asides for small business and labor surplus area concerns);

(2) Procedures under FAR 6.202(a)(2) or 206.302-3 to effect an industrial planning requirement; and

(3) When determined necessary by the applicable DoD component, individual service contracts may be awarded for accomplishing industrial planning efforts for selected essential military items. These efforts may include but are not limited to the maintenance of Government-owned industrial facilities (real and personal property); including production data packages; and

(4) When it is determined necessary to contract for an Industrial Preparedness Production Planning effort, and an item selected for such planning is being acquired, a line item for the planning services and data will be included in the contract schedule. The schedule shall describe in detail the required end items of supply, the specific services, and data by separate line items (see 204.71).

Subpart 208.3—Acquisition of Utility Services

See Supplement No. 5, Procurement of Utilities Services.

Subpart 208.4—Ordering From Federal Supply Schedules

208.404-1 Mandatory use.

(a) *Urgent requirements.* If delivery is offered in a shorter time than the maximum stated in the Schedule, but later than that required by the purchase request, the contracting officer shall ascertain from the activity initiating the purchase request whether the offered delivery is acceptable. This procedure need not be followed when transportation time from the contractor's shipping point or time required for inquiry and reply make conformance impracticable. When multiple award schedules are involved, the purchasing office need query only one contractor after considering the requirements of FAR 8.405-1.

208.404-2 Optional use.

(a)(S-70) DoD activities shall consider optional schedules as another source of supply to assure that purchase of supplies and services of the type contained in such schedules are really to the best advantage of the Government, price, delivery and other factors considered.

208.404-3 Requests for waivers.

(a) If such waiver is not granted, the case shall be referred to the Head of the Contracting Activity or his deputy, or to such higher authority as may be required by the Departments, and in the case of the Air Force, Commanders of AFLC Air Logistics Centers who shall make the final decision as to whether the nonschedule item will be purchased and shall promptly notify the Commissioner, Federal Supply Service, and the Purchasing Office, of the decision reached.

(b) When supplies or services are to be acquired from other sources and the situation will not permit the delay incident to following the normal channels of obtaining a waiver from the General Services Administration prior to purchase, such waiver shall not be requested. In emergency situations, the head of the office initiating the purchase request, or his designated representative, shall furnish to the purchasing office a signed statement identifying the supplies or services to be acquired, and explaining why similar items listed in the applicable Federal Supply Schedule will not meet the specific requirements. The purchasing office shall, within 15 days of the date of purchase, furnish such statement to the Commissioner, Federal Supply Service, General Services Administration.

208.404-70 Applicability of listed Federal Supply Schedules.

Supplies and services covered by the Federal Supply Schedules listed herein are mandatory in whole or in part upon some element of the Department of Defense. Some of the Federal Supply Schedules listed include classes unrelated to the Federal Supply Group which identifies the Schedule. To aid in locating an item in the mandatory Schedules, the classes included in each Schedule have been listed. The Remarks column states exceptions to the mandatory provisions of the Schedule when applicable. (But see 208.470-6 for mandatory use of CSA Term Contracts for maintenance, repair, rehabilitation and reclamation of personal property.) The Schedules should be checked for complete details concerning the exceptions.

Mandatory Nationally.

Schedule identification	FSC class	Schedule title	Remarks
25 I	2520, 2530, and 2540	VEHICULAR EQUIPMENT COMPONENTS—tire chains and clutch facings	
26 II	2610	PNEUMATIC TIRES AND INNER TUBES—Highway, off-highway industrial, pursuit/emergency high speed passenger, and agriculture.	
26 IV A	2630	TIRES—industrial, solid and cushion	
35 IV A	3510	APPLIANCES—household and commercial washing machines, electric; and drying tumblers, electric and gas.	
36 II	3610, 3615	SPECIAL INDUSTRY MACHINERY—lithographic printing plates (masters) and solutions; spirit duplication, thermal process, printing, duplicating, and bookbinding equipment; and pulverizing, pulping, and shredding machines.	Except Special Item Nos. 51-1, 51-1-1, 51-1-3, 51-2, 51-46, 51-106, 51-107 51-108, 51-110, 51-111, 51-113, 51-114, 51-125, 51-125-1, 51-126
36 IV	3610	SPECIAL INDUSTRY MACHINERY—copying equipment, supplies and services	Except Special Item No. 51-43, 51-44, 51-45, 51-52, 51-53, and 51-54.
37 I A	3730	AGRICULTURAL EQUIPMENT—cattleguards	
37 II A	3750	LAWN AND GARDEN EQUIPMENT—lawn mowers, mowers, shredders, edgers, trimmers, roto-tillers, broadcast spreaders, sprayers, vacuums, sweepers, tractors, and accessories.	

Schedule identification	FSC class	Schedule title	Remarks
41 I A	4120	AIR CONDITIONING EQUIPMENT—domestic use window units	
41 III A	4110	APPLIANCES—household refrigerator and refrigerator freezers	
41 III B	4110	REFRIGERATION EQUIPMENT—drinking water dispensers, mechanically cooled	
45 VII A	4520	PLUMBING AND HEATING EQUIPMENT—domestic water heaters, gas and electric	
45 VIII A	4540	PLUMBING AND SANITATION EQUIPMENT—household garbage disposers, ⅓ and ½ horsepower.	
49 I A	4910, 4940	MAINTENANCE AND REPAIR SHOP EQUIPMENT—hydraulic jacks, heat guns, auger machines.	
51 I A	5130, 5133, and 5180	HAND AND POWER TOOLS—pneumatic, hydraulic, power actuated, gasoline engine, and special purpose drill bits.	
51 II A	5130	HAND AND POWER TOOLS—electric	
51 IV	5110, 5120, 5136, 5140, and 5210.	HAND AND POWER TOOLS—nonpowered tools	
56 I B	5620	GLASS—safety glass, laminated, for "m" series trucks	
61 I	6140	BATTERIES—6 or 12 volt lead-acid automotive storage	
61 III	6135	BATTERIES—dry cell	Except Index Numbers 5, 13–22.
62 I	6230	LIGHTING FIXTURES AND LAMPS—household and quarters use	
62 III	6240, 6250, and 6750	ELECTRIC LAMPS—fluorescent and incandescent, and fluorescent adapters	
62 & 67	6240, 6750	LAMPS—electrical and photographic	
66 I B	6650, 6675	INSTRUMENTS AND LABORATORY EQUIPMENT—electronic distance measuring equipment and magnifiers.	Except Air Force.
66 II A	6630	INSTRUMENTS AND LABORATORY EQUIPMENT—blood analysis systems, dilutors, pipettes, electrophoresis equipment.	Except Air Force.
66 II B	6515, 6630, 6640, and 6125.	INSTRUMENTS AND LABORATORY SUPPLIES—glass, plastic, and metal laboratory ware; laboratory distillation and demineralizing systems; vena puncture products for blood specimen collection; and prescription bottles.	
66 II C	6630, 6640, and 6650	INSTRUMENTS AND LABORATORY EQUIPMENT—microscopes, centrifuges, pH meters, microtomes, stirrers, shakers, stereoscopes, monoculars, and titrators/titration systems.	
66 II E	6670	INSTRUMENTS AND LABORATORY EQUIPMENT—laboratory balances, precision scales and accessories.	
66 II H	5915, 5985, and 6625	INSTRUMENTS AND LABORATORY EQUIPMENT—amplifiers, microwave and low frequency instruments, and RF components.	Not mandatory for Dept. of the Air Force items in FSC 6625 not mandatory for DoD.
66 II M	6625, 6630, and 6650	INSTRUMENTS AND LABORATORY EQUIPMENT—spectrophotometers, densitometers, liquid scintillation systems, multichannel pulse height analyzers, spectrometers, photometers, and polarograph analysis equipment.	Not mandatory for Dept. of the Air Force items in FSC 6625 not mandatory for DoD.
66 II N	6630, 6635, 6640, and 6650.	INSTRUMENTS AND LABORATORY EQUIPMENT—analyzers, chromatographs, colony counters, blood analysis systems dilutors, pipetters, electrophoresis equipment, and image analysis systems.	Not mandatory for Dept. of the Air Force
66 II O	4110, 6530, 6636, and 6640.	INSTRUMENTS AND LABORATORY EQUIPMENT—laboratory apparatus, and laboratory and clinical refrigerators and freezers.	
66 II P	6640	INSTRUMENTS AND LABORATORY EQUIPMENT—laboratory and pharmacy furniture	
66 II Q	6625, 6630, 6640, 6655, 6660, 6680, and 6685.	INSTRUMENTS AND LABORATORY EQUIPMENT—environmental analysis equipment, pollution, oceanographic and weather.	Not mandatory for Dept. of the Air Force items in FSC 6625 not mandatory for DoD.
66 II R	6625, 6665, and 6680	INSTRUMENTS AND LABORATORY EQUIPMENT—environmental analysis, pollution control air beg and detecting equipment.	Not mandatory for Dept. of the Air Force items in FSC 6625 not mandatory for DoD.
66 II S	6630, 6640, and 6670	INSTRUMENTS AND LABORATORY EQUIPMENT—Glassware and Scales	
67 II B	6635, 6750, 6720, and 6740.	PHOTOGRAPHIC SUPPLIES—film, chemicals, and photographic paper	
67 IV B	6720, 6730, 6740, 6750, and 6760.	MICROPHOTOGRAPHIC EQUIPMENT AND SUPPLIES—cameras, projectors, printers, developing and duplicating equipment, and chemicals, film, and paper.	Except SINs 21-12-4 a, b and c, 21-21, 21-21a, 21-22, 21-22a, 21-40, and 21-41.
68 III E&F	6830	CHEMICALS AND CHEMICAL PRODUCTS—refrigerant fluorocarbons and sulfur hexafluoride.	
68 III G	6830	CHEMICALS AND CHEMICAL PRODUCTS—helium	
68 III H	6830	CHEMICALS AND CHEMICAL PRODUCTS—fire extinguishing fluorocarbons	
71 I A	7105	HOUSEHOLD AND QUARTERS FURNITURE—ranch style	
71 I B	7105	HOUSEHOLD AND QUARTERS FURNITURE—danish style	Except SINs 29 through 36.
71 I C	7105	HOUSEHOLD AND QUARTERS FURNITURE—traditional style	
71 I D	7105	HOUSEHOLD AND QUARTERS FURNITURE—dormitory and quarters	Except items 1-57 and items 92-100.
71 I E	7105	HOUSEHOLD AND QUARTERS FURNITURE—upholstered (performance tested) furniture	
71 I G	7105	HOUSEHOLD AND QUARTERS FURNITURE—rattan	
71 II A, B&C	7110	OFFICE FURNITURE—executive traditional, unitized and contemporary, wood	
71 II D	7110	OFFICE FURNITURE—filing cabinets, shelf files, card files insulated files and card size files (for desk use); file cabinets, tabulating machine card size.	
71 II E	7110	OFFICE FURNITURE—Systems Furniture	
71 II F	7110	OFFICE FURNITURE-Systems Furniture	
71 III A	7110, 7195	MISCELLANEOUS FURNITURE—classroom, auditorium and theatre seating	
71 III B	7195	MISCELLANEOUS FURNITURE—library, wood or metal	
71 III C	7125	MISCELLANEOUS FURNITURE—storage cabinets for forms and flammable liquids	
71 III D	7110, 7125	MISCELLANEOUS FURNITURE—mail sorting and distribution equipment, modular cabinets for high and low density storage, and molded plastic/corrugated storage bins.	
71 III E	7110	MISCELLANEOUS FURNITURE—insulated and uninsulated security filing cabinets, safes, vault doors, and map and plan files.	
71 III F	6530, 7105, 7210, and 7230.	MISCELLANEOUS FURNITURE—hospital patient room	Except items 462-7 and 482-8.
71 III H	7105, 7110	MISCELLANEOUS FURNITURE—multi-purpose seating	
71 III J	7125	MISCELLANEOUS FURNITURE—steel vertical blueprint filing cabinets, roll drawing files, and high-density movable shelf filing cabinet systems.	
71 III K	7125	MISCELLANEOUS FURNITURE—special purpose	
71 III L	7110	MISCELLANEOUS FURNITURE—cafeteria and food service	
71 III M	7195	MISCELLANEOUS FURNITURE—acoustical partitions, speech privacy partitions, and vertical surface panels.	Except items 500-2, 500-3, and 500-4
71 III N	7045, 7110	MISCELLANEOUS FURNITURE—ADP furniture, storage and transportation items	
71 III O	7105, 7195	MISCELLANEOUS FURNITURE—folding chairs and tables	
71 V B	7110, 7125	OFFICE FURNITURE—key cabinets	
71 V D	7105, 7110	OFFICE AND FIELD FURNITURE—office furniture; map and plan filing cabinets and folding tables; modular steel field office furniture: filing cabinets, desk top, and end folding table.	
71 XIV A	7110, 7125, and 7195	SHOP FURNITURE—desks, benches, and tables	
71 XXVII A	6230, 7105, 7110, and 7195.	FURNITURE—office and household, centurion by Federal Prison Industries	
71 XXVII B	7110	QFFICE FURNITURE—contemporary centurion by Federal Prison Industries	

Schedule identification	FSC class	Schedule title	Remarks
72 I A&D	7220	HOUSEHOLD AND COMMERCIAL FURNISHINGS—carpets, special purpose carpets, rugs, carpet tiles, and carpet cushions.	Not mandatory for use aboard vessels.
72 I B	7220	HOUSEHOLD AND COMMERCIAL FURNISHINGS—floor coverings; tile, linoleum, and vinyl sheet.	Not mandatory for use aboard vessels.
72 I E	7220	HOUSEHOLD AND COMMERCIAL FURNISHINGS—mats and matting; entrance-way, interlocking modular, resilient open construction and anti-static types.	Not mandatory for use aboard vessels.
72 II	7230, 8305	HOUSEHOLD AND COMMERCIAL FURNISHINGS—window shades: cloth vinyl, and fiberglass.	Not mandatory for FSC 8305.
73 IV A	7310	APPLIANCES—household gas ranges	
73 IV B	7310	APPLIANCES—household and commercial electric ranges	
73 V A	7320	APPLIANCES—household dishwashing machines	
74 I A	7430	OFFICE MACHINES—electronic typewriters, visual display preparation devices, sound reduction equipment and electric typewriter supplies.	
74 I B	7430	OFFICE MACHINES—typewriters, electric, single element	
74 I C	7450	OFFICE MACHINES—dictating and transcribing equipment	
74 II & III	6645, 7420, and 7490	OFFICE MACHINES—adding, calculating, cash registers, time measuring instruments, miscellaneous office machines.	
74 II A	7420	OFFICE MACHINES—calculators, desk top nonprogrammable	
74 V	7430	OFFICE MACHINES—manual typewriters—portable and nonportable	
75 I C	7530, 9310	OFFICE SUPPLIES—special use paper: engineering and draftsman papers—graph, drawing, tracing, overlay plastic sheets, cardboard and paper embossing; index sheet sets for looseleaf binders; paperboard, drawing; and labels for automatic data processing.	
75 I D	7530	OFFICE SUPPLIES—plotting paper, supplies; and recording paper	
75 II A	3540, 7510, 7520, 7690, and 7530.	OFFICE SUPPLIES—pencils, leads, tape label marking, chart supplies and/or letters and figures, sorters, desk correspondence, file suspended folders, plastic book jackets, plastic organizers and sorters, out-of-typewriter correction material, labels, price marking equipment, data binders, binders, looseleaf, typewriter ribbons, word processing ribbons, correction tape, computer ribbons, computer printout ruler, plastic copy holder, and print wheels.	
75 II B	3540, 7510, and 7520	OFFICE SUPPLIES—looseleaf binders, label tape, pamphlet files, multistrike typewriter ribbons, typewriter correction tape, pressure sensitive adhesive tape, correctable typewriter ribbons, plastic desk trays, lead holders, document protector, typist copyholders, gummed tape dispensers, file drawer frames, stapling machines, bristol cardboard, labeling machines.	
75 IV A&B	7520	OFFICE SUPPLIES—rubber stamps	
75 IV C	7520	OFFICE SUPPLIES—pre-inked rubber stamps	
75 V	7530	OFFICE SUPPLIES—envelopes: mailing, printed and plain	Mandatory except for plain envelopes for use in the District of Columbia.
75 VII	7540	OFFICE SUPPLIES—U.S. Government national credit card	
75 VIII A	7530	OFFICE SUPPLIES—cards: tabulating, aperture, and copy	
75 X	7530	OFFICE SUPPLIES—xerographic paper	
75 XI	7530	OFFICE SUPPLIES—xerographic paper and thermal copy paper	
75 XII	7530	OFFICE SUPPLIES—electrographic paper	
76 I	7610, 7640	PUBLICATIONS—dictionaries, encyclopedias, other reference books and pamphlets, maps, atlases, charts, and globes.	
76 II	7610, 7630, and 7670	PUBLICATIONS—law, tax, and reporting periodicals, microfilm library systems	Except SINs 37-5, 6, and 7.
77 I	7740	AUDIO AND VIDEO SUPPLIES—phonograph records, 8-track tape cartridges, and cassettes.	
77 III	7105, 7730	AUDIO AND VIDEO EQUIPMENT—televisions, radios, phonographs and video cassette recorders.	
78 I A	7810	ATHLETIC AND RECREATIONAL EQUIPMENT—outdoor equipment	
78 I B	7810, 7820, and 7830	ATHLETIC AND RECREATIONAL EQUIPMENT—indoor recreational and gymnasium equipment.	
78 I C	7830	ATHLETIC AND RECREATIONAL EQUIPMENT—outdoor recreational equipment	
79 I A	7910	CLEANING EQUIPMENT AND SUPPLIES—vacuum cleaners, carpet shampooers, floor polishing and scrubbing machines.	
79 I B	7910	CLEANING EQUIPMENT AND SUPPLIES—vacuum cleaners, carpet shampooers, floor polishing and scrubbing machines.	
79 II A	7930	CLEANING EQUIPMENT AND SUPPLIES—liquid and powdered dishwashing compounds with contractor supplied, installed and maintained accessory dispensing systems.	
79 III A	7930	CLEANING EQUIPMENT AND SUPPLIES—liquid and powdered laundry detergents with contractor supplied, installed and maintained accessory dispensing systems.	
80 II A	8010	PAINT—gloss and semi-gloss latex, interior	
81 I A	8135	PACKAGING AND PACKING SUPPLIES—cushioning material	
81 II A	8135	PACKAGING AND PACKING SUPPLIES—steel and nonmetallic strapping	
99 VI A	9910	TROPHIES AND AWARDS—trophies, awards, plaques, pins and ribbons	
99 V A	9905	RECRUITING AID PROMOTIONAL MATERIAL	For requirements of recruiting commands only.
733	7339	TRANSCRIPTS—stenographic reporting services	

In addition to these National Federal Supply Schedules, there are Regional Schedules (chiefly covering various services) which are mandatory in the region covered. Activities should check with local GSA Region offices for listings of regional schedules applicable in their area.

208.404-71 Establishment or revision of Federal Supply Schedules mandatory upon DoD.

(a) *Policy.* The Administrator of General Services Administration has agreed that the concurrence of the Office of the Secretary of Defense will be obtained prior to establishing a Federal Supply Schedule which is mandatory upon the Department of Defense, or prior to adding or removing any items from Federal Supply Schedules which are mandatory upon the Department of Defense, or making any other changes in such Schedules affecting their use by Department of Defense in meeting its supply requirements. However, deletion of an item from a Federal Supply Schedule will not require Office of the Secretary of Defense concurrence when the reports of sales for that item amount to less than $1,000 per year, except where—

(1) The item is a part or accessory incidental to a basic item;

(2) The item is a component of a unit assembly;

(3) The item has a demonstrated need to fill out a range of colors, sizes or other characteristics; or

(4) The item involves a contract for services.

(b) *Procedures.* Requests for the establishment of or a change in a Federal Supply Schedule mandatory on elements of the Department of Defense

shall be forwarded to the Executive Director, Contracting, Defense Logistics Agency, for coordination with the Departments. Such proposals normally shall be forwarded in sufficient time to provide three months for consideration by all interested elements of the Department of Defense and General Services Administration prior to the desired effective date. In the event action on such proposals is desired in a shorter period of time, a minimum of 35 days for consideration should be anticipated. These proposals will be distributed to the representatives of the Departments and General Services Administration engaged in the Federal Supply Schedule review program, as appropriate, for comment or concurrence. Any questions will be jointly considered before final action is taken. If the Departments and General Services Administration representatives cannot reach agreement on a question raised, the question will be forwarded to the Assistant Secretary of Defense (Manpower, Installations and Logistics) for resolution.

208.405 Ordering office responsibilities.

208.405-1 Ordering from Multiple-Award Schedules.

(c) When purchase of an item of foreign origin is specifically required, the using activity shall furnish the contracting activity sufficient information to permit the determination required by FAR Part 25 to be made.

208.405-2 Order placement.

DD Form 1155 is authorized for use to place orders against Federal Supply Schedules.

(S-70) *Oral orders not to exceed $10.000.*

(1) *General.* Contracting offices are authorized to make acquisitions not in excess of $10.000 by oral orders from Federal Supply Schedule contractors. Ordering activities shall obtain an agreement from the contractor that for each shipment under an oral order the contractor will furnish a delivery ticket, in the number of copies required by each purchasing office, which shall contain the following information:

(i) Contract number;

(ii) Order number under the contract;

(iii) Date of order;

(iv) Name and title of the person placing order;

(v) Itemized listing of supplies or services furnished; and

(vi) Date of delivery or shipment.

(2) *Payment.* Optional methods of invoicing are permissible. An individual invoice accompanied by a receipted copy of the related delivery ticket may be submitted for payment. Alternatively, a summarized monthly invoice covering all oral orders made during the month, accompanied by a receipted copy of each delivery ticket or a statement by the contracting officer that the supplies have been received by the Government, may be submitted for payment. The monthly billing procedure is preferred when numerous oral orders may be placed.

(S-71) *Imprest funds (petty cash method).* In buying commodities where cash payment is advantageous, the imprest funds method (see FAR 13.4) is authorized; *Provided,* the order does not exceed $500, and the contractor agrees to such a procedure.

208.470 Acquisition from GSA Sources.

208.470-1 Applicability.

This subsection applies to the acquisition of supplies available from General Services Administration stock for delivery in the contiguous United States, including the satisfaction of overseas requirements when such requirements are routed to facilities in the contiguous states for supply action in accordance with instructions prescribed by the Departments. This subsection may be applied optionally in Alaska and Hawaii. It does not apply in any event to any order which amounts to $25.00 or less, or to:

(a) Any subsistence or medical item which is under the cognizance of the Defense Personnel Support Center;

(b) Any item which is being purchased for resale; or

(c) Any item used by commissaries for operation and maintenance that is available through local purchase at a price lower than from GSA stock.

This subsection also applies to the mandatory use of General Services Administration services and term contracts for the maintenance, repair, rehabilitation, and reclamation of all personal property described in 208.470-6, in the United States, Puerto Rico and the Virgin Islands. Services of this type which are available from Federal Prisons Industries and Agencies for the Blind will be procured under the provisions of FAR Subparts 8.6 and 8.7.

208.470-2 Acquisition from General Services Administration stock.

It is the policy of the Department of Defense that for an item which has been decentralized for local purchase and which is available from the General Services Administration stock, such items will be ordered from GSA unless delivery requirements cannot be met. The mandatory provisions of Department of Defense, General Services Administration Interagency Purchase Assignments (208.7106) are not applicable to decentralized items which are within these assignments and which are available from the stock. Such items will be ordered in accordance with the above-stated policy.

208.470-3 GSA Supply Catalog.

The General Services Administration Supply Catalog sets forth, among other things, information with respect to some of the items of supply carried in stock, prices, and delivery information, and a listing of the General Services Administration regional offices. The catalogs do not list all of the items carried in stock. Items within the classes assigned to GSA in accordance with DoD/GSA agreements and not recorded in the management data lists of the Federal catalog publications as managed by another service or agency and not recorded for decentralized acquisition, should be requisitioned from GSA. Copies of the GSA Supply Catalog may be obtained by completing GSA Form 457 (FSS Publications Mailing List Application) and mailing it to the GSA Centralized Mailing Lists Service, Building 41, Denver Federal Center, Denver, Colorado 80225. GSA Form 457 may be obtained from the GSA Centralized Mailing Lists Service by letter or by telephoning 303-234-4195.

208.470-4 General Services Administration regional offices.

The General Services Administration regional offices, located in the cities listed below, serve the areas indicated in the GSA Supply Catalog guide. The addresses shown are the mailing addresses to which all orders and correspondence should be forwarded.

GSA Region and Address

(a) Boston, MA—John W. McCormack, Post Office & Courthouse, Boston, MA 02109.

(b) New York, NY—26 Federal Plaza, New York, NY 10007.

(c) Philadelphia, PA—Ninth & Market Streets, Philadelphia, PA 19107.

(d) Atlanta, GA—75 Spring Street, SW, Atlanta, GA 30303.

(e) Chicago, IL—230 S. Dearborn Street, Chicago, IL 60604.

(f) Kansas City, MO—1500 East Bannister Road, Kansas City, MO 64131.

(g) Fort Worth, TX—819 Taylor Street, Fort Worth, TX 76102.

(h) Denver, CO—Denver Federal Center, Bldg. 41, Denver, CO 80225.

(i) San Francisco, CA—525 Market Street, San Francisco, CA 94105.

(j) Auburn, WA—General Services Administration Center, Auburn, WA 98002.

(k) National Capital—7th & D Streets SW., Washington, DC 20407

208.470-5 Order for supplies.

Orders for supplies from the General Services Administration shall be submitted in accordance with the Military Standard Requisitioning and Issue Procedures (MILSTRIP) (DoD 4140.17-M).

208.470-6 Mandatory Sources for Maintenance, Repair, Rehabilitation and Reclamation of Personal Property.

General Services Administration regional offices provide facilities for maintenance, repair, rehabilitation and reclamation of Government-owned personal property and, in addition, have Term Contracts with commercial concerns for similar services. These contracts are published as General Services Term Contracts. When requirements exceed the in-house capabilities of a Departmental activity or installation, or it is otherwise required that outside sources be used, mandatory General Services Administration sources for such services shall be used except when:

(a) The items involved are military weapons systems, specialized military support equipment, or specialized technical or scientific equipment;

(b) Such services are available from the Agencies for the Blind or Other Severely Handicapped;

(c) The required services are covered by warranty or other preexisting contract;

(d) Delivery requirements for repair and refinishing services cannot be met (the provisions of FAR 8.404-1 are applicable when determining whether a General Services Administration source can meet the delivery requirements);

(e) The required services are not within the scope of the existing mandatory GSA Term Contract or a waiver is first obtained from the appropriate GSA Federal Supply and Services contracting office (such waivers are not required when the exigency of the contract action will not permit delay; however, telephonic clearances will be given by GSA in appropriate cases); and

(f) The requiring activity is outside the geographic area covered in the GSA Term Contract. (Normally, this area extends no more than a 15-mile radius from the contractor's location. Each contract specifies the area covered which may in some cases extend beyond that distance.)

208.470-7 Personal property covered under mandatory GSA term contracts.

The items of personal property listed below are indicative of those for which General Services Administration sources are mandatory for maintenance, repair, rehabilitation, and reclamation services. They are not all inclusive. For detailed listings, see the latest Federal Supply Catalog entitled "Guide to Sources of Supply and Service." Copies are available from GSA Regional Offices and should be obtained by each installation and activity that may have need of such services. Copies of existing GSA Term Contract for these services are routinely forwarded by each GSA Regional Office to all affected Government activities within the respective regions.

Sample List of Items

Adders, calculators, and comptometers
Fire extinguishers (industrial and Commercial)
Furniture (office, household, quarters, institutional and hospital type)
Household appliances
Mattresses
Motors and generators (industrial and Commercial)
Tires (except for aircraft)
Typewriters (manual and electric)
Watches and clocks (industrial and Commercial)

208.470-8 Order for services.

Orders for maintenance, repair, rehabilitation, or reclamation services from General Services Administration sources shall be placed as follows:

(a) *GSA repair facility.* A delivery order on Order for Supplies or Services/Request for Quotations (DD Form 1155) shall be submitted to the General Services Administration regional office which normally serves the contracting activity. Each delivery order which is subject to fiscal year limitations necessitating GSA acquisition action to be completed not later than September 30 shall contain a notation to that effect.

(b) *Commercial sources.* Delivery orders on DD Form 1155 will be placed directly with contractors pursuant to GSA Term Contracts.

(1) *Inspection and acceptance.* Arrangements for inspection and acceptance shall be the responsibility of the ordering agency, except when the GSA Term Contract specifically provides for source inspection by GSA.

(2) *Default terminations.* The GSA contracting office shall be notified each time an order is terminated for default in accordance with contract provisions.

Subpart 208.70—Coordinated Acquisition

208.7000 Applicability.

Although the Department of Defense Coordinated Acquisition Program includes items assigned to one or more of the Departments or the General Services Administration for integrated materiel management, the procedures set forth in this Part apply to items assigned for purchase responsibility only, and not to those in the integrated materiel management program. The latter items will be obtained in accordance with current supply procedures.

208.7001 Definitions.

As used in this part, the following terms have the meanings set forth below.

"Acceptance of MIPR" means DD Form 448-2 (Acceptance of MIPR) executed by a Contracting Department as notice to the Requiring Department that a MIPR has been received and accepted for contracting action.

"Coordinated acquisition" means (a) acquisition by contracting activities, within the 48 contiguous States and the District of Columbia, of certain supplies to satisfy the requirements (including overseas requirements) of all Departments in compliance with assignment responsibilities set forth in Subpart 208.71; (b) procurement assignments made by the respective Unified Commanders in Alaska, Hawaii, and outside the United States, regardless of funds utilized; and (c) acquisition assignments made in accordance with 8.7018. It does not include acquisitions made in Alaska, Hawaii, or outside the United States which do not fall within (a) or (b) above.

"Direct citation acquisition (Category II Method of Funding)" means an acquisition having separate identification of the items and citing the funds of the Requiring Department, and may be accomplished by combining the requirements of two or more Departments under one contract with separate schedules showing the quantities, prices, dollar amounts, and citation of funds of each Requiring Department, or by placing separate contracts for each department.

"Integrated materiel management items" means items assigned to one Department or the General Services Administration for entire Department of Defense management. Such management normally includes responsibility for computation of requirements, funding, budgeting, storing, issuing, cataloging, standardizing and contracting functions.

"Military service managed items" means items which are within Federal Supply Classes assigned to the Defense Logistics Agency or the General Services Administration but which are retained for supply management by the Requiring Department.

"Contracting department" means the Department or the General Services

Administration whichever is assigned the contracting responsibility for the supplies.

"Purchase request" means the following types of authorized purchase requisitions: (a) Military Interdepartmental Purchase Request (MIPR) (DD Form 448); and (b) Requisition for Coal, Coke, and Briquettes (DD Form 416).

"Reimbursable acquisition (Category I Method of Funding)" means the acquisition of supplies for a Requiring Department on a contract funded by the Contracting Department, without separate identification of the items or separate citation of funds of the Requiring Department, with subsequent delivery to and reimbursement by the Requiring Department.

"Requiring department" means the Department originating a requisition or purchase request for supplies.

208.7002 Responsibilities under coordinated acquisition.

The Contracting Department is generally responsible for the following under coordinated acquisition:

(a) Operational phases of acquisition planning (phasing the submission of requirements, consolidating or dividing requirements, analyzing the market, and determining patterns for the phased placement of orders in such a manner as to assure meeting the needs of the Requiring Departments at the lowest possible price to the Government, and at the same time avoiding unnecessary peaks and valleys of production);

(b) Purchasing.

(c) Performing or arranging through a contract administration office for contract administration, including followup and expediting of inspection and transportation; and

(d) Acquisition of licenses under patents or other proprietary rights covering the subject matter of the acquisition and the settlement of patent infringement claims arising out of the acquisition; approval of the Departments whose funds are to be charged for acquisition of licenses or settlement of claims shall be obtained.

208.7003 General principles governing implementation of acquisition assignments.

208.7003-1 Standard format-development and promulgation of implementing procedures.

Implementation of acquisition assignments shall be in accordance with Enclosure 1 of Department of Defense Instruction 4115.1, dated October 14, 1968 (and amendments thereof), Subj: Department of Defense Coordinated Procurement Program—Purchase Assignments (NAVSUPINST 4215.4B).

208.7003-2 Relationship between research and development and coordinated acquisition.

Items are not subject to procurement assignment until they have reached the production stage.

208.7003-3 Small dollar value purchases.

Requirement of small dollar value shall be acquired in accordance with the provisions of the approved implementing procedures covering the particular assignment. Such implementing procedures shall normally provide a small dollar limitation of $2,500; however, in special situations, the limit may vary depending upon the commodity area and may be expressed either in a higher or lower dollar value, by tonnage, less-than-carload lot quantities, or other units, as appropriate. Such implementing procedures shall clearly state that requirements of a value or quantity less than the prescribed limitations shall, wherever feasible, be acquired by the Requiring Department. A MIPR for a military type item need not contain such a notation. The Contracting Department shall not return a MIPR submitted in accordance with the foregoing, but shall procure such items.

208.7003-4 Emergency.

In case of emergency, when the exigencies of the situation will not permit the delay incident to following the normal channels of coordinated acquisition, purchases may be made without the prior authorization of the Contracting Department. When an emergency purchase is made, one copy of the contractual instrument, bearing or accompanied by a statement of the emergency, shall be transmitted promptly to the contracting activity of the Contracting Department (the coordinated acquisition assignee). The provisions of this paragraph will not normally be used for stock replenishment. These emergency procedures do not apply to the purchase of integrated materiel management items as described by 208.7001. Emergency purchase of such items is covered by 208.7101-2(d).

208.7003-5 Department of Defense manufacturing establishment.

When acquisition assignments have been made for items required by manufacturing establishments of the Departments, these items shall be obtained through the facilities of the Contracting Department unless such action will unduly hinder or delay production. When acquisitions are made other than through the Contracting Department, one copy of the contractual instrument bearing or accompanied by a statement of the circumstances necessitating such acquisition shall be transmitted promptly to the contracting activity of the Contracting Department. This paragraph is not applicable when purchases are made pursuant to 208.7003-3 above.

208.7003-6 Consolidation of requirements.

The primary objective of coordinated acquisition is to obtain for the Government maximum economy through the consolidation of requirements and the elimination thereby of competitive purchases among the Departments. The Procuring Department shall, to the extent consistent with the delivery schedule of the Requiring Department, consolidate in one contract its own requirements for the same or similar items plus all requirements via MIPRs or other purchase requests.

208.7004 Items in short supply.

When shortages develop in the market for supplies being purchased and requirements have been submitted by more than one Department, the normal procedure shall be to resolve the problem on a Departmental level between or among the Departments based on priorities for the supplies. If agreement cannot be reached, the subject shall be referred to the Deputy Assistant Secretary of Defense (Logistics) for decision.

208.7005 Transfer of uncompleted Contracts.

208.7005-1 Effect of assignment of acquisition responsibility.

As a general rule, when the acquisition responsibility for a commodity or class of commodities is assigned to one Department, or the General Services Administration, uncompleted contracts of any other Department, or the General Services Administration, for any commodity or class of commodities will not be transferred but will continue to be administered by the Contracting Department or Defense Contract Administration Services as appropriate.

208.7005-2 Contracting officers under transferred contracts.

In the case of any contract transferred, or to be transferred, to any Department, the successor to the contracting officer for each such contract shall be the Head of the Contracting Activity (or any contracting officer thereof) to which the administration of any such contract is assigned, and any such successor shall

have all of the rights and responsibilities of a contracting officer under such transferred contract.

208.7006 Purchase authorization.

208.7006-1 MIPRs or other authorized purchase requests.

(a) Military Interdepartmental Purchase Requests (MIPRs) or other authorized purchase requests when received by the Contracting Department shall be the authority to acquire the supplies or nonpersonal services in accordance with single department acquisition assignments or agreements between the Departments concerned as provided in 208.7018. The Contracting Department is authorized to create obligations against the funds cited in a MIPR without further referral to the Requiring Department. The Contracting Department has no responsibility to determine the validity of a stated requirement in an approved MIPR; however, it should bring apparent errors in the requirement to the attention of the Requiring Department.

(b) When purchase requests other than MIPRs (see 208.7001) are used as the basis for acquisition, the general procedures prescribed for processing, amending, accepting and terminating requirements on MIPRs as prescribed in other paragraphs of this subpart shall normally be followed, except as otherwise agreed to by the Departments involved.

208.7006-2 Use of advance MIPRs.

(a) An Advance MIPR is an unfunded MIPR provided to the procuring activity in advance of the formal funded MIPR whereby initial steps in planning contract action can begin at an earlier date.

(b) Advance MIPRs may be used only when the Procuring Department and the Requiring Department agree that the procedure may be beneficial in placing the acquisition and obtaining the requirements in a more timely manner.

(c) Advance MIPRs shall not be released to a procuring activity until proper approval of the requirement is obtained.

(d) When Advance MIPRs are used, the DD 448 shall be prominently marked "Advance MIPR."

(e) For urgent requirements, the Advance MIPR may be in the form of an electrically transmitted message.

(f) On the basis of an Advance MIPR, the Procuring Department may take the initial steps toward establishing a contract, such as obtaining internal coordination, and preparing an acquisition plan. The extent of such action may be determined by the procuring Departments. However, contracts shall not be awarded on the basis of Advance MIPRs.

208.7006-3 Justifications and approvals and determinations and findings.

(a) Coordinated procurement shall not be used by Departments to avoid FAR Part 6 requirements concerning full and open competition (see FAR 6.002). When a Requiring Department requests that a Procuring Department obtain supplies or services by contract using other than full and open competition, the Requiring Department shall prepare the justification required by FAR 6.303 and obtain the approval specified in FAR 6.304. The Requiring Department shall also make the Determinations and Findings specified in FAR 6.302-7(c)(1) and FAR 6.202(b)(1), where applicable. The Requiring Department shall preserve the original justification and approval and determination and findings with supporting data as required by 215.3. Two copies shall be attached to the MIPR or purchase request in the Procuring Department's contract file.

(b) *Foreign end products.* Where a foreign end product is specified by the Requiring Department, that Department is responsible for determining that a domestic source end product is not available as required by FAR 25.108 and FAR 25.302. Two copies of the determination that a domestic source end product is not available shall be furnished to the Procuring Department with the MIPR.

208.7006-4 Delivery schedules.

(a) In submitting MIPRs the Requiring Department should take into consideration the normal administrative lead time of the particular commodity in order to insure delivery by the date required. The time of delivery or performance is an essential element for inclusion in a contract and must be clearly stated in each MIPR. Delivery and performance schedules on MIPRs shall be designed to meet the requirements of the particular acquisition and must be realistic (see FAR 12.1). If the delivery schedule, as set forth in a MIPR, is unrealistic or cannot be accepted by the Procuring Department, the DD Form 448-2 "Acceptance of MIPR" will be so annotated (see 208.7009-3). Changes in the requested delivery schedule shall be accomplished in accordance with 208.7008-5.

(b) When a short delivery schedule is mandatory, the MIPR shall be marked "URGENT" in bold letters. The Requiring Department's justification for the "URGENT" marking shall be stated on the MIPR or attached thereto, in order to enable the Procuring Department to apply any necessary expediting techniques to assure the required delivery.

208.7006-5 Specifications, drawings, and other purchase data.

The Requiring Department shall furnish to the Procuring Department a list (or copies) of specifications, drawings, and other data, as appropriate, required for the acquisition. If Federal, Military, Departmental, or other specifications, or drawings or data are available to the Procuring Department and referenced in the MIPR, they need not be furnished by the Requiring Department (but see FAR 46.407). Required changes in such purchase data shall be accomplished as set forth in 208.7008-5.

208.7006-6 Utilization of existing Department of Defense assets.

The Requiring Department is responsible for insuring compliance with FAR 8.001 prior to submitting military interdepartmental purchase requests for acquisition action.

208.7006-7 Options for increased quantities.

If the Requiring Department desires an option to purchase an additional quantity, the MIPR shall so stipulate and shall contain a justification therefor.

208.7007 Funds and payments.

208.7007-1 Citation of appropriation and funds of requiring Department—Category II method of funding.

Except as provided in 208.7007-2, contracts and orders for other than integrated supply management materiel shall cite the specific fund citation(s) and the MIPR number of the Requiring Department. The Contracting Department shall determine which type of funding (direct citation or reimbursable acquisitions) shall be used.

208.7007-2 Citation of funds of Contracting Department—Category I method of funding.

Under the conditions listed below, only the funds of the Contracting Department shall be cited in the consolidated contracts; and the contracts and orders thereunder shall provide for payment by the Contracting Department or by the Defense Contract Administration Services as appropriate:

(a) Delivery is from existing inventories of the Contracting Department;

(b) Delivery is by diversion from existing contracts of the Contracting

Department which cite the funds of the Contracting Department;

(c) Production or assembly is through government work orders in Government-owned plants;

(d) Allocation of production quantities among users from one or more contracts for which the identity of specific quantities of the end item to individual contracts is not feasible at the time of MIPR acceptance;

(e) Acquisition of the end items involves separate acquisition of components to be assembled by the Contracting Department;

(f) Payments will be made without reference to deliveries of end items; e.g., cost-reimbursement type contracts and fixed-price contracts with progress payment clauses; or

(g) It is not feasible and economical to use Category II method of funding.

208.7007–3 Disbursement.

When the contract is funded with DoD funds and is to be administered by the Defense Contract Administration Services, the Contracting Department shall cite as the disbursement office the Defense Contract Administration Services Region Disbursing Office (see 242.102). If the contract is not administered by the Defense Contract Administration Services, the Contracting Department shall cite as the disbursement office the payment office designated by the Requiring Department (see 208.7008–1).

208.7007–4 Authorization for exceeding MIPR estimates.

Each MIPR shall indicate on its face whether or not the total MIPR estimate may be exceeded by the purchasing office, and if affirmative, by what amount. The additional amount shall not be more than $20,000, or 10% of the total estimated MIPR amount, whichever is less.

208.7008 Preparation and use of DD Form 448 (MIPR).

DD Form 448 is substantially self-explanatory. Information provided in MIPRs shall be arranged in Uniform Contract Format to the extent feasible. If desired, each Department may overprint fixed repetitive information.

208.7008–1 Special instructions.

(a) *MIPR number.* The MIPR number will consist of:

(1) The requiring agency identification code as prescribed in the DoD Activity Address Directory (DoDAAD), DoD 4000.25D;

(2) The last digit of the fiscal year; and

(3) The number of the particular MIPR (numbered consecutively by the requiring activity).

Amendments will be numbered with the MIPR number suffixed with the amendment number assigned in consecutive numbered sequence.

(b) Appropriate checks in Item 9 shall be accomplished in compliance with Department of Defense policy which requires interdepartmental screening of items in accordance with FAR 8.001 to determine stock availability within other Departments prior to preparation of a DD Form 448. Items which are determined to be available from stocks of other Departments shall be requisitioned as follows:

(1) Items within the scope of MILSTRIP (see DoD 4140.17–M (MILSTRIP) of 1 May 1964, as amended) shall be obtained by use of DD Form 1348/1348m, DoD Single Line Item Requisition System Document;

(2) Items not covered by MILSTRIP shall be obtained by use of DD Form 1149, Requisition and Invoice/Shipping Document. If a Contracting Department determines after receipt of a MIPR that the items can be supplied from stock, the MIPR shall be used for effecting supply from such stock.

(c) Normally a MIPR shall be restricted to one major end item, including its required spare parts, ground support equipment, and similar related items. MIPRs for other than major end items normally shall be limited to items within a single Federal Supply Classification.

(d) Attachments to MIPRs (Item 10) must be prepared in sufficient numbers so that each copy of a MIPR submitted to the Contracting Department is complete with a copy of all attachments. "Ship To and Mark For" addresses in shipping instructions shall include the clear text identification and DoDAAD code if assigned.

(e) Item 13 is used to identify the name and address of the office to receive invoices and make payment only if the resulting contract is not to be paid by the Defense Contract Administration Services in accordance with 208.7007–3, and the office to receive invoices and make payment is known at the time of preparation of the MIPR. If payment is to be made by an office designated to receive invoices, also enter the DoDAAD code of that office. If payment is to be made by an office other than the office to which the invoice is to be mailed (Item 13), the name, address, and DoDAAD code of the payment office shall be set forth in detail as an attachment to the MIPR. If multiple offices are to receive invoices and make payment, the names and addresses of those offices shall be set forth as an attachment to the MIPR, including the DoDAAD code of each payment office. Whenever the payment office(s) is included in an attachment, an appropriate reference to the attachment will be included in Item 13. If the names and addresses of those offices are to be provided to the Contracting Department after preparation of the MIPR, the DoDAAD code also shall be provided for each payment office.

(f) Allotment data for the acquisition of supplies shall be entered in Item 14. Allotment data for the transportation of supplies at Government expense, if cited in the MIPR in accordance with 208.7017 shall be entered in Item 12. Each citation in Item 14 shall be set forth in the appropriate space in the following manner:

(1) *ACRN.* If the Accounting Classification Reference Number procedures of 204.7108 are used in the MIPR to relate allotment data to the MIPR item or delivery, the ACRN for each fund citation in Item 14 shall be entered. (The Contracting Department is not required to use in the resulting contract the ACRN assigned to a fund citation in the MIPR.)

(2) *Appropriation.* Will be shown in the ten positions as follows:

(i) First and second positions shall be the Treasury Department number identifying the Department or Agency to which the appropriation applies or has been transferred.

(ii) Third and fourth positions shall be the Treasury Department number identifying the Department or Agency from which an appropriation has been transferred; shall be blank if no transfer is involved.

(iii) Fifth and sixth positions shall identify the Appropriation Fiscal Year. For multiple-year appropriations, the fifth position shall be the last digit of the first year of availability and the sixth position shall be the last digit of the final year of availability. For annual appropriations, the fifth position shall be blank and the sixth position shall be the "X".

(iv) Seventh through tenth positions shall be the Treasury Department appropriation serial number.

(3) *Limit/Subhead.* Up to four characters; if less than four characters, leave empty spaces blank.

(4) *Supplemental accounting classification data.* Shall not exceed 36 characters. Enter in accordance with Departmental or Agency regulations.

(5) *Accounting station.* Shall show the six character DoDAAD code of the accounting station (not used with Navy and Marine Corps funds).

(6) *Amount.* Enter the amount for each fund citation if more than one allotment is cited.

(7) *Additional citations.* If space is required for additional fund citations, they shall be set forth in the same manner as an attachment to the MIPR and a reference to the attachment will be included on the form.

(g) Requiring Activities shall provide MILSTRIP requisition data prescribed in Appendix B of the MILSTRIP Manual, for each line item which is to be delivered to each "ship to" address. Repetitive data applicable to all lines on the MIPR may be overprinted.

(h) The Requiring Activity will furnish estimated weight, cube and dimensions for each line item or a statement that such data are not available and the reasons therefor.

208.7008–2 Cutoff dates for submission of Category II (direct citation) MIPRs.

(a) Unless otherwise agreed between the Departments, a cutoff date of 31 May of each year is established for the receipt of MIPRs citing expiring appropriations which must be obligated by 30 September of that fiscal year. If circumstances arise which require the submission of MIPRs citing expiring appropriations after the cutoff date, the Requiring Department will communicate with the Contracting Department prior to submission to ascertain whether or not it will be possible for the Contracting Department to execute a contract or otherwise obligate the funds by the end of the fiscal year. Contracting Departments will make every effort to obligate funds for all such MIPRs accepted after the cutoff date. However, acceptance of a late MIPR does not constitute assurance by the Contracting Department that all such funds will be obligated. The provisions of these instructions are not to be construed as restrictive in the processing of MIPRs when it is within the capabilities of the Contracting Department to execute contracts or otherwise obligate the funds prior to the end of the fiscal year.

(b) MIPRs citing continuing appropriations are not restricted by law to time limits for obligation; therefore, the cutoff date of 31 May is not applicable to such MIPRs and contracting action should continue regardless of whether obligation will be accomplished before or after the end of the fiscal year. However, as the timely accomplishment of obligations is a factor affecting delivery of material, every effort must be made by the Contracting Department to obligate available funds as soon after receipt of the MIPR as is possible.

208.7008–3 Notification of inability to obligate.

On 1 August of each fiscal year, the Contracting Department will advise the Requiring Department of any Category II (direct citation) MIPRs on hand citing expiring appropriations on which they will be unable to obligate the funds prior to the fund expiration date. If an unforeseen situation develops after 1 August which will prevent execution of a contract, the Contracting Department will notify the Requiring Department of that fact by the most expeditious means and return the MIPR accompanied by a letter of transmittal authorizing purchase by the Requiring Department including the reason that acquisition could not be accomplished.

208.7008–4 Number of copies of MIPRs with attachments to be submitted.

Unless otherwise agreed by the Departments, the original and six copies of each MIPR, all complete with attachments, shall be forwarded to the Contracting Department. When copies of specifications, drawings or other data are to be furnished with MIPRs (see 208.7006–5), the number of copies of such data to be furnished shall be as agreed upon by the Requiring and Contracting Departments.

208.7008–5 Changes to MIPRs.

(a) Normally, changes that affect the contents of the MIPR must be processed as a MIPR amendment regardless of the status of the MIPR. However, a MIPR amendment for increased quantities of items specified in the original MIPR may be used when it is known that the original MIPR requirements have not been released for solicitation but then only after coordination and agreement with the Contracting Department. Changes may be initially provided by expeditious means such as telegraphic message but shall be confirmed by a MIPR amendment. Requirements for additional line items of supplies or services not provided for in the original MIPR shall be submitted as a new MIPR.

(b) Only those items of the DD Form 448 that are applicable to the change, revision, etc., being written, which vary or deviate from the data shown on the basic MIPR or prior amendment thereto will be filled out. All other items will have "n/c" inserted to reflect no change. However, basic information in items 1 through 8 must always be shown.

(c) A MIPR amendment is not required for change of a disbursing office set forth on a DoD funded MIPR when the resultant contract is assigned for contract administration to a Defense Contract Administrative Services Region. Such change may be made by the DCASR by issuance of an administrative change order, copies of which will be provided to the Contracting Officer for transmittal to the requiring activity.

208.7008–6 Requests for additional funds.

When the Contracting Department requires additional funds to complete contracting actions for the Requiring Department, the request for additional funds must identify the exact items involved and the reason why additional funds are required. The Requiring Department shall take expeditious action to provide such funds by an amendment to the MIPR or to reduce requirements accordingly. In case of any anticipated delay in furnishing required additional funds, the Contracting Department will be advised accordingly.

208.7009 Acceptance of MIPR.

As soon as practicable, but not later than 30 days after receipt of a MIPR, the Contracting Department shall formally accept the MIPR by DD Form 448–2, "Acceptance of MIPR." If this time limit cannot be met, the Requiring Department shall be informed of the reason for the delay and the anticipated date the MIPR will be accepted. In any event, Category I MIPRs must be accepted in writing by the Contracting Department prior to the expiration of funds cited. When accepted for reimbursable acquisition, the executed DD Form 448–2 is the authority for the Requiring Department to record the obligation of funds. When accepted for direct citation acquisition, the accomplished date and a conformed copy of the contract will be the authority to record the obligation. The accepting activity of the Contracting Department shall remain responsible for the MIPR even though that activity may split the MIPR into segments for actions among other contracting activities.

208.7009–1 Qualified acceptance.

Where contingencies, price revisions or variations in quantities are anticipated by the Contracting Department under reimbursable acquisition, the acceptance will be so annotated on DD Form 448–2. When the acceptance is qualified, the Contracting Department will periodically advise the Requiring Department prior to submission of billings, of any changes in the acceptance figure so that an amendment to the MIPR may be issued by the Requiring Department and the appropriate adjustment may be made to the recorded obligation to reflect the current price.

208.7009–2 Non-qualified acceptance.

If the acceptance of a MIPR is not qualified by the Contracting Department for anticipated contingencies under reimbursable acquisition, the price on the acceptance will be final and will be billed at time of delivery.

208.7009–3 Preparation and use of DD Form 448–2 (acceptance of MIPR).

(a) DD Form 448–2 is substantially self-explanatory; however, certain details are defined below. Only pertinent items should be accomplished.

(1) Check the specific terms in Item 6 under which the MIPR is being accepted (see 208.7007–3).

(2) If any one of the MIPR line items is not accepted, Item 7 will be checked and the affected MIPR line item number and reason recorded in Item 13.

(3) Items 8 and 9 will be used only:

(i) When Item 6c acceptance is indicated (identify the MIPR line item numbers that will be provided under each method of financing in Items 8a and 9a respectively); or

(ii) If quantities or estimated costs cited in a MIPR require adjustment (the affected MIPR line item numbers will be listed together with the adjusted quantities or estimated costs in the columns provided under Items 8 and 9 as may be appropriate).

(4) Whenever a MIPR is accepted in part or in total under Category II (direct citation) method of financing, the Contracting Department will forecast in Item 10 the approximate date that contractual placement is expected to be accomplished.

(5) Enter the total amount of funds in Item 11 required by the Contracting Department to fund the MIPR items, as accepted.

(6) Complete Item 12 only in those cases where the amount recorded in Item 11 is not in agreement with the amount recorded in Item 5. This will serve either as (i) request on the Requiring Department to issue a MIPR amendment to provide the additional funds required, or (ii) authority for the Requiring Department to withdraw the available excess funds. When funds of two or more appropriations are involved, proper breakdown information will be provided in Item 13.

(7) Item 13 will be used to record (i) justification, by MIPR line item, for any additional funds required; (ii) explanation for rejection of MIPR whether in part or in total; (iii) appropriation and subhead data cited on the MIPR; and (iv) such other data as may be pertinent.

(b) DD Form 448–2 shall be executed for all MIPR amendments involving an adjustment of funds or delivery schedule, and in all other cases only when requested by the Requiring Department.

(c) The Requiring Department will be furnished four copies (one signed) of each accomplished DD Form 448–2 unless otherwise agreed between the Departments.

208.7009–4 Withdrawal of funds.

(a) When the Contracting Department accepts a MIPR for reimbursable acquisition in a lesser amount than authorized on the MIPR, the DD Form 448–2 is the authorization for the Requiring Department to withdraw such excess funds by MIPR amendment. Upon receipt of the final billing (SF 1080) and a subsequent determination that all items requested on the MIPR have been delivered and billed in an amount less than the MIPR, the Requiring Department may adjust their fiscal records accordingly without authorization from or notice to the Contracting Department.

(b) When the Contracting Department has accepted a MIPR for direct citation acquisition, and initial contract placement is completed, any unused funds remaining on the MIPR become excess and are no longer authorized for use of the Contracting Department. Any such excess funds will be immediately reported to the Requiring Department. Although the Contracting Department is prohibited from further use of such excess funds, the Requiring Department will confirm the withdrawal of excess funds by the issuance of a MIPR amendment.

208.7010 Components of end items.

208.7010–1 Contractor-furnished components.

In the acquisition of end items where the contraotor normally secures all components thereof from his own source (not Government-furnished), the acquisition assignment does not apply to the component items required by such contractor.

208.7010–2 Government-furnished components.

In the acquisition of end items where the Government furnishes components which are covered by an acquisition assignment, such components shall be acquired in accordance with the acquisition assignment. However, direct purchase may be made by a Requiring Department in exceptional cases where agreement is reached with the Contracting Department or is authorized in accordance with Subpart 208.71.

208.7010–3 Purchase of components over and above those initially purchased with the end item.

The acquisition of components covered by an acquisition assignment, over and above those initially purchased with the end item, shall be effected in accordance with the acquisition assignment. However, direct purchase may be made by a Requiring Department in exceptional cases where agreement is reached with the Contracting Department or is authorized in accordance with 208.7100.

208.7011 Distribution of contracts and orders.

(See 204.201(c)(3).)

208.7012 Cancellation of requirements.

(a) *Direct citation acquisition.* When all or any part of the supplies or services requested in the MIPR are to be canceled by the Requiring Department, that Department shall so notify the Contracting Department by telegraphic notice. In the event that the Contracting Department has not entered into a contract for the supplies and services to be canceled, the Requiring Department shall be immediately notified to that effect. Upon receipt of such notification, the Requiring Department shall initiate a MIPR amendment to revoke the estimated amount shown on the original MIPR for the canceled items.

(1) In the event that the items to be canceled have already been placed under contract, the following procedures will apply. As soon as practicable but in any event within 45 days after receipt of the notice of cancellation from the Requiring Department, the Contracting Officer shall issue a Termination Data Letter to the Requiring Department (original and 4 copies) which will contain as a minimum the information set forth below.

Subject: Termination Data Re:

Contract No. ——————————

Termination No. ——————————

Contract ——————————

To:

(a) As termination action is now in progress on the above contract, the following information is submitted:

(1) Brief description of items terminated.

(2) You are notified that the sum of $—— is available for release under the subject contract which sum represents the difference between $——, the value of items terminated under subject contract, and $—— estimated to be required for settlement of the terminated contract. The estimated amount available for release is allocated by the appropriations cited on the contract as follows:

MIPR No.—— Accounting Classification —— Amount ——

Total available for release at this time $——.

(b) You are requested to forward an amendment to MIPR —— on DD Form 448 to reflect the reduced quantity and amount of funds available for release.

(c) Periodic examinations (not less than 60 days) will be made as termination proceedings progress to redetermine the Government's probable obligation.

(Signature of Contracting Officer)

(2) Periodic examinations of the termination proceedings will be accomplished no less often than every 60 days by the termination contracting officer to reassess the Government's probable obligation. If any additional funds are excess to the probable settlement requirements, or if it appears that previous release of excess funds will result in a shortage of the amount which will be required to consummate settlement, prompt action will be taken to notify the contracting office, which will amend the Termination Data Letter accordingly. A MIPR amendment to reflect the reinstatement of funds shall be processed by the Requiring Department within 30 days after the amended Termination Data Letter requesting reinstatement of funds has been received from the contracting office.

(3) If required, an amendment to the MIPR covering final removal of any remaining excess funds with respect to terminated quantities shall be prepared by the Requiring Department upon receipt of its copy of the Termination Settlement Agreement.

(b) *Reimbursable acquisition.* When all or any part of the supplies or services requested in the MIPR are to be canceled by the Requiring Department, that Department shall notify the Contracting Department by telegraphic notice. Within 30 days, the Contracting Department shall notify the Requiring Department as to the quantity of items available for termination and the amount of funds in excess of the estimated settlement costs. Upon receipt of this information, the Requiring Department shall issue a MIPR amendment to reduce the quantities and funds accordingly.

(c) *Termination by default.* When the Contracting Department exercises authority to terminate for default (see FAR Part 49), that Department will query the Requiring Department as to whether the supplies or services to be terminated are still required so that repurchase action can be undertaken.

(1) The Requiring Department will not obligate funds on a contract terminated for default until such time as a contractual supplemental agreement of settlement or other written evidence from the Contracting Department as to release of funds is received.

(2) On the repurchase action, the Contracting Department will not exceed the unliquidated funds on the defaulted contract without the provisions of additional funds by the Requiring Department.

208.7013 Administrative costs.

The Contracting Department shall bear, without reimbursement therefor, the administrative costs incidental to its acquisition of supplies for another Department. However, when an acquisition responsibility is transferred from one Department to another Department, funds appropriated or to be appropriated for defraying the administrative costs of such acquisition responsibility shall be made available to the successor Contracting Department which shall assume budget cognizance at the earliest possible date.

208.7014 Inspection.

Policies and procedures concerning inspection and acceptance for use in conjunction with this subpart are set forth in FAR Part 46.

208.7015 Execution of contracts.

Generally, the Contracting Department shall execute a single contract where an award embodying the requirements of more than one Department is made to a single contractor.

208.7016 Status reporting.

(a) The Contracting Department shall maintain an appropriate system of MIPR followup so that the Requiring Department may be informed of the current status of their requests. In addition, an appropriate system of followup shall be maintained by the contract administration office so that the Contracting Department may be currently informed as to contractor performance and in turn to insure that the Requiring Department is apprised of the status of contracts resulting from MIPRs.

(b) If requested by the Requiring Department, the Contracting Department will furnish the Requiring Department a copy of the solicitation document for materiel management status information when the request is satisfied through the use of direct citation of funds (Category II Method of Funding).

(c) Any reimbursement billings, shipping documents, contractual documents, project orders or related documentation furnished to the Requiring Department will identify the Requiring Department's MIPR number, quantities of items, and funds covered thereby.

208.7017 Transportation of supplies.

The Requiring Department is responsible for advising the Contracting Department or the Transportation Officer in the Contract Administration Office, as appropriate, the appropriate fund account chargeable for transportation costs in effecting delivery of supplies at Government expense. The Requiring Department shall accomplish this by either citing the fund account on each MIPR or providing the appropriate fund account to the Transportation Officer of the office administering the contract, at the commencement of each fiscal year, for citation on the Government bill of lading. In every instance, the Government bill of lading, which is generally issued by the Transportation Officer in the responsible Contract Administration Office, shall show the Requiring Department as the Department to be billed, and the appropriate fund account designated by that Department.

208.7018 Acquisition agreements.

(a) This paragraph establishes policy as authorized in 10 U.S.C. 2308 with regard to agreements between the Departments or other agencies for acquisition of commodities or services not assigned in accordance with 208.71.

(b) 10 U.S.C. 2308 provides that Department Heads, by agreement, may make assignments and delegations of acquisition responsibilities from one Department to another or may create joint or combined offices to exercise acquisition functions and responsibilities.

(c) Agreements may be made on either a one-time basis or a continuing basis. The submission of a MIPR by a requiring activity and its acceptance by the contracting activity of another Department, even though based on oral communication, shall establish a one-time agreement. Delegated acquisition responsibilities of a continuing nature shall be considered for coordinated acquisition assignment. However, all agreements of a continuing nature shall be formalized, implemented, and distributed among the activities concerned even though not considered suitable for coordinated acquisition assignment.

Subpart 208.71—Commodity Assignments

208.7100 Assignment authority.

The commodity assignments set forth below have been made by the Deputy Assistant Secretary of Defense

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(Logistics) to the Military Departments. Also included are assignments to the General Services Administration made by the Deputy Under Secretary of Defense for Acquisition Management in accordance with DoD/GSA Agreements. The letter "P" appearing after an FSC Code indicates a partial FSC assignment. There may be specific items within any of the assignments which have been designated for DoD Integrated Materiel Management to other than the coordinated acquisition assignee. Such items will be purchased by the DoD Integrated Materiel Manager.

208.7100–1 Exclusions—Military Department assignments (Except DLA).

General exclusions to applicability of commodity assignments made to a Military Department (except Defense Logistics Agency) are:

(a) Emergency acquisitions, as determined by the Requiring Department;

(b) Acquisitions not in excess of $2,500 per line item;

(c) Acquisitions of items authorized for local purchase; pursuant to mutual agreement between the assignee and the other users;

(d) Items in a research and development stage; and

(e) Item subject to rapid design changes, or to continuous redesign or modification during the production or operational use phases which necessitate continual contact between industry and technical personnel of the requiring service to insure that the item acquired is exactly that which is required.

208.7100–2 Exclusions—DLA and GSA assignments.

(a) *Optional Exclusions.* With respect to commodity assignments made to the Defense Logistics Agency or the General Services Administration, the following categories of service-managed items within an assigned class may be purchased by the Departments of the Army, Navy, or Air Force at their option:

(1) Items in a research and development stage—This exception permits the Military Departments to contract for research and development requirements, including quantities for testing purposes and items undergoing in-service evaluation (not yet in actual production, but beyond prototype). The term "research and development" as used herein relates only to acquisitions described in FAR Part 35. Generally, this exception can be used only when the acquisition is covered by research and development funds; and

(2) Items peculiar to Nuclear Ordnance Materiel, because of design characteristics or because of test-inspection requirements which are controlled by the Department of Energy (DOE) or by the DoD to insure reliability of nuclear weapons.

(i) This exception applies to all items designed for and peculiar to nuclear ordnance regardless of Agency control, or to any item which requires test or inspection conducted or controlled by DOE or DoD. The Defense Nuclear Agency will have DoD procurement responsibility for all items assigned for integrated management in accordance with DoD Directive 5105.31.

(ii) This exception does not cover items used for both nuclear ordnance and other purposes if such items are not subject to the special testing procedures.

(3) Items to be acquired under the authority of 10 U.S.C. 2304(c)(6) and FAR 6.302–6, acquisitions when disclosure of the agency's needs would compromise the national security unless the agency is permitted to limit the number of sources from which it solicits bids or proposals;

(4) Items to be acquired under the authority of 10 U.S.C. 2304(c)(1) and FAR 6.302–1 (a)(1) and (b)(2), follow-on contracts for the continued development or production of a major system or highly specialized equipment including major components thereof;

(5) Items which are directly related to a weapon/defense/space system and which are design-controlled by, and acquired from either the system manufacturer or a manufacturer of a major subsystem thereof;

(i) This exception is intended to cover a specific and relatively small portion of "weapon/defense/space system" related items. An exempted item must meet two conditions. First, it must be directly related to the weapon system. Secondly, it must be both design controlled and acquired from the system or major subsystem contractor.

(ii) The exception is intended, for example, to permit a Service to contract for an item which it acquires from an airframe manufacturer (as sole source), provided the airframe manufacturer is responsible for the design of the item. It would likewise pertain to a component of a Government-furnished engine to be installed in the airframe, if the Service acquires the component from the engine manufacturer and the engine manufacturer has design cognizance of the item.

(iii) The exception is not intended to cover the broad category of weapons related items but only that portion which is both acquired from and design controlled by the system or major subsystem contractor.

(6) Items subject to rapid design changes or to continuous redesign or modification during the production and/or operational use phases which necessitate continual contact between industry and technical personnel of the Requiring Department to insure that the item acquired is exactly what is required.

(i) This exception permits the Military Departments to contract for items of highly unstable design. Its use must be predicated on a determination that it is clearly impractical, both from a technical and contracting viewpoint, to refer the acquisition to DLA or GSA. Thus, the possibility of a number of design changes occurring during the course of the contract is not in itself sufficient evidence for retention of the acquisition. Neither is the fact that an acquisition would possibly qualify for placement as a negotiated contract. Conversely, an acquisition for an item covered by a reasonably firm specification which can be placed under the sealed bid procedure is prima facie evidence that the use of the exception is not valid.

(ii) This exception also applies to items requiring compatibility testing as a contract requirement, provided that such testing requires continual contact between industry and technical personnel of the Requiring Department.

(7) Containers acquired only with items for which they are designed; and

(8) Emergency acquisitions, as determined by the Requiring Department:

(i) This exception permits the Services to make emergency acquisitions (valued at over $2,500) in the context of 208.7003–4 when the exigencies of the situation will not permit the delay incident to following the normal channels of coordinated acquisition.

(ii) As a general rule, this exception should cover items only when they are readily available from commercial inventories or in current production. It should not be used with extended production leadtime.

(iii) Unless the item is immediately available from a commercial source, emergency acquisitions should be coordinated with the cognizant DLA Center or GSA Support Region by telephone or other rapid communication prior to proceeding with the local acquisition. This will serve the interests of the Requiring Department for the following reasons:

(A) The need may be satisfied immediately by diversion from a current DLA or GSA contract;

(B) The Center or the GSA Support Region may arrange to satisfy the requirement from other Military Department stocks or DLA/GSA stocks recently delivered under a DLA or GSA contract; and

(C) The Center or GSA Support Region may be able to modify an existing DLA or GSA contract and obtain the material faster than the Requiring Department could by a unilateral acquisition.

(9) Acquisitions of military service-managed or noncataloged items not in excess of $2,500 per line item—This exception permits the Military Departments to acquire a line item which does not exceed a value of $2,500. It does not apply to a line item valued at $2,500 or under which is included in a Federal Supply Schedule mandatory for use by DoD activities; and

(10) Noncatalog items in the nature of a one-time buy and not contemplated as an item in the supply system:

(i) This exception is intended to permit the Military Departments to contract for a nonrecurring requirement for a noncataloged item. "Not contemplated as an item in the supply system" as a practical matter means that the item is not in the supply system nor is such anticipated. This exception could cover a part or component for a prototype and such part or component may be stock numbered at a later date.

(ii) This exception may not be used to cover acquisitions of recurring requirements for an item based solely on the fact that the item is not stock numbered nor may it be used to acquire items which have only slightly different characteristics from previously cataloged items.

(b) *Defense Logistics Agency and General Services Administration responsibility to acquire excluded items upon request.* Items other than nuclear ordnance materiel which may be acquired by the other Military Departments at their option under (a) above shall be acquired by DLA or GSA at the requests of the Military Departments.

(c) *Exclusions to Defense Logistics Agency or General Services Administration assignments by agreement.* The Military Departments shall process to the appropriate DLA Center or GSA Support Region for acquisition those service-managed items which do not meet the exception criteria set forth in (a) above, unless by mutual agreement between the cognizant Military Service Inventory Manager and the DLA Center concerned, or the GSA Support Region, the item is determined to be most satisfactorily acquired on a Military Service basis. The Military Departments shall insure that subsequent acquisitions of items previously classified as exceptions under (a) above do in fact continue to meet the exception criteria at the time of the subsequent acquisition. Otherwise, such acquisitions shall be forwarded to DLA or GSA for purchase.

(d) *Exclusions for local purchase of integrated moteriel managed items.* Requiring Departments may purchase at their option any DLA or GSA centrally managed, commercially available item provided:

(1) In the case of an emergency requirement, such as a work stoppage, the contract action is limited to immediate-use quantity, or

(2) In the case of routine requirements, the total line item value does not exceed $10.00 and local purchase is determined to be the most economical method of supply.

208.7101 Department of the Army.

Federal Supply Class Code and Commodity

FSC ("P" after the FSC number indicates a partial FSC assignment)

Electronic Equipment.

Each Department is assigned procurement responsibility for those items which the Department either designed or for which it sponsored development. See FSC 5821 under Navy listings for assignment of certain commercially developed radio sets (*i.e.*, developed without the use of government funds).

1005 P* Guns, through 30mm.

This partial FSC assignment applies to guns, through 30mm, and parts and equipment therefor, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to naval ordnance type guns; MK 11 and MK 12, 20mm gun; and aircraft gun mounts.

1010 P* Guns, over 30mm, up to 75mm

This partial FSC assignment applies to guns, over 30mm and up to 75mm, and parts and equipment therefor, as listed in Department of the Army Supply Manuals/Catalogs. It does not apply to naval ordnance type guns and aircraft gun mounts.

1015 P* Guns, 75mm through 125mm.

This partial FSC assignment applies to guns, 75mm through 125mm, and parts and equipment therefor, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to naval ordnance type guns.

1020 P* Guns over 125mm through 150mm

1025 P* Guns over 150mm through 200mm

1030 P* Guns over 200mm through 300mm

1035 P* Guns over 300mm

These partial FSC assignments apply to guns, over 125mm, and parts and equipment therefor, as listed in Department of Army Supply Manuals/Catalogs. They do not apply to naval ordnance type guns.

1040 Chemical Weapons and Equipment

1055 P* Launchers, Rocket and Pyrotechnic.

This partial FSC assignment applies to launchers, rocket and pyro-echnic, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to naval ordnance type and airborne type, with the exception of 2.75 inch Rocket Launchers which are included in this partial FSC assignment to the Department of the Army.

1090 P Assemblies Interchangeable Between Weapons in Two or More Classes

This partial FSC assignment applies to the following items:

National Stock Number Nomenclature

1090–563–7232 Staff Section, Class

1090–699–0633 Staff Section

1090–796–8760 Power Supply

1090–885–8451 Wrench Corrector

1090–986–9707 Reticle Assembly

1095 P* Miscellaneous Weapons

This partial FSC assignment applies to miscellaneous weapons, and parts and equipment therefor, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to naval ordnance type; line throwing guns (which are under DoD Coordinated Procurement assignment to the Department of the Navy); and aircraft type miscellaneous weapons.

1210 P* Fire Control Directors

1220 P* Fire Control Computing Sights and Devices

1230 P* Fire Control Systems, Complete

1240 P* Optical Sighting and Ranging Equipment

1250 P* Fire Control Stabilizing Mechanisms

1260 P* Fire Control Designating and Indicating Equipment

1265 P* Fire Control Transmitting and Receiving Equipment, Except Airborne

1285 P* Fire Control Radar Equipment, Except Airborne

1290 P* Miscellaneous Fire Control Equipment. The above nine partial FSC assignments apply to fire control equipment, as listed in Department of the Army Supply Manuals/Catalogs. They do not apply to naval ordnance type and aircraft type.

1305 P* Ammunition, through 30mm

This partial FSC assignment applies to ammunition through 30mm as listed in Department of Army Supply Manuals / Catalogs. It does not apply to naval ordnance type and ammunition for the MK 11 and MK 12, 20mm gun.

1310 P* Ammunition, over 30mm up to 75mm.

This partial FSC assignment applies to ammunition, over 30mm up to 75mm, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to naval ordnance type and to 40mm ammunition (which is under DoD procurement assignment to the Navy.) The Army is responsible for the procurement of fillers and the loading, assembling and packing of toxicological, incapacitating riot control, smoke and incendiary munitions.

1315 P* Ammunition, 75mm through 125mm.

This partial FSC assignment applies to ammunition, 75mm through 125mm, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to naval ordnance type. The Army is responsible for the procurement of fillers and the loading, assembling and packing of toxicological, incapacitating riot control, smoke and incendiary munitions.

1320 P* Ammunition, over 125mm.
This partial FSC assignment applies to ammunition over 125mm, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to naval ordnance type. The Army is responsible for the procurement of fillers and the loading, assembling and packing of toxicological, incapacitating riot control, smoke and incendiary munitions.

1325 P* Bombs.
This partial FSC assignment applies to Bombs as listed in Department of Army Supply Manuals/Catalogs. It does not apply to Navy assigned Bombs as shown in list of assignments to the Navy; however, the Department of the Army is responsible for the procurement of fillers and the loading, assembling and packing of toxicological, incapacitating riot control, smoke and incendiary munitions, and for other loading, assembling and packing in excess of Navy owned capacity.

1330 Grenades.

1340 P* Rockets and Rocket Ammunition.
This partial FSC assignment applies to:
66mm Rocket, HEAT, M72.
2.75" Rocket FFAR, Service and Practice.
Heads MK5 and Mods (HEAT).
HE, M151
HE, XM229 (17 lb Warhead)
HE, XM157 (Spotting Red)
HE, XM158 (Spotting Yellow)
MK61 Practice (5 lb Slug)
XM230 Practice (10 lb)
Motors MK4 and Mods (High Performance Aircraft).
MK40 and Mods (Low Performance Aircraft)
3.5 In. Rocket Heat, M35.
Practice, M36
Smoke, WP, M30
4.5 In. Motor, Drill, M24.
HE, M32.
Practice, M33.
Incendiary and toxicological rockets, as listed in Army Supply Bulletins.
It does not apply to Navy assigned rockets as shown in list of assignments to the Navy. However, the Department of the Army is responsible for procurement of filler and for filling of all smoke and toxicological rockets.

1345 Land Mines.

1385 Military Chemical Agents.

1370 P Pyrotechnics.
This partial FSC assignment does not apply to shipboard and aircraft pyrotechnics.

1375 P Demolition Materials.
This partial FSC assignment is applicable to Blasting Agents and supplies such as:
Bangalore torpedo
Blocks, demolition
Caps, blasting, electric and nonelectric
Charge, cratering
Charge, shaped and demolition
Chests, demolition platoon and squad
Cord detonating
Demolition equipment sets, with ancillary items
Detonators, all types
Dynamite
Firing Devices
Fuze, safety
Kit, demolition
Lighter, fuse
Machine, blasting
Primer, percussion cap
It does not apply to Navy underwater demolition requirements.

1376 P Bulk Explosives.
This partial FSC assignment is applicable to solid propellants and explosives such as:
Ammonium Picrate (Explosive D) JAN-A-166A
Trinitrotoluene (TNT) MIL-T-248A
Tetryl JAN-T-339
Pantaerythrite Tetranitrate (PETN) JAN-P-387
RDX
Composition B
Composition B-3
Pentolite, 50
Composition C-3
Composition A-3
Composition A-4
Nitroguanidine (Picrate)
It does not apply to production capacity for any of the above listed explosives at the U.S. Naval Propellant Plant, Indian Head, Maryland.

1377 P Cartridge and Propellant Actuated Devices and Components.
This partial FSC assignment is applicable to the following devices:
(Reserved pending Services agreement as to items which shall be included in this assignment.)

1380 Military Biological Agents.

1390 P* Fuzes and Primers.
This partial FSC assignment applies to Fuzes and Primers for Army Assigned Ammunition.
It does not apply to naval ordnance type, which is under DoD procurement assignment to the Department of the Navy; and guided missile fuzes.

2210 Locomotives.

2220 Rail Cars.

2240 Locomotive and Rail Car Accessories and Components.

2250 Track Materials, Railroad.

2310 P Passenger Motor Vehicles.

2320 P Trucks and Truck Tractors.
The above two partial Federal Supply Class Assignments apply to tactical vehicles; trucks over 10,000 pounds Gross Vehicle Weight (GVW); and the following types of vehicles:
Bus, convertible to ambulance;
Truck, 4x4, convertible to ambulance;
Truck, 4x4, dump, 9,000 GVW, with cut-down cab.
These assignments do not apply to tracked landing vehicles which are not under DoD Coordinated Procurement assignment, and airport crash rescue vehicles, which are under DoD Coordinated Procurement assignment to the Department of the Air Force. With the exception of the types enumerated above, these assignments do not apply to commercial passenger carrying vehicles and trucks up to 10,000 pounds GVW, which are assigned for DoD Coordinated Procurement to the General Services Administration.

2330 P Trailers.
This partial FSC assignment does not apply to two wheel lubrication trailers, two wheel steam cleaning trailers, and troop transporter semitrailers which are not under DoD Coordinated Procurement assignment, and airport crash rescue trailer units which are under DoD Coordinated Procurement assignment to the Department of the Air Force.

2340 P Motorcycles, Motor Scooters, and Bicycles.
This partial FSC assignment does not apply to bicycles and tricycles.

2350 Tanks and Self-propelled Weapons.

2430 Tractors, Track Laying, High Speed.

2510 P** Vehicular Cab, Body, and Frame Structural Components.

2520 P** Vehicular Power Transmission Components.

2530 P** Vehicular Brake, Steering, Axle, Wheel, and Track Components.

2540 P** Vehicular Furniture and Accessories.

2590 P** Miscellaneous Vehicular Components.

2610 Tires and Tubes, Pneumatic, except Aircraft.

2630 Tires, solid and cushion.

2640 Tire Rebuilding and Tire and Tube Repair Materials.

2805 P** Gasoline Reciprocating Engines, Except Aircraft; and Components.

2910 P** Engine Fuel System Components, Nonaircraft.

2920 P** Engine Electrical System Components, Nonaircraft.

2930 P** Engine Cooling System Components, Nonaircraft.

2940 P** Engine Air and Oil Filters, Strainers and Cleaners, Nonaircraft.

2990 P** Miscellaneous Engine Accessories, Nonaircraft.

4210 P Fire Fighting Equipment.
This partial FSC assignment applies only to equipment developed by or under the sponsorship of the Department of the Army.

4230 P Decontaminating and Impregnating Equipment.
This partial FSC assignment applies only to items peculiar to chemical warfare.

4240 P Safety and Rescue Equipment.
This partial FSC assignment applies only to military respiratory protective equipment for chemical warfare.

5805 P Telephone and Telegraph Equipment.
This partial FSC assignment applies only to military (wire) equipment, field type.

5815 P Teletype and Facsimile Equipment.
This partial FSC assignment applies only to military (wire) equipment, field type.

5820 P Radio and Television Communication Equipment, except Airborne.
This partial, FSC assignment applies to non-tactical, off-the-shelf, commercially available radio and television equipment and supplies used by the Armed Forces

Radio and Television Stations including equipment and supplies used by the Armed Forces for closed TV circuit educational, and training programs.

5830 P Intercommunication and Public Address Systems: Except Airborne
This partial FSC assignment applies only to military (wire) equipment, field type.

6135 P Batteries, Primary.
This partial FSC assignment applies to MIL type, dry cell batteries, only.

6625 P Electrical and Electronic Properties Measuring and Testing Instruments.
This partial FSC assignment applies only to instruments for testing military (wire) equipment, field type.

6645 P Time Measuring Instruments.
This partial FSC assignment applies to the following watches; aircraft instrument panel clocks; cases and spare parts therefor:
Master navigation watches; pocket watches; stop watches; second setting wrist watches; wrist watches; athletic timers; aircraft clocks; aircraft panel clocks; mechanical aircraft clocks; navigation watch cases; pocket watch cases; watch holders; watch case assemblies and watch movements.

6660 P Meteorological Instruments and Apparatus.
Each Department is assigned procurement responsibility for those systems, instruments and end items in FSC 6660 for which the Department either designed or for which it sponsored development. For purposes of this assignment, the developing Department is the department which awarded the developmental contract, notwithstanding that other Departments may have provided funds for the development.

6665 P Hazard-Detecting Instruments and Apparatus.
This partial FSC assignment applies only to items peculiar to chemical warfare.

6695 P Combination and Miscellaneous Instruments.
This partial FSC assignment applies to jewel bearings only.

6820 P Dyes.
This partial FSC assignment applies only to items peculiar to chemical warfare.

6910 P Training Aids.
This partial FSC assignment applies only to items peculiar to Army assignments under weapons, fire control equipment, ammunition and explosives and chemical and biological warfare.

6920 P Armament Training Devices.
This partial FSC assignment applies to armament training devices as listed in DA Catalogs SC 6910, ML/IL and SC 6920 ML/IL. It does not apply to clay pigeons in DA catalogs SC 6010, ML/IL and SC 6920 ML/IL. It does not apply to clay pigeons.

6940 P Communication Training Devices.
This partial FSC assignment applies only to code training sets, code practice equipment, and other telephone and telegraph training devices.

8130 P Reels and Spools.
This partial FSC assignment applies only to reels and spools for military (wire) equipment, field type.

8140 P Ammunition Boxes, Packages, and Special Containers.
This partial FSC assignment applies only to boxes, packages and containers peculiar to Army assignments under ammunitions, explosives, and chemical and biological warfare as listed in DA Catalog SC 8140 IL and SC 8140 ML.

*For purposes of procurement, Naval Ordnance comprises all arms, armor, and armament for the Department of the Navy and includes all offensive and defensive weapons, together with their components, controlling devices and ammunition used in executing the Navy's mission in National Defense (except small arms and those items of aviation ordnance procured from the Army).

**These partial FSC assignments apply only to repair parts peculiar to combat and tactical vehicles. In addition, the assignment in FSC-2805 applies to military standard engines 1.5 HP through 20 HP and parts peculiar therefor. Balance of these Federal Supply Classes are assigned to the Defense Logistics Agency (Defense Construction Supply Center).

208.7102 Department of the Navy.

Federal Supply Class Code and Commodity

FSC ("P" after the FSC number indicates a partial FSC assignment.)

Electronic Equipment.
Each Department is assigned procurement responsibility for those items which the Department either designed or for which it sponsored development. See FSC 5821 for assignment of certain commercially developed radio sets to the Department of the Navy (i.e., developed without the use of government funds.)

1095 P Miscellaneous Weapons
This partial FSC assignment applies to line throwing guns only.

1310 P Ammunition, over 30mm up to 75mm.
This partial FSC assignment applies only to reels and spools for military

1325 P Bombs.
This partial FSC assignment applies to armor-piercing; depth bombs; externally suspended low drag bombs; and components and practice bombs therefor, as listed in Ord Pamphlets, and the MK 43, Target Detecting Device. With respect to this assignment the Department of the Army is responsible for the procurement of fillers and the loading, assembling and packing of toxicological, incapacitating riot control-smoke and incendiary munitions and for other loading, assembling and packing in excess of Navy-owned capacity.

1340 P Rockets and Rocket Ammunition.
This partial FSC assignment applies to:
Fuze, Rocket, V.T., MK93-0
2.25 In. Rocket SCAR, Practice
Heads MK3 and Mods
Motors MK15 and Mods
MK16 and Mods
5 In. Rocket HVAR, service and practice
Heads MK2 and Mods (common) MK6 and Mods (GP)
MK4 and Mods (smoke) MK25 and Mods (ATAR)
Motors MK10 and Mods
5 In. Rocket FFAR service and practice
Heads MK24 and Mods (General Purposes)
MK32 and Mods (Shaped Charged)
MK26 and Mods (Illum)
Motor MK16 and Mods
With respect to this assignment the Department of the Army is responsible for procurement of filler and for filling of all smoke and toxicological rockets.

1390 P Fuzes and Primers.
This partial FSC assignment applies to fuzes and primers for Navy assigned ammunition.

1550 P Drones.
This partial FSC assignment applies only to Drone, Model BQM34E.

1905 P Combat Ships and Landing Vessels.
This partial FSC assignment applies to landing vessels only.

1910 P Transport Vessels, Passenger and Troop.
This partial FSC assignment applies to ferryboats only.

1920 Fishing Vessels.

1925 Special Service Vessels.

1930 Barges and Lighters, Cargo

1935 P Barges and Lighters, Special Purpose.
This partial FSC assignment does not apply to Derricks, Pile Drivers, Rock Cutters, Concrete Mixing Plants, Mechanical Bank Grader Barges, Other Bank Revetment Barges; and Barge Power Plants.

1940 Small Craft.

1945 P Pontoons and Floating Docks.
This partial FSC assignment applies only to Naval Facilities Engineering Command Type Pontoons.

1950 Floating Drydocks.

1990 P Miscellaneous Vessels.
This partial FSC assignment applies to commercial sailing vessels only.

2010 Ship and Boat Propulsion Components.

2020 Rigging and Rigging Gear.

2030 Deck Machinery.

2040 Marine Hardware and Hull Items.

2060 Commercial Fishing Equipment.

2090 Miscellaneous Ship and Marine Equipment.

2820 P Steam Engines, Reciprocating, and Components.
This partial FSC assignment applies to Marine Main Propulsion Steam Engines only.

2825 P Steam Turbines and Components.
This partial FSC assignment applies to Marine Steam Turbines only.

4210 P Fire Fighting Equipment.
This partial FSC assignment applies only to fire fighting equipment developed by or under the sponsorship of the Department of Navy.

4410 P Industrial Boilers.
This partial FSC assignment applies only to Boilers for use aboard those ships assigned to the Navy for coordinated procurement.

4420 P Heat Exchangers and Steam Condensers.
This partial FSC assignment applies only to Heat Exchangers for use aboard those ships assigned to the Navy for coordinated procurement.

4925 P Ammunition Maintenance and Repair Shop Specialized Equipment.

This partial FSC assignment applies to sets, kits and outfits of tools and equipment for explosive ordnance as defined in pertinent Military Service regulations and documents.

5821 P Radio and Television Communication Equipment, Airborne.

This partial FSC assignment applies to the following commercially developed radio sets. (The term "commercially developed" means that no government funds were provided for development purposes.) HF–101, 102, 103, 104, 105, 106, 107, 108, 109, 111, 113; ARC–94, 102, 105, 110, 112, 119, 120; MRC–95, 108; VC–102, 104, 105, 106, 109, 110; and components of the foregoing including the 490T antenna coupler.

6125 P Converters, Electrical, Rotating.

This partial FSC assignment applies only to Motor-Generator Sets for use aboard ships assigned to the Navy for coordinated procurement.

6320 P Shipboard Alarm and Signal System.

This partial FSC assignment applies only to Alarm Systems; Fire Alarm Systems; Indicating Systems; Telegraph Systems (Signal and Signaling) (Less Electronic Type) for use aboard ships assigned to the Navy for coordinated procurement.

6605 P Navigational Instruments.

This partial FSC assignment applies only to lifeboat and raft compasses; aircraft sextants; Hand Leads (Soundings); Lead Reels; Sounding Machines and Pelorus Stands for use aboard ships assigned to the Navy for coordinated procurement.

6645 P Time Measuring Instruments.

This partial FSC assignment applies to the following instruments, cases and spare parts therefor:

Chronometers including gimbal, padded and make break circuit.

Clocks, Alarm; boat; deck; direct reading; electrical; floor; interval timer; marine; mechanical; master control; master program;

master regulating; mechanical message center;

nurses; program; shelf; stop; wall; watchman's.

Counters, time period.

Meters; engine running time; hour recording; and electrical time totalizing.

Timers; bombing; engine hours; sequential; stop; and program.

Program control instrument.

Cases; chronometer, including gimbal and padded; chronometer carrying; makebreak circuit chronometer.

Cans; chronometer shipping and storage.

Clock keys; clock movements; clock motors.

6650 P Optical Instrument.

This partial FSC assignment applies only to Stands, Telescope, for use aboard ships assigned to the Navy for coordinated procurement.

6660 P Meteorological Instruments and Apparatus.

Each Department is assigned procurement responsibility for those systems, instruments and end items in FSC 6660 for which the Department either designed of for which it sponsored development. For purposes of this assignment, the developing Department is the department which awarded the developmental contract, notwithstanding that other Departments may have provided funds for the development.

6665 P Hazard-Detecting Instruments and Apparatus.

This partial FSC assignment applies only to Hazard Determining Safety Devices, for use aboard ships assigned to the Navy for coordinated procurement.

8140 P Ammunition Boxes, Packages, and Special Containers.

This partial FSC Assignment applies only to boxes, packages and containers for 40mm ammunition.

208.7103 Department of the Air Force.

Federal Supply Class Code and Commodity

FSC ("P" after the FSC number indicates a partial FSC assignment.)

Electronic Equipment.

Each Department is assigned procurement responsibility for those items which the Department either designed or for which it sponsored development. See FSC 5821 under Navy listing for assignment of certain commercially developed radio sets (*i.e.*, developed without the use of government funds).

1550 P Drones.

This partial assignment applies only to the following model drones: Model 147; Model 154; BQM 34A and MQM 34D.

2320 P Trucks and Truck Tractors.

This partial FSC assignment applies only to Airport Crash Rescue Vehicles.

2330 P Trailers.

This partial FSC assignment applies only to Airport Crash Rescue Trailer Units.

4210 P Fire Fighting Equipment.

This partial FSC assignment applies only to fire fighting equipment developed by or under the sponsorship of the Department of the Air Force.

6660 P Meteorological Instruments and Apparatus.

Each Department is assigned procurement responsibility for those systems, instruments and end items in FSC 6660 for which the Department either designed or for which it sponsored development. For purposes of the assignment the developing Department is the Department which awarded the developmental contract, notwithstanding that other Departments may have provided funds for the development.

6710 P* Cameras, Motion Picture.

This partial FSC assignment does not apply to Submarine Periscope and Underwater Cameras.

6720 P* Cameras, Still Picture.

This partial FSC assignment does not apply to Submarine Periscope and Underwater Cameras.

6730 P* Photographic Projection Equipment.

This partial FSC assignment does not apply to 35mm Theater Projectors.

6740 * Photographic Developing and Finishing Equipment.

6760 * Photographic Equipment and Accessories.

6780 * Photographic Sets, Kits, and Outfits.

8820 P Live Animals Not Raised For Food.

This partial FSC assignment applies only to the following types of working dogs: scout, sentry, patrol, mine/tunnel, tracker, detector-narcotic/contraband, sledge, bloodhound, water dog and patrol/detector.

*This partial FSC assignment does not apply to Photographic Equipment controlled by the Congressional Joint Committee on Printing, and Micro-Film Equipment and Supplies.

208.7104 Defense Logistics Agency.[1]

Federal Supply Class Code	Commodity	DLA Center [2]
FSC ("P" after the FSC number indicates a partial FSC assignment.)		
2230	Right of Way Construction and Maintenance Equipment, Railroad.	DCSC
2410	Tractor, Full Track, Low Speed.	DCSC
2420	Tractors, Wheeled	DCSC
2510 P [3]	Vehicular Cab, Body, and Frame, Structural Components.	DCSC
2520 P [3]	Vehicular Power Transmission Components.	DCSC
2530 P [3]	Vehicular Brake, Steering, Axle, Wheel and Track Components.	DCSC
2540 P [3]	Vehicular Furniture and Accessories.	DCSC
2590 P [3]	Miscellaneous Vehicular Components.	DCSC
2805 P [3]	Gasoline Reciprocating Engines, Except Aircraft; and Components.	DCSC
2815	Diesel Engines and Components.	DCSC
2895	Miscellaneous Engines and Components.	DCSC
2910 P [3]	Engine Fuel System Components, Nonaircraft.	DCSC
2920 P [3]	Engine Electrical System Components, Nonaircraft.	DCSC
2930 P [3]	Engine Cooling System Components, Nonaircraft.	DCSC
2940 P [3]	Engine Air and Oil Filters, Strainers and Cleaners, Nonaircraft.	DCSC
2990 P [3]	Miscellaneous Engine Accessories, Nonaircraft.	DCSC
3020	Gears, Pulleys, Sprockets and Transmission Chain.	DCSC
3030	Belting, Drive Belts, Fan Belts, and Accessories.	DCSC
3040	Miscellaneous Power Transmission Equipment.	DCSC
3110	Bearings, Antifriction Unmounted.	DISC
3120	Bearings, Plain Unmounted.	DISC
3130	Bearings, Mounted	DISC
3210	Sawmill and Planing Mill Machinery.	DGSC
3220	Woodworking Machines	DGSC
3230	Tools and Attachments for Woodworking Machinery.	DGSC
3405 P [3]	Saws and Filing Machines.	DGSC
3408 P [3]	Machining Centers and Way-Type Machines.	DGSC
3410 P [3]	Electrical and Ultrasonic Erosion Machines.	DGSC
3411 P [3]	Boring Machines	DGSC
3412 P [3]	Broaching Machines	DGSC
3413 P [3]	Drilling and Tapping Machines.	DGSC

Federal Supply Class Code	Commodity	DLA Center [2]
3414 P [3]	Gear Cutting and Finishing Machines.	DGSC
3415 P [3]	Grinding Machines	DGSC
3416 P [3]	Lathes	DGSC
3417 P [3]	Milling Machines	DGSC
3418 P [3]	Planers and Shapers	DGSC
3419 P [3]	Miscellaneous Machine Tools.	DGSC
3422 P [3]	Rolling Mills and Drawing Machines.	DGSC
3424 P [3]	Metal Heat Treating Equipment.	DGSC
3428 P [3]	Metal Finishing Equipment.	DGSC
3431	Electric Arc Welding Equipment.	DGSC
3432 P [3]	Electric Resistance Welding Equipment.	DGSC
3433 P [3]	Gas Welding, Heat Cutting & Metalizing Equipment.	DGSC
3436 P [3]	Welding Positioners and Manipulators.	DGSC
3438 P [3]	Miscellaneous Welding Equipment.	DGSC
3439 P [3]	Miscellaneous Welding, Soldering and Brazing Supplies and Accessories.	DGSC
3441 P [3]	Bending and Forming Machines.	DGSC
3442 P [3]	Hydraulic and Pneumatic Presses, Power Driven.	DGSC
3443 P [3]	Mechanical Presses, Power Driven.	DGSC
3444 P [3]	Manual Presses	DGSC
3445 P [3]	Punching and Shearing Machines.	DGSC
3446 P [3]	Forging Machinery and Hammers.	DGSC
3447 P [3]	Wire and Metal Ribbon Forming Machinery.	DGSC
3448 P [3]	Riveting Machines	DGSC
3449 P [3]	Misc. Secondary Metal Forming and Cutting Machines.	DGSC
3450 P [3]	Machine Tools, Portable	DGSC
3455 P [3]	Cutting Tools for Machine Tools.	DGSC
3456 P [3]	Cutting and Forming Tools for Secondary Metal Working Machines.	DGSC
3460 P [3]	Machine Tool Accessories.	DGSC
3461 P [3]	Accessories for Secondary Metalworking Machinery.	DGSC
3465 P [3]	Production Jigs, Fixtures and Templates.	DGSC
3470 P [3]	Machine Shop Sets, Kits, and Outfits.	DGSC
3510	Laundry and Dry Cleaning Equipment.	DGSC
3520	Shoe Repairing Equipment.	DGSC
3530	Industrial Sewing Machine & Mobile Textile Repair Shops.	DGSC
3610	Printing, Duplicating, and Bookbinding Equipment.	DGSC
3611 P [3]	Industrial Marking Machines.	DGSC
3620 P [3]	Rubber and Plastics Working Machinery.	DGSC
3635 P [3]	Crystal and Glass Industries Machinery.	DGSC
3650 P [3]	Chemical & Pharmaceutical Products Manufacturing Machinery.	DGSC
3655	Gas Generating and Dispensing Systems, Fixed or Mobile.	DGSC
3660 P [3]	Industrial Size Reduction Machinery.	DGSC
3680 P [3]	Foundry Machinery, Related Equipment and Supplies.	DGSC
3685 P [3]	Specialized Metal Container Manufacturing Machinery and Related Equipment.	DGSC
3693 P [3]	Industrial Assembly Machines.	DGSC
3694 P [3]	Clean Work Stations, Controlled Environment & Related Equipment.	DCSC
3695	Miscellaneous Special Industry Machinery.	DGSC
3710	Soil Preparation Equipment.	DCSC
3720	Harvesting Equipment	DCSC
3740	Pest, Disease, and Frost Control Equipment.	DCSC
3770	Saddlery, Harness, Whips and Related Animal Furnishings.	DCSC
3805	Earth Moving and Excavating Equipment.	DCSC
3810	Cranes and Crane-Shovels.	DCSC
3815	Crane and Crane-Shovel Attachments.	DCSC
3820	Mining, Rock Drilling, Earth Boring, and Related Equipment.	DCSC
3825	Road Clearing and Cleaning Equipment.	DCSC
3830	Truck and Tractor Attachments.	DCSC
3835	Petroleum Production and Distribution Equipment.	DCSC
3895	Miscellaneous Construction Equipment.	DCSC
3910	Conveyors	DCSC
3920	Materials Handling Equipment, Nonself-Propelled.	DGSC
3930	Warehouse Trucks and Tractors, Self-Propelled.	DCSC
3940	Blocks, Tackle, Rigging, and Slings.	DISC
3950	Winches, Hoists, Cranes, and Derricks.	DCSC
3990	Miscellaneous Materials Handling Equipment.	DGSC
4010	Chain and Wire Rope	DISC
4020	Fiber Rope, Cordage and Twine.	DISC
4030	Fittings for Rope, Cable and Chain.	DISC
4110	Refrigeration Equipment	DGSC
4120	Air Conditioning Equipment.	DGSC
4130	Refrigeration and Air Conditioning Components.	DGSC
4140	Fans, Air Circulators, and Blower Equipment.	DGSC
4210 P [3]	Fire Fighting Equipment	DCSC
4220	Marine Lifesaving and Diving Equipment.	DCSC
4310	Compressors and Vacuum Pumps.	DCSC
4320	Power and Hand Pumps	DCSC
4330	Centrifugals, Separators, and Pressure and Vacuum Filters.	DCSC
4440	Driers, Dehydrators, and Anhydrators.	DCSC
4450	Industrial Fan and Blower Equipment.	DCSC
4460	Air Purification Equipment	DCSC
4510	Plumbing Fixtures and Accessories.	DCSC
4520	Space Heating Equipment and Domestic Water Heaters.	DCSC
4530	Fuel Burning Equipment Units.	DCSC
4540	Miscellaneous Plumbing, Heating and Sanitation Equipment.	DCSC
4610	Water Purification Equipment.	DCSC
4620	Water Distillation Equipment, Marine and Industrial.	DCSC
4630	Sewage Treatment Equipment.	DCSC
4710	Pipe and Tube	DCSC
4720	Hose and Tubing, Flexible.	DCSC
4730	Fittings and Specialties; Hose, Pipe and Tube.	DCSC
4810	Valves, Powered	DCSC
4820	Valves, Nonpowered	DCSC
4930	Lubrication and Fuel Dispensing Equipment.	DCSC
5280	Sets, Kits, and Outfits of Measuring Tools.	DGSC
5305	Screws	DISC
5306	Bolts	DISC
5307	Studs	DISC
5310	Nuts and Washers	DISC
5315	Nails, Keys and Pins	DISC
5320	Rivets	DISC
5325	Fastening Devices	DISC
5330	Packing and Gasket Materials.	DISC
5335	Metal Screening	DISC
5340	Miscellaneous Hardware	DISC
5355	Knobs and Pointers	DISC
5360	Coil, Flat and Wire Springs.	DISC
5365	Rings, Shims and Spacers.	DISC
5410	Prefabricated and Portable Buildings.	DCSC
5420	Bridges, Fixed and Floating.	DCSC
5430	Storage Tanks	DCSC
5440	Scaffolding Equipment and Concrete Forms.	DCSC
5445	Prefabricated Tower Structures.	DCSC
5450	Miscellaneous Prefabricated Structures.	DCSC
5510	Lumber and Related Basic Wood Materials.	DCSC
5520	Millwork	DCSC
5530	Plywood and Veneer	DCSC
5660	Fencing, Fences and Gates.	DCSC
5680 P	Miscellaneous Construction Materials. This partial FSC assignment applies only to airplane landing mat. (Also, see footnote 1 at end of list relative to purchase of DSA managed items in GSA assigned classes.).	DCSC
5905	Resistors	DESC
5910	Capacitors	DESC
5915	Filters and Networks	DESC
5920	Fuses and Lightning Arrestors.	DESC
5925	Circuit Breakers	DESC
5930	Switches	DESC
5935	Connectors, Electrical	DESC
5940	Lugs, Terminals, and Terminals Strips.	DGSC
5945	Relays, Contractors, and Solenoids.	DESC
5950	Coils and Transformers	DESC
5955	Piezoelectric Crystals	DESC
5960	Electron Tubes and Associated Hardware.	DESC
5961	Semiconductor Devices and Associated Hardware.	DESC
5962	Microelectronic Circuit Devices.	DESC
5965	Headsets, Handsets, Microphones and Speakers.	DESC
5970	Electrical Insulators and Insulating Materials.	DGSC
5975	Electrical Hardware and Supplies.	DGSC
5977	Electrical Contact Brushes and Electrodes.	DGSC
5985	Antennas, Waveguides, and Related Equipment.	DESC
5990	Synchros and Resolvers	DESC
5995	Cable, Cord, and Wire Assemblies: Communication Equipment	DGSC

Federal Supply Class Code	Commodity	DLA Center [5]
5999	Miscellaneous Electrical and Electronic Components.	DESC
6105	Motors, Electrical	DGSC
6110	Electrical Control Equipment.	DGSC
6115 P [6]	Generators and Generator Sets, Electrical.	DGSC
6120	Transformers: Distribution and Power Station.	DGSC
6145	Wire and Cable, Electrical	DISC
6150	Miscellaneous Electric Power and Distribution Equipment.	DGSC
6210	Indoor and Outdoor Electric Lighting Fixtures.	DGSC
6220	Electric Vehicular Lights and Fixtures.	DGSC
6230	Electric Portable and Hand Lighting Equipment.	DGSC
6240	Electric Lamps	DGSC
6250	Ballasts, Lampholders and Starters.	DGSC
6260	Nonelectrical Lighting Fixtures.	DGSC
6350	Miscellaneous Alarm and Signal Systems.	DGSC
6504 [6]	Drugs, Biologicals, and Official Reagents.	DPSC
6508 [6]	Medicated Cosmetics and Toiletries.	DPSC
6510 [6]	Surgical Dressing Materials.	DPSC
6515 [6]	Medical and Surgical Instruments, Equipment and Supplies.	DPSC
6520 [6]	Dental Instruments, Equipment, and Supplies.	DPSC
6525 [6]	X-Ray Equipment and Supplies: Medical, Dental and Veterinary.	DPSC
6530 [6]	Hospital Furniture, Equipment, Utensils, and Supplies.	DPSC
6532	Hospital and Surgical Clothing and Textile Special Purpose Items.	DPSC
6540 [6]	Opticians' Instruments, Equipment and Supplies.	DPSC
6545 [6]	Medical Sets, Kits, and Outfits.	DPSC
6630	Chemical Analysis Instruments.	DGSC
6635	Physical Properties Testing Equipment.	DGSC
6640	Laboratory Equipment and Supplies.	DPSC
6655	Geophysical and Astronomical Instruments.	DGSC
6670	Scales and Balances	DGSC
6675	Drafting, Surveying and Mapping Instruments.	DGSC
6680	Liquid and Gas Flow, Liquid Level and Mechanical Motion Measuring Instruments.	DGSC
6750	Photographic Supplies	DGSC
6810 [7]	Chemicals	DFSC & DGSC
6820	Dyes	DGSC
6830	Gases: Compressed and Liquefied.	DGSC
6840	Pest Control Agents and Disinfectants.	DGSC
6850	Miscellaneous Chemical Specialties.	DFSC & DGSC
7210	Household Furnishings	DPSC
7310	Food Cooking, Baking and Serving Equipment.	DGSC
7320	Kitchen Equipment and Appliances.	DGSC
7360	Sets, Kits and Outfits: Food Preparation and Serving.	DGSC
7610	Books and Pamphlets	DGSC
7660	Sheet and Book Music	DGSC
7690	Miscellaneous Printed Matter.	DGSC
8110	Drums and Cans	DGSC
8120	Commercial and Industrial Gas Cylinders.	DGSC
8125	Bottles and Jars	DGSC
8305	Textile Fabrics FSC 8305 does not include laminated cloth used exclusively in the repair of lighter than air envelopes.	DPSC
8310	Yarn and Thread	DPSC
8315	Notions and Apparel Findings. FSC 8315 does not include coated cloth tape used exclusively in the repair of lighter than air envelopes.	DPSC
8320	Padding and Stuffing Materials.	DPSC
8325	Fur Materials	DPSC
8330	Leather	DPSC
8335	Shoe Findings and Soling Materials.	DPSC
8340	Tents and Tarpaulins	DPSC
8345	Flags and Pennants	DPSC
8405	Outerwear, Men's	DPSC
8410	Outerwear, Women's	DPSC
8415	Clothing, Special Purpose FSC 8415 includes all submarine clothing.	DPSC
8420	Underwear and Nightwear, Men's.	DPSC
8425	Underwear and Nightwear, Women's.	DPSC
8430	Footwear, Men's	DPSC
8435	Footwear Women's	DPSC
8440	Hosiery, Handwear, and Clothing Accessories, Men's.	DPSC
8445	Hosiery, Handwear, and Clothing Accessories, Women's.	DPSC
8450	Children's and Infants' Apparel and Accessories.	DPSC
8455	Badge and Insignia	DPSC
8460	Luggage	DPSC
8465	Individual Equipment	DPSC
8470	Armor, Personal	DPSC
8475	Specialized Flight Clothing and Accessories.	DPSC
8905 [5]	Meat, Poultry, and Fish	DPSC
8910 [5]	Dairy Foods and Eggs	DPSC
8915 [5]	Fruits and Vegetables	DPSC
8920 [5]	Bakery and Cereal Products.	DPSC
8925 [5]	Sugar, Confectionery and Nuts.	DPSC
8930 [5]	Jams, Jellies, and Preserves.	DPSC
8935 [5]	Soups and Bouillons	DPSC
8940 [6]	Special Dietary Foods and Food Specialty Preparations.	DPSC
8945 [5]	Food Oils and Fats	DPSC
8950 [5]	Condiments and Related Products.	DPSC
8955 [5]	Coffee, Tea, and Cocoa	DPSC
8960 [5]	Beverages, Nonalcoholic	DPSC
8970 [5]	Composite Food Packages.	DPSC
8975 [5]	Tobacco Products	DPSC
9110	Fuels, Solid	DFSC
9130	Liquid Propellants and Fuels, Petroleum Base.	DFSC
9140	Fuel Oils	DFSC
9150	Oils and Greases: Cutting, Lubricating, and Hydraulic.	DFSC
9160	Miscellaneous Waxes, Oils, and Fats.	DFSC
9320	Rubber Fabricated Materials.	DGSC
9330	Plastics Fabricated Materials.	DGSC
9340	Glass Fabricated Materials.	DGSC
9350	Refractories and Fire Surfacing Materials.	DGSC
9390	Miscellaneous Fabricated Nonmetallic Materials.	DGSC
9420 P	Fibers: Vegetable, Animal and Synthetic. This partial FSC assignment applies only to raw cotton and raw wool.	DPSC
9430 P	Miscellaneous Crude Animal Products, Inedible. This partial FSC assignment applies only to crude hides.	DPSC
9505	Wire, Nonelectrical, Iron and Steel.	DISC
9510	Bars and Rods, Iron and Steel.	DISC
9515	Plate, Sheet, and Strip: Iron and Steel.	DISC
9520	Structural Shapes, Iron and Steel.	DISC
9525	Wire, Nonelectrical, Nonferrous Base Metal.	DISC
9530	Bars and Rods, Nonferrous Base Metal.	DISC
9535	Plate, Sheet, Strip, and Foil: Nonferrous Base Metal.	DISC
9540	Structural Shapes, Nonferrous Base Metal.	DISC
9545	Plate, Sheet, Strip, Foil and Wire: Precious Metal.	DISC
9620 P	Minerals, Natural and Synthetic. This partial FSC assignment applies only to crude petroleum and crude shale oil.	DFSC
9925	Ecclesiastical Equipment, Furnishings and Supplies.	DGSC
9930	Memorials, Cemeterial and Mortuary Equipment and Supplies.	DGSC
9999	Miscellaneous Items	DGSC

Footnotes for List in 208.7104

[1] These assignments do not apply to items decentralized by the DLA Center Commander, *i.e.*, designated for purchase by each Military Department, and to those items in DLA assigned Federal Supply Classes, which may be assigned to GSA for supply management. In addition, see 208.7100-2 which describes conditions under which a Military Service may purchase (contract for) Military Service supply managed items in DLA assigned Federal Supply Classes. See notes 2 and 3 below for further exceptions pertaining to certain DLA assignments.

[2] DLA assignments in FSC 2510, 2520, 2530, 2540, 2590, 2805, 2910, 2920, 2930, 2940 and 2990 do not apply to repair parts peculiar to combat and tactical vehicles, which are assigned for coordinated procurement to the Department of the Army. In addition, the assignment in FSC-2805 does not apply to military standard engines 1.5 HP through 20 HP and parts peculiar therefor, which are assigned for coordinated procurement to the Department of the Army.

[3] This partial FSC assignment in FSC 4210 does not apply to Fire Fighting Equipment developed by or under the sponsorship of a Military Department. The procurement responsibility for such equipment is assigned to the Department which developed or sponsored its development.

[4] The Defense Logistics Agency has procurement responsibility for all the items in the Classes of FS Group 65. In addition, DLA has procurement responsibility for all equipment and supplies related to the medical, dental, veterinary professions in Non-Group 65 Classes where the Military medical services have the sole or prime interest in such items. The specific item coverage of these Non-Group 65 items is published in the DOD Section of the Federal Supply Catalog for Medical Material C3–1 through C3–12, inclusive.

[5] This assignment includes Health and Comfort items listed in AR 700–23. It also includes resale items for commissary stores (including brand name items).

[6] DLA Centers are identified as follows: DCSC—Defense Construction Supply Center. DESC—Defense Electronics Supply Center. DFSC—Defense Fuel Supply Center. DGSC—Defense General Supply Center. DISC—Defense Industrial Supply Center. DPSC—Defense Personnel Support Center.

[7] DFSC is responsible for procurement of only petroleum base items in FSC 6810 and FSC 6850.

[8] This partial assignment applies only to secondary items not identified as IPE. Such secondary items are listed in the applicable Federal Supply Catalog Management Data Lists of each respective Service.

[9] This partial FSC assignment in FSC 8115 does not apply to Mobile Electric Power Generating Sources (MPEGS). The procurement direction responsibility for MEPGS is assigned to the DoD Project Manager, Mobile Electric Power by DoD Directive 4120.11. DoD components desiring to use other than the DoD Standard Family of Generator Sets, contained in MIL-STD 633, shall process a Request for Deviation in accordance with Joint Operating Procedures, AR 700–101, AFR 400–50, NAVMATINST 4120.100A, MCO 11310.8c and DLAR 4120.7, Subject: Management and Standardization of Mobile Electric Power Generating Sources, prior to initiating procurement.

208.7105 Defense Nuclear Agency.[1]

Nuclear Ordnance

Federal Supply Class Code and Commodity

1105 Nuclear Bombs.
1110 Nuclear Projectiles.
1115 Nuclear Warheads and Warhead Sections.
1125 Nuclear Demolition Charges.
1127 Nuclear Rockets.
1130 Conversion Kits, Nuclear Ordnance.
1135 Fuzing and Firing Devices, Nuclear Ordnance.
1140 Nuclear Components.
1145 High Explosive Charges, Propellants, and Detonators: Nuclear Ordnance.
1190 Specialized Test and Handling Equipment, Nuclear Ordnance.
1195 Miscellaneous Nuclear Ordnance.

208.7106 General Services Administration.[1]

Federal Supply Class Code and Commodity

FSC ("P" after FSC number indicates partial FSC assignment.)
2310 P Passenger Motor Vehicles.
2320 P Trucks and Truck Tractors.
The above two partial Federal Supply Class Assignments apply to all commercial passenger carrying vehicles and trucks up to 10,000 pounds Gross Vehicle Weight (GVW) except the following types which are assigned for DoD Coordinated Procurement to the Department of the Army.
Bus, convertible to ambulance.
Truck 4 x 4, convertible to ambulance.
Truck 4 x 4, dump, 9,000 pounds GVW, with cut-down cab.
(See Army Coordinated Procurement assignments in FSC 2310 and FSC 2320.)
3540 Wrapping and Packaging Machinery.
3550 Vending and Coin Operated Machines.
3590 Miscellaneous Service and Trade Equipment.
3750 Gardening Implements and Tools.
5110 Hand Tools, Edged, Nonpowered.
5120 Hand Tools, Nonedged, Nonpowered.
5130 Hand Tools, Power Driven.
5133 Drill Bits, Counterbores, and Countersinks: Hand and Machine.
5136 Taps, Dies and Collects: Hand and Machine.
5140 Tool and Hardware Boxes.
5180 Sets, Kits and Outfits of Hand Tools.
5210 Measuring Tools, Craftmen's.
5345 Disks and Stones, Abrasive.
5350 Abrasive Materials.
5610 Mineral Construction Materials, Bulk.
5620 Building Glass, Tile, Brick and Block.
5630 Pipe and Conduit, Nonmetallic.
5640 Wallboard, Building Paper, and Thermal Insulation Materials.
5650 Roofing and Siding Materials.
5670 Architectural and Related Metal Products.
5680 P[2] Miscellaneous Construction Materials.
7105 Household Furniture.
7110 Office Furniture.
7125 Cabinets, Lockers, Bins and Shelving.
7195 Miscellaneous Furniture and Fixtures.
7220 Floor Coverings.
7230 Draperies, Awnings, and Shades.
7240 Household and Commercial Utility Containers.
7290 Miscellaneous Household and Commercial Furnishings and Appliances.
7330 Kitchen Hand Tools and Utensils.
7340 Cutlery and Flatware.
7350 Tableware.
7410 Punched Card System Machines.
7420 Accounting and Calculating Machines.
7430 Typewriters and Office-type Composing Machines.
This FSC assignment does not apply to machines controlled by the Congressional Joint Committee on Printing.
7450 Office-type Sound Recording and Reproducing Machines.
7460 Visible Record Equipment.
7490 Miscellaneous Office Machines.
This FSC assignment does not apply to equipment controlled by the Congressional Joint Committee on Printing.
7510 Office Supplies.
This FSC assignment does not apply to Office Supplies, including special inks, when DoD requirements of such items are procured through Government Printing Office channels.
7520 Office Devices and Accessories.
This FSC assignment does not apply to office devices and accessories when DoD requirements of such items are procured through Government Printing Office channels.
7530 Stationery and Record Forms.
This FSC assignment does not apply to Stationery and Record Forms when DoD requirements of such items are procured through Government Printing Office channels including those items covered by term contracts issued by GPO for tabulating cards and marginally punched continuous forms.
7710 Musical Instruments.
7720 Musical Instrument Parts and Accessories.
7730 Phonographs, Radios, and Television Sets: Home Type.
7740 Phonograph Records.
7810 Athletic and Sporting Equipment.
7820 Games, Toys, and Wheeled Goods.
7830 Recreational and Gymnastic Equipment.
7910 Floor Polishers and Vacuum Cleaning Equipment.
7920 Brooms, Brushes, Mops and Sponges.
7930 Cleaning and Polishing Compounds and Preparations.
8010 Paints, Dopes, Varnishes, and Related Products.
8020 Paint and Artists Brushes.
8030 Preservative and Sealing Compounds.
8040 Adhesives.
8105 Bags and Sacks.
8115 Boxes, Cartons and Crates.
8135 Packaging and Packing Bulk Materials.
8510 Perfumes, Toilet Preparations and Powders.
8520 Toilet Soap, Shaving Preparations and Dentifrices.
8530 Personal Toiletry Articles.
8540 Toiletry Paper Products.
8710 Forage and Feed.
8720 Fertilizers.
8730 Seeds and Nursery Stock.
9310 Paper and Paperboard.
9905 Signs, Advertising Displays, and Identifications Plates.
9910 Jewelry.
9915 Collectors' Items.
9920 Smokers' Articles and Matches.

[1] In addition to the above, assignments to DNA include all items for which DNA has integrated management responsibility in accordance with DoD Directive 5105.31.

[1] These GSA assignments do not apply to items as described under FSC 7430, 7490, 7510, 7520, and 7530, and those items in the GSA assigned Federal Supply Classes which have been retained for DLA supply management as listed in the applicable Federal Supply Catalog Management Data Lists. In addition, see 208.7100–2 which describes conditions under which a Military Service may purchase (contract for) Military Service Supply managed items in GSA assigned Federal Supply Classes.

[2] This partial FSC assignment does not include landing mats which are assigned to the Defense Logistics Agency.

Subpart 208.72—Acquisition for NASA

208.7200 Authorization and policy.

(a) NASA is authorized by Pub. L. 85–568 to use the acquisition services, personnel, equipment and facilities of the Departments with their consent, with or without reimbursement, and on a similar basis to cooperate with the Departments in the use of acquisition services, equipment and facilities.

(b) The Department will cooperate fully with NASA in making their acquisition services, equipment, personnel and facilities available on the basis of mutual agreement.

(c) The Departments will not claim reimbursement for administrative costs incident to acquisitions for NASA, except as may be otherwise agreed prior to the time the services are performed.

(d) When acquiring supplies or services for NASA or performing field service functions in support of NASA contracts, the Department concerned will use its own methods, except when required by the terms of the agreement involved.

(e) The Departments normally will use their own funds when acquiring supplies or services for NASA, or performing services, and will not cite NASA funds on any Defense obligation or payment document.

208.7201 NASA purchase request and acceptance.

(a) The NASA-Defense Purchase Request (NASA Form Number 523) will be used by NASA for requesting

acquisition of supplies or services, from all activities of the Departments.

(b) Except as provided in (d) below, within 30 days after receipt of a NASA-Defense Purchase Request, the Department concerned will forward to the initiator of the request a DD Acceptance of MIPR Form, DD Form 448–2, in quadruplicate in accordance with instructions contained in 208.7009. Each DD Form 448–2 will show the action being taken or to be taken to fill the requirement and the name and complete address to the Department of Defense acquisition activity for future direct contact by the initiator.

(c) To the extent feasible, all documents including acceptances, contracts, correspondence, shipping documents, work or project orders, and Standard Form 1080 (Voucher for Transfer Between Appropriations and/or Funds) billings will reference the NASA-Defense Purchase Request Number and the item number when appropriate.

(d) Acceptance by the Department is not required for NASA-Defense Purchase Requests covering deliveries of common-use standard stock items which the supplying department has on hand or on order for prompt delivery at published prices.

208.7202 Changes in estimated total prices.

When a Department determines that the estimated total price (Block 9, NASA Form 523) of the items to be acquired for NASA is not sufficient to cover the required reimbursement, or is in excess of the amount required, a request for an amendment will be forwarded to the NASA originating office. The request will indicate a specific dollar amount, rather than a percentage, and will include justification for any upward adjustment requested. Upon approval of the request, an amendment to the NASA-Defense Purchase Request will be forwarded to the contracting activity.

208.7203 Inquiries.

Inquiries and correspondence will be directed to the NASA originating office.

208.7204 Payments.

Payments to the Departments for supplies and services furnished or acquired for NASA will be effected on the basis of Standard Form 1080 billings submitted to the NASA office designated in Block 11 of the NASA-Defense Purchase Request, except where agreements provide that reimbursement is not required. Billings will be supported in the same manner as billings between Departments.

Subpart 208.73—Miniature and Instrument Ball Bearings

208.7301 Definitions.

"Domestic manufacture" means miniature and instrument ball bearings manufactured in the United States or Canada. When a ball bearing assembly is involved, all components of the bearing must also have been manufactured in the United States or Canada.

"Miniature and instrument ball bearings" are all rolling contact ball bearings with a basic outside diameter (exclusive of flange diameters) of 30 millimeters or less, irrespective of material, tolerance, performance, or quality characteristics.

208.7302 Policy.

It has been determined that defense requirements for miniature and instrument ball bearings must be acquired from domestic manufacturing sources to the maximum extent practicable. Accordingly, all acquisitions of miniature and instrument ball bearings and all acquisitions of items containing miniature and instrument ball bearings shall include, except as provided in 208.7303 below, a requirement that such ball bearings delivered under the contract be of domestic manufacture only.

208.7303 Procedures.

(a) The clause set forth at 252.208–7000, Required Sources for Miniature and Instrument Ball Bearings, shall be inserted in all contracts except:

(1) When the contracting officer knows that the item being acquired does not contain miniature or instrument ball bearings;

(2) When the urgency of the military requirement necessitates delivery of an end item containing other than domestically manufactured miniature or instrument ball bearings;

(3) In small purchases using small purchase procedures, other than in purchase of bearings as the end item;

(4) Purchases of standard commercial items, other than—

(i) Those which are intended for use as components or subassemblies of defense equipments or systems (e.g., repair parts) or

(ii) Purchases of bearings as the end item; or

(5) Purchases made overseas for overseas use.

(b) Subsequent to the award of a contract which includes the clause required by (a) above, the contracting officer may waive the "use" but not the acquisition requirements of the clause. Such waiver may be granted upon submission of a written request by the contractor if the contractor or subcontractor has on hand subassemblies or end items containing nondomestic ball bearings, and either:

(1) The production of such subassemblies or end items in the performance of all or a part of the contract using ball bearings of domestic manufacture would interfere with economical or normal production scheduling of the military product under contract or with production of another item (military or commercial); or

(2) The delivery schedule under the contract or subcontract is such that use of other than domestic ball bearings or subassemblies or parts is necessary.

The contracting officer should grant waivers only to the extent and for the period of time necessary to permit the contractor to acquire and use domestic bearings.

Subpart 208.74—Precision Components for Mechanical Time Devices

208.7401 Definitions.

"Domestic manufacture" means precision components for mechanical time devices manufactured in the United States or Canada. When a mechanical timing assembly is involved, all components of the assembly must also have been manufactured in the United States or Canada.

"Precision components for mechanical time devices" are parts which closely relate so that precise control and selection of working production tolerances can be maintained to accomplish the desired function and reliability. In terms of accuracy, such precision components have total tolerances under 0.003 inches, eccentricities less than 0.0015 inches, and surface finishes better than 64 rms. Examples of such precision components include: gears, pinions, posts, and plates. Precision components subject to the provisions of this subpart are those which are included in fuzes, boosters, and aircraft clocks in the following Federal Supply Classes:

FS Class and Description	
1305	Ammunition through 30mm.
1310	Ammunition, over 30mm up to 75mm.
1315	Ammunition, 75mm through 125mm.
1320	Ammunition over 125mm.
1325	Bombs.
1330	Grenades.
1340	Rockets and Rocket Ammunition.
1345	Land Mines.
1390	Fuzes and Primers.
6645	Time Measuring Instruments (aircraft clocks only).

208.7402 Policy.

It has been determined that defense requirements for precision components for mechanical time devices must be acquired from domestic manufacturing sources to the maximum extent practicable. Accordingly, all acquisitions of precision components for mechanical time devices and all acquisitions of items containing precision components for mechanical time devices shall include, except as provided in 208.7403 below, a requirement that such components delivered under the contract be of domestic manufacture only.

208.7403 Procedures.

(a) All acquisitions of items in the Federal Supply Classes listed above or any subassembly, component, or part thereof shall provide that precision components for mechanical time devices, in the quantities and of the type and sizes (including tolerances) required to produce the end item being supplied, be of domestic manufacture and incorporated into the items delivered by the contractor and subcontractor at every tier. To accomplish this, the clause set forth at 252.208–7001, Required Sources for Precision Components for Mechanical Time Devices, shall be inserted in all contracts except:

(1) When the contracting officer knows that the item being procured does not contain precision components for mechanical time devices;

(2) When the urgency of the military requirement necessitates delivery of an end item containing other than domestically manufactured precision components for mechanical time devices;

(3) In small purchases using small purchase procedures, other than in purchase of precision components for mechanical time devices as the end item;

(4) Purchases of standard commercial items, other than—

(i) Those which are intended for use as components or subassemblies of defense equipment or systems (e.g., repair parts); or

(ii) Purchases of precision components for mechanical time devices as the end item; or

(5) Purchases made overseas for overseas use.

(b) Subsequent to the award of a contract which includes the clause required by (a) above, the contracting officer may waive the "use" but not the acquisition requirements of the clause. The contracting officer should grant waivers only to the extent and for the period of time necessary to permit the contractor to acquire and use domestic components. Such waiver may be granted upon submission of a written request by the contractor if the contractor or subcontractor has on hand subassemblies or end items containing nondomestic precision components for mechanical time devices and either:

(1) The production of such subassemblies or end items in the performance of all or a part of the contract using precision components for mechanical time devices of domestic manufacture would interfere with economical or normal production scheduling of the military product under contract or with production of another item (military or commercial); or

(2) The delivery schedule under the contract or subcontract is such that use of other than domestic precision components for mechanical time devices or subassemblies or parts is necessary.

Subpart 208.75—High-Purity Silicon

208.7501 Definitions.

"Domestic manufacture" means high-purity silicon manufactured in the United States or Canada. When an item or subassembly containing high-purity silicon is involved, all such silicon (polycrystal and single crystal) incorporated in the item or subassembly must also have been manufactured in the United States or Canada.

"High-purity silicon" is N or P type and has a resistivity greater than 3000 ohm-centimeter.

208.7502 Policy.

It has been determined that defense requirements for High-Purity Silicon must be acquired from qualified domestic manufacturing sources to the maximum extent practicable. Accordingly, all acquisitions of high-purity silicon and all acquisitions of items containing high-purity silicon shall include, except as provided in 208.7503 below, a requirement that such high-purity silicon and high-purity silicon incorporated in items containing high-purity silicon delivered under the contract be of domestic manufacture only.

208.7503 Procedures.

(a) The clause set forth at 252.208–7002, Required Sources for High-Purity Silicon, shall be inserted in all contracts except:

(1) When the contracting officer knows that the item being acquired does not contain high-purity silicon;

(2) In small purchases using small purchase procedures, other than in purchase of high-purity silicon as the end item;

(3) Purchase of standard commercial items, other than purchases of high-purity silicon as the end item; or

(4) Purchases made overseas for overseas use.

(b) Subsequent to the award of a contract, the contracting officer may waive the requirements set forth at 252.208–7002, Required Sources for High-Purity Silicon. Such waiver may be granted upon submission of a written request by the contractor if the contractor or subcontractor has on hand subassemblies or end items containing nondomestic high-purity silicon, and either:

(1) The production of such subassemblies or end items in the performance of all or a part of the contract using high-purity silicon of domestic manufacture would interfere with the normal production scheduling of the military product under contract or with production of another item (military or commercial); or

(2) The delivery schedule under the contract or subcontract is such that use of other than domestic high-purity silicon is necessary. The contracting officer should grant waivers only to the extent and for the period of time necessary to permit the contractor to acquire and use domestic high-purity silicon.

Subpart 208.76—High Carbon Ferrochrome (HCF)

208.7601 Definitions.

"U.S. manufacture" means high carbon ferrochrome (HCF) manufactured in the United States, regardless of the source of the chrome ore. HCF means ferrochromium alloy that contains three percent or more carbon and 50 percent or more chromium.

208.7602 Policy.

It has been determined that defense requirements for HCF must be acquired from U.S. manufacturing sources (to the maximum extent practical). Accordingly, all acquisitions of HCF and all acquisitions of items containing HCF shall include, except as provided in 208.7603 below, a requirement that such HCF and HCF incorporated in items delivered under the contract be of U.S. manufacture only.

208.7603 Procedures.

(a) The clause set forth at 252.208–7003, Required Sources of HCF, shall be inserted in all contracts except:

(1) When the Contracting Officer knows that the item being acquired does not contain HCF;

(2) In small purchases using small purchase procedures other than in purchase of HCF as the end item;

(3) Purchase of standard commercial end items, other than purchases of HCF as the end item, or steel plate, sheet or ingots and the like that incorporate HCF;

(4) Purchases made overseas for overseas use; or

(5) In cases where DoD has memoranda of understanding (MOU)/offset agreements with U.S. NATO Allies and nondomestic HCF is incorporated in the end item being furnished in support of defense contracts.

(b) Subsequent to the award of a contract, the Contracting Officer may waive the requirements set forth at 252.208–7003, Required Sources for HCF. Such waiver may be granted on a case-by-case basis when adequate U.S. supplies of HCF are not available to meet DoD needs on a timely basis. Such waivers will only be granted to the extent and for the period of time necessary to permit the contractor to acquire and use U.S. HCF.

Subpart 208.77—Utilization of Government-Owned Precious Metals

208.7701 Definitions.

"Defense Industrial Supply Center (DISC)" means the Defense Logistics Agency field activity which is the assigned Commodity Integrated Materiel Manager for refined precious metals and is responsible for the storage and issue of such materiel.

"Refined precious metal" means recovered silver, gold, platinum, palladium, iridium, rhodium; or ruthenium in bullion, granulation or sponge form which has been purified to at least .999 percentage of fineness.

208.7702 Policy.

(a) This section establishes uniform policy, guidance, and procedures for implementing requirements of the Department of Defense Precious Metals Recovery Program (PMRP) concerning the utilization of PMRP recovered precious metals as Government-furnished material (GFM) in contracts as provided in DoD Directive 4160.22, "Recovery and Utilization of Precious Metals", December 1, 1976, and the related DoD Instruction 4140.41, "Government-Owned Materiel Assets Utilized as Government-Furnished Materiel for Major Acquisition Programs", July 26, 1974.

(b) It is the policy of the Department of Defense that DoD Components participate in the PMRP to the maximum extent and promote optimum economic utilization of available Government-owned precious metals as Government-furnished material in lieu of contractor-furnished precious metals in production contracts.

(c) In order to realize more cost-effective contracting, DoD-refined precious metal assets shall be utilized in lieu of open market contracting in acquisition programs for military-designed or commercial material when use of Government-furnished material (GFM) is the more cost-effective manner to accomplish the task, or is otherwise in the Government's best interest. The DISC issue price of GFM precious metals is normally significantly lower than the commercial market price.

208.7703 Applicable procedures.

(a) To assure maximum utilization of PMRP recovered precious metals as GFM in contracts for items which require those precious metals cited in (d) below in their manufacture, the provision in 252.208–7004 shall be inserted in solicitations for items in the Federal Supply Groups listed in (c) below or any subassembly, component, or part thereof except: when using small-purchase procedures; when the contracting officer has determined, through the end item inventory manager, in accordance with the procedures in Chapter XVII of the Defense Utilization and Disposal Manual, DoD 4160.21–M, that the required precious metals are not available from DISC; or when the contracting officer knows that the supplies being acquired do not require precious metals in their manufacture.

(b) When an offeror advises of a precious metals requirement in accordance with 252.208–7004, the contracting officer shall have the end item inventory manager contact the DISC Precious Metal Inventory Manager (M), in accordance with the procedures in Chapter XVII of the Defense Utilization and Disposal Manual, DoD 4160.21–M, to determine availability of required precious metal assets and current GFM unit prices. If the precious metals are available the contracting officer shall evaluate offers and award the contract on the basis of that offer which is in the best interest of the Government.

(c) *Federal Supply Groups.* Acquisition of items in the following Federal Supply Groups are subject to the above-prescribed policy and procedures:

FS Groups and Description.

12 Fire Control Equipment.
14 Guided Missiles.
15 Aircraft and Airframe Structural Components.
16 Aircraft Components and Accessories.
17 Aircraft launching, Landing, and Ground Handling Equipment.
18 Space Vehicles.
20 Ship and Marine Equipment.
28 Engines, Turbines and Components.
29 Engine Accessories.
31 Bearings.
34 Metalworking Machinery.
58 Communications, Detection, and Coherent Radiation Equipment.
59 Electrical and Electronic Equipment Components.
61 Electric Wire and Power and Distribution Equipment.
65 Medical, Dental, and Veterinary Equipment and Supplies.
66 Instruments and Laboratory Equipment.
67 Photographic Equipment.
68 Chemicals and Chemical Products.
84 Clothing, Individual Equipment, and Insignia.
95 Metal Bar, Sheets, and Shapes.

(d) *Refined precious metals.* The following refined precious metals are currently managed by DISC:

Precious Metal and National Stock Number (NSN)

Silver Bullion/Granules—9660–00–106–9432
Gold Bullion/Granules—9660–00–42–7733
Platinum Granules—9660–00–042–7768
Platinum Sponge—9660–00–151–4050
Palladium Granules—96600–00–042–7765
Rhodium Sponge–96600–01–011–2625
Iridium Sponge—9600–01–011–1937
Ruthenium Sponge—96600–01–039–0313

Subpart 208.78—Forging and Welded Shipboard Anchor Chain Items Used for Military Application for Combat and Direct Combat Support Items

208.7801 Definitions.

"Domestic manufacture" means forging and welded shipboard anchor chain items manufactured in the United States and Canada.

"End item" means a final combination of end products, component parts, and/or materials which is ready for its intended use per JCS Publication #1 (DoD Dictionary of Military and Associated Terms).

208.7802 Policy.

It has been determined that defense requirements for the forging and welded shipboard anchor chain items listed in 208.7802–1 below must be acquired from domestic sources (United States and Canada) to the maximum extent practical. Accordingly, all acquisitions of these forging items and all acquisitions of items containing these forging and welded shipboard anchor chain items shall include, except as provided in 208.7803 below, a requirement that such items and forging items incorporated in end items delivered under the contract be of domestic manufacture only. This restriction does not include forgings used for commercial vehicles (such as commercial cars and trucks) or to noncombat support military vehicles.

208.7802–1 List of DoD forging and welded shipboard anchor chain items that must be acquired from domestic sources (United States and Canada).

Ship propulsion shafts greater than 50 feet in length
Periscope tubes
Ring forgings for bull gears greater than 120 inches in diameter
Large caliber, thick-walled cannon, 105mm through 8-inch forgings listed below:
  Preform forgings
  Gun tube forgings
  Muzzle brake forgings
  Breach ring forgings
  Breach block forgings
60mm and 81mm mortar forgings listed below:
  Bipod forgings
  Base plate forgings
  Body yoke forgings
Small caliber weapons forgings listed below:
  Barrel extensions
  Bolts
  Receivers
  Sights/handles, etc.
Tank and automotive forgings listed below:
  Turret rings
  Road arms
  Final drive gears
  Shafts
  Sprockets
  Track shoes
  Axle shafts
  Flywheels
  Connecting rods
  Crankshafts
  Roadwheels
  Spindles
  Torsion bars
Forged DiLok Anchor Chain
Welded Shipboard Anchor Chain (smaller than four (4) inches in diameter)

208.7803 Procedures.

(a) The clause set forth at 252.208–7005, Required Sources for Forging and Welded Shipboard Anchor Chain Items, shall be inserted in all contracts except—

(1) When the contracting officer knows that the item being acquired does not contain forging items listed in 208.7802–1;

(2) When purchases are made overseas for overseas use;

(3) If the quantity being acquired is determined to be greater than that required to maintain the U.S. defense mobilization base (provided the quantity above mobilization base needs constitutes an economical buy quantity), such greater quantities will not be subject to the U.S., Canadian restriction and shall be awarded competitively to the maximum practical extent. NATO and other qualifying countries may compete for the excess quantities consistent with Part 225 of this Supplement.

(b) A Canadian firm may bid on and supply any of the restricted items if: (1) It normally produces similar items or it is currently producing the item in support of DoD contracts (as prime or subcontractor), and (2) It agrees to become (upon receiving a contract/order) a planned producer under DoD's Industrial Preparedness Program (IPP), if it is not already a planned producer for the item.

(c) Subsequent to the award of a contract, the contracting officer may waive the requirements set forth at 252.208–7005, Required Sources for Forging and Welded Shipboard Anchor Chain Items. Such waiver may be granted on a case-by-case basis when adequate domestic supplies of listed forging items are not available to meet DoD needs on a timely basis. Also, these waivers will only be granted to the extent and for the period of time necessary to permit the contractor to acquire and use listed forging items of domestic manufacture.

PART 209—CONTRACTOR QUALIFICATIONS

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 209.1—Responsible Prospective Contractors

209.103 Policy.

(S–70) *Acquisition from Concerns in Qualifying Countries.*

(1) Awards to concerns in qualifying countries are subject to this subpart and other sections of this Supplement concerning NATO participating country sources.

(2) A Canadian firm proposed by the Canadian Commercial Corporation (CCC) as its subcontractor generally shall be accepted by the contracting officer under the provisions of FAR 9.104–4 as the basis for his determination under FAR 9.103.

209.104 Standards.

209.104–3 Application of standards.

(c) *Satisfactory performance record.*

(c)(2) Quality is a significant consideration in determining satisfactory performance. Quality defects of a critical or repetitive nature without adequate and timely corrective action, including repair or replacement of items, shall also be presumptive of inability to meet this requirement. DoD components shall assure that contracts are not awarded to contractors with a history of providing supplies or services of an unsatisfactory quality.

(S–70) In cases where the firm proposed by CCC is so accepted, preaward survey forms need not be completed. When the CCC proposal is not consistent with other information which may be available to the contracting officer, the contracting officer shall request from CCC and any other sources whatever additional information or plant surveys the contracting officer may deem necessary to make the determination of responsibility of sources proposed by CCC. Such additional data may be requested on the preaward survey forms or on any other forms. Upon request, CCC shall be furnished an explanation of the reasons for rejection of its proposed firm.

209.105 Procedures.

209.105–70 Current information.

(a) Maximum practicable use shall be made of currently valid information on file or within the knowledge of personnel in the Department of Defense Each Department shall, at such level and manner as it deems appropriate, maintain useful records and experience data for the guidance of contracting officers in the placement of new procurement, and shall inform its contracting officers and the other Departments of the means of access thereto. Notwithstanding this direction contract administration offices shall maintain files of information reflecting upon the ability of contractors to perform Government contracts successfully.

(b) Any contracting office becoming aware of circumstances which, for any reason, casts doubt upon the ability of a contractor to perform contracts successfully, shall immediately advise the cognizant contract administration office. A contract administration office, upon being notified by a contracting office of unfavorable information affecting a contractor under its cognizance, or upon developing unfavorable information during the course of contract administration activities, shall advise the contracting offices of the other Departments. When a contract administration office is requested to perform a preaward survey and it has been notified of the existence of unfavorable information relative to the contractor, it shall obtain the details including full supporting information. Careful and full consideration shall be given such information.

(c) For preaward survey assistance for contracts requiring performance of Contract Administration Services (CAS) on military installations, see 242.270.

209.106 Preaward surveys.

209.106-2 Requests for preaward surveys.

(S-70) Procedure for requesting preaward survey.

(1) Preaward surveys will be accomplished by the cognizant Contract Administration Office as listed in DoD Directory of Contract Administration Services Components, DoD 4105.59-H. The contracting officer shall request a preaward survey on Standard Form (SF) 1403, Preaward Survey of Prospective Contractor (General), indicating in Section III thereof, the scope of the survey desired. An original and 3 copies of the SF 1403 requesting a preaward survey will be provided along with a copy of the solicitation and such drawings and specifications as deemed necessary by the purchasing office.

(2) Factors requiring emphasis not enumerated in Section III should be listed by the contracting officer under item "G" of that Section and explained in block 23, Remarks.

(3) The "Walsh-Healey Public Contracts Act" block of Section I is for information purposes only. If information is needed on the offeror's eligibility under the Walsh-Healey Act, it must be specifically requested in block "G" of Section III and explained in block 23, Remarks.

(4) A survey may be requested by telegraphic communication containing the data required by Sections I, II, and III of the form. A survey may be requested by telephone but shall be immediately confirmed by transmittal of completed SF 1403.

(5) The SF 1403 lists five major factors and seven other factors to be evaluated. One or more of these factors can be checked depending on the contracting officer's concerns regarding the offeror's responsibility. Following is a brief explanation of the factors:

Section III, Block 19, Major Factors

Factors A—Technical Capability—An assessment of the prospective contractor's key management personnel to determine if they have the basic technical knowledge, experience, and understanding of the requirements necessary to produce the required product or provide the required service.

Factor B—Production Capability—An evaluation of the prospective contractor's ability to plan, control, and integrate manpower, facilities, and other resources necessary for successful contract completion. This includes (1) an assessment of the prospective contractor's possession of, or the ability to acquire, the necessary facilities, material, equipment and labor; (2) a determination that the prospective contractor's system provides for timely placement of orders and for vendor follow-up and control.

Factor C—Quality Assurance Capability—An assessment of the prospective contractor's capability to comply with the quality assurance requirements of the proposed contract. It may involve an evaluation of the prospective contractor's quality assurance system, personnel, facilities and equipment.

Factor D—Financial Capability—A determination that the prospective contractor has adequate financial resources, or access to them, to acquire needed facilities, equipment, materials, etc.

Factor E—Accounting System—An assessment by the Defense Contract Audit Agency (DCAA) of the adequacy of the prospective contractor's accounting system. Normally, an accounting system review will be requested when conditions such as progress payment, or a cost or incentive type contract is contemplated.

Section III, Block 20, Other Factors

Factor A—Government Property Control—An assessment of the prospective contractor's capability to manage and control Government property.

Factor B—Transportation—An assessment of the prospective contractor's capability to comply with the laws and regulations applicable to the movement of Government material, or overweight, oversized, hazardous cargo, etc.

Factor C—Packaging—An assessment of the prospective contractor's ability to meet all contractual packaging requirements including preservation, unit pack, packing, marking and unitizing for shipment.

Factor D—Security Clearance—A determination that the prospective contractor's facility security clearance is adequate and current. (When checked, this factor will be referred to the Defense Investigation Service (DIS) by the surveying activity.)

Factor E—Plant Safety—An assessment of the prospective contractor's ability to comply with safety requirements specified in the solicitation.

Factor F—Environmental/Energy Considerations—An evaluation of the prospective contractor's ability to meet specific environmental/ energy requirements contained in the solicitation.

Factor G—Other—This factor is checked when an assessment of other than Major Factors A-E and Other Factors A-F is desired. When Factor G is checked, the desired information will be explained in the Remarks sections. An example of an item that may be included under this factor is Walsh-Healey eligibility.

(6) Factors checked on the SF 1403 will be limited to those essential to the contracting officer's determination of responsibility.

(7) Block 10 of the SF 1403 will show the date preaward survey results are required by the purchasing office. This date will be determined by the contracting officer after due consideration of the urgency of the acquisition, and the scope and complexity of the preaward survey. In particular, consideration must be given to the more time-consuming aspects of a preaward survey such as secondary survey requirements, accounting system review, financial capability analysis, and purchasing office participation in the survey. Routine preaward surveys, with established DoD contractors, are normally accomplished by the Contract Administration Office within 7 workdays after receipt of the request. Preaward survey requests for particularly complex items, or those involving aspects as mentioned above, will usually require more time and should be allowed for by the contracting officer.

209.106-70 Steps for survey performance.

The three steps in performing a preaward survey are the preliminary analysis, the development and evaluation of information, and the preparation and review of the survey report.

(a) *Preliminary analysis.* The request (SF 1403, Sections I, II, and III) shall be reviewed to establish basic administrative information and the factors to be evaluated. The solicitation shall then be reviewed to ascertain those general and special requirements which have a significant bearing on determining contractor responsibility. Examples are the nature of the product, applicable specifications, delivery schedule, documentation requirements, property control requirements, and financing aspects.

(b) *Development of information.*

(1) *Review of available data.* The information already available in the contract administration office pertaining to the prospective contractor and his past performance shall be reviewed. Prior preaward survey reports shall be examined and considered in support of preaward survey recommendations. If the prospective contractor has current or contemplated Government contracts, the files should be checked for information regarding similarity of product, current status of contracts, quality control experience, and financial status.

(2) *Development of additional data.*

(i) When appropriate, the contract administration office shall supplement the data on hand with any additional information required from other Government sources and from commercial sources, such as banks, business associates, and credit rating and reporting agencies.

(ii) When a prospective contractor proposes to acquire additional resources essential to performance of the proposed contract, the CAO shall as a minimum obtain and evaluate:

(A) An itemized list of the required resources;

(B) A planned method of acquisition; and

(C) A schedule for acquisition of resources. Failure to meet commitments on previous contracts shall be documented in the current preaward survey report and considered in the final recommendation.

(c) *On-site surveys.*

(1) *Interview, evaluation, and review.*

(i) *General.* An on-site survey will consist of an interview with representatives of the prospective contractor and, normally, an evaluation of his resources and procedures.

(ii) *Interview with management.* Management officials of the appropriate level authorized to represent the prospective contractor should be interviewed. The prospective contractor's background shall be reviewed and as much history recorded as necessary to reflect the soundness and reputation of the firm's operation.

(A) The organizational structure of the facility is the basis for management's control and must be reviewed. Assignment of definite tasks and responsibilities should be checked.

(B) Lack of understanding or misinterpretation of the solicitation often results in delinquent contracts and leads to default actions. Therefore, the solicitation shall be discussed with prospective contractors to assure that they understand its requirements, including its technical aspects such as drawings, specifications, prototype, technical data and provisioning technical documentation (including automated data processing requirements when appropriate), testing, packaging, and Government's right to use technical data in accordance with the terms of the solicitation. Any misinterpretations of the requirements of the solicitation which could adversely affect performance, or refusal by the prospective contractor to furnish required data, should be brought to the immediate attention of the official approving the survey by the team coordinator. The official approving the survey shall, in turn, promptly advise the purchasing office.

(iii) *Evaluation of resources and review of procedures.* The resources which the prospective contractor intends to utilize shall be inspected, analyzed, and compared with his overall plans for performing. His procedures relating to performance of the proposed contract shall be reviewed for adequacy.

(iv) *Specific factors to be considered.* In the course of developing information, those factors described in 209.106-70(c)(2) through 209.106-70(c)(4) below and all others needed to provide the report and recommendations in the detail and to the extent required by the purchasing office shall be considered.

(2) *Production.*

(i) *General.* The production portion of the on-site survey consists of an evaluation of the prospective contractor's ability to manufacture the product(s) in accordance with the specifications and delivery schedule of the proposed contract. To achieve the objectives of this portion of the on-site survey, the production plan shall be reviewed, production resources ascertained, and the plan related to such resources.

(ii) *Obtaining the production plan.* The prospective contractor's production plan for meeting the delivery schedule specified in the proposed contract shall be ascertained. The principal milestones within the production plan shall be established, along with target dates for achievement. These target dates must support the delivery schedule of the proposed contract. The controls which will be utilized in order to gear and hold the manufacturing effort to the target dates for the principal milestones shall be analyzed for suitability.

(iii) *Ascertaining production resources.* The information necessary to prepare SF 1405 shall be obtained by discussion with appropriate management personnel of the prospective contractor. This information shall be verified, when necessary, by physical inspection of the manufacturing plant and evaluated in terms of suitability to manufacture the required item(s).

(iv) *Relating production plans to production resources.* When necessary, representatives of the prospective contractor shall be requested to advise how the production resources will be allocated and utilized in order to achieve the target dates for the principal milestones. This shall include both in-house and subcontractor production resources. Pertinent to this is an analysis of projects and contracts which will compete for utilization of those resources within the same time frame as that specified by the prospective contractor's production plan. The information developed as a result of equating the production plan and production resources of the prospective contractor should enable the contract administration office to:

(A) Conclude whether the resources which the prospective contractor is planning to use are suitable for the job;

(B) Determine whether the prospective contractor will be capable of properly controlling, maintaining, protecting and using Government property;

(C) Determine whether the planning and scheduling of effort will result in timely accomplishment of the principal milestones;

(D) Conclude whether achievement of the principal milestones will result in timely delivery.

(3) *Quality assurance (SF 1406).*

(i) The standing of the quality assurance organization in the prospective contractor's overall organization must be evaluated. An inspection or quality control function which reports to some other organizational segment (such as Production) instead of top management may be undesirable. The experience of the company inspection or quality control personnel with the same or similar items shall be evaluated.

(ii) To evaluate the prospective contractor's ability to comply with quality control or inspection requirements, the following areas shall be reviewed:

(A) Methods currently utilized to control product quality as reflected by a documented or verifiable inspection system or quality program plan;

(B) Personnel on hand and available (report both trained and untrained);

(C) Inspection and test equipment on hand and available;

(D) Quality, identification, and storage of materials;

(E) Physical arrangement of plant;

(F) Tool and gauge control; and

(G) Test and inspection records.

(4) *Financial (SF 1407).*

(i) *General.* The normal procedure for determining a prospective contractor's financial capability shall be initial presurvey planning, followed by verification of financial data as required. The extent of the review and analysis of financial matters shall be governed by the nature of the proposed contract. In certain instances, a sound

decision may be possible after a relatively simple review of a company's financial position and production commitments. Under other circumstances, a more comprehensive review and analysis will be required. The approach to financial analysis shall be consistent with the basic policies and regulations outlines in FAR 32.172, 32.173 and 32.174.

(ii) *Procedure.* Aspects to be considered in determining the prospective contractor's financial capability include the following:

(A) The latest balance sheet and profit and loss statement shall be reviewed. The following are indicative of the soundness of the prospective contractor's financial structure:

(*1*) Rates and ratios;

(*2*) Working capital as represented by current assets over current liabilities; and

(*3*) Financial trends such as net worth, sales and profit.

(B) The method of financing the contract shall be evaluated. Where sources of outside financing, other than the Government, are indicated, their availability should be verified.

(C) When financial aid from the Government is to be obtained, the necessity should be verified. Review shall be made concerning the applicability of such financing as progress payments or guaranteed loans.

(d) *Evaluating data and preparing the report.*

(1) *Findings of team members.* When the required information has been gathered, each individual participant shall analyze it and evaluate the prospective contractor's capability to perform with respect to the functional element(s) evaluated. Each participant shall then provide his findings to the official approving the survey. When a negative reply is recorded, or when doubt exists, an explanation must substantiate such action. If a detailed analysis is needed or additional significant information is pertinent, a narrative report shall be supplied.

(2) *Evaluation and recommendation.* Based on all the information received from the team members, the official approving the survey shall thoroughly review and evaluate the findings and recommendations, and forward the report direct to the purchasing office. When advance reports are made by telegraphic communication or telephone, they shall be confirmed by mail without delay. The official approving the survey shall follow up on any requirements for the submission of supplemental reports.

209.106-71 Audit responsibilities for preaward surveys and reviews.

Preaward surveys of potential contractors' competence to perform proposed contracts shall be managed and conducted by the contract administration office. When information is required on the adequacy of the contractor's accounting system or its suitability for administration of the proposed type of contract, such information shall always be obtained by the ACO from the auditor. The contract administration office shall be responsible for advising the contracting officer on matters concerning the contractor's financial competence or credit needs.

Subpart 209.2—Qualifications Requirements

209.202 Policy.

(a)(1) The inclusion of qualification requirements in specifications for products which are to be included on a Qualified Products List (QPL) must be approved by the applicable authority listed below:

In the Army, Headquarters, U.S. Army Materiel Command, (AMCPD-SE);

In the Navy, Contracts and Business Management, OASN (S&L);

In the Air Force, Departmental Standardization Office (HQ USAF/RDXM);

In the Defense Logistics Agency, The Executive Director, Contracting;

In the National Security Agency, The Director of Procurement;

In the Defense Communications Agency, The Director;

In the Defense Nuclear Agency, The Director, Acquisition Management; and

In the Defense Mapping Agency, The Director of Acquisition.

Subpart 209.3—First Article Testing and Approval

209.302 General.

The Government may require that first articles be manufactured using the same facilities and the same production processes, methods and materials, with which the item is to be produced for the contract (see 209.308 below).

209.303 Use.

(b)(1) The term "processes" as used in FAR 9.303(b)(1) includes materials or production facilities.

209.305 Risk.

This authorization may be given to a contractor only after approval at a level higher than the contracting officer (see FAR Subpart 9.308).

209.306 Solicitation requirements.

(i) The Government's estimate shall be documented in the contract file.

209.308 Contract clauses.

Alternate I of the clauses at FAR 52.209-3 or 52.209-4, as appropriate, may be included by the Contracting Officer whenever:

(a) The form, fit, or function of the product would be adversely affected by contractor changes in the production facilities, processes, methods, or materials subsequent to first article approval; and

(b) The Government has relied upon first article testing in the absence of complete design specifications to supplement a performance specification; or

(c) It is essential to have an approved first article to serve as a manufacturing standard.

Subpart 209.4—Debarment, Suspension, and Ineligibility

209.403 Definitions.

"Authorized Representative" means an official who has been designated by and authorized to act on behalf of the Secretary concerned for the purposes of this Subpart (see 209.470) including, but not limited to, acting as a debarring or suspending official.

209.404 Consolidated list of debarred, suspended, and ineligible contractors.

(c)(4) At a minimum, each Department shall maintain records relating to each contractor it has debarred or suspended that contain the following information:

(i) The contractor's name and address;

(ii) The cause of the action (see FAR 9.406-2 and FAR 9.407-2);

(iii) The effective date of the action and, in the case of debarments, the termination date for each listing; and

(iv) The name and telephone number of the Department's point of contact for the action.

209.405 Effect of listing.

(a)(1) Prior to initiating a pre-award survey or any of the contract actions set forth in FAR 9.405, the consolidated list shall be reviewed. Bids received from any listed contractor in response to an Invitation for Bids shall be opened, entered on the Abstract of Bids, and rejected unless the Secretary concerned or his authorized representative determines in writing that there is a compelling reason to make an exception. Proposals, quotations or offers received from any listed contractor shall not be evaluated for award or included in the competitive range, and discussions shall not be conducted with such offeror, unless the Secretary concerned or his authorized representative determines in writing that there is a compelling reason to make an exception. Notwithstanding the above, if the debarment is based on a felony criminal conviction, exceptions from this section based on compelling reasons shall not be effective without the prior written concurrence of the Secretary concerned or in the case of the Defense Agencies the Under Secretary of Defense for Research and Engineering.

(2) When a Department makes an exception, a notice describing the exception shall be forwarded to the GSA Office of Acquisition Policy. Some examples of circumstances that may constitute a compelling reason include: (i) The property or services to be acquired are available only from the listed contractor; (ii) the urgency of the requirement dictates that the Department deal with the contractor; (iii) the contractor and the Department have entered an agreement covering the same events which resulted in the listing and the agreement includes a decision by the Department not to debar or suspend the contractor; and (iv) for such other reasons related to the national defense which required continued business dealings with the listed contractor.

(c) Debarred or suspended contractors are also excluded from conducting business with the Department of Defense as agents or representatives of other contractors.

209.405-2 Restrictions on subcontracting.

If a debarment is based on a felony criminal conviction, Government consent or approval of a subcontract with a debarred contractor shall not be given unless the Secretary concerned or, in the case of the Defense Agencies the Assistant Secretary of Defense (Acquisition and Logistics), concurs in writing with such consent or approval.

209.406 Debarment.

209.406-1 General.

(d) If the cause for debarment as listed in FAR 9.406-2 is based on a felony criminal conviction, the debarment period should be commensurate with the seriousness of the crime. The period of the debarment should afford adequate time for the contractor to eliminate the circumstances within the contractor's organization that encouraged the belief that the acts or omissions on which the organization's conviction was based would escape accountability or be condoned. Mitigating factors may be considered in making the debarment decision. However, for any decision not to debar or to debar for one year or less, the mitigating factors must demonstrate clearly to the debarring official's complete satisfaction, that the contractor has eliminated such circumstances and has implemented effective remedial measures.

(S-70) If no suspension is in effect under FAR 9.407 at the time debarment is proposed by a Department, bids or proposals shall not be solicited from, contracts shall not be awarded to, existing contracts shall not be renewed or otherwise extended with, and subcontracts shall not be consented to or approved for the contractor by any DoD component pending a debarment decision unless the Secretary concerned or authorized representative states in writing the compelling reason to do so.

209.406-3 Procedures.

(c)(7) For purposes of this FAR subsection, "agency" includes all DoD components. The Secretary concerned or his authorized representative may, however, make an exception in accordance with 209.406-1(S-70).

209.406-4 Period of debarment.

(a) If the debarment is based on a felony criminal conviction, the period shall be commensurate with the seriousness of the crime and will generally be for more than one year but not more than 3 years. A decision by the debarring official not to debar or to debar for one year or less than one year must be approved in writing by the Secretary concerned or, in the case of the Defense Agencies, by the Assistant Secretary of Defense (Acquisition and Logistics). If the suspension precedes debarment, the suspension period shall be considered in determining the debarment period.

(c) If the debarment is based on a felony criminal conviction, the period or extent of debarment may be only reduced:

(1) If the conviction upon which the debarment was based is reversed; or

(2) If the contractor demonstrates to the debarring official's complete satisfaction that the steps taken to eliminate the circumstances within the contractor's organization that encouraged the belief that the acts or omissions on which the organization's conviction was based would escape accountability or be condoned have been effective.

209.470 Authorized representatives.

For the purpose of FAR Subpart 9.4 the authorized representatives of the Secretaries are:

(a) In the Army, the Assistant Judge Advocate General for Military Law;

(b) In the Navy, the Assistant Secretary of the Navy (Shipbuilding and Logistics);

(c) In the Air Force, the Deputy Chief of Staff, Research, Development and Acquisition;

(d) In the Defense Logistics Agency, the Special Assistant for Contracting Integrity;

(e) In the National Security Agency, The Director;

(f) In the Defense Communications Agency, the General Counsel;

(g) In the Defense Nuclear Agency, the Director; and

(h) In the Defense Mapping Agency, the General Counsel.

209.471 Interchange of information.

Debarment or suspension of a contractor by one Department can have an adverse impact on the missions of other Departments with which the contractor does business. Accordingly, if it appears that there is the potential for such an adverse impact, the cognizant debarring or suspending official should solicit the comments of those Departments that he believes could be affected before taking action. A Department that believes it could be affected by the proposed action should comment directly to the cognizant debarring or suspending official. If several Departments independently are contemplating a debarment or suspension action against the same contractor, consideration should be given to designating one Department as the lead agency for making the decision.

209.472 Reporting.

209.472-1 Situations where reports are required.

A report incorporating the information required by 209.472-2 shall be prepared by the contracting officer when:

(a) A contractor has committed, or is suspected of having committed, any of the acts described in FAR 9.406-2 and 9.407-2;

(b) A report is required by 203.000;

(c) A report is required by 203.409 (contingent fees);

(d) A report is required by FAR 49.106 (termination settlements);

(e) Buy American Act violations are suspected (see FAR 25.204); or

(f) A contractor is suspected of attempting to evade the prohibitions or debarments or suspensions imposed under this Regulation by changes of address, multiple addresses, formation of new companies, or by other devices.

209.472-2 Contents of reports.

Each report prepared pursuant to this subsection shall contain the name and telephone number of the individual assigned to the case as the point of contact for the activity making the report, and shall include substantially the following information, where available:

(a) Name and address of the contractor;

(b) Names of the principal officers, partners, owners, or managers;

(c) All known affiliates, subsidiaries, or parent firms, and the nature of the affiliation;

(d) Description of the contract or contracts concerned, including the contract number, and all office identifying numbers or symbols, the amount of each contract, the degree of completion, the amount paid the contractor and the amount still due, and the percentage of work to be completed;

(e) The status of vouchers;

(f) Whether the contract has been assigned pursuant to the Assignment of Claims Act, and if so assigned, the name and address of the assignee and a copy of the assignment;

(g) Whether any other contracts are outstanding with the contractor or any of his affiliates, and if so, the amount of such contracts, whether they are assigned pursuant to the Assignment of Claims Act, and the amounts paid or due on such contracts;

(h) A complete summary of all pertinent evidence;

(i) A recommendation as to the continuation of all current contracts with a full explanation of the reason for such recommendation, or if no recommendation is made, the reason therefor;

(j) An estimate of damages, if any, sustained by the Government as a result of the action of the contractor, including an explanation of the method used in making the estimate;

(k) The comments and recommendations of the contracting officer and of each successive echelon as to (1) whether the contractor should be suspended or debarred, (2) whether any limitations should be applied to such action, and (3) the period of any debarment; and,

(l) As an enclosure, a copy of the contract (or contracts) or pertinent excerpts therefrom, appropriate exhibits, testimony or statements of witnesses, copies of assignments, and other relevant documentation, such as affidavits, copies of investigative reports and certified copies of indictments and judgments.

209.472-3 Addresses and copies of reports.

Reports shall be submitted in three complete copies, including enclosures, to the authorized representatives of the Secretaries concerned, unless otherwise provided by Departmental procedures. Additional copies without enclosures may be required by Departmental procedures for other addresses.

209.473 Acquisition outside United States.

209.473-1 General.

The foregoing provisions of this subpart shall be applied by overseas commanders to acquisitions outside the United States and its possessions, whenever possible, and as modified by the following provisions, with due consideration to laws or customs of the foreign countries concerned.

209.473-2 Responsibilities and area coverage.

The Commander in Chief, United States European Command (CINCEUR), the Commander in Chief, Pacific (CINCPAC) and the Commander in Chief, Southern Command (CINCSOUTH), or the Commanders of a component command which each of these unified commanders may designate, shall establish and maintain a consolidated list of offshore suppliers to whom contracts will not be awarded and from whom bids or proposals will not be solicited. The CINCEUR consolidated list will include names in the North Atlantic and Mediterranean areas, including all of Europe, North Africa, and the Middle East. The CINCPAC consolidated list will include names in the Far East and Pacific Ocean areas, excluding the United States and its possessions. The CINCSOUTH consolidated list will include names in Central and South America, excluding possessions. All other overseas commanders shall utilize and contribute to such lists as appropriate to their geographical location or areas in which they award contracts. Lists shall not be established or maintained except as provided above.

209.473-3 Information contained on overseas lists.

The list shall show as a minimum the following Information:

(a) Names and addresses of those contractors to whom contracts shall not be awarded and from whom bids or proposals shall not be solicited (Names will be set forth alphabetically with appropriate cross reference where more than one name is involved in a single action or where a parent contractor in one country is known to control subsidiaries, branches, or agencies in the same or other countries.);

(b) Basis or authority for each action;

(c) Extent of restrictions imposed;

(d) Termination date for each debarred listing; and

(e) Originating activity, component, or agency.

209.473-4 Maintenance and distribution of lists.

The lists shall be kept current by issuance of notices of additions or deletions and by periodic reprinting. Copies of the lists shall be distributed to contracting officers as the unified commanders and their component commanders direct. CINCEUR, CINCPAC, and CINCSOUTH shall exchange lists directly. Copies shall also be furnished the Deputy Assistant Secretary of Defense (Procurement), OASD(A&L), the Assistant Secretary of Defense (International Security Affairs), and the authorized representative of the Secretaries.

209.473-5 Basis of addition of contractors to lists.

In addition to the names of offshore contractors which may be included on the lists as falling into the categories outlined in FAR 9.405, the names of contractors abroad shall be included on the list in the following additional categories:

(a) Those who are "designated nationals" under the Foreign Assets Control Regulations;

(b) Those found by the Assistant Secretary of Defense (International Security Affairs) or authorized representative to have engaged in improper East-West trade activity;

(c) Those found by the Assistant Secretary of Defense (International Security Affairs) or authorized representative to be ineligible because they do not meet the political or security criteria;

(d) Those found by the United States Diplomatic Mission or a Country Team (consisting of members of the United States Diplomatic Mission in the country or countries in which the contractors are located) to be ineligible because they do not meet the labor-political criteria; and,

(e) Those who for other causes of a serious and compelling nature are so designated by the unified commander.

209.473-6 Treatment to be accorded contractors in debarred or ineligible status.

The provisions of FAR 9.405 shall be complied with, if applicable. In addition, contracts shall not be awarded to, nor shall bids or proposals be solicited from or furnished to contractors abroad which come within the categories in 209.473-5. With respect to 209.473-5(a), an exception may be made only by the Secretary of the Treasury. With respect to 209.473-5 (b), (c), and (d), an exception may be made by the Assistant Secretary of Defense (International Security Affairs) or his authorized representative.

209.473-7 Causes and conditions for which unified commanders may place names on the consolidated list.

CINCEUR, CINCPAC, and CINCSOUTH, or their designated component commanders are authorized to place on the list names of contractors doing business within the areas for which they are responsible, for any of the causes and under the conditions set forth in 209.473-5 and 209.473-6. Overseas commanders or unified commanders overseas other than CINCEUR, CINCPAC, and CINCSOUTH are similarly authorized to place on the list the names of contractors in their command areas and shall promptly notify CINCEUR, CINCPAC, or CINCSOUTH as appropriate, of such action, furnishing the information required by 209.473-3. CINCEUR, CINCPAC, or CINCSOUTH shall add the names to his consolidated list. The listing shall operate to deny contracts and subcontracts (when Government approval is required) to such contractors throughout the Department of Defense. Unified commanders shall be notified of the action based on causes and under conditions set forth in 209.473-5 and 209.473-6 through the "Economic Defense List", transmitted by the Department of Commerce through State Department channels, which contains the names of contractors affected or by direct communication from the Office of the Assistant Secretary of Defense (International Security Affairs).

209.473-8 Liaison with United States diplomatic missions.

The Chief of the United States Diplomatic Mission, or such attache or other officer as the Chief of the United States Diplomatic Mission directs, in the country where the contractor concerned is located, shall be notified of actions contemplated under the foregoing paragraphs which may have important political significance. In cases of contemplated action against a branch or subsidiary in one or more countries, the Chief of the United States Diplomatic Mission in each country, including that in which the parent or principal is located, will be notified.

209.474 Use of lists.

(a) Due to the length of the lists, the numerous revisions, and the distances involved, as well as the infrequent contracting by offices with suppliers outside their respective areas, the United States, CINCEUR, CINCPAC, and CINCSOUTH consolidated lists shall not be distributed to contracting officers outside the area covered by the respective lists. However, no contracts shall be awarded by contracting officers to suppliers without ascertaining that the names of the contractors involved do not appear on the consolidated list for the geographical area in which the contractor is located. All lists shall be held for reference in each of the Departments, and in offices designated by CINCEUR, CINCPAC, and CINCSOUTH, and shall be utilized in accordance with procedures established by them.

(b) When a contracting officer becomes aware that a prospective contractor proposes to furnish products of a concern that has been placed on an overseas list in accordance with 209.473-5 (a), (c), or (e), the matter shall be referred to the authorized representatives of the Secretaries concerned.

PART 210—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

210.001 Definitions.

"Bill of Materials" means a report by a supplier which specifies the quantities of various materials required to produce a designated quantity of supplies of a particular kind.

210.004 Selecting specifications or descriptions for use.

(b)(3)(i) *General.*

(A) Purchase descriptions which contain references to one or more brand name products followed by the words "or equal" may be used only when authorized by FAR 10.004(b) and 210.006(a) and in accordance with 210.004(b)(3) (ii) and (iii). The term "brand name product" means a commercial product described by brand name and make or model number or other appropriate nomenclature by which such product is offered for sale to the public by the particular manufacturer, producer, or distributor. When feasible, all known acceptable brand name products should be referenced. Where a "brand name or equal" purchase description is used, prospective contractors must be given the opportunity to offer products other than those specifically referenced by brand name if such other products will meet the needs of the Government in essentially the same manner as those referenced.

(B) "Brand name or equal" purchase descriptions should set forth those salient physical, functional, or other characteristics of the referenced products which are essential to the needs of the Government. For example, when interchangeability of parts is required, such requirement should be specified. Purchase descriptions shall contain the following information to the extent available, and include such other information as is necessary to describe the item required:

(*1*) Complete common generic identification of the item required;

(*2*) Applicable model, make, or catalog number for each brand name product referenced, and identity of the commercial catalog in which it appears; and

(*3*) Name of manufacturer, producer, or distributor of each brand name product referenced (and address if not well known).

(C) When necessary to describe adequately the item required, an applicable commercial catalog description, or pertinent extracts therefrom, may be used if such description is identified in the solicitation as being that of the particular named manufacturer, producer, or distributor. The contracting officer will insure that a copy of any catalogs referenced (except parts catalogs) is available on request for review by bidders at the purchasing office.

(ii) *Invitations for bids.*

(A) Except as provided in (C) below, when a "brand name or equal" purchase description is included in an invitation for bids, the following shall be inserted after each item so described in the invitation, for completion by the bidder:

Bidding on:
Manufacturer's Name _____
Brand _____
No. _____

(B) In addition, the clause at 252.210-7000, Brand Name or Equal, shall be included.

(C) When component parts of an end item are described in the invitation for bids by a "brand name or equal" purchase description and the contracting officer determines that application of the clause in (B) above to such component parts would be impracticable, the requirements of (A) above shall not apply with respect to such component parts. In such cases, if the clause is included in the Invitation for Bids for other reasons, a statement substantially as follows also shall be included:

The clause entitled "Brand Name or Equal" does not apply to the following component

parts: (List the component parts as to which the clause does not apply.)

In the alternative, if the contracting officer determines that the clause in (B) above should apply to only certain such component parts, the requirements of (A) above shall apply to such component parts and a statement substantially as follows also shall be included:

The clause entitled "Brand Name or Equal" applies to the following component parts: (List the component parts to which the clause applies.)

(D) When an invitation for bids contains "brand name or equal" purchase descriptions, bidders who offer brand name products referenced in such descriptions shall not be required to furnish bid samples of the referenced brand name products; however, invitations for bids may require the submission of bid samples in the case of bidders offering "or equal" products.

(iii) *Bid evaluation and award.*

(A) Bids offering products which differ from brand name products referenced in a "brand name or equal" purchase description shall be considered for award when the contracting officer determines in accordance with the terms of the clause at 252.210–7000 that the offered products are equal in all material respects to the products referenced. Bids shall not be rejected because of minor differences in design, construction, or features which do not affect the suitability of the products for their intended use.

(B) Award documents shall identify, or incorporate by reference an identification of, the specific products which the contractor is to furnish. Such identification shall include any brand name and make or model number, descriptive material, and any modifications of brand name products specified in the bid. Included in this requirement are those instances when the description of the end item contains "brand name or equal" purchase descriptions of component parts or of accessories related to the end item, and the clause at 252.210–7000 was applicable to such component parts or accessories (see 210.004(b)(3)(ii)(C)).

(iv) *Procedure for negotiated acquisitions.*

(A) The policies and procedures prescribed in 210.004(b)(3) (i) and (iii) for acquisitions by sealed bidding shall be generally applicable to negotiated acquisitions.

(B) The clause at 252.210–7000 may be adapted for use in negotiated acquisitions. If use of the clause is not practicable (as may be the case in an unusual and compelling urgency), suppliers shall be suitably informed that proposals offering products different from the products referenced by brand name will be considered if the contracting officer determines that such offered products are equal in all significant and material respects to the products referenced.

210.004-70 Requiring bills of materials.

A bill of materials with respect to all or part of the supplies to be furnished pursuant to a contract, shall be required only if the contracting officer shall determine that such bill is necessary to develop materials or components requirements for production and maintenance programs, for industrial mobilization purposes, or for other specified purposes. In such event, the contract shall specify, with respect to such bill, the following:

(a) The supplies or parts thereof to be covered by the bill of materials;

(b) The type of bill or bills (detailed, modified, expanded summary, or abbreviated summary) to be furnished, with applicable instructions;

(c) The compensation to be paid the contractor for furnishing such bill and any revisions thereto, or a statement that the price of the item to which the bill relates includes compensation for the furnishing of such bill;

(d) The number and kind of copies of such bill to be furnished; and

(e) Delivery dates.

The contract shall also include the clause required by 210.011(72). When a bill of materials is procured by contract separate from the supplies to which such bill of materials relates, such contract shall include such of the terms mentioned above as may be appropriate and shall specify that the bill of materials shall be furnished on DD Forms 346 and 347, if applicable, or authorized reproductions thereof. The contractor shall not be required to obtain data for the bill of materials in greater detail from a subcontractor than the contractor is to furnish under the terms of the above clause.

210.008 Identification and availability of specifications.

(g) (1) A Department of Defense Single Stock Point (DODSSP) has been established at the Naval Publications and Forms Center in Philadelphia for unclassified Federal, Military and other specifications and standards (including commercial) listed in the Department of Defense Index of Specifications and Standards (DODISS) and data item descriptions listed in the Department of Defense Acquisition Management Systems and Data Requirements Control List (AMSDL) DODD 5000.19–L, Volume II.

(2) Contracting activities may obtain copies of the DODISS and the AMSDL, as well as all unclassified specifications and standards (including commercial) listed in the DODISS, and data item descriptions listed in the AMSDL by sending DD Form 1425 to the DODSSP.

210.011 Solicitation provisions and contract clauses.

(S–70) The contracting officer shall insert the provision at 252.210–7001 in addition to the provision at FAR 52.210–2, Availability of Specifications Listed in the DoD Index of Specifications and Standards (DODISS), in all solicitations containing data item descriptions.

(S–71) Specifications and standards not listed in the DODISS, and plans, drawings, and other pertinent documents (including new or revised Federal or Military specifications and standards not yet listed in DODISS) and data item descriptions not listed in DoD Directive 5000.19–L, Volume II, normally shall be furnished with the solicitation. When this is not feasible because of the bulk of the documents, the limited number of copies available, or for some other good reason, the contracting officer shall insert a provision substantially similar to the provision at 252.210–7002, Availability of Specifications and Standards Not Listed in DODISS, Data Item Descriptions Not Listed in DoD Directive 5000.19–L, Volume II, and Plans, Drawings, and Other Pertinent Documents or the provision at 252.210–7003, Availability for Examination of Specifications, Standards, Plans, Drawings, Data Item Descriptions, and Other Pertinent Documents, as appropriate.

(S–72) The contracting officer shall insert the clause at 252.210–7004 as required by 210.004–70.

PART 211—ACQUISITION AND DISTRIBUTION OF COMMERCIAL PRODUCTS

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

211.002 Policy.

Contracting activities may use purchase descriptions which allow offerors to furnish commercial products and allow the Government to use commercial distribution systems whenever these products or distribution systems satisfy the Government's needs, but only if not prohibited by 211.005(b) below.

211.005 Acceptability.

(b) The 1983 Supplemental Appropriations Act (Pub. L. 98–63) contained a provision limiting the acquisition of commercial products by Department of Defense contracts; this same provision was enacted as section 779 of the 1984 DoD Appropriations Act (Pub. L. 98–212). When using funds appropriated by these acts, or any future appropriation act containing the same provision, no solicitation shall impose a requirement that in order to be eligible to submit a bid or an offer on a contract to be let for the supply of commercial or commercial-type products, a small business concern must demonstrate that its product is accepted in the commercial market (except to the extent that may be required to evidence compliance with the Walsh-Healey Public Contracts Act) or satisfy any other prequalification to submitting a bid or an offer for the supply of any such product. Under this prohibition, solicitations may not exclude small business concerns from being considered for award, whether or not former suppliers under detailed specifications, solely because the product of the small business does not meet the definition of a "commercial product" or "commercial-type product" in FAR 11.001.

PART 212—CONTRACT DELIVERY OR PERFORMANCE

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 212.1—Delivery or Performance Schedules

212.102 Factors to consider in establishing schedules.

(b)(S–70) *Construction.* When economies to the Government would result by excluding certain specified periods of time from contractor performance in computing the completion date, the solicitation shall contain the clause in 252.212–7000, Exclusion of Periods in Computing Completion Schedules.

212.103 Supplies or services.

(S–70) Solicitations shall generally indicate either a desired term of performance or a completion date. In cases where development of a tangible item by a given date is urgent, solicitation shall indicate such urgency. Generally, solicitations to conduct research exploratory development work will specify a level of effort for a term of performance. However, solicitations calling for a specific item in the category of such exploratory or advanced development will specify a completion date. A contractor may propose an alternate term of performance or completion date without disqualification of his proposal.

212.104 Contract clauses.

(a)(2) The clauses at FAR 52.212–1 and FAR 52.212–2 can also be used in contracts for research, development facilities, time and material, and labor hours.

(a)(3) The clauses at FAR 52.212–1 and FAR 52.212–2 can also be used in contracts for research, development facilities, time and material, and labor hours.

Subpart 212.2—Liquidated Damages

212.204 Contract clauses.

(b) The contracting officer shall insert the clause at FAR 252.212–5 in all construction contracts in excess of $25,000 except cost-plus-fixed-fee contracts, or those where the contractor cannot control the pace of the work. Use of the liquidated damages clause is optional for contracts of $25,000 or less.

Subpart 212.3—Priorities and Allocations

212.302 General.

(S–70) *DoD Priorities and Allocations Manual.* Department of Defense implementation of all rules and regulations, published by the Office of Industrial Resource Administration (OIRA) of the Department of Commerce and for which the Department of Defense is delegated administrative responsibility is published in the Priorities and Allocations Manual promulgated by Department of Defense Instruction 4400.1. Authorized deviations to the priorities and allocations rules and regulations are published in the Manual.

Subpart 212.4—Variation In Quantity

212.401 Supply contracts.

(a) The permissible variation in the acquisition of small quantities of subsistence may be stated in the Schedule as follows:

(1) Standard pack items purchased on a package, carton, can or other than pound basis: maximum variation for 250 units or less—nearest full shipping container.

(2) Nonstandard pack items other than carcass meats not purchased on a package, carton, or can basis: maximum variation for 250 pounds or less—nearest piece or shipping container.

(3) Carcass meats: maximum variation for 500 pounds or less—nearest piece, quarter, side or carcass.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 213—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 213.1—General

213.104 Procedures.

(a) Installation or activity transportation facilities may be used for delivery from local suppliers to the contracting installation only after consideration of the following methods:

(1) Supplier delivery;

(2) Common carrier;

(3) Parcel post;

(4) Other mail classes.

(b) In other acquisitions using small purchase procedures, solicitation of foreign firms located in qualifying countries (see 225.001) is not required unless determined to be in the best interests of the Government.

213.106 Competition and price reasonableness.

(b) *Purchases over $1,000.* Display in a public place of written requests for quotations which provide at least 10 calendar days for submission of quotes and which have an estimated value in excess of $5,000 is encouraged. Display of such requests below that value is permitted.

(c) *Data to support small purchases over $1,000.* If a separate form is used for documentation of price reasonableness, DD Form 1784, Small Purchase Pricing Memorandum, shall be used.

Subpart 213.2—Blanket Purchase Agreements

213.203 Establishment of blanket purchase agreements.

213.203–2 Clauses.

(a) *Form.* (1) Except as provided in paragraph (a)(2) below, blanket purchase agreements shall be prepared and issued on DD Form 1155 (Order for Supplies or Services/Request for Quotations). Either the "General Provisions," DD Form 1155r, or the "Reverse of Order for Supplies or Services/Request for Quotations-Foreign," DD Form 1155r–1, as applicable, shall be used. Other applicable provisions of the blanket purchase agreement shall be set forth on the Standard Form 36 (Continuation Sheet) or on a blank sheet of paper. Clauses authorized in 213.505–2(S–73)(1)

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which are mandatory for use in purchases over $10,000 shall be included in blanket purchase agreements that permit the placement of individual calls valued at more than $10,000. Additionally, the following provisions may be applicable:

(i) The Contract Work Hours and Safety Standards Act—Overtime Compensation clause at FAR 52.222–4 shall be added unless it is reasonably anticipated that the aggregate of the total dollar amounts of orders to be placed thereunder will be $2,500 or less;

(ii) When the agreement is for the intended purchase of services covered by the Service Contract Act of 1965, as amended, the clause at FAR 52.222–41 shall be substituted for Clause 15 of the General Provisions and the procedures in FAR 22.1005 complied with, unless it is reasonably anticipated that the aggregate of the total dollar amounts of orders to be placed thereunder will be $2,500 or less;

(iii) When the agreement is for the intended purchase of supplies, the Walsh-Healey Public Contracts Act clause at FAR 52.222–20 shall be added, unless the agreement limits the aggregate total dollar amounts of orders to be placed thereunder to $10,000;

(iv) When the agreement is for the intended purchase of supplies, the applicable Equal Opportunity Clause at FAR 52.222–26 shall be added; and

(v) The Identification of Sources of Supply clause at 252.217–7270 (see 217.7204).

(2) Blanket purchase agreements issued by the Defense Personnel Support Center may be prepared on its form "Order for Subsistence."

(b) *Numbering.* Enter the Procurement Instrument Identification (PII) number as prescribed in Subpart 204.70.

213.204 Purchase under blanket purchase agreements.

(b) A blanket purchase agreement may not be used when a call exceeds $10,000, except that BPA calls up to $25,000 may be placed by Inventory Control Points. BPA calls for subsistence are unlimited as to dollar value, however such actions over $25,000 must satisfy the requirements of Part 206. BPA's may also be established with Federal Supply Schedule contractors and ADTS Schedule contractors consistent with the terms of the applicable contract schedule (see FAR 13.203–1(f)).

Subpart 213.3—Fast Payment Procedure

213.302 Conditions for use.

(a) Individual orders do not exceed $25,000, except that for purchases of brand name commissary resale subsistence and commercial type medical supplies for direct shipment overseas, the procedure may be used without dollar limitation.

Subpart 213.4—Imprest Fund

213.402 General.

(a) *Authority.* Commanders of installations and of activities with contracting authority are authorized to approve the establishment of imprest funds. The number of imprest funds at an installation shall be kept to a minimum, and one imprest fund should be sufficient in most instances. Exceptions to this general rule may be justified for isolated activities when the location of the established fund is not readily accessible. Additional guidance on imprest funds is contained in DoD Instruction 5100.71, Delegation of Authority and Regulations Relating to Cash Held at Personal Risk Including Imprest Funds.

(b) *Imprest fund cashiers.*

(1) Imprest fund cashiers must be appointed by the head of an installation or activity to make authorized cash payments for materials and nonpersonal services, maintain custody of funds, and file periodic vouchers to account for and replenish the imprest fund. An imprest fund cashier should be established at a convenient location on the installation or activity for the purpose of making payments to vendors or carriers, e.g., in "Central Receiving." Disbursing officers and individuals responsible for originating, approving and processing requirements are not eligible for appointment as imprest fund cashiers. Exceptions to this rule may be granted by the major headquarters exercising control over the installation or activity. In no event shall an imprest fund cashier have access to or control of more than one imprest fund.

(2) Each appointment and termination of appointment shall be approved by the head of the installation or activity. After approval, administrative orders signed by the appropriate authority shall be issued. Appointment orders shall contain the following:

(i) Name of individual and duty station;

(ii) Identification of disbursing station for which the cashier will act, including the accounting number assigned thereto;

(iii) Specific duties to be performed;

(iv) Effective date; and

(v) Amount and location of fund.

An alternate cashier may be appointed (see (3) below) on the same order as the principal. Two copies of the orders shall be furnished to cashiers, and one copy each to the disbursing office and the installation or activity contracting office.

(3) An alternate imprest fund cashier may be appointed to provide service during the absence of the principal cashier. Appointment requirements for principal cashiers shall apply to alternate cashiers. In planned absences of the principal cashier, cash may be advanced by the principal to the alternate in any amount up to the limit of the fund. The principal shall obtain a signed cash receipt from the alternate. Upon resumption of duties, the principal cashier shall return the cash receipt to the alternate after obtaining paid receipts, subvouchers and residual cash. In the unforeseen absence of the principal cashier, funds may be advanced to the alternate in the normal manner by the disbursing officer. These funds shall be in addition to the amount currently advanced to the principal cashier under the established fund, but shall not exceed the amount of the fund. Upon return of the principal cashier, the alternate shall return paid receipts, subvouchers, and residual cash, to the disbursing officer.

213.404 Conditions for use.

(a) Imprest funds may also be used for small purchases when:

(1) The supplies or services are available for delivery within 60 days, whether at the supplier's place of business or at destination.

(2) The purchase does not require detailed technical specifications or technical inspection.

(b) Imprest funds may also be used for payment of:

(1) Charges for local delivery, parcel post (including c.o.d. postal charges) and line haul or inter-city transportation charges of $75.00 or less for supplies ordered for payment from imprest funds when the vendor is requested to arrange for delivery.

(2) C.O.D. charges for supplies ordered for payment from imprest funds.

(3) Civilian volunteers for participation in approved medical research projects.

(c) The conditions for use specified in (a) and (b) above do not preclude the use of imprest funds for other expenditures not related to small purchases (e.g., travel advances, travel expenses, transportation charges, and purchases of postage stamps and transportation tokens or passes), when such expenditures are authorized by other regulations governing the use of imprest funds.

(d) Imprest funds shall not be used for:

(1) Payments of salaries and wages;

(2) Advances, other than those authorized in 213.402;

(3) Cashing of checks or other negotiable instruments.

213.405 Proccdures.

(a) *Receipt of material.*

(1) All material purchased through the imprest fund shall be delivered to a designated receiving activity. The receiver shall examine the material to ascertain that the quantities and items described on the purchase request document and the supplier's sales document are present and in satisfactory condition. If the material is acceptable, the receiver shall stamp the supplier's sales document "Received and Accepted," date and sign the document, and pass it to the imprest fund cashier for payment. A supplier's sales document, a receipted Standard Form 1165 (Receipt for Cash—Subvoucher), DD Form 1155 (Order for Supplies or Services/Request for Quotations), or DD Form 1348–1 (DoD Single Line Item Release/Receipt Document) may be used to record the receipt of purchases made from the imprest fund.

(2) When it is not practicable to obtain delivery of material at destination on a c.o.d. basis, advance arrangement may be made for the material to be picked up. The imprest fund cashier may then advance cash to an authorized individual to pick up and pay for the material. Necessary certification of receipt and acceptance of material shall be obtained on one of the documents as indicated in (1) above. Receipt for cash payment (see (e) below) shall be made on the same document, which will serve as the imprest fund receipt.

(3) When prior arrangement for pick up of material is not practicable, the imprest fund cashier may advance cash to an authorized individual to make a proposed purchase.

(b) *Advance of funds.* Individuals receiving a cash advance from the imprest fund cashier shall be required to sign the "Interim Receipt for Cash" portion of Standard Form 1165, or an equivalent receipt form. After purchase has been made, the individual will return any unused cash to the imprest fund cashier with the necessary certifications of receipt, acceptance, and cash payment, at which time the imprest fund cashier shall "void" the interim receipt for cash. Cash so advanced should be accounted for daily, but under unusual circumstances, cash may be advanced for longer periods.

(c) *Certificotion of cash payment.* The original receipt document (or a copy tendered as the original) presented to the imprest fund cashier for payment shall be stamped with a certification containing the following information:

(1) Statement that cash payment was received in full.

(2) Amount paid.

(3) Date of payment.

(4) Signature and title of supplier or supplier's agent receiving the cash payment.

Alterations or corrections to documents tendered for payment shall be initialed by the person making the change. Changes in the amount paid shall be initialed by the individual receiving payment.

(d) *Responsibilities of imprest fund cashier.*

(1) Pending receipt of material, the imprest fund cashier shall keep a file of purchase request documents covering imprest fund purchases. Prior to payment, or acceptance of the document tendered for settlement of an advance, the cashier shall verify the necessary certification of receipt and the supplier's billed price or the price paid. If the supplier's receipt for cash payment is not obtained for purchases of $15 or less, the imprest fund cashier shall complete the cash receipt document and have the person receiving the fund sign this document. Receipt for U.S. parcel post c.o.d. charges should be obtained on Standard Form 1165. When receipt cannot be obtained for c.o.d. purchases, imprest fund cashiers located in foreign countries are authorized to certify on the receipt document, "Delivered by (name of post office or carrier) no receipt given." The c.o.d. label shall be removed from the parcel and affixed to the receipt document in support of the reimbursement voucher. Imprest fund cashiers at any location may accept a signed c.o.d. receipt to support the subvoucher if the carrier refuses to sign a Government form.

(2) After completion of the settlement transaction, each subvoucher shall be numbered consecutively and this number placed on the original of the paid receipt documents. These subvouchers will support the cashier's claim for reimbursement of the imprest fund. The imprest fund cashier will not request duplicate receipt documents, nor retain such documents if provided.

(3) When total charges stated on the sales document are paid, without deduction of discounts offered and earned, or without correction of minor billing errors, action will be taken to obtain a refund from the supplier. Collection action may be waived for refunds of one dollar or less.

(e) *Payments.*

(1) *C.O.D.* Upon presentation of an authorized document with the necessary certification of receipt for supplies or services, the imprest fund cashier or other authorized individual shall pay the supplier or supplier's agent and obtain the certification of cash payment as set forth in 213.405(d)(1).

(2) *Receipt from common corrier or post office.* When C.O.D. shipments are received or picked up from a common carrier or post office, the certification of cash payment may be accomplished on a list of the packages provided by the post office or common carrier. Such receipt will be supported by copies of the applicable sales documents, if available.

(3) *Periodic payments.* When a blanket purchase agreement is not suitable and it is administratively convenient and agreeable to the supplier, periodic payments from the imprest fund may be made for supplies delivered on a repetitive basis, provided that the accumulated amount of the deliveries for the specified period does not exceed the dollar limitation imposed on the imprest fund method by FAR 13.404.

(4) *Failure to ship C.O.D.* When material is ordered C.O.D. but is shipped by the supplier subject to payment by check, Standard Form 1034 (Public Voucher for Purchases and Services Other than Personal), may be used to make payment. Under these circumstances, the receiver, shall prepare the necessary certification of receipt and forward the receipted document through the imprest fund cashier, for attachment of the supporting documents which authorized the shipment and submission to the disbursing officer for payment.

(f) *Reimbursement of imprest funds.*

(1) The imprest fund shall be reimbursed by use of Standard Form 1129 (Reimbursement Voucher) supported by cashier's subvouchers. The imprest fund cashier shall prepare and submit Standard Form 1129 in triplicate to the disbursing officer as frequently as necessary, but not less often than monthly. At the close of the fiscal year, a reimbursement voucher covering all remaining subvouchers through 30 September shall be submitted before the closing of the allotment accounts for the month. When required, subvouchers shall be summarized by account to complete the accounting classification block of Standard Form 1129 and submitted to the disbursing officer for

reimbursement of the imprest fund. One copy of Standard Form 1129 shall be retained by the imprest fund cashier pending the return of the "paid" copy of the form with the reimbursement checks or currency in the amounts requested by the cashier. When the imprest fund is reimbursed by mail, or when long delays in the reimbursement are encountered, the imprest fund cashier may retain copies of subvouchers until reimbursement is accomplished. When copies are retained, they shall be placed in a sealed envelope identified to the reimbursement voucher involved. When reimbursement is received, the sealed envelope will be presented to the official who signed the Administrative Certificate on the Standard Form 1129 for destruction.

(2) When a supplier refunds cash prior to the submission of Standard Form 1129 covering such payment, the imprest fund cashier shall accept the refund, return the money to the imprest fund, and enter the amount of the refund on the original of the supplier's receipt. When the refund is made subsequent to the submission of the applicable Standard Form 1129, the imprest fund cashier shall enter the amount of the refund on the retained copy of the reimbursement voucher, promptly submit the refund to the disbursing officer, and obtain a receipt.

(g) *Accounting.* Recordkeeping for the imprest fund shall be as simple as possible consistent with the maintenance of adequate controls. A file of supplier's receipts for amounts paid and not yet vouchered for reimbursement, and copies of paid reimbursement vouchers ordinarily will suffice for the record of the imprest fund cashier.

(h) *Review.* The imprest fund cashier shall be required to account for the established fund at any time, by cash on hand, paid supplier's receipts,unpaid reimbursement vouchers, and interim receipts for cash. Unannounced inspections, including cash counts are required to be made of each imprest fund at least quarterly by qualified individuals who are under the jurisdiction of the Comptroller or Chief Accounting Officer of the installation, where such positions exist, but in any case by individuals, excluding the disbursing officer advancing the funds and subordinates of the imprest fund cashier.

Subpart 213.5—Purchase Orders

213.502 Unpriced purchase orders.

(c) Unpriced purchase orders may be issued by using DD Form 1155.

213.503 Obtaining contractor acceptance and modifying purchase orders.

(b) Standard Form 30 shall be used to modify the purchase order for administrative or other changes.

(1) Modifications making administrative changes such as the correction of typographical errors, changes in paying office, and changes in accounting and appropriation data do not require contractor acceptance. In addition, the issuance of no cost Amended Shipping Instructions (ASIs) which modify unilateral purchase orders and which have been concurred in by the contractor by telephone or letter do not require contractor acceptance by signature on the Standard Form 30.

(2) To otherwise modify a purchase order prior to commencement of performance and within the scope of the original order, a unilateral modification may be issued on a Standard Form 30. The modification may not be unilaterally issued unless:

(i) The modification reflects the contractor's written or oral confirmation of the proposed revision(s). Unilateral modifications may include withdrawal of all or part of the original purchase order.

(ii) Block 13A. of the Standard Form 30 is annotated to reflect the issuance of an authorized unilateral modification.

(3) To otherwise modify the purchase order, and if not previously included in the purchase order, the Additional General Provisions (Clauses 16–19 of DD Form 1155r) shall be incorporated by reference in the Standard Form 30, Amendment of Solicitation/Modification of Contract, and the contractor's acceptance obtained by signature on the Standard Form 30. Subsequent changes pursuant to the Changes clause shall not require contractor acceptance. However, other modifications outside the scope of the Changes clause, such as the addition of the Government Property clause, shall require contractor acceptance by signature on the Standard Form 30.

213.505 Purchase order and related forms.

213.505–2 Agency order forms in lieu of optional Forms 347 and 348.

(S–70) Purchases of supplies, nonpersonal services and construction not in excess of $25,000 may be effected by using DD Form 1155, Order for Supplies or Services/Request for Quotations, and its ancillary forms. (Optional Forms 347 and 348 are not authorized for use in the Department of Defense.)

(S–71) The DD Form 1155 provides for the arrangement of information in fixed locations, including sequential numbering of all blocks, and within certain of these blocks, a code box for inserting alpha-numeric codes. The uniform arrangement of data and the provision for codes facilitates manual and automated processing of contractual documents and interchange of information between contracting offices and contract administration activities.

(S–72) *Forms.* The following forms may be used to issue purchase orders:

(1) DD Form 1155, Order for Supplies or Services/Request for Quotations, which, when used with DD Form 1155r in accordance with 213.505–2(S–73)(1). or with DD Form 1155r–1 in accordance with 213.505–2(S–73)(2), as appropriate, provides in one document—

(i) A purchase order, a blanket purchase agreement, a delivery order under a contract or delivery order on Government agencies outside the Department of Defense;

(ii) A receiving and inspection report;

(iii) A property voucher;

(iv) A public voucher; and

(v) A document for acceptance by the supplier.

(2) Standard Form 36, Continuation Sheet, provides additional space, or a blank sheet of paper may be used.

(3) DD Form 1155c–1, Commissary Continuation Sheet, (for use on an optional basis), provides columns suited for commissary acquisitions.

(4) Standard Form 30, Amendment of Solicitation/Modification of Contract, shall be used in all modifications to DD Form 1155 (see 213.503).

(5) The foregoing forms may be used as snap-out manifold forms, as cut sheets, as reproducible masters, or automatically printed. In addition, DD Form 1155r or DD Form 1155r–1 may be printed on the reverse of DD Form 1155.

(S–73) *Conditions for use.*

(1) *Use as a purchase order of not more than $25,000 in the United States, its possessions, and Puerto Rico.* The *United States*, when used in a geographical sense, means the States and the District of Columbia. Possessions, in a geographical sense, include the Virgin Islands, the Swan Islands, Guantanamo Bay, Johnston Island, American Samoa, Guam, Wake Island, Midway Island, and the Guano Islands, but do not include Puerto Rico, leased bases, or trust territories. Definitions of the *United States*, in a contractual sense, vary according to individual laws, orders or regulations. DD Form 1155 is authorized for negotiated purchases of not more than $25,000 within the United States, its possessions, and Puerto Rico, *provided*,

(i) The acquisition is unclassified, except that DD Form 1155 may be used for classified acquisition if:

(A) The Security Requirements clause in FAR 52.204–2 is inserted in the schedule.

(B) DD Form 254, Contract Security Classification Specification, (see FAR 4.403(c) and FAR 53.204–1) is incorporated in the purchase order.

(C) The contractor's acceptance of the purchase order is obtained by use of DD Form 1155r at the time of issuance of the order.

(ii) No clause covering the subject matter of any clause set forth in this supplement, other than clauses on DD Form 1155r and clauses referred to in this paragraph (213.505–2(S–73)(1)) and in FAR 13.502, Unpriced Purchase Order, FAR 13.503, Obtaining Contractor Acceptance and Modifying the Purchase Order, FAR 46.301, Contractor Inspection Requirements, FAR 46.302, Standard Inspection Requirements, and FAR 46.504, Certificate of Conformance, is to be used.

(iii) When the order specifies the delivery of data, one of the clauses in 252.227, Rights in Technical Data and Computer Software, shall be used as appropriate in accordance with the instructions contained in 227.4.

(iv) When required by FAR 25.7, the clause, Certain Communist Areas, in FAR 52.225–11 shall be used.

(v) When required by FAR 12.4, the clause in FAR 52.212–9, Variation in Quantity, shall be used.

(vi) When required by 232.111 the clause in 252.232–7000, Invoices, shall be used.

(vii) When the order is assigned to other than the purchasing office for administration, or if otherwise desired by the purchasing office, the clause, Material Inspection and Receiving Report in 252.246–7000, shall be used.

(viii) When Government property having an acquisition cost in excess of $50,000 is to be furnished (for use in performance of an order or for repair), the appropriate Government Property clause or clauses in FAR 52.245–1,2,3, or 19 shall be inserted in the Schedule. When Government property having an acquisition cost not in excess of $50,000 is to be furnished for use in performance of the order or for repair, the Government-Furnished Property (Short Form) clause in FAR 52.245–4 shall be inserted in the Schedule, *provided* that use of the clause shall be optional when the acquisition cost of property furnished for repair is not in excess of $10,000. When a Government Property clause is inserted in the Schedule, the contractor's signature shall be obtained on the DD Form 1155r.

(ix) When the order is for Military Assistance Program items, the United States Products Certificate (Military Assistance Program), at 252.225–7015, and the clause, United States Products (Military Assistance Program), in 252.225–7016, shall be inserted in the Schedule, and Clause 6, Foreign Supplies, of the General Provisions shall be deleted. In addition, the contractor's signature shall be obtained on DD Form 1155r.

(x) When required by 217.7204(b), the clause Identification of Sources of Supply at 252.217–7270 shall be used.

(xi) The clauses, New Material, (FAR 52.210–5) and Used, Reconditioned, Residual Inventory and Former Government Surplus Property (FAR 52.210–6 and 7), may be used in accordance with the provisions of FAR 10.010 and FAR 10.011.

(xii) When the order is for mortuary services;

(A) The following clauses shall be inserted in the Schedule:

(*1*) The Specifications clause in 252.237–7104;

(*2*) The Delivery and Performance clause in 252.237–7107;

(*3*) The Subcontracting clause in 252.237–7108;

(*4*) The Professional Requirements clause in 252.237–7111;

(*5*) The Facility Requirements clause in 252.237–7112;

(*6*) The Preparation History clause in 252.237–7113;

(*7*) The Inspection of Services clause in FAR 52.246–4.

(B) The Additional Default Provision clause in 252.237–7109 shall be inserted in the Schedule, with the following substitutions for paragraph (a) and the first sentence of paragraph (b) of that clause:

(a) This clause supplements the "Termination for Default" clause of this contract.

(b) This contract may be terminated for default by written notice if during the performance of this contract:

(C) The Changes clause in FAR 52.243–1 shall be substituted for paragraph 16 of the Additional General Provisions on DD Form 1155r.

(xiii) [Reserved]

(xiv) When required by 225.70, the clauses 252.225–7009, Preference for Certain Domestic Commodities, 252.225–7011, Preference for Domestic Specialty Metals (Major Programs), and 252.225–7012, Preference for Domestic Specialty Metals, shall be added.

(xv) When required by FAR 22.10, the clause, Service Contract Act of 1965, at FAR 52.222–41 for service contracts in excess of $2,500, or FAR 52.222–40 for service contracts not in excess of $2,500, shall be added.

(xvi) When required by FAR 47.305–6, the clause, Clearance and Documentation Requirements—Shipments to DoD Air or Water Terminal Transportation Points at FAR 52.247–52 shall be added.

(xvii) In accordance with FAR 46.805, the clause in FAR 52.246–23, Limitation of Liability, or FAR 52.246–25, Limitation of Liability—Services, may be inserted.

(xviii) When the order requires the use of a Government bill of lading or mailing indicia, the clause, FOB Origin-Government Bills of Lading or Prepaid Postage, at FAR 52.242–10 or FOB Origin-Government Bills of Lading or Indicia Mail, at FAR 52.242–11, shall be added.

(xix) [Reserved]

(xx) [Reserved]

(xxi) At the contracting officer's discretion, the clause, Duty-Free Entry—Qualifying Country End Products and Supplies, at 252.225–7008 may be used (see 225.605(a)(S–70)).

(xxii) When required by FAR 22.305, the Contract Work Hours and Safety Standards Act—Overtime Compensation—General, clause in FAR 52.222–4 shall be added.

(xxiii) [Reserved]

(xxiv) [Reserved]

(xxv) When required by FAR 19.508(c), the Notice of Total Small Business Set-Aside clause in FAR 52.219.6 shall be added.

(xxvi) [Reserved]

(xxvii) When required by FAR 47.305–4, the clause, FOB Destination, in FAR 52.247–34, and the clause, FOB Destination—Evidence of Shipments, in FAR 52.247–48, shall be added.

(xxviii) When required by 208.7303, the clause, Required Sources for Miniature and Instrument Ball Bearings, in 252.208–7000 shall be added.

(xxix) When required by 208.7403, the clause, Required Sources for Precision Components for Mechanical Time Devices, in 252.208–7001 shall be added.

(xxx) In accordance with 225.7312, all orders for the purchase of goods or services for Military Assistance Program (MAP), International Military Educational Training (IMET) and Foreign Military Sales (FMS) shall include the clause, Exclusionary Policies and Practices of Foreign Governments, in 252.225–7019.

(xxxi) As required by FAR 22.1408, insert the clause, Affirmative Action for Handicapped Workers, in FAR 52.222–36.

(xxxii) If the order is to involve materials of a hazardous nature, include the clause, Hazardous Material

Identification and Material Safety Data, in FAR 52.223–3, as prescribed in FAR 23.303.

(xxxiii) When the order involves the purchase of gas in contractor-furnished returnable cylinders and the contractor retains title to the cylinders, the clause in 252.213–7001, Returnable Gas Cylinders, shall be added. A similar clause may also be used in orders for other supplies involving reels, spools, drums, carboys, liquid petroleum gas containers, or other returnable containers, when the contractor is to retain title to the containers.

(xxxiv) In orders, except those exempted by FAR 22.807 (a) or (b)(2)(4), insert the Equal Opportunity clause in FAR 52.222–26.

(xxxv) When the purchase order includes FMS requirements, clearly indicate "FMS Requirement" on its face and specify within the order each FMS case identifier code by line/subline item number, e.g., FMS Case Identifier GY–D–DCA.

(xxxvi) The clause, Delivery of Excess Quantities of $100 or Less, in FAR 52.212–10, may be used in accordance with instructions at FAR 12.403(b).

(xxxvii) For orders requiring payment in Canadian currency, the contract price shall be quoted in terms of Canadian dollars and shall be identified by the initials CN; e.g., $1,647.23CN. The contract shall clearly indicate on its face the US/Canadian conversion rate in effect at the time of award and the US dollar equivalent of the Canadian dollar contract amount.

(xxxviii) The Walsh-Healey Public Contracts Act clause in FAR 52.222–20 shall be used in each order for supplies that exceeds $10,000 and is otherwise subject to the Act, in accordance with FAR 22.603.

(xxxix) Unless excepted under FAR 22.1302 or FAR 22.1308, the clause in FAR 52.222–35, Affirmative Action for Special Disabled and Vietnam Era Veterans, shall be in all orders of $10,000 or more.

(xl) The clause, Utilization of Small Business and Small Disadvantaged Business Concerns, in FAR 52.219–8 shall be in all orders exceeding $10,000 except those which will be performed entirely outside the United States, the District of Columbia, or the Commonwealth of Puerto Rico, or for orders which are for services personal in nature.

(xli) (Reserved)

(xlii) The clause, Affirmative Action Compliance Requirements for Construction, in FAR 52.222–27 shall be inserted in orders exceeding $10,000 in accordance with FAR 22.810, unless excepted under FAR 22.807.

(xliii) The Equal Opportunity clause in FAR 52.222–28 shall be included in architect-engineering contracts and is applicable to contractors who have been or are awarded Federal contracts and/or subcontracts which have an aggregate value in excess of $10,000. The clause is also applicable unless exempted under the rules, regulations and relevant orders of the Secretary of Labor (41 CFR, Ch. 60).

(xliv) Unless exempted by FAR 22.810, the clause, Certification of Nonsegregated Facilities, FAR 52.222–21 shall be inserted in orders exceeding $10,000 and is applicable to orders, subcontracts and agreements with applicants who are themselves performing Federally assisted construction contracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause.

(xlv) In accordance with FAR 22.810, the clause, Previous Contracts and Compliance Reports, in FAR 52.222–22 shall be inserted in all contracts that exceed $10,000.

(xlvi) Except for construction orders, the clause, Affirmative Action Compliance, in FAR 52.222–25 shall be inserted in all contracts that include the Equal Opportunity clause, in accordance with FAR 22.810.

(xlvii) Unless exempted by FAR 22.807, the clause, Notification of Visa Denial, FAR 52.222–29, shall be included in all orders to be performed in or on behalf of a foreign country.

(xlviii) In accordance with FAR 22.810, insert the clause, Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity, in FAR 52.222–23, in applicable solicitations involving construction in excess of $10,000. Follow the provision's parenthetical instructions for inserting the applicable construction trade(s), percentage goals, and geographical description of the covered area.

(xlix) In accordance with FAR 19.508(a), insert the clause, Notice of Small Business-Small Purchase Set-Aside, in FAR 52.219–4, in all requests for quotations and purchase orders of $10,000 or less, which are subject to small purchase procedures, unless excepted under FAR 13.105.

(l) In accordance with FAR 14.407–3, insert the provision at 252.214–7000, Discounts.

(li) When acquiring qualified products, the terms and conditions at FAR 52.209–1, Qualified Products—End Items, and FAR 52.209–2, Qualifed Products—Components of End Items, shall be used.

(lii) When first Article Approval is required, either the clause at 252.209–3, First Artilce Approval—Contractor Testing, or 252.209–4, First Article Approval—Government Testing, shall be used in accordance with the instructions at FAR 9.308–1(a) or 9.303–2(a). When either clause is used the contrator's signature shall be obtained on DD Form 1155r.

(2) *Use as a purchase order of not more than $25,000 outside the United States, its possessions, and Puerto Rico.* DD Form 1155 and 1155r–1, with executed contractor's acceptance when required, are authorized for negotiated purchases of not more than $25,000 when such purchases are for supplies and services acquired and used outside the United States, its possessions, and Puerto Rico, *provided:*

(i) The acquisition is unclassified.

(ii) No clauses covering the subject matter of any clause set forth in this Regulation, other than clauses set forth in DD Form 1155r–1, are to be used, except that—

(A) The Disputes clause at FAR 52.233–1 is inserted in the Schedule unless the contract is exempt pursuant to FAR 33.003.

(B) When the order is translated into another language, the Schedule shall contain the provision in 252.213–7000, Inconsistency Between English Version and Translation of Contract.

(C) When Government property having acquisition cost in excess of $50,000 is to be furnished (for use in performance of an order or for repair), the Government Property clause in FAR 52.245–2 shall be inserted in the Schedule in accordance with instruction in FAR 45.106. When Government property having an acquisition cost not in excess of $50,000 is to be furnished for use in performance of the order or for repair, the Government-Furnished Property (Short Form) clause in FAR 52.245–4 shall be inserted in the Schedule in accordance with instructions in that paragraph, *provided* that use of the clause shall be optional when the acquisition cost of property furnished for repair is not in excess of $10,000. When a Government Property clause is inserted in the Schedule, the contractor's signature shall be obtained on DD Form 1155r–1.

(D) A commercial warranty clause may be used in accordance with FAR 46.706.

(E) When required by 225.70 the clauses in 252.225–7009, Preference for Certain Domestic Commodities; or 252.225–7011, Preference for Domestic Specialty Metals (Major Programs); or 252.225–7012, Preference for Domestic Specialty Metals, shall be added. In purchases in excess of $2,500, the clause, Certain Communist Areas, in FAR 52.225–11 shall be inserted in the Schedule when acceptance of supplies, services, or construction is to take place outside the United States, its possessions or Puerto Rico. FAR 25.603 provides that supplies from the Communist areas of North Korea, Vietnam or Cuba may be acquired only in unusual situations; for example, in an emergency or when supplies are not available from any other source and a substitute supply is not acceptable. In such situations, the contracting officer shall determine for small purchases that there is need for an exception in accordance with Departmental procedures.

(F) The clause, Delivery of Excess Quantities of $100 or Less, in FAR 52.212–10 may be used in accordance with instructions at FAR 12.403(b).

(G) Unless exempted by FAR 22.807, the clause, Notification of Visa Denial, at FAR 52.222–29, shall be included in all orders to be performed in or on behalf of a foreign country.

(H) In accordance with FAR 25.302, the statement in 52.225–7004 to provide reporting of the balance of payments consequences of Defense acquisition, will be placed on the face of applicable purchase orders.

(I) The contracting officer may delete the Taxes clause from the DD Form 1155r–1 in purchases under $1,000 if the contracting officer determines that the administrative burden of securing relief from such taxes would be out of proportion to the relief obtained, *provided*, that such clause shall be included in all orders in support of NATO infrastructure programs involving the expenditures of funds under section 503(b) of the Foreign Military Sales Act of 1968 (see FAR 29.402 on use of foreign taxes clauses).

213.505–3 Standard Form 44, Purchase Order—Invoice—Voucher.

(b)(1) The $2,500 limitation applies to all purchases except for aviation fuel and oil purchases which will not exceed $10,000.

213.505–70 Instructions for entries on DD Form 1155 and Standard Form 36.

(a) The instructions herein are mandatory for the preparation of orders if administration is assigned: (1) To DCAS, or (2) to a non DCAS office listed in the DoD Directory of Contract Administration Services Components and the contractor is located in the continental United States or Canada.

(b) The organizational entity codes (address codes) referenced throughout Part 13 are as follows:

(1) *Codes published in DoD Activity Address Directory (DODAAD), DoD 4000.25D.* These codes will be used for Government entities in Blocks 6, 7, 9, 14, 15, and 19. However, the "Ship To" (Block 14) and "Ship To"/"Mark For" (Block 19 (viii) and (xi)) shall use a DODAAD code for non-Government entities for shipments to satisfy MILSTRIP requisitions for that non-Government entity. Foreign Military Sales (FMS) and Military Assistance Program (MAP), "Ship To"/"Mark For" (Block 14) shall use a Military Assistance Program Address Directory (MAPAD) code (MAPAC and TAC) in accordance with DoD 5105.38–D.

(2) *Codes published in Handbook of Non-Government Organizations for MILSCAP H8–1/H8–2 Handbooks.* These codes will be used for non-Government entities in Blocks, 9, 14, and 19, except for the condition as noted in (1) above.

(c) The right hand columns designate by alpha code the activities responsible for completing certain blocks on the DD Form 1155. The legend is "C" for contractor, "P" for purchasing office, and "—" for not applicable.

TITLE AND INSTRUCTIONS FOR ENTRIES

	Block No.	Applicable to— RFQ	PO	DO
1	*Contract/Purchase Order Number*—Enter the Procurement Instrument Identification (PII) number and, when applicable, the supplementary identification number for contracts and purchase orders as prescribed in 204.70.	—	P	P
2	*Delivery Order Number*—Enter PII number for delivery orders as prescribed in 204.70	—	—	P
3	*Date of Order*—Enter the date of the order, i.e., 2 position numeric year, 3 position alpha month and 2 position numeric day. For example: 84 Sep 30	—	P	P
4	*Requisition/Purchase Request Number*—Enter the applicable number authorizing the purchase. When the number differs by line item it will be listed in the schedule and this block annotated "see schedule".	P	P	P
5	*Certified for National Defense Under DMS Reg 1*—Enter the appropriate claimant program number as defined in Volume I, Section III of the DoD Procurement Coding Manual.	—	P	P
6	*Issued By*—Insert the name and address of the issuing office. In the Code Block, insert the appropriate DODAAD code for the issuing office. Directly below the address insert: Buyer/Symbol, followed by the appropriate buyer's name and routing symbol. Directly below the Buyer/Symbol insert: Phone followed by the buyer's phone number and extension.	P	P	P
7	*Administered by*—Enter the name and address of the DCAS or military activity responsible for administration service. The "DoD Directory of Contract Administration Services Components" No. 4105.59H contains the complete listing of activities performing contract administration services. On purchase orders retained by purchasing offices for administration this block may be marked "see block 6." Enter in the code block the organizational entity code (address code) of the administration services office. In the lower right or left-hand corner, insert Criticality Designator code (see FAR 42.1105).	—	P	P
8	*Delivery FOB*—Indicate the FOB point by checking the applicable box	P	P	P
9	*Contractor/Quoter*—(i) Enter the full business name and address of the contractor or quoter. Enter in the first code block the organizational entity code (address code) of the contractor. (ii) If it is known that all the work covered by the order is to be performed at an address different from the address represented by the contractor's code, and any contract administration function will be required at that facility, enter in the facility code block the appropriate address code for that facility, i.e., H8–1/H8–2 code for a nongovernment entity or DODAAD code for a government entity. (DODAAD codes shall be used only to indicate "performed at" locations for orders specifying services at a government location.) If it is known that multiple facilities are involved, i.e., when the work covered by the order is performed both at the contractor's address and one or more other facilities, or when all the work is to be performed at two or more facilities other than the contractor's address, indicate the codes for all facilities at which work is to be performed, including the contractor's code if work is performed at that address, in the Standard Form 36 Continuation Sheet and mark the facility code block with "See Schedule." For orders specifying services which will be performed at locations other than the contractor's address, the locations shall be indicated as required above.	P	P	P
10	*Delivery to FOB Point by*—If a single date of delivery is applicable to the entire order, it shall be entered in this block. Multiple delivery dates will be listed in the schedule and this block annotated "See Schedule".	P	P	P
11	*Small Business*—Check if the contractor/quoter is a small business concern as defined in FAR 19	C	P	P
	Small Disadvantaged Business—Check if the contractor/quoter is a small disadvantaged business concern as defined in FAR 52.219–2	C	P	P
12	*Discount Terms*—Enter the discount for prompt payment in terms of percentages and corresponding days allowed. The percentages will be expressed in whole numbers and decimals. For example: 3.25%—10 days; 0.50%—20 days.	C	P	—
13	*Mail Invoices to*—Enter a reference to the block number containing the appropriate address to which invoices are to be mailed. When not contained in blocks 6, 7, 14 or 15, insert in block 13 "See Schedule".	—	P	P
14	*Ship To*—If a single ship-to point is applicable to the entire order, the name and address of that point may be entered in this block. Multiple ship-to points will be shown in the schedule and this block annotated "See Schedule".	P	P	P
15	*Payment Will be Made by*—Enter the name and address of the activity making payment. For purchase orders assigned to DCAS, see the DoD Directory of Contract Administration Components No. 4105.59H for the DCAS Regional Office authorized to make payment. Enter in code block, the organizational entity code (address code) of the paying activity.	—	P	P
16	*Type of Order*—Indicate by checking the appropriate box whether order is a purchase or delivery order. If a purchase order, further entries are made as follows:	—	P	P

TITLE AND INSTRUCTIONS FOR ENTRIES—Continued

Block No.		Applicable to—		
		RFQ	PO	DO
	(i) Identify the type of quotation, i.e., oral, letter or TWX on which the order is based			
	(ii) When the Fast Payment procedure is applicable, indicate by checking the appropriate box			
	(iii) Check the box when acceptance of the purchase order by the Contractor is desired and indicate the number of copies of the order to be returned to the issuing office.			
17	*Accounting and Appropriation Data*—Enter the accounting classification applicable to the order. Enter the Accounting Classification Reference Number(s) in accordance with 204.71.	—	P	P
18	*Item Number*—Enter an item number for each item of supply or service separately identified in accordance with 204.71	P	P	P
19	*Schedule of Supplies/Services*—The Schedule contains several elements of data. In order to accomplish standardization objectives, it will be necessary to treat and enter separately certain elements of data as indicated below. Though the order and arrangement of data in the schedule is only mandatory for purchase and delivery orders assigned to DCAS or Plant Cognizance Representatives for administration, it is encouraged, in order to establish uniformity, that this format be adopted for all orders.	P	P	P
	(i) *National Stock Number (NSN)*—Total Item Quantity for the line or subline item number followed by the appropriate National Stock Number or the word "none" if an NSN has not been assigned. On the same line and adjacent to NSN, enter the words "Total Item Quantity." This phrase is used in conjunction with the total quantity, unit of issue unit price, and dollar amount of the stock number or item cited (see entries for blocks 20, 21, 22 and 23).	P	P	P
	(ii) *Item Identification*—Enter first the most descriptive noun or verb of the supplies or services to be furnished, supplemented by additional description as prescribed in FAR 10. If multiple accounting classifications apply to the contract, enter the Accounting Classification Reference Number in accordance with 204.71.	P	P	P
	(iii) *Quantity Variance*—Enter the quantity variance permitted for the line item in terms of percentages, indicating whether the percentage is plus or minus and if applicable to each destination.	P	P	P
	(iv) *Inspection/Acceptance*—Enter the point at which inspection/acceptance will take place	P	P	P
	(v) *Preservation and Packaging*—Enter the preservation and packaging requirements for the item described. These requirements may be expressed in terms of MIL-STD726 codes or reference to applicable specifications. 1st Example: MIL STD 726 PRES/PACK: B/10/1/00/2/10/c/00/21/3/22/4/3/2/00. 2nd Example: Preservation and packaging shall be in accordance with instructions below. DGSP P-54 in lieu of level "c" requirement.	P	P	P
	(vi) *Packing*—When required, enter the packing level designator and specification, standard, or document in which the requirements are stated or state the specific requirements. 1st Example: Packing. Preserved and packaged items shall be packed Level (A, B, or C depending on destination) in accordance with MIL-STD 794. 2nd Example: Packing. Preserved and packaged items shall be packed level (A, B, or C) in accordance with DESC Manual 4100.1.	P	P	P
	(vii) *Unitization*—When desired by the requiring activity, a requirement for cargo unitization for a particular destination should be specified for shipments involving two or more shipping containers having an aggregate total of not less than 20 cubic feet or 200 pounds. Example 1: Items packed for shipment shall be unitized in accordance with MIL-STD-147. Example 2: Nonperishable subsistence, packed as specified shall be unitized in accordance with MIL-L-35078C Type (I or II) Class (A through F for Type I, A through D for Type II). Supplemental waterproofing requirements of Appendix II (are/are not) applicable.	P	P	P
	(viii) *Ship to*—Enter the organizational entity code (address code) of the ship to point on the first line and the corresponding name and address on succeeding lines. If multiple accounting classifications apply to the same line or subline item, enter the Accounting Classification Reference Number in accordance with 204.71. When several items are to be shipped to the same point, the code will be listed; but it will not be necessary to repeat the clear text address.	P	P	P
	(ix) *Delivery Date*—When multiple delivery dates apply, enter the required date of delivery on the same line with Ship to Code	P	P	P
	(x) *Mark For*—Enter the organizational entity code (address code) on the first line and name and address of the ultimate recipient of the supplies and services on succeeding lines.	P	P	P
20	*Quantity Ordered/Accepted*—Enter the total quantity ordered for the line item. If applicable, enter the breakdown on quantities for each ship to point within the line item.	P	P	P
21	*Unit*—Enter the unit of measure applicable to the line items described	P	P	P
22	*Unit Price*—Enter the unit price applicable to the line item described	—	P	P
23	*Amount*—Enter the extended dollar amount (quantity × unit price) for each line item	—	P	P
24	*Contracting/Ordering Officer*—The contracting/ordering officer's signature will be entered in this block	—	P	P
25	*Total Amount*—Enter the total dollar amount for all line items on the order	—	P	P
26–42	These blocks are utilized in the receiving and payment functions. Procedures for making entries are prescribed by the respective departments.			

213.505–71 Use of DD Form 1155 as a public voucher.

DD Form 1155 is authorized for use as a public voucher:

(a) Not exceeding $25,000 when the form is used as a purchase order,

(b) Without monetary limitation when the form is used as a delivery order, and

(c) Without monetary limitation as the basis for payment of an invoice against blanket purchase agreements, or basic ordering agreements when a firm price has been established.

PART 214—SEALED BIDDING

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 214.2—Solicitation of Bids

214.201 Preparation of invitation for bids.

Reserved, pending determination to what extent guidance may be necessary.

214.202 General rules for solicitation of bids.

214.202–1 Bidding time.

(a) *Policy.* For potential sources in participating countries, see 225.7403(a); for sources in FMS/offset arrangement countries, see 225.7310(c)(2); and for sources in defense cooperation countries, see 225.7502.

214.202–5 Descriptive literature.

(b) *Policy.* It may be appropriate to require descriptive literature in the acquisition of highly technical or specialized equipment, where considerations such as design or style are important in determining acceptability of the product.

(d) *Requirements of invitation for bids.* When brand name or equal purchase descriptions are used, the requirements of FAR 14.202–5 are met by inserting in the invitation for bids the brand names provision at 252.210–7000.

214.205 Solicitation mailing lists.

214.205–1 Establishment of lists.

(a) For special instructions relative to the establishment of a Research and Development Bidders Mailing List, see Supplement No. 4, "Procedures for Submission of Applications to be Placed on Research and Development Bidders Mailing Lists."

214.207 Pre-bid conference.

A pre-bid conference may be used only when approved at a level higher than the contracting officer. All interested parties, including representatives from qualifying country sources, shall be invited to the pre-bid conference. (See 225.7403(a), 225.7310(c)(2), and 225.7502.)

214.208 Amendment of invitation for bids.

(a) Pen and ink entries, deletions, or alterations shall not be made in an invitation for bids after it has been reproduced for issue to prospective bidders. Any changes required to the IFB shall be made by Standard Form 30.

214.270 Master solicitation.

A master solicitation is a document containing the text of special provisions which have been identified as being essential for carrying out the peculiar needs of a specific commodity assignment to a single contracting activity within DoD. The document is prepositioned with potential sources who are requested to retain them for continued and repetitive use. The purpose of this technique is to simplify solicitation and award documents, to reduce the size of solicitations and awards, and concurrently to achieve time and dollar savings for both the Government and industry. The master solicitation technique involves two separate phases, the issuance of the master solicitation and the issuance of the individual solicitation/award. In addition, use of this technique to meet such peculiar requirements shall be subject to the following criteria:

(a) The master solicitation shall not be used unless repetitive purchases are anticipated.

(b) The master solicitation shall not include nonessential or infrequently used provisions.

(c) The master solicitation shall consist primarily of those locally developed provisions relating to instructions and procedures requiring repetitive use that cannot otherwise be avoided through use of FAR or DoD FAR Supplement clauses. The master solicitation may include FAR Part 52 clauses and DoD FAR Supplement clauses.

(d) Copies of a master solicitation shall be made available upon request.

(e) Each individual solicitation shall reference the date of the current master solicitation and any changes thereto. Significant revisions or a significant number of revisions should result in a reissuance of the entire master solicitation.

(f) Copies of contracts furnished to the contract administration activity must be complete and shall include a copy of the master solicitation unless prior arrangements have been made.

(g) The use of this technique shall be limited to those situations where it is clearly demonstrable that a substantial reduction of paperwork and simplification of the contracting process will result. Approval by the Head of the Contracting Activity is required.

Subpart 214.4—Opening of Bids and Award of Contract

214.404 Rejection of bids.

214.404–1 Cancellation of invitations after opening.

(c) Unless otherwise specified in agency procedures, the contracting officer shall make the written determination.

(e) Unless otherwise specified in agency procedures, the contracting officer shall make the written determination.

214.406 Mistakes in bids.

214.406–3 Other mistakes disclosed before award.

(e)(1) Authority for making a determination under FAR 14.406–3(a), (b), and (d) may be delegated, without power of redelegation, as follows:

(i) Department of the Army: To the Deputy Assistant Secretary (Acquisition), Office of the Assistant Secretary of the Army (Research, Development and Acquisition); General Counsel of the U.S. Army Materiel Command; General Counsel of the Office of the Chief of Engineers; Chief, Contract Law Division, Office of The Judge Advocate General, Headquarters, Department of the Army.

(ii) Department of the Navy: To the Assistant Commander for Contracts, Naval Facilities Engineering Command Headquarters; the Deputy Commander Purchasing, Naval Supply Systems Command Headquarters.

(iii) Department of the Air Force: To the Staff Judge Advocate, Headquarters, Air Force Logistics Command.

(iv) Defense Logistics Agency: The General Counsel and Assistant General Counsel.

(v) National Security Agency: Director of Procurement.

(vi) Defense Communications Agency: The General Counsel.

(vii) Defense Nuclear Agency: The General Counsel.

(viii) Defense Mapping Agency: The General Counsel.

(e)(2) Authority to elect not to correct a bid but to allow withdrawal when clear and convincing evidence establishes only the existence of the mistake may be delegated, without power of redelegation, to any contracting activity or office having legal counsel available. Any case involving evidence that is less than clear and convincing shall be processed under FAR 14.406–3(d) and paragraph (1) above.

(g)(3)(iv) Supporting evidence (such as work sheets, or other data used in preparing the bid) of the existence of the mistake and manner in which it occurred, and supporting evidence of the bid actually intended, shall be submitted with the bidder's written request.

(h) A signed copy of the administrative determination authorizing modification of the bid made in accordance with FAR 14.406–3 shall accompany the appropriate finance center copy of the contract award.

214.407 Award.

214.407–1 General.

(c)(3) When two or more awards are made to a single bidder on an invitation, the copy of the successful bid marked "original" will be attached to the appropriate finance center copy and a copy marked "duplicate" will be attached to the retained office copy of the first award issued. Succeeding awards will be inscribed to indicate the number of the award to which the original and duplicate bids are attached. This is necessary for legal review and auditing by the General Accounting Office.

214.407–3 Prompt payment discounts.

If the acquisition is one regarding which bidders may offer prompt payment discounts, the Discounts provision in 252.214–7000 shall be included in the solicitation.

214.407–6 Equal low bids.

(b) When award is to be made by drawing by lot and the information available shows that the product of a particular manufacturer has been offered by more than one bidder, a preliminary drawing by lot shall be made to ascertain which of the bidders offering the product of a particular manufacturer will be included in the final drawing to determine the award.

214.408 Information to bidders.

214.408–2 Award of classified contracts.

Disposition action shall be taken in accordance with the Industrial Security Manual (DoD 5220.22–M).

Subpart 214.5—Two-Step Sealed Bidding

214.503 Procedures.

214.503–1 Step one.

(a) Requests for technical proposals may be in the form of a letter.

(1) The written notification to offerors required by FAR 14.503–1(i) shall advise offerors of the discontinuance of two-step sealed bidding and the reason therefor.

214.503-2 Step two.

(a)(3) The statement required by FAR 14.503-2(a)(3) should be set forth in the item description by a provision substantially in the form of the following example:

Radio Antenna, in accordance with Exhibit No. _____ dated _____ (use other description of specifications as appropriate), and your Technical Proposal _____ (insert specific identification of the bidder's proposal, including any revision thereof as finally accepted), incorporated herein by reference. Nothing contained in said Technical Proposal shall constitute a waiver of any of the provisions of said Exhibit (or specifications).

PART 215—CONTRACTING BY NEGOTIATION

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 215.1—General Requirements for Negotiation

215.103 Converting from sealed bidding to negotiation procedures.

Unless otherwise specified in agency procedures, the contracting officer shall make the written determination.

215.170 Negotiation of initial production contracts for technical or specialized military supplies.

(a) The production of important new technical or specialized military supplies generally involves development, evaluation, and initial production phases. Examples of such supplies are tanks, radar, guided missiles, aircraft, rockets, and equipment of similar complexity; major components of such equipment as the foregoing; and any items of technical or specialized nature necessary for the use, maintenance or operation of such equipment. Contracting officers shall avoid, wherever practicable, awarding initial production contracts for supplies until completion of the development and evaluation phases. At the time of placing the initial production contract, it is essential that the Government be completely free to select the contractor as the best interest of the Government may dictate. In the placement and administration of research or development contracts, no commitments shall be made to contractors with respect to obtaining subsequent production contracts. Acquisition of initial production quantity of an item shall not be initiated until the item has been approved for service use unless prior approval has been obtained. When justified by special circumstances, acquisition of production quantities in advance of approval for service use may be authorized for the Departments of the Army and Air Force by Heads of the Contracting Activity, and for the Department of the Navy by the appropriate authority set forth in SECNAV Instructions 3900.30 and 3960.2.

(b) In connection with the foregoing, when consistent with FAR 6.302-1(b)(2), it may be in the best interest of the Government that the initial production contract for technical and specialized supplies be placed with the contractor responsible for the development of the design for such supplies. Accordingly, it is essential that, in placing such initial production contracts, an analysis be made of the importance to be attached to the following considerations:

(1) Extensive preliminary research and development work which can be put to most effective use in production by the research and development contractor for any of the following reasons:

(i) A need for adaptation of the newly developed equipment for quantity manufacture, and for introduction of advanced production methods, together with a significant interrelationship between the design engineering and production engineering, which will yield best results from the standpoint of performance, reliability, and producibility; or

(ii) The substantial time and money which would be required for another contractor to indoctrinate and train engineering staff in the specialized techniques or novel design concepts which have been employed, thereby adding to production lead time.

(2) Continuing improvement of the equipment, concurrent with production which can be most effectively accomplished by a single contractor because of the advantages of unified responsibility and close coordination of improved design features with production processes and equipment.

(3) Substantial time and effort which have been already expended by the development contractor in developing a prototype.

(4) The advantages to be gained through obtaining production drawings, e.g., detailed manufacturing, process, and assembly drawings, with rights to use for acquisition purposes at the earliest possible date for competitive reprocurement purposes by placing production engineering contracts and the first production contract with the developer (see (d) below).

(c) When it is in the Government's interest to award the initial production contract to the development contractor, price alone should not be allowed to dictate an award elsewhere unless a fair and reasonable price cannot be negotiated with the development contractor, or unless the price advantage in award to another supplier is so substantial as to outweigh the other factors involved. This paragraph 15.170 is not to be construed to require or to prevent competitive pricing. Initial production contracts shall not be awarded to development contractors who do not have fully adequate and available financial, technical and production resources.

(d) The number of items to be acquired under an initial production contract will be established only after considering all pertinent factors, including the practical minimum quantity suitable to permit the development of the production design and a data package adequate to establish competitive acquisition of the item at the earliest practicable date.

(e) To the extent practicable, the initial production contract should also provide for the furnishing of an initial supply of special testing equipment, special tools, demonstration sets, and manuals required for operation, maintenance and training.

215.171 Abstract of offers.

The abstract of offers required by FAR 4.803(a)(10) shall be prepared on Abstract of Offers (SF Form 1409) or Abstract of Offers—Construction (SF Form 1419) appropriately modified (see FAR 53.2) to include all the information necessary for evaluation (but see FAR 15.413 and FAR 15.610). These forms need not be used in the case of acquisition from a single source of supply, for research and development, for the chartering of vessels by the Military Sealift Command, for the acquisition of coal and petroleum products by the Defense Fuel Supply Center, or for perishable subsistence items by the Defense Personnel Support Center.

Subpart 215.4—Solicitation and Receipt of Proposals and Quotations

215.402 General.

(f) Examples of circumstances under which an oral solicitation may be used include those listed in 206.302-2. However, oral solicitation is not to be considered justified solely because a high issue Priority Designator has been assigned to the requirement. Should the issuance of a resulting contractual instrument be unduly delayed, following oral solicitation, the contract file should be documented to describe the reasons for the delay and justify award based upon the oral solicitation.

215.406 [Reserved]

Reserved pending determination to what extent guidance may be necessary.

215.407 Solicitation provisions.

(S-70) Pursuant to the policy of FAR 14.407-3, the contracting officer shall insert the provision at 252.214-7000, Discounts, in solicitations where prompt payment discounts may be offered.

215.410 Amendment of solicitations before closing date.

Requests for quotations may be amended by letter.

215.411 Receipt of proposals and quotations.

215.411-70 Maintenance and disposition of proposals and quotations.

Both solicited and unsolicited proposals shall be maintained and disposed of pursuant to FAR 4.803.

215.414 Forms.

(a) Letter RFPs and RFQs may also be used provided they otherwise comply with the requirements of FAR and this regulation.

(b) In the acquisition of subsistence, DPSC Form 300, Order for Subsistence, may be used for award purposes.

215.470 Master solicitation.

A master solicitation for negotiated contracts may be established, maintained, and utilized in accordance with 214.270.

Subpart 215.5—Unsolicited Proposals

215.504 Advance guidance.

(b)(2) Agencies shall, where applicable, in addition to the requirements of FAR 15.504(b)(2), also make available to potential offerors of unsolicited proposals requirements concerning cost sharing (see 235.003(b)).

215.506 Agency procedures.

215.506-1 Receipt and initial review.

(c) In addition to the requirements of FAR 15.506-1(c), agencies shall advise offerors of the disposition or intended disposition of the material submitted as the unsolicited proposal. The agency shall not deny reconsideration of a timely and appropriately revised or supplemented proposal which meets the requirements of FAR 15.506-1(a). When it is determined that a meritorious unsolicited proposal is not related to the mission of the recipient agency or may be of interest to other agencies in addition to the recipient agency, the recipient agency may identify for the offeror other agencies whose missions bear a relationship to the subject matter of the unsolicited proposal.

215.507 Contracting methods.

(b)(S-70) When the requirements of FAR Part 6 and FAR Subpart 15.5 have been met, contracts for studies, analyses, or consulting services (see FAR 37.2) may be entered into on the basis of an unsolicited proposal. However, when so limited by an applicable DoD Appropriation Act, such contracts may be entered into only when the head of the contracting activity or his designee (no lower than the chief of the contracting office) determines that:

(i) As a result of thorough evaluation, only one source is found fully qualified to perform the proposal work; or

(ii) The purpose of the contract is to explore an unsolicited proposal which offers significant scientific or technological promise, represents the product of original thinking, and was submitted in confidence by one source; or

(iii) The purpose of the contract is to take advantage of unique and significant industrial accomplishment by a specific concern, or to insure that a new product or idea of a specific concern is given financial support; except that this limitation shall not apply to contracts in an amount of less than $25,000, contracts related to improvements of equipment that is in development or production, or contracts as to which a civilian official of the Department of Defense who has been confirmed by the Senate, determines that the award of such contract is in the interest of national defense.

Subpart 215.6—Source Selection

215.603 Purpose.

(d) In addition, source selection procedures are designed to ensure selection of the source whose proposal is in the best interests of the Government, price and other factors considered.

215.607 Disclosure of mistakes before award.

(c)(3) Authority to make the determination is delegated to the head of the contracting activity with authority to redelegate to the chief of the contracting office.

215.608 Proposed evaluation.

(b) Unless otherwise specified in agency procedures, the contracting officer shall make the written determination.

215.613 Alternative source selection procedures.

"Four-Step" Source Selection Procedures are as follows:

(a) *General.*

(1) The Four-Step process, briefly described, is the (i) submission and evaluation of the offeror's technical proposal; (ii) submission and evaluation of the offeror's cost proposal; (iii) establishment of the competitive range and selection of the apparent successful offeror; and (iv) negotiation of a definitive contract.

(2) The conventional process differs in that (i) offerors' technical and cost proposals are submitted and evaluated simultaneously; (ii) definitive contracts are negotiated with all offerors in the competitive range; and (iii) the contractor is selected. One additional difference in the two processes involves discussion of proposal deficiencies. In the Four-Step process, deficiencies are not revealed to the individual offerors, while in the conventional process protracted discussions may evolve around proposal deficiencies.

(3) These procedures are designed primarily to: focus attention on technical excellence, maintain the integrity of each offeror's proposal, provide visibility of discriminating features between proposals, reduce the opportunity for buy-ins, preclude the opportunity for the use of auctioning techniques and assure a disciplined and orderly process in the selection of sources. To this end, early and open dialogue, e.g., pre-solicitation notices and conferences, pre-proposal conferences, informal solicitations and the tailoring of specifications, is encouraged to establish a better understanding of the Government's needs.

(4) Following the technical evaluation and discussions, cost/price proposals are obtained from each offeror together with any necessary clarifications of technical proposals. Subsequent to the receipt of the cost/price proposals and any technical clarifications, a competitive range is established. Those proposals outside the competitive range are eliminated at this point and the offerors so notified. Limited discussions are then held with the remaining offerors on their cost/price proposals and any technical clarifications. Following such discussions, a proposal may be eliminated from further consideration and the offeror so notified when it is determined to be no longer in the competitive range.

(5) At the completion of technical and cost/price discussions, a common cut-off date for the receipt of final technical and cost/price proposals based upon those discussions is then established and the remaining offerors so notified. An evaluation is then made of each offeror's total proposal and a single

offeror is normally selected for negotiation of a contract (see 215.613(h)(7)). In order to release proposal teams at the earliest practical date, all offerors are notified of the contractor selected.

(6) A definitive contract is then negotiated with the selected offeror and contract award accomplished. These negotiations must be completed in a timely manner and must not involve changes in the Government's requirements or the contractor's proposal which would affect the basis for source selection. In the event a definitive contract cannot be awarded on a timely basis, negotiations may be terminated and a new source selection decision made.

(b) *Applicability.* These procedures may be used at the discretion of the Contracting Officer for competitively negotiated research and development acquisitions with an estimated value of two million dollars or more. They may also be used for any other acquisition when approved in accordance with Departmental procedures subject to the restrictions below. Use of these procedures is most appropriate when Government evaluation of initial proposals, without discussion of proposal deficiencies, will be sufficient to determine the best overall offer to the Government. Acquisitions for which these procedures are not used shall follow the procedures of FAR 15.6.

(c) *Restrictions.* These procedures should not be used for acquisitions in which the necessity to conduct extensive negotiations is anticipated. These procedures shall not be used for any acquisitions which:

(1) Are acquired pursuant to FAR 6.302–2;

(2) Are solely for personal or nonpersonal services;

(3) Are for architect-engineer services; or

(4) Have an estimated value of less than two million dollars.

(d) *Procedures.* Acquisitions subject to this paragraph shall be conducted in accordance with the following procedures:

(1) *Solicitations.* Solicitations shall be developed in accordance with FAR 15.4 and shall include the following special requirements and instructions:

(i) A general statement explaining the concept and procedures to be used in the selection of a contractual source of the proposed acquisition.

(ii) The relative importance of technical/system performance criteria.

(iii) A notification that any proposals which are unrealistic in terms of technical or schedule commitments or unrealistically low in cost or price will be deemed reflective of an inherent lack of technical competence or indicative of failure to comprehend the complexity and risks of the proposed contractual requirements and may be grounds for the rejection of the proposal.

(iv) A schedule of planned source selection events including, but not limited to, specific dates for the submission of both technical and cost/price proposals.

(v) Provisions requiring sequential submission of separate technical and cost/price proposals.

(vi) Requirements for the technical proposal to include, where appropriate, identification of trade-offs among performance, production costs, operating and support costs, schedule and logistic support factors; and requirements for cost estimates which illustrate the impact of these trade-offs. In addition, requirements for the technical proposal to include information necessary to indicate that the design to cost and operating and support cost objectives, when used, would be achieved when the item(s) enters production.

(vii) Requirements for the cost proposal to include the detailed, substantiating cost information pertaining to the performance of the contemplated contract and other detailed data necessary for evaluation of cost factors to be considered in the source selection decision.

(viii) A statement that both technical and cost/price discussions will be limited as set forth in (e) and (f) below.

(ix) A notification that negotiations will be conducted only with the selected offeror, and that offerors should represent their most favorable technical and cost/price proposals initially.

(e) *Step one—evaluation and discussion of technical proposals.* A detailed evaluation shall be accomplished on all technical proposals received based upon the established criteria in the solicitation. Upon completion of the initial evaluation, limited discussions shall be conducted with all offerors for the purpose of achieving maximum understanding and clarification of the contents of the proposal. During such discussions, offerors shall not be advised of deficiencies in their proposals. A deficiency is defined as that part of an offeror's proposal which would not satisfy the Government's requirements. Offerors shall be advised of areas of their proposal in which the intent or meaning is unclear or for which additional substantiating data is required for evaluation. When necessary for complete understanding of proposals, clarifications and/or additional substantiating data may be requested concerning those areas of an offeror's proposal when there is uncertainty that a deficiency exists. In most cases, clarification of proposals and additional substantiating data, if required, will be included by offerors with their cost/price proposals in Step Two. When it is apparent from the proposals received that the Government's requirements have been misinterpreted, clarification shall be provided to all offerors to ensure complete understanding.

(f) *Step two—evaluation and discussion of cost/price proposals.*

(1) Following the technical evaluation and discussions, complete, fully documented cost/price proposals and clarifications, if required, of technical proposals shall be obtained. Each proposal shall be evaluated and those which have no reasonable chance for award may be eliminated from the competition at this point and the offerors notified that they are outside the competitive range and will be given no further consideration.

(2) Limited discussions as indicated herein shall then be conducted with all remaining offerors in connection with their respective cost/price proposals, either on an element-by-element basis or in their entirety. These discussions may include (i) rectification and/or correction of inconsistencies or mathematical errors; (ii) correlation of elements of cost with their respective technical efforts, in order to assess the extent of realism in the cost proposal; and (iii) discussion necessary to ensure a complete understanding of the Government's requirements, what is being offered (including delivery schedules, trade-offs among performance, design to cost, life cycle cost, and logistics support factors) and other contract terms. An offeror shall not be advised during these discussions that its proposal or any of its elements are either too high or too low. When discussions of technical proposals are required they shall be limited as stated in (e) above.

(3) Following such discussions, a proposal may be eliminated from further consideration and the offeror so notified (i) when the proposal was initially included in the competitive range because it might have been susceptible of being made acceptable, or (ii) because there was uncertainty whether it was in the competitive range, and in either case, through discussions relating to ambiguities and omissions it becomes clear that the proposal should not have been included in the competitive range initially.

(g) *Step three—common cut-off.*

(1) A common cut-off date for receipt of technical and cost/price proposal clarifications or substantiations shall be established and all participants so notified in accordance with FAR 15.611.

(2) Offerors shall be informed that any changes incorporated in the final proposal must be fully substantiated. Supporting data must provide traceability to the causative technical, business, or financial conditions that brought about any change. Lump sum reductions in cost/price shall not be accepted without supporting rationale.

(3) After the common cut-off date, requirements shall not be imposed for additional proposals or revisions to submitted technical or cost proposals without the prior approval of an official at a level no lower than that of a Head of a Contracting Activity (HCA). Auctioning through repetitive calls for offers is strictly prohibited.

(4) Final detailed negotiations leading to the bilateral execution of a definitive contract shall be deferred until after the selection of an offeror for final contract negotiations.

(h) *Selection of an offeror for final contract negotiations.*

(1) Complete evaluation of all factors in accordance with the criteria set forth in the solicitation, including cost/fee or price, shall be conducted with careful regard for security procedures and good business practice.

(2) Based upon the offeror's latest total acceptable technical and cost proposals, selection of a single source shall be made for the conduct of final negotiations leading to a definitive contract. (This does not preclude selecting more than one source when multiple sources are desired; e.g., competitive prototypes.) Procedures for waiver of this requirement are at (7) below.

(3) Proposals unrealistic in terms of technical or schedule commitments or unrealistically low in cost or price will be deemed reflective of an inherent lack of technical competence or indicative of failure to comprehend the complexity and risks of the contract requirements and may be grounds for rejection of the proposal.

(4) The selection will be based on an integrated decision, involving consideration of technical approach, capability, management, design to cost, operating and support cost objectives, historical performance, price/cost and other factors.

(5) Following selection of the best offeror, all competitors shall be notified of the source to be awarded the contract, subject to negotiation of a satisfactory definitive contract.

(6) The source selection decision is conditional in that award of a fully negotiated contract to the selected offeror must be accomplished within a period of time prescribed by the source selection authority. In the event a definitive contract cannot be awarded on a timely basis, negotiations may be terminated and a new source selection decision made.

(7) Proposed contracts may be negotiated with two or more offerors within the competitive range, if the HCA makes a written determination that a final selection of a single source should not be made until such proposed contracts have been negotiated. Such determination shall not be made solely for the purpose of maintaining a competitive environment. However, such a determination may be based, for example, on unique situations where there are no significant discriminating technical or cost features between two or more offerors. Notification of such determination shall be provided to OASD(A&L)(P) through Departmental procedures.

(i) *Step four—final negotiations and contract award.* Final negotiations leading to bilateral execution of a single definitive contract will be conducted only with the selected offeror except when multiple negotiations are authorized by the HCA. Final negotiations shall include the disclosure and resolution of all technical deficiencies and all unsubstantiated areas of cost. Negotiations shall not involve changes in the Government's requirements or the contractor's proposal which would affect the basis for source selection. In the event that such changes are necessary, the procedures in FAR 15.606 shall be followed. The final negotiated contract must represent a reasonable probability that the Government's requirements will be satisfied at a fair and reasonable cost/fee or price.

(j) *Debriefings.* Formal debriefings shall be conducted after contract award, in accordance with FAR 15.1002 and 215.1002.

Subpart 215.7—Make-or-Buy Programs

215.704 Items and work included.

The minimum dollar threshold within DoD referred to in FAR 15.704(b) is $500,000.

215.706 Evaluation, negotiation, and agreement.

(d) Contracting officers shall also give primary consideration to the effect of the proposed make-or-buy program on the contemplated type of subcontract.

215.707 Incorporating make-or-buy programs in contracts.

(a)(2) The contracting officer may exclude the make-or-buy program from (i) cost-plus-incentive-fee contracts to which FAR 15.707(b) is applicable and (ii) from cost-plus-incentive fee contracts having a cost incentive which provides for a swing from target fee of at least 3 percent and a contractor's overall share of cost of at least 10 percent (authority may be requested (see FAR 1.4) to exclude the make-or-buy program from other cost-plus-incentive-fee contracts having different incentive and cost-sharing patterns, whenever the contracting officer finds that such other contracts provide sufficient incentive for control of costs).

Subpart 215.8—Price Negotiation

215.802 Policy.

(b)(2) (This prohibition neither prevents the negotiation of indirect costs and other rates applicable to several contracts nor prohibits FPRA's applicable to several contracts.)

215.803 General.

(b) When necessary, requirements and technical specialists should be consulted. The primary responsibility for the adequacy of specifications and for the delivery requirements must necessarily rest with requirements and technical groups. However, the contracting officer should be aware of the effect which these factors may have on prices and competition, and should, prior to award, inform requirements and technical groups of any unsatisfactory effect which their decisions have on prices or competition.

(d) When products are sold in the open market, costs are not necessarily the controlling factor in establishing a particular seller's price. Similarly, where competition may be ineffective or lacking, estimated costs plus estimated profit are not the only pricing criteria. In some cases, the price appropriately may represent only a part of the seller's cost and include no estimate for profit or fee, as in research and development projects where the contractor is willing to share part of the costs. In other cases, price may be controlled by competition. The objective of the contracting officer shall be to negotiate fair and reasonable prices in which due weight is given to all relevant factors. When negotiations indicate the need for using other than a firm fixed-price contract, there should be compatibility between the type of contract selected and the contractor's accounting system.

215.804 Cost or pricing data.

215.804-2 Requiring certified cost or pricing data.

(a)(1)(ii) The term "price adjustment" or "pricing adjustment" means the aggregate increases and/or decreases in costs plus applicable profits.

(2) Partial or limited data may be requested when less than complete cost analysis (e.g., analysis of only specific factors) will provide a reasonable pricing result on awards under $100,000 without the submission of complete cost or pricing data. The contracting officer shall request only that data which the contracting officer considers adequate to support the limited extent of the cost analysis required and he will not require certification.

(b)(1) Cost or pricing data shall not be required merely in anticipation of post-award review of the contract.

(2) If, after cost or pricing data were initially requested and received, it is determined that adequate price competition does exist, the data need not be certified.

215.804-3 Exemption from or waiver of submission of certified cost or pricing data.

(a)(1) When economic price adjustment provisions are included in competitive acquisitions, see FAR 16.203-2(b).

(b)(2)(ii) An example of a determinative advantage is where substantial costs, such as start-up or other nonrecurring expenses, have already been absorbed in connection with previous sales, thus placing the competitor in a preferential position.

(3) Examples of a price "based on" adequate price competition are: (i) Exercise of an option in a contract for which there was adequate price competition if the option price has been determined to be reasonable in accordance with FAR 17.207(d); and (ii) an item normally is acquired competitively but in a particular situation only one offer is solicited or received, and the price clearly is reasonable in comparison with recent purchases of comparable quantities for which there was adequate price competition.

(c)(6) In addition, cost or pricing data may be requested, if necessary, where there is such a disparity between the quantity being acquired and the quantity for which there is such a catalog or market price that pricing cannot reasonably be accomplished by comparing the two.

(7) In determining exemptions, it is the item under consideration that must meet the test. The ultimate objective is to achieve fair and reasonable prices for items bought. Altered terms, minor configuration changes, extra inspection requirements, or quantity differences are adequate reasons for pricing items differently from catalog or market prices.

(e)(3) In anticipation of repetitive acquisitions of a catalog item, the contracting officer or the cognizant ACO may make special arrangements for submission of the exemption claim. The submission need not be on a Standard Form 1412, but shall include any data required by the form and include or incorporate by reference all the applicable definitions, representations and rights included in the form. Government approval of the exemption claim shall set forth the effective period, usually not more than one year, and require the contractor to furnish any later information that might raise a question as to the continuation of the exemption. Such approval may be extended to other Government contracting offices with their concurrence.

Note.—A copy of each waiver shall be sent to the Deputy Assistant Secretary for Procurement, Office of Assistant Secretary of Defense, Acquisition and Logistics.

(i) Set forth below is a format for the D&Fs to be made by the agency head with respect to waiving the requirement for submission of cost or pricing data and certification thereof, as required by 10 U.S.C. 2306(f), and for waiving the inclusion of the clauses required by FAR 52.214-27 and 52.215-25. The format may be used also for the D&Fs for such waiver made by the Head of the Procuring Activity for contracts with foreign governments or agencies thereof.

(Military Department or Agency)

Determination and Findings

Authority to Waive Submission of Cost or Pricing Data and Certificate

Upon the basis of the following findings and determination which I hereby make as agency head, the requirement for submission of cost and pricing data and certificate described below may be waived pursuant to the authority of 10 U.S.C. 2306(f), as implemented by FAR 15.804-3(i).

Findings

1. The (2) proposes to enter into a contract with (3) for the acquisition of (4).

2. Pursuant to FAR 15.804-2, the proposed contractor is required to submit certified cost or pricing data. However, waiver of submission of the certified cost or pricing data described below is justified for the reasons indicated: (5).

Determination

1. The requirement for submission of cost or pricing data for the proposed contract action may be waived.

Date

Notes.—

(1) In the case of a contract with a foreign government or agency thereof, delete the words "agency head" and substitute therefor "head of a procuring activity."

(2) Procuring or contracting activity.

(3) Name of supplier.

(4) Brief description of supplies or services.

(5) Describe the cost or pricing data requirements to be waived. (The waiver may be partial, i.e. limited to particular cost or pricing data.) Set forth the circumstances and conditions which make the proposed contract action an exceptional case and state the reasons which justify the proposed waiver.

215.804-4 Certificate of current cost or pricing data.

(c) The data on numerous minor material items each of which by itself would be insignificant may be reasonably available only as of a cut-off date prior to agreement on price because the volume of transactions would make the use of any later data impracticable. Furthermore, except where a single item is used in substantial quantity, the net effect of any changes to the prices of such minor items would likely be insignificant.

215.804-6 Procedural requirements.

(b)(2) The following may be used with the SF 1411:

(i) When Contract Cost Data Reports are required by the purchase request, the contractor shall be required to submit DD Forms 1921 and/or 1921-1 to support the SF 1411. The DD Forms 1921 shall be prepared in accordance with the Contractor Cost Data Reporting (CCDR) System (Army—AMCP 715-8, Navy—OASN(S&L), CBM-CPR, and Air Force—AFLCP/AFSCP 800-15). The contractor supporting data shall be prepared in such a manner as to support each cost element on the DD Form 1921-1.

(ii) *Contract pricing proposal supporting schedules* may be devised by contracting offices to require such supporting data to the foregoing forms as is considered necessary and reasonable through knowledge of industry, company or commodity practices.

(c) To the extent possible, the understanding should relate to the contractor's formal estimating system. Notwithstanding the foregoing, significant matters important to contractor management and to the Government and any related data within the contractor's organization or the organization of a subcontractor or prospective subcontractor would be expected to be current on the date of agreement on price and, therefore, will be treated as reasonably available as of that date. Although changes in the labor base or in prices of major material items are generally significant matters, no hard and fast rule can be laid down since what is significant can depend upon such circumstances as the size and nature of the acquisition.

(e) The referral to higher authority shall also include a complete statement of the attempts made to resolve the matter, including (1) steps taken to secure essential cost or pricing data, (2) efforts to secure the contractor's cooperation in the establishment of a satisfactory business relationship, and (3) any assurances offered, such as agreements to adequately safeguard information furnished.

(f) Since an offeror may propose a price which does not include all preproduction and startup or other nonrecurring costs for the purpose of obtaining the first production contract and for gaining an advantage over competitors in negotiations for future acquisitions, it is important to know whether the offeror intends to absorb any portion of these costs or whether the offeror plans to recover them in connection with subsequent pricing actions under the proposed or future contracts. This information is needed in evaluating competing proposals to determine which proposal is most likely to result in the lowest overall cost to the Government, particularly where the successful offeror is likely to become, in effect, a sole source for follow on acquisitions (including spare parts or other support items).

(g)(3) In addition to submitting cost or pricing data from the prospective subcontractor most likely to be awarded the subcontract, the contractor shall submit other data pertaining to subcontract costs, including other subcontractor quotations. Failure by the contractor to submit subcontract cost or pricing data may be cause for disqualification of the contractor from further consideration for award of the proposed contract.

215.804-7 Defective cost or pricing data.

(b)(2) In the absence of evidence to the contrary, the natural and probable consequence of defective data is an increase in the contract price in the amount of the defect plus related burden and profit or fee; therefore, unless there is a clear indication that the defective data were not used, or were not relied upon, the contract price should be reduced in that amount. In establishing that the defective data caused an increase in the contract price, the contracting officer is not expected to reconstruct the negotiation by speculating as to what would have been the mental attitudes of the negotiating parties if the correct data had been submitted at the time of agreement on price.

(d) An auditor's advisory report of post-award reviews of cost and pricing data may result either from a specific request of a contracting officer or from audit action initiated independent of a contracting officer's request.

(e) In exercising the Government's rights in such cases, the contracting officer will consider the varying circumstances discussed below.

(e)(S-70) In some instances, the prime contractor may have reached agreement on price with a subcontractor before the prime contractor and the Government agree on a definitive price. This might occur, for example, if the prime contractor commenced performance under an unpriced action such as a letter contract. In such cases, the subcontractor's cost or pricing data must be submitted with the prime contractor's submission. If any such subcontractor data are subsequently found to be defective, the prime contract is subject to price adjustment in the same manner as would be the case if any other cost or pricing data submitted by the prime contractor proved to be defective.

(e)(S-71) The Government and the prime contractor will normally agree on the price of a contract prior to final agreement on price between the prime contractor and his subcontractor. In such cases, the prime contract price will be based, in part, on subcontract cost estimates. The prime contractor will be expected to support the subcontract cost estimates with subcontractor cost or pricing data. The prime contract price will be subject to adjustment on the basis of defective subcontractor cost or pricing data submitted prior to agreement on the prime contract price if:

(i) Such subcontractor data were not accurate, complete, or current as of the date certified in the prime contractor's Certificate of Cost or Pricing Data, or in some cases were not accurate as submitted by the subcontractor, and

(ii) The prime contract price was increased by a significant sum because of such defective subcontractor data.

(f) Conditions may be prescribed by: the Office of the Assistant Secretary of the Army (Research, Development and Acquisition), for the Army; Office of the Assistant Secretary of the Navy (Shipbuilding & Logistics), DCBM, for the Navy; the Director of Contracting and Manufacturing Policy, Headquarters, USAF (AF/RDC), for the Air Force; and the Executive Director, Contracting, for the Defense Logistics Agency.

(2) Although the action is taken under those price reduction clauses rather than under Part 31 as a practical matter the result is the same, i.e., the increased costs will be disallowed under cost-type contracts or not considered as actual costs for final pricing of redeterminable or incentive-type contracts. The action is taken under the price reduction clauses because not only will the increased costs be disallowed or not considered as actual costs but also the fixed-fee or target profit included in the initial price may be subject to reduction in accordance with (1) and (2) of 215.804-7(e) above.

215.804-8 Contract clauses.

The requirement for inclusion of the specified clauses in contracts with foreign governments or agencies may be waived in exceptional cases by the Agency head (see FAR 15.804-3(i)). The contracting officer shall also include the clause at FAR 52.215-22 when obtaining partial cost or pricing data in accordance with 215.804-2(a)(2).

(S-70) The clause at 252.215-7000, Aggregate Pricing Adjustment, shall be included in all solicitations and contracts which include a clause at FAR 52.215-23, FAR 52.215-24, or at FAR 52.215-25. The Contracting Officer may insert a lesser dollar amount, if appropriate.

215.805 Proposal analysis.

215.805-1 General.

(a) The contracting officer should also note the following:

(a)(S-70) Each contracting officer is responsible for performing or having performed all administrative actions necessary for effective contracting.

(a)(S-71) For certain acquisitions, it may be necessary to convene a formal "Should Cost" (see FAR 15.810) team of specialists to evaluate the contractor's cost projections, supporting standards, and other in-plant management, operational and performance practices, on which cost projections are based.

(a)(S-72) Contract auditors are professional accountants who, although organizationally independent, are the principal advisors to contracting officers on contractor accounting and contract audit matters. Contract audit services are available in two forms:

(i) Audit reports setting forth the results of auditors' reviews and analyses of cost data submitted by contractors as part of pricing proposals, reviews of contractors' accounting systems, estimating methods, and other related matters; and,

(ii) "On-the-spot" personal consultation and advice to contracting

and contract administration personnel in connection with analyses of contractors' cost representations and related matters by liaison auditors stationed at contracting and contract administration offices. (DCAA provides procurement liaison auditors (PLAs) at most major contracting and contract administration offices to facilitate the receipt and use of audit service and to provide accounting and audit advice as to whether or not audit review of a price proposal should be waived.)

(b) Some form of price or cost analysis is required in connection with every negotiated contract action. The method and degree of analysis, however, is dependent on the facts surrounding the particular acquisition and pricing situation. The extent of cost analysis should be that necessary to assure reasonableness of the pricing result, taking into consideration the amount and complexity of the proposed contract. Normally, a sound conclusion as to value cannot be made on the basis of cost analysis alone. Depending on the information available, a price arrived at by cost analysis should be corroborated through price analysis techniques.

215.805–2 Price analysis.

(b) To provide a suitable basis for comparison, appropriate allowances must be made for differences in such factors as time of prior acquisitions, specifications, quantities ordered, time for delivery, Government-furnished materials, and experienced trends of improvement in production efficiency. It must also be recognized that such comparison may not detect an unreasonable current quotation unless the reasonableness of the prior prices was established and unless changes in the general level of business and prices have been considered.

215.805–4 Technical analysis.

Technical analyses by the Plant Rep/ACO and the team members shall be based on their knowledge of such factors as production, quality assurance, engineering and manufacturing practices and techniques, and information as to plant capacity, scheduling, engineering and production "know-how," Government property, make-or-buy considerations, and industrial security, particularly as these relate to practices of the specific prospective contractor.

215.805–5 Field pricing support.

(a)(1) Contracting officers shall request field pricing reports for contracts and modifications resulting from a proposal in excess of $100,000 for a firm fixed-price contract, $250,000 for a fixed-price incentive contract, and $500,000 for a cost type contract. The requirement for subject reports may be waived, with adequate justification, at one level above the contracting officer. Requests for field pricing support should be tailored to ask for minimum essential information needed to ensure a fair and reasonable price is achieved. Information of the type described in (i) through (vi) below, which is often available to the contracting officer from the Plant Rep/ACO or from the Procurement Liaison Auditor (PLA), should be useful in determining the extent of any field pricing support that is needed.

(i) In-house engineering determination of level of effort required in connection with research and development or study contracts.

(ii) Audited cost information from contract awards in process, or recently negotiated contracts.

(iii) Adequately reviewed data on proposed subcontract items which constitute the major portion of the prime contract price proposal.

(iv) Prices of standard commercial items which constitute the major portion of the prime contract price proposal.

(v) Special forward pricing formulas or rates such as for support items, or forecast overhead rates, prescribed in an existing advance agreement.

(vi) Current labor rates; overhead rates, loading factors, per diem rates, and lot data based upon actual costs and labor hours. It should be borne in mind that no single category of information is necessarily sufficient by itself; for example, information as to rates for labor and overhead would normally require data concerning the base elements—labor hours, material costs, etc.—to which the rates apply.

(2) The Plant Rep/ACO, as well as the contract auditor, will be responsible for providing a complete and accurate field pricing report to the contracting officer. To accomplish this end, the Plant Rep/ACO must:

(i) In concert with the auditor and in consideration of the auditor's workload, establish a deadline for the auditor's input, subject to date adjustments when considered necessary (adjustments will be coordinated by the Plant Rep/ACO with the contracting officer and the contract auditor);

(ii) Identify areas for special consideration (these are areas in addition to those specified by the contracting officer);

(iii) Arrange for exchanges of technical and audit information; and

(iv) Be fully responsive to a request for technical information from the auditor.

(a)(S–70) If an audit review will not be required, either as a separate report or as part of a field pricing report, before negotiating any contract or modification for which a proposal is submitted in excess of $500,000, approval shall be obtained at a level above the contracting officer.

(c)(1)(S–70) When field pricing reviews are required, contracting officers should note the following:

(A) The Plant Rep/ACO is the team manager for all contracting officer requests for field pricing support. Therefore, the contracting officer shall send all requests for field pricing support to the cognizant field contract administration activity; generally, the Plant Representative (Plant Rep) for the Services and the Administrative Contracting Officer (ACO) for DCAS(DLA). A copy of the request will also be sent to the cognizant audit activity.

(B) When the contracting officer knows in advance that field pricing support will be required, the contracting officer shall provide the cognizant Plant Rep/ACO and auditor a copy of the solicitation. In addition, the contracting officer may require the contractor to provide copies of the proposal direct to the Plant Rep/ACO and auditor. In this event the contracting officer shall, as soon as possible after receipt of the contractor's proposal, identify those specific areas for which field pricing support is required.

(C) Where audit reports are received on contracting actions that are subsequently canceled or unsuccessful, the cognizant auditor shall be notified in writing.

(c)(1)(S–71) When field pricing reports are requested for acquisition of parts or support equipment, the request shall as a minimum include, but will normally be limited to, the following:

(A) A detailed analysis of each line item where the quoted price exceeds 25 percent or more the lowest price of the Government of the item at any time within the most recent 12-month period. These items will be specified in the request for field pricing support.

(B) The results of a review of the description and the price of each line item in the proposal made to assist in identifying any obvious overpricing. Those items, so identified, will be subjected to further analysis.

(C) An analysis of the significant high-dollar-value items. If there are no obvious high-dollar-value items (i.e., the majority of line items are of approximate equal value), a random sampling technique should be used.

(D) An analysis of a random sample of the remaining low-dollar-value line items. Sample size may be determined by subjective judgment, e.g., experience with the contractor, reliability of contractor's estimating/accounting systems, credibility of proposals, etc.

(d) The efforts of all field pricing support team members are complementary, advisory and also offer an excellent check and balance of the various analyses imperative to the contracting officer's final pricing decision. Therefore, it is essential that there be close understanding, cooperation and communication to ensure the exchange of information of mutual interest during the period of analysis. While they shall review the data concurrently when possible, each shall render services within the individual area of responsibility. For example, on quantitative factors (such as labor hours), the auditor may find it necessary to compare proposed hours with hours actually expended on the same or similar products in the past as reflected on the cost records of the contractor. From this information the auditor can often project trend data. The technical specialist may also analyze the proposed hours on the basis of knowledge of such things as shop practices, industrial engineering, time and motion factors, and the contractor's plant organization and capabilities. The interchange of this information will not only prevent duplication but will assure adequate and complementary analysis.

(e) The terms "audit review" and "audit" refer to examinations by contract auditors of contractors' statements of actual or estimated costs to the extent deemed appropriate by the auditors in the light of their experience with contractors and relying upon their appraisals of the effectiveness of contractors' policies, procedures, controls, and practices. Such audit reviews or audits may consist of desk reviews, test checks of a limited number of transactions, or examinations in depth, at the discretion of the auditor. The contract auditor is responsible for submission of information and advice, based on analysis of the contractor's books and accounting records or other related data, as to the acceptability of the contractor's incurred and estimated costs.

(e)(6) Reports of technical analysis and review should be furnished to the auditor at the earliest possible date and at least five days prior to the due date of the audit report to enable the auditor to include the financial effect of technical findings in the audit report (for example, the necessary computations of dollar amounts arising from changes in proposed kinds and quantities of materials, labor hours, etc.). In the event the technical analyses are not available in time to be reflected in the audit report, the audit report shall so state, and this shall be made known to the Plant Rep/ACO so that comments may be incorporated in the submission to the contracting officer. If technical analyses are received later by the auditor, the auditor shall issue a supplemental report if the status of the negotiation is such that a report would serve a useful purpose. The original of all technical reports received by the auditor shall be made a part of the audit report submitted to the Plant Rep/ACO.

(e)(7) When the contracting officer determines that deficiencies in the contractor's accounting system or estimating methods are such that the proposed contract cannot be adequately priced or administered, the contracting officer shall, with the advice of the contract auditor and the Plant Rep/ACO, assure that necessary corrective action is initiated prior to the award of such contract. The auditor is responsible for performing that part of reviews and cost analyses which requires access to the contractor's books and financial records supporting proposed cost or pricing data, regardless of the dollar amount involved.

(e)(8) During the course of the examination, the Plant Rep/ACO and the auditor shall each confer with the contractor to fully understand the basis for each item in the contractor's proposal and to remove any doubts as to the validity and accuracy of their conclusions and findings.

(g) The Plant Rep/ACO (price analyst or negotiator) shall query the auditor or technical personnel about matters in audit or technical reports which appear to need clarification. When developing the Plant Rep/ACO statement to the contracting officer transmitting audit and technical reports, comments or observations shall be added about pertinent matters whether or not covered in the audit or technical reports. However, it is not contemplated, for example, that the price analyst or negotiator should attempt an examination of the contractor's accounting records for this purpose since the contract auditor has this responsibility.

(i) If in the opinion of the contracting officer, Plant Rep/ACO, or auditor, the review of a prime contractor's proposal requires further review of subcontractors' cost estimates at the subcontractors' plants (after due consideration of reviews performed by the prime contractor), such reviews should be fully coordinated with the Plant Rep/ACO having cognizance of the prime contractor before being initiated. If a review is required of a subcontract proposal, the prime Plant Rep/ACO shall forward the request to the subcontract ACO with an information copy to the subcontract auditor. In the event a lower tier subcontract proposal requires review, the request should be coordinated in sequence with the Plant Rep/ACO's at higher tiers in the subcontract chain. The resulting pricing reports, including any audit reports, shall be forwarded by the subcontract Plant Rep/ACO to the prime Plant Rep/ACO with an information copy to the prime auditor. If the review is of a lower tier subcontract proposal, the report shall be transmitted through the Plant Rep/ACO's in the subcontract chain.

(j) The appropriate contract administration activities will be notified by the HCA when review and evaluation of subcontractors' proposals will require extensive field pricing assistance in connection with the acquisition of a major new weapon system, or require special or expedited action by field pricing personnel and such action is being, or has been, delayed.

215.806 Subcontract pricing considerations.

(S–70) Other subcontract pricing considerations include:

(1) Subcontract costs and pricing arrangements are significant elements to be considered during negotiation of prime contracts and during contract administration.

(2) Basic responsibility rests with the prime contractor for decisions to make or buy, for selection of subcontractors, for subcontract prices, and for subcontract performance. The contracting officer who is responsible for negotiating the contract price with the prime contractor must have adequate knowledge of these elements as they affect prime contract prices.

(3) Contractors' "make-or-buy" programs and proposed subcontracts must be reviewed in accordance with FAR 15.7 and with FAR Part 44. Information from these reviews should be used in evaluating subcontract costs when negotiating prime contract prices. The contracting officer, when appropriate, should secure from the contractor information concerning:

(i) The prime contractor's purchasing practices; and

(ii) The principal components to be subcontracted and the prospective or

actual subcontractors, including (A) the extent of competition obtained or to be obtained, (B) the basis for the subcontract costs included in the contract pricing proposal (SF 1411), (C) any contractor cost or price analyses of subcontract proposals, including the cost or pricing data submitted by subcontractors, (D) the pricing arrangement contemplated or negotiated, and (E) the extent of subcontract supervision.

(4) The contracting officer is responsible for the reasonableness of the prime contract price which includes self-satisfaction as to the reasonableness of the subcontract costs included in the prime contract price. Field pricing support from the Plant Rep/ACO cognizant of the prime contractor is generally required in determining reasonableness of the prime contract price. In some instances, it may be necessary to obtain field pricing support of proposed subcontracts. On the basis of a request from the contracting officer and/or advice from members of the field pricing team, the ACO cognizant of the prime contractor may request field pricing support from the ACO cognizant of the prospective subcontractor. These actions will be taken in accordance with 215.805–5.

(5) If the prime contractor's analysis is not considered adequate, the ACO will return the analysis package to the contractor for re-accomplishment indicating areas of inadequacy. In this case, the prime contractor will accomplish or cause the accomplishment of the additional review and resubmit the package to the ACO.

(6) When subcontracts have been placed on a price redetermination or fixed-price incentive basis and the prime contract is to be repriced, it may be appropriate to negotiate a firm prime contract price, even though the contractor has not yet established final subcontract prices. The contracting officer may do this when convinced the amount included for subcontracting is reasonable, e.g., where realistic cost or pricing data on subcontract efforts are available. However, even though the available cost data are highly indefinite and there is a distinct chance that one or more of the subcontracts eventually may be redetermined at prices that are lower than those predicted in redetermining the prime contract price, other circumstances may require the prompt negotiation of the final contract price. In such a case, the contract modification which evidences the revised contract prices should provide for adjustment of the total amount paid or to be paid under the contract on account of subsequent redetermination of the specified subcontracts. This may be done by including in the contract modification a statement substantially as follows:

Promptly upon the establishment of firm prices for each of the subcontracts listed below, the Contractor shall submit, in such form and detail as the Contracting Officer may reasonably require, a statement of costs incurred in the performance of such subcontract and the firm price established therefor. Thereupon, notwithstanding any other provisions of this contract as amended by this modification, the Contractor and the Contracting Officer shall negotiate an equitable adjustment in the total amount paid or to be paid under this contract to reflect such subcontract price revision. The equitable adjustment shall be evidenced by a modification to this contract.

(List Subcontracts)

(7) In considering cost-plus-fee subcontracts, the contracting officer shall make every effort to insure that fees under such subcontracts never exceed the fee limitations identified in 215.903(d).

(8) The prime contractor may submit subcontractor claims for exemption at any time to the contracting officer for an advance review of their acceptability, but otherwise the prime contractor shall submit them with its proposal or request for subcontract consent; or other action by the contracting officer, whichever comes first.

215.807 Prenegotiation objectives.

(b) Prenegotiation objectives will be documented in accordance with Departmental procedures.

(S–70) When contract audit review of the offeror's proposal has been requested, the contracting officer shall keep the auditor informed of planned prenegotiation and negotiation activities, including related fact-finding sessions and/or discussions with the offeror, and invite contract audit participation where the contracting officer and auditor agree that a significant contribution can be made.

215.806 Price negotiation memorandum.

(a)(4) Comments should also be included on the current status of their contractor systems (e.g., estimating, accounting, compensation, etc.) to the extent that they impacted and were considered in the negotiation.

(a)(10) The following applies to documentation of profit or fee negotiated:

(i) Since the profit objective is the contracting officer's prenegotiation evaluation of the total estimated profit under the proposed contract, the amounts set forth for each category of cost will probably change in the course of negotiation. Furthermore, the negotiated profit will probably vary from the profit objective, and from a detailed application of the weighted guidelines method to each element of the Contractor's Input to Total Performance as anticipated prior to negotiation. Since the profit objective is viewed as a whole rather than as its component parts, insignificant variations from the pre-negotiation profit objective, as a result of changes of the Contractor's Input to Total Performance, need not be documented in detail. Conversely, significant deviations from the profit objective necessary to reach a final agreement on profit or fee shall be explained. The profit earned as a result of contract performance will generally vary from that anticipated at the time of negotiation.

(ii) When the weighted guidelines method is not used because of unusual pricing situations (see 215.9), the contract file shall be documented to support the exceptions.

(iii) DD Form 1547 (see 215.9) may be used in the Price Negotiation Memorandum, *Provided* that the rationale used in assigning the various rates is fully documented.

(iv) See also FAR 15.807(c).

215.809 Forward pricing rate agreements.

(e) Indirect costs commonly known as overhead are defined and described in FAR 31.203. Criteria for treatment and application of indirect costs to contracts are also set forth in FAR 31.203. To assure a reasonable approximation and allocation of indirect costs on an equitable basis to individual contracts, negotiators shall utilize audited indirect cost data or negotiated indirect cost rates, when available, in connection with negotiation of contracts and shall not, unless authorized by the head of the contracting activity, seek preferential indirect cost rates. If there is any question with respect to audited indirect cost data or negotiated indirect cost rates, or if such are not available, the negotiator should normally use the advisory services of the cognizant Department of Defense auditor.

(e)(2) In assessing changed conditions, the ACO will consider: (i) The type of contract contemplated; (ii) whether the dollar amount of the proposed contract action would significantly change the rates in the agreement; (iii) whether the performance period of the proposed contract action is significantly different from the period to which the rate agreement applies; and (iv) any new data or other information that may raise a question as to the acceptability of the rates.

(f) When contracting representatives have received notice that changed conditions negate FPRA's, individual contracting actions should not be delayed.

215.810 Should-cost analysis.

(b)(S–70)(i) Should-cost analyses shall be performed prior to award of definitive major systems contracts in excess of $100 million for major systems if each of the following conditions are met:

(A) A production contract for the system is to be awarded on a sole-source basis;

(B) Initial production of the system has already taken place;

(C) The current plans for the Department of Defense include production of substantial quantities of identical or similar items;

(D) The work to be performed under the contract is sufficiently defined to permit an effective analysis of what production of the system by the contractor should cost; and

(E) Major changes in the program are unlikely.

(ii) After an initial should-cost analysis has been performed under (i) above, subsequent should-cost analyses need not be performed annually, but must be accomplished at least every four years on contracts meeting the requirements of (i) above.

(iii) Waiver of a should-cost analysis shall be made in accordance with Service procedures, but in no event at a level lower than a general/flag officer or civilian equivalent.

(e) The content of the should-cost analysis team report shall be prescribed by Service procedure. Team leaders should ensure that activities are coordinated to avoid duplication of effort.

215.811 Estimating systems.

(a)(S–70) The establishment, maintenance, and consistent use of formal cost estimating systems by contractors is to the mutual benefit of the Government and industry, particularly where a large portion of the contractor's business is defense work and there are a number of significant proposals requiring review. Contracting activities and contract administration activities are required to furnish full support to a program of encouraging major defense contractors to formalize and follow good estimating procedures. It is recognized that estimating procedures will vary among contractors, and may vary between plants or divisions of a contractor due to differences in products, size and methods of operations, production vs. research, and other factors. While formal systems do not eliminate the need for judgmental factors to be applied by contractors in developing cost proposals, they do provide a sound foundation for the systematic and orderly application of these judgment factors to specific proposals.

(a)(S–71) Reviews and reports shall be accomplished as a joint contract audit and contract administration office team effort, with the contract auditor designated as its head. Reviews shall be tailored to take full advantage of the day-to-day work done as an integral part of both the contract audit and contract administration activities. The program established by the contract audit activity shall be coordinated with the appropriate contract administration activity to assure that team membership includes qualified technical specialists, and that adequate personnel resources are made available to accomplish the program.

215.870 Procedures for identifying contractors' unallowable costs.

(a) The establishment, maintenance, and consistent use of procedures for identifying and segregating unallowable costs, which will assure compliance with CAS 405 and FAR Part 31 will benefit both the Government and contractors. Such procedures may vary between plants or divisions of a contractor due to size, mix of business and complexity of organization. Some of the advantages of sound procedures are that:

(1) A greater degree of confidence can be placed on the accuracy and reliability of contractors' proposals, billings and claims;

(2) They expedite the negotiation process; and

(3) They may reduce the scope of reviews performed by audit and other technical and contracting personnel.

(b) The responsible Federal Contract Audit organization shall review contractors' procedures and practices in conjunction with other contract audit activities. Deficiencies shall be reported to the cognizant ACO, and, as appropriate, contracting officers having substantial business with the contractor. Among the matters to be considered in determining the adequacy of a contractor's procedures are its policy, practices and techniques for:

(1) Assignment of responsibilities within the contractor's organization for reviewing and approving claims against the Government;

(2) Identification of unallowable costs (expressly unallowable, mutually agreed to be unallowable or specifically designated as unallowable by written decision of the contracting officer) together with the individual employees incurring such costs;

(3) Identification and computation of directly associated costs;

(4) Assurance that unallowable and directly associated costs are not included in estimated costs proposed, or incurred amounts claimed by the contractor;

(5) Coordination and communication between the elements of the contractor's organization that prepare proposals and claims and those responsible for identifying unallowable and directly associated costs; and

(6) Assuring the adequacy of the documentation maintained by the contractor identifying the unallowable costs together with directly associated costs.

(c) Documentation in support of the contractor's procedures shall be made available to authorized Government personnel.

215.871 Estimated data prices (DD Form 1423).

(a) The Department of Defense requires estimates of the prices of data in order to evaluate the cost to the Government of data items in terms of their management, product or engineering value.

(b) When data are required to be delivered under a contract, the solicitation will include DD Form 1423, Contract Data Requirements List. The form and the provision included in the solicitation request the offeror to state what portion of the total price is estimated to be attributable to the production or development of the listed data for the Government (not to the sale of rights in the data). However, offerors' estimated prices may not reflect all such costs; and different offerors may reflect these costs in a different manner, for the following reasons:

(1) Differences in business practices in competitive situations;

(2) Differences in accounting systems among offerors;

(3) Use of factors or rates on some portions of the data;

(4) Application of common effort to two or more data items;

(5) Differences in data preparation methods among offerors.

For these and other reasons, data price estimates should not be used for contract pricing purposes without further analysis.

(c) The contracting officer shall assure that the contract does not include a requirement for data which the

contractor has delivered or is obligated to deliver to the Government under another contract or subcontract, and that the successful offeror furnishes any certification required by the solicitation. However, where duplicate data are desired, the contract price shall include the costs of duplication, but not of preparation, of such data.

(d) In the case of acquisitions of $100,000 or over, the contracting officer, after agreeing upon a negotiated contract price, will adjust the estimated prices in Blocks 26 of the original DD Form 1423 for the data items listed thereon to equal the amount included in the related priced contract line or subline item(s) for the data item(s). Adjusted DD Form 1423 will be maintained so as to be available at each contracting activity. The detachable portion of the DD Form 1423 (Blocks 17–26) with the estimated or adjusted prices shall not appear in the contract.

(e) When printing is to be acquired as an integral part of a contract for other supplies or services, each requirement in the contract for printing shall be listed as a separate line item on DD Form 1423; and the approval or waiver obtained pursuant to Subpart 208.8 shall be appropriately identified.

215.872 Capital investment incentives.

(a) *General.* Although the DoD profit policy is normally sufficient encouragement to increase contractor investment, it is recognized that situations will arise when additional incentives may be appropriate. In these individual cases, a special Capital Investment Incentive clause may be negotiated and included in contracts for research, development, and/or production of weapon systems or material to provide incentives to contractors to invest in severable plant equipment capital assets. Such clause must be tailored to the requirements of the individual situation, and then only after a careful analysis of the benefits in each case is made, to assure optimum results are obtained for the Government. This clause would become operative in the event that the contract or program is terminated or funds are not provided in subsequent fiscal years for the planned acquisition upon which the investment decision was based. Such clause may permit the Government to acquire specific capital investments at no more than the depreciated value. This value may be determined by considering a combination of investment incentives, income tax credits or incentives, and allowable depreciation costs pursuant to cost principles established in FAR Part 31.

(b) *Scope.*

(1) This technique is designed to transfer to the Government some of the risk associated with acquisition of certain capital assets by contractors. Its purpose is to cover only specifically identified cost-effective capital assets. It is not to be used to override the general policy that all facilities needed for the performance of Government contracts will be provided by the contractor as set forth in FAR Part 45.

(2) Capital assets which may be covered by such an investment clause are subject to the following criteria:

(i) Includes only severable industrial plant equipment, and other types of severable plant equipment with a unit value in excess of $10,000, including associated accessories which would be capitalized in accordance with the contractor's disclosed accounting practices, but excluding real property;

(ii) The capital investment would not otherwise be made by the contractor except to substantially benefit the program(s) involved;

(iii) The overall savings that will accrue to the Government on the program(s) for covered equipment exceed the related investment costs by a margin sufficient to make the acquisition economically viable;

(iv) The savings that will result from use of this equipment, as developed under (c) below, will be reflected in the pricing of the individual contracts.

(c) *Determination.* Prior to implementing this investment clause, the contracting officer shall make a written determination that the contractor will not make the investment without the use of this technique. This determination should be detailed and include the following elements:

(i) Consideration of the alternatives of acquiring such equipment through the manner listed in FAR 45.302;

(ii) An analysis of the costs of the investment and the overall cost savings to the Government, including the payback quantities and/or payback periods;

(iii) An assessment of the degree of competition present for the proposed requirement. If a competitive environment is present, the competition may cause the firms to consider bearing the total risks for the investments. When this technique is to be used, it shall be a factor in the source selection evaluation criteria;

(iv) An assessment stating the rationale why the DoD profit policy is insufficient motivation for the investment;

(v) Other considerations which should be addressed are:

(A) Effect upon the contractor's make or buy plan;

(B) Subcontractor participation in the investment technique;

(C) Consistency of depreciation rates with FAR 31.205.11;

(vi) Any other matter which has a bearing on the investment plan.

(d) *Limitations.*

(1) This investment incentive is designed primarily for DoD programs which are listed in the Five Year Defense Program (FYDP) and designated as Defense System Acquisition Review Council (DSARC) Programs, in accordance with DoD Directive 5000.1, "Acquisition of Major Defense Systems." This incentive may also be extended to other DoD programs provided approval is obtained from the Secretary of the Department. The program must provide for a sufficient buy to allow for amortization of the planned investment.

(2) The fiscal authority who commits funds to the resultant contract must certify that the following actions have been accomplished:

(i) The Approval Authority (see (g)(1) below) has approved by fiscal year the amount of contingent Government liability;

(ii) The Approval Authority has notified the Congress in advance that the technique will be used on contracts for a specific weapon system or material program element. Unless there are unusual circumstances, this notification will be included in the justification material submitted to the Congress in support of authorization and appropriation requests. A copy of the notification shall be retained in the contract file.

(e) *Negotiation requirements.*

(1) Since this investment incentive is predicated on the written determination specified in paragraph (c) above, the impact on contract cost will be recognized in the price(s) negotiated.

(2) In order for items of plant equipment to be covered, they must be listed (nomenclature and value) in the Capital Investment Incentive clause. The items of equipment can be incorporated in the contract using either or both of the following procedures:

(i) When the exact value and nomenclature of the item of plant equipment is known at the time of negotiations, it shall be listed in the investment clause at the time of the contract award. The contractor's proposal should reflect the impact on cost and other benefit to the Government that will accrue from use of the equipment in order to comply with Pub. L. 87–653;

(ii) If the exact value and nomenclature of each investment is not known at the time of negotiations and it can be mutually agreed that certain categories of plant equipment would benefit the Government, an additional provision to the investment clause should be used. This additional provision shall stipulate the conditions which the individual items of plant equipment must meet to be subsequently incorporated into the investment clause and shall establish the requirement for the contractor to submit financial and other justification necessary for the contracting officer to make the determination specified in (c) above. Such items of equipment will be incorporated into the contract by supplemental agreement and the price revised, as appropriate; *Provided:* (A) They meet the contractual conditions and (B) the equipment value, when added to the value of previously covered equipment, will not exceed the stated dollar ceiling.

(3) The limit of the Government's contingent liability is subject to negotiation. Provision should be made to assume only that liability which is sufficient to motivate the contractor to invest.

(4) Application of the weighted guidelines in 215.9 should reflect the assumption of risk by the parties associated with items covered by this technique.

(f) *Contractual requirements.* In order to incorporate this investment incentive, a special contractual Capital Investment clause shall be developed. Such a clause should include but not be limited to the following:

(1) A listing of the exact nomenclature and value of each item of plant equipment covered.

(2) A provision for additions to the listing after contract award, if appropriate. Such provision shall establish the conditions that must be met, the categories of equipment that will be covered, and the requirement for such additions to be incorporated by contract modification. This provision should allow for removal of an item from coverage at the request of the contractor with the concurrence of the contracting officer.

(3) Criteria for ascertaining when this special provision can be invoked as well as the criteria which will cancel the Government's contingent liability under the clause such as end-item quantity thresholds and performance dates, whichever occurs first.

(4) The dollar ceiling of the value of covered items as well as the Government's contingent liability by fiscal year.

(5) A specific method to establish the price to the Government at which each item would be acquired if this special provision is invoked.

(6) A provision that within 30 days of a Government decision that provides a basis for the contractor to invoke the special provision, the contracting officer shall notify the contractor in writing that the event has occurred and its date of occurrence. Further, the provision shall require that within 90 days after notification by the contracting officer, the contractor must provide to the contracting officer, in writing, a list of the specific investments which he desires to have the Government acquire. This list shall not include any investments which have not been incorporated into the investment clause of the contract prior to the contracting officer's notice to the contractor.

(7) A provision that once the contractor requests the Government to buy any equipment covered by the investment clause, the Government has the right to buy any and/or all other equipment covered by the clause whether the contractor requests it to do so or not.

(8) A provision for deferral of Government acquisition of those items of equipment needed for contract or program completion.

(9) A provision that the investment clause be carried over to successor contracts until the Government's responsibility to acquire the equipment expires.

(10) A provision that a supplemental agreement shall be executed for any equipment acquired by the Government under this special clause.

(11) A provision that as a condition of Government acquisition, the equipment shall be in good operating condition.

(12) Criteria for providing disposition instructions should the special provision for capital investment be exercised. Identify which party is to bear the cost of restoration, storage, disconnect and removal, packing and transportation upon removal of the equipment. The provisions of FAR Subpart 45.6 shall apply unless the contract provides specific exception thereto.

(13) A provision that in the event this special clause is invoked, the limitation stated in FAR 31.205–39 does not prevent acquisition or any payment for the covered equipment.

(14) A provision that this special clause for capital investment shall not apply in the event of contract termination for default.

(15) Provide that this investment clause can be made applicable to subcontracts, if appropriate benefits, as outlined in paragraph (b) above, are available. Provision must be made for Government approval, as outlined in paragraph (c) above, of all equipment for which the Government may assume contingent liability as well as a provision that the clause can be invoked only as a direct flow down from the prime's ability to invoke the clause.

(16) A provision that establishes the extent to which the contractor may use this equipment for other business.

(g) *Administration.*

(1) Approval for use of this investment incentive for contingent liabilities must be obtained from the Secretary of the Military Department or the Director of DLA. Authority up to $50 million may be delegated no lower than the Commander, AFSC, AFLC, NMC, AMC.

(2) In the event that it becomes apparent that the contingent liability resulting from the use of this technique will become an actual obligation, the approval authority shall be notified and immediate steps shall be taken to obtain sufficient funds to cover the obligation. These funds must be made available at the time the actual obligation materializes, to preclude a violation of the Anti-Deficiency Act.

Subpart 215.9—Profit

215.901 General.

(c) Furthermore, low average profit rates on defense contracts overall are detrimental to the public interest. Effective national defense in a free enterprise economy requires that the best industrial capabilities be attracted to defense contracts. These capabilities will be driven away from the defense market if defense contracts are characterized by low profit opportunities. Consequently, negotiations aimed merely at reducing prices by reducing profits, with no realization of the function of profit, cannot be condoned. For each contract in which profit is negotiated as a separate element of the contract price, the aim of negotiation should be to employ the profit motive so as to impel effective contract performance by which overall costs are economically controlled. To this end, the profit objective must be fitted to the circumstances of the particular acquisition, giving due weight to each of the effort, risk, facilities investment, and special factors set forth in this subpart. This will result in a wider range of profits which, in many cases, will be significantly higher than previous norms.

215.902 Policy.

(a)(1) The weighted guidelines method shall be used as the structured approach for determining profit or fee in

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accordance with 215.905 and the following:

(i) The weighted guidelines method provides contracting officers with a technique that will insure consideration of the relative value of the appropriate profit factors in the establishment of a profit objective and the conduct of negotiations; and a basis for documentation of this objective, including an explanation of any significant departure from it in reaching a final agreement. The contracting officer's analysis of these profit factors is based on information available prior to negotiations. Such information is furnished in proposals, audit data, performance reports, preaward surveys, and the like. Except as set forth in 215.902(a)(2), the weighted guidelines method shall be used in the negotiation of all contracts where cost analysis is performed for:

(A) The manufacturing of supplies and equipment;

(B) Research and development as described in FAR Part 35, encompassing research, exploratory development, advanced development, engineering development, and operational systems development;

(C) Services as described in FAR Part 37;

(*1*) The profit objective for manufacturing contracts shall be computed, except as indicated in (*5*) below, using the manufacturing weighted guidelines method, which provides profit opportunity based on facilities capital investment.

(*2*) The profit objective for research and development contracts shall be computed using the research and development weighted guidelines method unless, in the judgment of the contracting officer, a significant amount of facilities is required for efficient contract performance, in which case the manufacturing weighted guidelines shall be used.

(*3*) The profit objective for service contracts shall be computed using the service contract weighted guidelines method unless, in the judgment of the contracting officer, a significant amount of facilities is required for efficient contract performance, in which case the manufacturing weighted guidelines shall be used.

(*4*) In determining whether a particular contract shall be classified as manufacturing, research and development, or services, primary reliance shall be placed on the nature of the work to be performed, as indicated by the coding for Item B8A of the DD Form 350 (see DoD 4105.61–M, Department of Defense Procurement Coding Manual, Volume 1), notwithstanding the appropriation or negotiation authority used. The following guidelines shall apply:

(*i*) *Manufacturing Weighted Guidelines.* Contracts coded under Section I, Part C, Supplies and Equipment.

(*ii*) *Research and Development Weighted Guidelines.* Contracts coded under Section I, Part A, Research, Development, Test and Evaluation, except for contracts coded as AD2–, Defense Services, and A—6, Management and Support.

(*iii*) *Services Weighted Guidelines.* Contracts coded under Section I, Part B, Other Services and Construction; and under Section I, Part A, as AD2– and as A—. Note, however, that there are blanket exceptions for certain services (see 215.902(a)(2)).

(*5*) The categories listed above are intended to be used as a point of departure in determining which weighted guidelines method applies. Many contracts for research and development and for services will require a significant amount of facilities for efficient contract performance. When this is the case, the manufacturing weighted guidelines method shall be used. Similarly, certain contracts for the manufacture of small quantities of high technology supplies and equipment may not require a significant amount of facilities. In such cases, the research and development weighted guidelines method shall be used. Contracting officers shall apply sound judgment in determining which weighted guidelines method is most appropriate for a particular contracting situation. The difference in profit objectives that would result from the application of alternative weighted guidelines methods shall not be a consideration in making this determination.

(*6*) In determining whether a significant amount of facilities is required for efficient contract performance, the contracting officer should assess the facilities needed, including contractor owned and leased and Government owned. When there is a relatively small amount of facilities capital cost of money allocated to the contract because some facilities are provided through operating leases and by the Government, this does not necessarily mean that an insignificant amount of facilities is required for efficient contract performance.

(*7*) When a method other than the manufacturing weighted guidelines method is used to establish the prenegotiation profit objective, the profit objective shall be reduced by the amount of facilities capital cost of money allowed in accordance with 231.205–10. On cost-plus-award-fee contracts, the base fee shall be reduced by the amount of facilities capital cost of money or the contract shall contain a provision to disallow the cost.

(ii) The contractor's proposal should include cost information for evaluation and a total profit figure. Contractors shall not be required to submit the details of their profit objectives but they shall not be prohibited from doing so if they desire. Elaborate and voluminous presentations are neither required nor desired and may indicate a low index of cost effectiveness, which fact itself shall be taken into consideration by the contracting officer.

(iii) The negotiation process does not contemplate or require agreement on either estimated cost elements or profit elements, although the details of analysis and evaluation may be discussed in the fact-finding phase of the negotiation. If the difference between the contractor's profit objective and the contracting officer's profit objective is relatively small, no discussion of individual factors may be necessary. If the negotiating parties' objectives are relatively far apart, a disclosure of weightings and rationale by both parties may be made concerning the total assigned to contractor effort, contractor risk, facilities investment, and special factors. By thus developing a mutual understanding of the logic of the respective positions, an orderly progression to final agreement should result. Simultaneous, not sequential, agreement will be reached on cost, any incentive profit-sharing formulas or limitation on profits, and price. The profit objective is a part of an overall negotiation objective which, as a going-in objective, bears a distinct relationship to the target cost objective and any proposed sharing arrangement. Since the profit is merely one of several interrelated variables, the Government negotiator shall not complete the profit negotiation without simultaneously agreeing on the other variables. Specific agreement on the exact weights or values of the individual factors is not required and shall not be attempted.

(iv) The prime contractor may use the weighted guidelines or a structured approach that discriminates among different levels of investment if the acquisition would be subject to the weighted guidelines under a prime contract. (For applicability, see 230.570–1(c).) If the acquisition falls into one of the exceptions to the weighted guidelines (see 215.902(a)(2)), the prime contractor may use another method to establish profit objectives. In the absence of a structured approach that discriminates among different levels of investment, similar to the weighted guidelines, the profit objective will be reduced by the amount of facilities capital cost of money allowed in accordance with FAR 31.205–10.

(v) The following factors shall be considered in all cases in which profit is to be specifically negotiated. The weight ranges listed after each factor shall be used in all instances where the weighted guidelines method is used.

WEIGHT RANGES

	Manufacturing [1] (pct)	R&D (pct)	Services (pct)
A. Contractor Effort:			
Material Acquisition:			
Subcontract Items	1 to 5	1 to 5	1 to 5
Purchased Parts	1 to 4	1 to 4	1 to 4
Other Material	1 to 4	1 to 4	1 to 4
Engineering: Direct Labor	9 to 15	9 to 15	N/A
Manufacturing: Direct Labor	5 to 9	5 to 9	N/A
Services:			
Direct Labor	N/A	N/A	5 to 15
Overhead	N/A	N/A	4 to 6
Other: General Management	6 to 8	6 to 8	6 to 8
B. Contractor Risk	0 to 8	0 to 7	0 to 4
C. Facilities Investment	16 to 20	N/A	N/A
D. Special Factors:			
Productivity	([2])	N/A	N/A
Independent Development	1 to 4	1 to 4	N/A
Other	−5 to +5	−5 to +5	−5 to +5

[1] An adjustment factor of .7 is applied to the results of the Contractor Effort evaluation to arrive at the dollar profit objective for this factor (see DD Form 1547). (Also, see 230.70.)

[2] See 15.905–2(a).

(vi) Under the weighted guidelines method, the contracting officer shall first measure the "Contractor's Effort" by the assignment of a profit percentage, within the designated weight ranges, to each element of contract cost recognized by the contracting officer. Although certain classifications of acceptable cost, including travel, subsistence, facilities, test equipment, special tooling, Federal manufacturers' excise taxes, and royalty expenses, may have been historically excluded from the base upon which profit has been computed, they shall not be excluded when using the weighted guidelines method. Not to be included for the computation of profit as part of the cost base is the amount calculated for the cost of money for facilities capital. How this cost is determined and how it will be applied and administered is fully set forth in 230.70.

(vii) The suggested categories under the Contractor's Effort are similar to those on the Contract Pricing Proposal (SF 1411). Often, individual proposals will be in a different format, but since these categories are broad and basic, they provide sufficient guidance to evaluate all other items of cost.

(viii) After computing a total dollar profit for the Contractor's Effort, the contracting officer then shall add the specific profit dollars assigned for Contractor's risk, facilities investment risk, and special factors. Weighted Guidelines Profit/Fee Objective (DD Form 1547) is to be used, as appropriate, to facilitate the calculation of this profit objective.

(ix) The weighted guidelines method was designed for arriving at profit or fee objectives for other than nonprofit organizations. However, if appropriate adjustments are made to reflect differences between profit and nonprofit organizations, the weighted guidelines method can be used as a basis for arriving at fee objectives for nonprofit organizations. Therefore, the policy of the Department of Defense is to use the weighted guidelines method, as modified in (B) below, to establish fee objectives that will stimulate efficient contract performance and attract the best capabilities of nonprofit organizations to defense-oriented activities. The modifications shall not be applied as deductions against historical fee levels but to the fee objective for such a contract, as calculated under the weighted guidelines method.

(A) For purposes of this subparagraph, nonprofit organizations are defined as those business entities organized and operated exclusively for charitable, scientific, or educational purposes, of which no part of the net earnings inure to the benefit of any private shareholder or individual, of which no substantial part of the activities is carrying on propaganda or otherwise attempting to influence legislation or participating in any political campaign on behalf of any candidate for public office, and which are exempt from Federal income taxation under Section 501 of the Internal Revenue Code.

(B) For contracts with nonprofit organizations where fees are involved, the following adjustments are required in the weighted guidelines method.

(*1*) An adjustment of −1% of the total effort shall be assigned in all cases where the manufacturing weighted guidelines method is used. An adjustment of −3% of the total effort shall be assigned in all cases where the research and development or services weighted guidelines method is used.

(*2*) The weight range under "Contractor Cost Risk" shall be −1% to 0% in lieu of 0% to 8% for contracts with those nonprofit organizations, or elements thereof, identified by the Secretary of Defense or the Secretary of a Department (or their respective designees) as receiving sustaining support on a cost-plus-a-fixed-fee basis from a particular Department or Agency of the Department of Defense.

(x) In making a judgment of the value of each factor, the contracting officer should be governed by the definition, description, and purpose of the factors, together with considerations for evaluating them as set forth herein.

(a)(2)(i) Under the following listed circumstances, other methods for establishing profit objectives may be used:

(A) Architect-engineering contracts;

(B) Management contracts for operation and/or maintenance of Government facilities;

(C) Construction contracts;

(D) Contracts primarily requiring delivery of material supplied by subcontractors;

(E) Termination settlements;

(F) Cost-plus-award-fee contracts;

(G) Contracts not expected to exceed $500,000; and

(H) Unusual pricing situations where the weighted guidelines method has been determined to be unsuitable. Such exceptions shall be justified in writing and shall be authorized by the head of the contracting activity.

(ii) If the contracting officer makes a written determination that the pricing situation meets any of the circumstances set forth above and that application of the manufacturing weighted guidelines will result in an inequitable profit objective, other methods for establishing the profit objective may be used. These methods shall be supported in a manner similar to that used in the weighted guidelines (profit factor breakdown and documentation of profit objectives); however, investment or other factors that would not be applicable to the contract shall be excluded from the profit objective determination. It is intended that the methods will result in profit objectives for noncapital intensive contracts that are below those generally developed for capital intensive contracts.

215.903 Contracting officer responsibilities.

(b) In analyzing profit, contracting officers should consider the following:

(1) When cost analysis is performed pursuant to 215.805–3, profit consideration shall be in accordance with the objectives set forth below. The Government should establish a profit objective for contract negotiations, which will—

(i) Motivate contractors to undertake more difficult work requiring higher skills and reward those who do so;

(ii) Allow the contractors an opportunity to earn profits commensurate with the extent of the cost risk they are willing to assume;

(iii) Motivate contractors to provide their own facilities and financing and to establish their competence through development work undertaken at their own risk and reward those who do so; and

(iv) Reward contractors for productivity increases. The weighted guidelines method set forth in 215.902 for establishing profit objectives is designed to provide reasonably precise guidance in applying these principles. This method, properly applied, will tailor profits to the circumstances of each contract in such a way that long-range, cost-reduction objectives will be fostered, and a spread of profits will be achieved that is commensurate with varying circumstances.

(2) Development of a profit objective should not begin until after a thorough—

(i) Review of proposed contract work;

(ii) Review of all available knowledge regarding the contractor, including capability reports, audit data, preaward survey reports and financial statements, as appropriate; and

(iii) Analysis of the contractor's cost estimate and comparison with the Government's estimate or projection of cost.

(3) A profit objective is that part of the estimated contract price objective or value which, in the judgment of the contracting officer, is appropriate for the acquisition being considered, covering the profit or fee element of the price objective. This objective should realistically reflect the total overall task to be performed and the requirements placed on the contractor. Prior to the negotiation of a contract, change order, or contract modification where cost analysis is undertaken, the negotiator shall develop a profit objective. The weighted guidelines method, if applicable, shall be used for developing this profit objective.

(f) In cases where the change or modification calls for substantially different work, then the basic contract profit and the contractor's effort may be radically changed and a detailed analysis is necessary. Also, if the dollar amount of the change or contract modification is very significant in comparison to the contract dollar amount, a detailed analysis shall be made.

215.905 Profit-analysis factors.

215.905-1 Common factors.

(a) This factor is a measure of how much the contractor is expected to contribute to the overall effort necessary to meet the contract performance requirements in an efficient manner. This factor, which is apart from the contractor's responsibility for contract performance, takes into account what resources are necessary and what the contractor must do to accomplish a conversion of ideas and materials into the final product called for in the contract. This is a recognition that, within a given performance output or within a given sales dollar figure, necessary efforts on the part of individual contractors can vary widely in both value and quantity, and that the profit objective should reflect the extent and nature of the contractor's contribution to total performance. The evaluation of this factor requires an analysis of the cost content of the proposed contract as follows.

(1) Analysis of these cost items shall include an evaluation of the managerial and technical effort necessary to obtain the required purchased parts, subcontracted items, and other materials, including special tooling. This evaluation shall include consideration of the number of orders and suppliers and whether established sources are available or new sources must be developed. The contracting officer shall also determine whether the contractor will obtain the material and tooling by routine orders from readily available supplies (particularly those of substantial value in relation to the total contract cost) or by detailed subcontracts for which the prime contractor will be required to develop complex specifications involving creative design or close tolerance manufacturing requirements. Consideration shall be given to the managerial and technical efforts necessary for the prime contractor to administer subcontracts and select subcontractors, including efforts to break out subcontracts from sole sources through the introduction of competition. These determinations shall be made for purchases of raw materials or basic commodities, purchases of processed material, including all types of components of standard or near standard characteristics, and purchases of pieces, assemblies, subassemblies, special tooling, and other products special to the end item. In the application of this criterion, it should be recognized that the contribution of the prime contractor to his purchasing program may be substantial. This may apply in the management of subcontracting programs involving many sources, new complex components and instrumentation, incomplete specifications, and close surveillance by the prime contractor's representative. Recognized costs proposed as direct material costs, like scrap charges, shall be treated as material for profit evaluation. If intracompany transfers are accepted at price, they shall be evaluated as material. Other intracompany transfers shall be evaluated by individual components of cost, i.e., material, labor, and overhead. Normally, the lowest unadjusted weight for direct material is 2%. A weighting of less than 2% would be appropriate only in unusual circumstances when there is a minimal contribution by the contractor.

(2) Analysis of the engineering, manufacturing, and service labor items of the cost content of the contract shall include evaluation of the comparative quality and level of the engineering talents, manufacturing and service skills, and experience to be employed. In evaluating engineering labor for the purpose of assigning profit dollars, consideration shall be given to the amount of notable scientific talent or unusual or scarce engineering talent needed in contrast to journeyman engineering effort or supporting personnel. The diversity, or lack thereof, of scientific and engineering specialties required for contract performance and the corresponding need for engineering supervision and coordination shall be evaluated. Similarly, the variety of manufacturing labor skills required and the contractor's manpower resources for meeting these requirements shall be considered. Service contract labor shall be evaluated in a like manner by assigning higher weights to engineering or professional-type skills and lower weights to semiprofessional or other type skills required for contract performance. A weighting in excess of 10% for service contract labor will be justified normally only when the quality, skill, and experience of the service contract labor warrant a corresponding weighting under a research and development contract.

(3)(i) Analysis of conversion related indirect costs and general management (FAR 15.905-1(a)(4)) includes the evaluation of the makeup of these expenses and how much they contribute to contract performance. This analysis shall include a determination of the amount of labor within these overhead pools and how this labor would be treated if it were considered as direct labor under the contract. The allocable labor elements shall be given the same profit consideration that they would receive if they were treated as direct labor. The other elements of these overhead pools shall be evaluated to determine whether they are routine expenses, like utilities, depreciation, and maintenance, and hence given lesser profit consideration, or whether they are significant contributing elements. The composite of the individual determinations in relation to the elements of the overhead pools will be the profit consideration given the pools as a whole. The procedure for assigning relative values to these overhead expenses differs from the method used in assigning values of the direct labor. The upper and lower limits assignable to the direct labor are absolute. In the case of overhead expenses, individual expenses may be assigned values outside the range as long as the composite ratio is within the range.

(ii) It is not necessary that the contractor's accounting system break down the overhead expenses within the classifications of engineering overhead, manufacturing overhead, and general and administrative expenses, unless dictated by cost accounting standards (CAS). The contractor whose accounting system only reflects one overhead rate on all direct labor need not change the system (if CAS-exempt) to correspond with the above classifications. In evaluating such a contractor's overhead rate, the contracting officer can break out the applicable sections of the composite rate which can be classified as engineering overhead, manufacturing overhead, and general and administrative expenses, and follow the appropriate evaluation technique.

(iii) There is a critical factor to consider in the determination of profit in this area. Management problems surface in various degrees and the management expertise exercised to solve them shall be considered as an element of profit. For example, a new program for an item that is on the cutting edge of the state of the art will cause more problems and require more managerial time and abilities of a higher order than a follow-on contract. If new contracts create more problems and require a higher profit weight, follow-ons shall be adjusted downward as many of the problems shall have been solved. In any event, an evaluation shall be made of the underlying managerial effort involved on a case-by-case basis.

(iv) It may not be necessary for the contracting officer to make a separate profit evaluation of overhead expenses with each acquisition of substantially the same product with the same contractor. Where an analysis of the profit weight to be assigned to the overhead pool has been made, the weight assigned may be used for future contracts with the same contractor until there is a change in the cost composition of the overhead pool or the contract circumstances, or until the factors discussed in (iii) above are relevant.

(4) See (a)(3) above.

(b) In evaluating contract cost risk, contracting officers should also consider the following:

(1) This factor reflects the policy of the Department of Defense that contractors bear an equitable share of contract cost risk, and to compensate them for the assumption of that risk. A contractor's risk associated with costs to perform under a Government contract is usually minimal under cost-reimbursement type contracts. However, as acquisitions progress from basic research through follow-on production and supply contracts, the use of increased contractor-risk-assumption type contracts is appropriate for increasing the contractor's responsibility for performance. The generally accepted progression of the acquisition spectrum ranging from basic research through supply acquisitions and from cost to firm fixed-price contracts, is shown below:

Type of effort and type of contract

1. Basic Research—Cost, CPFF
2. Applied Research—Cost, CPFF
3. Exploratory Development—Cost, CPFF
4. Advanced Development—CPFF, CPAF
5. Engineering Development—CPFF, CPAF, CPIF
6. Operational System Development—CPIF, CPAF, FPI
7. First Production—FPI
8. Follow-on Production—FPI, FFP
9. Supply—FFP

(2) In developing the prenegotiation profit objective, the contracting officer will need to consider strongly the type of contract anticipated to be negotiated and the associated contractor risk when selecting the position in the weight range for profit that is appropriate for the risk to be borne by the contractor. This is one of the most important factors in arriving at prenegotiation profit objectives.

(3) Evaluation of this risk requires a determination of (i) the degree of cost responsibility the contractor assumes, (ii) the reliability of the cost estimates in relation to the task assumed, and (iii) the complexity of the task assumed by the contractor. This factor is specifically limited to the risk of contract costs. Thus, such risks on the part of the contractor as reputation, losing a commercial market, losing potential profits in other fields, or any risk on the part of the contracting activity, such as the risk of not acquiring an effective weapon, are not within the scope of this factor.

(4) The first and basic determination of the degree of cost responsibility assumed by the contractor is related to the sharing of total risk by contract cost by the Government and the contractor through the selection of contract type. The extremes are a cost-plus-fixed-fee contract, requiring only that the contractor use his best efforts to perform a task, and firm fixed-price contract for a complex item. A cost-plus-fixed-fee contract reflects a minimum assumption of cost responsibility, whereas a firm fixed-price contract reflects a complete assumption of cost responsibility.

(5) The second determination is that of the reliability of the cost estimates. Sound price negotiation requires well-defined contract objectives and reliable cost estimates. Prior production experience assists the contractor in preparing reliable cost estimates on new contracts for similar equipment. An excessive cost estimate reduces the possibility that the cost of performance will exceed the contract price, thereby reducing the contractor's assumption of contract cost risk.

(6) The third determination is that of the difficulty of the contractor's task. The contractor's task can be difficult or easy, regardless of the type of contract.

(7) Contractors are likely to assume greater cost risk only if contracting officers objectively analyze the risk incident to proposed contracts and are willing to compensate contractors for it. Generally, a cost-plus-fixed-fee contract will not justify a reward for risk in excess of 0.5%, nor will a firm fixed-price contract justify a reward of less than the minimum on the weighted guidelines. Where proper contract-type selection has been made, the reward for risk, by contract type, will usually fall into the following percentage ranges:

(i) Type of contract and percentage ranges for profit objectives developed by using the manufacturing weighted guidelines method:

Cost-Plus-Fixed Fee	0 to 0.5%
Cost-Plus-Incentive Fee	
With Cost Incentives Only	1 to 2%
With Multiple Incentives	1.5 to 3%
Fixed-Price-Incentive	
With Cost Incentives Only	3 to 5%
With Multiple Incentives	4 to 6%
Prospective Price Redetermination	4 to 6%
Firm Fixed-Price	6 to 8%

(ii) Type of contract and percentage ranges for profit objectives developed by using the research and development weighted guidelines method:

Cost-Plus-Fixed Fee	0 to 0.5%
Cost-Plus-Incentive Fee	
With Cost Incentives Only	1 to 2%
With Multiple Incentives	1.5 to 3%
Fixed-Price-Incentive	

With Cost Incentives Only	2 to 4%
With Multiple Incentives	3 to 5%
Prospective Price Redetermination	3 to 5%
Firm Fixed-Price	5 to 7%

(iii) Type of contract and percentage ranges for profit objectives developed by using the service contract weighted guidelines method:

Cost-Plus-Fixed Fee	0 to 0.5%
Cost-Plus-Incentive Fee	1 to 2%
Fixed-Price-Incentive	2 to 3%
Firm Fixed-Price	3 to 4%

(A) These ranges may not be appropriate for all acquisitions. For instance, a fixed-price-incentive contract that is closely priced with a low ceiling price and high incentive share may be tantamount to a firm fixed-price contract. In this situation, the contracting officer may determine that a basis exists for high confidence in the reasonableness of the estimate and that little opportunity exists for cost reduction without extraordinary efforts. On the other hand, a contract with a high ceiling and low incentive formula can be considered to contain cost-plus-incentive-fee contract features. In this situation, the contracting officer may determine that the Government is retaining much of the contract cost responsibility and that the risk assumed by the contractor is minimal. Similarly, if a cost-plus-incentive-fee contract includes an unlimited downward (negative) fee adjustment on cost control, it could be comparable to a fixed-price-incentive contract. In such a pricing environment, the contracting officer may determine that the Government has transferred a greater amount of cost responsibility to the contractor than is typical under a normal cost-plus-incentive-fee contract.

(B) The contractor's subcontracting program may have a significant impact on the contractor's acceptance of risk under a contract form. It can cause risk to increase or decrease in terms of both cost and performance. This consideration shall be a part of the contracting officer's overall evaluation in selecting a factor to apply for cost risk. It may be determined, for instance, that the prime contractor has effectively transferred real cost risk to a subcontractor and the contract cost risk evaluation, as a result, may be below the range that would otherwise apply for the contract type being proposed. This situation will be found to exist only in a few extraordinary situations under circumstances of (i) a follow-on production contract, in which a substantial portion of the total contract costs represents a single subcontract or a few subcontracts, (ii) the fullest incentive reward and penalty feature on cost performance having been passed by the prime contractor to the subcontractor. In an acquisition in which all of these circumstances are found to exist, a lower than usual profit weight may be applied to the aggregate of all recognized costs including the subcontract portion. The contract cost risk evaluation shall not be lowered, however, merely on the basis that a substantial portion of the contract costs represents subcontracts without any substantial transfer of contractor's risk, since this can result eventually in a lessening of the amount of work let on subcontracts.

(C) In making a contract cost risk evaluation in an acquisition that involves definitization of a letter contract, unpriced change orders, and unpriced orders, under BOAs, consider the effect on total contract cost risk as a result of having partial performance before definitization. Under some circumstances it may be reasoned that the total amount of cost risk has been effectively reduced. Under other circumstances it may be apparent that the contractor's cost risk remained substantially unchanged. To be equitable, the determination of a profit weight for application to the total of all recognized costs, both those incurred and those yet to be expended, must be made with consideration to all attendant circumstances and not be just the portion of costs incurred, or percentage of work completed, prior to definitization.

(D) Time and material, labor hour, overhaul contracts priced on a time and material basis, and firm-fixed-price, level-of-effort term contracts shall be considered to be cost-plus-fixed-fee contracts for the purpose of establishing a profit weight in the evaluation of the contractor's assumption of contract cost risk.

(E) In determining the contract cost risk percentage under CONTRACTOR RISK in profit factors of the weighted guidelines provided in 215.902(a)(1), it is appropriate to consider additional risks associated with foreign military sales (FMS). To be recognized, an additional cost risk factor shall be demonstrated by the contractor to be significant and over and above that normally present in DoD contracts for similar items. If an additional cost risk factor associated with FMS is recognized, the total profit under the CONTRACTOR RISK Section shall not exceed the limits set forth in FAR 15.903(d) for different types of contracts. For example, when the manufacturing weighted guidelines method is used, the limitation will be 0.5% for CPFF contracts, 3% for CPIF contracts, 6% for FPI contracts, and 8% for FFP contracts. The additional cost risk factor shall not apply to FMS made from inventories or stocks nor to acquisitions made under DoD cooperative logistics support arrangements.

(c) See 215.905–2.

(d) This element relates to the consideration to be given in the profit objective in recognition of the investment risk associated with the facilities employed by the contractor. Sixteen to 20% of the net book value of facilities capital allocated to the contract is the normal range of weight for this profit factor. The key factors that the contracting officer shall consider in evaluating this risk are:

(1) The overall cost effectiveness of the facilities employed;

(2) Whether the facilities are general purpose or special purpose items;

(3) The age of the facilities;

(4) The undepreciated value of the facilities;

(5) The relationship of the remaining writeoff life of the investment and the length of the program(s) or contract(s) on which the facilities are employed; and

(6) Special contract provisions that reduce the contractor's risk of recovery of facilities capital investment (termination protection clauses, multiyear cancellation ceilings, etc.). To assist in evaluating new investment, the contracting officer should request the contractor to submit reasonable evidence that the new facilities are part of an approved investment plan and that achievable benefits to the Government will result from the investment. New industrial facilities and equipment shall receive maximum weight when they—

(i) Are to be acquired by the contractor primarily for defense business;

(ii) Have a long service life;

(iii) Have a limited economic life due to limited alternative uses; and

(iv) Reduce the total life cycle cost of the products produced for the Department of Defense.

To the extent that the new investment represents routine replacement of existing assets, a lesser weight shall be assigned.

(e) See 215.905–2.

(f) See 215.905–2.

215.905–2 Additional factors.

(a) *Productivity.*

(1) *General.* A key objective of the DoD profit policy is to reduce the cost of defense preparedness by incentivizing defense contractors' investment in modern cost-reducing facilities and other improvements in efficiency. To the extent that costs serve as the basis for pricing (both cost and profit), success in reducing costs can serve, in turn, to reduce profit dollars opportunity. For example, a fixed-price incentive-type contract is typically used for the first production contract of a major weapon system program. The incentive to increase productivity and reduce cost within one contract works against a contractor on follow-on production contracts because the reduced level of cost becomes a part of the basis for pricing subsequent contracts. In order to mitigate the loss of profit dollars opportunity that occurs when costs are reduced due to productivity gains, a special "Productivity Reward" may be included in the prenegotiation profit objective of a pending acquisition under certain circumstances.

(2) *Applicability criteria.* The "Productivity Reward" may be applied when the following criteria are met:

(i) The pending acquisition involves a follow-on production contract.

(ii) Reliable actual cost data is available to establish a fair and reasonable cost baseline.

(iii) Changes made in the configuration of the item being acquired are not of sufficient magnitude to invalidate price comparability.

(3) *Implementation procedures.* The amount of productivity reward for a given contract is based on the estimated cost reduction that can be attributed to productivity gains. Set forth below are principles and procedures that apply to estimating cost reductions and calculating the productivity reward:

(i) The contractor shall prepare and support the cost reduction estimate.

(ii) The overall contract cost decrease shall be based on estimated decreases measured at the unit cost level.

(iii) The lowest average unit cost (exclusive of profit) for a preceding production run shall serve as the unit cost baseline.

(iv) A technique shall be employed to determine that portion of the cost decrease attributable to productivity gains as opposed to the effects of quantity differences between the base contract and the pending acquisition.

(v) When the parties agree that the estimated overall contract cost decrease is materially affected by price level differences between the base period and the current point in time, an economic price adjustment may be applied to the estimate.

(vi) The productivity reward shall be calculated by multiplying the contract cost decrease due to productivity gains by the base profit objective rate.

(vii) The degree of review and validation of the data supporting the productivity reward calculation shall be commensurate with the materiality of this profit element in relation to the overall price objective.

There may be several methods advanced, by both contracting officers and contractors, to quantify productivity gains. Any technique may be acceptable; *Provided* it takes into account equitably the principles and procedures listed above.

(b) *Independent development.* Contractors who develop items that have potential military application without Government assistance are entitled to special profit consideration on those items as a special profit factor to be considered within the weighted guidelines in arriving at a profit objective. One to 4% of recognized cost is established as the normal range of value for this profit factor. The criteria for selection of the specific percentage shall be the importance of the development in advancing defense purposes, the demonstrable initiative in determining the need and application of the development, the extent of the contractor's cost risk, and whether the development cost was recovered directly or indirectly from Government sources.

(c) *Other factors.* A composite percentage weight within the range of −5% to +5% of the basic profit objective may be assigned to other profit factors in arriving at the total profit objective. These other profit factors, which may apply to special circumstances or particular acquisitions, relate to contractor participation in the Government's Small Business, Small Disadvantaged Business, and Labor Surplus Programs, and to special situations not specifically set forth elsewhere in these guidelines. Participation that is rated as merely satisfactory shall be assigned a weight of zero, generally. Evidence of energetic support may justify a plus weight, and poor support a negative weight. Special situations may be assigned either a plus or minus weight, depending on the particular circumstances of the acquisition.

(1) *Small business and small disadvantaged business participation.* The contractor's policies and procedures that energetically support Government small business and small disadvantaged business subcontracting programs, pursuant to FAR Part 19, shall be given favorable consideration. Any unusual effort that the contractor displays in subcontracting with small business or small disadvantaged business concerns, particularly for development-type work likely to result in later production opportunities, and the overall effectiveness of the contractor in subcontracting with and furnishing assistance to such concerns shall be considered. Conversely, failure or unwillingness on the part of the contractor to support Government small business or small disadvantaged business policies shall be viewed as evidence of poor performance for the purpose of establishing a profit objective.

(2) *Labor surplus area participation.* A similar review and evaluation (as required in (1) above) shall be given to the contractor's policies and procedures supporting the Government's Labor Surplus Area Program, pursuant to FAR Part 20. In particular, favorable consideration shall be given to a contractor who (i) makes a significant effort to help find jobs and provide training for the hardcore unemployed, or (ii) promotes maximum subcontractor utilization of certified eligible concerns, as defined in FAR 20.101.

(3) *Energy conservation.* Favorable consideration shall be given to the contractor's initiatives and accomplishments in the conservation of energy.

(4) *Special situations.* Particular situations may justify use of a profit factor other than those specifically identified in these guidelines. These situations shall be identified and the reason(s) for their use documented in the records of price negotiation. Examples of such situations include contractor effort to exploit additional production cost-reduction opportunities or to improve or develop new product/manufacturing technologies to reduce production cost.

Subpart 215.10—Preaward, Award, and Postaward Notifications, Protests and Mistakes

215.1001 Notifications to unsuccessful offerors.

(b)(1) Within DoD, the threshold for notification is $25,000 in accordance with 10 U.S.C. 2304(g).

(b)(2) Acquisitions processed under small purchase procedures are exempt from the requirements of FAR 15.1001(b)(2).

(c) Within DoD, the threshold for notification is $25,000 in accordance with 10 U.S.C. 2304(g).

215.1003 Debriefing of unsuccessful offerors.

(a) Debriefings shall be provided at the earliest feasible time after contract award. They shall be conducted by purchasing office officials familiar with

the rationale for the selection decision and contract award.

215.1070 Classified information.

Classified information shall be furnished only in accordance with regulations governing classified information.

PART 216—TYPES OF CONTRACTS

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 216.1—Selecting Contract Types

216.101 General.

(a) In addition, the role of profit in selecting contract type includes the following:

(1) Profit, generally, is the basic motive of business enterprise. Both the Government and its defense contractors should be concerned with harnessing this motive to work for the effective and economical contract performance required in the interest of national defense. To this end, the parties should seek to negotiate and use the contract type best calculated to stimulate outstanding performance. The objective should be to insure that outstandingly effective and economical performance is met by high profits, mediocre performance by mediocre profits, and poor performance by low profits or losses. The proper application of these objectives on a contract by contract basis should normally result in a range of profit rates.

(2) Success in harnessing the profit motive begins with the negotiation of sound performance goals and standards. This objective is met if the contractor either benefits or loses in relation to achieving or failing to achieve realistic targets. When award is based on effective price competition, there is reasonable assurance that the contract price represents a realistic pricing standard, including a profit factor which reflects an appropriate return to the contractor for the financial risk assumed in undertaking performance at the competitive price. In the absence of competitive forces, however, the contract type selected should provide for a profit factor that will tie profits to the contractor's efficiency in controlling costs and meeting desired standards of performance, reliability, quality, and delivery. Therefore, in noncompetitive situations, the degree to which available cost estimates are realistic, and the degree of uncertainty affecting the work to be performed, should be carefully considered in determining which type of contract should be selected and how it should be used.

(3) The policies in (1) and (2) above require that the contractor assume a reasonable degree of cost responsibility as early in contract performance as is possible. This can be achieved only through vigorous contract administration and effort on the part of both parties to assure timely pricing. Particularly in fixed-price type contracts providing the price revisions, delays in pricing actions by either party may distort the type of contract which has been agreed upon and such delays must be avoided.

(4) When a contract type providing for a reasonable degree of contractor cost responsibility cannot be negotiated on a timely basis, due to the contractor's unwillingness to assume reasonable risk, profits should be negotiated so as to reflect this fact.

(5) Notwithstanding the validity of profit as a motivating factor in general, there are situations, particularly in the early stages of research and development, in which the profit motive may be secondary. Harnessing the profit motive at the early stages of such procurements may not be effective or desirable in view of the high degree of technical and cost risk associated with performance or consistent with achieving desired technical objectives. The contracting officer's objective should still be "effective and economical performance," but the relative weight of these factors must be kept in balance (see 216.104–(S–71)). Of course, outstanding performance can still be rewarded under a research and development contract, by proper application of incentive techniques.

(6) The firm fixed-price contract is the most preferred type for harnessing the profit motive because the contractor accepts full cost responsibility, and the relationship between cost control and profit dollars is established at the outset of the contract. Accordingly, when a reasonable basis for firm pricing exists (see 216.202), the firm fixed-price contract shall be used, because its use under these circumstances will provide the contractor with a maximum profit incentive to control the costs of performance. However, the contracting officer must be alert to the fact that in certain situations the use of special contract incentive provisions may be more appropriate. While maximum incentive to a contract exists in a firm fixed-price contract, the basis for the application of firm fixed-price is the knowledge that the price has been arrived at either through competition or through sound pricing techniques which keep pricing uncertainties to a minimum. When contracting for research and development, or when price competition is not present, and (i) when the cost or pricing data available does not permit sufficiently realistic estimates of the probable cost of performance, or (ii) uncertainties surrounding the contract performance cannot be sufficiently identified to evaluate their impact on price, the use of a type of contract other than firm fixed-price should be considered. For example, a profit incentive to control costs can be achieved through use of the fixed-price incentive contract, and to a lesser degree, the cost-plus-incentive-fee contract, when appropriate target costs and incentive arrangements can be negotiated.

(b) The specific type of contract should be determined by the degree of risk in contract performance. When the risk is minimal or can be predicted with an acceptable degree of certainty, a firm fixed-price contract is preferred. However, as the uncertainties become more significant, other fixed price or cost type contracts should be employed to accommodate these uncertainties and to avoid placing too great a cost risk on the contractor.

216.102 Policies.

(d) Set forth below is a format for the D&Fs to be made by the contracting officer with respect to the use of a cost, cost-plus-fixed-fee, or incentive type contract, as required by 10 U.S.C. 2306(c) (See FAR 16.301–3(c) and FAR 16.403(c)). The format may be modified as appropriate.

(Military Department or Agency)

Determination and Findings

Authority To Use a (1) Contract

Upon the basis of the following findings and determination which I hereby make pursuant to the authority of 10 U.S.C. 2306(c), the proposed contract described below may be entered into on a (1) basis.

Findings

1. The (2) proposes to enter into a (1) contract for the acquisition of (3) at an estimated cost of $ (4).

2. The work to be performed is (5).

Determination

1. It is impracticable to secure services of the kind or quality required without the use of the proposed type of contract.(6)

(Alt: The use of the proposed type of contract is likely to be less costly than other methods.)(6)

(Alt: It is impracticable to secure services of the kind or quality required without the use of the proposed type of contract and the use of such type of contract is likely to be less costly than any other method.)(6)

2. The estimated cost of the proposed contract is $ (4).(7)

Date

Notes

(1) Enter type of contract to be used, i.e. fixed-price incentive, cost-plus-incentive-fee, cost, or cost-plus-fixed-fee.

(2) Contracting activity.

(3) Brief description of supplies or services.

(4) Enter amount to nearest thousand.

(5) Describe the nature of the work to be performed and set forth the facts (for the type of contract proposed, see FAR Part 16) that shows why it is impracticable to secure supplies or services of the kind or quality required without the use of such type of contract, or that such method of contracting is likely to be less costly than other methods. The supporting facts should be confined to those pertinent to the specific determination being made. However where the facts adequately support alternative determinations, they should be set forth conjunctively when conjunctive determinations are to be used.

(6) Use the determination responsive to the findings. See Note 5 above.

(7) Determination to be made when a cost-plus-fixed-fee contract is proposed.

216.104 Factors in selecting contract types.

(S–70) *Stability of design.* Other factors to consider are stability of design, which in turn may influence such subordinate considerations as the adequacy and firmness of specifications, and the availability of relevant historical pricing data and prior production experience and adequacy of the contractor's estimating system.

(S–71) *Other factors based on development stage.*

(1) *Research and development (R&D).* The selection of the appropriate contract type is, in the final analysis, the responsibility of the contracting officer. However, because of the importance of technical considerations at the R&D stage, the choice of contract type shall not be made without obtaining the recommendations of cognizant technical personnel. Generally, the selection of contract type should also be discussed with prospective contractors. Where appropriate, R&D solicitations should permit prospective contractors to propose an alternative contract type. Any counterproposal must be supported by the contractor's rationale for his choice. The contracting officer shall include a statement in the file, setting forth his rationale for the type of contract ultimately selected. The categories of Research, Exploratory Development, Advanced Development, Engineering Development and Operational Systems Development, represent the spectrum of the R&D cycle and were so designated to provide an appropriate breakdown of R&D effort for management purposes. Each category has a prime technical or functional objective and certain distinctive features. It should not be inferred, however, that each category is a discrete step in the R&D process with a clear beginning and end entirely separate and distinct each from the other. In the latter categories of development, it is possible for different parts of a project to fit several different category definitions. Thus, a project properly categorized as Engineering Development may include subsystem work or elements of work that are, because of their particular technical state of development, truly Advanced Development, or in rare cases, even Exploratory Development. Again, the contract must be selected to fit the work required, not selected solely on the basis of the classification of the overall program.

(2) *Research and exploratory development.* The categories of Research and Exploratory Development form a logical grouping of the R&D process at one end of the spectrum. In Research and Exploratory Development contracting, the nature of the work, the usual lack of definitive requirements, the inability to measure technical objectives, the inability to measure risk, the amount of government technical direction and control desired, the lack of competition, and whether the contractor will be an educational institution, commercial company, or a not-for-profit organization, may be primary consideration in choosing the type of contract. Price is not necessarily the primary factor in determining the contract type. While no restriction exists on the type of contract which may be used, the nature of the work in these categories most frequently necessitates the negotiation of a CPAF, CPFF term, cost-no-fee, or cost-sharing contract. In cases where the level of contractor effort desired can be identified and agreed upon in advance of performance, negotiation of a firm fixed-price level of effort contract may be appropriate. Incentive type contracts should not be used unless the contractor and Government agree that an incentive arrangement is desirable, can be effective, and, upon completion, can be evaluated in terms of the incentives.

(3) *Advanced development.* The primary objective of Advanced Development is to determine and demonstrate, experimentally, the acceptability of the technical, economic, logistic and operational characteristics of one or more advanced concepts considered suitable for solution of a clearly stated military problem or technical objective. Advanced development provides the development effort which couples the inventory of science, technological and feasibility concepts derived from research and exploratory development to the end use oriented engineering and operational system developments. Included in this is the experimental demonstration of advanced technologies, equipment, subsystems, or systems, as well as the study, design, development, test and evaluation of advanced or innovative hardware, equipment or instrumentation necessary to provide a basis for selection among alternatives. It includes systems analyses tradeoff studies, cost effectiveness analyses and particularly exploratory technological effort directly responsive to the objectives of the specific advanced development. Further, it includes conceptual effort required to generate the information to satisfy the prerequisites to initiation of system development wherein advanced development efforts are aimed at risk reduction and providing feasibility—often referred to as the validation phase or prototype phase. It is in this category that the first significant hardware for test is developed. In this broad category of work, selection of the best contract type should be made only after careful identification of the specific nature of the work required. No restriction exists as to the type of contract that may be used for work in this category. The nature of the work, however, often necessitates the use of CPFF completion type contracts. Incentive contracts can be effectively used in this category when realistic, measurable targets can be identified and program success can be predicted with a reasonable degree of accuracy. Contracts with only cost incentive should not be used in procurement where, at the outset, it can be expected that there will be a large number of major technical changes in the project or where actions beyond the control of the contractor may influence the just determination of the contractor's achievement. Competition may be used in these efforts for risk reduction, design innovation and cost reduction.

(4) *Engineering development and operational systems development.* Engineering and Operational Systems Development, because of many similarities, forms a logical grouping in the spectrum of R&D categories. These categories, the ultimate aim of which is production and development, include all effort the primary objective of which is the engineering design and final engineering demonstration of the technical, economic, logistic and operational characteristic of an experimentally feasible and acceptable system, equipment, subsystem, component or process judged to be the

optimum solution to clearly stated military problems or technical objectives. In Engineering Development, such effort is founded on the probability of eventual procurement for inventory and use, and, therefore, includes effort leading to the demonstration of acceptability for such procurement. Operational Systems Development effort has the primary objectives of producibility demonstration and R&D support of final service test of the logical and operational development of an acceptable system, equipment, subsystem or component, approved for procurement and operational deployment or otherwise specifically approved for inclusion in this category. It may include the building of one or more production prototypes utilizing all processes, tooling, and test equipment considered for the production process thereby constituting a demonstration and qualification of the production process. Even when the overall project is in Engineering or Operational System Development, there may be integral supporting tasks that are still in the Advanced Development stage and the contract type for these tasks should be selected accordingly. The type of contract selected should be decided on the basis of major factors such as: (i) The definitiveness of the project at this stage and its bearing on the accuracy of cost estimates; (ii) the completion schedule required for satisfactory operational deployment; (iii) the degree of risk and uncertainty expected; (iv) the ability to establish meaningful and measurable incentives; (v) the need for effort overlapping that of earlier development stages; (vi) the desirability of firm technical direction by the Government; and (vii) the degree of configuration control to be exercised. Any one or combination of these factors could have a direct bearing on the type of contract selected. Cost reimbursement type contracts are preferred to all development efforts and particularly for major defense systems. When risk has been reduced to the extent that realistic pricing can occur, fixed price type contracts should be used, e.g., when a program has reached the final stages of development and technical risks are minimal. The use of letter contracts shall be minimized.

Subpart 216.2—Fixed-Price Contracts

216.203–4 Contract clauses.

(a) In addition, the clause should normally be used only when the total contract price is over $5,000 and delivery is not to be completed within six months after the contract date.

(b) In addition, the clause should normally be used only when the total contract price is over $5,000 and delivery is not to be completed within six months after the contract date.

(c)(1) In addition, the clause shall be limited to contracts in which the price exceeds $50,000 and the period of performance exceeds six months unless its use otherwise is approved by the Chief of the contracting office. An appropriate modification of the clause may be used in advertised procurements. Further, the clause may be modified by increasing the 10-percent limit on aggregate increases specified in subparagraph (c)(4) of the clause upon approval by the chief of the contracting office.

(3) The following sample format illustrates a type of schedule description that may be used:

The following types of labor and material are subject to price adjustment pursuant to the "Economic Price Adjustment—Labor and Material" clause of this contract.

CONTRACT ITEM NO. 1

Types of labor and material	Rates of pay and material prices	Quantities and direct costs per unit of procurement
Drill press operator.	$3.00/hour ..... No fringe benefits included.	
Welder	$3.00 ..... $2.75/hour ..... .05/hour—vacation pay. .20/hour—pension plan.	20 min.—$1.00.
	$3.00	10 min.—$0.50.
Copper sheet	$0.40/lb.	2 lb.—$0.80.
Purchased parts: (1) ABC tube X5721.	$1.00 each	3 ea.—$3.00.
(2) XYZ part #9348.	$0.50 each	10 ea.—$5.00.

(c)(4) Also, if the specific terms and conditions of the authorized clause are not applicable, a modified economic price adjustment clause to cover increases or decreases in the actual costs incurred by the contractor for labor or materials may be included if it is consistent with the above guidelines and is approved by the Department concerned.

(iv) Make the full amount of decrease in the labor rates and fringe benefits or unit prices for materials.

(d)(3) The following factors may be considered in preparing a price adjustment clause meeting the criteria above including construction of appropriate indices:

(i) The clause should not be overly complex.

(ii) Normally, the clause should not provide either a ceiling or a floor for adjustment unless adjustment is based on indices below the four digit level of the Bureau of Labor Statistics Producer Price Index or the Wage and Income Series by Standard Industrial Classification (Labor);

(iii) Normally, the clause should cover all potential economic fluctuations within the original contract period of performance;

(iv) The clause must have a positive and accurate identification of the applicable index(es) upon which adjustments will be based and provide appropriate economic fluctuation in the event of the discontinuance of the publication of the movement of the designated index. This might include the substitution of another index if the time remaining would so justify and an appropriate index is reasonably available, or some other method for repricing of the remaining portion of the work to be performed. There should not normally be any need to make an adjustment in the event computation of the identified index is altered; however, provision may be made to adjust the economic fluctuation computations in the event there is such a substantial alteration to the method of computing the index as to negate the original intent of the parties. When an index to be used is subject to revision (e.g., the Bureau of Labor Statistics Producer Price Indexes), the economic price adjustment clause shall further specify that any economic price adjustment shall be based upon the applicable revised index;

(v) An index should be structured to encompass a large sample of relevant items yet bear a logical relationship to the type of contract costs being measured. The basis of the index should not be so large and diverse that it is significantly affected by fluctuations not relevant to the contract performance, yet must be significantly broad so as to assure the minimal effect of any single company, including the anticipated contractors.

(vi) Construction of an index is largely dependent upon two general series published by the U.S. Department of Labor, Bureau of Statistics (BLS). These are the Industrial Commodities portion of the Producer Price Index and the Wage and Income Series by Standard Industrial Classification for labor. Since there are no BLS published series currently available that relate directly to total prices of delivered DoD aircraft, ships, missiles, electronics, etc., such composite indices from major portions of the two series described above should be made.

(vii) Normally not more than two indices should be used, i.e., one for labor (direct and indirect) and one for material (direct and indirect).

(viii) The clause must establish and properly identify a base period comparable to the contract periods for which adjustments are to be made as a reference point for application of an index.

(ix) The clause should provide for adjustment from the beginning of the contract or from such period of time that the rate of expenditure is commensurate with the administrative cost and effort to adjust, but it should not provide for adjustment beyond the original contract performance period.

(x) The expenditure profile for both labor and material should be based on a predetermined rate of expenditure (expressed as the percentage of material or labor usage as it relates to total contract price) in lieu of actual cost incurred. In the event the clause is to be used in a competitive procurement, the labor and material allocations, with regard to both mix of labor and material and rate of expenditure by percentage, shall be determined by the PCO in a manner which will, as nearly as possible, approximate the average expenditure profile of all companies to be solicited in order that all companies may compete on an equal basis. If the clause is to be used in a noncompetitive procurement, the labor and material allocations as determined by the PCO may be subject to negotiation and agreement. For multiyear contracts, there should be established predetermined expenditure profile tables for each of the annual increments in the multiyear buy, with each of the second and subsequent year tables being cumulative to reflect the total expenditures for all increments funded through the latest multiyear funding.

(xi) The clause should state that percentage of the contract price subject to price adjustment. Normally, adjustments would not be applied to the profit portion of the contract. Additionally, the labor and material portions of the contract must be examined to exclude any areas that do not require adjustment. It may not be necessary, for example, to include all subcontracting as being subject to economic price adjustment, because some of the subcontracting could be for shorter periods of time during the early life of the contract, and would be covered, therefore, by firm priced subcontracting. It may be possible to exclude certain areas of overhead from economic price adjustment protection; for example, depreciation charges, prepaid insurance costs, rental costs, leases, certain taxes, and utility charges are illustrated as some of the areas that should be examined in detail. In the same manner, consideration should be given to the necessity to include economic fluctuation protection covering that portion of labor for the period of time for which a definitive union agreement exists without additional factoring for such things as cost of living increases. Care should be taken to allocate to labor and material only those costs likely to be affected by fluctuation in the economy. That portion of the contract which is determined to be proper for economic fluctuation protection shall then be allocated to specific periods of time (e.g., quarterly, semiannually, etc.) based on the most probable expenditure or commitment basis (expenditure profile).

(xii) The clause should provide for definite times or events positive for price adjustments. Adjustments should be of such a frequency so as to afford the contractor appropriate economic relief without at the same time creating a burdensome administrative effort. The adjustment period should normally range from a minimum of quarterly to a maximum of annually.

(xiii) When the contract contains cost incentives, any sums paid to the contractor on account of economic price adjustment provisions shall be subtracted from the total of the contractor's allowable cost for the purpose of establishing the total costs to which the cost incentive provisions apply. If the incentive arrangement is cited in percentage ranges rather than dollar ranges, above and below target costs, the economic price adjustment clause should be structured to maintain the original contract incentive range in dollars.

(xiv) The economic price adjustment clause should provide that once the labor and material allocations have been established, they remain fixed through the life of the contract and are not modified except in the event of partial termination of the contract. The clause should state that pricing actions pursuant to the Changes clause or other provisions of the contract will be priced as though there were no provisions for economic price adjustment.

(4) Consistent with the factors set forth above, the contracting officer may also determine it appropriate to provide for certain economic price adjustment arrangements between the prime contractor and subcontractors to properly allocate risks. In such circumstances, provision for incorporation of price adjustment clauses in specified subcontracts should be included in the price adjustment provision of the prime contract.

(5) When economic price adjustment provisions are included in contracts that do not require submission of cost or pricing data as provided for in 215.804–3, it will be the responsibility of the contracting officer to obtain adequate information to establish the base line from which adjustments will be made. In addition, the contracting officer may require verification of the data submitted to the extent considered necessary to permit reliance upon it as a reasonable base line.

216.203–70 Fixed-price contracts with economic price adjustment.

(a) *Price adjustment for basic steel, aluminum, brass, bronze or copper mill products.* The price adjustment clause at 252.216–7000 is authorized for use in fixed-price supply contracts for basic steel, aluminum, brass, bronze or copper mill products, such as sheets, plates and bars, when an established catalog or market price exists for the particular product being procured and has been verified in accordance with criteria in 215.804–3(c). The 10 percent figure in paragraph (c)(1) of the clause shall not be exceeded unless approved by the Chief of the Contracting Office. No adjustment under this clause shall be made in the contract price until the requested adjustment has been verified by the contracting officer, in accordance with the criteria set forth in FAR 15.804–3 and as required by paragraph (c)(4) of the clause.

(b) *Price adjustment for nonstandard steel items.* The price adjustment clause at 252.216–7001 is authorized for use in fixed price supply contracts when:

(1) The contractor is a steel producer and actually manufactures the standard steel mill item referred to in paragraph (d) of the clause; and

(2) The items being procured are nonstandard steel items made wholly or in part of standard steel mill items.

When this clause is included in invitations for bids, Note (8) of the clause is inapplicable and shall be omitted. Invitations for bids or requests for proposals shall instruct bidders or offerors to complete all blanks in accordance with the applicable notes. When the clause is to provide for adjustment based on the contractor's "established price" (see paragraphs (a) and (d) of the clause and Note (8) of the clause), the established price shall be verified in accordance with 215.804–3 prior to contract award. When the clause is to provide for adjustment on another basis (see Note (8) of the clause), that price must be verified. No

adjustment under this clause shall be made in the contract price until the requested adjustment has been verified by the contracting officer, in accordance with criteria set forth in FAR 15.804–3 (but see Note (8) of the clause) and as required by paragraph (f) of the clause. The 110% figure in paragraph (e) of the clause shall not be exceeded unless approved by the Chief of the Contracting Office.

216.206 Fixed-ceiling price contracts with retroactive price redetermination.

216.206–1 Description.

The redetermined price should be negotiated so as to give weight to the management effectiveness and ingenuity exhibited by the contractor during performance, and the basis for such negotiation should be fully discussed with the contractor when this type of contract is negotiated. Because the price is redetermined on a completely retroactive basis, this contract type (except for the price ceiling) does not provide the contractor with a calculable incentive for effective cost control. Once established, the ceiling price is subject to adjustment only if required by the operation of other contract clauses (see FAR 16.201).

216.207 Firm-fixed-price, level-of-effort term contracts.

216.207–1 Description.

This type of contract can be a useful tool, particularly in the Research and Exploratory Development categories when the work cannot be clearly defined and the level of effort desired can be identified and agreed upon in advance of performance.

Subpart 216.3—Cost-Reimbursement Contracts

216.301 General.

216.301–2 Application.

While cost-reimbursement contracts are particularly useful for procurements involving substantial amounts, e.g., estimated cost of $100,000 or more, the parties may agree in a given case to use this type of contract to cover transactions in which the estimated costs are less than $100,000.

216.303 Cost-sharing contracts.

(b) *Applicotion.* Cost-sharing contracts are for use in research or development procurements.

216.306 Cost-plus-fixed-fee contracts.

(b) *Applicotion.* In addition to the conditions of FAR 16.301–2 being present, a cost-plus-fixed-fee contract is suitable when:

(1) A cost-reimbursement type of contract is found necessary in accordance with 216.301–2;

(2) The parties agree that the contract should be fee bearing;

(3) The level of effort required is unknown; and where measuring achievements in contract performance does not lend itself to the subjective evaluation required in CPAF contracts.

(c)(S–70) This type of contract normally should not be used in the development of major weapons and equipment, once prerequisite preliminary exploration, studies, and risk reductions have indicated a high degree of probability that the development is achievable and the Government generally has determined its desired performance objectives and schedule of completion. The cost-plus-fixed-fee contract shall not be used for procurements categorized as either Engineering Development or Operational System Development; which have completed the Validation Phase except with the approval of the Head of a Contracting Activity or his designee, it may be used in these categories for individual procurements, ancillary to the development of a major weapon system or equipment, where the purpose of the procurement is clearly to determine or solve specific problems associated with the major weapon system or equipment.

Subpart 216.4—Incentive Contracts

216.402 Application of predetermined, formula-type incentives.

216.402–2 Technical performance incentives.

Increases in profits or fees resulting from the use of incentive provisions are made only because cost, performance, or other contractual goals or standards have been surpassed.

(S–70) *Description.* A contract with a performance incentive is one which incorporates an incentive to the contractor to surpass stated performance targets by providing for increases to the extent that such targets are not met. Salient features and considerations in the use of this type of contract are as follows:

(1) "Performance," as used in this paragraph refers not only to the performance of the article being procured, but to the performance of the contractor as well. Performance which is the minimum which the Government will accept shall be mandatory under the terms of the Completion form contract and shall warrant only the minimum profit or fee related thereto. Performance which meets the stated targets will warrant the "target" profit or fee. Performance which surpasses these targets will be rewarded by additional profit or fee. The incentive feature (providing for increases or decreases, as appropriate) is applied to performance targets rather than performance requirements.

(2) The incentive, when applied to the product, should relate to specific performance characteristics, such as range of a missile, speed of an aircraft or ship, thrust of an engine, maneuverability to a vehicle, and fuel economy. However, high overall performance of the end item is the primary objective of such contracts. Accordingly, the incentive feature should reflect a balancing of the various characteristics which together account for overall performance, so that no one characteristic will be exaggerated to the detriment of the end item as a whole. When applied to the performance of the contractor, the incentive should relate to specific performance areas of milestones, such as delivery or test schedules, quality controls, maintenance requirements, and reliability standards.

(3) Since performance tests generally are essential in order to determine the degree of attainment of performance targets, the control must be as specific as possible in establishing test criteria, such as conditions of testing, precision of instrumentation, and interpretation of test data.

(S–71) *Application.* Contracts with performance incentives are suitable for use in procurements where it is desired to provide the contractor with an incentive in the form of financial reward for surpassing stated performance targets, counter-balance by a penalty in the form of decreased profit or fee for failure to achieve such targets. Performance incentives are particularly appropriate for inclusion in contracts for major weapons and equipment, both in development when desired performance objectives are known and the fabrication of prototypes for test and evaluation is required, and in production where there is potential for improved performance that would be highly desirable to the Government. Effort always should be made in these procurement situations to include a performance incentive in the contract. Performance incentives present complex problems in contract administration and should be negotiated and administered by contracting officers with full cooperation of Government engineering and pricing specialists.

216.403 Fixed-price incentive contracts.

(b)(3) *Application.* Separate incentive provisions may be made applicable to individual line items of a contract, e.g., when dissimilar work is best incentivised by use of separate formulas.

(c) *Limitations.* In no case should such contracts be used where the sole or principal purpose is to shift substantially all cost responsibility to the Government. Further, in no case shall the firm target profit or formula for final profit and price be established independently.

(c)(S–70) *Quarterly limitotion on payments statements.* The contracting officer must be satisfied that the contractor's accounting system will furnish reliable financial information for preparing the Quarterly Limitation on Payments Statement required under the clauses at FAR 52.216–16 and 17. In computing overpayments or underpayments, the contracting officer shall use the following formula when (1) actual costs for individual items delivered are not available and (2) the necessary cost data are available from an accounting system which meets the Cost/Schedule Control Systems Criteria.

Formula for Computing Overpayment/ Underpayment

COID = Cost of items delivered
TCID = Target cost of items delivered
ACWP = Actual cost of work performed
BCWP = Budgeted cost of work performed
BMR = Budgeted management reserve
BTD = Billings to date
TEP = Total estimated price of the contract
TP = Target profit on items delivered
IP = Incentive profit on items delivered

$$COID = TCID \times \frac{ACWP}{BCWP + \left(BMR \times \frac{BTD}{TEP}\right)}$$

Adjusted price = COID + TP + IP
Overpayment/Underpayment = Amount Invoiced − Adjusted Price.

216.403–2 Fixed price incentive (successive targets).

(a)(1) This formula does not apply for the life of the contract but simply is used to fix the firm target profit for the contract. To provide an incentive consistent with the circumstances, the formula for fixing the firm target profit should reflect the relative risk involved in establishing an incentive arrangement where cost and pricing information were not sufficient to permit the negotiation of firm targets at the outset.

216.404 Cost-reimbursement incentive contracts.

216.404–1 Cost-plus incentive fee contracts.

(b) *Application.* Where it is highly probable that the development is feasible and the Government generally has determined its desired performance objectives, the cost-plus-incentive-fee contract should be used in conjunction with performance incentives in the development of major systems, and in other development programs where use of the cost and performance incentive approach is considered both desirable and administratively practical. Range of fee and the fee adjustment formula should be negotiated so as to give appropriate weight to basic procurement objectives. For example, in an initial product development contract, it may be appropriate to negotiate a cost-plus-incentive-fee contract providing for relatively small increases, or decreases in fee tied to the cost incentive feature, balanced by the inclusion of performance incentive provisions providing for significant upward or downward fee adjustment as an incentive for the contractor to meet or surpass negotiated performance targets. Conversely, in subsequent development and test contracts, it may be more appropriate to negotiate an incentive formula where the opportunity to earn additional fee is based primarily on the contractor's success in controlling costs. With regard to the cost incentive provisions of a contract, the minimum and maximum fees, and the fee adjustment formula, should be negotiated so as to provide an incentive which will be effective over variations in costs throughout the full range of reasonably foreseeable variations from target cost. Whenever this type of contract, with or without the inclusion of performance incentives, is negotiated so as to provide incentive up to a high maximum fee, the contract also shall provide for a low minimum fee, which may even be a "zero" fee or, in rare cases, a "negative" fee.

216.404–2 Cost-plus-award-fee contracts.

(a) *Description.* The CPAF contract is a cost reimbursement type of contract with special fee provisions. It provides a means of applying incentives in contracts which are not susceptible to definitc measurements of performance necessary for structuring incentive contracts. Award fee may be earned in whole or in part. The number of criteria used and the requirements which are represented will differ widely from one contract to another. Therefore, when determining criteria and rating plans the using activity should be flexible and select a plan which will motivate the contractor in a positive way to improve performance. Evaluations are furnished to the contractor to afford him an opportunity to comment on the evaluation findings. The decision that award fee has been earned is based on the reports of performance made by the Government personnel knowledgeable with respect to the contract requirements.

(b) *Application.* The CPAF contract is suitable for:

(1)(S–70) Level of effort contracts for performance of services where mission feasibility is established but measurement of achievement must be by subjective evaluation rather than objective measurement; and

(1)(S–71) Work which would have been placed under another type of contract if the performance objectives could be expressed in advance by definite milestones, targets or goals susceptible of measuring actual performance.

(b)(S–70) *Weighted guidelines.* The weighted guidelines method shall not be applied to CPAF contracts with respect to either the base (fixed) fee or the award fee.

(b)(S–71) *Fee.* The amount of the base fee shall not exceed three percent of the estimated cost of the contract exclusive of the fee, and the maximum fee (base fee plus award fee) shall not exceed the limitations stated in FAR 15.903.

(b)(S–72)(i) *Evaluotion.* The contract should provide for evaluation at stated intervals during contract performance, so that the contractor will periodically be made aware of the quality of his performance and will know in which areas improvement is expected. Partial payment of fee will generally correspond to the evaluation periods. This will make effective the incentive which the award fee can create by inducing the contractor to improve poor performance or to continue good performance.

(ii) Consideration may be given to (A) constituting a board to evaluate the contractor's performance and determine the amount of the award fee or recommend an amount to the contracting officer and, (B) to afford the contractor an opportunity to present matters on his own behalf.

(iii) The contract shall set forth those

criteria to be used in evaluating the contractor's performance to arrive at the award fee. See examples of such criteria set forth in charts below.

(b)(S–73) *Disputes.* The contract shall expressly exclude from the operation of the Disputes clause any dispute over the amount of the award fee.

(c)(S–70) *Limitations.* The CPAF contract shall not be used as an administrative technique to avoid CPFF contracts when the criteria for CPFF contracts apply, nor shall a CPAF contract be used to avoid the effort of establishing objective targets so as to make feasible the use of a CPIF type contract.

(c)(S–71) The CPAF contract shall not be used where the contract amount, period of performance or the benefits expected are insufficient to warrant the additional administrative effort or cost.

(c)(S–72) The CPAF contract shall not be used for procurements categorized as either Engineering Development or Operational System Development which have undergone contract definition, except that where it may be more advantageous to do so, it may be used in these categories for individual procurements, ancillary to the development of a major weapon system or equipment, where the purpose of the procurement is clearly to determine or solve specific problems associated with the major weapon system or equipment.

(S–70) *Other application of the award fee provision.* In certain cases, it may be desirable to motivate and reward a contractor for management performance over and above that which can be objectively measured and incentivised under other forms of government contracts. For example, logistics support, quality, timeliness, cooperation, ingenuity, and cost effectiveness are areas under the control of management which may be susceptible only to subjective measurement and evaluation. In such cases, the "award amount" portion of the fee applicable to the CPAF contract is an ideal method for incorporation of these additional incentives into government contracts; the "base fee" or fixed amount portion would not be applicable in these procurements. When approved by the Chief of the Contracting Office, the "award amount" portion of the CPAF contract may be used in conjunction with other types and kinds of contracts for Government's benefit. An Award Review Board shall be appointed at each appropriate installation or activity. Procedures shall be established for the conduct of the evaluation. Further, the award fee provision shall not be used in conjunction with other types and kinds of contracts when the administrative effort or costs for evaluation exceed the benefits to be derived from the use of this arrangement.

Examples of Criteria

PERFORMANCE EVALUATION REPORT CRITERIA

		Submarginal 0–60	Marginal 61–70	Good 71–80	Very Good 81–90	Excellent 91–100
A Time of Delivery.	(A–1) Adherence to plan schedule.	Consistently late on 20% of plans.	Late on 10% plans w/o prior agreement.	Occasional plan late w/o justification.	Meets plan schedule	Delivers all plans on schedule & meets prod. change requirements on schedule.
	(A–2) Action on Anticipated delays.	Does not expose changes or resolve them as soon as recognized.	Exposes changes but is dilatory in resolution on plans.	Anticipates changes, advise Shipyard but misses completion of design plans 10%.	Keeps Yard posted on delays, resolves independently on plans.	Anticipates in good time, advises Shipyard, resolves independently and meets production schedule.
	(A–3) Plan Maintenance.	Does not complete interrelated systems studies concurrently.	System studies completed but constr. plan changes delayed.	Major work plans coordinated in time to meet production schedules.	Design changes from studies and interrelated plans issued in time to meet product schedules.	Design changes, studies resolved and test data issued ahead of production requirements.
B Quality of Work.	(B–1) Work Appearance.	25% dwgs. not compatible with Shipyard repro. processes and use.	20% not compatible with Shipyard repro. processes and use.	10% not compatible with Shipyard repro. processes and use.	0% dwgs. prepared by Des. agent not compatible with Shipyard repro. processes and use.	0% dwgs. presented incl. Des. agent, vendors, subcontr. not compatible with Shipyard repro. processes and use.
	(B–2) Thoroughness and Accuracy of Work.	Is brief on plans tending to leave questionable situations for Shipyard to resolve.	Has followed guidance, type & standard dwgs..	Has followed guidance, type & standard dwgs. questioning and resolving doubtful areas.	Work complete with notes and thorough explanations for anticipated questionable areas.	Work of highest caliber incorporating all pertinent data required including related activities.
	(B–3) Engineering Competence.	Tendency to follow past practice with no variation to meet reqmts. job in hand.	Adequate engrg. to use & adapt existing designs to suit job on hand for routine work.	Engineered to satisfy specs., guidance plans and material provided.	Displays excellent knowledge of constr. reqmts. considering system aspect, cost, shop capabilities and procurement problems.	Exceptional knowledge of Naval shipwork & adaptability to work process incorporating knowledge of future planning in Design.
	(B–4) Liaison Effectiveness.	Indifferent to requirements of associated activities, related systems, and shipyard advice.	Satisfactory but dependent on Shipyard to force resolution of problems without constructive recommendations to subcontr. or vendors.	Maintains normal contact with associated activities depending on Shipyard for problems requiring military resolution.	Maintains independent contact with all associated activities, keeping them informed to produce compatible design with little assist. for Yard.	Maintains expert contact, keeping Yard informed, obtaining info from equip., supplies w/o prompting by Shipyard.
	(B–5) Independence and Initiative.	Constant surveillance req'd. to keep job from slipping—assign to low priority to satisfy needs.	Requires occasional prodding to stay on schedule & expects Shipyard resolution of most problems.	Normal interest and desire to provide workable plans with average assistance & direction by Shipyard.	Complete & accurate job, free of *incompatible* with little or no direction by Shipyard.	Develops complete and accurate plans, seeks out problem areas and resolves with assoc. act. ahead of schedule.
C Effectiveness in Controlling and/or Reducing Costs.	(C–1) Utilization of Personnel.	Planning of work left to designers on drafting boards.	Supervision sets & reviews goals for designers.	System planning by supervisory, personnel, studies checked by engineers.	Design parameters established by system engineers & held in design plans.	Mods. to design plans limited to less than 5% as result lack engrg. system correlation.
	(C–2) Control Direct Charges (Except Labor).	Expenditures not controlled for services.	Expenditures reviewed occasionally by supervision.	Direct charges set & accounted for on each work package.	Provides services as part of normal design function w/o extra charges.	No cost overruns on original estimates absorbs service demands by Shipyard.
	(C–3) Performance to Cost Estimate.	Does not meet cost estimate for original work or changes 30% bme.	Does not meet cost estimate for original work or changes 20% bme.	Exceeds original est. on change orders 10% bme and meets original design costs.	Exceeds original est. on change orders 5% bme.	Never exceeds estimates of original package or change orders.

CONTRACTOR PERFORMANCE EVALUATION REPORT

Ratings
Excellent (91–100)
Very good (81– 90)
Good (71– 80)
Marginal (61– 70)
Submarginal (0– 60)

Period of ..... 19....
Contract Number .....
Contractor .....
Date of Report .....
PNS Technical Monitor/s .....

Category	Criteria	Rating	Item factor	Evaluation rating	Category factor	Efficiency rating
A	TIME OF DELIVERY					
	A–1 Adherence to Plan Schedule		×.40 =			
	A–2 Action on Anticipated Delays		×.30 =			
	A–3 Plan Maintenance		×.30 =			
		Total Item Weighed Rating			×.30 =	
B	QUALITY OF WORK					
	B–1 Work Appearance		×.15 =			
	B–2 Thoroughness and Accuracy of Work		×.30 =			
	B–3 Engineering Competence		×.20 =			
	B–4 Liaison Effectiveness		×.15 =			
	B–5 Independence and Initiative		×.20 =			
		Total Item Weighed Rating		×.40 =		
C	EFFECTIVENESS IN CONTROLLING AND/OR REDUCING COSTS					
	C–1 Utilization of Personnel		×.30 =			
	C–2 Control of all Direct Charges other than labor		×.30 =			
	C–3 Performance to Cost Estimate		×.40 =			
		Total Item Weighed Rating			×.30 =	
		TOTAL WEIGHED RATING				
		Rated by:				
		Signature(s)				

NOTE.—Provide supporting data and/or justification for below average or outstanding item ratings.

Subpart 216.5—Indefinite-Delivery Contracts

216.501 General.

(d) For items with a shelf-life of less than six months, consideration will be given to use of indefinite type contracts with orders to be placed either (i) directly by the users, or (ii) by central purchasing offices with deliveries direct to users. When it is desired to authorize the use of the fast pay procedure for orders not in excess of $10,000, the special data required by FAR 13.3 shall be included in the contract. The required clause in FAR 52.213–1 shall be modified for this purpose to refer to delivery orders and to the appropriate contract clause of the indefinite delivery type contract for the preparation of invoices.

216.502 Definite quantity contracts.

(S–70) Advantages of this type of contract are that it permits stocks in storage depots to be maintained at minimum levels and permits direct shipment to the user. Further advantages of this type of contract are:

(1) Flexibility with respect to both quantities and delivery scheduling;

(2) Supplies or services need to be ordered only after actual needs have materialized;

(3) The obligation of the Government is limited; and

(4) It permits stocks to be maintained at minimum levels and allows direct shipment to the user.

216.503 Requirement contracts.

(S–70) Advantages of this type of contract are:

(1) Flexibility with respect to both quantities and delivery scheduling;

(2) Supplies or services need be ordered only after actual needs have materialized;

(3) When production lead time is involved, deliveries may be made more promptly because the contractor is usually willing to maintain limited stocks in view of the Government's commitment;

(4) Price advantages or savings may be realized through combining several anticipated requirements into one quantity procurement; and

(5) It permits stocks to be maintained at minimum levels and allows direct shipment to the user.

Subpart 216.6—Time-and-Materials, Labor-Hour, and Letter Contracts

216.601 Time-and-materials contracts.

(b)(2) Material handling costs may include all indirect costs, including general and administrative expense, allocated to direct materials in accordance with the contractor's usual accounting practices consistent with Part 231. Such material handling cost should include only costs clearly excluded from the labor hour rate. This type of contract does not afford the contractor any positive profit incentive to control the cost of materials or to manage his labor force effectively. This type of contract may be used in the procurement of (i) engineering and design services in connection with the production of supplies; (ii) the engineering, design and manufacture of dies, jigs, fixtures, gauges, and special machine tools, (iii) repair, maintenance or overhaul work; and (iv) work to be performed in emergency situations.

216.603 Letter contracts.

216.603–2 Application.

(c) Letter contracts shall be specifically negotiated and, as a minimum, shall include the appropriate clauses from Part 252. Whether executed on Standard Form 26 or Standard Form 30, a definitized contract will be numbered as a modification of the letter contract as provided in 204.70.

Subpart 216.7—Agreements

216.702 Basic agreements.

(b) *Application.* The use of the basic agreement contemplates the coverage which will provide for the scope of the work, price, delivery, and additional matters peculiar to the requirements of the specific procurement involved, and

shall incorporate by reference or append the contract clauses agreed upon in the basic agreement as required or applicable.

(b)(3) To minimize modification, revisions to FAR involving changes in authorized contract clauses utilized in basic agreements will provide appropriate direction with respect to any required modifications of basic agreements and to the extent possible, modifications will be required only in matters resulting from changes in statutes or Executive orders.

(b)(S–70) Basic agreements may include negotiated overhead rates for cost-reimbursement type contracts. A basic agreement shall be used to cover all subsequent procurements which fall within its scope. Provisions of the basic agreement, including supplements thereto, shall be incorporated into the formal contractual document covering the particular procurement by referring therein to the number of the basic agreement and each of its supplements. The reference "Basic Agreement No. ____ as amended," shall not be used.

(b)(S–71) Basic agreements generally shall be utilized only in connection with negotiated contracts. An existing contract may be amended by a supplemental agreement effecting new procurement without incorporating the most recent basic agreement only if all clauses then required by statute, Executive order, and this Regulation are included in the contract or the proposed supplemental agreement.

(b)(S–72) Supplemental agreements negotiated pursuant to the terms of an existing contract and not involving new procurement may, if determined to be in the interest of the Government, amend the existing contract to conform to a subsequently executed or supplemented basic agreement.

(b)(S–73) Clauses pertaining to subjects not covered in a basic agreement but applicable to the contract being negotiated shall be included in the contract as if no basic agreement existed.

(b)(S–74) Where a clause which was included in the basic agreement pursuant to a deviation must be replaced by a revised clause, the revised clause may deviate to the same extent as the original clause if the revision is not related to the deviation, and if the deviation has not expired or been rescinded.

(b)(S–75) If a letter contract has been entered into under a basic agreement which thereafter was superseded by a new basic agreement, or amended by supplemental agreement, the contractual instrument which definitizes such letter contract shall incorporate the superseding basic agreement or supplemental agreement, as applicable. If the basic agreement has been terminated without being superseded, or has expired, the definitive contract which supersedes the letter contract shall incorporate the clauses required by statute, Executive Order, or this Regulation.

(S–70) *Content and form.* Basic agreements shall contain a set of "General Provisions." These general provisions shall include two groups of clauses. The first group, identified as "Part A", shall include all of the clauses made mandatory by statute, Executive order, the FAR and this Supplement, for use in negotiated Government contracts, and shall be made a part of each formal contractual document. The second group, identified as "Part B", shall consist of clauses which may be made a part of each formal contractual document, depending upon their applicability to the particular procurement. The format set forth below may be adapted to fit specific circumstances.

Basic Agreement Between the United States of America and _____

This Agreement is entered into as of the _____ day of _____ 19____ between the United States of America, hereinafter called the "Government", represented by the Contracting Officer, _____ and _____, a corporation organized and existing under the laws of the State of _____, herein called "Contractor."

The clauses and provisions of Parts A and B hereinafter set forth have been agreed upon by the parties hereto for use in negotiated _____ type contracts and in letter contracts contemplating conversion to _____ type contracts, between parties, entered into on or after the date of this Agreement, and prior to its termination. It is further agreed that (i) the clauses and provisions set forth in Part A are mandatory clauses and shall, by reference or attachment, be incorporated in each contract awarded pursuant to this Agreement, and (ii) the clauses and provisions set forth in Part B are to be similarly incorporated in such contracts only when applicable and agreed to by the parties for each individual contract.

This Agreement, including Parts A and B hereof, may be amended only by mutual agreement of the parties, and the Agreement may be terminated in its entirety by either party upon thirty (30) days written notice to the other party, except that this Agreement may be terminated by the Government at any time if the parties fail to agree upon any deletion, amendment or addition to this Agreement which is required by statute, Executive order, or the FAR and this Supplement. No deletion, modification, addition to, or termination of, this Agreement shall affect any contracts theretofore entered into between the parties in which this Agreement or a portion thereof has been incorporated by reference.

This Agreement shall be reviewed, as a minimum, annually before the anniversary of its effective date, and revised to conform with all requirements of statutes, Executive orders, or the FAR and this Supplement. This revision shall be evidenced by an agreement modifying this Basic Agreement or by the issuance of a superseding Basic Agreement.

This Agreement shall not be referred to by the Contractor in bids submitted in response to invitations for bids nor become a part of any contract placed through the process of formal advertising.

In Witness Whereof, the parties hereto have executed this Agreement as of the day and year first above written:

United States of America
By _____
(Contracting Officer)

_____
(Name of Company)
By _____

(Title)

216.703 Basic ordering agreements.

(b) *Application.* A basic ordering agreement may be used to expedite contracting if after a competitive solicitation of quotations or proposals from the maximum number of qualified sources, other than a solicitation accomplished by use of Standard Form 33, it is determined that the successful responsive offeror holds a basic ordering agreement, the terms of which are either identical to those of the solicitation or different in a way that could have no impact on price, quality or delivery, and if it is determined further that issuance of an order against the basic ordering agreement rather than preparation of a separate contract would not be prejudicial to the other offerors.

In situations covered by the foregoing, the choice of firms to be solicited shall be made in accordance with normal procedures, without regard to which firms hold basic ordering agreements; firms not holding a basic ordering agreement shall not be precluded by the solicitation from proposing or quoting; and the existence of a basic ordering agreement shall not be a consideration in source selection.

(c) *Limitations.* The clause in FAR 52.213–1 shall be modified to refer to orders and to the appropriate clause of the basic ordering agreement for the preparation of invoices when fast pay is desired on orders less than $25,000. The basic ordering agreement shall specify the point at which each order becomes a binding contract. For example, the agreement may provide either (1) that issuance of an order gives rise to a contract arises upon the contractor's failure to reject the order within a specified number of days, or (3) that a contract

arises when the contractor accepts the order in a specified manner, such as by postcard, telegram, letter, signing and returning a copy of Standard Form 26 or DD Form 1155.

(c)(S–70) As a general rule, prices should be established prior to authorizing the contractor to begin work. However, where the contractor is allowed to begin work prior to pricing in accordance with this paragraph, the contractor and the contracting officer shall proceed with pricing as soon as practicable. The basic ordering agreement shall provide that failure to reach agreement on price in such circumstances will constitute a dispute subject to the procedures of the Disputes clause.

(c)(S–71) To minimize modifications, revisions to FAR involving changes in authorized contract clauses, utilized in basic ordering agreements shall provide appropriate direction with respect to any required modifications of basic ordering agreements; and, to the extent possible, modifications shall be required only in matters resulting from changes in statutes, or Executive Order.

(c)(S–72) The basic ordering agreement shall list one or more activities which are authorized to issue orders under the agreement. Any activity so named may issue orders specifying the supplies or services required. Orders shall be issued on DD Form 1155 or Standard Form 26 and shall incorporate by reference the provisions of the basic ordering agreement.

(d)(1)(S–70) The contracting officer issuing an order under a basic ordering agreement shall be responsible for assuring compliance with the provisions of all limitations of this section.

(d)(1)(S–71) If a contract administration office is authorized to issue orders (see FAR 42.202(c)), that office shall be provided a copy of the synopsis required by FAR 5.201(a), or a copy of the exception determination specified at FAR 5.202(a) or (b), and a copy of the justification and appropriate approvals required by FAR 6.303 and 6.304.

(d)(3)(ii) However, incentive provisions consistent with this part are permitted.

PART 217—SPECIAL CONTRACTING METHODS

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 217.1—Multiyear Contracting

217.101 Definitions.

"Property", as used in this subpart means items of supplies, including but not limited to systems, subsystems, major equipment, components, parts, materials, supplies, and the advance acquisition thereof, and commercial and noncommercial items.

217.102 Policy.

217.102–2 General.

(a) Multiyear contract quantities are budgeted for and financed in accordance with the applicable program year as reflected in the DoD Five-Year Defense Program.

217.102–3 Objectives.

(a)(S–70) Implementation of the industrial preparedness program for planned items with planned producers;

(d)(4) The decision not to request dual proposals must also take into account the determinations required by 217.103–1(b) (S–70) or (S–71).

217.103 Procedures.

217.103–1 General.

(a)(1) The use of such a contract will promote the national security of the United States.

(b)(1) For exceptions to this paragraph see 217.104–70 for multiyear contracting of specified services, and 217.104–71 for multiyear contracting of supplies and services of the maintenance and operation of family housing.

(b)(S–70) A multiyear contract may not be executed in the case of services, until a written determination has been made by the HCA or his designee that (i) there will be a continuing requirement for the services and incidental supplies, consonant with current plans for the proposed contract period; (ii) the furnishing of such services and incidental supplies will require a substantial initial investment in plant or equipment or the incurrence of substantial contingent liabilities for the assembly, training, or transportation of a specialized work force, or other substantial startup costs; and (iii) the use of such a contract will promote the best interest of the United States by encouraging effective competition and promoting economies of operation.

(b)(S–71) A multiyear contract may not be executed in the case of property, until a written determination has been made by the Secretary or designee that the criteria specified in FAR 17.103–1 have been met.

(d)(1) Such ceilings shall be expressed in the schedule and shall be a not-to-exceed amount to apply alike to all bidders or offerors.

217.103–2 Solicitations.

Solicitations for multiyear contracts should be appropriately structured to reflect any selected variations to standard multiyear techniques allowed by FAR 17.102–3(d).

217.103–4 Awards.

(c) Prior to award of a multiyear contract, the contracting officer shall verify that findings made in accordance with 217.103–1(b) (S–70) or (S–71) remain valid and shall annotate the findings document accordingly.

217.103–70 Funding of multiyear contracts.

Before any multiyear contract that contains a clause setting forth a cancellation ceiling in excess of $100 million may be awarded, the Secretary shall give written notification of the proposed contract and of the proposed cancellation ceiling for that contract to the Committees on Armed Services and on Appropriations of the Senate and House of Representatives, and such contract may not then be awarded until the end of a period of 30 calendar days beginning on the date of such notification. Departments shall establish reporting procedures. Copies of the notification shall be submitted to the Office of the Secretary of Defense, OASD(A&L)(P), and Deputy Assistant Secretary of Defense; OASD(C) (P/B). Departments shall also comply with any notification requirements or restrictions contained in annual authorization or appropriation acts.

(a) The planning and coordination of multiyear acquisition strategies should begin sufficiently early to permit required integration of the acquisition into the Planning Programming and Budgeting System (PPBS). The degree of integration and the extent of data required will vary with the type and size of the program. Guidelines shall be included, as required, in DoD and Service instructions for preparing program objective memoranda (POM) submissions and budget estimate submissions (BES).

(b) Policies and procedures for the funding of acquisitions within the procurement title of the DoD Appropriation Act are contained in DoD Directive (DoDD) 7200.4, Full Funding of DoD Procurement Programs.

217.104 Related areas.

217.104-70 Multiyear contracting of services under Pub. L. 90-378.

(a) Under Pub. L. 90-378 (10 U.S.C. 2306 (g)), the Department of Defense is authorized to enter into multiyear acquisitions for the following listed services, to obtain requirements which are not in excess of the Five-Year Defense Program and for which funds are limited by statute for obligation during the fiscal year in which the contract is executed:

(1) Operation, maintenance, and support of facilities and installations;

(2) Maintenance or modification of aircraft, ships, vehicles, and other highly complex military equipment;

(3) Specialized training necessitating high quality instructor skills (for example, pilot and other aircrew members; foreign language training); and

(4) Base services (for example, ground maintenance; in-plane refueling; bus transportation; refuse collection and disposal). However, such acquisitions shall be entered into for no more than a 5-year period and only when such acquisitions are consistent with the policies of and satisfy the requirements set forth in FAR 17.101 through 17.105. The performance years specified in the schedule shall not extend beyond the end of any fiscal year (1 October–30 September).

(b) Since acquisitions under this authority are limited for execution on a fiscal year basis, references to "program year" throughout Sup 217.104-70 shall be considered to mean "fiscal year".

217.104-71 Multiyear acquisition of supplies and services under Pub. L. 91-142.

(a) Under section 512 of Pub. L. 91-142, the Department of Defense is authorized to enter into contracts for periods of no more than 4 years for supplies and services required for the maintenance and operation of family housing for which funds would otherwise be available only within the fiscal year for which appropriated. Such acquisitions shall be entered into only when they are consistent with the policies and satisfy the requirements set forth in FAR 17.101 through 17.105. The performance years specified in the schedule shall not extend beyond the end of any fiscal year (1 October–30 September).

(b) Since acquisitions under this authority are limited for execution on a fiscal year basis, references to "program year" shall be considered to mean "fiscal year".

Subpart 217.2—Options

217.203 Solicitations.

(a)(S-70) When the contracting officer either knows or anticipates that the option may be appropriate to fulfill Foreign Military Sales (FMS) commitments, the solicitation shall notify contractors of the Government's intent in this regard and shall identify the FMS country (countries) and its (their) requirements.

(S-71) When the contracting officer either knows or anticipates that an option may be appropriate to fulfill FMS requirements but the specific country or countries are not identified, the solicitation shall advise contractors that the U.S. Government will subsequently identify the foreign country for the purpose of negotiating any equitable price adjustment for cost or profit considerations attributable to the option if exercised for FMS requirements (see 217.208(S-70)(2)).

(S-72) Such notification shall not be placed in solicitations for the establishment or replenishment of DoD inventories or stocks or acquisitions made under DoD Cooperative Logistics Support Arrangements.

(g)(2) The Chief of the Contracting Office is the person authorized to make the approval cited in FAR 17.203(g)(2).

217.207 Exercise of options.

(c)(2) An FMS commitment undertaken by the United States Government on behalf of a foreign country constitutes the type of need described in FAR 17.207(c)(2). In such cases, the contract shall expressly provide for the Government's right to exercise the option for FMS purposes (see 217.203(a)).

217.208 Solicitation provisions and contract clauses.

(S-70) *FMS option.*

(1) When the contracting officer either knows or anticipates that a contract option may be exercised to fulfill FMS requirements (see 225.7309) and the parties are able to negotiate a price in advance, insert the clause at 252.217-7000, Exercise of Option to Fulfill Foreign Military Sales Commitments, if a clause at FAR 52.217-6, 52.217-7, 52.217-8, or 52.217-9 is included in the contract.

(2) When the contracting officer either knows or anticipates that a contract option may be exercised to fulfill FMS requirements (see 225.7309) and the parties are unable to negotiate any additional cost or profit considerations attributable to Foreign Military Sales until a specific country or countries are subsequently identified, the clause at 252.217-7001, Exercise of Option to Fulfill Foreign Military Sales Commitment, (Alt. 1) shall be inserted if a clause at FAR 52.217-6, 52.217-7, 52.217-8, or 52.217-9 is included in the contract.

Subpart 217.5—Interagency Acquisitions Under the Economy Act

217.502 General.

(a) For purposes of FAR 17.502, the designee of the head of the requesting agency within DoD is the contracting officer unless otherwise directed by departmental regulations.

(b) Except as provided in FAR 7.3, it is the policy of the Department of Defense not to place Government agencies in direct competition with commercial sources.

(c) An order for services shall not be placed with a department or agency when such services can be performed as conveniently or more economically by private contractors.

217.503 Determination requirements.

(b) In addition to the requirements of FAR 17.503(b), the determination shall also include a finding that the services cannot be performed as conveniently or more economically by private contractors.

217.504 Ordering procedures.

(b) Invitations for bids and requests for proposals shall not be sent to Government agencies. Orders for supplies and services placed within a department shall be in accordance with procedures prescribed by that department. Delivery orders may be placed on DD Form 1155.

Subpart 217.6—Management and Operating Contracts

The provisions of FAR Subpart 17.6 are not applicable within DoD.

Subpart 217.70—Exchange of Personal Property

217.7000 Scope of Subpart.

This part prescribes contracting policy and procedures governing the use by Department of Defense components of the exchange authority of section 201(c) of the Federal Property and Administrative Services Act of 1949, 63 Stat. 384, as amended (40 U.S.C. 481(c)), when exchange is accomplished concurrently with procurement. The act authorizes the exchange of personal property and the application of the exchange allowance to the acquisition of similar property. Exchange policy, authority, applicability, and limitations are governed by the Federal Property Management Regulations issued by the Administrator for General Services, and by Department of Defense Instruction 4140.51, "Exchange of Nonexcess Personal Property in the Department of Defense."

217.7001 Definitions.

"Exchange (trade-in) property" means property not in excess of the needs of the owning DoD component, but eligible for replacement because of obsolescence, unserviceability, or other valid reason, that is exchanged and applied as whole or partial payment allowance toward the acquisition of similar items.

"Similar items" in exchange transactions means both the item being acquired and the item being replaced. Both must fall within one of the single generic categories listed in 217.7003-1, and the item being acquired must be designed and constructed for the same specific purpose as the item being replaced.

217.7002 Policy.

It is DoD policy to use exchange processing for replacing eligible nonexcess items. It shall be used to the maximum extent possible when such transactions foster the economical and efficient accomplishment of an approved program.

217.7003 Categories of property eligible for exchange and categories of property ineligible for exchange.

217.7003-1 Property eligible for exchange.

Nonexcess personal property in the categories listed below is eligible for exchange. However, in the exchange of such property, both the item to be acquired and the item to be replaced must fall within a single number category. Categories of property not listed below or not included in 217.7003-2 are also eligible for exchange if designed and constructed for the same specific purpose.

1. Agriculture products, processed foods, and forage
2. Ammunition and ammunition components
3. Animals and animal products
4. Batteries, storage
5. Cards, tabulating
6. Ditching machines
7. Dozer blades
8. Drill presses
9. Drugs, biologicals, and official reagents
10. Earth augers
11. Graders, self-powered and towed
12. Lathes
13. Machines, adding and calculating
14. Machines, addressing and mailing
15. Machines, dictating and transcribing
16. Machines, duplicating
17. Machines, punched card, bookkeeping, tabulating, and accounting
18. Milling machines
19. Mixers, concrete, portable or truck mounted
20. Pile drivers
21. Plows, snow, motor
22. Refrigeration and air conditioning components (FSC 4130 only and this authority expires 31 December 1986)
23. Road rollers, wheeled and sheepsfoot
24. Saws, circular or band
25. Scrapers, earth moving, self-powered
26. Scrapers, earth moving, towed
27. Sedans, station wagons, coupes, limousines
28. Shovels, power
29. Spreaders, aggregate and line
30. Tractors, warehouse
31. Tractors, wheeled or crawler, with or without special attachments, up to 65 h.p.
32. Tractors, wheeled or crawler, with or without special attachments, 65 h.p. and up
33. Trailers, general purpose, multiple axle
34. Trailers, general purpose, single axle
35. Trailers, tank mounted
36. Trucks, forklift
37. Trucks, general purpose, cargo and construction, 12,500 GVW and up (including truck tractors, dump, and multiple drive)
38. Trucks, general purpose and utility, up to 12,500 GVW (including suburbans, carryalls, and sedan deliveries)
39. Trucks, straddle
40. Trucks, tank (special purpose truck on which the tank is integral part of the construction)
41. Trucks, warehouse, platform, electric and gasoline powered
42. Typewriters, manual and electric

217.7003-2 Property ineligible for exchange.

Items that are found in any of the FSCGs listed below are not eligible for handling under exchange procedures without the prior approval of the General Services Administration (such approval shall accompany the purchase request):

10 Weapons
11 Nuclear ordnance
12 Fire control equipment
14 Guided missiles
15 Aircraft, and airframe structural components *
16 Aircraft components and accessories *
17 Aircraft launching, landing, and ground handling equipment
20 Ship and marine equipment
22 Railway equipment
31 Bearings
32 Woodworking machinery and equipment, except lathes, milling machines, and saws, circular or band
34 Metalworking machinery, except drill presses, lathes, milling machines, and saws, circular or band
40 Rope, cable, chain, and fittings
41 Refrigeration and air conditioning equipment **
42 Fire fighting, rescue, and safety equipment
44 Furnace, steam plant, and drying equipment; and nuclear reactors
45 Plumbing, heating, and sanitation equipment
46 Water purification and sewage treatment equipment
47 Pipes, tubing, hoses, and fittings
48 Valves
51 Hand Tools
53 Hardware and abrasives
54 Prefabricated structures and scaffolding
55 Lumber, millwork, plywood, and veneer
56 Construction and building materials
68 Chemicals and chemical products, except medicinal chemicals
71 Furniture
75 Office supplies and devices, except cards, tabulating
83 Textiles, leather, and furs
84 Clothing and individual equipment

* These line items shall be exchanged directly when the Military Departments rely on a contract with a manufacturer for full spare parts support for commercial type aircraft.

** Except for FSC 4130 items; which may be exchanged [see 217.7003-1].

217.7004 Procedures.

217.7004-1 Offering property for exchange.

(a) Sale of nonexcess personal property is not authorized pursuant to this part. The objective in exchanging nonexcess personal property shall be to acquire new property from an offeror whose offer will be most advantageous to the Government, price and other factors considered. When acquiring new property concurrent with offering exchange property, either sealed bidding or negotiation shall be used as appropriate (see FAR Part 6), except that when the personal property is required to be acquired against a mandatory Federal Supply Schedule Contract, the property shall be acquired against such contract, regardless of whether the exchange can be effected under such contract.

(b) The following notation shall be included in the solicitation:

> The property described in item number(s) _____, is being offered in accordance with the exchange provisions of section 201(c) of the Federal Property and Administrative Services Act of 1949, 63 Stat. 384 (40 U.S.C. 481(c)).

(c) A minimum of 14 calendar days should be allowed in Continental United States (CONUS) for the inspection of property being offered for exchange. For exchanges outside Continental United States, the minimum inspection period should normally be 21 calendar days.

217.7004-2 Purchase request and certification.

In connection with an acquisition involving exchange, the purchase

request must be accompanied by a certification that the property is eligible for exchange and complies with all conditions and limitations specified in DODI 4140.51 including a written administrative determination of economic advantage which shall indicate—

(a) The anticipated economic advantage to the Government resulting from the use of the exchange authority.

(b) That exchange allowances shall be applied toward or in partial payment for the items to be acquired.

(c) That if required, the exchange property has been rendered safe or innocuous, or has been demilitarized.

217.7005 Exchange of exchange property.

Each solicitation listing exchange property, in addition to asking for prices for the new items being acquired, shall request offers in terms of exchange (trade-in allowance) for the exchange property listed. The solicitation shall provide for award(s) which are in the best overall interest of the Government. Exchanges may only be effected with the successful offeror. Thus, if the lowest net price to the Government of the property to be acquired (i.e., the price of the new property less the amount offered for the exchange property) results from an offer by a supplier of the new property who agrees to accept the exchange property as a trade-in, a single award would be made which would cover both the acquisition by the Government of the new property and the disposal of the exchange property by trade-in. If, however, the lowest net price to the Government results from a low offered price from a supplier of the new property, without exchange of the exchange property, award shall be made to the low offeror to purchase the new property and the exchange shall not be made.

Subpart 217.71—Master Agreement for Repair and Alteration of Vessels

217.7100 Scope of subpart.

Acquisition policies and procedures applicable to the Master Agreement for Repair and Alteration of Vessels are set forth in this part.

217.7101 Definitions

(a) Master Agreement for Repair and Alteration of Vessels—The Master Agreement is not a contract and contains no statement of work. It is a written compilation of both required clauses and clauses used as applicable which establishes in advance the terms and conditions upon which a contractor will effect repairs, alterations, and/or additions to vessels, under the provisions of job orders awarded by contracting activities from time to time. The clauses comprising the Master Agreement for Repair and Alteration of Vessels are set forth in 217.7104.

(b) Job Order—A fixed price contract entered into with a contractor which has previously executed a Master Agreement for Repair and Alteration of Vessels. The job order applies to a specific acquisition and sets forth the scope of work, price, delivery date, and additional matters peculiar to the requirements of the specific acquisition. The job order incorporates by reference or appends the clauses of the Master Agreement as required or applicable.

217.7102 Policy.

(a) The Master Agreement for Repair and Alteration of Vessels shall be entered into with all prospective contractors located within the United States, its possessions, or Puerto Rico, which request ship repair work and which possess the organization and facilities to perform such work satisfactorily. Issuance of the Master Agreement for Repair and Alteration of Vessels does not constitute approval of the contractor's facilities for any particular acquisition.

(b) When using the Master Agreement for Repair and Alteration of Vessels in work with prospective contractors located outside the United States, its possessions, or Puerto Rico, the applicable portions of 217.7104 shall be used as a guide.

(c) The Government may from time to time desire to issue job orders under the Master Agreement for Repair and Alteration of Vessels to effect repairs, alterations, and/or additions to vessels belonging to foreign governments. Vessels of a foreign government will be treated as if they were vessels of the United States Government, whenever so requested by the contracting officer. The IFB, RFP, or RFQ and job order will identify the vessel and the foreign government.

217.7103 Procedures.

217.7103-1 Content and format.

The Master Agreement for Repair and Alteration of Vessels shall contain a set of "Contract Clauses". These contract clauses shall be classified into two groups. The first group, identified as Part 217.7104(a), shall include all clauses made mandatory by statute, Executive order, or the Federal Acquisition Regulation, and shall be incorporated into job orders awarded under the Master Agreement for Repair and Alteration of Vessels. The second group, identified as Part 217.7104(b), shall include those clauses to be incorporated into job orders awarded under the Master Agreement for Repair and Alteration of Vessels, as applicable. The format set forth below may be adapted to fit specific circumstances.

Master Agreement for Repair and Alteration of Vessels

This AGREEMENT is entered into this ____ day of _____ 19____ by the UNITED STATES OF AMERICA, hereinafter called the "Government", represented by the Contracting Officer, _____, and _____, a corporation organized and existing under the laws of the State of _____, hereinafter called the "Contractor". The clauses of the Federal Acquisition Regulation (FAR) and the Department of Defense (DoD) FAR Supplement, as set forth herein, have been agreed upon by the parties hereto for use in Invitations for Bids, Requests for Proposals, Requests for Quotations, and/or Job Orders to effect repairs, alterations, and/or additions to vessels, issued by the Government from time to time under this Agreement. It is further agreed that the clauses set forth in DoD FAR Supplement 217.7104(a) are mandatory and shall, by reference or attachment, be incorporated in each job order awarded pursuant to this Agreement.

This Agreement may be cancelled by either party upon thirty (30) days written notice without affecting rights and liabilities under any job order existing at the time of cancellation; *Provided, however,* that the Contractor shall perform and complete under the terms hereof all work covered by any job order entered into hereunder prior to the effective date of cancellation, as such job order may be modified by any change order issued under Clause 252.217-7101 entitled *Changes,* hereof.

This Agreement may be modified only by mutual agreement of the parties. However, the Government has the right to cancel this Agreement upon thirty (30) days written notice at any time the parties fail to agree upon any modification to this Agreement which is required by statute, Executive order, the Federal Acquisition Regulation, or the DoD FAR Supplement. A modification of this Agreement shall not affect any job order in existence at the time of modification, unless the parties so agree.

The rights and obligations of the parties to this Agreement shall be subject to and governed by the provisions of this Agreement, the provisions of job orders issued hereunder, and the drawings, design plans, and specifications. To the extent of any inconsistency between this Agreement and any job order, including any drawings, design plans, and specifications, the provisions of this Agreement shall govern.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

THE UNITED STATES OF AMERICA
By _____
(Contracting Officer)

_____
(Contractor)
By _____

(Title)

217.7103-2 Period of agreement.

Either party to the Agreement shall have the right to cancel it without affecting the rights and liabilities under any job order in existence at the time of cancellation by giving 30 days written notice; *Provided,* however, that the contractor shall perform and complete under the terms thereof all work covered by any job order, and any modifications thereto, entered into prior to the effective date of cancellation. The Master Agreement for Repair and Alteration of Vessels will remain in force until cancelled by either party thereto.

217.7103-3 Inviting bids, proposals, or quotations for job orders.

(a) When a requirement arises for the type of work covered by the Master Agreement for Repair and Alteration of Vessels within the United States, bids, proposals or quotations will be solicited from prospective contractors which have previously executed a Master Agreement for Repair and Alteration of Vessels and from prospective contractors which possess the necessary qualifications to perform the work and agree to execute a Master Agreement for Repair and Alteration of Vessels before award of a job order.

(b) The contracting officer shall ensure that solicitations are prepared in the Uniform Contract Format and in accordance with FAR Part 14, Subpart 14.2 or Part 15, Subpart 15.4 as applicable. Solicitations shall include the clauses in 217.7104(a) and, as applicable, the clauses in 217.7104(b). Whenever the Government shall invite the contractor to submit a bid or proposal for the repair, completion, alteration of or addition to a vessel, the contracting officer shall notify the contractor in reasonable detail of (1) the nature of the work to be performed, (2) the date the vessel will be available to the contractor, and (3) the date the work is to be completed. Whenever bulk ammunition is aboard the vessel, the notice shall so state. Unless the notice otherwise states, bids or proposals shall be submitted on the basis that the work will be performed at the contractor's site.

(c) In the event that the contractor is willing and able to perform the work, the contractor, where practicable, shall be afforded an opportunity to inspect the items of work to be accomplished on such vessel, and the contractor shall submit a bid, proposal, or quotation as requested by the contracting officer for the performance of the work as set forth in the solicitation. If the contracting officer requests the contractor to negotiate, the contractor shall submit a proposal which shall include a breakdown of the price in such form and supported by such reasonable detail as the contracting officer may request, but in any case indicating at a minimum the amount proposed for (1) direct labor, (2) material, (3) overhead, and (4) contingencies and profit.

217.7103-4 Pre-Award survey.

In addition to the procedures set forth in FAR 9.104 for making the determination called for by FAR 9.100, the contracting officer may make, before awarding a job order, a pre-award survey of the contractor's operations, including any analysis of the contractor's proposed subcontractors, to insure the adequacy and suitability of facilities, including safety standards and adequacy of fire protection, adequacy of facilities for the health, comfort, and welfare of the crew of the vessel, and adequate plant protection to safeguard the vessel and Government property.

217.7103-5 Award of a job order.

After the receipt and evaluation of bids or proposals and selection of the contractor, the price for the work and other pertinent data shall be set forth in a job order (SF 26, SF 33). This job order, by its terms, is subject to the provisions of the Master Agreement for Repair and Alteration of Vessels. When the acquisition has been made under sealed bid procedures, issuance of a job order, signed by the contracting officer only, constitutes an award. When the procurement has been negotiated, the job order must also be signed by the contractor and returned to the contracting officer.

217.7103-6 Emergency work.

Under the following circumstances, the contracting officer, without inviting bids or proposals, may issue a written order for work to a contractor who has previously executed a Master Agreement for Repair and Alteration of Vessels: (a) when a vessel, its cargo, or stores would be endangered by delay in the performance of necessary repair work, or (b) when military necessity requires immediate work on a vessel. As soon as practicable after the issuance of such an order, the parties are required by the Master Agreement for Repair and Alteration of Vessels to negotiate a price for the work. When agreement is reached upon a price, the contracting officer will issue a job order pricing the work.

217.7103-7 Repair costs not readily ascertainable.

If the nature of any repairs is such that their extent and probable costs are not readily ascertainable, the contracting officer may issue a job order on a negotiated or sealed bid basis, to determine the nature and extent of required repairs. The job order shall provide that upon such determination, the contractor, if requested by the contracting officer, shall negotiate prices for the performance of such work as the contracting officer may deem necessary to accomplish the repairs. The prices so agreed upon shall be set forth in a modification to the job order.

217.7103-8 Modification of master agreements for repair and alteration of vessels.

Whenever the Federal Acquisition Regulation and/or the DoD FAR Supplement is revised, the Master Agreement shall also be revised to incorporate all changes made necessary by the revision.

217.7104 Contract clauses.

(a) The contracting officer shall insert the following required clauses in all job orders awarded under the Master Agreement for Repair and Alteration of Vessels:

(1) 252.217-7100 Definitions.
(2) 252.217-7101 Changes.
(3) 252.217-7102 Extras.
(4) 252.217-7103 Job Orders and Compensation.
(5) 252.217-7104 Inspection and Manner of Doing Work.
(6) 252.217-7105 Title.
(7) 252.217-7106 Payments.
(8) 252.217-7107 Assignment of Claims.
(9) 252.217-7108 Bonds.
(10) 252.217-7109 Federal, State, Local and Foreign Taxes.
(11) 252.217-7110 Default.
(12) 252.217-7111 Disputes.
(13) 252.217-7112 Performance.
(14) 252.217-7113 Access to Vessel.
(15) Reserved.
(16) Reserved.
(17) Reserved.
(18) 252.217-7117 Equal Opportunity Clause.
(19) 252.217-7118 Officials Not to Benefit.
(20) 252.217-7119 Covenant Against Contingent Fees.
(21) 252.217-7120 Termination for Convenience of the Government.
(22) 252.217-7121 Authorization and Consent.
(23) 252.217-7122 Notice and Assistance Regarding Patent and Copyright Infringement.

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(24) 252.217–7123 Responsibility for Inspection.
(25) 252.217–7124 Liability and Insurance.
(26) 252.217–7125 Pricing of Adjustments.
(27) Reserved.
(28) Reserved.
(29) 252.217–7128 Clean Air and Water.
(30) 252.217–7129 Invoices.
(31) 252.217–7130 Guarantees.
(32) 252.217–7131 Discharge of Liens.
(33) 252.217–7132 Department of Labor Safety and Health Regulations for Ship Repairing.

(b) The Contracting Officer shall insert the following clauses in job orders awarded under the Master Agreement for Repair and Alteration of Vessels as applicable.

(1) 252.217–7200 Workers' Compensation and War Hazard Insurance Overseas.
(2) 252.217–7201 Buy American Act and the Balance of Payments Program.
(3) 252.217–7202 Notice to the Government of Labor Disputes.
(4) 252.217–7203 Patent Indemnity.
(5) 252.217–7204 Filing of Patent Applications.
(6) 252.217–7205 Contract Schedule Subline Items Not Separately Priced.
(7) 252.217–7206 Reporting and Refund of Royalties.
(8) 252.217–7207 Rights in Technical Data and Computer Software.
(9) 252.217–7208 Military Security Requirements.
(10) 252.217–7209 Utilization of Small Business and Small Disadvantaged Business Concerns.
(11) 252.217–7210 Examination of Records by Comptroller General.
(12) 252.217–7211 Gratuities.
(13) 252.217–7212 Convict Labor.
(14) 252.217–7213 Priorities and Allocations.
(15) 252.217–7214 Utilization of Labor Surplus Area Concerns.
(16) 252.217–7215 Limitation on Withholding of Payments.
(17) 252.217–7216 Equal Opportunity Pre-Award Clearance of Subcontracts.
(18) 252.217–7217 Subcontracts.
(19) 252.217–7218 Government Property.
(20) 252.217–7219 Federal, State, Local, and Foreign Taxes.
(21) Reserved.
(22) 252.217–7221 Price Reduction for Defective Cost or Pricing Data.
(23) 252.217–7222 Duty-Free Entry.
(24) 252.217–7223 Duty-Free Entry of Qualifying Country Supplies.
(25) 252.217–7224 Inspection System.
(26) 252.217–7225 Advance Payments.
(27) 252.217–7226 Required Sources for Jewel Bearings and Related Items.
(28) 252.217–7227 Required Sources for Miniature and Instrument Ball Bearings.
(29) 252.217–7228 Interest.
(30) 252.217–7229 Competition in Subcontracting.
(31) 252.217–7230 Audit by Department of Defense.
(32) 252.217–7231 Subcontractor Cost or Pricing Data.
(33) 252.217–7232 Value Engineering.
(34) 252.217–7233 Reserved.
(35) 252.217–7234 Required Sources for Precision Components for Mechanical Time Devices.
(36) 252.217–7235 New Material.
(37) 252.217–7236 Government Surplus.
(38) 252.217–7237 Utilization of Women-Owned Business Concerns (Over $10,000).
(39) 252.217–7238 Material Inspection and Receiving Report.
(40) 252.217–7239 Protection of Government Buildings, Equipment and Vegetation.
(41) 252.217–7240 Government Delay of Work.
(42) 252.217–7241 Distribution of Defense Subcontracts Placed Overseas.
(43) 252.217–7242 Safety Precautions for Ammunition and Explosives.
(44) 252.217–7243 Cost Accounting Standards.
(45) 252.217–7244 Notification of Changes.
(46) 252.217–7245 Engineering Change Proposals (ECP's).
(47) 252.217–7246 Change Order Accounting.
(48) 252.217–7247 Contracts Conditioned Upon the Availability of Funds.
(49) 252.217–7248 Preference for Domestic Specialty Metals.
(50) 252.217–7249 Preference for United States-Flag Air Carriers.
(51) 252.217–7250 Exclusionary Policies and Practices of Foreign Governments.
(52) 252.217–7251 Hazardous Material Identification and Material Safety Data.
(53) 252.217–7252 Certification of Requests for Adjustment or Relief Exceeding $100,000.
(54) 252.217–7253 Qualifying Country Sources as Subcontractors.
(55) 252.217–7254 Stop Work Orders.
(56) 252.217–7114 Certain Communist Areas.
(57) 252.217–7115 Contract Work Hours and Safety Standards Act—Overtime Compensation.
(58) 252.217–7116 Walsh-Healey Public Contracts Act.
(59) 252.217–7126 Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.
(60) 252.217–7127 Affirmative Action for Handicapped Workers.
(61) 252.217–7255 Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding.
(62) 252.217–7256 Subcontractor Cost or Pricing Data.
(63) 252.217–7257 Notice of Total Small Business Set-Aside.
(64) 252.217–7258 Preference for Labor Surplus Area Concerns.
(65) 252.217–7259 Bid Guarantee.
(66) 252.217–7260 Production Progress Reports.
(67) 252.217–7261 Government-Furnished Property (Short Form).
(68) 252.217–7262 Clauses Incorporated by Reference.
(69) 252.217–7263 Aggregate Pricing Adjustment.
(70) 252.217–7264 Small Business and Small Disadvantaged Business Subcontracting Plan (Master Plans).
(71) 252.217–7265 Restrictive Markings on Technical Data.
(72) 252.217–7266 Identification of Technical Data.
(73) 252.217–7267 Data Requirements.
(74) 252.217–7268 Certain Communist Areas.
(75) 252.217–7269 Plant Protection.

Subpart 217.72—Acquisition of Component Parts

217.7201 Privately developed items.

217.7201–1 General.

It is Department of Defense policy to provide an incentive to industry creativity by honoring the rights in data resulting from private development and by limiting the demands for such data to that which is essential for Government purposes. It is important that the efforts directed toward permitting full and open competition do not demand or use privately developed data in a manner which is contrary to the policies and procedures established in FAR Part 27. Accordingly, when the policy stated above produces situations which require the contracting officer to decide whether to procure data for future competitive acquisition, the provisions of Part 227, as supplemented by this paragraph, shall govern.

217.7201–2 Specific acquisition methods.

(a) When Defense requirements are for items which are available from more than one source as a result of either licensing, competitive copying, or independent development, the contracting officer shall provide for full and open competition for such items.

(b) When the Government desires to purchase privately developed items but does not have necessary data with unlimited rights for use in a specification for competitive acquisition, the contracting officer shall use one of the following alternative procedures in order of preference (see also 217.7203).

(1) When items of identical design are not required, the contracting officer shall provide for full and open competition using performance or other similar specifications, including purchase descriptions, which do not contain data pertaining to items, components or processes, developed at private expense to which the Government does not have unlimited rights. There are two methods of competitive procurement which may provide items of the same or similar design and suitable performance. One of these is purhcase by two-step sealed bidding. The other is by the use of "brand name or equal" purchase descriptions. To encourage participation by technically oriented firms that are desirous of offering their privately developed products in competition with similar articles, contracting activities should consider incorporating a requirement in the IFB or RFP for a bid sample to be used for evaluation purposes only (see 210.004(b)(3)(i)).

(2) When items of design or composition similar or identical to a privately developed item are required and other than full and open competition is authorized under Part 206, procurement should be from the firm which developed or designed the item or process or its licensees, *provided* productive capacity and quality are adequate and price is fair and reasonable.

(3) When additional sources are required for items of design or composition similar or identical to a privately developed item in order to meet total current or mobilization requirements, and the procedures in (1) above cannot practicably be used to create additional sources, the developer should be encouraged to license others to manufacture such items. Procuring activities should also consider the specific acquisition by the Government of the necessary rights in data. When complex technical equipment is involved and the establishment of satisfactory additional sources will require, in addition to data, technical assistance from the primary source, consideration should be given to the use of the leader company acquisition technique (see FAR Subpart 17.4).

(4) As a last alternative, a design specification may be developed by the Government through inspection and analysis of the product (i.e. reverse engineering) and used for competitive acquisition. Reverse engineering shall not be used unless significant cost savings can be reasonably demonstrated and the action is authorized by the Head of the Contracting Activity.

217.7202 Component breakout.

217.7202–1 Scope of paragraph.

(a) This section sets forth guidance for making decisions on whether or not components should be acquired by the Government directly and furnished to an end item contractor as Government-furnished material, for incorporation in the end item. This paragraph, however, does not pertain to all such decisions, but only to those which deal with whether components that have been included as contractor-furnished material in a previous acquisition of the end item should be "broken out" from a forthcoming end item acquisition for direct Government acquisition. Thus, except as set forth in Part 7, this paragraph does not pertain to the initial Government-furnished equipment/contractor-furnished equipment decisions that must be made at the inception of an acquisition program.

(b) Parts acquired for replenishment are not covered by this paragraph, but are governed by 217.7203 and Supplement 6, Replenishment Parts Breakout Program.

(c) This section applies to acquisitions of weapons systems or other items of major equipment involving components whose direct acquisition by the Government may result in substantial net cost savings over the life of the acquisition program. Accordingly, it will seldom be applicable to an acquisition of such a system or item of less than $1,000,000. The term "component", as used in this paragraph, includes subsystems, assemblies, subassemblies, and other major elements of an end item, but does not include elements of relatively small annual acquisition value.

217.7202–2 Policy.

Whenever it is anticipated that the prime contract for a weapons system or other major end item will be awarded without adequate price competition, and the prime contractor is expected to acquire a component without such competition, it is Department of Defense policy to break out that component if:

(a) Substantial net cost savings will probably be achieved; and

(b) Such action will not jeopardize the quality, reliability, performance or timely delivery of the end item.

The desirability of breakout should also be considered (regardless of whether the prime contract or the component being acquired by the prime contractor is on the basis of price competition) whenever substantial net cost savings will result (1) from greater quantity acquisitions or (2) from such factors as improved logistics support through reduction in varieties of spare parts and economies in operations and training through standardization of design. Primary breakout consideration shall be given to those components of the end item representing the highest annual acquisition costs and offering the largest potential net savings through breakout.

217.7202–3 Responsibility for component breakout selection, review and decision.

The program manager, project manager, project officer, program director, or other official responsible for the material program concerned, supported by a project team (to include the Small Business Specialist, cognizant engineering, production, logistics, maintenance and other appropriate personnel, and the contracting officer or designee), shall be responsible for:

(i) Earmarking as susceptible to breakout those components potentially conforming to the criteria and policy set forth herein;

(ii) Conducting the breakout review and evaluation described in 217.7202–4;

(iii) Making the decision whether or not to break out the component; and

(iv) Preparing records explaining such decisions in compliance with 217.7202–5.

217.7202–4 Breakout guidelines.

(a) Each decision on whether or not to break out a component must embrace (1) assessment of the potential risks of degrading the end item through such contingencies as delayed delivery and reduced reliability of the component, (2) calculation of estimated net cost savings (i.e., estimated acquisition savings less any offsetting costs), and (3) analysis of the technical, operational, logistic and administrative factors involved. As to each of these, the decision must be supported by adequate explanatory information, including an assessment by, and consultation with, the end item contractor when feasible.

(b) In deciding whether a component should be broken out, the guidelines set forth below (in the form of questions) should be considered. Answers will rarely be "positively yes" or "positively no" but usually "probably yes" or "probably no", with the degree of probability governed by the facts of the particular case. The decisions will depend largely upon the degree and significance of the risks to quality performance, reliability and timely delivery of the end item which would be

involved in breakout and upon the estimated overall cost savings. Where the risks, if any, are acceptable and breakout is expected to result in substantial overall cost savings, the component should be broken out. On the other hand, if such risks are unacceptable, the components should not be broken out.

(1) Are the design of the component (and the design of the end item insofar as it will affect the component) sufficiently stable that further design or engineering effort by the end item contractor in respect to the component is unlikely to be required?

(2) Is a suitable data package available with rights to use it for Government acquisition? (Note that breakout may be warranted even though competitive acquisition is not possible.)

(3) Can any problems of quality control and reliability of the component be resolved without requiring effort by the end item contractor?

(4) Is it anticipated that requirements for technical support (i.e., functions such as development of proposed detailed specifications; development of test requirements to prove design adequacy or compliance with design; monitoring tests to assure compliance with established requirements; definition of quality assurance requirements for production of articles; and analysis and correction of service-revealed deficiencies) heretofore performed by the end item contractor will be negligible? If not, does the Government have the resources (manpower, technical competence, facilities, etc.) to provide such support, or can such support be obtained from the end item contractor (even though the compoonent is broken out) or other source?

(5) Can breakout be accomplished without causing unacceptable difficulties in logistics support (e.g., by jeopardizing requisite standardization of components)?

(6) Can breakout be accomplished without causing over fragmentation of the end item that might materially impede administration, management, and performance of the end item contract (e.g., by unduly complicating production scheduling or identifying (and fixing responsibility for) end item failure that may be caused by a defective component)?

(7) Can breakout be accomplished without jeopardizing delivery requirements of the end item?

(8) If a decision is made to break out a component and to acquire it from a new source, can advance acquisition funds be made available to provide that source any necessary additional lead time?

(9) Is there a source other than the present manufacturer capable of supplying the component?

(10) Has the component been (or is it known that it is going to be) acquired directly by the Government as a support item in the supply system or as GFE in other end items?

(11) Would the financial risks and other responsibilities being assumed by the prime contractor that will have to be assumed by the Government if the item is broken out be acceptable?

(12) Will breakout result in substantial net cost savings? Estimates of probable savings in cost, should be developed for each case on its own facts, with consideration given to any estimated offsetting costs such as increases in the cost of requirements determination and control, contracting, contract administration, data package purchase, material inspection, qualification or preproduction testing, ground support and test equipment, transportation, security, storage, distribution, and technical support.

(c) If application of the guidelines in (b) above reveals conditions currently unfavorable to breakout, the feasibility of eliminating such conditions should be considered. For example, where adequate technical support is not available from Government resources, or similar assistance must be obtained in order to successfully accomplish breakout, consideration should be given to the contracting for the necessary services, such as product assurance suitability services, from the end item contractor or other qualified source.

217.7202-5 Records and review procedure.

The records of the contracting activity shall contain documentation of:

(a) Those components which have been reviewed and determined to have no potential for breakout;

(b) Those components which have been reviewed and earmarked as being susceptible to breakout pursuant to 217.7202-3; and

(c) Those components for which a decision to breakout has been made.

Documentation of these three categories, and for those components once earmarked but no longer considered susceptible to breakout, shall be signed by the cognizant project manager or other designated official and reflect the facts and conditions of the case, including any assessment by the contractor, and the basis for the decision. Components that have been earmarked for potential breakout shall be reviewed well in advance of each successive acquisition, with a decision made as to whether the component will be broken out for the ensuing acquisition. Such reviews, made preferably in the course of requirements determination, but in any event before acquisition of the requirement is initiated, shall be repeated until a final decision on whether or not to breakout is reached, and shall be documented. When breakout is delayed or postponed, the documentation shall include a description of the actions required to accomplish breakout, identify the activities responsible for such actions, and indicate the fiscal year when breakout should be effected.

217.7203 Acquisition of parts.

(a) Any part, subassembly, or component (hereinafter called "part") for military equipment, to be used for replenishment of stock, repair, or replacement, must be acquired so as to assure the requisite safe, dependable, and effective operation of the equipment. Where it is feasible to do so without impairing this assurance, parts should be acquired on a full and open competitive basis, as in the kind of cases described in (b) below. However, where this assurance can be had only if the parts are acquired from the original manufacturer of the equipment or his supplier, the acquisition should be restricted accordingly, as in the kind of cases described in (c) below. Centrally managed replenishment parts for military systems and equipment (except replenishment parts acquired under other specifically defined initial support programs or acquired through local purchase) are governed by Supplement 6, the Replenishment Parts Breakout Program.

(b) Parts that are fully identified and can be obtained from a number of known sources, and parts for which fully adequate manufacturing drawings and any other needed data are available with the right to use for acquisition purposes (or can be made so available in keeping with the policies in FAR Part 27 are to be acquired on a competitive basis. In general, such parts are of a standard design configuration. They include individual items that are susceptible of separate acquisition, such as resistors, transformers, generators, spark plugs, electron tubes, or other parts having commercial equivalents.

(c) Parts not within the scope of (b) above generally should be procured (either directly or indirectly) only from sources that have satisfactorily manufactured or furnished such parts in the past, unless fully adequate data (including any necessary data developed at private expense), test results, and quality assurance procedures, are available with the right to use for procurement purposes (or can reasonably be made so available in keeping with the policies in FAR Part 27 to assure the requisite reliability and interchangeability of the parts, and acquisition on a competitive basis would be consistent with the assurance described in (a) above. In assessing this assurance, the nature and function of the equipment of which the part is needed should be considered. Parts qualifying under this criteria are normally sole source or source controlled parts (see MILSTD 100) which exclusively provide the performance, installation and interchangeability characteristics required for specific critical applications. To illustrate, acceptable tolerances for a commercial television part may be far less stringent than those for a comparable military radar part, permitting competitive contracting for the former but not for the latter. The exacting performance requirements of specially designed military equipment may demand that parts be closely controlled and have proven capabilities of precise integration with the system in which they operate, to a degree that precludes the use of even apparently identical parts from new sources, since the functioning of the whole may depend on latent characteristics of each part which are not definitely known.

(d) When an award is made to a source that has not previously produced the item, the cognizant Government inspection activity and the appropriate contract administration office should be notified by the contracting office that the contractor will be producing the item for the first time.

(e) *Limitations on price increases.*

(1) Except as provided in (2) below, the contracting officer shall not purchase or agree to a price for any centrally managed spare or replacement part, on a sole source basis, when the price of such part has increased by 25 percent or more at any time within the most recent 12-month period.

(2) The purchase of such part is permitted notwithstanding a price increase of 25 percent or more provided the contracting officer certifies in writing to the head of a contracting activity before the purchase is made that:

(i) The contracting officer has evaluated the price of such part and concluded that the price increase is fair and reasonable, or

(ii) The national security interests of the United States require that such part be purchased despite the price increase.

(3) If necessary to implement this paragraph (e), contracting officers may require that vendors supply price and quantity data for any government orders issued within the most recent 12 months for the spare or replacement part as part of their response to a solicitation.

(4) The fact that a particular price has not increased by 25 percent in no way relieves the contracting officer of the responsibility for obtaining a fair and reasonable price.

217.7204 Identification of sources of supply.

(a) 10 U.S.C. 2384(a) requires that, whenever practicable, each contract requiring the delivery of supplies shall require that the contractor identify:

(1) The actual manufacturer or producer of the item or of all sources of supply of the contractor for that item;

(2) The national stock number of the item (if there is such a number), and the identification number of the actual manufacturer or producer of the item or of each source of supply of the contractor for the item; and

(3) The source of any technical data delivered under the contract.

This enables contracting officers to obtain sufficient information to allow solicitation of all actual manufacturer(s) of end items, parts, subassemblies and/or components, thereby allowing for enhancing competition and avoiding payment of additional costs where no significant value is added by dealers, distributors and manufacturers other than the actual manufacturer.

(b) The contracting officer shall include the clause at 252.217-7270 in all supply contracts except when:

(1) The contracting officer already has the information required by this clause (for example, the information was obtained as part of the offer or under other acquisitions);

(2) The contract is for subsistence, clothing or textiles, fuels, or supplies purchased and used outside the United States; or

(3) The contracting officer determines that it would not be practicable to require the contractor to provide the information, e.g., nonrepetitive local purchases.

(c) The contracting officer may include the clause at 252.217-7270 in service contracts requiring the delivery of supplies when appropriate.

Subpart 217.73—Special Commodities

217.7301 Bakery and dairy products contracts.

217.7301-1 Scope.

This section sets forth special policies and requirements for acquisiton of perishable bakery and dairy products.

217.7301-2 Plant locations.

Prior to award of a contract for perishable bakery or dairy products the contractor must identify the plant or plants at which any manufacturing or processing will occur and from which shipment will be made. The plants named by the successful contractor shall be listed in the Schedule.

217.7301-3 Chemical and microbiological requirements (fresh dairy foods).

(a) *Chemical requirements.* Fresh dairy foods shall meet the chemical requirements for each fresh dairy food specification cited in the contract on the date of award.

(b) *Microbiological requirements.* Milk and milk products as defined in DLAM 8200.1, shall meet microbiological requirements stated in the Public Health Service Publication 229 in effect on the date of award. In the event of conflict between these requirements and individual product specifications, the requirements of Public Health Service Publication 229 shall govern.

(c) *Cultured products.* Cultured products shall meet the coliform requirements as specified in the Public Health Service Publication 229 in effect on the date of award. In the event of conflict between these requirements and individual product specifications, the requirements of Public Health Service Publication 229 shall govern.

(d) *Solicitation and contract requirements.* The requirements of (a), (b) and (c) above shall be expressed in solicitations and contracts for fresh dairy products.

217.7301-4 Containers and equipment (milk dispensing).

If the contractor is to furnish cabinets for dispensing milk from bulk containers, a notice so stating shall be included in the Schedule of solicitations and resultant contracts. The notice shall state (a) the number of dispenser cabinets required, or a reasonably accurate estimate thereof, (b) whether metal stands for the cabinets are required, (c) the number of cabinets required with a capacity of two containers each, and (d) the number required with a capacity of three containers each.

217.7301-5 Contract clauses.

(a) The contracting officer shall insert the following clauses in solicitations and contracts for perishable bakery and dairy products when an indefinite delivery type contract (see FAR 16.5) is to be used.

(1) 252.217-7300, Delivery Vehicles.

(2) 252.217-7301, Time of Delivery. When an indefinite quantity contract is to be used, rather than a requirements contract, the contracting officer shall use the clause as modified by its Alternate I.

(3) 252.217-7302, Change in Plant Location, (see 217.7301-2).

(4) 252.217-7303, Sanitary Conditions. When an indefinite quantity contract is used, rather than a requirements contract, the contracting officer shall use the clause as modified by its Alternate I.

(5) 252.217-7304, Remedies Under Delivery Orders. When delivery orders are to be placed by an activity other than the activity which awarded the contract, and in order to establish authority in the ordering officer under the Changes, Extras, Inspection, Default (Fixed Price Supply and Service), and Disputes clauses, the contracting officer shall use the clause with its Alternate I.

(b) The contracting officer shall insert the following clauses, substantially the same as the clauses prescribed below, in solicitations and indefinite delivery contracts for perishable dairy products.

(1) 252.217-7305, Examination and Testing.

(2) 252.217-7306, Deficiency Adjustment. The formulas prescribed in the clause may be modified to accommodate purchasing or ordering activities which do not have access to the Department of Agriculture reports cited therein.

(3) 252.217-7307, Warning.

(4) 252.217-7308, Suspension. When an indefinite quantity contract is used, rather than a requirements contract, the contracting officer shall use the clause with its Alternate I.

(5) 252.217-7309, Default.

(6) 252.217-7310, Reinstatement.

(c) The contracting officer shall insert the clause at 252.217-7311, Code Dating, in solicitations and indefinite delivery type contracts for perishable bakery and dairy products when a Schedule or specification provision requires the labels of one or more items to show the date of pasteurization, manufacture, production, or processing, and in order to permit the use of a coding system.

(d) The contracting officer shall insert the clause at 252.217-7312, Marking, in solicitations and indefinite delivery contracts for perishable bakery and dairy products except when a provision is inserted in the Schedule specifically requiring supplies to be marked in accordance with MIL-STD-129, Marking for Shipment and Storage.

(e) The contracting officer shall insert the clause at 252.217-7313, Responsibility for Containers and Equipment, in solicitations and indefinite delivery contracts for perishable bakery and dairy products when the contractor is to provide reusable containers and equipment.

(f) The contracting officer shall insert the clause at 252.217-7314, Containers and Equipment, in solicitations and indefinite delivery contracts for perishable bakery and dairy products when the contractor is to furnish cabinets for dispensing milk from bulk containers (see 217.7301-4).

Subpart 217.74—Contracts With Requirements For Provisioned Items

217.7400 Scope of subpart.

This subpart sets forth contract requirements and procedures to be followed with respect to the provisioning process.

217.7401 Definitions.

"Provisioned Item" means any support-type item selected through provisioning procedures to support an end item of equipment. Support-type items include (but are not limited to) spares, repair parts and special support equipment.

"Provisioned Items Order" means an unpriced order issued under a contract which sets forth the Government's requirements for provisioned items. (Provisioned items for which firm prices have been established are acquired by supplemental agreement or by separate contract.)

"Provisioning Activity" means that organization of a using Military Service, or that organization delegated by a using Service, which is responsible for the selection of, and the determination of requirements for, provisioned items.

"Provisioning Procedure" means the contract specification which sets forth the general requirements governing the acquisition of provisioned items and related documentation. It includes various optional provisioning techniques and formats for provisioning lists and data which the Government may elect to use on a particular contract. It also prescribes the sequence and timing of events to be followed and the responsibilities of the Government and the contractor in the provisioning process.

"Provisioning Requirements Statement" means the contractual document by which the Government notifies the contractor of the specific provisioning requirements selected from available options, as applicable to a particular contract. It normally includes instructions such as the provisioning method to be used; the range of provisioning technical documentation and data including the form and schedule of submission, number of copies and distribution instructions; the type and location of provisioning conferences; sample article requirements; the delivery schedule and packaging and marking requirements for provisioned items, and contractor requirements for provisioning screening.

"Provisioning Technical Documentation" means the documentation furnished by contractors to a provisioning activity for use in the identification, determination of initial requirements and cataloging of items to be acquired. It generally includes provisioning lists, priced spare parts lists, and EDP cards and tapes. Engineering drawings or sketches supported by item descriptions (which include technical characteristics) are referred to as supplementary provisioning-technical documentation.

217.7402 Acquisition requirements.

(a) *Contract requirements.* Contracts which contain Provisioning Procedures shall specify the functions of the provisioning process to be performed under the contract and the activities responsible for performing these functions. Further, such contracts shall:

(1) Include a Provisioning Requirements Statement or specify a time (e.g., days after award) for its incorporation in the contract by contract modification; revisions to the Provisioning Requirements Statement shall also be incorporated by contract modification;

(2) Provide on the DD Form 1423 a time schedule or milestones for the delivery of provisioning technical documentation or for the subsequent incorporation thereof in the contract by contract modification;

(3) Require a flow-down of the appropriate provisioning technical documentation requirement in subcontracts and purchase orders where the documentation is to be prepared by subcontractors;

(4) Specify, if applicable, procedures for contractor interim release of long lead time items and include ordering and funding instructions for such items. (Such instructions shall require the contractor to advise the PCO or Provisioning Activity within 30 days as to the items released, their estimated cost and the effective date of release.);

(5) Provide a time-frame for contractors to furnish price quotations for Provisioned Items Orders, which normally shall not exceed 60 days from receipt of the order;

(6) Specify exhibit identifiers applicable to the contract line/subline items (see 204.7105).

(7) Specify the activity designated to issue Provisioned Items Orders, i.e., Contracting Officer, Provisioning Activity or ACO. (When it is anticipated that more than one department will place Provisioned Items Orders against the contract, the requirements for provisioned items of each department shall be stated as separate contract line items.);

(8) Include procedures for processing changes in quantities of items ordered, including cancellations.

(b) *Issuance of provisioned items orders.* Provisioned Items Orders shall be issued on Standard Form 30, Amendment of Solicitation/Modification of Contract, and numbered in accordance with 204.7004-3.

(1) The Term Provisioned Items Order, in capital letters and underscored, shall be entered in Block 14.

(2) The appropriate exhibit identifier(s) for all attached exhibits shall be entered in Block 14.

(3) The order shall obligate funds to cover the estimated price of the items being ordered. Individual estimated prices will be shown for each exhibit line item on the copy(ies) of the Provisioned Items Order to be provided to the accounting and payment office(s).

(4) The Provisioned Items Order, or other form of contract modification, shall be used to effect decreases in quantities of items ordered, including cancellation.

(5) Upon receipt of advice from the contractor, as provided in (a)(4) above, the contracting officer will normally within 30 days issue an order covering the interim released items or notify the contractor to cancel the items.

(6) Orders shall be given the same distribution as the basic contract (see FAR 4.2) except that the distribution of voluminous spares/repair parts exhibits may be curtailed to the extent determined by the Contracting Officer and provided that the required copies, complete with exhibits, are forwarded to the Contract Administration Office and the payment office.

217.7403 Contract administration requirements.

(a) *Provisioning conferences.* The Contracting Officer or Provisioning Activity shall give the Contract Administration Office (CAO) timely notice of conferences on provisioning matters. The CAO shall: (1) Insure that the contractor understands the basic provisioning requirements of the contract and that all applicable publications are available to the contractor; (2) coordinate, as necessary, with the contractor and the Contracting Officer or Provisioning Activity to determine the types of and schedules for provisioning conferences required, e.g., guidance meetings, long lead time items conferences, source coding meetings, etc.; and (3) assist, if required, in the development of conference agenda. When requested by the Contracting Officer or Provisioning Activity or when otherwise considered necessary for effective contract administration, the CAO shall be represented at provisioning conferences.

(b) *Monitoring by the contract administration office.* The CAO shall monitor each contract which contains requirements for provisioning technical documentation and provisioned items, as follows:

(1) Prepare and maintain a check list of events in the provisioning process, including schedules for use in monitoring such events;

(2) Review contractor progress in the preparation of provisioning technical documentation and, on request of the Contracting Officer or Provisioning Activity, inspect such documentation for format and content;

(3) Insure that the contractor invokes the prime contract provisioning technical documentation requirements in subcontracts and purchase orders when the subcontractor is charged with preparation of any documentation;

(4) Advise the Contracting Officer or Provisioning Activity, in accordance with FAR 42.11 of provisioning technical documentation delivery delays or other related problems.

(5) Ensure contractor compliance with contract requirements relative to the assignment of National Stock Numbers.

(6) Ensure that the contractor adheres to the criteria established by the contract for the release of long lead time items.

(c) *Negotiating and executing supplemental agreements.* The ACO shall accomplish negotiation of prices and execution of supplemental agreements within 180 days after receipt of the Provisioned Items Order *provided* that, when time in excess of 60 days is allowed for submission of price quotations (see 217.7402(a)(5)), the 180 day period shall be adjusted accordingly. The ACO also shall maintain records to reflect the status of Provisioned Items Orders as to adequacy of obligated funds, due dates for price quotations, and actions taken to obtain additional funds or deobligate excess funds.

(1) In the process of negotiating prices, the ACO shall:

(i) Determine the acceptability of pricing methods proposed by the contractor;

(ii) Verify that items and quantities contained in proposals are identical to those ordered, clarifying, as appropriate, any variances with the Contracting Officer or Provisioning Activity; and

(iii) Avail himself of data from similar contracts with the contractor, making use of audit records and information available from the Contracting Officer or Provisioning Activity. Price negotiation policies and techniques set forth in FAR 15.8 shall be followed, including the record of price negotiations required by FAR 15.808.

(2) When delivery dates are not proposed by the Contracting Officer or Provisioning Activity or, when proposed delivery dates cannot be met by the contractor, the ACO shall coordinate the negotiated schedule with the Contracting Officer or Provisioning Activity prior to the execution of the supplemental agreement.

(3) Supplemental Agreements shall be used to increase quantities of priced items and to definitize Provisioned Items Orders. Supplemental Agreements which definitize Provisioned Items Orders may incorporate multiple orders, or portions of orders when such action is not inconsistent with the provisions of the applicable contract.

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 219.1—Size Standards

219.102-70 Size standards for transportation industries.

(c) No concern offering to provide local and/or long distance trucking, warehousing and/or packing and crating, and/or freight forwarding will be denied small business status for the purpose of Government acquisition solely because of its contractual relationship with a large interstate van line if the concern's annual receipts have not exceeded $7 million during its most recently completed fiscal year.

Subpart 219.2—Policies

219.201 General policy.

(b)(1) The Director of Small and Disadvantaged Business Utilization is responsible for the development of overall DoD small business and disadvantaged business goals and for consulting with SBA regarding the establishment of such goals.

(2) Departmental Directors of Small and Disadvantaged Business Utilization are responsible for the development of small business and disadvantaged business utilization goals for

subordinate elements within their department. These goals will be further assigned by these subordinate elements as appropriate, such as engineer district offices or individual contracting divisions within a central contracting activity or major commodity command.

(3) Heads of contracting activities are responsible for the attainment of assigned small business and disadvantaged business utilization goals.

(4) Within 60 days after the conclusion of each fiscal year, the Secretaries of the Military Departments and the Directors of Defense agencies shall report to the Secretary of Defense on the extent of participation by small business concerns and disadvantaged business concerns in contracts awarded by their Department. Such report shall contain appropriate justifications for failure to meet goals established by the Office of the Secretary of Defense, as well as actions planned to increase the rate of participation by such firms in future contract awards. The Office of the Secretary of Defense will submit information to SBA concerning any failure to meet established goals and actions to be taken to improve future performance.

(d)(1) Small and disadvantaged business utilization specialists shall be appointed by name, in writing, for contracting activities, contract administration offices, and other such offices, as the Departments consider appropriate. They shall be responsible directly to the appointing authority and shall not be subject to the direction of contracting, contract administration, or technical personnel. The appointing authority, without power of redelegation, is as follows:

(i) Army—Commanders of major commands, Commanders of major subordinate commands, and installation, post, camp, station or activity commanders. For each major command, one specialist will be appointed as the Associate Director for Small and Disadvantaged Business Utilization, reporting directly to the Commander or the second-in-command. The Associate Director will have primary responsibility for the effective implementation of the Army's small business, disadvantaged business utilization, labor surplus area and other socio-economic business programs within the Command. The Associate Director for Small and Disadvantaged Business Utilization Policy at Major Command Headquarters other than at the Army Materiel Command (AMC), Office, Chief of Engineers (OCE), Forces Command (FORSCOM), Training and Doctrine Command (TRADOC), may be assigned on a part-time basis.

(ii) Navy—Head of a contracting activity or the official in charge of an activity having purchase authority of $10,000 or more, or in charge of a contract administration activity;

(iii) Air Force—Commander of each central contracting activity; the Wing/Base Commander of each local contracting office and the Chief of each contract administration activity. In addition, an Executive for Small and Disadvantaged Business Utilization shall be appointed by the Commander of each Major Air Command in the United States, not mandatorily reporting directly to the Commander but having ready access to such person, who will have primary responsibility for the effective implementation of the Air Force small business, small disadvantaged business utilization and labor surplus area program(s) within the Command;

(iv) Defense Logistics Agency—Commanders of Defense Supply Centers, Commanders, Defense Contract Administration Services Regions and Commanders of other DLA contracting activities;

(v) National Security Agency—the Director;

(vi) Defense Communications Agency—the Director;

(vii) Defense Nuclear Agency—the Director;

(viii) Defense Mapping Agency—Director; directors of subordinate components.

A copy of each appointment and termination of appointment of all such specialists shall be forwarded to the appropriate Department or Agency Office of Small and Disadvantaged Business Utilization (219.201(71)). In addition to performing that portion of the specific program outlined in (2) below that is normally performed in the activity to which the specialist is assigned, the small and disadvantaged business utilization specialist shall advise the head of the activity and shall perform such additional functions as are prescribed for the specialist in furtherance of the overall small business, small disadvantaged business utilization and labor surplus area programs. A small and disadvantaged business utilization specialist shall be appointed on a full-time basis in all activities having sufficient business or program responsibility to justify such action. When the volume of contracting does not warrant assignment of a full time small and disadvantaged business utilization specialist, an individual shall be appointed as the specialist on a part-time basis. The responsibilities of this assignment shall take precedence over collateral responsibilities.

(2) A small and disadvantaged business utilization specialist (SADBU), appointed pursuant to the above, shall perform the following duties, as determined to be appropriate to the activity by the appointing officer or by the Departmental or Agency Director or Staff Director of Small and Disadvantaged Business Utilization. The SADBU shall:

(i) Maintain a program designed to locate capable small business, small disadvantaged business and labor surplus area business sources for current and future acquisitions, through SBA or other methods;

(ii) Coordinate inquiries and requests for advice from small business, small disadvantaged business and labor surplus area business concerns on acquisition matters;

(iii) Review acquisitions to insure maximum opportunity for participation by small and disadvantaged business, women-owned, and LSA, and to make recommendations for set-aside and 8(a) awards (see 19.501(c));

(iv) When small business concerns cannot be given an opportunity to compete because adequate specifications or drawings are not available, unless there are sufficient and valid reasons to the contrary, initiate action, in writing, with appropriate technical and contracting personnel to insure that necessary specifications or drawings of the current or future acquisitions, as appropriate, are available;

(v) Review acquisition programs for possible breakout of items suitable for acquisition from small business concerns;

(vi) Ensure that financial assistance available under existing regulations is offered and that requests by small business concerns for proper assistance are not treated as a handicap in the award of contracts;

(vii) Participate in determinations concerning responsibility of a prospective contractor whenever small business concerns are involved;

(viii) Participate in the evaluation of a prime contractor's small business, labor surplus, and small disadvantaged business subcontracting plans;

(ix) Review and make appropriate recommendations to the contracting officer on any proposal to furnish Government-owned facilities to a contractor if such action may hurt the small business program;

(x) Assure that participation of small business concerns is accurately reported;

(xi) Bring to the attention of the Department Director or Staff Director for Small and Disadvantaged Business Utilization possible contracting opportunities in labor surplus area;

(xii) Make available to SBA copies of solicitations when so requested;

(xiii) When a bid from a small business, small disadvantaged business or labor surplus area firm has been rejected for nonresponsiveness or nonresponsibility, upon request, aid, counsel and assist that firm in understanding requirements for responsiveness and responsibility so that the firm may be able to qualify for future awards;

(xiv) Participate in government-industry conferences to assist small business, small disadvantaged business and labor surplus area concerns, including Business Opportunity/Federal Procurement Conferences, Minority Business Enterprises Procurement Seminars, and Minority Business Opportunity Committee meetings;

(xv) Advise potential suppliers how they may obtain information about formal advertising and negotiated acquisitions and that they may subscribe to the Commerce Business Daily as a source of information on proposed acquisitions;

(xvi) Brief the specialist's Commander at least once quarterly concerning the status of the installation's small business, small disadvantaged business utilization and labor surplus area programs in relation to goals and objectives established by higher headquarters;

(xvii) Participate in the development, implementation and review of automated contracting systems to assure that the interests of small business, small disadvantaged business and labor surplus area firms are fully considered with particular reference to FAR 19.202-4(c), FAR 19.501(c), and FAR 19.502;

(xviii) Assist program managers as early as possible in the development cycle of major system acquisitions and system programs as pertains to the small business programs;

(xix) Assist contracting officers in establishing criteria for and determining acceptability of small business and small disadvantaged business concerns subcontracting plans submitted by prime contractors;

(xx) Assure that the installation's small business, small disadvantaged business and labor surplus area business programs are frequently publicized in the appropriate media;

(xxi) Assure that the organization maintains a list of products and services which have been placed on repetitive small business setaside;

(xxii) Provide small business, small disadvantaged business and labor surplus area firms information regarding assistance available from Federal agencies such as the Small Business Administration, Office of Minority Business Enterprise, Bureau of Indian Affairs, Office of Economic Development, National Science Foundation, Department of Labor and others including state, trade, and other associations;

(xxiii) Be responsible for establishing an education and training program for personnel whose duties and functions affect the activity's small business, small disadvantaged business and firms located in labor surplus areas;

(xxiv) Recommend to the specialist's Commander the activity small business and disadvantaged business utilization overall goals and goals to be placed on subordinate contracting offices;

(xxv) Participate in interagency programs relating to small business, small disadvantaged business and labor surplus area matters as authorized by the Director of SADBU; and

(xxvi) Advise and assist contracting officers in discharging their responsibilities by:

(A) Monitoring and reviewing contractor performance to determine compliance with small and disadvantaged small business subcontracting plans;

(B) Developing and maintaining records and reports that reflect such compliance or noncompliance.

(S-70) *Office of the Secretary of Defense Directors.*

(1) *Director of Small and Disadvantaged Business Utilization.* The Director of Small and Disadvantaged Business Utilization reports directly to the Deputy Secretary of Defense and is responsible for the overall management and direction of the DoD small business, disadvantaged business utilization, and labor surplus area programs and for advising the Secretary of Defense and the Deputy Secretary of Defense in matters relating to these programs. To that end, the Director will provide guidance to the Departments and periodically review the direction and implementation of their activities in promoting contract awards to small business, small disadvantaged business, and labor surplus area concerns.

(2) *Director of Small Business and Economic Utilization Policy.* The Director of Small Business and Economic Utilization Policy is responsible for the establishment, implementation, and execution of DoD small business and labor surplus area programs. Negotiations with the SBA, the Office of Federal Procurement Policy, the Office of Management and Budget, and other agencies or departments outside the Department of Defense, concerning small business and labor surplus area policy, programs, and DoD goals shall be conducted by the Director of Small Business and Economic Utilization Policy or, with authorization, by representatives of the Departments. The Director of Small Business and Economic Utilization Policy, on behalf of the Director of Small and Disadvantaged Business Utilization, will provide guidance to the Departments' Directors of Small and Disadvantaged Business Utilization regarding small business and labor surplus area matters.

(3) *Director of Disadvantaged Business Utilization Policy.* The Director of Disadvantaged Business Utilization Policy is responsible for the establishment, implementation, and execution of the DoD socially and economically disadvantaged business utilization program. Negotiations with the Small Business Administration, the Office of Federal Procurement Policy, the Office of Management and Budget, and other agencies or departments outside the Department of Defense, concerning disadvantaged business utilization policy, programs, and DoD goals shall be conducted by the Director for Disadvantaged Business Utilization Policy or, with authorization, by representatives of the Departments. The Director of Disadvantaged Business Utilization Policy, on behalf of the Director of Small and Disadvantaged Business Utilization, will provide guidance to the Departments' Directors of Small and Disadvantaged Business Utilization regarding disadvantaged business utilization matters.

(S-71) *Departmental Directors of Small and Disadvantaged Business Utilization.*

(1) Each department or agency shall maintain an Office of Small and Disadvantaged Business Utilization as follows:

Army—Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary of the Army, Pentagon, Washington, DC 20310;

Navy—Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary of the Navy, Washington, DC 20360;

Air Force—Director, Office of Small and Disadvantaged Business Utilization, DCS/RD&A, Pentagon, Washington, DC 20330;

Defense Logistics Agency—Staff Director, Office of Small and Disadvantaged Business Utilization, Code DLA–U, Cameron Station, Alexandria, VA 22314;

National Security Agency—Director, Office of Small and Disadvantaged Business Utilization, Fort Meade, MD 20755;

Defense Communications Agency—Director, Office of Small and Disadvantaged Business Utilization, Code 260, Washington, DC 20035;

Defense Nuclear Agency—Director, Office of Small and Disadvantaged Business Utilization, (Code OAFR), Washington, DC 20305;

Defense Mapping Agency—Director, Office of Small and Disadvantaged Business Utilization, Headquarters, Washington, DC 20305.

(2) Each Departmental Office of Small and Disadvantaged Business Utilization shall be managed by a Director who shall be appointed by the Secretary of the department and shall be responsible to and report directly to the Secretary or Under Secretary of the Department. Directors of Defense agencies shall appoint a Staff Director for Small and Disadvantaged Business Utilization who shall be responsible to and report directly to the Director or the Deputy Director.

(3) The primary responsibility of the Director or Staff Director of each Office of Small and Disadvantaged Business Utilization shall be in matters concerning small business, small disadvantaged business utilization, and labor surplus areas. The Director or Staff Director advises the Secretary on small business, small disadvantaged business utilization and labor surplus area matters, implements such DoD programs within the Department or Agency and represents the Department or Agency in negotiations with other Departments or Governmental agencies on small business, small disadvantaged business utilization and labor surplus area matters. The Director or Staff Director will exercise supervisory authority over Department or Agency Small and Disadvantaged Business Utilization Specialists regarding small business, disadvantaged business utilization and labor surplus area matters. Appointment of Small and Disadvantaged Business Utilization Specialists shall be made after consultation with the Director or Staff Director of the Office of Small and Disadvantaged Business Utilization of the Department or Agency involved. In addition, such Director shall be afforded an opportunity to comment upon, and contribute to the performance evaluations of the Specialists for the contracting activities and contract administration offices or major organizational elements of the Department involved, including pay pursuant to the Civil Service Reform Act of 1978.

(S–72) *Small Business Technical Advisor.*

(1) The Military Departments shall assign small business technical advisors to assist each resident SBA Procurement Center Representative in the performance of the duties of the representative.

(2) A Small Business Technical Advisor (SBTA) shall be a fulltime employee of the contracting activity and shall be well qualified, technically trained, and familiar with the supplies or services acquired at the activity.

(3) The principal duty of this advisor shall be to assist the SBA Procurement Center Representative in that person's duties and functions relating to sections 8 and 15 of the Small Business Act. Providing such assistance shall take precedence over any other collateral duties that may be the responsibility of the SBTA.

219.202–1 Encouraging small business participation in acquisitions.

The Departments to the extent consistent with the best interests of the Government and in order to broaden the industrial base shall:

(a) Attempt to locate additional qualified small business suppliers by all appropriate methods including use of the assistance of SBA, particularly where only a limited number of small business concerns are on bidders' mailing lists;

(b) Give wide publicity to contracting methods and practices;

(c) Publicize proposed acquisitions by use of advance notices or other appropriate methods (see FAR 5.2);

(d) Include all established and qualified potential small business suppliers on mailing lists;

(e) Send solicitations to all firms on the appropriate list, except that where less than a complete list is to be used pursuant to FAR 14.205–4, at least a *pro rata* number of small business concerns shall be solicited;

(f) Divide proposed acquisition of supplies and services, except construction, into quantities not less than economic production runs, so as to permit bidding on quantities less than the total requirements; allow the maximum time practicable for preparation and submission of bids, proposals, or quotations; where feasible, establish delivery schedules which will encourage small business participation;

(g) Examine each major acquisition to determine the extent to which small business subcontracting should be encouraged or required;

(h) Use small business concerns to the maximum extent feasible as planned producers in the Industrial Readiness Planning Program; and

(i) Maintain liaison with Federal, State (including Governor's Commissions), and local agencies and other organizations for the purpose of providing information and assistance to small business concerns.

219.202–5 Data collection and reporting requirements.

Records of the total value of contracts and subcontracts placed with small business concerns during each fiscal year shall be maintained by the use of DD Form 350 (Individual Procurement Action Report), DD Form 1057 (Monthly Procurement Summary by Purchasing Office), Standard Form 294 (Subcontracting Report for Individual Contracts), and Standard Form 295 (Summary Subcontract Report), as appropriate.

Subpart 219.4—Cooperation With the Small Business Administration

219.401 General.

(b) The contracting activity Small and Disadvantaged Business Utilization Specialist shall be the activity focal point for interface with the SBA.

219.402 Small Business Administration procurement center representatives.

(b) The SBA procurement center representative's request for access to contract information will be processed through the activity's Small and Disadvantaged Business Utilization Office.

Subpart 219.5—Set-Asides for Small Business

219.501 General.

(c) The Small and Disadvantaged Business Utilization Specialist is responsible for reviewing those acquisitions not set-aside or not acquired through small business-small purchase set-aside. The SADBU shall, prior to the issuance of solicitation or contract modifications (except those which exercise an option), (1) for additional supplies or services in excess of $5,000 which have not been set-aside under FAR 19.502, or (2) for a dissolved small business-small purchase set-aside in excess of $5,000 (213.105), review the acquisition and the contracting officer's justification for not making a set-aside or for dissolving a small business-small purchase set-aside. The SADBU shall make recommendation to the contracting officer for set-aside, as appropriate, on an individual acquisition, or class of acquisition, or portion thereof. In automated contracting systems, such reviews will be accomplished prior to entering the item into the automated system after which no further review of the individual acquisition will be necessary if the automated system is so programmed that any changes in the acquisition of the item satisfy the provisions of FAR 19.502–2. Disagreements between the specialist and the contracting officer on proposed set-aside actions for small business shall be resolved under FAR 19.505. Disagreements on small business-small purchase set-asides shall be resolved under FAR 13.105–1(d)(2) by the contracting officer.

(d) All cases involving the noninitiation of a set-aside, whether resulting from a joint decision of the small business specialist and the contracting officer or a determination by the contracting officer alone, require referral to the SBA representative (if one is assigned and available) for that person's review. The SBA representative will either concur with the decision of the contracting officer or appeal the case in accordance with the provisions of FAR 19–505.

(g) This procedure is applicable to DoD.

(S–70) Architectural and engineering services and construction design contracts in the amount of $85,000 and over for military construction projects shall not be set-aside for small business. Indefinite delivery and indefinite quantity contracts for architectural and engineering services that are set-aside for small business shall not exceed, for the total of orders placed under the contract, $85,000.

(S–71) Every proposed acquisition for construction, including maintenance and repairs, in excess of $5,000 and under $2 million (except dredging under $1 million) shall be considered individually, as though the Small Disadvantaged Business Utilization Specialist had initiated a set-aside request, and the procedures of DoD FAR Supplement 219.505 shall apply.

(S–72) Every proposed acquisition of $2 million or more for construction or $1 million or more for dredging, shall be considered on an individual acquisition basis under FAR Subpart 19.502–2.

(S–73) Every proposed acquisition for A–E services and construction design under $85,000 for military construction projects shall be considered individually, as though the Small and Disadvantaged Business Utilization Specialist had initiated a set-aside request, and the procedure of DoD FAR Supplement 219.505 shall apply.

219.502 Setting aside acquisitions.

219.502–1 Requirements for setting aside acquisitions.

Department of Defense activities follow the order of precedence in 219.504. Acquisition of supplies which were developed and financed in whole or in part by Canadian sources under the U.S.-Canadian Defense Development Sharing Program shall not be set-aside for small business. Supplies covered by the Program shall be identified by the cognizant Department.

219.502–2 Total set-asides.

Where multiyear contracting procedures are appropriate, total set-asides may be made in connection therewith.

219.502–70 Combined small business-labor surplus area set-asides.

(a) In the acquisition of certain items, the objectives of both the Small Business Act and Defense Manpower Policy (DMP) No. 4 may be attained in a single acquisition. Under this procedure, the total required quantity of an item would be set aside for exclusive participation by small business firms and a portion of that total quantity would be further set-aside for award to small business concerns which are also LSA firms.

(b) For acquisitions exceeding $25,000 the use of this combined small business-LSA set-aside procedure shall be considered. This procedure shall be used in preference to all others when the proposed acquisition meets the criteria for:

(1) Total small business set-aside (FAR 19.502–2), and

(2) A partial LSA set-aside (220.7003).

(c) Contracts utilizing this procedure may be entered into by sealed bidding or negotiation (see FAR 6.102, FAR Parts 14 and 15.) This set-aside procedure may be used in multi-year contracting (FAR Subpart 17.1). Solicitations shall provide that offers may be submitted by small business firms only and that a part of the total requirement is further set-aside for LSA firms which are also small business concerns. Offers received from firms which do not qualify as small business concerns shall be considered nonresponsive and shall be rejected.

(d) (1) In combined small business-LSA set-asides each solicitation shall contain the clause at 252.219–7001, Notice of Combined Small Business-Labor Surplus Area Set-Aside (except see (2) below).

(2) When experience indicates that token bidding, block bidding, tie-in bidding, or similar devices may occur, the alternate clause at 252.219–7002, Notice of Combined Small Business-Labor Surplus Area Set-Aside, Alternate, may be used.

(c) (1) After the award price for the non LSA set-aside portion has been determined, negotiations may be conducted for the LSA set-aside portion. Acquisition of the LSA set-aside portion shall in all instances be effected by negotiation. Negotiations shall be conducted only with those offerors who have submitted responsive offers on the non LSA set-aside portion. Negotiations shall be conducted in the order of priority as indicated in the foregoing clause; *provided* that, when equal low offers are received on the non LSA set-aside portion from concerns which are equally eligible for the LSA set-aside portion, the concern which is awarded the non LSA set-aside portion (under the equal low bid procedure of 214.407–6) shall have first priority with respect to negotiations for the LSA set-aside portion. The LSA set-aside portion shall be awarded as provided in the clause. An offeror entitled to receive the award for quantities of an item under the non LSA set-aside portion and who accepts the award of additional quantities under the LSA set-aside portion shall not be requested to accept a lower price because of the increased quantities of the award, nor shall negotiation be conducted with a view to obtaining such a lower price based solely upon receipt of award of both portions of the acquisition. This does not prevent acceptance by the contracting officer of voluntary reductions in price from the low eligible offeror prior to award, acceptance of voluntary refunds, or the changes of prices after award by negotiation of a contract modification.

(2) Offers obtained under the provisions of the set-aside clause from firms eligible for the set-aside portion of the requirement shall be in writing and shall include (i) agreement as to the established set-aside price for the available set-aside quantity, (ii) agreement as to the required delivery, (iii) agreement that all other terms and conditions of the solicitation will apply to the set-aside award, and (iv) agreement to inclusion of the clauses at FAR 52.215–1, Examination of Records by Comptroller General, and at FAR 52.215–2, Audit—Negotiation.

(3) When the award of the non-set-aside portion has been made to a small business concern and the same small business concern is entitled to receive the set-aside portion of the solicitation, the LSA set-aside portion may be added to the basic contract by supplemental agreement utilizing Standard Form 30. The supplemental agreement shall (i)

include a reference to the contractor's letter offering on the set-aside quantity, (ii) state the price and delivery schedule applicable to the set-aside quantity, and (iii) include the clauses at FAR 52.215-1, Examination of Records by Comptroller General, and at FAR 52.215-2, Audit—Negotiation, applicable to the LSA set-aside portion only. Copies of all pertinent documents, including the signed offer, shall be attached. The supplemental agreement shall be signed by the contracting officer but need not be signed by the contractor. The contractor's signature on the attached offer will be deemed sufficient.

(4) When the award for the non-set-aside portion has been made to a firm other than the concern entitled to receive the set-aside portion of the solicitation, award of the set-aside portion will be made utilizing Standard Form 26. The offers obtained and the award utilized shall reference and include the same data indicated in paragraphs (2) and (3) above. Also, the award shall reference in Block 26 of the Standard Form 26, the applicable solicitation and the contractor's written offer, and copies of the solicitation and offer shall be attached. The Standard Form 26 shall be signed by the contracting officer but need not be signed by the contractor. The contractor's signature on the attached offer will be deemed sufficient.

For purposes of Subpart 204.6, the non-LSA-set-aside portion shall be reported separately. (See FAR 19.507 for automatic dissolution of set-asides.)

219.502-71 Small business set-asides under foreign military sales.

Small Business set-asides shall not be authorized under the Foreign Military Sales Program if the foreign purchaser specifies the sources qualified to meet the requirement and only one of those sources is a small business concern. This prohibition shall expire 18 October 1986.

219.503 Setting aside a class of acquisitions.

(d) The contracting officer may initiate withdrawal of an individual acquisition or modification of a class set-aside by giving written notice to the activity's SADBUS and the SBA procurement center representative. In case of disagreement, the matter will be resolved under the procedures in FAR 19.506(b).

219.504 Set-aside program order of precedence.

(b) The following order of precedence applies to DoD:

(1) Combined small business/LSA set-aside (219.502-70).

(2) Partial set-aside for LSA firms (220-7003(a)).

(3) Total set-aside for small business firms (FAR 19.502-2).

(4) Partial set-aside for small business (FAR 19.502-3).

219.505 Rejecting set-aside recommendations.

(a) Upon a recommendation of the Small and Disadvantaged Business Utilization Specialist that an individual acquisition or class of acquisitions, or portion thereof, be set-aside the contracting officer shall promptly either:

(1) Concur in the recommendation, or

(2) Disapprove, stating in writing the reasons for disapproval. If the contracting officer disapproves the recommendation of the Small and Disadvantaged Business Utilization Specialist, the case shall be promptly referred to the SBA representative (if one is assigned and available) for review. No further appeal action will be taken by the small business specialist. In those cases where an SBA representative is not assigned or available, and the contracting officer disagrees with the recommendation of the small business specialist regarding a small business set-aside for an individual acquisition or class of acquisitions or a portion thereof and so notifies the small business specialist in writing, or if the small business specialist disagrees with the contracting officer regarding a withdrawal or modification of a set-aside determination, the small business specialist may appeal in writing to the appointing authority (see 219.201(d)(1)) for decision. A memorandum of the decision by the appointing authority shall be placed in the contract file. After receipt of a decision from the appointing authority, which shall be final, and if the decision approves the action of the contracting officer, the small business specialist shall forward for information and management purposes complete documentation of the case to the appropriate Departmental Director for Small and Disadvantaged Business Utilization or designee as identified in 219.201(c)(71). The specialist's signed memorandum of nonconcurrence in a recommended set-aside action or of any withdrawal or modification shall be made and retained in the contract file.

(b) The head of the contracting activity's designee shall be at a level no lower than the chief of the contracting office.

(d) The matter shall be forwarded with full justification of the action taken through normal channels.

(e) Should it be determined that a decision cannot be made within 30 business days, a later date will be established in writing by the Secretary of the Department concerned to the Administrator, SBA, citing the reasons why additional time is required. A copy of such correspondence will be provided to the Director of Small and Disadvantaged Business Utilization, Office of the Deputy Secretary of Defense.

(f) The contracting officer must determine that contracting action must proceed without delay in order to protect the public interest. The contracting officer's statement shall be approved at a level above the contracting officer.

219.506 Withdrawing or modifying set-asides.

(b) Disagreements between the contracting officer and the Small and Disadvantaged Business Utilization Specialist will be resolved in accordance with the procedures in 219.505.

219.508 Solicitation provisions and contract clauses.

(d) When using the clause at FAR 52.219-7, the contracting officer shall insert the clause at 252.219-7003, Determining the Set-Aside Award Price.

(S-70) The contracting officer shall insert the clause at 252.219-7004, Eligibility for Preference as a Labor Surplus Concern, in solicitations and contracts for partial small business set-asides under FAR 19.502-3, for Combined Small Business-Labor Surplus Area Set-Asides under 219.502-70, and for partial set-asides for Labor Surplus Area Concerns under 220.7003.

Subpart 219.6—Certificates of Competency and Determinations of Eligibility

219.602 Procedures.

219.602-1 Referral.

(a) When the contracting officer makes a determination that a small business concern is not responsible on a proposed award, the contracting officer will refer the matter directly to the SBA. The activity that refers the matter to the SBA shall maintain close liaison. If the activity does not hear from the cognizant SBA field office within 5 working days after referral, the activity will contact the SBA office to which the matter was referred to determine whether a Certificate of Competency (CoC) is being processed.

219.602-3 Resolving differences between the agency and the Small Business Administration.

(a) Prior to final SBA action, the contracting officer (or the preaward survey activity when authorized to act as contracting officer's representative) will be afforded an opportunity to meet or communicate with SBA field office representatives and furnish to them new or additional information on the case. Copies of significant data developed by SBA that are pertinent to the case will be available, upon request, to the contracting officer or contracting officer's representative at such a meeting or through correspondence. SBA case files may be examined at the meeting and pertinent notes taken by the contracting officer or contracting officer's representative, but such files will not be released outside of SBA. Personnel from a contracting office or surveying activity who participated in a preaward survey of the prospective contractor or other personnel having cognizance of the survey shall be prepared to discuss with the SBA the basis for the preaward findings. Every effort should be made to resolve any differences between the SBA and the Departments through a complete exchange of preaward information developed by each agency.

(b)(2) If the contracting officer intends to appeal a proposed CoC issuance, upon receipt of initial notification from the SBA Central Office that it concurs with its Regional Office, the contracting officer shall immediately inform the Departmental or Agency Director or Staff Director of Small and Disadvantaged Business Utilization identified in 219.201(S-71)(1). If the Department elects to present a formal appeal to HQ SBA, a factual case shall be prepared as expeditiously as possible and processed through Departmental channels for approval at the Secretarial level prior to presenting the matter to HQ SBA. Any competent level of review within the Department or Agency may conclude that a formal appeal should not be made and that the contract should be awarded to the small business concern in question without a CoC or that a CoC should be accepted and the award made. If such action is taken, the contracting officer and HQ SBA shall be advised accordingly.

219.670 Quarterly reporting.

The Departmental Director or Staff Director of Small and Disadvantaged Business Utilization, identified in 219.201(S-71)(1), shall be informed by the contracting activity Small and Disadvantaged Business Utilization Specialist, in writing, on a quarterly basis, of all certificate of competency cases initiated during a particular quarter and of the final disposition made on cases during the quarter, including the number and dollar value of CoC's issued during the period. The information shall include company name, item being acquired, solicitation number, dollar value of the contract, and the date the case was submitted to SBA. In addition, advice and data will be furnished for all cases where (a) the small business concern elects not to file an application for a CoC; or (b) SBA declines to issue a CoC; or (c) the contracting activity reverses the preaward survey activity's negative finding concerning responsibility, withdraws the request for the CoC, and makes the award. This reporting requirement is assigned RCS DD-A&L(Q)1152.

Subpart 219.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

219.703 Eligibility requirements for participating in the program.

(a) The SBA Size Appeals Board has final authority to determine the eligibility of a concern to be designated as a small business. The contracting officer, in connection with small business subcontracting requirements, may question the prime contractor concerning a written representation of small business status, or the refusal to accept such written representation by either the prime contractor or a subcontractor, of a concern offering as a subcontractor on a particular acquisition. Other interested parties may also question such representation or refusal. If the matter(s) cannot be resolved, the contractor (prime or sub) is responsible for referring it for a size determination to the SBA Regional Office in which region the concern submitting the written representation has its principal office.

219.706 Responsibilities of the cognizant administrative contracting officer.

(a) *Evaluation of subcontract reports.* The ACO is responsible for reviewing, evaluating, and approving master subcontracting plans. In the evaluation of subcontract reports, the SADBU Specialist shall support the ACO in evaluating a contractor's performance and compliance with its subcontract plans. The original of the Standard Form 294, Subcontracting Report for Individual Contracts, and a copy of the Standard Form 295, Summary Subcontract Report, and reports of periodic reviews of contractor performance shall be retained by the cognizant SADBU Specialist. These reports together with other pertinent information shall be used as a basis for advising the ACO as to contractor's compliance with subcontracting plans.

219.708 Solicitation provisions and contract clauses.

(b) The contracting officer shall include the clause at 252.219-7000, Small Business and Small Disadvantaged Business Subcontracting Plan (Master Plans), in all solicitations and contracts that contain the clause at FAR 52.219-9.

PART 220—LABOR SURPLUS AREA CONCERNS

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 220.70—Labor Surplus Area Policy and Procedures

220.7000 Scope.

As authorized by FAR 20.201-2, this subpart sets forth Department of Defense policy and procedures with respect to aiding labor surplus areas in the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands. This subpart implements Defense Manpower Policy No. 4B, 23 May 1980 (44 CFR Part 331), and the Small Business Act as amended (15 U.S.C. 631), and U.S. Department of Labor Regs (20 CFR Part 654). Defense Manpower Policy No. 4B states the policy of the Government to encourage the placing of contracts and facilities in labor surplus areas and to assist such areas in making the best use of their available resources.

220.7001 General policy.

Except as provided in 220.7005 with respect to depressed industries, it is the policy of the Department of Defense to aid Labor Surplus Areas (LSA) by placing contracts with LSA concerns, to the extent consistent with acquisition objectives and when such contracts can be awarded at prices no higher than those obtainable from other concerns and by encouraging prime contractors to place subcontracts with LSA concerns. In carrying out this policy, and to accommodate the small business policies of Part 19, preference shall be given in the following order of priority to (i) LSA concerns which are also small business concerns, (ii) other LSA concerns, and (iii) small business concerns which are not LSA concerns. In no case will price differentials be paid for the purpose of carrying out this policy. Heads of contracting activities and chiefs of contracting and contract

administration offices are responsible for the effective implementation of the Labor Surplus Area Program within their respective offices. Responsibility for administration of the program shall be assigned to small business specialists appointed pursuant to Part 19.

220.7002 Application of policy.

(a) Within the policy set forth in 220.7001, the following shall be applied to contracts which are estimated to exceed $25,000:

(1) Contracts shall, where acquisition objectives permit, be awarded to labor surplus area concerns; *Provided*, that in no case shall price differentials be paid for the purpose of carrying out this policy;

(2) When appropriate, acquisitions shall be made from LSA concerns by partial set-aside procedures, in accordance with 220.7003 (but no total set-aside shall be made for LSA concerns) and such set-asides shall be given preference over any small business set-aside;

(3) Each Department shall assure that information identifying LSA is disseminated promptly to contracting personnel;

(4) When less than a complete bidders list is to be used pursuant to 214.205-4, at least a *pro rata* number of prospective LSA concerns shall be solicited;

(5) Subcontracting with concerns in LSA shall be encouraged in accordance with 220.7004.

(6)(a) See subsection 225.103 regarding acquisitions from qualifying country sources where LSA set-asides are involved.

(b) Records of the total value of all contracts in excess of $25,000 placed with LSA concerns during each fiscal year, and reports based thereon, are maintained by each Department through the Department of Defense Reporting System described in Subpart 204.6. Accordingly, each Department, in soliciting bids and proposals for any contract estimated to exceed $25,000 shall request from any offeror, or other source, any information needed to determine whether the offeror is a LSA concern. Contract files shall be documented to indicate the extent to which LSA concerns were considered and the action taken with respect thereto.

220.7003 Partial set-asides for labor surplus area concerns.

(a) *General.*

(1)(i) In accordance with the policy set forth in 220.7001 and 220.7002 (see also 219.504) a portion of each acquisition shall be set aside for LSA concerns if:

(A) The acquisition is severable into two or more economic production runs or reasonable lots; and

(B) One or more LSA concerns are expected to qualify as LSA concerns and to have the capability to furnish a severable portion of the acquisition at a reasonable price, except that a partial set-aside shall not be made if there is a reasonable expectation that offers will be received from only two concerns with capability (one concern which will not qualify as a LSA concern and one concern which will qualify as a LSA concern) unless authorized by the Head of the Contracting Activity on a case-by-case basis. Before reaching this conclusion, the contracting officer shall consult with the LSA specialist and may make advance inquiries to determine the number and expected classification of interested concerns.

(ii) In determining whether a proposed acquisition is susceptible to division into two or more economic production runs or reasonable lots, consideration should be given to the following factors and any others deemed appropriate:

(A) Price and acquisition history of the items,

(B) Open industry capacity,

(C) Startup cost including special tooling requirements,

(D) Delivery schedule, and

(E) Nature of item and quantity being acquired.

Before a portion or portions, constituting more than 50% of the total requirement may be set aside, a determination must be made that there is a reasonable expectation the action proposed will not result in the payment of a price differential. The determination and supporting information will be made part of the contract file.

(iii) In furtherance of the policy to assure that a fair proportion of acquisitions are placed with small business concerns, each LSA set-aside shall provide that, in addition to LSA concerns, small business concerns not performing in such areas are also eligible for participation in the set-aside for such quantities thereof as are not awarded to LSA concerns. In this respect, see the provisions of 220.7003(b)(2)(i) for notice to offerors, and 220.7003(b)(2)(ii) for conduct of set-aside negotiations.

(2) None of the following is, in itself, sufficient cause for not making a set-aside:

(i) A large part of previous acquisitions of the item in question has been placed with LSA concerns;

(ii) The item to be acquired is on an established planning list under the Industrial Readiness Planning Program;

(iii) The item to be acquired is on a Qualified Products List;

(iv) A period of less than 30 (see FAR 5.203) days from the date of issuance of solicitations is prescribed for the submission of offers;

(v) The acquisition is classified; or

(vi) LSA concerns are receiving a fair proportion of contracts.

(3) Acquisition of supplies which were developed and financed in whole or in part by Canadian sources under the U.S.—Canadian Defense Development Sharing Program shall not be set aside for LSA. Identification of the supplies covered by the Program will be in accordance with Departmental procedures.

(b) *Set-aside procedures.*

(1) When a portion of an acquisition is to be set aside, the acquisition shall be divided into a non-set-aside portion and set-aside portion, each of which shall be not less than an economic production run or reasonable lot. Insofar as practical, the set-aside portion pursuant to this Part will be such as to make the maximum use of the capacity of LSA concerns. Delivery terms and other terms applicable to the set-aside portion of an item and those applicable to the non-set-aside portion of that item shall be comparable.

(2)(i) In acquisitions involving set-asides pursuant to this Part, each solicitation and resulting contract shall contain the clause in 252.220-7000, Notice of Labor Surplus Area Set-Asides (except see (ii) below).

(ii) When experience indicates that token bidding, block bidding, tie-in bidding, or similar devices may occur, the alternate clause in 252.220-7001, Notice of Labor Surplus Area Set-Asides, may be used.

(iii) See 219.508(S-70) for use of the clause at 252.219-7004 for preference as a Labor Surplus concern.

(3)(i) After the award price for the non-set-aside portion has been determined, negotiations may be conducted for the set-aside portion. Acquisition of the set-aside portion shall in all instances be effected by negotiation. Negotiations shall be conducted only with those offerors who have submitted responsive offers on the non-set-aside portion. Negotiations shall be conducted in the order of priority as indicated in the clauses required by 220.7003(b)(2) (i) & (ii) above; *provided* that, when equal low offers are received on the non-set-aside portion from concerns which are equally eligible for the set-aside portion, the concern which is awarded the non-set-aside portion (under the equal low bid procedure of 214.407-8 shall have first priority with

respect to negotiations for the set-aside portion. The set-aside portion shall be awarded as provided in the clause. An offeror entitled to receive the award for quantities of an item under the non-set-aside portion and who accepts the award of additional quantities under the set-aside portion shall not be requested to accept a lower price because of the increased quantities of the award, nor shall negotiations be conducted with a view to obtaining such a lower price based solely upon receipt of award of both portions of the acquisition. This does not prevent acceptance by the contracting officer of voluntary reductions in price from the low eligible offeror prior to award, acceptance of voluntary refunds or the change of prices after award by negotiation of a contract modification. If the entire set-aside portion cannot be awarded by the method described herein, any unawarded portion may be acquired by sealed bidding or negotiation, as appropriate, in accordance with existing regulations. Since considerable time may have elapsed since the initiation of the requirement, contracting officers, prior to issuing a new solicitation, shall review the required delivery schedule (see FAR 12.101) to ensure that it is realistic in the light of all relevant factors including the capabilities of LSA concerns.

(ii) Offers obtained under the provisions of the set-aside clause from firms eligible for the set-aside portion of the requirement shall be in writing and shall include (A) agreement as to the established set-aside price for the available set-aside quantity, (B) agreement as to the required delivery, (C) agreement that all other terms and conditions of the original solicitation will apply to the set-aside award, and (D) agreement to inclusion of the clauses *"Examination of Records by Comptroller General"* in FAR 52.215-1 and *"Audit Negotiation"* in FAR 52.215-2.

(iii) When the award of the non-set-aside portion has been made to a concern which is entitled to receive the set-aside portion of the solicitation, the set-aside portion may be added to the basic contract by supplemental agreement utilizing Standard Form 30. The supplemental agreement shall (A) include a reference to the contractor's letter offering on the set-aside quantity, (B) state the price and delivery schedule applicable to the set-aside quantity, and (C) include the clauses *"Examination of Records by Comptroller General"* in FAR 52.215-1 and *"Audit Negotiation"* in FAR 52.215-2 applicable to the set-aside portion only. Copies of all pertinent documents, including the signed offer, should be attached. The supplemental agreement shall be signed by the contracting officer but need not be signed by the contractor. The contractor's signature on the attached offer will be deemed sufficient.

(iv) When the award for the non-set-aside portion has been made to a firm other than the concern entitled to receive the set-aside portion of the solicitation, award of the set-aside portion will be made utilizing Standard Form 26. The offers obtained and the award utilized shall reference and include the same data indicated in paragraphs (ii) and (iii) above. Also, the award shall reference in Block 26 of Standard Form 26, the applicable solicitation and the contractor's written offer, and copies of the solicitation and offer shall be attached. The Standard Form 26 shall be signed by the contracting officer but need not be signed by the contractor. The contractor's signature on the attached offer will be deemed sufficient. For purposes of Subpart 204.6, the non-set-aside and set-aside portions shall be reported separately.

(c) *Withdrawal of set-asides.* If, prior to the award of a contract involving a labor surplus set-aside, the contracting officer considers that the set-aside is detrimental to the public interest, e.g., because of unreasonable prices, the contracting officer shall withdraw the set-aside and complete the acquisition by sealed bidding or negotiation as appropriate in accordance with existing regulations. A signed memorandum setting forth the basis of the withdrawal of any set-aside shall be made and retained.

220.7004 Subcontracting with labor surplus-area concerns.

(a) *General policy.*

(1) It is the policy of the Government to promote equitable opportunities for labor surplus area concerns to compete for defense subcontracts and to encourage placement of subcontracts with concerns which will perform such contracts substantially in labor surplus areas in the order of priority described in 220.7001 where this can be done, consistent with efficient performance of contracts, at prices no higher than are obtainable elsewhere.

(2) To more effectively carry out the Government's policy objectives stated in (a) above, prime contractors and subcontractors having labor surplus area subcontracting programs must be informed of (i) the Government's evaluation of their efforts in carrying out an effective labor surplus area subcontracting program, (ii) any specific noted deficiencies in their Labor Surplus Area Subcontracting Programs, and (iii) any areas of outstanding achievement where they may have exceeded contractual requirements. To motivate a contractor to improve its program, the contractor should be advised in general terms as to the type of actions which will result in a reward, penalty, or no impact on profit or fee actions. Any evaluation and remarks to the contractor which has exceeded contractual requirements, must be documented to furnish a basis for evaluation in connection with future awards.

(b) *Labor surplus area subcontracting program.* The Government's labor surplus area subcontracting program requires Government prime contractors to assume an affirmative obligation with respect to subcontracting with labor surplus area concerns. These obligations are in addition to those required by the minority business enterprise subcontracting program and the small business subcontracting program, FAR Subpart 19.7. In contracts which range from $25,000 to $500,000, the contractor undertakes the simple obligation of using its best efforts to place subcontracts with concerns which will perform such subcontracts substantially in labor surplus areas where this can be done, consistent with the efficient performance of the contract, at prices no higher than are obtainable elsewhere. This undertaking is set forth in the contract clause prescribed in 220.7004(c)(1). In contracts which may exceed $500,000, the contractor is required, pursuant to the clause required by 220.7004(c)(2) to undertake a number of specific responsibilities designed to ensure achievement of the objectives referred to above and to impose similar responsibilities on major subcontractors.

(c) *Required clauses.*

(1) The clause at FAR 52.220-3, Utilization of Labor Surplus Area Concerns, shall be inserted in all contracts which may exceed $25,000, except:

(i) Contracts with foreign contractors which, including all subcontracts thereunder, are to be performed entirely outside the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands;

(ii) Contracts for services which are personal in nature;

(iii) Contracts for construction; and

(iv) Contracts with the petroleum and petroleum products industry.

(2) The clause at FAR 52.220-4, Labor Surplus Area Subcontracting Program, shall be included in all contracts which may exceed $500,000, but which contain

the clause required by (a) above and which, in the opinion of the purchasing activity, offer substantial subcontracting possibilities. Prime contractors who are to be awarded contracts that do not exceed $500,000, which in the opinion of the purchasing activity offer substantial subcontracting possibilities, shall be urged to accept the clause.

220.7005 Depressed industries.

(a) *General.* When an entire industry is depressed, the Director of the Federal Emergency Management Agency (FEMA) may, under Defense Manpower Policy No. 4, establish appropriate measures on an industrywide, rather than on an area, basis. Designations of such industries are made by the FEMA and such industries will be given special treatment as specified therein.

(b) *Petroleum and petroleum products industry. (Notification no. 58).* There shall be no labor surplus area set-asides in this industry.

PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 222.1—Basic Labor Policies

222.101 Labor relations.

222.101-1 General.

(S-70) Authorization shall be obtained from Departmental headquarters prior to initiating any contact on labor relation matters with a national office of any labor organization, Government department, agency or other governmental organization and shall promptly notify such headquarters of each contact by the national office of any of these organizations.

(S-71) All problems arising out of the industrial labor relations of contractors and all communications with contractors, labor organizations or Federal agencies relative thereto shall be handled in accordanoe with the procedures prescribed in this Section. Industrial security matters concerning contractor employees are governed by the DoD Industrial Security Regulation 5220.22R and the DoD Industrial Security Manual 5220.22M.

(S-72) Approval of the Office of the Deputy Assistant Secretary of Defense (Production Support) will be obtained on major policies relating to all labor relations matters. Recommendations for plant seizure or injunctive action relating to potential or actual work stoppages and resolution of inter-service disagreements are examples of major policy actions.

(S-73) [Reserved]

(S-74) Questions involving FAR Part 22 or other contractor labor relations matters may be addressed to the appropriate departmental/agency headquarters labor advisor:

For the Army: Assistant Secretary of the Army (RDA), Attention: Labor Advisor

For the Navy: Office of the Assistant Secretary of the Navy (Shipbuilding and Logistics), OASN(S&L), CBM-CM

For the Air Force: Headquarters, United States Air Force/RDC-LA, Attention: Special Assistant for Labor Affairs

For the DLA: Headquarters, Defense Logistics Agency: For all matters excepting strikes and disputes—Executive Directorate Contracting, Attention: DLA-PL: For matters involving strikes and disputes—Executive Director Contract Management, Attention: DLA-AP

For the DCA: Headquarters, Defense Communications Agency, Attention: Counsel

For the DMA: Headquarters, Defense Mapping Agency, Attention: Staff Director of Logistics

For the DNA: Headquarters, Defense Nuclear Agency, Attention: Deputy Director of Operations and Administration

For the NSA: Headquarters, National Security Agency, Attention: Director of Procurement

222.101-2 Contract pricing and administration.

(S-70) Nothing in FAR 22.101-1 should be construed to relieve a contracting office from the responsibility to achieve efficient contract pricing and administration.

(S-71) Inspection personnel in the discharge of their duties, consistent with the policy of FAR 22.101-1(b), shall refrain from taking or expressing a position upon the merits of any dispute between labor and private management.

222.101-3 Reporting Labor Disputes.

When an interference is likely to occur, the CAO shall notify the contracting offices, their Heads of Contracting Activities and their Departmental headquarters labor relations office (see listing at 222.101-1(74)). Further dissemination of labor dispute information shall be made by the CAO as requested by the Departmental headquarters labor relations offices. Labor disputes should be reported on DD Form 1507, Work Stoppage Report. An initial report should be submitted when a work stoppage due to a labor dispute is imminent or when such work stoppage occurs and thereafter when a significant change occurs in the dispute situation. This reporting requirement is assigned RCS DD I&L (AR) 1153 (see 253.303-70-DD-1507).

222.101-4 Removal of items from contractors' facilities affected by work stoppages.

(a) It is the policy of the Department of Defense with respect to the movement of items from facilities affected by work stoppages to avoid the use of force or the appearance of force and to prevent the occurrence of incidents which will detrimentally affect relations with labor and management.

(b) Materials which the contractor is unable to deliver because of a work stoppage at the plant, and the delivery of which is urgent and critical to an important program, may be obtained in accordance with procedures set forth below:

(1) The contracting officer, upon the direction of the Departmental Headquarters Labor Relations Office (see listing at 222.101-1(S-74)), shall furnish a written request for removal of the material to Contract Administration Office (CAO) having cognizance over the plant. The Commander of the cognizant CAO, or representative, or the Headquarters Labor Relations Advisor shall attempt to work out an arrangement agreeable to both management and the labor representatives involved for shipment by normal means of urgently required material: Prior to making any removal, the Departmental Headquarters Labor Relations Office will solicit the opinion of the National Office of the Federal Mediation and Conciliation Service or other appropriate mediation agency as to the effect the movement of items would have on negotiations. The contracting officer's request will include the following:

(i) A statement as to the urgency and criticality of the system, subsystem or item needed;

(ii) Description of items to be moved (nature of item, amount, approximate weight and cubic feet, contract number, item number etc.);

(iii) Mode of transportation by which items are to be moved if different from contract and whether by Government or commercial bill of lading; and

(iv) Destination of material if different than contract.

(2) If an arrangement in accord with (i) cannot be made, the Commander of the CAO or representative, after obtaining approval from the Departmental Headquarters Labor Relations Office, may seek the concurrence of parties to the dispute to permit movement of the required material by military vehicles with military personnel to the extent needed. On receipt of such concurrences, the Commander of the CAO may proceed to make necessary arrangements to move the material.

(3) If satisfactory arrangements under (i) and (ii) cannot be made, the matter shall be referred to the Departmental Headquarters Labor Relations Office with the information required by 222.101-70(b). If that office is unsuccessful in obtaining the voluntary concurrences of the parties for movement of the material involved and further action to obtain the material is deemed necessary, the matter shall be referred to the DASD(A&L)(PS).

(4) Upon review and verification that the material is urgently or critically needed and cannot be moved with the consent of the parties, the DASD(A&L)(PS) may request the Secretary of the Department to order removal of the material from the plant or plants involved.

222.101-70 Impact of labor disputes on defense programs.

(a) Each Department shall determine the degree of impact of potential or actual labor disputes on its own programs and requirements, considering among others the following factors:

(1) Whether the dispute involves a product, project (including construction) or service which must be obtained in order to meet schedules of urgently needed military programs or requirements; or

(2) Whether alternative sources of supply for the product, project, or service involved are reasonably available to fulfill the requirement or program in time to maintain essential military schedules.

(b) Within each department, the contracting activity involved shall obtain and develop data reflecting the impact of a dispute on requirements and programs. Upon determining the impact, the Head of the Contracting Activity shall submit through appropriate channels a report of findings, together with recommendations, to the headquarters labor relations office originally notified pursuant to FAR 22.101-3. Such report shall be in narrative form and shall include the following information:

(1) Location of dispute and name of contractor or subcontractor involved;

(2) A statement indicating the degree of impact, relating specific items or construction involved to the programs or requirements affected;

(3) Identity of alternate sources available to furnish supply or service within the time required; and

(4) A description of any action taken to reduce impact.

(c) Reports of impact shall be made to the Office of the Deputy Assistant Secretary of Defense (A&L)(PS).

(1) Upon specific request; or

(2) When considered by the Department to be of sufficient urgency to warrant the attention of the DASD(A&L)(PS).

(d) Report submitted in accordance with (c) above shall be developed by the headquarters labor relations office concerned and shall cover the following areas of fact, as appropriate:

(1) *Description of military program, project, or service*—Identify item, project, or service which will be or is being affected by the work stoppage, describing its normal use and current functions in combat, combat support, or deterrent operations. For components or raw materials identify the end item(s) for which used.

(2) *Requirements and assets*—State requirements and assets in appropriate detail in terms commonly used by the DoD component.

(i) For *production programs* include requirements for each using military service. Where applicable, state in detail production schedules, inventory objectives, assets against these objectives, and critical shortages. For spares and highly expendable items, such as ground and air ammunition, show usage (consumption) rates and assets in absolute terms and in terms of daily, weekly, or monthly supplies. For components, include requirements for spares.

(ii) For *projects*, describe the potential adverse effects of a delay in meeting schedules and explain how a security disadvantage would result from such a delay. Attention should be given to feature any relative loss in balance of strength vis-a-vis potential enemies' capabilities.

(iii) For *services*, describe how a loss or interruption affects ability to support defense operations in terms of traffic requirements, assets, testing programs, etc.

(3) *Possible measures to minimize strike impact*—Describe:

(i) Capabilities, if any, to substitute items or to use alternate sources. (Note how many other facilities are available and the relative capabilities of such facilities in meeting total requirements.);

(ii) How much time would be required to replace the loss of the facilities or service affected by a work stoppage; and

(iii) Feasibility of transfer of assets from theater to theater to relieve deficits in some areas of urgency.

(4) *Conclusion: Impact on operations of a 15-30, of a 30-60, and of a 60-90 day work stoppage*—Degree of criticality of a program, project, or service resulting from a work stoppage will be projected on a calendar basis, indicating the increased impact, if any, as the stoppage lengthens. Criticality is measured by the time required for the work stoppage to have an effect on operational capability. This time must be stated in terms of days.

222.101-71 Acquisition of stevedoring services during labor disputes.

When stevedoring services are furnished by a contractor to a Department, and the performance under the contract, although urgently required, is delayed through a labor dispute, the following procedures shall be utilized in the order of priority listed. Each successive procedure shall be used only when the preceding steps are inadequate.

(a) An attempt shall be made to have management and labor voluntarily agree to exempt military supplies from the labor dispute by continuing the movement of such material.

(b) Vessels shall be diverted to alternate ports able to provide necessary stevedoring services.

(c) Considerati.on shall be given to contracting with reliable alternative sources of supply within the stevedoring industry.

(d) Civil service stevedores shall be utilized to perform the work therefor performed by contract stevedores.

(e) Military personnel shall be utilized to handle the cargo which was being handled by contract stevedores prior to the labor dispute.

(f) When the exigencies of a situation require deviation from the procedures outlined above, the Departmental headquarters labor advisor (see listing at 222.101-1(S-74)) shall be promptly notified.

222.102 Federal and State labor requirements.

222.102-70 Applications by contractors for relaxation of requirements.

(a) Departments shall not initiate applications of any kind for suspension or relaxation of labor requirements without prior coordination of the Departmental headquarters labor advisor (see listing at 222.101-1(S-74)). They may, however, support such applications by contractors or suppliers when all of the following circumstances and conditions have been met:

(1) The interested contractor or supplier has filed his application for relaxation of the laws, orders or regulations involved with the appropriate Governmental official charged with the enforcement of such

labor requirements applicable to the contract involved;

(2) The required products or services are in short supply and unless the application is granted, production schedules for critically needed military material cannot be met;

(3) There is no alternative source of supply reasonably available to furnish the products or services within the period of time delivery is required;

(4) There is no practicable possibility of taking action (such as recruiting, training, and more effective utilization of manpower) as an alternative to relaxation of applicable Governmental labor requirements;

(5) The apparent supply of labor, and in particular of critical skills, is limited, and it is not practicable to set up new production lines or to use additional facilities as an alternative to the relief requested; and

(6) The granting of the application will not result in an excessive increase in hours or work, an unreasonable curtailment of rest and lunch periods, an undesireable impairment of working conditions, or otherwise adversely affect the productivity of the facility involved.

(b) Requests for authority to support an application on behalf of a contractor or supplier shall be submitted to the Departmental headquarters labor advisor (see listing at 222.101–1(S–74)). Such requests shall contain the following information:

(1) The facilities and services involved and affected;

(2) Provision(s) of law which require relaxation;

(3) Criticality or relative scarcity of the material;

(4) Circumstances necessitating the relaxation (for example, a shortage in the local supply of skilled labor);

(5) Remedial action being taken by the manufacturer (e.g., training, recruiting, more effective utilization of manpower);

(6) The most limited relaxation of the requirement necessary for completion of the specific work; and

(7) The approximate period of time required for completion of the work.

(c) Consistent with the limitations of security and the foregoing requirements, contract information may be furnished to the appropriate Governmental official, upon request, in connection with an application of a contractor or supplier for relaxation of a labor requirement as to the execution of a contract in pursuance of a military acquisition program.

222.103 Overtime.

222.103–4 Approvals.

The Deputy Assistant Secretary (Acquisition), Office of the Assistant Secretary of the Army (Research Development and Acquisition), for the Army; the Office of the Assistant Secretary of the Navy (Shipbuilding and Logistics), Deputy Director, Contracts & Business Management, for the Navy; the Director of Contracting and Manufacturing Policy, Headquarters, USAF, for the Air Force; the Executive Director for Contracting, for the Defense Logistics Agency; the Director of Procurement, for the National Security Agency; the Assistant to the Director for Administration, for the Defense Communications Agency; the Chief, Office of Procurement, for the Defense Nuclear Agency; and the Staff Director of Logistics, for the Defense Mapping Agency; are authorized, without power of delegation, to designate without power of redesignation, officers and civilian officials for the purpose of approving overtime premiums at Government expense. Such approval may be for an individual contract, project, or program, or for a plant, division, or company, as most practicable, and shall ordinarily be prospective, but may be retroactive when justified by the circumstances. When two or more contracting offices have current contracts at a single facility, and the approval of overtime by one contracting office will affect the performance or cost of contracts of another, the approving official will obtain the concurrence of other appropriate approving officials and seek agreement as to the contracts under which overtime premiums will be approved. If the approving officials do not agree within a reasonable time as to the action to be taken, a decision shall be obtained through normal channels. Ordinarily, in the absence of evidence to the contrary, a contracting office may rely on the contractor's statement that such approval will not affect the performance, or payments in connection with any contract of another contracting office.

Subpart 222.4—Labor Standards for Contracts Involving Construction

This Subpart has been reserved pending development of appropriate coverage in FAR Subpart 22.4 to reflect recent changes in Department of Labor Regulations.

Subpart 222.6—Walsh-Healey Public Contracts Act

222.604 Exemptions.

222.604–2 Regulatory exemptions.

(c) In addition to the requirements contained in FAR 22.604–2(c) regarding head of agency requests to the Secretary of Labor for exemption of contracts or classes of contracts from any or all stipulations of the Walsh-Healey Public Contracts Act, all applications for such exemptions shall (1) contain pertinent data (including a statement of justification) and recommendation and (2) be submitted through contract channels to the departmental headquarters labor relations advisor (see listing at 222.101–1(S–74)).

222.609 Regional jurisdictions of the Department of Labor, Wage and Hour Division.

In contrast to FAR 22.609, the regional office locations set forth below contain both street addresses and telephone numbers.

(a) *Boston Region*—For the States of Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, and Connecticut: Regional Administrator, Employment Standards Administration, U.S. Department of Labor, Room 1612C, John F. Kennedy Federal Building, Government Center, Boston, MA 02203 (telephone: 617–223–2035).

(b) *New York Region*—For the States of New York and New Jersey and for Puerto Rico and the Virgin Islands: Regional Administrator, Employment Standards Administration, U.S. Department of Labor, 1515 Broadway, New York, NY 10036 (telephone: 212–971–5451).

(c) *Philadelphia Region*—For the States of Pennsylvania, Maryland, Delaware, Virginia, West Virginia, and the District of Columbia: Regional Administrator, Employment Standards Administration, U.S. Department of Labor, Room 704C, 1317 Filbert Street, Philadelphia, PA 19107 (telephone: 215–597–9633).

(d) *Atlanta Region*—For the States of Florida, Georgia, North Carolina, South Carolina, Tennessee, Alabama, Kentucky, and Mississippi: Regional Administrator, Employment Standards Administration, U.S. Department of Labor, Room 331, 1371 Peachtree Street, NE, Atlanta, GA 30309 (telephone: 404–526–5801).

(e) *Chicago Region*—For the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin: Regional Administrator, Employment Standards Administration, U.S. Department of Labor, U.S. Courthouse and Federal Office Building, Room 742, 219 South Dearborn Street, Chicago, IL 60604 (telephone: 312–353–7280).

(f) *Dallas Region*—For the States of Texas, New Mexico, Oklahoma, Arkansas, and Louisiana: Regional Administrator, Employment Standards Administration, U.S. Department of Labor, Room 13F12, 1100 Commerce Street, Dallas, TX 75202 (telephone: 214–749–2037).

(g) *Kansas City Region*—For the States of Missouri, Kansas, Nebraska, and Iowa: Regional Administrator, Employment Standards Administration, U.S. Department of Labor, Room 2000, Federal Office Building, 911 Walnut Street, Kansas City, MO 64102 (telephone: 816–374–5384).

(h) *Denver Region*—For the States of Colorado, North Dakota, South Dakota, Utah, Wyoming, and Montana: Regional Administrator, Employment Standards Administration, U.S. Department of Labor, Room 246, 232 New Customshouse, 721 19th Street, Denver, CO 80202 (telephone: 303–837–4613).

(i) *San Francisco Region*—For the States of California, Nevada, Arizona, and Hawaii, and for Guam, and various Pacific Islands: Regional Administrator, Employment Standards Administration, U.S. Department of Labor, 450 Golden Gate Avenue, Room 10431, San Francisco, CA 94102 (telephone: 415–556–1318).

(j) *Seattle Region*—For the States of Washington, Oregon, Idaho, and Alaska: Regional Administrator, Employment Standards Administration, U.S. Department of Labor, 2008 Smith Tower, 506 Second Avenue, Seattle, WA 98104 (telephone: 206–442–1536).

Subpart 222.8—Equal Employment Opportunity

222.804 Affirmative action programs.

222.804–2 Construction.

(b) Requests for instructions shall be forwarded through contracting channels to: Labor Advisor, OASA(RDA), for the Army; the cognizant field office of the Naval Facilities Engineering Command, for the Navy; Director of Contracting and Manufacturing Policy, Headquarters USAF, for the Air Force; Executive Director for Contracting, for the Defense Logistics Agency; Director of Procurement, for the National Security Agency; the Counsel, for the Defense Communications Agency; Director, Acquisition Management, for the Defense Nuclear Agency; Staff Director of Logistics, for the Defense Mapping Agency; and the Assistant Director for Administrative Services, for the Defense Civil Preparedness Agency.

222.805 Procedures.

(a)(2) A listing of Department of Labor regional offices can be found at 222.609 (in using the listing, replace "Wage and Hour Division" with "Office of Federal Contract Compliance Programs").

222.806 Inquiries.

(b) Matters requiring the attention of OFCCP, Washington, DC Headquarters shall be forwarded to the departmental labor advisor (see listing at 222.101–1(S–74)) for referral to the Director, OFCCP.

222.807 Exemptions.

(c) The contracting officer's justification for exemption shall be submitted through appropriate contracting channels to the departmental labor advisor (see listing at 222.101–1(S–74)) for departmental coordination and submission, if favorably endorsed, to the Deputy Assistant Secretary of Defense (Production Support) (DASD(A&L)(PS)). If the request is submitted under FAR 22.807(a)(1), the DASD(A&L)(PS) shall forward it to the Secretary of Defense for granting of the exemption, and if the exemption is granted, shall notify the Director, OFCCP within 30 days of such action. If the request is submitted under FAR 22.807(a)(2) or FAR 22.807(b)(5), the DASD(A&L)(PS) shall forward it to the Director, OFCCP.

Subpart 222.10—Service Contract Act of 1965

222.1003 Applicability.

(e) *Requests for determinations and exemptions.*

(1) The contracting officer shall direct requests for determination of applicability of the Act or determination of the applicability or appropriateness of Department of Labor Wage determinations to the departmental labor advisor (see listing at 222.101–1(S–74)).

(2) The contracting officer shall submit in writing requests for exemption from the Act through contracting channels, as appropriate, to the departmental labor advisor (see 222.101–1(S–74)). The labor advisor shall effect necessary departmental coordination and submit the request, if endorsed, to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210.

222.1006 Clauses for contracts over $2,500.

(S–70) *Potential Application Clause.* The contracting officer shall insert the clause at 252.222–7000, Potential Application of the Service Contract Act, As Amended (Fixed Price), (SEP 1979) in solicitations and contracts for overhaul and modification of equipment, which are considered by the contracting office to be subject to the Walsh-Healey Public Contracts Act rather than the Service Contract Act, as amended. In paragraph (c) of the clause, "60 days" may be substituted for "30 days".

(S–71) *Minimum Wages and Fringe Benefits.* The contracting shall insert the clause at 252.222–7001, Service Contract Act (SCA) Minimum Wages and Fringe Benefits, in solicitations and contracts when:

(1) The clause at FAR 52.222–41 applies;

(2) The contract resulting from this solicitation succeeds an ongoing contract for substantially the same services;

(3) The incumbent contractor has negotiated or is negotiating a CBA with some or all of its service employees; and

(4) All applicable Department of Labor wage determinations have been requested but not received.

222.1007 Notice of intent to make a service contract.

(e) Requests, other than routine requests to check the status of the submitted Notice of Intention to Make a Service Contract and Response to Notice (SF–98/98(a)), to the Department of Labor, Washington, DC headquarters are not authorized. Other-than-routine requests shall be made through the departmental labor advisor (see listing at 222.101–1(S–74)) who, if the request is justified, shall contact cognizant Department of Labor headquarters officials regarding the request.

(S–70)(1) If the SCA wage determination requested in accordance with FAR 22.1007(a) is not received in time for inclusion in the solicitation, and absent an incumbent contractor union agreement, the contracting officer should proceed using the latest wage determination included in the existing contract, if any. If a new wage determination is subsequently received 10 or more days prior to the opening of bids or the date established for the initial receipt of proposals, the solicitation must be amended accordingly. However, if a new wage determination is received less than 10 days before the opening of bids or the date established for the initial receipt of proposals, it shall be included in the solicitation only when there is a reasonable time to notify offerors thereof.

(2) In those cases involving an incumbent contractor operating under a collective bargaining agreement, the wage determination in the incumbent's

contract shall not be included in any solicitation that must be released without a new SCA wage determination. Instead, using the solicitation provisions as prescribed at 222.1006(S–71), offerors shall be informed that—

(i) The economic terms of such agreement(s) will apply to the contract and should be considered in developing an offer; however,

(ii) Pursuant to Department of Labor Regulations at 29 CFR 4.1c, and subject to the conditions set forth in FAR 22.1007(f) and 22.1008–1, the economic terms of any agreement entered into subsequent to this solicitation might apply to the contract.

(3) The contracting officer shall notify, in writing, the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, of each case when compelled to proceed without a new wage determination due to a delayed response from the Department of Labor. An information copy of each such notice shall be forwarded to the appropriate departmental labor advisor (see 222.101–1(S–74)).

222.1008 Wage determinations and collective bargaining agreements.

222.1008–1 Before award.

(a) Solicitations and contracts for more than $2,500 shall contain an attachment (wage determination or appropriate revisions thereto) issued by the Administrator in response to the notice required under FAR 22.1007(a), setting forth the minimum wages and fringe benefits for service employees to be employed thereunder. However, wage determinations and revisions thereto shall *not* apply:

(1) Where no collective bargaining agreement exists and wage determinations or revisions are received less than 10 days before the opening of bids or date established for the initial receipt of proposals, unless the contracting officer finds that there is a reasonable time to notify bidders or offerors thereof; or

(2) Where a collective bargaining agreement does exist and (i) the contracting agency has received notice of the existence thereof less than 10 days before bid opening or commencement of performance of a negotiated contract, option, or contract extension, *and* (ii) the contracting officer determines that there is not reasonable time to incorporate a new wage determination in the solicitation, *and* (iii) the notices required by FAR 22.1007 (a) and (f) have been given.

222.1009 Notice of award.

Two copies of SF 99 shall be prepared for contracts of $2,500 or more but less than $25,000 containing the clause in FAR 52.222–41; for the initial order (if less than $25,000) under an indefinite-type contract or basic ordering agreement containing the clause in FAR 52.222–41; and for the initial purchase (if less than $25,000) under a blanket purchase agreement containing the clause in FAR 52.222–41. The address for the Department of Labor office cited is Washington, DC 20210.

(S–70) *Individual Procurement Action Report (DD Form 350).* The contracting officer shall not report to the Department of Labor awards of service contracts of $25,000 or more containing the clause in FAR 52.222–41 and initial orders/calls of $25,000 or more under indefinite delivery-type contracts, basic ordering agreements, and blanket purchase agreements containing the clause in FAR 52.222–41. SF 99 information pertinent to such contracts and agreements is contained in DD Form 350 Data Input which is accessible to the Department of Labor via the Federal Procurement Data System.

222.1011 Hearings.

(a) The contracting officer shall submit a request for a hearing to the departmental labor advisor (see listing at 222.101–1(S–74)) who shall effect necessary departmental coordination and forward the request, if endorsed, to the Department of Labor.

222.1012 Withholding of contract payments.

Generally, sums withheld shall be forwarded immediately to the Department of Labor for payment to employees unless otherwise directed by the Department of Labor.

Subpart 222.13—Special Disabled and Vietnam Era Veterans

222.1303 Waivers.

(c) The contracting officer shall submit a request for waiver under FAR 22.1303 (a) and (b) via appropriate contracting channels to the departmental or agency headquarters contractor labor relations advisor (see 222.101–1(S–74)) for listing of advisors). If the waiver request is justified, the advisor shall endorse the request and forward it to the OASD(A&L)(P) for waiver by the Secretary of Defense. Only the Secretary of Defense may make waivers under FAR 22.1303.

222.1306 Complaint procedures.

Each complaint received shall be forwarded by the contracting officer as indicated in FAR 22.1306. The contracting officer shall notify the complainant of such referral. The contractor in question shall not be advised in any manner or for any reason of the complainant's name, the nature of the complaint, or the fact that the complaint was received.

Subpart 222.14—Employment of the Handicapped

222.1403 Waivers.

(c) The contracting officer shall submit a request for waiver under FAR 22.1403 (a) and (b) via appropriate contracting channels to the departmental or agency headquarters contractor labor relations advisor (see 222.101–1(S–74) for listing of advisors). If the waiver request is justified, the advisor shall endorse the request and forward it to the OASD(A&L)(P) for waiver by the Secretary of Defense. Only the Secretary of Defense may make waiver under FAR 22.1403.

222.1404 Department of Labor notices.

To assist the contracting officer in obtaining appropriate notices to be furnished the contractor, a listing of Department of Labor regional offices is located at 222.609 (for this purpose, replace "Wage and Hour Division" with "Office of Federal Contract Compliance Programs").

222.1406 Complaint procedures.

Each complaint received shall be forwarded by the contracting officer as indicated in FAR 12.1406 (see 222.609 for listing of Department of Labor regional/area offices). The contracting officer shall notify the complainant of such referral. The contractor in question shall not be advised in any manner or for any reason of the complainant's name, the nature of the complaint, or the fact that the complaint was received.

Subpart 222.70—Safety and Health Regulations for Shipyard and Related Employment

222.7001 Safety and health regulations.

The Secretary of Labor has promulgated safety and health regulations for shipyard and related employment pursuant to the authority of Pub. L. 85–742, 72 Stat. 835 (approved August 23, 1958) amending section 41 of the Longshoremen's and Harbor Worker's Compensation Act (33 U.S.C. 941). These regulations are set forth in Title 29, Code of Federal Regulations, Subtitle B, Part 1915.

222.7002 Applicability.

These regulations apply to ship repair and shipbuilding or related work, as defined therein, performed within the Federal maritime jurisdiction on the navigable waters of the United States, including any dry dock or marine railway.

222.7003 Contract clause.

The Master Agreement for Repair and Alteration of Vessels includes a clause entitled "U.S. Department of Labor Safety and Health Regulations for Ship Repairing" directing the attention of the contractor to the applicability of these regulations. Similar clauses should be included in shipbuilding and ship conversion contracts.

222.7004 Administration and enforcement.

The responsibility for compliance with the U.S. Department of Labor Regulations is placed upon employers, any of whose employees are engaged in any ship repair, shipbuilding, or related employment aboard any vessel upon the navigable waters of the United States, including any dry dock or marine railway. Consequently, prime contractors or subcontractors or both may be responsible for compliance with these regulations. Insofar as the Government is concerned, the responsibility for the administration and enforcement of these regulations is with the U.S. Department of Labor. Contractors or employees who inquire concerning applicability or interpretation of the foregoing regulations shall be advised that rulings concerning such matters fall within the jurisdiction of the U.S. Department of Labor and shall be given the address of the appropriate field office of the Bureau of Labor Standards of the U.S. Department of Labor.

Subpart 222.71—Fair Labor Standards Act of 1938

222.7101 Basic statute.

The Fair Labor Standards Act of 1938 (Act of June 30, 1938; 29 U.S.C. 201–219), as amended, provides for the establishment of minimum wage and maximum hour standards, creates a Wage and Hour Division in the Department of Labor for purposes of interpretation and enforcement (including investigations and inspections of Government contractors), and prohibits oppressive child labor. Said Act applies to all employees, unless otherwise exempted, who are engaged in (a) interstate commerce or (b) any closely related process or occupation essential to such production.

222.7102 Suits against government contractors.

Payments made pursuant to the provisions of the Fair Labor Standards Act are usually reimbursable under cost or cost-plus-a-fixed-fee contracts. Consequently, each Department has a direct interest in claims and suits under said Act which are made or brought in connection with such contracts. Procedures have been established, by agreement between the Department of Justice and the Departments governing the defense of Fair Labor Standards Act suits. These procedures in general contemplate the defense of Fair Labor Standards Act suits by private counsel employed by the contractor, the employment of whom is approved by the Department concerned. These procedures must be followed if contractors are to be reimbursed for the amount of any judgment under said Act, or for any litigation expenses (including the reasonable fees of such private counsel).

222.7103 Rulings on applicability or interpretation.

Contractors or contractor employees who inquire concerning applicability or interpretation of the Fair Labor Standards Act shall be advised that rulings concerning such matters fall within the jurisdiction of the Department of Labor and shall be given the address of the appropriate Regional Director of the Wage and Hour and Public Contracts Divisions of the Department of Labor.

Subpart 222.72—Section 8078, 1986 Defense Appropriations Act—Restrictions on the Employment of Personnel for Work on Construction/Service Contracts in Alaska and Hawaii

222.7200 Policy.

(a) Except as provided in (b) and (c) below, Section 8078 of the 1986 Defense Appropriations Act requires that notwithstanding any other provision of law, every contract awarded during FY 1986 calling for construction or services to be performed in whole or in part within the State of Alaska or the State of Hawaii shall include a provision requiring the contractor to employ, for the purpose of performing that portion of the contract work within the particular state, individuals who are residents of that state, and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills to perform the contract.

(b) This section shall not apply at any time during FY 1986 when the unemployment rate in Alaska is not in excess of the national average rate of unemployment as determined by the Secretary of Labor.

(c) This section shall not apply to contracts to be performed in whole or in part within the State of Hawaii unless in FY 1986 the unemployment rate in Hawaii is in excess of the national average rate of unemployment as determined by the Secretary of Labor.

222.7201 Waivers.

This section may be waived by the Secretary of Defense, the Deputy Secretary of Defense, the Assistant Secretary of Defense for Acquisition and Logistics, and any Secretary, Undersecretary, or Assistant Secretary of the Army, Navy, and Air Force, in the interest of national security. Requests for waiver shall be processed in accordance with Departmental or agency procedures.

222.7202 Contract Clause.

The contracting officer shall insert the clause of 252.222–7002, Restrictions on Employment of Personnel, in all solicitations and contracts in accordance with 222.7200.

PART 223—ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL SAFETY

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 223.3—Hazardous Material Identification and Material Safety Data

223.303 Contract clause.

(S–70) The contracting officer shall insert the clause at 252.223–7000, Notice of Radioactive Materials, in all contracts for items, components thereof, and materials which are radioactive in which the radioactivity per gram is greater than 0.002 microcuries. Such contracts include, but are not limited to, contracts for aircraft, ammunition, missiles, vehicles, electronic tubes, instrument panel gauges, compasses and identification markers.

Subpart 223.70—Safety Precautions for Ammunition and Explosives

223.7001 Definition.

The term "ammunition and explosives", as used in this subpart, means liquid and solid propellants and explosives, pyrotechnics, incendiaries and smokes in any of the following: bulk form, ammunition, rockets, missiles, warheads, devices, and components thereof, except for wholly inert items.

223.7002 Policy and contract clauses.

(a) The requirements of DoD 4145.26–M, "DoD Contractors' Safety Manual for Ammunition and Explosives", are to be applied to all contracts involving ammunition or explosives. To

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accomplish this policy, all solicitations/requests for quotations, and resulting contracts involving development, testing, research, manufacturing, handling, loading, assembling, packaging, storage, transportation, renovation, demilitarization, modification, repair, disposal, inspection, or other use of ammunition and explosives shall include, in its entirety, the clause set forth in 252.223-7001, except as noted below:

(i) The clause is not to be included in contracts solely because of inert components containing no explosives, propellants, or pyrotechnics.

(ii) The clause is not to be included in contracts which are solely for flammable liquids, acids, oxidizers, powdered metals, or other materials having fire or explosive characteristics. However, the clause shall be included in contracts which require the use or incorporation of such materials for initiation, propulsion, or detonation as an integral or component part of an explosive, an ammunition or explosive end item, or a weapon system.

(iii) When work is to be performed on a Government-owned installation, ammunition and explosives regulations of the DoD Component or installation for handling ammunition and explosives may be used to supplement or substitute for DoD 4145.26-M (the manual). The regulations used to supplement or substitute for the manual must be cited in the contract.

(b) The purpose of incorporating the DoD Manual into the contract is to minimize the potential for mishaps that could interrupt DoD operations, delay project/product completion dates, adversely impact upon DoD production base or capabilities, damage or destroy DoD-owned material/equipment, or cause injury to DoD personnel.

(c) The clause at 252.223-7002 shall be inserted in all solicitations and contracts containing the clause at 252.223-7001.

223.7003 Preaward considerations.

(a) The contracting officer shall obtain a preaward ammunition and explosives safety survey before awarding any contract (including purchase orders) involving ammunition and explosives. When the prospective contractor proposes subcontracting any ammunition and explosives work, the preaward safety survey will also include the subcontractor(s) facility.

(b) Omission of the clause from solicitations and contracts referred to in 223.7002, or waiver of mandatory requirements of the manual prior to contract award, must be approved by the HCA or designee. When mandatory requirements of the manual are to be waived prior to award, the specific requirements to be waived must be set forth in the solicitation or by modification thereto. When requested deviations from mandatory requirements of the manual are rejected by the HCA or designee, but the prospective contractor proposes corrective action acceptable for compliance, then the contractor's proposed corrective actions must be set forth in the schedule of the resulting contract. All requested waivers, deviations, or omissions of the clause must be reviewed by safety personnel responsible for ammunition and explosives safety prior to forwarding for HCA or designee approval.

(c) In contracts involving shipment of ammunition and explosives, applicable Department of Transportation (DOT)/Military Traffic Management Command (MTMC) requirements and other needed transportation, packaging, marking, and labeling requirements will be addressed within the schedule of the contract.

(d) The contracting office will include instructions within the contract concerning final disposition of excess (to include defective/reject) Government-Furnished Material (GFM) containing ammunition and explosives.

223.7004 Postaward considerations.

(a) Compliance with the standards required by the clause is the responsibility of the contractor (see 242.302(a)(39)). Contract administration personnel have the responsibility to verify that these contract requirements are being implemented in a manner which will tend to reduce or eliminate the probability of a mishap occurrence to the maximum extent practicable. As provided in the clause, the standards of the manual are to be applied only to the contractor's operations relating or exposed to ammunition and explosives.

(b) The contracting officer will review contractor requests for waiver of contractual safety standards and submissions for site plan modification or construction review. The manual requires the contractor to submit these requests through the ACO. If the request for review does not include the ACO review and recommendation, coordination with the ACO or return of the submission to the ACO is required. The contracting officer must also obtain a review and recommendation from the appropriate servicing safety department responsible for ammunition and explosives safety. The approval/disapproval determination by the contracting officer should be made to the contractor, through the ACO, as soon as practicable.

(c) *Subcontracts.* (1) The clause at 252.223-7001 requires the contractor to notify the contracting officer prior to placing subcontracts for ammunition and explosives. When notifications are received, the contracting officer should, in coordination with safety personnel, request supporting contract administration in accordance with FAR 42.204, and should normally request supporting administration when the nature of the subcontract work potentially endangers Government property, Government personnel, production capability or contract completion.

(2) When a preaward safety survey identifies areas in which the subcontractor is in noncompliance with the manual and those noncompliances could be corrected prior to the starting up of production, the contracting officer shall require a preoperations survey to verify that the corrections have been made.

(3) When postaward safety reviews by the Government uncover safety deficiencies in the subcontractor's operation (whether or not they are immediately corrected or correctable), the cognizant ACO for the subcontractor shall be informed. The ACO cognizant of the subcontractor shall immediately notify the ACO cognizant of the prime contractor, who shall formally notify the prime contractor of the subcontractor deficiencies requiring correction. In the event of critical safety deficiencies, the foregoing notifications shall be accomplished by the most expeditious means available.

PART 224—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 224.1—Protection of Individual Privacy

224.102 General.

(a)(1) The Act applies to systems of records on individuals when, for example:

(i) Determinations on benefits are made by Federal agencies;

(ii) Records are maintained for administrative functions of the Federal agency such as personnel, payroll, etc.; or

(iii) Health records are maintained by an outside contractor engaged to provide health services to agency personnel.

(2) The Act does not apply to systems of records on individuals when:

(i) Records are maintained by the contractor on individuals whom the contractor employs in the process of providing goods and services to the Federal Government;

(ii) An agency contracts with a state or private educational organization to provide training, and the records generated on contract students pursuant to their attendance (admission forms, grade reports) are similar to those maintained on other students and are commingled with their records on other students.

224.103 Procedures.

(b)(2) Implementation of the requirements of the Privacy Act is located in DoD Directive 5400.11 (see Appendix P).

Subpart 224.2—Freedom of Information Act

224.202 Policy.

Implementation of the requirements of the Freedom of Information Act is located in DoD Directive 5400.7 and DoD Regulation 5400.7-R (see Appendix L).

PART 225—FOREIGN ACQUISITION

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

225.000 Scope of Part.

This part supplements FAR Part 25 and provides special guidance (including pricing guidance) for Military Assistance Program acquisitions and Foreign Military Sales; procedures to promote liaison with overseas activities and compliance with government-to-government agreements for acquisition from foreign contractors; and procedures for the solicitation and evaluation of offers of defense equipment which are qualifying country end products.

225.001 Definitions.

As used through this part, the words and terms defined in this paragraph shall have the meanings set forth below, unless a different definition is prescribed for a specific subpart.

"Defense cooperation agreement country end product" means an item listed in the defense cooperation country agreement and produced in that country.

"A defense cooperation country" is a foreign country which has a defense cooperation agreement and for which a Determination and Findings (D&F) was made by the Secretary of Defense waiving the Buy American Act restrictions for a list of mutually agreed items. These countries are listed at 225.7501.

"Defense cooperation country offer" means an offer of a defense cooperation country end product, including transportation to destination.

"Defense equipment" means any equipment, item of supply, component, or end product purchased by the Department of Defense.

"Domestic concern" means an incorporated concern incorporated in the United States or an unincorporated concern having its principal place of business in the United States. (In the context of this part, "concern" refers to a prospective or actual contractor. Thus, a contract with a foreign subsidiary or foreign branch or business office of a U.S. corporation would not be a contract with a domestic concern. Conversely, a contract executed by a foreign salesman or agent on behalf of a domestic concern would nevertheless be a contract with a domestic concern since the basic contractual and legal responsibility resides with the domestic concern.)

"Domestic end product" means (i) an unmanufactured end product which has been mined or produced in the United States; or (ii) an end product manufactured in the United States if the cost of its qualifying country components and its components which are mined, produced, or manufactured in the United States exceeds 50% of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate may be issued). A component shall be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind (i) determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality; or (ii) as to which the Secretary concerned has determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act (FAR 25.102(a)(3)).

"FMS/Offset arrangement country offer" means an offer of a FMS/Offset arrangement country end product, including transportation to destination.

"FMS/Offset arrangement country" is a foreign country which has an offset arrangement negotiated in conjunction with a Foreign Military Sale and which arrangement provides for obtaining a waiver of the Buy American Act restrictions on a case-by-case basis. These countries are listed at 225.7310(a).

"FMS/Offset arrangement country end product" means (i) an unmanufactured end product mined or produced in a FMS/Offset arrangement country; or (ii) an end product manufactured in a FMS/Offset arrangement country if the cost of its qualifying country components and its components which are mined, produced, or manufactured in the United States exceeds 50% of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and any duty, whether or not duty is in fact paid.

"Foreign concern" means a concern that is not a domestic concern.

"Participating country" is a NATO country which has a Memorandum of Understanding (MOU) or similar agreement with the U.S., and for which a blanket D&F was made by the Secretary of Defense waiving the Buy American Act restrictions. These countries are listed at 225.7401.

"Participating country end product" means (i) an unmanufactured end product mined or produced in a participating country; or (ii) an end product manufactured in a participating country if the cost of its qualifying country components and its components mined, produced, or manufactured in the United States exceeds 50% of the cost of all its components. The cost of components shall include transportation to the place of incorporation into the end product and any duty, whether or not duty is in fact paid.

"Participating country offer" means an offer of a participating country end product, including transportation to destination.

"Qualifying country" means any country defined as a defense cooperation country, a FMS/Offset arrangement country, or a participating country.

"Qualifying country component" means (i) an item mined, produced, or manufactured in a participating country or in a FMS/Offset arrangement country when the applicable D&F has been made waiving the Buy American Act restrictions; or (ii) any item listed in a defense cooperation country agreement.

"Qualifying country end product" means (i) a participating country end product; (ii) a FMS/Offset arrangement country end product when the applicable D&F has been made waiving the Buy American Act restrictions; or (iii) a defense cooperation country agreement listed item.

"Qualifying country offer" means an offer of a qualifying country end

product, including transportation to destination.

"Source" (when restricted by such words as foreign, domestic, qualifying country, etc.) refers to the actual manufacturer or producer of the end product or component (product may encompass a report).

"United States" means the States, the District of Columbia, Puerto Rico, and possessions. It does not include leased bases or trust territories.

Subpart 225.1—Buy American Act—Supplies

225.102 Policy.

(S–70) *Buy American Act requirements.* Except as provided in this section, the Buy American Act requires that in the acquisition of supplies, only domestic end products shall be acquired for public use in the United States. In determining whether an end product is a domestic end product, only the end product and its components shall be considered. The act and its implementation by E.O. 10582 and the Balance of Payments Program require the use of evaluation factors specified in 225.105.

(1) *Use outside the United States.* The restrictions of the Buy American Act do not apply to articles, materials, or supplies for use outside the United States. However, the Balance of Payments Program is not so restricted. In order to uniformly implement the Balance of Payments Program worldwide, the preferences and procedures of the Buy American Act for soliciting and awarding contracts for supplies and applicable services have been extended as a matter of policy to acquisition of supplies and applicable services for use outside the United States.

(2) *Unreasonable cost or inconsistency with the public interest.* The restrictions of the Buy American Act and the Balance of Payments Program do not apply when it is determined by the Secretary concerned that the cost of a domestic end product would be unreasonable, or that acquisition of a domestic end product would be inconsistent with the public interest.

(3) *Nonavailability in the United States.* The Buy American Act does not apply to (i) end products of a class or kind which the Government has determined are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality; or (ii) components of end products manufactured in the United States or a qualifying country if the component is of a class or kind determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. Certain items determined to be exempt under these exceptions are set forth in FAR 25.108(d)(1).

(4) *Commissary resale.* The provisions of the Buy American Act do not apply to supplies purchased specifically for commissary resale. However, nonsubsistence items of foreign origin purchased for resale in domestic commissaries must meet the evaluation criteria in this subpart.

(S–71) A nonavailability determination is not required for end products or components listed in (S–72) below or in FAR 25.108(d)(1). Otherwise, acquisitions of foreign end products or components on the basis of nonavailability shall be made only after a determination of nonavailability has been made and the acquisition is approved:

(1) At a level above the contracting officer, if the amount involved is estimated not to exceed $25,000;

(2) By the chief of the contracting office concerned, if the acquisition is estimated not to exceed $250,000;

(3) By the head of the contracting activity (HCA) or his immediate deputy, or in the case of the Defense Advanced Research Projects Agency (DARPA), the Director, DARPA, if the acquisition is estimated not to exceed $2 million; or

(4) By the Secretary of the Department concerned, or his designee at a level no lower than an HCA, if the acquisition is estimated to exceed $2 million.

In making such determination, and granting such approval, the feasibility of foregoing the requirement or providing a U.S. substitute shall be considered.

(S–72) Acquisitions in the following categories may be made without determinations or approvals otherwise required by this subsection.

(1) Spare and replacement parts, if the acquisition must be restricted to the original manufacturer or his supplier.

(2) Foreign drugs by the Defense Personnel Support Center when the Chief of the Division of Technical Operations, Directorate of Medical Materiel, has determined that only the requested foreign drug will fulfill the requirements.

(S–73) *Balance of payments program requirements.* The 50% evaluation factor in favor of domestic offers, implemented in 225.105, is an interim measure designed to alleviate the impact of DoD expenditures on the Nation's balance of international payments. The Department of Defense does not expect to use the 50% factor beyond the time when the U.S. balance of payments deficit is corrected.

(1) Although the evaluation procedures in 225.105 reduce overseas dollar expenditures resulting from defense acquisition at an acceptable increase in budgetary costs, this result is an average and overall result rather than one precisely obtained in each case. This is so because, both under the Buy American Act and as a matter of administrative practicability, items are classified absolutely as "foreign" or "domestic" and varying degrees within each class are not recognized. However, deviations (see FAR Subpart 1.4) from the evaluation procedures of 225.105 should be considered for acquisitions over $250,000 when it is anticipated that the low domestic offer will involve relatively substantial foreign expenditures or that the low foreign offer will involve relatively substantial domestic expenditures. Any request for such a deviation should be made sufficiently in advance of solicitation to permit the solicitation to describe the evaluation procedure that will be used. Such deviations require the advance approval of the Assistant Secretary of Defense (Acquisition and Logistics)(ASD(A&L)) or his designee.

225.103 Agreements with certain foreign governments.

(See Subparts 225.73, 225.74, and 225.75.)

225.105 Evaluating offers.

In lieu of the procedures set forth in FAR 25.105, the following procedures are applicable to the Department of Defense.

(S–70) In accordance with the Buy American Act, the Secretary of Defense has determined that where the procedures in (S–71) below result in the acquisition of foreign end products, the acquisition of domestic end products would be (i) unreasonable in cost or (ii) inconsistent with the public interest.

(S–71) Except as provided in this subparagraph (S–71) and in (S–73) and (S–74) below, offers shall be evaluated so as to give preference to domestic offers as follows:

(1) Each nonqualifying country offer of defense equipment (but see exception (ii) below) shall be adjusted for purposes of evaluation either by excluding any duty from the nonqualifying country offer and adding 50% of the offer (exclusive of duty) to the remainder, or by adding to the nonqualifying country offer (inclusive of duty) a factor of 6% of that offer, whichever results in the greater evaluated price, except that a 12% factor shall be used instead of the 6% factor if (i) the firm submitting the low acceptable domestic offer is a small business concern, or a labor surplus area concern, or both; (ii) small purchase procedures are not used; and (iii) any contract award to a domestic concern which would result from applying the 12% factor, but which would not result from applying the 6% or 50% factor, would not exceed $100,000. If an award for more than $100,000 would be made to a domestic concern if the 12% factor is applied, but would not be made if the 6% factor or 50% factor is applied, the matter shall be submitted to the Secretary of the Department concerned for decision as to whether the award to the small business or labor surplus area concern would involve unreasonable cost or inconsistency with the public interest. If the foregoing procedure results in a tie between a nonqualifying country offer, as evaluated, and a domestic offer, award shall be made on the latter. In other instances, use the tiebreaking procedures in 214.407–6. When more than one line item is offered in response to a solicitation, the appropriate factor shall be applied on an item-by-item basis, except that the factor may be applied to any group of items as to which the solicitation specifically provides that award may be made on a particular group of items.

(2) In the event that a domestic offer, a qualifying country offer, and a nonqualifying country offer compete for defense equipment, the qualifying country offer shall be evaluated without applying the price differentials of this paragraph, whereas the nonqualifying country offer shall be subject to the price differentials (see Example E below). However, in the event the low domestic offer exceeds the evaluated price of the nonqualifying country offer, all foreign offers shall be evaluated as if no domestic offer was submitted (see Example F below). In the event a qualifying country offer competes against a nonqualifying country offer and no domestic offer is submitted, they shall be evaluated on an equal basis (see Example G below).

(S–72) The following examples illustrate how the procedure in (S–71) above should be applied. Throughout these examples, "domestic offer—large" means a domestic offer which is not from a small business or labor surplus area concern; "domestic offer—small" means a domestic offer which is from either a small business concern or a labor surplus area concern, or both.

Example A

Nonqualifying Country Offer, including duty of $4,500 ..... $14,500
Domestic Offer—Large 15,100
Domestic Offer—Small 15,110

Award on Domestic Offer—Large. Domestic Offer—Small is out because it is not the low acceptable domestic offer. Nonqualifying Country Offer, if adjusted by the 50% factor, would be $14,500 less $4,500 duty (i.e., $10,000), plus 50% of $10,000 (i.e., $5,000), or $15,000; but if adjusted by the 6% factor, it would be $14,500 plus 6% of $14,500 (i.e., $870), or $15,370; therefore, the 6% factor is added, and the Domestic Offer—Large is the low evaluated offer.

Example B

Nonqualifying Country Offer, including duty of $2,000 ..... $12,000
Domestic Offer—Large 15,000

Award on Domestic Offer—Large. Nonqualifying Country Offer, adjusted by 50% factor, is $15,000; adjusted by 6% factor, it is $12,720. Therefore, Nonqualifying Country Offer is evaluated at $15,000, resulting in a tie and consequent award on the Domestic Offer—Large.

Example C

Nonqualifying Country Offer, including duty of $3,500 ..... $13,500
Domestic Offer—Large 17,000
Domestic Offer—Small 15,100

Award on Domestic Offer—Small. Nonqualifying Country Offer, adjusted by 50% factor is $15,000; adjusted by 12% factor, it is $15,120. Therefore, it is evaluated at $15,120, resulting in award on the Domestic Offer—Small.

Example D

Nonqualifying Country Offer, including duty of $70,000 ..... $270,000
Domestic Offer—Large 310,000
Domestic Offer—Small 302,000

Submit the case to the Secretary of the Department concerned. Nonqualifying Country Offer, adjusted by 50% factor is $300,000; adjusted by 12% factor, it is $302,400; adjusted by 6% factor, it is $286,200. Therefore, Domestic Offer—Small is in line for possible award only because of the bidder's small business or labor surplus area status. But since the contract award would exceed $100,000, the matter requires Secretarial decision.

Example E

Nonqualifying Country Offer, including duty of $2,000 ..... $8,000
Domestic Offer—Large 10,500
Domestic Offer—Small 8,900
Qualifying Country Offer 8,800

Award on Qualifying Country Offer. Nonqualifying Country Offer, adjusted by 50% factor is $9,000; adjusted by 12% factor it is $8,960. Therefore, it is evaluated at $9,000. The qualifying country offer receives the award because it is evaluated without adjustment and is the lowest offer.

Example F

Nonqualifying Country Offer, including duty of $2,000 ..... $8,000
Domestic Offer—Large 10,000
Domestic Offer—Small 9,500
Qualifying Country Offer 8,800

Award on Nonqualifying Country Offer. Nonqualifying Country Offer, adjusted by 50% factor is $9,000; adjusted by 12% factor it is $8,960. Therefore, it is evaluated at $9,000 which is still lower than both domestic offers. Accordingly, the qualifying and nonqualifying country offers are evaluated on an equal basis as if the domestic offers had never been submitted, and the award is made on the nonqualifying country offer.

Example G

Nonqualifying Country Offer $10,000
Qualifying Country Offer 11,500

Award on Nonqualifying Country Offer. Since there is no domestic offer, the nonqualifying country and qualifying country offers are evaluated on an equal basis, and the award is made on the nonqualifying country offer.

(S–73) When a qualifying country offer is received for defense equipment listed in 225.7405 or FAR 8.203, rejection of that offer in the interest of protecting the domestic mobilization base is required, except when the quantity for which the offer is made has been identified as a quantity in excess of that required to maintain the U.S. defense mobilization base for those items. In those instances when it has been determined prior to solicitation that the item is not to be supplied from any foreign source, offerors shall be so notified in the solicitation. When rejection of a qualifying country offer is contemplated for reasons of national interest or for mobilization base considerations and the defense equipment involved is not listed in 225.7405 or FAR 8.203, a copy of the proposed decision shall be forwarded to OASD(A&L)(P) (International Acquisition), 10 working days in advance of issuance of the rejection.

(S–74) When proposed awards are submitted for Secretarial decision pursuant to (S–71) above, each submission shall include a copy of each offer being considered for award, the date the offer expires, including extensions, a copy of the abstract of bids or proposals, and a statement justifying the proposed awards. Submissions should be forwarded to

allow 21 days for processing and Secretarial consideration, unless the nature of the item or market conditions indicate the need for processing in a shorter time.

(S–75) When performing the evaluation in (S–71) above for items for civil works activities, offers of qualifying country end products shall not be subject to the 50% evaluation factor of the Balance of Payments Program, but shall be subject to the 6% and 12% evaluation factors of the Buy American Act, unless a specific waiver of the Buy American Act is otherwise obtained for that acquisition through the procedures of this subpart.

225.107 Acquisition from or through other government agencies.

Balance of Payments evaluation procedures are not applicable to transactions described in FAR 25.107 (a), (b) and (c).

(S–70) Defense activities have the responsibility for compliance with the Buy American Act and Balance of Payments evaluation procedures when they purchase a foreign end item from (1) a mandatory Federal Supply Schedule which includes a domestic end product; or (2) a nonmandatory Federal Supply Schedule.

(S–71) Defense activities purchasing items of equipment and supplies for civil works projects for use in the United States by civil agencies or departments shall not apply the Balance of Payments Program 50% evaluation factor when evaluating offers; only the evaluation factors of the Buy American Act, as implemented by Executive Order 10582, dated 17 December 1954, shall be applied.

(S–72) In the case of coordinated acquisition under Part 8, compliance with the Buy American Act and Balance of Payments evaluation procedures is the responsibility of the Contracting Department, except when the Requiring Department specifies a foreign end product; in which case, the determination that a domestic end product is not available, including consideration of foregoing the acquisition or providing a U.S. substitute, shall be the responsibility of the Requiring Department.

225.108 Excepted articles, materials, and supplies.

(a) Pursuant to the Buy American Act, it has been determined that the articles, materials, and supplies listed in FAR 25.108(d)(1) and below, when purchased as end items or components, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. When required to be incorporated into (i) an end product or construction material manufactured in the United States, or (ii) a qualifying country end product or construction material, these items or components may be regarded as being of domestic origin. (For construction material, see FAR 25.2.)

(d)(1) Sperm oil.

(d)(S–70) *Scrap.* Scrap generated in, collected in, and prepared for processing in the United States, shall be considered as of domestic origin.

225.109 Solicitation provisions and contract clauses.

(a)(S–70) The provision at 252.225–7000, Buy American-Balance of Payments Program Certificate, shall be used in lieu of the provisions at FAR 52.225–1, Buy American Certificate, and FAR 52.225–6, Balance of Payments Program Certificate, and shall be inserted in any solicitation which includes the clause at 252.225–7001.

(a)(S–71) For small purchases using DD Form 1155, the provision at 252.225–7000 shall be used with the clause, Foreign Supplies, on DD Form 1155r. When so used, the provision may be modified by inserting a period after ". . . products" in subparagraphs (b)(i), (b)(ii), and (b)(iii) and then deleting the balance of the respective sentences.

(b) When quotations are obtained orally, vendors shall be informed that only domestic and qualifying country end products shall be acceptable, other than those items which have been excepted either on a blanket or an individual basis, or the price of the offered foreign end product meets the evaluation criteria in 225.105.

(d)(S–70) The clause at 252.225–7001, Buy American Act and Balance of Payments Program, shall be used in lieu of the clauses at FAR 52.225–3, Buy American Act-Supplies, and FAR 52.225–7, Balance of Payments Program. The contracting officer shall insert the clause at 252.225–7001 in all solicitations and contracts (i) not utilizing small purchase procedures, (ii) which do not contain the clause at 252.225–7006, and (iii) for supplies and for services, which services require the furnishing of supplies (e.g., the leasing of equipment), except as cited in 225.302(S–72)(1).

(d)(S–71) For small purchases using DD Form 1155, the clause at 252.225–7001 may be inserted in lieu of the clause, Foreign Supplies, on DD Form 1155r.

(d)(S–72) The contracting officer shall insert the clause at 252.225–7002, Qualifying Country Sources as Subcontractors, whenever the clause at 252.225–7001 or the clause 252.225–7006 is used in the solicitation or contract.

(S–70) *Solicitation of offers.* Solicitations shall state that the specific information as to articles, materials, and supplies excepted from these procedures (see 225.108(d)(1)) is available to prospective contractors upon request. When only domestic end products are acceptable, the solicitation shall so state.

Subpart 225.2—Buy American Act—Construction Materials

225.202 Policy.

(a)(1) and (2) The restrictions of the Buy American Act do not apply when it is determined by the Secretary concerned that the use of a particular domestic construction material would (i) unreasonably increase the cost, or (ii) be impracticable. When proposed awards are submitted for approval, each submission shall include a description of the materials, including unit and quantity, estimated costs, location of the construction project, name and address of the proposed contractor, and a detailed justification of the impracticability of using domestic materials. Submissions shall allow 21 days for processing, unless the nature of the item or market conditions indicate the need for processing in a shorter time.

(a)(3) The Buy American Act does not apply to articles, materials, and supplies of a class or kind determined to be not mined, produced or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality. Certain construction materials determined to be exempt under this exception are set forth in FAR 25.108(d)(1). Purchase of nondomestic construction material on the basis of "nonavailability," when the material is not listed in FAR 25.108(d)(1), shall be made only if the determination for the purchase and use of such material is approved by:

(i) The Secretary of the Department concerned, if the cost of such materials is estimated to exceed $100,000;

(ii) The Head of the Contracting Activity or his immediate deputy, if the cost of such materials is estimated not to exceed $100,000;

(iii) The principal staff officer responsible for procurement within the contracting activity (or, in the Air Force, within the major air command) concerned, if the cost of such materials is estimated not to exceed $10,000; or

(iv) An official at a level above the contracting officer, if the cost of such materials is estimated not to exceed $2,500. Before granting such approval or making such determination, the feasibility of foregoing the requirement or providing a United States substitute shall be considered. When proposed awards are submitted for approval, each submission shall include a description of the materials, including unit and quantity, estimated costs, location of the construction project, name and address of the proposed contractor, and a detailed justification of the impracticability of using domestic materials. Submissions shall allow 21 days for processing, unless the nature of the item or market conditions indicate the need for processing in a shorter time.

(S–70) *Panamanian materials for use in the Canal Zone.* In accordance with the Memorandum of Understanding ancillary to the Treaty with the Republic of Panama, signed 25 January 1955, articles, materials, and supplies that are mined, produced, or manufactured in Panama and are purchased for use in the Canal Zone are excepted from the Buy American Act.

225.205 Solicitation provision and contract clause.

(S–70) *Nondomestic construction material.* When a determination has been made that certain construction materials may be used without regard to The Buy American Act, the clause at 252.225–7003, Nondomestic Construction Materials, shall be included in the contract by the contracting officer, and the excepted item shall be listed therein. When this clause is used, the contracting officer shall place in the contract file a copy of the signed approval, and a copy thereof shall be available for public inspection.

Subpart 225.3—Balance of Payments Program

225.300 Scope of subpart.

This subpart implements the Department of Defense Balance of Payments Program with respect to all acquisitions of (a) services which require the furnishing of end items (e.g., leasing of equipment) and supplies required for use outside the United States, except petroleum and Military Assistance Program acquisitions (see 225.72); and (b) scientific and technical knowledge, resulting in dollar expenditures outside the United States and Canada. However, the exception regarding Military Assistance Program acquisitions does not apply to 225.370. Defense requirements as to the use of U.S. Flag vessels, which effect the Balance of Payments Program, are set forth in FAR 47.5.

225.302 Policy.

(a) It is the policy of the Department of Defense to implement the Balance of Payments Program using evaluation procedures similar to those which implement the Buy American Act.

(S–70) *Prohibition against fragmenting acquisitions.* As to those provisions of this subpart which state dollar limitations below which exceptions permitting the purchase of foreign items may be made if certain conditions are satisfied, requirements aggregating more than any such limitations shall not be broken into separate purchases which are less than such limitations merely for the purpose of allowing such exceptions.

(S–71) *Real property construction, repair, and maintenance.*

(1) Contracts for construction, repair, and maintenance of real property outside the United States will, to the extent required by DoD Directive, specify that U.S. materials will be used, or that Government materials and equipment will be furnished, only when the cost of the U.S. items (including costs associated with transportation and handling) does not exceed the cost of acceptable foreign items plus 50 percent. A differential greater than 50 percent may be used when specifically authorized in accordance with departmental procedures.

(2) The evaluation referred to in (1) above is normally accomplished in the estimating process prior to solicitation for award of a real property construction, repair or maintenance contract. This paragraph does not apply to direct contracts for acquisition of construction materials and equipment for use outside the United States. The procedures of 225.303 shall be used for such acquisitions (also see 225.302(S–73)).

(S–72) *Exceptions.*

(i) Acquisitions of end products (including construction materials) and applicable services for use outside the United States should be made in the following cases without regard to the origin of the end products. In these cases, the provision at 252.225–7000 and the clauses at 252.225–7001 and 252.225–7002 shall not be used.

(i) *Treaty or executive agreement*—acquisitions required to be made from indigenous sources pursuant to a treaty or executive agreement between governments.

(ii) *Small purchases*—acquisitions by contracting officers located outside the United States, which are estimated not to exceed $25,000 in foreign cost.

(iii) *Perishable subsistence*—acquisitions of perishable subsistence items when it is determined that delivery from the United States would destroy or significantly impair their quality at the point of consumption. The determination shall be made prior to acquisition by the individuals designated in (2)(i) below or their immediate deputies, except that this authority may be redelegated for acquisitions estimated not to exceed $500,000 in foreign cost. A determination is not required for the acquisition of perishable subsistence items for commissary resale.

(iv) *Panamanian products used in Panama*—acquisitions of articles, materials or supplies that are mined, produced, or manufactured in Panama when acquired by, and for use of, U.S. Forces in Panama.

(v) *Services*—Services which do not primarily involve the acquisition of equipment or supplies.

(vi) *Certain food items*—acquisition of bananas, tea, coffee, spices, herbs, sugar, cocoa, cream of tartar, tapioca, and coconut.

(vii) *Miscellaneous*—acquisition of the requirements listed below, *Provided*, they do not duplicate or replace an existing organic service capability.

(A) All items on the list at FAR 25.108(d)(1);

(B) Utilities, including gas, water, electricity, steam, sewage, refuse collection and disposal;

(C) Maintenance and repair of, and acquisition of spare parts for, foreign-manufactured vehicles, equipment, machinery and system; *Provided*, in the case of parts, That this exception applies only if the acquisition must be restricted to the original manufacturer or its supplier in accordance with DoD Standardization policy (see DoD 4120.3);

(D) Industrial gases;

(E) Brand drugs specified by the Defense Medical Materiel Board;

(F) The following bulk construction materials: sand, gravel and other soil materials, stone, concrete masonry units; and fired brick;

(G) Overhaul and repair of vessels, aircraft, and vehicles which are home-ported/stationed/deployed overseas and which, because of their operating commitments, cannot return to the United States or to U.S.-operated repair facilities;

(H) Ice (wet or dry);

(I) Books, pamphlets, newspapers, magazines, periodicals, and printed briefs and films not printed in the United States and for which there are no substitutes of U.S. origin which are intended for use in the Department of Defense Overseas Dependents Schools; and

(J) Ready-mixed asphalt and portland cement concrete; *Provided*, That foreign cost is estimated not to exceed $10,000.

(viii) *Excess and near-excess foreign currencies*—acquisitions made with excess or near-excess foreign currencies when acquisition costs are in accordance with 225.7604.

(ix) *Commissary resale*—purchases of subsistence items of foreign origin which are intended for resale in overseas commissary stores.

(x) *Nonavailability in the United States*—acquisitions as to which it is determined in advance by the individuals designated in (2) below that (A) the requirements can only be filled by foreign end products because U.S. end products are not available per se, or are not available within the time required to meet urgent military requirements directly related to maintaining combat capability, the health and safety of DoD personnel, or to protect property, and (B) that it is not feasible to forego filling the requirements or to provide a U.S. substitute for it. This authority is not intended for use in making repetitive supply acquisitions or acquisitions of total annual supply requirements of items available in the United States but not available within the time required.

(xi) *Unreasonable cost*—acquisitions, other than those covered in (i) through (x) above where United States end products or services are available and the difference between the domestic cost and the foreign cost exceeds 50% of the foreign cost, if so determined in advance by the individuals designated in (2) below.

(2) The individuals listed below, and their immediate deputies are designated to make the determinations required by (1) (iii), (x), and (xi) above.

(i) For acquisitions estimated not to exceed $2 million in foreign cost, except that this authority may be redelegated to other individuals specifically designated for this purpose for acquisitions estimated not to exceed $500,000:

Department of the Army—

Deputy Chief of Staff for Procurement and Production, U.S. Army Materiel Command;
Commander in Chief, U.S. Army, Europe; and DCSLOG, U.S. Army, Europe;
Commander, Eighth U.S. Army; and Chief of Staff, Eighth U.S. Army;
Commander, Corps of Engineers Command;
Commander, U.S. Army, Japan;
Commander, U.S. Army Medical Research and Development Command;
Commander, U.S. Army Forces Command.

Department of the Navy—

Commander-in-Chief, U.S. Naval Forces, Europe;
Commander, U.S. Naval Forces, Japan;
Commander, U.S. Naval Forces, Philippines;
OASN(S&L), CBM;
Commander-in-Chief, U.S. Atlantic Fleet;
Commander, Naval Logistics Command, Pacific Fleet;
Commander, Military Sealift Command (MSC);
Commandant, U.S. Marine Corps;
Commander, Naval Facilities Engineering Command;
Commanding General, III Marine Amphibious Force.

Department of the Air Force—

Commander, U.S. Air Forces in Europe;
Commander, Pacific Air Force;
Commander, Military Airlift Command (MAC);
Commander, Air Force Logistics Command;
Commander, Air Force Systems Command;
Commander, Strategic Air Command;
Commander, Tactical Air Command;
Commander, Air Force Communications Command;
Commander, Space Command.

Defense Logistics Agency—

Executive Director, Contracting.

Defense Communications Agency—

Director.

(ii) For acquisitions estimated to exceed $2 million in foreign cost—Secretary of the Department concerned.

(3) Acquisition of scientific and technical knowledge resulting in expenditures outside the United States and Canada shall be made only in the following cases:

(i) Those set forth in (1) (i), (ii), and (viii) above;

(ii) When it is determined in advance, by the individuals designated in (4) below, that the requirement can only be filled by foreign end products or services and that it is not feasible to forego filling the requirement or to provide a U.S. substitute for it; and

(iii) Acquisitions other than those covered in (i) and (ii) above when U.S. end products or services are available, and the difference between the domestic cost and the foreign cost exceeds 50% of the foreign cost as determined by the individuals designated in (4) below. Whenever practicable, such acquisitions shall be made on a cost-sharing basis or other arrangement designed to limit any adverse effect on the balance of payments. Policy questions concerning such arrangements should be directed to the Assistant Secretary of Defense (Acquisition and Logistics).

(4) The individuals listed below and their immediate deputies are designated to make the determinations required by (3) (ii) and (iii) above.

(i) For acquisitions estimated not to exceed $2 million in foreign cost, except that this authority may be redelegated to individuals specifically designated for this purpose for acquisitions estimated not to exceed $100,000:

Department of the Army—

Commanding General, Army Materiel Development and Readiness Command;
Commander, Corps of Engineers Command;
Surgeon General, Army Medical Corps;
Chief of Research, Development and Acquisition;

Department of the Navy—

Chief of Naval Research;
Commander, Naval Air Systems Command;
Commander Naval Electronics Systems Command;
Commander, Naval Sea Systems Command;
Chief, Bureau of Medicine and Surgery;
Commander, Naval Supply Systems Command;
Chief of Naval Development;
Oceanographer of the Navy;
Commander, Naval Facilities Engineering Command;
Military Sealift Command;
DC/S Installations and Logistics Department Headquarters, U.S. Marine Corps;

Department of the Air Force—

Commander, Air Force Systems Command;
Commander, Air Force Logistics Command;

Defense Agencies—

Director, Advance Research Projects Agency;
Director, Defense Nuclear Agency;
Director, Defense Communications Agency;
Director, Defense Intelligence Agency.

(ii) For acquisitions estimated to exceed $2 million in foreign cost—Secretary of the Department concerned, or the Assistant Secretary of Defense (Acquisition and Logistics) in the case of agencies set forth in (4)(i).

(5) Complete documentation justifying acquisitions under (1) and (3) above shall be prepared except for acquisitions made pursuant to (1)(ii) and (1)(vi). Such documentation shall be prepared by requiring activities, furnished in requests for determination submitted to the individuals listed in (2) and (4) above, and included in the contract file.

(S–73) *Construction materials.* Purchase of materials, equipment, and supplies for construction overseas shall generally be the responsibility of the contractor performing the work; but where necessary to comply with foreign law, or to avoid taxation, or to obtain other advantages, purchase may be by the United States. Contracting Officers shall consider savings that may be obtained by exemptions from import and other taxes and, to the extent economical, shall take advantage of tax exemptions available under existing agreements. See 229.402–70. In specifying materials, supplies, and equipment for construction in foreign countries, contracting officers shall make maximum use of foreign currencies available for the project, shall encourage the use of American materials, equipment, and supplies and shall obtain the maximum feasible competition from indigenous, other foreign and American suppliers.

225.303 Procedures.

Except as provided in 225.302(a)(S–72), proposed acquisitions of supplies and applicable services for use outside the United States shall be accomplished in accordance with the evaluation procedures in (b) below.

(a) *Solicitation of offers.* When quotations are obtained orally, vendors shall be informed that only domestic and qualifying country end products shall be acceptable other than those items which have been excepted either on a blanket or an individual basis or the price for the nonqualifying country end item meets the evaluation criteria in (b) below. When only domestic end products are acceptable, the solicitation shall so state.

(b) *Evaluation.*

(1) In accordance with the Balance of Payments Program, when these procedures result in the acquisition of foreign end products, the acquisition of domestic end products is deemed unreasonable in cost or inconsistent with the public interest. Except as provided herein and in 225.105, offers shall be evaluated so as to give preference to domestic offers as follows:

(i) Each nonqualifying country offer of defense equipment (but see exception in (ii) below) shall be adjusted for purposes of evaluation by increasing such offer by 50%. If the foregoing procedure results in a tie between a nonqualifying country offer, as evaluated, and a domestic offer, award shall be made on the latter. In all other instances, use the tie-breaking procedures in FAR 14.407–6.

(ii) In the event that a domestic offer, a qualifying country offer, and a nonqualifying country offer compete for defense equipment, the qualifying country offer shall be evaluated without applying the price differentials of this paragraph, whereas the nonqualifying country offer shall be subjected to the price differentials (see Example A below). However, in the event the low domestic offer exceeds the evaluated price of the nonqualifying country offer, all foreign offers shall be evaluated as if no domestic offer was submitted (see Example B below). In the event a qualifying country offer competes against a nonqualifying country offer and no domestic offer is submitted, they shall be evaluated on an equal basis (see Example C below).

(2) The following examples illustrate how the procedure in (1) above should be applied.

Example A

Nonqualifying Country Offer..... $6,000
Domestic Offer..... 8,900
Qualifying Country Offer..... 8,800

Award on qualifying country offer. The nonqualifying country offer, adjusted by 50% factor is $9,000. The qualifying country offer receives the award because it is evaluated without adjustment and is the lowest offer.

Example B

Nonqualifying Country Offer..... $6,000
Domestic Offer..... 9,500
Qualifying Country Offer..... 8,800

Award on nonqualifying country offer. Nonqualifying country offer, adjusted by 50% factor is $9,000. It is still lower than the domestic offer. Accordingly, the qualifying and nonqualifying country offers are evaluated on an equal basis as if the domestic offer had never been submitted and the award is made on the nonqualifying country offer.

Example C

Nonqualifying Country Offer..... $10,000
Qualifying Country Offer..... 11,500

Award on nonqualifying country offer. Since there is no domestic offer, the nonqualifying country and qualifying country offers are evaluated on an equal basis, and the award is made on the nonqualifying country offer.

225.304 Excess and near-excess foreign currencies.

(See Subpart 225.76.)

225.305 Solicitation provision and contract clauses.

(c) *Clauses.* The contracting officer shall insert the clause at 252.225–7004, Identification of Expenditures in the United States, under the conditions set forth at 225.370 (see 225.109 for use of clauses at 252.225–7000, 7001, and 7002).

225.370 Identification of expenditures in the United States.

DoD balance of payment reporting instructions require the reporting of the amount of acquisitions of U.S. end products and services accomplished under these regulations. The following provisions are designed to facilitate such reporting by cognizant accounting and disbursing officers. In implementing these provisions, it is essential that there be appropriate liaison between acquisition, accounting, and disbursing personnel at each activity involved.

(a) Except as provided in (b) below, the clause at 252.225–7004, Identification of Expenditures in the United States, shall be included in each contract in excess of $25,000 that—

(1) Requires the contractor to furnish U.S. end products, except that the clause in 252.225–7004 is not required if the contractor is a domestic concern and the Government will take title to the end products within the United States; or

(2) In the case of a contract for construction, repair or maintenance of real property, or for services, to be performed outside the United States, either—

(i) Requires the contractor to acquire specified materials, equipment, or services from U.S. sources (whether or not the contractor is a domestic concern), or

(ii) Is with a contractor who is a domestic concern (whether or not specified items must be acquired from U.S. sources).

(b) In lieu of the clause specified at (a) above, the following statement may be placed prominently on the face of each such contract, where the contracting officer considers that greater accuracy will be achieved or that inclusion of the contract clause is impracticable:

U.S. Expenditures for:
U.S. end products—_____% of each invoice.
U.S. services—_____% of each invoice.
Transportation on U.S. carriers—_____% of each invoice.
(See DoD FAR Supplement 252.225–7004 for definitions.)

(c) Contracts and purchase orders of $25,000 or less, which otherwise meet the criteria in (a) above for including the clause at 252.225–7004, shall have the statement in (b) above placed prominently on their face.

Subpart 225.4—Purchases Under the Trade Agreements Act of 1979

225.401 Definitions.

"Eligible product" means a designated or Caribbean Basin country end product listed at 225.403(S–70).

225.402 Policy.

(b) There shall be no purchase of a foreign end product listed in 225.403(S–70) with a total value at or above that specified in the FAR which is not a designated or Caribbean Basin country end product except as provided below:

(1) National interest exceptions must be approved on a case-by-case basis. An exception request with supporting rationale shall be submitted in accordance with Departmental procedures to DASD(A&L)(P) or designee.

(2) End products from countries listed at 225.7310(a) and 225.7401, and from countries at 225.75 are limited to those items listed on appropriate annexes.

225.403 Exceptions.

(d) This exception includes purchases from foreign sources where prohibited by the Department of Defense Annual Appropriations Act (see 225.7002). The products listed at 225.403(S–70) generally do not come under this exception, but in the event a Department considers an individual acquisition of such a listed product to be a purchase "indispensable for national security or national defense purposes," and appropriate for exclusion from the provisions of this subpart, a request with supporting rationale shall be submitted in accordance with Departmental procedures for approval by DASD(A&L)(P) or designee.

(S–70) *List of eligible products.* The following list is arranged according to Federal Supply Classifications. If an item is not within an FSC listed below, FAR Subpart 25.4 does not apply. As noted in FAR 25.401, Caribbean Basin country end products are limited to those which are eligible for duty-free treatment under 19 U.S.C. 2703(b). The list below of eligible products has been annotated to indicate those products which are eligible for designated countries, but are not presently eligible for Caribbean Basin countries due to this limitation. [Note: Most of the excluded product categories for Caribbean Basin countries mentioned in FAR 25.401 are not mentioned below, such as textiles, apparel articles, flat goods, footwear, handbags, work gloves, leather wearing apparel, and tuna, because these products do not fall into any of the eligible product categories due to other restrictions on foreign purchases.)

FSC Category/Description

22 Railway equipment
23 Motor vehicles, trailers, and cycles (except 2350 and buses under 2310)
24 Tractors
25 Vehicular equipment components
26 Tires and tubes
29 Engine accessories
30 Mechanical power transmission equipment
32 Woodworking machinery and equipment
34 Metalworking machinery (except 3408, 3410–3419, 3426, 3433, 3441–3443, 3446, 3448, 3449, 3460, 3461)
35 Service and trade equipment
36 Special industry machinery (except 3690)
37 Agricultural machinery and equipment
38 Construction, mining, excavating, and highway maintenance equipment
39 Materials handling equipment
40 Rope, cable, chain and fittings
41 Refrigeration and air conditioning equipment
42 Fire fighting, rescue and safety equipment
43 Pumps and compressors
44 Furnace, steam plant and drying equipment (except 4470)
45 Plumbing, heating and sanitation equipment
46 Water purification and sewage treatment equipment
47 Pipe, tubing, hose and fittings
48 Valves
49 Maintenance and repair shop equipment (except 4920–4927, 4931–4935, 4960)
52 Measuring tools
53 Hardware and abrasives
54 Prefabricated structures and scaffolding
55 Lumber, millwork, plywood and veneer
56 Construction and building materials
61 Electric wire, and power and distribution equipment
62 Lighting fixtures and lamps
63 Alarm and signal systems
65 Medical, dental, and veterinary equipment and supplies
66 Instruments and laboratory equipment (except aircraft clocks under 6645)—See FAR 25.401 exclusion of certain watches and watch parts for certain Caribbean Basin countries
67 Photographic equipment
68 Chemicals and chemical products
69 Training aids and devices
70 General purpose ADPE, software, supplies and support equipment
71 Furniture
72 Household and commercial furnishings and appliances
73 Food preparation and serving equipment
74 Office machines, visible record equipment and ADP equipment
75 Office supplies and devices
76 Books, maps, and other publications
77 Musical instruments, phonographs, and home type radios
78 Recreational and athletic equipment
79 Cleaning equipment and supplies
80 Brushes, paints, sealers and adhesives
81 Containers, packaging and packing supplies (except 8140)
8460 Luggage—See FAR 25.401 for exclusion of luggage for Caribbean Basin countries
85 Toiletries
87 Agricultural supplies
88 Live animals
91 Fuels, lubricants, oils and waxes—See FAR 25.401 for exclusion for Caribbean Basin countries
93 Nonmetallic fabricated materials
94 Nonmetallic crude materials
96 Ores, minerals and their primary products
99 Miscellaneous

225.404 Labor surplus area set-asides.

(See 252.220–7000 and 252.220–7001.)

225.405 Procedures.

(d) This requirement does not apply to offshore procurements or to Defense Fuel Supply Center post, camp, or station overseas requirements. (See 225.501.)

225.407 Solicitation provision and contract clause.

(a)(1) The provision, Buy American-Trade Agreements-Balance of Payments Program Certificate, at 252.225–7005, shall be used in all solicitations in which the Buy American Act, Trade Agreements Act, and the Balance of Payments Program clause at 252.225–7006 is used. This provision is to be used in lieu of that at FAR 52.225–6.

(a)(2) The clause at 252.225–7006, Buy American Act, Trade Agreements Act, and the Balance of Payments Program, shall be used in lieu of the clause at FAR 52.225–9 and shall be inserted along with the clause at 252.225–7002, Qualifying Country Sources as Subcontractors, in all solicitations and contracts subject to the Trade Agreements Act. The clause at 252.225–7006 may also be used in lieu of the clause at 252.225–7001.

Subpart 225.5—Payment in Local Foreign Currency

225.501 Policy.

(a) Offshore contracts with local firms will be priced and paid in local currency unless (i) there exists a Status of Forces Agreement providing for payment in U.S. currency; or (ii) the use of local currency is determined to be inequitable, and the use of U.S. currency is authorized at a level above the contracting officer. An example of a situation where pricing and paying in dollars may be appropriate or necessary would be a contract requiring significant purchases in the United States (see 225.76).

Subpart 225.6—Customs and Duties

225.600 Scope of subpart.

This subpart sets forth policies and procedures for excepting from import duty certain supplies that are imported into the United States in connection with Defense contracts. Ordinarily, duty is payable for the importation of non-Defense supplies obtained outside the United States. Two exceptions to this rule are available to the Department of Defense: "Emergency purchases of war materials abroad" by a Military Department may be imported duty-free pursuant to Schedule 8, Part 3, Item No. 832.00, Tariff Schedules of the United States; and certain supplies (not including equipment) for vessels or aircraft operated by the United States may be imported duty-free pursuant to 19 U.S.C. 1309. This subpart prescribes the uses and limits of these two exceptions. This subpart does not deal with or affect the evaluation of offers of foreign supplies as set forth elsewhere in Part 225. Although the procedures of this subpart may require or permit duty-free entry to be accorded foreign supplies in a given case, this in itself neither precludes nor requires the inclusion of duty in evaluating an offer of such supplies.

225.601 Definitions.

Emergency Purchase of War Material means any acquisition of foreign supplies if:

(1) The supplies comprise—

(i) Weapons, munitions, aircraft, vessels, or boats;

(ii) Agricultural, industrial, or other supplies used in the prosecution of war or for the national defense; or

(iii) Supplies, including components or equipment, necessary for the manufacture, production, processing, repair, servicing, or operation of supplies within (i) or (ii) above; and

(2) The acquisition—

(i) Is made in time of war or during a national emergency;

(ii) Is made because of a shortage of domestic supply, pursuant to a decision that the supplies are necessary for the adequate maintenance of the Armed Services;

(iii) Is made for the use of U.S. forces abroad or U.S. vessels in foreign waters; or

(iv) Consists of captured enemy war material, materials requisitioned by U.S. forces abroad, or materials rebuilt from other materials owned by, or turned over to U.S. forces, or materials loaned or given to a Military Department of the U.S. Government under exchange agreements with foreign governments.

225.602 Policy.

The issuance of duty-free entry certificates in appropriate situations will result in important savings to military appropriations. Such certificates must be limited to carefully selected situations so that they do not result in unanticipated profits to contractors, especially under fixed-price-type contracts, and involve the Government in administrative expenses outweighing any possible savings to military appropriations. It is DoD policy to use duty-free entry certificates whenever there is *reasonable assurance* that advantages in the form of savings to military appropriations will outweigh the administrative and other costs of processing duty-free entry certificates and of maintaining controls to verify that a full benefit of the certificates inures to the Government. As a rule, a contractor which has been awarded a fixed-price-type contract based on providing a domestic end product or component cannot subsequently furnish a foreign end product or component (including a qualifying country end product or component) and receive a duty-free entry certificate in accordance with FAR 52.225–10 or 252.225–7008 of this supplement without an appropriate reduction in contract price.

225.603 Procedures.

(a) *General.*

(1) To assure that the policy of 225.602 is carried out for emergency purchases of war materials abroad, the clauses at FAR 52.225–10 and 252.225–7014 of this supplement shall be used in each negotiated contract in excess of $100,000. Notwithstanding this dollar limit, the clauses may be inserted in any other negotiated contract when the contracting officer determines that to do so would further the policy in 225.602 and would be consistent with the limitations in (4) below, and in any such case the dollar figure in paragraphs (b)(1) and (i)(2) of the clause in FAR 52.225–10 may be reduced appropriately.

(2) When the clause at FAR 52.225–10 is used, the contracting officer shall insert the solicitation provision at 252.225–7007.

(3) In order to provide for duty-free entry for foreign supplies as required by various Memoranda of Understanding between the Department of Defense and allied nations and as required to fully implement the Trade Agreements Act, a clause entitled Duty-Free Entry—Qualifying Country End Products and Supplies is used in most DoD contracts (see 225.605).

(4) Duty-free entry certificates shall be issued as required by contracts containing any of the contract clauses described in 225.605. Consistent with 225.602, duty-free entry certificates may also be issued in connection with any other contract for an "emergency purchase of war material" (i.e. one not containing an appropriate clause) that falls within one of the following categories:

(i) Direct purchases of foreign supplies under a DoD prime contract regardless of whether title passes at point of origin or at destination in the United States; *Provided,* the contract states that the final price is exclusive of duty;

(ii) Purchases of foreign supplies by a domestic prime contractor under a cost-reimbursement type contract or by a cost-reimbursement type subcontractor (where no fixed-price prime or fixed-price subcontract intervenes between the purchaser and the Government), regardless of whether title passes at point of origin or at destination in the United States. If a fixed-price prime or fixed-price subcontract intervenes, the criteria stated in (iii) below should be followed; and

(iii) Purchases of foreign supplies by a fixed-price domestic prime contractor, a fixed-price subcontractor, or a cost-type subcontractor where a fixed-price prime contract, or fixed-price subcontract intervenes; *Provided,* (A) the fixed-price prime contract and, where applicable, fixed-price subcontract prices are, or are amended to be, exclusive of duty; (B) the prime contractor and, where applicable, the subcontractors concerned certify that the supplies so purchased are to be delivered to the Government or incorporated in Government-owned property or in an end product to be furnished to the Government, and that the duty will be paid if such supplies or any portion thereof are utilized for other than the performance of the Government contract or disposed of other than for the benefit of the Government in accordance with the contract terms; and (C) such acquisition abroad is authorized by the terms of the contract, the applicable subcontract, or by the contracting officer. In any case, the procedures required by the clauses prescribed in 225.605 shall be followed to the extent practicable.

(5) When the clauses cited at 225.605 are used, the Contracting Officer shall list in the contract the name and address of the CAO administering the contract and its activity address number (Appendix N of this supplement) in paragraph (d) of the clause at 252.225–7014 or paragraph (k) of the clause at 252.225–7008.

(b) *Formal entry and release.*

(1) *CAO responsibilities.* Contracting Officer assigned to administer the contract must assure that prime contractors are aware of and understand the clause requirements which are summarized below. Contractors should understand that failure by them or their subcontractors to include the data required by the clause will result in the shipment being treated as a shipment without benefit of free entry under Schedule 8, Part 3, Item No. 832.00, Tariff Schedules of the United States.

(i) Written notice from the contractor or any tier subcontractor to the CAO immediately upon award to a foreign supplier. The notice includes:

(A) Prime contract number plus delivery order number, if applicable;

(B) Total dollar value of the prime contract or delivery order;

(C) Expiration date of the prime contract or delivery order;

(D) Foreign supplier name;

(E) Number of the subcontract/purchase order for foreign supplies;

(F) Total dollar value of the subcontract for foreign supplies;

(G) Expiration date of the subcontract for foreign supplies;

(H) List of items purchased; and

(I) Contractor certification by the purchaser of foreign supplies that supplies to be entered duty-free are intended to be delivered to the Government or incorporated in the end item delivered under the contract.

(ii) Contractor and subcontractor responsibilities to instruct foreign supplier regarding shipping document information including the Activity Address Number as set forth by the clause and as listed in Appendix N.

(iii) Contractor duties to prepare and submit to the District Director of Customs all customs forms required to enter foreign purchased supplies in the United States, its possessions, or Puerto Rico for shipments other than to a military installation in the United States.

(iv) Understanding of the flow down provision of clauses.

(v) Procedure for adjustment to prime contract price with regard to duty not previously excluded (see 225.602).

(2) *Duty-free entry entitlements.* Upon receipt of the required notice of purchase of foreign supplies from the prime contractor or any tier subcontractor, the contracting officer administering the prime contract will verify the duty-free entitlement of goods to be entered under the contract. A review of the prime contract should ensure foreign supplies (quantity and price) identified in the notice are required for the performance of the contract.

(3) *Adjustment to prime contract price.* When notification is received from the contractor by the administrative contracting officer indicating that a foreign purchase is being placed that was not identified at the time of the prime contract award, a reduction to the prime contract price may be required in accordance with the Duty-Free Entry clause at FAR 52.224-10, the Duty-Free Entry—Qualifying Country End Products and Supplies clause at 252.225-7008 or pursuant to 225.603(a)(4) of this supplement. After determining the amount of duty that would be payable if duty-free entry certificates were not issued, an equitable adjustment to the prime contract price shall be made unless otherwise approved by the procuring contracting officer. Unless retained in accordance with 242.203, the authority to negotiate and issue such modifications reducing the contract price has been delegated to the ACO in accordance with 242.203(a)(S-74). After determining the price of foreign supplies exclusive of duty, the contracting officer administering the contract shall advise the contractor that that amount will be the maximum dollar value of supplies for which duty-free entry certificates will be issued.

(4) *Data required by DCASR New York.*

(i) Within 20 days of receipt of the notification of purchase of foreign supplies, ACOs will forward the following information to DCASR New York in the format shown below:

TO: Commander
DCASR New York
ATTN: Customs Function
201 Varick Street
New York, NY 10014

A contractor notification of the purchase of foreign supplies has been received in accordance with FAR 52.225-10 and 52.225-7014 of the DoD FAR Supplement or 252.225-7008 of the Supplement. Verification has been made that foreign supplies are required for the performance of the contract. If required, prime contract price has been or will be adjusted in accordance with 225.603(b)(3) of the DoD FAR Supplement.

In accordance with 225.603(b)(4) of the Supplement, the following information is provided:

Prime Contractor Name:
Prime Contract Number plus Delivery Order
Number, if applicable:
Total Dollar Value of the Prime Contract or Delivery Order:
Expiration Date of the Prime Contract or Delivery Order:
Foreign Supplier Name:
Number of the Subcontract/Purchase Order for
Foreign Supplies:
Total Dollar Value of the Subcontract for Foreign Supplies:
Expiration Date of the Subcontract for Foreign Supplies:
CAO Activity Address Number (Appendix N of the DoD FAR Supplement):

Signature:

Title:

(ii) If a contract modification results in a change to any data previously furnished to DCASR New York to verify duty-free entitlement, a revised notification of the changed data shall be forwarded to DCASR New York.

(3) *Customs forms and duty-free entry certificates.*

(i) *Execution of duty-free entry certificates.* The responsibility for issuing duty-free entry certificates for foreign supplies purchased under a DoD contract or subcontract rests with the Transportation Officer, DCASR New York. Upon receipt of import documentation for incoming shipments from the contractor, his agent, or the U.S. Customs Service, the Transportation Office, DCASR New York will verify the duty-free entitlement and execute the duty-free entry certificate.

(ii) *Customs import documentation.* Upon arrival of foreign supplies at ports of entry, the consignee, generally the contractor or his agent (import broker) for shipments to other than a military installation, will file U.S. Customs Form 7501, 7501A, or 7506 and U.S. Customs Form 3461, with the District Director of Customs.

(6) *Immediate entry and release.* Immediate release permits, executed on Customs Forms 3461 (Application for Special Permit for Delivery of Perishable and Other Articles, Immediate Delivery of Which is Necessary), entitle all shipments qualifying as "emergency purchase" of war material abroad to be released immediately by the District Directors of Customs at the various ports of entry, prior to and pending the filing of Customs Forms 7501, 7501A, or 7506 and a duty-free entry certificate. The existence of an immediate release permit on file at a port of entry does not dispense with the necessity of filing Customs Forms 7501, 7501A, or 7506 and appropriate duty-free entry certificates. Each Department designates the individuals responsible for issuance of Immediate Release Permits.

225.604 Exempted supplies.

(b) *Supplies for vessels or aircraft operated by the United States.*

(1) Subject to the considerations set forth in FAR 25.605, a duty-free entry certificate may be issued when "certain supplies (not including equipment)" are purchased for vessels or aircraft operated by the United States. As used in this paragraph, the term "certain supplies (not including equipment)" includes articles known as "stores", such as food, medicines and toiletries, and, in addition, all consumable articles necessary and appropriate for the propulsion, operation, and maintenance of the vessel or aircraft, such as fuel, oil, gasoline, grease, paint, cleansing compounds, solvents, wiping rags, and polishes. It does not include portable articles necessary and appropriate for the navigation, operation or maintenance of vessel or aircraft and for the comfort and safety of the persons on board, such as rope, bolts and nuts, bedding, china and cutlery, which are included in the term "equipment." The procedures to be followed in the issuance of such certificates shall be prescribed by the respective Departments.

(2) The duty-free entry certificate referred to in this paragraph shall be printed, stamped, or typed on the face of Customs Form 7501, or attached thereto, and shall be executed by a duly designated officer or civilian official of the appropriate Department in the following form:

(Date)

I certify that the acquisition of this material constituted a purchase of supplies by the United States for vessels or aircraft operated by the United States, and is admissible free of duty pursuant to 19 U.S.C. 1309.

(Name)

(Title)

(Organization)

225.605 Contract clause.

(a) When the contract is required to contain the clause at FAR 52.225-10, the contracting officer shall include the clause at 252.225-7014 and the provision at 252.225-7007 of this Supplement. Notwithstanding FAR 25.605, the clauses shall only be used within the limits contained at 225.603(a) of this supplement.

(S-70) *Duty-free entry—qualifying country end products and components.* The clause at 252.225-7008 shall be inserted in all contracts for supplies and in all contracts for services involving the furnishing of supplies, except that it need not be inserted when simplified small purchase procedures are used or in contracts for supplies exclusively for use outside the United States.

Subpart 225.7—Restrictions on Certain Foreign Purchases

225.703 Exceptions.

(b) For other than small purchases, an exception shall be approved by the Secretary of the Department concerned. Before granting an exception for other than small purchases, the Secretary concerned shall obtain the advice of the Assistant Secretary of Defense (International Security Affairs); however, such advice is not required for emergency purchases, or where supplies are not available from any other source and substitute supplies are not acceptable.

Subpart 225.8—International Agreements and Coordination

225.800 Scope of subpart.

This subpart concerns the applicability of international agreements other than those in Subparts 225.73, 225.74, 225.75, and coordination with overseas commands and activities in purchasing from foreign sources.

225.801 International agreements.

Treaties and international agreements in effect between the United States and governments receiving military and economic aid under the Foreign Assistance Act of 1961, affect acquisition in foreign countries. Copies of international agreements are filed with the United States European Command covering existing agreements in the United Kingdom of Great Britain and Northern Ireland, Western European countries, North Africa, and in the Middle East. Agreements with countries in the Pacific and Far East are filed with the United States Pacific Command (CINCPAC). Military Assistance Advisory Groups, Naval Missions, and Joint United States Military Aid Groups normally have copies of the agreements applicable to the countries concerned.

225.870 Coordination with overseas commands and activities.

When it has been determined that an acquisition will be made from a foreign contractor, overseas contracting offices shall be utilized to the maximum practical extent. Contracting offices not within the command jurisdiction of a unified or specified command, anticipating placement of contracts with foreign contractors, shall maintain liaison with the appropriate component commander during preaward negotiations and postaward administration. When an acquisition may result in a requirement for logistic support of contractor employees or additional Government employees in an overseas location, in support of US or FMS requirements, the contracting officer shall obtain advance approval from the appropriate component commander of the types of logistic support needed and of the costs associated with it. The contract file shall include documentation reflecting specific advance approval for such commitment from the appropriate component commander.

Subpart 225.9—Omission of the Examination of Records Clause

225.903 Conditions for omission.

(b) A determination of the Secretary under FAR 25.903(a)(2) does not require the concurrence of the Comptroller General or his designee. However, when a determination is the basis for exclusion of the Examination of Records by Comptroller General clause, the statute requires that a written report be furnished to the Congress. This report, which shall explain the reasons for the determination, shall be submitted in triplicate by the Department of Defense component concerned, to the Director for Information Operations and Reports, Washington Headquarters Services, Washington, DC 20301 (see also 225.7203).

225.904 Determination and findings.

Request for determination and findings for exclusion ordinarily will be initiated by the contracting officer. The report shall consist of a letter submitted through normal acquisition channels, addressed to the Secretary, setting forth all the facts necessary to arrive at an appropriate determination and findings.

Subpart 225.70—Appropriations Act Restrictions

225.7000 Scope of subpart.

This subpart implements the Defense Appropriations Act restriction on the availability of appropriated funds for the acquisition of any article of food, clothing, cotton, wool, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, specialty metals, or hand or measuring tools. However, reference should be made to the current Department of Defense Appropriations Act as a check on the current applicability of such restriction. This subpart also implements the restriction on acquisition of foreign buses contained in section 404 of Pub. L. 90-500 (see 225.7006), the restriction on R&D contracting with foreign sources contained in section 744 of Pub. L. 92-570 (see 225.7007), the restriction for the construction of major components of the hull or superstructure of any naval vessel or the construction of any naval vessel in foreign shipyards (see 225.7005), and the restriction on acquisition of manual typewriters which were manufactured by facilities located within states which are signatories of the Warsaw Pact (see 225.7004). Nothing herein shall affect the applicability of the Buy American Act or the Balance of Payments Program.

225.7001 Definitions.

As used in this subpart, the following terms have the meaning set forth below.

"Hand or Measuring Tools", means those tools listed in Federal Supply Classification 51 and 52 respectively.

"Possessions", as used in the phrase "United States or its possessions," includes Puerto Rico.

"United States" means the States and the District of Columbia.

"Specialty metals" means:

(a) Steels where the maximum alloy content exceeds one or more of the following limits: manganese, 1.65%; silicon, 0.60%; or copper, 0.60%; or which contains more than 0.25% of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium;

(b) Metal alloys consisting of nickel, iron-nickel and cobalt base alloys containing a total of other alloying metals (except iron) in excess of 10%;

(c) Titanium and titanium alloys; or

(d) Zirconium and zirconium base alloys.

225.7002 Restriction on food, clothing, fabrics, and specialty metals.

Except as provided in (a) below, contracting activities shall not acquire supplies consisting in whole or in part of any food, clothing, cotton, wool, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, or coated synthetic fabric, which have not been grown or produced in the United States or its possessions; or specialty metals, including stainless steel flatware which have not been melted in steel manufacturing facilities located within the United States or its possessions, but this does not restrict the acquisition of cotton or wool reprocessed or reused in the United States or its possessions or of foods manufactured or processed in the United States or its possessions.

(a) *Exceptions.* The following exceptions apply:

(1) Acquisitions outside the United States in support of combat operations;

(2) Acquisitions by vessels in foreign waters;

(3) Emergency acquisitions or acquisitions of perishable foods by establishments located outside the United States for the personnel attached thereto;

(4) Acquisitions of those supplies listed in FAR 25.108(d)(1) as to which the list does not make this subpart expressly applicable;

(5) Small purchases (for the purpose of this exception, a small purchase shall mean an acquisition action, as distinguished from a single line item, involving a total dollar amount not in excess of $10,000);

(6) Acquisitions of end items incidentally incorporating cotton or wool, of which the estimated value is not more than 10% of the total price of the end item; *Provided,* That the estimated value does not exceed $10,000 or 3% of the total price of the end item, whichever is greater;

(7) Any articles of food or clothing or any form of cotton, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, coated synthetic fabric, or wool, as to which the Secretary concerned has determined that a satisfactory quality and sufficient quantity grown or produced in the United States or its possessions cannot be acquired as and when needed at U.S. market prices,.

(8) Supplies purchased specifically for commissary resale (see 225.102(70)(4));

(9) Purchases of specialty metals or any item incorporating specialty metals, as to which the Secretary concerned or his authorized designee has determined that a satisfactory quality and sufficient quantity melted in the United States or its possessions cannot be acquired as and when needed at U.S. market prices;

(10) Purchases of specialty metals below the prime contract level for programs other than those for aircraft, missile and space systems, ships, tank-automotive, weapons, and ammunition; and

(11) Purchases of specialty metals or chemical warfare protective clothing when such purchases are necessary to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources for the purposes of offsetting sales made by the U.S. Government or U.S. firms under approved programs serving defense requirements, or when such acquisition is in furtherance of an agreement with a qualifying country.

(b) *Preference for certain domestic commodities.* The contracting officer shall insert the clause at 252.225–7009, Preference for Certain Domestic Commodities, in all solicitations expected to have, and all small purchases and contracts which do have, a value of $10,000 or more.

(c) *Preference for domestic wool.*

(1) The Secretaries have determined that to the extent that application of the procedures in this subparagraph results in the acquisition of any articles of wool (except mohair) not grown, reprocessed, reused, or produced in the United States or its possessions, a satisfactory quality and sufficient quantity of such articles grown, reprocessed, reused, or produced in the United States or its possessions cannot be acquired as and when needed at U.S. market prices.

(2) Offers for supplies of which wool is a part will be solicited on the following alternative bases:

(i) Manufactured in the United States or its possessions from domestic wool;

(ii) Manufactured in the United States or its possessions from foreign wool; and

(iii) Manufactured in the United States or its possessions from a blend of (percent) domestic wool and (percent) foreign wool.

(3) For each solicitation for supplies of which wool is a component part or end product, the contracting officer will insert the clause at 252.225–7010, Domestic Wool Preference. The evaluation factor will be computed in accordance with (6) below, and the amount of the factor will be inserted in place of the blank in (c) of the provision at 252.225–7010.

(4) If, on the date of opening of offers, the average market price of domestic wool of usable grades is no more than 10% above the average of the prices of representative types and grades of domestic wools in the wool category that includes the wool required by the specifications (see (6) below), which prices reflect the current incentive price as established by the Secretary of Agriculture, and if reasonable offers have been received for the advertised quantity offering 100% domestic wools, the contract will be awarded for domestically produced articles using 100% domestic wools, and the procedure set forth in (5) and (6) below will be disregarded.

(5) In the evaluation of offers under this subpart, an evaluation factor computed in accordance with (6) below will be added to that portion of the offered price that represents foreign wool to be furnished or used in performance of the contract, and award will be made accordingly. In the event that tie offers result from such evaluation, award will be made to the offeror proposing to furnish or use the most domestic wool.

(6) The evaluation factor to be used under (5) above will be 10% of the average of the following prices of representative types and grades of domestic wools within that one of the following categories which includes the wool required by the specifications. (The following prices reflect the current incentive price of $0.62 per pound grease basis converted to grade and type clean basis.)

Representative type and grade	Price clean basis per pound (dollars)
Group 1—Grades 60's and finer	
Category 1—Staple, Average and Good French Combing (worsted type)	
The average of the following grades:	
Territory Original Bag Wool: Average and Good French Combing, 64's and finer	1.7748
Graded Territory and Texas Wool: Staple and Good French Combing, One-Half Blood, 60's/62's	1.6946
Graded Fleece Wool:	
Staple and Good French Combing, 64's and finer	1.7862
Staple and Good French Combing, One-Half Blood, 60's/62's	1.6259
Category 2—Short Average and Good French Combing and Clothing (woolen type)	
The average of the following grades:	
Territory Original Bag Wool: Short, French Combing and Clothing, fine (64's, not to exceed 15% of 60's/62's)	1.5801
Graded Territory and Texas Wool: Average and Good French Combing, One-Half Blood, 60's and 62's	1.6145
Graded Fleece Wool:	
Average and Good French Combing, 64's and finer	1.7061
Average and Good French Combing, One-Half Blood, 60's/62's	1.5343
Group 2—Grades 50's–60's	
Category 3—Staple and Good French Combing (worsted)	
The average of the following grades:	
Graded Territory and Texas Wool:	
Staple and Good French Combing, Three-Eighths Blood, 56's/58's	1.3648
Staple and Good French Combing, 50's/48's, One-Quarter Blood	1.3397
Graded Fleece Wool:	
Staple and Good French Combing, Three-Eighths Blood, 56's/58's	1.3626
Staple and Good French Combing, 50's/48's, One-Quarter Blood	1.2710
Category 4—Average French Combing (woolen type)	
The average of the following grades:	
Graded Territory and Texas Wool:	
Average French Combing, Three-Eighths Blood, 56's/58's	1.3053
Average French Combing, 50's/48's, One-Quarter Blood	1.2023
Graded Fleece Wool:	
Average French Combing, Three-Eighths Blood 56's/58's	1.2137
Average French Combing, 50's/48's, One-Quarter Blood	1.0678
Group 3—Grades Below 50's	
Category 5—Staple and Good French	
The average of the following grades:	
Graded Fleece Wool:	
Low One-Quarter Blood, 46's, 4 inches or more in length	1.1565
Common and Braid, 44's/36's, 5 inches or more in length	1.0763

(7) See Subpart 225.76 for procedures for using U.S.-owned foreign currency for payment of contracts for foreign-end products.

(d) *Preference for domestic specialty metals.*

(1) The contracting officer shall insert the clause at 252.225–7011, Preference for Domestic Specialty Metals (Major Programs), in all solicitations and contracts over $10,000 that call for the delivery to the Government of an article containing specialty metals within the following six major classes of programs: aircraft, missile and space systems, ships, tank-automotive, weapons, and ammunition.

(2) The contracting officer shall insert the clause at 252.225–7012, Preference For Domestic Specialty Metals, in all solicitations and contracts over $10,000, other than those covered by the clause in (d)(1) above, calling for the delivery of an article that contains specialty metals.

225.7003 Restriction on domestic hand or measuring tools.

Public Law 97–377 and subsequent laws appropriating funds for the Department of Defense have provided restrictions on the acquisition of hand or measuring tools. The contracting officer shall insert the clause at 252.225–7013, Preference for Domestic Hand or Measuring Tools, in all small purchases of $10,000 or more and in all contracts calling for delivery of hand or measuring tools.

225.7004 Restriction on sources for manual typewriters.

Public Law 97–377 provides that none of the funds available to the Department of Defense shall be available for the procurement of manual typewriters which were manufactured by facilities located within States which are Signatories to the Warsaw Pact.

225.7005 Restriction on the hull and superstructure of naval vessels.

Each year the Department of Defense Appropriations Authorization Act contains the Burns-Tollefson Amendment which reads:

Provided, That none of the funds herein provided for the construction or conversion of any naval vessel to be constructed in shipyards in the United States shall be expended in foreign shipyards for the construction of major components of the hull or superstructure of such vessel: *Provided further,* That none of the funds herein provided shall be used for the construction of any naval vessel in foreign shipyards.

This Amendment is incorporated into the Department of Defense Appropriations Act each year and is located under "Shipbuilding and Conversion, Navy".

225.7006 Restriction on acquisition of foreign buses.

(a) Section 404 of the Act of September 20, 1968 (Pub. L. 90–500), the Department of Defense Appropriation Authorization Act for Fiscal Year 1969, provides that:

No funds authorized for appropriation for the use of the Armed Forces of the United States under the provisions of this Act or the provisions of any other law shall be available for the purchase, lease, rental, or other acquisition of multipassenger motor vehicles (buses) other than multipassenger motor vehicles (buses) manufactured in the United States, except as may be authorized by regulations promulgated by the Secretary of Defense solely to insure that compliance with this prohibition will not result in either an uneconomical procurement action or one which would adversely affect the national interests of the United States.

(b) The objective of this statutory provision is to assure that only buses manufactured in the United States shall be used to satisfy requirements of United States Armed Forces located throughout the world for bus transportation, where such buses are available and where their use would not be uneconomical or contrary to the national interests of the United States. It should be applied whether the buses are purchased, leased, rented, or made available under contracts for transportation services. The use of foreign manufactured buses is authorized where the Head of the Contracting Activity determines that the use of U.S.-manufactured buses would be uneconomical or would adversely affect the national interests of the United States. However, foreign buses may be acquired without such determination in the following circumstances:

(1) When U.S.-manufactured buses are not available in time to satisfy requirements which cannot be postponed, foreign-manufactured buses may be used for a temporary period of time but not to exceed the lead time required for acquisition and delivery of U.S.-manufactured buses.

(2) When the requirement for buses is of a temporary nature to meet a special but nonrecurring requirement or where a recurring requirement is sporadic and infrequent, foreign-manufactured buses may be used for the temporary periods of time not to exceed the period of time needed to meet the nonrecurring or the recurring infrequent requirement.

(3) When foreign-manufactured buses are made available at no direct or indirect acquisition cost to the U.S. Government, foreign-manufactured buses may be used.

225.7007 Restriction on R&D contracting with foreign sources.

(a) Section 744 of the Defense Appropriations Act for FY 1973 (Pub. L. 92–570) provides that no funds appropriated for the Department of Defense are available for entering into any contract or agreement with any foreign corporation, organization, person, or other entity for the

performance of research and development in connection with any weapon system or other military equipment for the Department of Defense when there is a U.S. corporation, organization, person, or other entity equally competent to carry out such research and development and willing to do so at a lower cost.

(b) The above provision does not change the rules for the selection of research and development contractors set forth in FAR Part 35. However, when a U.S. and a foreign source are considered equally competent, the contracting officer will make a determination as to which of the sources will provide the services required at the lowest estimated cost to the Government.

Subpart 225.71—Canadian Purchases

225.7101 Mutual Canadian-American interests.

(a) Because of the close geographical proximity of the United States and Canada, and because of the mutual interest of both nations in the defense of North America, various steps have been taken during and since World War II to coordinate their economic efforts in the common defense, so as to achieve:

(1) Greater integration of military production;

(2) Greater standardization of military equipment;

(3) Wider dispersal of production facilities;

(4) Establishment of supplemental sources of supply; and

(5) Greater flow of defense supplies and equipment between the two countries.

Accordingly, it is DoD policy to seek the best possible coordination of the materiel programs of Canada and the United States and to assure Canada a fair opportunity to share in the production of military equipment and materiel involving programs of mutual interest to Canada and the United States and in the research and development connected therewith. Accomplishment of these purposes requires (i) the exemption of the restrictions of the Balance of Payment Program and the Buy American Act with respect to acquisitions for public use of supplies mined, produced, or manufactured in Canada in the manner prescribed in Subparts 225.1 and 225.3; and (ii) the Canadian Commercial Corporation, in placing contracts with Canadian or U.S. concerns, to insert suitable provisions in such contracts, obtaining for the Department of Defense the same production rights, data and information that the Department of Defense would obtain for itself pursuant to the FAR and this supplement if the Department were placing the contracts with U.S. concerns.

225.7102 Agreement with the Government of Canada.

(a) The agreement, dated 27 July 1956, as amended 17 December 1956, 31 May 1957, 6 January 1961, and 15 October 1962, between the Department of Defence Production (Canada) and the Department of Defense (see Appendix T Subpart 2), sets forth policies and provides for the implementation of procedures with respect to all contracts for supplies and services placed with the Canadian Commercial Corporation (an agency of the Government of Canada) on or after 1 October 1956.

(b) Subsequent to the execution of the agreement referred to in (a) above, the reorganization of the Canadian Government's departments and agencies vested the contracting authority of the former Canadian Department of Defence Production in the Department of Supply and Services. Pursuant to that reorganization, the authority of the Department of Defence Production to enter into cooperative development projects under the Memorandum of Understanding (see Appendix T) is vested in the Canadian Department of Industry, Trade and Commerce.

(c) This agreement and associated enabling provisions permit Canadian firms, including Canadian Crown corporations, a fair opportunity to participate in the production of defense equipment and materiel involving defense programs of interest to both nations.

(d) A contract with a supplier or contractor located in Canada should normally be made with and administered through the Canadian Commercial Corporation. (See 225.7104(b).)

(e) In connection with contracts placed with the Canadian Commercial Corporation, the Department of Supply and Services (Canada) provides without charge to the Defense Departments and Agencies, among other things, such contract administration services as cost and pricing analysis, industrial security, accountability and disposal of Government property, production expediting, compliance with Canadian labor laws, processing of termination claims and disposal of termination inventory, customs documentation, processing of disputes and appeals, and such other related contract administration functions as may be required with respect to the Canadian Commercial Corporation contract with the Canadian supplier. Additionally, in connection with such contracts, audits, when required, are performed by the Audit Services Bureau, Department of Supply and Services (Canada), and the Department of National Defence (Canada) provides inspection personnel, services and facilities, at no charge to the Defense Departments and Agencies.

225.7103 Guarantee by Canadian Government.

The Canadian Government guarantees to the U.S. Government all commitments, obligations, and covenants of the Canadian Commercial Corporation in connection with any contract or order issued to said Corporation by any contracting activity of the U.S. Government. The Canadian Government has likewise waived notice of any change or modification which may be made from time to time in these commitments, obligations, or covenants.

225.7104 Procedures for Canadian Purchases.

(a) *Bidding Procedures.*

(1) *Solicitation of Canadian firms.*

(i) Except as provided in (ii) below, Canadian firms shall be included on bidders mailing lists and comparable source lists only upon request by the Canadian Commercial Corporation. Such requests shall be forwarded by the Canadian Commercial Corporation to the activity having acquisition responsibility for the supplies or services involved.

(ii) Canadian planned producers under the Industrial Readiness Planning Program shall be included on bidders mailing lists for their planned items (see FAR 14.205–1).

(iii) Solicitations shall be sent directly to Canadian firms appearing on the appropriate bidders mailing lists. A complete copy of the solicitation and a listing of Canadian firms solicited shall be sent to the Canadian Commercial Corporation, Export Supply Centre, Ottawa, Ontario, K1A–OS6, Canada.

(iv) Upon request by the Canadian Commercial Corporation, solicitations shall be furnished to it even though no Canadian firms were solicited.

(v) Small purchases (see FAR Part 13) normally should be handled directly with Canadian firms and not through the Canadian Commercial Corporation.

(2) *Submission of offers.*

(i) As indicated in 225.7104(b) below, the Canadian Commercial Corporation should normally be the prime contractor. In order to indicate its acceptance of offers by individual Canadian companies, the Canadian Commercial Corporation issues a letter supporting the Canadian offer and containing the following information: name of the Canadian offeror; confirmation and endorsement of the offer in the name of the Canadian Commercial Corporation; and a statement that the Corporation shall subcontract 100% with the offeror.

(ii) When a Canadian offer cannot be processed through the Canadian Commercial Corporation in time to meet the bid-opening requirement or the closing date for receipt of proposals, the Corporation is authorized to permit Canadian firms to submit offers directly; *Provided,* That the Canadian offer and the Canadian Commercial Corporation endorsement are both received by the contracting officer prior to bid opening or the closing date for receipt of proposals.

(iii) All sealed bids shall be submitted by the Canadian Commercial Corporation in terms of U.S. currency. Contracts placed as a result of such sealed bidding shall not be subject to adjustment for losses or gains resulting from fluctuation in exchange rates.

(iv) All offers and quotations submitted by the Canadian Commercial Corporation, except those in which competition is obtained, shall be in terms of Canadian currency. However, the Corporation may, at the time of submitting the offer, elect to quote and receive payment in terms of U.S. currency; in which event, contracts arising therefrom shall provide for payment in U.S. currency and shall not be subject to adjustment for losses or gains resulting from fluctuation in exchange rates.

(b) *Contracting procedures.*

(1) Individual contracts covering purchases from suppliers located in Canada, except as noted in (2) below, shall be made with the Canadian Commercial Corporation, which has offices located at the Export Supply Centre, 11 Laurier Avenue, Hull, Quebec, Canada (mail address—Canadian Commercial Corporation, Export Supply Centre, Ottawa, Ontario, K1A–OS6 Canada), and at 2450 Massachusetts Avenue, NW., Washington, DC 20008. Contracts should normally be awarded to and administered through the Export Supply Centre Office in Hull, and all payments under such contracts awarded to the Canadian Commercial Corporation shall be made to that office. Under contracts with the Canadian Commercial Corporation, direct communication with the Canadian supplier is authorized and encouraged in connection with all technical aspects of the contract; *Provided,* however, that the approval of the Corporation shall be obtained on any matters involving changes to the contract.

(2) The general policy in (1) above need not be followed for negotiated purchases for experimental, developmental, or research work unless the contract is for a project under the Defense Development Sharing Program; purchases of unusual or compelling urgency; small purchases; or purchases made by U.S. Defense activities located in the Dominion of Canada.

(3) Prices in the contracts shall identify the type of currency; i.e., United States or Canadian. When contracts provide for payment in Canadian currency, the contract price shall be quoted in terms of Canadian dollars and shall identify the amount by the initials CN; e.g., $1,647.23CN. The contract shall clearly indicate on its face the US/Canadian conversion rate at the time of award and the US dollar equivalent of the Canadian dollar contract amount.

(c) *Administration procedures.*

(1) The following policy and procedures are applicable only to cost-reimbursement type contracts with Canadian contractors:

(i) On contracts with the Canadian Commercial Corporation (CCC), audits are automatically arranged by the Department of Supplies and Services (DSS) Canada (see 225.7102). Audit reports are furnished to DSS. Upon advice from DSS, the CCC will certify the invoice and forward it with Standard Form 1034 (Public Voucher) to the ACO for further processing (see 242.803(a)) and transmittal to the disbursing officer.

(ii) On contracts placed directly with Canadian firms, audits are requested by the ACO from the Audit Services Bureau (ASB), Ottawa, Ontario, Canada. Invoices are approved by the ASB/DSS auditor on a provisional basis pending completion of the contract and final audit. These invoices, accompanied by Standard Form 1034 (Public Voucher) are forwarded to the ACO for further processing (see 242.803(a)) and transmittal to the disbursing officer. Periodic advisory audit reports are furnished directly to the ACO.

(d) *Termination procedures.* The Canadian Commercial Corporation will continue to administer contracts that may be terminated by the U.S. contracting officer and settle all Canadian subcontracts in accordance with the policies, practices, and procedures of the Canadian Government in the termination and settlement of Department of Defence Production (Canada) contracts. The U.S. agency administering the contract with the Canadian Commercial Corporation shall render such services as are required by the Canadian Commercial Corporation with respect to settlement of any subcontracts placed in the United States, including disposal of inventory. The settlement of such U.S. subcontracts shall be in accordance with this regulation.

(e) *Acceptance of Canadian supplies.* Under f.o.b.-origin contracts with the Canadian Commercial Corporation where inspection has been performed by the Department of National Defence (Canada), pursuant to paragraph 6 of the Letter of Agreement (see Appendix T), acceptance of supplies or services which are in accordance with the terms of the contract, shall be made by the Department of National Defence (Canada) on behalf of the Defense Departments and Agencies. Signing of the acceptance certificate on the applicable United States Department of Defense inspection and acceptance form shall be considered satisfactory evidence for payment purposes.

(f) *Industrial security.* Industrial Security for Canada shall be in accordance with 225.7403(d) and pursuant to the United States-Canada Industrial Security Agreement of 31 March 1952, as amended.

225.7105 Contract administration.

(a) When services are requested from the Defense Contract Administration Services on contracts to be performed in Canada, the request shall be directed to:

Defense Logistics Agency, Defense Contract Administration Services, Management Area, Ottawa, 365 Laurier Avenue West, Ottawa, Ontario, Canada, K1A OS5

(b) When contract administration is performed in Canada by Defense Contract Administration Services, the paying office activity to be named in the contract for disbursement of DoD funds (DoD Department Code: 17—Navy; 21—Army; 57—Air Force; 97—All other DoD Components), whether payment is in Canadian or U.S. dollars, shall be:

Disbursing Office, Defense Contract Administration, Services Region, Cleveland, 1240 East 9th Street, Anthony J. Celebrezze Federal Building, Cleveland, Ohio 44199

Subpart 225.72—Military Assistance Program Acquisitions

225.7200 Scope of subpart.

This subpart implements the Military Assistance Program portion of the Foreign Assistance Act of 1961 (section 604, 22 U.S.C. 2354) and the policies set forth in the President's Determination under section 604(a) of the said act (Memorandum of October 18, 1961) and in Executive Order 10973 dated 3 November 1961.

225.7201 Statutory requirements.

(a) Section 604(a) of the Foreign Assistance Act of 1961, as implemented, provides that funds made available under the Act shall not be used for acquisition outside the United States except:

(1) To acquire items required for military assistance which are not produced in the United States;

(2) To make local purchases for administrative purposes;

(3) To use local currency available for military assistance purposes; or

(4) Where the Assistant Secretary of Defense (ISA) certifies that exclusion of acquisition outside the United States would seriously impede attainment of Military Assistance Program objectives.

(b) Where a MAP order involves acquisition covered by a certification issued in accordance with (a)(4) above, the Director of Military Assistance, Office of the Assistant Secretary of Defense (International Security Affairs), will specify in the order that the Military Department is authorized to contract offshore.

225.7202 Procedures.

The following procedures apply to all contracts for the Military Assistance Program (other than those excepted pursuant to 225.7201) citing funds authorized by the Foreign Assistance Act of 1961, or citing funds made available under Department of Defense Appropriation Acts when it is known at the time of acquisition that the items being acquired are to fill existing Military Assistance Program orders and that DoD appropriations are to be reimbursed from Foreign Assistance Act funds. The requirements of this paragraph do not apply to issues from DoD inventories or to replenishment of such inventories.

(a) *Method of purchase.* Acquisition for the Military Assistance Program shall be restricted to domestic concerns and to U.S. end products as defined in 252.225–7016. The Foreign Assistance Act of 1961 shall not be used as authority to contract without full-and-open competition under 10 U.S.C. 2304(c)(5).

(b) *Certificate.* When the acquisition is solely to fill existing Military Assistance Program orders, the solicitation shall so state. When the acquisition consists of both Military Assistance Program items and Non-Military Assistance Program items, the solicitation shall clearly designate the Military Assistance Program items. In either instance, the solicitation shall require that each offer for end products include either the certificate at 252.225–7000 or the certificate at 252.225–7005 and the certificate at 252.225–7015.

225.7203 Exemptions from examination of records requirement.

(a) *General.* Military Assistance Program purchases authorized to be made outside the United States under the Foreign Military Sales Act of 1968, as amended, and the Arms Export Control Act of 1976, as amended, are exempt (Executive Order No. 11223, dated 12 May 1965) from the requirement for examination of records by the Comptroller General (10 U.S.C. 2313(b) and section 3(b), Pub. L. 85–804) in the following circumstances:

(1) Contracts with foreign contractors (including foreign governments) to be performed outside the United States; and

(2) Contracts, and amendments and modifications thereof, entered into pursuant to Pub. L. 85–804 (see FAR Part 50). *Provided,* That the Department concerned shall make a determination that it is impracticable to include the Examination of Records clause or to obtain compliance therewith; such determinations may be made by any officer or official authorized to approve contracts, and amendments and modifications thereof, pursuant to FAR Part 50.

(b) Notwithstanding the exemptions permitted above, the contracting officer, where practicable, shall include the Examination of Records clause in contracts covered in (a)(1) above.

225.7204 Department of Defense audit and records.

Contracts exempted under 225.7203(a)(1) from the requirement for examination of records by the Comptroller General shall nevertheless include the clause at FAR 52.214–26, Audit—Sealed Bidding or at FAR 52.215–2, Audit—Negotiation, as appropriate, in accordance with the requirements of that paragraph.

225.7205 Contract provision and clause.

(a) The provision at 252.225–7015, United States Products Certificate (Military Assistance Program), shall be inserted in all solicitations which, in whole or in part, are subject to this subpart 225.72 under the conditions at 225.7202(b).

(b) The clause at 252.225–7016, United States Products (Military Assistance Program), shall be inserted by the contracting officer in all solicitations and contracts which call for end products which, in whole or in part, are subject to this Subpart 225.72, unless excepted pursuant to 225.7201 and in all solicitations which include the provision at 252.225–7015.

Subpart 225.73—Acquisitions for Foreign Military Sales

225.7300 Scope of subpart.

This subpart sets forth policies and procedures applicable to acquisitions made for the purpose of Foreign Military Sales (FMS) pursuant to the Arms Export Control Act. It does not apply to Foreign Military Sales made from inventories or stocks, to acquisitions for replenishment of inventories or stocks, or acquisitions made under DoD Cooperative Logistic Supply Support Arrangements. An FMS Agreement is an accepted Letter of Offer and Acceptance which is the document by which the U.S. Government agrees to sell defense articles and services to a foreign government or international organization.

225.7301 Applicable statutory provisions.

(a) *Contract authorization.*

(1) Pursuant to section 22 of the Arms Export Control Act (Pub. L. 90–629, as amended), the Department of Defense is authorized to enter into contracts for purposes of resale to foreign countries or international organizations.

(2) The Act provides in part that:

(i) The President may, without requirement for charge to any appropriation or contract authorization otherwise provided, enter into contracts for the acquisition of defense articles or defense services for sale for U.S. dollars to any foreign country or international organization if such country or international organization provides the U.S. Government with a dependable undertaking (A) to pay the full amount of such contract which will assure the U.S. Government against any loss on the contract; and (B) to make funds available in such amounts and at such times as may be required to meet the payments required by the contract and any damages and costs that may accrue from the cancellation of such contract, in advance of the time such payments, damages, or costs are due. Interest shall be charged on any net amount by which any such country or international organization is in arrears under all of its outstanding unliquidated dependable undertakings, considered collectively. The rate of interest charged shall be a rate not less than a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding short-term obligations of the United States as of the last day of the month preceding the net

arrearage and shall be computed from the date of net arrearage.

(ii) The President may, if he determines it to be in the national interest, issue letters of offer under section 22 of the Arms Export Control Act, as amended, which provides for billing upon delivery of the defense article or rendering of the defense service and for payment within 120 days after the date of billing. This authority may be exercised, however, only if the President also determines that the emergency requirements of the purchaser for acquisition of such defense articles and services exceed the ready availability to the purchaser of funds sufficient to make payments on a dependable undertaking basis and submits both determinations to the Congress together with a special emergency request for authorization and appropriation of additional funds to finance such purchases under this Act.

(b) *Commercial availability.* DoD policies and procedures with respect to commercial availability are contained in the Military Assistance and Sales Manual (DoD Manual 5105.38–M), Part III, Chapter H, entitled *Commercial Availability*, published by the Defense Security Assistance Agency. (See DoD Manual 5105.38–M.)

225.7302 Applicability.

The FAR and this supplement shall apply to all purchases and contracts made by the Department of Defense in support of Foreign Military Sales.

225.7303 Preparation of DoD offer and acceptance, DD Form 1513.

(a) DD Form 1513 lists the items and/or services, estimated costs, the terms and conditions of sale, and provides for the foreign government's signature to indicate acceptance.

(b) *Procedures.*

(1) In connection with each Foreign Military Sale expected to involve a contract in excess of $10,000 which cannot be placed on the basis of price competition (as, for example, when the foreign customer has designated only one source as acceptable), before the Department of Defense furnishes prices for information purposes to potential foreign customers, prices, delivery and other relevant information shall be requested from the prospective source, and such request shall state that it is for information for the purpose of a potential Foreign Military Sale and shall identify the customer.

(2) As a general rule on FMS programs requiring new acquisitions, the contracting officer should participate in the preparation of Price and Availability Data to support the tendering of the DoD Offer and Acceptance (DD Form 1513) by the U.S. Government to foreign countries and international organizations. In addition to the identification and review of sales commissions and fees, the contracting officer shall request contractors to identify in advance of the DoD Offer and Acceptance any unusual provisions or deviations, particularly those proposed for the contract which could affect the prices quoted. Such unusual contractual requirements shall also be identified in the submittal of the price and availability data to the Departmental activity responsible for providing the DoD Offer and Acceptance to the foreign country. If the Departmental activity expands, modifies or does not accept such requirements, the contractor shall be advised prior to the submission of the offer to the foreign country.

(3) Whenever applicable, the contracting officer shall request contractors to identify any anticipated logistic support necessary in order to perform the contract.

225.7304 Pricing acquisitions for foreign military sales.

(a) *General.* When the Department of Defense undertakes purchasing for sale to a foreign country which has committed itself to bear the cost of the acquisition, the Department of Defense assumes responsibility to see to it that no more than a fair price is paid for the acquisition. Accordingly, FMS contracts shall be priced on the same principles and with the same care as are used in pricing normal defense contracts. This does not mean that prices of normal defense contracts for an item are automatically applicable to FMS contracts for the same item. On the contrary, application to FMS contracts of the pricing principles established by FAR Part 15 and FAR Part 31 may require pricing results that differ from normal defense contract prices for the same item because certain kinds of costs may reasonably and allocably arise in different amounts for the former than for the latter. In this regard, known FMS requirements shall be separately identified in solicitations.

(b) *Commercial sales to foreign customers.* If the contractor has made sales of an item to foreign customers under comparable conditions, including quantity and delivery, the pricing of FMS contracts shall be in accordance with FAR Part 15.

(c) *Cost of doing business with a foreign government or an international organization.*

(1) In pricing FMS contracts, where non-U.S. Government prices as described in (b) do not exist, recognition should be given to costs of doing business with a foreign government or international organization (even though the form of the transaction is a defense purchase for the purpose of FMS) whenever comparable costs of doing business with the United States would be recognized in pricing normal defense contracts. Thus, recognition should be given to reasonable and allocable costs, even though such costs might not be recognized in the same amounts in pricing normal defense contracts. Examples of such costs include, but are not limited to, the following:

(i) Selling expenses (not otherwise limited by FAR Part 31); e.g.:

(A) Maintaining international sales and service organizations;

(B) Sales commissions and fees in accordance with FAR Subpart 3.4;

(C) Sales promotions, demonstrations, and related travel for the purposes of sales to foreign governments; however, such costs shall not be recovered against U.S. Government contracts for U.S. Government requirements. These expenses may be recovered; *Provided,* That when required by paragraph 123.16 of the International Traffic in Arms Regulations (ITAR) (22 CFR Part 121), such promotion or demonstration has received U.S. Government approval.

(D) Configuration studies and related technical services undertaken as a direct selling effort to a foreign country.

(ii) Product support and postdelivery service expenses; e.g.:

(A) Operations or maintenance training, training or tactics films, manuals, or other related data;

(B) Technical field services provided in a foreign country related to accident investigations, weapon system problems, operations/tactics enhancement, and related travel to foreign countries.

(iii) Costs associated with the implementation of DoD offset arrangements.

(iv) Costs that are the subject of advance understanding, in accordance with the appropriate provisions of FAR Part 31, or where the advance understanding places a limit on the amounts of cost that will be recognized allowable in defense contract pricing, and the understanding contemplated that it will apply only to DoD contracts for the U.S. Government's own requirements (as distinguished from contracts for FMS).

(2) Costs that are not allowable under FAR Part 31 are not allowable in pricing FMS contracts.

(3) The provisions of Section 203, Pub. L. 91–441, do not apply to contracts for Foreign Military Sales. Therefore, the ceiling limitations or the formula constraints on bid and proposal (B&P) costs incorporated in Part 231, and on independent research and development (IR&D) costs incorporated in Part 231 shall not be applicable to contracts for Foreign Military Sales. IR&D and B&P costs allowed on contracts for Foreign Military Sales shall be limited to their allocable share of the total expenditures. In pricing contracts for Foreign Military Sales, the best estimate of reasonable costs shall be used in forward pricing. Actual expenditures, to the extent that they are reasonable, shall be used in determining final cost.

(4) Pursuant to section 21(e)(1)(A) of the Arms Export Control Act, as amended, the United States shall make appropriate charges for administrative services in order to recover the estimated cost of administration of sales made under the Arms Export Control Act.

(d) *Government-to-government agreements.* In the event a government-to-government agreement between the United States and a foreign government, for the sale, coproduction, or cooperative logistic support of a specifically defined weapon system, major end item or support item, contains language in conflict with the provisions of (a) through (c) above, the language of the government-to-government agreement shall prevail.

225.7305 Sales commissions and contingent fees on foreign military sales.

(a) *Scope.* This section provides policies and procedures for determining the applicability and allowability of sales commissions and contingent fees on FMS purchases. It supplements the policies contained in 225.7304(c)(1)(i), FAR Part 31, and FAR Subpart 3.4.

(b) *Policy.* Sales commissions and contingent fees are allowable under defense contracts; *provided*: that, in accordance with FAR Part 31 and FAR Subpart 3.4, the commissions or fees are paid to a bona fide employee or a bona fide established commercial or selling agency maintained by the prospective contractor (hereinafter referred to as contractor) for the purpose of securing business (but see 225.7305(f)). For FMS, it is extremely difficult for the Department of Defense to verify the services rendered or the value of services by bona fide employees or bona fide established commercial or selling agencies. Therefore, it is the policy of the Department of Defense that the allowable cost of sales commissions and contingent fees (as defined in FAR Subpart 3.4) anticipated to be included in FMS contracts is limited to $50,000, and such fees or commissions shall be made known to the purchasing government prior to or in conjunction with the submission of the DoD Offer and Acceptance (DD Form 1513) to that government.

(c) *DoD offer and acceptance procedures.*

(1) In submitting an Offer and Acceptance to a foreign government which is known to contain a sales commission or fee, the Department of Defense will include:

(i) The name and address of the sales representative;

(ii) The estimate of the proposed fee, along with a statement as to the percentage of sale involved if such fee is based on a percentage of the sale price; and

(iii) A statement indicating one of the following, whichever is applicable:

(A) Appropriate officials within the U.S. Department of Defense consider the fee to be fair and reasonable;

(B) In the event only a portion of the proposed fee is considered fair and reasonable, a statement to this effect, together with the rationale therefor; or

(C) The U.S. Department of Defense cannot determine reasonableness of the proposed fee.

The notification in the Offer and Acceptance may also include the contractor's explanation of or justification for the proposed charge, together with any other data which may be requested by the purchasing government.

(2) The Offer and Acceptance also will include a statement to the effect that acceptance of the offer by the purchasing government, after receipt of the appropriate notification outlined above, will constitute that government's approval of the sales commission or fee involved. No fee shall be accepted by the Department of Defense if disapproved by the purchasing government.

(3) There may be occasions, as when FMS requirements are to be fulfilled by competitive acquisitions, when it is not possible to determine prior to presentation of the Offer and Acceptance whether or not the price to be paid for material or services will include sales commissions and fees. In such cases, the purchasing government will be notified (by DoD officials responsible for presentation of the Offer and Acceptance) as soon as possible if subsequent contract negotiations indicate that a sales representative's charges will be claimed by the contractor. This notification will include the information outlined in (1) above, along with an indication that the Department of Defense will determine whether or not to accept such costs as a valid charge to the contract, unless contrary notification is received from the purchasing government within 30 days of the date of the notification.

(4) If in making the determination required by FAR Subpart 3.4 and (d)(3), the responsible contracting official determines that a sales representative is not bona fide for reasons other than reasonableness of fee, no Offer and Acceptance will be tendered pending withdrawal by the prospective contractor of the fee for such sales representative from his proposal.

(d) *Applicability and allowability of sales commissions or fees.*

(1) When a contracting officer is requested to obtain price and availability data from a contractor to support the tendering of an Offer and Acceptance, he shall require the contractor to identify the amount of any sales commissions or fees. Allowable costs for sales commissions or fees applicable to contracts for FMS shall not exceed $50,000 per contract (including all modifications and subcontracts thereto) for each foreign customer served by that contract. Although commissions and fees may be less than $50,000 per contract, all such commissions and fees must be justified and supported, based on the criteria in (2) below. If deviations to this policy are considered necessary, FAR 1.4 shall apply. In addition, sales commissions or fees shall not be allowed for follow-on spares provided under DoD Cooperative Logistic Supply Support Arrangements.

(2) In order to provide the appropriate notice and advice regarding sales commissions and fees to a foreign government at the time an Offer and Acceptance is submitted, the contracting officer, except with respect to those contracts excluded in FAR Subpart 3.4, shall:

(i) Require the contractor to submit a Contractor's Statement of Contingent or Other Fees (Standard Form 119) (including any such fees claimed by subcontractors);

(ii) Determine under FAR Subpart 3.4 whether a bona fide employee or agency relationship exists (for the purposes of FMS, the definition in FAR Subpart 3.4 of improper influence also extends to officials of the foreign government);

(iii) Require the contractor to submit a breakdown of the fee related to the services performed by the sales representative. Even though a bona fide employee or agency relationship is determined to exist, the basic test of

reasonableness for the purposes of making the statement required by 225.7305(c)(1)(iii) is an assessment of the services provided, or to be provided, compared to the amount of the fee. In addition to the fee breakdown of services, a comparative analysis may be made of the proposed fee/commission with recent payment for comparable services under commercial sales (non-FMS) of the same or similar items, and sales commissions and fees allowed on previous FMS sales of comparable scope and dollar amounts. In analyzing the fee, consideration should be given to whether the sale is the initial or follow-on sale because the effort for follow-on sales of additional quantities, spares and support equipment would not normally be as great as the effort for the initial sale.

(3) The PCO shall make a determination with respect to a bona fide employee or agency relationship and reasonableness of the commission or fee (i.e., one of the 225.7305(c)(1)(iii) fee statements), subject to the approval of the chief of the contracting office.

(e) *Contracting procedures relating to sales, commissions and fees.* If, after notification by DoD officials responsible for presentation of the Offer and Acceptance to a foreign government as required by (c) above, the foreign government disapproves the fee, or a portion of the fee, the contracting officer shall notify the prospective contractor and request withdrawal of the fee for the sales representative from the proposal. Should the contractor refuse to withdraw the fee, the Department of Defense will notify the foreign government that the Department of Defense is unable to purchase the items or services from that contractor.

(f) *Special country requests with respect to sales commissions and fees.* Pursuant to DoD Manual 5105.38–M (Military Assistance and Sales Manual), Letters of Offer and Acceptance for requirements for the governments of Australia, Taiwan, Egypt, Greece, Iran, Israel, Japan, Jordan, Republic of Korea, Kuwait, Pakistan, Philippines, Saudi Arabia, Turkey, Thailand, United Arabe Emirates, or Venezuela (Air Force) are required to provide that all U.S. Government contracts resulting from the Letters of Offer shall prohibit the payment of sales commission and fee unless such payments have been identified and payment thereof approved in writing by the government involved before contract award. Therefore, the contracting officer shall on behalf of these purchasers, insert the clause at 252.225–7017, Limitation of Sales Commissions and Fees for Foreign Governments, in all solicitations and contracts for FMS requirements unless such payment has been approved.

225.7306 Recovery of nonrecurring costs.

(a) *Policy.* It is the policy of the Department of Defense to recover a fair share of its investment in nonrecurring costs related to defense products, and/or a fair price for its contribution to the development of related technology, when such products are sold and when technology relating to the manufacture of the products is sold or licensed to a foreign government, international organization, foreign commercial firm, or domestic organization. Furthermore, in selected cases, it is DoD policy to recover, on behalf of a foreign government or international organization, a fair share of the nonrecurring costs for a special feature or product paid by the foreign government or international organization under a foreign military sales case when subsequent customers purchase the same specialized feature.

(b) *Applicability.*

(1) This policy applies to those products and technologies for which investment costs equal or exceed $5 million for any of the following:

(i) Nonrecurring research, development, test, and evaluation (RDT&E) costs to develop defense products and related technology. The determination of RDT&E costs shall be based upon the current and predecessor models of an item or equipment.

(ii) Nonrecurring production costs.

(iii) RDT&E and nonrecurring production costs for special features under a foreign military sale, when requested by the FMS customer and agreed to by the U.S. Government.

(2) In the event an end item contains one or more components which individually meet the above thresholds, recoupment will be made on a component when sold separately.

(3) In the case of product sales, if the dollar threshold is met for either nonrecurring RDT&E or production costs, recoupment for both categories of investment costs will be charged.

(c) *Procedures.* Charges shall be computed and assessed by the DoD officials responsible for presentation of the DD Form 1513. Such charges shall not be included in the contractor's proposed price.

225.7307 Source selection.

(a) Purchases for FMS customers shall be implemented under normal acquisition and contract management procedures set forth in the FAR and this supplement, and other directives. However, the FMS customer may request that a defense article or defense service be obtained from a particular prime source. In such cases, FAR 6.302–4 provides authority to contract without full-and-open competition. The FMS customer may also request that a subcontract be placed with a particular firm. The contracting officer shall honor such requests from the FMS customer only as specified in the Letter of Agreement or other written direction by the military sales organization.

(b) Representatives of the FMS customer shall not be permitted to direct the deletion of names of firms from bidders mailing lists or slates of proposed A-E firms. They may, however, suggest that certain firms be included. Contracting offices shall not accept directions from the FMS customer as to source selection decisions or contract terms (other than the special contract provisions and warranties referred to in Condition A.2 of the DD Form 1513), nor shall the FMS customer be permitted to interfere with a prime contractor's placement of his subcontracts. Requests by the FMS customer for rejection of any bid or proposal shall not be honored unless the rejection is justified on the basis of reasons which would be sufficient in the case of a purchase by the Department of Defense to meet its own needs.

225.7308 Limitation of Liability.

In acquisitions for FMS, the foreign purchaser shall be advised that the appropriate Liability clause(s) (see FAR Subpart 46.8) is included in the FMS contract (see Condition C on the DD Form 1513). If the foreign customer does not agree to assume the risk for loss or damage as provided in the clause(s) and objects to the inclusion of such clause(s) in the Offer and Acceptance, the contractor shall be so advised. The costs of necessary insurance, if any, to be obtained by the contractor to cover such risk of loss or damage shall be considered in establishing the FMS contract price of such items.

225.7309 Exercise of options for foreign military sales.

Exercising an option to satisfy an FMS requirement may introduce the need to consider changes to costs and profit attributable to pricing differences between U.S. and FMS contract requirements. Such consideration may also be necessary if the option is already identified for FMS but it is exercised for country B requirements instead of the country A requirements to which it was priced. In order to provide for and better permit the inclusion of priced options in the contract and their

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subsequent exercise for FMS requirements whether or not the specifics are fully known at the time of award, the contracting officer should consider the use of the clauses prescribed at 217.207(S–70).

225.7310 Implementation of offset arrangements negotiated pursuant to foreign military sales agreements.

(a) *Scope.* This section sets forth policies and procedures concerned with the fulfillment of Department of Defense offset arrangements negotiated pursuant to an FMS agreement. An "FMS/offset arrangement" is that which is negotiated pursuant to an FMS agreement wherein the Department of Defense agrees to place on a contractual basis and consistent with the guidance in 225.7310(b)(2), a certain percentage of the FMS agreement dollar value or a stated dollar objective in that country with which the FMS agreement has been negotiated. The purpose of an FMS/offset arrangement is to fulfill commitments negotiated pursuant to an FMS agreement. Australia, Belgium, Denmark, Netherlands, Norway, and Switzerland have FMS/offset arrangements negotiated pursuant to FMS agreements. However, Belgium, Denmark, Netherlands, and Norway are also participating NATO countries and are accorded preferences under Subpart 225.74.

(b) *General.*

(1) Since May 4, 1978, it has been DoD policy not to enter into government-to-government offset agreements because of the inherent difficulties in negotiating and implementing such arrangements. Exceptions to this policy must be approved by the Secretary of Defense or his Deputy and will only be made when there is no feasible alternative to ensure the successful completion of FMS transactions considered to be of significant importance to the national security interests of the United States.

(2) When authorized, offset provisions typically require the Military Departments or U.S. prime contractors, or both, to identify items for which foreign sources may obtain contracts up to a specified offset level and in accordance with the terms and conditions of the particular DoD offset agreement. Normally, FMS/offset arrangements should be negotiated prior to the FMS agreement Offer and Acceptance in order that the Department of Defense and its prime contractors will have an opportunity to assess in advance the DoD's or contractor's ability to fulfill the FMS/offset arrangement, and include in the offer those DoD and contractor costs associated with such arrangements.

(3) If an exception is granted pursuant to paragraph (1) above, the policy of the Department of Defense is that the domestic concerns involved in the FMS and the foreign customer will make suitable arrangements to fulfill an FMS/offset arrangement. Only if it is determined that the FMS/offset arrangement cannot be fulfilled in this fashion will the Department of Defense seek to fulfill the offset commitments through other defense purchases. When practical, the U.S. prime contractor shall be contacted and coordination obtained prior to the Government's committing the U.S. prime contractor's participation.

(4) The Defense Security Assistance Agency (DSAA) acts as the focal point within the Executive Branch for interagency coordination on offset policy in consultation with the Office of the Assistant Secretary of Defense (International Security Affairs), from which DSAA derives overall policy guidance. The Office of the Assistant Secretary of Defense (Acquisition and Logistics) (OASD(A&L)) is responsible for matters pertaining to the fulfillment of the offset portion of FMS agreements. General information regarding the existence of FMS/offset arrangements with particular countries or implementation of such arrangements may be obtained by submitting inquiries through the Departments to the Director for International Acquisition, OASD(A&L)(P)(IA).

(c) *Procedures.*

(1) Whenever an FMS agreement involves a single major weapon system, the Department responsible for acquisition of the weaponsystem will be responsible for managing any resulting FMS/offset arrangement. If an FMS agreement involves the sale of items from two or more Departments, OASD(A&L) may either direct that one Department be responsible for coordinating the implementation of the FMS/offset arrangement, or apportion responsibility for managing the offset program among two or more Departments. Such management includes (i) the development of special contractual provisions consistent with (4) below; (ii) the consideration of other DoD contract items for competition by foreign sources (to the extent other defense purchasing is involved or becomes necessary); and (iii) the obtaining of appropriate exemptions by the Secretary of the purchasing Department concerned from the Buy American Act under FAR 25.102, the Balance of Payments Program, duty and other applicable acquisition restrictions on a purchase-by-purchase basis of defense equipment. (See sample Determination and Findings set forth in (2)(i) below for the exemption of the Buy American Act.) Even though a Military Department or Defense Agency is not responsible for the management of a certain FMS/offset arrangement, it will consider, for competitive acquisitions, offers of defense equipment from FMS/offset arrangement country sources.

(2) Solicitation of FMS/offset arrangement country sources shall be accomplished using procedures like those set forth in 225.7403(a)(1) for participating countries (see also 225.402(b)). When soliciting sources outside the United States, international air mail shall be utilized where security classification permits. See 214.202–1, FAR 14.203–1, and FAR 15.408(c). For the purpose of evaluating an FMS/offset arrangement country offer, it shall be treated as if it were a participating country offer and evaluated in accordance with 225.7403(a)(3). If after such evaluation, it is clear that the FMS/offset arrangement country offer is low or otherwise eligible for award, the contracting officer shall request from the Secretary of the Department concerned the appropriate exemptions for the acquisition as set forth in (2)(i) below. The list set forth at 225.7405 shall also apply to FMS/offset arrangement countries as shall 225.402(b).

(i) To obtain an exemption, under FAR 25.102, of the Buy American Act, the contracting officer shall process a Determination and Findings for the signature of the Secretary of the Department or Agency concerned. The Determination and Findings shall be substantially as follows for end items, or modified as necessary for components.

Service or Agency Exemption of the Buy American Act (41 U.S.C. 10a–d) Determination and Findings

Upon the basis of the following findings and determination which I hereby make in accordance with the provisions of FAR 25.102, acquisition of an (FMS/offset arrangement country) (describe item) may be made as provided below.

Findings

1. The (Contracting Activity) proposes to purchase _____, under contract number _____, mined, produced or manufactured in (country of origin). The total estimated cost of this acquisition is _____.

2. The United States Government (USG) and the Government of _____ have entered into an FMS/offset arrangement whereby the Government of _____ will purchase US defense articles and services and the USG, through the Department of Defense (DoD), if necessary, will offer potential DoD requirements suitable for purchases of (FMS/offset arrangement country) defense items.

3. The Agreement provides that competitive offers of (FMS/offset arrangement country) end products will be evaluated by the Department of Defense without imposing any price differential under the Buy American Act or Balance of Payments Program and without taking applicable U.S. customs and duties into consideration so that (FMS/offset arrangement country) items may better compete, for sales of defense equipment to the Department of Defense. In addition, the Agreement stipulates that acquisitions of (FMS/offset arrangement country) items must fully satisfy Department of Defense requirements for performance, quality, and delivery and shall cost the Department of Defense no more than would comparable U.S. source or other foreign source defense equipment eligible for award.

4. In order to achieve the above objectives, the solicitation contained the Buy American Act and Balance of Payments Program clause, 252.225–7001, or the Buy American Act, Trade Agreements Act, and the Balance of Payments Program clause, 252.225–7006 which state that an exemption from the application of the Buy American Act may be granted by the Secretary of the Department concerned. Offers were solicited from other sources and the offer received for an (FMS/offset arrangement country end item) is found to be acceptable.

Determination

Pursuant to the Buy American Act (41 U.S.C. 10a–d), I hereby determine that it is inconsistent with the public interest to apply the restrictions of the Buy American Act to the proposed offer.

_____
(Date)

_____
(Secretary of Department)

(3) To assure that the policy of 225.602 is carried out regarding the issuance of duty-free entry certificates, the contracting officer shall include the clauses at FAR 52.225–10, Duty-Free Entry, and 252.225–7007, Supplies to be Accorded Duty-Free Entry, in contracts which either contribute, or anticipate to contribute, to the fulfillment of an FMS/offset arrangement.

(4) The clause set forth at 252.225–7018, Offset Arrangement, shall be used in a contract when the domestic concern involved in the Foreign Military Sale has accepted responsibility for accomplishing any portion of an FMS/offset arrangement. (Paragraph (a) of the clause should be modified as necessary to state any special terms and conditions of the FMS/offset arrangement, such as competitive prices or otherwise, period of offset accomplishment, special type or nature of offset required, and so forth.)

(5) When an FMS/offset arrangement program is structured to provide offset potential on a number of DoD purchases, as opposed to only within the prime FMS contracts, DoD solicitations which contemplate proposals of FMS/offset arrangement country end products should indicate that the price evaluation of offers will be accomplished without the application of the Buy American Act or the Balance of Payments Program differentials or duty, which would otherwise be applied to the price evaluation in accordance with other paragraphs of this Part 225. If on the basis of such evaluation, an offeror proposing an end product from an FMS/offset arrangement country source is low, the matter will be forwarded to the Secretary of the Department for consideration as to whether it would be in the public interest to exempt the end product from the restrictions of the Buy American Act (see FAR 25.102) and the Balance of Payments Program regulations. FMS/offset arrangement country sources, in competing for DoD purchases under a DoD FMS/offset program, must be responsive to the terms and conditions of DoD solicitations unless otherwise specifically provided for in the FMS/offset arrangement with the FMS/offset arrangement country. DoD contracting activities must also comply with all other laws and regulations governing foreign purchases, such as security restrictions and disclosure of information to foreign nationals.

(6) In a general FMS/offset arrangement which contemplates foreign competition with U.S. sources for defense contracts (as opposed to one structured to be accomplished within the FMS prime contracts for that sale), the preferable procedure is to require the foreign government to propose, from time to time, specific defense-related items which appear susceptible to competition by companies in that country. When such proposals are made, the foreign government will include the names and addresses of the foreign sources which that foreign government considers qualified to perform the work. However, in order to ensure fulfillment of the FMS/offset arrangement within the specified time limits, the Departments are also expected to exercise initiative in seeking out items which might be suitable for such foreign competition and in making arrangements through the foreign government, if necessary, to identify suitable sources.

(d) *Quality Assurance Agreement with Australia.* The Department of Defense of the United States and the Department of Defense of Australia have agreed to provide to each other, quality assurance services upon request for all contracts involving defense supplies and services in accordance with the terms of the Details of Agreement (D of A), Mutual Acceptance of Government Quality Assurance. (See Appendix T–101.1 and 246.406(73).)

225.7311 Use of Government production and research property on work for foreign governments or international organizations.

See 245.405.

225.7312 Exclusionary policies and practices of foreign governments.

All contracts for the purchase of goods or services for Military Assistance Programs (MAP), International Military Educational Training (IMET), and Foreign Military Sales (FMS) shall include the clause in 52.225–7019, Exclusionary Policies and Practices of Foreign Governments.

225.7313 Nonapplicability of rates under 49 U.S.C. section 10721 (formerly "Section 22 Rates").

(See FAR 47.104–2.)

225.7314 Specific FMS/offset agreements.

Specific FMS/offset agreements are included in Appendix T, Subpart 1.

Subpart 225.74—Purchases From NATO Participating Country Sources

225.7400 Scope of subpart.

This subpart implements the Memoranda of Understanding (MOU) between the United States and participating countries.

225.7401 Policy.

In order to increase the defense capabilities of NATO through more efficient cooperation in the field of research and development, production, and acquisition of defense equipment, the United States has entered into Memoranda of Understanding with Canada, the Federal Republic of Germany, the Government of Italy, the United Kingdom of Great Britain and Northern Ireland (U.K.), the Government of Norway, the Kingdom of the Netherlands, the Government of Portugal, the Government of Belgium, the Government of Denmark, the Government of France, the Government of Turkey, the Government of the Grand Duchy of Luxembourg, and the Government of Spain. The objective of each MOU is to facilitate the defense of North America and Europe so as to achieve:

(a) Greater cooperation in research, development, acquisition, and production;

(b) The most rational use of their respective industrial, economic, and technological resources;

(c) The greatest attainable military capability at the lowest possible cost; and

(d) Greater standardization and interoperability of their weapon systems.

Accordingly, it is DoD policy to seek the best possible coordination of the materiel programs between the participating countries and the United States and to ensure that sources from participating countries are provided every opportunity to compete on a fair and equal basis with U.S. sources for research and development and for production contracts consistent with 225.7402(b). Accomplishment of this policy requires exemption of foreign acquisition restrictions with respect to all items of defense equipment from participating countries. (See also 225.402(b).)

225.7402 MOUs with NATO participating countries.

(a) The MOUs set forth acquisition policies with respect to defense equipment from sources in participating countries.

(b) *Applicability.* This subpart applies except where restricted by (1) provisions of U.S. National Disclosure Policy (NDP), DoD Directive 5230.11; (2) U.S. defense mobilization base requirements as specified in 208.73, 208.74, and 208.75; (3) U.S. laws or regulations (e.g., the annual DoD Appropriations Act (225.70); and (4) U.S. Industrial Security Requirements.

225.7403 Procedures for purchases from participating countries.

(a) *Solicitation procedures.*

(1) *Solicitation of sources in participating countries.*

(i) Participating country sources shall be included on bidders mailing lists and comparable source lists upon request by such sources in accordance with the procedures in FAR 14.205. Requests of this nature should be forwarded by participating country sources to the activity having acquisition responsibility for the supplies involved.

(ii) The normal criteria for soliciting and making awards under FAR Part 19 for small business concerns and FAR Part 20 for labor surplus area firms shall be utilized without regard to the fact that there are potential participating country sources for the end product, except items developed under the U.S./Canadian Development Sharing Program. Offers of a foreign end product shall not be considered on any acquisition, or part thereof, identified for the exclusive participation for such firms.

(iii) Solicitations shall be sent directly to participating country sources appearing on the appropriate bidders mailing list except when restricted by 225.105, 225.7402(b), 225.7405 and (ii) above. In addition, Canadian sources shall also be solicited through the Canadian Commercial Corporation in accordance with 225.7104. When solicitation destinations are outside the United States, international air mail shall be utilized where security classification permits (see FAR 14.202 and FAR 14.203).

(iv) Upon request, solicitations shall be furnished to the embassy or other designated place or representative of the participating country.

(v) If unusual technical or security requirements would preclude the acquisition of otherwise acceptable defense equipment from participating country sources, the need for such requirements should be specifically reviewed. Under no circumstances will unusual technical or security requirements be imposed solely for the purpose of precluding the acquisition of defense equipment from participating countries.

(vi) Participating country sources shall not be automatically excluded from submitting offers because their supplies have not been tested and evaluated by a Department. Departments which find it necessary to limit solicitations to sources whose items have been service tested and evaluated by the department shall make provision for considering supplies from participating country sources which have been tested and accepted by the participating country for service use, subject to U.S. confirmatory test, if necessary. Where it appears that these provisions might adversely delay service programs, the concurrence of the Department of Defense Acquisition Executive, USDRE, shall be obtained prior to exclusion of the participating country item from consideration. Sufficiency of participating country service testing should be considered on a case-by-case basis. When confirmatory tests of participating country end products are deemed necessary by the department, U.S. test and evaluation standards, policies, and procedures shall apply.

(vii) Subject to 225.7402(b), industry representatives from a participating country shall be permitted to attend symposia, program briefings, prebid conferences (FAR 14.207 and FAR 15.409), and like meetings which address U.S. defense equipment needs and requirements. When practical, these meetings should be structured so as to allow attendance by representatives of participating country concerns.

(2) *Submission of offers.* Participating country sources competing for DoD requirements must be responsive to the terms and conditions of DoD solicitations.

(3) *Evaluation of offers from participating country sources.*

(i) In furtherance of the objectives set forth in 225.7401, the Secretary of Defense has determined that it is inconsistent with the public interest to apply the restrictions of the Buy American Act and the Balance of Payments Program with respect to acquisition of defense equipment (for items for civil works activities, see 225.105(S-75)) which is mined, produced, or manufactured in a participating country.

(ii) In accordance with the above, offers of participating country end products shall be evaluated without the application of the price differentials normally applied pursuant to the Buy American Act and Balance of Payments Program requirements contained in 225.105 and subpart 225.3. This exemption shall further include the following consideration: In the event that a domestic offer, a participating country offer, and a nonqualifying country offer compete for defense equipment, the participating country offer shall be evaluated without applying the price differentials of 225.105, whereas the nonqualifying country offer shall be subjected to the price differentials. (See 225.105(S-72), Example E.) However, in the event that the low domestic offer exceeds the evaluated price of the nonqualifying country offer, all foreign offers shall be evaluated as if no domestic offer was submitted. (See 225.105(S-72), Example F.) In the event that a participating country offer competes against a nonqualifying country offer and no domestic offer is submitted, the participating country offer shall be evaluated on an equal basis with the nonqualifying country offer. (See 225.105(S-72), Example G.) Participating countries are listed at 225.7401.

(iii) As to any end product that is manufactured in the United States, all components from participating countries are treated as components mined, produced, or manufactured in the United States for the purpose of determining whether the end product is a domestic source end product.

(iv) In keeping with the policy to enhance cooperation with the participating countries, U.S. duty-free entry shall be accorded supplies from participating countries by the issuance of duty-free entry certificates. Offers of defense equipment from participating country sources shall be evaluated without application of duty. Such duty-free entry shall be accorded whenever

such supplies are acquired at a prime contract or at a subcontract level. (See also 225.602 for postaward circumstances of fixed-price type contracts.) The resulting contract shall include the appropriate clause(s) referenced in 225.605.

(v) If, when evaluated in accordance with the above, an offer of a participating country end product is determined to be from the lowest, responsive, responsible offeror, the cognizant contracting officer shall normally proceed to make award to that offeror. However, there is no restriction on the authority or responsibility of the cognizant Secretary to restrict acquisitions to domestic sources or reject an otherwise acceptable offer from a participating country source in those instances where such restriction or rejection is considered necessary for reasons of the national defense.

(b) *Subcontracting with participating country sources.* In reviewing prime contractor subcontracting procedures, the contracting officer shall assure that the prime contract does not preclude participating country sources from competing for subcontracts, except when restricted by national security interest reasons or mobilization base considerations.

(c) *Required clause.* As prescribed at 225.109(d)(S-72), the clause at 252.225-7002, Qualifying Country Sources as Subcontractors, shall be inserted in solicitations and contracts.

(d) *Industrial security for participating countries.* Required procedures designed to safeguard classified defense information which may be necessary for the performance of contracts awarded to participating country sources are set forth in the DoD Industrial Security Regulation DoD 5220.22-R (implemented for the Army by AR 380131; for the Navy by OPNAV Instruction 5540.8E; for the Air Force by AFR 205-4; for the Defense Logistics Agency by DLAM 8500.1; for the Defense Communications Agency by DCA Inst. 240-50-7; and for the Defense Mapping Agency by DMA Inst. 5520.22).

225.7404 Contract administration.

When contract administration services are requested on contracts to be performed in participating countries, except Canada, the request should be directed to the cognizant activity in accordance with DoD 4105.59-H, section II, Part 2 (DoD Directory of Contract Administration Services Components). Contract administration services required with respect to DoD subcontracts placed by participating country sources, except Canada, in the United States will be arranged by the cognizant activity in accordance with DoD 4105.59H, section II, Part 2 (DoD Directory of Contract Administration Services Components).

225.7405 List of excluded items.

The policies and procedures of this subpart do not apply to offers of the following items of defense equipment unless the quantity being acquired is greater than that required to maintain the U.S. defense mobilization base. This restriction does not apply to Canadian Planned Producers. Items may be added to or deleted from the list from time to time. Information concerning this list may be obtained from OASD(A&L)(IR). (See also Subparts 208.73, 208.74, and 208.75.)

Navy

Fuzes, Safe and Arm Devices, and Similar Items
- MK-13 Safe and Arm Device
- MK-13 Triggering Device
- MK-17 Safe and Arm Device
- MK-33 Safe and Arm Device
- MK-330 Fuze
- MK-334 Fuze
- MK-404 Fuze
- MK-407 Fuze
- FMU-109 Fuze

Missiles and Missile Components
- AIM-7F Sparrow Missile Guidance and Controls Section
- MK-58 Rocket Motors
- MK-71 Warhead Metal Parts

AIM-9L Sidewinder Missile
- Guidance and Control Section
- MK-36 Rocket Motors
- DSU-15 Target Detector
- AN/WDU-17 Warhead
- MK 1 Wing and ANM/BSU-32 Fins

Trident I (C-4) Missile System
- Guidance and Control System
- MK-5 Electronic Assemblies (EA)
- MK-5 Intertial Measurement Unit Electronics (IMUE) and Monitor Component Assembly (MCA)
- Backfit of Poseidon (C-3) SSBNs

Flares
- MK-46 Flares, Infrared Decoy

Sonobuoys and Components
- AN/SSQ-36
- AN/SSQ-41B
- AN/SSQ-53A
- AN/SSQ-57A
- AN/SSQ-62

Ship Gun Systems
- MK-75 Gun Mounts

Submarine Systems
- Type 18B/D Periscope System
- TR 155 K 33 Transducers

Military Sealift Cargo
- Ocean Transportation and Services

Air Force

MAC Commercial Airlift

GAU-8/A and 30mm Ammo

Defense Logistics Agency

Textiles—Worsted

Army

L.A.P., manufacturing and testing of projectiles (5.56 mm through 8 inch), mines, dispensers, rockets, pyrotechnic devices, grenades, demolition charges, small arms ammunition and components, fuzes and components containing mechanical timing devices)

TOW Missile and Launcher

2.75 Rocket Items
- LAP Motor
- Fin & Nozzle Assembly
- Stabilizer Rod
- Felt Washer
- Ring Charge Support
- O Ring
- Metal Spacer
- Intervelometer
- Igniter
- Motor Tube
- Seal Rings
- Disc Charge Support
- Spacer Charge Support
- Lockwire
- Launcher
- Fin Blades

Projectile Metal Parts for Cartridge 105mm (Beehive)

Projectile M406, M107—155mm

Projectile M509—8 inch

Projectile M735

Projectile M735, Metal Parts and Cores

Projectile M718, M141

155mm Cannister, XM625, XM626:
- Projectile Metal Parts for Cartridge 90mm

255mm Projectile, AT M716/M741 (RAAM):
- Component,
- Electronic Assemblies

Cartridge Case M118, M14B4

Fuze:
- M1 Delay
- MK-1
- MK-30
- MK-38 Energizer
- MK-40 Energizer
- MK-54
- MK-73-13
- MK-339-1/Inert
- MK-379
- MK-393/403
- MK-404
- MK-407
- FM-54B
- M19
- M42/46
- M62A2
- M91A2
- M84A1
- M114 S&A
- M118 S&A
- M201A1
- M213
- M19E1
- M223
- M228
- M427/M423
- M494/571
- M505A3
- M505
- M509A2
- M564
- M565
- M567 (Comp Pts/Rewk)
- M577/M582
- M578

M578 (Comp Pts)
M732:
Elec Head Final Assembly
Detonator
Power Supply
Sleeve
Elec Timer, W/IC
M904E3
Casing Burster Warhead, M156
Assy M258, M170
Body Assy and Base Plug, M404
Bomb, M117A1E1
Launcher Rocket 2AU 68A/A
Warhead Flechets WDU 4A/A
M18 Mine Program
Blasting Cap, Firing Device, Metal Parts, Test Sets
Laser Range Finder VVC–2 and M21 for Solid State Ballistic Computer for M60 Series Tank
Limited Light Sight
MX–9644 Image Intensifier Tube 25mm
MX–7845 Image Intensifier Tube (1st generation)
MX–8501 Image Intensifier Tube (1st generation)
BA–4386 Battery
AN/PVS–4 Night Vision Sights
AN/PVS–5 Night Vision Goggles
AN/PVS–5A Night Vision Goggles
AN/VVS–2 Viewer
AN/VSS–3 Searchlight
Common Module Program (Thermal Imaging System) Tactical Night Vision Systems—
AN/TAS–4
AN/TAS–5
AN/TAS–6
GLLD/TAS–4
Machine Gun M240
Machine Gun M240 Spare Parts
Electronic Time Fuze XM587E2/XM724
Power Supply PS127
Fuze Setter XM36E1
Tank Thermal Sights AN/VSG–2
Night Vision Goggles AN/PVS–5A
Image Intensifier Assembly MX–9916–UV
Battery, Dry BA–4386
Maintenance of idle portions of 21 GOCO facilities
Consolidated Facilities Scranton AAP
Hydraulic Turbine (Civil Works)

225.7406 Specific reciprocal memoranda of understanding with NATO participating countries.

Specific reciprocal memoranda of understanding with NATO participating countries are included in Appendix F, Subpart 2.

Subpart 225.75—Purchases From Defense Cooperation Country Sources

225.7500 Scope of subpart.

This subpart implements the defense cooperation agreements made by the United States pursuant to other than Foreign Military Sales agreements.

225.7501 Policy.

In order to increase their respective defense capabilities through more efficient cooperation in the research and development, production, and acquisition of defense equipment, the United States and the Governments of Israel and Egypt have entered into a defense cooperation agreement. The purpose of this agreement is to promote the most cost-effective and rational use of defense appropriations of the United States and the defense cooperation country. Accordingly, it is Department of Defense policy to achieve the best possible coordination of the materiel programs between such countries and the United States and to ensure that sources in defense cooperation countries are provided the opportunity to compete on a fair and equal basis with U.S. sources for selected research and development, production and service contracts subject to the restrictions of 225.7402(b). Accomplishment of this policy requires the exemption of certain Buy National laws and foreign acquisition restrictions with respect to selected defense equipment purchased from defense cooperation country sources. For the purposes of solicitation and evaluation of such selected defense equipment, offers of defense cooperation country end products shall be treated as if they were participating country end products, except as provided in 225.402(b).

225.7502 Procedures.

(a) *Solicitation procedures.* Defense cooperation country sources shall be solicited as if they were sources from participating countries. The procedures set forth at 225.7403(a)(1) shall apply.

(b) *Submission of offers.* Defense cooperation country sources competing for DoD requirements must be responsive to the terms and conditions of DoD solicitations. The Buy American Act and the Balance of Payments Program restrictions are waived only for items listed in appropriate annexes to the agreements with the defense cooperation country. However, the absence of an item from the defense equipment list is without prejudice to the authority of the Secretary to determine in any individual case that application of the restrictions to the item would be inconsistent with the public interest. Copies of these lists may be obtained from the Director for International Acquisition, ODASD(P).

(c) *Evaluation procedures.* Defense cooperation country offers shall be evaluated as if they were participating country offers. The procedures set forth at 225.7403(a)(3)(ii) shall apply.

(d) *Other procedures.* Contracting procedures, industrial security procedures and contract administration procedures for defense cooperation country sources shall be conducted as if they were sources from participating countries. The procedures and policies set forth at 225.7403(c), 225.7404, and 225.7405, and throughout this regulation shall apply.

225.7503 Specific memoranda of understanding with defense cooperation countries.

Specific memoranda of understanding with the Defense cooperation countries are included in Appendix T, Subpart 3.

Subpart 225.76—Use of U.S.-Owned Foreign Currency for Payments

225.7600 Scope of subpart.

This subpart implements the Government's policy that U.S.-owned foreign currency be used when feasible in payment of purchases in foreign countries.

(a) This subpart applies to acquisitions of supplies, services, or construction for use outside the United States.

(b) This subpart does not apply to acquisitions (1) funded from Special Foreign Currency Program Appropriations; or (2) made under Subpart 225.1.

225.7601 Definitions.

As used in this subpart, the following terms have the meanings set forth below:

"Excess Foreign Currency" means currency that has been determined by the Department of the Treasury to be in excess of foreseeable requirements of the U.S. Government. Countries in which the United States owns excess foreign currency are listed in 225.7607(a).

"Near-Excess Foreign Currency" means currency that has been determined by the Department of the Treasury to be above the immediate requirements of the U.S. Government. Countries in which the United States owns near-excess foreign currency are listed in 225.7607(b).

"U.S. Dollar Content" means the U.S. dollar cost to an offeror for domestic source end products or services (including costs of transportation furnished by U.S. flag carriers) imported directly from the United States and to be used in performance of a contract, as certified by the offeror.

"U.S.-Owned Foreign Currency" means currency of a foreign country which currency is:

(a) Owned by the United States;

(b) Determined excess or near-excess by the United States Department of the Treasury;

(c) Available in the country of issuance to pay obligations of the United States within that country; and

(d) Disbursed by the United States Treasury Disbursing Officer in the country concerned, either directly to the contractor or to the military disbursing officer, as appropriate.

225.7602 Procedures.

(a) Except as provided in (c) below, when supplies, services, or construction for use outside the United States are to be purchased, the solicitation shall contain the provision in 252.225–7020, Option to Award and Pay in United States Owned Foreign Currency, when it can reasonably be expected that (1) contracts will be performed in whole or in part in a country in which there is U.S.-owned foreign currency; or (2) a contractor (domestic or foreign) may be willing to accept U.S.-owned foreign currency in payment in whole or in part.

(b) Failure to state a price in U.S.-owned foreign currency, either in whole or in part, shall not in itself cause an offer to be considered nonresponsive to a solicitation.

(c) Requests for quotations for purchases described under small purchase procedures for delivery within a country in which there is U.S.-owned foreign currency shall be limited to be the local trade area of that country; and, to the extent feasible within the criteria in 225.7606, shall require quotations to be stated only in the U.S.-owned foreign currency of that country.

225.7603 Evaluating offers.

(a) *Conversion for evaluation purposes.* For purposes of evaluation, offers expressed in whole or in part in U.S.-owned foreign currency shall be converted to show their equivalency in U.S. dollars at the rate of exchange used by U.S. disbursing officers for such currency on the date set for receipt of offers.

(b) *Excess foreign currency offers.* Subject to (d) below and to the award limitations in 225.7604, reference for acceptance of offers in excess foreign currency or in combinations of excess foreign currency and U.S. dollars shall be in the following order, even though the offer preferred may not be the lowest in price:

(1) The lowest responsive offer in whole in an excess foreign currency. If equal low offers are received and one or more contain a U.S. dollar content which is not required to be paid in U.S. dollars, that offer which contains the greatest U.S. dollar content shall be preferred.

(2) When the only responsive offers in excess foreign currency also contain a U.S. dollar content for which payment in U.S. dollars is required and is limited to that content, that offer which results in the lowest expenditure of U.S. dollars.

(3) When the only responsive offers in excess foreign currency also require payment in part in U.S. dollars which are not limited to the U.S. dollar content, that offer which results in the lowest expenditure of U.S. dollars. If equal low offers are received and one or more contain a U.S. dollar content and others contain no U.S. dollar content, that offer which contains the greatest U.S. dollar content shall be preferred.

(4) When responsive offers in combinations described in (2) and (3) above are received, the lowest offer evaluated under (2) above.

(5) When responsive offers are received in U.S. dollars only, the lowest such offer. If equal low offers are received and one or more contain a U.S. dollar content, that offer which contains the greatest U.S. dollar content shall be preferred.

(c) *Near-excess foreign currency offers.* The lowest responsive offer in whole or in part in a near-excess foreign currency which does not exceed the lowest responsive offer in U.S. dollars shall be preferred over the U.S. dollar offer. Offers in excess foreign currency shall always be preferred over offers in near-excess foreign currency.

(d) *Consideration of combination offers.* When responsive offers received include some which are priced only in U.S. dollars and others in combinations of U.S. dollars and excess or near-excess foreign currency, a combination offer shall not be considered for award if the U.S. dollar amount of that offer exceeds the dollar amount of the lowest responsive offer in U.S. dollars only.

(e) *Evaluation table.* The following table illustrates the evaluation of offers received in whole in excess foreign currency, in combinations of excess foreign currency and U.S. dollars, and in U.S. dollars only.

Evaluation Table

Offers received are priced in U.S. dollars and "X" Country's rupees. Applicable exchange rate assumed for this table is 3 rupees equal 1 dollar.

Offers	In excess currency only	In combination excess currency—U.S. dollars	In U.S. dollars only	In U.S. dollars as converted (see 25.7603(a))	U.S. dollars content	Preference	
						For award	See footnote
1	36OR			$120 ($20 + $80)	0	1	3
2		60R + $60		$100 ($6 + $95)	0	6	4
3		18R + $85		$101 ($20 + $90)	0	None	4
4		60R + $90		$110	0	7	4
5			$94	$94	$0	9	5
6	45OR			$150 ($20 + $90)	$50	2	3
7		60R + $90		$110	$90	4	4
8			$94	$94	$50	8	5
9	45OR			$150 ($20 + $80)	0	3	3
10		60R + $80		$100	$50	5	4

Notes to Evaluation Table:
1. All offers are assumed to be responsive.
2. The lowest offer in U.S. dollars only is $94. Therefore, $141 ($94.00 plus $47) is the maximum amount for which the contracting officer has authority to award without referral under 225.7604(b).
3. Offers 1, 6, and 9 are entirely in excess foreign currency and are given first consideration. Offer 1, being the lowest, is preferred for award. In the absence of Offer 1, Offer 6 would be preferred because it contains a U.S. dollar content of $50. In the absence of Offers 1 and 6, Offer 9 would be preferred. In accepting Offer 1, 6, or 9, the DoD Appropriation would be charged $94 (see 225.7604(a)). Before Offer 6 or 9 could be accepted, they would require referral under 225.7604(b).
4. Offers 2, 3, 4, 7, and 10 are combination offers and would be given consideration in the absence of Offers 1, 6, and 9, or in the absence of Offer 1 and in case Offers 6 and 9 were not approved by higher authority after referral under 225.7604(b). Offer 7 would be preferred over Offers 2, 3, 4, and 10 because it contains a U.S. dollar content and the part to be paid in U.S. dollars is limited to that content. In the absence of Offer 7, Offer 10 would be preferred over Offers 2, 3, and 4 because it contains a U.S. dollar content of $50, and, although the part to be paid in U.S. dollars is more than that content, it would result in the least expenditure of U.S. dollars. In the absence of Offers 7 and 10, Offer 2 would be preferred over Offers 3 and 4 because it would result in the least expenditure of United States dollars. In the absence of Offers 2, 7, and 10, Offer 4 would be preferred. Offer 3 could not be considered for award because the U.S. dollar amount ($95) exceeds the lowest offer in U.S. dollars ($94) (see 225.7603(d)).
5. Offers 5 and 8 are entirely in U.S. dollars and would be given consideration in the absence of all other offers or in the absence of all other offers except 8 and 9 and in case those offers were not approved by higher authority after referral under 225.7604(b). Offer 8 would be preferred to Offer 5 because it contains a U.S. dollar content of $50.

225.7604 Awards.

(a) *Basis.* Award shall be made in accordance with (b) and (c) below. When unreasonable overpricing in relation to the U.S. dollar cost or the normal local foreign currency cost to non-DoD users of the same or similar items exists, the proposed acquisition shall be referred to higher authority.

(b) *Awards by the contracting officer.* The contracting officer shall have authority to award contracts as follows:

(1) To the offeror submitting the lowest responsive offer in whole or in part in excess foreign currency when

that offer does not exceed the lowest responsive offer in U.S. dollars by more than 50% and the lowest responsive offer in U.S. dollars does not exceed $50,000; (Note: The cost to the DoD Appropriation shall be the lowest responsive offer in U.S. dollars. The additional cost will be assumed by the Department of the Treasury.)

(2) To the offeror submitting the lowest responsive offer in whole or in part in near-excess foreign currency, when that offer does not exceed the lowest responsive offer in U.S. dollars;

(3) To the offeror submitting the lowest responsive offer entirely in U.S. dollars; Provided, That payment in U.S. dollars is authorized under 225.7606.

(c) *Awards requiring approval by higher authority.*

(1) The contracting officer shall refer the proposed acquisition to the appropriate official listed in (3) below when:

(i) The lowest responsive offer in excess foreign currency exceeds the lowest responsive U.S. dollar offer by more than 50%, regardless of the U.S. dollar cost of the contract;

(ii) The lowest responsive U.S. dollar offer exceeds $50,000; or

(iii) The lowest responsive offer in near-excess foreign currency exceeds the lowest responsive offer in U.S. dollars.

(2) The contracting officer shall refer the case expeditiously describing, as a minimum, the acquisition involved; the number of offers received in each currency category; the lowest responsive offer in U.S. dollars; the date or dates the offers will expire; and recommending the offer, if any, that should be accepted.

(3) The Secretaries of the Military Departments, the Assistant Secretary of Defense (Acquisition and Logistics), the Directors of Defense Agencies, and the Assistant Secretary of Defense (Comptroller), or their designees, shall determine whether a proposed acquisition described in (a) above shall be made payable in U.S.-owned foreign currency or in U.S. dollars.

225.7605 Determinations of nonfeasibility and contract certifications.

(a) At the time of award, the contracting officer shall determine whether payment in U.S.-owned foreign currency is feasible.

(b) When the contracting officer determines that it is not feasible under one of the criteria in 225.7606 to use U.S.-owned foreign currency for payment of a contract, he shall execute a Contract Certification in the following format.

Contract Certification

I hereby certify that it is not feasible to make payment under this contract in the country of _____ in the amount of $_____ from U.S.-owned foreign currency for the reason stated. (Cite the applicable criterion.)

(Signature) _____

(Typed Name and Title of Contracting Officer) _____

(c) When U.S.-owned foreign currency and U.S. dollars are combined for payment of a contract, the dollar amount shown in the Contract Certification shall be that amount which is to be paid in U.S. dollars.

(d) The original and one copy of each Contract Certification shall be furnished to the disbursing officer designated to make payments under the contract; and one signed copy shall be filed with the contract. Other distribution may be made in accordance with Departmental instructions.

225.7606 Criteria for nonfeasibility determinations.

The following criteria shall be used in determining that payment of contracts in whole or in part in U.S.-owned foreign currency is not feasible:

(a) The Department of the Treasury is not holding excess or near-excess foreign currency in the country concerned.

(b) The contract is to be awarded in a foreign country where there is U.S.-owned foreign currency but where a treaty, executive agreement, or law of the country concerned requires payments to be made in U.S. dollars.

(c) Responsive offers require payment in U.S. dollars in whole or in part.

(d) The only responsive offers received require payment entirely in U.S. dollars.

(e) The acquisition is for a compelling need and of such urgency that serious injury to the U.S. Government would likely be incurred if payment in excess or near-excess foreign currency were to be insisted upon.

(f) Offers in excess or near-excess foreign currency were unreasonably overpriced in relation to the U.S. dollar cost or the normal local foreign currency cost to non-Department of Defense users of the same or similar items or services and payment in United States dollars has been authorized by the proper authority under 225.7604(c)(3).

225.7607 Excess and near-excess foreign currency countries.

(a) The Department of the Treasury holds excess foreign currency in the following countries.

Country	Currency
Burma	Kyat.
Guinea	Franc.
India	Rupee.
Pakistan	Rupee.
Poland	Zloty.

(b) The Department of the Treasury holds near-excess foreign currency in the following countries.

Country	Currency
Taiwan	Taiwan Dollar.
Yugoslavia	Dinar.

(c) Changes in the currency position of the countries in which excess and near-excess foreign currency is held are disseminated periodically by the Departments to their disbursing officers.

225.7608 Contracts with domestic concerns.

The clause in 252.225–7021, Acquisition and Use of Excess and Near-Excess Currency, shall be included in any contract with a domestic concern when the contracting officer anticipates the contract will be performed in any U.S.-owned foreign currency country.

Subpart 225.77—Procurements Involving Work To Be Performed in Foreign Countries by United States Contractors

225.7700 Scope of subpart.

This subpart provides policy and procedure regarding procurements involving work to be performed in foreign countries by United States contractors.

225.7701 Policy.

When a contract which requires work to be performed in a foreign country by personnel of the United States or third country national contractor is contemplated by a purchasing activity not within the command jurisdiction of the unified or specified command involved, coordination shall be effected with the appropriate senior component commander in the country involved. In the event there is no such component command in the country, or the procurement does not pertain to a component command, this action shall be effected through either the unified commander, the unified command representative, or the designated commanding officer of the unified command for that country. Such coordination shall be effected as early as possible, preferably prior to the issuance of the solicitation, but in any event prior to award of a contract. When such coordination is initiated prior to, or at the time of solicitation, the notification should include a copy of the solicitation, and as much of the information listed in (b) as is then available.

225.7702 Procedures.

(a) The contracting officer shall request the following information from the overseas Commander:

(1) The applicability of any international agreements to the requirement being procured;

(2) Security requirements applicable to the area concerned;

(3) Standards of conduct required to be observed by the prospective contractor and his employees, and any action that may be taken against them in the event required standards are not maintained; and

(4) Requirements pertaining to the use of foreign currencies, including applicability of United States holdings of excess foreign currencies.

(b) The contracting officer shall furnish the overseas Commander the following information prior to any contract performance:

(1) Any contractor logistical support desired in support of US or FMS requirements;

(2) Contract performance period and estimated contract value;

(3) Number and nationality of contractor employees and date of planned arrival of contractor personnel;

(4) Contract security requirements; and

(5) Other pertinent information to effect complete coordination and cooperation.

(c) Approvals and documentation of the contract file shall be as indicated in 225.870.

(d) In accordance with 229.402–70, the contracting officer shall, at the time of negotiation of a contract that is to be performed in a country or area listed in 229.101–10(c), obtain from the appropriate Designated Commanding Officer detailed information concerning the taxes and duties from which the Government of the United States is exempt under the provisions of applicable international agreements or foreign law.

PART 227—PATENTS, DATA, AND COPYRIGHTS

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 227.3—Patent Rights Under Government Contracts

227.304–1 General.

Interim and final invention reports and notification of all subcontracts for experimental, developmental, or research work (FAR 27.304–1(d)(ii)) may be submitted on DD Form 882.

227.304–4 Subcontracts.

The contracting officer shall insert the clause at 252.227–7034, Patents-Subcontracts, in solicitations and contracts containing the clause at FAR 52.227–11, Patent Rights-Retention by the Contractor (Short Form).

Subpart 227.4—Technical Data, Other Data, Computer Software, and Copyrights

227.400 Scope of subpart.

(a) This subpart sets forth the Department of Defense policies, procedures, implementing instructions, solicitation provisions, and contract clauses relating to rights in technical data, other data, computer software, and copyrights as well as to requirements for the acquisition of technical data and computer software. This subpart also sets forth policies, procedures, implementing instructions, solicitation provisions, and contract clauses pertaining to data, copyrights, and restricted designs unique to the acquisition of construction and architect-engineer services.

(b) Specific information concerning requirements for the acquisition of computer software is found in DoD Directive 5000.19–L, Volume II, "Acquisition Management Systems and Data Requirements Control List".

(c) This subpart does not encompass rights in computer software acquired under GSA authorized ADP Schedule Pricelist contracts. Such rights are governed by the terms of the GSA contracts.

227.401 Definitions.

"Commercial computer software", as used in this subpart, means computer software which is used regularly for other than Government purposes and is sold, licensed, or leased in significant quantities to the general public at established market or catalog prices.

"Computer", as used in this subpart, means a data processing device capable of accepting data, performing prescribed operations on the data, and supplying the results of these operations; for example, a device that operates on discrete data by performing arithmetic and logic processes on the data, or a device that operates on analog data by performing physical processes on the data.

"Computer data base", as used in this subpart, means a collection of data in a form capable of being processed and operated on by a computer.

"Computer program", as used in this subpart, means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. Computer programs include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort-merge programs, and ADPE maintenance/diagnostic programs, as well as applications programs such as payroll, inventory control, and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general-purpose in nature or be designed to satisfy the requirements of a particular user.

"Computer software", as used in this subpart, means computer programs and computer data bases.

"Computer software documentation", as used in this subpart, means technical data, including computer listings and printouts, in human-readable form which (a) documents the design or details of computer software, (b) explains the capabilities of the software, or (c) provides operating instructions for using the software to obtain desired results from a computer.

"Data", as used in this subpart, means recorded information, regardless of form or characteristic.

"License rights", as used in this subpart (SBIR program contracts only), means rights to use, duplicate, or disclose technical data or computer software, in whole or in part and in any manner, for Government purposes only, and to have or permit others to do so for Government purposes only. License rights do not grant to the Government the right to have or permit others to use technical data or computer software for commercial purposes.

"Limited rights", as used in this subpart, means rights to use, duplicate, or disclose technical data in whole or in part, by or for the Government, with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data, be (a) released or disclosed in whole or in part outside the Government, (b) used in whole or in part by the Government for manufacture, or in the case of computer software documentation, for reproduction of the computer software, or (c) used by a

party other than the Government, except for:

(1) Emergency repair or overhaul work only, by or for the Government, where the item or process concerned is not otherwise reasonably available to enable timely performance of the work, *provided* that the release or disclosure thereof outside the Government shall be made subject to a prohibition against further use, release or disclosure; or

(2) Release to a foreign government, as the interest of the United States may require, only for information or evaluation within such government or for emergency repair or overhaul work by or for such government under the conditions of (1) above.

"Limited rights", as used in this subpart (SBIR program contracts only), means rights to use, duplicate, or disclose technical data, in whole or in part, by or for the Government, with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data, be (a) released or disclosed in whole or in part outside the Government, (b) used in whole or in part by the Government for manufacture, or in the case of computer software documentation, for preparing the same or similar computer software, or (c) used by a party other than the Government.

"Restricted rights", as used in this subpart, means rights that apply only to computer software, and include, as a minimum, the right to—

(a) Use computer software with the computer for which or with which it was acquired, including use at any Government installation to which the computer may be transferred by the Government;

(b) Use computer software with a backup computer if the computer for which or with which it was acquired is inoperative;

(c) Copy computer programs for safekeeping (archives) or backup purposes; and

(d) Modify computer software, or combine it with other software, subject to the provision that those portions of the derivative software incorporating restricted rights software are subject to the same restricted rights.

In addition, restricted rights include any other specific rights not inconsistent with the minimum rights in (a)–(d) above that are listed or described in a contract or described in a license or agreement made a part of a contract.

"Technical data", as used in this subpart, means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental, or engineering work; or be usable or used to define a design or process or to acquire, produce, support, maintain, or operate materiel. The data may be graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design type documents; or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications and related information, and computer software documentation. Technical data does not include computer software or financial, administrative, cost and pricing, and management data, or other information incidental to contract administration.

"Technical data", as used in this subpart (SBIR program contracts only), means recorded information, regardless of form or characteristic, of a scientific or technical nature. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications and related information, and computer software documentation. Technical data does not include computer software or financial, administrative, cost and pricing, and management data, or other information incidental to contract administration.

"Unlimited rights", as used in this subpart, means rights to use, duplicate, or disclose technical data or computer software in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

227.402 Copyrights.

(a) In general, the copyright law gives an owner of copyright the exclusive rights to—

(1) Reproduce the copyrighted work in copies or phonorecords;

(2) Prepare derivative works;

(3) Distribute copies or phonorecords to the public;

(4) Perform the copyrighted work publicly; and

(5) Display the copyrighted work publicly.

(b) In view of the exclusive rights in subparagraphs (1)–(5) above, any technical data, other data, or computer software that is protected under the copyright law is not in the public domain, even though it may have been published, because acts inconsistent with these rights may not be exercised without a license from the copyright owner.

(c) Department of Defense policy affords the contractor ownership of copyright in any work of authorship first prepared, produced, originated, developed, or generated under a contract, unless the work is designated a "special work" in which case ownership and control of the work is retained by the Government and the contractor is precluded by the terms of the contract from asserting any rights or claim to copyright in the work. Department of Defense policy also requires that the contractor grant to the Government and authorize the Government to grant to others a nonexclusive, paid-up, worldwide license for Government purposes in any work of authorship (other than a "special work") first prepared, produced, originated, developed, or generated and, in addition, requires that the contractor grant to the Government and authorize the Government to grant to others the same license in any work of authorship acquired by the Government under the contract (not first prepared) in which the copyright is owned by the contractor.

(d) Under the clause at 252.227–7013, Rights in Technical Data and Computer Software, the contractor grants to the Government and authorizes the Government to grant to others a nonexclusive, paid-up, worldwide license for Government purposes, under any copyright owned by the contractor in any technical data or computer software prepared for or acquired by the Government under the contract. Under the clause at 252.227–7020, Rights in Data—Special Works, any work first produced in the performance of the contract becomes the sole property of the Government, and the contractor agrees not to assert any rights or establish any claim to copyright in such work. Under this clause, the contractor similarly grants to the Government and authorizes the Government to grant to others a nonexclusive, paid-up, worldwide license for Government purposes in any portion of a work which is not first produced in the performance of the contract but in which copyright is owned by the contractor and which is incorporated in the work furnished under the contract.

(e) Under both of these clauses at 252.227–7013 and 252.227–7020, unless written approval of the contracting officer is obtained, the contractor also agrees not to include in any work prepared, produced, originated, developed, generated, or acquired under the contract, any work of authorship in which copyright is not owned by the contractor without acquiring for the Government and those acting by or on behalf of the Government a nonexclusive, paid-up, worldwide license for Government purposes in the copyrighted work.

227.403 Acquisition of rights in technical data.

227.403–1 Background.

(a) *Government's interest in technical data.* The Government has extensive needs for many kinds of technical data. Its needs may well exceed those of private commercial customers. For defense purposes, millions of separate equipment and supply items, ranging from standard to unique types, must be acquired, operated, and maintained, often at points remote from the source of supply. Functions requiring varied kinds of technical data include training of personnel, overhaul and repair, cataloging, standardization, inspection and quality control, packaging, and logistics operations. Technical data resulting from research and development contracts must be obtained, organized and disseminated to many different users. Finally, the Government must make technical data widely available in the form of contract specifications in order to obtain competition among its suppliers, and thus further economy in Government acquisition.

(b) *Contractor's interest in technical data.* Commercial organizations have a valid economic interest in technical data pertaining to items, components, or processes which they have developed at their own expense. Such technical data is often closely held because its disclosure to competitors could jeopardize the competitive advantage it was developed to provide. Public disclosure of such technical data can cause serious economic hardship to the originating company.

(c) *The balancing of interests.*

(1) It is apparent that there is no necessary correlation between the Government's need for technical data and its contractors' economic interest therein. However, in balancing the Government's requirements for technical data against the contractor's interest in protecting its technical data, it should be recognized that there may be a considerable identity of interest. This is particularly true in the case of innovative contractors who can best be encouraged to develop at private expense items of military usefulness where their rights in such items are scrupulously protected.

(2) It is equally important that the Government foster successful contractual relationships and encourage a ready flow of data essential to Government needs by confining its acquisitions of technical data to cases of actual need. Certainly the Government must not be barred from bargaining and contracting to obtain such technical data as it needs, even though that technical data may normally not be disclosed in commercial practice. Moreover, when the Government pays for research and development work which produces new knowledge, products, or processes, it has an obligation to foster technological progress through wide dissemination of the new and useful information derived from such work and where practicable to provide competitive opportunities for supplying the new products and utilizing the new processes.

(3) At the same time, acquiring, maintaining, storing, retrieving, and distributing technical data in the vast quantities generated by modern technology is costly and burdensome for the Government. For this reason alone, it would be necessary to control closely the extent and nature of technical data acquisition. Such control is also necessary to ensure Government respect for its contractors' economic interest in technical data relating to their privately developed items. The policies and procedures of this subsection are framed in the light of these considerations.

227.403–2 Policy.

(a) *General.*

(1) It is the policy of the Department of Defense to acquire only such technical data rights as are essential to meet Government needs.

(2) In deciding whether to acquire technical data for future acquisitions so that all such acquisitions can be made on a competitive basis to the maximum practicable extent, the provisions of this section shall govern.

(b) *Unlimited rights technical data.* Technical data in the following categories shall be acquired with unlimited rights:

(1) Technical data resulting directly from performance of experimental, developmental, or research work which was specified as an element of performance in a Government contract or subcontract;

(2) Technical data necessary to enable others to manufacture end-items, components and modifications, or to enable them to perform processes, when the end-items, components, modifications or processes have been, or are being, developed under Government contracts or subcontracts in which experimental, developmental or research work was specified as an element of contract performance, except technical data pertaining to items, components or processes developed at private expense;

(3) Technical data prepared or required to be delivered under any Government contract or subcontract and constituting corrections or changes to Government-furnished data;

(4) Technical data pertaining to end-items, components or processes, prepared or required to be delivered under any Government contract or subcontract, for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics and performance requirements ("form, fit and function" data, e.g., specification control drawings, catalog sheets, envelope drawings, etc.);

(5) Manuals or instructional materials prepared or required to be delivered under a Government contract or subcontract for installation, operation, maintenance or training purposes; and

(6) Technical data which is in the public domain or has been or is normally released or disclosed by the contractor or subcontractor without restriction on further disclosure. "In the public domain" means available to the public without copyright or other restriction of any kind.

(c) *Limited rights technical data.*

(1) Except as provided in paragraph (b) above, unpublished technical data pertaining to items, components or processes developed at private expense will be acquired with limited rights; *Provided*, that the data is identified as limited rights data in accordance with subparagraph (b)(2) of the clause at 252.227–7013, Rights in Technical Data and Computer Software. Unpublished, as applied to technical data and computer software documentation, means that which has not been released to the public nor been furnished to others without restriction on further use or disclosure.

(2) It should be clearly understood that the above statement of policy is a recital of rights to be acquired in technical data. Neither the foregoing statement of technical data rights policy, nor its implementing subparagraphs (b)(1) and (2) of the clause at 252.227–7013, Rights in Technical Data and Computer Software, establishes technical data requirements for a particular contract. It should also be noted that technical data pertaining to items, components or processes developed at private expense may be called for, required, or otherwise furnished under subparagraphs (b)(1), (3), (4), (5), and (6) above and, as such, it will be acquired with unlimited rights. Contract clauses and the schedule establish the form and type of technical

data to be furnished; the categories into which such technical data fall, determine the rights to be obtained by the Government to use or publish such technical data.

(d) *Predetermination of Rights in Technical Data.*

(1)(i) When the Government needs technical data with unlimited rights, any data which the offeror intends to deliver with limited rights pursuant to paragraph (c) above should be identified prior to contract award, if feasible, and an agreement with respect thereto shall be incorporated in the contract. This procedure is called predetermination of rights in technical data.

(ii) The procedure may be initiated by the contracting officer or an offeror during the negotiation of a negotiated contract. In order to be productive, the procedure should apply only to that technical data for which rights may practicably be identified. Although the agreement may also cover technical data to be delivered with unlimited rights, in no case shall the procedure be used to require the contractor to furnish, with unlimited rights, technical data which it is entitled to furnish with limited rights under the policy in paragraph (c) above. The contracting officer shall consult counsel as fully as possible in determining whether to use the procedure and in connection with the various steps of the procedure.

(2) Any agreements reached shall be incorporated in the Schedule of the contract directly or by reference and shall describe specifically the technical data which may be furnished with limited rights pursuant to paragraph (c) above. The contracting officer may, however, review the technical data asserted to be limited rights data to determine whether to invoke the procedures of paragraph (f) below to negotiate to purchase unlimited rights in any of the technical data, or adopt some alternative such as to—

(i) Delete or modify the requirement for the technical data in which the Government would need unlimited rights if it were ordered; or

(ii) Modify the specifications so as not to require or permit the use of the item, component or process covered by the limited rights data; or

(iii) Include a contractual option to acquire unlimited rights.

(3) When the predetermination of rights in technical data procedure is to be used, include the provision at 252.227–7014, Predetermination of Rights in Technical Data, in the Request for Proposals.

(4) If completion of predetermination proves impracticable before award or if contractual requirements relating to design or technical data items are changed during the course of a contract, an appropriate provision shall be included in the contract, requiring the contractor to complete the identification of limited rights with respect to that technical data listed in the solicitation for which predetermination was proposed, or to identify limited rights technical data relating to the changed requirements.

(e) *Subcontracts.* It is the policy of the Department of Defense that prime contractors and higher-tier subcontractors shall not use their power to award subcontracts as economic leverage to acquire rights in the technical data of their subcontractors for themselves. Accordingly, a subcontractor who would have the right pursuant to paragraph (c) above to furnish technical data with limited rights, may furnish such limited rights data directly to the Government rather than through the prime contractor.

(f) *Specific acquisition of unlimited rights in technical data.*

(1) Notwithstanding paragraph (c) above or any other provision of this subsection the Government may acquire unlimited rights in any limited rights technical data by means of negotiation with an individual contractor or subcontractor, or as a part of a competition among several contractors or subcontractors. Such individual negotiation or competition may be conducted either by the Government, or upon Government request by the prime contractor or higher-tier subcontractor. Such unlimited rights in technical data shall be stated in the contract schedule as a separate item and shall be separately priced. Unlimited rights in technical data shall not be acquired under this paragraph unless it is determined after a finding upon a documented record that—

(i) There is a clear need for repurchase of the item, component, or process to which the technical data pertains;

(ii) There is no suitable item, component or process of alternate design or availability;

(iii) The item or component can be manufactured or the process performed through the use of such technical data by other competent manufacturers, without the need for additional technical data which cannot be purchased reasonably or is not readily obtained by other economic means; and

(iv) Anticipated net savings in repurchases will exceed the acquisition cost of the technical data and rights therein.

(2) The analysis and findings referred to in subparagraph (b)(1) above shall specifically identify each item, component or process and the particular technical data therefor which is to be purchased.

(3) When all technical data is to be acquired under any contract with unlimited rights in accordance with the findings of paragraph (f)(1) above, the clause at 252.227–7015, Rights in Technical Data-Specific Acquisition, shall be used.

(4)(i) In addition to the acquisition of unlimited rights in technical data as authorized in paragraph (f)(1) above, there will be situations when it is in the best interest of the Government to acquire from subcontractors repair parts or components by direct sale to the Government.

(ii) The clause at 252.227–7017, Rights in Technical Data—Major System and Subsystem Contractor, may be used in contracts for major systems or major subsystems involving estimated program expenditures in excess of $50 million of RDT&E funds or in excess of $200 million of production funds. When this clause is used, any compensation the contractor requires for the right the subcontractor will have to use his limited rights, technical data shall be included in the price of the prime contract. Also, the Government shall have the right to purchase such items direct from manufacturing subcontractors without the payment, either directly of any fee or royalty to the prime contractor, or as part of the purchase price, for use of the prime contractor's technical data.

(iii) For the purpose of applying the foregoing policy, the following definitions shall be utilized: A major system is a composite of equipment, skills, and techniques capable of performing and/or supporting an operational role which required or will require research, development, test and evaluation investment or design, development, test and evaluation investment estimated in excess of $50 million or total production investment estimated in excess of $200 million. A major subsystem is a major functional part of a major system (as defined above) which is essential to operationa. completeness. Examples are: airframe, propulsion, armament, guidance, and communication. A major system or major subsystem contractor includes an associate contractor defined as a prime contractor to the Government for developing and/or producing subsystems, equipment, or components meeting specifications prepared by a contractor performing one or more of the functions of systems engineering for a major system (as defined above).

(g) *Notice of certain limited rights.*

(1) Whether or not the procedure of paragraph (d) above for predetermination of rights in technical data is used, if continuing information is desired under a contract about a contractor's intention to use in the performance of the contract any item, component, or process for which technical data would be subject to limited rights in accordance with the policy of paragraph (c) above, the contractor may be required to advise the contracting officer of this fact promptly (see subparagraph 227.412(a)(2) and Alternate I to the clause at 252.227–7013, Rights in Technical Data and Computer Software). If possible, the schedule should indicate the specific areas pertaining to which limited rights data is of concern and the notice requirement should be restricted to those areas of concern.

(2) No such advice shall be required as to items, components, or processes for which notice was previously given pursuant to the predetermination procedure in the same contract, or with respect to standard commercial items which are manufactured by more than one source of supply. No contracting officer approval under this clause is necessary for the contractor to use any item, component, or process, identified pursuant to this requirement, in the performance of the contract.

(3) If the contracting officer agrees that under the policy stated in paragraph (c) above such technical data would be subject to limited rights, the contracting officer may then determine whether to invoke the procedure of paragraph (f) above, to negotiate for the purchase of unlimited rights in such data or to adopt other suitable alternatives. The contract shall be amended to reflect any changes required by these procedures.

227.403–3 Procedures.

(a) *Deviations.* Extension of the six-month period of subparagraph (d)(2) below shall be processed under the authority of FAR section 1.403. Other deviations to section 227.403 and from the clauses prescribed for use herein shall be processed in accordance with the procedures in FAR section 1.404.

(b) *Establishing the Government's rights to use technical data.* All technical data specified in a contract or subcontract for delivery thereunder shall be acquired subject to the rights established in the appropriate Rights in Technical Data clauses. Except as provided in FAR section 48.105 and in FAR Subpart 38.6 no other clauses, directives, standards, specifications or other implementation shall be included, directly or by reference, to enlarge or diminish such rights. The Government's acceptance of technical data subject to limited rights does not impair any rights in such data to which the Government is otherwise entitled or impair the Government's right to use similar or identical data acquired from other sources.

(c) *Marking of technical data.*

(1) Technical data delivered to the Government pursuant to any contract requirement shall be marked with the number of the prime contract, except as provided, in subparagraph 227.404–2(c)(2), and the name of the contractor and any subcontractor who generated the technical data. Each piece of technical data submitted with limited rights shall also be marked with—

(i) The authorized restrictive legend,

(ii) An indication (for example, by circling, underscoring, or a note) of that portion of the piece of technical data to which the legend is applicable, and

(iii) An explanation of the indication used to identify limited rights data.

The Government shall include such identifying markings on all reproductions thereof, unless the Government cancels such markings pursuant to subparagraphs (c)(2), (d)(3), or (d)(4) below.

(2) The contractor has the responsibility to assure that no restrictive markings are placed on technical data except in accordance with the "Rights in Technical Data and Computer Software" clause at 252.227–7013. Copyright notices as specified in Title 17, United States Code, Sections 401 and 402, are not considered "restrictive markings". When the clause at 252.227–7013, "Rights in Technical Data and Computer Software", is required by 227.412(a), the clause at 252.227–7018, "Restrictive Markings on Technical Data", shall also be included in the contract. The contractor's procedures required by this clause shall be reviewed periodically by the Contract Administration Office. In addition to the rights afforded to the Government by the clause at 252.227–7018, "Restrictive Markings on Technical Data", the following actions are available to insure proper marking of technical data:

(i) The procedures in paragraph (d), "Removal of Unauthorized Markings", of the clause at 252.227–7013, may be invoked if the contractor fails to follow procedures required by the clause at 252.227–7013, Rights In Technical Data and Computer Software, or fails to correct deficiencies within a specified time.

(ii) Failure to follow proper marking procedures may also be deemed to render technical data nonconforming and subject to FAR section 46.102 and to withholding of payments under the "Technical Data—Withholding of Payments" clause.

(iii) When a pre-award survey is requested by the purchasing office, the quality assurance review shall include as an item of special inquiry an examination of the prospective contractor's procedures for complying with the "Restrictive Markings on Technical Data" clause.

(iv) The contractor's procedures for complying with the "Restrictive Markings on Technical Data" clause shall be reviewed when holding post-award conferences pursuant to FAR Part 42.

(d) *Unmarked or improperly marked technical data.*

(1) The Government shall have the right to require the contractor to furnish clear and convincing evidence of the propriety of any restrictive markings used by the contractor on data furnished to the Government under contract.

(2) Technical data received without a restrictive legend shall be deemed to have been furnished with unlimited rights. However, within six months after delivery of such data the contractor may request permission to place restrictive markings on such data at its own expense and the Government may so permit if the contractor—

(i) Demonstrates that the omission of the restrictive marking was inadvertent,

(ii) Establishes pursuant to subparagraph (d)(1) above that the use of the markings is authorized, and

(iii) Relieves the Government of any liability with respect to such technical data (see paragraph 227.403–3(a)).

(3) If technical data which the contractor is not authorized by the contract to furnish with limited rights is received with restrictive markings, the technical data shall be used with limited rights pending written inquiry to the contractor. If no response to an inquiry has been received within 60 days, or if the response fails to substantiate by clear and convincing evidence that the markings were authorized, the cognizant Government personnel shall cancel or ignore such markings, notify the contractor accordingly in writing, and thereafter may use such technical data with unlimited rights.

(4) If technical data which the contractor is authorized by the contract to furnish with limited rights is received with restrictive markings not in the form prescribed by the contract, the technical data shall be used with limited rights,

and the contractor shall be required by written notice to correct the markings to conform with those specified in the contract. If the contractor fails to so correct the markings within 60 days after notice, Government personnel may correct or cancel the markings, so notify, the contractor in writing, and thereafter use the technical data accordingly.

(e) *Technical data furnished on a restricted basis in support of o proposal.* When the contracting officer contemplates awarding a contract on a solicited or unsolicited proposal which was offered on a restricted basis (see FAR 5.413 and FAR 15.509), the contracting officer shall ascertain whether to acquire rights to use all or part of the technical data furnished with the proposal. If such rights are desired, the contracting officer shall negotiate with the offeror in accordance with the policies set forth in this section 227.403. If the offeror agrees to furnish the technical data under the contract, the appropriate clause at 252.227–7013, Rights in Technical Data and Computer Software, shall be inserted in the contract, and the contract shall identify the technical data to be covered by the clause as provided by section 227.410.

(f) *Delivery of technical data to foreign governments.* As provided in the definition of limited rights in section 227.401, limited rights include the right of the Government to deliver the technical data to foreign governments as the national interest of the United States may require, subject to the same limitations which the Government accepts for itself. When the Government proposes to make technical data subject to limited rights available for use by a foreign government, it will, to the maximum extent practicable, give reasonable notice thereof to the contractor or subcontractor who generated the technical data and whose name appears thereon.

227.404 Acquisition of rights in computer software.

227.404–1 Policy.

(a) The Government shall have unlimited rights in:

(1) Computer software resulting directly from or generated as part of the performance of experimental, developmental, or research work specified as an element of performance in a Government contract or subcontract;

(2) Computer software required to be originated or developed under a Government contract, or generated as a necessary part of performing a contract;

(3) Computer data bases, prepared under a Government contract, consisting of (i) information supplied by the Government (ii) information in which the Government has unlimited rights; or (iii) information which is in the public domain;

(4) Computer software prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished software; or

(5) Computer software which is in the public domain or has been or is normally furnished by the contractor or subcontractor without restriction.

(b) When the Government has unlimited rights in computer software in the possession of a contractor, no payment will be made for rights of use of such software in performance of Government contracts or for the later delivery to the Government of such computer software, *provided* however, that the contractor shall be entitled to compensation for converting the software into the prescribed form for reproduction and delivery to the Government.

(c) It is Department of Defense policy to acquire only such rights to use, duplicate, and disclose computer software developed at private expense as are necessary to meet Government needs. Such rights should be designed to allow the Government flexibility while, at the same time, adequately preserving the rights of the contractor. Computer software developed at private expense may be purchased or leased. Restrictions may be negotiated with respect to the right of the Government to use, duplicate, or disclose computer programs or computer data bases developed at private expense. As a minimum, however, the Government shall have the rights provided in the definition of restricted rights in section 227.401.

(d) Patented or copyrighted computer software will not be subject to any agreement prohibiting the Government from infringing a patent or copyright. Title 28, United States Code, section 1498 provides that the Government is liable only for reasonable compensation for use of a patented invention or for infringement of copyright. However, see section 227.7011.

(e) When computer software is developed at private expense and acquired with restricted rights, the associated computer software documentation will be acquired with limited rights to the extent provided in the definition of limited rights in section 227.401, and will not be used for preparing the same or similar computer software.

(f) Commercial computer software and related documentation developed at private expense may be leased, or a license to use may be purchased, by the Government subject to the restrictions in subdivision (b)(3)(i) of the clause at 252.227–7013, Rights in Technical Data and Computer Software.

227.404–2 Procedures.

(a) *Deviations.* All requests for deviations from this section 227.404 shall be submitted to the DAR Council in accordance with the procedures in FAR 1.404.

(b) *General.* (1) Except as provided at 252.227–7031, Data Requirements, any computer program or computer data base to be acquired under a contract shall be listed on the Contract Data Requirements List (DD Form 1423). Also, if a contract requires the conversion of data to machinereadable form, the editing or revision of existing programs, or the preparation of computer software documentation, the products of this work, if required to be delivered, shall be included on the DD Form 1423.

(2) The clause at 252.227–7013, Rights in Technical Data and Computer Software, shall be included in every contract under which computer software may be originated, developed, or delivered. That clause establishes the circumstances under which the Government secures unlimited rights in both technical data and computer software, limited rights in technical data, and restricted rights in computer software. In negotiated contracts where the clause at 252.227–7013, Rights in Technical Data and Computer Software, is required, the provision at 252.227–7019, Identification of Restricted Rights Computer Software, shall be included in the solicitation.

(3) Contracts under which computer software developed at private expense is acquired or leased shall explicitly set forth the rights necessary to meet Government needs and restrictions applicable to the Government as to use, duplication and disclosure of the software. Thus, for example, such software may be needed, or the owner of such software will only sell or lease it, for specific or limited purposes such as for internal agency use, or for use in a specific activity, installation or service location. In any event, the contract must clearly define any restrictions on the right of the Government to use such computer software, but such restrictions will be acceptable only if they will permit the Government to fulfill the need for which such software is being acquired. The recital of restrictions may be complete within itself or it may

reference the contractor's license or other agreement setting forth restrictions. If referencing is employed, a copy of the license or agreement must be attached to the contract. The minimum rights are provided in the Rights in Technical Data and Computer Software clause at 252.227–7013, and need not be included in the recital.

(4) When computer software developed at private expense is modified or enhanced as a necessary part of performing a contract, only that portion of the resulting product in which the original product is recognizable will be deemed to be computer software developed at private expense to which restricted rights may attach.

(5) The scope of the restrictions on or, conversely, the scope of the use which the Government is permitted to make of such software shall be taken into account in determining the reasonableness of the contract price for the computer software.

(c) *Computer software subject to restricted rights.*

(1) Because of the widely-varying restrictions which are likely to be encountered in the purchase or lease of computer software developed at private expense, a standard recital setting forth specific restrictions and rights suitable for all cases is not feasible. If the standard set of restrictions and rights set forth in paragraph 227.404–1(f) for commercial computer software is not appropriate, personnel are urged to consult counsel in any case in which the proposed contractor requests the Government to accept other restrictions on the use of such software.

(2) To apprise user personnel of the restrictions on use, duplication or disclosure agreed to by the Government with respect to such software sold or leased to the Government, the contractor is required to place the following legend on such software:

Restricted Rights Legend

Use, duplication or disclosure is subject to restrictions stated in Contract No. _____ with _____ (Name of Contractor).

For commercial computer software and documentation, the contract number may be omitted and replaced by "paragraph (b)(3)(B) of the Rights in Technical Data and Computer Software clause at 252.227–7013", and the contractor's address added. The Government shall include the same restrictive markings on all its reproductions of the computer software unless the Government cancels such markings pursuant to the procedures in 227.403–3(d).

(3) A statement setting forth the restrictions imposed on the Government to use, duplicate, and disclose computer software subject to restricted rights is required to be prominently displayed in humanreadable form in the computer software documentation. The reference to the Rights in Technical Data and Computer Software clause in the Restricted Rights Legend on commercial computer software and documentation satisfies this requirement.

(4) Except as provided in paragraph (b) above, computer programs, computer data bases, and computer software documentation delivered to the Government pursuant to a contract requirement must be identified with the number of the prime contract and the name of the contractor.

(5) All markings, (notice, legends, identifications, etc.) concerning restrictions on the use, duplication, or disclosure of computer software required or authorized by the terms of the contract under which delivery is made are required to be in human-readable form that can be readily and visually perceived and, in addition may be in machine-readable form as appropriate and feasible under the circumstances. Such markings shall be affixed by the contractor to the computer software prior to delivery of the software to the Government.

(6) The human-readable markings may be applied to card decks, magnetic tape reels, or disc packs. This may be, in the case of a card deck, on a notice card even though the cards of the deck do not contain printed material; in the case of a card deck packaged in a container intended as a permanent receptacle for the cards, on the container; in the case of a tape, on the tape reel or on the surface of the leader and trailer of the tape; and in the case of a disc pack, on the hub of the disc.

(d) *Unmarked or improperly marked computer software.*

(1) No restrictive markings shall be placed upon computer software unless restrictions are set forth in the contract prior to delivery of the software. Copyright notices as specified in Title 17, United States Code, Sections 401 and 402 are not considered "restrictive markings". The Government may require the contractor to identify the contractual provision setting forth such restrictions before accepting computer software with restrictive markings. If computer software is received with restrictive markings, and there is a question whether it is authorized by the contract to be furnished with restricted rights, it shall be used subject to the asserted restrictions pending written inquiry to the contractor. If no response to an inquiry has been received within 60 days, or if the response fails to identify the restrictions set forth in the contract, the cognizant Government personnel shall cancel or ignore the markings, notify the contractor accordingly in writing, and thereafter use the software with unlimited rights.

(2) Computer software received without a restrictive legend shall be deemed to have been furnished with unlimited rights. However, the contractor may request permission to place restrictive markings on such software at its own expense, and the Government may so permit, if the contractor establishes that the markings are authorized by the contract and demonstrates that the omission was inadvertent. Failure of the contractor to mark such computer software prior to delivery to the Government shall relieve the Government of liability for any use, duplication or disclosure of such computer software.

(3) If computer software authorized by the contract to be furnished with restrictions is received with restrictive markings not in the form prescribed by the contract, the software should be used in accordance with the restrictions provided for in the contract and the contractor shall be required by written notice to correct the markings to conform with those specified in the contract. If the contractor fails to correct the markings within 60 days after notice, Government personnel may correct the markings, and so notify the contractor.

227.405 Contracts for acquisition of special works.

(a) The clause at 252.227–7020, Rights in Data—Special Works, shall be used in all contracts for special works, including technical data and computer software, where ownership and control by the Government is desired, for example, in contracts—(1) primarily for the production of audiovisual works including motion pictures or television recordings with or without accompanying sound, or for the preparation of motion picture scripts, musical compositions, sound tracks, translations, adaptations, and the like; (2) for histories of the respective Departments for services or units thereof; (3) for works pertaining to recruiting, morale, training, or career guidance; (4) for surveys of Government establishments; (5) for works pertaining to the instruction or guidance of Government officers and employees in the discharge of their official duties; and (6) primarily for production of technical reports, studies, or similar documents.

(b) Contracts for audiovisual works may include limitations in connection with music licenses, talent releases, and

the like which are consistent with the purpose for which the works are acquired.

227.406 Contracts for acquisition of existing works.

(a) *Off-the-shelf acquisition of books and similar items.* Notwithstanding the instructions of any other paragraphs in this part, no contract clause contained in this part need be included in contracts for the separate, sole acquisition of data, other than motion pictures, in the exact form in which such material exists prior to the initiation of a request for acquisition (such as the off-the-shelf acquisitions of existing products) unless the right to reproduce such technical data is an objective of the contract.

(b) *Acquisition of existing audiovisual works.*

(1) The clause at 252.227–7021, Rights in Data—Existing Works, shall be used in contracts exclusively for the acquisition of existing motion pictures, television recordings, or other audiovisual works. The contract may set forth limitations consistent with the purposes for which the material covered by the contract is being acquired. Examples of these limitations are—(i) means of exhibition or transmission; (ii) time; (iii) type of audience; and (iv) geographical location. Paragraph (c) of the clause should be modified to make the indemnity coextensive with the rights acquired under paragraph (b) of the clause as limited by the contract.

(2) In contracts which call for the modification of existing motion pictures, television records, or other audiovisual works through editing, translation, or addition of subject matter, the clause at 252.227–7020, Rights in Data—Special Works, appropriately modified, shall be used.

227.407 Contracts limiting government's right of publication for sale to the general public.

The paragraph of Alternate II may be added to the clause at 252.227–7013, Rights in Technical Data and Computer Software, for use in contracts for research when the contracting officer determines, in consultation with counsel, as appropriate, that public dissemination of a work, or certain designated parts of a work, specified to be delivered under the contract is in the best interest of the Government and would be facilitated by the Government relinquishing its right to publish the work for sale, or to have others publish the work for sale on behalf of the Government. This paragraph shall not be used otherwise.

227.408 Architect-engineer and construction contracts.

227.408–1 General.

This section sets forth policies, procedures, implementing instructions, solicitation provisions, and contract clauses pertaining to data, copyrights, and restricted designs unique to the acquisition of construction and architect-engineer services.

227.408–2 Acquisition and use of plans, specifications, and drawings.

(a) *Architectural designs and data clauses for architect-engineer or construction contracts.*

(1) *Plans and specifications and as-built drawings.*

(i) Except as provided in (ii) below, insert the clause at 252.227–7022, Government Rights (Unlimited), in solicitations and contracts calling for architect-engineer services or in contracts for construction involving architect-engineer services.

(ii) When the purpose of a contract for architect-engineer services or for construction involving architect-engineer services is to obtain a unique architectural design of a building, a monument, or construction of similar nature, which for artistic, esthetic or other special reasons the Government does not want duplicated by anyone else, the Government may desire to acquire exclusive control of the data pertaining to such design. In those cases only where the contracting officer determines for the foregoing reasons that it is desirable to maintain exclusive control over the design and data, the clause at 252.227–7023, Drawings and Other Data to Become Property of Government, shall be used in solicitation and contracts. If the contract is for architect-engineer services, the clause at 252.227–7022 shall be deleted and the clause at 252.227–7023 substituted therefor. If the contract is for construction involving architect-engineer services, only the clause at 252.227–7023 shall be included.

(2) *Shop drawings for construction.* In acquiring shop drawings for construction, the Government shall obtain the unlimited right to use and reproduce such drawings, but shall not exclude a similar right in the designer or others. Accordingly, in solicitations and contracts calling for delivery of such drawings, insert the clause at 252.227–7033, Rights in Shop Drawings.

227.408–3 Contracts for construction supplies and research and development work.

The solicitation provisions and contract clauses in Subpart 227.4 relating to technical data, other data, computer software, and copyrights and prescribed for use in solicitation and contracts for the acquisition of other than construction or architect-engineer services are applicable when the acquisition is limited to either (a) construction supplies or materials as such, as distinguished from construction as defined in FAR 36.102; (b) experimental, developmental, or research work, or test and evaluation studies of structures, equipment, processes, or materials for use in construction; or (c) both. The right of the Government and others to use, duplicate, or disclose such technical data, other data, or computer software will be determined by the terminology of the applicable clauses in the contracts or the terminology of agreements recited in or made part of the contracts.

227.408–4 Mixed contracts.

When solicitations and resulting contracts call for (a) supplies or materials, (b) experimental, developmental or research work, or (c) both, in addition to either construction or architect-engineer work, the solicitation provisions and contract clauses in Subpart 227.4 relating to technical data, other data, computer software, and copyrights and prescribed for use in solicitations and contracts for the acquisition of other than construction or architect-engineer services shall be included in such solicitations and resultant contracts in addition to the appropriate solicitation provisions and contract clauses prescribed for use in solicitations and contracts for construction or architect-engineer services. In such cases, the solicitations and resulting contracts shall clearly indicate which of the solicitation provisions and contract clauses apply only to the supplies or materials being acquired, or to the experimental, developmental, or research work, or to both, and which of the solicitation provisions and contract clauses apply only to the construction or architect-engineer work.

227.408–5 Approval of restricted designs.

(a) Specifications for construction should allow for maximum latitude in the use of various types of commercially available products, materials, equipment, or processes which will meet objective Government requirements. However, Government requirements may necessitate, or the architect-engineer may contemplate the use of structures, products, materials, equipment, or processes which are available only from a sole source. In such event, the architect-engineer

should report to the contracting officer the items known to be sole source, and the reasons therefor, and advise the contracting officer of the extent to which such items are considered necessary to meet the Government's requirements. This will make possible timely planning and arrangements for the use of sole source items, or where appropriate, consideration of alternate items.

(b) This procedure is not intended to restrict the use of patented or copyrighted items, but is meant to give the Government an opportunity to consider whether the specification being drawn by the architect-engineer, in regard to any one item, are unnecessarily restricted, according to objective Government requirements to a single sole item. The procedure is primarily for use in instances where the proposed design is expected to be conventional or standard and where the design may be used in subsequent acquisitions. For this purpose, the clause at 252.227–7024, Notice and Approval of Restricted Designs, may be inserted in architect-engineer contracts.

227.409 Contracts awarded under small business innovation research program (SBIR Program).

(a) Pub. L. 97–219, "Small Business Innovation Development Act of 1982", requires certain agencies to establish a Small Business Innovation Research Program (SBIR Program). The public law also includes terminology providing for "retention of rights in data generated in the performance of the contract by the small business concern". The Small Business Administration (SBA) issued Policy Directive No. 65–01 on 19 November 1982 to provide policy direction for the conduct of the Small Business Innovation Research Programs within the federal agencies. The policy directive was issued pursuant to the authority contained in the public law.

(b) In the policy directive, the SBA in essence recommended that, except for program evaluation, agencies should protect technical data and computer software generated under an SBIR Program contract (funding agreement) for a period of two years from the completion of the contract under which the technical data and computer software were generated, unless the agencies obtained permission to disclose such data and software from the contractor. The SBA also recommended that, effective at the conclusion of the two-year period, the Government shall have a royalty-free license in the technical data and computer software for Government use. The SBA further recommended that the contractor, with prior written permission of the contracting officer, be afforded ownership of copyright in technical data and computer software generated under an SBIR Program contract and that the contractor be allowed to publish (subject to national security considerations, if any) such data and software. The policy directive considered it appropriate that the Government should receive a royalty-free license under any copyright and that each publication should contain an appropriate acknowledgement and disclaimer statement.

(c) The clause at 252.227–7025, Rights in Technical Data and Computer Software (SBIR Program), incorporates the coverage recommended by the SBA policy directive and shall be included in all contracts awarded under the SBIR Program in which technical data or computer software is required to be prepared, originated, developed, generated, or delivered. The clause differs basically from the clause at 252.227–7013, Rights in Technical Data and Computer Software, in that it incorporates a new category of rights defined as license rights. This new category permits certain technical data and computer software generated under an SBIR Program contract to be delivered with a license rights legend thereon. The clause thus permits technical data to be acquired under a contract with license rights, unlimited rights, or limited rights; and computer software to be acquired with license rights, unlimited rights or restricted rights. The clause is limited to use solely in contracts awarded under the SBIR Program.

227.410 Acquisition of technical data and computer software.

227.410–1 General.

(a) *Policy.*

(1) Technical data and computer software is expensive to prepare in the required form and to maintain and update. Every effort, therefore, should be made to avoid placing a requirement upon a contractor to prepare and deliver technical data or software unless the need is positively determined. By delaying the delivery of technical data or software until needed for a specific purpose, storage requirements within DoD of technical data and computer software items are reduced, the handling of technical data and software superseded by updated versions is greatly decreased and the purchase of technical data or software which may become obsolete by pending hardware changes is minimized.

(2) Economy in the purchase of technical data and software and the probability of greater currency may be achieved by deferring the delivery, and in some cases deferring the ordering, of technical data or software until an operational need is determined, or until stability of design or production is reached during contract performance. The application of the deferred delivery and deferred ordering principles, as explained further, should be made only after a careful evaluation on a case-by-case basis of the anticipated operational uses of technical data or computer software and any other relevant considerations. When it is expected that technical data or computer software may be required, but the precise need at time of contracting has not been determined, deferred ordering will be used to avoid the cost of preparation but allow the ordering of the technical data or software at some point downstream in contract performance should the need arise. When the need but not the time of delivery can be determined, deferred delivery will be used. When deferred delivery is used, it is expected that the contractor will price the technical data and software at the time of contracting and incur the cost of preparation prior to the call for delivery. Therefore, it is important that deferred ordering rather than deferred delivery be used where the need for technical data or software is doubtful. Whether the technique of deferred delivery or deferred ordering is used, the receipt of technical data or software by the Government should be scheduled to be in phase with a specific and planned use of the technical data or software.

(b) Deferred delivery refers to the practice of timing the delivery of technical data or computer software specified in a contract to a firm, operational need. This technique should be used only when a technical data or software requirement can be determined at the time of contracting and therefore is specified on the DD Form 1423, but the time or place of delivery is not firm. The dates for the delivery of data and software should be scheduled to coincide with the needs of the Government. The contractor, however, must be notified sufficiently in advance of a delivery date to enable the contractor to provide the technical data or software in specified form on time. Thus, in any contract the Government may defer the delivery of all or any portion of the technical data or computer software specified in the contract until actual need can be economically determined. The Government may require the contractor to deliver any such data or software, or portions thereof, at any time during the

performance of the contract or within two years from either acceptance of all items (other than data and software) under the contract or termination of the contract, whichever is later. However, the contractor's obligation to deliver technical data pertaining to any item obtained from a subcontractor shall cease two years after the date on which it accepts the item. The Government's rights in deferred delivery data and software are as prescribed in the contract under which the data or software is to be delivered. When the delivery of technical data or computer software is to be deferred, the clause at 252.227-7026, "Deferred Delivery of Technical Data or Computer Software", shall be included in the contract.

(c) Deferred ordering refers to delaying the ordering of technical data or computer software generated in the performance of the contract until such time as a need can be established and the requirements can be specifically identified for delivery under the contract. In many instances it is difficult to determine during solicitation and negotiation stages exactly what data or software is needed. The information available at these stages may suggest the need for some data or software but further information may be needed to identify the specific data or software items. In such situations, and also when it is desired to delay the ordering of technical data or computer software until such time as the production design becomes firm, the clause at 252.227-7027, Deferred Ordering of Technical Data or Computer Software, is appropriate. The requirement for technical data or computer software under these circumstances is not listed on the DD Form 1423 until the specific need is determined. Whenever the clause at 252.227-7027, Deferred Ordering of Technical Data or Computer Software, is used, the clause at 252.227-7013, Rights in Technical Data and Computer Software, shall also be included. When data or software items are ordered, the delivery dates shall be negotiated and the contractor shall be compensated for converting the data or software into the prescribed form, for reproduction and delivery to the Government. Compensation to the contractor shall not include the cost of generating such data or software since it was generated in the performance of work for which the Government has already agreed to pay the contractor.

227.410-2 Requirement for technical data certification.

The provision at 252.227-7028, Requirement for Technical Data Certification, shall be included in a solicitation that may result in a negotiated contract when information is needed to establish whether an offeror has delivered or is obligated to deliver to the Government under any contract or subcontract the same or substantially the same technical data included in the offer (see 215.406 and FAR 15.406-5(a)). This solicitation provision requires the offeror to submit with the offer a certification as to whether the same or substantially the same technical data that is included in the offer has been delivered or is obligated to be delivered to the Government under any contract or subcontract. If so, the offeror will be required to identify one such contract or subcontract under which such technical data was delivered or will be delivered, and the place of such delivery.

227.410-3 Identification of technical data.

(a) The contractor is required to include on technical data delivered under a contract the contractor's name, the contract number and the name of any subcontractor who generated any part of such data. If technical data were marked, for example, in the manner permitted by paragraph (b)(2) of the clause at 252.227-7013, Rights in Technical Data and Computer Software, such marked data would comply with the requirements of the clause identified in (b) below and need not be further identified pursuant to this clause. The marking requirement provides the basis for identifying the rights of the contractor and the Government in technical data.

(b) To insure that technical data is fully identified as to its source, the clause at 252.227-7029, Identification of Technical Data, shall be made a part of any contract under which technical data is to be delivered.

227.410-4 Technical data—withholding of payment.

(a) Timely delivery of technical data is particularly important to the operation and maintenance of equipment as well as competitive procurement of follow-on quantities of contract items and of items broken out from an assembly or equipment. The clause at 252.227-7030, Technical Data—Withholding of Payment, is designed to assure timely delivery of technical data. The clause permits a withholding not exceeding 10 percent of the total contract price or amount, but the contracting officer may specify a lesser amount in the contract if circumstances warrant. A case-by-case determination as to the amount to be withheld shall be made by the contracting officer after considering the estimated value of the technical data to the Government. No amount shall be withheld when the failure to make timely delivery arises out of causes beyond the control and without the fault or negligence of the contractor.

(b) Withholding action under paragraph (b) of the clause should be taken only when the contractor has failed to make timely deliveries of acceptable technical data on other contracts or if the contracting officer has information which would cause the contracting officer to anticipate late delivery of technical data or delivery of deficient technical data. The amount of withholding should be based on the estimated value of the technical data to the Government.

227.410-5 Warranties of technical data.

The factors contained in section 246.703, Criteria for Use, shall be considered in deciding whether to provide for warranties of technical data delivered under contracts calling for technical data. The basic technical data warranty clause is set forth at 252.246-7001, Warranty of Data. There are two alternates to the basic clause. The basic clause and the appropriate alternate should be selected in accordance with section 246.770.

227.410-6 Data requirements.

(a) The clause at 252.227-7031, Data Requirements, shall be included in all solicitations and contracts, except that the clause need not be included in—

(1) Any contract, of which the aggregate amount involved does not exceed $25,000 and in any blanket purchase agreement and purchase order utilizing the DD Form 1155 (however, the DD Form 1423 shall be used with orders issued under a basic ordering agreement);

(2) Any contract awarded to a contractor outside the United States, except those under Subpart 225.71, Canadian Purchases;

(3) Any research or exploratory development contract when reports are the only deliverable item(s) under the contract;

(4) Any service type contract, when the contracting officer determines that the use of the DD Form 1423 (Contract Data Requirements List) is impractical for use with respect to records prepared by a contractor in performing operation and maintenance under the contract;

(5) Any contract under which construction and architectural drawings and specifications are the only deliverable items;

(6) Any contract for commercial items when the only deliverable data is such an item, or would be packaged or furnished with such items in accordance with customary trade practices; or

(7) Any contract for items containing material which, by virtue of its potentially dangerous nature, requires controls to assure adequate safety to life and property, when the only deliverable data is the Materials Safety Data Sheet (MSDS) submitted in compliance with Federal Standard 313A and the clause at FAR 52.223-3, Hazardous Material Identification and Material Safety Data, and when such clause is included in the contract.

(b) The clause at 252.227-7031, Data Requirements, states that the contractor is required to deliver only the data items listed on the DD Form 1423 and the data items identified in and deliverable under any contract clause of Subpart 252.2 and FAR Subpart 52.2 made a part of the contract.

(c) Other than the data items falling within the exceptions set forth in paragraph (a) above, and the data items identified in and deliverable under any contract clause of Subpart 252.2 and FAR Subpart 52.2 made a part of the contract, the requirement for delivery of any data items under the contract can be established only by listing the data items on the DD Form 1423 (see section 253.270). The clause at 252.227-7031, Data Requirements, shall be inserted in all contracts in which the DD Form 1423 is used. The DD Form 1423 need not be used to list data or software requirements in any of the contracts falling within the exceptions set forth in paragraph (a) above.

227.411 Contracts with foreign sources to be performed outside the United States.

Normally, the clause at 252.227-7032, Rights in Technical Data and Computer Software (Foreign), is used in solicitations and contracts with foreign sources, except that the clause shall not be used in contracts for special works (see section 227.405), contracts for existing works (see section 227.406), or contracts for Canadian purchases (see Subpart 225.71, Canadian Purchases). This clause should be inserted when the Government is to acquire unlimited rights in all technical data, including reports, drawings and blueprints, and all computer software, specified to be delivered to the Government. The clause at 252.227-7013, Rights in Technical Data and Computer Software, shall be inserted when the same rights are to be obtained as would be obtained if contracting with United States firms. Notwithstanding paragraphs 227.403-3(a) and 227.404-2(a), the clause may be modified to meet the requirements necessary for and peculiar to the foreign acquisition; *Provided*, it agrees with the policies and principles of subsections 227.403-2 and 227-404-1.

227.412 Solicitation provisions and contract clauses.

(a)(1) The contracting officer shall insert the basic data clause at 252.227-7013, Rights in Technical Data and Computer Software, in solicitations and contracts when technical data is specified to be delivered or computer software may be originated, developed, or delivered, *provided* that such clause shall not be used in solicitations and contracts—

(i) When all technical data to be delivered is to be acquired with unlimited rights pursuant to the policy at 227.403-2(f) in which case the clause at 252.227-7015, Rights in Technical Data—Specific Acquisition, shall be used;

(ii) When existing works are to be acquired in accordance with section 227.406;

(iii) When special works are to be acquired in accordance with section 227.405;

(iv) When the work will be performed by foreign sources outside the United States, its territories, possessions, or Puerto Rico, in which case the clause at 252.227-7032, Rights in Technical Data and Computer Software (Foreign) applies;

(v) When performance will be limited solely to architect-engineer services or construction, in which case either the clause at 252.227-7022, Architect-Engineer Work—Unlimited Rights, or the clause at 252.227-7023, Architect-Engineer Work—Sole Property Rights, applies; and

(vi) When the contract is awarded under the DoD Small Business Innovation Research Program (SBIR Program), in which case the clause at 252.227-7025, Rights in Technical Data and Computer Software (SBIR Program), applies.

(2) The contracting officer shall use the clause with its Alternate I in accordance with the policy at 227.403-2(g).

(3) The contracting officer shall use the clause with its Alternate II under the circumstances specified at 227.407.

(b) The contracting officer shall insert the provision at 252.227-7014, Predetermination of Rights in Technical Data, in solicitations when the procedure of 227.403-2(d) is to be used.

(c) The contracting officer shall insert the clause at 252.227-7015, Rights in Technical Data—Specific Acquisition, in solicitations and contracts when all technical data is to be acquired with unlimited rights in accordance with 227.403-2(f) (1),(2), and (3). The clause shall also be included in subcontracts when the Government has determined to acquire all technical data with unlimited rights from a subcontractor in accordance with the authority and findings of subparagraph 227.403-2(f) (1), (2), and (3). The clause shall not be used under any other circumstances.

(d) The contracting officer, in order to prevent any misinterpretation of the scope of the clause at 252.227-7013, Rights in Technical Data and Computer Software, in the contract, may insert the clause at 252.227-7016, Contract Schedule Items Requiring Experimental, Developmental, or Research Work, in solicitations and contracts when the solicitations and contracts, in whole or in part, call for experimental, developmental, or research work as an element of performance.

(e) The contracting officer may insert the clause at 252.227-7017, Rights in Technical Data—Major System and Subsystem Contracts, in solicitations and contracts for major systems or major subsystems under the circumstances specified at 227.403-2(f)(4) (i), (ii), and (iii).

(f) The contracting officer shall insert the clause at 252.227-7018, Restrictive Markings on Technical Data, in all solicitations and contracts in accordance with 227.403-3(c)(2).

(g) The contracting officer shall insert the provision at 252.227-7019, Identification of Restricted Rights Computer Software, in solicitations and contracts in accordance with 227.404-2(b)(2).

(h) The contracting officer shall insert the clause at 252.227-7020, Rights in Data—Special Works, in solicitations and contracts as required by 227.405.

(i) The contracting officer shall insert the clause at 252.227-7021, Rights in Data—Existing Works, in solicitations and contracts as required by 227.406.

(j) The contracting officer shall insert the clause at 252.227-7022, Government Rights (Unlimited) in solicitations and contracts in accordance with 227.408-2(a)(1)(i).

(k) The contracting officer shall insert the clause at 252.227-7023, Drawings and Other Data to Become Property of Government, in solicitations and contracts in accordance with 227.408-2(a)(1)(ii).

(l) The contracting officer shall insert the clause at 252.227-7024, Notice and Approval of Restricted Designs, in solicitations and contracts in accordance with 227.408-5.

(m) The contracting officer shall insert the clause at 252.227-7025, Rights in Technical Data and Computer Software (SBIR Program), in solicitations and contracts in accordance with 227.409.

(n) The contracting officer shall insert the clause at 252.227–7026, Deferred Delivery of Technical Data or Computer Software, in solicitations and contracts in accordance with 227.410–1(b).

(o) The contracting officer shall insert the clause at 252.227–7027, Deferred Ordering of Technical Data or Computer Software, in solicitations and contracts in accordance with 227.410–1(c).

(p) The contracting officer shall insert the provision at 252.227–7028, Requirement for Technical Data Certification, in solicitations in accordance with 227.410–2.

(q) The contracting officer shall insert the clause at 252.227–7029, Identification of Technical Data, in all solicitations and contracts in accordance with 227.410–3.

(r) The contracting officer shall insert the clause at 252.227–7030, Technical Data—Withholding of Payment, in solicitations and contracts in accordance with 227.410–4.

(s) The contracting officer shall insert the clause at 252.227–7031, Data Requirements, in solicitations and contracts, in accordance with 227.410–6.

(t) The contracting officer shall insert the clause at 252.227–7032, Rights in Technical Data and Computer Software (Foreign), in solicitations and contracts in accordance with 227.411.

(u) The contracting officer shall insert the clause at 252.227–7033, Rights in Shop Drawings, in solicitation and contracts in accordance with 227.408–2(a)(2).

Subpart 227.6—Foreign License and Technical Assistance Agreements

227.670 Scope.

This subpart prescribes policy with respect to Foreign License and Technical Assistance Agreements.

227.671 General.

In furtherance of the Military Assistance Program or for other national defense purposes, the Government may undertake to develop or encourage the development of foreign additional sources of supply. The development of such sources may be accomplished by an agreement, often called a foreign licensing agreement or technical assistance agreement, wherein a domestic concern, referred to in this subpart as a "primary source," agrees to furnish to a foreign concern or government, herein referred to as a "second source;" foreign patent rights; technical assistance in the form of data, know-how, trained personnel of the primary source, instruction and guidance of the personnel of the second source, jigs, dies, fixtures, or other manufacturing aids, or such other assistance, information, rights, or licenses as are needed to enable the second source to produce particular supplies or perform particular services. Agreements calling for one or more of the foregoing may be entered into between the primary source and the Government, a foreign government, or a foreign concern. The consideration for providing such foreign license and technical assistance may be in the form of a lump sum payment, payments for each item manufactured by the second source, an agreement to exchange data and patent rights on improvements made to the article or service, capital stock transactions, or any combination of these. The primary source's bases for computing such consideration may include actual costs; charges for the use of patents, data, or know-how reflecting the primary source's investment in developing and engineering and production techniques; and the primary source's "price" for setting up a second source. Such agreements often refer to the compensation to be paid as a royalty or license fee whether or not patent rights are involved.

227.672 Policy.

It is Government policy not to pay in connection with its contracts, and not to allow to be paid in connection with contracts made with funds derived through the Military Assistance Program or otherwise through the United States Government, charges for use of patents in which it holds a royalty-free license or charges for data which it has a right to use and disclose to others, or which is in the public domain, or which the Government has acquired without restriction upon its use and disclosure to others. This policy shall be applied by the Departments in negotiating contract prices for foreign license technical assistance contracts (227.675) or supply contracts with second sources (227.674); and in commenting on such agreements when they are referred to the Department of Defense by the Department of State pursuant to section 414 of the Mutual Security Act of 1954 as amended (22 U.S.C. 1934) and the International Traffic in Arms Regulations (see 227.675).

227.673 Foreign license and technical assistance agreements between the government and domestic concerns.

(a) Contracts between the Government and a primary source to provide technical assistance or patent rights to a second source for the manufacture of supplies or performance of services shall, to the extent practicable, specify the rights in patents and data and any other rights to be supplied to the second source. Each contract shall provide, in connection with any separate agreement between the primary source and the second source for patent rights or technical assistance relating to the articles or services involved in the contract, that—

(1) The primary source and his subcontractors shall not make, on account of any purchases by the Government or by others with funds derived through the Military Assistance Program or otherwise through the Government, any charge to the second source for royalties or amortization for patents or inventions in which the Government holds a royalty-free license; or data which the Government has the right to possess, use, and disclose to others; or any technical assistance provided to the second source for which the Government has paid under a contract between the Government and the primary source; and

(2) The separate agreement between the primary and second source shall include a statement referring to the contract between the Government and the primary source, and shall conform to the requirements of the International Traffic in Arms Regulations (see 227.675–1).

(b) The following factors, among others, shall be considered in negotiating the price to be paid the primary source under contracts within (a) above:

(1) The actual cost of providing data, personnel, manufacturing aids, samples, spare parts, and the like;

(2) The extent to which the Government has contributed to the development of the supplies or services, and to the methods of manufacture or performance, through past contracts for research and development or for manufacture of the supplies or performance of the services; and

(3) The Government's patent rights and rights in data relating to the supplies or services and to the methods of manufacture or of performance.

227.674 Supply contracts between the government and a foreign government or concern.

In negotiating contract prices with a second source, including the redetermination of contract prices, or in determining the allowability of costs under a cost-reimbursement contract with a second source, the contracting officer:

(a) Shall obtain from the second source a detailed statement (see FAR 27.204–1(a)(2)) of royalties, license fees, and other compensation paid or to be paid to a primary source (or any of his subcontractors) for patent rights, rights in data, and other technical assistance provided to the second source, including identification and description of such patents, data, and technical assistance; and

(b) Shall not accept or allow charges which in effect are—

(1) For royalties or amortization for patents or inventions in which the Government holds a royalty-free license; or

(2) For data which the Government has a right to possess, use, and disclose to others; or

(3) For any technical assistance provided to the second source for which the Government has paid under a contract between the Government and a primary source.

227.675 Foreign license and technical assistance agreements between a domestic concern and a foreign government or concern.

227.675–1 International traffic in arms regulations.

Pursuant to section 414 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1934), the Department of State controls the exportation of data relating to articles designated in the United States Munitions List as arms, ammunition, or munitions of war. (The Munitions List and pertinent procedures are set forth in the International Traffic in Arms Regulations, 22 CFR, et seq.) Before authorizing such exportation, the Department of State generally requests comments from the Department of Defense. On request of the Office of the Assistant Secretary of Defense (International Security Affairs), each Department shall submit comments thereon as the basis for a Department of Defense reply to the Department of State.

227.675–2 Review of agreements.

(a) In reviewing foreign license and technical assistance agreements between primary and second sources, the Department concerned shall, insofar as its interests are involved, indicate whether the agreement meets the requirements of sections 124.07—124.10 of the International Traffic in Arms Regulations or in what respects it is deficient. Paragraphs (b) through (g) below provide general guidance.

(b) When it is reasonably anticipated that the Government will purchase from the second source the supplies or services involved in the agreement, or that Military Assistance Program funds will be provided for the procurement of the supplies or services, the following guidance applies.

(1) If the agreement specifies a reduction in charges thereunder, with respect to purchases by or for the Government or by others with funds derived through the Military Assistance Program or otherwise through the Government, in recognition of the Government's rights in patents and data, the Department concerned shall evaluate the amount of the reduction to determine whether it is fair and reasonable in the circumstances, before indicating its approval.

(2) If the agreement does not specify any reduction in charges or otherwise fails to give recognition to the Government's rights in the patents or data involved, approval shall be conditioned upon amendment of the agreement to reflect a reduction, evaluated by the Department concerned as acceptable to the Government, in any charge thereunder with respect to purchases made by or for the Government or by others with funds derived through the Military Assistance Program or otherwise through the Government, in accordance with section 124.10 of the International Traffic in Arms Regulations.

(3) If the agreement provides that no charge is to be made to the second source for data or patent rights to the extent of the Government's rights, the Department concerned shall evaluate the acceptability of the provision before indicating its approval.

(4) If time or circumstances do not permit the evaluation called for in (1), (2), or (3) above, the guidance in (c) below shall be followed.

(c) When it is not reasonably anticipated that the Government will purchase from the second source the supplies or services involved in the agreement nor that Military Assistance Program funds will be provided for the purchase of the supplies or services, then the following guidance applies.

(1) If the agreement provides for charges to the second source for data or patent rights, it may suffice to fulfill the requirements of Section 124.10, insofar as the Department of Defense is concerned if:

(i) The agreement requires the second source to advise the primary source when he has knowledge of any purchase made or to be made from him by or for the Government or by others with funds derived through the Military Assistance Program or otherwise through the Government;

(ii) The primary source separately agrees with the Government that upon such advice to him from the second source or from the Government or otherwise as to any such a purchase or prospective purchase, he will negotiate with the Department concerned an appropriate reduction in his charges to the second source in recognition of any Government rights in patents or data; and

(iii) The agreement between the primary and second sources further provides that in the event of any such purchase and resulting reduction in charges, the second source shall pass on this reduction to the Government by giving the Government a corresponding reduction in the purchase price of the article or service.

(2) If the agreement provides that no charge is to be made to the second source for data or patent rights to the extent to which the Government has rights, the Department concerned shall:

(i) Evaluate the acceptability of the provision before indicating its approval; or

(ii) Explicitly condition its approval on the right to evaluate the acceptability of the provision at a later time.

(d) When there is a technical assistance agreement between the primary source and the Government related to the agreement between the primary and second sources that is under review, the latter agreement shall reflect the arrangements contemplated with respect thereto by the Government's technical assistance agreement with the primary source.

(e) Every agreement shall provide that any license rights transferred under the agreement are subject to existing rights of the Government.

(f) In connection with every agreement referred to in (b) above, a request shall be made to the primary source (1) to identify the patents, data, and other technical assistance to be provided to the second source by the primary source or any of his subcontractors, (2) to identify any such patents and data in which, to the knowledge of the primary source, the Government may have rights, and (3) to segregate the charges made to the second source for each such category or item of patents, data, and other technical assistance. Reviewing personnel shall verify this information or, where the primary source does not furnish it, obtain such information from Governmental sources so far as practicable.

(g) The Department concerned shall make it clear that its approval of any agreement does not necessarily recognize the propriety of the charges or the amounts thereof, or constitute approval of any of the business arrangements in the agreement, unless the Department expressly intends by its approval to commit itself to the fairness

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and reasonableness of a particular charge or charges. In any event, a disclaimer should be made to charges or business terms not affecting any purchase made by or for the Government or by others with funds derived through the Military Assistance Program or otherwise through the Government.

Subpart 227.70—Infringement Claims, Licenses, and Assignments

227.7000 Scope.

This subpart precribes policy, procedures, and instructions for use of clauses with respect to processing licenses, assignments, and infringement claims.

227.7001 Policy.

Whenever a claim of infringement of privately owned rights in patented inventions or copyrighted works is asserted against any Department or Agency of the Department of Defense, all necessary steps shall be taken to investigate, and to settle administratively, deny, or otherwise dispose of such claim prior to suit against the United States. This Subpart 227.7 does not apply to licenses or assignments acquired by the Department of Defense under the Patent Rights clauses.

227.7002 Statutes pertaining to administrative claims of infringement.

Statutes pertaining to administrative claims of infringement in the Department of Defense include the following: the Foreign Assistance Act of 1961, 22 U.S.C. 2356 (formerly the Mutual Security Acts of 1951 and 1954); the Invention Secrecy Act, 35 U.S.C. 181–188; 10 U.S.C. 2386; 28 U.S.C. 1498; and 35 U.S.C. 286.

227.7003 Claims for copyright infringement.

The procedures set forth herein will be followed, where applicable, in copyright infringement claims.

227.7004 Requirements for filing an administrative claim for patent infringement.

(a) A patent infringement claim for compensation, asserted against the United States under any of the applicable statutes cited in 227.7002, must be actually communicated to and received by a Department, agency, organization, office, or field establishment within the Department of Defense. Claims must be in writing and should include the following:

(1) An allegation of infringement;

(2) A request for compensation, either expressed or implied;

(3) A citation of the patent or patents alleged to be infringed;

(4) A sufficient designation of the alleged infringing item or process to permit identification, giving the military or commercial designation, if known, to the claimant;

(5) A designation of at least one claim of each patent alleged to be infringed; or

(6) As an alternative to (4) and (5) above, a certification that the claimant has made a bona fide attempt to determine the item or process which is alleged to infringe, but was unable to do so, giving reasons, and stating a reasonable basis for his belief that his patent or patents are being infringed.

(b) In addition to the information listed in (a) above, the following material and information is generally necessary in the course of processing a claim of patent infringement. Claimants are encouraged to furnish this information at the time of filing a claim to permit the most expeditious processing and settlement of the claim.

(1) A copy of the asserted patent(s) and identification of all claims of the patent alleged to be infringed.

(2) Identification of all procurements known to claimant which involve the alleged infringing item or process, including the identity of the vendor or contractor and the Government procuring activity.

(3) A detailed identification of the accused article or process, particularly where the article or process relates to a component or subcomponent of the item procured, an element by element comparison of the representative claims with the accused article or process. If available, this identification should include documentation and drawings to illustrate the accused article or process in suitable detail to enable verification of the infringement comparison.

(4) Names and addresses of all past and present licenses under the patent(s), and copies of all license agreements and releases involving the patent(s).

(5) A brief description of all litigation in which the patent(s) has been or is now involved, and the present status thereof.

(6) A list of all persons to whom notices of infringement have been sent, including all departments and agencies of the Government, and a statement of the ultimate disposition of each.

(7) A description of Government employment or military service, if any, by the inventor and/or patent owner.

(8) A list of all Government contracts under which the inventor, patent owner, or anyone in privity with him performed work relating to the patented subject matter.

(9) Evidence of title to the patent(s) alleged to be infringed or other right to make the claim.

(10) A copy of the Patent Office file of each patent if available to claimant.

(11) Pertinent prior art known to claimant, not contained in the Patent Office file, particularly publications and foreign art. In addition in the foregoing, if claimant can provide a statement that the investigation may be limited to the specifically identified accused articles or processes, or to a specific procurement, it may materially expedite determination of the claim.

(c) Any Department receiving an allegation of patent infringement which meets the requirements of this paragraph shall acknowledge the same and supply the other Departments* which may have an interest therein with a copy of such communication and the acknowledgement thereof.

*For the Department of the Army, Chief, Patents, Copyrights, and Trademarks Division, U.S. Army Legal Services Agency; for the Department of the Navy, The Patent Counsel for Navy, Office of Naval Research; for the Department of the Air Force, Chief, Patents Division, Office of The Judge Advocate General; for the Defense Logistics Agency, The Office of Counsel; for the National Security Agency, the General Counsel; for the Defense Communications Agency, the Counsel; for the Defense Nuclear Agency, The General Counsel; and for the Defense Mapping Agency, The Counsel.

(d) If a communication alleging patent infringement is received which does not meet the requirements set forth above, the sender shall be advised in writing—

(i) That his claim for infringement has not been satisfactorily presented, and

(ii) Of the elements considered necessary to establish a claim.

(e) A communication making a proffer of a license in which no infringement is alleged shall not be considered as a claim for infringement.

227.7005 Indirect notice of patent infringement claims.

(a) A communication by a patent owner to a Department of Defense contractor alleging that the contractor has committed acts of infringement in performance of a Government contract shall not be considered a claim within the meaning of 227.7004 until it meets the requirements specified therein.

(b) Any Department receiving an allegation of patent infringement which meets the requirements of 227.7004 shall acknowledge the same and supply the other Departments* which may have an interest therein with a copy of such communication and the acknowledgement thereof.

*For the Department of the Army, Chief, Patents, Copyrights, and Trademarks Division, U.S. Army Legal Services Agency; for the Department of the Navy, The Patent Counsel for Navy, Office of Naval Research; for the Department of the Air Force, Chief, Patents Division, Office of the Judge Advocate General; for the Defense Logistics Agency, The Office of Counsel; for the National Security Agency, the General Counsel; for the Defense Communications Agency, the Counsel; for the Defense Nuclear Agency, The General Counsel; and for the Defense Mapping Agency, The Counsel.

(c) If a communication covering an infringement claim or notice which does not meet the requirements of 227.7004(a) is received from a contractor, the patent owner shall be advised in writing as covered by the instructions of 227.7004(d).

227.7006 Investigation and administrative disposition of claims.

An investigation and administrative determination (denial or settlement) of each claim shall be made in accordance with instructions and procedures established by each Department, subject to the following:

(i) When the procurement responsibility for the alleged infringing item or process is assigned to a single Department or only one Department is the purchaser of the alleged infringing item or process, and the funds of that Department only are to be charged in the settlement of the claim, that Department shall have the sole responsibility for the investigation and administrative determination of the claim and for the execution of any agreement in settlement of the claim. Where, however, funds of another Department are to be charged, in whole or in part, the approval of such Department shall be obtained as required by 208.7002. Any agreement in settlement of the claim, approved pursuant to 208.7002 shall be executed by each of the Departments concerned.

(ii) When two or more Departments are the respective purchasers of alleged infringing items or processes and the funds of those Departments are to be charged in the settlement of the claim, the investigation and administrative determination shall be the responsibility of the Department having the predominant financial interest in the claim or of the Department or Departments as jointly agreed upon by the Departments concerned. The Department responsible for negotiation shall, throughout the negotiation, coordinate with the other Departments concerned and keep them advised of the status of the negotiation. Any agreement in the settlement of the claim shall be executed by each Department concerned.

227.7007 Notification and disclosure to claimants.

When a claim is denied, the Department responsible for the administrative determination of the claim shall so notify the claimant or his authorized representative and provide the claimant a reasonable rationale of the basis for denying the claim. Disclosure of information or the rationale referred to above shall be subject to applicable statutes, regulations, and directives pertaining to security, access to official records, and the rights of others.

227.7008 Settlement of indemnified claims.

Settlement of claims involving payment for past infringement shall not be made without the consent of, and equitable contribution by, each indemnifying contractor involved, unless such settlement is determined to be in the best interests of the Government and is coordinated with the Department of Justice with a view to preserving any rights of the Government against the contractors involved. If consent of and equitable contribution by the contractors are obtained, the settlement need not be coordinated with the Department of Justice.

227.7009 Patent releases, license agreements, and assignments.

This section contains clauses for use in patent release and settlement agreements, license agreements, and assignments, executed by the Government, under which the Government acquires rights. Minor modifications of language (e.g., pluralization of "Secretary" or "Contracting Officer") in multidepartmental agreements may be made if necessary.

227.7009-1 Required clauses.

(a) Officials Not To Benefit. Insert the clause at FAR 52.203–1.

(b) Covenant Against Contingent Fees. Insert the clause at FAR 52.203–5.

(c) Gratuities. Insert the clause at FAR 52.203–3.

(d) Assignment of Claims. Insert the clause at FAR 52.232–23.

(e) Disputes. Pursuant to FAR 33.014, insert the clause at FAR 52.233–1.

(f) Non-Estoppel. Insert the clause at 252.227–7000.

227.7009-2 Clauses to be used when applicable.

(a) Release of Past Infringement. The clause at 252.227–7001 is an example which may be modified or omitted as appropriate for particular circumstances, but only upon the advice of cognizant patent or legal counsel. (See footnotes at end of clause.)

(b) Readjustment of Payments. The clause at 252.227–7002 shall be inserted in contracts providing for payment of a running royalty.

(c) Termination. The clause at 252.227–7003 is an example for use in contracts providing for the payment of a running royalty. This clause may be modified or omitted as appropriate for particular circumstances, but only upon the advice of cognizant patent or legal counsel.*

*For the Department of the Army, Chief, Patents, Copyrights, and Trademarks Division, U.S. Army Legal Services Agency; for the Department of the Air Force, Chief, Patents Division, Office of the Judge Advocate General; for the Defense Logistics Agency, The Patent Counsel; for the Department of the Navy, the Patent Counsel for the Navy, Office of Naval Research; for the Defense Communications Agency, The Counsel; for the Defense Nuclear Agency, The General Counsel; and for the Defense Mapping Agency, The Counsel.

227.7009-3 Additional clauses—contracts except running royalty contracts.

The following clauses are examples for use in patent release and settlement agreements, and license agreements not providing for payment by the Government of a running royalty.

(a) License Grant. Insert the clause at 252.227–7004.

(b) License Term. Insert one of the clauses at 252.227–7005 Alternate I or Alternate II, as appropriate.

227.7009-4 Additional clauses—contracts providing for payment of a running royalty.

The clauses set forth below are examples which may be used in patent release and settlement agreements, and license agreements, when it is desired to cover the subject matter thereof and the contract provides for payment of a running royalty.

(a) License Grant—Running Royalty. No Department shall be obligated to pay royalties unless the contract is signed on behalf of such Department. Accordingly, the License Grant clause at 252.227–7006 should be limited to the practice of the invention by or for the signatory Department or Departments.

(b) License Term—Running Royalty. The clause at 252.227–7007 is a sample form for expressing the license term.

(c) Computation of Royalties. The clause at 252.227–7008 providing for the computation of royalties, may be of varying scope depending upon the nature of the royalty bearing article, the volume of procurement, and the type of

contract pursuant to which the procurement is to be accomplished.

(d) Reporting and Payment of Royalties.

(1) The contract should contain a provision specifying the office designated within the specific Department involved to make any necessary reports to the contractor of the extent of use of the licensed subject matter by the entire Department, and such office shall be charged with the responsibility of obtaining from all procuring offices of that Department the information necessary to make the required reports and corresponding vouchers necessary to make the required payments. The clause at 252.227-7009 is a sample for expressing reporting and payment of royalties requirements.

(2) Where more than one Department or Government Agency is licensed and there is a ceiling on the royalties payable in any reporting period, the licensing Departments or Agencies shall coordinate with respect to the pro rata share of royalties to be paid by each.

(e) License to other government agencies. When it is intended that a license on the same terms and conditions be available to other departments and agencies of the Government, the clause at 252.227-7010 is an example which may be used.

227.7010 Assignments.

(a) The clause at 252.227-7011 is an example which may be used in contracts of assignment of patent rights to the Government.

(b) To facilitate proof of contracts of assignments, the acknowledgement of the contractor should be executed before a notary public or other officer authorized to administer oaths (35 U.S.C. 261).

227.7011 Procurement of rights in inventions, patents, and copyrights.

Even though no infringement has occurred or been alleged, it is the policy of the Department of Defense to procure rights under patents, patent applications, and copyrights whenever it is in the Government's interest to do so and the desired rights can be obtained at a fair price. The required and suggested clauses at 252.227-7004 and 252.227-7010 shall be required and suggested clauses, respectively, for license agreements and assignments made under this paragraph. The instructions at 227.7009-3 and 227.7010 concerning the applicability and use of those clauses shall be followed insofar as they are pertinent.

227.7012 Contract format.

The format at 252.227-7012 appropriately modified where necessary, may be used for contracts of release, license, or assignment.

227.7013 Recordation.

Executive Order No. 9424 of 18 February 1944 requires all executive Departments and agencies of the Government to forward through appropriate channels to the Commissioner of Patents and Trademarks, for recording, all Government interests in patents or applications for patents.

PART 228—BONDS AND INSURANCE

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

228.001 Definitions.

"Fidelity bond" means a bond which secures an employer up to an amount stated in the bond for losses caused by dishonesty on the part of an employee. A blanket fidelity bond covers all employees, except those expressly excluded by written endorsement on the bond.

"Forgery bond or policy" (Depositors Form) means a bond or policy which secures the person or persons named therein up to the amount stated for losses caused by the forging or altering of a check, draft, or similar instrument issued by or purporting to have been issued by any of the insureds, and for losses resulting from a check or draft having been obtained from the insureds through impersonation.

"Purchased insurance" means insurance purchased from insurers independent of and external to the contractor.

"Self-insurance" means the assumption or retention of the risk of loss, whether voluntarily or involuntarily, by the contractor. Self-insurance includes the deductible portion of purchased insurance. Insurance provided by captive insurers; i.e., insurers owned by or under the control of the contractor, is self-insurance except that if the captive insurer sells insurance to the general public in substantial quantities and it can be demonstrated that the charge to the contractor is based on competitive forces, then the insurance will be considered purchased insurance. This definition applies only to contracts subject to the provisions of Cost Accounting Standard (CAS) 416 or to contracts not subject to the provisions of CAS 416 when the contractor elects to establish a program of self-insurance (FAR 31.205-19(a)). Self-insurance is not recognized on contracts not subject to the provisions of CAS 416 unless the contractor makes such an election.

Subpart 228.1—Bonds

228.102 Performance and payment bonds for construction contracts.

228.102-1 General.

(a) The requirement of a performance and payment bond has been waived for all cost-reimbursement type construction contracts. In unusual circumstances, either or both bonds may be required of a prime contractor, subject to approval by the Chief of the Contracting Office. Contracting officers shall, however, require a cost-reimbursement type prime contractor to obtain a payment bond from his subcontractor in favor of the prime contractor, in an amount sufficient to assure payment of suppliers of labor and materials for any fixed-priced construction subcontract exceeding $25,000. In such a case, a performance bond in an equal amount should also be obtained if available at no additional cost.

228.103 Performance and payment bonds for other than construction contracts.

228.103-1 General.

Subcontract bonds shall not be executed on Standard Forms 25 and 25-A, or on DD Form 1673. The forms set forth in FAR 53.228 are authorized and may be adapted to fit specific cases.

228.103-2 Performance bonds.

(a)(1) Subject to the general policy stated in FAR 28.103-2, determinations that performance bonds will be required in specified classes of cases (e.g., for particular types of supplies or services) may be made (i) for the Army, by the Director and Deputy Director of Procurement and Production, US Army Materiel Command, and by all Heads of Contracting Activities not subordinate to that command; (ii) for the Navy, by the Office of the Assistant Secretary of the Navy (Shipbuilding & Logistics), Director, Contracts & Business Management; (iii) for the Air Force, by the Director of Contracting and Manufacturing Policy, DCS/RD&A; (iv) for the Defense Logistics Agency, by the Executive Director, Contracting; (v) for the National Security Agency, by the Director of Procurement; (vi) for the Defense Nuclear Agency, by the Director; (vii) for the Defense Communications Agency, by the Chief, Contract Management Division (Code 260); and for the Defense Mapping Agency, by the Staff Director of Logistics. A copy of each such determination covering a class of cases shall be forwarded to the Office of Assistant Secretary of Defense (Acquisition and Logistics) for information.

(a)(4) The contracting officer shall insert the provision at 252.228-7004, Bonds or Other Security, as well as the clause at FAR 52.228-1, Bid Guarantee, in solicitations for dismantling, demolition, or removal of improvements in accordance with 237.302.

228.105 Other types of bonds.

228.105-70 Fidelity and forgery bonds.

Fidelity and forgery bonds are not generally required in any procurement. However, in connection with cost-reimbursement contracts for supplies, construction, or for operation of government-owned plants, such bonds may be required when necessary for the protection of the Government or the contractor, or when it is considered desirable to obtain the investigative and claims services of a surety company. Approval for requiring these bonds shall be obtained, (a) for the Army, by the Head of a Contracting Activity; (b) for the Navy, by the Office of the Assistant Secretary of the Navy (Shipbuilding & Logistics), Director, Contracts & Business Management; (c) for the Air Force, by the Air Force Logistics Command (PMC); (d) for the Defense Logistics Agency, by the Head of a Contracting Activity; (e) for the National Security Agency, by the Director of Procurement; (f) for the Defense Communications Agency, by the Chief, Contract Management Division (Code 260); (g) for the Defense Nuclear Agency, by the Director, and (h) for the Defense Mapping Agency, by the Staff Director of Logistics.

228.106 Administration.

228.106-2 Substitution of surety bonds.

A new surety bond may be substituted when approved, (a) for the Army, by The Judge Advocate General; (b) for the Navy, by the Office of the Assistant Secretary of the Navy (Shipbuilding & Logistics); Director, Contracts & Business Management; (c) for the Air Force, by the Air Force Logistics Command; (d) for the Defense Logistics Agency, by the Head of a Contracting Activity; (e) for the National Security Agency, by the Director of Procurement; (f) for the Defense Communications Agency, by the Chief, Contract Management Division (Code 260); (g) for the Defense Nuclear Agency, by the Director; and (h) for the Defense Mapping Agency, by the Staff Director of Logistics. When so approved and authorized by Departments other than the Air Force, the principal and surety of the original bond will be notified that the original bond will not be considered as security for any default occurring after the date of acceptance of the new bond. When approved by the Air Force, authority to relieve an original surety of liability for default occurring subsequent to the date of approval of a substitute bond will be obtained from the Commander, Air Force Logistics Command, prior to giving such notification.

228.106-70 Review of bonds and notification of surety.

All bonds will be reviewed by the contracting officer to ascertain that the bond is in the penal sum required and, when appropriate, properly describes the contract. Additional review, approval, and distribution of bonds and consents of surety will be accomplished by each military department. When a contractor is performing his contract in such a manner as to lead to default, timely notification to the surety may result in action by the surety that will avoid a default. Therefore, on all such contracts, the surety shall be promptly notified of any failure by the contractor to perform (see FAR 49.402-4(a)).

Subpart 228.3—Insurance

228.304 Risk-pooling arrangements.

The following describes the Department of Defense Special Casualty Insurance Rating Plan, the National Defense Projects Rating Plan.

(a) *Special casualty insurance rating plan.* The National Defense Projects Rating Plan is available for application on both domestic and foreign contracts, which meet the eligibility requirements set forth herein. This plan provides a special rating formula for the purchase of the casualty insurance coverages listed in FAR 28.307-2 (a) through (c), and is mandatory as to contracts which meet the use and eligibility standards in (c) below. Construction subcontractors whose contracts provide that the prime contractor shall furnish insurance, and whose operations are at the project site, shall be included automatically in the prime contractor's rating plan policies for similar coverage. Construction subcontractors whose operations are away from the project site shall be included in the prime contractor's rating plan.

(b) This plan is effected by endorsements attached to standard insurance policy forms for workers' compensation, employer's liability, general liability, and automobile liability. The rating plan provides for a fixed deposit premium, for a reduced rate of current premium payments, for yearly adjustments of the premium depending upon loss experience during the period, and for final adjustment of the premium based upon the experience of the entire period covered by the policies. The final adjustment may be deferred for a maximum of 68 months after expiration of the policies. The total adjusted premium is the sum of the following:

(1) A fixed charge which is a percentage of the standard premium and is to compensate the insurance company for general expenses other than those referred to hereafter;

(2) Modified losses, which are the losses paid or incurred, multiplied by a conversion factor of 1.12 to compensate the insurance company for claim department expense;

(3) Allocated claims expenses, which are expenses for claims services not of the type ordinarily rendered by the insurer's claim department, such as actual expenditures for attorney's fees and other trial or hearing expenses in connection with litigated cases;

(4) Special assessments imposed by the applicable jurisdiction for purposes such as second injury funds, rehabilitation funds, maintenance of workers' compensation commissions, etc.; and

(5) Actual premium taxes.

Each of the above adjustments are subject to review by authorized representatives of the Department concerned, and the total adjusted premium derived therefrom, cannot exceed a maximum premium which is a percentage of the standard premium developed by use of manual rates issued or approved by the appropriate rating organization. In general, the plan is a variation of commercially available insurance rating plans, but has been specifically developed to meet the requirements of the Departments.

(c) The rating plan shall be applied to all eligible defense projects where such application is determined by the Heads of Contracting Activities, for the Department of the Army; the Office of the Assistant Secretary of the Navy (Shipbuilding & Logistics), Director, Contracts & Business Management—CM, for the Department of the Navy; Air Force Systems Command, administrative contracting officers, for the Department of the Air Force; the Deputy Director, Contract Administration Services, Attn: DLA-AF, for the Defense Logistics Agency; the Director of Procurement, for the National Security Agency; the Director, for the Defense Communications Agency; the Chief, Office of

Procurement, for the Defense Nuclear Agency; and the Staff Director of Logistics, for the Defense Mapping Agency; to be in the best interest of the Government. The rating plan may be applied to cost-reimbursement type contracts and also, in appropriate cases, to fixed-price contracts with price redetermination provisions. A defense project is eligible for application of a plan when (i) eligible Government contracts represent, at inception of the plan, at least 90 percent of the payroll for total operations at the specific locations of the project; and (ii) the annual premium for insurance is estimated to be at least $10,000. A defense project may include contracts awarded by more than one Department to the same contractor.

(d) The following agreement shall be used for accomplishing the assignment to the Government of the interest in return premiums, premium refund, etc., on insurance policies issued under the National Defense Projects Rating Plan, upon termination or completion of the contract, when the Government has assumed the payment of the contractor's obligation for further premium payment under such policies:

Special Casualty Insurance Rating Plan Assignment-Assumption of Premium Obligations

It is agreed that 100%* of the return premiums and premium refunds (and dividends) due or to become due the prime contractor under the policies to which the National Defense Projects Rating Plan Endorsement made a part of policy _____ applies are hereby assigned to and shall be paid to the United States of America, and the prime contractor directs the Company to make such payments to the office designated for contract administration acting for and on account of the United States of America.

The United States of America hereby assumes and agrees to fulfill all present and future obligations of the prime contractor with respect to the payment of 100%* of the premiums under said policies.

This agreement, upon acceptance by the prime contractor, the United States of America and the Company shall be effective from _____.

Accepted.....(Date)
(Name of Insurance Company)
By _____
(Title of Official Signing)
Accepted.....(Date)
United States of America
By _____
(Authorized Representative)

*In the event the Government has less than a 100% interest in premium refunds or dividends, the assignment shall be appropriately modified to reflect the percentage of interest and of the extent of the Government's assumption of additional premium obligation.

Accepted.....(Date)
(Prime Contractor)
By _____
(Authorized Representative)

(e) Since the Federal Tort Claims Act provides protection for employees of the Government while driving government-owned vehicles within the scope of their employment, the National Defense Projects Rating Plan shall exclude coverage for such employees. The following endorsement shall be attached to automobile liability coverage provided under the plan:

It is agreed that such insurance as is afforded by the policy with respect to the ownership, maintenance or use of automobiles, including loading and unloading thereof, does not apply to the following as insureds: The United States of America, any of its agencies, or any of its officers or employees.

228.305 Overseas workers' compensation and war hazard insurance.

(d) Requests for waivers shall be submitted through channels (1) for the Army, to the Labor Advisor, Office of the Assistant Secretary of the Army (RDA); (2) for the Navy, to the Office of the Assistant Secretary of the Navy (Shipbuilding & Logistics), Director, Contracts & Business Management; (3) for the Air Force, to the Directorate of Contracting and Manufacturing Policy, Headquarters USAF; (4) for the Defense Logistics Agency, to the Deputy Director, Contract Administration Services, Attn: DLA–AF; (5) for the Defense Communications Agency, to the Chief, Contract Management Division; (6) for the Defense Nuclear Agency, to the Chief, Office of Procurement; and (7) for the Defense Mapping Agency, to the Staff Director of Logistics. The request for waiver shall include the following:

(i) Name of contractor;
(ii) Business mailing address of contractor;
(iii) Contract number;
(iv) Date of award;
(v) Geographic location where the contract will be performed;
(vi) Name of insurance company providing the Defense Base Act coverage;
(vii) Nationality of employees to whom waiver is to apply; and
(viii) Reason for waiver.

(e)(1) If the Defense Base Act has been waived with respect to some or all of the contractor's employees, the benefits of the War Hazards Compensation Act will also have been waived as to such employees. In case of such waivers, the contractor shall provide protection against the risk of work injury or death (workers' compensation type coverage) for the benefit of such waived employees. Insurance for this purpose as in any other case should be obtained at competitive rates in line with the policies of FAR Part 31, particularly if there has been a waiver and the insurance has been or is to be obtained to comply with workers' compensation or equivalent statutes of a foreign country.

(2) The contractor shall also assume liability to such waived employees and their beneficiaries for war hazard injury, death, capture or detention. At the option of the Government, either the costs of this liability or the reasonable cost of insurance against this liability shall be allowed as a cost under the contract. When the clause at FAR 52.228–4 is required and if it is decided by the Head of the Contracting Activity or designee that the contractor shall not purchase insurance against this liability, the contracting officer shall insert the clause at 252.228–7000, Reimbursement for War Hazard Losses.

228.306 Insurance under fixed-price contracts.

(a) *General.*

(1) Negotiated fixed-price type contracts for the production, modification, maintenance, or overhaul of aircraft shall, except as provided in (2) below, include the clause at 252.228-7001, Ground and Flight Risk.

(2)(i) In paragraph (b) of the clause at 252.228–7001, certain of the defined terms may be modified by insertion of appropriate additional definitions in the contract in accordance with the following. The purpose of the clause is to have the Government to assume risks which generally entail unusually high insurance premiums and which are not covered by the contractor's "contents," "work-in-process," or other similar insurance. It is recognized that all of the definitions prescribed in the clause may not cover all situations which should be covered if the above purpose is to be accomplished. Therefore, changes may be effected in the contract as set forth below.

(A) Since the standard definition of "aircraft" contemplates conventional types of winged aircraft, a modified definition is necessary if the contract covers helicopters, vertical take-off aircraft, lighter-than-air airships or other nonconventional types of aircraft. The modified definition should take into consideration that the aircraft has reached a point of manufacture comparable to that required in the standard definition;

(B) The definition of "in the open" may be modified to include "hush houses", test hangars, and comparable structures, and other designated areas;

(C) "Contractor's premises" shall be expressly defined and shall be limited to those locations where aircraft, as defined in the clause, may be located during and for the performance of the contract. "Contractor's premises" may include, but are not limited to, premises owned or leased by the contractor or premises as to which the contractor has a permit, license, or other right of use either exclusively or jointly with others, including Government airfields.

(ii) The Government need not assume the risk of damage to, or loss or destruction of, aircraft, as provided by the clause, if the best estimate of premium costs which would be included in the contract price for insurance coverage for such damage, loss, or destruction at any plant or facility is less than $500. The Government shall not assume such risks if the aircraft is being acquired in connection with a Foreign Military Sale and the foreign government involved has not agreed to assume such risks. If it is determined not to assume such risks, the clause shall not be made a part of the contract, and the cost of necessary insurance to be obtained by the contractor to cover such risks shall be considered in establishing the contract price. In such cases, however, if performance of the contract is expected to involve the flight of Government-furnished aircraft, the substance of the Flight Risks clause in 252.228–7002, suitably adapted for use in a fixed-price type contract, shall be used.

(iii) Subparagraph (d)(iii) of the clause in 252.228–7001 may be varied to provide for Government assumption of risk of transportation by conveyance on streets or highways where the contracting officer determines that such transportation is limited to the vicinity of the contractor's premises and is merely an incident to work being performed under the contract.

228.307 Insurance under cost-reimbursement contracts.

228.307–1 Group insurance plans.

(a) *Prior approval requirement.* Group insurance plans under cost-reimbursement contracts shall be submitted for approval to the Heads of Contracting Activities, for the Department of the Army; the Office of the Assistant Secretary of the Navy (Shipbuilding & Logistics), Director, Contracts & Business Management, for the Department of the Navy; Air Force Systems Command, administrative contracting officers, for the Department of the Air Force; the Director of Procurement, for the National Security Agency; the Director, for the Defense Communications Agency; the Director, for the Defense Nuclear Agency; and the Staff Director of Logistics, for the Defense Mapping Agency. For the Defense Logistics Agency such plans shall be submitted for approval to the Directors, Directorate of Contract Administration, DCASR New York (DCRN–C), DCASR Chicago (DCRIC), or DCASR Los Angeles (DCRL–C), as appropriate.

(S–70) The Defense Department Group Term Insurance Plan is available for use by cost-reimbursement type contractors. A contractor is eligible only if the number of covered employees is 500 or more, and (i) the contractor is wholly engaged in operations under eligible contracts, or (ii) 90 percent or more of the payroll of contractor's operations to be insured under the Plan arises under eligible contracts. Insurance policies under this plan shall be submitted for approval to the Heads of Contracting Activities, for the Department of the Army; the Assistant Secretary of the Navy (S&L) (CBM), for the Department of the Navy; Air Force Systems Command, administrative contracting officers for the Department of the Air Force; the Deputy Director, Contract Administration Services, Attn: DLA–AF, for the Defense Logistics Agency; the Director of Procurement, for the National Security Agency; the Director, for the Defense Communications Agency; the Chief, Office of Procurement, for the Defense Nuclear Agency; and the Staff Director of Logistics, for the Defense Mapping Agency.

228.307–2 Liability.

(S–70) *Aircraft flight risk.*

(1) Cost-reimbursement-type contracts for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involving the furnishing of aircraft to the contractor by the Government, shall, except as provided in (2) below, include the clause at 252.228–7002, Flight Risks.

(2) In the clause, the definition of "aircraft" may be appropriately modified if the contract covers helicopters, vertical take-off aircraft, lighter-than-air airships, or other nonconventional types of aircraft.

228.309 Contract clauses for workers' compensation insurance.

(S–70) The Contracting Officer is authorized to insert the clause at 252.228–7003, Capture and Detention, when the employees of a contractor are subject to capture and detention under circumstances which may be outside the scope of the War Hazards Compensation Act (42 U.S.C. 1701 et seq.).

228.311 Solicitation provision and contract clause on insurance liability under cost reimbursement contracts.

(S–70) *Contract clause for construction.* The Contracting Officer shall insert the clause at 252.228–7005, Insurance, in accordance with 236.573–5.

Subpart 228.70—Indemnification

228.7000 General.

Indemnification under research and development contracts against unusually hazardous risks is covered in 235.070(a). Indemnification under Pub. L. 85–804 is covered in FAR Subpart 50.4. Indemnification under contracts involving both research and development and work that cannot be so classified is covered in 235.070(b) and 250.403–70.

Subpart 228.71—Accident Reporting and Safety

228.7101 Accident reporting.

The contracting officer may insert the clause at 252.228–7006, Accident Reporting and Investigation Involving Aircraft, Missiles and Space Launch Vehicles, in solicitations and contracts which involve or are in connection with the manufacture, modification, overhaul or repair of aircraft, missiles or space launch vehicles.

PART 229—TAXES

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 229.1—General

229.101 Resolving tax problems.

(a) Agency-designated legal counsel are responsible for resolving tax issues affecting the agency. Within the Department of Defense, these agency-designated legal counsel are: Chief, Contract Law Division, Office of the Judge Advocate General, for the Army; the General Counsel, for the Navy; the General Counsel, for the Air Force; the General Counsel, for the Defense Logistics Agency; the General Counsel, for the National Security Agency; the General Counsel, for the Defense Communications Agency; the General Counsel, for the Defense Nuclear Agency; and the General Counsel, for the Defense Mapping Agency.

(b) and (c) Within the Department of Defense, a contractor having a cost-reimbursement type contract or a fixed-price type contract containing a tax

escalation clause may be directed, after coordination with the appropriate agency-designated legal counsel through the Department of Defense Tax Policy and Advisory Group, to litigate the applicability of a particular tax. In such cases, guidance will be issued in Defense Acquisition Circulars informing purchasing activities of the litigation, the need for special contract clauses covering the tax in question, and instructions to be given contractors regarding nonpayment, payment, protest or other specific treatment of the tax. In addition, similar guidance may be furnished concerning an anticipated repeal or reduction in the rate of a tax. It is particularly important that this guidance be considered by those negotiating incentive type contracts in order that the tax in question may be treated separately in the establishment of a target price.

229.101-70 Resolving foreign tax relief issues.

(a) The definitions, policies, and responsibilities of the DoD Foreign Tax Relief Program are set forth in DoD Directive 5100.64, and that Directive and applicable implementing regulations or instructions should be consulted by contracting activities prior to the initiation of foreign procurement. Implementing instructions within the Services and DoD agencies are as follows:

Department of the Army Regulation AR 27-70;

Department of the Navy Instruction SECNAVINST 5840.5;

Department of the Air Force Regulation AFR 110-16;

Defense Communications Agency Instruction 100-50-6;

Defense Contract Audit Agency Regulation 5110.2;

Defense Mapping Agency Instruction 5500.2;

Defense Nuclear Agency Instruction 5100.64; and

Defense Logistics Agency Regulation 5500.6.

(b) In addition, the following Unified Commands have issued management procedures to guide and coordinate the administration of the foreign tax relief program throughout their respective area commands—

Commander in Chief, European Command (USCINCEUR) EUCOM DIRECTIVE 45-8;

Commander in Chief, Atlantic Command (CINCLANT) CINCLANTINST 5840.2A;

Commander in Chief, Pacific Command (CINCPAC) CINCPACINST 5840.2B

As regards Canada and Greenland, Commander, SPACE COMMAND Regulation 110.1.

(c) Questions relating to the implementation of the DoD Foreign Tax Relief Program shall first be referred to the designated Commanding Officers below. Several foreign countries or areas have been designated, pursuant to subsection E.7 of DODD 5100.64, to make and maintain a current tax law study, serve as a single point of contact for U.S. contracting officers and contracting activities for the investigation and resolution of specific foreign tax relief matters, and to serve as a liaison point with the responsible diplomatic mission and local foreign tax authorities:

Country or area	Designated commanding officer
Australia	Commander in Chief, Pacific Rep., Australia.
Azores	Commander, U.S. Forces, Azores.
Bahrain	Commander in Chief, U.S. Naval Forces, Europe.
Belgium	Commander in Chief, U.S. Army, Europe.
Bermuda	Commanding Officer, U.S. Naval Air Station, Bermuda.
Canada	Commander, Space Command.
Caribbean Islands (including Bahamas).	Commander, Antilles Defense Command.
Denmark	Commander in Chief, U.S. Air Forces, Europe.
Ethiopia	Commander in Chief, U.S. Army, Europe.
France	Commander in Chief, U.S. Army, Europe.
Germany	Commander in Chief, U.S. Army, Europe.
Greece	Commander in Chief, U.S. Air Forces, Europe.
Greenland	Commander, Space Command.
Iceland	Commander, Iceland Defense Force.
Iran	Commander in Chief, U.S. Army, Europe.
Italy	Commander in Chief, U.S. Naval Forces, Europe.
Japan	Commander, U.S. Forces, Japan.
Korea	Commander, U.S. Forces, Korea.
Luxembourg	Commander in Chief, U.S. Army, Europe.
Morocco	Commander in Chief, U.S. Naval Forces, Europe.
Netherlands	Commander in Chief, U.S. Air Forces, Europe.
New Zealand	Commander, U.S. Naval Support Forces, Antarctica.
Norway	Commander in Chief, U.S. Air Forces, Europe
Philippines	Commander in Chief, Pacific Rep., Philippines.
Portugal	Commander in Chief, U.S. Naval Forces, Europe.
Spain	Commander in Chief, U.S. Air Forces, Europe.
Taiwan	Commander, U.S. Military Assistance Command, Thailand.
Turkey	Commander in Chief, U.S. Air Forces, Europe.
United Kingdom	Commander in Chief, U.S. Air Forces, Europe.

(d) The activity initially raising the tax issue shall, in turn, refer unanswered questions on the DoD Foreign Tax Relief Program to its agency designated legal counsel listed at 229.101.

Subpart 229.2—Federal Excise Taxes

229.202 General exemptions.

(b) *Certificate of export to a possession or to Puerto Rico.* The following form of exemption certificate shall be used as proof of export or shipment to a possession or to Puerto Rico:

Certificate of Export

(For use by purchasers of articles for export or shipment to a possession under Section 4221(a)(2), Internal Revenue Code of 1954)

(Date)

(Name of Contractor)

The undersigned does hereby certify that _____ (quantity and description of supplies) _____ which were purchased for export, or for shipment to a possession of the United States or to Puerto Rico, under Contract No. _____, were in fact exported to a foreign country, or shipped to a possession of the United States or to Puerto Rico, and a copy of the documents pursuant to which the supplies were shipped, is being retained in the files of _____ (official address of office).

(Signature)

(Title)

(Address)

(d) *Exemption certificate for supplies for vessels of war.* The following form of exemption certificate shall be used in claiming an exemption for supplies for vessels of war (including aircraft).

Exemption Certificate

(For use by purchasers of articles for use as fuel supplies, ships' stores, sea stores, or legitimate equipment on certain vessels under Sections 4041(g)(1) and 4221(d)(3), Internal Revenue Code).

(Date)

(Name of Contractor)

The undersigned hereby certifies that he is an authorized agent of the United States of America and that the article or articles specified in the accompanying order, or as specified below, or on the reverse side hereof, will be used only for fuel supplies, ships' stores, sea stores, or legitimate equipment on vessels of war of the United States or of a foreign nation, including aircraft owned by the United States or by a foreign nation and constituting a part of the armed forces thereof.

The undersigned understands that if the article or articles are used for any purpose other than as stated in this certificate, or are

resold or otherwise disposed of, the purchaser must report such fact to the manufacturer, or, in the case of special motor fuel, that if the fuel is sold or used otherwise than as stated in 4041(g) of the Internal Revenue Code, liability for the tax upon such sale or use will attach. The undersigned also understands that the purchaser must be prepared to establish by satisfactory evidence the purposes for which the article was used.

The fraudulent use of this certificate for the purpose of securing exemption from the payment or adjustment of taxes will subject the guilty party to a fine of not more than $10,000 or imprisonment for not more than five (5) years, or both, together with cost of prosecution.

(Signature)

(Title)

(Address)

(S-70) *Federal tax exemptions—other exemptions.*

(1) Pursuant to Title 26, Section 4293, the Secretary of the Treasury may authorize exemption for specific taxes imposed on particular articles or services purchased for the exclusive use of the United States when such impositions will cause substantial burden or expense which can be avoided by granting a tax exemption and when the full benefit of such exemption will accrue to the United States. The Secretary of Treasury has authorized tax exemptions from taxes imposed in the following Articles and Services:

(i) Communication Supplies and Services for the Exclusive Use of the United States;

(ii) Air Transportation of Persons and Property; and,

(iii) Manufacture of Trucks and Production or Purchase of Tread Rubber.

(2) Pursuant to Title 26, section 4483(b), the Secretary of the Treasury has authorized exemption from the Federal excise tax imposed by section 4481 of the Internal Revenue Code on the use of heavy highway vehicles on the public highways in the United States when the use of such heavy highway vehicles is by the United States and whether or not such highway vehicles are owned by the United States.

Subpart 229.3—State and Local Taxes

229.303 Application of state and local taxes to government contractors and subcontractors.

(a) (1) It is DoD policy that DoD contracts shall not contain contract clauses expressly designating prime contractors of cost-type contracts to be performed within the United States as agents of the Government to purchase supplies for the purpose of avoiding state and local taxes. This policy was adopted to preclude the inclusion of contract clauses designed to avoid otherwise validly imposed state or local taxes.

(2) Although circumstances may exist under which a contractor is an agent of the Government, even in the absence of a contract clause expressly designating the contractor as such, these circumstances are exceedingly rare. Before any DoD activity may contend that any of its contractors are agents of the Government for the purpose of claiming immunity from state and local sales and use taxes, the matter will be referred to the Office of the Secretary of Defense (OSD), Under Secretary of Defense (R&E) for review to ensure that DoD policy is complied with and that the agency contention is fully in accord with the pertinent legal principles and precedents. Each case forwarded will be reviewed by the head of the agency before referral to OSD. The referral will include all pertinent data on which an agency contention is based, together with a thorough analysis of all relevant legal precedents.

(3) Whenever clauses, procedures and business practices are cited by DoD activities to support the contention that a contractor is an agent of the Government for the purpose of immunity from a state or local sales or use tax, contracting activities should, whenever possible, devise alternative clauses, procedures and practices for future use which will accomplish their intended purpose without providing the basis for the contention that the contractor is an agent of the Government for the purpose of immunity from state or local sales or use taxes. Therefore, any referral to OSD will include comment on the extent to which alternate clauses, procedures or practices may be utilized to accomplish the intended purpose without providing the basis for the contention that the contractor is an agent of the Government for the purpose of immunity from state and local sales and use taxes.

Subpart 229.4—Contract Clauses

229.402 Foreign contracts.

229.402-1 Foreign fixed-price contracts.

(S-70) The contracting officer shall insert a clause substantially as shown at 252.229-7000, Fixed-Price, Into-Plane, Fuel Contracts at Overseas Locations, in solicitations and contracts when a fixed-price contract is contemplated for into-plane fueling at overseas locations.

229.402-70 Use of foreign tax clauses.

(a) *Exclusion of specific taxes from the contract price.* The contracting officer shall not attempt to provide a contractor or prospective contractor information as to foreign taxes or duties normally applicable to the acquisition. The contracting officer shall, however, at the time of negotiation of a contract to be performed in a country or area listed in 229.101-70(c) obtain from the appropriate Designated Commanding Officer detailed information concerning the taxes and duties from which the Government of the United States is exempt under the provisions of applicable international agreements or foreign law. Information obtained by the contracting officer regarding exemptions shall be made available to the contractor or prospective contractor and retained as part of the contract file.

(b) *Tax exemption certificates and other assistance.* During the administration of the contract, the contracting officer shall, as appropriate, issue tax exemption certificates or use other procedures, if available, to assist the contractor in obtaining relief from foreign taxes and duties which were excluded from the contract price. If, in accordance with its contract, the contractor notifies the contracting officer that a tax or duty has been assessed by a foreign government on the contractor which could result in an increase in the contract price, the contracting officer shall immediately seek advice and assistance in accordance with 229.101-70(d).

PART 230—COST ACCOUNTING STANDARDS

Authority: 5 U.S.C. 301; 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 230.1—General

230.103 Cost Accounting Standards Board (CASB) publications.

Copies of the CASB Standards, Regulations, and Interpretations are contained in Appendix O.

Subpart 230.4—CAS Administration

230.401 Responsibility.

(a) In accordance with FAR Part 30, Cost Accounting Standards, and FAR Part 31, Contract Cost Principles and Procedures, the cognizant contract auditor shall be responsible for making recommendations to the ACO as to whether:

(1) A contractor's Disclosure Statement, submitted as a condition of contracting, adequately describes the

actual or proposed cost accounting practices as required by Pub. L. 91–379, 50 U.S.C. App. 2168, as implemented by the Cost Accounting Standards Board;

(2) A contractor's disclosed cost accounting practices are in compliance with FAR Part 31 and applicable cost accounting standards.

(3) A contractor's or subcontractor's failure to comply with applicable cost accounting standards or to follow consistently his disclosed cost accounting practices has resulted, or may result in, any increased cost paid by the Government; and

(4) A contractor's or subcontractor's proposed price changes, submitted as a result of changes made to previously disclosed or established cost accounting practices, are fair and reasonable.

Subpart 230.70—Facilities Capital Employed for Facilities in Use

230.7001 Policy.

(a) It is the policy of the Department of Defense to reeognize facilities capital employed as an element in establishing the price of certain negotiated defense contracts when such contracts are priced on the basis of cost analysis. The inclusion of this recognition is intended to reward contractor investments, motivate increased productivity and reduced costs through the use of modern manufacturing technology, and to generate other efficiencies in the performance of defense contracts. The recognition of contractor investments in the development of the profit objective will result in a profit objective based on a combination of effort, risk, and investment factors.

(b) Separate recognition shall be given to the cost of capital and the special risk associated with the facilities capital employed for defense contract purposes.

(1) The risk aspect of facilities capital employed shall be recognized as a part of profit when the profit objective is established in accordance with the guidelines set forth in 215.905–1(d).

(2) Cost of money for facilities capital will be recognized as an allowable cost in those negotiated defense contracts priced on the basis of cost analysis (see FAR 31.205–10(a)).

230.7002 Definitions, measurement, and allocation.

Cost Accounting Standard (CAS) No. 414, "Cost of Money as an Element of the Cost of Facilities Capital" (See Appendix 0), establishes criteria for the measurement and allocation of the cost of capital committed to facilities, as an element of contract cost for historical cost determination purposes. Important features of the CAS are its definitions, techniques for application, and a prescribed Form CASBCMF with instructions. This subpart adopts the techniques of CAS 414 as the approved methods of measurement and allocation of facilities cost of money to overhead pools at the business unit level, and adds only such supplementary procedures as are necessary to extend those techniques to contract forward pricing and administration purposes. Therefore, these procedures are intended to be completely compatible with, and an extension of, the definitions, criteria and techniques of CAS 414. Contractors who computerize their financial data are encouraged to meet the requirements of both CAS 414 and this Subpart from the same data bank and programs.

230.7003 Estimating business unit facilities capital and cost of money.

The method of estimating the business unit facilities capital and cost of money utilizes the techniques of CAS 414. Cost of money factors (CMF) by overhead pools at the business unit are developed using Form CASB–CMF. Three elements are required to develop cost of money factors: Business unit facilities capital data, overhead allocation base data, and the interest rate promulgated by the Secretary of the Treasury pursuant to Pub. L. 92–41. These elements are discussed below.

(a) *Business unit facilities capital data.* The net book value (acquisition cost less accumulated depreciation) is used for each cost accounting period. The net book value used is the total of (1) the net book value of facilities recorded on the accounting records of the business unit, (2) the capitalized value of leases (see FAR 31.205–2 and FAR 31.205–36), and (3) the net book value of facilities at the corporate or group level that support depreciation charges allocated to the business unit in accordance with the provisions of CAS 403. Projections of facilities capital will be supported by budget plans and/or similar type documentation and the estimated depreciation will be the same as used in projected overhead rates. Projections will accommodate changes in the level of facilities net book value, e.g., facilities additions, deletions of facilities by sale, abandonment or other disposal, idle facilities (see FAR 31.205–17).

(b) *Overhead allocation bases.* The base data used to compute the CMF must be the same as that used to compute the proposed overhead rates. CMF's should be submitted and evaluated as part of the proposal.

(c) *Interest rate.* For purpose of projection, the most recent interest rate promulgated by the Secretary of the Treasury will be used as the cost of money rate in Column 1 of Form CASB–CMF and the same rate must be used on the DD Form 1861 to determine Contract Facilities Capital Employed (see 230.7004 below). Where actual costs are used in definitization actions, the actual treasury rate(s) applicable to the period(s) of the incurred costs will be recognized by development of a composite rate.

(d) *Determination of final cost of money.* CMF's estimated in accordance with the above procedures are used to develop the facilities investment base used in the pre-negotiation profit objectives. Actual CMF's are required when it is necessary to determine final allowable costs for cost settlement and/or repricing in accordance with CAS 414 and FAR 31.205–10.

230.7004 Contract facilities capital estimates.

(a) After the appropriate Forms CASB–CMF have been analyzed and CMF's have been developed, the contracting officer is in a position to estimate the facilities capital cost of money and capital employed for a contract proposal. DD Form 1861 "Contract Facilities Capital and Cost of Money" has been provided for this purpose and, when properly completed, becomes a connecting link between the Forms CASB–CMF and DD Form 1547 "Weighted Guidelines Profit/Fee Objective." An evaluated contract cost breakdown, reduced to the contracting officer's prenegotiation cost objective, must be available. The procedure is similar to applying overhead rates to appropriate overhead allocation bases to determine contract overhead costs.

(b) DD Form 1861 provides for listing overhead pools and direct-charging service centers (if used) in the same structure they appear on the contractor's cost proposal and Forms CASB–CMF. The structure and allocation base units-of-measure must be compatible on all three displays. The base for each overhead pool must be broken down by year to match each separate Form CASB–CMF. Appropriate contract overhead allocation base data are extracted by year from the evaluated cost breakdown or pre-negotiation cost objective, and are listed against each separate Form CASB–CMF. Each allocation base is multiplied by its corresponding cost of money factor to get the Facilities Capital Cost of Money estimated to be incurred each year. The sum of these products represents the estimated Contract Facilities Capital Cost of Money for the year's effort.

Total contract facilities cost of money is the sum of the yearly amounts.

(c) Since the Facilities Capital Cost of Money Factors reflect the applicable cost of money rate in Column 1 of Form CASB–CMF, the Contract Facilities Capital Employed can be determined by *dividing* the contract Cost of Money by that same rate. DD Form 1861 is designed to record and compute all the above in the most direct way possible, and the end result is the Contract Facilities Capital Cost of Money and Capital Employed which is carried forward to DD Form 1547.

230.7005 Pre-award facilities capital applications.

Facilities Capital Cost of Money and Capital Employed as determined above, are applied in establishing cost and price objectives as follows:

(a) *Cost of money.*

(1) *Cost objective.* This special, imputed cost of money shall be used, together with normal, booked costs, in establishing a cost objective or the target cost when structuring an incentive type contract. Target costs thus established at the outset, shall not be adjusted as actual cost of money rates become available for the periods during which contract performance takes place.

(2) *Profit objective.* Cost of money shall not be included as part of the cost base when measuring the contractor's effort in connection with establishing a pre-negotiation profit objective. The cost base for this purpose shall be restricted to normal, booked costs.

(b) *Facilities capital employed.* The profit objective as it relates to the risk associated with facilities capital employed shall be assessed and weighted in accordance with the profit guidelines set forth in 215.905–1(d).

230.7006 Post award facilities capital applications.

(a) *Interim billings based on costs incurred.* Contract Facillties Capital Cost of Money may be included in cost reimbursement and progress payment invoices. The amount that qualifies as cost incurred for purposes of the "Cost Reimbursement, Fee and Payment" or "Progress Payment" clause of the contract is the result of multiplying the incurred portions of the overhead pool allocation bases by the latest available Cost of Money Factors. Like applied overhead at forecasted overhead rates, such computations are interim estimates subject to adjustment. As each year's data are finalized by computation of the actual Cost of Money Factors under CAS 414 and FAR 31.205–10, the new factors should be used to calculate contract facilities cost of money for the next accounting period.

(b) *Final settlement.* Contract facilities capital cost of money for final cost determination or repricing is based on each year's final Cost of Money Factors determined under CAS 414 and supported by separate Forms CASB–CMF. Contract cost must be separately computed in a manner similar to yearly final overhead rates. Also like overhead costs, the final settlement will include an adjustment from interim to final contract cost of money. However, estimated or target cost will not be adjusted.

230.7007 Administrative procedures.

(a) Contractor submission of Forms CASB–CMF will normally be initiated under the same circumstances as Forward Pricing Rate Agreements (See FAR 15.809), and evaluated as complementary documents and procedures. Separate Forms are required for each prospective cost accounting period during which Government contract performance is anticipated. If the contractor does not annually negotiate FPRA's, submissions may nevertheless be made annually *or* with individual contract pricing proposals, as agreed to by the contractor and the cognizant ACO. The cognizant ACO shall, with the assistance of the cognizant auditor, evaluate the cost of money factors, and retain approved factors with other negotiated forward pricing data and rates.

(b) When a contracting officer uses the Weighted Guidelines method of determining a profit objective under the criteria of 15.902, he will complete a DD Form 1861 "Contract Facilities Capital and Cost of Money" after evaluating the contractor's cost proposal and determining this pre-negotiation cost objective, but before completing a DD Form 1547 "Weighted Guidelines Profit/Fee Objective". When available, a computer generated form is acceptable, provided all essential elements of data are included and identified as DD Form 1861 data. At his option, a PCO may request the cognizant ACO to complete the DD Form 1861 in connection with normal field pricing support under FAR 15.805, and include it in his field pricing report with appropriate evaluation comments and recommendations.

(c) A final Form CASB–CMF must be submitted by the contractor under CAS 414 as soon after the end of each cost accounting period as possible, for the purpose of final cost determinations and/or repricing. The submission should accompany the contractor's proposal for actual overhead costs and rates, and be evaluated as complementary documents and procedures.

Subpart 230.71—Facilities Capital Employed for Facilities Under Construction

230.7101 Policy.

It is the policy of the Department of Defense to recognize a contractor's investment in capital facilities while these are being constructed, fabricated or developed for the contractor's own use. This recognition is made through the allowance of an imputed cost of money amount which is (a) calculated in accordance with 230.7103 below, (b) capitalized along with the other costs of the asset for which the investment is made, and (c) allocated to Department of Defense contracts in accordance with 230.7104.

230.7102 Definitions.

The following definitions have been taken or developed from Cost Accounting Standard (CAS) 417, Cost of Money as an Element of the Cost of Capital Assets Under Construction (See Appendix O).

(a) *Intangible capital asset.* An asset that has no physical substance, has more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the benefit it yields.

(b) *Tangible capital asset.* An asset that has physical substance, more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the service it yields.

(c) *Cost of money rate.* The cost of money rate is either the interest rate determined by the Secretary of the Treasury pursuant to Pub. L. 92–41 (85 Stat 97), or the time-weighted average of such rates for each cost accounting period during which the asset is being constructed, fabricated, or developed. The time-weighted average interest rate is calculated by multiplying the various rates in effect during the months of construction by the number of months each rate was in effect. The sum of the products is divided by the total number of months in which the rates were experienced.

(d) *Representative investment.* The representative investment is the calculated amount considered invested by the contractor in the project to construct, fabricate, or develop the asset during the cost accounting period. In calculating the representative investment, consideration must be given

to the rate or expenditure pattern of the investment, i.e., if most of the investment was at the end of the cost accounting period, the representative investment calculation must reflect this fact.

(1) If the contractor experiences an irregular or uneven expenditure pattern in the construction, fabrication, or development of a capital asset, i.e., a majority of the construction costs were incurred toward the beginning, middle, or end of the cost accounting period, the contractor must either

(i) Determine a representative investment amount for the cost accounting period by calculating the average of the month-end balances for that cost accounting period; or

(ii) Treat month-end balances as individual representative investment amounts.

(2) If the construction, fabrication, or development costs were incurred in a fairly uniform expenditure pattern throughout the construction period, the contractor may:

(i) Determine a representative investment amount for the cost accounting period by averaging the beginning and ending balances of the construction, fabrication, or development cost account for the cost accounting period; or

(ii) Treat month-end balances as individual representative investment amounts.

230.7103 Measurement.

(a) The imputed cost of money for an asset under construction, fabrication, or development is calculated by applying a cost of money rate (see 230.7102(c)) to the representative investment amount (see 230.7102(d)).

(1) When a representative investment amount is determined for a cost accounting period in accordance with 230.7102(d)(1)(i) or 230.7102(d)(2)(1) the cost of money rate used shall be the time-weighted average rate.

(2) When a monthly representative investment amount (see 230.7102(d)(2)(ii) or 230.7102(d)(2)(ii)) is used, the cost of money rate shall be the rate in effect each month (Note: Under this method, the cost of money calculation is made monthly and the total for the cost accounting period is the sum of the monthly calculations).

(b) The method chosen by a contractor for determining the representative investment amount may be different for each capital asset being constructed, fabricated, or developed as long as the method fits the expenditure pattern of the construction costs incurred.

(c) The imputed cost of money will be capitalized only once in any cost accounting period; either at the end of the period or at the end of the construction period, whichever comes first.

(d) When the construction of an asset takes more than one cost accounting period, the cost of money capitalized for the first cost accounting period will be included in determining the representative investment amount for any future cost accounting periods.

230.7104 Composition and allocation of costs.

(a) The cost of money for a tangible capital asset determined in accordance with 230.7102 and 230.7103 shall be capitalized along with the other construction, fabrication, or development cost of that asset for purposes of depreciation pursuant to FAR 31.205–11.

(b) The cost of money for an intangible capital asset determined in accordance with 230.7102 and 230.7103 shall be capitalized along with other construction, fabrication, or development costs of that asset and amortized over appropriate cost accounting periods.

(c) Where CAS 414 cost of money is allocated to construction, fabrication, or development effort in accordance with 230.70 it will be recognized and considered an element of total construction costs and be included in all calculations of the asset's representative investment amount.

230.7105 Limitations.

If substantially all activities necessary to get an asset ready for its intended use are discontinued, cost of money shall not be capitalized for the period of discontinuance, except when such discontinuance arises out of causes beyond the control and without the fault or negligence of the contractor.

230.7106 Preaward capital employed application.

An offset to the profit objectives as set forth in FAR 15.9 is not required for CAS 417 cost of money.

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 231.1—Applicability

231.101 Objectives.

Pursuant to FAR 31.101 and to reflect DoD policy, the DAR Council has granted certain exceptions to FAR Part 31 cost principles. These exceptions are set forth in this supplement.

231.103 Contracts with commercial organizations.

(S–70) The FAR and this supplement apply to purchases and contracts made by the DoD in support of Foreign Military Sales (FMS) (see 201.103). Accordingly, the cost principles and procedures in FAR 31.2, as supplemented, shall be used in pricing FMS contracts (see 225.7304 and 225.7305).

231.105 Construction and architect-engineer contracts.

(d)(2)(i)(A) When the contracting officer cannot determine actual cost data for both ownership and operating costs for each piece of equipment, or groups of similar serial or series equipment, from the contractor's accounting records, costs shall be determined in accordance with the Construction Equipment Ownership and Operating Expense Schedule, published by the U.S. Army Corps of Engineers, unless another schedule is specified in the contract. Costs otherwise unallowable under this part shall not become allowable through the use of any schedule (see FAR 31.109(c)). For example, a schedule must be adjusted for Government contract costing purposes if it is based on replacement cost, includes unallowable interest costs, or uses improper cost-of-money rates or computations.

Subpart 231.2—Contracts With Commercial Organizations

231.201 General.

The contracting officer shall insert the clause at 252.231–7000, Supplemental Cost Principles, in all solicitations and contracts, except acquisitions made under the small purchase procedures in FAR Part 13.

231.205–10 Cost of money.

(a)(2)(i) The contractor's capital investment must also be measured, allocated to contracts, and costed in accordance with 230.70.

(ii) The contractor must also maintain records to demonstrate compliance with (i) above.

(b)(2)(i)(A) The cost of money must be calculated, allocated to contracts, and costed in accordance with 230.70.

(B) The contractor must also maintain records to demonstrate compliance with (A) above.

231.205–18 Independent research and development and bid and proposal costs.

(c)(1)(vii) The total amount of IR&D/B&P costs allocated to DoD contracts shall not exceed the total of expenditures for IR&D/B&P projects with a potential relationship to a military function or operation. For contracts which do not provide for cost determinations on a historical basis, the requirement will be considered to have been met if the estimated IR&D/B&P costs allocated to the contract do not exceed its proportionate share of the total estimated costs of IR&D/B&P with a potential relationship to a military function or operation. IR&D/B&P costs will be considered to satisfy the potential relationship requirement when the contractor can demonstrate that the effort under a proposed contract or grant would have a potential relationship to a military function or operation. The potential relationship of IR&D/B&P will be determined by the contracting officer, and the results of the determination will be made available to the contractor. For additional allowability requirements affecting Foreign Military Sales (FMS) contracts, see 225.7304.

231.205–38 Selling costs.

Additional allowability requirements for Foreign Military Sales (FMS) contracts are contained in 225.7304 and 225.7305.

PART 232—CONTRACT FINANCING

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 232.1—General

232.102 Description of contract financing methods.

(e)(2) Progress payments based on percentage or state of completion will be confined to contracts for construction, shipbuilding and ship conversion, alteration or repair.

232.108 Financial consultation.

The contract financing offices are: The Chief of Contract Financing, Office of the Comptroller of the Army; the Executive Assistant Comptroller for Banking, Cash Management, Contract Financing and Compensation Systems, Assistant Comptroller of the Navy for Financial Management; the Chief of Banking and Contract Financing, Directorate of Accounting, Air Force Accounting and Finance Center; and the Comptroller, Defense Logistics Agency. For other Departments, the contracting financing office will be within the Office of the Agency Comptroller.

232.111 Contract clauses.

(a), (b), (c) and (d) See DAC 76–42, Item I, for authorized modifications with respect to payment due dates.

(S–70) The contracting officer shall insert the clause at 252.232–7000, Invoices, in solicitations and contracts for supplies and services when a fixed price contract is contemplated.

232.170 Responsibilities.

232.170–1 Organization.

The financing function should be separated from the procurement function, but close cooperation should be preserved at all times. For progress payments, contract financing officers will ordinarily participate in the development of appropriate regulations and standard contract provisions designed to avoid undue risk to the Government, and in specific cases involving policy questions or unusual financing arrangements.

232.170–2 Resolution of disagreements.

If a disagreement arises between the financing office and the procuring activity on financing provisions, the matter will be referred to and resolved in the higher echelons of the authority responsible for both financing and procurement functions.

232.170–3 Responsibility, administration, contract finance committee.

The Assistant Secretary of Defense (Acquisition and Logistics) has the responsibility for insuring uniform administration of financing. Only policy issues or important procedural problems shall be referred to the Office of the Assistant Secretary of Defense (Acquisition and Logistics). Usual financing operations shall be the responsibility of the Departments.

(a) Responsibility for financing in each Department shall be in the Under or Assistant Secretary, or other designated official, responsible for the comptroller function, with the focal point for such activities at Departmental headquarters. Contract financing offices may be established at the operational level determined by the Departments.

(b) There shall be a Contract Finance Committee composed of a representative of the Assistant Secretary of Defense (Acquisition and Logistics) as chairman, a representative of the Assistant Secretary of Defense (Comptroller), and two representatives of each Military Department and DLA (one representing procurement and one representing the contract finance office). The Committee shall meet upon call by the Chairman or when requested by a member. The Committee shall advise and assist the Assistant Secretary of Defense (Acquisition and Logistics) in assuring proper and uniform application of policies, procedures and forms. The Committee may recommend to the Secretary of Defense through the Assistant Secretary of Defense (Acquisition and Logistics) further policy directives on financing matters. The Committee shall be responsible for the formulation, revision and promulgation of uniform contract financing regulations.

232.171 Deviations.

Actions in the exercise of the judgment and discretion allowed by these regulations are not deviations. Actions contrary to or inconsistent with these regulations constitute deviations. Deviations will be permitted only in exceptional circumstances, after the proposed deviation has been presented to the Contract Finance Committee and a recommendation obtained, and the approval of the Assistant Secretary of Defense (Acquisition and Logistics) or his designated representative has been given. This procedure will also be followed for amendments to these regulations.

232.172 Financial responsibility of contractors.

Procuring activities must give due regard to the financial capabilities of potential suppliers. Financial difficulties encountered by contractors and subcontractors may disrupt production schedules; cause wastage of manpower and materials; and if connected with guaranteed loans, advance payments or progress payments, result in monetary loss to the Government. If financial crises occur in the course of a contractor's production, the need for continued production may make guaranteed loans or advance payments imperative for continued production, even though monetary losses may be likely.

232.173 Financial information and analysis.

(a) The necessity for financial information and analysis of the financial capability of contractors vary with the circumstances of particular cases. Judgment must be used in accumulating and evaluating data. Financial analysis would serve little useful purpose when providing customary progress payments:

(1) For contractors who are known from experience to be fairly relied upon to perform their contracts satisfactorily;

(2) For contractors who are in a satisfactory financial condition and operating profitably, where the items involved are regularly produced by the contractor and the contract amounts are

within the normal sales volume of the contractor. In such cases, the financial evaluation may consist of scrutiny of the contractor's balance sheets and operating statements. In doubtful cases, the financial analysis would have to be as detailed as necessary to fit the circumstances.

(b) Obtaining and analyzing data on a contractor's financial capability is of particular importance when:

(1) The contractor is a new supplier,

(2) The contractor has not supplied the item (or a similar item) within the preceding twelve months,

(3) The contractor is a newly organized concern,

(4) The contractor is on a list requiring pre-award clearances or special clearance prior to award,

(5) The contractor is on any current list indicating current or post contract defaults or delinquencies,

(6) The contractor is known to be involved in performance difficulties as a supplier or subcontractor for private customers on Government or commercial work,

(7) The contractor is listed on the Consolidated List of Contractors Indebted to the Government (Hold-Up List), or,

(8) There are any facts or circumstances which support reasonable doubts as to the contractor's financial capability to perform.

232.174 Appropriate information.

The kinds of information and data that may be appropriate in particular cases are outlined below. Only those items which are appropriate to a particular case are required. The purpose of obtaining this data is to gain a full understanding of the propriety and reasonable necessity for contract financing, for evaluation of a contractor's ability to perform contracts without loss to the Government, and for informed judgment related to terms, conditions and protective provisions that may be appropriate for the protection of the Government.

(a) Balance sheet and income statement for the most recent fiscal year prepared and certified by an independent public accountant (including his comments, if any), and, if available, similar financial data for the two previous years; latest available interim balance sheet and income statement of the current fiscal year; a separate statement of amounts of defense and commercial sales. If audited reports are not available, then corresponding statements should be submitted, certified by an authorized officer, partner, or individual proprietor as truly and fully setting forth the financial condition and operating results of the applicant; if a proprietorship, partnership or joint venture, personal financial statements of proprietor, partners, or members of joint venture and description of individual liabilities of partners or members of joint venture on contracts of partnership or joint venture;

(b) Summary history of contractor and its principal management personnel, indicating particularly any past insolvencies of the contractor or a predecessor or of the officers, partners, or proprietors; also a description of its products or services;

(c) Statement of all affiliates of the contractor, showing financial interests of the contractor in affiliates and of affiliates in the contractor, and also mutual officers, directors and major stockholders or owners, and disclosing character and amount of business transactions with affiliates or with officers, directors, major stockholders or owners of the contractor or its affiliates; also, if a corporation, list of major stockholders, and shares held;

(d) Statement of compensation payable to each officer, partner, proprietor, and principal executive, and to each key employee receiving comparable compensation, including bonus, commission, and profit-sharing arrangements, together with similar data for the past two years; also past and projected dividends, unless obtained with (a) above;

(e) Schedule of principal contracts and orders on hand, showing defense orders and civilian orders separately, and showing face amounts, unfinished amounts, and unliquidated advance or progress payments, and also indicating bids outstanding and contemplated and explanation concerning contracts under negotiation;

(f) Cash forecast, showing estimated disbursements and receipts for the period or periods involved (see 232.174–1 and 232.174–2);

(g) Estimated income statements and estimated balance sheets (see 232.174–3);

(h) Comparison of past financial results with estimates previously furnished by the contractor;

(i) Credit agency ratings of the contractor, and, when significant, credit agency ratings of principal subcontractors and of principal business customers (defense and commercial) of the contractor;

(j) Existing and contemplated credit or financing arrangements, names of parties and relationship, if any, to contractor, amounts available or to be available, periods of availability, and required or contemplated payments, including (1) loans and credits, (2) advances and progress payments, (3) projected equity capital increases, (4) deferred trade credit, if any, (5) creditor subordinations or standbys, and (6) mortgages, liens, pledges, assignments, conditional sales, lease/purchases, hypothecations, and other encumbrances or security arrangements, both existing and contemplated;

(k) Status of all tax accounts, particularly Federal income, excise, and withholding taxes, and social security taxes or contributions (including verification with Internal Revenue Service, when appropriate) with special attention to the matter of Federal tax delinquencies (which are covered by the lien and right of distraint and levy provided by sections 6321 and 6331 of the Internal Revenue Code);

(l) Appropriate information, explanation and schedules to indicate (1) leases, deferred purchased arrangements, and patent or royalty arrangements, outlining terms and showing relationship, if any, of other parties to the contractor, (2) insurance maintained and to be maintained, (3) contemplated capital expenditures, debt reduction or retirement, and acquisitions of capital stock, (4) delinquencies on contracts, subcontracts or purchase orders, and status thereof, (5) pending or anticipated liability for contract price refunds, or for renegotiation, or for other Government claims, (6) anticipated losses on contracts, (7) contingent liabilities, including those on endorsements, guarantees, warranties, surety bonds, and material litigation pending or threatened, (8) aging and collectibility of accounts and notes receivable, status of disputed receivables, identification of any amounts included in receivables but not currently due and payable, (9) obsolescence of inventory and method of valuing inventory, (10) aging of accounts and notes payable, identifying major creditors and interest rates and other charges, if any, and status of significant disputed items, (11) adequacy of reserves for depreciation, (12) analysis of surplus;

(m) Significant ratios such as (1) inventory to annual sales, (2) inventory to current assets, (3) liquid assets to current assets, (4) liquid assets to current liabilities, (5) current assets to current liabilities, and (6) net worth to debt;

(n) Comments and opinion of audit agency concerning contractor's accounting system and controls, and available audit agency analysis of important elements of financial statements or projections;

(o) Other facts that may be appropriate for the purposes stated at the beginning of this 232.174.

232.174–1 Cash flow forecast and estimated financial statements.

In doubtful cases, an estimated cash budget (Cash Flow Forecast) and related estimated income statements and estimated balance sheets prepared by the contractor, will be very useful for the purpose of arriving at an informed judgement as to the cash requirements (both for the contract and for the contractor's other activities), cash receipts for the contract period, and cash or credit needed to supply any excess or projected expenditures over projected receipts. When considered useful or necessary, such estimates should be requested from the prospective contractor, analyzed by financial personnel, and discussed to the extent necessary or appropriate with the prospective contractor. Many contractors will have such projects readily available, perhaps not including estimated balance sheets. The failure of the contractor to have prepared such estimates, or resistance to their preparation, or difficulties and delays in preparation, or poor quality of the projections, or the use of unreasonable or unrealistic assumptions in their preparation, may well constitute warning signals that the company's planning has been insufficient and that significant financial troubles may be encountered during the contemplated period of contract performance.

232.174–2 Realistic assumptions.

Cash forecasts can, of course, be no more reliable and representative of probable financial developments than the assumptions on which these forecasts are based. Each cash forecast and related projection should disclose the important underlying assumptions. Most important of these assumptions are the—

(1) Estimated amounts and timing of purchases of materials, parts, components, subassemblies, services, and payments therefor;

(2) Estimated amounts of timing of purchases of machinery and equipment, other production or test facilities, other fixed assets, and purchases or production of special tooling, and payments therefore;

(3) Schedule of fixed cash charges, such as debt installments, interest, rentals and taxes;

(4) Projected manufacturing and production schedules;

(5) Projected shipments, or delivery acceptances;

(6) Estimated amounts and timing of billings to customers (including progress payments), and customer payments;

(7) Estimated amounts and timing of cash receipts from lenders or other credit sources, and liquidation of loans; and

(8) Estimated amounts and timing of cash receipts from other sources.

The assumptions underlying cash forecasts should be checked for reasonableness and realism—with the contractor, Government personnel responsible in the areas of engineering, production scheduling, cost and price analysis, and with others (including prospective supply, subcontract, and loan or credit sources)—as may be prudent in the circumstances of the case.

232.174–3 Estimated income statements and balance sheets.

The cash budget or cash forecast does not show anticipated profit or loss, and is limited to the forecast of movements within a company's cash account. The concurrent submission of an estimated income statement covering the same period serves to tie in the anticipated cash transactions with the estimated sales and expense activity, and culminates in the estimated balance sheet position. The estimated income statement also can serve as a guide for evaluating the company's projections with respect to sales volume, cost of goods sold, gross profit and net profit in relation to the known results of past performance.

232.175 Interpretations.

It is important that these regulations and contract clauses be applied fairly and uniformly for all contractors. When a serious question of interpretation or application of these regulations arises, an advance opinion should be obtained from the procurement policy office at the headquarters of the Department primarily interested. If the circumstances do not reasonably permit requesting an advance opinion, report of an interpretation made should be made to the appropriate Departmental headquarters procurement policy office. That office should obtain the views of interested offices of the other Departments, including the contract financing offices (232.108). When questions submitted are considered to be of importance in the general interest of uniformity and of fair and effective administration of these regulations, appropriate revision of these regulations will be considered. Changes and additions to these regulations will be developed by the Contract Finance Committee (see 232.170–3(b) and 232.171).

Subpart 232.3—Loan Guarantees for Defense Production

232.302 Authority.

(a) The Department of the Army, the Department of the Navy, the Department of the Air Force, and the Defense Logistics Agency, among others, are designated as "guaranteeing agencies" within the Department of Defense.

232.304 Procedures.

232.304–1 Application for guarantee.

(a) Guaranteed loans will be used primarily for working capital purposes and not for facilities expansion. Guarantees are not precluded where a relatively small portion of the loan might be used for facilities expansion of a minor or incidental nature, provided that the contractor's financial condition is such that the facilities expansion will not impair repayment of the guaranteed loan.

232.304–2 Certificate of eligibility.

(a) Contracting officers are expected to immediately take appropriate steps for the determination of eligibility. Their findings and report, including certificate of eligibility where appropriate, should be submitted to the contract financing office within the guaranteeing agency.

(c) The Department that has the preponderance of interest on the basis of the dollar amount of unfilled and unpaid balances (without regard to the existence of progress payments and without regard to the issuance or nonissuance of certificates of eligibility on particular contracts) on contracts and subcontracts will be the guaranteeing agency. Contracts with advance payments will be included only if the guaranteed loan will liquidate the advance payment. Service procurement contracts are deemed those of the purchasing department. If the application is approved and a guarantee agreement is executed, the guaranteeing agency will bear all losses and expenses and receive all revenues under the guarantee. In exceptional cases, one Department may act for others through a sharing arrangement. If preponderance of interest should shift to another Department during the guaranteed loan period, actions on requests for increases in amount or extension of maturity will ordinarily be taken by the Department with the current preponderance of interest. However, the new guarantee should simply replace the former guarantee so as not to disturb or impair any security for the existing loan. The existing loan agreement and collateral security instruments should be appropriately revised. The contract

financing office of the Department which authorized the existing guaranteed loan will transfer the file to the contract financing office of the Department with the current preponderance of interest. If the loan is in distress with foreseeable losses, and the purpose of the request is for the purpose of orderly liquidation of the loan to reduce the amount of the loss, the Department which guaranteed the loan will take action.

232.304-70 Guaranteed loans for an extended period of time.

It is not the policy of the Department of Defense to continue furnishing assistance in the form of guaranteed loans over an extended period of time unless it is reasonably necessary to obtain required products.

Subpart 232.4—Advance Payments

232.404 Exclusions.

(a)(9) In accordance with 10 U.S.C. 503, FAR Subpart 32.4 does not apply to advance payments for advertising for military recruitment in high school and college publications not to exceed $500 under any single contract.

232.409 Contracting officer action.

232.409-1 Recommendation for approval.

The departmental contract financing office (see 232.106) shall prepare the documents required by FAR 32.409-1 (e) & (f). This is necessary to assure uniform application of this subpart as required by FAR 32.402(e)(1).

232.410 Findings, determination, and authorization.

(a) Modifications to incorporate special facts and circumstances are permitted.

(b) In cases where the procedure for advance payments without a special bank account is to be used in accordance with 232.470, insert the following paragraph instead of paragraph (a)(4) of the Findings, Determination, and Authorization for Advance Payments at FAR 32.410.

(4) The proposed advance payment clause contains appropriate provisions for the protection of the Government, as security for advance payments. These include provisions that the outstanding advance payments will be liquidated from cost reimbursements as they become due the contractor. Such security is deemed to be adequate.

232.412 Contract clause.

(S-70) The contracting office shall insert the clause at 252.232-7001, Advance Payments Pool, in any contract that will be subject to the terms of an advance payment pool agreement with a nonprofit educational or research and development institution. Normally this will include all cost reimbursement type contracts with the particular institution.

(S-71) The contracting office shall insert the clause at 252.232-7002, Disposition of Payment, in contracts when the payments under the contract are to be made by a disbursing office other than the disbursing office designated in the advance payment pool agreement.

232.470 Procedure for advance payments to nonprofit educational and research and development institutions without a special bank account.

In view of the nonprofit position of educational and certain research institutions and the Government objective of strengthening the research capabilities of these institutions, interest-free advance payments in reasonable amounts may be authorized, when prudent and practical, to finance experimental, research and development contracts. The advance payments may be periodically made directly to the institutions without the use of either a special bank account or letter of credit under the procedure described below:

(a) The contracting officer shall advise the departmental contract financing office upon the award of any cost-type contract to an institution with an advance payment pool arrangement (see 232.471).

(b) The agreement set forth at 232.472 will be used. These arrangements will allow advance payments directly to the contractor to meet its contractual cash needs for the shortest practical periods of time to cover contract performance. The contractor shall periodically determine its cash requirements for contract(s) performance and submit requests for advance payments, in an acceptable format with supporting information as prescribed by the administering office, to the designated approving official who shall determine the necessity for the advance payment. If the approving official concurs with the amount of advance payment requested by the contractor, the request will be promptly approved and forwarded to the designated disbursing office for payment. In the event that the approving official determines that the amount of advance payments requested for the specified period is in excess of the needs, the request will be approved and forwarded to the disbursing office for payment of only the amount needed. The approving official shall act promptly, in accordance with the contract or pool agreement terms and departmental procedures, to resolve any disagreement on the unapproved portion of the request.

(c) The contractor shall submit cost reimbursement vouchers on a monthly basis for the contract(s) being financed by advance payments to the disbursing office designated in the contract. The proceeds from the payments that would otherwise be due the contractor shall be applied in liquidation of the outstanding advance payments. If the proceeds exceed the outstanding advance payments, the remaining balance shall be paid to the contractor.

(d) The advance payments shall be requested, approved, and paid based on estimates. There may be a variance between the contractor's estimated and actual cash requirements for each period. These variances represent over-or-under financing by the Government and could become significant. Consequently, these variances must be identified and taken into consideration with each new request for an advance payment. This is a joint responsibility of the contractor and the approving official.

232.471 Pooled advance payments.

An advance payment pool arrangement is an instrument for conveniently financing the performance of more than one contract, held by a single contractor. The agreement is separate from the contracts financed under it. It is especially convenient for the financing of cost-type contracts with nonprofit educational or research institutions for experimental, or research and development work, when several contracts or a series of contracts require financing by advance payments. When advance payments are appropriate, pooled advance payments may also be used to finance performance of other types of contracts held by a single contractor. They may be established without regard to the number of appropriations involved, and regardless of the fact that contracts affected may be those of more than one DoD purchasing office, DoD procuring activity, or Military Department. If more convenient or otherwise preferable, there also may be more than one advance payment pool agreement in force at the same time with a single contractor, designed separately to finance contracts of the Military Departments respectively concerned, or of one or more DoD procuring activities respectively. Advance payment pool agreements may be established under the statutes mentioned in FAR 32.401 and will be in accordance with the procedure that follows for arrangements with nonprofit institutions. Advance payment pool arrangements with other than nonprofit organizations shall be in accordance with the specific directions of the departmental contract financing office.

232.471-1 Distinction between pool contracts and designated pool contracts.

An advance payment pool agreement may cover a broad area of a contractor's financial needs rather than piecemeal segments related to separate contracts. A pool agreement is based upon the contractor's financing requirements for a group of DoD contracts to be performed at the same time. The monetary requirements for the group of contracts are considered in fixing the maximum dollar amount for the advance payment pool agreement. Advances are normally not made on each separate contract, but can be made on and charged against one or more contracts, so as to supply the monetary requirements of smaller contracts included in the advance payment pool. A contract to which the advance payments are charged is called a "designated pool contract." All other contracts financed by the pool agreement are called "pool contracts."

232.471-2 Advance payment pool agreement—special features.

The principal features distinguishing an advance payment pool agreement from an advance payment provision affecting only a single contract are:

(a) The advance payment pool agreement specifies one or more designated pool contracts, and provides for substitution from time to time of new or different contracts as the designated pool contract(s);

(c) The advance payment pool agreement defines the contracts included as pool contracts, and provides for inclusion of them as they are awarded;

(d) All payments under the pool contracts and designated pool contracts are made into a special bank account, except where the procedure for advance payments without a special bank account is to be used in accordance with 232.409-3 and 232.470. Where a special bank account is not used, payments otherwise due the contractor are applied in liquidation of the outstanding advance payments; and

(e) The appropriate provisions of the advance payment clause are made applicable to all pool contracts, including the designated pool contracts.

232.471-3 Liquidation—designated pool contracts—administering office.

It is imperative for each advance payment pool that effective arrangements be made to ensure that the advances outstanding do not exceed the amount authorized in the advance payment pool agreement and that timely liquidation is accomplished. For each pool agreement, there shall be a single administering office, and to the extent possible, there should be a single disbursing office for all of the contracts in the pool, especially those contracts which are designated pool contracts.

232.471-4 Advance payment pool—understandings.

Advance payment pools including contracts of more than one Military Department require approval from the contract financing office of each department concerned. The following guidance is provided:

(a) Requests to establish an advance payment pool agreement may be initiated by the contractor, the contracting officer, chief of a procuring activity, or at Departmental headquarters.

(b) When the advance payment pool includes contracts of more than one Military Department, the authorizing Department should be the one having a preponderant interest in the contractor's unfinished contracts. The Military Department with the preponderant interest is the Department with the largest dollar value of the contractor's unfinished contracts. Possible exceptions to the preponderance principle are cases in which it would be more convenient to use a relatively large long-term contract of a nonpreponderant Department as the designated pool contract, or where it is reasonably expected that preponderance will shift during the term of the advance payment pool agreement.

(c) Situations may occur in which the remaining payments available on pool contracts are not sufficient to liquidate the outstanding advance. These circumstances will not affect the normal practice of offsetting mutual debits and credits. If there is only one open designated pool contract, the entire advance payment loss should fall on that contract. If there is more than one open designated pool contract on which advance payments remain outstanding after adjustment for debits and credits under each separate contract, the advance payment loss (insofar as contracts of two or more Military Departments are involved) will fall on all of those designated pool contracts, in proportion to the contract prices of the designated pool contracts.

(d) Normally, records will not be maintained to show separately the amount of advance payments invested in each one of the separate contracts. The keeping of such records is unnecessary, and would not be consistent with the purposes of advance payment pools.

232.472 Agreement for advance payments without special bank account.

An agreement with a nonprofit educational or research and development institution for pooled advance payments without a special bank account is constructed by making the following changes to the Advance Payments clause at FAR 52.232-12.

(a) Change the clause title to "Advance Payment Pool Agreement Without Special Bank Account."

(b) Throughout the clause text: Change all occurrences of the word "contract" to "agreement."

(c) Add the following preamble immediately below the title:

This agreement is entered into this ____ day of _____, 19___ between the United States of America (the government), represented by _____, and _____ (insert institution name and appropriate identification information) (hereinafter referred to as the "contractor").

(d) In paragraph "(a)(2)," in the blank space left for the amount, insert the following:

. . . the amount stated in the Designations and Determinations paragraph hereof or the aggregate of the total unpaid designated pool contracts' prices, whichever is less.

(e) Delete paragraph (b) and insert the following:

(b) Amount of Advance Payments.

(1) The Contractor shall determine the estimated amount of advance payment(s) necessary to meet the requirements of paragraph (c) herein entitled "Use of Funds" to cover performance of the pool contract(s). This determination shall be pursuant to written instructions provided by the Administering Office (see Designations and Determinations paragraph herein) relative to the (i) shortest practical period for which advance payments will be provided, (ii) format and frequency of requests for advance payments, and (iii) data required in support of each request. The estimate shall be adjusted for the amount by which actual cash expenditures for prior period performance of the pool contract(s) exceeded or was less than the advance payments provided for such performance. The Contractor shall submit its estimate and supporting data in a request for advance payment(s) to the Approving Official designated in writing by the Administering Office for advance payments. The request should be submitted sufficiently early to permit review, approval, and disbursement of the required advance payment(s) by the time the funds are actually needed by the Contractor.

(2) The Approving Official will review the Contractor's advance payment requirements to determine the reasonableness thereof, and if concurrence is given, the request will be approved and the Disbursing Office designated (see Designations and Determinations paragraph herein) will be notified by the Approving Official to make

payment. If the Approving Official determines that the advance payment requested by the Contractor is in excess of cash requirements for performance of the pool contracts during the specified period of time, the Approving Official will approve an amount based on such determination and notify the Disbursing Office of the reduced amount. Upon any such reduction, the Approving Official will immediately notify the Administering Office for this advance payment pool agreement in writing, with a copy to the Contractor, of the amount requested, the amount approved, and the reasons for reduction. The Administering Office will determine whether additional funds will be advanced to the Contractor.

(3) Upon notification of the approved request, the Disbursing Office will draw a Treasury check payable to the Contractor for the amount authorized by the Approving Official and mail such check to the Contractor in time to be received on or about the date the funds are required for contract performance.

(f) Delete paragraph (c) and insert the following:

(c) *Use of Funds.* Advance payments hereunder are to be used by the Contractor solely for the purpose of making payments for direct materials, direct labor, and administrative and overhead expenses allowable in accordance with the provisions of the pool contracts, or for the purpose of reimbursing the Contractor for such payments. Any interpretation required as to the proper use of funds shall be made in writing by the Administering Office.

(g) Delete the last sentence of paragraph (d).

(h) Delete paragraph (e) and insert the following:

(e) *Liquidation.* The contractor will submit monthly cost reimbursement vouchers in accordance with the payment provisions of the pool contracts. The Government shall withhold payments of such vouchers due the Contractor and apply the amounts withheld against the Contractor's obligation to repay advance payments made hereunder and interest charges thereon until such advance payments and interest charges shall have been fully liquidated. Upon completion or termination of the advance payment pool agreement, the balance of liquidated advance payments shall be deducted from any amount otherwise due or which may become due to the Contractor from the Government, and any deficiency shall be paid by the Contractor to the Government upon demand.

(i) Add the following to the last sentence of paragraph (f)(2):

", . . . except as provided in the Liquidation and Default paragraphs herein."

(j) Add the following sentence at the end of paragraph (f)(2):

If interest is required, the interest will be calculated in accordance with paragraph (f) herein.

(k) Delete from paragraph (f)(3):

. . . the higher of (i) the published prime rate of the banking institution (depository) in which the special bank account is established or (ii) . . .

(l) Delete paragraphs (g) and (h).

(m) Change paragraph letters (i) through (p) to (g) through (n).

(n) Delete old paragraph (m) and insert the following:

(k) *Information and Access to Records.* The Contractor shall furnish to the administering office (1) monthly or at other intervals as required, signed or certified balance sheets and profit and loss statements together; and (2) if requested, other information concerning the operation of the Contractor's business. The Contractor shall provide the authorized Government representatives proper facilities for inspection of the Contractor's books, records, and accounts.

(o) Add the following new paragraphs:

(o) *Designations and Determinations:*

(1) *Amount.* The amount of advance payments at any time outstanding shall not exceed $_____ or the aggregate of the total undisbursed obligation of the designated pool contract, whichever is less.

(2) *Administering Office.* The office administering advance payments:

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(3) *Disbursing Office.* The office making advance payments under this Agreement:

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(4) *Approving Office.* The approving office shall be _____.

(p) *Limiting Date.* Advance payments made hereunder are to finance all pool contracts subject to this Agreement, including amendments issued thereunder which result in increasing the contract price, that are executed on or before _____ [insert a date, normally not more than two years in the future].

(p) Add the following at the conclusion of the agreement:

Signatures and official titles:
For the Contractor:

_____
(name)

_____
(title)

_____
(date)

For the United States:

_____
(name)

_____
(title)

_____
(date)

Subpart 232.5—Progress Payments Based on Costs

232.501 General.

232.501-1 Customary progress payment rates.

(a) The customary progress payment rate applicable to Foreign Military Sales requirements is 95% for other than small businesses, and 100% for small businesses. The customary progress payment rate for flexible progress payments is the rate determined by use of the CASH II computer program in accordance with the requirements of 232.502-1(S-71). Except for contracts which contain both U.S. and FMS requirements, no more than one progress payment rate or liquidation rate is applicable to a contract at any point in time.

232.501-2 Unusual progress payments.

(a) Contracting officers shall not modify contracts to authorize unliquidated unusual progress payments in excess of $25,000,000 without the prior written consent of the Office of The Assistant Secretary of Defense (Acquisition and Logistics). All other unusual progress payment provisions shall be coordinated by the departmental contract financing office, with the Department of Defense Contract Finance Committee.

232.501-3 Contract price.

(b) For purposes of making progress payments, the contract price may exceed the funds obligated under the contract if the contract contains an appropriate limitation of funds clause. In such cases, the progress payments shall be limited to the lesser of the applicable percentage of the contract price, or 100% of the funds obligated.

232.502 Preaward matters.

232.502-1 Use of customary progress payments.

(S-70) *Customary FMS progress payments.*

(1) FMS progress payments shall be applicable to Department of Defense acquisitions on behalf of foreign governments or international organizations pursuant to section 22 of the Arms Export Control Act (FMS requirements).

(2) FMS progress payments are not applicable to:

(i) Acquisitions for replenishment of U.S. Government inventories or stocks, and

(ii) Acquisitions made under DoD cooperative logistic support arrangements.

(S-71) *Customary flexible progress payments.*

(1) Paying progress payments assists in financing a contractor's performance and reduces the contractor's investment in its work in process inventory. The actual investment held by a contractor in work in process inventory is influenced by a number of factors in addition to progress payments, such as delivery schedules, cash management practices, and Government payment practices. Progress payment amounts that are determined by using uniform, standard progress payment rates (i.e., 90% or 95%) are insensitive to these other factors influencing investment and, as a consequence, result in investments by contractors in work in process inventory that vary among contractors and across contracts; on the other hand, flexible progress payment rates (expressed as a percentage that will be applied to costs to determine the amount payable as a progress payment in the same manner as uniform, standard progress payment rates) are designed to tailor more closely the progress payment rate to the cash needs for financing performance of a particular contractor for a given contract.

(2) For flexible progress payments, cash needs are measured and projected in relation to investment underlying the work in process inventory over the life of the contract. Total investment is measured by a weighted average of total costs paid by the contractor to complete performance of the contract, and the contractor's investment is the weighted average of the amount not paid by the Government. The Department of Defense (DoD), as a matter of policy, has concluded that a contractor should retain at least a 5% investment in work in process inventory over the life of the contract. Accordingly, the DoD will make progress payments at a rate (expressed as a whole number) that is the highest rate which yields a corresponding investment by the contractor in work in process inventory of not less than 5%. This progress payment rate is to be determined by the DoD Cash Flow Computer Model. In no event will the progress payment rate be greater than 100%, or less than the uniform, standard progress payment rate that would have been applied to the contract absent flexible progress payments.

(3) Contracting officers shall use a flexible progress payment rate in lieu of the uniform standard rates if:

(i) The contractor requests the use of flexible progress payments rates,

(ii) The contractor agrees to the requirements of this section, and

(iii) The criteria in paragraph (5) below are met.

(4) The flexible progress payment rate shall be determined through application of the DoD Cash Flow Computer Model, available to contracting officers on the COPPER IMPACT computer time sharing network under the computer file name "CASH II." The model takes into account key cash flow factors, such as contract cost profile, delivery schedules, subcontractor progress payments, liquidation rates, and payment/reimbursement cycles. Operating instructions and cash flow data requirements are retrievable within the model in a conversational mode. Contractors may obtain copies of the DoD Cash Flow Computer Model User's Guide from the Defense Technical Information Center, Building 5, Cameron Station, Alexandria, VA 22314. Contracting officers shall not grant contractor access to Government leased COPPER IMPACT time sharing computer network.

(5) Contractors who submit certified cost or pricing data, as defined in FAR 15.804-2, for negotiated fixed-price contracts in excess of $1 million may request flexible progress payments. Formally advertised contracts are not eligible for flexible progress payments. Flexible progress payments are not available for contracts awarded and performed entirely outside of the United States, its possessions and territories.

(6) Contractors will furnish to the contracting officer cash flow data in the form and context specified by the DoD Cash Flow Computer Model. These data include: actual and projected incurred cost broken down by element of cost and by month for the duration of the contract, float times for each element of cost, progress payment receipts and delivery payment receipts and associated contract prices and profit percentage. Contracting officers will verify the cash flow data in accordance with normal procedures used to verify contractor cost and pricing data. Administrative contracting officers are encouraged to establish advance agreements at contractor locations for float and payment lag which are common to several contracts. Such agreements should be established when administratively practical.

(7) A redetermination of the flexible progress payment rate shall be made upon the request of the Government or contractor if measurement of the contractor's cumulative investment in work in process inventory using actual and projected cash flow data indicates an investment level above 7% or below 3%. The cash flow computer model is designed to generate a progress payment rate that yields a target investment of 5%, based on a weighted average. Accordingly, there should normally be no need to request actual and projected contract cash flow data unless delivery schedules are revised, Government progress payment lag times are substantially changed from those used in the establishment of the progress payment rate, or substantial new work (e.g., option) is added to the contract.

(8) As noted in FAR 32.504, the standards for progress payments to subcontractors ought to be the same as those applicable to prime contractors. Accordingly, subcontractors who request a flexible progress payment rate, meet the criteria in paragraph (5) above and agree to the requirements of this section are to receive a flexible progress payment rate. The subcontract flexible progress payment rate will be determined by the prime contractor without regard to the progress payment rate in the prime contract. The DoD Cash Flow Computer Model and associated procedures will be used by the prime contractor and a reasonable review of the cash flow data provided by the subcontractor will be made.

(9) When flexible progress payments are contemplated for use on a definitive contract superseding a letter contract or an unpriced BOA order, the applicable standard progress payment clause at FAR 52.232-16 shall be used until definitization.

232.502-2 Contract finance office clearance.

Deviation from the Progress Payment clause, policy and procedures prescribed in FAR Part 32 and this Supplement shall be authorized only by the Office of the Assistant Secretary of Defense (Acquisition and Logistics) in accordance with 232.171.

232.502-4 Contract clauses.

(S-70) The contracting officer shall insert the clause at 252.232-7003, Progress Payments for Foreign Military Sales Acquisitions, in any contract that provides for progress payments and contains FMS requirements.

(S-71) The contracting officer shall insert the clause at 252.232-7004, Flexible Progress Payments, when a flexible progress payment rate is used in the contract.

232.503 Postaward matters.

232.503-1 Contractor requests.

Subject to the specific requirements of agency procedures, contractor requests for progress payments may be submitted by computer generated equivalents of the Standard Form 1443.

232.503-6 Suspension or reduction of payments.

(g) *Loss contracts.*

(S-70) *Loss ratio adjustment procedures.* The following procedures shall be followed whenever the adjustments required by FAR 32.503-6 (f) and (g) are made:

(i) Except as provided in paragraph (ii) below, the loss ratio adjustment shall

be calculated by the contracting officer using the procedures in FAR 32.503–6(g) by preparation of a supplementary analysis to the contractor's request for progress payments;

(ii) The Contractor may be requested to prepare the supplementary analysis as an attachment to the progress payment request, when the contracting officer determines, after a review, that the contractor's methods of estimating the Costs to Complete are reliable, accurate, and not susceptible to improper influences, prejudicial to the Government's interests; and

(iii) In order to maintain an audit trail, and permit verification of calculations, the loss ratio adjustment shall not be made by alteration or replacement of the data on the contractor's original request for progress payment (SF 1443 or computer generated equivalent).

Subpart 232.6—Contract Debts

232.600 Scope.

This subpart provides additional guidance for the collection of contract debts, the charging of interest thereon, the deferral of payments, the compromise and termination of claims, and the reporting of contractor bankruptcies.

232.601 Definition.

Unless otherwise indicated in this subpart, the contract financing office within each military department and DLA is the "responsible official" for purposes of FAR Subpart 32.6.

232.605 Responsibilities and cooperation among Government officials.

(b) A disbursing officer has primary responsibility for determining the amount and collection of contract debt whenever overpayments or erroneous payments have been made. The disbursing officer also has such primary responsibility when the amounts due and dates for payment are fixed by the terms of the contract itself, and copy of such contract has been furnished to the disbursing officer with notice to collect as amounts become due. Disbursing officers are those officials designated to make payments under a contract or to receive payments of amounts due under a contract, including finance and accounting officers at installations where integrated accounting is in effect.

232.606 Debt determination and collection.

(c)(9)(vii) Upon transfer of a case to the contract financing office, the debt record maintained by a contracting officer shall be closed by appropriate reference to the date of transfer. When a disbursing officer is primarily responsible for collection, the record of the debt shall be maintained until payment or advice of collection is received. In all cases transferred to a contract financing office, that office shall establish and maintain an accounts receivable record showing all pertinent information relating to the debt, including an indebtedness and payment record reflecting current status, to be closed upon collection or compromise, or referral of the case to the General Accounting Office or to the Department of Justice.

(d) In the absence of a deferment agreement made by the contract financing office, a report of indebtedness will be made to the General Accounting Office upon failure to effect collection within a reasonable period, generally not to exceed 180 days from the date the debt is established.

(e) Before a debt is placed on the Hold-Up List (see 232.173), or before distribution of a new listing, the office undertaking to effect collection may sometimes request other offices having dealings with the contractor on other contracts, whether contracting officers or disbursing officers, to withhold payments on contracts, for application on the debt. Government personnel are expected to cooperate and assist in the fulfillment of such requests, giving due regard, however, to the effect of abrupt cessation of payments on the operations of the contractor, performance of the contracts, and the interest of the United States in such contracts. In the making of these requests to other offices, and in complying with such requests, care will be taken at all times to avoid overcollection or duplicate collection. Each check to liquidate indebtedness pursuant to such requests will be drawn payable to "(contractor's name (or office designated for contract administration))," and transmitted to the disbursing officer on the contract under which the indebtedness arose, and will be accompanied by a statement sufficient to identify the indebtedness to which it is to be applied. Appropriate notice of the deduction will be given to the contractor concerned, by the agency making the deduction.

232.610 Demand for payment of contract debt.

(a) Demands for payment of contract debts resulting from other than a termination for default shall be made by the office which first determines an amount due, whether it be the Contract Administration Office, the Contracting Office, the Disbursing Office, or the selling office/agency, and will be handled in accordance with the regulations of the department or agency to which that office is assigned. A copy of the demand shall be provided to the payment office cited in the contract and designated to receive payment. Demands for payment of contract debts resulting from a termination for default, e.g., excess costs, unliquidated progress payments, and liquidated damages, shall be made by the Procuring Contracting Officer and shall direct the debtor to make payment to an office of the Procuring Department. If this action will result in the payment being made to a payment office other than the one cited in the contract, the assigned ACO will issue a contract modification designating the new payment office.

232.613 Deferment of collection.

(S–70) Deferment requests will be forwarded as soon as possible to the contract financing office of the Department concerned. Such requests shall be supported by adequate identifying and explanatory information, including relevant memoranda and correspondence, accounting data, amounts and dates of any collections, name and location of disbursing office and, if applicable, the assignee, date of filing of appeal or of action with the Claims Court, information on hand concerning financial condition of the contractor, and recommendations for action on the deferment request. Incident to its review and action of a deferment or installment proposal, the contract financing office may request additional information, as well as other assistance needed from the transmitting office. Such requested information and assistance will be furnished promptly so that final action on the proposed deferment or installment may be taken by the contract financing office without unnecessary delay. Whenever deemed appropriate by the contract financing office, it may deal directly with the contractor concerning collection or deferment of the debt.

(S–71) When the contract financing office enters into a deferral agreement or a compromise, it will furnish copies to the appropriate contracting officer and disbursing officer when deemed necessary.

(S–72) When the contract financing office denies a deferral request, or does not reach agreement with a contractor on a deferment, it will give timely notice to the appropriate contracting officer when deemed necessary.

232.614 Interest.

232.614–1 Interest charges.

(c) The interest rates established by the Secretary of the Treasury will be published in the **Federal Register** every 6 months. The current rate may also be obtained from the Departmental contract financing office representative.

232.616 Compromise actions.

Department of Defense authority under the cited statute and joint regulations has been delegated to the Departments. Within each Department, for those debts covered by this subpart authority to act in conformity to the cited statute and joint regulations has been delegated to the contract financing office.

232.617 Contract clause.

(a)(7) The following further exceptions have been established:

(i) Contracts for instructions of military personnel or ROTC personnel at civilian schools, colleges, and universities;

(ii) Basic agreements with telephone companies, under which communications services and facilities will be ordered, and purchases under such agreements; and

(iii) Transportation contracts with common carriers for common carrier services, e.g., common carrier transportation services procured by transportation requests, transportation warrants, bills of lading, and similar transportation forms.

(S–70) Contractors and contracts mentioned in FAR 32.617(a) (2) through (5), and other contractors in exceptional circumstances, may be exempted from the administrative interest charges required by this subpart when so agreed by the DoD Contract Finance Committee, with the approval of the Assistant Secretary of Defense (Acquisition and Logistics) or his representative.

232.670 Transfer of responsibility for debt collection.

(a) Transfer of the debt case will be made to the contract financing office upon the expiration of 45 days without full collection after the date of initial demand, whether or not postponement has been requested. Debt cases under contracts terminated for default shall be transferred to the contract financing office of the Procuring Department. Debt cases transferred to the contract financing office of the Procuring Department under contracts terminated for default shall not include that portion of a debt related to actions where a disbursing officer has primary responsibility. All debt cases where the disbursing officer has primary responsibility shall be transferred to the contract financing office of the disbursing office's department. Other types of debt cases shall be transferred to the contract financing office or other office of the Department which first determines an amount to be due in accordance with the regulations of that Department.

(b) The transfers required above will not be made for amounts less than $600.00. However, it is incumbent on contracting officers and disbursing officers to effect collection whenever and by such means as are practicable.

(c) The contract financing office of each military department shall take appropriate actions to effect collection of debts referred to it. This includes administration of deferment agreements; causing debts to be listed on the consolidated list of contractors indebted to the United States, commonly known as the "Hold-Up List;" to remove names from the "Hold-Up List;" to determine administrative uncollectability; and to refer debts to the General Accounting Office or the Department of Justice as appropriate. Within each Department, no arrangement for installment or deferral of payments may be made without the approval of the contract financing office. Acting in conformity to the standards stated in this subpart, those offices may approve or deny deferment proposals transmitted to them or made directly to them by contractors, or approve such proposals on prescribed conditions.

(d) Responsibility for assuring effective administration in accordance with this subpart shall be in the Assistant Secretary of Defense (Acquisition and Logistics). Responsibility for effective administration under this subpart in each Department shall be in the Under or Assistant Secretary, or other designated official, responsible for the comptroller function. The DoD Contract Finance Committee shall advise and assist the Assistant Secretary of Defense (Acquisition and Logistics) in assuring proper application of policies and the development of procedures hereunder, and in the formulation of such further instructions on this subject as may appear desirable. That Committee is responsible for this section and will develop and promulgate herein supplemental instructions on this subject.

232.671 Bankruptcy reporting.

For those debts covered by this subpart, claims in bankruptcy, insolvency, or in proceedings for reorganization or rearrangement will be furnished to the Department of Justice. These claims are (a) those which have been transferred to a contract financing office; (b) those on their way to a contract financing office at inception of bankruptcy or insolvency proceedings; (c) those pending and not forwarded to a contract financing office at inception of bankruptcy or insolvency proceedings; and (d) those which are the consequence of bankruptcy or insolvency proceedings. Information on a bankruptcy, insolvency, reorganization or rearrangement will be provided as soon as possible by the office of origin of a debt to that office within a Department designated to receive such information. Proof of claim, with pertinent supporting data and documentation shall be furnished to the Department of Justice by the contract financing office or by such other office as may be designated within a Department. All claims arising under the same contract will be filed by the procuring department which awarded the contract. Information, reports, and proof of claim under this paragraph are not expected on debts of less than $600.

Subpart 232.7—Contract Funding

232.705 Contract clauses.

232.705–2 Clauses for limitation of cost or funds.

(a) When a contract is of the installment type, the clause at FAR 52.232–20, Limitation of Costs, may be appropriately modified.

(c) When a contract is of the installment type, the clause at FAR 52.232–22, Limitation of Funds, may be appropriately modified.

Subpart 232.8—Assignment of Claims

232.803 Policies.

(b) Only DOD contracts for personal services may prohibit the assignment of claims (see FAR 32.806(b) for appropriate clause).

(d) For purposes of DOD contracts, a national emergency is deemed to exist (see 50 U.S.C. 1651(a) (4) and (5)). Nevertheless, when Departments determine it is in the Government's interest, they may exclude the no set-off commitment (Alt I) in accordance with Departmental procedures.

(e) The assignee shall forward to the administrative contracting officer, disbursing officer, and surety, if any, the notice and instrument of assignment in the number of copies indicated below:

(1) To the administrative contracting officer—a true copy of the instrument of assignment and an original and three copies of the notice of assignment. The administrative contracting officer shall acknowledge receipt by signing and dating all copies of the notice of assignment and shall—

BEST COPY AVAILABLE

(i) File the true copy of the instrument of assignment and the original of the notice in the contract file;

(ii) Forward two copies of the notice to the disbursing officer designated in the contract to make payment;

(iii) Return a copy of the notice to the assignee; and

(iv) Advise the procuring contracting officer that the assignment has been made.

(2) To the surety or sureties, if any—a true copy of the instrument of assignment and an original and three copies of the notice of assignment. The surety shall return three acknowledged copies of the notice to the assignee who shall forward two copies to the disbursing officer designated in the contract.

(3) To the disbursing officer designated in the contract to make payment—a true copy of the instrument of assignment and an original and one copy of the notice of assignment. The disbursing officer shall acknowledge and return to the assignee the copy of the notice and shall file the true copy of the instrument and original notice.

232.806 Contract clauses.

(a)(2) When the clause at FAR 52.232–23 is used, the contracting officer shall also insert Alternate I, unless excluded under FAR 32.803(d).

PART 233—PROTESTS, DISPUTES, AND APPEALS

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 233.2—Disputes and Appeals

233.210 Contracting officer's authority.

Contracting officer authority under FAR 33.210 is limited by 243.70.

233.213 Obligation to continue performance.

(a) The acquisition of aircraft, naval vessels, missiles, tracked combat vehicles, and related electronic systems shall include the alternate paragraph (h). In addition, the alternate (h) may also be used in those contracts or classes of contracts when it has been determined, in accordance with Department procedures, that it is essential because of unusual circumstances in which the performance of a contract may be so vital to the national security or to the public health and welfare that performance must be guaranteed even in the event of a dispute that may be characterized as a claim relating to, as opposed to arising under, the contract. Examples of the types of unusual circumstances when continued performance may be determined to be vital to the national security or public health and welfare include the acquisition of weapons, support systems, and related components other than those listed above, or other essential supplies or services whose timely reprocurement from other sources would be impracticable. The determination to use the alternate paragraph (h) in other situations shall be made by the head of the contracting activity responsible for the acquisition involved.

233.214 Contract clause.

The contracting officer may use Alternate I under the conditions set forth in 233.213(a) above.

233.270 Claims for interest penalties under the Prompt Payment Act.

(a) The Prompt Payment Act (Pub. L. 97–177) provides that a contractor will be paid interest penalties when certain payments by the Government are not made on time or when discounts are taken for payments that are not made within the discount period. The act applies to payments made on contracts awarded on or after 1 October 1982. Under the act, interest penalties are due if the contractor is not paid for delivery of complete items of supplies or services within 15 days after the required payment date (within 3 days for meat or meat food products and within 5 days for perishable agricultural commodities). Interest penalties are also due on the unpaid portion of discount payments made after the discount period. Claims for interest penalties not paid may be made under the Contract Disputes Act.

(b) The required payment date for purposes of the Prompt Payment Act is the date on which payment is due under the terms of the contract or, if a specific date on which payment is due is not established by the contract, 30 days after the later of the date on which a proper invoice is received in the designated paying office or the date on which the supplies or services are accepted. The required payment date for meat and meat food products is not later than the 7th day after delivery, and for perishable agricultural commodities is not later than the 10th day after delivery, unless another date is specified in the contract. The required payment date for improperly taken discounts is the last day of the discount period.

(c) Interest penalties begin to accrue on the day after the required payment date and end on the date on which payment of the amount due is made. Interest penalties do not continue to accrue under the Prompt Payment Act after the filing of a claim for such penalties under the Contract Disputes Act or for more than one year. Interest penalties also do not accrue under the Prompt Payment Act when payment is not made within the prescribed period after the required payment date because of a dispute over the amount of the payment or other allegations concerning compliance with the contract.

Subpart 233.70—Certification Under Section 813 of Pub. L. 95–485

233.7000 Certification of requests for adjustment or relief exceeding $100,000.

(a) Section 813 of the 1979 Department of Defense Appropriation Authorization Act, Pub. L. 95–485, requires the certification of contract claims, requests for equitable adjustment to contract terms, requests for relief under Pub. L. 85–804, and similar requests exceeding $100,000. This certification must be signed by a senior company official in charge at the plant or location involved. Although the law only requires submission of the certification with requests exceeding $100,000, even if the requirement is not set forth in the contract, the clause contained at 252.233–7000, Certification of Requests for Adjustment or Relief Exceeding $100,000, shall be inserted in all contracts expected to exceed $100,000 in value.

(b) Submission of the section 813 certification is required in addition to any certification required by the Truth in Negotiations Act and by FAR 15.804–4.

(c) Section 6(c) of the Contract Disputes Act, Pub. L. 95–563, also requires the certification of claims. The section 813 certification described above is due when the claim or request for relief is first asserted to the Government. However, the certification under the Contract Disputes Act is due only after a dispute has come into being and the contractor submits a written claim for the purpose of obtaining a contracting officer's decision. A single certification, using the language prescribed by the Contract Disputes Act but signed by a senior company official in charge at the plant or location involved, can be used to comply with both statutes in those situations where the first assertion of a claim or request for relief coincides with the inception of a contract dispute.

(d) In determining when the dollar thresholds requiring a section 813 certification described above are met, the aggregate amount of both the increased and decreased costs shall be used. (See 215.804–2(a)(1)(ii).)

PART 234—MAJOR SYSTEM ACQUISITION

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

234.000 Scope of part.

Department of Defense implementation of OMB Circular A–109, Major System Acquisitions, is contained in DoD Directive 5000.1, Major System Acquisitions, and DoD Instruction 5000.2, Major System Acquisition Procedures.

234.005 General requirements.

234.005–70 Special considerations.

Selected major systems programs will require compliance with several management/contract requirements depending on dollar thresholds and stage of development such as: Design-to-cost/life cycle cost goals, at the contract level in accordance with DoDD 4245.3, Design-to-Cost; system production plans in accordance with DoDD 4245.6, Defense Production Management; test and demonstration requirements in accordance with DoDI 5000.3, Test and Evaluation; cost/schedule control system criteria (C/SCSC) in accordance with DoDI 7000.2, Performance Measurement for Selected Acquisitions; and standardization requirements in the engineering design in accordance with DoDI 4120.3, Defense Standardization and Specification Program. The contracting officer shall include applicable provisions/clauses in solicitations and contracts consistent with the requirements of the specific acquisition.

234.005–71 Contract clauses for major systems acquisitions.

When compliance with C/SCSC is required, the solicitation and resulting contract shall include the provision at 252.234–7000, Notice of Cost/Schedule Control Systems, and the clause at 252.234–7001, Cost/Schedule Control Systems.

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

235.001 Definitions.

The following terms and categories relating to "research and development" are those set forth by the Department of Defense for management of RDT&E programs. However, the term "research and development" as used in this regulation ordinarily encompasses only the Research, Exploratory Development, Advanced Development, Engineering Development, and Operational Systems Development categories below. Generally, it does not cover the management and support category. For example, construction of recreational facilities at an installation used exclusively or generally for research and development would not be acquisition of "research and development" under this regulation. Nevertheless in an exceptional case, depending upon the particular facts, some kinds of work within management and support could be "research and development" within this regulation:

"Advanced development" means all effort directed toward projects which have moved into the development of hardware for test. The prime result of this type of effort is proof of design concept rather than the development of hardware for service use. Projects in this category have a potential military application.

"Educational or other nonprofit organization" means any corporation, foundation, trust, or institution operated for purposes of higher education or whose primary purpose is the conduct of scientific research, not organized for profit and no part of whose net earnings inure to the profit of any private shareholder or individual.

"Engineering development" means those projects in full-scale engineering development for Service use but which have not yet received approval for production or had production funds included in the DoD budget submission for the budget or subsequent fiscal year. This area is characterized by major line item projects and program control will be exercised by review of individual projects.

"Exploratory development" means all effort directed toward the solution of specific military problems, short of major development projects. This type of effort may vary from fairly fundamental applied research to quite sophisticated bread-board hardware, study, programming and planning efforts. It would thus include studies, investigations and minor development effort. The dominant characteristic of this category of effort is that it be pointed toward specific military problem areas with a view toward developing and evaluating the feasibility and practicability of proposed solutions and determining their parameters.

"Management and support" means all effort directed toward support of installations or operations required for general research and development use. Included would be military construction of a general nature unrelated to specific programs, maintenance support of laboratories, operation and maintenance of test ranges, and maintenance of test aircraft and ships. Costs of laboratory personnel, either in-house or contract-operated, would be assigned to appropriate projects or as a line item in the Research, Exploratory Development, or Advanced Development Program areas, as appropriate.

"Operational system development" means those projects still in full-scale engineering development but which have received approval for production through DSARC or other action, or production funds have been included in the DoD budget submission for the budget or subsequent fiscal year. All items in this area are major line items projects which appear as RDT&E Costs of Weapons Systems Elements in other programs. Program control will thus be exercised by review of the individual projects.

"Research" means all effort of scientific study and experimentation directed toward increasing knowledge and understanding in those fields of the physical, engineering, environmental and life sciences related to long-term national security needs. It provides fundamental knowledge required for the solution of military problems. It forms a part of the base for (a) subsequent exploratory and advanced developments in Defense related technologies, and (b) new or improved military functional capabilities in areas such as communications, detection, tracking, surveillance, propulsion, mobility, guidance and control, navigation, energy conversion, materials and structures, and personnel support.

"Unsolicited proposal" means a written research and development proposal submitted to an agency on the initiative of the submitter for the purpose of obtaining a contract with the Government and which is not in response to a formal or informal request (other than an agency request constituting a publicized general statement of needs.)

235.003 Policy.

(a) *Use of contracts.* Grants are authorized under 42 U.S.C. 1891 for basic research at educational institutions and other nonprofit organizations whose primary purpose is the conduct of scientific research. The policies and procedures for grants are prescribed by other Department of Defense directives as implemented in Departmental procedures.

(b) *Cost sharing.* Cost sharing under DoD contracts is encouraged in accordance with Federal Management Circular, FMC 73–3: "Cost Sharing on

Federal Research," in the acquisition of basic and applied research. This paragraph provides guidelines for participation by contractors, both profit and nonprofit, in the cost of research supported by DoD.

(b)(S–70) *Scope.*

(i) These guidelines are applicable to all research contracts.

(ii) These guidelines need not be applied to development projects (i.e., projects for which the principal purpose is the production of, or design, testing or improvement of, products, materials, devices, systems of methods). However, contracting officers may apply some or all of these guidelines to development contracts.

(b)(S–71) *Cost Participation by contractors.* (i) Participation by contractors in the cost of conducting research projects is intended to serve the mutual interests of the DoD and the contractors by helping to assure efficient utilization of the resources available for the conduct of research projects and by promoting sound planning and prudent fiscal policies by contractors.

(ii) Contractors shall be encouraged to contribute to the cost of performing research unless it is concluded that a request for cost sharing would not be appropriate because of any one of the following:

(A) The particular research objective or scope of effort for the contract is specified by the Government rather than proposed by the contractor; this would usually include any formal Government request for proposals for a specific project;

(B) The research effort has only minor relevance to the commercial activities of the contractor, and the organization is proposing to undertake the research primarily as a service to the Government; or

(C) The contractor has little or no outside sources of funds from which to make a cost contribution. Cost sharing should generally not be requested if cost sharing would mean that the Government would have to provide funds through some other means (such as fees) to enable the contractor to cost share. It should be recognized that those contractors who are predominantly engaged in research and development and have little or no production or other service activities may not be in a favorable position to make a cost contribution.

(b)(S–72) *Amount of cost sharing.* When cost sharing is required, the amount of cost participation by the contractor may vary in accordance with a number of factors relating to the contractor's organization (profit or nonprofit), and the character of the research effort. The amount of cost participation should reflect the mutual agreement of the parties. Factors which the contracting officer may consider in any negotiations with contractors regarding the amount of cost participation, include the following:

(i) Cost participation by educational institutions and other not-for-profit or nonprofit contractors should normally be at least 1% of total contract cost. In many cases cost sharing of less than 5% of total project cost would be appropriate in view of the contractor's nonprofit status and limited ability to recover the cost of such participation from non-Federal sources. However, in some cases, it may be appropriate for educational institutions to provide a higher degree of cost sharing, such as when the cost of the research consists primarily of the academic year salary of faculty members, or when the equipment acquired by the institution for the project will be of significant value to the institution in its educational activities.

(ii) The amount of cost participation by commercial contractors should depend to a large extent on whether the research effort or results are likely to enhance the contractor's capability, expertise or competitive position, and the value of such enhancement to the contractor. It should be recognized that those contractors who are predominantly engaged in research and development and have little or no production or other service activities may not be in a favorable position to derive a monetary benefit from their research under Government contracts. Therefore, cost participation by commercial contractors could reasonably range from as little as 1% or less of the total project cost, to more than 50% of total project cost.

(iii) If the contractor will not acquire title to or the right to use inventions, patents, or technical information resulting from the research project, it would generally be appropriate to obtain less cost sharing than in cases in which the contractor acquires such rights.

(iv) A relatively low degree of cost sharing may be appropriate if, in the view of the contracting officer, an area of research requires special stimulus in the national interest.

(v) A fee or profit will usually not be paid if the contractor is to contribute to the cost of the research effort, but the amount of cost sharing may be reduced to reflect the fact that the organization is foregoing a normal fee or profit on the research. However, if the research is expected to be of only minor value to the contractor, it may be appropriate for the contractor to make a contribution in the form of a reduced fee or profit rather than sharing the costs of the contract.

(b)(S–73) *Administration.*

(i) Cost participation may be accomplished by a contribution to either direct or indirect costs, provided that such costs would otherwise be allowable in accordance with any cost principles applicable to the contract, and that the costs are not charged to the Government under any other grant or contract.

(ii) The amount of cost participation by a contractor may be determined for each individual research contract or, if the contracting officer desires, for the aggregate of all or some of the contractor's research projects supported by DoD. When the amount of cost sharing is determined for individual projects, the contracting officer may consider the contractor's participation over the total term of the project so that a relatively high contribution in one year may be offset by a relatively low contribution in another year. If the amount of the contractor's cost sharing is to be determined for the aggregate of all or some of DoD's projects, relatively high contributions on some projects may be offset by relatively low contributions on other projects.

(c) *Recoupment.* The policy and procedures in Subpart 235.71 apply with respect to the recovery of nonrecurring costs on commercial sales of defense products and technology. Also, see Part 225 for guidance on recovery of nonrecurring research, development, test and evaluation costs when acquisitions are made for foreign military sales customers.

235.004 Publicizing requirements and expanding research and development sources.

(a) In addition to the requirements of FAR 35.004(a), where the contracting mission warrants it, Research and Development Bidders Mailing Lists will be established by purchasing activities in accordance with Supplement No. 4, Procedures for Submission of Applications To Be Placed on Research and Development Bidders Mailing Lists.

(a)(2) Contracting officers, technical personnel, and small business specialists shall cooperatively seek and develop information on the technical competence of small business concerns for research and development contracts. Small business specialists shall regularly bring to the attention of contracting officers and technical personnel descriptive data, brochures, and other information as to small business concerns that are apparently competent to perform research or development work in fields in which the contracting activity is interested. In order to cooperate with the Small Business Administration in carrying out its responsibility of assisting small business concerns to obtain contracts for research and development, contracting officers, technical personnel and small business specialists shall, upon request, provide to authorized SBA representatives information necessary to understand the Government's need concerning research and development programs consideration for specific future acquisition actions. Normally, this information shall be provided, as early as practicable, to SBA representatives assigned to a contracting activity and shall cover the Government's requirements for each proposed research and development acquisition exceeding $25,000. To the maximum extent feasible, SBA shall be afforded a minimum of 15 working days to provide pertinent information concerning qualified potential small business sources developed through its investigation of the capabilities of specific firms in the particular field of research and development covered by such acquisitions. Full evaluation shall be given to any such information in selecting qualified sources. Sources recommended by SBA for a specific acquisition shall be solicited. Exception to the policy of providing SBA a minimum 15 working day interval to recommend additional qualified small research and development sources for a proposed acquisition will be permitted only in those cases where the head of the contracting activity or the HCA's designated representative advises the SBA representative that such action would result in unjustifiable delay.

235.005 Work statement.

(d)(6) Other considerations peculiar to the work to be performed include—

(i) Technical considerations, such as any known specific phenomena or techniques, and

(ii) A detailed description of the technical requirements and subordinate tasks (the emphasis on the detailed description of the technical requirements and subordinate tasks shall be on achievement of performance, operational and support requirements, rather than specifying detailed procedures or methods of accomplishment).

235.006 Contracting methods and contract type.

(a) Acquisition by negotiation may not be necessary in research and development acquisitions. Two-step sealed bidding (see FAR 14.5) may be appropriate, for example, in the case of an advanced developmental project.

235.007 Solicitations.

(a) Through its research and development programs, the Department of Defense must seek the most advanced scientific knowledge attainable and the best possible equipment, weapons, and weapon systems that can be devised and produced. This means two things. First, it means seeking the best scientific and technological sources consistent with the demands of the proposed acquisition for the best mix of cost, performances and schedules. Second, it means continuing efforts to increase the number of qualified sources, and to encourage participation by small business concerns, as well as others, in Defense research, and development (see also FAR 9.104).

(5) Other relevant factors include review of information obtained as a result of synopsis of the requirement or other advance publicity (FAR 35.004(a)(1)).

(b) Sources that become known as a result of synopsis or other means of publicizing requirements shall be solicited only if such sources possess the necessary security clearance. When a source not initially solicited requests a copy of a solicitation and such source has been technically evaluated within the past six months and determined not qualified, the source shall be so advised and provided a copy of the solicitation in accordance with FAR 5.102 if still requested. In the event such source has not been technically evaluated within the past six months, a copy of the request for proposal shall be furnished in accordance with FAR 5.102, but only after advice has been given to the source making the request as to the reasons for the limited solicitation and, as appropriate, the unlikelihood of any other source being able to qualify for a contract award under the circumstances. The formal solicitation process is not the only method of entering into contracts for research and development. The ongoing research and development work pursued in industrial laboratories is producing ideas and products of interest to the Government; this is especially true in the exploratory and advanced development segment of the research and development spectrum. In the R&D areas where there has been unique and significant industrial accomplishment by a specific concern, the establishment of specifications for solicitation of others may defeat the purpose of taking advantage of this industrial initiative. In such cases, see FAR 35.007(i). In all acquisitions of research and development in which no small business source was solicited for a proposal, a statement shall be included in the solicitation file setting forth the reasons for not soliciting small business. Where there is no substantial question as to the choice of the source, as set forth in (1), (2) and (3) below, solicitations may be limited to a single source in accordance with Part 206:

(1) As a result of thorough evaluation, only one source is found fully qualified to perform the proposed work. (See 206.302–1(b)(1).)

(2) The purpose of the contract is to explore an unsolicited proposal which offers significant scientific or technological promise, represents the product of original thinking, and was submitted in confidence by one source. (See 206.302–1(b)(3).)

(3) Where the purpose of the contract is to take advantage of unique and significant industrial accomplishment by a specific concern, or to insure that a new product or idea of a specific concern is given financial support. (See 206.302–1(b)(7) or 206.302–3(b)(2).)

(c) The requirements of FAR 35.007(c) apply only as applicable to a specific acquisition. Solicitations shall also provide offerors the opportunity to indicate the appropriate specifications and standards and to specify the way they will be applied and tailored to achieve the objectives, desired results and comply with the requirements stated in the solicitation.

(g) In soliciting proposals for the conduct of research and exploratory development, it may be desirable for the Government to furnish prospective contractors with certain information elaborating on the proposed statement of work, in order to permit optimum response by offerors and to allow more timely and comparable evaluation of proposals by the Government. This information normally should consist of the Government's estimate of the scientific and technical man-effort, or other reasonable indicators, it envisions when it is not possible to describe the magnitude of the proposed work to a sufficiently definitive degree. For example, the estimated effort may be expressed in terms of numbers of man-months or years in particular occupational categories. This technique may be appropriate in cases of contractors for research studies, investigations, or laboratory scale evaluations of feasibility where the Government desires to limit the scope of effort or depth of research. Where the degree of effort type of information is furnished, it should be made clear that such information is advisory only and is not cause for restricting what the

contractor believes to be a meritorious technical proposal.

(i) Under the circumstances discussed in FAR 35.007(i) and subject to FAR Part 6 and Subpart 215.5, the contracting officer may discuss new ideas or products, encourage submission of proposals and negotiate with prospective sources without a formal solicitation.

235.008 Evaluation for award.

(a) Before determining the technical competence of prospective contractors, and recommending to the contracting officer the concern or concerns that they consider most technically competent, cognizant technical personnel shall consider all the evaluation factors set forth in the solicitation (see FAR 35.007(e) for examples of evaluation factors).

(e) Proposals for cost reimbursement type or fixed price type contracts may be penalized during evaluation to the degree that the estimated cost is unrealistically low. The contracting officer, in accordance with FAR 15.1001, shall notify of that decision those offerors whose proposals or offers have been determined to be unacceptable.

(e)(S–70) *Evaluation of price and costs.*

(i) While cost or price should not be the controlling factor in selecting a contractor for a research or development contract, cost or price should not be disregarded in the choice of the contractor.

(ii) Price analysis generally considers the overall reasonableness of the proposals in relation to the total contemplated expenditures and the extent and nature of the task scheduled to be accomplished. In most research and development contracts, the inability to define specifications and the nature of the end items prevent the effective use of certain techniques of price analysis, such as comparisons with prior quotations and current prices and evaluations in terms of quantitative yardsticks. The conclusions reached by price analysis techniques must be supported by cost analysis procedures, used to examine the details of the offerors' proposals.

(iii) The analysis of cost factors begins with an evaluation of the reliability of the offeror's cost estimating procedures and the dependability of offeror's cost controls, as demonstrated by offeror's history of cost management in the performance of other contracts or by offeror's establishment of a sound practice for this purpose. The cost analysis proceeds with a critical examination of the composition of each cost element in terms of its expected application to the objectives of the contract, and its conformance to the accepted principles of allocability and reasonableness. (See FAR 31.3 and FAR 31.201.) A Government cost estimate may help in projecting tools for these purposes and may develop the expected incidence of various cost factors in relation to performance phases, planned segments, or identification "milestones." This estimate should provide a summary forecast of the time, effort, materials, equipment, and services necessary to accomplish the research or development objective. The comparison and reconciliation of the Government cost estimate with the offeror's cost estimate for the same phases, segments, or events should bring into focus any areas of excessive or insufficient emphasis and provide a foundation for meaningful discussions with the offeror.

(iv) Special care should be exercised to comply with FAR 31.205–1 and FAR 31.205–18 in the allowance of advertising costs under FAR 31.311–1.

(e)(S–71) *Documentation.* Contract files for research and development acquisition shall be fully documented to include the basis and reasons for the selection of the sources solicited and for the award. Such documentation should be adequate to justify the selection of the contractor over others whose proposals, from the standpoint of some single factor (such as lower estimated costs or short performance time), might appear more advantageous to the Government (see FAR 4.1).

235.010 Scientific and technical reports.

(a) Scientific and technical reports are documents written for the permanent record to document results obtained from and recommendations made on scientific and technical activities relating to a single project, task or contract, or relating to a small group of closely connected efforts within the Department of Defense Research and Development Program. A completed Report Documentation Page (DD Form 1473) is to be included in each copy of a scientific or technical report required by the contract (see Part 253). Whenever a scientific or technical report is required as a product of the Research, Development Test and Evaluation Effort, the contracting officer will assure that the requirement for a completed DD Form 1473 is clearly stated and that a complete DD Form 1473 is included with each copy of the required scientific and technical reports. Scientific and technical reports should be reproduced as economically as practicable, consistent with the reporting needs of the Government.

(b) Copies of scientific and technical reports resulting from DoD contracts are furnished to the Defense Technical Information Center (DTIC) which provides a central service for the interchange of scientific and technical information of value to the Department of Defense and its contractors. Organizations may become eligible for this service by registering in accordance with Defense Logistics Agency Regulation 4185.10, Certification and Registration for Access to DoD Defense Technical Information, which is available from the Defense Technical Information Center, Cameron Station, Alexandria, Virginia 22314.

235.011 Data.

(a) The data clauses as required by Subpart 227.4 usually provide, among other things, for the reproduction and use for any purpose of the Government of any or all of the information to be provided under the contract. Contracting officers shall require contractors to furnish all such information resulting from research and development contracts.

235.014 Government property and title.

(b) The basic requirements to be observed by the Departments for establishing and maintaining control over Government Property are set forth in Part 245.

(1) In determining whether to grant the approval to the contractor, the contracting officer shall determine that the proposed acquisition is essential to performance of the contract. Approval may be granted either on a line item basis or for clearly defined classes of items.

(c) Headquarters, Air Force Systems Command (AFSC)(PMPR), Andrews Air Force Base, Maryland 20334, is responsible in the Department of Defense for obtaining and maintaining files of Letters of Assurance from nonprofit institutions of higher education and other nonprofit institutions which provide for the agreement specified in FAR 35.014(c). AFSC(PMPR) will distribute, and periodically update, a list of institutions which furnished a Letter of Assurance. Contracting organizations may request a copy of this list; or at any time, inquire as to whether a particular institution has furnished the required Letter of Assurance. If transfer of title to equipment is contemplated and the contractor has not furnished a Letter of Assurance, the contracting office will request, in writing, that AFSC(PMPR) obtain a Letter of Assurance from the contractor. This request must give the complete mailing address of the contractor.

235.015 Contracts for research with educational institutions and nonprofit organizations.

(b) *Basic agreements.*

(2) The responsibility for negotiating Basic Agreements with appropriate educational institutions and nonprofit organizations for DoD, except designated Federal Contract Research Centers (FCRC), is assigned to the Office of Naval Research, 800 North Quincy Street, Arlington, Virginia 22217. Copies of the agreements will be maintained by the Office of Naval Research and provided to DoD and other purchasing activities upon their request. The Office of Naval Research will periodically provide a listing of current Basic Agreements to the DAR Council for publication in a Defense Acquisition Circular. The need for special clauses should not preclude the purchasing office from utilizing these basic agreements. The Basic Agreement is incorporated by reference in Section I contract clauses, of the contract. Special clause requirements may be incorporated into Section H—Special Provisions, of the contract.

(S–70) *Special use allowances for research facilities acquired by educational institutions.*

(1) *Definitions.*

"Research facility" means real, property, other than land, and includes structures, alterations, and improvements, acquired for the purpose of conducting scientific research under contracts with agencies of the Department of Defense; and

"Special use allowance" means a negotiated direct or indirect allowance for buildings, structures, and real property, other than land, computed at an annual rate in excess of the rate which normally would be allowed under FAR Subpart 31.3.

(2) *Policy.* The expanding requirements of the Department of Defense for the performance of scientific research programs by educational institutions may create special situations wherein the acquisition or construction of additional research facilities by such institutions is essential for the effective performance of scientific research programs of major importance to the Department of Defense. Educational institutions are expected to furnish facilities required for the performance of Defense contracts, and the extent of reimbursement by the Government for the research programs of such institutions shall be governed by the principles set forth in FAR Subpart 31.3. However, in certain limited situations an educational institution may be unable to provide capital for new laboratories or other expanded facilities necessitated by Defense contracts unless the institution is given Governmental assistance in return for the risks and expenses it assumes in acquiring or constructing such facilities. Special use allowances constitute a means for recognizing these risks and expenses on the part of the educational institution and also provide a basis for permitting essential governmental research programs to go forward. The resort to special use allowances as provided by this paragraph is an extraordinary type of arrangement and constitutes an exception to the provisions for normal use allowances. Any specific agreement providing for a special use allowance shall be negotiated on a case-by-case basis using the criteria established herein.

(3) *Authorization of special use allowances.* The head of a contracting activity may approve special use allowances for the acquisition or construction costs of research facilities financed by educational institutions only when all of the following conditions are met:

(i) The research facility is essential to the performance of Department of Defense contracts;

(ii) The program requirements cannot be met practically and effectively by existing facilities, either Government or non-Government;

(iii) The proposed agreement for the special use allowances represents a sound business arrangement;

(iv) It is undesirable or impractical for the Government to provide Government-owned facilities for the performance of the research; and

(v) The proposed use of the research facility is in consonance with the underlying objective of the Government in granting the special use allowance.

(4) *Negotiation and administration of contracts providing for special use allowances.* The negotiation and administration of contracts providing for special use allowances are subject to the conditions set forth in (i) through (xiii) below:

(i) The terms of the agreement for special use allowances authorized herein shall be specified or incorporated by reference in the applicable contracts.

(ii) When the special use allowance is based on the total acquisition cost, no normal use allowance or other use or depreciation charge will apply during the special allowance period nor after the educational institution has recovered the total acquisition cost under Government contracts or from other users. When the special use allowance is based on less than total acquisition cost of the research facility, the agreement will specify whether any normal use allowance or other use or depreciation charge will apply to the balance during the special use allowance period; however, no more than the normal use allowance computed in accordance with FAR Subpart 31.3 may be applied thereafter to the balance.

(iii) During the period of the special use allowance, and for subsequent periods to the extent agreed upon, the research facility shall be available for Government research use on a priority basis over non-Government use. Any significant use during such period other than that which justified the special use allowance shall be subject to prior consent of the cognizant approval authority specified in (3) above.

(iv) Special use allowances are applicable only in years in which the Government has contracts in effect with the educational institution for research to be conducted in the facility. The Government has no liability to the educational institution for the special use allowance in any year in which there is no Government contract. In any year when the level of research effort under Government contracts has been reduced to a point where the special use allowance is excessive in relation to the extent of the Government research funding, the parties may negotiate a special use allowance for that year at a mutually acceptable rate.

(v) When more than one Government contract is to be performed in the research facility, special use allowances generally should be allocated to using contracts on an equitable basis.

(vi) If during the period when a special use allowance is in effect, any substantial use is made of the research facility for parties other than the Government, only an allocable share of the special use allowance shall be charged to the Government.

(vii) Special use allowances shall not include any maintenance, utilities, or other operational costs.

(viii) Generally, the period for which a special use allowance is authorized shall be at least ten years. However, a shorter period of time is authorized where the total amount to be allowed is less than acquisition cost for the research facility.

(ix) Reimbursements under contracts for special use allowances shall not commence until the research facility is occupied and used for research under the contract. However, equitable adjustments may be made in the special

use allowance during the construction period if the research facility is partially used for research under the contract.

(x) Determination of the amount of a special use allowance shall be based on the comparative need for the research facility by the Department of Defense and by the educational institution. In no event shall the institution be paid more than the acquisition costs.

(xi) In establishing the annual special use allowance, due consideration shall be given to rental costs for similar space in the area where the research facility is to be located.

(xii) No payment shall be made to the educational institution for costs of land or interest charges on capital, used or borrowed, for the acquisition of the research facility.

(xiii) Information copies of each special use allowance agreement negotiated shall be furnished to each authorizing official specified in (3) and to the Deputy Under Secretary (Research and Advanced Technology), Office of the Under Secretary of Defense for Research and Engineering.

235.070 Indemnification against unusually hazardous risks.

(a) *Indemnification under research and development contracts.*

(1) *Use of clause.* Pursuant to the authority of 10 U.S.C. 2354 and when authorized by the Secretary concerned (or designee under 10 U.S.C. 2356), a contract for research and development, or both, may provide for indemnification of the contractor and subcontractors against:

(i) Claims by third persons (including employees) for death, bodily injury, or loss of or damage to property; and

(ii) Loss of or damage to the contractor's property, to the extent that such liability, loss or damage—

(A) Results from a risk that the contract defines as "unusually hazardous",

(B) Arises out of the direct performance of the contract, and

(C) Is not compensated by insurance or otherwise. When authorization has been obtained, the appropriate clause prescribed in 235.071 (a) or (b) shall be used.

(2) Each contract containing a clause authorized by (a) above shall clearly define the specific unusually hazardous risks to which the clause applies. This definition shall be submitted for approval with the request for authorization to grant indemnification. The definition may be included as an additional paragraph of the clause or inserted elsewhere in the contract. The fact that one or more risks under a contract may be appropriately defined as unusually hazardous does not justify so defining other risks of contract performance which are not in themselves unusually hazardous; neither does it preclude indemnification of such other risks under other appropriate authority.

(b) *Indemnification under contracts involving both research and development and work that cannot be so classified.* Certain contracts require a substantial amount of research and development work as well as a substantial amount of work that cannot be so classified. When indemnification is to be provided for such contracts, an appropriate clause, utilizing the authority of both 10 U.S.C. 2354 and Pub. L. 85–804 may be used. In such cases, the use of Pub. L. 85–804 to provide indemnification is limited to work which cannot be indemnified pursuant to 10 U.S.C. 2354 and is subject to compliance with the provisions of FAR Subpart 50.4.

235.071 Contract clauses.

(a) The contracting officer shall insert the clause at 252.235–7000, Indemnification Under 10 U.S.C. 2354—Fixed Price, as provided for in 235.070.

(b) The contracting officer shall insert the clause at 252.235–7001, Indemnification Under 10 U.S.C. 2354—Cost Reimbursement, as provided for in 235.070.

(c) The contracting officer shall insert the clause at 252.235–7002, Recovery of Nonrecurring Costs on Commercial Sales, as provided for in 235.7103(a).

(d) The contracting officer shall insert the clause at 252.235–7003, Care of Laboratory Animals, in all contracts in compliance with law and in furtherance of the Department of Defense policy that all aspects of investigative programs involving the use of experimental or laboratory animals be humanely conducted in accordance with recognized principles. The clause shall be included in all contracts awarded in the United States, its possessions, and Puerto Rico which may involve the use of such animals.

(e) The contracting officer shall insert the clause at 252.235–7004, Frequency Authorization, in any contract which calls for developing, producing, constructing, testing, or operating a device for which a radio frequency authorization is required.

Subpart 235.70—Short Form Research Contract

235.7000 Scope of subpart.

This subpart prescribes procedures for contracting for research on a cost-reimbursement basis with educational institutions or nonprofit organizations within the United States whose primary purpose is the conduct of scientific research, when the basis for award is an unsolicited proposal.

235.7001 Definitions.

(a) Educational institution means an institution of higher learning providing facilities for teaching and research and authorized to grant academic degrees.

(b) Nonprofit organization—organizations of the type described in section 501 (c)(3) and (d) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any nonprofit scientific organization qualified under a state nonprofit organization statute.

(c) Research includes all effort described as research in 235.001 including that part of exploratory development applicable to applied research.

235.7002 Applicability.

(a) The procedures contained in this subpart may be used for contracting:

(1) Whenever the principal purpose is the acquisition of research from an educational institution or a nonprofit organization; or

(2) When the work is to be accomplished on a cost-reimbursement basis;

(3) When the basis for award is an unsolicited proposal; and

(4) When the contract requires the delivery of designs, drawings or reports as end items.

(b) When the circumstances in (a) above are present, the Short Form Research Contract (SFRC) may be used. The SFRC shall not be used for any purpose other than as described herein.

235.7003 Content of unsolicited proposals.

Unsolicited proposals submitted for award in accordance with these procedures shall contain all the information in FAR 15.505. A contract may be awarded on the basis of the unsolicited proposal exactly as submitted or as subsequently amended by the offeror, if the proposal contains the information listed in (a) through (h) below:

(a) In addition to the information identified in FAR 15.505(b), a statement of work in accordance with 235.005 and FAR 35.005 and a breakdown of the time, identifying man-days, man-months or man-years to be devoted to the contract by the principal investigator and any associates (see FAR 35.015(a)). A separate work statement which can be incorporated by reference in the SFRC is preferred.

(b) In addition to information identified in FAR 15.505(c), the following executed representations and certifications on DD Form 2222–1:

(1) Organizational Conflicts of Interest—FAR 15.505(c)(6);

(2) Contingent Fee Representation and Agreement—FAR 52.203–4;

(3) Certification of Nonsegregated Facilities—FAR 52.222–21;

(4) Previous Contracts and Compliance Reports—FAR 52.222–22;

(5) Affirmative Action Compliance—FAR 52.222–25;

(6) Clean Air and Water Certification (if proposal exceeds $100,000) in FAR 52.223–1;

(7) Insurance—Immunity From Tort Liability—FAR 52.228–7.

Offerors may elect to submit the representations and certifications on a one-time basis to each contracting office. Such representations and certifications would be valid for all SFRC contract awards. *Provided,* for each proposal submitted, the offeror references the submission and confirms in writing its validity for the research proposal.

(c) A statement that the Government may award a contract in accordance with the procedures of this Subpart 235.70 as applicable.

(d) Identification of property, as defined in 252.235–7005 showing, when possible, the description or title and estimated or known cost of each item. For facilities only (FAR 45.301), the offeror must include a statement as to why it is necessary to acquire these items with contract funds and express in writing the offeror's unwillingness or financial inability to acquire the items with the offeror's own resources. When special test equipment or components are proposed, individual items of less than $1,000 may be grouped by category (FAR 45.307–2). The description or title of all property for which contract funds are requested should be in sufficient detail to enable the contracting officer to:

(1) Determine whether or not the Government will furnish such property, pursuant to 235.014, FAR 35.014 and FAR 45.302–1; and

(2) For property which may be contractor-acquired (versus Government-furnished)—

(i) Accept it as advance notification required by FAR 52.244–2; and

(ii) Authorize acquisition at the time of award.

(e) A Contract Pricing Proposal Cover Sheet (SF 1411) or acceptable substitute. Information for subcontracts listed in FAR 52.244–2, subparagraph (b), shall be as prescribed by that subparagraph.

(f) If the proposal includes data that the offeror does not want disclosed for any purpose other than evaluation, the offeror shall mark the title page and each restricted sheet as prescribed by FAR 15.509. If the offeror grants permission to the Government to have non-government evaluators review the offeror's proposal, the offeror should either make this statement in the offer or check block A on page 2 of the DD Form 2222–2.

(g) The offeror's proposal shall include the following statement:

This proposal incorporates by reference, and makes a part thereof, all applicable clauses in DFARS 252.235–7005 in effect on the date of this proposal or such other date as may be mutually agreed upon.

(h) The parties may also incorporate, by mutual consent, any other FAR or DFARS clauses which are determined to be applicable because of the nature of the particular acquisition.

235.7004 Contracting procedures.

(a) The contracting officer may award an SFRC resulting from an unsolicited proposal when the requirements of FAR 15.505 and 235.7003 are satisfied, and noncompetitive award is appropriate under 215.507 and FAR 15.507.

(b) Contracts resulting from unsolicited proposals may be effected by using the procedures in either (c) or (d) below, as appropriate.

(c) When the unsolicited proposal, either as submitted initially, or as amended in writing by the offeror, is satisfactory to the Government, the proposal should be accepted by the contracting officer and a contract formed by incorporating the entire proposal by reference, or by incorporating the statement of work by reference and executing the SFRC.

(d) When acceptance of the entire proposal is not considered advantageous to the Government, the contracting officer should use such parts of the unsolicited proposal as are considered appropriate, either by actual attachment or incorporation by reference, to develop a contract for execution by both parties. In this event, the SFRC shall be executed by the contractor prior to signature by the government.

(e) Modifications shall be effected by use of the DD Form 2222.

(f) The offeror may offer options to the Government or the parties may agree to options to conduct research effort beyond the initial research program proposed. The initial dollar amount and period of performance specified at the time of award shall not include the cost and period of the options. The cost and period of such options shall be separately identified. The option may be exercised by the government by unilateral modification of the contract.

(g) The policy and background regarding vesting of title in property to organizations defined in 235.7001 are set forth in 235.014 and FAR 35.014. Title to property which is not vested in the contractor or for which the determination regarding vesting of title is deferred shall be identified in the DD Form 2222.

(h) By submission of the offeror's proposal pursuant to this Subpart 235.70, the offeror must agree to be bound by all terms and conditions of the resulting contract.

235.7005 Advance payments.

SFRCs awarded to institutions and organizations authorized to receive advance payments in accordance with Subpart 232.4 and FAR Subpart 32.4, shall be clearly marked to read "ADVANCE PAYMENT POOL CONTRACT PURSUANT TO ATTACHED PAYMENT PROVISION".

235.7006 Methods of funding.

SFRCs may be fully or incrementally funded in accordance with departmental procedures. If incrementally funded, the SFRC shall specify the total estimated cost for the full period of the research program, both funded or unfunded, and the amount of funds currently obligated. For the purpose of establishing the period covered by the incremental funds available, the funds available will be prorated by dividing the number of months into the dollars available. If this method is not acceptable, the offeror shall specify an alternate method of establishing the time period.

235.7007 Proposal format.

Contractors are encouraged to use DD Form 2222–2 in the submission of research proposals for SFRC awards. Use of this format will promote consistency in award procedures among DoD funding agencies and expedite the award of the SFRC.

235.7008 SFRC clauses.

(a) The clauses in 252.235–7005 are applicable to all SFRC awards of $10,000 or more as of the date of the offeror's proposal, unless such date is modified by mutual agreement. Such modification may be included in the offeror's proposal or may be specifically identified in the contract document. Inclusion of the change in the contract document will necessitate execution of the contract by the signature of both contracting parties.

(b) Uniform contract clauses to be used in Short Form Research Contracts (SFRCs) with educational institutions and other nonprofit organizations are set forth in 252.235-7005.

(c) For purposes of this subpart, "contract action" is defined as the amount of the initial contract or the amount of a modification for new procurement to the contract. It does not include the amount of any unexercised options.

(d) Clauses specified in 252.235-7005 are considered part of the General Provisions of an SFRC unless inapplicable in accordance with the conditions set forth at the clause citation.

(e) SFRC awards of less than $10,000 shall identify the clauses in 252.235-7005 which are not applicable when the contract amount is under $10,000.

235.7009 Price negotiation memorandum.

The price negotiation memorandum (FAR/DFARS 15.808) shall include information necessary for appropriate contract administration. Included, for example, will be a statement as to whether FAR clause 52.215-30 or 52.215-31 is applicable (Facilities Capital Cost of Money clauses).

Subpart 235.71—Recovery of Nonrecurring Costs on Commercial Sales of Defense Products and Technology

235.7100 Scope.

This subpart sets forth policy and procedures established in DoD Directive 2140.2 for the recovery of nonrecurring costs on commercial sales by contractors of products, components, and related technology developed with DoD appropriations or, in special cases, with Foreign Military Sales (FMS) funds. The objective of recovery is to ensure that a customer pays a fair share of the nonrecurring investment cost incurred by the Department of Defense or a foreign government.

235.7101 Policy.

(a) It is the policy of the Department of Defense to recover a fair share of its investment in nonrecurring costs related to products, and/or a fair price for its contribution to the development of related technology, when the products are sold, and when technology relating to the manufacture of the products is sold or licensed, to a foreign government, international organization, foreign commercial firm, or domestic organization (here referred to as "customers").

(b) Furthermore, in selected cases, it is DoD policy to recover, on behalf of a foreign government or international organization, a fair share of the nonrecurring costs for a special feature or product paid by the foreign government or international organization under an FMS case where subsequent customers purchase the same specialized feature(s). However, the U.S. Government will not collect this recoupment on behalf of a foreign government beyond 8 years from the date of the acceptance of the original DoD Offer and Acceptance (DD Form 1513) that included the nonrecurring investment.

235.7102 Applicability.

(a) This policy applies to those products and technologies for which investment costs equal or exceed $5 million for any of the following:

(1) Nonrecurring research, development, test, and evaluation (RDT&E) costs to develop defense products and related technology. The determination of RDT&E costs shall be based upon the current and predecessor models of an item or equipment.

(2) Nonrecurring production cost.

(3) RDT&E and nonrecurring production costs for special features under a foreign military sale when requested by the FMS customer and agreed to by the U.S. Government.

(b) In the event an end item contains one or more components that individually meet the above thresholds, recoupment will be made on a component when it is sold separately.

(c) In the case of product sales, if the dollar threshold is met for either nonrecurring RDT&E or production costs, recoupment for both categories of investment costs will be charged.

235.7103 Procedures.

(a) To assure the recovery of investment in nonrecurring costs and related technology, the clause in 252.235-7002, Recovery of Non Recurring Costs on Commercial Sales, shall be included in all RDT&E and production contracts and subcontracts of $1 million or more as prescribed at 235.071(c). This clause requires the contractor and qualifying subcontractors to pay to the U.S. Government the amounts established by the U.S. Government in the event of the contractor's commercial sale of products, or sale or license of related technology, that meet the thresholds of 235.7102.

(b) If the recoupment charge has been previously established, the contracting office, at the time of each commercial sale, shall determine if there have been significant changes in factors or assumptions used to compute the original charge (for example, changes in identifiable RDT&E cost of the anticipated production run). When significant changes are identified, the contracting office shall submit a request in accordance with departmental procedures to the Office of the Secretary of Defense (see (c) below) for authority to make appropriate changes in nonrecurring cost recoupment charges. Such revised charges shall not be retroactively applied to past sales or to sales that have been consummated by a written contract between the parties.

(c) If the recoupment charge has not been previously established, the contracting office shall expeditiously obtain a charge determination from the office in each DoD component that is responsible for establishing the charge. The Office of the Secretary of Defense must approve certain charges, as follows:

(1) The Director, Defense Security Assistance Agency (DSAA)—nonrecurring cost unit recoupment charges for the sale of major defense equipment (as defined in 252.235-7002).

(2) The Under Secretary of Defense for Research and Engineering (USDRE)—all technology charge determinations.

(d) The amount to be reimbursed to the U.S. Government for the commercial sale of products and components and for the sale or license of technology is provided for in 252.235-7002 and in DoD Directive 2140.2.

235.7104 Deviations.

(a) A DoD component, a foreign government, or a Defense contractor (vice president or higher) may request deviation, in whole or in part, from assessing the charges prescribed here for a commercial sale when it is considered to be in the best interest of the United States to satisfy a demonstrable right of the manufacturer or the purchaser or to obtain advantage to the Department of Defense. Consideration may also be given to nonmonetary returns that are advantageous to national security, foreign policy, and the public interest.

(b) Requests for deviation associated with product sales under foreign sales shall be submitted through channels to the Director of the Defense Security Assistance Agency. Requests for deviation for product sale charges to domestic organizations and requests for deviation for technology sales shall be submitted to the Under Secretary of Defense for Research and Engineering. A request for deviation from the otherwise appropriate charges shall contain:

(1) A summary statement of the facts;

(2) The benefits expected, with justification;

(3) The specific areas to which the deviation would apply; and

(4) Calculations necessary to ascertain the extent of any monetary involvement and how the calculations are to be handled by either the DoD component or the contractor, as appropriate.

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 236.1—General

236.102 Definitions.

"Construction Activity" means an activity, at any organizational level of the Military Departments, which has responsibility for the architectural, engineering, and other related technical aspects of the planning, design, and construction of facilities, and which receives its technical guidance from the Army Office of the Chief of Engineers, Naval Facilities Engineering Command, or Air Force Directorate of Civil Engineering.

236.103 Methods of contracting.

(a) Overseas construction may be acquired by means of sealed bidding provided that the Head of a Contracting Activity, or designee, determines that the use of sealed bidding, in strict accordance with FAR Part 14, is practicable and advantageous to the United States as to a specific country or other geographic area outside the United States, its possessions, and Puerto Rico.

236.170 Sources of construction services.

Generally, military construction in the United States shall be performed by contract. The following exceptions to this policy are authorized:

(a) Military construction units, other military personnel and Civil Service maintenance personnel may:

(1) Perform construction in periods of emergency arising from fire, flood, explosion, pestilence or other disaster to provide essential facilities for shelter, safety, and protection of personnel and property;

(2) Perform construction where the isolated location of the work makes it impracticable to obtain qualified contractors;

(3) Perform construction where the necessity for obtaining security clearances for contractor personnel introduces unacceptable delays in operational schedules.

(b) Military construction units may perform construction in addition to that set forth in (a) above, but only when the integrity of the unit will be maintained and the project will contribute to the training of the unit for its war-time mission.

(c) Military personnel, other than military construction units, may, in addition to (a), above:

(1) Perform construction in connection with welfare and recreational facilities intended for their own use;

(2) Perform repair incident to maintenance—

(i) When required for reasons of security;

(ii) For disciplinary action arising from military offenses;

(iii) For training and maintaining competence in recognized trade skills;

(iv) In and around the barracks which they themselves occupy or are about to occupy.

(d) Civil service maintenance forces may, in addition to (a), above:

(1) Perform construction where the work is of a minor nature;

(2) Perform construction where conditions are such that it is impracticable to prepare plans and specifications;

(3) Perform construction where the work must be performed intermittently to avoid disrupting other important operations;

(4) Perform repair incident to maintenance.

Subpart 236.2—Special Aspects of Contracting for Construction

236.201 Evaluation of contractor performance.

(a) *Preparation of performance evaluation reports.*

(1)(S-70) The contracting officer shall also prepare a performance evaluation report for each construction contract of $10,000 or more when any element of performance was either unsatisfactory or outstanding.

(c) *Distribution and use of performance reports.*

(1) The original of the performance evaluation report for every contract will be retained by the activity preparing the report for a minimum of six years after date of the report. In addition, the reviewing official will forward a copy of the following reports:

(i) Reports with an overall unsatisfactory evaluation,

(ii) Reports which cite outstanding performance, and

(iii) Reports for all contracts in excess of $200,000 to the:

Office of the Chief of Engineers,
ATTN: DAEN-PR
Pulaski Building
Washington, DC 20314

This office is responsible for establishing procedures and practices which will assure appropriate distribution and utilization of performance evaluation data within the Departments.

(2) Performance evaluations of construction contractors shall be used in making responsibility determinations. In the selection of fully qualified responsible contractors for future awards or negotiation of construction contracts above $1,000,000, the contracting officer shall also obtain from the central data bank the following:

(i) A record of the number of contracts and the total dollar amount for all satisfactory evaluations; and

(ii) Complete transcripts of all performance evaluations showing unsatisfactory performance either on individual elements or overall evaluation, or remarks on outstanding performance. These transcript(s) or statement(s) may be obtained for smaller awards.

236.203 Government estimate of construction costs.

(c) The Government estimate shall be designated "For Official Use Only" unless the nature of the information therein requires a security classification, in which event it shall be handled in accordance with applicable security regulations. The "For Official Use Only" designation shall be removed only when the estimate is made public in accordance with instructions below. If the acquisition is by sealed bidding (except two-step sealed bidding) a sealed copy of the detailed Government estimate shall be filed with the bids until bid opening. After the bids are read and recorded, the "For Official Use Only" designation shall be removed and the estimate shall be read and recorded in the same detail as the bids.

236.206 Liquidated damages.

A liquidated damages clause shall be included in all contracts in excess of $25,000 except cost-plus-fixed-fee contracts or those where the contractor cannot control the pace of the work. Use of a liquidated damages clause is optional for contracts of $25,000 or less. Where such a provision is used, the clause set forth in FAR 52.212-5 shall be included in the invitation for bids or request for proposals. Where different completion dates for separate parts or stages of the work are specified in the contract, this clause should be revised appropriately to provide for liquidated damages for delay of each separate part

or stage of the work. The minimum amount of liquidated damages should be based on the estimated cost of inspection and superintendence for each day of delay in completion. Whenever the Government will suffer other specific losses due to the failure of the contractor to complete the work on time, such as the cost of substitute facilities, the rental of buildings, or the continued payment of quarters allowances, an amount for such items should also be included.

236.270 Minimum standards for responsible prospective contractors.

In evaluating the responsibility of a prospective contractor, the contracting officer shall consider whether a bid bond has been furnished and performance and payment bonds are to be furnished. Prior to underwriting bid performance and payment bonds, it is normal practice for each surety company to conduct a prequalification survey which examines, verifies and evaluates the contractor's financial resources, technical expertise for the type work involved, management and organization ability, current workload, and capability to complete the contrac in the required time. Normally, the contracting officer is not expected to duplicate this effort in conducting the pre-award survey, but should emphasize in addition thereto the evaluation of information which is uniquely available to the Government, such as the Consolidated List of Debarred, Suspended, and Ineligible Contractors (see FAR 9.404), contractor experience lists, and performance evaluations on present or previous contracts with the Government. More extensive pre-award surveys should be conducted when the project requires unique or unusual construction expertise or when information available to the contracting officer indicates that the contractor may not be responsible (see FAR 9.104). The responsibility for determination of the extent of pre-award survey appropriate to the circumstances rests with the contracting officer. Where the prospective contractor is a joint venture, the sum of its financial resources and the individual capacities of all its members will be used in determining the responsibility of the joint venture.

236.271 Expediting construction contracts.

Approval by the head of the Agency (on a non-delegable basis) is required to expedite the completion date of a contract funded by a Military Construction Appropriations Act, if additional costs are involved. The approval authority must (1) certify that the additional expenditures are necessary to protect the National interest and (2) establish a reasonable completion date for the project. The contracting officer may approve an expedited completion date if no additional costs are involved.

236.272 Cost-plus-fixed fee contracts.

Annual Military Construction Appropriation Acts provide that cost-plus-fixed-fee construction contracts estimated to exceed $25,000 to be performed within the United States, except Alaska, and to be charged to such appropriations shall not be executed unless the specific written approval of the Assistant Secretary of Defense (A&L), setting forth the reasons therefore, is obtained.

236.273 Prequalification of bidders and offerors.

(a) The prequalification procedures are used when it is necessary to assure timely and efficient performance of critical construction projects by limiting bidding or offers to concerns of proven competence to perform in the required manner. The result of a prequalification is a list of sources determined to be qualified to perform a specific construction contract.

(b) The Head of a Contracting Activity (HCA) may authorize the prequalification when the HCA determines in writing that a construction project is of such urgency or complexity as to require prequalification.

(c) Procedures to be used shall be approved by the Head of a Contracting Activity. They shall provide, in connection with small business concerns, that:

(1) If the qualifying authority is of the opinion that a small business concern is not qualified for reasons relating to responsibility, the recommendation of the appropriate Small Business Regional Office shall be requested;

(2) If the office expresses the opinion that the concern appears to have the requisite responsibility, it shall be permitted to submit a bid or offer, and

(3) If a small business concern is found to be non-responsible, the procedures prescribed by FAR 19.6 shall be followed.

Subpart 236.3—Special Aspects of Sealed Bidding in Construction Contracting

236.303 Invitation for bids.

(c)(S–70) The Cost Limitations provision (see 236.580–1 and 252.236–7081).

(S–70) If it appears that funds available for a project may be insufficient for all the desired features of construction, the contracting officer may provide in the solicitation for a first or base bid item covering the work generally as specified and for one or more additive or deductive bid items which progressively add or omit specified features of the work in a stated order of priority. In such case, the solicitation shall include a provision substantially as prescribed at 236.580–2, and the low bidder and the bid items to be awarded shall be determined as therein provided. The contracting officer, prior to the opening of bids, shall determine and record in the contract file the amount of funds available for the project. The amount so recorded shall be controlling for determining the low bidder but may be increased for determining the bid items to be awarded to the low bidder; *Provided* that award on such combination of bid items does not exceed the amount offered by any other conforming responsible bidder for the same combination of bid items.

Subpart 236.4—Special Procedures for Negotiation of Construction Contracts

236.402 Price negotiation.

(S–70) *Profit or fee.*

(1) *Fixed-price construction and architect-engineer contracts.* The guidance set forth in FAR 15.9, while not required, may be used in considering profit as an element of price under fixed-price construction and architect-engineer contracts.

(2) *Cost-reimbursement type construction contracts.*

(i) The fees of prime contractors under cost-plus-fixed-fee construction contracts shall be negotiated in accordance with Departmental procedures which have been approved by the Assistant Secretary of Defense (A&L).

(ii) The target fee of prime contractors in incentive fee contracts shall be established using the criteria and fee schedules provided for under Departmental procedures as a guide in conjunction with the reasonableness of the target cost, the maximum and minimum fees to be established and the fee adjustment formula.

(iii) Limitations on fees for cost-reimbursement type contracts are set forth in FAR 15.903(d).

(3) *Cost-plus-fixed fee contracts.* Annual Military Construction Appropriation Acts provide that cost-plus-fixed-fee architect-engineer contracts estimated to exceed $25,000 to be performed within the United States, except Alaska, and to be charged to such appropriations shall not be executed unless the specific written approval of the Assistant Secretary of Defense (A&L), setting forth the reasons therefor, is obtained.

Subpart 236.5—Contract Clauses

236.501 Performance of work by the contractor.

(a) The contractor shall be required to perform not less than 15 percent on housing and not less than 20 percent on other work.

236.570 Additional clauses.

Sections 236.571 through 236.574 present additional clauses for insertion in contracts for construction and architect-engineer services.

236.571 Clauses.

The following clauses are required in fixed-price construction contracts and solicitations:

236.571-1 Composition of contractor.

The contracting officer shall insert the clause at 252.236–7000, Composition of Contractor, in solicitations and contracts when a fixed-price construction contract is contemplated.

236.571-2 Modification proposals—price breakdown.

The contracting officer shall insert the clause at 252.236–7001, Modification of Proposals—Price Breakdown, in solicitations and contracts when a fixed-price construction contract is contemplated.

236.571-3 Contract drawings, maps and specifications.

The contracting officer shall insert the clause at 252.236–7002, Contract Drawings, Maps and Specifications, in solicitations and contracts when a fixed-price construction contract is contemplated.

236.572 Clauses.

The following clauses will be inserted in fixed-price construction contracts and solicitations as set forth below:

236.572-1 Contract prices—bidding schedule.

The contracting officer shall insert the clause at 252.236–7004, Contract Prices—Bidding Schedule, in solicitations and contracts when a fixed-price construction contract is contemplated and the contract is to contain only unit prices for specified items.

236.572-2 Salvage materials and equipment.

The contracting officer shall insert the clause at 252.236–7005, Salvage Materials and Equipment, in solicitations and contracts when a fixed-price construction contract is contemplated and the contract will involve Government furnished property which is to be salvaged and reused.

236.572-3 Misplaced material.

The contracting officer shall insert the clause at 252.236–7006, Misplaced Material, in solicitations and contracts when a fixed-price construction contract is contemplated and the contract will involve work near or on navigable waterways.

236.572-4 Identification of employees.

The contracting officer shall insert the clause substantially as set out at 252.236–7007, Identification of Employees, in solicitations and contracts when a fixed-price construction contract is contemplated and identification of employees is required for security or other reasons.

236.572-5 Superintendence of subcontractors.

The contracting officer shall insert the clause at 252.236–7008, Superintendence of Subcontractors, in solicitations and contracts when a fixed-price construction contract is contemplated and the contract will be for work of a highly technical and complicated nature requiring extraordinary control by the contractor of the several parts of the work, or the contract will cover work spread over several places on the site of work.

236.572-6 Payment for mobilization and preparatory work.

The contracting officer shall insert one of the clauses at 252.236–7009, (see below) in solicitations and contracts when a fixed-price construction contract is contemplated which will contain a separate bid item for mobilization and preparatory work with the approval of the Head of the Contracting Activity.

(a) In major construction contracts requiring major or special items of plant and equipment or large stockpiles of material which are considered to be in excess of the type, kind and quantity presumed to be normal equipment of a contractor qualified to undertake the work, insert the clause at 252.236–7009(a), Payment for Mobilization and Preparatory Work, Payment Item No. _____.

(b) In contracts involving major mobilization expense or plant equipment and material other than such as are covered in (a) above, which is occasioned by the location or nature of the work, insert the clause at 252.236–7009(b), Mobilization and Demobilization, Payment Item No. _____.

(c) The percentage of the lump sum price, for mobilization and demobilization in paragraph (a) of the clause at 252.236–7009(b), attributed to mobilization should generally be 60% and the remaining 40% considered to be the cost of demobilization. These percentages may be varied to reflect the situation contemplated under the particular contract, but in no event should mobilization exceed 80% of the payment item.

236.572-7 [Reserved]

236.572-8 Airfield safety precautions.

The contracting officer shall insert the clause at 252.236–7011, "Airfield Safety Precautions," in solicitations and contracts when a fixed-price construction contract is contemplated which is to be performed on or near airfields.

236.572-9 Contractor prepared network analysis system.

(a) The contracting officer is authorized to insert a clause substantially as set forth at 252.236–7012, "Contractor Prepared Network Analysis System," in solicitations and contracts when a fixed-price construction contract is contemplated in accordance with the instructions in (b) below. Since the clause is broad in scope, modifications thereto will be necessary to accommodate individual project requirements.

(b)(1) (See paragraph (b)(2).) The requirements pertaining to the identification of separate buildings and features and to the minimum number of activities may be deleted for projects where this information is not needed. This portion should always be used when more than one line item is being contracted for under a single contract to provide data for Government costing purposes. The column showing the minimum number of activities per building or feature may be deleted if not considered necessary.

(2) (See paragraph (b)(3).) The requirement for time scaling the summary network diagram may be deleted. The use of time scaling provides a more easily comprehended diagram for those not intimately familiar with a project and hence is of value to higher level management. It is also of considerable value for evaluating the utilization of resources of manpower and equipment and the scheduling of those activities which have slack available. On the other hand, revisions are much more difficult to make on time scaled diagrams requiring considerable, if not complete, redrafting. This makes time scaling more expensive to maintain

and may result in delays in submitting diagrams. The advantages to management, as against the possibility of additional cost and delay in submission, must be considered in deciding whether time scaling should be included. If time scaling is omitted, references thereto in paragraph (e) should also be deleted.

(3) (See paragraphs (b)(4) and (b)(7).) Any items may be included or deleted as project requirements and local computer capabilities indicate. It should be noted that many computer system programs are written so as to provide only part of the information listed, and it is probable that there is no single program which will provide all the needed information. The listings should be revised to require only the minimum information necessary for project management.

(4) (See paragraph (b)(6)(i).) Two means of estimating the computing time required can be used, (i) based on normal work days (excluding Saturdays, Sundays and holidays), or (ii) based on calendar days. This paragraph should be retained if the former method is to be used. If the latter method is to be used, this paragraph should be deleted and the following inserted at the end of paragraph (b)(2):

In calculating activity durations, Saturdays, Sundays, holidays, and normal inclement weather should be considered.

(5) (See paragraph (b)(6) (ii) and (iii).). Requirements for manpower loading and list of equipment will be deleted unless the nature of the project is such as to make their inclusion necessary for proper surveillance by the resident engineer. When these requirements are deleted here, references thereto in other sections should also be deleted.

(6) (See paragraph (c).) The times allowed for the various submissions may be revised to fit individual project requirements based on project duration and complexity.

(7) (See paragraph (e).) The time for submission of periodic reports may be changed based on project requirements. Normally, reports will be required twice a month with payments made once a month based on the work shown as accomplished in the last two reports.

(8) (See paragraph (f).) For partially completed activities, a relatively broad estimate of the portion completed is normally adequate, for example, 25%, 50%, 75% or 100%, and the clause may be changed accordingly. Due to the multiplicity of activities and their normally small dollar value, a more precise evaluation frequently may be impractical. On activities with significant costs, a more precise estimate should be used.

(9) (See paragraphs (g), (h) and (i).) The sheet size of diagrams and number of copies of report to be submitted may be revised to suit individual project requirements.

236.572-10 Government-prepared network analysis system.

The contracting officer is authorized to insert the clause at 252.236-7013, "Government-Prepared Network Analysis System," in solicitations and contracts when a fixed-price construction contract is contemplated in accordance with the following instructions:

(a) (See paragraph (a).) This paragraph shall be used when the project is of long duration and a schedule of the first two months' operation is necessary for controlling the project until the "Construction Progress Schedule" is submitted. The blank will be filled in with the number of days desired. This paragraph will be deleted when the construction project is of short duration.

(b) (See paragraph (b).) Proper number of days for submittals shall be inserted by the contracting officer.

(c) Paragraphs (c)(1) and (c)(2) shall be modified to agree with detail and type of network analysis system the Government proposes to prepare.

236.573 Clauses.

The following clauses are required in cost reimbursement construction contracts and solicitations:

236.573-1 Statement of work.

The contracting officer shall insert the clause at 252.236-7014, Statement of Work, in solicitations and contracts when a cost-reimbursement construction contract is contemplated.

236.573-2 Estimated cost, performance period.

The contracting officer shall insert the clause at 252.236-7015, Estimated Cost, Performance Period, in solicitations and contracts when a cost-reimbursement construction contract is contemplated.

236.573-3 Direct payments.

The contracting officer shall insert the clause at 252.236-7016, Direct Payments, in solicitations and contracts when a cost-reimbursement construction contract is contemplated.

236.573-4 Approved construction plant.

The contracting officer shall insert the clause at 252.236-7017, Approved Construction Plant, in solicitations and contracts when a cost-reimbursement construction contract is contemplated.

236.573-5 Insurance.

The Contracting Officer shall insert the clause prescribed at 228.311-70 in solicitations and contracts when a cost-reimbursement construction contract is contemplated.

236.574 Option for supervision and inspection services.

The contracting officer shall insert the clause at 252.236-7018, Option for Supervision and Inspection Services, in solicitations and contracts when a fixed-price architect-engineer contract is contemplated, and supervision and inspection services by the architect-engineer during construction are contemplated. The details of such services must be set out in Appendix A of the contract.

236.580 Solicitation provisions.

This section prescribes additional solicitation provisions applicable only to construction contracting.

236.580-1 Cost limitations.

The contracting officer shall insert the provision at 252.236-7081, Cost Limitations, if the solicitation contains one or more items subject to statutory cost limitations, except when a waiver has been granted pursuant to FAR 36.205.

236.580-2 Additive or deductive items.

The contracting officer shall insert the provision at 252.236-7082, Additive or Deductive Items, under the conditions set forth at 236.303(S-70).

Subpart 236.6—Architect-Engineer Services

236.600 Scope of subpart.

Architectural and engineering services and construction design contracts in the amount of $85,000 and over for military construction projects shall not be set-aside for small business. Those under $85,000 shall be considered individually, as though the Small and Disadvantaged Business Utilization Specialist had initiated a set-aside request, and the procedures of FAR Subpart 19.505 shall apply.

236.601 Policy.

(S-70) For contract actions with an estimated total fee of $300,000 or over and which require notification to Congress in accordance with 10 U.S.C. 2807, no funds shall be obligated until 21 days after Congress has been notified. During the notification waiting period, synopsis of the proposed contract action and administrative actions leading to the procurement of the architect-engineer services may be started.

236.602 Selection of firms for architect-engineer contracts.

236.602-1 Selection criteria.

(a)(6) The volume of work previously awarded to the firm by the Department of Defense shall also be considered, with the object of effecting an equitable distribution of Department of Defense architect-engineer contracts among qualified architect-engineer firms, including small and small disadvantaged business firms, and firms that have not had prior Department of Defense contracts.

(S-70) For contracts estimated to cost more than $2,500, criteria which will be used to evaluate the qualifications of the architect-engineer firms to be considered should be established in advance. In addition to the general considerations listed in FAR 36.601, the criteria should be specific as to desired qualifications, size and expertise of staff, required past experience, and, as appropriate, esthetic considerations, special conceptual or design elements, and related factors. The information contained in the DD Form 1391 for the construction project, if applicable, should be used in preparing the criteria. The criteria shall be set forth in the public announcement as required by FAR 5.205(c).

236.602-2 Evaluation boards.

(a) Preselection boards are authorized. A preselection list of the maximum practicable number of qualified firms shall be prepared by a preselection board from data described in FAR 36.603 and other pertinent information which may be available, and the list shall be approved by the head of the construction activity, or his designee. Preparation of preselection lists for contracts estimated to cost more than $25,000, shall be accomplished by formally constituted boards consisting of at least three members.

236.602-4 Selection authority.

(a) All selection actions, including preselection, shall be under the cognizance of the construction activity responsible for the work.

(c) Approval authorities shall not add firms to any selection report. If the firms on a submitted selection report are deemed to be unqualified or the list is considered inadequate for other reasons, the approval authority shall record the reasons and return the report through channels to the preselection board for the preparation of a revised report. However, the finding that certain firms on the selection report are unqualified shall not preclude approval of the report provided that a minimum of three firms remain. In such cases the reasons for finding a firm or firms unqualified shall be recorded and reports may be approved with respect to the three or more qualified firms remaining.

(S-70) *Special approval of selections.* Special approval shall be required for certain selections as indicated below:

(1) When the estimated cost of a contract to be awarded by a field activity exceeds $500,000, the selection shall require the approval of the next higher organizational level of the construction activity;

(2) When a firm, to which a field contracting office has previously awarded contracts totaling over $500,000 during the current calendar year, has been selected for an additional award to be made by the same contracting office, the selection shall require, prior to negotiation with the firm, the approval of the next higher organizational level of the construction activity;

(3) When a selection is made by the Army Corps of Engineers, the Naval Facilities Engineering Command, or the Air Force Directorate of Civil Engineering for a contract whose estimated cost is $500,000 or more, the selection shall require the approval of the Chief of Engineers, the Commander, Naval Facilities Engineering Command, or the Director of Civil Engineering, respectively, or their respective designee;

(4) When supplemental work to be added to an existing contract will bring the total contract cost to any of the various levels of approval noted above, the selection for such work shall require approval as indicated for the appropriate level (such approval is not required for supplemental work accomplished pursuant to the Changes clause of the contract); and

(5) When approval of a selection for a contract has been obtained at a particular approval level, further approval shall not be required for the selection of the same firm to accomplish supplemental work under that contract, unless the total cost of the basic contract plus all supplemental work is an amount requiring approval of the selection at the next higher approval level.

236.604 Performance evaluation.

(a) *Preparation of performance reports.*

(1) For each contract over $10,000 awarded, a performance evaluation report shall be prepared by the cognizant construction activity. Such reports may also be prepared for contracts of lesser amounts. For contracts of over $10,000, the construction activity shall distribute the SF 1421 to all other offices within the region or geographical area as listed in the book, "How to Obtain Consideration for Architect-Engineer Contracts with the Department of Defense," and to the Washington, DC Headquarters of their respective construction activities. The SF 1421 shall be filed and utilized in a manner similar to the qualifications data (Standard Form 254).

(c) *Distribution and use of performance reports.* For the purposes of receiving and distributing architect-engineer qualification and performance data, the United States is divided into regions, and the rest of the world into general geographic areas. These regions and areas are described and delineated in a booklet entitled, "How to Obtain Consideration for Architect-Engineer Contracts with the Department of Defense," which is available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, or from DoD construction activities.

236.605 Government cost estimate for architect-engineer work.

(a) An independent Government estimate of the cost of architect-engineer services shall be prepared for each proposed contract or contract modification expected to exceed $10,000.

236.606 Negotiations.

(S-70) Negotiations shall be conducted with the first selected architect-engineer until a price which is fair and reasonable and not in excess of the Government estimate, revised to correct errors of fact or judgment, has been obtained. Where the negotiations result in a price in excess of the Government estimate, as revised, the contracting officer shall terminate the negotiations and request a proposal from the architect-engineer next in order of preference.

(S-71) In no event shall a contract for architect-engineer services for the preparation of designs, plans, drawings and specifications exceed the statutory limitation of six percent (6%) of the estimated construction costs of the project. If the contract also covers any other type services than the preparation of designs, plans, drawings and specifications, the part of the contract price for such other services shall not be subject to the six percent (6%) limitation.

(S-72) *Modifications.* Where the modification involves work not initially included in the contract, the limitation on the total contract price set forth in 236.606-71 is applicable, as applied to the revised total estimated construction

costs. Where redesign is required and the contract is modified, the following method shall be used to insure that the six percent (6%) statutory limitation is not exceeded:

(1) The estimated construction cost of the redesigned features will be added to the original estimated construction cost;

(2) The contract cost for the original design will be added to the contract cost for redesign; and

(3) The total contract design cost obtained by (2) above will be divided by the total construction cost obtained by (1) above. The resulting percentage may not exceed the six percent (6%) statutory limitation.

Subpart 236.7—Standard Forms for Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements

236.701 Standard forms for use in contracting for construction or dismantling, demolition, or removal of improvements.

(c) Optional Forms 347 and 348 are not authorized for use in the Department of Defense (see 213.505–2(S–70)).

Subpart 236.70—Construction in Foreign Countries

236.7001 General.

Construction in foreign countries includes construction anywhere outside the United States, its possessions and Puerto Rico. In contracts which are entered into with foreign contractors or are for performance in foreign countries, the term "United States" will appear before the word "Government."

236.7002 Technical agreements.

When construction is contemplated in a foreign country, the Office of the Chief of Engineers, Department of the Army, or the Naval Engineering Facilities Command, Department of the Navy, as appropriate, should be invited to participate in the negotiations of any technical working agreement with a foreign government concerning the construction. This agreement negotiated between appropriate officials of the United States and the foreign government should, to the extent feasible and where not otherwise provided for in other agreements, cover all elements necessary for the construction required by the laws, regulations and customs of the United States and the foreign government relating to:

(a) The acquisition of all necessary rights;

(b) The expeditious, duty free importation of labor, material and equipment;

(c) The payment of taxes applicable to contractors, personnel, materials and equipment;

(d) The applicability of workers' compensation laws and other labor laws to citizens of the United States, citizens of the host country and citizens of other countries;

(e) The provision of utility services;

(f) The disposition of surplus materials and equipment;

(g) The handling of claims and litigation; and

(h) Any other problems which can be foreseen and appropriately resolved by such agreement.

236.7003 Labor laws of host country.

Contractors shall comply with the applicable labor laws of the host country. Exemption from such laws shall be sought by means of treaty, executive agreement or express authorization from proper officials, where compliance with the laws is impractical or serves no useful purpose.

Subpart 236.71—Termination of Contracts

236.7100 Scope.

This subpart sets forth policies and instructions unique to construction and architect-engineer contracts relating to termination of such contracts through default or for the convenience of the Government.

236.7101 Contractor inventory.

This subpart and FAR 45.6 cover the disposition of all contractor inventory generated under construction and architect-engineer contracts. It applies to termination inventory and to any other inventory which is:

(a) Excess because of a contract modification; or

(b) Excess under a price revision type contract; and the cost thereof is included in the contractor's claim for an equitable adjustment or revision in price. It also applies to all property which is excess to the requirements of a cost-reimbursement type contract and includes excess Government-furnished property under any type contract.

236.7101–1 Inventory schedules.

In addition to the requirements contained in FAR 45.606, construction equipment shall be submitted on separate schedules.

236.7101–2 Allocability of contractor-acquired property on inventory schedules.

It is the responsibility of the contracting officer to determine that all property listed on inventory schedules is qualitatively and quantitatively allocable to the terminated contract or the terminated portion thereof, taking into consideration any work in place. Also, where applicable, the contracting officer must determine that the difference between the cost of allocable property on the inventory schedules and the total cost of property included in the settlement has been incorporated in the work or consumed in the performance thereof.

236.7101–3 Contractor's certificate-property incorporated in work.

Each contractor whose settlement proposal includes the cost of property (materials, etc.) incorporated into the work shall execute a certificate to the effect that all property not accounted for on the inventory schedules has been incorporated into the work or consumed in the performance thereof.

236.7101–4 Inventory at construction site.

Every effort will be made by the contracting officer to relieve the contractor, as promptly as possible, of the responsibility for the preservation and protection of termination inventory located at the construction site. Property, including construction equipment, which is not to be included on inventory schedules shall be removed by the contractor as promptly as possible.

236.7101–5 Screening of contractor inventory.

Inventories of construction materials and equipment shall be screened in accordance with FAR 45.608 in the Army, by the Corps of Engineers; in the Navy, by the Naval Facilities Engineering Command; and in the Air Force, by the Director, Civil Engineering.

PART 237—SERVICE CONTRACTING

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 237.1—Service Contracts—General

237.104 Personal services contracts.

(b) Also see 237.104(S–70)(b) for additional authority required by Defense activities for use of 5 U.S.C. 3109.

(S–70) *Procurement of the personal services of experts or consultants.*

(a) *Scope.* This subsection sets forth policy and procedures for the procurement by contract, pursuant to 5 U.S.C. 3109, of the personal services of individual experts or consultants (including stenographic reporting services) from individuals and from firms, regardless of the terms of contract arrangements or whether with an individual expert or consultant or a firm employing such individuals. This subsection does not govern employment of individual experts or consultants by excepted appointment. The requirements for such employment are set forth in the Federal Personnel Manual, Chapter 304, "Employment of Experts and Consultants" and the regulations of the respective Departments. In addition, this subsection does not govern policy and procedures for advisory committees and their membership; the requirements for advisory committees are set forth in OMB Circular A–63, "Review of Federal Advisory Committees". Expert or consultant services as used in this subsection involve personal services contracts issued pursuant to 5 U.S.C. 3109 and may also involve "consulting" services subject to FAR 37.2 and 237.270 of this supplement.

(b) *Statutory authority.*

(1) Authority for the procurement by contract of the personal services of experts and consultants is found in 5 U.S.C. 3109, as implemented by annual appropriation acts or by other legislation. Most contracts for expert or consultant services are executed by the Departments pursuant to the authority contained in the General Provisions of the Annual Department of Defense Appropriation Act.

(i) 5 U.S.C. 3109 provides:

(a) For the purpose of this section—

(1) "Agency" has the meaning given it by section 5721 of this title; and

(2) "Appropriation" includes funds made available by statute under section 849 of Title 31.

(b) When authorized by an appropriation or other statute, the head of an agency may procure by contract the temporary (not in excess of 1 year) or intermittent services of experts or consultants or an organization thereof, including stenographic reporting services. Services procured under this section are without regard to—

(1) The provisions of this title governing appointment in the competitive service;

(2) Chapter 51 and Subchapter III of Chapter 53 of this title; and

(3) Section 5 of Title 41, except in the case of stenographic reporting services by an organization. However, an agency subject to Chapter 51 of Subchapter III of Chapter 53 of this title may pay a rate for services under this section in excess of the daily equivalent of the highest rate payable under section 5332 of this title only when specifically authorized by the appropriation or other statute authorizing the procurement of the services.

(ii) Typical of the language which is enacted each year in the General Provisions of the Department of Defense Appropriation Act implementing 5 U.S.C. 3109 in section 703 of the Act of December 21, 1979 (Pub. L. 96–154; 93 Stat. 1139), which provides:

During the current fiscal year, the Secretary of Defense and the Secretaries of the Army, Navy and Air Force, respectively, if they should deem it advantageous to the national defense, and if in their opinions the existing facilities of the Department of Defense are inadequate, are authorized to procure services in accordance with section 3109 of Title 5, United States Code, under regulations prescribed by the Secretary of Defense, and to pay in connection therewith travel expenses of individuals, including actual transportation and per diem in lieu of subsistence while traveling from their homes or places of business to official duty stations and return as may be authorized by law: Provided, that such contracts may be renewed annually.

(2) Contracts with individuals or firms for the personal services of experts or consultants are usually negotiated on a sole source basis under the authority of 10 U.S.C. 2304(c)(1), as implemented by FAR 6.302–1.

(c) *Definition of experts and consultants.*

(1) The terms "experts" and "consultants" shall include those persons who are exceptionally qualified, by education or by experience, in a particular field to perform some specialized service. For the purpose of this subsection, an "expert" is an individual who is a recognized professional or highly skilled practitioner normally used to perform an operating function rather than to provide advisory or consulting services. A "consultant" is an individual who primarily serves in an advisory capacity in a particular field, rather than in the performance or supervision of an operating function (or functions). Depending on how they are used individuals may be either experts or consultants.

(2) Stenographic reporting services by individuals is included in the term "expert or consultant services" for purposes of procurement by contract under this subsection.

(d) *Policy.* The proper use of experts and consultants is a legitimate and economical way to improve Government services and operations. Activities of the Departments can be strengthened by utilizing the highly specialized knowledge and skills of such individuals. However, the personal services of experts and consultants shall not be used to perform duties which can be performed by regular employees, to fill positions which call for full-time continuing employees, or to circumvent competitive civil service procedures and Classification Act pay limits.

(e) *Limitations on use of expert or consultant authority.* Obtaining the personal services of individual experts or consultants by contract, pursuant to 5 U.S.C. 3109, is subject to the following limitations:

(1) The employment of individual experts or consultants shall be by contract only when the services required cannot be obtained by excepted appointment in accordance with personnel regulations.

(2) The nature of the duties to be performed must be temporary (not more than one year) or intermittent (not cumulatively more than 130 days in one year). Accordingly, no contract shall be entered into for longer than one year at a time.

(3) Procurement of the services must be advantageous to the national defense.

(4) Such services shall not be used when existing facilities of the particular Department are adequate or when personnel with the necessary skills can be obtained through normal civil service appointment procedures.

(5) Procurement of such services by contract shall not be used as a means of circumventing manpower space ceilings.

(6) Preference shall not be given to former Government employees per se.

(7) Consultant services shall not under any circumstances be used to specifically aid in influencing or enacting legislation.

(f) *Contracts crossing fiscal years.* Because the implementing appropriation act authorizing the procurement of expert and consultant services expires and must be renewed each fiscal year, a contract under this authority shall not cross fiscal years—even in cases where funds could properly be obligated to a contract calling for services in parts of two fiscal years—unless it calls for an end product which cannot feasibly be subdivided for separate performances in each fiscal year. No contract shall cross fiscal years unless authorized to do so in accordance with 237.104(S–70)(g). This paragraph shall apply equally to personal services contracts with individuals and with firms.

(g) *Authorization to enter into contracts: "Determinations and findings".*

(1) All contracts to be entered into pursuant to 5 U.S.C. 3109 for the personal services of experts or consultants must be authorized in writing by a Determinations and Findings (D&F) signed in accordance with Departmental regulations. Ordinarily each contract shall be separately authorized. However, when the determinations can appropriately be made with respect to a class of contracts, the authorizing official may issue blanket authority for that class of contracts by signing a class D&F.

(2) Each D&F shall authorize a contract or class of contracts to be entered into during a stated period not to exceed one year, which ordinarily shall be within one fiscal year. A D&F may be issued during one fiscal year to authorize a contract or class of contracts to be entered into during the following fiscal year, provided the determinations are reasonably expected to hold true at the time the contract or contracts are to be entered into and provided that either the D&F is made contingent upon enactment of implementing legislation or implementing legislation of the next fiscal year has already been enacted.

(3) Each D&F shall contain the following:

(i) A brief description of the services authorized to be procured, including for individual D&Fs the estimated time of performance and the estimated cost;

(ii) A determination by the authorizing official with respect to the particular contract or class of contracts that:

(A) The duties to be performed are of a temporary or intermittent nature;

(B) Procurement of the services is advantageous to the national defense;

(C) The existing facilities of his Department are inadequate to furnish the services;

(D) It is not feasible to obtain personnel with the necessary skills through normal civil service appointment procedures;

(E) A nonpersonal services contract is not practicable; and,

(F) Any other determination required by applicable statutes has been made;

(iii) A citation of statutory authority, namely 5 U.S.C. 3109 and (except where (vii) below, is applicable) appropriate implementing legislation; the latter may be the current annual Department of Defense Appropriation Act, a current temporary Department of Defense appropriation enactment, or other appropriate legislation;

(iv) A grant of authority to procure the required services and, if desired to extend the contract;

(v) The condition that the necessary funds must be available for obligation.

(vi) The condition that no contract may be entered into for longer than one year at a time;

(vii) An added condition, in cases where the D&F covers a period for which implementing legislation has not yet been enacted, that at the time the procurement is entered into there must be in effect a law authorizing the procurement pursuant to 5 U.S.C. 3109 and requiring no further Secretarial action than that required by the implementing legislation current at the time the D&F is issued;

(viii) Where appropriate, authorization to contract across fiscal years (see 237.104–(S–70)(f)), and in such cases, where the implementing authority cited is annual legislation, an added condition that in the event the implementing authority is not renewed for the following fiscal year the contracting officer shall terminate the contract in accordance with its terms; and

(ix) The date of expiration of the authority granted by the D&F.

(h) *Requests for determinations and findings.* Requests for authorization to procure the personal services of experts or consultants/pursuant to 5 U.S.C. 3109, whether from individuals or from firms, must contain statements required by Departmental regulations to support the determinations. The responsibilities of the various organizational levels in the Departments with respect to requests for D&Fs are also set forth in Departmental regulations.

(i) *Contracts with individual experts or consultants.*

(1) *Method and amount of payment.* The contract may provide for compensation at rate for time actually worked (e.g., amount per day, per week, per month, etc.) or it may provide for performance of a specific task at a fixed price, or it may provide for nominal compensation. The amount or rate of payment will be determined on a case-by-case basis, taking into account (among any other relevant factors) the relative importance of the duties to be performed, the stature of the individual in his specialized field, comparable pay positions under the Classification Act or other Federal pay systems, rates paid by private employers, and rates previously paid other experts or consultants for similar work. Compensation for personal services is subject to the limitation in 237.104–(S–70)(l).

(2) *Benefits.* When an individual expert or consultant is furnishing personal services and the contract provides for a regularly scheduled tour of duty during each administrative work week, the contract shall also provide that the contractor will be accorded the same paid annual and sick leave benefits as those to which he would be entitled under Departmental personnel regulations if he were employed by excepted appointment during the period of the contract. The contract may also provide for similar benefits (e.g., paid holidays, paid administrative leave), but these shall in no event exceed those to which the individual would be entitled under excepted appointment. No benefits shall be accorded the contractor which are not specifically provided for in the written contract. The contracting officer shall effect necessary coordination with the cognizant civilian personnel office.

(3) *Taxes.* When the individual is to render personal services, the compensation generally is subject to FICA (Social Security), FUTA (Unemployment), and federal income withholding tax. It may also be necessary to report or withhold state income tax under 5 U.S.C. 84b. The contracting officer shall take appropriate steps in coordination with the cognizant civilian personnel office to have deductions and reports made where required by law.

(4) *Conflict of interest.* The contracting officer shall ensure that individual experts or consultants who are to render personal services under contract familiarize themselves with Executive Order 11222, May 8, 1965, "Prescribing Standards of Ethical Conduct for Government Officers and Employees", 30 FR 6469 (1965), and that they comply with it and with Departmental regulations implementing it.

(5) *Administrative treatment.* Individual experts or consultants who are to render personal services under contract are charged against personnel ceilings in the same way as experts and consultants employed by excepted appointment. Also, the cognizant civilian personnel office must maintain certain records on individual experts and consultants who render personal services. Therefore, the contracting officer shall effect necessary coordination with the cognizant civilian personnel office before award of a contract for personal services and may also designate the appropriate personnel office as his representative for the purpose of administering contract provisions relating to benefits, obtaining necessary data from the contractor for tax withholding purposes, and administering applicable conflict of interest provisions.

(j) *Contracts with firms for expert or consultant services.* When contracts with firms for the services of specified individual experts or consultants are considered to be personal services contracts (see FAR 37.104), payment for the services of each expert or consultant is subject to the guidelines in 237.104(S–70)(i) and the limitations in 237.104(S–70)(e). Contracts with firms for consulting or other management support services, where those services are nonpersonal in nature, are not entered into pursuant to the authority of this subsection and should not specifically address individual compensation by the firm or with any other rights or obligations as between the firm and these individuals, but should deal only with rights and obligations as between the Government and the firm.

(k) *Contracts for stenographic reporting services.*

(1) Stenographic reporting services normally are provided by regular civilian employees appointed under the usual civil service procedures. However, under certain circumstances these services may be procured by contract from individuals or firms (pursuant to 5 U.S.C. 3109, if personal) as where there are variable requirements or insufficient qualified personnel, and necessity or economy to the Government demand.

(2) Such contracts shall normally be written on an end-product basis and payment made according to delivered items (e.g., number of copies of transcript, words per page, etc.), and the contractor ordinarily shall be required to furnish the necessary materials (typewriter, paper, bindings, etc.).

(3) Contracts for stenographic reporting services may be considered to be for nonpersonal services, and therefore not subject to the provisions of this subsection, *Provided* that:

(i) They are written in accordance with (b) above;

(ii) They do not involve ordinary, day-to-day stenographic or secretarial services;

(iii) They do not involve direct or indirect Government supervision of contractor employees; and

(iv) They involve temporary or intermittent requirements.

(l) *Limitation on payment for personal services.*

(1) When the personal services of individual experts or consultants are being procured pursuant to 5 U.S.C. 3109, payment of the services of each expert or consultant shall not exceed the highest rate fixed by the Classification Act pay schedules for grade GS–15 or, in the case of professional engineering services primarily involving research and development or professional services involving physical or natural sciences or medicine, the highest rate payable to a GS–18. In addition, the contract may provide for such per diem and travel expenses as would be authorized for a Government employee, including actual transportation and per diem in lieu of subsistence while the expert or consultant is traveling between his home or place of business and his official duty station.

(2) If a fixed-price contract which is predominantly for nonpersonal services also includes personal services, the requirements of (a) above are applicable to the personal services if it is feasible and practicable to price them separately.

(m) *Modification of contracts.* When supplemental agreements or change orders are required which substantially change the basis upon which the D&F was made, such as to revise substantially the scope of work or time limitations, or to apply additional funds, authorization shall be requested in the same way as authorization to procure the services by contract in the first place.

(n) *Extension of contracts.*

(1) A contract may provide for extension—for a maximum of one year each time—by written notification to the contractor from the contracting officer.

(2) A contract shall not be extended unless either a new D&F has been issued, or the D&F authorizing the original contract (or a prior extension) has not yet expired and specifically authorizes the extension, or an unexpired class D&F covering that type of contract is in effect, (also see 237.104–(S–70)(f)).

(3) Extension of a contract legally creates a new contract; therefore, extension of a contract is improper unless all the requirements and limitations of this subsection have been complied with.

(S–71) *Acquisition of personal direct health care services.*

(a) *Scope.* This subsection sets forth policy and procedures for the acquisition by contract, pursuant to 10 U.S.C. 1091, of the personal direct health care services from individuals or firms. (Nothing in this subsection precludes the acquisition by contract of nonpersonal health care services or applies to such services.)

(b) *Definition of direct health care services.* Direct health care services are those services provided by health care providers who participate in clinical patient care and services. Some examples of direct health care providers for the purpose of this subsection are nurses, radiology technicians, dental hygienists, and medical technologists. Not included are the services of personnel whose duties are predominantly administrative or clerical and personnel who provide maintenance or security services.

(c) *Policy.* It is the policy of the Department of Defense that when in-house sources are insufficient to support the medical mission of the Military Departments or DoD Components, contracting officers may contract for personal direct health care services under the authority of 10 U.S.C. 1091 (see DoDI 6025.5).

(d) *Limitations on contracting for personal direct health care services.* Obtaining personal direct health care services under contract is subject to the following limitations:

(1) Preference shall not be given to former government employees.

(2) Compensation of contract health care providers is negotiable depending upon the skills of the prospective contractor. Compensation shall be within the limits established in the table below.

(3) Each prospective personal direct health care services contract shall be approved (see Departmental implementation of DoDI 6025.5 for approval requirements). The requiring activity shall provide the contracting officer a copy of the approval to enter into a personal direct health care services contract. A copy of the approval shall be retained in the contract file.

TABLE OF MAXIMUM AUTHORIZED COMPENSATION RATES

Occupation/specialty group	Compensation rate not to exceed*	
	Pay grade	Years of service
I. Physicians and dentists	0–6	Over 26.
II. Other individuals, including nurse practitioners, nurse anesthetists, and nurse midwives, but excluding paraprofessionals.	0–5	Over 20 but less than 22.
III. All registered nurses, except those included in Group II	0–4	Over 16 but less than 18.
IV. Paraprofessionals	0–3	Over 6 but less than 8.

* Compensation rate includes basic pay and basic allowance for subsistence and basic allowance for quarters (including VHA); it does not include special and incentive pays, hazardous duty pay, flight pay, professional pay, continuation pay, or any discretionary pay.

(e) *Malpractice liability insurance.* Personal services contractors shall not be required to furnish malpractice liability insurance.

237.106 Funding and term of service contracts.

Categories of service contracts funded by annual appropriations that are

authorized to extend beyond the end of the fiscal year of the annual appropriation used are as follows:

(a) A one year contract for maintenance of tools or facilities if authorized under the current Department of Defense Appropriations Act;

(b) A multi-year service contract;

(c) A one-year requirement or indefinite quantity contract, as defined in FAR 16.503 and FAR 16.504, in which any specified minimum quantities are certain to be ordered in the fiscal year current at the beginning of the contract term (but see FAR 32.705–1(b)); or

(d) A contract for the personal services of experts or consultants entered into in accordance with 237.104–(S–70), or a contract for educational services, which cannot feasibly be subdivided for separate performance in each fiscal year.

Subpart 237.2—Consulting Services

237.204 Policy.

(S–70) For personal services contracts for or with individual consultants the requirements of 237.104–(S–70) apply.

(S–71) For proposed contracts to be awarded as a result of an unsolicited proposal, the limitations of 215.507(b)(S–70) apply.

237.205 Management controls.

237.205–70 Responsibilities of the contracting officer.

(a) The contracting officer is also responsible, in coordination with the requiring/sponsoring activity, for determining whether a proposed contract requirement regardless of dollar value, is for services as defined in 237.270 of this document. The contracting officer's determination shall be final. In this regard the contracting officer, in coordination with the sponsor and the supporting comptroller, should assure that funds provided are proper to the category of service required.

(b) Prior to issuing any solicitation for the services covered by 237.270, the contracting officer shall assure that the applicable provisions of this part have been adhered to and that documentation required is complete and included in the official contract file.

(c) The contracting officer shall assure that the following written evaluations are included in each contract file (these evaluations shall normally be prepared by the sponsoring/requiring activity), when services as defined in FAR 37.201 or 237.270 herein are acquired:

(1) An evaluation discussing the timeliness and quality of performance and the contractor's compliance with the statement of work and terms of the contract, and;

(2) At contract completion, an evaluation documenting the use made of the services or products obtained and their value to the sponsoring organization.

(d) The contracting officer is responsible for timely and accurate reporting of contract actions for services described in this subpart. Contract awards for consulting services are reported on DD Form 350 under Item B9 as well as in Item B8A.

237.205–71 Departmental procedures.

(a) Departments shall ensure that for all contract actions for services defined in FAR 37.201 and 237.270 of this supplement:

(1) Each requirement is appropriate; fully justified in writing; does not unnecessarily duplicate any previously performed work or services; and is approved in advance in accordance with (b) below and Departmental procedures.

(2) Work statements are specific and complete to the maximum extent practicable, and specify a fixed period of performance of the services to be provided;

(3) Contracts are competitively awarded to the maximum extent practicable to ensure that prices are reasonable (see 215.507(b)(S–70)) with regard to proposed contracts resulting from unsolicited proposals);

(4) Appropriate disclosure is required of, and warning provisions are given to, prospective contractors to avoid conflicts of interest;

(5) Contracts are properly administered and monitored to ensure that performance is satisfactory;

(6) Contract reports prominently display on the cover of the report the following information:

(i) Name and business address of the contractor;

(ii) Contract number;

(iii) Contract dollar amount;

(iv) A statement as to whether the contract was competitively awarded or not; and

(v) Name of the sponsoring individual in the agency and his/her office identification and location; and

(7) The sponsoring element, at contract completion, documents the use made of the services or products obtained and their value to the sponsoring organization.

(b) Departments shall further ensure that the approval of the need for the use of the services defined in FAR 37.201 and 237.270 is based on the policy and guidelines contained in this section, and that, for actions greater than $50,000 the approval authority is not below the SES manager or General or Flag Officer level, except when 0–6 personnel are filling such command or management positions or have subordinate SES personnel.

237.270 Studies and analyses and professional and management services.

(a) *Definitions.*

"Professional and Management Services" means services of a "white collar" professional nature, e.g., preparation of reports or documentation, software development, development of logistics support plans, and other similar tasks, in support of management and control of programs.

"Studies and Analyses" means the broad class of intellectual activities characterized by the application of the tools of analysis to address a wide range of problems. Studies are analytic examinations used to support DoD decision-makers and activities. Studies contribute to greater understanding of relevant issues and provide one means for addressing those matters facing the Department of Defense. Studies and support of studies include development of data bases, models, and methodologies. Results of studies are documented products including oral and written briefings, formal reports, and computer products. Excluded from the scope of this definition are the following categories:

(i) Basic and applied research, development, and technology demonstrations;

(ii) Architect and engineering studies related to construction projects;

(iii) Value engineering;

(iv) System fabrication;

(v) System test;

(vi) Operational test and evaluation;

(vii) Technology development;

(viii) Clinical medicine;

(ix) Project/program planning or monitoring;

(x) Automatic data processing services;

(xi) National Foreign Intelligence Program;

(xii) General Defense Intelligence Program.

(b) Contract awards for these services are generally reported on the DD Form 350 under FSC Code R400 or R500 series. Management and support services for research and development activities should also be recorded appropriately under these codes.

(c) The management controls stated at FAR 37.205 and 237.205–70 herein also apply to these services.

Subpart 237.3—Dismantling, Demolition, or Removal of Improvements

237.302 Bonds or other security.

If the contracting officer determines that it is in the best interest of the Government to require the contractor to furnish a performance bond or other security, the "Bid Guarantee" clause at FAR 52.228–1 and the "Bonds or Other Security" provision at 252.228–7004 shall be included in the solicitation.

237.304 Contract clauses.

(S–70) *Statement of work.* The contracting officer shall insert the clause at 252.237–7000, "Statement of Work," in solicitations and contracts for dismantling, demolition or removal of improvements in order to specify the property to be dismantled, demolished or removed, the dates of commencement and completion of the work, requirements for conditioning, handling and storing property retained by the Government, and applicable bond requirements.

(S–71) *Composition of contractor.* The contracting officer shall insert the clause at 252.236–7000, "Composition of Contractor," in solicitations and contracts for dismantling, demolition or removal of improvements to specify that if the contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable for compliance with all provisions of the contract.

(S–72) *Misplaced material.* The contracting officer shall insert the clause at 252.236–7006, "Misplaced Material," in solicitations and contracts for dismantling, demolition or removal of improvements when the contract involves work on or near navigable waterways in order to set forth the contractor's responsibility for misplaced material.

(S–73) *Identification of employees.* The contracting officer shall insert the clause at 252.236–7007, "Identification of Employees," in solicitations and contracts for dismantling, demolition or removal of improvements when necessary for security or other reasons to require the contractor to furnish employee identification.

Subpart 237.70—Engineering and Technical Services

237.7001 Definitions.

"Contractor engineering and technical services" means the furnishing of advice, instruction, and training to Department of Defense personnel, by commercial or industrial companies, in the installation, operation, and maintenance of Department of Defense weapons, equipment, and systems. This includes transmitting the knowledge necessary to develop among those Department of Defense personnel the technical skill required for installing, maintaining and operating such equipment in a high state of military readiness.

(a) *Contract Field Services (CFS)* means those engineering and technical services provided on site at defense locations by the trained and qualified engineers and technicians of commercial or industrial companies.

(b) *Contract Plant Services (CPS)* means those engineering and technical services provided by the trained and qualified engineers and technicians of a manufacturer of military equipment or components, in the manufacturer's own plants and facilities.

(c) *Field Service Representatives (FSR)* means those employees of a manufacturer of military equipment or components who provide a liaison or advisory service between their company and the military users of their company's equipment or components.

237.7002 Contracting for engineering and technical services.

(a) *General.* Every contract calling for engineering and technical services, whether it calls for only those services or whether it calls for those services in connection with the furnishing of an end item, shall show those services as a separate and identifiable line item separately priced. The contract shall contain definitive specifications for the services and shall show the man-months involved.

(b) *Personal services.* Notwithstanding FAR 37.104, in the event unusual requirements involving essential mission accomplishment necessitate the procurement of contract field services (CFS) which appear to be personal services, those services may be obtained by contract for an interim period if that particular procurement is specifically authorized by the Assistant Secretary of Defense (Manpower, Installations and Logistics).

Subpart 237.71—Mortuary Services

237.7100 Scope.

Acquisition procedures peculiar to contracts for mortuary services (the care of remains) of military personnel within the United States are set forth in this subpart. These procedures may be used as guidance in areas outside the United States in acquiring such services for both deceased military and civilian personnel.

237.7101 Method of acquisition.

(a) *Acquisitions by requirements type contract.* By agreement among the military activities involved, one military activity in each geographical area shall contract for the estimated requirements for the care of remains for all activities in the area. Acquisition shall be by use of a requirements type contract (see FAR 16.503) when the estimated annual requirements for the individual activity concerned, or for the activities using one contract, are 10 or more. Such acquisitions shall be made using the sealed bid method when the criteria of FAR 6.103(a) are met.

(b) *Acquisitions by purchase order.* Where no contract exists, such services shall be obtained by use of DD Form 1155, "Order for Supplies and Services/Request for Quotations," and DD Form 1155r, "General Provisions" (see FAR 13.5), inserting in the Schedule the clauses prescribed in 213.505–2.

(c) *Solicitation planning.* Offers for annual requirements for the next fiscal year shall be solicited in sufficient time to permit award prior to the beginning of the fiscal year.

(d) *Area of performance.* Each contract for care of remains (except Port of Entry Requirements contracts) shall clearly define the geographical area covered by the contract. The area shall be determined by the activity entering into the contract in accordance with the following general guidelines. It shall be an area using political boundaries, streets, or other features as demarcation lines. Generally, this should be a size roughly equivalent to the contiguous metropolitan or municipal area enlarged to include the activities served. In the event the area of performance best suited to the needs of a particular contract is not large enough to include a carrier terminal commonly used by people within such area, the contract area of performance shall specifically state that it includes such terminal as a pickup or delivery point.

(e) *Distribution of contracts.* In addition to normal contract distribution, three copies of each contract shall be furnished to each activity authorized to use it, and two copies to each of the following:

(1) HQDA (DAAG–PED), Alexandria, VA 22331.

(2) Bureau of Medicine and Surgery, Department of the Navy (MED 3134), 23rd and E Streets, NW, Washington, DC 20372.

(3) Headquarters, AFMPC/MPCCM, Randolph AFB, TX 78150.

237.7102 Schedule formats.

(a) *Schedule format for other than port of entry requirements contracts.* Se

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forth below is an example of a Schedule format suitable for use in solicitations and contracts for other than port of entry requirements. The estimated quantities are only illustrative.

Item No.	Supplies, services and transportation	Estimated quantity	Unit	Unit price	Amount
0001	For a standard size casket, supplies and services in accordance with specifications.	10	Each		
0002	Shipping container conforming to performance testing specification requirements of the air carrier and subsequent connecting carriers.	2	Each		
0003	For an oversize casket, supplies and services in accordance with specifications.	4	Each		
0004	Shipping container conforming to performance testing specification requirements of the air carrier and subsequent connecting carriers.	1	Each		
0005	For transportation of remains, in accordance with specifications and as provided for in paragraphs (b) and (c) of the "Area of Performance" clause of this contract.	200	(Loaded mile).		

Additional items may be added (in numerical sequence), as required.

(b) *Schedule format for port of entry requirements contracts.* Set forth below is an example of a Schedule format suitable for use in solicitations and contents for port of entry requirements. The estimated quantities are only illustrative.

Item No.	Supplies, services and transportation	Estimated quantity	Unit	Unit price	Amount
0001	For a standard size casket, supplies and services in accordance with specifications.	20	Each		
0002	Shipping container conforming to performance testing specification requirements of the air carrier and subsequent connecting carriers.	17	Each		
0003	For an overize casket, supplies and services in accordance with specifications.	5	Each		
0004	Shipping container conforming to performance testing specification requirements of the air carrier and subsequent connecting carriers.	3	Each		
0005	For inspection and/or reprocessing of casketed remains prior to delivery to selected common carrier.	18	Each		
0006	For transportation of remains between _____ and processing facility.	31	(Loaded trip each).		
0007	For transportation of remains between processing facility and selected common carrier or National Cemetery as indicated below:		(Loaded trip each).		
	X _____	9			
	Y _____	10			
	Z _____	9			
0008	For transportation of remains between processing facility and any point within 100 miles as designated by the contracting officer.				

Additional items may be added (in numerical sequence), as required.

237.7103 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 252.237–7100, Award to Single Bidder, in sealed bid solicitations for mortuary services contracts.

(b) The contracting officer shall insert the provision at 252.237–7101, Award to Single Offeror, in negotiated solicitations for mortuary services contracts.

(c) The contracting officer shall insert the following clauses in mortuary services solicitations and contracts except those for port of entry requirements:

(1) 252.237–7102, Requirements;
(2) 252.237–7103, Area of Performance;
(3) 252.237–7104, Specifications;
(4) 252.237–7105, Using Activities;
(5) 252.237–7106, Delivery Orders and Invoices;
(6) 252.237–7107, Delivery and Performance;
(7) 252.237–7108, Subcontracting;
(8) 252.237–7109, Additional Default Provision;
(9) 252.237–7110, Group Interment;
(10) 252.237–7111, Professional Requirements;
(11) 252.237–7112, Facility Requirements;
(12) 252.237–7113, Preparation History.

(d) Except for the "Area of Performance" and the "Facility Requirements" clauses, the contracting officer shall insert all of the clauses in (c) above, as well as the Government-Furnished Property (Short Form) clause at FAR 52.245–4 in port of entry solicitations and contracts for mortuary services.

Subpart 237.72—Laundry and Dry Cleaning Services

237.7200 Scope.

This subpart contains instructions for the preparation and use of contracts for laundry and dry cleaning services within the United States. It may be used as guidance in all other locations.

237.7201 General policy.

Except for laundry and dry cleaning services acquired under small purchase procedures, the normal method of contracting for laundry and dry cleaning services shall be by formal advertising.

237.7202 Selection of count of articles or weight (unsorted or presorted) basis.

Laundry services in support of hospitals may be acquired on the basis of (a) a count of articles or (b) by bulk weight. Acquisitions by weight may be on either a pre-sorted (bag type) or unsorted (simple bulk weight) basis. The basis of acquisition shall be at the discretion of the requiring activity in conjunction with advice of the contracting officer based on consideration of such factors as price, administrative costs, aseptic requirements, risk of contamination/cross-contamination, volume and nature of articles to be serviced. All other laundry and dry cleaning services shall be acquired on a count of articles basis.

237.7203 Schedule format.

Set forth below are examples of schedule formats suitable for use in solicitations. The estimated quantities are only illustrative.

(a) Count of articles.

Item No.	Item	Estimated quantity for contract period	Unit	Unit price	Estimated amount
	LOT I				
	Laundering				
0001	Pillowcase (P)	100,000	Each		
0002	Nurses Uniform, with belt (S) (P) (OH)*	25,000	Each		
0003	Slippers	50,000	Pair		
	LOT II				
	Dry Cleaning				
0004	Curtains	500	Each		
0005	Trousers (P)	5,000	Each		
	LOT III**				
	Individual Laundry				
0006	Individual bundle (26 piece)	1,000	Each		
0007	Individual bundle (18 piece)	1,000	Each		
***					

* (S)—Starched, (P)—Pressed, (OH)—Item delivered on hanger (hanger included in Unit Price), and ( ) Other instructions as required.
** Include in contracts containing the Individual Laundry clause at 252.237–7206.
*** See Subpart 4.71 for Line Item Numbering Procedures.

(b) Bulk weight (unsorted).

Item No.	Item	Estimated quantity for serviced laundry for contract period	Unit	Unit price	Estimated amount
0001	Laundry Services for the items listed below. The following articles are to be serviced. Separate prices are not to be submitted for these articles.	100,000	Lb		
	Towels, hand	40,000	Lb	NSP	
	Sheets	40,000	Lb	NSP	
	Wash cloths	20,000	Lb	NSP	

(c) Bulk weight (bag type).

Item No.	Item	Estimated quantity for serviced laundry for contract period	Unit	Unit price	Estimated amount
0001	BAG TYPE I (Patient items: sheets, pillow cases,)	200,000	Lb		
0002	BAG TYPE II (Terry Type: Towels, wash cloths,)	100,000	Lb		
0003	BAG TYPE III (Surgical items: Masks, caps, shirts,).	50,000	Lb		
0004	BAG TYPE IV CONTAMINATED (May include any or all items in above listed bag types).	75,000	Lb		

237.7204 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert a provision similar to that set forth at 252.237–7200, Instructions to Bidders (Count of Articles), in solicitations for laundry and dry cleaning services when such services are to be provided on a count of articles basis.

(b) The contracting officer shall insert a provision similar to that set forth at 252.237–7201, Instructions to Bidders (Bulk Weight), in solicitations for laundry services when such services are to be provided on a bulk weight basis.

(c)(1) The contracting officer shall insert the clause at 252.237–7202, Count of Articles, in solicitations and contracts for laundry and dry cleaning services to be provided on a count of articles basis.

(2) When laundry and dry cleaning services are to be provided to individual personnel on a count of articles basis, the contracting officer shall use the clause with its Alternate I.

(d) The contracting officer shall insert the clause at 252.237–7203, Loss or Damage (Count of Articles), in solicitations and contracts for laundry

and dry cleaning services to be provided on a count of articles basis.

(e) The contracting officer shall insert the following clauses, substantially the same as the clauses prescribed below, in solicitations and contracts for laundry services to be provided on a bulk weight basis:

(1) 252.237–7204, Weight of Articles (Bag Type), for bag type laundry;

(2) 252.237–7205, Weight of Articles (Unsorted), for unsorted laundry;

(3) 252.237–7206, Loss or Damage (Weight of Articles);

(4) 252.237–7207, Maximum Weight Loss.

(f) The contracting officer shall insert the clause at 252.237–7208, Individual Laundry, in solicitations and contracts for laundry services to be provided to individual personnel.

(g) The contracting officer shall insert the clause at 252.237–7209, Special Definitions of Government Property, in solicitations and contracts for laundry and dry cleaning services.

Subpart 237.73—Educational Service Agreements

237.7300 Scope.

This subpart prescribes acquisition procedures for agreements with established schools, colleges, or universities, or other educational institutions for educational services using the institution's facilities, standard courses, and prevailing tuition and fees applicable to the general public. As used in the part, "facilities" does not include the institution's dining rooms or dormitories. Also, as used in the subpart, "fees" does not include charges for meals or lodging. Tuition assistance agreements, i.e., payment by the Government of partial tuition under the off-duty educational program, are not included under this subpart. Except in connection with the detailing of commissioned officers to law schools pursuant to 10 U.S.C. 2004, no agreement shall be made under this subpart which will provide for, or results in, payment of Government funds for tuition or other expenses in connection with training in any legal profession.

237.7301 Educational service agreement.

(a) An educational service agreement is one which calls for educational services to be provided under the following conditions:

(1) The Government pays all normal tuition and fees for educational services provided to a student by the contractor under its regularly established schedule of tuition and fees applicable to all students generally; and

(2) Enrollment is at the contractor's institution under his regular rules and in courses and curricula which the institution offers to all students meeting the contractor's admission requirements, with no special courses or special fees applicable to Government students.

(b) An educational service agreement is not a contract, but is a continuing offer which may be accepted by the Government by the placing of requests for services. Each request for services results in a separate contract.

237.7302 [Reserved]

237.7303 Duration.

Educational service agreements shall be for an indefinite duration and shall remain in effect until terminated. However, the issuing activity shall establish procedures to review each educational service agreement at least once each year (with due regard to the institution's academic calendar and at least 30 days before the beginning of a term) for the purpose of incorporating changes to reflect requirements of any Statute, Executive Order, or this regulation. If the parties do not agree on such required changes, the contracting officer shall terminate the agreement in accordance with its terms.

237.7304 Format and clauses for educational service agreements.

Educational service agreements authorized by this Subpart shall be on locally reproduced forms consisting of a cover page, general provisions, schedule, and signature page, in the format set forth in this paragraph. The contracting officer may add to the schedule any other provisions necessary to describe the requirements of the Department, as long as such provisions do not contradict any of the general provisions or schedule provisions prescribed by this paragraph or otherwise alter the concept of acquiring educational services in the form of standard course offerings at the prevailing rates of the institution.

(a) *Cover page.* The cover page shall contain the following provisions and necessary information to complete the provisions.

Educational Service Agreement

Agreement No. ——.

1. This agreement entered into on the ——— day of ———, 19——, between the United States of America, hereinafter called the "Government", represented by the Contracting Officer, and (name of institution), an educational institution located at ——— (City) ———, ——— (State) ———, herein after called the "Contractor", is for educational services to be provided to Government personnel at the Contractor's institution. The parties intend that the Contractor shall provide instruction with standard offerings of courses available to the public and shall receive payment for services rendered in accordance with the Contractor's schedule of tuition and fees applicable to the public and in effect at the time the services are performed.

2. This agreement may be amended only by mutual consent of the parties.

3. The Government will review this agreement annually before the anniversary of its effective date for the purpose of incorporating changes required by Statutes, Executive Orders, the Federal Acquisition Regulation, or the DoD FAR Supplement; such changes will be evidenced by a modification to this agreement or by a superseding agreement. If the parties fail to agree upon any such change, the Government will terminate this agreement.

4. This agreement shall commence on the effective date above and shall continue until terminated.

5. The estimated annual cost hereunder is $———; however, this estimate is for administrative purposes only and shall not impose any obligation on the Government to request any services or to make any payment except as provided herein.

6. Advance payments are authorized by 31 U.S.C. 529i.

7. Submit invoices to: ——— (Name and Address of Activity)

8. This agreement consists of this cover page, a Schedule of ——— (number of pages) pages, General Provisions of ——— (number of pages) pages, and a Signature Page.

(b) *Schedule Provisions.*

Schedule Provisions

1. Ordering Procedures and Services To Be Provided.

(a) The Contractor shall promptly deliver to the Contracting Officer one copy of each catalog applicable to this agreement, and one copy of any subsequent revision thereof.

(b) The Government will request educational services under this agreement by delivery to the Contractor of (insert type of request that will be used; e.g., delivery order, official Government order, or other written communication) containing the number of this agreement and designating as students at the Contractor's institution under this agreement one or more Government-selected persons, who have already been accepted for admission under the Contractor's usual standards of admission.

(c) All students under this agreement shall register in the same manner, be subject to the same academic regulations, and have the same privileges, including the use of all facilities and equipment as regular non-Government students (hereinafter called civilian students).

(d) Upon enrolling each student pursuant to this agreement, the Contractor shall, where the resident or nonresident status involves a difference in tuition or fees:

(i) Determine the resident or nonresident status of the student and notify the student and the contracting officer of such determination, and if there is an appeal of such determination, process the appeal in accordance with the Contractor's standard procedures and notify the appellant of the result; and

(ii) Make the above determination a part of the student's permanent record.

(e) The Contractor shall not furnish any instruction or other services to any student pursuant to this agreement prior to the effective date of a request for such services in the form specified above.

2. *Change in curriculum.* The Contracting Officer may vary the curriculum for any student enrolled under this agreement but shall not require or make any change in any course as offered by the Contractor without the Contractor's consent.

3. *Payment.*

(a) The Government shall pay the Contractor the regularly established tuition and fees which the Contractor charges civilian students pursuing the same or similar curricula, except for any tuition and fees which this agreement specifically excludes. The Contractor shall have the right to change any tuition and fees, provided that the Contractor publishes such revisions in a catalog or otherwise publicly announces such revisions and applies them uniformly to all students pursuing the same or similar curricula as Government students enrolled under this agreement. The Contractor shall provide the Contracting Officer notice of such changes prior to their effective date.

(b) The Contractor shall not establish any tuition or fees which apply solely to Government students.

(c) If the Contractor regularly charges higher tuition and fees for students who are not residents of the State in which the Contractor is located, the Contractor may charge the Government such regularly established nonresident tuition and fees for those Government students who are in fact nonresidents. The Government shall not claim resident tuition and fees for any student solely on the basis of his residing in the state as a consequence of enrollment under this agreement.

(d) The Contractor shall charge the Government only the tuition and fees (which may include (i) penalty fees for late registration or change of course occasioned by action of the Government and (ii) mandatory health fees and health insurance charges) which relate directly to enrollment as a student and are a consequence of his being a student. The Contractor shall not charge the Government for permit fees, such as vehicle registration or parking fees, unless specifically authorized in the request placed hereunder. In addition to the above, the Contractor shall not make any charge under this agreement for any equipment, refundable deposits, or any items or services (such as computer time) related to student research. However, any flat rate charge applicable to all students registered for research and which appears in the Contractor's publicly announced fee schedule shall be chargeable under this agreement.

(e) Normally the Contractor shall not directly charge individual students for application fees or any other fee properly chargeable to this agreement. However, if the Contractor's standard procedures require payment of any fee before the student is enrolled under this agreement, the Contractor shall reimburse the student in full for any such fee when the Contractor receives payment therefor under this agreement.

(f) For each term in which the Contractor enrolls students under this agreement the Contractor shall submit ——— copies of an invoice listing charges for each student separately. Contractor shall submit invoices within ——— days after the start of the term it covers and shall include:

(i) Agreement number and inclusive dates of the term to which the invoice applies;

(ii) Name of each student;

(iii) Schools which charge by credit hour shall list each course of each student;

(iv) The resident or nonresident status of each student (if applicable to the Contractor's school);

(v) Breakdown of charges for each student, identifying each element; e.g., Credit Hours: $———, Tuition: $———, Application Fee: $———, Labor Fee (Chem 300): $———. Contractor shall show the *total of fees for each student and grand total for all students listed on the invoice.*

(g) If unforeseen events require additional charges which are otherwise payable in accordance with the Contractor's published tuition and fee schedule, the Contractor may submit a supplemental invoice or make the adjustment on the next regular invoice under this agreement. In either case the Contractor shall clearly identify and explain the supplemental invoice or the adjustment.

(h) The Contractor shall apply to subsequent invoices submitted under this agreement any credits resulting from withdrawal of students, or from any other cause in accordance with its standard procedures. Such credits should appear on the first invoice submitted after the action resulting in such credits. If no subsequent invoice is submitted, the Contractor shall deliver to the Contracting Officer a check drawn to the order of the office designated for contract administration. Contractor shall identify the reason for the credit and the applicable term dates in all cases.

4. *Withdrawal of students.*

(a) The Government may, at its option and at any time, withdraw financial support for any student by issuing official orders. The Government shall furnish ——— copies of such orders to the Contractor within a reasonable time after publication.

(b) The Contractor may request withdrawal by the Government of any student for academic or disciplinary reasons.

(c) If such withdrawal occurs prior to the end of a term, the Government shall pay any tuition and fees due for the current term in which the student may be enrolled, and the Contractor shall credit the Government with any charges eligible for refund under the Contractor's standard procedures for civilian students in effect on the effective date of such withdrawal.

(d) Withdrawal of students by the Government shall not be the basis for any special charge or claim by the Contractor other than as provided by the Contractor's standard procedures.

5. *Transcripts.* Within a reasonable period of time after withdrawal of a student for any reason, or after graduation, the Contractor shall send to the Contracting Officer (or to such other address as the Contracting Officer may specify) one copy of an official transcript showing all work by the student at the Contractor's institution until such withdrawal or graduation.

6. *Student teaching.* Awarding of fellowships and assistantships by the Contractor to students attending school under this agreement is not anticipated. In the case of graduate students, however, should both the student and the Contractor deem it to be in the best interests of the student for him to assist in the teaching program of the institution, the Contractor may provide nominal compensation for such students' part-time service in accordance with the Contractor's established practices and procedures for other students of similar accomplishment in that department or field. Such compensation shall be applied as a credit against any invoices presented for payment for any period in which he performed the part-time teaching service.

7. *Termination of agreement.*

(a) Either party may terminate this agreement by giving thirty (30) days advance written notice of the effective date of termination. In the event of termination, the Government shall have the right, at its option, to continue to receive educational services for those students already enrolled in the Contractor's institution under this agreement until such time that the students complete their courses or curricula or the Government withdraws them from the Contractor's institution. The terms and conditions of this agreement in effect on the effective date of the termination shall continue to apply to such students remaining in the Contractor's institution.

(b) Withdrawal of students pursuant to Schedule Provision 4 shall not be considered a termination within the meaning of this provision.

(c) Termination by either party shall not be the basis for any special charge or claim by the Contractor other than as provided by the Contractor's standard procedures.

(c) *General provisions.*

General Provisions

1. *Definitions.* Insert the clause at FAR 52.202–1, Definitions, with the following additional paragraphs.

(d) The word "term" means the period of time into which the Contractor divides the academic year for purposes of instruction; this includes "semester," "trimester," "quarter," or any similar word the Contractor may use.

(e) The word "course" means a series of lectures or instructions, and/or laboratory periods, relating to one specific representation of subject matter, such as Elementary College Algebra, German 401 or Surveying. Normally, student completes a course in one term and receives a certain number of semester hours credit (or equivalent) upon successful completion.

(f) The word "curriculum" means a series of courses having a unified purpose and belonging primarily to one major academic field. It will usually include certain required courses and elective courses within

established criteria. Examples include Business Administration, Civil Engineering, Fine and Applied Arts, and Physics. A curriculum normally covers more than one term and leads to a degree or diploma upon successful completion.

(g) The word "catalog" means any medium by which the Contractor publicly announces terms and conditions for enrollment in the Contractor's institution, including tuition and fees to be charged. This includes "bulletin," "announcement," or any other similar word the Contractor may use.

(h) The word "tuition" means the amount of money charged by an educational institution for instruction, not including fees as defined below.

(i) The word "fees" means those applicable charges directly related to enrollment in the Contractor's institution. This shall not include any permit charge (e.g., parking, vehicle registration or charges for services of a personal nature (e.g., food, housing, laundry) unless specifically called for in the request placed hereunder.

2. *Gratuities.* Insert the clause at FAR 52.203–3.

3. *Covenant against contingent fees.* Insert the clause at FAR 52.203–5.

4. *Officials not to benefit.* Insert the clause at FAR 52.203–1.

5. *Approval of contract.* Insert clause from FAR 52.204–1 in accordance with Departmental procedures when it is desired to cover the subject matter thereof.

6. *Order of precedence.* Insert clause from FAR 52.215–18.

7. *Conflicts between agreement and cotolog.* Insert the following clause:

Conflicts Between Agreement and Catalog

To the extent of any inconsistency between the provisions of this agreement and any catalog or other document incorporated in this agreement by reference or otherwise or any of the Contractor's rules and regulations, the provisions of this agreement shall govern.

8. *Disputes.* Insert the clause at FAR 52.233–1.

9. *Convict labor.* Insert the clause at FAR 52.222–3.

10. *Equal opportunity.* In accordance with FAR 22.802, 22.807, and FAR 22.810 insert the appropriate clause from FAR 52.222–26.

11. *Assignment of claims.* Insert the following clause.

Assignment of Claims

No claim under this agreement shall be assigned.

12. *Examination of records by comptroller general.* In accordance with the requirements of FAR 52.215–1, insert the clause therein.

13. *Alterations in contract.* Insert the clause at FAR 52.252–4 in accordance with Departmental procedures when it is desired to cover the subject matter thereof.

(d) *Signature page.* The signature page shall be in the following format.

Agreement No. ———

Signature Page

In Witness Whereof, the parties hereunto have executed this agreement as of the day and year first above written.

The United States of America

By: ———
(Contracting Officer)
Activity ———
Location ———
(Name of Contractor)
By: ———
(Title) ———

Subpart 237.74—Communication Services

237.7401 Definitions.

"Appropriate Governmental Regulatory Body" means the Federal Communications Commission, any state-wide regulatory body, or any body with less than state-wide jurisdiction when operating pursuant to state authority. Regulatory bodies whose decisions are not subject to judicial appeal and regulatory bodies which regulate a company owned by the same entity which creates the regulatory body are not "appropriate governmental regulatory bodies" for the purposes of this subpart.

"Common Carriers" means any person, partnership, association, joint-stock company, trust governmental body, or corporation engaged in the business of providing communications services to the general public, normally authorized or franchised by the Federal Communications Commission (FCC) or other appropriate governmental body.

"Communications Services" means those services provided by all types of systems and facilities connected therewith that employ electric or electromagnetic signals to transmit information between two or more points by means of radio, wire, cable, satellite, and other media. Included are telephone, telegraph, teletypewriter, remote writing, remote display, data transmission, facsimile and television transmission services, as well as terminal devices, switches, private branch exchanges, transmission facilities and other components of the systems that supply these services. Also included are all local, post, camp, station or long distance services, as well as all fixed or mobile facilites that are interconnected to systems providing these types of services.

"Foreign Carrier" means any person, partnership, association, joint-stock company, trust, governmental body, or corporation not subject to regulation by an appropriate United States governmental regulatory body and not doing business as a citizen of the United States, which provides communications services outside the territorial limits of the United States.

"Noncommon Carrier" means any entity other than a common carrier which offers communications facilities, services or equipment for lease.

237.7402 Applicability.

This subpart applies to acquisition of communications services from communications common carriers regulated by the Federal Communications Commission or an appropriate governmental regulatory body. In addition, except as otherwise specifically provided, this subpart provides guidelines for the acquisition of all other communications services (e.g., from nonregulated common carriers, noncommon carriers and foreign carriers) but is not mandatory for use in such acquisitions.

237.7403 Policy.

In accordance with instructions contained in Department of Defense directives and implementing departmental regulations concerning the operation of commercial and industrial type activities, and specifically with those concerning the sources for communications services, the Department of Defense generally procures communications services of a kind offered by common carriers, including equipment and facilities incidental to those services, from common carriers in accordance with tariff provisions, and at tariff rates established with the Federal Communications Commission (FCC) or with other appropriate governmental regulatory bodies unless cost or operational requirements dictate otherwise.

237.7404 Regulatory bodies.

(a) The Federal Communications Commission (FCC) and other appropriate governmental regulatory bodies generally publish rules and regulations governing the operations of common carriers and prescribe accounting principles to be employed in the establishment of rates. Notwithstanding other provisions of this Supplement, the regulations, practices, and decisions of the FCC and other appropriate governmental regulatory bodies concerning rates, cost principles, and accounting practices shall be recognized in the procurement of communications services from common carriers. With respect to those issues concerning common carrier services (1) on which the appropriate governmental regulatory body has not expressed itself, (2) over which the appropriate governmental regulatory body has declined jurisdiction, or (3) as to which there is no appropriate governmental regulatory body to make a decision, specific provisions should be made in the contract for adoption of FCC-

approved practices or the generally accepted practices of the industry.

(b) Since the Department of Defense frequently requires unusual or special communications services advancing the "state of the art," Defense Department activities frequently move into areas which the cognizant governmental regulatory bodies have not explored. In such situations, the Defense Department frequently is the sole or primary user of many of a given common carrier's offerings. In addition, because of the large volume or normal services which the Defense Department requires, the day-to-day decisions of governmental regulatory bodies may have a vast dollar impact upon it. It is not Defense Department policy to duplicate the efforts of appropriate governmental regulatory bodies or to act as a second regulatory body. On the other hand, the Defense Department's self interest requires that it act as an informed and intelligent consumer, seeing to it that its side of the case is presented to the cognizant bodies and working with the common carriers to ensure that in those areas in which the FCC cannot or will not rule, sound regulatory practices are followed. Every effort should be made to avoid the time and expense of litigation by full and fair disclosure of both the carrier's and the Government's position in advance. Nevertheless, in the event actions short of litigation are not productive or just, reasonable or otherwise lawful rates, or when there is a refusal to provide required services or file appropriate tariffs, legal actions should be initiated and vigorously pursued. All contacts with the regulatory bodies should be through cognizant counsel in accordance with established Departmental and Defense Communications Agency procedures.

(c) Upon receipt of tariff information received in accordance with 252.237–7411, Tariff Information, the contracting officer shall immediately provide copies to the cognizant counsel.

237.7405 Sources for communications services.

237.7405–1 Common carriers.

(a) Communication services shall be acquired from the communication common carriers authorized by the appropriate regulatory body to operate within the service area in which the services are required.

(b) Although normally only one carrier is authorized to provide a specific type of service at any given location, there are locations at which no single communication common carrier has the exclusive right to provide the required service. When this is the case and more than one common carrier is authorized and can provide the required service, the acquisition shall be made from the source offering the lowest cost to the Government, if practicable. If this is not practicable, the contract file shall be documented as to the reasons for selection of another source (e.g., unique ability to meet service date; more timely and effective maintenance; security reasons; system integrity). In any event, special assembly items and entire communications systems shall be acquired using full and open competition unless otherwise authorized under FAR Subpart 6.3; and every effort should be made to exclude from the service contract any provisions which would require the Government to lease from the source of service any associated and related items such as circuits, circuit extensions, and terminal equipment.

237.7405–2 Noncommon carriers.

While communications services generally shall be acquired from common carriers, they may be acquired from noncommon carriers when equipment and the services function as a complete communication system or are an integral part of a communication system. Equipment and services shall be considered an integral part of a communication system if the combination of equipment and services is necessary to perform the desired services.

237.7405–3 Foreign carriers.

The acquisition of communication services within or between foreign countries and the acquisition from a foreign carrier of communication services from a foreign country to the United States present problems beyond the scope of this subpart. Frequently, foreign carriers are owned by the Government of the country in which they operate, and their methods of doing business are prescribed by the foreign Government. In many countries, an international agreement with the host country prescribes guidelines for how the Defense Department will obtain communication services. In addition, there are frequently severe problems with taxes on communications in foreign countries. In other countries, a corporate subsidiary of a carrier not indigenous to the country (often a U.S. parent) is the sole source for communication services. As a general rule in foreign countries, rates and practices should be spelled out in as much detail as possible in a contractual document. It consistently has been Defense Department policy not to pay discriminatory rates and to pay no more for communication services in a foreign country than does the military of that country. Special problems with communications procurement in foreign countries should be channeled to higher headquarters for resolution with the assistant of State Department representatives as appropriate.

237.7406 Who may acquire communication services.

(a) The general authority of the Head of a Contracting Activity contained in FAR 1.601 includes the acquisition of communication services. In addition, the Administrator, General Services Administration, has delegated to the Secretary of Defense under the terms of the Federal Property and Administrative Services Act, as amended, authority to enter into contracts for communication services extending beyond the fiscal year, but not longer than ten years under the following circumstances:

(1) The Government obtains lower rates, larger discounts, or more favorable conditions of service than those available under a contract for a definite term not extending beyond the current fiscal year; or

(2) Nonrecurring or termination charges payable under contracts for a definite term not extending beyond the current fiscal year are eliminated or reduced; or

(3) The carrier refuses to render the desired service except under contract for a definite term extending beyond the current fiscal year.

(b) The Secretary of Defense has delegated the authority to him by the Administrator, GSA, to the Secretaries of the Military Departments and the Director, Defense Communications Agency, who have in turn delegated it to the following (with power of redelegation):

(1) For the Department of the Army: The Commanding General, United States Army Information Systems Command.

(2) For the Department of the Navy: The Commander, Naval Facilities Engineering Command;

(3) For the Department of the Air Force: The Deputy Chief of Staff, Research Development and Acquisition; and the Director of Contracting and Manufacturing Policy, DCS/RD&A, HQ USAF;

(4) For the Defense Communications Agency: The Chief, Defense Commercial Communications Office;

(5) For the Defense Logistics Agency: for the leasing of local telecommunications facilities and services, Commanders of DLA centers, depots, and DCAS regions; and

(6) For the Defense Nuclear Agency: for contracts not in excess of $1,000,000, The Commander, Field Command, DNA.

(c) The ten-year limitation of (a) above does not apply to "general contracts" (see 237.7408) but to obligating the Government for a longer period than ten years by orders placed under the general contract.

237.7407 Cost or pricing data.

(a) Rates or preliminary estimates quoted by a common carrier for tariffed services are considered to be prices set by regulation within the provisions of Pub. L. 87–653, even if the tariff will not be established until after execution of the contract. Accordingly, except as provided in (b), common carriers are not required to submit cost or pricing data prior to award of contracts for tariffed services. On the other hand, rates or preliminary estimates quoted by a common carrier for nontariffed service or by a noncommon carrier for any service are not considered to be prices set by regulation; and the provisions of Pub. L. 87–653 and FAR 15.804 shall be applied accordingly.

(b) Even when not required by Pub. L. 87–653, certified cost or pricing data shall be obtained whenever the contracting officer is unable to determine that the prices are reasonable on the basis of price analysis (see FAR 15.805–2). However, certified cost or pricing data shall not be required to support annual recurring costs below $5,000 and nonrecurring costs or basic termination liabilities below $10,000. Situations in which cost or pricing data may be found necessary within the above policy are:

(1) A tariff, whether filed or contemplated to be filed is for new services installed or developed primarily for Government use (and the data shall cover special construction charges in connection therewith);

(2) A tariff, whether filed or contemplated to be filed, in which specific rates and charges are not included;

(3) More than one commercial source (one or more of which is a noncommon carrier) can offer the desired service but price competition is not considered adequate;

(4) To support the reasonableness of special assembly rates and charges;

(5) To support the reasonableness of special construction and equipment charges;

(6) To support the reasonableness of those contingent liabilities which are fixed at the outset of the service; or

(7) To support proposed cancellation and termination charges (pursuant to the clause entitled "Cancellation or Termination of Orders") and reuse arrangements (pursuant to the clause entitled "Reuse Arrangements").

(c) Cost or pricing data need not be obtained for each order in the case of services obtained by delivery order under a general call type contract which is negotiated for use by Government ordering activities and includes detailed and approved price schedules as a part of the general contract.

(d) As to the form and detail of cost or pricing data, the following will apply:

(1) For data submitted by common carriers, the data may be in the same form and detail normally submitted to the governmental regulatory body having jurisdiction over the carrier in question; provided, this form and detail is sufficient for the Government to make an adequate evaluation.

(2) For data submitted by other than common carrier, the data should be that required by FAR 15.8.

(e) In the case of noncommon carriers or common carriers quoting for services not to be furnished pursuant to tariff, the contracting activity shall require that the cost or pricing data be accompanied with a certificate as required in FAR 15.804–4. In the case of a common carrier furnishing service pursuant to a tariff filed or to be filed, the contracting activity shall require that data submitted pursuant to (b) above be accompanied with a certificate that to the best of the company's knowledge the data are accurate, complete, and a statement that either;

(1) The rates for services in question are based on these data which will be used or are currently being used to justify the tariff for such service; or

(2) The rates for services in question are not based on these data but are based upon filed tariffs.

The contracting activity shall inform carriers required to furnish cost or pricing data under this subparagraph (e) that the data and certifications will be used by the Government, if appropriate, in any subsequent proceedings relative to this tariffed service.

(f) If any noncommon carrier or any common carrier providing a service not to be furnished pursuant to tariff refuses to furnish cost or pricing data required under this paragraph, applications for waiver shall be processed in accordance with FAR 15.804.

237.7408 Type of contract.

237.7408–1 General.

Generally, the procurement of communication services is facilitated by a contractual arrangement which (a) permits the activities served to order services directly from time to time as specific requirements are developed; and/or (b) provides a written instrument of understanding between the Department of Defense or a contracting activity and the contractor which sets forth the basis under which future procurements will be entered into as required during the term of the agreement.

237.7408–2 General agreements.

General agreements, referred to as "general contracts" within the communication industry, are widely used to facilitate awards for communication services. Such an instrument is not a contract, but rather represents a written instrument of understanding executed between a procurement activity and a communications contractor which sets forth the negotiated contract clauses and other matters which shall be applicable to future procurements entered into between the parties during the term of agreement. The general agreement together with the order issued thereunder (see 237.7408–3) represents the contract. General agreements shall not be used in any manner to restrict available competition. All general agreements will be executed in the name of the United States Government.

237.7408–3 Communication Service Authorization (CSA).

DD Form 428, Communication Service Authorization (CSA), or an electronic data processing substitute (when the volume of transactions necessitates preparation of orders by other than manual process, a format suitable for an electronic data processing system may be used in lieu of DD Form 428, provided that all essential elements of the DD Form 428 are incorporated) shall be used to order services under the general contract and to modify, cancel, or terminate services when a CSA has been used to establish the service. As a general rule, prices should be established prior to authorizing the contractor to begin work. However, when the contractor is allowed to begin work prior to pricing in accordance with this paragraph, an estimated price or ceiling shall be included; and the contractor and the contracting officer shall proceed with definitive pricing as soon as practicable. In addition, a CSA may be issued which includes a ceiling or a series of ceilings for the stated services. Normally, this type of CSA is called a "maximum limit authorization" in the communications industry. This maximum limit authorization also may provide, in addition to the established ceilings, limited authority to designated individuals to effect modifications in service within the dollar ceilings by the use of work orders designated for this purpose. Each CSA issued under a general agreement shall be subject to such reviews, approvals and determinations and findings specified in this Supplement as would be applicable if the CSA were a contract entered into apart from the general contract.

237.7408–4 Federal Supply Schedule contracts.

General Services Administration Federal Supply Schedule contracts covering communication services, including equipment and facilities incidental to the services, are optional for use by the Department of Defense and may be used in accordance with FAR 8.404 when it is not more advantageous to negotiate a separate contract. The DD Form 428 may be used as a delivery order.

237.7409 Funding of Communication Service Authorizations (CSA) under general contracts.

(a) Funding is a comptroller responsibility and shall be handled in accordance with appropriate Department of Defense comptroller related directives and departmental implementations thereof. The guidelines in (b) through (e) below are provided for the contracting officer's information.

(b) In acquisitions of communication services, unlike other types of acquisitions, obligations are usually recorded when the service starts or if and when a cancellation or termination is ordered. Thus funds are not obligated by the "general contract," but are ordinarily obligated by CSAs issued under the "general contracts" (see 252.237–7408, Ordering of Facilities and Services—Common Carriers).

(c) Each individual CSA establishes a basis for the obligation of funds to cover recurring charges for services to be provided during the fiscal year in which the CSA is issued, together with such onetime charges as are applicable to those services.

(d) The same CSA continues to be the basis for the obligation of funds when the same services are required to be continued into subsequent fiscal years. However, obligation of funds for recurring charges for such subsequent fiscal years must be subject to the availability of appropriations therefor; and in the event funds are not appropriated, a cancellation or termination CSA must be issued.

(e) The contracting officer, through his comptroller, must insure that funds are available at the time service is provided or at the time a cancellation or termination CSA is issued. FAR 32.702–2 does not apply to the issuance of CSAs.

237.7410 Special construction.

237.7410–1 General.

(a) Special Construction, as defined by tariffs, normally involves the furnishing of some special service or facility by a common carrier incident to the performance of the basic service. Under a given tariff, this may include (1) moving or relocating specified equipment, (2) providing temporary facilities, (3) expediting provision of facilities, or (4) providing channel facilities which must be specially constructed to meet the requirements of the Government. The procurement of "special construction," as that term is used in the communication industry, shall be governed by the provisions of this part and shall not ordinarily be subject to the provisions of FAR Part 36.

(b) Special construction costs may take the following forms:

(1) Contingent liability for utilizing the services for a shorter period of time than the specified minimum to reimburse the contractor for his unamortized nonrecoverable costs and usually expressed in terms of a termination liability, as provided in the contract or by tariff;

(2) A one-time special construction charge;

(3) Recurring charges for constructed facilities;

(4) A minimum service charge;

(5) An expediting charge; or

(6) A move or relocation change.

(c) When a common carrier submits a proposal or quotation of charges which indicates that special construction will be necessary, he shall be required to submit a detailed special construction proposal as well. All special construction proposals shall be analyzed to (1) determine the adequacy of the proposed construction; (2) disclose excessive or duplicative construction; and (3) when different forms of charge are possible, insure that the form most advantageous to the Government is provided for.

(d) When possible, special construction charges should be analyzed and approved prior to provision of the service. If, because of operational requirements, prior approval is not possible and a contractor is authorized to proceed, a ceiling cost for the special construction shall be imposed. Special construction charges must be approved and authorized prior to total payment thereof.

(e) Special construction provisions shall be administered by the contracting officer issuing the CSA. This involves administration of the cost and payment provisions, recording the unamortized termination liabilities (if any), and monitoring minimum service charges (MSC) reuse of MSC facilities—all in coordination with the requiring Department, office or agency and with the Defense Contract Audit Agency, as appropriate.

237.7410–2 Applicability of construction labor standards to CSAs for special construction.

(a) The construction labor standards in FAR 22.4 ordinarily do not apply to "special construction." However, if the special construction includes construction (as defined in FAR 36.102) of a public building or public work, the construction labor standards may be applicable. Applicability must be determined under FAR 22.402.

(b) Individual CSAs which are subject to construction labor standards under FAR 22.402 shall specifically recite that fact.

237.7411 Special assembly.

(a) Special assembly is the designing, manufacturing, arranging, assembling or wiring of an item or items of equipment to provide service that cannot be provided with equipment normally employed for general use.

(b) Special assembly rates and charges shall be based on estimated costs and shall be negotiated prior to commencement of service whenever possible. When it is not possible to negotiate in advance, the initial rates and charges shall be preliminary and tentative only and shall be subject to adjustment to the extent appropriate at the time that final rates and charges are negotiated.

237.7412 Cancellation and termination.

(a) (1) Cancellation is the discontinuance of a requirement subsequent to the placing of an order, but prior to initiation of service.

(2) Termination is the discontinuation of a service for the convenience of the Government after the service has been initiated.

(b) Cancellation or termination charges shall be determined in accordance with the provisions of the applicable tariff or contract.

(c) At the conclusion of a cancellation or termination settlement negotiation, the contracting officer shall document the contract file as to the principal elements involved in the settlement and in a manner which will enable reviewing authorities to understand the appropriateness of the proposed settlement.

(d) Pursuant to the Cancellation or Termination of Orders clause, partial payments on cancellation or termination claims may be made prior to settlement under the applicable policy and procedures of FAR 49.112–1.

237.7413 Contract clauses.

(a) The contracting officer shall insert the following clauses, modified if necessary to meet the specific requirements of an appropriate governmental regulatory agency or when the basic intent is not changed, in solicitations and contracts when a contract for communications services with a common or a noncommon carrier is contemplated.

(1) The clause at 252.237–7400, Definitions (Communications);

(2) [Reserved]

(3) The clause at 252.237–7402, Access;

(4) The clause at 252.237–7403, Amendment of Contract; and

(5) The clause at 252.237–7404, Obligation of the Government.

(b) The contracting officer shall insert the following clauses, modified if necessary to meet the specific requirements of an appropriate governmental regulatory agency or when the basic intent is not changed, in solicitations and contracts when a contract for communications services with a common carrier is contemplated.

(1) [Reserved]

(2) The clause at 252.237–7406, Continuation of Orders;

(3) The clause at 252.237–7407, Facilities and Services to be Furnished—Common Carriers;

(4) The clause at 252.237–7408, Ordering of Facilities and Services—Common Carriers;

(5) The clause at 252.237–7409, Rates, Charges, and Services-Common Carriers;

(6) The clause at 252.237–7410, Payment—Common Carriers;

(7) The clause at 252.237–7411, Tariff Information;

(8) The clause at 252.237–7412, Cancellation or Termination of Orders—Common Carriers;

(9) The clause at 252.237–7413, Reuse Arrangements;

(10) The clause at 252.237–7414, Submission of Cost or Pricing Data—Common Carriers;

(11) The clause at 252.237–7415, Audit and Records—Common Carriers; and

(12) The clause at 252.237–7416, Term and Termination of Contract—Common Carriers.

(c) The contracting officer shall insert the following clauses, modified if necessary to meet the specific requirements of an appropriate governmental regulatory agency or when the basic intent is not changed, in solicitations and contracts when a contract with a common or a noncommon carrier is contemplated and when special construction charges are expected:

(1) The clause at 252.237–7417, Special Construction and Equipment Charges; and

(2) The clause at 252.237–7418, Title to Communication Facilities and Equipment.

Subpart 237.75—Services of Students at Research and Development Laboratories

237.7500 Scope.

This subpart prescribes procedures for the acquisition by contract under the authority of 10 U.S.C. 2360, of the temporary or intermittent services of students at institutions of higher learning for the purpose of providing technical support at defense research and development laboratories.

237.7501 Definitions.

For the purpose of this subpart, the following terms are defined:

"Institution of Higher Learning." An institution of higher learning means any public or private post-secondary school, junior college, college, university, or other degree granting educational institution located in the United States, its possessions, and Puerto Rico with an accredited education program approved by an appropriate accrediting body and offering a program of study at any level beyond that of high school.

"Nonprofit Organization." A nonprofit organization means any organization described by section 501(c)(3) of Title 26 of the United States Code which is exempt from taxation under section 501(a) of Title 26.

"Student." A student means an individual who is enrolled (or has been accepted for enrollment) prior to the term of the student technical support contract and remains in good standing at an institution of higher learning in a curriculum designed to lead to the granting by that institution of a recognized degree, during the term of the contract.

"Technical Support." Technical support means any scientific or engineering work in support of the mission of the DoD laboratory involved. It does not include services of an administrative or clerical nature.

237.7502 Policy.

These contracts shall not be used solely to circumvent personnel ceilings or to provide for an increase in the civilian workforce.

237.7503 General.

Pursuant to this subpart, acquisition of services of students at institutions of higher learning generally shall be acquired by contract between a nonprofit organization employing the student and the Government. When it is in the best interest of the Government to do so, however, contracts may be made directly with students.

(a) *Special considerations.* Any contract entered into pursuant to this subpart shall be considered to be a nonpersonal service contract for the purposes of FAR Part 13. Such contracts are not subject to the provisions of FAR 19.202, 19.501, 19.508(a), or FAR 13.105.

(b) *Contract authority.* Contracts under this subpart shall cite 10 U.S.C. 2304(a)(1) and 10 U.S.C. 2360 as authority for award.

237.7504 Contract clauses.

Any contract with an individual student made pursuant to this subpart shall contain the clauses at FAR 52.232–3, Payments Under Personal Services Contracts, and FAR 52.249–12, Termination (Personal Services).

PART 238—FEDERAL SUPPLY SCHEDULE CONTRACTING

No DoD FAR Supplement.

PART 239—MANAGEMENT, ACQUISITION, AND USE OF INFORMATION RESOURCES

See Part 270.

PART 242—CONTRACT ADMINISTRATION

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 242.1—Interagency Contract Administration and Audit Services

242.101 Policy.

(d) *Reimbursement.*

(1) Except as noted in (2) and (3) below, reimbursement for services shall be required from non-DoD organizations covered by this part at the current standard rate determined by the Assistant Secretary of Defense (Comptroller).

(2) Reimbursement is not required for quality assurance, inspection, and contract audit services under an effective reciprocal agreement which provides for such services to be rendered on a no-charge basis.

(3) Reimbursement is not required for services performed under contracts awarded by the Small Business

Administration in accordance with FAR Subpart 19.9.

(4) Request for exceptions other than those noted in (2) and (3) above shall be submitted to the ASD (Comptroller) for resolution or approval when it can be shown that such exceptions are in the best interests of the U.S. Government.

242.102 Procedures.

(S–70) *Department of National Defense Production (Canada).*

(1) Department of Defense components shall, upon direct request, provide contract administration services to the Department of National Defense Production (Canada). Performance for other Canadian Government organizations shall be in accordance with 242.102(S–71).

(2) Performance without charge of contract administration services by the Department of National Defence Production (Canada) for the U.S. Department of Defense components is provided for in 225.7105 concerning Canadian purchases.

(S–71) *Foreign Governments and International Agencies.*

(i) *Performance of Services in the United States.* Department of Defense contract administration services components shall, on receipt of requests from the DoD Central Control Point, provide contract administration services to foreign governments and international organizations who are making direct purchases from United States producers. "Direct purchase" is the purchase of defense supplies in the United States by a foreign government or contractor or international organization in which the supplies are purchased through commercial channels for use by the foreign government or international organization.

(2) *Operations of DoD Central Control Point (CCP).* Requests from foreign governments and international organizations shall be forwarded to the Defense Contract Administration Services Region (DCASR), New York, NY, which is the designated CCP. The CCP will—

(i) Determine that the request is from a friendly foreign government or from an international agency in which the United States is a participant;

(ii) Determine that the services requested are consistent with Department of Defense mutual security program policies (questions as to eligibility of foreign governments or international organizations to receive services from DoD contract administration services components will be referred to the Assistant Secretary of Defense (International Security Affairs));

(iii) Assure that the reimbursement arrangements are consistent with 242.101(d);

(iv) Determine that the requested services can be provided, and acknowledge receipt of the request;

(v) Distribute the procurement documents and related material to the cognizant contract administration services component, receive statements of costs from performing contract administration services components, bill the foreign governments or international organizations for services rendered, and distribute the remittance when received.

(S–72) *Performance of Services Outside the United States.* When services are performed by Department of Defense contract administration services personnel outside the United States, the levels of technical capability and the administrative procedures, not already prescribed in existing laws or Department of Defense policies, shall be in accordance with arrangements suitable and acceptable to the United States country teams or commanders of unified and specified commands, as appropriate.

(S–73) *Payment for Services Rendered.* Department of Defense components shall pay for services rendered at the rate established by the performing activity for such services, except where formal agreements provide for reciprocal performance without reimbursement. When services are requested from foreign governments and international organizations, DoD components should check with the Office of the Assistant Secretary of Defense (Comptroller) to determine whether any reciprocal agreements are in effect which would preclude payment for services requested.

Subpart 242.2—Assignment of Contract Administration

242.203 Retention of contract administration.

(a) When any field contract administration service is required, the contract will be assigned for administration regardless of dollar value.

(2) The purchasing office may retain responsibility for administration of contracts listed below:

(i) Contracts of or in support of the National Security Agency;

(ii) Contracts for coal or bulk petroleum;

(iii) Research and development contracts;

(iv) Grants;

(v) Contracts for flight training;

(vi) Contracts for headstones and gravemarkers;

(vii) Contracts for industry technical representatives;

(viii) Contracts for consultant support services;

(ix) Geodetic mapping, air charting, and information center contracts;

(x) Base, post, camp, and station purchases;

(xi) Contracts for operation or maintenance of, or installation of equipment at radar or communications network sites, e.g., SAGE, BMEWS, JCSAN, WHITE ALICE, etc.;

(xii) Communications service contracts;

(xiii) contracts for installation, operation and maintenance of spacetrack sensors and relays;

(xiv) Dependents Medicare Program contracts;

(xv) Stevedoring contracts;

(xvi) Contracts for construction and maintenance of military and civil public works, including harbors, docks, port facilities, military housing, development of recreational facilities, water resources, flood control, and public utilities;

(xvii) Architect-engineer (A–E) contracts;

(xviii) Contracts for airlift and sealift—Military Airlift Command and Military Sealift Command may perform contract administration services at contractor locations involved solely in performance of airlift or sealift contracts;

(xix) Contracts for subsistence supplies;

(xx) Ballistic missile site contracts—supporting administration of these contracts may be performed at missile activation sites during the installation, test, and checkout of the missiles and associated equipment; and

(xxi) Contracts for operation and maintenance of, or installation of equipment at, military test ranges, facilities, and installations.

(b) To avoid duplication of field contract administration capability, except for the performance of (xviii) and (xx) above, contract administration personnel from the purchasing office shall not be located at contractors' facilities. If field assistance from a DoD contract administration services component is needed in the administration of these contracts, such assistance will be requested by assignment of supporting contract administration to the contract administration offices listed in DoD Directory 4105.59–H as cognizant of the contractor's facility (facilities) at which the supporting contract administration function(s) is required. Specific instructions as to the assistance needed

will be furnished. If field assistance is needed in the performance of the major portion of applicable contract administration functions, the contract will be reassigned to the cognizant contract administration office.

242.204 Supporting contract administration.

(a) Generally, the office for performing supporting functions shall be selected from the list in DoD Directory 4105.59–H. However, in special circumstances (for example, when contractor's work site is a military base), a component of a military command not listed in DoD Directory 4105.59–H may be selected to perform supporting contract administration when prior coordination between the offices concerned has indicated that such an arrangement is feasible and that adequate resources are available, but see 242.270. Where supporting contract administration is required on a contractor purchase order or subcontract which includes FMS requirements, the requesting CAO shall clearly indicate "FMS Requirement" on the face of the document and provide the FMS case identifier code, associated item quantity, and related DoD prime contract number and contract line/subline item number. When more than one FMS case is involved, the information shall be provided for each.

242.205 Designation of the paying office.

(a) *Defense Contract Administration Services disbursing office.* Contracts assigned to an office of Defense Contract Administration Services for administration shall also specify disbursement by the cognizant Defense Contract Administration Services Regional Office if funded with DoD funds (i.e., Department codes 17 (Navy), 21 (Army), 57 (Air Force), 97 (OSD, including Defense Agencies), and 43 (Civil Defense)). For any other department or agency funds, the payment office serving that department or agency must be cited for the portion of the contract covered by non-DoD funds, even though the contract is otherwise wholly administered by the DCASR.

(b) *Other disbursing office(s).* Any contract not assigned to a Defense Contract Administration Services Office for administration shall designate a disbursing office in accordance with Departmental or Agency regulations. Such contract, if issued for requirements of more than one Department or Agency, may provide for payment by more than one disbursing office.

(c) *Disbursement for Air Force missile propellant contracts.* The Department of the Air Force shall retain the disbursement function on all contracts for Air Force missile propellants.

242.270 Contracts requiring performance of contract administration services (CAS) on military installations.

(a) Contract administration functions on a military installation are normally performed by the installation commander who is responsible for its continued operation as a military base. Where work on the military installation is unrelated to the base mission and requires skills and resources which exceed the installation commander's capability, DCAS shall, upon request by the relevant service, provide the required contract administration functions. When a contractor's normal place of industrial operation is located on a military base because of the availability of real estate or the existence of an industrial facility on that base, DCAS shall have cognizance of that facility, unless cognizance has otherwise been assigned to a Military Department in accordance with DoDI 4105.59.

(b) The Military Departments shall coordinate their Departmental contract administration efforts so as to avoid mixed contract administration arrangements which result when more than one CAS activity performs CAS at the same military installation.

(c) DCAS shall provide preaward survey assistance for post, camp, and station work performed on military installations. The purchasing office and the DCAS preaward survey monitor shall jointly determine the scope of the survey and individual responsibilities.

(d) All requests from the Military Departments for Defense Logistics Agency/Defense Contract Administration Services support under (a) above should be coordinated to ensure availability of the capability and resources for performing requested functions.

Subpart 242.3—Contract Administration Office Functions

242.302 Contract administration functions.

(a)(11) (ii) & (iii) For those contractors with which the TriService Contracting Officer negotiates advance agreements pursuant to FAR 42.10, he shall have full authority for determinations related to CAS 420.

(a)(39) For contracts containing ammunition and explosive requirements, see 223.70.

(S–70) Perform industrial readiness and mobilization production planning field surveys and schedule negotiations.

(S–71) Perform post award surveillance of contractor progress toward demonstration of Cost/Schedule Control Systems to meet the Cost/Schedule Control Systems Criteria, provide assistance in the review and acceptance of contractors' Cost/Schedule Control Systems, and perform post acceptance surveillance to ensure continuing operation of contractors' accepted systems. (See 234.005–70.)

(S–72) Monitor the contractor's costs as prescribed under Subpart 42.70.

(S–73) In connection with classified contracts, administer those portions of the Industrial Security Program designated as ACO responsibilities in the ISR and ISM. (See Appendix C, Industrial Security Regulation, DoD 5220.22–R, for partial listing of primary responsibilities (also see FAR 4.401).)

(S–74) In connection with the provisions of paragraph (b) of the clause at FAR 52.225–10, Duty-Free Entry, and paragraph (c) of the clause at 252.225–7008, Duty-Free Entry—Qualifying Country End Products and Supplies, negotiate and issue appropriate contract modifications reducing contract prices.

Subpart 242.4—Correspondence and Visits

242.402 Visits to contractors' facilities.

(a) If access to classified information will be involved, the contractor must be given advance notice, in writing, as required by the Industrial Security Regulation (DoD 5220.22–R).

Subpart 242.5—Postaward Orientation

242.501 General.

The need for a postaward orientation conference normally will be established as a result of substantive review and analysis of the contract by the Contract Administration Office. However, the contracting officer or technical representative of the purchasing office may initiate the request for a conference. A conference of Government personnel normally shall be held prior to notifying and conferring with the contractor to assure that the Government position on all matters is established.

242.503–1 Postaward conference arrangements.

(a)(2) The agenda of the postaward conference may include such matters as are indicated on DD Form 1484.

242.503–2 Postaward conference procedure.

The chairperson shall use the DD Form 1484 in conducting the conference to assure that all significant matters are covered.

242.503–3 Postaward conference report.

The chairperson may use the DD Form 1484 as the summary report where appropriate.

Subpart 242.6—Corporate Administrative Contracting Officer

242.602 Assignment and location.

(a) If a particular corporate complex does not meet the criteria for the establishment of a CACO, but a Department believes a CACO assignment is required, such determination requires approval of the Secretary or his designee.

When a corporate entity has divisions under the contract administration cognizance of more than one Department, CACO assignments shall be determined by the Department concerned. When agreement cannot be reached, the matter shall be referred to the DUSD(AM), Office of Under Secretary of Defense, Research and Engineering, for resolution.

242.603 Responsibilities.

The CACO shall be responsible for the negotiation of advance agreements for independent research and development costs and bid and proposal costs except when this responsibility is assigned in the master list published annually in a Defense Acquisition Circular for Tri-Service Department negotiation. Departmental Tri–Service contracting activities may delegate such negotiations to established CACOs.

Subpart 242.7—Indirect Cost Rates

242.705 Final indirect cost rates.

242.705–1 Contracting officer determination procedure.

(a)(1) When a multi-divisional contractor has a CACO, the decision as to whether final overhead rate negotiations will be on a coordinated or centralized basis will be made jointly by the CACO and the individual ACO's based upon the degree of centralization within the contractor complex and the requirements of the parties concerned. When negotiations are conducted on a coordinated basis, individual ACO's are responsible for coordinating with the CACO to assure consistency of cost determinations.

(b)(1) In addition to submitting a final indirect cost proposal to the contracting officer, the contractor shall also submit a copy of the proposal to the cognizant auditor.

(b)(3) Particularly when there is a significant difference of opinion between the Government and contractor concerning the allowability or reasonableness of indirect costs or the acceptability of the bases used in developing the overhead rates, representatives of the audit activity, the technical activity, and the contracting officer will discuss the areas of disagreement prior to the negotiation conference with the contractor. Special attention should be directed to those issues which impact prospective and subsequent final overhead rate determinations. Such issues should be resolved in order to preclude repetitive consideration of the same items.

(b)(5)(i) The Contracting Officer shall:

(A) Not resolve any questioned costs until he has obtained—

(*1*) Adequate documentation with respect to such costs; and

(*2*) The opinion of the defense contract auditor on the allowability of such costs;

(B) Ensure that the defense contract auditor, to the maximum extent practicable, is present at any negotiation or meeting with the contractor regarding a determination of final indirect cost rates of the contractor;

(C) Ensure that all categories of costs designated in the report of the defense contract auditor as questioned with respect to a proposal for settlement be resolved in such a manner that the amount of the individual questioned costs that are considered allowable will be reflected in the negotiation memorandum; and

(D) Notify the contractor which individual costs were considered unallowable and the respective amounts of the disallowance.

242.705–2 Auditor determination procedure.

(b)(2)(iii) The agreement shall be signed by the contractor and the auditor-in-charge.

(b)(2)(v) If, under the auditor determination procedure, agreement with the contractor cannot be reached, the auditor, in addition to submitting an advisory audit report to the contracting officer pursuant to FAR 42.705–2(b)(iv), will issue DCAA Form 1 detailing the items of exception to which the contractor can submit a request in writing to the cognizant ACO to reconsider the auditor's determination.

242.705–3 Educational institutions.

(a)(3) In addition to following the procedure in FAR when negotiating postdetermined final indirect cost rates, the contracting officer shall also follow the guidance in 242.705–1(b).

242.706 Distribution of documents.

(a) One executed copy of the overhead rate agreement will be furnished to the contractor, the cognizant CACO (if assigned), the cognizant ACO, and the cognizant auditor. In addition, copies will be distributed to other Departments, and (upon specific request) any other interested Government agencies. Departments may make further distribution to activities within their departments and shall insert one copy in each contractor general file (see S–101.2 and S2–102.4).

(b)(1) One copy of the overhead negotiation memorandum, if prepared under contracting officer determination procedures, or the audit report, if prepared under auditor determination procedures, will be furnished to the cognizant CACO (if assigned), the cognizant ACO, and the cognizant auditor. Upon specific request, a copy will be furnished to other Departments or Government agencies.

242.770 Certification of indirect costs.

(a) *Policy.* (1) No proposal to establish billing rates or final indirect cost rates shall be accepted unless such costs have been certified by the contractor using the Certificate of Indirect Costs set forth in paragraph (d) below. The certificate must be signed on behalf of the firm by an individual of the contractor's organization at a level no lower than vice president or chief financial officer of the business segment of the contractor that submits the proposal.

(2) No billing rate or final indirect cost rate shall be agreed to by the contracting officer or auditor based on a proposal from the contractor that has not been certified. Where it is necessary to establish billing or final indirect cost rates in order to comply with the terms of a contract and the contractor has not submitted a certified proposal for establishing such rates in accordance with the requirements of this section, the Government shall unilaterally establish such rates. Such rates may be based upon audited historical data or such other data that has been furnished to the contracting officer or auditor and for which it can be demonstrated that all unallowable costs have been excluded. When billing or final indirect cost rates are unilaterally established by the Government because of failure of the contractor to submit a certified proposal for establishing such rates in accordance with this section, the rates established will be set at a level low enough to ensure that potentially unallowable costs will not be reimbursed.

(b) It shall be the responsibility of the cognizant contracting officer or auditor to review billing rates periodically for indirect costs and all circumstances affecting the level of indirect cost rates. Generally, billing rates shall not be in effect for longer than one year. Final indirect cost rates shall be established promptly after the end of the applicable year.

(c) *Waiver.* (1) The Secretary of Defense or the Secretary of the military department concerned may, in an exceptional case, waive the requirement for certification under paragraph (a) in the case of any contract if the Secretary—

(i) Determines in such case that it would be in the interest of the United States to waive such certification; and

(ii) States in writing the reasons for that determination and makes such determination available to the public.

(2) Examples of situations where it may be appropriate to waive the requirement for certification of indirect costs include, but are not limited to contracts with:

(i) Foreign governments or international governmental organizations, such as subsidiary bodies of NATO;

(ii) State and local governments that are subject to OMB Circular A–87;

(iii) Educational institutions subject to OMB Circular A–21; or

(iv) nonprofit organizations subject to OMB Circular A–122.

(d) *Certificate.* The certificate required by this section shall be in the following form:

Certificate of Indirect Costs

This is to certify that to the best of my knowledge and belief:

1. I have reviewed the indirect cost proposal submitted herewith;

2. All costs included in this proposal (identify, date) to establish billing or final indirect costs rates for (identify period covered by rate) are allowable in accordance with the requirements of contracts to which they apply and with the cost principles of the Department of Defense applicable to those contracts;

3. This proposal does not include any costs which are unallowable under applicable cost principles of the Department of Defense, such as (without limitation): advertising and public relations costs, contributions and donations, entertainment costs, fines and penalties, lobbying costs, defense of fraud proceedings, and good will; and

4. All costs, included in this proposal are properly allocable to Defense contracts on the basis of a beneficial or causal relationship between the expenses incurred and the contracts to which they are allocated in accordance with applicable acquisition regulations.

I declare under penalty of perjury that the foregoing is true and correct.

Firm: _____

Signature: _____

Name of Corporate Official: _____

Title: _____

Date of Execution: _____

242.770–1 Clause.

The contracting officer shall insert the clause at 252.242–7003, "Certification of Indirect Costs" in all solicitations and contracts which provide for (a) interim reimbursement of indirect costs, (b) establishment of final indirect costs rates, or (c) contract financing that includes interim payment of indirect cost (e.g., progress payments based on cost and payments based on percentage or state of physical completion such as shipbuilding).

Subpart 242.8—Disallowance of Costs

242.801 Notice of intent to disallow costs.

(e) A Corporate Administrative Contracting Officer (CACO) need not obtain the approval of local cognizant ACOs for items of corporate expense.

242.803 Disallowing costs after incurrence.

(a) *Contracting officer receipt of vouchers.* This procedure is applicable only for Cost-Reimbursement Type Contracts involving Canadian Contractors (see 225.7104(c)).

(1) On contracts with the Canadian Commercial Corporation (CCC), CCC will certify and forward the invoice with Standard Form 1034 (Public Voucher) to the ACO for further processing and transmittal to the disbursing officer.

(2) On contracts placed directly with Canadian firms, invoices, as provisionally approved by the ASB/DSS auditor and accompanied by Standard Form 1034 (Public Voucher), are forwarded to the ACO for further processing and transmittal to the disbursing officer. In the event that costs claimed are suspended or disapproved, the ACO shall issue the DCAA Form 1, "Notice of Contract Costs Suspended and/or Disapproved" to the contractor. DCAA Form 1 will be processed in the same manner as indicated in FAR 42.803(b)(3) with regard to contractor appeals.

(b) *Auditor receipt of vouchers.*

(1) and (2) The contract auditor is the authorized representative of the contracting officer for these functions, except that vouchers are approved for provisional payment and transmitted to the cognizant disbursing officer (but see 242.803(a) for certain Canadian contracts). DCAA Form 1, "Notice of Contract Costs Suspended and/or Disapproved", shall be used for this purpose. In addition, the contracting officer may direct the issuance of DCAA Form 1 with respect to any cost that he has reason to believe should be suspended or disapproved. The contract auditor will approve fee portions of voucher for provisional payment in accordance with the contract schedule and any instructions received from the administrative contracting officer. Completion vouchers shall be forwarded to the ACO for approval and transmittal to the cognizant disbursing officer.

Subpart 242.1—Negotiating Advance Agreements for Independent Research and Development/Bid and Proposal Costs

242.1005 Lead negotiating agency responsibilities.

(b) The technical evaluation, performed or arranged for by the lead negotiating agency, shall include an opinion as to the potential relationship of the proposed IR&D program to relevancy requirements established under 231.205–18.

(c) The contractor shall be provided a contracting officer's determination concerning the potential relationship of proposed IR&D/B&P projects to the relevancy requirements established under 231.205–18.

242.1006 Conducting negotiations.

(a) In negotiating ceilings, the contracting officer shall pay attention to the determination of the potential relationship of the company's IR&D/B&P to a military function or operation.

242.1007 Content of advance agreements.

Advance agreements negotiated in accordance with this subpart shall include, where appropriate:

(S–70) A statement that a relevancy review has been performed and a determination made that the Government's allocable share of the negotiated ceiling(s) passes the relevancy test at the time of negotiation.

(S–71) For those companies meeting the threshold requirements, a provision that the recovery of IR&D/B&P costs under Government contracts shall not exceed the lesser of (i) such contracts' allocable share of incurred costs up to the total ceiling or (ii) the amount of incurred costs having a potential relationship to a Government function or operation.

242.1008 Administrative appeals.

Each Department will establish an appeals hearing group consisting of an acquisition member, who shall be chairman, a technical member and a legal member. Determinations of the appeals group shall be the final and conclusive determination of the Department of Defense. Members shall be appointed as follows:

(S–70)(1) *For the Army.* The Deputy Assistant Secretary (Acquisition) will appoint the acquisition member. The Deputy Assistant Secretary (Research, Development and Systems) will appoint the technical member. The Deputy General Counsel (Logistics) will appoint the legal member.

(S–70)(2) *For the Navy.* The Principal Deputy Assistant Secretary (Shipbuilding and Logistics) will appoint the acquisition member. The Principal Deputy Assistant Secretary (Research, Engineering and Systems) will appoint the technical member. The Deputy General Counsel (Logistics) will appoint the legal member.

(S–70)(3) *For the Air Force.* The Deputy Assistant Secretary (Acquisition Management) will appoint the acquisition member. The Deputy Assistant Secretary for Systems will appoint the technical member. The Assistant General Counsel (Procurement) will appoint the legal member.

(S–70)(4) *For the Defense Logistics Agency (DLA).* The Director, DLA (or the Deputy Director, DLA) will appoint the acquisition member, the technical member, and the legal member.

Subpart 242.11—Production Surveillance and Reporting

242.1101 General.

Delinquency includes—

(a) Actual failure by the contractor, that is, his failure, regardless of reason, to meet the contract delivery or performance schedule; and

(b) Potential failure by the contractor, that is, his failure, regardless of reason, to maintain such progress in contract performance as is required to meet his contract delivery or performance schedule.

242.1104 Surveillance requirements.

(a)(S–70) *Initial contract review.*

(i) The contract administration office shall, during initial contract review, assign contracts to production surveillance or review categories as follows:

(A) Category 1 is conducted by an industrial specialist or other person qualified to assess the contractor's plan for production and evaluate progress toward the successful accomplishment of that plan. This type of effort is adaptable to contracts which have a production/performance lead time of at least several months, and which entail identifiable milestone or pacing events against which progress may be measured. Contracts assigned this category should include those contracts which are of the complexity described under FAR 42.1104(a) and have a Criticality Designator A or are with a contractor which has either a history of generally poor production performance or a poor performance history on the same or similar supplies or services as those on the current contract.

(B) Category 2 is conducted by personnel qualified to assess information provided by the contractor in terms of delivery probability. They may be assisted by industrial specialists or other technically qualified personnel who will visit the production facility when there is probability of failure by the contractor to deliver or perform according to schedule, or when contractor-furnished information is questionable, or in other occasions when the assistance of technical personnel may contribute to the avoidance or minimizing of a delinquency. This category of surveillance entails, as a minimum, a written or telephonic reminder to the contractor in advance of the required delivery or performance date(s) including inquiry as to whether he will perform on schedule or as to the cause and duration of any anticipated delay, and periodic followup and expediting of supplies or services not delivered or performed on time. This category is adaptable to contracts which warrant surveillance effort by the Government in advance of the required due date. Any contract with a Criticality Designator A not assigned to Category 1 shall be assigned to Category 2. All Criticality Designator B contracts and those Criticality Designator C contracts placed with contractors having a history of generally poor production performance shall also be assigned to this category.

(C) Category 3 is conducted by the same personnel assigned Category 2 contracts. This category of surveillance entails inquiry and expediting effort after a failure to deliver or perform within the contract schedule has occurred, and periodic followup. It may involve assistance by technical personnel.

(ii) Regardless of assigned category, if a contract is reported by DD Form 375, Production Progress Report, as delinquent or anticipated to become delinquent, the surveillance efforts will provide continuous knowledge of the status of the problems causing the delinquency and of the corrective efforts being taken.

(iii) If Category 1 is assigned to a contract, the contract administration office shall also:

(A) Review the contract in conjunction with any preaward survey (see FAR 9.1) to ascertain what contract performance difficulties may be expected.

(B) Determine the extent of postaward orientation required in the production area (see FAR 42.5).

(C) Determine any special procedures to be followed.

(b) The contract administration office shall determine, in accordance with FAR 42.1104(a), the extent of production surveillance required regardless of dollar value.

(d) After delinquency has occurred, and before the PCO has determined the action to be taken, it is particularly important that surveillance be limited to fact finding to avoid waiver of the contract delivery and performance schedules.

242.1105 Assignment of criticality designator.

(a) The assigned designator may be changed only by the purchasing office. Ordinarily, unilateral purchase orders shall be assigned Criticality Designator C.

(b) DoD contract items on which a priority 01, 02, 03, or 06 (if emergency supply of clothing) has been assigned based on DoDD 4410.6, Uniform Material Movement and Issue Priority System shall fall under Criticality Designator A.

242.1106 Reporting requirements.

(b)(1) If the contractor's report indicates that the contract schedule will be met and the contract administration office concurs, no further report by the contract administration office is required.

(2) If, on the other hand, either the contractor forecasts delivery or performance failure, or the contract administration office does not concur in the contractor's no failure report, and in either case the delay is expected to be for more than 30 days, or purchasing office action, in any case, is deemed necessary, the contract administration office shall add an endorsement and forward a copy to the purchasing office and to the inventory control manager unless otherwise specified in the contract, within 4 working days after receipt of the contractor's report. The endorsement shall include:

(i) Comments as to nonconcurrence, if applicable;

(ii) Action taken by the contractor and by the Government to overcome the anticipated or actual delinquency.

(iii) Action required—a positive recommendation to the purchasing office of the action necessary to correct the delinquency, including any realistic schedule revision which can be met by the contractor and the extent to which the contractor may have excusable cause of delay. When other actions are indicated, such as those leading to default termination, the contract administration office shall indicate specific dates by which Government action should be taken to preserve the Government's rights.

(c) *Reports initiated by contract administration offices.* Reports may be furnished by use of:

(1) DD Form 375–2, or DLA Form 1654 (Test), Delay in Delivery (Flash Notices); or

(2) DD Form 375, Production Progress Report and DD Form 375c (continuation).

242.1107 Contract clause.

(b)(1) Contract schedule provisions supporting the clause at FAR 52.242–2 shall contain but not be limited to instructions relative to:

(i) The frequency and timing (normally 5 working days after each reporting period) of reporting;

(ii) The contract line items, exhibits, or exhibit line items for which reporting is required;

(iii) Offices and mailing addresses to which reports shall be sent including the purchasing office, the contract administration office (3 copies), status control activities and inventory managers, if appropriate; special requirements as to codes and formats.

(2) When reporting an actual or potential delinquency, the contractor-prepared DD Form 375c shall, as a minimum, contain the following data:

(i) Problem—a statement of the difficulty, the reasons therefor, and whether caused by the Government or the contractor;

(ii) Items and quantities affected;

(iii) Date of commencement of the anticipated or actual delinquency;

(iv) Action taken by the contractor to overcome the anticipated or actual delinquency.

(v) Estimated recovery date based upon evaluation of the factors contributing to the delinquency; and

(vi) A realistic schedule revision which can be met by the contractor. In the absence of an actual or potential delinquency, the DD Form 375c may be used to provide any information which the contractor deems appropriate.

Subpart 242.12—Novation and Change-of-Name Agreements

242.1203 Processing agreements.

(b)(1) The list of contracts required by FAR 42.1204(c)(2) will be included with the notice. Notice shall be provided to the Departments and Defense Agencies and NASA having contracts with the contractor or contractors concerned. Notice shall include the list of contracts required by FAR 42.1204(c)(2). Each list need contain only those contracts issued by purchasing offices of the addressee. Such notice shall be transmitted to the appropriate addressee listed below. In the case of contracts awarded by Departments or agencies not listed below, the notice shall be furnished directly to the cognizant contracting or contract administration office.

Department of the Army: HQ, U.S. Army Materiel Command, Attn: DRCGC–P, 5001 Eisenhower Avenue Alexandria, VA 22333
Department of the Navy: Office of the Assistant Secretary of the Navy (S&L), Contracts and Business Management (CM–N), Washington, DC 20360
Department of the Air Force: HQ, U.S. Air Force Systems Command, Attn: PMP, Washington, DC 20331
Defense Logistics Agency, Attn: DLA–PPR, Cameron Station, Rm 4C160, 5010 Duke Street, Alexandria, VA 22304–6100
National Aeronautics and Space Administration, Assistant Administrator for Procurement, Attn: HR, Washington, DC 20546.

(c) Where substantial alterations or additions to the formats shown at FAR 42.1204(e) and FAR 42.1205(b) are considered appropriate by the cognizant ACO processing the proposed agreement, coordination will be made with the appropriate addressees listed above involved prior to execution. Any objection shall be resolved before the agreement is executed. If, for any reason, NASA indicates a desire to consummate a separate agreement with the contractor, the cognizant ACO shall continue to process the agreement only for the Departments and Defense agencies concerned.

(e)(S–70) In addition to the distribution prescribed in FAR 42.1203(e), two copies of the agreement will be sent to the appropriate addresses listed in (b)(1) above. When the ACO responsible for the corporate office is the cognizant ACO, one copy will be distributed to each CAO responsible for contract administration at a plant or division. The CAO will, in turn, reproduce and distribute copies for each of its affected contracts. Each purchasing office will reproduce the necessary number of copies of the administrative change and will make distribution as determined necessary by that office. Reproduction and distribution of copies for CAOs will be accomplished by the ACO who executed the administrative change.

(e)(S–71) Novation and change-of-name agreements amending contracts and basic agreements for storage and related services for personal property of military and civilian personnel shall be forwarded to the cognizant area command of the Military Traffic Management Command as set forth below for execution without regard to other provisions.

Commander, Eastern Area, Military Traffic Management Command, Attn: MTE–PPS, Bayonne, NJ 07002
Commander, Western Area, Military Traffic Management Command, Oakland Army Base, Attn: MTW–PPS, Oakland, CA 94626

(f) NASA contracts shall not be included in this list since NASA will issue its own administrative change. A total of 2 copies of the administrative change, with the list of contracts affected, shall be furnished to the appropriate addressee(s) listed in (b)(1) above. Each list need contain only those contracts issued by purchasing offices of the addressee.

Subpart 242.14—Traffic and Transportation Management

242.1402 Volume movements within the continental United States.

(a)(1)(i) On FMS shipments, the aggregate will be 200,000 pounds or more.

(a)(2)(S–70) As soon as production schedules and planned destinations have been established, the contracting officer should report this information to the transportation office serving the purchase office. The transportation office will review the contracts and report planned volume movements in accordance with Chapter 201 of the Military Traffic Management Regulation (AR 55–355, NAVSUPINST 4600.70, AFM 75–2, MCO P4600 14A, DLAR 4500.3) (MTMR).

(S–71) The purchasing office shall forward a copy of the volume movement report to the contract administration office. The transportation office serving the CAO shall submit a volume movement report when:

(A) It is determined, upon review of the contract, that no volume movement report has been submitted by the purchasing office.

(B) Movement requirements are refined or changed to such a degree that a revised volume movement report should be submitted.

(S–72) On FMS shipments the volume movement report should also include the destination country, foreign forwarder, and port of embarkation, if known.

242.1403–1 U.S. Government Bills of Lading (GBLs).

(a) See 242.1472 for procedures whereby contractors shall obtain GBLs.

242.1403–2 Contractor-prepaid commercial bills of lading.

(a)(S–70) The term commercial bill of lading (CBL) includes the use of any commercial form or procedure.

(S–71) Appendix V of the MTMR contains the list of carriers and carrier associations that have entered into agreements with MTMC to provide the required transportation under commercial forms and procedures within CONUS.

(S–70) *Contract clause.* The contracting officer shall insert the clause at 252.242–7000, Submission of Commercial Freight Bill to the General Services Administration for Audit, when transportation costs are to be reimbursed to the contractor under a cost reimbursement type contract.

242.1404–2 Contract clauses.

(a) The clause at FAR 52.242–10 will not be included in those f.o.b. origin supply or service contracts containing the Fast Payment Procedure clause, FAR 52.213–1.

(b) The clause at FAR 52.242–11 will not be included in those f.o.b. origin supply or service contracts containing the Fast Payment Procedure clause, FAR 52.213.1.

(S–70) When the clauses at FAR 52.242–10 or FAR 52.242–11 are used in DoD contracts, the contract or ordering instrument shall instruct contractors desiring to obtain GBLs under paragraph (b) of those clauses to submit DD Form 1659, Application for United States Government Bills of Lading/Domestic Route Order/Export Traffic Release.

242.1405 Discrepancies incident to shipment of supplies.

(S–70) Improper markings or consignment deficiencies may result in misdirected shipments or additional handling or stowing of shipments, or affect identification of contents which necessitates opening of containers.

(S–71) The administrative procedures required in Chapter 221 of the Military Traffic Management Regulation govern the actions to be taken with respect to discrepancies caused by carriers.

242.1470 Routing, tracing, and expediting shipments.

(a) Routing of military freight consists of determining a mode of transportation and the carrier which will effect safe and timely delivery of supplies at the lowest overall costs.

(b) Tracing is the procedures used for locating unduly delayed shipments.

(c) Expediting is the procedure used when a shipment is urgently needed at destination or when congestion is likely to occur on the lines of the carriers over which the shipment is to move.

(d) Methods for tracing or expediting shipments are outlined in Chapter 220, Military Traffic Management Regulation.

242.1471 Demurrage and detention charges.

(a) Demurrage is a fixed charge made by rail carriers on cars held by, or for, a consignor or consignee for loading, unloading, or for any other purpose. A contractor who detains cars for these reasons is required to pay the carrier's published tariff charges for demurrage. Generally, carrier demurrage rules allow a definite period called "free time" for loading or unloading cars or for any other purpose, and impose a definite per day per car charge for cars held beyond this period. The free time allowed is usually 48 hours for loading or unloading cars and 24 hours when cars are held for reconsignment, diversion, reshipment, or held in transit on orders of the shipper or consignee. Normally, the free time starts from the first 7 a.m. (excluding Saturdays, Sundays, and holidays) after placement of the car.

(b) Detention is the term used when motor carrier equipment is held by, or on behalf of, a shipper or consignee beyond a reasonable period allowed for loading, unloading, forwarding directions, or for any other purpose. Motor carrier detention rules and charges are not uniform and are published in individual carrier or agency tariffs. Detention charges are usually based on an hourly rate.

(c) Procedures involving payment or collection of demurrage or detention charges are contained in paragraph 219010 of the Military Traffic Management Regulation.

242.1472 DD Form 1659 (1 Apr 70), application for U.S. Government Bill(s) of Lading/Domestic Route Order/Export Traffic Release.

DD Form 1659 shall be prepared by the contractor for submission of advance shipping data to the cognizant contract administration office. In response, the transportation office shall furnish the required U.S. Government Bill of Lading, Domestic Route Order or Export Traffic Release when necessary, required for use in connection with the Government contract.

Subpart 242.70—Monitoring Contractors' Costs

242.7000 Scope.

This subpart sets forth guidelines for monitoring the policies, procedures, and practices used by contractors to control direct and indirect costs related to Government business. These procedures are intended to eliminate duplication in monitoring contractors' costs.

242.7001 Purpose.

To ensure the most efficient and economical performance of DoD contracts, it is essential that contract costs be managed effectively. Contractors are responsible for managing and controlling their direct and indirect costs. However, DoD components need to systematically monitor the management of such costs to assure that contractors are fulfilling their responsibilities.

242.7002 Application.

A formal program of Government monitoring of contractor policies, procedures, and practices to control costs should be conducted at:

(a) All major contractor locations where—

(1) Sales to the Government are expected to exceed $50 million during the contractor's next fiscal year on other than firm-fixed-price and fixed-price-with-escalation contracts;

(2) The Government's share of indirect costs for such sales is at least 50% of the total of such indirect costs; and

(3) A contract administration office has been established at the location.

(b) Other critical locations with significant Government business where specifically directed by the HCA.

Decisions to implement or terminate cost monitoring should be based upon sound estimates of Government business for the coming year and not upon minor interim volume fluctuations. This does not preclude action to start or stop the program during a given year where there is a significant change in volume and the anticipated new level of business is expected to remain stable for a reasonable period of time.

242.7003 Designation of a Cost Monitoring Coordinator.

A member of the contract administration office (CAO) cognizant of a contractor location shall be designated as the Cost Monitoring Coordinator (CMC) after the location has been identified as qualified under 242.7002 for application of this program. Depending upon the circumstances, the designee may be the ACO or any other

staff member whose normal function relates to evaluation of contractor performance.

242.7004 Responsibilities of the Cost Monitoring Coordinator.

(a) In performing his assigned contract administration duties, the Plant Rep/ACO acts as a high-level manager calling upon the various specialists established within DoD to review and report on those areas that fall within their respective areas of expertise. It is not intended that the Plant Rep/ACO duplicate the functional capabilities or work of such specialists. Likewise, the CMC in the contract administration organization will fully utilize the work of these specialists in monitoring contractor costs through coordination with their various organizations.

(b) The CMC shall be responsible for:

(1) Preparing and maintaining an annual consolidated written plan and schedule for reviewing contractor operations from coordinated long-range plans established by each team member including the DCAA auditor. This composite plan and schedule will assure cost monitoring responsibilities are being fully implemented and that the technical and professional expertise of various organizational units of the CAO are used without duplication of effort or skills;

(2) Coordinating the performance of the cost monitoring effort of the organizational units of the CAO;

(3) Coordinating the cost monitoring efforts of the CAO with those of the DCAA auditor;

(4) Advising the head of the CAO of situations where the contractor should correct conditions, policies, or practices which are not considered the most economical and efficient for the performance of Government contracts, and recommending corrective action, including issuance of formal written notices to the contractor advising of specific costs which may not be allowed if incurred;

(5) Coordinating CAO actions to assure that the procuring contracting officer, project manager, the head of the procuring activity, DCAA, and other responsible officials are informed of relevant matters significantly affecting the most economical and effective performance of Government contracts;

(6) Coordinating actions to assist the CAO, DCAA, and other Government personnel in obtaining access to pertinent contractor policies, procedures, and related data, and obtaining the assistance of the head of the CAO when such access is being denied or impaired;

(7) Maintaining an inventory of CAO, DCAA, and other Government reports on significant issues relating to monitoring costs;

(8) Continuously monitoring the status of recommendations made to the contractor concerning cost performance stemming from all Government reports. While contractors are responsible for managing their direct and indirect costs, the CMC monitors the contractors' effort through this task. In the event agreement is not reached on a recommendation and the cost or principle involved is sufficiently important, the CMC should prepare for the ACO's consideration, a *Notice of intent to disallow or not recognize costs;*

(9) Maintaining current organizational charts of the operations identifiable to the contractor's functional centers of his cost control systems.

(c) The plan required by [b](1) above must be tailored to the contractor, taking into account the extent of competition in awarded contracts, the contractor's operating methods, the nature of work being done, procurement cycle stage, business and industry practices, types of contracts involved, degree of technical and financial risk, ratio of Government/commercial work, and extent that performance efficiencies have been previously demonstrated. The plan should stress the importance of anticipating potential problems and provide a means of calling them to the attention of the contractor at an early stage so that preventive action can be taken. Reviews required by this supplement and the contracting officer must be included in the plan.

242.7005 DCAA auditor responsibility.

DCAA audit offices are responsible for performing all necessary contract audit for DoD and providing accounting financial advisory service regarding contracts and subcontracts to all DoD components responsible for procurement and contract administration. The auditor is responsible for submitting information and advice based on his analysis of the contractor's financial and accounting records or other related data as to the acceptability of the contractor's incurred and estimated costs, as well as for reviewing the financial and accounting aspects of the contractor's cost control systems. The auditor is also responsible for performing that part of reviews and such analysis which requires access to the contractor's financial and accounting records supporting proposed costs or pricing data. This does not preclude the Program Manager, PCO, Plant Rep/ACO, or their technical representatives from requesting any data from, or reviewing records of, the contractor (such as CSCS/C data, lists of labor operations, process sheets, etc.) necessary to the discharge of their responsibilities. The CAO will utilize the auditor's services whenever such expertise is needed, particularly regarding the contractor's financial management reports, books, and records.

242.7006 Procedure.

(a) *Selecting operations for review.* It is not possible to review all elements of a contractor's entire operation each year. Therefore, the CMC, together with the auditor, is to select for review those operations that have the greatest potential for charging Government contracts with significant amounts of unacceptable costs. To select these cost-risk areas on a sound and orderly basis, an overview must first be obtained of the contractor's entire operation. Before the beginning of each Government fiscal year, the CMC should arrange for a joint meeting between CAO, DCAA, and other directly interested Government representatives to coordinate selection of the areas to be reviewed during the coming year. The following data will be used in the selection process:

(1) The contractor's forecasts for the coming year supporting direct and indirect costs by functional centers of his cost control system and the results of the latest survey performed of such systems [DCAA responsibility];

(2) Detailed organizational charts for the contractor's entire operation [CAO responsibility];

(3) An outline of the contractor's accounting system to understand the flow of costs by function [DCAA responsibility];

(4) The determination of Government participation in the dollars attributable to the operations and cost accounts under consideration [DCAA responsibility];

(5) A complete list of recent reviews and audits performed by CAO, the DCAA, and other Government representatives that would effect the selection of areas to be reviewed in the current year. This listing should show outstanding weaknesses and deficiencies in the contractor's operations [CAO responsibility];

(6) Evidence of under and overstaffing [CAO–DCAA responsibility];

(7) Significant departures from established contractor productivity standards [CAO responsibility];

(8) Major financial variances from forecasts in prior years [DCAA responsibility];

(9) Evidences of idle or underused capacity (CAO–DCAA responsibility).

(b) *Planning for reviews.* The primary purpose of the joint meeting described above is to develop a mutually acceptable annual plan for reviewing the contractor's operation. The plan should provide coverage for each significant operational area of the contractor over a period of two to three years and should be modified to reflect any changed conditions during subsequent meetings. The schedule and resource limitations of participating organizations will be considered in preparing the annual plan. The plan will identify the organizations having the primary responsibility for performing the reviews:

(1) The CAO will review the technical aspects of contractor operations requiring minimal or no access to contractors' financial and accounting records and will sign reports on these reviews;

(2) DCAA will review the financial and accounting aspects of contractor operations requiring minimal or no technical considerations and will sign reports on these reviews;

(3) The CAO and DCAA will jointly perform reviews requiring significant CAO and DCAA expertise. Reports resulting from these reviews will be signed by the heads of the respective local organizations.

Some operations reviews such as the purchasing (CAO) and estimating system reviews (DCAA) are assigned to the responsible reviewing organization. These assignments will continue to be recognized. All others will be performed according to the above criteria. The annual plan will be formally approved by heads of the local CAO and the DCAA resident offices.

(c) *Joint review.*

(1) *Objective.* The objectives of joint CAO–DCAA reviews of contractor operations are:

(i) To optimize the utilization of DCAA–CAO personnel in performing selected operations reviews; and

(ii) To generate joint reports of the reviews that contain findings, conclusions, and recommendations mutually agreed upon by the DCAA auditor and the CAO to improve the effectiveness and economy of contractor operations.

(2) *Exit conference with contractor.* During the course of the review, there may be several informal briefings with contractor management personnel to exchange information. Every opportunity should be afforded each party, to either update the information provided or to conduct additional reviews to preclude misconceptions that could develop as a result of obtaining incomplete or inaccurate data. An exit conference with contractor management personnel provides the opportunity to explain CAO/DCAA findings, conclusions and recommendations. On joint reviews, the ACO or his representative shall arrange the exit conference with the contractor. Both CAO and DCAA will be represented at the exit conference.

(d) *Reports.* All reports prepared separately or jointly by DCAA or CAS personnel will be forwarded through the ACO to the contractor. While these review reports are advisory to the ACO, the ACO has responsibility to assure that (i) appropriate recognition is given to the results of such reviews in any contract negotiations and (ii) the contractor implements appropriate corrective actions. In event of any dispute with the contractor, the ACO has the ultimate responsibility and authority to effect final settlement.

Subpart 242.71—Voluntary Refunds

242.7100 General.

A voluntary refund is a payment or credit, not required by any contractual or other legal obligation, made to the Government by a contractor or subcontractor either as a payment or as an adjustment under one or more contracts or subcontracts. It may be unsolicited or it may be made in response to a request by the Government. Where it is desired to solicit a voluntary refund from a subcontractor, the prime contractor should be encouraged to facilitate the making of such refund. In deciding whether to solicit a voluntary refund or to accept an unsolicited refund, the contracting officer shall ask legal counsel to review the contract or contracts and all data relevant thereto to determine whether the Government's rights would be jeopardized or impaired by the contracting officer's proposed action.

242.7101 Solicited refunds.

Voluntary refunds may be requested during or after contract performance. They shall be requested only when it is considered that the Government was overcharged under a contract or was inadequately compensated for the use of Government-owned property, or in the disposition of contractor inventory, and retention by the contractor or subcontractor of the amount in question would be contrary to good conscience and equity. Generally, retention by the contractor or subcontractor shall not be considered contrary to good conscience and equity, and thus a voluntary refund shall not be requested, unless the overcharged or inadequate compensation was due, at least in part, to the fault of the contractor or subcontractor. The decision to solicit a voluntary refund shall be made by the Secretary concerned.

242.7102 Disposition of voluntary refunds.

(a) If a refund is offered prior to final payment, it is preferable that the contract price be appropriately modified to reflect the refund. In such a case, the amount of the refund shall be credited to the applicable appropriation cited in the contract.

(b) In cases where the refund is to be made by check rather than by an adjustment in the contract price, the check shall be made payable to the office designated for contract administration and shall be forwarded immediately to the comptroller of the appropriate Department or other Departmental officer responsible for the control of funds. When forwarded, the check shall be accompanied by a letter identifying it is a voluntary refund, giving the number of the contract or contracts involved and, where possible, giving the account number of the appropriation to which the refund should be credited.

PART 243—CONTRACT MODIFICATIONS

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 243.1—General

243.104 Notification of contract changes.

(a) No unilateral change will be made in the terms and conditions of a contract except for changes identified as such in writing and signed by the contracting officer pursuant to the "Changes" clause or other clause in the contract. Government representatives shall avoid conduct (written or oral communications, actions and inactions) that could constitute an unauthorized unilateral change in the terms and conditions of a contract. When a contracting officer or other Government representative, by conduct, causes a contractor to perform changed work, such conduct may be the basis for a claim by the contractor. Examples of such Government conduct include: furnishing defective Government specifications; requiring adherence to delivery schedules when a contractor is entitled to a time extension; denying a contractor the opportunity to employ a permissible method or sequence of work; or erroneously requiring a

contractor to perform contrary to the contractor's correct interpretation of the contract requirements. Government representatives shall act promptly to resolve such situations as soon as they are made known to the Government.

(b)(1) Only the contracting officer is authorized to take the actions prescribed in paragraphs (c) and (d) of the clause at FAR 52.243–7, except when the contracting officer expressly delegates in writing any or all of such actions to the Administrative Contracting Officer (ACO).

(2) In exceptional cases, the contracting officer may designate a "specifically authorized representative" to issue directions and interpretations as provided in the clause contained in FAR 52.243–7 when the contracting officer anticipates that continuity of the contractor's performance for a particular phase or task under a contract is so important that no delay or diminution of performance is acceptable. If such a designation is made, the notice of designation shall: (i) Be in writing and furnished promptly to the contractor, the ACO, and the "specifically authorized representative," and (ii) clearly prescribe the scope and duration of authority of the "specifically authorized representative," *Provided*, however, that such designated authority in no event shall exceed the authority of the contracting officer. All directions, communications, interpretations, orders and similar conduct of a "specifically authorized representative" shall be reduced to writing as promptly as possible after their occurrence and copies thereof shall be furnished to the contractor and to the contracting officer and ACO. No notice of designation, however, shall be issued retroactively to confirm directions earlier communicated by a representative of the Government. The contracting officer shall promptly countermand any directions of "specifically authorized representative" which exceed the representative's designated authority. A sample of such a designation is:

I, John Doe, Contracting Officer, pursuant to (a) of the Notification of Changes clause in Contract N000000–83–C–0001 hereby designate Ralph Roe, quality assurance representative resident at the contractor's facility as my representative empowered to communicate directions, interpretations, determinations and orders concerning qualification test specification No. ABCD dated 6 August 1979 during the forthcoming qualification testing of the XYZ weapon system between 29 November and 4 December 1983.

243.105 Availability of funds.

(S–70) (1) It is the policy of the Department of Defense that unexpended dollar balances determined to be excess to known contractual requirements shall be released promptly. Contracting officers shall monitor contract fund status and take action to reduce the dollar balance of contracts when determined to be in excess of the amounts necessary for payment of outstanding contract requirements.

(2) To accomplish such determination, consultation with contractors and coordination between contracting offices and CAOs may be required to properly establish funding levels. A determination may be based upon, but is not limited to: (i) Contractually required funding reports; (ii) Fund status reviews; (iii) Advice from the contractor; (iv) Advice from the buying office, CAO, or DCAA; (v) Examination of vouchers or invoices; and (vi) A review of contract progress. Upon a determination of excess funds, contracting officers shall take appropriate action to assure such funds are removed from contracts as expeditiously as possible. For release of funds excess to a termination claim, see FAR 49.105–2 and 249.604.

243.170 Identification of FMS contract modifications.

If the modification adds FMS requirements, identify the modification by clearly stamping or otherwise indicating the "FMS Requirement" on the face of the modification and specify within the modification each FMS case identifier code by line/subline item number, e.g., FMS Case Identifier GY–D–DCA, for such added FMS items.

Subpart 243.2—Change Orders

243.201 General.

(a) Fair and economical processing of change orders does not occur automatically merely by issuance of an authorized change order. Procedures are necessary to:

(1) Establish the authority of the Government to request a contractor to originate a change or to evaluate a Government proposed change;

(2) Promote the policy of forward pricing of changes when feasible;

(3) Require the contractor to submit and to certify cost or pricing data in support of the contractor's equitable adjustment;

(4) Provide that contractor-originated changes of less than a specified magnitude may be made without price adjustment;

(5) Provide for recording of and accounting for segregable direct costs of changed work in support of equitable adjustment claims; and

(6) Equitably adjust the contract in a single, final and complete supplemental agreement.

243.202 Authority to issue change orders.

(S–70) *Originating engineering chonge proposals.*

(a) Engineering changes may be originated by either party to the contract. The Government needs to obtain detailed information supporting and documenting the proposed change; to evaluate the technical, cost and schedule effects of implementing the change; and to price the change in advance when possible. The clause at 252.243–7000 may be used to require a contractor to submit engineering change impact evaluation information, including the maximum equitable adjustment resulting from the change.

(b) The clause at 252.243–7000 includes a sample of an optional paragraph (c) supplementing the basic clause to discourage a large number of small-dollar, contractor-initiated engineering changes and to reduce the administrative cost of reviewing such changes.

243.204 Administration.

(S–70) *Correction or revision.* Upon receiving a copy of the change order from the contracting officer, the ACO shall review it to assure that its provisions are compatible with the status of performance. For example, if the contractor has progressed beyond the effective point specified in the change order, the ACO shall determine the earliest practical point at which the change order could be made effective and advise the contracting officer accordingly. Correction, revision or supersession of a change order shall be made by issuing another change order. The definitizing supplemental agreement shall cite both change orders.

(S–71) *Responsibility for negotiation of equitable adjustments.* Except for those change orders assigned to the ACO, the contracting officer shall be responsible for negotiating all equitable adjustments resulting from change orders, including the execution of supplemental agreements in Standard Form 30, Amendment of Solicitation/Modification of Contract. The ACO shall forward to the contracting officer the contractor's proposal, together with an analysis thereof. Except at the specific request of the contracting officer, the analysis shall not include the negotiation of any element of the contractor's proposal, although obvious mistakes may be called to the contractor's attention. Differences between the contractor's proposal and the results of the analysis made by the contract administration office shall be called to the attention of the contracting officer.

(S–72) *Use of supplemental agreements.* Supplemental agreements are used:

(1) To reflect the agreement reached in the negotiation of change orders;

(2) In preference to a change order when a supplemental agreement is considered feasible, even though authority exists to accomplish the modification by change order;

(3) To definitize letter contracts;

(4) To reflect other agreements of the parties modifying the terms of contract; and

(5) To definitize provisioned items orders.

(S–73) *Modifications to letter contracts.*

(1) Modifications to letter contracts shall be accomplished under the same policies and procedures as those applicable to definitive contracts.

(2) Bilateral modifications (supplemental agreements) issued prior to definitizing a letter contract may be processed in the same manner as the letter contract, i.e., the contracting officer may sign prior to the contractor.

243.205 Contract clauses.

(S–70) The contracting officer may insert the clause at 252.243–7000, Engineering Change Proposals, under the conditions at 243.202–70(a).

(S–71) The contracting officer shall insert the clause at 252.243–7001, Pricing of Adjustments, in solicitations and contracts when a fixed-price type contract is contemplated.

Subpart 243.3—Forms

243.301 Use of forms.

(a)(2)(ii) The SF 30 shall be used in connection with termination actions as follows:

(A) *Notice of termination for convenience of the Government.* SF 30 shall be used as the initial or confirming notice, and shall include the information outlined in FAR 49.601–2, appropriately modified as required. If the termination is partial, the line items and quantities affected by the termination shall be identified to the extent practicable. If the termination is complete, line item identification may be omitted, since the contract is considered to be physically completed upon issuance of a notice of complete termination. [See DAR Supplement 2 (S2–301.1).] The same modification number and effective date shall be assigned to the initial and confirming modification.

(B) *Notice of termination for default.* SF 30 shall include all information outlined in FAR 49.402–3(g), including the statement that the modification constitutes a decision of the contracting officer from which the contractor has the right of appeal pursuant to the Disputes clause, if the contracting officer has determined that failure to perform was not excusable. If the notice does not include the decision of the contracting officer, the decision, when made, shall be issued in letter form pursuant to FAR 49.402–3(k).

(C) *Amendment to termination notice.* Each amendment to a termination notice, including rescission of the termination, reinstatement of items or quantities previously terminated, or termination of additional items or quantities, shall be issued on SF 30.

(D) *Conversion of default termination to convenience.* If a termination for default is subsequently converted to a termination for convenience of the Government, either by a decision of the contracting officer or by a decision of ASBCA on an appeal filed by the contractor, the converted designation shall be reflected on SF 30. The effective date of the termination for default shall be indicated in the modification as the effective date of the convenience termination.

(E) *Determination of contracting officer.* SF 30 shall be used to reflect a determination of the amount due in settlement of a contract terminated for convenience:

(*a*) In cases where the contractor has lost the right of appeal for failure to submit a timely settlement proposal in accordance with the Termination clause; and

(*b*) To confirm the determination, if the contractor does not appeal the decision of the TCO.

SF 30, prepared pursuant to (*b*) above, shall indicate the same effective date as the letter determination previously issued. Item 14 of the modification may be limited to a reference to the letter determination and a statement of the net amount determined to be due in settlement of the termination. To assure sequential numbering of modifications, a Supplementary Procurement Instrument Identification Number shall not be assigned to the letter determination.

(a)(S–70) Three copies of Standard Form 30 should be sent to the contractor with instructions to return the original and one copy.

Subpart 243.70—Adjustments to Prices Under Shipbuilding Contracts

243.7001 Adjustments to prices under shipbuilding contracts.

10 U.S.C. 2405 provides that no adjustment in any price under a shipbuilding contract entered into after December 7, 1983 may be made for an amount set forth in a claim, request for equitable adjustment, or demand for payment under a contract (or incurred due to the preparation, submission, or adjudication of any such claim, request, or demand) arising out of events occurring more than 18 months before the submission of the claim, request or demand.

243.7002 Submission requirements.

A claim, request, or demand under this subpart shall be considered to have been submitted only when the contractor has provided the certification required by section 6(c)(1) of the Contract Disputes Act of 1978 (41 U.S.C. 605(c)(1)) and the supporting data for the claim, request, or demand.

PART 244—SUBCONTRACTING POLICIES AND PROCEDURES

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 244.3—Contractors' Purchasing Systems Reviews

244.301 Objective.

This subpart sets forth the DoD requirements for conducting a contractor purchasing system review (CPSR) under the direction of a purchasing system analyst (PSA). When deemed necessary, Contractor Purchasing System Review Boards may be established in accordance with Departmental procedures. If no board is to be convened, the report shall be forwarded directly to the ACO by the CPSR team captain. If it is determined that a review board is necessary, the report of the CPSR team shall be reviewed and evaluated by the board, which shall make appropriate recommendations to the ACO.

244.302 Requirements.

(b)(1) *Initial review.* An initial review is a complete, intensive, first-time analysis of a contractor's purchasing system.

(2) *Subsequent review.* A subsequent review is an analysis of a contractor's purchasing system, performed to validate the adequacy of the system.

(i) Plants in which there is a full-time resident PSA shall receive, after an initial review, continuing surveillance

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equivalent to a subsequent review on an annual basis or continuing surveillance with subsequent reviews at 3-year intervals.

(ii) Plants in which there is no resident PSA shall receive, after initial review, surveillance through on-site visits (244.304), and a subsequent review in alternate years. The contracting officer may call for a subsequent review prior to the regularly scheduled review if circumstances indicate the need.

(3) *Special reviews.* A special review is an investigation of specific weaknesses identified in any contractor's purchasing system, using the same techniques followed in performing an initial or subsequent review. The ACO, or the PSA, with the concurrence of the ACO, may initiate special review of any contractor's purchasing system in connection with deficiencies revealed as a result of:

(i) The initial or subsequent review, or continuing indepth surveillance;

(ii) The review of subcontracts submitted under the notification and consent to subcontract requirements of contract clauses;

(iii) Major changes in the contractor's purchasing policies, procedures, or key personnel;

(iv) Changes in plant workload or type of work; or

(v) Information provided by Government personnel. In conducting special reviews, the same criteria used in initial or subsequent reviews shall be applied to the area being examined. The summary report format will be used as appropriate.

(4) *Followup review.* A followup review is an investigation performed when a contractor's purchasing system approval is withheld or withdrawn, to determine whether a contractor has implemented the recommendations of the ACO and corrected the deficiencies revealed by any purchasing system review. The techniques used in making an initial or subsequent review are employed in the followup review. If approval of a contractor's purchasing system is withheld or withdrawn, a followup review shall be made as soon as evidence is received from the contractor that the factors leading to the action have been corrected. Whether this followup review consists of a complete reexamination of the contractor's purchasing system or is confined to the areas found deficient shall be a matter of judgment and will depend on the time lapse between the notice to the contractor of withholding or withdrawal of approval and the followup review. The summary report format will be used as appropriate.

244.303 Extent of review.

Supplement 1 contains additional guidance for conducting CPSR's on Defense contractors.

244.304 Surveillance.

(a) Each Military Department and the Defense Logistics Agency will establish controls to assure maintenance of a viable surveillance program.

(b) The surveillance plan shall specifically include the contractor response for corrective action to the recommendations made by the ACO as a result of an initial or indepth subsequent purchasing system review and the Government's planned surveillance tests of the contractor's corrective implementation. The surveillance plan shall provide procedures for informing the contractor of surveillance findings and related recommendations; for followup, as necessary, to effect recommended improvements; and when warranted by the findings, for rescinding approval of the contractor's purchasing system. The contractor must make available the necessary procedures and data to permit adequate surveillance.

(1) The surveillance plan shall encompass pertinent phases of the contractor's purchasing system (Preaward/Postaward/Performance/Contract Completion) and pertinent operations which impact the contractor's purchasing and subcontracting. As considered necessary, surveillance shall include:

(i) Determination and limitation of requirements;

(ii) Advance planning (market testing, source development, performance evaluations, program objectives, make-or-buy);

(iii) Solicitation of proposals (development of solicitations, statement of work, specifications/drawings, facility surveys, financial analysis, preaward audits, terms and conditions, selection of contract type, establishing a competitive base, socio-economic consideration, bidders lists, presolicitation and indoctrination of potential bidders);

(iv) Proposal evaluations (cost, technical, and management considerations);

(v) Source selection (restrictive clauses, flowdown of prime contract provisions, compliance with Pub. L. 87-653 "Truth in Negotiations Act," compliance with Pub. L. 91-379, Cost Accounting Standards," cost/price analysis/assist audits and cost studies, progress payments to subcontractors, changes in technical content of statement of work, factfinding and bidders conference);

(vi) Provisioning, management influence and overriding consideration, documentation, compliance with FAR 9.104-4 and other provisions of this Supplement concerning Subcontractor Responsibility;

(vii) Management approvals;

(viii) Advance notification and consent requirements;

(ix) Early definition (TWX and letter contracts);

(x) Change control (timely and effective action);

(xi) Engineering;

(xii) Schedules;

(xiii) Production;

(xiv) Material control;

(xv) Quality control and quality assurance;

(xvi) Management reporting (advance payments, progress payments, cost performance, funding requirements, discounts, milestone and progress reports);

(xvii) Management support (residencies, secondary administration, buyer control of commitments, buyer's role, subcontract management, subcontract modification, expediting, transportation, subcontractor system surveillance);

(xviii) Contract completion (termination partial or complete, stopwork orders, default actions, excusable delays);

(xix) Closeout actions;

(xx) Postaward audits; and

(xxi) Performance evaluation and reports (thorough review of all areas, including documentation for future business).

(2) The plan shall give appropriate consideration to the data furnished by the contractor when providing the required advance notification of intent to place certain subcontracts.

(3) Surveillance tests that require audit effort should be accomplished for the ACO by the contract auditor in conjunction with other audit duties.

(4) Certain subcontractors may require additional surveillance because of the emphasis in the flowdown of system acquisition policies in subcontracts, with particular concern for subcontractor cost, schedule, and technical performance. The contracting officer, the PSA, the review team, and/or subcontract management personnel may request assistance of the contract administration office having cognizance over the subcontractor to provide supplementary information as a means of verifying the information obtained from the contractor's records and, if needed, the request will call for a complete report on the subcontractor's purchasing system.

244.305 Granting, withholding, or withdrawing approval.

An exit conference shall be held with the contractor at completion of the inplant review. At that time, the contractor should be given the review team's recommendations signed by the ACO. The contractor shall be requested to furnish its plan for accomplishing the necessary actions within 15 days.

244.305-2 Notification.

(c) If at any time other than during a CPSR, recommendations are made for improvement of an approved system, the contractor shall be requested to furnish within 15 days of such notification a concurrence or position with respect to the recommendations.

244.307 Reports.

After receipt of the complete report (Parts I and II), the ACO, within 5 days, shall review and evaluate the report, prepare a letter to the contractor stating the status of the purchasing system, and provide copies of the report and the letter to those described in FAR 44.307 and such others as approved by the ACO. One copy of the summary report (Part I only) shall be sent to a contracting office when requested. Also, where there is a resident PSA assigned to the contractor's plant, the cognizant CAS organization has the option of preparing only a summary report, which shall be distributed in accordance with FAR 44.307. A copy of the ACO's letter to the contractor, setting forth the status of the purchasing system, shall be attached to the summary report.

PART 245—GOVERNMENT PROPERTY

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 245.3—Providing Government Property to Contractors

245.301 Definitions.

"Agency-peculiar property," as used in DoD, means military property and includes end items and integral components of military weapons systems, along with the related peculiar support equipment which is not readily available as a commercial item.

"Facilities Project" means an undertaking by the Government to provide facilities to a contractor for the performance of a Government contract or subcontract or to modernize or replace facilities for the same purpose.

"Industrial Plant Equipment" (IPE) is that part of plant equipment with an acquisition cost of $5,000 or more; used for the purpose of cutting, abrading, grinding, shaping, forming, joining, testing, measuring, heating, treating, or otherwise altering the physical, electrical or chemical properties of materials, components or end items entailed in manufacturing, maintenance, supply, processing, assembly, or research and development operations; and IPE is further identified by noun name in the following Joint DoD Handbooks:

INDEX OF INDUSTRIAL PLANT EQUIPMENT HANDBOOKS

[Note.—Handbooks are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402]

FSC	Title	Army	Navy	Air Force	DLA	Marine Corps
3424, 4430	Industrial Furnances & Ovens Volume 1 and 2	SB 708-4430-1	NAVSUP Pub 5502	AFM 78-8	DLAH 4215.4	MCO P4870.8B
6635	Physical Properties Testing Equipment	SB 708-6635-1	NAVSUP Pub 5504	AFM 78-10	DLAH 4215.6	MCO P4870.10C
6636	Environmental Chambers	SB 708-6636-1	NAVSUP Pub 5508	AFM 78-14	DLAH 4215.10	MCO P4870.14C
3422, 3426	Rolling Mills, Drawing Machines & Metal Finishing Equipment.	SB 708-3400-2	NAVSUP Pub 5510	AFM 78-15	DLAH 4215.12	MCO P4870.16C
3450, 3460	Portable Machine Tools & Metal-working Machinery Accessories.	SB 708-3400-3	NAVSUP Pub 5511	AFM 78-16	DLAH 4215.13	MCO P4870.17B
6650, 6670	Scales, Balances & Optical Instruments	SB 708-6600-2	NAVSUP Pub 5518	AFM 78-25	DLAH 4215.18	MCO P4870.22B
3680	Foundry Equipment	SB 708-3680-1	NAVSUP Pub 5517	AFM 78-23	DLAH 4215.19	MCO P4870.23A
6630, 6640	Chemical Analysis & Laboratory Instruments	SB 708-6600-3	NAVSUP Pub 5529	AFM 78-38	DLAH 4215.30	MCO P4870.35B
3620	Rubber and Plastics Working Machinery	SB 708-3620-1	NAVSUP Pub 5534	AFM 78-28	DLAH 4215.35	MCO P4870.40B
3611, 3693, 3695	Marking, Assembly, and Miscellaneous Industry Machinery	SB 708-3800-2	NAVSUP Pub 5535	AFM 78-26	DLAH 4215.36	MCO P4870.41B
3650	Chemical & Pharmaceutical Products Manufacturing Machinery.	SB 708-3650-1	NAVSUP Pub 5536	AFM 78-45	DLAH 4215.37	MCO P4870.42A
4940	Miscellaneous Maintenance and Repair Shop Specialized Equipment.	SB 708-4940-1	NAVSUP Pub 5537	AFM 78-48	DLAH 4215.38	MCO P4870.43A
3690, 4925	Specialized Ammunition and Ordnance Machinery	SB 708-4900-1	NAVSUP Pub 5538	AFM 78-49	DLAH 4215.39	MCO P4870.44A
3405	Metalworking Saws & Filing Machines	SB 708-3405-1	NAVSUP Pub 5539	AFM 78-34	DLAH 4215.40	MCO P4870.47B
3418	Planers and Shapers (Includes Shapers, Formerly Part of FSC 3419).	SB 708-3418.1	NAVSUP Pub 5540	AFM 78-37	DLAH 4215.41	MCO P4870.48A
3431, 3432, 3433, 3436, 3438.	Welding, Heat Cutting, and Metallzing Equipment	SB 708-3400-4	NAVSUP Pub 5541	AFM 78-39	DLAH 4215.42	MCO P4870.49A
3408, 3410	Machinery Center, Way Type Machines, Electrical and Ultrasonic Erosion Machines.	SB 708-3400-5	NAVSUP Pub 5542	AFM 78-41	DLAH 4215.43	MCO P4870.50B
3419	Miscellaneous Machine Tools	SB 708-3400-6	NAVSUP Pub 5547	AFM 78-46	DLAH 4215.44	MCO P4870.51A
3413	Drilling And Tapping Machines	SB 708-3413-1	NAVSUP Pub 5548	AFM 78-50	DLAH 4215.45	MCO P4870.53B
3411, 3412, 3414	Boring Machines, Broaching Machines, Gear Cutting and Finishing Machines.	SB 708-3400-7	NAVSUP Pub 5549	AFM 78-51	DLAH 4215.46	MCO P4870.55A
3441, 3442, 3443, 3445, 3448, 3447, 3448, 3449.	Secondary Metal Forming and Cutting Machines	SB 708-3400-61	NAVSUP Pub 5551	AFM 78-53	DLAH 4215.48	MCO P4870.56A
3418	Metalworking Lathes	SB 708-3418-1	NAVSUP Pub 5552	AFM 78-54	DLAH 4215.49	MCO P4870.57A
5860	Stimulated Coherent Radiation Devices (Lasers)	SB 708-5860-1	NAVSUP Pub 5553	AFM 78-55	DLAH 4215.50	MCO P4870.58B
3415	Grinding Machines	SB 708-3415-1	NAVSUP Pub 5554	AFM 78-56	DLAH 4215.51	MCO P4870.59
3417	Milling Machines	SB 708-3417-1	NAVSUP Pub 5555	AFM 78-57	DLAH 4215.52	MCO P4870.60A
3670	Specialized Semiconductor, Microelectronic Circuit Board Manufacturing Machinery.	SB 708-3670-1	NAVSUP Pub 5557	AFM 78-58	DLAH 4215.53	MCO P4870.61

"Other Plant Equipment" (OPE) is that part of plant equipment, regardless of dollar value, which is used in or in conjunction with the manufacture of components or end items relative to maintenance, supply, processing, assembly or research and development operations, but excluding items categorized as IPE.

"Provide," as used in the context of such phrases as "Government property provided to the contractor" and "Government-provided property," means either to furnish, as in "Government-furnished property," or to acquire, as in "contractor-acquired property."

245.302 Providing facilities.

245.302-1 Policy.

(S-70) A facilities contract shall be terminated when the Government production and research property covered thereby is no longer required for the performance of Government contracts or subcontracts, unless such termination is detrimental to the Government's interests. The contractor shall not be granted the unilateral right, at the contractor's election, to extend the time during which the contractor is entitled to use the property provided under the facilities contract.

245.302-70 Securing approval for facilities projects.

(a) The Secretaries of the Military Departments or their designees and the Directors of Defense Agencies may approve requests for Government-owned facilities projects if—

(1) The facilities projects that are funded from procurement appropriations will be approved on a location basis and shall not exceed $5 million for all property efforts (expansion, modernization, rehabilitation, etc.) during one fiscal year;

(2) It is a research and development-funded project that will not exceed $3 million per fiscal year; or

(3) The total plant and equipment investment cost to support a specific major system or subsystem (including ammunition-related project request) will not exceed $25 million during the projected acquisition or maintenance effort. (Approval authority shall not be redelegated lower than the level of Assistant Secretary.) Approval may be granted only when there is compliance with all provisions of this regulation and DoD Directive 4275.5, "Acquisition and Management of Industrial Resources."

(b) All projects which will exceed the above limitations will be submitted to the DASD(A&L)(PS) for approval.

(c) Facilities projects that involve real property transactions shall not be undertaken prior to reporting such transactions to the Committees on Armed Services of the House of Representatives and the Senate, as required by 10 U.S.C. 2662, and during the 30-day period prescribed therein. Further, Congress must be notified in advance of starting any construction regardless of cost. If not included in the annual budget, submission to all appropriate Congressional Committees will be made by using DD 1391 Forms.

245.302-71 Providing industrial plant equipment (IPE).

(a) Prior to acquiring IPE, having an item acquisition cost of $10,000 or more, DoD Industrial Plant Equipment Requisition (DD Form 1419) shall be submitted to the Defense Industrial Plant Equipment Center, Memphis, Tennessee 38114, to ascertain whether existing reallocable Government-owned facilities can be utilized. If the requested facilities are numerically controlled, DD Form 1342, Section VI (page 2), shall be prepared and submitted with the DD Form 1419. No acquisition of any listed item shall be made until a certificate of nonavailability is received from the Defense Industrial Plant Equipment Center (DIPEC). However, prior to issuing a certificate of nonavailability, DIPEC shall determine if technical data (e.g., parts listings, maintenance, overhaul and repair manuals, wiring diagrams, etc.) are available. If it is determined that such data is not available at the time of issuance of the nonavailability certificate for equipment, DIPEC may request, by an appropriate instruction in block 51 of DD Form 1419, that an additional set of technical (maintenance) data be acquired with the new facilities when they are obtained. This additional set of data shall be delivered to the repository address specified by DIPEC in block 51 of DD Form 1419. In addition to acquiring technical (maintenance) data for new facilities, a description of the features of numerically controlled facilities on DD Form 1342, Section VI (page 2), shall also be acquired.

(b) Acquisition of new numerically controlled facilities shall include the requirement for the builder to complete Section VI of DD Form 1342 in triplicate, affix one copy to inside of numerical control cabinet door in a manner to preclude removal or destruction, place two copies in an envelope, and tape to door near the first copy. When warranted by the urgency of the situation, requests for screening may be submitted to DIPEC by whatever means determined expedient. When submitting urgent screening requirements other than on a DD Form 1419, the following elements of information must be furnished for each item of equipment:

(1) Requisition number;

(2) PEC/NSN;

(3) Description data sufficient to enable DIPEC to make an urgency determination of availability;

(4) Date item required;

(5) Name and address of requiring agency;

(6) Contract number and program;

(7) Statement as to whether item is for production or mobilization, replacement or modernization, whether item will be acquired if not available from DIPEC, and date of availability from contracting;

(8) Assigned urgency rating; and

(9) Estimated cost.

(c) Upon notification of availability by DIPEC, a DD Form 1419 will be submitted to DIPEC for each item accepted by the requestor. However, if DIPEC does not have the item available or cannot furnish the item within the time specified by the requestor, DIPEC will furnish a statement of nonavailability including a certificate number. This statement will be the official Certificate of Nonavailability and will confirm that the plant equipment item has been screened against the idle inventory.

245.302-72 Providing ADPE as Government property.

The proposed acquisition of automatic data processing equipment by a contractor shall be submitted through the Administrative Contracting Officer to Headquarters, Defense Logistics Agency, ATTN: Defense Automation Resources Information Center (DARIC), Cameron Station, Alexandria, VA 22314, in accordance with DoD Manual 4160.19-M.

245.303 Providing material.

245.303-2 Procedures.

When the contractor is to be responsible for preparing requisitioning documentation, the contract shall require such documentation to be prepared in accordance with the "Manual for Military Standard Requisitioning and Issue Procedure (MILSTRIP)" (see Appendix H).

245.306 Providing special tooling.

245.306-2 Acquiring special tooling.

(S-70) *Criteria for waiving special tooling provisions in subcontracts.* In determining whether rights to acquire special tooling from the subcontractors are not of substantial interest to the Government so as to permit the omission of special tooling provisions from the affected subcontracts pursuant to paragraph (k) of the clause at FAR 52.245-17, the contracting officer shall consider the factors listed in FAR 45.306-2. It is desirable that such determination be made before execution of the contract, to the extent practicable, in which case the price shall reflect the authorized omission of special tooling provisions in any affected subcontract. If this question is presented to the contracting officer after execution of the contract, the contracting officer shall condition the determination upon securing the contractor's consent to an equitable reduction in the contract price to reflect any reduction in the price of the affected subcontracts resulting from the omission of such provisions.

Subpart 245.4—Contractor Use Rental of Government Property

245.401 Policy.

Government use includes use on contracts for foreign military sales. Use of contracts for foreign military sales shall be on a rental basis unless specific approval for rent-free use is granted.

245.402 Authorizing use of Government production and research property.

(a) A contracting officer desiring to authorize use of Government production and research property under the cognizance of another contracting officer shall request the latter to give contracting officer concurrence in such use. If concurrence is denied, the matter shall be raised to a level higher than the contracting officer.

245.403 Rental—use and charges clause.

(a) The Use and Charges clause shall be included in the contract under which the facilities are accountable.

(b) The policies and procedures of Recovery of Nonrecurring Costs in DoD Directive 2140.2, shall apply to the recovery of a fair share of DoD cost for special tooling and special test equipment. Where the recoupment thresholds are not met, charges for special tooling and special test equipment shall be assessed by an equitable method when determined by the cognizant contracting officer to be administratively practicable.

245.405 Contracts with foreign Governments or international organizations.

(a) A contractor may use Government production and research property on work for foreign governments and international organizations only upon written approval of the contracting officer having cognizance of the property. Such approval shall be granted only if such use will not interfere with foreseeable requirements of the United States, and if:

(1) The work is undertaken as a DoD Foreign Military Sale; or

(2) In the case of a direct commercial sale, the foreign country or international organization would be authorized to place the contract with the Department concerned under the Arms Export Control Act.

(b) The Use and Charges clause shall not be applicable to wholly Government-owned plants operated by private contractors on a fee basis. In such cases, any sales to foreign countries or international organizations will require an asset use charge (see (c) below) in place of the Use and Charges clause.

(c) In those circumstances where the Secretary or designee determines that a special rental agreement or the Use and Charges clause is not appropriate or is impractical, and Government facilities are to be used for foreign military sales, an asset use charge will be computed and assessed by the DoD officials responsible for preparation of the DoD Offer and Acceptance (DD Form 1513).

(d) When a particular foreign government or international organization has funded the acquisition of specific production and research property, no rental charges, asset use charges, or nonrecurring recoupments shall be assessed that foreign government or international organization for the use of such property.

(e) Requests for waivers or reduction of charges for the use of Government facilities on work for foreign governments or international organizations shall be submitted to the contracting officer who shall refer the matter through contracting channels. Approval may be granted only by the Director, Defense Security Assistance Agency for particular sales which would, if made, significantly advance U.S. Government interests in North Atlantic Treaty Organization (NATO) standardization, or foreign acquisition in the United States under coproduction arrangements.

(f) Rental/asset use charges for use of U.S. production and research property on Foreign Military Sales (FMS) and commercial sales transactions to the Government of Canada are waived for all FMS agreements accepted and commercial contracts awarded on or before 30 April 1990. This waiver is based on an understanding wherein the Government of Canada has agreed to waive its rental/asset use charges.

245.407 Non-Government use of plant equipment.

(a) Non-Government use of Industrial Plant Equipment (IPE) exceeding 25% requires prior approval of the Assistant Secretary of the Army (RD&A), Assistant Secretary of the Navy (S&L), Assistant Secretary of the Air Force (RD&L), or the Director of the Defense Logistics Agency. This authority shall not be redelegated without formal DASD(A&L)(PS) approval. Requests requiring Departmental level approval should be submitted by the contractor to the cognizant contract administration office at least six weeks in advance of the projected use and shall include:

(1) The total number of active IPE items involved and the total acquisition cost thereof; and

(2) An itemized listing of active equipment having an acquisition cost of $25,000 or more, showing for each item the nomenclature, plant equipment code, year of manufacture, and the acquisition cost.

The percentage of non-Government use shall be computed on the basis of the time available for use. For this purpose the contractor's normal work schedule as represented by the scheduled production shift hours shall be used. The base time period for determining percentages for non-Government use shall be neither less than three months nor more than one year. Non-Government use of IPE located at a single plant may be averaged for all items used having a unit acquisition cost of less than $25,000. Equipment having a unit acquisition cost of $25,000 or more shall be considered on an item-by-item basis. Approving officials shall retain for periodic review, sufficient documentation of the circumstances justifying non-Government use approvals.

Subpart 245.5—Management of Government Property in the Possession of Contractors

245.505-5 Records of plant equipment.

(a) DD Form 1342 may be used as a source document for setting up prescribed records.

245.505-6 Special reports of plant equipment.

The contractor shall prepare a DD Form 1342 for each item of equipment identified as Industrial Plant Equipment (IPE), including items which, though part of a manufacturing system, would otherwise qualify as industrial plant equipment. Section VI (page 2) of the DD Form 1342 will be prepared for each item of IPE with numerically controlled features. General purpose components of special test equipment, which would otherwise qualify as IPE, should not be reported until there is no longer a requirement for the test equipment. The DD Form 1342, including Section VI, as appropriate, will be prepared in accordance with instructions contained in AR 700-43/NAVSUP PUB 5009/AFM 78-9/DLAM 4215.1, Management of Defense-Owned Industrial Plant Equipment (IPE), at the time (a) of receipt and acceptance of accountability by the contractor; (b) major changes as specified by DLAM 4215.1 occur in the data initially submitted to DIPEC; (c) IPE is no longer required for the purpose

authorized or provided; or (d) disposal is completed. The DD Form 1342 prepared at the time IPE is no longer required for the purpose authorized or provided shall reflect all changes in data not previously reported to DIPEC. The contractor shall retain the original of each DD Form 1342 which may be used as the official property record. Copies of the DD Form 1342, including Section VI, as appropriate, shall be forwarded directly to DIPEC through the property administrator. Each DD Form 1342 will be prepared and forwarded within 15 working days after the events which created the need for its preparation and forwarding. AR 700-43/NAVSUP PUB 5009/AFM 78-9/DLAM 4215.1 is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (see 245.301).

245.505-14 Reports of Government property.

(a) The contractor's property control system shall provide annually the total acquisition cost of Government facilities in the following classifications:

(1) Land and rights therein;

(2) Other real property, including utility distribution systems, buildings, structures, and improvements thereto;

(3) IPE required to be reported to DIPEC;

(4) Other plant equipment (OPE). The contractor shall furnish to the property administrator, as of 30 September of each year, a report by contract, of the total acquisition cost of Government (DoD) facilities and the quantity of the IPE for which the contractor is accountable in each of the above classifications. This shall include facilities at subcontractor plants and at alternate locations for which the prime contractor is accountable. Reports shall be prepared on DD Form 1662 (Report of Government (DoD) Facilities), and furnished to the property administrator in duplicate no later than 20 October of each year. Office of Management and Budget No. 0704-0033 has been assigned to the report.

Subpart 245.6—Reporting, Redistribution, and Disposal of Contractor Inventory

245.600 Scope of subpart.

In connection with reporting, redistribution, and disposal of contractor inventory, 245.71 prescribes Forms, Instructions, and Reports applicable to DoD plant clearance actions.

245.601 Definitions.

"Controlled substances" means any of the following:

(1) Narcotic (opium), depressant, stimulant (demerol), or hallucinogenic drug (marijuana) or substance;

(2) Any other drug or substance found by the Attorney General to require control as provided by Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970; or

(3) Any other drug or substance required to be controlled by the U.S. by international treaty, convention or protocol.

"Demilitarization" means the act of destroying the military offensive or defensive characteristics inherent in certain types of equipment or material so as to prevent their further military or lethal use.

"Production scrap" means material generated as a scrap in the normal production process having only a remelting or reprocessing value, including textile clippings, metal clippings, chippings, borings, turnings, and similar types of scrap, including faulty castings and forgings.

"Serviceable or usable property" means property that has reasonable prospect of use or sale either in its existing form or after minor repairs or alterations; only property in Federal Condition Codes A1, A2, A4, A5, B1, B2, B4, B5, F7, or F8 (see 245.606-5).

245.603 Disposal methods.

245.603-70 Contractor performance of selected plant clearance duties and responsibilities.

(1) A DoD Component may, at its option and under the guidance in this section, provide instructions to its contract administration offices which would authorize selected contractors under its administrative cognizance to perform certain plant clearance functions under the surveillance of the contracting officer or a designated representative. Such authorizations should be considered by the DoD Component only when plant clearance personnel are stationed at the facility where the contractor's plant clearance function operates and when the DoD Component and the contractor agree that the volume of plant clearance actions warrants such an authorization.

(2) Such authorizations shall be made in writing and shall, as a minimum:

(i) Specify the plant clearance functions to be performed;

(ii) Apply to all Government contracts which contain a Government Property clause at one or more plants, as appropriate;

(iii) Specify that the authorization may be unilaterally cancelled in whole or in part by the Government through written notice by the contracting officer or a designated representative;

(iv) Provide for such direct Government participation in plant clearance cases as may be required by Government regulation or circumstances at hand. The authorization shall be approved at a level above the contract administration office as designated by the DoD Component having administrative cognizance over the contractor; and

(v) Designate the contractor authorized under (1) above to perform specified plant clearance functions as an "accredited contractor".

(3) In each case of such an authorization, the DoD Component will plan and conduct a program of surveillance which will insure effective and regular evaluations of contractor performance and prompt corrective actions when appropriate. The plant clearance case file maintained by the contractor shall be the official case file.

(4) When paragraphs (1) and (2) above are implemented, the following additional responsibilities shall be performed by the plant clearance officer:

(i) Evaluate the adequacy of contractor procedures for the performance of the tasks prescribed in (5) below. Insure that these procedures are complied with. Discrepant conditions must be promptly resolved in order for the contractor to remain accredited;

(ii) Advise the accredited contractor of the identity of redistribution screening activities and the number of copies of inventory schedules to be submitted to these activities for screening. This includes screening prescribed herein and prescribed by inventory control points and the plant clearance officer;

(iii) Review and act on the contractor's proposals to withdraw items of Government-furnished property from inventory schedules (see FAR 45.606-4);

(iv) Continuously evaluate physical, quantitative, and technical allocability of contractor inventory prior to its disposal by the accredited contractor. These evaluations shall be incorporated within the surveillance program required by (3) above. Greatest emphasis shall be placed on high dollar value property that constitutes a claim against the Government. In the event that assets are considered to be nonallocable, the contractor will be directed to delay disposition pending the contracting officer's resolution of the issue. Completion of SF 1423, Inventory Verification Survey is not required. However, the applicable questions on the SF 1423 should be answered as part of the evaluation program;

(v) Establish, with contractor assistance, criteria under which certain disposal determinations by the contractor will be reviewed and approved or disapproved by the plant clearance officer. The criteria should be detailed in the accredited contractor's plant clearance procedures;

(vi) Complete the first endorsement section of DD Form 1640, Request for Plant Clearance, upon receipt of incoming referral cases for subcontractor inventory. Inventory schedules will be forwarded to the contractor for plant clearance. Upon case completion, obtain the case file from the contractor, prepare a DD Form 1640, and forward the file to the referring activity;

(vii) Work with the contractor, buyers, and screeners of contractor inventory to the extent required to assure that the Government shall realize maximum asset reutilization and disposal proceeds; and

(viii) Provide continuous training and assistance to the contractor as requested or as necessary.

(5) The accredited contractor will perform the following designated tasks which are identified within the referenced paragraphs as plant clearance officer functions. The accredited contractor shall:

(i) Assign the Automatic Release Date (ARD) and screening release date (SRD), initiate screening prescribed herein or as prescribed by the plant clearance officer, and effect resulting transfer and donation actions (see FAR 45.608, 45.609);

(ii) Withdraw items, except for Government-furnished property, from inventory schedules without plant clearance officer approval and notify the affected screening activities. Plant clearance officer approval will be obtained for withdrawal of Government-furnished property from inventory schedules (see FAR 45.606-4);

(iii) Assure acceptability of inventory schedules. DD Form 1637, Notice of Acceptance of Inventory, is not required but may be used for internal contractor case coordination (see FAR 45.606-3);

(iv) Suspend disposition of property when assets are determined to be nonallocable by the plant clearance officer (see FAR 45.606-3);

(v) Arrange for the physical inspection of property by prospective transferees as appropriate;

(vi) Determine the method of disposal under established priorities (see FAR 45.603) and document disposal decisions and actions (see FAR 45.609, 45.610, 45.611, 45.613). Use of the DD Form 1641, Disposal Determination Approval, is not required as long as equivalent documentation is maintained. The plant clearance officer shall be notified in writing in advance in each instance when the contractor is bidding on property to be sold under FAR 45.610. Sales under FAR 45.610-3 shall not be conducted by an accredited contractor;

(vii) Account for disposal of all contractor inventory and application of proceeds. SF 1424, Inventory Disposal Report, or a contractor form containing comparable data elements is required to be submitted to the plant clearance officer (see FAR 45.610-3, 45.615);

(viii) Maintain the donable property file (see FAR 45.609);

(ix) Release property to eligible donees (see FAR 45.609);

(x) Properly prepare, approve, sign, and maintain official plant clearance files and required forms including:

(A) Plant clearance case number (see 245.7102-4);

(B) DD Form 1635, Plant Clearance Case Register, or comparable contractor document (see 245.7101-8);

(C) SF 120, Reporting of Excess Personal Property (see FAR 45.608-2 and FAR 45.608-8);

(D) DD Form 1342, DoD Property Record, and transmittal letter (see 245.7102-3); and

(E) DD Form 1348-1, DoD Single Line Item Release/Receipt Document, for transfers (turn-ins) to the Defense Property Disposal Service or inventory control points; and

(xi) All completed case files and subcontractor inventory cases received for plant clearance shall be retained by the contractor in the official case file.

245.604 Restrictions on purchase or retention of contractor inventory.

(S-70) A contractor, when authorized to sell contractor inventory, shall not sell such inventory to persons known by him to be: (1) A civilian employee of the Department of Defense or the United States Coast Guard whose duties include any functional or supervisory responsibility for or within the Defense Property Disposal Program, or for the disposal of contractor inventory; (2) A member of the Armed Forces of the United States, including the United States Coast Guard, whose duties include any functional or supervisory responsibility for or within the Defense Property Disposal Program, or for the disposal of contractor inventory; or (3) An agent, employee or immediate member of the household of personnel in (1) and (2) above.

(S-71) The authority of a contractor to approve a sale, purchase, or retention at less than cost, by a subcontractor, and the authority of a subcontractor to sell, purchase, or retain at less than cost, contractor inventory with the approval of the next higher-tier contractor does not include authority to approve:

(1) A sale by a subcontractor to the next higher-tier contractor or to an affiliate of such contractor or of the subcontractor; or

(2) A sale, purchase, or retention at less than cost, by a subcontractor affiliated with the next higher-tier contractor.

(S-72) Each excluded sale, purchase, or retention requires the written approval of the plant clearance officer.

(S-73) (1) Contractor inventory possessing military offensive or defensive characteristics, not required within the Department of Defense, shall be demilitarized by the contractor in accordance with Defense Demilitarization Manual, DoD 4160.21-M-1. In unusual cases, the purchaser may be authorized by the contracting officer to perform the demilitarization in accordance with DoD 4160.21-M-1; *provided*, however, that in no case shall such authorization be granted to the purchaser if the inventory is dangerous to life or property.

(2) Contractor inventory classified by reason of military security, unless the classification is removed by proper authority, shall be disposed of in accordance with applicable security regulations or as otherwise directed by the contracting officer.

(3) Contractor inventory dangerous to public health or safety shall not be donated or otherwise disposed of unless rendered innocuous or until adequate safeguards have been provided.

245.606-3 Acceptance.

(a) If the schedules are acceptable, the plant clearance officer shall, within 15 days, execute and transmit to the contractor a DD Form 1637, Notice of Acceptance of Inventory.

245.606-5 Instructions for preparing and submitting schedules of contractor inventory.

(See 245.7001-4 for specific duties and responsibilities of DoD plant clearance officers.)

(d) *General Instructions for Completing Forms.*

(4) For the purposes of indicating condition of the property, the codes indicated below should be used in combination with the disposal condition codes (1-9, X, and S). Use a letter and a number (such as A1 or F7) or two letters (such as SS):

A. New, used, repaired, or reconditioned property which is serviceable and issuable to

all customers without limitations or restriction. Includes material with more than 6 months shelf-life remaining.

B. New, used, repaired, or reconditioned property which is serviceable and issuable for its intended purpose but which is restricted from issue to specific units, activities, or geographical areas by reason of its limited usefulness or short service-life expectancy. Includes material with 3 through 6 months shelf-life remaining.

F. Economically reparable property which requires repair, overhaul, or reconditioning. Includes reparable items which are radioactively contaminated.

H. Property which has been determined to be unserviceable and does not meet repair criteria.

S. Property that has no value except for its basic material content.

245.607 Scrap.

245.607-70 Pre-inventory scrap determinations.

The contractor may request the plant clearance officer to make a pre-inventory scrap determination of inventory considered by the contractor to be without value except as scrap. These pre-inventory scrap determinations shall be based on on-site surveys. If the contractor's scrap recommendation is approved, the contractor may make a single descriptive entry on an inventory schedule covering that property and indicating its approximate total cost. If the plant clearance officer determines that any of the property listed by the contractor as scrap is serviceable, usable, or salvable, the contractor shall, in accordance with this determination, submit appropriate inventory schedules. If the determination is made subsequent to the submission of a scrap inventory schedule, the contractor shall be required to submit revised inventory schedules in proper form.

245.607-71 Segregation.

Property determined to be scrap shall be segregated by the contractor to the extent necessary to assure the highest net proceeds. In appropriate cases, when approved by the plant clearance officer, these sales may be consolidated with the contractor's sales of scrap generated from other work.

245.607-72 Contractor's approved scrap procedure.

(a) When a contractor has an approved scrap procedure, certain property may be routinely disposed of in accordance with that procedure and not processed under this Part. Production scrap and production spoilage may be disposed of through the contractor's approved scrap procedure. In addition, worn, broken, mutilated, or otherwise rejected parts excess to overhaul and repair contracts may be similarly processed with the approval of the plant clearance officer.

(b) A plant clearance case shall not be established for property which is disposed of through the contractor's approved scrap procedure.

(c) The contractor's scrap and salvage procedures, particularly the sales aspects thereof, shall be reviewed by the plant clearance officer prior to its approval by the property administrator. The plant clearance officer shall assure that the procedure contains adequate requirements for inspection and examination of items to be disposed as scrap. When the contractor's approved scrap procedure does not require physical segregation and disposition of Government-owned from contractor-owned scrap, care shall be exercised to assure that a contract change, which generates a large quantity of property, does not result in an inequitable return to the Government. In these cases, a determination shall be made as to whether separate disposition of Government scrap would be appropriate.

(d) Scrap, other than that disposed of through the contractor's approved scrap procedure, shall be reported on appropriate inventory schedules for disposition in accordance with the provisions of FAR Part 45 and this supplement.

(e) Silver, gold, platinum, palladium, rhodium, iridium, osmium and ruthenium; scrap bearing such metals; and items containing recoverable quantities thereof will be reported to the Defense Property Disposal Service, DPDS-R, Federal Center, Battle Creek, Michigan 49016, for disposition instructions.

245.608 Screening of contractor inventory.

245.608-1 General.

(b) The 75th day shall be designated as the Automatic Release Date (ARD) by the plant clearance officer. The full 90-day period shall be designated as the Screening Completion Date (SCD). Plant clearance officers will designate two dates on all screening documents, the 75th day as the ARD and the 90th day as the SCD, neither of which shall be extended.

245.608-7 Reimbursement of costs for transfer of contractor inventory.

Costs incident to movement of IPE under the direction and control of the Defense Industrial Plant Equipment Center shall be borne by the Defense Logistics Agency.

245.608-70 Contractor inventory redistribution system (CIRS).

Serviceable and usable contractor inventory of the type listed on SF Forms 1428, Inventory Schedule B or SF Forms 1434, Inventory Schedule E, having a National Stock Number (NSN) and a line item acquisition value (acquisition value of each unit times the number of units) in excess of $50, or having no NSN and a line item acquisition value in excess of $500 shall be processed as follows:

(a) The 90-day screening period normally applies and the plant clearance officer establishes the ARD and SCD; and

(b) Two copies of the SF Form 1428, SF Form 1434, or authorized substitutes will be transmitted by Standard Form 120 to the Defense Industrial Plant Equipment Center (DIPEC), Attn: DIPEC-SSB; and

(c) DIPEC will return an annotated copy of each SF Form 1428 or 1434 received to the plant clearance officer with a Notification of Receipt form attached. This notification will inform the plant clearance officer which items were processed, are not accepted, or are now available for local area screening; and

(d) Property submitted for CIRS-processing will be subjected to a 30-day DoD screening period. The requiring activity within the requiring Department shall have requisitioning priority over other activities within that requiring Department and over the contracting Department when the requiring and contracting Departments are different. DIPEC reports items not requisitioned to the General Services Administration on the 31st day, unless the plant clearance officer provided special instructions to the contrary on the Standard Form 120; and

(e) DIPEC will issue shipping instructions on DD Form 1348-1 to the plant clearance officer. The plant clearance officer shall reroute requisitions received directly from the requisitioner to DIPEC during the first 45 days of the screening period. Requisitions received by DIPEC or by the plant clearance officer after the 45th day of the screening cycle shall be forwarded directly to the General Services Administration; and

(f) The plant clearance officer will instruct the contractor to send one copy of the completed DD Form 1348-1 to DIPEC, Attn: DIPEC-SSB, when shipment has been made; and

(g) Unless the contracting officer directs otherwise, motor vehicles generated under Army and Navy contracts shall not be screened through CIRS.

245.608-71 Procedures for industrial plant equipment.

(a) *Reporting idle industrial plant equipment.* Industrial plant equipment (IPE) having an acquisition cost of $5,000 or more shall be listed on DD Form 1342, DoD Property Record. The DD Form 1342 shall be prepared by the contractor and submitted to the assigned Government property administrator for appropriate review and transmittal to the plant clearance officer. If the IPE has numerically controlled features, the contractor shall prepare and submit DD Form 1342, Section VI (page 2), Numerically Controlled Machine Data. Upon receipt of an acceptable DD Form 1342, the plant clearance officer will designate the 75th day from that date as the ARD, with the 90th day from that date as the SCD. The ARD will be entered in block 24 of the DD Form 1342 and shall not be extended, except as provided in (e) below. The plant clearance officer will forward 2 copies of the DD Form 1342 to the Defense Industrial Plant Equipment Center, Memphis, TN 38114, for all IPE in condition codes other than "X." Condition code "X" IPE shall be processed in accordance with agency procedures. The DD Form 1342 shall be forwarded to DIPEC within 15 working days after becoming idle. No other distribution of this form will be made by the plant clearance officer.

(b) *Screening—first through 30th day.* DIPEC shall screen excess IPE against all requirements submitted by Department of Defense activities, including Department of Defense reserve requirements, with priority being given to requirements of the owning Department through the 30th day. DIPEC will issue a shipping instruction containing appropriate accounting, funding, transportation, routing recommendations, and preservation instructions for items selected to the appropriate contract administration office.

(c) *Screening—31st through 75th day.* On the 31st day, DIPEC will forward excess data to the applicable General Services Administration regional office for Federal utilization screening through the 75th day. During the period from the 31st through the 75th day, the General Services Administration will approve requests from any agency of the Government on a "first come-first served" basis, and will approve and forward transfer orders containing appropriate accounting, funding, transportation, routing recommendations, and preservation instructions to the appropriate contract administration office. The General Services Administration will forward copies of the approved transfer orders to DIPEC.

(d) *Screening—76th through 90th day.* During this period the General Services Administration will provide for the screening of all remaining IPE for possible donation. The General Services Administration will receive and approve donation applications for IPE and will forward approved donation applications, containing appropriate accounting, funding, transportation, routing recommendations, and preservation instructions to the appropriate contract administration office. The General Services Administration will forward copies of the approved donation applications to DIPEC.

(e) If a Department of Defense requirement develops after the 90th day and the item is still available, the item will be shipped against such requirement, unless the plant clearance officer has justified and compelling reasons for not making the shipment.

(f) Items of plant equipment with an acquisition cost of less than $5,000, and items of plant equipment with an acquisition cost of more than $5,000 not qualifying as IPE, as defined in 245.301, shall not be reported to DIPEC but shall be reported and screened in accordance with FAR 45.608 and this supplement.

(g) The plant clearance officer shall, when IPE has been transferred, donated, sold, destroyed, abandoned, or other disposition taken, assure that the contractor prepares a DD Form 1342 for submission to DIPEC through the property administrator within 15 working days. In the case of a transfer of the IPE, assure that the Shipment Status Card or a copy of the completed shipping document is sent to DIPEC.

245.609 Donations.

(S-70) (1) Classification of eligible donees in order of precedence and approval requirements are:

(i) For property schedules transmitted to GSA—

(A) *Public airports.* Donations approved during the first five days of the donation screening period. State or local public airport donations require approval of an appropriate official of the Federal Aviation Administration, Department of Transportation, and GSA.

(B) *Service educational activities (SEA).* SEA's have the same order of precedence as in (2) below. Approval required of their national headquarters and GSA.

(C) *Educational, public health, and civil defense institutions and organizations.* Donations approved on a first-come, first-served basis with public airports and SEAs, during the last 10 days of the donation screening period. GSA has the over-all responsibility for selecting property determined to be usable and necessary for educational, public health and civil defense purposes, including research for any such purposes. Surplus property is screened and distributed for educational, public health, and civil defense purposes by State Agencies for Surplus Property (SASP). Approval of GSA is required.

(ii) For property screened in accordance with FAR 45.608, public airports, SEAs, and SASP screen and select property for donation approval by GSA on a first-come, first-served basis.

(iii) *Public bodies.* Surplus property may be donated to public bodies in lieu of destruction or abandonment in accordance with FAR 45.611.

(2) In addition to the activities indicated in (1) above, a Department may donate, without expense to the United States, certain material not needed by the Department of Defense to veterans' organizations, soldiers' monument associations, state museums, and incorporated museums operated and maintained only for educational purposes, whose charter denies them the right to operate for profit. For guidance as to limitations and requirements for donation to these activities, see Chapter X, para. F, DoD 4160.21-M.

245.610 Sale of surplus contractor inventory.

245.610-1 Responsibility.

(a) *Property under DoD Control.*

(1) *General.*

(i) It is the Department of Defense policy that when surplus contractor inventory is to be disposed of by means of sale, such sale will be conducted by the contractor in possession in accordance with procedures provided in this section. The contractor is required to use best efforts to sell contractor inventory in the manner, at the times, to the extent, and at the prices approved by the plant clearance officer. The contractor is not required to extend credit to any purchaser.

(ii) Surplus contractor inventory included in the contractor's inventory schedules which has not been utilized or donated under FAR 45.609, or retained at cost pursuant to FAR 45.605, shall be sold in accordance with (2) below at any time after notification by the plant clearance officer that screening has been accomplished. Any such purchase, retention, or sale shall be subject to the approval of the plant clearance offficer.

(iii) *Description of property.* Description of property must be

adequate for identification by prospective bidders. Accuracy is essential and commercial terminology desirable. The original manufacturer and brand name shall be included, if appropriate. When property is boxed or packaged, information as to type of packaging shall be included.

(iv) *Condition.* Condition shall be stated as "used" or "unused" and shall not be described as new. If unused property is still in manufacturer's original containers, a statement to that effect shall be included. Appropriate qualifying statements shall supplement the basic noun description, i.e., "well preserved," "some surface rust," "repairs required," etc. Condition codes shall not be used. Because of its non-specific meaning to the trade, the term "salvage" risks downgrading of the property in the bidder's viewpoint and shall not be used.

(v) *Lotting* shall be in accordance with the following:

(A) Unused items shall be lotted by make or manufacturer, except when quantities or dollar values are small;

(B) Commercially similar items shall be lotted together when practicable;

(C) Used and unused items shall be lotted separately, unless the quantity, value, or nature is such that it is uneconomical to sell separately;

(D) Within the bounds of economical considerations, the size of lots shall be influenced by an effort to encourage bidding by small businesses or individuals;

(E) No lot shall be so small that the administrative cost of selling will be disproportionate to the anticipated proceeds;

(F) An alternate bid for groups of items or for the entire offering may be solicited by use of an additional item described as follows:

Item _____ (Alternate Bid).
This item consists of all property listed and described in Items _____ to _____, inclusive. Award under this item may be made only if the highest acceptable bid on this item is equal to, or greater than, the total of the highest acceptable bids on Items _____ to _____, inclusive.

(vi) *Basis of sale* shall be:

(A) *Unit price basis.* Items offered for sale shall require the bid price to be stated in terms of the quantity or weight generally applied by industry in the commercial sale of such items.

(B) *Lot price basis.* When a sales offering is made on a lot price basis, bids shall be requested only for the entire lot. Use of the lot prices basis shall be held to a minimum, since it precludes adjustments. The lot price basis shall be used only when property cannot be sold by unit measure or the potential monetary recovery is small.

(vii) *Format of invitation.* In large sales, a summary list of items offered shall be set forth and used as an item bid sheet, with detailed item descriptions on attached sheets.

(viii) *Bidder's lists.* The plant clearance officer shall assure that commodity bidder's lists sufficient to obtain adequate competition in the sale of contractor inventory are maintained. The plant clearance officer may obtain additional listings, as required, from the Defense Property Disposal Service (DPDS–R), Federal Center, Battle Creek, Michigan 49016. Use of listings maintained by DPDS is encouraged when extremely large quantities of property, special commodities, or unusual geographic location is involved.

(ix) *Auction, spot bid, and retail sales.* Auction, spot bid, and retail sales shall not be utilized for selling contractor inventory, unless approved on an individual case basis by the departmental headquarters of the administering activity.

(x) *Market impact.* Contracting Officers or plant clearance officers shall submit data to the Defense Logistics Services Center (DLSC) relative to the proposed sale of machine tools of any one type on hand at any single location in minimum condition A1, A2, or A4, with a total acquisition cost exceeding $250,000. Sales data shall include the Plant Equipment Code (PEC) number, noun description, quantity, location of property, and the proposed method of sale. DLSC shall advise the contracting officer or plant clearance officer within five working days whether or not sale proposal is approved. Priority for sales approval shall be given in those instances when plant clearance or other expedited actions are involved.

(2) *Competitive sales.*

(i) *General.* Surplus contractor inventory shall be offered for sale on a competitive basis except as provided in (3) below. To the extent feasible, subcontractors and suppliers should be solicited when additional competition is likely to result. The plant clearance officer shall provide the contractor with instructions relative to the method of soliciting bids and the basis for offering the property for sale (i.e., serviceable or scrap). In determining the sales method to be used, the plant clearance officer shall consider the expected sales proceeds (based on previous experience and current market) versus the cost of conducting the sale. When it is determined that an individual sale will be uneconomical, the material to be sold shall be combined with other material offered for sale, disposed of through the contractor's approved production generated scrap disposal procedure or abandoned. Case files will be documented to show the basis for the decision. The contractor's overall program, including all forms and procedures, shall be evaluated by the plant clearance officer and shall be subject to surveillance. To the extent necessary, the plant clearance officer may reserve the right to approve individual sales offerings prior to distribution. When the plant clearance officer determines that sale services are required, such services will be arranged for by the plant clearance officer directly with the organization requested to provide the services. The plant clearance officer will justify and document this need. These documents shall be a part of the plant clearance case file. The agreement reached will provide for the Defense Property Disposal Office or General Services Administration Regional Office to return total proceeds to the plant clearance officer for crediting in compliance with FAR 45.610–3.

(ii) *Solicitation of bids.* Contractors shall solicit bids by formal invitations, unless informal bid procedures have been approved by the plant clearance officer as provided in (B) below:

(A) *Formal bid procedures.*

Bids shall be solicited a minimum of 15 calendar days in advance of the opening of bids to allow bidders an adequate opportunity to inspect the property and prepare and formally submit bids;

Invitations shall be circulated to a sufficient number of prospective bidders to assure wide competition, including the original suppliers and those prospective bidders designated by the plant clearance officer and the contractor;

In addition to mailing or delivering a notice of the proposed sale to all prospective bidders, the contractor may supplement this sales method by—

Displaying a notice of the proposed sale in appropriate public places;

Displaying a notice of the proposed sale in appropriate trade journals or magazines; or

Publishing a notice of the proposed sale in a newspaper of general circulation in the locality in which the property is located, when the results of such paid commercial advertising is expected to justify the additional expenses involved.

When the acquisition cost of property to be sold at one time, at one place, is $250,000 or more, notice of each such proposed sale shall be transmitted to the U.S. Department of Commerce, Commerce Business Daily Office, Sales Section, P.O. Lock Box 5999, Chicago, Illinois, 60680. The notice shall be sent at as early a date as possible in advance of the sale but at least 20 days prior to the date when the bids will be opened, or, in the case of spot bid or auction sale, when the sale will be conducted. Such notice shall be transmitted by fastest mail available and shall be in synopsis form suitable for printing directly from the text so transmitted without editing or condensing. Double space lines will be used to describe each sales action; and the length of the line should be approximately 65, but not to exceed 69 character spaces and will contain the following information in the order listed: the name and address of the contractor who will issue the invitation; the name or title, address, and telephone number of the official from whom copies of the sales offering and other information can be obtained; a description of the property to be sold; when deemed desirable, the total estimated acquisition cost; the number of the invitation or sale; the date of the sale or bid opening, the types of sale, i.e., sealed bid, spot bid, or auction; and the location(s) of the property. The utmost care should be exercised in describing the types of property to be sold in order to assure interest by the maximum number of potential buyers but, at the same time, condense the information so that minimum space in the Department of Commerce publication will be required for printing. Where the acquisition cost is less than $250,000 such notice may be transmitted, when considered desirable, in accordance with the procedures prescribed above.

(B) *Informal bid procedures.* When the amount or value of the property is not large enough to warrant preparation of a formal notice of the proposed sale or other special circumstances are present, invitations to bid may, with the approval of the plant clearance officer, be issued orally, by telephone or by other informal media, so long as the element of competition is maintained and each such sale is fully documented to include a record of solicitations and written confirmation of informal bids. Any bid by the contractor or its employees shall be submitted to the plant clearance officer prior to solicitation of bids by the contractor from other prospective bidders.

(iii) *Formal invitations.* Sale by formal invitation shall include as a minimum general sale terms and conditions provided in 245.7102–6(a) and, when necessary, special conditions in 245.7102–6(b). The plant clearance officer or representative shall be present to witness bid openings. Within two working days after bid opening, the contractor shall submit to the plant clearance officer two copies of an abstract of all bids, signed by the witnessing Government representative. All awards shall be subject to the approval of the plant clearance officer as indicated in (iv) below.

(iv) *Bid reservations.* All invitations for bid shall reserve the right to reject any or all bids and shall require payment of the full purchase price prior to delivery of the property to the purchaser.

(v) *Approval of sale.* Bids shall be evaluated by the plant clearance officer to establish that the sale price is fair and reasonable in the light of reasonable knowledge or test of the market, due regard being given to current prices for products for which quotations are published and to the circumstances, nature, condition, quantity, and location of the property. Current market price appraisal or price received may be obtained from DPDS upon request. Award shall be approved to that responsible bidder whose bid is most advantageous to the Government, price and other factors considered. Award shall not be approved to any bidder who would not be eligible to enter into a sales contract with the Department of Defense in accordance with the provisions of the Consolidated List of Debarred, Suspended, and Ineligible Contractors. If it is determined that a compelling reason exists to make an award to a contractor on the Consolidated List, the plant clearance officer shall request approval from the departmental headquarters of the administering activity.

(vi) *Award by contractor.* The plant clearance officer shall notify the contractor within five working days of the bidder to whom an award shall be made. The contractor shall make the award, collect the proceeds of sale, and release the property to the purchaser. The contractor shall provide the plant clearance officer with evidence of delivery reflecting actual quantities released to the purchaser.

(3) *Negotioted sales.*

(i) Negotiated sales, including purchases or retentions at less than cost by the contractor, may be made when the contracting department or the plant clearance officer determines and documents in accordance with 245.613(d) and FAR Subpart 1.7, as appropriate, that the use of this method of sale is essential to expeditious plant clearance, or is otherwise justified on the basis of circumstances enumerated below, *provided*, that the Government's interests are adequately protected. Negotiated sales, including purchases or retentions at less than cost by the contractor, shall be at prices which are fair and reasonable and not less than the proceeds which could reasonably be expected to be obtained if the property was offered for competitive sale. Specific conditions justifying negotiated sales are:

(A) Scientific equipment allocated to terminated research and development contracts with educational institutions;

(B) When no acceptable bids have been received as a result of competitive bidding under a suitably advertised sale;

(C) When property is of such small value that the proceeds to be derived would not warrant the expense of a formal competitive sale;

(D) When the disposal will be to states, territories, possessions, political subdivisions thereof, or tax-supported agencies therein, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained;

(E) When the specialized nature and limited use potential of the property would create negligible bidder interest;

(F) When removal of the property would result in a significant reduction in value, or the accrual of disproportionate expenses in handling; or

(G) When it can be clearly established that such action is essential to the Government's interests.

(ii) In those instances when the contracting department has concluded that it is appropriate to sell production equipment to the contractor in possession by means of noncompetitive negotiated sale, the department will provide the CAO with the required sales justification including any special sales provisions that may be appropriate.

(4) *Applicability of antitrust laws.* When contractor inventory with an acquisition cost of $3,000,000 or more (or any patents, processes, techniques, or inventions, irrespective of cost) is to be sold or otherwise disposed of to private interest, the Department concerned shall promptly notify the Attorney General and the Administrator, General Services Administration, of the proposed disposal and the probable terms or conditions thereof. Prior to approving or effecting the proposed disposition, the plant clearance officer shall obtain antitrust clearance by transmitting the following information relative to the proposed sale through departmental channels of the administering activity for submission by that activity to the Department of Justice and the General Services Administration: Report Control

Symbol DD DR&E(AR) 1492 has been assigned for this reporting requirement.

(i) Location and description of property (specifying the tonnage, if scrap);

(ii) Proposed sale price of property (explaining the circumstances if proposed purchaser was not highest bidder);

(iii) Acquisition cost of property of Government;

(iv) Manner of sale, indicating whether by—

(A) Sealed bid (specifying number of purchasers solicited and bids received),

(B) Auction or spot bid (stating how sale was advertised), or

(C) Negotiation (explaining why property was not offered for sale by competitive bid);

(v) Proposed purchaser's name, address, and trade name (if any), under which proposed purchaser is doing business;

(vi) If a corporation, give name of state and date of incorporation, and name and address of—

(A) Each holder of 25 percent or more of the corporate stock,

(B) Each subsidiary, and

(C) Each company under common control with proposed purchaser;

(vii) If a partnership, give—

(A) Name and address of each partner, and

(B) Other business connections of each partner;

(viii) Nature of proposed purchaser's business, indicating whether its scope is local, statewide, regional, or national;

(ix) Estimated dollar volume of sales of proposed purchaser (as of latest calendar or fiscal year);

(x) Estimated net worth of proposed purchaser; and

(xi) Proposed purchaser's intended use of property. Disposition shall be withheld pending receipt of advice from the Attorney General as to whether the proposed disposal action would tend to create or maintain a situation inconsistent with the antitrust laws. If the Attorney General advises that the proposed disposition would tend to create or maintain a situation inconsistent with the antitrust laws, such disposition will not be made. When property with a total acquisition cost of $3,000,000 or more is offered for sale on a competitive bid basis, the condition of sale specified in 245.7102–6(b)(8) shall be included in the invitation for bid. When the sale is not competitive, the prospective purchaser shall be informed that final consummation of the sale is subject to determination by the Attorney General. The purchaser on either a competitive or noncompetitive sale shall be required to complete a questionnaire, providing the information outlined in (v) through (xi) above.

(5) *Foreign contractor inventory.*

(i) To prevent diversion, transshipment, or re-export of contractor inventory located in foreign countries to prohibited destinations and the use of such inventory adversely to the interests of the United States, the sale or other disposition of such inventory by the contractor, including sales to foreign governments, shall be made in accordance with (ii) and (iii) below.

(ii) Sales contracts or other documents for passing title to foreign contractor inventory shall contain the following certificate:

> The Purchaser certifies that the property covered by this contract will be used in (insert name of country). In the event resale or export is to be effected by the Purchaser of any of the property, acquired at a price in excess of One Thousand United States Dollars ($1,000) or its equivalent in other currency at the official rate of exchange, the Purchaser agrees to obtain the approval of _____ (insert name and address of Sales Contracting Officer).

(iii) The sales contracting officer shall approve sales contracts and requests for approval of resales or exports only if:

(A) The proposed purchaser's name does not appear on the Consolidated List of Debarred, Suspended and Ineligible Contractors, and

(B) If the sales contract contains a provision prohibiting exports by purchasers and subpurchasers to communist areas, as listed in FAR 25.702.

(iv) Any disposals of foreign contractor inventory by the United States Government, as distinguished from disposal by a contractor, shall be in accordance with the security trade control regulation on foreign excess sales, and regulations dealing with integrity and reliability checks.

(v) Generally, disposal activities of the Military Departments shall be utilized to accomplish the disposition of surplus contractor inventory located in foreign countries except Canada. Contractor-conducted sales may be authorized, *provided* the interests of the Government are adequately protected.

245.610–3 Proceeds of sale.

(S–70) When payments are due the contractor under the applicable contract, and unless otherwise provided in the contract, the proceeds of any sale, purchase, or retention shall be credited to the Government as part of the settlement agreement, or otherwise credited to the price or cost of the work covered by the contract, or applied in the manner directed by the contracting officer. The plant clearance officer will maintain an open suspense record until the plant clearance officer has verified that credit has in fact been applied, unless another Government representative has specifically assumed this responsibility.

(S–71) Proceeds from contractor-conducted sales which have not been credited as provided in (S–70) above shall be collected by the contractor and remitted to the plant clearance officer.

(S–72) All proceeds of sale remitted to the plant clearance officer shall be delivered to the designated disbursing officer by means of DD Form 1131, Cash Collection Voucher, within two working days after receipt. Transmittals shall identify the acquisition contract by number and name of the contractor.

245.613 Property disposal determinations.

Written determinations supporting disposal actions in the following categories shall be made and placed in the plant clearance case file:

(a) Salvage determination;

(b) Scrap determinations (not required for production scrap);

(c) Abandonment and/or destruction determinations;

(d) Disposal by noncompetitive sale; and

(e) Other actions considered necessary by the plant clearance officer.

Determinations shall be recorded on DD Form 1641, Disposal Determination/Approval.

Subpart 245.70—Appointment of Property Administrator

245.7001 Appointment of property administrator.

245.7001–1 Selection, appointment, and termination.

The selection, appointment and termination of appointment of property administrators shall be made in writing by the Head of a Contracting Activity or designee for the Defense Logistics Agency and by the head of the contract administration office or designee for the other Departments. In selecting qualified property administrators, the appointing authority shall consider experience, training, education, business acumen, judgment, character, and ethics.

245.7001–2 Evaluation criteria.

In considering experience, training and education, the following shall be evaluated:

(a) Experience in accounting, material control, inventory control and allied functions;

(b) Formal education or specialization in such areas as evaluating, monitoring, administering, or coordinating industrial property programs or implementing plans and policies in support of diversified property control system; and

(c) Knowledge of the provisions of this and other applicable regulations.

245.7001–3 [Reserved]

245.7001–4 Duties and responsibilities of plant clearance officer.

The plant clearance officer shall be responsible for:

(a) Providing the contractor with instructions and advice regarding the proper preparation of inventory schedules;

(b) Accepting or rejecting inventory schedules and DD Form 1342;

(c) Conducting or arranging for inventory verification;

(d) Initiating prescribed screening and effecting resulting transfer and donation actions;

(e) Final plant clearance of contractor inventory;

(f) Pre-inventory scrap determinations, as appropriate;

(g) Evaluating the adequacy of the contractor's procedures for effecting property disposal actions;

(h) Determining method of disposal;

(i) Surveillance of contractor-conducted sales;

(j) Accounting for all contractor inventory reported by the contractor;

(k) Advising and assisting, as appropriate, the contractor, inventory control manager, other federal agencies, or higher headquarters in all actions relating to the proper and timely disposal of contractor inventory;

(l) Approving method of sale, evaluating bids, and approving sale prices for contractor-conducted sales;

(m) Recommending the reasonableness of selling expenses on contractor-conducted sales;

(n) Securing anti-trust clearance, as required; and

(o) Advising the contracting officer on all property disposal matters.

Subpart 245.71—Forms, Instructions, and Reports

245.7101 Forms.

The forms listed below are prescribed for use in the performance of plant clearance actions covered in FAR Subpart 45.6 and Subpart 245.6.

245.7101–1 Standard Form 97.

Certificate of Release of a Motor Vehicle (Agency Record Copy) will be executed by the contracting officer and furnished to the purchaser. Plant clearance officers will process Standard Form 97 in connection with transfers, donations, and sales of motor vehicles. Precautionary measures will be taken to prevent unauthorized persons from obtaining these forms. (245.7102–6)

245.7101–2 DD Form 1131.

Cash Collection Voucher shall be used to remit proceeds of sale to the appropriate disbursing officer.

245.7101–3 DD Form 1149.

Requisition and Invoice Shipping Document shall be used for transfers and donations of excess or surplus contractor inventory, except IPE shall ordinarily be shipped by DD Form 1348–1, provided that any donation of IPE may be shipped via DD Form 1149.

245.7101–4 DD Form 1342.

DoD Property Record shall be used to report idle industrial plant equipment to DIPEC for worldwide screening.

245.7101–5 DD Form 1640.

Request for Plant Clearance shall be used to request plant clearance assistance or transfer plant clearance.

245.7101–6 DD Form 1638.

Report of Excess and Surplus Contractor Inventory shall be used to provide a uniform reporting system of essential management data reflecting the scope and effectiveness of the contractor inventory utilization and disposal program.

245.7101–7 DD Form 1641.

Disposal Determination/Approval shall be used to support disposal determinations.

245.7101–8 DD Form 1635.

Plant Clearance Case Register provides a permanent numerical listing of plant clearance cases and shall be maintained by each office performing a plant clearance function. The space provided on the right-hand side of the form may be used for additional columns and headings considered essential by management officials. In those instances when the plant clearance register has been mechanized, a mechanized form may be used in lieu of the DD Form 1635.

245.7101–9 DD Form 1348–1.

DoD Single Line Item Release/Receipt Document shall be used for all transfers of idle Industrial Plant Equipment and Contractor Inventory Redistribution System (CIRS) inventory when directed by DIPEC.

245.7102 Instructions.

Additional instructions are provided below for completing the forms or reports prescribed in this section.

245.7102–1 Instructions for performing inventory verification and determination of allocability.

The following instructions shall be observed in verifying inventory schedules:

(a) *Allocability.* Determine allocability of inventory by reviewing contract requirements, delivery schedules, bills of material, and other pertinent material. Determine whether schedules include:

(1) Material which would not have been required for completion of the terminated or modified portion of the contract;

(2) Material in quantities indicating an unreasonable anticipation of contract requirements; or

(3) Material which might be utilized on the continuing portion of the contract, or diverted to other work of the contractor, either commercial or Government. Utilize sound judgment and experience gained during the life of the contract in detecting common items. In addition review—

(i) Contractor's purchase orders for current acquisition of similar material,

(ii) Contractor's plans and orders for current and scheduled production,

(iii) Contractor's stock record cards, and

(iv) Contractor's bills of material prepared for items similar to the terminated or modified items.

(b) *Quantity.* Assure that the quantities of inventory available are in accordance with the quantities listed on the inventory schedules. While a complete physical count of each item of inventory normally need not be performed, sufficient checks to assure that the quantities are accurate shall be performed.

(c) *Condition.* Assure that the condition of the inventory is in accordance with that shown on the inventory schedules.

245.7102–2 DD Form 1638.

Report of Excess and Surplus Contractor Inventory shall be used by all contract administration offices having plant clearance responsibility for reporting cases under which disposition of contractor inventory actually has been effected. Cases transferred to other offices will not be included. Only the column total for each line of this report will be completed, unless the departmental headquarters of the administering activity desires a breakout of DIPEC-controlled property and directs completion of other column. Reports shall be prepared on a quarterly basis covering report periods ending 31 March, 30 June, 30 September, and 31

December, and shall be submitted in duplicate to the Departmental Headquarters of the administering activity, no later than 10 working days after the close of the report period. This reporting requirement is assigned Report Control Symbol DD(I&L)(Q)1430. All items on the report are self-explanatory except as follows:

(a) *Line 1.* Insert exact totals from line 7 of preceding report.

(b) *Line 2.* Insert net increase or decrease due to shortage, overages, errors, or withdrawals (other than purchases or retentions at cost).

(c) *Line 3.* Insert totals representing all excess inventory reported by the contractors for plant clearance purposes during reporting period.

(d) *Line 4.* Insert total of lines 1, 2, and 3.

(e) *Line 5.* Insert totals representing all plant clearance cases completed during the reporting period. Cases shall not be reported as completed until physical removal (or other final disposition) has been accomplished. Acquisition cost must equal acquisition cost on line 19.

(f) *Line 8.* Insert amount which contractor in possession is retaining or withdrawing at full acquisition cost.

(g) *Line 9.* Insert full acquisition cost in appropriate column, and in "Proceeds" column insert the acquisition cost less approved handling, transportation, or restocking charges.

(h) *Line 10.* Insert total acquisition cost of all transfers accomplished during the reporting period. On lines 10A through 10H, insert subtotals representing value of transfers to each service or agency indicated. Line 10 represents the total of the individual amounts shown on lines 10A through 10H. Caution should be taken to exclude the amount on lines 10A through 10H when obtaining the grand total on line 19 of the several columns of Section II.

(i) *Lines 12 through 14.* Insert gross proceeds. When approved costs of sale are reimbursed from proceeds, net proceeds shall be identified in "Remarks".

(j) *Line 15.* Insert acquisition cost of inventory sold by the contractor with proceeds applied as a credit to overhead.

(k) *Lines 16 and 18.* Lines 16 and 18 may be used to identify and report transactions not otherwise identified.

(l) *Line 19.* Insert total of lines 8 through 18. Acquisition cost must equal acquisition cost on line 5.

245.7102-3 Instructions for establishing a plant clearance case.

Upon receipt of acceptable inventory schedules or DD Form 1342 from the contractor or from other Government sources provided by this Part, the plant clearance officer shall assign a plant clearance case number in accordance with 245.7102-4 and establish a plant clearance case file. The case number, contractor's name, and contract number shall be identified on the case folder. Termination inventory shall be identified with the word "Termination" on the outside of the case folder to insure priority handling. Separate submissions of inventory schedules and DD Forms 1342, applicable to one contract at the same location, shall be consolidated, whenever possible, under one plant clearance case. The plant clearance case file, as a minimum, shall contain the following:

(a) Copy of inventory schedules or DD Form 1342. (The copy of the inventory schedule will be annotated by the plant clearance office to reflect all disposal actions accomplished. Upon completion of all plant clearance actions, this copy should reflect disposition of all inventory reported for plant clearance action.);

(b) Copy of letters or transmittal documents forwarding contractor inventory to the appropriate screening activity;

(c) Copies of all shipping instructions, correspondence, or other instructions directing the disposition of contractor inventory, or evidence of no requirements;

(d) Copies of all shipping documents accomplishing transfer or shipment of contractor inventory;

(e) Copy of Inventory Verification Survey or other forms evidencing completion of allocability review;

(f) Copies of appropriate forms authorizing donation;

(g) Copies of all appropriate forms evidencing the sale of contractor inventory;

(h) Appropriate documentation indicating proper disposition of any proceeds resulting from plant clearance action;

(i) Copies of all other correspondence or forms bearing on disposal actions concerned with the case;

(j) Copies of all pertinent correspondence and approvals concerning Property Disposal Review Board cases, and antitrust clearance, when required; and

(k) Copy of Inventory Disposal Report.

245.7102-4 Instructions for assigning plant clearance case number.

(a) The plant case number shall consist of a three-part, 11-digit number constructed as follows:

(1) The first part shall be a six digit (alphanumeric combination), as shown in the DoD Activity Address Directory assigned to the contract administering activity.

(2) The second part, digits 7 through 10 shall consist of the following: 7th through 9th digits—Consecutively numbered serial number, locally assigned, using alpha and numeric characters commencing with 001 at the beginning of each calendar year, and continuing as necessary through ZZZ.

(3) The third part, 11th digit, will be a single alpha code to identify the Department:

C—Army
Q—Navy
E—Air Force
L—Marine Corps
U—Defense Logistics Agency
N—Defense Nuclear Agency
M—Defense Mapping Agency
S—National Aeronautics and Space Administration
O—Non-DoD Activities

(b) Combined, the plant clearance case number assigned by the plant clearance officer will be in accordance with the following examples:

"S4403A-0010-Q" and "S4403A-ZZZ2-Q"

(1) "S4403A" indicates that the Dallas Defense Contract Administration Services Region is designated as the office to which the plant clearance officer is assigned.

(2) "0010" indicates that this is the first case established by the Dallas Defense Contract Administration Services Region in calendar year 1970 and "ZZZ2" the 8199th case in calendar year 1972.

(3) "Q" indicates that the Navy is the owning military service.

(c) The plant clearance case number assigned will be recorded on DD Form 1635, Plant Clearance Case Register, which will provide a permanent numerical listing of plant clearance cases.

245.7102-5 Form letter for transmitting DD Form 1342 to DIPEC.

The following minimum information shall be included in the letter:

(1) The number of DD Form 1342 included;

(2) Automatic Release Date;

(3) Screening Complete Date;

(4) Contractor's name and address;

(5) Procurement Instrument Identification (Contract) Number;

(6) The name and address of the contracting activity that awarded the facility or other type contract which permitted the contractor to acquire the industrial plant equipment;

(7) The location of the industrial plant equipment;

(8) Total acquisition cost;

(9) A note stating that the ARD will not be extended;

(10) A note substantially as follows:

All requests for transfer or shipment must indicate appropriate fund citation for packing, crating, and handling charges. Government Bills of Lading (GBL) should be furnished when possible. If shipments will be accomplished by other than a GBL, DIPEC must cite transportation funds;

and

(11) A signature block containing the name of the plant clearance officer.

245.7102-6 General sales terms and conditions, and special conditions of sale.

(a) The following general sales terms and conditions shall be included, as a minimum, in contractor-conducted sales by formal invitation:

(1) *Inspection.* The Bidder is invited, urged, and cautioned to inspect the property to be sold prior to submitting a bid. Property will be available for inspection at the places and times specified in the Invitation. In no case will failure to inspect constitute grounds for the withdrawal of a bid after opening.

(2) *Condition and location of property.* Unless otherwise specifically provided in the Invitation, all property listed therein is offered for sale "as is" and "where is." If it is provided therein that the Contractor shall load, then "where is" means f.o.b. conveyance at the point specified in the Invitation. The description is based on the best available information. However, the Contractor makes no warranty, express or implied, as to quantity, kind, character, quality, weight, size, or description of any of the property or its fitness for any use or purpose. Except as provided in Conditions No. (8) and (10), no request for adjustment in price or for rescission of the sale will be considered. This is not a sale by sample.

(3) *Considerotion of bids.* The Bidder agrees that its bid will not be withdrawn within the period of time specified for the acceptance thereof following the opening of bids (sixty (60) calendar days if no period is specified by the Contractor or by the Bidder, but not less than ten (10) calendar days in any case) and that during such period its bid will remain firm and irrevocable. The right is reserved to reject any or all bids, to waive any technical defects in bids, and unless otherwise specified in the offering or by the Bidder, to accept any one item or group of items in the bid. Unless the Invitation otherwise provides, bids may be submitted on any or all items. However, unless the Invitation otherwise provides, a bid covering any listed item must be submitted on the basis of the unit specified for that item and must cover the total number of units designated for that item. In case of error in the extension of prices, unit prices will govern.

(4) *Payment.* The Purchaser agrees to pay for property awarded to the purchaser in accordance with the prices quoted in the purchaser's bid. Payment of the full purchase price, subject to any adjustment pursuant to Condition No. (8), must be made within the time specified for removal and prior to delivery of any of the property. In the event that any adjustment is made pursuant to Condition No. (8), payment must be completed immediately subsequent to such adjustment. The balance of the purchase price after applying the total bid deposit made by the Purchaser (if a bid deposit was required) under the Invitation (or otherwise the full purchase price) shall be paid to the Contractor in cash or by certified check, cashier's check, traveler's check, bank draft, or postal or express money order. The Contractor reserves the right to apply any bid deposits made under this Invitation by a Bidder against any amounts due to the Contractor under a contract awarded by the Contractor under this Invitation for Bid. In those instances where the total sum becoming due to the Contractor from the Purchaser on a contract awarded to the Purchaser under the Invitation is less than the total amount deposited with the Purchaser's bid, the difference shall be promptly refunded. Deposits accompanying bids which are not accepted shall be promptly returned.

(5) *Title.* Unless otherwise specified in the Invitation, title to the items of property sold hereunder shall vest in the Purchaser as and when full and final payment is made, except that if the Invitation provides that loading will be performed by the Contractor, title shall not vest until such payment and loading are completed. On all motor vehicles and motor-propelled or motor-drawn equipment requiring licensing, a certificate of release, Standard Form 97, Certificate of Release of a Motor Vehicle, executed by the Contracting Officer (or a State certificate of title), shall be furnished for each vehicle and piece of equipment.

(6) *Delivery and removal of property.* Unless otherwise specified in the Invitation, the Purchaser shall be entitled to obtain the property upon vesting of title of the property in the Purchaser. Delivery shall be made at the designated location, and the Purchaser shall remove the property at the Purchaser's expense within the period of time originally specified in the Invitation or within such additional time as may be allowed by the Contractor. The Purchaser shall reimburse the Contractor for any damage to the Contractor's property caused by the removal operations of the Purchaser. If the Purchaser is permitted by the Contractor to remove the property after the expiration of the period prescribed or allowed for removal, the Contractor, without limiting any other rights which it may have, may require the Purchaser to pay a reasonable storage charge.

(7) *Default.* If the successful Bidder fails to make full payment, to remove property on the specified date, or to comply with any other terms and conditions thereof, the right is reserved to sell or otherwise dispose of any or all such property and to charge losses and expenses incidental thereto to the account of the defaulting Bidder. The bid deposit (if required in the Invitation) shall be applied against any such losses and expenses.

(8) *Adjustment for variation in quantity or weight.* When property is sold on a "unit price" basis, the Contractor reserves the right to vary the quantity or weight delivered by fifteen percent (15%) from the quantity or weight listed in the Invitation; and the Purchaser agrees to accept delivery of any quantity or weight within these limits. The purchase price shall be adjusted upward or downward in accordance with the unit price and on the basis of the quantity or weight actually delivered. No adjustment for variation shall be made where property is sold on a "price for the lot" basis.

(9) *Weighing.* When weighing is necessary to determine the exact purchase price hereunder, the Purchaser shall arrange for and pay all expenses of weighing material. All switching charges shall be paid by the Purchaser. When removal is by truck, weighing shall be subject to supervision and accomplished on (i) Contractor scales, (ii) certified scales, or (iii) other scales acceptable to both parties. When removal is by rail, weighing shall be on railroad track scales or by other means acceptable to the railroad for freight purposes. Approved weighing shall establish the exact purchase price and govern the making of full payment thereon.

(10) *Risk of loss.* After mailing notice of award and prior to the date specified for removal, the Contractor shall be responsible only for the exercise of reasonable care for the protection of the property. After passage of title and after the date specified for removal of the property or any extension approved in writing by the Contractor, all risk of loss, damage, or destruction from any

cause whatsoever shall be borne by the Purchaser.

(11) *Limitation on contractor and Government liability.* The measure of Contractor and Government liability in any case when liability of Contractor and Government to the Purchaser has been established shall not exceed refund of such portion of the purchase price as the Contractor may have received.

(12) *Oral statements and modifications.* Any oral statement or representation by any representative of the Contractor changing or supplementing the contract or any condition thereof is unauthorized and shall confer no right upon the Purchaser.

(13) *Eligibility of bidders.* The Bidder certifies that the Bidder is not: (i) A civilian employee of the Department of Defense or the United States Coast Guard whose duties include any functional or supervisory responsibility for disposal of contractor inventory; (ii) A member of the Armed Forces of the United States, including the United States Coast Guard, whose duties include any functional or supervisory responsibility for disposal of contractor inventory; (iii) An agent, employee or immediate member of the household of personnel in (i) and (ii) above.

(14) *Claims liability.* The Purchaser or Bidder agrees to save the Contractor and Government harmless from any and all claims, demands, actions, debts, liabilities, judgments, costs, and attorney's fees arising out of, claimed on account of, or in any manner predicated upon loss of or damage to property of, and injuries to or the death of any and all persons whatsoever, in any manner caused or contributed to by the Purchaser or Bidder, their agents, servants or employees, while in, upon, or about the sale or the property site on which the property sold or offered for sale is located, or while going to or departing from such areas; and to save the Contractor and Government harmless from and on account of damages of any kind which the Contractor may suffer as the result of the acts of any of the Purchaser's agents, servants, or employees while in or about the said sites.

(b) The following special conditions of sale shall be included in contractor-conducted sales by formal invitation, as required, or at the specific request and direction of the plant clearance officer:

(1) *Demilitarization.* When demilitarization of property by the Purchaser is required, whether on or off the contractor or Government premises, the following special conditions shall be included in the invitation for bids on property located in the United States or outside the United States, as appropriate—

(i) *Demilitarization.* Item(s) _____ are required to be demilitarized by the Purchaser in the manner and to the degree set forth below: _____

(A) Insert item number(s) and specific demilitarization requirements for item(s) shown in Attachment 1, Part 2 of Defense Demilitarization Manual, DoD 4160.21–M–1 for property located in the United States.

(B) For property located outside the United States, insert item number(s) and specific demilitarization requirements for item(s) shown in Attachment 1, Part 3 of DoD 4160.21–M–1.

(ii) *Demilitarization on Government premises.* The property requiring demilitarization shall not be removed from Government premises and title shall not pass to the Purchaser until demilitarization has been completed by the Purchaser and approved by the Contractor's authorized representative and a Government representative. Demilitarization will be accomplished as specified elsewhere in the contract. Component parts essential to the military or lethal purpose of the item shall be rendered unusable as prescribed herein. The Purchaser agrees to assume all costs incident to the demilitarization and further agrees to do any necessary work to restore the working area to its present condition after completely removing the demilitarized property.

(iii) *Demilitarization on other than Government premises.* The property requiring demilitarization shall be demilitarized by the Purchaser under supervision of qualified Department of Defense personnel and title shall not pass to the Purchaser until demilitarization has been completed by the Purchaser and approved by the Contractor's authorized representative and a Government representative. Demilitarization will be accomplished as specified elsewhere in the contract. Component parts essential to the military or lethal purpose of the item shall be rendered unusable as prescribed herein. The Purchaser agrees to assume all costs incident to the demilitarization.

(iv) *Failure to demilitarize.* If the Purchaser fails to demilitarize the property being sold herein in accordance with the terms of the contract, the Contractor may, at the Contractor's option and upon ten (10) days written notice (calculated from date of mailing) to the Purchaser:

(A) Repossess the property, complete the demilitarization thereof, and return the property to the Purchaser. The Purchaser hereby agrees to pay to the Contractor prior to the return of the property to the Purchaser all costs incurred by the Contractor in repossessing, demilitarizing, and returning the property to the Purchaser.

(B) Repossess the property, complete the demilitarization thereof, resell the property, and charge the defaulting Purchaser with all excess costs occasioned the Contractor thereby. The Contractor shall deduct these costs from the purchase price and refund the balance of the purchase price, if any, to the Purchaser. In the event the excess costs incurred by the Contractor in repossessing, demilitarizing, and reselling the property exceed the purchase price, the defaulting Purchaser hereby agrees to pay these excess costs to the Contractor.

(C) Repossess the property and resell it under similar terms and conditions. In the event this option is exercised, the Contractor shall charge the defaulting Purchaser with all excess costs occasioned the Contractor thereby. The Contractor shall deduct these excess costs from the original purchase price and refund the balance of the purchase price, if any, to the defaulting Purchaser. Should the cost to the Contractor of repossessing and reselling the property exceed the purchase price, the defaulting Purchaser hereby agrees to pay these excess costs to the Contractor.

(2) *Performance bond.* When work, other than loading, is to be performed by the purchaser and it is considered necessary to insure performance by the purchaser, a performance bond shall be required. Generally, the amount of each performance bond shall be 100% of the estimated cost of the work to be performed. If a requirement for a 100% performance bond would be disadvantageous to the contractor or to the Government, the amount may be reduced to not less than 50% of the estimated cost of the work to be performed. The execution of a performance bond in a specified amount shall be required, as follows:

Performance bond. Within ten (10) days after notice of award, the Purchaser shall furnish a performance bond in the sum of $_____ to cover the Purchaser's obligations and undertakings herein. Such bond shall remain in full force and effect during the term of the contract and any extensions as may be agreed upon. The Purchaser shall not be permitted to begin performance until such time as the bond has been received.

(3) *Liability and insurance.* The following shall be required when the work to be performed by the purchaser warrants a special condition of sale:

Liability and insurance. The Purchaser shall at the Purchaser's own expense purchase and maintain during the term of the contract insurance as follows:

(i) Standard workers' compensation and employer's liability insurance such as may be proper under State and Federal statutes. However, upon receipt of satisfactory evidence that the Purchaser is qualified as a self-insurer under applicable provisions of law, the Contractor may waive this requirement.

(ii) Bodily injury liability insurance in the amount of not less than $300,000 any one occurrence.

(c) Property damage liability insurance including any and all property, whether or not in the care, custody, or control of the Purchaser.

(4) *Dangerous property.* A warning of potential danger shall be included in all cases when it cannot be certified that the property is completely innocuous. The following condition shall be used for this purpose:

Dangerous property. Purchasers are warned that the property purchased may contain items of an explosive, toxic, or inflammable nature, notwithstanding reasonable care exercised by the Contractor to render the property harmless. The Contractor and the Government assume no liability for damage to the property of the Purchaser, or for personal injuries or disabilities to the Purchaser or the Purchaser's employees, or to any other person, arising from or incident to the purchase of the property, or its use or disposition by the Purchaser. The Purchaser shall save the Contractor and the Government harmless from any and all such claims.

(5) *Controlled substances.* The sale of any controlled substance, e.g., narcotics, stimulants, depressants, hallucinogenic drugs, shall be subject to the following special conditions:

Controlled substances. Bids will be rejected unless the Bidder submits the following certification with its bid: "The undersigned represents and warrants that it is registered under The Comprehensive Drug Abuse Prevention and Control Act of 1970, and is authorized under the law and by the Attorney General, U.S. Department of Justice (Bureau of Narcotics and Dangerous Drugs) to buy controlled substances either as a medical practitioner, dealer or manufacturer of controlled substances."

Narcotic drugs and chemicals. Bids will be rejected unless the Bidder submits the following certification with its bid: "The undersigned represents and warrants that it is registered under Federal narcotics laws and is authorized by law and by the Bureau of Narcotics, United States Treasury Department, as a manufacturer of narcotics."

(6) *Radioactive material.* The following condition shall be used whenever there is the possibility that the property offered for sale is capable of emitting ionized radiation:

Radioactive material. Purchasers are warned that the property may be capable of emitting ionized radiation in varying degrees. The Contractor and the Government assume no liability for damage to the property of the Purchaser, or for personal injuries or disabilities to the Purchaser or the Purchaser's employees, or to any other person arising from or incident to the purchase of the property or its use or disposition by the Purchaser. The Purchaser shall hold the Contractor and the Government harmless from any and all such claims. As a safety precaution, the Purchaser should warn future possessors or users of the property that it may be capable of emitting ionized radiation.

(7) *Scrap warranty.* The following condition shall be used whenever property, other than production scrap, is offered for sale as scrap:

Scrap warranty. The Purchaser represents and warrants that the property will be used only as scrap, in its existing condition or after further preparation, and will not be resold until (a) scrapping has been accomplished, or (b) the Purchaser obtains an identical warranty from any subsequent purchaser.

(8) *Antitrust clearance.* When a sales offering include property with an acquisition cost of $3,000,000 or more, the following condition shall be included:

Antitrust. To comply with section 207 of the Federal Property and Administrative Services Act of 1949, as amended, when property offered for sale has an acquisition cost of $3,000,000 or more, or when the property consists of patents, processes, techniques, or inventions, irrespective of cost, the successful Bidder shall be required to furnish additional information and shall allow up to sixty (60) days for acceptance of its bid. Award shall be made only upon advice from the Department of Justice that the proposed sale would not tend to create or maintain a situation inconsistent with the antitrust laws.

(9) *Small business representation.* The following provision shall be included in the general sales terms and conditions for all formal sales invitations covering contractor conducted sales of surplus industrial plant equipment.

Bidder Represents:
(Check appropriate box)
(a) That Bidder ☐ is, ☐ is not, a small business concern.
(b) For definitions and applicable size standards, see FAR Subpart 19.1 and Code of Federal Regulations, Title 13, Part 121, as amended.
(End of provision)

(c) The following special conditions of sale may be added at the option of the contractor:

(1) *Sales and use tax liability.* If the purchase of the property is subject to a state sales or use tax, a special condition of sale shall be included stipulating that the Purchaser shall pay and the Contractor shall collect the amount of the tax, which shall be itemized separately on the billing document.

(2) *Safety, security, and fire regulations.*

(3) *Bid deposits.*

(4) *Other special conditions.* All other special conditions of sale considered necessary by the Contractor shall be subject to the prior approval of the plant clearance officer. Approval shall be granted, *provided,* the prescribed conditions of sale are not altered or affected thereby and the interest of the Government is not adversely affected.

PART 246—QUALITY ASSURANCE

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 246.1—General

246.101 Definitions.

"Calibration", is the comparison of a measurement system or device of unverified accuracy to a measurement system or device of known or greater accuracy to detect and correct any variation from required performance specification of the unverified measurement system or device.

"Metrology", is the science of weights and measures used to determine conformance to technical requirements including the development of standards and systems for absolute and relative measurements.

"Quality", means the composite of material attributes including performance features and characteristics of a product or service to satisfy a given need.

"Quality Assurance", is a planned and systematic pattern of all actions necessary to provide adequate confidence that adequate technical requirements are established; products and services conform to established technical requirements; and satisfactory performance is achieved.

"Quality Audit", is a systematic examination of the acts and decisions with respect to quality in order to independently verify or evaluate the operational requirements of the Quality program or the specification or contract requirements of the product or service.

"Quality Program", is a program which is developed, planned, and managed to carry out cost effectively all efforts to effect the quality of materials and services from concept through validation, full-scale development, production, deployment, and disposal.

246.102 Policy.

(S–70) The Departments shall develop and manage a cost effective quality

program to assure that all services provided and products designed, developed, purchased, produced, stored, distributed, operated, maintained, or disposed of, by contractors for the Department of Defense, conform to specified requirements.

(S–71) The Departments will plan and implement a quality program as an integral part of all phases of the acquisition and support process, and will conduct quality audits to assure the attainment of quality products and services.

(S–72) The Government shall determine the type and extent of Government contract quality assurance actions required, based upon the particular acquisition.

(1) These actions may include:

(i) Inspection of supplies and services;

(ii) Review of the contractor's inspection system, quality program, or other means employed by the contractor to control quality and to comply with contract requirements:

(iii) Maintenance of Government records to reflect actions, deficiencies, and corrective measures; and

(iv) Review and evaluation of quality data, including reports from the user, to initiate required corrective actions or to adjust Government contract quality assurance actions.

(2) The Government shall hold contractors responsible for the quality of products and services by means of:

(i) Contract provisions that place responsibility on contractors;

(ii) The Government's exercising its right to reject or return contractor-responsible defective items for repair, correction or replacement; and

(iii) Warranty clauses, when appropriate.

(3) The Government shall consider the use of:

(i) Contractual means for encouraging excellence in the conduct of contractor-responsible quality efforts;

(ii) Incentive fee or award fee arrangements for achieving quality goals;

(iii) Reduced Government surveillance when contractor's quality performance so indicates; and

(iv) Other noncontractual motivation techniques.

(4) Contractors shall be provided maximum flexibility in establishing efficient and effective quality programs within specified contractual requirements.

246.103 Contracting office responsibilities.

The contracting office may conduct, in conjunction, where necessary, with the activity responsible for technical requirements, product-oriented surveys and evaluations to determine the adequacy of the technical requirements relating to quality and product conformance to design intent. The contracting office may arrange with the contract administration office to participate in pre-award surveys, post-award, and preproduction conferences, and first article testing. The contracting office may aid the contract administration office in the transition from research and development to production, aid the technical activity in improving the quality requirements in contracts when first designed for competitive acquisition, and aid in ascertaining the source of difficulties associated with user experience reports.

246.104 Contract administration office responsibilities.

(d) Written instructions from the contracting office shall be continued as prescribed until any recommendation has been acted upon by the contracting office (also see FAR 46.103(c)).

246.170 Organization responsible for technical requirements.

(a) The activity responsible for technical requirements (e.g., specifications, drawings and standards) is responsible for prescribing inspection, testing, or other contract quality requirements that are essential to assure the integrity of products and services.

(b) To the extent feasible, alternative but substantially equivalent inspection methods shall be provided in order to obtain wide competition and low cost. Contractor-recommended alternatives may be authorized when in the interest of the Government and after approval by the activity responsible for technical requirements.

(c) The activity responsible for technical requirements may also prepare instructions regarding the type and extent of Government inspections pertaining to contracts for specific supplies or services that are complex or for which unusual requirements have been established. Such instructions shall be kept to a minimum taking into account the policy contained in 246.474(b). Normally, issuance of these instructions will not be appropriate for standard commercial items except when items having critical characteristics are being purchased. After issuance of these instructions, production problems, product-oriented visits, user experience and input from the contract administration office shall be analyzed periodically to determine whether conditions warrant a change in type and extent of the inspection requirements. Such analysis may result in decreasing or increasing Government inspection. These instructions shall be prepared on a contract-by-contract basis and shall not be issued:

(1) As a substitute for incomplete contract quality requirements;

(2) Where the contract does not impose equal or greater inspection requirements on the contractor;

(3) Encompassing broad or general designations such as "all requirements", "all characteristics", or "all characteristics in the classification of defects";

(4) On routine administrative procedures; or

(5) Specifying continued inspection requirements when statistically sound sampling will provide an adequate degree of protection.

(d) In the preparation of such instructions, the technical activity shall consider, to the extent available and applicable, such factors as:

(1) The past quality history of the contractor;

(2) The criticality of the material acquired in relation to it's ultimate use considering such factors as reliability, safety and interchangeability;

(3) Problems encountered in the development of the product;

(4) Problems encountered in the acquisition of the same or similar material;

(5) Previously generated feedback data from receiving, testing or using activities; and

(6) Other contractor's experience in overcoming manufacturing problems.

When knowledge of the determining factors, which resulted in the requirement for Government inspection, would be useful to the contract administration office in performing the contract quality assurance function, these factors should be provided to the contract administration office.

Subpart 246.2—Contract Quality Requirements

246.202 Types of contract quality requirements.

246.202–3 Higher-level contract quality requirements.

(S–70) Inspection System Requirement is a requirement, in addition to the Standard Inspection Requirement, that the contractor establish and maintain an inspection system in accordance with a Government specification. This requirement shall be referenced in contracts when technical requirements are such as to require control of quality by in-process as well as final end-item inspection, including control of such elements of the manufacturing process as measuring and testing equipment, drawings and changes, inspection, documentation and records. The objectives and essential elements of an inspection system are prescribed in MIL–I–45208, which shall be referenced in contracts when an inspection system requirement has been established.

(S–71) Quality Program Requirement is a requirement, in addition to the Standard Inspection Requirement, that the contractor establish and maintain a quality program in accordance with a Government specification. Such a requirement shall be established when the technical requirements of the contract are such as to require control of work operations, in-process controls, and inspection, as well as attention to other factors (e.g., organizations, planning, work instructions, documentation control, advanced metrology). The objectives and essential elements of a quality program are prescribed in MIL–Q–9858 which shall be referenced in contracts when a quality program requirement has been established.

246.203 Criteria for use of contract quality requirements.

(c) *Criticality.* Whether peculiar or common, purchases of critical items must have contract quality requirements.

246.204 Application of criteria.

For DoD the following table implements FAR 46.204, Table 46–1, for higher-level contract quality requirements:

TABLE 46–1—CONTRACT QUALITY REQUIREMENTS GUIDE

Item		Type of contract	
Technical description	Complexity	Application	Quality requirement
Commercial	Complex	Critical	MIL–I–45208
Military-Federal.	Non-complex.	Critical	MIL–I–45208
Military-Federal.	Complex	Non-critical peculiar.	MIL–I–45208
Military-Federal.	Complex	Critical	MIL–Q–9858

Subpart 246.3—Contract Clauses

246.370 Material inspection and receiving report.

The contracting officer shall insert the clause at 252.246–7000, Material Inspection and Receiving Report, in solicitations and contracts when delivery of a separate and distinct object or entity, whether separately priced or not, is anticipated. However, when contract administration is retained by the contracting office, the clause is not required in the following situations unless the use of a MIRR is desired by the contracting officer:

(a) Contracts effected under FAR Part 13;

(b) Negotiated subsistence contracts;

(c) Contracts for fresh milk and related fresh dairy products;

(d) Contracts for which the end item is a scientific or technical report;

(e) Research and development contracts not requiring the delivery of separately priced end items;

(f) Base, post, camp or station contracts;

(g) In overseas areas when the contracting officer determines that the preparation and distribution of DD Form 250 by the contractor would be impracticable, the contracting office shall arrange for the contractor to provide the information necessary for the preparation of the DD Form 250 by the contract administration personnel; and,

(h) Contracts for services when hardware is not acquired as an item in the contract, e.g., level of effort type contracts; field service type contracts, etc.

A MIRR is not required when indefinite delivery type contracts are placed by central contracting offices which authorize only base, post, camp or station activities to issue orders, provided that such contracts and orders are not assigned for administration.

246.371 Inspection records.

Inspection records referenced in the following FAR clause paragraphs include any data analysis or summary of records used by the contractor to complement the contractor's inspection system: 52.246–2(b), 52.246–4(b), 52.246–5(b), 52.246–6(b), 52.246–7(a), 52.246–8(b), 52.246–10(b), and 52.246–12(b).

Subpart 246.4—Government Contract Quality Assurance

246.405 Subcontracts.

Selective evaluation of the contractor's control of subcontractors may be requested by the contract administration office responsible for the contract in order to provide that office with additional assurance that supplies being received from subcontractors conform to quality requirements. Communications between contract administration offices concerning contract quality assurance actions to be performed shall be through Government channels. Requests for selective evaluation shall indicate Government contract quality actions to be performed, e.g., specific characteristics, processes and procedures to be verified, tests to be witnessed, and records, reports, and certificates to be evaluated.

246.406 Foreign governments.

(S–70) *FMS requirements.* If a contractor's purchase order or subcontract includes FMS requirements and "quality assurance only" is requested at source, the requesting CAO shall clearly indicate "FMS Requirement" on the face of the document and provide the FMS case identifier code, associated item quantity and related DoD prime contract number and contract line/subline item number. When more than one FMS case is involved, the information shall be provided for each.

(S–71) *Quality assurance among NATO countries.*

(1) NATO Standardization Agreement (STANAG) 4107, Mutual Acceptance of Government Quality Assurance sets forth procedures, terms and conditions under which mutual government quality assurance of military material and services is to be performed by the national authority of one NATO country on request of another NATO country, or a NATO organization. This agreement, with certain reservations, has been ratified by the United States and other nations in the North Atlantic Treaty Organization. The Military Departments may request NATO countries to perform quality assurance in accordance with STANAG 4107. Military Departments will also perform quality assurance in accordance with STANAG 4107 when requested by a NATO country. As a reservation to STANAG 4107, the U.S. Government reserves the right to require reimbursement for work performed for other NATO countries and organizations. 242.101(d) applies.

(2) NATO Standardization Agreement (STANAG) 4108, Allied Quality Assurance Publications, provides for the application of Allied Quality Assurance Publications (AQAP's). Its annexes furnish a list of AQAP's and the criteria for the application of those AQAP's which are contractually required in contracts between NATO countries.

(S–72) *International military sales (non-NATO).* Department of Defense components shall:

(1) Perform quality assurance (QA) services on international military sales contracts or in accordance with existing agreements;

(2) Assure conformance to technical and quality requirements of international military sales contracts;

(3) Keep Government personnel and contractors informed on the use of QA publications; and,

(4) Specify appropriate quality requirements in contracts awarded to other countries, and delegate QA services to the host government whenever satisfactory services are available, as appropriate.

(S–73) *Quality Assurance Agreement with Australia.* (See also 225.7310(d) and Appendix T–101.1.)

(1) Requests for quality assurance services in Australia shall be directed to:

Department of Defence
P.O. Box E33
Queen Victoria Terrace
Parkes, ACT 2600
ATTN: QAERP (CP4–3–46)

(2) Requests for quality assurance services in the United States shall be directed to:

Department of Defense Central Control Point
DCASR, New York, 201 Varrick Street
New York, NY 10014

246.470 Quality assurance by other agencies.

Under Pub. L. 85–726 (72 Stat. 776, 49 U.S.C. 1423), the Federal Aviation Administration (FAA) has certain responsibilities and prerogatives in connection with the issuance and continuation of various certificates applicable to the design, manufacture, and airworthiness criteria of certain types of commercial aircraft and of aircraft equipment and accessories. The FAA evaluations are not a substitute for normal Department of Defense evaluations of the contractor's quality assurance measures. Actual records of such FAA evaluations may be of benefit, however, and should be utilized to maximum advantage by the contract administration office. That office is responsible for assuring that the supplies and services conform to the terms of the contract and that any required certificates and approvals are in the possession of the contractor prior to acceptance.

246.471 Contract administration of special commodities.

246.471–1 Subsistence.

(a) Any Federal activity capable of assuring wholesomeness and quality in food, including medical service personnel of the Military Departments, may be designated by the contracting office to perform Government contract quality assurance actions on a reimbursable basis when appropriate, for subsistence contract items.

(b) The following is an explanation of particular terms used in this section:

(1) Subsistence—food for, and provisions to be used in, feeding of personnel and animals;

(2) Medical Service Personnel—officers and enlisted personnel of the Medical Services of the Departments of the Army, Navy, and Air Force designated to perform the required inspections of subsistence;

(3) Wholesomeness of Food—that characteristic possessed by a food product which promotes good health and well being in the consumer; and

(4) Quality of Food—the required elements or characteristics stated in the specification or other contractual document which the food must possess to comply with the desired degree of excellence exclusive of those characteristics required to assure wholesomeness.

(c) The Surgeons General of the Military Departments are responsible for the acceptance criteria, technical requirements, and inspection procedures needed to assure wholesomeness of foods. Wholesomeness assurance measures will include but not be limited to:

(1) Establishment of standards of tolerances to evaluate wholesomeness.

(2) Inspection of sources for sanitation including sources of component items when required;

(3) Approval of manufacturing processes to assure wholesomeness is incorporated and used; and

(4) Use of test and examination techniques during processing or for the finished item to detect unsanitary practices or unwholesome food.

(d) Maximum utilization shall be made of existing inspection and grading services of other Federal agencies to perform contract quality assurance actions in processing plants economically and efficiently. However, an adequate Government contract quality assurance workload shall be retained for training of medical service personnel and to provide a base for rotation of personnel between the continental United States and overseas.

246.471–2 Petroleum.

The contract administration office may authorize the release of petroleum supplies without requiring the signing or stamping of shipping papers by a representative of the contract administration office, if the alternative procedures of 246.473(b) are used. In that event on petroleum servicing contracts for receiving, storing, and issuing Government-owned petroleum products, the contractor shall be required to type or stamp and to sign the following statement on each copy of the shipping papers:

I certify that the above supplies were (a) in the quality indicated, (b) taken from Government-owned and approved stocks, and (c) loaded into inspected and approved containers. This shipment was released in accordance with paragraph 246.471–2 of the DoD FAR Supplement under authorization of (Name and title of the authorized representative of the Contract Administration Office) in a letter dated (Date of authorizing letter).

(Signature and Title of Contractor's designated official)

246.471–3 Construction projects.

(a) On-site inspection of buildings and other structures is normally performed by the Military Department responsible for their construction.

(b) Government contract quality assurance actions for construction materials and supplies acquired for military and civil works projects shall be performed by the contract administration office in accordance with this section.

(c) The functions in (a) and (b) above will be performed so as to assure compatibility of buildings and structures and installed equipment.

246.472 Inspection stamping.

(a) There is one Department of Defense inspection approval marking design for identification of material which has been inspected for conformance to only a portion of the contract quality requirements, and another for material which has been completely inspected for all contract quality requirements at source. The designs and their uses are as follows:

(1) *Partial (circle) inspection approval stamp.* This stamp is circular and is used by or under the direct supervision of the Government representative to identify contract or subcontract material which has been subjected to only a portion of the contract quality requirements applicable to the material at the time and place of Government contract quality assurance. Partial inspection approval stamping shall identify, for Government personnel, material which complies with all contract quality requirements applicable at the time and place of Government contract quality assurance, excepting those listed as uninspected on the associated Material Inspection and Receiving Report (DD Form 250), packing list, or comparable document.

(2) *Complete (square) inspection approval stamp.* This stamp is square and is used by or under the direct supervision of the Government representative to identify contract or subcontract material which has satisfied all contract quality requirements. Complete inspection approval stamping shall identify, for Government personnel, material which is in complete conformance with all contract quality requirements applicable to the material at the time and place of inspection. Complete inspection approval establishes that material which once was partially approved has subsequently received complete approval. One imprint of the square stamp will void multiple imprints of the circle stamp.

(b) The marking of each item is neither required nor prohibited. Ordinarily, the stamping of shipping containers, packing lists, or lot routing tickets adequately serves to provide the necessary indication status and to control or facilitate the movement of material. No material shall be stamped in such a way as to damage the material.

(c) The placing of a Department of Defense Inspection Approval Stamp upon material does not mean that the material has been accepted by the Government. Acceptance is ordinarily evidenced by execution of the acceptance certificate on the applicable inspection and receiving report.

(d) NASA Publications include detailed policies and procedures regarding the use of National Aeronautics and Space Administration (NASA) Quality Status Stamps. When requested by NASA Centers, the Government representative shall use NASA Quality Status Stamps and apply the procedures of current NASA requirements for all NASA delegations.

246.473 Authorizing shipment of supplies.

(a) *General.* Ordinarily, a representative of the contract administration office shall sign or stamp the shipping papers accompanying Government source-inspected supplies of both prime contracts and subcontracts to release them for shipment. In accordance with the criteria in 246.473(b), however, an alternative procedure may be used in which the contractor assumes the responsibility for the release for shipment of such supplies inspected at the contractor's or subcontractor's facilities, just as the contractor may be given the authority for other functions pertaining to the control of quality. When this alternative procedure is used, it will release Department of Defense manpower for technical functions by eliminating routine signing or stamping of the papers accompanying each shipment.

(b) *Alternative procedures—contractor release for shipment.*

(1) The contract administration office may give the contractor authorization in writing to release supplies for shipment when:

(i) The stamping or signing of the shipping papers by a representative of the contract administration office impairs the operation of a planned Government contract quality assurance program or places an unreasonable demand on the Government representative's time; and

(ii) There is sufficient continuity of production to permit the establishment of a systematic and continuing Government evaluation of the contractor's control of quality; and

(iii) The contractor has a record of satisfactory product quality including quality pertaining to preparation for shipment.

(2) When there is an indication that the conditions in (b)(1) (i) (ii) or (iii) above no longer prevail, the authorization shall be withdrawn in writing.

(3) When the alternative procedure is used, the contractor shall:

(i) Type or stamp, and sign, the following statement on the required copy or copies of the shipping paper(s) or on an attachment thereto:

The supplies comprising this shipment have been subjected to and have passed all examinations and tests required by the contract, were shipped in accordance with authorized shipping instructions, and conform to the quality, identity and condition called for in contractual requirements and to the quantity shown on this document. This shipment was released in accordance with paragraph 246.473 of the DoD FAR Supplement for authorizing Shipment of Supplies under authorization of (Name and Title of the authorized representative of the Contract Administration Office) in a letter dated (Date of authorizing letter).
(Signature and Title of Contractor's designated official), and

(ii) Release and process, in accordance with established instructions, the DD Form 250 (Material Inspection and Receiving Report) or any other receiving report authorized by this Supplement.

246.474 Government contract quality assurance actions.

(a) *Planning.*

(1) Government contract quality assurance actions to determine a contractor's compliance with contract quality requirements shall be systematically planned, taking into consideration the relative importance of the product and the variety of tasks required of the available resources. Systematic planning shall include:

(i) Review and analysis of pre-award surveys, post-award conferences, technical data packages, and first article approvals;

(ii) Identification of the specific products, processes and procedures to be subjected to Government contract quality assurance as well as the specific characteristics of such products, processes, or procedures to be verified (in the absence of identification of specific characteristics by the purchasing office, those established by the contractor will be used to the maximum extent possible);

(iii) Provisions for effective distribution and utilization of the Government's efforts and resources between inspection of products and inspection of the contractor's methods of regulating quality; and provisions for keeping and using records.

(2) Planning to determine the extent of Government contract quality assurance actions shall include as a minimum:

(i) Possible effect of failure on health or safety of personnel, or on associated or related equipment;

(ii) Tactical, strategic, or technical importance;

(iii) Complexity and the need for required reliability;

(iv) Pertinency, completeness, and reliability of the contractor's quality records;

(v) Previous quality history of the contractor; and

(vi) Unit cost.

(b) *Implementation.*

(1) Determination of conformance to contract quality requirements shall be made on the basis of objective evidence of quality. In determining the acceptability of supplies or services, the contract administration office shall make optimum use of quality data generated by contractors. To the extent that contractor quality data are available and reliable, as determined by the contract administration office, such data shall be used to adjust the amount of Government contract quality assurance to a minimum consistent with proper assurance that the supplies or services accepted conform to contract quality requirements.

(2) When the contract requires the contractor to conduct particularly expensive tests involving destruction of supplies, extended periods of time for conducting the tests, or other factors contributing to high-testing costs, the tests shall be coordinated between the contractor and the Government to the maximum extent practicable to avoid the need for later independent Government examination and testing.

(3) The following basic actions shall be taken to determine the contractor's compliance with the contract quality requirements:

(i) Review and evaluation of the contractor's inspection procedures;

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(ii) Review and evaluation of the contractor's selection, calibration, maintenance, and use of gauges and measuring and test equipment;

(iii) Review and evaluation of the contractor's quality records; and

(iv) Performance of product verification inspection by the Government.

(4) Because of configuration, innumerable design characteristics, and life and reliability requirements, the quality of complex supplies and equipment cannot be adequately evaluated by inspection only; such supplies and equipment must be produced under regulated conditions if adequate assurance of product quality is to be realized. Systematic control of manufacturing processes by the producer is an essential prerequisite for assuring the quality of such items. It is also essential that the Government verify systematically that such control is, in fact, established and maintained by contractors.

(5) The Government, under the Inspection clause at FAR 52.246–2, reserves the right to charge to the contractor any additional cost of Government inspection and test when supplies are not ready at the time such inspection and test are requested by the contractor or when reinspection or retest is necessitated by prior rejection. When a contract contains this clause, a record shall be maintained of the additional cost occasioned the Government by the delay, reinspection or retest. Such record shall include a description of any delay, the reasons for any reinspection or retest, and a statement of the hours spent by the Government, including wait time, as well as the cost of any applicable travel and transportation. When the Quality Assurance Representative (QAR) considers that the circumstances warrant the assessment of the additional costs occasioned the Government by the delay, reinspection or retest, the QAR shall forward the QAR's recommendation together with the record of additional costs to the contracting officer. If the contracting officer determines that such additional costs should be charged to the contractor, the contracting officer shall notify the contractor, in writing, of the contracting officer's determination to exercise the Government's right under the Inspection clause and demand payment of such costs in accordance with the collection procedures established under FAR Subpart 32.6. In arriving at any such recommendation and determination, consideration should be given to the frequency of such delay, reinspection or retest under both current and prior contracts; the cause of such delay, reinspection or retest; and the expense of recovering the additional costs. Charges for such delay, reinspection or retest normally should not be assessed when such delay, reinspection or retest occurs only occasionally, or results from causes beyond the contractor's control, or when the expense of recovery outweighs the costs to be recovered. Costs shall be determined at the standard DoD reimbursable rate in effect at the time of the delay, reinspection or retest.

(c) *Maintenance of government records.* Suitable records shall be maintained by the contract administration office as part of the performance records of contractors in order to reflect:

(1) The nature of all Government contract quality assurance actions, including when appropriate the number of observations made and the number and type of deficiencies;

(2) Decisions regarding the acceptability of the products, the processes, and the requirements, together with action taken to correct deficiencies; and,

(3) Distribution of Government contract quality assurance effort.

(d) *Quality evaluation data.* The contract administration office shall establish a system providing as a minimum for the collection, evaluation and use of quality data developed by the contractor during manufacture and by the Government through contract quality assurance actions and reports by users during initial use phase, where available. The objectives of the system are to:

(1) Provide a foundation of technical actions aimed at maintaining and making needed improvements in the quality characteristics of both current and future products (subject to military requirements and cost considerations);

(2) Upgrade the methods and practices used to assure quality during manufacture, delivery, and use of the item;

(3) Provide a basis for managerial decisions relative to the allocation of Government contract quality assurance resources among different products and activities; and

(4) Determine production source capabilities as measured by product quality.

Subpart 246.6—Material Inspection and Receiving Reports

246.670 General.

Appendix I, Material Inspection and Receiving Report, contains procedures and instructions for the use, preparation, and distribution of the Material Inspection and Receiving Report (MIRR) (DD Forms 250 Series) and suppliers commercial shipping/packing lists used to evidence Government contract quality assurance (see FAR 46.401).

246.671 Policy.

(a) Material Inspection and Receiving Reports (MIRRs) are used to document contract quality assurance, acceptance of supplies and services, and shipments. They are used by receiving, status control, technical, contracting, inventory control, requisitioning, and paying activities. MIRRs shall not be used for:

(1) Shipments by subcontractors where direct shipment is not made to the Government; or

(2) Shipment of contractor inventory.

(b) The provisions of Appendix I are applicable to supplies or services acquired by the Department of Defense (DoD) when the Material Inspection and Receiving Report clause (see 252.246–7000) is included in the contract (see 246.370).

(c) When the Department of Defense provides contract quality assurance and/or acceptance services for non-DoD activities, the MIRR shall be prepared in accordance with Appendix I unless otherwise specified in the contract.

Subpart 246.7—Warranties

246.701 Definitions.

"Acceptance," as used in this subpart and in the warranty clauses at FAR 52.246–17, Warranty of Supplies of a Noncomplex Nature; FAR 52.246–18, Warranty of Supplies of a Complex Nature; FAR 52.246–19, Warranty of Systems and Equipment under Performance Specifications or Design Criteria; and FAR 52.246–20, Warranty of Services; means the execution of an official document (e.g., DD Form 250) by an authorized representative of the Government. The above clauses shall be modified accordingly in DoD contracts.

"Defects," as used in this subpart, means any condition or characteristic in any supplies or services furnished by the contractor under the contract that is not in compliance with the requirements of the contract.

246.702 General.

(d) Planning is an essential step in obtaining an effective warranty. To be effective, warranties should be implemented as an integral part of an overall design, development, test and production program.

(e) The acquisition cost of a warranty may be included as part of an item's price or may be set forth as a separate contract line item.

(f) Agencies shall establish procedures to track and accumulate data relative to warranty costs.

246.703 Criteria for use of warranties.

The use of warranties in the procurement of weapon systems is mandatory pursuant to 10 U.S.C. 2403; unless a waiver is authorized. Policy and procedures for obtaining such warranties or waivers are contained in 246.770. Acquisition of warranties in the procurement of supplies that do not meet the definition of a weapon system (e.g., spare, repair, or replenishment parts) is governed by FAR 46.7.

246.704 Authority for use of warranties.

In contracts for other than weapon systems, the Chief of the Purchasing Office must approve use of a warranty except for:

(a) Commercial supplies or services (see FAR 46.709);

(b) Technical data, unless the warranty provides for extended liability (see 246.708);

(c) Supplies and services in fixed price type contracts containing quality assurance provisions that reference MIL–I–45208 or MIL–Q–9858; and

(d) Supplies and services in construction contracts when the warranties contained in Federal, military or construction guide specifications applicable to a given construction project are used. Authority for use of warranties in the procurement of weapon systems is stated in 246.770.

246.705 Limitations.

(a) Except for contracts for the production of weapon system under 246.770, contracting officers shall not include warranties in cost-reimbursement contracts, except for those warranties contained in the clauses at FAR 52.246–3, Inspection of Supplies—Cost-Reimbursement; FAR 52.246–8, Inspection of Research and Development—Cost-Reimbursement; and at 252.246–7001, Warranty of Technical Data.

246.706 Warranty terms and conditions.

(b)(5) *Markings.* If items delivered under the contract shall be stamped or marked, it shall be done so in accordance with MIL Standard 129, "Marking for Shipments and Storage" and MIL Standard 130, "Identification Marking of U.S. Military Property."

246.708 Warranties of technical data.

A warranty of technical data should be obtained whenever practicable and cost effective. The contracting officer shall consider the factors contained in FAR 46.703 in deciding whether to provide for warranties of technical data and whether there should be an extended liability provision (see 246.770–10). Particular emphasis should be placed on whether the extended liability is justified by: (i) The likelihood that correction or replacement of the nonconforming data, or a price adjustment in lieu thereof, will not afford adequate protection to the Government; and (ii) the effectiveness of the additional remedy as a deterrent against furnishing nonconforming data.

246.710 Contract Clauses.

(f) In accordance with 246.708, the contracting officer may insert a clause substantially the same as the clause at 252.246–7001, Warranty of Data, in solicitations and contracts when a fixed-price or cost-reimbursement contract is contemplated that will require data to be furnished. When this clause is not used, technical data is warranted under the clauses at FAR 52.246–3, Inspection of Supplies—Cost-Reimbursement; FAR 52.246–6, Inspection—Time-and-Material and Labor Hour; FAR 52.246–8, Inspection of Research and Development—Cost-Reimbursement; and FAR 52.246–19, Warranty of Systems and Equipment Under Performance Specifications or Design Criteria.

(1) If extended liability is desired and a fixed-price incentive contract is contemplated, the contracting officer may use the clause with its Alternate I.

(2) If extended liability is desired and a firm fixed-price contract is contemplated, the contracting officer may use the clause with its Alternate II.

246.770 Use of warranties in weapon system procurements.

This section sets forth policy and procedures for obtaining, pursuant to 10 U.S.C. 2403, certain warranties from prime contractors when contracting for the production of a weapon system.

246.770–1 Definitions.

"At no additional cost to the United States," as used in this section, means at no increase in price for firm fixed price contracts or at no increase in target or ceiling price for fixed price incentive contracts (see also FAR 46.707) or at no increase in estimated cost or fee for cost-reimbursement contracts.

"Design and manufacturing requirements," as used in this section, means structural and engineering plans and manufacturing particulars, including precise measurements, tolerances, materials and finished product tests for the weapon system being produced.

"Essential performance requirements," as used in this section, means the operating capabilities and/or maintenance and reliability characteristics of a weapon system that are determined by the Secretary of Defense (or delegated authority) to be necessary for it to fulfill the military requirement for which the system is designed.

"Initial production quantity," as used in this section, means the number of units of a weapon system contracted for in the first program year of full-scale production.

"Mature full-scale production," as used in this section, means follow-on production of a weapon system after manufacture of the lesser of the initial production quantity or one-tenth of the eventual total production quantity.

"Prime contractor," as used in this section, means a party that enters into an agreement directly with the United States to furnish a system or a major subsystem.

"Weapon system," as used in this subpart, means a system or major subsystem used directly by the armed forces to carry out combat missions. By way of illustration, the term "weapon system" includes, but is not limited to the following, if intended for use in carrying out combat missions: Tracked and wheeled combat vehicles; self-propelled, towed and fixed guns, howitzers and mortars; helicopters; naval vessels; bomber, fighter, reconnaissance and electronic warfare aircraft; strategic and tactical missiles including launching systems; guided munitions; military surveillance, command, control, and communication systems; military cargo vehicles and aircraft; mines; torpedoes; fire control systems; propulsion systems; electronic warfare systems; and safety and survival systems. This term does not include related support equipment, such as ground-handling equipment, training devices and accessories thereto; or ammunition, unless an effective warranty for the weapon system would require inclusion of such items. This term does not include commercial items sold in substantial quantities to the general public as described at FAR 15.804–3(c).

246.770–2 Policy.

(a) Unless waived under 246.770–9, after 1 January 1985, the Military Departments and Defense Agencies may not enter into a contract for the production of a weapon system with a unit weapon system cost of more than $100,000 or for which the eventual total procurement cost is in excess of $10,000,000, unless:

(1) A prime contractor for the weapon system provides the United States with written warranties that—

(i) The weapon systems provided under the contract conform to the design and manufacturing requirements specifically delineated in the contract (or any modification to that contract).

(ii) The weapon systems provided under the contract are free from all defects in materials and workmanship at the time of acceptance or delivery as specified in the contract; and

(iii) The weapon systems, if manufactured in mature full-scale production, conform to the essential performance requirements as specifically delineated in the contract (or any modification to that contract);

(2) The contract terms provide that, in the event the weapon system fails to meet the terms of the above warranties, the contracting officer may—

(i) Require the contractor to promptly take such corrective action as necessary (e.g., repair, replace and/or redesign) at no additional cost to the United States,

(ii) Require the contractor to pay costs reasonably incurred by the United States in taking necessary corrective action, or

(iii) Equitably reduce the contract price.

(b) Contracting officers may require warranties that provide greater coverage and remedies than specified above, such as including an essential performance requirements warranty in other than a mature full-scale production contract.

246.770–3 Tailoring warranty terms and conditions.

As the objectives and circumstances vary considerably among weapon system acquisition programs, Contracting officers shall appropriately tailor the required warranties on a case-by-case basis, including remedies, exclusions, limitations and duration; provided such are consistent with the specific requirements of this section (see also FAR 46.706). The duration specified in any warranty should be clearly related to the contract requirements and allow sufficient time to demonstrate achievement of the requirements after acceptance. Contracting officers may exclude from the terms of the warranty certain defects for specified supplies (exclusions) and may limit the contractor's liability under the terms of the warranty (limitations), as appropriate, if necessary to derive a cost-effective warranty in light of the technical risk, contractor financial risk, or other program uncertainties. All subsystems and components will be procured in such a manner so as not to invalidate the weapon system warranty. Contracting officers are encouraged to structure broader and more comprehensive warranties where such are advantageous and in accordance with agency policy. Likewise, the Contracting officer may narrow the scope of a warranty where such is appropriate (e.g., where it would be inequitable to require a warranty of all essential performance requirements because a contractor had not designed the system). It is Department of Defense policy not to include in warranty clauses any terms that cover contractor liability for loss, damage or injury to third parties.

246.770–4 Establishing essential performance requirements.

The Secretary of Defense or heads of military departments, or delegees, shall designate which features of a weapon system are its essential performance requirements. Essential performance requirements may be subsequently modified, superseded or cancelled by the Secretary of Defense or heads of military departments (or delegees) when such is in the interests of the Government.

246.770–5 Warranties on government-furnished property.

A prime contractor shall not be required to provide the warranties specified in 246.770–2 on any property furnished to that contractor by the United States except for (a) defects in installation, (b) installation or modification in such a manner that invalidates a warranty provided by the manufacturer of the property, or (c) modifications made to the property by the prime contractor.

246.770–6 Exemption for alternate source contractor(s).

Agency heads may exempt alternate source contractor(s) from the essential performance warranty requirements of 246.770–2(a)(1)(iii) until that contractor manufactures the first 10% of the eventual total production quantity anticipated to be acquired from that contractor.

246.770–7 Applicability to FMS.

The warranty requirements of 246.770–2 are not mandatory for FMS production contracts. For all weapon systems procured for FMS requirements, the policy of the Department of Defense should be to obtain the same warranties on conformance to design and manufacturing requirements and against defects in materials and workmanship that are obtained for U.S. supplies. DoD will not normally obtain essential performance warranties for FMS purchasers. However, where the cost for the warranty of essential performance requirements cannot be practically separately identified, the foreign purchaser may be provided the same warranty that is obtained on the same equipment purchased for the U.S. If the FMS purchaser expressly requests a performance warranty in the Letter of Acceptance (LOA), the United States will exert its best efforts to obtain the same warranty obtained on U.S. equipment or, if specifically requested by the FMS purchaser, a unique warranty. It is anticipated that the costs for warranties for FMS purchasers may be different from the costs for such warranties for the United States due to such factors as overseas transportation and any tailoring to reflect the unique aspects of the FMS purchaser. Special care must be exercised to ensure that the FMS purchaser shall bear all of the acquisition and administration costs of any warranties obtained.

246.770–8 Cost-benefit analysis.

It is Department of Defense policy to only obtain warranties that are cost effective. If a specific warranty is considered not to be cost effective by the contracting officer, a waiver request shall be initiated under 246.770–9. In assessing the cost effectiveness of a proposed warranty, an analysis must be performed which considers both the quantitative and qualitative costs and benefits of the warranty. Costs include the warranty acquisition, administration, enforcement and user costs, weapon system life cycle costs with and without a warranty, and any costs resulting from limitations imposed by the warranty provisions. Costs incurred during development specifically for the purpose of reducing production warranty risks should also be considered. Similarly, the cost-benefit analysis must also consider logistical/operational benefits expected as a result of the warranty as well as the impact of the additional contractor motivation provided by the warranty. Where possible, a comparison should be made with the costs of obtaining and enforcing similar warranties on similar systems. The analysis should be documented in the contract file.

246.770–9 Waiver and notification procedures.

One or more of the weapon system warranties required by 246.770–2 may be waived if such waiver is in the interests of national defense or if the warranty to be obtained would not be cost-effective. Waivers may be granted by the Secretary of Defense, by the Assistant Secretary of Defense (Acquisition and Logistics) for Defense agencies without the power to redelegate, or by the Secretaries of the Army, Navy and Air Force with the power to redelegate to no lower than an Assistant Secretary of the Military Department. Class waivers may be granted where justified. Waivers may be granted provided the following notifications or reports are made to the Senate and House Committees on Armed Services and on Appropriations:

(a) *Major weapon systems.* With respect to a weapon system that is a major defense acquisition program for the purpose of 10 U.S.C. 139a, before granting a waiver, the waiving official shall notify the aforementioned Committees in writing of an intention to waive one or more of the required warranties. The notice of intent to waive shall include an explanation to the reasons for the waiver and shall ordinarily be given 30 days prior to granting such waiver.

(b) *Other weapon systems.* With respect to weapon systems that are not major defense acquisition programs for the purpose of 10 U.S.C. 139a, waiving officials shall submit an annual report not later than February 1 of each year that lists waivers granted on such programs during the preceding calendar year. This report shall also include an explanation of the reasons for granting each waiver.

(c) *Weapon systems not in mature full-scale production.* Although a waiver is not required, if a production contract for a major weapon system not yet in mature full-scale production will not include a warranty on essential performance requirements, the waiving officials shall nonetheless comply with the notice requirements for major weapon systems.

(d) *Processing waivers, notifications and reports.* Each Department shall issue procedures for processing waivers, notifications, and reports to Congress. At the minimum, these procedures shall specify:

(1) Requests for waiver shall include—

(i) A brief description of the weapon system and its stage of production, e.g., the number of units delivered and anticipated to be delivered and anticipated to be delivered during the life of the program; and

(ii) The specific warranty or warranties required by 246.770–2(a)(1) for which the waiver requested, the duration of the waiver if it is to go beyond the instant contract and rationale for the waiver.

(iii) A description of the warranties or other techniques to be employed to assure acceptable field performance of the weapon system.

(2) Notifications and reports shall include—

(i) A brief description of the weapon system and its stage of production, and

(ii) Rationale for not obtaining a warranty.

(3) A written record will be kept of each waiver granted and notification and report made, together with supporting documentation such as a cost-benefit analysis, for use in answering inquiries.

(4) A copy of each notification and report to Congress shall be submitted concurrently to the Assistant Secretary of Defense (Acquisition and Logistics). For class waivers this copy shall be submitted in advance of transmittal to Congress.

246.770–10 Special contract clauses.

(a) In accordance with 246.770, the contracting officer shall insert in solicitations and contracts pertaining to the production of weapon systems a clause that describes the contractor's warranties on the weapon system.

PART 247—TRANSPORTATION

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 247.1—General

247.103 Transportation documentation and audit regulation (TDA).

(b)(2) Appendix V of the MTMR contains the list of carriers and carrier associations that have entered into agreements with MTMC to provide the required transportation under commercial forms and procedures within CONUS.

247.104–3 Cost-reimbursement contracts.

Section 10721 rates are not applicable on Foreign Military Sales (FMS) shipments. However, on stock fund items from a manufacturer to a depot, section 10721 rates do apply, unless it is clear that the quantity in a specific transportation unit will be delivered to an FMS purchaser. When it is known that a portion of the material in a transportation unit will be delivered to an FMS purchaser, that portion will be shipped on a separate bill of lading and section 10721 rates will not apply.

247.104–5 Citations of government rate tenders.

(a) DoD shippers within CONUS use section IX, Chapter 214 of the MTMR for instructions pertaining to commercial bills of lading to be converted to GBLs.

247.105 Transportation assistance.

(b)(1) The term transportation assistance/traffic management advice includes any and all transportation factors, such as freight rates (for evaluation of bids or routing purposes), other transportation costs, transit agreements, time in transit, or port capabilities.

(2) Military Traffic Management Command (MTMC) is responsible for the performance of traffic management functions within CONUS, including the direction, control, and supervision of all functions incident to the effective and economical acquisition and use of freight and passenger transportation services from commercial for-hire transportation companies, including rail, highway, air, inland waterway, coastwide and intercoastal carriers. Therefore, requests for assistance, rates or other cost factors pertaining to transportation matters other than those outlined above should be directed to the appropriate military activity, i.e., the Military Airlift Command (MAC), Military Sealift Command (MSC), or Headquarters of the Military Service sponsoring the cargo (see 247.372).

(3) The locations and geographical areas of jurisdiction of each area headquarters of the MTMC are listed in Chapter 108 of the MTMR.

(4) Requests for assistance, rates or other costs applicable to shipments of bulk petroleum via ocean tanker transportation should be obtained from the Military Sealift Command.

(5) Requests for assistance, rates or other costs applicable for supplies to be shipped between points outside of the continental United States, including Alaska and Hawaii, shall be obtained from the Headquarters of the Military Service which sponsors the cargo. Requests should be directed as follows:

(i) Army: Deputy Chief of Staff for Logistics, Department of the Army, ATTN: LOG/MM–SSB, Washington, DC 20315.

(ii) Navy: Navy Supply Systems Command, Code 05, Washington, DC 20390.

(iii) Air Force: Applicable Overseas Air Force Command.

(iv) Marine Corps: Director, Transportation Division, HQ, U.S. Marine Corps, COS, Washington, DC 20380.

(6) Requests for rates and related costs for the evaluation of bids or proposals shall include the bid opening or proposal due date and the expected date of initial shipment, if established (see 247.373).

Subpart 247.2—Contracts for Transportation or for Transportation-Related Services

247.270 Stevedoring contracts.

247.270–1 Scope of section.

Acquisition procedures peculiar to stevedoring are set forth in this subsection. This section, however, does not contain or cross reference all provisions of this regulation applying to service contracts which shall be adhered to where applicable.

247.270–2 Definition.

Stevedoring is the loading of cargo from an agreed point of rest on a pier or lighter and its storage aboard a vessel, or the breaking out and discharging of cargo from any space in the vessel to an agreed point of rest dockside or in a lighter.

247.270–3 [Reserved]

247.270–4 Type of contract.

Normally, stevedoring services will be contracted for by means of an indefinite quantity type contract. Contracts for single job stevedoring services may be made when no indefinite quantity contract is available to fulfill the requirements.

247.270–5 Technical provisions.

(a) Since conditions vary at different ports and sometimes within the same port, standard technical provisions covering all phases of stevedoring operations are impractical. If car loading and unloading or other dock and terminal work will be performed under a stevedoring contract, technical provisions appropriate for such dock and terminal work should be added to the contract as separate items of work.

247.270–6 Evaluation of bids and proposals.

(a) *General.* Offerors shall be required to include in their bids and proposals tonnage or commodity rates which apply to the bulk of the cargo worked under normal conditions. Schedules of labor-hour rates which apply to services not covered by commodity rates or to work performed under hardship conditions shall also be required.

(b) *Analysis of tonnage or commodity rates.*

(1) The price quoted for handling a ton (weight or measurement) of a specified commodity is a commodity rate. This rate is computed by dividing the hourly stevedoring gang cost by the estimated number of tons of the specified commodity which can be handled in one hour. The gang cost consists of the following:

(i) The total hourly wages paid to the workers in the gang in accordance with the collective bargaining agreement between the maritime industry and the unions at a specific port;

(ii) Payments of workmen's compensation, social security taxes, unemployment insurance, taxes, and liability and property damage insurance; and

(iii) General and administrative expenses and profit.

(2) The direct costs shall be verified by the contracting officer. Since the negotiated stevedoring contract is designed to minimize the contractor's risk, the contractor's gang cost should contain no allowance for contingencies and the profit rate should be less than is granted in the usual fixed-price contract. The estimated number of tons of the specified commodity which can be handled in one hour is based on the contractor's experience and should be compared with the records of experience at the required activity. The evaluation of bids and proposals shall include an extension of the quoted commodity rates against the payable tonnage estimated to be handled for each commodity.

247.270–7 Analysis of labor-hour and equipment rental rates.

Labor-hour rates shall be established for every category of labor expected to be necessary to perform services required under the contract. The development of labor-hour rates follows a pattern similar to the method used in arriving at a gang cost. Specifically, it is composed of the basic wage rate of the worker, workmen's compensation, social security taxes, insurance, general and administrative expenses, and profit. The evaluation of bids and proposals shall include an extension of the quoted labor-hour rates against the estimated labor-hour requirements for each artisan classification. Rates for equipment rental shall be extended against estimated equipment hours.

247.270–8 Award of contract.

The award shall be made to the responsible contractor who offers the lowest overall acceptable bid or proposal after evaluating the total estimated cost of tonnage to be moved at commodity rates and estimated cost at labor-hour rates.

247.270–9 Contract clauses.

(a) The contracting officer shall insert the clauses at 252.247–7000, Scope of Contract, and 252.247–7001, Schedule of Rates in solicitations and contracts for stevedoring services, as appropriate to the contracting situation. While these clauses, containing technical provisions, cover most situations adequately, the various provisions may be deleted, added to, modified, or rearranged as necessary to meet local conditions.

(b) The contracting officer shall insert the clause at 252.247–7002, Price Escalation, in sealed bid solicitations and contracts for stevedoring services.

(c) The contracting officer shall insert the clause at 252.247–7003, Revision of Prices, in negotiated solicitations and contracts for stevedoring services.

(d) The contracting officer shall insert the clause at 252.247–7004, Changes, in solicitations and contracts for stevedoring services, in lieu of the clause at FAR 252.243–1—Alternate I.

(e) The contracting officer shall insert the clause at 252.247–7005, Termination, in solicitations or contracts for stevedoring services when it is desired that the contract may be terminated by either party.

(f) The contracting officer shall insert the clause at 252.247–7006, Indefinite Quantities-Fixed Charges, in solicitations and contracts for stevedoring services when the contract will provide for the payment of "Fixed Charges."

(g) The contracting officer shall insert the clause at 252.247–7007, Indefinite Quantities-No Fixed Charges, in solicitations and contracts for stevedoring services when the contract will not provide for the payment of "Fixed Charges."

(h) The contracting officer shall insert the clauses at 252.247–7008, Employees of Contractor; 252.247–7009, Removal of Contractor's Employees; and 252.247–7010, Liability and Insurance, in solicitations and contracts for stevedoring services.

247.271 Contracts for the preparation of personal property for shipment or storage.

247.271–1 Scope of section.

Acquisition procedures peculiar to the preparation of personal property for shipment or storage and for the performance of intra-area movement or intra-city movements are set forth in this section. This section, however, does not contain or cross reference all provisions of this regulation applying to service contracts which shall be adhered to where applicable.

247.271–2 Policy.

(a) *Annual contracts.* Services for the preparation of personal property for shipment or storage and for the performance of intra-area movement normally shall be obtained by requirements contracts awarded as a result of sealed bidding. Such contracts

shall be on a calendar year basis except for noncontinuous requirements for shorter periods. Award of contracts should be made prior to November 1 of each year.

(b) *Area of performance.* The solicitation shall define clearly each area of performance. One or more areas may be established; but, the number should be held to a minimum consistent with local conditions. Each schedule may provide for the same or different areas of performance. An area shall be determined in accordance with the following general guidelines. It shall be an area using political boundaries, streets, or any other features as lines of demarcation. Determination as to the number of areas thereof shall take into consideration such matters as total volume, size of overall area and isolated areas of high population density which will be serviced. Frequently used terminals will be specifically identified and considered as being included in each area of performance described in the solicitation.

(c) *Use of pre-bid conference.* In accordance with provisions of FAR 14.207, the use of pre-bid conference shall be considered and is encouraged.

(d) *Appropriate post-award orientation of contractors.* Contracting officers will assure that in accordance with FAR 42.503, each successful contractor is provided appropriate post-award orientation.

(e) *Maximum requirements-minimum capability.* The quantities established by the contracting officer in the Estimated Quantities clauses must be realistic. The contracting officer must be assured that the Government's minimum acceptable daily capability will provide for at least the maximum authorized individual weight allowance as prescribed by the Joint Travel Regulations. Extreme caution must be exercised to ensure that the established minimum acceptable daily capability does not preclude the submission of bids by small but otherwise acceptable bidders.

247.271–3 Procedure.

(a) *Single CONUS military installations or activities assigned total multi-service personal property areas of responsibility.*

(1) When two or more military installations or activities are assigned personal property responsibilities for a given area, one military activity shall contract for the estimated requirements of all activities in a contiguous area. The activity shall be designated by mutual agreement of the installation commanders concerned.

(2) The Commander, Military Traffic Management Command (MTMC), shall designate the contracting activity when local commanders are unable to reach an agreement as to the activity to be designated.

(b) *Additional services and excess requirements.*

(1) *Excess requirements.* Excess requirements are those services which exceed the contractors' capabilities available under contracts. When excess requirements exist, they may be obtained by using small purchase procedures (see FAR Part 13).

(2) *Additional services.* Additional services include, but are not limited to, attempted pickups or deliveries, handling in and out, hoisting or lowering of articles, drayage to or from residences outside area of performance, extra long carry, carrying of pianos or organs, re-weighing, waiting time, special packaging, loading or unloading of railroad cars to include bracing and blocking and unbracing and unblocking as required. At the option of the contracting officer, additional services may be obtained by:

(i) Inclusion as items within the contract; provided, they are not used in the evaluation of bids (see 252.247–7100); and

(ii) Using Small Purchase Procedures (see FAR Part 13). Prices for additional services may be predetermined with the contractor or negotiated on a case-by-case basis.

(3) *Ordering of additional services.* Additional services other than attempted pickup or delivery will be performed by the contractor only upon authorization of the contracting officer regardless of the method of purchase. To the maximum extent possible, additional services required incident to an order should be identified prior to placement of the order or during the premove survey when applicable.

(c) *Contract distribution.* In addition to the distribution requirements of FAR Subpart 4.2, one copy of each contract will be furnished as follows:

(1) CONUS personal property shipping activities forward to the MTMC Personal Property Office having jurisdiction over the respective activity. These offices are: Commander, Military Traffic Management Command, Eastern Area, ATTN: MTE–PP, Bayonne, New Jersey 07002; and Commander, Military Traffic Management Command, Western Area, ATTN: MTW–PP, Oakland, California 94626.

(2) Personal property shipping activities in the European and Pacific areas forward to the appropriate Military Traffic Management Command Field Office. Other overseas personal property shipping activities forward to the Commander, Military Traffic Management Command, ATTN: MT–PPQ, Washington, DC 20315.

247.271–4 Solicitation provisions, schedule formats, and contract clauses.

(a) *Solicitation provisions and schedule formats.* Solicitation provisions and schedules may be revised, as appropriate, if negotiation procedures are employed.

(1) The contracting officer shall insert the provision at 252.247–7100, Evaluation of Bids, in solicitations for the preparation of personal property for movement or storage, and for performance of intra-city or intra-area movement. When "additional services" items are added to any schedule, the contracting officer shall insert the provision at Alternate I (also see 247.271–3(b)).

(2) The contracting officer shall insert the provision at 252.247–7101, Award, in solicitations for the preparation of personal property for movement or storage, and for performance of intra-city or intra-area movement.

(3) The contracting officer shall insert the provision at 252.247–7102, Estimated Quantities, in solicitations and resulting contractual instruments for the preparation of personal property for movement or storage, and for performance of intra-city or intra-area movement.

(4) The contracting officer shall insert the schedules at 252.247–7103 in solicitations and resulting contracts for the preparation of personal property for movement or storage, and for performance of intra-city or intra-area movement. When a requirement does not exist for an item or sub-item in a schedule, that item or sub-item number, in its proper numerical sequence, will be indicated and the statement "No Requirement" added. Within Schedules I (Outbound) and II (Inbound), item numbers have been reserved to permit the contracting officer to include additional items as may be required by local conditions. Overseas activities, except those in Alaska and Hawaii, may modify the schedules when necessary to conform with local trade practices and country (including political subdivisions thereof) laws and regulations. All generic terminology, schedule and item numbers in proper sequence shall follow those contained in the basic format. All other modifications, other than those authorized herein, of schedule format will be processed as a request for deviation in accordance with Subpart 21.4. When it is determined to be in the best interest of the Government to have

both outbound and inbound services within a given area of performance furnished by the same contractor, the contracting officer may modify the schedule format to combine both services in a single schedule; however, items shall follow the same sequential order as in the basic format. Whenever FED SPEC PPP-B-580 containers are specified in a schedule, containers listed in MTMC Pamphlet 55-12, dated 12 October 1978, may be substituted.

(b) *Contract clauses.* The contracting officer shall insert the clauses set forth below in solicitations and contracts for the preparation of personal property for movement or storage, and for performance of intra-city or intra-area movement (except see 247.271-3(b)). Overseas commands, except those in Alaska and Hawaii, may modify these clauses when necessary to conform with local practices and country (including political subdivisions thereof) laws and regulations.

(1) 252.247-7104, Scope of contract.

(2) 252.247-7105, Period of contract. When the period of performance is less than a calendar year, the clause shall be modified to show the appropriate beginning and ending. However, the date for the end of the contract period shall not be later than 31 December of the year in which the contract is awarded.

(3) FAR 52.216-18, Ordering. In addition to the designation of each ordering activity, the individuals authorized to place orders for each activity shall be identified by name or position title. When provisions are made for the placement of oral orders in accordance with FAR 16.506(b), required documentation of such oral orders will be in accordance with Departmental instructions.

(4) 252.247-7106, Ordering limitation.

(5) 252.247-7107, Contract areas of performance.

(6) 252.247-7108, Requirements. The contracting officer shall insert the clause at FAR 52.216-21 except that paragraph (f) of the clause shall be deleted and the paragraph (f) at 252.247-7108 shall be inserted in its place.

(7) 252.247-7109, Facilities. Also see FAR 28.3 regarding insurance policies.

(8) 252.247-7110, Performance.

(9) 252.247-7111, Time requirements.

(10) 252.247-7112, Demurrage.

(11) 252.247-7113, Vans.

(12) 252.247-7114, Drayage.

(13) 252.247-7115, Liability.

(14) 252.247-7116, Erroneous shipments.

(15) 252.247-7117, Additional marking instructions.

(16) 252.247-7118, Weight certificates.

(17) 252.247-7119, Report of lost/damaged material.

(18) 252.247-7120, Subcontracting.

(19) 252.247-7121, Additional services.

Subpart 247.3—Transportation in Supply Contracts

247.301-2 Participation of transportation officers.

See FAR 47.105(b) for information concerning additional traffic management assistance.

247.301-3 Using the defense transportation system (DTS).

Contractual documents shall specify that the contractor shall not ship directly to a consolidation or containerization point (CCP) without authorization from the designated contract administration office.

247.305-10 Packing, marking and consignment.

(a)(1) Consignment instructions shall include, as a minimum, the clear text and coded MILSTRIP data as follows:

(i) Department of Defense Activity Address Director (DODAAD), Military Assistance Program Address Director (MAPAD) code (MAPAC and TAC) in accordance with DoD 5105.308-D or H8-1/H6-2 code of consignee and clear text identification of consignee and destination;

(ii) Project code, when applicable;

(iii) Transportation Priority (TP);

(iv) Required Delivery Date (RDD); and

(v) Coded MILSTRIP document number, demand/suffix code, a supplementary address and signal code. Non-MILSTRIP shipments shall include data similar to (i) through (iv) above and the applicable portion of (v) above, together with the notation "Non-MILSTRIP".

(2) In addition to the data requirements of (i) through (v) of (1) above, amended shipping instructions shall include the following when appropriate:

(i) Name of the activity originally designated, from which the stated quantities are to be deducted; and

(ii) Any other features of the amended instructions not contained in the basic contract.

(b) For contracts assigned for any contract administration function listed in FAR Subpart 42.3 to any office listed in DoD 4105.59-H, DoD Directory of Contract Administration Services Components, such instructions shall include the modification serial number and, if a new line item is created by the issuance of shipping instructions, the new line item number and the existing line item number if affected.

(c) For diversions of petroleum, oil and lubricant (POL) products overseas to new destinations, instructions issued by an office other than that issuing the contract or delivery order and issued by telephone, teletype or telegram are exempted from the requirement to include the modification serial number and the new line item number in such instructions.

(d) See 247.371.

247.306-2 Lowest overall transportation costs.

(a) See 247.105 for information concerning sources for the lowest available freight and related accessorial and incidental charges.

(b) See 247.372 and 247.373.

247.370 DD Form 1384 (1 APR 66), Transportation Control and Movement Document.

Reporting procedures and instructions for this form will be in compliance with DoD Regulation 4500.32-R, MILSTAMP.

247.371 Standard Form 30, Amendment of Solicitation/Modification of Contract.

When complete consignment instructions are not initially known (See 247.305-10) Form 30 will be used to issue or amend consignment instructions and when necessary, to confirm consignment instructions issued telephonically, via teletype or telegram. When issued to confirm delivery instructions the Form 30 will:

(a) Be stamped or marked "CONFIRMATION" in block letters and shall specify in detail those instructions being confirmed;

(b) Contain no changes to the instructions being confirmed. The confirming Standard Form 30 shall be processed as follows:

(1) For contracts assigned for any contract administration function listed in Subpart 242.3 to any office listed in DoD 4105.59-H, within five working days;

(2) For diversions of petroleum, oil and lubricants (POL) products overseas to new destinations, within 30 days of instructions being confirmed.

(3) Other contracts—

(i) Telephone—within five working days; and

(ii) Teletype or telegraph—consolidate on a monthly basis.

247.372 DD Form 1653 (1 MAR 68), Transportation Data for IFBs and RFPs.

DD Form 1653 which will contain recommendations to the contracting officer concerning f.o.b. terms best suited for the acquisition, and other suggested transportation provisions for inclusion in the IFB/RFP, shall be completed upon request of the contracting officer by the transportation specialist, for association with the appropriate purchase request. When appropriate, DD Form 1653 will also include information on combined port handling and transportation charges to be included in the IFB/RFP in connection with export shipments.

247.373 DD Form 1654 (1 MAR 68), Evaluation of Transportation Cost Factors.

DD Form 1654 permits contracting personnel to furnish basic information to the transportation office for development of transportation cost factors which shall be used by the contracting officer in the evaluation of f.o.b. origin bids or proposals.

Subpart 247.5—Ocean Transportation by U.S.-Flag Vessels

247.503 Applicability.

(S-70) For the purposes of this subpart, the following geographic areas are established:

(1) North Atlantic: Includes Eastern Canada from the United States border to Goose Bay, Labrador; and Narsarssuak, Greenland.

(2) U.S. East Coast: Includes the eastern United States from the Canadian border to (and including) Key West, Florida.

(3) U.S. Gulf: Extends from (but excluding) Key West, Florida, to the Mexican border.

(4) Caribbean: Includes Bermuda; Bahamas; Cuba; Puerto Rico; Haiti; Dominican Republic; Jamaica; Windward and Leeward Islands; Trinidad; the eastern coast of Mexico; the eastern coast of Central America; and the northern coast of South America up to (and including) French Guiana.

(5) Eastern South America: Includes the eastern coast of South America from (but excluding) French Guiana to Cape Horn.

(6) North Europe: From the northern boundary of Portugal includes northern Atlantic and Biscay ports of Spain; Bordeaux/Hamburg range; Scandinavian and Baltic Sea Ports; England, Wales, Scotland and Ireland; Iceland.

(7) Mediterranean: Includes Azores; Canary Islands; Morocco; Spanish Morocco; Mediterranean ports extending from Gilbraltar to Suez Canal; ports on Adriatic and Aegean Sea, Sea of Marmora and Black Sea; and Atlantic ports of Portugal and Spain from Gibraltar to the northern boundary of Portugal.

(8) West Africa: Includes the western coast of Africa from northern boundary of Rio de Oro to southern boundary of Angola and includes the Cape Verde Islands, Ascension Island and St. Helena.

(9) South and East Africa: Includes the southern and eastern coast of Africa and Madagascar from southern boundary of Angola on the west coast and around the south and east coast to Cape Guardafui between the Gulf of Aden and the Indian Ocean.

(10) South Asia: Extends from Suez to but excluding New Guinea. Includes the shores of the Red Sea; shore of the Gulf of Aden; the northern shores of the Indian Ocean including extensions such as the Persian Gulf; the East Indies including Borneo, the Celebes, etc., but excluding the Philippines and New Guinea; and the Malay Peninsula excluding Thailand.

(11) New Guinea-Australia: Includes Australia; New Guinea; Tasmania; New Zealand and Melanesia (comprising generally the Admiralty Islands, New Ireland, New Britain, the Solomons, New Hebrides and New Caledonia).

(12) East Asia: Includes the ports of the mainland and islands of East Asia from and including Thailand to and including Japan; includes the Philippines, Formosa, the Ryukyu Islands and the Bonins.

(13) Hawaii-Central Pacific: Hawaiian Islands; Wake/Marcus; and Oceania and Micronesia (comprising generally Palau, Marianas, Carolines, Gilberts, Fijis, Marquesas, Tuamotu Archipelago, etc., but excluding oceanic island possessions of South American countries).

(14) Alaska and Aleutian Islands: Includes the western coast of Canada and Alaska (including the Aleutian Islands) south of Cape Prince of Wales.

(15) U.S. Northwest: Includes all Oregon and Washington ports.

(16) U.S. West Coast: Includes all California.

(17) Western Mexico and Central America: Includes the western coast of Mexico and the western coast of Central America.

(18) Western South America: Includes the western coast of South America from (and including) the Republic of Colombia to Cape Horn, and the Pacific Islands possessions of South American countries.

(19) Exempt Areas:

(i) Alaska north of Cape Prince of Wales.

(ii) Greenland, except Narsarssuak.

(iii) Northern and eastern Canada from Goose Bay, Labrador, to Alaska.

(iv) Ports and facilities under security restrictions in otherwise nonexempt areas.

(v) Antarctica.

(71) The procedures set forth at FAR 47.506 and 47.506 below are applicable to all ocean shipments of supplies except:

(1) Shipments in vessels assigned to United States Navy fleets other than the Military Sealift Command;

(2) Shipments which originate or terminate in "exempt areas" as established in (S-70) above;

(3) Shipments which originate and terminate in the same geographic area; *provided*, however, that supplies of the type described in FAR 47.503(a)(1) shall be transported in United States flag vessels to the extent such vessels are available at fair and reasonable United States-flag rates.

247.506 Procedures.

(S-70) Except for those supplies obtained for nonreimbursable contributions to foreign assistance programs for which the ocean transportation is to be provided by and at the expense of the recipient government, ocean transportation of supplies owned by the Government and in the possession of either a Department, or a contractor, or subcontractor of any tier, of a Department, will be provided by the Military Sealift Command. Upon receipt of advice from the contracting officer, the Military Sealift Command shall take such action as may be necessary and practicable to assure proper utilization of Government vessels and private United States vessels in accordance with this subpart and applicable regulations. The Commander of the Military Sealift Command or designated representative is authorized to make any determination as to availability of United States-flag vessels required to assure such proper utilization.

247.507 Contract clauses.

(a) Forward the applicable shipping document specified in the clause set forth at FAR 52.247-64 to the Department of the Navy (Commander, Military Sealift Command, ATTN: MT-5), Washington, DC 20390, for shipments made under arrangements by the contractor or by a Government agency other than the Military Sealift Command.

(S-70) The contracting officer shall insert the clause at 252.247-7200, Ocean Transportation of Government-Owned Supplies, in solicitations and contracts which may involve ocean transportation of property owned by the Government and in the possession of the contractor or any of its subcontractors, including any contract under which title to

property may pass to the Government prior to shipment.

PART 248—VALUE ENGINEERING

Subpart 248.2—Contract Clauses

248.201 Clauses for supply or service contracts.

(a) *General.* Supply or service contracts for spare parts and repair kits of $25,000 or more, for other than standard commercial parts, shall contain a VE incentive clause (see FAR 48.201(b)).

PART 249—TERMINATION OF CONTRACTS

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 249.1—General Principles

249.102 Notice of termination.

See 243.301(a)(1)(S–70) for use of the Standard Form 30 (SF 30), Amendment of Solicitation/Modification of Contract, in providing notice of termination and amendment of the termination notice.

249.105 Duties of termination contracting officer after issuance of notice of termination.

249.105–1 Termination status report.

Upon receipt of the termination notice, it is the responsibility of the contract administration office to prepare DD Form 1598, Contract Termination Status Report, and transmit two copies to the purchasing office and one copy to the headquarters office to which the contract administration office is directly responsible. In addition, these reports shall be furnished on a quarterly basis for the quarters ending March, June, September, and December, within 30 days after the end of the respective quarter, and upon closing of the termination case. This reporting requirement is assigned Report Control Symbol: DD(I&L)(Q&AR) 1411.

249.108 Settlement of subcontract settlement proposals.

249.108–4 Authorization for subcontract settlements without approval or ratification.

(a)(1)(ii) However, no industrial plant equipment included in such inventory shall be disposed of prior to screening pursuant to FAR 45.6.

(e) However, industrial plant equipment, the cost of which is included in determining the amount of the claim, shall not be disposed of prior to screening pursuant to FAR 45.6.

249.109 Settlement agreements.

249.109–7 Settlement by determination.

See 243.301(a)(S–70) for use of the Standard Form 30 (SF–30), Amendment of Solicitation/Modification of Contract, to reflect a determination of the amount due.

249.110 Negotiation memorandum.

(a)(1) *Formot for termination contracting officer's settlement memorandum for fixed-price type contract terminoted for convenience of the Government.* This memorandum shall be addressed to a reviewing authority or the file as appropriate. Contractors and subcontractors should be encouraged to use this format appropriately modified to cover subcontract settlements submitted for review and approval.

Part I—General Information

1. *Identification.* (Identify memorandum as to its purpose and content.)

a. Name and address of the contractor. Comment on any pertinent affiliation between prime and subcontractors relative to the overall settlement.

b. Names and titles of both contractor and Government personnel who participated in the negotiation.

2. *Description of terminated contract.*

a. Date of contract and contract number.

b. Type of contract (*e.g.*, fixed price, or fixed price incentive).

c. General description of contract items.

d. Total contract price.

e. Furnish reference to the contract termination clauses (cite FAR/DoD FAR Supplement designation or other special provisions).

3. *Termination notice.*

a. Reference termination notice and state effective date of termination.

b. Scope and nature of termination (complete or partial), items terminated, unit price and total price of items terminated.

c. State whether termination notice was amended, and if so, explain.

d. Statement whether contractor stopped work on effective termination date. If he did not, furnish details. Also state whether subcontracts were terminated promptly by the contractor.

c. Statement as to diversion of commom items and return of goods to suppliers, if any.

f. Furnish information as to contract performance and timely deliveries on part of contractor.

Part II—Contractor's Settlement Proposal

1. *Date and amount.* Indicate date and location where claim was filed. State gross amount of claim. (If interim settlement proposals were filed, furnish information for each claim.)

2. *Basis of claim.* State whether claim was filed on inventory, total cost or other basis. Explain approval granted in connection with submission on other than inventory basis.

3. *Examination of proposal.* State type of reviews made and by whom (audit, engineering, legal, or other).

Part III—Tabular Summary of Contractor's Claim

Prepare a summary substantially as follows:

(Where field recommendations are to be considered, expand the format to include such recommendations.)

AUDITOR'S RECOMMENDATION

	Contractor's proposal	Dollars accepted	Cost questioned	Unresolved items	TCO negotiated amount
Item claimed:					
1. Contractor's costs as set forth on Settlement Proposal, Metals, Raw materials, etc					
Total					
2. Profit					
3. Settlement Expense					
4. Total					
5. Settlement with Subs					
6. Acceptable Finished Product					
7. Gross Total					
8. Disposal and Other Credits					
9. Net Settlement					
10. Partial, Progress & Advance Payments					
11. Net Payment Requested					

Part IV—Discussion of Settlement

1. *Contractor's cost.*

a. If the settlement was negotiated on the basis of individual items, specify the factors and consideration with respect to each item.

b. In the case of a lump sum settlement, comment on the general basis for and major factors concerning each element of cost and profits included therein.

c. Comment on any important adjustments made to costs or any significant amounts in relation to the total claim.

d. If a partial termination is involved, state whether the contractor has requested an equitable adjustment in the price of the continued portion of the contract.

e. Comment on any unadjusted contractual changes which are included in the settlement.

f. Comment on whether or not a loss would have been incurred and explain adjustment for loss, if any.

g. Furnish other information believed helpful to any reviewing authority in understanding the recommended settlement.

2. *Profit.* Explain the basis and factors considered in arriving at a fair profit.

3. *Settlement expenses.* Comment on and summarize those expenses not included in audit review.

4. *Subcontroctor's settlements.*

Number of Settlements . . . Net Amount

Approved by Termination Contracting Officer _____

Concluded by contractor under delegation of authority.

No Cost Settlements _____

Total _____

5. *Partiol poyments.* Furnish total amount of partial payments, if any.

6. *Progress or advance payments.* Furnish total of unliquidated amounts, if any.

7. *Cloims of the Government against the contractor included in settlement agreement reservations.* List all outstanding claims, if any, which the Government has against the contractor in connection with the terminated contract or terminated portion thereof.

8. *Assignments.* List any assignments, giving name and address of assignee.

9. *Disposal credits.* Furnish information as to applicable disposal credits and give dollar amounts of all disposal credits.

10. *Plant clearance.* State whether all plant clearance action has been complete and all inventory sold, retained or otherwise properly disposed of in accordance with applicable plant clearance regulations. Comment on any unusual matters pertaining to plant clearance. Consolidated closing plant clearance report is attached.

11. *Government property.* State whether all Government property has been accounted for.

12. *Special tooling.* If involved, furnish comment on disposition.

13. *Summary of settlement.* Summarize the settlement in tabular form substantially as follows:

TABULAR SUMMARY FOR COMPLETE OR PARTIAL TERMINATION

	Amount claimed	Allowed amount
Prime Contractor's Charges (before disposal credits)	$	
Plus: Subcontractor charges (after disposal credits)		
Gross Settlement	$	$
Less: Disposal Credits—Prime	XXXXX	
Net Settlement	$	
Less: Prior Payment Credits (This Settlement)		
Previous Partial Settlements		
Other Credits or Deductions		$
Total		$
Net Payment		
Total Contract Price (Complete Termination)		$
CPIT (for partial termination):		
Less: Total Payments to date		
Net Payment from this Settlement		
Fund Reserved for Reservations		
Final Contract Price (Terminated Portion for partial termination)		$
Reduction in Contract Price		

14. *Exclusions.* Describe any proposed reservation of rights to the Government or to the contractor.

Part V—Recommendation

1. *Recommendation.* Include statement as to the amount of the gross settlement and recommendation that it is fair and reasonable to the Government and the contractor.

2. *Signature.* The Contracting Officer will sign and date the memorandum.

(End of Memorandum)

(2) *Formot for termination contracting officer's settlement memorandum for cost-reimbursement type contracts.* This memorandum shall be addressed to a reviewing authority or the file as appropriate. This format may be appropriately modified and used to cover subcontract settlements.

Part I—General Information

1. *Identification.* (Identify memorandum as to its purpose and content.)

a. Name and address of the contractor. Comment on any pertinent affiliation between prime and subcontractors relative to the overall settlement.

b. Names and titles of contractor and Government personnel who participated in the negotiation.

2. *Description of terminated contract.*

a. Date of contract and contract number.

b. Type of contract.

c. General description of contract items.

d. State total contract cost and fee data if complete termination.

e. Furnish reference to the contract termination clauses (cite FAR/DoD FAR Supplement —— or other special provisions).

3. *Termination notice.*

a. Reference termination notice and state effective date of termination.

b. Scope and nature of termination (complete or partial, items terminated, estimated costs and fee data applicable to items terminated).

c. State whether termination notice was amended, and if so, explain.

d. Explain scope of the settlement as to whether settlement concerns fee only or whether costs are also included.

Part II—Contractor's Settlement Proposal

1. *Date and amount.* Indicate date and location where claim was filed. State gross amount of claim. (If interim settlement proposals were filed, furnish information for each claim.)

2. *Examination of proposal.* State type of reviews made and by whom (audit, engineering, legal, or other).

Part III—Tabular Summary of Settlement

1. *Summary.* Summarize the proposed settlement in tabular form substantially as shown in Attachments A and B. Partial settlements may be summarized on Attachment B.

2. *Comments.* Furnish comments in amplification of tabular summaries.

a. Summary of Final Settlement (see Attachment A).

(1) If the auditor's final report was not available for consideration, state the circumstances.

(2) Explain how the fixed fee was adjusted. Identify basis used, such as percentage of completion. Include a description of factors considered and how they were considered. Include any tabular summaries and breakdowns deemed helpful to an understanding of the process. Factors which may be given consideration are outlined in FAR 49.305.

(3) Briefly identify matters included in liability for property and other charges against the contractor arising from the contract.

(4) Identify reservations included in the settlement that are other than standard reservations required by regulations and which are concerned with pending claims and refunds.

(5) Explain substantial or otherwise important adjustments made in cost figures submitted by the contractor in arriving at the proposed settlement.

(6) If unreimbursed costs were settled on a lump sum basis, exlain the general basis for and the major factors considered in arriving at this settlement.

(7) Comment on any unusual items of cost included in the claim and on any phase of cost allocation requiring particular attention and not covered above.

(8) If auditor's recommendations for nonacceptance were not followed, explain briefly the main reasons why such recommendations were not followed.

(9) On items recommended for further consideration by the author, explain, in general, the basis for the action taken thereon.

(10) If any cost previously disallowed by a contracting officer is included in the proposed settlement, identify and explain the reason for inclusion of such costs.

(11) Show settlements with subcontractors by breakdown as follows:
Approved by Termination Contracting Officer—
Concluded by contractor under delegation of authority.
No Cost Settlements _____
Total _____

(12) The following summary will be followed where settlement includes costs and fixed fee in a complete termination.

	Number settlements	Total dollar amount
Gross Settlement	$	
Less: Disposal credits		
Net Settlement		
Less: Prior Payments		
Other credits or deductions		
Total		
Net Payment	$	
Total contract estimated cost plus fixed fee		
Less: Net settlement		
Estimated reserve for exclusions		
Final contract price (Consisting of $_____ for reimbursement of costs and $_____ for adjusted fixed fee) $		
Reduction in contract price (credit)		

(13) *Plant clearance.* Indicate dollar value of termination inventory and state whether plant clearance has been completed. Attach consolidated plant clearance report (DD Form 1636, Inventory Disposal Report).

(14) *Government property.* State whether all Government property has been accounted for.

Part IV—Recommendation

1. *Recommendation.* Set forth the amount of the proposed negotiated settlement and make recommendation that the settlement is fair and reasonable to the Government and the contractor and as such should be approved.

2. *Signature.* The termination contracting officer and negotiator will sign and date the memorandum.

SUMMARY OF SETTLEMENT—COST TYPE CONTRACT *

Contract No. _____

Termination No. _____

	Amount claimed	Amount allowed
1. Previous Reimbursed Costs—Prime and Subs	$	$
2. Previous Unreimbursed Costs		
3. Total Cost Settlement	$	$
4. Previous Fees Paid—Prime	$	$
5. Previous Fees Unpaid—Prime		
6. Total Fee Settlement	$	$
7. Gross Settlement	$	
Less: Deductions not reflected in items 1–7		
a. Disposal credits	$	
b. Other charges against contractor arising from contract	$	
8. Net Settlement		$
Less: Prior Payment Credits		
9. Net Payment		$
10. Recapitulation of previous settlements (insert number of previous partial settlements effected on account of this particular termination):		
Aggregate gross amount of previous settlements		$
Aggregate net amount of previous partial settlements		$
Aggregate net payment provided in previous partial settlements		$
Aggregate amount allowed for prime contractor acquired property taken over by the Government in connection with previous partial settlements.		$

* Use applicable portion for partial settlement.

ATTACHMENT A

UNREIMBURSED COSTS SUBMITTED ON DD FORM 547 [1]

Costs	Amounts claimed by contractor's proposal	Auditor's Recommendation		TCO's Computation
		Cost Questioned	Unresolved Items	
1. Direct material				
2. Direct labor				
3. Indirect factory expense				
4. Dies, jigs, fixtures and special tools				
5. Other costs				
6. General and administrative expense				
7. Fee				
8. Settlement expense				
9. Settlements with subs				
10. Total costs (Items 1–9)				

[1] Expand the format to include recommendations of technical personnel as required.

Attachment B

(End of Memorandum)

Subpart 249.4—Termination for Default

249.402 Termination of fixed-price contracts for default.

249.402-3 Procedure for default.

See 243.301(a)(1)(S–70) for use of the Standard Form 30 (SF 30), Amendment of Solicitations/Modification of Contract, in providing notice of termination.

Subpart 249.6—Contract Termination Forms and Formats

249.601 Notice of termination for convenience.

See 243.301(a)(1)(S–70) for use of the Standard Form 30 (SF 30), Amendment of Solicitation/Modification of Contract, in providing notice of termination.

Subpart 249.70—Special Requirements

249.7001 Terminated contracts with Canadian commercial corporation.

(a) The termination and settlement of contracts with the Canadian Commercial Corporation shall be effected in accordance with the provisions of (1) the Letter of Agreement between the Department of Defence Production (Canada) and the United States Department of Defense (see Appendix T.201, Canadian Agreements); (2) policies in T.201 and Part 249; and (3) the Manual of Procedure on Termination of Contracts, Department of Defence Production (Canada).

(b) The termination proposal of Canadian Commercial Corporation shall be submitted in the form prescribed in FAR 49.602 and shall reflect the amount of settlements with subcontractors. The letter transmitting the proposal shall certify that (1) subcontract settlements with Canadian subcontractors have been approved by the Contracts Settlement Committee of the Department of Defence Production (Canada), if required pursuant to the Manual of Procedure on Termination of Contracts, Department of Defence Production (Canada), and (2) that disposition of inventory has been completed. The TCO shall prepare an appropriate settlement agreement pursuant to the provisions of FAR 49.603.

(c) All Canadian subcontracts shall be settled by the Canadian Commercial Corporation pursuant to T.201. Schedules listing serviceable or usable contractor inventory shall be submitted by the Canadian Commercial Corporation to the TCO for screening in accordance with the provisions of FAR 45.6. Transfer instructions resulting from screening procedures shall be submitted to the Canadian Commercial Corporation for action. At the expiration of the screening period, the TCO shall advise the Canadian Commercial Corporation to proceed with disposition of contractor inventory determined to be surplus to the requirements of the Government. The settlement of Canadian subcontracts shall not be subject to approval or ratification by the TCO, except that in cases that result in a proposed negotiated settlement in excess of the total contract price of the prime contract, ratification of the proposed settlement by the United States PCO, evidenced by a contract modification increasing the contract price and obligating required additional funds shall be obtained by the TCO prior to final settlement.

(d) Termination proposals submitted by the United States subcontractors and suppliers normally should be referred by the Canadian Commercial Corporation to the TCO (normally DCASR, Cleveland) for settlement in accordance with this Part and T.201. Upon completion of all settlement action, the TCO shall advise the Canadian Commercial Corporation of the amount of the net settlement agreed upon, which shall be included in the termination proposal submitted pursuant to (b) above. Execution of a settlement agreement with the subcontractor shall be the responsibility of the Canadian Commercial Corporation.

249.7002 Prior notification of significant contract terminations.

(a) Prior Defense Department clearance of the information release is required before any notice or any information concerning a proposed contract termination involving a reduction in employment of 100 or more contractor employees is released to a contractor. Coordination of the timing of the notice to the contractor and release of information to Congress or the public is the responsibility of each Department through its liaison point designated in (d) below. In a labor surplus area, a lesser number than 100 may be significant, and if so, such information release should be similarly cleared.

(b) The following information will be submitted to the appropriate Departmental liaison point:

(1) Contract number, date, type of contract;

(2) Name of company;

(3) Nature of contract or end item;

(4) The reasons for the termination;

(5) Contract price of items terminated;

(6) Total number of contractor employees, involved including the Government's estimate of the number who may be discharged;

(7) Statement of anticipated impact on the company and the community (identify); identify area labor category; whether contractor is large or small business, and include any known impact on hardcore disadvantaged employment programs;

(8) Total number of subcontractors involved as well as the impact in this area, if known; and

(9) Draft (unclassified) of suggested press release of information.

(c) Clearance to release the information will be requested as soon as possible after the decision has been made to terminate a contract. Pending receipt of clearance to release, information pertinent to the termination will require "For Official Use Only" handling unless a security clearance is required.

(d) The Departmental liaison points for prior clearance to release information on significant terminations are as follows:

Army—OSA, OCLL, (SACLL), ASA (I&L) (copy)
Navy—Chief of Legislative Affairs (OLA–N)
Air Force—HQ USAF (AF/RDC)
Defense Logistics Agency—DLA–PC
Defense Communications Agency—Contract Management Division (Code 260)
Defense Nuclear Agency—Chief, Office of Procurement, OATR
Defense Mapping Agency—DMA/LO

(e) Liaison offices of Departments will act promptly on the request for clearance to release information (not later than two working days after receipt) to avoid the accrual of termination cost.

(f) This reporting requirement is assigned Report Control Symbol: DD(I&L)(AR) 1412.

249.7003 Special termination costs.

(a) The clause at 252.249–7000, Special Termination Costs, is authorized for use in an incrementally funded contract when:

(1) The contract term is two years or more;

(2) The contract is estimated to require total RDT&E financing in excess $25 million or total production investment in excess of $100 million;

(3) Adequate resources are available within existing appropriated amounts to cover the contingent reserved liability for special termination costs in the event of contract termination; and

(4) The use of the clause in the contract is approved by the (Secretary of the Department concerned or

designee. The clause may be used in circumstances other than those in (1) and (2) above when approved by the Secretary of the Department concerned or designee. Any addition to the categories of special termination costs listed in paragraph (a) (1) through (4) of the clause in 252.249–7000 shall be processed in accordance with 201.404.

(b) The contractor and the contracting officer shall agree upon an amount that represents their best estimate of the total special termination costs to which the contractor would be entitled in the event of termination of the contract. Such amount shall be inserted in the clause.

(c) A provision allowing for negotiated adjustments of the amount reserved for special termination costs may be inserted as paragraph (d) of the clause. Contract provisions for periodic adjustments by mutual agreement of the parties may be established based on, among other things, (1) set time periods within the contract, (2) the Government's incremental assignment of funds to the contract, or (3) the time when certain performance milestones are accomplished by the contractor. Provisions for such adjustments may be considered desirable in contracts containing unusually long performance periods, or in contracts where the contractor's cost risk associated with the contingent special termination costs, in the event of Government termination, fluctuates extensively over the period of the contract, depending on the scope of work to be performed during a certain period of the contract, or the amount of funds to be assigned to the contract during any one increment.

PART 250—EXTRAORDINARY CONTRACTUAL ACTIONS

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

250.001 Definitions.

"Agency head," as used within this part by the Department of Defense, does not include heads of defense agencies.

"Secretarial level," as used within this part by the Department of Defense, means an official at or above the level of an Assistant Secretary (or Deputy) of Defense or of the Army, Navy, or Air Force, and a Contract Adjustment Board established by the Secretary concerned.

Subpart 250.1—General

250.103 Deviations.

For purposes of this section, "defense agencies" include the Departments of the Army, Navy, and Air Force, as well as agencies within the Office of the Secretary of Defense.

250.104 Reports.

Departmental and agency supplements will designate officials responsible for preparing and processing the reports required by this section.

250.105 Records.

(S–70) *Record of requests and dispositions.*

(1) *General.* In order that adequate records of actions by each Department pursuant to the Act may be maintained, 50.303(S–71) requires the preparation of a preliminary record when each request is filed for an adjustment under FAR Subpart 50.3, and 250.306(S–70) requires the preparation of a final record indicating the disposition of the request. This paragraph describes in detail the information which should be included in these records. A suggested format for the records is shown in 250.105(S–70)(4). It is designed so that the information required for the preliminary and final record with respect to each request may be combined on the same form. Departmental and agency supplements will designate the offices or officials responsible for preparing, submitting, receiving, and maintaining all records required by this part. Records required by this supplement shall be maintained in the Departments of the Army, Navy, and Air Force by their respective Contract Adjustment Boards and in the Headquarters of the defense agencies.

(2) *Preliminary records.* Each preliminary record prepared pursuant to 250.303(S–71) should contain the following information:

(i) *Type of record.* The fact that the record is a preliminary record should be indicated.

(ii) *Date of contractor's request.* The date on the face of the contractor's request for adjustment should be inserted.

(iii) *Date received by government.* The date the request for adjustment is received in any Government office to which the contractor may properly submit his request should be inserted.

(iv) *Name and address of contractor.* The full and correct name and address of the contractor filing the request should be inserted. If the contractor is a small business, this fact should be indicated.

(v) *Name and address of the contractor's representative, if any.* If a particular named person (employee, attorney, etc.) is the point of contact with the contractor, his full name and address should be inserted.

(vi) *Cognizant contracting officer or office.* The contracting officer administering the contract for which an adjustment was requested or, if none, the contracting officer or office cognizant of the request should be inserted.

(vii) *Procuring activity.* The name of the procuring activity with jurisdiction over the contracting officer or official referred to in (vi) above, should be inserted.

(viii) *Property or service involved.* A brief description of the item being procured or services being rendered should be inserted.

(ix) *Extent of performance as of date of request.* A brief indication, as of the date of the request, of the degree of completion of the contract should be inserted; for example, 50 percent completed, or performance not yet begun; if work is completed, indicate date of completion and whether final payment has been made.

(x) *Contract number and date.* The identifying numbers and dates of the contracts for which an adjustment is requested should be inserted. If there is no contract, then the word "None" should be inserted. If the question arises under a letter of intent, then that fact and the date of such letter should be inserted.

(xi) *Award procedure.* The procedure under which the contract was awarded, e.g., formal advertising, negotiation, or sealed bidding, should be indicated. The specific authority, if applicable, should be indicated; for example: "Neg. 10 U.S.C. 2304(a)(14)."

(xii) *Type of contract.* The type of contract involved (see FAR Part 16) should be inserted; e.g., FFP (firm fixed-price), FPI (fixed-price incentive), CPFF (cost-plus-fixed-fee), or T&M (time and materials).

(xiii) *Category of case.* Whether the request involves an amendment without consideration, a mistake, or an informal commitment should be indicated. If the case involves two or more categories, each should be indicated; however, the most significant category involved should be listed first.

(xiv) *Amount or description of request.* If the request is expressed in dollars, as a change in price, then that fact should be inserted as follows: "$5,250 increase" or "$5,250 decrease." If the request seeks an adjustment which cannot be expressed in monetary terms, then a brief description of it should be inserted, such as "Cancellation" or "Modification of Terms." The fact that an adjustment is not easily expressed in dollar terms should not deter an estimate if such an estimate is made by the contractor in his request.

(xv) *Date of this record.* The date on which the record is signed and forwarded should be inserted.

(xvi) *Signature.* The record should be signed by an authorized representative of the reporting authority.

(3) *Final records.* Each final record prepared pursuant to 250.306–(S–70) should contain the information listed in (S–70)(2) (ii) through (xvi) above, and, in addition, should contain the following information:

(i) *Type of record.* The fact that the record is a final record should be indicated.

(ii) *Action below secretarial level.* The disposition of the case, the office which took action, and the date thereof should be inserted. The disposition should be indicated as: "withdrawn," "denied," "approved," or "forwarded." If the request was approved in whole or in part, the dollar amount or nature of the action should be indicated in a manner similar to that described in 250.105(S–70)(2)(xiv). The date should correspond with the date of the Memorandum of Decision or of the letter forwarding the request to the Board.

(iii) *Action by contract adjustment board and date.* The disposition of the case by the Contract Adjustment Board and the date thereof should be indicated in a manner similar to that described in (2) above.

(iv) *Implementation and date.* The contractual action or correspondence which implements the decision of the approving authority or of the Board should be inserted as follows: "amendment," "new contract," or "letter of denial."

(4) *Sample format.* The preliminary and final records described in (2) and (3) above may be prepared in a format substantially as follows:

☐ PRELIMINARY	RECORD OF REQUEST FOR ADJUSTMENT PUBLIC LAW 85–804	FINAL ☐
DATE OF REQUEST		DATE RECEIVED BY GOVERNMENT
CONTRACTOR'S NAME AND ADDRESS		☐ SMALL BUSINESS
NAME AND ADDRESS OF CONTRACTOR'S REPRESENTATIVE, IF ANY		
COGNIZANT CONTRACTING OFFICER OR OFFICE		PROCURING ACTIVITY
PROPERTY OR SERVICE INVOLVED		EXTENT OF PERFORMANCE AS OF DATE OF REQUEST
CONTRACT NUMBER	DATE	ADVERTISED OR NEGOTIATED / TYPE OF CONTRACT
CATEGORY OF CASE		AMOUNT OR DESCRIPTION OF REQUEST
ACTION BELOW SECRETARIAL LEVEL		DATE
ACTION BY CAB		DATE
IMPLEMENTATION		DATE
ADDITIONAL DATA OR REMARKS		
DATE THIS RECORD SIGNED		SIGNATURE

Subpart 250.2—Delegation of and Limitations on Exercise of Authority

250.201 Delegation of authority.

(b) Authority to approve actions under FAR Subpart 50.4–Residual Powers, obligating $50,000 or less may not be delegated below the level of the Head of the Contracting Activity (but see FAR 50.201(d) for indemnification authority).

(S–70) *Authority delegated.*

(1) *Departments of the Army, Navy, and the Air Force.* Delegations and levels of authority for actions by the Departments of the Army, Navy, and Air Force under the Act and the Executive Order are contained in their departmental supplements.

(2) *Defense agencies.* Subject to the restrictions on delegations of authority in FAR 50.201 and 250.201 above, the Directors of the Defense Logistics Agency, the Defense Communications Agency, the Defense Nuclear Agency, the National Security Agency, and the Defense Mapping Agency may exercise and further delegate authority under the Act and the Executive Order. Levels of such authority are contained in defense agency supplements. Recommendations for approval of actions in excess of the authority delegated by this paragraph will be submitted to the Assistant Secretary of Defense, Acquisition and Logistics.

(3) *Approvals.* Authorities may be delegated and redelegated only with the written approval of the Secretary or Director concerned.

250.202 Contract adjustment boards.

(S–70) *Organization and authority.*

(1) *Organization.* A Contract Adjustment Board has been established within the Departments of the Army, Navy, and Air Force by the Secretary. Such Boards consist of a Chairman and not less than two nor more than six other members, one of whom may be designated the Vice-Chairman. A majority constitutes a quorum for any purpose and the concurring vote of a majority of the total Board membership constitutes an action of the Board. Alternates may be appointed to act in the absence of members.

(2) *Authority.* The Contract Adjustment Board in each Department has been given authority to approve, authorize and direct appropriate action under the standards set forth in FAR Subpart 50.3 in any case submitted to it, by an official designated to submit cases, and to make all determinations and findings which are necessary or appropriate. When deemed necessary to the exercise of the foregoing authority, such Boards may authorize any

appropriate action not precluded by FAR 50.203, including the modification or release of any obligations.

Subpart 250.3—Contract Adjustments

250.303 Contractor requests.

(S–70) *Filing of requests.* If a request is filed with an administrative contracting officer, it shall be forwarded promptly to the procuring contracting officer for appropriate action. If such filing is impracticable, requests will be deemed to be properly filed if filed with the following addresses for forwarding to the cognizant contracting officer:

(1) In the Army: The Head of Contracting Activity listed in Part 2 appearing to be cognizant of the contract or commitment involved;

(2) In the Navy: The Head of Contracting Activity listed in Part 2 appearing to be cognizant of the contract or commitment involved;

(3) In the Air Force: Commander Air Force Logistics Command ATTN: PPC Wright-Patterson Air Force Base, Ohio;

(4) In the Defense Logistics Agency: Commanders of the Defense Supply Centers concerned;

(5) In the Defense Communications Agency: Director, DCA ATTN: Code 260;

(6) In the Defense Nuclear Agency: Director, DNA, ATTN: OAPR;

(7) In the National Security Agency: Director, NSA; and

(8) In the Defense Mapping Agency: Director, DMA, ATTN: LO.

(S–71) *Record of request.* At the time the request is filed, a preliminary record as decribed in 250.105(S–70)(2) shall be prepared by, and forwarded within 30 days after the close of the month in which prepared, to those officials designated pursuant to 250.105(S–70)(1).

250.305 Processing cases.

(S–70) *Processing cases by contract adjustment boards.*

(1) *Statement to board.* Cases to be submitted for consideration of the cognizant Contract Adjustment Board shall be forwarded by means of a letter signed by the officer or official responsible for the case. The letter shall state:

(i) The nature of the case;

(ii) The basis for the Board's authority to act;

(iii) The findings of fact essential to the case (see FAR 50.304) arranged chronologically with cross references to supporting enclosures;

(iv) The conclusions drawn from applying the standards for deciding cases, as set forth in FAR Subpart 50.3, to the findings of fact; and

(v) The disposition recommended, and, if contractual action is recommended, the opinion of the signer that such action will facilitate the national defense.

The letter shall enclose copies of the contractor's request, the evidentiary materials, and all indorsements, reports and comments of cognizant Government officials. The letter and enclosure shall be in duplicate.

(2) *Amendments without consideration under FAR 50.302–1(a).* A letter to the Board recommending an amendment without consideration under the standards of FAR 50.302–1(a) should, in addition to the requirements of paragraph (a) above, ordinarily cover, with supporting data as appropriate, the findings and conclusions with respect to all of the items set forth in FAR 50.304(b) and, in addition, findings as to:

(i) The contractor's performance record, including the quality of product, rate of production and promptness of deliveries;

(ii) The importance to the Government, particularly to the operating forces, of the performance of the contract by the contractors and the importance of the contractor to the national defense;

(iii) Forecast of future contracts with the contractor; and

(iv) Other available sources of supply for the supplies or services covered by the contract, and the time and cost of having contract performance completed by such other sources.

(3) *Forwarding to boards.* Cases to be submitted to the Boards will be forwarded through channels in accordance with departmental supplements.

(4) *Processing by boards.* Upon receipt of cases, the Contract Adjustment Boards, each in accord with its own procedures, shall render decisions as expeditiously as practicable. The chairman shall sign a Memorandum of Decision disposing of the case, which shall be dated and shall contain the information required by FAR 50.306. The Memorandum of Decision shall omit any information classified "Confidential" or higher. The Board's decision will be communicated to the appropriate officer or official for implementing action.

250.306 Disposition.

(S–70) *Record of disposition.*

(1) In each case when the request for relief is denied or approved below the Secretarial level, each of the following documents shall be submitted to the office designated pursuant to 250.105(S–70)(1) within 30 days after the close of the month during which it is executed:

(i) Two copies of the Memorandum of Decision;

(ii) One copy of the contractual document implementing any decision approving contractual action (not to be submitted in the case of the Army); and

(iii) One copy of a final record, as prescribed in 250.105(S–70)(3) prepared by the office designated pursuant to 250.105(S–70)(1).

(2) When a Contract Adjustment Board decision is implemented, the documents listed in (S–70)(1) (ii) and (iii) above shall be prepared and submitted to the Board by the activity which forwarded the case to the Board.

Subpart 250.4—Residual Powers

250.403–70 Indemnification under contract involving both research and development and work that cannot be so classified.

Certain contracts require a substantial amount of research and developmental work as well as a substantial amount of work that cannot be so classified. When indemnification is to be provided for such contracts, an appropriate clause, utilizing the authority of both 10 U.S.C. 2354 and Pub. L. 85–804 may be used. In such cases, the use of Pub. L. 85–804 to provide indemnification is limited to work which cannot be indemnified pursuant to 10 U.S.C. 2354 and is subject to compliance with FAR Subpart 50.4. Indemnification pursuant to the authority of 10 U.S.C. 2354 is covered by 235.070.

Subpart 250.70—Act and Executive Order

250.7000 Scope.

This subpart sets forth in full the Act and Executive Order.

250.7001 Act of August 28, 1958, as amended.

(Pub. L. 85–804); 72 Stat. 972, as amended by 87 Stat. 605 (1973); 50 U.S.C. 1431–1435, as amended:

Be it enacted by the Senate and House of Representotives of the United States of Americo in Congress assembled, That the President may authorize any department or agency of the Government which exercises functions in connection with the national defense, acting in accordance with regulations prescribed by the President for the protection of the Government, to enter into contracts or into amendments or modifications of contracts heretofore or hereafter made and to make advance payments thereon, without regard to other provisions of law relating to the making, performance, amendment, or modification of contracts, whenever he deems that such action would facilitate the national defense. The authority conferred by this section shall not be utilized to obligate the United States in an amount in excess of $50,000 without approval by an official at or above the level of an Assistant Secretary or his Deputy, or an assistant head or his deputy, of such department or agency, or by a Contract Adjustment Board established therein. The authority conferred by this section may not be utilized to obligate the United States in any amount in excess of $25,000,000 unless the Committees on Armed Services of the Senate and the House of Representatives have been notified in writing of such proposed obligation and 60 days of continuous session of Congress have expired following the date on which such notice was transmitted to such Committees and neither House of Congress has adopted, within such 60 day period, a resolution disapproving such obligation. For purposes of this section, the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of such 60 day period.

Sec. 2. Nothing in this Act shall be construed to constitute authorization hereunder for—

(a) The use of the cost-plus-a-percentage-of-cost system of contracting;

(b) Any contract in violation of existing law relating to limitation of profits;

(c) The negotiation of purchases of or contracts for property or services required by law to be procured by formal advertising and competitive bidding;

(d) The waiver of any bid, payment, performance, or other bond required by law;

(e) The amendment of a contract negotiated under section 2304(a)(15), Title 10, United States Code, or under section 302(c)(13) of the Federal Property and Administrative Services Act of 1949, as amended (63 Stat. 377, 394), to increase the contract price to an amount higher than the lowest rejected bid of any responsible bidder, or;

(f) The formalization of an informal commitment, unless it is found that at the time the commitment was made it was impracticable to use normal procurement procedures.

Sec. 3(a) All actions under the authority of this Act shall be made a matter of public record under regulations prescribed by the President and when deemed by him not to be detrimental to the national security.

(b) All contracts entered into, amended, or modified pursuant to authority contained in this Act shall include a clause to the effect that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment, have access to and the right to examine any directly pertinent books, documents, papers, and records of the contractor or any of his subcontractors engaged in the performance of and involving transactions related to such contracts or subcontracts.

Sec. 4(a) Every department and agency acting under authority of this Act shall, by March 15 of each year, report to Congress all such actions taken by that department or agency during the preceding calendar year. With respect to actions which involve actual or potential cost to the United States in excess of $50,000, the report shall—

(1) Name the contractor;

(2) State the actual cost or estimated potential cost involved;

(3) Describe the property or services involved; and

(4) State further the circumstances justifying the action taken.

With respect to (1), (2), (3), and (4), above, and under regulations prescribed by the President, there may be omitted any information the disclosure of which would be detrimental to the national security.

(b) The Clerk of the House and the Secretary of the Senate shall cause to be published in the Congressional Record all reports submitted pursuant to this section.

Sec. 5. This Act shall be effective only during a national emergency declared by Congress or the President and for six months after the termination thereof or until such earlier time as Congress, by concurrent resolution, may designate.

250.7002 Executive Order 10789 of November 14, 1958.

(23 FR 8897) as amended by Executive Order 11051, dated 27 September 1962, Executive Order 11382 of November 28, 1967, and Executive Order 11610 of July 22, 1971:

AUTHORIZING AGENCIES OF THE GOVERNMENT TO EXERCISE CERTAIN CONTRACTING AUTHORITY IN CONNECTION WITH NATIONAL DEFENSE FUNCTIONS AND PRESCRIBING REGULATIONS GOVERNING THE EXERCISE OF SUCH AUTHORITY

By virtue of the authority vested in me by the act of August 28, 1958, 72 Stat. 972, hereinafter called the act, and as President of the United States, and in view of the existing national emergency declared by Proclamation No. 2914 of December 16, 1950, and deeming that such action will facilitate the national defense, it is hereby ordered as follows:

Part 1—Department of Defense

Under such regulations, which shall be uniform to the extent practicable, as may be prescribed or approved by the Secretary of Defense:

1. The Department of Defense is authorized, within the limits of the amounts appropriated and the contract authorization provided therefor, to enter into contracts and into amendments or modifications of contracts heretofore or hereafter made, and to make advance payments thereon, without regard to the provisions of law relating to the making, performance, amendment, or modification of contracts, whenever, in the judgment of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force, or the duly authorized representative of any such Secretary, the national defense will be facilitated thereby.

(a) The limitation in paragraph 1 to amounts appropriated and the contract authorization provided therefor shall not apply to contractual provisions which provide that the United States will hold harmless and indemnify the contractor against any of the claims or losses set forth in subparagraph (b), whether resulting from the negligence or wrongful act or omission of the contractor or otherwise (except as provided in subparagraph (b)(2)). This exception from the limitations of paragraph 1 shall apply only to claims or losses arising out of or resulting from risks that the contract defines as unusually hazardous or nuclear in nature. Such a contractual provision shall be approved in advance by an official at a level not below that of the Secretary of a military department and may require each contractor so indemnified to provide and maintain financial protection of such type and in such amounts as is determined by the approving official to be appropriate under the circumstances. In deciding whether to approve the use of an indemnification provision and in determining the amount of financial protection to be provided and maintained by the indemnified contractor, the appropriate official shall take into account such factors as the availability, cost and terms of private insurance, self-insurance, other proof of financial reponsibility and workmen's compensation insurance. Such approval and determination, as required by the preceding two sentences, shall be final.

(b)(1) Subparagraph (a) shall apply to claims (including reasonable expenses of litigation and settlement) or losses, not compensated by insurance or otherwise, of the following types:

(A) Claims by third persons, including employees of the contractor, for death, personal injury, or loss of, damage to, or loss of use of property;

(B) Loss of, damage to, or loss of use of property of the contractor;

(C) Loss of, damage to, or loss of use of property of the Government;

(D) Claims arising (i) from indemnification agreements between the contractor and a subcontractor or subcontractors, or (ii) from such arrangements and further indemnification arrangements between subcontractors at any tier, *provided* that all such arrangements were entered into pursuant to regulations prescribed or approved by the Secretaries of Defense, the Army, the Navy, or the Air Force.

(2) Indemnification and hold harmless agreements entered into pursuant to this subsection, whether between the United States and a contractor, or between a contractor and a subcontractor, or between two subcontractors, shall not cover claims or losses caused by the willful misconduct or lack of good faith on the part of any of the contractor's or subcontractor's directors or officers or principal officials which are (i) claims by the United States (other than those arising through subrogation) against the contractor or subcontractor, or (ii) losses affecting the property of such contractor or subcontractor. Regulations to be prescribed or approved by the Secretaries of Defense, the Army, the Navy or the Air Force shall define the scope of the term *"principal officials"*.

(3) The United States may discharge its obligation under a provision authorized by subparagraph (a) by making payments directly to subcontractors or to third persons to whom a contractor or subcontractor may be liable.

(c) A contractual provision made under subparagraph (a) that provides for indemnification must also provide for—

(1) Notice to the United States of any claim or action against, or of any loss by, the contractor or subcontractor which is covered by such contractual provision; and

(2) Control or assistance by the United States, at its election, in the settlement or defense of any such claim or action.

2. The Secretaries of Defense, the Army, the Navy, and the Air Force, respectively, may exercise the authority herein conferred and, in their discretion and by their direction, may delegate such authority to any other military or civilian officers or officials of their respective departments, and may confer upon any such military or civilian officers or officials the power to make further delegations of such authority within their respective commands or organizations: *Provided*, that the authority herein conferred shall not be utilized to obligate the United States in an amount in excess of $50,000 without approval by an official at or above the level of an Assistant Secretary or his Deputy, or by a departmental Contract Adjustment Board.

3. The contracts hereby authorized to be made shall include agreements of all kinds (whether in the form of letters of intent, purchase orders, or otherwise) for all types and kinds of property or services necessary, appropriate, or convenient for the national defense, or for the invention, development, or production of, or research concerning, any such property or services, including, but not limited to, aircraft, missiles, buildings, vessels, arms, armament, equipment or supplies of any kind, or any portion thereof, including plans, spare parts and equipment therefor, materials, supplies, facilities, utilities, machinery, machine tools, and any other equipment without any restriction of any kind as to type, character, location, or form.

4. The Department of Defense may by agreement modify or amend or settle claims under contracts heretofore or hereafter made, may make advance payments upon such contracts of any portion of the contract price, and may enter into agreements with contractors or obligors modifying or releasing accrued obligations of any sort, including accrued liquidated damages or liability under surety or other bonds. Amendments or modifications of contracts may be with or without consideration and may be utilized to accomplish the same things as any original contract could have accomplished hereunder, irrespective of the time or circumstances of the making, or the form, of the contract amended or modified, or of the amending or modifying contract, and irrespective of rights which may have accrued under the contract or the amendments or modifications thereof.

5. Proper records of all actions taken under the authority of the act shall be maintained within the Department of Defense. The Secretaries of Defense, the Army, the Navy, and the Air Force shall make such records available for public inspection except to the extent that they, or their duly authorized representatives, may respectively deem the disclosure of information therein to be detrimental to the national security.

6. The Department of Defense shall, by March 15 of each year, report to the Congress all actions taken within that department under the authority of the act during the preceding calendar year. With respect to actions which involve actual or potential cost to the United States in excess of $50,000, the report shall (except as the disclosure of such information may be deemed to be detrimental to the national security)—

(a) Name the contractor;

(b) State the actual cost or estimated potential cost involved;

(c) Describe the property or services involved; and

(d) State further the circumstances justifying the action taken.

7. There shall be no discrimination in any act performed hereunder against any person on the ground of race, religion, color, or national origin, and all contracts entered into, amended, or modified hereunder shall contain such nondiscrimination provision as otherwise may be required by statute or Executive order.

8. No claim against the United States arising under any purchase or contract made under the authority of the act and this order shall be assigned except in accordance with the Assignment of Claims Act of 1940 (54 Stat. 1029), as amended.

9. Advance payments shall be made hereunder only upon obtaining adequate security.

10. Every contract entered into, amended, or modified pursuant to this order shall contain a warranty by the contractor in substantially the following terms:

"The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona-fide employees or bona-fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee."

11. Except as provided in the Act of September 1966 (80 Stat. 850), contracts entered into, amended, or modified pursuant to authority of this order shall include a clause to the effect that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment, have access to and the right to examine any directly pertinent books, documents, papers, and records of the contractor or any of his subcontractors engaged in the performance of, and involving transactions related to, such contracts or subcontracts. Before exercising the authority provided in the Act of September 27, 1966 (80 Stat. 850), the Secretaries of Defense, the Army, the Navy, or the Air Force, or their designees, shall first determine that all reasonable efforts have been made to include the clause prescribed above and that alternate sources of supply are not reasonably available.

12. Nothing herein contained shall be construed to constitute authorization hereunder for—

(a) The use of the cost-plus-a-percentage-of-cost system of contracting;

(b) Any contract in violation of existing law relating to limitation of profits of fees;

(c) The negotiation of purchases of or contracts for property or services required by law to be procured by formal advertising and competitive bidding;

(d) The waiver of any bid, payment, performance, or other bond required by law;

(e) The amendment of a contract negotiated under section 2304(a)(15) of title 10 of the United States Code to increase the contract price to an amount higher than the lowest rejected bid of any responsible bidder; or

(f) The formalization of an informal commitment, unless the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force, or the duly authorized representative of any such Secretary, finds that at the time the commitment was made it was impracticable to use normal procurement procedures.

13. The provisions of the Walsh-Healey Act (49 Stat. 2036), as amended, the Davis-Bacon Act (49 Stat. 1101), as amended, the Copeland Act (48 Stat. 948), as amended, and the Eight Hour Law (37 Stat. 137), as amended, if otherwise applicable, shall apply to contracts made and performed under the authority of this order.

14. Nothing herein contained shall prejudice anything heretofore done under Executive Order No. 9001 of December 27, 1941, or Executive Order No. 10210 of February 2, 1951, or any amendments or extensions thereof, or the continuance in force of an action heretofore taken under those orders or any amendments or extensions thereof.

15. Nothing herein contained shall prejudice any other authority which the Department of Defense may have to enter into, amend, or modify contracts, and to make advance payments.

Part II—Extension of Provisions of Paragraphs 1–14

21. Subject to the limitations and regulations contained in paragraphs 1 to 14, inclusive, hereof, and under any regulations prescribed by him in pursuance of the provisions of paragraph 22 hereof, the head of each of the following-named agencies is authorized to perform or exercise as to his agency, independently of any Secretary referred to in the said paragraphs 1 to 14, all the functions and authority vested by those paragraphs in the Secretaries mentioned therein:

Department of the Treasury
Department of the Interior
Department of Agriculture
Department of Commerce
Department of Transportation
Atomic Energy Commission
General Services Administration
National Aeronautics and Space Administration
Tennessee Valley Authority
Government Printing Office

22. The head of each agency named in paragraph 21 hereof is authorized to prescribe regulations governing the carrying out of the functions and authority vested with respect to his agency by the provisions of paragraph 21 hereof. Such regulations shall, to the extent practicable, be uniform with the regulations prescribed or approved by the Secretary of Defense under the provisions of Part I of this order.

23. Nothing contained herein shall prejudice any other authority which any agency named in paragraph 21 hereof may have to enter into, amend, or modify contracts and to make advance payments.

24. Nothing contained in this Part shall constitute authorization thereunder for the amendment of a contract negotiated under section 302(c)(14) of the Federal Property and Administrative Services Act of 1949 (63 Stat. 394), as amended by section 2(b) of the act of August 28, 1958, 72 Stat. 966, to increase the contract price to an amount higher than the lowest rejected bid of any responsible bidder.

Dwight D. Eisenhower

PART 251—USE OF GOVERNMENT SOURCES BY CONTRACTORS

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 251.1—Contractor Use of Government Supply Sources

251.100 Scope of subpart.

FAR Subpart 51.1 and this Subpart are applicable to the acquisition of supplies to be delivered in the United States, its possessions, or Puerto Rico. (The use of GSA sources by grantees is not authorized.)

251.102 Authorization to use government supply sources.

(e) The following is the form of authorization to the contractor:

Subject: Authorization to Purchase from Government Supply Sources.

_____ (Contractor's Name)
_____ (Address)

1. You are hereby authorized to utilize Government sources in performing Contract No. _____ for the Department of _____ as follows:

(Insert applicable purchasing authority given to the contractor.)

2.a. Purchase Orders Under Federal Supply Schedules or Personal Property Rehabilitation Price Schedules. Orders will be placed in accordance with the terms and conditions of the attached Schedule(s) and this authorization. A copy of the authorization shall be attached to the order (unless a copy was previously furnished to the Federal Supply Schedule or Personal Property Rehabilitation Price Schedule contractor) and the order shall contain the following statement:

This order is placed under written authorization from _____ dated _____ (*_____). In the event of any inconsistency between the terms and conditions of this order and those of your Federal Supply Schedule or Personal Property Rehabilitation Price Schedule contract, the latter will govern.

b. Requisitioning from GSA or DoD. Orders will be placed in accordance with the Federal Standard Requisitioning and Issue Procedures (FEDSTRIP) or Military Standard Requisitioning and Issue Procedures (MILSTRIP), as appropriate, and this authorization. Orders shall include the activity address code cited in paragraph 5 below. Bills will not be issued by Government supply sources until after the supplies have been shipped. Payment shall be made promptly upon receipt of billings.

3. Insert other provisions, as necessary.

4. This authority hereby granted is not transferable or assignable.

5. The DoD Activity Address Directory (DODAAD) (DLAH 4140.1, AR 725-60-1, MCO P4420.2H, CG 364, AFM 75-6, NAVSUP PUB 5544)** Activity Address Code to which this Authorization applies is _____

6. This authorization expires _____

(Contracting Officer) _____

* Insert "a copy of which is attached," or "a copy of which you have on file," or other suitable language, as appropriate.

** The sponsoring service assumes responsibility for monitoring and controlling all activity address codes utilized in the letters of authority.

(e)(3)(ii) In addition to the procedure and form authorized by FAR 51.102(e)(3)(ii), contractors are also authorized to use DD Form 1155 when requisitioning from the VA.

251.103 Ordering from government supply sources.

(b) "Contracting agency" as used in FAR 51.103(b) shall be construed to mean the contracting officer.

251.104 Furnishing assistance to contractors.

(b)(2) GSA Form 457 may be obtained from the GSA regional office serving the area in which the requesting activity is located.

251.106 Title.

(b) With DoD, title to property having an acquisition cost of $5,000 or less shall vest in the contractor under the circumstances prescribed in FAR 51.106(b).

251.107 Contract clause.

The contracting officer shall insert the clause at 252.251-7000, Ordering from Government Supply Sources, in solicitations and contracts which include the clause at FAR 52.251-1.

Subpart 251.2—Contractor Use of Interagency Motor Pool Vehicles

251.202 Authorization.

(a)(2) See FAR 28.307-2(c), and FAR 28.308 and 228.001 for policy on contractor insurance and self-insurance, respectively, and FAR 31.205-19 for allowability of insurance costs.

(a)(5) Paragraph (e) of the clause at 252.251-7001 satisfies the requirement of FAR 51.202(a)(5) for the written statement required by that paragraph.

251.205 Contract clause.

The contracting officer shall insert the clause at 252.251-7001, Use of Interagency Motor Pool Vehicles and Related Services, in solicitations and contracts which include the clause at FAR 52.251-2.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 252.1—Instructions for Using Provisions and Clauses

252.101 Using Part 252.

(b) *Numbering.*

(2) *Provisions or clauses that supplement the FAR.*

(ii) Provisions and clauses in this supplement are not preceded by the assigned CFR chapter number. The sequential numbers are "7000" or higher, not to exceed "8999." Sequential numbers "9000" and higher are reserved for departmental supplementation (see 201.104-2).

(e) *Matrices.*

(2)(ii) In the event of an obvious conflict between the matrix location listing and FAR 14.201 or 15.406, the latter shall govern.

(f) *Dates.* Provisions and clauses in this supplement that were formerly in the DAR bear the DAR date when the provision or clause was transferred verbatim to this supplement.

252.106 Derivations of provisions and clauses.

Provisions and clauses in this supplement derived from the DAR do not include derivation notations.

Subpart 252.2—Texts of Provisions and Clauses

252.200 Scope of subpart.

(S-70) This subpart sets forth the texts of all DoD FAR Supplement provisions and clauses and for each, gives a cross-reference to the location in the DoD FAR Supplement that prescribes its use.

252.203-7000 Advertising and coupon redemption for military resale activities.

As prescribed at 203.570, insert the following clause:

ADVERTISING AND COUPON REDEMPTION FOR MILITARY RESALE ACTIVITIES (APR 1974)

The Contractor will not represent in any manner, expressed or implied, that the products purchased hereunder are approved or endorsed by any element of the United States Government. Any advertisement by the Contractor, including price-off coupons, which refers to a military resale activity, shall contain the following statement:

"This advertisement is neither paid for nor sponsored, in whole or in part, by any element of the United States Government."

(End of clause)

252.204-7000 Contract schedule subline items not separately priced—withholding of billing and payment.

As prescribed at 204.7104-2(c)(2), insert the following clause:

CONTRACT SCHEDULE SUBLINE ITEMS NOT SEPARATELY PRICED—WITHHOLDING OF BILLING AND PAYMENT (NOV 1970)

If the unit price of any contract subline or exhibit subline item contained in the Schedule of this contract is not separately priced ("NSP" entered as the unit price column), and the unit price for such subline item is included within the unit price of a related subline item, payment shall not be made nor shall the Contractor invoice the Government for any portion of a contract line item or exhibit line item which contains an "NSP" subline until the total quantity of all related contract subline items or exhibit subline items have been delivered and accepted. This clause is not applicable to technical data.

(End of clause)

252.204-7004 Data Universal Numbering System (DUNS) number reporting.

As prescribed at 204.670-3, insert the following provision:

DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER REPORTING (DEC 1980)

In the block with its name and address, the offeror should supply the Data Universal Numbering System (DUNS) Number applicable to that name and address. The DUNS Number should be preceded by "DUNS:". If the offeror does not have a DUNS Number, it may obtain one from any Dun and Bradstreet branch office. No offeror should delay the submission of its offer pending receipt of its DUNS Number.

(End of provision)

252.204-7005 Overseas distribution of defense subcontracts.

As prescribed at 204.670-4, insert the following clause:

OVERSEAS DISTRIBUTION OF DEFENSE SUBCONTRACTS (AUG 1986)

(a) For each subcontract or modification thereof which exceeds $25,000, where the country of origin is outside the United States or its territories and possessions, the Contractor agrees to prepare and submit the Subcontract Report of Foreign Purchases on DD Form 2139 to Director for International Acquisition, OASD(A&L)(P), Department of Defense, The Pentagon, Washington, D.C. 20301-3060. As used herein, "country of origin" means the country where the actual producer of supplies or the actual provider of services is located. Copies of the form may be obtained from the Contracting Officer. Contractors who maintain information on foreign subcontracts on an automated data base may submit the information in a report format compatible with their automated system. In all cases, however, the report shall include all of the information required by the DD Form 2139. A sample of the form is shown at DoD FAR Supplement 253.303-70-DD-2139.

(b) The required information, if any, shall be as of the last day of the calendar year quarter and submitted within ten (10) days of the end of each quarter.

(c) The prime Contractor agrees to insert a provision substantially similar to this in all first-tier subcontracts over $100,000 except subcontracts for ores, natural gas, utilities, petroleum products and crudes, timber (logs), and subsistence. The prime Contractor shall also identify the applicable prime contract number to the subcontractor for reporting purposes.

(End of clause)

252.208-7000 Required sources for miniature and instrument ball bearings.

As prescribed at 208.7303(a), insert the following clause:

REQUIRED SOURCES FOR MINIATURE AND INSTRUMENT BALL BEARINGS (JUL 1971)

(a) For the purpose of this clause:

"Domestic manufacture" means manufacture in the United States or Canada and, when a ball bearing assembly is involved, all components of the bearing must also have been manufactured in the United States or Canada; and

"Miniature and instrument ball bearings" are all rolling contact ball bearings with a basic outside diameter (exclusive of flange diameters) of 30 millimeters or less, irrespective of material, tolerance, performance, or quality characteristics.

(b) The Contractor agrees that end items and components thereof delivered under this contract shall contain miniature and instrument ball bearings that are of domestic manufacture only.

(c) The requirement for delivery in (b) above may be waived in whole or in part by the Contracting Officer when such waiver is determined to be in the Government's interest. In the event a waiver is granted, the Contractor agrees to acquire for non-Government use, domestically manufactured miniature and instrument ball bearings of a like quantity and type.

(d) The Contractor agrees to retain until the expiration of three (3) years from the date of final payment under this contract and to make available during such period, upon request of the Contracting Officer, records showing compliance with this clause.

(e) The Contractor agrees to insert this clause, including this paragraph (e), in every subcontract and purchase order issued in performance of this contract, unless he knows that the item being purchased contains no miniature or instrument ball bearings.

(End of clause)

252.208-7001 Required sources for precision components for mechanical time devices.

As prescribed at 208.7403(a), insert the following clause:

REQUIRED SOURCES FOR PRECISION COMPONENTS FOR MECHANICAL TIME DEVICES (AUG 1971)

(a) For the purpose of this clause:

"Domestic manufacture" means manufacture in the United States or Canada, and, when a mechanical timing assembly is involved, all precision components of the assembly must also have been manufactured in the United States or Canada.

"Precision components for mechanical time devices" are parts which closely relate so that precise control and selection of working production tolerances can be maintained to accomplish the desired function and reliability. In terms of accuracy, such precision components have total tolerances under 0.003 inches, eccentricities less than 0.0015 inches, and surface finishes better than 65 rms. Examples of such precision components include: gears, pinions, posts, and plates.

(b) The Contractor agrees that end items and components thereof delivered under this contract shall contain precision components for mechanical time devices that are of domestic manufacture only.

(c) The requirement for delivery in (b) above may be waived in whole or in part by the Contracting Officer when such waiver is determined to be in the Government's interest. In the event a waiver is granted, the Contractor agrees to acquire, for non-Government use, domestically manufactured precision components for mechanical time devices of a like quantity and type.

(d) The Contractor agrees to retain until the expiration of three (3) years from the date of final payment under this contract and to make available during such period, upon request of the Contracting Officer, records showing compliance with this clause.

(e) The Contractor agrees to insert this clause, including this paragraph (e), in every subcontract and purchase order issued in performance of this contract, unless he knows that the item being purchased contains no precision components for mechanical time devices.

(End of clause)

252.208-7002 Required sources for high-purity silicon.

As prescribed at 208.7503(a), insert the following clause:

REQUIRED SOURCES FOR HIGH-PURITY SILICON (JUN 1983)

(a) For the purpose of this clause:

"Domestic manufacture" means high-purity silicon manufactured in the United States or Canada. When an item or subassembly containing high-purity silicon is involved, all such high-purity silicon incorporated in the item or subassembly must also have been manufactured in the United States or Canada.

"High-purity silicon" is N or P type and has a resistivity greater than 3000 ohm—centimeter.

(b) The Contractor agrees that end items and components thereof delivered under this contract shall contain high-purity silicon of domestic manufacture only.

(c) The requirement for delivery in (b) above may be waived in whole or in part by the Contracting Officer when such waiver is determined to be in the Government's interest.

(d) The Contractor agrees to retain until the expiration of three (3) years from the date of final payment under this contract and to make available during such period, upon request of the Contracting Officer, records showing compliance with this clause.

(e) The Contractor agrees to insert this clause, including this paragraph (e), in every subcontract or purchase order which involves the purchase of an item or subassembly containing high-purity silicon.

(End of clause)

252.208-7003 Required sources for High Carbon Ferrochrome (HCF).

As prescribed at 208.7603(a), insert the following clause:

REQUIRED SOURCES FOR HIGH CARBON FERROCHROME (AUG 1984)

(a) For the purpose of this clause: "U.S. manufacture" means high carbon ferrochrome manufactured in the United States regardless of source of the chrome ore. HCF means ferrochromium alloy that contains three percent or more carbon and 50 percent or more chromium.

(b) The Contractor agrees that end items, components and processed materials thereof delivered under this contract shall contain HCF of U.S. manufacture, and/or it has met the requirements of paragraph (g) of this clause.

(c) The Contractor agrees to insert this clause, including this paragraph (c), in every subcontract and purchase order issued in performance of this contract, unless he knows that the item being purchased contains no HCF.

(d) The Contractor agrees to retain until the expiration of three (3) years from the date of final payment under this contract and to make available during such period, upon request of the Contracting Officer, records showing compliance with this clause.

(e) The requirement for delivery in (b) above may be waived in whole or in part on a case-by-case basis by the Contracting Officer when such waiver is determined to be in the Government's interest and it meets the provisions of Subpart 208.76 of the DoD FAR Supplement.

(f) The provisions of this clause do not apply to the Contractor when he obtains an end item in support of DoD Memoranda of Understanding (MOU)/offset agreements with NATO Allies and nondomestic HCF is incorporated in the end item being furnished in support of the defense contract.

(g) The Contractor or subcontractor that uses HCF to produce end items, components or processed material is not required to keep its inventory of U.S. versus foreign produced HCF separate for storage or control purposes. However, contractor or subcontractor must be able to show (when requested by the Contracting Officer) that U.S. HCF in adequate quantities has been procured in support of the defense contract when required end items, components or processed material incorporate HCF in the manufacturing process.

(End of clause)

252.208-7004 Notice of intent to furnish precious metals as Government-Furnished Material.

As prescribed at 208.7703(a), insert the following provision.

NOTICE OF INTENT TO FURNISH PRECIOUS METALS AS GOVERNMENT-FURNISHED MATERIAL (OCT 1985)

(a) It is the Government's intent to furnish precious metal(s) required in the manufacture of contractually-deliverable items by the Offeror in performance of any contract resulting from this solicitation pursuant to the clause "Government-Furnished Property" herein (except that use of Government-furnished silver is mandatory only when the quantity required is one hundred (100) troy ounces or more), if such action is determined to be in the Government's best interest.

(b) To facilitate such determination the Offeror shall cite below the type (silver, gold, platinum, palladium, iridium, rhodium, and ruthenium) and quantity (in whole troy ounces) of precious metal(s) required in the performance of this contract (including precious metal required for any first article or production sample), and shall also cite in what contractually-deliverable item the precious metal(s) will be used, specifying National Stock Number and Nomenclature, if known.

Type of precious metal required [1]	Quantity (in whole troy ounces)	Contractually-deliverable item in which precious metals will be used (cite NSN and nomenclature)

[1] If platinum or palladium, specify whether sponge or granules are required.

(c) Offerors shall submit two prices for each contractually-deliverable item containing precious metal: one based on the Government's furnishing precious metals, and one based on the Contractor's furnishing precious metals; and award will be made, considering the Government-furnished material unit price, which is in the best interest of the Government.

(d) The Contractor agrees to insert this provision, including this paragraph (d), in solicitations for subcontracts and purchase orders issued in performance or any contract resulting from this solicitation unless the Contractor knows that the item being purchased contains no precious metals.

(End of provision)

252.208-7005 Required sources for forging and welded shipboard anchor chain items used for military application for combat and direct combat support items.

As prescribed at 208.7803, insert the following clause:

REQUIRED SOURCES FOR FORGING AND WELDED SHIPBOARD ANCHOR CHAIN ITEMS (AUG 1985)

(a) For the purpose of this clause:

"Domestic manufacture" means forging items manufactured in the United States or Canada.

"End item" means a final combination of end products, component parts, and/or materials which is ready for its intended use, per JCS Publication #1 (DoD Dictionary of Military and Associated Terms).

(b) The Contractor agrees that end items, components, and processed materials thereof delivered under this contract shall contain domestic forging and welded shipboard anchor chain (smaller then four inches in diameter) items of United States and Canadian manufacturers only as listed in section 208.7802-1 of the DoD FAR Supplement. This restriction does not include forgings for commercial vehicles (such as commercial cars and trucks) or to noncombat support military vehicles.

(c) A Canadian firm may bid on and supply any of the restricted items if: (1) It normally produces similar items or it is currently producing the item in support of DoD contracts (as prime or subcontractor); and (2) it agrees to become (upon receiving a contract/order) a planned producer under DoD's Industrial Preparedness Program (IPP), if it is not already a planned producer for the item.

(d) The Contractor agrees to insert this clause, including this paragraph (d), in every subcontract and purchase order issued in performance of this contract, unless he knows that the item being purchased contains none of the restricted forging or welded shipboard anchor chain items.

(e) The Contractor agrees to retain until the expiration of three (3) years from the date of final payment under this contract and to make available during such period, upon request of the Contracting Officer, records showing compliance with this clause.

(f) The requirement for delivery in (b) above may be waived in whole or in part on a case-by-case basis by the Contracting Officer when such a waiver is determined to be in the Government's interest and it meets the provisions of Subpart 208.78 of the DoD FAR Supplement.

(End of clause)

252.210-7000 Brand name or equal.

As prescribed at 210.004(b)(3)(ii)(B), insert the following provision:

BRAND NAME OR EQUAL (APR 1973)

(As used in this clause, the term "brand name" includes identification of products by make and model.)

(a) If items called for by this Invitation for Bids have been identified in the Schedule by

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a "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bids offering "equal" products including products of the brand name manufacturer other than the one described by brand name will be considered for award if such products are clearly identified in the bids and are determined by the Government to meet fully the salient characteristics requirements referenced in the Invitation for Bids.

(b) Unless the bidder clearly indicates in the bid that the bidder is offering an "equal" product, the bid shall be considered as offering a brand name product referenced in the Invitation for Bids.

(c)(1) If the bidder proposes to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the Invitation for Bids, or such product shall be otherwise clearly identified in the bid. The evaluation of bids and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the bidder or identified in the bid, as well as other information reasonably available to the contracting activity. CAUTION TO BIDDERS. The contracting activity is not responsible for locating or securing any information which is not identified in the bid and reasonably available to the contracting activity. Accordingly, to insure that sufficient information is available, the bidder must furnish as a part of the bid all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the contracting activity to (i) determine whether the product offered meets the salient characteristics requirements of the Invitation for Bids and (ii) establish exactly what the bidder proposes to furnish and what the Government would be binding itself to acquire by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the contracting activity.

(2) If the bidder proposes to modify a product so as to make it conform to the requirements of the Invitation for Bids, the bidder shall (i) include in the bid a clear description of such proposed modifications, and (ii) clearly mark any descriptive material to show the proposed modifications.

(3) Modifications proposed after bid opening to make a product conform to a brand name product referenced in the Invitation for Bids will not be considered.

(End of provision)

252.210-7001 Availability of descriptions listed in DoD directive 5000.19-L, Volume II.

As prescribed at 210.011(S-70), insert the following provision:

AVAILABILITY OF DESCRIPTIONS LISTED IN DOD DIRECTIVE 5000.19-L, VOLUME II (APR 1984)

Copies of the Acquisition Management Systems and Data Requirements Control List, DoD Directive 5000.19-L, Volume II, may also be ordered from the supply point listed herein. When requesting a data item description, the request shall cite the applicable data item number set forth in the solicitation.

(End of provision)

252.210-7002 Availability of specifications and standards not listed in DODISS, data item descriptions not listed in Department of Defense Directive 5000.19-L, Volume II, and plans, drawings, and other pertinent documents.

As prescribed at 210.011(S-71), insert the following provision:

AVAILABILITY OF SPECIFICATIONS AND STANDARDS NOT LISTED IN DODISS, DATA ITEM DESCRIPTIONS NOT LISTED IN DOD DIRECTIVE 5000.19-L, VOLUME II, AND PLANS, DRAWINGS, AND OTHER PERTINENT DOCUMENTS (JUN 1977)

The specifications, standards, plans, drawings, descriptions and other pertinent documents cited in this solicitation may be obtained by submitting request to:

(Activity) _____

(Complete Address) _____

Requests should give the number of the solicitation and the title and number of the specification, standard, plan, drawing or other pertinent document requested, exactly as cited in this solicitation.

(End of provision)

252.210-7003 Availability for examination of specifications, standards, plans, drawings, data item descriptions, and other pertinent documents.

As prescribed at 210.011(S-71), insert the following provision:

AVAILABILITY FOR EXAMINATION OF SPECIFICATIONS, STANDARDS, PLANS, DRAWINGS, DATA ITEM DESCRIPTIONS, AND OTHER PERTINENT DOCUMENTS (JUN 1977)

The specifications, standards, plans, drawings, descriptions, and other pertinent documents cited in this solicitation may be examined at the following locations:

_____

(Insert Complete Address)

(End of provision)

252.210-7004 Bill of materials.

As prescribed at 210.011(S-72), insert the following clause:

BILL OF MATERIALS (APR 1955)

(a) With respect to the supplies to be delivered pursuant to the contract, for which a Bill of Materials is required, the Contractor shall furnish a Bill of Materials in the required number of copies on Department of Defense Forms 346 and 347 if applicable, or authorized reproductions thereof, in accordance with the instructions specified in the Schedule.

(b) The Contractor shall furnish to the Government, at such intervals as designated in the Schedule, revised pages of the Bill of Materials incorporating the effect of any changes, pursuant to the clause hereof entitled "Changes", in the quantity of any material or part, or any other information contained in the Bill of Materials, or a statement that no revision is necessary. A final revision, or statement that no revision is necessary, shall be furnished upon completion of performance of the contract.

(c) The Bill of Materials and all revisions or statements subsequent thereto shall be subject to inspection and acceptance by the Government.

(End of clause)

252.212-7000 Exclusion of periods in computing completion schedules.

As prescribed at 212.102(b), insert the following clause:

EXCLUSION OF PERIODS IN COMPUTING COMPLETION SCHEDULES (JAN 1965)

No work will be required during the period between _____ and _____ inclusive and such period has not been considered in computing the time allowed for completion. The Contractor may, however, perform work during all or any part of this period upon giving prior written notice to the Contracting Officer. If the work performed during such period is less than *(_____ cubic yards) (the average monthly work necessary to complete the contract within the time specified) and the Contracting Officer maintains an inspection force during this period to inspect the work, the Contractor will be charged the percentage of the cost of maintaining such force that his work is less than *(_____ cubic yards) (the average monthly work necessary to complete the contract within the time specified).

(End of clause)

* Delete inapplicable provision.

252.213-7000 Inconsistency between English version and translation of contract.

As prescribed at 213.505-2(S-73)(2)(ii)(B), insert the following provision:

INCONSISTENCY BETWEEN ENGLISH VERSION AND TRANSLATION OF CONTRACT (APR 1966)

In the event of inconsistency between any terms of this contract and any translation thereof into another language, the English language meaning shall control.

(End of clause)

252.213-7001 Returnable gas cylinders.

As prescribed at 213.505-2(S-73)(1)(xxxiii), insert the following clause:

RETURNABLE GAS CYLINDERS (OCT 1966)

(a) Cylinders shall remain the property of the Contractor but will be loaned without charge to the Government for a period of thirty (30) days* after the date of delivery of the cylinders to the f.o.b. point specified in the contract. Beginning with the first day after the expiration of the thirty (30) day loan period to and including the day the cylinders are delivered to the Contractor where the original delivery was f.o.b. origin, or to and including the date the cylinders are delivered or are made available for delivery to the Contractor's designated carrier in the case where the original delivery was f.o.b. destination, the Government shall pay the Contractor a rental of _____ dollars ($_____) per cylinder per day, regardless of type or capacity.

* The time period may be modified to comply with the customary commercial practice for the particular type of container being rented.

(b) This rental charge will be computed separately for cylinders of differing types, sizes, and capacities, and for each point of delivery named in the contract. A credit of thirty (30) cylinder days will accrue to the Government for each cylinder, regardless of type or capacity, delivered by the Contractor. A debit of one (1) cylinder day will accrue to the Government for each cylinder for each day after delivery to the f.o.b. point specified in this contract. At the end of the contract, if the total number of debits exceeds the total number of credits, rental shall be charged for the difference. If the total number of credits equals or exceeds the total number of debits, no rental charges will be made for the cylinders. No rental shall accrue to the Contractor in excess of the replacement value per cylinder specified in (c) below.

(c) For each cylinder lost or damaged beyond repair while in the Government's possession, the Government shall pay to the Contractor the replacement value as follows, less the allocable rental paid therefor:

(i) Oxygen cylinders of 100-110 cubic foot capacity $_____;

(ii) Oxygen cylinders of 200-220 cubic foot capacity $_____;

(iii) Acetylene cylinders of 100-150 cubic foot capacity $_____;and

(iv) Acetylene cylinders of 230-300 cubic foot capacity $_____.

(d) Cylinders lost, or damaged beyond repair, and paid for by the Government shall become the property of the Government, subject to the following: If any lost cylinder is located within _____ (insert period of time) after payment by the Government, it may be returned to the Contractor by the Government, and the Contractor shall pay to the Government an amount equal to the replacement value, less rental computed in accordance with (a) above, beginning at the expiration of the thirty (30) day loan period specified in (a) above, and continuing to the date on which the cylinder was delivered to the Contractor.

(End of clause)

252.214-7000 Discounts.

As prescribed at 213.505-2(S-73)(1)(xlx), 214.407-3, and 215.407(S-70), insert the following provision:

DISCOUNTS (APR 1984)

Prompt payment discounts will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a prompt payment discount in conjunction with the offer, offerors awarded contracts may include prompt payment discounts on individual invoices.

(End of provision)

252.215-7000 Aggregate pricing adjustment.

As prescribed at 215.804-8(S-70), insert the following clause:

AGGREGATE PRICING ADJUSTMENT (APR 1985)

In determining whether a pricing adjustment is expected to exceed $100,000, the term "pricing adjustment" shall mean "the aggregate increases and/or decreases in cost plus applicable profits."

(End of clause)

252.216-7000 Economic price adjustment—basic steel, aluminum, brass, bronze or copper mill products.

As prescribed at 216.203(S-70)(a), insert the following clause:

ECONOMIC PRICE ADJUSTMENT—BASIC STEEL, ALUMINUM, BRASS, BRONZE OR COPPER MILL PRODUCTS (AUG 1978)

(a) The Contractor warrants that the unit price stated herein for _____ is not in excess of the Contractor's applicable established price in effect on the date set for opening of bids (or the contract date if this is not a contract entered into by means of formal advertising) for like quantities of the same item. The term "unit price" excludes any part of the price which reflects requirements for preservation, packaging and packing beyond standard commercial practice. The term "established price" means one which (1) is an established catalog or market price for a commercial item sold in substantial quantities to the general public and (2) meets the criteria of FAR 15.804-3. Such price is the net price after applying any applicable standard trade discounts offered by the Contractor from his catalog, list, or schedule price.

(b) The Contractor shall promptly notify the Contracting Officer as to the amount and effective date of each decrease in any applicable established price, and each corresponding contract unit price shall be decreased by the same percentage that the said established price is decreased. Such decrease shall apply to items delivered on and after the effective date of the decrease in the Contractor's established price, and this contract shall be modified accordingly. The Contractor shall certify on each invoice that each unit price stated therein reflects all decreases required by this clause, or shall certify on the final invoice that all price decreases required by this clause have been applied in the manner herein required.

(c) If the Contractor's applicable established price is increased after the date set for opening of bids (or the contract date, if this is not a contract entered into by means of formal advertising), the corresponding contract unit price shall be increased, upon the Contractor's request in writing to the Contracting Officer, by the same percentage that the established price is increased and the contract shall be modified accordingly, *provided* that:

(1) The aggregate of the increases in any contract unit price under this clause shall not exceed ten percent (10%) of the original contract unit price;

(2) The increased contract unit price shall be effective on the effective date of the increase in the applicable established price if the Contractor's written request is received by the Contracting Officer within ten (10) days thereafter, but if not, the effective date of increased unit price shall be the date of receipt by the Contracting Officer of such request;

(3) The increased contract unit price shall not apply to quantities scheduled under the contract for delivery before the effective date of the increased contract unit price unless the Contractor's failure to deliver before such date results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of the "Default" clause of this contract.

(4) No modification incorporating an increase in a contract unit price shall be executed pursuant to this clause until the increase in the applicable established price has been verified by the Contracting Officer.

(d) Within thirty (30) days after receipt of the Contractor's written request the Contracting Officer may cancel, without liability to either party, any portion of the contract affected by the requested increase and undelivered at the time of such cancellation, except that the Contractor may thereafter deliver any items which the Contractor certifies, by notice received by the Contracting Officer within ten (10) days after the Contractor receives the cancellation notice, were completed or in the process of manufacture at the time of receipt of such cancellation notice, and the Government shall pay for such items so delivered at the contract unit price increased to the extent provided by (c) above. Any standard steel supply shall be deemed to be in the process of manufacture when the steel therefore is in any state of processing after the beginning of the furnace melt.

(e) Pending any cancellation of this contract as provided in (d) above and thereafter if there is no cancellation, the Contractor shall continue deliveries according to the delivery schedule of the contract and shall be paid for such deliveries at the contract unit price increased to the extent provided by (c) above.

(End of clause)

252.216-7001 Economic price adjustment—nonstandard steel items.

As prescribed at 216.203(S-70)(b), insert the following clause:

ECONOMIC PRICE ADJUSTMENT—NONSTANDARD STEEL ITEMS (AUG 1978)

(a) The term "established price" as used in this clause is one which (1) is an established catalog or market price of a commercial item sold in substantial quantities to the general public and (2) meets the criteria of Federal Acquisition Regulation 15.804-3. Such a price is the net price after applying any applicable standard trade discounts offered by the Contractor from his catalog, list, or scheduled price. (But see Note (8).)

(b) Each contract unit price shall be subject to revision, pursuant to the provisions of this clause, to reflect changes in the cost of labor and steel. For the purpose of any such price

revision, the proportion of the contract unit price attributable to costs of labor not otherwise included in the price of the steel item identified in paragraph (d) below shall be ____ percent, and the proportion of the contract unit price attributable to the cost of steel shall be ____ percent. (*See Note (1).*)

(c) For the purposes of this paragraph, the term "labor index" shall mean the average straight time hourly earnings of the Contractor's employees in the _____ shop of the Contractor's _____ plant (*see Note (2)*) for any particular month. The word "month" as used herein means "calendar month;" *provided,* however, that if the Contractor's accounting period does not coincide with the calendar month, then such accounting period shall be used throughout the clause in lieu of "month." Unless otherwise specified in this contract, the labor index shall be computed by dividing the total straight time earnings of the Contractor's employees in the particular shop identified above for any given month by the total number of straight time hours worked by such employees in that month. Any revision in a contract unit price to reflect changes in the cost of labor shall be computed solely by reference to the "base labor index," which shall be the average of the labor indices for the three (3) months consisting of the month of _____, 19____, (*see Note (3)*) the month immediately preceding and the month immediately following, and to the "current labor index," which shall be the average of the labor indices for the month in which delivery of supplies is required to be made in accordance with the terms of this contract and the month preceding.

(d) Any revision in a contract unit price to reflect changes in the cost of steel shall be computed solely by reference to the "base steel index," which shall be the Contractor's established price (*see Note (8)*) including all applicable extras of $____ per ____ (*see Note (4)*) for _____ (*see Note (5)*) on _____, 19____, (*see Note (6)*) and the "current steel index," which shall be the Contractor's established price (*see Note (8)*) of said item including all applicable extras in effect _____ days (*see Note (7)*) prior to the first day of the month in which delivery of supplies is required to be made in accordance with the terms of the contract.

(e) Each contract unit price shall be revised for each month in which, by the terms of this contract, delivery of supplies is required to be made, and such revised contract unit price shall apply to the deliveries of those quantities of supplies required to be made in that month regardless of when actual delivery is made of said quantities of supplies. Each revised contract unit price for any month shall be computed by adding together the following three amounts: (1) the amount (representing the adjusted cost of labor) obtained by multiplying ____ percent of the contract unit price by a fraction, the numerator of which shall be the current labor index and the denominator of which shall be the base labor index; (2) the amount (representing the adjusted cost of steel) obtained by multiplying ____ percent of the contract unit price by a fraction, the numerator of which shall be the current steel index and the denominator of which shall be the base steel index; and (3) the amount equal to ____ percent of the original contract unit price (representing that portion of such unit price which relates neither to the cost of labor nor to the cost of steel and which is therefore not subject to revision (*see Note (1)*); *provided,* however, that any revised contract unit price made pursuant to the provisions of this clause shall in no event exceed one hundred and ten percent (110%) of the original contract unit price. All computations shall be made to the nearest one-hundredth of one cent.

(f) Pending revisions of the contract unit prices, if any, to be made pursuant to this clause, the Contractor shall be paid the contract unit price for deliveries made. Within thirty (30) days after the final delivery of supplies, or within such further period of time as may be authorized by the Contracting Officer, the Contractor shall furnish a statement setting forth and certifying the correctness of (1) the average straight time hourly earnings of the Contractor's employees in the shop of the Contractor identified in paragraph (c) above which earnings are relevant to the computations of the "base labor index" and the "current labor index" and (2) the Contractor's established prices (*see Note (8)*) including all applicable extras for like quantities of the item identified in paragraph (d) above, which prices are relevant to the computation of the "base steel index" and the "current steel index." Upon request of the Contracting Officer, the Contractor shall make available his records used in the computation of the labor indices. After the receipt of such certificate by the Contracting Officer, the revised contract unit prices shall be computed in accordance with the provisions of this clause, and this contract shall be modified accordingly. However, no modification to this contract shall be made pursuant to this clause until the revised established price (*see Note (8)*) has been verified by the Contracting Officer.

(g) In the event of any total or partial termination of any item of this contract for the convenience of the Government, the month in which notice of such termination is received by the Contractor, if prior to the month in which the delivery is required by this contract, shall be considered the month in which delivery of such terminated or partially terminated item is required for the purpose of determining the current labor and steel indices under paragraphs (c) and (d) hereof; *provided,* however, that as to the quantity of such item which is not terminated for convenience, the month in which delivery is required by this contract shall continue to apply for determining said indices. In the case of termination of any steel item for default of the Contractor, any price revision shall be limited to the quantity of such item which has been delivered by the Contractor and accepted by the Government prior to receipt by the Contractor of notice of termination for default.

(h) As used in this clause the phrase "the month in which delivery of supplies is required to be made in accordance with the terms of this contract" shall mean any month in which under the terms of this contract a specific quantity of units of the supplies called for by this contract is required to be delivered; *provided,* however, that in the case of the failure of the Contractor to make delivery of such quantity shall have arisen out of causes beyond the control and without the fault or negligence of the Contractor, within the meaning of the clause of this contract entitled "Default," the quantity not delivered shall be required to be delivered as promptly as possible after the cessation of the cause of such failure, and the delivery schedule set forth in this contract shall be amended accordingly.

Notes:

(1) Bidder insert the same percentage figures for the corresponding blanks in paragraphs (b) and (e) (1) and (2). In paragraph (e)(3), bidder insert the percentage representing the difference between the sum of the percentages inserted in paragraph (b) and 100 percent.

(2) Bidder identify the shop and plant in which the standard steel mill item identified in paragraph (d) will be finally fabricated or processed into the contract item.

(3) Bidder insert the month of bid opening, or the month in which the Contractor submitted his proposal if this is a negotiated contract.

(4) Bidder insert the unit price and unit measure of the standard steel mill item used by the Contractor in the manufacture of the contract item.

(5) Bidder identify the standard steel mill item used by the Contractor in the manufacture of the contract item.

(6) Bidder insert the date set for bid opening, or the date of the Contractor's quotation if this is a negotiated contract.

(7) Bidder insert the number of days which represents the Contractor's best estimate of the period of time required for processing the standard steel mill item in the shop identified in paragraph (c).

(8) In negotiated procurements of nonstandard steel items, when there is no "established price" or when it is not desirable to use such price, this paragraph may refer to another appropriate price basis, such as an established interplant price.

(End of clause)

252.217-7000 Exercise of option to fulfill Foreign Military Sales commitments.

As prescribed at 217.208(S-70)(1), insert the following clause:

EXERCISE OF OPTION TO FULFILL FOREIGN MILITARY SALES COMMITMENTS (APR 1984)

The U.S. Government may exercise the option or options under the option clause of this contract to fulfill Foreign Military Sales commitments undertaken by the U.S. Government on behalf of a foreign country.

(End of clause)

252.217-7001 Exercise of option to fulfill Foreign Military Sales commitments (Alt. 1).

As prescribed at 217.208(S-70)(2), insert the following clause:

EXERCISE OF OPTION TO FULFILL FOREIGN MILITARY SALES COMMITMENTS (ALT. 1) (APR 1984)

The U.S. Government may exercise the option or options under the option clause of this contract to fulfill Foreign Military Sales commitments undertaken by the U.S. Government on behalf of a foreign country. At the date of exercise of the option, the U.S. Government will identify the foreign country for the purpose of negotiating an equitable price adjustment for any cost or profit considerations attributable to Foreign Military Sales requirements in section 225.7304 and paragraph 215.905-1(b)(7)(iii)(E) of the DoD FAR Supplement. Failure to agree to such an equitable adjustment shall be treated as a dispute within the meaning of the clause of this contract titled "DISPUTES".

(End of clause)

252.217-7100 Definitions.

As prescribed at 217.7104(a), insert FAR clause 52.202-1 (APR 1984).

252.217-7101 Changes.

As prescribed at 217.7104(a), insert the following clause:

CHANGES (APR 1982)

The Contracting Officer may at any time, by written change order, and without notice to the sureties, make changes within the general scope of any job order issued under this agreement in (i) drawings, designs, plans and specifications, (ii) work itemized in any job order, (iii) place of performance of the work, and (iv) time of commencement or completion of the work, and may otherwise vary the requirements of the job order within the general scope thereof. If any such change causes an increase or decrease in the cost of, or the time required for, performance of the job order, whether changed or not changed by any such change order, an equitable adjustment shall be made in the price or in the date of completion, or both, and the job order shall be modified in writing accordingly. The price adjustment for the change order and the adjustment in the date of completion shall be agreed upon and reduced to writing at the time the change is ordered or as soon thereafter as practicable. A request for price adjustment, together with the Contractor's written estimate of the increased cost, must be asserted within ten (10) days from the date of receipt by the Contractor of the notification of change or within such further time as the Contracting Officer may allow on request made by the Contractor during such period; *provided, however,* that the Contracting Officer, if deciding that the facts justify such action, may receive and act upon any such request asserted at any later time prior to final payment under the job order, except that in such event no profit shall be allowed to the Contractor. Where the cost of property made obsolete or excess as result of a change is included in the Contractor's claim for adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of Clause 252.217-7111 entitled DISPUTES hereof. However, nothing in this clause shall excuse the Contractor from proceeding with the job order as changed.

(End of clause)

252.217-7102 Extras.

As prescribed at 217.7104(a), insert FAR clause 52.232.11 (APR 1984).

252.217-7103 Job orders and compensation.

As prescribed at 217.7104(a), insert the following clause:

JOB ORDERS AND COMPENSATION (APR 1985)

(a) (1) When the Contracting Officer invites bids for the performance of work under this agreement and, upon receipt of a bid in accordance therewith from the Contractor, determines that such work should be awarded to the Contractor, the price for the work shall be set forth in a job order and such job order shall be signed and issued by the Contracting Officer. The issuance of such job order shall constitute an award of the work to the Contractor in response to his bid. Such job order shall be deemed to incorporate the terms and conditions of this agreement.

(2) When the Contracting Officer requests proposals or quotations for the performance of work under this agreement on a negotiated basis and, upon receipt of proposals or quotations in accordance therewith from the Contractor, determines that the work should be performed by the Contractor, the price for the work shall be set forth in a job order, and such job order shall be signed and issued by the Contracting Officer and signed and acknowledged by the Contractor. Such job order shall be deemed to incorporate the terms and conditions of this agreement.

(b) Whenever the Contracting Officer determines that a vessel, its cargo or stores would be endangered by delay or whenever the Contracting Officer determines that military necessity requires immediate performance of work on a vessel, the Contracting Officer may issue a written order, with which the Contractor hereby agrees to comply, to perform work on such vessel within his capabilities. As soon as practicable after the issuance of such written order, the Contracting Officer and the Contractor shall negotiate a price for the work and the Contracting Officer shall issue a job order covering such work. In connection with negotiation of a price for such work, the Contractor shall, upon request, furnish the Contracting Officer with a breakdown of costs incurred by the Contractor and an estimate of costs expected to be incurred in the performance of such work as required by the Contracting Officer. The Contractor shall keep records showing the cost of performing such work, and such records shall be available for inspection by the Government at reasonable times. Failure of the parties to agree upon the price of such work shall constitute a dispute within the meaning of Clause 252.217-7111 entitled "DISPUTES". In the meantime, the Contractor shall diligently proceed with the performance of the work.

(c) If the nature of any repairs is such that their extent and probable cost are not readily ascertainable, the Contracting Officer may issue a job order, on a negotiated or sealed bidding basis, for the work necessary to determine the nature and extent of repairs. Upon determining the nature and extent of repairs, the Contractor shall, if so requested by the Contracting Officer, negotiate prices at which the Contractor will perform such work as the Contracting Officer may determine necessary to accomplish the repairs, and the prices so agreed upon shall be set forth in a modification of the job order. Failure of the parties to so agree shall constitute a dispute within the meaning of Clause 252.217-7111. In the meantime, the Contractor shall diligently proceed with the performance of the work specified in the job order as determined necessary by the Contracting Officer.

(End of clause)

252.217-7104 Inspection and manner of doing work.

As prescribed at 217.7104(a), insert the following clause:

INSPECTION AND MANNER OF DOING WORK (APR 1982)

(a) Work shall be performed hereunder in accordance with the job order, and any drawings and specifications made a part thereof, as modified by any change order issued under Clause 252.217-7101 entitled "CHANGES" hereof.

(b) Unless otherwise specifically provided in the job order, all operational practices of the Contractor and all workmanship and material, equipment and articles used in the performance of work hereunder shall be in accordance with the rules and requirements of the American Bureau of Shipping, the U.S. Coast Guard, and the Institute of Electrical and Electronic Engineers, in effect at the time of the Contractor's submission of bid (or acceptance of the job order, if negotiated) and the best commercial marine practices, except when Navy specifications are specified in the job order, in which case Naval standards of material and workmanship shall be followed. The solicitation shall prescribe the Navy standard whenever applicable, and the decision of the Contracting Officer shall be final.

(c) All material and workmanship shall be subject to inspection and test at all times during the Contractor's performance of the work to determine their quality and suitability for the purpose intended and compliance with the job order. In case any material or workmanship furnished by the Contractor is found prior to redelivery of the vessel to be defective, or not in accordance with the requirements of the job order, the Government, in addition to its rights under Clause 252.217-7130 entitled "GUARANTEES" hereof, shall have the right prior to redelivery of the vessel to reject such material or workmanship, and to require its correction or replacement by the Contractor at the Contractor's cost and expense. If the Contractor fails to proceed promptly with the replacement or correction of such material or workmanship, as required by the Contracting Officer, the Government may, by contract or

otherwise, replace or correct such material or workmanship and charge to the Contractor the excess cost occasioned the Government thereby. As specified in the job order, the Contractor shall provide and maintain an inspection system acceptable to the Government covering the work specified in the job order. Records of all inspection work by the Contractor shall be kept complete and available to the Government during the performance of the job order and for a period of ninety (90) days after completion of all work required by the job order.

(d) No welder shall be permitted to work in connection with repairs, completion, alterations, or additions to vessels unless the welder is, at the time, qualified to the standards established by the U.S. Coast Guard, American Bureau of Shipping, or Department of the Navy for the type of welding being performed. Qualifications of a welder for this purpose shall be as specified in the job order. No welder shall be permitted to work on production applications of welding other than those for which the welder has qualified.

(e) The Contractor shall exercise reasonable care to protect the vessel from fire, and the Contractor shall maintain a reasonable system of inspection over the activities of welders, burners, riveters, painters, plumbers and similar workers, particularly where such activities are undertaken in the vicinity of the vessel's magazines, fuel oil tanks or storerooms containing flammable materials. A reasonable number of hose lines shall be maintained by the Contractor ready for immediate use on the vessel at all times while the vessel is berthed alongside the Contractor's pier or in drydock or on a marine railway. Unless otherwise provided in the job order, the Contractor shall provide sufficient security patrols to reasonably maintain a fire watch for protection of the vessel when the ship is in the Contractor's custody. All tanks under alteration or repair shall be cleaned, washed and steamed out or otherwise made safe by the Contractor if and to the extent necessary, and the Contracting Officer shall be furnished with a "gas-free" or "safe-for-hotwork" certificate before any hot work is done on a tank. The contents of any tanks shall be treated as Government property in accordance with Clause 252.217-7218 entitled "GOVERNMENT PROPERTY". Any disposition of said contents shall be at the direction and with the concurrence of the Contracting Officer.

(f) Except as otherwise provided in the job order, when the vessel is in the custody of the Contractor or in drydock or on a marine railway and the temperature becomes as low as thirty-five degrees (35°) Fahrenheit, the Contractor shall keep all hose pipe lines, fixtures, traps, tanks, and other receptacles on the vessel drained to avoid damage from freezing, or if this is not practicable, the vessel shall be kept heated to prevent such damage. The vessel's stern tube and propeller hubs shall be protected from frost damage by applied heat through the use of a salamander or other proper means.

(g) The work shall, whenever practicable, be performed in such manner as not to interfere with the berthing and messing of civilian or military personnel attached to the vessel, and provisions shall be made so that personnel assigned shall have access to the vessel at all times, it being understood that such personnel will not interfere with the work or the Contractor's workers.

(h) The Government does not guarantee the correctness of the dimensions, sizes, and shapes set forth in any job order, sketches, drawings, plans or specifications prepared or furnished by the Government, except when a job order requires that the work be performed by the Contractor prior to any opportunity to make the necessary inspection. The Contractor shall be responsible for the correctness of the shape, sizes, and dimensions of parts to be furnished hereunder except as above set forth and other than those furnished by the Government.

(i) The Contractor shall at all times keep the site of the work on the vessel free from accumulation of waste material or rubbish caused by his employees or the work, and at the completion of the work shall remove all rubbish from and about the site of the work and shall leave the work in its immediate vicinity "broom clean", unless more exactly specified in the job order.

(End of clause)

252.217-7105 Title.

As prescribed at 217.7104(a), insert the following clause:

TITLE (APR 1982)

Unless title to materials and equipment acquired or produced for, or allocated to, the performance of this agreement shall have vested previously in the Government by virtue of other provisions of this agreement, title to all materials and equipment to be incorporated in any vessel or part thereof, or to be placed upon any vessel or part thereof in accordance with the requirements of the job order, shall vest in the Government upon delivery thereof at the plant or such other location as may be specified in the job order for the performance of the work; *Provided*, however, that the provision of this clause or other provisions of this agreement shall not be construed as relieving the Contractor from the full responsibility for all such Contractor-furnished materials and equipment or the restoration of any damaged work or as a waiver of the right of the Government to require the fulfillment of all the terms of this agreement, it being expressly understood and agreed that the Contractor shall assume without limitation the risk of loss for any such materials and equipment until such time as all work is completed and accepted by the Government and the vessel is redelivered to the Government. Upon completion of the job order, or with the approval of the Contracting Officer at any time during the performance of the job order, all such Contractor-furnished materials and equipment not incorporated in any vessel or part thereof, or not placed upon any vessel or part thereof, in accordance with the requirements of the job order, shall become the property of the Contractor, except those materials and equipment the cost of which has been reimbursed by the Government to the Contractor.

(End of clause)

252.217-7106 Payments.

As prescribed at 217.7104(a), insert the following clause:

PAYMENTS (APR 1982)

(a) Progress payments (which are hereby defined as payments prior to completion of work in progress under any job order) shall be made as the work progresses upon the submission by the Contractor of invoices therefor in such form and with such copies as the Contracting Officer may prescribe. Such invoices may be submitted semi-monthly or more frequently if expenditures by the Contractor warrant. No progress payment will be required under this clause upon invoices aggregating less than $5,000. Such progress payments shall be made upon the basis of the value, computed on the price of the job order, of labor and materials incorporated in the work, materials suitably stored at the site of the work, and preparatory work already completed, all as estimated or approved by the Contracting Officer, less the aggregate of any previous payments. For the purpose of enabling the Contracting Officer to make such estimate or give such approval, the Contractor will furnish to the Contracting Officer, upon request, such reports concerning expenditures on the work to date as may be requested.

(b) In making such progress payments, there shall be retained five percent (5%) of the amount estimated or approved by the Contracting Officer pursuant to paragraph (a) above until final completion and acceptance of all work covered by the job order.

(c) If the Contracting Officer so directs, progress payments under paragraph (a) of this clause shall be based upon the price of the job order as adjusted from time to time as a result of change orders under Clause 252.217-7101 entitled CHANGES hereof. If the Contracting Officer has not directed that the increase or decrease in price as a result of any change order be taken into account for purposes of progress payments under paragraph (a) of this clause, (i) payments on account of such increases shall be made from time to time when the increase is determined pursuant to Clause 252.217-7101 entitled CHANGES; and (ii) reductions on account of such decreases shall be made for the purposes of subsequent progress payments as soon as the amounts thereof are determined pursuant to Clause 252.217-7101 entitled CHANGES hereof.

(d) Upon completion of the work under a job order and final inspection and acceptance thereof and upon submission of invoices therefor in such form and with such copies as the Contracting Officer may prescribe, the Contractor shall be paid for the price of the job order, as adjusted pursuant to Clause 252.217-7101 entitled CHANGES hereof, less the amount of all previous payments.

(e) All materials, equipment, and other property or work in process covered by progress payments made by the Government shall upon the making of such progress payments become the sole property of the Government, and shall be subject to the provision of Clause 252.217-7105 entitled TITLE hereof.

(End of clause)

252.217-7107 Assignment of claims.

As prescribed at 217.7104(a), insert FAR clause 52.232-23 (APR 1984).

252.217-7108 Bonds.

As prescribed at 217.7104(a), insert the following clause:

BONDS (APR 1982)

(a) If the solicitation requires a bid bond to be furnished, the Contractor may furnish in lieu thereof an annual bid bond, or evidence thereof, or an annual performance and payment bond, or evidence thereof. If bonds are not required by the solicitation, the Government reserves the right at the discretion of the Contracting Officer to require a performance and payment bond, in form, amount, and with a surety acceptable to the Contracting Officer, and if said bond is in fact required, then the bid price shall be increased upon the award of a job order in an amount not to exceed the premium of a corporate surety bond; and the Contractor by submitting a bid warrants that the Contractor has not included in the price any contingency to cover the premium of said bond.

(b) If any surety upon any bond furnished in connection with a job order under this agreement becomes unacceptable to the Government, or if any such surety fails to furnish reports as to the financial condition of the surety from time to time as requested by the Government, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of the Government and of persons supplying labor or materials in the prosecution of the work contemplated by this agreement.

(End of clause)

252.217-7109 Federal, State, local, and Foreign taxes.

As prescribed at 217.7104(a), insert FAR clause(s) 52.229-3, 52.229-4, 52.229-5, 52.229-6, and 52.229-7 (APR 1984) as applicable.

252.217-7110 Default.

As prescribed at 217.7104(a), insert the following clause:

DEFAULT (APR 1982)

(a) The Government may, subject to the provisions of paragraph (b) below, by written Notice of Default to the Contractor, terminate the whole or any part of a job order in any one of the following circumstances:

(i) If the Contractor fails to make delivery of the supplies or to perform the services within the time specified in a job order or any extension thereof; or

(ii) If the Contractor fails to perform any of the other provisions of this agreement or a job order issued hereunder, or so fails to make progress as to endanger performance of the job order in accordance with its terms.

(b) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if any failure to perform the job order arises from causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to perform the job order within the time specified therein. As used in this clause, the word "subcontractor" means subcontractor at any tier.

(c) In the event the Government terminates the job order in whole or in part as provided in paragraph (a) of this clause, the Government may, upon such terms and in such manner as the Contracting Officer may deem appropriate, arrange for the completion of the work so terminated, at such plant or plants, including that of the Contractor, as may be designated by the Contracting Officer; *Provided*, that the Contractor shall continue the performance of the job order to the extent not terminated under the provisions of this clause. If the work is to be completed at the plant, the Government may use all tools, machinery, facilities and equipment of the Contractor determined by the Contracting Officer to be necessary for that purpose. If the cost to the Government of the work procured or completed (after adjusting such cost to exclude the effect of changes in the plans and specifications made subsequent to the date of termination) exceeds the price fixed for work under the job order (after adjusting such price on account of changes in the plans and specifications made prior to the date of termination), the Contractor, or the Contractor's surety, if any, shall be liable for such excess.

(d) If a job order is terminated in whole or in part as provided in paragraph (a) of this clause, the Government, in addition to any other rights provided in this clause, may require the Contractor to transfer title and delivery to the Government, in the manner and to the extent directed by the Contracting Officer, (i) any completed supplies and (ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of the job order as has been terminated; and the Contractor shall, upon direction of the Contracting Officer, protect and preserve property in possession of the Contractor in which the Government has an interest. The Government shall pay to the Contractor the job order price for completed items of work delivered to and accepted by the Government, and the amount agreed upon by the Contractor and the Contracting Officer for manufacturing materials delivered to and accepted by the Government, and for the protection and preservation of property. Failure to agree shall be a dispute concerning a question of fact within the meaning of clause 252.217-7111 entitled DISPUTES hereof.

(e) If, after notice of termination of the job order under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination has been issued pursuant to the clause 252.217-7120 hereof entitled TERMINATION FOR CONVENIENCE OF THE GOVERNMENT.

(f) If the Contractor fails to complete the performance of a job order within the time specified therein, or any extension thereof, the actual damage to the Government for the delay will be difficult or impossible to determine. Therefore, in lieu of actual damage, the Contractor shall pay to the Government as fixed, agreed, and liquidated damages for each calendar day of delay the amount, if any, set forth in the job order (prorated to the nearest hour for fractional days). Alternatively, the Government may terminate the job order in whole or in part as provided in paragraph (a) of this clause, and in that event the Contractor shall be liable, in addition to the excess costs provided in paragraph (c) above, for such liquidated damages accruing until such time as the Government may reasonably obtain completion of the work described in the job order. The Contractor shall not be charged with liquidated damages when the delay arises out of causes beyond the control and without the fault or negligence of the Contractor, as defined in paragraph (b) above, and in such event, subject to the provisions of Clause 252.217-7111 entitled DISPUTES of this agreement, the Contracting Officer shall ascertain the facts and the extent of the delay and shall extend the time for performance when in the judgment of the Contracting Officer, the findings of fact justify an extension.

(g) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law under this agreement.

(End of clause)

252.217-7111 Disputes.

As prescribed at 217.7104(a), insert FAR clause 52.233-1 (APR 1984).

252.217-7112 Performance.

As prescribed at 217.7104(a), insert the following clause:

PERFORMANCE (APR 1982)

(a) Upon the issuance of a job order, the Contractor shall promptly commence the work specified therein and in any plans and specifications made a part thereof, and shall

diligently prosecute the work to completion. The Contractor shall not commence work until the job order has been issued, except in the case of work ordered by the Contracting Officer as provided in paragraph (b) of clause 252.217-7103 entitled JOB ORDERS AND COMPENSATION hereof.

(b) The Government shall deliver the vessel described in the job order at such time and location as may be specified in the job order, and, upon completion of the work, the Government shall accept delivery of the vessel at such time and location as may be specified in the job order.

(c) The Contractor shall, without charge and without specific requirement thereof in a job order:

(i) Make available at the plant to personnel of the vessel while in drydock or on a marine railway, toilet and similar facilities acceptable to the Contracting Officer as adequate in number and sanitary standards. Supply and maintain, in such condition as the Contracting Officer may reasonably require, suitable brows and gangways from the pier, drydock or marine railway to the vessel;

(ii) Test salvage, scrap, or other ship's material of the Government resulting from performance of the work as items of Government-furnished property in accordance with the provisions of clause 252.217-7218 entitled GOVERNMENT PROPERTY.

(iii) Perform, or pay the cost of, any repair, reconditioning or replacement made necessary as the result of the use by the Contractor of any of the vessel's machinery, equipment or fittings, including, but not limited to, winches, pumps, rigging, or pipe lines; and

(iv) Furnish suitable offices, office equipment and telephones at or near the site of the work as the Contracting Officer reasonably requires for the Contracting Officer and staff of the Contracting Officer.

(d) Except as otherwise provided in the job order, the Contractor shall furnish all necessary material, labor, services, equipment, supplies, power, accessories, facilities, and such other things and services as are necessary for accomplishing the work specified in the job order subject to the right reserved in the Government under clause 252.217-7218 entitled GOVERNMENT PROPERTY.

(e) Dock and sea trials of the vessel when required by the Government shall be specified in the job order. Unless otherwise expressly provided in the job order, during the conduct of such trials the vessel shall be under the control of the vessel's commander and crew with representatives of the Contractor and the Government on board to determine whether or not the work done by the Contractor has been satisfactorily performed. Dock and sea trials not specified by the job order which the Contractor requires for the Contractor's own benefit shall not be undertaken by the Contractor without prior notice to and approval of the Contracting Officer; any such dock trials shall be conducted at the expense of the Contractor, and any such sea trials shall be conducted at the risk and expense of the Contractor. The Contractor shall provide and install all fittings and appliances which may be necessary for the dock and sea trials, to enable the representatives of the Government to determine whether the requirements of the job order, plans, and specifications have been met, and the Contractor shall be responsible for the care, installation and removal of instruments and apparatus furnished by the Government for such trials.

(End of clause)

252.217-7113 Access to vessel.

As prescribed at 217.7104(a), insert the following clause:

ACCESS TO VESSEL (MAY 1983)

(a) A reasonable number of officers, employees, and associates of the Government, or other prime Contractors with the Government, and their subcontractors, shall, as authorized by the Supervisor, have at all reasonable times, admission to the plant, and access to vessel(s) to perform and fulfill their respective obligations to the Government on a noninterference basis. The Contractor shall make reasonable arrangements with the Government or Contractors of the Government, as shall have been identified and authorized by the Supervisor, to be given admission to the Contractor's facilities and access to the vessel(s) and to office space, work areas, storage or shop areas, or other facilities and services, necessary for the performance of their respective responsibilities and reasonable to their performance. All such above personnel shall be required to comply with all Contractor rules and regulations governing personnel at its shipyard, including those relative to safety and security.

(b) The Contractor further agrees as authorized by the Supervisor, to afford to a reasonable number of officers, employees, and associates of offerors on other contemplated work, the same privileges of admission to the Contractor's plant and access to the vessel(s) on a noninterference basis subject to all Contractor rules and regulations governing personnel in its shipyard, including those relative to safety and security.

(c) The vessel, its equipment, movable stores, cargo, or other ship's material shall not be considered Government-Furnished Property.

(End of clause)

252.217-7114 Certain Communist areas.

As prescribed at 217.7104(b), insert FAR clause 52.225-11 (APR 1984).

252.217-7115 Contract Work Hours and Safety Standards Act—overtime compensation.

As prescribed at 217.7104(b), insert FAR clause 52.222-4 (APR 1984).

252.217-7116 Walsh-Healey Public Contracts Act.

As prescribed at 217.7104(b), insert FAR clause 52.222-20 (APR 1984).

252.217-7117 Equal opportunity clause.

As prescribed at 217.7104(a), insert FAR clause 52.222-26 (APR 1984).

252.217-7118 Officials not to benefit.

As prescribed at 217.7104(a), insert FAR clause 52.203-1 (APR 1984).

252.217-7119 Covenant against contingent fees.

As prescribed at 217.7104(a), insert FAR clause 52.203-5 (APR 1984).

252.217-7120 Termination for convenience of the government.

As prescribed at 217.7104(a), insert FAR clause(s) 52.249-1 or 52.249-2 (APR 1984), as applicable.

252.217-7121 Authorization and consent.

As prescribed at 217.7104(a) insert FAR clause 52.227-1 (APR 1984).

252.217-7122 Notice and assistance regarding patent and copyright infringement.

As prescribed at 217.7104(a), insert FAR clause 52.227-2 (APR 1984).

252.217-7123 Responsibility for inspection.

As prescribed at 217.7104(a), insert FAR clause 52.246-1 (APR 1984).

252.217-7124 Liability and insurance.

As prescribed at 217.7104(a) insert the following clause:

LIABILITY AND INSURANCE (AUG 1983)

(a) The Contractor shall exercise reasonable care and use the Contractor's best efforts to prevent accidents, injury or damage to all employees, persons and property, in and about the work, and to the vessel or part thereof upon which work is done.

(b) The Contractor shall not, unless otherwise directed or approved in writing by the Department, carry or incur the expense of any insurance against any form of loss or damage to the vessels or to the materials or equipment therefor to which the Government has title or which have been furnished by the Government for installation by the Contractor. The Government assumes the risks of loss of and damage to the vessels and such materials and equipment. The Government does not assume any risk with respect to loss or damage compensated for by insurance or otherwise or resulting from risks with respect to which the Contractor has failed to procure or maintain insurance, if available, as required or approved by the Department; *Provided, further,* that under this clause the Government does not assume any risk with respect to, and will not pay for any costs of the Contractor for the inspection, repair, replacement, or renewal of any defects themselves in the vessel(s) or such materials and equipment due to (A) defective workmanship or defective materials or equipment performed by or furnished by the Contractor or its subcontractors; or (B) workmanship or materials or equipment performed by or furnished by the Contractor or its subcontractors which do(es) not conform to the requirements of the contract, whether or not any such defect is latent or whether or not any such nonconformance is the result of negligence: *Provided, further,* that under this clause the Government does not assume the risk of and will not pay for the costs of any loss, damage, liability or expense caused by, resulting from, or incurred as a consequence of delay or disruption of any type whatsoever; or willful misconduct or lack of good faith on the part of any of the Contractor's directors, officers and any of its managers, superintendents or other equivalent representatives who have supervision or direction of (i) all or substantially all of the Contractor's business or (ii) all or substantially all of the Contractor's operation at any one plant; *Provided, however,* that as to such risk assumed and borne by the Government, the Government shall be subrogated to any claim, demand or cause of action against third persons which exists in favor of the Contractor, and the Contractor shall, if required, execute a formal assignment or transfer of claims, demands or causes of action; *Provided, further,* that nothing contained in this paragraph shall create or give rise to any right, privilege or power in any person except the Contractor, nor shall any person (except the Contractor) be or become entitled thereby to proceed directly against the Government, or join the Government as a codefendant in any action against the Contractor brought to determine the Contractor's liability or for any other purpose. Notwithstanding the foregoing the Contractor shall bear the first $5,000 of loss or damage from each occurrence or incident the risk of which the Government otherwise would have assumed under the provisions of this paragraph.

(c) The Contractor indemnifies and holds harmless the Government, its agencies and instrumentalities, the vessel and its owners, against all suits, actions, claims, costs or demands (including, without limitation, suits, actions, claims, costs or demands resulting from death, personal injury and property damage) to which the Government, its agencies and instrumentalities, the vessel or its owner may be subject or put by reason of damage or injury (including death) to the property or person of any one other than the Government, its agencies, instrumentalities and personnel, the vessel or its owner, arising or resulting in whole or in part from the fault, negligence, wrongful act or wrongful omission of the Contractor, or any subcontractor, the Contractor's or subcontractors' servants, agents or employees; *Provided,* that the Contractor's obligation to indemnify under this paragraph (c) shall not exceed the sum of $300,000 on account of any one accident or occurrence in respect of any one vessel. Such indemnity shall include, without limitation, suits, actions, claims, costs or demands of any kind whatsoever, resulting from death, personal injury or property damage occurring during the period of performance of work on the vessel or within *ninety (90)* days after redelivery of the vessel; and with respect to any such suits, actions, claims, costs, or demands resulting from death, personal injury or property damage occurring after the expiration of such period, the rights and liabilities of the Government and the Contractor shall be as determined by other provisions of this *agreement* and by law; *Provided,* however, that such indemnity shall apply to death occurring after such period which results from any personal injury received during the period covered by the Contractor's indemnity as provided herein.

(d) The Contractor shall, at its own expense, procure, and thereafter maintain such casualty, accident and liability insurance, in such forms and amounts as may be approved by the Government, insuring the performance of its obligations under paragraph (c) of this clause. Further, the Contractor shall procure and maintain in force Workers' Compensation Insurance (or its equivalent) covering its employees engaged on the work and shall insure the procurement and maintenance of such insurance by all subcontractors engaged on the work. The Contractor shall provide such evidence of such insurance as may be, from time to time, required by the Government.

(e) No allowance shall be made the Contractor in the job order price for the inclusion of any premium expense or charge for any reserve made on account of self-insurance for coverage against any risk assumed by the Government under this clause.

(f) As soon as practicable after the occurrence of any loss or damage the risk of which the Government has assumed, written notice of such loss or damage shall be given by the Contractor to the Contracting Officer, which notice shall contain full particulars of such loss or damage. If claim is made or suit is brought thereafter against the Contractor as the result or because of such event, the Contractor shall immediately deliver to the Government every demand, notice, summons or other process received by the Contractor or the Contractor's representatives. The Contractor shall cooperate with the Government and, upon the Government's request, shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits; and the Government shall pay to the Contractor the expense, other than the cost of maintaining the Contractor's usual organization, incurred in so doing. The Contractor shall not, except at its own cost, voluntarily make any payment, assume any obligation or incur any expense other than shall be imperative for the protection of the vessel or vessels at the time of said occurrence of such event.

(g) In the event of loss of or damage to any of the vessels or any of the materials or equipment therefor which may result in a claim against the Government under the insurance provisions of this contract, the Contractor promptly shall notify the Contracting Officer of such loss or damages, and the Contracting Officer may, without prejudice to any other right of the Government, either:

(i) Order the Contractor to proceed with replacement or repair, in which event the Contractor shall effect such replacement or repair. The Contractor shall submit to the Contracting Officer a request for reimbursement of the cost of such replacement or repair together with such supporting documentation as the Contracting Officer may reasonably require, and shall identify such request as being submitted under the "Insurance" Clause of the contract. If the Government determines that the risk of such loss or damages is within the scope of the risks assumed by the Government under this clause, the Government will reimburse the Contractor for the reasonable, allowable cost of such replacement or repair, plus a reasonable profit (if the work of replacement or repair was performed by the Contractor) less the deductible amount specified in paragraph (b) of this clause. Payments by the Government to the Contractor under this Insurance Clause are outside the scope of and shall not affect the pricing structure of the contract (firm fixed price or incentive type arrangement, as applicable), and are additional to the compensation otherwise payable to the Contractor under this contract; or

(ii) In the event the Contracting Officer decides that the loss or damage shall not be replaced or repaired,

(A) Modify the contract appropriately consistent with the reduced requirements reflected by the unreplaced or unrepaired loss or damage, or

(B) Terminate the repair of any part or all of the vessel(s) under the clause of this contract entitled "TERMINATION FOR CONVENIENCE OF THE GOVERNMENT".

(End of clause)

252.217-7125 Pricing of adjustments.

As prescribed at 217.7104(a), insert the clause at 252.243-7001 (APR 1984).

252.217-7126 Affirmative action for disabled veterans and veterans of the Vietnam era.

As prescribed at 217.7104(b), insert FAR clause 52.222-35 (APR 1984).

252.217-7127 Affirmative action for handicapped workers.

As prescribed at 217.7104(b), insert FAR clause 52.222-36 (APR 1984).

252.217-7128 Clean air and water.

As prescribed at 217.7104(a), insert FAR clause 52.223-2 (APR 1984).

252.217-7129 Invoices.

As prescribed at 217.7104(a), insert DoD FAR Supplement clause 252.232-7000 (OCT 1982).

252.217-7130 Guarantees.

As prescribed at 217.7104(a), insert the following clause:

GUARANTEES (APR 1982)

In case any work done or materials furnished by the Contractor under this agreement on or for any vessel or the equipment thereof, shall within ninety (90) days from the date of redelivery of the vessel by the Contractor, prove defective or deficient, such defects or deficiencies shall, as required by the Government in writing, be corrected and repaired by the Contractor or at the Contractor's expense to the satisfaction of the Contracting Officer *Provided* that for any guarantee secured by

the Contractor or any subcontractor covering work done on materials furnished which exceeds the 90 day period, the Government shall be entitled to rely upon said guarantee until the expiration and *Provided* further that with respect to any individual work item identified and listed as incomplete at the redelivery of the vessel the guarantee period shall run from the date of completion of such item. The Government shall, if and when practicable, afford the Contractor an opportunity to effect such corrections and repairs himself, but when, because of the condition or the location of the vessel or for any other reason, it is impracticable or undesirable to return it to the Contractor, or the Contractor fails to proceed promptly with any such repairs as directed by the Contracting Officer, such corrections and repairs shall be effected at the Contractor's expense at such other locations as the Government may determine. Where correction and repairs are to be effected by other than the Contractor, due to nonreturn of the vessel to him, the Contractor's liability may be discharged by an equitable deduction in the price of the job. The Contractor's liability shall only extend for an additional 90-day guarantee period on those defects or deficiencies which the Contractor corrected and in no event to those for which payment was made; *Provided*, however, that nothing in this clause shall be deemed to limit the responsibility of the Contractor under clause 252.217-7124 entitled "LIABILITY AND INSURANCE" hereof or relieve the Contractor of its liability under that clause. At the option of the Contracting Officer, defects and deficiencies may be left in their then condition, and an equitable deduction from the job order price, as agreed by the Contractor and the Contracting Officer, shall be made therefor. If the Contractor and the Contracting Officer fail to agree upon the equitable deduction from the job order price to be made, the dispute shall be determined as provided in Clause 252.217-7111 entitled "DISPUTES" hereof.

(End of clause)

252.217-7131 Discharge of liens.

As prescribed at 217.7104(a), insert the following clause:

DISCHARGE OF LIENS (APR 1982)

The Contractor shall immediately discharge or cause to be discharged any lien or right *in rem* of any kind, other than in favor of the Government, which at any time exists or arises in connection with work done or materials furnished under any job order hereunder with respect to the machinery, fittings, equipment or materials for any of the vessels. If any such lien or right *in rem* is not immediately discharged, the Government may discharge or cause to be discharged such lien or right at the expense of the Contractor.

(End of clause)

252.217-7132 Department of Labor safety and health regulations for ship repairing.

As prescribed at 217.7104(a), insert the following clause:

DEPARTMENT OF LABOR SAFETY AND HEALTH REGULATIONS FOR SHIP REPAIRING (APR 1982)

Attention of the Contractor is directed to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651–678), and to the Safety and Health Regulations for Ship Repairing (29 CFR 1915), promulgated under Pub. L. 85–742, amending section 41 of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 941), and adopted by the Department of Labor as occupational safety or health standards under section 6(a) of the Occupational Safety and Health Act of 1970 (see 29 CFR 1910.13). These regulations apply to all ship repair and related work, as defined in the regulations, performed under this agreement on the navigable waters of the United States including any drydock or marine railway. Nothing contained in this agreement or any job order hereunder shall be construed as relieving the Contractor from any obligations which it may have for compliance with the aforesaid regulations.

(End of clause)

252.217-7200 Workers' compensation and war hazard insurance overseas.

As prescribed at 217.7104(b), insert FAR clause 52.228–4 (APR 1984), as applicable.

252.217-7201 Buy American Act and the balance of payments program.

As prescribed at 217.7104(b), insert the clause at 252.225–7001 (OCT 1980), as applicable.

252.217-7202 Notice to the Government of labor disputes.

As prescribed at 217.7104(b), insert FAR clause 52.222–1 (APR 1984), as applicable.

252.217-7203 Patent indemnity.

As prescribed at 217.7104(b), insert FAR clause 52.227–3 (APR 1984), as applicable.

252.217-7204 Filing of patent applications.

As prescribed at 217.7104(b), insert FAR clause 52.227–10 (APR 1984), as applicable.

252.217-7205 Contract schedule subline items not separately priced.

As prescribed at 217.7104(b), insert DoD FAR Supplement clause 252.204–7000 (APR 1984), as applicable.

252.217-7206 Reporting and refund of royalties.

As prescribed at 217.7104(b), insert FAR clauses 52.227–8 and 52.227–9 (APR 1984), as applicable.

252.217-7207 Rights in technical data and computer software.

As prescribed at 217.7104(b), insert clause 252.227–7013 (MAY 1981), as applicable.

252.217-7208 Military security requirements.

As prescribed at 217.7104(b) insert FAR clause 52.204–2 (APR 1984), as applicable.

252.217-7209 Utilization of small business and small disadvantaged business concerns.

As prescribed at 217.7104(b) insert FAR clause(s) 52.219–8, 52.219–9, and 52.219–10 (APR 1984), as applicable.

252.217-7210 Examination of records by Comptroller General.

As prescribed at 217.7104(b), insert FAR clause 52.215–1 (APR 1984), as applicable.

252.217-7211 Gratuities.

As prescribed at 217.7104(b), insert FAR clause 52.203–3 (APR 1984), as applicable.

252.217-7212 Convict labor.

As prescribed at 217.7104(b), insert FAR clause 52.222–3 (APR 1984), as applicable.

252.217-7213 Priorities and allocations.

As prescribed at 217.7104(b), insert FAR clause 52.212–8 (APR 1984), as applicable.

252.217-7214 Utilization of labor surplus area concerns.

As prescribed at 217.7104(b), insert FAR clause(s) 52.220–3 and 52.220–4 (APR 1984), as applicable.

252.217-7215 Limitation on withholding of payments.

As prescribed at 217.7104(b), insert FAR clause 52.232–9 (APR 1984), as applicable.

252.217-7216 Equal opportunity preaward clearance of subcontracts.

As prescribed at 217.7104(b), insert FAR clause 52.222–28 (APR 1984), as applicable.

252.217-7217 Subcontracts.

As prescribed at 217.7104(b), insert FAR clause 52.244–1 (APR 1984), as applicable.

252.217-7218 Government property.

As prescribed at 217.7104(b), insert FAR clause 52.245–2 (APR 1984), as applicable.

252.217-7219 Federal, state, local, and foreign taxes.

As prescribed at 217.7104(b), insert FAR clause 52.229–2 (APR 1984), as applicable.

252.217-7220 Quality program.

As prescribed at 217.7104(b), insert FAR clause 52.246–11 (APR 1984), as applicable.

252.217-7221 Price reduction for defective cost or pricing data.

As prescribed at 217.7104(b), insert FAR clause 52.214–27 or 52.215–22 (APR 1984), as applicable.

252.217-7222 Duty-free entry.

As prescribed at 217.7104(b), insert FAR clause 52.225–10 (APR 1984), as applicable.

252.217-7223 Duty-free entry of qualifying country supplies.

As prescribed at 217.7104(b), insert clause 52.225–7008 (JAN 1981), as applicable.

252.217-7224 Inspection system.

As prescribed at 217.7104(b), insert FAR clause 52.246–11 (APR 1984), as applicable.

252.217-7225 Advance payments.

As prescribed at 217.7104(b), insert FAR clause 52.232–12 (APR 1984), as applicable.

252.217-7226 Required sources for jewel bearings and related items.

As prescribed at 217.7104(b), insert FAR clause 52.208–1 (APR 1984), as applicable.

252.217-7227 Required sources for miniature and instrument ball bearings.

As prescribed at 217.7104(b), insert DoD FAR Supplement clause 252.208–7000 (JUL 1971), as applicable.

252.217-7228 Interest.

As prescribed at 217.7104(b), insert FAR clause 52.232–17 (APR 1984), as applicable.

252.217-7229 Competition in subcontracting.

As prescribed at 217.7104(b), insert FAR clause 52.244–5 (APR 1984), as applicable.

252.217-7230 Audit by Department of Defense.

As prescribed at 217.7104(b), insert FAR clause(s) 52.214–26 or 52.215–2 (APR 1984), as applicable.

252.217-7231 Subcontractor cost or pricing data.

As prescribed at 217.7104(b), insert FAR clause 52.215–25 (APR 1984), as applicable.

252.217-7232 Value engineering.

As prescribed at 217.7104(b), insert FAR clause 52.248–1 (APR 1984), as applicable.

252.217-7233 [Reserved]

252.217-7234 Required sources for precision components for mechanical time devices.

As prescribed at 217.7104(b), insert DoD FAR Supplement clause 252.208–7001 (AUG 1971), as applicable.

252.217-7235 New material.

As prescribed at 217.7104(b), insert FAR clause 52.210–5 (APR 1984), as applicable.

252.217-7236 Government surplus.

As prescribed at 217.7104(b), insert FAR clause 52.210–6 or 52.210–7 (APR 1984), as applicable.

252.217-7237 Utilization of women-owned business concerns.

As prescribed at 217.7104(b), insert FAR clause 52.219–13 (APR 1984), as applicable.

252.217-7238 Material inspection and receiving report.

As prescribed at 217.7104(b), insert DoD FAR Supplement clause 52.246–7000 (DEC 1969), as applicable.

252.217-7239 Protection of Government buildings, equipment, and vegetation.

As prescribed at 217.7104(b), insert FAR clause 52.237–2 (APR 1984), as applicable.

252.217-7240 Government delay of work.

As prescribed at 217.7104(b), insert FAR clause 52.212–15 (APR 1984), as applicable.

252.217-7241 Distribution of defense subcontracts placed overseas.

As prescribed at 217.7104(b), insert DoD FAR Supplement clause 252.204–7005 (JUN 1982), as applicable.

252.217-7242 Safety precautions for ammunition and explosives.

As prescribed at 217.7104(b), insert DoD FAR Supplement clause 252.223–7001 (JUL 1986) and 52.223–7002 (JUL 1986), as applicable.

252.217-7243 Cost accounting standards.

As prescribed at 217.7104(b), insert FAR clause(s) 52.230–3 and 52.230–4 (APR 1984), as applicable.

252.217-7244 Notification of changes.

As prescribed at 217.7104(b), insert FAR clause 52.243–7 (APR 1984), as applicable.

252.217-7245 Engineering change proposals (ECP's).

As prescribed at 217.7104(b), insert DoD FAR Supplement clause 252.243–7000 (APR 1984), as applicable.

252.217-7246 Change order accounting.

As prescribed at 217.7104(b), insert FAR clause 52.243–6 (APR 1984), as applicable.

252.217-7247 Contracts conditioned upon the availability of funds.

As prescribed at 217.7104(b), insert FAR clause(s) 52.232–18 or 52.232–19 (APR 1984), as applicable.

252.217-7248 Preference for domestic specialty metals.

As prescribed at 217.7104(b), insert the clause at 252.225–7012 (OCT 1980), as applicable.

252.217-7249 Preference for United States-flag air carriers.

As prescribed at 217.7104(b), insert FAR clause 52.247–63 (APR 1984), as applicable.

252.217-7250 Exclusionary policies and practices of foreign governments.

As prescribed at 217.7104(b), insert the clause at 52.225–7019 (JAN 1977).

252.217-7251 Hazardous material identification and material safety data.

As prescribed at 217.7104(b), insert FAR clause 52.223–3 (APR 1984), as applicable.

252.217-7252 Certification of requests for adjustment or relief exceeding $100,000.

As prescribed at 217.7104(b), insert DoD FAR Supplement clause 252.233–7000 (FEB 1980), as applicable.

252.217-7253 Qualifying country sources as subcontractors.

As prescribed at 217.7104(b), insert clause 252.225–7002 (OCT 1980).

252.217-7254 Stop work orders.

As prescribed at 217.7104(b), insert FAR clause 52.212–13 (APR 1984), as applicable.

252.217-7255 Subcontractor cost or pricing data—modifications—sealed bidding.

As prescribed at 217.7104(b), insert FAR clause 52.214–28 (APR 1985).

252.217-7256 Subcontractor cost or pricing data.

As prescribed at 217.7104(b), insert FAR clause 52.215–24 (APR 1985).

252.217-7257 Notice of total small business set-aside.

As prescribed at 217.7104(b), insert FAR clause 52.219–6 (APR 1984).

252.217-7258 Preference for labor surplus area concerns.

As prescribed at 217.7104(b), insert FAR clause 52.220–1 (APR 1984).

252.217-7259 Bid guarantee.

As prescribed at 217.7104(b), insert FAR clause 52.228-1 (APR 1984).

252.217-7260 Production progress reports.

As prescribed at 217.7104(b), insert FAR clause 52.242-2 (APR 1984).

252.217-7261 Government-furnished property (short form).

As prescribed at 217.7104(b), insert FAR clause 52.245-4 (APR 1984).

252.217-7262 Clauses incorporated by reference.

As prescribed at 217.7104(b), insert FAR clause 52.252-2 (APR 1984).

252.217-7263 Aggregate pricing adjustment.

As prescribed at 217.7104(b), insert the clause at 252.215-7000 (APR 1985).

252.217-7264 Small business and small disadvantaged business subcontracting plan (master plans).

As prescribed at 217.7104(b), insert the clause at 252.219-7000 (APR 1984).

252.217-7265 Restrictive markings on technical data.

As prescribed at 217.7104(b), insert the clause at 252.227-7018 (MAR 1975).

252.217-7266 Identification of technical data.

As prescribed at 217.7104(b), insert the clause at 252.227-7029 (MAR 1975).

252.217-7267 Data requirements.

As prescribed at 217.7104(b), insert the clause at 252.227-7031 (APR 1972).

252.217-7268 Certain Communist areas.

As prescribed at 217.7104(b), insert FAR clause 52.225-11 (APR 1984).

252.217-7269 Plant protection.

As prescribed at 217.7104(b), insert the following clause, as applicable.

PLANT PROTECTION (AUG 1985)

(a) The Contractor shall provide for its plant and the work in process under this contract such safeguards, including personnel, devices and equipment, as would constitute reasonable protection under peacetime conditions (in the light of the size of the plant and the scope of its operations) under all hazards, including unauthorized entry, malicious mischief, theft, vandalism and fire.

(b) In addition to the foregoing precautions, the Contractor shall provide such additional safeguards as may be required or approved by the Contracting Officer for the protection of its plant and the work in process under this contract against espionage, sabotage, and enemy action. The cost to the Contractor of all safeguards so required or approved shall, to the extent allocable to this contract, be reimbursed to the Contractor in the same manner as if the Contractor had furnished such safeguards pursuant to a change order issued under the clause of this contract entitled "CHANGES". Such cost shall not include any allowance on account of overhead expense, except shop overhead charges incident to the construction or installation of such devices or equipment.

(c) Upon payment by the Government of the cost to the Contractor of any device or equipment required or approved under paragraph (b) of this clause, title thereto shall vest in the Government, and the Contractor shall comply with the instructions of the Department respecting the identification and disposition thereof. No part or item of any such devices or equipment shall be or become a fixture by reason of affixation to any realty not owned by the Government.

(End of clause)

252.217-7270 Identification of sources of supply.

As prescribed in 217.7204(b), insert the following clause:

IDENTIFICATION OF SOURCES OF SUPPLY (OCT 85)

The Contractor shall provide to the Contracting Officer with respect to each line item for supplies the following information: the corresponding national stock number (NSN) (if any), the item nomenclature, the name and address of the actual manufacturer, producer or each source of supply of the Contractor for the item and the identification number assigned by the actual manufacturer, producer or each source of supply. With respect to each line item for technical data, the Contractor shall identify, by appropriate line item number, the name and address of each source of the data. The list shall be provided at the time and in the quantities specified elsewhere in the contract.

(End of clause)

252.217-7300 Delivery vehicles.

As prescribed at 217.7301-5(a)(1), insert the following clause:

DELIVERY VEHICLES (APR 1967)

The supplies delivered under this contract shall be transported in clean, closed vehicles. The vehicles shall be maintained in a sanitary condition to prevent contamination of the supplies and shall be equipped to maintain any temperature requirement prescribed in the specification or elsewhere in this contract. The vehicles shall be subject to inspection by the Government at all reasonable times and at all places, including the plant of the Contractor. Supplies tendered for acceptance in vehicles which are not sanitary, or which are not equipped to maintain any prescribed temperatures, may be rejected without further inspection.

(End of clause)

252.217-7301 Time of delivery.

As prescribed at 217.7301-5(a)(2), insert the following clause:

TIME OF DELIVERY (APR 1967) Individual written delivery orders issued or oral delivery orders placed under this contract shall specify the locations to which deliveries shall be made and the quantities for each location. Deliveries will be completed within the hours prescribed in the Schedule of this contract and on the days specified by the order. Orders which call for delivery within less than twenty-four (24) hours from the time the Contractor receives said orders shall be governed by paragraph (e) of the clause entitled "Requirements."

(End of clause)

ALTERNATE I

If an indefinite quantity contract is used, rather than a requirements contract, the following shall be substituted for the last sentence of the basic clause:

The Contractor shall not be required to deliver within less than _____ hours from the time the Contractor receives a delivery order.

252.217-7302 Change in plant location.

As prescribed at 217.7301-5(a)(3), insert the following clause:

CHANGE IN PLANT LOCATION (APR 1967)

The performance of any work under this contract at any place other than that named in this contract is prohibited unless specific written advance approval is obtained from the Contracting Officer.

(End of clause)

252.217-7303 Sanitary conditions.

As prescribed at 217.7301-5(a)(4), insert the following clause:

SANITARY CONDITIONS (APR 1967)

(a) All plant facilities, machinery, equipment, and apparatus used in the production, processing, handling, storage, or delivery of supplies under this contract, and all supplies (as the term "supplies" is defined in paragraph (a) of the clause entitled "Inspection of Supplies—Fixed Price") delivered under this contract, shall meet the sanitary standards, including bacteriological requirements, prescribed by the specifications cited elsewhere in this contract.

(b) All plant facilities, machinery, equipment, and apparatus used in the production, processing, handling, storage, or delivery of supplies under this contract shall be subject to inspection and test by the Government at all places and at all reasonable times.

(c) The Government shall notify the Contractor in writing of any failure to meet the sanitary standards, including bacteriological requirements, prescribed by this contract. If such failure has not been corrected within three (3) days from the date the Contractor receives said notice, the whole or any part of this contract may be terminated for default or, at the option of the Contracting Officer, the Contractor's right to perform under this contract may be partially or wholly suspended for not less than ten (10) days, and for such longer period of time as the Contracting Officer deems appropriate to permit correction of such failure. A suspension shall not operate to extend the life of this contract and shall not be considered sufficient cause for the extension of any delivery time. During the period of any such suspension, the Government may procure from other sources, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies similar to those specified in the Schedule, and the Contractor shall be liable to the Government for any excess costs for such similar supplies. If the Contractor does not correct the failure to meet the sanitary standards, including bacteriological requirements, within any suspension period specified by the Contracting Officer, the Government may terminate the unexpired portion of this contract for default without allowing additional time for correction, notwithstanding paragraph (a)(2) of the clause entitled "Default (Fixed Price Supply and Service)."

(End of clause)

ALTERNATE I

If an indefinite quantity contract is used, rather than a requirements contract, the following shall be inserted in paragraph (c) of the basic clause after the third sentence:

The quantity of supplies designated in the Schedule as "Minimum" shall be reduced, in the event of a suspension, by an amount proportionate to the ratio between the number of days the Contractor's right to perform is suspended and the number of days in the contract period. The quantity of supplies designated as "Maximum" shall not be reduced.

252.217-7304 Remedies under delivery orders.

As prescribed at 217.7301-5(a)(5), insert the following clause:

REMEDIES UNDER DELIVERY ORDERS (APR 1967)

All rights and remedies afforded to the Government under the provisions of this contract may be exercised and enforced by the Government with respect to each written or oral delivery order placed under this contract.

(End of clause)

ALTERNATE I

If delivery orders are to be placed by an activity other than the activity which awarded the contract, the following may be added to the basic clause to establish authority in the ordering officer under the Changes, Extras, Inspection, Default (Fixed Price Supply and Service), and Disputes clauses for the administration of individual delivery orders:

For the purpose of the exercise of the Government's rights and remedies under one or more individual delivery orders, the term "Contracting Officer" as used in the "Changes," "Extras," "Inspection of Supplies—Fixed Price," "Default (Fixed Price Supply and Service)," and "Disputes" clauses, shall include the person executing or placing said order or orders.

252.217-7305 Examination and testing.

As prescribed at 217.7301-5(b)(1), insert the following clause:

EXAMINATION AND TESTING (AUG 1985)

(a) The Government examination and testing of dairy products shall be in accordance with DLAM 8200.1, Appendix A—Procurement Quality Assurance for Fresh Dairy Products." The Contractor agrees that a lot consists of a day's production of the type of product delivered or intended to be delivered. Whether sampling is conducted at origin or at destination, the Contractor agrees that the results of the tests performed using the samples selected in accordance with DLAM 8200.1, Appendix A, will apply to the entire contract quantity of each type product delivered on the date specified at the time of sampling and that the results will be used in determining the weighted average of butterfat, milk solids non-fat, and total solids for the monthly period.

(b) The Government reserves the right to test all products to be delivered under the contract. Samples selected by the Government at origin shall be furnished at the expense of the Contractor and shall be considered to be representative of all the products delivered to the Government from the lot sampled. The Contractor shall certify the quantity of all products delivered from lots sampled at origin. Samples selected by the Government at destination shall be furnished at the expense of the Government and shall be considered to be representative of all of that type of product delivered to the Government on the date sampled.

(c) When samples are selected from containers of ½ gallon size or smaller, the entire content of the container shall constitute the sample; when samples are selected from containers larger than ½ gallon, a ½ pint sample shall be withdrawn for laboratory analysis.

(d) When the butterfat, milk solids non-fat or total solids of any type of product as determined by chemical analysis is less than required by this contract, the Contractor shall reimburse the Government for the deficiency in the amount determined pursuant to the clause entitled "Deficiency Adjustment." For this purpose the butterfat, milk solids non-fat, and total solids content of the entire quantity of each type of product delivered during a monthly period shall be deemed to be the weighted average of the results of the tests of all samples thereof selected during said period. If the butterfat, milk solids non-fat, or total solids content of any type of product in any monthly period, as determined by a chemical analysis of at least two (2) samples, is less than required by this contract, the Contractor shall reimburse the Government for the deficiency in an amount determined pursuant to the clause entitled "Deficiency Adjustment." Deficiencies so computed, totaling $25 or less during a monthly accounting period will not be assessed. Monthly periods commence on the first (1st) day of the contract period and on the same day of each succeeding calendar month thereafter. The butterfat, milk solids non-fat, and total solids content of one type of product will not be averaged with or offset against the content of another type of product, and the content of products delivered in any one monthly period will not be averaged with or offset against the content of products delivered in any other monthly period. No payment will be made for butterfat, milk solids non-fat, and total solids content in excess of the amount required by this contract.

(End of clause)

252.217-7306 Deficiency adjustment.

As prescribed at 217.7301-5(b)(2), insert the following clause:

DEFICIENCY ADJUSTMENT (DEC 1969)

(a) The amount to be paid by the Contractor to the Government as consideration for the acceptance of supplies deficient in butterfat, milk solids non-fat, or total solids, pursuant to the clause entitled "Examination and Testing," shall be determined in accordance with the following formulas:

(1) *Butterfat:* Subtract the total pounds of butterfat delivered from the total pounds of butterfat required to be delivered, and multiply the remainder by the butterfat value.

(2) *Milk Solids Non-Fat.* Subtract the total pounds of milk solids non-fat delivered from the total pounds of milk solids non-fat required to be delivered, and multiply the remainder by the milk solids non-fat value.

(3) *Total Solids.* To the total solids add any shortages for butterfat, milk solids non-fat, previously price adjusted and subtract from the total solids required to be delivered. Multiply the remainder by the milk solids non-fat value.

(b) The term "butterfat value" shall mean the average Chicago top "Wholesale Selling Price" of Grade A, 92 score butter during the monthly period for which the deficiency is computed, as reported in the Weekly Dairy Comments, Dairy and Poultry Market News, published by the Department of Agriculture, Consumer and Marketing Service, Chicago, Illinois, multiplied by 1.30. The term "milk solids non-fat value" shall mean the average Chicago top price for "Commercial Sales, Extra Grade, Nonfat Dry Milk, Spray (bags)" during the monthly period for which the deficiency is computed, as reported in the aforementioned Weekly Dairy Comments, multiplied by 1.45.

(c) The Contractor shall certify the tare weights of all containers on the shipping documents, and furnish a copy thereof to the Government inspector(s) at destination(s). The tare weight of dispenser containers shall include all parts of the container delivered as a unit, including lids, tubes, and seals. If different types of containers with different tares are included in a single delivery, the Contractor shall furnish the tare weight and identifying characteristics of each type of container. Volume and net weight shortages of any line item, revealed by inspecting a representative sample of said line item, shall be adjusted for payment by the receiving installation for the entire quantity of the line item delivered on the day the shortage is discovered. For the purpose of determining net weight, the following will apply:

(1) The weight factor of 8.8 pounds per gallon will be used for chocolate flavored milk and chocolate flavored drink.

(2) The weight factor of 8.6 pounds per gallon will be used for milk whole fresh, buttermilk fluid, milk whole fresh cultured, and milk skim fresh.

(3) The weight factor of 8.5 pounds per gallon will be used for fresh cream eighteen percent (18%) butterfat or less, half-and-half fresh, and cream sour cultured.

(4) The weight factor of 8.4 pounds per gallon will be used for all creams with a butterfat percentage of more than eighteen percent (18%).

(5) Other items such as cottage cheese, butter and so forth, shall be weighed in accordance with the weight stated on the container.

(6) For ice cream and frozen desserts, weight shall be determined based on applicable commodity specification.

(d) The foregoing is an agreed method for the adjustment of prices of noncomplying products, and is without prejudice to the Government's right to terminate for default or to pursue any other remedy under this contract or as provided by law.

(End of clause)

252.217-7307 Warning.

As prescribed at 217.7301-5(b)(3), insert the following clause:

WARNING (DEC 1969)

The Government shall notify the Contractor orally or in writing of any failure to meet sanitary standards, or when two of the last four consecutive lots tested are nonconforming for the same specification requirement. Oral notifications will be confirmed in writing. When this notice is based on product nonconformance, it shall be in effect so long as two of the last four consecutive lots tested exceed the same limit of the specification. An additional sample shall be taken within fourteen (14) days of such notice, but not before three (3) days have elapsed.

(End of clause)

252.217-7308 Suspension.

As prescribed at 217.7301-5(b)(4), insert the following clause:

SUSPENSION (DEC 1969)

The Contractor's right to perform may be suspended when three out of the last five consecutive lots tested are nonconforming for the same specification requirement. This suspension shall not operate to extend the life of this contract and shall not be considered sufficient cause for the extension of any delivery time. During the period of any such suspension, the Government may procure from other sources, upon such terms and in such a manner as the Contracting Officer may deem appropriate, supplies similar to those specified in the Schedule, and the Contractor shall be liable to the Government for any excess costs for such similar supplies. It is the responsibility of the Contractor to use the period of suspension to effect corrections of deficiencies and to notify the Government when such corrections are completed. Concurrently with initial notification, or any time after notification, but prior to correction of deficiencies and notification to the Government thereof, the Contractor's right to perform under this contract may be partially or wholly suspended immediately if such failure results in the production of a product which is considered to be a health hazard. Any suspension shall not exceed ten (10) days.

(End of clause)

ALTERNATE I

If an indefinite quantity contract is used, rather than a requirements contract, the following shall be added to the basic clause:

The quantity of supplies designated in the Schedule as "Minimum" shall be reduced, in the event of a suspension, by an amount proportionate to the ratio between the number of days the Contractor's right to perform is suspended and the number of days in the contract period. The quantity of supplies designated as "Maximum" shall not be reduced.

252.217-7309 Default.

As prescribed at 217.7301-5(b)(5), insert the following clause:

DEFAULT (DEC 1969)

If the Contractor does not correct the deficiencies within this period of suspension, the Contracting Officer may terminate the unexpired portion of this contract for default without allowing additional time for correction; notwithstanding subparagraph (a)(2) of the clause entitled "Default (Fixed Price Supply and Service)."

(End of clause)

252.217-7310 Reinstatement.

As prescribed at 217.7301-5(b)(6), insert the following clause:

REINSTATEMENT (DEC 1969)

When the Contractor's right to perform has been suspended for product nonconformances, this right may be reinstated only after the Contractor certifies, in writing, that corrective action has been taken, and the Government has verified that the Contractor has taken corrective action to its satisfaction and has so notified the Contractor in writing.

(End of clause)

252.217-7311 Code dating.

As prescribed at 217.7301-5(c), insert the following clause:

CODE DATING (APR 1967)

A code may be used to comply with the requirement set forth in the Schedule or specifications of this contract for showing a date on the labels of items delivered hereunder, *provided* that, prior to the use of a code, a written explanation thereof is furnished to the Contracting Officer and approved by the Contracting Officer in writing. No changes in the code symbols, code system or explanation thereof, shall be made without the advance written approval of the Contracting Officer.

(End of clause)

252.217-7312 Marking.

As prescribed at 217.7301-5(d), insert the following clause:

MARKING (APR 1967)

Notwithstanding any specification references to MIL-STD-129, commercial markings are acceptable.

(End of clause)

252.217-7313 Responsibility for containers and equipment.

As prescribed at 217.7301-5(e), insert the following clause:

RESPONSIBILITY FOR CONTAINERS AND EQUIPMEMT (APR 1967)

The Contractor shall maintain all reusable containers and equipment in a sanitary condition and in a good state of repair and working order. At the time of each delivery, the Contractor shall remove from the premises of the Government all empty reusable containers, unless the Contracting Officer grants permission in writing for less frequent removal. The Government shall not be liable for any damage to, or loss or destruction of, containers and equipment furnished by the Contractor.

(End of clause)

252.217-7314 Containers and equipment.

As prescribed at 217.7301-5(f), insert the following clause:

CONTAINERS AND EQUIPMENT (APR 1967)

(a) Dispenser containers and filling equipment used by the Contractor in the performance of this contract, and any refrigerated bulk milk dispenser cabinets furnished by the Contractor, shall comply with MIL-STD-175, "Minimum Sanitary Standards for the Equipment and Methods for Handling of Milk and Milk Products in Bulk Milk Dispensing Operations," as amended.

(b) Any bulk milk dispenser cabinets required by the Schedule to be furnished by the Contractor shall be installed, serviced, and maintained to the satisfaction of the Contracting Officer. All responsibility for the supply, installation, maintenance, and removal thereof, including labor and material costs, and for any damage thereto or loss or destruction, shall remain with the Contractor.

(c) When, and for as long as, the Contractor fails to furnish bulk milk dispenser cabinets or milk dispenser containers as required in the Schedule, or does not properly service, maintain, and repair said dispenser cabinets, so that milk cannot be dispensed as needed by the Government, the Contractor shall deliver a sufficient quantity of milk in half-pint containers to satisfy orders for milk dispenser containers, at the price per gallon for milk dispenser containers.

(d) Any contamination, spoilage, leakage, or other loss of any contents of a dispenser container due to functional failure of the dispenser cabinets or dispenser containers, except for a general power failure at the Government installation, shall be replaced immediately by the Contractor without cost to the Government.

(e) The tare weight of dispenser containers required to be certified in accordance with paragraph (b) of the clause entitled "Examination and Testing" shall include all parts of the container delivered as a complete unit, including lids, tubes, and seals.

(End of clause)

252.219-7000 Small business and small disadvantaged business subcontracting plan (master plans).

As prescribed at 219.708(b), insert the following clause:

SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS SUBCONTRACTING PLAN (MASTER PLANS) (APR 1984)

Master plans, referred to in FAR 52.219-9 must be approved by the Government's cognizant Contract Administration Office.

(End of clause)

252.219-7001 Notice of combined small business-labor surplus area set-aside.

As prescribed at 219.502-70(d)(1), insert the following clause:

NOTICE OF COMBINED SMALL BUSINESS-LABOR SURPLUS AREA SET-ASIDE (APR 1985)

(a) *General.*

(1) Offers under this acquisition are solicited from small business concerns only and the acquisition is to be awarded only to one or more small business concerns. This action is based on a determination by the Contracting Officer, alone or in conjunction with a representative of the Small Business Administration, that it is in the interest of maintaining or mobilizing the Nation's full productive capacity, in the interest of war or national defense programs, or in the interest of assuring that a fair proportion of Government acquisition is placed with small business concerns. Offers received from firms which are not small business concerns shall be considered nonresponsive and shall be rejected.

(2) Part of this acquisition identified in the solicitation as the "labor surplus area (LSA) set-aside portion," has been further set aside for award only to one or more LSA concerns, which are also small business concerns, and, to a limited extent, to small business concerns which do not qualify as LSA concerns. Award of the LSA set-aside portion will be made after awards have been made on the non-LSA set-aside portion.

(b) *Definitions.*

(1) A "small business concern" is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is making an offer on Government contracts, and can further qualify under the criteria set forth in the regulations of the Small Business Administration (CFR Title 13, Section 121.3-8). In addition to meeting these criteria, a manufacturer or a regular dealer submitting offers in its own name must agree to furnish in the performance of the contract, end items manufactured or produced by small business concerns; *provided*, that this additional requirement does not apply in connection with construction or service contracts.

(2) *Labor Surplus Area.* The term "labor surplus area" means a geographic area which at the time of award is classified as such by the Secretary of Labor in the Department of Labor "Listing of Eligible Labor Surplus Areas Under Defense Manpower Policy 4 and Executive Order 10582."

(3) *Labor Surplus Area Concerns.* The term "labor surplus area concern" means a concern that agrees to perform or cause to be performed a substantial proportion of a contract in labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in labor surplus areas if the aggregate costs that will be incurred by the concern or its first tier subcontractors on account of manufacturing or production performed in labor surplus areas amount to more than 50% of the contract price.

(c) *Procedures.*

(1) *Determining Eligibility:*

(i) To be eligible to participate in the LSA set-aside portion of this acquisition, a labor surplus area concern which is also a small business concern (or a small business concern to the extent indicated below) must submit a responsive offer on the non-LSA set-aside portion.

(ii) The Government reserves the right not to award to any concern submitting a token offer on the non-LSA set-aside portion or attempting by any other device to secure an unfair advantage over other offerors.

(2) *Determining Priority for Award:* Labor surplus concerns which are also small business concerns and other small business concerns eligible under (1) above will participate in the set-aside in the following order of priority:

Group 1. Small business concerns which are also labor surplus area (LSA) concerns.

Group 2. Small business concerns which are not labor surplus area (LSA) concerns. Within each of the above groups, offers on the LSA set-aside portion will be requested from concerns in the order of their offers on the non-LSA set-aside portion, beginning with the lowest responsive offer. Concerns may offer less than the total LSA set-aside portion.

(3) *General Rule.* Subject to the exceptions listed in (ii) and (iii) below, awards under the LSA set-aside shall be made at the highest unit price for each item awarded on the non-LSA set-aside, adjusted to reflect transportation, rent-free use of Government property and other cost factors considered in evaluating offers on the non-LSA set-aside portion. The LSA set-aside award price shall be subject to the same discount terms used in the evaluation of the highest non-LSA set-aside award price.

(ii) *Award Price Involving Foreign End Products* (see FAR Part 25).

(A) When the highest award price on the non-LSA set-aside is established by an award for a foreign end product, the award price for the LSA set-aside portion shall be the award price on the non-LSA set-aside as adjusted in evaluating the offer submitting the foreign end product for award under applicable Buy American procedures, except for awards on the LSA set-aside to concerns offering foreign end products, in which case the general rule applies.

(B) Award under the LSA set-aside to a concern offering a foreign end product, when the highest award price on the non-LSA set-aside portion is established by an award to a firm offering a domestic source end product, shall be at a price which, after application of the evaluation factors used under Buy American procedures for determining eligibility of a foreign end product for award, is equal to the highest award price on the non-LSA set-aside portion, adjusted to reflect transportation and other factors considered in evaluating the offers.

(iii) *Obtaining Offers and Processing LSA Set-Aside Awards.*

(A) When an unaccepted low offer is not involved: if there is no unaccepted low offer meeting the criteria in (B) below, eligible concerns in the order of priority in (2) above will be requested to offer on the LSA set-aside quantity at the highest unit price awarded on the non-LSA set-aside portion. Concerns may offer less than the total LSA set-aside portion. If any part of the LSA set-aside portion is not taken by eligible concerns, the partial LSA set-aside is automatically dissolved as to the unawarded portion. Such unawarded portion may be acquired by sealed bidding or negotiation, as appropriate, in accordance with existing regulations.

(B) When an unaccepted low offer is involved: if *a.* a responsive offer is submitted on the non-LSA set-aside portion at a unit price which, when adjusted, is lower than the adjusted highest unit price awarded on the non-LSA set-aside portion, but cannot be accepted (e.g., because of "all-or-none" or other quantity limitations, or because the offeror is nonresponsible), and *b.* at the time of negotiation for the LSA set-aside portion, the offer could be accepted (e.g., because the LSA set-aside quantity is large enough that the quantity limitations could be complied with, or because the offeror has now become responsible), then the following procedures shall be followed.

Step One. Eligible concerns (in the order of priority in (2) above) will be requested to offer at the adjusted unit price of the unaccepted offer, a quantity of the LSA set-aside portion equal to the quantity of the unaccepted offer.

Step Two. If no eligible concern is willing to take the entire quantity of the unaccepted offer, then all eligible concerns (in the order of priority in (2) above) shall be requested to make offers on any lesser portion at the same price, until either the entire quantity is awarded or all eligible concerns refuse any further portions of such quantity.

Step Three.

Case 1. If the unaccepted offer was submitted by a concern not eligible to participate in the LSA set-aside, and if any of the quantity under Step Two is not awarded, then it and all other remaining quantities of the LSA set-aside portion must be withdrawn and resolicited. If the entire quantity under Step Two is awarded among eligible concerns, Steps Four, Five and Six are applicable to the remaining LSA set-aside portion.

Cose 2. If the unaccepted offer was submitted by a concern eligible to participate in the LSA set-aside, Steps Four, Five and Six are applicable to the remaining LSA set-aside portion regardless of whether any quantity under Step Two is not awarded after all eligible concerns have been afforded an opportunity to offer on the unaccepted quantity. However, the concern which submitted the unaccepted offer shall be eliminated from consideration under Step Four and Step Five, for award at higher prices, unless the concern first accepts a quantity of the LSA set-aside portion equal to the entire quantity of its unaccepted offer at the adjusted price of its offer.

Step Four. In case there is more than one unaccepted offer which meets the conditions of *a.* and *b.* above, Steps One, Two and Three above shall be applied with respect to the quantities of each such offer in turn, from lowest price to highest.

Step Five. Eligible concerns in the order of priority in (2) above will be requested to offer, at the highest unit price awarded on the non-LSA set-aside portion on any quantity of the LSA set-aside portion, remaining after Steps One, Two, Three and Four have been completed.

Step Six. If the entire LSA set-aside portion is not taken by eligible concerns pursuant to Steps One through Five above, the partial LSA set-aside is automatically dissolved as to the unawarded portion and such unawarded portion may be acquired by sealed bidding or negotiation as appropriate, in accordance with existing regulations.

(d) *Agreement.* The offeror agrees that if awarded a contract as a small business LSA concern under the set-aside portion of this acquisition, he will perform or cause to be performed a substantial proportion of the contract in areas classified at the time of award or at the time of performance of the contract as LSA.

(e) *Identification of Areas of Performance.* Each offeror desiring to be considered for award as a LSA concern on the LSA set-aside portion of this acquisition shall identify in Section _____ of his offer the geographical areas in which he proposes to perform, or cause to be performed, a substantial proportion of the contract. If the Department of Labor classification of any such area changes after the offeror has submitted this offer, the offeror may change the areas in which he proposes to perform, *provided,* that he so notifies the Contracting Officer before award of the LSA set-aside portion. Such offerors are instructed to insert in the clause entitled "Eligibility for Preference as a Labor Surplus Area Concern" in Section ____ of the solicitation, the address(es) where costs incurred on account of manufacturing or production (by offeror or first-tier subcontractor) will amount to more than fifty percent (50%) of the contract price.

CAUTION: Failure to list the location of manufacture or production and the percentage of costs to be incurred at each location in the space provided in the clause entitled "Eligibility for Preference as a Labor Surplus Area Concern" set forth in Section ____ of the solicitation will preclude consideration of the offeror as a LSA concern.

(f) *Requirements Contract.* Only one award will be made for each item or sub-item of the non-LSA set-aside portion and only one award will be made for each item or sub-item of the LSA set-aside portion. For the purpose of equitably distributing orders in accordance with this "Notice of Combined Small Business-Labor Surplus Area Set-Aside," the Government will apportion the quantities to be ordered as equally as possible between the non-LSA set-aside Contractor and the LSA set-aside Contractor to whom the awards are made.

(End of clause)

252.219-7002 Notice of combined small business-labor surplus area set-aside—alternate.

As prescribed at 219.502-70(d)(2), insert the following clause:

NOTICE OF COMBINED SMALL BUSINESS-LABOR SURPLUS AREA SET-ASIDE—ALTERNATE (APR 1985)

(a) *General.*

(1) Offers under this acquisition are solicited from small business concerns only and the acquisition is to be awarded only to one or more small business concerns. This action is based on a determination by the Contracting Officer, alone or in conjunction with representative of the Small Business Administration, that it is in the interest of maintaining or mobilizing the Nation's full productive capacity, in the interest of war or national defense programs, or in the interest of assuring that a fair proportion of Government acquisition is placed with small business concerns. Offers received from firms which are not small business concerns shall be considered nonresponsive and shall be rejected.

(2) Part of this acquisition, identified in the solicitation as the "labor surplus area (LSA) set-aside portion," has been further set aside for award only to one or more LSA concerns, which are also small business concerns, and, to a limited extent, to small business concerns which do not qualify as LSA concerns. Award of the LSA set-aside portion will be made after awards have been made on the non-LSA set-aside portion.

(b) *Definitions.*

(1) A "small business concern" is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is making an offer on Government contracts, and can further qualify under the criteria set forth in the regulations of the Small Business Administration (CFR Title 13, Section 121.3-8). In addition to meeting these criteria, a manufacturer or a regular dealer submitting offers in its own name must agree to furnish in the performance of the contract, end items manufactured or produced by small business concerns; *provided,* that this additional requirement does not apply in connection with construction or service contracts.

(2) *Labor Surplus Area.* The term "labor surplus area" means a geographic area which at the time of award is classified as such by the Secretary of Labor in the Department of Labor "Listing of Eligible Labor Surplus Areas Under Defense Manpower Policy 4B and Executive Order 10582."

(3) *Labor Surplus Area Concerns.* The term "labor surplus area concern" means a concern that agrees to perform or cause to be performed a substantial proportion of a contract in labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in labor surplus areas if the aggregate costs that will be incurred by the concern or its first tier subcontractors on account of manufacturing or production performed in labor surplus areas amount to more than 50% of the contract price.

(c) *Procedures.*

(1) *Determining Eligibility:*

(i) To be eligible to participate in the LSA set-aside portion of this acquisition, a labor surplus area concern which is also a small business concern (or a small business concern to the extent indicated below) must submit a responsive offer on the non-LSA set-aside portion.

(ii) The Government reserves the right not to award to any concern submitting a token offer on the non-LSA set-aside portion or attempting by any other device to secure an unfair advantage over other offerors.

(2) *Determining Priority for Award:* Labor surplus concerns eligible under (1) above will participate in the LSA set-aside in the following order of priority:

Group 1. Small business concerns which are also LSA concerns. A concern in this group which has received an award on the non-LSA set-aside portion of an item shall first be requested to offer the same percentage of the LSA set-aside portion. If a percentage of the LSA set-aside portion of the item remains to be awarded, a drawing by lot shall determine the order of priority within this group for negotiations for the balance of the item.

Group 2. Small business concerns which are not LSA concerns. If a quantity of the item remains unawarded after negotiations with concerns in Group 1, the same procedure shall be followed for Group 2.

(3) *Determining the LSA Set-Aside Award Price:*

(i) *General Rule:* Subject to the exceptions listed in (ii) and (iii) below, award under the LSA set-aside shall be made at the highest unit price for each item awarded on the non-LSA set-aside, adjusted to reflect transportation, rent free use of Government property and other cost factors considered in evaluating offers on the non-LSA set-aside portion. When any one of separate quantities offered on an item cannot be accepted without awarding other quantities of that item at higher prices, the weighted average price shall be used to determine the highest unit price for award if the highest award of the non-LSA set-aside portion of an item was made on such a conditioned offer. When offers on the non-LSA set-aside portion tie-in two or more items so that an award cannot be made for a quantity on one item without a concurrent award of a quantity on another item, such tie-in conditions will be disregarded and the price offered for each quantity under each item shall be considered separately. The LSA set-aside award price shall be subject to the same discount terms used in the evaluation of the highest non-LSA set-aside award price.

(ii) *Award Price Involving Foreign End Products (see Part 25 of FAR and DoD FAR Supplement).*

(A) When the highest award price on the non-LSA set-aside is established by an award for a foreign end product, the award price for the LSA set-aside portion shall be the award price on the non-LSA set-aside as adjusted in evaluating the offer submitting the foreign end product for award under applicable Buy American procedures, except for awards on the LSA set-aside to concerns offering foreign end products, in which case the general rule applies.

(B) Award under the LSA set-aside to a concern offering a foreign end product, when the highest award price on the non-LSA set-aside portion is established by an award to a firm offering a domestic source end product, shall be at a price which, after application of the evaluation factors used under Buy American procedures for determining eligibility of a foreign end product for award, is equal to the highest award price on the non-LSA set-aside portion, adjusted to reflect transportation and other factors considered in evaluating the offers.

(iii) *Obtaining Offers and Processing LSA Set-Aside Awards.*

(A) When an unaccepted low offer is not involved: if there is no unaccepted low offer meeting the criteria in (B) below, eligible concerns in the order of priority in (2) above will be requested to offer on the LSA set-aside quantity at the highest unit price awarded on the non-LSA set-aside portion. Concerns may offer less than the total LSA set-aside portion. If any part of the LSA set-aside portion is not taken by eligible concerns, the partial LSA set-aside is automatically dissolved as to the unawarded portion. Such unawarded portion may be acquired by sealed bidding or negotiation, as appropriate, in accordance with existing regulations.

(B) When an unaccepted low offer is involved: if (I) a responsive offer is submitted on the non-LSA set-aside portion at a unit price which, when adjusted, is lower than the adjusted highest unit price awarded on the non-LSA set-aside portion, but cannot be accepted (e.g., because of "all-or-none" or other quantity limitations, or because the offeror is nonresponsible), and (II) at the time of negotiation for the LSA set-aside portion, the offer could be accepted (e.g., because the LSA set-aside quantity is large enough that the quantity limitations could be complied with or because the offeror has now become responsible), then the following procedures shall be followed.

Step One. Eligible concerns (in the order of priority in (2) above) will be requested to offer at the adjusted unit price of the unaccepted offer, a quantity of the LSA set-aside portion equal to the quantity of the unaccepted offer.

Step Two. If no eligible concern is willing to take the entire quantity of the unaccepted offer, then all eligible concerns (in the order of priority in (2) above) shall be requested to make offers on any lesser portion at the same price, until either the entire quantity is awarded or all eligible concerns refuse any further portions of such quantity.

Step Three.

Case 1. If the unaccepted offer was submitted by a concern not eligible to participate in the LSA set-aside, and if any of the quantity under Step Two is not awarded, then it and all other remaining quantities of the LSA set-aside portion must be withdrawn and resolicited. If the entire quantity under Step Two is awarded among eligible concerns, Steps Four, Five and Six are applicable to the remaining LSA set-aside portion.

Case 2. If the unaccepted offer was submitted by a concern eligible to participate in the LSA set-aside, Steps Four, Five and Six are applicable to the remaining LSA set-aside portion regardless of whether any quantity under Step Two is not awarded after all eligible concerns have been afforded an opportunity to offer on the unaccepted quantity. However, the concern which submitted the unaccepted offer shall be eliminated from consideration under Step Four and Step Five, for award at higher prices, unless that concern first accepts a quantity of the LSA set-aside portion equal to the entire quantity of its unaccepted offer at the adjusted price of its offer.

Step Four. In case there is more than one unaccepted offer which meets the conditions of (I) and (II) above, Steps One, Two and Three above shall be applied with respect to the quantities of each such offer in turn, from lowest price to highest.

Step Five. Eligible concerns in the order of priority in (2) above will be requested to offer, at the highest unit price awarded on the non-LSA set-aside portion on any quantity of the LSA set-aside portion, remaining after Steps One, Two, Three and Four have been completed.

Step Six. If the entire LSA set-aside portion is not taken by eligible concerns pursuant to Steps One through Five above, the partial LSA set-aside is automatically dissolved as to the unawarded portion and such unawarded portion may be acquired by sealed bidding or negotiation as appropriate, in accordance with existing regulations.

(4) *Determining the LSA Set-Aside Quantity:*

(i) The maximum quantity of an item which may be awarded to any eligible concern shall be determined by applying the percentage of the total non-LSA set-aside portion of an item on which an offer was made to the total quantity of the LSA set-aside portion of that item.

(ii) If a concern offers on two or more items on the non-LSA set aside portion, but conditions its offer in such a manner that the total of all these quantities may not be awarded, or offers a quantity which, at the option of the Government, may be applied to one or more items, the overall maximum which can be offered on the LSA set-aside portion of the items affected will be determined by applying the percent of the total quantities of these items on the non-LSA setaside portion that could have been awarded to the total of these items on the LSA set-aside portion.

(iii) Notwithstanding the foregoing, if the entire LSA set-aside portion of an item is not awarded after completion of the above steps, then the unawarded balance shall be offered to those concerns who were previously awarded quantities on the LSA set-aside portion but who were prevented from accepting additional quantities because of the quantity limitations stated above. The unawarded quantity will first be offered to that concern in the first priority which has received the largest quantity of the item. If two or more offerors in the first priority received an identical quantity, a drawing by lot shall determine their priority. If a balance still remains, this procedure shall be repeated with the offerors in each of the original priority groups in turn, to dispose of any balance of the item still remaining.

(d) *Agreement.* The offeror agrees that if awarded a contract as a small business LSA concern under the set-aside portion of this acquisition, he will perform or cause to be performed a substantial proportion of the contract in areas classified at the time of award or at the time of performance of the contract as LSA.

(e) *Identification of Areas of Performance.* Each offeror desiring to be considered for award as a LSA concern on the LSA set-aside portion of this acquisition shall identify in Section K of his offer the geographical areas in which he proposes to perform, or cause to be performed, a substantial proportion of the contract. If the Department of Labor classification of any such area changes after the offeror has submitted his offer, the offeror may change the areas in which he proposes to perform, *provided,* that he so notifies the Contracting Officer before award of the LSA set-aside portion. Such offerors are instructed to insert in the clause entitled "Eligibility for Preference as a Labor Surplus Area Concern" in Section K of the solicitation, the address(es) where costs incurred on account of manufacturing or production (by offeror or first-tier subcontractor) will amount to more than fifty percent (50%) of the contract price.

CAUTION: Failure to list the location of manufacture or production and the percentage of cost to be incurred at each location in the space provided in the clause entitled "Eligibility for Preference as a Labor Surplus Area Concern" set forth in Section K of the solicitation will preclude consideration of the offeror as a LSA concern.

(f) *Requirements Contract.* Only one award will be made for each item or sub-item of the non-LSA set-aside portion and only one award will be made for each item or sub-item of the LSA set-aside portion. For the purpose of equitably distributing orders in accordance with this "Notice of Combined Small Business-Labor Surplus Area Set-Aside," the Government will apportion the quantities to be ordered as equally as possible between the non-LSA set-aside Contractor and the LSA set-aside Contractor to whom the awards are made.

(End of clause)

252.219-7003 Determining the set-aside award price.

As prescribed at 219.508(d), insert the following clause:

DETERMINING THE SET-ASIDE AWARD PRICE (APR 1985)

In determining the price for the set-aside portion when the clause at FAR 52.219-7, Notice of Partial Small Business Set-Aside, is included herein, the following procedures will be used:

(a) *General Rule.* Subject to the exceptions listed in (b) and (c) below, awards under the set-aside shall be made at the highest unit price for each item awarded on the non-set-aside, adjusted to reflect transportation, rent free use of Government property and other cost factors considered in evaluating offers on the non-set-aside portion. The set-aside award price shall be subject to the same discount terms used in the evaluation of the highest non-set-aside award price.

(b) *Award Price Involving Foreign End Products (see Part 25 of the FAR and Part 225 of the DoD FAR Supplement.*

(1) When the highest award price on the non-set-aside is established by an award for a foreign end product, the award price for the set-aside portion shall be the award price on the non-set-aside as adjusted in evaluating the offer submitting the foreign end product for award under applicable Buy American procedures, except for awards on the set-aside to concerns submitting foreign end products in which case the general rule applies.

(2) Award under the set-aside to a concern offering a foreign end product, when the highest award price on the non-set-aside portion is established by a domestic source end product, shall be at a price which, after application of the evaluation factors used under Buy American procedures for determining eligibility of a foreign end product for award, is equal to the highest award price on the non-set-aside portion, adjusted to reflect transportation and other factors considered in evaluating the offers.

(c) *Obtaining Offers and Processing Set-Aside Awards.*

(1) When an unaccepted low offer is not involved; if there is no unaccepted low offer meeting the criteria in (ii) below, eligible concerns in the order of priority in FAR 19.202-3 will be requested to offer on the set-aside quantity at the highest unit price awarded on the non-set-aside portion. Concerns may offer less than the total set-aside portion. If any part of the set-aside portion is not taken by eligible small business concerns, the partial set-aside is automatically dissolved as to the unawarded portion. Such unawarded portion may be acquired by sealed bidding or negotiation, as appropriate, in accordance with existing regulations.

(2) When an unaccepted low offer is involved; if (i) a responsive offer is submitted on the non-set-aside portion at a unit price which, when adjusted, is lower than the adjusted highest unit price awarded on the non-set-aside portion, but cannot be accepted (e.g., because of "all-or-none" or other quantity limitations, or because the offeror is nonresponsible), and (ii) at the time of negotiation for the set-aside portion, the offer could be accepted (e.g., because the set-aside quantity is large enough that the quantity limitations could be complied with, or because the offeror has now become responsible), then the following procedures shall be followed:

Step One. Eligible concerns (in the order of priority in FAR 19.202-3) will be requested to offer at the adjusted unit price of the unaccepted offer, a quantity of the set-aside portion equal to the quantity of the unaccepted offer.

Step Two. If no eligible concern is willing to take the entire quantity of the unaccepted offer, then all eligible concerns (in the order of priority in FAR 19.202-3) shall be requested to make offers on any lesser portion at the same price, until either the entire quantity is awarded or all eligible concerns refuse any further portions of such quantity.

Step Three.

Case 1. If the unaccepted offer was submitted by a concern not eligible to participate in the set-aside, and if any of the quantity under Step Two is not awarded, then it and all other remaining quantities of the set-aside portion must be withdrawn and resolicited. If the entire quantity under Step Two is awarded among eligible concerns, Steps Four, Five and Six are applicable to the remaining set-aside portion.

Case 2. If the unaccepted offer was submitted by a concern eligible to participate in the set-aside, Steps Four, Five and Six are applicable to the remaining set-aside portion regardless of whether any quantity under Step Two is not awarded after all eligible concerns have been afforded an opportunity to offer on the unaccepted quantity. However, the concern which submitted the unaccepted offer shall be eliminated from consideration under Step Four and Step Five, for award at higher prices, unless that concern first accepts a quantity of the set-aside portion equal to the entire quantity of its unaccepted offer, at the adjusted price of its offer.

Step Four. In case there is more than one unaccepted offer which meets the conditions of (c)(2) (i) and (ii) above, Steps One, Two and Three above shall be applied with respect to the quantities of each such offer, in turn, from lowest to highest.

Step Five. Eligible concerns in the order of priority in FAR 19.202-3 will be requested to offer at the highest unit price awarded on the non-set-aside portion of any quantity of the set-aside portion remaining after Steps One, Two, Three and Four have been completed.

Step Six. If the entire set-aside portion is not taken by eligible small business concerns pursuant to Steps One through Five above, the partial set-aside is automatically dissolved as to the unawarded portion and such unawarded portion may be acquired by sealed bidding or negotiation as appropriate, in accordance with existing regulations.

(End of clause)

252.219-7004 Eligibility for preference as a labor surplus concern.

As prescribed at 219.508(70), insert the following clause:

ELIGIBILITY FOR PREFERENCE AS A LABOR SURPLUS CONCERN (APRIL 1985)

Each offeror desiring to be considered for award as a labor surplus area (LSA) concern on the set-aside portion of this acquisition, specified elsewhere in the schedule, shall indicate below the address(es) where costs incurred on account of manufacturing or production (by offeror or first tier subcontractor) will amount to more than fifty percent (50%) of the contract price:

Name of Company: _____

Street Address: _____

City/County: _____

State: _____

(If more than one location is to be used, list each location and the costs to be incurred at each, stated as a percentage of the contract price.)

CAUTION: Failure to list the location of manufacture or production and the percentage, if required, of cost to be incurred at each location will preclude consideration of the offeror as a LSA concern.

(End of clause)

252.220-7000 Notice of labor surplus area set-aside.

As prescribed at 220.7003(b)(2)(i), insert the following clause:

NOTICE OF LABOR SURPLUS AREA SET-ASIDE (APR 1985)

(a) *General.* Part of this acquisition, identified in the Schedule as the "set-aside portion," has been set aside for preferential award to one or more labor surplus area (LSA) concerns, and, to a limited extent, to other business concerns which do not qualify as LSA concerns. Award of the set-aside portion will be made after awards have been made on the non-set-aside portion.

(b) *Procedures.*

(1) *Determining Eligibility.*

(i) To be eligible to participate in the set-aside portion of this acquisition, a concern must submit a responsive offer on the nonset-aside portion.

(ii) The Government reserves the right not to award to any concern submitting a token offer on the non-set-aside portion or attempting by any other device to secure an unfair advantage over other offerors.

(2) *Determining Priority for Award.* Labor surplus concerns and other business concerns eligible under (1) above will participate in the set-aside in the following order of priority:

Group 1. LSA concerns which are also small business concerns.

Group 2. Other LSA concerns.

Group 3. Small business concerns which are not LSA concerns.

Group 4. Other business concerns which are not LSA concerns. Within each of the above groups, offers on the set-aside portion will be requested from concerns in the order of their offers on the nonset-aside portion, beginning with the lowest responsive offer. Concerns may offer less than the total set-aside portion.

(3) *Determining the Set-Aside Award Price.*

(i) *General Rule.* Subject to the exceptions listed in (ii) and (iii) below, awards under the set-aside shall be made at the highest unit price for each item awarded on the non-set-aside, adjusted to reflect transportation, rent-free use of Government property and other cost factors considered in evaluating bids on the non-set-aside portion. The set-aside award price shall be subject to the same discount terms used in the evaluation of the highest non-set-aside award price.

(ii) *Award Price Involving Foreign End Products (see Part 25 of the FAR and DoD FAR Supplement).*

(A) When the highest award price on the non-set-aside is established by an award for a foreign end product, the award price for the set-aside portion shall be the award price on the non-set-aside as adjusted in evaluating the offer submitting the foreign end product for award under applicable Buy American procedures, except for awards on the set-aside to concerns offering foreign end products, in which case the general rule applies.

(B) Award under the set-aside to a concern offering a foreign end product when the highest award price on the non-set-aside portion is established by a domestic source end product shall be at a price which, after application of the evaluation factors used under Buy American procedures for determining eligibility of a foreign end product for award, is equal to the highest award price on the non-set-aside portion, adjusted to reflect transportation and other factors considered in evaluating the offers.

(iii) *Obtaining Offers and Processing Set-Aside Awards.*

(A) When an unaccepted low offer is not involved: if there is no unaccepted low offer meeting the criteria in (B) below, eligible concerns in the order of priority in (2) above will be requested to offer on the set-aside quantity at the highest unit price awarded on the non-set-aside portion. Concerns may offer less than the total non-set-aside portion, *provided* that if any part of the set-aside portion is not taken by eligible concerns in the first 3 groups, awards will be made in Group 4 at prices no higher than the lower price awarded on the non-set-aside portion.

(B) When an unaccepted low offer is involved: if *a.* a responsive offer is submitted on the non-set-aside portion at a unit price which, when adjusted, is lower than the adjusted higher unit price awarded on the non-set-aside portion, but cannot be accepted (e.g., because of "all-or-none," or other quantity limitations, or because the bidder is nonresponsible), and *b.* at the time of negotiation for the set-aside portion, the offer could be accepted (e.g., because the set-aside quantity is large enough that the quantity limitations could be complied with, or because the bidder has now become responsible), then the following procedures shall be followed:

Step One. Eligible concerns (in the order of priority in (2) above), excluding Group 4 firms, will be requested to offer at the adjusted unit price of the unaccepted bid, a quantity of the set-aside portion equal to the quantity of the unaccepted offer.

Step Two. If no eligible concern will offer to take the entire quantity of the unaccepted offer, then all eligible concerns (in the order of priority in (2) above), excluding Group 4 firms, shall be requested to offer on any lesser portion at the same price, until either the entire quantity is awarded or all eligible concerns refuse any further portions of such quantity.

Step Three. Steps Four, Five and Six are applicable to the remaining set-aside portion regardless of whether any quantity under Step Two is not awarded after all eligible concerns have been afforded an opportunity to offer on the unaccepted quantity. *However,* the concern which submitted the unaccepted offer shall be eliminated from consideration under Step Four and Step Five, for award at higher prices, unless that concern first accepts a quantity of the set-aside portion equal to the entire quantity of its unaccepted offer at the adjusted price of its offer.

Step Four. In case there is more than one unaccepted offer which meets the conditions of *a.* and *b.* above, Steps One, Two and Three above shall be applied with respect to the quantities of each such offer in turn, from lowest price to highest.

Step Five. Eligible concerns in the order of priority in (2) above will be requested to offer at the highest unit price awarded on the non-set-aside portion on any quantity of the set-aside portion remaining after Steps One, Two, Three and Four have been completed, *provided,* that if any part of the set-aside portion is not taken by eligible concerns in the first 3 groups, awards will be made in Group 4 beginning with the lowest offeror on the non-set-aside portion at prices no higher than the lowest price awarded on the non-set-aside portion.

Step Six. If the entire set-aside portion is not taken by eligible concerns pursuant to Steps One through Five above, the partial set-aside is automatically dissolved as to the unawarded portion and such unawarded portion may be acquired by sealed bidding or negotiation as appropriate, in accordance with existing regulations.

(c) *Definitions.*

(1) "Labor surplus area" means a geographic area which at the time of award is classified as such by the Secretary of Labor in the Department of Labor "Listing of Eligible Labor Surplus Areas Under Defense Manpower Policy 4B and Executive Order 10582."

(2) "Labor surplus area concern" means a concern that agrees to perform or cause to be performed a substantial proportion of a contract in labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in labor surplus areas if the aggregate costs that will be incurred by the concern or its first tier subcontractors on account of manufacturing or production performed in labor surplus areas amount to more than fifty percent (50%) of the contract price.

(3) "Small business concern" is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is offering on Government contracts, and can further qualify under the criteria set forth in regulations of the Small Business Administration (CFR Title 13, Section 121.3-8). In addition to meeting these criteria, a manufacturer or a regular dealer submitting offers in its own name must agree to furnish in the performance of the contract end items manufactured or produced by small business concerns; *provided,* that this additional requirement does not apply in connection with construction or service contracts.

(d) *Agreement.* The offeror agrees that if awarded a contract as a LSA concern under the set-aside portion of this acquisition, he will perform or cause to be performed a substantial proportion of the contract in areas classified at the time of award or at the time of performance of the contract as LSA.

(e) *Identification of Areas of Performance.* Each offeror desiring to be considered for award as a LSA concern on the LSA set-aside portion of this acquisition shall identify in Section K of his offer the geographical areas in which he proposes to perform, or cause to be performed, a substantial proportion of the contract. If the Department of Labor classification of any such area changes after the offeror has submitted his offer, the offeror may change the areas in which he proposes to perform, *provided,* that he so notifies the Contracting Officer before award of the LSA set-aside portion. Such offerors are instructed to insert in the clause entitled *"Eligibility for Preference as a Labor Surplus Area Concern"* in Section K of the solicitation, the address(es) when costs incurred on account of manufacturing or production (by offeror or first tier subcontractor) will amount to more than fifty percent (50%) of the contract price.

CAUTION: Failure to list the location of manufacture or production and the percentage of cost to be incurred at each location in the space provided in the clause entitled "Eligibility for Preference as a Labor Surplus Area Concern" set forth in Section K of the solicitation will preclude consideration of the offeror as a LSA concern.

(f) *Requirements Contract.* Only one award will be made for each item or sub-item of the non-set-aside portion and only one award will be made for each item or sub-item of the set-aside portion. For the purpose of equitably distributing orders in accordance with this "Notice of Labor Surplus Area Set-Aside," the Government will apportion the quantities to be ordered as equally as possible between the non-set-aside Contractor and the set-aside Contractor to whom the awards are made.

(End of clause)

252.220-7001 Notice of labor surplus area set-aside—alternate.

As prescribed at 220.7003(b)(2)(ii), insert the following clause:

NOTICE OF LABOR SURPLUS AREA SET-ASIDE—ALTERNATE (APR 1985)

(a) *General.* Part of this acquisition, identified in the Schedule as the "set-aside portion," has been set aside for preferential award to one or more labor surplus area (LSA) concerns, and, to a limited extent, to other business concerns which do not qualify as LSA concerns. Award of the set-aside portion will be made after awards have been made on the non-set-aside portion.

(b) *Procedures.*

(1) *Determining Eligibility.*

(i) To be eligible to participate in the set-aside portion of this acquisition, a concern must submit a responsive offer on the non-set-aside portion.

(ii) The Government reserves the right not to award to any concern submitting a token offer on the non-set-aside portion or attempting by any other device to secure an unfair advantage over other offerors.

(2) *Determining Priority for Award.* Labor surplus concerns and other business concerns eligible under (1) above will participate in the set-aside in the following order of priority:

Group 1. LSA concerns which are also small business concerns. A concern in this group which has received an award on the non-set-aside portion of an item shall first be requested to offer the same percentage of the set-aside portion. If a percentage of the set-aside portion of the item remains to be awarded, a drawing by lot shall determine the order of priority within this group for negotiations for the balance of the item.

Group 2. Other LSA concerns. If a quantity of an item remains unawarded after negotiations have been completed with concerns in Group 1, the same procedure shall be followed for Group 2.

Group 3. Small business concerns which are not LSA concerns. If a quantity of an item remains unawarded after negotiations with concerns in Group 2, the same procedure shall be followed for Group 3.

Group 4. Other business concerns which are not LSA concerns. If a quantity of the item remains unawarded after negotiations with concerns in Group 3, the same procedure shall be followed for Group 4.

(3) *Determining the Set-Aside Award Price.*

(i) *General Rule.* Subject to the exception listed in (ii) and (iii) below, awards under the set-aside shall be made at the highest unit price for each item awarded on the non-set-aside, adjusted to reflect transportation, rent-free use of Government property and other cost factors considered in evaluating bids on the non-set-aside portion. When any one of separate quantities offered on an item cannot be accepted without awarding other quantities of that item at higher prices, the weighted average price shall be used to determine the highest unit price for award if the highest award of the non-set-aside portion of an item was made on such a conditioned offer. When offers on the non-set-aside portion tie-in two or more items so that an award cannot be made for a quantity on one item without a concurrent award of a quantity on another item, such tie-in conditions will be disregarded and the price offered for each quantity under each item shall be considered separately. The set-aside award price shall be subject to the same discount terms used in the evaluation of the highest non-set-aside award price.

(ii) *Award Price Involving Foreign End Products (see Part 25 of the FAR and DoD FAR Supplement).*

(A) When the highest award price on the non-set-aside is established by an award for a foreign end product, the award price for the set-aside portion shall be the award price on the non-set-aside as adjusted in evaluating the offer submitting the foreign end product for award under applicable Buy American procedures, except for awards on the set-aside to concerns offering foreign end products, in which case the general rule applies.

(B) Award under the set-aside to a concern offering a foreign end product when the highest award price on the non-set-aside portion is established by a domestic source end product shall be at a price which, after application of the evaluation factors used under Buy American procedures for determining eligibility of a foreign end product for award, is equal to the highest award price on the non-set-aside portion, adjusted to reflect transportation and other factors considered in evaluating the offers.

(iii) *Obtaining Offers and Processing Set-Aside Awards.*

(A) When an unaccepted low offer is not involved: If there is no unaccepted low offer meeting the criteria in (B) below, eligible concerns in the order of priority in (2) above will be requested to offer on the set-aside quantity at the highest unit price awarded on the non-set-aside portion. Concerns may offer less than the total set-aside portion, *provided* that if any part of the set-aside portion is not taken by eligible concerns in the first 3 groups, awards will be made in Group 4 at prices no higher than the lowest price awarded on the non-set-aside portion.

(B) When an unaccepted low offer is involved: If *a.* a responsive offer is submitted on the non-set-aside portion at a unit price which, when adjusted, is lower than the adjusted highest unit price awarded on the non-set-aside portion, but cannot be accepted (e.g., because of "all-or-none," or other quantity limitations, or because the bidder is nonresponsible), and *b.* at the time of negotiation for the set-aside portion, the offer could be accepted (e.g., because the set-aside quantity is large enough that the quantity limitations could be complied with, or because the bidder has now become responsible), then the following procedures shall be followed:

Step One. Eligible concerns (in the order of priority in (2) above), excluding Group 4 firms, will be requested to offer at the adjusted unit price of the unaccepted bid, a quantity of the set-aside portion equal to the quantity of the unaccepted offer.

Step Two. If no eligible concern will offer to take the entire quantity of the unaccepted offer, then all eligible concerns (in the order of priority in (2) above), excluding Group 4 firms, shall be requested to offer on any lesser portion at the same price, until either the entire quantity is awarded or all eligible concerns refuse any further portions of such quantity.

Step Three. Steps Four, Five and Six are applicable to the remaining set-aside portion regardless of whether any quantity under Step Two is not awarded after all eligible concerns have been afforded an opportunity to offer on the unaccepted quantity. *However,* the concern which submitted the unaccepted offer shall be eliminated from consideration under Step Four and Step Five, for award at higher prices, unless that concern first accepts a quantity of the set-aside portion equal to the entire quantity of its unaccepted offer, at the adjusted price of its offer.

Step Four. In case there is more than one unaccepted offer which meets the conditions of *a.* and *b. above, Steps One, Two and Three above shall be applied with respect to the quantities of each such offer in turn, from lowest price to highest.*

Step Five. Eligible concerns in the order of priority in (2) above will be requested to offer at the highest unit price awarded on the non-set-aside portion on any quantity of the set-aside portion remaining after Steps One, Two, Three and Four have been completed, *provided* that if any part of the set-aside portion is not taken by eligible concerns in the first 3 groups, awards will be made in Group 4 at prices no higher than the lowest price awarded on the non-setaside portion.

Step Six. If the entire set-aside portion is not taken by eligible concerns pursuant to Steps One through Five above, the partial set-aside is automatically dissolved as to the unawarded portion and such unawarded portion may be acquired by sealed bidding or negotiation as appropriate, in accordance with existing regulations.

(4) *Determining the Set-Aside Quantity.*

(i) The maximum quantity of an item which may be awarded to any eligible concern shall be determined by applying the percentage of the total non-set-aside portion of an item on which an offer was made to the total quantity of the set-aside portion of that item.

(ii) If a concern offers on two or more items on the non-set-aside portion, but conditions its offer in such a manner that the total of all these quantities may not be awarded, or offers a quantity which, at the option of the Government, may be applied to one or more items, the overall maximum which can be offered on the set-aside portion of the items affected will be determined by applying the percent of the total quantities of these items on the non-set-aside portion that could have been awarded to the total of these items on the set-aside portion.

(iii) Notwithstanding the foregoing, if the entire set-aside portion of an item is not awarded after completion of the above steps, then the unawarded balance shall be offered to those concerns who were previously awarded quantities on the set-aside portion but who were prevented from accepting additional quantities because of the quantity limitations stated above. The unawarded quantity will first be offered to that concern in the first priority which has received the largest quantity of the item. If two or more offerors in the first priority received an identical quantity, a drawing by lot shall determine their priority. If a balance still remains, this procedure shall be repeated with the offerors in each of the original priority groups in turn, to dispose of any balance of the item still remaining.

(c) *Definitions.*

(1) "Labor surplus area" means a geographic area which at the time of award is classified as such by the Secretary of Labor in the Department of Labor "Listing of Eligible Labor Surplus Areas Under Defense Manpower Policy 4B and Executive Order 10582."

(2) "Labor surplus area concern" means a concern that agrees to perform or cause to be performed a substantial proportion of a contract in labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in labor surplus areas if the aggregate costs that will be incurred by the concern or its first tier subcontractors on account of manufacturing or production performed in labor surplus areas amount to more than fifty percent (50%) of the contract price.

(3) "Small business concern" is a concern, including its affiliates, which is

independently owned and operated, is not dominant in the field of operation in which it is offering on Government contracts, and can further qualify under the criteria set forth in regulations of the Small Business Administration (CFR Title 13, Section 121.3-8). In addition to meeting these criteria, a manufacturer or a regular dealer submitting offers in its own name must agree to furnish in the performance of the contract end items manufactured or produced by small business concerns: *provided,* that this additional requirement does not apply in connection with construction or service contracts.

(d) *Agreement.* The offeror agrees that if awarded a contract as an LSA concern under the set-aside portion of this acquisition, he will perform or cause to be performed by a first tier subcontractor a substantial proportion of the contract in areas classified at the time of award or at the time of performance of the contract as LSA.

(e) *Identification of Areas of Performance.* Each offeror desiring to be considered for award as a LSA concern on the LSA set-aside portion of this acquisition shall identify in Section K of his offer the geographical areas in which he proposes to perform, or cause to be performed a substantial proportion of the contract. If the Department of Labor classification of any such area changes after the offeror has submitted his offer, the offeror may change the areas in which he proposes to perform, *provided,* that he so notifies the Contracting Officer before award of the LSA set-aside portion. Such offerors are instructed to insert in the clause entitled "Eligibility for Preference as a Labor Surplus Area Concern" in Section K of this solicitation, the address(es) where costs incurred on account of manufacturing or production (by offeror or first tier subcontractor) will amount to more than fifty percent (50%) of the contract price.

CAUTION: Failure to list the location of manufacture or production and the percentage of cost to be incurred at each location in the space provided in the clause entitled "Eligibility for Preference as a Labor Surplus Area Concern" set forth in Section K of the solicitation will preclude consideration of the offeror as an LSA concern.

(f) *Requirements Contract.* Only one award will be made for each item or sub-item of the non-set-aside portion and only one award will be made for each item or sub-item of the set-aside portion. For the purpose of equitably distributing orders in accordance with this "Notice of Labor Surplus Area Set-Aside," the Government will apportion the quantities to be ordered as equally as possible between the non-set-aside Contractor and the set-aside Contractor to whom the awards are made.

(End of clause)

252.222-7000 Potential application of the Service Contract Act, as amended (fixed price).

As prescribed at 222.1006(S-70), insert the following clause:

POTENTIAL APPLICATION OF THE SERVICE CONTRACT ACT, AS AMENDED (FIXED PRICE) (SEP 1979)

(a) The Contractor warrants that the prices set forth in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(b) In the event that during the performance of this contract, it is determined by appropriate authority that the provisions of the Service Contract Act of 1965, as amended, apply to any of the work covered by this contract, the Contracting Officer may unilaterally implement such determination by requiring payment of the appropriate wage and fringe benefit scale, and the Contractor agrees to comply with such implementation. In the event that compliance with the Contracting Officer's direction results in any increase in the labor rates paid under this contract, the Contractor agrees to enter promptly into negotiations to reflect such an increase. Such contract adjustment shall be limited to increases in wages or fringe benefits affected by the above determination, and the concomitant increases in social security and unemployment taxes and workers' compensation insurance, but shall not otherwise include any amount for profit, or for general administrative costs or overhead.

(c) Within 30 days of receipt of the applicable wage and fringe benefit scale, the Contractor will submit a proposal for any contract price change to the Contracting Officer. With the submission of his proposal for adjustment, the Contractor shall also submit, if requested by the Government, all necessary and pertinent data used by the Contractor in preparing the proposal upon which it received the original award of this contract. The Contracting Officer or authorized representative shall have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor until the expiration of 3 years after final payment under this contract.

(d) This clause shall be deemed to constitute the exclusive contractual remedy of the Contractor for adjustment arising out of the decision to apply the Service Contract Act, as amended, to work covered by this contract. Failure of the parties to reach an understanding as to such adjustment shall be considered a dispute subject to the Disputes clause of the contract.

(End of Clause)

252.222-7001 Service Contract Act (SCA) minimum wages and fringe benefits.

As prescribed at 222.1006(S-71), insert the following clause:

SERVICE CONTRACT ACT (SCA) MINIMUM WAGES AND FRINGE BENEFITS (SEP 1979)

An SCA wage determination applicable to this work has been requested from the U.S. Department of Labor (DOL). If an SCA wage determination is not incorporated herein, the bidders/offerors shall consider the economic terms of the collective bargaining agreement (CBA) between the incumbent Contractor _____ and the _____ (union). Copies of the agreement can be obtained from the Contracting Officer. Pursuant to DOL Regulation, 29 CFR 4.1c, the economic terms of that agreement (or any new CBA negotiated ten or more days prior to the opening of bids, or the commencement of the contract in the case of negotiated contracts, exercise of options, or extensions) will apply to the contract resulting from this solicitation, notwithstanding the absence of a wage determination reflecting such terms, unless it is determined, after a hearing pursuant to section 4(c) of the SCA, that they are substantially at variance with the wages prevailing in the area.

(End of clause)

252.222-7002 Restrictions on Employment of Personnel.

As prescribed in 222.7202, insert the following clause:

RESTRICTIONS ON EMPLOYMENT OF PERSONNEL (JAN 1986)

(a) The Contractor shall employ, for the purposes of performing that portion of the contract work in the State of (*insert appropriate state*), individuals who are residents of the state, and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills to perform the contract.

(b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in each subcontract.

(End of clause)

252.223-7000 Notice of radioactive materials.

As prescribed at 223.303(S-70), insert the following clause:

NOTICE OF RADIOACTIVE MATERIALS (APR 1974)

(a) The Contractor shall notify the Contracting Officer or designee, in writing (*) days prior to the delivery of, or prior to completion of any servicing required by this contract of, items containing either (i) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, and set forth in Title 10 CFR, in effect on the date of this contract, or (ii) other radioactive material not requiring specific licensing in which the radioactivity per gram is greater than 0.002 microcuries. Such notice shall specify the part or parts of the items which contain such radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the Contractor which will put users of the items on notice as to the hazards involved (BOB No. 38-R027).

(b) All items, parts or subassemblies which contain radioactive materials in which the radioactivity per gram is greater than 0.002 microcuries and all containers in which such items, parts or subassemblies are delivered to the Government shall be clearly marked and labeled as required by the latest revision of MIL-STD-1458 in effect on the date of the contract.

(End of clause)

* The Contracting Officer shall insert the number of days required in advance of delivery of the item or completion of the servicing to assure that appropriate licenses

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are obtained or safeguards are taken when licenses are not required.

252.223-7001 Safety precautions for ammunition and explosives.

As prescribed in 223.7002(a), insert the following clause in solicitations and contracts.

SAFETY PRECAUTIONS FOR AMMUNITION AND EXPLOSIVES (JUL 1986)

(a) The term "ammunition and explosives" means liquid and solid propellants and explosives, pyrotechnics, incendiaries and smokes in any of the following: bulk form, ammunitions, rockets, missiles, warheads, devices and components thereof, except for wholly inert items.

(b) The Contractor shall comply with the DoD Contractors' Safety Manual for Ammunition and Explosives (DoD Manual 4145.26-M) (the manual) in effect on the date of the solicitation for this contract, and any other additional requirements included in the schedule of the contract. The Contractor shall allow authorized Government representatives to evaluate safety programs, implementation, and facilities and, in this respect, shall allow the Government access to Contractor facilities, personnel and safety program documentation.

(c) If the Contracting Officer notifies the Contractor of any noncompliance with the manual or schedule provisions, the Contracting shall take immediate steps to correct the noncompliance. Within thirty (30) days (or such other period as the Contracting Officer may direct) from the date of notification, the Contractor shall inform the Contracting Officer of the results of the corrective actions taken. Costs incurred by the Contractor to correct noncompliances with the manual will not, unless otherwise specified within the contract, be reimbursable.

(d) If the Contractor has been notified of a noncompliance and fails or refuses to take corrective action within the time specified by the Contracting Officer, the Contractor may be directed to cease performance on all or part of this contract until the Contracting Officer determines that satisfactory corrective action has been taken. The Contracting Officer may at any time remove Government personnel whenever the Contractor is in noncompliance with the safety requirements of this clause. Either action by the Contracting Officer shall not entitle the Contractor to an adjustment of the contract price or the delivery or performance schedule unless it is later determined that the Contractor had in fact complied with the manual or schedule provisions. In such a case, an equitable adjustment will be made in accordance with the procedures provided for in the clause of this contract entitled "Changes".

(e) The Contractor shall immediately notify the Contracting Officer after an accident involving ammunition or explosives. The Contractor shall also, in accordance with this contract or as required by the Contracting Officer, conduct an investigation and submit a written report of the accident to the Contracting Officer.

(f) Neither the requirements of this clause, nor any act or failure to act by the Government in surveillance of this contract, shall affect or relieve the Contractor of responsibility for the safety of the Contractor's personnel and property, for the safety of the Government's personnel and property, and for the safety of the general public in connection with the performance of this contract.

(g) The frequency or number of Government inspections and the degree of surveillance which the Government exercises with respect to the enforcement of the contract terms and conditions is a matter solely within the discretion of the Government, and does not relieve the Contractor of responsibility for performance of the contract. Nor shall any act or failure to act by the Government in surveillance or enforcement of this contract impose or add to any liability of the Government.

(h) The Contractor shall insert this clause, including this paragraph (h), with appropriate changes in the designation of the parties, in every subcontract hereunder which involves ammunition or explosives as defined in paragraph (a) above, except for: subcontracts for inert components containing no explosives, propellants, or pyrotechnics or subcontracts for flammable liquids, acids, powdered metals or other materials having fire or explosive characteristics unless the subcontractor is using or incorporating these materials for initiation, propulsion, or detonation as an integral or component part of an explosive, an ammunition and explosive and item, or a weapon system. Such clause shall include a provision allowing authorized Government safety representatives to evaluate subcontractor safety programs, implemenation, and facilities as determined necessary. NOTE: All safety communiques from the Government Contracting Officer or authorized representative will be to the prime Contractor, although copies may be furnished to the subcontractor involved. Prime contractors shall change references to the "Government" to cite the name of the prime Contractor while assuring that the subcontractor(s) understand and agree to the Government's right to access to review compliance with contract safety requirements. In addition, the prime Contractor or higher level subcontractors shall include provisions to allow direction to cease performance of the subcontract as a result of a serious uncorrected or recurring safety deficiency potentially causing an imminent hazard to DoD personnel, property or contract performance.

(i) The Contractor shall notify the Contracting Officer, or authorized representative, prior to issuing any subcontract when it involves ammunition or explosives. In the event that the proposed subcontract represents a change in place of performance, the Contractor shall request approval for such change in accordance with the clause of this contract entitled "Change in Place of Performance—Ammunition and Explosives".

(j) Nothing contained herein shall relieve the Contractor from complying with applicable Federal, state, and local laws, ordinances, codes, and regulations (including the obtaining of licenses and permits) in connection with the performance of this contract.

(End of clause)

252.223-7002 Change in place of performance—ammunition and explosives.

As prescribed in 223.7002(c), insert the following clause in solicitations and contracts.

CHANGE IN PLACE OF PERFORMANCE—AMMUNITION AND EXPLOSIVES (JUL 1986)

(a) The Offeror must stipulate in the Place of Performance Clause included in this solicitation (FAR 52.214-14 or FAR 52.215.20) information pertinent to the place of performance of all ammunition and explosives work covered by the Safety Precautions for Ammunition and Explosives Clause (DFARS 252.223-7001). Failure to furnish this information with the offer may result in rejection of the offer.

(b) No change in the place(s) of performance shall be permitted between the opening/closing date of the solicitation/Request for Quotation and the award except where time permits and then only upon receipt of the Contracting Officer's written approval.

(c) Any change in place(s) of performance cited in this offer and in any resulting contract is prohibited unless it is specifically approved in advance by the Contracting Officer.

(End of clause)

252.225-7000 Buy American—balance of payments program certificate.

As prescribed at 225.109(a)(S-70), insert the following provision:

BUY AMERICAN—BALANCE OF PAYMENTS PROGRAM CERTIFICATE (OCT 1980)

(a) The offeror hereby certifies that each end product, except the end products listed below, is a domestic end product (as defined in the clause entitled "Buy American Act and Balance of Payments Program") and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

EXCLUDED END PRODUCTS

Line item No.	Country of origin
(List as necessary)	

(b) Offers will be evaluated by giving certain preferences to domestic end products and foreign qualifying country end products over foreign nonqualifying country end products. In order to obtain such preferences in the evaluation of each excluded end product listed in (a) above, it is necessary that offerors identify and certify, below, those excluded end products identified above that are qualifying country end products or they will be deemed nonqualifying country end products. Offerors must certify by inserting the applicable line item numbers in the appropriate brackets:

(i) The offeror certifies that the following supplies qualify as "participating country end products" as that term is defined in the clause entitled "Buy American Act and Balance of Payments Program."

[Insert line item No.]

(ii) The offeror certifies that the following supplies qualify as "FMS/offset arrangement country end products" as that term is defined in the clause entitled "Buy American Act and Balance of Payments Program," if the Government makes the necessary waivers.

[Insert line item No.]

(iii) The offeror certifies that the following supplies qualify as "defense cooperation country end products" as that term is defined in the clause entitled "Buy American Act and Balance of Payments Program."

[Insert line item No.]

(c) Offers will be evaluated in accordance with the policies and procedures of FAR Part 25 and DoD FAR Supplement Part 225.

(End of Certificate)

252.225-7001 Buy American Act and the balance of payments program.

As prescribed at 225.109(d)(S-70), insert the following clause:

BUY AMERICAN ACT AND BALANCE OF PAYMENTS PROGRAM (APR 1985)

(a) This clause implements the Buy American Act (41 U.S.C. section 10a-d) and the Department of Defense Balance of Payments Program by providing a preference to domestic end products over foreign end products, except for certain foreign end products which meet the requirements for classification as qualifying country end products. For the purpose of this clause—

(i) "Components" means those articles, materials, and supplies directly incorporated into end products.

(ii) "Qualifying country component" means (A) an item mined, produced, or manufactured in a participating country or in an FMS/Offset arrangement country when the applicable D&F has been made waiving the Buy American Act restrictions; or (B) any item listed in a defense cooperation country agreement.

(iii) "End products" means those articles, materials, and supplies to be acquired for public use under the contract. As to a given contract, the end products are the items to be delivered to the Government, as specified in the contract, including supplies to be acquired by the Government for public use in connection with service contracts but excluding installation and other services to be performed after delivery.

(iv) "Domestic end product" means (A) an unmanufactured end product which has been mined or produced in the United States, or (B) an end product manufactured in the United States if the cost of its qualifying country components and its components which are mined, produced, or manufactured in the United States exceeds fifty percent (50%) of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate may be issued). A component shall also be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind (A) determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, or (B) as to which the Secretary concerned has determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act.

(v) "Foreign end product" means an end product other than a domestic end product.

(vi) "Qualifying country end product" means (A) a participating country end product; (B) an FMS/Offset arrangement country end product when the applicable Determination and Findings has been made waiving the Buy American Act restrictions; or (C) a defense cooperation country agreement listed item.

(vii) "Participating country end product" means (A) an unmanufactured end product mined or produced in a participating country, or (B) an end product manufactured in a participating country if the cost of its qualifying country components and its components mined, produced, or manufactured in the United States exceeds fifty percent (50%) of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and any duty whether or not duty is, in fact, paid.

(viii) "FMS/Offset arrangement country end product" means (A) an unmanufactured end product mined or produced in an FMS/Offset arrangement country, or an end product manufactured in an FMS/Offset arrangement country if the cost of its qualifying country components and its components which are mined, produced, or manufactured in the United States exceeds fifty percent (50%) of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and any duty whether or not duty is, in fact, paid. To obtain the waivers necessary to accord preferential treatment for an FMS/Offset arrangement country end product, see the procedures at DoD FAR Supplement 225.7310(c)(2)(i).

(ix) "Defense cooperation country end product" means an item listed in the defense cooperation country agreement and produced in that country.

(b) The Contractor agrees that there will be delivered under this contract only domestic end products *unless*, in its offer, it specified delivery of foreign end products in the clause entitled "Buy American Act and Balance of Payments Program Certificate." An offer certifying that a qualifying country end product will be supplied requires the Contractor to supply a qualifying country end product or, at the Contractor's option, a domestic end product. An offer based on supplying a nonqualifying country end product, if accepted, will permit the Contractor to supply a product without regard to the requirements of this clause.

(c) Offers will be evaluated in accordance with the policies and procedures of FAR Part 25 and DoD FAR Supplement Part 225.

(d) Generally, when the Buy American Act is applicable, each nonqualifying country offer of defense equipment shall be adjusted for the purpose of evaluation by: (i) Adding 50% of the offer, exclusive of duty; (ii) adding 6% of the offer, inclusive of duty, if a domestic offer is from a large business that is not a labor surplus area concern; or (iii) adding 12% of the offer, inclusive of duty, if the domestic offer is from a small business concern or any labor surplus area concern. Evaluation will be inclusive or exclusive of duty whichever results in the greater evaluated price. See DoD FAR Supplement 225.1 for procedures and exceptions.

(e) Generally, when the Balance of Payments Program applies, each nonqualifying country offer of defense equipment shall be adjusted for the purpose of evaluation by increasing the offer by 50%. See DoD FAR Supplement 225.3 for procedures and exceptions.

(End of clause)

252.225-7002 Qualifying country sources as subcontractors.

As prescribed at 225.109(d)(S-72), insert the following clause:

QUALIFYING COUNTRY SOURCES AS SUBCONTRACTORS (OCT 1980)

No qualifying country source (DoD FAR Supplement 225.001), subject to the restrictions set forth in DoD FAR Supplement Subpart 225.74, or U.S. source is to be precluded from competing for subcontracts.

(End of clause)

252.225-7003 Nondomestic construction materials.

As prescribed at 225.205(S-70), insert the following clause:

NONDOMESTIC CONSTRUCTION MATERIALS (OCT 1966)

The requirements of the clause of this contract entitled "Buy American Act" do not apply to the items set forth below.

(Insert list here)

(End of clause)

252.225-7004 Identification of expenditures in the United States.

(a) As prescribed at 225.305(c), insert the following clause:

IDENTIFICATION OF EXPENDITURES IN THE UNITED STATES (OCT 1966)

(a) On each invoice, voucher, or other request for payment under this contract, the Contractor shall identify that part of the requested payment which represents estimated expenditures in the United States. Identification shall consist of stating the full

amount of the payment requested, subdivided into the following categories:

1. United States end products—expenditures for material and equipment manufactured or produced in the United States, excluding transportation;

2. United States services—expenditures for services performed in the United States, including charges for overhead, other indirect costs, and profit;

3. Transportation on United States carriers—expenditures for transportation furnished by United States flag, ocean, surface, and air carriers; and

4. Expenditures not identified under 1, 2, and 3 above.

(b) If this contract is principally for supplies or if the Contractor is not an incorporated concern incorporated in the United States, or an unincorporated concern having its principal place of business in the United States, the amounts identified under (a)1, (a)2, and (a)3 above will be limited to payments made pursuant to the requirements either of the "United States Products and Services" clause, if any, or of any other specific provision of this contract that obligates the Contractor to procure certain materials, equipment, transportation, or services from United States sources.

(c) The identification of expenditures required under (a) above may be expressed either as dollar amounts or as percentages applicable to the total amount of the request for payment.

(d) The identification will be based on reasonable estimates by the Contractor. Nothing in this clause requires the establishment or maintenance of detailed accounting records or gives the United States Government any right to audit the Contractor's books or records.

(End of clause)

252.225-7005 Buy American Act—Trade Agreements Act—Balance of Payments Program Certificate.

As prescribed at 225.407(a)(1), insert the following provision:

BUY AMERICAN—TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM CERTIFICATE (MAY 1986)

(a) The Offeror hereby certifies that each end product, except the end products listed below, is a domestic end product (as defined in the clause entitled "Buy American Act, Trade Agreements Act, and Balance of Payments Program"), and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

EXCLUDED END PRODUCTS

Line item No.	Country of origin
(List as necessary)	

(b) Offers will be evaluated by giving certain preferences to domestic end products, qualifying country end products, designated country end products and Caribbean Basin country end products over other end products. In order to obtain such preferences in the evaluation of each excluded end product listed in (a) above, it is necessary that offerors identify and certify, below, those excluded end products identified above that are qualifying country end products, designated country end products, or Caribbean Basin country end products. Products which are not identified and certified below will not be deemed qualifying country end products, designated country end products, or Caribbean country end products. Offerors must certify by inserting the applicable line item numbers in the appropriate brackets.

(i) The offeror certifies that the following supplies qualify as " participating country end products" as that term is defined in the clause entitled "Buy American Act, Trade Agreements Act, and Balance of Payments Program".

(Insert line item no.)

(ii) The offeror certifies that the following supplies qualify as "FMS/Offset arrangement country end products" as that term is defined in the clause entitled "Buy American Act, Trade Agreements Act, and Balance of Payments Program," if the Government makes the necessary waivers.

(Insert line item no.)

(iii) The offeror certifies that the following supplies qualify as "defense cooperation country end products" as that term is defined in the clause entitled "Buy American Act, Trade Agreements Act, and Balance of Payments Program."

(Insert line item no.)

(iv) The offeror certifies that the following supplies qualify as "designated country end products" as that term is defined in the clause entitled "Buy American Act, Trade Agreements Act, and Balance of Payments Program".

(Insert line item no.)

(v) The Offeror certifies that the following supplies qualify as "Caribbean Basin country end products" as that term is defined in the clause entitled "Buy American Act, Trade Agreements Act, and the Balance of Payments Program."

(Insert line item no.)

(c) Offers will be evaluated in accordance with the policies and procedures of FAR Part 25 and DoD FAR Supplement Part 225.

(End of Certificate)

252.225-7006 Buy American Act, Trade Agreements Act, and The Balance of Payments Program.

As prescribed at 225.407(a)(2), insert the following clause:

BUY AMERICAN ACT, TRADE AGREEMENTS ACT, AND THE BALANCE OF PAYMENTS PROGRAM (MAY 1986)

(a) This clause implements the Buy American Act (41 U.S.C. section 10a–d), the Trade Agreements Act of 1979 (19 U.S.C. 2501 et seq.), and the Department of Defense Balance of Payments Program and the Caribbean Basin Initiative as provided for in Executive Order 12260, by providing a preference to domestic end products over foreign end products, except for certain foreign end products which meet the requirements for classification as qualifying country end products, designated country end products or Caribbean Basin end products. For the purpose of this clause—

(i) "Components" means those articles, materials, and supplies incorporated directly into the end products.

(ii) "Qualifying country component" means (A) an item mined, produced, or manufactured in a participating country or in an FMS/Offset arrangement country when the applicable D&F has been made waiving the Buy American Act restrictions; or (B) any item listed in a defense cooperation country agreement.

(iii) "End product" means those articles, materials, and supplies to be acquired for public use under the contract.

(iv) "Domestic end product" means (A) an unmanufactured end product which has been mined or produced in the United States, or (B) an end product manufactured in the United States if the cost of its qualifying country components, and its components which are mined, produced, or manufactured in the United States exceeds fifty percent (50%) of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate may be issued). A component shall also be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind (A) determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, or (B) as to which the Secretary concerned has determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act.

(v) "Foreign end product" means an end product other than a domestic end product.

(vi) "Qualifying country end product" means (A) a participating country end product; (B) an FMS/Offset arrangement country end product when the applicable Determination and Findings has been made waiving the Buy American Act restrictions; or (C) a defense cooperation country agreement listed item.

(vii) "Participating country end product" means (A) an unmanufactured end product mined or produced in a participating country, or (B) an end product manufactured in a participating country if the cost of its qualifying country components and its components mined, produced, or manufactured in the United States exceeds fifty percent (50%) of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and any duty whether or not duty is, in fact, paid.

(viii) "FMS/Offset arrangement country end product" means (A) an unmanufactured end product mined or produced in an FMS/Offset arrangement country, or (B) an end product manufactured in an FMS/Offset arrangement country if the cost of its qualifying country components and its components which are mined, produced, or manufactured in the United States exceeds fifty percent (50%) of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and any duty whether or not duty is, in fact, paid. To obtain the waivers necessary to accord preferential treatment for an FMS/Offset arrangement country end product, see the procedures at DoD FAR Supplement 225.7310(c)(2)(i).

(ix) "Defense cooperation country end product" means an item listed in the defense cooperation country agreement and produced in that country.

(x) "Designated country end product" means an article that (A) is wholly the growth, product, or manufacture of the designated country, or (B) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term includes services (except transportation services) incidental to its supply; *Provided*, That the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such.

(xi) "Caribbean Basin country end product" means (A) an article that *(1)* is wholly the growth, product, or manufacture of a Caribbean Basin country (as defined in section 25.401 of the Federal Acquisition Regulation (FAR)), or *(2)* in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term includes services (except transportation services) incidental to its supply; *Provided*, that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such. (B) The term *excludes* products which are excluded from duty-free treatment for Caribbean countries under the Caribbean Basin Economic Recovery Act under 19 U.S.C. 2703(b). These exclusions presently consist of *(1)* textiles and apparel articles which are subject to textile agreements; *(2)* footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel not designated as eligible articles for the purpose of the Generalized System of Preferences under title V of the Trade Act of 1974; *(3)* tuna, prepared or preserved in any manner in airtight containers; *(4)* petroleum, or any product derived from petroleum, and *(5)* watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material which is the product of any country to which TSUS column 2 rates of duty apply.

(b) The Contractor agrees that there will be delivered under this contract only domestic end products *unless*, in its offer, it specified delivery of foreign end products in the clause entitled Buy American Act, Trade Agreements Act, and Balance of Payments Program Certificate. An offer certifying that a qualifying country end product, a designated country end product, or a Caribbean Basin country end product will be supplied requires the Contractor to supply a qualifying country end product, a designated country end product, or a Caribbean Basin country end product whichever is certified, or, at the Contractor's option, a domestic end product. An offer based on supplying a nonqualifying country end product, if accepted, will permit the Contractor to supply a product without regard to the requirements of this clause; however, Contractors may not supply an end product listed at DoD FAR Supplement 225.403(S–70) with a total value at or above dollars ($) [Contracting Officers shall insert the dollar threshold amount referenced in FAR 25.402(a) distributed through agency procedures in accordance with FAR 25.402(a)] from a country not listed at FAR 25.401, except as provided at DoD FAR Supplement 225.402(b).

(c) Offers will be evaluated in accordance with the policies and procedures of FAR Part 25 and DoD FAR Supplement Part 225.

(d) Generally, when the Buy American Act is applicable, each nonqualifying country offer of defense equipment shall be adjusted for the purpose of evaluation by: (i) Adding 50% of the offer, exclusive of duty; (ii) adding 6% of the offer, inclusive of duty, if a domestic offer is from a large business that is not a labor surplus area concern; or (iii) adding 12% of the offer, inclusive of duty, if the domestic offer is from a small business concern or any labor surplus area concern. Evaluation will be inclusive or exclusive of duty whichever results in the greater evaluated price. See DoD FAR Supplement 225.1 for procedures and exceptions.

(e) Generally, when the Balance of Payments Program applies, each nonqualifying country offer of defense equipment shall be adjusted for the purpose of evaluation by increasing the offer by 50%. See DoD FAR Supplement 225.3 for procedures and exceptions.

(f) Generally, when the Trade Agreements Act applies, offers of designated and Caribbean Basin country end products will be evaluated without the Buy American Act and Balance of Payments Program price adjustments discussed in paragraphs (d) and (e) above. See FAR and DoD FAR Supplement 225.4 for procedures and exceptions.

(End of clause)

252.225-7007 Supplies to be accorded duty-free entry.

As prescribed at 225.605, insert the following clause:

SUPPLIES TO BE ACCORDED DUTY-FREE ENTRY (DEC 1965)

In accordance with paragraph (a) of the clause entitled "Duty-Free Entry," the following supplies are hereby identified as supplies to be accorded duty-free entry:

(End of clause)

252.225-7008 Duty-free entry—qualifying country end products and supplies.

As prescribed at 225.605, insert the following clause:

DUTY-FREE ENTRY—QUALIFYING COUNTRY END PRODUCTS AND SUPPLIES (AUG 1984)

(a) The requirements of this clause apply to this contract and subcontracts, which term includes purchase orders, that involve supplies to be accorded duty-free entry, whether—

(1) Placed directly with a foreign concern as a prime contract; or

(2) As a subcontract or purchase order under a contract placed with a domestic concern.

(b) Except as otherwise approved by the Contracting Officer, no amount is or will be included in the contract price on account of duty with respect to—

(1) All end items which constitute "qualifying country end products" (as defined in DoD FAR Supplement 225.001) to be delivered under this contract; and

(2) All supplies (including, without limitation, raw materials, components, and intermediate assemblies) produced or made in qualifying countries, which are to be incorporated in the end items to be delivered under this contract; *Provided*, That such end items are manufactured in the United States or in a qualifying country, except supplies imported into the United States prior to the date of this contract or, in the case of supplies imported by a first or lower tier subcontractor hereunder, prior to the date of the subcontract.

(c) Unless the Contracting Officer otherwise agrees, duty-free entry certificates will not be furnished under fixed-price contracts which were based on supplying a domestic end item or component unless the Contractor agrees to negotiate an appropriate reduction in contract price if the Contractor, subsequent to award, decides to furnish a qualifying country end product or component.

(d) The Contractor warrants that all such qualifying country supplies, for which duty-free entry is to be claimed, are intended to be delivered to the Government or incorporated in the end items to be delivered under this contract and that duty shall be paid by the Contractor to the extent that such supplies, or any portion thereof (if not scrap or salvage) are diverted to nongovernmental use other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer.

(e) The Government agrees to execute duty-free entry certificates and to afford such assistance as appropriate in order to obtain the duty-free entry of qualifying country end products as to which the shipping documents bear the notation specified in paragraph (f) below, except as the Contractor may otherwise agree.

(f) All shipping documents submitted to Customs, covering foreign end products or

supplies for which duty-free entry certificates are to be issued in accordance with this clause, shall (1) consign the shipments to the appropriate (i) Military Department in care of the particular Contractor, including the Contractor's delivery address, or (ii) the appropriate military installation; and (2) bear the following information:

(i) prime contract number plus delivery order, if applicable;

(ii) number of the subcontract/purchase order for foreign supplies, if applicable;

(iii) identification of carrier;

(iv) the notation: "UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE Duty-Free Entry to be claimed pursuant to Schedule 8, Part 3, Item No. 832.00, Tariff Schedules of the United States. Upon arrival of shipment at the appropriate port of entry, District Director of Customs, please release shipment under 19 CFR Part 142 and notify Commander, Defense Contract Administration Services Region (DCASR) New York, ATTN: Customs Function, 201 Varick Street, New York, New York 10014, for execution of Customs Forms 7501, 7501A, or 7506 and any required duty-free entry certificates." (Note: The above notation shall be used only for direct shipments to a U.S. military installation. In cases where the shipment will be consigned to other than a military installation, e.g., a domestic contractor's plant, the shipping document notation shall be altered to insert the name and address of the contractor, agent or broker who will notify Commander, Defense Contract Administration Services Region (DCASR) New York, for execution of the duty-free entry certificates.)

(v) gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight);

(vi) estimated value in U.S. dollars; and

(vii) Activity Address Number of the Contract Administration Office (CAO) actually administering the prime contract, e.g., for DCASMA Dayton, DLA8DP.

(g) Preparation of Customs Forms.

(1) Except for shipments consigned to a military installation, the Contractor shall prepare, or authorize an agent to prepare, any customs forms required for the entry of foreign supplies in connection with DoD contracts into the United States, its possessions, or Puerto Rico. The completed customs forms shall be submitted to the District Director of Customs with a copy to DCASR NY for execution of any required duty-free entry certificates. Shipments consigned directly to a military installation will be released in accordance with sections 10.101 and 10.102 of the U.S. Customs Regulations.

(2) For shipments containing both supplies which are to be accorded duty-free entry and supplies which are not, the Contractor shall identify on the customs forms those items which are eligible for duty-free entry.

(h) The Contractor agrees to prepare (if this contract is placed direct with a foreign supplier) or to instruct the foreign supplier to prepare a sufficient number of copies of the bill of lading (or other shipping document) so that at least two of the copies accompanying the shipment will be available for use by the District Director of Customs at the port of entry and to consign the shipment as specified in (f) above, and to mark the exterior of all packages as follows:

(1) "UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE" and

(2) the Activity Address Number applicable to the contract administration office actually administering the prime contract.

(i) The Contractor agrees to ensure that the Contracting Officer administering the prime contract is notified in writing of any purchase under the contract of qualifying country supplies to be accorded duty-free entry that are to be imported into the United States for delivery to the Government or for incorporation in end items to be delivered to the Government. Such notice shall be furnished to the CAO immediately upon the award to the qualifying country supplier. The notice shall identify:

(1) Prime contract number plus delivery order number if applicable;

(2) Total dollar value of the prime contract or delivery order;

(3) Expiration date of the prime contract or delivery order;

(4) Foreign supplier name;

(5) Number of the subcontract/purchase order for foreign supplies;

(6) Total dollar value of the subcontract for foreign supplies;

(7) Expiration date of the subcontract for foreign supplies;

(8) List of items purchased; and

(9) Certification by the purchaser of foreign supplies: I certify that all such supplies for which duty-free entry is to be claimed are intended to be delivered to the Government or incorporated in the end items to be delivered under this contract, and that duty shall be paid by the Contractor to the extent that such supplies, or any portion thereof (if not scrap or salvage) are diverted to nongovernmental use other than as a result of a competitive sale made, directed or authorized by the Contracting Officer;

(10) The qualifying country; and

(11) The scheduled delivery date(s).

(j) This clause shall not apply to purchases of qualifying country supplies in connection with this contract if (1) such qualifying country supplies are identical in nature with supplies purchased by the Contractor or any subcontractor hereunder in connection with its commercial business; and (2) it is not economical or feasible to account for such supplies so as to assure that the amount of such supplies for which duty-free entry is claimed pursuant to this clause does not exceed the amount thereof purchased in connection with this contract.

(k) The Contractor agrees to insert the substance of this clause, including this paragraph (k) in all subcontracts for supplies hereunder. Each such subcontract shall require the subcontractor to identify this contract by its contract number on any shipping documents submitted to Customs covering supplies for which duty-free entry is to be claimed pursuant to this clause. The Contractor also agrees to ensure that the name and address of the Contracting Officer administering the prime contract (name and address of the CAO cognizant of the prime contract), and its Activity Address Number (Appendix N of the DoD FAR Supplement), and the information required by (i) (1), (2) and (3) above is included in applicable subcontracts.

(End of clause)

252.225-7009 Preference for certain domestic commodities.

As prescribed at 225.7002(b), insert the following clause:

PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (OCT 1980)

The Contractor agrees that there will be delivered under this contract only such articles of food, clothing, cotton, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, coated synthetic fabric, or wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles) as have been grown, reprocessed, reused, or produced in the United States, its possessions, or Puerto Rico; *Provided*, That (i) this clause shall have no effect to the extent that the Secretary has determined that a satisfactory quality and sufficient quantity of such articles cannot be acquired as and when needed at U.S. market prices; (ii) nothing herein shall preclude the delivery, under this contract, of foods which have been manufactured or processed in the United States, its possessions, or Puerto Rico; and (iii) this clause shall not apply to chemical warfare protective clothing produced in qualifying countries (see DoD FAR Supplement Part 225).

(End of clause)

252.225-7010 Domestic wool preference.

As prescribed at 225.7002(c)(3), insert the following clause:

DOMESTIC WOOL PREFERENCE (MAR 1958)

(a) It is Congressional policy that, in Department of Defense procurements, preference shall be given to wool grown, reprocessed, reused, or produced in the United States, its possessions, or Puerto Rico, to the extent that articles containing such wool can be procured as and when needed at United States market prices.

(b) If, on the date of opening of bids or evaluation of proposals, the average market price of domestic wool of usable grades (as reported by grade and type in the four issues of the Department of Agriculture "Market News" immediately preceding the date of bid opening or evaluation of proposals) is not more than ten percent (10%) above the average of the prices (for usable grades and types) which reflect the current incentive price established by the Secretary of Agriculture, award will be made only on bids or proposals offering domestically produced articles of which the wool component is one hundred percent (100%) domestic wool; *Provided*, That such bids or proposals are considered reasonable and otherwise acceptable.

(c) If, on the date of opening of bids or evaluation of proposals, the average market price of domestic wool of usable grades (as reported by grade and type in the four issues of the Department of Agriculture "Market News" immediately preceding the date of bid opening or evaluation of proposals) is more than ten percent (10%) above the average of the prices (for usable grades and types) which reflect the current incentive price, or to the extent that the Government's requirement cannot be filled by awards based on paragraph (b) hereof, there will be added to each bid or proposal offering articles of which the wool component is one hundred percent (100%) foreign wool, an evaluation factor of $_____ per yard or per item, and there will be added to each bid or proposal offering articles of which the wool component is a blend of domestic and foreign wool that part of the evaluation factor which is in direct proportion to the percentage of foreign wool to be used, and award will be made to the low acceptable bidder.

(d) For the purposes of (b) and (c) above, the average market price of domestic wool of usable grades shall be the average market price of the representative types and grades set forth in DoD FAR Supplement 225.7002(c)(6) within that one of the categories therein set forth which includes wool which would meet the specifications, and the average of the prices which reflect the current incentive price established by the Secretary of Agriculture shall be the average of the prices set forth in 225.7002(c)(6) for that category.

(e) While bids or proposals offering articles using foreign wool may be considered and evaluated, as stated above, all stages of manufacturing of wool (whether foreign or domestic) must be performed in the United States, its possessions, or Puerto Rico, as required by the contract clause entitled "Preference for Certain Domestic Commodities." This requirement is satisfied as to wool noils, reprocessed or reused wool if the reprocessing (i.e., garnetting or combing) and ensuring manufacture is performed in the United States, its possessions, or Puerto Rico.

(f) The Secretary has determined that, to the extent that any foreign wool is used under an award made pursuant to paragraph (c) hereof, a satisfactory quality and sufficient quantity of domestic wool cannot be procured as and when needed at United States market prices.

(End of clause)

252.225-7011 Preference for domestic specialty metals (major programs).

As prescribed at 225.7002(d)(1), insert the following clause:

PREFERENCE FOR DOMESTIC SPECIALTY METALS (MAJOR PROGRAMS) (OCT 1980)

(a) The Contractor agrees that any specialty metals (as hereinafter defined) incorporated in articles delivered under this contract will be melted in the United States, its possessions, or Puerto Rico; *Provided*, that this clause shall have no effect to the extent that (i) the Secretary or his designee has determined that a satisfactory quality and sufficient quantity of such articles cannot be acquired as and when needed at U.S. market prices; (ii) the acquisition is for a qualifying country end product; or (iii) the acquisition is necessary to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources for the purposes of offsetting sales made by the U.S. Government or U.S. firms under approved programs serving defense requirements.

(b) For the purposes of this clause, the term "specialty metals" means:

(i) Steels, where the maximum alloy content exceeds one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent or which contains more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium;

(ii) Metal alloys consisting of nickel, iron-nickel and cobalt base alloys containing a total of other alloying metals (except iron) in excess of ten percent (10%);

(iii) titanium and titanium alloys; or

(iv) zirconium and zirconium base alloys.

(c) The Contractor agrees to include this clause, including this paragraph (c), in every subcontract or purchase order issued hereunder, unless he knows that the item being purchased contains no specialty metals.

(End of clause)

252.225-7012 Preference for domestic specialty metals.

As prescribed at 225.7002(d)(2), insert the following clause:

PREFERENCE FOR DOMESTIC SPECIALTY METALS (OCT 1980)

(a) The Contractor agrees that any specialty metals (as hereinafter defined) furnished by it or purchased by it for direct incorporation in any article delivered to the Government under this contract shall have been melted in the United States, its possessions, or Puerto Rico; *Provided*, That this clause shall have no effect to the extent that (i) the Secretary or his designee determines that a satisfactory quality and sufficient quantity of such articles cannot be acquired as and when needed at U.S. market prices; (ii) the acquisition is for a qualifying country end product; or (iii) the acquisition is necessary to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources for the purpose of offsetting sales made by the U.S. Government or U.S. firms under approved programs serving defense requirements.

(b) For the purposes of this clause, the term "specialty metals" means:

(i) steels, where the maximum alloy content exceeds one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent or which contains more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium;

(ii) metal alloys consisting of nickel, iron-nickel and cobalt base alloys containing a total of other alloying metals (except iron) in excess of ten percent (10%);

(iii) titanium and titanium alloys; or

(iv) zirconium and zirconium base alloys.

(End of clause)

252.225-7013 Preference for domestic hand or measuring tools.

As prescribed at 225.7003, insert the following clause:

PREFERENCE FOR DOMESTIC HAND OR MEASURING TOOLS (APR 1984)

The Contractor agrees that there will be delivered under this contract only such hand or measuring tools as have been produced in the United States or its possessions.

(End of clause)

252.225-7014 Duty-free entry—additional provisions.

As prescribed at 225.605, insert the following clause:

DUTY-FREE ENTRY—ADDITIONAL PROVISIONS (AUG 1984)

(a) The requirements of this clause supplement the clause of this contract entitled Duty-Free Entry, and both of these clauses apply to this contract and subcontracts, which term includes purchase orders, that involve supplies to be accorded duty-free entry whether—

(1) Placed directly with a foreign concern as a prime contract; or

(2) As a subcontractor purchase order under a contract placed with a domestic concern.

(b) Notification for Supplies not Previously Identified. The Contractor shall send the notification required by paragraph (b)(1) of the Duty-Free Entry clause contained in this contract to the Contracting Officer administering this contract.

(c) Notification Applicable to All Foreign Supplies. In addition to any data required by paragraph (b)(1) of the Duty-Free Entry clause, the Contractor shall furnish the following for all foreign supplies to be imported pursuant to paragraphs (a) or (b) of the Duty-Free Entry clause. This information must be furnished to the Contracting Officer administering the prime contract immediately upon award of any contract or subcontract involving supplies to be accorded duty-free entry.

(1) Prime contract number plus delivery order number, if applicable;

(2) Total dollar value of the prime contract or delivery order;

(3) Expiration date of the prime contract or delivery order;

(4) Foreign supplier name;

(5) Number of the subcontract/purchase order for foreign supplies;

(6) Total dollar value of the subcontract for foreign supplies;

(7) Expiration date of the subcontract for foreign supplies;

(8) List of items purchased; and,

(9) Certification by the purchaser of foreign supplies: I certify that all such supplies for which duty-free entry is to be claimed are intended to be delivered to the Government or incorporated in the end items to be delivered under this contract, and that duty shall be paid by the Contractor to the extent that such supplies, or any portion thereof (if not scrap or salvage) are diverted to

nongovernmental use other than as a result of a competitive sale made, directed or authorized by the Contracting Officer.

(d) Inclusion in Subcontracts. The Contractor agrees to incorporate the substance of this clause, including this paragraph, in any subcontract (including purchase orders) in accordance with paragraph (i) (eye) of the Duty-Free Entry clause of this contract. The Contractor agrees to ensure that the name and address of the Contracting Officer administering the prime contract (name and address of the CAO cognizant of the prime contract and its Activity Address Number (Appendix N of the DoD FAR Supplement)) and the information required by (c) (1), (2), and (3) above are included in applicable subcontracts.

(e) Shipping Documents. For the purpose of properly completing the shipping document instructions as required by paragraph (f) of the Duty-Free Entry clause, the Contractor shall insert Defense Contract Administration Services Region (DCASR) New York, ATTN: Customs Function, 201 Varick Street, New York, New York 10014, as the cognizant contract administration office (for paragraph (f) only) in those cases when the shipment is consigned directly to a military installation. In cases when the shipment will be consigned to other than a military installation, e.g. a domestic contractor's plant, the shipping document notation required by paragraph (f) of the clause shall be altered to insert the name and address of the Contractor, agent or broker who will prepare the customs documentation in accordance with applicable customs directives in anticipation of the execution of the Duty-Free Entry certificates. In either case, the shipping documents will contain the following items in addition to those required by paragraph (f) of the Duty-Free Entry clause:

(1) If applicable, delivery order number on the Government prime contract;

(2) Number of the subcontract/purchase order for foreign supplies, if applicable;

(3) Activity Address Number of the Contract Administration Office (CAO) actually administering the prime contract, e.g., for DCASMA Dayton, DLA8DP.

(f) Preparation of Customs Forms. Except for shipments consigned to a military installation, the Contractor shall prepare, or authorize an agent to prepare, any customs forms required for the entry of foreign supplies in connection with DoD contracts into the United States, its possessions, or Puerto Rico. The completed customs forms shall be submitted to the District Director of Customs with a copy to DCASR NY for execution of any required duty-free entry certificates. For shipments containing both supplies which are to be accorded duty-free entry and supplies which are not, the Contractor shall identify on the customs forms those items which are eligible for duty-free entry in accordance with the provisions of the Duty-Free Entry clause contained in this contract. Shipments consigned directly to a military installation will be released in accordance with sections 10.101 and 10.102 of the U.S. Customs Regulations.

(g) Exterior Markings. The Contractor shall ensure that all exterior containers are marked in accordance with paragraph (g) of the Duty-Free Entry clause, including the following additional data:

(1) "UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE."

(2) the Activity Address Number applicable to the contract administration office actually administering the prime contract.

(End of clause)

252.225-7015 United States products certificate (Military Assistance Program).

As prescribed at 225.7205(a), insert the following provision:

UNITED STATES PRODUCTS CERTIFICATE (MILITARY ASSISTANCE PROGRAM) (DEC 1962)

To the extent that the Government specifies the items being purchased are in implementation of the Military Assistance Program, the bidder or offeror hereby certifies that each such item furnished will be a United States end product (as defined in the contract clause entitled "United States Products"); that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States; and that he is a domestic concern.

(End of provision)

252.225-7016 United States products (Military Assistance Program).

As prescribed at 225.7205(b), insert the following clause:

UNITED STATES PRODUCTS (MILITARY ASSISTANCE PROGRAM) (DEC 1962)

(a) To the extent that the Government specifies the items being purchased are in implementation of the Military Assistance Program, the Contractor agrees that there will be delivered under this contract only United States end products.

(b) For the purpose of this clause:

(i) "components" means those articles, materials, and supplies, which are directly incorporated in end products.

(ii) "end products" means those articles, materials, and supplies, which are acquired under this contract for public use; and

(iii) a "United States end product" means—

(A) an unmanufactured end product which has been mined or produced in the United States; and

(B) an end product manufactured in the United States if the cost of the components thereof which are mined, produced, or manufactured in the United States exceeds fifty percent (50%) of the cost of all its components. A component shall be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

(End of clause)

252.225-7017 Limitation of sales commissions and fees for foreign governments.

As prescribed at 225.7305(f), insert the following clause:

LIMITATION OF SALES COMMISSIONS AND FEES FOR FOREIGN GOVERNMENTS (OCT 1980)

Unless the sales commission and fee have been identified and payment thereof has been approved in writing by the Government of _____* before contract award, the following provisions, as appropriate, shall apply.

(a) For firm-fixed-price contracts or fixed-price contracts with economic price adjustment:

"The Contractor certifies that the contract price (including any subcontracts awarded hereunder) does not include any direct or indirect costs of sales commissions or fees for contractor sales representatives for the solicitation or promotion or otherwise to secure the conclusion of the sale of any of the supplies or services called for by this contract to the Government of _____*."

(b) For all other types of contracts:

"Notwithstanding any other provision of this contract, any direct or indirect costs of sales commissions or fees for contractor (or subcontractor) sales representatives for the solicitation or promotion or otherwise to secure the conclusion of the sale of any of the supplies or services called for by this contract to the Government of _____* shall be considered as an unallowable item of cost under this contract."

* Name of foreign country.

(End of clause)

252.225-7018 Offset arrangement.

As prescribed at 225.7310(c)(4), insert the following clause:

OFFSET ARRANGEMENT (OCT 1980)

(a) The Contractor is responsible under the contract for arranging with representatives of the Government of _____*, under _____**, dated _____, for participation by sources in _____*, for a minimum of *(percentage or dollar value)* of the value of this prime contract. This offset requirement may be fulfilled either by subcontracts under this contract or through other business the Contractor may choose to place in _____*. (Commercial business will not be considered for duty-free entry.) All contractual arrangements to be entered into in accordance with this clause must be submitted to the Contracting Officer for determination as to whether such arrangements fulfill the offset requirement. Special conditions relating to the offset requirement are as follows:

_____

_____

(b) The Contractor will provide the following information to the Contracting Officer within 30 calendar days after the completion of each calendar quarter during the term of the contract:

(i) subcontract or other solicitations offered to _____* industry (items, dollar value, date of solicitation, and identification of sources);

(ii) subcontract or orders placed with _____* sources—

(A) item
(B) value
(C) contracting officer
(D) competitive or noncompetitive
(E) date of subcontract
(F) identification of subcontractor

(iii) status of deliveries under subcontracts placed with _____* sources.

(c) None of the provisions of this clause shall relieve the Contractor of the need to comply with the International Traffic in Arms Regulations, the Industrial Security Manual, or other laws and regulations governing foreign acquisition and disclosure of information to foreign nationals.

(d) The substance of this provision shall be placed in all subcontracts awarded to U.S. companies which appear to offer a significant opportunity for lower tier subcontracting with _____* sources under _____**.

* Insert name of foreign country.

** Insert offset agreement number or other description.

(End of clause)

252.225-7019 Exclusionary policies and practices of foreign governments.

As prescribed at 225.7312, insert the following clause:

EXCLUSIONARY POLICIES AND PRACTICES OF FOREIGN GOVERNMENT (JAN 1977)

No person, partnership, corporation, or other entity performing functions pursuant to this contract, shall, in employing or assigning personnel to participate in the performance of any such function, whether in the United States or abroad, take into account the exclusionary policies or practices of any foreign government where such policies or practices are based on race, religion, national origin, or sex.

(End of clause)

252.225-7020 Option to award and pay in foreign currency.

As prescribed at 225.7602(a), insert the following provision:

OPTION TO AWARD AND PAY IN FOREIGN CURRENCY (APR 1974)

(a) Offerors are required to state their price in United States dollars. Such price may also be stated wholly in the currency of the countries listed in the Schedule, or in a combination of United States dollars and the currency of any of the listed countries.

(b) Offerors shall state separately the United States dollar content, if any, in United States dollars. The term "United States dollar content" means the United States dollar cost to an offeror for United States end products or services (including costs of transportation furnished by United States flag carriers) imported directly from the United States and to be used in performance of a contract, as certified by the offeror.

(c) The Contracting Officer reserves the right to award to that responsive offeror willing to accept payment in whole or in part in a currency of any of the listed countries and whose offer is considered the most advantageous to the United States Government, even though the total price of the accepted offer may be more than the price of an offer received in United States dollars.

(End of provision)

252.225-7021 Acquisition and use of excess and near-excess currency.

As prescribed at 225.7608, insert the following clause:

ACQUISITION AND USE OF EXCESS AND NEAR-EXCESS CURRENCY (DEC 1967)

The Contractor shall not expend United States dollars for the performance of this contract in any of the countries set forth in the Schedule of this contract for the purchase of currency of such countries or for the purchase of goods or services needed for performance under this contract. The Contractor shall purchase all such currencies from United States disbursing officers in such countries at the rates of exchange used by such officers at the times of purchase.

(End of clause)

252.227-7000 Non-Estoppel.

As prescribed at 227.7009-1, insert the following clause in patent releases, license agreements, and assignments:

NON-ESTOPPEL (OCT 1966)

The Government reserves the right at any time to contest the enforceability, validity, scope of, or the title to any patent or patent application herein licensed without waiving or forfeiting any right under this contract.

(End of clause)

252.227-7001 Release of past infringement.

As prescribed at 227.7009-2(a), insert the following clause in patent releases, license agreements, and assignments:

RELEASE OF PAST INFRINGEMENT (AUG 1984)

The Contractor hereby releases each and every claim and demand which he now has or may hereafter have against the Government for the manufacture or use by or for the Government prior to the effective date of this contract, of any inventions covered by (i) any of the patents and applications for patent identified in this contract, [and (ii) any other patent or application for patent owned or hereafter acquired by him, insofar as and only to the extent that such other patent or patent application covers the manufacture, use, or disposition of (description of subject matter)].*

(End of clause)

* Bracketed portions of the clause may be omitted when not appropriate or not encompassed by the release as negotiated.

252.227-7002 Readjustment of payments.

As prescribed at 227.7009-2(b), insert the following clause in patent releases, license agreements, and assignments:

READJUSTMENT OF PAYMENTS (OCT 1966)

(a) If any license, under substantially the same patents and authorizing substantially the same acts which are authorized under this contract, has been or shall hereafter be granted within the United States, on royalty terms which are more favorable to the licensee than those contained herein, the Government shall be entitled to the benefit of such more favorable terms with respect to all royalties accruing under this contract after the date such more favorable terms become effective, and the Contractor shall promptly notify the Secretary in writing of the granting of such more favorable terms.

(b) In the event any claim of any patent hereby licensed is construed or held invalid by decision of a court of competent jurisdiction, the requirement to pay royalties under this contract insofar as its arises solely by reason of such claim, and any other claim not materially different therefrom, shall be interpreted in conformity with the court's decision as to the scope of validity of such claims; *Provided*, however, that in the event such decision is modified or reversed on appeal, the requirement to pay royalties under this contract shall be interpreted in conformity with the final decision rendered on such appeal.

(End of clause)

252.227-7003 Termination.

As prescribed at 227.7009-2(e), insert the following clause in patent releases, license agreements, and assignments:

TERMINATION (AUG 1984)

Notwithstanding any other provision of this contract, the Government shall have the right to terminate the within license, in whole or in part, by giving the Contractor not less than thirty (30) days notice in writing of the date such termination is to be effective; *Provided*, however, that such termination shall not affect the obligation of the Government to pay royalties which have accrued prior to the effective date of such termination.

(End of clause)

252.227-7004 License grant.

As prescribed at 227.7009-3(a), insert the following clause in patent releases, license agreements, and assignments:

LICENSE GRANT (AUG. 1984)

(a) The Contractor hereby grants to the Government an irrevocable, nonexclusive, nontransferable, and paid up license under the following patents, applications for patent, and any patents granted on such applications, and under any patents which may issue as the result of any reissue, division or continuation thereof, to practice by or cause to be practiced for the Government throughout the world, any and all of the inventions thereunder, in the manufacture and use of any article or material, in the use of any method or process, and in the disposition of any article or material in accordance with law:

U.S. Patent No. _____

Date _____

Application Serial No. _____
Filing Date _____

together with corresponding foreign patents and foreign applications for patents, insofar as the Contractor has the right to grant licenses thereunder without incurring an obligation to pay royalties or other compensation to others solely on account of such grant.

(b) No rights are granted or implied by the agreement under any other patents other than as provided above or by operation of law.

(c) Nothing contained herein shall limit any rights which the Government may have obtained by virtue of prior contracts or by operation of law or otherwise.

(End of clause)

252.227-7005 License term.

As prescribed at 227.7009-3(b), insert one of the following clauses in patent releases, license agreements, and assignments:

(ALTERNATE I)

LICENSE TERM (AUG 1984)

The license hereby granted shall remain in full force and effect for the full term of each of the patents referred to in the "License Grant" clause of this contract and any and all patents hereafter issued on applications for patent referred to in such "License Grant" clause.

(End of clause)

(ALTERNATE II)

LICENSE TERM (AUG 1984)

The license hereby granted shall terminate on the _____ day of _____ 19____; *Provided*, however, that said termination shall be without prejudice to the completion of any contract entered into by the Government prior to said date of termination or to the use or disposition thereafter of any articles or materials manufactured by or for the Government under this license.

(End of clause)

252.227-7006 License grant—running royalty.

As prescribed at 227.7009-4(a), insert the following clause in patent releases, license agreements, and assignments:

LICENSE GRANT—RUNNING ROYALTY (AUG 1984)

(a) The Contractor hereby grants to the Government, as represented by the Secretary of _____, an irrevocable, nonexclusive, nontransferable license under the following patents, applications for patent, and any patents granted on such applications, and under any patents which may issue as the result of any reissue, division, or continuation thereunder to practice by or cause to be practiced for the Department of _____, throughout the world, any and all of the inventions thereunder in the manufacture and use of any article or material, in the use of any method or process, and in the disposition of any article or material in accordance with law:

U.S. Patent No. _____
Date _____

Application Serial No. _____
Filing Date _____

together with corresponding foreign patents and foreign applications for patent, insofar as the Contractor has the right to grant licenses thereunder without incurring an obligation to pay royalties or other compensation to others solely on account of such grant.

(b) No rights are granted or implied by the agreement under any other patents other than as provided above or by operation of law.

(c) Nothing contained herein shall limit any rights which the Government may have obtained by virtue of prior contracts or by operation of law or otherwise.

(End of clause)

252.227-7007 License term—running royalty.

As prescribed at 227.7009-4(b), insert the following clause in patent releases, license agreements, and assignments:

LICENSE TERM—RUNNING ROYALTY (AUG 1984)

The license hereby granted shall remain in full force and effect for the full term of each of the patents referred to in the "License Grant" clause of this contract and any and all patents hereafter issued on applications for patent referred to above unless sooner terminated as elsewhere herein provided.

(End of clause)

257.227-7008 Computation of royalties.

As prescribed at 227.7009-4(c), insert the following clause in patent releases, license agreements, and assignments:

COMPUTATION OF ROYALTIES (AUG 1984)

Subject to the conditions hereinafter stated, royalties shall accrue to the Contractor under this agreement on all articles or materials embodying, or manufactured by the use of, any or all inventions claimed under any unexpired United States patent licensed herein, upon acceptance thereof by the Department of _____, at the rate of _____ [percent of the net selling price of such articles or materials] [(amount) per (name of item)] * whether manufactured by the Government or procured under a fixed price contract, and at the rate of (amount) per (name of item) acquired or manufactured by a Contractor performing under a cost-reimbursement contract. With respect to such articles or materials made by the Department of _____, "net selling price," as used in this paragraph, means the actual cost of direct labor and materials without allowance for overhead and supervision.

(End of clause)

*Use bracketed matter as appropriate.

252.227-7009 Reporting and payment of royalties.

As prescribed at 227.7009-4(d), insert the following clause in patent releases, license agreements, and assignments:

REPORTING AND PAYMENT OF ROYALTIES (AUG 1984)

(a) The (procuring office) shall, on or before the sixtieth (60th) day next following the end of each yearly* period ending _____ during which royalties have accrued under this license, deliver to the Contractor, subject to military security regulations, a report in writing furnishing necessary information relative to royalties which have accrued under this contract.

(b) Royalties which have accrued under this contract during the yearly* period ending _____ shall be paid to the Contractor (if appropriations therefor are available or become available) within sixty (60) days next following the receipt of a voucher from the Contractor submitted in accordance with the report referred to in (a) of this clause; *Provided*, that the Government shall not be obligated to pay, in respect of any such yearly period, on account of the combined royalties accruing under this contract directly and under any separate licenses granted pursuant to the "License to Other Government Agencies" clause (if any) of this contract, an amount greater than _____ dollars ($_____), and if such combined royalties exceed the said maximum yearly obligation, each department or agency shall pay a pro rata share of the said maximum yearly obligation as determined by the proportion its accrued royalties bear to the combined total of accrued royalties.

(End of clause)

*The frequency, date, and length of reporting periods should be selected as appropriate to the particular circumstances of the contract.

252.227-7010 License to other Government agencies.

As prescribed at 227.7009-4(e), insert the following clause in patent releases, license agreements, and assignments:

LICENSE TO OTHER GOVERNMENT AGENCIES (AUG 1984)

The Contractor hereby agrees to grant a separate license under the patents, applications for patents, and improvements referred to in the "License Grant" clause of this contract, on the same terms and conditions as appear in this license contract, to any other department or agency of the Government at any time on receipt of a written request for such a license from such department or agency; *Provided*, however, that as to royalties which accrue under such separate licenses, reports and payments shall be made directly to the Contractor by each such other department or agency pursuant to the terms of such separate licenses. The Contractor shall notify the Licensee hereunder promptly upon receipt of any request for license hereunder.

(End of clause)

252.227-7011 Assignments.

As prescribed at 227.7010, insert the following clause in assignments.

ASSIGNMENT (AUG 1984)

The Contractor hereby conveys to the Government, as represented by the Secretary of _____, the entire right, title, and interest in and to the following patents (and applications for patent), in and to the inventions thereof, and in and to all claims and demands whatsoever for infringement thereof heretofore accrued, the same to be held and enjoyed by the Government through its duly appointed representatives to the full end of the term of said patents (and to the full end of the terms of all patents which may be granted upon said applications for patent, or upon any division, continuation-in-part or continuation thereof):

U.S. Patent No. _____
Date _____
Name of Inventor _____
U.S. Application Serial No. _____
Filing Date _____
Name of Inventor _____

together with corresponding foreign patents and applications for patent insofar as the Contractor has the right to assign the same.

(End of clause)

252.227-7012 Patent license and release contract.

As prescribed at 227.7012, insert the following clause in patent releases, license agreements, and assignments:

_____ (Contract No.)

PATENT LICENSE AND RELEASE CONTRACT (AUG 1984)

THIS CONTRACT is effective as of the _____ day of _____ 19____ between the UNITED STATES OF AMERICA (hereinafter called the Government), and _____ (hereinafter called the Contractor), [a corporation organized and existing under the laws of the State of _____], [a partnership consisting of _____], [an individual trading as _____]], of the City of _____ in the State of _____.

WHEREAS, Contractor warrants that he has the right to grant the within license and release, and the Government desires to procure the same, and

WHEREAS, this contract is authorized by law, including 10 U.S.C. 2386.

NOW THEREFORE, in consideration of the grant, release and agreements hereinafter recited, the parties have agreed as follows:

ARTICLE 1. License Grant.*

(Insert the clause at 252.227-7004 for a paid up license, or the clause at 252.227-7006 for a license on a running royalty basis.)

ARTICLE 2. License Term.*

(Insert the appropriate alternative clause at 252.227-7005 for a paid up license, or the clause at 252.227-7007 for a license on a running royalty basis.)

ARTICLE 3. Release of Past Infringement.

(Insert the clause at 252.227-7001.)

ARTICLE 4. Non-Estoppel.

(Insert the clause at 252.227-7000.)

ARTICLE 5. Payment.

The Contractor shall be paid the sum of _____ Dollars ($_____) in full compensation for the rights herein granted and agreed to be granted. (For a license on a running royalty basis, insert the clause at 252.227-7006 in accordance with the instructions therein, and also the clause as specified at 252.227-7002 and 252.227-7009 and 252.227-7010.)

ARTICLE 6. Officials Not to Benefit.

(Insert the clause at FAR 52.203-1.)

ARTICLE 7. Covenant Against Contingent Fees.

(Insert the clause at FAR 52.203-5.)

ARTICLE 8. Assignment of Claims.

(Insert the clause at FAR 52.232-23.)

ARTICLE 9. Gratuities.

(Insert the clause at FAR 52.203-3.)

ARTICLE 10. Disputes.

(Insert the clause at FAR 52.223-1.)

ARTICLE 11. Successors and Assignees.

This Agreement shall be binding upon the Contractor, his successors ** and assignees, but nothing contained in this Article shall authorize an assignment of any claim against the Government otherwise than as permitted by law.

IN WITNESS WHEREOF, the parties hereto have executed this contract.

THE UNITED STATES OF AMERICA.
By _____
Date _____
(Signature and Title of Contractor) _____
By _____
Date _____

* If only a release is procured, delete this article; if an assignment is procured, use the clause at 252.227-7011.

** When the Contractor is an individual, change "successors" to "heirs"; if a partnership, modify appropriately.

(End of clause)

252.227-7013 Rights in technical data and computer software.

As prescribed at 227.412(a)(1), insert the following clause:

RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE (MAY 1981)

(a) *Definitions.* "Commercial Computer Software", as used in this clause, means computer software which is used regularly for other than Government purposes and is sold, licensed or leased in significant quantities to the general public at established market or catalog prices.

"Computer", as used in this clause, means a data processing device capable of accepting data, performing prescribed operations on the data, and supplying the results of these operations; for example, a device that operates on discrete data by performing arithmetic and logic processes on the data, or a device that operates on analog data by performing physical processes on the data.

"Computer Data Base", as used in this clause, means a collection of data in a form capable of being processed and operated on by a computer.

"Computer Program", as used in this clause, means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. Computer programs include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort-merge programs, and ADPE maintenance/diagnostic programs, as well as applications programs such as payroll, inventory control, and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general-purpose in nature or designed to satisfy the requirements of a particular user.

"Computer Software", as used in this clause, means computer programs and computer data bases.

"Computer Software Documentation", as used in this clause, means technical data, including computer listings and printouts, in human-readable form which (1) documents the design or details of computer software, (2) explains the capabilities of the software, or (3) provides operating instructions for using the software to obtain desired results from a computer.

"Limited Rights", as used in this clause, means rights to use, duplicate, or disclose technical data, in whole or in part, by or for the Government, with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data be (1) released or disclosed in whole or in part outside the Government, (2) used in whole or in part by the Government for manufacture, or in the case of computer software documentation, for preparing the same or similar computer software, or (3) used by a party other than the Government, except for:

(1) Emergency repair or overhaul work only, by or for the Government, where the item or process concerned is not otherwise reasonably available to enable timely performance of the work; *Provided*, that the release or disclosure thereof outside the Government shall be made subject to a prohibition against further use, release or disclosure; or

(2) Release to a foreign government, as the interest of the United States may require, only for information or evaluation within such government or for emergency repair or overhaul work by or for such government under the conditions of (1) above.

"Restricted Rights", as used in this clause, means rights that apply only to computer software, and include, as a minimum, the right to—

(1) Use computer software with the computer for which or with which it was acquired, including use at any Government installation to which the computer may be transferred by the Government;

(2) Use computer software with a backup computer if the computer for which or with which it was acquired is inoperative;

(3) Copy computer programs for safekeeping (archives) or backup purposes; and

(4) Modify computer software, or combine it with other software, subject to the provision that those portions of the derivative software incorporating restricted rights software are subject to the same restricted rights.

In addition, restricted rights include any other specific rights not inconsistent with the minimum rights in (1)–(4) above that are listed or described in this contract or described in a license or agreement made a part of this contract.

"Technical Data", as used in this clause, means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work, or be usable or used to define a design or process or to acquire, produce, support, maintain, or operate materiel. The data may be graphic or pictorial delineations in media such as

drawings or photographs, text in specifications or related performance or design type documents; or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications and related information, and computer software documentation. Technical data does not include computer software or financial, administrative, cost and pricing, and management data or other information incidental to contract administration.

"Unlimited Rights", as used in this clause, means rights to use, duplicate, or disclose technical data, in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(b) *Government Rights.*

(1) *Unlimited Rights.* The Government shall have unlimited rights in:

(i) technical data and computer software resulting directly from performance of experimental, developmental or research work which was specified as an element of performance in this or any other Government contract or subcontract;

(ii) computer software required to be originated or developed under a Government contract, or generated as a necessary part of performing a contract;

(iii) computer data bases, prepared under a Government contract, consisting of information supplied by the Government, information in which the Government has unlimited rights, or information which is in the public domain;

(iv) technical data necessary to enable manufacture of end-items, components, and modifications, or to enable the performance of processes, when the end-items, components, modifications or processes have been, or are being, developed under this or any other Government contract or subcontract in which experimental, developmental or research work is, or was specified as an element of contract performance, except technical data pertaining to items, components, processes, or computer software developed at private expense (but see subdivision (b)(2)(ii) below);

(v) technical data or computer software prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished data or computer software;

(vi) technical data pertaining to end-items; components or processes, prepared or required to be delivered under this or any other Government contract or subcontract, for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics and performance requirements ("form, fit and function" data, e.g., specification control drawings, catalog sheets, envelope drawings, etc.);

(vii) manuals or instructional materials prepared or required to be delivered under this contract or any subcontract hereunder for installation, operation, maintenance or training purposes;

(viii) technical data or computer software which is in the public domain, or has been or is normally released or disclosed by the Contractor or subcontractor without restriction on further disclosure; and

(ix) technical data or computer software listed or described in an agreement incorporated into the schedule of this contract which the parties have predetermined, on the basis of subparagraphs (i) through (viii) above, and agreed will be furnished with unlimited rights.

(2) *Limited Rights.* The Government shall have limited rights in:

(i) technical data, listed or described in an agreement incorporated into the Schedule of this contract, which the parties have agreed will be furnished with limited rights; and

(ii) unpublished technical data pertaining to items, components or processes developed at private expense, and unpublished computer software documentation related to computer software that is acquired with restricted rights, other than such data as may be included in the data referred to in subdivisions (b)(1) (i), (v), (vi), (vii), and (viii) above. The word *unpublished*, as applied to technical data and computer software documentation, means that which has not been released to the public nor been furnished to others without restriction on further use or disclosure. For the purpose of this definition, delivery of limited rights technical data to or for the Government under a contract does not, in itself, constitute release to the public.

Limited rights shall be effective provided that only the portion or portions of each piece of data to which limited rights are to be asserted pursuant to subdivisions (2)(i) and (ii) above are identified (for example, by circling, underscoring, or a note), and that the piece of data is marked with the legend below in which is inserted:

A. the number of the prime contract under which the technical data is to be delivered,

B. the name of the Contractor and any subcontractor by whom the technical data was generated, and

C. an explanation of the method used to identify limited rights data.

Limited Rights Legend

Contract No. _____
Contractor: _____

Explanation of Limited Rights Data Identification Method Used

_____

_____

Those portions of this technical data indicated as limited rights data shall not, without the written permission of the above Contractor, be either (A) used, released or disclosed in whole or in part outside the Government, (B) used in whole or in part by the Government for manufacture or, in the case of computer software documentation, for preparing the same or similar computer software, or (C) used by a party other than the Government, except for: (1) Emergency repair or overhaul work only, by or for the Government, where the item or process concerned is not otherwise reasonably available to enable timely performance of the work, *Provided*, that the release or disclosure hereof outside the Government shall be made subject to a prohibition against further use, release or disclosure; or (2) release to a foreign government, as the interest of the United States may require, only for information or evaluation within such government or for emergency repair or overhaul work by or for such government under the conditions of (1) above. This legend, together with the indications of the portions of this data which are subject to such limitations shall be included on any reproduction hereof which includes any part of the portions subject to such limitations.

(3) *Restricted Rights.*

(i) The Government shall have restricted rights in computer software, listed or described in a license or agreement made a part of this contract, which the parties have agreed will be furnished with restricted rights, *Provided*, however, notwithstanding any contrary provision in any such license or agreement, the Government shall have the rights included in the definition of "restricted rights" in paragraph (a) above. Such restricted rights are of no effect unless the computer software is marked by the Contractor with the following legend:

Restricted Rights Legend

Use, duplication or disclosure is subject to restrictions stated in Contract No. _____ with _____ (Name of Contractor) _____.

and the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software. The Contractor may not place any legend on computer software indicating restrictions on the Government's rights in such software unless the restrictions are set forth in a license or agreement made a part of this contract prior to the delivery date of the software. Failure of the Contractor to apply a restricted rights legend to such computer software shall relieve the Government of liability with respect to such unmarked software.

(ii) Notwithstanding subdivision (i) above, commercial computer software and related documentation developed at private expense and not in public domain may, if the Contractor so elects, be marked with the following Legend:

Restricted Rights Legend

Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subdivision (b)(3)(ii) of the Rights in Technical Data and Computer Software clause at 252.227-7013.

_____

(Name of Contractor and Address)

When acquired by the Government, commercial computer software and related documentation so legended shall be subject to the following:

(A) Title to and ownership of the software and documentation shall remain with the Contractor.

(B) User of the software and documentation shall be limited to the facility for which it is acquired.

(C) The Government shall not provide or otherwise make available the software or documentation, or any portion thereof, in any form, to any third party without the prior written approval of the Contractor. Third parties do not include prime contractors, subcontractors and agents of the Government who have the Government's permission to use the licensed software and documentation at the facility, and who have agreed to use the licensed software and documentation only in accordance with these restrictions. This provision does not limit the right of the Government to use software, documentation, or information therein, which the Government may already have or obtains without restrictions.

(D) The Government shall have the right to use the computer software and documentation with the computer for which it is acquired at any other facility to which that computer may be transferred; to use the computer software and documentation with a backup computer when the primary computer is inoperative; to copy computer programs for safekeeping (archives) or backup purposes; and to modify the software and documentation or combine it with other software, *Provided*, that the unmodified portions shall remain subject to these restrictions.

(E) If the Contractor, within sixty (60) days after a written request, fails to substantiate by clear and convincing evidence that computer software and documentation marked with the above Restricted Rights Legend are commercial items and were developed at private expense, or if the Contractor fails to refute evidence which is asserted by the Government as a basis that the software is in the public domain, the Government may cancel or ignore any restrictive markings on such computer software and documentation and may use them with unlimited rights. Such written requests shall be addressed to the Contractor as identified in the Restricted Rights Legend.

(4) No legend shall be marked on, nor shall any limitation or restriction on rights of use be asserted as to, any data or computer software which the Contractor has previously delivered to the Government without restriction. The limited or restricted rights provided for by this paragraph shall not impair the right of the Government to use similar or identical data or computer software acquired from other sources.

(c) *Copyright.*

(1) In addition to the rights granted under the provisions of paragraph (b) above, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world, of the scope set forth below, under any copyright owned by the Contractor, in any work of authorship prepared for or acquired by the Government under this contract, to reproduce the work in copies or phonorecords, to distribute copies or phonorecords to the public, to perform or display the work publicly, and to prepare derivative works thereof, and to have others do so for Government purposes. With respect to technical data and computer software in which the Government has unlimited rights, the license shall be of the same scope as the rights set forth in the definition of "unlimited rights" in paragraph (a) above. With respect to technical data in which the Government has limited rights, the scope of the license is limited to the rights set forth in the definition of "limited rights" in paragraph (a) above.

With respect to computer software which the parties have agreed in accordance with subparagraph (b)(3) above will be furnished with restricted rights, the scope of the license is limited to such rights.

(2) Unless written approval of the Contracting Officer is obtained, the Contractor shall not include in technical data or computer software prepared for or acquired by the Government under this contract any works of authorship in which copyright is not owned by the Contractor without acquiring for the Government any rights necessary to perfect a copyright license of the scope specified in subparagraph (c)(1).

(3) As between the Contractor and the Government, the Contractor shall be considered the "person for whom the work was prepared" for the purpose of determining authorship under section 201(b) of Title 17, United States Code.

(4) Technical data delivered under this contract which carries a copyright notice shall also include the following statement which shall be placed thereon by the Contractor, or should the Contractor fail, by the Government: This material may be reproduced by or for the U.S. Government pursuant to the copyright license under the clause at 252.227-7013 (date).

(d) *Removal of Unauthorized Markings.* Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may correct, cancel, or ignore any marking not authorized by the terms of this contract on any technical data or computer software furnished hereunder if:

(1) The Contractor fails to respond within sixty (60) days to a written inquiry by the Government concerning the propriety of the markings, or

(2) The Contractor's response fails to substantiate, within sixty (60) days after written notice, the propriety of limited rights markings by clear and convincing evidence, or of restricted rights markings by identification of the restrictions set forth in the contract.

In either case, the Government shall give written notice to the Contractor of the action taken.

(e) *Relotion to Potents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(f) *Limitation on Charges for Dato ond Computer Software.* The Contractor recognizes that the Government or a foreign government with funds derived through the Military Assistance Program or otherwise through the United States Government may contract for property or services with respect to which the vendor may be liable to the Contractor for charges for the use of technical data or computer software on account of such a contract. The Contractor further recognizes that it is the policy of the Government not to pay in connection with its contracts, or to allow to be paid in connection with contracts made with funds derived through the Military Assistance Program or otherwise through the United States Government, charges for data ur computer software which the Government has a right to use and disclose to others, which is in the public domain, or which the Government has been given without restrictions upon its use and disclosure to others. This policy does not apply to reasonable reproduction, handling, mailing, and similar administrative costs incident to the furnishing of such data or computer software. In recognition of this policy, the Contractor agrees to participate in and make appropriate arrangements for the exclusion of such charges from such contracts, or for the refund of amounts received by the Contractor with respect to any such charges not so excluded.

(g) *Acquisition of Data and Computer Software from Subcontractors.*

(1) Whenever any technical data or computer software is to be obtained from a subcontractor under this contract, the Contractor shall use this same clause in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the Government's or the Contractor's rights in that subcontractor data or computer software which is required for the Government.

(2) Technical data required to be delivered by a subcontractor shall normally be delivered to the next-higher tier contractor. However, when there is a requirement in the prime contract for data which may be submitted with limited rights pursuant to subparagraph (b)(2) above, a subcontractor may fulfill such requirement by submitting such data directly to the Government rather than through the prime Contractor.

(3) The Contractor and higher-tier subcontractors will not use their power to award subcontracts as economic leverage to acquire rights in technical data or computer software from their subcontractors for themselves.

(End of clause)

ALTERNATE I (MAY 1981)

As prescribed at 227.412(a)(2), add the following paragraph to the basic clause:

Notice of Certain Limited Rights

(h) (1) Unless the Schedule provides otherwise, and subject to (2) below, the Contractor will promptly notify the Contracting Officer in writing of the intended use by the Contractor or a subcontractor in performance of this contract of any item, component or process for which technical data would fall within subparagraph (b)(2) above.

(2) Such notification is not required with respect to:

(i) Standard commercial items which are manufactured by more than one source of supply; or

(ii) Items, components or processes for which such notice was given pursuant to predetermination of rights in technical data in connection with this contract.

(3) Contracting Officer approval is not necessary under this clause for the Contractor to use the item, component or process in the performance of the contract.

ALTERNATE II (MAY 1981)

As prescribed at 227.412(a)(3), add the following paragraph to the basic clause:

( ) Publication for sale. If, prior to publication for sale by the Government and within the period designated in the contract or task order, but in no event later than 24 months after delivery of such data, the Contractor publishes for sale any data (1) designated in the contract as being subject to this paragraph and (2) delivered under this contract, and promptly notifies the Contracting Officer of these publications, the Government shall not publish such data for sale or authorize others to do so. This limitation on the Government's right to publish for sale any such data so published by the Contractor shall continue as long as the data is protected as a published work under the copyright law of the United States and is reasonably available to the public for purchase. Any such publication shall include a notice identifying this contract and recognizing the license rights of the Government under subparagraph (c)(1) of this clause. As to all such data not so published by the Contractor, this paragraph shall be of no force or effect.

252.227-7014 Predetermination of rights in technical data.

As prescribed at 227.412(b), insert the following provision:

PREDETERMINATION OF RIGHTS IN TECHNICAL DATA (JUL 1976)

(a) The Offeror is requested to identify in the proposal which of the below listed data (including data to be furnished in whole or in part by a subcontractor) when delivered, the Offeror intends to identify as limited rights data in accordance with paragraph (b) of the "Rights in Technical Data and Computer Software" clause of this Solicitation. This identification need not be made as to data which relate to standard commercial items which are manufactured by more than one source of supply.

[The solicitation should list here that technical data or portions thereof with respect to which the Government proposes use of the predetermination procedure. Data which clearly comes within subparagraph (b)(1) of the "Rights in Technical Data and Computer Software" clause and would therefore be acquired with unlimited rights should not be listed.]

(b) Limited rights data may be identified as such, pursuant to paragraph (a) above only if it pertains to items, components or processes developed at private expense. Nevertheless, it cannot be so identified if it comes within subparagraph (b)(1) of the "Rights in Technical Data and Computer Software" clause. At the request of the Contracting Officer or representative, the Offeror agrees to furnish clear and convincing evidence that the data which will be so identified comes within the definition of limited rights data.

(c) The listing of a data item in paragraph (a) above does not mean that the Government considers such item to come within the definition of limited rights data.

(End of provision)

252.227-7015 Rights in technical data—specific acquisition.

As prescribed at 227.412(c), insert the following clause:

RIGHTS IN TECHNICAL DATA—SPECIFIC ACQUISITION (MAR 1979)

(a) *Definition.* Technical Data means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work; or be usable or used to define a design or process or to acquire, produce, support, maintain, or operate materiel. The data may be graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design type documents; or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information, and documentation related to computer software. Technical data does not include computer software or financial, administrative, cost and pricing, and management data, or other information incidental to contract administration.

(b) *Government Rights.* The Government may duplicate, use and disclose in any manner and for any purpose whatsoever, and have others so do, all or any part of the technical data delivered by the Contractor to the Government under this contract.

(c) *Copyright.*

(1) In addition to the rights granted under the provisions of (b) above, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world under any copyright owned by the Contractor, in any work of authorship prepared for or acquired by the Government under this contract, to reproduce the work in copies or phonorecords, to distribute copies of phonorecords to the public, to perform or display the work publicly, and to prepare derivative works thereof, and to have others do so for Government purposes.

(2) Unless written approval of the Contracting Officer is obtained, the Contractor shall not include in technical data prepared for or acquired by the Government under this contract any works of authorship in which copyright is not owned by the Contractor without acquiring for the Government any rights necessary to perfect a copyright license of the scope specified in subparagraph (c)(1) above.

(3) As between the Contractor and the Government, the Contractor shall be considered the "person for whom the work was prepared" for the purpose of determining authorship under section 201(b) of Title 17, United States Code.

(4) Technical data delivered under this contract which carries a copyright notice shall also include the following statement which shall be placed thereon by the Contractor, or should the Contractor fail, by the Government: This material may be reproduced by or for the U.S. Government pursuant to the copyright license under the clause at 252.227-7015 (date).

(d) *Relation to Patents.* Nothing contained in this clause shall imply a license to the Government under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(e) *Limitation on Charges for Data.* The Contractor recognizes that the Government, or a foreign government with funds derived through the Military Assistance Program or otherwise through the United States Government, may contract for property or services with respect to which the vendor may be liable to the Contractor for charges for the use of technical data on account of such a contract. The Contractor further recognizes that it is the policy of the Government not to pay in connection with its contracts, or to allow to be paid in connection with contracts made with funds derived throughout the Military Assistance Program or otherwise through the United States Government, charges for data which the Government has a right to use and disclose to others, which is in the public domain, which the Government has been given without restrictions upon its use and disclosure to others. This policy does not apply to reasonable reproduction, handling, mailing, and similar administrative costs incident to the furnishing of such data. In recognition of this policy, the Contractor agrees to participate in and make appropriate arrangements for the exclusion of such charges from such contracts, or for the refund of amounts received by the Contractor with respect to any such charges not so excluded.

(End of clause)

252.227-7016 Contract schedule items requiring experimental, developmental, or research work.

As prescribed at 227.412(d), insert the following clause:

CONTRACT SCHEDULE ITEMS REQUIRING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK (MAR 1975)

For purposes of defining the nature of the work and the scope of rights in data granted to the Government pursuant to the "Rights in Technical Data and Computer Software" clause of this contract, it is understood and agreed that items (list applicable schedule line items or sub-line items or data exhibit numbers) require the performance of experimental, developmental, or research work. This clause does not constitute a determination as to whether or not any data required to be delivered under this contract falls within the definition of limited rights data.

(End of clause)

252.227-7017 Rights in technical data—major system and subsystem contracts.

As prescribed at 227.412(e), insert the following clause:

RIGHTS IN TECHNICAL DATA—MAJOR SYSTEM AND SUBSYSTEM CONTRACTS (NOV 1971)

The Contractor agrees that it will neither incorporate any provision in its subcontracts nor enter into any agreement, written or oral, either directly or indirectly, with subcontractors which has or may have the effect of prohibiting subcontractor sales directly to the Government of any supplies, like those manufactured or services like those furnished by such subcontractor under this contract or any follow-on production contract, or under any contract for parts or components of supplies furnished under this or any follow-on production contract. The Contractor further agrees that all data, including data in which the Government may not have unlimited rights, furnished or otherwise made available by the Contractor for use by subcontractors in furnishing such supplies or services, will be furnished to such subcontractors without payment to the Contractor of any fee, royalty or other charge by the subcontractor or the Government for use by such subcontractors in furnishing such supplies or services for sale directly to the Government. For the purpose of this paragraph, the term "fee, royalty or other charge" shall not include within its meaning fees, royalties of charges for reasonable returns on use of patents.

(End of clause)

252.227-7018 Restrictive markings on technical data.

As prescribed at 227.412(f), insert the following clause:

RESTRICTIVE MARKINGS ON TECHNICAL DATA (MAR 1975)

(a) The Contractor shall have, maintain, and follow throughout the performance of this contract, procedures sufficient to assure that restrictive markings are used on technical data required to be delivered hereunder only when authorized by the terms of the "Rights in Technical Data and Computer Software" clause of this contract. Such procedures shall be in writing. The Contractor shall also maintain a quality assurance system to assure compliance with this clause.

(b) As part of the procedures, the Contractor shall maintain (1) records to show how the procedures of paragraph (a) above were applied in determining that the markings are authorized, as well as (2) such records as are reasonably necessary to show pursuant to subparagraph (d)(2) of the "Rights in Technical Data and Computer Software" clause that restrictive markings used in any piece of technical data delivered under this contract are authorized.

(c) The Contractor shall, within sixty (60) days after award of this contract, identify in writing to the Contracting Officer by name or title the person(s) having the final responsibility within Contractor's organization for determining whether restrictive markings are to be placed on technical data to be delivered under this contract. The Contractor hereby authorizes direct contact between the Government and such person(s) in resolving questions involving restrictive markings.

(d) The Contracting Officer may evaluate or verify the Contractor's procedures to determine their effectiveness. Upon request, a copy of such written procedures shall be furnished. The failure of the Contracting Officer to evaluate or verify such procedures shall not relieve the Contractor of the responsibility for complying with paragraphs (a) and (b) above.

(e) (1) If the Contractor fails to make a good faith effort to institute the procedures of paragraphs (a) and (b) above, any limited rights markings on technical data delivered under this contract may be cancelled or ignored by the Contracting Officer. The Contracting Officer shall give written notice to the Contractor of the action taken, including identification of the data on which markings have been cancelled or ignored, and thereafter may use such data with unlimited rights.

(2) The Contracting Officer may give written notification to the Contractor of any failure to maintain or follow the established procedures, or of any material deficiency in the procedures, and state a period of time not less than thirty (30) days within which the Contractor shall complete corrective action. If corrective action is not completed within the specified time, restrictive markings on any technical data being prepared for delivery or delivered under this contract during that period shall be presumed to be unauthorized by the terms thereof and the Contracting Officer may cancel or ignore such markings if the Contractor is unable to substantiate the markings in accordance with the procedures of paragraph (d) of the clause at 252.227-7013, "Rights in Technical Data and Computer Software".

(f) Notwithstanding any provisions of this contract concerning inspection and acceptance, the acceptance by the Government of technical data with restrictive legends shall not be construed as a waiver of any rights accruing to the Government.

(g) This clause, including this paragraph (g), shall be included in each subcontract under which technical data is required to be delivered. When so inserted, "Contractor" shall be changed to "Subcontractor".

(End of clause)

252.227-7019 Identification of restricted rights computer software.

As prescribed at 227.412(g), insert the following provision:

IDENTIFICATION OF RESTRICTED RIGHTS COMPUTER SOFTWARE (APR 1977)

The Offeror's attention is called to the requirement in the "Rights in Technical Data and Computer Software" clause that any restrictions on the Government's concerning use or disclosure of computer software which was developed at private expense and is to be delivered under the contract must be set forth in an agreement made a part of the contract, either negotiated prior to award or included in a modification of the contract before such delivery. Therefore, the Offeror is requested to identify in his proposal to the extent feasible any such computer software which was developed at private expense and upon the use of which it desires to negotiate restrictions, and to state the nature of the proposed restrictions. If no such computer software is identified, it will be assumed that all deliverable computer software will be subject to unlimited rights.

(End of provision)

252.227-7020 Rights in data—special works.

As prescribed at 227.412(h), insert the following clause:

RIGHTS IN DATA—SPECIAL WORKS (MAR 1979)

(a) The term "works" as used herein includes literary, musical, and dramatic works; pantomimes and choreographic works; pictorial, graphic, and sculptural works; motion pictures and other audiovisual works; sound recordings; and works of similar nature. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) All works first produced in the performance of this contract shall be the sole property of the Government, which shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under section 201(b) of Title 17, United States Code, and the Government shall own all of the rights comprised in the copyright. The Contractor agrees not to assert or authorize others to assert any rights, or establish any claim to copyright, in such works. The Contractor, unless directed to the contrary by the Contracting Officer, shall place on any such works delivered under this contract the following notice:

c *(Year date of delivery)* United States Government as represented by the Secretary of *(department)*. All rights reserved.

In the case of a phonorecord, the c will be replaced by P.

(c) Except as otherwise provided in this contract, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world (1) to reproduce in copies or phonorecords, to prepare derivative works, to distribute copies or phonorecords, and to perform or display publicly any portion of a work which is not first produced in the performance of this contract but in which copyright is owned by the Contractor and which is incorporated in the work furnished under this contract, and (2) to authorize others to do so for Government purposes.

(d) Unless written approval of the Contracting Officer is obtained, the Contractor shall not include in any works prepared for or delivered to the Government under this contract any works of authorship in which copyright is not owned by the Contractor or the Government without acquiring for the Government any rights necessary to perfect a license of the scope set forth in paragraph (c) above.

(e) The Contractor shall indemnify and save and hold harmless the Government, and its officers, agents and employees acting for the Government, against any liability, including costs and expenses, (1) for violation of proprietary rights, copyrights, or rights of privacy or publicity, arising out of the creation, delivery, or use of any works furnished under this contract, or (2) based upon any libelous or other unlawful matter contained in such works.

(f) Nothing contained in this clause shall imply a license to the Government under any patent, or be construed as affecting the scope of any license of other right otherwise granted to the Government under any patent.

(g) Paragraphs (c) and (d) above are not applicable to material furnished to the Contractor by the Government and incorporated in the work furnished under the contract; *Provided*, such incorporated material is identified by the Contractor at the time of delivery of such work.

(End of clause)

252.227-7021 Rights in data—existing works.

As prescribed at 227.412(i), insert the following clause:

RIGHTS IN DATA—EXISTING WORKS (MAR 1979)

(a) The term "works" as used herein includes literary, musical, and dramatic works; pantomimes and choreographic works; pictorial, graphic and sculptural works; motion pictures and other audiovisual works; sound recordings; and works of a similar nature. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) Except as otherwise provided in this contract, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world (1) to distribute, perform publicly, and display publicly the works called for under this contract and (2) to authorize others to do so for Government purposes.

(c) The Contractor shall indemnify and save and hold harmless the Government, and its officers, agents, and employees acting for the Government, against any liability, including costs and expenses, (1) for violation of proprietary rights, copyrights, or rights of privacy or publicity arising out of the creation, delivery, or use, of any works furnished under this contract, or (2) based upon any libelous or other unlawful matter contained in same works.

(End of clause)

252.227-7022 Government rights (unlimited).

As prescribed at 227.412(j), insert the following clause:

GOVERNMENT RIGHTS (UNLIMITED) (MAR 1979)

(a) The Government shall have unlimited rights, in all drawings, designs, specifications, notes and other works developed in the performance of this contract, including the right to use same on any other Government design or construction without additional compensation to the Contractor. The Contractor hereby grants to the Government a paid-up license throughout the world to all such works to which he may assert or establish any claim under design patent or copyright laws. The Contractor for a period of three (3) years after completion of the project agrees to furnish the original or copies of all such works on the request of the Contracting Officer.

(End of clause)

252.227-7023 Drawings and other data to become property of government.

As prescribed at 227.412(k), insert the following clause:

DRAWINGS AND OTHER DATA TO BECOME PROPERTY OF GOVERNMENT (MAR 1979)

All designs, drawings, specifications, notes and other works developed in the performance of this contract shall become the sole property of the Government and may be used on any other design or construction without additional compensation to the Contractor. The Government shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under section 201(b) of Title 17, United States Code. With respect thereto, the Contractor agrees not to assert or authorize others to assert any rights nor establish any claim under the design patent or copyright laws. The Contractor for a period of three (3) years after completion of the project agrees to furnish all retained works on the request of the Contracting Officer. Unless otherwise provided in this contract, the Contractor shall have the right to retain copies of all works beyond such period.

(End of clause)

252.227-7024 Notice and approval of restricted designs.

As prescribed at 227.412(l), insert the following clause:

NOTICE AND APPROVAL OF RESTRICTED DESIGNS (APR 1984)

In the performance of this contract, the Contractor shall, to the extent practicable, make maximum use of structures, machines, products, materials, construction methods, and equipment that are readily available through Government or competitive commercial channels, or through standard or proven production techniques, methods, and processes. Unless approved by the Contracting Officer, the Contractor shall not produce a design or specification that requires in this construction work the use of structures, products, materials, construction equipment, or processes that are known by the Contractor to be available only from a sole source. The Contractor shall promptly report any such design or specification to the Contracting Officer and give the reason why it is considered necessary to so restrict the design or specification.

(End of clause)

252.227-7025 Rights in technical data and computer software (SBIR program).

As prescribed at 227.412(m), insert the following clause:

RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE (SBIR PROGRAM) (APR 1984)

(a) *Definitions.* "Computer Data Base", as used in this clause, means a collection of data in a form capable of being processed and operated on by a computer.

"Computer Program", as used in this clause, means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. Computer programs may be either machine-dependent or machine-independent, and may be general-purpose in nature or designed to satisfy the requirements of a particular user.

"Computer Software", as used in this clause, means computer programs and computer data bases.

"Computer Software Documentation", as used in this clause, means technical data, including computer listings and printouts, in human-readable form which (1) documents the design or details of computer software, (2) explains the capabilities of the software, or (3) provides operating instructions for using the software to obtain desired results from a computer.

"License Rights", as used in this clause, means rights to use, duplicate, or disclose technical data or computer software, in whole or in part and in any manner, for Government purposes only, and to have or permit others to do so for Government purposes only. License Rights do not grant to the Government the right to have or permit others to use technical data or computer software for commercial purposes.

"Limited Rights", as used in this clause, means rights to use, duplicate, or disclose technical data, in whole or in part, by or for the Government, with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data be (1) released or disclosed in whole or in part outside the Government, (2) used in whole or in part by the Government for manufacture, or in the case of computer software documentation, for preparing the same or similar computer software, or (3) used by a party other than the Government.

"Restricted Rights", as used in this clause, means rights that apply only to computer software, and include, as a minimum, the right to:

(1) Use computer software with the computer for which or with which it was acquired, including use at any Government installation to which the computer may be transferred by the Government;

(2) Use computer software with a backup computer if the computer for which or with which it was acquired is inoperative;

(3) Copy computer programs for safekeeping (archives) or backup purposes; and

(4) Modify computer software, or combine it with other software, subject to the provision that those portions of the derivative software incorporating restricted rights software are subject to the same restricted rights.

In addition, restricted rights include any other specific rights not inconsistent with the minimum rights in (1)–(4) above that are listed or described in this contract or described in a license or agreement made a part of this contract.

"Technical Data", as used in this clause, means recorded information regardless of form or characteristic, of a scientific or technical nature. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications and related information, and computer software documentation. Technical data does not include computer software or financial, administrative, cost and pricing, and management data, or other information incidental to contract administration.

"Unlimited Rights", as used in this clause, means rights to use, duplicate, or disclose technical data or computer software, in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(b) *Government Rights.*

(1) *License Rights.* For a period of two (2) years (or such other period as may be authorized by the Contracting Officer for good cause shown) after the delivery and acceptance of the last deliverable item under this contract, the Government shall have limited rights and, after the expiration of the two-year period, shall have license rights in:

(i) Technical data and computer software resulting directly from performance of experimental, developmental, or research work which was specified as an element of performance in this contract or any subcontract hereunder;

(ii) Computer software required to be originated or developed under this contract or any subcontract hereunder, or generated as a necessary part of performing this contract or any subcontract hereunder;

(iii) Technical data necessary to enable manufacture of end-items, components and modifications, or to enable the performance of processes, when the end-items, components, modification or processes have been, or are being, developed under this contract or any subcontract hereunder in which experimental, developmental or research work is, or was specified as an element of contract performance, except technical data pertaining to items, components, processes, or computer software developed at private expense (but see subdivision (b)(2)(i) below);

(iv) Technical data or computer software prepared or required to be delivered under this contract or any subcontract hereunder and constituting corrections or changes to Government-furnished data or computer software;

(v) Technical data pertaining to end-items, components or processes, prepared or required to be delivered under this contract or any subcontract hereunder for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics and performance requirements ("form, fit and function" data, e.g., specification control drawings, catalog sheets, envelope drawings, etc.);

(vi) Manuals or instructional materials prepared or required to be delivered under this contract or any subcontract hereunder for installation, operation, maintenance, or training purposes; and

(vii) Any other technical data or computer software prepared or required to be delivered unden this contract or any subcontract hereunder, other than technical data furnished with limited or unlimited rights pursuant to subparagraphs (b) (2) and (4) below or computer software furnished with restricted or unlimited rights pursuant to subparagraphs (b) (3) and (4) below.

License Rights shall be effective with respect to the technical data identified in subdivisions (b)(1) (i), (iii), (iv), (v), (vi), and (vii) above only if each piece of data is marked with the License Rights Legend below in which is inserted the number of the prime contract under which the data is to be delivered, the name of the contractor and any subcontractor by whom the data was generated, and the period in which the data is subject to limited rights, and shall be effective with respect to the computer software identified in subdivisions (b)(1) (i), (ii), and (iv) and (vii) above only if each unit of software is marked with an abbreviated License Rights Legend reciting that the use, duplication, or disclosure of the software is subject to the same license rights restrictions included in the same contract (identified by number) with the same Contractor (identified by name):

License Rights Legend

Contract No. _____
Contractor or subcontractor: _____

For a period of two (2) years after the delivery and acceptance of the last deliverable item under this contract, this technical data shall not, without the written permission of the above Contractor, be either (A) used, released or disclosed in whole or in part outside the Government, (B) used in whole or in part by the Government for manufacture, or (C) used by a party other than the Government. After the expiration of the two (2) year period, the Government may use, duplicate, or disclose the data, in whole or in part and in any manner, for Government purposes only, and may have or permit others to do so for Government purposes only. All rights to use or duplicate the data in whole or in part for commercial purposes are retained by the Contractor, and others to whom this data may be disclosed agree to abide by this commercial purposes limitation. The Government assumes no liability for use or disclosure of the data by others for commercial purposes. This legend shall be included on any reproduction of this data, in whole or in part.

(2) *Limited Rights.* The Government shall have limited rights in:

(i) Unpublished technical data pertaining to items, components or processes developed at private expense, and unpublished computer software documentation related to computer software that is acquired with restricted rights, other than such data as may be included in the data referred to in subdivisions (b)(1) (i), (iv), (v), and (vi) above. The word *unpublished*, as applied to technical data and computer software documentation, means that which has not been released to the public nor been furnished to others without restriction on further use or disclosure. For the purpose of this definition, delivery of limited rights technical data to or for the Government under a contract does not, in itself, constitute release to the public.

Limited Rights shall be effective with respect to the technical data mentioned in subdivision (b)(2)(i) above only if each piece of data is marked with the Limited Rights Legend below in which is inserted the number of the prime contract under which the data is to be delivered and the name of the Contractor and any subcontractor by whom the data was generated:

Limited Rights Legend

Contract No. _____
Contractor or subcontractor: _____

This technical data shall not, without the written permission of the above contractor, be either (A) used, released or disclosed in whole or in part outside the Government, (B) used in whole or in part by the Government for manufacture, or (C) used by a party other than the Government. This legend shall be included on any reproduction of this data, in whole or in part.

(3) *Restricted Rights.* The Government shall have restricted rights in privately developed computer software, listed or described in a license or agreement made a part of this contract, which the parties have agreed will be furnished with restricted rights: *Provided*, however, notwithstanding any contrary provision in any such license or agreement, the Government shall have the rights included in the definition of "restricted rights" in paragraph (a) above. Such restricted rights are of no effect unless the computer software is marked by the Contractor with the following legend:

Restricted Rights Legend

Use, duplication or disclosure is subject to restrictions stated in Contract No. _____ with _____ (Name of Contractor).

and the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software. The Contractor may not place any legend on computer software indicating restrictions on the Government's rights in such software unless the restrictions are set forth in a license or agreement made a part of this contract prior to the delivery date of the software. Failure of the Contractor to apply a restricted rights legend to such computer software shall relieve the Government of liability with respect to such unmarked software.

(4) *Unlimited Rights.* The Government shall have unlimited rights in:

(i) technical data or computer software required to be prepared or delivered under this contract or any subcontract hereunder that was previously delivered or previously required to be delivered to the Government under any contract or subcontract with unlimited rights;

(ii) technical data or computer software that is in the public domain or has been or is normally released or disclosed by the Contractor or any subcontractor without restriction on further use or disclosure; and

(iii) computer data bases, consisting of information supplied by the Government, information in which the Government has unlimited rights, or information which is in the public domain.

(5) No legend shall be marked on, nor shall any limitation or restriction on rights of use be asserted as to, any technical data or computer software which the Contractor or any subcontractor has previously delivered to the Government without restriction. The license, limited or restricted rights provided for by this paragraph (b) shall not impair the right of the Government to use similar or identical technical data or computer software acquired from other sources.

(c) *Copyright.*

(1) The Contractor is hereby granted permission to assert or establish claim to or ownership of copyright in any work of authorship prepared for or acquired by the Government under this contract. In addition to the rights granted under the provisions of paragraph (b) above, the Contractor hereby grants to the Government a nonexclusive, irrevocable, paid-up license throughout the world of the scope set forth below, under any such copyright to reproduce the work in copies or phonorecords, to distribute copies or phonorecords to the public, to perform or display the work publicly, and to prepare derivative works thereof, and to have others do so for Government purposes. All published works for which claim to or ownership of copyright has been asserted or established shall contain an appropriate credit line identifying Government support. With respect to technical data and computer software in which the Government has license rights or unlimited rights, the license shall be of the same scope as the rights set forth in the definitions of "license rights" and "unlimited rights" in paragraph (a) above. With respect to technical data in which the Government has limited rights, the scope of the license is limited to the rights set forth in the definition of "limited rights" in paragraph (a) above. With respect to computer software which the parties have agreed in accordance with paragraph (b)(3) above will be furnished with restricted rights, the scope of the license is limited to such rights.

(2) Unless written approval of the Contracting Officer is obtained, the Contractor shall not include in technical data or computer software prepared for or acquired by the Government under this contract any works of authorship in which copyright is not owned by the Contractor without acquiring for the Government any rights necessary to perfect a copyright license of the scope specified in subparagraph (c)(1).

(3) As between the Contractor and the Government, the Contractor shall be considered the "person for whom the work was prepared" for the purpose of determining authorship under Section 201(b) of Title 17, United States Code.

(4) Technical data delivered under this contract which carries a copyright notice shall also include the following statement which shall be placed thereon by the Contractor, or should the Contractor fail, by the Government: This material may be reproduced by or for the U.S. Government pursuant to the copyright license under the clause at 252.227-7025 (date).

(d) *Removal of Unauthorized Markings.* Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may correct, cancel, or ignore any marking not authorized by the terms of this contract on any technical data or computer software furnished hereunder, if:

(1) the Contractor fails to respond within sixty (60) days to a written inquiry by the Government concerning the propriety of the markings; or

(2) the Contractor's response fails to substantiate, within sixty (60) days after written notice, the propriety of limited rights markings by clear and convincing evidence, or of restricted rights markings by identification of the restrictions set forth in the contract.

In either case, the Government shall give written notice to the Contractor of the action taken.

(e) *Omitted Markings.* Technical data and computer software delivered to the Government without any of the legends or markings specified in paragraph (b) above or that are not copyrighted shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the use, duplication, or disclosure of such data and software. However, to the extent the data and software have not been disclosed without restriction outside the Government, the Contractor may request, within six (6) months after delivery of such data and software, permission to place restrictive legends on such data and software at the Contractor's expense and the Government may so permit if the Contractor:

(1) demonstrates that the omission of the restrictive legends was inadvertent;

(2) establishes pursuant to paragraph (d) above that the use of the markings is authorized; and

(3) acknowledges that the Government has no liability with respect to the use or disclosure of such data and software that was received prior to the addition of the restrictive markings.

(f) *Relation to Patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(g) *Acquisition of Data and Computer Software from Subcontractor.*

(1) Whenever any technical data or computer software is to be obtained from a subcontractor under this contract, the Contractor shall use this same clause in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the Government's or the Contractor's rights in that subcontractor data or computer software which is required for the Government.

(2) Technical data required to be delivered by a subcontractor shall normally be delivered to the next higher-tier Contractor. However, when there is a requirement in the prime contract for data which may be submitted with limited rights pursuant to subparagraph (b)(2) above, a subcontractor may fulfill such requirement by submitting such data directly to the Government rather than through the prime Contractor.

(3) The Contractor and higher-tier subcontractors will not use their power to award subcontracts as economic leverage to acquire rights in technical data or computer software from their subcontractors for themselves.

(End of clause)

252.227-7026 Deferred delivery of technical data or computer software.

As prescribed at 227.412(n), insert the following clause:

DEFERRED DELIVERY OF TECHNICAL DATA OR COMPUTER SOFTWARE (NOV 1974)

The Government shall have the right to require, at any time during the performance of this contract, within two (2) years after either acceptance of all items (other than data or computer software) to be delivered under this contract or termination of this contract, whichever is later, the delivery of any technical data or computer software item identified in this contract as "deferred delivery" data or computer software. The obligation to furnish such technical data required to be prepared by a subcontractor and pertaining to an item obtained from him shall expire two (2) years after the date Contractor accepts the last delivery of that item from that subcontractor for use in performing this contract.

(End of clause)

252.227-7027 Deferred ordering of technical data or computer software.

As prescribed at 227.412(o), insert the following clause:

DEFERRED ORDERING OF TECHNICAL DATA OR COMPUTER SOFTWARE (NOV 1974)

In addition to technical data or computer software specified elsewhere in this contract to be delivered hereunder, the Government may, at any time during the performance of this contract or within a period of three (3) years after acceptance of all items (other than technical data or computer software) to be delivered under this contract or the termination of this contract, order any technical data or computer software (as defined in the "Rights in Technical Data and Computer Software" clause of this contract) generated in the performance of this contract or any subcontract hereunder. When such technical data or computer software is ordered, the Contractor shall be compensated for converting the data or computer software into the prescribed form, for reproduction and delivery. The obligation to deliver such technical data of a subcontractor and pertaining to an item obtained from him shall expire three (3) years after the date the Contractor accepts the last delivery of that item from that subcontractor under this contract. The Government's rights to use said data or computer software shall be pursuant to the "Rights in Technical Data and Computer Software" clause of this contract.

(End of clause)

252.227-7028 Requirement for technical data certification.

As prescribed at 227.412(p), insert the following provision:

REQUIREMENT FOR TECHNICAL DATA CERTIFICATION (APR 1974)

The Offeror shall submit with its offer a certification as to whether the Offeror has delivered or is obligated to deliver to the Government under any contract or subcontract the same or substantially the same technical data included in its offer; if so, the Offeror shall identify one such contract or subcontract under which such technical data was delivered or will be delivered, and the place of such delivery.

(End of provision)

252.227-7029 Identification of technical data.

As prescribed at 227.412(q), insert the following clause:

IDENTIFICATION OF TECHNICAL DATA (MAR 1975)

Technical Data (as defined in the "Rights in Technical Data and Computer Software" clause of this contract) delivered under this contract shall be marked with the number of this contract, name of Contractor, and name of any subcontractor who generated the data.

(End of clause)

252.227-7030 Technical data—withholding of payment.

As prescribed at 227.412(r), insert the following clause:

TECHNICAL DATA—WITHHOLDING OF PAYMENT (JUL 1976)

(a) If "Technical Data" (as defined in the clause of this contract entitled "Rights in Technical Data and Computer Software"), or any part thereof, specified to be delivered under this contract, is not delivered within the time specified by this contract or is deficient upon delivery (including having restrictive markings not specifically authorized by this contract), the Contracting Officer may until such data is accepted by the Government, withhold payment to the Contractor of ten percent (10%) of the total contract price or amount unless a lesser withholding is specified in the contract. Payments shall not be withheld nor any other action taken pursuant to this paragraph when the Contractor's failure to make timely delivery or to deliver such data without deficiencies arises out of causes beyond the control and without the fault or negligence of the Contractor.

(b) After payments total ninety percent (90%) of the total contract price or amount and if all technical data specified to be delivered under this contract has not been accepted, the Contracting Officer may withhold from further payment such sum as the Contracting Officer considers appropriate, not exceeding ten percent (10%) of the total contract price or amount unless a lesser withholding limit is specified in the contract.

(c) The withholding of any amount or subsequent payment to the Contractor shall not be construed as a waiver of any rights accruing to the Government under this contract.

(End of clause)

252.227-7031 Data requirements.

As prescribed at 227.412(s), insert the following clause:

DATA REQUIREMENTS (APR 1972)

(a) Data means recorded information, regardless of form or characteristics.

(b) The Contractor is required to deliver only the data items listed on the DD Form 1423 (Contract Data Requirements List) and data items identified in and deliverable under any contract clause of FAR Subpart 52.2 and DoD FAR Supplement Subpart 252.2 made a part of the contract.

(End of clause)

252.227-7032 Rights in technical data and computer software (foreign).

As prescribed at 227.412(t), insert the following clause:

RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE (FOREIGN) (JUN 1975)

The United States Government may duplicate, use, and disclose in any manner for any purposes whatsoever, including delivery to other governments for the furtherance of mutual defense of the United States Government and other governments, all technical data including reports, drawings and blueprints, and all computer software, specified to be delivered by the Contractor to the United States Government under this contract.

(End of clause)

252.227-7033 Rights in shop drawings.

As prescribed at 227.412(u), insert the following clause:

RIGHTS IN SHOP DRAWINGS (APR 1966)

(a) Shop drawings for construction means drawings, submitted to the Government by the Construction Contractor, subcontractor or any lower tier subcontractor pursuant to a construction contract, showing in detail (i) the proposed fabrication and assembly of structural elements and (ii) the installation (i.e., form, fit, and attachment details) of materials or equipment. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(b) This clause, including this paragraph (b), shall be included in all subcontracts hereunder at any tier.

(End of clause)

252.227-7034 Patents-subcontracts.

As prescribed at 227.304-4, insert the following clause:

PATENTS-SUBCONTRACTS (APR 1984)

The Contractor will include the clause at FAR 52.227-12, Patent Rights—Retention by the Contractor (Long Form) suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by other than a small business firm or nonprofit organization.

(End of clause)

252.228-7000 Reimbursement for war hazard losses.

As prescribed at 228.305(e)(2), insert the following clause:

REIMBURSEMENT FOR WAR HAZARD LOSSES (JUL 1968)

(a) The Contractor's costs for assuming liability for employee protection against war hazard risks pursuant to paragraph (b) of the clause of this contract entitled "Workers' Compensation and War Hazard Insurance" shall be an allowable cost under this contract, subject to the following:

(i) The Contractor shall submit proof of loss files to support payment or denial of each claim.

(ii) As soon as practicable, but no later than one year after the expiration or termination of this contract, unless the time shall be extended by the Contracting Officer, the Contractor shall convert each claim which has not been finally settled into a suitable arrangement under which the claim can be extinguished by the Contractor with a lump sum payment. Subject to approval by the Contracting Officer, the Contractor shall thereupon obtain necessary release documents and settle the claim by lump sum arrangement, taking into account any payments previously made.

(iii) As to any potential claim which is known to, or reasonably should be within the knowledge of, the Contractor at the time of final settlement under this contract, the Contractor shall, at that time, present to the Government a full report and evaluation, indicating as to each potential claim that a reasonable investigation of the circumstances has been made, the results thereof, an evaluation of the merits, and an estimate of the amount involved should the potential claim mature into a valid obligation.

(iv) The cost of insurance against a liability reimbursable under this clause shall not be an allowable cost or otherwise recoverable under this contract.

(b) The Government may require the Contractor to assign to the Government in the manner, at the times, and to the extent directed by the Contracting Officer all right, title and interest of the Contractor to any refund, rebate or recapture arising out of any claim settlement. The Government may handle such assigned entitlements in such manner as it deems appropriate and may recover any benefits related to claim settlements.

(c) The Contractor shall, as soon as practicable after an occurrence which appears to give rise to a claim under this portion of the contract, perform such investigations as may be appropriate and promptly notify the Contracting Officer in writing of any additional amount estimated to be necessary to be obligated on account of such claim or potential claim. In addition, the Contractor shall give the Government or its representatives immediate written notice of any suit or action filed, the cost or expense of which may be reimbursable to the Contractor under this clause. The Contractor agrees to render full assistance to the Government in connection with any third party suit or claim relating to this clause or its subject matter which the Government elects to prosecute or defend in its own behalf.

(End of Clause)

252.228-7001 Ground and flight risk.

As prescribed at 228.306(a)(1), insert the following clause:

GROUND AND FLIGHT RISK (OCT 1975)

(a) Notwithstanding any other provisions of this contract, except as may be specifically provided in the Schedule as an exception to

this clause, the Government, subject to the definitions and limitations of this clause, assumes the risk of damage to, or loss or destruction of, aircraft "in the open", during "operation", and in "flight", as these terms are defined below, and agrees that the Contractor shall not be liable to the Government for any such damage, loss, or destruction, the risk of which is so assumed by the Government.

(b) For the purposes of this clause:

(i) Unless otherwise specifically provided in the Schedule, the term "aircraft" means—

(A) aircraft (including (I) complete aircraft, and (II) aircraft in the course of being manufactured, disassembled, or reassembled; *Provided*, that an engine or a portion of a wing or a wing is attached to a fuselage of such aircraft) to be furnished to the Government under this contract (whether before or after acceptance by the Government); and

(B) aircraft (regardless of whether in a state of disassembly or reassembly) furnished by the Government to the Contractor under this contract; including all property installed therein, or in the process of installation, or temporarily removed from such aircraft; *Provided*, however, that such aircraft and property are not covered by a separate bailment agreement.

(ii) The term "in the open" means located wholly outside of buildings on the Contractor's premises or at such other places as may be described in the Schedule as being in the open for the purposes of this clause, except that aircraft furnished by the Government shall be deemed to be in the open at all times while in Contractor's possession, care, custody, or control.

(iii) The term "flight" means any flight demonstration, flight test, taxi test, or other flight, made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the _____.* With respect to land based aircraft, "flight" shall commence with the taxi roll from a flight line on the Contractor's premises, and continue until the aircraft has completed the taxi roll in returning to a flight line on the Contractor's premises; with respect to seaplanes, "flight" shall commence with the launching from a ramp on the Contractor's premises and continue until the aircraft has completed its landing run upon return and is beached at a ramp on the Contractor's premises; with respect to helicopters, "flight" shall commence upon engagement of the rotors for the purpose of take-off from the Contractor's premises and continue until the aircraft has returned to the ground on the Contractor's premises and the rotors are disengaged; and with respect to vertical take-off aircraft, "flight" shall commence upon disengagement from any launching platform or device on the Contractor's premises and continue until the aircraft has been re-engaged to any launching platform or device on the Contractor's premises, *Provided*, however, that aircraft off the Contractor's premises shall be deemed to be in flight when on the ground or water only during periods of reasonable duration following emergency landing, other landings made in the performance of this contract, or landings approved by _____.* in writing.

(iv) The term "Contractor's premises" means those premises designated as such in the Schedule or in writing by the _____,* and any other place to which aircraft are moved for the purpose of safeguarding the aircraft.

(v) The term "operation" means operations and tests, other than on any production line, of aircraft, when not in flight, whether or not the aircraft is in the open or in motion during the making of any such operations or tests, and includes operations and tests of equipment, accessories, and power plants, only when installed in aircraft.

(vi) The term "flight crew members" means the pilot, the co-pilot and unless otherwise specifically provided in the Schedule, the flight engineer, navigator, bombardier-navigator, and defensive systems operator, when required, or assigned to their respective crew positions, to conduct any flight on behalf of the Contractor.

(c)(1) The Government's assumption of risk under this clause, as to aircraft in the open, shall continue in effect unless terminated pursuant to subparagraph (3) below. Where the _____* finds that any of such aircraft is in the open under unreasonable conditions, that Government representative shall notify the Contractor in writing of the conditions the representative finds to be unreasonable and require the Contractor to correct such conditions within a reasonable time.

(2) Upon receipt of such notice, the Contractor shall act promptly to correct such conditions, regardless of whether the Contractor agrees that such conditions are in fact unreasonable. To the extent that the Contracting Officer may later determine that such conditions were not in fact unreasonable, an equitable adjustment shall be made in the contract price to compensate the Contractor for any additional costs it incurred in correcting such conditions and the contract shall be modified in writing accordingly. Any dispute as to the unreasonableness of such conditions or the equitable adjustment shall be deemed to be a dispute concerning a question of the fact within the meaning of the clause of this contract entitled "Disputes".

(3) If the _____* finds that the Contractor failed to act promptly to correct such conditions or has failed to correct such conditions within a reasonable time, that Government representative may terminate the Government's assumption of risk under this clause, as to any of the aircraft which is in the open under such conditions, such termination to be effective at 12:01 A.M. on the fifteenth day following the day of receipt by the Contractor of written notice thereof. If the Contracting Officer later determines that the Contractor acted promptly to correct such conditions or that the time taken by the Contractor was not in fact unreasonable, an equitable adjustment shall, notwithstanding paragraph (g) of this clause, be made in the contract price to compensate the Contractor for any additional costs it incurred as a result of termination of the Government's assumption of risk under this clause and the contract shall be modified in writing accordingly. Any dispute as to whether the Contractor failed to act promptly to correct such conditions, or as to the reasonableness of the time for correction of such conditions, or as to such equitable adjustment, shall be deemed to be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes".

(4) In the event the Government's assumption of risk under this clause is terminated in accordance with (3) above, the risk of loss with respect to Government-furnished property shall be determined in accordance with the clause of this contract, if any, entitled "Government Property" until the Government's assumption of risk is reinstated in accordance with (5) below.

(5) When unreasonable conditions have been corrected, the Contractor shall promptly notify the Government thereof. The Government may elect to again assume the risks and relieve the Contractor of liabilities as provided in this clause, or not, and the _____* shall notify the Contractor of the Government's election. If, after correction of the unreasonable conditions the Government elects to again assume such risks and relieve the Contractor of such liabilities, the Contractor shall be entitled to an equitable adjustment in the contract price for costs of insurance, if any, extending from the end of the third working day after the Contractor notifies the Government of such correction until the Government notifies the Contractor of such election. If the Government elects not to again assume such risks, and such conditions have in fact been corrected, the Contractor shall be entitled to an equitable adjustment for costs of insurance, if any, extending after such third working day.

(d) The Government's assumption of risk shall not extend to damage to, or loss or destruction of, such aircraft:

(i) Resulting from failure of the Contractor, due to willful misconduct or lack of good faith of any of the Contractor's managerial personnel, to maintain and administer a program for the protection and preservation of aircraft in the open, and during operation, in accordance with sound industrial practice (the term "Contractor's managerial personnel" means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or other equivalent representatives, who has supervision or direction of all or substantially all of the Contractor's business, or all or substantially all of the Contractor's operations at any one plant or separate location at which this contract is performed, or a separate and complete major industrial operation in connection with the performance of this contract);

(ii) Sustained during flight if the flight crew members conducting such flight have not been approved in writing by the _____;*

(iii) While in the course of transportation by rail, or by conveyance on public streets, highways, or waterways, except for Government-furnished property;

(iv) To the extent that such damage, loss or destruction is in fact covered by insurance;

(v) Consisting of wear and tear, deterioration (including rust and corrosion), freezing, or mechanical, structural, or electrical breakdown or failure, unless such damage is the result of other loss, damage, or destruction covered by this clause; *Provided*, however in the case of Government-furnished property, if such damage consists of reasonable wear and tear or deterioration, or results from inherent vice in such property, this exclusion shall not apply; or

(vi) Sustained while the aircraft is being worked upon and directly resulting therefrom, including but not limited to any repairing, adjusting, servicing or maintenance operation, unless such damage, loss, or destruction, is of a type which would be covered by insurance which would customarily have been maintained by the Contractor at the time of such damage, loss, or destruction, but for the Government's assumption of risk under this clause.

(e) With the exception of damage to, or loss or destruction of aircraft in "flight", the Government's assumption of risk under this clause shall not extend to the first $1,000 of loss or damage resulting from each event separately occurring. The Contractor assumes the risk of and shall be responsible for the first $1,000 of loss of or damage to aircraft "in the open" or during "operation" resulting from each event separately occurring, except for reasonable wear and tear and except to the extent the loss or damage is caused by negligence of Government personnel. If the Government elects to require that the aircraft be replaced or restored by the Contractor to the condition in which it was immediately prior to the damage, the equitable adjustment in the price authorized by paragraph (i) below shall not include the dollar amount of the risk assumed by the Contractor under this paragraph. In the event the Government does not elect repair or replacement, the Contractor agrees to credit the contract price or pay the Government $1,000 (or the amount of the loss if smaller) as directed by the Contracting Officer.

(f) A subcontractor shall not be relieved from liability for damage to, or loss or destruction of, aircraft while in the subcontractor's possession or control, except to the extent that the subcontract, with the prior written approval of the Contracting Officer, provides for relief of the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of such aircraft in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this contract. Where a subcontractor has not been relieved from liability for any damage, loss, or destruction of aircraft and any damage, loss, or destruction occurs, the Contractor shall enforce the liability of the subcontractor for such damage to, or loss or destruction of, the aircraft for the benefit of the Government.

(g) The Contractor warrants that the contract price does not and will not include, except as may be otherwise authorized in this clause, any charge or contingency reserve for insurance (including self-insurance funds or reserves) covering any damage to, or loss or destruction of, aircraft while in the open, during operation, or in flight, the risk of which has been assumed by the Government under the provisions of this clause, whether or not such assumption may be terminated as to aircraft in the open.

(h) In the event of damage to, or loss or destruction of, aircraft in the open, during operation, or in flight, the Contractor shall take all reasonable steps to protect such aircraft from further damage, separate damaged and undamaged aircraft, put all aircraft in the best possible order and further, except in cases covered by (e) above, the Contractor should furnish to the _____* a statement of:

(i) The damaged, lost, or destroyed aircraft;

(ii) The time and origin of the damage, loss or destruction;

(iii) All known interests in commingled property of which aircraft are a part; and

(iv) The insurance, if any, covering any part of the interest in such commingled property.

Except in cases covered by (e) above, an equitable adjustment shall be made in the amount due under this contract for expenditures made by the Contractor in performing his obligations under this paragraph (h), and this contract shall be modified in writing accordingly.

(i) If prior to delivery and acceptance by the Government any aircraft is damaged, lost, or destroyed and the Government has under this clause assumed the risk of such damage, loss or destruction, the Government shall either (1) require that such aircraft be replaced or restored by the Contractor to the condition in which it was immediately prior to such damage, or (2) shall terminate this contract with respect to such aircraft. In the event the Government requires that the aircraft be replaced or restored, an equitable adjustment shall be made in the amount due under this contract and in the time required for its performance, and this contract shall be modified in writing accordingly. If, in the alternative, this contract is terminated under this paragraph with respect to such aircraft and under this clause the Government has assumed the risk of such damage, loss, or destruction, the Contractor shall be paid the contract price for said aircraft (or, if applicable, any work to be performed on said aircraft) less such amounts as the Contracting Officer determines (1) that it would have cost the Contractor to complete the aircraft (or any work to be performed on said aircraft) together with anticipated profit, if any, on any such uncompleted work, and (2) to be the value, if any, of the damaged aircraft or any remaining portion thereof retained by the Contractor. The Contracting Officer shall have the right to prescribe the manner of disposition of the damaged, lost, or destroyed aircraft, or any remaining parts thereof; and, if any additional costs of such disposition are incurred by the Contractor, a further equitable adjustment will be made in the amount due to the Contractor. Failure of the parties to agree upon an equitable adjustment or upon the amount to be paid in the event of termination of the contract with respect to any aircraft, shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(j) In the event the Contractor is at any time reimbursed or compensated by any third person for any damage, loss, or destruction of any aircraft, the risk of which has been assumed by the Government under the provisions of this clause and for which the Contractor has been compensated by the Government, the Contractor shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such damage, loss, or destruction and, upon the request of the _____,* shall at the Government's expense furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment or subrogation in favor of the Government) in obtaining recovery.

(End of Clause)

* In the foregoing clause, insert in contracts of the Department of the Army, the Department of the Navy, the Department of the Air Force, and in contracts to be administered by the Defense Contract Administration Services the activity designated in combined regulation identified as Air Force Regulation 55-22, Army Regulation 95-20, NAVAIR Instruction 3710.1A, Defense Logistics Agency Regulation 8210.1, dated 8 October 1971, Subject: Requirements for Contractor Operating Procedures and Flight Crews, enclosure 1.

252.228-7002 Flight risks.

As prescribed at 228.307-2(S-70)(1), insert the following clause:

FLIGHT RISKS (OCT 1975)

(a) Notwithstanding any other provision of this contract, and particularly subparagraph (g)(1) of the "Government Property" clause and paragraph (c) of the "Insurance—Liability to Third Persons" clause, the Contractor shall not (i) be relieved of liability for, damage to, or loss or destruction of, aircraft sustained during flight, or (ii) be reimbursed for liabilities to third persons for loss of or damage to property, or for death or bodily injury, which are caused by aircraft during flight, unless the flight crew members have previously been approved in writing by _____.* (See footnote at end of clause.)

(b) For purposes of this clause:

(i) Unless otherwise specifically provided in the Schedule, the term "aircraft" means any aircraft, whether furnished by the Contractor under this contract (either before or after acceptance by the Government) or furnished by the Government to the Contractor under this contract, including all Government Property placed or installed therein or attached thereto; *Provided*, however, that such aircraft and property are not covered by a separate bailment agreement.

(ii) The term "flight" means any flight demonstration, flight test, taxi test, or other flight, made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the _____.* (See footnote at end of clause.) As to land based aircraft, "flight" shall commence with the taxi roll from a flight line and continue until the aircraft has completed the taxi roll to a flight line; as to sea planes, "flight" shall commence with the launching from a ramp and continue until the aircraft has completed its landing run and is beached at a ramp; as to helicopters, "flight" shall commence upon engagement of the rotors for the purpose of take-off and continue until the aircraft has returned to the

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ground and rotors are disengaged; and for vertical take-off aircraft, "flight" shall commence upon disengagement from any launching platform or device and continue until the aircraft has been re-engaged to any launching platform or device.

(iii) The term "flight crew members" means the pilot, the co-pilot and, unless otherwise specifically provided in the Schedule, the flight engineer, navigator, bombardier-navigator, and defense systems operator, when required, or assigned to their respective crew positions, to conduct any flight on behalf of the Contractor.

(c) If any aircraft is damaged, lost, or destroyed during flight, and if the amount of such damage, loss, or destruction exceeds one hundred thousand dollars ($100,000) or twenty percent (20%) of the estimated cost (exclusive of any fee) of this contract, whichever is less, and if the Contractor is not liable for the damage, loss or destruction pursuant to the "Government Property" clause of this contract together with paragraph (a) above, then an equitable adjustment for any resulting repair, restoration, or replacement that is required under this contract shall be made (i) in the estimated cost, delivery schedule, or both, and (ii) in the amount of any fee to be paid to the Contractor, and the contract shall be modified in writing accordingly; *Provided*, in determining the amount of adjustment in the fee that is equitable, any fault of the Contractor, the Contractor's employees, or any subcontractor, which materially contributed to the damage, loss, or destruction shall be taken into consideration. Failure to agree on any adjustment shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(End of clause)

* In the foregoing clause, insert in contracts of the Department of the Army, the Department of the Navy, the Department of the Air Force, and in contracts to be administered by the Defense Contract Administration Services the activity designated in combined regulation identified as Air Force Regulation 55–22, Army Regulation 95–20, NAVAIR Instruction 3710.1A, Defense Logisitics Agency Regulation 8210.1, dated 8 October 1971, Subj: Requirements for Contractor Operating Procedures and Flight Crews, enclosure 1.

In the foregoing clause, the definition of "aircraft" may be appropriately modified in the Schedule if the contract covers helicopters, vertical take-off aircraft, lighter-than-air airships, or other nonconventional types of aircraft.

252.228–7003 Capture and detention.

As prescribed at 228.309(S–70), insert the following clause:

CAPTURE AND DETENTION (JUN 1968)

(a) As used in this clause:

(1) "Captured person" means any employee of the Contractor—

(i) Who is assigned to duty outside the United States for the performance of this contract, and

(ii) Who is found to be missing from that person's place of employment under circumstances that make it appear probable that that person's absence is due to the action of the force of any power not allied with the United States in a common military effort, or who is known to have been taken prisoner, hostage, or otherwise detained by the force of any such power, whether or not such person is actually engaged in that person's employment at the time of capture; *Provided*, that at the time the person was captured and detained the person was either:

(A) Engaged in activity directly arising out of the course of that person's employment under this contract, or

(B) Captured in an area in which the captured person was present only because such presence was required in order to perform this contract;

(2) A "period of detention" begins with the day of capture and continues until the captured person is returned to the person's place of employment, or to the United States, or is able to be returned to the jurisdiction of the United States, or until the person's death is in fact established or legally can be presumed to have occurred by evidence satisfactory to the Contracting Officer, whichever shall occur first;

(3) "United States" comprises geographically the fifty states and the District of Columbia; and

(4) "War Risk Hazards Compensation Act" refers to the statute compiled in Chapter 12 of Title 42, U.S. Code (sections 1701–1717), as amended.

(b) If pursuant to an agreement entered into prior to the capture, the Contractor is obligated to pay and shall have paid benefits to a captured person, or the person's dependents, on account of detention, the Government will reimburse the Contractor for such payments up to an amount which will equal the lesser of (i) the total wage or salary (computed at the rate being paid at the time of capture) due from the Contractor to the captured person for the period of detention, or (ii) that amount which would have been payable to such person if the detention had occurred under circumstances wherein the benefit provisions of the War Risk Hazards Compensation Act would have been applicable.

(c) The period of detention shall not be considered as time spent in the performance of this contract, and the Government shall not be obligated to make payment under this contract on account of such person for the period of the detention except as provided in this clause.

(d) The obligation of the Government to make payments provided for by this clause shall be applicable to the entire period of detention except that it is expressly conditioned upon and subject to the availability of funds from which payment can be made. The rights and obligations of the parties under this clause shall survive the earlier expiration, completion or termination of this contract.

(e) The Contractor shall not be reimbursed under the provisions of this clause for payments made to employees for a period of detention during which the employees were entitled to compensation for capture and detention under the War Risk Hazards Compensation Act, as amended.

(End of clause)

252.228–7004 Bonds or other security.

As prescribed at 228.103–2(a)(4), insert the following provision:

BONDS OR OTHER SECURITY (APR 1977)

A bid guarantee in the penal sum of $_____ must accompany the bid. Within ten (10) days after receipt of a notice of award, the Contractor shall furnish a performance bond (Standard Form 25) in the penal sum of $_____ and payment, in full, of any sum due the Government. The bond of any surety company holding a certificate of authority from the Secretary of the Treasury as an acceptable surety on Federal bonds will be accepted. Individual sureties will be accepted if each such surety deposits with the Contracting Officer cash, bonds, or notes of the United States, or certified check drawn to the order of the office designated for contract administration, or such other security as the Contracting Officer may deem necessary, for the required amount of the guaranty, under the agreement that the collateral so deposited shall remain in the possession and control of the Treasurer of the United States until the completion of the contract. The formal contract and notice to proceed will be issued on receipt of an acceptable performance bond and payment of any sum due the Government.

(End of provision)

252.228–7005 Insurance.

As prescribed at 228.311–70, insert the following clause:

INSURANCE (JAN 1965)

(a) The Contractor shall purchase and thereafter maintain such bonds and insurance in such forms and such amounts and for such periods of time as the Contracting Officer may require in writing and shall be reimbursed for the cost thereof.

(b) In every instance where this contract requires the United States to reimburse the Contractor for the payment of the premium on a bond or insurance policy, the bond or insurance policy shall contain an endorsement or other recital excluding by appropriate language any claim on the part of the insurer or obligator to be subrogated, on payment of a loss or otherwise, to any claim against the United States.

(c) The Contractor shall give the Contracting Officer or the Contracting Officer's representative immediate notice in writing of any suit or action filed against the Contractor arising out of the performance of this contract and of any claim against the Contractor the cost and expense of which are reimbursable under the provisions of the Clause entitled "Allowable Cost and Payment," and the risk of which is then uninsured or in which the amount claimed exceeds the amount of insurance coverage. The Contractor shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the Contractor. Insofar as the following shall not conflict with any policy or contract of insurance, and upon request of the Contracting Officer, the Contractor shall do any and all things to effect an assignment and subrogation in favor of the Government, of all Contractor's rights and claims except against the Government, arising from or growing out of such asserted claims, and if required by the Contracting Officer, shall authorize representatives of the Government to settle and/or defend any such claim and to represent or take charge of any such litigation affecting the Contractor.

(End of clause)

252.228–7006 Accident reporting and investigation involving aircraft, missiles, and space launch vehicles.

As prescribed at 228.7101, insert the following clause:

ACCIDENT REPORTING AND INVESTIGATION INVOLVING AIRCRAFT, MISSILES, AND SPACE LAUNCH VEHICLES (JAN 1969)

(a) The Contractor shall report promptly to the Administrative Contracting Officer all pertinent facts relating to each accident involving an aircraft, missile, or space launch vehicle being manufactured, modified, repaired, or overhauled under or in connection with this contract.

(b) If the Government elects to conduct an investigation of the accident, the Contractor will cooperate fully and assist the Government's personnel until the investigation is completed.

(c) The Contractor will include a clause in each of the Contractor's applicable subcontracts to require subcontractor cooperation and assistance in accident investigation under this clause.

(End of clause)

252.229–7000 Fixed-price, into-plane, fuel contracts at overseas locations.

As prescribed at 229.402–1(S–70), insert the following clause:

FIXED-PRICE, INTO-PLANE, FUEL CONTRACTS AT OVERSEAS LOCATIONS (JAN 1979)

(a) As used throughout this clause, the following terms shall have the meanings set forth below:

(1) The term "direct tax" means any foreign tax, duty, fee, or like charge, directly applicable to the completed supplies or services covered by this contract. It includes any foreign tax, duty, fee, or like charge, directly applicable to the importation, exportation, production, manufacture, distribution, transportation, storage, withdrawal from storage, handling, receipt, sale, or delivery of such supplies or services. The term does not include unemployment compensation taxes; social security taxes; income taxes; excess-profits taxes; capital stock taxes; property taxes, except such property taxes as are assessed either on completed supplies covered by this contract or on the Contractor's interest in or use of Government-owned property supplied under this contract; and such other taxes as are not within the definition of the term "direct tax" as set forth in this paragraph. If this contract provides for the furnishing of supplies in Puerto Rico, the term "direct tax" also includes the U.S. import tax on petroleum.

(2) The term "nonrefundable tax" means any direct tax which the Contractor is required to pay and, in respect to which, he is unable to obtain a refund or drawback.

(b) The contract prices do not include any direct tax.

(c) The Contractor shall use all reasonable efforts to collect all refunds or drawbacks due to the Contractor, either in its own right or under any rights and privileges arising out of this contract, of any direct tax which the Contractor is required to pay or bear the burden of.

(d) The Government shall reimburse the Contractor for any nonrefundable tax. Contractor invoices for such reimbursement shall be submitted separately on a monthly basis and, when applicable, shall show credit deductions for all refunds or drawbacks received by the Contractor.

(e) Prior to submitting an initial invoice for any nonrefundable tax, the Contractor shall furnish the Contracting Officer, for approval, a written statement in quadruplicate showing the nature of the nonrefundable tax, the unit rate thereof in U.S. dollars per U.S. gallon, and the airport and grade of product involved. The Contractor shall notify the Contracting Officer by a written statement in quadruplicate of any changes in said unit rates and of any additional nonrefundable tax. The Contracting Officer will inform the Accounting and Finance Office of his approval or disapproval of the rates for which reimbursement is sought. All invoices for any nonrefundable tax submitted by the Contractor shall be forwarded by the Contractor directly to the Accounting and Finance Officer, Attn: Examination Section, DLA Administrative Support Center, Cameron Station, Alexandria, Virginia, 22314, who will certify the invoices for payment only in accordance with unit rates for such taxes as approved by the Contracting Officer.

(f) The provisions of this paragraph (f) shall apply only to the extent that this contract is performed within any of the following foreign countries: Australia, the Bahamas, Bahrain, Barbados, Belgium, Canada, Republic of China, Denmark (including Greenland), Ethiopia, Federal Republic of Germany (including West Berlin), France, Greece, Iceland, Iran, Italy, Japan, Republic of Korea, Luxembourg, the Netherlands, New Zealand, Norway, Panama, the Philippines, Portugal (including the Azores), Saudi Arabia, Spain, Thailand, Trinidad and Tobago, Turkey, the United Kingdom (including Anegada Island, Antigua Island, Ascension Island, Bermuda, British Indian Ocean Territories (Diego Garcia), Mahe Island, and Turks and Caicos Island), and Yugoslavia. The contract price, including the price in subcontracts, does not include any tax or duty which the Government of the United States and the government of any of the foregoing countries have agreed shall not apply to expenditures in that country by the United States. If any such tax or duty has been included in the contract price through error or otherwise, the contract price shall be correspondingly reduced.

(End of clause)

252.231–7000 Supplemental cost principles.

As prescribed at 231.201, insert the following clause:

SUPPLEMENTAL COST PRINCIPLES (APR 1984)

When the allowability of costs under this contract is determined in accordance with Subpart 31.2 of the Federal Acquisition Regulation, the allowability of costs shall also be determined by the Contracting Officer in accordance with Subpart 231.2 of the DoD FAR Supplement in effect at the date of this contract.

(End of clause)

252.232–7000 Invoices.

As prescribed at 232.111(S–70), insert the following clause:

INVOICES (OCT 1982)

(a) An invoice is a written request for payment under the contract for supplies delivered or for services rendered. In order to be proper, an invoice must include as applicable the following:

(1) Invoice date;

(2) Name of contractor;

(3) Contract number (including order number, if any), contract line item number, contract description of supplies or services, quantity, contract unit of measure and unit price, and extended total;

(4) Shipment number and date of shipment (bill of lading number and weight of shipment will be shown for shipments on Government bills of lading);

(5) Name and address to which payment is to be sent (which must be the same as that in the contract or on a proper notice of assignment);

(6) Name (where practicable), title, phone number and mailing address of person to be notified in event of a defective invoice; and

(7) Any other information or documentation required by other provisions of the contract (such as evidence of shipment).

Invoices shall be prepared and submitted in quadruplicate (one copy shall be marked "original") unless otherwise specified.

(b) For purposes of determining if interest begins to accrue under the Prompt Payment Act (Public Law 97–177):

(1) A proper invoice will be deemed to have been received when it is received by the office designated in the contract for receipt of invoices and acceptance of the supplies delivered or services rendered has occurred;

(2) Payment shall be considered made on the date on which a check for such payment is dated;

(3) Payment terms (e.g., "net 20") offered by the Contractor will not be deemed a "required payment date;" and

(4) The following periods of time will not be included

(i) After receipt of an improper invoice and prior to notice of any defect or impropriety, but not to exceed 15 days (or any lesser period established by this contract); and

(ii) Between the date of a notice of any defect or impropriety and the date a proper invoice is received. When the notice is in writing, it shall be considered made on the date shown on the notice.

(End of clause)

252.232-7001 Advance payment pool.

As prescribed at 232.412(S–70), insert the following clause:

ADVANCE PAYMENT POOL (APR 1984)

Notwithstanding other provisions of this contract, advance payments will be made for the work called for hereunder in accordance with the Determinations, Findings and Authorization for advance payments dated _____. Payments made pursuant to this clause shall be governed by the terms and conditions of the Advance Payment Pool Agreement, as it may be amended from time to time, between the United States of America and _____ (insert the name of the contractor), which agreement is hereby incorporated by reference with the same force and effect as though fully set forth herein.

(End of clause)

252.232-7002 Disposition of payments.

As prescribed at 232.412(S–71), insert the following clause:

DISPOSITION OF PAYMENTS (APR 1984)

Payment will be by a dual payee Treasury check drawn payable to the contractor or the _____ (insert name of the disbursing office designated in the advance payment pool agreement) and forwarded to the _____ (insert name of the disbursing office designated in the advance payment pool agreement) for appropriate disposition.

(End of clause)

252.232-7003 Progress payments for foreign military sales acquisitions.

As prescribed at 232.502–4(S–70), insert the following clause:

PROGRESS PAYMENTS FOR FOREIGN MILITARY SALES ACQUISITIONS (APR 1984)

If this contract includes FMS requirements, the contractor shall submit progress payment requests in accordance with the following:

(a) The contractor shall submit a separate progress payment request for each separate progress payment rate in this contract.

(b) The contractor shall submit a supporting schedule showing the amount of each request distributed to each country's requirements in the contract. This schedule shall also show the contract line items and total prices thereof applicable to each separate progress payment rate.

(c) Each progress payment request shall:

(1) Identify the contract requirements to which it applies, (i.e., FMS or U.S.).

(2) Be calculated on the basis of the prices, costs (including estimated costs to complete), subcontractor progress payments, and progress payment liquidations of the contract requirements to which it applies. The contractor in preparing these requests shall distribute costs among contract line items and countries in a manner acceptable to the Administrative Contracting Officer.

(End of clause)

252.232-7004 Flexible progress payments.

As prescribed at 232.502–4(S–71), insert the following clause:

FLEXIBLE PROGRESS PAYMENTS (APR 1984)

This contract is subject to flexible progress payment procedures. The progress payment rate of this contract is ____%, and this percentage applies in lieu of the uniform, standard progress payment rate and liquidation rate of the "Progress Payments" clause. The progress payment rate of this contract was determined by the DoD Cash Flow Computer Model, (dated _____), using five percent (5%) as the targeted rate for the Contractor's investment (as a weighted average of costs) in its work in process inventory over the life of the contract. If actual and projected cash flow data generated during performance of this contract reveal that the progress payment rate will result in an investment in work in process inventory by the Contractor in excess of seven percent (7%), or less than three percent (3%), the progress payment rate shall be redetermined by using the DoD Cash Flow Computer Model. Unless it contained an error, the version of the DoD Cash Flow Computer Model that was used initially in this contract will be used for any redetermination permitted by this clause. In no event will the progress payment rate be less than the uniform, standard progress payment rate that would have applied to this contract absent flexible progress payment procedures, and in no event will the progress payment rate be greater than one hundred percent (100%).

(End of clause)

252.233-7000 Certification of requests for adjustment or relief exceeding $100,000.

As prescribed at 233.7080, insert the following clause:

CERTIFICATION OF REQUESTS FOR ADJUSTMENT OR RELIEF EXCEEDING $100,000 (FEB 1980)

(a) Any contract claim, request for equitable adjustment to contract terms, request for relief under Pub. L. 85–804, or other similar request exceeding $100,000 shall bear, at the time of submission, the following certificate given by a senior company official in charge at the plant or location involved:

I certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief, and that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable.

_____

(Official's Name)

_____

(Title)

(b) The certification in paragraph (a) requires full disclosure of all relevant facts, including cost and pricing data.

(c) The certification requirement in paragraph (a) does not apply to:

(1) requests for routine contract payments; for example, those for payment for accepted supplies and services, routine vouchers under cost-reimbursement type contracts, and progress payment invoices; and

(2) final adjustments under incentive provisions of contracts.

(d) In those situations where no claim certification for the purposes of section 813 has been submitted prior to the inception of a contract dispute, a single certification, using the language prescribed by the Contract Disputes Act but signed by a senior company official in charge at the plant or location involved, will be deemed to comply with both statutes.

(End of clause)

252.234-7000 Notice of cost/schedule control systems.

As prescribed at 234.005–71, insert the following provision:

NOTICE OF COST/SCHEDULE CONTROL SYSTEMS (AUG 1985)

(a) The Offeror shall submit a comprehensive plan for compliance with the attached criteria (DoDI 7000.2, Performance Measurement for Selected Acquisitions) for the internal Cost/Schedule Control Systems which are and/or will be operational for any contract resulting from this solicitation, and which includes the C/SCSC clause set forth at 252.234–7001 of the DoD FAR Supplement. The Offeror shall identify the Offeror's existing management systems separately from proposed modifications to meet the criteria. The plan shall:

(1) Describe the management systems and their application in all major functional cost areas such as engineering, manufacturing and tooling, as related to development of the work breakdown structure, planning, budgeting, scheduling, work authorization, cost accumulation, measurement and reporting of cost and schedule performance, variance analysis, and baseline control;

(2) Describe compliance with each of the criteria, preferably by cross-referencing appropriate elements in the description of systems with the items in the checklist for C/SCSC contained in AFSCP/AFLCP 173–5, DARCOM–P 715–5, NAVMAT P–5240, Cost/Schedule Control Systems Criteria Joint Implementation Guide;

(3) Identify the major subcontractors, or major subcontracted effort in the event major subcontractors have not been selected, planned for application of the criteria;

(4) Describe the proposed procedure for administration of the criteria as applied to subcontractors.

(b) If the Contractor is utilizing Cost/Schedule Control Systems which have been previously accepted, or is operating such systems under a current Memorandum of Understanding, evidence of such may be submitted in lieu of the comprehensive plan mentioned above. In such event, the Contracting Officer will determine the extent to which such systems shall be reviewed to assure continued compliance with the criteria.

(c) The Offeror shall provide information and assistance as requested by the Contracting Officer for evaluation of compliance with the cited criteria.

(d) The Offeror's plan for Cost/Schedule Control Systems will be evaluated prior to contract award. Upon acceptance of the Cost/Schedule Control Systems, a description of the accepted systems will be referenced in the contract.

(e) Subcontractor selection for application of the C/SCSC will be by agreement between the prime Contractor and the Government. The prime contractor will contractually require the selected subcontractors to comply with the criteria. However, demonstrations and reviews of these selected subcontractors' management systems may be performed by the procuring authority when requested by either the prime or subcontractor.

(End of provision)

252.234-7001 Cost/schedule control systems.

As prescribed at 234.005–71, insert the following clause:

COST/SCHEDULE CONTROL SYSTEMS (AUG 1985)

(a) The Contractor shall establish, maintain and use in the performance of this contract Cost/Schedule Control Systems meeting the attached criteria (DoDI 7000.2, Performance Measurement for Selected Acquisitions). Prior to acceptance by the Contracting Officer and within ninety (90) (or as otherwise agreed to by the parties) calendar days after contract award, the Contractor shall be prepared to demonstrate the operation of the Contractor's systems to the Government to verify that the proposed systems meet the established criteria set forth above. As a part of the demonstration, review and acceptance procedure, the Contractor shall furnish the Government a description of the Cost/Schedule Control Systems applicable to this contract in such form and detail as indicated by the AFSC/AFLCP 173–5, DARCOM–P 715–5, NAVMAT P–5240, Cost Schedule Control Systems Criteria Joint Implementation Guide, hereinafter referred to as the guide, or required by the Contracting Officer. The Contractor agrees to provide access to all pertinent records, data and plans as requested by representatives of the Government for the conduct of the review.

(b) The description of the management systems accepted by the Contracting Officer, identified by the title and date, shall be referenced in the contract. Such systems shall be maintained and used by the Contractor in the performance of this contract.

(c) Contractor changes to the accepted systems shall be submitted to the Contracting Officer for review and approval. The Contracting Officer shall advise the Contractor of the acceptability of such changes within sixty (60) days after receipt from the Contractor. When systems existing at time of contract award do not comply with the criteria, adjustments necessary to assure compliance will be effected at no change in contract price or fee.

(d) The Contractor agrees to provide access to all pertinent records and data requested by the Contracting Officer or duly authorized representative for the purpose of permitting Government surveillance to ensure continuing application of the accepted systems to this contract. Deviations from accepted systems discovered during contract performance shall be corrected as directed by the Contracting Officer.

(e) The Contractor shall require that each selected subcontractor, as mutually agreed to between the Government and the Contractor and as set forth in the schedule of this contract; shall meet the Cost/Schedule Control Systems criteria as set forth in the guide and shall incorporate in all such subcontracts adequate provisions for demonstration, review, acceptance and surveillance of subcontractors' systems, to be carried out by the Government when requested by either the prime or subcontractor.

(f) If the Contractor or subcontractor is utilizing Cost/Schedule Control Systems which have been previously accepted, or is operating such systems under a current Memorandum of Understanding, the Contracting Officer may waive all or part of the provisions hereof concerning demonstration and review.

(End of clause)

252.235-7000 Indemnification under 10 U.S.C. 2354—fixed price.

As prescribed at 235.071(a), insert the following clause:

INDEMNIFICATION UNDER 10 U.S.C 2354—FIXED PRICE (APR 1974)

(a) Pursuant to the authority of 10 U.S.C. 2354, notwithstanding any other provision of this contract, but subject to the following paragraphs of this clause, the Government shall hold harmless and indemnify the Contractor against:

(1) Claims (including reasonable expenses of litigation or settlement) by third persons (including employees of the Contractor) for death, bodily injury (including sickness or disease), or loss of, (damage to, or loss of use of property;

(2) Loss of or damage to property of the Contractor, and loss of use of such property, but excluding loss of profit; and

(3) Loss of, damage to, or loss of use of property of the Government;

to the extent that such a claim, loss or damage (i) arises out of the direct performance of this contract; (ii) is not compensated by insurance or otherwise; and (iii) results from a risk defined in this contract to be unusually hazardous. Any such claim, loss, or damage within deductible amounts of Contractor's insurance shall not be covered under this clause.

(b) The Government shall not be liable for any such claim, loss or damage that results from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of the Contractor's managers, superintendents, or other equivalent representatives, who has supervision or direction of (1) all or substantially all of the Contractor's business, or (2) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or (3) a separate and complete major industrial operation in connection with the performance of this contract. The Contractor shall not be indemnified under this clause for liability assumed under any contract or agreement (except for subcontracts which are covered by paragraph (d) below) unless such assumption of liability has been specifically approved by the Contracting Officer; (or in contracts with the Department of the Navy, *The Department.*)

(c) No payment shall be made by the Government under this clause unless the amount thereof shall first have been certified to be just and reasonable by the Secretary or representative designated for such purpose. Such payments shall be made from funds as stated in 10 U.S.C. 2354. The rights and obligations of the parties under this clause shall survive the termination, expiration, or completion of this contract.

(d) With the prior written approval of the Contracting Officer, the Contractor may include in any subcontract under this contract the same provisions as those in this clause, whereby the Contractor shall indemnify the subcontractor against any risk defined in this contract to be unusually hazardous. Such a subcontract shall provide the same rights and duties, and the same provisions for notice, furnishing of papers and the like, between the Contractor and the subcontractor as are established by this clause. The Contracting Officer may also approve similar indemnification of lower tier subcontractors upon the same terms and conditions. Subcontracts providing for indemnification within the purview of this clause shall entitle the Contractor or the Government, or both, to direct, participate in, and supervise the settlement or defense of relevant actions and claims. The Government shall indemnify the Contractor with respect to the Contractor's obligation to subcontractors under subcontract provisions thus approved by the Contracting Officer. The Government may discharge its obligations under this paragraph by making payments directly to subcontractors or to persons to whom the subcontractors may be liable.

(e) If insurance coverage maintained by the Contractor on the date of the execution of this contract is reduced, the liability of the Government under this clause shall not, by reason of such reduction, be increased to cover risks theretofore insured, unless the Contracting Officer consents thereto in consideration of an equitable adjustment to the Government, if appropriate, of the price in a fixed-price contract, or the fee in a cost-reimbursement type contract, in such amount as the parties may agree.

(f) The Contractor shall (i) promptly notify the Contracting Officer of any occurrence, action or claim the Contractor learns of that reasonably may be expected to involve indemnification under this clause, (ii) furnish evidence or proof of any claim, loss or damage in the manner and form required by the Government, and (iii) immediately furnish to the Government copies of all pertinent papers received by the Contractor. The Government may direct, participate in, and

supervise the settlement or defense of any such claim or action. The Contractor shall comply with the Government's directions, and execute any authorizations required, in regard to such settlement or defense.

(g) The Contractor shall purchase and maintain, to the extent available, such insurance against unusually hazardous risks as the Contracting Officer [or in contracts with Department of the Navy, *The Department*) may from time to time require or approve. All such insurance shall be in such form, in the amounts, for the periods of time, at such rates, and with such insurers, as the Contracting Officer (or in contracts with Department of the Navy, *The Department*) may from time to time require or approve. The obligations of the Government under this clause shall not apply to claims, loss or damage to the extent that insurance is available and is either required or approved pursuant to this paragraph. The Contractor shall be reimbursed the cost of any such insurance in excess of that maintained by the Contractor as of the date of this contract, to the extent the cost thereof is properly allocable to this contract and is not included in the contract price.

(End of clause)

252.235-7001 Indemnification under 10 U.S.C. 2354—cost reimbursement.

As prescribed at 235.071(b), insert the following clause.

INDEMNIFICATION UNDER 10 U.S.C. 2354—COST REIMBURSEMEMT (APR 1974)

(a) Pursuant to the authority of 10 U.S.C. 2354, notwithstanding any other provision of this contract, but subject to the following paragraphs of this clause, the Government shall hold harmless and indemnify the Contractor against:

(1) Claims (including reasonable expenses of litigation or settlement) by third persons (including employees of the Contractor) for death, bodily injury (including sickness or disease), or loss of, damage to, or loss of use of property;

(2) Loss of or damage to property of the Contractor, and loss of use of such property, but excluding loss of profit; and

(3) Loss of, damage to, or loss of use of property of the Government;

to the extent that such a claim, loss or damage (i) arises out of the direct performance of this contract; (ii) is not compensated by insurance or otherwise; and (iii) results from a risk defined in this contract to be unusually hazardous. Any such claim, loss, or damage within deductible amounts of Contractor's insurance shall not be covered under this clause.

(b) The Government shall not be liable for any such claim, loss or damage that results from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of the Contractor's managers, superintendents, or other equivalent representatives who has supervision or direction of (1) all or substantially all of the Contractor's business, or (2) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or (3) a separate and complete major industrial operation in connection with the performance of this contract. The Contractor shall not be indemnified under this clause for liability assumed under any contract or agreement (except for subcontracts which are covered by paragraph (d) below) unless such assumption of liability has been specifically approved by the Contracting Officer, (or in contracts with the Department of the Navy, *The Department*).

(c) No payment shall be made by the Government under this clause unless the amount thereof shall first have been certified to be just and reasonable by the Secretary or his representative designated for such purpose. Such payments shall be made from funds as stated in 10 U.S.C. 2354. The rights and obligations of the parties under this clause shall survive the termination, expiration, or completion of this contract.

(d) With the prior written approval of the Contracting Officer, the Contractor may include in any subcontract under this contract the same provisions as those in this clause, whereby the Contractor shall indemnify the subcontractor against any risk defined in this contract to be unusually hazardous. Such a subcontract shall provide the same rights and duties, and the same provisions for notice, furnishing of papers, and the like, between the Contractor and the subcontractor as are established by this clause. The Contracting Officer may also approve similar indemnification of lower tier subcontractors upon the same terms and conditions. Subcontracts providing for indemnification within the purview of this clause shall entitle the Contractor or the Government, or both, to direct, participate in, and supervise the settlement or defense of relevant actions and claims. The Government shall indemnify the Contractor with respect to the Contractor's obligations to subcontractors under subcontract provisions thus approved by the Contracting Officer. The Government may discharge its obligations under this paragraph by making payments directly to subcontractors or to persons to whom the subcontractors may be liable.

(e) If insurance coverage maintained by the Contractor on the date of the execution of this contract is reduced, the liability of the Government under this clause shall not, by reason of such reduction, be increased to cover risks therefore insured, unless the Contracting Officer consents thereto in consideration of an equitable adjustment to the Government, if appropriate, of the price in a fixed-price contract, or the fee in a cost-reimbursement type contract, in such amount as the parties may agree.

(f) In addition to the Contractor's responsibilities under the "Insurance—Liability to Third Persons" clause of this contract, which are hereby made applicable to claims under this clause, the Contractor shall (1) promptly notify the Contracting Officer of any occurrence the Contractor learns of that reasonably may be expected to involve indemnification under this clause, (2) furnish evidence or proof of any claim, loss or damage covered by this clause in the manner and form required by the Government, and (3) to the extent required by the Government, permit and authorize the Government to direct, participate in, and supervise the settlement or defense of any such claim or action. The cost of insurance (including self insurance), covering a risk defined in this contract as unusually hazardous, shall not be reimbursed either as a direct or indirect cost except to the extent that such insurance has been required or approved under the "Insurance—Liability to Third Persons" clause hereof.

(g) The "Limitation of Cost" clause of this contract does not apply to the Government's obligations under this clause. Such obligations shall be excepted from the release required under the "Allowable Cost, Fee, and Payment" clause of this contract.

(h) For purposes of this clause, a claim, loss or damage shall be considered to have arisen out of the direct performance of this contract if the cause for such claim, loss or damage occurred during the period of performance of this contract or as a result of the performance of this contract.

(End of clause)

252.235-7002 Recovery of nonrecurring costs on commercial sales.

As prescribed in 235.071(c), insert the following clause:

RECOVERY OF NONRECURRING COSTS ON COMMERCIAL SALES (FEB 1980)

(a) Definitions.

(1) *Commercial sale* means a sale to a customer (either foreign or domestic) other than the U.S. Government by a defense contractor of products, technology, material, services, and/or development or production techniques that were originally developed, improved, or produced using DoD appropriations/funds.

(2) *Domestic organization* means any U.S nongovernmental organization or private commercial firm.

(3) *Technology* means a collection of information of any kind that can be used or adapted for use in the design, production, manufacture, utilization, or reconstruction of articles or material. It may take a tangible form, such as a scale model, prototype, blueprint, or an operating manual, or may take an intangible form, such as technical advice.

(4) *Nonrecurring research, development, test, and evaluation (RDT&E) costs* are those costs funded by an RDT&E appropriation to develop or improve the product or technology under consideration. This includes costs of any engineering change proposal initiated prior to date of the contract with the customer, as well as projections of such costs, to the extent additional effort applicable to the sale model or technology is necessary or planned. It does not include costs funded by either Procurement or Operations and Maintenance appropriations to improve the product.

(5) *Nonrecurring production costs* are those one-time costs incurred in support of previous production of the model specified and those costs specifically incurred in support of the total projected production run from which delivery is to be made, which would normally be expensed against a production run. These nonrecurring costs include such costs as preproduction, special tooling, special test equipment, production engineering, product improvement, destructive testing, and pilot model production, testing, and evaluation.

(6) *"Special" RDT&E and nonrecurring production costs* are those incurred for and paid by an FMS customer in developing a special feature or unique requirement under a DoD Offer and Acceptance (DD Form 1513).

(7) *Fair market price of technology*, such as that sold or licensed under a licensing or technical assistant agreement, is a price negotiated between a buyer and seller when the monetary return to the seller is primarily determined by the buyer's need for the technology and the potential market for the product(s) produced from the technology.

(8) *Model* is the generic term applied to a basic item and all modifications to that item. The model can generally be identified by a basic alphanumeric designation, such as a ship hull series, an equipment or system series, an airframe series, or a vehicle series. Recoupment within a model series is identified by determining total nonrecurring investment (RDT&E or production, as appropriate) applicable to that model series and dividing by the total number of units of the model series estimated to be produced for DoD requirements, FMS, and commercial sales.

(9) *Major defense equipment*, as applicable herein, means any item of significant combat equipment on the United States Munitions List having a nonrecurring research and development cost of more than $50 million or a total production cost of more than $200 million.

(b) In the event the Contractor intends to enter into domestic or foreign commercial sales for items in this contract, or essentially similar items, or enter into license or technical assistance agreements for the technology developed under this contract, the Contractor shall promptly notify the Contracting Officer [or the original DoD Contracting Office in the event the contract is closed) to obtain the applicable nonrecurring recoupment charge.

(1) The Contractor agrees that, with respect to (2) below, the Contractor will:

(i) Reimburse the U.S. Government for a fair share of U.S. Government expenditures for nonrecurring costs applicable to the items, or, in the case of technology, the Government's proportionate share of the fair market price of the technology for the commercial customer. In the event that the current charge is unavailable, the Contractor will submit information required to support the development of the appropriate charge.

(ii) Reimburse a fair share of nonrecurring costs related to a special feature or product paid by a foreign government or international organization under a U.S. Government Foreign Military Sales case when the Contractor enters into a commercial sale or license agreement for the same or similar special feature or product.

(2) The Government will require reimbursement under the provisions of this clause when:

(i) The Government's investment in research, development, test, and evaluation (RDT&E) equals or exceeds $5 million.

(ii) The Government's investment in nonrecurring production costs equals or exceeds $5 million.

(iii) A foreign government's RDT&E and nonrecurring production costs for a special feature or product equal or exceed $5 million (when requested under an FMS case and agreed to by the U.S. Government).

(iv) Reimbursement for investment costs below the thresholds in (i) through (iii) are specifically approved by the Secretary of Defense or his designee.

(3) For each commercial sale of the item, the amount to be reimbursed to the U.S. Government for nonrecurring costs shall be determined by dividing the total nonrecurring costs incurred and projected to be incurred by the total production quantity of the item, past and projected, including the production quantity for the Department of Defense (or FMS purchaser in the case of special feature or product recoupment), and multiplying the result by the quantity involved in each commercial sale or license agreement. In principle, for defense equipment for which several model designators exist, the nonrecurring costs and the total production quantity should be accumulated over the entire range of models and major subsystems that are basically similar to the model and subsystems being sold. In a combination FMS and commercial sale of a product, the Contractor agrees to reimburse the Government for the nonrecurring costs associated with the commercial portion of the customer's purchase.

(4) For each commercial sale of technology, these factors will be considered in determining fair market price: (i) The costs incurred by the Department of Defense in developing the technology being considered for sale; (ii) the costs that would be incurred by the buyer in independently developing the technology; and (iii) the estimated dollar value of the product(s) that will be produced by the buyer upon transfer of the technology. In the case of sale or license of technology to a domestic organization, the fair market price will be the lower of either a fair share of the DoD investment cost identified to the development of the technology or a proportionate share of the fair market price for the technology based on demand or the potential monetary return on investment. For sales or licenses of technology to foreign commercial customers, this price will be the greater of these two alternatives. The foregoing domestic pricing criterion will only be applied if the prospective commercial purchaser agrees that, in the event the technology is transferred from the prospective purchaser to a foreign recipient prior to its becoming generally available, the domestic purchaser will provide further payment to the Government on the basis of the foreign pricing criterion.

(c) The determination by the Government of the amount to be reimbursed pursuant to this clause shall not be subject to the Disputes clause.

(d) In the case of a commercial sale to a foreign government or international organization that qualifies for U.S. Government Foreign Military Sales, the Contractor agrees to inform the Contractor's customer that any Defense-furnished goods, services, and transportation (i.e., DoD support costs) can be provided only by means of a Foreign Military Sales case (DoD Offer and Acceptance, DD Form 1513) executed by the U.S. Government and the customer. The foreign government, at its option, may designate the Contractor to act as its agent in executing the Foreign Military Sales case and/or to receive possession or performance of the goods, services, or transportation.

(e) In the event of a commercial sale of items developed under this contract, or essentially similar items, or sale or license of technology relating thereto, the Contractor agrees to relieve the Government of any and all loss or liability that might result from the Contractor's use of Government data, tooling, test equipment or facilities.

(f) Notwithstanding the provisions of the clauses of this contract entitled "Patent Rights—Retention by the Contractor" and "Rights in Technical Data and Computer Software," the Contractor agrees that the Contractor's rights to enter into production for commercial sales of the items or essentially similar items, or to sell or license related technology, are expressly contingent upon compliance with the provisions of this clause, *provided*, that the Secretary of Defense or designee may waive the Government's rights under this clause, in whole or in part, whenever the Secretary of Defense or designee determines that such action would be in the best interests of the Government.

(g) The substance of this provision shall be placed in all subcontracts for components, or items which can be sold commercially and which meet, or are expected to meet, the thresholds set forth herein.

(End of clause)

252.235-7003 Care of laboratory animals.

As prescribed at 235.071(d), insert the following clause:

CARE OF LABORATORY ANIMALS (APR 1974)

(a) Before undertaking performance of any contract involving the use of laboratory animals, the Contractor shall register with the Secretary of Agriculture of the United States in accordance with section 6, Pub. L. 89-544, Laboratory Animal Welfare Act, 24 August 1966 as amended by Pub. L. 91-579, Animal Welfare Act of 1970, 24 December 1970. The Contractor shall furnish evidence of such registration to the Contracting Officer.

(b) The Contractor shall acquire animals used in research and development programs from a dealer licensed by the Secretary of Agriculture, or from exempted sources in accordance with the Public Laws enumerated in (a) above.

(c) In the care of any live animals used or intended for use in the performance of this contract, the Contractor shall adhere to the principles enunciated in the *Guide for Core and Use of Laboratory Animals* prepared by the Institute of Laboratory Animal Resources, National Academy of Sciences—National Research Council, and in the United States Department of Agriculture's regulations and standards issued under the Public laws

enumerated in (a) above. In case of conflict between standards, the higher standard shall be used. Contractor reports on portions of the contract in which animals were used shall contain a certificate stating that the animals were cared for in accordance with the principles enunciated in the *Guide for Care and Use of Laboratory Animals* prepared by the Institute of Laboratory Animal Resources, NAS-NRC, and/or in the regulations and standards as promulgated by the Agricultural Research Service, USDA, pursuant to the Laboratory Animal Welfare Act of 24 August 1966, as amended (Pub. L. 89-544 and P.L. 91-579). NOTE: The Contractor may request registration of the Contractor's facility and a current listing of licensed dealers from the Regional Office of the Animal and Plant Health Inspection Service (APHIS), USDA, for the region in which the Contractor's research facility is located. The location of the appropriate APHIS Regional Office as well as information concerning this program may be obtained by contacting the Senior Staff Officer, Animal Care Staff, USDA/APHIS, Federal Center Building, Hyattsville, Maryland 20782.

(End of clause)

252.235-7004 Frequency authorization.

As prescribed at 235.071(e), insert the following clause:

FREQUENCY AUTHORIZATION (OCT 1966)

(a) Authorization of radio frequencies required in support of this contract shall be obtained through the Contracting Officer by the Contractor or subcontractor in need thereof. Frequency management procedures prescribed in the Schedule of this contract shall be followed in obtaining radio frequency authorization.

(b) For any experimental, developmental or operational equipment for which the appropriate frequency allocation has not been made, the Contractor or subcontractor shall provide the technical operating characteristics of the proposed electromagnetic radiating device to the Contracting Officer during the initial planning, experimental, or developmental phases of contractual performance. DD Form 1494, "Application for Frequency Allocation", shall be used for this purpose and shall be prepared in accordance with instructions contained on the form.

(c) This clause including this paragraph (c), shall be included in all subcontracts which call for developing, producing, testing, or operating a device for which a radio frequency authorization is required.

(End of clause)

252.235-7005 Short form research contract clauses.

As prescribed in 235.7008(b), insert the following clauses in SFRC awards to educational institutions and nonprofit organizations. The clauses set forth below are incorporated with the same force and effect as if set forth in full. Clauses with a single asterisk (*) are applicable to educational institutions only. Clauses with a double asterisk (**) are applicable to nonprofit institutions only. For awards where the amount is less than $10,000, the inapplicable clauses shall be identified in the contract.

Definitions. FAR 52.202-1.
Assignment of Claims. FAR 52.232-23 Alternate I.
Disputes. FAR 52.233-1.
Equal Opportunity. FAR 52.222-26. Alternate I shall be added as a special provision when applicable per Alternate I instructions.
Officials Not to Benefit. FAR 52.203-1.
Covenant Against Contingent Fees. FAR 52.203-5.
Notice and Assistance Regarding Patent and Copyright Infringement. FAR 52.227-2 (applicable only if amount of contract action exceeds $25,000).
Affirmative Action for Special Disabled and Vietnam Era Veterans. FAR 52.222-35.
Utilization of Small Business Concerns and Small Disadvantaged Business Concerns. FAR 52.219-8.
Examination of Records by Comptroller General. FAR 52.215-1.
Convict Labor. FAR 52.222-3.
Utilization of Labor Surplus Area Concerns. FAR 52.220-3 (applicable only if contract action exceeds $25,000).
Audit—Negotiation. FAR 52.215-2.
Excusable Delays. FAR 52.249-14.
Termination for the Convenience of the Government (Educational and Other Nonprofit Institutions). FAR 52.249-5 (applicable as set forth in clause preamble).
Authorization and Consent. FAR 52.227-1, and Alternate I. FAR 52.246-9.
Government Property (Cost-Reimbursement, Time and Material, or Labor-Hour Contracts). FAR 52.245-5 and Alternate I.
Affirmative Action for Handicapped Workers. FAR 52.222-36.
Subcontracts under Cost-Reimbursement and Letter Contracts. FAR 52.244-2.
Allowable Cost and Payment. FAR 52.216.
Rights in Technical Data and Computer Software (See 252.227-7013 of this Supplement).
Identification of Technical Data. (See 252.227-7029 of this Supplement.)
Restrictive Markings on Technical Data. (See 252.227-7018 of this Supplement.)
Insurance—Liability to Third Persons. FAR 52.228-7. Alternates I or II apply under the circumstances set forth herein.
Government Supply Sources. FAR 52.251-1.
Preference for United States-Flag Air Carriers. FAR 52.247-63.
Patent Rights—Retention by the Contractor (Short Form). FAR 52.227-11.
Patents—Subcontracts. 252.227-7034.
Competition in Subcontracting. FAR 52.244-5 (applies only if contract action exceeds $25,000).
Utilization of Women-Owned Small Businesses. FAR 52.219-13 (applicable only if contract action exceeds $25,000).
Payment for Overtime Premiums. FAR 52.222-2. (Note: The word "zero" is inserted in the blank space indicated by an asterisk. Clause applicable only in contracts over $100,000.)
Care of Laboratory Animals. 252.235-7003.
Limitation of Cost. FAR 52.232-20 (applicable only when contract action is fully funded).
Limitation of Funds. FAR 52.232-22 (applicable only when contract action is incrementally funded).
Clean Air and Water. FAR 52.223-2 (applicable only if contract action exceeds the dollar amount set forth in the preamble to the clause).
Overseas Distribution of Defense Subcontracts. 252.204-7005 (applicable only when contract action exceeds $500,000 or when any modification increases contract amount to more than $500,000).
Gratuities. FAR 52.203-3.
Certification of Requests for Adjustment or Relief Exceeding $100,000. 252.233-7000 (applicable only if contract action exceeds $100,000).
Ordering From Government Supply Sources. (See 252.251-7000 of this Supplement.)
* Predetermined Indirect Cost Rates. FAR 52.216-15 (applicable only when the contractor has an executed negotiation agreement with the cognizant contract administration office).
** Limitation on Withholding of Payments. FAR 52.232-9.
** Notice of Intent to Disallow Costs. FAR 52.242-1.
** Subcontractor Cost or Pricing Data. FAR 52.215-24 (applicable only if contract action exceeds $500,000).
** Technical Data—Withholding of Payment. (See 252.227-7030 of this Supplement.)
** Fixed Fee. FAR 52.216-8 (applicable only in cost-plus-fixed-fee contracts).
** Price Reduction for Defective Cost or Pricing Data. FAR 52.215-22 (applicable only if contract action exceeds $500,000).
** Cost Accounting Standards. FAR 52.230-3 (applicable only if contract action exceeds $100,000 and the contract is not exempt per FAR 30.301).
** Disclosure and Consistency of Cost Accounting Practices. FAR 52.230-5 (applicable only if contract action exceeds $100,000 and the contract is not exempt per FAR 30.301).
** Administration of Cost Accounting Standards. FAR 52.230-4 (applicable only if contract action exceeds $100,000 and the contract is not exempt per FAR 30.301).
** Changes—Cost Reimbursement. FAR 52.243-2 and Alternate V.
** Facilities Capital Cost of Money. FAR 52.215-30 (applicable as set forth in the clause).
** Waiver of Facilities Capital Cost of Money. FAR 52.215-31 (applicable as set forth in the clause).
** Termination (Cost-Reimbursement). FAR 52.249-6 (applicable only to cost-plus-fixed-fee contracts).
** Excusable Delays. FAR 52.249-14 (applicable only to contracts to which FAR clause 52.249-6 "Termination (Cost-Reimbursement)" is applicable).

Work to be Performed

WORK TO BE PERFORMED (AUG 1983)

The Contractor shall perform research as specified in the unsolicited proposal and identified in the Short Form Research Contract (SFRC) document.

(End of clause)

Acknowledgement of Sponsorship

ACKNOWLEDGEMENT OF SPONSORSHIP (APR 1984)

(a) The Contractor agrees that in the release of information relating to an SFRC, such release shall include a statement to the effect that the project or effort depicted was or is sponsored by the agency set forth in the SFRC, and that the content of the information does not necessarily reflect the position or the policy of the Government, and no official endorsement should be inferred.

(b) For the purpose of this clause, information includes news releases, articles, manuscripts, brochures, advertisements, still and motion pictures, speeches, trade association proceedings, symposia, etc.

(c) Nothing in the foregoing shall affect compliance with the requirements of the clause entitled "Security Requirements" (FAR 52.204-2), if such clause is a part of the contract.

(End of clause)

Publications

PUBLICATIONS (AUG 1983)

Publication of results of the research project in appropriate professional journals is encouraged as an important method of recording and reporting scientific information. One copy of each paper planned for publication will be submitted to the Scientific Program Officer simultaneously with its submission for publication. Following publication, copies of published papers shall be submitted to the Scientific Program Officer, or to the other addressees in quantities as may be directed by the Contracting Officer.

(End of clause)

Reporting Requirements

REPORTING REQUIREMENTS (APR 1984)

(a) Reporting shall be as specified in the SFRC. Unless specified otherwise, reporting requirements will include annual letter reports for multiyear research programs and a final technical report due within sixty (60) days after the expiration date of the SFRC.

(b) The Contracting Officer, after coordination with the Scientific Program Officer, will specify the form and content of the required reports. These requirements may be furnished the Contractor as may be mutually agreed.

(c) Technical data and computer software, as defined in 252.227-7013 shall be delivered to the Scientific Program Officer. Unless otherwise specified in the SFRC, these items shall be delivered as part of the final technical report.

(End of clause)

Option to Extend the Term of the SFRC

OPTION TO EXTEND THE TERM OF THE SFRC (APR 1984)

(a) If the Contractor's proposal covers an additional period(s) which could be treated as an optional period(s), such additional period(s) of research may be added to the contract, at the option of the Government, by the Contracting Officer's giving written notice exercising such option(s) at any time during the performance period specified in the contract or any extensions thereof.

(b) If the Government exercises an option, the Contractor agrees to the following:

(i) To comply with the applicable clauses listed in the SFRC; and

(ii) To comply with the policies and regulations for the SFRC as set forth in Subpart 225.70.

(End of clause)

Contractor-Acquired Property

CONTRACTOR-ACQUIRED PROPERTY (APR 1984)

(a) As used in this clause, "property" is as defined in subparagraph (b)(1) of the clause of this contract entitled "Title to Contractor-Acquired Property" which has been specifically identified in the Contractor's proposal which is the basis for award or modification.

(b) The identification and description in the Contractor's proposal of property to be Contractor-acquired may be accepted by the Contracting Officer as advance notification required by subparagraphs (a) and (b) of the clause of this contract entitled "Subcontracts Under Cost Reimbursement and Letter Contracts" (FAR 52.244-2).

(c) Award of this contract, and modifications thereto, shall constitute the written consent of the Contracting Officer, required by subparagraph (c) of FAR 52.244-2, to acquire property identified in the Contractor's proposal, except for those items specifically identified in the contract as required by Block 27A of the DD Form 2222.

(d) The decision to approve subcontracts for acquisition of items listed in Block 27A of the contract will be made subsequent to award of the contract or modification pursuant to FAR 52.244-2.

(End of clause)

Title to Contractor-Acquired Property

TITLE TO CONTRACTOR-ACQUIRED PROPERTY (APR 1984)

(a) This paragraph implements subparagraph (c)(4) of the clause of this contract entitled "Government Property (Cost-Reimbursement, Time and Material, or Labor Hour Contracts)" and FAR 35.014.

(b) For purposes of this paragraph, "property" is all nonexpendable tangible personal property, except material:

(1) As described in FAR 45.101, including ADPE defined in FAR 31.001 and facilities defined in FAR 45.301; and

(2) Which is acquired with funds available for the conduct of research; and

(3) For which the Contracting Officer has authorized acquisition by the Contractor (i) at the time of award of the contract or modification as provided in 252.235-7005, or (ii) subsequent to award pursuant to the Subcontracts clause of this contract.

(c) Title to all property having an acquisition cost of $1,000 or more which is specifically identified in the Contractor's proposal shall vest in the Contractor without further obligation to the Government, unless the determination regarding vesting of title is deferred until after acquisition. Property for which the determination regarding title is deferred shall be identified in Block 27B of DD Form 2222, and title to such property shall vest in accordance with the provisions of (d) below.

(d) Title to all property having an acquisition cost of $1,000 or more which was not specifically identified in the Contractor's proposal, or for which the determination regarding title is deferred pursuant to (c) above, shall vest as follows:

(1) In the Government pursuant to FAR 35.014; or

(2) In the Contractor; or

(3) In the Contractor subject to the right of the Government to direct transfer of the title back to the Government or third parties. This right may be exercised at anytime up to and including the twelfth (12th) month after completion or termination of the contract. The Government may at anytime remove an item of property from this category and transfer title to the Contractor without right of the Government to direct transfer of the title back to the Government or to third parties.

(e) Transfer of title back to the Government or third parties shall not be the basis for any claim by the institution. The provisions of the clause of this contract entitled "Government Property (Cost-Reimbursement, Nonprofit)" apply to any changes in property.

(f) Until title to property acquired with funds made available under this contract has been vested in the Contractor, without right of the Government to direct transfer of the title back to the Government or third parties, it shall be considered Government Property and subject to the provisions of FAR 52.245-5 and Alternate I.

(g) The Contractor shall furnish the Contracting Officer a list of all property having an acquisition cost of $1,000 or more acquired under this contract, to which title has not been vested in the Contractor, within forty-five (45) days following the end of the calendar year of the Contractor's fiscal year during which such property was acquired.

(End of clause)

Research Responsibility

RESEARCH RESPONSIBILITY (APR 1984)

(a) The Contractor shall bear responsibility for the conduct of the research specified in the Contractor's unsolicited proposal identified in the SFRC. The Contractor will exercise judgment in attaining the stated research objectives within the limits of the terms and conditions of the SFRC; *Provided*, however, that the Contractor will obtain the Contracting Officer's approval to change the Statement of Work. Consistent with the foregoing, the Contractor shall conduct the work as set forth in his proposal and accepted by the contract award.

(b) When the decision to enter into the SFRC is based upon the principal investigator's knowledge of the field of study, and the principal investigator's capabilities to manage the research project in an effective and productive manner, the principal investigator identified in the unsolicited proposal shall be continuously responsible for the conduct of the research project, and shall be closely involved with the research efforts.

(c) The Contractor shall advise the Contracting Officer if the principal investigator(s) identified in the SFRC plans to devote substantially less effort to the work than set forth in the proposal.

(d) The Contractor shall obtain the Contracting Officer's approval prior to changing the principal investigator(s) identified in the proposal.

(End of clause)

Restriction on Printing

RESTRICTION ON PRINTING (AUG 1983)

The Government authorizes the reproduction of reports, data, or other written materials, if required; *Provided*, the material produced does not exceed 5,000 production units of any page, and items consisting of multiple pages do not exceed 25,000 production units in the aggregate. The Contractor shall obtain the express prior written authorization of the Contracting Officer to reproduce material in excess of the quantities cited above.

(End of clause)

Contract Items Requiring Experimental, Developmental or Research Work

CONTRACT ITEMS REQUIRING EXPERIMENTAL, DEVELOPMENTAL OR RESEARCH WORK (AUG 1983)

For purposes of defining the nature of the work and the scope of rights in data granted to the Government pursuant to the Rights in Technical Data and Computer Software clause of this contract, it is understood and agreed that the work to be performed under this contract requires the performance of experimental, developmental, or research work. This clause does not constitute a determination as to whether or not any data required to be delivered under this contract falls within the definition of limited rights data.

(End of clause)

Advance Payments

ADVANCE PAYMENTS (AUG 1983)

Advance payments shall be made under this contract pursuant to the advance payment pool agreement between the Contractor and one or more Military Departments applicable to this contract, in effect as of the date of this contract. If such an agreement is not in effect as of the date of award of this contract, the Contractor will be paid in accordance with the clause of this contract entitled "Allowable Cost and Payment".

(End of clause)

252.236-7000 Composition of contractor.

As prescribed at 236.571-1, insert the following clause:

COMPOSITION OF CONTRACTOR (JAN 1965)

If the Contractor hereunder is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

(End of clause)

252.236-7001 Modification proposals—price breakdown.

As prescribed at 236.571-2, insert the following clause:

MODIFICATION PROPOSALS—PRICE BREAKDOWN (APR 1968)

The Contractor, in connection with any proposal he makes for a contract modification, shall furnish a price breakdown, itemized as required by the Contracting Officer. Unless otherwise directed, the breakdown shall be in sufficient detail to permit an analysis of all material, labor, equipment, subcontract, and overhead costs, as well as profit, and shall cover all work involved in the modification, whether such work was deleted, added or changed. Any amount claimed for subcontracts shall be supported by a similar price breakdown. In addition, if the proposal includes a time extension, a justification therefor shall also be furnished. The proposal, together with the price breakdown and time extension justification, shall be furnished by the date specified by the Contracting Officer.

(End of clause)

252.236-7002 Contract drawings, maps and specifications.

As prescribed at 236.571-3, insert the following clause:

CONTRACT DRAWINGS, MAPS AND SPECIFICATIONS (JAN 1965)

(a) One set of sepia of large scale contract drawings, maps and specifications will be furnished the Contractor without charge except applicable publications incorporated into the technical provisions by reference. Additional sets will be furnished on request at the cost of reproduction. The work shall conform to the following contract drawings and maps, all of which form a part of these specifications and are available in the office of

_____

_____

(address)

Title, File, and Drawing No.

(b) Omissions from the drawings or specifications or the misdescription of details of work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall not relieve the Contractor from performing such omitted or misdescribed details of the work but they shall be performed as if fully and correctly set forth and described in the drawings and specifications.

(c) The Contractor shall check all drawings furnished him immediately upon their receipt and shall promptly notify the Contracting Officer of any discrepancies. Figures marked on drawings shall in general be followed in preference to scale measurements. Large scale drawings shall in general govern small scale drawings. The Contractor shall compare all drawings and verify the figures before laying out the work and will be responsible for any errors which might have been avoided thereby.

(End of clause)

252.236-7003 [Reserved]

252.236-7004 Contract prices—bidding schedules.

As prescribed at 236.572-1, insert the following clause:

CONTRACT PRICES—BIDDING SCHEDULES (APR 1968)

Payment for the various items listed in the Bidding Schedule shall constitute full compensation for furnishing all plant, labor, equipment, appliances, and materials, and for performing all operations required to complete the work in conformity with the drawings and specifications. All costs for work not specifically mentioned in the Bidding Schedule shall be included in the contract prices for the items listed.

(End of clause)

252.236-7005 Salvage materials and equipment.

As prescribed at 236.572-2, insert the following clause:

SALVAGE MATERIALS AND EQUIPMENT (JAN 1965)

The Contractor shall maintain adequate property control records for all materials or equipment specified to be salvaged. These records may be in accordance with the Contractor's system of property control, if approved by the property administrator. The Contractor shall be responsible for the adequate storage and protection of all salvaged materials and equipment and shall replace, at no cost to the Government, all salvage materials and equipment which are broken or damaged during salvage operations as the result of his negligence, or while in his care.

(End of clause)

252.236-7006 Misplaced material.

As prescribed at 236.572-3, insert the following clause:

MISPLACED MATERIAL (JAN 1965)

Should the Contractor, during the progress of the work, lose, dump, throw overboard, sink, or misplace any material, plant, machinery, or appliance, which in the opinion of the Contracting Officer may be dangerous to or obstruct navigation, the Contractor shall recover and remove the same with the utmost dispatch. The Contractor shall give immediate notice, with description and location of such obstructions, to the Contracting Officer or inspector, and when required shall mark or buoy such obstructions until the same are removed. Should he refuse, neglect, or delay compliance with the above requirements, such obstructions may be removed by the Contracting Officer, and the cost of such removal may be deducted from any money due or to become due the Contractor, or may be recovered under his bond. The liability of the Contractor for the removal of a vessel wrecked or sunk without fault or negligence shall be limited to that provided in sections 15, 19, and 20 of the River and Harbor Act of March 3, 1899 (33 U.S.C. 410 et seq.).

(End of clause)

252.236-7007 Identification of employees.

As prescribed at 236.572-4, insert the following clause:

IDENTIFICATION OF EMPLOYEES (JAN 1965)

The Contractor shall be responsible for furnishing to each employee and for requiring each employee engaged on the work to display such identification as may be approved and directed by the Contracting Officer. All prescribed identification shall immediately be delivered to the Contracting Officer for cancellation upon the release of any employee. When required by the Contracting Officer, the Contractor shall obtain and submit fingerprints of all persons employed or to be employed on the project.

(End of clause)

252.236-7008 Superintendence of subcontractors.

As prescribed at 236.572-5, insert the following clause:

SUPERINTENDENCE OF SUBCONTRACTORS (JAN 1965)

(a) The Contractor shall be required to furnish the following, in addition to the superintendence required by FAR clause at 52.236-6, entitled "SUPERINTENDENCE BY THE CONTRACTOR":

(i) If more than 50% and less than 70% of the value of the contract work is subcontracted, one superintendent shall be provided at the site and on the Contractor's payroll to be responsible for coordinating, directing, inspecting and expediting the subcontract work.

(ii) If 70% or more of the value of the work is subcontracted, the Contractor shall be required to furnish two such superintendents to be responsible for coordinating, directing, inspecting and expediting the subcontract work.

(b) If the Contracting Officer, at any time after 50% of the subcontracted work has been completed, finds that satisfactory progress is being made, he may waive all or part of the above requirements for additional superintendence subject to the right of the Contracting Officer to reinstate such requirements if at any time during the progress of the remaining work he finds that satisfactory progress is not being made.

(End of clause)

252.236-7009 Payment for mobilization and preparatory work.

As prescribed at 236.572.6, insert one of the following clauses:

(a) PAYMENT FOR MOBILIZATION AND PREPARATORY WORK, PAYMENT ITEM NO. _____ (MAR 1979)

(a) Payments will be made under this contract on the actual expenditures made by the Contractor for mobilization and preparatory work under payment Item No. _____ as follows: The Contractor may submit to the Contracting Officer certified accounts of the actual payments made by him for construction plant exceeding $10,000 in value per unit, as appraised by the Contracting Officer at the site of the work, acquired for the execution of the work; for the transportation of all plant and equipment to the site; for material purchased for the prosecution of the contract, but not to be incorporated in the work; for construction of camps, access roads or railroads, trailer courts, mess halls, dormitories or living quarters, field headquarters facilities and construction yards, and for personal services and hire of plant on work preparatory to commencing actual work on the construction items for which payment is provided under the terms of the contract. Accounts so submitted must be accompanied by certificate of the Contractor, supported by receipted bills or certified copies of payrolls and freight bills, showing that he has acquired said construction plant and material free from all encumbrances and agreement that it will not be removed from the site and that structures and facilities prepared or erected for the prosecution of the contract work will be maintained and not dismantled prior to the completion and acceptance of the entire work without the written permission of the Contracting Officer. If the Contracting Officer finds that said construction plant, material, equipment and the mobilization and preparatory work performed are suitable and necessary to the efficient prosecution of the contract and that the said preparatory work has been done with proper economy and efficiency, payment, less the prescribed retained percentage, will be made therefor to the Contractor. Payment for construction plant, material and structures and facilities prepared or erected for prosecution of the contract work shall not exceed the cost thereof to the Contractor less the estimated value upon the completion of the contract as determined by the Contracting Officer. In no event shall such payment exceed 100% of the cost to the Contractor of any such items which have no appreciable salvage value and 75% of the cost to the Contractor of such items which have an appreciable salvage value. The findings of the Contracting Officer as to the suitability and value of the construction plant, equipment, materials, structures or facilities shall not be subject to appeal.

(b) Payments for mobilization and preparatory work will be made in accordance with (a) above, and such payments will be deducted from the contract price for Item No. _____ "Mobilization and Preparatory Work" until the total amount thus charged to this item reduces this item to zero, after which no further payments will be made under this item. If the total of such payments made does not reduce this item to zero, the balance will be paid to the Contractor in the final payment under the contract. The retained percentage will be paid in accordance with the clause of this contract entitled "Payments to Contractor".

(End of clause)

(b) MOBILIZATION AND DEMOBILIZATION, PAYMENT ITEM NO. _____ (DEC 1985)

(a) All costs connected with the mobilization and demobilization of all of the Contractor's plant and equipment will be paid for at the contract lump sum price for this item. _____ percent (_____%) of the lump sum price will be paid to the Contractor upon completion of his mobilization at the work site. The remaining _____ percent (_____%) will be paid to the Contractor upon completion of demobilization.

(b) In the event the Contracting Officer considers that the amount in this item (_____%), which represents mobilization and (_____%) which represents demobilization, does not bear a reasonable relation to the cost of the work in this contract, the Contracting Officer may require the Contractor to produce cost data to justify this portion of the bid. Failure to justify such price to the satisfaction of the Contracting Officer will result in payment of actual mobilization costs, as determined by the Contracting Officer at the completion of mobilization, and actual demobilization costs, as determined by the Contracting Officer at the completion of demobilization, and payment of the remainder of this item in the final payment under this contract. The determination of the Contracting Officer is not subject to appeal.

(End of clause)

Note.—The percentage of the lump sum price for mobilization and demobilization in paragraph (a) of the above clause at 252.236-7009(b), attributed to mobilization should generally be 60% and the remaining 40% considered to be the cost of demobilization. These percentages may be varied to reflect the situation contemplated under the particular contract, but in no event should mobilization exceed 80% of the payment item.

252.236-7011 Airfield safety precautions.

As prescribed at 236.572-8, insert the following clause:

AIRFIELD SAFETY PRECAUTIONS (APR 1968)

(a) The operation of all ground equipment (mobile or stationary), the placement of all materials, and the performance of all work, upon and in the vicinity of all airfields, shall be done in accordance with this clause. The requirements of this clause are in addition to any other safety requirements of this contract.

(b) For purposes of this clause the following definitions shall apply.

(1) "Landing Areas" means the following:

(i) the primary surfaces which are comprised of the surface of the runways, the runway shoulders, and the lateral safety zones (the length of each primary surface is the same as the runway length; the width of each primary surface is 2,000 feet (1,000 feet on each side of the runway centerline)*); (see footnote at end of clause)

(ii) the "clear zone" beyond the ends of each runway, i.e., the extension of the "primary surface" for a distance of 1,000 feet beyond each end of each runway;

(iii) all taxiways plus the lateral clearance zones along each side for the length of the taxiways (the outer edge of each lateral clearance zone is laterally 250 feet from the far or opposite edge of the taxiway, i.e., a 75-foot-wide taxiway would have a combined

width of taxiway and lateral clearance zones of 425 feet); and

(iv) all aircraft parking aprons plus the area 125 feet in width extending beyond each edge all around the aprons.

(2) "Safety precaution areas" means those portions of approach-departure clearance zones and transitional zones where placement of objects incident to contract performance might result in vertical projections at or above the approach-departure clearance surface or the transitional surface.

(A) The "approach-departure clearance surface" is an extension of the primary surface and the clear zone at each end of each runway, for a distance of 50,000 feet, first along an inclined (glide angle) and then along a horizontal plane, both flaring symmetrically about the runway centerline extended. The inclined plane (glide angle) begins in the clear zone 200 feet past the end of the runway (and primary surface) at the same elevation as the end of the runway, and continuous upward at a slope of 50:1 (one foot vertically for each 50 feet horizontally) to an elevation of 500 feet above the established airfield elevation; at that point the plane becomes horizontal, continuing at that same uniform elevation to a point 50,000 feet longitudinally from the beginning of the inclined plane (glide angle) and ending there. The width of the surface at the beginning of the inclined plane (glide angle) is the same as the width of the clear zone; thence it flares uniformly, reaching the maximum width of 16,000 feet at the end.

(B) The "approach-departure clearance zone" is the ground area under the approach-departure clearance surface.

(C) The "transitional surface" is a sideways extension of all primary surfaces, clear zones, and approach-departure clearance surfaces along inclined planes. The inclined plane in each case begins at the edge of the surface. The slope of the inclined plane is 7:1 (one foot vertically for each 7 feet horizontally), and it continues to the point of intersection with the inner horizontal surface (which is the horizontal plane 150 feet above the established airfield elevation) or the outer horizontal surface (which is the horizontal plane 500 feet above the established airfield elevation), whichever is applicable.

(D) The "transitional zone" is the ground area under the transitional surface. (It adjoins the primary surface, clear zone and approach-departure clearance zone.)

(c) The Contractor shall report to the Contracting Officer before initiating any work and shall notify him of proposed changes of locations and operations.

(d) Neither equipment nor personnel shall use any runway for purposes other than aircraft operation without permission of the Contracting Officer unless the runway is closed by order of the Contracting Officer and marked as provided in (e)(2) below.

(e)(1) The Contractor shall place nothing upon the landing areas without authorization of the Contracting Officer.

(2) Unless otherwise authorized by the Contracting Officer, the Contractor shall outline those landing areas hazardous to aircraft, with red flags by day, and with electric, battery-operated, low-intensity red flasher lights by night.

(3) Before entering any landing area at an airfield where flying is controlled, additional permission must be obtained every time from the control tower operator, unless the landing area is marked as hazardous to aircraft in accordance with (2) above.

(4) All vehicles which the Contractor operates in landing areas shall be identified by means of a flag on a staff attached to and flying above the vehicle. The flag shall be three feet square and shall consist of a checkered pattern of international orange and white square of one foot on each side (except that the flag may vary up to 10 percent from each of these dimensions).

(5) Unless otherwise authorized by the Contracting Officer, all other equipment and materials in the landing areas shall be marked with red flags by day, and with electric, battery-operated, low-intensity red flasher lights by night.

(6) Work shall be carried on so as to leave that portion of the landing area which is available to aircraft free from hazards, holes, piles of material, and projecting shoulders that might damage an airplane tire.

(f)(1) The Contractor shall place nothing upon the safety precaution areas without authorization of the Contracting Officer.

(2) Unless otherwise authorized by the Contracting Officer, all equipment and materials in safety precaution areas shall be marked with red flags by day, and with electric, battery-operated, low-intensity red flasher lights by night.

(3) All objects placed in safety precaution areas, which project above the approach-departure clearance surface or above the transitional surface must be provided at night with a red light or red lantern.

(g) The Contractor shall keep all paved surfaces, such as runways, taxiways, and hardstands, clean at all times and, specifically, free from small stones which might damage aircraft propellers or jet aircraft.

(h) While work is actually being performed on the airfield by the Contractor, the operation of mobile equipment shall be governed by the safety provisions above. At all other times all mobile equipment shall be removed to locations approved by the Contracting Officer at a distance of at least 750 feet from the runway centerline plus any additional distance necessary to insure compliance with the other provisions of this clause.

(i) Only those trenches may be opened for which material is on hand and ready for placing therein. As soon as practicable after material has been placed and work approved, trenches shall be backfilled and compacted as required by the contract. Meanwhile all hazardous conditions shall be marked and lighted in accordance with the other provisions of this clause.

(End of clause)

*At some airfields the width of the primary surfaces is 1,500 feet (750 feet on each side of the runway centerline). In such instances, substitute the proper width in the clause.

252.236-7012 Contractor-prepared Network Analysis System.

As prescribed at 236.572-9, insert the following clause:

CONTRACTOR-PREPARED NETWORK ANALYSIS SYSTEM (APR 1968)

The progress chart to be prepared by the Contractor pursuant to the clause entitled "Schedules for Construction Contracts", shall consist of a network analysis system as described below. In preparing this system the scheduling of construction is the responsibility of the Contractor. The requirement for the system is included to assure adequate planning and execution of the work and to assist the Contracting Officer in appraising the reasonableness of the proposed schedule and evaluating progress of the work.

(a) An example of one of the numerous acceptable types of network analysis systems is shown in Appendix I of Corps of Engineers Regulation ER 1-1-11 entitled "Network Analysis System", single copies of which are available to bona fide bidders on request. Other systems which are designed to serve the same purpose and employ the same basic principles as are illustrated in Appendix I will be accepted subject to the approval of the Contracting Officer.

(b) The system shall consist of diagrams and accompanying mathematical analyses. The diagrams shall show elements of the project in detail and the entire project in summary.

(1) Diagrams shall show the order and interdependence of activities and the sequence in which the work is to be accomplished as planned by the Contractor. The basic concept of a network analysis diagram will be followed to show how the start of a given activity is dependent on the completion of preceding activities and its completion restricts the start of following activities.

(2) Detailed network activities shown on a detailed or subnetwork diagram shall include, in addition to construction activities, the submittal and approval of samples of materials and shop drawings, the procurement of critical materials and equipment, fabrication of special material and equipment and their installation and testing. All activities of the Government that affect progress and contract required dates for completion of all or parts of the work will be shown. The detail of information shall be such that duration times of activities will range from three (3) to thirty (30) days with not over two percent (2%) of the activities exceeding these limits. The activities which comprise the following separate buildings and features shall be separately identifiable by coding or use of subnetworks or both:

Building or feature.....
Minimum number of activities.....

The selection and number of activities shall be subject to the Contracting Officer's approval. Detailed networks, when summary networks are also furnished, need not be time scaled but shall be drafted to show a continuous flow from left to right with no arrows from right to left. The following information shall be shown on the diagrams for each activity: preceding and following event numbers, description of the activity, cost, and activity duration.

(3) Summary network. If the project is of such size that the entire network cannot be readily shown on a single sheet, a summary network diagram shall be provided. The summary network diagram shall consist of a minimum of fifty activities and a maximum of one hundred and fifty activities, and shall be based on and supported by detailed diagrams. Related activities shall be grouped on the network. The critical path shall be plotted generally along the center of the sheet with channels with increasing float placed towards the top or bottom. The summary network shall be time scaled using units of approximately one-half inch equals one week or other suitable scale approved by the Contracting Officer. Weekends and holidays shall be indicated. Where slack exists, the activities shall be shown at the time when they are scheduled to be accomplished.

(4) The mathematical analysis of the network diagram shall include a tabulation of each activity shown on the detailed network diagrams. The following information will be furnished as a minimum for each activity:

(i) Preceding and following event numbers (numbers shall be selected and assigned so as to permit identification of the activities with bid items:

(ii) Activity description;

(iii) Estimated duration of activities (the best estimate available at time of computation);

(iv) Earliest start date (by calendar date);

(v) Earliest finish date (by calendar date);

(vi) Scheduled or actual start date (by calendar date);

(vii) Scheduled or actual finish date (by calendar date);

(viii) Latest start date (by calendar date);

(ix) Latest finish date (by calendar date);

(x) Slack or float;

(xi) Monetary value of activity;

(xii) Responsibility for activity (Prime contractor, subcontractors, suppliers, Government, etc.);

(xiii) Manpower required;

(xiv) Percentage of activity completed;

(xv) Contractor's earnings based on portion of activity completed; and

(xvi) Bid item of which activity is a part.

(5) The program or means used in making the mathematical computation shall be capable of compiling the total value of completed and partially completed activities and subtotals from separate buildings or feature listed in paragraph (b)(2).

(6) In addition to the tabulation of activities, the computation will include the following data:

(i) Identification of activities which are planned to be expedited by use of overtime or double shifts to be worked including Saturdays, Sundays and holidays;

(ii) On-site manpower loading schedule;

(iii) A description of the major items of construction equipment planned for operations of the project. (The description shall include the type, number of units and unit capacities. A schedule showing proposed time equipment will be on the job keyed to activities on which equipment will be used shall be provided); and

(iv) Where portions of the work are to be paid by unit costs, the estimated number of units in an activity which was used in developing the total activity cost.

(7) The analysis shall list the activities in sorts or groups as follows:

(i) By the preceding event number from lowest to highest and then in the order of the following event number;

(ii) By the amount of slack, then in order of preceding event number;

(iii) By responsibility in order of earliest allowable start dates; and

(iv) In order of latest allowable start dates, then in order of preceding event numbers, and then in order of succeeding event numbers.

(c) Submission and approval of the system shall be as follows:

(1) A preliminary network defining the Contractor's planned operations during the first sixty (60) calendar days after notice to proceed will be submitted within ten (10) days. The Contractor's general approach for the balance of the project shall be indicated. Cost of activities expected to be completed or partially completed before submission and approval of the whole schedule should be included.

(2) The complete network analysis consisting of the detailed network mathematical analysis (on-site manpower loading schedule, equipment schedule) and network diagrams shall be submitted within forty (40) calendar days after receipt of notice to proceed.

(d) The Contractor shall participate in a review and evaluation of the proposed network diagrams and analysis by the Contracting Officer. Any revisions necessary as a result of this review shall be resubmitted for approval of the Contracting Officer within ten (10) calendar days after the conference. The approved schedule shall then be the schedule to be used by the Contractor for planning, organizing and directing the work and for reporting progress. If the Contractor thereafter desires to make changes in his method of operating and scheduling he shall notify the Contracting Officer in writing stating the reasons for the change. If the Contracting Officer considers these changes to be of a major nature he may require the Contractor to revise and submit for approval, without additional cost to the Government, all or the affected portion of the detailed diagrams and mathematical analysis and the summary diagram to show the effect on the entire project. A change may be considered of a major nature if the time estimated to be required or actually used for an activity or the logic of sequence of activities is varied from the original plan to a degree that there is a reasonable doubt as to the effect on the contract completion date or dates. Changes which affect activities with adequate slack time shall be considered as minor changes, except that an accumulation of minor changes may be considered a major change when their cumulative effect might affect the contract completion date.

(e) The Contractor shall submit at intervals of fifteen (15) calendar days a report of the actual construction progress by updating the mathematical analyses. Revisions causing changes in the detailed network shall be noted on the summary network, or a revised issue of affected portions of the detailed network furnished. The summary network shall be revised as necessary for the sake of clarity. However, only the initial submission or complete revisions need be time scaled. Subsequent minor revisions need not be time scaled.

(f) The report shall show the activities or portions of activities completed during the reporting period and their total value as basis for the Contractor's periodic request for payment. Payment made pursuant to the General Provision entitled "Payments to Contractor" will be based on the total value of such activities completed or partially completed after verification by the Contracting Officer. The report will state the percentage of the work actually completed and scheduled as of the report date and the progress along the critical path in terms of days ahead or behind the allowable dates. If the project is behind schedule, progress along other paths with negative slack shall also be reported. The Contractor shall also submit a narrative report with the updated analysis which shall include but not be limited to a description of the problem areas, current and anticipated, delaying factors and their impact, and an explanation of corrective actions taken or proposed.

(g) Sheet size of diagrams shall be 30 by 42 inches. Each updated copy shall show a date of the latest revision.

(h) Initial submittal and complete revisions shall be submitted in six (6) copies.

(i) Periodic reports shall be submitted in four (4) copies.

(End of clause)

252.236-7013 Government-prepared network analysis system.

As prescribed at 236.572-10, insert the following clause:

GOVERNMENT-PREPARED NETWORK ANALYSIS SYSTEM (APR 1968)

The progress chart prepared by the Contractor pursuant to the clause entitled "Schedules for Construction Contracts" will include the following:

(a) The Contractor shall submit to the Contracting Officer a chart showing the initial progress schedule covering the first sixty (60) days of his construction operations within _____ days after receipt by him of the Notice to Proceed.

(b) The Contractor shall submit a chart showing the construction progress schedule in accordance with the clause entitled "Schedules for Construction Contracting" for the entire work under this contract within _____ days after receipt of the Notice to Proceed.

(c) In addition to the above information he Contractor will also provide information for the Government to prepare and maintain a surveillance system and verify progress payments using the network analysis system of scheduling as described in Appendix I of the Corps of Engineers Regulation, ER 1-1-11, entitled "Network Analysis System", single copies of which are available to bona fide bidders upon request. In preparing this data the scheduling is the responsibility of the Contractor. The requirement is included to assure adequate planning and execution of the work and to assist the Contracting Officer in appraising the reasonableness of the proposed schedule and evaluating the

progress of the work. The data shall include, but not be limited to:

(1) A description of the Contractor's detailed construction plan of the project including the cost or weighted value, the order and interdependence, and the estimated duration of the activities which make up the project. Data shall be in sufficient detail to permit preparation of the network and schedule analysis by the Government.

(2) Revisions and updating of the data on scheduling with reasons for the revisions, as required by the Contracting Officer, shall be furnished by the Contractor in a timely and progressive manner to assist the Government in keeping the network and schedule analysis in a current working status.

(d) Pursuant to the General Provision entitled "Payments to Contractor", progress payments will be made on the basis of weighted value or cost assigned to each activity or group of activities as related to the total contract cost of the activity.

(End of clause)

252.236-7014 Statement of work.

As prescribed at 236.573-1, insert the following clause:

STATEMENT OF WORK (JAN 1965)

The Contractor shall furnish all labor, materials, equipment, and services (except those furnished by the Government) for the construction of (insert a brief description of the project) in accordance with the drawings and specifications or instructions attached hereto as Appendix "A" and made a part hereof, or to be furnished hereafter by the Contracting Officer and subject in every detail to his supervision, direction, and instructions.

(End of clause)

252.236-7015 Estimated cost, performance period.

As prescribed at 236.573-2, insert the following clause:

ESTIMATED COST, PERFORMANCE PERIOD (JAN 1965)

It is estimated that the construction cost of work required under this contract will be _____ Dollars, ($_____), exclusive of the Contractor's fee, and that the work herein contracted for will be ready for utilization by the Government on or before _____, 19__. It is expressly understood, however, that neither the Government nor the Contractor guarantees the correctness of either of these estimates.

(End of clause)

252.236-7016 Direct payments.

As prescribed at 236.573-3, insert the following clause:

DIRECT PAYMENTS (JAN 1965)

(a) *To Suppliers, Laborers, and Mechanics.* If bills for purchase of material, machinery or equipment, or payrolls covering employment of laborers or mechanics incurred by the Contractor or by any subcontractor hereunder are not paid promptly by the Contractor or subcontractor, as the case may be, the Contracting Officer may, in his discretion, withhold from payments otherwise due the Contractor an amount equivalent to the amount of any such bill or payroll. Should the Contractor neglect or refuse to pay such bills or payrolls or to direct any subcontractor to pay such bills or payrolls within five (5) days after notice from the Contracting Officer so to do, the Government shall have the right to pay such bills or payrolls directly, and in such event a deduction equal to five percent (5%) of the amount so paid directly shall be made from the Contractor's fee.

(b) *To Common Carriers.* The Government reserves the right to pay directly to common carriers any or all freight charges on construction plant, materials and supplies.

(End of clause)

252.236-7017 Approved construction plant.

As prescribed at 236.573-4, insert the following clause:

APPROVED CONSTRUCTION PLANT (JAN 1965)

Upon approval of the Contracting Officer, construction plant furnished by the Contractor will be shown in the attached Appendix "B" or modification thereto.

(End of Clause)

252.236-7018 Option for supervision and inspection services.

As prescribed at 236.574, insert the following clause:

OPTION FOR SUPERVISION AND INSPECTION SERVICES (APR 1972)

At any time prior to six (6) months after satisfactory completion and acceptance of the work to be furnished hereunder, the Government at its option, may direct, by a written order, the Architect-Engineer to perform any part or all of the supervision and inspection services provided under Appendix A. Upon receipt of such direction, the Architect-Engineer shall proceed with such work and services.

(End of clause)

252.236-7081 Cost limitation.

As prescribed at 236.580-1, insert the following provision:

COST LIMITATION (APR 1974)

A bid which does not contain separate bid prices for the items identified as subject to a cost limitation may be considered nonresponsive. A bidder by signing his bid certifies that each price bid on items subject to a cost limitation includes an appropriate apportionment of all applicable estimated costs, direct and indirect, as well as overhead and profit. Bids may be rejected which (i) have been materially unbalanced for the purpose of bringing affected items within cost limitations, or (ii) exceed the cost limitations unless such limitations have been waived by the Under Secretary of Defense (Research and Engineering) prior to award.

(End of provision)

252.236-7082 Additive or deductive items.

As prescribed at 236.580-2, insert the following provision:

ADDITIVE OR DEDUCTIVE ITEMS (APR 1968)

The low bidder for purposes of award shall be the conforming responsible bidder offering the low aggregate amount for the first or base bid item, plus or minus (in the order of priority listed in the schedule) those additive or deductive bid items providing the most features of the work within the funds determined by the Government to be available before bids are opened. If addition of another bid item in the listed order of priority would make the award exceed such funds for all bidders, it shall be skipped and the next subsequent additive bid item in a lower amount shall be added if award thereon can be made within such funds. For example, when the amount available is $100,000 and a bidder's base bid and four successive additives are $85,000, $10,000, $8,000, $6,000 and $4,000, the aggregate amount of the bid for purposes of award would be $99,000 for the base bid plus the first and fourth additives, the second and third additives being skipped because each of them would cause the aggregate bid to exceed $100,000. In any case, all bids shall be evaluated on the basis of the same additive or deductive bid items, determined as above provided. The listed order of priority need be followed only for determining the low bidder. After determination of the low bidder as stated, award in the best interests of the Government may be made to him on his base bid and any combination of his additive or deductive bid for which funds are determined to be available at the time of the award, *Provided* that award on such combination of bid items does not exceed the amount offered by any other conforming responsible bidder for the same combination of bid items.

(End of provision)

252.237-7000 Statement of work.

As prescribed by 237.304(S-70), insert the following clause:

STATEMENT OF WORK (OCT 1976)

(a) The Contractor shall furnish all labor, material and equipment and perform all work required for the dismantling, demolition and removal, or both, of _____ (identify properly) _____.

(b) The work shall be commenced _____ and shall be completed not later than _____.

(c) All property retained by the Government will be conditioned, handled and stored by the Contractor in such manner and place as prescribed in the specifications.

(End of Clause)

ALTERNATE I (OCT 1976)

In accordance with FAR 37.302, where the contractor is required to furnish a performance bond or other security in an amount deemed adequate to assure completion of the work and to protect the Government against damage to adjoining property during the performance of the contract, the following paragraph (d) shall be added to the above clause:

(d) A performance bond or other security in the penal sum of _____ dollars ($_____) shall be furnished by the Contractor.

252.237-7100 Award to single bidder.

As prescribed at 237.7103(a), insert the following provision:

AWARD TO SINGLE BIDDER (OCT 1965)

Subject to the provisions contained herein, award shall be made to a single bidder. Bids must include unit prices for each item listed in order that bids may be properly evaluated. Failure to do this shall be cause for rejection of the entire bid. Bids shall be evaluated on the basis of the estimated quantities shown, and award shall be made to that responsible bidder whose total aggregate price is low.

(End of provision)

252.237-7101 Award to single offeror.

As prescribed at 237.7103(b), insert the following provision: services:

AWARD TO SINGLE OFFEROR (OCT 1963)

Subject to the provisions contained herein, award shall be made to a single offeror. Offers must include unit prices for each item listed in order that offers may be properly evaluated. Failure to do this shall be cause for rejection of the entire offer. Offers shall be evaluated on the basis of the estimated quantities shown. Discussions may be held with those offerors determined to be within the competitive range, and award shall be made to that responsible offeror whose total aggregate offer is determined to be in the best interest of the Government.

(End of provision)

252.237-7102 Requirements.

As prescribed at 237.7103 (c) and (d), insert the following clause:

REQUIREMENTS (OCT 1965)

(a) This is a requirements contract for the supplies or services specified in the Schedule, and for the period set forth in this contract. Delivery of supplies or performance of services shall be made only as authorized by orders issued in accordance with the clause entitled "Delivery Orders and Invoices." The quantities of supplies or services specified herein are estimates only and are not purchased hereby. Except as may be otherwise provided herein, in the event the Government's requirements for supplies or services set forth in the Schedule do not result in orders in the amounts or quantities described as "estimated" or "maximum" in the Schedule, such event shall not constitute the basis for an equitable price adjustment under this contract.

(b) The Government shall order from the Contractor all the supplies, services, and transportation set forth in the Schedule which are required to be purchased by the Government activity named herein, and the Contractor shall furnish to the Government such supplies, services, and transportation as may be ordered by the Contracting Officer. The Government, however, reserves the right not to order supplies and services under this contract in instances where the body is removed from the area for medical, scientific, or other cogent reason. In the event of an epidemic or other emergency, the Contractor shall not be required to provide services in excess of the capacity of his facilities.

(End of clause)

252.237-7103 Area of performance.

As prescribed at 237.7103(c), insert the following clause:

AREA OF PERFORMANCE (APR 1974)

(a) The area of performance is specified in Attachment 1 to this contract. This contract includes taking possession of the remains at the place where they are located, transporting them to the Contractor's place of preparation, and transporting them thereafter to a place designated by the Contracting Officer. The Contractor shall not be entitled to reimbursement for transportation when both the place where the remains were located and the delivery point are within the area of performance.

(b) If remains are located outside the area of performance, the Government may call on the Contractor or obtain the services elsewhere. If the Government calls on the Contractor, the Contractor shall be paid the amount per mile indicated in the Schedule for the number of miles required to transport the remains by a reasonable route from the point where located to the boundary of the area of performance. If the Government elects to have the remains brought into the area of performance by some other means, it may require the Contractor to perform after the remains are within the area of performance.

(c) The Government may require the Contractor to deliver remains to any point within one hundred (100) miles of the area of performance. In this case, the Contractor shall be paid the amount per mile indicated in the Schedule for the number of miles required to transport the remains by a reasonable route from the boundary of the area of performance to the delivery point.

(End of clause)

252.237-7104 Specifications.

As prescribed at 237.7103 (c) and (d), insert the following clause:

SPECIFICATIONS (OCT 1965)

Armed Services Specifications Care of Remains of Deceased Personnel, hereinafter referred to as "Specifications" are attached hereto and made a part of this contract.

(End of clause)

252.237-7105 Using activities.

As prescribed at 237.7103 (c) and (d), insert the following clause:

USING ACTIVITIES (OCT 1965)

Contracting Officers of the following activities may order services and supplies under this contract:

_____

_____

_____

(End of clause)

252.237-7106 Delivery orders and invoices.

As prescribed at 237.7103 (c) and (d), insert the following clause:

DELIVERY ORDERS AND INVOICES (OCT 1965)

Delivery orders for supplies or services shall be issued by the Contracting Officer and shall set forth (i) the supplies or services being ordered; (ii) the quantities to be furnished; (iii) delivery or performance dates; (iv) place of delivery or performance; (v) packing and shipping instructions; and (vi) the address to which invoices for services rendered under this contract shall be sent. Amendments to delivery orders may be made by the Contracting Officer issuing the order. Each delivery order or change order shall cite the funds from which payment for the supplies or services ordered shall be made.

(End of clause)

252.237-7107 Delivery and performance.

As prescribed at 237.7103 (c) and (d), insert the following clause:

DELIVERY AND PERFORMANCE (OCT 1965)

Except as otherwise herein provided, the Contractor shall furnish the material ordered and perform the services specified in each case as promptly as possible but in no event later than thirty-six (36) hours after the Contractor has received notification to remove the remains, exclusive of the time necessary for the Government to inspect and check results of preparation. The Government may, at no additional charge, require the Contractor to hold the remains for an additional period not to exceed seventy-two (72) hours from the time the remains are casketed and final inspection completed.

(End of clause)

252.237-7108 Subcontracting.

As prescribed at 237.7103 (c) and (d), insert the following clause:

SUBCONTRACTING (OCT 1965)

No contract shall be made by the Contractor with any other party for furnishing any of the work or services herein contracted for without the written approval of the Contracting Officer. This provision does not apply to contracts of employment between the Contractor and his personnel.

(End of clause)

252.237-7109 Additional default provision.

As prescribed at 237.7103 (c) and (d), insert the following clause:

ADDITIONAL DEFAULT PROVISION (OCT 1965)

(a) This clause supplements the "Default (Fixed Price Supply and Service)" clause of this contract.

(b) This contract may be terminated for default by written notice without the ten (10) day notice specified under (a)(2) of the "Default (Fixed Price Supply and Service)" clause if during the performance of this contract:

(1) the Contractor, through circumstances reasonably within his control or that of persons in his employ, performs any act or acts under or in connection with this contract, or fails in the performance of any service under this contract and such acts or failures may reasonably be considered to reflect discredit upon the Department of Defense in fulfilling its responsibility for proper care of remains.

(2) the Contractor, either by his own act or through persons in his employ, solicits relatives or friends of the deceased to purchase supplies or services not provided for under this contract. (The Contractor may furnish supplies or arrange for services not provided for under this contract, only where such other supplies or services are voluntarily requested, selected and paid for by the representatives of the deceased.);

(3) the services, or any part thereof, to be performed under this contract are, without the written authorization of the Contracting Officer, performed by an individual, partnership, corporation, or other person or business association whatsoever, other than the Contractor to whom this contract is awarded, his employees and members of the firm;

(4) the Contractor refuses to perform the services required for any particular remains; or

(5) the Contractor advertises in any way that he has a contract for mortuary services with the Government.

(c) All other provisions of the "Default (Fixed Price Supply and Service)" clause shall apply to a termination made pursuant to this "Additional Default Provision" clause.

(End of clause)

252.237-7110 Group interment.

As prescribed at 237.7103 (c) and (d), insert the followng clause:

GROUP INTERMENT (OCT 1965)

Payments to the Contractor for supplies and services provided for remains to be interred as a group shall be made on the basis of the number of caskets furnished rather than on the basis of the number of persons in the group.

(End of clause)

252.237-7111 Professional requirements.

As prescribed at 237.7103 (c) and (d), insert the following clause:

PROFESSIONAL REQUIREMENTS (OCT 1965)

The Contractor shall meet all state and local licensing requirements and shall furnish the highest quality of professional services. Preparation and transportation of remains shall be performed in accordance with all applicable Federal, state, and local health laws, statutes, and regulations. The Contractor shall obtain and furnish all necessary health department and shipping permits at no additional cost to the Government, and shall insure that all necessary health department permits are in order for disposition of the remains.

(End of clause)

252.237-7112 Facility requirements.

As prescribed at 237.7103 (c) and (d), insert the following clause:

FACILITY REQUIREMENTS (OCT 1965)

The Contractor's building shall have complete facilities for maintaining the highest standards of solemnity, reverence, and assistance to the family, and for prescribed ceremonial services. The preparation room shall be clean, sanitary, and adequately equipped. The Contractor shall have, or be able to obtain, catafalques, church trucks and equipment for Protestant, Catholic, and Jewish services. The funeral home, furnishings, grounds and surrounding area shall be carefully maintained so as to present a clean and well-kept appearance.

(End of clause)

252.237-7113 Preparation history.

As prescribed at 237.7103 (c) and (d), insert the following clause:

PREPARATION HISTORY (OCT 1965)

For each body prepared, or in the case of group interment for each casket handled, the Contractor shall state briefly the results of the embalming process on a certificate furnished by the Contracting Officer.

(End of clause)

252.237-7200 Instruction to bidders (count of articles).

As prescribed at 237.7204(a), insert the following provision:

INSTRUCTION TO BIDDERS (COUNT OF ARTICLES) (OCT 1981)

(a) Bids must include unit prices for each item in a lot. Unit prices must include all costs to the Government of providing the services, including pickup and delivery charges. Failure to bid on any item in a lot shall be cause for rejection of the bid on that lot. Bids shall be evaluated on the basis of the estimated quantities stated in the invitation. Subject to the provision contained herein, award generally shall be made to a single bidder for all lots. The Government reserves the right, however, to award by individual lot when the Contracting Officer determines that this is more advantageous to the Government.

(b) Upon application to the Contracting Officer, types of articles to be serviced may be inspected prior to bidding.

(End of provision)

252.237-7201 Instruction to bidders (bulk weight).

As prescribed at 237.7204(b), insert the following provision:

INSTRUCTION TO BIDDERS (BULK WEIGHT) (OCT 1981)

(a) Bids must be submitted on a unit price per pound of serviced laundry. Unit prices must include all costs to the Government of providing the service, including pickup and delivery charges. Bids shall be evaluated on the basis of the estimated pounds of serviced laundry stated in the invitation. Subject to the provision contained herein, award generally shall be made to a single bidder for all lots. The Government reserves the right, however, to award by individual lot when the Contracting Officer determines that this is more advantageous to the Government.

(b) Upon application to the Contracting Officer, types of articles to be serviced may be inspected prior to bidding.

(End of provision)

252.237-7202 Count of articles.

As prescribed at 237.7204(c)(1), insert the following clause:

COUNT OF ARTICLES (APR 1967)

(a) The Contractor shall be liable for return of the number and kind of articles furnished for service under this contract, in accordance with the count of the Contracting Officer, or the number and kind of articles agreed upon as a result of a joint count by the Contractor and the Contracting Officer at the time of delivery to the Contractor.

(b) Delivery tickets in the number of copies required, and in the form approved by the Contracting Officer shall be completed by the Contractor at the time of his receipt of the articles to be serviced. One copy of each delivery ticket shall accompany the Contractor's invoice.

(End of clause)

ALTERNATE I (APR 1967)

As prescribed at 237.7204(c)(2), add the following paragraph (c) to the basic clause:

(c) Individual laundry bundle delivery tickets shall be provided by the Contractor as specified in the clause entitled "Individual Laundry" of the contract clauses of this contract.

252.237-7203 Loss or damage (count of articles).

As prescribed at 237.7204(d), insert the following clause:

LOSS OR DAMAGE (COUNT OF ARTICLES) (OCT 1981)

(a) The Contractor shall indemnify the Government for any property delivered to the Contractor for servicing under this contract which is lost, or which is damaged and, in the opinion of the Contracting Officer, cannot be repaired satisfactorily. In either of these events, the Contractor shall pay to the Government the value thereof in accordance with Federal Supply Schedule price lists. If the property is not on these price lists, the Contracting Officer shall determine a fair and just price. Credit shall be allowed for any depreciation in the value of the property at the time of loss or damage, and the parties hereto shall determine the amount of the allowable credit. If the parties fail to agree upon the value of the property, or fail to agree on the amount of credit due, the dispute shall be determined as provided in the clause hereof entitled "Disputes."

(b) In case of damage to any property which the Contracting Officer and the Contractor agree can be satisfactorily repaired, the Contractor shall repair the property at his expense in a manner satisfactory to the Contracting Officer.

(End of clause)

252.237-7204 Weight of articles (bag type).

As prescribed at 237.7204(e)(1), insert the following clause:

WEIGHT OF ARTICLES (BAG TYPE) (OCT 1981)

(a) The Contractor shall be liable for the return of the articles furnished for service under this contract.

(b) Delivery tickets in the number of copies required, and in the form approved by the Contracting Officer, shall be completed by the Contractor at the time of his receipt of the articles to be serviced. One copy of each delivery ticket shall accompany the Contractor's invoice.

(c) Prior to Contractor pickup of articles for service under this contract, the Contracting Officer shall ensure that each bag contains only articles within a single bag type as specified in the Schedule. The Contracting Officer shall ensure each bag is weighed and that this weight and bag type are identified on the bag. The bag shall always be included in this weight. This weight and the bag type shall be verified by the Contractor who shall record the verified weight and bag type on the delivery ticket. One copy of the delivery ticket shall be retained by the Government.

(d) At the time of delivery, the Contractor shall record the weight of serviced laundry on the delivery ticket. The Contracting Officer shall ensure that this weight is verified at time of delivery.

(End of clause)

252.237-7205 Weight of articles (unsorted).

As prescribed at 237.7204(e)(2), insert the following clause:

WEIGHT OF ARTICLES (UNSORTED) (OCT 1981)

(a) The Contractor shall be liable for the return of the articles furnished for service under this contract.

(b) Delivery tickets in the number of copies required, and in the form approved by the Contracting Officer, shall be completed by the Contractor at the time of his receipt of the articles to be serviced. One copy of each delivery ticket shall accompany the Contractor's invoice.

(c) Prior to Contractor pickup of articles for service under this contract, the Contracting Officer shall ensure each bag is weighed and that this weight is identified on the bag. The bag shall always be included in this weight. This weight shall be verified by the Contractor who shall record the verified weight on the delivery ticket. One copy of the delivery ticket shall be retained by the Government.

(d) At the time of delivery, the Contractor shall record the weight of serviced laundry on the delivery ticket. The Contracting Officer shall ensure that this weight is verified at time of delivery.

(End of clause)

252.237-7206 Loss or damage (weight of articles).

As prescribed at 237.7204(e)(3), insert a clause substantially as follows:

LOSS OR DAMAGE (WEIGHT OF ARTICLES) (OCT 1981)

(a) The Contractor shall indemnify the Government for any property delivered to the Contractor for servicing under this contract which is lost, or which is damaged, and in the opinion of the Contracting Officer, cannot be repaired satisfactorily. In either of these events, the Contractor shall pay to the Government the value thereof in accordance with the price of _____* per pound. The Contractor shall only be required to pay the Government for any losses which exceed the maximum weight loss allowable by the clause hereof entitled "Maximum Weight Loss." If the parties fail to agree on the amount of credit due, the dispute shall be determined as provided in the clause hereof entitled "Disputes."

(b) In the case of damage to any property which the Contracting Officer and the Contractor agree can be satisfactorily repaired, the Contractor shall repair the property at his expense in a manner satisfactory to the Contracting Officer.

*Insert reasonable per pound price based on the average per pound value of the property to be serviced. When the contract requires laundry services on a bag type basis, reasonable per pound prices shall be identified by bag type.

(End of Clause)

252.237-7207 Maximum weight loss.

As prescribed at 237.7204(e)(4), insert the following clause:

MAXIMUM WEIGHT LOSS (OCT 1981)

The maximum weight loss allowable in servicing the laundry is _____* percent of the weight recorded on delivery tickets, as set forth in the clause entitled "Weight of Articles," when the laundry is picked up. Any weight loss in excess of this amount shall be subject to the clause hereof entitled "Loss or Damage."

*Insert applicable percentage not to exceed eight percent (8%).

(End of clause)

252.237-7208 Individual laundry.

As prescribed at 237.7204(f), insert the following clause:

INDIVIDUAL LAUNDRY (APR 1967)

(a) The Contractor shall provide laundry service on both a unit bundle and on a piece-rate bundle basis for individual personnel when required by this contract. The total number of pieces listed in the column "Estimated Quantity" in the Schedule is the estimated amount of individual laundry for this contract, but does not constitute any representation as to the amount of individual laundry to be required. Individuals may elect whether they shall patronize the laundry services. Services covered by this provision shall be on a weekly basis, and the schedule for pickup and delivery shall be as specified elsewhere in this contract. Charges for individual laundry shall be on a per unit bundle or a piece-rate basis as indicated on the form, to be furnished by the Contractor, accompanying the bundle at time of pickup.

(b) The maximum number of pieces to be allowed per bundle is as specified in the Schedule and as follows:*

(1) Bundle consisting of twenty-six (26) pieces including laundry bag. This bundle shall contain approximately _____ pieces of outer garments which are to be starched and pressed. Outer garments shall include but not be limited to cotton shirts, trousers, jackets, dresses, coats.

(2) Bundle consisting of thirteen (13) pieces including laundry bag. This bundle shall contain approximately _____ pieces of outer garments which are to be starched and pressed. Outer garments shall include but not be limited to cotton shirts, trousers, jackets, dresses, coats.

(c) Individual laundry bundles shall be accompanied by forms listing the items contained therein, prepared by the patrons concerned. Forms on individual laundry bundles shall clearly identify unit bundle or piece-rate bundle as applicable when both services are provided by this contract.

*The number of pieces and the composition of a bundle may be revised by the Contracting Officer prior to advertising to meet local conditions.

(End of clause)

252.237-7209 Special definitions of Government property.

As prescribed at 237.7204(g), insert the following clause:

SPECIAL DEFINITIONS OF GOVERNMEMT PROPERTY (APR 1967)

(a) The term "Government-furnished property," as used in this contract, means any supplies or facilities furnished to the Contractor by the Government for use in connection with the performance of this contract, but does not include the articles delivered to the Contractor to be laundered or dry cleaned.

(b) The term "Government-owned property," as defined in this contract, means all of the articles delivered to the Contractor to be laundered or dry cleaned, expressly including any articles which may actually be owned by individual Government personnel.

(End of clause)

252.237-7400 Definitions (Communications).

As prescribed at 237.7413(a), insert the following clause:

DEFINITIONS (COMMUNICATIONS) (APR 1971)

(a) The term "Communication Service Authorization" (CSA) means an order for services or facilities under this contract.

(b) The term "Appropriate Governmental Regulatory Body" means the Federal Communications Commission, any state-wide regulatory body, or any body with less than state-wide jurisdiction when operating pursuant to state authority. Regulatory bodies whose decisions are not subject to judicial appeal and regulatory bodies which regulate a company owned by the same entity which creates the regulatory body are not "appropriate governmental regulatory bodies" for the purposes of this contract.

(End of clause)

252.237-7401 [Reserved]

252.237-7402 Access.

As prescribed at 237.7413(a), insert the following clause:

ACCESS (APR 1971)

(a) Subject to military security regulations, the Government shall permit the Contractor access at all reasonable times to contractor furnished facilities; *Provided* that, if by reason of military necessity the Government

is unable to permit access, the Government at its own risk and expense shall maintain these facilities and the Contractor shall not be responsible for the service involving any of these facilities during the period of nonaccess, unless the service failure results from the Contractor's fault or negligence.

(b) During periods when Contractor access is not permitted, cost attributable to loss of or damage to the equipment due to the fault or negligence of the Government shall be reimbursed to the Contractor at mutually acceptable rates. Failure to agree shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(End of clause)

252.237-7403 Amendment of contract.

As prescribed at 237.7413(a), insert the following clause:

AMENDMENT OF CONTRACT (APR 1971)

Upon thirty (30) days written notice, either party may request reconsideration of this contract for the purpose of revision to conform with requirements of law or to provide for mutually acceptable changes.

(End of clause)

252.237-7404 Obligation of the Government.

As prescribed at 237.7413(a), insert the following clause:

OBLIGATION OF THE GOVERNMENT (APR 1971)

The Government incurs no monetary liability under this instrument. The Government's liability shall arise, if appropriate, upon the issuance of a CSA pursuant to the terms of this instrument.

(End of clause)

252.237-7405 [Reserved]

252.237-7406 Continuation of orders.

As prescribed at 237.7413(b), insert the following clause:

CONTINUATION OF ORDERS (APR 1971)

All orders heretofore issued by _____ under Contract Number _____, dated _____, are transferred to this contract and shall continue in full force and effect as though placed under this contract. Orders currently in effect which were heretofore issued by the above Department under other contracts of that Department with the Contractor may likewise be transferred to this contract.

(End of clause)

252.237-7407 Facilities and services to be furnished—common carriers.

As prescribed at 237.7413(b), insert the following clause:

FACILITIES AND SERVICES TO BE FURNISHED—COMMON CARRIERS (APR 1971)

(a) The Contractor shall furnish any classes of services or facilities that he offers or furnishes under published tariffs.

(b) When it is mutually agreed that the Contractor shall furnish nontariffed services, such services may be ordered in the manner provided in the clause entitled "Ordering of Facilities and Services." These may include the engineering, installation, alteration or maintenance of facilities owned either by the Contractor or by the Government, and may be located on or off Government premises or at any of its establishments.

(c) The Contractor agrees to interconnect his facilities with any Government-owned or furnished communications equipment, facilities or transmission media, in accordance with established technical criteria for assuring continuity of service and/or traffic without damage to or degradation of commercial facilities, upon request of the Contracting Officer.

(End of clause)

252.237-7408 Ordering of facilities and services—common carriers.

As prescribed at 237.7413(b), insert the following clause:

ORDERING OF FACILITIES AND SERVICES—COMMOM CARRIERS (APR 1971)

All services and facilities furnished, as provided in the clause entitled "Facilities and Services to be Furnished—Common Carriers," shall be ordered by the Contracting Officer on numbered CSAs referring to this contract and specifying the services and facilities desired, the premises involved, the address where bills for service shall be sent, the Disbursing Officer, and any other pertinent details. Acceptance of orders by the Contractor shall be acknowledged by (a) commencing performance or (b) written acceptance by a duly authorized representative. The Contractor shall sign and promptly return the order to the Government when required by the Contracting Officer. Orders pursuant to this clause which are unacceptable to the Contractor shall be returned to the Contracting Officer within _____ days of receipt stating the reasons therefor.

(End of clause)

252.237-7409 Rates, charges, and services—common carriers.

As prescribed at 237.7413(b), insert the following clause:

RATES, CHARGES, AND SERVICES—COMMON CARRIERS (APR 1971)

(a) The services and facilities furnished hereunder shall be in accordance with all applicable tariffs, rates, charges, rules, regulations or requirements (1) lawfully established by an appropriate governmental regulatory body; and (2) applicable to service and facilities furnished or offered by the Contractor to the general public or his subscribers; or at rates, terms and conditions of service and facilities furnished or offered by the Contractor to the general public or his subscribers; or at rates, terms and conditions of service as may be agreed upon, subject, when appropriate, to jurisdiction of an appropriate governmental regulatory body. For nontariffed services which are furnished, the Government shall be charged at the lowest rate and under the most favorable terms and conditions for similar service and facilities offered to any other customer.

(b) Recurring charges for services and facilities furnished under this contract shall, in each case, commence with satisfactory establishment of service or provision of facilities or equipments and are payable monthly in arrears.

(c) Subject to the "Cancellation or Termination of Orders-Common Carriers" clause, the Government may discontinue the use of any service or facilities furnished hereunder at any time. Upon discontinuance, the Government shall pay to the Contractor all charges for services and facilities adjusted to the effective date of discontinuance.

(d) Expediting charges are expenditures necessary to secure services earlier than those services normally would be provided, such as costs of overtime pay, or special shipment. Expediting charges shall be paid only when (1) payment thereof is provided for in the tariff established by an appropriate regulatory authority or (2) such charges are specially authorized in an expediting CSA. When authorized, expediting charges shall be the additional costs incurred by the Contractor and the subcontractor.

(e) When the services normally provided are technically unacceptable and the requirement necessitates the development, fabrication or manufacture of special equipment, the Government may provide such equipment or may direct the Contractor to procure the equipment or facilities upon a competitive basis to the extent practicable.

(f) If at any time the Government defers or changes its orders for any of the services hereunder but does not cancel or terminate them, the amount paid or payable to the Contractor for providing the services deferred or modified shall be equitably adjusted in accordance with applicable tariffs filed by the Contractor with the regulatory commission and in effect at the time of the deferral or change, or if no tariffs are in effect, by written agreement between the Government and the Contractor. Failure to agree on any adjustment shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause.

(End of clause)

252.237-7410 Payment—common carrier.

As prescribed at 237.7413(b), insert the following clause:

PAYMENT—COMMON CARRIER (APR 1971)

The Government shall pay the Contractor, in arrears, upon submission of invoices for services and facilities furnished in accordance with the provisions of CSAs issued under this contract, the rates and charges for such services and facilities as set forth in the clause entitled "Rates, Charges and Services."

(End of clause)

252.237-7411 Tariff information.

As prescribed at 237.7413(b), insert the following clause:

TARIFF INFORMATION (APR 1971)

(a) A copy of the Contractor's current existing tariffs (including changes) shall be furnished promptly to the Contracting Officer upon request. As early as possible prior to the filing of any application to a Federal, state or any other regulatory agency seeking the establishment of, or changes in, rates, charges, services, or any other regulations relating to any tariff or any of the facilities or services to be furnished solely or primarily to the Government, the Contractor shall notify the Contracting Officer thereof and shall furnish a copy of the application. Upon request therefor, the Contractor shall furnish a copy of all information, material and data developed or prepared in support of or in connection with such application.

(b) The Contractor also shall notify the Contracting Officer of any such application which may be filed with an appropriate governmental regulatory body by anyone other than the Contractor which affects or will affect the rate or conditions of services rendered or to be rendered promptly after the Contractor himself learns of that application. The foregoing requirements shall apply also to all such applications pending on the effective date of this contract.

(End of Clause)

252.237-7412 Cancellation or termination of orders—common carriers.

As prescribed at 237.7413(b), insert the following clause:

CANCELLATION OR TERMINATION OF ORDERS—COMMON CARRIERS (APR 1971)

(a) In the event the Government cancels, in whole or in part, any of the services which the Contractor is requested to provide under this contract, prior to the time such services are made available to the Government, or in the event that the Government terminates any of these services, in whole or in part, after they are made available to the Government, the Government shall reimburse the Contractor for the actual nonrecoverable costs which the Contractor has reasonably incurred in specially providing facilities and equipment the use of which is canceled or terminated and for which the Contractor has no foreseeable reuse. The amount of reimbursement shall be determined in the manner set forth in (b), (c) or (d) below.

(b) The amount of the Government's liability upon cancellation or termination of any of the services ordered under this contract, in whole or in part, shall be determined in accordance with applicable tariffs governing cancellation and termination charges which are filed by the Contractor with an appropriate governmental regulatory body and are in effect on the date of termination, and which provide specific cancellation or termination charges for the facilities and equipment involved or set forth the manner in which such charges will be determined.

(c) The amount of the Government's liability upon cancellation or termination, in whole or in part, of any of the services ordered under this contract, which are not subject to an appropriate governmental regulatory body, shall be determined in accordance with a mutually agreed schedule as contained in the applicable Communication Services Authorization (CSA).

(d) If no such applicable tariffs are in effect on the date of cancellation or termination or set forth in the applicable CSA, the Government's liability shall be determined at the time of cancellation or termination of the facilities and equipment in accordance with the following settlement procedures:

(1) The Contractor agrees to provide the Contracting Officer, in such reasonable detail as he may require, certified inventory schedules covering all items of property or facilities in the Contractor's possession, the cost of which is included in the "Basic Cancellation or Termination Liability" for which the Contractor has no foreseeable reuse.

(2) The Contractor shall use his best efforts to sell such property or facilities when the Contractor has no foreseeable reuse or when the Department has not exercised its option to take title under the clause entitled "Title to Communications Facilities and Equipment." Any proceeds of such sale shall be applied in reduction of any payments to be made by the Government to the Contractor under a cancellation or termination settlement.

(3) Actual nonrecoverable costs shall be recorded in accordance with the established accounting procedures prescribed by the cognizant governmental regulatory authority or, if no such procedures have been prescribed, in accordance with generally accepted accounting procedures applicable to the provision of communication services for public use.

(4) The actual nonrecoverable costs are the installed costs of the facilities and equipment, less cost of reusable materials, and less net salvage. Installed costs shall include the actual cost of equipment and materials specifically provided or used, plus the actual cost of installing (including engineering, labor, supervision, transportation, rights-of-way, and any other items which are chargeable to the capital accounts of the Contractor) except any such costs for which the Government may have directly reimbursed the Contractor under the clause entitled "Special Construction and Equipment Charges." From the Contractor's installed cost, there shall be deducted the net salvage value (salvage value less cost of removal). In determining such net salvage, due consideration shall be given to foreseeable reuse by the Contractor of the facilities and equipment and due allowance shall be made for the cost of dismantling, removal, reconditioning and disposal of the facilities and equipment when necessary either to the sale of facilities or their reuse by the Contractor in another location.

(5) The "Basic Cancellation Liability" is defined as the actual nonrecoverable cost which the Government shall reimburse the Contractor at the time services are canceled. The "Basic Termination Liability" is defined as the nonrecoverable cost amortized in equal monthly increments throughout the liability period. Upon termination of services, the Government shall reimburse the Contractor for the nonrecoverable cost less such costs amortized to the date services are terminated. The liability period shall be established as mutually agreed to but will not exceed ten (10) years.

(6) When the "Basic Cancellation or Termination Liability" established by the CSA is based on estimated costs, the Contractor agrees to settle on the basis of actual cost at the time of termination or cancellation.

(7) The Contractor agrees that, if after settlement but within the termination liability period of the services, should the Contractor make reuse of equipment or facilities which were treated as nonreusable or nonsalvable in the settlement, the Contractor shall reimburse the Government for the value thereof.

(8) The Contractor agrees that in no event shall any costs be included which are not included in determining cancellation and termination charges under the Contractor's standard practices or procedures; and no cancellation or termination charge shall be made if such charge is not ordinarily made by the Contractor with respect to similar facilities or equipment furnished under similar circumstances.

(e) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the canceled or termination portion of this contract whenever in the opinion of the Contracting Officer the aggregate of such payments is within the amount to which the Contractor is entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest at the rate of six percent (6%) per annum, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government; *provided*, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of the cancellation or termination inventory until ten (10) days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

(f) Failure to agree shall be a dispute concerning a question of fact within the meaning of the clause entitled "Disputes."

(End of clause)

252.237-7413 Reuse arrangements.

As prescribed at 237.7413(b), insert the following clause:

REUSE ARRANGEMENTS (APR 1971)

(a) When feasible, the Contractor shall reuse canceled or terminated facilities or equipment to minimize the charges to the Government.

(b) If at any time the Government requires that communications facilities or equipment be relocated within the Contractor's service area, the Government shall have the option of paying the costs of relocating the facilities or equipment in lieu of paying any termination

or cancellation charge. The "Basic Termination Liability" applicable to the facilities or equipment in their former location shall continue to apply to the facilities and equipment in their new location. Monthly rental charges shall continue to be paid during the period.

(c) When there is another requirement or foreseeable reuse in place of canceled or terminated facilities or equipment, no charge shall apply and and the basic cancellation or termination liability shall be appropriately reduced. When feasible, the Contractor shall promptly reuse discontinued channels or facilities, including equipment for which the Government is obligated to pay a minimum service charge.

(End of clause)

252.237-7414 Submission of cost or pricing data—common carriers.

As prescribed at 237.7413(b), insert the following clause:

SUBMISSION OF COST OR PRICING DATA—COMMON CARRIERS (APR 1971)

The Contractor agrees to provide certified cost or pricing data, as requested by the Contracting Officer whenever:

(a) the services are nontariffed services;

(b) a tariff, whether filed or contemplated to be filed, is for new services installed or developed primarily for Government use (and the data shall cover special construction charges in connection therewith);

(c) a tariff, whether filed or contemplated to be filed, in which specific rates and charges are not included;

(d) more than one commercial source (one or more of which is a common carrier) can offer the desired service but price competition is not considered adequate;

(e) required to support the reasonableness of special assembly rates and charges;

(f) required to support the reasonableness of special construction and equipment charges;

(g) required to support the reasonableness of those contingent liabilities which are fixed at the outset of the service; or

(h) required to support proposed cancellation and termination charges (pursuant to the clause entitled "Cancellation or Termination Orders") and reuse arrangements (pursuant to the clause entitled "Reuse Arrangements").

(End of clause)

252.237-7415 Audit and records—common carriers.

As prescribed at 237.7413(b), insert the following clause:

AUDIT AND RECORDS—COMMON CARRIERS (APR 1971)

(a) For the purpose of verifying the accuracy of the cost or pricing data submitted pursuant to the clause entitled "Submission of Cost or Pricing Data—Common Carriers," the Contracting Officer or his authorized representative shall, (1) until the expiration of three (3) years from the date of the submission of the data which forms the basis or a recurring or nonrecurring charge, or (2) until the expiration of the period of contingent liability with respect to such contingent liability, have the right to examine those books, records, documents, and other supporting data which will permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein, which were available to the Contractor as of the date of the certification of the data.

(b) The Contractor shall maintain such books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly the direct and indirect costs which were the basis for the pricing of the CSA. The foregoing constitute "Records" for the purpose of this clause.

(c) The Contractor shall insert the substance of this clause in subcontracts awarded hereunder which furnish the basis for charges referred to in (a) hereof, unless its omission is authorized by the Contracting Officer.

(End of clause)

252.237-7416 Term and termination of contract—common carriers.

As prescribed at 237.7413(b), insert the following clause:

TERM AND TERMINATION OF CONTRACT—COMMON CARRIERS (JUL 1976)

This contract shall be effective for an initial term commencing _____* and ending September 30, 19__** and shall continue in force thereafter from year to year, unless and until terminated by either party at any time upon not less than sixty (60) days' prior written notice to the other. Termination shall be applicable prospectively only and shall not operate as a cancellation of any orders previously issued or outstanding.

(End of clause)

*Insert the effective date of the contract.
**Insert the current fiscal year.

252.237-7417 Special construction and equipment charges.

As prescribed at 237.7413(c), insert the following clause:

SPECIAL CONSTRUCTION AND EQUIPMENT CHARGES (APR 1971)

(a) Except to the extent provided in the clause of this contract entitled "Cancellation or Termination of Orders," the Government shall not directly reimburse the Contractor for charges based on the cost of constructing any facilities or providing any equipment unless such direct reimbursement is specifically authorized by the Contracting Officer. If, at any time, facilities or equipment for which the Government has directly reimbursed the Contractor in whole or in part are discontinued, the Contractor shall allow the Government such credit as may be appropriate for the value of the facilities or equipment attributable to the Government's contribution. The value of the facilities and equipment shall be determined on the basis of the foreseeable reuse of the facilities and equipment by the Contractor at the time their use is discontinued or on the basis of the net salvage value, whichever is greater. The Contractor shall promptly pay the Government the amount of any such credit.

(b) The amount of any direct special construction charge shall not exceed the actual costs to the Contractor, properly allocable to the services to be provided to the Government of specially constructing or providing the facilities or equipment involved. In no event shall the amount of any direct special construction charge include costs incurred by the Contractor which are covered by a cancellation or termination liability or by the Contractor's recurring or other nonrecurring charges. The Contractor represents that in establishing his recurring charges for the services, facilities and equipment involved, he has not included in his rate base any costs for which he has been reimbursed by the Government and that depreciation charges are based only on the cost of facilities and equipment paid by the Contractor and not reimbursed by the Government. If, due to circumstances beyond the control and without the fault of the Contractor, it becomes necessary for the Contractor to incur costs for the replacement of any facilities or equipment for which direct special construction charges were assumed by the Government or for which the Contractor was reimbursed by the Government beyond that provided as a part of the Contractor's recurring charges, the Government shall assume such costs or reimburse the Contractor for such replacement costs at rates mutually acceptable to both the Government and the Contractor. Prior to incurring such costs, the Government shall have the right to terminate such service in accordance with the clause entitled "Cancellation or Termination of Orders."

(End of clause)

252.237-7418 Title to communication facilities and equipment.

As prescribed at 237.7413(c), insert the following clause:

TITLE TO COMMUNICATION FACILITIES AND EQUIPMENT (APR 1971)

Notwithstanding payment by the Government of any of the Contractor's costs of constructing communication facilities and equipment, title to all contractor furnished facilities and equipment used in providing communication services ordered under this contract shall remain in the Contractor except as may be specifically provided in a CSA issued and accepted hereunder, and the Contractor shall operate and maintain all such communication facilities and equipment.

(End of clause)

252.242-7000 Submission of commercial freight bills to the General Services Administration for audit.

As prescribed at 242.1403-2, insert the following clause:

SUBMISSION OF COMMERCIAL FREIGHT BILLS TO THE GENERAL SERVICES ADMINISTRATION FOR AUDIT (AUG 1985)

When transportation costs are reimbursed to the Contractor, the Contractor is required to furnish to the General Services Administration, at the address below (or to the ACO if specified), individual commercial freight bills (or equivalent shipment data and evidence of payment) for transportation charges in excess of five hundred dollars ($500.00).

General Services Administration—BWAA
GSA Building
18th & F Streets, NW.
Washington, DC 20405

(End of clause)

252.242-7001 [Reserved]

252.242-7002 [Reserved]

252.242-7003 Certification of indirect Costs.

As prescribed in 247.770-1, insert the following clause:

CERTIFICATION OF INDIRECT COSTS (APR 1986)

(a) The Contractor shall certify any proposal to establish or modify billing rates or to establish final indirect cost rates in the form set forth in paragraph (b) of this clause. The certificate shall be signed on behalf of the Contractor by an individual of the Contractor's organization at a level no lower than a vice president or chief financial officer of the business segment of the Contractor that submits the proposal. The Contractor understands that if the Contractor fails to submit a certificate as required herein, payments on account of indirect cost shall be at rates unilaterally established by the Government.

(b) *Certificate of Indirect Costs.* The certificate of indirect costs shall read as follows:

Certificate of indirect costs

This is to certify that to the best of my knowledge and belief:

1. I have reviewed the indirect cost proposal submitted herewith;

2. All costs included in the proposal (identify, date) to establish billing or final indirect cost rates for (identify period covered by rate) are allowable in accordance with the requirements of contracts to which they apply and with the cost principles of the Department of Defense applicable to those contracts;

3. This proposal does not include any costs which are unallowable under applicable cost principles of the Department of Defense, such as (without limitation): advertising and public relations costs, contributions and donations, entertainment costs, fines and penalties, lobbying costs, defense of fraud proceedings, and good will; and

4. All costs included in this proposal are properly allocable to Defense contracts on the basis of a beneficial or causal relationship between the expenses incurred and the contracts to which they are allocated in accordance with applicable acquisition regulations.

I declare under penalty of perjury that the foregoing is true and correct.

Firm: _____

Signature: _____

Name of Corporate Official: _____

Title: _____

Date of Execution: _____

(End of clause)

252.243-7000 Engineering change proposals.

As prescribed at 243.205(S-70), insert the following clause:

ENGINEERING CHANGE PROPOSALS (AUG 1985)

(a) The Contracting Officer may at any time, in writing, request the Contractor to prepare and submit an Engineering Change Proposal (ECP) as that term is defined in DOD-STD-480, within the scope of this contract, as hereafter set forth. Upon receipt of such request, the Contractor shall submit to the Contracting Officer the information specified by, and in the format required by paragraph 4.8 of DOD-STD-480.

(b) Any Contractor ECP shall set forth a "not to exceed" price* and delivery adjustment or a "not less than" price* and delivery adjustment, acceptable to the Contractor if the Government subsequently orders such ECP. If ordered, the equitable increase shall not exceed, nor shall the equitable decrease be less than, such "not to exceed" or "not less than" amounts.** This paragraph does not preclude any revision(s) or correction(s) of an ECP in accordance with paragraph 4.10 and 4.11 of DOD-STD-480. Concurrently with the submission of any ECP under this contract in which the proposed aggregate cost is $100,000 or greater, the Contractor shall submit to the Contracting Officer a completed SF 1411. At the time of agreement upon the price of the ECP, the Contractor shall submit a signed Certificate of Current Cost or Pricing Data.

(End of clause)

ALTERNATE I (APR 1984)

As prescribed at 243.202-70(b), insert the following paragraph:

(c) If the price* adjustment proposed for any Contractor-originated ECP (excluding any Government-requested ECP or Value Engineering Change Proposal) is*** (percent of the contract price*) (or $***) or less, such change shall be made at no adjustment of the contract price*.

*Use term suitable to type of contract.
**In cost-reimbursement type contracts, replace this sentence with the following sentence: "Change orders issued pursuant to the Changes clause of this contract shall not be considered an authorization to the Contractor to exceed the estimated cost set forth in the Schedule in the absence of a statement in the change order, or other contract modification, increasing the estimated cost."
***To be negotiated.

252.243-7001 Pricing of adjustments.

As prescribed at 243.205(S-71), insert the following clause:

PRICING OF ADJUSTMENTS (APR 1984)

When costs are a factor in any determination of a contract price adjustment pursuant to the Changes clause or any other clause of this contract, such costs shall be in accordance with Part 31 of the Federal Acquisition Regulation and Part 231 of the DoD FAR Supplement in effect on the date of this contract.

(End of clause)

252.246-7000 Material inspection and receiving report.

As prescribed at 246.370, insert the following clause:

MATERIAL INSPECTION AND RECEIVING REPORT (DEC 1969)

At the time of each delivery of supplies or services under this contract, the Contractor shall prepare and furnish to the Government a Material Inspection and Receiving Report in the manner and to the extent required by Appendix I, "Material Inspection and Receiving Report" (see DoD FAR Supplement 246.670).

(End of clause)

252.246-7001 Warranty of data.

As prescribed at 246.770-10, insert the following clause:

WARRANTY OF DATA (NOV 1974)

(a) Technical data means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work; or be usable or used to define a design or process or to procure, produce, support, maintain, or operate materiel. The data may be graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design typed documents; or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information, and documentation related to computer software. Technical data does not include computer software or financial, administrative, cost and pricing, and management data, or other information incidental to contract administration.

(b) Notwithstanding inspection and acceptance by the Government of technical data furnished under this contract and notwithstanding any provision of this contract concerning the conclusiveness thereof, the Contractor warrants that all technical data delivered under this contract will at the time of delivery conform with the specifications and all other requirements of this contract. The warranty period shall extend for three (3) years after completion of the delivery of the line item of data (as identified in DD Form 1423) of which the data forms a part; or any longer period specified in the contract.

(c) The Contractor agrees to notify the Contracting Officer in writing immediately of any breach of the above warranty which the Contractor discovers within the warranty period.

(d) The following remedies shall apply to all breaches of the above warranty *Provided*, that the Government notifies the Contractor of the breach in writing within the warranty period.

(1) Within a reasonable time after the Contracting Officer notifies the Contractor of

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a breach of warranty, the Contracting Officer may:

(i) By written notice, direct the Contractor to correct or replace at the Contractor's expense the nonconforming technical data promptly; or

(ii) If the Contracting Officer determines that the Government no longer has a requirement for correction or replacement of the data, or that the data can be more reasonably corrected by the Government, inform the Contractor by written notice that the Government elects a price or fee adjustment in lieu of correction or replacement.

(2) If the Contractor refuses or fails to comply with a direction under (1)(i) above, the Contracting Officer may, within a reasonable time of such refusal or failure:

(i) by contract or otherwise, correct or replace the nonconforming technical data and charge the Contractor the cost occasioned to the Government thereby; or

(ii) elect a price or fee adjustment in lieu of correction or replacement.

(3) The remedies set forth in this clause represent the exclusive means by which the rights conferred on the Government by this clause may be enforced.

(f) The provisions of this clause apply anew to that portion of any technical data which is corrected or furnished in replacement under (d)(1)(i) above.

(End of clause)

ALTERNATE I (NOV 1974)

As prescribed at 246.770, insert the following paragraph:

(3) In addition to the remedies specified under (d)(1) and (2) above, Contractor shall be liable to the Government for all damages sustained by the Government as a result of breach of the warranty specified in this clause; however, the additional liability under this subparagraph (3) shall not exceed 75% of the target profit. If the breach of the warranty specified in (b) of this clause is with respect to data supplied by an equipment subcontractor, the limit of the prime contractor's liability shall be 10% of the total subcontract price in the case of a firm fixed-price subcontract, 75% of the total subcontract fee in the case of a cost-plus-fixed-fee or cost-plus-award-fee subcontract, or 75% of the total subcontract target profit or fee in the case of a fixed-price or cost-plus-incentive-type contract. Damages due the Government under the provisions of this warranty shall not be considered as an allowable cost. The additional liability specified in this paragraph (3) shall not apply:

(i) With respect to the requirement under Category E or I of MIL–D–1000, provided that the data furnished by the Contractor was current, accurate at time of submission and did not involve a significant omission of data necessary to comply with such requirements; or

(ii) With respect to specific defects as to which the Contractor discovers and gives written notice to the Government before the error is discovered by the Government.

ALTERNATE II (NOV 1974)

As prescribed at 246.770, insert the following paragraph:

(3) In addition to the remedies specified under (1) and (2) above, the Contractor shall be liable to the Government for all damages sustained by the Government as a result of breach of the warranty specified in this clause; however, the additional liability under this subparagraph (3) shall not exceed 10% of the total contract price. If the breach of the warranty specified in (b) of this clause is with respect to data supplied by an equipment subcontractor, the limit of the prime contractor's liability shall be 10% of the total subcontract price in the case of a firm fixed-price subcontract, 75% of the total subcontract fee in the case of a cost-plus-fixed-fee or cost-plus-award-fee subcontract, or 75% of the total subcontract target profit or fee in the case of a fixed-price or cost-plus-incentive-type contract. The additional liability specified in this paragraph (3) shall not apply:

(i) With respect to the requirement under Category E or I of MIL–D–1000, provided that the data furnished by the Contractor was current, accurate at time of submission and did not involve a significant omission of data necessary to comply with such requirements; or

(ii) With respect to specific defects as to which the Contractor discovers and gives written notice to the Government before the error is discovered by the Government.

252.247–7000 Scope of contract.

As prescribed at 247.270–9(a), insert the following clause:

SCOPE OF CONTRACT (AUG 1964)

(a) *General.* The Contractor shall load and discharge cargoes and in connection therewith shall perform all the duties of a stevedore on any vessel which the Contracting Officer may designate at _____ upon the terms and conditions hereinafter set forth for the term of this contract, beginning _____ and ending _____; *Provided,* however, that any work started before and not completed by the expiration of this contract shall be governed by the terms of this contract unless otherwise directed by the Contracting Officer.

(b) *Contractor's Duties.*

(1) *Loading.* In loading vessel, the Contractor shall remove and handle cargo from place of rest on pier or in pier shed or within the cargo assembly area; also from open-top railroad cars, trucks and trailers alongside ship; also from barges, lighters, scows, car floats and open-top railroad cars on car floats alongside ship. The Contractor shall stow said cargo in any space in vessel, including bunker space, holds, 'tween decks, on deck, and deep tanks, in the order directed by and in a manner satisfactory to the Contracting Officer.

(2) *Discharging.* In discharging vessel, the Contractor shall remove and handle cargo from any space in the vessel, including bunker space, holds, 'tween decks, on deck, and deep tanks. The Contractor shall land said cargo at place of rest on pier or in pier shed or within the cargo assembly area; also on open-top railroad cars, trucks and trailers alongside ship; also on barges, lighters, scows, car floats and open-top railroad cars on car floats alongside ship. The Contractor shall perform such discharging in the order directed by and in a manner satisfactory to the Contracting Officer.

(3) *Handling Explosives.* In addition to (1) and (2) above, the following provisions are applicable to the loading and discharging of explosives:

(a) In loading explosives the Contractor shall perform all the stevedoring services necessary for the breaking-out and discharging from railroad cars, trucks and/or lighters alongside ship or from place of rest on pier, transporting to the vessel, and property loading, stowing and normal securing and chocking in the vessel in a manner directed by applicable U.S. Coast Guard, Army, or Navy regulations.

(b) In discharging explosives the Contractor shall perform all stevedoring services necessary for discharging cargo from the vessel to place of rest on pier or the transporting to and loading into railroad cars, trucks and/or lighters. The Contractor shall also prepare and line the cars for handling the cargo (except the laying of new flooring) and shall brace, secure, cut bands, and lash the cargo in the cars in accordance with applicable regulations and shall place "explosives" placards on the cars prior to release, and shall close and seal all doors.

(c) The furnishing and preparation of gates, studs, new flooring, etc., for blocking railroad cars, as well as prefabrication of blocking in the vessel's hold, will be at the expense of the Government.

(d) The Contractor shall not be compensated for standby time when caused by slow-up or delay of one of his operations, which delay directly affects the other operations, such as delay in loading railroad cars, or in discharging from ship's hatches, unless such slow-up or delay was beyond the control and without the fault or negligence of the Contractor. This does not include the time required for shifting cars. No standby time will be allowed unless previously approved by the Contracting Officer.

(4) *Cargo Assembly Area.* The term "cargo assembly area" as used in this contract, is defined as _____ feet from either extremity of the vessel and for a distance _____ feet from the vessel inboard side.

(c) *Damage Reports.* In all instances where cargo, vessel, vessel equipment or Government equipment sustains damage through handling by the Contractor's employees, a full report of the fact and the extent of such damage shall be submitted by the Contractor to the Contracting Officer within twenty-four (24) hours following the occurrence of such damage.

(d) *Rigging and Unrigging.* When the ship's gear is used for handling cargo, the Contractor, at his own expense, shall rig and unrig all gear, including the rigging and unrigging of heavy-lift gear when the heavy-lift booms are used, and shall hoist, lower and secure hatch tents when necessary: *Provided,* however, that where any one set of gear is rigged for handling less than one hundred (100) payable tons of cargo on a commodity rate basis, the Contractor shall be compensated on an extra-labor basis for the rigging and unrigging of such set of gear. Rigging and unrigging shall include topping, lowering, and trimming of booms. When the Contractor is required to perform any rigging and unrigging services for the purpose of performing extra labor services or performs any such services at the request of the Contracting Officer for any purpose other than loading or discharging cargo on a commodity rate basis, he shall be compensated therefor at extra labor rates. When the Contractor is required to break out booms from collars or boom rest, or to reeve guys on topping lifts through blocks, he shall be compensated therefor on an extra-labor basis.

(e) *Opening and Closing Vessel.* The Contractor shall, at his own expense, remove and replace tarpaulins, battens, hatch covers, and beams with respect to all decks and deep tanks both during loading unloading operations and when necessary because of weather or working conditions, as directed by the Contracting Officer; *Provided,* however, that the opening and closing on any one hatch shall be performed on an extra-labor basis where less than one hundred (100) payable tons are to be loaded and/or discharged at the commodity rate on any hatch so worked, and also where the Contractor is required to open and close the vessel for the purpose of performing extra-labor services. The removing, handling, replacing, or setting of reefer plugs during the handling of cargo in any or all refrigerated or chilled space aboard the vessel is included in the basic commodity rate, except where the complete operation is on an extra-labor basis. When the Contractor is required to open or close reefer plugs more than once in any four (4) hour shift because of a change in orders or type of cargo, he shall be compensated therefor on the basis of fifteen (15) minute detention time for men in gangs, including equipment drivers and gang foremen.

(f) *Docking, Undocking and Shifting of Vessels.* The Contractor shall, when requested by the Contracting Officer, furnish men to handle lines for docking, undocking, and shifting of vessels, and the Government shall compensate the Contractor therefor on an extra-labor basis.

(g) *Shifting Barges, Lighters, Scows, and Car Floats.* Barges, lighters, scows, and car floats will be placed alongside the vessel without cost to the Contractor. When they are shifted from hatch to hatch, the Contractor shall do so at his own expense unless operational conditions make movement by ship's gear impracticable in which event the operation shall be at the expense of the Government.

(h) *Gear Supplied by Government.* The Government, at its own expense, shall furnish and maintain in good working order the following: blocks on booms, booms, heavy lift cranes, wire end rope falls rigged, gant-lines rigged on booms, hatch tents, lighters and floating derricks, lights on wharves and vessels, pallet boards, power and steam necessary, preventers on booms, and winches. Floating derricks and heavy lift dock cranes will not be used when, in the opinion of the Contracting Officer, the ship's equipment can be used satisfactorily.

(i) *Gear Supplied by Contractor.* The Contractor shall perform an efficient stevedoring operation and, except as provided in (h) and (j) of clause, shall at his own expense, furnish all necessary and proper gear, including the following: ammunition gear (when handling ammunition and explosives), roller conveyors, hooks, cargo nets, saveall nets, rollers, skids, chain slings, platform slings, wire and rope slings (except heavy-lift slings used in connection with shore or floating heavy-lift cranes), drag lines, spreaders, hand-trucks, machinery dollies, trailers, lift trucks, tractors, and tractor cranes; *Provided,* however, that the Contractor shall be compensated for furnishing mobile equipment in accordance with the applicable schedule in the "Schedule of Rates" clause of this contract, whenever such equipment is furnished in connection with services performed on an extra-labor basis.

(j) *Rental of Mobile Equipment.*

(1) The Contractor, when directed by the Contracting Officer to supply extra-labor services, shall upon request of the Contracting Officer also supply and maintain the necessary mobile equipment to the extent available, and the Contractor shall be compensated therefor at the rates set forth in the applicable schedule of the "Schedule of Rates" clause of this contract.

(2) Upon request, the Government will supply mobile equipment, if available, to the Contractor, and the Government shall be compensated therefor at the rates set forth in the applicable schedule of the "Schedule of Rates" clause of this contract.

(3) If the Government supplies mobile equipment to the Contractor for use in performing extra-labor services, no charge shall be made by the Government for the use of such mobile equipment.

(k) *Transportation of Gear by Contractor.* The Contractor will transport his own gear and equipment when necessary at his own expense, except transportation of said gear and equipment shall be at Government expense when the vessel is loading and unloading in stream, or at any other location inaccessible to trucks.

(l) *Tiering.* If cargo tiered on the pier or in the cargo assembly area is beyond the reach of the Contractor's equipment, the Government will break it down at the place of tiering so that it can be handled by the Contractor's equipment. No charge will be made by the Contractor for removing cargo from piles within the reach of his equipment. The tiering of cargo above reach of the Contractor's equipment will be at Government expense. When the Contractor is required to break down cargo tiered above the reach of his equipment or to tier cargo beyond the reach of his equipment, the Government will compensate the Contractor therefor on an extra-labor basis.

(m) *Dunnage.* The loading, shifting within the same hatch, and laying of all dunnage (including cordwood, tarpaulins, matting and reefer stripping) necessary to properly stow and secure the vessel's cargo and reverse the operation when discharging the vessel's cargo, is included in the basic commodity rate.

(n) *Other Work.*

(1) *Lashing and Securing.* The Contractor shall, at his own expense, lash and secure all cargo below deck when loaded on a commodity-rate basis, as directed by the Contracting Officer. Lashing and securing of cargo below deck which was loaded in an extra-labor basis and the lashing of all on-deck cargo will be done at extra-labor rates. The Government will supply lumber, wire, turn-buckles, and other equipment as may be required for dunnaging, securing, and shoring cargo in all instances.

(2) *Unlashing and Unsecuring Cargo.* When cargo is discharged on a commodity-rate basis the Contractor shall, at his own expense, unlash all cargo on deck and below deck and shall remove all tomming, chocking tank beds, and all types of double dunnage flooring, except false decks, as directed by the Contracting Officer. The unlashing and unsecuring of cargo on deck and below deck, if discharged on an extra-labor basis, will be done at extra-labor rates.

(3) *Carpenter Work, Welding and Burning.* All necessary carpenter work and welding and burning shall be at the expense of the Government.

(o) *Tonnage Figures and Invoices.* The weight ton referred to in this contract is a ton of two thousand two hundred forty (2,240) pounds, and the measurement ton is a ton of forty (40) cubic feet. Where rates are provided on both a weight and measurement basis, the Contractor shall be paid on the basis of a manifested ton, whichever produces the greater tonnage, the weight ton of two thousand two hundred forty (2,240) pounds or the measurement ton of forty (40) cubic feet. The maximum measurement tonnage upon which compensation is to be computed for any manifested item of cargo for any single lift shall be one hundred fifty (150) tons. The Government will furnish the Contractor a breakdown of cargo loaded or discharged according to the commodity list, or, at the option of the Contracting Officer, manifests will be furnished. Invoices of each vessel loaded or discharged will be submitted by the Contractor not later than ten (10) days after receipt of tonnage figures or manifests. Progress payments for services performed on each vessel may be made upon approval of the Contracting Officer, *Provided,* that such progress payments shall not exceed ninety percent (90%) of the direct labor cost to the Contractor of the services upon which payment is made, which cost shall be determined from evidence submitted by the Contractor and which must be such as to be satisfactory to the Contracting Officer. No services will be paid for by the Government other than those specifically enumerated herein and provided for in the rate schedule of this contract or elsewhere in this contract.

(p) *Hardship (Unusual Conditions).* If the Contracting Officer determines that due to unusual vessel, dock, or cargo conditions, the loading or unloading of any particular cargo at the basic commodity rates will work a hardship upon the Contractor, he may so certify in writing (in advance, if possible) and authorize the compensation to the Contractor for loading or unloading such cargo at the extra-labor rates set forth in the applicable schedule in the "Schedule of Rates" clause of this contract. Unusual conditions will include, but not be limited to, inaccessibility of ship's cargo gear to place of stowage, side port

operations, and small quantities of cargo in any one hatch.

(q) *Detentions.*

(1) Detention (sometimes referred to as "stand-by time" or "waiting-time") is time lost as a result of the stoppage, or inability to start, of loading or discharging of cargo due to causes beyond the control and without the fault or negligence of the Contractor, including, but not limited to, a breakdown of the vessel's equipment or Government-furnished gear, bad weather, non-readiness of the vessel, non-arrival of cargo, or non-availability of equipment required to be furnished by the Government.

(2) When cargo is worked on a commodity rate basis the Contractor shall, without limitation, absorb each detention of _____ minutes or less; but the Government shall pay the Contractor at detention rates for men in gangs, including equipment drivers and gang bosses, for each detention in excess of _____ minutes including the first _____ minutes thereof.

(3) When loading or discharging of cargo is performed on an extra-labor basis, the Government will pay the Contractor at extra-labor rates for the first _____ minutes of each detention and will pay the Contractor on a detention rate basis for all time of each detention except the first _____ minutes.

(4) Minimum time is defined as the time in addition to time actually worked for which the Contractor is required to pay his employees to comply with minimum time requirements of labor agreements applicable to the Contractor and his employees. The Government shall pay the Contractor for minimum time at detention rates.

(5) If any detention or minimum time, as defined in (1) and (4) above, is due to the fault of the Contractor or the failure of the Contractor to comply with proper instructions of the Contracting Officer, the entire time resulting therefrom shall be at the expense of the Contractor.

(r) *Extra Labor.* The Contractor shall, when directed by the Contracting Officer, supply extra labor for miscellaneous services when not occasioned by the fault or negligence of the Contractor, and shall be compensated therefor on an extra-labor basis. Among the miscellaneous services for which such extra labor may be required, but not by way of limitations, are the following: ammunition handling (when commodity rate does not apply); cleaning vessel's holds and decks; handling excess dunnage and debris; handling mail and baggage; rehandling, removing or shifting cargo; removing or securing tank lids when secured by more than four (4) bolts for each lid; handling ship's stores and material.

(s) *Overtime Rates.* The Contactor shall order out men for overtime work only with the approval of the Contracting Officer. When approved by the Contracting Officer, and in accordance with such approval, the Contractor shall be paid for all overtime services, in addition to the applicable commodity rates, or man-hour rates, at the overtime differential rates set forth in the applicable schedules of the "Schedule of Rates" clause of this contract. Overtime periods will be determined in accordance with the prevailing collective bargaining agreements applicable to the Contractor and his employees.

(t) *Penalty Rates.* Except where the applicable commodity rates or man-hour rates expressly include cargo penalties, the Contractor shall be compensated for penalties, where payable under applicable collective bargaining agreements, at the rates set out in the penalty rate schedule of the "Schedule of Rates" clause of this contract.

(u) *Traveling Time.* When the Contractor is required to pay traveling time to the men employed, the Contractor shall be compensated therefor at the rates specified in the applicable schedule of the "Schedule of Rates" clause of this contract.

(v) *Transportation of Men and Other Allowances.* When the Contractor is required by applicable collective bargaining agreements to pay allowance for subsistence, quarters, and rail, bus, or boat fares in transporting the men employed, the Contractor shall be compensated therefor at the rates specified in the applicable schedule of the "Schedule of Rates" clause of this contract, or, if the contract contains no such schedule, at the actual out of pocket cost to the Contractor.

(w) *Income for Handling Lighters, Cars, etc.* Any and all income derived from sources other than provided for in this contract for the handling of cargo direct to or from lighters, barges, scows, trucks, and railroad cars, and to or from ships under this contract, will be for the account of the Contractor and shall be collected by the Contractor. Collection of this income by the Contractor is reflected in the commodity rates.

(End of Clause)

252.247-7001 Schedule of rates.

As prescribed at 247.270-9(a), insert the following clause:

SCHEDULE OF RATES (AUG 1964)

(a) Commodity Rates. The Contractor will be compensated for services, except those specified elsewhere in this contract, at the commodity rates listed herein which are based on straight time rates of pay only. The rates named in Columns A and B are based on normal operations involving use of ship's gear.

SCHEDULE I—COMMODITY TONNAGE RATES

Commodity list	Loading A	Discharging B
	Ship's gear 2240# 40c/t	Ship's gear 2240# 40c/t

NOTE: List only commodities justifying a specific rate.

(b) Miscellaneous Hourly Rate Schedules.

TABLE OF SCHEDULES (RATE PER HOUR)

Rating	Extra labor straight time rate—Schedule II	Travel time and detentions in nonexplosive area—Schedule III	Overtime differential—Schedule IV	Explosive straight time rate—Schedule V	Travel time and detentions in explosive area—Schedule VI	Explosive overtime differential—Schedule VII	Premium meal hour differential—Schedule VIII	
							Nonexplosive	Explosive
Longshoremen.								
Winch drivers.								
Hatch tenders.								
Fork-lift operators.								
Jitney operators.								
Crane operators.								
Ship foremen.								
Supercargoes.								
Head clerks								
Clerks								
Checkers								
Walking bosses.								
Assistant ship foremen.								
Crane foremen.								

(c) *Stevedoring Cargo Penalty Rates—Schedule IX.* Penalty differentials relative to types of workers, cargo, and working conditions will be determined in accordance with the applicable collective bargaining agreements and the Contractor will be compensated therefor at the following penalty differential rates:

Cargo carrying straight time penalty of	Rates per man per hour		
	S/T	O/T	Premium meal hour

(d) *Equipment Rental-Schedule X.*

Type of equipment	Rates per hour*
Tractor	Rates per gang per hour.
Fork-lift trucks	
Cranes up to 10 tons with operator and oiler.	
Cranes from 10 to 20 tons with operator and oiler.	
Ross lumber carriers	
Miscellaneous small gear per gang.	

*Rates per hour include fuel, lubricants, and maintenance.

(End of clause)

252.247-7002 Price escalation.

As prescribed at 247.270-9(b), insert the following clause:

PRICE ESCALATION (AUG 1964)

(a) The Contractor warrants that the prices set forth in this contract are based upon the wage rates, allowances, and conditions as set forth in the collective bargaining agreements between him and his labor employees which are in effect as of _____ and which are generally applicable to the port where work under this contract is performed and are applicable to operations by the Contractor on non-Government work as well as under this contract. The Contractor further warrants that the prices herein do not include any allowance for any increase to his costs to perform the contract that may thereafter become effective pursuant to the terms of said collective bargaining agreements or that may result from the modification(s) of said collective bargaining agreements thereafter made effective.

(b) If, during the performance of this contract, there are from time to time increases or decreases in the wage rates, allowances, fringe benefits and conditions pertaining to its direct labor employees pursuant to the provisions of the aforesaid collective bargaining agreements or as a result of effective modifications thereto which increase or decrease his costs to perform this contract, the Contractor shall notify the Contracting Officer thereof within sixty (60) days of receipt of notice of such increase or decrease. Such notice shall include the Contractor's proposal for an adjustment in the contract commodity, activity, or man-hour prices to be negotiated in accordance with paragraph (c) below, and shall be accompanied by data, in such form as the Contracting Officer may require, explaining (i) the causes, (ii) the effective date, and (iii) the amount of the increase or decrease of the Contractor's proposal for such adjustment.

(c) Promptly upon receipt of any notice and data described in (b) above, the Contractor and the Contracting Officer shall negotiate an adjustment, and the effective date thereof, in the contract commodity, activity, or man-hour prices; provided, however, no adjustment upward in excess of _____ percent per annum of the existing commodity, activity, or man-hour prices will be allowed, except as provided in the "Changes" clause of this contract. Increases or decreases in the contract prices shall reflect, in addition to the direct labor costs and variable indirect labor costs, the concomitant increases or decreases in the following costs: social security and unemployment compensation taxes and workman's compensation insurance. No adjustment may be made to increase the dollar amount allowances of the Contractor's profit. The agreed-upon adjustment, the effective date thereof, and the appropriately revised commodity, activity, or man-hour prices for services set forth in the schedule of rates, shall be set forth in a supplemental agreement to this contract. Failure of the parties to agree to an adjustment under this clause shall be deemed to be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract. Pending agreement on, or determination of, any such adjustment and its effective date, the Contractor shall continue performance.

(d) Notwithstanding the foregoing, there shall be no adjustment for any increase or decrease in the quantities of labor that the Contractor contemplated for each specific commodity except as may result from modifications of the collective bargaining agreements. For the purpose of administering this clause, the Contractor shall submit to the Contracting Officer, within five (5) days after award, the accounting data and computations used by the Contractor to determine his estimated efficiency rate in the performance of this contract, to include the Contractor's computation of the costs apportioned for each rate set forth in the schedule of rates.

(e) The final invoice submitted under this contract shall include a certification that the Contractor has not experienced a decrease in rates of pay for labor or that he has given notice of all such decreases in compliance with (b) above.

(End of clause)

252.247-7003 Revision of prices.

As prescribed at 247.270-9(c), insert the following clause:

REVISION OF PRICES (AUG 1964)

(a) *General.* The prices fixed in this contract are based on wages and working conditions established by collective bargaining agreements and on other conditions in effect on the date of this contract. Such prices may be increased or decreased in accordance with this clause.

(b) *Demand for Negotiation.* At any time, and from time to time, subject to the limitations specified in this clause, either the Government or the Contractor may deliver to the other a written demand that the parties negotiate to revise the prices under this contract. No such demand shall be made before ninety (90) days after the date of this contract, and thereafter neither party shall make a demand having an effective date within ninety (90) days of the effective date of any prior demand; *Provided,* however, that this limitation shall not be applicable in the event that during any ninety (90) day period there is a "wage adjustment" as hereinafter defined. The term "wage adjustment," as used in this clause, means a change in the wages, salaries, or other terms or conditions of employment which shall substantially affect the cost of performing this contract and which shall be generally applicable to the port where work under this contract is performed and shall be applicable to operations by the Contractor on non-Government work as well as to work under this contract. Each demand shall specify a date (identical with or subsequent to the date of the delivery of the demand) as to which the revised prices shall be effected as to services performed thereon and thereafter. This date is hereinafter referred to as the "effective date of the price revision." Any demand under this clause, if made by the Contractor shall state briefly the ground or grounds therefor and shall be accompanied by the statements and data referred to in paragraph (c) of this clause. If the demand is made by the Government, such statements and data will be furnished by the Contractor within thirty (30) days of the delivery of the demand.

(c) *Submission of Data.* At the time or each of the times specified or provided for in paragraph (b) of this clause, the Contractor shall submit:

(i) A new estimate and breakdown of the unit cost and the proposed prices for the services to be performed under the contract after the effective date of the price revision, itemized in connection with the original negotiations of the contract;

(ii) An explanation of the difference between the original (or last preceding) estimate and the new estimate;

(iii) Such relevant operating data, cost records, overhead absorption reports, and accounting statements as may be of assistance in determining the accuracy and reliability of the new estimate;

(iv) A statement of the experienced costs of performance hereunder to the extent that they are available at the time or times of the negotiation of the revision of prices hereunder; and

(v) Any other relevant data usually furnished in the case of negotiations of prices under a new contract.

The Government may make such examination of the Contractor's accounts, records, and books as the Contracting Officer may require and may make such audit thereof as the Contracting Officer may deem necessary.

(d) *Negotiations.*

(1) Upon the filing of the statements and data required by (c) of this clause, the Contractor and the Contracting Officer will negotiate promptly in good faith to agree upon prices for services to be rendered on

and after the effective date of the price revision. Negotiations for price revisions under this clause shall be conducted on the same basis, employing the same types of data, including without limitation, comparative prices, comparative costs, and trends thereof, as in the negotiation of prices under a new contract: *Provided*, however, that if the prices in the contract were arrived at as a result of competitive negotiation, the contract prices shall not be revised upward except upon the basis of, and as justified by changes in conditions occurring after the contract was entered into.

(2) After each negotiation the agreement reached will be evidenced by a supplemental agreement stating the revised price to be effective with respect to services rendered on and after the effective date of the price revision (or such other later date as the parties may fix in such supplemental agreement).

(e) *Disagreements.* If, within thirty (30) days after the date on which the statements and data are required pursuant to paragraph (b) of this clause to be filed (or such further period as may be fixed by written agreement), the Contracting Officer and the Contractor fail to agree to revised prices, the failure to agree shall be disposed of in accordance with the "Disputes" clause of this contract, and the prices so fixed shall remain in effect for the balance of the contract notwithstanding any other provision of this clause.

(f) *Payments.* Until new prices shall become effective in accordance with this clause, the prices in force at the effective date of the price revision shall be paid upon all services performed, subject to appropriate later revisions made pursuant to (d) or (e) of this clause.

(g) *Retroactive Changes in Wages or Working Conditions.* In the event of a retroactive wage adjustment the Contractor or the Contracting Officer may request an adjustment in the prices fixed in this contract, and such adjustment will be made to the extent equitable: *Provided*, however, that the prices applicable to services performed subsequent to the date of the request for price adjustment shall not be adjusted under this paragraph, it being the intent that any price adjustment under this paragraph shall cover the period prior to such request. Such request by the Contractor shall be made within thirty (30) days of such retroactive wage adjustment and shall be supported by:

(i) An estimate of the changes in cost occasioned by the retroactive wage adjustment;

(ii) Completed information upon which such estimate is based; and

(iii) A certified copy of the collective bargaining agreement, arbitration award, or other document evidencing the retroactive wage adjustment.

Subject to the foregoing limitation as to the time of making a request hereunder, completion or termination of this contract shall not affect or impair the Contractor's right under this paragraph. Such adjustment shall be by mutual agreement between the Contracting Officer and the Contractor. The adjusted prices, and the manner of making adjustments with respect to services theretofore paid for, shall be incorporated in an amendment to this contract to be executed by the Contractor and the Contracting Officer. In case of disagreement concerning any question of fact including whether any adjustment should be made, or the amount of such adjustment, such disagreement will be resolved in accordance with the "Disputes" clause of this contract. The Contractor shall give written notice to the Contracting Officer of any request by or on behalf of the employees of the Contractor which may result in a retroactive wage adjustment. Such notice shall be given within twenty (20) days after such request, or if request has occurred prior to execution of this contract, at the time of execution of this contract.

(End of clause)

252.247-7004 Changes.

As prescribed at 247.270-9(d), insert the following clause:

CHANGES (AUG 1964)

The Contracting Officer may, at any time by written order, and without notice to the sureties, make changes within the general scope of this contract. If any such change causes an increase or decrease in the cost of the performance of any part of the work under this contract, an equitable adjustment shall be made in the contract price or in the applicable schedule of rates and the contract shall be modified in writing accordingly. Any claims by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change: *Provided*, however, that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(End of clause)

252.247-7005 Termination.

As prescribed at 247.270-9(e), insert the following clause:

TERMINATION (SEP 1978)

(a) This contract may be terminated at any time by either party hereto upon sixty (60) days, or such number of days as may be otherwise provided in the Schedule, notice in writing to the other. Termination under this clause shall not affect, or relieve any part of, any obligation or liability that may have accrued prior to such termination.

(b) Upon termination of the contract under (a) above, or as provided in the "Default" clause of this contract, the Contractor shall be paid any sum due the Contractor for services performed under this contract to the date of such termination, and in the event of partial termination shall be paid in accordance with the terms of this contract for any services furnished under the portion of the contract that is not terminated; *Provided*, however, any such payments shall be without prejudice to any claim which the Government may have against the Contractor under the "Default" clause of this contract or otherwise, and the Government shall have the right to offset any such claims against such payment.

(End of clause)

252.247-7006 Indefinite quantities—fixed charges.

As prescribed at 247.270-9(f), insert the following clause:

INDEFINITE QUANTITIES—FIXED CHARGES (AUG 1964)

The amount of work and services which the Contractor may be ordered to furnish and the Government to accept hereunder, shall be the amount which shall from time to time be ordered hereunder by the Contracting Officer. In any event, however, the Government is obligated to compensate the Contractor the monthly lump sum specified in Schedule entitled "Fixed Charges," for each month or portion thereof the contract remains in effect.

(End of clause)

252.247-7007 Indefinite quantities—no fixed charges.

As prescribed at 247.270-9(g), insert the following clause:

INDEFINITE QUANTITIES—NO FIXED CHARGES (AUG 1964)

The amount of work and services which the Contractor may be ordered to furnish and the Government to accept hereunder, shall be the amount which shall from time to time be ordered hereunder by the Contracting Officer. In any event, however, the Government shall order, during the term of this contract, work or services having an aggregate value at the prices listed in the schedules made a part hereof of not less than one hundred dollars ($100.00).

(End of clause)

252.247-7008 Employees of contractor.

As prescribed at 247.270-9(h), insert the following clause:

EMPLOYEES OF CONTRACTOR (AUG 1964)

All employees of the Contractor employed in performance of work under this contract shall be employees of the Contractor at all times and not of the Government. The Contractor shall comply with the Social Security Act, the Longshoremen's and Harbor Workers' Compensation Act, and such Workmen's Compensation Laws and Unemployment Insurance Laws of the state where the work is performed as shall be applicable to work performed hereunder and the Contractor shall comply with all other relevant legislation, state and Federal.

(End of clause)

252.247-7009 Removal of contractor's employees.

As prescribed at 247.270-9(h), insert the following clause:

REMOVAL OF CONTRACTOR'S EMPLOYEES (OCT 1965)

The Contractor agrees to utilize only experienced, responsible and capable people in the performance of the work. The Contracting Officer may require that the Contractor remove from the Government job employees who endanger persons or property, or whose continued employment under this contract is inconsistent with the interests of military security.

(End of clause)

252.247-7010 Liability and insurance.

As prescribed at 247.270-9(h), insert the following clause:

LIABILITY AND INSURANCE (JAN 1977)

(a) The Contractor shall be:

(i) Liable to the Government for loss or damage to property, real and personal, owned by the Government or for which the Government is liable;

(ii) Responsible for, and hold the Government harmless from, loss of or damage to property not included in (i) above; and

(iii) Responsible for, and hold the Government harmless from, bodily injury and death of persons, occasioned either in whole or in part by the negligence or fault of the Contractor, his officers, agents, or employees in the performance of work under this contract. For the purpose of this clause, all cargo loaded or unloaded under this contract is agreed to be property owned by the Government or property for which the Government is liable. The amount of the loss or damage as determined by the Contracting Officer will be withheld from payments otherwise due the Contractor. Determination of liability and responsibility by the Contracting Officer will constitute questions of fact within the meaning of the "Disputes" clause of this contract. The general liability and responsibility of the Contractor under this clause are subject only to the following specific limitations.

(b) The Contractor shall not be responsible to the Government for and does not agree to hold the Government harmless from loss or damage to property or bodily injury to or death of persons if:

(i) The unseaworthiness of the vessel or failure or defect of the gear or equipment furnished by the Government contributed jointly with the fault or negligence of the Contractor in causing such damage, injury or death, and the Contractor, his officers, agents, and employees, by the exercise of due diligence, could not have discovered such unseaworthiness or defect of gear or equipment, or through the exercise of due diligence could not otherwise have avoided such damage, injury, or death; or

(ii) The damage, injury or death resulted solely from an act or omission of the Government or its employees or resulted solely from proper compliance by officers, agents, or employees of the Contractor with specific directions of the Contracting Officer.

(c) The Contractor shall at his own expense procure and maintain insurance during the term of this contract, as follows:

(i) Standard Workmen's Compensation and Employer's Liability Insurance and Longshoremen's and Harbor Workers' Compensation Insurance, or such of these as may be proper under applicable state or Federal statutes. The Contractor may, however, be self-insurer against the risk of this subparagraph (i), if he has obtained the prior approval of the Contracting Officer. This approval will be given upon receipt of satisfactory evidence that the Contractor has qualified as such self-insurer under applicable provision of law.

(ii) Bodily Injury Liability Insurance in an amount of not less than $300,000 on account of any one occurrence.

(iii) Property Damage Liability Insurance (which shall include any and all property, whether or not in the care, custody, or control of the Contractor) in an amount of not less than $300,000 on account of any one occurrence.

(d) All policies of insurance required under the terms of this contract shall, by appropriate endorsement or otherwise, provide that no cancellation thereof shall be effective for such period as may be prescribed by the laws of the State in which this contract is to be performed and in no event less than thirty (30) days after written notice thereof has been given to the Contracting Officer.

(e) Satisfactory evidence of the required insurance endorsed as required in (d) above, shall be filed with the Contracting Officer prior to the performance of any work under this contract.

(f) The Contractor shall, at his own cost and expense, defend any suits, demands, claims, or actions, in which the United States might be named as a codefendant of the Contractor, arising out of or as a result of the Contractor's performance of work under this contract, whether or not such suit, demand, claim, or action arose out of or was the result of the Contractor's negligence. This shall not prejudice the right of the Government to appear in such suit, participate in defense, and take such actions as may be necessary to protect the interests of the United States.

(g) It is expressly agreed that the provisions contained in (c) through (f) of this clause shall not in any manner limit the liability or extent of liability of the Contractor as provided in (a) and (b) of this clause.

(h) In the event that the Contractor is indemnified, reimbursed, or relieved for any loss or damage to Government property, he shall equitably reimburse the Government. The Contractor shall do nothing to prevent the Government's right to recover against third parties for any such loss, or damage and, upon the request of the Contracting Officer, shall at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery.

(End of clause)

252.247-7100 Evaluation of bids.

As prescribed at 247.271-4(a)(1), insert the following provision:

EVALUATION OF BIDS (FEB 1983)

(a) Bids will be evaluated on the basis of total aggregate price of all items within an area of performance under a given schedule. A bidder must bid on all items within a specified area of performance for a given schedule. Failure to do so shall be cause for rejection of the bid for that area of performance of that schedule. Any bid which stipulates minimum charges or graduated prices for any or all items shall be rejected for that area of performance within the schedule.

(b) In addition to other factors, bids will be evaluated on the basis of advantages or disadvantages to the Government that might result from making more than one award (multiple awards). For the purpose of making this evaluation, it will be assumed that the sum of $250 would be the administrative cost to the Government for issuing and administering each contract awarded under this invitation, and individual awards will be for the items and combinations of items which result in the lowest aggregate to the Government, including such administrative costs.

(End of provision)

ALTERNATE I (FEB 1983)

As prescribed at 247.271-4(a)(1), insert the following paragraph:

(c) Notwithstanding (a) above, when "additional services" are added to any schedule, such "additional services" items will not be considered in the evaluation of bids.

252.247-7101 Award.

As prescribed at 247.271-4(a)(2), insert the following provision:

AWARD (APR 1977)

Award shall be made to the qualified low bidder by area under each of the specified schedules to the extent of his stated guaranteed daily capability as provided herein and the clause entitled "Estimated Quantities." The Government reserves the right to make an award of two or more areas to a single bidder if such award will result in an overall lower estimated cost to the Government. The Government also reserves the right to award additional contracts, as a result of this solicitation, to the extent necessary to meet its estimated maximum daily requirements.

(End of provision)

252.247-7102 Estimated quantities.

As prescribed at 247.271-4(a)(3), insert the following provision:

ESTIMATED QUANTITIES (MAY 1970)

(a) The quantities shown by area of performance for each item in this solicitation are the Government's estimates of requirements which may be ordered during the period of the contract.

(b) The Government's estimated maximum daily requirements, excluding Saturday; Sunday; National, State and local holidays are listed below by area of performance within each schedule. Bidders must complete the "Bidder's Guaranteed Daily Capability," which must equal or exceed the Government's minimum acceptable daily capability, for all items within an area of performance for which they submit bids. Failure to do so will render the bid nonresponsive.

	Government's estimated maximum daily capability	Government's minimum acceptable daily capability	Bidder's guaranteed daily capability
Outbound (Schedule I) area.	GCWT	GCWT	GCWT
Inbound (Schedule II) area.	GCWT	GCWT	GCWT
Intra-city area (Schedule III) area.	NCWT	NCWT	NCWT

(Repeat for each area listed)

(End of provision)

252.247-7103 Schedule formats.

As prescribed at 247.271–4(a)(4), insert the following clause:

SCHEDULE FORMATS (APR 1984)

Schedule I—Outbound Services

Item 1. Complete Service-Outbound (HHGs). Services shall include premove survey, servicing of appliances, disassembly of furniture if required, preliminary packing, inventorying, tagging, wrapping, padding, packing and bracing of household goods in Government owned and furnished shipment containers (Shipping Container FED SPEC PPP–B–580 or Air Cargo) at owner's residence, or at Contractor's facility when ordered by the Contracting Officer, properly securing and sealing for shipment, weighing, obliterating old marking, strapping, and drayage of the container within area of performance. Service shall include loading of shipment on line-haul carrier's equipment at the Contractor's facility. When containers will not accommodate all articles of any lot, loose articles shall be packed in the said containers before any over-packed articles are placed therein. Overflow articles which require packing and containerization shall be paid for under Item 3.

AREA_____

	Estimated annual quantity	Unit	Unit price	Total
a. At owner's residence: (1) Container, FED SPEC PPP–B–580.		GCWT		
(2) Air Cargo Container.		GCWT		
b. At Contractor's Facility: (1) Container, FED SPEC PPP–B–580.		GCWT		
(2) Air Cargo Container.		GCWT		

(Repeat a. and b. above for additional areas as needed.)

Item 2. Outbound (HHGs From Non-Temporary Storage). Service shall be the same as Item 1 except that: (i) household goods shall be picked up at a non-temporary storage facility and transported to Contractor's facility; or (ii) household goods shall be delivered to Contractor's facility; and (iii) premove survey, servicing of appliances, preliminary packing and accessorial services shall not be provided. Overflow articles requiring containerization will be paid for under Item 3.

AREA_____

	Estimated annual quantity	Unit	Unit price	Total
a. Pickup by Contractor: (1) Container, FED SPEC PPP–B–580.		GCWT		
(2) Air Cargo Container.		GCWT		
b. Delivered to Contractor: (1) Container, FED SPEC PPP–B–580.		GCWT		
(2) Air Cargo Container.		GCWT		

(Repeat a. and b. above for additional areas as needed.)

Item 3. Complete Service-Outbound (HHGs-Overflow Articles and HHGs Shipments Requiring Other Thon PPP–B–580 or Air Cargo Containers). Service shall be the same as Item 1 or Item 2 except that the loose articles may be drayed to Contractor's facility when ordered by the Contracting Officer for containerization in Government-approved, Contractor-furnished containers.

AREA_____

	Estimated annual quantity	Unit	Unit price	Total
a. Overseas Pack: (1) Overflow and Oversize Articles*.		GCWT		
(2) Other Shipments.		GCWT		
b. Domestic Pack: (1) Overflow and Oversize Articles*.		GCWT		

AREA_____—Continued

	Estimated annual quantity	Unit	Unit price	Total
(2) Other Shipments.		GCWT		

(Repeat a. and b. above for additional areas as needed.)

* The overflow box will be of lesser size than specified in FED Spec PPP–B–580 and must be limited to one per shipment. Oversize boxes are limited to use for items which exceed the dimensions of and cannot be accommodated in a household goods shipping container (Fed Spec PPP–B–580), therefore requiring a specially built box. One or more of this type may be required per shipment. These boxes will be constructed in accordance with Military Specification PPP–B–601, Style A or B and, in addition, will be caulked during assembly.

Item 4. Complete Service-Outbound (Unaccompanied Baggage). Service includes inventorying, packing in Government approved containers, weighing, strapping, obliteration of old marking and marking of unaccompanied baggage. Service shall be performed at owner's residence. (Service may be performed at Contractor's facility when ordered by the Contracting Officer.) Drayage, if required, will be ordered by the Contracting Officer.

AREA_____

	Estimated annual quantity	Unit	Unit price	Total
a. Government-Furnished Containers: (1) Drayage Included.		GCWT		
(2) Drayage Not Included.		GCWT		
b. Contractor-Furnished Containers: (1) Drayage Included.		GCWT		
(2) Drayage Not Included.		GCWT		

Item 5. Outbound Service-Unaccompanied Baggage Packed by Owner. Service shall include weighing, strapping, banding, obliterating old markings, and marking. Service may include (when necessary) containerization in outer shipping containers as ordered by the Contracting Officer. Drayage, if required, will be ordered by the Contracting Officer.

AREA_____

	Estimated annual quantity	Unit	Unit price	Total
a. Containerization Not Required: (1) Drayage Included.		GCWT		
(2) Drayage Not Included.		GCWT		
b. Containerization Required: (1) Drayage Included.		GCWT		
(2) Drayage Not Included.		GCWT		

(Repeat a. and b. above for additional areas as needed.)

Item 6. Goods of Extraordinary Value (Hi-Value). Service shall include inventorying (each item), packing in Government-approved, Contractor-furnished container(s), marking, banding, weighing, and cubing at owner's residence. In jurisdictions where local law prohibits the certification of portable scales, a weight certificate will not be required. Drayage, if required, will be ordered by the Contracting Officer.

AREA_____

	Estimated annual quantity	Unit	Unit price	Total
a. Drayage Included.		GCWT		
b. Drayage Not Included.		GCWT		

(Repeat for additional areas as needed.)
See clause entitled "Drayage" for explanation.

Item 7. Storage. Storage of containerized articles shall be furnished when ordered by the Contracting Officer. Charges shall not commence earlier than the sixth (6) workday following date of transportation officer's receipt of notification of completion of containerization service. Storage charges apply for each 30-day period or fraction thereof. Date of release from storage shall not be considered in computation of storage charges.

AREA_____

	Estimated annual quantity	Unit	Unit price	Total
		GCWT		

(Repeat for additional areas as needed.)

Item 8. Containers. Under this item, the Contractor shall supply the following types of containers when ordered:

AREA_____

	Estimated annual quantity	Unit	Unit price	Total
Container, FED SPEC PPP–B–580.		GCWT		
Air Cargo, FED SPEC PPP–B–580.		GCWT		

(Repeat for additional areas as needed.)

Item 9. Remarking and Coopering Service.

a. *Remarking for Shipments for Reconsignment or Diversion.* Service shall consist of obliteration of all old markings and stenciling of necessary information on loaded shipping containers scheduled for reconsignment or diversion when ordered by the Contracting Officer.

AREA_____

	Estimated annual quantity	Unit	Unit price	Total
		each piece		

(Repeat for additional areas as needed.)

b. *Coopering.* Service shall consist of repair of containers not to exceed 30% of total area of shipping container or cost of repairs will not exceed 50% of the container replacement cost as necessary when ordered by the Contracting Officer. Minor repair, such as replacement of bolts, renailing and rebanding shall be accomplished at no expense to the Government.

AREA_____

	Estimated annual quantity	Unit	Unit price	Total
		each piece		

(Repeat for additional areas as needed.)

Items 10–14 Reserved (See DOD FAR Supplement 47.271–4(a)(4).)

RECAPITULATION SCHEDULE I

Schedule Total—Area _____ $_____

(Repeat for each area listed.)

SCHEDULE II—INBOUND SERVICES

Item 15. Complete service-inbound (HHGs). Service shall include drayage to owner's residence, decontainerization and unpacking of loaded containers of household goods and placing goods in appropriate rooms as directed by owner or his designated representative, servicing appliances, assembly of any disassembled articles and removing shipping containers, barrels, boxes/crates and debris from owner's residence and drayage of empty containers to Contractor's or Government facility as directed by Contracting Officer.

AREA_____

	Estimated annual quantity	Unit	Unit price	Total
		GCWT		

(Repeat for additional areas as needed.)

Item 16. Complete service-inbound (HHGs). Service shall be same as Item 15 except that drayage of shipment to residence is not required.

AREA_____

	Estimated annual quantity	Unit	Unit price	Total
		GWCT		

(Repeat for additional areas as needed.)

Item 17. Complete service-inbound (HHGs). Service shall be same as Item 15 except removal of items from outer container will be at the Contractor's facility and articles will be drayed to owner's residence. This service will be performed only upon order of the Contracting Officer.

AREA_____

	Estimated annual quantity	Unit	Unit price	Total
		GCWT		

(Repeat for additional areas as needed.)

Item 18. Inbound service-contractor facility (HHGs). Service shall include removal of items from outer shipping container(s) at the Contractor's facility and delivery of articles to property owner, motor van carrier or commercial non-temporary storage Contractor at the Contractor's facility.

AREA_____

	Estimated annual quantity	Unit	Unit price	Total
		GCWT		

(Repeat for additional areas as needed.)

Item 19. Complete service-extra-ordinary value items. Service includes decontainerization and unpacking of containers at owner's residence, and removal of shipping containers and debris from the residence. Drayage, if required, will be ordered by the Contracting Officer.

AREA_____

	Estimated annual quantity	Unit	Unit price	Total
a. Drayage Included.		GCWT		
b. Drayage Not Included.		GCWT		

(Repeat for additional areas as needed.)

NOTE: See clause entitled "Drayage" for explanation

Item 20. Complete service-inbound (unaccompanied baggage). Service shall include drayage of unaccompanied baggage containers to owner's residence, unpacking of containers and removal of all shipping containers and debris from the residence.

AREA_____

	Estimated annual quantity	Unit	Unit price	Total
		GCWT		

(Repeat for additional areas as needed.)

Item 21. Complete service-inbound (unaccompanied baggage). Service shall be same as Item 20 except that drayage to residence is not required.

AREA_____

	Estimated annual quantity	Unit	Unit price	Total
		GCWT		

(Repeat for additional areas as needed.)

Item 22. Inbound service-contractor facility (unaccompanied baggage). Service shall include removal of unaccompanied baggage from outer shipping containers for pickup by the owner at the Contractor's facility.

AREA_____

	Estimated annual quantity	Unit	Unit price	Total
		GCWT		

(Repeat for additional areas as needed.)

Item 23. Storage. Storage of containerized articles shall be furnished when ordered by the Contracting Officer. Charges under this item shall not commence earlier than the sixth (6th) workday following date of notification to transportation officer of arrival of shipment. Storage charges apply for each 30-day period or fraction thereof. Date of release from storage shall not be considered in computation of storage charges.

AREA_____

	Estimated annual quantity	Unit	Unit price	Total
		GCWT		

(Repeat for additional areas as needed.)

Item 24. Remarking/coopering service.

a. *Remarking of shipments for reconsignment or diversion.* Service shall consist of obliteration of all old markings and stenciling of necessary information on loaded shipping containers scheduled for reconsignment or diversion when ordered by the Contracting Officer.

AREA_____

	Estimated annual quantity	Unit	Unit price	Total
		GCWT		

(Repeat for additional areas as needed.)

b. *Coopering.* Service shall consist of repair of containers not to exceed 30% of total area of shipping container or cost of repairs will not exceed fifty percent (50%) of the container replacement cost as necessary when ordered by the Contracting Officer. Minor repair such as replacement of bolts, renailing and rebanding shall be accomplished at no expense to the Government.

AREA_____

	Estimated annual quantity	Unit	Unit price	Total
		each piece		

(Repeat for additional areas as needed.)

Items 25–28 [Reserved] (See DoD FAR Supplement 247.271–4(o)(4).)

Recapitulation Schedule II

Schedule Total—Area _____ $_____

Schedule III—Intra-city and Intra-area Moves

Item 29. Complete service for intra-city and intra-area moves. Service shall include a premove survey, servicing of appliances, packing at owner's residence to protect household goods properly during transit, tagging of items, inventorying, loading, weighing, drayage, unloading, unpacking, and placing of each article in owner's residence (new) as directed by owner or his designated representative and removal of all empty containers and material from residence. Service shall be in conformance with provisions of MIL–STD–212D, except that all service shall be performed within times stipulated in clause entitled "Time Requirements."

AREA_____

	Estimated annual quantity	Unit	Unit price	Total
		NCWT		

(Repeat for additional areas as needed.)

Item 30. Storage. Storage of articles shall be furnished incident to services performed under Item 29 when ordered by the Contracting Officer. Storage charges apply for each 30-day period or fraction thereof. Date of release from storage shall not be considered in computation of storage charges.

AREA_____

	Estimated annual quantity	Unit	Unit price	Total
		NCWT		

(Repeat for additional areas as needed.)
(Insert when required.)

Recapitulation Schedule III

Schedule Total—Area _____ $_____
(Repeat for each area listed.)

(End of clause)

252.247–7104 Scope of Contract.

As prescribed at 247.271–4(b)(1), insert the following clause:

SCOPE OF CONTRACT (APR 1977)

The Packing and Containerization Contractor, hereafter referred to as Contractor, shall furnish services and materials for the preparation of personal property (including servicing of appliances) for movement or storage, drayage and related services. Unless otherwise indicated in the Schedule, the Contractor shall (i) furnish all materials except Government-owned containers (Container, Federal Specification PPP–B–580 and Air Cargo), all equipment, plant and labor; and (ii) perform all work in accomplishing containerization of personal property for overseas or domestic movement or storage; stenciling; cooperage; drayage of personal property in connection with other services; and decontainerization of inbound shipments of personal property. Excluded from the scope of this contract is the furnishing of like services or materials which are provided incident to complete movement of personal property when purchased by the Through Government Bill of Lading method.

(End of clause)

252.247–7105 Period of contract.

As prescribed at 247.271–4(b)(2), insert the following clause:

PERIOD OF CONTRACT (MAY 1970)

This contract shall begin 1 January 19____ and shall end 31 December 19____, both dates inclusive. *Provided,* however, that any work ordered before, and not completed by, the expiration of this contract period shall be governed by the terms of this contract. Orders requiring commencement of performance more than 15 days after the expiration date shall not be placed under this contract.

(End of clause)

252.247–7106 Ordering limitation.

As prescribed at 247.271–4(b)(4), insert the following clause:

ORDERING LIMITATION (MAY 1970)

Ordering for items of supplies or services required will be placed under this contract by the Government and performed by the Contractor holding the initially awarded contract, to the extent of his guaranteed maximum daily capability. However, the Contractor may accept an additional quantity in excess of his capability to accommodate a single order. Orders for additional requirements will be placed with and performed by the next higher Contractor to the extent of his guaranteed maximum daily capability in a like manner. This procedure will be repeated until the Government's total daily requirement is fulfilled. In the event this procedure does not fulfill the Government's total daily requirement, additional orders may be offered under the contract to Contractors without regard to their guaranteed maximum daily capability.

(End of clause)

252.247–7107 Contract areas of performance.

As prescribed at 247.271–4(b)(5), insert the following clause:

CONTRACT AREAS OF PERFORMANCE (MAY 1970)

(a) All areas of performance described in (b) below will be considered to include the Contractor's facility regardless of geographical location.

(b) Service shall be performed within the following defined areas of performance which include terminals identified therein: (Define each area of performance as required; see DoD FAR Supplement 247.271–2(b).

(End of clause)

252.247–7108 Requirements.

As prescribed at 247.271–4(b)(6), insert the following paragraph:

REQUIREMENTS (APR 1984)

(f) Orders issued during the effective period of this contract and not completed within that time shall be completed by the Contractor within the time specified in the order, and the rights and obligations of the Contractor and the Government respecting those orders shall be governed by the terms of this contract to the same extent as if completed during the effective period of this contract.

(End of clause)

252.247–7109 Facilities.

As prescribed at 247.271–4(b)(7), insert the following clause:

FACILITIES (DEC 1982)

(a) As the minimum standard for qualifications of a Contractor's warehouse, it must have either (i) an acceptable automatic sprinkler system; or (ii) a supervised fire detection and reporting system. Installed fire protective systems must be accredited by the cognizant fire insurance rating organization for insurance rate credit. Additionally, the facility will be protected by an adequate water supply for fire fighting and a fire department which is responsive 24 hours a day. Statements from the cognizant fire insurance rating organization, municipal fire department, or local authority, having jurisdiction, will be used as a basis for determining the sufficiency or adequacy of a fire fighting water supply and the responsiveness of a fire department to protect a facility.

(b) The following information shall be furnished by the Contractor upon receipt of award:

Evidence of the following kinds and minimum amounts of insurance covering work herein to be performed by the Contractor. The Contractor shall maintain at least the minimum coverage stated below * throughout the contract period. Each policy shall contain an indorsement that cancellation or material change in the policy shall not be effective until after a 30-day written notice is furnished to the Contracting Officer.

(1) Workmen's Compensation Insurance $ *_____.

(2) Comprehensive General Liability Insurance $ *_____.

(3) Automobile Liability Insurance $ *_____.

(End of clause)

* The insurance coverage specified in FAR 28.307–2 is the minimum insurance required. Additional coverage and higher limits may be required by the Contracting Officer.

252.247–7110 Performance.

As prescribed at 247.271–4(b)(8), insert the following clause:

PERFORMANCE (APR 1977)

(a) The services called for hereunder shall be performed in conformance with the latest issue of MIL–STD 212, "Preparation of Household Goods for Shipment or Storage and Related Services," in effect on date of solicitation, for Schedules I and II, unless otherwise directed by the Contracting Officer. The following are desired minimum stowage factor standards in stuffing of shipping containers:

(1) For Federal Specifications PPP–B–580 containers—5.7 net lbs. per gross cubic foot of container cube.

(2) For air cargo containers—8.9 net lbs. per gross cubic foot of container cube. Failure to meet the above standards may be cause for rejection of the service performed unless the Contractor can demonstrate the standards cannot be met. (The term "stuffing" as related to containers means loading of personal property into shipping containers.)

(b) Labor employed to perform pickup and delivery, inventorying, packing, crating, weighing, marking, loading, drayage, unpacking, blocking, bracing, and other services described herein shall be competent in the performance of such services.

(c) Inventory of shipment shall be accomplished pursuant to provisions of the latest issue of MIL–STD 212 in effect on date of solicitation.

(d) All services shall be performed in accordance with the priority order established by the Contracting Officer.

(e) MIL–STD 212, "Military Standard-Preparation of Household Goods for Shipment and Storage and Related Services," and applicable specifications referred to therein are available for reference in the local procurement or transportation offices.

(f) When pickup of shipments is part of line-haul service, the Contractor shall perform loading on freight carrier's equipment at Contractor's facility.

(End of clause)

252.247–7111 Time requirements.

As prescribed at 247.271–4(b)(9), insert the following clause:

TIME REQUIREMENTS (MAY 1970)

(a) The Contractor shall commence containerization of household goods or unaccompanied baggage at owner's residence or Contractor's facility on the date specified by the Contracting Officer. If containerization is ordered at Contractor's facility, the household goods or unaccompanied baggage shall be picked up on the date and within the hours specified. Unless a longer period is authorized by the Contracting Officer, the maximum containerization time allowed at the Contractor's facility shall be three (3) working days following specified pickup date for household goods and two (2) working days following specified pickup date for unaccompanied baggage.

(b) The Contracting Officer or his designated representative shall normally give the Contractor notice to commence containerization or to pick up household goods or baggage shipments at least twenty-four (24) hours prior to the date specified.

(c) Delivery or removal of household goods or unaccompanied baggage to or from owner's residence, or containerization of household goods or unaccompanied baggage at owner's residence, shall commence between the hours of 8:00 a.m.-12 p.m. (noon) or 12 p.m (noon)-5:00 p.m. as specified, Monday through Friday, officially declared National, State or local holidays excluded: The Contracting Officer may authorize performance of services at other times when agreed to by the owner or his authorized agent and the Contractor.

(d) The Contractor shall accept and pick up inbound shipments of household goods, or unaccompanied baggage, effect delivery thereof to the destination, and shall unload and unpack the same on the date and within the hours specified by the Contracting Officer during the working hours set forth above. The Contractor will notify the Contracting Officer upon arrival of a shipment but not later than the morning of the next workday. Delivery shall be effected within two (2) working days following date of receipt or notification of arrival unless otherwise specified.

(End of clause)

252.247–7112 Demurrage.

As prescribed at 247.271–4(b)(10), insert the following clause:

DEMURRAGE (MAY 1970)

The Contractor shall be liable for all demurrage, detention, or other charges accruing as a result of his failure to load or unload trucks, freight cars, freight terminals, vessel piers, or warehouses within the free time allowed under applicable rules and tariffs.

(End of clause)

252.247–7113 Vans.

As prescribed at 247.271–4(b)(11), insert the following clause:

VANS (MAY 1970)

Vans used in transporting unpacked and uncrated furniture shall be of the closed type and shall be supplied with sufficient clean pads, covers, and any other equipment to protect personal property adequately during transit and delivery. Vehicles used in transporting containerized personal property may be the open type: *Provided*, a weatherproof tarpaulin is used to protect the shipment.

(End of clause)

252.247-7114 Drayage.

As prescribed at 247.271-4(b)(12), insert the following clause:

DRAYAGE (APR 1977)

(a) Drayage under the Schedules of Items in this contract shall include all outbound or inbound hauling of loose articles, containerized shipments and empty Government containers within the area of performance as defined in the clause entitled, "Contract Areas of Performance." Each area includes the Contractor's facility, storage warehouse other than Contractor's facility, frequently used air and surface transportation terminals, military installation shipping offices and ocean or river terminals/piers. The price of each item of service includes drayage within the area awarded, unless otherwise provided in the item.

(b) Repositioning of empty Government containers within the contractual area of performance, shall be as directed by the Contracting Officer or his designated representative at no additional cost to the Government.

(End of clause)

252.247-7115 Liability.

As prescribed at 247.271-4(b)(13), insert the following clause:

LIABILITY (JUL 1960)

(a) "Article" means any shipping piece or package and its contents.

(b) If notified within one (1) year after delivery that the owner has discovered loss or damage to his property, the Contractor agrees to indemnify the owner for loss of or damage to the owner's property which arises from any cause while it is in the Contractor's possession as follows:

(i) *Non-negligent damage*. The Contractor shall indemnify owners for any loss of or damage to their property which results from any cause, other than the Contractor's negligence, at a rate not to exceed sixty cents ($.60) per pound per article.

(ii) *Negligent damage*. When loss or damage is caused by the negligence of the Contractor, he shall be liable for the full cost of satisfactory repair or for the current replacement value of the article. The Contractor shall make prompt payment to the owner of the property for any loss or damage for which the Contractor is liable.

(c) In the absence of evidence or supporting documentation which places liability on a carrier or another Contractor, the destination Contractor will be presumed to be liable for the loss or damage of which it is timely notified.

(End of clause)

252.247-7116 Erroneous shipments.

As prescribed at 247.271-4(b)(14), insert the following clause:

ERRONEOUS SHIPMENTS (MAY 1977)

(a) It shall be the responsibility of the Contractor at his expense to have articles of personal property which he inadvertently packed with goods of other than the rightful owner forwarded to the rightful owner by the quickest means of transportation, as selected by the Contracting Officer.

(b) Further, it shall be the responsibility of the Contractor to insure that all shipments have been stenciled correctly. When a shipment is forwarded to an incorrect address due to incorrect stenciling by the Contractor or his personnel, the shipment shall be returned with the least possible delay to its rightful owner by a mode of transportation selected by the Contracting Officer. The Contractor shall be liable for all costs incurred including charges for preparation, drayage and transportation.

(c) It shall be the responsibility of the Contractor to deliver to the designated air or surface terminal all pieces of a shipment, in one lot, at the same time. Pieces of one lot not included in delivery and remaining at Contractor's facility after the departure of the original shipment shall be forwarded to the owner with the least possible delay by a mode of transportation selected by the Contracting Officer or his designated representative. The Contractor shall be liable for all additional transportation costs incurred in excess of what it would have cost the Government had the entire lot been shipped at the same time.

(End of clause)

252.247-7117 Additional marking instructions.

As prescribed at 247.271-4(b)(15), insert the following clause:

ADDITIONAL MARKING INSTRUCTIONS (MAY 1970)

(a) All containers of professional books, papers or equipment shall be stenciled "Professional Books, Paper, Equipment" and their weights shall be shown separately on packing lists.

(b) Unaccompanied baggage containers shall be marked as such.

(End of clause)

252.247-7118 Weight certificates.

As prescribed at 247.271-4(b)(16), insert the following clause:

WEIGHT CERTIFICATES (MAY 1970)

A weight certificate, in triplicate, from a certified scale or weightmaster shall be submitted to the transportation officer for all outbound shipments.

(End of clause)

252.247-7119 Report of lost/damaged material.

As prescribed at 247.271-4(b)(17), insert the following clause:

REPORT OF LOST/DAMAGED MATERIAL (APR 1977)

It shall be the responsibility of the Contractor when making delivery to prepare a separate report listing all articles lost or damaged and describing such loss or damage. This report will be forwarded to the transportation officer within seven (7) working days after the delivery of the goods.

(End of clause)

252.247-7120 Subcontracting.

As prescribed at 247.271-4(b)(18), insert the following clause:

SUBCONTRACTING (MAY 1970)

The Contractor shall not subcontract without the prior written approval of the Contracting Officer. The facilities of any approved Subcontractor shall meet the minimum standards required by this contract.

(End of clause)

252.247-7121 Additional services.

As prescribed at 247.271-4(b)(19), insert the following clause:

ADDITIONAL SERVICES (APR 1977)

Additional services not included in the schedule, but required for satisfactory completion of services ordered under this contract shall be provided at a rate not in excess of the rate for like services as contained in applicable Military Rate Tenders or in the absence of a Military Rate Tender, applicable tariff in effect at time of order.

(End of clause)

252.247-7200 Ocean transportation of Government-owned supplies.

As prescribed at 247.507(S-70), insert the following clause:

OCEAN TRANSPORTATION OF GOVERNMENT-OWNED SUPPLIES (NOV 1963)

The Contractor shall advise the Contracting Officer of any proposed transportation by ocean vessels of Government-owned property in the possession of the Contractor or his subcontractors (including property under which title will pass to the Government prior to such transportation). Such property shall subsequently be transported only on United States-flag vessels as directed by the Contracting Officer.

(End of clause)

252.249-7000 Special termination costs.

In accordance with 249.7003(a), insert the following clause:

SPECIAL TERMINATION COSTS (APR 1984)

(a) Notwithstanding the Limitation of Cost/Limitation of Funds clause of this contract, the Contractor shall not include in its estimate of costs incurred or to be incurred, any amount for special termination costs, as herein defined, to which the Contractor may be entitled in the event this contract is terminated for the convenience of the Government. The Contractor agrees to perform this contract in such a manner that the Contractor's claim for such special termination costs will not exceed $_____. The Government shall have no obligation to pay the Contractor any amount for the special termination costs in excess of this amount. Special termination costs are defined as costs only in the following categories:

(1) severance pay as provided in FAR 31.205-6(g);

(2) reasonable costs continuing after termination as provided in FAR 31.205-42(b);

(3) settlement of expenses as provided in FAR 31.205-42(g);

(4) costs of return of field service personnel from sites as provided in FAR 31.205-35 and FAR 31.205-46(c); and

(5) costs in categories (1), (2), (3), and (4) above to which subcontractors may be entitled in the event of termination.

(b) In the event of termination for the convenience of the Government, this clause shall not be construed as affecting the allowability of special termination costs in any manner other than limiting the maximum amount payable therefor by the Government.

(c) This clause shall remain in full force and effect until this contract is fully funded.

(End of Clause)

252.251-7000 Ordering from Government supply sources.

As prescribed at 251.107, insert the following clause:

ORDERING FROM GOVERNMENT SUPPLY SOURCES (APR 1984)

(a) Contractors placing orders under Federal Supply Schedules or Personal Property Rehabilitation Price Schedules shall follow the terms of the applicable schedule and authorization and include with each order:

(1) A copy of the authorization (unless a copy was previously furnished to the Federal Supply Schedule or Personal Property Rehabilitation Price Schedule Contractor).

(2) The following statement:

This order is placed under written authorization from _____ dated _____. In the event of any inconsistency between the terms and conditions of this order and those of your Federal Supply Schedule contract or Personal Property Rehabilitation Price Schedule contract, the latter will govern.

(3) The complete address(es) to which the Contractor's mail, freight, and billing documents are to be directed.

(b) If a Federal Supply Schedule Contractor refuses to honor an order placed by a Government Contractor under an agency authorization, the Contractor shall report the circumstances to the General Services Administration, FFN, Washington, DC 20406, with a copy to the authorizing office.

(c) Contractors placing orders under nonmandatory schedule contracts and requirements contracts issued by GSA, Office of Information Resources Management, for automated data processing equipment, software and maintenance, communications equipment and supplies, and teleprocessing services, shall follow the terms of the applicable contract and the procedures in (a) (1), (2), and (3) above.

(d) Contractors placing orders for Government stock shall—

(1) Comply with the requirements of the Contracting Officer's authorization, using FEDSTRIP or MILSTRIP procedures, as appropriate;

(2) Use only the GSA Form 1948-A, Retail Services Shopping Plate, when ordering from GSA Self-Service Stores;

(3) Order only those items required in the performance of their contracts; and

(4) Pay bills from Government supply sources promptly upon receipt of billings.

(e) Authorizations for subcontractors to utilize Government supply sources shall be requested only by the prime Contractor and shall not be granted without approval of the prime Contractor.

(End of clause)

252.251-7001 Use of interagency motor pool vehicles and related services.

As prescribed in 251.205, insert the following clause:

USE OF INTERAGENCY MOTOR POOL VEHICLES AND RELATED SERVICES (APR 1984)

(a) Authorized Contractors shall submit requests for interagency motor pool vehicles and related services in writing to the appropriate GSA Regional Customer Service Bureau, Attention: Motor Equipment Activity; except that requests for more than five vehicles shall be submitted to General Services Administration, FTM, Washington, DC 20406, and not to the regions. Each request shall include the following:

(1) Two copies of the agency authorization to obtain vehicles and related services from GSA.

(2) The number of vehicles and related services required and period of use.

(3) A list of the Contractor's employees who are authorized to request vehicles and related services.

(4) A listing of the make, model, and serial numbers of Contractor-owned or leased equipment authorized to be serviced.

(5) Billing instructions and address.

(b) Contractors requesting unusual quantities of vehicles should do so as far in advance as possible to facilitate availability.

(c) Contractors authorized to use interagency motor pool vehicles and related services shall comply with the requirements of 41 CFR 101-39 and the operator's packet furnished with each vehicle.

(d) Contractors shall establish and enforce suitable penalties for their employees who use or authorize the use of Government vehicles for other than performance of Government contracts.

(e) The Contractor shall assume, without the right of reimbursement from the Government, the cost or expense of any use of motor pool vehicles and services not related to the performance of the contract.

(f) Authorizations for subcontractors to utilize interagency motor pool vehicles and related services shall be requested only by the prime Contractor and shall not be granted without the approval of the prime Contractor.

(End of clause)

252.252-7000 Simplified supply contract required clauses.

The following clause for fixed-price supply contracts may be used only by contracting offices authorized by their Department to use the test procedures of the DoD Contract Simplification Program:

SIMPLIFIED SUPPLY CONTRACT REQUIRED CLAUSES (APR 1984)

The clauses set forth below by reference are incorporated herein with the same force and effect as if set forth in full.

Title and date	FAR or DoD FAR supplement clause
Definitions (APR 1984)	52.202-1
Officials Not to Benefit (APR 1984)	52.203-1
Gratuities (APR 1984)	52.203-3
Covenant Against Contingent Fees (APR 1984)	52.203-5
New Material (APR 1984)	52.210-5
Used or Reconditioned Material, Residual Inventory, and Former Government Surplus Property (APR 1984)	52.210-7
Priorities, Allocations and Allotments (APR 1984)	52.212-8
Variation in Quantity (APR 1984)	52.212-9
Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (APR 1984)	52.219-8
Utilization of Labor Surplus Area Concerns (APR 1984)	52.220-3
Notice to the Government of Labor Disputes (APR 1984)	52.222-1
Convict Labor (APR 1984)	52.222-3
Walsh-Healey Public Contract Act (APR 1984)	52.222-20
Equal Opportunity (APR 1984)	52.222-26
Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1984)	52.222-35
Affirmative Action for Handicapped Workers (APR 1984)	52.222-36
Buy American Act, Trade Agreements Act, and the Balance of Payments Program (APR 1984)	252.225-7006
Federal, State, and Local Taxes (APR 1984)	52.229-3
Payments (APR 1984)	52.232-1
Discounts for Prompt Payment (APR 1984)	52.232-8
Interest (APR 1984)	52.232-17
Assignment of Claims (APR 1984)	52.232-23
Invoices (OCT 1982)	252.232-7000
Disputes (APR 1984)	52.233-1
Changes—Fixed-Price (APR 1984)	52.243-1
Contractor Inspection Requirements (APR 1984)	52.246-1
Inspection of Supplies—Fixed-Price (APR 1984)	52.246-2
Responsibility for Supplies (APR 1984)	52.246-16
Termination for Convenience of the Government (Fixed Price) (APR 1984)	52.249-2
Default (Fixed Price Supply and Service) (APR 1984)	52.249-8

(End of clause)

252.252-7001 Simplified services contract required clauses.

The following clause for fixed price services contracts may be used only by contracting offices authorized by their Department to use the test procedures of the DoD Contract Simplification Program:

SIMPLIFIED SERVICES CONTRACT REQUIRED CLAUSES (APR 1984)

The clauses set forth below by reference are incorporated herein with the same force and effect as if set forth in full.

Title and date	FAR or DoD FAR supplement clause
Definitions (APR 1984)	52.202-1
Officials Not to Benefit (APR 1984)	52.203-1
Gratuities (APR 1984)	52.203-3
Covenant Against Contingent Fees (APR 1984)	52.203-5
Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (APR 1984)	52.219-8
Utilization of Labor Surplus Area Concerns (APR 1984)	52.220-3
Notice to the Government of Labor Disputes (APR 1984)	52.222-1
Convict Labor (APR 1984)	52.222-3
Contract Work Hours and Safety Standards—Act Overtime Compensation (JAN 1984)	DAR 7-103.16(a)
Payrolls and Basic Payroll Records (JAN 1984)	DAR 7-103.16(c)
Equal Opportunity (APR 1984)	52.222-26
Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1984)	52.222-35
Affirmative Action for Handicapped Workers (APR 1984)	52.222-36
Service Contract Act of 1965 (JAN 1984)	DAR 7-1903.41(a)
Federal, State, and Local Taxes (APR 1984)	52.229-3
Payments (APR 1984)	52.232-1
Discounts for Prompt Payment (APR 1984)	52.232-8
Interest (APR 1984)	52.232-17
Assignment of Claims (APR 1984)	52.232-23
Invoices (OCT 1982)	252.232-7000
Disputes (APR 1984)	52.233-1
Changes—Fixed-Price AR II (APR 1984)	52.243-1
Inspection of Services—Fixed-Price (APR 1984)	52.246-4
Default (Fixed-Price Supply and Service) (APR 1984)	52.249-8

(End of clause)

252.252-7002 Simplified supply and services provisions (negotiated).

The following solicitation provision for fixed price negotiated contracts may be used only by contracting offices authorized by their Department to use the test procedures of the DoD Contract Simplification Program:

SIMPLIFIED SUPPLY AND SERVICES PROVISIONS (NEGOTIATED) (APR 1984)

The solicitation provisions set forth below by reference are incorporated herein with the same force and effect as if set forth in full.

Title and date	FAR provision
Solicitation Definitions (APR 1984)	52.215-5
Unnecessarily Elaborate Proposals or Quotations (APR 1984)	52.215-7
Acknowledgement of Amendments to Solicitations (APR 1984)	52.215-8
Submission of Offers (APR 1984)	52.215-9
Restriction on Disclosure and Use of Data (APR 1984)	52.215-12
Preparation of Offers (APR 1984)	52.215-13
Explanation to Prospective Offerors (APR 1984)	52.215-14
Failure to Submit Offer (APR 1984)	52.215-15
Contract Award (APR 1984)	52.215-16
Order of Precedence (APR 1984)	52.215-18

(End of provision)

252.252-7003 Simplified supply and services provisions (advertised).

The following solicitation provision for fixed-price advertised contracts may be used only by contracting offices authorized by their Department to use the test procedures of the DoD Contract Simplification Program:

SIMPLIFIED SUPPLY AND SERVICES PROVISIONS (ADVERTISED) (APR 1984)

The solicitation provisions set forth below by reference are incorporated herein with the same force and effect as if set forth in full.

Title and date	FAR provision
Solicitation Definitions—Formal Advertising (APR 1984)	52.214-1
Acknowledgement of Amendments to Invitations for Bids (APR 1984)	52.214-3
False Statements in Bids (APR 1984)	52.214-4
Submission of Bids (APR 1984)	52.214-5
Explanation to Prospective Bidders (APR 1984)	52.214-6
Failure to Submit Bid (APR 1984)	52.214-9
Contract Award—Formal Advertising (APR 1984)	52.214-10
Order of Precedence—Formal Advertising (APR 1984)	52.214-11
Preparation of Bids (APR 1984)	52.214-12

(End of Provision)

252.270-7000 Automatic data processing clauses—general.

252.270-7001 Warranty exclusion and limitation of damages.

As prescribed at 270.310(a), insert the following clause:

WARRANTY EXCLUSION AND LIMITATION OF DAMAGES (FEB 1983)

Except as expressly set forth in writing in this agreement, or except as provided in the Contractor Representation clause, if applicable, and except for the implied warranty of merchantability, there are no warranties expressed or implied. In no event will the contractor be liable to the Government for consequential damages as defined in the Uniform Commercial Code, Section 2-715, in effect in the District of Columbia as of January 1, 1973; i.e., Consequential damages resulting from the seller's breach include:

(a) Any loss resulting from general or particular requirements and need of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) Injury to person or property proximately resulting from any breach of warranty.

(End of clause)

252.270-7002 Contractor representation.

As prescribed at 270.310(b), insert the following clause:

CONTRACTOR REPRESENTATION (APR 1984)

Unless the Contractor expressly states otherwise in his proposal, where functional requirements are expressly stated as part of the requirements of this solicitation, the Contractor, by responding, represents that in its opinion the system/item proposed is capable of meeting those requirements. However, once the system/item is accepted by the Government, contractor responsibility under this clause ceases. In the event of any inconsistency between the detailed specification and the functional specification contained in the solicitatinn, the former will control.

(End of clause)

252.270-7003 Fixed price options.

As prescribed at 270.310(c), insert the following clause:

(The data required for the "fill-ins" should be suitably highlighted, and inapplicable bracketed portions should be deleted).

FIXED PRICE OPTIONS (APR 1984)

(a) This solicitation is being conducted on the basis that known requirements extend beyond the initial contract period (and exceed the basic quantity*) to be awarded, but due to the unavailability of funds, including statutory limitations on obligations of funds, the options cannot be exercised at the time of award of the initial contract. There is a reasonable certainty that funds will be available thereafter to permit exercise of the options. Because realistic competition for the option periods (and quantity*) is impracticable once the initial contract is awarded, it is in best interest of the Government to evaluate options in order to eliminate the possibility of a "buy-in".

(b) In order to safeguard the integrity of the Government's evaluation and because the Government is required to acquire ADPE and related items on the basis of fulfilling the systems-life requirement at the lowest overall cost, price and other factors considered, requirements for optional periods (and additional quantities*) as well as initial requirements will be evaluated for award on a fixed-price basis. Since the systems or items to be acquired under the solicitation have an expected life of ** months (hereafter referred to as "system life" or "item life", as appropriate), and since lowest system (item) life costs are synonymous with lowest overall costs, the contract resulting from a solicitation will contain options at fixed prices for renewals for subsequent periods based on fiscal years throughout the projected system (item) life (and options at fixed prices for all stated optional quantities of supplies or services not included in the initial requirements*). Despite the foregoing, offerors are reminded that although the evaluation that will lead to contract award will be based on system (item) life costs, the award of the initial contract, as well as the exercise of the options, is dependent not only on the continued existence of the requirement and the availability of funds but also on an affirmative determination that each exercise of an option is in the best interest of the Government.

(c) Options included in offers submitted in response to this solicitation will be evaluated as follows:

(1) *Firm fixed prices.* To be considered acceptable under the solicitation, offerors must offer (i) fixed prices for the initial contract period for the initial systems or items being acquired, (ii) fixed prices or prices which can be finitely determined for each separate option renewal period, which prices must remain in effect throughout that period, and (iii) fixed prices or prices which can be finitely determined for all required option quantities.*

(2) *Evaluation of prices.* Offers will be evaluated for purposes of award by adding the total prices of all optional periods (and all stated optional quantities*) to the total price for the initial contract period covering the initial system or items. These prices will be adjusted by the appropriate discount factors shown in *** of the solicitation document. Evaluation of option prices will not obligate the Government to exercise the options. Offers which do not include fixed or determinable system (item) life prices cannot be evaluated for the total systems-life requirement and will be rejected. Offers which meet the mandatory requirements will be evaluated on the basis of lowest overall cost to the Government, price and other factors considered. Evaluated optional features, if any, will also be evaluated.

(3) *Separate charges.* Separate charges, in any form, are not solicited. Offers containing any charges for failure to exercise any option will be rejected.

(d) Selection of an offer shall be made on the basis of lowest overall cost, price and other factors considered, to the Government provided that the contract price reasonably represents the value of bona fide fiscal year requirements, rather than representing, to any extent, a portion of any other fiscal year's requirements. This determination with respect to the contract price shall be made after consideration of such factors as commercial catalog prices for short-term leases, offeror system startup expenses, multiyear price protection, assured system-life availability of equipment, software, and vendor support. If a determination is made that an offer does not meet these criteria, that offer cannot be accepted for award.

(e) Award of an initial contract will not obligate the Government to exercise any contractual option. Prior to exercising any option, the Government will make a determination that (i) funds are available, (ii) the requirement covered by the option fulfills an existing need of the Government, and (iii) the exercise of the option is the most advantageous method of fulfilling the Government's need, price and other factors considered.

(f) Failure to exercise an option shall not obligate the Government to pay any charges other than the contract price including exercised options.

(End of clause)

* Delete when inapplicable.

** Insert the specific number of months applicable to the solicitation.

*** Insert location in the solicitation where appropriate discount factors and the contemplated payment schedule are specified.

252.270-7004 Option to extend the term of the contract.

As prescribed at 270.310(d), insert the following clause:

OPTION TO EXTEND THE TERM OF THE CONTRACT (APR 1984)

This contract is renewable at the prices stated elsewhere in the contract, at the option of the Government, by the Contracting Officer giving written notice of renewal to the Contractor by the first day of each fiscal year of the Government or within 30 days after funds for that fiscal year become available, whichever date is the later; *Provided*, that the Contracting Officer shall have given preliminary notice of the Government's intention to renew at least **** days before this contract is to expire. Such a preliminary notice of intent to renew shall not be deemed to commit the Government to renewals. If the Government exercises this option for renewal, the contract as renewed shall be deemed to include this option provision. However, the total duration of this contract, including the exercise of any options under this clause, shall not exceed ** months.

(End of clause)

** Insert the specific number of months applicable to the solicitation.

**** Insert 30 days unless a longer period is appropriate.

252.270-7005 Option for increased quantities.

As prescribed at 270.310(e), insert the following clause:

OPTION FOR INCREASED QUANTITIES (FEB 1983)

The Government may increase the items called for herein by the quantities stated and at the unit prices specified elsewhere in this contract. The Contracting Officer may exercise this option at any time within the period specified in the contract by giving written notice to the Contractor. Delivery of items added by exercise of this option shall be in accordance with the delivery schedule set forth elsewhere in this contract.

(End of clause)

252.270-7006 Discontinuance repricing.

As prescribed at 270.310(f), insert the following provision:

DISCONTINUANCE REPRICING (APR 1984)

(a) By the incorporation of this solicitation provision, the Government indicates its willingness to incorporate into the resulting contract the clause at 252.270-7006, Discontinuance of Rental and Repricing, which is an alternative to standard termination for convenience procedures in appropriate circumstances.

(b) The following example illustrates the operation of the clause:

—Monthly rental price for the period in which the discontinuance date falls for the discontinued item as stated in the contract. $90

—Monthly rental price for the item effective at the time of initial award of the system contract as stated in the vendor's ADP schedule contract (or the established commercial catalog price at the same time, if lower or if no ADP schedule contract effective). $120

—Months of rental prior to the discontinuance date during the initial or option contract period of performance in which the discontinuance date occurs. $10

—Rental charges earned during the applicable period of performance (10×$90). $900

—Discontinuance charges to be added at discontinuance date ($120—$90×10). $300

—Total rental charges plus discontinuance charges ($900+$300). $1,200

—Ceiling on total of rental changes and discontinuance repricing charges (12×$90). $1,080

—Total price during period for the discontinued item ($1,080 ceiling lower than total rental earned plus discontinuance charges). $1,080

(c) Offeror election. The undersigned offeror _____ agrees to, _____ declines, the incorporation of the Discontinuance of Rental and Repricing clause in any contract which may result from this solicitation.

(End of provision)

252.270-7007 Discontinuance of rental and repricing.

As prescribed at 270.310(g), insert the following clause:

DISCONTINUANCE OF RENTAL AND REPRICING (APR 1984)

(a) The Government may, in lieu of a termination under the Termination for Convenience of the Government clause of this contract, during the initial or any option period of performance of this contract, discontinue rental of any equipment or software on a date specified in a written notice provided to the Contractor not less than 30 days prior to the specified discontinuance date. The Government may discontinue the rental on shorter notice when agreed to by the Contractor.

(b) In the event of discontinuance of rental under (a) above, the Government shall pay termination repricing charges to the Contractor as computed in accordance with this paragraph (b). The charges shall be the remainder obtained by subtracting the contract monthly rental price effective at the discontinuance date for the discontinued equipment or software item from the monthly rental price for the item under the GSA/ADP schedule contract or the established commercial catalog price, whichever is less, effective at the time of award of the contract's initial period of performance, multiplied by the number of months the item was rented during the particular contract period of performance (initial or option) in which the discontinuance was effective, *Provided*, in no event shall the total of termination repricing charges and the contract rental price for the number of months the item was rented during the period in which discontinuance was effective

exceed the contract price for the item for the entire period.

(c) The provisions of this clause shall prevail when notice pursuant to this clause is made.

(End of clause)

252.270-7008 Rights in privacy safeguards.

As prescribed at 270.904, insert the following clause:

RIGHTS IN PRIVACY SAFEGUARDS (APR 1984)

(a) The details of any and all safeguards that the Contract may design or develop under this contract shall become and remain the property of the Government and shall not be published or disclosed in any manner without the express written consent of the Government.

(b) The details of any and all safeguards that may be revealed to the Contractor by the Government in the course of performing under this contract shall not be published or disclosed in any manner without the express written consent of the Government.

(End of clause)

252.270-7009 Access to contractor facilities and records—privacy safeguards inspection.

As prescribed at 270.904, insert the following clause:

ACCESS TO CONTRACTOR FACILITIES AND RECORDS—PRIVACY SAFEGUARDS INSPECTION (APR 1984)

(a) The Government shall, following presentation of advance written notice of ___ days be afforded full, free, and uninhibited access to all facilities and installations, and to all technical capabilities and operations, and to all documentation, records, and data bases for the purpose of carrying out a program of inspection to ensure continued efficacy and efficiency of safeguards against threats and hazards to data security, integrity, and confidentiality.

(b) In the event that new or unanticipated threats or hazards are discovered by either the Government or the contractor, or that existing safeguards have ceased to function, the discoverer shall immediately bring the situation to the attention of the other party. Mutual agreement shall then be reached on changes or corrections to existing safeguards or institution of new safeguards with final determination of appropriateness being made by the Government. The cost of such changes or corrections shall be a matter of negotiation. The Government's liability is limited to an equitable adjustment of cost for such changes or corrections, and the Government shall not be liable for claims of loss of business, damage to reputation or damages of any other kind arising from discovery of new or unanticipated threats or hazards, or any public or private disclosure thereof.

(End of clause)

252.270-7100 Federal information processing standards publications (FIPS PUB) clause.

252.270-7101 American Standard Code for Information Interchange (ASCII) system requirements.

As prescribed at 270.1103(a)(1), insert the following clause:

AMERICAN STANDARD CODE FOR INFORMATION INTERCHANGE (ASCII) SYSTEM REQUIREMENTS (APR 1984)

The system, upon receiving a hardware or software command, shall accept data on magnetic tape, paper tape, or any other input media covered by an approved Federal Information Processing Standards Publication (FIPS PUB) in ACSII code and collating sequence prescribed in FIPS PUB 1-1 and in the format prescribed in FIPS PUBS 2, 3-1, 25, 50, or other applicable FIPS PUBS. Such data may be translated, if necessary, into a form that the proposed equipment can internally process provided that upon receiving a hardware or software command the proposed equipment can produce the processed data on magnetic tape, paper tape, and other output media in the ACSII code and collating sequence prescribed in FIPS PUB 1-1 and in the format prescribed in FIPS PUBS 2, 3-1, 25, 50, or other applicable FIPS PUBS.

(End of clause)

252.270-7102 Punched paper tape readers and punches.

As prescribed at 270.1103(a)(2), insert the following clause:

PUNCHED PAPER TAPE READERS AND PUNCHES (APR 1984)

Punched paper tape equipment shall be capable of reading and punching in the prescribed American Standard Code for Information Interchange (ASCII) code and format specified in FIPS PUBS 1-1 and 2.

(End of clause)

252.270-7103 Recorded magnetic tape for information interchange (800 CPI, NRZI).

As prescribed at 270.1103(a)(3), insert the following clause:

RECORDER MAGNETIC TAPE FOR INFORMATION INTERCHANGE (800 CPI, NRZI) (APR 1984.

All 9-track digital magnetic tape recording and reproducing equipment employing ½-inch wide tape at the recording density of 800 characters per inch (CPI), including associated programs, shall provide the capability to accept and generate recorded tapes in compliance with the requirements set forth in FIPS PUB 3-1.

(End of clause)

252.270-7104 Rectangular holes in 12-row punched cards.

As prescribed at 270.1103(a)(4), insert the following clause:

RECTANGULAR HOLES IM 12-ROW PUNCHED CARDS (FEB 1983)

All punching or reading equipment utilizing 12-row 3¼-inch punched cards used in data processing, communications, and similar operations shall be capable of punching and reading rectangular holes of a size and location specified in FIPS PUB 13.

(End of clause).

252.270-7105 Hollerith punched card code.

As prescribed at 270.1103(a)(5), insert the following clause:

HOLLERITH PUNCHED CARD CODE (APR 1984)

All punching or reading equipment utilizing 12-row 3¼-inch wide, rectangular hole punched cards used in data processing, communications, and similar operations shall be capable of punching or reading the Code for Information Interchange, FIPS PUB 1-1, or one of the approved Subsets of the Standard Code for Information.

(End of clause)

252.270-7106 Subsets of the standard code for information interchange.

As prescribed at 270.1103(a)(6), insert the following clause:

SUBSETS OF THE STANDARD CODE FOR INFORMATION INTERCHANGE (APR 1984)

Printers; display devices; data acquisition, preparation, and transcription devices; data communication terminal devices; punched card equipment; and other data processing or communications equipment not requiring the 128-character set of the Federal Code of Information Interchange, FIPS PUB 1-1, shall conform to one of the approved character Subsets of the Standard Code for Information Interchange, FIPS PUB 15. Printers of the "chain" or "train" or other replaceable symbol technology may also be provided with optional subsets having a different number of characters from those specified in FIPS PUB 15 in order to increase the printer's repertoire of symbols or the printer's speed as required for local use, provided the ability to interchange information by the selected character subpart (FIPS PUB 15) is retained in the data processing system.

(End of clause)

252.270-7107 Flowcharts, symbols, and their usage in information processing.

As prescribed at 270.1103(a)(7), insert the following clause:

FLOWCHARTS, SYMBOLS, AND THEIR USAGE IN INFORMATION PROCESSING (FEB 1983)

All new information processing system documentation involving the use of flowcharts that may result from this solicitation shall comply with FIPS PUB 24

(End of clause)

252.270-7108 Recorded magnetic tape for information interchange (1600 CPI, Phase Code 0).

As prescribed at 270.1103(a)(8), insert the following clause:

RECORDED MAGNETIC TAPE FOR INFORMATION INTERCHANGE (1600 CPI, PHASE CODE O) (APR 1984)

All 9-track digital magnetic tape recording and reproducing equipment and employing ½-inch wide tape at the recording density of 1,600 characters per inch (CPI) phase encoded, including associated programs, shall provide the capability to accept and generate recorded tape in compliance with the requirements set forth in FIPS PUB 25.

(End of clause)

252.270-7109 One-inch perforated paper tape for information interchange.

As prescribed at 270.1103(a)(9), insert the following clause:

ONE-INCH PERFORATED PAPER TAPE FOR INFORMATION INTERCHANGE (APR 1984)

All one-inch wide perforated paper tape and related 8-channel paper tape punch and reading equipment which are utilized in Federal information processing systems, communication systems, and associated terminals employing perforated paper tape equipment, shall provide the capability to accept and generate tape in compliance with the requirements set forth in FIPS PUB 28.

(End of clause)

252.270-7110 Take-up reels for the one-inch perforated tape for information interchange.

As prescribed at 270.1103(a)(10), insert the following clause:

TAKE-UP REELS FOR THE ONE-INCH PERFORATED TAPE FOR INFORMATION INTERCHANGE (APR 1984)

All one-inch perforated tape take-up reels and related devices employing such reels, including paper tape readers, punches, and related tape-handling equipment, which are used in Federal information processing systems and associated equipment employing such devices, shall provide the capability to accept one of the two types of reels specified in FIPS PUB 27.

(End of clause)

252.270-7111 Software summary for describing computer programs and/or automated data systems.

As prescribed at 270.1103(a)(11), insert the following clause:

SOFTWARE SUMMARY FOR DESCRIBING COMPUTER PROGRAMS AND/OR AUTOMATED DATA SYSTEMS (APR 1984)

All documentation of computer programs and/or automated data systems shall include completed Standard Form (SF 185) summaries as described by FIPS PUB 30.

(End of clause)

252.270-7112 Optical character recognition equipment.

As prescribed at 270.1103(a)(12), insert the following:

OPTICAL CHARACTER RECOGNITION EQUIPMENT (APR 1984)

All applicable Optical Character Recognition (OCR) equipment or services shall comply with the provisions of FIPS PUB 32-1. Applicable OCR equipment also includes data input devices such as typewriters, line printers, and CRT displays. Applicable services include data preparation and processing information represented in OCR form.

(End of clause)

252 270-7113 Character set for handprinting.

As prescribed at 270.1103(a)(13), insert the following clause:

CHARACTER SET FOR HANDPRINTING (APR 1984)

All applicable Optical Character Recognition (OCR) equipment or services which are capable of reading handprinted material shall comply with FIPS PUB 33. The applicable services include data preparation and processing of information represented in OCR form.

(End of clause)

252.270-7114 Code extension technique in 7 or 8 bits.

As prescribed at 270.1103(a)(14), insert the following clause:

CODE EXTENSION TECHNIQUE IN 7 OR 8 BITS (APR 1984)

All coded character sets which require control function and/or graphic symbols that are not included in the 128 characters of ASCII shall be implemented through the use of the code extension methods and techniques as described in FIPS PUB 35.

(End of clause)

252.270-7115 Graphic representation of the control characters of ASCII (FIPS PUB 1-1).

As prescribed in 270.1103(a)(15), insert the following clause:

GRAPHIC REPRESENTATION OF THE CONTROL CHARACTERS OF ASCII (FIPS PUB 1-1) (APR 1984)

All applicable equipment that prints or displays graphic representations of any or all the control characters of ASCII (FIPS PUB 1-1) or of the characters "space" or "delete" shall comply with the requirements set forth in FIPS PUB 36. This standard also applies to equipment that prints these graphic representations on media such as perforated tape, punched cards, or listings.

(End of clause)

252.270-7116 Data encryption standards (DES).

As prescribed at 270.1103(a)(16), insert the following clause:

DATA ENCRYPTION STANDARDS (DES) (APR 1984)

In the event that a data encryption requirement is specified, such encryption shall be accomplished in accordance with FIPS PUB 46. Implementations of the Standard embodied in products or services offered, that are asserted to have an encryption capability in conformance with FIPS PUB 46, shall have the capability validated by the National Bureau of Standards prior to being proposed. Arrangements for validation may be made with the Systems and Software Division, National Bureau of Standards, Washington, DC 20234.

(End of clause)

252.270-7117 Recorded magnetic tape for information interchange, 6250 characters per inch (CPI)(246 CPMM), group coded recording.

As prescribed in 270.1103(a)(17), insert the following clause:

RECORDED MAGNETIC TAPE FOR INFORMATION INTERCHANGE, 6250 CHARACTERS PER INCH (CPI) (246 CPMM), GROUP CODED RECORDING (APR 1984)

All applicable digital magnetic tape recording and reproducing equipment which employs ½-inch wide (12.7mm) magnetic computer tape at the recording density of 6250 characters per inch (246 characters per millimeter) group coded recording, including associated programs, shall provide the capability to accept and generate recorded tapes in compliance with the requirements set forth in FIPS PUB 50.

(End of clause)

252.270-7118 Magnetic tape cassettes for information interchange (3.810mm (0.150 inch) tape at 32 BPMM (800 BPI), PE).

As prescribed at 270.1103(a)(18), insert the following clause:

MAGNETIC TAPE CASSETTES FOR INFORMATION INTERCHANGE (3.810MM (0.150 INCH) TAPE AT 32 BPMM (800 BPI), PE) (APR 1984)

All magnetic tape cassette recording and reproducing equipment which employs 3.810mm (0.150 inch) wide magnetic tape at the recording density of 32 bits per millimeter (800 bits per inch) using phase encoding techniques, including associated programs, shall provide the capability to accept and generate recorded tapes in compliance with the requirements set forth in FIPS PUB 51.

(End of clause)

252.270-7119 Recorded magnetic tape cartridge for information interchange, 4-track, 6.30MM (0.25 inch), 63 BPMM (1600 BPI) phase encoded.

As prescribed at 270.1103(a)(19), insert the following clause:

RECORDED MAGNETIC TAPE CARTRIDGE FOR INFORMATION INTERCHANGE, 4-TRACK, 6.30 MM (0.25 INCH) 63 BPMM (1600 BPI) PHASE ENCODED (APR 1984)

All magnetic tape cartridge recording and reproducing equipment which employs 6.30 millimeter (0.25 inch) wide magnetic tape with one, two, or four independent serial data tracks at recording densities of 63 bits per millimeter (1600 bits per inch) using phase encoding techniques, including associated software, shall provide the capability to accept and generate recorded magnetic tape cartridges in the code and format as specified in FIPS PUBS 1-1 and 52.

(End of clause)

252.270-7120 Description of computer magnetic tape file properties.

As prescribed at 270.1130(a)(20), insert the following clause:

DESCRIPTION OF COMPUTER MAGNETIC TAPE FILE PROPERTIES (APR 1984)

All magnetic tape used to transmit coded information to the Federal Government shall include completed Standard Form 277 describing magnetic tape file properties as set forth in FIPS PUB 53.

(End of clause)

252.270-7121 Computer output microform (COM) formats and reduction ratios, 16MM and 105MM.

As prescribed at 270.1103(a)(21), insert the following clause:

COMPUTER OUTPUT MICROFORM (COM) FORMATS AND REDUCTION RATIOS, 16MM and 105.MM (FEB 1983)

All applicable equipment or services that may result from this solicitation that produce computer generated microforms using plaintype faces shall be in compliance with FIPS PUB 54.

(End of clause)

252.270-7122 Input/output (I/O) channel interface.

As prescribed at 270.1103(a)(22), insert the following clause:

INPUT/OUTPUT (I/O) CHANNEL INTERFACE (AUG 1986)

Unless excluded or waived in accordance with FIPS PUB 60-2, ADP systems and peripheral subsystems that may result from this solicitation shall conform to FIPS PUB 60-2 for the connection of computers to those general classes of peripheral subsystems (such as magnetic tape or disk subsystems) for which operational specifications have been issued and are in effect. The correct operation of these systems conforming interfaces shall be verified before the acceptance of all applicable ADP equipment. Arrangements for verification may be made according to procedures issued by the National Bureau of Standards. These procedures may be obtained by writing the Director, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234, Attention: Verification of I/O Channel Interface Standards. The Government may at its option apply instrumentation and test equipment at any interface required to conform with FIPS PUB 60-2 before the acceptance of these ADP systems to ensure conformance with FIPS PUB 60-2.

(End of clause)

252.270-7123 Channel level power control interface.

As prescribed at 270.1103(a)(23), insert the following clause:

CHANNEL LEVEL POWER CONTROL INTERFACE (AUG 1986)

Unless otherwise excluded as specified in FIPS PUB 61-2 by reference to FIPS PUB 60-1 or unless a waiver is granted following the waiver procedures specified in FIPS PUB 60-2, ADP systems and peripheral subsystems that may result from this solicitation, and for which operational specifications FIPS PUBS (such as FIPS PUB 62-1 and 63-1) have been issued and are in effect, shall conform to FIPS PUB 61-1. The correct operation of these systems' conforming interfaces shall be verified before the acceptance of all applicable ADP equipment. The Government may, at its option, apply instrumentation and test equipment at any interface required to conform to FIPS PUB 61-1 before the acceptance of these ADP systems to ensure conformance with FIPS PUB 61-1. Waivers applicable to the requirements of this solicitation are identified elsewhere in this solicitation document.

(End of clause)

252.270-7124 Operational specification for magnetic tape subsystems.

As prescribed at 270.1103(a)(24), insert the following clause:

OPERATIONAL SPECIFICATION FOR MAGNETIC TAPE SUBSYSTEMS (AUG 1986)

Unless otherwise excluded, as specified in FIPS PUB 62-1 by reference to FIPS PUB 60-2 or unless a waiver is granted following the procedures specified in FIPS PUB 62-1, ADP systems and magnetic tape subsystems that may result from this solicitation shall conform to FIPS PUB 62-1. The correct operation of these systems' conforming interfaces shall be verified before the acceptance of all applicable ADP equipment. The Government may, at its option, apply instrumentation test equipment at any interface required to conform to FIPS PUB 61-1 before the acceptance of these ADP systems to ensure conformance with FIPS PUB 62-1. Waivers applicable to the requirements of this solicitation are identified elsewhere in this solicitation document.

(End of clause)

252.270.7125 Interface: ADP SYstems/ Variable Block, Rotating Mass Storage Subsystems.

As prescribed at 70.1103(a)(25), insert either the clause at (a) or (b):

(a) INTERFACE: ADP SYSTEMS-VARIABLE, BLOCK, ROTATING MASS STORAGE SUBSYSTEMS WITH CONFORMANCE TO SUPPLEMENTAL DEVICE DEPENDENT CHARACTERISTICS (AUG 1986)

Unless excluded or waived in accordance with FIPS PUB 63-1, ADP systems and variable block, rotating mass storage subsystems that may result from this specification shall conform to FIPS PUB 63-1. In addition, conformance to the specifications for Class(es) (Insert class(es) as contained in the NBS report entitled "Additional Operational Specifications for Variable Block Rotating Mass Storage Devices") is required. The correct operation of all interfaces, whose conformance to FIPS PUB 63-1 and the above designated class(es) is required, shall be verified before the acceptance of all applicable ADP equipment. Arrangements for verification may be obtained by writing the Director, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234, Attention: Verification of Operational Specifications for Rotating Mass Storage Subsystems. The Government may, at its option, apply instrumentation and test equipment at any interface required to conform to FIPS PUB 63-1 before the acceptance of these ADP systems to ensure conformance with FIPS PUB 63-1. Waivers applicable to the requirements of this solicitation are identified elsewhere in this solicitation document.

(End of clause)

(b) INTERFACE: ADP SYSTEMS/ VARIABLE BLOCK, ROTATING MASS STORAGE SUBSYSTEMS WITHOUT SUPPLEMENTARY DEVICE DEPENDENT CHARACTERISTICS (AUG 1986)

Unless excluded or waived in accordance with FIPS PUB 63-1, ADP systems and variable block, rotating mass storage subsystems that may result from this solicitation shall conform to FIPS PUB 63-1. The correct operation of all interface, whose conformance to FIPS 63-1 is required, shall be verified before the acceptance of all applicable ADP equipment. Arrangements for verification may be obtained by writing the Director, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234, Attention: Verification of Operational Specifications for Rotating Mass Storage Subsystems. The Government may, at its option, apply instrumentation and test equipment at any interface required to conform to FIPS PUB 63-1 before the acceptance of these ADP systems to ensure conformance with FIPS PUB 63-1. Waivers applicable to the requirements of this solicitation are identified elsewhere in this solicitation document.

(End of clause)

252.270-7126 Magnetic tape labels and file structure information interchange.

As prescribed at 270.1103(a)(28), insert the following clause:

MAGNETIC TAPE LABELS AND FILE STRUCTURE INFORMATION INTERCHANGE (FEB 1983)

Information processing systems using 9-track tape drives and new tape label processing facilities that will be part of an information processing system shall be capable of generating and processing tape labels and file structures that conform to one of the four levels of FIPS PUB 79 if the information processing system either generates or accepts magnetic tapes for information interchange. Offerors shall specify the level of conformance and certify that a copy of the current users manual is on file with the National Bureau of Standards as required by FIPS PUB 79.

(End of clause)

252.270-7127 Data Encryption Standard (DES) modes of operation.

As prescribed at 270.1103(a)(29), insert the following clause:

DATA ENCRYPTION STANDARD (DES) MODES OF OPERATION (APR 1984)

Equipment and services that implement the Data Encryption Standard and are intended for use in the cryptographic protection of sensitive but unclassified computer data, shall use one or more of the modes of operation specified in FIPS PUB 81.

(End of clause)

252.270-7128 Microform readers.

As prescribed at 270.1103(a)(30), insert the following clause:

MICROFORM READERS (FEB 1983)

Microform readers offered as a result of this solicitation that display computer-generated microforms conforming to FIPS PUB 4 shall comply with the provisions of FIPS PUB 84.

(End of clause)

252.270-7129 Optical Character Recognition (OCR) inks.

As prescribed at 270.1103(a)(31), insert the following clause:

OPTICAL CHARACTER RECOGNITION (OCR) INKS (APR 1984)

Inks and preprinted forms shall be required to conform to the provisions of FIPS PUB 85 if they will be read by OCR techniques and if the interchange of machine-readable information between different systems may be required.

(End of clause)

252.270-7130 Optical Character Recognition (OCR) printers, readers and printed forms.

As prescribed at 270.1103(a)(32), insert the following clause:

OPTICAL CHARACTER RECOGNITION (OCR) PRINTERS, READERS AND PRINTED FORMS (APR 1984)

OCR printers, readers and printed forms shall conform to the provisions of FIPS PUB 89, when the interchange of machine sensible information between different systems is required as specified elsewhere herein.

(End of clause)

252.270-7131 Digital magnetic tape cassette equipment and associated programs.

As prescribed at 270.1103(a)(33), insert the following clause:

DIGITAL MAGNETIC TAPE CASSETTE EQUIPMENT AND ASSOCIATED PROGRAMS (APR 1984)

All digital magnetic data cassette recording and reproducing equipment which employ dual track, complementary return-to-bias (CRB), four-states recording techniques on 3.81mm (0.150 in) tape, including associated programs, shall provide the capability to accept and generate recorded tape cassettes in compliance with the requirements set forth in the Federal Standard as stated in FIPS PUB 91 and as may be specified elsewhere herein.

(End of clause)

252.270-7132 Acquisition and validation of COBOL compilers.

As prescribed at 270.1103(a)(34), insert the following clause:

ACQUISITION AND VALIDATION OF COBOL COMPILERS (APR 1984)

(a) COBOL compilers offered as a result of the requirements set forth in this solicitation shall be identified as implementing all of the language elements of at least one of the levels of Federal Standard COBOL as specified in FIPS PUB 21-1. Implementation must provide a facility for the user to optionally specify a level of Federal Standard COBOL for monitoring the source program at compile time. Monitoring may be specified for any level at or below the highest level for which a compiler is implemented and shall consist of an analysis of the syntax used in a source program against the syntax included in the level specified for monitoring. Any syntax not conforming to the specified level will be identified through a diagnostic message in the source program listing. The diagnostic message will contain at least the identification of the source program line number for each nonconforming syntax and identify the level of Federal Standard COBOL that supports the syntax or indicates that the syntax is nonstandard COBOL.

(b)(1) In addition to the specified mandatory COBOL compiler requirements stated in the specification portion of this solicitation, all COBOL compilers brought into the Federal inventory as a result of this solicitation, the most recent release of which has not been previously tested, shall be tested using the official COBOL Compiler Validation System (CCVS). The results of the validation shall be used to confirm that the compiler meets the specified requirements of the designated level of FIPS PUB 21-1, Federal Standard COBOL. To be considered responsive, the vendor shall:

(i) Certify in the proposal that all COBOL compilers offered in response to this solicitation have been submitted for validation; and

(ii) Agree to correct all deviations from the standard reflected in the Validation Summary Report (VSR) not previously covered by a waiver. All deviations shall be corrected within 12 months from the date of contract award unless a shorter period is specified elsewhere in the solicitation. If an interpretation of the standard is required that will invoke the procedures set forth in FIPS PUB 29, such requests for interpretation shall be made within 30 calendar days after contract award.

(2) Any corrections that are required as a result of decisions made under the procedures of FIPS PUB 29 shall be completed within 12 months of the date of formal notification of the interpretation to the contractor. Failure to make required corrections within the time provisions set forth above shall be deemed a failure to deliver required software. The liquidated damages as specified for failure to deliver either operating system or other software shall apply. In addition, such failure falls within the purview of the default clause. If the required corrections are not made within the time provisions specified above, subsequent proposals submitted to the Government offering the deficient COBOL compilers or subsequent uncorrected versions thereto shall be considered nonresponsive.

(End of clause)

252.270-7133 Acquisition of COBOL programs and/or programming services.

As prescribed at 270.1103(a)(35), insert the following clause:

ACQUISITION OF COBOL PROGRAMS AND/OR PROGRAMMING SERVICES (APR 1984)

Business-oriented computer application programs (i.e, those applications or programs that emphasize the manipulation of characters, files, and input/output as contrasted with those concerned primarily with computation of numeric values) offered or prepared as a result of the requirements set forth in this solicitation shall be written using one of the levels of Federal Standard COBOL as defined in FIPS PUB 21-1, including optional language elements, if any, as specified herein. If services provided include compilation(s), compilers used to perform these services shall be validated.

(End of clause)

252.270-7134 Delayed validation of compilers.

As prescribed at 270.1103(a)(36), insert the following clause:

DELAYED VALIDATION OF COMPILERS (APR 1984)

In addition to the compiler requirements specified elsewhere in this document, all compilers for Federal Standard programming languages brought into the Federal inventory as a result of this document and those compilers used by vendors to develop programs or provide services shall be tested using the official Compiler Validation System (CVS).

The results of the validation shall be used to confirm that the compiler meets the requirements of the applicable Federal Standard specified elsewhere in this document. To be considered responsive, the vendor shall:

(1) Certify in the proposal that all Federal Standard programming language compilers offered in response to this document have been submitted for validation or have been previously validated and listed in the latest Federal Software Testing Center (FSTC) Certified Compiler List. Proof of current validation will be provided in the form of a

Certificate of Validation from the FSTC. Unless specified elsewhere in the requirements document, proof of submission for validation will be in the form of a letter from the FSTC scheduling the validation.

(2) Agree to correct all deviations from the applicable Federal Standard reflected in the Validation Summary Report (VSR) not previously covered by a waiver. All deviations must be corrected within 12 months from the date of contract award unless otherwise specified elsewhere in this document. If an interpretation of the Federal Standard is required that will invoke the procedures set forth in FIPS PUB 29–1, such a request for interpretation shall be made within 30 calendar days after contract award. Any corrections that are required as a result of decisions made under the procedures of FIPS PUB 29–1 shall be completed within 12 months of the date of formal notification to the contractor of the approval of the interpretation. Proof of correction in either case will be in the form of a Certificate of Validation from the FSTC for the corrected compiler. Failure to make required corrections within the time limits set forth above shall be deemed a failure to deliver required software. Any liquidated damages as specified for failure to deliver the operating system or other software shall apply.

(End of clause)

252.270–7135 Interchange of machine processable data between and among agencies.

As prescribed at 270.1103(a)(37), insert the following clause:

INTERCHANGE OF MACHINE PROCESSABLE DATA BETWEEN AND AMONG AGENCIES (FEB 1983)

All application programs resulting from this solicitation that have been identified as those that will be interchanged, or that will record data that will be interchanged with Federal agencies, state and local governments, industry, and the public, shall implement the following applicable approved Federal Information Processing Standards (FIPS):

FIPS PUB 4 Calendar Date.
FIPS PUB 5–1 States and Outlying Areas of the United States.
FIPS PUB 6–3 Counties and County Equivalents of the States of the United States and the District of Columbia.
FIPS PUB 8–4 Standard Metropolitan Statistical Areas.
FIPS PUB 9 Congressional Districts of the United States.
FIPS PUB 10–2 Countries, Dependencies, and Areas of Special Sovereignty.
FIPS PUB 58 Representations of Local Time of the Day for Information Interchange.
FIPS PUB 59 Representations of Universal Time, Local Time Differentials, and United States Time Zone References for Information Interchange.
FIPS PUB 66 Standard Industrial Classification (SIC) Codes.
FIPS PUB 70 Representation of Geographic Point Locations for Information Exchange.
FIPS PUB 95 Code for the Identification of Federal and Federally-Assisted Organizations.

(End of clause)

252.270–7136 Additional American Standard Code for Information Interchange (ASCII) controls for character-imaging ADP equipment or services.

As prescribed by 270.1103(a)(38), insert the following clause:

ADDITIONAL AMERICAN STANDARD CODE FOR INFORMATION INTERCHANGE (ASCII) CONTROLS FOR CHARACTER-IMAGING ADP EQUIPMENT OR SERVICES (JUN 1984)

All applicable ADP character-imaging equipment or services (e.g., interactive ADP terminals of the display and printer type, line printers, microfilm printers, typesetting composers, word processors, and related devices or services using such devices) offered as a result of this solicitation shall comply with the requirements set forth in FIPS PUB 86 when such equipment or services employ the character set and encoding conventions prescribed in FIPS PUB 1–1 and FIPS PUB 35, employ primarily character-oriented controls, and are consistent with the architectural assumptions for devices in Appendix B, ANS X3.64–1979. All ADP terminals that meet these conditions are included in this requirement if they contain alphanumeric keyboards and CRT displays or printers that may be used in any form of on-line interactive application or standalone off-line data preparation. Computer resident control software may be used, but is not required, to implement specific features of FIPS PUB 86, unless specified otherwise in this document (insert reference).

(End of clause)

252.270–7137 Interface: ADP Systems/Fixed Block, Rotating Mass Storage Subsystems.

As prescribed by 70.1103(a)(37), insert the following clause:

INTERFACE: ADP SYSTEMS/FIXED BLOCK, ROTATING MASS STORAGE SUBSYSTEMS (AUG 1986)

Unless excluded or waived in accordance with FIPS PUB 97, ADP systems and Fixed Block, Rotating Mass Storage Subsystems, that may result from this solicitation shall conform to FIPS PUB 97. The correct operation of all interfaces whose conformance to FIPS PUB 97 is required shall be verified before the acceptance of all applicable ADP equipment. Arrangements for verification may be obtained by writing the Director, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234, Attention: Verification of Operational Specifications for Rotating Mass Storage Subsystems. The Government may, at its option, apply instrumentation and test equipment at any interface required to conform to FIPS PUB 97 before the acceptance of these ADP systems to ensure conformance with FIPS PUB 97. Waivers applicable to the requirements of this solicitation are identified elsewhere in this solicitation document.

(End of clause)

252.270–7200 Joint Federal Information Processing/Federal Telecommunications Standards (FIPS–FED/STD) Clauses.

252.270–7201 Synchronous high speed data signaling rates between data terminal equipment and data communication equipment.

As prescribed at 270.1103(b)(1), insert the following clause:

SYNCHRONOUS HIGH SPEED DATA SIGNALING RATES BETWEEN DATA TERMINAL EQUIPMENT AND DATA COMMUNICATION EQUIPMENT (FEB 1983)

All applicable equipment or services resulting from the solicitation that are employed with synchronous data communication equipment designed to operate on binary coded information over wide-band communication channels shall comply with FIPS PUB 37/FED–STD 1001.

(End of clause)

252.270–7202 Bit sequencing of the code of information interchange in serial-by-bit data transmission.

As prescribed at 270.1103(b)(2), insert the following clause:

BIT SEQUENCING OF THE CODE OF INFORMATION INTERCHANGE IN SERIAL-BY-BIT DATA TRANSMISSION (FEB 1983)

All applicable equipment or services that may result from this solicitation, transmitting in a serial-by-bit, serial-by-character mode, shall be capable of bit sequencing as prescribed in FIPS PUB 16–1/FED–STD 1010 for the transmission of the Standard Code for Information Interchange, and FIPS PUB 1–1 at the interface between data terminal equipment and data communication equipment.

(End of clause)

252.270–7203 Character structure and character parity sense for serial-by-bit data communication in the code for information interchange.

As prescribed at 270.1103(b)(3), insert the following clause:

CHARACTER STRUCTURE AND CHARACTER PARITY SENSE FOR SERIAL-BY-BIT DATA COMMUNICATION IN THE CODE FOR INFORMATION INTERCHANGE (FEB 1983)

All applicable equipment that may result from this solicitation, transmitting in a serial-by-bit, serial-by-character synchronous or asynchronous mode, shall be capable of transmitting the character structure and sense of character parity prescribed in FIPS PUB 17–1/FED–STD 1011 for the transmission of the Standard Code for Information Interchange, FIPS PUB 1–1 at the interface between data terminal equipment and data communications equipment.

(End of clause)

252.270–7204 Character structure and character parity sense for parallel-by-bit data communication.

As prescribed at 270.1103(b)(4), insert the following clause:

CHARACTER STRUCTURE AND CHARACTER PARITY SENSE FOR PARALLEL-BY-BIT DATA COMMUNICATION (FEB 1983)

All applicable equipment or services that may result from this solicitation, transmitting in a parallel-by-bit, serial-by-character mode, shall be capable of transmitting the character structure and sense of character parity prescribed in FIPS PUB 18–1/FED-STD 1012, when transmitting the Standard Code for Information Interchange, FIPS PUB 1–1, or an approved Federal subset (FIPS PUB 15) at the interface between data terminal equipment and data communication equipment.

(End of clause)

252.270–7205 Synchronous signaling rates between data terminal and data communication equipment.

As prescribed at 270.1130(b)(5), insert the following clause:

SYNCHRONOUS SIGNALING RATES BETWEEN DATA TERMINAL AND DATA COMMUNICATION EQUIPMENT (FEB 1983)

All applicable equipment or services resulting from this solicitation that are employed in conjunction with synchronous data communication equipment designed to operate on binary encoded information in either serial or parallel fashion over voice grade communication channels of nominal 4kHz bandwidth shall comply with FIPS PUB 22–1/FED–STD 1013.

(End of clause)

252.270–7206 Data link control—synchronous bit-oriented data.

As prescribed at 270.1103(b)(6), insert the following:

DATA LINK CONTROL—SYNCHRONOUS BIT-ORIENTED DATA (APR 1984)

All equipment or services using synchronous, bit-oriented data communications offered as a result of this solicitation shall implement the class of procedures specified in FIPS PUB 71/ FED-STD 1003A.

(End of clause)

252.270–7207 Interface Between Data Terminal Equipment (DTE) and Data Circuit Terminating Equipment (DCE) for Operation with Packet-Switched Data Communications Network.

As prescribed at 70.1103(b)(7), inser the following clause:

INTERFACE BETWEEN DATA TERMINAL EQUIPMENT (DTE) AND DATA CIRCUIT TERMINATING EQUIPMENT (DCE) FOR OPERATION WITH PACKET-SWITCHED DATA COMMUNICATIONS NETWORK (AUG 1986)

All applicable ADP and telecommunications equipment or services using public packet switched data communication networks which require an interface based on CCITT Recommendation X.25 shall comply with the requirements specified in FIPS PUB 100/FED–STD 1041.

(End of clause)

252.270–7300 Federal Telecommunications Standards (FED/STD) Clauses.

252.270–7301 Time and frequency reference information in telecommunications systems.

As prescribed at 270.1103(c)(1), insert the following clause:

TIME AND FREQUENCY REFERENCE INFORMATION IN TELECOMMUNICATIONS SYSTEMS (FEB 1983)

All applicable telecommunications facilities and systems that are offered or used as a result of this solicitation shall be referenced to the time and frequency standard specified in FED–STD 1002.

(End of clause)

252.270–7302 Coding and modulation requirements for nondiversity 2400 bit/second modems.

As prescribed at 270.1103(c)(2), insert the following clause:

CODING AND MODULATION REQUIREMENTS FOR NONDIVERSITY 2400 BIT/SECOND MODEMS (FEB 1983)

All nondiversity 2400 bits per second modems offered as a result of this solicitation for use with 4kHz channels derived from either switched networks or dedicated lines shall comply with FED–STD 1005.

(End of clause)

252.270–7303 Coding and modulation requirements for 4800 bit/second modems.

As prescribed at 270.1103(c)(3), insert the following clause:

CODING AND MODULATION REQUIREMENTS FOR 4800 BIT/SECOND MODEMS (FEB 1983)

All 4800 bits per second modems (and equipment containing the 4800 bits per second modems) offered as a result of this solicitation for use with nominal 4kHz analog channels shall comply with FED–STD 1006.

(End of clause)

252.270–7304 Coding and modulation requirements for duplex 9600 bit/second modems.

As prescribed at 270.1103(c)(4), insert the following clause:

CODING AND MODULATION REQUIREMENTS FOR DUPLEX 9600 BIT/SECOND MODEMS (FEB 1983)

All duplex 9600 bits per second modems offered as a result of this solicitation for use by nominal 4kHz analog transmission channels shall comply with FED–STD 1007.

(End of clause)

252.270–7305 Coding and modulation requirements for Duplex 600 and/or 1200 bit/second modems.

As prescribed at 270.1103(c)(5), insert the following clause:

CODING AND MODULATION REQUIREMENTS FOR DUPLEX 600 AND/OR 1200 BIT/SECOND MODEMS (FEB 1983)

All two-wire duplex 600 bits per second and/or 1200 bits per second modems (except those to be acoustically coupled to telephone instruments) offered as a result of this solicitation for use with nominal 4kHz analog channels shall comply with FED–STD 1006.

(End of clause)

252.270–7306 Electrical characteristics of balanced voltage digital interface circuits.

As prescribed at 270.1103(c)(6), insert the following clause:

ELECTRICAL CHARACTERISTICS OF BALANCED VOLTAGE DIGITAL INTERFACE CIRCUITS (FEB 1983)

All equipment using balanced voltage digital interface cicuits that is offered as a result of this solicitation shall comply with the electrical characteristics addressed by FED–STD 1020A.

(End of clause)

252.270–7307 Electrical characteristics of unbalanced voltage digital interface circuits.

As prescribed at 270.1103(c)(7), insert the following clause:

ELECTRICAL CHARACTERISTICS OF UNBALANCED VOLTAGE DIGITAL INTERFACE CIRCUITS (FEB 1983)

All equipment using unbalanced voltage digital interface circuits that is offered as a result of this solicitation shall comply with the electrical characteristics addressed by FED–STD 1030A.

(End of clause)

252.270–7308 Group 2 facsimile apparatus for document transmission.

As prescribed at 270.1103(c)(8), insert the following clause:

GROUP 2 FACSIMILE APPARATUS FOR DOCUMENT TRANSMISSION (FEB 1983)

All Group 2 facsimile apparatus offered as a result of this solicitation for use with voice-band analog circuits shall comply with FED–STD 1061.

(End of clause)

252.270–7309 Cryptographic components, equipment, systems, and services.

As prescribed in 270.1103(c)(9), insert the following clause:

CRYPTOGRAPHIC COMPONENTS, EQUIPMENT, SYSTEMS, AND SERVICES (JUN 1984)

If a requirement for the encryption protection of unclassified digital information in the telecommunications environment is specified elsewhere in this solicitation, all

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cryptographic components, equipment, systems, and services offered to meet that requirement shall comply with FED-STD 1027 and be endorsed as so complying by the National Security Agency prior to being proposed. These items include standalone DES cryptographic equipment as well as any Data Terminal Equipment and Data Circuit-Terminating Equipment utilizing the DES algorithm (described in FIPS PUB 46) for digital encryption. Arrangements for endorsement may be made with the Communications Protection Special Projects Office (S84), National Security Agency, 9800 Savage Road, Fort George G. Meade, MD 20755.

(End of clause)

252.270-7310 Acquisition, design, or development of Group 3 facsimile apparatus.

As prescribed by 270.1103(c)(10), insert the following clause:

ACQUISITION, DESIGN, OR DEVELOPMENT OF GROUP 3 FACSIMILE APPARATUS (JUNE 1984)

All Group 3 facsimile apparatus designed, developed, or offered for use over voice band analog circuits shall comply with FED-STD 1062.

(End of clause)

252.270-7311 Acquisition, design or development of Groups 1, 2, and 3 facsimile apparatus.

As prescribed by 270.1103(c)(11), insert the following clause:

ACQUISITION, DESIGN, OR DEVELOPMENT OF GROUP 1, 2, and 3 FACSIMILE APPARATUS (JUN 1984)

All groups 1, 2, and 3 facsimile apparatus designed, developed, or offered for use over voice band analog circuits shall comply with FED-STD 1063.

(End of clause)

252.270-7400 Other automatic data processing standards clauses.

252.270-7401 BASIC language compilers.

As prescribed at 270.1103(a)(26), insert the following clause:

BASIC LANGUAGE COMPILERS (APR 1984)

BASIC compilers offered as a result of this solicitation shall implement Federal Standard Minimal BASIC, as well as any additional language elements as specified elsewhere in the requirements document (insert reference here).

(End of clause)

252.270-7402 FORTRAN language compilers.

As prescribed at 270.1103(a)(27), insert the following clause:

FORTRAN LANGUAGE COMPILERS (APR 1984)

FORTRAN compilers offered as a result of this solicitation shall implement all of the language elements of the level of Federal Standard FORTRAN specified elsewhere in this requirements document (insert reference here), as well as any additional language elements as specified elsewhere in this document (insert reference here). The compiler shall enable the user to monitor any statement appearing in the source program that does not conform syntactically to the specifications of Federal Standard full FORTRAN.

(End of clause)

252 270-7403 Protection against compromising emanations.

As prescribed at 270.1003(c), insert the following clause:

PROTECTION AGAINST COMPROMISING EMANATIONS (APR 1984)

The Contractor shall certify in his bid/proposal that computer equipment, as specified by the Government, to be provided or used under this contract has been accredited to meet the appropriate security requirements of the National Communications Security Subcommittee on Compromising Emanations (SCOCE) National TEMPEST Standards (NACSEM No. 5100 or NACSIM No. 5100A, "Compromising Emanations Laboratory Test Standard, Electromagnetics (U)") or other specified standard and, upon request of the Contracting Officer, shall provide documentation supporting this accreditation. Notwithstanding the existence of valid accreditations of equipment(s) prior to award of contract, the Government may, as part of its inspection and acceptance, conduct such additional tests at the installation site or Contractor's facility to ensure that equipment/systems delivered or used under the contract satisfy the security standards of NACSEM 5100, NACSIM 5100A, or other approved standards as specified elsewhere in this solicitation/contract. Unless otherwise provided in this contract under the Warranty of Supplies or Warranty of Systems and Equipment clauses, the Contractor shall correct or replace, at no cost to the Government, accepted equipment/systems found to be deficient within one year after proper installation. This applies regardless of f.o.b. point or the point of acceptance of the deficient equipment/systems. Should a modification to the delivered equipment be made by the Contractor, the one-year period is applied to the modification upon its proper installation.

(End of clause)

PART 53—FORMS

Subpart 253.1—General

253.170 Forms for use in DoD acquisition.

This part contains illustrations of Department of Defense Acquisition Forms. The DoD Forms illustrated in this part are presented in numerical order to provide a ready source of reference. Some DD Forms that were previously illustrated in the DAR have been converted to Standard Forms and are published in the FAR or are published in the FAR as DD Forms. A few have been deleted. The Table of Contents of this part has been annotated with the status of all DD Forms previously published in the DAR. Except as may be otherwise indicated in this DoD FAR Supplement, all DD Forms illustrated in this part may be continued on (a) bond paper, or (b) specially constructed continuation sheets (e.g., DD Form 250c). Continuation sheets shall be annotated in the upper right-hand corner with the number of the form being continued and the serial page number of the total pages being prepared (e.g. page 5 of 15).

Editorial Note: Department of Defense Acquisition Forms are not published in the Federal Register or the Code of Federal Regulations. A list containing DoD Form numbers and titles follows 253.270.

Subpart 253.2—Prescription of Forms

253.270 Use of forms.

Pending final reorganization of the material that was in DAR Section XVI, that material shall be retained as is and used to the extent that it is not inconsistent with explicit instructions of the FAR or this Supplement.

Editorial Note: Department of Defense Acquisition Forms are not published in the Federal Register or the Code of Federal Regulations. For the convenience of the user, the list set forth below includes section numbers and form numbers and titles.

253.303-70-DD-250 DD Form 250: Material Inspection and Receiving Report.
253.303-70-DD-250c DD Form 250c: Material Inspection and Receiving Report—Continuation Sheet.
253.303-70-DD-250-1 DD Form 250-1: Tanker/Barge Material Inspection and Receiving Report.
253.303-70-DD-346 DD Form 346: Raw (Basic Processed) and Semi-Fabricated Stock Form.
253.303-70-DD-347 DD Form 347: Bill of Materials for—Sub-Contracted Parts—Purchased Parts—Government-Furnished Property.
253.303-70-DD-350 DD Form 350: Individual Contracting Action Report (Over $25,000).
253.303-70-DD-375 DD Form 375: Production Progress Report.
253.303-70-DD-375c DD Form 375c: Production Progress Report (Continuation).
253.303-70-DD-375-2 DD Form 375-2: Delay in Delivery (Flash Notice).
253.303-70-DD-416 DD Form 416: Purchase Request for Coal, Coke or Briquettes.
253.303-70-DD-428 DD Form 428: Communication Service Authorization.
253.303-70-DD-448 DD Form 448: Military Interdepartmental Purchase Request.
253.303-70-DD-448-2 DD Form 448-2: Acceptance of MIPR.
253.303-70-DD-558-1 DD Form 558-1: Bidder's Mailing List Application Supplement.
253.303-70-DD-879 DD Form 879: Statement of Compliance.
253.303-70-DD-882 DD Form 882: Report of Inventions and Subcontracts (Pursuant to "Patent Rights" Contract Clause).
253.303-70-DD-1057 DD Form 1057: Monthly Contracting Summary of Actions $25,000 or Less.
253.303-70-DD-1114 DD Form 1114: Instructions for Use of Contract Termination Settlement and Inventory Schedule Forms.
253.303-70-DD-1131 DD Form 1131: Cash Collection Voucher.
253.303-70-DD-1149 DD Form 1149: Requisition and Invoice/Shipping Document.
253.303-70-DD-1155 DD Form 1155: Order for Supplies or Services/Request for Quotations.
253.303-70-DD-1155r DD Form 1155r: General Provisions.
253.303-70-DD-1155r-1 DD Form 1155r-1: Reverse of Order for Supplies or Services/Request for Quotations—Foreign.
253.303-70-DD-1155c-1 DD Form 1155c-1: Order for Supplies or Services (Commissary Continuation Sheet).
253.303-70-DD-1342 DD Form 1342: DoD Property Record.
253.303-70-DD-1348 DD Form 1348: DoD Single Line Item Requisition System Document (Manual).
253.303-70-DD-1348m DD Form 1348m: DoD Single Line Item Requisition System Document (Mechanical).
253.303-70-DD-1348-1 DD Form 1348-1: DoD Single Line Item Release/Receipt Document.
253.303-70-DD-1384 DD Form 1384: Transportation Control and Movement Document.
253.303-70-DD-1419 DD Form 1419: DoD Industrial Plant Equipment Requisition.
253.303-70-DD-1423 DD Form 1423: Contract Data Requirements List.
253.303-70-DD-1425 DD Form 1425: Specifications and Standards Requisition.
253.303-70-DD-1473 DD Form 1473: Report Documentation Page.
253.303-70-DD-1484 DD Form 1484: Post-Award Conference Record.
253.303-70-DD-1499 DD Form 1499: Report of Individual Contract Profit Plan.
253.303-70-DD-1507 DD Form 1507: Department of Defense Work Stoppage Report.
253.303-70-DD-1513 DD Form 1513: United States Department of Defense Offer and Acceptance.
253.303-70-DD-1535 DD Form 1535: Request/Approval for Authority To Advertise.
253.303-70-DD-1547 DD Form 1547: Weighted Guidelines Profit/Fee Objective.
253.303-70-DD-1565 DD Form 1565: Request for Authorization of Additional Classification and Rate.
253.303-70-DD-1567 DD Form 1567: Labor Standards Interview.
253.303-70-DD-1568 DD Form 1568: Labor Standards Investigation Summary Sheet.
253.303-70-DD-1592 DD Form 1592: Contract Cross Reference Data.
253.303-70-DD-1593 DD Form 1593: Contract Administration Completion Record.
253.303-70-DD-1594 DD Form 1594: Contract Completion Statement.
253.303-70-DD-1597 DD Form 1597: Contract Closeout Check-List.
253.303-70-DD-1598 DD Form 1598: Contract Termination Status Report.
253.303-70-DD-1635 DD Form 1635: Plant Clearance Case Register.
253.303-70-DD-1637 DD Form 1637: Notice of Acceptance of Inventory.
253.303-70-DD-1638 DD Form 1638: Report of Excess and Surplus Contractor Inventory.
253.303-70-DD-1639 DD Form 1639: Scrap Warranty.
253.303-70-DD-1640 DD Form 1640: Request for Plant Clearance
253.303-70-DD-1641 DD Form 1641: Disposal Determination/Approval.
253.303-70-DD-1651 DD Form 1651: Industrial Equipment Modernization Program—Post Analysis Report.
253.303-70-DD-1653 DD Form 1653: Transportation Data for IFBs and RFPs.
253.303-70-DD-1654 DD Form 1654: Evaluation of Transportation Cost Factors.
253.303-70-DD-1659 DD Form 1659: Application for U.S. Government Bill(s) of Lading Domestic Route Order/Export Traffic Release.
253.303-70-DD-1660 DD Form 1660: Management Control Systems Summary List.
253.303-70-DD-1662 DD Form 1662: Report of Government (DOD) Facilities.
253.303-70-DD-1664 DD Form 1664: Data Item Description.
253.303-70-DD-1665 DD Form 1665: Solicitation, Offer, and Award (Overseas).
253.303-70-DD-1707 DD Form 1707: Information to Offerors or Quoters.
253.303-70-DD-1784 DD Form 1784: Small Purchase Pricing Memorandum.
253.303-70-DD-1861 DD Form 1861: Contract Facilities Capital and Cost of Money.
253.303-70-DD-2025 DD Form 2025: Packaging Change Recommendation/Approval.
253.303-70-DD-2139 DD Form 2139: Subcontract Report of Foreign Purchases.
253.303-70-DD-2222 DD Form 2222: Short Form Research Contract (SFRC) Modification (Page 1)
253.303-70-DD-2222 DD Form 2222: Short Form Research Contract (SFRC) Modification (Page 2)
253.303-70-DD-2222 Instructions for Completing DD Form 2222
253.303-70-DD-2222-1 DD Form 2222-1: Representations and Certifications From Offerors Submitting Proposals Under DFARS 235.70
253.303-70-DD-2222-1 DD Form 2222-1: Representations and Certifications From Offerors Submitting Proposals Under DFARS 235.70 (Page 2)
253.303-70-DD-2222-2 DD Form 2222-2: Short Form Research Contract Research Proposal Cover Page
253.303-70-DD-2222-2 DD Form 2222-2: Short Form Research Contract Research Proposal (Page 2)

PART 270—ACQUISITION OF COMPUTER RESOURCES

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

270.000 Scope.

This part prescribes the policies and procedures for Department of Defense (DoD) and its contractors' acquisition of computers, computer components, software, maintenance services, certain other services, and computer supplies. Separate subparts address acquisition when the procurement authority is vested in the General Services Administration, or is within the provisions of 10 USC 2315, or when the acquisition does not fall within the scope of either General Services Administration or 10 USC 2315 authority. ADP protests to GSBCA are covered in FAR Part 33.

Subpart 270.1—General

270.101 Procurement authorities.

(a) *General Services Administration.* Pub. L. 89-306, 40 USC 759, authorizes and directs the Administrator of the General Services Administration to provide for the economic and efficient purchase, lease, and maintenance of automatic data processing equipment (ADPE) (see Subpart 270.2) by Federal agencies, subject to the fiscal and policy control of the Office of Management and Budget (OMB). Policies and procedures for acquisitions for which procurement authority is vested in GSA are contained in Subpart 270.3.

(b) *10 USC 2315.* Section 908 of the DoD Authorization Act, 1982 (Public Law 97-86) added section 2315 to Title 10, United States Code which provides that the provisions of 40 USC 759 are not applicable to DoD procurements of ADPE systems, components, and services if the function, operation or use (see also Subpart 270.4):

(1) Involves intelligence activities;

(2) Involves cryptologic activities related to national security;

(3) Involves the command and control of military forces;

(4) Involves equipment that is an integral part of a weapon or weapon system; or

(5) Is critical to the direct fulfillment of military or intelligence missions, excluding routine administrative and business applications (including payroll, finance, logistics, and personnel management applications)

(c) *Other acquisitions of computer resources.* Certain acquisitions do not fall within the scope of either (a) or (b) above. Such acquisitions include computer systems and components, including computer items modified to Government specifications at the time of production, which are specially designed (not configured) to the extent that:

(1) They cannot be used to process a variety of problems or applications; or

(2) They can only be used as an integral part of a non-computer system. In addition, acquisitions by DoD contractors, acquisition of printing services utilizing computer technology, acquisition of computers as an integral part of a non-computer system, and acquisition of computer support services fall within the scope of these "other acquisitions." Policies and procedures for these "other acquisitions" are contained in Subpart 270.6 and FAR Subpart 8.8.

(d) *Software.* The authority to acquire commercially available software (see 270.200) is vested in the General Services Administration and shall be acquired in accordance with Subpart 270.3 unless within the scope of 10 U.S.C. 2315, in which case the commercially available software shall be acquired in accordance with Subpart 270.4.

Subpart 270.2—Definitions

270.200 Scope of subpart.

The definitions in this subpart apply only to acquisitions within the scope of Part 270.

"Automatic Data Processing Equipment (ADPE)" means general purpose, automatic data processing components and the equipment systems created from them, regardless of use, size, capacity or price, that are designed to be applied to the solution or processing of a variety of problems or applications and are not specially designed (rather than configured) for any specific application.

"ADP Fund" means a financing mechanism administered by GSA and which, subject to GSA approval, is available without fiscal year limitation for financing the acquisition of ADPE and related items by lease, purchase, transfer, or otherwise.

"Agency Procurement Request (APR)" means a request by a DoD component for GSA to contract for ADPE, commercially available software, or maintenance services or for GSA to delegate the authority to contract for these items.

"Benchmark" means a problem or series of problems used to evaluate the performance of computers and/or software relative to the contract specifications.

"Computer Equipment" means electronic devices which perform logical, arithmetic, or storage functions through the use of software.

"Commercially Available Software" means software developed at private expense and available in the commercial market through lease or purchase (including licensing arrangements) from a concern representing itself to have ownership and/or marketing rights in the software. Software which is furnished as part of the computer but, is separately priced from the computer, is included in this category.

"Conversion Costs" means those costs that are directly related to the conversion from installed computer resources to replacement computer resources. In addition to project management costs, conversion costs shall include, but are not limited to:

(a) Conversion of the following software by reprogramming, recoding, or translation:

(1) Existing software written in Federal standard or other ANSI standard higher-level language;

(2) Application software written in assembly or other nonstandard languages that will continue to meet essential agency mission needs without redesign, provided that continued use of the nonstandard software can be justified and the file is documented with the justification prior to incorporation into the software conversion study;

(3) Mission-essential application software to be developed for operational use before the replacement is installed (or before commercial computer services are procured), provided the software is written in Federal standard or other ANSI standard languages;

(b) Conversion of data bases, data base design changes, and data base management systems to the extent necessary to permit the continued use of existing application software;

(c) Firmware required solely to permit the continued use of application software;

(d) Site preparation and modifications to installed environmental controls;

(e) Parallel operation of the old system during the conversion process, including offsite data processing support;

(f) Travel and training expenses, including pay and fringe benefits of Government employees during attendance at formal classroom training courses; and

(g) Other general and user expenses directly related to the conversion effort; e.g., conversion planning, preparation and management, additional supplies, and any additional general-purpose software required to support the conversion.

"Delegation of Procurement Authority (DPA)" means a written notification from GSA to a DoD component in response to an APR, granting contracting authority to the DoD component.

"Equipment Technology Update" means an acquisition resulting from an obsolescence review of an ADPE system which establishes that it would be more economic and efficient over the remaining systems life to replace some or all components of that system. This type of acquisition does not necessarily require a current requirements analysis or software conversion study.

"Evaluated Optional Features" means those contractual conditions and technical requirements which are established in the solicitation but which do not have to be bid (offered) in order to be responsive (acceptable). Each evaluated optional feature in the solicitation must reflect its relative value to the Government.

"Maintenance Services" means those examination, testing, repair, or part replacement functions performed to:

(a) Reduce the possibility of malfunction (preventive maintenance);

(b) Correct a malfunction (remedial maintenance); or

(c) Modify in a minor way (field engineering change or field modification).

"Noncompetitive Procurement" means a procurement for which the minimum needs are so restrictive that there is only one known manufacturer capable of satisfying the minimum needs. Included in this type of procurement are:

(a) Sole source procurements; and,

(b) Specific make and model procurements (notwithstanding the fact that there may be more than one bid (offer) thus creating price competition).

"Obsolescence Review" means a review to determine whether existing computer resources are economically or technically obsolete. Indications of economic and technical obsolescence include:

(a) Maintenance service or parts are becoming unavailable or are no longer being provided by the original equipment manufacturer (OEM);

(b) An operating system is or will no longer be supported by the OEM;

(c) Degradation in equipment reliability;

(d) Maintenance costs are accounting for an increasingly greater portion of operating costs;

(e) Energy consumption, including necessary environmental control, is relatively high;

(f) System throughput and processing turn-around are too slow, and flexibility is limited for the mission requirement;

(g) The equipment is two or more production cycles behind the present product line.

"Remote Terminal Emulation" means a means of evaluating the teleprocessing performance of an ADPE system by use of components external to the ADPE system under evaluation. Workload is introduced to the ADPE system by components external to the ADPE system and the performance of the ADPE system is recorded for evaluation to determine the teleprocessing performance of the ADPE system.

"Software" means a series of instructions, in a form acceptable to a computer, which causes a computer to perform specified operations.

"Software Conversion Study" means a study of the effort and costs required to convert software from the existing computer system to the replacement computer system.

"Specifications" means specifications for the acquisition of computer resources. Such specifications may consist of one or more of the following types:

(a) *Brand-name or equal.* The purchase description refers to one or more specific commercial products identified by brand name and make or model number or other appropriate nomenclature by which such products are offered for sale to the public by the particular manufacturer, producer, or distributor. These purchase descriptions should set forth those salient physical, functional, or other characteristics of the brand name product(s) which are essential to meet the needs of the Government. Prospective contractors must be given the opportunity to offer products other than those specifically referenced by brand name if such other products will meet the needs of the Government in essentially the same manner as those referenced.

(b) *Equipment performance requirements.* A statement of those minimum use output requirements such as the amount of data that needs to be stored or processed within a given time and operational reliability, supplemented to the extent necessary with hardware factors (devoid of as much specific vendor orientation as possible) such as, cycle time, computing speed, tape read and/or write speed, printer speed, size of memory, expandibility (modularity), and related software which are a measure of the operating capability of equipment and which, when applied to the functional specifications, provide a quantitative measure of the operating time and capacity required to process the applications involved on that equipment.

(c) *Functional specifications.* The delineation of the objectives which the system is intended to accomplish and the data processing requirements underlying that accomplishment. A description of the data processing requirements should include a description of the data output and its intended uses, the data input, the data files and record content, the volumes of data, the processing frequencies, timing, and such other factors as may be necessary to provide a full description of the system.

(d) *Plug compatible.* A plug (plug-to-plug) compatible purchase description is similar to a brand name or equal purchase description. The purchase description refers to one or more specific commercial products identified by brand name and make or model number or other appropriate nomenclature and sets forth those salient physical, functional, or other characteristics of the brand name product(s) which are essential to meet the needs of the Government. Unlike an item offered under a brand name or equal purchase description, a plug compatible item need not perform its functions in essentially the same manner as the referenced product; however, it must perform the same functions as the referenced product.

(e) *Specific make and model.* A purchase description under which only a specific manufacturer's make and model (or other appropriate nomenclature by which such products are offered for sale to the public by the particular manufacturer, producer, or distributor) is acceptable.

"Systems or Items Life" means a forecast or projection of the period of time that begins with the installation of the systems or items and ends when the need for such systems or items has terminated. Systems or items life is established by the Government on the basis of requirements and is usually set forth in the solicitation. Systems or items life is not necessarily synonymous with the actual life of the systems or items.

Subpart 270.3—Acquisitions Under General Services Administration (GSA) Authority

270.300 Scope of subpart.

This subpart sets forth policies and procedures for contracting by the Department of Defense for automatic data processing equipment, commercially available software, maintenance services, and certain other services and supplies, when procurement authority is vested in the General Services Administration (GSA).

270.301 Policy.

(a) Pub. L. 89-306, 40 U.S.C. 759, authorizes and directs the Administrator of the General Services Administration to provide for the economic and efficient purchase, lease, and maintenance of automatic data processing equipment (ADPE) by Federal agencies, subject to the fiscal and policy control of the Office of Management and Budget (OMB). The statute specifically provides that the authority conferred upon the Administrator of the General Services Administration shall not be construed as to impair or interfere with the determination by agencies of their individual requirements or the use made of ADPE or components thereof by any agency.

(b) The authority cited in (a) above does not extend to those acquisitions described in 270.101 (b) and (c). These acquisitions shall be accomplished in accordance with 270.4 and 270.5.

270.302 Procurement authority.

This section prescribes the applicable procedures when procurement authority is vested in the General Services Administration.

270.302-1 Application.

When a requirement exists for ADPE, commercially available software, or maintenance services, as defined in 270.2, an Agency Procurement Request (APR) must be submitted to the GSA prior to the initiation of any contract action, unless the requirement meets an exception set forth below. In response to an APR, the GSA may contract or issue a Delegation of Procurement Authority (DPA). For the procedures to be followed in submitting the APR, see 270.303-1. At the option of the DoD Component, abbreviated procedures promulgated by GSA may be substituted for those described herein.

270.302-2 Exceptions.

Contracts may be made without the prior approval of the GSA under the following conditions:

(a) *Automatic data processing equipment.* Except for contracts involving the GSA ADP Fund (see 270.321), excess leased ADPE (see 270.14), or the acquisition of hardware monitors for measuring computer system performance, DoD may contract for ADPE without prior approval of GSA,

provided that at least one of the following conditions is met:

(1) The contract will occur by placing a delivery order against an applicable GSA requirements contract;

(2) The contract will occur by placing a delivery order against a GSA Schedule contract, provided that:

(i) The order is placed under the terms and conditions of the contract;

(ii) The order is within the maximum order limitation (MOL) of the applicable contract;

(iii) The total purchase price of the item(s) covered by the order does not exceed $300,000.

(Note: Even though the item(s) are to be rented or leased, the purchase price shall be used to determine if the dollar value of the order falls within the $300,000 threshold); and

(iv) The requirements set forth in 270.314 on the use of GSA Schedule contracts for ADP are met; or

(3) The value of the contract does not exceed:

(i) $2,500,000 purchase price, or $1,000,000 annual rental charge (including attendant maintenance costs) for a competitive procurement;

(ii) $250,000 purchase price, or $100,000 annual rental charge (including attendant maintenance costs) for a noncompetitive procurement.

(4) The acquisition is an "equipment technology update" (see 270.2) action resulting from a comparative cost analysis made in connection with an obsolescence review (see 270.2) if:

(i) The situation reviewed was limited to processing existing workload on installed old technology equipment;

(ii) The resulting technology update capability will not exceed the reviewed old technology capability by more than 50 percent;

(iii) An immediate increase in economy and efficiency can be realized without significant disruption in the continuing satisfaction of the need; and

(iv) Either (A) no new, replacement, or augmented equipment system is known or planned beyond the existing system life for the reviewed ADP equipment system or (B) a new, replacement, or augmented equipment system has been identified and is definitively planned for acquisition actio. on a competitive basis, but the contract award will be far enough in the future to allow significant economy and efficiency to be realized in the interim period.

(b) *Software.* After compliance with 270.1304, DoD may contract for commercially available software, including software performance monitoring packages, for use with ADPE without approval of GSA or the Federal Computer Performance Evaluation and Simulation Center (FEDSIM), provided that at least one of the following conditions is met:

(1) The contract will occur by placing a delivery order against an applicable GSA requirements contract;

(2) The contract will occur by placing a delivery order against an applicable nonmandatory GSA Schedule contract under the terms and conditions of that contract;

(3) The procurement is to be made by normal solicitation procedures and the total value of the procurement, for the specific software package(s), does not exceed:

(i) $1,000,000 for competitive acquisitions; or

(ii) $100,000 for noncompetitive acquisitions; or

(4) The software is provided with and is not separately priced from the ADPE.

(c) *Maintenance services.* The DoD may contract for maintenance services without approval of GSA when:

(1) Such services are available under the terms and conditions of an applicable GSA Schedule contract; or

(2) The maintenance charges do not exceed $1,000,000 annually for a competitive procurement, or $100,000 annually for a noncompetitive procurement.

(d) *Services.* GSA approval is not required for other services. (But see 270.8 for use of the GSA Teleprocessing Services Program.)

270.303 Contracting procedures.

This section sets forth the procedures for performing contracting when procurement authority is vested in the GSA. Prior to issuance of the solicitation, the contracting officer shall insure that a DPA has been obtained, or that the acquisition falls within one of the exceptions.

270.303-1 Submission(s) of agency procurement requests (APR).

If it is determined that the conditions of the contemplated contracting action are not covered by the blanket delegation of contracting authority provisions of 270.302, or if the conditions of the action change during the contracting process so that those provisions become inapplicable, two copies of the APR and other applicable documents shall be forwarded to the General Services Administration (KMA), Washington, DC 20405. The APR shall be signed by an official who has been authorized to initiate the acquisition action. In addition, the APR shall contain the name and telephone number of an individual within the DoD Component who shall act as the point of contact for GSA. The APR shall include, as applicable:

(a) *DoD Component information.* DoD Component name, address, names and telephone numbers of appropriate officials.

(b) *Project title and description.*

(1) Name or designation of the ADPE system.

(2) Description of the requirement. Indicate whether it is a new, an addition to, or a modification of a current ADPE system.

(3) Estimated system/item life.

(4) Estimated system/item life cost.

(5) Locations (city and state) which require user access to the ADPE system or where the equipment is to be installed, if appropriate.

(6) Fiscal year and quarter during which the solicitation is expected to be released.

(7) Expected contract award date.

(c) *Contracting action planning.*

(1) Budgeted value of the acquisition in the request to OMB, indicating whether implicitly or explicitly described, including fiscal year involved.

(2) A summary of the alternatives considered to meet the requirement, the related costs and the basis for the alternative(s) selected.

(3) If the GSA Teleprocessing Services Program (TSP) is used as the source of supply, indicate the contracting arrangement comtemplated (Multiple Award Schedule (MAS) or Basic Agreement (B/A), and type (full, interactive, or remote batch)).

(4) Conclusions of the performance evaluation for the currently installed ADPE system, when applicable.

(5) A statement that available resources have been screened and none are available to satisfy the requirement.

(6) Documentation regarding telecommunications, when applicable.

(7) Conclusions of the software conversion study, when applicable.

(8) Unique software, maintenance, and support requirements, if any.

(9) Evidence that site construction/modification by GSA is or is not required. One of the following statements shall be used for this purpose:

(i) The acquisition of this equipment will not require site construction or modification by GSA; or

(ii) The acquisition of this equipment will require site construction/modification by GSA which must be completed by (*date*) and notification and information, as applicable, has been/will be submitted to GSA on (*date*).

(10) One of the following statements regarding the Privacy Act of 1974:

(i) Equipment or services identified by this request will not be used to operate a system of records on individuals to accomplish an agency function.

(ii) Equipment or services identified by this request will be used to operate a system of records on individuals to accomplish an agency function and all applicable provisions of the Privacy Act have been complied with.

(11) A brief description of the primary agency programs that the equipment or services will support.

(12) Computer security requirements, where applicable, as certified by the responsible official.

(d) *Acquisition strategy.*

(1) Description of conversion management planning actions.

(2) Type of specification.

(3) The basis and documentation to support the use of brand name or equal, plug compatible, or specific make and model specification, when applicable (see 270.2).

(4) The basis and documentation to support a contemplated noncompetitive action, when applicable. Specifically, the justification must address:

(i) The critical service, unique features, or mandatory requirements dictated by the intended use that limits the acquisition to a noncompetitive procurement (the overriding necessity of these competition-limiting requirements shall be clearly identified);

(ii) The steps taken which led to the conclusion that no other known or probable source of supply exists; and

(iii) The factors which preclude the development of specifications or the determination of the requirement in a form suitable for competition.

(5) The documentation to support a dedicated teleprocessing system strategy, when applicable.

(6) If the GSA TSP is used as the source of supply, source selection information, as follows:

(i) List of requirements (mandatory and evaluated optional features, if any);

(ii) Other elements to be evaluated;

(iii) Summary description of any benchmark and the method for developing cost information from the benchmark results, or a description of how cost information will be determined if a benchmark is not used; and

(iv) The method to be used for combining all cost elements to determine the lowest overall system-life cost.

(7) If remote terminal emulation is to be used, provide justification as set forth in 270.320.

(e) *Exceptions or deviations.* Provide a statement that all applicable regulations have been reviewed and complied with, or identify and justify deviations.

(f) *Remarks.* Provide additional information concerning any of the above items or other special conditions associated with the action deemed necessary for understanding of the APR.

(g) *References.* Provide references to relevant past GSA authorizations, meetings, telephone discussions, etc.

(h) *Supplemental submissions.* If, prior to award, the requirement or any of the contract planning or strategy elements of an APR change materially from data submitted in the APR, irrespective of whether before or after authorization is received from GSA to proceed, promptly provide a supplementary APR submission to GSA containing pertinent information and referencing the basic APR.

270.303-2 GSA action on APR.

(a) After review of the APR and the documentation submitted, and subject to the right of the DoD Component to determine its individual ADPE, commercially available software, and maintenance requirements, including the development of specifications for and the selection of the types and configurations of equipment needed, the Assistant Administrator for Information Resources Management, GSA or his designee, will:

(1) Delegate to the DoD Component authority to contract;

(2) Delegate to the DoD Component the authority to contract and provide for GSA participation in the contracting to the extent deemed necessary under the circumstances; or

(3) Provide for the contracting by GSA, or otherwise obtain the requirement on behalf of the DoD Component.

(b) A copy of the APR and the GSA response and other related documentation prescribed by the DoD Component shall be made a part of the contract file. Action will be taken by GSA within 20 workdays after receipt of full information contained in an APR or supplement thereto. Upon expiration of this 20-workday period, plus 5 calendar days for mail lag, the DoD Component may proceed with the acquisition as if a DPA had, in fact, been granted. This 20-workday period is subject to written modification by GSA in the event that, after review of the APR data, it is found not to contain the full information required. To establish a common understanding of the 20-workday period, GSA will provide written verification within this period that identifies the date of receipt of the APR or supplemental data. In the event that unusual circumstances surrounding the acquisition dictate that a longer period of time is required for GSA to complete its appraisal, it will so notify the DoD Component and, under these circumstances, the automatic DPA rule shall not apply.

(c) APR submissions to GSA are not required to exercise a renewal option within the systems life of a previous authorization.

(d) Changes within the scope of a change provision in the contract do not require an additional DPA (including purchase orders under the Multiple Award Schedule (MAS) or contracts using the Basic Agreement (B/A) in the TSP). Any changes shall be within the systems life of the requirement as specified in the APR. A new DPA is required when requirements exceed the contract quantities (including options) by more than 25 percent.

270.303-3 GSA contracting for DoD.

When GSA acquires ADPE or related items for DoD, the contracting is a joint endeavor. In this case the DoD Component shall:

(a) Submit documentation to GSA including the requirement, systems or items life, the technical specification, and justification to support contracting on an other-than-full and open competition basis, if applicable;

(b) Prepare the technical portion of the solicitation and define any unique requirements;

(c) Provide necessary technical personnel (and contracting personnel, if desired) as members of the contract negotiating team;

(d) Prepare a selection plan and submit it to the GSA contracting officer prior to issuance of the solicitation;

(e) Evaluate proposals from a technical point of view and arrange for offerors' oral presentations, when appropriate;

(f) Provide copies of correspondence to the GSA contracting officer when authorized to communicate directly with offerors;

(g) Determine the technical capability of the items offered to meet the requiring activity's requirements, technical specifications, and systems or items life. This responsibility shall include the determination of whether the proposals are technically acceptable or unacceptable. The results of these determinations shall be transmitted to the GSA contracting officer to enable the contracting officer to take appropriate action with the offerors;

(h) Select the lowest overall cost item(s) and transmit this information with the necessary supporting documentation to the GSA contracting

officer. In the event a conclusive judgment cannot be made on the basis of lowest overall cost, a determination and findings to this effect shall be prepared before any other factors are used as a basis for selection;

(i) Provide the following administrative information to the GSA contracting officer along with the data required in (h) above:

(1) Finance data (e.g., paying office, and fund citation);

(2) Contract distribution list and addresses; and

(3) Identity of the successor contracting officer.

(j) Assist the GSA contracting officer in debriefing offerors, when debriefings are requested;

(k) If required, place the delivery order(s);

(l) Accomplish any other task not included above which will further the joint contracting objective or expedite completion of the contract action at the DoD Component's discretion and with GSA concurrence; and

(m) Administer the contract in accordance with the terms and conditions thereof.

270.304 Small purchases.

The provisions of Part 213 apply when the aggregate amount of any one requirement for ADPE, commercially available software, or maintenance services does not exceed $25,000 annually. ADP schedule contracts may be used to procure FSC Group 70 items.

270.305 Restrictions on the use of simulation in the ADPE contracting process.

(a) Data structured for simulation purposes shall not be the only means of describing data processing requirements in solicitation documents. Simulation data shall be accompanied by a narrative description of the objectives, workload, and any available application logic diagrams.

(b) Solicitation documents should not be structured in such a way as to require offerors to use a specific computer system simulator in order to submit their offers. When offerors submit computer simulation as part of their offers, they shall be required to describe clearly the simulation used and the make and model of the computer on which the simulation was run.

(c) Offers should not be considered nonresponsive or unacceptable solely on the basis of simulation results.

(d) Procedures for simulation and computer performance evaluation services are prescribed in Departmental procedures.

270.306 Publicizing contract actions.

(a) To ensure that appropriate competition is obtained, synopses of proposed contracts for ADPE, commercially available software, and maintenance services shall be publicized in the Commerce Business Daily (CBD) in accordance with the provisions of FAR Part 5, and 205.2, 270.314, and 270.315 of this supplement. The exception of FAR 5.202(a)(6) does not apply to the use of GSA nonmandatory ADP Schedules.

(b) The GSA centralized Bidders Mailing List (BML) for Federal Supply Classification (FSC) Group 70 may be used for competitive ADPE and commercially available software and maintenance service acquisitions. DoD Components may obtain the GSA BML by a written request to the General Services Administration (8BR), Building 41, Denver Federal Center, Denver, Colorado 80225. The request shall include the applicable class and BML code number(s), listed below:

7010–0001	ADPE Configuration
7020–0001	ADP Central Processing Unit (CPU, Computer), Analog
7021–0001	ADP Central Processing Unit (CPU, Computer), Digital
7022–0001	ADP Central Processing Unit (CPU, Computer), Hybrid
7025–0001	Memory-Magnetic Storage
7025–0002	Magnetic Tape Subsystems
7025–0003	Magnetic Disk Subsystems
7025–0004	Printers, High Speed (ADP)
7025–0005	Paper Tape Devices
7025–0007	Interactive Display
7025–0008	Interactive Graphics
7025–0009	Interactive Hard Copy
7025–0010	Other ADP Input/Output and Storage Devices
7030–0001	ADP Software—Operating System
7030–0002	ADP Software—Application Programs
7030–0003	ADP Software—Data Base Management Programs
7030–0004	Other ADP Software
7035–0001	ADP Accessorial Equipment
7040–0001	Punched Card Equipment
7045–0002	ADP Support Equipment
7050–0001	ADP Components

The GSA BML may be used for subsequent contracting for items in the class and BML code, provided the solicitation is released to industry within 90 days following receipt of the BML in question.

(c) 41 CFR 150 [1] shall be cited as the authority for the request. For further information concerning the above classes, DoD Components should contact General Services Administration (KEC), Washington, DC 20405.

(d) To contract for ADP maintenance services, agencies may obtain the GSA BML for Standard Industrial Group 0739, BML Code 4, by written request to the addressee indicated in (b) above. 41 CFR 150 [1] shall be cited as the authority for requesting the BML.

(e) Maximum advantages shall be taken of the latest technological advances in the ADPE field to ensure that the Government's needs are met at the lowest overall cost. To encourage industry to offer proposals which permit the Government to take full advantage of technology and to ensure that specifications are clear and complete, DoD Components may provide proposed specifications to industry for comment prior to formal solicitation. A copy should be furnished to all prospective offerors scheduled to receive the solicitation. Industry should be given a minimum of 30 calendar days to submit written comments and at least 60 days for complex acquisitions. Comments and the disposition thereof shall be retained in the contract file.

270.307 Evaluation factors.

(a) Solicitations shall identify all factors, including conversion costs, that will be considered in the evaluation of offers. The evaluation factors shall be applied to the mandatory technical requirements and the evaluated optional features (e.g., specific software packages, compatible input-output devices), where applicable. Where evaluated optional features are included in a solicitation, their value to the Government shall be expressed in dollars, points, or any other reasonable indicator as an evaluation factor.

(b) While acquisition price is usually considered to be the most significant factor, the circumstances of a particular acquisition may require that other additional factors be taken into consideration. These include, but are not limited to:

(1) Technical approach;

(2) Previous experience in complex acquisitions;

(3) Management organization;

(4) Prior success at satisfying technical and delivery requirements;

(5) Post-award support capability;

(6) Ability to deliver technologically current software; and

(7) Maintenance costs.

Contracting officers shall ensure that these and all other relevant factors, as required by other parts of this subpart, are clearly stated in the solicitation along with their relative importance.

(c) Unless waived in accordance with Departmental procedures, the contracting officer shall solicit and evaluate, over the projected systems life, all forms of financing an acquisition. These include:

(1) Purchase.

(2) Lease: Vendor retains title to the item throughout system's life.

(3) Lease With Option to Purchase (LWOP): The Government leases items with options to purchase at a later date.

(4) Lease to Ownership Plan: The Government leases items for a specified period in accordance with applicable funding statutes after which lease payments cease and title is transferred to the Government. When solicitation of these various financing methods is appropriate, offerors may submit any or all of them. The contract file shall be documented with the results of the analysis performed on the financing methods received.

(d) Other factors to be considered in evaluating proposals include:

(1) Residual value of purchased ADPE at the conclusion of systems life.

(2) Present value of money (discounted for the systems life) in accordance with procedures established by the DoD Components.

270.308 Commercially available software contracts.

When acquiring commercially available software, contracting officers should have the following objectives:

(a) Avoid restrictive clauses that limit the use of the software to a specific system, installation, or organization;

(b) Incorporate a clause that will permit other Government agencies to obtain the software under the contract being negotiated;

(c) Obtain additional quantity discounts should any other Government agency acquire the same software under the contract; and

(d) Ensure that the contractor is contractually obligated to support and maintain the software in subsequent years.

270.309 Determination of selection factors.

The prices offered for the systems or items life and conversion costs, whether based on prices offered or a Government estimate, shall be included in determining the lowest overall cost. Determination of system/item life is optional for a system/item with a purchase price of $25,000 or less; however, this does not apply if the system/item is to be leased or rented. The following are examples of other factors to be considered:

(a) Economic benefits clearly attributable to increased productivity.

(b) Direct savings that would accrue from the release of rented ADPE, discontinuance of services, or reduction in energy or telecommunications costs.

(c) Indirect savings derived from reductions in other than ADPE or service costs, such as space and/or personnel support expenses.

(d) Benefits from implementing new applications which otherwise would have to be deferred.

(e) Economic advantages resulting from providing the capability to accommodate projected increases in workload without contracting for further augmentation, replacement of the ADPE, or acquisition services.

(f) Potential savings due to the availability of software already developed and available from the Federal inventory or commercial marketplace that could be used to meet additional requirements.

(g) Proven reliability of the equipment and operating system software in similar operating environments.

(h) The continued availability of operating system software support and maintenance services beyond the initial system/item life that would enhance the probability of reutilization of the ADPE within the Government.

(i) The potential for supporting other agencies through the ADP sharing program.

270.310 Contract clauses.

In addition to the other clauses required by the FAR or the DoD FAR Supplement, the clauses prescribed below shall be used in all solicitations and contracts for ADP equipment, software and maintenance services and certain other services for which GSA has delegated procurement authority either by DPA or by regulation.

(a) *Warranty exclusion and limitation of damages.* The contracting officer shall insert the clause at 252.270–7001, Warranty Exclusion and Limitation of Damages, in solicitations and contracts for ADP equipment, commercially available software, maintenance, and related supplies, unless the contracting officer determines that a higher degree of protection is in the best interest of the Government.

(b) *Contractor representation.* The contracting officer shall insert the clause at 252.270–7002, Contractor Representation, in solicitations and contracts for ADP equipment items or systems when the Government's requirement is set forth in whole or part by functional specifications and the contract amount is expected to exceed $100,000.

(c) *Fixed-price options.*

(1) The use of option(s) to extend the contract period and/or to acquire additional quantities may be in the best interest of the Government when the conditions of FAR 17.206 are met. The evaluation of options motivates price competition on a system/item life basis and eliminates the long-term effects of a buy-in. One-time charges (startup and other nonrecurring costs), such as documentation, manuals, initial training requirements, etc., may be significant for a particular solicitation. An offeror may intend to absorb some portion of these costs or may plan to recover (amortize) them in possible "follow-on" awards. Incumbent offerors could enjoy a competitive advantage since it may not be necessary to recover them in a single contract. In addition, offerors with relatively broader markets and/or stronger financial resources tend to have greater flexibility with respect to any one individual procurement action. The evaluation of system/item life prices promotes greater competition by evening out these advantages and encourages lower system/item life pricing.

(2) *Separate charges.*

(i) When considering options, care should be exercised in making the distinction between: (A) discontinuance charges (i.e., termination settlement compensation including negotiated contractual payment provisions) for discontinuance during the initial contract period or during an exercised option period, (B) separate charges for the Government's failure to exercise an option to extend the contract term or to acquire additional quantities, and (C) contracting for evaluated optional features, which is outside the scope of this subsection.

(ii) A payment that reflects the addition of a separate charge to a contract price is illegal if the charge, when added to the contract price, exceeds the amount that reasonably represents the value of bona fide fiscal year requirements. (See 31 U.S.C. 665a, 31 U.S.C. 712a, and 41 U.S.C. 11). To preclude the payment of these illegal charges (because of the nonexercise of options), when options are to be incorporated into a contract, separate charges in any form shall not be solicited and offers containing any charges for the Government's failure to exercise any option will be rejected as provided by the clause entitled "Fixed-Price Options" prescribed below.

(3) *Discontinuance of lease/rental of equipment or software.* When the Fixed-Price Options clause is used, the Government and the contractor may find it mutually advantageous to incorporate a special provision containing specific notice and settlement terms to cover

[1] Editorial Note: Regulations republished in 41 CFR Chapter 201 at 49 FR 20994, May 17, 1984.

discontinuance of rental of equipment or software during the contract period. The clause entitled "Discontinuance of Rental and Repricing" (see example at 252.270–7007) may be used for this purpose. The special "Discontinuance of Rental and Repricing" clause provides notice of discontinuance and settlement payment terms. A means is provided to determine those charges within a ceiling that ensures that the value of the discontinued requirement and the contract value of the requirement for the revised contract period are reasonable. It provides the opportunity for a lower price by covering the risk of discontinuance with specified repricing provisions. Neither the incorporation of this clause in the contract nor the calculation and comparison of potential discontinuance charges shall be considered an evaluation factor.

(4) The contracting officer shall insert the clause at 252.270–7003, Fixed-Price Options, in solicitations and contracts when a fixed-price contract is contemplated; the solicitation is for ADP equipment, commercially available software, or maintenance services requirements that will extend beyond the initial fiscal year; and an option to extend the contract period and/or to acquire additional quantities may be in the best interests of the Government. When the Fixed-Price Options clause is used, the solicitation shall also specify:

(i) The system/item life;

(ii) The present-value-methodology, including payment schedule, that will be used for purposes of award evaluation; and

(iii) The option periods of performance and option quantities, as appropriate.

(d) *Option to extend the term of the contract.*

The contracting officer shall insert the clause at 252.270–7004, Option to Extend the Term of the Contract, in solicitations and contracts when the clause at 252.270–7002, Fixed-Price Options, is used.

(e) *Option for increased quantities.*

The contracting officer shall insert the clause at 252.270–7005, Option for Increased Quantities, in solicitations and contracts when the solicitation includes the provision at 252.270–7003, Fixed-Price Options, and the known requirements exceed the basic quantity to be awarded [also see FAR 17.2].

(f) *Discontinuance repricing.*

The contracting officer may insert the provision at 252.270–7006, Discontinuance Repricing, in solicitations when a fixed-price contract is contemplated and conditions in 270.310(c)(3) are applicable. The provision contains boxes that provide the offeror an election to agree to or decline the inclusion of the clause at 252.270–7007, Discontinuance of Rental and Repricing.

(g) *Discontinuance of rental and repricing.* The contracting officer shall insert the clause at 252.270–7007, Discontinuance of Rental and Repricing, when the solicitation includes the provision at 252.270–7005, Discontinuance Repricing (also see 270.310(c)(3)).

270.311 Use of GSA regional support services contracts.

GSA establishes and makes available (for the use of other agencies a variety of regional ADP support services contracts. These contracts may include such areas as software development and programming, production of computer-output microfilm, and data entry. DoD Components should consult with their GSA/OIRM regional office to determine the scope and availability of these contracts. These sources of supply should be used if it is determined that they will meet the user's need at the lowest overall cost, price and other factors considered. The following information is generally descriptive of these contracts:

(a) These regional requirements contracts are mandatory for the GSA and the contractor. They are optional for use by DoD Components whose requirements fall within the scope of these contracts.

(b) DoD Components that wish to use these contracts have the responsibility to develop, jointly with GSA regional personnel, a statement of their work and deliverables. The GSA regional personnel serve as contract administrators on the contracts.

(c) Task orders are negotiated by GSA and the Component with vendors based upon services and deliverables specified by the requesting component. GSA contract administrators ensure that contract provisions are met and services are delivered as negotiated.

(d) DoD Components reimburse GSA through the ADP Fund for services received under the requirements contracts.

270.312 Contracting for ADP supplies.

ADP supplies shall be contracted for in accordance with the following procedures:

(a) EDP tape and instrumentation tape—the provisions of FAR 8.404 apply.

(b) Tabulating machine cards—the provisions of FAR 8.404 apply.

(c) Marginally punched continuous forms—the provisions of FAR 8.802 apply.

(d) Other ADP supplies—the provisions of FAR 8.404 apply in the event the supplies are included in either mandatory or nonmandatory Federal Supply Schedules.

270.313 Use of GSA schedule contracts for certain ADP related equipment.

Certain specific key-strike function-limited office information resources equipment, not defined as ADPE, is available under GSA nonmandatory ADP schedule contracts. The provisions of 270.314 apply to these equipment items classified under Federal Supply Classification (FSC) 7435, except that a DAP is not required.

270.314 GSA nonmandatory schedule contracts.

A large number of items of ADPE, commercially available software, and maintenance services are available under nonmandatory GSA Schedule contracts, subject to the following:

(a) *General.* When a nonmandatory schedule contract is used, a specific Delegation of Procurement Authority from GSA is not required even though the order may be for a noncompetitive requirement; however, the existence of nonmandatory ADP Schedule contracts shall not eliminate the requirement for maximum practicable competition in acquiring ADPE, commercially available software or maintenance services. Requirements shall be synopsized in accordance with 270.315. Also, the availability of items under ADP Schedule contracts shall not detract from acquiring the items, including peripheral equipment or items for augmenting an existing system, from a number of different sources if this action is in the best interest of the Government. Suitable equipment must be considered whether or not this equipment is on an ADP Schedule contract. All schedule contracts that might satisfy the requirement shall be considered; or, the acquiring activity may choose to prepare a solicitation to secure goods or services at lower overall costs to the Government. Costs of the contracting process should be considered. If ADPE, commercially available software or maintenance services are acquired under an ADP Schedule at other than the lowest delivered price available for identical or similar items under any other ADP Schedule contract, DoD Components shall justify the action and retain the justification and supporting data in the contract file. The following are examples of factors that may be used in support of such justifications:

(1) Special features of one item, not provided by comparable items, are required for effective program performance.

(2) An actual need exists for special characteristics to accomplish identified tasks.

(3) It is essential that the item selected be compatible with items or systems already being used.

(4) Time of delivery in terms of actual need cannot be met by a contractor offering a lower price.

(5) Greater maintenance availability, lower overall maintenance costs, or the elimination of problems anticipated with respect to machines or systems, especially at isolated use points, will produce savings in the long run which are greater than the difference in prices.

(b) *Initial acquisition of ADPE.*

(1) Whether for purchase, lease or rental, orders for ADPE may be placed under ADP Schedule contracts, *provided* that:

(i) The purchase price of the items covered (even though they are rented or leased) does not exceed $300,000; and

(ii) Requirements are synopsized in the CBD in accordance with 270.315, and either:

(A) No response is received to such notice. The contract file shall be documented accordingly; or

(B) The only interest expressed in response to the synopsis is to satisfy the requirement under the terms of an existing ADP schedule contract. The file shall be documented with evidence that use of the selected ADP schedule contract, including the method of financing (e.g., purchase, lease) is the lowest overall cost alternative, price and other factors considered.

(2) Whether for purchase, lease or rental, if a response(s) to the synopsis issued in accordance with (1)(ii) above indicates an intention to offer terms, conditions, or prices not contained in ADP schedule contracts, the requirement shall be met using the policy and procedures of FAR Part 6.

(c) *Continued lease or rental of installed ADPE and software.*

(1) GSA Schedule contracts may be used for the continued lease or rental of installed equipment and software.

(2) A DPA must be obtained before issuing the annual renewal if the ADP Schedule price of the Central Processing Unit (CPU) exceeds $300,000 and the synopsis results conducted in accordance with 270.315 indicate that it is available from a source other than the schedule contract.

(d) *Conversion from lease to purchase of installed ADPE.* A specific delegation of procurement authority must be obtained from GSA before issuing an order to purchase ADPE with a net purchase price of more than $300,000 when identical, i.e., specific make and model, or suitable substitute equipment is available from a source other than the schedule contractor. Requirements shall be synopsized in accordance with 270.315.

(e) *Acquisition of commercially available software and maintenance services.* Orders may be issued for these services, provided that the contract file supports use of the Schedule contract as being in the best interest of the Government. Requirements shall be synopsized in accordance with 270.315.

270.315 Synopsis of GSA schedule actions.

(a) Orders must be synopsized in accordance with FAR Part 5. GSA has determined, after having consulted with OFPP and SBA, that standard dollar thresholds and waiting periods are neither reasonable nor appropriate for acquisition of ADP under GSA Scheduled. Accordingly, a threshold of $50,000 rather than $10,000 is applicable, and a 15 calendar day waiting period rather than 30 calendar days shall be used. As a minimum, the synopsis shall include the description of the item(s) required, quantity, delivery date and location, period of lease/rental, if applicable, and any other information to assist vendors in responding to the synopsis. The synopsis shall indicate that no contract award will be made on the basis of quotations/proposals or other information received in response to the notice since the synopsis of intent to place a delivery order against a schedule contract cannot be considered a request for quotations/proposals. If, however, the only responses to a CBD notice of intent to place such an order are from vendors offering use of their schedule contracts, and technical acceptability can be established by examination of contractor literature, then the contracting officer may place a delivery order in accordance with 270.314.

(b) The schedule order synopsis technique provides DoD Components with both the GSA negotiated schedule prices (derived from discounting prices in the competitive commercial marketplace) and additional product and cost information as might be submitted by offerors in response to the CBD notification. It is critical that the synopsis process, if used to determine the feasibility of placing a delivery order against an ADP Schedule contract, elicit sufficient information for the contracting officer to determine the need to prepare a formal solicitation. If responses indicate that soliciting is desirable or required, the contracting officer:

(i) If solicitation is for the purpose of comparing proposals with ADP Schedule contracts, *shall ensure* that terms and conditions of the solicitation are substantially the same as those contained in the Schedule contract(s) contemplated for use. The vendor(s) having the ADP Schedule contract(s) shall be included as an addressee(s) of the solicitation since it often is interested in furnishing required items by use of locally awarded contracts. This procedure will permit the vendor(s) to further discount Schedule prices since GSA does not consider this to be a price reduction requiring subsequent adjustment of prices listed in the Schedule contract(s) for all future users.

(ii) *Shall evaluate* offers and ADP Schedule contracts equally. Some offerors may not accept solicitation terms and conditions similar to those that schedule vendors have incorporated into their GSA contracts. The contracting officer shall act in a manner most advantageous to the Government by either awarding a contract or placing an order against a GSA ADP Schedule contract. The contract file shall be documented to justify the action taken.

(c) As appropriate, synopses shall refer to Note 22 as specified in 205.207(d)(S–70).

270.316 Use of GSA ADP requirements contracts.

GSA makes selected ADPE and commercially available software available through requirements contracts. When ADPE and software which satisfy requirements are available from GSA requirements contracts, this source shall be the primary source of supply in accordance with the provisions of the contract. Copies of the contracts are distributed to recipients of the GSA ADP Schedule for FSC Group 70, Part 1. Additional copies are available from the General Services Administration (8BR), Building 41, Denver Federal Center, Denver, Colorado 80225. Some of these requirements contracts specify that GSA is responsible for the allocation of ADPE or software. In these cases, authorization shall be obtained from GSA (KED), Washington, DC 20405, before placing an order. ADPE or commercially available software which is functionally similar to that on a requirements contract shall not be acquired from another source until the activity (a) documents the contract file as to why the requirements contract could not be used, and (b) obtains a delegation of contracting authority from

GSA, unless the contract is within the exceptions noted.

270.317 Compatibility-limited requirements.

(a) Unless demonstrated by other circumstances, a requirement for an augmentation or replacement acquisition that is limited to ADPE and/or software compatible with the installed system shall be:

(1) Supported by a software conversion study (see 270.318), as applicable.

(2) Justified on the basis of mission-essential data processing requirements, and economy and efficiency; and

(3) Acquired in accordance with the requirements of this subpart.

(b) Compatibility limited requirements tend to restrict competition and, therefore, shall not be made a mandatory requirement solely for reasons of economy or efficiency. When conversion and other costs associated with acquiring noncompatible systems are to be evaluated, the solicitation shall provide for the submission and evaluation of acceptable noncompatible offers from responsible offerors that will meet the requirement at the lowest overall cost, price and other factors considered. The evaluation shall determine if acquisition of compatible systems is most advantageous to the Government.

(c) The following factors shall be considered in determining whether the incorporation of compatibility-limited requirements is justified for the replacement acquisition:

(1) The essentiality of existing software, without redesign, to meet critical mission needs. For example, the continuity of operations may be so critical that conversion is not a viable alternative.

(2) The additional risk associated with conversion if compatibility-limited specifications are not used and the extent to which the Government would be injured, financially or otherwise, if the conversion to the new ADP system fails.

(3) The additional adverse impact of factors such as delay, lost economic opportunity, and less than optimum utilization of skilled professionals if compatibility-limited specifications are not used.

(4) The steps being taken to foster competitive conditions on the augmentation or replacement acquisition.

(5) The off-loading of selected applications programs to commercial data processing service facilities as an alternative to conversion.

(6) The extent of essential parallel operations, i.e., need to continue operations of the old system in parallel with the new system until it can fully support the mission needs.

(7) The continuation of ADP services for selected application programs with the present commercial ADP services contractor as an alternative to conversion of all programs in the present ADPE resource system.

(8) The feasibility of competing conversion requirements to be performed on a guaranteed basis under a competitive solicitation that couples the conversion effort and ADP services in a single contract, including consideration of the basis for and calculation of liquidated damages provisions for conversion performance failure.

(d) The justification that supports the use of compatibility-limited specifications (i.e., plug-compatible or brand name or equal purchase descriptions) shall be submitted with the APR in accordance with 270.303–1 when the use of these specifications is contemplated.

270.318 Software conversion studies.

(a) Software conversion studies are performed to ensure that the user's needs are met at the lowest overall cost, price and other factors considered. This includes cost and other factors associated with conversion activities. A software conversion study is not required when one of the following conditions exists:

(1) Initial acquisition where no software currently exists;

(2) Acquisition of computer peripherals only;

(3) Exercise of a purchase option under a lease; or

(4) Acquisition of a compatibility-limited replacement system as the result of a comparative cost analysis made in connection with an obsolescence review.

(b) A software conversion study shall be made for each augmentation or replacement ADPE acquisition when either one of the two following conditions exists:

(1) The estimated purchase price of the equipment system or the estimated system life cost is expected to exceed $2,500,000; or

(2) The cost of conversion is to be used as the primary justification for a noncompetitive requirement when the estimated value of the acquisition exceeds $300,000.

(c) A DoD component may elect to conduct its own comprehensive software conversion study, use contractual sources to accomplish the study, or request the GSA Federal Conversion Support Center (FCSC) to perform the study.

(d) The software conversion study shall be included in the contract file and shall be submitted with the APR to GSA.

(e) When contracting for a software conversion study, the statement of work shall provide the following as a minimum:

(1) Problem definition;

(2) Inventory of current system components;

(3) Description of the operating system environment;

(4) Inventory of application programs and data files to be converted;

(5) Feasible equipment contracting approaches (including acquiring plug-compatible or noncompatible equipment, as appropriate) with schedules for both the acquisition and conversion effort;

(6) General description of the target environment, including system hardware and software, performance requirements, and any constraints on the functional definition of the requirement;

(7) If applicable, approach to accomplish any eventual conversion; and

(8) A requirement for the contractor to recommend actions to be taken to reduce cost and risk in any future conversions.

(f) Studies for acquisitions below the thresholds stated in 270.318(b) above shall be based on Government estimates determined in accordance with Departmental procedures. The contract file shall be documented to record the estimates and the method of computation.

(g) Costs directly related to the conversion of the installed ADPE, software, data bases, files, and telecommunications software to the replacement system, and project management costs, shall include, but are not limited to:

(1) Conversion of the following software by reprogramming, recoding or translation:

(i) Existing software written in Federal standard or other ANSI standard higher-level language;

(ii) Application software written in assembly or other nonstandard languages that will continue to meet essential mission needs without redesign, provided that continued use of the nonstandard software can be justified and the file documented with the justification prior to incorporation into the software conversion study;

(iii) Mission-essential application software to be developed for operational use before the replacement is installed (or before commercial ADP services are procured), provided that the software is written in Federal standard or other ANSI standard language.

(2) Conversion of data bases, data base design changes, and data base management systems to the extent necessary to permit the continued use of existing application software;

(3) Firmware required solely to permit the continued use of application software;

(4) Site preparation and modifications to installed environmental controls;

(5) Parallel operation of the old system during the conversion process, including off-site data processing support;

(6) Travel and training expenses, including pay and fringe benefits of Government employees during attendance at formal classroom training courses; and

(7) Other general and user expenses directly related to the conversion effort; e.g., conversion planning, preparation and management supplies, and any additional general-purpose software required to support the conversion.

(h) The useful life of application software is limited by changes in data processing requirements, operating system software, and equipment technology. Generally, the life expectancy of this software, without redesign or reprogramming, is in the range of 5 to 10 years. Accordingly, the updating of application software for these reasons must be considered regardless of whether these programs are converted from one ADPE system architecture to another. The costs incurred for the redesign of application software in technology updating are not bona fide conversion costs and they shall not be evaluated as such. These technology updating costs include:

(1) The conversion of existing software and data bases which are to be redesigned;

(2) Purging duplicate or obsolete software, data bases, and files;

(3) Development of documentation for existing application software; and

(4) Improvements in management and operating procedures.

(i) Standard cost factors, such as those contained in the OMB Cost Comparison Handbook (Supplement No. 1 to OMB Circular A–76), shall be used to the maximum practicable extent in preparing conversion cost studies and estimates. These cost factors may be supplemented by industry or Component-developed cost factors, as necessary.

270.319 Use of benchmarks in low-dollar ADPE systems acquisitions.

(a) Mandatory benchmarks shall not be used in solicitations for ADPE systems with a purchase value of less than $300,000 unless there is no other acceptable means of validation. When the use of benchmarks is necessary, solicitations shall not require the running of "worst case" benchmark programs (e.g., programs that require extensive reprogramming or conversion) unless these programs are representative of the using activity's actual or anticipated data processing needs.

(b) For ADPE systems with a purchase value of $300,000 or less, the following validating methods shall be considered:

(1) Validation of performance by the technical evaluation of proposed ADPE and software; or

(2) Evaluation of an operational ADPE installation processing a similar workload on comparable equipment.

720.320 Use of remote terminal emulation in ADPE systems acquisitions.

(a) Each Component shall determine whether or not to authorize use of remote terminal emulation during each ADPE system procurement and should use the GSA Handbook, "Use and Specifications of Remote Terminal Emulation in ADP System Acquisitions," before making its determination.

(b) When remote terminal emulation is authorized in an ADPE system acquisition, the DoD Component:

(1) Shall follow all mandatory procedures contained in the GSA Handbook (the handbook may be obtained from the General Services Administration (KEC), Washington, DC 20405);

(2) Shall not require remote terminal emulation capabilities that are not explicitly defined in the GSA Handbook;

(3) May declare an offer unacceptable in an negotiated procurement if the offeror fails to provide the remote terminal emulation capabilities required by the solicitation; and

(4) Shall not require an offeror to conduct a benchmark test using remote terminal emulation at the component's site.

(c) Components shall not authorize the use of remote terminal emulation in ADP service contracting actions, except for:

(1) Dedicated teleprocessing requirements; and

(2) Unusually large and complex share-teleprocessing requirements.

(d) Authority to deviate from the requirements of (b) above shall be obtained prior to synopsis or release of the solicitation, in accordance with Departmental procedures.

(1) To request a deviation, requiring activities shall provide a detailed technical description and justification for each specific deviation desired.

(2) If authority to deviate is granted, the contracting officer shall promptly provide to potential offerors detailed instructions specifying all mandatory remote terminal emulation capabilities not defined in the GSA Handbook and the exact manner in which each emulation benchmark test must be conducted. A notice indicating the availability of these materials shall be published in the Commerce Business Daily (CBD) at least 60 calendar days before the release of the solicitation document.

270.321 ADP fund.

(a) The GSA ADP Fund is a revolving fund available for financing the purchase and, under certain circumstances, lease and maintenance of ADP equipment and/or commercially available software. When approved by GSA, the ADP Fund may be used to obtain maintenance services for ADPE leased from GSA through the ADP Fund.

(b) When an evaluation of offers indicates purchase as the lowest overall cost alternative, but the funds committed to the purchase are inadequate or are not of the proper type, the contracting officer shall notify the requiring or other Department-designated activity of the savings to be realized if items are purchased rather than leased. This activity, upon ensuring that funds are not available, shall make an inquiry to GSA for the use of the ADP Fund. If the ADP Fund is not available, the activity shall notify the contracting officer that the ADP Fund is not available and that the next lowest overall cost alternative should be selected.

(c) If the GSA ADP Fund is used, the activity shall negotiate and execute a payback arrangement with the GSA.

270.322 Exchange/"sale" of ADPE.

(a) When it is determined that Government-owned ADPE should be replaced, exchange/"sale" should be considered. Exchange/"sale" is a means of transferring the equipment to be replaced to another Government agency, with reimbursement, or to the supplier of the replacement ADPE for a trade-in allowance on the contract price so that the proceeds can be applied in whole or in part payment for the replacement ADPE. "Sale" relates to the proceeds obtained from another Government agency whereas "exchange" relates to

the trade-in allowance offered by contractors. The proceeds of "sale" or the exchange allowance shall be applied toward the acquisition of replacement ADPE. In addition to the requirements in this subpart, compliance with Subpart 217.70 and DOD Manual 7950.1–M is required.

(b) The contracting officer, working with the reutilization activity, is responsible for complying with the following conditions in completing an exchange/"sale" transaction.

(1) The ADPE system/item to be "sold" or exchanged must be similar to the ADPE system/item to be acquired;

(2) The ADPE system/item must be needed in the continuing satisfaction of the ADP requirement;

(3) One system/item must be acquired to replace another similar system/item, except in situations where lesser or greater number of systems/items must be acquired to perform all or substantially all of the functions which the trade-in system/item would otherwise perform; and

(4) A written administrative determination must be made by the requiring activity that the exchange allowance or the proceeds of the "sale" will be applied in acquiring the replacement ADPE and that the exchange/"sale" transaction will foster the economic and efficient accomplishment of a continuing requirement.

(c) The normal steps in the execution of an acquisition authorizing an exchange transaction are specified herein.

(1) Offers shall be solicited both on an exchange (trade-in for allowance) or no exchange (no trade-in) basis. The Government shall retain the option to exercise any exchange offer at the time of award.

(2) The exchange ADPE shall be listed and described in the solicitation document with the following information included as a minimum: a brief description of each item of ADPE, name of manufacturer, equipment type, model number, and the appropriate condition code and a translation of that condition code. The contracting schedule must allow sufficient time for the screening of the exchange ADPE within the Government prior to contract award.

(3) Immediately upon receipt of offers, the highest exchange offer (if any) shall be determined and used to initiate screening pursuant to 270.14. Notification shall be given to the Defense Automation Resources Office (DARO) on SF 120, Report of Excess Personal Property. The following notation shall be displayed prominently on the original and 5 copies of the SF 120.

Exchange/"Sale" Property

A written administrative determination has been (will be) made to apply the exchange allowance or proceeds of sale to the acquisition of similar items.

The following additional information shall be submitted with the SF 20:

(i) The identity of the offeror of the exchange;

(ii) The type of replacement equipment;

(iii) The method of acquisition for the replacement equipment;

(iv) The anticipated purchase price for the replacement equipment;

(v) The DPA number assigned by GSA for the replacement equipment, if applicable; and

(vi) The name and telephone number of the contracting officer.

(4) Offers shall be evaluated using the solicitation criteria, including consideration of any exchange allowance offers. Award can be made irrespective of whether the replaced ADPE is exchanged.

(5) Before an award is made, the results of screening shall be considered. If another Government agency wishes to acquire the replaced equipment, the exchange shall not be made. In this event, the contract price will not include the exchange allowance since this amount will be realized by the sale of the equipment to the requesting agency. The actual sale price to the requesting agency will equal the exchange allowance (if any) of the successful offeror.

(6) If no Government agency wishes to acquire the replaced equipment, the contract price will include the exchange allowance (if any). If no exchange allowance was offered by the successful contractor, the replaced equipment shall be handled in accordance with 270.14.

270.323 Conflicts between this subpart and the DPA.

When contracting for ADPE, commercially available software, maintenance services, supplies, and certain other services under a DPA from the GSA, the provisions of the delegation shall take precedence over any conflicting provisions of this subpart and need not be processed as a deviation.

270.324 Acquisition assistance.

Assistance in any phase of the contracting process covered by this subpart may be obtained by contacting:

Army

U.S. Army Computer Systems Selection and Acquisition Agency, Alexandria, VA 22331

HQDA (DAMO–C4Z–K), The Pentagon, Washington, DC 20310

Navy

ADP Selection Office, Washington, DC 20374
Naval Data Automation Command, Code 11, Washington, DC 20374

Air Force

Air Force Computer Acquisition Center, Hanscom AFB, MA 01731
HQ USAF (AF/RDC), Washington, DC 20330

Defense Logistics Agency

Defense Logistics Agency, ADP/T Contracting Office (DACO), Cameron Station, Alexandria, VA 22314

Subpart 270.4—Acquisitions Under 10 USC 2315 Authority

270.400 Scope of subpart.

This subpart is applicable to acquisition of automatic data processing equipment or services if the function, operation, or use involves, as its primary purpose, one or more of the following:

(a) *Intelligence systems.* Computer resources for the Intelligence community for the research and development of, or use in, its intelligence activities.

(b) *Cryptologic systems related to national security.* Computer resources for the research and development of, or use in, cryptologic activities authorized by the National Security Agency.

(c) *Command and control of military forces.* Computer resources for research and development of, or use in:

(1) The National Military Command System;

(2) Worldwide Military Command and Control System;

(3) DoD Component Command and Control Systems.

(d) *Integral part of a weapons system.* Computer Resources:

(1) Physically a part of, dedicated to, or essential in real time to, performance of the mission of weapon systems;

(2) Used for specialized training, diagnostic testing and maintenance, simulation, or calibration of weapons systems;

(3) Used for research and development of weapons systems.

(e) *Critical to the direct fulfillment of military or intelligence missions.* Computer resources in, or used in the research and development of:

(1) Systems that will deploy as mission support in a combat environment;

(2) War planning systems;

(3) Environmental systems supporting military missions, e.g., weather, oceanographic, or satellite systems;

(4) Projects the existence of which are classified;

(5) Warning, surveillance, reconnaissance and electronic warfare systems;

(6) Mapping, charting, and geodesy systems;

(7) Airlift, sealift, and port facilities systems;

(8) Military communication systems; or

(9) Logistics systems which provide direct support to operating forces or provide direct support to maintenance of weapons systems (e.g., organic supply, software support facilities for weapon systems, etc.). This does not include logistic systems supporting, contracting, accounting, disbursement and budgeting, etc.

270.401 Determination of applicability.

Determinations as to the applicability of this subpart shall be made in accordance with DoD Component procedures.

270.402 Procedures.

Unless the contracting officer elects to use the procedures at 270.3, normal acquisition procedures as prescribed in the FAR and this Supplement shall be used in acquiring automatic data processing resources covered by the 10 U.S.C. 2315 authority. Other DoD and Departmental regulations treating acquisition and management of ADP resources may also apply.

Subpart 270.5—Acquisitions Under Other Authorities—[Reserved]

Subpart 270.6—Acquisition of ADPE by DOD Contractors

270.600 Scope of subpart.

(a) This subpart is applicable to contractor acquired ADPE as defined in FAR 31.001, except as components of end items delivered to the Government.

(b) If a contractor acquires ADPE for the account of the Government or if title to the equipment will pass to the Government, the acquisition must be approved as provided in 270.601 and FAR Part 45.

(c) If a contractor leases ADPE, and the lease will not be for the account of the Government or title will not pass to the Government, and the total cost is to be allocated to one or more Government contracts requiring the determination or negotiation of costs, the acquisition must be approved in accordance with the procedures of 270.601 and FAR Part 45.

(d) If a contractor leases ADPE (see 270.2) with an annual cost in excess of $500,000 and more than 50 percent of the cost is allocated to Government contracts requiring the negotiation or determination of costs, the acquisition must be approved in accordance with the procedures of 270.603.

(e) The provisions of 270.602 relating to providing reused equipment to DoD Contractors are applicable regardless of the manner of acquisition or dollar amount.

270.601 DoD component approvals.

(a) Requests for approval of acquisitions of the types outlined in 270.600 (b) and (c) must be submitted through the administrative contracting officer (ACO) to the procuring contracting officer (PCO) who awarded the contract that gave rise to the need for the computer equipment. Prior to the submission to the PCO, the ACO shall comply with 270.602. The PCO will obtain any approvals required by DoD Component procedures.

(b) The supporting documentation for these acquisitions should clearly indicate the best method of financing the acquisition which is in the Government's best interests, that is:

(1) Leasing, either operating or capital, or

(2) Purchase.

(c) The PCO shall consider providing the computer equipment to the contractor as Government-furnished equipment. Factors to be considered include:

(1) Increased ability to realize economies, efficiencies, and to obtain greater competition;

(2) Timeliness;

(3) Impact upon the contractor's ability to perform his contract responsibilities, and

(4) Type of funds available.

The determination shall be made part of the contract file or, if required by DoD Component procedures, transmitted to the appropriate official for approval.

(d) Upon approval of the contractor's requirement, written confirmation shall be provided through the ACO to the contractor.

270.602 Providing reused computer equipment to DoD contractors.

(a) When a DoD contractor has a requirement for computer equipment exclusively for use as facilities, special test equipment, plant equipment or material, under one or more Government contracts, the contractor shall submit a DD Form 1419 with documentation attached as required by 270.604 to the ACO.

(b) The ACO shall forward the approved requirements to the Defense Logistics Agency, Defense Automation Resources Office (DARO), Cameron Station, Alexandria, VA 22314 in accordance with DOD 7950.1–M. The DARO response shall be provided to the PCO.

270.603 Review and approval of contractor-acquired computer equipment used for commercial and government contracts.

(a) In accordance with FAR 31.205–2, if the total cost of leasing computer equipment at a contractor's plant, division, or cost center is expected to exceed $500,000 in any 12-month period and more than 50 percent is to be allocated to Government contracts requiring the negotiation or determination of costs, the ACO shall, prior to approving lease costs:

(1) Conduct an initial and an annual review thereafter of the contractor's system(s) for the purpose of evaluating:

(i) The reasonableness, from the technical standpoint, of the contractor's configuration;

(ii) The existing capability and need to continue leasing, regardless of whether the term of the lease was renewed or otherwise extended by the contractor (see 270.604 for documentation required); and

(2) Arrange for submission by the contractor to the ACO of any proposed lease of a new system and any proposed major change to an existing system, for advance determination of the reasonableness of the resulting cost (see 270.604 for documentation required). A "major change" is any addition or substitution of computer equipment which will result in an annual cost in excess of $100,000.

(b) After the initial review of any proposed lease of a new system or major change, and after each annual review, the ACO shall either enter into an advance agreement with the contractor pursuant to FAR 31.109 to provide a basis for concurrence in the proposed lease, or, in the alternative, notify the contractor of the Government's nonconcurrence and of any consequent cost disallowance contemplated.

270.604 Contractor documentation.

This section specifies the documentation DoD contractors shall submit to support acquisitions of computer equipment. When the documentation has previously been submitted to DCAA, a copy of that submission may be used or, if voluminous, reference to it is acceptable. Documentation previously submitted does not have to be resubmitted; only updated as necessary. The ACO may waive specific documentation requirements below

when they are not considered relevant to the acquisition.

(a) *Inventory and analysis of utilization of existing installed computer equipment.*

(1) List each component by manufacturer, type, and model number.

(2) Location(s).

(3) Furnish installation date(s) by component.

(4) Give type of acquisition, i.e., operating lease, capital lease, purchase, Government-furnished, or lease back.

(5) Furnish component reliability data for the past 12 calendar months. Indicate hours each component was available for use versus hours unavailable for use. Indicate preventive and remedial maintenance hours.

(6) Identify and describe each data system supported; indicate computer time for each system and the related contract(s) or task(s) involved.

(7) Identify any system which has been acquired to comply with a contract requirement. The contract number, clause identification and extract of wording requiring a specially configured or specific computer shall be available for Government review.

(b) *Documentation supporting and justifying need for and benefits to be derived from new system(s) or major change(s) to existing systems.*

(1) Furnish advance planning documentation covering useful life of these systems. This documentation shall provide information to support useful life decisions and also provide a basis for entering into advance understandings as provided at FAR 31.109.

(2) List specific objectives or requirements (generally in the form of a functional specification).

(3) At the option of the Government furnish functional block diagrams of the present and proposed configuration.

(4) Briefly describe the major applications to be processed and appropriate background information to explain the need.

(5) If applicable, list or summarize projects by short title and Research and Development (R&D) project number.

(6) Indicate estimated monthly main frame use hours for each major application or project for the expected retention period.

(7) Indicate software requirements.

(8) Indicate telecommunications requirements.

(c) *Competitive selection of computer equipment.*

The following shall be submitted for new requirements which will be competitively acquired. It shall be made available for annual reviews.

(1) Show names and addresses of sources solicited, indicate those submitting proposals.

(2) Indicate which, if any, proposals were not acceptable and explain why.

(3) Show cost comparisons for operating lease, capital lease, lease-with-option-to-purchase, and purchase, for all acceptable proposals.

(4) Attach a copy of the solicitation, a copy of each acceptable proposal, a copy of each proposal's evaluation, and a copy of the selection report. When proposals are voluminous, a summary may be submitted to the Government; actual proposals will be kept on file and be available to the Government.

(5) State whether the selected computer equipment will provide the lowest overall cost to the Government over the useful life. If not, explain the rationale for its selection over that which would have provided the least cost.

(d) *Noncompetitive selection of computers.*

Include alternatives considered or state why none are feasible. Show the equipment configuration selected including manufacturer, type, and model number of each component, feature, and device. Show cost comparisons for operating lease, capital lease, or purchase for the equipment configuration selected.

(e) *Cost.*

State the resulting increase or decrease in monthly costs to the Government.

(f) *Lease versus purchase analysis.*

(1) Pursuant to FAR 31.205–2, provide a lease/purchase analysis by component for the selected computer equipment when an operating lease is the selected method of acquisition. A suggested format for this analysis is shown at the end of this section.

(2) The use of a realistic Useful Life, Present Value and Residual Value analysis for each component is critical. (See 270.604(f)(1).)

SUGGESTED PURCHASE/LEASE ANALYSIS FORMAT

ADP system As of Date

ADPS Components	Qty.	Vendor	Avg. Monthly Rental(*)/ Lease(**)	Instal. date	Useful Life (*)	Orig. Purchase Price	Equity (*)	(7–8) Current Purchase Price	Other Vendors Pruchase Price	Residual Value (*)	(9–11 or 10–11) Owner Depreciation Costs	Other Costs (*)	(12+13) Total Owner Costs	(4×6) Total Rental/ Lease Costs (**)	(15–14) Differential (**)
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16

(*) Includes projected extra shift where necessary.
(**) Includes other costs (taxes, maintenance, insurance, etc.)
(*) Documentation must be provided and attached per ASPR 3–1100.3 or 15–205.48, as applicable.
(*) Accrued equity on rented/leased equipment (accumulated rental credits).
(*) Residual value forecast at end of useful life.
(*) Includes taxes, maintenance, insurance, selling costs, lease cancellation costs, etc.
(*) When considering annual justification for retention of existing ADPE capacity and the need to continue leasing, only the remaining rental costs to be paid under the lease should be shown.
(**) If lease is favorable, bracket differential figures.

270.605 Contractor use of computers for non-government purposes.

The prior written permission of the contracting officer (or, the official prescribed in procedures of the DoD Components, if the expected cost is in excess of $500,000 for any 12-month period) is required for any non-Government use of computer equipment provided to the contractor which was acquired under one or more Government contracts negotiated on the basis of cost data. This approval may be granted if FAR 45.407(b) is satisfied and no additional costs are incurred by the Government.

270.606 Purchase option credits for contractor-acquired computers.

(a) When leased ADPE is used on a Government contract(s) and the total cost is charged to the Government under a cost-reimbursement contract(s), the contracting officer shall require the contractor to include a provision in the rental contract stating that the Government shall have the initial option to utilize any purchase credits or other benefits earned through rental payments. This applies regardless of whether the acquisition qualifies as an operating lease or capital lease.

(b) When leased ADPE is used on a cost-reimbursement type Government contract(s) requiring the determination or negotiation of costs, and less than 100 percent of the cost of the equipment is charged to the Government, the contracting officer should obtain for the Government at the time that the initial annual review is conducted, the right to accrued purchase credits if the contractor elects not to exercise its purchase option. Accordingly, negotiation objectives shall include the following when less than 100 percent of the cost of the equipment is absorbed by the Government:

(1) The contractor should be encouraged to incorporate in its equipment lease the right to assign accrued purchase credits to the Government;

(2) The contracting officer should obtain for the Government, if possible, the right of first refusal on accrued purchase credits if the contractor elects not to exercise its purchase option; and

(3) A 120-day advance notice should be provided to the ACO when the contractor intends to terminate its equipment lease if the Government has rights in accrued purchase credits.

(c) The ACO shall report the availability of such credits in accordance with the procedures for the reuse of computer equipment as prescribed by DoD Manual 7950.1–M and the respective DoD Component implementations thereof.

(d) If the Government decides to take advantage of the benefits, the provisions of 270.1401(c) apply.

270.607 Reuse of computers, software, and associated spare parts.

Excess computers, software, and associated spare parts in the possession of contractors, whether leased or Government-owned, will be reported in accordance with Part 245 and DoD Manual 7950.1–M. Computers, software, and associated spare parts with an initial acquisition cost below $1,500 are subject to special procedures in DoD Manual 7950.1–M.

270.608 Technical assistance.

Technical assistance in implementing this subpart shall be provided as necessary to the contracting officer by the DoD Component having CAS cognizance for the contractor.

Subpart 270.7—Telecommunications Resources

270.701 General.

Acquisitions of telecommunications resources by the DoD are governed by the Statement of Areas of Understanding Between the Department of Defense and the General Services Administration, dated November 27, 1950 which appears at 15 FR 8226, December 1, 1950. The text of that agreement is as follows:

Statement of Areas of Understanding Between Department of Defense and General Services Administration:

(1) The areas of understanding herein set forth were worked out pursuant to order of the President of July 1, 1949, directed to the Secretary of Defense, the Director, Bureau of the Budget, and the Administrator of the General Services Administration.

(2) The areas of understanding with respect to communications services are:

(a)(1) As used in this statement, with respect to communications services: "Area contracts" are contracts providing for the furnishing of a communication service to all, or substantially all, activities of the Government located within a specified area, executed by GSA or by another agency designated by GSA.

(a)(2) As appropriate for contractual and operational matters: "Department of Defense" means one or more of the military departments.

(b) The basic principle in the procurement of communications services is that all such services shall be procured or provided at the minimum total cost to the Government consistent with requirements for capacity, efficiency of operation, reliability of service, security, and programmed activities. These requirements must be determined by the using agency.

(c) Close coordination and cooperation between the GSA and the Department of Defense shall be maintained to obtain the maximum economy consistent with the requirements for service.

(d) Communications services for activities of the Department of Defense occupying property controlled or operated by another Federal agency will be procured or provided by the General Services Administration or by the operating agency unless, in the opinion of the Department of Defense, the procurement or provision thereof by the Department of Defense is necessary in the interest of military operations, exercise of command and/or National Security.

(e) Communications services for the Department of Defense, in localities within an area where these services are or may become available under a General Services Administration contract, will be procured under a General Services Administration area contract when such a procedure is of benefit to the Government as a whole and does not adversely affect Military operations, exercise of command and/or National Security. In all other instances, communication services required by the Department of Defense will continue to be procured under a standardized National Defense contract. Copies of or data on contracts executed by the Department of Defense for communications facilities and services will be furnished to the GSA upon request unless distribution is inadvisable for reasons of security.

(f) Except as provided in paragraphs 2 (d) and (e) above, all communication facilities and services for activities of the Department of Defense will be provided or procured by the Department of Defense.

(g) The Department of Defense will provide for complete coordination of all communication services procured or provided by it for all activities of the Department of the Army, Navy (including Marine Corps) and Air Force, and for maximum economy consistent with requirements.

(h) Joint use of telephone facilities such as private branch exchanges is to be encouraged whenever such use will result in efficient and economical service: provided that, in the opinion of the Department of Defense, no interference with military operations or violations of military security will result.

(i) It is recognized that rapid written communications for the Government as a whole can best be obtained by independent military and civilian agency systems, with these systems cooperating with each other. These systems, however, may interchange traffic where such interchange is efficient, and economical and practicable, provided that in the opinion of the Department of Defense there is no interference with movement of military traffic, and the handling of civilian traffic does not necessitate the utilization of additional facilities and personnel by the Department of Defense.

(j) Except as otherwise provided herein, the GSA will represent Executive Agencies, including the Department of Defense, in proceedings involving communications before municipal, State and Federal regulatory bodies in all rate cases and matters associated therewith.

Exceptions

(1) In those instances where the Department of Defense has the sole Government interest in a proceeding involving communications before a regulatory body, the Department of Defense will conduct the representation on behalf of all Executive Agencies of the United States Government. The Department of Defense and the General Services Administration in pending or proposed proceedings will advise each other of action taken or to be taken that may have effect upon or be of interest or assistance to each other. Such representations conducted by the Department of Defense shall be subject to overall coordination by the General Services Administration. This shall not preclude representation for the Department of Defense by the General Services Administration when such representation is requested by the Department of Defense and is mutually agreeable.

(2) In those instances where the Department of Defense does not have sole Government interest in a proceeding

involving communications before a regulatory body, the Department of Defense will conduct the representation on behalf of all Executive Agencies whenever representatives of the Department of Defense and the General Services Administration agree that conduct of the representation by the Department of Defense is in the best interest of the Government. Such representation conducted by the Department of Defense shall be subject to overall coordination by the General Services Administration.

(j) Except as pertains to the applications of pertinent provisions of section 5, Public Law 211, 81st Congress.

(k) Liaison between the Department of Defense and the General Services Administration for all matters involving representation of Executive Agencies in proceedings involving communications before regulatory bodies shall be maintained between the Office of General Counsel, the General Services Administration and the Office of General Counsel, Department of Defense.

(l) Liaison with respect to policy matters concerning this arrangement and matters pertinent thereto except as provided in paragraph (k), will be maintained between the Chief, Public Utilities Branch, Public Building Service, General Services Administration and Chief, Electronics Division, Munitions Board of the Department of Defense and for operational and contractual matters between designated representatives of the General Services Administration and of the Department of Defense.

(m) This area of understanding is applicable to communications services within the Continental United States, Hawaii, Puerto Rico and the Virgin Islands. The Department of Defense shall be exempt from action taken by the Administrator with respect to communications services under Section 201(a) of Public Law 152 in other geographic areas.

270.702 Policy.

Acquisitions of telecommunications resources shall be accomplished in accordance with the Statement of Understanding set forth in 270.701.

Subpart 270.8—Use of the GSA Teleprocessing Services Program (TSP)

270.800 Scope.

The TSP is a GSA program that DoD Components may use to acquire remote data processing services through use of Multiple Award Schedules (MAS) (see 270.802–1) and Basic Agreements (BA) (see 270.802–2).

270.801 Applicability.

(a) When a requirement analysis indicates that remote data processing services are available in the commercial market to satisfy a requirement, the DoD Component should consider the TSP as a source of supply.

(b) DoD contractors or subcontractors may use the TSP.

(c) Covered TSP services include interactive, remote batch processing, and a combination of these (full services), as well as related support services incidental to the teleprocessing performed by commercial firms. These include:

(1) Training services that are limited to the unique features of a particular teleprocessing service;

(2) Technical Assistance/Analyst Services (TA/AS) specifically related to the firm providing teleprocessing services. Such services are limited to assisting users on network operations, special features that may influence application system design, communication interfaces with contractor networks, or other areas incidental to the use of the firm's software packages;

(3) Use of the TSP firm's premium (extra charge) software packages related to a teleprocessing requirement as limited in paragraph (e);

(4) Use of the TSP firm's data bases related to a teleprocessing requirement;

(5) Furnishing network documentation;

(6) Conversion of Government-controlled files and application programs when initiating performance or changing firms under a TSP contracting arrangement as provided in paragraph (g).

(d) *Excluded services.* Facilities management, the lease or purchase of ADPE and predominantly local batch processing services are excluded.

(e) *Limitations on TA/AS and premium software packages.* Technical assistance/analyst services and use of premium software packages (paragraphs (c)(2) and (3) above) have dollar limitations that are reflected in both the MAS and BA. Acquisition of these types of services, that exceed the established limitations, should be on a competitive basis. The dollar limitations for each teleprocessing requirement are 10 percent of the total value of the requirement per fiscal year, not to exceed $100,000 per year for TA/AS and $25,000 per year per premium software package. The DoD Component shall obtain authorization from the GSA TSP contracting officer before placing a purchase order under a MAS or awarding a contract under a BA which includes requirements that exceed the above limitations.

(f) *Conversion under TSP.* Services associated with conversion of files and application programs may be included in a MAS purchase order or BA contract at the option of the DoD Component, provided that:

(1) A determination is made, when the conversion requirement is estimated to exceed $75,000, that more extensive competition is not practicable,

(2) Each participating firm, when the MAS method is selected and the teleprocessing requirement includes conversion services, is required to propose the conversion portion of the requirement or be eliminated from consideration.

(3) The description of an individual TSP conversion requirement identifies, as a minimum, the number of programs to be converted, source computer system, the number of lines of code to be converted by language, the number of files to be converted by organizational type (e.g., index sequential, sequential, random, DBMS), a description of the complexity and level of documentation of the files and programs, redocumentation requirements, training requirements, and specific testing and acceptance criteria for the converted programs and files.

(4) Offerors are provided an opportunity to inspect the available documentation of all programs and files pertinent to the conversion effort, subject to necessary limitations for the protection of personal, proprietary, or other sensitive data.

(5) Offers for conversion services are solicited and awarded on a separate line item, firm fixed-price basis. Under the MAS method, participating firms do not quote conversion services rates in their schedule price list; rather, a firm offer is made for each particular requirement.

(6) Order placements or contract awards, when teleprocessing requirements include conversion services, are based on lowest overall costs, price and other factors considered.

(g) *Software redesign or programming.* Software redesign or programming services are not always available in the MAS and BA. Programming of linkage or bridge routines between multiple software packages under $5,000 annually per requirement are generally available. Other application programming can be included in a TSP BA contract provided the DoD Component requests and receives specific authorization from the GSA contracting officer.

270.802 Methods of acquiring GSA TSP services.

The GSA TSP includes two methods of acquiring services, either of which may be used as appropriate. Neither of these methods allows cost-reimbursement contracting.

270.802–1 Multiple Award Schedule (MAS).

GSA periodically establishes a multiple award schedule which includes firm rates for services. The MAS provides for incremental discounts based on each firm's total MAS dollar volume of services delivered Government-wide. The MAS terms and conditions can only be modified by GSA. Under the provisions of the schedule, a firm may modify the services offered through a MAS amendment. The MAS may be used when other-than-full and open competition is justified. Policies and procedures for using the GSA MAS are contained in the GSA TSP Handbook (see 270.802–3).

270.802–2 Basic Agreement (BA).

(a) GSA periodically establishes a BA under which GSA negotiated terms and conditions are made available for use in soliciting proposals and awarding contracts for TSP services. The BA terms and conditions can be submitted only by GSA. Contracting actions using other-than-full and open competitive procedures, if properly justified, may be placed under the BA when a requirement within the TSP scope cannot be justified under the MAS.

(b) Dedicated teleprocessing systems requirements may be included in a BA solicitation under the TSP provided:

(1) The APR includes appropriate documentation to support a system requirement configuration, or a specific part thereof, which is to be solicited solely on a dedicated-system basis. This provision does not apply when a DoD Component expresses willingness to evaluate a dedicated-system alternative proposal to a proposal priced on a resources-used (unit rate) basis.

(2) When dedicated-system proposals are to be solicited and evaluated as an alternative to resources-used type proposals, evaluation criteria shall be sufficient to adequately compare a dedicated system pricing offer with resources-used (unit rates) offers. The solicitation documentation shall provide that an offeror submitting a dedicated-system proposal may submit a resources-used proposal. Contract awards made on a system-life basis shall provide for an annual Government review of work load and usage and reserve the right to select on a prospective basis the more favorable of the contractor's dedicated-system or resources-used pricing modes.

270.802–3 GSA TSP guidance.

(a) Guidance concerning the GSA TSP may be obtained from the General Services Administration (KED), Washington, DC 20405 or from any GSA regional office.

(b) The Teleprocessing Services Program (TSP) Handbook provides procedures to be followed by Federal agencies in acquiring services within the TSP scope. The handbook is not a regulation. A limited number of copies of the handbook are available without charge to all Federal agencies by written request to GSA (KED), Washington, DC 20405 or any GSA regional office. Major revisions or new editions of the handbook are announced in GSA bulletins.

270.803 Procedures for acquiring GSA TSP services.

(a) *Agency procurement requests.* DoD Components shall submit an APR to GSA to acquire GSA TSP services unless the acquisition is below $2,000,000 competitive, or $200,000 noncompetitive, annually.

(b) *Evaluation and source selection.* Source selection shall be based on a technical and a system-life cost evaluation.

(1) Technical evaluation factors shall be limited to mandatory service requirements and those evaluated optional features that have been assigned relative values (expressed in dollars, points, or any other reasonable indicators). Evaluated optional features should not exceed 20 percent weighting value in the total evaluation.

(2) The lowest overall cost shall be used in evaluation and source selection, price and other factors considered. Conversion costs shall be included in system-life evaluations. Contractor prices instead of Government estimates shall be used in the Government's overall estimate of conversion in computing the systemlife costs.

(3) For requirements over $300,000 annually, benchmark results shall be used to determine costs for all technically qualified firms. The benchmark package should be available to offerors at least 45 calendar days before benchmark performance. The use of benchmarks may be considered in selections under $300,000 annually because different amounts of connect, input/output and CPU time, for example, will be required by different contractor systems to accomplish the same work load. The selection of the benchmark work-load is critical to the source selection because it will evaluate the contractor's billing algorithm, a significant factor in cost determination. Under either the MAS or BA, a copy of the benchmark used for cost evaluation in the selection process shall be retained for periodic performance evaluation purposes over the system life of the requirement. If a benchmark is not used, the cost shall be derived by a calculation of the various categories of the work-load estimate or other adequate techniques. FEDSIM has developed a synthetic benchmark for remote batch applications called the "Resource Driver Program" which can be considered (see 270.12).

(4) Prices, rates, and discounts for MAS selections shall be obtained by contacting any GSA/OIRM regional office. Other costs for selections under the MAS shall be derived directly from the pricelists.

(c) *Low cost acquisition.* When the system-life estimated cost does not exceed $10,000 annually, the MAS method provides a simplified procedure that agencies use for selecting teleprocessing services.

270.804 GSA review of selections under the GSA TSP.

GSA reserves the right to review any TSP selection action under the MAS or BA, either before or after award. Consequently, contractor selection and contracting documentation shall be retained for a period of two years after selection.

Subpart 270.9—Privacy for Computer Systems

270.901 Applicability.

This subpart applies to computer systems acquired by a DoD Component or Government contractor.

270.902 Requirements.

FAR Part 24 prescribes policies and procedures for complying with the Privacy Act of 1974 (5 USC 552a).

270.903 DoD Component responsibilities.

In addition to the requirements of FAR 24.103, contracting officers shall ensure that contracts subject to the Privacy Act require the submission of necessary reports and notices required by DoD Component implementation of OMB Circular A–108.

270.904 Contract clauses.

In addition to the clause at FAR 52.224–2, contracting officers may insert the clauses at 252.270–7006, Rights in Privacy Safeguards, and 252.270–7009, Access to Contractor Facilities and Records—Privacy Safeguards Inspection, in solicitations and contracts when acquiring equipment, software, or services subject to the Privacy Act.

Subpart 270.10—Security for Computer Systems

270.1000 Scope of subpart.

This subpart applies to all computer acquisitions regardless of the authority under which acquired.

270.1001 Policy.

(a) Specifications for the acquisition of ADPE, software, maintenance services, and supplies are required to be certified by the requiring agency as meeting the agency security needs in accordance with Departmental regulations. These requirements are in addition to provisions concerning protection of the privacy of individuals (see 270.9 and FAR 24.1).

(b) Specifications or other requirements statements for solicitations shall include, when applicable:

(1) DoD Component rules of conduct that a contractor and the contractor's employees shall be required to follow;

(2) A list of the anticipated threats and hazards that have been determined by risk analysis that the contractor must guard against;

(3) A description of the safeguards that the contractor is required to provide;

(4) The standard applicable to the contractual requirement (see 70.11);

(5) The test methods, procedures, criteria, and inspection system (or the requirement to submit proposals therefore) necessary to verify and monitor the operation of the safeguards during contract performance and acceptance and to discover and counter any new threats or hazards;

(6) The requirement for periodically assessing the security risks involved and advising potential users of the level of security provided;

(7) Proposed contractual clauses or provisions, as necessary, to provide for the foregoing; and

(8) A description of the personnel security requirements.

270.1002 Security program for automatic data processing facilities.

(a) DoD Components are required to organize and maintain an ADP system security program to ensure the protection, confidentiality, and integrity of the Government's investment in the ADP system, including associated ADPE, data, computer media, and software. This program should be applied to contractors as appropriate. DoD Components' internal directives and procedures for the physical security of computer facilities should consider the standards and guidelines that appear in the following Department of Commerce publications:

(1) FIPS PUB 31, Guidelines for Automatic Data Processing Physical Security and Risk Management;

(2) FIPS PUB 29, Glossary for Computer Systems Security;

(3) FIPS PUB 41, Computer Security Guidelines for Implementing the Privacy Act of 1974;

(4) FIPS PUB 46, Data Encryption Standard;

(5) FIPS PUB 48, Guidelines on Evaluation of Techniques for Automated Personnel Identification; and

(6) FIPS PUB 65, Guideline for Automatic Data Processing Risk Analyses.

(b) NBS Publications List 91 outlines a number of additional NBS computer security publications.

270.1003 Security against compromising emanations.

(a) If computer equipment to be acquired is to be used to process classified information, a determination as to whether or not the equipment is required to provide protection against compromising emanations, as required by Departmental procedures, shall be provided to the contracting officer by the requiring activity. If such protection is required, the contracting officer shall require that equipment delivered under the contract shall comply with an established National TEMPEST standard (e.g., NACSEM 5100, NACSIM 5100A) or a standard used by other authority, as identified by the requiring activity.

(b) If contracts are to be awarded which require the performance of ADP services involving classified data, programs, etc., the requiring activity shall advise the contracting officer on whether or not to require Defense contractors performing these services to use equipment meeting the requirements specified in (a) above. The requiring activity shall also provide information concerning any requirement for marking of TEMPEST-certified equipment (especially if to be reused), and the means of validating TEMPEST equipment compliance with required standards.

(c) *Contract clause.* The contracting officer shall insert a clause similar to the clause at 252.270-7403, Protection Against Compromising Emanations, in solicitations and contracts when acquiring computer equipment or systems to be used to process, transmit, store, retrieve or display information requiring protection under the National Security or Atomic Energy Acts, as amended. Other necessary material developed by DoD Components may be invoked in the clause as appropriate when a contractor is to perform automated services involving material requiring protection against compromise.

(d) The contracting officer shall insure that Section E of the contract (Inspection and Acceptance) requires validation of the equipment's TEMPEST compliance with the established standard. This is accomplished by one of three methods:

(1) Determining that the equipment is listed or certified for listing on the Preferred Products List (PPL) published quarterly by the Subcommittee on Compromising Emanations (SCOCE). This list is available from the local TEMPEST official;

(2) If compliance with a TEMPEST standard other than NACSEM 5100 or NACSIM 5100A is required, the requiring activity's cognizant TEMPEST official shall determine the compliance of the delivered equipment with the standard; or

(3) Actual testing and certification by the DoD Component's cognizant TEMPEST activity.

(e) In addition to the local TEMPEST official, information on the TEMPEST program, equipment qualification, etc., may be obtained from the following:

For the Army: TEMPEST Coordination Officer, Major Command Headquarters, or Commander, U.S. Army Intelligence and Security Command, Attn: IAOPS-OP-P, Arlington Hall Station, Arlington, VA 22212.

For the Navy: Commander, Naval Security Group Command, Attn: Code G65, 3801 Nebraska Avenue NW., Washington, DC 20390.

For the Air Force: TEMPEST Officer, Major Command Headquarters, or AFCSC/EPV, San Antonio, TX 78243.

For the Marine Corps: Commandant of the Marine Corps, Headquarters, Marine Corps, Attn: Code CCTS, Washington, DC 20380.

For the Office, Secretary of Defense and Defense Agencies Not Listed Below: Office of the Joint Chiefs of Staff, Attn: TC3S-JTR, The Pentagon, Washington, DC 20301.

For the Defense Intelligence Agency: Director, Defense Intelligence Agency, Attn: OS-2, Washington, DC 20301.

For the Defense Communications Agency: Mr. Wheeler W. Hatch, Defense Communications Agency, Attn: B315, Washington, DC 20305.

For the Defense Logistics Agency: Director, Defense Logistics Agency, Attn: Command Security Office (DLA-T1), Cameron Station, Alexandria, VA 22314.

For the Defense Nuclear Agency: Director, Defense Nuclear Agency, Attn: ISSO, Washington, DC 20305.

For the Defense Investigative Service: Defense Investigative Service, Directorate for Industrial Security, Attn: V0410, 1900 Half Street NW., Washington, DC 20324.

For the Defense Mapping Agency: Defense Mapping Agency, Building 56, USNGBS, Washington, DC 20305

Subpart 270.11—Standards

270.1100 Scope of subpart.

This subpart provides for implementation of Federal Information Processing Standards (FIPS), Federal Telecommunications Standards (FED-STD) and joint FIPS/FED-STD for computer equipment subject to Subpart 270.3. These standards may also be used for computer equipment subject to Subparts 270.4 and 270.5.

270.1101 Policy.

(a) Under the provisions of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 759(f) and Executive Order 11717), the Secretary of Commerce is authorized to establish uniform Federal Information Processing Standard Publications (FIPS PUB) to be met by Federal agencies, including the Department of Defense, in acquiring ADP equipment and software as defined in 70.2. Prior to the award of any contract for these items, contracting officers shall assure that the otherwise successful offeror satifies the applicable FIPS PUB requirements specified in the solicitations.

(b) The Defense Communications Agency and the U.S Army Communications-Electronics Command (CECOM) are responsible for developing and/or promulgating all guidance on communications standards, regardless of source or origin, applicable to DoD that Defense communications systems must meet when being acquired. These include NATO, international and national standards, industry, Federal and military standards. Acquisition shall be made only from those sources that comply with the communications standards contained in the solicitations.

(c) In order to maximize competition by promoting standardization and compatibility among vendors of commercially available automatic data processing equipment (ADPE), the National Bureau of Standards (NBS), Department of Commerce, has established and maintains listings of equipment that it has verified as having conformed to, or having been excluded from, certain FIPS. These standards apply to the acquisitions of:

(i) All new and replacement ADP systems not otherwise excluded in FIPS PUBS 60-2, 61-1, 62, and 63-1;

(ii) Computer peripheral equipment acquired to replace existing peripheral equipment or to augment ADP systems that employ interfaces conforming to the Input/Output Channel Interface Standards (FIPS PUBS 60-2, 61-1, 62, and 63-1); and

(iii) Peripheral equipment acquired to replace existing peripheral equipment or to augment ADP systems that do not conform to FIPS PUBS 60-2, 61-1, 62, and 63-1, but for which the hardware and software necessary to conform to these standards are commercially available.

(d) Though the NBS qualification procedures occur in advance and independent of any specific action, maximum practicable opportunity shall be given to prospective contractors to qualify products during the preaward process. Contracting officers may obtain both the lists of equipment which qualify as satisfying the NBS standards and those excluded from this verification procedure by writing the Director, Center for Computer System Engineering, Institute for Computer Science and Technology, National Bureau of Standards, Washington, DC 20234. Offerors may obtain verification procedures for compliance testing from this address, Attention: Verification of I/O Channel Level Interface Standards.

270.1102 Waivers.

(a) The waiver procedure for FIPS for computer equipment subject to 270.3 is set forth in the particular FIPS PUB. For some standards, a waiver approval is required from the Secretary of Commerce prior to issuance of solicitations.

(b) The waiver provisions of FAR 9.206-1(c)(3) do not apply to those items subject to (a) above. Waiver procedures are specified by the DoD components. Communication standards in the MIL STD 188-series are mandatory for use within DoD.

270.1103 Solicitation provisions and contract clauses.

(a) Federal Information Processing Standards. The contracting officer shall insert the following provisions and clauses, as applicable (see 270.1101 above), in solicitations and contracts for automatic data processing equipment, software and supplies, unless a waiver has been obtained in accordance with DoD Component procedures (see 270.1102 above):

(1) 252.270-7101, American Standard Code for Information Interchange (ASCII) System Requirements; to specify the code and character set for use in information processing systems and associated communications and related equipment.

(2) 252.270-7102, Punched Paper Tape Readers and Punches; when acquiring equipment which punches or reads perforated tape.

(3) 252.270-7103, Recorded Magnetic Tape for Information Interchange (800 CPI, NRZI); when acquiring 9-track ½-inch wide, 800 characters-per-inch magnetic tape equipment.

(4) 252.270-7104, Rectangular Holes in 12-Row Punched Cards; when acquiring equipment or services involving the reading or punching of 3 ¼-inch cards.

(5) 252.270-7105, Hollerith Punched Card; when acquiring punched card machines (PCM) used to punch or read 12-row 3 ¼-inch wide cards utilizing rectangular holes.

(6) 252.270-7106, Subsets of the Standard Code for Information Interchange; when acquiring ADPE which does not require the full 128-character set required by FIPS PUB 1-1.

(7) 252.270-7107, Flowcharts, Symbols, and their Usage in Information Processing; when flowcharts of information processing systems is part of the documentation to be delivered to the Government.

(8) 252.270-7108, Recorded Magnetic Tape for Information Interchange (1600 CPI, Phase Code *0*); when acquiring tape drives as described in the clause.

(9) 252.270-7109, One-inch Perforated Paper Tape for Information Interchange; when acquiring one-inch paper tape or associated equipment.

(10) 252.270-7110, Take-up Reels for the One-inch Perforated Tape for Information Interchange; when acquiring one-inch perforated tape take-up reels or related equipment.

(11) 252.270-7111, Software Summary for Describing Computer Programs and/or Automated Data Systems; when the ADP acquisition involves documentation of computer programs and/or automated data systems.

(12) 252.270-7112, Optical Character Recognition Equipment; when acquiring Optical Character Recognition (OCR) equipment, or services relating thereto, except as described in 70.1103(a)(13) below.

(13) 252.270-7113, Character Set for Handprinting; when acquiring Optical Character Recognition (OCR) equipment requiring data entry of handprinted material.

(14) 252.270-7114, Code Extension Technique in 7 or 8 Bits; when the acquisition allows for the submission of coded character sets that are not included in the standard 128 characters of the American Standard Code for Information Interchange (ASCII).

(15) 252.270-7115, Graphic Representation of the Control Characters of ASCII (FIPS PUB 1-1); when acquiring equipment that prints or

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displays any of the control characters of the ASCII.

(16) 252.270–7116, Data Encryption Standard (DES); when (i) there is a requirement for data encryption, (ii) a DoD component decides that cryptographic protection is required, and (iii) the data are not classified according to either the National Security Act or the Atomic Energy Act.

(17) 252.270–7117, Recorded Magnetic Tape for Information Interchange, 6250 Characters per Inch (CPI)(246 CPMM, Group Coded Recording); when acquiring tape drives as described in the clause.

(18) 252.270–7118, Magnetic Tape Cassettes for Information Interchange (3.810MM (0.150 Inch) Tape at 32BPMM (800 BPI), PE); when acquiring magnetic tape cassette equipment as described in the clause.

(19) 252.270–7119, Recorded Magnetic Tape Cartridge for Information Interchange, 4-Track, 6.30MM (0.25 Inch), 63 BPMM (1600 BPI) Phase Encoded; when acquiring magnetic tape cartridge equipment as described in the clause.

(20) 252.270–7120, Description of Computer Magnetic Tape File Properties; when the acquisition involves delivery of coded information on magnetic tape.

(21) 252.270–7121, Computer Output Microform (COM) Formats and Reduction Ratios, 16MM and 105MM; when the acquisition involves computer generated microforms.

(22) 252.270–7122, Input/Output (I/O) Channel Interface; when an acquisition conforming to 270.1101(c) is effected, and FIPS PUB 60–2 controls. This standard does not apply to minicomputers, microcomputers and other small scale systems that are specifically excluded by the National Bureau of Standards (NBS).

(23) 252.270–7123, Channel Level Power Control Interface; when an acquisition conforming to 270.1101(c) is effected, and FIPS PUB 61–1 controls.

(24) 252.270–7124, Operational Specification for Magnetic Tape Subsystems; when an acquisition conforming to 270.1101(c) is effected, and FIPS PUB 62 controls.

(25) 252.270–7125, Interface: ADP Systems/Variable Block, Rotating Mass Storage Subsystems; when an acquisition conforming to 270.1101(c) is effected, and the clauses at 252.270–7122 and 252.270–7123 are applicable, use of the clause at 252.270–7125(a) is required when acquiring variable block, rotating mass storage subsystems with supplementary device characteristics. When the clause at 252.270–7125(a) is used, it shall be completed in accordance with Departmental procedures. The clause at 252.270–7125(b) is required when acquiring variable block rotating mass storage subsystems when conformance to supplementary device dependent characteristics is not required and unless otherwise excluded by use of the clauses at 252.270–7122 and 252.270–7123. Neither clause is required if waived under the provisions of FIPS PUB 63–1.

(26) 252.270–7126, Magnetic Tape Labels and File Structure Information Interchange; when acquiring information processing systems that will either generate or accept magnetic tapes for information interchange.

(27) 252.270–7127, Data Encryption Standard (DES) Modes of Operation; when acquiring ADPE and ADP services subject to the GSA approval requirements contained in Subpart 270.3, and the Data Encryption Standard (DES) described at 270.1103(a)(16) above.

(28) 252.270–7128, Microform Readers; when acquiring microform readers to be used in conjunction with computer-generated microform conforming to the clause at 252.270–7029.

(29) 252.270–7129, Optical Character Recognition (OCR) Inks; when local purchase is authorized for optical character recognition (OCR) ink and preprinted forms that will be read by OCR techniques when the interchange of machine readable information between different systems will be required.

(30) 252.270–7130, Optical Character Recognition (OCR) Printers, Readers and Printed Forms; when acquiring optical character recognition (OCR) printers, readers and printed forms subject to the clause at 252.270–7112.

(31) 252.270–7131, Digital Magnetic Tape Cassette Equipment and Associated Programs; when acquiring magnetic tape cassette equipment or associated programs specified in the clause.

(32) 252.270–7042, Acquisition and Validation of COBOL Compilers; when the acquisition includes a COBOL compiler.

(33) 252.270–7133, Acquisition of COBOL Programs and/or Programming Services; when the acquisition involves delivery of a program written in COBOL.

(34) 252.270–7134, Delayed Validation of Compilers; when delayed validation of compilers is necessary or advantageous.

(35) 252.270–7135, Interchange of Machine Processable Data Between and Among Agencies; when a contract will involve the acquisition of programs to be interchanged with state and local governments, industry and the public.

(36) 252.270–7136, Additional American Standard Code for Information Interchange (ASCII) Controls For Character-Imaging ADP Equipment or Services; when acquiring ADPE such as interactive terminals, line and microfilm printers, word processors and other types of character-imaging equipment subject to 270.1103(a) (1) and (14).

(37) 252.270–7137, Interface: ADP Systems/Fixed Block, Rotating Mass Storage Subsystems; when acquiring fixed block, rotating mass storage subsystems, unless excluded by reference to the FIPS PUBS in 252.270–7022 and 252.270–7023.

(b) *Joint federal information processing/federal telecommunications standards (FIPS–FED/STD).* The contracting officer shall insert the following clauses, as applicable, in solicitations and contracts for automatic data processing equipment (ADPE), software and services subject to Subpart 270.3, *provided* that the requiring activity determines that no other standards apply to the telecommunication aspects of the requirements, and compliance with FIPS PUB 1–1 is required:

(1) 252.270–7201, Synchronous High Speed Data Signaling Rates Between Data Terminal Equipment and Data Communications Equipment; when an acquisition involves data terminal and ADPE which is (i) employed with synchronous data communication equipment, and (ii) designed to operate on binary encoded information over wideband communication channels having greater band width than the normal 4kHz commonly used in analog voice transmission.

(2) 252.270–7202, Bit Sequencing of the Code of Information Interchange in Serial-by-Bit Data Transmission; when acquiring equipment or services requiring the transmission of data in a serial-by-bit, serial-by-character mode.

(3) 252.270–7203, Character Structure and Character Parity Sense for Serial-by-Bit Data Communication in the Code for Information Interchange; when acquiring equipment where transmission of data is a serial-by-bit, serial-by-character synchronous or asynchronous mode is to occur.

(4) 252.270–7204, Character Structure and Character Parity Sense for Parallel-by-Bit Data Communication; when acquiring equipment or services for the transmission of data in a parallel-by-bit, serial-by-bit mode, in order to prescribe the character structure and sense of character requirements.

(5) 252.270–7205, Synchronous Signaling Rates Between Data Terminal and Data Communication Equipment; when acquiring equipment or services that are to employ voice communication facilities, in order to prescribe the transfer rate for binary coded information in synchronous serial or parallel form.

(6) 252.270–7206, Data Link Control-Synchronous Bit-Oriented Data; when acquiring equipment or services using synchronous, bit-oriented data communications, in order to prescribe data link control procedures.

(7) 252.270–7207, Interface Between Data Terminal Equipment (DTE) and Data Circuit Terminating Equipment (DCE) for operation with Packet-Switched Data Communications Networks, whenever an interface based on the International Telegraph and Telephone Consultive Committee (CCITT) recommendation X.25 is required.

(c) *Federal telecommunicotions standard.* The contracting officer shall insert the following clauses, as applicable, in solicitations and contracts involving acquisition of ADP and telecommunications equipment and software subject to Subpart 270.3, unless it is determined by the requiring activity that other standards are appropriate:

(1) 252.270–7301, Time and Frequency Reference Information in Telecommunications Systems; when acquiring telecommunications systems or facilities which are totally funded by one or more Government contracts.

(2) 252.270–7302, Coding and Modulation Requirements for Nondiversity 2400 Bit/Second Modems; when acquiring, by lease or purchase, 2400 bits per second (bps) modems for use over analog transmission channels other than those derived from high-frequency radio facilities.

(3) 252.270–7303, Coding and Modulation Requirements for 4800 Bit/Second Modems; when acquiring 4800 bits per second (bps) modems to be used with nominal 4kHz analog channels.

(4) 252.270–7304, Coding and Modulation Requirements for Duplex 9600 Bit/Second Modems; when acquiring duplex 9600 bits per second (bps) modems for use with "four-wire" nominal 4kHz analog transmission channels.

(5) 252,270–7305, Coding and Modulation Requirements for Duplex 600 and/or 1200 Bits/Second Modems; when acquiring duplex 600 and/or 1200 bits per second (bps) modems to be used with 4kHz analog transmission channels terminated by "two-wire" circuits.

(6) 252.270–7306, Electrical Characteristics of Balanced Voltage Digital Interface Circuits; when there is a requirement to acquire equipment which must satisfy the electrical characteristics of balanced voltage digital interface circuits employed for the interchange of serial binary information which is conveyed at the direct current (DC) baseband level at signaling rates of up to 10 megabits per second.

(7) 252.270–7307, Electrical Characteristics of Unbalanced Voltage Digital Interface Circuits; when there is a requirement to acquire equipment which must satisfy the electrical characteristics of unbalanced voltage digital interface circuits employed for the interchange of serial binary information conveyed at the direct current (DC) baseband level of signaling rates of up to 100 kilobits per second.

(8) 252.270–7308, Group 2 Facsimile Apparatus for Document Transmission; when acquiring Group 2 facsimile equipment.

(9) 252.270–7309, Cryptographic Components, Equipment, Systems, and Services; when acquiring these items to be used in a telecommunication environment and this clause is more appropriate for use than the one indicated at 270.1103(a)(16).

(10) 252.270–7310, Acquisition, Design, or Development of Group 3 Facsimile Apparatus; when acquiring, designing or developing Group 3 facsimile equipment. This clause is not applicable to equipments subject to Military Standard 188–161 or equipments to be used in the transmission of mixed mode information (e.g., code character data and image data).

(11) 252.270–7311, Acquisition, Design, or Development of Group 1, 2, and 3 Facsimile Apparatus; when acquiring, designing or developing Group 1, 2, and 3 facsimile equipment.

(d) The contracting officer shall include the following clauses properly completed, in solicitations and contracts in accordance with agency procedures:

(1) 252.270–7401, BASIC Language Compilers, when an acquisition includes a BASIC compiler.

(2) 252.270–7402, FORTRAN Language Compilers, when an acquisition includes a FORTRAN compiler.

Subpart 270.12—The Federal Computer Performance Evaluation and Simulation Center

270.1201 The Federal Computer Performance Evaluation and Simulation Center.

(a) *General.* The Federal Computer Performance Evaluation and Simulation Center (FEDSIM) is operated by the Department of the Air Force under a delegation of authority from the Administrator of the General Services Administration. It provides technical assistance, support, and services on a reimbursable basis for simulation, analysis, and performance evaluation of automatic data processing systems and is the primary source for these services.

(b) *Services available.*

(1) Services available nationally are comprised of FEDSIM resources and FEDSIM-monitored contractual services for computer services simulation and performance evaluation. These services include simulation languages and packages for computer system simulations, software and hardware monitors for computer system performance evaluation, and special software programs designed to support computer system simulation and performance evaluation efforts, such an accounting systems analysis and workload modeling. The Center's services also include ADP support services such as those provided by simulation analysts.

(2) The services that the Center provides are intended to be temporary in nature and in response to specific questions or problems. A continuous simulation and performance evaluation program in support of individual user operations is not intended.

(c) *Policy for obtaining FEDSIM services.*

(1) FEDSIM shall be considered as the primary source of supply for ADP simulation and computer performance evaluation requirements, services, and products, including but not limited to, computer systems simulators and hardware and software monitors.

(2) The Center advises agencies whether (i) FEDSIM resources or FEDSIM contracts are available; (ii) an ADP schedule is available as a source of supply; or (iii) a new acquisition action is necessary.

(3) If the Center is unable to fulfill the requirement or if the requirement can be more economically fulfilled through commercial sources, the agency may acquire the services.

(d) *Procedures for obtaining FEDSIM services.*

(1) DoD components requiring ADP simulation, computer performance evaluation assistance, hardware performance monitors, software performance monitoring packages, or other computer performance evaluation products or services, shall contact the Center. The mailing address is: Department of the Air Force, Federal Computer Performance Evaluation and Simulation Center (FEDSIM), Washington, DC 20330.

(2) The Center, consistent with the lowest cost alternative or combination

of alternatives, will take one of the following four actions:

(i) Provide services from its own resources on a reimbursable basis to the requesting agency.

(ii) Acquire, on a reimbursable basis, the necessary support from commercial sources for the requesting agency.

(iii) Advise the requesting agency's acquisition activity how to acquire necessary support from the ADP schedule or other existing contractual instruments or how to initiate an acquisition action for the services. resources for the

(iv) Recommend to GSA that GSA acquire required requesting agency (where unusual legal or acquisition policy issues so dictate).

(3) If no action involving a request for services is taken by the Center within 20 workdays after acknowledgment of receipt of full information from an agency, the agency may proceed without further references to the Center.

Subpart 270.13—Sharing of Computer Resources

270.1300 Scope of subpart.

This subpart provides direction relating to use of existing resources as an alternative to the acquisition of additional resources.

270.1301 Policy.

DoD Components are required to consider sharing and use of existing resources in accordance with DoD Manual 7950.1–M, Departmental procedures, and OMB Circular A–121 as an economical and efficient means of meeting their needs.

270.1302 Government-wide sharing procedures.

(a) DoD Components shall not initiate the process of selection and acquiring resources unless it has first made a reasonable effort to determine that the required capability cannot be met economically and efficiently by using existing resources on a shared basis. If the result of screening is unsuccessful, the basis for this determination shall be documented in the contract file.

(b) DoD components are required to include a statement relative to this screening procedure when submitting agency procurement requests (APRs).

270.1303 Federal data processing centers (FDPC).

(a) *Services available from FDPCs.* FDPC's provide many ADP services and ADP support services. GSA, through informational bulletins, will announce the availability of specific services and associated costs.

(b) *Point of contact.* Activities that require any FDPC services that have not been provided through the procedures set forth in 270.1302 may contact General Services Administration (KMA), Washington, DC 20405, or the appropriate FDPC.

270.1304 Federal Software Exchange Program.

The Federal Software Exchange Program is operated by GSA or its authorized representative pursuant to the overall policy guidance and direction of GSA. The program applies to common-use software developed or revised by either Government or contractor personnel. It is not applicable to software that is classified, developed at private expense, or developed with revolving funds where reimbursement of all costs is required. It is not applicable to software to which the Government does not possess full rights of ownership. For the purpose of this subpart, common-use software is that which:

(a) Deals with problems common to many agencies, that would be useful to other agencies, and is written in such a way that minor variations in requirements can be accommodated without significant programming effort. Examples of such software are: management business applications, computer systems support and utility programs, simulators, scientific or engineering applications, programming aids which are application-independent, and bibliographic or textual programs;

(b) Has been tested and proven operational for at least 90 days and is maintained by or for a Federal agency; and

(c) Is composed of stand-alone subroutines, programs, or subsystems; i.e., not dependent on special or unique hardware options or software features unless such options or features can be readily translated or simulated for hardware other than the original and can be similarly useful on different hardware.

270.1304–1 Procedures.

(a) DoD components having requirements for software that they plan to acquire from commercial sources shall screen existing Federal ADP software resources by reviewing the Federal Software Exchange Catalog or by obtaining assistance from the Federal Software Exchange Center (FSEC) to meet its software requirements.

(b) Programs or systems listed in the Federal Software Exchange Catalog are available through the FSEC, which will contact the contributing agency for the requested documentation and/or programs.

(c) The FSEC will make a copy of both the documentation and the program to be kept on file for future requests. The FSEC will provide the software package to the requesting agency at the published price.

270.1304–2 Federal Software Exchange Center.

The functions of the Federal Software Exchange Center (FSEC) include:

(a) Maintaining a central library of summary descriptions of common-use programs and systems, including a complete index of this inventory and master copies of requested programs, systems and documentation.

(b) Editing, screening, and compiling agency abstracts of common-use programs or systems submitted for exchange by Federal agencies.

(c) Functioning as a central point of contact with agencies for information and dissemination of available software.

(d) Publishing and distributing the basic Federal Software Exchange Catalog with periodic updates.

(e) Assisting Federal agencies in identifying currently available software to satisfy their requirements.

(f) Assisting agencies in obtaining information concerning technical problems with software released through FSEC.

(g) Notifying agencies of changes to software obtained through FSEC.

270.1304–3 DoD component requirements.

DoD Components are required to:

(a) Continually review software within the agency to identify programs or systems which would be of use to other agencies meeting the criteria set forth in 270.1304 and notify FSEC of changes and programs no longer maintained.

(b) Submit abstracts of programs meeting the criteria in 270.1304 to FSEC, National Technical Information Service, Springfield, VA 22151, on Standard Form (SF) 185, Federal Information Processing Standard Software Summary. Common-use programs and systems meeting the specified criteria will be described and reported to FSEC on a continuing basis.

(c) Notify FSEC, using SF 185, of changes to software previously reported. Such changes should have been adequately tested to ensure the effective performance of the software.

(d) Notify FSEC, using SF 185, of previously reported programs that the agency no longer maintains. (Reports shall be made within 30 days after terminating maintenance.)

270.1304–5 Federal Software Exchange Catalog availability.

The Federal Software Exchange Catalog of common-use programs and systems may be obtained from the National Technical Information Service, Springfield, VA 22151. Revisions of the catalog are published quarterly.

Subpart 270.14—Reuse of Computer Equipment

270.1400 Scope of subpart.

This subpart sets forth policies and procedures regarding the reuse of computer equipment.

270.1401 Reassignment of computer equipment within DoD.

(a) The policies and procedures relating to the reassignment of computer equipment within the Department of Defense is contained in DoD Manual 7950.1–M, Defense Automation Resources Management Program.

(b) Installed Government-leased computer equipment need not be physically replaced by reassigned Government-owned computer equipment if retention of the leased computer equipment is more economical. In these circumstances, the agency should initiate action to return Government-owned computer equipment to the manufacturer/supplier in exchange for the title to the leased computer equipment.

(c) The reassignment of Government-leased computer equipment that is no longer required for the purpose and use for which it was originally acquired is a sole-source contracting action and, therefore, must be accomplished as such.

(d) The use of computer equipment for cannibalization for a parts source of supply shall not be made until excess reutilization requirements of other agencies are determined.

270.1402 Excess or exchange/"sale" computer equipment.

Each DoD component shall report Government-owned or -leased computer equipment that is excess to its needs or Government-owned computer equipment that is contemplated to be replaced pursuant to the exchange/"sale" authority in accordance with DoD 7950.1–M. Policies and procedures for reporting exchange/"sale" of computer equipment are contained in DoD 7950.1–M.

270.1403 Reutilization of excess and exchange/"sale" computer equipment.

(a) DoD components shall be responsible for determining whether their ADP requirements can be efficiently and economically satisfied by using excess ADP equipment. To obtain maximum reutilization and to minimize the acquisition of the new computer equipment, excess and exchange/"sale" computer equipment shall be made available for transfer to other Federal agencies in accordance with DoD 7950.1–M.

(b) Excess auxiliary or accessorial computer equipment with an original acquisition cost (OAC) of $1,500 or less shall be made available for transfer to other Federal agencies.

(c) Any need for excess (but not obsolescent-excess) computer equipment expressed by a Federal agency shall take precedence over surplus disposal, provided such need is made known prior to shipment, or delivery in case of donation, or prior to contract award in case of "sale".

(d) Without exception, holding agencies shall solicit both requesting agency "sale" and vendor exchange (trade-in) offers when using exchange/"sale" authority (see 270.322).

270.1404 Considerations for use of excess Government-owned or -leased computer equipment.

(a) *Government-owned excess computer equipment.* DoD components shall consider excess Government-owned computer equipment as a replacement for installed leased computer equipment or in meeting new requirements if the excess Government-owned computer equipment has the capability to fulfill the requirement and represents the lowest overall cost to the Government. The reutilization of excess Government-owned computer equipment is not a contracting action.

(b) *Government-leased excess computer equipment.*

(1) The reutilization of excess leased computer equipment is an acquisition and requires justification for use of other-than-full and open competition (see FAR 6.303) or the equipment be selected as a result of a full and open competitive solicitation.

(2) Since excess leased computer equipment accrues substantial purchase option credits, agencies shall consider this equipment as replacement for installed leased computer equipment which has accrued fewer credits to the Government. This type of replacement shall not be considered a contracting action.

270.1405 Use of the ADP fund.

(a) Government-owned excess ADPE systems or items with a GSA estimated fair market value of at least $250,000 will be screened by GSA for possible reutilization. GSA will incorporate appropriate systems or items in the availability list. These systems or items will be leased to agencies by the ADP Fund at 50 percent of the fair market value determined by GSA. Ownership of the equipment will remain with the GSA ADP Fund.

(b) When leased excess ADPE with purchase option credits can satisfy agency data processing requirements, GSA will consider using the ADP Fund to purchase the equipment for the requesting agency when purchase is in the best economic interest of the Government and the agency does not have purchase funds available.

(c) DoD components may seek use of the ADP Fund for acquisition of exchange/"sale" ADPE if it is determined that the acquisition is economically advisable, the following requirements are met, and the DoD component can certify that:

(1) It has complied with applicable provisions of 270.302;

(2) It does not have funds programmed, nor can it reprogram funds for this purpose; and

(3) It cannot divert funds planned for other ADPE acquisitions with lesser rates of return, if any, for this purpose.

(d) When a DoD component proposes to request transfer of exchange/"sale" ADPE which it desires to acquire through the ADP Fund, the requesting activity shall submit a letter of intent to the General Services Administration (KXM), Washington, DC 20405. This letter shall include the projected period of equipment use; the requested terms of reimbursement, e.g., quarterly reimbursement for 3 years; the agency point of contact (with address and telephone number); and the shipping address, instructions, and fund citations for transportation and ADP Fund reimbursement. In addition, the requestor shall submit certifications that demonstrate the agency's compliance with the conditions listed in paragraph (c) of this section.

(e) The use of the ADP Fund for acquisitions of exchange/"sale" ADPE must be approved by GSA before a holding agency may honor the requesting agency's hold.

Appendix A—Armed Services Board of Contract Appeals

Approved 1 May 1962.
Revised 1 May 1969.
Revised 1 September 1973.
Revised 1 July 1979.

Part 1—Charter.

1. There is created the Armed Services Board of Contract Appeals which is hereby designated as the authorized representative of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy and the

Secretary of the Air Force, in hearing, considering and determining appeals by contractors from decisions of contracting officers or their authorized representatives or other authorities on disputed questions. These appeals may be taken (a) pursuant to the Contract Disputes Act of 1978 (41 U.S.C. Sec. 601, et seq.), (b) pursuant to the provisions of contracts requiring the decision by the Secretary of Defense or by a Secretary of a Military Department or their duly authorized representative or board, or (c) pursuant to the provisions of any directive whereby the Secretary of Defense or the Secretary of a Military Department has granted a right of appeal not contained in the contract on any matter consistent with the contract appeals procedure. The Board may determine contract disputes for other departments and agencies by agreement. The Board shall operate under general policies established or approved by the Under Secretary of Defense (Research and Engineering).

2. Membership of the Board shall consist of attorneys at law who have been qualified in the manner prescribed by the Contract Disputes Act of 1978. Members of the Board are hereby designated Administrative Judges. There shall be appointed from members of the Board a chairman and two or more vice-chairmen. Appointment of the chairman and vice-chairmen and other members of the Board shall be made by the Under Secretary of Defense (Research and Engineering) and the Assistant Secretaries of the Military Departments responsible for procurement. The chairman and vice-chairmen shall serve in that capacity for a two-year term unless sooner removed or reappointed for an additional term or terms. The Under Secretary will also designate the order in which the vice-chairmen will act for the chairman in his absence. In the absence of a vice-chairman, the chairman or acting chairman may designate a member of the Board to serve as a temporary vice-chairman.

3. It shall be the duty and obligation of the members of the Armed Services Board of Contract Appeals to decide appeals on the record of the appeal to the best of their knowledge and ability in accordance with applicable contract provisions and in accordance with law and regulation pertinent thereto.

4. The chairman of the Board shall be responsible for establishing appropriate divisions of the Board to provide for the most effective and expeditious handling of appeals. He shall be responsible for assigning appeals to the divisions for decision without regard to the military department or other procuring agency which entered into the contract. A division may consist of one or more members of the Board. The chairman shall designate one member of each division as the division head. The division heads and the chairman and vice-chairmen shall constitute the senior deciding group of the Board. A majority of the members of a division or of the senior deciding group shall constitute a quorum for the transaction of the business of each, respectively. Decisions of the Board shall be by majority vote of the members of a division participating and the chairman and a vice-chairman, unless the chairman refers the appeal for decision by the senior deciding group. The decision of the Board in cases so referred to the senior deciding group shall be by majority vote of the participating members of that group. The chairman may refer an appeal of unusual difficulty, significant precedential importance, or serious dispute within the normal decision process for decision by the senior deciding group. An appeal involing $50,000 or less may be decided by a single member or fewer members of the Board than hereinbefore provided for cases of unlimited dollar amount, under accelerated or expedited procedures as provided in the Rules of the Board and the Contract Disputes Act of 1978.

5. The Board shall have all powers necessary and incident to the proper performance of its duties. Subject to the approval of the Under Secretary of Defense (Research and Engineering) and the Assistant Secretaries of the Military Departments responsible for procurement, the Board shall adopt its own methods of procedure, and rules and regulations for its conduct and for the preparation and presentation of appeals and issuance of opinions. The Military Departments and other procuring agencies shall provide legal personnel to prepare and present the contentions of the departments or agencies in relation to appeals filed with the Board. It shall not be necessary for the Board, unless it otherwise desires, to communicate with more than one trial attorney in each of the departments or agencies concerning the preparation and presentation of appeals and the obtaining of all records deemed by the Board to be pertinent thereto.

6. Any member of the Board or any examiner, designated by the chairman, shall be authorized to hold hearings, examine witnesses, and receive evidence and argument for consideration and determination of the appeal by the designated division. A member of the Board shall have authority to administer oaths and issue subpoenas as specified in Section 11 of the Contract Disputes Act of 1978. The chairman may request orders of the court in cases of contumacy or refusal to obey a subpoena in the manner prescribed in that Section.

7. The Chairman shall be responsible for the internal organization of the Board and for its administration. He shall provide within approved ceilings for the staffing of the Board with non-member personnel, including hearing examiners, as may be required for the performance of the functions of the Board. The chairman shall appoint a recorder of the Board. Such personnel shall be responsible to and shall function under the direction, supervision and control of the chairman.

8. The Board will be serviced by the Department of the Army for administrative support for its operations as required. Administrative support will include budgeting, funding, fiscal control, manpower control and utilization, personnel administration, security administration, supplies, and other administrative services. The Departments of the Army, Navy, Air Force and the Office of the Secretary of Defense will participate in financing the Board's operations on an equal basis and to the extent determined by the Assistant Secretary of Defense (Comptroller). The cost of processing appeals for departments and agencies other than those in the Department of Defense will be reimbursed.

9. The chairman of the Board will furnish the Secretary of Defense and to the Secretaries of the Military Departments by October 31 of each year a report containing an account of the Board's transactions and proceedings for the preceding fiscal year. Within 30 days following the close of a calendar quarter, the chairman shall forward a report of the Board's proceedings for the quarter to the Under Secretary of Defense (Research and Engineering), the Assistant Secretaries of the Military Departments responsible for procurement, and to the Director of the Defense Logistics Agency. Such reports shall disclose the number of appeals received, cases heard, opinions rendered, current reserve of pending matters, and such other information as may be required.

10. The Board shall have a seal bearing the following inscription: "Armed Services Board of Contract Appeals." This seal shall be affixed to all authentications of copies of records and to such other instruments as the Board may determine.

11. This revised charter is *effective April 21, 1980.*

Approved:

W. Graham Claytor, Jr.,
Deputy Secretary of Defense.

Clifford L. Alexander, Jr.,
Secretary of the Army.

E. Hidalgo,
Secretary of the Navy.

Hans M. Mark,
Secretary of the Air Force.

Part 2—Rules

Approved 15 July 1963.
Revised 1 May 1969.
Revised 1 September 1973.
Revised 30 June 1980.

Preface

I. Jurisdiction for Considering Appeals

The Armed Services Board of Contract Appeals (referred to herein as the Board) shall consider and determine appeals from decisions of contracting officers pursuant to the Contract Disputes Act of 1978 (Public Law 95–563, 41 U.S.C. 601–613) relating to contracts made by (i) the Departments of Defense, Army, Navy and Air Force or (ii) any other executive agency when such agency or the Administrator for Federal Procurement Policy has designated the Board to decide the appeal.

II. Location and Organization of the Board

(a) The Board's address is Hoffman Building #2, 200 Stovall Street, Alexandria, Virginia 22332, telephone (202) 325–9070.

(b) The Board consists of a chairman, two or more vice chairmen, and other members, all of whom are attorneys at law duly licensed by a state, commonwealth, territory, or the District of Columbia. Board members are designated Administrative Judges.

(c) There are a number of divisions of the Armed Services Board of Contract Appeals, established by the Chairman of the Board in such manner as to provide for the most effective and expeditious handling of appeals. The Chairman and a Vice Chairman of the Board act as members of each division. Appeals are assigned to the divisions for decision without regard to the military department or other procuring agency which entered into the contract involved. Hearing may be held by a designated member (Administrative Judge), or by a duly authorized examiner. Except for appeals processed under the expedited or accelerated procedure, the decision of a majority of a division constitutes the decision of the Board, unless the chairman refers the appeal to the Board's Senior Deciding Group (consisting of the chairman, vice chairmen and all division heads), in which event a decision of a majority of that group constitutes the decision of the Board. Appeals referred to the Senior Deciding Group are those of unusual difficulty, significant precedential importance, or serious dispute within the normal division decision process. For decisions of appeals processed under the expedited or accelerated procedure, see Rules 12.2(c) and 12.3(b).

Preliminary Procedures

1. *Appeals, How Taken.* (a) Notice of an appeal shall be in writing and mailed or otherwise furnished to the Board within 90 days from the date of receipt of a contracting officer's decision. A copy thereof shall be furnished to the contracting officer from whose decision the appeal is taken.

(b) Where the contractor has submitted a claim of $50,000 or less to the contracting officer and has requested a written decision within 60 days from receipt of the request, and the contracting officer has not done so, the contractor may file a notice of appeal as provided in subparagraph (a) above, citing the failure of the contracting officer to issue a decision.

(c) Where the contractor has submitted a properly certified claim over $50,000 to the contracting officer or has requested a decision by the contracting officer which presently involves no monetary amount pursuant to the Disputes clause, and the contracting officer has failed to issue a decision within a reasonable time, taking into account such factors as the size and complexity of the claim, the contractor may file a notice of appeal as provided in subparagraph (a) above, citing the failure of the contracting officer to issue a decision.

(d) Upon docketing of appeals filed pursuant to (b) or (c) hereof, the Board may, at its option, stay further proceedings pending issuance of a final decision by the contracting officer within such period of time as is determined by the Board.

(e) In lieu of filing a notice of appeal under (b) or (c) hereof, the contractor may request the Board to direct the contracting officer to issue a decision in a specified period of time, as determined by the Board, in the event of undue delay on the part of the contracting officer.

2. *Notice of Appeal, Contents of.* A notice of appeal should indicate that an appeal is being taken and should identify the contract (by number), the department and/or agency involved in the dispute, the decision from which the appeal is taken, and the amount in dispute, if known. The notice of appeal should be signed personally by the appellant (the contractor taking the appeal), or by the appellant's duly authorized representative or attorney. The complaint referred to in Rule 8 may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a complaint, if it otherwise fulfills the requirements of a complaint.

3. *Docketing of Appeals.* When a notice of appeal in any form has been received by the Board, it shall be docketed promptly. Notice in writing shall be given to the appellant with a copy of these rules, and to the contracting officer.

4. *Preparation, Content, Organization, Forwarding, and Status of Appeal File.* (a) *Duties of Contracting Officer*—Within 30 days of receipt of an appeal, or notice that an appeal has been filed, the contracting officer shall assemble and transmit to the Board an appeal file consisting of all documents pertinent to the appeal, including:

(1) The decision from which the appeal is taken;

(2) The contract, including pertinent specifications, amendments, plans and drawings;

(3) All correspondence between the parties relevant to the appeal, including the letter or letters of claim in response to which the decision was issued;

(4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(5) Any additional information considered relevant to the appeal.

Within the same time above specified the contracting officer shall furnish the appellant a copy of each document he transmits to the Board, except those in subparagraph (a)(2) above. As to the latter, a list furnished appellant indicating specific contractual documents transmitted will suffice.

(b) *Duties of the Appellant*—Within 30 days after receipt of a copy of the appeal file assembled by the contracting officer, the appellant shall transmit to the Board any documents not contained therein which he considers relevant to the appeal, and furnish two copies of such documents to the government trial attorney.

(c) *Organization of Appeal File*—Documents in the appeal file may be originals or legible facsimiles or authenticated copies, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file.

(d) *Lengthly Documents*—Upon request by either party, the Board may waive the requirement to furnish to the other party copies of bulky, lengthy, or out-of-size documents in the appeal file when inclusion would be burdensome. At the time a party files with the Board a document as to which such a waiver has been granted he shall notify the other party that the document or a copy is available for inspection at the offices of the Board or of the party filing same.

(e) *Status of Documents in Appeal File*—Documents contained in the appeal file are considered, without further action by the parties, as part of the record upon which the Board will render its decision. However, a party may object, for reasons stated, to consideration of a particular document or documents reasonably in advance of hearing or, if there is no hearing, of settling the record. If such objection is made, the Board shall remove the document or documents from the appeal file and permit the party offering the document to move its admission as evidence in accordance with Rules 13 and 20.

(f) Notwithstanding the foregoing, the filing of the Rule 4(a) and (b) documents may be dispensed with by the Board either upon request of the appellant in his notice of appeal or thereafter upon stipulation of the parties.

5. *Motions.* (a) Any motion addressed to the jurisdiction of the Board shall be promptly filed. Hearing on the motion shall be afforded on application of either party. However, the Board may defer its decision on the motion pending hearing on both the merits and the motion. The Board shall have the right at any time and on its own initiative to raise the issue of its jurisdiction to proceed with a particular case, and shall do so by an appropriate order, affording the parties an opportunity to be heard thereon.

(b) The Board may entertain and rule upon other appropriate motions.

6. *Pleadings.* (a) *Appellant*—Within 30 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board an original and two copies of a complaint setting forth simple, concise and direct statements of each of its claims. Appellant shall also set forth the basis, with appropriate reference to contract provisions, of each claim and the dollar amount claimed, to the extent known. This pleading shall fulfill the generally recognized requirements of a complaint, although no particular form is required. Upon receipt of the complaint, the Board shall serve a copy of it upon the Government. Should the complaint not be received within 30 days, appellant's claim and appeal may, if in the opinion of the Board the issues before the Board are sufficiently defined, be deemed to set forth its complaint and the Government shall be so notified.

(b) *Government*—Within 30 days from receipt of the complaint, or the aforesaid notice from the Board, the Government shall prepare and file with the Board an original and two copies of an answer thereto. The answer shall set forth simple, concise and direct statements of Government's defenses to each claim asserted by appellant, including any affirmative defenses available. Upon receipt of the answer, the Board shall serve a copy upon appellant. Should the answer not be received within 30 days, the Board may, in its discretion, enter a general denial on behalf of the Government, and the appellant shall be so notified.

(c) A party who intends to raise an issue concerning the law of a foreign country shall give notice in his pleadings or other reasonable written notice. The Board, in determining foreign law, may consider any

relevant material or source, including testimony, whether or not submitted by a party or admissible under Rules 11, 13 or 20. The determination of foreign law shall be treated as a ruling on a question of law.

7. *Amendments of Pleadings or Record.* The Board upon its own initiative or upon application by a party may order a party to make a more definite statement of the complaint or answer, or to reply to an answer. The Board may, in its discretion, and within the proper scope of the appeal, permit either party to amend its pleading upon conditions fair to both parties. When issues within the proper scope of the appeal, but not raised by the pleadings, are tried by express or implied consent of the parties, or by permission of the Board, they shall be treated in all respects as if they had been raised therein. In such instances, motions to amend the pleadings to conform to the proof may be entered, but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings, it may be admitted within the proper scope of the appeal, provided, however, that the objecting party may be granted a continuance if necessary to enable it to meet such evidence.

8. *Hearing Election.* After filing of the Government's answer or notice from the Board that it has entered a general denial on behalf of the Government, each party shall advise whether it desires a hearing as prescribed in Rules 17 through 25, or whether it elects to submit its case on the record without a hearing, as prescribed in Rule 11.

9. *Prehearing Briefs.* Based on an examination of the pleadings, and its determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may, in its discretion, require the parties to submit prehearing briefs in any case in which a hearing has been elected pursuant to Rule 8. If the Board does not require prehearing briefs either party may, in its discretion and upon appropriate and sufficient notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall simultaneously be furnished to the other party as previously arranged.

10. *Prehearing or Presubmission Conference.* (a) Whether the case is to be submitted pursuant to Rule 11, or heard pursuant to Rules 17 through 25, the Board may upon its own initiative, or upon the application of either party, arrange a telephone conference or call upon the parties to appear before an administrative judge or examiner of the Board for a conference to consider:

(1) Simplification, clarification, or severing of the issues;

(2) The possibility of obtaining stipulations, admissions, agreements and rulings on admissibility of documents, understandings on matters already of record, or similar agreements that will avoid unnecessary proof;

(3) Agreements and rulings to facilitate discovery;

(4) Limitation of the number of expert witnesses, or avoidance of similar cumulative evidence;

(5) The possibility of agreement disposing of any or all of the issues in dispute; and

(6) Such other matters as may aid in the disposition of the appeal.

(b) The administrative judge or examiner of the Board shall make such rulings and orders as may be appropriate to aid in the disposition of the appeal. The results of pretrial conferences, including any rulings and orders, shall be reduced to writing by the administrative judge or examiner and this writing shall thereafter constitute a part of the record.

11. *Submission Without a Hearing.* Either party may elect to waive a hearing and to submit its case upon the record before the Board, as settled pursuant to Rule 13. Submission of a case without hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. Affidavits, depositions, admissions, answers to interrogatories, and stipulations may be employed to supplement other documentary evidence in the Board record. The Board may permit such submissions to be supplemented by oral argument (transcribed if requested), and by briefs arranged in accordance with Rule 23.

12. *Optional SMALL CLAIMS (EXPEDITED) and ACCELERATED Procedures.*

These procedures are available solely at the election of the appellant.

12.1 *Elections to Utilize SMALL CLAIMS (EXPEDITED) and ACCELERATED Procedures.* (a) In appeals where the amount in dispute is $10,000 or less, the appellant may elect to have the appeal processed under a SMALL CLAIMS (EXPEDITED) procedure requiring decision of the appeal, whenever possible, within 120 days after the Board receives written notice of the appellant's election to utilize this procedure. The details of this procedure appear in section 12.2 of this Rule. An appellant may elect the ACCELERATED procedure rather than the SMALL CLAIMS (EXPEDITED) procedure for any appeal eligible for the SMALL CLAIMS (EXPEDITED) procedure.

(b) In appeals where the amount in dispute is $50,000 or less, the appellant may elect to have the appeal processed under an ACCELERATED procedure requiring decision of the appeal, whenever possible, within 180 days after the Board receives written notice of the appellant's election to utilize this procedure. The details of this procedure appear in section 12.3 of this Rule.

(c) The appellant's election of either the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure may be made by written notice within 60 days after receipt of notice of docketing, unless such period is extended by the Board for good cause. The election may not be withdrawn except with permission of the Board and for good cause.

12.2 *The SMALL CLAIMS (EXPEDITED) Procedure.* (a) In cases proceeding under the SMALL CLAIMS (EXPEDITED) procedure, the following time periods shall apply:

(1) Within 10 days from the Government's first receipt from either the appellant or the Board of a copy of the appellant's notice of election of the SMALL CLAIMS (EXPEDITED) procedure, the Government shall send the Board a copy of the contract, the contracting officer's final decision, and the appellant's claim letter or letters, if any; remaining documents required under Rule 4 shall be submitted in accordance with times specified in that rule unless the Board otherwise directs.

(2) Within 15 days after the Board has acknowledged receipt of appellant's notice of election, the assigned administrative judge shall take the following actions, if feasible, in an informal meeting or a telephone conference with both parties: (i) Identify and simplify the issues; (ii) establish a simplified procedure appropriate to the particular appeal involved; (iii) determine whether either party wants a hearing, and if so, fix a time and place therefor; (iv) require the Government to furnish all the additional documents relevant to the appeal; and (v) establish an expedited schedule for resolution of the appeal.

(b) Pleadings, discovery, and other prehearing activity will be allowed only as consistent with the requirement to conduct the hearing on the date scheduled, or if no hearing is scheduled, to close the record on a date that will allow decisions within the 120-day limit. The Board, in its discretion, may impose shortened time periods for any actions prescribed or allowed under these rules, as necessary to enable the Board to decide the appeal within the 120-day limit, allowing whatever time, up to 30 days, that the Board considers necessary for the preparation of the decision after closing the record and the filing of briefs, if any.

(c) Written decision by the Board in cases processed under the SMALL CLAIMS (EXPEDITED) procedure will be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single administrative judge. If there has been a hearing, the administrative judge presiding at the hearing may, in the judge's discretion, at the conclusion of the hearing and after entertaining such oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes and to establish the starting date for the period for filing a motion for reconsideration under Rule 29.

(d) A decision against the Government or the contractor shall have no value as precedent, and in the absence of fraud shall be final and conclusive and may not be appealed or set aside.

12.3 *The ACCELERATED Procedure.* (a) In cases proceeding under the ACCELERATED procedure, the parties are encouraged, to the extent possible consistent with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs. The Board, in its discretion, may shorten time periods prescribed or allowed elsewhere in these Rules, including Rule 4, as necessary to enable the Board to decide the appeal within

180 days after the Board has received the appellant's notice of election of the ACCELERATED procedure, and may reserve 30 days for preparation of the decision.

(b) Written decision by the Board in cases processed under the ACCELERATED procedure will normally be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single administrative judge with the concurrence of a vice chairman, or by a majority among these two and the chairman in case of disagreement. Alternatively, in cases where the amount in dispute is $10,000 or less as to which the ACCELERATED procedure has been elected and in which there has been a hearing, the single administrative judge presiding at the hearing may, with the concurrence of both parties, at the conclusion of the hearing and after entertaining such oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes, and to establish the starting date for the period for filing a motion for reconsideration under Rule 29.

12.4 *Motions for Reconsideration in Rule 12 Cases.* Motions for Reconsideration of cases decided under either the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure need not be decided within the original 120-day or 180-day limit, but all such motions shall be processed and decided rapidly so as to fulfill the intent of this Rule.

13. *Settling the Record.* (a) The record upon which the Board's decision will be rendered consists of the documents furnished under Rules 4 and 12, to the extent admitted in evidence, and the following items, if any: pleadings, prehearing conference memoranda or orders, prehearing briefs, depositions or interrogatories received in evidence, admissions, stipulations, transcripts of conferences and hearings, hearing exhibits, post-hearing briefs, and documents which the Board has specifically designated be made a part of the record. The record will, at all reasonable times, be available for inspection by the parties at the office of the Board.

(b) Except as the Board may otherwise order in its discretion, no proof shall be received in evidence after completion of an oral hearing or, in cases submitted on the record, after notification by the Board that the case is ready for decision.

(c) The weight to be attached to any evidence of record will rest within the sound discretion of the Board. The Board may in any case require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal.

14. *Discovery—Depositions.* (a) *General Policy and Protective Orders*—The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the Board may make any order required to protect a party or person from annoyance, embarrassment, or undue burden or expense. Those orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents.

(b) *When Depositions Permitted*—After an appeal has been docketed and complaint filed, the parties may mutually agree to, or the Board may, upon application of either party, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purpose of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(c) *Orders on Despositions*—The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or, failing such agreement, governed by order of the Board.

(d) *Use as Evidence*—No testimony taken by depositions shall be considered as part of the evidence in the hearing of an appeal until such testimony is offered and received in evidence at such hearing. It will not ordinarily be received in evidence if the deponent is present and can testify at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the deponent given at the hearing. In cases submitted on the record, the Board may, in its discretion, receive depositions to supplement the record.

(e) *Expenses*—Each party shall bear its own expenses associated with the taking of any deposition.

(f) *Subpoenos*—Where appropriate, a party may request the issuance of a subpoena under the provisions of Rule 21.

15. *Interrogatories to Parties. Admission of Facts; and Production and Inspection of Documents.* After an appeal has been docketed and complaint filed with the Board, a party may serve on the other party: (a) Written interrogatories to be answered separately in writing, signed under oath and answered or objected to within 45 days after service; (b) a request for the admission of specified facts and/or the authenticity of any documents, to be answered or objected to within 45 days after service; the factual statements and the authenticity of the documents to be deemed admitted upon failure of a party to respond to the request; and (c) a request for the production, inspection and copying of any documents or objects not privileged, which reasonably may lead to the discovery of admissible evidence, to be answered or objected to within 45 days after service. The Board may allow a shorter or longer time. Any discovery engaged in under this Rule shall be subject to the provisions of Rule 14(a) with respect to general policy and protective orders, and of Rule 35 with respect to sanctions.

16. *Service of Papers Other Than Subpoenas.* Papers shall be served personally or by mail, addressed to the party upon whom service is to be made. Copies of complaints, answers and briefs shall be filed directly with the Board. The party filing any other paper with the Board shall send a copy thereof to the opposing party, noting on the paper filed with the Board that a copy has been so furnished. Subpoenas shall be served as provided in Rule 21.

Hearings

17. *Where and When Held.* Hearings will be held at such places determined by the Board to best serve the interests of the parties and the Board. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals, Rule 12 requirements, and other pertinent factors. On request or motion by either party and for good cause, the Board may, in its discretion, adjust the date of a hearing.

18. *Notice of Hearings.* The parties shall be given at least 15 days notice of the time and place set for hearings. In scheduling hearings, the Board will consider the desires of the parties and the requirement for just and inexpensive determination of appeals without unnecessary delay. Notices of hearings shall be promptly acknowledged by the parties.

19. *Unexcused Absence of a Party.* The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the case will be regarded as submitted by the absent party as provided in Rule 11.

20. *Hearings: Nature, Examination of Witnesses.* (a) *Nature of Hearings*—Hearings shall be as in formal as may be reasonable and appropriate under the circumstances. Appellant and the Government may offer such evidence as they deem appropriate and as would be admissible under the Federal Rules of Evidence or in the sound discretion of the presiding administrative judge or examiner. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may require evidence in addition to that offered by the parties.

(b) *Examination of Witnesses*—Witnesses before the Board will be examined orally under oath or affirmation, unless the presiding administrative judge or examiner shall otherwise order. If the testimony of a witness is not given under oath, the Board may advise the witness that his statements may be subject to the provisions of Title 18, United States Code, sections 287 and 1001, and any other provision of law imposing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency thereof.

21. *Subpoenas.* (a) *General*—Upon written request of either party filed with the recorder, or on his own initiative, the administrative judge to whom a case is assigned or who is otherwise designated by the chairman may issue a subpoena requiring:

(i) Testimony at a deposition—the deposing of a witness in the city or county where he resides or is employed or transacts his business in person, or at another location convenient for him that is specifically determined by the Board;

(ii) Testimony at a hearing—the attendance of a witness for the purpose of taking testimony at a hearing; and

(iii) Production of books and papers—in addition to (i) or (ii), the production by the

witness at the deposition or hearing of books and papers designated in the subpoena.

(b) *Voluntary Cooperation*—Each party is expected (i) to cooperate and make available witnesses and evidence under its control as requested by the other party, without issuance of a subpoena, and (ii) to secure voluntary attendance of desired third-party witnesses and production of desired third-party books, papers, documents, or tangible things whenever possible.

(c) *Requests for Subpoenas*—

(1) A request for subpoena shall normally be filed at least:

(i) 15 days before a scheduled deposition where the attendance of a witness at a deposition is sought; or

(ii) 30 days before a scheduled hearing where the attendance of a witness at a hearing is sought.

In its discretion the Board may honor requests for subpoenas not made within these time limitations.

(2) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any books and papers sought.

(d) *Requests to Quash or Modify*—Upon written request by the person subpoenaed or by a party, made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the Board may (i) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or (ii) require the person in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed books and papers. Where circumstances require, the Board may act upon such a request at any time after a copy has been served upon the opposing party.

(e) *Form; Issuance*—

(1) Every subpoena shall state the name of the Board and the title of the appeal, and shall command each person to whom it is directed to attend and give testimony, and if appropriate, to produce specified books and papers at a time and place therein specified. In issuing a subpoena to a requesting party, the administrative judge shall sign the subpoena and may, in his discretion, enter the name of the witness and otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.

(2) Where the witness is located in a foreign country, a letter rogatory or subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781–1784.

(f) *Service*—

(1) The party requesting issuance of a subpoena shall arrange for service.

(2) A subpoena requiring the attendance of a witness at a deposition or hearing may be served at any place. A subpoena may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law; however, where the subpoena is issued on behalf of the Government, money payments need not be tendered in advance of attendance.

(3) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the Board as a sufficient ground for striking the testimony of the witness and the books or papers the witness has produced.

(g) *Contumacy or Refusal to Obey a Subpoena*—In case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a United States District Court, the Board will apply to the Court through the Attorney General of the United States for an order requiring the person to appear before the Board or a member thereof to give testimony or produce evidence or both. Any failure of any such person to obey the order of the Court may be punished by the Court as a contempt thereof.

22. *Copies of Papers.* When books, records, papers, or documents have been received in evidence, a true copy thereof or of such part thereof as may be material or relevant may be substituted therefor, during the hearing or at the conclusion thereof.

23. *Post-Hearing Briefs.* Post-hearing briefs may be submitted upon such terms as may be directed by the presiding administrative judge or examiner at the conclusion of the hearing.

24. *Transcript of Proceedings.* Testimony and argument at hearings shall be reported verbatim, unless the Board otherwise orders. Waiver of transcript may be especially suitable for hearings under Rule 12.2. Transcripts of the proceedings shall be supplied to the parties at such rates as may be established by contract between the Board and the reporter, provided that ordinary copy of transcript shall be supplied to the appellant at an amount no greater than the cost of duplication.

25. *Withdrawal of Exhibits.* After a decision has become final the Board may, upon request and after notice to the other party, in its discretion permit the withdrawal of original exhibits, or any part thereof, by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be required by the Board in its discretion as a condition of granting permission for such withdrawal.

Representotion

26. *The Appellont.* An individual appellant may appear before the Board in person, a corporation by one of its officers; and a partnership or joint venture by one of its members; or any of these by an attorney at law duly licensed in any state, commonwealth, territory, the District of Columbia, or in a foreign country. An attorney representing an appellant shall file a written notice of appearance with the Board.

27. *The Government.* Government counsel may, in accordance with their authority, represent the interest of the Government before the Board. They shall file notices of appearance with the Board, and notice thereof will be given appellant or appellant's attorney in the form specified by the Board from time to time.

Decisions

28. *Decisions.* (a) Decisions of the Board will be made in writing and authenticated copies of the decision will be forwarded simultaneously to both parties. The rules of the Board and all final orders and decisions (except those required for good cause to be held confidential and not cited as precedents) shall be open for public inspection at the offices of the Board. Decisions of the Board will be made solely upon the record, as described in Rule 13.

(b) Any monetary award to a contractor by the Board shall be promptly paid in accordance with the procedures provided by section 1302 of the Act of July 27, 1956 (70 Stat. 694, as amended; 31 U.S.C. 724a). To assure prompt payment the Recorder will forward a waiver form to each party with the decision. If the parties do not contemplate an appeal or motion for reconsideration, they will execute waivers which so state, and return them to the Recorder. The Recorder will forward the waivers and a certified copy of the award decision to the General Accounting Office for certification for payment.

Motion for Reconsideration

29. *Motion for Reconsiderotion.* A motion for reconsideration may be filed by either party. It shall set forth specifically the grounds relied upon to sustain the motion. The motion shall be filed within 30 days from the date of the receipt of a copy of the decision of the Board by the party filing the motion.

Suspensions, Dismissols and Defaults: Remonds

30. *Suspensions; Dismissol Without Prejudice.* The Board may suspend the proceedings by agreement of counsel for settlement discussions, or for good cause shown. In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. Where the suspension has continued, or may continue, for an inordinate length of time, the Board may, in its discretion, dismiss such appeals from its docket without prejudice to their restoration when the cause of suspension has been removed. Unless either party or the Board acts within three years to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed with prejudice.

31. *Dismissol or Default for Foilure to Prosecute or Defend.* Whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may, in the case of a default by the appellant, issue an order to show cause why the appeal should not be dismissed or, in the case of a default by the Government, issue an order to show cause why the Board should not act thereon pursuant to Rule 35. If good cause is not shown, the Board may take appropriate action.

32. *Remand from Court.* Whenever any court remands a case to the Board for further proceedings, each of the parties shall, within 20 days of such remand, submit a report to the Board recommending procedures to be followed so as to comply with the court's order. The Board shall consider the reports and enter special orders governing the handling of the remanded case. To the extent the court's directive and time limitations permit, such orders shall conform to these rules.

Time, Computation and Extensions

33. *Time, Computation and Extensions.* (a) Where possible, procedural actions should be taken in less time than the maximum time allowed. Where appropriate and justified, however, extensions of time will be granted. All requests for extensions of time shall be in writing.

(b) In computing any period of time, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a legal holiday, in which event the period shall run to the end of the next business day.

Ex Porte Communications

34. *Ex parte Communications.* No member of the Board or of the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal, submit to the Board or the Board's staff, off the record, any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation among Board members or to ex parte communications concerning the Board's administrative functions or procedures.

Sanctions

35. *Sanctions.* If any party fails or refuses to obey an order issued by the Board, the Board may then make such order as it considers necessary to the just and expeditious conduct of the appeal.

Effective Date and Applicability

36. *Effective Date.* These rules shall apply (i) mandatorily, to all appeals relating to contracts entered into on or after 1 March 1979, and (ii) at the contractor's election, to appeals relating to earlier contracts, with respect to claims pending before the contracting officer on 1 March 1979 or initiated thereafter.

Pursuant to the Charter of the Armed Services Board of Contract Appeals, the attached rules are hereby approved for use and application to appeals to the Armed Services Board of Contract Appeals under the Contract Disputes Act of 1978.

(signed) William J. Perry (30 Jun 1980),

Under Secretary of Defense for Research and Engineering.

(signed) Percy A. Pierre,

Assistant Secretary of the Army (Research, Development and Acquisition).

(signed) J.A. Doyle,

Assistant Secretary of the Navy (Manpower, Reserve Affairs and Logistics)

(signed) Eugene H. Kopf,

(Acting) Assistant Secretary of the Air Force (Research, Development and Logistics).

Appendices B–C—[Reserved]

Appendix D—Notice and Hearing Under Gratuities Clause

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Notice and Hearing Under Gratuities Clause

D–1. Introduction

10 U.S.C. 2207 requires all contracts, other than contracts for personal services which call for the expenditures of funds appropriated for the Department of Defense, to contain a clause permitting the termination of the contractor's right to proceed under any such contract and permitting the Government to pursue the remedies that it could pursue in the event of breach of contract if it is found after notice and hearing by the Secretary of the Department with which the contract was made, or by his duly authorized representative, that gratuities (in the form of entertainment, gifts or otherwise) were offered or given by the contractor or by his agent or representative to any officer or employee of the Government with a view toward securing a Government contract or favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performing of such contract. The Military Departments have prescribed the use of such clause, as set forth in the Armed Services Procurement Regulation, paragraph 7–104.16, in contracts as required by the above Act and in other procurement contracts. It is the purpose of these rules to make provisions for the giving of the notice of hearing, for the conduct of the hearing, and for other procedural matters incident to the exercise of the rights and special remedies provided by the prescribed clause, wherever it is now or may hereafter be used in contracts of the Military Departments. In the interest of uniformity in proceedings before the three Military Departments, those rules are hereby adopted. Nothing herein shall be construed to affect or impair (1) the pursuit of other remedies available to the Government in any instance, or (2) the right of termination of any contract for any reason available to the Government under the terms of such contract.

D–2. Definitions

Department. The term "*Department*" means the Department of the Army, the Department of the Navy, or the Department of the Air Force.

Secretary. The term "*Secretary*" means the Secretary, the Under Secretary, or any Assistant Secretary of any Military Department.

Designee. The term "*Designee*" means the person or board to whom authority has been delegated by the Secretary under Rule 3. The designee is the Secretary's authorized representative.

D–3. Delegation of Authority

The Secretary may delegate to any person, military or civilian, or board of such persons within his Department all the authority of the Secretary conferred by statute or the prescribed contract clause to give notice of hearings, to conduct hearings and to make findings of fact with respect to (i) whether a gratuity was offered or given by a contractor or any agent or representative of such contractor to a Government officer or employee with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performance of such contract; and (ii) where appropriate, the amount of the costs incurred by the contractor in providing such gratuity. If the Secretary delegates his authority to a board, one of the members thereof shall be a person trained in the law, and the Secretary shall designate one member to be the presiding officer of the board.

D–4. Notice and Contents

Whenever information coming to the attention of the Department indicates that the procedures provided herein may be properly invoked, the Department may cause a written notice to be served upon the contractor in the manner hereinafter provided. The notice shall be signed by the Secretary of his designee and dated and shall include the following items:

(i) A statement of the time, place, and purpose of the hearing, and the authority and jurisdiction under which it will be held. The statement as to purpose need only identify the contract clause, the contract or contracts involved and the ultimate facts to be determined. The time of the hearing shall not be less than 10 days after service of the notice.

(ii) Brief allegations setting forth the circumstances surrounding the offering or giving of the gratuity, including a description of the alleged gratuity itself and its estimated cost to the contractor; an identification of the offeree or donee and of the offeror or donor and the latter's relationship to the contractor;

and the approximate date and place of the alleged offer or gift. Such allegations need be only sufficient to apprise the contractor reasonably of the issues involved in the hearings.

(iii) A request that the contractor answer in writing the allegations of the notice, including in his answer such facts or arguments as he may wish, and that he attend the hearing to adduce such evidence with respect to the alleged offer or gift as he may desire.

A suggested form of notice is set out as an appendix to these rules.

D–5. Service of Notice

Service shall be made by mailing or delivering a copy of the notice to the contractor. Delivery of a copy means handing it to the party to be served, or, if the party is a corporation, partnership, or unincorporated association, handing it to an officer, partner, managing or general agent, or any other agent authorized by appointment or by law to receive service of process, or by leaving the copy at the contractor's office with the person in charge thereof. Service by mail shall be made only by certified mail and service shall be complete upon mailing. The manner of service shall be evidenced by the signed endorsement of the person making the service upon a copy of the notice to be included in the record of the proceeding. Service of notice may be accepted or waived by the contractor by written endorsement on a copy of the notice.

D–6. Continuances and Delays

The authority to grant continuances or to adjourn the hearing shall rest with the person presiding at the hearing. Continuances will only be allowed for the most compelling reasons.

D–7. Parties

The parties to the hearing will be the contractor concerned and the Government. No intervention by other persons shall be permitted.

D–8. Representation and Hearing Assistants

The parties may be represented at the hearing and proceedings incident thereto by legal counsel. Upon the appearance of record of legal counsel of the contractor in the proceedings, service of papers as may thereafter be required may be made upon such legal counsel. The Department will make available such technical assistants, including a reporter, secretary or notary, as may be required.

D–9. Transcript

Testimony and arguments shall be reported verbatim. The reporter or secretary shall make available to the contractor and to the Government transcripts of the proceedings, including all testimony and copies of all documentary exhibits upon the payment of the reasonable costs thereof as the Department may by order fix.

D–10. Hearings

Hearings shall be conducted by the Secretary or his designee. Hearings will be as informal as may be reasonably appropriate under all the circumstances. Evidence and testimony, although not ordinarily admissible under legal rules of evidence, may be received subject to the discretion of the person presiding at the hearing. Immaterial, irrevelant, or unduly repetitious evidence shall be excluded. The parties may stipulate as to any facts or testimony. The testimony of witnesses shall be under oath and witnesses shall be subject to cross-examination. The hearing officer shall make such rulings with respect to the conduct of hearings as circumstances may require to ensure the orderly and expeditious presentation of evidence in a manner fair to the parties and consistent with these Rules and requirements of due process of law.

D–11. Depositions

Following service of the notice of hearing, a deposition may be taken as herein provided, and placed in evidence whenever the ends of justice will be served thereby.

(a) *Notice to Take.* When either party desires to take a deposition, unless the parties stipulate as to the time when and place where, the deposition is to be taken, the name of the officer before whom it is to be taken, and the names and addresses of the witnesses, the moving party shall give to the opposite party at least ten days' notice of the time when and the place where such deposition will be taken, the name and address and official title of the officer before whom it is proposed to take the deposition, and the names of the witnesses. A deposition may be taken either upon written interrogatories or upon oral examination, as may be specified in the notice. If the deposition is to be taken upon written interrogatories, copies thereof must accompany the notice to take depositions; if the opposite party desires to submit cross-interrogatories, written cross interrogatories should be served upon the party giving the notice within 5 days from the receipt of the notice to take the deposition. Notices may be served upon the contractor as provided by Rule 4 or upon his legal counsel of record. Service upon the Government may be made upon the person signing the notice of hearing or the Government representative of record. If service is made by mail, the mail shall be registered and service will be complete upon mailing.

(b) *Taking Depositions.* Depositions may be taken before and authenticated by any officer, military or civil, authorized by the laws of the United States or by the laws of the place where the deposition is taken, to administer oaths. Witnesses shall be under oath and shall be subject to cross-examination as at the hearing. Objections will be reserved for determination at the hearing; *provided,* however, objections as to the form of questions shall be made and noted in the deposition. Each deposition shall show the caption of the proceeding, the place and date of taking, the names of the witnesses, and the party by whom called. The officer taking a deposition shall enclose the original deposition and exhibits, in a sealed packet, with postage or other transportation prepaid, and forward the same to the Secretary or his designee.

(c) *Use of Deposition.* Testimony taken by deposition will not be considered until offered in whole or in part and received in evidence. A deposition taken by one party may be offered by the opposite party.

D–12. Submissions Without Appearance: Absence of Parties

If the contractor fails or refuses to appear or to make a written submission without appearing at the hearing, the hearing shall proceed upon such evidence as the Government may offer. The unexcused absence of any party shall not be occasion for delay of the hearing. Nothwithstanding the nonappearance of the contractor at the hearing, proposed findings, conclusions, and argument may be submitted in writing on the contractor's behalf as provided in Rule 13.

D–13. Argument and Request for Findings

Within the discretion of the person presiding at the hearing, limited oral argument may be presented by the parties upon the completion of the hearing. Within ten days after the hearing is completed, both parties may file in writing with the person or board conducting the hearing proposed findings and conclusions with reasons and argument in support thereof. Copies will be provided to the opposite party.

D–14. Findings and Decision

As soon as practicable after completion of the hearing and the timely submission of proposed findings and conclusions, the person or board that conducted the hearing shall make written findings and conculsions with respect to all material issues; reasons for the findings will be included at such length as may be appropriate. The findings where adverse to the contractor will include, in addition to other appropriate items, the following: (i) A description of the gratuity that was offered or given; (ii) a statement of the costs incurred by the contractor in providing the gratuity; (iii) the name and relationship to the contractor of the person by whom the gratuity was offered or given on the contractor's behalf; (iv) the name and position of the officer or employee of the Government to whom the gratuity was offered or given; (v) a description of the contract which the Contractor sought to secure by the offering or giving of the gratuity, or a statement as to the nature of the favorable treatment so sought with respect to the awarding or amending, or the making of any determinations with respect to the performing of a contract. When the findings are made by a designee they shall be forwarded to the Secretary with recommendations as to whether the right of the contractor to proceed under any contract mentioned in the notice of hearing shall be terminated, and as to the exemplary damages to be imposed against the contractor, which shall be in an amount which shall not be less than three nor more than ten times the costs incurred in providing the gratuity.

Approved this 5th day of July 1952.

(Signed) Earl D. Johnson,
Assistant Secretary of the Army.
(Signed) H.R. Askins,
Assistant Secretary of the Navy.
(Signed) Roswell L. Gilpatric,
Under Secretary of the Air Force.

Appendix to Rules

Form of Notice

BEFORE THE _____
OF THE _____

In the Matter of the XYZ Corporation.

Contract _____: Proceedings
Pursuant to Clause _____ of
Contract No. _____
File No. _____
To: XYZ Corporation,
Rockefeller Plaza, New York City, New York

1. You are hereby notified that at _____ M. on _____, 1852, at room _____ of the _____ Building, _____, a hearing will be held before _____ to determine whether or not under the provisions of clause _____ of Government contract _____ a gratuity has been offered or given on behalf of the XYZ Corporation to an officer or employee of the Government of the United States with a view toward securing (a contract) (favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of a contract). If it is found that a gratuity was so offered or given, your right to proceed under the contract may be terminated, and a penalty imposed in accordance with the contract clause mentioned above. In the event of such termination the Government will be entitled to pursue the remedies available for breach of contract.

2. The hearing at the time and place aforesaid will be held under the authority of (cite applicable Public Law and clause of contract(s)). Enclosed is a copy of the Rules promulgated by the Secretary of the _____ pursuant to which the hearing will be conducted. Papers pertaining to the proceedings may be captioned as above.

3. The contract(s) involved in the hearing, and which is (are) subject to termination if a gratuity is found to have been given or offered to secure favorable action as aforesaid, is (are) identified as follows:

Contract number _____ dated _____ under the cognizance of _____ and executed by _____ on behalf of the Government as the Contracting Officer.

4. The gratuity offered or given and the circumstances relating thereto are alleged to be as follows: (Include in a concise statement the nature of the alleged gratuity; a fair estimate of the costs incurred by the contractor in providing the gratuity; the identity of the offeree or donee and his position with the Government; the identity of the offerer or donor and his relationship to the contractor; and the approximate date, time, and place of the alleged offer or gift. Also allege, as appropriate, that the gratuity was (offered) (given) with a view toward securing a Government contract or favorable treatment with respect to the awarding or amending, or the making of a determination with respect to the performing of a Government contract. Identify or describe the contracts involved). On proof of the facts alleged as aforesaid, the Government, in accordance with the applicable statutory and contract provisions mentioned in paragraph 2, may terminate your right to proceed under the contract identified in paragraph 3 and to pursue the remedies available for breach of contract; also to impose exemplary damages as provided in such law and contract provision.

5. If you desire to be heard in this matter, you are requested to file with the Department on or before the time of the hearing a written answer and to appear at the hearing.

Dated _____
By direction of the _____
of the _____

Note.— Portions set apart by parentheses should be stricken or modified as appropriate to conform to the facts.

Appendices E–G—[Reserved]

Appendix H—Military Standard Requisitioning and Issue Procedure

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H–000 Scope of MILSTRIP.

Military Standard Requisitioning and Issue Procedure (MILSTRIP), as the name implies, is a requisitioning and issue procedure for use by the Military Departments and contractors authorized by the terms of a contract, to requisition or move Government materiel to supply control cognizance. MILSTRIP is a system with uniform codes and punch-card formats designed to provide standard procedures of requisitioning, receiving, and returning Government materiel and to permit the maximum utilization of automatic data processing equipment. MILSTRIP applies when DoD contractors requisition on GSA supply sources. (See DoD Manual 4140.17–M, Military Standards Requisitioning and Issue Procedures (MILSTRIP).)

Part 1—Introduction

H–100 Scope.

This Appendix H provides policies, procedures, forms and instructions for use by contractors in the requisitioning of Government-furnished materiel (GFM) and the return of such materiel when directed by the cognizant Military Department in accordance with the requirements of the MILSTRIP system. (See DoD Manual 4140.17–M, Military Standards Requisitioning and Issue Procedures (MILSTRIP).)

H–101 Applicability.

(a) These procedures, forms, and instructions for the requisitioning and returning of Government-furnished materiel are prescribed for use by contractors when required by the terms of a contract pursuant to the appropriate Government Property clause as referenced in FAR Part 45 and Part 45 of the DoD FAR Supplement. For the purpose of MILSTRIP, the Defense Personnel Support Center may furnish the following items of special tooling under these procedures: shoe lasts, shoe patterns, hubs, dies, shaping blocks, printing rollers, printing roller containers, and inspection gauges.

(b) These procedures are not applicable to in-house control of Government-furnished materiel. Neither are MILSTRIP procedures applicable to the movement of Government-furnished materiel within or between contractors.

(c) These procedures do not prescribe the frequency of submitting requisitions, nor do they prescribe the source of supply or specify the materiel to be furnished by the Government, which shall be determined by the Military Department.

(d) Any requisition placed on a distribution system is a requirement for a serviceable item, unless otherwise agreed to between the Military Department and the contractor. However, this does not change the contractual obligations of the parties, and when the provisions of a contract are in conflict with MILSTRIP, the specific terms of the contract shall govern. However, the codes, forms and formats contained in MILSTRIP will be used as prescribed.

H–102 Definitions.

As used herein, the following terms shall have the meanings set forth below:

H–102.1.

"Advice Codes" means a coding structure for the purpose of transmitting instructions considered by the originator of requisitions to be essential to the desired supply action. Insertion of advice codes is at the discretion of the initial document originator. These codes are opposite to status codes in that directional flow is reversed. (See H–607.)

H–102.2.

"Document Identifier" means a code that identifies the basic type of administrative action, the specific sub-type of supply transaction, and related modifying instructions for each type of supply document used throughout the requisitioning, processing, and issuing functions or other types of supply transactions within and between military supply and distribution systems. (See H–602.)

H–102.3.

"Government-Furnished Materiel" means property in the possession of, or acquired directly by, the Government and subsequently delivered or otherwise made available to the contractor. All items necessary for the equipment, maintenance, operation, and support of military activities without distinction as to their application for administrative or combat purposes; excludes ships or naval aircraft.

H–102.4.

"Passing Actions (Generic Term)" is a general term identifying all types of supply actions associated with materiel demands within military supply distribution systems. The term is applicable when forwarding materiel demands from one military supply source to another military supply source. Specific types of passing actions are passing orders and referral orders.

H–102.5.

"Passing Order" means an order used to pass an erroneously routed requisition to the appropriate military depot or distribution point and to pass a requisition from one military distribution system to another.

H–102.6.

"Referral Order" means an order used between depots, inventory managers, or other managers in an established supply distribution system for the purpose of passing correctly routed requisitions for continued supply action when the initial activity cannot fill the demand.

H–102.7.

"Routing Identifier" means a code that identifies a specific supply and distribution organization as to its Military Department or governmental ownership and its geographical location. Routing identifier codes required by contractors will be provided in the contract or otherwise furnished by the procuring Military Department or Government Agency.

H–102.8.

"Status Codes" means a coding structure for the purpose of transmitting status information from the inventory manager and/or supply source to the originator of a requisition or the consignee. These codes are the opposite of advice codes in that directional flow is reversed. (See H–607.)

Part 2—General Policies

H–200 Scope of part.

This part: (a) Sets forth procedures and instructions for amending and deviating from this Manual, (b) precribes the forms for use by contractors, and (c) contains general policies on the use by contractors of the MILSTRIP system.

H–201 System maintenance.

(a) The Defense Logistics Standard Systems Office (DLSSO) is responsible for the Military Standard Requisitioning and Issue Procedure as prescribed by this Manual.

(b) Recommendations, revisions, or suggested changes originated by contractors shall be forwarded to the cognizant contract administration office.

(c) Recommendations, revisions, or suggested changes received and concurred in or originated by the Military Departments shall be forwarded to Defense Logistics Standard Systems Office, ATTN: DLSS–OBM, Cameron Station, Alexandria, VA 22304–6100.

(d) Changes to this Manual shall be coordinated by the Defense Logistics Standard Systems Office (DLSSO). The provisions of the Federal Acquisition Regulation (FAR) and the DoD FAR Supplement (DFARS) pertaining to deviations and to amendments do not apply to this Manual. Requests by the Military Departments for deviations or waivers from this Manual may be approved by the Defense Logistics Standard Systems Office but only the Assistant Secretary of Defense (Acquisition and Logistics) may disapprove such requests.

H–202 Forms and use.

H–202.1 DoD Single Line Item Requisition System Document (Manual) (DD Form 1348).

DD Form 1348 is a four or six part form consisting of either two electrical accounting machine (EAM) cards—manila or paper (arranged as the first copy and the fourth or sixth copy), with two or four paper forms, carbon interleaved. The use of EAM cards or paper as the first and fourth or sixth copies is optional. However, when paper is used, the first copy shall be bond paper or equivalent, and the fourth or sixth copy may be bond paper or tissue. The form size shall remain unchanged when either cards or paper is used. All copies are identical in format except that the original copy does not provide for unit and total price data. In addition, the original card, when used, is upper left corner cut. DD Form 1348 is illustrated below. DD Form 1348 is used as a manual—

(a) Requisition,
(b) Followup,
(c) Cancellation,
(d) Requisition modifier.

H–202.2 DoD single line item requisition system document (mechanical) (DD Form 1348m).

DD Form 1348m is a standard electrical accounting machine (EAM) card—"Natural", with upper left corner cut. DD Form 1348m is illustrated below. DD Form 1348m is used as a—

(a) Requisition,
(b) Followup,
(c) Cancellation,
(d) Supply status card,
(e) Reply to followup,
(f) Shipment status card,
(g) Passing order,
(h) Referral order,
(i) Reply to cancellation request,
(j) Requisition modifier

H–202.3 DoD single line item release/receipt document (DD Form 1348–1).

DD Form 1348–1 is a six-part paper carbon interleaved continuous form of pin-feed, tear-away configuration, measuring 8 inches wide (usable) and 5½ inches in length (top to bottom). The form is designed to accept 10 printed characters to the inch. This form may be reproduced when additional copies are required. DD Form 1348–1 is illustrated below. DD Form 1348–1 is used as a—

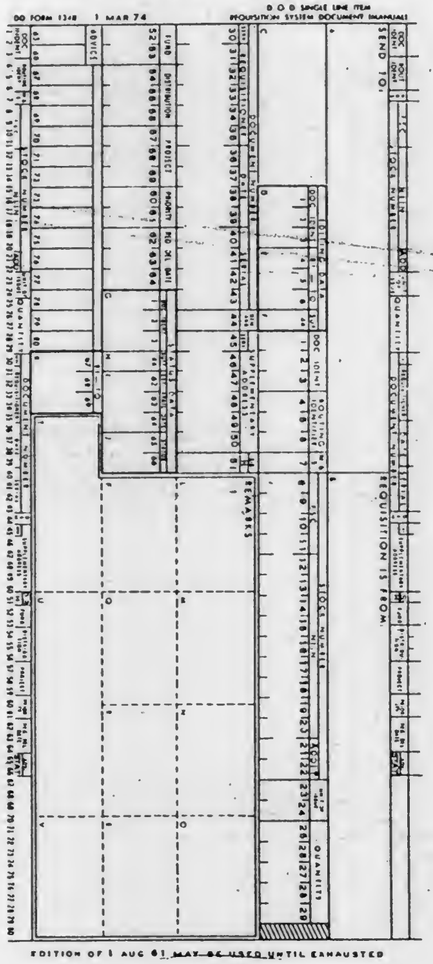
(a) Release document from distribution point to consignee resulting from a requisition,
(b) Receipt document by the consignee,
(c) Shipping document for GFM turn-in,
(d) Release document for retrograde materiel.

BILLING CODE 3810-01-M

MILITARY STANDARD REQUISITIONING AND ISSUE PROCEDURE

DoD Single Line Item Requisitioning System Document (Manual)
(DD Form 1348)

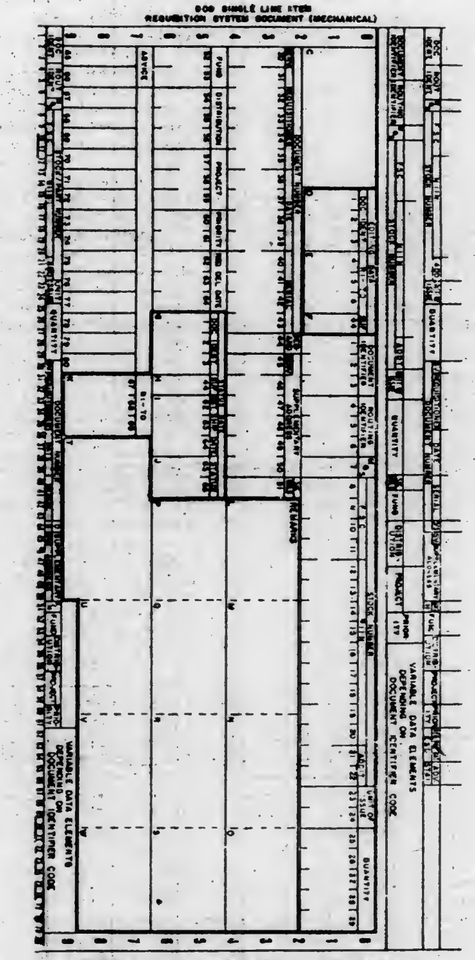
USE TYPEWRITER OR PRESS BALL POINT HARD PEN
TO ASSURE LEGIBILITY ON ALL COPIES



EDITION OF 1 AUG 61 MAY BE USED UNTIL EXHAUSTED

MILITARY STANDARD REQUISITIONING AND ISSUE PROCEDURE

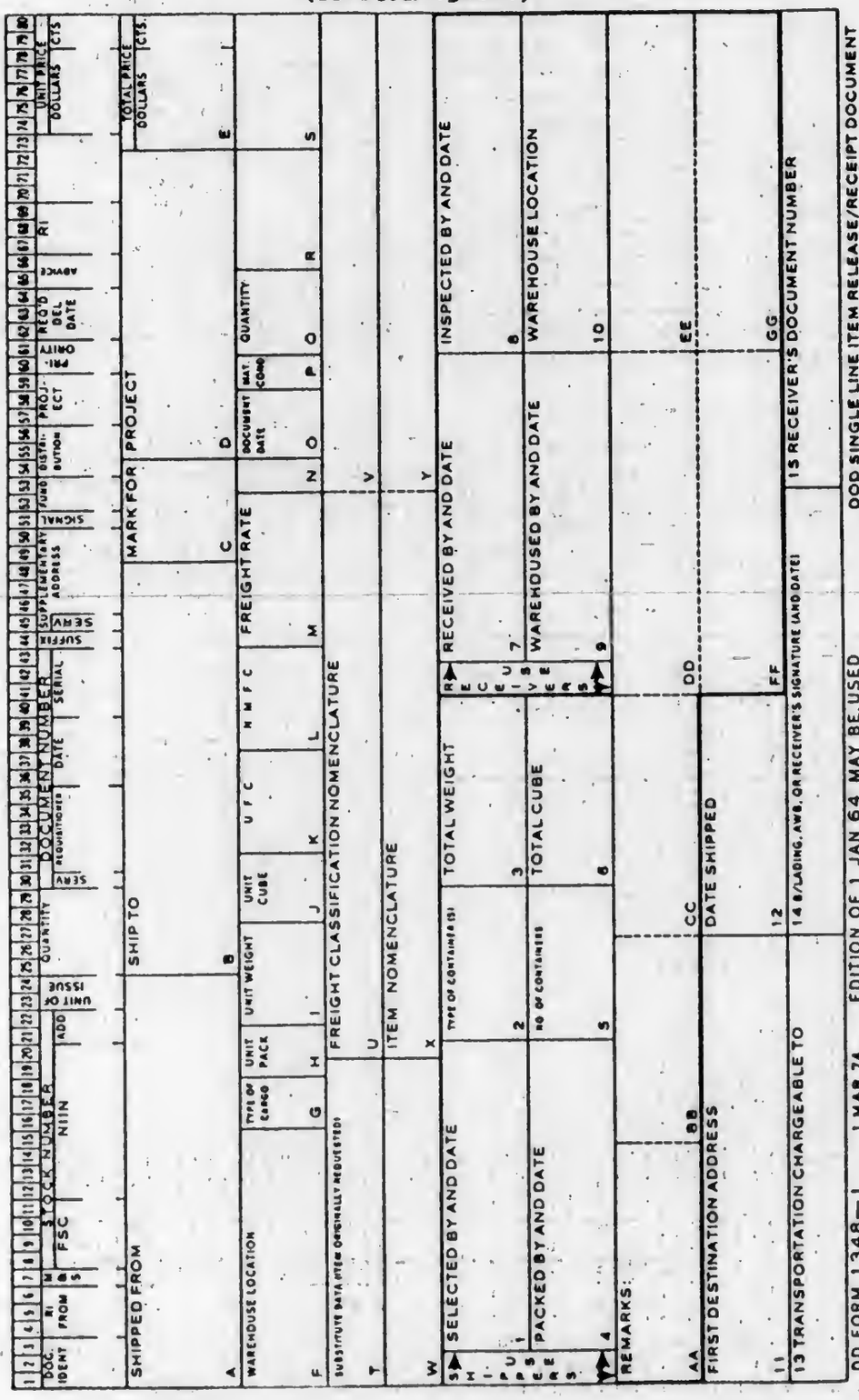
DOD Single Line Item Requisition System Document (Mechanical) (DD Form 1348m)



DD FORM 1348m 1 MAR 74 EDITION OF 1 APR 71 MAY BE USED

MILITARY STANDARD REQUISITIONING AND ISSUE PROCEDURE

DoD Single Line Item Release/Receipt Document
(DD Form 1348-1)



H–202.4 Messages.

Messages may be used for transmitting requisitions, followups, and cancellations. Set forth below is a sample of a message containing multi-requisitions.

Sample Message Format

(Insert Addressee)
(Insert Message Number)
MILSTRIP Requisitions:
1. AOA/FMZ/6/5950001234567/EA/00040/EY9185/7049/6001/N/*BLNK/D/*BLNK*BLNK/*BLNK/07/*BLNK/2B.
2. AOA/FMZ/F/5950002345678/EA/00021/EY9185/7049/6002/0/*BLNK/D/*BLNK/*BLNK/*BLNK/07/*BLNK/*BLNK.
3. AOE/FMZ/8/12343456789/EA/00015/EY9185/7049/6003/N/*BLNK/D/*BLNK/*BLNK/*BLNK/07/*BLNK/2B.
Remarks: Mfg Part Number referenced on Page 121 of Technical Instruction No. 45.
4. AOA/FMZ/W/5950005671234/EA/00024/7049/6004/N/*BLNK/D/*BLNK/*BLNK/*BLNK/07/*BLNK/2B.

For explanatory purposes, the first requisition (Item 1) is segmented and explained.

First Line: AOA/(Document Identifier), FMZ/(Routing Identifier), 6/(Media and Status), 5950001234567/(Stock or Part Number), EA/(Unit of Issue), 00040/(Quantity), EY9185/(Requisitioner), 7049/(Julian Date), 6001/(Serial Number).

Second Line: N/(Demand Code), *BLNK/(Supplementary Address), D/(Signal), *BLNK/(Fund Code), *BLNK/(Distribution Code), *BLNK/(Project), 07/(Priority), *BLNK/(Required Delivery Date), 2B (Advice Code).

* When an element of data is not applicable, the field shall be recognized and entered as "BLNK".

H–202.5 Reserved.

H–202.6 Multiuse standard requisitioning/issue system document (Standard Form 344).

Standard Form 344 is a multi-line item paper document designed to accommodate a maximum of fifteen single line items on one sheet. The form may be used as a requisition by Defense contractors for requisitioning Government-furnished materiel when such use is approved by the Military Service.

(a) The Standard Form 344 is a multiple part, paper document, measuring 10½ inches by 8 inches. The form may be prepared manually by ballpoint pen, pencil or typewriter. The form consists of two parts which reflect document identification data and requisition data. The document identification data serve to identify a single document and are applicable to each line item being requisitioned. The requisition data are the data applicable to the specific item being requisitioned. No deviations or modifications are authorized in the size, format, or use of the SF 344 other than as prescribed in this Manual.

(b) The block alignment of SF 344 is compatible with the numeric block alignments of DD Forms 1348 and 1348m.

(c) The data entries of SF 344 are the same as prescribed for requisitions submitted on DD Forms 1348 and 1348m. The signature block is not required to be completed on contractor requisitions submitted on Department of Defense supply sources. Block 23 (Remarks) is provided for entry of data necessary to assist in supply decisions and which cannot be accommodated by the prescribed MILSTRIP codes.

(d) Each item contained on SF 344 will be processed separately as a single line without regard to other items contained on the document. In this respect, subsequent transactions, such as status, cancellations, followups, etc., will be accomplished on a single line item basis by use of the DD Form 1348 or 1348m or message.

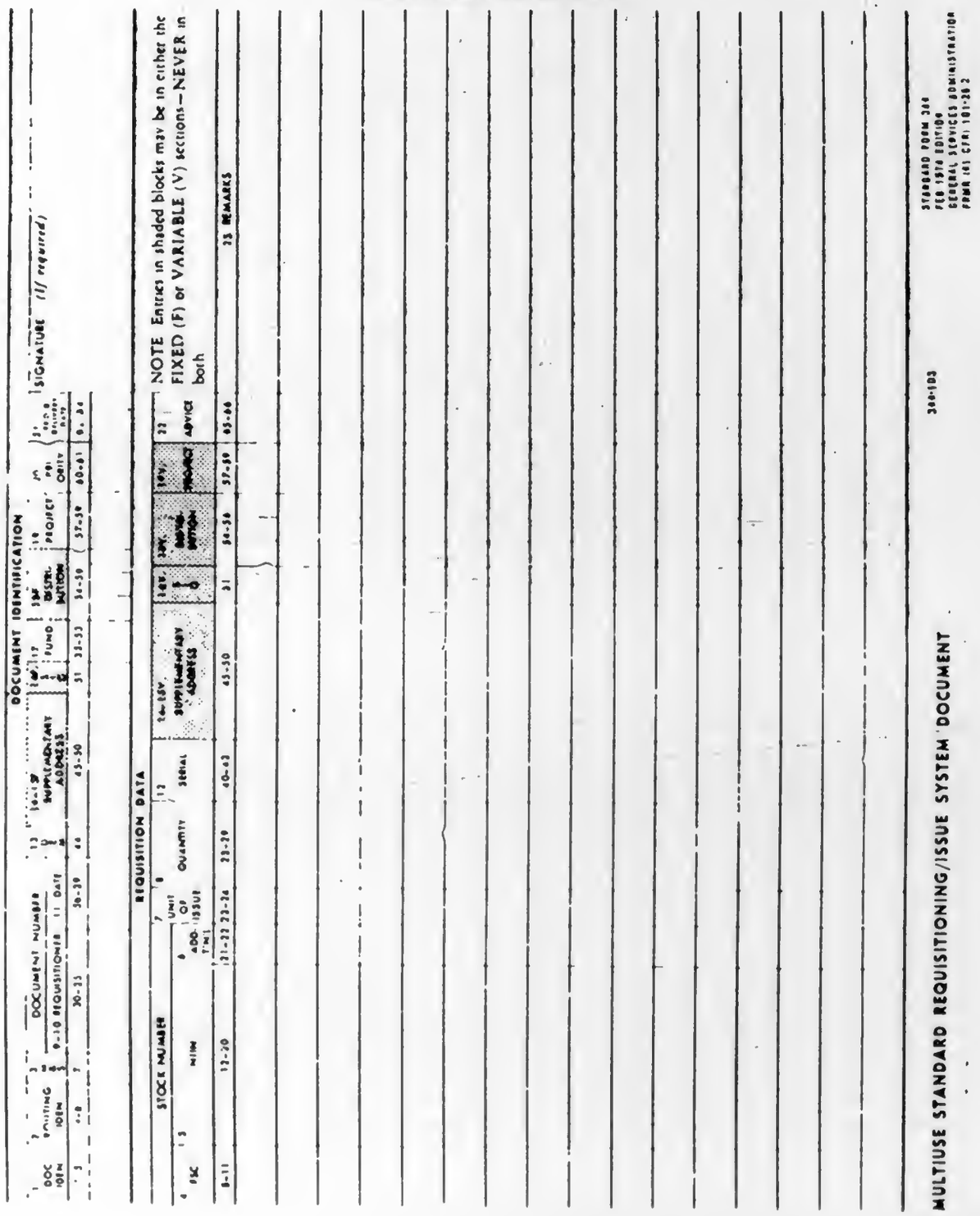
(e) When the form is used to requisition items not identified by stock or part numbers, the item descriptions may be written across an entire line or lines under requisition data, without regard to columnar headings. Such data as the quantity, Serial No., supplementary address, signal and advice codes will be entered directly below the item descriptions in the appropriate blocks. When more than one delivery date is applicable a single item, block 21 will be left blank and delivery dates reflected on the line(s) directly beneath the desired items.

(f) The form may be completed in as many copies as required. However, only the original copy will be submitted to supply sources as a requisition.

BILLING CODE 3810-01-M

MILITARY STANDARD REQUISITIONING AND ISSUE PROCEDURE

Multiuse Standard Requisitioning/Issue System Document (Standard Form 344)



MULTIUSE STANDARD REQUISITIONING/ISSUE SYSTEM DOCUMENT

H–203 Priority designators on requisitions for government-furnished materiels.

When a Military Department executes a contract which provides that a contractor will requisition Government-furnished materiel, the contracting officer will advise the contractor of the Priority Designators to be shown in such contractor-prepared requisitions. The advice will take cognizance of the Force Activity Designator of the National priority, program or force/activity for which the contract is executed, and potential urgencies of need in accordance with DoD Directive 4410.6 (Uniform Materiel Movement and Issue Priority System).

H–204 Time frames.

Time frames have been established for furnishing supply status and for delivery of materiel as follows:.

(a) *Supply Status—*

Priority designator	Dispatched after receipt of requisition or followup
01 through 08	Within 2 days.
09 through 15	Within 5 days.

(b) *Delivery of Materiel CONUS (includes Canada)—*

Priority designator	From requisition date to receipt of materiel by consignee (days)
01 through 03	8
04 through 08	12
09 through 15	31

(c) *Delivery of Materiel Overseas—*

Priority designator	From requisition data to receipt of materiel by consignee		
	Area 1 (days)	Area 2 (days)	Area 3 (days)
01 through 03	12	12	13
04 through 08	16	16	17
09 through 15	69	74	84

Note.—Area 1 includes Alaska, Hawaii, South America, Caribbean and North Atlantic.

Area 2 includes Northern Europe, Mediterranean, and Africa.

Area 3 is Western Pacific.

Time standards for delivery of Materiel (CONUS and Overseas) include one day for Priority Designator 01–08 requisitions and two days for Priority Designator 09–15 requisitions when the initial supply source passes the requisition to another supply source for action. Passing actions are identified by Supply Status documents containing Status Code BM in columns 65–66.

H–205 Status data.

H–205.1 General.

The MILSTRIP system requires that processing elements of the military supply activity show action taken or being taken on certain requisitions. The term for this information is known as "status data" and the specific types of such data are categorized as exception status, 100% supply status, and shipment status.

H–205.2 Exception status.

Exception status is any of the following supply source action decisions, alone or in combination:

(a) Back order,
(b) Procurement for direct delivery,
(c) Partial issue or partial other action,
(d) Substitution,
(e) Change of unit of issue,
(f) Requisition rejected,
(g) Passing order,
(h) Referral order,
(i) Cancellation acknowledgement,
(j) Any circumstance which predicts that issue may not be made within the number of days established for the priority assigned.

H–205.3 100% supply status.

Notice of all actions taken or being taken by supply sources on a requisition, redistribution and referral order. This includes all positive supply action decisions, all applicable exception non-positive supply action decisions, and combinations thereof.

H–205.4 Rejection status.

Used by supply sources to advise all status eligible recipients, i.e., cc 30–35, 45–50 and 54, of rejected requisitions, redistribution orders, passing orders and referral orders regardless of the M&S Code in cc 7.

H–205.5 Direct delivery supply status.

DI Codes AB1, 2 and 3 will be used only for intra-Service/Agency transactions, on an optional basis, and serve as notice of items to be supplied by direct delivery from procurement. This status also provides a cross-reference between the requisition document number and the Procurement Instrument Identification Number.

H–205.6 Shipment status.

Informs recipients of estimated shipping dates (i.e., awaiting release for transportation), or actual shipping dates (i.e., released to a carrier). It also provides for interface with transportation and for shipment tracing by consignees, as provided in MILSTAMP.

H–205.7 Acknowledgement status.

Either supply or shipment status and informs recipients of the results of supply source processing of the following types of documents received:

(a) Materiel Obligation Validation Response (DI Code AP__).
(b) Cancellation (DI Codes AC__ and/or AK__).
(c) Document Modifier (DI Code AM__).
(d) Follow-Up Request for Improved ESD (DI Code AFC).
(e) Follow-up Request for Status (DI Codes AF1, 2, 3, AF6, and AT__).

H–206 Followups.

The MILSTRIP system provides for followups. A followup may be submitted by the requisitioner or supplementary addressee or by the activity designated in card column 54 of the original requisition provided that status data is not on hand and the time frame for receiving such data has elapsed, or the time frame for the receipt of materiel has elapsed.

H–207 Media and transmission of MILSTRIP documents.

The MILSTRIP forms and procedures are designed for both manual and mechanized application, transmission, and processing of requisitions and followon transactions. Methods of submission and transmission, in order of preference, are as follows:

(a) Data pattern AUTODIN;
(b) Air or regular mail, with the container conspicuously marked "MILSTRIP";
(c) Courier;
(d) Administrative electrical message; and
(e) Telephone or radio.

H–208 Required delivery date.

(a) Normally, a required delivery date will not be placed on a requisition. However, if the prescribed time frame for the priority assigned does not meet the "actual need date", a required delivery date may be placed on the requisition indicating that the materiel must be delivered by that specific date to preclude work stoppage.

(b) On Defense Logistics Agency bailment type contracts, the required delivery date indicates the date on which the Government-furnished materiel must be ready for pickup at the Military Department distribution point by a carrier (contractor's truck or commercial carrier designated by the contractor).

H–209 Codes.

H–209.1 General.

Part 6 provides the codes and other data normally required by contractors on a repetitive basis to:

(a) Requisition and turn-in Government-furnished materiel,
(b) Prepare cancellation of requisitions,
(c) Initiate followups on requisitions, and
(d) Interpret status.

Infrequently used codes and codes of limited application will, if required, be provided in the contract or otherwise furnished to the contractor by the procuring Military Department or Government Agency.

H–209.2 Routing identifier.

The name, address, and routing identifier code of the supply and distribution organization responsible for MILSTRIP supply support will be provided in the contract or otherwise furnished to the contractor by the procuring Military Department or Government Agency. When more than one supply and distribution organization is responsible for MILSTRIP supply support, the name, address routing identifier code and logistics responsibility assigned each supply and distribution organization will be provided in the contract or otherwise furnished to the contractor by the procuring Military Department or Government Agency.

H–210 Address.

Contractors shall use their activity address codes, as assigned by the Military Departments, on MILSTRIP documents. These identifying codes are published for the

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Departments in the DoD Activity Address Directory (DoDAAD), DoD 4000.25–D.

Part 3—Requisitions, Followups, Cancellations and Requisition Modifiers

H–300 Scope of part.

This part sets forth uniform instructions for the preparation, submission, and distribution of MILSTRIP documents for use as requisitions, followups, cancellations and requisition modifiers.

H–301 General.

Depending on the mechanized capabilities of the contractor, the means of transmitting the request and the urgency of need, the requisition may be prepared as a manual requisition on a DD Form 1348, or Standard Form 344, a prepunched requisition on a DD Form 1348m, or as a message-type or telephonic request. Requisitions may be prepared by either the contractor or the Procuring Activity, as specified in the contract.

H–302 Preparation and utilization of the DoD single line item requisition system document (manual) (DD Form 1348). (See H–202.1.)

H–302.1 Uses.

Contractors not having mechanized capabilities shall utilize DD Form 1348 for the following purposes:
(a) Manual requisitions,
(b) Manual followups,
(c) Manual cancellations, and
(d) Manual requisition modifiers.

H–302.2 Use of DD Form 1348 as a requisition.

When used as a requisition, DD Form 1348 shall be prepared as follows:

Item and explanation and instructions

Block A Send to: Enter "in the clear" the source of supply addressee as indicated by the Military Department.
Block B Requisition is from: Enter "in the clear" contractor's name and activity address code furnished by the Military Department, and address of the contractor.
Card Columns 1–3 Document Identifier: Enter one of the following 3–digit document identifier codes:

For domestic shipment	For overseas shipment
AOA w/NSN/NATO Stock No	A01
AOB w/Part No	A02
AOD w/Other	A04
AOE w/Exception data (See H–602)	A05

Item and Explanation and Instructions

Card Columns 4–6—Routing Identifier: For maintenance contracts, enter the three-digit routing identifier applicable to the Management Control Activity (MCA). For other than maintenance contracts, enter the 3-digit routing identifier indicating the source of supply to which the requisition is to be submitted.
Card Column 7—Media and Status Code: Enter one of the following codes indicating the type of status required, the activity to receive status, and the communication method by which status is to be transmitted:
a. Numeric Series:
0 No status to requisitioner or supplementary addressee.
2 Exception status to requisitioner by transceiver.
3 Exception status to requisitioner by mail.
4 Exception status to supplementary addressee by transceiver.
5 Exception status to supplementary addressee by mail.
6 Exception status to requisitioner by message.
7 Exception status to supplementary addressee by message.
b. Alpha Series:
A 100% supply and shipment status from DAAS to requisitioner on a Clear-Text Supply/Shipment Information Mailer.
B 100% supply status to requisitioner by transceiver.
C 100% supply status to requisitioner by mail.
D 100% supply status to supplementary addressee by transceiver.
E 100% supply status to supplementary addressee by mail.
F 100% supply status to requisitioner by message.
G 100% supply status to supplementary addressee by message.
H 100% supply and shipment status from DAAS to supplementary addressee on a Clear-Text Supply/Shipment Status Information Mailer.
J Exception supply and shipment status from DAAS to requisitioner on a Clear-Text Supply/Shipment Status Information Mailer.
K Exception status plus shipment status to requisitioner by transceiver.
L Exception status plus shipment status to requisitioner by mail.
M Exception status plus shipment status to supplementary addressee by transceiver.
N Exception status plus shipment status to supplementary addressee by mail.
P Exception status plus shipment status to supplementary addressee by message.
Q Exception supply and shipment status from DAAS to supplementary address on a Clear-Text Supply/Shipment Status Information Mailer.
R Exception status plus shipment status to requisitioner by message.
S 100% supply status plus shipment status to requisitioner by transceiver.
T 100% supply status plus shipment status to requisitioner by mail.
U 100% supply status plus shipment status to supplementary addressee by transceiver.
V 100% supply status plus shipment status to supplementary addressee by mail.
W 100% supply status plus shipment status to requisitioner by message.
X 100% supply status plus shipment status to supplementary addressee by message.
Card Columns 8–22, Stock or part number: In card columns 8–20, enter the National Stock Number, NATO Stock Number, or other number identifying the item. Card columns 21–22 shall be utilized for additional identification data when required by the Military Department. (See H–603.)
Card Columns 23–24, Unit of Issue: Enter the two-letter abbreviation as shown in the applicable catalog or stock list; e.g., EA, LB, FT.
Card Columns 25–29, Quantity: Enter the quantity being requisitioned. If the quantity exceeds 99,999, prepare additional requisitions as required. Zeros shall precede significant numerics.
Card Columns 30–43, Document number, Card Column 30 Service: Enter the 14-digit number constructed as set forth below. (See also H–604.) Enter the alphabetic code (For Contractor Use Only) used to identify the military organization. (See H–601.)
Card Columns 31–35, Requisitioner Address: Enter the applicable activity address code of the requisitioner as listed in the DoD Activity Address Directory.
Card Columns 36–39, Date: Enter the Julian day calendar date (see H–609); i.e., in the first column indicate the last numeric digit of the calendar year (for example, "3" for 1983, "4" for 1984) and in the last three columns indicate the numeric consecutive day of the calendar year (for example, "004" for 4 January, "157" for 6 June).
Card Columns 40–43, Serial number: For maintenance contracts, enter an "M" in Card Column 40 and the serial number in Card Columns 41–43. For other than maintenance contracts, enter the serial number of the requisition. This number will be assigned by the requisitioner but shall not be duplicated on any one day. (See H–604.3(d) for certain limitations in the assignment of the serial number.) **Note:** May be used to code contract numbers, if desired.
Card Column 44, Demand: Enter the appropriate demand code as follows: (a) An "R" shall be used if it is a recurring demand (a demand to replenish materiel utilized on a day-to-day basis). (b) An "N" shall be used if it is a nonrecurring demand (a demand made on a one-time basis). (c) An "O" shall be used if a requisitioning activity is submitting requisitions for substitute items which are acceptable in lieu of previously requisitioned, but delayed, items.
Card Columns 45–50, Supplementary address: When materiel is to be "shipped to" or "billed to" an activity other than the requisitioner, the activity address code identifying the "ship to" or "bill to" activity shall be entered. (See H–606.)
Card Column 51 Signal: Enter one of the following codes which indicate the "ship to" or "bill to" activity when applicable:

Ship to requisitioner and Bill to

A Card Columns 30–35 (Requisitioner)
B Card Columns 45–50 (Supplementary Address)
C Bill to activity designated by card column 52. However, if the third digit of the document identifier is "5" or "E", the Remarks block may indicate other billing information. (See H–606.)

D No billing required (free issue). Not to be used on requisitions submitted to General Services Administration.

Ship to supplementary address and Bill to

J Card Columns 30–35 (Requisitioner)
K Card Columns 45–50 (Supplementary Address)
L Bill to activity designated by card column 52. However, if the third digit of the document identifier is "5" or "E", the Remarks block may indicate other billing information. (See H–606.)
M No billing required (free issue). Not to be used on requisitions submitted to General Services Administration.
See H–605.

Note.—Codes A, B, C, J, K, and L will be provided by the contract or otherwise furnished by the Military Department to the contractor.

Item and Explanation and Instructions

Card Columns 52–53, Fund Code: Enter fund code furnished by the Military Department, if applicable. (See H–606.)
Card Columns 54–56, Distribution: Leave blank, unless directed otherwise by the Military Department.
Card Columns 57–59, Project: Leave blank, unless directed otherwise by the Military Department.
Card Columns 60–61, Priority: Enter appropriate priority designator in accordance with H–203.
Card Columns 62–64, Required Delivery Date: Will normally be left blank. The date will be entered only when conditions meet the requirements set forth in H–208.
Card Columns 65–66, Advice: Enter the applicable advice code to convey instructions to the supply source, if necessary. When code is not required, leave blank. (See H–607.)
Card Columns 67–71: Leave blank.
Card Column 72: Enter the appropriate management code as prescribed by the contracting Military Department or Agency; otherwise, leave blank. (See H–615.)
Card Columns 73–80, Blocks L thru V, Remarks: For maintenance contracts, enter last eight positions of the Procurement Instrument Identification Number (PIIN). Leave blank for other contracts. In the Remarks block, enter any additional information not provided for in the requisition format. When data are entered in the Remarks field, the third digit of the document identifier code entered in block 1 must be an "E" or "5", as appropriate. When required by the Military Department, the contract number shall be entered in the "Remarks" blocks.

H–302.3 Use of DD Form 1348 as a followup.

(a) When used as a followup and when no status has been received from the supply source, DD Form 1348 shall be prepared as follows:

Card Columns 1–3, Document Identifier: Followups will be initiated by the requisitioner or the supplementary addressee (Code AT_).
All other Card, Columns: Enter duplicate entries from the original requisition.

(b) When used as a followup and status has been received from the supply source, DD Form 1348 shall be prepared as follows:

Item and Explanation and Instructions

Block A Send to: Enter "In the clear" address of the last known source of supply as indicated in the latest status document. When this block is used, card columns 4–6 may be left blank.
Card Columns 1–3, Document Identifier: Enter the code AF1, AF2, or AT_.
Card Columns 4–6, Routing Identifier: Enter the code identifying the last known supply source indicated on the supply status card. When this entry is made, block A may be left blank.
All other Card, Columns: Duplicate the entries in the last status card received.

H–302.4 Use of DD Form 1348 as a cancellation.

(a) A cancellation, in whole or in part, shall be initiated only by the requisitioner or the supplementary addressee. When cancellation is necessary, DD Form 1348 shall be prepared as follows:

Item and Explanation and Instructions

Block A Send to: Enter "in the clear" address shown on the original requisition or the "in the clear" address of the last known source as indicated on the latest status document.
Block B Requisition is from: Card Columns 1–3, Document Identifier: Enter "in the clear" address of the activity requesting cancellation. Cancellation will be initiated by the originator (Code AC1) or the supplementary addressee (Code AC2).
Card Columns 4–6, Routing Identifier: Enter the appropriate code for the last known source of supply.
Card Column 7 Media and Status: Enter Code as shown in the original requisition.
Card Columns 8–22; Stock number: Enter stock number shown on requisition or supply status card.
Card Columns 23–24, Unit of issue: Enter the unit of issue as shown on the requisition or status card.
Card Columns 25–29, Quantity: Enter the quantity for which cancellation is requested.
Card Columns 44, Demand: Enter the suffix code as shown in the supply status card, when applicable. Otherwise, enter demand code from requisition.
Card Columns 45–61: Enter data as shown in the original requisition or supply status card.
Card Columns 62–64, Date of Preparation: Julian Date of Preparation.
All other Card, Columns: Enter identical information in other card columns as shown on original requisition or supply status card.

(b) Cancellation requests shall not be submitted for requisitioned material destined for CONUS contractor activities after receipt of shipment status information advising that shipment has occurred.

(c) Cancellation requests shall not be submitted for requisitioned materiel destined for overseas contractor activities after receipt of shipment status or lift information advising that:

(i) The materiel has been shipped by air or parcel post.
(ii) The total value of the materiel is less than $200.
(iii) The materiel was shipped more than:
(A) Ten days previously by air to an APOE, or
(B) Forty-five days previously by surface to a WPOE.

H–302.5 Use of DD Form 1348 as a requisition modifier.

(See H–307.)

H–302.6 Submission to the supply source.

Methods of submission of DD Form 1348 to the supply source are as follows:
(a) Air or regular mail, with the container conspicuously marked "MILSTRIP";
(b) Courier;
(c) Administrative electrical message; and
(d) Telephone or radio.

H–302.7 Confirmation copies.

When requisitions are relayed by telephone, radio, or electrical message, confirmation copies are not required and shall not be forwarded.

H–302.8 Distribution of DD Form 1348.

(a) When used as a requisition, copies of DD Form 1348 shall be distributed as follows:
(i) Original—to supply source, and
(ii) Remaining copies—for contractor use.
(b) When used as a followup or a cancellation, copies of DD form 1348 shall be distributed as follows:
(i) Original—to supply source, except when status has been received indicating that another activity is responsible for processing the demand (in such case, submit to activity so designated on the status card), and
(ii) Remaining copies—for contractor use.

H–303 Preparation and transmission of DoD single line item requisition system document (mechanical) (DD Form 1348m).

H–303.1 Use of DD Form 1348m as a requisition.

(a) Contractors with mechanized capabilities shall prepare a punched DoD Single Line Item Requisition System Doument (Mechanical) (DD Form 1348m) for submission to the supply source by transceiver. However, air or regular mail, courier, or electrical media may be utilized for transmission of the punched card. When a requisition is prepared by using the DD Form 1348m, duplicates may be prepared for internal use by the requisitioning activity, as required.

(b) The DD Form 1348m (see H–202.2), prepared as a requisition, shall contain the required data punched in the appropriate card columns, as follows:

Card columns	Field/legend	Explanation and instructions
1–3	Document Identifier.	Enter one of the following appropriate document identifier codes: For domestic shipment and for overseas shipment. AOA w/NSN/NATO Stock No., A01. AOB w/Part No., A02. AOD w/Other A04.

Card columns	Field/legend	Explanation and instructions
		AOE w/Exception data, A05.
4–6	Routing Identifier.	For maintenance contracts, enter the 3-digit routing identifier applicable to the Management Control Activity (MCA). For other than maintenance contracts, enter the 3-digit routing identifier indicating the source of supply to which the requisition is to be submitted.
7	Media and status.	Enter one of the followng codes indicating the type of status desired, the activity to receive status and the communication method by which status is to be transmitted: (1) Numeric Series: 0 No status to requisitioner or supplementary addressee. 2 Exception status to requisitioner by transceiver. 3 Exception status to requisitioner by mail. 4 Exception status to supplementary addressee by transceiver. 5 Exception status to supplementary addressee by mail. 6 Exception status to requisitioner by message. 7 Exception status to supplementary addressee by message. (2) Alpha Series: B 100% supply status to requisitioner by transceiver. C 100% supply status to requisitioner by mail. D 100% supply status to supplementary addressee by transceiver. E 100% supply status to supplementary addressee by mail. F 100% supply status to requisitioner by message. G. 100% supply status to supplementary addressee by message. K Exception status plus shipment status to requisitioner by transceiver. L Exception status plus shipment status to requisitioner by mail. M Exception status plus shipment status to supplementary addressee by transceiver. N Exception status plus shipment status to supplementary addressee by mail. P Exception status plus shipment status to supplementary addressee by message. R Exception status plus shipment status to requisitioner by message. S 100% supply status plus shipment status to requisitioner by transceiver. T 100% supply status plus shipment status to requisitioner by mail. U 100% supply status plus shipment status to supplementary addressee by transceiver. V 100% supply status plus shipment status to supplementary addressee by mail. W 100% supply status plus shipment status to requisitioner by message. X 100% supply status plus shipment status to supplementary addressee by message. (See H-607.)

Card columns	Field/legend	Explanation and instructions
8–22	Stock or part number.	Enter stock or part number with additional identification data, when applicable. (See H-603.)
23–24	Unit of issue	Enter the two-letter abbreviation as shown in the applicable catalog or stock list; e.g., Ea, Lb, Ft.
25–29	Quantity	Enter quantity being requisitioned. If the quantity exceeds 99,999, prepare additional requisitions as required. Zeros shall precede significant numerics.
30–43	Document number.	Enter the 14-digit number constructed as set forth below. (See also H-604.)
30	Service	Enter the alphabetical code (For Contractor Use Only) used to identify the military service. (See H-601.)
31–35	Requisitioner	Enter the applicable activity address code of the requisitioner as listed in the DoD Activity Address Directory.
36–39	Date	Enter the Julian day calendar date (see H-609), i.e., in the first column indicate the last numeric digit of the calendar year (for example, "3" for 1983, "4" for 1984), and in the last three columns indicate the numeric consecutive day of the calendar year (for example, "004" for 5 January, "157" for 6 June).
40–43	Serial Number	For maintenance contracts, enter an "M" in Card Column 40 and the serial number in Card Columns 41–43. For other than maintenance contracts, enter the serial number of the requisition. This number will be assigned by the requisitioner but shall not be duplicated on any one day. See H-604.3(d) for certain limitations in the assignment of the serial number.
44	Demand	NOTE.—May be used to code contract numbers, if desired. Enter the appropriate demand code as follows: (1) An "R" shall be used if it is a recurring demand (a demand to replenish materiel utilized on a day-to-day basis). (2) An "N" shall be used if it is a nonrecurring demand (a demand made on a "one-time" basis). (3) An "O" shall be used if a requisitioning activity is submitting requisitions for substitute items which are acceptable in lieu of previously requisitioned, but delayed items.
45–50	Supplementary Address.	When material is to be "shipped to" or "billed to" an activity other than the requisitioner, the service code and activity address code identifying the "ship to" or "bill to" activity shall be entered. See H-608.
51	Signal	Enter one of the following codes which indicate the "ship to" and "bill to" activity: Ship to Requisitioner and Bill to: A Card Columns 30–35 Requisitioner. B Card Columns 45–50 Supplementary address. C Bill to activity designated by column 52. However, if the third digit of the document identifier is "5" or "E", the Remarks block may indicate other billing information. (See H-606.) D No billing required. Not to be used on requisitions submitted to General Services Administration. Ship to Supplementary Address and Bill to: J Card Columns 30–35 Requisitioner. K Card Columns 45–50 Supplementary address.
52–53	Fund	Enter fund code furnished by the Military Department, as applicable. (See H-606.)
54–56	Distribution	Leave blank, unless directed otherwise by the Military Department.
57–59	Project	Leave blank, unless directed otherwise by the Military Department.
60–61	Priority	Enter appropriate priority designator in accordance with H-203.
62–64	Required Delivery Date.	Will normally be left blank. The date shall be entered only when conditions meet the requirements set forth in H-206.
65–66	Advice	Enter applicable advice code to convey instructions to the supply source, if necessary. When code is not required, leave blank. (See H-607.)
67–71	Blank	Leave blank.
72	Management	Enter the appropriate management code as prescribed by the contracting Military Department or Agency; otherwise, leave blank. (See H-615.)
73–80	PIIN	For maintenance contracts, enter last eight positions of the Procurement Instrument Identification Number (PIIN). Leave blank for other contracts. In the Remarks block, enter any additional information not provided for in the requisition format. When data are entered in the Remarks field, the third digit of the document identifier code entered in block 1 must be an "E" or "5", as appropriate. When required by the Military Department, the contract number shall be entered in the "Remarks" blocks.

H–303.2 Use of DD Form 1348 as a followup.

(a) Followups may be submitted only by the requisitioner, the supplementary addressee or if applicable, the activity indicated by an alpha character in card column 54. Prior to submission, the contractor following up will ensure that status data are not on hand and that the time frame for receipt of status has elapsed or that the time frame for receipt of the material has elapsed.

(b) Followups for requisitions with Priority Designators 09 through 15 may be submitted only after expiration of at least 7 days from the date of requisition or transaction date of the latest supply status. Followups for requisitions with Priority Designators 01 through 08 may be submitted only after expiration of 3 days from the requisition submission date or transaction date of the latest supply status. Submission of followups under these criteria will be accomplished only after activities insure that:

(1) Status information has been requested under the provisions of the Media and Status Code;

(2) Status data are not on hand to indicate a delay in receipt of material beyond the Standard Delivery Date or Required Delivery Date; or

(3) The order and shipping time standards for receipt of materiel have elapsed.

Activities following up on overseas requisitions, prior to submission of followups, will ensure that 48 hours have elapsed since the Required Delivery Date or the Standard Delivery Date expressed on the requisition, or that 48 hours have elapsed since expiration of the established time frame for receipt of status.

(c) Followups shall be submitted to the point to which the requisition was submitted, except when supply status has been received indicating that another supply activity is responsible for processing the demand. In the latter case, followup shall be to the activity indicated as currently processing the requisition (i.e., "last known source of supply", which is the distribution point holding the demand for decision to issue the materiel). Transmission of followups will normally be by the same method employed for submission of requisitions.

(d) When used as a followup and when no status has been received from the supply source, the following entries shall be punched in the DD Form 1348m:

Card columns	Data	Explanation and instructions
1–3	Document Identifier.	Enter Code AT
4–80	All other fields of data.	Duplicate entries from the original requisition.

(e) When used as a followup and when status has been received from a supply source, the following entries shall be punched in the DD Form 1348m:

Card columns	Data	Explanation and instructions
1–3	Document Identifier.	Enter the code AF1, AF2 or AT
4–6	Routing Identifier.	Enter code identifying the last known supply source indicated on the supply status card in columns 67–69.
7–80	All other fields of data.	Duplicate the entries from the last status card received.

H–303.3 Use of DD Form 1348m as a cancellation.

(a) A cancellation, in whole or in part, may be initiated by the requisitioner, the supplementary addressee, the activity designated by the code in card column 54, Service of Agency headquarters, or authorized Service or Agency command elements.

(b) Preparation of the DD Form 1348m for use as a cancellation shall be as follows:

Card columns	Field/legend	Explanation and instructions
1–3	Document Identifier.	Enter code AC as applicable to a cancellation.
4–6	Routing Identifier.	Enter code for last known source of supply.
7	Media and status.	Enter code shown on requisition.
8–22	Stock number.	Enter stock or part number as shown on requisition or on supply status card when such status has been received.
23–24	Unit of Issue	Enter unit of issue as shown on requisition or status card.
25–29	Quantity	Enter quantity for which cancellation is requested.
30–43	Document number.	Enter the Document Number of the requisition for which cancellation is requested.
44	Suffix or Demand.	Enter Suffix Code as shown in supply status card when applicable; otherwise, enter Demand Code from requisition.
45–61		Enter the data in the requisition or supply status card.
62–64	Date of Preparation.	Julian date of preparation.
65–80	All other fields.	Enter data in the requisition or supply status card.

(c) Cancellation requests shall not be submitted for requisitioned materiel destined for CONUS contractor activities after receipt of shipment status information advising that shipment has occurred.

(d) Cancellation requests shall not be submitted for requisitioned materiel destined for overseas contractor activities after receipt of shipment status or lift information advising that:

(1) The materiel has been shipped by air or parcel post,

(2) The total value of the materiel is less than $200,

(3) The materiel was shipped more than:

(i) Ten days previously by air to an APOE, or

(ii) Forty-five days previously by surface to a WPOE.

H–303.4 Use of DD Form 1348m as a requisition modifier.

See H–307.

H–304 Preparation and use of messages.

H–304.1 General.

Requisitions, followups, and cancellations may be transmitted by messages when time is of the essence and other means are not considered appropriate.

H–304.2 Limitations.

When messages are used for any of the foregoing purposes, each transmission shall be limited to a maximum of seven transactions or the contents of a single page, whichever is greater. When explanatory comments are required, the appropriate entry shall be entered on the line immediately following each transaction. All transactions on a single message must be intended for the same elements within the recipient processing point; i.e., the routing identifier codes must be identical on all transactions.

H–304.3 Use of messages as requisitions.

The first line in the body of the message shall contain the words "MILSTRIP Requisition(s)". Thereafter, each transaction shall be numbered commencing with number 1 and the first 66 columns of data, except that dividing slashes (/)shall be inserted, and divided exactly as shown in H–202.4. Each transaction shall consist of 18 separate field lengths of data.

H–304.4 Use of messages as cancellations, followups and requisition modifiers.

Cancellations, followups and requisition modifiers by message shall be in the same format as that shown for a sample requisition, except that the first line in the body of the message shall be shown as "MILSTRIP Cancellation(s)", "MILSTRIP Followup(s)." or "MILSTRIP Requisition Modifier(s)", as appropriate. Data shown on cancellations and followups, except the first element of data which will show the correct document identifier, shall be a repeat of the original requisition as changed by the latest status received. An exception to this general rule is that a cancellation of part of the quantity originally requisitioned will contain the quantity to be cancelled in the quantity field. An entry in a requisition modifier document may differ from that in the original requisition only to reflect the data to be modified. A modifier document may be initiated to change a Priority Designator and/or the Required Delivery Date or the Media and Status and/or Distribution Code in conjunction with Priority Designator and/or Required Delivery date changes. When the priority of an item ordered changes but the quantity required is different from the quantity previously requisitioned, a new requisition shall be submitted for the quantity required under the new priority.

H–304.5 Confirmation copies.

When requisitions are relayed by electrical message, confirmation copies are not required by the supply source and shall not be forwarded.

H 305 Telephone and radio requisitions.

H–305.1 General.

Under exceptional circumstances when other methods of transmission are not adequate, requisitions may be submitted by telephone or radio. When considered necessary, requisitions will be prepared on DD Form 1348 or DD Form 1348m, as appropriate, and read to the supply source by telephone or radio in exact columnar alignment.

H–305.2 Confirmation copies.

When requisitions are relayed by telephone or radio, confirmation copies are not required by the supply source and shall not be forwarded.

H–306 Formats for status, replies to followups, and replies to cancellation requests.

The formats used by military processing elements (i.e., depots, inventory control points, inventory managers, etc.) in furnishing status and in replying to followups and cancellation requests are as follows:

(a) Exception status, see H–611;

(b) 100% supply status, see H–611;

(c) Shipment status, see H–612;

(d) Reply to followup, see H–613;

(e) Reply to cancellation request, see H–614.

H–307 Submission and use of requisition modifier documents.

(a) A requisition modifier document may be initiated by the requisitioner or supplementary addressee to modify previously submitted requisitions when the required dates for previously requisitioned materiel must be changed to prevent work stoppage at industrial/production activities engaged in repair, modification or manufacture of primary weapons, equipment and supplies.

(b) The activity initiating a requisition modifier document will be responsible for furnishing notification of such action to other interested activities, such as the requisitioner and the supplementary addressee. The requisition modifier document will be transmitted to the last known source of supply.

(c) Supply sources will process requisition modifier documents to provide for modification of requisitions on back-order or modification of requisitions for which materiel release orders have not been processed to storage activities. The corresponding original requisitions in process, and materiel obligations, will be recycled in accordance with Service/Agency policy, and normal processing actions will be continued to accommodate the modifier priority designator or required delivery date. Requisitions which have been submitted to procurement sources for direct delivery of required items are not required to be modified. When requisition modifier documents are processed, the original requisitions identified by document numbers of the modifier documents, will be suspended from processing. Should the original requisitions be held on backorder, upon receipt of the requisition modifier document, the priority designators and/or required delivery dates will be amended in accordance with the requisition modifier documents. Procurement sources will be advised of the priority designator and/or required delivery date amendments. Modification of materiel release orders is at the discretion of the Military Services and Agencies. Supply sources will furnish requiring activities with the latest supply or shipment status information when modification of materiel release orders will not be accomplished. In those instances where the Services or Agencies elect to modify materiel release orders, materiel release order modifier document will be prepared as a result of processing the requisition modifier.

(d) Storage activities, upon receipt of materiel release order modifier documents, will cancel the original materiel release order. Identification of these latter documents will be accomplished by matching the document numbers of modifier documents with document numbers of materiel release orders having been previously received. The modifier documents will be processed in the normal manner prescribed for materiel release orders.

(e) In those instances where requisition modifiers are received and modification action cannot be taken due to no record of the requisition/MRO, the following actions will be taken:

(1) Requisition processing points will process the requisition modifier document as a new requisition.

(2) Storage activities will process the materiel release order modifier document as a new materiel release order.

(f) When storage activities receive materiel release order modifier documents and shipment action applicable to the original materiel release order has been accomplished, no action will be taken relative to the modifier document.

(g) Document Identifier Codes to be used on requisition modifier documents are listed in H–602.2.

H–308 Submission and use of followup (request for improved ESD).

(a) A followup requesting improvement of Estimated Shipping Dates (ESDs) contained in previously furnished supply status documents may be initiated by prime contractors. These followup inquiries will contain Document Identifier Code AFC in card columns 1–3 and the data from the previously received supply status document in card columns 4–80. The AFC documents will be prepared only for transactions applicable to Priority Designators 01–08. The necessity for such inquiries will generally result from such conditions which necessitate receipt of materiel prior to expiration of certain dates.

(b) When determination is made that improvement in ESDs can be accomplished, supply status documents, containing the revised ESD in columns 70–73, will be transmitted to status recipients designated in the original requisitions. When actions taken by management do not result in improved ESDs, status recipients designated in the original requisitions will be provided the latest status applicable to the requisitions concerned with the requests for ESD improvement.

H–309 Submission and use of followup on cancellation request document.

(a) A followup to obtain the status on a previously submitted cancellation request may be submitted by the requisitioner, the supplementary addressee, or the activity designated by an alpha character in card column 54. The followup will be processed as a cancellation request by the supply source, provided that the original cancellation request was not received.

(b) The followup on a cancellation request will be prepared by originating activities completing all prescribed data elements for cancellation requests. (See H–302.4 and H–303.3.) Document Identifier AK__, as appropriate, will be entered in Card Columns 1 through 3. Followups on cancellation requests will be transmitted to the last known source of supply.

Part 4—Release/Receipt Documentation

H–400 Scope of part.

This part sets forth instructions for the preparation and use of the MILSTRIP documentation prepared by the military supply activity to accompany Government-furnished materiel to contractors.

H–401 General.

All contractor receipts of Government-furnished material under MILSTRIP will be accompanied by a Release/Receipt Document (DD 1348–1) (see H–202.3) prepared by the military supply activity, regardless of whether shipment is in response to a contractor's requisition or is the result of action by a military supply activity. The military supply activity will supply a minimum of three copies of DD Form 1348–1 with the materiel. Additionally, if an advance copy of a bill of lading is received, a copy of the DD Form 1348–1 will be attached.

H–402 Responsibilities.

On Military Department originated requisitions for Government-furnished materiel, it is the responsibility of the originating Military Department to ensure that the contractor is furnished a cross reference between the requisition document and the contract number. The requisition will be treated as a supply directive and the originating Military Department will provide the contractor the required cross reference by:

(a) Ensuring that the contract number appears on the documentation accompanying the shipment, i.e. on the DD Form 1348–1; or

(b) Furnishing the contractor "supply directive memoranda", cross referencing the requisition document number to the applicable contract number.

H–403 Exceptions in preparation of DD Form 1348–1.

Release/Receipt Document (DD Form 1348–1) resulting from Materiel Release Orders prepared by DLA activities will perpetuate requisition submission time in columns 21 and 22 of the document.

H–404 Data entries.

H–404.1 Minimum data entries.

The minimum data entries shown on the DD Form 1348–1 shall be as follows:

Columns	Item	Identification or source of data
1–3	Document identifier.	Identifies the source document used to prepare DD Form 1348–1.
4–6	Routing identifier.	The routing identifier of the shipping activity.
7	Media and status code.	The code originally assigned to the requisition document.
8–22	Stock or part number.	The stock or part number of the item shipped. (See H–403.)
23–24	Unit of issue.	The unit of issue of stock or part number being shipped.
25–29	Quantity	The quantity being shipped.
30–43	Document number.	The document number originally assigned to the requisition.
44	Suffix	Blank, if the document represents shipment of the total quantity requisitioned; otherwise, an appropriate character is assigned to indicate a partial quantity shipped.
45–50	Supplementary address.	The code as shown on the original requisition.
51	Signal	Do.
52–53	Fund code	Do.
54–56	Distribution	Do.
57–59	Project code	Do.
60–61	Priority code	Do.
62–64	Required delivery date.	Do.
65–66	Blank	Leave blank or perpetuate data from requisition or other source document.
67–68	Routing identifier code.	The routing identifier code (if any) appearing in columns 67–69 of the source document. Identifies the activity directing release of the materiel.
70–73	Management codes.	Distribution system management codes as prescribed by the contracting Military Department or Agency. (See H–615.)
74–80	Unit price	The unit price of the item being released.

H–404.2 Other data.

In order to accommodate the various distribution systems and equipment, DD Form 1348–1 provides blocks for entry of other data. The use of these blocks with the exception of block 5 is optional; but, when used, they shall contain the following:

Block and Data Which May be Entered

A The shipping point identified by name and/or code.
B The consignee by name and address and/or code listed in DoD Activity Address Directory.
C Repeat of data entered in the supplementary address field (columns 45–50).
D The project and/or code, if any.
E The extended value of the transaction.
F The location from which materiel is to be selected.
G Coded cargo data.
H The number of issue units in a package.
I The unit weight applicable to the unit of issue.
J The unit cube applicable to the unit of issue.
K Uniform freight classification.
L National motor freight classification.
M Percentage of first class.
N Physical Security/Pilferage Code.
O Date of document preparation.
P Supply Condition Code.
Q Quantity.
R For internal use.
S For internal use.
T Stock or part number of item originally requested, if other than item released.
U Freight classification nomenclature.
V For internal use.
W For internal use.
X Item nomenclature.
Y For internal use.
1–4 Shipper and receivers use.
5 Block 5 of DD Forms 1348–1 will reflect the shipping container number and the total number of containers in a shipment under the rules contained in paragraph 5.3.4 of MIL–STD 129. The shipping container number(s) will indicate the specific container(s) in which the item reflected on a DD Form 1348–1 is packed. EXAMPLE: 7/12; container number 7 of a 12-container shipment. When an item is shipped in more than one container of a shipment, the container numbers and number of containers will be entered in block 5 as: 3, 5, 7/12; container 3, 5, and 7 of a 12-container shipment.
6–10 Shipper and receivers use.
AA–FF Provided for any special notes or instructions deemed appropriate.
GG Provided for any special notes or instructions deemed appropriate. For Air Force Government-furnished materiel, the Expendability-Recoverability-Repair Code (ERRC) shall be entered in block GG by the shipping activity.
11–15 Self-explanatory.

H–405 Document distribution. Distribution of the individual copies of DoD Single Line Item Release/Receipt Document (DD Form 1348–1) shall be as follows:

(a) Original is retained by the distribution point (shipper);

(b) Two copies—to consignee with materiel;

(c) One copy—to consignee attached to outside of No. 1 shipping container after use for picking, packing and item identification;

(d) One copy [1]—to consignee with advance copy of the bill of lading;

(e) One copy—transportation copy retained by the distribution point (shipper).

Part 5—Requisitions for Government-Furnished Materiel (GFM)

H–500 Scope of part.

This part sets forth instructions for the preparation and use of the MILSTRIP documents for requisitioning Government-Furnished Materiel (GFM).

H–501 General.

(a) The Management Control Activity (MCA) is a DoD Component activity designated to initially receive and effect control over contractor initiated requisitions for GFM to support commercially performed maintenance contracts and/or requirements which would be supplied from the DoD wholesale supply system.

(b) Requisitions for GFM may be initiated by the responsible Service/Agency or, subject to the terms of the contract, by the contractor.

H–502 Preparation of requisitions for government-furnished materiel (GFM).

(a) Contractor initiated requisitions for GFM will reflect the appropriate Service/Agency Code, MILSTRIP Appendix B2, and requisitioners account number in cc 30–35. Requisitions initiated by DoD maintenance contractors will be processed through the MCA. DoD maintenance contracts will specify a Routing Identifier (RI) Code applicable to the MCA for entry in cc 4–6. Also, the contract will specify that an "M" will be entered in card column 40, MILSTRIP Appendix B7, and that the last eight positions of the Procurement Instrument Identification Number (PIIN) will be entered in cc 73–80 of all requisitions prepared by the contractor.

(b) Supply sources receiving MILSTRIP requisitions, modifiers, passing orders, referral orders, followups, redistribution orders and cancellations, irrespective of method of transmission, will process such transactions in accordance with MILSTRIP procedures. Supply sources will validate the data elements and codes in these documents and accomplish changes thereto, continue the processing action, or reject the documents, as indicated. See MILSTRIP Appendix B16 for appropriate requisition transaction status codes.

Code or data element	Entry in card column blank or incorrect
Routing Identifier	Determine correct source and continue processing. Exception—Reject when all five of the following conditions exist: (1) Document Identifier is— AO (Requisition), or AM (Modifier), or AT (Followup). *and* (2) CC 30 contains one of the following codes: "C, E, L, Q, U", *and* (3) CC 40 contains an "M", *and* (4) CC 72 does not contain Management Code "Y", *and* (5) Supply source is not the MCA for the contract.
Media and Status	Process as 0.
Stock Number or Appropriate Item Identification.	Reject.
Unit of Issue	Enter correct unit of issue or reject.
Quantity	Reject.
Requisitioner	Discard.
Date	Reject.
Serial	Reject.
Demand	Process as recurring.
Supplementary Address.	If not effected by the Signal Code, process; otherwise, reject.
Signal	Reject.
Fund	If not affected by Signal Code, or if Signal Code is D or M, process; otherwise, reject.
Distribution	Process as blank.
Project Code	Process as blank.
Priority	(1) If code 999 is not entered in Required Delivery Date field, demand is not NMCS and no OSD/JCS Project Code is assigned, enter Priority Designator 15. (2) If Code 999 is entered in Required Delivery Date Field or OSD/JCS Project Code is assigned or demand is NMCS, enter Priority Designator 03. (3) If date is in Required Delivery Date Field and no "X" or "S" is entered in cc 62, enter Priority Designator 06. (4) If date is in Required Delivery Date Field and "A", "X", or "S" is entered in cc 62, enter Priority Designator 15. (5) If expedited handling signal "555" is entered in cc 62–64 and PD 01–08 in cc 60–61, process immediately after NMCS in accordance with the priority. If PD 09–15 is entered in cc 60–61, process in accordance with the priority.
Required Delivery Date.	If there is an "N" in cc 62 and PD 01–08 in cc 60–61, process. If expedited handling signal "555" is entered in cc 62–64, process. If there is an "N" in cc 62 and PD 09–15 in cc 60–61, blank the entry in cc 62–64 and process in accordance with the priority. In all other cases, process as blank.
Advice	Process as blank.

(c) Rejection of MILSTRIP documents will be accomplished only after an attempt has been made to correct the questionable data element or code. When rejection actions are applicable to more than one data element or code and no other reject status code is applicable, the rejection will use Status Code CA.

[1] When shipment is accomplished by a method not requiring backup documentation to a movement document (i.e., parcel post, Government truck, etc.), this copy will be destroyed by the shipping point.

H–503 Requisition processing and related actions.

(a) Management Control Activities (MCAs), when processing DoD Maintenance Contractor initiated requisitions for Government Furnished Materiel (GFM), will utilize the following procedures.

(1) Management Control Activities (MCAs) receiving maintenance contractor initiated requisitions (AO__), modifiers (AM__), and followups (AT__), irrespective of method of transmission, will process such transmissions in accordance with procedures prescribed herein. Based upon criteria furnished by Procurement/ Contracting Offices, MCAs will validate the data elements and codes in these requisitions and accomplish changes thereto, reject, or continue processing action, as indicated below.

Code or data element	Entry in card column blank or incorrect
Stock Number Field	If blank or incorrect, reject. Verify part number or National Stock Number against contract to determine authority for contractor issue and continue processing or reject if determined to be unauthorized.
Quantity	If blank, reject. If determined to be excessive, process off-line and reject or continue processing.
Requisitioner	Discard if blank or incorrect. If correct, and cc 40 contains an "M", verify requisitioning authority and continue processing or reject as appropriate. If correct, and cc 40 does not contain an "M", forward requisition to supply source for normal processing.
Distribution	Enter the distribution code for the MCA and continue processing.
Contract Identification.	Reject if contract is not on MCA files.

Rejection of documents will be accomplished only after an attempt has been made to correct the questionable data element or code. If rejection actions are applicable to more than one data element or code and no other reject status code applies, reject using MILSTRIP Status Code CA.

(2) The Services/Agencies will assign a unique Routing Identifier (RI) Code and Distribution Code to each MCA.

(3) Following validation of contractor initiated requisitions (AO), modifiers (AM__) and followups (A__) for Government-Furnished Materiel, the AO__, AM__, or AT__ transaction will be forwarded to the appropriate supply source, through DAAS, with the following changes entered in the document:

(i) Routing Identifier (RI) Code, cc 4–6 will be blank.

(ii) The Distribution Code of the MCA will be entered in cc 54.

(iii) The contract identification will be deleted from cc 73–80.

(iv) Management Code "Y" will be entered in cc 72.

DAAS will route all contractor initiated requisitions (AO__), modifiers (AM__), and followups (AT__) of Government Furnished Materiel coming from a MCA (i.e., "M" in cc 40 and "Y" in cc 72) to the correct supply source.

(b) The MILSTRIP System requires that supply sources or Management Control Activities (MCAs) provide status data to designated activities as notice of action taken or being taken on MILSTRIP documents received, using status codes in MILSTRIP Appendix B16. Activities to receive status data and the type of data required are designated by entry of a Media and Status (M&S) Code in cc 7, MILSTRIP Appendix B4. A significant Distribution Code in cc 54 also designates monitoring/control offices to receive all status data. In addition to supply sources furnishing status, the Defense Automatic Addressing System (DAAS) also generates status in selected situations as a result of editing the stock number field of requisitions. The DAAS status is furnished using the unique DI Code of AE9 and the DAAS RI Code (from) is cited in these transactions.

(c) Exception Supply Status is any of the following supply sources or, as indicated, Management Control Activity (MCA) action decisions, alone or in combination:

(1) Backorder;
(2) Procurement for direct delivery;
(3) Partial issue and partial other action;
(4) Substitution;
(5) Change of unit of issue;
(6) Requisition rejected (supply source or MCA);
(7) Passing Order;
(8) Referral Order;
(9) Cancellation Acknowledgment;
(10) Any circumstance which predicts that issue may not be made within the time frames established for the assigned priority designator.

(d) Management Control Activities (MCAs) will be responsible for furnishing Rejection Status for requisitions processed by that activity. Supply sources will be responsible for maintaining and furnishing current supply and shipment status as provided below. For these purposes, accessible requisition history records will be maintained by MCAs and supply sources for a minimum of six months after completion of shipment or cancellation, to provide timely response to followups. MCAs will maintain requisition history records indexed by Procurement Instrument Identification Number (PIIN) until contract termination.

Part 6—Codes and Other Data

H–600 Scope of part.

This part sets forth the codes and other miscellaneous data and instructions for their use by contractors in the preparation and interpretation of MILSTRIP documents.

H–601 Service assignment codes.

(Blocks 9 and 14—Manual.) (Columns 30 and 45—Mechanical.) Service assignment codes are designed to accommodate service identity and use of specific fields or columns without duplication by other services. Service assignment codes are as follows:

Code	Column 30	Use 45	Service
C	X	X	Army (For Contractor Use Only).
O	X	X	Navy (For Contractor Use Only) (Contractors not listed in DoDAAD).
L	X	X	Marine Corps (For Contractors Use Only).
E	X	X	Air Force (For Contractors Use Only).
U	X	X	Defense Logistics Agency (For Contractors Use Only).

H–602 Document identifier codes.

(Block 1—Manual.) (Columns 1, 2, and 3—Mechanical.)

H–602.1 General.

The document identifier code provides a means of identifying a given transaction (i.e., requisition, cancellation, followup, supply status, etc.) to the system to which it pertains and further identifies such data as to its intended purpose and usage. This code will furnish personnel with the ability to recognize the data and then to perform the operation dictated. When used in conjunction with electronic computers, it will enable the equipment to select the appropriate programs and mechanically assimilate and/or react to the data.

H–602.2 Entry.

The document identifier is a mandatory entry on all requisitions and related products entering the supply distribution systems under MILSTRIP. Document identifier codes are as follows:

Columns 1, 2, 3		
AO1	Requisition	For overseas shipment with National Stock Number (NSN)/NATO Stock No.
AO2	Requisition	For overseas shipment with Part Number.
AO4	Requisition	For overseas shipment with other.[2]
AO5 [1]	Requisition	For overseas shipment with exception data.
AOA	Requisition	For domestic shipment with NSN/NATO Stock No.
AOB	Requisition	For domestic shipment with Part Number.
AOD	Requisition	For domestic shipment with other.[2]
AOE [1]	Requisition	For domestic shipment with exception data.
AC1	Cancellation	By requisitioner (cols 30–35).
AC2	Cancellation	By supplementary addressee (cols 45–50).
AC3	Cancellation	By card column 54.
AF1	Followup	By requisitioner (cols 30–35).
AF2	Followup	By supplementary addressee (cols 45–50).
AF3	Followup	By card column 54.
AFC	Followup (Request for Improved ESD).	Furnished by prime contractors as requests to supply sources to initiate actions which will improve estimated shipping dates provided in supply status transactions.
AE1	Supply Status	For requisitioner (cols 30–35).
AE2	Supply Status	For supplementary addressee (cols 45–50).
AE3	Supply Status	For Card Column 54.
AE9	Supply Status	From the Defense Automatic Addressing System (DAAS): a. To activities identified by M&S Code (cc 7), and/or Distribution Code (cc 54) to advise of the rerouting or change to a MILSTRIP requisition document as reflected by the Supply Status Code (cc 65–66). b. To activity in cc 30–35 when the M&S Code is "0", and cc 54 is blank or invalid to advise of rerouting or change to a MILSTRIP requisition document as reflected by the Supply Status Code (cc 65–66). c. To activities in cc 30–35, 45–50, and 54 to advise of rejection of a MILSTRIP requisition document as reflected by Supply Status Code (cc 65–66). d. To "From" Routing Identifier Code (cc 74–76) to advise of the rerouting of an A3__ (Passing Order), or A4__ (Referral Order).
AS1	Shipment Status	For requisitioner (cols 30–35).
AS2	Shipment Status	For supplementary addressee (cols 45–50).
AK1	Followup on Cancellation Request.	By requisitioner (cols 30–35).
AK2	Followup on Cancellation Request.	By supplementary addressee (cols 45–50).
AK3	Followup on Cancellation Request (Process as cancellation if original cancellation not received).	By cc 54.
AM1	Requisition Modifier.	For overseas shipment/with NSN/NATO Stock Number.
AM2	Requisition Modifier.	For overseas shipment/with Part Number.
AM4	Requisition Modifier.	For overseas shipment/with other.[2]
AM5	Requisition Modifier.	For overseas shipment/with exception data.
AMA	Requisition Modifier.	For domestic shipment/with NSN/NATO Stock Number.
AMB	Requisition Modifier.	For domestic shipment/with Part Number.
AMD	Requisition Modifier.	For domestic shipment/with other.[2]
AME	Requisition Modifier.	For domestic shipment/with exception data.
ATA	Followup (Process as Stock Number, Requisition if original Requisition not received).	For domestic shipment/with NSN/NATO Stock Number.
ATB	Followup (Process as Requisition if original Requisition not received).	For domestic shipment/with Part Number.
ATD	Followup (Process as Requisition if original Requisition not received).	For domestic shipment/with other.
ATE	Followup (Process as Requisition if original Requisition not received).	For domestic shipment/with exception data.
AT1	Followup (Process as Requisition if original Requisition not received).	For overseas shipment/with NSN/NATO Stock Number.
AT2	Followup (Process as Requisition if original Requisition not received).	For overseas shipment/with Part Number.
AT4	Followup (Process as Requisition if original Requisition not received).	For overseas shipment/with other.
AT5	Followup (Process as Requisition if original Requisition not received).	For overseas shipment/with exception data.
AU1	Reply to cancellation request–shipment status.	To requisitioner (cols 30–35).
AU2	Reply to cancellation request–shipment status.	To supplementary addressee (cols 45–50).
AU3	Reply to Cancellation request–shipment status.	To cc 54.

[1] Processing activity will, by screening of documents, ascertain whether requisition or passing action contains a National Stock Number or other Part Number or NATO Stock Number. If data can be acted upon without need for further passing actions, the digit in column 3 shall be changed to correspond with correct National Stock Number, Part Number or NATO Stock Number.

[2] For use when requisition or related document contains other National Stock Number, Part Number, or NATO Stock Number (i.e., Plant Equipment Code (PEC) No., DoD Ammunition Number, etc.).

H–603 Stock number entries (rules for entry).

H–603.1 National stock number.

(a) When a 13-digit National Stock Number is applicable:

(1) The Federal Supply Class (FSC) shall be entered in columns 8 through 11, and

(2) The National Item Identification Number (NIIN) shall be entered in columns 12 through 20.

Example:

8	9	10	11	12	13	14	15	16	17	18	19	20	21	22
8	3	2	0	0	0	1	2	3	1	2	3	4		Blank

Military Departments cognizance symbols, stratification codes, fraction symbols, condition codes, etc., are never to be entered in columns 8 through 20.

(b) When codes are required in addition to the National Stock Number to properly identify the item and these codes are recognizable to the initial processing inventory manager or depot, these codes shall be entered in columns 21 through 22. If less than two digits, entry shall be made in column 21.

Example:

8	9	10	11	12	13	14	15	16	17	18	19	20	21	22
8	3	2	0	0	0	1	2	3	1	2	3	4	1	Blank

or

8	9	10	11	12	13	14	15	16	17	18	19	20	21	22
1	5	6	0	0	0	1	2	3	1	2	3	4	A	B

H–603.2. NATO stock number.

When a 13-digit NATO Stock Number is applicable:

(a) The NATO Supply Class (FSC) shall be entered in columns 8 through 11,

(b) The two-digit NATO Country Code shall be entered in columns 12 and 13, and

(c) The seven-digit NATO Identification Number (NIIN) shall be entered in columns 14 through 20.

Example:

8	9	10	11	12	13	14	15	16	17	18	19	20	21	22
5	3	4	0	0	0	1	2	3	1	2	3	4		Blank

H–603.3 Manufacturer's part number.

(a) When a manufacturer's part number is applicable, the manufacturer's identity code (Federal Supply Code for Manufacturers) shall be entered in columns 8 through 12. Entry shall commence in column 8 and progress to the right. Spaces not required shall be left blank.

(b) The manufacturer's part number, if 10 digits or less, shall be entered in columns 13 through 22 progressing from left to right, with unrequired spaces, if any, left blank.

(c) When a manufacturer's part number exceeds 10 digits, the entire manufacturer's code and part number shall be entered in the "Remarks" space and properly identified. The construction of part numbers will conform to the requirements of the DIDS Procedures Manual (DoD 4100.39–M).

(d) If a stock number or manufacturer's part number is not known but a description or publication reference is available to adequately identify the item, and such reference is meaningful to the processing point, the Stock or Part Number Field shall be left blank and the descriptive or reference data shall be entered in the "Remarks" space.

H–603.4 Other numbers.

When other than a National Stock Number, part number, or NATO Stock Number is applicable (i.e., a Plant Equipment Code (PEC), DoD Ammunition Number, locally assigned number, etc.), the following rules apply:

(a) If 15 digits or less, it shall commence in column 8 and progress to the right, with unused spaces left blank.

Examples:

(Less than Fifteen digits)														
8	9	10	11	12	13	14	15	16	17	18	19	20	21	22
1	2	3	4	5	6	7	8	9	1	2	3			Blank

(Fifteen digits)														
8	9	10	11	12	13	14	15	16	17	18	19	20	21	22
1	2	3	4	5	6	7	8	9	1	2	3	4	5	8

(b) If 16 digits or more, the entire number shall be entered in the "Remarks" space.

H–603.5 Additional rules.

Column 3 of the document identifier code (see H–602) is significant to the type of number entered in columns 8 through 22, as follows:

(a) Any requisition containing a National Stock Number/NATO Stock Number, irrespective of additional codes in columns 21 and 22, must have a "1" (for overseas shipment) or an "A" (for domestic shipment) entered therein unless additional data is contained in the "Remarks" space.

(b) Any requisition containing a part number must contain a "2" or "B" unless additional data is entered in the "Remarks" space;

(c) Any requisition containing a Plant Equipment Code (PEC), DoD Ammunition Number, or locally assigned number, etc., must contain a "4" or "D" unless additional data is entered in the "Remarks" space.

When additional data are entered in the "Remarks" space, regardless of the content of any columns of the requisition (including columns 8 through 22), column 3 must contain a "5" or "E" and the requisition must not be transceived. When these requisitions are mailed, the envelopes will be conspicuously marked "MILSTRIP EXCEPTION DATA REQUISITIONS".

H–604 Document number entries.

H–604.1 General.

These instructions for document number entries are applicable to both requisitions and turn-ins for columns 30 through 43—manual requisition (DD Form 1348), mechanized requisitions (DD Form 1348m).

H–604.2 Composition.

The document number is a non-duplicative number throughout the MILSTRIP system and is constructed of four basic elements as follows:

(a) Service (column 30),

(b) Requisitioner/shipping contractor **address (columns 31 through 35),**

(c) Julian date (columns 36 through 39), and

(d) Serial number (columns 40 through 43).

Example:

Service	Requisitioner/shipping contractor					Julian date				Serial number			
30	31	32	33	34	35	36	37	38	39	40	41	42	43

H–604.3 Entries.

(a) The entry in column 30 (service) always shall be the appropriate character from H–601 that indicates the service or other governmental element ownership or sponsorship.

(b) For requisitions, the entry in columns 31 through 35 indicates the activity address code of the requisitioner. It may also indicate the intended consignee or ship to address. (See H–605.) For turn-ins, the entry in columns 31 through 35 indicates the activity address code of the contractor making the turn-in. Activity address codes are published in the DoD Activity Address Directory. (See H–210.)

(c) Entries in columns 36 through 39 (date) shall always be numeric and will be the date of transmittal from the requisitioning activity to the appropriate supply source as follows:

(1) Column 36 shall indicate the last numeric digit of the calendar year in which the document was transmitted. For example, "5" for 1975, "6" for 1976, etc.; and

(2) Columns 37 through 39 shall indicate the numeric consecutive day of the calendar year on which the document was transmitted. For example, "063" for 4 March. (See Julian day calendar in H–609.)

(d) Entries in columns 40 through 43 may be numeric or alphabetic characters to indicate the serial number of the document and may be assigned at the discretion of the document originator. The serial number shall not be duplicated on the same day. The use of alphabetic characters can serve to provide for block assignment by Service/Agency designated activities. The following alphabetic codes have been reserved for use in column 40 as indicated:

Code	Explanation
J	To identify requisitions resulting from interogations of the Interrogation Requirements Information System (see DoD 4160.21–M).
K	To identify requisitions submitted to DPDS, DPDO, or GSA for excess property located at a DPDO that is requested as a result of reviewing manual screening lists, e.g., Excess Personal Property Lists (EPPL), GSA Regional Catalog listings.
L	To identify requisitions submitted at DPDOs which result from physical screening of property at the DPDO. This type of screening is referred to as "Local Area Screening" without any consideration of the distance traveled by the screener.
M	To identify contractor initiated requisitions for Government Furnished Material (GFM) to support commercially performed maintenance contracts.
N	Reserved.
P	Reserved.
Q	Reserved.
R	To identify requisitions submitted to DPDS/DPDOs from Inventory Control Points or Integrated Material Managers based on a final asset screening notice of surplus personal property.
S	To identify requisitions submitted to DPDS/DPDOs from Inventory Control Points or Integrated Material Managers based on a Front End Screening notice of excess personal property.
T	Reserved.
U	Reserved.
Y	To identify Marine Corps ownership of materiel applicable to Contractor Inventory Utilization Group (CIUG) Procedures.

(e) *Air Force transactions.*

(1) For requisitions in support of Air Force maintenance (repair, modification, PDM) contracts and for turn-in of GFM, the contractor's activity address code (EZ number) as published in Section 3 of the DoD Activity Address Directory shall be entered in columns 30 through 35 (blocks 9 and 10—manual) of the requisition or columns 30 through 35 of the turn-in document.

(2) An EY number shall be used when the materiel being turned in was received in support of any other type contract such as production or research and development.

(3) The procuring activity shall request Headquarters Air Force Logistics Command (LOZMS) to assign EY and EZ activity address codes when such codes are not included in the DoD Activity Address Directory (DoD 4000.25–D). Requests shall indicate the specific code needed.

(4) The Contract Administration Office (CAO) shall advise Headquarters Air Force Logistics Command (LOZMS) of all required changes to EY or EZ activity address codes (e.g., contractor name changes and mail or freight addresses). The CAO shall also promptly notify HQ AFLC/LOZMS of EY or EZ activity address codes for cancellation actions when the contractor no longer has Air Force contracts.

H–605 Signal codes (column 51).

H–605.1 General.

The purpose of the signal code is two-fold in that it designates the fields containing the intended consignee (ship to) and the activity to receive and effect payment of bills, when applicable. All requisitions and documents resulting therefrom used under MILSTRIP shall contain the appropriate signal code.

H–605.2 Coding structure and meaning.

(a) When the materiel is to be shipped to the activity indicated in columns 30 through 35 (requisitioner), the signal code shall be as follows:

(1) Code "A"—Bill to the activity in columns 30 through 35.

(2) Code "B"—Bill to the activity in columns 45 through 50.

(3) Code "C"—Bill to activity designated by column 52. However, if the third digit of the document identifier is "5" or "E", the Remarks block may indicate other billing information. (See H–606.)

(4) Code "D"—No billing required (free issue). Not to be used on requisitions submitted to General Services Administration.

(b) When the materiel is to be shipped to the activity indicated in columns 45 through 50 (supplementary address), the signal code shall be as follows:

(1) Code "J"—Bill to the activity in columns 30 through 35.

(2) Code "K"—Bill to the activity in columns 45 through 50.

(3) Code "L"—Bill to activity designated by column 52. However, if the third digit of the document identifier is "5" or "E", the Remarks block may indicate other billing information. (See H–606.)

(4) Code "M"—No billing required (free issue). Not to be used on requisitions submitted to General Services Administration.

H–606 Fund codes (columns 52 and 53).

H–606.1 General.

(a) The fund code is provided for the specific use of the requisitioner, when directed by the Military Department to enter a code that will indicate, to the distribution system, that funds are available to pay the charge when and where received. In addition, this fund code will be perpetuated by the distribution system in all follow-on documentation. The fund code construction is the responsibility of the appropriate Military Department.

(b) A secondary use for the fund code field has been provided when the signal code in column 51 (see H–605) is "C" or "L", to indicate the activity that is to be billed. When the signal code (column 51) is "C" or "L", the first position (column 52) of the fund code shall contain an alphabetic character which will indicate the activity to receive the bill.

(c) When the third position of the document identifier (column 3 is "5" or "E" and column 51 is "C" or "L", the information in the "Remarks" field may indicate other billing information.

(d) Requisitions submitted to Defense Supply Centers, other Departments, and the General Services Administration, shall always contain a fund code, unless the materiel requested has been offered without a reimbursement, in which case the signal code (column 51) will be "D" or "M" (free issue) and the fund code field shall be blank. The submission of a MILSTRIP requisition citing a fund code constitutes sufficient authority for release of materiel and subsequent billing therefor. The billing activity shall always perpetuate the fund code cited on the requisition.

(e) Intra-Service requisitions (transactions other than (d) above) may or may not require entries in the fund code field dependent upon the Department regulations.

(f) Service use of fund code with signal code "C" or "L" in column 51 will be as follows:

(1) Air Force—in accordance with H–606.2;

(2) Army—not applicable;

(3) Navy—not applicable;

(4) Marine Corps—not applicable; and

(5) Defense Logistics Agency—not applicable.

(g) Fund code entries are required in turn-in documents for Government-Furnished Materiel prepared by Army contractors. These entries will be as directed by the contracting officer. Fund code entries are required in turn-in documents prepared by other service contractors only when specifically requested by the contracting officer. In such cases, the contracting officer will provide the fund code to be used.

H–606.2 Air Force entries in fund code (columns 52 and 53).

(a) Air Force contractor activities, when directed by that Department, submitting requisitions to Defense Supply Centers, other Departments, and the General Services Administration for base funded items, shall enter a two-digit fund code in which the first position (column 52) shall always be a numeric (used with signal codes "A", "B", "J", and "K" in column 51).

(b) Air Force contractor activities submitting requisitions to Air Force depots, when funding is not a condition of requisitioning, shall leave columns 52 and 53 blank (used with signal codes "D" and "M" in column 51).

(c) Air Force inventory managers, when passing requisitions for centrally funded items to Defense Supply Centers, other Departments, and the General Services Administration shall enter a two-digit fund code in which the first position (column 52) shall always be the appropriate alphabetic character, as listed below, identifying the depot obligating the funds and to effect payment (used with signal codes "C" and "L" in column 51).

Code	Activity
AF	Acctg Disb Sta Nr 595600.
AN	ASD/ACF.
AW	WPAFB, OH 45433.
BN	Acctg Disb Sta Nr 669800.
BW	AFFTC/ACF, Edwards AFB, CA 93523.
CC	Acctg Disb Sta Nr 676100.
CN	ESD/ACF.
CW	Hanscom AFB, MA 01731.
DB	Acctg Disb Sta Nr 679200.
DW	USAFA/ACF, USAF Academy, CO 80840.
EM	Acctg Disb Sta Nr 662400.
EN	ESMC/ACF.
EW	Patrick AFB, FL 32925.
FF FM FU	Acctg Disb Sta Nr 503200.
FJ FN FW	2852 ABG/ACF.
FK FR	McClellan AFB, CA 95652.
GF GM GW	Acctg Disb Sta Nr 504400.
GJ GR	2849 ABG/ACF.
GK GU	Hill AFB, UT 84056.
HF HM	Acctg Disb Sta Nr 503100.
HJ HR	2854 ABG/ACF.
HK HW	Tinker AFB, OK 73145.
LF LM	Acctg Disb Sta Nr 503300.
LJ LR	2853 ABG/ACF.
LK LW	Robins AFB, GA 31098.
MM	Acctg Disb Sta Nr 503600.
MN	63 MAW/ACF.
MW	Norton AFB, CA 92409.
NM NW	Acctg Disb Sta Nr 503000.
NS	2750 ABG/ACF.
NU	WPAFB, OH 45433.
PF PM PU	Acctg Disb Sta Nr 504300.
PJ PN PW	2851 ABG/ACF.
PK PR	Kelly AFB, TX 78241.
RM	Acctg Disb Sta Nr 662300.
RW	1606 ABW/ACF, Kirtland AFB, NM 87117.
SN	Acctg Disb Sta Nr 667300.
SW	AEDC/ACF, Arnold AFS, TN 37389.
TM	Acctg Disb Sta Nr 594100.
TN	4392 AEROSG/ACF.
TW	Vandenberg AFB, CA 93437.
UN	Acctg Disb Sta Nr 528500.
UW	6570 ABG/ACF, Brooks AFB, TX 78235.
VN	Acctg Disb Sta Nr 527900.
VW	AD/ACF, Eglin AFB, FL 32542.
WN	Acctg Disb Sta Nr 503900.
WW	416 BMW/ACF, Griffiss AFB, NY 13441.
	Acctg Disb Sta Nr 599100.
	2803 ABG/ACF, Newark AFS, OH 43055.
YF YN	Acctg Disb Sta Nr 594200.
YJ YW	SD/ACF.
YK	Los Angeles AFS, CA 90009.
3L	AFAFC/SAAC.
3M	ATTN: FSRS, Denver, CO 80279.

H–607 Advice and status codes (columns 65 and 66).

H–607.1 General.

(a) The advice/status field is of dual use and its application and the coding structures are dependent upon the directional flow of the documents.

(b) Advice codes (see H–607.2) are numeric/alphabetic and flow from requisition originators to initial processing points and are thereafter perpetuated into passing actions and Release/Receipt documents. The purpose of advice codes is to provide coded instructions to supply sources when such data are considered essential to supply action and entry in narrative form is not feasible.

(c) Status codes (see H–607.3) are alphabetic/alphabetic and alphabetic/numeric and flow from supply sources to requisitioners or consignees and inform recipients of the status of requisitions.

H–607.2 Advice codes—numeric/alphabetic.

(From Requisitioner to Initial Processing Point)

(a) General Codes.

Columns 65	Columns 66	
2	A	Item is not locally obtainable through manufacture, fabrication or procurement.
2	B	Requested item only will suffice. Do not substitute/interchange. Also applies to "Obsolete"/"Inactivated" items previously rejected with Status Code CJ.

Columns 65	66	
2	C	Do not back-order. Reject any unfilled quantity not available to meet SDD/RDD. Suitable substitute acceptable.
2	D	Furnish exact quantity requested (i.e., do not adjust to unit pack quantity).
2	F	Free issue. Stock lists or other publications offer this materiel without reimbursement (to be used with signal codes D or M on interservice requisitions).
2	F	Item known to be coded "Obsolete" but still required for immediate consumption. Service coordinated/approved substitute is acceptable. If unable to procure, reject requisition with Status Code CJ.
2	G	Multiple use: (1) Ship new stocks or stocks having new appearance; (2) Strategic mission requires latest model and configuration (for electronic tubes); (3) Strategic mission requires newest stock only (for photographic film or for aerial requirements for ammunition devices or cartridges); (4) Anticipated usage requires latest expiration dates only (for biologicals).
2	H	Special textile requirement for use in Airborne operations where personal safety is involved.
2	J	Do not substitute or back-order any unfilled quantities.
2	K	Item being requisitioned from Continental United States pursuant to the balance of payments program (to be used only by overseas requisitioners).
2	L	Quantity reflected in quantity field exceeds normal demands; however, this is a confirmed valid requirement.
2	N	Item required in one continuous length as expressed in cc 25–29 and unit of issued in cc 23–24. No other configuration is acceptable and/or multiples of the unit pack are not acceptable.
2	P	Item required in one continuous length as expressed in card columns 25–29 and the Unit of Issue in card columns 23–24. If requirements exceed the unit pack lengths, multiples of the unit pack are acceptable.
2	T	Deliver to the ultimate consignee by the SDD or RDD entered hereon or cancel requirement.
2	W	This requisition is substituted for free issue of assets above the Approved Force Acquisition Objective on a fill or kill bases (applicable to MAP/MASF requisitions only).
3	A	This requisition is for assets located in the DPDO activities, as advertised by DPDS for which the requisitioner desires to inspect materiel prior to shipment. Fill or kill. Use of this code is limited to requisitions with J, K, L, R, or S in cc 40.
3	B	Item being requisitioned has been designated as commercial-type item. Unable to obtain item from commercial sources. Request supply of requisitioned quantity be accomplished against the FMS case reflected in cc 44–50.
3	C	The item required is in FSC 5510 (Lumber and Related Basic Wood Materials) and the end-use application is for high appearance, cabinetry, furniture. Lumber grades associated with this application are B and better, C and better, D and better.
3	D	The item required is in FSC 5510 (Lumber and Related Basic Wood Materials) and the end-use application is for structural light framing. Lumber grades associated with this application are #1, #2, #3, and Select Structural.
3	E	The item required is in FSC 5510 (Lumber and Related Basic Wood Materials) and the end-use application is for light framing. Lumber grades associated with this application are Construction, Standard, Economy, and Utility.
3	F	The item required is in FSC 5510 (Lumber and Related Basic Wood Materials) and the end-use application is for crating, boxing, dunnage, blocking, or bracing. Lumber grades associated with this application are #2, #3, Standard, Economy Common, and Utility.
3	G	The item required is in FSC 5510 (Lumber and Related Basic Wood Materials) and the end-use application is for beams, stringers and timbers. Lumber grades associated with this application are #1, #2, and Select Structural.
3	H	The item required is in FSC 5530 (Plywood and Veneer) and the end-use application is for appearance of both sides relative to cabinets, signs, and built-ins. The plywood grade associated with this application is A-A Interior.
3	J	The item required is in FSC 5530 (Plywood and Veneer) and the end-use application is for appearance of one side relative to cabinets, signs, partitions and fences. The plywood grades associated with this application are A–B Interior and Exterior.
3	K	The item required is in FSC 5530 (Plywood and Veneer) and the end-use application is for appearance of one side relative exterior structures, gable ends and bulletins. The plywood grades associated with this application are A–C Exterior.
3	L	The item required is in FSC 5530 (Plywood and Veneer) and the end-use application only one side will show relative to wall paneling, ceiling, displays, and partitions. The plywood grades associated with this application are A–D Interior.
3	M	The item required is in FSC 5530 (Plywood and Veneer) and the end-use application is relative to concrete forms, good face for paintability, counter, and table tops. The plywood grades associated with this application are B–B and B–C Exterior, B–D Interior, and B–B HDO.
3	N	The item required is in FSC 5530 (Plywood and Veneer) and the end-use application is relative to outside construction, pallets, crates, subflooring, siding, roof decking, wall and floor sheathing, target ranges, and containers. The plywood grades associated with this application are C–C Exterior, C–D Interior, and CDX.
3	P	The item required is in FSC 5510 or 5530 and because of the single purpose use of the item, identification of the end-use application is not necessary. Examples within FSC 5510 are all hardwood items, poles, pilings, crossarms, ties, decking, ship lumber, molding, stripping, stepping, scaffold plank, vehicle lumber, wedges, posts, stakes, plugs, laths, dowels, and logs. Examples within FSC 5530 are all treated, fire retardant, boat and ship construction, hardwood, aircraft flatpanel and veneer items. EXCESS TRANSACTION ADVICE CODES
3	T	Document has been edited by DAAS. Records indicate that NSN is correct and that the activity identified in cc 4–6 is the managing ICP/IMM.
B	G	One or more of the following fields have been changed: (1) Stock Number (as the result of a formal catalog change). (A) Requisitioned NSN has been replaced by or consolidated with NSN in stock number field. (B) NSN is assigned to part number that was requisitioned. (C) FSC has changed but NIIN remains the same as originally requisitioned. Review NSN (FSC & NIIN) to ensure that requisition under process is for desired item. If NSN is not for desired item, submit cancellation request to source of supply. (D) FSC has changed but NIIN remains the same as expressed in original transaction (applies to DoD MILSTRAP DZ9 status notification only). (2) Unit of Issue (as the result of a formal catalog change). (3) Requisitioned part number has been identified to/replaced by the part number reflected in the stock number field. Examine the quantity and unit process as a result of the above changes. Revise appropriate records accordingly. Additional status will be provided by the supply source to indicate further action on this requisition.

(b) *Air Force Transactions only.*

Columns 65	66	
6	A	Request for shipment of Reparable Materiel, FILL or KILL.
6	B	Request for shipment of TOC Materiel, FILL or KILL.

H–607.3 Status codes.

Alphabetic/Alphabetic and Alphabetic/Numeric, From Processing Point to Authorized Activity.

(a) *Supply status.* Supply status advises requisitioners and other designated status recipients of on-time shipments, delays, or rejection of specific requisitions. Latest status can be determined by "transaction dates" entered in columns 71 through 73. Supply status codes are as follows:

Columns 65	66	
B	A	Item being processed for release and shipment. The estimated shipping date is contained in card columns 70–73 when provided in response to a follow-up.
B	B	Item backordered against a due-in stock. The estimated shipping date for release of materiel to the customer is contained in columns 70 through 73.
B	C	Item on original requisition containing this document number has been backordered. Long delay is anticipated and estimated shipping date is in columns 70–73. Item identified in stock number field (or "Remarks" field if stock number field cannot accommodate the item number), which is not an automatic/coordinated substitute, can be furnished. The price for the substitute item is in columns 74–80. If desired, submit cancellation for original requisition and submit a new requisition for the offered substitute.
B	D	Requisition is delayed due to need to verify requirement relative to authorized application, item identification, technical data, or when the intent to procure for direct delivery is known. When the intent is to place the requirement on direct delivery, the estimated shipping date will be entered in card columns 70–73 upon completion of review or procurement, additional status will be provided to indicate action taken.
B	E	Depot/storage activity has a record of the MRO but no supporting transaction/record of the action taken (Depot/storage activity response to ICP request for MRO status, for use with DI code AE8 only).
B	F	No record of your document for which your DI code AF _ followup or cancellation request was submitted. (1) If received in response to a cancellation request, subsequently received requisitions (AO_) or other documents (AM_, AT_) will be returned by the supply source with BF status. Deobligate funds and, if then still required, submit requisition using new document number.[1] [2] (2) If received in response to a followup (AF_) request, supply source action to process subsequently received documents (AQ_, AM_, AT_) will continue under regular MILSTRIP procedures. (3) If received in response to DI codes AFX/AFZ followups from DPDS, used by shipping activities to indicate that no shipment had actually been made or that no record of shipment could be located.
B	G	One or more of the following fields have been changed: (1) Stock Number (as the result of a formal catalog change). (A) Requisitioned NSN has been replaced by or consolidated with NSN in stock number field. (B) NSN is assigned to part number that was requisitioned. (C) FSC has changed but NIIN remains the same as originally requisitioned. Review NSN (FSC & NIIN) to ensure that requisition under process is for desired item. If NSN is not for desired item, submit cancellation request to source of supply. (D) FSC has changed but NIIN remains the same as expressed in original transaction (applies to DoD MILSTRAP DZ9 status notification only). (2) Unit of Issue (as the result of a formal catalog change). (3) Requisitioned part number has been identified to/replaced by the part number reflected in the stock number field. Examine the quantity and unit process as a result of the above changes. Revise appropriate records accordingly. Additional status will be provided by the supply source to indicate further action on this requisition.
B	H	Service/coordinated/approved substitute/interchangeable item, identified in stock number field will be supplied. Examine unit of issue, quantity and unit price fields for possible changes. Revise appropriate records accordingly. Additional status will be provided
B	J	Quantity changed to conform to unit pack, adjust the due in records accordingly. Unit of issue is not changed.
B	L	Notice of Availability was forwarded to the country representative or freight forwarder on date entered in cc 70–73.
B	M	Your document is forwarded to activity indicated in card columns 67 through 69. Forward all future transactions for this document number to that activity (also applies to DoD MILSTRAP DZ9 status notifications).
B	N	Requisition being processed as free issue. Signal and fund code fields corrected as noted. Adjust local fund obligation records.
B	P	Item is on backorder or procurement for direct delivery. Shipping action will be delayed. Revised estimated shipping date is cc 70–73.
B	Q	Cancelled. Results from receipt of cancellation request from requisitioner, consignee, manager, or other authorized activity. Also applies to cancellations resulting from deletion of an activity from the DoDAAD. Deobligate funds, if applicable.
B	R	Cancelled. Requisitioning activity authorized cancellation in response to materiel obligation validation request furnished by processing point.
B	S	Cancelled. Requisitioning activity failed to respond to materiel obligation validation request from processing point.
B	U	Item being supplied against your Foreign Military Sales Case Designator reflected in cc 48–50, or your Grant Aid Program and Record Control Number reflected in cc 46–50. This document represents a duplicate of the requisition prepared by the U.S. Military Service.
B	V	Item procured and on contract for direct shipment to consignee. The contract shipping date is entered in columns 70–73. Cancellation, if requested, may result in billing for contract termination costs and/or transportation costs, if applicable.
B	W	Your FMS/Grant Aid requisition containing this document number has been received by the ILCO and submitted to the supply system. A current ESD is not presently available but will be provided by subsequent status transactions (may be used by ILCOs in acknowledging requisition receipt or in reply to followup when ESDs are not available).
B	X	Reserved for Air Force/DEPRA interface.
B	3	The RAD contained in the original requisition is unrealistic. The date in cc 70–73 is the date when materiel will be available.
B	4	Cancelled. Results from receipt of cancellation request from requisitioner, consignee, manager or other authorized activity. Do not deobligate funds. Billing for materiel or contract termination charges will be made.
B	5	The activity identified by the code in cc 4–6 is in receipt of your followup request. Action to determine current status and/or improve the ESD is being attempted. Further status will be furnished.
B	6	The materiel applicable to the requisition requested for cancellation has been diverted to an alternate consignee.
B	7	Unit price change. The lastest unit price for the item, identified by the stock or part number in columns 8–22, is reflected in columns 74–80.
B	8	Quantity requested for cancellation or diversion not accomplished.
B	9	The activity identified by the code in columns 4–6 is in receipt of your cancellation request. Action to cancel the demand or to divert the applicable shipment is being attempted. Do not deobligate funds or delete due-in. Advice of final action will be furnished in subsequent status transactions.

[1] Submit a new requisition using a new document number with a current Julian date.

[2] If requisition via submission of a new document number, submit cancellation request prior to fund deobligation to ensure against potential duplicate shipments.

(b) *Rejection codes.* All inter-service rejections shall contain "C" in column 65 followed by an alphabetic or numeric character in column 66 which shall furnish the appropriate "reason for rejection". Items rejected, if still required, shall be rerequisitioned using new document numbers. To preclude similar rejection, the requisitioner shall consider the reason for the previous rejection and correct or adequately elaborate on the new requisition. Rejection codes are as follows:

Columns 65	66	
C	A	Rejected. (1) Initial provisions of this status will be by narrative message. The message will also state the reasons for rejection. (2) When provided in response to a followup, this status will be sent via AUTODIN and no response for rejection will be included. When received in response to a followup, authorized status recipients may request the reasons for rejection offline (by mail, message, or telephone) if the initial narrative message containing the reasons for rejection cannot be located.
C	B	Rejected. Initial requisition requested rejection of that quantity not available for immediate release or not available by the SDD or RDD. Quantity field indicates quantity not filled.
C	C	Rejected. Applies only to requisitions containing National Stock Numbers (NSNs) for items within FSCs 5510 and 5530. One of the following reasons applies: (1) End-use application as indicated by unique wood products advice code is not compatible with the item ordered. (2) Advice code field contains other than a unique wood products advice code or is blank. Review NSN requisitioned to determine correct item required which is compatible with the intended end-use application and submit a new requisition. If it is determined that the original NSN requisition is correct and no unique wood product advice code applies, submit a new requisition using DD Form 1348 or SF 344 with DI Code A05 or AOE identifying species/grade required and/or end-use application.
C	D	Rejected. Unable to process because of errors in the quantity, date, serial number and/or signal code fields. (1) If received in response to a requisition and the materiel is still required, submit a new requisition with correct data field entries. (2) If received in response to a cancellation request and materiel is not required, submit a new cancellation request with a valid quantity entry.
C	E	Rejected. Unit of issue stated in original requisition, which is reflected in card columns 23–24 of this status document, does not agree with ICP unit of issue and cannot be converted. If still required, submit a new requisition with correct unit of issue and quantity.
C	G	Rejected. Unable to identify requested items. Submit a new requisition and furnish correct National Stock Number or part number. If correct NSN or part number is unknown or if part number is correct, submit a new requisition on DD Form 1348–6 furnishing as much data as is available. SF 344 may be submitted by authorized activities.
C	H	Rejected. Requisition submitted to incorrect single-manager/technical service/distribution depot or Management Control Activity (MCA) and correct source/MCA cannot be determined. Research for correct source/MCA and submit a new requisition.
C	J	Rejected.
C	K	Rejected. Unable to procure. No substitute/interchangeable item is available. Returned for supply by local issue of next higher assembly, kit, or components. Suggest fabrication or cannibalization. If not available, submit a new requisition for next higher assembly, kit, or components.
C	L	Rejected. Contractor requisition containing an "M" in cc 40 is to be processed initially by a Management Control Activity (MCA). Requisition entries indicate direct submission. Research for correct MCA and submit a new requisition.
C	M	Rejected. Fund obligation not cited and/or item is not or no longer free issue. Submit new funded requisition.
C	P	Rejected. Source of supply is local manufacturer, fabrication, procurement, or direct ordering from Federal Supply Schedule. If no available locally, or activity lacks procurement authority, submit a new requisition with Advice Code 2A.
C	R	Rejected. (1) Item requested is command or service regulated or controlled. Submit a new requisition through appropriate channels. (2) Requisition is for a controlled substance/item and "Ship To" address is not authorized recipient as designated by parent Service/Agency headquarters. (3) Requisition is for Government-Furnished Materiel (CFM) and— (A) Item is not authorized by terms of contract; (B) Contractor is not authorized to requisition GFM; (C) Contract identified in requisition is not registered at MCA.
C	S	Rejected. Quantity requisitioned is suspect of error or indicates excessive quantity. Partial quantity being supplied. Quantity field in this transaction reflects quantity rejected. If requirement still exists, submit a new requisition for the required quantity using Advice Code 2L.
C	V	Rejected. Item prematurely requisitioned. The effective date for requisitioning is contained in Card Columns 70–73.
C	W	Rejected. Item not available or is a nonmailable item whose transportation costs are uneconomical. Local procurement is authorized for this requisition only. If item cannot be locally procured, submit new requisition using Advice Code 2A.
C	X	Rejected. Unable to identify the "bill to" and/or "ship to" address as designated by the signal code or the signal code is invalid. If still required, submit a new requisition with valid data field entries.
C	Z	Rejected. Subsistence item not available for resale. Reserved for troop issue only.
C	1	For subsistence only. Rejected. Requested item is not available nationally. Do not requisition this item until advised by the activity identified in card column 4–6.
C	2	Rejected. International Logistics Program funds are not available to process this requisition. (This code will be used between ILCO and requisitions only.)

Columns 65	66	
C	3	Rejected. Applies to subsistence only. Vendor cannot make delivery during shipping period.
C	4	Rejected. Applies only to subsistence. Item is seasonal and not available for delivery during current shipping period.
C	5	Rejected. Requisitioner, upon inspection of material located in the DPDO activity, rejected acceptance due to condition of material/unacceptable substitute and/or material incorrectly identified. This status code is generated by the DPDO and furnished to the appropriate status recipients.
C	6	Rejected. Requisition is for commercial type item which is not authorized for supply under the Foreign Military Sales program. If unable to obtain desired item from commercial sources, submit a new requisition containing Advice Code 3B.
C	7	Rejected. Document identifier code indicates this is a remarks/exception data document. Supply source has no record of receipt of remarks/exception data. If still required, submit a new requisition.
C	8	Rejected. Vendor will not accept order for quantity less than the quantity indicated in cc 76–80. If requirement still exists, submit a new requisition for a quantity that is not less than that reflected in cc 76–80.
C	9	Rejected. Applies only to subsistence. Quantity in cc 25–29 cancelled due to nonavailability during shipping period. If required in subsequent shipping period, submit a new requisition.
D	2	Rejected. Item requested is brand name resale and is in short supply.
D	3	Rejected. Activity did not respond to supply source request for additional information.
D	4	Cancelled. Applies only to subsistence items. Quantity in cc 25–29 cancelled. Your requisition quantity, together with all other requisitions received this cycle for the specified port or depot, does not meet the contractor's minimum order quantity.

(c) Air force Transactions only.

Columns 65	66	
F	A	Obligation authority for base procurement (used to indicate that the requisitioning activity is authorized to make local procurement of items for which Air Force Logistics Command has procurement responsibility). Central procurement funds will be made available to the requisitioning activity on an obligation authority. Not applicable from CONUS to overseas activities.
F	B	Back order cancelled. Report of serviceable excess received for item currently on back order.
F	C	Passing action (materiel release order or redistribution order) issued over 60 days ago. Air Logistics Center followup action has not resulted in shipment confirmation or denial. If item is still required, requisition using new document number.
F	D	Rejected. Contractor's requisitioning authorizations has been totally suspended or suspended for the specific contract number cited on the requisition document. To be used when the dollar requisitioning authorization on a specific contract or contracts has been or is about to be exceeded. Excludes valid, MICAP Mission Capable requisitions from contractors.
F	E	Rejected. Contractor's requisition (EZ in columns 30–31) containing "R" in column 53 (fund code) does not contain contract number identification or valid "EZ" stock record account number other than the requisitioner in the supplemental address field (columns 45–50); or does not contain valid ALC code in column 52; or does not contain signal code "C" or "L" in column 51. Rerequisition using new document number, and citing valid data in columns 45–50, and columns 51–53.
F	F	Rejected. Item is stock listed as nonpub and not authorized for requisition, stockage, or issue. If a need exists for the specific items only, manually rerequisition, providing full justification for reactivation of the item and anticipated usage data.
F	G	Rejected. Item is not authorized for requisitioning by AF activities in any published or computer disseminated stock number list. Research for keypunch or transmission errors. If the stock number is correct and the need for the item still exists, manually rerequisition providing data concerning source of the stock number and full anticipated usage data.
F	K	Cancelled. Requisitioning activity failed to reply to request and subsequent followup for additional information necessary for processing requisition.
F	L	Rejected. Insurance item. Not authorized for stock. If required, rerequisition giving complete justification.
F	M	Rejected. Depot overhaul item. If required, rerequisition giving complete justification. Mechanically assigned to an unauthorized activity requisition for depot overhaul item (maintenance code "3").
F	N	Replacement type item. Review for appropriate authorization. If EAID requirement exists, rerequisition using appropriate advice code.
F	O	Incomplete or invalid technical order figure and index number (rerequisition "A02/B" or "A05/E" as required) or end item identification.
F	P	Item requested is used on end item—Command supported.
F	Q	Change in fund and/or signal code. Requisition routed as necessary to correct SOS. Requisitions which are corrected and rerouted by DAAS will be identified by D/I "AE9". Status passed by the ALC will reflect D/I "AE1", "AE2". Where both a fund code change and passing action is indicated by an ALC and NSS has been found on which the Air Force is not a recorded user. The NSN found has been screened for technical adequacy for AF applications and may be used on future requisitions in lieu of the part number originally submitted. Action is being initiated to record the Air Force as a user on the NSN. Appropriate changes have been made in columns 51, 52–53, and 67–69. Update all records accordingly; applicable only to fund codes "6H" and "6C".
F	R	Cancelled. Invalid MICAP requirement. Not reported in RCS: HAF-LEY(AR)7113, Aerospace Vehicles and Selected Items of Equipment MICAP.
F	U	Rejected. Item not procured for stock (applied to items with provisioning source code U, X, X1, X1D, 2X2, or X2d). If the item assigned provisioning source code (PSC) entered in cc 67–69 is believed to be in error, resubmit requisition (DD Form 1348–6) with justification for change of PSC code. If PSC is correct, requisition next higher assembly, if not available. NOTE: Definitions and actions for provisioning source codes are in chapter 17, attachment P–2A of DoD Manual 4140.17–M. (REX code 1 assigned.) Refer to MGT F452.
F	W	Report as work stoppage with Appendix B (DoD Manual 4140.17–M) (reparable contractor only).
F	X	Parts required to make assembly are listed in technical orders. If component parts are not available, rerequisition required parts accordingly.
F	Y	Reference number requisitioned has been related to another reference number with assigned NSN not AF used. AFLC IM has initiated adopt action, taken action to update CRL–1, and revise DAAS routing identifier. If support is still required, rerequisition using NSN reflected in columns 8–22.

Note.—Alternate for status code "FX".

H–608 Supplementary address entries.

(Columns 45 through 50)

H–608.1 General.

The supplementary address is a two-part field to indicate:

(a) Service (column 45), and

(b) Activity address code (columns 46 through 50).

Example:

Service	Activity address code				
45	46	47	48	49	50

H–608.2 Entries.

(a) The entry in column 45 (service) shall always be the appropriate character from H–601 that indicates the service or other Government element ownership or sponsorship. Specific alphabetic characters are prescribed for normal requisitioning and shipping and for contractor's use.

(b) Entries in columns 46 through 50 indicate the specific activity address code for the purpose of receiving material or receiving documentation. The activity address code will be established and disseminated in the DoD Activity Address Directory. Each activity address code so established will contain the address(es) in detail to permit shipping or material, billing for material, and mailing of documentation.

(c) When the originator of the document desires to utilize columns 46 through 50 for other data, the entry will not be significant to other than the originator. In these cases, an alpha "Y" shall be entered in column 45. The alpha "Y" indicates that the contents of the field (columns 46 through 50) are not significant to the MILSTRIP system and shall not be disseminated, but will be perpetuated and shown on subsequent document generated therefrom.

H–609 Julian day calendar.

JULIAN DAY CALENDAR

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1	32	60	91	121	152	182	213	244	274	305	335
2	33	61	92	122	153	183	214	245	275	306	336
3	34	62	93	123	154	184	215	246	276	307	337
4	35	63	94	124	155	185	216	247	277	308	338
5	36	64	95	125	156	186	217	248	278	309	339
6	37	65	96	126	157	187	218	249	279	310	340
7	38	66	97	127	158	188	219	250	280	311	341
8	39	67	98	128	159	189	220	251	281	312	342
9	40	68	99	129	160	190	221	252	282	313	343

JULIAN DAY CALENDAR—Continued

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
10	41	69	100	130	161	191	222	253	283	314	344
11	42	70	101	131	162	192	223	254	284	315	345
12	43	71	102	132	163	193	224	255	285	316	346
13	44	72	103	133	164	194	225	256	286	317	347
14	45	73	104	134	165	195	226	257	287	318	348
15	46	74	105	135	166	196	227	258	288	319	349
16	47	75	106	136	167	197	228	259	289	320	350
17	48	76	107	137	168	198	229	260	290	321	351
18	49	77	108	138	169	199	230	261	291	322	352
19	50	78	109	139	170	200	231	262	292	323	353
20	51	79	110	140	171	201	232	263	293	324	354
21	52	80	111	141	172	202	233	264	294	325	355
22	53	81	112	142	173	203	234	265	295	326	356
23	54	82	113	143	174	204	235	266	296	327	357
24	55	83	114	144	175	205	236	267	297	328	358
25	56	84	115	145	176	206	237	268	298	329	359
26	57	85	116	146	177	207	238	269	299	330	360
27	58	86	117	147	178	208	239	270	300	331	361
28	59	87	118	148	179	209	240	271	301	332	362
29		88	119	149	180	210	241	272	302	333	363
30		89	120	150	181	211	242	273	303	334	364
31		90		151		212	243		304		365

For leap year, add one to each date after 28 February.

H–610 Mode/method of shipment codes.

Code	Description
A	Motor, truckload.
B	Motor, less than truckload.
C	Van (unpacked, uncrated personal or Government property).
D	Driveaway, truckaway, towaway.
E	Bus.
F	Military Airlift Command (MAC) (Channel and Special Assignment Airlift Mission).
G	Surface parcel post.
H	Air parcel post.
I	Government trucks, for shipment outside local delivery area.
J	Air, small package carrier.
K	Rail, carload.[1]
L	Rail, less than carload.[1]
M	Surface, freight forwarder.
N	LOGAIR.
O	Organic military air (including aircraft of foreign governments).
P	Through Government Bill of Lading (TGBL).
Q	Commercial air freight (includes regular and expedited service provided by major airlines; charters and air taxis).
R	Reserved for future use.
S	Scheduled Truck Service (STS) (applies to contract carriage, guaranteed traffic routings and/or scheduled service).
T	Air freight forwarder.
U	QUICKTRANS.
V	SEAVAN.
W	Water, river, lake, coastal (commercial).
X	Bearer, walk-thru (customer pickup of materiel).
Y	Military intratheater Airlift Service.
Z	Military Sealift Command (MSC) (controlled contract or arranged space).
2	Government watercraft, barge, lighter.
3	Roll On/Roll Off (RO/RO) service.
4	Armed Forces Courier Service (ARFCOS).
5	Surface, small package carrier.
6	Military official mail (MOM).
7	Express mail.
8	Pipeline.
9	Local delivery by government or commercial truck (includes on base transfers; deliveries between air, water, or motor terminals; and adjacent activities). Local delivery areas are identified in commercial carriers' tariffs which are filed and approved by regulatory authorities.

[1] Includes trailer/container-on-flat-car (excluding SEAVAN).

Field/Legend	Columns	Explanation of Entries
Document identifier	1–3	The appropriate code applicable to supply status, to include the recipient of the status. (See H–602.)
Routing identifier	4–6	The appropriate code of the supply source furnishing the supply status.
Media and status	7	The code as shown on the requisition.
Stock or part number	8–22	The stock or part number to which status is applicable. (See H–607.3 for status codes applicable to changed or substituted numbers.)
Unit of issue	23–24	The unit of issue applicable to the stock or part number. (See H–607.3 for status code applicable to changed unit of issue.)
Quantity	25–29	The quantity applicable to the item being supplied. (See H–607.3 for status code applicable to quantity change and/or relating to a unit of issue change.)
Document number	30–43	The document number as shown on the requisition.
Suffix	44	The suffix code when the requisitioned quantity is divided into separate supply actions. When the requisition quantity is not divided, this field shall be left blank.
Supplementary address	45–50	
Signal	51	
Fund	52–53	The codes as shown on the requisition.
Distribution	54–56	
Project	57–59	
Priority	60–61	
Transaction date	62–64	The Julian Date that corresponds to the date of this reply.
Status	65–66	The appropriate status code to convey the information regarding the status of the requisition. (See H–607.1.)

H–611 Supply status card entries.

The supply status card is used to furnish exception status and 100% supply status as follows:

Field/Legend	Columns	Explanation of Entries
Routing identifier	67–69	The "last known source" to which authorized followup action will be directed.
Estimated shipping date	70–73	When designated by the status code, enter the year and Julian day that it is estimated the materiel will be shipped.
Unit price	74–80	The unit price of the stock or part number shown in columns 8–22. When the supply status contains a status code relating to an erroneously routed requisition, this field will be left blank. (See H–607.)

H–612 Shipment status card entries.

The shipment status card is the document by which specific shipping information is furnished in reply to a followup. Entries are as follows:

Field/Legend	Columns	Explanation of Entries
Document identifier	1–3	The code applicable to shipment status. (See H–602.)
Routing identifier	4–6	The code of the supply source from which the MRO was received.
Media and status	7	The code as shown on the applicable MRO.
Stock or part number	8–22	The stock or part number of the item supplied.
Unit of issue	23–24	The unit of issue for the item supplied.
Quantity	25–29	The quantity of the item supplied.
Doucment number	30–43	The document number as shown on the requisition.
Suffix	44	The suffix code, when requisitioned quantity is divided into separate supply actions. When the requisition quantity is not divided, this field shall be left blank.
Supplementary address	45–50	The coded address as shown on the requisition.
Hold code	51	Type of held code, when applicable. Left blank in response to followup when shipment has not occurred.
Fund code	52–53	The code shown on the original requisition.
Distribution	54–56	The code as shown on the requisition.
Estimated shipping date or date shipped.	57–59	The date delivered to carrier. When used in response to a followup and shipment has not occurred, will contain estimated shipping date.
Priority	60–61	The code shown on the requisition.

Field/Legend	Columns	Explanation of Entries
Transaction Control Number (TCN) or Other Shipment Unit Number (Service Assignment Code of the requisitioner will be omitted when the TCN is used).	62–76	The TCN for overseas shipments and unregistered parcel post shipments; the consignor, letter B and GBL number for CONUS shipments; the consignor, letter C, and certified mail number for shipments forwarded by certified mail; the consignor, letter R and registration number on registered parcel post; the consignor, letter I and insured number on insured parcel post. Left blank in response to followup when shipment has not occurred.
Mode of Shipment	77	The appropriate code identifying the mode of shipment. (See H-610.)
Date available for shipment or port of embarkation (POE).	78–80	a. CONUS. Date available for shipment if shipment has not occurred. b. OVERSEA. Enter POE except on parcel post or shipments to a SEAVAN Cargo Assembly Point. On shipments to a SEAVAN Cargo Assembly Point, enter the SEAVAN Cargo Assembly Point Designator (see DoD 4500.32-R, MILSTAMP). Leave blank in response to followup when shipment has not occurred. (See H-616.)

H–613 Reply to followup.

The reply to a followup will contain the most current information available regarding the status of a requisition and may be as follows:

(a) A supply status card which may contain a change in the estimated shipping date. The transaction date will correspond to the date of reply. (See H–611 for entries.)

(b) A shipment status card, identified as such in the document identifier. (See H–612 for entries.)

H–614 Replies to cancellation requests.

The reply to a cancellation request may be as follows:

(a) A supply status card prepared as shown in H–611. The supply status code in Card Column 65–66 will indicate the status of cancellation action.

(b) If the materiel has already been shipped, a reply identified by the document identifier as a reply to cancellation request-shipment status, card except for the document identifier. (See H–612 for entries.)

H–615 Management codes.

H–615.1 General.

The appropriate management code is entered in Column 72 of requisitions and turn-ins when specified by the contracting Military Department or Agency.

H–615.2 Air Force entry of management code (Column 72).

(a) *General.* Air Force maintenance, production, and research and development contractors when requesting GFM from or returning GFM to Air Force activities shall enter, in Column 72, the appropriate alphabetic character as listed herein.

Code	Indentification of Operation
C	On all returns to Air Force activities of end items (other than those excluded in (b) below) from maintenance contracts for modification and modernization.
F	On all requisitions and returns to Air Force activities of GFM including modification kits furnished in support of maintenance, production, and including return of contractor acquired property (CAP).
H	On all returns to Air Force activities of end items (other than those excluded in (b) below) from maintenance contracts for repair and testing.
J	On all requisitions and returns to Air Force activities of Government-furnished aeronautical equipment (GFAE).
K	On all returns of unserviceable components removed from end items and shipped to an Air Force Specialized Repair Activity (SRA).
L	On all requisitions and returns to Air Force activities of Government-furnished equipment (GFE) under loan agreements, for maintenance contracts and baited items under production, and research and development contracts.

(b) *Exclusions.* Air Force transactions involving the following end items are excluded from the provisions of H–615.2(a) above:

(1) Complete aircraft and missiles;

(2) Complete vehicles;

(3) Propulsion units;

(4) Industrial plant equipment controlled by the Defense Industrial Plant Equipment Center, Memphis, Tennessee;

(5) COMSEC (Communications Security) and SIGINT (Signals Intelligence) equipment, COMSEC aids (Keying Material);

(6) Forms and publications;

(7) Bulk petroleum and packaged fuel products; and

(8) Perishable subsistence items and brand-name resale subsistence items.

H–616 CONUS consolidation and containerization point (CCP) codes.

The CCP code is used in lieu of the POE code in MILSTRIP Shipment Status or similar shipping advice to identify cargo shipped to CONUS SEAVAN consolidation points for onward movement by SEAVAN. The first position of the code identifies the MTMC area command and a combination of the second and third positions identifies the CCP within the area. Tracing actions citing the CCP in the POE field will be sent to the appropriate MTMC area command.

Eastern Area CCP

101 New Cumberland Army Depot
102 Letterkenny Army Depot (Alternate)
103 Defense Depot Mechanicsburg, PA
104 Air Force Consolidation and Containerization Point (AFCCP) (WRALC) Robins AFB, Georgia
201 Red River Army Depot (Anniston Army Depot as an alternate for Red River Army Depot)

Western Area CCP

301 Sharpe Army Depot
302 Sacramento Army Depot (Alternate)
303 Defense Depot Tracy, CA

Appendix I—Material Inspection and Receiving Report

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Part 1—Introduction

I–101 General.

(a) This appendix sets forth procedures and instructions for the use, preparation, and distribution of the Material Inspection and Receiving Report (MIRR) (DD Forms 250 Series) and suppliers commercial shipping/packing lists used to evidence Government Procurement Quality Assurance (PQA).

(b) MIRRs are used to document Procurement Quality Assurance, Acceptance of supplies and services, and shipments; they are used by receiving, status control, technical, contracting, inventory control, requisitioning, and paying activities. MIRRs shall not be used for:

(i) Shipments by subcontractors where direct shipment is not made to the Government; or

(ii) Shipment of contract inventory.

(c) The contractor shall prepare the MIRR with the exception of those entries required to be completed by the authorized Government representative.

(d) To preclude delays in shipments, payments, and avoid multiple corrections, contractors are encouraged to consult with the cognizant Government representing regarding implementation of this appendix.

(e) Standard abbreviations may be used.

(f) Where optional methods are permitted in this appendix, the exercise of the opinion shall be at the discretion of the contractor.

I–102 Applicability.

(a) The provisions of this appendix are applicable to supplies or services procured by the Department of Defense (DoD) when the Material Inspection and Receiving Report clause (see 7–104.62) is included in the contract. If the contract contains the fast payment procedure (see 7–104.84), the contractor may elect not to prepare a DD Form 250 and include additional information on his invoice.

(b) When the Department of Defense provides PQA and/or Acceptance services for non-DoD activities, the MIRR shall be prepared in accordance with the instructions of this appendix unless otherwise specified in the contract.

I–103 Use.

(a) the DD Form 250 is a multi-purpose report used for:

(i) PQA—to provide evidence of PQA at origin or destination;

(ii) Acceptance—to provide evidence of acceptance at origin or destination;

(iii) Packing List;

(iv) Receiving;

(v) Shipping;

(vi) Contractor Invoice;

(vii) Contractor Commercial Invoice Support; and

(viii) Contractor Internal Use.

(b) The DD Form 250–1 is used when bulk movements of petroleum products are made by tanker or barge to cover:

(i) Origin acceptance of cargo;

(ii) Shipment of Government-owned product;

Note: This Form may also be used to transmit quality data to the point of acceptance in the case of origin inspection on FOB destination deliveries or preinspection at product source. When so used, it shall be annotated "INSPECTED FOR QUALITY ONLY."

(iii) Destination acceptance of cargo;

(iv) Receipt of Government-owned product.

I–104 Application.

(a) *DD Form 250:*

(1) The DD Form 250 shall be used for delivery of contract line, subline, exhibit line or exhibit subline items, except for those exhibit line or exhibit subline items on a DD Form 1423 that indicate no DD Form 250 is required.

(2) If the "Shipped To," "Marked For," "Shipped From," "Mode of Shipment," "PQA" and "Acceptance" data are the same for more than one shipment made on the same day under the same contract, one MIRR may be prepared to cover all such shipments.

(3) If the volume of the shipment precludes the use of a single car, truck or other vehicle, a separate MIRR shall be provided for the contents of each vehicle.

(4) When a shipment is consigned to an Air Force activity and the shipment includes items of more than one Federal Supply Class or Materiel Management Code (MMC), a separate DD Form 250 shall be prepared for items of each of the Federal Supply Classes or MMC included in the shipment. However, the cognizant Government representative may authorize a single DD Form 250 listing each of the Federal Supply Classes or MMC included in the shipment on a separate continuation sheet. The MMC appears as a suffix to the National Stock Number (NSN) applicable to the item.

(5) Consolidation of Petroleum Shipments on a single MIRR—

(i) *Continental United States:* Multiple car or truck load shipments of petroleum made on the same day, to the same destination, against the same contract line item, may be consolidated on one MIRR. To permit verification of motor deliveries, each load shall be assigned a load number which can be identified to the shipment number in Block 2 of the DD Form 250. Individual loads shall be accompanied by a shipping document (commercial or Government) showing as a minimum, the shipper, shipping point, consignee, contract and line item number, product identification, gross gallons (bulk only), loading temperature (bulk only), API gravity (bulk only), identification of carrier's equipment, serial number of all seals applied, and signature of supplier's representative. When acceptance is at destination, the receiving activity shall retain the shipping document(s) to verify the entries on the consignee copy of the DD Form 250 forwarded by the contractor (ref: I–401, Table I) prior to signing Block 21B.

(ii) *Overseas:* The same criteria as for continental United States applies except the consolidation period may be extended to a time frame acceptable to the receiving activity, shipping activity, Government finance office and the authorized Government Representative having cognizance at the contractor's facility. In addition, more than one contract line item may be included provided the "Shipped To," "Marked For," "Shipped From," "Mode of Shipment," "PQA" and "Acceptance" data are the same for all.

(6) Consolidation of Coal Shipments on a single MIRR-Multiple railcar or truck shipments of coal made on the same day, to the same destination, against the same contract line item, may be consolidated on one MIRR. To permit verification of truck deliveries, each load shall be assigned a load number which can be identified to the shipment number in block 2 of the DD Form 250 and the attached analytical test report. Individual truck loads shall be accompanied by a commercial shipping document showing as a minimum the shipper, the name or names, location and shipping point of the mine or mines from which the coal originates, the contract number, the exact size of the coal shipped, and a certified weighmaster's certificate of weight for the truckload. Rail shipments will be accompanied by a waybill showing the identical information. To permit verification of rail deliveries, each railcar number comprising the shipment shall be identified to the shipment number in block 2 of the DD Form 250 and the attached analytical test report. When acceptance is at destination, the receiving activity shall retain the shipping document(s) to verify the entries on the consignee copy of the DD Form 21B.

(b) *DD Form 250–1:*

(1) A separate form shall be used for each tanker or barge cargo loaded. More than one barge in the same tow may be reported on a single form if on the same contract and consigned to the same destination. When liftings involve more than one contract, separate forms shall be prepared to cover the portion of cargo loaded on each contract. A separate form shall be prepared for each product or grade of product loaded.

(2) A separate document shall be used for each tanker or barge cargo and each grade of product discharged. More than one barge in the same tow may be reported on a single form if from the same loading source.

I–105 Forms.

(a) Contractors may obtain from the Contract Administration Office, upon request, and at no cost, MIRR forms required for use in connection with Government contracts.

(b) Contractors may print forms provided that the format and dimensions (*DD Forms 250 and 250c; 8½ inches x 11 inches, DD Form 250–1: 8½ inches x 14 inches*) are identical to the MIRR forms printed by the Government and that the forms are cast to provide for 78 characters per printed image horizontally and 62 lines vertically border to border for the DD Form 250, and 61 lines vertically border to border for the DD Form 250c.

I–106 Reproduction.

This appendix may be reproduced in whole or in part.

Part 2—PQA on Shipments Between Contractors

I–201 Instructions.

The supplier's commercial shipping document/packing list shall be used to indicate performance or required PQA actions at subcontract level. The following entries shall be made on the supplier's commercial shipping document/packing list.

Required PQA of listed items has been performed.

—.....

(Signature of Authorized Govt. Rep. or DoD Stomp)

(Date).....

(Typed Nome and Office).....

Distribution for Government purposes shall be one copy:

(i) With shipment;

(ii) For the Government representative at consignee (via mail); and

(iii) For the Government representative at consignor.

Part 3—Preparation of the DD Form 250 and DD Form 250c

I–301 Preparation Instructions.

DD Form 250 (MIRR) and DD Form 250c (Continuation Sheet) shall be prepared as follows:

(a) *General:* (i) The date, where required, shall utilize seven spaces consisting of the last two digits of the year, three alphabetic month abbreviation, and two digits for the day. For example, 71AUG07, 71SEP24;

(ii) The address, where required, shall consist of the name, street address / P.O. Box, city, state and ZIP Code;

(iii) The Handbook of non-Government Organizations for MILSCAP (H8–1 / H8–2) code, Department of Defense Activity Address Directory (DODAAD) code or Military Assistance Program Address Directory (MAPAD) code (MAPAC and TAC) in accordance with DoD 5105.38–D when contained in the contract, shall be entered to the right of and on the same line as the word "CODE" in Blocks 9 through 12 and in Block 14. The DODAAD code, or MILSCAP (H8–1 / H8–2) code shall be entered in Block 13;

(iv) When the DD Form 250c is used, the data entered in the blocks at the top of the form shall be identical to the comparable entries as shown in Blocks 1, 2, 3 and 6 of the DD Form 250;

(v) Overflow data of the DD Form 250 shall be entered in Block 16 or in the body of the DD Form 250c with appropriate block cross reference. Additional DD Form 250c sheets, solely for continuation of Block 23 data shall not be numbered or distributed as part of the MIRR.

(b) *Classified Information.* Classified information shall not be included in or appear on the MIRR, nor shall the MIRR be classified.

Block 1—PROC INSTRUMENT IDEN (CONTRACT).

(a) Enter the 13 position alpha-numeric basic Procurement Instrument Identification (PII) number of the contract. When applicable, enter the four alpha-numeric call/order serial number which is supplementary to the 13 position basic PII number, *i.e.*, delivery orders under indefinite delivery type contracts, orders under basic ordering agreements and calls under blanket purchase agreements. This number shall be entered as shown in the examples below. Except as indicated in (b) below, do not enter supplementary numbers used in conjunction with basic PII numbers to identify (i) modifications of contracts and agreements or (ii) modifications to calls/orders or (iii) document numbers representing contracts written between contractors.

1. PROC INSTRUMENT IDEN (CONTRACT)	(ORDER) NO.
DABE01–66–C–0001	

1. PROC INSTRUMENT IDEN (CONTRACT)	(ORDER) NO.
DABE01–67–A–0001–0001	

(b) When shipping instructions are furnished by telephone/TWX message and shipment is made prior to receipt of the confirming contract modification (SF 30), the contract modification six digit number or the two digit call/order number which is provided in accordance with 19–204 will be entered immediately following the PIIN or call/order four digit SPIIN.

1. PROC INSTRUMENT IDEN (CONTRACT)	(ORDER) NO.
DABE01–66–C–0001–PV0001	

1. PROC INSTRUMENT IDEN (CONTRACT)	(ORDER) NO.
DABE01–67–A–0001–0001AA	

(c) For DoD delivery orders on non-DoD contracts, enter the non-DoD contract number immediately below the PII number.

1. PROC INSTRUMENT IDEN (CONTRACT)	(ORDER) NO.
DSA400–68–F–1684	
GS–000S–61917	

(d) When a contract number other than PII number is used, enter that contract number.

Block 2—SHIPMENT NO.

(a) The shipment number is composed of a three alpha character prefix and a four numeric or alpha-numeric serial number.

(1) The shipment number prefix shall be controlled and assigned by the prime contractor and shall consist of three alphabetic characters for each "Shipped From" address (Block 11). The shipment number prefix shall be different for each "Shipped From" address and shall remain constant throughout the life of the contract. Separate prefixes may be assigned when shipments are made from different locations within a facility identified by one "Shipped From" address.

(2) The first shipment made under the contract or contract and order number shown in Block 1 from each "Shipped From" address, or shipping location within the "Shipped From" address, shall be numbered 0001. All subsequent shipments with the identification shipment number prefix shall be consecutively numbered.

a. Alpha-numeric serial numbers shall be used when more than 9,999 numbers are required. Alpha-numeric numbers shall be serially assigned with the alpha in the first position (the letters I and O shall not be used) followed by the three position numeric serial number. The following alpha-numeric sequence shall be used:

A000 through A999 (10,000 through 10,999)
B000 through B999 (11,000 through 11,999)
Z000 through Z999 (34,000 through 34,999)

b. When this series is completely used, numbering shall revert to 0001.

(b) The shipment number of the initial shipment shall be reassigned where a "Replacement Shipment" is involved (Block 16(c)(6)).

(c) The prime contractor shall control deliveries and on the final shipment of the contract shall suffix the shipment number with a "Z". Where the final shipment is from other than the prime contractor's plant, the prime contractor may elect either to: (i) Direct the subcontractor making the final shipment to suffix that shipment number with a "Z", or (ii) Upon determination that all subcontractors have completed their shipments, to correct the DD Form 250 (see I–305) covering the final shipment made from the prime contractor's plant by addition of a "Z" to that shipment number.

(d) When commercial invoices are used, see I–306.

Block 3—DATE SHIPPED. Enter the date the shipment is released to the carrier or the date of completion of services. If the shipment will be released after the date of PQA and/or Acceptance, enter the estimated date of release. When the date is estimated, enter an "E" after the date. Distribution of the MIRR shall not be delayed for entry of the actual shipping date. Reissuance of the MIRR is not required to show the actual shipping date.

Block 4—B/L TCN. When applicable, enter:

(a) The commercial or Government bill of lading number "B/L";

(b) The Transportation Control Number after "TCN" (When a TCN is assigned for each line item on the DD Form 250 in accordance with Block 16 instructions, insert "See Block 16."); and

(c) The initial (line haul) mode of shipment code in the lower right corner of the block (I–302).

Block 5—DISCOUNT TERMS. The discount, in terms of percentages and corresponding days allowed, shall be entered as described below:

(a) The contractor may, at his option, enter the discount terms on all copies of the MIRR.

(b) When the MIRR is used as an invoice, see I–306.

Block 6—INVOICE NO./DATE. Enter the invoice number and date as described below:

(a) The contractor may enter the invoice number and actual or estimated date of invoice submission on all copies of the MIRR. When the date is estimated, enter an "E" after the date. MIRRs other than invoice copies shall not be corrected to reflect the actual date of invoice submission.

(b) When the MIRR is used as an invoice, see I–306.

Block 7—PAGE/OF. Consecutively number the pages comprising the MIRR. On each page enter the total number of pages of the MIRR.

Block 8—ACCEPTANCE POINT. Enter an "S" for Origin or "D" for Destination.

Block 9—PRIME CONTRACTOR/CODE. Enter the code and address.

Block 10—ADMINISTERED BY/CODE. Enter the code and address of the Contract Administration Office (CAO) cited in the contract.

Block 11—SHIPPED FROM/CODE/FOB.

(a) Enter the code and address of the "Shipped From" location. If identical to Block 9, enter "See Block 9."

(b) For performance of services line items which do not require delivery of items upon completion of services, enter the code and address of the location at which the services were performed. If the DD Form 250 covers performance at multiple locations, or if identical to Block 9, enter "See Block 9."

(c) Enter on the same line and to the right of "FOB" an "S" for Origin or "D" for Destination as specified in the contract. Enter an alphabetic "O" if the "FOB" point cited in the contract is other than origin or destination. *NOTE:* For destination or origin acceptance shipments involving discount terms, enter "DISCOUNT EXPEDITE" in at least one-half inch outline-type style letters across Blocks 11 and 12. Do not obliterate the information in the "Code" box in these blocks.

Block 12—PAYMENT WILL BE MADE BY/CODE. Enter the code and address of the payment office cited in the contract. See NOTE under Block 11 above.

Block 13.—SHIPPED TO/CODE. Enter the code and address as contained in the contractor shipping instructions.

Block 14—MARKED FOR/CODE. Enter the "Mark For" code and address contained in the contract or shipping instructions. When three-character project codes are provided in the contract or shipping instructions, enter the code in the body of the block, prefixed by "Proj"; do not enter in the code block.

Block 15—ITEM NO. Enter the contract line item, subline line, exhibit line or exhibit subline identification as set forth in the contract. If four or less digits are used, they will be positioned immediately to the left of the vertical dashed line and prefixed with zeros, if applicable to achieve four digits. Where a six digit identification containing alpha digits in the final two positions is used, enter the last two digits to the right of the vertical dashed line. Do not make an entry on the DD Form 250 for sublines/exhibit sublines which are included in and identified by numerics in the last two positions. Line item identifications not in accordance with the Uniform Contract Line Item Number System, Section XX, will be entered without regard to positioning.

Block 16—STOCK/PART No./DESCRIPTION.

(a) Enter, as applicable, for each line item, using single or double spacing between each line item when there are less than four line items, or double spacing when there are four or more line items:

(1) The National Stock Number (NSN) or noncatalog number and if applicable, prefix or suffix; when a number is not provided or it is necessary to supplement the number, include other identification, *e.g.*, manufacturer's name or Federal Supply Code, as published in Cataloging Handbook H4–1, and part number, additional part numbers may be shown in parentheses or slashes; the descriptive noun of the item nomenclature and if provided, the Government assigned management/material control code. The following technique may be used in the case of equal kind supply items; the first entry shall be the description without regard to kind. For example, "Shoe-Low Quarter-Black," "Resistor," "Vacuum Tube," etc. Below this description, enter the contract line item number in Block 15 and Stock/Part number followed by the size or type in Block 16.

(2) On the next printing line if required by the contract for control purposes enter: the make, model, serial number, lot, batch, hazard indicator and/or similar description.

(3) On the next printing lines: The MIPR number prefixed by "MIPR" or the MILSTRIP requisition number(s) when provided in the contract, or shipping instructions followed on the same line, when more than one requisition is entered, by the unit for payment and the quantity shipped against each requisition.

Example:

V0469601850750XY19059A—EA 5
N0018801776038XY3211BA—EA 200
AT650803050051AAT6391J—EA 1000

(4) When a TCN is assigned for each line item, enter on the next line the Transportation Control Number prefixed by "TCN".

(b) When acceptance of a service line item (as differentiating from supplies) is involved, enter the word "SERVICE" followed by as specific a description as is possible in no more than 20 additional characters. Some examples of service line items are maintenance, repair, alteration, rehabilitation, engineering, research, development, training, and testing. Do not complete Blocks 4, 13 and 14 when shipment of materiel is not involved in the service.

(c) For all contracts administered by Defense Contract Administration Services, with the exception of fast pay procedures, enter and complete the following:

Gross Shipping Wt. ———.

State weight in pounds only.

(d) In addition to entries required above, starting with the next line, enter the following as appropriate (entries may be extended through Block 20). When entries are applicable to more than one line item in the MIRR, such data may be entered only once after the last line item entry referencing applicable line item numbers:

(1) Enter in capital letters any special handling instructions/limits for material. environmental control, *e.g.*, temperature, humidity, aging, freezing, shock, etc.

(2) When a shipment is chargeable to Navy appropriation 17X4911, enter the appropriation, Bureau Control Number (BCN), and Authorization Accounting Activity (AAA) Number (*e.g.*, 17X4911–14003–104).

(3) When the Navy transaction type code (TC), "2T" or "7T" is included in the appropriation data, enter "TC 2T" or "TC 7T".

(4) When an NSN is required by but not cited in a contract and has not been furnished by the Government, shipment may be made without such NSN at the direction of the contracting officer. Enter the authority for such shipment.

(5) When Government furnished property (GFP) is included with or incorporated into the line item, enter the letters "GFP".

(6) When shipment consists of replacements for supplies previously furnished, enter in capital letters "REPLACEMENT SHIPMENT." (See I–301, Block 17, for replacement indicators).

(7) On shipments of Government Furnished Aeronautical Equipment (GFAE) under Air Force contracts, the assignment AERNO control number will be entered, *e.g.*, "AERNO 60–6354."

(8) For items shipped with missing components, enter and complete the following: "Item(s) shipped short of the following component(s): NSN or comparable Identification ———, Quantity ———, Estimated Value ———, Authority ———."

(9) When shipment is made of components which were short on a prior shipment, enter and complete the following: "These components were listed as shortages on shipment number ———, date shipped ———."

(10) When shipments involve drums, cylinders, reels, containers, skids, etc., designated as returnable under contract provisions, enter and complete the following: "Return to ———, Quantity ———, Item ———, Ownership (*Government/contractor*)."

(11) Enter the total number of shipping containers, the type of containers, and the container number(s) assigned for the shipment.

(12) On Foreign Military Sales (FMS) or Military Assistance Program (MAP) (Grant Aid) shipments, enter the special markings, the applicable FMS country and case identifier or MAP Record Control/Program/Directive Number identifier as provided in the contract, and the gross weight.

(13) Reserved.

(14) Reserved.

(15) When test/evaluation results are a condition of acceptance and are not available prior to shipment, the following note shall be entered if the shipment is approved by the ACO/PCO: "Note: Acceptance and payment are contingent upon receipt of approved test/evaluation results." The ACO/PCO shall advise (a) the consignee of the results (approval/disapproval) and (b) the contractor to withhold invoicing pending attachment to

his invoice of the approved test/evaluation results.

(16) The copy of the DD Form 250 required to support payment for destination acceptance (top copy of those with shipment) or ARP origin acceptance shall be identified as follows: Enter "PAYMENT COPY" in approximately one-half inch outline type style letters with "FORWARD TO BLOCK 12 ADDRESS" in approximately one-quarter inch letters immediately below. Do not obliterate any other entries.

(17) For Clothing and Textile contracts containing a bailment clause, enter the words "GFP UNIT VALUE."

(18) When the initial unit incorporating an approved Value Engineering Change Proposal (VECP) is shipped, enter the following statement:

This is the initial unit delivered which incorporates VECP No. ———, Contract Modification No. ———, dated ———.

Block 17—QUALITY SHIPPED/RECEIVED.

(a) Enter the quantity shipped, using the unit of measure indicated in the contract for payment. When a second unit of measure is used for purposes other than payment, enter the appropriate quantity directly below in parentheses.

(b) On the final shipment of a line item of a contract containing a clause permitting a variation of quantity and an underrun condition exists, the prime contractor shall enter a "Z" below the last digit of the quantity. Where the final shipment is from other than the prime contractor's plant and an underrun condition exists, the prime contractor may elect either to: (i) Direct the subcontractor making the final shipment to enter a "Z" below the quantity, or (ii) upon determination that all subcontractors have completed their shipments, correct the DD Form 250 (see I–305) covering the final shipment of the line item from the prime contractor's plant by addition of a "Z" below the quantity. The "Z" shall not be used on deliveries which equal or exceed the contract line item quantity.

(c) If a replacement shipment is involved, enter below the last digit of the guantity, the letter "A" to designate first replacement, "B" for second replacement, etc. The final shipment indicator "Z" on underrun deliveries shall not be used when a final line item shipment is replaced.

17. QUANTITY SHIP/REC'D
1000
(10)
Z

(d) If the quantity received is the same quantity shipped and all items are in apparent good condition, indicate by a check mark. If different, enter actual quantity recieved in apparent good condition below quantity shipped and encircle. The receiving activity shall annotate the DD Form 250 stating the reason for the difference.

Block 18—UNIT. Enter the abbreviation of the unit measure as indicated in the contract for payment. Where a second unit of measure is indicated in the contract for purposes other than payment or used for shipping purposes, enter the second unit of measure directly below in parentheses. Authorized abbreviations are listed in MIL-STD–129 (Marking for Shipment and Storage). For example: LB for pound; SH for sheet.

18. UNIT
LB
(SH)

Block 19—UNIT PRICE. The contractor shall enter unit prices on all MIRR copies. Line items shall be priced using actual prices or, if not available, estimated prices. When the price is estimated, enter an "E" after the price.

(a) When the MIRR is used as an invoice, see I–306.

(b) For Clothing and Textile contracts containing a bailment clause, enter the cited Government Furnished Property unit value opposite "GFP UNIT VALUE" entry in Block 16.

(c) For Clothing and Textile contracts containing a bailment clause, enter the cited Goverament Furnished Property unit value opposite "GFP UNIT VALUE" entry in Block 16.

(d) All copies of DD 250s for FMS shipments shall be priced using actual, or if not available, estimated prices. When the price is estimated, enter an "E" after the price.

Block 20—AMOUNT. Enter the extended amount when the unit price is entered in Block 19.

Block 21—PROCUREMENT QUALITY ASSURANCE.

(a) The words "conform to contract", contained in the printing statements in Blocks A and B relate to contract obligations pertaining to quality and to the quantity of the items on the report. The statements shall not be modified. Notes taking exception shall be entered in Block 16 or on attached supporting documents with appropriate block cross reference.

(b) When a shipment is authorized under Alternative Release Procedure, the appropriate contractor signed certificate shall be attached to or included on the top copy of the DD Form 250 copies distributed to the payment office or attached to the CAO copy when contract administration (Block 10 of the DD Form 250) is performed by DCAS.

(c) When contract terms provide for use of Certificate of Conformance and shipment is made under these terms, the contractor shall enter "Certificate of Conformance" in Block 21A on the next line following the PQA and Acceptance statements. The appropriate contractor signed certificate shall be attached to or included on the top copy of the DD Form 250 copies distributed to the payment office or attached to the CAO copy when contract administration (Block 10 of the DD Form 250) is performed by DCAS. In addition, a copy of the signed certificate shall also be attached to or entered on copies of the MIRR sent with shipment.

"A. ORIGIN"

(1) The authorized Government representative shall:

a. Place an "X" when applicable in the appropriate PQA and/or Acceptance box(es) to evidence origin Procurement Quality Assurance and/or Acceptance. When the contract requires PQA at destination in addition to origin PQA, an asterisk shall be entered at the end of the statement and an explanatory note entered in Block 16;

b. Enter the date of signature;

c. Sign; and

d. Enter the typed, stamped, or printed name and office DODAAD code.

(2) When Alternative Releases Procedures apply, the contractor or subcontractor shall complete the entries required under (1) a and d above and enter in capital letters "ALTERNATIVE RELEASE PROCEDURE" on the next line following the printed PQA/Acceptance statement. When acceptance is at origin and Contract Administration is performed by an office other than DCAS, the contractor shall furnish the four payment office copies of the MIRR to the Authorized Government Representative for dating and signing of one copy and forwarding of all copies to the payment office. When acceptance is at origin and contract administration is performed by DCAS, the Contract Administration Office copy of the MIRR shall be furnished to the Authorized Government Representative for dating and signing and forwarding to the Contract Administration Office (see I–401, Table 1).

(3) When Fast Pay procedures apply, the contractor or subcontractor shall enter in capital letters "FAST PAY" on the next line following the printed PQA/Acceptance statement. When PQA is required, the authorized Government representative shall execute the block as required by (1) above.

(4) When Certificate of Conformance procedures apply, inspection or inspection and acceptance are at source, and the contractor's Certificate of Conformance is required, the contractor shall make entries required by "A. ORIGIN" (1)*a* and *d* above. For contracts administered by an office other than DCAS, furnish the four payment office copies of the MIRR to the Authorized Government Representative for dating and signing of one copy, and forwarding of all copies to the payment office. For contracts administered by DCAS, the Contract Administration Office copy of the MIRR shall be furnished to the Authorized Government Representative for dating and signing and forwarding to the Contract Administration Office. (See I–401, Table 1.) When acceptance is at destination, no entry shall be made other than "CERTIFICATE OF CONFORMANCE."

"B. DESTINATION"

(1) When acceptance at origin is indicated in Block 21A, no entries shall be made in Block 21B.

(2) When PQA and Acceptance or Acceptance is at destination, the authorized Government representative shall:

a. Place an "X" in the appropriate box(es).

b. Enter the date of signature;

c. Sign; and

d. Enter typed, stamped, or printed name and title.

(3) When "ALTERNATIVE RELEASE PROCEDURE" is entered in Block 21A and acceptance is at destination, the authorized Government representative shall complete the entries required by B(2) above.

(4) The executed payment copy or MILSCAP Format Identifier PKN or PKP shall be forwarded to the payment office cited in Block 12 within four work days (*five days when MILSCAP Format is used*) after delivery and acceptance of the shipment by the receiving activity. One executed copy of the final DD Form 250 shall be forwarded to the contract administration office cited in Block 10 for implementing contract closeout procedures, except where a DCASR is cited as the payment office in Block 12.

(5) When "FAST PAY" is entered in Block 21A, no entries shall be made in this block.

Block 22—RECEIVER'S USE. This block shall be used by the receiving activity (Government or contractor) to denote receipt, quantity and condition. The receiving activity shall enter in this block the date the supplies arrived. For example, when off-loading or in-checking occurs subsequent to the day of arrival of the carrier at the installation, the date of the carrier's arrival is the date received for purposes of this block.

Block 23—CONTRACTOR USE ONLY. This block is provided and reserved for Contractor use.

I–302 MODE/METHOD OF SHIPMENT CODES

Code	Description
A	Motor, truckload.
B	Motor, less than truckload.
C	Van (unpacked, uncrated personal or Government property).
D	Driveaway, truckaway, towaway.
E	Bus.
F	Military Airlift Command (Channel and Special Assignment Airlift Mission).
G	Surface parcel post.
H	Air parcel post.
I	Government trucks, for shipment outside local delivery area.
J	Air, small package carrier.
K	Rail, carload. [1]
L	Rail, less than carload. [1]
M	Surface, freight forwarder.
N	LOGAIR.
O	Organic military air (including aircraft of foreign governments).
P	Through Government Bill of Lading (TGBL).
Q	Commercial air freight (includes regular and expedited service provided by major airlines; charters and air taxis).

I–302 MODE/METHOD OF SHIPMENT CODES—Continued

Code	Description
R	Reserved for future use.
S	Scheduled Truck Service (STS) (applies to contract carriage, guaranteed traffic routings and/or scheduled service).
T	Air freight forwarder.
U	QUICKTRANS.
V	SEAVAN.
W	Water, river, lake, coastal (commercial).
X	Bearer, walk-thru (customer pickup of material).
Y	Military Intratheater Airlift Service.
Z	Military Sealift Command (MSC) (controlled contract or arranged space).
2	Government watercraft, barge, lighter.
3	Roll On Roll Off (RORO) Service.
4	Armed Forces Courier Service (ARFCOS).
5	Surface, small package carrier.
6	Military official mail (MOM).
7	Express mail.
8	Pipeline.
9	Local delivery by government or commercial truck (includes on base transfers; deliveries between air, water, or motor terminals; and adjacent activities). Local delivery areas are identified in commercial carriers' tariffs which are filed and approved by regulatory authorities.

[1] Includes Trailer/Container-On-Flat-Car (Excluding SEAVAN).

I–303 Consolidated Shipments.

When individual shipments are held at the contractor's plant for authorized transportation consolidation to a single destination on a single bill of lading, the applicable DD Forms 250 may be prepared at the time of Procurement Quality Assurance or Acceptance prior to the time of actual shipment. (See Block 3.)

I–304 Multiple Consignee Instructions.

When the identical line item(s) of a contract is to be shipped to more than one consignee, with the same or varying quantities, and requires origin acceptance, one MIRR may be prepared. Preparation shall be as prescribed in this appendix with the following changes:

(i) Blocks 2, 4, 13 and, if applicable, 14—Enter "See Attached Distribution List."

(ii) Block 15—Item numbers may be grouped for identical stock/part number and description.

(iii) Block 17—Enter the "total" quantity shipped by line item or, if applicable, grouped identical line items.

(iv) The DD Form 250c shall be used to list each individual "Shipped To" and "Marked For" with code(s) and complete shipping address and a sequential shipment number for each; line item number(s); quantity; MIPR number prefixed by "MIPR:" or the MILSTRIP requisition number(s) and quantity for each when provided in the contract or shipping instructions; and if applicable, Bill of Lading number, TCN, and Mode of Shipment Code.

(v) Pages of DD Form 250c comprising the distribution list that are not applicable to the individual consignee may be omitted from the MIRR furnished that consignee. A complete MIRR shall be provided for all other distribution.

I–305 Correction Instructions.

When, because of errors or omissions, it is necessary to correct the MIRR after distribution has been made, a revised or new MIRR shall be effected by correcting the original master or preparing a new MIRR containing the identical data of the original MIRR and distributing the corrected form. MIRRs shall not be corrected for Block 19 and 20 entries. The corrections shall be made as follows:

(i) Circle the error and place the corrected information in the same block; if space is limited, enter the corrected information in Block 16 referencing the error page and block. Enter omissions in Block 16 referencing omission page and block.

2. SHIPMENT NO.
AAA0001
See Block 16

17. QUANTITY SHIP/REC'D
19
(17)

BEST COPY AVAILABLE

16. STOCK/PART NO. DESCRIPTION
CORRECTIONS:
Refer Block 2: Change shipment No. AAA0001 to AAA0010 on all pages of the MIRR.
Refer Blocks 15, 16, 17 and 18, page 2: Delete in entirety Line Item No. 0006. This item was not shipped.

(ii) When corrections have been made to entries for line items (Block 15) or quantity (Block 17) the words "CORRECTIONS HAVE BEEN VERIFIED" shall be entered on page 1. The authorized Government representative shall date and sign immediately below the statement. This verification statement and signature are not required for other corrections.

(iii) Pages of the MIRR requiring correction shall be clearly marked "CORRECTED COPY", avoiding obliteration of any other entries. Where correctiosn are made only on continuation sheets, page number 1 shall also be marked "CORRECTED COPY."

(iv) Page 1 and only those continuation pages marked "CORRECTED COPY" shall be distributed to the initial distribution. A complete MIRR with corrections shall be distributed to new addressee(s) created by error corrections.

I–306 Invoice Instructions.

Contractors are encouraged to use copies of the MIRR as an invoice, in lieu of a commercial form, but are not required to do so. If commercial forms are used, the related MIRR shipment number(s) shall be identified thereon. Copies of the MIRR used as an invoice are in addition to the standard distribution (I–401). The four invoice copies shall be prepared and forwarded to the payment office as follows:

(i) Complete Blocks 5, 6, 19 and 20. Column 20 shall be totalized.

(ii) Mark in letters approximately one inch high, first copy: "ORIGINAL INVOICE"; three copies: "INVOICE COPY".

(iii) Forward the four copies to the payment office (Block 12 Address), except when acceptance is at destination and a Navy Finance Office will make payment, forward to destination.

(iv) The invoice and the four "Payment Office" (Part 4, Table 1) copies of the MIRR shall not be fastened together.

I–307 Packing List Instructions.

Copies of the MIRR may be used as a packing list. When they are used, the packing list copies shall be in addition to the copies of the MIRR required for standard distribution (I–401) and shall be marked "PACKING LIST."

I–308 Receiving Instructions.

When the MIRR is used for receiving purposes, procedures shall be as prescribed by local directives. If PQA and Acceptance or Acceptance of supplies is required upon arrival at destination, see Block 21B for instructions.

Part 4—Distribution of DD Form 250 and DD Form 250c

I–401 Distribution.

(a) The contractor is responsible for distribution, including mailing and payment of postage, of DD Form 250 in accordance with Tables 1 and 2.

(b) Distribution of MIRRs shall be in accordance with and limited to the distribution and the quantities as provided in Tables 1 and 2. Air mail shall be used whenever it is faster than regular mail.

(c) Distribution of MIRRs on non-DoD contracts shall be in accordance with this Part as amended by the contract.

(d) Distribution shall be made promptly, but no later than the close of business of the work day following:

(i) Signing of the DD Form 250 (Block 21A) by the authorized Government representative, or

(ii) Shipment when authorized under terms of Alternative Release; Certificate of Conformance; or Fast Pay procedure, or shipment when PQA and Acceptance are to be performed at destination.

(e) The consignee copies (via mail) on overseas shipments shall *not* be sent to Port of Embarkation (POE). The copies shall be sent to consignee at APO/FPO address.

(f) Copies of the MIRR forwarded to a location for more than one recipient shall clearly identify each recipient.

TABLE 1.—STANDARD DISTRIBUTION

With Shipment*	4
Consignee (*via mail*)	2
(*For Navy procurement, copies will be priced*) (For Grant Aid/Foreign Military Sales, consignee copies are not required).	
Contract Administration Office	1
(Forward direct to address in Block 10 except when addressee is a DCASR, DCASD, or DCASO, and a Certificate of Conformance (see I–301, Block 21(c)A(4)) or the Alternate Release Procedures (see I–301, Block 21(c)A(2)) is involved, and acceptance is at origin; then, forward through the Authorized Government Representative.)	
Purchasing Office	1
Payment Office**	4
(Forward direct to addressee in Block 12 except (i) when addressee in Block 10 is a DCASR, DCASD, or DCASO and Payment Office in Block 12 is a DCASR do not make distribution; (ii) when addressee in Block 12 is HQ AFCMD attach only one copy to the required number of copies of the contractor's invoice; (iii) when acceptance is at destination and a Navy Finance Office will make payment, forward to destination; and (iv) when a Certificate of Conformance (see I–301, Block 21(c)A(4)) or the Alternative Release Procedures (see I–301, Block 21(c)A(2)) is involved and acceptance is at origin, forward the copies through the Authorized Government Representative.)	
ADP Point for CAO (*Applicable to Air Force only*)	1
(When an AFPRO is specified as the administering activity in Block 10, or HQ AFCMD is cited as Payment Office in Block 12, send *one* copy to HQ AFCMD immediately upon signature. If submission of delivery data is being made by mechanical means, distribution of the hard copy need not be made to HQ AFCMD.)	

* Attach as follows:

Type of Shipment	Location
Carload or truckload	Affix to the shipment where it will be readily visible and available upon receipt.
Less-than-carload or truck-load.	Affix to container number one, or container bearing lowest number.
Mail, including parcel post	Attach to outside or include in the package. Include a copy in each additional package of multipackage shipments.
Pipeline or tank car: Railroad cars for coal movements.	Forward with consignee copies.

** Payment by DCASRs will be based on the source acceptance copies of DD Forms 250 forwarded to the Contract Administration Office except in those rare instances where distribution will be made to DCASR Payment Offices in accordance with the above distribution schedule.

TABLE 2.—SPECIAL DISTRIBUTION

As required	Address	Number of copies
Each: Navy Status Control Activity, Army, Air Force, DSA Inventory Control Manager.	Address specified in the contract.	[1] 1
Quality Assurance Representative.	Address specified by the assigned Quality Assurance Representative.	1
Transportation Office issuing GBL (attach to GBL memorandum copy).	CAO address unless otherwise specified in the contract.	1
Purchasing Office other than office issuing contract.	Address specified in the contract.	1
Foreign Military Sales Representative.	Address specified in the contract.	6
Military Assistance Advisory Group (Grant Aid Shipments).	U.S. Military Advisory Group, Military Attache, Mission, or other designated agency address as specified in the contract.	1

TABLE 2.—SPECIAL DISTRIBUTION—Continued

As required	Address	Number of copies
Army: Foreign Military Sales/Military Assistance Program (Grant Aid).	Commander, US Army Security Assistance Center, Attn: DRSAC-OP, 3rd Street and "M" Avenue, Bldg 54, New Cumberland Army Depot, New Cumberland, PA 17070.	1
Air Force:		
On shipments of new production of aircraft and missiles, class 1410 missiles, 1510 aircraft (fixed wing, all types), 1520 aircraft (rotary wing), 1540 gliders, 1550 target drones.	Air Force Logistics Command, Aerospace Vehicle Distribution Office (MCNAPV), Wright-Patterson AFB, Ohio 45433.	1
When above items are delivered to aircraft modification centers.	A.F. Plant, Representative Office.	1
Foreign Military Sales/Military Assistance Program (Grant Aid) shipments to Canada.	National Defence Headquarters, Ottawa, Ontario, Canada K1A OK4, Attn: DPSUPS3.	1
Other Than Canada	Address specified in the contract.	1
When consignee is an Air National Guard Activity.	Consignee address (Block 13), ATTN: Property Officer.	3
Navy:		
Navy Foreign Military Sales/Military Assistance Program (Grant Aid).	US Navy International Logistics, Control Office (NAVILCO) 700 Robins Avenue, Philadelphia, PA 19111.	2
When typed code (TC) 2T or 7T is shown in Block 16.	Aviation Supply Office (ASO) 700 Robins Avenue, Philadelphia, PA 19111 (Code MFA) for aviation-type material.	2
or	and	
When shipment is consigned to another contractor's plant for a Government representative		
or		
When Block 16 indicates the shipment includes GFP.	Ships Parts Control Center (SPCC) (Code 7231) for all other material, Mechanicsburg, PA 17055.	2
Marine Corps:		
All shipments consigned to a Marine Corps Activity (excluding aeronautical spares).	Commandant of the Marine Corps Headquarters, USMC Washington, DC 20380.	1
	Commanding General, Marine Corps Logistics Base, Albany, GA 31704.	3
Bulk Petroleum Shipments.	Cognizant Defense Fuel Region (see Table 4).	1

[1] Each addressee.

Part 5—Preparation of the DD Form 250–1 (Loading Report)

I–501 Instructions.

The DD Form 250–1 shall be prepared in accordance with the following instructions when applied to a tanker or barge cargo lifting. Abbreviations may be used where space is limited. The block numbers correspond to those on the form.

Block 1—TANKER/BARGE. Line out "TANKER" or "BARGE" as appropriate and place "X" to indicate loading report.

Block 2—INSPECTION OFFICE. Enter the name and location of the Government office conducting inspection.

Block 3—REPORT NO. Number each form consecutively, starting with number 1, to correspond to the number of shipments made against the contract. In case shipment is made from more than one location against the same contract, follow this numbering system at each location.

Block 4—AGENCY PLACING ORDER ON SHIPPER, CITY, STATE, AND/OR LOCAL ADDRESS (loading). Indicate the applicable Government activity.

Block 5—DEPARTMENT. Indicate Military Department owning product being shipped.

Block 6—PRIME CONTRACT OR P.O. NO. Enter the contract or purchase order number.

Block 7—NAME OF PRIME CONTRACTOR, CITY, STATE AND/OR LOCAL ADDRESS (loading). Enter the name and address of the contractor as shown in the contract.

Block 8—STORAGE CONTRACT. Enter storage contract number if applicable.

Block 9—TERMINAL OR REFINERY SHIPPED FROM, CITY, STATE AND/OR LOCAL ADDRESS. Enter the name and location of the contractor facility from which shipment is made. Also indicate delivery point in this space as either "FOB Origin" of "FOB Destination."

Block 10—ORDER NO. ON SUPPLIER. Enter number of the delivery order, purchase order, subcontract or suborder placed on the supplier.

Block 11—SHIPPED TO: (Receiving Activity, City, State and/or Local Address). Enter the name and geographical address of the consignee as shown on the shipping order.

Block 12—B/L NUMBER. Where applicable, enter the initials and number of the bill of lading. If commercial bill of lading later to be converted to a Government bill of lading is authorized, show "Com. B/L to GB/L.

Block 13—REQN. OR REQUEST NO. Enter number and date if cited in the shipping instructions.

Block 14—CARGO NO. Enter the cargo number furnished by the ordering office.

Block 15—VESSEL. Enter the name of tanker or barge.

Block 16—DRAFT ARRIVAL. Enter the vessel's draft on arrival.

Block 17—DRAFT SAILING. Enter the vessel's draft on completion of loading.

Block 18—PREVIOUS TWO CARGOES. Enter the type of product constituting previous two cargoes.

Block 19—PRIOR INSPECTION. Leave blank.

Block 20—CONDITION OF SHORE PIPELINE. Indicate condition of line (full or empty) before and after loading.

Block 21—APPROPRIATION (Loading). Indicated the appropriation number shown on the contract, purchase order or distribution plan. If the shipment is made from departmentally owned stock, show "Army, Navy or Air Force (as appropriate) owned Stock."

Block 22—CONTRACT ITEM NO. Enter the contract item number applicable to the shipment.

Block 23—PRODUCT. Enter the product nomenclature and grade as shown in the contract or specification, the stock or class number, and the NATO symbol.

Block 24—SPECIFICATIONS. Enter the specification and amendment number shown in the contract.

Block 25—STATEMENT OF QUANTITY. Enter in the "LOADED" column, the net barrels, net gallons and long tons for the cargo loaded. NOTE: If more than ½ of 1% difference exists between the ship and shore quantity figures an investigation shall be made immediately to determine the cause of such difference. If necessary, corrected documents shall be prepared; otherwise, a statement shall be palced in Block 28 as to the probable or actual cause of the difference.

Block 26—STATEMENT OF QUALITY.

(a) Under the heading "TESTS" list all inspection acceptance tests of the specification and any other quality requirements of the contract.

(b) Under the heading "SPECIFICATION LIMITS" list the limits or requirements as stated in the specification or contract directly opposite each entry in the "TESTS" column. Applicable waivers to technical requirements shall be listed.

(c) Under the heading "TEST RESULTS" list the test results applicable to the storage tank or tanks from which the cargo was lifted. If more than one storage tank is involved, list the tests applicable to each tank in separate columns headed by the tank number, the date the product in the tank was approved, and the quantity loaded from the tank. Each column shall also list such product characteristics as amount the type of corrosion inhibitor, etc.

Block 27—TIME STATEMENT. Line out "DISCHARGE" and "DISCHARGING." Complete all applicable entries of the time statement using local time. These dates and times shall be taken from either the vessel or shore facility log. The Government representative shall assure that the logs are in agreement on those entries used. If the vessel and shore facility logs are not in agreement, the Government representative will explain the reasons in Block 28—REMARKS. Date and time vessel left berth shall not be entered on documents placed aboard the vessel but shall appear on all other copies. All dates shall be expressed in sequence of day, month, and year with the month spelled out or abbreviated (*e.g.*, 10 Sept. 67). The term FINISHED BALLAST DISCHARGE is meant to include all times needed to complete deballasting and mopping/drying of ship's tanks. The inspection of ship's tanks for loading is normally performed immediately upon completion of drying tanks.

Block 28—REMARKS. Use this space for reporting:

(a) All delays, their case and responsible party (vessel, shore facility, Government representative, or other).

(b) Details of loading abnormalities such as product losses due to overflow leaks, delivery of product from low level in shore tanks, etc.

(c) In the case of multiple consignees, enter each consignee, the amount consigned to each, and if applicable, the storage contract numbers appearing on the delivery order.

(d) When product title is vested in the U.S. Government, insert in capital letters "U.S. GOVERNMENT OWNED CARGO." If title to the product remains with the contractor and inspection is preformed at source with acceptance at destination, insert in capital letters "CONTRACTOR OWNED CARGO."

(e) If the form covers shipments for Military Assistance Program support, enter in this space "FY-(the year)—MAP" in half-inch letters. Also indicate the MAP reference number—*i.e.* program directive number or MAP cause number if known.

(f) Seal number and location of seals. If space is not adequate, place this information on the ullage report or an attached supplemental sheet.

Block 29—COMPANY OR RECEIVING TERMINAL. Line out "OR RECEIVING TERMINAL" and secure the signature of the supplier's representative. The signature shall be applied to the master ditto or all copies of the form.

Block 30—CERTIFICATION BY GOVERNMENT REPRESENTATIVE. Line out "DISCHARGED." The Government representative shall date and sign the completed master ditto or all copies of the form to certify inspection and acceptance, as applicable, by the Government. The name of the individual signing this certification, as well as the names applied in Blocks 29 and 31 shall be typed or hand lettered on the master or all copies of the document. The signature in Block 30 must agree with the typed or lettered named to be acceptable to the paying office.

Block 31—CERTIFICATION BY MASTER OR AGENT. Obtain the signature of the master of the vessel or its agent. The signature shall be applied to the master ditto or all copies of the form.

Part 6—Preparation of the DD Form 250—1 (DISCHARGED REPORT)

I—601 Instructions.

The DD Form 250—1 shall be prepared in accordance with the following instructions when applied to tanker or barge discharge. Abbreviations may be used where space is limited. The block numbers correspond to those on the form.

Block 1—TANKER/BARGE. Line out "TANKER" or "BARGE" as applicable and place "X" to indicate discharge report.

Block 2—INSPECTION OFFICE. Indicate Government activity performing inspection on the cargo received.

Block 3—REPORT NO. Leave blank.

Block 4—AGENCY PLACING ORDER ON SHIPPER. CITY, STATE AND/OR LOCAL ADDRESS (loading). Indicate Government agency shown on loading report.

Block 5—DEPARTMENT. Indicate Department owning product being received.

Block 6—PRIME CONTRACT OR P.O. NO. Indicate the contract or purchase order number shown on the loading report.

Block 7—NAME OF PRIME CONTRACTOR, CITY, STATE AND/OR LOCAL ADDRESS (Loading). Indicate name and location of contractor who loaded the cargo.

Block 8—STORAGE CONTRACT. Enter the number of the contract under which material is placed in commercial storage where applicable.

Block 9—TERMINAL OR REFINERY SHIPPED FROM, CITY, STATE AND/OR LOCAL ADDRESS. Indicate source of cargo.

Block 10—ORDER NO. ON SUPPLIER. Make sure entry appearing on loading report.

Block 11—SHIPPED TO: (Receiving Activity, City, State and/or Local Address). Enter receiving activity's name and location.

Block 12—B/L NUMBER. Enter as appears on loading report.

Block 13—REQN. OR REQUEST NO. Leave blank.

Block 14—CARGO NO. Enter cargo number shown on loading report.

Block 15—VESSEL. Enter name of tanker or barge discharging cargo.

Block 16—DRAFT ARRIVAL. Enter draft of vessel upon arrival at dock.

Block 17—DRAFT SAILING. Enter draft of vessel after discharging.

Block 18—PREVIOUS TWO CARGOES. Leave blank.

Block 19—PRIOR INSPECTION. Enter the name and location of the Government office which inspected the cargo loading.

Block 20—CONDITION OF SHORE PIPELINE. Indicate condition of line (full or empty) before and after discharging.

Block 21—APPROPRIATION (Loading). Leave blank.

Block 22—CONTRACT ITEM NO. Enter the item number shown on the loading report.

Block 23—PRODUCT. Enter information appearing in Block 23 of the loading report.

Block 24—SPECIFICATIONS. Enter information appearing in Block 24 of the loading report.

Block 25—STATEMENT OF QUANTITY. Enter applicable data in proper columns.

(a) "LOADED" figures shall be taken from the loading report.

(b) Quantities discharged shall be determined from shore tank gauges at destination.

(c) If a grade of product is discharged at more than one point, the loss or gain for that product shall be calculated by the final discharge point. Amounts previously discharged shall be as reported on discharge reports prepared by the previous discharge points. Volume figures shall be transmitted by routine message to the final discharge point in advance of mailed documents to expedite the loss or gain calculation and provide proration data when more than one department is involved.

(d) The loss of gain percentage shall be entered in the "PERCENT" column followed by "LOSS" or "GAIN" as applicable.

(e) On destination acceptance shipments, accomplish the "DISCHARGED" column only, unless instructed to the contrary.

Block 26—STATEMENT OF QUALITY.

(a) Under the heading "TESTS" enter the verification tests performed on the cargo preparatory to discharge.

(b) Under "SPECIFICATION LIMITS" enter the limits, including authorized departures (if any) appearing on the loading report, for the tests performed.

(c) Enter the results of tests performed under the heading "TEST RESULTS."

Block 27—TIME STATEMENT. Line out "LOAD" and "LOADING." Complete all applicable entries of the time statement using local time. The dates and times shall be taken from either the vessel or shore facility log. The Government representative shall assure that these logs are in agreement with entries used. If the vessel and shore facility logs are not in agreement, the Government representative will explain the reason(s) in Block 28—REMARKS. Date and time vessel left berth shall not be entered on documents placed aboard the vessel but shall appear on all other copies. All dates shall be expressed in the sequence of day, month and year with the month spelled out or abbreviated (e.g., Sept. 10, 1967).

Block 28—REMARKS. Use this space for reporting important facts such as:

(a) Delays, their cause and responsible party (vessel, shore facility, Government representative, or other).

(b) Abnormal individual losses contributing to the total loss. The cause of such losses shall be indicated as well as actual or estimated volumes involved. Such losses shall include, but not be restricted to, product remaining aboard (indicate tanks in which contained), spillages, line breaks etc. Where gravity group change of receiving tank contents results in a fictitious loss or gain, such fact shall be noted. Irregularities oberved on comparing vessel ullages obtained at loading point with those at the discharge point shall be noted if indicative of an abnormal transportation loss or contamination.

Block 29—COMPANY OR RECEIVING TERMINAL. Line out "COMPANY OR." Secure the signature of a representative of the receiving terminal. The signature shall be applied to the master ditto or all copies of the form.

Block 30—Certification by Government Representative. Line out "LOADED." The Government representative shall date and sign the completed master ditto or all copies of the form to certify inspection and acceptance, as applicable, by the Government. The name of the individual signing the certification as well as the names applied in Blocks 29 and 31 shall be typed or hand lettered on the master or all copies of the form. The signature in Block 30 must agree with the typed or lettered name to be acceptable to the paying office.

Block 31—Certification by Master or Agent. Obtain the signature of the master of the vessel or the vessel's agent. The signature shall be applied to the master ditto or all copies of the form.

Port 7—Distribution of the DD Form 250–1

I–70 Distribution.

(a) The completed DD Form 250–1 shall oe distributed by the Government representative in accordance with Table 3 of this Appendic as may be amended by the provisions of the contract or shipping order.

(b) The contractor shall furnish the Government representative sufficient copies of the completed form to permit the required distribution.

(c) Distribution of the form shall be made as soon as possible but not later than 24 hours following completion of the form.

[See Table 3 on following pages]

I–702 Corrected DD Form 250–1.

When errors are made in entries on the form which would affect payment or accountability, corrected copies shall be made. Entries corrected shall be encircled on all copies and the form plainly identified as a "CORRECTED COPY." The statement "Corrections Have Been Verified" shall be entered in Block 26 with the authorized Government representative's dated signature directly below. Distribution of the certified corrected copy shall be made to all recipients of the original distribution.

TABLE 3.—DD FORM 250–1 DISTRIBUTION

Type of shipment	Recipient of DD Form 250–1	Number of Copies			
		Loading		Discharge	
		Tanker	Barge Prepared by Shipper/ Govt. Representative	Tanker	Barge Prepared by Receiving Activity
On all overseas shipments provide for a minimum of 4 consignees. Place 1 copy (attached to ullage report) in each of 4 envelopes and mark envelopes "Consignee-First Destination," "Consignee-Second Destination," etc., for delivery via the tanker.	Each Consignee: By mail (CONUS shipments only); With Shipment.	2, 1	1, 1	* (1)	* (1)
	Master of Vessel	1	1	1	1
	Tanker or Barge Agent	2	2	2	2
	Contractor	(1)	(1)	(1)	(1)
	Cognizant Inspection Office	1	1	1	1
	Government Representative at each Destination Responsible for Quality.	1	1	1	1
	Government Representative at Cargo Loading Point	1	1	*1	*1
On all USNS tankers and all MSC chartered tankers and MSC chartered barges.	Military Sealift Command, Code 331, Washington, DC 20390	2	2	2	2
See contract or shipping order for finance documentation and any supplemental requirements for Government-owned product shipments and receipts.	Payment Office: If this is DASC–F, send copies to Defense Fuel Supply Center, ATTN: DFSC–CDX, Cameron Station Bldg. 5, Alexandria, VA 22314 (Do not send copies to DASC–F).	2	2	2	2
For shipments and receipts of DFSC financed cargos for which DFSC–F is not the Paying Office.	Accounting Office, DFSC, ATTN: DFSC–CD, Cameron Station, Alexandria, VA 22314.	1	1	1	1
For shipments on all USNS tankers, MSC chartered tankers and barges, and FOB destination tankers with copy of ullage report.	DFSC–OC, Cameron Station Alexandria, VA 22314	1	1	*1	1
On Army ILP shipments	US Army International Logistics Center, New Cumberland Army Depot, New Cumberland, PA 17070.	2	2	2	2
Navy:					
On all shipments to Navy-Operated Terminals	Navy Fuel Petroleum Office, Cameron Station, Alexandria, VA 22314.	2	1	2	1
On all shipments to AF bases	Directorate of Energy Mgmt, SA ALC (SFO), Kelly AFB, TX	1	1	1	1
On all CONUS loadings	DFSC Fuel Region(s) cognizant of Shipping	1	1	1	1
On all shipments to CONUS Destinations	DFSC Fuel Region(s) cognizant of Shipping and Receiving Point***.	1	1	0	0
For all discharges of cargoes originating at DFSPs and discharging at activities not a Defense Fuel Support Point.	Accounting Office, DFSC, ATTN: DFSC–CD, Cameron Station Alexandria, VA 22314.			***1	***1

[1] As required.
* With copy of ullage report.
** Dry tank certificate to accompany DD Form 250–1 and ullage report.
*** The copies of DD Form 250–1, forwarded by bases, will include the following in Block 11: Shipped to: Supplementary Address, if applicable; Signal Code; and Fund Code.
**** See Table 4.

TABLE 4.—FUEL REGION LOCATIONS AND AREAS OF RESPONSIBILITY

a. DFR Northeast	Defense Fuel Region Northeast, McGuire AFB, Bldg. 19–01, NJ 08641.
Area of Responsibility: (Region 1).	Connecticut, Delaware, Distrct of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia.
b. DFR Southeast	Defense Fuel Region Southeast, P.O. Box TT, Tyndall AFB, FL 32403.
Area of Responsibility: (Region 2).	Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, and Kentucky.
c DFR Central	Defense Fuel Region Central, 8900 S. Broadway, Bldg. 2, St. Louis, MO 63125.

TABLE 4.—FUEL REGION LOCATIONS AND AREAS OF RESPONSIBILITY—Continued

Area of Responsibility: (Region 3).	Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, North Dakota, Ohio, South Dakota, Utah, Wisconsin, and Wyoming.
d. DFR Southwest	Defense Fuel Region Southwest, Room 7017, 515 Rusk Avenue, Houston, TX 77002.
Area of Responsibility: (Region 4).	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.
e. DFR West	Defense Fuel Region West, 3171 N. Gaffney Street, San Pedro, CA 90731.
Area of Responsibility: (Region 5).	Arizona, California, Idaho, Nevada, Oregon, and Washington.
f. DFR Alaska	Defense Fuel Region Alaska, Elmendorf AFB, Alaska 99506.
Area of Responsibility	Alaska and Aleutians.
g. DFR Europe	Defense Fuel Region Europe, HQ USEUCOM (J4), APO New York 09128.

TABLE 4.—FUEL REGION LOCATIONS AND AREAS OF RESPONSIBILITY—Continued

Area of Responsibility	Central Europe, British Isles and Scandinavia, Mediterranean Region plus Jordan and Iraq, Africa, to include the Canary Islands and Seychelles Islands; and the Azores.
h. DFR Pacific	Defense Fuel Region, Pacific, Camp H. M. Smith, Honolulu, HI 96861.
Area of Responsibility	PACOM.
i. DFR Caribbean	Defense Fuel Region, Caribbean Naval Station, Box 3399, FPO Miami, FL 34051.
Area of Responsibility	Caribbean Area (includes Puerto Rico, West Indies, and Mexico, but excludes Panama and the Bahamas).

BILLING CODE 3810–01–M

MATERIAL INSPECTION AND RECEIVING REPORT

1 PROC. INSTRUMENT IDEN (CONTRACT) | (ORDER) NO | 6 INVOICE | 7 PAGE | OF | 8 ACCEPTANCE POINT

2 SHIPMENT NO | 3 DATE SHIPPED | 4 B/L | TCN | 5 DISCOUNT TERMS

9 PRIME CONTRACTOR | CODE | 10 ADMINISTERED BY | CODE

11 SHIPPED FROM (If other than 9) | CODE | FOB | 12. PAYMENT WILL BE MADE BY | CODE

13. SHIPPED TO | CODE | 14 MARKED FOR | CODE

15. ITEM NO.	16. STOCK/PART NO. DESCRIPTION (Indicate number of shipping containers - type of container - container number)	17 QUANTITY SHIP/REC'D *	18. UNIT	19. UNIT PRICE	20. AMOUNT

21. PROCUREMENT QUALITY ASSURANCE

A. ORIGIN

☐ POA ☐ ACCEPTANCE of listed items has been made by me or under my supervision and they conform to contract, except as noted herein or on supporting documents.

DATE | SIGNATURE OF AUTH GOVT REP

TYPED NAME AND OFFICE

B. DESTINATION

☐ POA ☐ ACCEPTANCE of listed items has been made by me or under my supervision and they conform to contract, except as noted herein or on supporting documents.

DATE | SIGNATURE OF AUTH GOVT REP

TYPED NAME AND TITLE

22 RECEIVER'S USE

Quantities shown in column 17 were received in apparent good condition except as noted

DATE RECEIVED | SIGNATURE OF AUTH GOVT REP

TYPED NAME AND OFFICE

* If quantity received by the Government is the same as quantity shipped, indicate by (✓) mark, if different, enter actual quantity received below quantity shipped and encircle

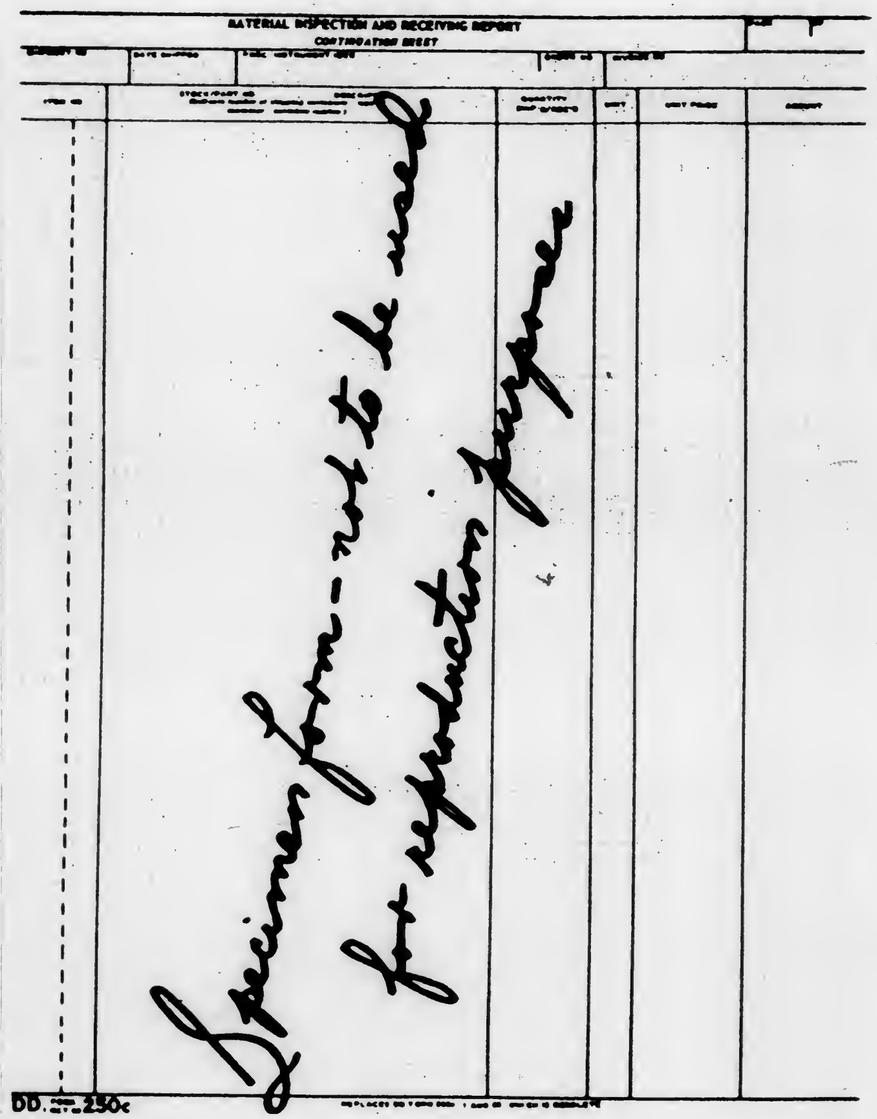
23. CONTRACTOR USE ONLY

DD FORM 1 NOV 68 250 REPLACES EDITION OF 1 AUG 67 WHICH MAY BE USED

MATERIAL INSPECTION AND RECEIVING REPORT

I–802 DD Form 250c: Material Inspection and Receiving Report

Continuation Sheet



TANKER/BARGE MATERIAL INSPECTION AND RECEIVING REPORT	1. TANKER/BARGE ☐ LOADING REPORT ☐ DISCHARGE REPORT	2. INSPECTION OFFICE	3. REPORT NUMBER
4. AGENCY PLACING ORDER ON SHIPPER, CITY, STATE AND/OR LOCAL ADDRESS (Loading)		5. DEPARTMENT	6. PRIME CONTRACT OR P.O. NUMBER
7. NAME OF PRIME CONTRACTOR, CITY, STATE AND/OR LOCAL ADDRESS (Loading)			8. STORAGE CONTRACT
9. TERMINAL OR REFINERY SHIPPED FROM, CITY, STATE AND/OR LOCAL ADDRESS			10. ORDER NUMBER ON SUPPLIER
11. SHIPPED TO: (Receiving Activity, City, State and/or Local Address)			12. B/L NUMBER
			13. REQN. OR REQUEST NUMBER / 14. CARGO NUMBER
15. VESSEL		16. DRAFT ARRIVAL FORE / AFT	17. DRAFT SAILING FORE / AFT
18. PREVIOUS TWO CARGOES FIRST / LAST		19. PRIOR INSPECTION	
20. CONDITION OF SHORE PIPELINE		21. APPROPRIATION (Loading)	22. CONTRACT ITEM NUMBER
23. PRODUCT		24. SPECIFICATIONS	

25. STATEMENT OF QUANTITY	LOADED	DISCHARGED	LOSS/GAIN	PER CENT
BARRELS (42 Gals) (Net)				
GALLONS (Net)				
TONS (Long)				

26. STATEMENT OF QUALITY

TESTS	SPECIFICATION LIMITS	TEST RESULTS

27. TIME STATEMENT	DATE	TIME
NOTICE OF READINESS TO LOAD DISCHARGE		
VESSEL ARRIVED IN ROADS		
MOORED ALONGSIDE		
STARTED BALLAST DISCHARGE		
FINISHED BALLAST DISCHARGE		
INSPECTED AND READY TO LOAD DISCHARGE		
CARGO HOSES CONNECTED		
COMMENCED LOADING DISCHARGE		
STOPPED LOADING DISCHARGING		
RESUMED LOADING DISCHARGING		
FINISHED LOADING DISCHARGING		
CARGO HOSES REMOVED		
VESSEL RELEASED BY INSPECTOR		
COMMENCED BUNKERING		
FINISHED BUNKERING		
VESSEL LEFT BERTH (Actual/Estimated)		

28. REMARKS (Note in detail cause of delays such as repairs, breakdown, slow operation, stoppages, etc.)

29. COMPANY OR RECEIVING TERMINAL

(Signature)

30. I CERTIFY THAT THE CARGO WAS INSPECTED, ACCEPTED AND LOADED/DISCHARGED AS INDICATED HEREON.

(Date) (Signature of Authorized Government Representative)

31. I HEREBY CERTIFY THAT THIS TIME STATEMENT IS CORRECT.

(Master or Agent)

DD FORM 1 MAR 86 250-1 REPLACES DD FORM 250-1, 1 JUL 55, WHICH MAY BE USED.

Appendix L—DoD Freedom of Information Act Program

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Department of Defense Directive No. 5400.7, Subject: DoD Freedom of Information Act Program, dated March 24, 1980 (with amendments) ...	L:1
Department of Defense Regulation No. 5400.7-R, DoD Freedom of Information Act Program, issued November 3, 1980 ...	L:6

Appendix L—Department of Defense Directive 5400.7 of March 24, 1980.

Subject: DoD Freedom of Information Act Program

DEPARTMENT OF DEFENSE DIRECTIVE 5400.7

REPRINT - Changes 1, 2, and 3 have been incorporated.

March 24, 1980#
NUMBER 5400.7

ASD(PA)

Department of Defense Directive

SUBJECT: DoD Freedom of Information Act Program

References: (a) DoD Directive 5400.7, "Availability to the Public of Department of Defense Information," February 14, 1975 (hereby canceled)
(b) Title 5, United States Code, Section 552
(c) DoD Directive 5025.1, "Department of Defense Directives System," October 16, 1980
(d) Public Law 86-36, "National Security Information Exemption"
(e) through (g), see enclosure 1

A. REISSUANCE AND PURPOSE

1. This Directive reissues reference (a); establishes policies and procedures for the implementation of the DoD Freedom of Information Act (FOIA) Program under reference (b); and delegates authorities and responsibilities for the effective administration of the program.

2. This Directive also authorizes, in accordance with reference (c), the publication of DoD 5400.7-R, the single DoD regulation on the FOIA Program.

B. APPLICABILITY AND SCOPE

1. The provisions of this Directive apply to the Office of the Secretary of Defense (OSD) and their administrative support agencies, the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, the Defense Communications Agency (DCA), Defense Contract Audit Agency (DCAA), Defense Intelligence Agency (DIA), Defense Investigative Service (DIS), Defense Logistics Agency (DLA), Defense Mapping Agency (DMA), and the Defense Nuclear Agency (DNA). For the purpose of this Directive, OSD, OJCS, the Unified Commands, and OSD administrative support agencies are considered one "DoD Component." The other DoD Components referred herein are the Military Departments, DCA, DCAA, DIA, DIS, DLA, DMA, and DNA.

2. The National Security Agency records are subject to the provisions of this Directive, unless the records are exempt under reference (d).

#First amendment (Ch 1, 4/11/80)
#Second amendment (Ch 2, 4/24/80)
#Third amendment (Ch 3, 12/3/80)

C. Definitions

The terms used in the directive are defined in DoD 5400.7-R, December 1980.

D. Policy

It is the policy of the Department of Defense to:

1. Promote public trust by making the maximum amount of information available to the public on the operation and activities of the Department of Defense, consistent with DoD's responsibility to ensure national security.

2. Allow a requester to obtain records from the Department of Defense that are available through other public information services without invoking the FOA.

3. Make available, under the procedures established by Chapter IV, V, and VI of DoD 5400.7-R, those records that are requested by a member of the general public who cities the FOIA.

4. Answer promptly all other requests for information, records, objects, and articles under established procedures and practices.

5. Release records to the public, unless those records are exempt from mandatory disclosure as outlined in Chapter III of DoD 5400.7-R.

6. Process requests by individuals for access to records about themselves under the Privacy Act procedures as implemented by DoD Directive 5400.11 (reference (e)) or procedures outlined in this Directive when they are more advantageous to the requester.

E. Responsibilities

1. The *Assistant Secretary of Defense (Public Affairs) [ASD(PA)]* shall:

a. Direct and administer the DoD FOIA Program to ensure compliance with policies and procedures that govern the administration of the program.

b. Issue a DoD FOA regulation and other discretionary instructions and guidance to ensure timely and reasonably uniform implementation of the FOA in the Department of Defense.

c. Administer internally the FOA Program for the OSD, the OJCA and, as an exception to DoD Directive 5100.3 (reference (f)), the Unified Commands (the Sepcified Commands remain under the Military Departments for FOA matters).

d. As the designee of the Secretary of Defense, serve as the sole appellate authority for appeals to decisions of respective Initial Denial Authorities identified in ASD(PA) supplementing instructions.

2. The *General Counsel of the Department of Defense* shall provide uniformity in the legal interpretation of this Directive.

3. *Heads of DoD Components* shall:

a. Publish in the Federal Register any instructions necessary for the internal administration of this Directive within a DoD Component that are not prescribed by this Directive or by other issuances of the ASD(PA). For the guidance of the public, the information specified in 5 U.S.C. 552(a)(1) (reference (b)) will be published in accordance with DoD Directive 5400.9 (reference (g)).

b. Conduct training on the provisions of this Directive for officials and employees who implement the FOA.

c. Submit the reports prescribed in Chapter VII of DoD 5400.7-R.

d. Make available for public inspection and copying in an appropriate facility or facilities, in accordance with rules and published in the Federal Register, the records specified in 5 U.S.C. 552(a)(2) (reference (b)) unless such records are published and copies are offered for sale.

e. Maintain and make available for public inspection and copying current indices of these records.

F. Information Requirements

The reporting requirements in Chapter VII of DoD 5400.7-R have been assigned Report Control Symbol DD-PA(TRA&A) 1365.

G. Effective Dote and Implementation

This Directive is effective immediately. Forward two copies of implementing documents to the Office of the Assistant Secretary of Defense (Public Affairs) within 120 days.

W. Graham Claytor, Jr.,

Deputy Secretary of Defense

**Enclosure—1, References.

(e) DoD Directive 5400.11, "Personal Privacy and Rights of Individuals Regarding their Personal Records," August 4, 1975.

(f) DoD Directive 5100.3, "Support of the Headquarters of Unified, Specified and Subordinate Joint Commands," March 17, 1980.

(g) DoD Directive 5400.9, "Publication of Proposed and Adopted Regulations Affecting the Public," December 23, 1974.

Appendix L—Department of Defense Regulation 5400.7-R

DOD Freedom of Information Act Program

DEPARTMENT OF DEFENSE REGULATION 5400.7-R

Assistant Secretary of Defense

Washington, D.C. 20301

November 3, 1980

FOREWORD

This regulation is issued under the authority of DoD Directive 5400.7, "DoD Freedom of Information Act Program," March 24, 1980.

It is effective immediately and is mandatory for use by all DoD Components listed at enclosure 2. Heads of DoD Components may elect to issue instructions deemed essential to the accommodation of perceived requirements peculiar to respective Components. Any such instruction may not conflict with the provisions of this regulation.

This regulation incorporates the provisions of enclosures 2 through 7 of DoD Directive 5400.7, March 24, 1980.

Recommendations for amendments shall be forwarded through appropriate channels to Director, Freedom of Information and Security Review, who is authorized to approve and issue amendments to this regulation. Recommendations should be addressed to: Director, Freedom of Information and Security Review, Office of the Assistant Secretary of Defense (Public Affairs), Room 2C757, Pentagon, Washington, D.C. 20301.

Thomas B. Ross,

Assistant Secretary.

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DoD FREEDOM OF INFORMATION ACT PROGRAM

CHAPTER I—GENERAL PROVISIONS

Section 1—REFERENCES

1–100 References

(a) Title 5, United States Code, Section 552
(b) DoD Directive 5400.7, "DoD Freedom of Information Act Program," March 24, 1980
(c) Public Law 86–36, "National Security Information Exemption"
(d) DoD Directive 5400.11, "Personal Privacy and Rights of Individuals Regarding Their Personal Records," August 4, 1975
(e) through (u), see enclosure 1

Section 2—PURPOSE AND APPLICABILITY

1–200 Purpose

The purpose of this Regulation is to provide policies and procedures for the DoD implementation of the Freedom of Information Act (reference (a)) and reference (b) and to promote uniformity in the DoD Freedom of Information Act (FOIA) Program. This Regulation incorporates and amplifies enclosures 2 through 7 of DoD Directive 5400.7 (reference (b)).

1–201 Applicability

a. This Regulation applies to the Office of the Secretary of Defense (OSD) (which includes for the purpose of this Regulation the Organization of the Joint Chiefs of Staff, Unified Commands and OSD administrative support agencies), the Military Departments and the Defense Agencies (hereafter referred to as "DoD Components"), and takes precedence over all Component regulations that supplement the DoD FOIA Program. A list of DoD Components is at enclosure 2.

b. The National Security Agency records are subject to the provisions of this Regulation, only to the extent the records are not exempt under Public Law 86–36 (reference (c)).

Section 3—DoD PUBLIC INFORMATION

1–300 Public Information

The public has a right to information concerning the activities of its government. DoD policy is to conduct its activities in an open manner and provide the public with a maximum amount of accurate and timely information concerning its activities, consistent always with the legitimate public and private interests of the American people. A DoD record requested by a member of the public who follows rules established by proper authority in the Department of Defense shall be withheld only when it is exempt from mandatory public disclosure under the FOIA and denial would serve a significant, legitimate government purpose. In order that the public may have timely information concerning DoD activities, records requested through public information channels by news media representatives that would not be withheld if requested under the FOIA should be released upon request. Prompt responses to requests for information from news media representatives should be encouraged to eliminate the need for these requesters to invoke the provisions of the FOIA and thereby assist in providing timely information to the public. Similarly, requests from other members of the public for information should continue to be honored through appropriate means even though the request does not qualify under FOIA requirements.

1–301 Control System

A request for records that invokes the FOIA shall enter a formal control system designed to ensure compliance with the FOIA. A release determination must be made and the requester informed within the time limits specified in this Regulation. Any request for DoD records that either explicitly or implicitly cites the FOIA shall be processed under the provisions of this Regulation or under the Privacy Act, when the request is from the subject of the records requested.

Section 4—Definitions

1–400 Definitions

As used in this Regulation, the following terms and meanings shall be applicable.

1–401 FOIA Request

A written request for DoD records, made by a member of the public, that either explicity or implicitly invokes the FOIA, DoD Directive 5400.7, this Regulation, or DoD Component supplementing regulations or instructions.

1–402 Agency Record

a. The products of data compilation, regardless of physical form or characteristics, made or received by a DoD Component in connection with the transaction of public business and preserved by a DoD Component primarily as evidence of the organization, policies, functions, decisions, or procedures of the DoD Component.

b. The following are not included within the definition of the word "record":

1. Library and museum material made, acquired, and preserved solely for reference or exhibition.

2. Objects or articles, such as structures, furniture, paintings, sculpture, three-dimensional models, vehicles and equipment, whatever their historical value, or value as evidence.

3. Commercially exploitable resources, including but not limited to, formulae, designs, drawings, maps and charts, map compilation manuscripts and map research materials, research data, computer programs, and technical data packages that were not created and are not utilized as primary sources of information about organizations, policies, functions, decisions, or procedures of a DoD Component.

4. Unaltered publications and processed documents, such as regulations, manuals, maps, charts, and related geophysical materials, that are available to the public through an established distribution system with or without charges.

5. Anything that is not a tangible or documentary record, such as, an individual's memory or oral communication.

6. Personal notes of an individual not made available to other persons in an agency and not filed with agency records.

7. Information stored within a computer for which there is no existing computer program or printout.

c. A record must exist and be in the possession or control of Department of Defense at the time of the request to be considered subject to this Regulation. There is no obligation to create, compile, or obtain a record to satisfy an FOIA request.

1–403 DoD Component

An element of the Department of Defense, as defined in 1–201, authorized to receive and act independently on FOIA requests. A DoD Component has its own initial denial authority (IDA) or authorities and its own appellate authority.

1–404 Initial Denial Authority

An official who has been granted authority by the head of a DoD Component to withhold records requested under the FOIA for one or more of the nine categories of records exempt from mandatory disclosure.

1–405 Appellate Authority

The head of the DoD Component or the Component head's designee having jurisdiction for this purpose over the record.

1–406 Administrative Appeal

A request by a member of the general public, made under the FOIA, asking the appellate authority of a DoD Component to reverse an IDA decision to withhold all or part of a requested record or to deny a request for waiver or reduction of fees.

Section 5— Policy

1–500 Compliance with the Freedom of Information Act

DoD personnel are expected to comply with the provisions of the FOIA and this Regulation in both letter and spirit. This strict adherence is necessary to provide uniformity in the implementation of the DoD FOIA Program and to create conditions that will promote public trust.

1–501 Openness with the Public

The Department of Defense shall conduct its activities in an open manner consistent with the need for security and adherence to other requirements of law and regulation. Records not specifically exempt from disclosure under the Act shall, upon request, be made readily accessible to the public in accordance with rules promulgated by competent authority, whether or not the Act is invoked.

1–502 Avoidance of Procedural Obstacles

DoD Components shall ensure that procedural matters do not unnecessarily impede a requester from obtaining DoD records promptly. Components shall provide assistance to requesters to help them understand and comply with procedures established by this Regulation and any supplemental regulations published by the DoD Components.

1–503 Prompt Action of Requests

When a member of the public complies with the procedures established in this Regulation for obtaining DoD records, the request shall receive prompt attention; a reply shall be dispatched with in 10 working days, unless a delay is authorized. Requests by individuals for access to records about themselves shall be processed under the Privacy Act procedures, as implemented by DoD Directive 5400.11 (reference (d)), outlined in this Regulation, providd such records are contained in a system of records and are retrievable by reference to the requester's name or other personal identifier. Even though a request that invokes the FOIA is administratively processed under Privacy Act procedures, no record shall be withheld that would be released under FOIA procedures.

1–504 Use of Exemptions

Records that may be withheld under the exemptions outlined in Chapter III of this Regulation shall be made available to the public when no significant, legitimate Government purpose is served by withholding them. Determination of significant and legitimate Government purpose is within the sole discretion of the Component, consistent with statutory requirements, security classification requirements, or other requirements of law.

1–505 Public Domain

Nonexempt records released under the authority of this Regulation is considered to be in the public domain. Exempt records released pursuant to this Regulation or other statutory or regulatory authority however, may be considered to be in the public domain only when their release constitutes a waiver of the FOIA exemption. When the release does not constitute such a waiver, such as when disclosure is made to a properly constituted advisory committee or to a Congressional Committee, the released records do not lose their exempt status. Also, while authority may exist to disclose records to individuals in their official capacity, the provisions of this Regulation apply if the same individual seeks the records in a private or personal capacity.

1–506 Creating a Record

A record must exist and be in the possession or control of the Department of Defense at the time of the request to be considered subject to this Regulation. There is no obligation to create, compile, or obtain a record to satisfy an FOIA request. A DoD Component, however, may compile or create a new record when so doing would result in a more useful response to the requester, or be less burdensome to the agency than providing existing records, and the requester does not object. Cost of creating or compiling such a record may not be charged to the requester unless the fee for creating the record is less than the fee which would be charged for providing the existing record. Fee assessment for direct search and duplication associated with the request shall be in accordance with paragraph 6–101.

1–507 Description of Requested Record

a. Identification of the record desired is the responsibility of the member of the public who requests a record. The requester must provide a description of the desired record, that enables the Government to locate the record with a reasonable amount of effort. The Act does not authorize "fishing expeditions." When a DoD Component receives a request that does not "reasonably describe" the requested record, it shall notify the requester of the defect.

* The defect should be highlighted in a specificity letter, asking the requester to provide the type of information outlined below in paragraph 1–507b of this regulation. Components are not obligated to act on the request until the requester responds to the specificity letter.

When practicable, Components shall offer assistance to the requester in identifying the records sought and in reformulating the request to reduce the burden on the agency in complying with the Act.

b. The following guidelines are provided to deal with "fishing expedition" requests are based on the principle of reasonable effort. Descriptive information about a record may be divided into two broad categories.

1. Category I is file-related and includes information such as type of record—memorandum, title, index citation, subject area, date the record was created and orginator.

2. Category II is event-related and includes the circumstances that resulted in the record being created or the date and circumstances surrounding the event the record covers.

c. Generally, a record is not reasonably described unless the description contains sufficient Category I information to permit the conduct of an organized, non-random search based on the Component's filing

arrangements and existing retrieval systems, or unless the record contains sufficient Category II information to permit inference of the Category I elements needed to conduct such a search.

d. The following guidelines deal with requests for personal records. Ordinarily, when personal identifiers only are provided in connection with a request for records concerning the requester, only records retrievable by pesonal identifiers need be searched. Search for such records may be conducted under Privacy Act procedures. No record may be denied that is releasable under the FOIA.

e. The above guidelines notwithstanding, the decision of the DoD Component concerning reasonableness of description must be based on knowledge of its files. If the description enables DoD Component personnel to locate the record with reasonable effort, the description is adequate.

1-508 Referrals

a. A request received by a DoD Component having no records responsive to a request shall be referred routinely to another DoD Component, if the other Component confirms that it has the requested record, and this belief can be confirmed by the other DoD Component. If the DoD Component that is consulted determines that the existence or nonexistence of any record of the DoD Component responsive to the request is in itself classified, the requester will be so notified. Otherwise, the request shall be referred to the other DoD Component, and the requester shall be notified of any such referral. Any DoD Component receiving a request that has been misaddressed shall refer the request to the proper address and advise the requester.

b. Whenever a record, or a portion of a record, is, after prior consultation, referred to another DoD Component or to a government agency outside of the Department of Defense for a release determination and direct response, the requester shall be given a description of the record referred, as furnished by the DoD Component that was consulted. Referred records shall only be identified to the extent consistent with security requirements.

c. A DoD Component shall refer an FOIA request for a classified record that it holds to another DoD Component or agency outside the DoD, if the record originated in the other DoD Component or outside agency or if the classification is derivative. Telephonic coordination with the DoD Component or outside agency shall be made prior to the referral.

d. A DoD Component may also refer a request for a record that it originated to another DoD Component or agency when the record was created for the use of the other DoD Component of agency. The DoD Component or agency for which the record was created may have as significant and as legitimate an interest in withholding the record that the DoD Component that created the record would have. An example of such a situation is a request for audit reports prepared by the Defense Contract Audit Agency. These advisory reports are prepared for the use of contracting officers and their release to the audited contractor should be at the discretion of the contracting officer. Any FOIA request shall be referred to the appropriate contracting officer and the requester shall be notified of the referral.

e. Within DoD, a Component shall ordinarily refer an FOIA request for a record that it holds, but that was originated by another DoD Component or that contains substantial information obtained from another DoD Component, to that Component for direct response, after direct coordination and obtaining concurrence from the Component. Then, the requester shall be notified of such referral. DoD Components shall not, in any case, release or deny such records without prior consultation with the other DoD Component.

f. DoD Components that receive referred requests shall answer them in accordance with the time limits established by the FOIA and this Regulation. Those time limits shall begin to run upon receipt of the referral by the official designated to respond.

g. Agencies outside the Department of Defense that are subject to the FOIA:

1. A Component may refer an FOIA request for any record that originated in an agency outside the Department of Defense or that is based on information obtained from an outside agency to the agency for direct response to the requester after coordination with the outside agency, if that agency is subject to FOIA and if the requester does not object. Otherwise the component must respond to the request.

2. A DoD Component shall not honor any FOIA request for investigative, intelligence or any type of records that are on loan to the Department of Defense for a specific purpose, if the records are restricted from further release and so marked. Such requests shall be referred to the agency that provided the record.

h. To the extent referrals are consistent with the policies expressed by this paragraph, referrals between offices of the same DoD Component are authorized.

1-509 Fee Assessment

a. Fees may not be used to discourage requests, and to this end FOIA fees are limited to standard charges for direct document search and duplication. Documents may be furnished without charge or at a reduced charge when the agency determines that waiver or reduction of the fees is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Based on this guidance, the Department of Defense has established a liberal fee schedule, that is outlined in Chapter VI of this Regulation.

b. In order to be as responsive as possible to FOIA requests, while minimizing unwarranted costs to the taxpayer, DoD Components shall adhere to the following procedures:

1. If the requester declares an unwillingness to pay fees and does not substantiate a request for waiver and if it appears that the direct search and reproduction costs associated with the request shall exceed the automatic waiver threshold, the request need not be processed and the requester shall be so informed.

2. If the requester declares a willingness to pay fees up to a specified amount and does not substantiate a request for waiver, then the specified amount or the automatic waiver threshold, whichever is greater, shall not be exceeded without the consent of the requester.

3. If the requester makes no declaration concerning fees and does not substantiate a request for waiver, and if it appears that the direct search and reproduction fees to be assessed shall exceed the automatic waiver threshold, the request shall not be processed until the requester is advised of anticipated charges and agrees to pay them.

4. Components may require payment of all or a portion of estimated fees before processing a request.

5. Subsequent requests from persons who fail to discharge fee obligations need not be processed until previous obligations have been discharged or waived.

1-510 Authentication

Records provided under this Regulation shall be authenticated with an appropriate seal whenever necessary to fulfill an official Government or other legal function. This service, however, is in addition to that required under FOIA and is not included in the FOIA fee schedule. DoD Components may charge for the service at a rate of $3.00 for each authentication.

1-511 Unified and Specified Commands

a. The Unified Commands are placed under the jurisdiction of the OSD, instead of the administering Military Department, only for the purpose of administering the DoD FOIA Program. This policy represents an exception to the policies directed in DoD Directive 5100.3 (reference (e)); it authorizes and requires the Unified Commands to process FOI requests in accordance with DoD Directive 5400.7 (reference (b)) and this Regulation. The Unified Commands shall forward directly to the Office of the Assistant Secretary of Defense (Public Affairs), OASD(PA), all correspondence associated with the appeal of an initial denial for records under the provisions of the FOIA. Procedures to effect this administrative requirement are outlined in Appendix A.

b. The Specified Commands remain under the jurisdiction of the administering Military Department. The Commands shall designate IDAs within their headquarters; however, the appellate authority shall reside with the Military Department.

1-512 Records Monogement

FOIA records shall be maintained and disposed of in accordance with DoD Component disposition instructions and schedules.

Chapter II—FOIA Reading Rooms

Section 1—Requirements

2-100 Reading Room

Each Component shall provide an appropriate facility or facilities where the public may inspect and copy or have copied the materials described below. DoD Components may share reading room facilities if the public is not unduly inconvenienced. The cost of copying shall be imposed on the person requesting the material in accordance with the provisions of Chapter VI of this Regulation.

2-101 Material Availability

The FOIA requires that so-called "(a)(2)" material shall be made available in the FOI reading room for inspection and copying, unless such materials are published and copies are offered for sale. Identifying details that, if revealed, would create a clearly unwarranted invasion of personal privacy may be deleted from "(a)(2)" materials made available for inspection and copying. In every case, justification for the deletion may be fully explained in writing. However, a DoD Component may publish in the **Federal Register** a description of the basis upon which it will delete identifying details of particular types of documents to avoid clearly unwarranted invasions of privacy. In appropriate cases, the DoD Component may refer to this description rather than write a separate justification for each deletion. So-called "(a)(2)" materials are:

a. Final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases, as defined in 5 U.S.C. 551 (reference (f)), that may be cited, used, or relied upon as precedents in future adjudications.

b. Statements of policy and interpretations that have been adopted by the agency and are not published in the **Federal Register.**

c. Administrative staff manuals and instructions, or portions thereof, that establish DoD policy or interpretations of policy that affect a member of the public. This provision does not apply to instructions for employees on tactics and techniques to be used in performing their duties, or to instructions relating only to the internal management of the DoD Component. Examples of manuals and instructions not normally made available are:

1. Those issued for audit, investigation, and inspection purposes, or those that prescribe operational tactics, standards of performance, or criteria for defense, prosecution, or settlement of cases.

2. Operations and maintenance manuals and technical information concerning munitions, equipment, systems, and foreign intelligence operations.

Section 2—Indexes

2-200 "(a)(2)" Materials

a. Each DoD Component shall maintain in each facility prescribed in paragraph 2-100 an index of materials described in paragraph 2-101 that are issued, adopted, or promulgated, after July 4, 1967. No "(a)(2)" materials issued, promulgated, or adopted after July 4, 1967 that are not indexed and either made available or published may be relied upon, used or cited as precedent against any individual unless such individual has actual and timely notice of the contents of such materials. Such materials issued, promulgated, or adopted before July 4, 1967, need not be indexed, but must be made available upon request if not exempted under this Regulation.

b. Each DoD Component shall promptly publish quarterly or more frequently, and distribute, by sale or otherwise, copies of each index of "(a)(2)" materials or supplements thereto unless it publishes in the **Federal Register** an order containing a determination that publication is unnecessary and impracticable. A copy of each index or supplement not published shall be provided to a requester at a cost not to exceed the direct cost of duplication as set forth in Chapter VI of this Regulation.

c. Each index of "(a)(2)" materials or supplement thereto shall be arranged topically or by descriptive words rather than by case name or numbering system so that members of the public can readily locate material. Case name and numbering arrangements, however, may also be included for DoD Component convenience.

2-201 Other Materials

a. Any available index of DoD Component material published in the **Federal Register,** such as material required to be published by Section 552(a)(1) of the FOIA, shall be made available in DoD Component FOIA reading rooms.

b. Although not required to be made available in response to FOIA requests or made available in FOIA Reading Rooms, "(a)(1)" materials shall, when feasible, be made available in FOIA reading rooms for inspection and copying. Examples of "(a)(1)" materials are: descriptions of an agency's central and field organization, and to the extent they affect the public, rules of procedures, descriptions of forms available, instruction as to the scope and contents of papers, reports, or examinations, and any amendment, revision, or report of the aforementioned.

Chapter III—Exemptions

Section 1—General Provisions

3-100 General

Records that meet the exemption criteria in Section 2 of this Chapter may be withheld from public disclosure and need not be published in the **Federal Register,** made available in a library reading room, or provided in response to an FOIA request.

3-101 Significant and Legitimate Government Purpose

An exempted record, other than those being withheld pursuant to Exemptions 1, 3 or 6, shall be made available upon the request of any individual when, in the judgment of the releasing DoD Component or higher authority, no significant and legitimate government purpose would be served by withholding it under an applicable exemption. If a DoD Component determines that a record requested under the FOIA meets the Exemption 4 withholding criteria set forth in this Regulation, the DoD Component shall not ordinarily exercise its discretionary power to release, absent circumstances in which a compelling public interest will be served by release of that record.

Section 2—Exemptions

3-200 FOIA Exemptions

The following types of records may be withheld in whole or in part from public disclosure unless otherwise prescribed by law.

Number 1. Those properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under the criteria established by executive order and implemented by regulations, such as DoDD 5200.1-R (reference (g)). Although material is not classified at the time of the FOIA request, a classification review may be undertaken to determine whether the information should be classified. The procedures in DoDD 5200.1-R, Section 2-204f apply.

Number 2. Those containing or constituting rules, regulations, orders, manuals, directives, and instructions relating to the internal personnel rules or practices of a DoD Component if their release to the public would substantially hinder the effective performance of a significant function of the Department of Defense and they do not impose requirements directly on the general public. Examples include:

a. Those operating rules, guidelines, and manuals for DoD investigators, inspectors, auditors, or examiners that must remain privileged in order for the DoD Component to fulfill a legal requirement.

b. Personnel and other administrative matters, such as examination questions and answers used in training courses or in the determination of the qualifications of candidates for employment, entrance on duty, advancement, or promotion.

Number 3. Those concerning matters that a statute specifically exempts from disclosure by terms that permit no discretion on the issue, or in accordance with criteria established by that statute for withholding or referring to particular types of matters to be withheld. Examples of statutes are:

a. National Security Agency Information Exemption, P.L. 86-36, Section 6 (reference (c)).

b. Patent Secrecy, 35 U.S.C. 181-188 (reference (h)). Any records containing information relating to inventions that are the subject of patent applications on which Patent Secrecy Orders have been issued.

c. Restricted Data and Formerly Restricted Data, 42 U.S.C. 2162 (reference (i)).

d. Communication Intelligence, 18 U.S.C. 798 (reference (j)).

Number 4. Those containing trade secrets or commercial or financial information that a DoD Component receives from a person or organization outside the government with the understanding that the information or record will be retained on a privileged or confidential basis in accordance with the customary handling of such records. Records within the exemption must contain trade secrets, or commercial or financial records the disclosure of which is likely to cause substantial harm to the competitive position of the source providing the information; impair the government's ability to obtain necessary information in the future; or impair some other legitimate government interest. Examples include records that contain:

a. Commercial or financial information received in confidence in connection with loans, bids, contracts, or proposals, as well as other information received in confidence

or privileged, such as trade secrets, inventions, discoveries, or other proprietary data.

b. Statistical data and commercial or financial information concerning contract performance, income, profits, losses, and expenditures, if offered and received in confidence from a contractor or potential contractor.

c. Personal statements given in the course of inspections, investigations, or audits, when such statements are received in confidence from the individual and retained in confidence because they reveal trade secrets or commercial or financial information normally considered confidential or privileged.

d. Financial data provided in confidence by private employers in connection with locality wage surveys that are used to fix and adjust pay schedules applicable to the prevailing wage rate employees within the Department of Defense.

e. Scientific and manufacturing processes or developments concerning technical or scientific data or other information submitted with an application for a research grant, or with a report while research is in progress.

Number 5. Except as provided in subsections b. through e., below, internal advice, recommendations, and subjective evaluations, as contrasted with factual matters, that are reflected in records pertaining to the decision-making process of an agency, whether within or among agencies (as defined in 5 U.S.C. 552(e) (reference (a)) or within or among DoD Components.

a. Examples include:

1. The nonfactual portions of staff papers, to include after-action reports and situation reports containing staff evaluations, advice, opinions or suggestions.

2. Advice, suggestions, or evaluations prepared on behalf of the Department of Defense by individual consultants or by boards, committees, councils, groups, panels, conferences, commissions, task forces, or other similar groups that are formed for the purpose of obtaining advice and recommendations.

3. Those nonfactual portions of evaluations by DoD Component personnel of contractors and their products.

4. Information of a speculative, tentative, or evaluative nature or such matters as proposed plans to procure, lease or otherwise acquire and dispose of materials, real estate, facilities or functions, when such information would provide undue or unfair competitive advantage to private personal interests or would impede legitimate government functions.

5. Trade secret or other confidential research development, or commercial information owned by the Government, where premature release is likely to affect the government's negotiating position or other commercial interests.

6. Records that are exchanged among agency personnel and within and among DoD Components or agencies as part of the preparation for anticipated administrative proceeding by an agency or litigation before any federal, state, or military court, as well as records that qualify for the attorney-client privilege.

7. Those portions of official reports of inspection, reports of the Inspector General, audits, investigations, or surveys pertaining to safety, security, or the internal management, administration, or operation of one or more DoD Components, when these records have traditionally been treated by the courts as privileged against disclosure in litigation.

b. If any such intra or interagency record or reasonably segregable portion of such record hypothetically would be made available routinely through the "discovery process" in the course of litigation with the agency, i.e., the process by which litigants obtain information from each other that is relevant to the issues in a trial or hearing, then it should not be withheld from the general public even though discovery has not been sought in actual litigation. If, however, the information hypothetically would only be made available through the discovery process by special order of the court based on the particular needs of a litigant, balanced against the interests of the agency in maintaining its confidentiality, then the record or document need not be made available under this Regulation.

c. Intra or interagency memoranda or letters that are factual, or those reasonably segregable portions that are factual, are routinely made available through "discovery," and shall be made available to a requester, unless the factual material is otherwise exempt from release, inextricably intertwined with the exempt information, so fragmented as to be uninformative, or so redundant of information already available to the requester as to provide no new substantive information.

d. A direction or order from a superior to a subordinate, though contained in an internal communication, generally cannot be withheld from a requester if it constitutes policy guidance or a decision, as distinguished from a discussion of preliminary matters or a request for information or advice that would compromise the decision-making process.

e. An internal communication concerning a decision that subsequently has been made a matter of public record must be made available to a requester when the rationale for the decision is expressly adopted or incorporated by reference in the record containing the decision.

Number 6. Information in personnel and medical files, as well as similar personal information in other files, that, if disclosed to the requester would result in a clearly unwarranted invasion of personal privacy.

a. Examples of other files containing personal information similar to that contained in personnel and medical files include:

1. Those compiled to evaluate or adjudicate the suitability of candidates for civilian employment or membership in the Armed Forces, and the eligibility of individuals (civilian, military, or contractor employees) for security clearances, or for access to particularly sensitive classified information.

2. Files containing reports, records, and other material pertaining to personnel matters in which administrative action, including disciplinary action, may be taken.

b. In determining whether the release of information would result in a "clearly unwarranted invasion of personal privacy," consideration shall be given to the stated or ascertained purpose of the request. When determining whether a release is "clearly unwarranted," the public interest in satisfying this purpose must be balanced against the sensitivity of the privacy interest being threatened. This exemption shall not be exercised in an attempt to protect the privacy of a deceased person, but it may be used to protect the privacy of the deceased person's family.

c. Individuals' personnel, medical, or similar file may be withheld from them or their designated legal representative only to the extent consistent with DoD Directive 5400.11 (reference (d)).

d. A clearly unwarranted invasion of the privacy of the persons identified in a personnel, medical or similar record may constitute a basis for deleting those reasonably segregable portions of that record, even when providing it to the subject of the record.

Number 7. Those investigative records compiled for the purpose of enforcing civil, criminal, or military law, including the implementation of executive orders or regulations issued pursuant to law.

a. This exemption applies, however, only to the extent that release of a record or portion of a record would:

1. Interfere with enforcement proceedings.

2. Deprive a person of the right to a fair trial or to an impartial adjudication.

3. Constitute an unwarranted invasion of personal privacy of a living person, including surviving family members of an individual identified in such a record.

4. Disclose the identity of a confidential source.

5. Disclose confidential information furnished only from a confidential source and obtained by a criminal law enforcement authority in a criminal investigation or by an agency conducting a lawful national security intelligence investigation.

6. Disclose investigative techniques and procedures not already in the public domain and requiring protection against public disclosure to ensure their continued effectiveness.

7. Endanger the life, physical safety, or well-being of law enforcement personnel or their families.

b. Examples include:

1. Statements of witnesses and other material developed during the course of the investigation and all materials prepared in connection with related government litigation or adjudicative proceedings.

2. The identity of firms or individuals being investigated for alleged irregularities involving contracting with Department of Defense when no indictment has been obtained nor any civil action filed against them by the United States.

3. Information obtained in confidence, expressed or implied, in the course of a criminal investigation by a criminal law enforcement agency or office within a DoD Component, or a lawful national security intelligence investigation conducted by an authorized agency or office within a DoD Component. National security intelligence investigations include background security investigations and those investigations conducted for the purpose of obtaining affirmative or counterintelligence information.

c. The right of individual litigants to investigative records currently available by law (such as, the Jencks Act, 18 U.S.C. 3500, reference k)) is not diminished.

d. When the subject of an investigative record is the requester of the record, it may be withheld only as authorized by DoD Directive 5400.11 (reference (d)).

Number 8. Those contained in or related to examination, operation or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial instructions.

Number 9. Those containing geological and geophysical information and data (including maps) concerning wells.

Chapter IV—For Official Use Only

Section 1—General Provisions

4-100 General

Information that has not been given a security classification pursuant to the criteria of an Executive Order, but which may be withheld from the public for one or more of the reasons cited in FOIA Exemptions 2 through 9 shall be considered as being for official use only. *No other material shall be considered or marked "For Official Use Only"* (FOUO), and FOUO is not authorized as an anemic form of classification to protect national security interests.

4-101 Prior FOUO Application

The prior application of FOUO markings is not a conclusive basis for withholding a record that is requested under the FOIA. When such a record is requested, the information in it shall be evaluated to determine whether, under current circumstances, FOIA exemptions apply and whether a significant and legitimate government purpose is served by withholding the record or portions of it.

4-102 Historical Papers

Records such as notes, working papers, and drafts retained as historical evidence of DoD Component actions enjoy no special status apart from the exemptions under the FOIA (reference (a)).

4-103 Time to Mark Records

The marking of records at the time of their creation provides notice of FOUO content and facilitates review when a record is requested under the FOIA. Records requested under the FOIA that do not bear such markings, shall not be assumed to be releasable without examination for the presence of information that requires continued protection and qualifies as exempt from public release.

4-104 Distribution Statement

Information in a technical document that requires a distribution statement pursuant to DoD Directive 5200.20 (reference (l)) shall bear that statement and shall not be marked FOUO.

Section 2—Markings

4-200 Location of Markings

a. An unclassified document containing FOUO information shall be marked "For Official Use Only" at the bottom on the outside of the front cover (if any), on the first page, on the back page, and on the outside of the back cover (if any).

b. Within a classified document, an individual page that contains both FOUO and classified information shall be marked at the top and bottom with the highest security classification of information appearing on the page.

c. Within a classified or unclassified document, an individual page that contains FOUO information but no classified information shall be marked "For Official Use Only" at the bottom of the page.

d. Other records such as, photographs, films, tapes, or slides, shall be marked "For Official Use Only" or "FOUO" in a manner that ensures that a recipient or viewer is aware of the status of the information therein.

e. FOUO material transmitted outside the Department of Defense requires application of an expanded marking to explain the significance of the FOUO marking. This may be accomplished by typing or stamping the following statement on the record prior to transfer:

This document contains information EXEMPT FROM MANDATORY DISCLOSURE under the FOIA. Exemptions— apply.

Section 3—Dissemination and Transmission

4-300 Release and Transmission Procedures

Until FOUO status is terminated, the release and transmission instructions that follow apply:

a. FOUO information may be disseminated within DoD Components and between officials of DoD Components and DoD contractors, consultants, and grantees to conduct official business for the Department of Defense. Recipients shall be made aware of the status of such information, and transmission shall be by means that preclude unauthorized public disclosure. Transmittal documents shall call attention to the presence of FOUO attachments.

b. DoD holders of FOUO information are authorized to convey such information to officials in other departments and agencies of the executive and judicial branches to fulfill a government function, except to the extent prohibited by the Privacy Act. Records thus transmitted shall be marked: "For Official Use Only", and the recipient shall be advised that the information has been exempted from public disclosure, pursuant to the FOIA, and that special handling instructions do or do not apply.

c. Release of FOUO information to Members of Congress is governed by DoD Directive 5400.4 (reference (m)). Release to the General Accounting Office (GAO) is governed by DoD Directive 7650.1 (reference (n)). Records released to the Congress or GAO should be reviewed to determine whether the information warrants FOUO status. If not, prior FOUO markings shall be removed or effaced. If withholding criteria are met, the records shall be marked FOUO and the recipient provided an explanation for such exemption and marking. Alternatively, the recipient may be requested, without marking the record, to protect against its public disclosure for reasons that are explained.

4-301 Transporting FOUO Information

Records containing FOUO information shall be transported in a manner that precludes disclosure of the contents. When not commingled with classified information, FOUO information may be sent via first-class mail or parcel post. Bulky shipments, such as distributions of FOUO Directives or testing materials, that otherwise qualify under postal regulations may be sent by fourth-class mail.

4-302 Electrically Transmitted Messages

Each part of electrically transmitted messages containing FOUO information shall be marked appropriately. Unclassified messages containing FOUO information shall contain the abbreviation "FOUO" before the beginning of the text. Such messages shall be transmitted in accordance with communications security procedures in ACP-121 (US Supp 1) (reference (o)) for FOUO information.

Section 4—Safeguarding FOUO Information

4-400 During Duty Hours

During normal working hours, records determined to be FOUO shall be placed in an out-of-sight location if the work area is accessible to nongovernmental personnel.

4-401 During Nonduty Hours

At the close of business, FOUO records shall be stored so as to preclude unauthorized access. Filing such material with other unclassified records in unlocked files or desks, etc., is adequate when normal U.S. Government or government-contractor internal building security is provided during nonduty hours. When such internal security control is not exercised, locked buildings or rooms normally provide adequate after-hours protection. If such protection is not considered adequate, FOUO material shall be stored in locked receptacles such as file cabinets, desks, or bookcases. FOUO records that are subject to the provisions of P.L. 86-36 (reference (c)) shall meet the safeguards outlined in any system notice for that group of records.

Section 5—Termination, Disposal and Unauthorized Disclosures

4-500 Termination

The originator or other competent authority, e.g., initial denial and appellate authorities, shall terminate "For Official Use Only" markings or status when circumstances indicate that the information no longer requires protection from public disclosure. When FOUO status is terminated, all known holders shall be notified, to the extent practical. Upon notification, holders shall efface or remove the "For Official Use Only" markings, but records in file or storage need not be retrieved solely for that purpose.

4–501 Disposal

a. Nonrecord copies of FOUO materials may be destroyed by tearing each copy into pieces to preclude reconstructing, and placing them in regular trash containers. When local circumstances or experience indicates that this destruction method is not sufficiently protective of FOUO information, local authorities may direct other methods but must give due consideration to the additional expense balanced against the degree of sensitivity of the type of FOUO information contained in the records.

b. Record copies of FOUO documents shall be disposed of in accordance with the disposal standards established under 44 U.S.C. CH 33 (reference (p)), as implemented by DoD Component instructions concerning records disposal.

4–502 Unauthorized Disclosure

The unauthorized disclosure of FOUO records does not constitute an unauthorized disclosure of DoD information classified for security purposes. Appropriate administrative action shall be taken, however, to fix responsibility for unauthorized disclosure whenever feasible, and appropriate disciplinary action shall be taken against those responsible. Unauthorized disclosure of FOUO information that is protected by the Privacy Act may also result in criminal sanctions against responsible persons. The DoD Component that originated the FOUO information shall be informed of its unauthorized disclosure.

Chapter V—Release and Processing Procedures

Section 1—General Provisions

5–100 Public Information

a. Since the policy of the Department of Defense is to make the maximum amount of information available to the public consistent with its other responsibilities written requests for a DoD record made under the FOIA may be denied only when:

1. The record is subject to one or more of the exemptions in Chapter III of this Regulation, and a significant and legitimate government purpose is served by withholding it.

2. The record has not been described well enough to enable the DoD Component to locate it with a reasonable amount of effort by an employee familiar with the files.

3. The requester has failed to comply with the procedural requirements, including the written agreement to pay or payment of any required fee imposed by the instructions of the DoD Component concerned. When personally identifiable information in a record is requested by the subject of the record or his attorney, notarization of the request may be required.

b. Individuals seeking DoD information should address their FOI requests to one of the addresses listed in Appendix B.

5–101 Requests From Private Citizens

The provisions of the FOIA are reserved for persons which private interests as opposed to governments seeking information. Foreign governments seeking information from DoD Components should use established official channels for obtaining information. Release of records to individuals under the FOIA is considered public release of information, except as provided for in paragraph 1–505.

5–102 Requests From Government Officials

Requests from officials of federal, state, or local governments for DoD Component records shall be honored on an expeditious basis whenever possible. For purposes of determining whether the record or records shall be provided, such officials acting in an individual capacity shall be considered the same as any other requester.

5–103 Privileged Release to Officials

a. Subject to the provisions of DoD Regulation 5200.1–R (reference (g)), applicable to classified information, DoD Directive 5400.11 (reference (d)), applicable to personal privacy, or other applicable law, records exempt from release under Chapter III of this Regulatory may be authenticated and released, in accordance with DoD Component regulations, to officials requesting them on behalf of local, state or federal government bodies, whether legislative, executive, administrative, or judicial, as follows:

1. To Congress, in accordance with DoD Directive 5400.4 (reference (m)).

2. To the federal courts, whenever ordered by officers of the court as necessary for the proper administration of justice.

3. To other federal agencies, both executive and administrative, as determined by the head of a DoD Component or designee.

4. To state and local officials, as determined by the head of a DoD Component or designee.

b. DoD Components shall inform officials receiving records under the provisions of paragraph 5–103a that those records are exempt from public release under the FOIA and are privileged. DoD Components shall also advise officials of any special handling instructions.

Section 2—Initial Determinations

5–200 Initial Denial Authority

a. Components shall limit the number of IDAs appointed. In designating its IDAs, a DoD Component shall balance the goals of centralization of authority to promote uniform decisions and decentralization to facilitate responding to each request within the time limitations of the FOIA.

b. The initial determination of whether to make a record available upon requests may be made by any suitable official designated by the DoD Component in published regulations. The presence of the marking "For Official Use Only" does not relieve the designated official of the responsibility to review the requested record for the purpose of determining whether an exemption under this Regulation is applicable and should be invoked.

c. The officials designated by DoD Components to make initial determinations should consult with public affairs officers (PAOs) to become familiar with subject matter that is considered to be newsworthy, and advise PAOs of all requests from news media representatives. In addition, the officials should inform PAOs in advance when they intend to withhold or partially withhold a record, if it appears that the withholding action may be challenged in the media.

5–201 Reasons for Not Releasing a Record

There are six reasons provided by the FOIA for not complying with a request for a record. They are:

a. The information requested is not a record within the meaning of the FOIA and this Regulation.

b. A record has not been described with sufficient particularity to enable the DoD Component to locate it by conducting a reasonable search.

c. The requester has failed unreasonably to comply with procedural requirements, including payment of fees, imposed by this Regulation or DoD Component supplementing regulations.

d. The DoD Component determines through knowledge of its files and reasonable search efforts that it does not hold the requested record. (A "no record" determination is not considered a denial; therefore, an appeal is not appropriate.)

e. The DoD Component determines that the request should be handled under the provisions of the Privacy Act.

f. The record is denied in accordance with Procedures set forth in the FOIA and this Regulation.

5–202 Denial Tests

To deny a requested record that has been located, a DoD Component must determine that the denial meets the following tests:

a. The record is included in one or more of the nine categories of records exempt from mandatory disclosure as provided by the FOIA and outlined in Chapter III of this Regulation.

b. A significant and legitimate government purpose is served by withholding the record.

5–203 Reasonably Segregable Portions

Although portions of some records may be denied, the remaining reasonably segregable portions must be released to the requester when the meaning of these portions is not distorted by deletion of the denied portions and when it reasonably can be assumed that a skillful and knowledgeable person could not reconstruct the excised information. When a record is denied in whole, the response advising the requester of that determination will specifically state that it is not possible to reasonably segregate meaningful portions of the record for release.

5–204 Response to Requester

a. Initial determinations to release or deny a record normally shall be made and the decision reported to the requester within 10 workings days after receipt of the request by the official designated to respond.

b. When a decision is made to release a record, a copy should be made available promptly to the requester once he has complied with preliminary procedural requirements.

c. When a request for a record is denied in whole or in part, the official designated to respond shall inform the requester in writing of the name and title or position of the official who made the determination, and shall explain to the requester the basis for the determination in sufficient detail to permit the requester to make a decision concerning appeal. The requester specifically shall be informed of the exemptions on which the denial is based and the significant and legitimate government purpose served by withholding the record. When the initial denial is based in whole or in part on a security classification, the explanation should include a summary of the applicable criteria for classification, as well as an explanation, to the extent reasonably feasible, of how those criteria apply to the particular record in question. The requester shall also be advised of the opportunity and procedures for appealing an unfavorable determination to a higher final authority within the DoD Component.

d. The response to the requester should contain information concerning the fee status of the request. Generally, the information shall reflect one or more of the following conditions:

1. All fees due have been received.

2. Fees have been waived because they fall below the automatic fee waiver threshold.

3. A request for waiver has been denied.

4. Fees have been waived or reduced from a specified amount to another specified amount because the rationale provided in support of a request for waiver has been accepted.

5. Fees due in a specified amount have not been received.

e. The explanation of the substantive basis for a denial shall include both specific citation of the statutory exemption applied under provisions of this Regulation and a discussion of the significant and legitimate government purpose served by invoking an exemption. Merely referring to a classification or, to a "For Official Use Only" marking on the requested record does not constitute a proper citation or explanation of the basis for invoking an exemption.

f. When the time for response becomes an issue, the official responsible for replying shall acknowledge to the requester the date of the receipt of the request.

5–205 Extension of Time

a. In unusual circumstances, when additional time is needed to respond, the DoD Component shall acknowledge the request in writing within the 10-day period, describe the circumstances requiring the delay, and indicate the anticipated date for substantive response that may not exceed 10 additional working days. Unusual circumstances that may justify delay are:

1. The requested record is located in whole or in part at places other than the office processing the request.

2. The request requires the collection and evaluation of a substantial number of records.

3. Consultation is required with other DoD Components or agencies having substantial interest in the subject matter to determine whether the records requested are exempt from disclosure in whole or in part under provisions of this Regulation or should be released as a matter of discretion.

b. The statutory extension of time for responding to an initial request must be approved on a case-by-case basis by the final appellate authority for the DoD Component or in accordance with regulations of the DoD Component or in accordance with regulations of the DoD Component that establish guidance governing the circumstances in which such extensions may be granted.

c. In these unusual cases where the statutory time limits cannot be met, and no informal extension of time has been agreed to, the inability to process any part of the request within the specified time should be explained to the requester, with notification that he may treat the delay as an initial denial with a right to appeal, or that the requester may agree to a wait a substantive response by an anticipated date. It should be made clear that any such agreement does not prejudice the right of the requester to appeal the initial decision after it is made.

d. As an alternative to the taking of formal extensions of time as described in subsections a, b and c above, the negotiation by the cognizant, FOIA coordinating office of informal extensions in time with requesters is encouraged where appropriate.

5–206 Misdirected Requests

Misdirected requests shall be forwarded promptly to the DoD Component with the responsibility for the records requested. The period allowed for responding to the request misdirected by the requester shall not begin until the request is received by the DoD Component that manages the records requested.

5–207 Records of Non-U.S. Government Source

When a request is received for a record that was obtained from a non-U.S. Government source, or for a record containing information, clearly identified as having been provided by a non-U.S. Government source, the source of the record or information normally shall be notified promptly of that request and afforded reasonable time to present any objections concerning the release unless it is clear that there can be no valid bases for objection. If for example, the record or information was provided with actual or presumptive knowledge of the non-U.S. Government source and that it would be made available to the public upon request, there is no obligation to notify the source. Any objections shall be evaluated. When a substantial issue has been raised, the DoD Component may seek additional information from the source of the information and afford the source and requester reasonable opportunities to present their arguments on the legal issues involved prior to making an agency determination. When the source advises it will seek a restraining order or take court action to prevent release of the record or information, the requester shall be notified, and action on the request normally shall not be taken until after the outcome of that court action is known.

5–208 File of Initial Denials

Copies of all initial denials shall be maintained by each DoD Component in a form suitable for rapid retrieval, periodic statistical compilation, and management evaluation.

5–209 Special Mail Services

DoD Components are authorized to use registered mail, certified mail, certificates of mailing and return receipts. However, their use should be limited to instances where it appears advisable to establish proof of dispatch or receipt of FOIA correspondence.

5–210 Receipt Accounts

The Treasurer of the United States has established two accounts for FOIA receipts. These accounts, which are described below, shall be used for depositing all FOIA receipts except receipts for industrially funded activities. Industrially funded activity FOIA receipts shall be deposited to the applicable industrial fund.

a. *Receipt Account 2252, Sale of Publications and Reproductions, Freedom of Information Act.* This account shall be used when depositing funds received from providing existing publications and forms, that meet the Receipt Account Series 2250 description found in Federal Account Symbols and Titles.

b. *Receipt Account 2419.3, Fees and Other Charges for Services, Freedom of Information Act.* This account is used to deposit search fees and fees for duplicating records to satisfy requests that could not be filled with existing publications or forms.

Section 3—Appeals

5–300 General

If the official designated by the DoD Component to make initial determinations on requests for records declines to provide a record because the official considers it exempt and its withholding justified for a significant and legitimate government purpose, that decision may be appealed by the requester in writing to a designated appellate authority. The appeal should be accompanied by a copy of the letter denying the initial request. Such appeals should contain the basis for disagreement with the initial refusal. In addition, the DoD Component may impose a reasonable time limit, which may not be more than 45 days, for the requester to file an appeal. Appeal procedures also apply to the disapproval of a request for waiver or reduction of fees. A "no record" finding may not be appealed, although the requester may ask the agency to search other files or provide more detailed identification to facilitate another search of the files.

5–301 Time of Receipt

FOI appeal has been received by a DoD Component when it reaches the office of the appellate authority having jurisdiction. Misdirected appeals should be referred expeditiously to the proper appellate authority.

5–302 Time Limits

a. The requester must file an appeal so that it reaches the appellate authority no later than 45 working days after the requester receives notification of an initial denial. At the conclusion of this period, the case may be

considered closed. In cases where the requester is provided several incremental determinations for a single request, the time for the appeal shall not begin until the requester receives the last such notification. Records which are denied shall be retained during the time permitted for appeal.

b. Final determinations on appeals normally shall be made within 20 working days after receipt.

5–303 Delay in Responding to an Appeal

a. If additional time is needed due to the unusual circumstances described in paragraph 5–205. the final decision may be delayed for the number of working days (not to exceed 10), that were not utilized as additional time for responding to the initial request.

b. If a determination cannot be made and the requester notified within 20 working days, the appellate authority shall acknowledge to the requester in writing the date of receipt of the appeal, the circumstances surrounding the delay, and the anticipated date for substantive response. Requesters shall be advised that, if the delay exceeds the statutory extension provision or is for reasons other than the unusual circumstances identified in paragraph 5–205, they may consider their administrative remedies exhausted. They may, however, without prejudicing their right of judicial remedy, await a substantive response. The DoD Component shall continue to process the case expeditiously whether or not the requester seeks a court order for release of the records, but a copy of any response provided subsequent to filling of a complaint shall be forwarded to the Department of Justice.

5–304 Response to the Requester

a. When an appellate authority makes a determination to release all or a portion of records withheld by an IDA, a copy of the records so released should be forwarded promptly to the requester after compliance with any preliminary procedural requirements, such as payment of fees.

b. Final refusal to provide a requested record or to approve a request for waiver or reduction of fees must be made in writing by the head of the DoD Component or by a designated representative. The response, as a minimum, shall include the following:

1. The basis for the refusal shall be explained to the requester, in writing, both with regard to the applicable statutory exemption invoked under provisions of this Regulation and the significant and legitimate government purpose served by its withholding.

2. When the final refusal is based in whole or in part on a security classification, the explanation shall include a determination that the record meets the cited criteria and rationale of the governing executive order and that this determination is based on a declassification review, with the explanation of how that review confirmed the continuing validity of the security classification.

3. The final denial shall include the name and title or position of the official responsible for the denial.

4. The response shall advise the requester that the material being denied does not contain meaningful portions that are reasonably segregable.

5. The response shall advise the requester of the right to judicial review.

5–305 Consultation

a. Final refusal involving issues not previously resolved or that the DoD Component knows to be inconsistent with rulings of other DoD Components ordinarily should not be made before consultation with the Office of the General Counsel of the Department of Defense.

b. Tentative decisions to deny records that raise new or significant legal issues of potential significance to other agencies of the government shall be brought to the attention of the Freedom of Information Committee of the Department of Justice through the Office of Information Law and Policy.

Section 4—Judicial Actions

5–400 General

a. This section states current legal and procedural rules for the convenience of the reader. The statements of rules do not create rights or remedies not otherwise available, nor do they bind DoD to particular judicial interpretations or procedures.

b. A requester may seek an order from a United States District court to compel release of a record after administrative remedies have been exhausted; i.e., when refused a record by the head of a Component or an appellate designee or when the DoD Component has failed to respond within the time limits prescribed by the FOIA and set forth in this Regulation.

5–401 Jurisdiction

The requester may bring suit in the United States District Court in the district in which the requester resides or is the requester's place of business, in the district in which the record is located, or in the District of Columbia.

5–402 Burden of Proof

The burden of proof is on the DoD Component to justify its refusal to provide a record. The court shall evaluate the case de novo (anew) and may elect to examine any requested record in camera (in private) to determine whether the denial was justified.

5–403 Actions by the Court

a. When a DoD Component has failed to make a determination within the statutory time limits but can demonstrate due diligence in exceptional circumstances, the court may retain jurisdiction and allow the Component additional time to complete its review of the records.

b. If the court determines that the requester's complaint is substantially correct, it may require the United States to pay reasonable attorney fees and other litigation costs.

c. When the court orders the release of denied records, it may also issue a written finding that the circumstances surrounding the withholding raise questions whether DoD Component personnel acted arbitrarily and capriciously. In these cases, the special counsel of the Merit System Protection Board will conduct an investigation to determine whether or not disciplinary action is warranted. The DoD Component is obligated to take the action recommended by the special counsel.

d. The court may punish the responsible official for contempt when a DoD Component fails to comply with the court order to produce records that it determines have been withheld improperly.

5–404 Non-United States Government Source Information

A requester may bring suit in a U.S. District Court to compel the release of records obtained from a nongovernment source or records based on information obtained from a nongovernment source. Such source shall be notified promptly of the court action. When the source advises that it is seeking court action to prevent release, the DoD Component shall defer answering or otherwise pleading to the complainant as long as permitted by the Court or until a decision is rendered in the court action of the source, whichever is sooner.

5–405 Litigation Status Sheet

Freedom of Information managers at DoD Component level shall be aware of litigation under the FOIA. Such information will provide management insights into the use of the nine exemptions by Component personnel. The Litigation Status Sheet at Appendix C provides a standard format for recording information concerning FOIA litigation and forwarding that information to the Office of the Secretary of Defense. Whenever a complaint under the FOIA is filed in a U.S. District Court, the DoD Component named in the complaint shall forward a Litigation Status Sheet, with items 1 through 6 completed, and a copy of the complaint to the Director for Freedom of Information and Security Review, Office of the Assistant Secretary of Defense (Public Affairs). A revised Litigation Status Sheet shall be provided at each stage of the litigation.

CHAPTER VI—Fee Schedule

Section 1—General Provisions

6–100 Application

The fees described in this chapter apply to FOIA requests. They reflect direct search and duplication costs, collection of which are permitted by the FOIA. They are neither intended to imply that fees must be charged in connection with providing information to the public in the routine course of business nor are they meant as a substitute for any other schedule of fees, such as DoD Instruction 7230.7 (reference (q)).

6–101 Fee Assessment

a. Minimum fees shall not be charged.

b. When direct search and duplication costs for a single FOIA request total less than 30.00, fees should be waived automatically. The DoD Components, however, may set aside the automatic waiver provision when, on the basis of good evidence, the Component can demonstrate that waiver of fees is not in the public interest.

c. Decisions to waive or reduce fees that exceed the automatic waiver threshold shall be made on a case-by-case basis. The following circumstances, however, describe the most common circumstances in which waiver or reduction of fees are most likely to be warranted.

1. No record is located or all records are denied. However, fee charges are appropriate if the requester insists upon a search and agrees to such fees after being informed that the search is likely to be nonproductive or that the records are all likely to be exempt from release.

2. A record is voluntarily created to preclude an otherwise burdensome effort to provide voluminous amounts of available records including additional information not requested.

3. The records are to be made available in response to a news media requester whose requests under this regulation are reasonable in scope and frequency. Fee charges are appropriate for news media requesters and may be assessed when:

(a) The fee charges exceed the fee waiver threshold of $30.00; and

(b) Either the requested record does not contain information that can be considered as primarily benefiting the general public, or the search for the requested record requires an inordinate amount of DoD Component personnel time, and impacts adversely on the DoD Component concerned in accomplishing its primary functional missions.

4. When news media requests are broad in scope and are considered unreasonable by the Head of the Component, a specificity letter, as outlined in paragraph 5–107a of this regulation, should be dispatched. An estimate of fee charges may be included in the specificity letter, if practicable, or provided after receiving a reframed request.

5. The record is for a nonprofit public interest group and the subject of the requested record is known to be of wide public interest, and furnishing the information can be considered as primarily benefiting the general public.

6. A previous denial is reversed in whole or in part and the search and reproduction costs involved are not substantial.

6–102 Computation of Fees

The fee schedule contained in this chapter is used to compute the search and duplication costs associated with processing a given FOIA request. Search fees shall be computed based on time actually spent. Neither time-based nor dollar-based minimum charges for search and duplication are authorized.

Section 2—Collection of Fees and Fee Rates

6–200 Collection of Fees

Collection of charges and fees need not be made in advance of rendering the service unless the costs are expected to exceed the fee waiver threshold and the requester has not indicated a willingness in writing to pay. It frequently is more practical to collect charges and fees at the time of providing the service or property to the recipient when the requester specifically states that the cost involved shall be acceptable or acceptable up to a specified limit that covers anticipated costs. Collection of fees in advance is an appropriate requirement only when the requester has not agreed in writing to pay the anticipated fee or has not honored previous commitments to pay fees that were owed an agency or component.

6–201 Search Fees

a. Manual Search:

Type	Grade	Hourly rate
Clerical	E9/GS8 and below	$8
Professional	01–06/GS9–GS–15	16
Executive	07/GS16/ES1 and above	25

b. Computer search is based on direct cost of the central processing unit, input-output devices, and memory capacity of the actual computer configuration.

c. Actual cost of transporting records or personnel to the search site may be included.

6–202 Duplication Fees

Type	Cost per page (cents)
Printed Material	01
Office Copy	10
Microfiche	25

6–203 Audiovisual Documentary Materials

Search costs are computed as for any other record. Duplication cost is the actual direct cost of reproducing the material, including the wage of the person doing the work. Audiovisual materials provided to a requester need not be in reproducible format or quality.

6–204 Other Records

Direct search and duplication cost for any record not described above shall be computed in the manner described for audiovisual documentary material.

Chapter VII—Reports

Section 1—Reports Control

7–100 General

The reporting requirement outlined in this chapter is assigned Report Control Symbol DD–PA(TRA&A) 1365.

Section 2—Annual Report

7–200 Reporting Time

Each DoD Component shall prepare statistics and accumulate paperwork for the preceding calendar year on those items prescribed for the annual report and submit them in duplicate to the ASD(PA) on or before each February 1. Existing DoD standards and registered data elements are to be used for all data requirements to the greatest extent possible in accordance with the provisions of DoD Directive 5000.11 (reference (r)). The standard data elements are contained in DoD 5000.12–M (reference (s)).

7–201 Annual Report Content

a. The annual report shall contain the following:

1. *Item. 1.* Report the number of public requests (a single FOIA request) completed. Report the number of reportable requests, the number in which a statutory exemption was invoked, and the number in which some other authority resulted in the denial of the request.

Note.— A reportable request is that portion of an FOIA request resulting in a single record or group of records pertaining to one general subject area being acted upon by one IDA who concludes that a single type of determination applies. Example: A single public request that requires the action of three IDAs in determining if a record under their jurisdiction is to be released would be counted as three reportable requests, but one public request. Records released by two IDAs in response to one public request would be counted as two reportable requests.

2. *Item 2.* Provide statistics on the specific authorities—statutory exemptions, status, and categories of other reasons used in the totals above.

(a) *Item 2(a).* Show the number of times each of the nine statutory exemptions was invoked (the total may not agree with Item 1 because of situations where two or more exemptions were cited for one record).

(b) *Item 2(b).* List the statutes cited when invoking Exemption 3 and the number of times each was cited.

(c) *Item 2(c).* Show the number of times each category of other reasons was cited in response to the public. Five such reportable categories have been established in Appendix E to this Regulation (the total will equal the number reported in Item 1).

3. *Item 3.* Provide the number of IDAs authorized. Then list the names and titles or positions of persons cited as IDAs, followed thereafter in two subcolumns by the number of times each person cited exemptions or other authority categories (the vertical columnar totals must match Item 1).

4. *Item 4.* Provide the number of appeals that, upon review, were granted in part, or denied, followed by a total of those three numbers.

5. *Item 5.* Repeat the three statistical requirements of Item 2 for the appeals that were granted in part or denied.

6. *Item 6.* Repeat item 3 for appellate authorities including both subcolumnar statistics.

7. *Item 7.* When a court determines that DoD Component records were improperly withheld and issues a finding raising questions on the actions of DoD Component personnel, provide a copy of each such court opinion or order; a copy of the Office of Personnel Management finding and recommendation on each such proceeding; and a report of any disciplinary action taken against the person who was primarily responsible for improperly withholding records or an explantion of why disciplinary action was not taken.

8. *Item 8.* List changes or revisions of DoD Component rules or regulations affecting the implementation of FOIA followed by the **Federal Register** reference (number, date, and page) that announced the change or revision to the public. Append a copy of each such change or revised rule or regulation.

9. *Item 9.* The amount of fees collected from the public will be reported triannually to OASD(PA); thus, duplicate annual reporting by DoD Components is not required.

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10. *Item 10.* the following subitems have been established by Congressional request as indicative of DoD Component efforts to administer FOIA.

(a) *Item 10(a).* List all new categories of records now being released in whole or in part under FOIA.

(b) *Item 10(b).* The costs of administering the FOIA Program shall be reported triannually to OASD(PA); thus, duplicate annual reporting by Components is not required. The triannual reports shall be used by the OASD(PA) to portray annual DoD Component and DoD-wide totals.

(c) *Item 10(c).* Report the number of times unusual circumstances required an extension of normal processing time limits, and break down that total by circumstances and by court action. Append a copy of each court opinion or order involving the question of time limits for processing.

(d) *Item 10(d).* Append a copy of all unpublished (not announced in the **Federal Register**) instructions to DoD Component personnel, memoranda, or other issuances that address procedures, definitions, or interpretations of the FOIA promulgated during the year at Major Command level or the DoD Component. Report the number of documents published and whether or not they are publicly available, together with the legal basis for nondisclosure, should that be the case.

(e) *Item 10(e).* Any other information, opinion, or recommendations considered pertinent by the DoD Component.

11. *Item 11.* Report descriptions of FOI instructional and educational efforts undertaken by the DoD Component directed toward DoD Component personnel or the public.

12. Statistical data required by the item listed above shall be prepared in the format shown in Appendix D.

Section 3—Triannual Report

7–300 General

A portion of the annual reporting requirements has been selected for more frequent reporting to provide management data at intermediate DoD Components and DoD levels. The data selected fall into three areas: (1) costs attendant to administration of the FOIA program, (2) the amount collected from the public, and (3) the number of reportable requests and appeals.

7–301 Time of Report

Each DoD Component shall prepare statistics triannually (Jan-Apr, May-Aug, Sep-Dec.) and, using the outline provided below, report these data to the ASD(PA) on or before 30 days after the close of each 4-month period. The use of DD Form 2086, "Record of Freedom of Information (FOI) Processing Cost," to maintain a record of the cost of each FOIA case shall provide the data needed for compiling the data in this report.

7–302 Triannual Report Outline

a. The Triannual Report shall include the following:
Reporting Activity:
Period of Report:
1. Cost of Routine Requests Processed:
No. of reportable requests × (Cost factor per request)..... $——
2. Personnel Costs (Civilian and Military):
(a) Direct costs of personnel assigned FOI duties based upon estimated payroll manyers by grade:
——— Cost: $——
(b) Direct costs for other personnel involved in processing requests not included above based upon accumulation of total hourly data:
(1) Search Time Costs... ——
(2) Review and Excising..... ——
(3) Coordination and Approval/Denial Decision Costs ..... ——
(4) Correspondence and Form Preparation.. ——
(5) Other Activity Costs ..... ——
Total Manhour Costs ..... $——
(c) Application of Overhead:
(Subtotal a) + (Subtotal b) × (overhead rate) ..... $——
Total of Direct Personnel Costs and Overhead..... $——
3. Other Case Related Costs:
(a) Computer..... $——
(b) Office Copy Reproduction... $——
(c) Microfiche Reproduction... $——
(d) Cost of Printed Records..... $——
Total of Other Costs..... $——
4. Other Operating Costs:
(a) Reporting Costs [1]
(1) Operational.. ——
(2) User..... ——
(3) Overhead... ——
((1) + (2) × (overhead rate))..... ——
$——
(b) Other costs are directed or as can be reasonably ascertained. Itemize each expense category and cost ..... $——
(Subtotal a) + (Subtotal b)..... $——
5. Summary:
(a) Total Costs of Sections 1 through 4, above..... $——
(b) Amount Collected from Requesters this Reporting Period:
Search——Copy——Total: $——
(c) No. of Requests Processed During this Reporting Period:
Reportable Requests——
Appeals——Total:——
b. A copy of DD Form 2086, "Record of Freedom of Information (FOI) Processing Costs," is at Appendix F.
c. Format and instructions for the Triannual report are at Appendix G.

[1] See DoD Instruction 5000.22 (reference (ll)). In the report for the last 4-month period (Sep-Dec) of each year, include the costs attributable to the Annual Report.

Chapter VIII—Education and Training

Section 1—Responsibility and Purpose

8–100 Responsibility

The head of each DoD Component is responsible for the establishment of educational and training programs on the provisions and requirements of this Regulation. The educational programs should be targeted toward all members of the DoD Component, developing a general understanding and appreciation of the DoD FOIA Program; whereas, the training programs should be focused toward those personnel who are involved in the day-to-day processing of FOI requests, developing a thorough understanding of the procedures outlined in this Regulation.

8–101 Purpose

The purpose of the educational and training programs is to promote a positive attitude among DoD personnel and raise the level of understanding and appreciation of the DoD FOIA Program, thereby improving the interaction with members of the public and improving the public trust in the Department of Defense.

8–102 Scope and Principles

Each Component shall design its FOIA educational and training programs to fit the particular requirements of personnel dependent upon their degree of involvement in the implementation of this Regulation. The program should be designed to accomplish the following objectives:

a. Familiarize personnel with the requirements of the FOIA and its implementation by this Regulation.

b. Instruct personnel, who act in FOI matters, concerning the provisions of this Regulation, advising them of legal hazards involved and the strict prohibition against arbitrary and capricious withholding of information.

c. Provide for the procedural and legal guidance and instruction, as may be required, in the discharge of the responsibilities of initial denial and appellate authorities.

d. Advise personnel of the penalties for noncompliance with the FOIA.

8–103 Implementation

To ensure uniformity of interpretation, all major educational and training programs concerning the implementation of this Regulation should be coordinated with the Director, Freedom of Information and Security Review, OASD (Public Affairs).

8–104 Uniformity of Legal Interpretation

In accordance with DoD Directive 5400.7 (reference (b)) the General Counsel of the Department of Defense shall ensure uniformity in the legal position and interpretation of the DoD FOIA Program.

Appendix A—Unified Commands—Processing Procedures for FOI Appeals

1. General

a. In accordance with DoD Directive 5400.7 (reference (b)) and this Regulation, the Unified Commands are placed under the jurisdiction of the Office of the Secretary of Defense, instead of the administering Military Department, only for the purpose of administering the Freedom of Information (FOI) Program. This policy represents an exception to the policies in DoD Directive 5100.3 (reference (e)).

b. The policy change above authorizes and requires the Unified Commands to process FOI requests in accordance with DoD Directive 5400.7 (reference (b)) and to forward directly to the Office of the Assistant Secretary of Defense (Public Affairs) all correspondence associated with the appeal of an initial denial for information under the provisions of the Freedom of Information Act (FOIA).

2. Processing Procedures

A request for a record under the FOIA may be denied only upon determination that:

(a) The record is subject to one or more of the exemptions set forth in Chapter III of this Regulation and a significant and legitimate government purpose is served by the withholding.

(b) The record cannot be found because it has not been described with sufficient particularity to enable a responsible authority to locate it with a reasonable amount of effort.

(c) The requester has unreasonably failed to comply with the procedural requirements imposed by this regulation.

3. Responsibilities of Commands

Unified Commanders in Chief shall:

(a) Designate the officials authorized to deny initial FOI requests for records.

(b) Designate an office as the point-of-contact for FOI matters.

(c) Refer FOI cases to the ASD(PA) for review and evaluation when the issues raised are of unusual significance, precedent setting, or otherwise require special attention or guidance.

(d) Consult with other OSD and DoD Components that may have a significant interest in the requested record prior to a final determination. Coordination with agencies outside of Department of Defense, if required, is authorized.

(e) Coordinate proposed denials of records with the appropriate Unified Command's Office of the Staff Judge Advocate.

(f) Answer any request for a record within 10 working days of receipt. The requester shall be notified that his request has been granted or denied. In unusual circumstances, such notification may state that additional time, not to exceed 10 working days, is required to make a determination.

(g) Provide to the ASD(PA) when the request for a record is denied in whole or in part, a copy of the response to the requester or his representative, and any internal memoranda that provide background information or rationale for the denial.

(h) State in the response that the decision to deny the release of the requested information, in whole or in part, may be appealed to the ASD(PA) the Pentagon, Washington, D.C. 20301.

(i) Upon request, submit to ASD(PA) a copy of the records that were denied. ASD(PA) shall make such requests when adjudicating appeals.

4. Fees for FOI Requests

The fees charged for requested records shall be in accordance with Chapter VI of this Regulation.

5. Communications

Excellent communication capabilities currently exist between the Office of the ASD(PA) and the Public Affairs Offices of the Unified Commands. This communication capability shall be used for FOI cases that are time sensitive.

6. Reporting Requirements

a. The Unified Commands shall submit to the ASD(PA) triannual reports and an annual report. The instructions for these two reports are outlined in Chapter VII of this Regulation.

b. The annual report shall be submitted in duplicate to the ASD(PA) not later than each February 1. This reporting requirement is assigned Report Control Symbol DD–PA(TRA&A) 1365.

c. The triannual reports for the periods January–April, May–August, September–December are required within 30 days after the close of the reporting period. The first report is due for the period May–August 1980, arriving at the Office of the ASD(PA) not later than September 30, 1980. This reporting requirement is assigned Report Control Symbol DD–PA (TRA&A) 1365.

Appendix B—Addressing FOIA Requests

1. General

a. The Department of Defense includes the Office of the Secretary of Defense and the Organization of the Joint Chiefs of Staff, the Military Departments, the Unified and Specified Commands, and such other agencies as the Secretary of Defense establishes to meet specific requirements.

b. The Department of Defense does not have a central repository for DoD records. FOI requests, therefore, should be addressed to the DoD Component that has custody of the record desired. In answering inquiries regarding FOI requests, DoD personnel shall assist requesters in determining the correct DoD Component to address their requests. If there is uncertainty as to the ownership of the record desired, the requester shall be referred to the DoD Component that is most likely to have the record.

2. Listing of DoD Component Addresses for FOI Requests

a. *Office of the Secretary of Defense/Organization of the Joint Chiefs of Staff.* This Component includes the Office of the Secretary of Defense, Office of the Deputy Secretary of Defense, Organization of the Joint Chiefs of Staff, Under Secretary of Defense for Policy, Under Secretary of Defense for Research and Engineering, Assistant Secretaries of Defense, General Counsel of the Department of Defense, Deputy Under Secretary of Defense (Policy Planning), Deputy Under Secretary of Defense (Policy Review), Assistant to the Secretary of Defense (Atomic Energy), Assistant to the Secretary of Defense (Legal Affairs), Director of Defense Advanced Research Projects Agency, Director of Defense Audit Service, Director of Defense Audiovisual Agency, Director of Defense Security Assistance Agency, Director of Net Assessment, Director of Office of Civilian Health and Medical Program of the Uniformed Services, Director of Office of Dependents Schools (including Overseas Schools), Deputy Advisor on NATO Affairs, Inspector General for Defense Intelligence, President of the Uniformed Services University of the Health Sciences, President of National Defense University (including the National War College and the Industrial College of the Armed Forces), Commandant of the Defense Systems Management College, Commandant of Armed Forces Staff College. All Freedom of Information requests concerning records of these activities should be sent to: Director, Freedom of Information and Security Review, Office of the Assistant Secretary of Defense (Public Affairs), Room 2C757, Pentagon, Washington, D.C. 20301.

b. *Department of the Army.* Army records may be requested from those Army officials who are listed in 32 CFR 518.17. Send requests to HQDA (DAAG–AMR–S), Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20314, for records of the Headquarters, U.S. Army, or if there is uncertainty as to which Army activity may have the records desired.

c. *Department of the Navy.* Navy and Marine Corps records may be requested from any Navy or Marine Corps activity by addressing a letter to the commanding officer and clearly indicating that it is a FOI request. Send requests to Chief of Naval Records Management Division (OP–09B1), Room 5E–613, Pentagon, Washington, D.C. 20350, for records of the Headquarters, Department of the Navy, or if there is uncertainty as to which Navy or Marine Corps activity may have records sought.

d. *Department of the Air Force.* Air Force records may be requested from the Commander (ATTENTION: DADF) of any Air Force installation, major command, or separate operating agency, or from the Headquarters, United States Air Force. Requesters should send FOI requests to HQ USAF/DADF, Washington, D.C. 20330, for Air

Force records of Headquarters, United States Air Force, or if there is uncertainty as to which Air Force activity may have the records desired.

e. *Defense Communications Agency (DCA).* DCA records may be requested from any DCA field activity or from its headquarters. FOI requests may be addressed to Headquarters, Defense Communications Agency (Code 105), Washington, D.C. 20305.

f. *Defense Contract Audit Agency (DCAA).* DCAA records may be requested from any of its regional offices or from its headquarters. Requesters should send FOI requests to the Defense Contract Audit Agency, Cameron Station, Alexandria, Va. 22314, for records of its headquarters or if there is uncertainty as to which DCAA region may have the records sought.

g. *Defense Intelligence Agency (DIA).* FOI requests for DIA records may be addressed to Defense Intelligence Agency (RTS–2A), Washington, D.C. 20301.

h. *Defense Investigative Service (DIS).* All FOI requests for DIS records should be sent to the Office of Information and Legal Affairs Defense Investigative Service (DOO20), 1900 Half St., S.W., Washington, D.C. 20314.

i. *Defense Logistics Agency (DLA).* DLA records may be requested from its headquarters or from any of its field activities. Requesters should send FOI requests to Defense Logistics Agency (DLA–XA), Cameron Station, Alexandria Virginia 22314, for records of its headquarters or DLA field activities if the record is known to be at the field location.

j. *Defense Mapping Agency (DMA).* FOI requests for DMA records may be sent to the Defense Mapping Agency, Naval Observatory, Building 56, 34 Massachusetts Avenue, N.W., Washington, D.C. 20305.

k. *Defense Nuclear Agency (DNA).* FOI requests for DNA records may be sent to Defense Nuclear Agency, Public Affairs Office, Washington, D.C. 20305.

l. *National Security Agency (NSA).* FOI requests for NSA records may be sent to the National Security Agency, ATTN: Freedom of Information Office, Fort George G. Meade, MD 20755.

3. Other Addresses

a. *Office of Civilian Health and Medical Program of the Uniformed Services (CHAMPUS).* FOI requests for CHAMPUS records may be sent to the Director, OCHAMPUS, Denver, Colorado 80240.

b. *National Guard Bureau.* FOI requests for National Guard Federal records may be sent to any State Guard unit or to the National Guard Bureau (NGS–DA), Room 2C–362, Pentagon, Washington, D.C. 20301.

c. *Miscellaneous.* If there is uncertainty as to which DoD Component may have the DoD record sought, the requester may address a Freedom of Information request to the Director, Freedom of Information and Security Review, Office of the Assistant Secretary of Defense (Public Affairs), Room 2C757, Pentagon, Washington, D.C. 20301.

Appendix C—Litigation Status Sheet

1. Case Number*
2. Requester
3. Document Title or Description
4. Litigation
   a. Date Complaint Filed
   b. Court
   c. Case File Number*
5. Defendants (agency and individual)
6. Remarks: (brief explanation of what the case is about)
7. Court Action
   a. Court's Finding
   b. Disciplinary Action (as appropriate)
8. Appeal (as appropriate)
   a. Date Complaint Filed
   b. Court
   c. Case File Number*
   d. Court's Finding
   e. Disciplinary Action (as appropriate)

*Number used by component for reference purposes.

Appendix D—Annual Report Format

Item 1

Initial Determinations Resulting in not Providing all or a Portion of Record Requested

Total Demands	Reporting * Activity	Completed Public Requests	Completed Reportable Requests	Reasons	Statutory Exemption + Other = Total

Item 2(a)

Exemptions Invoked on Initial Determinations

	EXEMPTION BY NUMBER (552(b))									
Reporting * Activity	1	2	3	4	5	6	7	8	9	Total

Item 2(b)

Statutes Invoked on Initial Determinations

Reporting * Activity	Statute	Number of Times

Item 2(c)

Other Reasons

Reporting * Activity	Category *					Total
	1	2	3	4	5	

Item 3

Initial Denial Officials by Participation

A. Total IDAs authorized:———

B. IDAs involved in adverse determinations

Name *	Title	No. of Instances of Participation	
		Exemptions	Other

Item 4

Number of Appeals and Results

Reporting * Activity	Number of Appeals			Total
	Granted	Granted in Part	Denied	

Item 5(a)

Exemptions Invoked on Appeal Determinations

	EXEMPTIONS BY NUMBER (522(b))									
Reporting * Activity	1	2	3	4	5	6	7	8	9	Total

Item 5(b)

Statutes Invoked on Appeal Determinations

Reporting * Activity	Statute	Number of Times

Item 5(c)

Other Reasons Cited on Appeal Determinations

Reporting * Activity	Category *					Total
	1	2	3	4	5	

Item 6

Participation of Appellate Authorities (those responsible for denials in whole or in part

Name *	Title	No. of Instances of Participation	
		Exemptions	Other

Reporting * Activity	Location	I		II & III	
		Unusual Circumstances		Court Involvement	Total
		Volume	Consultation		

Item 7

Court Opinions and Action Taken

Item 8

FOIA Implementation Rules or Regulations

Reporting * Activity	Document Identification	FEDERAL REGISTER Ref.

Item 10A

Availability of Records (New categories of segregable portions of records now being released)

Item 10C

Time Limit Extensions by Activity

Item 10D

Internal Memoranda (Including Directives not Published in **Federal Register**)

Reporting * Activity	No. of Memoranda	No. Available to Public

Item 10E (Optional)

Other information (opinions) or recommendations on administering FOIA

Item 11

FOIA Instructional and Educational Efforts

Note.—Items marked with an asterisk (*) have been registered in the DoD data element program.

Appendix E—Other Reason Categories

1. Transferred Requests

This category applies when responsibility for making a determination or a decision on categories 2, 3, or 4 below is shifted from one DoD Component to another.

2. Lack of Records

This category covers those situations wherein the requester is advised the DoD Component has no record or has no statutory obligation to create a record.

3. Failure of Requester to Reasonably Describe Record

This category is specifically based on Section 552(a)(3)(a) of the FOIA (reference (a)).

4. Other Foilures by Requesters To Comply With Published Rules or Directives

This category is based on Section 552(a)(3)(b) of the FOIA (reference (a)) and includes instances of failure to follow published rules concerning time, place, fees, and procedures.

5. Request Withdrawn by Requester

This category covers those situations wherein the requester asks an agency to disregard the request (or appeal) or pursues the request outside FOIA channels.

BILLING CODE 3810–01–M

DEPARTMENT OF DEFENSE REGULATION 5400.7-R

APPENDIX F

RECORD OF FREEDOM OF INFORMATION (FOI) PROCESSING COST — SEE INSTRUCTIONS ON BACK OF PAGE

1. REQUEST NO. | 2. TYPE OF REQUEST ☐ INITIAL ☐ APPEAL | 3. DATE COMPLETED (yr., mo., day)

4. CLERICAL HOURS (E-8/GS-8 AND BELOW)	TOTAL HOURS		HOURLY RATE		COST
SEARCH		X	$ 8.00	= *	
REVIEW/EXCISING					
CORRESPONDENCE AND FORMS PREPARATION					
OTHER ACTIVITY					

5. PROFESSIONAL HOURS	TOTAL HOURS		HOURLY RATE		COST
SEARCH		X	$ 16.00	= *	
REVIEW/EXCISING					
COORDINATION/APPROVAL/DENIAL					
OTHER ACTIVITY					

6. EXECUTIVE HOURS (O-7/GS-16 AND ABOVE)	TOTAL HOURS		HOURLY RATE		COST
REVIEW/EXCISING		X	$ 26.00	= *	
COORDINATION/APPROVAL/DENIAL					

7. COMPUTER SEARCH	TOTAL HOURS		HOURLY RATE		COST
MACHINE HOURS		X		= *	

8. OFFICE COPY REPRODUCTION	NUMBER		RATE		COST
PAGES REPRODUCED		X	.10	= *	

9. MICROFICHE REPRODUCTION	NUMBER		RATE		COST
MICROFICHE REPRODUCED		X	.25	= *	

10. PRINTED RECORDS	TOTAL PAGES		RATE		COST
FORMS		X	.01	*	
PUBLICATIONS				*	
REPORTS				*	

11. *For FOI Office Use Only*

a. SEARCH FEES PAID		e. TOTAL COLLECTABLE COSTS *	
b. COPY FEES PAID		f. TOTAL PROCESSING COSTS	
c. TOTAL PAID		g. TOTAL CHARGED *	
d. DATE PAID (yr., mo., day)		h. FEES WAIVED/REDUCED	☐ Y ☐ N

* *Chargeable to the Requester.*

DD FORM 1 JAN 80 2086

Instructions

PURPOSE: This form is used to record costs associated with the processing of a Freedom of Information request.

1. Request Number—First two digits will express CY followed by dash (–) and Component's request number, i.e., 79–001.

*2. Type of Request—Check the appropriate block to indicate initial request or appeal of a denial.

*3. Date Completed—Enter year, month and day, i.e., 79/06/21.

*4. Clerical Hours—For each applicable activity category, enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search—Time spent in locating from the files the requested information.

Review/Excising—Time spent reviewing the document content and determining if the entire document must retain its classification or segments could be excised thereby permitting the remainder of the document to be declassified. In reviews for other than classification, FOI exemptions 2 through 9 should be considered.

Correspondence & Forms Preparation—Time spent in preparing the necessary correspondence and forms to answer the request.

Other Activity—Time spent in activity other than above, such as, duplicating documents, hand carrying documents to other locations, restoring files, etc.

—Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category. Only search cost may be charged to the requester. Further discussion of chargeable fees is found in Enclosure 6, DoD Directive 5400.7.

*5. Professional Hours—For each applicable activity category, enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Review/Excising, and Other Activity—See explanation above.

Coordination/Approval/Denial—Time spent coordinating the staff action with interested offices or agencies and obtaining the approval for the release or denial of the requested information.

—Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category. Only search cost may be charged to the requester.

*6. Executive Hours—For each applicable activity category, enter the time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Review/Excising and Coordination/Approval/Denial—See explanation above.

—Multiply the time in the total hours column in each category by the hourly rate and enter the cost figures for each category.

*7. Computer Search—Enter the time to the nearest 15 minutes in the total hours column.

—Multiply the total hours by the computer hourly rate and enter the cost figures. Computer search will be based on direct cost only if the Central Processing Unit, input/output devices, and memory capacity of the actual computer configuration used. This amount is fully chargeable to the requester.

*8. Office Copy Reproduction—Enter the number of pages reproduced.

—Multiply by the rate per copy and enter cost figures. The entire cost is chargeable to the requester.

*9. Microfiche Reproduction—Enter the number of microfiche copies reproduced.

—Multiply by the rate per copy and enter cost figures. The entire cost is chargeable to the requester.

*10. Printed Records—Enter total pages in each category. The categories are:

Forms *(Include any type of printed forms)*

Publications *(Include any type of bound document, such as directives, regulations studies, etc.)*

Reports *(Include any type of memorandum, staff action paper, etc.)*

—Multiply the total number of pages in each category by the rate per page and enter cost figures. The entire cost of each category is chargeable to the requester.

11. For FOI Office Use Only—

a. Search Fees Paid—Enter total search fees paid by the requester.

b. Copy Fees Paid—Enter the total of copy fees paid by the requester.

c. Total Paid—Add search fees paid and copy fees paid. Enter total in the total paid block.

d. Date Paid—Enter year, month and day, i.e., 79/10/24, the fee payment was received.

e. Total Collectable Costs—Add the blocks in the cost column marked with an asterisk and enter total in the total collectable cost block. Only search, reproduction and printed records are chargeable to the requester.

f. Total Processing Costs—Add all blocks in the cost column and enter total in the total processing cost block. The total processing cost in most cases will exceed the total collectable cost.

g. Total Charged—Enter the total amount that the requester was charged, taking into account the fee waiver threshold and fee waiver policy.

*h. Fees Waived/Reduced—Indicate if the cost of processing the request was waived or reduced by placing an "X" in the "Y" block for Yes or an "X" in the "N" block for No.

Note.—All items marked with an asterisk (*) have been registered in the DoD Data Element Standardization Program (DoD Manual 5000.12M). Items 4, 5 and 6 were registered under data element "Type of FOI Manpower Category". The entries Search Review/Excising, Correspondence & Forms Preparation, Coordination/Approval/Denial, and Other Activity have been registered under the data element "FOI Manpower Activity Category."

Appendix G—Format for Triannual Report

Reporting Activity:*
Period of Report:
A. Cost of Routine Requests Processed: No. of Reportable Requests × (cost factor per request)—$———.
B. Personnel Costs (Civilian and Military):
(1) Direct costs of personnel assigned FOI duties based upon estimated payroll manyears by grade: ——— Cost: $———.
(2) Direct costs for other personnel involved in processing requests not included above based upon accumulation of total hourly data:
(a) Search Time Costs: ———.
(b) Review and Excising: ———.
(c) Coordination and Approval/Denial Decision Costs: ———.
(d) Correspondence and Form Preparation Costs: ———.
(e) Other Activity Costs: ———.
Total Manhour Costs: ———.
(3) Application of Overhead: (Sub-total A)+(Sub-total B)×(overhead rate): ———.
Total of Direct Personnel Costs and Overhead: ———.
C. Other Case Related Costs:
(1) Computer* $———.
(2) Office Copy Reproduction* $———.
(3) Microfiche Reproduction* $———.
(4) Cost of Printed Records* $———.
Total of Other Costs: $———.
D. Other Operating Costs:
(1) Reporting Costs: [1]
(a) Operational ———.
(b) User ———.
(c) Overhead ((a)+(b)×(overhead rate)) ——— $———.
(2) Other costs as directed or as can be reasonably ascertained. Itemize each expense category and cost. $———.
(Sub-total (1))+(Sub-total (2)) $———.
E. Summary:
(1) Total Costs of Sections A through D above $———.
(2) Amount Collected from Requesters this Reporting Period:
Search ——— Copy ——— Total: $———.
(3) No. Requests Processed During this Reporting Period:
Reportable Requests ——— Appeals ——— Total: ———.

[1] See DoD Instruction 5000.22 (reference (t)). In the report for the last four-month period (Sept-Dec) of each year, include the costs attributable to the Annual Report.

Note.—Items marked with an asterisk (*) have been registered in the DoD Data Element Program.

Instructions for Triannual FOI Report

1. General

a. To accomplish FOI cost reporting, each reporting activity must, first, determine whether sufficient repetitive requests are available to develop an average cost factor for these requests; second, establish which employees devote a sufficient percentage of their time to FOI duties to calculate their involvement in manyears; third, accumulate data on time (manhours) and costs involved in each case processed; and fourth, keep track of operating costs of the FOI Program. DD Form 2086 (Appendix F) should be used to accumulate case data.

b. Only those requests processed under the FOI Act shall be costed and reported. The provision to the public of unclassified information, documents, and forms as part of normal service, in accordance with previously established criteria or the Privacy Act, is excluded from this reporting requirement.

2. Section A

Some reporting activities will find it economical to develop an average cost factor for processing repetitive routine requests

rather than tracking costs on each request as it is processed. This section provides for that economy, but care must be exercised that costs are comprehensive, to include overhead, yet not duplicated elsewhere in the report.

3. Section B

a. Personnel costs are reported in two ways. Section B. (1) uses a manyear/wage type of costing by grade that relieves individuals primarily those involved in planning, program management, or administrative handling from accounting for their time by manhours.

SAMPLE COMPUTATION [1]

[Air Force]

Grade/Step	No.	X	1/3 Annual Wage	X	% of Time	=	Cost
O-4	1		$7,687		25		$1,924
O-3	1		6,459		50		3,230
GS-9(5)	1		4,844		100		4,844
GS-4(3)	1		2,701		25(2)		1,350
					225		$11,348

Manyears = 225 100 — 3 = 75

[1] (a) Military Grades—use DoD Accounting Guidance Handbook (DoD) 7220.9–H, Sec. 252 (reference (u)).
(b) Civilan Grades—use Office of Personnel Management Salary Table.

b. Use of one-third the annual wage and dividing manyears by three is required in this triannual report. Delete the computation.

c. Section B.(2) accounts for all other personnel involvement by manhours in particular activities associated in request processing as captured on DD Form 2086 (Appendix F). At the end of the reporting period, determine the total hourly data for each activity from all forms for the 4-month period and add totals into the five areas. It is suggested that hours and fractions thereof be added rather than dollar amounts. The use of standard fee schedule rates for each activity simplifies mathematical calculations and also allows these data to be compared to amounts collected. Executive manhours will likely be restricted to (2) (b) and (c) of Section B. (2)

Example Computation:

Clerical Search hours
2071.75x$8.00 = $16,574.00
Professional Search hours
910.20x$16.00 = $14,563.20
(1) Search time costs
= $31,137.20

d. Section B.(3) applies overhead to the direct manyear/manhour costs previously totaled above. The overhead rate includes the costs of supervision, space, and administrative support. Some reporting activities may have their own overhead rate (or will choose to develop one) based on cost experience. In the event that no such rate is available, an overhead rate of 25 percent may be used to produce an estimate of overhead costs. Include the rate used in the report.

4. Section C

Add the dollar amounts for each type of cost as recorded on DD Form 2086 (Appendix F) for the period and enter the total for each of these costs.

5. Section D

Use of this section recognizes reporting costs as part of total costs. It also provides for those other costs that are easily identifiable by each reporting activity. This section allows each DoD Component, as well as other levels of command, to amplify reporting requirements for subordinate levels. Use can vary, but items such as per diem, operation of courier vehicles, training courses, printing (indexes and forms), and use of indicia apply.

6. Section E

The summary data provide a total best estimate cost figure for administering the FOI Program during the reporting period, a recap of fees collected, and the workload that generated these costs and collections.

References

(e) DoD Directive 5100.3, "Support of the Headquarters of Unified, Specified and Subordinate Joint Commands," March 17, 1980.

(f) Title 5, United States Code, Section 551, "Administrative Procedures Act".

(g) DoD 5200.1–R, "DoD Information Security Program Regulation," October 1980, authorized by DoD Directive 5200.1, November 29, 1978.

(h) Title 35, United States Code, Section 181–188, "Patent Secrecy".

(i) Title 43, United States Code, Section 2162, "Restricted Data and Formerly Restricted Data".

(j) Title 18, United States Code, Section 798, "Communication Intelligence".

(k) Title 18, United States Code, Section 3500, "The Jencks Act".

(l) DoD Directive 5200.20, "Distribution Statements on Technical Documents," September 24, 1970.

(m) DoD Directive 5400.4, "Provision of Information to Congress," January 30, 1978.

(n) DoD Directive 7650.1, "General Accounting Office Comprehensive Audits," July 9, 1958.

(o) ACP–121 (United States Supplement 1).

(p) Title 44, United States Code, Chapter 33, "Disposal of Records".

(q) DoD Instruction 7230.7, "User Charges," June 12, 1979.

(r) DoD Directive 5000.11, "Data Elements and Data Codes Standardization Program," December 7, 1964.

(s) DoD 5000.12–M, "DoD Manual for Standard Date Elements," December 1979, authorized By DoD Directive 5000.12, April 27, 1965.

(t) DoD Instruction 5000.22, "Guide to Estimating Costs of Information Requirements," October 17, 1974.

(u) DoD Handbook 7220.9–H, "DoD Accounting Guidance Handbook," February 1, 1978, authorized by DoD Instruction 7220.9, July 12, 1971.

DoD Freedom of Information Act Program Components

Office of the Secretary of Defense/ Organization of the Joint Chiefs of Staff/ Unified Commands and Other Agencies Assigned to OSD for Administrative Support

Department of the Army
Department of the Navy
Department of the Air Force
Defense Communications Agency
Defense Contract Audit Agency
Defense Intelligence Agency
Defense Investigative Service
Defense Logistics Agency
Defense Mapping Agency
Defense Nuclear Agency
National Security Agency

Appendix M—[Reserved]

Appendix N—Activity Address Numbers

Activity Address Numbers are for use in conjunction with the Procurement Instrument Identification Numbering System as prescribed in subpart 4.70 of the DoD FAR Supplement. The six-digit number is used in the first six positions of the Procurement Instrument Identification Number (PIIN). The two-digit number is used in the first two positions of the Call/Order Serial Number.

For further information, see subpart 4.70 of the DoD FAR Supplement.

Activities numbering procurement instruments shall use only those unique and significant numbers assigned by their respective Department/Agency Activity Address Monitor(s). When required, activities shall also be assigned a two-digit number. (Newly assigned numbers will be listed in future revisions to Appendix N.) Activity Address Monitors are as follows:

Army

HQDA (JDHQ–SV–W–P), Chief, Procurement Statistics Division, Washington, DC 20310

Navy

Navy Accounting and Finance Center, (NAFC–3113), Washington, DC 20390, *(Six-digit Unit Identification Number only)

Air Force

Hq USAF (RDCL), Directorate, Contracting and Manufacturing Policy, Washington, DC 20330

Defense Logistics Agency

Chief, Policy Branch (DLA–PPR), Procurement Division, Defense Logistics Agency, Cameron Station, Alexandria, VA 22304–6100

Marine Corps

Commandant of the Marine Corps, Headquarters, U.S. Marine Corps (CHS–2) (Code LBO), Washington, DC 20380–0001, *(Six-digit Unit Identification Number only)

Defense Mapping Agency

Deputy Director for Programs, Production and Operations, Defense Mapping Agency, Washington, DC 20305–3000

Defense Nuclear Agency

Chief, Contract Division, Defense Nuclear Agency, Washington, DC 20305

Defense Communications Agency

Chief, Logistics Management Office, Code 202, Defense Communications Agency, Washington, DC 20305

* The Navy and Marine Corps Activity Address Monitor for assignment of two-digit "alpha-numeric call/serial numbers" is:

Office of Naval Acquisition Support (0212), Washington, DC 20360.

Department of the Army

DAAA03, B1—Pine Bluff Arsenal, Pine Bluff, AR 71601
DAAA05, B2—USA Rocky Mountain Arsenal, Denver, CO 80240
DAAA08, B7—USA Rock Island Arsenal, Rock Island, IL 61299
DAAA09, BA—USA Armament Materiel Readiness Command, Rock Island, IL 61299
DAAA11—Iowa Army Ammunition Plant, Burlington, IA 52601
DAAA19, B4—Lake City Army Ammunition Plant, Independence, MO 64056
DAAA22, BV—USA Watervliet Arsenal, Watervliet, NY 12189
DAAA27—Radford Army Ammunition Plant, Radford, VA 24141
DAAA29, FV—USA Ammunition Plant, Hawthorne, NV 89415
DAAA31, CJ—USA Ammunition Plant, McAlester, OK 74501
DAAB07, BG—USA Communications and Electonics, Materiel Readiness Command, Procurement Directorate, Fort Monmouth, NJ 07703
DAAB08—USA Communications and Electronics Command, Base Operations Procurement Branch, DRSEL–TC–C–BO, Fort Monmouth, NJ 07703
DAAD01, B5—Yuma Proving Ground, Yuma, AZ 85364
DAAD03, B6—Jefferson Proving Ground, Madison, IN 47250
DAAD05, BM—Aberdeen Proving Ground, MD 21005
DAAD07, BN—White Sands Missile Range, NM 88002
DAAD09, BP—Dugway Proving Ground, Procurement Office, PO Box 545, Dugway, UT 84022
DAAD10—HDQTRS, USA Test and Evaluation Command, Aberdeen Proving Ground, MD 21005
DAAE07, BR—USA Tank-Automotive Command, Warren, MI 48090
DAAG02, BH—Anniston Army Depot, Anniston, AL 36201
DAAG06, ZR—Sierra Army Depot, ATTN: SDSSA–PMD–A, Herlong, CA 96113
DAAG08, ZR—Sacramento Army Depot, Sacramento, CA 95813
DAAG10, ZM—Sharpe Army Depot, Lathrop, CA 95331
DAAG29, G2—USA Research Office, PO Box 12211, Research Triangle Park, NC 27709
DAAG34, ZN—Letterkenny Army Depot, Chambersburg, PA 17201
DAAG36, D2—New Cumberland Army Depot, New Cumberland, PA 17070
DAAG38, ZS—Tobyhanna Army Depot, Tobyhanna, PA 18466
DAAG46, D6—USA Materials and Mechanics Research Center, Arsenal Street, Watertown, MA 02172
DAAG47, D7—Red River Army Depot, Texarkana, TX 75501
DAAG48, BJ—USA Depot, Corpus Christi, TX 78419
DAAG49, BK—Tooele Army Depot, Building 9, Tooele, UT 84074
DAAG54, ZP—USA Electronics Materiel Readiness Activity, Vint Hill Farms Station, Warrenton, VA 22186
DAAG60, G8—U.S. Army Military Academy, West Point, NY 10996
DAAG99, USA Project Manager, SANG, APO New York 09038
DAAH01, CC—HDQTRS, US Army Missile Command, Redstone Arsenal, AL 35809
DAAH03, D8—P&C Division, USA Missile Command, Redstone Arsenal, AL 35809
DAAJ04, C6—USA St. Louis Area Support Center, Granite City, IL 62040
DAAJ09, BS, YY, ZQ—USA Troop Support and Aviation, Materiel Readiness Command, 4300 Goodfellow Blvd., St. Louis, MO 63120
DAAK10, 2T—USA Armament R&D Command, Procurement Directorate, Dover, NJ 07801
DAAK11, 2U—USA Armament R&D Command, Chemical/Ballistics Procurement Division, Edgewood Arsenal, Aberdeen Proving Ground, MD 21010–5423
DAAK20, 1Y—USA Electronics R&D Command, Fort Monmouth Procurement Office, Fort Monmouth, NJ 07703
DAAK21, D3—Harry Diamond Laboratories, 2800 Powder Mill Road, Adelphi, MD 20783
DAAK50, 1W—USA Aviation R&D Command, PO Box 209, St. Louis, MO 63120
DAAK51, D9—Applied Technology Laboratory, USA Research and Technology Laboratories, AVRADCOM, Fort Eustis, VA 23604
DAAK60, C5—USA Natick R&D Command, Natick, MA 01760
DAAK70, E1—USA Mobility Equipment R&D Command, Fort Belvoir, VA 22060
DAAK80, 2V—USA Communications R&D Command, Procurement Directorate, DRDCO–PC, Fort Monmouth, NJ 07703
DABT01, F6—US Army Aviation Center & Fort Rucker, ATTN: ATZQ–DI–PC, Fort Rucker, AL 36362
DABT02, 2A—US Army Military Policy/ Chemical Schools/Training Center & Fort McClellan, ATTN: ATZN–DIP, Fort McClellan, AL 36205
DABT10, 2B—USA Infantry Center & Fort Benning, ATTN: ATZC–DIP, Columbus, GA 31905
DABT11, 2C—US Army Signal Center & Fort Gordon, ATTN: ATZH–DIP, Fort Gordon, GA 30905
DABT15, F9—US Army Soldier Support Center & Fort Benjamin Harrison, ATTN: ATZI–DI–P, Fort Benjamin Harrison, IN 46216
DABT19, 2D—US Army Combined Arms Center & Fort Leavenworth, ATTN: ATZL–DIP, Fort Leavenworth, KS 66027
DABT23, 2E—US Army Armor Center & Fort Knox, ATTN: ATZK–DI–P, Fort Knox, KY 40121
DABT31, 2F—US Army Training Center (Engineer) & Fort Leonard Wood; ATTN: ATZT–DI–PC, Fort Leonard Wood, MO 65473
DABT35, 2G—US Army Training Center & Fort Dix, ATTN: ATZDCD–G, Burlington, NJ 08640
DABT39, 2H—USA Field Artillery Center & Fort Sill, ATTN: ATZR–DIPC, Fort Sill, OK 73503
DABT43, 2J—Procurement Division, Bldg. 46, ATZE–DI–P, Carlisle Barracks, PA 17013
DABT47, 2K—US Army Training Center & Fort Jackson, ATTN: ATZJ–DIP, Fort Jackson, SC 29207
DABT51, 2L—Fort Bliss, PO Box 6078, ATZA–DIP, El Paso, TX 79906
DABT56, 2M—USA Engineer Center & Fort Belvoir, ATZA–DIP, Fort Belvoir, VA 22060
DABT57, 2N—US Army Transportation Center & Fort Eustis, ATTN: ATZF–DIO–CD, Fort Eustis, VA 23604
DABT58, 2P—Fort Monroe, ATTN: ATZG–DIC, Fort Monroe, VA 23651
DABT59, 2Q—US Army Quartermaster Center & Fort Lee, ATTN: ATZL–DIP, Fort Lee, VA 23081
DABT60—USA Training Support Center & Fort Eustis, ATTN: ATIC–LOC, Fort Eustis, VA 23604
DABT61—The Judge Advocate Generals School, USA, University of Virginia, Charlottesville, VA 22901
*DACA01; **DACW01, CK—USA Engineer District, Mobile, PO Box 2288, Mobile, AL 36628
*CA—Military; **CW—Civil Works
DACA03, DACW03, CL—USA Engineer District, Little Rock, PO Box 867, Little Rock, AR 72203
DACA05, DACW05, CM—USA Engineer District, Sacramento, 650 Capitol Mall, Sacramento, CA 95814
DACA06, DACW06, CN—USA Engineer Division, South Pacific, 630 Sansome Street, Room 1216, San Francisco, CA 94111
DACA07, DACW07, CP—USA Engineer District, San Francisco, 211 Main Street, San Francisco, CA 94105
DACA09, DACW09, CQ—USA Engineer District, Los Angeles, PO Box 2711, Los Angeles, CA 90053
DACA17, DACW17, CS—USA Engineer District, Jacksonville, PO Box 4970, Jacksonville, FL 32201
DACA19, DACW19, CU—USA Engineer Division, South Atlantic, 510 Title Bldg., 30 Pryor Street, S.W., Atlanta, GA 30303
DACA21, DACW21, CV—USA Engineer District, Savannah, 200 East Saint Julian Street, Savannah, GA 31401
DACA22, DACW22, CW—USA Engineer Division, North Central, 536 South Clark Street, Chicago, IL 60605
DACA23, DACW23, CX—USA Engineer District, Chicago, 219 South Dearborn Street, Chicago, IL 60604
DACA25, DACW25, CD—USA Engineer District, Rock Island, Clock Tower Building, Rock Island, IL 61201
DACA27, DACW27, CY—USA Engineer District, Louisville, PO Box 59, Louisville, KY 40201
DACA29, DACW29, CZ—USA Engineer District, New Orleans, PO Box 60267, New Orleans, LA 70160
DACA31, DACW31, DA—USA Engineer District, Baltimore, PO Box 1715, Baltimore, MD 21203
DACA33, DACW33, DB—USA Engineer District, New England, 424 Trapelo Road, Waltham, MA 02154
DACA35, DACW35, DC—USA Engineer District, Detroit, 150 Michigan Avenue, PO Box 1027, Detroit, MI 48231
DACA37, DACW37, DD—USA Engineer District, St. Paul, 1210 USPO & Customs House, St. Paul, MN 55101

DACA38, DACW38, DE—USA Engineer District, Vicksburg, PO Box 60, Vicksburg, MS 39181
DACA39, DACW39, DF—USA Engineer Water-Ways Experiment Station, PO Box 631, Vicksburg, MS 39181
DACA40, DACW40, DG—USA Engineer Division, Lower Mississippi Valley, PO Box 80, Vicksburg, MS 39181
DACA41, DACW41, DH—USA Engineer District, Kansas City, 700 Federal Bldg., 601 East 12th Street, Kansas City, MO 64106
DACA43, DACW43, DJ—USA Engineer District, St. Louis, 210 North 12th Street, St. Louis, MO 63101
DACA45 DACW45, DK—USA Engineer District, Omaha, 6014 USPO and Courthouse, Omaha, NE 68102
DACA46, DACW46, DL—USA Engineer Division, Missouri River, PO Box 103, Downtown Station, Omaha, NE 68101
DACA47, DACW47, DM—USA Engineer District, Albuquerque, PO Box 1580, Albuquerque, NM 87103
DACA49, DACW49, DN—USA Engineer District, Buffalo, Foot of Bridge Street, Buffalo, NY 14207
DACA51, DACW51, CE—USA Engineer District, New York, 26 Federal Plaza, New York, NY 10007
DACA52, DACW52, DP—USA Engineer Division, North Atlantic, 90 Church Street, New York, NY 10007
DACA54, DACW54, DQ—USA Engineer District, Wilmington, 308 Custom House, Wilmington, NC 28402
DACA55, DACW55, DR—USA Engineer Division, Ohio River, PO Box 1159, Cincinnati, OH 45201
DACA56, DACW56, DS—USA Engineer District, Tulsa, 224 South Boulder, Tulsa, OK 74102
DACA57, DACW57, DT—USA Engineer District, Portland, PO Box 2496, Portland, OR 97208
DACA58, DACW58, DU—USA Engineer Division, North Pacific, 210 Custom House, Portland, OR 97209
DACA59, DACW59, DV—USA Engineer District, Pittsburgh, Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222
DACA60, DACW60, DW—USA Engineer District, Charleston, PO Box 905, Charleston, SC 29402
DACA61, DACW61, CF—USA Engineer District, Philadelphia, Custom House, 2nd & Chestnut Streets, Philadelphia, PA 19106
DACA62, DACW62, DX—USA Engineer District, Nashville, PO Box 1070, Nashville, TN 37202
DACA63, DACW63, DY—USA Engineer District, Fort Worth, PO Box 17300, Fort Worth, TX 76102
DACA64, DACW64, DZ—USA Engineer District, Galveston, PO Box 1229, Galveston, TX 77551
DACA65, DACW65, EA—USA Engineer District, Norfolk, 803 Front Street, Norfolk, VA 23510
DACA66, DACW66, EB—USA Engineer District, Memphis, 668 Federal Office Building, Memphis, TN 38103
DACA67, DACW67, EC—USA Engineer District, Seattle, PO Box C-3755, Seattle, WA 98124
DACA68, DACW68, YW—USA Engineer District, Walla Walla, Building 602, City-County Airport, Walla Walla, WA 99362
DACA69, DACW69, CC—USA Engineer District, Huntington, 502 Eighth Street, Huntington, WV 25721
DACA70, DACW70, YX—USA Engineer Division, Southwestern, Main Tower Building, 1114 Commerce Street Dallas, TX 75242
DACA72, DACW72, ZA—USA Coastal Engineering Research Center, Kingman Building, Fort Belvoir, VA 22060
DACA73, DACW73, CH—Office, Chief of Engineers (DAEN-ECP-C), Washington, DC 20314
DACA74, DACW74, ZB—Rivers and Harbors, Board of Engineers, TEMPO "C" Building, Second & O Streets, SW., Washington, DC 20315
DACA75, DACW75, ZC—USA Engineer Division, Middle East, APO New York, NY 09038
DACA76, DACW76, ZD—USA Engineer Topographic Laboratories, Fort Belvoir, VA 22060
DACA78, DACW78—Rear Headquarters, USA Engineer Division, Middle East, PO Box 2250, Winchester, VA 22601
DACA79, DACW79—US Army Engineer District, Japan, APO San Francisco, CA 96343
DACA81, DACW81—US Army Engineer District, Far East, APO San Francisco, CA 96301
DACA84, DACW84, ZH—USA Engineer Division, Pacific Ocean, Building 230, Fort Shafter, HI 96858
DACA85, DACW85, ZJ—USA Engineer District, Alaska, PO Box 7002, Anchorage, AK 99510
DAC86, DACW86—USA Engineer District, Riyadh, APO New York, NY 09038
DACA87, DACW87, ZW—USA Engineer Division, Huntsville, PO Box 1600 West Station, Huntsville, AL 35807
DACA88, DACW88—USA Construction Engineering, Research Laboratory, PO Box 4005, Champaign, IL 61820
DACA89, DACW89, 1Z—USA Cold Regions Research, and Engineering Laboratory, PO Box 282, Hanover, NH 03755
DACA90, DACW90—USA Engineer Division, Europe, EUDPS-C, APO New York, NY 09757
DACA91, DACW91—Engineer Logistics Command, USA Engineer Division, Middle East, APO New York 09038
DACA93, DACW93—USA Engineer District, Al Batin, APO New York 09038
DACA94, DACW94—MX Program Agency (CEMXPA), Norton AFB, CA 92409
DACA95, DACW95—Commander, Near East Project Office, APO New York 09672
DADA01—Letterman Army Medical Center, ATTN: HSHH-LCP, Presidio of San Francisco, CA 94129
DADA03—Fitzsimons Army Medical Center, ATTN: HSHG-DIO-C, Aurora, CO 80045
DADA09—William Beaumont Army Medical Center, ATTN: HSHM-LOC-CO, El Paso, TX 79920
DADA11—Brooke Army Medical Center, ATTN: HSHE-LO-PC, Fort Sam Houston, TX 78234
DADA13—Madigan Army Medical Center, ATTN: HSHJ-LOC, Tacoma, WA 98431
DADA15—Walter Reed Army Medical Center, ATTN: HSHL-LP, Washington, DC 20012
DADA16—Tripler Army Medical Center, ATTN: HSHK-LD-PC, Tripler AMC, HI 96859
DAEA08, E4—HQ Fort Ritchie, CCNJ-DIO-PC, Fort Ritchie, MD 21719
DAEA16, E7—5th Signal Command, DCSLOG, Attn: CCE-LGC, APO New York, NY 09058
DAEA16, BL—USAAC, Purchasing and Contracting Office, Attn: CCL, PO Box 748, Ft. Huachuca, AZ 85613
DAEA20, E8—1st Signal Brigade, USACC, Contract Administration Branch S4, APO San Francisco, CA 96301
DAHA01, 9B—USP&FO for Alabama, PO Box 3715, Montgomery, AL 36193
DAHA02—USP&FO for Arizona, 1815 North 52nd Street, Phoenix, AZ 85008
DAHA03, 9D—USP&FO for Arkansas, PO Box 677, North Little Rock, AR 72115
DAHA04, 9N—USP&FO for California, PO Box G, Camp San Luis Obispo, CA 93406
DAHA05—USP&FO for Colorado, Camp George West, Golden, CO 80401
DAHA06—USP&FO for Connecticut, National Guard Armory, Hartford, CT 06115
DAHA07, 9A—USP&FO for Delaware, Grier Building, 1161 River Road, New Castle, DE 19720
DAHA08—USP&FO for Florida, State Arsenal, St. Augustine, FL 32084.
DAHA09—USP&FO for Georgia, PO Box 17882, Atlanta, GA 30316
DAHA10—USP&FO for Idaho, PO Box 1098, Boise, ID 83701
DAHA11, 9E—USP&FO for Illinois, Camp Lincoln, 1301 North McArthur Blvd., Springfield, IL 62702
DAHA12—USP&FO for Indiana, PO Box 41346, Indianapolis, IN 46241
DAHA13, 9L—USP&FO for Iowa, Camp Dodge RR #1, Grimes, IA 50111
DAHA14—USP&FO for Kansas, Kansas State Arsenal, 27th and Kansas Avenue, Topeka, KS 66601
DAHA15—USP&FO for Kentucky, Boone National Guard Center, Frankfort, KY 40601
DAHA16—USP&FO for Louisiana, HQ Building, Jackson Barracks, New Orleans, LA 70146
DAHA17—USP&FO for Maine, Camp Keyes, Augusta, ME 04330
DAHA18—USP&FO for Maryland, State Military Reservation, PO Box 206, Havre de Grace, MD 21078
DAHA19—USP&FO for Massachusetts, NG Supply Depot, 143 Speen Street, Natick, MA 01760
DAHA20, 9F—USP&FO for Michigan, PO Box 958, Lansing, MI 48904
DAHA21, 9K—USP&FO for Minnesota, Camp Ripley, Little Falls, MN 56345
DAHA22—USP&FO for Mississippi, PO Box 4447, Fondren Station, Jackson, MS 39218
DAHA23, 9H—USP&FO for Missouri, 1715 Industrial Avenue, Jefferson City, MO 65101
DAHA24, 9P—USP&FO for Montana, State Arsenal Building, PO Box 1157, Helena, MT 59601

DAHA25—USP&FO for Nebraska, 1234 Military Road, Lincoln, NE 68508
DAHA26—USP&FO for Nevada, 2601 South Carson Street, Carson City, NV 89701
DAHA27—USP&FO for New Hampshire, State Military Reservation, Concord, NH 03301
DAHA28—USP&FO for New Jersey, PO Box 2000, Trenton, NJ 08607
DAHA29—USP&FO for New Mexico, PO Box 4277, Santa Fe, NM 87501
DAHA30—USP&FO for New York, Building 4, State Campus, Albany, NY 12226
DAHA31—USP&FO for North Carolina, PO Box 26328, Raleigh, NC 27611
DAHA32—USP&FO for North Dakota, PO Box 1817, Bismarck, ND 58501
DAHA33, 9M—USP&FO for Ohio, 2811 W. Granville Rd., Attn: AGOH-PF-PC, Worthington, OH 43085
DAHA34, 9J—USP&FO for Oklahoma, 3501 Military Circle, NE, Oklahoma City, OK 73511
DAHA35—USP&FO for Oregon, 2150 Fairgrounds Road, N.E., Salem, OR 97310
DAHA36—USP&FO for Pennsylvania, c/o Dept. of Military Affairs, IGMR, Annville, PA 17003
DAHA37—USP&FO for Rhode Island, 51 Stenton Avenue, Providence, RI 02906
DAHA38—USP&FO for South Carolina, PO Box 1090, Columbia, SC 29202
DAHA39—USP&FO for South Dakota, Camp Rapid, Rapid City, SD 57701
DAHA40—USP&FO for Tennessee, PO Box 40748, Nashville, TN 37204
DAHA41, 9C—USP&FO for Texas, PO Box 5218 WAS, Austin, TX 78763
DAHA42—USP&FO for Utah, PO Box 8000, Salt Lake City, UT 84108
DAHA43—USP&FO for Vermont, Camp Johnson, Bldg. 1, Winooski, VT 05404
DAHA44—USP&FO for Virginia, 401 East Main Street, Richmond, VA 23219
DAHA45—USP&FO for Washington, Camp Murray, Tacoma, WA 98430
DAHA46—USP&FO for West Virginia, Buckhannon, WV 26201
DAHA47, 9G—USP&FO for Wisconsin, Camp Douglas, WI 54618
DAHA48—USP&FO for Wyoming, PO Box 1709, Cheyenne, WY 82001
DAHA49—USP&FO for District of Columbia, 2001 East Capitol Street, Washington, DC 20003
DAHA50—USP&FO for Hawaii, Fort Ruger, Honolulu, HI 96816
DAHA51—USP&FO for Alaska, PO Drawer 8989, Anchorage, AK 99508
DAHA70—USP&FO for Puerto Rico, PO Box 3786, San Juan, PR 00904
DAHA72—USP&FO for Virgin Islands, PO Box 1050, Christiansted, St. Croix, VI 00820
DAHA74—USP&FO for Guam, Dept. of Military Affairs, PO Box GC, Agana, Guam 96910
DAHA90—National Guard Bureau, Washington, DC 20310
DAHC06—Hq, US Army Computer Systems Command, Fort Belvoir, VA 22060
DAHC21, G3—Eastern Area, MTMC, Attn: MTE-AQ, Bayonne, NJ 07002
DAHC23, G4—Commander, Western Area, MTMC, Attn: MTW-AQ, Oakland Army Base, Oakland, CA 94626
DAHC24—HDQTRS, Military Traffic Management Command, Contract Operation Office, Attn: MT-ASO, Washington, DC 20315
DAHC25—Directorate of Personal Property, MTMC, Washington, DC 20315
DAHC26, 1X—USA Computer Systems Selection and, Acquisition Agency (USACSSA-CD), Hoffman Building, 2461 Eisenhower Avenue, Alexandria, VA 22331
DAHC30—HDQTRS, Military District of Washington, Attn: HCA Staff Office, Bldg. 15, Cameron Station, Alexandria, VA 22314
DAHC31—The Adjutant General Center, Army Publication Directorate, DAAG-PAR-C, Hoffman Building, Alexandria, VA 22331
DAHC32—National Defense University, Attn: Contracting Officer, Fort Leslie J. McNair, Washington, DC 20310
DAHC34—Superintendent, Arlington National Cemetery, Arlington, VA 22211.
DAHC40—USA Troop Support Agency, Southeast Commissary Field Office, Fort Lee, VA 23801
DAHC41—USA Troop Support Agency, Northeast Commissary Field Office, Fort George G. Meade, MD 20755
DAHC42—USA Troop Support Agency, Midwest Commissary Field Office, Fort Sam Houston, TX 78234
DAHC43—USA Troop Support Agency, Western Commissary Field Office, Fort Lewis, WA 98433
DAHC44—Headquarters, USA Troop Support Agency, Fort Lee, VA 23801
DAHC61—USA Memorial Affairs Agency, Washington, DC 20315
DAHC75—U.S. Army Western Command, ACofS for Acquisition, Fort Shafter, HI 96858
DAHC77, CJ—USA Support Command, Hawaii, Contracts Division, DIO, Fort Shafter, HI 96858
DAJA01, 9Q—U.S. Army Southern European Task Force, Attn: AESE-GDL-PC, APO New York, NY 09168
DAJA02, G5—Seckenheim Area Contracting Office, Attn: AEUPC-SKM, APO New York, NY 09081
DAJA04, 9R—Fuerth Area Procurement Office, Attn: AEUPC-FH, APO New York, NY 09696
DAJA06, 9S—Stuttgart Area Procurement Office, Attn: AEUPC-ST, APO New York, NY 09154
DAJA10, 9U—Augsburg Area Procurement Office, USAPAE, USAREUR, APO New York, NY 09178
DAJA16, 8X—Grafenwoehr Suboffice, Attn: AEUPC-FH-G, APO New York, NY 09114
DAJA23, 9W—U.S. Army, Berlin, Attn: AEBA-PR, APO New York, NY 09742
DAJA25, 9X—Bremerhaven Area Procurement Office, Attn: AEUPC-BRN, APO New York, NY 09069
DAJA37, G6—USA Procurement Agency, Europe, Attn: AEUPC-CO, APO New York, NY 09710
DAJA45, 9Y—Department of the Army, Hq, 47th Area Support Group, APO New York, NY 09075
DAJA61, 9Z—NATO/SHAPE Support Group (U.S.), Attn: AERSH-BCD, APO New York, NY 09667
DAJA75—USA Pipeline Liaison Office, France, Attn: DPGMM, APO New York, NY 09777
DAJA76, 8V—Frankfurt Area Procurement Office, Attn: AEUPC-FKT, Box #73, APO New York, NY 09710
DAJB03, F4—USA Korea Procurement Agency, APO San Francisco, CA 96301
DAKF01, 1A—Presidio of San Francisco, ATTN: AFZM-DI-PR, San Francisco, CA 94129
DALF03, F2—7th Infantry Division & Fort Ord, ATTN: AFZW-DI-PC, P.O. Box 27, Fort Ord, CA 93941
DAKF04—National Training Center, ATTN: AFZJ-DIC, General Delivery c/o Post Office, Fort Irwin, CA 92311
DAKF06, 1C—4th Inf Div (Mech) &, Fort Carson, ATTN: AFZC-DI-A, Fort Carson, CO 80913
DAKF10, 1D—24th Inf Div &, Fort Stewart, ATTN: AFZP-DIP, Fort Stewart, GA 31313
DAKF11, 1E—Fort McPherson, ATTN: AFZK-DI-P, Atlanta, GA 30330
DAKF15, 1F—Fort Sheridan, ATTN: AFZO-DI-C, Fort Sheridan, IL 60037
DAKF19, 1G—1st Inf Div &, Fort Riley, ATTN: AFZN-DI-C, P.O. Box 2248, Fort Riley, KS 66442
DAKF23, 1H—101st ABN Div (AAST) &, Fort Campbell, ATTN: AFZB-DI-PC, Fort Campbell, KY 42223
DAKF24, G1—5th Inf Div (Mech), Fort Polk, ATTN: AFZX-DI, Fort Polk, LA 71459
DAKF27, 1J—Fort George G. Meade, ATTN: AFZI-DI-C, Fort George G. Meade, MD 20755
DAKF31, 1K—Fort Devens, ATTN: AFZD-DI-P, Fort Devens, MA 01433
DAKF36, 1M—Fort Drum, ATTN: AFZS-DI-P, Fort Drum, NY 13602
DAKF40, 1N—XVIII ABN CORPS &, Fort Bragg, ATTN: AFZA-DI-C, Drawer 70120, Fort Bragg, NC 28306
DAKF44, 1P—USA Garrison, Fort Indiantown Gap, ATTN: AFZQ-DI-P, Annville, PA 17003
DAKF48, 1Q—III CORPS &, Fort Hood, ATTN: AFZF-DI-CON, Fort Hood, TX 76544
DAKF49, 1R—Fort Sam Houston, ATTN: AFZG-DI-P, Fort Sam Houston, TX 78234
DAKF57, 1T—I CORPS &, Fort Lewis, ATTN: AFZH-DIP, Fort Lewis, WA 98433
DAKF61, 1U—Fort McCoy, ATTN: AFZR-DI-P, Sparta, WI 54656
DAKF70, 8U—HQ, 172d Infantry Brigade, ATTN: AFZT-DI-D, P.O. Box 5-525, Fort Richardson, AK 99505
DAKF71, 1V—HQ, 193d Infantry Brigade (Panama), ATTN: AFZU-LSC, APO Miami 34004
DAMD17, B3—USA Medical Research and Development Command, Fort Detrick, Frederick, MD 21701
DASG60, CB—Ballistic Missile Defense Systems Command, P.O. Box 1500, Huntsville, AL 35807

Department of the Navy

N000.14, EE—Office of Naval Research, Arlington, VA 22217
N00019, EF—Naval Air Systems Command, Washington, DC 20361
N00023—Naval Supply Systems Command, Washington, DC 20376
N00024, EH—Naval Sea Systems Command, Washington, DC 20360

N00025, EJ—Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332
N00030, EK—Strategic System Project Office, Department of the Navy, Washington, DC 20376
N00032, GU—Director of Contracts, Joint Cruise Missile Project, Washington, DC 20360
N00033, EL—Commander, Military Sealift Command, Washington, DC 20390
N00034, EM—U.S. Navy Finance Center, Cleveland, OH 44114
N00039, NS—Naval Electronic Systems Command, Washington, DC 20360
N00062, 8A—Chief of Naval Education and Training, Code 013, NAS, Pensacola, FL 32508
N00072—Chief of Naval Reserve, Code 17, New Orleans, LA 70146
N00101, 3R—Naval Air Station, South Weymouth, MA 02190
N00102, EN—Portsmouth Naval Shipyard, Portsmouth, NH 03801
N00104, EP, EQ—U.S. Navy Ships Parts Control Center, Mechanicsburg, PA 17055
N00109, F1—U.S. Naval Weapons Station, Yorktown, VA 23491
N00112—U.S. Naval Hospital, Chelsea, MA 02150
N00123, ES—Commanding Officer, Naval Regional Contracting Center, Long Beach, CA 90822
N00124, M5—Naval War College, Newport, RI 02840
N00127, H1—Naval Air Station, Quonset Point, RI 02819
N00128, EU—Supply Department, Naval Administrative Command, U.S. Naval Training Center, Great Lakes, IL 60088
N00129, EV—U.S. Naval Submarine Base, New London, Groton, CT 06340
N00140, EX, LA—Commanding Officer, Naval Regional Contracting Center, Naval Base Bldg. No. 600, Philadelphia, PA 19112
N00146, QK—Marine Corps Air Station, Cherry Point, NC 28533
N00148—Naval Air Station, New York, c/o Naval Air Station, Willow Grove, PA 19090
N00151, EY—Philadelphia Naval Shipyard, Philadelphia, PA 19112
N00153—Governor, U.S. Naval Home, 01800 East Beach Blvd., Gulfport, MS 39501
N00158, 3V—Naval Air Station, Willow Grove, PA 19090
N00161, FA—U.S. Naval Academy, Annapolis, MD 21402
N00163, FB—U.S. Naval Avionics Center, 21st and Arlington Avenue, Indianapolis, IN 46218
N00164, FC—U.S. Naval Weapons Support Center, Crane, IN 47522
N00166, LC—U.S. Naval Air Facility, Washington, DC 20390,
N00167, FD—Naval Ship Research & Development Center, Washington, DC 20084
N00168, FE—National Naval Medical Center, Bethesda, MD 20014
N0017A—Atlantic Fleet Weapons Training, Facility (Code 51), U.S. Naval Station, Box 3023, FPO Miami 34051
N00171, N5—HQ, Naval District Washington, Washington Navy Yard, Washington, DC 20374
N00173, FF—U.S. Naval Research Laboratory, Washington, DC 20390
N00174, FG—U.S. Naval Ordnance Station, Indian Head, MD 20640
N00181, FJ—Norfolk Naval Shipyard, Portsmouth, VA 23709
N00187, 3J—U.S. Naval Public Works Center, Norfolk, VA 23511
N00188, H2—Naval Air Station, Norfolk, VA 23511
N00189, FK—U.S. Naval Supply Center, Norfolk, VA 23512
N00191, FL—Charleston Naval Shipyard, U.S. Naval Base, Charleston, SC 29408
N00193—Commanding Officer (Code 11), Naval Weapons Station, Charleston, SC 29408
N00196, 3K—Commanding Officer (Code 60), Naval Air Station, Atlanta, Marietta, GA 30060
N00197, FM—U.S. Naval Ordnance Station, Louisville, KY 40214
N00200, H3—U.S. Naval Station, Key West, FL 33040
N00203—Commanding Officer, Naval Aerospace & Regional Medical Center, Pensacola, FL 32512
N00204, FN—Naval Air Station (Code 19P10), Pensacola, FL 32508
N00205, FP—Naval Support Activity (Code N443), New Orleans, LA 70146
N00206—Naval Air Station, New Orleans, LA 70146
N00207, FQ—Naval Air Station, Jacksonville, FL 32212
N00213, H4—Naval Air Station, Key West, FL 33040
N00215, 3W—Naval Air Station (Code 60), Dallas, TX 75211
N00216, FR—Commanding Officer (Code 194), Naval Air Station, Bldg 10, Corpus Christi, TX 78419
N00221, K5—Mare Island Naval Shipyard, Vallejo, CA 94582
N00228, FU—U.S. Naval Supply Center, Oakland, CA 94625
N00231—Commanding Officer, Naval Regional Medical Clinic, Quantico, VA 22134
N00236, NX—Naval Air Station, Alameda, CA 94501
N00244, NW—U.S. Naval Supply Center, Naval Base, 937 North Harbor Drive, San Diego, CA 92132
N00246, H5—Naval Air Station, North Island, San Diego, CA 92135
N00247, HC—U.S. Naval Training Center, San Diego, CA 92133
N00249—Commanding Officer, Civil Engineer Support Officer, Naval Construction Battalion Center, Port Hueneme, CA 93043
N00250, FW—Commander, Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, NY 10305
N00251, FX—Puget Sound Naval Shipyard, Bremerton, WA 98314
N00253, FY—Commanding Officer, Naval Undersea Warfare Engineering Station, Keyport, WA 98345
N00267—Commanding Officer, Navy Regional Medical Clinic, Key West, FL 33040
N00274—Naval Air Facility, Selfridge Air Force Base, Supply Department, Mt. Clemens, MI 48045
N00275, 3M—Naval Air Station, Glenview, IL 60026
N00276—Naval Air Station, Twin Cities, Minneapolis, MN 55450
N00278—Naval Air Station, Olathe, KS 66061
N00281—Commanding Officer, Fleet Combat Training Center, Atlantic, Dam Neck, Virginia Beach, VA 23461
N00285—Commanding Officer, Naval Regional Medical Clinic, Corpus Christi, TX 78419
N00288—U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120
N00296, NY—Naval Air Station, Moffett Field, CA 94035
N00311, GA—Pearl Harbor Naval Shipyard, Box 400, Pearl Harbor, HI 96860
N00314, M7—Naval Submarine Base, Pearl Harbor, HI 96860,
N00334, N6—Naval Air Station, Barbers Point, HI 96862
N00383, GB NK, GC NL, GD NM—U.S. Navy Aviation Supply Office, 700 Robbins Avenue, Philadelphia, PA 19111
N00389, KL—Contracting Officer (Code 192), U.S. Naval Station, Box 3002, FPO Miami 34051
N00406, GE—U.S. Naval Supply Center, Puget Sound, Bremerton, WA 98314
N00421, M8—Naval Air Test Center, Patuxent River, MD 20670
N00600, GG—Naval Regional Contracting Center, Washington Navy Yard, Washington, DC 20374
N00604, NQ—U.S. Naval Supply Center, Pearl Harbor, Pearl Harbor, HI 96860
N00612, GH—Commanding Officer, Naval Supply Center, RCD, Code 200M, Charleston, SC 29408
N00620, H6—Naval Air Station, Whidbey Island, Oak Harbor, WA 98277
N00639, H7—Commanding Officer, Naval Air Station, Memphis (84), Millington, TN 38054
N00651, H8—U.S. Naval Supply Depot, Subic Bay, Box 33, FPO San Francisco, CA 96651
N00743, 8N—Commanding Officer, U.S. Naval Communication Station, Box 3022, FPO Miami 34051
N00788—Commanding Officer, U.S. Naval Communication Unit, Washington (Cheltenham, MD), Washington, DC 20390
N00867, 8P—Commanding Officer, U.S. Naval Communication Station, (NAVCOMMSTA), Box 5016, FPO Miami 34059
N00886, QB—U.S. Naval Communication Station, San Francisco, Rough and Ready Island, Stockton, CA 95203
N00950, 8R—U.S. Naval Communication Area, Master Station, EASTPAC, Wahiawa, HI 96786
N0428A, 3Q—Naval Air Station, Patuxent River, MD 20670
N0429A, 3A—Naval Air Station, Point Mugu, CA 93042
N0463A—Commanding Officer, Navy Experimental Diving Unit, NAVCOASTSYSCEN, Bldg. 321, Panama City, FL 32401
N08939—U.S. Naval Mission to Venezuela, Caracas, Department of State, Washington, DC 20521
N09534—Chief, Military Assistance, Advisory Group, Peru, APO Miami 34031
N09550, 4C—U.S. Fleet Air Mediterranean, FPO New York, NY 09521

N30776, 4N—Naval Air Station, Kingsville Auxiliary Landing Field, Orange Grove Det., Orange, TX 77630
N30779, 3Z—U.S. Naval Auxiliary Landing Field, Goliad, TX 77963
N30829—Officer in Charge, U.S. Naval Support Activity Naples, Detachment Gaeta, Italy, FPO New York 09522
N30929—Commanding Officer, Navy Flight Demonstration Squadron, Naval Air Station (Attn: Supply Officer), Pensacola, FL 32508
N31863—Director, Naval Audit Service, Capital Region, P.O. Box 1206, Falls Church, VA 22041
N32525, 8S—U.S. Naval Communication Detachment (Sigonella, Italy), FPO New York 09523
N32832, 7K—Naval Air Technical Assistance Group, Alverca, Portugal, APO New York, NY 09285
N32960, K2—U.S. Naval Support Unit, La Maddalena, Italy, FPO New York 09533
N33137—U.S. Navy Liaison Unit, Munich, Germany, APO New York 09108
N39096—U.S. Naval Liaison Officer, American Embassy, P.O. Box N–8197, Nassau, Bahamas, FPO New York 09559
N39167—Commanding Officer, NAVEROSPREGMEDCEN BR Clinic, Naval Air Station, Meridian, MS 39309
N39353, GV—Commanding Officer, Integrated Combat Systems Test Facility, San Diego, CA 92152
N42237, 7A—Commanding Officer, Naval Submarine Supp. Base, Code N411, Kings Bay, GA 31547
N46079—Military Sealift Command Office, Northern Europe, APO New York 09069–0006
N55416, V5—U.S. Naval Support Force, Antarctica, Detachment Christchurch, Christchurch, New Zealand, FPO San Francisco 96690
N57012, GQ—Commander Naval Air Force, U.S. Atlantic Fleet, Naval Air Station, Norfolk, VA 23511
N57023, GT—Commander, Operational Test and Evaluation Force, Naval Base, Norfolk, VA 23511
N57032—U.S. Naval Air Facility, Mildenhall UK, FPO New York 09127
N57075—Commanding Officer, U.S. Naval Facility Argentia, FPO New York 09597
N60002—Commanding Officer, Naval Regional Medical Center, Memphis, Millington, TN 38054
N60028, QC—U.S. Naval Station, Treasure Island, San Francisco, CA 94130
N60036, QD—U.S. Naval Weapons Station, Concord, CA 94520
N60050, HD—Marine Corps Air Station, El Toro, Santa Ana, CA 92709
N60087, 3P—Naval Air Station, Brunswick, ME 04011
N60169—Commanding Officer, Marine Corps Air Station, Beaufort, SC 29904
N60191, 4A—Naval Air Station, Oceana, Virginia Beach, VA 23460
N60200, 3C—Commanding Officer, Naval Air Station, Cecil Field, FL 32215
N60201, L7—Commanding Officer, Naval Station, P.O. Box M, Mayport, FL 32228
N60211, 3D—U.S. Naval Auxiliary Landing Field, Crows Landing, CA 95313
N60234, 4R—Naval Air Station, Saufley Field, Pensacola, FL 32508
N60241, 3X—Commanding Officer, Naval Air Station, Bldg. 2701, Kingsville, TX 78363
N60258, GK—Long Beach Naval Shipyard, Long Beach, CA 90801
N60259, H9—Naval Air Station, Miramar, CA 92145
N60376, 3Y—Commanding Officer, Naval Air Station, Chase Field, Beeville, TX 78103
N60462—U.S. Naval Station, Adak, FPO Seattle, WA 98791
N60478, 3C—U.S. Naval Weapons Station, Earle, Colts Neck, NJ 07722
N60495, 3T—Naval Air Station, Fallon, NV 89406
N60508, 4Q—Commanding Officer, Naval Air Station, Whiting Field, Milton, FL 32570
N60514, GL—Commanding Officer, U.S. Naval Station, Box 33, FPO New York 09593
N60530, GM—U.S. Naval Weapons Center, China Lake, CA 93555
N60656, GN—U.S. Navy Commissary Store, Naval Station, Annapolis, MD 21402
N60663, GR—Officer in Charge, U.S. Navy Commissary Store, Naval Base, Bldg. 2600, Great Lakes, IL 60088
N60666, GS—U.S. Navy Commissary Store, Naval Station, Key West, FL 33040
N60676, GX—U.S. Navy Commissary Store, Naval Air Station, Patuxent River, MD 20670
N60681, HA—U.S. Navy Commissary Store, Naval Station, San Diego, CA 92136
N60693, HB—U.S. Navy Commissary Store, Naval Base Pearl Harbor, Box 110, Pearl Harbor, HI 96860
N60701, 4M—U.S. Naval Weapons Station, Seal Beach, CA 90740
N60895, HF—U.S. Navy Commissary Store, Naval Air Station, Alameda, CA 94501
N60921, HG, FH—Commander, Naval Surface Weapons Center, Headquarters, Dahlgren, VA 22448
N60935, HH—U.S. Navy Commissary Store, Naval Air Station, Jacksonville, FL 32212
N60936, HJ—U.S. Navy Commissary Store, Naval Air Station, Pensacola, FL 32508
N60937, HK—U.S. Navy Commissary Store, Naval Support Activity, New Orleans, LA 70140
N60936, HL—U.S. Navy Commissary Store, Naval Air Station, Corpus Christi, TX 78419
N60939, HM—U.S. Navy Commissary Store, Naval Air Station, Memphis 32, Millington, TN 38054
N61115, HN—U.S. Navy Commissary Store, Naval Submarine Base, New London, Groton, CT 06340
N61119, HP—U.S. Naval Supply Depot, Guam, FPO San Francisco, CA 96630
N61165—Supply Officer, Bldg. NS46, Naval Station, Charleston, SC 29408
N61173—U.S. Naval Station, 495 Summer Street, Boston, MA 02210
N61174, 7B—Naval Support Activity, Brooklyn, NY 11251
N61189—U.S. Naval Station, Philadelphia, PA 19112
N61217, HQ—U.S. Navy Commissary Store, Naval Station, Bermuda, FPO New York 09560
N61331, HR—Commanding Officer, Naval Coastal Systems Center, Panama City, FL 32407
N61337—Commanding Officer, Naval Hospital, Beaufort, SC 29904
N61339, HT—Commanding Officer, Naval Training Equipment Center (N–601), Orlando, FL 32813
N61414, 4B—U.S. Naval Amphibious Base, Little Creek, Norfolk, VA 23521
N61466—Commander, Naval Base, Bldg. NH48, Charleston, SC 29408
N61510, HU—U.S. Navy Commissary Store, Naval Station, Guam, Box 179, FPO San Francisco, CA 96630
N61533, HW—Naval Ship Research and Development Laboratory, Annapolis, MD 21402
N61602, HX—Morocco-U.S. Naval Training Command, FPO New York 09544
N61726, QL—Naval Submarine Medical Center, Naval Submarine Base New London, Groton, CT 06340
N61751—U.S. Naval Medical Research Unit No. 3, Cairo, FPO New York 09527
N61762, HY—U.S. Naval Ordnance Missile Test Facility, White Sands Missile Range, NM 88002
N61894—Commanding Officer, Naval and Marine Corps Reserve Center, Armed Forces Reserve Center, Naval District Washington, Washington Navy Yard, Anacostia, Washington, DC 20374
N61910—Commanding Officer, Naval and Marine Corps Reserve Center, 2869 Central Avenue, Augusta, GA 30904
N61911—Commanding Officer, Naval Reserve Center, Naval Base, Bldg RTC–1, Charleston, SC 29408
N61912—Commanding Officer, Naval and Marine Corps Reserve Center, 513 Pickens Street, Columbia, SC 29201
N61913—Commanding Officer, Naval Reserve Center, 1680 Riverside Drive, P.O. Box 6115, Macon, GA 31208
N61915—Commanding Officer, Naval and Marine Corps Reserve Center, 274 Fifth Street, N.W., Atlanta, GA 30316
N61916—Commanding Officer, Naval Reserve Center, 2144 Lakeshore Drive, Wilmington, NC 28401
N61917—Commanding Officer, Naval and Marine Corps Reserve Center, 725 W. Sixth Street, Charlotte, NC 28202
N61919—Commanding Officer, Naval Reserve Center, 414 Fourth Avenue, Box 1539, Columbus, GA 31902
N61920—Commanding Officer, Naval Reserve Center, 721 Merriman Ave., Asheville, NC 28804
N61921—Commanding Officer, Naval & Marine Corps Reserve Center, Triad Armed Forces Reserve Center, 7838 McCloud Rd, Greensboro, NC 27409
N61923—Commanding Officer, Naval & Marine Corps Reserve Center, 2725 Western Blvd., Raleigh, NC 27606
N61926—Commanding Officer, Naval & Marine Corps Reserve Center, Box 44, Naval Air Station (NAS), Jacksonville, FL 32802
N61927—Commanding Officer, Naval Reserve Center, 2610 Tigertail Ave., Miami, FL 33133
N61929—Commanding Officer, Naval & Marine Corps Reserve Center, 595 N. Primrose Drive, Orlando, FL 32803
N61930—Commanding Officer, Naval Reserve Center, Bayboro Harbor, St. Petersburg, FL 33701

N61931—Commanding Officer, Naval Reserve Center, 2214 Ave. E. Riviera Beach, FL 33404
N61933—Commanding Officer, Naval Reserve Center, 1325 York Street, Tampa, FL 33602
N61934—Commanding Officer, Naval & Marine Corps Reserve Center, 12 Meadow Street, Chattanooga, TN 37405
N61935—Commanding Officer, Naval & Marine Corps Reserve Center, P.O. Box 1180, Gulfport, MS 39501
N61937—Commanding Officer, Naval Reserve Center, 100 Navy Drive, P.O. Box 1544, Fort Smith, AR 72901
N61938—Commanding Officer, Naval & Marine Corps Reserve Center, Tulsa (AFRC), 1101 North 6th, Suite 5, Broken Arrow, OK 74012
N61940—Commanding Officer, Naval & Marine Corps Reserve Center, 503 "B" Street, Ryan Airport, Baton Rouge, LA 70807
N61942—Commanding Officer, Naval & Marine Corps Reserve Center, 1101 Fourth Ave, SW, Bessemer, AL 35020
N61944—Commanding Officer, Naval & Marine Corps Reserve Center, State Fair Grounds, Shreveport, LA 71109
N61945—Commanding Officer, Naval & Marine Corps Reserve Center, P.O. Box 8485, Mobile, AL 36608
N61947—Commanding Officer, Naval & Marine Corps Reserve Center, 1650 Federal Drive, Montgomery, AL 36109
N61948—Commanding Officer, Naval & Marine Corps Reserve Center, P.O. Box 667, Alcoa Highway, Knoxville, TN 37901
N61949—Commanding Officer, Naval Reserve Center, Bldg 845, Saufley Field, Pensacola, FL 32509
N61952—Commanding Officer, Naval Reserve Center, P.O. Box 1669, Tuscaloosa, AL 35401
N61954—Commanding Officer, Naval & Marine Corps Reserve Center, 5020 Lakeshore Drive, New Orleans, LA 70146
N61955—Commanding Officer, Naval Reserve Center, P.O. Box 821, Jackson, MS 39205
N61956—Commanding Officer, Naval Reserve Center, 4501 West Stone Drive, Kingsport, TN 37660
N61958—Commanding Officer, Naval Reserve Center, P.O. Box 1748, Stillwater, OK 74074
N61959—Commanding Officer, Naval & Marine Corps Reserve Center, 2309 Line Avenue, Amarillo, TX 79106
N61962—Commanding Officer, Naval Reserve Center, 2524 Avery Ave., Box 12487, Memphis, TN 38112
N61963—Commanding Officer, Naval Reserve Center, 4601 Fairview Drive, Austin, TX 78731
N61965—Commanding Officer, Naval Reserve Center, 5316 S. Douglas Blvd., Oklahoma City, OK 73115
N61967—Commanding Officer, Naval & Marine Corps Reserve Center, 1712 Surrey Street, Lafayette, LA 70508
N61968—Commanding Officer, Naval Reserve Center, 1902 Old Spanish Trail, Houston, TX 77054
N61970—Commanding Officer, Naval & Marine Corps Reserve Center, Memorial Park, Little Rock, AR 72205
N61971—Commanding Officer, Naval Reserve Center, Shelby Park, P.O. Box 60404, Nashville, TN 37206
N61972—Commanding Officer, Naval Reserve Center, 435 E. Gadsden St., P.O. Box 2367, Gadsden, AL 35903
N61973—Commanding Officer, Naval Reserve Center, 501 Casson Street, Alexandria, LA 71301
N61978—Commanding Officer, Naval Reserve Center, Naval Air Station, Corpus Christi, TX 78419
N61979—Commanding Officer, Naval & Marine Corps Reserve Center, Bldg 193, Naval Air Station, Dallas, TX 75211
N61980—Commanding Officer, Naval & Marine Corps Reserve Center, 1313 Indiana Street, El Paso, TX 79930
N61982—Commanding Officer, Naval & Marine Corps Reserve Center, 311 E. Arsenal Street, San Antonio, TX 78204
N62021, 7V—Naval Amphibious Base, Coronado, CA 92155
N62154—Commanding Officer, Naval Reserve Center, 1407 Wheaton Street, Savannah, GA 31404
N62161, HZ—U.S. Navy Commissary Store, Rough and Ready Island, Stockton, CA 95203
N62190—Commanding Officer, Naval Research Laboratory, Underwater Sound Reference Detachment, P.O. Box 8337, Orlando, FL 32856
N62245—U.S. Naval Medical Field Research Laboratory, Camp Lejeune, NC 28542
N62247—Commanding Officer, Naval Reserve Center, 209 Pollard St., SW, Huntsville, AL 35801
N62248—Commanding Officer, Naval & Marine Reserve Center, 2903 4th Street, Lubbock, TX 79415
N62254—Commander Fleet Activities, Okinawa, U.S. Naval Air Facility, Kadena, Box SU/CR, FPO Seattle 98770
N62257—Commanding Officer, Naval & Marine Corps Reserve Center, 1941 S. 3rd Street, Abilene, TX 79602
N62269, JC—Commander, U.S. Naval Air Development Center, Johnsville, Warminster, PA 18974
N62271, QE—U.S. Naval Postgraduate School, Monterey, CA 93940
N62306, 7C—Commanding Officer (Code 4410), Naval Oceanographic Office, National Space Technology Laboratory, Bay St. Louis, MS 39552
N62375—Commanding Officer, Naval & Marine Corps Reserve Center, 426 North Main Street, Greenville, SC 29601
N62376, 4K—Commanding Officer, U.S. Naval Air Propulsion Center, P.O. Box 7176, Trenton, NJ 08628
N62381, JG—Military Sealift Command, Atlantic, Military Ocean Terminal, Building 42, Bayonne, NJ 07002
N62382—Military Sealift Command, Gulf Subarea, 4400 Dauphin Street, New Orleans, LA 70146
N62383, JH—Military Sealift Command, Pacific, Naval Supply Center, Oakland, CA 94625
N62387—Commander, Military Sealift Command (Code M10-3), 4228 Wisconsin Avenue, Washington, DC 20016
N62404, JJ—Military Sealift Command, Far East, FPO Seattle 98760
N62412—Commanding Officer, Naval Recruiting District, 4525 Executive Park Dr., Montgomery, AL 36116
N62415—Commanding Officer, Naval Recruiting District, P.O. Box 2711, Columbia, SC 29202
N62419—Commanding Officer, Naval Recruiting District, Melrose Bldg., 1121 Walker Street, Houston, TX 77002
N62422—Commanding Officer, Naval Recruiting District, 2974 Woodcock Drive, Jacksonville, FL 32207
N62423—Commanding Officer, Naval Recruiting District, 301 Center Street, Little Rock, AR 72201
N62425—Commanding Officer, Naval Recruiting District, 1808 West End Ave., Suite 1312, Nashville, TN 37203
N62430—Commanding Officer, Naval Recruiting District, 1001 Navaho Drive, Raleigh, NC 27609
N62437—Commanding Officer, Naval Recruiting District, 918 So. Ervay Street, Dallas, TX 75201
N62442—Commanding Officer, Naval Recruiting District Atlanta, 612 Tinker Street, Suite C, Marietta, GA 30060
N62444—Commanding Officer (Code 602-2C), Naval Recruiting District, 4400 Dauphine Street, New Orleans, LA 70146
N62462—Naval Applied Science Laboratory, Brooklyn, NY 11251
N62467, JM—Commanding Officer, Southern Division, Naval Facilities Engineering Command (SODIVNAVFAC), P.O. Box 10068, 2144 Melbourne Street, Charleston, SC 29411
N62470, JN—Atlantic Division, Naval Facilities Engineering Command, Norfolk, VA 23511
N62471, N7—Officer in Charge of Construction, Naval Facilities Engineering Command Contracts, Mid-Pacific, Pearl Harbor, HI 96860
N62472, JP—Northern Division, Naval Facilities Engineering Command, U.S. Naval Base, Philadelphia, PA 19112
N62474, JR—Western Division, Naval Facilities Engineering Command, San Bruno, CA 94066
N62477, JU—Chesapeake Division, Naval Facilities Engineering Command, Washington Navy Yard, Washington, DC 20390
N62481, N8—U.S. Naval Station, Bermuda, FPO New York 09560
N62507—Commanding Officer, U.S. Naval Air Facility, Atsugi, Japan, Box 3, FPO Seattle 98767
N62522, JV—Military Sealift Command, Europe, Box 3, FPO New York 09510-3700
N62535, HE—Marine Corps Air Station (HELO), Tustin, CA 92710
N62537—Military Sealift Command, Mediterranean Sub-Area, Box 23, FPO New York 09521-0600
N62538, K1—Military Sealift Command Office, Norfolk, Bldg Y100A, Norfolk, VA 23512
N62539—Military Sealift Command Office, United Kingdom, Box 29, FPO New York 09510-3700
N62566, 3F—Officer in Charge, U.S. Naval Fuel Depot, P.O. Box 9068, Jacksonville, FL 32208

N62573, K8—Marine Corps Air Facility, New River Plaza, Jacksonville, NC 28540
N62576, J2—Naval Construction Battalion Center, Davisville, RI 02854
N62583, J3—Naval Construction Battalion Center, Port Heuneme, CA 93041
N62585, K3—Commander, U.S. Naval Activities, UK, FPO New York 09510
N62588, NR—U.S. Naval Support Activity, Naples, FPO New York 09521
N62593—Director, Navy Publications & Printing Service Office, Southeast Div., 4400 Dauphine St., Unit 601-3-B, New Orleans, LA 70146
N62603—Commanding Officer, Fleet & Mine Warfare Training Center, Naval Base, Bldg 647, Charleston, SC 29408
N62604, J4—Commanding Officer, Naval Construction Battalion Center, Gulfport, MS 39501
N62613—Commanding Officer, U.S. Marine Corps Air Station, Iwakuni, Japan, FPO Seattle 98764
N62649, JY—U.S. Naval Supply Depot, Yokosuka, FPO Seattle 98762
N62651—Director, Naval Publications & Printing, Service Detachment Office, Naval Education and Training Command, Pensacola, FL 32508
N62653—Director, Naval Publications & Printing, Service Detachment Office, Bldg. 1628, Naval Base, Charleston, SC 29408
N62665, JQ—Supervisor of Shipbuilding, Conversion and Repair, USN, Barnes Building—6th Floor, 495 Summer Street, Boston, MA 02210
N62670, 8B—Supervisor of Shipbuilding, Conversion and Repair, USN, Drawer T, Mayport Naval Station, Jacksonville, FL 32228
N62673—Supervisor of Shipbuilding, Conversion and Repair, USN, Naval Base, Charleston, SC 29408
N62678, 8C—Supervisor of Shipbuilding, Conversion and Repair, USN, P.O. Box 215, Portsmouth, VA 23705
N62695—Auditor General of the Navy, P.O. Box 1206, Falls Church, VA 22041
N62735—Commander, U.S. Fleet Activities, Sasebo, Japan, FPO Seattle 98766
N62741—Commanding Officer, Navy Supply Corps School, Code 60, Athens, GA 30606
N62742, KB—Pacific Division, Naval Facilities, Engineering Command, Pearl Harbor, HI 96860
N62745—Officer in Charge of Construction, Naval Facilities Engineering Command Contracts, Mediterranean, APO New York 09285
N62748—Commanding Officer, Naval & MARCORPS RESCEN, 2100 N. New Road, Waco, TX 76707
N62766, L1—Officer in Charge of Construction, Naval Facilities Engineering Command Contracts, Guam, FPO San Francisco, CA 96630
N62786, ER—Supervisor of Shipbuilding, Conversion and Repair, USN, 574 Washington Street, Bath, ME 04530
N62789, L8—Supervisor of Shipbuilding, Conversion and Repair, USN, Groton, CT 06340
N62791, NU—Supervisor of Shipbuilding, Conversion and Repair, USN, Naval Station, Box 119, San Diego, CA 92136
N62793, 4T—Supervisor of Shipbuilding, Conversion and Repair, USN, Newport News, VA 23607
N62794, 7D—Supervisor of Shipbuilding, Conversion and Repair, USN, Flushing & Washington Avenues, Brooklyn, NY 11251
N62795, 7F—Supervisor of Shipbuilding, Conversion and Repair, USN, Pascagoula, MS 39567
N62796, 4X—Supervisor of Shipbuilding, Conversion and Repair, USN, San Francisco, CA 94135
N62799, 7M—Supervisor of Shipbuilding, Conversion and Repair, USN, Seattle, WA 98115
N62810—Chief, Navy Section, Military Assistance Advisory Group, Taipei, Box 12, FPO San Francisco, CA 96268
N62832—U.S. Naval Activities, Rota, Spain, FPO New York 09540
N62836, L4—Officer in Charge of Construction, Naval Facilities Engineering Command Contracts, Far East, Yokosuka, Box 61, FPO Seattle, WA 98762
N62841—Commanding Officer, Naval Ordnance Test Unit, Cape Canaveral, FL 32920
N62852—Naval Electronic System Security Engineering Center, Naval Security Station, 3801 Nebraska Avenue, NW, Washington, DC 20390
N62861, KD—Naval Plant Representative Office, General Dynamics, P.O. Box 2505, Pomona, CA 91766
N62863, K4—U.S. Naval Station, Rota, Spain, FPO New York 09540
N62864, L2—Officer in Charge of Construction, Naval Facilities Engineering Command Contracts, Southwest Pacific, APO San Francisco, CA 96528
N62892—Commanding Officer, Naval Security Group Activity, Site "B", Card Sound Road, Homestead, FL 33039
N62894—Commander, U.S. Naval Forces, Korea, APO San Francisco, CA 96301
N62907, KG—Naval Plant Representative Office, Applied Physics Laboratory, Johns Hopkins Road, Laurel, MD 20810
N62908, 8D—Naval Weapons Engineering Support Activity, Washington Navy Yard, Washington, DC 20374
N62913—Commander, Naval Recruiting Area Three, 451 College Street, P.O. Box 4887, Macon, GA 31208
N62917—Commander, Navy Recruiting Area Seven, 1499 Regal Row, Suite 501, Dallas, TX 75247
N62921, KH—Naval Plant Representative Office, (Special Projects), Lockheed Missiles & Space Co., P.O. Box 504, Sunnyvale, CA 94088
N62922, 7W—Resident Officer in Charge of Construction, Pacific, Department of the Navy, P.O. Box 416, San Bruno, CA 94067
N62938, KK—Naval Plant Representative Office, Grumman Aerospace Corp., Bethpage, L.I., NY 11714
N62940, KM—Naval Plant Representative, Naval Plant Representative Office, Rockwell International Corp., 4300 East 5th Avenue, P.O. Box 1259, Columbus, OH 43216
N62974, JB—Marine Corps Air Station, Yuma, AZ 85364
N62990, L3—Supervisor of Shipbuilding, Conversion and Repair, USN, P.O. Box 26, Sturgeon Bay, WI 54235
N62995, 4H—U.S. Naval Air Facility, Sigonella, FPO New York 09523
N63005—Commanding Officer, Administrative Support Unit, Bahrain, FPO New York 09526
N63015, 7Y—Naval Education and Training Support Center, Pacific, Fleet Station P.O. Bldg, San Diego, CA 92132
N63028—Polaris Missile Facility Atlantic, Charleston, SC 29408
N63032, KS—U.S. Naval Station, Keflavik, FPO New York 09571
N63038, 8M—U.S. Naval Communication Unit, Cutler, East Machias, ME 04630
N63042, NZ—Naval Air Station, Lemoore, CA 93245
N63043, 3S—Commanding Officer, Naval Air Station, Meridian, MS 39301
N63051—Commanding Officer, Naval Investigative Service Office, Naval Base, Bldg NH 53, Charleston, SC 29408
N63053—Commanding Officer, Naval Investigative Service Office, P.O. Box 6438, New Orleans, LA 70174
N63073—U.S. Naval Security Group Activity RAF, Edzell UK, FPO New York 09516
N63080, KT—U.S. Navy Commissary Store, Chinhae, FPO Seattle, WA 98769
N63082—Commanding Officer, Naval Technical Training Center, Corry Station (Code 4460), Pensacola, FL 32511
N63105, 4W—Naval Air Systems Command Representative, Atlantic, U.S. Naval Air Station, Norfolk, VA 23511
N63110—Commanding Officer, Chief of Naval Air Training (Code N-73), Naval Air Station, Corpus Christi, TX 78419
N63111—Commanding Officer, Chief of Naval Technical Training, Naval Air Station, Memphis, Millington, TN 38054
N63124—Supervisor of Shipbuilding, Conversion and Repair, USN, New Orleans, LA 70146
N63134, 7R—Fleet Numerical Oceanography Center, Monterey, CA 93940
N63136—Navy Section, U.S. Military Group, Argentina, Buenos Aires, Dept. of State, Washington, DC 20521
N63143, 8K—U.S. Naval Communication Station (Keflavik, Iceland), Box 22, FPO New York 09571
N63165, 7U—Navy Regional Data Automation Center, Washington, Washington Navy Yard, Washington, DC 20374
N63182, 8T—U.S. Naval Communication Station (Rota, Spain), FPO New York 09539
N63204, KV—Naval Plant Representative Office, Goodyear Aerospace Corp., Akron, OH 44305
N63205, KW, QM—Naval Air Engineering Center Detachment, GSE, Naval Plant Representative Office, Vought Corporation, P.O. Box 5907, Dallas, TX 75222
N63212—Commanding Officer, NROTC Unit, University of Texas at Austin, Austin, TX 78712
N63219—Commanding Officer, NROTC Unit, Rice University, P.O. Box 1892, Houston, TX 77001
N63226—Commanding Officer, NROTC Unit, Tulane University, New Orleans, LA 70118
N63229—Commanding Officer, NROTC Unit, University of Oklahoma, Norman, Oklahoma 73019

N63273, 4S—Fleet Combat Direction Systems Support Activity, Dam Neck, Virginia Beach, VA 23461
N63274, 4F—Naval Electronic Systems Engineering Center, Vallejo, CA 94592
N63282, KZ—Naval Plant Representative Office, Lockheed Aircraft Corp., Burbank, CA 91503
N63287, LB—Naval Plant Representative Office, McDonnell-Douglas Corp., Douglas Aircraft Company, Aircraft Div., Long Beach, CA 90801
N63296—Commanding Officer, NROTC Unit, Auburn University, Auburn, AL 36830
N63299—Commanding Officer, NROTC Unit, Duke University, Durham, NC 27706
N63301—Commanding Officer, NROTC Unit, Georgia Tech, Atlanta, GA 30313
N63307—Commanding Officer, NROTC Unit, University of Mississippi, Box 69, University, MS 38677
N63308—Commanding Officer, NROTC Unit, University of North Carolina, Chapel Hill, NC 27515
N63313—Commanding Officer, NROTC Unit, University of South Carolina, Columbia, SC 29208
N63315—Commanding Officer, NROTC Unit, Vanderbilt University (Westside Hall), Nashville, TN 37240
N63325, 7X—Naval Education & Training Support Center, Atlantic, Bldg. Z–86, Naval Station, Norfolk, VA 23511
N63331, LF—Naval Plant Representative Office, United Aircraft Corp., Sikorsky Aircraft Div., Stratford, CT 06497
N63339, LL—U.S. Navy Commissary Store, Naval Station, Adak, FPO Seattle, WA 98791
N63340, LM—U.S. Navy Commissary Store, Naval Station, Argentia, FPO New York 09597
N63341, LN—U.S. Navy Commissary Store, Naval Auxiliary Air Station, Chase Field, Beeville, TX 78102
N63344, LR—U.S. Navy Commissary Store, Naval Station, Charleston, SC 29408
N63345, LS—U.S. Navy Commissary Store, Naval Base, Guantanamo Bay, FPO New York 09598
N63348, LT—U.S. Navy Commissary Store, Naval Station, Keflavik, FPO New York 09571
N63348, LV—U.S. Navy Commissary Store, Naval Auxiliary Air Station, Kingsville, TX 78364
N63349, LW—U.S. Navy Commissary Store, Naval Air Station, Lemoore, CA 93246
N63350—U.S. Commissary Store Region UK, Dunstable, England, FPO New York 09510
N63351, LY—U.S. Navy Commissary Store, Naval Station, Long Beach, CA 90802
N63352, KE—U.S. Navy Commissary Store, Naval Auxiliary Air Station, Meridian, MS 39301
N63353, MA—Officer in Charge, U.S. Navy Commissary Store Region, Naval Support Activity, Naples, FPO New York 09521
N63356, MD—U.S. Navy Commissary Store, Naval Station, Roosevelt Roads, FPO New York 09551
N63357, ME—U.S. Navy Commissary Store, Naval Station, Rota, FPO New York 09540
N63362, MK—Officer in Charge, U.S. Navy Commissary Store Region, Subic Bay, Philippines, P.O. Box 28, FPO San Francisco 96651
N63365, MN—U.S. Navy Commissary Store Region, Yokosuka, Japan, Box 33, FPO Seattle 98762
N63367, MP—Officer in Charge, U.S. Navy Commissary Store Div., Navy Resale System Field Support Office, Norfolk, VA 23511
N63369—Military Sealift Command Office, Benelux, APO New York 09159
N63387, JD—U.S. Naval Public Works Center, Naval Base, San Diego, CA 92136
N63394, L8—Naval Ship Weapon Systems Engineering Station, Port Hueneme, CA 93043
N63395, 8L—U.S. Naval Communication Station (Thurso, Caithness, UK), FPO New York 09516
N63402, K7—Commanding Officer, Strategic Weapons Facility, Pacific, Bremerton, WA 98383
N63410, KA—Navy Manpower and Material Analysis Center, Atlantic, Norfolk, VA 23511
N63427, 8F—U.S. Naval Communication Station, Harold E. Holt, Exmouth, Western Australia, FPO San Francisco 96680
N63439, K9—Naval Ophthalmic Support and Training Activity, Yorktown, VA 23690
N63482—Commanding Officer, Naval & MARCORPS RESCEN, 2910 Roberts Ave., Tallahassee, FL 32304
N63821—Officer in Charge, Naval Underwater Systems Center, AUTEC Andros Range Detachment, Andros Island, Bahama Islands, FPO New York 09559
N63886, 8Q—U.S. Naval Security Group Activity (Adak, AK), FPO Seattle 98777
N64267, M9—Naval Weapons Station, Seal Beach Detachment, Fleet Analysis Center, Corono Annex, Corono, CA 91720
N64281, 3U—Commanding Officer, Naval Sea Combat Systems Engineering Station, Naval Station, Norfolk, VA 23511
N64980—Officer in Charge, U.S. Naval Aviation Weapons Facility, Detachment Machrinhanish, UK, FPO New York 09515
N64981—Commanding Officer, U.S. Naval Aviation Weapons Facility, St. Mawgan UK, FPO New York 09511
N65114—Commanding Officer, Navy Public Works Center, Naval Air Station, Pensacola, FL 32508
N65117, NJ—Naval Plant Representative Office (Strategic Systems Project Office), General Electric Ordnance Systems, 100 Plastics Avenue, Pittsfield, MA 01201
N65148, 7E—Procurement Branch, OP–09B31, Office of the Chief of Naval Operations, Support Activity, Washington, DC 20350
N65202—Supervisor of Shipbuilding, Conversion and Repair, USN, Box 400, Pearl Harbor, HI 96860
N65227, NH—Naval Plant Representative Office, Sperry Rand Corp., Great Neck, L.I., NY 11020
N65236, V7—Naval Electronic Systems Engineering Center, 4600 Goer Road, North Carleston, SC 29406
N65428—Commanding Officer, U.S. Naval Hospital, FPO Miami 34051
N65440—Officer in Charge, U.S. Navy Commissary Store, Exmouth, Western Australia, FPO San Francisco 96680
N65492—Commanding Officer, Naval Regional Medical Center, Fiscal & Supply Service, Code 32C, Orlando, FL 32813
N65576—Navy Space Systems Activity, PO Box 92960, Worldway Postal Center, Los Angeles, CA 90009
N65580, M2—Naval Electronic Systems Engineering Center, PO Box 55, Portsmouth, VA 23705
N65584, EW, 3E—Naval Electronic Systems Engineering Center, PO Box 80337—Building #4, Code 104, San Diego, CA 92138
N65870, M4—Supervisor of Shipbuilding, Conversion and Repair, USN, Long Beach Naval Shipyard, Long Beach, CA 90822
N65886—Commanding Officer, Naval Air Rework Facility, Naval Air Station, Jacksonville, FL 32212
N65889—Commanding Officer, Naval Air Rework Facility, Naval Air Station, Code 56000, Pensacola, FL 32508
N65912, GP—Commanding Officer, Naval Sea Support Center, Atlantic, St. Juliens Creek Annex, Portsmouth, VA 23702
N65913, 7L—Naval Sea Support Center, Pacific, San Diego, CA 92138
N65926—Officer in Charge, Naval Underwater Systems Center Detachment, AUTEC, West Palm Beach Detachment, West Palm Beach, FL 33402
N65928, N3—Naval Training Center, Orlando, FL 32813
N65980—Naval Electronic Systems Engineering Activity, St. Inigoes, MD 20684
N65995—Officer in Charge, U.S. Naval Activities UK, Detachment Holy Loch, FPO New York 09514
N66001, 7N—Naval Ocean Systems Center, San Diego, CA 92152
N66021, 7G—Fleet Air, Western Pacific, FPO Seattle, WA 98767
N66032—Automatic Data Processing Selection Office, Building 218, Washington Navy Yard, Washington, DC 20374
N66074—Commanding Officer, NROTC Unit, Prairie View A&M University, Prairie View, TX 77445
N66604, N4—Naval Underwater Systems Center, Newport, RI 02840
N66691, 4P—Commanding Officer, U.S. Naval Support Activity, Souda Bay, Crete, Greece, FPO New York 09528
N66753—Commanding Officer, NROTC Unit, Jacksonville University, Jacksonville, FL 32211
N66754—Commanding Officer, U.S. Naval Security Group Activity, FPO Miami 34053
N66809—Commanding Officer, NROTC Unit, Savannah State College, Savannah, GA 31404
N66810—Commanding Officer, NROTC Unit, Southern Univeristy and A&M College, Baton Rouge, LA 70813
N66818, JX—Commanding Officer, Naval Regional Medical Center, Portsmouth, VA 23708
N66833—Commanding Officer, U.S. Naval Station Panama Canal, FPO Miami 34061
N66863—Commanding Officer, Naval Biodynamics Laboratory, 13800 Old Gentilly Road, Michout Assembly Facility, New Orleans, LA 70189
N66898—Commanding Officer, Naval Regional Medical Clinic, New Orleans, LA 70142
N66957—Director, Navy Publications and Printing Service, Branch Officer Southeast

Division, Bldg. 2049, NTC, Orlando, FL 32813
N66959—Director, Navy Publications and Printing Service, Branch Officer Southeast Division, P.O. Box 3, NAS, Jacksonville, FL 32212
N66972—Commanding Officer, Navy Recruiting District, 5901 S.W. 74th Street, Miami, FL 33143
N67596—Commanding Officer, Navy Recruiting District, 102 W Rector Street, San Antonio, TX 78216
N68011—Commanding Officer, Navy Recruiting District, 8 North Third Street, Sterick Bldg., Memphis, TN 38103
N68032—Director, NAVRESMGTSCOL, NACRESUPPOFC, Detachment One, Bldg. 59, Naval Support Activity, New Orleans, LA 60146
N68047, 4L—U.S. Naval Office, Singapore, FPO San Francisco, CA 96699
N68056, JE—Navy Regional Medical Center, San Diego, CA 92134
N68064—Commanding Officer, NROTC Unit, University of Florida, Van Fleet Hall, Room 26, Gainesville, FL 32601
N68072—Commanding Officer, NROTC, Texas A&M University, College Station, TX 77843
N68084—Commanding Officer (Code 206), Naval Regional Medical Center, Charleston, SC 29408
N68085—Commanding Officer, Naval Regional Medical Center, Code 18, Jacksonville, FL 32214
N68086, 7S—Navy Regional Medical Center, Newport, RI 02840
N68092—Navy Regional Medical Center, Great Lakes, IL 60088
N68093—Navy Regional Medical Center, Camp Lejeune, NC 28542
N68094, V9—Navy Regional Medical Center, Camp Pendleton, CA 92055
N68095, JF—Naval Regional Medical Center, Bremerton, WA 98314
N68096, J5—Commanding Officer, U.S. Naval Regional Medical Center, FPO San Francisco 96630
N68097, QA—Navy Regional Medical Center, Oakland, CA 94627
N68101—Navy Regional Medical Center, 17th Street and Pattison Avenue, Philadelphia, PA 19145
N68139—Commanding Officer, NROTC Unit, Florida A&M University, Tallahassee, FL 32307
N68171, M3—Commanding Officer, U.S. Naval Regional Contracting Center, FPO New York 09521
N68199—Commanding Officer, Navy Office of Information, 1459 Peachtree Street, NE—Suite 300, Atlanta, GA 30309
N68200—Director, Navy Office of Information, Dallas Branch, 1114 Commerce Street, Suite 811, Dallas, TX 75242
N68221, 7J—Commanding Officer, Naval Personnel Research and Development Center, San Diego, CA 92152
N68248, V6—Officer in Charge of Construction, Naval Facilities Engineering Command Contracts, Naval Submarine Base, Kings Bay, GA 31547
N68307—Commander, Code 431, Naval Reserve Readiness Command Region Ten, New Orleans, LA 70142
N68311, JL—Naval Station, Long Beach, CA 90822
N68322, 7Z—Naval Education & Training Program, Development Center, Code SU1, Saufley Field, Pensacola, FL 32509
N68335, 4Y—Commanding Officer, Naval Air Engineering Center, Supply Dept., Purchase Division, Lakehurst, NJ 08733
N68348—Commander, Naval Reserve Readiness Command, Region Nine, NAS Memphis (76), Bldg E–35, Millington, TN 38054
N68356—Commander, Naval Reserve Readiness Command, Region Seven, Naval Base, Charleston, SC 29408
N68358—Commander, Naval Reserve Readiness Command, Region Eight, Naval Air Station, Jacksonville, FL 32212
N68359—Commander, Naval Reserve Readiness Command, Region Eleven, Bldg 11, Naval Air Station, Dallas, TX 75211
N68436, KC, J6—Naval Submarine Base, Code 883, Bangor, Bremerton, WA 98315
N68441—Commanding Officer, Naval Regional Dental Center, Naval Air Station, Pensacola, FL 32508
N68443, 7T—Commanding Officer, Naval Regional Dental Center, Bremerton, WA 98314
N68449—Commanding Officer, Naval & Marine Corps Reserve Center, Pier Road, Bldg 187, Orange, TX 77630
N68478, 7H—Naval Plant Branch Representative Office, Westinghouse Electric Corporation, Oceanic Division, PO Box 1488, Annapolis, MD 21404
N68497—Commanding Officer, Code 40, Naval Administrative Command, Naval Training Center, Orlando, FL 32813
N68518—Commanding Officer, Naval Reserve Support Office, Internal Supply, Code S43, 4400 Dauphine Street, New Orleans, LA 70146
N68520, 7P—Naval Aviation Logistics Center, U.S. Naval Air Station, Patuxent River, MD 20670
N68525, 7Q—Naval Plant Representative Office, General Electric Company, Aircraft Engine Group, 1000 Western Avenue, Lynn, MA 01910
N68546, QG—Navy Environmental Health Center, Naval Station, Norfolk, VA 23511
N68610, GF—Officer in Charge, Fleet Hospital Support Center, 620 Central Ave., Bldg No. #5, Alameda, CA 94501
N68679, 3N—Commanding Officer, Naval Plant Representative Office, 4800 East River Road, Minneapolis, MN 55421
N68790—Officer in Charge of Construction, Naval Facilities Engineering Command Contracts, Diego Garcia, FPO San Francisco 96685
N68836, J9—Commanding Officer, Naval Supply Center, Jacksonville, FL 32212
N70092—U.S. Naval Security Station, 3801 Nebraska Avenue, NW, Washington, DC 20390
N70240, M6—Commanding Officer, Naval Communication Station, San Diego, 937 N. Harbor Drive, San Diego, CA 92132
N70272, 8G—U.S. Naval Communication Area, Master Station LANT, Norfolk, VA 23511
N70273, V3—Naval Radio Station, Jim Creek, Oso, WA 98223
N70278, V4—U.S. Naval Communication Station (Yokosuka, Japan), Box 3, FPO Seattle 98762
N70283—Commanding Officer, Code 30, Naval Security Group Activity, FPO Miami 34060
N70294, 8H—U.S. Naval Communication Area, Master Station MED (Naples, Italy), FPO New York 09524
N70295, 8J—U.S. Naval Communication Station (Nea Makri, Greece), FPO New York 09525
M00027, MS—Headquarters, U.S. Marine Corps, Washington, DC 20380
M00146, MT—Commissary Store, Marine Corps Air Station, Cherry Point, NC 28533
M00243, NE—Marine Corps Recruit Depot, San Diego, CA 92140
M00263, MX—Marine Corps Recruit Depot, Parris Island, SC 29905
M00264, MY—Marine Corps Schools Development and Education Command, Quantico, VA 22134
M00318, MU—Commissary Store, Marine Corps Air Station, FPO San Francisco, CA 96628
M00681, NC—Marine Corps Base, Camp Pendleton, Oceanside, CA 92054
M28300, QH—1st Force Service Regiment, Force Logistic Command, FPO San Francisco, CA 96602
M60050, MV—Commissary Store, Marine Corps Air Station, El Toro (Santa Ana), CA 92709
M61801—Marine Corps Reserve Training Center, Lawrence, MA 01843
M61807—Marine Corps Reserve Training Center, Springfield, MA 01104
M61809—Marine Corps Reserve Training Center, Manchester, NH 03102
M61815—Marine Corps Reserve Training Center, Worcester, MA 01605
M61821—Marine Corps Reserve Training Center, Providence, RI 02905
M61835—Marine Corps Reserve Training Center, Hartford, CT 06114
M61839—Marine Corps Reserve Training Center, Rochester, NY 14617
M61842—Marine Corps Reserve Training Center, Buffalo, NY 14201
M61843—Marine Corps Reserve Training Center, Bronx, NY (Fort Schuyler) 10465
M61846—Marine Corps Reserve Training Center, New Rochelle, NY 10801
M61858—Marine Corps Reserve Training Center, Newark, NJ 07114
M61861—Marine Corps Reserve Training Center, Albany, NY 12203
M61866—Marine Corps Reserve Training Center, New Haven, CT 06512
M61869—Marine Corps Reserve Training Center, Huntington, L.I., NY 11743
M61876—Marine Corps Reserve Training Center, Wilmington, DE 19808
M61877—Marine Corps Reserve Training Center, Harrisburg, PA 17101
M61881—Marine Corps Reserve Training Center, Reading, PA 19610
M61884—Marine Corps Reserve Training Center, Folsom, PA 19033
M61888—Marine Corps Reserve Training Center, Camden, NJ 08103
M61894—Marine Corps Reserve Training Center, Washington, DC 20390

M61899—Marine Corps Reserve Training Center, Portsmouth, VA 23709
M61902—Marine Corps Reserve Training Center, Cumberland, MD 21502
M61910—Marine Corps Reserve Training Center, Augusta, GA 30904
M61912—Marine Corps Reserve Training Center, Columbia, SC 29201
M61915—Marine Corps Reserve Training Center, Atlanta, GA 30318–5699
M61917—Marine Corps Reserve Training Center, Charlotte, NC 28202
M61921—Marine Corps Reserve Training Center, Greensboro, NC 27401
M61923—Marine Corps Reserve Training Center, Raleigh, NC 27607
M61926—Marine Corps Reserve Training Center, Jacksonville, FL 32207
M61934—Marine Corps Reserve Training Center, Chattanooga, TN 37405
M61935—Marine Corps Reserve Training Center, Gulfport, MS 39503
M61936—Marine Corps Reserve Training Center, Norman, OK 73070
M61938—Marine Corps Reserve Training Center, Tulsa, OK 74104
M61939—Marine Corps Reserve Training Center, Galveston, TX 77552
M61942—Marine Corps Reserve Training Center, Birmingham, AL 35208
M61944—Marine Corps Reserve Training Center, Shreveport, LA 71109
M61945—Marine Corps Reserve Training Center, Mobile, AL 36608
M61947—Marine Corps Reserve Training Center, Montgomery, AL 36109
M61948—Marine Corps Reserve Training Center, Knoxville, TN 37901
M61954—Marine Corps Reserve Training Center, New Orleans, LA 70140
M61955—Marine Corps Reserve Training Center, Jackson, MS 39205
M61959—Marine Corps Reserve Training Center, Amarillo, TX 79106
M61963—Marine Corps Reserve Training Center, Austin, TX 78704
M61964—Marine Corps Reserve Training Center, Fort Worth, TX 76110
M61966—Marine Corps Reserve Training Center, Beaumont, TX 77701
M61967—Marine Corps Reserve Training Center, Lafayette, LA 70502
M61970—Marine Corps Reserve Training Center, Little Rock, AR 72205
M61979—Marine Corps Reserve Training Center, Dallas, TX 75220
M61980—Marine Corps Reserve Training Center, El Paso, TX 79923
M61982—Marine Corps Reserve Training Center, San Antonio, TX 78204
M61984—Marine Corps Reserve Training Center, Evansville, IN 47712
M61989—Marine Corps Reserve Training Center, Green Bay, WI 54305
M61992—Marine Corps Reserve Training Center, St. Louis, MO 63145
M61997—Marine Corps Reserve Training Center, Joliet (Rockdale), IL 60436
M61998—Marine Corps Reserve Training Center, Omaha, NE 68111
M61999—Marine Corps Reserve Training Center, Toledo, OH 43611
M62028—Marine Corps Reserve Training Center, Trenton, NJ 08608
M62034—Marine Corps Reserve Training Center, Detroit MI 48214
M62035—Marine Corps Reserve Training Center, Milwaukee, WI 53207
M62037—Marine Corps Reserve Training Center, Peoria, IL 62633
M62038—Marine Corps Reserve Training Center, Springfield, MO 65801
M62041—Marine Corps Reserve Training Center, Topeka, KS 66607
M62042—Marine Corps Reserve Training Center, Waterloo, IA 50703
M62044—Marine Corps Reserve Training Center, Fort Des Moines, IA 50135
M62045—Marine Corps Reserve Training Center, Steubenville, OH 43952
M62046—Marine Corps Reserve Training Center, Gary, IN 46403
M62054—Marine Corps Reserve Training Center, Kansas City, MO 64130
M62055—Marine Corps Reserve Training Center, Dayton, OH 45417
M62058—Marine Corps Reserve Training Center, Naval Air Station, Minneapolis, MN 55450
M62060—Marine Corps Reserve Training Center, Danville, IL 61834
M62063—Marine Corps Reserve Training Center, Mansfield, OH 44901
M62071—Marine Corps Reserve Training Center, Rockford, IL 61105
M62073—Marine Corps Reserve Training Center, Fort Wayne, IN 46803
M62075—Marine Corps Reserve Training Center, South Bend, IN 46613
M62077—Marine Corps Reserve Training Center, Lexington, KY 40503,
M62078—Marine Corps Reserve Training Center, Louisville, KY 40214
M62080—Marine Corps Reserve Training Center, Dearborn, MI 48120
M62081—Marine Corps Reserve Training Center, Flint, MI 48503
M62082—Marine Corps Reserve Training Center, Grand Rapids, MI 49505
M62084—Marine Corps Reserve Training Center, Kalamazoo, MI 49001
M62085—Marine Corps Reserve Training Center, Lansing, MI 48912
M62092—Marine Corps Reserve Training Center, Akron, OH 43310
M62093—Marine Corps Reserve Training Center, Canton, OH 44706
M62094—Marine Corps Reserve Training Center, Cincinnati, OH 45207
M62095—Marine Corps Reserve Training Center, Columbus, OH 43215
M62096—Marine Corps Reserve Training Center, Lorain, OH 44052
M62098—Marine Corps Reserve Training Center, Youngstown, OH 44507
M62100—Marine Corps Reserve Training Center, Madison, WI 53703
M62103—Marine Corps Reserve Training Center, Los Angeles, CA 90012
M62107—Marine Corps Reserve Training Center, Tucson, AZ 85711
M62108—Marine Corps Reserve Training Center, Albuquerque, NM 87106
M62109—Marine Corps Reserve Training Center, Phoenix, AZ 85009
M62110—Marine Corps Reserve Training Center, Santa Monica, CA 90405
M62111—Marine Corps Reserve Training Center, Bakersfield, CA 93307
M62113—Marine Corps Reserve Training Center, Pasadena, CA 91107
M62114—Marine Corps Reserve Training Center, San Bernardino, CA 92402
M62115—Marine Corps Reserve Training Center, San Francisco, CA 94130
M62119—Marine Corps Reserve Training Center, Sacramento, CA 95818
M62121—Marine Corps Reserve Training Center, Fresno, CA 93702
M62126—Marine Corps Reserve Training Center, Salt Lake City, UT 84113
M62127—Marine Corps Reserve Training Center, Reno, NV 89502
M62128—Marine Corps Reserve Training Center, San Jose, CA 95112
M62130—Marine Corps Reserve Training Center, Denver, CO 80225
M62135—Marine Corps Reserve Training Center, Tacoma, WA 98402
M62138—Marine Corps Reserve Training Center, Billings, MT 59101
M62139—Marine Corps Reserve Training Center, Boise, ID 83701
M62145—Marine Corps Reserve Training Center, Portland, OR 97217
M62146—Marine Corps Reserve Training Center, Spokane, WA 99208
M62204, MW—Marine Corps Logistics Base, Barstow, CA 92311
M62205—Marine Barracks, Bremerton, WA 98314
M62211—Marine Barracks, Naval Base, Pearl Harbor, Hawaii, FPO San Francisco, CA 96610
M62214—Marine Barracks, Fleet Activity, FPO Seattle, WA 98762
M62217—Marine Barracks, Fleet Activities, Yokosuka, FPO San Francisco, CA 96662
M62218—Marine Barracks, Naval Base, New York, Brooklyn, NY 11201
M62222—Marine Barracks, Naval Base, Boston, MA 02129
M62248—Marine Corps Reserve Training Center, Lubbock, TX 79408
M62250—Marine Corps Reserve Training Center, Salem, OR 97308
M62257—Marine Corps Reserve Training Center, Abilene, TX 79602
M62274—Marine Corps Reserve Training Center, Compton, CA 90221
M62293—Marine Barracks, Guam, FPO San Francisco, CA 96630
M62298—Marine Corps Reserve Training Center, Eugene, OR 97401
M62361—Marine Air Reserve Training Detachment, NAS, Alameda, CA 94501
M62375—Marine Corps Reserve Training Center, Greenville, SC 29601
M62378—Marine Corps Reserve Training Center, East Ninth Street, Cleveland, OH 44114
M62400—Marine Corps Reserve Training Center, Moline, IL 61265
M62748—Marine Corps Reserve Training Center, Waco, TX 76710
M62757—Marine Corps Reserve Training Center, Forest Park, IL 60130
M62952—Marine Corps Reserve Training Center, Pittsburgh, PA 15213
M62974, NA—Commissary Store, Marine Corps Air Station, Yuma, AZ 85364
M63438—Marine Corps Reserve Training Center, Little Creek, Norfolk, VA 23521
M67001, NB—Marine Corps Base, Camp Lejeune, NC 28542
M67004, NC—Marine Corps Logistics Base, Albany, GA 31704

M67011—Director, 1st Marine Corps District, Long Island, NY 11530
M67013—Director, 4th Marine Corps District, Philadelphia, PA 19112
M67015—Director, 6th Marine Corps District, Atlanta, GA 30303
M67016—Director, 8th Marine Corps District, New Orleans, LA 70113
M67017—Director, 9th Marine Corps District, Shawnee Mission, KA 66204
M67019—Director, 12th Marine Corps District, San Francisco, CA 94130
M67021—Marine Corps Reserve Training Command, Glenview, IL 60026
M67025 Headquarters, Fleet Marine Force, Pacific, Oahu, FPO San Francisco, CA 96610
M67027—Marine Barracks, Naval Base, Key West, FL 33040
M67029—Marine Barracks, Washington, DC 20003
M67030—Marine Barracks, Mare Island, Vallejo, CA 94592
M67031—Marine Barracks, Naval Station, Treasure Island, San Francisco, CA 94130
M67032—Marine Barracks, Naval Station, Sangley Point, Luzon, Philippines, FPO San Francisco, CA 96652
M67033—Marine Barracks, Naval Base, Subic Bay, Luzon, Philippines, FPO San Francisco, CA 96650
M67036—Marine Barracks, San Juan, P.R., FPO New York, NY 09550
M67037—Marine Barracks, Fleet Activities, Sasebo, FPO San Francisco, CA 96666
M67042—Marine Barracks, Naval Ammunition Depot, Hawthorne, NV 89415
M67043—Marine Barracks, NAD, Bangor, Bremerton, WA 98314
M67044—Marine Barracks, Naval Ammunition Depot, McAlester, OK 74501
M67048—Marine Barracks, Hunters Pt. Div., SFran Bay NSY (R), San Francisco, CA 94135
M67054—Marine Barracks, Naval Weapons Station, Yorktown, VA 23491
M67058—Marine Barracks, Naval Base, Newport, RI 02844
M67059—Marine Barracks, Submarine Base, New London, CT 06342
M67063—Marine Barracks, Naval Ammunition Depot, Earle, NJ 07722
M67066—Marine Barracks, Naval Station, Annapolis, MD 21402
M67068—Marine Barracks, Naval Base, Portsmouth, NH 03804
M67228—Marine Barracks, Naval Base, Guantanamo Bay, FPO New York, NY 09593
M67229—Marine Barracks, Naval Base, Charleston, SC 29408
M67230—Marine Barracks, Naval Base, Norfolk, VA 23511
M67231—Marine Barracks, Naval Base, Philadelphia, PA 19146
M67232—Marine Barracks, Norfolk Naval Shipyard, Portsmouth, VA 23709
M67235—Marine Air Reserve Training Detachment, Naval Air Facility, Andrews AFB, Washington, DC 20390
M67236—Marine Air Reserve Training Detachment, NAS, Atlanta, GA 30063
M67241—Marine Air Reserve Training Detachment, NAS, Glenview, IL 60026
M67242—Marine Air Reserve Training Detachment, NAS, Grosse Ile, MI 48138
M67244—Marine Air Reserve Training Detachment, NAS, Los Alamitos, CA 90721
M67245—Marine Air Reserve Training Detachment, Memphis, TN 38115
M67247—Marine Air Reserve Training Detachment, NAS, Minneapolis, MN 55450
M67248—Marine Air Reserve Training Detachment, NAS, New Orleans, LA 70140
M67249—Marine Air Reserve Training Detachment, NAS, Brooklyn, NY 11234
M67251—Marine Barracks, Naval Air Station, Alameda, CA 94501
M67252—Marine Air Reserve Training Detachment, NAS, Olathe, KS 66061
M67254—Marine Air Reserve Training Detachment, South Weymouth, MA 02190
M67256—Marine Air Reserve Training Detachment, NAS, Willow Grove, PA 19090
M67270—Marine Air Reserve Training Detachment, Norfolk, VA 23511
M67272—Marine Barracks, Naval Air Station, Atsugi, FPO San Francisco, CA 96667
M67273—Marine Barracks, Naval Weapons Station, Concord, CA 94520
M67281—Marine Detachment, Naval Station, Trinidad, FPO New York, NY 09655
M67283—Marine Barracks, Naval Station, Bermuda Barracks, Naval Station, Bermuda, FPO New York, NY 09560
M67284—Marine Barracks, Naval Station, Argentia, FPO New York, NY 09597,
M67285—Marine Barracks, Naval Station, Adak, FPO Seattle, WA 98791
M67336—Marine Barracks, Clarksville Base, Clarksville, TN 37040
M67341—Marine Barracks, Naval Station, San Diego, CA 92136
M67342—Marine Barracks, Naval Air Station, Barbers Point, Oahu, Hawaii, FPO San Francisco, CA 96611
M67343—Marine Barracks, Naval Ammunition Depot, Oahu, FPO San Francisco, CA 96612
M67346—Marine Detachment, Naval Disciplinary Command, Naval Base, Portsmouth, NH 03804
M67350—Marine Barracks, Naval Activities, Naples, FPO New York, NY 09521
M67351—Marine Detachment, London, APO New York, NY 09510
M67353—Headquarters Battalion, Marine Corps, Henderson Hall, Arlington, VA 22214
M67354—Post Supply Officer, Headquarters Marine Corps, Navy Annex, Arlington, VA 20380
M67385—Camp H. M. Smith, U.S. Marine Corps Aiea, Oahu, Hawaii 96861
M67387—Marine Barracks, Fallbrook Annex, NWPSTA Seal Beach, CA 92028
M67388—Marine Barracks, Lake Meade Base, Las Vegas, NV 89110
M67390—Director, 14th Marine Corps District, Pearl Harbor, Hawaii, FPO San Francisco, CA 96610
M67391 Headquarters Fleet Marine Force Atlantic (Camp Elmore), Norfolk, VA 23511
M67399, NF—Marine Corps Air Ground Combat Center, Twentynine Palms, CA 92278
M67400, QJ—Marine Corps Procurement Office, Okinawa, Marine Corps Base, Camp Smedley D. Butler, FPO Seattle, WA 98773
M67401—Marine Barracks, Rota, FPO New York, NY 09540
M67403—Marine Barracks, NWPSTA, Seal Beach, CA 90740
M67405—Marine Barracks, NAD, Charleston, SC 29408
M67410—Marine Barracks, Naval Missile Facility Lompoc, CA 93436
M67415—Marine Barracks, Sigonella, Sicily, FPO, New York, NY 09521
M67418—Marine Barracks, NAV Forces Iceland, Keflavik, FPO New York, NY 09571
M67422—Marine Air Reserve Training Detachment, NAS, Seattle, WA 98105
M67424—Subunit 2, Marine Air Reserve Training Detachment, Los Alamitos, Pasadena, CA 91107
M67425—Subunit 3, Marine Air Reserve Training Detachment, Alameda, CA 94501
M67426—Subunit 4, Marine Air Reserve Training Detachment, Alameda, San Jose, CA 95112
M67432—Subunit 2, Marine Air Reserve Training Detachment, Willow Grove, MCRTC, Wyoming, PA 18644
M67433—Subunit 1, Marine Corps Reserve Training Detachment, Grosse Ile, NMCRTC, Green Bay, WI 54305

Department of the Air Force

(C) Denotes a Central Contracting Activity

F01600, 5A—Maxwell AFB, AL 36112
F01620, MG—HQ SISC/PK, Gunter AFS, AL 36114
F01830, TL—Air Force Automated Systems, Projects Office/PGZ, Gunter AFS, AL 36114
F02600, 5B—Williams AFB, AZ 85224
F02601, 5C—Davis-Monthan AFB, AZ 85707
F02604, 5D—Luke AFB, AZ 85309
F02610, SR—AFPRO, Hughes Aircraft Co., Missile Systems Group, P.O. Box 11337, Emery Park Station, Tucson, AZ 85734
F03601, 5E—Blytheville AFB, AR 72315
F03602, 5F—Little Rock AFB, AR 72079
F04604, 5C—Castle AFB, CA 95342
F04605, 5H—March AFB, P.O. Box 6443, CA 92518
F04606, SM—Sacramento ALC/PM, McClellan AFB, CA 95652
F04607, 5J—Norton AFB, CA 92409
F04609, 5K—George AFB, CA 92392
F04611, QQ—AFFTC R & D Contracts (C), Edwards AFB, CA 93523
F04612, 5L—Mather AFB, CA 95655
F04614, S5—WSMC/PM, Vandenberg AFB, CA 93437
F04620, S6—AFPRO TRW, Defense & Space Systems Group, One Space Park, Redondo Beach, CA 90278
F04626, 5M—Travis AFB, CA 94535
F04630, RY—AFPRO, Rockwell International, Rocketdyne Division, 6633 Canoga Avenue, Canoga Park, CA 91304
F04666, 5N—Beale AFB, CA 95903
F04679, QR—AFPRO, Northrop Corp., Hawthorne, CA 90250
F04681, QS—AFPRO, Rockwell International Corp., North American Aircraft Div., Los Angeles, CA 90009
F04682, QT—AFPRO, Hughes Aircraft Company, P.O. Box 92463, Los Angeles, CA 90009
F04684, QW—Vandenberg AFB, CA 93437
F04688, QV—AFPRO, Aerojet-General Corp., P.O. Box 15846, Sacramento, CA 95813

F04689, RN—Air Force Satellite Control Facility, AFSCF/PMC, Base Contracts, Sunnyvale AFS, CA 94086
F04690, RF—Air Force Satellite Control Facility, Sunnyvale AFS, CA 94086
F04691, QX—AFPRO, Lockheed Missile & Space Co., Inc., P.O. Box 504, Sunnyvale, CA 94088
F04693, MG—SD/PMB Directorate of Base Contracts, Los Angeles AFS, P.O. Box 92960, Worldway Postal Center, Los Angeles, CA 90009
F04696, RB—AFPRO, Rockwell International Corp., Anaheim, 3370 Miraloma Ave., Anaheim, CA 92803
F04699, Q5—Sacramento ALC/PMK, Base Contracting, McClellan AFB, CA 95652
F04700, Q2—AFFTC Base Contracting, Edwards AFB, CA 93523
F04701, TB—SD(C), Los Angeles AFS, P.O. Box 92960, Worldway Postal Center, Los Angeles, CA 90009
F04702—1352 Audiovisual Squadron (MAC), Norton AFB, CA 92409–5439
F04703, R6—Western Space and Missile Center (C), Vandenberg AFB, CA 93437
F04704, R9—Ballistic Missiles Office (C), Norton AFB, CA 92409
F04705, RT—Det 6, 2762 Logistics Sq. Special (AFLC), Norton AFB, CA 92409
F04710, TC—AFPRO, McDonnell Douglas Corporation, Douglas Aircraft Company, Long Beach, CA 90646
F04720, RD—AFCMD OL–AD, AF Plant 42, 2503 East Avenue P, Palmdale, CA 93550
F04735, UE—Det 51, Sacramento Air Logistics Center, OL Norton AFB, CA 92409
F05600, 5P—Lowry AFB, CO 80230
F05604, SX—1014 Contracting Squadron, Peterson AFB, CO 80914
F05611, 5Q—USAF Academy, CO 80840
F05617, RE—AFPRO, Martin Marietta, Aerospace (Denver Div.), P.O. Box 179, Denver, CO 80201
F06700, T5—AFPRO, Pratt & Whitney, OL/AA, Commercial Products Division, East Hartford, CT 06108
F07603, 5R—Dover AFB, DE 19901
F08602, 5S—MacDill AFB, FL 33608
F08606, RC—Eastern Space and Missile Center (C), Patrick AFB, FL 32925
F08620, 5T—Hurlburt FLD, FL 32544
F08621, 5U—Homestead AFB, FL 33039
F08635, RH—AD(C), Eglin AFB, FL 32542
F08637, 5V—Tyndall AFB, FL 32401
F08650, TJ—Eastern Space and Missile Center (Base Contracts), Patrick AFB, FL 32925
F08651, Q3—AD, Directorate of Base Contracts, Eglin AFB, FL 32542
F08675, T2—AFPRO, Pratt & Whitney, Government Products Division, West Palm Beach, FL 33402
F09603, RJ, RR—Warner Robins ALC/PM, Robins AFB, GA 31098
F09604, RU—Det 8, 2762 Logistics Sq. Special (AFLC), Robins AFB, GA 31098
F09607, 5W—Moody AFB, GA 31601
F09609, 5X—Dobbins AFB, GA 30060
F09632, RK—AFPRO, Lockheed-Georgia Co., Marietta, GA 30063
F09634, 5Y—AFRES, Robins AFB, GA 31098
F09650, Q6—Warner Robins ALC/PMK, Base Contracting, Robins AFB, GA 31098
F10603, 5Z—Mountain Home AFB, ID 83648
F11602, 6A—Chanute AFB, IL 61868
F11603, 6B—Chicago O'Hare Intl Airport, Chicago, IL 60666
F11623, 6C—Scott AFB, IL 62225
F11624, UD—TSPMO/PGZ, Scott AFB, IL 62225
F11626, RL—HQ MAC/LGC, Scott AFB, IL 62225
F11628, RM—HQ AFCC(C), Scott AFB, IL 62225
F12617, 6D—Grissom AFB, IN 46971
F14614, 6E—McConnell AFB, KS 67221
F14615, RP—AFPRO Boeing Military Airplane Company, 3801 South Oliver Street, Wichita, KS 67210
F16600, 6F—England AFB, LA 71301
F16602, 6G—Barksdale AFB, LA 71110
F17600, 6H—Loring AFB, ME 04751
F18400, S2—AFPRO, Westinghouse Electric Corp., PO Box 1693, Baltimore, MD 21203
F18600, RQ—HQ, AFSC, Andrews AFB (C), Washington, DC 20334
F18601, 4D—Information Systems Group, Washington, DC 20330–5040
F19617—Westover AFB, MA 01022
F19620, SQ—AFPRO, AVCO, 201 Lowell Street, Wilmington, MA 01887
F19628, RS—ESD, Hanscom AFB (C), MA 01731
F19630, RV—AF Computer Acquisition Center, AFCAC/PK (C), Hanscom AFB, MA 01731
F19650, SH—Base Contracts Directorate, ESD, Hanscom AFB, MA 01731
F20603, 6J—Wurtsmith AFB, MI 48753
F20613, 6L—K.I. Sawyer AFB, MI 49843
F21611, 6N—Minneapolis-St. Paul Intl Airport, St. Paul, MN 55417
F22600, RC—Keesler AFB, MS 39534
F22608, 6Q—Columbus AFB, Q MS 39701
F23606, 6R—Whiteman AFB, MO 65305
F23608, 6S—Base Contracting Division, Richards-Gebaur AFB, MO 64030
F24604, 6T—Malmstrom AFB, MT 59402
F24607—Glasgow AFB, MT 59231
F25600, 6U—Offutt AFB, NE 68113
F25606, TD—HQ SAC/LGC, Offutt AFB, NE 68113
F26600, S4—Nellis AFB, NV 89191
F27604, R5—Pease AFB, NH 03801
F28609, 6V—McGuire AFB, NJ 08641
F29601, RW—Kirtland Contracting Center (PKR), Kirtland AFB, NM 87117
F29605, 6W—Cannon AFB, NM 88101
F29650, R3—Kirtland Contracting Center (PKB), Kirtland AFB, NM 87117
F29651, 6X—Holloman AFB, NM 88330
F30602, RX—RADC (C), Griffiss AFB, NY 13441
F30617, 6Y—Niagara Falls Intl Airport, NY 14304
F30625, ST—AFPRO, AIL, Eaton Corporation, AIL Div., Comac Road, Deer Park, NY 11729
F30635, S3—Griffiss AFB, NY 13441
F30636, 6Z—Plattsburgh AFB, NY 12903
F30669, R7—AFPRO Fairchild Republic Co., Farmingdale, NY 11735
F31601, BU—Pope AFB, NC 28308
F31610, BW—Seymour Johnson AFB, NC 27530
F32604, BX—Minot AFB, ND 58705
F32605, BY—Grand Forks AFB, ND 58205
F33600, RZ—2750 ABW/PMA & PMT, WPAFB, OH 45433
F33601, Q7—2750 ABW/PMB, Base Contracting, WPAFB, OH 45433
F33608, WP—AFLC Logistics Management Center/LDK, WPAFB, OH 45433
F33615, SC—ASD/PMR, Directorate of R&D Contracting, WPAFB, OH 45433
F33617, BZ—Rickenbacker AFB, OH 43217
F33620, SN—AFPRO, Rockwell International, North American Aircraft Operations OL/AB, 4300 E. Fifth Avenue, Columbus, OH 43216
F33630, C1—Youngstown Municipal Airport, Vienna, OH 44473
F33654, SB—AFPRO, General Electric Company, Evendale, OH 45215
F33657, SC—ASD (C), WPAFB, OH 45433
F33659, Q8—Aerospace Guidance & Metrology Center, Newark AFS, OH 43055
F33661—AFCMC, WPAFB, OH 45433

(With the Following Codes for Each Detachment)

MJ—Det 33, AF Contr. Maint. Center, APO New York, NY 09667
QY—Det 30, AF Contr. Maint. Center, APO New York, NY 09253
SS—Det 18, AF Contr. Maint. Center APO New York, NY 09633
SU—Det 19, AF Contr. Maint. Center APO New York, NY 09285
S8—AFLC Logistics Support Grup, Suadi Arabia AFCMC OL, APO New York, NY 09616
SV—Det 17, AF Contr. Maint. Center, APO New York, NY 09376
R1—Det 28, AF Contr. Maint. Center, APO San Francisco, CA 96259

(End of AFCMC Detachments)

F33700, S7—HQ Acquisition Logistics Division (AFLC), WPAFB, OH 45433
F34600, C2—Vance AFB, OK 73701
F34601, SD, TA, TG— Oklahoma City ALC/PM, Tinker AFB, OK 73145
F34608, TF—Engineering Installation Center, Oklahoma City AFS, OK 73145
F34612, Altus AFB, OK 73523
F34650, Q9—Oklahoma City ALC/PMK, Base Contracting, Tinker AFB, OK 73145
F35610, C4—Kingsley Field, Klamath Falls, OR 97601
F36629, C7—Greater Pittsburgh Airport, Pittsburgh, PA 15231
F36700, C8—Willow Grove Air Reserve Facility, Willow Grove, PA 19090
F36701, SF—AFPRO, General Electric Company, Re-Entry and Environmental Systems Division and Space Division, P.O. Box 8555, Philadelphia, PA 19101
F38601, C9—Shaw AFB, SC 29152
F38604, T3—USCENTAF Purchasing Office, USCENTAF/LGCD, Shaw AFB, SC 29152
F38606, CA—Myrtle Beach AFB, SC 29577
F38810, CR—Charleston AFB, SC 29404
F39601, CT—Ellsworth AFB, SD 57706
F40600,Q4—AEDC (C), Arnold AFS, TN 37389
F40650, D1—Base Contracting Div (AEDC), Arnold AFS, TN 37389
F41608, SA, QU—San Antonio ALC/PM, Kelly AFB, TX 78241
F41612, D4—Sheppard AFB, TX 76311
F41613, D5—Carswell AFB, TX 76127
F41614, E2—Goodfellow AFB, TX 76901
F41620, F3—Reese AFB, TX 79489
F41621, SJ—Electronic Security Command/LGC, San Antonio, TX 78243–5000
F41650—San Antonio ALC/PMK, Base Contracting, Kelly AFB, TX 78241–5320

F41652, E5—Dyess AFB, TX 79607
F41685, E6—Laughlin AFB, TX 78840
F41687, E9—Bergstrom AFB, TX 78743
F41689, SK—3303 Contracting Squadron (C), Randolph AFB, TX 78150
F41695, SL, TH—AFPRO, General Dynamics, P.O. Box 371, Ft. Worth Division, Fort Worth, TX 76101
F41800, T9—San Antonio Contracting Center, P.O. Box 8218, San Antonio, TX 78208
F41999—AFNAF Purchasing Office, HQ AFMPC/DPMSK, Bldg 499D, 3rd Floor, Randolph AFB, TX 78150–6001
F42600, QP SY—Ogden ALC/PM, Hill AFB, UT 84056
F42650, R2—Ogden ALC/PMK, Base Contracting, Hill AFB, UT 84056
F42651, R6—AFPRO, Thiokol Corporation, Box 524, Brigham City, UT 84302
F44600, F3—Langley AFB, VA 23665
F44650, Q1—4400 Contracting Squadron, Langley AFB, VA 23665
F45603, F5—McChord AFB, WA 98438
F45613, F8—Fairchild AFB, WA 99011
F45632, SP—AFPRO, Boeing Company, P.O. Box 3707, Seattle, WA 98124
F47606, G7—Gen. Billy Mitchell Field, 300 College Ave., Milwaukee, WI 53207
F48608, G9—F.E. Warren AFB, WY 82001
F49620, SE—AFOSR (C), Bolling AFB, DC 20332
F49642, J1—Washington Area Contracting Center, Andrews AFB, Washington, DC 20331
F61040, M1—1605 Military Airlift Support Wing, APO New York, NY 09406
F61051—USDAO, American Embassy, APO New York, NY 09667
F61060—USDAO, American Embassy, Sofia, Bulgaria
F61080—USDAO, American Embassy, Prague, Czechoslovakia
F61100—USDAO, American Embassy, APO New York, NY 09170
F61101, T1—USAFE Contracting Region—Denmark, Det 8, 7000 Contr. Sq., APO New York, NY 09170
F61130—USDAO, American Embassy, Helsinki, Finland
F61171—USDAO, American Embassy, APO New York, NY 09223
F61173, N1—USAFE Contracting Region—Greece, Det 7, 7000 Contr. Sq., APO New York, NY 09223
F61180—USDAO, American Legation, Budapest, Hungary
F61210—USDAO, American Embassy, APO New York, NY 09794
F61211, N9—USAFE Contracting Region—Italy, Det 6, 7000 Contr. Sq., APO New York, NY 09293
F61214, U9—USAFE Contracting Office, OL A Det 6, 7000 Contr. Sq., APO New York, NY 09240
F61250, TP—USAFE Contracting Office, OL B Det 6, 7000 Contr. Sq., APO New York, NY 09694
F61260—USDAO, American Embassy, APO, New York, NY 09159
F61270—USDAO, American Embassy, APO New York, NY 09085
F61271, T8—USAFE Contracting Office, OL A Det 8, 7000 Contr. Sq., APO New York, NY 09085
F61280—USDAO, American Consulate Gen., APO New York, NY 09757
F61290—USDAO, American Embassy, APO New York, NY 09678
F61301—USDAO, American Embassy, Bucharest, Rumania
F61308, W3—DSAFE Contracting Region—Spain, Det 5, 7000 Contr. Sq., APO New York, NY 09283
F61310—USDAO, American Embassy, APO New York, NY 09285
F61354, W8—TUSLOG Det 118/LGC, APO New York, NY 09224
F61355, T4—HQ TUSLOG/LGC, APO New York, NY 09254
F61358, W9—TUSLOG Det 10/LGC, APO New York, NY 09289
F61503, UC—435 TAW/LGC, APO New York, NY 09057
F61504, T8—7350 ABG, APO New York, NY 09611
F61517, UF—USAFE Contracting Region—EIFEL, Det 3, 7000 Contr. Sq., APO New York, NY 09132
F61519, R4—50 TFW/LGC, APO New York, NY 09109
F61521, UH—USAFE Contracting Region—Rheinland, Det 2, 7000 Contr. Sq., APO New York, NY 09012
F61546, UJ—USAFE Contracting Center, Det 1, 7000 Contr. Sq., APO New York, NY 09633
F61560, 4C—AFLC Logistics Support Group—Europe, APO New York, NY 09012
F61700, TM—USAFE Contracting Office, OL A Det 9, 7000 Contr. Sq., APO New York, NY 09150
F61708, UK—USAFE Contracting Region—Thames Valley, Det 9, 7000 Contr. Sq., APO New York, NY 09194
F61712, UM—81 TFW/LGC, APO New York, NY 09755
F61730, UQ—10 TFW/LGC, APO New York, NY 09236
F61775, UV—USAFE Contracting Region—UK, North, APO New York, NY 09179
F61815, T7—32 TFS/LGC, APO New York, NY 09292
F61817, UW—USAFE Contracting Office, OL A Det 5, 7000 Contr. Sq., APO New York, NY 09286
F61910, WJ—USAFE Contracting Office, OL A Det 3, 7000 Contr. Squadron/LGC, APO New York, NY 09188
F62032—U.S. Military Training Mission (Saudi Arabia), APO New York, NY 09616
F62088—John Hay Air Base, APO San Francisco, CA 96298
F62321, RA—PACAF Contracting Center, Okinawa, APO San Francisco, CA 96239
F62509, QZ—Misawa AB, APO San Francisco, CA 96519
F62562, SW—PACAF Contracting Center, Japan, APO San Francisco, CA 96328
F62600—5DSCS, APO San Francisco, CA 96287
F63197, UX—USAFE Contracting Office, OL A Det 7, 7000 Contr. Sq., APO New York, NY 09291
F64133, WC—Andersen AFB, APO San Francisco, CA 96334
F64605, TN—PACAF Contracting Center, Hawaii, Hickam AFB, HI 96853
F64608—Pacific Communications Division, Hickam AFB, HI 96853
F64620, SZ—CINCPACAF/LGC, Hickam AFB, HI 96853
F64719, TK—PACAF Contracting Center, Philippines, APO San Francisco, CA 96274
F65501, WF—Elmendorf AFB, AK 99506
F65503, WH—Eielson AFB, AK 99702
F65517, QN—HQ AAC/LGC, Elmendorf AFB, AK 99506
F66501—24th Composite Wing, Howard AFB, Panama 34001

Defense Logistics Agency

DLAH00, YK—HQ, Defense Logistics Agency, Contracting Directorate, Cameron Station, Alexandria, VA 22314
DLA001, TR—Defense Logistics Services Center, 50 North Washington Street, Battle Creek, MI 49016
DLA002, TS—Defense Industrial Plant Equipment Center, Defense Depot Memphis, TN 38114
DLA003, TT—Defense Depot Ogden, Ogden, UT 84401
DLA004, TU—Defense Depot Memphis, Memphis, TN 38115
DLA005, TV—Defense Depot Tracy, Tracy, CA 95376
DLA006, W1—Defense Logistics Agency Admin. Support Center, Cameron Station, Alexandria, VA 22314
DLA100, TW—Defense Personnel Support Center, Directorate of Clothing & Textiles, 2800 South 20th Street, Philadelphia, PA 19101
DLA120, TX—Defense Personnel Support Center, Directorate of Medical Materiel, 2800 South 20th Street, Philadelphia, PA 19101
DLA13H, UE—Defense Personnel Support Center, Directorate of Subsistence, 2800 South 20th Street, Philadelphia, PA 19101
DLA132, U8—Defense Subsistence Office, Kansas City, 601 E. 12th Street, Room 1768, Kansas City, MO 64106
DLA135, W4—Defense Subsistence Office, New Orleans, 4400 Dauphine Street, New Orleans, LA 70146
DLA136, W5—Defense Subsistence Office, Cheatham, Cheatham Annex, Bldg 113, Williamsburg, VA 23185
DLA137, W6—Defense Subsistence Region, Pacific, 2155 Mariner Square Loop, Alameda, CA 94501
DLA139, U6—Defense Subsistence Region, Europe, APO New York, NY 09052
DLA140, W7—Defense Personnel Support Center (Installation Support), 2800 South 20th Street, Philadelphia, PA 19101
DLA200, X1—Defense Property Disposal Service, Federal Center, Battle Creek, MI 49016
DLA400, TY—Defense General Supply Center, Richmond, VA 23297
DLA410, XH—Defense General Supply Center, Base Support Branch, Richmond, VA 23297
DLA420, XK—Defense General Supply Center, Educational Supplies Branch, Richmond, VA 23297
DLA500, TZ, YQ—Defense Industrial Supply Center, 700 Robbins Avenue, Philadelphia, PA 19111
DLA600, UA—Defense Fuel Supply Center, Cameron Station, Alexandria, VA 22314
DLA700, UB—Defense Construction Supply Center, Columbus, OH 43215
DLA710, YL—Defense Construction Supply Center, Commercial Services & Supplies

BEST COPY AVAILABLE

Branch, Contracting Division II, Columbus, OH 43215
DLA720, YM—Defense Construction Supply Center, Wood Products Branch, Contracting Division I, Columbus, OH 43215
DLA8AC, UC—DCASMA, Santa Ana, 34 Civic Center Plaza, P.O. Box C 12700, Santa Ana, CA 92712
DLA8AG, Z3—DCASPRO, Aero, Route 7, Box 40, Lake City, FL 32055
DLA8AL, Y1—DCASMA, Atlanta, 805 Walker Street, Marietta, GA 30060
DLA8AT, UL—DCASR, Atlanta, 805 Walker Street, Marietta, GA 30060
DLA8BA, UN—DCASMA, Birmingham, 908 South 20th Street, Birmingham, AL 35256
DLA8BC, UP—DCASMA, Bridgeport, 181 Middle Street, Bridgeport, CT 06606
DLA8BL, Y4—DCASPRO AVCO Lycoming Division, 550 South Main Street, Stratford, CT 06497
DLA8BM, UR—DCASMA, Baltimore, 300 East Joppa Road, Towson, MD 21204
DLA8BN, US—DCASPRO, Western Electric Company, 204 Graham Hopedale Road, Burlington, NC 27215
DLA8BP, UT—DCASR, Boston, 495 Summer Street, Boston, MA 02210
DLA8BS, Y3—DCASMA, Boston, 495 Summer Street, Boston, MA 02210
DLA8BT, UU—DCASPRO, Bendix Corp., Route 46, Teterboro, NJ 07608
DLA8BU, XC—DCASMA, Buffalo, 1103 Federal Building, 111 W. Huron Street, Buffalo, NY 14202
DLA8BV, YT—DCASPRO, GE, Burlington, Lakeside Avenue, Burlington, VT 05402
DLA8CD, UZ—DCASMA, Cedar Rapids, 4333 Edgewood Road, N.E., Cedar Rapids, IA 52402
DLA8CH, UY—DSCASR, Chicago, O'Hare International Airport, P.O. Box 66475, Chicago, IL 60666
DLA8CL, VB—DCASR, Cleveland, Anthony J. Celebrezze Federal Bldg., 1240 East Ninth Street, Cleveland, OH 44199
DLA8CN, Y5—DCASMA, Cleveland, Anthony J. Celebrezze Federal Bldg., 1240 East Ninth Street, Cleveland, OH 44199
DLA8CO, X6—DCASPRO, Goodyear Aerospace, c/o Goodyear Aerospace Corp., 1210 Massillon Road, Akron, OH 44305
DLA8CS, VE—DCASPRO, General Dynamics, 5001 Kearny Villa Road, P.O. Box 80847, San Diego, CA 92138
DLA8DA, VG—DCASR, Dallas, 1200 Main Street, Dallas, TX 75202–4399
DLA8DB, Z7—DCASMA, Dallas, P.O. Box 50500, Dallas, TX 75250–5050
DLA8DC, VH—DCASMA, San Diego, Bldg. 4, AF Plant 19, 4297 Pacific Coast Highway, San Diego, CA 92110
DLA8DD, U4—DCASPRO, Rockwell International Corporation, 870 Presidential Drive, Richardson, TX 75081
DLA8DM, Y7—DCASMA, Detroit, McNamara Federal Bldg., 477 Michigan Avenue, Detroit, MI 48226
DLA8DN, VK—DCASMA, Denver, 701 West Hampden Ave., Suite E–3210, Englewood, CO 81054
DLA8DP, VL—DCASMA, Dayton, c/o Defense Electronics Supply Center, Bldg. 1, 1502 Wilmington Pike, Dayton, OH 45401
DLA8EC, YP—DCASMA, Chicago, O'Hare International Airport, 6400 N. Manneheim Road, P.O. Box 66911, Chicago, IL 60666
DLA8FL, VN—DCASPRO, ITT, Defense Space Group, 500 Washington Avenue, Nutley, NJ 07110
DLA8FS, VR—DCASPRO, FMC, 1125 Coleman Avenue, P.O. Box 367, San Jose, CA 95103
DLA8FT, Y2—DCASPRO, Ford Aeronutronic Div., Admin Bldg, Rm 307, Ford Road, Newport Beach, CA 92660
DLA8GD, YB—DCASPRO, Gould, 18901 Euclid Avenue, Cleveland, OH 44117
DLA8GL, VV—DCASPRO, General Electric, 1100 Western Avenue (27753), Lynn, MA 01910
DLA8GM, VW—DCASMA, Grand Rapids, Riverview Center Bldg., 678 Front Street, N.W., Grand Rapids, MI 49504
DLA8GN, VX—DCASMA, Garden City, 605 Stewart Avenue, Garden City, LI, NY 11530
DLA8HB, WA—DCASPRO, Hayes, Hayes International Corporation, P.O. Box 2583, Birmingham, AL 35202
DLA8HC, WB—DCASMA, Hartford, 96 Murphy Road, Hartford, CT 06114
DLA8HD, WC—DCASPRO, Singer, 1225 McBride Avenue, Little Falls, NJ 07424
DLA8HE, Z2—DCASPRO, Hayes (Dothan), Napier Field, Dothan, AL 36301
DLA8HM, WD—DCASPRO, Honeywell, 2701 Fourth Avenue South, Minneapolis, MN 55408
DLA8HR, Z9—Hawaii Residency (DCASMA–SF), Federal Building, Room 4115, 300 Ala Moana Blvd., Honolulu, HI 96813
DLA8HS, XT—DCASPRO, Hamilton Standard, Bradley Field, Windsor Locks, CT 06096
DLA8HU, XC—DCASPRO, Hughes Aircraft Company, Ground Systems Group, Bldg. 600, Mail Station B104, P.O. Box 3310, Fullerton, CA 92634
DLA8JJ, WG—DSCASMA, Indianapolis, Building 1, Finance Center, Fort Benjamin Harrison, Indianapolis, IN 46249
DLA8JK, Z8—DCASPRO, GMC Detroit, Diesel Allison, 2001 South Tibbs Avenue, Indianapolis, IN 46241
DLA8JL, X2—DCASPRO, Magnavox, 1616 Directors Row, Fort Wayne, IN 46808
DLA8KA, XY—DCASPRO, Kaman Aerospace Corp., Old Windsor Road, Bloomfield, CT 06002
DLA8LA, WL—DCASR, Los Angeles, 11099 South La Cienega Blvd., P.O. Box 45011, Los Angeles, CA 90045
DLA8LB, WM—DCASPRO, Litton, 20812 Ventura Blvd., Woodland Hills, CA 91364
DLA8LC, Y8—DCASMA, Inglewood, 9920 South La Cienega Blvd., Inglewood, CA 90301
DLA8LT, WN—DCASPRO, E-Systems, Inc., P.O. Box 379, Greenville, TX 75401
DLA8MB, V1—DCASPRO, Harris-Melbourne, 1465 Clearmont Street, N.E., Palm Bay, Florida 32905–4017
DLA8MC, V2—DCASPRO, Rockwell International–MSD, P.O. Box 1367, Duluth, GA 30136–4099
DLA8MF, QF—DCASMA, San Juan, P.O. Box 34167, Ft. Buchanan, PR 00934
DLA8MH, X9—DCASPRO, McDonnell Douglas, Astronautics Co., West, 5301 Bolsa Avenue, Huntington Beach, CA 92647
DLA8MM, XL—DCASPRO Martin Marietta Aerospace Orlando, P.O. Box 5837, Mail Point 49, Orlando, FL 32855
DLA8MN, WQ—DCASMA, Twin Cities, 2305 Ford Parkway, St. Paul, MN 55116
DLA8MW, WR—DCASMA, Milwaukee, Henry S. Reuss Federal Plaza, Suite 340, 310 W. Wisconsin Avenue, Milwaukee, WI 53203
DLA8NC, WV—DCASMA, Ottawa, 24th Floor Journal Towers South, 365 Laurier Avenue West, Ottawa, ON, Canada K1A0S5
DLA8NF, WW—DCASMA, Orlando, 3555 Maguire Blvd., Orlando, FL 32803
DLA8NH, YS—DCASPRO, Sanders Associates, Inc., Daniel Webster Highway South, Nashua, NH 03061
DLA8NJ, WT—DCASMA, Springfield, 240 Route 22, Springfield, NJ 07081
DLA8NL, Z1—DCASMA, New Orleans, 13800 Old Gentilly Highway, Bldg. 350, P.O. Box 29283, New Orleans, LA 70189
DLA8NM, YR—DCASPRO, IBM, Route 17C, Owego, NY 13827
DLA8NN, YN—DCASPRO, PRD Electronics, 6801 Jericho Turnpike, Syosset, NY 11791
DLA8NY,WU—DCASR, New York, 201 Varick Street, New York, NY 10014
DLA8NZ, Y9—DCASMA, New York, 201 Varick Street, New York, NY 10014
DLA8PA, WY—DCASMA, Phoenix, 3800 North Central Avenue, Phoenix, AZ 85012
DLA8PH, XA—DCASR, Philadelphia, P.O. Box 7478, Philadelphia, PA 19101
DLA8PL, X3—DCASMA, Philadelphia, P.O. Box 7699, Philadelphia, PA 19101
DLA8PM, XB—DCASPRO, IBM Manassas, 9500 Godwin Drive, Manassas, VA 22110
DLA8PP, XD—DCASMA, Pittsburgh, 1626 South Federal Bldg., 1000 Liberty Avenue, Pittsburgh, PA 15222
DLA8PR, X7—DCASPRO, RCA, Marne Highway and Borton Landing Road, Moorestown, NJ 08057
DLA8PW, XE—DCASPRO, Ford Aerospace, 3939 Fabian Way, Palo Alto, CA 94303
DLA8RB, XF—DCASPRO, Raytheon, Spencer Laboratory, Wayside Avenue, Burlington, MA 01803
DLA8RP, XM—DCASMA, Reading, 45 South Front Street, Reading, PA 19602
DLA8RS, X4—DCASPRO, Rocketdyne, 6633 Canoga Avenue, Canoga Park, CA 91304
DLA8SA, XN—DCASMA, San Antonio, 615 E. Houston, San Antonio, TX 78294
DLA8SD, X8—DCASPRO, Sundstrand, P.O. Box 5066, Rockford, IL 61125
DLA8SF, XR—DCASMA, San Francisco, 1250 Bayhill Drive, San Bruno, CA 94066
DLA8SK, XQ—DCASPRO, Singer-Link, Kirtland Plant, Binghamton, NY 13902
DLA8SL, XS—DCASR, St. Louis, 1136 Washington Avenue, St. Louis, MO 63101
DLA8SN, XU—DCASMA, Syracuse, U.S. Courthouse & Federal Bldg., Syracuse, NY 13260
DLA8ST, X5—DCASMA, St. Louis, 1136 Washington Avenue, St. Louis, MO 63101
DLA8SW, XW—DCASMA, Seattle, Bldg. 5D, Naval Station Center, Seattle, WA 98115
DLA8SY, XX—DCASPRO, GTE Communications Products Corporation, 360 First Avenue, Needham, MA 02194

DLA8TC, YF—DCASPRO, Teledyne CAE, c/o Teledyne Continental Aviation and Engineering, 1330 Laskey Road, Toledo, OH 43612
DLA8TE, XZ—DCASPRO, Texas Instruments, P.O. Box 226015, MS 256, Dallas, TX 75226
DLA8TO, U3—DCASPRO, McDonnell Douglas/Rockwell, 2000 North Memorial Drive, Tulsa, OK 74115
DLA8VC, YC—DCASMA, Van Nuys, 6230 Van Nuys Blvd., Van Nuys, CA 91408
DLA8WK, YD—DCASMA, Wichita, Wichita Mid-Continent, Airport Terminal Bldg., Wichita, KS 67209
DLA8WR, YH—DCASPRO, Williams International Corp., 2280 West Maple Road, Walled Lake, MI 48088
DLA8WS, YG—DCASPRO, Westinghouse, Hendy Avenue, Sunnyvale, CA 94088
DLA8WT, Z8—DCASPRO, Grumman Aerospace Corp., Stuart, FL 33494
DLA8WU, VA—DCASPRO, Northrop DSD, 600 Hicks Road, Rolling Meadows, IL 60008–1098
DLA8WV, VD—DCASPRO, AM General, 701 W. Chippewa Avenue, South Bend, IN 46614–3711
DLA900, UD—Defense Electronics Supply Center, 1507 Wilmington Pike, Dayton, OH 45444
DLA910—Defense Electronics Supply Center, Base Contracting Section, 1507 Wilmington Pike, Dayton, OH 45444

Defense Mapping Agency

DMA600—Defense Mapping Agency, Bldg. 56, U.S. Naval Observatory, Washington, DC 20305–3000
DMA650—Defense Mapping Agency, Inter-American Geodedic Survey, Fort Sam Houston, TX 78234–5000
DMA700—Defense Mapping Agency, Aerospace Center, 3200 South Second Street, St. Louis, MO 63118–3399
DMA800, YZ—Defense Mapping Agency, Hydrographic/Topographic Center, 6500 Brooks Lane, Washington, DC 20315–0030
DMA920—Director, DMA Distribution Center, Clearfield, UT 84016–1292

Defense Communications Agency

DCA100—Defense Communications Agency, Washington, DC 20305
DCA200—Defense Communications Agency, Defense Commercial Communications Office, Scott AFB, IL 62225
DCA300—DECCO–PAC, 1154 Bishop Street, Honolulu, HI 96813
DCA400—DECCO–EUR, APO New York, NY 09130

Defense Nuclear Agency

DNA001, 8Z—Defense Nuclear Agency, Washington, DC 20305
DNA002, 9Z—Headquarters Field Command, Defense Nuclear Agency, Kirtland AFB, NM 87115
DNA004—Armed Forces Radiobiology Research Institute, Defense Nuclear Agency, Bethesda, MD 20014

Strategic Defense Initiative Organization

SDI084—Strategic Defense Initiative Organization, Washington, DC 20301–7100

Miscellaneous Defense Activities

MDA902—American Forces Radio and Television Service, 1016 North McCadden Place, Los Angeles, CA 90038
MDA903, F7—Defense Supply Service—Washington, Room 1D245, The Pentagon, Washington, DC 20310
MDA904, BE—Maryland Procurement Office, Procurement & Production Directorate, 9800 Savage Road, Fort George G. Meade, MD 20755
MDA905—Uniformed Services University of the Health Services, 4301 Jones Bridge Road, Bethesda, MD 20014
MDA906—Reserved for CHAMPUS
MDA907—Menwith Hill Station, Harrogate, Yorkshire, England

Appendix O—Cost Accounting Standards

(Note: The Cost Accounting Standards are codified in 4 CFR Chapter III.)

Appendix P—Department of Defense Directive 5400.11 of 9 June 1982

Subject: Department of Defense Privacy Program

Insert illustration(s) 1590

BILLING CODE 3810-01-C

DEPARTMENT OF DEFENSE DIRECTIVE 5400.11

June 9, 1982
NUMBER 5400.11

Department of Defense Directive

ASD(C)

SUBJECT: Department of Defense Privacy Program

References:
(a) DoD Directive 5400.11, "Personal Privacy and Rights of Individuals," August 4, 1975 (hereby canceled)
(b) Title 5, United States Code, Section 552a (Public Law 93-579, "The Privacy Act of 1974")
(c) DoD 5025.1-M, "Directives System Procedures" April, 1981, authorized by DoD Directive 5025.1, "Department of Defense Directives System," October 16, 1980
(d) through (g), see enclosure 1

A. REISSUANCE AND PURPOSE

1. This Directive reissues reference (a); establishes policies and procedures for implementing the DoD Privacy Program under reference (b); delegates authorities and assigns responsibilities for administration of the DoD Privacy Program; and establishes the Defense Privacy Board and the Defense Privacy Board Legal Committee.

2. This Directive authorizes the development, publication, and maintenance of DoD 5400.11-R, "The DoD Privacy Program Regulation," consistent with reference (c).

B. APPLICABILITY AND SCOPE

1. The provisions of this Directive apply to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, and the Defense Agencies (hereafter referred to as "DoD Components"), except for the National Security Agency/Central Security Service (NSA/CSS) (see subsection B.2., below).

2. This Directive shall apply to the NSA/CSS to the extent that its provisions are consistent with refereoces (d) and (e), and with requirements to protect sensitive cryptologic information.

3. The provisions of this Directive shall be made applicable by contract or other legally binding actions to government contractors whenever a contract is let for the operation of a system of records or a portion of a system of records. For purposes of liability under the Privacy Act (reference (b)) the employees of the contractor are considered employees of the contracting DoD Component.

4. The DoD Privacy Program componeots are listed at enclosure 2.

C. Definitions

1. *Individual.* A living citizen of the United States or an alien lawfully admitted to the United States for permanent residence. All members of U.S. Armed Forces are considered individuals for Privacy Act purposes. The legal guardian of an individual or the parent of a minor may act on behalf of the individual. No rights are vested in the representatives of a deceased person under this Directive

2. *Law Enforcement Activity.* Any activity engaged in the enforcement of criminal laws, including efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities.

3. *System of Records.* Any group or records under the control of any DoD Component from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to an individual.

D. Policy

It is the policy of the Department of Defense to safeguard personal information contained in any system of records maintained by DoD Components and to make that information available to the individual to whom it pertains to the maximum extent practicable.

E. Procedures

Detailed procedures for implementing the DoD Privacy Program are set forth in DoD 5400.11-R. In summary, these procedures:

1. *Permit individual access and amendment.* Individuals are permitted:

a. To determine what records pertaining to them are being collected, maintained, used, or disseminated.

b. To gain access to the information pertaining to them maintained in any system of records, and to correct or amend that information.

c. To obtain an accounting of all disclosures of the information pertaining to them except when disclosures are made (1) to DoD personnel in the course of their official duties; (2) under DoD 5400.7-R (reference (f)); or (3) to another agency or to an instrumentality or any governmental jurisdiction within or under control of the United States conducting law enforcement activities authorized by law.

d. To appeal any refusal to grant access to or amend any record pertaining to them, and to file a statement of disagreement with the record in the event amendment is refused.

2. *Limit collection, maintenance, use, and dissemination of personal information.* DoD Components are required:

a. To collect, maintain, use, and disseminate personal information only when it is relevant and necessary to achieve a purpose required by statute or Executive Order.

b. To collect personal information directly from the individuals to whom it pertains to the greatest extent practical.

c. To inform individuals who are asked to supply personal information for inclusion in any system of records:

(1) The authority for the solicitation;

(2) Whether furnishing the information is mandatory or voluntary;

(3) The intended uses of the information;

(4) The routine disclosures of the information that may be made outside the Department of Defense; and

(5) The effect on the individual of not providing all or any part of the requested information.

d. To ensure that all records used in making determinations about individuals are accurate, relevant, timely, and complete.

e. To make reasonable efforts to ensure that records containing personal information are accurate, relevant, timely, and complete for the purposes for which the record is being maintained before making them available to any recipients outside the Department of Defense, other than a federal agency, unless the disclosure is made under DoD 5400.7-R (reference (f)).

f. To keep no record that describes how individuals exercise their rights guaranteed by the First Amendment of the U.S. Constitution, unless expressly authorized by statute or by the individual to whom the records pertains, or the record is pertinent to and within the scope of an authorized law enforcement activity.

g. To make reasonable efforts, when appropriate, to notify individuals whenever records pertaining to them are made available under compulsory legal process, if such process is a matter of public record.

h. To establish safeguards to ensure the security of personal information and to protect this information from threats or hazards that might result in substantial harm, embarrassment, inconvenience, or unfairness to the individual.

i. To establish rules of conduct for DoD personnel involved in the design, development, operation, or maintenance of any system of records and to train them in these rules of conduct.

3. *Require public notice and annual publication.* DoD Components are required to publish in the **Federal Register:**

a. At least annually, a notice of the existence and character of every system of records maintained.

b. A notice of the establishment of any new or any alteration to existing system of record notices.

c. At least 30 days before adoption, advance notice for public comment of any new or intended changes to the routine uses of the information in existing system of records including the categories of users and the purposes of such use.

4. *Permit exempting eligible systems of records.* DoD Components may exempt from certain specific provisions of the Privacy Act (reference (b)) eligible systems of records, but only when there is an important public purpose to be served and specific statutory authority for the exemption exists.

5. *May require annual and other reports.* DoD Components shall furnish the Privacy Office that information required to complete any reports required by the Office of Management and Budget or other authorities.

F. Organization

1. *Defense Privacy Board.* Membership of the board shall consist of the Executive Secretary and representatives designated by the Secretaries of the Military Departments; the Assistant Secretary of Defense (Comptroller) (whose designee shall serve as chairman); the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics), the General Counsel, Department of Defense, and the Director, Defense Logistics Agency:

2. *The Defense Privacy Office.* The office consists of a Director, who shall also function as the Executive Secretary of the Defense Privacy Board, and his staff.

3. *The Defense Privacy Board Legal Committee.* The committee shall be composed of a legal counsel from each of the DoD Components represented on the DoD Privacy Board. The legal counsels shall be appointed by the Executive Secretary in coordination with the Secretaries of the Military Department or the head of the appropriate DoD Components. Other DoD legal counsels may be appointed by the Executive Secretary, after coordination with the appropriate representative of the DoD Component concerned, to serve on the committee.

G. Responsibilities

1. *The Assistant Secretary of Defense (Comptroller) (ASD(C)),* or his designee, *the Deputy Assistant Secretary of Defense (Administration) (DASD(A)),* shall:

a. Direct and administer the DoD Privacy Program.

b. Develop and maintain DoD 5400.11-R consistent with DoD 5025.1-M (reference (c)) and other guidance, to ensure timely and uniform implementation of the DoD Privacy Program.

c. Serve as chairman of the Defense Privacy Board.

2. *Chairman and members of the Defense Privacy Board* shall:

a. Serve as the principal policymakers for the DoD Privacy Program and the focal point for implementation of this Directive.

b. Ensure that all DoD Components actively participate in establishing policies, procedures, and practices in carrying out the DoD Privacy Program.

3. *Director, Defense Privacy Office,* shall carry out the specific responsibilities for implementation of the DoD Privacy Program set forth in enclosure 3.

4. *Members of Defense Privacy Board Legol Committee* shall:

a. Consider legal questions referred to the Board regarding the application of the Privacy Act (reference (b)), this Directive, DoD 5400.11-R, and the implementation of the DoD Privacy Program.

b. Render advisory opinions to the DoD Privacy Board, subject to approval by the General Counsel, Department of Defense.

5. The *General Counsel, Department of Defense,* shall:

a. Review the advisory opinions of the Defense Privacy Board Legal Committee to ensure uniformity in legal positions and interpretations rendered.

b. Be the final approving authority on all advisory legal opinions rendered by the Defense Privacy Board or the Defense Privacy Board Legal Committee regarding the Privacy Act (reference (b)) or its implementation.

6. The *Head of Each DoD Component* shall implement the DoD Privacy program by carrying out the specific responsibilities set forth in subsection E.2. and enclosure 4.

7. *System Managers* shall carry out the responsibilities set forth in enclosure 5.

8. *Automated Data Processing (ADP) or Word Processing Managers*, who process information from any system of records, shall carry out the responsibilities set forth in enclosure 6.

9. *DoD Employees* shall:

a. Not disclose any personal information contained in any system of records except as authorized by this Directive.

b. Not maintain any official files which are retrievable by name or other personal identifier without first ensuring that a notice for the system has been published in the **Federal Register.**

c. Report any disclosures of personal information from a system of records or the maintenance of any system of records that are not authorized by this Directive to the appropriate Privacy Act officials for his or her action.

H. Effective Date and Implementation

This Directive is effective immediately. Although DoD 5400.11–R expands on this Directive and implements the DoD Privacy Act Program, DoD Components shall forward within 180 days two copies of their internal implementing documents to the Assistant Secretary of Defense (Comptroller) to ensure compliance with paragraph G.2.b. of the basic Directive, and paragraph 5, enclosure 3.

Frank E. Carlucci,

Deputy Secretary of Defense.

Enclosures—6

1. References
2. DoD Privacy Program Components
3. Responsibilities of the Director, Defense Privacy Office
4. Responsibilities of DoD Component Heads
5. Responsibilities of the System Manager
6. Responsibilities of ADP and Word Processing Managers

(d) Public Law 86–36, "National Security Agency," May 29, 1959.

(e) Public Law 88–290, "Personnel Security Procedures in the National Security Agency," March 26, 1964.

(f) DoD 5400.7–R "DoD Freedom of Information Act Program," December 1980, authorized by DoD Directive 5400.7, "DoD Freedom of Information Act Program," March 24, 1980.

(g) Title 12, United States Code, Section 3401, "The Financial Privacy Act of 1976".

DOD Privacy Program Components

Office of the Secretary of Defense and its field activities
Department of the Army
Department of the Navy
Department of the Air Force
U.S. Marine Corps
Organization of the Joint Chiefs of Staff
Unified and Specified Commands
Defense Advanced Research Projects Agency
Defense Audiovisual Agency
Defense Audit Service
Defense Communications Agency
Defense Contract Audit Agency
Defense Criminal Investigative Service
Defense Intelligence Agency
Defense Investigative Service
Defense Logistics Agency
Defense Mapping Agency
Defense Nuclear Agency
Defense Security Assistance Agency
National Security Agency/Central Security Service
Uniformed Services University of the Health Sciences

Responsibilities of the Director, Defense Privacy Office

The *Director, Defense Privacy Office*, shall:

1. Serve as Executive Secretary and a member of the Defense Privacy Board.

2. Monitor implementation of the DoD Privacy Program for the Defense Privacy Board.

3. Serve as the focal point for the coordination of Privacy Act matters with the Defense Privacy Board; the Defense Privacy Board Legal Committee; the Office of Management and Budget; the General Accounting Office; the Office of the Federal Register, in conjunction with the OSD Federal Register Liaison Officer; and other Federal agencies, as required;

4. Develop and maintain DoD 5400.11–R consistent with DoD 5025.1–M reference (c)).

5. Review DoD Component instructions and related issuances pertaining to the DoD Privacy Program and provide overall guidance to avoid conflict with DoD Privacy Program policy and procedures.

6. Supervise the implementation of the Right to Financial Privacy Act of 1978 (reference (g)) and any other legislation that impacts directly on individual privacy.

7. In conjunction with the Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics), the Office of the General Counsel, DoD; and other DoD Components:

(a) Ensure that training programs regarding DoD Privacy Program policies and procedures are established for all DoD personnel whose duties involve design, development, operation, and maintenance of any system of records.

(b) Coordinate on all DoD personnel policies that may affect the DoD Privacy Program.

8. In conjunction with the Office of the Deputy Assistant Secretary of Defense (Management Systems), Office of the ASD(C), and other DoD Components, ensure that:

(a) All information requirements developed to collect or maintain personal data conform with DoD Privacy Program standards;

(b) Procedures are developed to protect personal information while it is being processed or stored in automated data processing or word processing centers.

9. In conjunction with the Office of the ASD(MRA&L), the Defense Manpower Data Center (Defense Logistics Agency), and other DoD Components, ensure that procedures developed to collect or maintain personal data for research purposes conform both to the requirements of the research and DoD Privacy Program standards.

Responsibilities of DoD Components Heads

The *Head of each DoD Component* shall:

1. Establish an active program to implement the DoD Privacy Program.

2. Provide adequate funds and personnel to support the Privacy Program.

3. Designate a senior official to serve as the principal point of contact for DoD Privacy Program matters and to monitor compliance with the program.

4. Ensure that DoD Privacy Program compliance is reviewed during the internal inspections conducted by Inspectors General or equivalent inspectors.

5. Ensure that the DoD Component head, a designee, or an appellant reviews all appeals from denials or refusals by Component officials to amend personal records.

6. Establish rules of conduct to ensure that:

a. Only personal information that is relevant and necessary to achieve a purpose required by statute or Executive Order is collected, maintainted, used, or disseminated.

b. Personal information is collected to the greatest extent practicable directly from the individual to whom it pertains.

c. No records are maintained describing how individuals exercise their rights guaranteed by the First Amendment to the U.S. Constitution unless expressly authorized by statute or the individuals to whom they pertain or unless the records pertain to and are within the scope of an authorized law enforcement activity.

d. Individuals are granted access to records which pertain to them in systems of records unless the system has been exempted from the access provisions of the Privacy Act (reference (b)).

e. No system of records subject to reference (b) is maintained, used, or disseminated without prior publication of a system notice in the **Federal Register.**

f. All personal information contained in any system of records is safeguarded against unwarranted and unauthorized disclosure.

g. Procedures are established that permit an individual to seek the correction or amendment of any record in a system of records pertaining to the individual unless the system of records has been exempted from the amendment procedures of reference (b).

h. All personnel whose duties involve design, development, operation, and maintenance of any system of records are trained in the rules of conduct established.

7. Assist, upon request, the Defense Privacy Board on matters of special interest.

Responsibilities of the System Manager

The *System Manager* for any system of records shall:

1. Ensure that all personnel who either have access to the system of record or who are engaged in developing or supervising procedures for handling records in the system of records are aware of their responsibilities for protecting personal information established by the DoD Privacy Program.

2. Prepare promptly any required new, amended, or altered system notices for the system of records and submit them through channels for publication in the **Federal Register.**

3. Notify all ADP or word processing managers who process information from the system of records that the information is subject to the DoD Privacy Program and the applicable routine uses for the information in the system.

4. Coordinate with ADP and word processing managers providing services to ensure an adequate risk analysis is conducted.

5. Coordinate with the servicing ADP and word processing managers to ensure that the system manager is notified when there are changes to processing equipment, hardware or software, and the data base that may require submission of a amended system notice.

Responsibilities of ADP and Word Processing Managers

All *ADP* and *word processing monogers*, who process information from a system of records shall:

1. Ensure that each system manager provides a current system notice or information as to the contents of the system notice for each system of records from which information is to be processed.

2. Ensure that all personnel who have access to information from a system of records during processing or who are engaged in developing procedures for processing such information are aware of the provisions of the DoD Privacy Program policies and procedures.

3. Notify promptly the system manager whenever there are changes to processing equipment, hardware or software, and the data base that may require the submission of an amended system notice for any system of records.

Appendix Q—Department of Defense Foreign Tax Relief Program

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APPENDIX Q

DEPARTMENT OF DEFENSE FOREIGN TAX RELIEF PROGRAM

Part 1—Department of Defense Directive 5100.64

Q-100 Reprint of DoD Directive 5100.64.

June 12, 1979
NUMBER 5100.64

OC, DoD

Department of Defense Directive

SUBJECT DoD Foreign Tax Relief Program

References:
(a) DoD Directive 5100.64, "Department of Defense Foreign Tax Relief Program," August 12, 1970 (hereby canceled)
(b) DoD Instruction 2050.1, "Delegated Approval Authority to Negotiate and Conclude International Agreements," July 6, 1977
(c) DoD Directive 5000.35, "Defense Acquisition Regulatory System," March 8, 1978
(d) DoD Directive 5525.1, "Status of Forces Policies and Information," January 20, 1966

A. REISSUANCE AND PURPOSE

This Directive (1) reissues reference (a), without substantive change, to correct superseded references; and (2) defines the tax relief policy of the Department of Defense, designates the organizational element which has continuing responsibility for the overall direction of the DoD Foreign Tax Relief Program, delineates the responsibilities of other organizational elements to implement and monitor the program, and requires the preparation and maintenance of specified foreign country tax law studies in order to facilitate the institution of statistical reporting procedures.

B. APPLICABILITY AND SCOPE

1. The provisions of this Directive apply to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified Command, and the Defense

Agencies (hereafter referred to as "DoD Components").

2. The policy set forth in this Directive applies to:

a. Military functions expenditures by the Department of Defense, and

b. Expenditures by nonappropriated fund activities of the Department of Defense that are subject to taxes imposed by:

(1) Foreign countries in which U.S. military forces are regularly stationed (other than attache and other military personnel assigned to a U.S. diplomatic mission); and

(2) Any other foreign country in which all or most U.S. defense activities, in a collective sense, are conducted in the interest of the common defense or otherwise significantly improve the military security of that country.

3. The policy set forth in this Directive also applies to Military Assistance Program (MAP) expenditures in all countries.

c. Definitions

1. Regardless of how a charge is denominated in foreign law or regulation, the words "tax" and "taxes" include all direct or indirect foreign customs duties, import and export taxes, excises, fees and other charges imposed at the national, local or intermediate level of a foreign country other than charges for services rendered or for other consideration received.

2. For example, taxes include but are not limited to purchase tax, sales tax, use tax, gross receipts tax, stamp tax, transfer tax, transaction tax, turnover tax, value added tax, service tax, trade tax, business tax; license tax, transportation tax, circulation tax, luxury tax, possession tax, production tax, registration tax, consumption tax, gasoline tax, real property tax, personal property tax, and gross income tax.

3. The word "relief" includes any method, technique, or procedure by which the ultimate economic burden of a tax on DoD funds may be avoided or otherwise remedied, such as exemption, refund, or drawback.

D. Policy

It is the policy of the Department of Defense to secure, to the maximum extent practicable, effective relief from all foreign taxes wherever the ultimate economic burden of those taxes would, in the absence of such relief, be borne by funds appropriated or allocated to the Department of Defense (including MAP appropriations) or under the control of its nonappropriated fund activities. In those cases in which the total economic burden of a tax not readily identifiable in the normal course of business is so small that it may be considered a *de minimis* matter, or in which the administrative burden of securing effective relief from a tax in a particular instance would be out of proportion to the amount of the relief obtained, tax relief shall be considered impracticable.

E. Responsibilities

1. The *General Counsel of the Department of Defense* shall:

a. Provide overall supervision and direction of the DoD Foreign Tax Relief Program.

b. Resolve any significant issues relating to the program.

c. Designate those countries that come within subparagraph B.2.b.(2) of this Directive.

d. Direct the preparation of country tax law studies for countries not within the scope of subsection B.2. of this Directive.

e. Designate the DoD member of the Inter-Agency Committee on Foreign Tax Relief, established by the Department of State.

2. The *Assistant Secretary of Defense (International Security Affairs)* shall monitor the negotiation and conclusion of international agreements subject to the Secretary's approval authority under DoD Instruction 2050.1 (reference (b)), to ensure that such agreements are compatible with the policy set forth in this Directive and any implementing guidance concerning that policy issued by the General Counsel of the Department of Defense.

3. The *Chairman, Defense Acquisition Regulatory Council*, shall coordinate with the General Counsel of the Department of Defense before the issuance, amendment, or revision of any portion of the Defense Acquisition Regulatory System (or regulation, directive, circular, or other publication within the scope of DoD Directive 5000.35 (reference (c)) that pertains to the implementation of the DoD Foreign Tax Relief Program.

4. The *Assistant Secretary of Defense (Comptroller)* shall perform such fiscal functions as may be required to implement the DoD Foreign Tax Relief Program, including advice and assistance in the institution of procedures for collecting data, compiling reports, and performing internal audits.

5. The *Secretary of each of the Military Departments* and the *Director of each of the Defense Agencies* shall issue instructions or regulations that charge a single office within the respective Military Department or Defense Agency (referred to as the "Cognizant Office") with continuing responsibility for supervising and monitoring the implementation of the DoD Foreign Tax Relief Program within such Department or Agency. Such instructions or regulations shall delegate to the Cognizant Office authority commensurate with its responsibility.

6. *Commanders of Unified Commands*, as appropriate, shall promulgate management procedures to guide and coordinate the administration of the DoD Foreign Tax Relief Program throughout their respective area commands.

7. For each foreign country that comes within the scope of subsection B.2. of this Directive, a single Military Commander shall be designated by the Commander of the Unified Command. The designated Military Commander shall be the same designated under the procedures in subsection IV.C. of DoD Directive 5525.1 (reference (d)). The designated Military Commander shall:

a. Make and maintain a current country tax law study in accordance with section F. of this Directive.

b. Be the single point of contact for U.S. contracting officers and activities for the investigation and resolution of specific matters that relate to the foreign tax relief program within the country for which the Military Commander is designated and for the forwarding of major problems affecting that program through proper channels to the General Counsel of the Department of the Defense.

c. Provide liaison with the responsible U.S. diplomatic mission on current tax relief problems and, where appropriate, with local foreign tax authorities.

F. Country Tax Law Studies

1. The taxes covered by each country tax law study shall be limited to those which in the absence of tax relief, would affect, or would appear to affect, U.S. Government expenditures, even as a *de minimis* matters. (All such taxes are hereafter referred to as "applicable taxes.") The formats of the studies for all countries shall be similar within each Unified Command insofar as practicable, and designed to facilitate statistical reporting procedures. The studies shall be prepared and maintained with a view to the practical utilization of the studies by U.S. contracting officers and activities for purposes of making reliable estimates of the total amount of taxes applicable to any particular contract and the amount thereof for which tax relief is available.

2. Each country tax law study shall consist of the following:

a. A general survey of all applicable taxes, together with translations, as appropriate, of the salient featured of the law or regulations imposing those taxes.

b. For each applicable tax, a summary statement containing: Its name; its rate (or rates); the taxing authority (national, provincial, or municipal); the legal incidence of the tax (the nature of the taxpayer or other entity liable for the payment of the tax to the taxing authority under the law of the country); its descrition (including the base or bases on which the tax is imposed); the applicability of the tax to various types of contracts (supplies, services or construction) is the event the tax is applicable to only one or serveral of such types of contracts; the applicability of the tax to the prime contract, as well as to any subcontracts or purchase orders issued by the prime contractor or subcontractor; the applicability of the tax to contractor and subcontractor personnel; the variation, if any, of the applicability of the tax depending upon the domicile of the contractor or contractor personnel, such as United States, host country, or third country; any applicable exemptions of deductions of significance; and the method of collection of the tax.

c. The basis upon which it is concluded that each applicable tax, in absence of tax relief, would affect, or would appear to affect, U.S. Government expenditures; and any evidence of the degree to which its ultimate economic burden would, in absence of tax relief, be borne by the U.S. Government rather than be absorbed by others.

d. The substantive tax relief, if any, from each applicable tax that is available to the U.S. Government either by international agreements in force or under the tax law or other regulation of the country; the procedures which may be used to obtain any such relief; the requirement, if any, for the issuance of a tax exemption certificate by the military procuring agency or by an agency of

the country to secure an exemption; the entitlement, if any, of the taxpayer to interest on any tax refund made by the host country; the credits, if any, that may be available against any other taxes otherwise payable by the taxpayer resulting from the payment of the tax under analysis; the approximate amount of the tax that should be involved in a particular case, if such can be estimated, taking into account the costs of filing a claim for refund by a contractor to warrant filing such a claim; and a brief narration of any significant problems which have occurred in attempting to obtain relief in particular cases.

e. A conclusion with regard to the adequacy of current tax relief measures; and such recommendations as may be appropriate for more efficient implementation of the policy set forth in this Directive.

3. Appended to each country tax law study shall be a verbatim quotation of all provisions relating to tax relief afforded by the countries that are contained in international agreements in force.

4. One copy of each country tax law study shall be forwared to the General Counsel of the Department of Defense and to each of the Cognizant Offices of the Military Departments and Defense Agencies within 30 days after its approval by the designated Military Commander. The information contained in the studies shall be disseminated by the Cognizant Offices to U.S. contracting officers and activities when required.

5. Country tax law studies shall be subject to continuing review. When there is a significant change in country tax laws, regulations, tax relief procedures, or in pertinent international agreements in force, the corresponding revision shall be promptly forwarded by the designated Military Commander to each of the offices referred to in subsection F.4.

G. Information Requirements

1. The reporting requirement contained in section F. relating to the submission of country tax law studies and revisions thereof is assigned Report Control Symbol (DDSD(AR) 1036.

2. Each January a summary of significant activities during the preceding year in implementation of the DoD Foreign Tax Relief Program shall be furnished by the Heads of Cognizant Officer to the General Counsel of the Department of Defense. The summary, in narrative form, shall include actions taken by the Cognizant Office to discharge its responsibility for supervising and monitoring the implementation of the foreign tax relief program within its Military Department or Defense Agency, and for disseminating the information contained in country tax law studies to U.S. contracting officers and activities. The reporting requirement contained in this subsection is assigned Report Control Symbol DDGC(A) 1198.

3. Each January a summary of significant activities during the preceding year of the administration of the foreign tax relief program shall be furnished by Commanders of the Unified Commands to the General Counsel of the Department of Defense. The summary, in narrative form, shall include actions taken by the Unified Command to discharge its responsibility to supervise and coordinate the preparation and maintenance of country tax law studies. The reporting requirement contained in this subsection is assigned Report Control Symbol DDGC(A) 1199.

H. Effective Date

This Directive is effective immediately. Forward two copies of implementing documents to the General Counsel of the Department of Defense within 120 days.

C.W. Duncan, Jr.,

Deputy Secretary of Defense.

Part 2—Implementation and Administration of DoD Directive 5100.64

Q–201 Implementation. DoD Directive 5100.64 has been implemented by the following regulations and instructions:

Department of the Army Regulation AR 27–70;

Department of the Navy Instruction SECNAVINST 5840.5;

Department of the Air Force Regulation AFR 110–18;

Defense Communications Agency Instruction 100–50–6;

Defense Contract Audit Agency Regulation 5100.3;

Defense Mapping Agency Instruction 5500.2;

Defense Nuclear Agency Instruction 5100.64; and

Defense Supply Agency Regulation 5500.6.

Pursuant to 11–000(d), the applicable implementing regulation or instruction should be consulted by contracting activities before the initiation of foreign acquisition.

Q–202 Administration of Program Under Unified Commands. The following Unified Commands have issued management procedures to guide and coordinate the administration of the foreign tax relief program throughout their respective area commands:

Commander in Chief, European Command (USCINCEUR) EUCOM DIRECTIVE 45–6;

Commander in Chief, Atlantic Command (CINCLANT) CINCLANTINST 5840.2A;

Commander in Chief, Pacific Command (CINCPAC) CINCPACINST 5840.2B; and as regards Canada and Greenland, Commander, Aerospace Defense Command (ADC) ADC Regulation 110–1.

These issuances implement subsection E. 7. of DoD Directive 5100.64 *(see Part I of this Appendix Q)* and apply to the contracting activities within the geographical areas assigned to the respective Unified Commands.

Part 3—Designated Commanding Officers

Q–301 Designated Commanding Officers. For the following foreign countries and areas a single military commander as indicated has been designated pursuant to subsection E. 7. of DoD Directive 5100.64 to make and maintain a current country tax law study, to serve as a single point of contact for U.S. contracting officers and contracting activities for the investigation and resolution of specific foreign tax relief matters, and to serve as a point of liaison with the responsible diplomatic mission and local foreign tax authorities.

Country or Area	Designated Commanding Officer
Australia	Commander in Chief, Pacific Rep., Australia
Azores	Commander, U.S. Forces, Azores
Bahrain	Commander in Chief, U.S. Naval Forces, Europe
Belgium	Commander in Chief, U.S. Army, Europe
Bermuda	Commanding Officer, U.S. Naval Air Station, Bermuda
Canada	Commander, Aerospace Defense Command
Caribbean Islands (including Bahamas),	Commander, Antilles Defense Command
Denmark	Commander in Chief, U.S. Air Forces, Europe
Ethiopia	Commander in Chief, U.S. Army Europe
France	Commander in Chief, U.S. Army, Europe
Germany	Commander in Chief, U.S. Army, Europe
Greece	Commander in Chief, U.S. Air Forces, Europe
Greenland	Commander, Aerospace Defense Command
Iceland	Commander Iceland Defense Force
Iran	Commander in Chief, U.S. Army, Europe
Italy	Commander in Chief, U.S. Naval Forces, Europe
Japan	Commander, U.S. Force, Japan
Korea	Commander, U.S. Forces, Korea
Luxembourg	Commander in Chief, U.S. Army, Europe
Morocco	Commander in Chief, U.S. Naval Forces, Europe
Netherlands	Commander in Chief, U.S. Air Forces, Europe
New Zealand,	Commander, U.S. Naval Support Forces, Antarctica
Norway	Commander in Chief, U.S. Air Forces, Europe
Philippines	Commander in Chief, Pacific Rep. Philippines
Portugal	Commander in Chief, U.S. Naval Forces, Europe
Spain	Commander in Chief, U.S. Air Force, Europe
Taiwan	Commander, U.S. Taiwan Defense Command
Thailand	Commander, U.S. Military Assis tance Command, Thailand
Turkey	Commander in Chief, U.S. Air Forces, Europe
United Kingdom.	Commander in Chief, U.S. Air Forces, Europe

Appendix R—Code of Federal Regulations

Title 41—Public Contracts and Property Management

Chapter 50—Public Contracts, Department of Labor

PART 50–206—THE WALSH-HEALEY PUBLIC CONTRACTS ACT INTERPRETATIONS

(Note.—Part 50–206 is codified in 41 CFR Chapter 50.)

Appendix S—[Reserved]

Appendix T—International Agreements

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T–000 Scope of Appendix. This Appendix contains copies of international agreements entered into by the Department of Defense.

Part 1—FMS/Offset Arrangements

T–100 Scope of Part. This part provides, for information purposes only, copies of FMS/Offset Arrangements negotiated pursuant to FMS agreements. See DAR 8–1315.

T–101 Australian Memorandum of Discussion.

Memorandum of Discussions

Against the purchase by the Government of Australia from the United States Department of Defense of major weapons systems and items of defense equipment, the U.S. Department of Defense agrees to establish the basis of an associated offset arrangement. The offset arrangement is pursuant to the discussions held in Washington on 10 April 1973 between the U.S. Department of Defense and the Australian Department of Defense. In these discussions the following principles and understandings were agreed:

1. The U.S. Department of Defense will commit itself to a combined U.S. industry and DoD offset objective of no more than 25% of the value of a major Australian order.

2. The U.S. Department of Defense and the Australian Department of Defense will look to those U.S. firms benefiting substantially from an Australian order to carry the initial and primary burden of offset implementation.

3. In the event that U.S. firms and subcontractors are unable to completely fulfill their offset objectives, the U.S. DoD will first offer Government Furnished Equipment (GFE) to Australian industry as bid opportunities and, second, if GFE items turn out to be unsuitable for either partner, select other items of defense equipment and supplies which appear to be competitively obtainable from Australian sources.

4. The DoD reserves the right, unilaterally, to select appropriate procurements for offset implementation. However, to facilitate the selection of suitable items, DoD will consult with A/DoD to identify areas of Australian industrial/technological strength.

5. DoD procurement from Australian sources will normally be competitive and be subject to two basic conditions: *one*, that the items of procurement fully satisfy DoD requirements for performance, quality, and delivery, and *two*, that the items of procurement cost DoD no more than would comparable U.S. items or other foreign items eligible for award.

6. If and when special circumstances invite it, the DoD may consider alternative means of procurement involving directed procurements or negotiated procurements, including items of Research and Development, to the extent appropriate items can be selected.

7. Procurements from Australian sources made under DoD implementation of offset arrangements will be in accord with the Armed Services Procurement Regulations (ASPR). Selective waiver of the Buy American Act and the DoD "Gold Flow" rule will be made by the DoD for those procurements in which Australian sources are solicited and evaluated to be the winning bid except for application of these differentials. Thus the DoD will authorize case-by-case exceptions of these differentials in consonance with the principles and understandings of this Memorandum of Discussions.

8. As a general rule, the DoD role in this offset agreement will begin at the time of an Australian Request for Quotation (RFQ). The time-frame for placement of orders in fulfillment of the DoD share of the U.S. offset objective will be within five years of the initial date of delivery of the items purchased against which the offset objective is measured.

9. Notwithstanding the DoD's willingness to facilitate and to assist the A/DoD and Australian industry in successfully accomplishing the purposes and understandings of the offset arrangement, it remains the basic Australian responsibility to carry out those actions to bring its sales to the U.S. defense industry market and to the DoD to successful consummation.

10. It is recognized that detailed implementing procedures for the management of offsets will be needed. These procedures necessarily involve both procurement and sales activities and they will be developed in subsequent meetings as mutually agreed.

Signed, ad referendum, this 10th day of April 1973 in Washington, DC.

SUBMITTED:

Leonard A. Alne,

For the U.S., Department of Defense.

Roy W.G. Davies,

For the Australian Department of Defense.

APPROVED:

W.P. Clements, Jr.

L. Barnard, M.O.D.

Details of Agreement (D of A) Mutual Acceptance of Government Quality Assurance

ANNEXES:

A(D of A)—Quality Assurance Request Format.

B(D of A)—Certificate of Conformity.

C(D of A)—Statement of Unsatisfactory Conditions.

Agreement

1. a. The Defense Authorities of the United States of America and of Australia agree that the appropriate national authority in each country will provide in its country upon request by the appropriate national authority in the purchasing country a Government Quality Assurance Service to orders in all areas of defense supply and services subject to the conditions and definitions contained in this D of A.

b. Nothing contained in this D of A shall be construed as a limitation to bilateral agreements between the two countries which further and extend the reciprocal utilization of the services of the national authorities beyond the minima specified in this D of A.

Application

2. It is agreed that request for Government Quality Assurance in the manufacturing country will be restricted to those cases where quality cannot be satisfactorily verified after receipt or when Government Quality Assurance at source is considered essential by the purchasing country.

Definitions

3. a. *Government Quality Assurance.* Government Quality Assurance is the process by which the appropriate national authorities determine and certify that the technical requirements of contracts are met.

b. *Supplier.* Supplier is the manufacturer on whom an order is placed.

c. *Purchaser.* Purchaser is the Government, or company or organization with Government cognizance placing an order on a supplier.

d. *Order.* Order is the contract placed by the Government, company or organization or the sub-contract arising therefrom placed by a purchaser on a supplier.

Procedure for Requesting Government Quality Assurance

4. a. Requests for Government Quality Assurance in Australia shall be directed to: Department of Defence, P.O. Box E33, Queen Victoria Terrace, Parkes, ACT 2600. Attn: QAERP (CP4–3–46).

Request for Government Quality Assurance in the United States shall be directed to DCASR, New York as follows: Department of Defense Central Control Point, DCASR, New York, 201 Varrick St., New York, N.Y. 10014.

b. All requests for Government Quality Assurance shall be forwarded on the form shown at Annex A.

c. Such request shall contain all pertinent information including, but not limited to, the name and address to which technical communications may be forwarded, special requirements with regard to certificates, markings, identification, etc.

d. Further, the Delegator shall ensure that the Delegatee is supplied with the required number of copies of the order, applicable specifications, drawings, specific quality requirements and other documents or data essential to the performance of the requested Government Quality Assurance with interpretations approved by the contracting parties if necessary.

Acceptance of a Request for Government Quality Assurance

5. a. On receipt of a request for Government Quality Assurance the Delegatee shall, as the case may be:

(i) Accept the request, with or without comments and qualifications, and forward to the Delegator such acceptance in writing, or

(ii) Transfer the request to another authority in his country informing the Delegator of the action taken, or

(iii) Inform the Delegator that the Government Quality Assurance cannot be performed, for reasons stated.

5. The Delegator shall inform the supplier through the Delegatee when decisions 5 (i) or 5 (ii) are taken.

b. If an article to be inspected includes a portion or portions outside the competence of the Delegatee Inspectorate, special arrangements will be made by the Delegatee Authority for the inspection of such portion or portions.

c. The Delegatee will inform the Delegator of any subcontract placed by the supplier in a third country. The Delegator as advised by the Delegatee will then decide what Government Quality Assurance shall be performed and if necessary or desirable shall co-operate with the Delegatee in arranging the quality assurance in that third country.

Contractual Provisions

6. a. The order shall contain an appropriate requirement on the supplier which will enable the Delegatee as the authorized representative of the Delegator to have all necessary access and the right to perform the required Quality Assurance, in accordance with his normal or such special procedure as may otherwise be agreed between the Delegator and Delegatee.

b. The order shall define the method to be used for any conversion between the foot-pound—and the metric systems of measurements which may be required in the course of checking and measuring.

c. Order shall provide that the supplier (including his sub-contractors) is responsible for maintaining effective control of the quality of supplies and services, for the provision of test facilities and the performance of inspection essential to demonstrate full conformance of the supplies to contract requirements prior to offering them for acceptance, and for the provision of objective evidence that controls and inspections are effective.

Procedure for Government Quality Assurance

7. Having accepted a request for Government Quality Assurance the Delegatee shall take appropriate actions inaccordance with its normal and established Quality Assurance Procedures to satisfy the request. If required for specific production, the Delegator and Delegatee may mutually establish special requirements for the Government Quality Assurance.

Notification of Unsatisfactory Conditions

8. If the Delegatee finds that, at any time during the course of the order, he cannot proceed with his function of Government Quality Assurance because of deficiencies in the supplier's system (e.g. required supplier testing cannot be performed because of lack of test facilities, test devices are not in a known state of calibration, qualification or other engineering approval is not held, etc.) or product (including parts, materials or processes) and such deficiencies are of major importance or will be a cause of excessive delay, the Delegatee will immediately advise the Delegator of these facts using the form shown at Annex C (D of A).

Certification of Conformity

9. Certification of conformity shall be provided by the Delegatee to the Delegator for each batch, lot or shipment in the manner prescribed at Annex B (D of A) or in any equivalent format containing the same minimum information.

Release for Delivery

10. Release for delivery of materiel and equipment whose quality has been assured by the above procedures shall be given in manner prescribed in the Delegator's initial request. Normally, release for delivery will be simultaneous with the issue of the Certificate of Conformity.

Deviations

11. a. Prime Contracts

Except where otherwise directed by the Delegator, the Delegatee shall be empowered to grant requests by the manufacturer for permission to depart from the technical requirements of the contract unless such departures will affect safety, reliability, maintainability, interchangeablity, storage life, performance, or cost. The Delegator shall be notified of any requests granted by the Delegatee.

Those applications for deviations which are subject to the decisions of the Delegator shall be forwarded by the manufacturer to the Delegator via the Delegatee.

b. Sub-Contracts

Requests for deviations on sub-contracts shall be forwarded by the supplier to the purchaser for action in accordance with the contractual requirements.

Delegator's Participation

12. The Delegator shall have the right to visit the manufacturer concerned during the course of the performance of the contract/subcontract. Any such visits shall be arranged through the Delegatee who shall have the right to accompany.

Communication

13. a. The Delegator shall ensure that the Delegatee is promptly furnished with any amendments, modifications or changes in the documents originally supplied in accordance with paragraph 4 d. above.

b. Any correspondence between the Delegator and the manufacturer, pertaining to Quality Assurance shall be transmitted through the Delegatee.

c. Delegatee and Delegator will consult together on any event of an unexpected character which is likely to affect the quality of materiel, equipment or services.

Charges

14. Reimbursement will be required for Quality Assurance services provided by each country. Charges will be determined by mutual arrangement.

Liability

15. The fact that the Delegatee has signed a Conformity Certificate will not relieve the contractor from the responsibility for furnishing supplies that meet all specifications of the contract. In the event that defects are discovered on or subsequent to delivery of materiel and services, no liability shall be attached to the Delegatee. The Delegatee shall, however, assist the Delegator in the investigation of such defects. The Delegator will provide the Delegatee with full description of the defects with supporting evidence, and, if possible, a sample of the defective parts.

Review of Agreement

16. This agreement will be reviewed every two years or as otherwise required.

Implementation of the Agreement

17. This D of A will be considered to have been implemented when orders have been issued to the personnel of the Government Quality Assurance Authority to comply with the provisions of this documents.

Mary Ann Gillence,

Deputy Under Secretary (Acquisition Management), For the United States Department of Defense.

Desmond N. Biddle,

Counsellor (Defence Supply), For the Secretary, Department of Defence Commonwealth of Australia.

Washington D.C.

October 1984

BILLING CODE 3810-01-M

INTERNATIONAL AGREEMENTS

ANNEX A

REQUEST FOR QUALITY ASSURANCE	
1. Issuing Authority (Delegator)	2. Forward to (Delegatee)
QUALITY ASSURANCE IS HEREBY REQUESTED FOR	
3. Government Contract No.	4. Purchaser
5. Order No.	6. Supplier (Name and manufacturing location)
7. Description and quantity	
8. Special Quality Assurance Requirements (if necessary, attach sheets)	
9. Attached hereto are: Copies of above order	10. Special remarks and/or instructions (if necessary, attach sheets)
11. Technical data and quality assurance requirements are attached hereto will be furnished by the supplier/purchaser	12. Signature (Delegator) 13. Date 14. Name and title/position (Block Capitals)

Decision overleaf

INTERNATIONAL AGREEMENTS

DECISION	
15. The requested Government Quality Assurance will be performed by the activity designated in 17 below and all communication on technical subjects should be addressed to that authority.	
16. Above request cannot be accepted due to reasons stated in 17 below.	
17. Designated activity or reasons for reservations or non-acceptance or notice of transfer of request to another national authority.	
The addressee in 2 above is requested to complete columns 15-20 and return one copy to the issuing authority (re.1 above)	18. Signature (Delegates) 19. Date
	20. Name and title/position (Block Capitals)

ANNEX B

CERTIFICATE OF CONFORMITY	
Page 1	No. of Pages
1. Purchaser	2. Order reference 3. Government Contract No.
4. Mailed to (Delegator)	6a. Shipped to (Consignee)
5. From (Supplier)	6b. Shipment number on order Partial Final
7. Certified that the whole of the supplies detailed below (or the services described above) conform in all respects to the specification(s), drawing(s) and order relative thereto and that the supplies have been inspected and tested in accordance with the conditions and requirements of the order Date Signature(Supplier) Name(printed)	

8. Contract Item No.	9. Stock/Part No. and Name	10. Quantity	11. Package No.	12. Undelivered Balance

Continue list on separate pages if necessary

Government Certificate (see overleaf)

13. Quantity received	
14. Government Quality Assurance Service (Delegatee)	15. This is to certify that within the provisions of the agreement the supplies and (or) services identified above have been subject to Government Quality Assurance and are considered to comply with the provisions of the applicable contract. Date Signature Name(printed)
16. REMARKS	

INTERNATIONAL AGREEMENTS

ANNEX C

QUALITY ASSURANCE ADVISORY REPORT
STATEMENT OF UNSATISFACTORY CONDITIONS

to (Delegator)	Contract issued by
Contract Number	Supplier
Request for Government Quality Assurance Number Date	
Pertinent contractual provisions(s) (identity by article number if possible)	
STATEMENT The following unsatisfactory conditions(s) pertaining to Quality Assurance on the above contract is reported	

Issued by (Delegatee)	Date	Signature, Name and Title

T-102 Swiss Agreements.
T-102.1 Swiss F-5 Agreement.

Memorandum of Understanding Between the Government of the Swiss Confederation and the Government of the United States Concerning the F-5 Program

1. The Government of the Swiss Confederation, acting through the Federal Military Department (hereinafter called the FMD) intends to purchase a quantity of F-5E and F-5F aircraft, with associated supporting defense articles and services, from U.S. sources through the Untied States Department of Defense (hereinafter called the DoD) under Foreign Military Sales procedures.

2. The goal of the Memorandum of Understanding (MOU) is to offect to the maximum extent possible the amount to be paid by the Swiss Government for the aircraft and supporting equipment set out in paragraph 1 by placing comtracts on a competitive basis with Swiss industries, but in no even will the goal be less than 30%.

3. The United States Government, acting through the DoD, and the Government of the Swiss Confederation, acting through the FMD, in seeking to attain this goal, will look to the U.S. firms benefiting substantially from the Swiss purchase to carry the primary burden of offset implementations. It will be the basic responsibility of industry in each country to identify and define their capability and to carry out the supporting action to facilitate the industrial participation envisioned herein. During the first two years the primary burden of offset implementation will be upon Northrop, General Electric and related contractors. However, if during that period Swiss industry offers items which can meet valid U.S. defense procurement on a competitive basis, the provisions of paragraph 5 will be applicable. After such two year period representatives of the parties hereto, with appropriate representatives from the industrial sectors, will meet to review progress hereunder. Should it be apparent that the offset objectives may not be reached before the expiration of the MOU, the DoD will augment industry efforts to reach that objective by offering to Swiss industry the opportunity to provide defense articles and services under competitive solicitation procedures and in accordance with paragraph 5.

4. (A) In order to achieve the goal the DoD, contingent on the sale of the above quantities of aircraft to the Government of the Swiss Confederation, agrees to use the best efforts to have Northrop, General Electric, and other companies associated with the F-5E and F aircraft program provide Swiss industry with the opportunity to compete, on an equal basis with U.S. industry and other sources for subcontracts. In addition, the DoD will encourage the prime contractors (Northrop and GE) to implement their plans for expansion of Swiss products in the U.S. and third-country markets.

(B) Swiss items purchased by U.S. sources (including municipalities) and Swiss items purchased by third-country sources as a result of the efforts of Northrop, GE and other U.S. contractors associated with the F-5 program will be recognized in any computation of offset amounts. The primary test will be a mutual accord as to whether or not a given sale occurred as a result of efforts arising from this offset agreement. To facilitate these computations the DoD will look primarily to the contractor to keep records adequate for this purpose.

5. The DoD agrees that in seeking to attain this goal, it will:

(A) Provide for waiver of the cost of import duties in evaluating defense prime contracts and sub-contract solicitations from Swiss industry and for the necessary duty-free entry certificates and related documentation.

(B) Emphasize that in inviting submission of selected tenders, special consideration should be given to those items for which Swiss industry can bid on a competitive basis.

(C) Use its best efforts to have technical data required for production provided to Swiss contractors on a reasonable cost basis.

(D) Facilitate the necessary export licenses required for the provision of bid package and related technical data to accomplish the above.

(E) Provide for waiver to the extent permitted under "Buy National" legislation and regulations.

6. The FMD and its organizations will use their good offices and authority to achieve the established procurement objectives. This will include, in addition to the purchase of the F-5 aircraft, the following:

(A) Direction to the Swiss industry on steps to be taken by Swiss industrial firms to make known their capabilities and products which might qualify for competitive procurement by U.S. industry and, to the extent necessary, by the DoD;

(B) Advice to Swiss industry on the necessary steps they must take to coordinate their efforts in responding to U.S. offers;

(C) Assistance to Swiss industry in meeting handling requirements for classified U.S. information.

7. The FMD and the DoD will appoint project officers to monitor progress toward the objective of this MOU. These project officers will meet periodically, but not less than annually, to review the progress of this understanding and recommend such action as may appear necessary to carry out its objective.

8. At the end of every two years, representatives of the parties hereto with appropriate representatives from the industrial sectors will meet to review progress under this MOU.

9. This Memorandum of Understanding is effective on the date on which it is signed, and shall remain in effect for eight years, subject to the respective laws of the Government of the Swiss Confederation and the Government of the United States.

James R. Schlesinger,

The Secretary of Defense of the United States of America.

Dated: 2 July 1975.

Rudolf Gnaegi,

The Chief of the Federal Military Department of the Swiss Confederation.

Dated: 9 July 1975.

T-102.2 *Amendment 1 to Swiss F-5 Agreement.*

Amendment 1 to the Memorandum of Understanding Between the Government of the Swiss Confederation and the Government of the United States Concerning the F-5 Program

1. The Government of the Swiss Confederation, acting through the Federal Military Department, intends to purchase an additional quantity of approximately 40 F-5 aircraft over and above that quantity covered by the basic Memorandum of Understanding (MOU). This purchase will be made from U.S. sources through the United States Department of Defense (hereinafter called the DoD) under Foreign Military Sales procedures.

2. The purpose of this Amendment is to extend the period of time during which Swiss industry will be allowed to compete with U.S. industries for DoD contracts. It is understood that reciprocal access to Swiss Government defense contract opportunities is afforded to U.S. industry, since the Government of Switzerland imposes no national protectionist barriers nor import duties in considering foreign proposals for Swiss Government defense contracts.

3. The U.S. Government will continue to perform its commitments with respect to the offset goal specified in the basic MOU through the period of time specified therein. However, this Amendment does not obligate the U.S. Government to any additional offset goal with respect to the additional F-5 purchase.

4. In consideration of the purchase by the Government of Switzerland of this additional quantity of F-5 aircraft, the basic MOU is herewith amended to provide that, upon termination of the obligations of the U.S. Government as set forth in the basic MOU, the DoD will continue, on a case-by-case basis, and to the extent permitted by U.S. laws and regulations, to:

(A) Provide for waiver on the cost of import duties in evaluating defense prime contract and subcontract solicitations from Swiss industry.

(B) Use its best efforts to have technical data required for production provided to Swiss contractors on a reasonable cost basis.

(C) Facilitate the necessary export licenses required for the provision of bid package and related technical data to accomplish the above.

(D) Provide for necessary duty-free certification and related documentation.

(E) Provide for waivers of buy national and balance of payments restrictions.

5. This Amendment shall become effective in July 1983 contingent upon Swiss Federal Military Department acceptance of the U.S. DoD's Letter of Offer and Acceptance for the additional F-5E/F Aircraft. This Amendment shall remain in effect for four years, subject to the respective laws of the Government of the Swiss Confederation and the Government of the United States.

———— ————,

Secretary of Defense for the Government of the United States of America.

Dated: October 7, 1980.

———— ————,

Chief of the Federal Military Department for the Government of the Swiss Confederation

Dated: October 29, 1980.

Part 2—MOU's With NATO Participating Countries

T-200 Scope of Part. This part provides, for information purposes only, copies of Participating Country Agreement, Memoranda of Understanding, and accompanying annexes. See DAR 6-1406.

T-201 Canadian Agreements.

T-201.1 *Letter of Agreement With Canada.*

1. This agreement applies to all contracts placed, on or after October 1, 1956, by any of the Military Departments with the Corporation. It shall remain in force from year to year until terminated by mutual consent; however, it can be terminated on the 31st day of December or the 30th day of June in any year by either party *provided* that six months notice of termination has been given in writing. In addition, this agreement provides for certain reciprocal arrangements facilitating procurement by each of the parties in the country of the other.

2. (a) The Corporation agrees that it will cause all first-tier subcontracts under contracts covered by this agreement to be placed in accordance with the practices, policies, and procedures of the Government of Canada covering procurement for defence purposes; and agrees that if the aggregate profit realized under such subcontracts by any first-tier subcontractor exceeds that which is allowed by the Government of Canada under the above mentioned practices, policies, and procedures, the amount of such excess will be refunded by the Corporation to the Military Departments. There shall also be refunded profits on any subcontract in excess of amounts which the Minister of Defence Production (Canada) in the exercise of said practices, policies and procedures considers to be fair and reasonable, recovered by the Minister pursuant to section 21 of the Defence Production Act (Canada) from any individual subcontractor of any tier. It is recognized that the practices, policies and procedures of the Government of Canada referred to above permit various rates of profit in accordance with the terms of the said practices, policies, and procedures as from time-to-time amended; however, in no case will the rate of profit be allowed to exceed any limit prescribed by statute of the Government of the United States. For the purpose of this paragraph, the Corporation will cause to be conducted such audits in accordance with the Costing Memorandum (DDP-31) of the Department of Defence Production (Canada) and such verifications of cost as are in accordance with the said practices, policies, and procedures. The Corporation will render to the Military Departments its certificate that the provisions of this paragraph have been observed.

(b) Contracts for communication and transportation services, and the supply of power, water, gas and other utilities shall be excepted from the provisions of subparagraph (a) above, provided the rate or charges for such services or utilities are fixed by public regulatory bodies; and provided further the Military Departments are accorded any special rates that may be available to the Canadian Government with respect to such contracts.

(c) The Canadian Government, its Department and Agencies, including but not limited to the Corporation and Canadian Arsenals Limited, a Crown Company wholly owned by the Canadian Government, shall not be entitled to any profit on any contract or contracts covered by this agreement. Any profits which may be realized shall be returned to the Military Departments except as hereinafter provided: Before refunding profits realized from the following sources:

(i) Net profits of the Canadian Government, its Departments and Agencies, as defined above, with respect to contracts and subcontracts covered by this agreement.

(ii) Excess profits referred to in paragraph (a) above, and

(iii) Renegotiation recoveries from subcontracts of any tier under contracts covered by this agreement, which recoveries the Military Departments would otherwise be entitled to receive in accordance with the provisions of subparagraph (a) above;

Corporation shall be entitled to deduct any losses it may sustain with respect to contracts covered by this agreement.

(d) Interim adjustments and refunds under this paragraph 2 shall be made at such time or times as may be mutually agreed upon but at least once a year as of June 30th. Such interim adjustments shall apply only to completed contracts. The final adjustment and refund shall be made as soon as practicable after the expiration of this agreement.

(e) The profit and loss provisions of this paragraph 2 shall not apply to contracts awarded to the Corporation as the result of formal competitive bidding (initiated by Invitation for Bids).

3.(a) All contracts placed by the Military Departments with the Corporation, except those placed as the result of formal competitive bidding, shall provide for prices or cost reimbursement, as the case may be, in terms of Canadian currency, and for payment to be made in such currency. Therefore, quotations and invoices shall be submitted by the Corporation to the Military Departments in terms of Canadian currency, and such cost data, vouchers, etc., as the contracts require shall also be submitted in terms of Canadian currency. However, the Corporation may elect in respect to any of such contracts to quote, submit the said cost data, vouchers, etc., and receive payment in United States currency, in which event such contracts shall provide for payment in United States currency and shall not be subject to adjustment for losses or gains resulting from fluctuations in exchange rates.

(b) All formal competitive bids shall be submitted by the Corporation in terms of United States currency and contracts placed as a result of such formal competitive bidding shall not be subject to adjustment for losses or gains resulting from fluctuation in exchange rates.

4. The Military Departments and the Corporation shall avoid, to the extent consistent with the declared policies of the Military Departments and the Canadian Government, the making of any surcharges covering administration costs with respect to contracts placed with the Corporation by any of the Military Departments and contracts placed by the Military Departments in the United States for the Canadian Government.

5. To the extent that contracts placed with the Corporation by the Military Departments provide for the audit of costs and profits, such audit will be made without charge to the Military Departments by the Cost Inspection and Audit Division of the Treasury of Canada in accordance with Costing Memorandum Form DDP-31 of the Department of Defence Production, Canada.

6. The Canadian Government shall arrange for inspection personnel of the Department of National Defence (Canada) to act on behalf of the Military Departments with respect to contracts placed by the Military Departments with the Corporation and with respect to subcontracts placed in Canada by United States contractors which are performing contracts for the Military Departments, and for the use of inspection facilities of the Department of National Defence (Canada) for such purposes, such personnel and facilities to be provided without cost to the Military Departments. The Military Departments shall provide and make no charge for inspection services and inspection facilities in connection with contracts placed in the United States by the Military Departments for the Canadian Government and with respect to subcontracts placed in the United States by Canadian contractors which are performing contracts for the Department of Defence Production* (Canada). The Department of National Defence (Canada) or any Military Department may provide liaison with the other's inspection personnel in connection with the foregoing. It is understood that either the Department of National Defence (Canada) or any Military Department may in appropriate cases arrange inspection by its own inspection organization in the other's country.

7. Because of the varying arrangements made by the Canadian Government and the Military Departments in furnishing Government-owned facilities (including buildings and machine tools) to contractors, it is recognized that the matter of inclusion in contract prices of charges, through amortization or otherwise, for use of such facilities will be determined in the negotiation of individual contracts. However, there shall be avoided, to the extent consistent with the policies of the Canadian Government and Military Departments, any such charges for use of Government-furnished facilities.

8. (a) The Corporation agrees that the prices set out in fixed-price type contracts covered by this Agreement will not include any taxes with respect to first-tier

subcontracts; nor shall prices include custom duties to the extent refundable in accordance with Canadian law, paid upon the import of any materials, parts, or components incorporated or to be incorporated in the supplies, with respect to first-tier subcontracts.

(b) The Corporation agrees that under cost-reimbursement type contracts the Corporation shall, to the extent practicable with respect to first-tier subcontracts, exclude from its claims all taxes and to the extent refundable in accordance with Canadian Law, customs duties, paid upon the import of any materials, parts or components, incorporated or to be incorporated in the supplies and that any amounts included in such claims representing such taxes and duties shall be refunded or credited to the Military Departments.

(c) The Corporation agrees that to the extent that such taxes and duties can be reasonably and economically identified it will use its best endeavors to cause such taxes to be excluded from all subcontracts below the first tier and if found to be included to be recoverable and credited to the Military Departments.

9. The Corporation recognizes that existing law of the United States prohibits the use of the cost-plus-a-percentage-of-cost system of contracting.

10. Each contract covered by this agreement shall be deemed to include the provisions required by (i) Pub. L. 245, 82nd Congress of the United States (65 Stat. 700; 41 U.S.C. 153(c)) and (ii) section 719 of Pub. L. 458, 83rd Congress of the United States (68 Stat. 353) or similar provisions that may be required by subsequent legislation.

(End of Agreement)

*Now the Department of Supply and Services

T-201.2 *Cooperative Agreement with Canada.*

Memorandum of Understanding in the Field of Cooperative Development Between The United States Department of Defense and the Canadian Department of Defence Production

This Memorandum of Understanding complements the U.S.-Canadian Defence Production Sharing Program by establishing a cooperative agreement in defense research and development between the United States Department of Defense (DoD) and the Canadian Department of Defence of Production (CDDP), called the Defense Development Sharing Program.

1. *Objectives:*

The principle objectives of the Defense Development Sharing Program are:

a. To assist in maintaining the Defense Production Sharing Program at a high level by making it possible for Canadian firms to perform research and development work undertaken to meet the requirements of U.S. armed forces.

b. To utilize better the industrial scientific and technical resources of the United States and Canada in the interest of mutual defense.

c. To make possible the standardization and interchangeability of a larger amount of the equipment necessary for the defense of United States and Canada.

2. *Description of the Program:*

a. The Defense Development Sharing Program will consist of research and development projects (such program projects being here and after referred to as "projects"):

(1) Which are performed by Canadian prime contractors;

(2) Which are designed to meet specific DoD research and development requirements;

(3) In which the Military Department of DoD which is the United States party to the project agreement acts as the design authority; and

(4) Which are jointly funded by DoD and CDDP, (Where DoD undertakes the research and development of a weapons system composed of several components, work funded by CDDP on one or more of such components will be considered to be jointly funded).

b. The Defense Development Sharing Program will not include efforts referred to in paragraph 13.

3. *Funding: The financial contribution of DoD in each project will not be less than 25 percent of the costs incurred subsequent to the date of the project agreement provided that in the case of work referred to in the parenthetical sentence of paragraph 2.a(4), the financial arrangements shall be as agreed to by DoD and CDDP in the project agreement.*

4. *Selection of Projects:*

A proposal to initiate a project may be made by CDDP to any of the Military Departments of DoD or by any of the Military Departments of DoD to CDDP. Each proposal will contain a complete and detailed description of the scope of the project and work to be performed and of the suggested cost sharing arrangement. Projects will be selected by mutual agreement of CDDP in the Military Department of DoD concerned.

5. *Project Agreements:*

The specific terms and conditions of each project will be governed by a project agreement between the Military Department of DoD and CDDP. The project agreement will *inter alia* set forth the scope of the projects, the work to be performed, types of reports to be submitted, the time and funding schedules, and the cost of sharing arrangements.

6. *Selection of Prime Contractors:*

The selection of prime contractors for work to be performed under a project shall be subject to mutual agreement.

7. *Contract Clauses for Projects:*

The Canadian Government agencies responsible for placing and administering research and development contracts with Canadian firms, will insert suitable provisions in such contracts obtaining for DoD the same production rights, data, and information that DoD would obtain for itself if DoD were solely funding and placing the contract under its Armed Services Procurement Regulation.

8. *Competitive Research and Development:*

DoD will not engage in research and development which duplicate the work being carried out under any project unless DoD considers such research and development to be in the United States national interest. The appropriate DoD agency will notify CDDP before undertaking such duplicative research and development and will, if requested by CDDP, promptly enter into consultations with CDDP.

9. *DoD Procurement of Researched Developed Items:*

Procurement by DoD from Canadian firms of items developed in a project will be made under the Defense Production Sharing Program and in accordance with the DoD Armed Services Procurement Regulation. Pursuant to that Regulation, procurement of items developed by Canadian firms under the Defense Development Sharing Program will not be "set aside" for small business or for labor surplus areas.

10. *Security:*

a. Information and materials developed within projects will be considered to be jointly developed, and classification and declassification thereof will be determined jointly.

b. Classified information and materials exchanged in connection with or developed within projects will be safeguarded in accordance with the United States-Canadian Security Agreement of January 30, 1962, in the United States-Canadian Industrial Security Agreement effected by an exchange of letters dated February 6 and March 31, 1952, as amended.

11. *Disclosure of Classified Information:*

a. Classified information and materials received by either Government under the Defense Development Sharing Program but not developed within a project will not be disclosed or transferred to third countries, or nationals of third countries, without the consent of the originating Government.

b. Jointly developed classified information materials will not be transferred or disclosed to any third party by either Government or nationals thereof without the consent of the other Government.

12. *Sales:*

a. Sales or transfers to any third party of items developed in a project containing classified information or materials will be subject to the provisions of paragraph 11.

b. Sales or transfers to NATO, Commonwealth, and SEATO countries, or nationals thereof, of jointly developed unclassified items may be made in accordance with any applicable arrangements between Canada and the United States regarding munitions control. Sales or transfers to any other third party of jointly developed unclassified items will not be made without the consent of both parties to this agreement.

c. Sales or transfers to any third party of jointly developed unclassified rights, information, or data necessary for the production of an item developed in a project will not be made without the consent of both parties to this agreement.

13. *Other Research and Development Efforts not in Defense Development Sharing Program:*

a. Consistent with normal DoD source selection procedures, Canadian firms may bid for DoD research and development contracts which are to be funded solely by the United States. DoD will evaluate proposals from qualified Canadian firms on a parity with proposals received from United States firms. CDDP undertakes to ensure that Canadian firms comply with DoD procurement procedures.

b. CDDP may award and solely fund research and development contracts to Canadian firms for the purpose of satisfying existing or anticipated DoD requirements. DoD and its Military Departments will not act as Design Authority for such contracts. In the event that the results of any such contract become of sufficient interest to DoD to warrant joint funding, the contract work may, upon mutual agreement, be made the subject of the Defense Development Sharing Program project.

14. *Canadian Access to United States Information:*

Subject to United States legislation and national policy, the Government of Canada will have access to information on the future requirements of DoD research and development programs and Canadian firms will have the same access to DoD research and development program information as United States firms.

15. *Supersession of Prior Arrangements:*

This Memorandum of Understanding supersedes the memoranda between CDDP and the United States Departments of the Army, and Air Force, respectively, dated July 26, 1960 and December 22, 1961, except with respect to projects already entered into thereunder.

16. *Effect and Duration:*

This Memorandum of Understanding will remain in force indefinitely, subject to modification or termination at any time by mutual agreement or to termination six months after receipt by either party of written notice of the intention of the other party to terminate it.

Charles M. Drury,
Minister of Defence Production.

Dated: November 21, 1963.

Robert S. McNamara,
Secretary of Defense.

Dated: November 16, 1963.

T-202 United Kingdom Memorandum of Understanding

Memorandum of Understanding Between the Government of the United States and the Government of the United Kingdom of Great Britain and Northern Ireland Relating to the Principles Governing Cooperation in Research and Development, Production, Procurement and Logistic Support of Defense Equipment (Short Title; Cooperation Memorandum)

Introduction

The Government of the United States of America (USG) and the Government of the United Kingdom of Great Britain and Northern Ireland (HMG). (Hereinafter referred to as the Governments),:

noting that the Governments established and have maintained understandings relating to reciprocal defense procurement since 1975; and

noting that the Governments already have an Arrangement dated May 1963 for Joint Military Development; and

are seeking to achieve greater co-operation in research, development, production, procurement and logistic support of defense equipment in order to:

—make the most cost-effective and rational use of their respective industrial, economic and technological resources to the extent permitted by national policies; and

—promote the widest possible use of standard or interoperable equipment; and

—develop and maintain an advanced technological capability for the North Atlantic Alliance, and particularly with respect to the parties to this Memorandum of Understanding.

Then, seeking to further the above aims, the Governments have sought to reach certain understandings and this Memorandum sets out the understandings in regard to the guiding principles governing mutual co-operation in defense equipment production and purchasing.

The Governments intend the understanding of this Memorandum of Understanding ("MOU") to strengthen the North Atlantic Alliance. In so doing, the Governments recognize the efforts of the Independent European Program Group (IEPG) to enhance equipment collaboration by more comprehensive and systematic arrangements among the individual member nations. They, therefore, agree that in the event of a possible conflict between understandings entered into between the IEPG and the USG, and this MOU, the parties hereto will consult with a view to amend this MOU.

The Governments will regard this MOU as being part of the arrangements, in the larger context, for co-operation between Europe and North America within the Alliance.

Section 1—Principles Governing Reciprocal Defense Purchasing

1.1. Both Governments intend to facilitate the mutual flow of the defense procurement for their armed services, aiming at a long term equitable balance in their exchanges, consistent with their national policies and taking into consideration the relative technological level of such procurement and each country's financial, industrial, economic and commercial possibilities.

1.2. This MOU is intended to cover areas in which, in the view of both Governments, bilateral co-operation could be achieved in defense equipment production and procurement. This co-operation is intended to complement the work of the Conference of National Armament Directors (CNAD), the Independent European Program Group (IEPG) and the Senior NATO Logisticians Conference (SNLC).

1.3. To facilitate these objectives the following principles will be observed by the Governments:

1.3.1. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense procurement organizations to implement the provisions of this MOU. Within 120 days of the effective date of this MOU, each government will provide to the other copies of such guidance and procedures.

1.3.2. The Governments will identify and nominate for consideration by each other, items of defense equipment believed suitable to satisfy their respective requirements. The Governments will decide between them to which items of defense equipment purchases this MOU will apply and whether the items may be procured on a Government-to-Government or Government-to-Industry basis.

1.3.3. In the interests of standardization and the effective utilization of scarce resources, each Government will, to the extent practical, adopt qualified defense items that have been developed or produced in the other country.

1.3.4. The implementing procedures for this MOU (Annex I) will incorporate the following:

(i) Consistent with national laws and regulations, offers or proposals will be evaluated without applying price differentials under 'Buy National' laws and regulations, and without applying the cost of import duties;

(ii) Full consideration will be given to all qualified sources in each other's country in accordance with the policies and criteria of the relevant purchasing office. In addition, each country will give full consideration to all applications for qualification by sources in the other country;

(iii) Offers or proposals will be required to satisfy requirements of the purchasing office including performance, quality, delivery and costs;

(iv) Consistent with national laws and regulations provision will be made for duty-free certificates and related documentation.

1.3.5. To facilitate programs set in implementation of this MOU, the Governments understand that subject to their laws, regulations, established policies and procedures and subject to privately owned proprietary rights, each Government will, so far as it is able, release to the other and to its agents information and technology necessary to implement such programs.

1.3.6. The Governments, through their appropriate representatives, will consult concerning the effective implementation of this MOU. Such consultations will be conducted on the basis of section 2 of this MOU.

1.3.7. Arrangements and procedures will, at the request of the purchasing government, be established concerning follow-on logistic support for items of defense equipment, purchased pursuant to this MOU. Both governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

Section 2—Implementation Machinery

2.1. The Governments will appoint representatives to a US–UK Defense Equipment Rationalization Committee (DERC), to discuss and review progress in implementing this MOU.

2.2. The Assistant Secretary of Defense of Acquisition and Logistics in conjunction with the Under Secretary of Defense for Research and Engineering and the Under Secretary of Defense for Policy in co-ordination, as appropriate, with other DoD offices, will be the responsible authority in the United States of America.

2.3. The Head of Defence Export Services MOD, under the policy guidance of the Secretary of State for Defence, and in consultation, as appropriate, with the Chairman and members of the MOD Equipment Policy Committee, will be the responsible authority in the United Kingdom of Great Britain and Northern Ireland.

Section 3—Industrial Participation

3.1. Implementation of this MOU will involve full industrial participation. Notwithstanding the governmental procedures to implement this MOU, it will be the basic responsibility of the industries in each country to identify and market their respective capabilities and to carry out the necessary actions to bring about industrial participation.

3.2. Each Government will be responsible for calling to the attention of its relevant industries the basic understanding or this MOU, together with appropriate guidance on its implementation.

3.3. The Governments will arrange that their respective procurement and requirements offices are made familiar with the principles and objectives of this MOU and will, consistent with their normal practice and procedures with their country's industry, assist sources in the country of the other Government to obtain information concerning proposed purchases, necessary qualification and appropriate documentation.

Section 4—Security

4.1. Any classified information or material exchanged under the terms of this MOU will be protected in accordance with the 1961 US–UK General Security Agreement, as amended, and including the Industrial Security Annex thereto.

4.2. Each Government will take all lawful steps available to it to keep information exchanged in confidence under this MOU free from disclosure under any legislative provision unless the other Government consents to such disclosure.

4.3. To assist in providing the desired protection, each Government will mark such information furnished to the other in confidence with a legend indicating the country of origin, the security classification, the conditions of release, and it unclassified the fact that the information relates to this MOU and that it is furnished in confidence.

4.4. Unclassified information provided by either Government to the other in confidence, and information produced by either government pursuant to this MOU requiring confidentiality will be safeguarded in a manner that ensures its proper protection from unauthorized disclosure. Each government will provide appropriate protection for unclassified but sensitive technical data which is at least equal to the protection provided by the originating government.

4.5. Technical Data Packages (TDPs) shall not be transferred between the two countries without the prior written permission of those owning or controlling any associated proprietary rights. Each Government will ensure that any TDPs which it may receive from the other are not used for any purpose other than for the purpose of offering or bidding on or performing prospective defense contract, without the prior written agreement of those owning or controlling proprietary rights, and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information they may contain.

4.6. The Governments will maintain full and comprehensive lists of Technical Exchange Agreements to which both are party. These Agreements will be taken into account when applications from the Government of either country including Government supported industry applications; are made for the disclosure of information relating to co-operation under the terms of the MOU.

4.7. Bearing in mind the close co-operation of the two Governments to ensure the maintenance of NATO's technological superiority over the Warsaw Pact, they confirm that in considering each co-operative project carried out under this MOU, they will pay specific attention to exercising control both bilaterally and within multi-national bodies over the transfer to proscribed countries of technologies and associated manufacturing processes involved in defense programs.

4.8. A security review of all co-operative programs carried out under this MOU will be conducted annually by Project Managers to ensure government and industry compliance with the security regulations of both governments for the protection of classified and unclassified but sensitive technology.

Section 5—Duration

5.1. This MOU including Annexes I, II, III, IV and V listed below will come into effect upon signature by the Governments and will terminate on 1 January 1995.

I. Principles Governing Implementation
II. Mutual Acceptance of Test and Evaluation
III. Reciprocal Audits of Contracts and Subcontracts
IV. Principles Governing Logistics Support of the Defense Equipment
V. Reciprocal Quality Assurance Services

5.2. If, however, either Government considers it necessary for compelling national reasons to discontinue its participation under this MOU before 1 January 1995, any such proposal will be the subject of immediate consultation with the other Government to enable the Governments fully to evaluate the consequences of such termination and, in the spirit of co-operation, to agree upon such actions as may be necessary to alleviate problems that may result from termination

5.3. It is intended that contracts entered into as a result of the co-operation fostered by the understandings in this MOU will not be terminated solely because of the termination of this MOU.

Section 6—Annexes

6.1. Further Annexes to this MOU may be negotiated by the responsible officers and approved by the appropriate authorities of each Government and will treated as an integral part thereof.

The foregoing represents the understandings reached between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland upon the matters referred to therein.

Signed in duplicate at _____ this _____ day of December 1985.

_____ _____,

For the Government of the United States.

December 30, 1985

_____ _____,

For the Government of the United Kingdom of Great Britain and Northern Ireland.

Date: December 18, 1985.

Annex I—Principles Governing Implementation

Section 1—Introduction

This Annex sets forth the procedures by which the Governments of the United States of America (USG) and United Kingdom of Great Britain and Northern Ireland (HMG) will implement the Memorandum of Understanding on co-operation in Research and Development, Production, Procurement and Logistic Support of Defense Equipment (hereinafter referred to as "the MOU").

Section 2—Major Principles

2.1. Each Government will consider for its defense requirements qualified defense items (and associated services included in a procurement contract) developed and/or produced in the other country. In addition, the responsible purchasing agencies of each Government will seek to inform themselves of the defense items which might be available from the other country to meet specific requirements.

2.2. It will be the responsibility primarily of industry representatives in each country to obtain information concerning the other country's proposed developments and purchases and to respond to requests for proposals in accordance with the prescribed procurement procedures and regulations of the purchasing country.

2.3. Each Government will, consistent with normal practice and procedures with their own country's industry, ensure that the responsible Government authorities in each country will assist sources in the other country by responding promptly to requests for appropriate information concerning:

2.3.1. Plans and programs for production and acquisition of defense items and services.

2.3.2. Requirements for the qualification of sources.

2.3.3. Specifications, quality assurance standards and other appropriate documentation.

2.4. Full consideration will be given to all qualified industrial and/or Government sources in both the US and UK, in accordance with the policies and criteria of the respective purchasing agencies. In addition, each Government will give full consideration to all applications for qualification by sources in the other country.

2.5. Offers will be required to satisfy requirements including performance, quality, delivery and cost. In preparing Invitations for Bids and Requests for Proposals, and in evaluating Offers, where applicable and consistent with national laws and regulations, full consideration will be given to potential NATO savings and/or increased NATO combat capability expected to result from the procurement of items that are standardized or interoperable with those of the Allies.

2.6. Consistent with national laws and regulations, offers of defense items developed and/or produced in the other country will be evaluated without applying price differentials under 'Buy National' laws and regulations and without applying the cost of import duty.

2.7. Consistent with national laws and regulations provision will be made for duty-free entry certificates and related documentation.

Section 3—Actions

3.1. Both Governments will review and, where considered necessary, revise policies, procedures and regulations to ensure that the principles and objectives of the MOU, which are intended to be compatible with the broad aims of NATO Rationalization, Standardization and Interoperability, are taken into account.

3.2. Recognizing that factors such as delivery date requirements, the interests of security, and the timely conduct of the contracting process must be considered, the following arrangements will be made to ensure free and full competition for the award of contracts:

3.2.1. Each Government will ensure that as a minimum the following are familiar with the principles, objectives and terms of the MOU, which are complemented by the Arrangement for Joint Military Development dated May 1963:

—Its respective defense planning, programming and procurement offices.
—Its respective research and development offices.
—Its respective agencies and industries responsible for the development and production of defense items and associated services.

3.2.2. Each Government may assist industries in its country to advise the other Government of their capabilities, and assist such industries in carrying out the supporting actions to maximize industrial participation in the implementation of the MOU.

3.2.3. Each Government will consider defense items and associated services offered by the Government or industry of the other country as candidates for their respective requirements. In meeting their procurement requirements, the Governments will, as far as practicable, ensure that the industries of each country are afforded adequate time to be able to participate in the production and procurement process.

3.2.4. Both Governments will use all reasonable endeavours to assist in negotiating licenses, royalties and technical information exchanges among their respective industries.

3.2.5. Each Government will ensure that those items and/or services excluded from consideration under the arrangements made as a result of this MOU, for reasons of protecting national requirements, such as the maintenance of a defense mobilization base, are limited to a small percentage of total annual defense procurement spending. Each country will also consult the other, in advance, about any proposed addition to the excluded list. Such defense items and/or services, together with those items and/or services that must be excluded from such consideration under the MOU because of legally imposed restrictions on acquisition from non-national sources, will be identified as soon as possible by both Governments. Lists of these items and/or services will be prepared and kept under review by both Governments.

3.2.6. To the extent feasible, both Governments will ensure that their respective action under the MOU, in working toward an equitable balance in defense trade, take into consideration the level of technology as well as the contractual value.

Section 4—Counting Procedures

4.1. The purchases and other transactions to be counted against the goals of the MOU will be identified jointly by the Governments. In principle, all defense items (and associated services included in a procurement contract) purchased by either country will be counted against the goals of the MOU as long as they meet the following criteria:

That the defense items (and associated services included in a procurement contract) are:

4.1.1. Direct purchase by the defense agencies of each Government, one from the other.

4.1.2. Purchases by the defense agencies of either Government from the industry of the country of the other Government.

4.1.3. Purchases by industry from the Government of industry of the other country, in the framework of Government defense contracts.

4.1.4. Purchases by a third country Government from either US or UK Government or the industry of the country of either Government as a direct result of the effort of the other (non-vendor) country.

4.1.5. Purchases resulting from projects jointly funded by both countries, to be credited in proportion to each country's financial contribution to the project, and to work completed in each country. The applicability of such purchases to the MOU will be agreed between MOD/DoD in each case.

4.1.6. License fees, royalties and other associated income resulting from orders placed by industry or Government of either country with a licensed company in the other country.

Section 5—Administration

5.1 Each Government will designate points of contact within their respective Ministry of Defence/Department of Defense, as well as within other relevant departments and agencies, for the purpose of carrying out those actions necessary to implement the MOU.

5.2. Each Government will designate representatives for its country to the Defense Equipment Rationalization Committee which will meet at agreed intervals to review progress in implementing the MOU. The representatives will discuss development, production and procurement needs of each country and the likely area of co-operation; agree to the basis of, and keep under review, the financial statement referred to below; and consider any other matters relevant to the MOU. The agenda will be agreed upon and made final 30 days prior to the date set for the meeting.

5.3. A financial statement ("Annual US/UK Statement") of the current balance, and long term trends, of purchases between the two countries will be prepared on a basis to be mutually agreed. The Statements will be reviewed during the meetings referred to in 5.2 above. Both countries will submit their proposed financial statement to one another in final form 30 days prior to the meeting.

Annex II—Mutual Acceptance of Test and Evaluation

Introduction

1. In furtherance of the principles governing reciprocal defense purchasing, as defined in the subject Memorandum of Understanding (MOU) and in accordance with the Implementing Procedures for MOU (Annex I thereto), representatives of the US Department of the Defense (DoD) and the UK Ministry of Defense (MOD) have engaged in discussions and presentations on Test and Evaluation (T&E) in Defense procurement. The discussions were aimed at facilitating the implementation of the MOU by:

a. Bringing about a thorough, mutual understanding of the two governments' policies, organizations and procedures for T&E.

b. Identifying the main differences between the two governments' organizations and procedures for T&E.

c. Determining the actions required to overcome any difficulties arising from the identified differences, in order to assure complete mutual acceptability of T&E procedures.

2. The purpose of this Annex, is to record the concurrence reached by the two governments concerning the mutual acceptability of their respective T&E procedures for those systems that are developed in one country and are candidates for procurement by the other. Two categories of Defense systems are considered:

a. Those still under development.

b. Those for which development is complete.

Points of Concurrence

3. The objective is to avoid redundant testing. Neither government will duplicate tests where acceptable data is available from the other government's official test program.

4. Existing T&E organizations and procedures of both governments are adequate to satisfy the purposes of the MOU. Differences are not such as to justify changes being made to the present procedures of either government.

5. To achieve a more widespread understanding of the two governments' T&E organizations and procedures in the US DoD, in the UK MOD, and in the Industries of both countries, the two governments will produce guidance information necessary to meet the purpose of this Annex, including:

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a. The relationship between their respective T&E organizations and procedures.

b. A US DoD-UK MOD communications matrix for initial contacts.

8. The focal point for all T&E aspects of procurement relating to development testing will be the US Program Manager or the UK Project Manager for the equipment being offered. For operational testing aspects, it will be the applicable US Services independent operational test agency and in the UK, the Project Manager.

Mutual Acceptance Procedures

7. All proposals for consideration of equipment of one country for procurement by the other will require a review of T&E data reflecting test conditions, test results and success criteria on a case-by-case basis. The following procedures will therefore be observed in all procurement considerations:

a. To facilitate the exchange of T&E data, a common documentation format will be adopted. This format will be similar to the US Navy's Test and Evaluation Master Plan (TEMP) as outlined in OPNAV Instruction 3960.10.

b. For systems under development, the offering government will invite participation by the other early in the T&E program. Should the other government not choose to participate in the testing, the offering Government, subject to its laws, established policies, procedures and regulations, and subject to privately owned proprietary rights, will arrange for the release to the other of information necessary for the purpose of such T&E.

c. For systems for which development is complete, the offering government will ensure, subject to its laws, established policies, procedures and regulations, and subject to privately owned proprietary rights, that all pertinent T&E data is made available to the other.

d. Should one government adjudge the T&E which has been completed or planned by the other to be inadequate for its procurement procedures, the two governments will decide by mutual agreement on any additional testing to be carried out. Such additional testing may be conducted by either country as mutually agreed. In addition, before such additional testing commences, concurrence will be reached by the two governments regarding payment of costs, allocation of resources, scheduling and the evaluation criteria which will apply.

e. When either government releases T&E data to the other, it is understood that, in the absence of any specific agreement to the contrary, such data is made available in confidence to the receiving government for the purpose of information and evaluation within such government and for no other use.

f. Each government will make data transmitted to the other with a legend that will indicate the country of origin and the conditions of release, that the data relates to this MOU, and that it is furnished in confidence. Where appropriate the security classification will be shown. Corresponding arrangements will be made for records of data transmitted orally.

g. Each government will make its best effort to protect data submitted in confidence by the other government. In the event of any request under domestic legislation to make available to the public such data furnished by the other government, the recipient government will take all legal steps available to it to withhold the data from disclosure.

8. In any case where agreement cannot be reached between the focal points or their Service superiors concerning the acceptability of T&E, or when it is felt that adequate data and information on T&E have not been provided, the matter will be referred to the appropriate higher authority. For the US this will be the Director Defense Test and Evaluation and for the UK this will be the appropriate Systems Controller.

Annex III—Reciprocal Audits and Contracts and Subcontracts

I. General

The US/UK Memorandum of Understanding on Co-operation Arrangements envisages the need for detailed implementing procedures to be decided upon. This Annex deals with reciprocity in the handling of auditing activity related to contracts and sub-contracts falling within the scope of the MOU.

The participating Governments recognize the mutual benefit of undertaking reciprocally for each other in their respective countries price proposal audits and contract cost audits in connection with the acquisition of defense equipment. As used in this Annex the term "audit" may include, but is not limited to, the following services including Field Pricing Support as appropriate to the contract or sub-contract concerned:

—Survey of contractor's capability;
—Pre-contract audit;
—Audit during contract performance;
—Audit after contract performance, e.g. termination, before payment of final price in respect of fixed price contract or cost type contract;
—Verification of compliance with requirements set forth by the purchasing government for accounting of contract costs or pricing;
—Verification after contract award of the currency, accuracy and completeness of data supporting a contractor's price proposal.

II. Purpose and Scope of Audits

The purpose of these audits will be to examine proposed or incurred costs and supporting date in sufficient detail to enable the cognizant contracting officer to determine their acceptability during negotiations with the relevant contractor or sub-contractor.

Audits peformed under the provisions of this Annex will cover all elements of the cost and identify profit amounts. The auditors will use to the fullest extent possible previously available data pertinent to the intended or actual contract or sub-contract.

III. Audit Agencies

The audits will be performed pursuant to the provisions of this Annex by the following agencies:

—For audits in the United States when requested by the United Kingdom Government, the Defense Contract Audit Agency (DCAA).
—For audits in the United Kingdom when requested by the United States Government, the Accountancy Services (AS (PE)) of the Ministry of Defence.

IV. Audit Request Procedures

Requests for audits will be transmitted as follows:

Requests by the United Kingdom Government:
—Cognizant Procuring Contracting Office for Acquisitions under U.S. Foreign Military Sales (FMS) procedures.
—The Director of Defense Contract Audit Agency, Cameron Station, Alexandria, Virginia 22314, for all other acquisitions.

Requests by the United States Government:
—Head of Contracts Policy, Procurement Executive, Ministry of Defence.

These requests will be transmitted with all the supporting documents and required format of the audit report.

V. Operating Rules

Before any relevant contract action commences, representatives of each Government will consult with one another as necessary to define the goals and the scope of the audits required.

The audits will pay regard to the Government accounting conventions applicable to the supplier's business and be performed in accordance with the terms of the contract or subcontract as required by the law and policy of the purchasing Government.

Each Government will accept auditing services performed on its behalf by the other as if it had performed those services itself as long as these reflect the particular or specific interest of the purchasing authority.

Each Government will make available to the other data pertinent to the relevant contract or sub-contract, including that associated with disclosed accounting practices, in support of the contracting officer's negotiation activity.

Applicable contracts or sub-contracts will invoke the provisions of this Annex.

Each audit report will respond to the question contained in the request for audit and will detail any problems encountered during the audit. The report should enable the contracting officer to evaluate independently the acceptability of the price proposals or costs.

Upon request of the contracting officer, additional information, supporting data, and explanations or clarifications will be provided to him or to his duly authorized representatives. The contracting officer will have the final authority to determine when adequate audit information has been provided for negotiation purposes.

Each Government will endeavor that in all possible cases its agencies will perform audits under the provisions of this Annex. If due to extraordinary circumstances, a Government is unable to perform an audit, or to perform it in a reasonable time, the contracting country's agencies would have a right to perform the audit themselves.

VI. Protection of Information

Each audit report will be prepared by the audit agency and submitted in confidence. No

report, or data therein will be disclosed to third parties unless the cognizant authorities of both parties and the audited supplier deem this to be appropriate. However, the contracting officer will normally release the final results of audits of sub-contractors to higher tier contractors for negotiation purposes. Specific information or extracts from the report may only be given to higher tier contractors in accordance with any directions or qualifications contained in the audit report.

Data obtained through the implementation of this Annex will receive the same protection against unauthorized disclosure as such data would normally receive under the laws and rules of the country which receives it.

VII. National Security

Access to classified information involving the national security of each country will be governed by the provisions of the MOU.

Annex IV—Concerning the Principles Governing Logistic Support of the Defense Equipment

In implementing Section I, para 1.2 the MOU, the two Parties shall be governed by the following:

1. When developing or procuring equipment, both Parties will agree upon the basis for joint follow-on logistic support in areas such as configuration control, interchangeability of spare parts/components, maintenance, conversion, storage, and spare parts provisioning, etc.

2. Arrangements and procedures will be established concerning follow-on logistics support and other forms of logistic cooperation, eg, joint utilization of facilities.

3. In the contracting procedure for logistic support, paragraph 1.3.7. of Section I of the MOU shall apply.

4. Both parties will issue directives and guidelines to their respective armament and logistics agencies to achieve their described goals of this MOU.

Annex V—Reciprocal Quality Assurance Services

1. *Scope.* This Annex sets forth the terms under which the participating Governments shall provide one another with quality assurance services in support of Defense contracts and subcontracts contemplated or executed under the Memorandum of Understanding (MOU).

2. *Application.* Quality assurance services will be provided under this Annex free-of-charge, for all contracts, sub-contracts and FMS Letters of Offer and Acceptance entered into on or after the date of the last signature on this MOU.

3. Quality Assurance services will be provided free of charge in accordance with the procedures of STANAG 4107, not limited by the Reservations of the US and UK authorities presently entered in the STANAG.

4. *Designated Focal Points.*

a. Requests for Government Quality Assurance (GQA) in UK shall be directed to: DGDQA, QA/FP2A, Ministry of Defence (PE), Building 2, Royal Arsenal (West), Woolwich SE18 6ST.

b. Requests for Government Quality Assurance in US shall be directed to: Department of Defense Central Control Point, DCASR New York, 201 Varrick Street, New York, NY 10014–4811.

5. *Additional Information.* The requests for GQA shall be on the forms described in Annex A to STANAG 4107, with the following information:

a. In Block 7, the type of equipment which the material or service pertains to, and the Armed Force (Army, Navy, or Air Force) that employees the equipment.

b. In Block 8, the desired services, if less than comprehensive support is needed.

c. In Block 10, address for correspondence if different from Focal Point.

6. *Protection of Information.* Data obtained through implementation of this Annex shall receive the same protection against unauthorized disclosure as such data would normally received under the laws and rules of the country which possesses it.

7. *Termination.* This Annex may be terminated in writing by either participant, to become effective after not less than one year from the date of notification.

T–203 Norway Memorandum of Understanding

Memorandum of Understanding Between the Government of Norway and the Government of the United States of America Concerning the Principles Governing Mutuol Cooperotion in the Research ond Development, Production ond Procurement of Defense Equipment

Preamble

The Government of the United States of America and the Government of Norway hereinafter referred to as the Governments:

• Intending to increase their respective defense capabilities through more efficient cooperation in the field of research and development, production and procurement of defense equipment, in order to:

—Make the most cost-effective and rational use of the funds allocated to defense to the extent permitted by their national policies; and

—Promote the widest possible use of standard or interoperable equipment; and

—Develop and maintain an advanced technological capability for the North Atlantic Alliance, and particularly with respect to the parties to this Agreement;

• Noting that no general agreement covers harmonization of mutual procurements, although specific offset agreements have existed between them in the past; and

• Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment have entered into this Memorandum of Understanding in order to achieve the above alms.

This Memorandum of Understanding (MOU) sets out the guiding principles government mutual cooperation in defense equipment research and development, production and procurement.

The Government of the United States of America and the Government of Norway conclude this Memorandum of Understanding to strengthen the North Atlantic Alliance. In so doing, the Governments are fully aware that the Independent European Program Group (IEPG) wants to enhance equipment collaboration by more comprehensive and systematic arrangements among the individual member nations.

The two Governments agree that this Memorandum of Understanding should be incorporated in the large context of the cooperation between Europe and North America within the Alliance.

All agreements or the relevant provisions of such agreements between the Independent European Program Group (IEPG) and the United States of America shall take precedence over this Memorandum of Understanding, assuming Norway is a party to such agreements.

Article I—Principles Governing Reciprocal Defense Cooperation

1. Both Governments intend to achieve and maintain a long-term equitable balance in their exchanges, in terms of the value of contracts and technological levels, to the maximum practicable extent consistent with their national policies. Equitable balance, in principle, shall be achieved when the two Governments have exhausted all means at their disposal to maximize defense R&D cooperation and reciprocal procurement to the extent permitted by the size and nature of each country's technological and industrial base.

2. This agreement is intended to cover areas in which possible bilateral cooperation could be achieved in conventional defense equipment research and development, production and procurement, complementing the work of the Conference of National Armament Directors (CNAD) and the Independent European Program Group (IEPG).

3. The two Governments will, consistent with the laws, regulations, and practices having the force of law of each Government, give full consideration to all requests for cooperative R&D, to all requests for production and procurement which are intended to maximize Alliance standardization and/or interoperability.

4. The two Governments shall, in the spirit of cooperation, mutually determine the counting procedures that will apply to all items under this agreement (and associated services included in a contract) purchased either directly by the two Governments or through their relevant industries.

5. In the interests of standardization and the effective utilization of scarce resources, the two Governments shall, if possible, select qualified defense items that have been developed and produced in the other country to meet their requirements in accordance with the procedures of paragraph 9 below.

6. Each Government may propose to the other any particular item of equipment that might be suitable for use by the other Government. Indicative lists are provided in the annexes.

7. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense procurement organizations to facilitate achievement of the aims described in paragraph 5.

8. Barriers to procurement or coproduction of an item of defense equipment that has been developed in the other country shall be removed, insofar as laws and regulations permit. This includes the removal of customs duties and other discriminatory levies as well as the waiver of protectionist provisions.

9. Normal competitive contracting procedures shall be used in acquiring items of conventional defense equipment developed in each other's country for use by either country's defense establishment.

10. Full consideration will be given to all qualified industrial and/or Government sources in each other's country consistent with the national procurement policy and criteria. It is therefore understood that items offered shall satisfy requirements for performance, quality, delivery and cost.

11. Both Governments will review items submitted as candidates for respective requirements. They will indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility and submit a bid or proposal.

12. Each Government will ensure that the technical data packages (TDPs) made available under this MOU are not used for any purpose other than for the purpose of bidding on, and performing, a prospective defense contract without the prior agreement with those owning or controlling proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDPs be transferred to any third country or any other transferee without the prior written consent of the originating Government.

13. Both Governments will use their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries.

14. Arrangements and procedures will be established concerning follow-on logistic support for items of defense equipment covered by this Memorandum of Understanding. Both Governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

Article II—Implementing Procedures

1. Representatives of the two Governments will be appointed to determine in detail the procedures for implementing this Memorandum of Understanding. Terms of reference will be proposed for a Norwegian-American Committee for Reciprocal Procurement, including rules governing its work. The implementing procedures under this Memorandum of Understanding shall be an integral part thereof.

2. The Under Secretary of Defense for Research and Engineering, in coordination with the Assistant Secretary of Defense for International Security Affairs, the Assistant Secretary of Defense for Manpower, Reserve Affairs and Logistics, the Director, Defense Security Assistance Agency, and other appropriate Department of Defense officials, will be responsible authority in the United States Government for the Development of implementing procedures under this Memorandum of Understanding.

3. The Director General of Armaments in the Ministry of Defense will be the responsible authority of the Government of Norway for any matter relating to the procedures for implementing this Memorandum of Understanding.

Article III—Industry Participation

1. Each Government will be responsible for calling to the attention of the relevant industries within its country the basic understanding of this Memorandum of Understanding, together with appropriate implementing guidance. Both Governments will take all necessary steps so that the industries comply with the regulations pertaining to security and to safeguarding classified information.

2. Implementation of this Memorandum of Understanding will involve full industrial participation. Accordingly, the Governments will arrange to inform their respective procurement and requirements offices concerning the principles and objectives of this Memorandum of Understanding. However, primary responsibility for finding business opportunities in areas of research and development and production shall rest with the industrial participants of each country.

Article IV—Security

1. To the extent that any items, plans, specifications or information furnished in connection with the specific implementation of this Memorandum of Understanding are classified by either Government for security purposes, the other Government shall maintain a similar classification and employ measures necessary to preserve such security equivalent to those measures employed by the classifying Government throughout the period during which the classifying Government may maintain such classification.

2. The operating procedures for the implementation of the General Security of Information Agreement dated 26 February 1970 between the United States Department of Defense and the Norwegian Ministry of Defense apply to activities under this Memorandum of Understanding.

Article V—Duration

1. This agreement will remain in effect for a ten-year period following its signing, unless otherwise agreed by both Governments.

2. If, however, either Government considers it necessary for compelling national reasons to discontinue its participation under this Memorandum of Understanding before the end of the ten-year period, written notification of its intention will be given to the other Government six months in advance of the effective date of discontinuance. Such notification of intent would be a matter of immediate consultation with the other Government to enable the Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to take such actions as necessary to alleviate problems that may result from the termination. In this connection, although the Memorandum of Understanding may be terminated by the parties, any contract entered into consistent with the terms of this agreement shall continue in effect, unless the contract is terminated in accordance with its own terms.

Article VI—Administration

1. Each Government will designate points of contact at the Ministry of Defense level and in each purchasing service/agency.

2. Government representatives will meet as agreed or at the request of either Government to review progress in implementing the Memorandum of Understanding. They will discuss development, production and procurement needs of each country and the likely areas of cooperation; agree to the basis of, and keep under review, the financial statement referred to below; and consider any other matters relevant to the Memorandum of Understanding.

3. An annual United States/Norway Statement of the current balance, and long-term trends, of R&D cooperation and purchases between the two countries will be prepared on a basis to be mutually agreed. Such statements will take account of any United States-Norway offset agreements in force when the Memorandum of Understanding was signed, and will be reviewed during the meetings referred to in paragraph 2 above.

Article VII—Annexes

Annexes negotiated by the responsible offices and approved by the appropriate Government authorities will be incorporated in this Memorandum of Understanding and made an integral part thereof.

Article VIII—Implementation

1. The arrangements contained in this Memorandum of Understanding represent the understanding reached between the Government of the United States of America and the Government of Norway upon the matters referred to herein. Each Government must mutually agree to any amendment of this Memorandum of Understanding.

2. This agreement, in two original texts in the Norwegian and English languages, both texts being equally authentic, will come into effect at the date signed by both Governments.

For the Government of Norway, the Minister of Defense.

Rolf Hansen.

For the United States Government, the Secretary of Defense.

Date May 19, 1978.

Harold Brown.

Date May 19, 1978.

Annex 1

I. Introduction

On 19 May 1978 the Governments of the United States (US) and Norway signed a Memorandum of Understanding (MOU) relating to "The Principles Governing Cooperation in R&D, Production and Procurement of Defense Equipment." The purpose of this document is to set forth the agreed implementing procedures for carrying out the MOU.

II. Major Principles

A. The US Department of Defense (DoD) and the Ministry of Defence of Norway (MOD) will each consider for their defense requirements qualified defense items (and associated services included in a procurement contract) developed or produced in the other country. (See also Paragraph III of this Annex). MOD and DoD will also identify to one another, as soon as possible, those practices of their respective countries having the force of law that may potentially restrict the fulfillment of the Memorandum of Understanding and this Annex.

B. It will be the responsibility of government and/or industry representatives in each country to obtain information concerning the other country's proposed developments and purchases and to respond to requests for proposals. However, the responsible governmental purchasing agencies in each country will assist sources in the other country to obtain information concerning proposed purchases, necessary qualifications and appropriate documentation.

III. Action

In implementing the MOU, DoD and MOD will review and, where considered necessary revise policies, procedures and regulations to ensure that the principles and objectives of this MOU, which are intended to be compatible with the broad aims of NATO Rationalization/Standardization, are taken into account. The DoD and the MOD agree that having taken the measures listed below, they will have fulfilled their obligation under Paragraph 1, Article I, of the MOU, to exhaust all means at their disposal to maximize defense R&D cooperation and reciprocal procurement. These measures will be utilized in a reasonable manner recognizing among other factors, delivery date requirements for supplies, the interest of security and the timely conduct of the procurement process, and requirements attendant to ensuring free and full competition for the award of contracts.

A. Ensure that their respective requirements offices are familar with the principles and objectives of this MOU.

B. Ensure that their respective research and development offices are familiar with the principles and objectives of this MOU.

C. Ensure that their respective procurement offices are familiar with the principles and objectives of this MOU.

D. Ensure wide dissemination of the basic understanding of this MOU to the respective defense industries.

E. Ensure that, consistently with national laws and regulations, offers of defense items produced in the other country will be evaluated without applying to such offers, either price differentials under buy-national laws and regulations or the cost of import duties. Provisions will be made for duty-free entry certificates and related documentation.

F. Assist industries in their respective countries to identify and advise the other government of their capabilities and assist such industries in carrying out the supporting actions to maximize industrial participation.

G. Review defense items submitted as candidates for respective requirements. Identify requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to participate in the development or production procurement process.

H. Make best efforts to assist in negotiating licenses, royalties, and technical information exchanges with their respective industries.

I. Ensure that those items excluded from consideration under this MOU for reasons of protecting National requirements such as the maintenance of a defense mobilization base are limited to a small percentage of total annual defense procurement spending. It is intended that such defense items, as well as those items which would not be qualified as a defense item under this MOU because of legally imposed restrictions on procurement from non-national sources, should be identified as soon as possible in lists drawn up by MOD and OSD for their respective countries, and that the position should be kept under review at this level.

J. Ensure that the balance of reciprocal purchasing within the areas of this MOU takes into consideration the levels of technology involved, as well as the contractual value.

K. Both DoD and MOD will from time to time arrange visits by relevant personnel to the other country in order to actively explore possibilities for R&D cooperation and procurement.

IV. Counting Procedures

The purchases to be counted against the goals of the MOU will be identified jointly by DoD and MOD. In principle: (1) All items procured by the overseas Base Exchanges and Commissary Operations for resale overseas shall be counted and (2) all defense items and associated services included in a procurement contract) purchased by DoD and MOD from the other country will be counted against the goals of the MOU as long as such purchases meet the following criteria:

A. Direct purchases by the MOD or DoD, including their respective agencies, from one another.

B. Direct purchases by either the MOD or DoD from the industry of the other country.

C. Purchases by industry from the government or industry of the other country in aid of government defense contracts.

D. Purchases by a third country government from the governments of the United States or of Norway or from industries of the two countries as a direct result of efforts of the other (non-supplying) country.

E. Purchases resulting from common funded defense projects to which the United States and/or Norway are contributors, to be credited in proportion to each country's financial contribution to the project, and to work carried out in each country. The extent to which such purchases will be counted against the goals of the MOU will be agreed between MOD and DoD in each case.

F. License fees, royalties and other associated income resulting from orders placed by industry and/or DoD or MOD with a licensed company in the other country.

V. Administration

A. Each country will designate points of contact at the Ministry of Defence level and in each purchasing service/agency.

B. Country representatives will meet at agreed intervals to review progress in implementing the MOU. They will discuss development, production and procurement needs of each country and the likely areas of cooperation; agrees to the basis of, and keep under review, the financial statement referred to below; and consider any other matters relevant to the MOU.

C. An annual United States/Norway Statement of the current balance and long-term trends, of purchases between the two countries will be prepared on a basis to be mutually agreed. Such statement will take account of any United States-Norway Offset agreements in force when the MOU was signed, and will be reviewed during the meetings referred to in B. above.

D. Quality Assurance procedures outlined in STANAG 4107 and 4108 will apply unless other provisions are mutually agreed to on any specific contract. Reimbursement for services provided shall be afforded in accordance with the National laws and regulations of each country.

United States Government.

For the Government of Norway.

T-204 Netherlands Memorandum of Understanding

Memorandum of Understanding Between the Government of the Kingdom of the Netherlands and the Government of the United States of America Concerning the Principles Governing Mutual Cooperation in the Research and Development, Production and Procurement of Defense Equipment

Preamble

The Government of the United States of America and the Government of the Kingdom of the Netherlands, duly represented by their Ministers of Defense:

Intending to increase their respective defense capabilities through more efficient cooperation in the fields of research and development, production and procurement in order to:

—Make the most cost-effective and rational use of the resources available for defense,

—Ensure the widest possible use of standard or interoperable equipment,

—Develop and maintain an advanced industrial and technological capability for the North Atlantic Alliance, and particularly with respect to the parties to this Memorandum of Understanding (MOU), and

Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment, and

Recalling that they had agreed, as members of the Alliance, to maximum cooperation in procurement as set forth in Annex A to NATO Document C-M(73)51 (revised), dated 20 August 1973,

Have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding sets out the guiding principles governing mutual cooperation in research and development, production and procurement of conventional defense equipment.

The two Governments conclude this MOU to strengthen the North Atlantic Alliance. In so doing, the Governments are fully aware

that the Independent Europe Program Group (IEPG) wants to enhance equipment collaboration by more comprehensive and systematic arrangements. They therefore agree that in the event of a possible conflict between agreements entered into between the IEPG and the Government of the United States, and this MOU, the parties hereto will consult with a view to amending this MOU.

The two Governments further agree that this MOU should be viewed in the larger context of the cooperation between Europe and North America within the Alliance and that this cooperation will be carried out pursuant to the Mutual Defense Assistance Agreement between the Government of the United States of America and the Government of the Kingdom of the Netherlands, signed 27 January 1950.

Article I—Principles Governing Reciprocal Defense Cooperation

1. Both Governments intend to facilitate the mutual flow of defense procurement, taking into consideration relative technological levels of such procurement, and consistent with their national policies. This facilitation shall be sought through the provision of opportunities to compete for procurements of defense equipment and services as well as through the coproduction of defense equipment and defense R&D cooperation.

2. This MOU is intended to cover areas in which possible bilateral cooperation could be achieved in research and development, production and procurement of conventional defense equipment, complementing the work of the Conference of National Armament Directors (CNAD) and the Independent European Program Group (IEPG).

3. The two Governments will, consistent with their relevant laws and regulations, give the fullest consideration to all requests for cooperative R&D, and to all requests for production and procurement which are intended to enhance standardization and/or interoperability within the Alliance.

4. In the interests of standardization and the effective utilization of scarce resources, the two Governments shall, to the extent possible, adopt qualified defense items that have been developed or produced in the other country to meet their requirements. Defense items or services are those items or services which may be procured utilizing appropriated funds of the U.S. Department of Defense or budgeted funds of the Netherlands Ministry of Defense.

5. The two Governments shall mutually determine the counting procedures to be laid down in an Annex to this MOU that will apply to all defense items and defense services purchased by them directly or through their relevant industries under this MOU.

6. Each Government shall from time to time notify the other Government of defense items that may not be acquired by the notifying Government from other than domestic sources, as well as those defense items that may be particularly suitable for acquisition by the other Government.

7. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense acquisition organization to facilitate achievement of the aims of this MOU.

8. Competitive contracting procedures shall normally be used in acquiring items of defense equipment developed or produced in each other's country for use by either country's defense establishment.

9. The detailed implementing procedures, to be agreed, will, consistent with and to the extent permitted by national laws and regulations, incorporate the following:

a. Offers or proposals will be evaluated without applying price differentials under buy national laws and regulations and without applying the costs of import duties;

b. Full consideration will be given to all qualified industrial and/or governmental resources in each other's country;

c. Offers or proposals will be required to satisfy requirements of the purchasing Government for performance, quality, delivery and costs.

10. Both Governments will review items submitted as candidates for respective requirements. They will indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility and submit a bid for proposal.

11. Each Government will ensure that the technical data packages (TDP's) made available under this MOU are not used for any purpose other than for the purpose of bidding on, and performing, a prospective defense contract without the prior agreement of those owning or controlling proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDP's be transferred to any third country or any other transferee without the prior written consent of the originating Government.

12. Both Governments will use their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries or other owners of such rights.

13. Arrangements and procedures will, at the request of the purchasing government, be established concerning follow-on logistic support for items of defense equipment, purchased pursuant to this MOU. Both Governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

Article II—Implementing Procedures

1. Representatives of the two Governments will be appointed to determine in detail the procedures for implementing this MOU and the terms of reference for a Netherlands-U.S. Committee for Procurement Cooperation.

2. The Under Secretary of Defense for Research and Engineering, in cooperation with the Assistant Secretary of Defense for International Security Affairs, the Assistant Secretary of Defense for Manpower, Reserve Affairs and Logistics, the Director, Defense Security Assistance Agency, and other appropriate Department of Defense officials, will be the responsible authority in the United States Government for the development of implementating procedures under this MOU.

3. The Director General for Materiel in the Ministry of Defense, in cooperation with other appropriate government authorities, will be the responsible authority of the Government of the Netherlands for the development of the implementing procedures under this MOU.

Article III—Industry Participation

1. Each Government will be responsible for calling to the attention of the relevant industries within its territory the basic understanding of this MOU, together with appropriate implementing guidance. Both Governments will take all necessary steps so that the industries comply with the regulations pertaining to security and to safeguarding classified information.

2. Implementation of this MOU will involve full industrial participation. Accordingly, the Governments will arrange to inform their respective procurement and requirements offices concerning the principles and objectives of this MOU. However, primary responsibility for finding business opportunities in areas of research and development and production shall rest with the industries in each nation.

Article IV—Security

To the extent that any items, plans, specifications or information furnished in connection with the specific implementation of this MOU are classified by either Government for security purposes, the other Government shall maintain a similar classification and employ all measures necessary to preserve such security equivalent to those measures employed by the classifying Government throughout the period during which the classifying Government may maintain such classifications.

Article V—Administration

1. The Netherlands-U.S. Committee for Procurement Cooperation, referred to in Article II above, will meet as agreed or at the request of either Government to review progress in implementing the MOU. They will discuss research and development, production and procurement needs of each nation and the likely areas of cooperation; agree to the basis of, and keep under review, the financial statement referred to below; and consider any other matters relevant to the MOU.

2. Each Government will designate points of contact at the Ministry of Defense level and in each purchasing service/agency under the Ministries of Defense.

3. An annual United States-Netherlands statement of the current balance, and long-term trends, of R&D cooperation and purchases between the two nations will be prepared on a basis to be mutually agreed. Such statement will take account of United States-Netherlands purchases of defense equipment and services and related offset agreements effected in the years from 1973 onwards and will be periodically reviewed.

Article VI—Annexes

Annexes negotiated by the responsible officials and approved by the appropriate Government authorities will be incorporated in this MOU.

Article VII—Duration

1. This MOU will remain in effect for a ten-year period and will be extended for successive five-year periods, unless the Governments mutually decide otherwise.

2. If, however, either Government considers it necessary for compelling national reasons to terminate its participation under this MOU before the end of the ten-year period, or any extension thereof, written notification of its intention will be given to the other Government six months in advance of the effective date of termination. Such notification of intent shall become a matter of immediate consultation with the other Government to enable the Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to take such actions as necessary to alleviate problems that may result from the termination. In this connection, although the MOU may be terminated by the Parties, and contract entered into consistent with the terms of this MOU shall continue in effect, unless the contract is terminated in accordance with its own terms.

3. The Parties hereto agree that, for the purposes of this MOU, references to the Kingdom of the Netherlands shall apply only to its territory in Europe.

Article VIII—Implementation

This MOU will come into effect on the date of the last signature.

For the Government of the Kingdom of the Netherlands.

Willem Scholten,

The Minister of Defense.

Dated: August 24, 1978.

For the Government of the United States of America.

Harold Brown,

The Secretary of Defense.

Dated: July 25, 1978.

Annex I—Principles Governing Implementation

1. Introduction

On 24 August 1978, the Governments of the United States and the Kingdom of the Netherlands signed a Memorandum of Understanding (MoU) relating to the principles governing mutual cooperation in research and development, production and procurement of defense equipment. This document sets forth the agreed implementing procedures for carrying out the MOU.

2. Major Principles

A. The U.S. Department of Defense (DoD) and the Ministry of Defense of the Netherlands (MoD) will consider for their defense requirements qualified defense items and services developed or produced in the other country.

B. It will be the responsibility of government and/or industry representatives in each country to acquire information concerning the other country's proposed research, developments, and purchases and to respond to requests for proposals in accordance with the prescribed procurement procedures and regulations. However, the responsible government agencies in each country will assist sources in the other country to obtain information concerning, intended research and development, proposed purchases, necessary qualifications and appropriate documentation.

3. Action

DoD and MoD will review and, where considered necessary, revise policies, procedures and regulations to ensure that the principles and objectives of this MOU, which are intended to be compatible with the broad aims of NATO Rationalization/ Standardization, are taken into account. DoD and MoD agree that the following measures shall be taken, recognizing that among other factors, delivery date requirements for supplies, the interest of security and the timely conduct of the procurement process, are considerations related to insured free and full competition for the award of contracts:

A. Ensure that their respective requirements offices are familiar with the principles and objectives of this MoU.

B. Ensure that their respective research and development offices and institutes are familiar with the principles and objectives of this MoU.

C. Ensure that their respective procurement offices are familiar with the principles and objectives of this MoU.

D. Ensure wide dissemination of the basic understanding of this MoU to their respective industries producing and/or developing defense items and/or services.

E. Ensure that, consistent with national laws and regulations, offers of defense items produced in the other country will be evaluated without applying to such offers, either price differentials under buy-national laws and regulations, or the cost of import duties. Full consideration will be given to all qualified industrial and/or governmental sources in each other's country. Provisions will be made for duty-free entry certificates and related documentation to the extent that existing laws and regulation permit.

F. Assist industries in their respective countries to identify and advise the other government of their production capability and assist such industries in carrying out the supporting actions to maximize industrial participation.

G. Review defense items and requests for services submitted by the other country as candidates for respective requirements. Identify requirements and proposed purchases to the other country in a timely fashion to ensure that the industries of such country are afforded adequate time to be able to participate in the research and development production and procurement processes.

H. Use best efforts to assist in negotiating licenses, royalties, and technical information exchanges among their respective industries, and research and development institutes.

I. Ensure that those items and services excluded from consideration under this MoU for reasons of protecting national requirements, such as the maintenance of a defense mobilization base, are limited to a small percentage of total annual defense procurement spending. It is intended that such defense items and services, as well as those items and services that must be excluded from consideration under this MoU because of legally imposed restrictions on procurement from non-national sources, be identified as soon as possible by the MoD and the DoD, and that such defense items and services be kept under review at this level.

J. Insure that the balance of reciprocal purchases takes into consideration the levels of technology involved, as well as the monetary value of purchase hereunder.

k. DoD and MoD will from time to time arrange visits in order to actively explore possibilities for cooperation on research and development, procurement, and logistical support.

4. Counting Procedures

The following purchases, to be identified jointly by DoD and MoD will be included in the counting procedures:

A. Purchases of items and services funded from appropriate funds of the U.S. Department of Defense or budgeted funds of the Netherlands Ministry of Defense and which, either/are:

(1) Directly purchased by the MoD or DoD from one another; or

(2) Directly purchased by the MoD or DoD from the industry of the other country; or

(3) Purchased by the industry of one country from the Government or industry of the other country; or

(4) Purchased as a result of jointly funded defense projects to which the United States and the Netherlands are the only contributors to be credited in proportion to each other country's financial contributions to the project, and to work carried out in each country. The extent to which such purchases will be counted against the goals of the MoU will be agreed upon between MoD and DoD in each case;

(5) License fees, royalties and other associated income, when separately contracted, by industry and/or DoD or MoD with a licensor in the country.

B. Purchases by the MoD or DoD from the industry of the other country, on half of other governmental departments and agencies.

C. Purchases by a third country government from the MoD or DoD or from industries of these two countries as direct result of the efforts of the government of the other country.

5. Administration

A. Each government will designate points of contact (procurement and logistics) at the Ministry of Defense level and in each purchasing service/agency and major acquisition activity.

B. Quality Assurance procedures outlined in STANAG 4107 and 4108 (subject to the USG reserve concerning reimbursement) will apply, unless other provisions are mutually agreed to on any specific contract. Reimbursement of services provided shall be afforded in accordance with the national laws and regulations of each country.

C. The terms of reference of the Netherlands/United States Committee of Procurement Cooperation is contained in Annex III.

For the Government of the United States of America.

Dr. William J. Perry.

Dated: December 22, 1978.

For the Government of the Netherlands.

Lt. General Hensen.

Dated: December 22, 1978.

(Appendices to Annex 1 not included.)

Annex II—Principles Governing Logistic Support of Common Equipment

In implementing Article I, para 13, of the MoU, the two Parties shall be governed by the following:

1. When developing or procuring defense equipment, both Parties will agree upon the basis for joint follow-on logistic support in areas such as configuration control, interchangeability of spare parts/components, maintenance, conversion, storage, and spare parts provisioning, etc.

2. Arrangements and procedures will be established concerning follow-on logistic support and other forms of logistic cooperation, e.g., joint utilization of facilities.

3. In the contracting procedure for logistic support, paragraph 9 of Article I of the MoU shall apply.

4. Both Parties will issue directives and guidelines to their respective armament and logistics agencies to achieve the described goals of this MoU.

For the Government of the United States of America.

Dr. William J. Perry.

Dated: December 21, 1978.

For the Government of the Netherlands.

Lt. General Hensen.

Dated: December 21, 1978.

Annex III—Terms of References

1. The Netherlands/U.S. Committee for Procurement Cooperation (hereafter to be called "the Committee") will serve, under the direct responsibility of the authorities, listed in Article II sub 2 and 3 of the MoU respectively, as the main body in charge of the adequate implementation of the MoU.

2. In particular, the Committee will be responsible for ensuring that the guiding principles of the MoU governing the mutual cooperation in research and development, production, procurement and logistic support of conventional defense equipment are being implemented to facilitate a mutual flow of defense equipment. To this end the Committee will meet as required, but not less than annually, to review progress in implementing the MoU. In this review:

A. They will discuss research, development, production, procurement and logistic support needs of such country and the likely areas of cooperation including joint activities in those fields.

B. They will exchange information as to the way the stipulations of the MoU have been carried out and, if need be, prepare proposals for amendments of the MoU and/or its annexes.

C. They will agree to the financial statement of the current balance, give guidance for its yearly preparation and formulate conclusions from it, such conclusions to include any long term trends which may be established.

D. They will consider any other matters relevant to the MoU.

E. They will report after each meeting and advise as appropriate.

F. The Committee will alternately meet in the United States and in the Netherlands. The country in which a particular meeting will take place will provide the Chairman and the secretariat for that meeting.

For the Government of the United States of America.

Dr. William J. Perry.

Dated: December 21, 1978.

For the Government of the Netherlands.

Lt. General Hensen.

Dated: December 21, 1978.

Annex IV to Memorandum of Understanding between the Government of the Kingdom of the Netherlands and the Government of the United States of America concerning the Principles Governing Mutual Cooperation in the Research and Development, Production and Procurement of Defense Equipment, signed at The Hague on 24 August 1978

Principles Governing Contract Administration Services

I. Introduction

This annex sets forth the terms, conditions, and procedures under which the governments will provide each other with selected contract administration services and related information in support of defense contracts and subcontracts contemplated or executed under the Memorandum of Understanding (MOU). It is recognized that in the event conflicts arise between any aspect of this annex and the laws of either government, the laws shall prevail.

II. Major Principles

The objective of this annex is to insure each government is able to employ the most effective and efficient contract administration support possible when acting under the MOU. Nothing is to be construed as impairing a purchasing government's access to its contractors and their records as may be contractually authorized.

For the purpose of this annex, contract administration shall include all those necessary actions, other than contract pricing and audit, to be accomplished at, or in proximity to, a firm's place of business to assist the purchasing office in evaluating a prospective contractor's capabilities and in monitoring and enforcing awarded contracts. This annex supplements NATO Standardization Agreement (STANAG) 4107, hereby incorporated by reference in regard to reciprocal quality assurance.

III. General

The purchasing government may request specific services and information selected from those listed in Appendix 1 to this annex which it considers appropriate to the circumstances. The purchasing government may elect to obtain additional support through its own on-site representatives provided there is no duplication of work performed by the host government. In addition, the host government will use its best efforts to supply information requested by the purchasing government but not listed in this annex when necessary to support contract award, enforcement, or termination. The purchasing government may modify a request for support during contract performance after consultation with the host government.

The host government shall accept requests for services to the extent resources are available and carry them out according to the procedures that government uses for its own contracts.

Contracts shall contain suitable provisions for the host government to act for and on behalf of the purchasing government and shall authorize access to contractor facilities and records and use of contractor assets as necessary for the performance of contract administration services.

Where representatives of either government deal with a contractor at the same location in support of the same contract or separate contracts, they shall act in full concert according to terms of reference mutually agreed or to be agreed upon.

Each government shall designate a single office to receive requests for contract administration services. In addition, each government may elect to designate an office in or near the other's country to act as a focal point through which requests for support will be forwarded. The host government will endeavor to keep the purchasing government's focal point apprised of current contract administration practices and resources to help insure requests for services are reasonable and prudent. The focal point shall advise the host government concerning contract requirements and clarify requests for services as necessary.

IV. Procedures

Requests for contract administration in The Netherlands shall be directed to the Ministry of Defense, Directorate-General Materiel. Procurement Policy Office. Kalvermarkt 32. P.O. Box 20701 2500 ES THE HAGUE The Netherlands. Requests for contract administration in the United States shall be directed to The Department of Defense Central Control Point, DCASR New York, 60 Hudson St., New York, NY 10013.

Contract administration requests will be accompanied by the number of copies of the request for proposal or awarded contract, as appropriate, prescribed in STANAG 4107 and will specify the contract administration services desired. Every effort will be made to forward support requests simultaneously with the forwarding of awarded contracts to the contractor. The format shall be as described in Annex A to STANAG 4107, with desired services other than quality assurance specified in Block 10. If less than comprehensive quality assurance is needed, the desired services selected from AQAP 10 shall be specified in Block 10. Requests shall reference this annex to the MOU and shall be processed according to the procedures in STANAG 4107 with due regard to section VII of this annex. In principle, acceptance or rejection shall be made within 30 calendar days of receipt by the host government.

Direct communications between the purchasing office and the assigned contract administration office in resolving contract problems are authorized and encouraged. The purchasing government shall retain final authority over contract interpretations and enforcement actions, and shall advise the contract administration office on such matters as needed.

In the event the purchasing government envisions the assignment of inplant representatives, proposed terms of reference describing an appropriate working relationship with host government representatives will be suggested to the host government as early as possible.

V. Responsibility and Liability

Nothing in this annex shall relieve the contractor of any responsibilities under the contract. No liability will attach to the government, its officers or agents, acting under this annex on behalf of the other government.

VI. Protection of Information

Data obtained through the implementation of this annex shall receive the same protection against unauthorized disclosure as such data would normally receive under the laws and rules of the country which possesses it.

VII. Charges

Service provided under this annex will be free of charge, subject to a joint review of the services being exchanged at not less than three year intervals. If, as a result of such a joint review, either government determines that charges will be necessary, they may be imposed after not less than one year advance notice. Should charges by the U.S. Government become necessary, Foreign Military Sales Procedures then in effect will apply.

VIII. Duration

This annex will remain in effect for a period as set forth in ARTICLE VII of the MOU, and may be terminated under the conditions as set forth in that article.

IX. Implementation

This Annex will come into effect on the date of the last signature.

For the Government of the Kingdom of the Netherlands.

———— ————.

Date 9th April 1982.

For the Government of the United States of America.

———— ————.

Date 9 April 1982.

Appendix 1. Services to be Exchanged.

Appendix 1 to Annex IV—Services to be Exchanged

In accordance with the principles and procedures as set forth in this annex the following services will be performed by the host government within its national boundaries upon requests by and on behalf of the purchasing government:

1. Support evaluations of contractor capabilities prior the award.

a. Supply available information concerning design, production, and quality control capabilities as appropriate; for example, the amount of available floor space, plant equipment, skilled and unskilled workers, past production of similar items, and the NATO Allied Quality Assurance Publications (AQAP's) against which the firm has been assessed.

b. Evaluate the financial strength of the prospective contractor, estimate the likelihood that financial resources will be sufficient to accomplish the contract, and report the monetary value (in local currency) of host government capital assets furnished or made available to the contractor which may be used in the contract.

c. Provide access to available accounting system disclosure statements and assistance in determining the systems's ability to meet contractual requirements.

2. Perform government quality assurance, as defined in STANAG 4107, in whole or in part as requested.

3. Report potential or actual slippages in contract delivery schedules or any other contractor difficulties which might affect contract performance.

4. Assess contract progress if needed by the purchasing office to authorize financial payments, and recommend approval or disapproval of contractor payment requests.

5. Evaluate the feasibility and practicality of contractor production plans.

6. Verify contractor management reports furnished to the purchasing office during contract performance.

7. Evaluate and monitor contractor compliance with contract requirements governing technical data, especially the propriety of any restrictive markings on data offered for delivery under the contract.

8. Monitor contractor costs under cost reimbursement contracts, and insure the purchasing office is advised of any anticipated overruns or underruns of estimated costs.

9. Advise the purchasing office if supporting contract administration is needed at subcontractor plants to verify the adequacy of prime contractor management, and assist the purchasing government obtain desired support within the host country.

Annex V to Memorandum of Understanding Between the Government of the Kingdom of the Netherlands and the Government of the United States of America Concerning the Principles Governing Mutual Cooperation in the Research and Development, Production and Procurement of Defense Equipment, Signed at The Hague on 24 August 1978

Protection of Information

The Security Procedures For Industrial Operations Between The Ministry of Defense of the Netherlands and the Department of Defense of the United States of America, developed to implement the provisions of the U.S./Netherlands General Security of Information Agreement, dated April 6, 1981, apply to the safeguarding of classified military information exchanged under this Memorandum of Understanding.

Such procedures are applicable in those cases in which contracts, subcontracts, precontract negotiations, or other government approved arrangements, involving classified military information of either or both governments, are placed or entered into by or on behalf of one government with industry in the country of the other government.

For the government of the Kingdom of The Netherlands.

———— ————,

Date 9th April 1982.

For the Government of the United States of America.

———— ————,

Date 9 April '82.

Annex VI to Memorandum of Understanding Between the Government of the Kingdom of the Netherlands and the Government of the United States of America Concerning the Principles Governing Mutual Cooperation in the Research and Development, Production and Procurement of Defense Equipment, Signed at The Hague on 24 August 1978

Principles Governing Defense Contract Audit Services

I. Introduction

This annex sets forth the terms, conditions and procedures under which the participating governments will provide one another with contract audit defense services upon request in support of defense contracts, subcontracts and FMS Letters of Offer and Acceptance contemplated or executed under the Memorandum of Understanding (MOU). It is recognized that in the event conflicts arise between any aspect of this annex and the laws of either participating government, the laws shall prevail. Nothing in this annex affects the U.S. Government's statutory rights concerning access to records of its contractors.

II—Major Principles

For purposes of this annex, defense contract audit services shall include:

1. Evaluating proposed prices or costs in sufficient detail to enable the cognizant contracting officer to determine their acceptability during negotiations with the relevant contractor or subcontractor.

2. Examining contractor accounting records and procedures to determine their accuracy, currency, completeness, and compliance with contract requirements.

3. Evaluating contractor cost estimating systems.

4. Verifying after contract award the currency, accuracy, and completeness of cost or pricing data submitted in support of contractor proposals.

5. Verifying reimbursement vouchers submitted under cost reimbursement contracts or other contracts with cost reimbursement features (e.g., material reimbursement) and recommending cost disallowances when appropriate after consultation with the contractor.

6. Monitoring compliance with disclosed accounting practices and contractual accounting requirements during contract performance.

7. Verifying overhead cost records prior to overhead settlements, and contract cost records prior to termination settlements.

8. Other audit services as considered necessary by contracting country.

The objective of this annex is to improve the effectiveness and efficiency of the audit

services available to the participating governments. Nothing in this agreement is to be construed as impairing a purchasing government's access to its contractors and their records as may be contractually authorized.

III. General

Contract audit reports shall be advisory. The purchasing government shall retain authority and responsibility for negotiating acceptable prices and contract settlements with contractors. Purchases by The Netherlands under the Foreign Military Sales Program will be handled under the U.S. FMS procedures in existence at the time of acceptance of the FMS agreement.

The particular governments shall perform requested services to the maximum extent permitted by available resources and according to the terms of the contract or subcontract involved. The Netherlands agrees to use US cost principles when performing an audit for the U.S. The Netherlands also agrees that the US will use its own cost principles and cost accounting standards when performing an audit for The Netherlands. Consistent with these standards and principles the performing government may use the same audit methods it customarily uses for its own contracts, and shall determine the organizations and personnel to be involved.

In the event a particular government is unable to provide requested services, or to perform them within a reasonable time, the purchasing government shall be entitled to perform the needed services itself. Audit representatives of the governments may attend the audit activities as observer, when the contract is only for that country's requirements. In addition, with advance notice to the other participating government, the purchasing government may elect to audit a specific contractor/subcontractor proposal or a specific contract. Neither participating government shall duplicate or review the work of the other on any particular proposal or contract except under the circumstances set out above. However, the governments shall hold periodic discussions to evaluate the operational effectiveness of the reciprocal agreement. In addition, each government shall insure that its contract audit operations are periodically evaluated by its own appropriate review and oversight organization.

The participating governments shall provide one another with access to available information concerning contractor costs estimating systems and disclosed accounting practices when needed to support contract negotiations or enforcement. It is expected that contracts requiring the disclosure of accounting practices shall normally authorize contractors to file such disclosures with their own government. In the United States, the files shall be maintained by: the Office administering the contract.

In The Netherlands, the files shall be maintained by: The Ministry of Defense, Director Audit Agency, Postbus 20701, 2500 ES, The Hague, The Netherlands.

Contracts and subcontracts shall contain suitable provisions to enable the participating governments to act for and on behalf of one another under this annex and shall authorize access to contractor facilities and records as necessary.

Recognizing that requests for support and contract terms may occasionally require clarification, each of the participating governments may designate an office in or near the other participating country to provide such clarifications and to act as a focal point through which requests for services will be forwarded. Each participating government shall also designate an office, listed elsewhere in this annex, to receive requests for services.

IV. Procedures

Requests for contract audit services in The Netherlands shall be sent to: The Ministry of Defense, Director Audit Agency, Postbus 20701, 2500 ES, The Hague, The Netherlands, through: The Royal Netherlands Embassy, 4200 Linnean Avenue, Washington, D.C. 20008–3896, U.S.A.

Requests for contract audit services in the United States shall be sent to: The Defense Contract Audit Agency (DCAA), Cameron Station, Alexandria, Virginia 22314, U.S.A.

In order that the equity of this annex may be periodically appraised, information copies of all requests for audit made by procurement officials, auditors, and prime and subcontractors of both countries will be sent to Defense Contract Audit Agency, European Branch Office, Lindsey Air Station, APO New York 09633.

Requests shall specify the services needed, identify any items of special interest to the purchasing government, and indicate the desired due date. Acceptance of requests shall be acknowledged in writing by the performing government. Requests originating from the Office of the Comptroller General of the United States shall be clearly identified as such.

Contract audit reports describe the scope and depth of the evaulation performed and indicate the methods used. Supporting evaluations by technical and other specialists shall be included in the reports. The information supplied should be sufficiently detailed to permit the purchasing government to determine acceptable prices or costs and to defend its position in negotiations with the contractor or in taking contractual action. The purchasing government may request additional clarifications or supporting data if necessary, and shall have the final authority to determine when the information provided is adequate for its purpose.

V. Protection of Information

Information obtained through the implementation of this annex shall receive the same protection against unauthorized disclosure as it would normally receive under laws and rules of the participating government which possesses it.

VI. Charges

Services will be provided under this annex free of charge, for all contracts, subcontracts, and FMS Letters of Offer and Acceptance entered into on or after the date of implementation of this annex provided that a joint review of the services being exchanged between the participating governments performed at not less than three year intervals indicates that general reciprocity is being maintained. If after such joint review either government determined that charges will be necessary, they may be imposed after not less than one year advance notice. Should charges by the U.S. Government become necessary, Foreign Military Sales procedures then in effect will apply.

VII. Exclusions

This audit annex does not cover audits for architecture and engineering, base support, banking, operation and maintenance, government owned and company operated facilities, universities, and contractors solely in the business of supporting U.S. presence in The Netherlands.

VIII. Duration

This annex will remain in effect for a period as set forth in aticle VII of the MOU and may be terminated under the conditions as set forth in that article.

For the Government of the United States of America.

———— ————,

Dated: April 18, 1985.

For the Government of the Kingdom of The Netherlands, on behalf of the Director General for Material.

———— ————,

Dated: March 14, 1985.

T–205 Federal Republic of Germany Memorandum of Understanding

Memorandum of Understanding Between the Federal Minister of Defense of the Federal Republic of Germany and the Secretary of Defense of the United States of America Concerning the Principles Governing Mutual Cooperation in the Research and Development, Production, Procurement and Logistic Support of Defense Equipment

The Secretary of Defense of the United States of America and the Federal Minister of Defense of the Federal Republic of Germany:

Intending to increase their respective defense capabilities through more efficient cooperation in the field of research and development, production, procurement and logistic support of defense equipment, in order to:

—Make the most cost-effective and rational use of the resources allocated to defense; and

—Promote the widest possible use of standard or interoperable equipment; and

—Develop and maintain an advanced technology capability for the North Atlantic Alliance, and particularly with respect to the parties to this Memorandum of Understanding; and

Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding sets out the guiding principles governing mutual cooperation in conventional defense equipment research and development, production, procurement and logistic support.

The Parties hereto conclude this Memorandum of Understanding to strengthen the North Atlantic Alliance. In so doing, the Parties are fully aware that the Independent European Program Group (IEPG) wants to enhance equipment collaboration by more comprehensive and systematic arrangements among the individual member nations. They therefore agree that in the event of a possible conflict between understandings entered into between the IEPG and the Government of the United States, and this Memorandum of Understanding, the Parties hereto will consult with a view to amending this Memorandum of Understanding.

The Parties further agree that this Memorandum of Understanding should be viewed in the larger context of the cooperation between Europe and North America within the Alliance.

Article I—Principles Governing Mutual Defense Cooperation

1.1 Both Parties intend to facilitate the mutual flow of defense procurement, taking into consideration relative technological levels of such procurement, and consistent with their national policies. This facilitation shall be sought through the provision of opportunities to compete for procurements of defense equipment and services as well as through the coproduction of defense equipment and defense R&D cooperation.

1.2 This Memorandum of Understanding is intended to cover areas in which, in the view of both parties to the Agreement, bilateral cooperation could be achieved in conventional defense equipment research and development, production, procurement and logistic support. This cooperation is intended to complement the work of the Conference of National Armament Directors (CNAD) and the Independent European Program Group (IEPG).

1.3 Each Party may propose to the other any particular project that might be suitable for cooperation or for use by the other Party.

1.4 Both Parties will, consistent with their relevant laws and regulations, give the fullest consideration to all requests for cooperative R&D, and to all requests for production, procurement and logistic support which are intended to optimize Alliance standardization and/or interoperability.

1.5 In the interests of standardization within the Alliance and the effective utilization of scarce resources, both Parties shall, to the extent possible, select qualified defense items that have been developed and produced in the other country to meet their requirements. Necessary decisions should be taken on the basis of joint comparative trials according to criteria to be jointly established.

1.6 Both Parties will review items submitted as candidates for respective requirements. They will indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility and to submit a bid or proposal.

1.7 Both Parties will provide appropriate policy guidance and administrative procedures within their respective defense procurement organizations to facilitate achievement to the aims described herein.

1.8 The detailed implementing procedures, to be agreed, will, consistent with and to the extent permitted by national laws and regulations, incorporate the following.

a. Offers or proposals will be evaluated without applying price differentials under buy national laws and regulations and without applying the costs of import duty; customs and import duties should not be charged as far as this is admissible under current laws.

b. Full consideration will be given to all qualified industrial and/or governmental resources in each other's country;

c. Offers or proposals will be required to satisfy requirements of the purchasing Party for performance, quality, delivery and costs.

1.9 Competitive contracting procedures shall normally be used in acquiring items of conventional defense equipment developed or produced in each other's country for use by either country's defense establishment.

1.10 Both Parties will ensure that the technical data packages (TDPs) made available under this Memorandum of Understanding are not used for any purpose other than for the purpose of bidding on, and performing, a prospective defense contract without the prior agreement with those owning or controlling proprietary rights and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDPs be transferred to any third country or any other transferee without the prior written consent of the originating Party.

1.11 Both Parties will undertake their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries or other owners of such rights. The two contracting parties will mutually make available to each other, to the extent possible, all information and proprietary rights required to implement cooperation under this agreement. The two contracting parties will, to the extent feasible, seek appropriate agreement with their industries that in the interest of standardization and armaments cooperation, proprietary rights in defense-relevant information and data can be transferred by appropriate arrangements, between the industries of the two countries.

1.12 Arrangements and procedures will, at the request of the purchasing Party, be established concerning follow-on logistic support for items of defense equipment acquired pursuant to this Memorandum of Understanding. Both Parties will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

Article II—Implementing Procedures

2.1 The DoD and MoD will appoint representatives to determine in detail the procedures for implementing this Memorandum of Understanding and the terms of reference for a German-American Committee for Mutual Cooperation.

2.2 The Under Secretary of Defense for Research and Engineering will be the responsible authority of the United States Department of Defense for the development of implementing procedures under this Memorandum of Understanding.

2.3 The Director General of Armaments in the Ministry of Defense will be the responsible authority of the Ministry of Defense of Germany for the development of implementing procedures under this Memorandum of Understanding.

Article III—Industry Participation

3.1 Implementation of this Memorandum of Understanding will involve full industrial participation. Primary responsibility for finding business opportunities shall rest with the industries of each country.

3.2 Each Party will be responsible for calling to the attention of the relevant industries within its country the basic understanding of this Memorandum of Understanding, together with appropriate implementing guidance. Both Parties will take all appropriate implementing guidance. Both Parties will take all necessary steps so that the industries comply with the regulations pertaining to security and to safeguarding classified information.

3.3 Also, the Parties will arrange to familiarize their respective procurement and requirements offices with the principles and objectives enunciated herein.

Article IV—Security

4.1 The operating procedures for the implementation of the General Security of Information Agreement dated 23 December 1960 between the two Parties, with particular reference to industrial security, apply to activities under this Memorandum of Understanding.

4.2 To the extent that any items, plans, specifications or information furnished in connection with the specific implementation of this Memorandum of Understanding are classified by either Party for security purposes, the other Party shall maintain a similar classification and employ all measures necessary to preserve such security equivalent to those measures employed by the classifying Party throughout the period during which the classifying Party may maintain such classification.

4.3 Information that has been provided by either of the Parties to the other on condition that it remain confidential shall either retain its original classification designation, or be assigned a classification designation that shall ensure a degree of protection against disclosure equivalent to that required by the other Government. To assist in providing the desired protection, each Party will mark such information furnished with a legend indicating the origin of information, that the information relates to the MOU and Annexes thereto, and that the information is furnished in confidence.

Article V—Administration

5.1 Each Party will designate points of contact at the Ministry of Defense level and in each purchasing service/agency.

5.2 The German-American Committee for Mutual Cooperation, referred to in Article II above, will meet as agreed or at the request of either Party to review progress in implementing the Memorandum of Understanding. It will discuss development, production, procurement and logistic support needs of each country and the likely areas of

cooperation; agree to the basis of, and keep under review, the financial statement referred to below; and consider any other matters relevant to this Memorandum of Understanding.

Article VI—Duration

6.1 This Memorandum of Understanding will remain in effect for a six-year period following its signing. Unless otherwise agreed by both Parties, the duration will be extended for another six years.

6.2. If, however, either Party considers it necessary for compelling national reasons to discontinue its participation under this Memorandum of Understanding before the end of the six-year period, or any extension thereof, written notification of its intention will be given to the other Party six months in advance of the effective date of discontinuance. Such notification of intent would be a matter of immediate consultation with the other Party to enable the Parties fully to evaluate the consequences of such termination and, in the spirit of cooperation, to take such actions as necessary to alleviate problems that may result from the termination. In this connection, although the Memorandum of Understanding may be terminated by the Parties, any contract entered into consistent with the terms of this Memorandum of Understanding shall continue in effect, unless the contract is terminated in accordance with its own terms.

Article VII—Implementation

7.1 Each Party must agree in writing to any amendment of this Memorandum of Understanding.

7.2 Details pertaining to implementation of the principles set forth herein will be set out in annexes to this Memorandum of Understanding.

7.3 Any differences of opinion over the interpretation and implementation of this Agreement and its Annexes shall be resolved by consultation between the DoD and MoD.

7.4 This Memorandum of Understanding will come into effect on the date of the last signature.

The Secretary of Defense of the United States of America.

Harold Brown.

Dated: October 17, 1978.

The Federal Minister of Defense of the Federal Republic of Germany.

Hans Apel.

October 17, 1978.

Annex—Reciprocal Contract Audit Defense Services Under the Memorandum of Understanding Between the United States of America and the Federal Republic of Germany Regarding Defense Research and Development, Production, and Procurement

I. Preamble

This annex sets forth the procedures under which the participating governments will provide one another with contract audit defense services upon request in support of defense contracts and subcontracts contemplated or executed under the Memorandum of Understanding (MOU). It is recognized that in the event conflicts arise between any aspect of this annex and the laws of either participating government, the laws shall prevail. Nothing in this annex affects the statutory rights of the US General Accounting Office (GAO)/ Bundersrechnungshof (BRH) concerning access to records of contractors.

For purposes of this annex, defense contract audit services shall include:

1. Evaluating proposed prices or costs in sufficient detail to enable the cognizant contracting officer to determine their acceptability during negotiations with the relevant contractor or subcontractor.

2. Examing contractor accounting records and procedures to determine their accuracy, currency, completeness, and compliance with contract requirements.

3. Evaluating contractor cost estimating and accounting systems.

4. Verifying after contract award the currency, accuracy, and completeness of cost or pricing data submitted in support of contractor proposals.

5. Verifying reimbursement vouchers submitted under cost reimbursement contracts or other contracts with cost reimbursement features (e.g., material reimbursement) and recommending cost disallowances when appropriate after consultation with the contractor.

6. Monitoring compliance with disclosed accounting practices and contractual accounting requirements during contract performance.

7. Verifying overhead cost records prior to overhead settlements, and contract cost records prior to termination settlements.

8. Other usual and customary contract audit services considered necessary by contracting country.

The objective of this annex is to improve the effectiveness and efficiency of the audit services available to the participating governments.

II. General

Contract audit reports shall be advisory. The purchasing government shall retain authority and responsibility for negotiating acceptable prices and contract settlements with contractors.

The participating governments shall perform requested services to the maximum extent permitted by available resources and according to the terms of the contract or subcontract involved. The performing government shall apply the cost principles and cost accounting standards as specified in the contract. Consistent with these standards and principles the performing government may use the same audit methods it customarily uses for its own contracts, and shall determine the organizations and personnel to be involved. Both parties shall issue national implementing guidelines which will be provided to their auditors and made available to the contractors for their information. Appendix I is a comparative guide of expressly covered costs, which is provided for ready reference purpose only. Therefore, the Appendix should not be considered as being complete, authoritative, substantive, or interpretive of existing cost regulations of the participating governments.

In the event a participating government is unable to provide requested services, or to perform them within a reasonable time, the purchasing government shall be entitled to perform the needed services itself. In addition, with advance notice to the other participating government, the purchasing government may elect to audit a specific contractor/subcontractor proposal or a specific contract; this should be limited to exceptional cases. Neither participating government shall duplicate or review the work of the other on any particular proposal or contract except under the circumstances set out above. However, the governments shall hold periodic discussions to evaluate the operational effectiveness of the reciprocal agreement. In addition, each government shall insure that its contract audit operations are periodically evaluated by its own appropriate review and oversight organizations.

The participating governments shall provide one another with access to available information concerning contractor cost estimating systems and disclosed accounting practices when needed to support contract negotiations or enforcement. It is expected that contracts requiring the disclosure of accounting practices shall normally authorize contractors to file such disclosures with their own government. In the United States, the files shall be maintained by the office administering the contracts. In the Federal Republic of Germany the Disclosure Statement shall be in accordance with FAR 30.201–1(e) (2) and shall be maintained by the Federal Office for Military Technology and Procurement (BWB), Koblenz.

Contracts and subcontracts shall contain suitable provisions to enable the participating governments to act for and on behalf of one another under this annex and shall authorize access to contractor facilities and records as necessary.

Recognizing that requests for support and contract terms may occasionally require clarification, each of the participating governments may designate an office in or near the other participating country to provide such clarification and to act as a focal point through which requests for services will be forwarded. Each participating government shall also designate an office, listed elsewhere in this annex, to receive requests for services.

III. Procedures

Requests for contract audit services in the Federal Republic of Germany shall be sent to BWB.*

Requests for contract audit services in the United States shall be sent to the cognizant Defense Contract Audit Agency (DCAA) Field Audit Office.

In order that the reciprocity of this annex may be periodically appraised, information copies of all requests for audit made by procurement officials, auditors, and prime and subcontractors of both countries will be sent to Defense Contract Audit Agency,

*Requests for audits by BWB should be sent to: Bundesamt Fuer Wehrtechnik und Beschaffung-BWB, Referat AW II, 5400 Koblenz, Postfach 7360, Federal Republic of Germany. This request should set out time period and any special requirements of the requestor.

European Branch Office, Lindsey Air Station, APO New York 09633.

Requests shall specify the services needed, identify any items of special interest to the purchasing government, and indicate the desired due date. Audit reports issued shall be responsive to audit requests and shall include coverage of the expressly unallowable cost's** to permit the purchasing government to successfully use the audit results. Acceptance of requests originating from the Office of the Comptroller General of the United States and the Bunderscrechnungshof shall be clearly identified as such.

Contract audit reports shall describe the scope and depth of the evaluations performed and indicate the methods used. Supporting evaluations by technical and other specialists shall be included in the reports. The information supplied should be sufficiently detailed to permit the purchasing government to determine acceptable prices or costs and to defend its position in negotiations with the contractor shall be acknowledged in writing by the performing government. Requests orgin taking contractural action. The purchasing government may request additional clarifications or supporting data if necessary, and shall have the final authority to determine when the information provided is adequate for its purposes.

IV. Protection of Information

Information obtained through the implementation of this annex shall receive the same protection against unauthorized disclosure as it would normally receive under the laws and rules of the participating government which possesses it.

V. Charges

Services will be provided under this annex free of charge, for all contracts, subcontracts, and FMS Letters of Offer and Acceptance entered into on or after the date of implementation of this annex provided that a joint review of the services being exchanged between the participating governments performed at not less than three year intervals indicates that general reciprocity is being maintained. If after such joint review either government determines that charges will be necessary, they may be imposed after not less than one year advance notice. Should charges by the U.S. Government become necessary, Foreign Military Sales procedures then in effect will apply. Purchases by the Federal Republic of Germany under the Foreign Military Sales Program will be handled under the U.S. FMS procedures in existence at the time of the FMS Agreement.

VI. Excluded

This audit annex does not cover audits for base support operation and maintenance, banking, government owned and company operated facilities, universities, and contractors solely in the business of supporting U.S. presence in the Federal Republic of Germany. (Construction contracts are not subject to this agreement.)

**For information purposes see Appendix I.

VII. Termination

The annex may be terminated in writing by either participant, to become effective the last day of the sixth month after notice of termination is given.

VII. Validity of Text

This annex has been drawn up in the German and the English language; both texts being equally authoritative.

IX. Effective Date

This agreement shall become effective on the day of the last signature of the English version.

X. Prior Audit Agreement

The 1966 audit agreement and annex to same between US DoD and FRG MOD is rescinded by the execution of this agreement.

For the Government of the United States of America.

———— ————,

Dated: November 29, 1985.

For the Government of the Federal Republic of Germany.

———— ————,

Dated: December 6, 1985.

T–206 Italy Memorandum of Understanding

Memorandum of Understanding Between the Government of Italy and the Government of the United States of America Concerning the Principles Governing Mutual Cooperation in the Research, Development, Production and Procurement of Defense Equipment

Preamble

The Government of the United States of America and the Government of Italy, hereinafter referred to as "the Governments":

Intending to increase their respective defense capabilities through more efficient cooperation in the field of research and development, production, procurement, and logistic support of defense equipment, in order to:

—Make the most cost-effective and rational use of the funds allocated to defense to the extent permitted by their national policies, assuring the most satisfactory level of reciprocal balance; and

—Promote the widest possible use of standard or interoperable equipment; and

—Develop and maintain an advanced technological capability for the North Atlantic Alliance, and particularly with respect to the parties to this Agreement;

Noting that no agreement covers harmonization of mutual procurements, although specific offset agreements have existed between them in the past, and

Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding (MOU) sets out the guiding principles governing mutual cooperation in defense equipment research and development, production, procurement and logistic support.

The Government of the United States of America and the Government of Italy conclude this Memorandum of Understanding to strengthen the North Atlantic Alliance.

The two Governments agree that this Memorandum of Understanding should be incorporated in the larger context of the cooperation between Europe and North America within the Alliance.

All agreements, or the relevant provisions contained therein, between the Independent European Program Group (IEPG) and the United States of America, shall take precedence over this Memorandum of Understanding, provided that Italy is a party to the specific agreement.

Article I—Principles Governing Mutual Defense Cooperation

1. Both Governments will take immediate steps to achieve and maintain an equitable balance in their exchanges, in terms of the value of contracts and technological levels, to the maximum practicable extent consistent with their national policies. An equitable balance, in principle, shall be achieved when the two Governments have implemented all practicable means at their disposal to maximize defense R&D cooperation and reciprocal procurement to the extent compatible with the nature of each country's technological and industrial base. Items procured under offset agreements by either Government with an industry of the other will apply to the achievement of the balance contemplated by this agreement.

2. This agreement is intended to cover areas in which possible bilateral cooperation could be achieved in conventional defense equipment research and development, production, procurement, and logistic support complementing the work of the Conference of National Armament Directors (CNAD), Senior NATO Logisticians Conference (SNLC) and the Independent European Program Group (IEPG).

3. The two Governments will, consistent with their laws and regulations give full consideration to all requests for cooperative R&D and to all requests for production and procurement which are intended to maximize Alliance standardization and/or interoperability.

4. The two Governments shall, in the spirit of cooperation, mutually determine the counting procedures that will apply to all items under this agreement (and associated services included in a contract) purchased either directly by the two Governments or through their defense industries.

5. In the interests of standardization and the effective utilization of scarce resources the two Governments shall, if possible, select qualified defense items that have been developed and produced in the other country to meet their requirements in accordance with the procedures of paragraph 9 below.

6. Each Government may propose to the other any particular item of defense equipment that might be suitable for use by the other Government.

7. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense procurement organizations to facilitate achievement of the aims described in paragraph 5.

8. Barriers to procurements or coproduction of an item of defense equipment that has been developed in the other country shall be removed, insofar as laws and regulations permit, such as not applying customs duites and other discriminatory levies in evaluating bids submitted in accordance with this MOU as well as the waiver of protectionist provisions. Defense items or services are those items or services which may be procured utilizing appropriated funds of the US Department of Defense or budgeted funds of the Italian Ministry of Defense.

9. Competitive contracting procedures normally shall be used in acquiring items of conventional defense equipment developed in each other's country.

10. Full consideration will be given to all qualified industrial and/or Government sources in each other's country consistent with the national procurement policy and criteria. It is therefore understood that items offered shall satisfy requirements for performance, quality, delivery and cost.

11. Both Governments will review items submitted as candidates for respective requirements. They will indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility and submit a bid or proposal.

12. Third party transfers of defense articles or technical data made available under this MOU, and of articles produced with such data, will be subject to the agreement of the Government that made available the defense articles or technical data, except as otherwise provided in particular arrangements between the two Governments. Each Government will base its decisions regarding requests by the other for agreement to third party transfers on its laws, regulations, and arms transfer policy. Each Government will use the same criteria for proposed transfers by the other as it uses for itself, and will not reject, solely in the pursuit of its own national commercial advantage, a request from the other for a third country transfer of such defense articles or technical data. Consistent with the above, in carrying out its own transfers to third countries, each Government shall take into consideration the extent to which a proposed transfer may damage or infringe upon licensing arrangements whereby commercial firms in the US or Italy have granted to firms in the other country licenses for the manufacture of the articles proposed to be transferred to a third-country.

13. Each Government will ensure that the technical data packages (TDPs) made available under this MOU are not used for any purpose other than for the purpose of bidding on, and performing a prospective defense contract without the prior agreement with those owning or controlling proprietary rights and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDPs be transferred to any third country or any other transferees without the prior written consent of the originating Government.

14. Both Governments will undertake their best efforts to assist in negotiating licenses, ties and technical information exchanges with their respective industries.

15. Arrangements and procedures will be established concerning follow-on logistic support for items of defense equipment covered by this Memorandum of Understanding. Both Governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

Article II—Implementing Procedures

1. Representatives of the two Governments will be appointed to determine in detail the procedures for implementing this Memorandum of Understanding. Terms of reference will be proposed for an Italian-American Committee for Mutual Cooperation, including rules governing its work. The implementing procedures under this Memorandum of Understanding shall be an integral part thereof.

2. The Under Secretary for Defense of Research and Engineering, in coordination with the Assistant Secretary of Defense for International Security Affairs, the Assistant Secretary of Defense for Manpower, Reserve Affairs and Logistics, the Director, Defense Security Assistance Agency, and other appropriate Department of Defense officials, will be responsible in the United States Government for the development of implementing procedures under this Memorandum of Understanding.

3. The National Armament Director in the Ministry of Defense, in coordination with the other appropriate governmental bodies, will be the responsible authority of the Government of Italy for the development of implementing procedures under this Memorandum of Understanding.

Article III—Industry Participotion

1. Each Government will be responsible for calling to the attention of the defense industries within its country the basic understanding of this Memorandum of Understanding, together with appropriate implementing guidance. Both Governments will take all necessary steps so that the defense industries comply with the regulations pertaining to security and to safeguarding classified information.

2. Implementation of this Memorandum of Understanding will involve full industrial participation. Accordingly, the Governments will arrange to familiarize their respective procurement and requirements offices with the principles and objectives of this Memorandum of Understanding. However, primary responsibility for finding business opportunities in areas of research and development and production shall rest with the industrial participants of each country.

Article IV—Security

1. To the extent that any items, plans, specifications or information furnished in connection with specific implementation of this Memorandum of Understanding are classified by either Government for security purposes, the other Government shall maintain a similar classification and employ all measures necessary to preserve such security equivalent to those measures employed by the classifying Government throughout the period during which the classifying Government may maintain such classification.

2. The operating procedures for the implementation of the General Security Information Agreement dated 4 August 1964 between the United States Department of Defense and the Italian Ministry of Defense apply to activities under this Memorandum of Understanding.

3. Information that has been provided by the GOI to the United States in Confidence, or produced by the United States pursuant to a written joint arrangement with GOI requiring confidentiality, shall either retain its original classification designation or be assigned a United States classification designation that shall ensure a degree of protection against disclosure equivalent to that required by the GOI. To assist in providing the desired protection, the GOI will mark such information furnished to the U.S. Government with a legend indicating that the information is of Italian Government origin, that the information relates to this MOU, and that the information is furnished in confidence.

Article V—Duration

1. This Agreement will remain in effect for a ten-year period following its signing. Unless otherwise agreed by both Governments, the duration will be extended for another ten years.

2. If, however, either Government considers it necessary for compelling national reasons to discontinue its participation under this Memorandum of Understanding before the end of the ten-year period, or any extension thereof, written notification of its intention will be given to the other Government six months in advance of the effective date of discontinuance. Such notification of intent would be a matter of immediate consultation with the other Government to enable the Government fully to evaluate the consequences of such termination and in the spirit of cooperation, to take such actions as necessary to alleviate problems that may result from the termination. In this connection, although the Memorandum of Understanding may be terminated by the parties, any contract entered into consistent with the terms of this agreement shall continue in effect, unless the contract is terminated in accordance with its own terms.

Article VI—Administration

1. Each Government will designate points of contact at the Ministry of Defense level and in each purchasing service/agency.

2. Government representatives will meet as agreed or at the request of either Government to review progress in implementing the Memorandum of Understanding. They will discuss development, production and procurement needs of each country and the likely areas of cooperation; agree to the basis of, and keep under review and promoting any correction step, the financial statement referred to below; and consider any other matters relevant to the Memorandum of Understanding.

3. An annual United States/Italy statement of the current balance, and long-term trends of R&D cooperation and purchases between the two countries will be prepared on a basis to be mutually agreed. Such statement will take account of any United States/Italy offset agreements in force when the Memorandum of Understanding was signed and will be reviewed during the meetings referred to in paragraph 2 above.

Article VII—Annexes

Annexes negotiated by the responsible offices and approved by the appropriate Government authorities will be incorporated in this agreement and made an integral part thereof.

Article VIII—Implementation

1. The arrangements contained in this Memorandum of Understanding represent the understanding reached between the Government of the United States of America and the Government of Italy upon the matters referred to herein. Each Government must mutually agree to any amendment of this Memorandum of Understanding.

2. This agreement, in two original texts in the Italian and English languages, both texts being equally authentic, will come into effect at the date signed by both Governments.

For the United States Government.

Harold Brown.

Dated: September 11, 1978.

For the Government of the Italian Republic.

Attilio Ruffini.

September 11, 1978.

Annex 1 to the Memorandum of Understanding Between the Government of the United States of America and the Government of Italy Concerning Mutual Cooperation in Defense Equipment Research and Development, Production and Procurement, Dated 11 September 1978

Principles Governing Implementation

1. Foreword

On 11 September 1978 the Governments of the United States and Italy signed a Memorandum of Understanding (MOU) relating to the principles governing mutual cooperation in the Research, Development, Production, Procurement, and Logistic Support of Defense Equipment. This annex sets forth mutually agreed implementing procedures for carrying out the MOU.

2. Basic Principles

With the aim already expressed in the text of the MOU to achieve the greatest practicable degree of standardization/interoperability in defense equipment, the two Governments shall cooperate in the field of Research, Development, Production, Procurement, and Logistic Support in order to implement programs of common interest and to strengthen their respective industrial defense efforts. This goal can be attained through both the joint participation in mutually agreed research, development and production programs, through an interchange of studies, materials and services, as well as through offset agreements between governments and industries.

The U.S. Department of Defense (DoD) and the Italian Ministry of Defense (MoD) will each consider for procurement for their defense requirements qualified defense items (and associated services) developed or produced in the other country. (See also paragraph 3 of this Annex). MoD and DoD will also identify to one another, as soon as possible, those practices of their respective countries having the force of law that may potentially restrict the fulfillment of the MOU and this Annex. It will be the responsibility of government and/or industry representatives in each country to obtain timely information concerning the other country's proposed developments and purchases and to respond to requests for proposals. However, the responsible governmental purchasing agencies in each country will assist sources in the other country to obtain timely information concerning proposed purchases, necessary qualifications and appropriate documentation.

3. Action

A. In implementing the foregoing, the two Governments shall in accordance with mutual laws and regulations consider the following:

1. Cooperation in R&D for specified projects. Said cooperation may take place also in the framework of projects already undertaken by both countries.

2. Co-production of defense equipment both for the requirements of the two countries and for export.

3. Supply of logistic and administrative materials and facilities.

4. Maintenance and overhauling of items of military equipment, including supply of spares.

B. DoD and MoD will individually review and, where considered necessary, revise their respective internal policies, procedures and regulations to ensure that the principles and objectives of this MOU, which are intended to be compatible with the broad aims of NATO Rationalization/Standardization, are taken into account. The DoD and MoD agree that, upon respectively taking the measures listed below, they will have fulfilled their obligation under paragraph 1, Article 1 of the MOU, to implement all practical means at their disposal to optimize defense R&D cooperation and procurement. These measures will be undertaking in a reasonable manner, recognizing among other factors, delivery date requirements for supplies, the interest of security, the timely conduct of the procurement process, and requirements attendant to ensuring free and full competition for the award of contracts.

1. Ensure that their respective requirements offices are familiar with the principles and objectives of this MOU.

2. Ensure that their respective research and development offices are familiar with the principles and objectives of this MOU.

3. Ensure that their respective procurement offices are familiar with the principles and objectives of this MOU.

4. Ensure wide dissemination of the basic understanding of this MOU to their respective defense industries.

5. Ensure that to the extent permitted by national laws and regulations, offers of defense items produced in the other country will be evaluated without applying to such offers, either price differentials under buy-national laws and regulations or the cost of import duties. Provisions will be made for duty free certificates and related documentations to the extent consistent with national laws and procedures.

6. Assist industries in their respective countries to identify and advise the other government of their capabilities and assist such industries in carrying out the support actions to maximize industrial participation.

7. Review defense items submitted as candidates for respective requirements. Identify requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to participate in the development of production procurement processes.

8. Make best efforts to assist in negotiating licenses, royalties, and technical information exchanges with their respective industries.

9. Permit the sales of equipment produced under license to allied countries and to appropriate third countries, subject to the policy outlined in Article 1, paragraph 12 of the basic MOU.

10. Ensure that those items excluded from consideration under this MOU for reasons of protecting overriding national interests, such as the maintenance of a defense mobilization base, are limited to a small percentage of total annual defense procurement spending. It is intended that such defense items as well as those items which would not be qualified as a defense item under this MO because of legally imposed restrictions on procurement from non-national sources should be identified as soon as possible in lists drawn up by MoD and DoD for their respective countries, and that the lists should be kept under review at this level.

11. Ensure that the balance of reciprocal purchasing within the areas of this MOU takes into consideration the levels of technology involved, as well as the contractual value, in accordance with the policy outlined in Article 1, paragraph 1 of the basic MOU.

12. Arrange visits between appropriate government personnel from time to time in order actively to explore possibilities for R&D cooperation, procurement, and logistic support.

4. Counting Procedures

A. The purchases to be counted against the goals of the MOU will be identified jointly by DoD and MoD. In principle all defense items or components thereof, as defined in the basic MOU, (and associated services included in a procurement contract) purchased by MoD and DoD from the other country will be counted against the goals of the MOU as long as such purchases meet the following criteria:

1. Direct purchases by the MoD and DoD, including their respective agencies, one from the other.

2. Direct purchases by either the MoD or DoD from the industry of the other country.

3. Purchases by industry from the Government or industry of the other country in the framework of Government defense contracts.

4. Purchases by a Third Country Government from either US or Italian Governments or industrial sources as a direct result of commercial efforts of the other, non-supplying Country.

5. Procurements by either country of defense items resulting from common funded projects to which the US and Italy are contributors, to be credited in proportion to each country's financial contribution to the project, and to work carried out in each country. The extent to which such procurements will be counted against the goals of this MOU will be, at the time of procurement, mutually agreed between MoD and DoD on a case by case basis.

6. License fees, royalties and other associated income resulting from orders placed by DoD or MoD and/or industry in one country with a licensed company in the other country; or in MoD-DoD transactions.

B. The following non-defense items also will be counted against the goals of the MOU:

1. Purchases by the MoD or DoD from the industry of the other country, on behalf of other governmental departments and agencies.

2. Purchases by a Third Country Government from the MoD or DoD or from industries of these two countries as a direct result of the efforts of the MoD/DoD of the other country.

5. Administration

A. Each country will designate points of contact at the Ministry of Defense level.

B. MoD and DoD representatives will meet periodically, alternatively in each country, to review the projects undertaken in implementing the MOU. They will discuss development, production, procurement, and logistic support needs of each country and the likely areas of cooperation; they will update the financial statement referred to in Paragraph C below as a means of judging the progress of activity in the period under review; and they will consider other matters relevant to this MOU. Specific tasks of the representatives are:

1. Review of the status of the exchanges on the basis of the data, in comparable terms, to be agreed upon by the other party.

2. Consider additional steps necessary to facilitate the actions called for in paragraph 3.

C. An annual US/Italy statement consolidating the current balance of defense equipment research, development, production, procurement, and logistic support between the two countries, as well as the long term trends, will be prepared on a basis to be mutually agreed. Such statement shall take account of any US/Italy offset agreements in force at the time this MOU is signed, and shall be reviewed during the meetings referred to in Paragraph 5B above.

D. Quality assurance procedures outlined in STANAG 4107 and 4108 (subject to the USG reserve concerning US reimbursement) will apply unless other provisions are mutually agreed to on any specific contract. Reimbursement for services provided shall be in accordance with National laws and regulations of each country.

E. This annex, in two original texts in the Italian and English languages, both texts being equaly authentic, will come into effect at the date signed by both Governments.

For the United States Government.

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Dated: January 2, 1979

For the Government of Italy.

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January 2, 1979.

Annex II

To the Memorandum of Understanding Between the Government of the United States of America and the Government of Italy Concerning Mutual Cooperation in Defense Equipment Research and Development, Production and Procurement, Dated 11 September 1978

Principles Governing Logistic Support of Common Equipment

In implementing Article 1, paragraph 15 of the MOU, the two Parties shall be governed by the following:

1. When developing or procuring defense equipment, both Parties will agree upon the basis for joint follow-on logistic support in areas such as configuration control, interchangeability of assemblies, components and spare parts, maintenance, conversion, storage, and spare parts provisioning, etc.

2. Arrangements and procedures will be established concerning follow-on logistic support and other forms of logistic cooperation, e.g., joint utilization of facilities.

3. In the contracting procedures for logistic support, paragraph 9, Article 1 of the MOU normally shall apply. Coproduction, licensed production, or jointly developed equipment may be excluded from this policy at the option of the contracting Party or Parties.

4. Both Parties will issue directives and guidelines to their respective armaments and logistics agencies to achieve the described goals of this MOU.

5. This annex, in two original texts in the Italian and English languages, both texts being equally authentic, will come into effect at the date signed by both Governments.

For the United States Government.
For the Government of Italy.

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Dated: January 2, 1979.

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January 2, 1979.

Annex III

To the Memorandum of Understanding Between the Government of the United States and the Government of Italy Concerning Mutual Cooperation in Defense Equipment Research and Development, Production and Procurement, Dated 11 September 1978

Italian/American Committee for Mutual Cooperation

Terms of Reference

1. The Italian/American Committee for Mutual Cooperation (hereinafter referred to as "the Committee") will operate, under the direct responsibility of the Authorities listed respectively at Article II, paragraphs 2 and 3 of the basic MoU, as the main agency tasked for the appropriate implementation of the MoU.

In particular, the Committee will ensure that the guiding principles of the MoU, governing mutual cooperation in the field of research and development, production, procurement and logistic support of conventional defense equipment are followed.

To this purpose, the Committee will meet annually, or more often when requested by the Government which deems it appropriate.

2. In particular, the Committee has been established in order to discuss problem areas hindering cooperation under the Agreement. Specifically, the Committee's charter is to:

2.1 Verify, through the exchange of information, the status of implementation of the MoU, and propose possible amendments if necessary;

2.2 Recommend, in order to facilitate a mutual flow of defense equipment, appropriate actions to pursue opportunities for cooperation in areas of research and development, production, procurement and logistic support to the maximum extent possible in accordance with national acquisition regulations;

2.3 Agree upon counting procedures and criteria for determining the current balance;

2.4 Prepare a yearly financial report on the interchange between the two countries, and on its trend at medium and long term;

2.5 Draw conclusions from the financial report, and promote possible corrective actions, as provided for by Article VI, paragraph 2-3 of the MoU;

2.6 Consider cases which one side or the other believes might involve improper refusals to requests for special transfers of defense articles and/or technical data to third countries, in order to verify whether it is a deviation from the policy defined in Article I, paragraph 12 of the MoU; in this case, forward immediately a joint report on the subject to the competent Authorities of both Governments;

2.7 Examine, in compliance with paragraph 3.B.10 of Annex I, the problems resulting from the carrying out of Enclosure A to this Annex, relevant to the preservation of the mobilization base of the defense industry;

2.8 Recommend visits by Authorities from time to time in order to explore actual possibilities for cooperation in research and development, production, procurement and logistic support;

2.9 Prepare, at the end of each regular or extraordinary meeting, a joint report for the respective Governments;

2.10 Examine any other subject of interest to the MoU.

3. Furthermore, the Committee will review the steps taken to:

3.1 Ensure that the responsible Government offices and the national industries concerned are informed of meetings of interest to them, and that all important information resulting from the meetings is distributed in timely fashion;

3.2 Ensure that the objectives of collaboration on technology as implied in the basic MoU and stated in Enclosure B to this Annex, are met.

4. The regular meetings of the Committee will take place alternately in Italy and in the United States; the location of the extraordinary meetings will be agreed upon each time.

The National acting as host for a regular meeting, or requesting an extraordinary meeting, will provide the Chairman and the Secretariat.

5. This Annex, in two original texts in the Italian and English languages, both texts being equally authentic, will come into effect at the date signed by both Governments.

For the United States Government.

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For the Government of italy.

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Enclosures: As Stated.

T-207 Portugal Memorandum of Understanding

Memorandum of Understanding Between the Government of Portugal and the Government of the United States of America Concerning the Principles Governing Mutual Cooperation in the Research, Development, Production, Procurement and Logistic Support of Defense Equipment

Preamble

The Government of the United States of America and the Government of Portugal, duly represented by their Ministers of Defense:

Intending to increase their respective defense capabilities through more efficient cooperation in the field of research, development, production, procurement, and logistic support in order to:

—Make the most cost-effective and rational use of the resources available for defense,

—Ensure the widest possible use of standard or interoperable equipment,

—Develop and maintain an advanced industrial and technological capability for the North Atlantic Alliance, and particularly with respect to this Memorandum of Understanding (MOU), and

Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment.

Have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding sets out the guiding principles governing mutual cooperation in research, development, production, procurement and logistic support of conventional defense equipment.

The two Governments conclude this MOU to strengthen the North Atlantic Alliance. In so doing, the Governments are fully aware that the Independent European Program Group (IEPG) wants to enhance equipment collaboration by more comprehensive and systematic arrangements. They therefore agree that in the event of a possible conflict between agreements entered into between the IEPG and the Government of the United States, and this MOU, the parties hereto will consult with a view to amending this MOU.

The two Governments further agree that this MOU should be viewed in the larger context of the cooperation between Europe and North America with the Alliance.

Article I—Principles Governing Mutual Defense Cooperation

1. Both Governments intend to facilitate the mutual flow of defense procurement, taking into consideration relative technological levels of such procurement, and consistent with their national policies. This facilitation shall be sought through the provision of opportunities to compete for procurements of defense equipment and services as well as through the coproduction of defense equipment and defense R&D cooperation.

2. This MOU is intended to cover areas in which possible bilateral cooperation could be achieved in research, development, production, procurement, and logistic support of conventional defense equipment, complementing the work of the Conference of National Armament Directors (CNAD), the Independent European Program Group (IEPG), and the Senior NATO Logisticians Conference (SNLC).

3. The two Governments will, consistent with their relevant laws and regulations, give the fullest consideration to all requests for cooperative R&D, and to all requests for production and procurement which are intended to enhance standardization and/or interoperability within the Alliance.

4. In the interests of standardization and the effective utilization of scarce resources, the two Governments shall, to the extent possible, adopt qualified defense items that have been developed or produced in the other country to meet their requirements.

5. The two Governments shall mutually determine the counting procedures to be laid down in an Annex to this MOU that will apply to all defense items and defense services purchased by them directly or through their relevant industries under this MOU.

6. Each Government shall from time to time notify the other Government of defense items that may not be acquired by the notifying Government from other domestic sources, as well as those defense items that may be particularly suitable for acquisition by the other Government.

7. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense acquisition organizations to facilitate achievement of the aims of this MOU.

8. Competitive contracting procedures shall normally be used in acquiring items of defense equipment developed or produced in each other's country for use by either country's defense establishment.

9. The detailed implementing procedures, to be agreed, will, consistent with and to the extent permitted by national laws and regulations, incorporate the following:

a. Offers or proposals will be evaluated without applying price differentials under buy national laws and regulations and without applying the costs of import duties;

b. Full consideration will be given to all qualified industrial and/or governmental resources in each other's country;

c. Offers or proposals will be required to satisfy requirements of the purchasing Government for performance, quality, delivery, and costs.

10. Both Governments will review items submitted as candidates for respective requirements. They will indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility and submit a bid or proposal.

11. Each Government will ensure that the technical data package (TDP's) made available under this MOU are not used for any purpose other than for the purpose of bidding on and performing a prospective defense contract, without the prior agreement of those owning or controlling proprietary rights and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDP's be transferred to any third country or any other transferee without the prior written consent to the originating Government.

12. Third party transfers of defense articles or technical data made available under this MOU, and of articles produced with such data, will be subject to the agreement of the Government that made available the defense articles or technical data, except as otherwise provided in particular arrangements between the two Governments.

13. Both Governments will use their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries or other owners of such rights.

14. Arrangements and procedures will, at the request of the purchasing government, be established concerning follow-on logistic support for items of defense equipment, purchased pursuant to this MOU. Both Governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

Article II—Implementing Procedures

1. Representatives of the two Governments will be appointed to determine in detail the procedures for implementing this MOU and the terms of reference for a Portugal-U.S. Committee for Mutual Cooperation.

2. The Under Secretary of Defense for Research and Engineering will be the responsible authority in the United States Government for the development of implementing procedures under this MOU.

3. The Director General of Armaments and the Secretary of State for Light Industry will be the responsible authorities of the Government of Portugal for the development of implementing procedures under the MOU.

Article III—Industry Participation

1. Each Government will be responsible for calling to the attention of the relevant industries within its territory the basic understanding of this MOU, together with appropriate implementing guidance. Both Governments will take all necessary steps so that the industries comply with the regulations pertaining to security and to safeguarding classified information.

2. Implementation of this MOU will involve full industrial participation. Accordingly, the Governments will arrange to inform their respective procurement and requirements offices concerning the principles and

objectives of this MOU. However, primary responsibility for finding business opportunities in areas of research and development and production shall rest with his industries in each nation.

Article IV—Security

1. To the extent that any items, plans, specifications or information furnished in connection with specific implementation of this Memorandum of Understanding are classified by the furnishing Government for security purposes, the other Government shall maintain a similar classification and employ all measures necessary to preserve such security equivalent to those measures employed by the classifying Government throughout the period during which the classifying Government may maintain such classification.

2. Information that has been provided by either of the Governments to the other on condition that it remain confidential shall either retain its original classification designation, or be assigned a classification designation, that shall ensure a degree of protection against disclosure equivalent to that required by the other Government. To assist in providing the desired protection, each Government will mark such information furnished with a legend indicating the origin of information, that the information relates to the "Memorandum of Understanding" and Annexes thereto, and that the information is furnished in confidence.

Article V—Administration

1. The Portugal-U.S. Committee for Mutual Cooperation, referred to in Article II above, will meet as agreed or at the request of either Government to review progress in implementing the MOU. They will discuss research and development, production and procurement needs of each national and the likely areas of cooperation; agree to the basis of and keep under review, the financial statement referred to below; and consider any other matters relevant to this MOU.

2. Each Government will designate points of contact at the Ministry of Defense level and in each purchasing service/agency under the Ministries of Defense.

3. An annual United States-Portugal statement of the current balance, and long-term trends, of R&D cooperation and purchases between the two nations will be prepared on basis to be mutually agreed.

Article VI—Annexes

Annexes negotiated by the responsible officials and approved by the appropriate Government authorities will be incorporated in this MOU.

Article VII—Duration

1. This MOU will remain in effect for a ten-year period and will be extended for successive five-year periods, unless the Governments mutually decide otherwise.

2. If, however, either Government considers it necessary for compelling national reasons to terminate its participation under this MOU before the end of the ten-year period, or any extension thereof, written notification of its intention will be given to the other Government six months in advance of the effective date of termination. Such notification of intent shall become a matter of immediate consultation with the other Government to enable the Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to take such actions as necessary to alleviate problems that may result from the termination. In this connection, although the MOU may be terminated by the Parties, any contract entered into consistent with the terms of this MOU shall continue in effect, unless the contract is terminated in accordance with its own terms.

Article VIII—Implementation

This MOU will come into effect on the date of the last signature.

For the Government of the United States of America.

The Secretary of Defense.

Harold Brown.

Dated: March 28, 1979.

For the Government of Portugal.

The Minister of Defense.

José Alberto Loureiro dos Santos.

December 18, 1978.

Annex I to the Memorandum of Understanding Between the Government of the United States of America and the Government of Portugal Concerning the Principles Governing Mutual Cooperation in the Research and Development, Production, Procurement, and Logistic Support of Defense Equipment, Dated 28 March 1979

Principles Governing Implementation

1. Introduction

On 28 March 1979, the Government of the United States and the Government of Portugal signed a Memorandum of Understanding (MoU) relating to the principles governing mutual cooperation in research and development, production, procurement, and logistic support of defense equipment. This document sets forth the agreed implementing procedures for carrying out the MoU.

2. Major Principles

2.1 The U.S. Department of Defense (DoD) and the Ministry of Defense of Portugal (MoD) will consider for their defense requirements qualified defense items and services developed or produced in the other country.

2.2 It will be the responsibility of government and/or industry representatives in each country to acquire information concerning the other country's proposed research, developments, and purchases and to respond to requests for proposals in accordance with the prescribed acquisition procedures and regulations of the purchasing nation. However, the responsible government agencies in each country will assist sources in the other country to obtain information concerning intended research and development, proposed purchases, necessary qualifications and appropriate documentation.

3. Action

DoD and MoD will review and, where considered necessary, revise policies, procedures and regulations to ensure that the principles and objectives of this MoU, which are intended to be compatible with the broad aims of NATO Rationalization/Standardization, are taken into account. Recognizing that factors such as delivery date requirements for supplies, the interests of security, and the timely conduct of the contracting process are considerations, DoD and MoD agree that the following measures will be taken to ensure free and full competition for the award of contracts:

3.1 Ensure that their respective requirements offices are familiar with the principles and objectives of this MoU.

3.2 Ensure that their respective research and development offices are familiar with the principles and objectives of this MoU.

3.3 Ensure that their respective acquisition offices are familiar with the principles and objectives of this MoU.

3.4 Ensure wide dissemination of the basic understanding of this MoU to their respective defense industries.

3.5 Ensure that, to the extent permitted by national laws and regulations, offers of defense items produced in the other country will be evaluated without applying to such offers either price differentials under buy-national laws and regulations, or the cost of import duties. Provisions will be made for duty-free entry certificates and related documentation to the extent consistent with national laws and procedures.

3.6 Assist industries in their respective countries to identify and advise the other government of their production capabilities and assist such industries in carrying out the supporting actions to optimize industrial participation.

3.7 Review defense items and requests for services submitted as candidates for respective requirements. Identify requirements and proposed purchases in a timely fashion to ensure adequate time for their industries to participate in the acquisition process.

3.8 Make best efforts to assist in negotiating licenses, royalties, and technical information exchanges with their respective industries.

3.9 Permit the sales of equipment produced under license to Allied countries, and to appropriate third countries, subject to the policy outlined in Article I, paragraph 12 of the basic MoU. Each agreement for a joint development or coproduction will address transfers of items or technology to Allied or third countries.

3.10 Ensure that those items and services excluded from consideration under this MoU for reasons of protecting overriding national requirements, such as the maintenance of a defense mobilization base (Appendix 1), are limited to a small percentage of total annual defense acquisition spending. It is intended that such defense items and services, as well as those items and services that must be excluded from consideration under this MoU because of legally imposed restrictions on acquisition from non-national sources, be identified as soon as possible by the MoD and the DoD, and that such defense items and services be kept under review at this level.

3.11 Ensure that the balance of reciprocal purchasing within the areas of this MoU take into consideration the levels of technology involved, as well as the contractual value, in accordance with the policy outlined in Article 1, paragraph 1 of the basic MoU.

3.12 Arrange visits between appropriate government personnel from time to time in order actively to explore possibilities for acquisition and logistic support.

4. Counting Procedures

4.1 The purchases to be counted against the goals of the MoU will be identified jointly by DoD and MoD. In principle, all defense items or components thereof, as defined in the basic MoU, and associated services included in a procurement contract, purchased by MoD and DoD from the other country will be counted against the goals of the MoU as long as such purchases meet the following criteria:

4.1.1 Direct purchases by the MoD and DoD, including their respective agencies, one from the other.

4.1.2 Purchases by either the MoD or DoD from the industry of the other country.

4.1.3 Purchases by industry from the Government or industry of the other country in the framework of Government defense contracts.

4.1.4 Purchases by a third country government from either US or Portuguese Government or industrial sources as a direct result of commercial efforts of the other, non-supplying country.

4.1.5 Acquisitions by either country of defense items resulting from common funded projects to which the US and Portugal are contributors, to be credited in proportion to each country's financial contribution to the project, and to work carried out in each country. The extent to which such acquisitions will be counted against the goals of the MoU will be, at the time of procurement, mutually agreed between MoD and DoD on a case-by-case basis.

4.1.6 License fees, royalties and other associated income resulting from orders placed by DoD or MoD and/or industry in one country with a licensed company in the other country; or in MoD-DoD transactions.

4.2 The following non-defense items also will be counted against the goals of the MoU:

4.2.1 Purchases by the MoD or DoD from the industry of the other country, on behalf of other governmental departments and agencies.

4.2.2 Purchases by a third country government from the MoD or DoD or from industries of these two countries as a direct result of the efforts of the MoD/DoD of the other country.

5. Administration

5.1 Each country will designate points of contact at the Ministry of Defense level.

5.2 MoD and DoD representatives will meet periodically, alternately in each country, to review the projects undertaken in implementing the MoU. They will discuss acquisition and logistic support needs of each country and the likely areas of cooperation; they will update the financial statement referred to in paragraph 5.3 below as a means of judging the progress of activity in the period under review; and they will consider other matters relevant to this MoU. Specific tasks of the representatives are:

5.2.1 Review the status of acquisitions on the basis of the date available concerning such acquisitions, in comparable terms to be agreed upon by both Parties.

5.2.2 Consider additional steps necessary to facilitate the actions called for in paragraph 3.

5.3 An annual US/Portugal statement consolidating the current balance of defense equipment acquisition and logistic support between the two countries, as well as the long term trends, will be prepared on a basis to be mutually agreed.

5.4 Quality assurance procedures outlined in STANAG 4107 and 4108 (subject to the USG reservation concerning US reimbursement) will apply unless other provisions are mutually agreed to on any specific contract. Reimbursement for services provided shall be in accordance with national laws and regulations of each country.

5.5 This annex will come into effect on the date of the last signature.

For the Government of the United States of America.

Dated: July 7, 1980.

William J. Perry.

For the Government of Portugal National Armament Director and Ministry of Sec. State Industry.

Brig. Jose Maria da Costa Alvares.

Cardoso Cunha.

December 12, 1979.

Annex II to the Memorandum of Understanding Between the Government of the United States of America and the Government of Portugal Concerning Mutual Cooperation in Defense Equipment Research and Development, Production, Procurement, and Logistic Support, Dated 28 March 1979

Principles Governing Logistic Support of Common Equipment

In implementing Article 1, paragraph 14 of the MoU, the two Governments shall be governed by the following:

1. When developing or procuring defense equipment, both Governments will agree upon the basis for joint follow-on logistic support in areas such as configuration control; interchangeability of assemblies, components and spare parts; maintenance; conversion; storage, spare parts provisioning; etc.

2. Arrangements and procedures for logistic support, paragraph 9, Article 1 of the MoU normally shall apply.

4. Both Governments will issue directives and guidelines to their respective armaments and logistics agencies to achieve the described goals of this MoU

5. This annex will come into effect on the date of the last signature.

For the Government of the United States of America.

Dated July 7, 1980.

William J. Perry.

For the Government of Portugal National Armament Director & Ministry of Sec. State Industry.

Brig. Jose Maria da Costa Alvares.

Cardoso Cunha.

December 12, 1979.

Annex III to the Memorandum of Understanding Between the Government of the United States of America and the Government of Portugal Concerning the Principles Governing Mutual Cooperation in the Research and Development, Production, Procurement, and Logistic Support of Defense Equipment, Dated 28 March 1979

Terms of Reference

1. The Portugal/U.S. Committee for Mutual Cooperation (hereafter to be called "the Committee") will serve under the direct responsibility of the authorities listed in Article II, sub 2 and 3 of the MoU, respectively, as the main body in charge of the adequate implementation of the MoU.

2. In particular, the Committee will be responsible for ensuring implementation of the MoU governing the mutual cooperation in research and development, production, acquisition and logistic support of conventional defense equipment. To this end the Committee members will meet as required, but not less than annually, to review progress in implementing the MoU. In this review:

2.1 They will discuss research, development, production, acquisition, and logistic support needs of each country and the likely areas of cooperation, including joint activities in those fields.

2.2 They will exchange information as to the way the stipulations of the MoU have been carried out and, if need be, prepare proposals for amendments of the MoU and/or its annexes.

2.3 They will agree to the financial statement of the current balance, given guidance for its yearly preparation and formulate conclusions from it, such conclusions to include any long term trends which may be established.

2.4 They will consider any other matters relevant to the MoU

2.5 They will report after each meeting and advise as appropriate.

2.6 The Committee will alternately meet in the United States and in Portugal. The country in which a particular meeting will take place will provide the chairman and the secretariat for that meeting.

For the Government of the United States of America.

Date July 7, 1980.

William J. Perry.

For the Government of Portugal National Armament Director & Ministry of Sec. State Industry.

Brig. Jose Maria da Costa Alvares.

Cardoso Cunha.

December 12, 1979.

T–208 Belgium Memorandum of Understanding

Memorandum of Understanding Between the Government of the Kingdom of Belgium and the Government of the United States of America Concerning the Principles Governing Mutual Cooperation in the Research, Development, Production, Procurement and Logistic Support of Defense Equipment

Preamble

The Government of the United States of America and the Government of the Kingdom of Belgium duly represented by their Ministers of Defense:

Intending to increase their respective defense capabilities through more efficient cooperation in the fields of research, development, production, procurement and logistic support in order to:

—Make the most cost-effective and rational use of their respective resources allocated to defense,

—Promote the widest possible use of standard or interoperable equipment,

—Develop and maintain an advanced industrial and technological capability for the North Atlantic Alliance, and particularly with respect to the parties to this Memorandum of Understanding (MOU),

Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment, and

Mindful of the objectives described in Art. 3 of the North Atlantic Treaty and para. 4 of the final communique of the North Atlantic Summit Council of May 1977 with regard to Alliance cooperation in view of safeguarding Western Security,

Have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding sets out the guiding principles governing mutual cooperation in research, development, production, procurement and logistic support of conventional defense equipment. The conclusion of this MOU does not preclude other specific agreements for cooperation in developing, producing, or co-producing, as appropriate, items of defense equipment.

The two Governments conclude this MOU to strengthen the North Atlantic Alliance. The two Governments further agree that this MOU should be viewed in the larger context of the cooperation within the Alliance. In so doing, the Governments are fully aware that the Independent European Program Group (IEPG) want to enhance equipment collaboration by more comprehensive and systematic arrangements among the indivudual member nations.

The parties hereto also agree that in the event of a possible conflict between this MOU and other agreements, they will consult with a view to amending this MOU.

Article I—Principles Governing Reciprocal Defense Cooperation

1. a. Both Governments intend to facilitate the mutual flow of defense procurement for their armed forces, aiming at a long term equitable balance in their exchanges, taking into consideration the relative technological level of such procurement, and consistent with their national policies.

b. Both Governments will make their best efforts to facilitate defense R&D cooperation, coproduction of defense equipment and provision of opportunities to compete for procurement of defense services and equipment to include components, subsystems, spare parts and major systems at all technological levels.

c. A long term equitable balance will not imply an equal monetary flow of defense procurement, but will take into account each country's financial, industrial, economic and commercial possibilities.

d. In order to assess the mutual flow of defense articles and services, the two Governments will jointly determine the counting procedures to be set down in an annex to this MOU that will apply to all defense articles and defense services purchased by them directly or through their respective industries under this MOU.

2. The two Governments will, consistent with their relevant laws and regulations, give the fullest consideration to all requests for cooperative R&D, and to all requests for production and procurement which are intended to optimize standardization and/or interoperability within the Alliance. They will do likewise with regard to offers of services.

3. In the interest of standardization and the effective utilization of scarce resources, the two Governments will, to the extent possible, select qualified defense articles and defense services that have been developed or produced in the other country to meet their requirements, in accordance with the procedures of paragraph 7 below. Defense articles or defense services are those articles or services which may be procured utilizing appropriated funds to the U.S. Department of Defense or budgeted funds of the Belgian Ministry of Defense.

4. Each Government will from time to time notify the other Government of defense articles and services that may only be acquired by the notifying Government from domestic sources, well as those defense articles and services that may be particularly suitable for acquisition by the other Government. Indicative lists of the latter will be provided in an annex to this MOU.

5. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense acquisition organizations to facilitate achievement of the aims of this MOU.

6. Competitive contracting procedures will normally be used in acquiring defense articles developed or produced in or defense services provided by each country for use by the other country's defense establishment.

7. The detailed implementing procedures to be agreed will, consistent with and to the extent permitted by national laws and regulations, incorporate the following:

a. Offers or proposals of defense articles produced in or defense services provided by each country will be evaluated without applying price differentials under buy-national laws and regulations, and without applying the cost of applicable import duties. In the event that either party can no longer comply with the exemption from import duties, the parties hereto will consult with a view to amending this MOU;

b. Each country will give full consideration to all qualified sources in the other country. In addition, each country will give full consideration to all applications for qualification by sources in the other country;

c. Offers or proposals will be required to satisfy requirements of the purchasing Government concerning performance, quality, delivery and costs;

d. Provisions for duty-free certificates and related documentation;

e. Arrangements concerning quality control and audits of incurred costs and price proposals.

8. Both Governments will review defense articles and defense services submitted as candidates for their respective requirements. They will indicate requirements and proposed purchases in a timely fashion, in accordance with national regulations, to ensure adequate time for their respective industries to qualify for eligibility and to submit a bid or proposal.

9. Each Government will ensure that the technical data packages (TDP's) made available under this MOU are not used for any purpose other than for the purpose of bidding on or performing a prospective defense contract, without the prior agreement of those owning or controlling proprietary rights, and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDP's be transferred to any third country or any other transferee without the prior written consent of the originating Government.

10. a. Transfers to third parties of defense articles or technical data made available under this MOU, and of articles produced with such data, will be subject to the prior written agreement of the Government that made available the defense articles or technical data, except as otherwise provided in particular arrangements between the two Governments.

b. Each Government will base its decisions regarding requests by the other for agreement to third party transfers on its laws, regulations and defense policies. Each Government will use the same criteria for proposed transfers by the other as it uses for itself, and will not reject, solely in the pursuit of its own national commercial advantage, a request from the other for a third country transfer of such defense articles or technical data. Third country transfers approved in accordance with this agreement will count in the calculation of the balance of exchanges as a purchase by the Government authorizing the transfer.

c. Consistent with the above, in carrying out its own transfers to third countries, each Government shall take into consideration the extent to which a proposed transfer may damage or infringe upon known licensing arrangements whereby commercial firms in the US or Belgium have granted to firms in the other country licenses for the manufacture of the articles proposed to be transferred to a third country.

11. Both Governments will use their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries or other owners of such rights. The two Governments will mutually make available to each other, to the extent possible and in a timely fashion, all information and the proprietary rights required to implement cooperation under this MOU. The two Governments will, to the extent feasible, seek appropriate agreement with their industries that in the interest of standardization and armaments cooperation, proprietary rights in defense-relevant information and data can be transferred by appropriate arrangements and on fair and reasonable terms, between the industries of the two countries.

12. Arrangements and procedures will, at the request of the purchasing Government, be established concerning follow-on logistic support for items of defense equipment covered by this MOU. Both Governments will make their defense logistic system and resources available for this purpose if required and mutually agreed.

Article II—Implementation Procedures

1. Mutually agreed implementing procedures for this MOU will be established and be a part thereof.

2. Representatives of the two Governments will be appointed as the responsible authorities for the implementation of this MOU. The Under Secretary of Defense for Research and Engineering will be the representative for the United States Government. The National Armaments Director will be the representatives for the Government of Belgium.

3. The establishment of a Belgian-United States Committee for Mutual Cooperation and its rules of procedure and competence will be agreed upon in an annex to be made a part of this MOU.

4. Each Government will designate points of contact at the Ministry of Defense level and in the procurement offices under the Ministry of Defense. They will be listed in an annex to be made a part of this MOU.

Article III—Industry Participation

1. Each Government will be responsible for calling to the attention of its respective industries the basic understanding of this MOU, together with appropriate implementing guidance. Both Governments will take all necessary steps so that their industries comply with the regulation pertaining to security and to safeguarding classified information.

2. Implementation of this MOU will involve maximum industrial participation. Accordingly, the Governments will arrange that their respective acquisition and requirements offices be made familiar with the principles and objectives of this MOU. However, primary responsibility for finding business opportunities in areas covered by this MOU shall rest with the industries in each country.

Article IV—Security

The General Security of Information Agreement, dated 9 August 1960 and the Agreement for Security Procedures for Industrial Operations, dated 24 July 1979, between the two Governments, apply to activities under this Memorandum of Understanding.

Article V—Annual Statement

An annual United States-Belgium statement of the current balance and long-term trends of R&D cooperation, procurement, maintenance and logistic support of defense equipment between the two nations will be prepared on a basis to be mutually agreed in an annex to this MOU and reviewed during the meetings of the Belgian-United States Committee for Mutual Cooperation, in accordance with its terms of reference.

Article VI—Annexes

Annexes negotiated by the responsible officials and approved by the appropriate government authorities will be incorporated into this MOU and become an integral part thereof as of the date of the last signature.

Article VII—Duration

1. This MOU will remain in effect for a ten-year period. Unless the Governments mutually decide otherwise, the duration will be extended for successive five-year periods.

2. If, however, either Government considers it necessary for compelling national reasons to terminate its participation under this MOU before the end of the ten-year period, or of any extension thereof, written notification of its intention will be given to the other Government six months in advance of the effective date of termination. Such notification of intent shall become a matter of immediate consultation with the other Government to enable the two Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to agree upon such actions as are necessary to alleviate problems that may result from the termination.

3. Although the MOU may be terminated by the parties, any contract entered into consistent with the terms of this MOU shall continue in effect, unless the contract is terminated in accordance with its own terms.

Article VIII—Implementation

1. The agreements in this MOU represent the understanding reached between the Government of the United States of America and the Government of the Kingdom of Belgium upon the matters referred to herein. Each Government may propose amendments; both Governments must agree in writing to any amendment of this MOU.

2. Any difference of opinion over the interpretation and implementation of this MOU and its annexes will be resolved by consultation between the two Governments.

3. This MOU, in three original texts in the English, French and Dutch languages, all three texts being equally authentic, will come into effect on the date of the last signature.

For the Government of the United States of America.

Harold Brown.

The Secretary of Defense.

Date: 12 December 1979.

For the Government of the Kingdom of Belgium.

Jose Desmarets,

The Minister of Defense.

12 December 1979.

Annex I—Memorandum of Understanding Between the Government of the Kingdom of Belgium and the Government of the United States of America Concerning the Principles Governing Mutual Cooperation in the Research and Development, Production, Procurement and Logistic Support of Defense Equipment Dated 12 December 1979

Principles Governing Implementation

1. Introduction

On 12 December 1979, the Governments of the United States and the Kingdom of Belgium signed a Memorandum of Understanding (MOU) relating to the principles governing mutual cooperation in the research, development, production, procurement and logistic support of defense equipment. This Annex sets forth the agreed implementing procedures for carrying out the MOU.

2. Major Principles

a. The U.S. Department of Defense (DoD) and the Ministry of Defense of Belgium (MOD) will consider for their defense requirements qualified defense items developed or produced in the other country.

b. It will be the responsibility of government and/or industry representatives in each country to acquire information concerning the other country's proposed research, developments, and purchases and to respond to requests for proposals in accordance with the prescribed procurement procedures and regulations. However, the responsible governing agencies in each country will assist sources in the other country to obtain information concerning intended research and development, proposed purchases, necessary qualifications and appropriate documentation.

3. Action

DoD and MOD will review and, where considered necessary, revise policies, procedures and regulations to ensure that the principles and objectives of this MOU, which are intended to be compatible with the broad aims of NATO Standardization and Interoperability, are taken into account. DoD and MOD agree that the following measures shall be taken, recognizing that among other factors, delivery date requirements for supplies, the interest of security and the timely conduct of the procurement process, are considerations related to ensure free and full competition for the award of contracts:

1. Ensure that their respective requirements offices are familiar with the principles and objectives of the MOU.

2. Ensure that their respective research and development offices and institutes are familiar with the principles and objectives of this MOU.

3. Ensure that their respective acquisition offices are familiar with the principles and objectives of this MOU.

4. Ensure wide dissemination of the basic understanding of the MOU to their respective

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industries producing and/or developing defense items and/or services.

5. Ensure that, consistent with national laws and regulations, offers of defense items produced in the other country will be evaluated without applying to such officers, either price differentials under buy-national laws and regulations, or the cost of applicable import duties. Also, provisions will be made for duty-free entry certificates and related documentation to the extent that existing laws and regulations permit.

6. Assist industries in their respective countries to identify and advise the other government of their production capabilities and assist such industries in carrying out the supporting actions to maximize industrial participation.

7. Full consideration will be given to all qualified industrial and/or governmental sources in each other's country and to all applications for qualification by sources in the other country.

8. Review defense items submitted by the other country as candidates for respective requirements. Identify requirements and proposed purchases to the other country in a timely fashion to ensure that the industries of such country are afforded adequate time to be able to participate in the research and development, production and procurement processes.

9. Use best efforts to assist in negotiating licenses, royalties, and technical information exchanges with their respective industries, or other owners of such rights.

10. Ensure that those items and services excluded from consideration under this MOU for reasons of protecting national requirements, such as the maintenance of a defense mobilization base, are limited to a small percentage of total annual defense procurement spending. It is intended that such defense items and services, as well as those items and services that must be excluded from consideration under this MOU because of legally imposed restrictions on procurement from non-national sources, be identified as soon as possible by the MOD and the DoD, and that such defense items and services be kept under review at this level.

11. Ensure that the balance of reciprocal purchases takes into consideration the levels of technology involved, as well as the monetary value of purchases hereunder and each country's financial, industrial, economic and commercial possibilities.

12. DoD and MOD will from time to time arrange visits in order to actively explore possibilities for cooperation on research and procurement, and logistical support and to examine any issues related to counting reports or procedures.

4. Counting Procedures

a. The purchases and other transactions to be counted against the goals of this MOU will be identified jointly by the DoD and MOD. In principle, all defense items and services purchased by the DoD and MOD from the other country will be counted as long as such purchases meet the following criteria:

1. Contracts resulting from direct purchases by the DoD or MOD, including their respective Agencies, one from the other.

2. Contracts resulting from purchases by either the MOD or DoD from the industry of the other country. When such purchases involve offset agreements between the Government of either country and the industry of the other country, the amount of such offset shall be applied in calculating the balance.

3. Purchases by industry from the Government or industry of the other country in the framework of Government defense contracts.

4. Purchases by a third country government from the US or Belgian Government or the industry of either country when either of the following circumstances occur:

—The sale requires the prior agreement of the non-vendor Government.

—The sale is a direct result of the promotional efforts by the Government or industry of the non-vendor country, which fact has been previously acknowledged and agreed by the vendor party.

5. Acquisitions by either country of defense items or services resulting from projects jointly funded by both countries.

6. License fees, royalties and other associated income resulting from orders placed by DoD or MOD and/or industry in one country with a licensed company in the other country; or in DoD-MOD transactions.

7. Transfers of technology, and production, testing and quality control equipment required to achieve the goals of this MOU.

8. Contributions by one country in research, development and demonstration programs in the other country that have been agreed by both Governments.

9. Purchases of non-defense items and services by the Government or industry of either country from the Government or industry of the other, provided that both Governments agree that any particular purchase is to be counted against the goals of this MOU.

b. The following transactions will *not* be counted:

1. Maintenance and logistic support activities in either country under contracts in effect before the effective date of this MOU.

2. Any transaction being carried out under contracts and agreements in effect before the effective date of this MOU.

3. Operational expenses of either Government to achieve the goals of this MOU.

c. Transactions listed in paragraph 4.a.1., and any others that both Governments agree, will be credited in the following manner:

1. At the value of the contract on its effective date.

2. Purchases by third countries of defense items or services from the US or Belgian Government or the industry of either country as described in paragraph 4.a.4. above, will be credited as a sale by the non-vendor country, as follows:

—When authorization by the non-vendor Government is required; the value of the item(s) directly related to the authorization will be credited.

—When the sale is the direct result of promotional efforts by the Government or industry of the non-vendor country; the value of parts, sub-assemblies, assemblies, equipment and services supplies by either the US or Belgian Government or their respective industries will be credited.

d. The following transactions will be credited in the manner and amounts agreed by both Governments:

1. License fees, royalties, and any other income resulting from transfer of technology, and production, testing and quality control equipment between both countries.

2. Orders placed by DoD or MOD and/or industry in one country with a licensed company in the other country, or from DoD-MOD transactions.

3. Contributions by one country in research, development and demonstration programs in the other country.

e. Transactions will be credited according to the exchange rate of the respective currencies on the effective date of the transaction.

f. Each Government will prepare an annual calendar year counting report. These reports will summarize the data counted pursuant to each of the categories above. Supporting data for each category included in the summary will indicate the item supplied, the parties to the transaction, transaction date, and credited value. Both Governments will exchange the summary reports and supporting data sufficiently in advance of the annual meeting to permit review and comment or agreement by the other at least two (2) weeks prior to the meeting. Any disagreement concerning the reports will be settled by the Belgian-US Committee for Mutual Cooperation established pursuant to paragraph 3 of Article II of the MOU.

5. Administration

a. Each Government will designate points of contact at the Ministry of Defense level, as well as within other relevant Departments and Agencies, for the purpose of carrying out those actions necessary to implement this MOU.

b. The Belgian-US Committee for Mutual Cooperation will be responsible for the general administration of this MOU. Its terms of reference are contained in Annex II.

c. Quality assurance procedures outlined in STANAGs 4107 and 4108 will apply, unless other provisions are mutually agree upon. Reimbursement for services provided shall be afforded in accordance with the national laws and regulations of each country.

For the Government of the United States of America.

———— ————,

Dated: 25 April 1983.

For the Government of the Kingdom of Belgium.

———— ————,

Dated: 25 April 1983.

Annex II—Memorandum of Understanding Between the Government of the Kingdom of Belgium and the Government of the United States of America Concerning the Principles Governing Mutual Cooperation in the Research and Development, Production, Procurement and Logistic Support of Defense Equipment Dated 12 December 1979

Terms of Reference for the U.S./Belgian Committee for Mutual Cooperation

1. The Belgian-US Committee for Mutual Cooperation, hereinafter called "the Committee", referred to in paragraph 3 of Article II of the MOU, will operate under the direct responsibility of the Authorities cited in paragraph 2 of the same Article, or their respective representatives. It will be the main body responsible for implementation of the MOU.

2. To this end, the Committee will meet not less than once in each calendar year. The meetings will be devoted to reviewing the progress in implementing and accomplishing the MOU. In particular, it will review progress in removing obstacles to achievement of the MOU goals, and the effectiveness of definite actions that may be mutually agreed to reach these goals. Furthermore, the Committee will:

a. Discuss each country's requirements of research, development, production, procurement and logistic support of defense items, as well as the evaluation of possible areas for cooperation and activities to be jointly developed.

b. Exchange information as to the way the stipulations of the MOU have been implemented and carried out, and, if need be, prepare proposals for amendments to the MOU and/or its Annexes.

c. Review and approve the annual counting report on the trade balance to be prepared in accordance with the guidance contained in Annex I to this MOU. Formulate conclusions and recommendations from it, to include any long-term trends which may be established.

d. Consider any other matters relevant to the MOU.

3. The Committee will alternatively meet in Belgium and in the United States. Each country will appoint a Project Officer, who will jointly prepare the agenda for each subsequent meeting. The country in which a particular meeting takes place will provide the chairman and the secretariat who will be responsible for preparing the minutes of the meeting.

For the Government of the United States of America.

———— ————,

Date 25 April 1983.

For the Government of the Kingdom of Belgium.

———— ————,

Date 26-04-1983.

Annex III—Memorandum of Understanding Between the Government of the Kingdom of Belgium and the Government of the United States of America Concerning the Principles Governing Mutual Cooperation in the Research and Development, Production, Procurement and Logistic Support of Defense Equipment Dated 12 December 1979

Principles Governing Contract Administration Services

1. Introduction

This Annex sets forth the terms, conditions, and procedures under which the Governments will provide each other with selected contract administration services and related information in support of defense contracts and subcontracts contemplated or executed under the Memorandum of Understanding (MOU). It is recognized that in the event conflicts arise between any aspect of this Annex and the laws of either Government, the laws shall prevail.

2. Major Principles

The objective of this Annex is to insure each Government is able to employ the most effective and efficient contract administration support possible when acting under the MOU. Nothing is to be construed as impairing a purchasing Government's access to its contractors and their records as may be contractually authorized.

For the purpose of this Annex, contract administration shall include all those necessary actions, other than contract pricing and audit, to be accomplished at, or in proximity to, a firm's place of business to assist the purchasing office in evaluating a prospective contractor's capabilities and in monitoring and enforcing awarded contracts. This Annex supplements NATO Standardization Agreement (STANAG) 4107, hereby incorporated by reference in regard to reciprocal quality assurance.

3. General

The purchasing Government may request specific services and information selected from those listed in Appendix 1 to this Annex which it considers appropriate to the circumstances. The purchasing Government may elect to obtain additional support through its own on-site representatives provided there is no duplication of work performed by the host Government. In addition, the host Government will use its best efforts to supply information requested by the purchasing Government but not listed in this Annex when necessary to support contract award, enforcement, or termination. The provision of any services and information other than those defined in Appendix 1 will be on a cost reimbursable basis. The purchasing Government may modify a request for support during contract performance after consultation with the host Government.

The host Government shall accept requests for services to the extent resources are available and carry them out according to the procedures that Government uses for its own contracts.

Contracts shall contain suitable provisions for the host Government to act for and on behalf of the purchasing Government and shall authorize access to contractor facilities and records and use of contractor assets as necessary for the performance of contract administration services.

Where representatives of either Government deal with a contractor at the same location in support of the same contract or separate contracts, they shall act in full concert according to terms of reference mutually agreed or to be agreed upon.

Each Government shall designate a single office to receive requests for contract administration services. This office shall arrange for the required services to be performed by the appropriate national organization. In addition, each Government may elect to designate an office in or near the other's country to act as a focal point through which requests for support will be forwarded. The host Government will endeavor to keep the purchasing Government's focal point apprised of current contract administration practices and resources to help insure requests for services are reasonable and prudent. The focal point shall advise the host Government concerning contract requirements and clarify requests for services as necessary.

4. Procedures

Requests for contract administration in the Kingdom of Belgium shall be directed to: Commission Interforces d'Evaluation, en Assurance de la Qualite, Quarter Reine Elisabeth—Bloc 11, Rue d'Evere 1, B 1140 Brussel, Belgium, Tel 2/243 40 21. TWX 21339CTRMODB.

Requests for contract administration in the United States shall be directed to: The Department of Defense Control Point, DCASR New York, 201 Varrick Street, New York, New York 10014, Tel 212/374-3446.

Contract administration requests will be accompanied by the number of copies of the request for proposal or awarded contract, as appropriate, prescribed in STANAG 4107 and will specify the contract administration services desired. Every effort will be made to forward support requests simultaneously with the forwarding of awarded contracts to the contractor. The format shall be as described in Annex A to STANAG 4107, with desired services other than quality assurance specified in Block 10. If less than comprehensive quality assurance is needed, the desired services selected from Allied Quality Assurance Publication (AQAP) 10 shall be specified in Block 10. Requests shall reference this Annex to the MOU and shall be processed according to the procedures in STANAG 4107 with due regard to Section VII of this Annex. In principle, acceptance or rejection shall be made within 30 calendar days of receipt by the host Government.

Direct communications between the purchasing office and the assigned contract administration office in resolving contract problems are authorized and encouraged. The purchasing Government shall retain final authority over contract interpretations and enforcement actions, and shall advise the contract administration office on such matters as needed.

In the event the purchasing Government envisions the assignment of in-plant representatives, proposed terms of reference describing an appropriate working relationship with host Government representatives will be suggested to the host Government as early as possible.

5. Responsibility and Liability

Nothing in this annex shall relieve the contractor of any responsibilities under the contract. No liability will attach to the Government, its officers or agents, acting under this Annex on behalf of the other Government.

6. Protection of Information

Data obtained through the implementation of this Annex shall receive the same protection against unauthorized disclosure as such data would normally receive under the

laws and rules of the country which possesses it.

7. Charges

Services defined in Appendix 1 and provided under this Annex will be free of charge, subject to a joint review of the services being exchanged at not less than three-year intervals. If, as a result of such a joint review, either Government determines that charges will be necessary, they may be imposed after not less than one year advance notice. Should such charges by the U.S. Government become necessary, or should the USG provide services other than those defined in Appendix I, Foreign Military Sales Procedures then in effect will apply.

8. Duration

This Annex will remain in effect for a period as set forth in ARTICLE VII of the MOU, and may be terminated under the conditions as set forth in that Article.

9. Implementation

This Annex will come into effect on the date of the last signature.

For the Government of the United States of America.

———— ————,

Date April 26, 1983.

For the Government of the Kingdom of Belgium.

———— ————,

Date 04–26–1983.

Appendix 1. Services to be Exchanged.

Appendix 1 to Annex III—Services To Be Exchanged

In accordance with the principles and procedures as set forth in this Annex the following services will be performed by the host Government within its national boundaries upon requests by and on behalf of the purchasing Government:

1. Support evaluations of contractor capabilities prior to award.

a. Supply available information concerning design, production, and quality control capabilities as appropriate; for example, the amount of available floor space, plant equipment, skilled and unskilled workers, past production of similar items, and the NATO Allied Quality Assurance Publications (AQAPs) against which the firm has been assessed.

b. Evaluate the financial strength of the prospective contractor, estimate the likelihood that financial resources will be sufficient to accomplish the contract, and report the monetary value (in local currency) of host Government capital assets furnished or made available to the contractor which may be used in the contract.

c. Provide access to available accounting system disclosure statements and assistance in determining the system's ability to meet contractual requirements.

2. Perform Government quality assurance, as defined in STANAG 4107, in whole or in part as requested.

3. Report detected potential or actual slippages in contract delivery schedules or any other contractor difficulties which might affect contract performance.

4. Assess contract progress if needed by the purchasing office to authorize financial payments, and recommend approval or disapproval of contractor payment requests.

5. Evaluate the feasibility and practicality of contractor production plans.

6. Verify contractor management reports furnished to the purchasing office during contract performance.

7. Evaluate and monitor contractor compliance with contract requirements governing technical data, especially the propriety of any restrictive markings on data offered for delivery under the contract.

8. Monitor contractor costs under cost reimbursement contracts, and insure the purchasing office is advised of any anticipated overruns or underruns of estimated costs.

9. Advise the purchasing office of supporting contract administration is needed at subcontractor plants to verify the adequacy of prime contractor management, and assist the purchasing Government to obtain desired support within the host country.

T–209 Denmark Memorandum of Understanding

Memorandum of Understanding Between the Government of the Kingdon of Denmark and the Government of the United States of America Concerning the Principles Governing Mutual Cooperation in the Research, Development, Production, Procurement and Logistic Support of Defense Equipment

Preamble

The Government of the United States of America and the Kingdom of Denmark duly represented by their Ministers of Defense:

Intending to increase their respective defense capabilities through more efficient cooperation in the fields of research, development, production, procurement and logistic support in order to:

—Make the most cost-effective and rational use of the resources available for defense,

—Ensure the widest possible use of standard or interoperable equipment,

—Develop and maintain an advanced industrial and technological capability for the North Atlantic Alliance, and particularly with respect to the parties to this Memorandum of Understanding (MOU), and

Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment,

Have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding sets out the guiding principles governing mutual cooperation in research, development, production, procurement and logistic support of conventional defense equipment.

The two Governments conclude this MOU to strengthen the North Atlantic Alliance. In so doing, the Governments are fully aware that the Independent European Program Group (IEPG) wants to enhance equipment collaboration by more comprehensive and systematic arrangements. They therefore agree that in the event of a possible conflict between agreements entered into between the IEPG and the Government of the United States, and this MOU, the parties hereto will consult with a view to amending this MOU.

The two Governments further agree that this MOU should be viewed in the larger context of the cooperation between Europe and North America within the Alliance.

Article I—Principles Governing Mutual Defense Cooperation

1. Both Governments intend to facilitate the mutual flow of defense procurement, taking into consideration relative technological levels of such procurement, and consistent with their national policies. This facilitation shall be sought through the provision of opportunities to compete for procurements of defense equipment and services as well as through the coproduction of defense equipment and defense R&D cooperation.

2. This MOU is intended to cover areas in which possible bilateral cooperation could be achieved in research, development, production, procurement and logistic support of conventional defense equipment, complementing the work of the Conference of National Armament Directors (CNAD), the Independent European Program Group (IEPG), and the Senior NATO Logisticians Conference (SNLC).

3. The two Governments will, consistent with their relevant laws and regulations, give the fullest consideration to all requests for cooperative R&D, and to all requests for production and procurement which are intended to enhance standardization and/or interoperability within the Alliance.

4. In the interests of standardization and effective utilization of scarce resources, the two Governments shall, to the extent possible, adopt qualified and cost-effective defense items that have been developed or produced in the other country to meet their requirements. Defense items or services are those items or services which may be procured utilizing appropriated funds of the U.S. Department of Defense or budgeted funded of the Danish Ministry of Defense.

5. The two Governments shall mutually determine the counting procedures to be laid down in an Annex to this MOU that will apply to all defense items and defense services purchased by them directly or through their relevant industries under this MOU.

6. Each Government shall from time to time notify the other Government of defense items that may not be acquired by the notifying Government from other than domestic sources, as well as those defense items that may be particularly suitable for acquisition by the other Government.

7. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense acquisition organizations to facilitate achievement of the aims of this MOU.

8. Competitive contracting procedures shall normally be used in acquiring items of defense equipment developed or produced in each other's country for use by either country's defense establishment.

9. The detailed implementing procedures, to be agreed, will, consistent with and to the extent permitted by national laws and regulations, incorporate the following:

a. Offers or proposals will be evaluated without applying price differentials under by national laws and regulations and without applying the costs of import duties;

b. Full consideration will be given to all qualified industrial and/or governmental resources in each other's country;

c. Offers or proposals will be required to satisfy requirements of the purchasing Government for performance, quality, delivery, and costs.

10. Both Governments will review items submitted as candidates for respective requirements. They will indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility and submit a bid or proposal.

11. Each Government will ensure that the technical data packages (TDP's) made available under this MOU are not used for any purpose other than for the purpose of bidding on and performing a prospective defense contract, without the prior agreement of those owning or controlling proprietary rights and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDP's be transferred to any third country or any other transferee without the prior written consent of the originating Government.

12. Third party transfers of defense articles or technical data made available under this MOU, and of articles produced with such data, will be subject to the agreement of the Government that made available the defense articles or technical data, except as otherwise provided in particular arrangements between the two Governments.

13. Both Governments will use their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries or other owners of such rights.

14. Arrangements and procedures will, at the request of the purchasing government, be established concerning follow-on logistic support for items of defense equipment, purchased pursuant to this MOU. Both Governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

Article II—Implementing Procedures

1. Representatives of the two Governments will be appointed to determine in detail the procedures for implementing this MOU and the terms of reference for a Danish-U.S. Committee for Mutual Cooperation.

2. The Under Secretary of Defense for Research and Engineering will be the responsible authority in the United States Government for the development of implementing procedures under this MOU.

3. The Armaments Director in the Ministry of Defense will be the responsible authority of the Kingdom of Demark for the development of the implementing procedures under this MOU.

Article III—Industry Participation

1. Each Government will be responsible for calling to the attention of its relevant industries the basic understanding of this MOU, together with appropriate implementing guidance. Both Governments will take all necessary steps so that the industries comply with the regulations pertaining to security and to safeguarding classified information.

2. Implementation of this MOU will involve full industrial participation. Accordingly, the Governments will arrange to inform their respective procurement and requirements offices concerning the principles and objectives of this MOU. However, primary responsibility for finding business opportunities in areas of research and development and production shall rest with the industries in each nation.

Article IV—Security

1. To the extent that any items, plans, specifications or information furnished in connection with the specific implementation of this Memorandum of Understanding are classified by the furnishing Government for security purposes, the other Government shall maintain a similar classification and employ all measures necessary to preserve such security equivalent to those measures employed by the classifying Government throughout the period during which the classifying Government may maintain such classification.

2. Information that has been provided by either of the Governments to the other on condition that it remain confidential shall either retain its original classification designation, or be assigned a classification designation, that shall ensure a degree of protection against disclosure equivalent to that required by the other Government. To assist in providing the desired protection, each Government will mark such information furnished with a legend indicating the origin of information that the information relates to the Memorandum of Understanding and Annexes thereto, and that the information is furnished in confidence.

Article V—Administration

1. The Danish-U.S. Committee for Mutual Cooperation, referred to in Article II above, will meet as agreed or at the request of either Government to review progress in implementing the MOU. They will discuss research and development, production and procurement and logistics support needs of each nation and the likely areas of cooperation; agree to the basis of, and keep under review, the financial statement referred to below; and consider any other matters relevant to this MOU.

2. Each Government will designate points of contact at the Ministry of Defense level and in each purchasing service/agency under the Ministries of Defense.

3. An annual United States-Denmark statement of the current balance, and long-term trends, of R&D cooperation and purchases between the two nations will be prepared on a basis to be mutually agreed.

Article VI—Annexes

Annexes negotiated by the responsible officials and approved by the appropriate Government authorities will be incorporated in this MOU and made an integral part thereof.

Article VII—Duration

1. This MOU will remain in effect for a ten-year period and will be extended for successive five-year periods, unless the Governments mutually decide otherwise.

2. If, however, either Government considers it necessary for compelling national reasons to terminate its participation under this MOU before the end of the ten-year period, or any extension thereof, written notification of its intention will be given to the other Government six months in advance of the effective date of termination. Such notification of intent shall become a matter of immediate consultation with the other Government to enable the Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to take such actions as necessary to alleviate problems that may result from the termination. In this connection, although the MOU may be terminated by the Parties, any contract entered into consistent with the terms of this MOU shall continue in effect, unless the contract is terminated in accordance with its own terms.

Article VIII—Implementation

This MOU will come into effect on the date of the last signature.

For the Government of the United States of America.

Harold Brown,

The Secretary of Defense.

Date: 30 January 1980.

The Kingdom of Denmark.

Poul Sogaard,

The Minister of Defense.

Date: 2 January 1980.

Annex—Reciprocal Quality Assurance Services Under the Memorandum of Understanding Between the United States and Denmark Regarding Defense R&D, Production, and Procurement

I. Preamble

This annex sets forth the terms, conditions and procedures under which the participating governments shall provide one another with quality assurance services in support of defense contracts and subcontracts contemplated or executed under the Memorandum of Understanding (MOU). The procedures of STANAG 4107 and AQAP 10 shall apply as supplemented by this annex to the extent consistent with the laws of both governments.

If special quality assurance arrangements are made for international cooperative projects in which the United States and Denmark participate, those special arrangements shall have precedence over this annex. Purchases by Denmark under the Foreign Military Sales (FMS) Program will be handled under U.S. FMS procedures in existence at the time of acceptance of the FMS agreement. Normally, FMS purchases will be afforded the same quality assurance that is provided for similar DoD procurements for use by the U.S. DoD.

Similar provisions will apply, to be changed if necessary, to U.S. Government purchases from the Danish Government.

The objective of this annex is to insure each participating government is able to employ the most effective and efficient quality assurance support possible when acting under this MOU. Nothing is to be construed as impairing a purchasing government's access to its contractors and their records as may be contractually authorized.

II. General

A flexible arrangement is envisioned under which a purchasing government may, on a case-by-case basis, request full quality assurance support as described in AQAP–10 or, alternatively, request specified services listed in AQAP 10 as it considers appropriate to the circumstances, for the purchase of defense items made outside of government-to-government channels. The purchasing government may elect to perform other necessary services through its own on-site representative and will inform the host government in such cases, in order to avoid duplication of the work performed by the host government. The purchasing government may modify a request for support during contract performance after consultation with the host government.

The participating governments shall accept requests for services to the extent resources are available and carry them out according to the procedures each government uses for its own contracts.

—Contracts shall contain suitable provisions for the host governments to act for and on behalf of the purchasing government and shall authorize access to contractor facilities and records and use of contractor assets as necessary for the performance of contract administration services.

Where representatives of both participating governments deal with a contractor at the same location in support of the same or separate contracts, they shall operate in full concert according to terms of reference mutually agreed or to be agreed upon.

The participating governments shall each designate a single office to receive requests for quality assurance services. This office shall arrange for the required services to be performed by the appropriate national organization. In addition, each participating government may elect to designate an office in or near the other participating country to act as focal point through which requests for quality assurance will be forwarded. The host government will endeavor to keep the purchasing Government's focal point appraised of current quality assurance practices and resources to help insure that requests for services are reasonable and prudent. The focal point shall advise the host government concerning contract requirement and clarify requests for services as necessary.

III. Procedures

Request for government quality assurance in Denmark shall be directed to (name and address of receiving focal point).

Requests for government quality assurance in the United States shall be directed to (address).

The format for requests for quality assurance shall be as described in Annex A to STANAG 4107, with the following additional information:

—in block 7, the type of equipment which the material or spare parts pertaining to, and the Armed Forces (Army, Navy, and Air Force) that employs the equipment;

—in block 10, desired services, if less than comprehensive support is needed.

The requests shall reference STANAG 4107 and this annex to the MOU, and shall be processed according to the procedures in the STANAG. Acceptance or rejection shall be made within 30 calendar days of receipt by the performing government. The STANAG procedures shall be followed in regard to notifying the purchasing office of unsatisfactory conditions, processing deviations and waivers, and issuing certificates of conformity.

Direct communications between the purchasing office and the assigned quality assurance office are authorized and encouraged in resolving contract problems. The purchasing government shall retain final authority over contract interpretations and enforcement actions, and shall advise the quality assurance office in a timely fashion on such matters as needed.

In the event the purchasing government envisions the assignment of on-site representatives, proposed terms of reference describing an appropriate working relationship with host government representatives will be suggested to the host government as early as possible.

IV. Responsibility and Liability

Nothing in this annex shall relieve the contractor of any responsibilities under the contract. No liability will attach to the Government, its officers or agents, acting under this Annex.

V. Protection of Information

Data obtained through implementation of this annex shall receive the same protection against unauthorized disclosure as such data would normally receive under the laws and rules of the country which possesses it.

VI. Charges

Services will be provided under this annex free of charge, for all contracts, subcontracts, and FMS Letters of Offer and Acceptance entered into on or after the date of implementation of this annex, provided that a joint review of the services being exchanged between the participating governments performed at not less than three year intervals indicates that general reciprocity is being maintained. If, as a result of such a joint review, either government determines that charges will be necessary, they may be imposed for future services after not less than one year advance notice. Should charges by the United States become necessary, Foreign Military Sales procedures then in effect will apply.

VII. Duration

This annex will remain in effect for a period as set forth in Article VII of the MOU, and may be terminated under the conditions as set forth in that Article.

VIII. Volidity of Text

The English language and Danish language versions of this text have equal validity.

IX. Implementotion

This Annex will come into effect on the date of the last signature.

For the Government of the United States of America.

———— ————,

Date 19 Sep 1984.

For the Government of the Kingdom of Denmark.

———— ————,

3/4/1965.

T–210 Luxembourg Memorandum of Understanding

Memorandum of Understanding on Reciprocal Defense Procurement

Preamble

The Government of the United States of America and the Government of the Grand Duchy of Luxembourg, hereinafter referred to as the "Governments":

Intending to increase their respective defense capabilities through more efficient cooperation in the areas of research and development, production, procurement and logistic support of defense equipment, in order to:

—Make the most cost-effective and rational use of the resources allocated to defense;

—Promote the widest possible use of standard or interoperable equipment; and,

—Develop and maintain an advanced technology capability for the North Atlantic Alliance, and particularly with respect to the Parties to this Agreement;

Noting the potential for increased purchases of defense items by the United States from Luxembourg and from the United States by Luxembourg, and recognizing the desirability of working toward a long term equitable balance in defense trade between the two countries;

Recognizing that suppliers in each country should be afforded the opportunity to compete, on a reciprocal basis, for the procurement of defense products, equipment, materials and services, hereinafter referred to as "defense items and services";

Have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding sets out the guiding principles governing mutual cooperation in research, development, production, procurement and logistic support of conventional defense equipment. The conclusion of this MOU does not preclude other specific agreements for cooperation in developing, producing, or co-producing, as appropriate, items of defense equipment.

Article 1—Principles Governing Mutuol Defense Cooperation

1.1.1. Both Governments intend to facilitate the mutual flow of defense procurement for their armed forces, aiming at a long-term equitable balance in their exchanges, taking into consideration the relative technological level of such procurement, and consistent with their national policies. A long-term equitable balance will not imply an equitable monetary flow of defense procurement, but will take into account each country's financial, industrial, economic and commercial possibilities.

1.1.2. Both Governments will make their best efforts to facilitate defense R&D cooperation, coproduction of defense equipment and provision of opportunities to compete for procurement of defense items and services to include systems, subsystems, components, and spare parts at all technological levels.

1.1.3. In order to assess the mutual flow of defense procurement, the Governments have jointly determined counting procedures which are set down in Annex 1 to this Agreement, and which will apply to all defense items and services purchased by them directly or through their respective industries under this Agreement. Defense items and services are those items and services which may be procured utilizing appropriated funds of the United States Department of Defense or budgeted funds of the Ministry of Defense of Luxembourg.

1.2. The Governments will, consistent with their relevant laws and regulations, give full and prompt consideration to all requests for cooperative R&D, and to all requests for production and procurement which are intended to enhance standardization and/or interoperability within the Atlantic Alliance.

1.3. In the interests of standardization and the effective utilization of scarce resources, each Government shall, to the extent possible, adopt qualified defense items that have been developed or produced in the other country to meet the requirements of the Government of such country.

1.4. Each Government shall from time to time notify the other Government of defense items that may not be acquired by the notifying Government from other than domestic sources, as well as those defense items that may be particularly suitable for acquisition by the other Government.

1.5. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense acquisition organizations to achieve and maintain the equitable balance mentioned in Article 1.1.1. of this Agreement, as well as the other aims of this Agreement.

1.6. Competitive contracting procedures shall normally be used in acquiring items of defense equipment developed or produced in each country for use by the other country's defense establishment.

1.7. Both Governments agree that consistent with and to the extent permitted by national laws and regulations, mutually agreed implementing procedures will incorporate the following:

1.7.1. Offers or proposals of defense items produced in or defense services provided by each country will be evaluated without applying price differentials under "buy national" laws and regulations, and without applying the cost of applicable import duties. In the event that either party can no longer comply with the exemption from import duties, the parties hereto will consult with a view to amending this MOU;

1.7.2. Each country will give full consideration to all qualified sources in the other country. In addition, each country will give full consideration to all applications for qualification by sources in the other country;

1.7.3. Offers or proposals will be required to satisfy requirements of the purchasing Government concerning performance, quality, delivery and costs;

1.7.4. Provisions for duty-free certificates and related documentation;

1.7.5. Arrangements concerning quality control and audits of incurred costs and price proposals.

1.8. Both Governments will review defense items and services submitted as candidates for their respective requirements. They will indicate requirements and proposed purchases in a timely fashion, in accordance with national regulations, to ensure adequate time for their respective industries to qualify as eligible suppliers and to submit a bid or proposal.

1.9. Technical Data Packages (TDPs) shall not be transferred between the two countries without the written permission of those owning or controlling any associated proprietary rights. Each Government will ensure that any TDPs which it may receive from the other are not used for any purpose other than for the purpose of offering or bidding on or performing a prospective defense contract, without the prior written agreement of those owning or controlling proprietary rights, and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information they contain.

1.10.1 Transfers to third parties of defense articles or technical data made available under this Agreement, and of articles produced with such data, will be subject to the prior written agreement of the Government that made available the defense articles or technical data, except as otherwise provided in particular arrangements between the two Governments or in multilateral agreements to which both Governments are parties.

1.10.2. Each Government will base its decisions regarding requests by the other for agreement to third party transfers on its laws, regulations and policies. Each Government will use the same criteria for proposed transfers by the other as it uses for itself, and will not reject, solely in the pursuit of its own national commerical advantage, a request from the other for a third country transfer of such defense articles or technical data.

1.11. Both Governments will use their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries or other owners of such rights. Consistent with its laws and regulations, each Government will make available to the other all information necessary to implement cooperative arrangements under this Agreement. To the extent feasible, both Governments will seek an understanding with their respective industries that, in the interest of standardization and defense industrial cooperation, proprietary rights in defense-relevant information and data can be transferred by appropriate arrangements between the industries of the two countries.

1.12. Arrangements and procedures will, at the request of the purchasing Government, be established concerning follow-on logistic support for items of defense equipment purchased pursuant to this Agreement. Each Government will make its defense logistic systems and resources available to the other for this purpose as required and mutually agreed.

Article 2—Implementing Procedures

2.1. Both Governments agree to create a Joint United States-Luxembourg Committee for Defense Industrial Cooperation.

2.2. The Under Secretary of Defense for Research and Engineering will be the responsible authority in the United States Department of Defense for the development of implementing procedures under this Agreement.

2.3. The Director of Foreign Trade, in cooperation with the appropriate bodies of the Ministry of Defense, will be the responsible authority to the Government of Luxembourg for the development of implementing procedures under this Agreement.

2.4. The United States-Luxembourg Committee for Defense Industrial Cooperation will be co-chaired by the authorities referred to in paragraphs 2.2 and 2.3, above, or their designated representatives. The Committee will meet as agreed at the request of either Government, but a minimum of once a year to review progress in implementing this Agreement. It will discuss the research, development, production, procurement and logistics support needs of each country and the likely areas of cooperation; agree to the basis of and keep under review the financial statement referred to in paragraph 2.6, below; and consider any other matters relevant to this Agreement.

2.5. Each Government will designate points of contact at the Ministry/Department of Defense level, in each purchasing Service/Agency under the Ministry/Department of Defense, and with other Government Departments and Agencies as appropriate.

2.6. An annual United States-Luxembourg statement of the current balance and long-term trends of R&D cooperation, production, and purchases between the two countries will be prepared on a basis to be mutually agreed.

Article 3—Industry Participation

3.1. Implementation of this Agreement will involve maximum industrial participation. Notwithstanding the governmental procedures to facilitate the implementation of this Agreement, it will be the basic responsibility of the industries in each country to identify and advise their Government of their respective capabilities for cooperation and to carry out the supporting actions to bring industrial participation to consummation.

3.2. Each Government will be responsible for calling to the attention of its relevant industries the basic understanding of this Agreement and the appropriate implementing guidance. Both Governments will take all necessary steps to ensure that their industries comply with the regulations pertaining to

security and to safeguarding classified information.

3.3. The Governments will arrange that their respective defense acquisition organizations are made familiar with the principles and objectives of this Agreement, and will assist sources in the other country to obtain information concerning proposed purchases, necessary qualifications and appropriate documentation.

3.4. To encourage the exchange of information in accordance with the purpose of this Agreement, each Government will, pursuant to its national laws and regulations, take action to facilitate participation by properly cleared officials and representatives of the other country in informational symposia, program briefings and prebid conferences, as well as access to publications and visits to installations.

Article 4—Security

4.1. The General Security of Information Agreement dated 17 September 1981, between the two Governments, with particular reference to industrial security, apply to activities under this Memorandum of Understanding.

4.2. To the extent that any items, plans, specifications, or information furnished in connection with the implementation of this Agreement are classified by the furnishing Government for security purposes, the other Government shall maintain a similar classification and employ security measures equivalent to those employed by the classifying Government.

4.3. Information provided by either Government to the other on condition that it remain confidential shall either remain in its original classification or be assigned a classification that ensures protection against disclosure equivalent to that required by the other Government. To assist in providing the desired protection, each Government will mark such information furnished with a legend indicating the origin of the information, that the information relates to this Agreement, and that the information is furnished in confidence.

Article 5—Duration

5.1. This Agreement will enter into force when signed, and will remain in force for a period of ten (10) years from the last date of signature.

5.2. If, however, either Government considers it necessary for compelling national reasons to terminate its participation under this MOU before the end of the ten-year period, or of any extension thereof, written notification of its intention will be given to the other Government six months in advance of the effective date of termination. Such notification of intent shall become a matter of immediate consultation with the other Government to enable the two Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to agree upon such actions as are necessary to alleviate problems that may result from the termination.

5.3. Notwithstanding the expiration or termination of this Agreement, any contract entered into consistent with the terms of this Agreement will continue in effect, unless the contract is terminated in accordance with its own terms.

5.4. Articles 1.9, 1.10 and Article 4 of this Agreement will continue in full force and effect after, and notwithstanding the expiration or termination of this Agreement.

Article 6—Annexes

6.1. Annexes which may be negotiated by the responsible officials and approved by the appropriate Government authorities will be incorporated in this Agreement and made an integral part thereof.

Done in Luxembourg, this 2 day of December —, in duplicate.

For the United States of America.

———— ————.

For the Grand-Duchy of Luxembourg.

———— ————.

Memorandum of Understanding on Reciprocal Defense Procurement

Annex 1—Principles Governing Implementation

Article 1—Introduction

This Annex sets forth the procedures agreed upon by the Governments of the United States and the Grand-Duchy of Luxembourg to implement the Memorandum of Understanding on Reciprocal Defense Procurement, hereinafter referred to as "The MOU".

Article 2—Major Principles

2.1 Each Government will consider for its defense requirements qualified defense items and services developed or produced in the other country.

2.2 The responsible Government authorities in each country will assist sources in the other country to obtain appropriate information concerning:

2.2.1 Plans and programs for research, development, production and acquisition of defense items and services.

2.2.2 Requirements for the qualification of sources.

2.2.3 Specifications and quality assurance standards.

Both Governments will respond promptly to requests for information that comply with their respective regulations and procedures. However, notwithstanding the governmental procedures established to facilitate the Agreement, it will be the responsibility of Government and/or industry representatives in each country to acquire information concerning the other country's research, development and procurement plans and to respond to solicitations in accordance with the prescribed acquisition regulations and procedures of the purchasing country.

Article 3—Actions

3.1 Both Governments will review and, where considered necessary, revise policies, procedures and regulations to ensure that the principles and objectives of this Agreement, which are intended to be compatible with the broad aims of NATO Standardization and Interoperability, are taken into account. Recognizing that factors such as delivery date requirements for supplies, the interest of security, and the timely conduct of the contracting process must be considered, both Governments agree that the following measures will be taken to ensure free and full competition for the award of contracts:

3.1.1 Ensure that, as a minimum, the following entities are familiar with the principles, objectives and terms of the Agreement:

—Their respective defense planning, programming, and contracting offices.

—their respective offices responsible for defense imports and exports.

—Their respective agencies and industries responsible for the research, development, and production of defense items and/or services.

3.1.2 Ensure that, consistent with national laws and regulations, offers of defense items developed and/or produced in the other country will be evaluated without applying to such offers either price differentials under "buy-national" laws and regulations, or the cost of import duties.

3.1.3 Consistent with national laws and regulations, provisions will be made for duty-free entry certificates and related documentation.

3.1.4 Assist industries in their respective countries to advise the other Government of their capabilities, and assist such industries in carrying out the supporting actions to maximize industrial participation in the implementation of the Agreement.

3.1.5 Consider defense items and service offered by the Government or industry of the other country as candidates for their respective requirements. Identify specific requirements and proposed purchases to the other country in a timely fashion to ensure that the industries of such country are afforded adequate time to be able to participate in the research, development, production and procurement processes.

3.1.6 Use their best efforts to assist in negotiating licenses, royalties, and technical information exchanges among their respective industries, and research and development institutes.

3.1.7 Permit the sale of defense equipment produced under license, coproduction agreements and/or joint development projects to allied countries and to appropriate third countries, subject to the policy outlined in Article 1.10 of the Agreement. Each agreement for a joint development or coproduction will address transfers of items or technology to allied or third countries.

3.1.8 Ensure that those items and services excluded from consideration under this Agreement for reasons of protecting national requirements, such as the maintenance of a defense mobilization base, are limited to a small percentage of total annual defense procurement spending. Such defense items and services, together with those items and services that must be excluded from consideration under this Agreement because of legally imposed restrictions on acquisition from non-national sources, will be identified as soon as possible by both Governments. Lists of these items and services will be prepared and kept under review at this level.

3.1.9 Pursuant to its national laws and regulations, facilitate arrangements for visits by properly cleared Government officials and

industry representatives of the other country to explore and actively promote cooperation possibilities for research, development, production, procurement and logistic support of defense equipment.

3.2 Both Governments will ensure that their respective actions under the Agreement in working toward an equitable balance in defense trade, take into consideration the level of technology involved as well as the contractual value of the items being purchased.

Article 4—Counting Procedures

4.1 The purchases and other transactions to be counted against the goals of this Agreement will be identified jointly by the two Governments. in principle, all defense items and services purchased by one Government from the other country will be counted as long as such purchases meet the following criteria:

4.1.1 Direct purchases by the defense agencies, one from the other.

4.1.2 Purchases by defense agencies of either country from the industry of the other country.

4.1.3 Purchases by industry from the Government or industry of the other country in the framework of Government defense contracts.

4.1.4 Purchases by a third country government from the Government of the United States or the Government of Luxembourg or the industry of either country when either of the following circumstances occur:

—The sale requires the prior agreement of the non-vendor Government.

—The sale is a direct result of the promotional efforts by the Government or industry of the non-vendor country, which fact has been previously acknowledged and agreed by the vendor party.

4.1.5 Acquisitions by either country of defense items or services resulting from projects jointly funded by both countries.

4.1.6 License fees, royalties and other associated income resulting from orders placed by defense agencies of one country with a licensed company in the other country; or in Government-to-Government transactions.

4.1.7 Transfer of technology, and production, testing and quality control equipment required to achieve the goals of this Agreement.

4.1.8 Contributions by one country in research, development and demonstration programs in the other country that have been agreed by both Governments.

4.1.9 Purchases of non-defense items and services by the Government or industry of either country from the Government or industry of the other, provided that both Governments agree that any particular purchase is to be counted against the goals of this Agreement.

4.2 The following transactions will *not* be counted:

4.2.1 Maintenance and logistic support activities in either country under contracts in effect before the effective date of this Agreement.

4.2.2 Any transaction being carried out under contracts and agreements in effect before the effective date of this Agreement.

4.2.3 Operational expenses of either Government to achieve the goals of this Agreement.

4.3 Transactions listed in Article 4.1 of this Annex, and any others that both Governments agree, will be credited in the following manner:

4.3.1 At the value of the contract on its effective date.

4.3.2 Purchases by third countries of defense items or services from the United States Government or the Government of Luxembourg or the industry of either country as described in paragraph 4.1.4. of this Annex, will be credited as a sale by the non-vendor country, as follows:

—When authorization by the non-vendor Government is required; only the value of the item(s) directly related to the authorization will be credited.

—When the sale is the direct result of promotional efforts by the Government or industry of the non-vendor country; only the value of parts, subassemblies, assemblies, equipment and services supplied by either the Government of the United States or the Government of Luxembourg or their respective industries will be credited.

4.4 The following transactions will be credited in the manner and amounts agreed by both Governments:

—License fees, royalties, and any other income resulting from transfers of technology, and production, testing and quality control equipment between both countries.

—Orders placed by defense agencies in one country with a licensed company in the other country, or from Government-to-Government transactions.

—Contributions by one country in research, development and demonstration programs in the other country.

4.5 Transactions will be credited according to the exchange rate of the respective currencies on the effective date of the transaction.

4.6 Each Government will prepare an annual counting report. These reports will summarize the data counted pursuant to each of the categories above. Supporting data for each category included in the summary will indicate the item supplies, the parties to the transaction, transaction date, and credited value. Both Governments will exchange the summary reports and supporting data sufficiently in advance of the annual meeting to permit review and comment or agreement by the other at least two (2) weeks prior to the meeting. Any disagreement concerning the reports will be settled by the Committee established pursuant to Article 2.1 of the Agreement.

Articles 5—Administration

5.1 Each Government will designate points of contact at their respective Ministry/Department of Defense levels, as well as within other relevant departments and agencies, for the purpose of carrying out those actions necessary to implement the Agreement.

5.2 The Committee for Defense Industrial Cooperation will be responsible for the general administration of the Agreement.

5.3 Quality assurance procedures outlined in STANAGS 4107 and 4108 will apply, unless other provisions are mutually agreed to on any specific contract. Reimbursement for services provided shall be afforded in accordance with the national laws and regulations of each country.

T–211 France Memorandum of Understanding

Synopsis—U.S./France Memorandum of Understanding

Memorandum of Understanding (MOU) Between the Government of the French Republic and the Government of the United States of America Concerning the Principles Governing Reciprocal Purchase of Defense Equipment

On May 22, 1978, the Minister of Defense of France and the Secretary of Defense of the United States signed an MOU for reciprocal defense procurement. The purpose of this MOU, which is classified, CONFIDENTIAL, is the seek balanced cooperation in defense equipment, research, development, production, and purchasing.

In accordance with the U.S./France MOU, contracting authorities of each country will:

—Evaluate offers without applying price differentials resulting from buy national laws (in the United States, the Buy American Act).

—Consistent with the laws and policies of each country, attempt to obtain exemptions from customs, dutics, taxes, or other restrictions designed to limit participation by industries of the other country.

—Take into consideration all qualified sources in each other's country in accordance with the policies and criteria of the purchasing office, it being understood that offers will satisfy requirements for performance, quality, delivery, and cost.

—Assist sources in the other country to obtain information concerning proposed purchases, necessary qualifications, and appropriate documentation.

Both countries agree that in general the principles of this MOU will apply to defense purchases of both Governments on the broadest possible basis. Items and services will be excluded from consideration under this MOU in order to protect the defense mobilization base; because of legally imposed restrictions; and for other reasons to be discussed by the parties from time to time in meetings between the MOD and the DoD. A Franco-American Committee for Defense Equipment (FACDE) will be established for this purpose. Both countries will ensure that those items and services excluded from consideration under this MOU for reasons of protecting national requirements, such as the maintenance of a defense mobilization base, are limited to a small percentage of total annual defense procurement spending.

Each Government will be responsible for bringing to the attention of the defense industries within its country, the basic understanding of this MOU, together with appropriate guidance on its implementation. Both Governments will take all necessary steps so that the defense industries comply with the regulations pertaining to security and classified information safeguarding.

Implementation of this MOU will involve full industrial participation. Accordingly, the Governments will arrange that their respective procurement and requirements

offices will be made familiar with the principles and objectives of this MOU and, where considered necessary, revise policies, procedures and regulations to ensure MOU principles are taken into account. Notwithstanding the governmental procedures to facilitate implementation, it will be the basic responsibility of industry in each country to isolate, identify, and advise its Government of capabilities and to carry out the supporting actions to bring industrial participation to consummation.

Yvon Bourges,

Minister of Defense, Republic of France.

Harold Brown,

Secretary of Defense, United States of America.

Annex II to the Memorandum of Understanding Between the Government of the French Republic and the Government of the United States of America Concerning the Principles Governing Reciprocal Purchases of Defense Equipment of May 22, 1978

Item I

The parties to this agreement agree to perform for each other in their own country price proposal audits and postaward audits in connection with the acquisition of defense equipment.

Item II

The audits will be performed pursuant to the provisions of this agreement by the following authorities:

—For the U.S. Government: the Defense Contract Audit Agency (DCAA)

—For the French Government, by a contract audit bureau of the "Ministere de la Defense" appointed by the Chairman of the "Comite de Coordination des Services d'Enquete des prix (CCSEP) for audits requested by the U.S. Department of Defense and, by the Government Commissioner entrusted with the firm to which the contract or subcontract has been awarded for audits requested by the General Accounting Office (GAO).

Each party will make available to the other party all data, including disclosed accounting practices, in support of the contracting officer's negotiation activity, currently available to its own contracting agencies.

Each government will accept auditing services performed on its behalf by another government as if it had performed those services itself.

It is understood that this agreement limits the direct (on-site, on-book) examination of contractor records to the cognizant agencies of the country in which the audit is performed. This does not limit requests for information necessary to determine the acceptability of proposed prices or incurred costs.

Item III

The audit request will be forwarded to the following authorities:

—Cognizant Procuring Contracting Office for acquisitions under U.S. Foreign Military Sales (FMS) procedures and to Director of Defense Contract Audit Agency, Cameron Station, Alexandria, Virginia 22314 for all other acquisitions (for request by French Government agencies).

—Le President du Comite de Coordination des Services d'Enquetes de Prix, Delegation Generale pour l'Armement, 14 rue St. Dominique 75997 Paris-Armees (for the DoD audits).

—Le Chef du Groupe de Controle de la Realisation des Materiels d'Armements, 14 rue St. Dominique 75997 Paris-Armees (for request by GAO).

These requests will be forwarded with all the needed documents (offers, estimates, contracts, annexes, etc. . . .).

Item IV

Audits of contracts in a country will be based on the governing accounting principles and customs of that country.

The object of these audits will be to examine proposed or actual costs in sufficient detail to enable the cognizant contracting officer to determine if particular elements of costs should be specifically dealt with during negotiations with the contractor or subcontractor.

The contracts or subcontracts placed by each country in the other country will take into account the provision of this item.

Item V

Before each acquisition program commences, representatives of each country will meet or consult with one another when necessary to define the goals and the scope of the audits. These preparatory meetings could include contractors' representatives and visits to the contractors' sites and plants.

The audits fulfilled under the terms of this agreement will cover all costs and identify profit amounts. The procuring parties should use to the fullest extent possible previously available information obtained by the agency entrusted with the audit.

The contracting officer or the audit agency will report to the other party the problems encountered during the audit and will call for a new meeting if needed. The audit reports will respond to the questions contained in the request for audit. The report should enable the requester to evaluate independently the acceptability of the price proposals or cost under the respective national regulations.

Upon request of the contracting officer, additional information, supporting data, and explanations or clarifications will be provided to him or to his duly authorized representatives. The contracting officer shall have the final authority to determine when adequate audit information has been provided for negotiation purposes.

Item VI

Each party must assure that in all possible cases its agencies will perform the audits under the terms of Item II of this agreement and pursuant to the terms and conditions agreed during consultation meetings defined in Item V. If, due to extraordinary circumstances, one of the governments states that it is unable to perform the audits, partially or totally, or to perform them in a reasonable time, the contracting country's agencies would have a right to complete the unperformed part of the audits themselves.

Such a right may be exercised only after consultations between the competent offices of the two countries.

In case of a persisting disagreement, the matter will be appealed to the supreme authorities of the two countries. Such audits will be performed in accordance with principles of the performing country.

Item VII

Each party agrees that proprietary data and audit reports should not be disclosed to third parties, but only to the authorities they are answerable to, without the clear agreement of the other country's cognizant authorities and the audited company.

However, the contracting officer generally will release the final results of audits of subcontractors to higher tier contractors for negotiation purposes. Specific information or extracts of the report may only be given to higher tier contractors in accordance with direction and qualifications contained in the audit report. Unreasonable restrictions upon disclosures will be discouraged.

The data (and their extracts) obtained through the implementation of this agreement will receive the same protection against unauthorized disclosure as such data would normally receive under the law and rules of the country which receives them.

The two parties agree that this agreement will not be used for the disclosure of proprietary data which could impair the competitive abilities of the contractors and subcontractors.

Item VIII

Access to classified information involving the National Security of each country will be governed by the provisions of the bilateral agreements in force between the two governments.

Item IX

This agreement is drawn up in four copies, two in English and two in French; each one of these documents in authoritative.

———— ————,

For the Government.

———— ————,

For the French Government.

Concurred in by the Comptroller General of the United States.

Annex III to the Memorandum of Understanding of May 22, 1978, Between the Government of the French Republic and the Government of the United States of America Concerning the Principles Governing Reciprocal Purchases of Defense Equipment

Principles Governing Contract Administration Services

1. Purpose

This annex sets forth the terms, conditions, and procedures which the participating Governments will provide each other with selected contract administration services and related information in support of defense contracts and subcontracts contemplated or executed under the Memorandum of Understanding (MOU) of May 22, 1978. Price audit operations are excluded; they are the subject of Annex II of the basic MOU. It is recognized that in the event conflicts arise between any aspect of this Annex and the laws of either Government, the laws shall prevail. In the event such conflict interferes with the objectives of this annex, the parties agree that they will consult and exercise their best efforts to resolve such conflict.

2. Major Principles

The objective of this annex is to insure each participating Government acting under the MOU is able to employ the most effective and efficient contract administration support for contracts awarded by one country to one of the other country's contractors including contracts awarded on behalf of France by the United States under the Foreign Military Sales (FMS) procedures. Nothing is to be construed as impairing a purchasing Government's access to its contractors and their records as may be contractually authorized.

This annex supplements NATO Standardization Agreement (STANAG) 4107, hereby incorporated by reference, in regard to reciprocal quality assurance.

For the purpose of this Annex, contract administration shall include all those necessary actions, to be accomplished at, or in proximity to, a firm's place of business to assist the purchasing office in evaluating a prospective contractor's capabilities and in monitoring and enforcing awarded contracts.

3. General Rules

A purchasing Government may request specific services and information selected from among those listed in Appendix 1 hereto which it considers appropriate to the circumstances. The purchasing Government may elect to obtain additional support through its own on-site representatives provided there is no duplication of work performed by the host Government. In addition, the host Government will use its best efforts to supply information requested by the purchasing Government but not listed in this annex when necessary to support contract award, enforcement, or termination. The provision of any services and information agreed by the parties other than those defined in Appendix 1 will be on a cost reimbursable basis. The purchasing Government may modify a request for support during contract performance after consultation with the host Government.

The participating Governments shall accept requests for services to the extent resources are available and carry them out according to the procedures each Government uses for its own contracts.

Contracts shall contain suitable provisions for the host Government to act for and on behalf of the purchasing Government and shall authorize access to and use of contractor facilities and records as necessary for the performance of contract administration services.

Where representatives of both participating Governments deal with a contractor at the same location in support of the same contract or separate contracts, they shall act in full concert according to terms of reference mutually agreed or to be agreed upon.

The participating Governments shall each designate a single office to receive requests for contract administration services. This office shall arrange for the required services to be performed by the appropriate national organization. In addition, each participating Government may elect to designate an office in or near the other participating country to act as a focal point through which requests for support will be forwarded. The host Government will endeavor to keep the purchasing Government's focal point apprised of current contract administration practices and resources to help insure requests for services are reasonable and prudent. The focal point shall advise the host Government concerning contract requirements and clarify requests for services as necessary.

4. Procedures

Requests for contract administration in France shall be directed to Monsieur le Directeur du Service de la Surveillance, Industrielle de l'Armement, 10, rue Sextius Michel, 75732 Paris Cedex 15—France (tel.: No. 554.92.11 and telex No. 270 857).

Requests for contract administration in the United States shall be directed to The Department of Defense Control Point, DCASR New York, 201 Varrick Street, New York, NY 10014, Tel. 212/374–3446.

Contract administration requests will be accompanied by a copy of the request for proposal or awarded contract, as appropriate, and will specify the contract administration services desired. Every effort will be made to forward requests for support simultaneously with the forwarding of the awarded contract to the contractor. The format for requests shall be as described in Annex A to STANAG 4107, with desired services other than quality assurance specified in Block 10. Requests shall reference this annex to the MOU, and shall be processed according to the procedures in STANAG 4107. In principle, acceptance or rejection shall be made within 30 calender days of receipt by the host Government.

Direct communications between the purchasing office and the assigned contract administration office in resolving contract problems are authorized and encouraged. The purchasing Government shall retain final authority over contract interpretations and enforcement actions; and shall inform the contract administration office on such matters as needed.

In the event the purchasing Government envisions the assignment of inplant representatives, proposed terms of reference describing an appropriate working relationship with host Government representatives will be suggested to the host Government as early as possible.

5. Liability

Nothing in this annex shall relieve the contractor of any responsibilites under the contract. No liability will attach to a participating Government, its officers or agents, acting under this annex on behalf of the other participating Government.

6. Protection of Information

Data obtained through the implementation of this annex shall receive the same protection against unauthorized disclosure as such data would normally receive under the law and rules of the country which possesses it.

7. Charges

Services defined in Appendix 1 and provided under this annex will be free of charge, subject to a joint review, performed at not less than three year intervals, of the services being exchanged between the participating Governments. If as a result of such review, either Government determines that charges will be necessary, they may be imposed after not less than one year advance notice. Should charges by the U.S. Government become necessary, or should the U.S. Government provide services other than those defined in Appendix I, Foreign Military Sales procedures then in effect will apply.

8. Protections, Rights, and Privileges of Foreign Contact Administration Personnel

Visiting foreign contract administration personnel acting under this annex shall receive the protection normally extended by visiting military officials of the participating Governments.

9. Implementation

This annex shall come into effect the day of the last signature.

10. Duration

The annex will remain in effect for a period as set forth in Article IV of the MOU, and may be terminated earlier in writing by either participant, to become effective on the last day of the sixth month after notice of termination is given.

11. Validity of Text

This annex will be drafted in French and English, both versions to have equal validity.

———— ————,

For the Government of the Republic of France.

———— ————,

For the Government of the United States of America.

Appendix 1 to Annex III—Services To Be Exchanged

In accordance with the principles and procedures as set forth in this Annex the following services will be performed by the host Government within its national boundaries upon requests by and on behalf of the purchasing Government:

1. Support evaluations of contractor capabilities prior to award.

a. Supply available information concerning design, production, and quality control capabilities as appropriate; for example, the amount of available floor space, plant equipment, skilled and unskilled workers, past production of similar items, and the NATO Allied Quality Assurance Publications (AQAPs) against which the firm has been assessed.

b. Evaluate the financial strength of the prospective contractor, estimate the likelihood that financial resources will be sufficient to accomplish the contract, and report the monetary value (in local currency) of host Government capital assets furnished or made available to the contractor which may be used in the contract.

2. Perform Government quality assurance, as defined in STANAG 4107, in whole or in part as requested.

3. Report detected potential or actual slippages in contract delivery schedules or any other contractor difficulties which might affect contract performance.

4. Assess contract progress if needed by the purchasing office to authorize financial payments, and recommend approval or disapproval of contractor payment requests.

5. Evaluate the feasibility and practicality of contractor production plans.

6. Verify contractor management reports furnished to the purchasing office during contract performance.

7. Evaluate and monitor contractor compliance with contract requirements governing technical data, especially the propriety of any restrictive markings on data offered for delivery under the contract.

8. Monitor contractor costs in the exceptional case of cost reimbursement contracts, and insure the purchasing office is advised of any anticipated overruns or underruns of estimated costs.

9. Advise the purchasing office if supporting contract administration is needed at subcontractor plants to verify the adequacy of prime contractor management, and assist the purchasing Government to obtain desired support within the host country.

T-212 Spain Memorandum of Understanding

Complementary Agreement Four—Defense Industrial Cooperation

Preamble

The Government of the United States of America and the Government of Spain, hereinafter referred to as the "Governments":

Intending to increase their respective defense capabilities through more efficient cooperation in the areas of research and development, production, procurement and logistic support of defense equipment, in order to:

—Make the most cost-effective and rational use of the resources allocated to defense;

—Promote the widest possible use of standard or interoperable equipment; and

—Develop and maintain an advanced technology capability for the North Atlantic Alliance, and particularly with respect to the Parties to this Agreement;

Noting the substantial purchases of defense items by Spain from the United States and the purchase of defense items from Spain by the United States, and recognizing the desirability of working toward an equitable balance in defense trade between the two countries;

Recognizing that suppliers in each country should be afforded the opportunity to compete, on a reciprocal basis, for the procurement of defense products, equipment, materials and services, hereinafter referred to as "defense items and services";

Seeking to improve the present situation and to strengthen their military capability and economic position through the mutual acquisition of standard or interoperable equipment and to achieve the above aims:

Enter into this Agreement, which sets out the guiding principles governing mutual cooperation in research and development, production, procurement and logistic support of conventional defense equipment.

Article 1—Principles Governing Mutual Defense Cooperation

1.1.1 Both Governments will take immediate steps to achieve and maintain an equitable balance in their exchanges, in terms of the value of contracts and technological levels, to the maximum practicable extent consistent with their national policies. An equitable balance, in principle, shall be achieved when the two Governments have implemented all practicable means at their disposal to maximize defense research and development (R&D) cooperation and reciprocal procurement to the extent compatible with the nature of each country's technological and industrial base.

1.1.2 Both Governments will make their best efforts to facilitate defense R&D cooperation, coproduction of defense equipment and provision of opportunities to compete for procurement of defense items and services to include systems, subsystems, components, and spare parts at all technological levels.

1.1.3 In order to assess the mutual flow of defense procurement, the Governments have jointly determined counting procedures which are set down in Annex 1 to this Agreement, and which will apply to all defense items and services purchased by them directly or through their respective industries under this Agreement. Defense items are services and those items and services which may be procured utilizing appropriated funds of the United States Department of Defense or budgeted funds of the Spanish Ministry of Defense.

1.2 The Governments will, consistent with their relevant laws and regulations, give full and prompt consideration to all requests for cooperative R&D, and to all requests for production and procurement which are intended to enhance standardization and/or interoperability within the Atlantic Alliance.

1.3 In the interests of standardization and the effective utilization of scarce resources, each Government shall, to the extent possible, adopt qualified defense items that have been developed or produced in the other country to meet the requirements of the Government of such country.

1.4 Each Government shall from time to time notify the other Government of defense items that may not be acquired by the notifying Government from other than domestic sources, as well as those defense items that may be particularly suitable for acquisition by the other Government.

1.5 Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense acquisition organizations to achieve and maintain the equitable balance mentioned in Article 1.1.1 of this Agreement, as well as the other aims of this Agreement.

1.6 Competitive contracting procedures shall normally be used in acquiring items of defense equipment developed or produced in each country for use by the other country's defense establishment.

1.7 Both Governments agree that consistent with and to the extent permitted by national laws and regulations, mutually agreed implementing procedures will incorporate the following:

1.7.1 Barriers to defense industrial cooperation including those to procurement of defense items developed or produced in the other country shall be removed. Specifically, offers or proposals of defense items produced in or defense services provided by each country will be evaluated without applying price differentials under "buy national" laws and regulations, and without applying the cost of applicable import duties;

1.7.2 Each country will give full consideration to all qualified sources in the other country. In addition, each country will give full consideration to all applications for qualification by sources in the other country;

1.7.3 Offers or proposals will be required to satisfy requirements of the purchasing Government concerning performance, quality, delivery and costs;

1.7.4 Provisions for duty-free certificates and related documentation;

1.7.5 Arrangements concerning quality control and audits of incurred costs and price proposals.

1.8 Both Governments will review defense items and services submitted as candidates for their respective requirements. They will indicate requirements and proposed purchases in a timely fashion, in accordance with national regulations, to ensure adequate time for their respective industries to qualify as eligible suppliers and to submit a bid or proposal.

1.9 Technical Data Packages (TDPs) shall not be transferred between the two countries without the written permission of those owning or controlling any associated proprietary rights. Each Government will ensure that any TDPs which it may receive from the other are not used for any purpose other than for the purpose of offering or bidding on or performing a prospective defense contract, without the prior written agreement of those owning or controlling proprietary rights, and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information they contain.

1.10.1 Transfers to third parties of defense articles or technical data made available under this Agreement, and of articles produced with such data, will be subject to the prior written agreement of the Government that made available the defense articles or technical data, except as otherwise provided in particular arrangements between the two Governments or in multilateral agreements to which both Governments are parties.

1.10.2 Each Government will base its decisions regarding requests by the other for agreement to third party transfers on its laws, regulations and policies. Each Government will use the same criteria for proposed transfers by the other as it uses for itself, and will not reject, solely in the pursuit of its own national commercial advantage, a request from the other for a third country transfer of such defense articles or technical data.

1.11 Both Governments will use their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries or other owners of such rights. Consistent with its laws and regulations, each Government will make available to the other all information necessary to implement cooperative arrangements under this Agreement. To the extent feasible, both Governments will seek an understanding with their respective industries that, in the interest of standardization and defense industrial cooperation, proprietary rights in defense-relevant information and data can be transferred by appropriate arrangements between the industries of the two countries.

1.12 Arrangements and procedures will, at the request of the purchasing Government, be established concerning follow-on logistic support for items of defense equipment purchased pursuant to this Agreement. Each Government will make its defense logistic systems and resources available to the other for this purpose as required and mutually agreed.

1.13 To the extent consistent with their respective laws and regulations and on the basis of reciprocity, each Government will waive its claims for reimbursement from the other with respect to nonrecurring research, development, and production costs.

Article 2—Implementing Procedures

2.1 Both Governments agree to create a Joint United States-Spanish Committee for Defense Industrial Cooperation to which they will appoint representatives who will develop terms of reference for this Committee and procedures for implementing this Agreement. Such implementing procedures are included in Annex 1 to this Agreement.

2.2 The Under Secretary of Defense for Research and Engineering will be the responsible authority in the United States Department of Defense for the development of implementing procedures under this Agreement.

2.3 The Director General de Armamento y Material of the Ministry of Defense will be the responsible authority of the Government of Spain for the development of implementing procedures under this Agreement.

Article 3—Industry Participation

3.1 implementation of this Agreement will involve maximum industrial participation. Notwithstanding the governmental procedures to facilitate the implementation of this Agreement, it will be the basic responsibility of the industries in each country to identify and advise their Government of their respective capabilities for cooperation and to carry out the supporting actions to bring industrial participation to consummation.

3.2 Each Government will be responsible for calling to the attention of its relevant industries the basic understanding of this Agreement and the appropriate implementing guidance. Both Governments will take all necessary steps to ensure that their industries comply with the regulations pertaining to security and to safeguarding classified information.

3.3 The Governments will arrange that their respective defense acquisition organizations are made familiar with the principles and objectives of this Agreement, and will assist sources in the other country to obtain information concerning proposed purchases, necessary qualifications and appropriate documentation.

3.4 To encourage the exchange of information in accordance with the purpose of this Agreement, each Government will, pursuant to its national laws and regulations, take action to facilitate participation by properly cleared officials and representatives of the other country in informational symposia, program briefings and prebid conferences, as well as access to publications and visits to installations.

Article 4—Security

4.1 Security arrangements under this Agreement will be subject to any subsequent security agreements entered into by the Governments. Until such security arrangements are agreed, the following provisions will apply:

4.1.1 To the extent that any items, plans, specifications, or information furnished in connection with the implementation of this Agreement are classified by the furnishing Government for security purposes, the other Government shall maintain a similar classification and employ security measures equivalent to those employed by the classifying Government.

4.1.2 Information provided by either Government to the other on condition that it remain confidential shall either remain in its original classification or be assigned a classification that ensures protection against disclosure equivalent to that required by the other Government. To assist in providing the desired protection, each Government will mark such information furnished with a legend indicating the origin of the information, that the information relates to this Agreement, and that the information is furnished in confidence.

4.1.3 Each Government will permit security experts of the other Government to make periodic visits to its territory, when it is mutually convenient, to discuss with its security authorities its procedures and facilities for the protection of classified military information furnished to it by the other Government. Each Government will assist such experts in determining whether such information provided to it by the other Government is being adequately protected.

4.1.4 The recipient Government will investigate all cases in which it is known or there are grounds for suspecting that classified military information from the originating Government has been lost or disclosed to unauthorized persons. The recipient Government shall also promptly and fully inform the originating Government of the details of any such occurrences, and of the final results of the investigation and corrective action taken to preclude recurrences.

Article 5—Defense Production Projects

5.1 The Government of the United States shall use its best efforts to furnish the Government of Spain such assistance as may be mutually agreed upon in light of the latter's priorities for the development, production, maintenance, repair and overhaul of Spanish defense equipment and materials, including arms and ammunition.

5.2 As a contribution to increasing the productive capacity of the Spanish military industry, defense production projects shall be designated by mutual agreement. A list of those projects under consideration shall be developed as soon as feasible; this list shall become part of this Agreement. Each Government shall from time to time notify the other of defense industrial cooperation projects it considers particularly suitable for addition to the list. These projects may be carried out by Spain alone, or as cooperative joint production projects by Spain and the United States, or as multilateral projects with the participation of one or more NATO countries as mutually agreed.

5.3 The Government of the United States will provide to the Government of Spain, or will assist the Government of Spain to obtain wherever possible at no cost, or on terms no less favorable then those extended by the Government of the United States to other NATO countries, the industrial property rights requested by the Government of Spain to develop its own defense production or to promote standardization and interoperability of equipment manufactured in Spain with that of the United States, and with other members of the NATO Alliance.

5.4 In accordance with the objectives set forth in Article 1.1.1 of this Agreement and the other goals of this Agreement, the Governments may enter into specific Government-to-Government or Government-to-industry agreements for cooperation in developing, producing, coproducing or procuring defense items.

Article 6—Administration

6.1 The United States-Spanish Joint Committee for Defense Industrial Cooperation will be co-chaired by the authorities referred to in Article 2 of this Agreement, or their designated representatives. The Committee will meet as agreed at the request of either Government, but a mimimum of once a year to review progress in implementing this Agreement. It will discuss the research, development, production, procurement and logistics suppor needs of each country and the likely areas of cooperation; develop the list of defense industrial cooperation projects mentioned in Article 5.2 of this Agreement; agree to the basis of and keep under review the financial statement referred to in Article 6.3 of this Agreement; and consider any other matters relevant to this Agreement.

6.2 Each Government will designate points of contact in the Ministry/Department of Defense level, in each purchasing Service/Agency under the Ministry/Department of Defense, and with other Government Departments and Agencies as appropriate.

6.3 An annual United States-Spanish statement of the current balance and long-term trends of R&D cooperation, production, and purchases between the two countries will be prepared on a basis to be mutually agreed.

Article 7—Effect of Termination

7.1 Notwithstanding the expiration of termination of this Agreement, any contract entered into consistent with the terms of this Agreement will continue in effect, unless the

contract is terminated in accordance with its own terms.

7.2 Articles 1.9, 1.10 and Article 4 of this Agreement will continue in full force and effect after, and notwithstanding the expiration or termination of this Agreement.

Article 8—Entry into Force

8.1 This Agreement, including its Annexes, will enter into force and remain in force in accordance with the provisions of Article Six of the Agreement on Friendship, Defense and Cooperation.

8.2 Supplementary protocols which may be negotiated by the responsible officials and approved by the appropriate Government authorities will be incorporated in this Agreement and made an integral part thereof.

Done in Madrid, this 2nd day of July, 1982, in duplicate, in the English and Spanish languages, both texts being equally authentic.

For the United States of America.

———— ————,

For the Kingdom of Spain.

———— ————.

Complementary Agreement Four—Defense Industrial Cooperation

Annex I—Principles Governing Implementation

Article 1—Introduction

This Annex sets forth the procedures agreed upon by the Governments of the United States and Spain to implement Complementary Agreement Four, hereinafter referred to as "The Agreement," to the Agreement on Friendship, Defense and Cooperation between the two countries.

Article 2—Major Principles

2.1 Each Government will consider for its defense requirements qualified defense items and services developed or produced in the other country.

2.2 The responsible Government authorities in each country will assist sources in the other country to obtain appropriate information concerning:

2.2.1 Plans and programs for research, development, production and acquisition of defense items and services.

2.2.2 Requirements for the qualification of sources.

2.2.3 Specifications and quality assurance standards.

Both Governments will respond promptly to requests for information that comply with their respective regulations and procedures. However, notwithstanding the governmental procedures established to facilitate the Agreement, it will be the responsibility of Government and/or industry representatives in each country to acquire information concerning the other country's research, development and procurement plans and to respond to solicitations in accordance with the prescribed acquisition regulations and procedures of the purchasing country.

Article 3—Actions

3.1 Both Governments will review and, where considered necessary, revise policies, procedures and regulations to ensure that the principles and objectives of the Agreement, which are intended to be compatible with the broad aims of NATO standardization and interoperability, are taken into account. Recognizing that factors such as delivery date requirements for supplies, the interests of security, and the timely conduct of the contracting process must be considered, both Governments agree that the following measures will be taken to ensure free and full competition for the award of contracts:

3.1.1 Ensure that, as a minimum, the following entities are familiar with the principles, objectives and terms of the Agreement:

—Their respective defense planning, programming, and contracting offices.

—Their respective offices responsible for defense imports and exports.

—Their respective agencies and industries responsible for the research, development, and production of defense items and/or services.

3.1.2 Ensure that, consistent with national laws and regulations, offers of defense items developed and/or produced in the other country will be evaluated without applying to such offers either price differentials under "buy-national" laws and regulations or the cost of import duties.

3.1.3 Consistent with national laws and regulations, provisions will be made for duty-free entry certificates and related documentation.

3.1.4 Assist industries in their respective countries to advise the other Government of their capabilities, and assist such industries in carrying out the supporting actions to maximize industrial participation in the implementation of the Agreement.

3.1.5 Consider defense items and services offered by the Government or industry of the other country as candidates for their respective requirements. Identify specific requirements and proposed purchases to the other country in a timely fashion to ensure that agencies and industries of such country are afforded adequate time to be able to participate in the research, development, production, and procurement processes.

3.1.6 Use their best efforts to assist in negotiating licenses, royalties, and technical information exchanges among their respective industries, and research and development institutes.

3.1.7 Permit the sale of defense equipment produced under license, coproduction agreements and/or joint development projects to allied countries and to appropriate third countries, subject to the policy outlined in Article 1.10 of the Agreement. Each agreement for a joint development or coproduction will address transfers of items or technology to allied or third countries.

3.1.8 Ensure that those items and services excluded from consideration under the Agreement for reasons of protecting national requirements, such as the maintenance of a defense mobilization base, are limited to a small percentage of total annual defense acquisition spending. Such items and services, together with those that must be excluded from consideration under the Agreement because of legally imposed restrictions on acquisition from non-national sources, will be identified as soon as possible by the Department of Defense as well as by the Ministry of Defense. Lists of these items and services will be prepared and kept under review at this level.

3.1.9 Pursuant to its national laws and regulations, facilitate arrangements for visits by properly cleared Government officials and industry representatives of the other country to explore and actively promote cooperation possibilities for research, development, production, procurement and logistic support of defense equipment.

3.2 Both Governments will ensure that their respective actions under the Agreement in working toward an equitable balance in defense trade, take into consideration the level of technology involved as well as the contractual value of the items being purchased.

Article 4—Counting Procedures

4.1 The purchases and other transactions to be counted against the goals of the Agreement will be identified jointly by the Department of Defense and Ministry of Defense. In principle, all defense items and services purchased by the Department of Defense or Ministry of Defense from the other country will be counted as long as such purchases meet the following criteria:

4.1.1 Direct purchases by the Department of Defense or Ministry of Defense, including their respective agencies, one from the other.

4.1.2 Purchases by either the Department of Defense of Ministry of Defense from the industry of the other country. When such purchases involve offset agreements between the Government of either country and the industry of the other country, the amount of such offset shall be applied in calculating the balance.

4.1.3 Purchases by industry from the Government or industry of the other country in the framework of Government defense contracts.

4.1.4 Purchases by a third country government from the Government of the United States or the Government of Spain or the industry of either country when either of the following circumstances occur:

—The sale requires the prior agreement of the non-vendor Government.

—The sale is a direct result of the promotional efforts by the Government or industry of the non-vendor country, which fact has been previously acknowledged and agreed by the vendor party.

4.1.5 Acquisitions by either country of defense items or services resulting from projects jointly funded by both countries.

4.1.6 License fees, royalties and other associated income resulting from orders placed by the Department of Defense or the Ministry of Defense and/or industry in one country with a licensed company in the other country; or in Department of Defense-Ministry of Defense transactions.

4.1.7 Transfers of technology, and production, testing and quality control equipment required to achieve the goals of the Agreement.

4.1.8 Contributions by one country in research, development and demonstration programs in the other country that have been agreed by both Governments.

4.1.9 Purchases of non-defense items an l services by the government or industry of either country from the Government or industry of the other, provided that both Governments agree that any particular purchase is to be counted against the goals of the Agreement.

4.2 The following transactions will not be counted:

4.2.1 Maintenance and logistic support activities in either country under contracts in effect before the effective date of the Agreement.

4.2.2 Any transaction being carried out under contracts and agreements in effect before the effective date of the Agreement.

4.2.3 Operational expenses of either Government to achieve the goals of the Agreement.

4.3 Transactions listed in Article 4.1 of this Annex, and any others that both Governments agree, will be credited in the following manner:

4.3.1 At the value of the contract on its effective date.

4.3.2 Purchases by third countries of defense items or services from the Government of the United States or the Government of Spain or the industry of either country as described in Article 4.1.4 of this Annex, will be credited as a sale by the non-vendor country, as follows:

—When authorization by the non-vendor Government is required: only the value of the item(s) directly related to the authorization will be credited.

—When the sale is the direct result of promotional efforts by the Government or industry of the non-vendor country: only the value of parts, subassemblies, assemblies, equipment and services supplied by either the Government of the United States or the Government of Spain or their respective industries will be credited.

4.4 The following transactions will be credited in the manner and amounts agreed by both Governments:

—License fees, royalties, and any other income resulting from transfers of technology, and production, testing and quality control equipment between both countries.

—Orders placed by the Department of Defense or the Ministry of Defense and/or industry in one country with a licensed company in the other country, or from Department of Defense-Ministry of Defense transactions.

—Contributions by one country in research, development and demonstration programs in the other country.

4.5 Transactions will be credited according to the exchange rate of the respective currencies on the effective date of the transaction.

4.6 Each Government will prepare an annual counting report. These reports will summarize the data counted pursuant to each of the categories above. Supporting data for each category included in the summary will indicate the item supplied, the parties to the transaction, transaction date, and credited value. Both Governments will exchange the summary reports and supporting data sufficiently in advance of the annual meeting to permit review and comment or agreement by the other at least two (2) weeks prior to the meeting. Any disagreement concerning the reports will be settled by the Joint Committee established pursuant to Article 2.1 of the Agreement.

Article 5—Administration

5.1 Each Government will designate points of contact at their respective Ministry/Department of Defense levels, as well as within other relevant departments and agencies, for the purpose of carrying out those actions necessary to implement the Agreement.

5.2 The Joint Committee for Defense Industrial Cooperation will be responsible for the general administration of the Agreement. Its terms of reference are contained in Annex 2 to the Agreement.

5.3 Quality assurance procedures outlined in STANAGS 4107 and 4108 will apply, unless other provisions are mutually agreed to on any specific contract. Reimbursement for services provided shall be afforded in accordance with the national laws and regulations of each country.

T–213 Turkey Memorandum of Understanding

Supplementary Agreement Number 2 Between the Governments of the United States of America ond of the Republic of Turkey on Defense Industriol Cooperation

The Government of the United States of America and of the Republic of Turkey,

Desiring to strengthen their respective defense capabilities as well as those of the North Atlantic Alliance as a whole through efficient cooperation in the fields of research, development, production, procurement and logistic support,

Recognizing that increased defense production capability is an integral part of a strong defense effort,

Having regard to the fact that an essential security relationship is supported by harmonious economic relations,

Bearing in mind the increasing impact of the economy and the application of new technologies on defense matters,

Taking into consideration the efforts of the NATO countries to develop and maintain an advanced industrial and technological capability and to achieve a more rational use of available resources, the standardization and interoperability of equipment and services, increased exchange of information, and better coordinated procurement policies, have agreed as follows:

Article I

1. The Government of the United States of America and the Government of the Republic of Turkey will cooperate in order to increase their defense equipment production and maintenance capabilities and to enable their armed forces to acquire more economically and efficiently modern armaments and equipment needed for self and common defense.

2. To this end, both Governments will seek to facilitate the mutual flow of defense procurement and technological know-how in the field of defense. They will also seek to provide opportunities to compete for procurement of defense equipment and services and to promote and faciliate the coproduction of defense equipment and cooperation in defense research and development and to expand programs of data exchange in defense technologies.

3. This Supplementary Agreement covers areas of possible bilateral cooperation in research, development, production, procurement and logistic support of conventional defense equipment. Measures taken under this Supplementary Agreement shall complement or be consistent with the work of the Conference of National Armament Directors (CNAD), the Independent European Program Group (IEPG), and the Senior NATO Logisticians Conference (SNLC). They therefore agree that, in the event of a possible conflict between agreements entered into between the IEPG and the Government of the United States, and this Supplementary Agreement, the Parties hereto will consult with a view of amending this Agreement.

4. The two Governments will, consistent with their relevant laws and regulations, give the fullest consideration to all requests for cooperative research and development, and to all requests for production and procurement intended to enhance the standardization and/or interoperability of equipment and services within the Alliance.

5. Each Government shall normally use competitive contracting procedures in acquiring items of defense equipment developed or produced in the other's country.

6. The two Governments shall agree upon detailed procedures to implement this Agreement. These procedures will incorporate the following:

A. Offers or proposals will be evaluated without applying price differentials under "Buy National" laws and regulations and without applying the cost of import duties;

B. Full consideration will be given to all qualified industrial and governmental resources in each country;

C. Offers or proposals will be required to satisfy the applicable requirements of the purchasing Government for performance quality, delivery and costs.

7. Any item to be excluded from consideration of reciprocal defense procurement under this Supplementary Agreement for reasons of protecting national defense requirements should be identified as soon as possible in lists drawn up by the Turkish Ministry of National Defense and the Office of the U.S. Secretary of Defense for their respective countries. These lists will be kept under review and may be modified only at this level.

8. Each Government will ensure that Technical Data Packages (TDP's) made available under this Supplementary Agreement are not used for any purpose other than for bidding on and performing a prospective defense contract, without the prior agreement of those owning or controlling proprietary rights and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information contained in TDP's. In no event shall the TDP's be transferred to a third country or any other transferee without the prior written consent of the originating Government.

9. Third party transfer of defense articles or technical data made available under this Supplementary Agreement and of defense articles produced with such data will be

subject to the agreement of the Government that made available the defense articles or technical data, except as otherwise agreed.

10. At the request of the purchasing Government, arrangements and procedures will be established concerning follow-on logistic support for items of defense equipment purchased pursuant to this Supplementary Agreement. Both Governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

Article II

1. The Government of the United States will furnish the Government of the Republic of Turkey such assistance as may be mutually agreed upon in light of the latter's priorities for the production, maintenance, repair and overhaul of defense equipment and materials, including arms and ammunition.

2. Mutually agreed defense production projects will be designed to constitute an increment to the production capabilities of Turkish industry. Such projects may be carried out solely by Turkey, as joint United States-Turkish projects of coordinated production, or as multilateral projects with the participation of other NATO and friendly countries.

Article III

Each Government will permit the importation and exportation, free from customs duties and taxes or similar charges, of equipment and materials sent to its country for maintenance, repair or overhaul pursuant to this Agreement.

Article IV

1. The Government of the United States will provide to the Government of the Republic of Turkey, or assist the Government of the Republic of Turkey in obtaining wherever possible at no cost, or, on terms no less favorable than those extended by the Government of the United States to any other NATO country, industrial property rights for the purpose of promoting the defense equipment production and enhancing the rationalization, standardization and interoperability of equipment and services of the NATO Alliance.

2. The Government of the United States will waive its reimbursement claims from the Government of the Republic of Turkey, to the extent possible and on a reciprocal basis, with respect to research and development costs and non-recurring production costs.

Article V

1. Each Government will call this Supplementary Agreement to the attention of relevant industries within its territory and will provide appropriate implementing guidance. Both Governments will take all necessary steps to ensure that industries comply with regulations pertaining to security and to the safeguarding of classified information.

2. Implementation of this Supplementary Agreement will involve full industrial participation. Accordingly, the Governments will inform their respective procurement and requirements offices of the principles and objectives of this Supplementary Agreement.

Article VI

1. To the extent that any items, plans, specifications, or information furnished in connection with the implementation of this Supplementary Agreement are classified by the furnishing Government for security purposes, the other Government shall maintain a similar classification and employ security measures equivalent to those employed by the classifying Government.

2. Information provided by either Government to the other on condition that it remain confidential shall either remain in its original classification, or be assigned a classification that ensures protection against disclosure equivalent to that required by the other Government. To assist in providing the desired protection, each Government will mark such information furnished with a legend indicating the origin of the information, that the information relates to this Supplementary Agreement, and that the information is furnished in confidence.

Article VII

This Agreement shall be implemented in accordance with mutually agreed programs. To this end, the two Governments, acting through their competent authorities will enter into implementing agreements. The two Governments will seek ways to implement these programs and projects, identified in an Annex to this Agreement, at the lowest possible cost to Turkey.

Article VIII

1. This Supplementary Agreement shall have an initial term of five years, and shall remain in force from year to year thereafter unless terminated. The Agreement shall be terminated at the end of its initial term or of an annual extension if either Party gives the other Party written notice of its intent to terminate it at least 90 days prior to the end of the term.

2. Should disagreement arise from the interpretation or implementation of this Agreement, the Parties shall consult in order to resolve the matter promptly.

3. Either Party may propose in writing the revision or amendment of this Agreement. In such a case, consultations shall begin immediately. If no result is reached in three months, either Party may terminate the Agreement upon 30 days notice in writing.

Article IX

Should the implementation of the contracts signed within the framework of this Supplementary Agreement not be completed at the time the present Agreement is terminated, provisions of this Agreement shall continue to cover said contracts until they are completed. Should this Agreement be terminated, Article I, Paragraphs 8 and 9, Articles VI will continue in force for those materials and data which were provided during the life of the Agreement.

Article X

Done at Ankara in duplicate, in the English and Turkish languages, each of which shall be equally authentic, on this 29th day of March 1980.

For the Government of the United States of America.

James W. Spain,

Ambassador of the United States of America.

For the Government of the Republic of Turkey.

Ilayrettin Erkmen,

Minister of Foreign Affairs.

Annex to Supplementary Agreement Number 2 Between the Governments of the United States of America and the Republic of Turkey on Defense Industrial Cooperation

Projects presently under consideration:

A. *Production of Anti-Armor Ammunition.*

A separate production line is required to manufacture armor piercing ammunition. The objective of this project is to gain the capability of producing hollow-charge and hard-core ammunition for existing weapons in the Turkish Armed Forces and for more modern types of weapons.

B. *Production of Fuses.*

New facilities are required to produce various types of fuses. The objective of this project is to increase existing production capability by obtaining new technology and equipment to produce fuses for artillery ammunition, rocket and missile warheads, and various bombs and mines.

C. *Production of Propellant Powders and Explosives.*

An increase in production capacity of propellant powders is required. The objective of this project is to produce various kinds of propellant powders and high explosives to support artillery ammunition and rocket warhead production programs.

D. *Production of Various Kinds of Rockets.*

The existing manufacturing facilities are required to be supplemented by equipment and production know-how in order to produce various kinds of rockets. The objective of this project is to manufacture and supply rocket-type ammunition and rocket-assisted equipment for the requirements of the Turkish Army.

E. *Improvement of Aircraft Rebuild Capabilities and Improvements of Facilities.*

In order to improve the rebuild capability of existing aircraft in the Turkish Air Force, the development of plans and programs is required. The objective of this project is to be a complete and self-sufficient rebuild capability of engine, body, avionics and other electronic equipment for the existing aircraft, including F-4 Phantoms.

F. *Building a Modern Frigate and Improvement of Overhauling Capability.*

The program of building a modern frigate suitable for Turkish Navy requirements is to be pursued. In parallel with the construction activity the overhauling capability of Golcuk shipyard is to be improved.

G. *Tank Upgrading Program.*

The objective of this project is to convert existing M48 tanks into M48A3 and/or M48AS versions, including Turkish production of various primary components.

Supplementary Agreement Number 3 Between the Governments of the United States of America and of the Republic of Turkey on Installations

Article I

1. Pursuant to Article V of the Agreement for Cooperation on Defense and Economy between the Governments of the United States of America and of the Republic of Turkey, the Government of the Republic of Turkey authorizes the Government of the United States to participate in joint defense measures at the following Turkish Armed Forces Installations:

—Sinop (electromagnetic monitoring).
—Pirinclik (radar warning space monitoring).
—Incirlik (air operations and support).
—Yamanlar (Izmir), Sahintepe (Gemlik), Elmadag (Ankara), Karatas (Adana), Mahmurdag (Samsun), Alemdag (Istanbul), and Kurecik (Malatya) (nodal communications sites).
—Belbasi (seismic data collection).
—Kargaburun (radio navigation).

2. The Government of the Republic of Turkey also authorizes United States administrative and support organizations and activities outside the installations. Such organizations and activities shall be subject to the relevant provisions of this Agreement.

3. Where necessary, requirements specified in this Supplementary Agreement shall be elaborated in appropriate implementing agreements.

Article II

1. Technical operations and maintenance services at the installations where the primary purpose is intelligence collection, nodal communications or radio navigation shall be carried out jointly by Turkish and United States personnel. The modalities of this cooperation, including the distribution of manpower spaces for assignment by each Party and training requirement for Turkish personnel, shall be determined jointly by appropriate authorities of the two Governments. For the purposes of this cooperation, the Government of the United States shall provide access to appropriate training for Turkish personnel.

2. All intelligence information, including raw data, produced at intelligence collection installations in the Republic of Turkey shall be shared by the two Governments in accordance with arrangements determined jointly by the competent technical authorities of the two Governments.

3. Mutually agreed arrangements shall be established to enhance Turkish Armed Forces' utilization of the capability of the Defense Communications System in Turkey to the extent feasible.

4. U.S. and Turkish authorities shall consult to avoid interference between activities of the installations authorized by this Agreement and the activities of other military and civilian installations and to avoid damage to life and property.

5. Modernization, addition or importation of the equipment related to the technical operations at the installations which would increase mission capabilities shall be subject to advance approval by the Government of the Republic of Turkey.

Article III

1. The Government of the United States of America will assign an officer as Commander of the United States Forces at each installation, who also will function as the single point of contact with the Turkish Installation Commander. The Turkish Installation Commander and the officer so assigned by the United States shall: exercise command and control over their respective forces, including equipment and material and the premises exclusively used by them, as well as providing security therefor; maintain close contact and coordination to insure that activities are conducted in a manner consistent with the spirit and provisions of this Agreement; and be responsible to insure that activities and technical operations at the installation shall be carried out in accordance with the provisions of this Agreement.

2. Turkish civilian personnel employed by the United States Forces or contractors of the United States Forces shall be under the control, responsibility and direction of their employer.

3. The Turkish Installation Commander shall be responsible for relation with the local Turkish authorities, order and security of the intallation as a whole, including perimeter security, consistent with Paragraph 1 of this Article and modalities mutually agreed in accordance with Paragraph 1, Article II of this Agreement.

4. Access to installations shall be under the control of the Installation Commander. Members and vehicles of the United States Forces and civilian component, as well as contractors, contractor employees and Turkish civilian employees of the United States Forces, shall have access to the installations on the basis of a standard identification card issued by appropriate Turkish authorities upon request of appropriate United States authorities. Such identification cards shall be valid for all installations covered by this Agreement. Personnel awaiting receipt of a standard identification card and temporary duty personnel shall have access on the basis of official orders and United States identification. Authorized dependents and official visitors shall have access on the basis of official United States or Turkish identification. Detailed implementing arrangements for admittance to the installations will be contained in a directive for procedures regarding admittance to the installations.

5. The United States flag may be flown at the headquarters of the United States Forces at the installation.

6. The installation Commander may issue directives applicable to the installation as a whole consistent with the provisions of this Article.

Article IV

The purpose, mission, location, installation plan, authorized quantities of arms and ammunition, authorized major items of equipment and authorized personnel strengths of the United States Forces and civilian component shall be detailed by mutual agreement. Increases in such authorized quantities and strengths shall be subject to prior approval of the appropriate Turkish authorities. The appropriate authorities of the Government of the United States shall provide to the appropriate authorities of the Government of the Republic of Turkey a quarterly report of assigned personnel strengths including Turkish civilian personnel, as well as organization charts for United States units at each installation. The Parties acknowledge that the number of personnel assigned may at times temporarily exceed authorized levels because of the personnel assignment processes.

Article V

1. In accordance with the provisions of the "Agreement Between the Parties of the North Atlantic Treaty Regarding the Status of Their Forces" dated June 19, 1951, the Government of the United States may import into and export from Turkey the equipment for its forces and reasonable quantities of provisions, supplies and other goods exclusively for the use of the United States Forces, its members, civilian component, and dependents. United States authorities shall notify Turkish authorities of such imports and exports by manifest.

2. The importation into and permanent transfer within Turkey of major items of equipment, arms and ammunition shall be subject to the prior approval of appropriate Turkish authorities and transfer within Turkey of arms and ammunition shall be accomplished with safeguards and protections as mutually agreed. Special procedures shall be established for the customs control of arms and ammunition as well as equipment and material of a classified nature.

3. Arms and ammunition and major items of equipment needed for the operation of an installation, including such equipment as may be earmarked for replacement as a result of modernization, will not be removed from Turkey without prior notification.

4. The competent authorities of both Parties shall consult before either Party terminates its activities or reduces its capabilities significantly at the installations.

Article VI

For the purposes of this Agreement, material, equipment, provisions, supplies, services, and civilian labor required by the Government of the United States shall be procured in Turkey to the extent feasible.

Article VII

1. State-owned land areas including improvements, utilities, easements and rights of way already allocated by the Government of the Republic of Turkey for the purposes of this Agreement will continue to be made available without costs to or claims against the Government of the United States. This Article shall not be interpreted as giving the right of ownership to such land areas, improvements, utilities, easements and rights of way to the United States and is without prejudice to the terms of existing non-intergovernmental lease contracts under which certain property is provided to the Government of the United States for the purposes of this Agreement.

2. All non-removable property, including property incorporated in the soil, constructed

or installed by or on behalf of the United States on the land areas allocated by the Government of the Republic of Turkey for the purposes of this Agreement, shall, from the date of its construction or installation, become the property of the Government of the Republic of Turkey, and shall be so registered without prejudice to the authorization by the Turkish authorities to the Government of the United States and its personnel to use such property for the purposes of this Agreement. Upon final termination of the use by the Government of the United States of any such non-removeable property, the right of such use will be transferred to the Government of the Republic of Turkey which will compensate the Government of the United States for the residual value, if any, of the property as determined by mutual agreement, taking into account past practices. Such property shall include those basic utility systems and other fixtures which have been permanently installed in or affixed to the property.

3. The Government of the Republic of Turkey shall have the right of priority to acquire, in accordance with mutually agreed terms, any equipment, materials, and supplies imported into or procured in Turkey by or on behalf of the Government of the United States for the purposes of this Agreement, in the event such equipment, materials and supplies are to be disposed of by the Government of the United States.

4. Construction of new buildings and other property incorporated into the soil at the installations and demolition, removal, alteration and modernization which change the basic structure of existing buildings shall be subject to prior approval by the appropriate Turkish authorities.

Article VIII

1. The costs of operations and maintenance of the installations, except for the premises exclusively utilized for Turkish operations or by Turkish personnel, and the costs of mutually agreed construction, modernization, alterations and repairs at the installations shall be met by the Government of the United States.

2. Each party shall pay its own personnel costs.

3. The costs of extention of local utilities requested by the United States and provided by the Government of the Republic of Turkey to the perimeter of the installations shall be met by the Government of the United States.

Article IX

1. The deployment into or from Turkey and operations of rotational squadron aircraft of the United States authorized to be stationed at Incirlik installation in support of NATO defense plans, their related support units, and aircraft which support activities authorized by Article I, Paragraphs 1 and 2, of this Agreement, shall be carried out in accordance with implementing agreements. These agreements shall also include:

A. Procedures for the joint use of Incirlik, installation and for the provision of air traffic control services; and

B. Procedures for training of rotational squadron aircraft at Incirlik.

2. Procedures for additional training in support of NATO defense plans will be established. Implementation of this training will be accomplished through separate protocols.

3. Aircraft operating in support of these activities shall have access to designated military and civilian airfields serving such activities. Supply vessels operating in connection with these activities shall have access to Turkish seaports to be authorized by the Government of the Republic of Turkey.

4. Provisions, consistent with this Agreement, will be established to facilitate movement of United States aircraft between installations and to and from Turkey.

Article X

The provisions of the Montreux Convention are reserved.

Article XI

The installations specified in Article I, Paragraph 1 above are subject to inspection by the appropriate Turkish authorities. The inspections in question shall be on the basis of mutually satisfactory administrative arrangements between the competent authorities of the Parties.

Article XII

Nothing in this agreement shall be in derogation of the inherent right of the Government of the Republic of Turkey under international law to take all appropriate restrictive measures required to safeguard its national existence in case of emergency situations.

Article XIII

1. This Supplementary Agreement shall be valid for a period of five years from the date of its entry into force. Unless one of the Parties notifies the other Party of the termination of this Agreement three months in advance of the end of this initial five year period, it will continue to be in effect from year to year until terminated by agreement of the Parties or by either Party upon 3 months' notice prior to the end of each subsequent year.

2. In the event of termination of this Agreement, the Government of the United States shall complete the process of its withdrawal and liquidation within one year after the effective date of termination. This Agreement shall be considered to remain in force for the purpose of such withdrawal and liquidation.

Article IX

Done at Ankara in duplicate, in the English and Turkish languages, each of which shall be equally authentic, on this 29th day of March 1980

For the Government of the United States of America.

James W. Spain,

Ambassador of the United States of America.

For the Government of the Republic of Turkey.

Hayrettin Erkmen,

Minister of Foreign Affairs.

Part 3—Defense Cooperating Country Agreements and Annexes

T-300 Scope of Part. This part provides, for information purposes only, copies of Defense Cooperation Country Agreements, Memoranda of Understanding, and accompanying annexes.

T-301 Israel Memorandum of Agreement.

Memorandum of Agreement Between the Government of Israel and the Government of the United States of America concerning the Principles Governing Mutual Cooperation in Research and Development, Scientist and Engineer Exchange, and Procurement and Logistic Support of Selected Defense Equipment

Preamble

The Government of the United States of America and the Government of Israel, hereinafter referred to as the Governments:

• Noting their previous agreements on (1) Data Exchange (signed on 22 December 1970), (2) the Production in Israel of U.S. Designed Defense Equipment (signed on 1 November 1971), and (3) Principles Governing Mutual Cooperation in Research and Development, Scientist and Engineer Exchange, and Procurement and Logistics Support of Selected Defense Equipment (signed on 19 March 1979), and (4) General Security of Information (signed on 10 December 1982) and its Industrial Security Annex (signed on 3 March 1983), and

• Intending to increase their respective defense capabilities through more efficient cooperation in the field of research and development, production, procurement and logistic support in order to:

—Promote the cost-effective and rational use of funds allocated to defense to the extent permitted by their national laws and policies, and

—Mutually benefit from selected research and development programs which satisfy each nation's defense needs in a cost effective manner, and

• Noting that Israel will continue to purchase large quantities of defense equipment from the United States and desiring to ameliorate the ensuing imbalance in defense trade between the two countries by allowing Israeli sources to compete for agreed upon procurements of the U.S. Department of Defense (DoD)

have entered into this Memorandum of Agreement in order to achieve the above aims.

This Memorandum of Agreement (MOA) sets out the guiding principles governing mutual cooperation in conventional defense equipment research and development, and procurement and logistic support of agreed upon defense supplies and services.

Article I—Principles Governing Reciprocal Defense Cooperation

1. The Governments intend to facilitate the accomplishment of the above-stated aims through operational and technical exchange leading toward understanding of military requirements and their technological solutions, through cooperation in the research and development areas, and data exchange and scientist-engineer exchange programs, all as listed in Annex A hereto: and by allowing each other's national sources to offer products and services identified in Annex B hereto. All listings of items or categories of items in Annex B are referred to collectively in this MOA as "items." Items may be added to these annexes by agreement of the Governments. Items may be dropped from these annexes by either Government as its national policies require. The requirements applicable to additions and deletions of items are set forth in Attachment 1.

2. Both Governments, in the cases of purchases directly in support of the programs listed in Annex "A" and in the case of the items and services listed in Annex "B", will accord the following treatment to offers of services to be performed or supplies to be produced, in the other country:

a. These offers will be evaluated without applying price differentials resulting from Buy National laws and regulations, including the Balance of Payment program.

b. To the extent permitted by law and regulation, these offers will be evaluated without consideration of the cost of duties and provisions will be made for duty-free entry certificates and related documentation.

c. Full consideration will be given to all qualified industrial and/or governmental sources of the other country for items or services listed in Annexes A and B consistent with the policies and criteria of the cognizant purchasing agencies, it being understood that such offers will be required to satisfy requirements of the purchasing organization for performance, quality, delivery and costs.

d. The requirements of each Government's laws and regulations relating to purchases of property and services (including the requirements for obtaining competition for such purchases) shall be applicable to the implementation of this agreement.

e. The absence of an item from Annex B is without prejudice to the authority of the Secretary of the Military Department to determine, in any individual case, that application of the restriction of the Buy American Act to that item would be inconsistent with the public interest. The absence of an item from Annex B should not be used as a basis for refusing Israeli industry an opportunity to be placed on the bidder's list, furnished a solicitation, and provided access to pre-bid conference.

f. Whenever permitted by law, waivers of further restrictive requirements are encouraged to facilitate the participation of sources in one country in the procurements of the other country.

3. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense procurement organizations to facilitate achievement of improved defense cooperation. Each Government will also be responsible for calling to the attention of the relevant industries within its country the basic understanding of this Memorandum of Agreement, together with appropriate implementing guidance.

4. Technical information, including Technical Data Packages (TDPs), furnished to the Government or to persons in the other country for the purpose of offering or bidding on, or performing a defense contract shall not be used for any other purpose without the prior agreement of the originating government as well as the prior agreement of those owning or controlling proprietary rights in such technical information. Each Government will ensure that full protection will be given by its officers, agents, and contractors to such proprietary, or to any privileged, protected or classified data and information they contain. Each Government will also undertake its best efforts to ensure compliance with the foregoing provisions on the part of other persons in its country. In no event shall such technical information or TDPs or products derived therefrom be transferred to any third country or any other third party transferee without the prior written consent of the originating Government, other persons in its country. In no event shall such technical information or TDPs or products derived therefrom be transferred to any third country or any other third party transferee without the prior written consent of the originating Government.

5. Both Governments will undertake their best efforts to assist in negotiating licenses, royalties, and technical information exchanges with their respective industries, when the items in Annexes A and B require such efforts. Both Governments will also facilitate the necessary export licenses required for the submission of bids or proposals or otherwise required for the performance of Annexes A and B.

6. The transfer to third countries of material or technical information and of articles derived therefrom generated from the mutual cooperative programs included in this MOA is subject to case-by-case advance agreement of the originating Government.

7. Arrangements and procedures will be established concerning follow-on logistic support for items of defense equipment covered by this Memorandum of Agreement. Both Governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

Article II—Implementing Procedures

A joint U.S. DoD-Israel MOD committee shall be established to prepare and update the annexes and attachment hereto for approval by the appropriate authorities of each Government and to periodically review the progress of implementation. The Under Secretary of Defense for Research and Engineering, in coordination with the Assistant Secretary of Defense for International Security Affairs, the Assistant Secretary of Defense for Manpower, Reserve Affairs and Logistics, and other appropriate Department of Defense and State officials, will be responsible in the U.S. Government for the implementation of this MOA. The Director General, Israel Ministry of Defense will be the responsible counterpart authority for the Government of Israel. Other duties to be assigned this committee and the frequency of their meetings shall be further defined in Attachment 1.

Article III—Security

1. To the extent that any items, plans, specifications or information furnished in connection with specific implementation of this MOA are classified by either Government for security purposes, the General Security Information Agreement, dated 10 December 1982, between the Governments, and that Agreement's Industrial Security Annex, dated 3 March 1983, shall apply.

Article IV—Duration

1. This MOA will remain in effect for a five-year period following its signing and will be extended for successive five-year periods, if at the end of each five-year interval the Governments mutually agree to such an extension.

2. If, however, either government considers it necessary for compelling national reasons to terminate its participation under this MOA before the end of the five-year period, or any extension thereof, written notification of its intention will be given to the other Government six months in advance of the effective date of termination. Such notification of intent shall become a matter of immediate consultation with the other Government to enable the Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to take such actions as necessary to alleviate problems that may result from the termination. In this connection, although the MOA may be terminated by the Parties, any contract entered into consistent with the terms of this MOA shall continue in effect, unless the contract is terminated in accordance with its own terms. Moreover, Article I, Section 4 and 6 and Article III of this MOA will continue in full force and effect after, and notwithstanding, the expiration or termination of this MOA.

3. In any event, this MOA may be amended at any time upon the agreement of the parties.

Moshe Arens,

For the Government of Israel, the Minister of Defense.

Date 19 Mar 1984.

Caspar W.Weinberger,

For the United States, the Secretary of Defense.

Date 19 Mar 1984.

Attachment 1 to Memorandum of Agreement Between the Government of Israel and the Government of the United States of America Concerning the Principles Governing Mutual Cooperation in Research and Development, Scientist and Engineer Exchange, and Procurement and Logistic Support of Selected Defense Equipment

I. Terms of Reference

1. A joint U.S. Department of Defense-Israel Ministry of Defense Committee (hereafter to be called "the Committee") is hereby established to serve, under the direct responsibility of the authorities listed in Article II of the Memorandum of Agreement (MOA), as the main body responsible for implementation of the MOA.

2. In particular, the Committee will be responsible for ensuring that the guiding principles of the MOA governing mutually beneficial cooperation in agreed upon conventional defense equipment research and development, procurement and logistic support of conventional defense equipment as designated in Annexes A and B are being implemented; to this end the Committee will meet as required pursuant to the request of either Government, but not less than at least

once every year in each country, to review progress in implementing the MOA. To the extent practical, the agenda for the Committee Meeting and issues to be discussed will be mutually agreed to at least 30 days in advance of the meeting. In this review:

A. They will discuss mutually beneficial cooperation in: research, development, production, procurement and logistic support and the likely general areas to be added to Annexes A and B including joint activities in those fields.

B. They will exchange information as to the way the stipulations of the MOA have been carried out, and, if need be, prepare proposals for amendments of the MOA and/or its Annexes.

C. They will provide an annual financial statement of the current status of procurement under the MOA, give guidance for its yearly preparation, and report on the progress of MOA implementation.

D. They will consider adding to Annexes A and B items or services eligible to be produced or performed in each country and identified through direct negotiations between the industries of each nation.

E. They will consider any other additions or deletions to Annexes A and B proposed by either side of the Committee.

F. They will consider problems which impede the implementation of this MOA in accordance with the procedures in paragraphs 3 and 4 below.

G. They will meet from time to time with representatives of the industries of each country to foster the objectives of the MOA.

3. The Committee will act as a forum for the consideration of all problems arising in the operation of the MOA, including issues relating to amending and interpreting Annexes A and B, and make recommendations to the parties for the resolution of such problems. In this context the Committee will:

—Establish procedures for raising and resolving problems involving the implementation of the MOA that are brought to its attention.

—If the Committee is unable to reach a consensus, refer the matter to the Under Secretary of Defense for Research and Engineering, in the event the United States is the procuring party, or to the Director General, Ministry of Defense, in the event Israel is the procuring party, in which case, the decision of the Under Secretary or the Director General shall be final.

4. The Committee shall not constitute the exclusive forum for the resolution of problems arising in the operation of the MOA; any aggrieved person may pursue whatever legal or administrative remedies are available to it in either country.

II. Principles Governing Implementation

1. Major Principles

A. The U.S. Department of Defense (DoD) and the Ministry of Defense of Israel (MOD) will consider for their defense requirements qualified defense items and services developed or produced in the other country that are include in Annexes A and B. However, this shall not preclude the DoD or MOD from considering items not included in the Annexes as provided for in Article I, paragraph 2(e) of the MOA.

B. Pursuant to the MOA and this Attachment, items listed in Exhibit 1, Annex B to the MOA shall be reviewed by the Committee and amended, as required, at least every quarter; and shall be republished in its entirety at least annually. Acceptance or refusal of items proposed to be added to Exhibit 1 shall be provided within 30 days.

C. In reviewing an item for possible inclusion in Exhibit 1, Annex B, the following will be DoD considerations:

1. *Releasability of technology:* The technology may be released by making available to Israeli Industry a government owned Technical Data Package which is provided with an IFB or RFP. The release of technology may also take place through an export license application processed by a U.S. prime contractor for technology to be used by an Israeli subcontractor. In either case, Military Department recommendations for an item for inclusion in Exhibit 1 is tantamount to a decision by the Military Department concerned to support the release or transfer of the technology involved to an Israeli source; however, concurrence in the addition of a category or item which has been recommended by the Government of Israel does not imply a commitment to transfer or release U.S. technology.

2. *Set-Asides.* Items that have been or are planned to be totally set aside for Small or Disadvantaged Business participation shall be excluded.

3. *Mobilization Bose:* The specific sustaining rate of an item that is designated as being part of the Mobilization Base shall be excluded.

D. In reviewing an item for possible inclusion in Exhibit 1, Annex B, the following will be MOD/GOI considerations:

1. *Releasability of technology:* The technology may be released by making available to U.S. Industry a government-owned Technology Data Package which is provided with a solicitation. The release of technology may also take place through an export license application processed by a GOI prime contractor for technology to be used by a U.S. subcontractor. GOI recommendation for an item for inclusion in Exhibit 1 is tantamount to a decision by the MOD to support the release or transfer of the technology involved to a U.S. source; however, concurrence in the addition of a category or item which has been recommended by the Government of the United States does not imply a commitment to transfer or release Israel technology.

2. *Set-Asides:* Items that have been or are planned to be totally set aside for designated types of Israeli business concerns shall be excluded.

3. *Mobilization Base:* The specific sustaining rate of an item that is designated as being part of a defense mobilization base requirement shall be excluded.

E. From time to time a need may arise to amend Annex B Exhibit 1 on a priority basis to allow participation in a current solicitation. These actions should be few in number and involve a significant procurement. The requesting government shall provide the request to bis opposite Annex B Subcommittee chairman at least two weeks before proposals are due un ler the solicitation. The request will be staffed in the most expeditious manner and a decision provided by message to the requesting government, whenever possible within less than two weeks.

F. Additions to Annexes A and B will be effective immediately and will apply to all solicitations for which an award has not yet been made.

G. Committee concurrence will normally be obtained before items will be removed from Exhibit 1. However, unilateral action to remove a category or item may be taken, but only when a three-month prior notification is provided.

H. Notwithstanding that an item has not been approved for inclusion in Annex B, for items not on the list, neither Government is excluded from waiving the Buy National restrictions (including duties and tariffs) on a case-by-case basis.

I. In all instances, when a government intends to procure an item for which non-domestic sources may not compete, the procuring Government shall state in its solicitation that the procurement is limited to domestic sources only.

J. When either government declines to add an item to Annex B, the appropriate official will provide to the other Government a written explanation for the exclusion.

K. Any later, version, model, modification, replacement, interchangeable or substitutable product for an item on Annex B shall be deemed to be included in Annex B for purposes of this agreement, unless such inclusion is prohibited in accordance with Paragraph C or Paragraph D.

L. When an item is removed from Annex A and B by mutual or unilateral action, the removal shall normally not apply to outstanding solicitations for which award had not yet been made.

M. It will be the responsibility of government owned entities or industry representatives in each country to acquire information concerning the other country's proposed research, developments, and purchases for items or services contained in Annexes A and B and to respond to requests for proposals in accordance with the prescribed government procedures and regulation. However, the responsible government agencies in each country will assist sources in the other country, to the same degree as domestic sources, to obtain information concerning intended research and development, proposed purchases, necessary qualifications and appropriate documentation for items or services contained in Annexes A and B.

2. *Action.*

DoD and MOD will review and, where considered necessary and to the extent provided by law, revise their respective policies, procedures, and regulations, and develop implementation procedures to ensure that the principles and objectives of the MOA, which are intended to promote the cost effective and rational use of funds allocated to defense, are taken into account. DoD and MOD agree that the following measures shall be taken, recognizing that, among other

factors, delivery date requirements for supplies, the interest of security and the timely conduct of the procurement process are considerations that may preclude free and full bilateral competition for the award of contracts:

A. Ensure that their respective requirements offices are familiar with the principles and objectives of this MOA.

B. Ensure that their respective research and development offices and institutes are familiar with the principles and objectives of this MOA.

C. Ensure that their respective procurement offices are familiar with the principles and objectives of this MOA.

D. Ensure wide dissemination of the basic understanding of this MOA to their respective industries or developing approved defense items or services.

E. Ensure that, consistent with national laws and regulations, offers of defense items produced and services performed in the other country and included in Annexes A and B will be evaluated without applying to such offers, either price differentials under buy-national laws and regulations, or the cost of import duties to the extent that existing laws and regulations permit the waiver of such import duties. Full consideration will be given to all qualified industrial or governmental sources in each other's country. Provisions will be made for duty-free entry certificate and related documentation to the extent that existing laws and regulations permit.

F. Assist industries in their respective countries to identify and advise the other government of their production capabilities and assist such industries in carrying out the supporting actions for industrial participation.

G. Review defense items and requests for services submitted by the other country as candidates for additions to Annexes A and B. Identify requirements and proposed purchases to the other country in a timely fashion to ensure that the industries of such country are afforded adequate time to be able to participate in the research and development production and procurement processes for Annex A and B items.

H. Use best efforts to assist in negotiating licenses, royalites, and technical information exchanges among their respective industries, and research and development institutes when Annex A and B items or services are involved.

III. Membership and Points of Contact

A. Membership

United States

Deputy Under Secretary (International Programs and Technology), Chairman U.S. Side of Committee
Director, International Acquisition
Deputy Assistant Secretary of Army (Acquisition)
Deputy Assistant Secretary of Navy (Systems)
Deputy for Tactical Warfare Systems, Air Force
Assistant Director Plans, Programs, and Systems, Defense Logistics Agency
R&D Subcommittee Chairman
Acquisition Subcommittee Chairman

Israel

Director, Government of Israel Ministry of Defense Mission to the United States of America, Chairman Israeli Side of Committee
R&D Subcommittee Chairman
Acquisition Subcommittee Chairman
Economic Minister of Israeli Embassy

B. Points of Contact

The points of contact will be developed and periodically updated by the DoD and the Israeli MOD and provided under separate cover.

Moshe Arens,

For the Government of Israel.

Date: 19 Mar. 1984.

Caspar W. Weinberger,

For the Government of the United States of America.

19 Mar 1984.

T-302 Egypt Memorandum of Understanding

Memorandum of Understanding Between the Government of the United States of America and the Government of Egypt Relating to the Production in Egypt of U.S. Designed Defense Equipment

The Government of the United States of America and the Government of Egypt, hereinafter referred to as the Governments:

Noting that the Government of Egypt has requested production assistance in the manufacture of defense eqoipment and technical assistance in improving existing systems to extend their useful life in order to conserve its hard currency and foreign exchange, and enable Egypt to economically meet its own defense needs; intending to utilize the defense industrial capability of Egypt and achieve a more readily available source of spare parts for defense items have entered into this memorandum of understanding in order to achieve the above aims.

The memorandum of understanding (MOU) sets out the guiding principles governing mutual cooperation in conventional defense equipment, technical data transfers and procurement and logistic support of agreed-upon defense supplies and services.

Article I

Principles governing technical data release and reciprocal defense cooperation

1. The Governments intend to facilitate the accomplishment of the above-stated aims through cooperation in the transfer of technical data for mutally agreed projects and by affording each other's national sources improved opportunities to offer related products and services. Projects and items may be annexed to the MOU by agreement of the Governments.

2. The Government of Egypt may request technical data packages (TDPS) which it desires to receive, (and be licensed to use for manufacture, operation, maintenance or repair of defense equipment for the use of the Armed Forces of Egypt) and shall submit same to the Department of State of the United States Government for approval through normal channels.

3. TDPS owned by tbe Government of the United States and which the Government of the United States approves for transfer to the Government of Egypt will be done so in accordance with DD Form 1513, letter of offer and acceptance. In the event of an inconsistency between the term of this MOU and any such DD Form 1513, the latter shall govern. Commercially owned TDPS which have been approved by the Government of the United States for transfer to the Government of Egypt under a commercial licensing agreement shall be done so through normal commercial channels.

4. Both Governments, in furtherance of projects carried out under this MOU will accord the following treatment on a reciprocal basis to offers of service to be performed or supplies to be produced, in the other country:

A. Offers will be evaluated without applying price differentials resulting from buy national laws and regulations.

B. To the extent permitted by law and regulation, these offers will be evaluated without consideration of the cost of custom duties and provisions will be made for duty-free entry certificates and related documentation.

c. Full consideration will be given to qualified industrial and/or governmental sources of the other country for items or services consistent with the policies and criteria of the cognizant purchasing agencies. It being understood that such offers will be required to satisfy requirements of the purchasing organization for performance, quality, delivery, and costs.

d. The other requirements of each Government's laws and regulations relating to purchases of property and services (including the requirements for obtaining competition for such purchases) shall be applicable.

5. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense procurement organizations to facilitate implementation of this agreement and achievement of improved defense cooperation. Each Government will also be responsible for calling to the attention of the relevant industries within its country the basic understanding of this memorandum of understanding, together with an appropriate implementing guidance.

6. Technical data, including TDPS, furnished to the other Government or to persons in the other country for the purpose of offering or bidding on, or performing a defense contract for either Government, shall not be used for any other purpose without the prior agreement of the originating Government as well as the prior agreement of those owning or controlling proprietary rights in such technical information. Each Government will ensure that full protection will be given to its officers, agents, and contractors to such proprietary, or to any privileged protected, or classified data and information they contain. Each Government will also undertake its best efforts to ensure compliance with the foregoing provisions on the part of other persons in its country. In no event shall such technical information or

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TDPS derived therefrom be transfered to any third country or any other third party transferree without the prior written consent of the originating Government.

7. The transfer to third countries or to anyone not an officer, agent or employee of recipient Government of material or technical data and of articles or services directly derived therefrom generated from the mutual cooperative programs under this MOU requires case-by-case advance agreement of the originating Government, obtained through normal channels.

8. Both Governments will undertake their best efforts to assist in negotiating, licensing, royalties, and technical data exchanges with their respective industries. When the projects.* Both Governments will give timely consideration to the necessary export licenses required for the submission of bids of proposals or otherwise required for the performance of such projects.

9. Duly authorized United States Government Representatives (either employees of the Government of the United Stated or contractor personnel) shall have access to inspect the production, testing, or evaluation of any items manufactured from the U.S. techncial data furnished pursuant to this memorandum of understanding. In cases where production, testing, or evaluation of such items is performed in a sensitive location, access to such items will be given after receipt of prior notice sufficient to permit the Government of Egypt to make security arrangements to protect other facilities or equipment in the vicinity.

10. The Government of Egypt agrees to furnish at no cost to the Government of the United States detailed technical data and information on inventions, improvements, and modifications directly derived from the use of technical data acquired by the Government of Egypt pursuant to this MOU notwithstanding paragraph 7. The Government of the United States shall have the right to use such data on a royalty-free basis for the use by the Armed Forces of the United States, the military assistance program (Grant Aid) of the United States Government or for foreign military sales.

11. This memorandum of understanding shall be effective for a period of three years unless otherwise agreed. Either party may terminate this memorandum of understanding by giving notice to the other party of its intention to terminate. In such case, the memorandum of understanding shall terminate one year after such notice has been given but without prejudice to obligations and liabilities which have then accrued pursuant to the terms hereunder, in particular those under paragraphs 3, 6, and 7 of this MOU.

12. Promptly after entry into effect of this MOU, the committee established pursuant to article 11 of the MOU will commence the review of the candidate projects and will submit recommendations to the Governments concerning the projects to be undertaken. Projects as to which the requisite agreements have been made between the Governments will be listed in annex A.

13. The activities of the United States Government in furtherance of this MOU shall be undertaken in accordance with, and subject to, applicable United States laws and regulations, in particular the Arms Export Control Act and regulations issued pursuant thereto. Foreign military sales cases under this MOU shall be executed in accordance with the U.S. Arms Export Control Act and governed by the terms and conditions of the DD Form 1513, letter of offer and acceptance.

Article II—Implementing Procedures

A joint U.S. Egypt Committee shall be established to periodially review the progress of implementation of this MOU. The Departments of State and Defense will be responsible in the U.S. Government for implementation of this MOU. The Egyptian Ministry of Defense will be the responsible counterpart authority for the Government of Egypt. Other duties to be assigned the joint committee and the frequency of their meetings shall be further defined and annexed to this MOU.

Article III—Security

1. To the extent that any items, plans, specifications, or information furnished in connection with the specific implementation of this MOU are classified by either Government for security purposes, the other Government shall maintain a similar classification and employ all measures necessary to preserve such security equivalent to those measures employed by the classifying Government through the period during which the classifying Government may maintain such classifications.

2. Classified military information and material shall be transferred only on a Government-to-Government basis and only to persons who have appropriate security clearance for access to it.

3. Each Government will permit security experts of the other Government to make periodic visits to its territory, when it is mutually convenient, to discuss with its security authorities its procedures and facilities for the protection of classified military information furnished to it by the other Government. Each Government will assist such experts in determining whether such information provided to it by the other Government is being adequately protected.

4. The recipient Government will investigate all cases in which it is known or there are grounds for suspecting that classified military information from the originating country has been lost or disclosed to unauthorized persons. The responsible Government agency of the originating country will, without delay, be fully advised of such occurrences and of the final findings and corrective actions taken to preclude recurrences.

5. This MOU shall enter into force and effect after exchange of notifications among the Governments that each has complied with the requirements of its national laws and practices that are prerequisites to entry into force of this agreement.

General Kamal Hassan Ali,

For the Government of Egypt.

Doctor William J. Perry,

For the Government of the United States of America.

21 October 1985

Amendment—Memorandum of Understanding Between the Government of the United States of America and the Government of Egypt Relating to the Production in Egypt of U.S. Designed Defense Equipment

The Government of the United States of America and the Government of Egypt hereby agree to renew subject Memorandum of Understanding, dated 21 October 1979, for an additional three years, thereby extending the effective period of the Memorandum of Understanding until 21 October 1988, unless otherwise agreed.

This Amendment shall be affixed to, and become a part of, the original Memorandum of Understanding dated 21 October 1979.

———,

For the Government of Egypt.

———,

For the Government of the United States of America.

Annex I to the Memorandum of Understanding Between the Government of the United States of America and the Government of Egypt Relating to the Production in Egypt of U.S. Designated Defense Equipment, Dated 21 October 1979

Terms of Reference.

1. The members of the Egypt/U.S. Committee for Mutual Cooperation (hereafter to be called "the Committee") will serve under the direct responsibility of the authorities listed in Article II, of the MOU, respectively, responsible for the implementation of the MOU.

2. In particular, the Committee will be responsible for monitoring implementation of the MOU governing the mutual cooperation in Defense Production Assistance, research and development, production, acquisition and logistic support of conventional defense equipment which is related to the Defense Production Assistance Program. To this end the Committee members will meet as required, but not less than semi-annually, to review progress in implementing the MOU. In this review:

2.1 The Committee will discuss Defense Production Assistance, research, development, production, acquisition, and logistic support needs of each country and the likely areas of cooperation, including joint activities in those fields relating to the Defense Production Assistance Program.

2.2 The Committee will exchange information as to the way the stipulations of the MOU have been carried out and, if need be, prepare proposals for amendments of the MOU and/or its annexes.

2.3 The Committee will consider any other matters relevant to the MOU

2.4 After each meeting the Committee will advise the authorities listed in Article II as appropriate.

2.5 The Committee will alternately meet in the United States and in Egypt. The country in which a particular meeting will take place will provide the chairman and the secretariat for that meeting.

———,

For the Government of Egypt.

———,

For the Government of the United States.

April 11, 1980.

Scientist and Engineer Exchange Agreement Between Egypt and the United States

Introduction

1.1 The Government of Egypt and the Government of the United States, agree to provide on-site working assignments to selected scientists and engineers from the other country in defense organizations, industries and universities associated with defense contracts covering technical areas of interest related to Army, Navy and Air Force conventional weapons systems and equipment. This agreement is intended to further implement the Memorandum of Understanding Between the Government of the United States of America and the Government of Egypt Relating to the Production in Egypt of US. Designed Defense Equipment, dated 21 October 1979.

Selection of Candidates

2.1 Participation in the Egypt and US scientist and engineer exchange program is restricted to military officers and civilian employees of the Egyptian Ministry of Defense (MOD) and the US Department of Defense (DOD) (including wholly owned government industries or facilities).

2.2 The placement of each candidate nominated under this program is conditional upon the ability of the activity involved to provide working assignments for a mutually agreed period.

2.3 Candidates should hold at least baccalaureate degrees and have at least four years practical experience in the discipline to which they are to be exposed.

2.4 To assist in the evaluation of candidates, the MOD and the DOD will forward background resumes and assignment objectives to each other at least six months prior to the desired date of assignment. Final selection of candidates will be by mutual agreement between the MOD and the DOD.

2.5 Selected candidates from the MOD must be proficient in English and have a working knowledge of US technical terms. Candidates from the DOD may be required to be proficient in Egyptian and have a working knowledge of Egyptian technical terms (as may be necessary on a case by case basis).

Costs

3.1 Costs incurred on account of participation of a country in assigning scientists and engineers under this program will be borne by the country of which that scientist or engineer is a national ("country of Origin").

3.2 Incurred costs to be borne by the country of origin will include, but not be limited to salary, per diem costs, housing allowances, differential relocation pay, family allowances, cost of movement of dependents and household effects, cost of shipment of remains and funeral expense in event of death, travel to and from the host country, travel in connection with assigned duties within the host country, and hospitalization, medical, dental and any other associated personnel costs occasioned by assignment of its nationals under this program.

3.3 The country of origin will make arrangements to defray costs of this program directly to its personnel rather than by reimbursement to the host country.

3.4 Incurred costs, to be borne by the country of origin, will not include costs of host country personnel or charges for the use of host country owned facilities, tooling, plant or laboratory equipment.

Security

4.1 During the selection process, each country will inform the other of the level of security clearance required to permit candidates access to selected work areas. Access will be limited to classifications based on the participants need-to-know to accomplish the work assignment. Security clearance will be authorized for the work program identified for participation. Additional or modified work assignments will require separate disclosure authorization.

4.2 Each country will cause to be filed, through its Embassy in the host country, appropriate security assurances for each selected candidate.

4.3 Any violation of security procedures by a participant during his assignment will be reported to the country of origin for appropriate action.

4.4 All classified items, plans, specifications, or other information available to personnel participating in this program will be considered as classified information furnished to or by the country of origin, and will be subject to all provisions and safeguards provided for under arrangements in force between the United States and Egypt.

4.5 The country of origin will insure, by appropriate means (e.g., indoctrination on applicable security laws and statutes, retention agreement equal to three times the length of the assignment, etc.), the protection of proprietary, classified, and other information disclosed under this program, after termination of a participant's assignment.

4.6 The data and information to be exchanged under this program as well as access to facilities, equipment and sites shall not extend to those disclosing "RESTRICTED DATA" or "FORMERLY RESTRICTED DATA" as those terms are used in the United States Atomic Energy Act of 1954 as amended.

4.7 Technical data (classified or unclassified, in written or other documentary form) received by a participant shall not be transmitted by the participant unless prior review and approval have been obtained by the appropriate host country disclosure authority.

Technical and Administrative Matters

5.1 The host country will provide, at no cost to the country of origin, such technical and administrative support as is deemed necessary for the efficient performance of a participant's assigned task.

5.2 Participants assigned under this program will be subject to the same restrictions, conditions, and privileges as local personnel of comparable rank in the area of assignment, unless modified by the local director or commander or equivalent of the facility to which assigned.

5.3 Participants and their authorized dependents shall be briefed regarding their specific entitlements, privileges, and obligations prior to or immediately following their arrival in the host country.

5.4 As a general rule, except for religious holidays, participants will observe holidays of the host organization rather than their own national holidays. Exceptions to this rule may be made by the local director, commander or equivalent of the installation to which personnel are assigned.

5.5 All participants will work under the guidance and control of a host supervisor who will, upon completion of a participant's tour of duty, submit an evaluation report to the participant's country of origin.

5.6 Supervisors will insure daily observation of participant's performance in order to provide a basis for counseling and reporting.

5.7 Supervisors may submit interim reports to appropriate recipients as deemed useful.

Inventions and Technical Information

6.1 The respective rights of the exchange scientist or engineer and the two governments, to use inventions made and technical information developed by an exchange scientist or engineer while working in a host organization under this program shall be governed by the laws and regulations of the respective government of origin.

6.2 To the extent that the right, title and interest to an invention is assigned to the government of origin under the provision established in paragraph 6.1, the government or origin agrees to grant:

a. To the host government for its own governmental purposes a worldwide, irrevocable, non-exclusive, royalty-free license for such inventions made (conceived or first actually reduced to practice under this program); and

b. To a non-government host facility a non-exclusive, royalty-free license to make, use and sell each such invention within the host country, coupled with the right to use and sell throughout the world any product manufactured pursuant to such license, if the invention is made while the participating scientist or engineer is engaged in work at such non-government owned facility.

6.3 As a condition for participating in this program, the government of origin shall obtain from each exchange scientist or engineer selected, a written agreement to grant:

a. To the government of origin and the host government, for their respective

* The text of the agreement as negotiated by the Governments includes the following language after "projects": "... carried out under this MOU require such efforts." The foregoing language was omitted thru inadvertence from the text of the agreement as actually signed.

governmental purposes, worldwide, irrevocable, non-exclusive, royalty-free licenses in inventions made and technical information developed by the individual during the period of and as a result of his participation in the program; and

b. To a non-government host facility a non-exclusive, royalty-free license to use technical information developed by the individual, and to make, use and sell within the host country each invention made by the individual coupled with the right to use and sell throughout the world any product manufactured pursuant to such license, if the technical information is developed or the invention is made while the participating scientist or engineer is engaged in work at such non-government owned facility.

6.4 In order to permit the host government to adequately protect its interest in inventions referred to in paragraph 6.2 within its territory, the host government as a licensee may file and prosecute patent applications within its territory for such inventions.

6.5 To the extent it can do so without incurring liability to a third party, each government agrees to grant to the other government for its governmental purposes a worldwide, irrevocable, non-exclusive, royalty-free license in technical information:

a. Furnished to or by the host government through an exchange scientis. or engineer; and

b. Relevant to technical information developed by an exchange scientist or engineer working in a host organization under this program.

6.6 Any additional compensation or award under an incentive award program or similar program due to the participating scientist or engineer for the work performed under this program shall be the responsibility of the government of origin.

Duration and Termination

7.1 This program will cover a period coincident with the Memorandum of Understanding Between the Government of the United States of America and the Government of Egypt Relating to the Production in Egypt of US Designed Defense Equipment, dated October 21, 1979, unless sooner terminated by agreement between the parties.

7.2 In the event of termination or expiration, the commitments regarding security, the protection of technical and other information against unauthorized use, disclosure, or transfer, and industrial property rights that accrued prior to termination will continue without the limit of time.

General Kamal Hassan Ali,

For the Government of Egypt.

11 April 1980.

Dr. William J. Perry,

For the Government of the United States of America.

11 April 1980.

[FR Doc. 86-28507 Filed 12-22-86; 8:45 am]

BILLING CODE 3810-01-M

federal register

Tuesday
December 23, 1986

Part III

Department of Education

34 CFR Parts 614 and 617

College Housing Program; Academic Facilities Program; Final Rule and Notice

DEPARTMENT OF EDUCATION

34 CFR Parts 614 and 617

College Housing Program; Academic Facilities Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary of Education issues final regulations governing College Housing and Academic Facilities loan discounts. These regulations will amend the current College Housing and set forth Academic Facilities loan discount regulations to allow the Secretary additional flexibility when determining the amount of a discount that may be offered to a school for prepayment of a loan under either program, as authorized by the Higher Education Amendments of 1986.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Samuel J. Weaver, Chief, Institutional Receivables Branch, L'Enfant Plaza, P.O. Box 23471, Washington, DC 20024. Telephone: (202) 472-9300.

SUPPLEMENTARY INFORMATION: Based on the Secretary's experience in administering current program regulations (34 CFR Part 614) for the discounted prepayment of College Housing loans, the regulatory provisions, establishing the basis for determining the amount of a discounted prepayment, need amending to provide the Secretary greater flexibility in determining this discount for those institutions which wish to buy back their loans from the Department. The amendments would also ensure that such prepayments are accepted in a manner which is in the best financial interests of the Federal government. The Department's review indicates that the price at which these loans will sell on the open market would be less than the net present value of the loans as calculated under the current regulations. It appears that many educational institutions may be interested in prepaying their loans if adjustments are made to the current regulations so that the permissible discount is calculated by accounting for the loan's true market value as opposed to calculating the discount with the yields of comparable obligations of the United States. Market value consists of the amount the Secretary would receive from nongovernmental investors if the loans were purchased by such investors on the open market.

Although the Secretary is issuing separate regulations for loan discounting under each program, the authority to discount Academic Facility Loans differs only slightly from the College Housing Loan discounting authority. The Academic Facilities authority requires that the structures built with the proceeds of the loan being prepaid continue to be used for educational purposes for the duration of the loan's originally scheduled term to maturity. An educational use restriction does not apply to discounting of College Housing loans under the Higher Education Amendments of 1986; however, discounts awarded prior to enactment of the amendments are still subject to an educational use restriction. Further, the Academic Facilities Loan discounting authority essentially expires in 1991, while the discounting authority for the College Housing Program does not have an expiration date for prepayments. These distinctions between the two authorities do not have any bearing on the discounting methodology and procedures established for the two programs.

The changes in the test of the final regulations from the text published in Notice of Proposed Rulemaking for the College Housing Program in the **Federal Register** on September 4, 1986, 51 FR 31754, are the result of the Higher Education Amendments of 1986. These changes do the following: (1) Eliminate various factors that the Secretary previously used to discount loans in default, and (2) flatly prohibit the discounting of loans that are less than five years old or made after October 1, 1986. See sections 732(b)(5)(B), (c), (d) and 762 (c) (7), (d), (e) of the Higher Education Act of 1965, as amended by section 701 of the Higher Education Amendments of 1986, Pub. L. No. 99-498. The Higher Education Amendments of 1986 also authorize institutions in default prior to October 1, 1986 to prepay their loans at a discount. These regulatory changes reflect self-implementing statutory enactments.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the Department may waive proposed rulemaking, if appropriate under 5 U.S.C. 553, which permits waiver when an agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the pubic interest.

The Department believes that it should waive proposed rulemaking for discounting of loans under the Academic Facilities Program because notice and comment procedures for loan discount regulations for the Academic Facilities Program would be unnecessary, impracticable, and contrary to the public interest, for several reasons. First, notice and comment for loan discount regulations for the Academic Facilities Program are unnecessary because virtually identical provisions were included in the Notice of Proposed Rulemaking (NPRM) for loan discounting under the College Housing Program, which was published in the **Federal Register** on September 4, 1986, 51 FR 31754. These two institutional loan programs have a common purpose and serve the same recipients. There is no basis for having a formula or methodology for discounting loans under the Academic Facilities Program different than the one prescribed for the College Housing Program. In light of the fact that the Department received only one comment, which was favorable, on the NPRM published for the College Housing Program, it would appear that an additional round of rulemaking procedure for the Academic Facilities Program would not yield additional public comment.

Second, Congress has directed the Secretary to sell loans under both programs to realize $579 million in proceeds by September 30, 1987. *See* section 783 for the Higher Education Act of 1965, *as added*, by Pub. L. No. 99-498. The additional time associated with publication of an NPRM for the Academic Facilities Program could impede fulfillment of this urgent Congressional directive. The urgency is also reflected in the Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, which also calls for the Department to raise revenues through the sale of the loans.

Third and finally, many of the loan discount regulations for the Academic Facilities Program reflect statutorily mandated provisions; public comment on such provisions would not result in changes to the regulatory text.

The Secretary, therefore, has decided for good cause to waive proposed rulemaking on the final regulations as impracticable, unnecessary, and contrary to the public interest under 5 U.S.C. 553(b)(B).

Executive Order 12291

The regulations have been reviewed by the Department in accordance with Executive Order 12291. They are classified as non-major because they do not meet the criteria for major regulations established in the Order.

Intergovernmental Review

The College Housing Program is listed in other regulations promulgated by the Secretary (34 CFR Part 79) as subject to the intergovernmental review requirements imposed by section 204 of the Demonstration Cities and Metropolitan Development Act of 1966. The objective of these requirements and Executive Order 12372, which implements these requirements, is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plan and actions for this program. However, the limited discount program offered by the Secretary is not subject to section 204 because no financial assistance for capital construction is awarded.

Assessment of Educational Impact

In the Notice of Proposed Rulemaking for the College Housing Program, the Secretary requested comments on whether the proposed regulations would require transmission of information that is already being gathered by or is available from any other agency or authority of the United States.

Based on the absence of any comments on this matter and the Department's own review, the Secretary has determined that the regulations in this document do not require information that is already being gathered by or is available from any other agency or authority for the United States.

List of Subjects

34 CFR Part 614

Colleges and universities, Education, Housing, Loan programs—housing and community development.

34 CFR Part 617

Colleges and universities, Education, Housing, Loan programs—housing and community development.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

Dated: December 16, 1986.

William J. Bennett,

Secretary of Education.

The Secretary amends Parts 614 and 617 of Title 34 of the Code of Federal Regulations as follows:

PART 614—COLLEGE HOUSING PROGRAM

1. The authority citation for Part 614 is revised to read as follows:

Authority: Part F of title VII of the Higher Education Act of 1965, as added by the Higher Education Amendments of 1986, Pub. L. No. 99-498, to be codified at Title 20 U.S.C. unless otherwise noted.

2. Section 614.63 is revised to read as follows:

§ 614.63 Discounted prepayment of a loan.

(a)(1) The Secretary may provide a discount for prepayment in full of a college housing loan in an amount determined to be in the best financial interests of the Government for institutions that meet the conditions established in paragraph (b) of this section.

(2) The discount is applicable both to loans in current payment status and to loans in default as long as an institution does not become delinquent or in default on its loans after October 1, 1986. The Secretary reviews proposals from institutions with defaulted loans separately from those in current payment status in order to provide institutions in default all possible guidance in accomplishing the prepayment of their college housing loans.

(b) The Secretary may approve a proposal from an institution for discounted prepayment of a college housing loan if—

(1) The prepayment is made from non-Federal sources;

(2) The prepayment is made on a loan both issued before October 1, 1986 and outstanding for at least five years;

(3) The prepayment is not derived from proceeds of obligations, the income of which is exempt from taxation under the Internal Revenue Code of 1954; and

(4) The prepayment is in an amount determined in accordance with paragraph (c) of this section;

(c) The Secretary determines the amount of a prepayment for a college housing loan based on—

(1) Current market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to that of the loan to be prepaid;

(2) Current fair market value of outstanding marketable obligations that are of comparable quality to that of the loan to be prepaid;

(3) Current and anticipated administrative costs incurred by the Secretary in servicing the loan to be prepaid; or

(4) Current net proceeds that the Secretary would receive from nongovernmental investors, if the loan to be prepaid were purchased by such investors on the open market.

Authority: Section 762(c), (d), (e) of the Higher Education Act of 1965, as added by the Higher Education Amendments of 1986, Pub. L. No. 99-498.

PART 617—FINANCIAL ASSISTANCE FOR CONSTRUCTION, RECONSTRUCTION, OR RENOVATION OF HIGHER EDUCATION FACILITIES

3. The authority citation for Part 617 is revised to read as follows:

Authority: 20 U.S.C. 1132a *et seq.*, unless otherwise noted.

4. Part 617 is amended by adding a new § 617.67 in Subpart D to read as follows:

§ 617.67 Discounted prepayment of a loan.

(a)(1) The Secretary may provide a discount for prepayment in full of an Academic Facilities loan in an amount determined to be in the best financial interests of the Government for institutions that meet the conditions established in paragraph (b) of this section.

(2) The discount is applicable both to loans in current payment status and to loans in default as long as an institution does not become delinquent or in default on its loans after October 1, 1986. The Secretary reviews proposals from institutions with defaulted loans separately from those in current payment status in order to provide institutions in default all possible guidance in accomplishing the prepayment of their college housing loans.

(b) The Secretary may approve a proposal from an institution for discounted prepayment of an Academic Facilities loan if—

(1) The prepayment is made before October 1, 1991;

(2) The prepayment is made from non-Federal sources;

(3) The prepayment is made on a loan both issued before October 1, 1986 and outstanding for at least five years;

(4) The prepayment is not derived from proceeds of obligations, the income of which is exempt from taxation under the Internal Revenue Code of 1954;

(5) The prepayment is in an amount determined in accordance with paragraph (c) of this section; and

(6) The Secretary is assured that the education facility financed by the proceeds of the loan being prepaid will continue to be used for educational purposes for the duration of the loans' originally scheduled time to maturity;

(c) The Secretary determines the amount of a prepayment for an Academic Facilities loan based on—

(1) Current market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to that of the loan to be prepaid;

(2) Current fair market value of outstanding marketable obligations that are of comparable quality to that of the loan to be prepaid;

(3) Current and anticipated administrative costs incurred by the Secretary in servicing the loan to be prepaid; or

(4) Current net proceeds that the Secretary would receive from nongovernmental investors, if the loan to be prepaid were purchased by such investors on the open market.

Authority: 20 U.S.C. 1132d–1.

[FR Doc. 86–28900 Filed 12–22–86; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

College Housing Program and Academic Facilities Loan Program; Administrative Notice—Transmittal of Proposals for Prepayment Discount

Educational institutions which have outstanding college housing and academic facilities loans and wish to take advantage of a prepayment discount under either program are invited to submit a proposal for a discount to the Secretary of Education.

The Secretary's authority to discount college housing and academic facilities loans has been reauthorized—and in some ways changed—under the Higher Education Amendments of 1986, Pub. L. 99–498. Final regulations implementing this authority under the College Housing and Academic Facilities programs are published in this issue of the Federal Register.

Closing Date for Transmittal of Proposals

Proposals must be mailed or hand-delivered by close of business February 27, 1987. A proposal sent by mail must be addressed to: U.S. Department of Education, OPE/DCMAS/IRB, P.O. Box 23471, L'Enfant Plaza Station, Washington, DC 20024.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark;

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service;

(3) A dated shipping label, invoice, or receipt from a commercial carrier;

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If a proposal is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark;

(2) A mail receipt that is not dated by the U.S. Postal Service.

Institutions should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

Institutions are encouraged to use registered or at least first-class mail. Each late applicant will be notified that it proposal will not be considered.

A proposal delivered by hand must be taken to: U.S. Department of Education, Institutional Receivables Branch, Room 5606, Regional Office Building 3, 7th & D Streets, SW., Washington, DC 20202, between 8:00 a.m. and 4:30 p.m. (Washington DC time) daily, except Saturday, Sunday or Federal Holidays. Proposals that are hand delivered will not be accepted after 4:30 p.m. on the closing date.

Program Information

This limited invitation is solely for prepayment of outstanding college housing and academic facilities loans. All loans are eligible for prepayment with the exception of loans which were issued after September 30, 1982. The applicable regulations specify requirements for prepayment of outstanding loans and for a determination by the Secretary of the actual amount that must be prepaid. The Secretary determines whether to discount a loan based on these requirements, including the requirement that the discount be in the best financial interests of the Federal Government.

Supplemental Information

There is no standard form for a proposal. However, a proposal for a prepayment discount should be submitted and signed by an authorized official of the institution, should reflect the information necessary for the Secretary to award a discount under applicable regulations, and should also contain the following information.

- If the institution intends to use funds on deposit in reserve accounts that were established for the building originally financed by the loan or the loan itself, a request that the Department grant the institution permission to use such funds for prepayment;
- A statement that the trustee under the indenture (or similar instrument) has verified the outstanding balance of the loan to be discounted;
- The exact date the institution will submit its prepayment to the Secretary. Prepayments are required within 90 days of Departmental approval of a prepayment application; and
- The construction project number for the loan and a description of the building financed by the loan.

The Department encourages each institution which proposes to submit a discounted prepayment for loans that are evidenced under a trust indenture (or similar instrument) to consult directly with the trustee institution with respect to the execution of appropriate forms for releasing or cancelling mortgages or liens which secure repayment of the loan. In addition, to the extent that several loans are evidenced by the issuance of one bond under a trust indenture, an institution wishing to prepay one or more, but not all, of the loans should seek the advice of the trustee as to the appropriate documents and forms for separating the loans for prepayment purposes. The Department anticipates that separating loans for prepayment purposes will necessitate the execution of collateral documents such as a supplemental to an indenture. All appropriate forms that a trustee might require the Department, as bondholder, to execute should be submitted with the proposal.

The Department plans to calculate the exact prepayment amount (*i.e.*, the discounted amount the Department accepts to consider a loan paid-in-full) of each loan which is eligible for a discount current "BBB" market rates. This information should be available to institutions no later than the 10th day of each month. Therefore, each institution which submits proposals need not calculate the amount to be prepaid.

If an institution wishes to lock-in a discount rate and prepayment amount for a given month, it may do so by making its prepayment in full at the same time it submits its proposal. Upon acceptance by the Department, the exact prepayment amount will be calculated using the locked-in discount rate and the payment receipt date. Any overpayments will be refunded by the Department of Education to the institution. Interest will not be paid on the overpayments.

An institution desirous of discounting its loan but which is unable to submit the total prepayment amount may guarantee for 90-days the rate for the month in which the proposal is submitted by including with the proposal a non-refundable deposit in an amount equal to 2% of the loan's outstanding principal. This deposit should be in the form of a certified check payable to the U.S. Department of Education. The check must be either mailed to the above post office box or delivered by hand to the street address shown above. If an institution which has made a deposit cannot later prepay the loan, the deposit will be credited to the next payment due on the loan.

The deposit will be applied to the prepayment amount upon receipt of the balance necessary to prepay the loan/loans. Upon the Department's acceptance of the institution's proposal, the exact prepayment amount will be calculated using the locked-in discount rate and the last business day of the month or the mutually agreed upon date for prepayment.

Each institution which has a discount proposal approved and does not submit its full prepayment or deposit with its

proposal will be advised by the Department of the discount rate, the exact payoff amount and the prepayment date.

If the institution's proposal is accepted by the Department, the payoff amount will be accepted as long as payment is received by the Department of the Treasury on the prepayment date specified by the Department in its acceptance letter. The Department encourages prepayment directly to the Federal Reserve Bank, Richmond, Virginia, by electronic funds transfer but will accept prepayment by a certified check to the Federal Reserve Bank in Richmond, Virginia. Care should be taken to ensure that checks are received promptly. Institutions are advised that full prepayment is required and that the prepayment must be made on the agreed-upon date.

Once a proposal has been tentatively accepted, the Department will execute an agreement with the institution. Generally, the agreement will reiterate the statutory and regulatory requirements for a prepayment discount; however, it is possible that terms of the agreement may vary from institution to institution depending on the particular facts involved.

Applicable Regulations

Regulations for the College Housing Program are at 34 CFR Part 614, and regulations for the Academic Facilities Program are at 34 CFR Part 617. The amended loan discount regulations for both programs are published in this issue of the **Federal Register.**

Intergovernmental Review

The College Housing Program is listed in other regulations promulgated by the Secretary (34 CFR Part 79) as subject to intergovernmental review requirements imposed by section 204 of the Demonstration Cities and Metropolitan Development Act of 1966. The objective of these requirements and Executive Order 12372, which implements the requirements, is to foster an intergovernmental partnership and strengthened federalism by relying on state processes for state and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program. However, the limited discount program offered by the Secretary is not subject to section 204 because no financial assistance for capital construction is awarded.

Further Information

For further information contact Samuel Weaver, Chief, Institutional Receivables Branch, Office of Postsecondary Education, Department of Education, P.O. Box 23471, L'Enfant Plaza Station, Washington, DC 20024. Telephone: (202) 472–9300.

Authority: Parts C and F of Title VII of Higher Education Act of 1965, as amended and added by the Higher Education Amendments of 1986, Pub. L. 99–496, to be codified at Title 20, U.S.C.

Dated: December 16, 1986.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 86–28901 Filed 12–22–86; 8:45 am]

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Title 3—

The President

Proclamation 5593 of December 22, 1986

National Year of the Teacher
National Teacher Appreciation Day

By the President of the United States of America

A Proclamation

When Henry Adams wrote, "A teacher affects eternity; he can never tell where his influence stops," he expressed a sentiment that any student could share. Teachers help us learn to read, to write, and to count—and how to study. By word and example, teachers impart moral and civic values. During our most formative and impressionable years, teachers help us understand ourselves and the world around us.

Our teachers in public and private schools, from preschool through elementary, secondary, and beyond, deserve the gratitude of our Nation for their wisdom, sacrifice, community service, and devotion to their students. Teachers prepare us for the future; and anyone who today works, dreams, imagines, creates, and contributes to the well-being of our country can thank devoted teachers who provided help, knowledge, and inspiration along the way.

The memory of a very special teacher inspires us: Sharon Christa McAuliffe, a dedicated teacher who, along with the other crew members of CHALLENGER, lost her life on January 28, 1986. May all Americans commemorate Sharon Christa McAuliffe and her brave companions. May we also express our gratitude to everyone who continues the legacy of devotion and excellence that she and the rest of America's teachers have given us through the years.

The Congress, by Public Law 99-480, has designated September 1986 through May 1987 as "National Year of the Teacher" and January 28, 1987, as "National Teacher Appreciation Day" and authorized and requested the President to issue a proclamation in observance of this year and of this day.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the school year of September 1986 through May 1987 as National Year of the Teacher and January 28, 1987, as National Teacher Appreciation Day. I invite the Governors of every State, employers, community leaders, school superintendents, principals, educators, students, parents, and all Americans to observe these events with appropriate educational activities to recognize the importance of teachers in American schools.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of December, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 86-29059
Filed 12-22-86; 4:13 pm]
Billing code 3195-01-M

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Presidential Documents

Proclamation 5594 of December 22, 1986

National Day of Prayer, 1987

By the President of the United States of America

A Proclamation

In 1952 the Congress of the United States, resuming a tradition observed by the Continental Congress from 1776 to 1783 and followed intermittently thereafter, adopted a resolution calling on the President to set aside and proclaim a suitable day each year as a National Day of Prayer. At the time the resolution was adopted, Americans were dying on the battlefield in Korea. More than 125,000 of our young men had been killed or wounded in that conflict, the third major war in which our troops were involved in a century barely half over.

Members of Congress who spoke for the resolution made clear that they felt the Nation continued to face the very same challenges that preoccupied our Founders: the survival of freedom in a world frequently hostile to human ideals and the struggle for faith in an age that openly doubted or vehemently denied the existence of the Almighty. One Senator remarked that "it would be timely and appropriate for the people of our Nation to join in this service of prayer in the spirit of the founding fathers who believed that God governs in the affairs of men and who based their Declaration of Independence upon a firm reliance on the protection of Divine Providence."

Human nature is such that times of distress, grief, and war—or their recent memory—impel us to acknowledgements we are often too proud to make, or too prone to forget, in periods of peace and prosperity. During the Civil War Lincoln said that he was driven to his knees in prayer because he was convinced that he had nowhere else to go. During World War II, an unknown soldier in a trench in Tunisia left behind a scrap of paper with the verses:

> Stay with me, God. The night is dark,
> The night is cold: my little spark
> Of courage dies. The night is long;
> Be with me, God, and make me strong.

America has lived through many a cold, dark night, when the cupped hands of prayer were our only shield against the extinction of courage. Though that flame has flickered from time to time, it burns brightest when we are willing, as we ought to be now, to turn our faces and our hearts to God not only at moments of personal danger and civil strife, but in the full flower of the liberty, peace, and abundance that He has showered upon us.

Indeed, the true meaning of our entire history as a Nation can scarcely be glimpsed without some notion of the importance of prayer, our Declaration of Dependence on God's favor on this unfinished enterprise we call America. Our land today is more diverse than ever, our citizens come from nearly every nation on Earth, and the variety of religious traditions that have found welcome here has never been greater. On our National Day of Prayer, then, we join together as people of many faiths to petition God to show us His mercy and His love, to heal our weariness and uphold our hope, that we might live ever mindful of His justice and thankful for His blessing.

By joint resolution of the Congress approved April 17, 1952, the recognition of a particular day set aside each year as a National Day of Prayer has become a cherished national tradition.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim May 7, 1987, as a National Day of Prayer. I call upon the citizens of this great Nation to gather together on that day in homes and places of worship to pray, each after his or her own manner, for unity of the hearts of all mankind.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of December, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 86-29060
Filed 12-22-86 4:14 pm]
Billing code 3195-01-M

Editorial Note: For the President's remarks on signing Proclamation 5594, see the *Weekly Compilation of Presidential Documents* (vol. 22, no. 52).

Presidential Documents

Executive Order 12577 of December 22, 1986

Closing of Government Departments and Agencies on Friday, December 26, 1986

By the authority vested in me as President of the United States of America, it is hereby ordered as follows:

Section 1. All Executive departments and agencies shall be closed and their employees excused from duty on Friday, December 26, 1986, the day following Christmas Day, except as provided in Section 2 below.

Sec. 2. The heads of Executive departments and agencies may determine that certain offices and installations of their organizations, or parts thereof, must remain open and that certain employees must report for duty on December 26, 1986, for reasons of national security or defense or for other public reasons.

Sec. 3. Friday, December 26, 1986, shall be considered as falling within the scope of Executive Order No. 11582 and of 5 U.S.C. 5546 and 6103(b) and other similar statutes insofar as they relate to the pay and leave of employees of the United States.

Ronald Reagan

THE WHITE HOUSE,
December 22, 1986.

[FR Doc. 86-29101
Filed 12-23-86; 10:30 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 51, No. 247
Wednesday, December 24, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 541]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 541 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 255,000 cartons during the period December 28, 1986–January 3, 1987. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATE: Regulation 541 (§ 910.841) is effective for the period December 28–January 3, 1987.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1986–87. The committee met publicly on December 16, 1986, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a vote of 12 to 0, a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market for lemons is strong.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.841 is added to read as follows:

§ 910.841 Lemon Regulation 541.

The quantity of lemons grown in California and Arizona which may be handled during the period December 28 through January 3, 1987, is established at 255,000 cartons.

Dated: December 19, 1986.

Thomas R. Clark,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86–28938 Filed 12–23–86; 8:45 am]
BILLING CODE 3410–02–M

Commodity Credit Corporation

7 CFR Part 1477

Disaster Payment Program for 1986 Crops

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This Final Rule establishes the terms and conditions for the implementation of a disaster payment program for eligible producers for losses of 1986 crop production due to drought, excessive heat, flood, hail or excessive moisture in 1986. The disaster payment program is carried out in accordance with the provisions of Pub. L. 99–500 and Pub. L. 99–591 (herein referred to as "99–500"). The provisions of this final rule were addressed in an interim rule issued on November 19, 1986. With a few exceptions, the provisions of this final rule are the same as those contained in the interim rule. Changes which are made by this final rule principally involve: (1) The definition of an "economic emergency"; (2) consideration of the quality of a nonprogram crop in determining whether a producer of such a crop is eligible to receive a disaster payment; (3) clarifying the payment rate that is applicable to upland cotton; and (4) the payment rate for sugar beets and sugar cane.

EFFECTIVE DATE: December 19, 1986.

FOR FURTHER INFORMATION CONTACT: Jerry W. Newcomb, Director, Emergency Operations and Livestock Programs

Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC Telephone: (202) 447-5621. A Final Regulatory Impact Analysis is being prepared and will be available upon request.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed in accordance with procedures implementing Executive Order 12291 and Secretary's Memorandum 1512-1 and has been classified as "major" since the program will have an annual effect on the economy exceeding $100 million.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of the law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

An Environmental Evaluation with respect to the Disaster Payment Program is being completed. It has been determined that this action is not expected to have a significant impact on the quality of the human environment. In addition, it has been determined that this action will not adversely affect environmental factors such as wildlife habitat, water quality, air quality, and land use and appearance. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The title and number of the federal assistance program to which this notice applies are: Title—Commodity Loans and Purchases; Number 10.051, as found in the Catalog of Federal Domestic Assistance.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

An interim rule, which established regulations governing the 1986 disaster payment program, was published in the Federal Register on November 19, 1986, (51 FR 41757) which set forth the regulations which implemented the disaster payment program authorized by Pub. L. 99-500. The interim rule provides for a disaster payment program for eligible producers for losses of 1986 crop production due to drought, excessive heat, flood, hail or excessive moisture in 1986. The interim rule also establishes the criteria for eligibility of individual producers to receive a disaster payment.

Comments Received

A total of 559 comments were received from 359 persons with respect to the interim rule published on November 19, 1986, (51 FR 41757) from United States Senators and Congressmen, State Governors, State Representatives, State departments of agriculture, county government officials, commodity interest groups, commodity cooperatives, national farmers organizations, producers and other interested individuals.

1. There were 302 comments objecting to the definition of the term "economic emergency" that is utilized to determine the eligibility of nonprogram crop producers. The interim rule defined this term as a loss of 50 percent or more of the value of all crops produced on all farms in which the producers have an interest within the county. The commentors suggested that if a producer produces several crops on the same farm and has suffered a loss of 50 percent or more of any one of those crops, the producers should be eligible for disaster payments on that particular crop. Ninety comments were received with respect to the related issue of considering the quality of the crop in determining whether there has been a loss of production of program and nonprogram crops.

Public Law 99-500 generally provides that disaster payments for program crops shall be based upon the "actual loss of production of the crop" and that the "loss of production of the eligible producer shall be the quantity . . . that eligible producers on a farm are unable to harvest due to reduced yields or are prevented from planting . . . due to drought, excessive heat, floods, hail or excessive moisture in 1986." With respect to nonprogram crops, Pub. L. 99-500 provides that disaster payments will be available if "(A) the producer has suffered a substantial loss of production due to drought, excessive heat, flood, hail or excessive moisture and (B) such loss has caused an economic emergency for the producer to the extent that additional assistance must be made available to alleviate such economic emergency . . . ." Because Pub. L. 99-500 does not provide any measure of loss for program crops other than a loss of harvested production, or take into consideration the occurrence of an "economic emergency" for producers of program crops, consideration of quality factors cannot be made with respect to program crops.

While Pub. L. 99-500 provides that with respect to nonprogram crops the Secretary of Agriculture must determine that a loss of production has created an economic emergency for the producer to the extent that additional assistance must be made available to alleviate such economic emergency, it does not define the term economic emergency. Based upon the comments received, it has been determined that the original definition of an economic emergency does not provide an adequate measure of the occurrence of an economic emergency for a producer. Accordingly, this final rule amends the regulations at 7 CFR 1477.7 to provide that the criteria which is utilized to determine whether or not a producer has suffered an economic emergency will be based on a 50 percent or greater loss on individual nonprogram crops. In making this determination, consideration will be given to the value of the commodity based upon the quality of the individual crop. This determination will be based upon the price recieved by the producer for the crop and, if the individual crop has not been sold, such value will be determined by the county ASC committee in accordance with instructions issued by the Deputy Administrator.

In addition, the quality of harvested nonprogram crops will be taken into consideration in determining whether there has been a "substantial loss of production" of the crop. The loss of production of the crop will be adjusted by taking into consideration the actual quantity of the nonprogram crop that has been marketed, adjusted for the price received for the crop if the price received was reduced because of quality. If such crop has not been marketed, but the producer has obtained an appraisal of the crop which indicates a reduction in quality, the county ASC committee may make an adjustment for quality.

2. Fifty-three comments were received with respect to the time of filing an application for payment. The general consensus of the comments was that not accepting applications from producers until January 11, 1987, is insensitive to the needs of producers needing funds immediately and that applications should be taken immediately.

Public Law 99-500 provides that eligible producers are those producers in a county in which producers are eligible to receive disaster emergency loans as the result of drought, excessive heat, floods, hail or excessive moisture which occurred in 1986. Accordingly, the total number of eligible counties and eligible producers will not be known until after December 31, 1986. Since Pub. L. 99-500 limits the funds that are available for making these disaster payments, it has been determined that it may be necessary to reduce each eligible producer's payment proportionately. Therefore, in order to treat all producers on an equitable basis, it has been determined that all applications must be submitted between January 11, 1986, and the statutory deadline of January 31, 1987.

3. Fifty comments were received that objected to the provision in the interim rule which related to the availability of funds. It was suggested that the interim rule be amended to delete this provision and that the Department of Agriculture either request a supplemental appropriation from Congress or transfer additional funds from the disaster loan account as indicated in the conference report if the $400 million provided in Pub. L. 99-500 was insufficient.

This suggestion has not been adopted since the amount of funds to be used for this purpose was specifically limited to the $400 million made available by Pub. L. 99-500.

4. One comment recommended that the payment rate for upland cotton that is set forth in the interim rule be amended since there is not a "basic county price support loan rate" established for upland cotton. This comment suggested that the payment rate be defined as the "1986 base loan rate, adjusted by location".

This suggestion has been adopted since upland cotton loan rates are established on a nationwide basis and are adjusted based upon the location of the upland cotton which is pledged as collateral for CCC price support loans. Accordingly, 7 CFR 1477.5 has been admended to reflect this change.

5. Eleven comments were received that suggested that a producer who planted a program crop and who was not participating in the price support and production adjustment program that was in effect for the crop should be eligible for disaster payments if an eligible loss of production had occured.

The statute very clearly provides that eligible producers of the 1986 crop of wheat, feed grains, upland cotton, rice, soybeans, sugar beets, sugar cane or peanuts must be eligible to receive price support under the Agricultural Act of 1949, as amended (the "1949 Act"), in order to be eligible for disaster payments. Since producers of wheat, feed grains, upland cotton, and rice must, in accordance with the provisions of the 1949 Act, participate in and comply with the terms and conditions of the production adjustment program established for such a commodity to be eligible to receive price support for that commodity, this suggestion has not been adopted.

6. Two comments were received suggesting that provisions governing the disaster payment acreage should be revised to provide that the eligible disaster acreage is the sum of the 1986 acreage planted for harvest and the 1986 acreage which the producer was prevented from planting to the crop or any other nonconserving crop not to exceed the sum of the acreage planted to the crop for harvest in 1985 (or the corresponding year if there is an approved rotation for the crop on the farm) plus the prevented planted acreage in 1985. One of the comments suggested that the interim rule be amended to provide that the disaster payment acreage be the average 1983, 1984, and 1985 acreage planted to the crop.

Public Law 99-500 provides that, with respect to soybeans, peanuts, sugar beets, and sugar cane, the sum of the acreage for payment purposes shall not exceed the acreage so affected but not in excess of the acreage planted in the immediately preceding year to soybeans or peanuts, respectively, for harvest including any acreage that was prevented from planting to such commodity or to other nonconserving crops in lieu of soybeans or peanuts. With respect to other program crops the disaster payment acreage may not exceed the 1986 permitted acreage for such crops. Accordingly, there is no statutory basis to revise this provision with respect to program crops. It has also been determined that, in order to provide consistency between program and nonprogram crops, the eligible disaster payment acreage for nonprogram crops shall be determined in the same manner as for sugar beets, sugar cane, soybeans, and peanuts.

7. There were 44 nonspecific comments received disagreeing with the interim rule in general.

8. One comment concurred with the definition of "economic emergency". As discussed above, the definition of an "economic emergency" has been amended.

9. One comment recommended that disaster payments not be made available to producers of nonprogram crops because it would reduce the amount of payments available to producers of program crops.

This suggestion was not adopted since Publ L. 99-500 does not provide for the allocation of funds on the basis of nonprogram and program crops.

10. One comment recommended that program participants be given an advantage over the nonparticipant in obtaining disaster payments for both program and nonprogram crop losses.

Public Law 99-500 does not authorize the granting of a preference to program participants in obtaining disaster payments for program and nonprogram crop losses. Accordingly, this suggestion has not been adopted.

11. Three comments stated that the payment rate for sugar beets was not established at a realistic level. It was suggested that the payment rate be established at $29.57 per ton, based upon the 1986 sugar price support loan rate.

Based upon a review of the price support loan rate which is applicable to the sugar program, 7 CFR 1477.5 has been amended to provide that, in order to establish a payment rate that is more reflective of the price support loan rate, the payment rate for sugar beets and sugar cane will be established as follows:

SUGAR BEETS

	Description	Payment rate per net ton
Region:		
1	Michigan and Ohio	$30.90
2	Minnesota and the eastern half of North Dakota.	26.32
3	Northeastern quarter of Colorado, Nebraska, and the southeastern quarter of Wyoming.	30.82
4	Texas	33.32
5	Montana, the northwestern quarter of Wyoming, and western half of North Dakota.	30.96
6	That part of Idaho east of the eastern boundary of Owyhee County and northward of this boundary.	31.81
7	Oregon and that part of Idaho west of the eastern boundary of Owyhee County and northward of this boundary.	31.81
8	California	32.82

Sugar Cane

Florida	$25.15
Louisiana	23.57
Texas	18.81
Hawaii	23.54
Puerto Rico	17.52

12. One comment suggested that the interim rule be expanded to include navy beans, soybeans, and sugar beets as crops eligible for disaster payments.

Since under the provisions of Pub. L. 99-500 and the interim rule, these crops are already eligible crops for disaster payment purposes, no change in the interim rule is necessary.

13. One comment suggested that the interim rule be amended to provide that farms located in counties contiguous to those counties designated to be eligible to receive disaster emergency loans as the result of a Presidential or Secretarial

designation should also be eligible to receive disaster payments.

Public Law 99–500 provides that eligible counties are those counties in which producers are eligible to receive disaster emergency loans under section 321 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961) as the result of drought, excessive heat, floods, hail or excessive moisture. Under section 321, producers in counties contiguous to designated counties are eligible to receive disaster emergency loans. No change, therefore, is needed in the rule to make producers in counties contiguous to designated counties eligible to receive disaster payments.

14. Two comments suggested that only the property affected by the disaster rather than that the total property of the landowner should be considered in determining eligibility for disaster payments.

Public Law 99–500 specifically provides that the actual production on a farm must be taken into consideration in determining eligibility for disaster payment purposes. Accordingly, there is no statutory basis to make a disaster payment solely on the loss of production of a crop on a specific piece of property regardless of the production of that crop on other unaffected acreage on the farm. Accordingly, this suggestion has not been adopted.

15. One comment suggested that the payment limitation provisions relating to crop insurance indemnity payments and price support loans and purchases be deleted from the provisions of the interim rule.

The payment limitation provisions which are applicable to these disaster payments are specifically set forth in Pub. L. 99–500 and there is no statutory basis to exclude crop insurance indemnity payments and price support loans and purchases when making these disaster payments.

16. One comment suggested that county ASC committees be given the final authority to determine a producer's eligibility for disaster payments and the extent to which such payments may be made available to the producer.

Public Law 99–500 provides that the Secretary of Agriculture shall carry out the program through the Commodity Credit Corporation. Price support and production adjustment programs and related programs generally are implemented by CCC by utilizing State and county ASC committees. In order to ensure that these programs are implemented in a uniform manner nationwide, 7 CFR Part 780 provides that the Administrator, ASCS, may take any action that was not taken or was improperly taken by the State or county ASC committees. Accordingly, in order to ensure that the Disaster Payment Program is implemented on a uniform basis, the program will be carried out by the State and county ASC committees under the supervision of the Executive Vice President of CCC who also serves as the Administrator, ASCS.

List of Subjects in 7 CFR Part 1477

Crop insurance, Indemnity payments.

Final Rule

Accordingly, the interim rule (7 CFR Part 1477), published at 51 FR 41757, is adopted as a Final Rule, with the following changes:

1. The authority citation for Part 1477 is revised to read as follows:

Authority: Pub. L. 99–500 and Pub. L. 99–591.

2. Section 1477.3 is amended by revising paragraph (c), (e) and (f) to read as follows:

§ 1477.3 Definitions.

* * * * *

(c) "Nonprogram crop" means a crop, other than a program crop, produced on a farm for sale or exchange on a commercial basis in a large enough quantity to have a substantial impact on the producer's income, as determined by the county committee in accordance with instructions issued by the Deputy Administrator.

* * * * *

(e) "Disaster payment acreage" means:

(1) For wheat, feed grains, upland cotton, extra long staple cotton, and rice, the sum of the 1986 acreage planted to the crop for harvest, as determined by the county committee in accordance with instructions issued by the Deputy Administrator, and the 1986 acreage which the county committee determines the producer was prevented from planting to the crop or any other nonconserving crop. Such sum shall not exceed the 1986 permitted acreage for the crop.

(f) "Economic emergency" means a loss of 50 percent or more of the value of an individual nonprogram crop produced by a producer on all farms located within a county, as determined by the county committee in accordance with instructions issued by the Deputy Administrator.

* * * * *

3. Section 1477.5 is amended by revising paragraph (c) to read as follows:

§ 1477.5 Disaster payment for program crops.

* * * * *

(c) *Payment computation.* The disaster payment for each crop shall be the result of multiplying the loss of production, as determined in accordance with paragraph (b) of this section, times the 1986 basic county price support loan rate for the applicable commodity, except for upland cotton, sugar beets, sugar cane, and peanuts. The payment rate for upland cotton shall be the national average loan rate adjusted for warehouse location. The payment rate for quota peanuts shall be $607.47 per ton and payment rate for additional peanuts shall be $149.75 per ton. The payment rate for sugar beets shall be:

SUGAR BEETS

	Description	Payment rate per net ton
Region:		
1	Michigan and Ohio	$30.90
2	Minnesota and the eastern half of North Dakota.	28.32
3	Northeastern quarter of Colorado, Nebraska, and the southeastern quarter of Wyoming.	30.82
4	Texas	33.32
5	Montana, the northwestern quarter of Wyoming, and western half of North Dakota.	30.96
6	That part of Idaho east of the eastern boundary of Owyhee County and northward of this boundary.	31.81
7	Oregon and that part of Idaho west of the eastern boundary of Owyhee County and northward of this boundary.	31.81
8	California	32.62

The payment rate for sugar cane shall be:

Sugar Cane

Florida	$25.15
Louisiana	23.57
Texas	18.81
Hawaii	23.54
Puerto Rico	17.52

* * * * *

4. Section 1477.7 is amended by revising paragraphs (a) and (b); redesignating paragraphs (c) and (d) as (d) and (e), respectively; and adding a new paragraph (c) to read as follows:

§ 1477.7 Disaster Payments for nonprogram crops:

(a) *Eligibility for disaster payments.* Disaster payments for prevented planting and low yield losses are authorized to be made to producers of 1986 nonprogram crops only if, in accordance with instructions issued by the Deputy Administrator:

(1) The producer has suffered an economic emergency due to drought, excessive heat, flood, hail, or excessive moisture;

(2) The producer submits a Form ASCS–574, Application for Disaster Credit;

(3) The producer submits a report of production and disposition in accordance with § 1477.10 for the individual nonprogram crop produced by the producer on all farms located within a county; and

(4) The county committee determines that, because of drought, excessive heat, flood, hail, or excessive moisture which occurred in 1986, the producer was prevented from planting another nonprogram crop or other nonconserving crop or that the nonprogram crop production was reduced.

(b) *Loss of production.* The loss of production of a nonprogram crop shall be the difference between:

(1) The result determined by multiplying 50 percent times the established disaster payment yield times the disaster payment acreage, and

(2) The 1986 actual production of such crop, if such quantity is less than the quantity determined in accordance with paragraph (b)(1) of this section.

(c) *Quality adjustment.* With respect to each nonprogram crop, the county committee, in accordance with instructions issued by the Deputy Administrator, shall take into consideration the quality of such crop produced by the producer in determining:

(1) The 1986 actual production;

(2) The disaster payment yield;

(3) The average market price, and

(4) The price received by the producer.

* * * * *

Signed at Washington, DC, on December 19, 1986.

Richard E. Lyng,

Secretary.

[FR Doc. 86–28937 Filed 12–19–86; 3:58 pm]

BILLING CODE 3410–05–M

FARM CREDIT ADMINISTRATION

12 CFR Part 624

Temporary Regulations; Farm Credit System Regulatory Accounting Practices

AGENCY: Farm Credit Administration.

ACTION: Final rule with request for comment.

SUMMARY: The Farm Credit Administration (FCA) has promulgated final regulations implementing the provision of the Farm Credit Act Amendments of 1986 (1986 Amendments) relating to the utilization of regulatory accounting practices (RAP) by Farm Credit System (System) institutions.

The 1986 Amendments authorize System institutions, during the period July 1, 1986, through December 31, 1988, to defer certain specified expenses for regulatory purposes. As these expenses are incurred, they are capitalized rather than expensed, and amortized over a period not to exceed 20 years. Deferring expenses in the manner authorized by the 1986 Amendments is not in accordance with generally accepted accounting principles (GAAP).

The 1986 Amendments provide that the use of RAP by System institutions is subject to the approval of the FCA. These regulations set forth the terms and restrictions, and accounting, reporting, and disclosure requirements applicable to the use of RAP by System institutions. The use of RAP in accordance with these regulations will achieve the principal objective of the 1986 Amendments by enhancing the ability of System institutions to reduce the interest rates charged to their borrowers and enabling certain institutions to avoid insolvency for regulatory purposes.

DATES: Effective December 24, 1986. Written comments must be received on or before February 24, 1987.

ADDRESS: Submit comments in writing (in triplicate) to Frederick R. Medero, General Counsel, Farm Credit Administration, McLean, VA 22102–5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Robert E. Donnelly, Office of Analysis and Supervision, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4450

or

Gary L. Norton, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4025

SUPPLEMENTARY INFORMATION: The 1986 Amendments, which were enacted on October 21, 1986, amended the Farm Credit Act of 1971 (1971 Act) (12 U.S.C. 2001, *et seq.*) to eliminate the authority of the FCA to approve specific interest rates charged by System institutions and to authorize System institutions to defer certain expenses and amortize them over a period of time not to exceed 20 years on the approval of and in accordance with conditions established by the FCA.

On October 16, 1986, prior to enactment of the 1986 Amendments, the FCA published proposed regulations which would eliminate the requirement for the FCA to approve specific interest rates charged by individual institutions (51 FR 36824). Many of the provisions of those regulations are related to the proposed Capital Adequacy regulations which were published on July 23, 1986 (51 FR 26402). The FCA is analyzing comments received on those proposed regulations and will be adopting final regulations in the near future.

On December 18, 1986, the FCA Board adopted final regulations implementing the provisions of the 1986 Amendments relating to the use of RAP and the reporting and disclosure requirements associated therewith.

The 1986 Amendments were enacted for the purpose of achieving two principal objectives. First, the Amendments enhanced the ability of the System to provide competitive interest rates that meet the credit needs of System borrowers. While the 1986 Amendments were designed to enable the System to reduce the interest rates charged to its borrowers, the Congress made clear that in no case would any institution be authorized to charge rates of interest below competitive market rates for similar loans made by nongovernment lenders to borrowers of equivalent credit-worthiness. This limitation ensures that System assets are not dissipated and thus are available to maintain the current levels of System capital and to provide assistance to other System institutions experiencing financial difficulties through the Farm Credit System Capital Corporation (Capital Corporation). Secondly, the 1986 Amendments authorized System institutions to use RAP to defer and amortize portions of their provisions for loan losses. The use of this authority can enable an institution to avoid insolvency for a limited period of time for regulatory purposes. Again, the use of this authority is subject to FCA approval and such conditions as it may establish.

These regulations will be codified in new Part 624 of Title 12, Code of Federal Regulations. This part sets forth temporary authorities of the System relating to the use of RAP and related reporting and disclosure requirements.

Section 624.102 authorizes a System bank to (1) capitalize and defer expenses associated with the repurchase of its obligations on outstanding Systemwide notes and bonds issued on or before December 31, 1984; (2) provide for the defeasance of such obligations through contracts with a System service corporation or independent third party; or (3) defer the

interest costs paid or to be paid on such obligations during the period July 1, 1986, through December 31, 1988. With regard to the repurchase or defeasance of such obligations, the expenses authorized to be capitalized shall be the excess of the cost to repurchase the obligation over the recorded net book value of the obligation. In the case of the capitalization of interest costs, the amount to be capitalized shall be limited to the excess of the bank's costs on such obligations over the market price for those same obligations on October 21, 1986 (date of enactment of the 1986 Amendments).

The FCA analyzed alternative methods of determining the amounts of expenses to be capitalized in accordance with these authorities. As a threshold matter, the FCA determined that the comparison between outstanding obligations and current issues must be based on obligations with the same maturity dates, not obligations with the same term to maturity at the time of issuance. Only a comparison of obligations with the same maturity dates could provide an accurate comparison of actual interest differentials. The FCA also analyzed whether interest comparisons should be based on the difference between the rates on an outstanding obligation and the rate on an obligation with the same maturity dates issued on October 21, 1986. The FCA concluded that this comparison would not be usable, since there could be many circumstances in which there were no new obligations issued on or about the date of enactment with terms comparable to the issues outstanding. Accordingly, the FAC determined that the use of actual secondary market quotations for specific obligations issued prior to December 31, 1984, provides the most accurate and fair method for comparing interest rates that is consistent with the specific requirements of the Act.

Section 624.102(c) restates the statutory provision that prohibits banks that defer expenses from charging rates of interest which are less than competitive interest rates. Competitive rates are defined as rates of interest for loans with similar terms charged by private lending institutions (in the same area) to borrowers of equivalent creditworthiness and access to alternative credit. While this statutory definition does not expressly require System institutions to employ differential rates in their lending programs, System institutions that offer the same lending rates for similar loans to borrowers of dissimilar creditworthiness would be obligated under the 1986 Amendments to charge all of their borrowers the rate which would otherwise apply to their least creditworthy borrowers.

Paragraph (d) of § 624.102 identifies the interest costs and other operating expenses which will be used by the FCA in its examination and supervisory programs as a basis for determining the appropriateness of each System institution's lending rate structure. These expenses are, in the case of System banks, (1) the cost of debt determined in accordance with RAP, (2) the amortized portion of interest expense or premium deferral, and (3) all operating costs and provisions for loan losses as determined in accordance with GAAP. In the case of production credit associations (PCA), such costs include interest expenses and other operating costs, including the provision for loan losses as determined in accordance with GAAP. Items (1) and (2) are not relevant for purposes of determining appropriate lending rates for PCAs, since the balance sheets of these institutions do not include debts of the type for which interest and interest-related costs can be deferred.

Section 624.103 authorizes each System institution to capitalize a portion of its provision for loan losses made during the period July 1, 1986, through December 31, 1988, for the purpose of maintaining the value of such institution's stock and participation certificates at par or face amount. The portion eligible for deferral is the amount of the provision for loan losses made by an institution on an annual basis that is in excess of ½ of 1 percent of the estimated loans outstanding at the current year end. However, for the period July 1, 1986, through December 31, 1986, the portion capitalized shall in no event exceed the amount of provision made by the institution during that half-year period.

The regulation restricts the authority to defer provisions for loan losses to amounts that are necessary to prevent capital impairment (for RAP purposes) because the only purpose for such a deferral is to treat an institution as solvent for regulatory purposes. The deferral cannot be used to improve an institution's financial condition since its financial statements are maintained in accordance with GAAP. This regulation will allow a GAAP-impaired institution to issue and retire stock at par, determined in accordance with RAP, if it elects to do so in accordance with § 624.104.

Paragraph (b) of this section requires an institution that uses RAP to correct capital impairment to execute a management agreement with the Capital Corporation. It is expected that such agreements will address the actions necessary to improve the institution's prospects to regain soundness and, if necessary, to enable the institution to receive financial assistance from the Capital Corporation in the event RAP procedures prove to be, or later become, insufficient to cure impairment. This requirement is the same as a provision in the regulations governing eligibility for financial assistance from the Capital Corporation. If an institution were to fail to comply with such agreement, its authority to use RAP could be withdrawn.

Institutions are required to execute such agreements as a precondition to using RAP to prevent impairment. However, in order to provide a transitional period, institutions are authorized to use RAP to cure impairments that occur as of December 31, 1986, if they execute agreements prior to March 31, 1987.

Section 624.103(c) prohibits an institution that is using RAP to defer its provision for loan losses from paying dividends or distributing patronage refunds. When such institution is an FICB or FLB, each PCA or FLBA in its district is also prohibited from paying dividends or distributing patronage. In operational terms, an institution that is using RAP to unimpair its capital would not have retained earnings from which it could pay dividends or distribute patronage. The regulation extends the prohibition to include associations in a district where a bank has used RAP to cure an impairment in order to preserve capital within a district that is in a critically weak financial condition. To allow a bank that is impaired on a GAAP basis to pass through additional funds to its associations would result in an even larger impairment of the bank's equities. Should an association, in turn, distribute such funds in the form of patronage or dividends, the effect would be equivalent to authorizing the distribution of all of the district's remaining capital, or having distributions made even after all of the district's capital has been dissipated.

Section 624.114 prohibits System institutions from reversing any financial assistance that was contributed or received (accrued) prior to October 1, 1986, in accordance with System Capital Preservation Agreements. This prohibition will protect institutions that could be facing imminent or actual stock impairment even with the use of RAP. related concern is that such reversal would leave some institutions in a position where they would be close t

having insufficient collateral to issue long-term debt obligations. This result must be avoided since it could cause confusion among investors and borrowers as to the future viability of the System and the marketability of its securities.

The FCA is aware that efforts are under way in the System to develop and implement various steps to deal with collateralization, including agreements that would provide for the sharing of collateral among System institutions. If, at a future date, the System implements collateral-sharing agreements or other actions that are demonstrably effective in correcting existing or potential collateral deficiencies that could otherwise preclude an institution from satisfying the collateral requirements for the issuance of debt, the FCA Board will be in a position to reexamine whether, within the context of the then-existing financial condition of the System, this regulation should be modified or deleted to permit the reversal of financial assistance transferred under the Capital Preservation Agreements. In considering such action in the future, the FCA Board will also have to be assured that the System has taken such other appropriate actions as are necessary to ensure that the reversal of financial assistance will not negatively impact the solvency of the institutions that are affected.

The requirements of this part which (1) prohibit the payment of dividends and patronage refunds, (2) prohibit the consideration of deferred interest expenses as capital, (3) require the execution of management agreements with the Capital Corporation, and (4) prohibit the reversal of intra-System assistance provided prior to October 1, 1986, will enhance the ability of institutions to reduce their interest rates while at the same time preserving the soundness of the System by preserving its resources. These provisions implement the express purposes of the 1986 Amendments and are consistent with the direction of Congress that "The FCA will continue to have authority, under the so-called 'safety and soundness' and 'capital adequacy' provisions of current law to ensure that the System does not take actions that threaten its viability." (See H.R. Rep. No. 967, 99th Cong., 2nd Sess. 6 (1986))

Section 624.104 provides each institution that is capitalizing and deferring a portion of its provision for loan losses with the option of issuing and retiring its stock and participation certificates (equities) on either a RAP or GAAP basis. The FCA believes that the selection of either option is a business decision that must be made by the board of directors and management of the institution. The selection of either option has accounting, disclosure, and legal implications that must be addressed by each institution.

If an institution decides to continue to issue and retire equities on a GAAP basis, the institution's board of directors must adopt a resolution that will require the institution to issue equities at par or face amount and retire equities at the lesser of par (face) or book value as determined in accordance with GAAP. Where an institution decides to issue and retire equities on a RAP basis, the institution's board of directors must adopt a resolution authorizing equities to be issued and retired at par (face) value as determined in accordance with RAP. Under this option, however, the institution is also required to obtain a legal opinion from independent counsel that the policies and procedures to be followed conform with the requirements of all applicable laws. An independent counsel would be an attorney other than the institution's in-house counsel. In either event, stock must be purchased in accordance with the statutory requirement of $5 per share. In addition, this section requires full disclosure to stockholders, holders of participation certificates, and new loan applicants, as set forth in § 624.113.

Subpart B establishes the accounting and disclosure requirements applicable to System institutions that use the authorities contained in the 1986 Amendments. Sections 624.111 and 624.112, pertaining to the deferral and capitalization of debt costs and provisions for loan losses, provide that such costs shall be amortized on a straight-line basis over a period not to exceed 20 years. Section 624.111 provides that capitalized debt costs shall not be considered as capital of an institution for any purpose and thus will not be considered a part of an institution's net worth.

Section 624.112 affirms the requirement that an institution using RAP to defer its provisions for loan losses shall maintain a separate allowance for loan losses determined in accordance with GAAP. The use of RAP to defer and capitalize loan loss provisions does not alter the responsibility of each institution to maintain an allowance for loan losses that reflects the inherent losses within the institution's loan portfolio.

This requirement is consistent with the provision of § 624.113, which require an institution that adopts RAP to issue financial statements to its stockholders in accordance with GAAP as provided for in Part 620 of the regulations. In accordance with § 624.113, the use of RAP must be disclosed in footnotes to the financial statements, and the financial statements must reconcile the differences between the application of GAAP and RAP. With these disclosure requirements, the stockholders of the institution's will be kept fully informed on the use and effects of RAP. Moreover, this requirement is consistent with the provisions of § 5.19(b) of the 1971 Act as amended by the 1986 Amendments, which provide that financial statements must be prepared in accordance with GAAP except with respect to actions authorized by the 1986 Amendments.

The requirement to issue financial statements prepared in accordance with GAAP is necessary since any other approach to disclosure would mislead stockholders as to the institutions true financial condition. In addition, if an institution were to issue RAP financial statements, it would result in the rendering of a qualified, or possibly adverse, opinion on its published financial statements. Either type of opinion would be detrimental to the institution since stockholders and investors have doubts about the actual financial condition of the institution. Such uncertainty could cause them to reduce or terminate their business relationships with the System.

Section 624.113 establishes additional requirements relating to the content and timing of disclosures to stockholders and loan applicants when the book value of an institution's stock and participation certificates determined in accordance with GAAP is less than par. This section requires each such institution to provide a written notice to its stockholders informing them of the following matters: (1) That the value of their investment is worth less than par; (2) the actual book value of the equity determined in accordance with GAAP; (3) the content of the resolution of the institution's board of directors relating to the stock issuance and retirement policy of the institution; and (4) the possible consequences and the effects of such policy on their investment in the institution. The same written disclosure must also be provided to loan applicants at the time of application.

The FCA Board has determined that these regulations shall be effective immediately upon publication and that the public shall have a period of 60 days from the date of publication within which to submit comments thereon. This determination is based upon the FCA Board's finding, for good cause and in accordance with 5 U.S.C. 553(b), that public comments prior to the effective

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date are impracticable, unnecessary, and contrary to the public interest. These regulations implement the 1986 Amendments, which were enacted in an expeditious manner to address the serious financial condition of the System and provide System institutions with the authority to use RAP accounting. Those statutory powers can only be exercised with the approval of the FCA and subject to such conditions as it imposes. These regulations implement those statutory authorities and will enable the System to take swift actions in accordance with the 1986 Amendments. Since some of these authorities must be available to certain System institutions in time to prepare financial statements for yearend 1986, it would be impracticable and contrary to the public interest to delay their effective date pending the completion of a public comment period.

For the same reasons, these regulations are effective immediately without a delayed effective date as provided for in 5 U.S.C. 553(d). In addition, these regulations permit System institutions to deviate from GAAP accounting by the use of RAP and thus provide exceptions and relieve restrictions that would otherwise apply to those institutions.

Finally, in accordance with 12 U.S.C. 2252(b), the FCA Board finds, for the same reasons enumerated above, that an emergency exists which authorizes the publication of these regulations without prior review by the appropriate congressional committees.

List of Subjects in 12 CFR Part 624

Accounting, Agriculture, Banks, Banking, Credit, Rural Areas.

As stated in the preamble, Part 624 is added to Chapter VI, Title 12, of the Code of Federal Regulations to read as follows:

PART 624—TEMPORARY REGULATIONS

Subpart A—Deferral and Amortization of Premiums, Interest Expenses, and Provisions for Loan Losses

Sec.

624.100 General.
624.101 Definitions.
624.102 Deferral of interest costs on debt.
624.103 Deferral of the provisions for loan losses.
624.104 Retirement of equities.

Subpart B—Accounting and Disclosure

624.110 General.
624.111 Deferral of interest costs.
624.112 Deferral of the provision for loan losses.
624.113 Financial reporting and disclosure.
624.114 Financial assistance.

Authority: 12 U.S.C. 2201, 2159, 2205, 2254, Pub. L. 99-509.

Subpart A—Deferral and Amortization of Premiums, Interest Expenses, and Provisions for Loan Losses

§ 624.100 General.

The regulations contained in this part implement the provisions of the Farm Credit Act Amendments of 1986 relating to accounting by System institutions and establish the authorities, terms, conditions, and restrictions pursuant to which a System institution may use regulatory accounting practices to defer and capitalize a portion of its interest costs, provisons for loan losses, and premiums paid to retire debt instruments, and to amortize such amounts. The regulations contained in this part are effective until December 31, 1988.

§ 624.101 Definitions.

For the purpose of this part, the following definitions apply:

(a) "Capital Corporation" means The Farm Credit System Capital Corporation chartered in accordance with the Act.

(b) "Competitive interest rates" means rates of interest for loans with similar terms charged by private lending institutions in the same area to borrowers of equivalent creditworthiness and access to alternative credit.

(c) "Generally accepted accounting principles (GAAP)" means that body of conventions, rules and procedures necessary to define accepted accounting practice at a particular time, as promulgated by the Financial Accounting Standards Board and other authoritative sources recognized as setting standards for the accounting profession in the United States. Generally accepted accounting principles shall include not only broad guidelines of general application but also detailed practices and procedures that constitute standards against which financial presentations are evaluated.

(d) "Institution" refers to any Federal land bank, Federal land bank association, Federal intermediate credit bank, production credit association, bank for cooperatives, and the Central Bank for Cooperatives chartered under the Act.

(e) "Loans outstanding" means gross loans outstanding net of any participations at the end of each reporting period. The term "loan" includes loans, contracts of sale, notes receivable, and other similar obligations and lease financings. The term "loan" includes loans originated through direct negotiations between the reporting institution and a borrowing entity and loans or interest in loans purchased from another lender that are recorded as assets of a reporting institution.

(f) "Operating costs" means all noninterest expenses incurred by an institution in carrying on its ordinary activities.

(g) "Regulatory accounting practices (RAP)" means those accounting methods and practices directed by statutory and regulatory requirements provided for in the Act and in this part and that are not in accordance with GAAP.

(h) "System" means the Farm Credit System organized and operating in accordance with the Act.

§ 624.102 Deferral of interest costs on debt.

(a) A System bank may capitalize any premium paid to repurchase the bank's obligations on consolidated Systemwide notes and bonds issued on or before December 31, 1984, and may contract with a third party, including a service corporation chartered by the Farm Credit Administration, in order to perform a defeasance of these same obligations. The premium paid shall be the excess of the cost to repurchase or redeem an obligation over the recorded net book value for such obligation.

(b) A System bank may capitalize a portion of its interest expenses which have been paid or will be paid during the period July 1, 1986, through December 31, 1988, on Systemwide consolidated notes and bonds issued on or before December 31, 1984. The amount of a bank's interest expense on an obligation that may be capitalized shall be limited to the excess of the bank's cost on the obligation over the market price for the obligation on October 21, 1986.

(c) System banks that defer expenses in accordance with this section shall not charge rates of interest which are less than competitive interest rates.

(d) For purposes of supervisory evaluations performed by the Farm Credit Administration, the interest rates charged to borrowers will be evaluated in the context of the following costs:

(1) In the case of System banks, such costs include:

(i) The cost of debt determined in accordance with RAP,

(ii) The amortized portion of interest expense or premium deferral, and

(iii) All operating costs and provisions for losses determined in accordance with GAAP.

(2) In the case of production credit associations, such costs include interest expenses and other operating costs including the provision for loan losse

as determined in accordance with GAAP.

§ 624.103 Deferral of the provisions for loan losses.

(a) Subject to the provisions of this section, a System institution is authorized during the period July 1, 1986, through December 31, 1988, to capitalize the amount of its provision for loan losses made on an annual basis in excess of ⅛ of 1 percent of loans outstanding as is necessary to maintain the value of the institution's stock and participation certificates at par or face amount in accordance with § 624.112 of this part.

(b)(1) Except as provided in paragraph (b)(2) of this section, no institution is authorized to use RAP to capitalize and defer its provisions for loan losses until such institution has executed a management agreement with the Capital Corporation that obligates the institution to take those actions that are necessary to correct operating deficiencies, control the management of high-risk assets, and improve management efficiency.

(2) Each institution that is eligible to use RAP to capitalize and defer its provision for loan losses based on its financial condition as of December 31, 1986, shall have until March 31, 1987, to execute a management agreement with the Capital Corporation.

(c)(1) During any period in which an institution has capitalized and is deferring a portion of its provision for losses, such institution shall not distribute or allocate patronage refunds or pay dividends to its patrons or shareholders.

(2) During any period in which a Federal land bank or Federal intermediate credit bank has capitalized and deferred a portion of its expenses related to its provision for loan losses, the production credit associations, in the case of a Federal intermediate credit bank, and the Federal land bank associations, in the case of a Federal land bank, in the district, shall not distribute or allocate patronage refunds or pay dividends.

§ 624.104 Retirement of equities.

An institution that is capitalizing and deferring a portion of its provision for losses in accordance with this part shall operate in accordance with paragraph (a) or (b) of this section:

(a) The board of directors of the institution shall adopt a resolution which provides for the issuance of stock and participation certificates at par value or face amount and the retirement at the lesser of par (or face amount) or book value as determined in accordance with GAAP. Full disclosure shall be provided to stockholders and loan applicants in accordance with Subpart B of this part.

(b) The board of directors of the institution shall adopt a resolution which authorizes the issuance and retirement of stock and participation certificates at par or face amount as determined in accordance with RAP subject to the following requirements:

(1) The institution shall obtain an opinion from independent legal counsel indicating that the basis for the issuance and retirement of equities approved by the board of directors and the related policies and procedures to be followed by the institution are in accordance with the requirements of the law; and

(2) The institution shall provide full disclosure to stockholders and loan applicants in accordance with Subpart B of this part.

Subpart B—Accounting and Disclosure

§ 624.110 General.

System institutions that capitalize and defer interest expenses or provisions for loan losses as authorized by Subpart A of this part shall employ accounting practices and provide disclosures to stockholders and loan applicants as provided for in this part.

§ 624.111 Deferral of interest costs.

A bank that defers any expenses associated with actions taken in accordance with § 624.102 of this part shall amortize such expenses over a period not to exceed 20 years using straight-line amortization. The unamortized portion of debt-related cost that is deferred or is eligible to be deferred shall not be considered as capital of the institution for any purpose.

§ 624.112 Deferral of the provision for loan losses.

An institution that defers a portion of its provision for loan losses in accordance with § 624.103 of this part shall amortize such amount over a period not to exceed 20 years, using straight-line amortization. Institutions using RAP to defer their provisions for loan losses shall maintain an allowance for loan losses determined in accordance with GAAP.

§ 624.113 Financial reporting and disclosure.

(a) Any bank that defers interest expenses or its provision for loan losses shall issue its financial statements to stockholders in accordance with Part 620 of this chapter. In addition, each institution shall disclose clearly in footnotes to its financial statements the regulatory accounting practices adopted by the institution, and shall reconcile the differences between the application of GAAP and RAP.

(b) Each Federal land bank, bank for cooperatives, the Central Bank for Cooperatives, and production credit association that is deferring its provision for loan losses in accordance with § 624.103 of this part shall comply with the requirements of this paragraph.

(1) Not later than 30 days after the institution has deferred a portion of its provision for loan losses the institution shall provide each stockholder and holder of participation certificates with a clearly written notification of the following matters:

(i) That the book value of its stock and participation certificates determined in accordance with GAAP is less than par value or stated value.

(ii) The book value of the institution's stock and participation certificates.

(iii) An explanation of the resolution of the board of directors of the institution that authorizes the issuance and retirement of stock and participation certificates and the institution's equity retirement policy.

(iv) An explanation of the financial consequences of the institution's stock policy on the value of stock and participation certificates at issuance, retirement, and in the event of liquidation of the institution.

(2) The institution shall provide a clearly written notification of the matters contained in paragraph (b)(1) of this section to each loan applicant at the time of the application.

(c) An institution that has adopted any provision of this part shall notify the Farm Credit Administration not later than 30 days after such action. Reports of condition and performance submitted in accordance with Part 621 of this chapter shall be accompanied by an additional schedule as prescribed by the Farm Credit Administration which will reconcile the differences between the application of GAAP and RAP.

§ 624.114 Financial assistance.

No institution shall reverse any financial assistance provided by the Capital Corporation, or under the 37-Bank Capital Preservation Agreement, or any other capital preservation/loss sharing program that was received or accrued prior to October 1, 1986.

Kenneth J. Auberger,

Secretary, Farm Credit Administration Board.

[FR Doc. 28864 Filed 12-23-86; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-NM-27-AD; Amdt. 39-5499]

Airworthiness Directives: McDonnell Douglas Model DC -6, -6A, -6B, R6D, and C-118 (Military) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD), applicable to McDonnell Douglas DC -6, -6A, -6B, R6D, and C-118 (Military) airplanes which currently requires inspection and repairs, if necessary, of wing lower fittings, stringers, and skin. This amendment defines a more accurate X-ray technique to assure proper coverage and sensitivity. This amendment also revises the inspection intervals, as a result of recent service experience.

DATES: Effective January 28, 1987. Compliance schedule as prescribed in the body of the AD, unless already accomplished

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-L65 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. William Roberts, Aerospace Engineer, Airframe Branch, ANM-121L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6319.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to amend an existing airworthiness directive (AD) to require X-ray inspections of certain left and right wing lower skins, stringers, fittings on McDonnell Douglas DC-6 series airplanes, was published in the Federal Register on May 8, 1986 (51 FR 17054).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 187 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures,the total cost impact of the AD on U.S. operators is estimated to be $22,440. Because the inspection interval has been extended from 500 to 1000 hours, this incremental cost is absorbed, and the AD provides a net savings to the operator.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By amending AD 80-12-02, Amendment 39-3785 (45 FR 37811), as follows:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-6, -6A, -6B, R6D, and C-118 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

A. Revise paragraph (b)(2) to read as follows:

"(2) Repair cracks in accordance with Douglas Structural Repair Manual or other repair data approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region."

B. Revise paragraph (c)(1) to read as follows:

"(1) Inspect by X-ray the left and right wing lower skin, stringers, and fittings between station 60 to 130 and 167 to 185, from the front spar to the center spar; and inspect by X-ray the wing skin that lies beneath the skate angle at wing station 130 at the inboard edge of the inboard nacelle, both left and right wing, in accordance with Douglas Aircraft Company Report MDC-J1946, "NDI Inspection Techniques for DC-6 Lower Wing Skin at Station 130," Revision "A," dated July 26, 1985, or later revision approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region."

C. Reidentify paragraph (c)(4) as (c)(5), and revise to read as follows:

"(5) Repair cracks prior to further flight in accordance with Douglas Structural Repair Manual or other repair data approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region."

D. Add a new paragraph (c)(4) to read as follows:

"(4) The interval for conducting the X-ray inspection in paragraph (c)(1), above, may be extended from 500 to 1000 hours time-in-service from the last X-ray inspection, provided that the visual inspection specified in paragraph (c)(2), above is extended to cover wing stations 60 to 185 from the front spar to the center spar, when the X-ray inspection is not accomplished."

E. Delete paragraphs (d) and (e) and add a new paragraph (d) to read as follows:

"(d) Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region."

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-L65 (54-60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This Amendment becomes effective January 28, 1987.

Issued in Seattle, Washington, on December 17, 1986.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-28879 Filed 12-23-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 86-ANE-16; Amdt. 39-5486]

Airworthiness Directives; Para-Flite, Incorporated Swift Reserve Canopy, P/N 82700

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of Para-Flite, Incorporated Swift Reserve canopies by individual letters issued October 29, 1986. The Ad requires Para-Flite, Incorporated Swift Reserve canopies Serial Numbers R3-2750 through R3-3471 to be inspected and modified. The AD is needed because it has been determined that the canopies are not performing properly in rate of descent and forward speed because of a dimensional error in the rib pattern at the leading edge of the canopy.

DATES: Effective December 29, 1986, as to all persons except those to whom it was made immediately effective by individual letters issued October 29, 1986, which contained this amendment.

Compliance—As required in the body of the AD.

Incorporation by Reference—Approved by the Director of the Federal Register on December 29, 1986

ADDRESSES: The applicable service information may be obtained from Para-Flite, Incorporated, 5800 Magnolia Avenue, Pennsauken, New Jersey 08109-1399. A copy of the service information is contained in Rules Docket Number 86-ANE-16, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: C. Kallis, ANE-173, New York Aircraft Certification Office, Aircraft Certification Division, Federal Aviation Administration, 181 South Franklin Avenue, Valley Stream, New York 11581.

SUPPLEMENTARY INFORMATION: On October 29, 1986, Priority Letter AD 86-22-07 was issued and made effective as to all known U.S. owners and operators of certain Para-Flite, Incorporated Swift Reserve canopies. AD action resulted from reports that Para-Flite, Incorporated Swift Reserve canopies P/N 82700 have not been performing properly. During a routine master pattern regeneration, a dimensional error was introduced in the airfoil section which affected the performance of the involved canopies by creating slower forward speed, higher rate of descent and, most important, very poor or no flare capability. There are approximately 721 of these canopies that are affected by this dimensional error. The FAA has determined that if the dimensional error in the airfoil on these canopies is not corrected, a dangerous performance condition may result in the use of any of the cited canopies.

Since it was found that a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by Reference.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Para-Flite, Incorporated:

Applies to Swift Reserve Canopy P/N 82700, Serial Numbers R3-2750 through R3-3471.

Compliance is required before further use after the effective date of this AD, unless already accomplished.

To prevent the possibility of the applicable canopies performing below their standards on rate of descent, forward speed and flare capability perform the following:

(a) Inspect and modify the canopies in accordance with Para-Flite, Incorporated Drawing 886028 dated January 17, 1986.

(b) Do not use or repack the affected canopies unless paragraph (a) has been accomplished.

Note: Para-Flite, Incorporated, recall notice dated January 17, 1986, is applicable.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, New York Aircraft Certification Office, Aircraft Certification Division, Federal Aviation Administration, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581.

Para-Flite, Incorporated, Drawing 886028 dated January 17, 1986, identified and described in this document, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Para-Flite, Incorporated, 5800 Magnolia Avenue, Pennsauken, New Jersey 08109-1399. This document also may be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 311, Docket Number 86-ANE-16, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Aircraft Certification Office, AEU-100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, Brussels, Belgium 09667-2021; telephone 513.38.30 Ext 2710, or the Manager, New York Aircraft Certification Office, Aircraft Certification Division, FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581, telephone (516) 791-6220.

Aircraft may be ferried in accordance with the provisions of Federal Aviation Regulations 21.197 and 21.199 to a base where the AD can be accomplished.

This amendment becomes effective December 29, 1986.

Issued in Burlington, Massachusetts, on December 2, 1986.

Laurence O. Higgins,

Acting Director, New England Region.

[FR Doc. 86-28886 Filed 12-23-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 86-AWA-22]

Alteration and Establishment of VOR Federal Airways; Expanded East Coast Plan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of Federal Airways V–276, V–30 and V–445 and establishes new Federal Airway V–613. This amendment is part of the Expanded East Coast Plan (EECP). The EECP's objective is to establish an improved air traffic system that is designed to reduce delays for aircraft en route to or departing from terminals in the eastern United States. The EECP is being implemented in several segments until completed.

EFFECTIVE DATE: 0901 UTC, February 12, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9254.

SUPPLEMENTARY INFORMATION:

History

On September 30, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of VOR Federal Airways V–276, V–30, V–403 and V–445 and establish new VOR Federal Airways V–601 and V–613 (51 FR 34648). Currently, east coast traffic flows are saturated and compressed in the New York metropolitan area to the point that substantial delays are experienced daily. The FAA has developed an Expanded East Coast Plan (EECP) to alleviate this congestion and reduce delays to and from terminals in the eastern United States. These airway actions are part of this plan. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, the removal of V–403 and V–601 and description changes to V–276 which involves removing a dogleg between Sea Isle, NJ, and Robbinsville, NJ, and adding Coyle, NJ, radial after Sea Isle, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the descriptions of Federal Airways V–276, V–30 and V–445 and establishes new Federal Airway V–613. This amendment is part of the Expanded East Coast Plan (EECP). The EECP's objective is to establish an improved air traffic system that is designed to reduce delays for aircraft en route to or departing from terminals in the eastern United States. The EECP is being implemented in several segments until completed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regualtory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V–276 [Amended]

By removing the words "Sea Isle, NJ, 050° radials" and by substituting the words "Coyle, NJ, 090° radials"

V–30 [Amended]

By removing the words "East Texas, PA; to Solberg, NJ." and by substituting the words "East Texas, PA; INT East Texas 095° and Solberg, NJ, 264° radials; to Solberg."

V–445 [Revised]

From INT Washington, DC, 065° and Baltimore, MD, 197° radials; INT Baltimore 093° and Dupont, DE, 223° radials; Dupont; Yardley, PA; INT Yardley 065° and LaGuardia, NY, 209° radials; to LaGuardia.

V–613 [New]

From Allentown, PA, to Wilkes-Barre, PA.

Issued in Washington, DC, on December 16, 1986.

Harold M. Downey,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86–28849 Filed 12–23–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 86–AWP–13]

Alteration of VOR Federal Airways, HI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of Federal Airways V–7 and V–25 located in the State of Hawaii. The current discriptions of these airways cite the Flight Information Region/Oceanic Control Airspace (FIR/Oceanic CTA) boundary as the end of these airways. This action redescribes the end of these airways by including geographical coordinates which pilots can easily locate.

EFFECTIVE DATE: 0901 UTC, February 12, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9254.

SUPPLEMENTARY INFORMATION:

History

On September 12, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of Federal Airways V–7 and V–25 located in the State of Hawaii (51 FR 32480). The current descriptions of these airways indicate that the end of V–7 is the Molokai, HI, 358° radial and the Honolulu FIR/Oceanic CTA boundary and V–25 is the Hilo, HI, 356° radial and the Honolulu FIR/Oceanic CTA boundary. To improve the descriptions of these airways, the FAA employs geographical coordinates rather than the FIR boundary. This action aids flight planning and increases safety by giving a precise geographical and navigational point where domestic air traffic control separation criteria must be applied. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA.

No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.127 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the descriptions of Federal Airways V–7 and V–25 located in the State of Hawaii. The current descriptions of these airways cite the Flight Information Region/Oceanic Control Airspace (FIR/Oceanic CTA) boundary as the end of these airways. This action redescribes the end of these airways by including geographical coordinates which pilots can easily locate.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, VOR Federal airways.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.127 [Amended]

2. Section 71.127 is amended as follows:

V–7 [Amended]

By removing the words "to INT Molokai 358° and the Honolulu FIR/Oceanic CTA boundary." and substituting the words "; to INT AMolokai 358°radial and lat. 24°19'00"N."

V–25 [Revised]

From Hilo, HI, via INT Hilo 356° and Maui, HI, 038° radials; to INT Maui 038° radial and lat. 23°00'24"N.

Issued in Washington, DC, on December 15, 1986.

Harold H. Downey,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86–28851 Filed 12–23–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 86–AWA–19]

Alteration and Revocation of VOR Federal Airways,

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of several Federal Airways located in the states of Minnesota and South Dakota by revoking some airway segments and renumbering other airway segments. This action is in support of the FAA agreement with the International Civil Aviation Organization (ICAO) to eliminate all alternate route designations from the National Airspace System (NAS).

EFFECTIVE DATE: 0901 UTC, February 12, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9254.

SUPPLEMENTARY INFORMATION:

History

On September 2, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to change the descriptions of several VOR Federal Airways located in the states of Minnesota and South Dakota by revoking all alternate route descriptions from the NAS. In addition, certain airway segments would be revoked and other segments would be renumbered (51 FR 31138). This action is in support of the FAA agreement with the ICAO to eliminate all alternate airway designations from the NAS. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400. 6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the descriptions of several VOR Federal Airways located in the states of Minnesota and South Dakota by revoking some airway segments and renumbering other airway segments. This action is in support of the FAA agreement with the ICAO to eliminate all alternate route designation from the NAS.

The FAA determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major

rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as amended (50 FR 48178, 51 FR 6, 5989, 8193 and 10365), is further amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-710 [Amended]

By removing the words "including a N alternate via INT Worthington 064° and Fairmont 285° radials;" and by removing the words "That airspace 11,000 feet MSL and below is excluded between Jamestown VORTAC and the Devils Lake VORTAC during the time that the Devils Lake East MOA is activated by NOTAM."

V-430 [Amended]

By removing the words ", including a north alternate via Thief River Falls, MN" and by removing the words ", including a N alternate from Grand Rapids, to Duluth via Hibbing, MN, excluding the airspace between the main and this N alternate airway"

V-191 [Amended]

By removing the words "including an east alternate; to Duluth, MN." and substituting the words "Duluth, MN; Hibbing, MN; Grand Rapids, MN; Bemidji, MN; Thief River Falls, MN; to Grand Forks, ND."

V-129 [Amended]

By removing the words "Hibbing, MN, including an E alternate; International Falls, MN, including a W alternate from Hibbing, INT Hibbing 319° and International Falls 182° radials to International Falls;" and substituting the words "Hibbing, MN; International Falls, MN;"

V-505 [Amended]

By removing the words ", to Grantsburg, WI." and substituting the words "; Grantsburg, WI; Duluth, MI; INT Duluth 331° and Hibbing, MN, 120° radials; Hibbing; INT Hibbing 319° and International Falls, MN, 182° radials; to International Falls."

V-181 [Amended]

By removing the words ", including a W alternate via INT Yankton 015° Sioux Falls 231° radials" and "including an east alternate;" also, by removing the words ", including an east alternate; Grand Forks, ND, including an east alternate via INT Fargo 004° and Grand Forks 152° radials;" and substituting the words "; Grand Forks, ND"

V-220 [Amended]

By removing the words "From Norfolk, NE; Yankton, SD; INT Yankton 015° and Sioux Falls, SD, 231° radials Sioux Falls; INT Sioux Falls 004° and Watertown, SD, 154° radials; Watertown; INT Watertown 021° and Fargo, ND, 172° radials; Fargo; INT Fargo 004° and Grand Forks, ND, 152° radials; to Grand Forks."

V-97 [Amended]

By removing the words "Boiler, including a W alternate via Indianapolis; INT Indianapolis 344° and Shelbyville 313° radials and INT Shelbyville 313° and Boiler 136° radials;" and substituting the word "Boilers;"

V-305 [Amended]

By removing the words "to Indianapolis." and substituting the words "Indianapolis; INT Indianapolis 038° and Kokomo, IN, 182° radials; to Kokomo."

Issued in Washington, DC, on December 16, 1986.

Harold H. Downey,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 28850 Filed 12-23-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-AWA-20]

Alteration of VOR Federal Airways; Expanded East Coast Plan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of Federal Airways V-188, V-36, V-39 and V-433. This amendment is part of the Expanded East Coast Plan (EECP). The EECP's objective is to establish an improved air traffic system that is designed to reduce delays for aircraft en route to or departing from terminals in the eastern United States. The EECP is being implemented in several segments until completed.

EFFECTIVE DATE: 0901 UTC, February 12, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9254.

SUPPLEMENTARY INFORMATION:

History

On September 30, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of VOR Federal Airways V-188, V-36, V-39 and V-433 (51 FR 34649). Currently, east coast traffic flows are saturated and compressed in the New York metropolitan area to the point that substantial delays are experienced daily. The FAA has developed an Expanded East Coast Plan (EECP) to alleviate this congestion and reduce delays to and from terminals in the eastern United States. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes and changes to the description of V-36 by extending the airway to Toronto, Canada, via Buffalo, NY; and by changing the description of V-39 by removing Chester, MA, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the descriptions of Federal Airways V-188, V-36, V-39 and V-433. This amendment is part of the Expanded East Coast Plan (EECP). The EECP's objective is to establish an improved air traffic system that is designed to reduce delays for aircraft en route to or departing from terminals in the eastern United States. The EECP is being implemented in several segments until completed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-188 [Amended]

By removing the words "INT Wilkes-Barre 094° and Sparta, NJ, 290° radials; Sparta" and substituting the words "INT Wilkes-Barre 084° and Sparta, NJ, 300° radials; to Sparta"

V-36 [Amended]

By removing the words "INT Toronto 147° and Buffalo, NY, 309° radials" and substituting the words "INT Toronto 152° and Buffalo, NY, 306° radials" also by removing the words "INT Lake Henry 136° and Sparta, NJ, 290° radials; Sparta; Kennedy, NY." and substituting the words "Sparta, NJ; LaGuardia, NY; INT LaGuardia, 133° and Deer Park, NY, 209° radials; Deer Park;"

V-39 [Amended]

By removing the words "to East Texas, PA." and substituting the words "East Texas, PA; Sparta, NJ; Carmel, NY."

V-433 [Revised]

From INT Washington, DC, 065° and Baltimore, MD, 197° radials; INT Washington, DC, 065° and Dupont, DE, 223° radials; Dupont; Yardley, PA; INT Yardley 047° and Kennedy, NY, 253° radials; INT Kennedy 253° and LaGuardia, NY, 209° radials; to LaGuardia.

Issued in Washington, DC, on December 17, 1986.

Harold H. Downey,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-28852 Filed 12-23-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 86-AWA-61]

Alteration and Establishment of VOR Federal Airways; Expanded East Coast Plan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of Federal Airways V-312, V-6, V-408, V-93, V-3, V-147 and V-457. This amendment is part of the Expanded East Coast Plan (EECP). The EECP's objective is to establish an improved air traffic system that is designed to reduce delays for aircraft en route to or departing from terminals in the eastern United States. The EECP is being implemented in several segments until completed.

EFFECTIVE DATE: 0901 UTC, February 12, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9254.

SUPPLEMENTARY INFORMATION:

History

On October 6, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of VOR Federal Airways V-312, V-6, V-408, V-93, V-3, V-147 and V-457 and establish new VOR Federal Airway V-605 (51 FR 35527). Currently, east coast traffic flows are saturated and compressed in the New York metropolitan area to the point that substantial delays are experienced daily. The FAA has developed an Expanded East Coast Plan (EECP) to alleviate this congestion and reduce delays to and from terminals in the eastern United States. These airway actions are part of this plan. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, the removal of V-605 and description changes to V-408 involving terminating the airway at the NOAAH Intersection in lieu of Chester, MA, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the descriptions of Federal Airways V-312, V-6, V-408, V-93, V-3, V-147 and V-457. This amendment is part of the Expanded East Coast Plan (EECP). The EECP's objective is to establish an improved air traffic system that is designed to reduce delays for aircraft en route to or departing from terminals in the eastern United States. The EECP is being implemented in several segments until completed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, VOR Federal airways.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as amended (51 FR 7 and 6102), is further amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-312 [Amended]

By removing the words "Sea Isle, NJ, 050° radials." and substituting the words "Kennedy, NY, 148° radials."

V-6 [Amended]

By removing the words "to Broadway, NJ," and substituting the words "Solberg, NJ; INT Solberg 105° and Canarsie, NY, 245° radials; INT Canarsie 245° and LaGuardia, NY, 209° radials; to LaGuardia."

V-408 [Revised]

From Baltimore, MD; INT Baltimore 004° and Lancaster, PA, 204° radials; INT Lancaster 204° and Modena, PA, 261° radials; Modena; Pottstown, PA; East Texas, PA; Allentown, PA; Lake Henry, PA; to INT Lake Henry 056° and Hancock, NY, 120° radials.

V-93 [Amended]

By removing the words "Baltimore; Lancaster, PA;" and substituting the words "Baltimore; INT Baltimore 004° and Lancaster, PA, 204° radials; Lancaster;"

V-3 [Amended]

By removing the words "Solberg, NJ; Carmel, NY;" and substituting the words "Solberg, NJ; INT Solberg 044° and Carmel, NY, 243° radials; Carmel."

V-147 [Revised]

From Yardley, PA; INT Yardley 294° and East Texas, PA, 124° radials; East Texas; Wilkes-Barre, PA; Elmira, NY; Geneseo, NY; to Rochester, NY.

V-457 [Revised]

From Broadway, NJ; Lancaster, PA; Westminster, MD; to Martinsburg, WV.

Issued in Washington, DC, on December 15, 1986.

Harold H. Downey,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-28853 Filed 12-23-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-ANM-22]

Alteration of VOR Federal Airways, V-444 and V-500—Boise, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of V-444 and V-500 located in the vicinity of Boise, ID. The Boise very high frequency omni-directional radio range and tactical air navigational aid (VORTAC) has been relocated 2.4 nautical miles east of its present location. This action alters the descriptions of all airways affected by the VORTAC relocation.

EFFECTIVE DATE: 0901 UTC, February 12, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9254.

SUPPLEMENTARY INFORMATION:

History

On September 23, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of VOR Federal Airways V-444 and V-500 located in the vicinity of Boise, ID (51 FR 33789).

The Boise VORTAC has been relocated approximately 2.4 nautical miles east of its present location, and all affected airway descriptions would be amended where necessary. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the descriptions of V-444 and V-500 located in the vicinity of Boise, ID. The Boise VORTAC has been relocated 2.4 nautical miles east of its present location. This action alters the descriptions of all airways affected by the VORTAC relocation.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-444 [Revised]

From Burley, ID, via INT Burley 323° and Boise, ID, 104° radials; 25 miles 95 MSL, 25 miles 90 MSL, 23 miles; Boise; Baker, OR. From Walla Walla, WA, 22 miles, 48 miles 45 MSL; to Spokane, WA.

V-500 [Revised]

From Portland, OR, via Newberg, OR; 41 miles 70 MSL, Kimberly, OR; 30 miles, 71 miles 105 MSL, Boise, ID; 23 miles, 25 miles 90 MSL, 25 miles 95 MSL, 22 miles, 26 miles 70 MSL, to Pocatello, ID.

Issued in Washington, DC, on December 16, 1986.

Harold H. Downey,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-28854 Filed 12-23-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 73

[Airspace Docket No. 86-ACE-1]

Alteration and Establishment of Restricted Areas; Fort Leonard Wood, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule alters the descriptions, altitudes, and/or times of use of Restricted Areas R-4501A, B, C, and D and establishes R-4501E, located near Fort Leonard Wood, MO. The alteration of Restricted Areas R-4501A-D and the establishment of R-4501E will enable the using agency, U.S. Army, to release additional airspace to the flying public when it is not in use.

EFFECTIVE DATE: 0901 UTC, February 12, 1987.

FOR FURTHER INFORMATION CONTACT: Andrew B. Oltmanns, Airspace and Aeronautical Information Requirements Branch (ATO-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9245.

SUPPLEMENTARY INFORMATION:

History

On October 16, 1986, the FAA proposed to amend Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) to alter the descriptions, altitudes, and/or times of use of Restricted Areas R-4501A, B, C, and D and to establish R-4501E, located near Fort Leonard Wood, MO, (51 FR 36827). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, these amendments are the same as those proposed in the notice. Sections 71.171 and 73.45 of Parts 71 and 73 of the Federal Aviation Regulations were republished in Handbook 7400.6B dated January 2, 1986.

The Rule

These amendments to Parts 71 and 73 of the Federal Aviation Regulations alters the descriptions, altitudes, and/or times of use of Restricted Areas R-4501 A, B, C, and D and establishes R-4501E, located near Fort Leonard Wood, MO. After reviewing R-4501 A-D, the FAA has determined that the alteration of these areas and the establishment of R-4501E will give the U.S. Army the ability to release additional airspace to the flying public when the areas are not in use. R-4501A will be removed from the Continental Control Area and R-4501E will be added. These airspace actions will also reduce the amount of time the restricted areas are in use.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 73

Aviation safety, Continental control area, Restricted areas.

Adoption of the Amendments

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) are amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71-151 [Amended]

2. Section 71.151 is amended as follows:

R-4501A Fort Leonard Wood West, MO [Removed]

R-4501E Fort Leonard Wood, MO [New]

PART 73—[AMENDED]

3. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73-45 [Amended]

4. Section 73.45 is amended as follows:

R-4501A Fort Leonard Wood West, MO [Amended]

By removing the present Time of designation and substituting the following:

Time of designation. 0700-1800 local time, Monday—Friday; other times by NOTAM issued at least 24 hours in advance.

R-4501B Fort Leonard Wood East, MO [Amended]

By removing the present Time of designation and substituting the following:

Time of designation. 0700-1800 local time, Monday—Friday; other times by NOTAM issued at least 24 hours in advance.

R-4501C Fort Leonard Wood, MO [Amended]

By removing the present Designated altitudes and Time of designation and by substituting the following:

Designated altitudes. From 2,200 feet MSL to 5,000 feet MSL.

Time of designation. As specified by NOTAM issued at least 24 hours in advance.

R-4501D Fort Leonard Wood, MO [Amended]

By removing the present Boundaries, Designated altitudes and Time of designation and by substituting the following:

Boundaries. Beginning at lat. 37°41'00" N., long. 92°16'10" W.; to lat. 37°41'26" N., long. 92°10'15" W.; to lat. 37°40'16" N., long. 92°07'05" W.; to lat. 37°38'20" N., long. 92°06'55" W.; to lat. 37°36'07" N., long. 92°10'27" W.; to lat. 37°35'22" N., long. 92°15'31" W.; to the point of beginning.

Designated altitudes. From 5,000 feet MSL to 12,000 feet MSL. Time of designation. As specified by NOTAM issued at least 24 hours in advance.

R-4501E Fort Leonard Wood, MO [New]

Boundaries. Beginning at lat. 37°41'00" N., long. 92°16'10" W.; to lat. 37°41'26" N., long. 92°10'15" W.; to lat. 37°40'16" N., long. 92°07'05" W.; to lat. 37°38'20" N., long. 92°06'55" W.; to lat. 37°36'07" N., long. 92°10'27" W.; to lat. 37°35'22" N., long. 92°15'31" W.; to the point of beginning.

Designated altitudes. From 12,000 feet MSL to FL 180.

Time of designation. As specified by NOTAM at least 24 hours in advance.

Controlling agency. FAA, Kansas City ARTCC.

Using agency. U.S. Army, Commanding General, Fort Leonard Wood, MO.

Issued at Washington, DC, on December 15, 1986.

Harold H. Downey,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-28848 Filed 12-23-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 75

[Airspace Docket No. 86-AWA-63]

Alteration of VOR Federal Airways and Jet Routes; Expanded East Coast Plan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments alter the descriptions of Federal Airways V-31, V-34, V-164, V-252, V-265 and Jet Route J-77. These amendments are part of the Expanded East Coast Plan (EECP). The EECP's objective is to establish an improved air traffic system that is designed to reduce delays for aircraft en route to or departing from terminals in the eastern United States. The EECP is being implemented in several segments until completed.

EFFECTIVE DATE: 0901 UTC, February 12, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9254.

SUPPLEMENTARY INFORMATION:

History

On October 6, 1986, the FAA proposed to amend Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) to alter the descriptions of VOR Federal Airways V-31, V-34, V-164, V-252, V-265 and Jet Route J-77 (51 FR 35528). Currently, east coast traffic flows are saturated and compressed in the New York metropolitan area to the point that substantial delays are experienced daily. The FAA has developed an Expanded East Coast Plan (EECP) to

alleviate this congestion and reduce delays to and from terminals in the eastern United States. These airway and jet route actions are part of this plan. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, radial changes to V–31 and description changes to V–252 which involves extending the airway from Huguenot, NY, to Robbinsville, NJ, these amendments are the same as those proposed in the notice. Sections 71.123 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400.6B dated January 2, 1986.

The Rule

These amendments to Parts 71 and 75 of the Federal Aviation Regulations alter the descriptions of Federal Airways V–31, V–34, V–164, V–252, V–265 and Jet Route J–77. These amendments are part of the Expanded East Coast Plan (EECP). The EECP's objective is to establish an improved air traffic system that is designed to reduce delays for aircraft en route to or departing from terminals in the eastern United States. The EECP is being implemented in several segments until completed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 75

Aviation Safety, VOR Federal airways and jet routes.

Adoption of the Amendment

PARTS 71 AND 75—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) are amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority. 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V–31 [Amended]

By removing the words "INT Rochester 289° and Kleinburg, ON, Canada, 133° radials;" and by substituting the words "INT Rochester 279° and Geneseo, NY, 305° radials; INT Geneseo 305° and Kleinburg, ON, Canada, 133° radials;"

V–34 [Amended]

By removing the words "From Kleinburg, ON, Canada, INT Kleinburg 113° and Rochester, NY, 309° radials; Rochester;" and by substituting the words "From Rochester, NY;" and by removing the words "The airspace within Canada and R–5207 is excluded."

V–164 [Amended]

By removing the words, "From Toronto, ON, Canada, via Toronto 172° and Buffalo, NY, 294° radials;" and by substituting the words "From Kleinburg, ON, Canada, INT Kleinburg 133° and Buffalo, NY, 338° radials;"

V–252 [Revised]

From Kleinburg, ON, Canada; INT Kleinburg 133° and Geneseo, NY, 305° radials; Geneseo; Binghamton, NY; Huguenot, NY; INT Huguenot 198° and Robbinsville, NJ, 351° radials; to Robbinsville. The airspace within Canada is excluded.

V–265 [Amended]

By removing the words "Dunkirk, NY." and by substituting the words "Dunkirk, NY; INT Dunkirk 325° and Toronto, ON, Canada, 187° radials; Toronto. The airspace within Canada is excluded."

3. The authority citation for Part 75 continues to read as follows:

Authority. 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

4. Section 75.100 is amended as follows:

J–77 [Revised]

From Boston, MA; Barnes, MA; Sparta, NJ; Broadway, NJ; Pottstown, PA; to Westminster, MD.

Issued in Washington, DC, on December 17, 1986.

Harold H. Downey,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86–28855 Filed 12–23–86; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 73

[Airspace Docket No. 86–ANM–25]

Alteration of Restricted Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment changes the time of designation and designated altitudes for Restricted Area R–5704 located near Hermiston, OR. In addition, the time of designation and controlling agencies for Restricted Areas R–6701, R–6707, and R–6713 located in the state of Washington will be amended Restricted Areas R–6703A, B, and D located near Fort Lewis, WA, will also be amended to reflect changes in time of designation. This action will reduce the time the restricted areas are in effect, thereby, releasing additional airspace to the flying public when it is not in use.

EFFECTIVE DATE: 0901 UTC, February 12, 1987.

FOR FURTHER INFORMATION CONTACT: Andrew B. Oltmanns, Airspace and Aeronautical Information Requirements Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9245.

The Rule

This amendment to Part 73 of the Federal Aviation Regulations (14 CFR Part 73) changes the time of designation and designated altitudes for Restricted Area R–5704 located near Hermiston, OR, from the surface to 5,000 feet MSL to the surface up to but not including 4,000 feet MSL; from 0800–2000 Monday-Friday to 0900–1700 Monday-Friday. Restricted Areas R–6701, R–6707 and R–6713 will be activated by NOTAM only at least two hours in advance. The controlling agency for R–6701 and R–6713 will be NAS Whidbey Island and the Seattle ARTCC will be the controlling agency for R–6707. R–6703A, B, and D will be activated from 0700–2300 Monday-Friday; other times by NOTAM at least two hours in advance. Because this action does not alter any airspace designations and only reduces the time the restricted areas are in effect, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor amendment in which the public would not be particularly interested. Sections 73.57 and 73.67 of Part 73 of the Federal Aviation Regulations were republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the amendment

PART 73—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

1. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 73.57 [Amended]

2. Section 73.57 is amended as follows:

R–5704 Hermiston, OR [Amended]

By removing the present designated altitudes and time of designation and by substituting the following:

Designated altitudes. Surface to but not including 4,000 feet MSL. Time of designation. 0900–1700 Monday-Friday.

§ 73.67 [Amended]

3. Section 73.67 is amended as follows:

R–6701 Admiralty Inlet, WA [Amended]

By removing the present time of designation and controlling agency and by substituting the following:

Time of designation. Intermittent by NOTAM two hours in advance. Controlling agency. Whidbey Island NAS, WA.

R–6707 Queets, WA [Amended]

By removing the present time of designation and controlling agency and by substituting the following:

Time of designation. Intermittent by NOTAM two hours in advance. Controlling agency. FAA, Seattle ARTCC.

R–6713 Whidbey Island, WA [Amended]

By removing the present time of designation and controlling agency and by substituting the following:

Time of designation. Intermittent by NOTAM two hours in advance. Controlling agency. Whidbey Island NAS, WA.

R–6703A Fort Lewis, WA [Amended]

By removing the present time of designation and by substituting the following:

Time of designation. 0700–2300 Monday-Friday; other times by NOTAM two hours in advance.

R–6703B Fort Lewis, WA [Amended]

By removing the present time of designation and by substituting the following:

Time of designation. 0700–2300 Monday-Friday; other times by NOTAM two hours in advance.

R–6703D Fort Lewis, WA [Amended]

By removing the present time of designation and by substituting the following:

Time of designation. 0700–2300 Monday-Friday; other times by NOTAM two hours in advance.

Issued in Washington, DC, on December 12, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86–28847 Filed 12–23–86; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 75

[Airspace Docket No. 86–AWA–60]

Alteration and Establishment of Jet Routes; Expanded East Coast Plan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of Jet Routes J–70 and J–75 and establishes new Jet Routes J–217 and J–221. This amendment is part of the Expanded East Coast Plan (EECP). The EECP's objective is to establish an improved air traffic system that is designed to reduce delays for aircraft en route to or departing from terminals in the eastern United States. The EECP is being implemented in several segments until completed.

EFFECTIVE DATE: 0901 UTC, February 12, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9254.

SUPPLEMENTARY INFORMATION:

History

On September 30, 1986, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to alter the description of Jet Routes J–70 and J–75 and establish new Jet Routes J–217 and J–221 (51 FR 34652). Currently, east coast traffic flows are saturated and compressed in the New York metropolitan area to the point that substantial delays are experienced daily. The FAA has developed an Expanded East Coast Plan (EECP) to alleviate this congestion and reduce delays to and from terminals in the eastern United States. These jet route actions are part of this plan. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes and description changes to J–70 and J–75 involving adding Stillwater, NJ, VORTAC to the description of J–70 and by adding Solberg, NJ, VORTAC to J–75, this amendment is the same as that proposed in the notice. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The rule

This amendment to Part 75 of the Federal Aviation Regulations alters the descriptions of Jet Routes J–70 and J–75 and establishes new Jet Routes J–217 and J–221. This amendment is part of the Expanded East Coast Plan (EECP). The EECP's objective is to establish an improved air traffic system that is designed to reduce delays for aircraft en route to or departing from terminals in the eastern Unted States. The EECP is being implemented in several segments until completed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979): and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

List of subjects in 14 CFR Part 75

Aviation safety, Jet Routes.

Adoption of the Amendment

PART 75—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 75 of the Federal Aviation Regulations (14 CFR Part 75) is amended, as follows:

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J-70 [Amended]

By removing the words "Sparta, NJ; to Kennedy, NY." and by substituting the words "Wilkes-Barre, PA; Stillwater, NJ; LaGuardia, NY, to Kennedy, NY."

J-217 [New]

From Hancock, NY, via Keating, PA; Clarion, PA; to INT Clarion 222° and Franklin, PA, 175° radials.

J-221 [New]

From Sparta, NJ, Via Lake Henry, NY; Wellsville, NY; to Buffalo, NY.

J-75 [Revised]

From Biscayne Bay, FL; Fort Myers, FL; INT Fort Myers 345° and Taylor, FL, 175° radials; Taylor; Columbia, SC; Greensboro, NC; Gordonsville, VA; Westminster, MD; Modena, PA; Solberg, NJ; Carmel, NY; INT Carmel 044° and Boston, MA, 252° radials; to Boston.

Issued in Washington, DC. on December 17, 1986.

Harold H. Downey,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-28844 Filed 12-23-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 86-AWA-59]

Alteration and Establishment of Jet Routes; Expanded East Coast Plan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of Jet Routes J-78, J-146 and J-584 and establishes new J-220. This amendment is part of the Expanded East Coast Plan (EECP). The EECP's objective is to establish an improved air traffic system that is designed to reduce delays for aircraft en route to or departing from terminals in the eastern United States. The EECP is being implemented in several segments until completed.

EFFECTIVE DATE: 0901 UTC, February 12, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9254.

SUPPLEMENTARY INFORMATION:

History

On September 30, 1986, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to alter the descriptions of Jet Routes J-78, J-110, J-146 and J-584 and establish new J-220 (51 FR 34650). Currently, east coast traffic flows are saturated and compressed in the New York metropolitan area to the point that substantial delays are experienced daily. The FAA has developed an Expanded East Coast Plan (EECP) to alleviate this congestion and reduce delays to and from terminals in the eastern United States. These jet route actions are part of this plan. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes and the removal of J-110 and description changes to J-220 which involves adding Stonyfork, PA, VORTAC to the airway alignment, this amendment is the same as that proposed in the notice. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 75 of the Federal Aviation Regulations alters the descriptions of Jet Routes J-78, J-146 and J-584 and establishes new J-220. This amendment is part of the Expanded East Coast Plan (EECP). The EECP's objective is to establish an improved air traffic system that is designed to reduce delays for aircraft en route to or departing from terminals in the eastern United States. The EECP is being implemented in several segments until completed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation Safety, Jet Routes.

Adoption of the Amendment

PART 75—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as amended (51 FR 8195), is further amended, as follows:

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 75.100 is amended as follows:

J-78 [Amended]

By removing the words "INT Philipsburg 083° and Keating, PA, 099° radials; to Kennedy, NY." and by substituting the words "to Milton, PA."

J-146 [Amended]

By removing the words "to Kennedy, NY," and by substituting the words "Milton, PA; Allentown, PA; to Kennedy, NY,"

J-220 [New]

From Armel, VA, INT Armel 001° and Stonyfork, PA, 181° radials; Stonyfork; Wellsville, NY; to Buffalo, NY.

J-584 [Amended]

By removing the words after "Slate Run, PA;" and by substituting the words "Williamsport, PA; to Broadway, NJ."

Issued in Washington, DC, on December 15, 1986.

Harold H. Downey,

Acting Manager, Airspace-Rules and Aeronautial Information Division.

[FR Doc. 86-28846 Filed 12-23-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 75

[Airspace Docket No. 86-AWA-58]

Alteration and Establishment of Jet Routes—Expanded East Coast Plan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of Jet Routes J-48 and J-80 and establishes new J-228 and J-230. This amendment is part of the Expanded East Coast Plan (EECP). The EECP's objective is to establish an improved air traffic system that is designed to reduce delays for aircraft en route to or departing from terminals in the eastern United States. The EECP is being implemented in several segments until completed.

EFFECTIVE DATE: 0901 UTC, February 12, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9254.

SUPPLEMENTARY INFORMATION:

History

On September 30, 1986, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to alter the descriptions of Jet Routes J-48, J-80 and J-563 and establish new J-228 (51 FR 34650). Also, a supplemental notice was published proposing establishment of J-230 (51 FR 34651). Currently, east coast traffic flows are saturated and compressed in the New York metropolitan area to the point that substantial delays are experienced daily. The FAA has developed an Expanded East Coast Plan (EECP) to alleviate this congestion and reduce delays to and from terminals in the eastern United States. These jets route actions are part of this plan. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, the removal of J-563, description changes to J-228 which involves changing the Linden, VA, radial from 242° to 234° and the Beckley, WV, radial from 065° to 070° and also changing the description of J-80 by adding East Texas, PA, this amendment is the same as that proposed in the notice. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 75 of the Federal Aviation Regulations alters the descriptions of Jet Routes J-48 and J-80 and establishes new J-228 and J-230. This amendment is part of the Expanded East Coast Plan (EECP). The EECP's objective is to establish an improved air traffic system that is designed to reduce delays for aircraft en route to or departing from terminals in the eastern United States. The EECP is being implemented in several segments until completed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

PART 75—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as amended (51 FR 9 and 6103), is further amended, as follows:

1. The authority citation for Part 75 continues to read as follows:

Authority. 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J-48 [Revised]

From Boston, MA; INT Boston 252° and Carmel, NY, 044° radials; Carmel; INT Carmel 238° and Pottstown, PA, 050° radials; Pottstown; Westminster, MD; Casanova, VA, to Pulaski, VA.

J-228 [New]

From Montreal, Canada; Plattsburg, NY; Albany, NY; Sparta, NJ; Broadway, NJ; Lancaster, PA; INT Lancaster 239° and Linden, VA, 042° radials; Linden; INT Linden 234° and Beckley, WV, 070° radials, to Beckley. The airspace within Canada is excluded.

J-230 [New]

From Robbinsville, NJ; INT Robbinsville 264° and Bellaire, OH, 090° radials, to Bellaire.

J-80 [Amended]

By removing all the words after "Bellaire, OH;" and substituting the words "INT Bellaire 090° and East Texas, PA, 240° radials; East Texas; Sparta, NJ; Barnes, MA; to Bangor, ME."

Issued in Washington, DC, on December 17, 1986.

Harold H. Downey,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-28845 Filed 12-23-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 23

[Docket No. 6116-6216]

Use of Penalty Mail in the Location and Recovery of Missing Children, Regulations

AGENCY: Office of the Secretary, Commerce.

ACTION: Final rule.

SUMMARY: This Department of Commerce regulation authorizes the Department of Commerce, through its component organizational units, to use penalty mail to aid in the location and recovery of missing children. The regulation further provides procedures under which penalty mail may be used to assist in the location and recovery of missing children in accordance with 39 U.S.C. 3220(a)(2), (Act of Aug. 9, 1985, Pub. L. 99-87, section 1(a)(1), 99 Stat. 290), in conformance with the Office of Juvenile Justice and Delinquency Prevention (OJJDP) preliminary guidelines which were published in the **Federal Register** on November 8, 1985, [50 FR 46622] pursuant to 39 U.S.C. 3220(a)(1).

EFFECTIVE DATE: This rule is effective January 23, 1987.

FOR FURTHER INFORMATION CONTACT: Mary DiGiulian, Office of Administrative Services Management, Office of Procurement and

Administrative Services, U.S. Department of Commerce, Room H6319, 14th and Constitution Avenue, NW., Washington, DC 20230, telephone (202) 377–0884.

SUPPLEMENTARY INFORMATION: The enactment of 39 U.S.C. 3220 is indicative of the increasing public concern with the problem of missing and exploited children. The Missing Children's Assistance Act of 1984, added as Title IV of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended by the Comprehensive Crime Control Act of 1984 (Pub. L. 98–473, 99 Stat. 1840), recognized the problem and provided a Federal coordination and assistance role in addressing this interstate problem.

A notice and comment period is not required for this regulation because the subject matter of the regulation pertains to internal management procedures affecting only the Department of Commerce's use of penalty mail in the location and recovery of missing children. Internal factors such as the Department of Commerce's mail management procedures, organizational structure, and the like have been primary considerations in drafting the regulation to structure the most cost effective implementation plan. The plan does not directly affect the rights and interests of the general public. The rule is to be effective thirty days after publication in the **Federal Register**.

Executive Order 12291

Since this rule is related to agency management, it is not a rule or regulation within the meaning of E.O. 12291 and, accordingly, is not subject to the requirements of that Order.

Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law under the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)), no Regulatory Flexibility Analysis has to be or will be prepared.

Paperwork Reduction Act

There are no collection of information requirements contained in this regulation required for submission to the Office of Management and Budget for review under the Paperwork Reduction Act, 44 U.S.C. 3504(h).

List of Subjects in 15 CFR Part 23

Administrative practice and procedure, Child welfare, Missing and exploited children, Penalty mail.

Accordingly, Title 15 Code of Federal Regulations is amended by adding Part 23 to read as follows:

PART 23—USE OF PENALTY MAIL IN THE LOCATION AND RECOVERY OF MISSING CHILDREN

Sec.

23.1 Purpose.
23.2 Contact person.
23.3 Plan.
23.4 Cost and percentage estimates.
23.5 Report to the Office of Juvenile Justice and Delinquency Prevention.
23.6 Definitions.
23.7 Notice to Department of Commerce organizational units of implementation and procedures.

Authority: 39 U.S.C. 3220(a)(2), 5 U.S.C. 301.

§ 23.1 Purpose.

These regulations are intended to comply with 39 U.S.C. 3220(a)(2), and the Office of Juvenile Justice and Delinquency Prevention (OJJDP) guidelines (50 FR 46622), to assist in the location and recovery of missing children through the use of penalty mail.

§ 23.2 Contact person.

Tim Coss, Office of Administrative Services Operations, U.S. Department of Commerce (H2063), 14th and Constitution Ave., NW., Washington, DC 20230, Telephone (202) 377–2108

§ 23.3 Plan.

(a) The Department of Commerce will supplement and expand the national effort to assist in the location and recovery of missing children through the economical use of missing children information in domestic penalty mail directed to the public and Federal employees.

(b) The Department of Commerce may include, on or inside authorized types of penalty mail, pictures and biographical data related to missing children, provided such use is determined to be cost effective. The authorized types of penalty mail include:

(1) All envelopes; and

(2) Self-mailer publications (newsletters, bulletins, etc.) with a shelf-life of no more than 90 days.

(c) The manner in which pictures and biographical data may be used includes:

(1) Printing on envelopes at the time they are initially printed with the United States Postal Service (USPS) required postal code identification;

(2) Printed inserts that are placed in envelopes along with other mailing material;

(3) Stickers that are printed and placed on envelopes prior to mailing; and

(4) Printing as part of the content of self-mailers such as bureau newsletters, bulletins, etc.

(d) Missing children information will not be placed on letter-size envelopes in the ares described as the "Penalty Indicia Area," "OCR Read Area," "Bar Code Read Area," and "Return Address Area" per Appendix A of the OJJDP guidelines.

(e) The National Center for Missing and Exploited Children (National Center) will be the sole source from which the Department of Commerce will obtain the camera-ready and other photographic and biographical materials for use by organizational units. Photographs which were reasonably current as of the time of the child's disappearance shall be the only acceptable form of visual media or pictorial likeness used on or in penalty mail.

(f) The Department of Commerce will remove all printed penalty mail envelopes and other materials from circulation or other use (i.e., use or destroy) within 90 days of notification by the National Center of the need to withdraw penalty mail envelopes and other materials related to a particular child from circulation. The Department of Commerce will not include missing children information on blank pages or covers of items such as those to be included in the Superintendent of Documents' Sales Program, or to be distributed to Depository Libraries, as such material generally could not be withdrawn from use within 90 days of notification. The National Center will be responsible for immediately notifying the Department Contact Person, in writing, of the need to withdraw from circulation penalty mail envelopes and other materials related to a particular child.

(g) The Department of Commerce will give priority:

(1) To penalty mail that is addressed to the public for receipt in the United States, its territories and possessions; and

(2) To inter- and intra-agency publications and other media that will be widely disseminated to and viewed by Federal employees.

(h) All suggestions and/or recommendations for innovative, cost-effective techniques should be forwarded to the Department Contact Person. The Department Contact Person shall conduct biannual meetings of departmental representatives to discuss the current plan and recommendations for future plans.

(i) This shall be the sole regulation implementing this program for the Department of Commerce.

§ 23.4 Cost and percentage estimates.

It is estimated that this program will cost the Department of Commerce $39,530 in the first year. It is the Department of Commerce's estimate that 9% of its penalty mail will transmit missing children photographs and information when the program is fully implemented.

§ 23.5 Report to the Office of Juvenile Justice and Delinquency Prevention.

The Department of Commerce will compile and submit a consolidated report to OJJDP, by June 30, 1987, on its experience in implementation of 39 U.S.C. 3220(a) (2), the OJJDP guidelines, and the Department of Commerce's regulation. This report will cover the period from December 24, 1986, through March 31, 1987, and provide detail on:

(a) The Department of Commerce's experience in implementation (including problems encountered), successful and/or innovative methods adopted to use missing children photographs and information on or in penalty mail, the estimated number of pieces of penalty mail containing such information, and the percentage of total penalty mail directed to the public which included missing children information.

(b) The estimated total cost to implement the program, with supporting detail, and

(c) Recommendations for changes in the program to make it more effective.

§ 23.6 Definitions.

(a) *Operating units.* Bureaus and other organizational entities outside the Office of the Secretary charged with carrying out specified substantive functions (i.e., programs).

(b) *Organizational units.* The organizational units within the Department of Commerce are:

Office of the Secretary
Bureau of Economic Analysis
Economic Development Administration
Bureau of the Census
International Trade Administration
Minority Business Development Agency
National Bureau of Standards
National Oceanic and Atmospheric Administration
National Telecommunications and Information Administration
National Technical Information Service
Patent and Trademark Office
United States Travel and Tourism Administration

§ 23.7 Notice to Department of Commerce organizational units of implementation and procedures.

Following are roles and responsibilities for the program within the Department of Commerce.

(a) The Department Contact Person shall:

(1) Serve as the Department of Commerce's sole representative for ordering materials, including camera-ready negatives, from the National Center,

(2) Serve as the Department of Commerce's sole supplier of materials to Operating Units,

(3) Maintain a current list of personnel within each Operating Unit who are authorized to order materials,

(4) Notify Operating Units whenever permission to use information on a missing child has been withdrawn,

(5) Ensure that only current missing children materials are distributed to Operating Units, and that only those requests from authorized departmental representatives are filled,

(6) Prepare all required departmental reports on the program,

(7) Promulgate any departmentwide operating instructions deemed appropriate for the program, and

(8) Chair biannual meetings of departmental representatives to discuss the program and identify additional opportunities to use the missing children data with penalty mail.

(b) The Head of each Operating Unit (and for the Office of the Secretary, the Director of the Office of Administrative Services Operations), or his/her representative, shall:

(1) Designate a single person to act as the Operating Unit's representative to the Department for requesting and controlling missing children materials and receiving notification to withdraw materials from use (an alternative may be designated to act in the representative's absence),

(2) Provide the Department Contact Person with the name, title, telephone number, and room number of the Operating Unit's representative for the program (and also for the alternate, if one is designated), and notify the Department of changes when they occur,

(3) Ensure that the shelf-life of printed penalty mail materials containing missing children information is limited to a maximum of three months,

(4) Ensure that information on a child is not used once permission has been withdrawn and the shelf-life for the material would keep the information available for greater than 90 days after the date that permission to use it was withdrawn,

(5) Direct that the Operating Unit representative (or alternate) order missing children information, as appropriate, only from the Department Contact Person,

(6) Comply with policies, procedures, and operating instructions issued by the Department,

(7) Maintain necessary information to prepare required reports and submit them in accordance with requirements,

(8) Provide only current camera-ready and other photographic and biographical materials to printers, including those at the Administrative Support Centers, and

(9) Otherwise determine and control the use of missing children materials and information by the Operating Unit.

(c) The Director of each Administrative Support Center, or his/her representatives, shall:

(1) Cooperate with serviced Operating Units to promote the use of missing children information on penalty mail,

(2) As directed by an Operating Unit, utilize camera-ready and other photographic and biographical material provided by the Operating Unit in preparation of material for use with penalty mail, and

(3) Assure that any printing performed or procured under its direction is in accordance with the type of material and the manner of presentation as prescribed in this regulation.

Dated: December 18, 1986.

Hugh L. Brennan,

Director, Procurement and Administrative Services.

[FR Doc. 86–28913 Filed 12–23–86; 8:45 am]

BILLING CODE 3510–FB–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9189]

Detroit Auto Dealers Association, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

AGENCY: Consent orders.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, the Federal Trade Commission Committee has issued three consent orders prohibiting, among other things, certain Detroit, Mich.-area Chevrolet, Chrysler-Plymouth and Cadillac associations, dealerships and dealers from conspiring to not advertise in the classified

sections of newspapers or to not advertise vehicle at all.

DATES: Complaint issued Dec. 29, 1984. Decisions issued Dec. 3, 1986.[1]

FOR FURTHER INFORMATION CONTACT: FTC/A–2105, Richard B. Smith, Washington, DC 20580. (202) 326–2713.

SUPPLEMENTARY INFORMATION: On Wednesday, Aug. 20, 1986, there was published in the **Federal Register**, 51 FR 29660, a proposed consent agreement with analysis In the Matter of Detroit Auto Dealers Association, Inc., et al., (Chevrolet), and on Friday, Sept. 12, 1986, there was published in the **Federal Register**, 51 FR 32485, a proposed consent agreement with analysis In the Matter of Detroit Auto Dealers Association, Inc., et al. (Chrysler-Plymouth and Cadillac), for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered three orders to cease and desist, as set forth in the proposed consent agreements, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Coercing and Intimidating: § 13.345, Competitors; § 13.367, Members. Subpart—Combining or Conspiring: § 13.384, Combining or conspiring, § 13.388, To control allocation and solicitation of customers; § 13.390, To control employment practice; § 13.395, To control marketing practices and conditions. Subpart—Corrective Actions and/or Requirements: § 13.533, Corrective actions and/or requirements; § 13.533–45, Maintain records; § 13.533–50, Maintain means of communication. Subpart—Cutting Off Access To Customers and Market: § 13.565, Interfering with advertising mediums; 13.570, Interfering with competitors' bids or price quotations.

[1] A single Complaint was issued against all respondents. Three separate Decisions and Orders with the same docket number were issued simultaneously against associations, dealerships, and dealers for: (1) Chevrolet; (2) Chrysler-Plymouth; and (3) Cadillac. Copies of the Complaint and the Decisions and Orders are available from the Commission's Public Reference Branch, H-130, 6th St. & Pa. Ave., NW., Washington, DC 20580.

Subpart—Disseminating Advertisements, Etc.: § 13.1043, Disseminating advertisements, etc.

List of Subjects in 16 CFR Part 13

Advertising, Motor vehicles, Trade practices.

(Sec. 6, Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 86–28839 Filed 12–23–86; 8:45 am]

BILLING CODE 6750–01–M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Parts 193 and 561

[OPP–300120A; FRL–3131–6]

Revocation of DDT and TDE Food and Feed Additive Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document (1) revokes the food and feed additive regulations for residues of the insecticide DDT [a mixture of 1,1,1-trichloro-2,2-bis(*p*-chlorophenyl)ethane and 1,1,1-trichloro-2-(*o*-chlorophenyl)-2-(*p*-chlorophenyl)ethane] and its degradation products, TDE [or DDD (1,1-dichloro-2,2-bis (*p*-chlorophenyl) ethane)] and DDE [1,1-dichloro-2,2-bis (*p*-chlorophenyl)ethylene]; (2) revokes the feed additive regulation established specifically for the residues of TDE; (3) lists the action levels EPA is recommending to the Food and Drug Administration (FDA) to replace the revoked food and feed additive regulations; and (4) lists EPA's recommendations to FDA regarding existing action levels for certain processed food and feed. This rule was initiated by the Environmental Protection Agency to remove pesticide food and feed additive regulations for which related registered uses have been cancelled. A related document, appearing elsewhere in this issue of the **Federal Register**, revokes tolerances for residues of DDT, its degradation products, TDE and DDE, and the tolerances specifically for residues of TDE.

EFFECTIVE DATE: Effective on December 24, 1986.

ADDRESS: Written objections, identified by the document control number [OPP–300120A], may be submitted to the: Hearing Clerk, Environmental Protection Agency, Rm. 3708 (A–110), 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Patricia Critchlow, Registration Division (TS–767), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703–557–1806).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of March 13, 1985 (50 FR 10070), which (1) proposed the revocation of the food and feed additive regulations for residues of the insecticide DDT and its degradation products, TDE and DDE; and (2) proposed the revocation of the feed additive regulation established specifically for the residues of TDE.

The March 13 **Federal Register** notice also listed the action levels which EPA intended to recommend to the Food and Drug Administration (FDA) to replace the food and feed additive regulations once the rule revoking the regulations was final. The action levels would cover unavoidable residues which can continue to occur in the processed food and feed commodities because of the persistence of DDT, its degradation products, and TDE in the environment. The notice also listed EPA's intended recommendations to FDA regarding retention of existing DDT and TDE action levels for processed food and feed commodities for which no food/feed additive regulations were originally set and which may contain residues of the pesticides because of environmental contamination.

A number of comments were submitted regarding the proposed revocation of DDT and TDE tolerances and food/feed additive regulations. These comments are discussed in a related document [OPP–300119A], appearing elsewhere in this issue of the **Federal Register**, which revokes the tolerances in 40 CFR Part 180 for residues of the insecticide DDT, its degradation products TDE and DDE, and the tolerances established specifically for residues of TDE.

Because of comments received regarding the action level of 5 ppm in fresh and processed (smoked, frozen, canned) fish, EPA has decided to make no recommendation at this time regarding the current DDT action level in fish. When EPA has accumulated more data and studied the situation thoroughly, the Agency will reassess the fish action level and determine what further action to take. This matter is discussed in more detail in the related **Federal Register** document [OPP–300119A].

Based on the information considered by the Agency and discussed in detail in the **Federal Register** document of March 13 (50 FR 10070), which proposed revocation of food and feed additive regulations for DDT and its degradation products TDE and DDE, and for TDE, the Agency is hereby revoking (1) all existing food/feed additive regulations in 21 CFR 193.110, 193.120, and 561.120 for DDT and its degradation products TDE and DDE; (2) the existing feed additive regulation in 21 CFR 561.370 established specifically for residues of TDE; and (3) the food additive regulation in 21 CFR 193.450 for combined residues of toxaphene and DDT in crude soybean oil.

EPA is recommending to FDA the following action levels for the sum of DDT, TDE, and DDE residues, expressed in parts per million (ppm), to replace the following food additive regulations which are being revoked for residues of DDT, DDT's degradation products, and TDE:

TABLE 1.—RECOMMENDED ACTION LEVELS

Commodities	Food additive limitations (ppm) being revoked		Recommended action levels (ppm) DDT/TDE/DDE
	DDT	TDE	
Hops (dried)	80	.....	(1)
Manufactured dairy products	[2] 1.25	.....	(3)
Peppermint oil	100	.....	1
Soybean oil (crude)	[4] 6	.....	1
Spearmint oil	100	.....	1
Tomato pomace (dried, for use in dog and cat food)	[5] 100	[6] 100	0.5

[1] Covered by the 0.1 ppm action level recommended to replace the tolerance in hops (fresh).

[2] Milk-fat basis.

[3] Covered by the 1.25 ppm action level in milk-fat recommended to replace the tolerance in milk.

[4] Includes the food additive level of 6 ppm DDT indicated in the food additive regulation of 12 ppm for combined residues of DDT and toxaphene in crude soybean oil; see 21 CFR 193.450 (toxaphene).

[5] If residues of TDE (DDD) are also present, the total of both such chlorinated compounds shall not exceed 100 ppm.

[6] If residues of DDT are also present, the total of both such chlorinated compounds shall not exceed 100 ppm.

EPA is recommending to FDA retention of the following action level for the sum of DDT, TDE, and DDE residues:

TABLE 2—ACTION LEVEL TO REMAIN IN EFFECT

Commodity	Existing and Recommended Action Level (ppm) DDT/TDE/DDE
Animal feed (processed)	0.5

The proposal to revoke these food/feed additive regulations recommended replacement action levels of 0.1 ppm for residues of DDT and its degradation products in dried hops and 1.25 ppm (on a milk-fat basis) for residues in manufactured dairy products. FDA has indicated that separate action levels for the processed products are not necessary. Since the concentration of residues is not expected to result from processing, the existing action level for residues in fresh fish and the recommended replacement action levels for residues in the fresh hops and raw milk will automatically apply to the related processed products. Revocation of the existing tolerances in fresh hops and raw milk and discussion of the replacement action levels for these commodities are included in the related **Federal Register** document [OPP–300119A]. As discussed above, the Agency is not recommending the setting of a replacement action level for processed fish at this time.

Any person adversely affected by this rule revoking the food and feed additive regulations may, within 30 days after the date of publication of this regulation in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

This document has been reviewed by the Office of Management and Budget as required by Section 3 of Executive Order 12291.

In order to satisfy requirements for analysis as specified by Executive Order 12291 and the Regulatory Flexibility Act, the Agency has analyzed the costs and benefits of the revocation of the food and feed additive regulations for DDT and TDE. This analysis is available for public inspection in Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Executive Order 12291

As explained in the proposal published on March 13, 1985, the Agency has determined, pursuant to the requirements of Executive Order 12291, that the revocation of the food and feed additive regulations in question will not cause adverse economic impacts on significant portions of U.S. enterprises.

Regulatory Flexibility Act

This rulemaking has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354; 94 Stat. 1164, 5 U.S.C. 601 *et seq.*) and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations. The reasons for this conclusion are discussed in the March 13, 1985 proposal.

List of Subjects in 21 CFR Parts 193 and 561

Food additives, Animal feeds, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 15, 1986.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 193—[AMENDED]

Therefore, 21 CFR is amended as follows:

1. In Part 193:

a. The authority citation for Part 193 continues to read as follows:

Authority: 21 U.S.C. 346a.

§ 193.110 [Removed]

b. Section 193.110 is removed.

§ 193.120 [Removed]

c. Section 193.120 is removed.

d. Section 193.450 is revised to read as follows:

§ 193.450 Toxaphene.

A tolerance of 6 parts per million is established for residues of the insecticide toxaphene (chlorinated camphene containing 67 to 69 percent chlorine) in crude soybean oil when present therein as a result of the application of this insecticide to the growing soybean crop.

PART 561—[AMENDED]

2. In Part 561:

a. The authority citation for Part 561 continues to read as follows:

Authority: 21 U.S.C. 346a.

§ 561.120 [Removed]

b. Section 561.120 is removed.

§ 561.370 [Removed]

c. Section 561.370 is removed.

[FR Doc. 86-28743 Filed 12-23-86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8116]

Accelerated Cost Recovery System—Retirement-Replacement-Betterment (RRB) Property

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the cost recovery of retirement-replacement-betterment (RRB) property under the Accelerated Cost Recovery System (ACRS). Changes to the applicable law made by the Economic Recovery Tax Act of 1981 (ERTA), are reflected in this document. These regulations provide the guidance necessary for compliance with the law.

DATES: The regulations are effective for eligible property placed in service before January 1, 1985.

FOR FURTHER INFORMATION CONTACT: Ada S. Rousso of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T), telephone 202-566-3287 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On February 16, 1984, the Federal Register (49 FR 5940) published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 168 of the Internal Revenue Code of 1954 (Code). The amendments were proposed to conform the regulations to sections 201 and 203 of the Economic Recovery Tax Act of 1981 (Pub. L. 97-34; 95 Stat. 203, 221), sections 205 and 206 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248; 96 Stat. 427, 431), and section 102 of the Technical Corrections Act of 1982 (Pub. L. 97-448; 96 Stat. 2367). The Service received a number of written comments responding to the notice of proposed rulemaking. One of those comments responded to the special rules for retirement-replacement-betterment (RRB) property. A public hearing was held on May 21, 1984. The Service believes it is necessary to adopt § 1.168-5(a) of the proposed amendments (relating to the cost recovery of RRB property) at this time in order to provide the public with the guidance found in that part of the amendments. However, the Service emphasizes that the unadopted parts of the proposed amendments are not being withdrawn. The balance of the proposed amendments will be adopted at a later date. Accordingly, after consideration of the comments, those proposed amendments as revised by this document are adopted by this Treasury decision.

Summary of Comments

Code section 168(f)(3)(A) and proposed § 1.168-5(a)(1)(i) contain a special transitional rule for RRB replacement property placed in service before January 1, 1985. Proposed § 1.168-5(a)(1)(ii) further provides that the transitional rule does not apply to any taxpayer who did not use the RRB method of depreciation under section 167 as of December 31, 1980. The commentator wrote that denying the transitional rule to such a taxpayer is not supported by either the statute or its legislative history.

In repealing the RRB method of depreciation, Congress generally intended that all property placed in service after December 31, 1980, would be subject to the ACRS. This special transitional rule for RRB replacement property placed in service before January 1, 1985, was intended to apply only in the case of property that would have been expensed had the RRB method not been repealed. Allowing transitional relief to taxpayers who did not use the RRB method of depreciation prior to January 1, 1981, would thus thwart Congressional intent. Accordingly, no change has been made to § 1.168-5(a)(1)(ii) in the final regulations.

In addition, § 1.168-5(a)(4) of the proposed regulations provides a rule for the recovery of the adjusted basis of RRB property as of December 31, 1980. That rule has been clarified in the final regulations to provide that if a taxpayer has consistently used the RRB method of depreciation for all periods after February 28, 1913, the adjusted basis of RRB property as of December 31, 1980, is not required to be reduced for depreciation sustained prior to March 1, 1913.

Non-Applicability of Executive Order 12291

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required.

Regulatory Flexibility Act

Although a notice of proposed rulemaking which solicited public comments was issued, the Internal Revenue Service concluded when the notice was issued that the regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 did not apply. Accordingly, the final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these regulations is Ada S. Rousso of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

List of Subjects in 26 CFR 1.61-1—1.281-4

Income taxes, Taxable income, Deductions, Exemptions.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

PART 1—INCOME TAX

Paragraph 1. The authority for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

§ 1.168-1 [Redesignated as § 1.168A-1]

Par. 2. Section 1.168-1 is redesignated as § 1.168A-1. Section 1.168A-1 as so redesignated is amended as follows:

§ 1.168A-1 [Amended]

1. Paragraph (a) is amended by removing "§ 1.168-5" and "§ 1.168-2" from the second and third sentences and inserting "§ 1.168A-5" and "§ 1.168A-2", respectively, in lieu thereof.

2. Paragraph (c) is amended by removing "§ 1.168-6" from the last sentence and inserting "§ 1.168A-6" in lieu thereof.

§ 1.168-2 [Redesignated as § 1.168A-2 and Amended]

Par. 3. Section 1.168-2 is redesignated as § 1.168A-2. Section 1.168A-2 as so redesignated is amended by removing "§ 1.168-1" from the second sentence of paragraph (a) and inserting "§ 1.168A-1" in lieu thereof.

§ 1.168-3 [Redesignated as § 1.168A-3]

Par. 4. Section 1.168-3 is redesignated as § 1.168A-3.

§ 1.168-4 [Redesignated as § 1.168A-4]

Par. 5. Section 1.168-4 is redesignated as § 1.168A-4.

§ 1.168-5 [Redesignated as § 1.168A-5 and Amended]

Par. 6. Section 1.168-5 is redesignated as § 1.168A-5. Section 1.168A-5 as so redesignated is amended by substituting "§ 1.168A-6" for "§ 1.168-6" in the last sentence of paragraph (a) (3).

§ 1.168-6 [Redesignated as § 1.168A-6 and Amended]

Par 7. Section 1.168-6 is redesignated as § 1.168A-6. Section 1.168A-6 as so redesignated is amended by substituting "§ 1.168A-5" for "§ 1.168-5" wherever it appears.

§ 1.168-7 [Redesignated as § 1.168A-7 and Amended]

Par. 8. Section 1.168-7 is redesignated as § 1.168A-7 and amended by substituting "§ 1.168A-5" for "§ 1.168-5" wherever is appears.

Par 9. Redesignated sections 1.168A-1 through 1.168A-7 will be added just after § 1.168(j)-1 and before § 1.169-1.

Par. 10. Section 1.168-5 is added immediately following § 1.167(m)-1 to read as follows:

§ 1.168-5 Special rules.

(a) *Retirement-replacement-betterment (RRB) property—(1) RRB replacement property placed in service before January 1, 1985.* (i) Except as provided in paragraph (a)(1)(ii) of this section, the recovery deduction for the taxable year for retirement-replacement-betterment (RRB) replacement property (as defined in paragraph (a)(3) of this section) placed in service before January 1, 1985, shall be (in lieu of the amount determined under section 168(b)) an amount determined by applying to the unadjusted basis (as defined in section 168(d)(1) and the regulations thereunder) of such property the applicable percentage determined in accordance with the following table:

If the recovery year is:	And the year the property is placed in service is:			
	1981	1982	1983	1984
	The applicable percentage is:			
1	100	50	33	25
2		50	45	38
3			22	25
4				12

(ii) The provisions of paragraph (a)(1)(i) of this section do not apply to any taxpayer who did not use the RRB method of depreciation under section 167 as of December 31, 1980. In such case, RRB replacement property placed in service by the taxpayer after December 31, 1980, shall be treated as other 5-year recovery property under section 168.

(2) *RRB replacement property placed in service after December 31, 1984.* RRB replacement property placed in service after December 31, 1984, is treated as other 5-year recovery property under section 168.

(3) *RRB replacement property defined.* RRB replacement property, for purposes of section 168, means replacement track material (including rail, ties, other track material, and ballast) installed by a railroad (including a railroad switching or terminal company) if—

(i) The replacement is made pursuant to a scheduled program for replacement.

(ii) The replacement is made pursuant to observations by maintenance-of-way personnel of specific track material needing replacement.

(iii) The replacement is made pursuant to the detection by a rail-test car of specific track material needing replacement, or

(iv) The replacement is made as a result of a casualty.

Replacements made as a result of a casualty shall be RRB replacement property only to the extent that, in the case of each casualty, the replacement cost with respect to the replacement track material exceeds $50,000.

(4) *Recovery of adjusted basis of RRB property as of December 31, 1980.* The taxpayer shall recover the adjusted basis of RRB property (as defined in section 168(g)(6)) as of December 31, 1980, over a period of not less than 5 years and not more than 50 years, using a rate of recovery consistent with any method described in section 167(b), including the method described in section 167(b)(2), switching to the method described in section 167(b)(3) at a time to maximize the deduction. For purposes of determining the recovery allowance under this subparagraph, salvage value shall be disregarded and, in the case of a taxpayer that depreciated RRB property placed in service before January 1, 1981, using the RRB method consistently for all periods after February 28, 1913, the adjusted basis of RRB property is the adjusted basis for purposes of determining the deduction for retirements under the RRB method, with no adjustment for depreciation sustained prior to March 1, 1913.

(5) *RRB property (which is not RRB replacement property placed in service after December 31, 1980.* Property) placed in service by the taxpayer after December 31, 1980, which is not RRB replacement property and which, under the taxpayer's method of depreciation as of December 31, 1980, would have been depreciated by the taxpayer under the RRB method, is treated as other property under section 168.

(b)-(f) [Reserved].

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: December 5, 1986.

J. Roger Mentz,

Assistant Secretary of the Treasury.

[FR Doc. 86-28934 Filed 12-23-86; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Parts 1 and 602

[T.D. 8117]

Deposit of Estimated Income Tax by Certain Private Foundations and Tax-Exempt Organizations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides temporary regulations that revise the Federal tax deposit regulations relating to corporate estimated income tax to make them applicable to quarterly payments required by the Tax Reform Act of 1986 of unrelated business income tax imposed upon certain tax-exempt organizations and the net investment income excise tax imposed upon certain private foundations. These amendments affect certain tax-exempt organizations which have income subject to the tax upon unrelated business income imposed by section 511 and certain private foundations subject to the net investment income excise tax imposed by section 4940. The text of the temporary regulations set forth in this document serves as the comment document for the notice of proposed rulemaking published in the Proposed Rules section of this issue of the Federal Register.

DATES: These amendments are applicable for taxable years beginning after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: John A. Tolleris of the Legislative and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T), (202-566-3590, not a toll-free number).

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SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations regarding deposits under section 6302(c) of the Internal Revenue Code of 1986 of tax upon net investment income and unrelated business income of certain private foundations and tax-exempt organizations. Since section 1542 of the Tax Reform Act of 1986 revises the rules for payments of such taxes effective for taxable years beginning after December 31, 1986, there is a need for immediate guidance relating to the manner and time for making these payments so private foundations and tax-exempt organizations can comply with the revisions made by the Tax Reform Act of 1986. These regulations will remain in effect until superseded by final regulations on this subject.

Explanation of Provisions

Prior to the enactment of the Tax Reform Act of 1986, tax-exempt organizations were required to pay the tax imposed by section 511 upon their unrelated business income, and some private foundations were required to pay the excise tax imposed by section 4940 upon their net investment income, annually with their returns. Section 1542 of the Tax Reform Act of 1986 provides that private foundations and tax-exempt organizations must make quarterly estimated payments of the tax on net investment income or of the tax on unrelated business income, respectively, under the same rules that currently require quarterly estimated payments of corporate income taxes.

This Treasury decision provides that private foundations and tax-exempt organizations shall pay their quarterly estimated taxes in the same manner and time as corporations pay their quarterly estimated taxes by making a deposit of their quarterly taxes through the Federal Tax Deposit (FTD) system by the due dates for paying estimated taxes.

Nonapplicability of Executive Order 12291

The Commissioner of Internal Revenue has determined that this rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Regulatory Flexibility Act

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, the temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Paperwork Reduction Act

The Collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. The requirements have been approved by OMB under control number 1545-0257.

Drafting Information

The principal author of this regulatory amendment is John A. Tolleris of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects

26 CFR 1.6302-1—1.6302-2

Income taxes, Administration and procedure, Tax depositaries.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 1 and 602 are amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805.* * * Section 1.6302-1 also issued under 26 U.S.C. 6302 (c).* * *

Par 2. New § 1.6302-1T is added immediately after § 1.6302-1 to read as follows:

§ 1.6302-1T Use of Government depositaries in connection with corporation income and estimated income taxes and certain taxes of tax-exempt organizations (temporary).

(a) *Requirement.* A corporation (and, for taxable years beginning after December 31, 1986, any organization subject to the tax imposed by section 511, and any private foundation subject to the tax imposed by section 4940) shall deposit with an authorized depositary of Federal taxes all payments of tax imposed by chapter 1 of the Code (or treated as so imposed by section 6154 (h)), including any payments of estimated tax, on or before the date otherwise prescribed for paying such tax. This paragraph does not apply to a foreign corporation or entity which has no office or place of business in the United States.

(b) *Cross-references.* For certain rules regarding the depositary forms to be used and their procurement see paragraphs (b) and (c) of § 1.6302-1. For provisions relating to the penalty for failure to make a deposit within the prescribed time see § 301.6656-1 of this chapter (Regulations on Procedure and Administration).

PART 602—[AMENDED]

Par. 3. The authority citation for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 4. Section 602.101 (c) is amended by inserting in the appropriate place in the table "§ 6302-1 . . . 1545-0257".

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: December 17, 1986.

J. Roger Mentz,

Assistant Secretary of the Treasury.

[FR Doc. 86-28935 Filed 12-23-86; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Parts 1 and 602

[T.D. 8113]

Withholding Upon Dispositions of U.S. Real Property Interests by Foreign Persons

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations relating to the withholding that is required upon the disposition of a U.S. real property interest by a foreign person. These regulations are necessary to provide the public with guidance with respect to the withholding requirements of section 1445 of the Internal Revenue Code of 1954, as added by the Tax Reform Act of 1984. These regulations affect purchasers of U.S. real property interests and entities with foreign interest-holders that dispose of U.S. real property interests. It also contains amendments to Income Tax Regulations relating to substantive income tax liability on such a disposition.

DATES: The regulations are effective with respect to dispositions of U.S. real property interests after January 23, 1987. However, if a person who is treated as a withholding agent under § 1.1445-8T of the Temporary Regulations exercises the option to apply such regulations to a distribution prior to the general 30 day effective date, then, solely for purposes of applying § 1.1445-8T, this regulation may be applied on the date § 1.1445-8T is applied with respect to that distribution.

FOR FURTHER INFORMATION CONTACT: Jeffrey Dorfman of the Office of Associate Chief Counsel (International) within the Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attn: CC:INTL:Br5); Telephone 202-566-3407 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Section 1445 was added to the Internal Revenue Code by section 129 of the Tax Reform Act of 1984. Technical corrections were made by sections 311(b)(4) and 1810(f) of the Tax Reform Act of 1986. On December 31, 1984, proposed additions to the Income Tax Regulations (26 CFR Part 1) under section 1445 were published in the Federal Register (49 FR 50739) by cross-reference to Temporary Income Tax Regulations (26 CFR Part 1a) published the same day (49 FR 50667). A public hearing concerning the proposed regulations was held on January 17, 1986. After consideration of all the comments received, those regulations are revised and adopted by this Treasury Decision.

Regulations published under section 897 of the Internal Revenue Code were adopted by Treasury Decision 7999 (49 FR 50689). This Treasury Decision amends those regulations.

Explanation of Provisions

Amendments to §§ 1.897-1(c)(2)(iii), 1.897-1(d)(2)(i), 1.897-1(n), 1.897-2(b)(2)(v), 1.897-2(c)(4)(ii), 1.897-2(c) (5), 1.897-2(g)(3), 1.897-3(a), and 1.897-3(c)(4) of the Income Tax Regulations.

Section 1.897-1[c)(2)(iii] has been clarified to indicate that the rule therein stated applies to regularly traded interests [not to only stock].

With respect to production payments, § 1.897-1(d)(2)(i) provides that an interest in production payments described in section 636 does not generally constitute an interest in real property other than solely as a creditor. However, a right to production payments shall constitute an interest in real property other than solely as a creditor if it conveys a right to share in the appreciation in value of, or in the gross or net proceeds or profits generated by, the mineral property. Thus, the right to typical bank-type production payments is treated as an interest in real property other than solely as a creditor because it is an interest in proceeds or profits, even though the production payment holder may have no right to share in the appreciation in value of the mineral property. Accordingly, § 1.897-1(d)(2)(i) has been amended.

In response to public comment, the definition of "regularly traded" contained in § 1.897-1(n) has been amended. The amendment provides that stock of a corporation which is described in section 851(a)(1) of the Internal Revenue Code (certain mutual funds and unit investment trusts) and units of a unit investment trust registered under the Investment Company Act of 1940, (15 U.S.C. 80 a-1 to 80 b-2), shall be treated as stock of a corporation which is regularly traded on an established securities market. The rationale for this change is that trading of interests in certain entities that are mutual funds (whether open end or closed end funds), unit investment trusts, or other investment vehicles described in section 851(a)(1) is sufficiently analogous to the trading of corporate stock on an established securities market to warrant identical treatment.

The definition of "regularly traded" contained in § 1.897-1(n) has also been clarified with respect to interests that are traded in bearer form on a foreign securities market. The rule provides that interests in a domestic entity that are traded on a foreign exchange shall not be considered to be regularly traded on an established securities market unless such interests are traded in registered form and are registered pursuant to the provisions of the Securities Exchange Act of 1934 (see, 15 U.S.C. 78). The reason for this change is that the Service cannot determine whether shares are regularly traded on a foreign exchange if they are traded in bearer form.

Section 1.897-2(b)(2)(v) has been substantially amended because its application was inconsistent with §§ 1.897-2(g)(1)(ii)(A) and § 1.897-2(g)(2)(ii). Thus, § 1.897-2(b)(2)(v) now provides a reference to §§ 1.897-2(g)(1)(ii)(A) and § 1.897-2(g)(2)(ii) with respect to the effect on interest holders of reliance on a statement issued by a corporation that made a determination as to whether it was a U.S. real property holding corporation under the provisions of § 1.897-2(b).

Typographical errors have been corrected in §§ 1.897-2(c)(4)(ii), 1.897-2(c)(5), 1.897-2(g)(3), 1.897-3(a), and 1.897-3(c)(4).

Amendments to § 1.897-2(h) of the Income Tax Regulations

Section 1.897-2(h)(1)(i) provides that a domestic corporation, any interest in which is known by the corporation to be held by a foreign person, must determine whether it is a U.S. real property holding corporation in accordance with the rules of that section. Section 1.897-2(h)(1)(ii) of the regulations provides that a domestic corporation, any interest in which is known to be held by a foreign person, that determines it is not a U.S. real property holding corporation on each of the applicable determination dates in a given taxable year must attach a statement to its income tax return, informing the Service that it is not a U.S. real property holding corporation. Section 1.897-2(i)(2) provides that with respect to taxable years ending after June 18, 1980, for which a return was filed before January 30, 1985, the statement required to be filed by paragraph (h)(1)(ii) of this section must be separately delivered to the Internal Revenue Service office where the corporation filed its most recent income tax return no later than April 1, 1985.

Commentators have raised two problems with respect to these regulations. First, no method is provided for corporations that have failed to provide statements required under § 1.897-2(h)(1)(ii) to remedy this failure. Second, the regulations may be unclear with respect to whether a corporation that failed to file the required statement with respect to taxable years ending after June 18, 1980, for which a return was filed before January 30, 1985, can file statements with respect to subsequent years.

In view of these problems, the regulations under § 1.897-2(h) have been revised. Section 1.897-2(h)(1) now requires a domestic corporation to provide notice (regarding whether such corporation is or has been a U.S. real property holding corporation) to a foreign interest holder within a reasonable period after receipt of an inquiry by such foreign interest holder. Annual filing of a notice with the Service is no longer required. However, in order for the statement provided to the foreign interest holder to be valid, the corporation must deliver notice to the Service (as provided in § 1.897-2(h)(2)) on or before the 30th day after the statement is mailed to the interest holder that requested it. As in the prior regulations, the requirements of § 1.897-2(h) are not applicable to domestically controlled real estate investment trusts and to corporations in which any class

of stock is regularly traded on an established securities market. Section 1.897–2(h)(4) provides that a corporation, any interest in which is known to be held by a foreign person, which determines that it is not a U.S. real property holding corporation on each of the applicable determination dates in a given taxable year may voluntarily attach to its income tax return for that year a statement informing the Service of its determination. The transition rules in § 1.897–2(i) have also been amended.

Section 1.1445–1: General Rules

Commentators suggested that the Service clarify the amount subject to withholding with respect to joint transferors. Accordingly, § 1.1445–1(b)(2) provides that the amount subject to withholding in the case of a joint transfer of a U.S. real property interest by one or more foreign persons and one or more non-foreign persons shall be determined by allocating the amount realized based upon the capital contribution of each transferor with respect to the property and by aggregating the amounts allocated to foreign persons. A special rule, which overrides the general rule, has been provided for joint transferors that are husband and wife. Where a husband and wife are joint transferors their total capital contribution is aggregated and each is deemed to have contributed 50 percent of the aggregated amount. Section 1.1445–1(f)(3)(iv) provides rules regarding the crediting of amounts withheld among joint foreign transferors.

In response to public comment, rules have been provided governing withholding with respect to options to acquire a U.S. real property interest. These rules are contained in § 1.1445–1(b)(3).

Section 1.1445–1(c)(1) provides the general rule regarding reporting and paying over withheld amounts. In response to several comments, the time period for reporting and paying over withheld amounts has been extended from 10 days to 20 days.

Section 1.1445–1(c)(2) provides rules concerning delayed reporting and payment pending application for a withholding certificate. The regulations have been modified in the following manner in response to public comment.

(1) To address concerns that the terms of a sale can change significantly within 30 days prior to a transfer of a U.S. real property interest, the regulations no longer require that an application be submitted to the Service at least 30 days prior to the transfer. Under § 1.1445–1(c)(2)(i)(A), an application need only be submitted on the day of or any time prior to the transfer for delayed reporting and payment to apply.

(2) With respect to reporting and paying over withheld amounts pending a determination by the Service on an application for a withholding certificate, the regulation draws a distinction regarding applications submitted by a transferee of a U.S. real property interest and applications submitted by a transferor. Where the applicant is a transferee, the transferee must report and pay over withheld amounts (or a lesser amount as determined by the Service) by the 20th day following the Service's final determination (defined as the day the withholding certificate or notice of denial is mailed to the transferee). An applicant that is a transferor of a U.S. real property interest must provide notice to a transferee prior to the transfer that an application for a withholding certificate has been submitted to the Service. While the transferee must still withhold 10 percent of the amount realized on the transfer, the transferee need not report and pay over such amount (or a lesser amount determined by the Service) until the 20th day after the Service's final determination. For this purpose, the definition of the Service's "final determination" is the day upon which a copy of the withholding certificate or notice of denial issued by the Service is mailed.

One commentator suggested that an appeal procedure be available if an application for reduced withholding is rejected. This suggestion was not adopted because it is not mandated by section 1445 and would impose an undue administrative burden on the Service. Several commentators suggested that the anti-abuse rule of § 1.1445–1T(c)(2)(iii) of the Temporary Regulations be eliminated. This was rejected because the rule is a needed safeguard against abusive delays in complying with section 1445(a).

Contents of Forms 8288 and 8288-A (§1.1445–1(d))

Several comments were received regarding Forms 8288 and 8288A. The first comment suggested the elimination of the requirement that the name of the transferor be identified. This was rejected because the Service must know the identity of transferors in order to properly credit amounts withheld against tax liability arising from the transfer. The second comment suggested that an individual transferor or transferee be able to provide a mailing address rather than a home address. This suggestion was adopted in part. The regulations now provide that, in addition to a home address, the transferor may specify a mailing address to which the stamped copy of the Form 8288–A is to be sent. A third suggestion was that the requirement that the "nature of an improvement" be reported on Forms 8288 and 8288A be deleted. We have responded to this suggestion by requiring that the nature of only substantial improvements be reported on Forms 8288 and 8288A. Finally, it was suggested that the regulations delete §1.1445–1(d)(1)(vii) which authorizes Forms 8288 and 8288A to include "such other information as the Commissioner may require." This was rejected because the Service may need flexibility in the future with respect to obtaining other information that may be needed to administer section 1445.

Penalties and Interest Imposed on Transferee (§ 1.1445–1(e))

Section 1.1445–1(e) has been expanded to clarify the liability under section 1461 of transferees who fail to withhold and pay over tax under section 1445, and to coordinate that liability with the transferor's tax liability. New § 1.1445–5(e)(3) clarifies that pursuant to section 1463 the liability for tax and penalties generally terminates when the transferor's liability with respect to the transfer has been satisfied. The transferee must provide sufficient information to enable the Service to determine that the transferor's liability has been satisfied.

Section 1.1445–1(e)(3) also clarifies that interest is due from and payable by the transferee, under section 6601 and the regulations thereunder, on the amount of the withholding tax that should have been, but was not, timely withheld and paid over by the transferee. Liability for interest for failure to withhold and pay over tax is not excused by a subsequent payment of tax by the transferor, since the transferee's liability to withhold and pay over tax is not dependent on the transferor's actual tax liability. However, the regulations provide that if the transferor's tax liability is in fact paid (or established to be zero) then the transferee's liability will also be deemed to have been satisfied as of that date. Thus, the transferee will be held liable for the payment of interest with respect to the period between the date on which the transferee was required to pay over tax under section 1445 and the date on which that liability is deemed to be satisfied by reason of the transferor's payment of tax.

Effect of Withholding on Transferor (§ 1.1445–1(f))

Section 1.1445–1(f) requires a stamped copy of Form 8288A to be attached to a transferor's return in order to claim credit for withheld taxes. One commentator raised an issue concerning the effect of the failure of the transferee to remit withheld funds to the Service with the result that the transferor would never receive a stamped copy of Form 8288A. To address this concern, § 1.1445–1(f) now provides that if a stamped copy of Form 8288A is not received by the transferor, the transferor may establish the amount of tax withheld by the transferee by attaching to its return substantial evidence (*e.g.*, closing documents) of such amount.

Finally, one commentator suggested that a foreign person should not be required to file a return if withholding under section 1445 fully satisfies any substantive tax liability. This was rejected. Withholding under section 1445 is not a substantive tax and taxpayers must file a return to establish their correct liability.

Definitions (§ 1.1445–1(g))

With respect to the definition of amount realized, commentators suggested that, (1) it should be made clear that "cash paid or to be paid" includes only principal and not interest (stated or unstated) or original issue discount, and (2) the normal expenses of sale should be taken into account. While the former suggestion was adopted, the latter was not on the basis that the statutory language of section 1445(a) did not allow this result.

A clarification was also made in the definition of "date of transfer" to indicate that payments made pursuant to a "contract for deed" constitute payments of consideration.

Section 1.1445–2 Situations Where No Withholding Required; Transferor Not a Foreign Person (§ 1.1445–2 (b))

Section 1.1445–2(b)(1) provides that a transferee may employ "other means" (rather than a certification of non-foreign status) to determine the non-foreign status of the transferor. One commentator suggested that, because the transferee may employ "other means," a transferee would not be considered a person "required" to deduct and withhold tax under section 1461 in the event such transferee refused to employ "other means" and demanded a withholding certificate. In response to this comment the rules under §§ 1.1445–2(b)(1) and 1.1445–5(b)(3) have been clarified to indicate that a transferee need not employ "other means" to fall within the ambit of section 1461.

Section 1.1445–2(b)(2)(ii) requires a foreign corporation that made a section 897(i) election to attach a copy of the acknowledgement to the certification of non-foreign status. A commentator suggested that this requirement be replaced with one requiring that a transferee provide only a sworn statement that a section 897(i) election has been filed. This comment was rejected because the copy of the acknowledgement provides assurance that the section 897(i) election has, in fact, been filed with the Service. In addition, the regulations have been clarified to indicate that the acknowledgement provided by the Service must state that the information required by § 1.897–3 has been determined to be complete.

One commentator suggested that withholding resulting from a belated notice of false certification under § 1.1445–2T(b)(4)(iv) of the Temporary Regulations not be made with respect to an unrelated party that has become a holder in due course of a transferee's obligation. This suggestion has been adopted by indicating in § 1.1445–2(b)(4)(iv) that withholding is to take place only with respect to amounts to be paid to the transferor.

Transferred Property Not a U.S. Real Property Interest (§ 1.1445–2(c))

Section 1.1445–2(c)(2) concerns interests in publicly traded corporations. In response to public comment, rules have been adopted that allow certain dispositions to fall within the publicly traded exception where the disposition is incident to a public offering of stock.

Section 1.1445–2(c)(2) provides that the publicly traded exception does not apply to the acquisition from a single transferor (or related transferors) in a single transaction (or related transactions) of an interest described in § 1.897–1(c)(2)(iii)(B) or of similar interests in publicly traded partnerships or trusts. A commentator suggested that the rule was unclear in its application to a single transferee's acquisition of a number of interests, no one of which alone would be considered an interest described in § 1.897–1(c)(2)(iii)(B), from several transferors. This is clarified by indicating that the term "related" is defined pursuant to § 1.897–1(i). If the transferors are not related, a transferee would not aggregate the interests acquired in determining whether the 5 percent threshold of § 1.897–1(c)(2)(iii)(B) was exceeded.

The reference in § 1.1445–2T(c)(93) of the Temporary Regulations to the notice requirement of § 1.897–2(h)(1)(ii) required that a domestic corporation file timely notices of non-U.S. real propery holding corporation status with the Service as a condition precedent to providing a transferor with a certification that an interest in the corporation is not a U.S. real propery interest. A commentator indicated that if a domestic corporation failed to file timely notices, no method was provided to remedy the failure. The rules of § 1.897–2(h) have been substantially amended and this problem should not be significant under the amended rules.

Pursuant the section 1810(f)(2) of the Tax Reform Act of 1986, the regulations under § 1.1445–2(c)(3) and § 1.1445–5(b)(4)(iii)(A) have been clarified to indicate that a domestic corporation can issue a statement that an interest in the corporation is not a U.S. real property interest if such interest ceases to be a real property interest under section 897(c)(1)(B). Further, a rule regarding belated notice of a false statement has been added.

A commentator suggested that the regulations specifically allow a corporation's status as a non-U.S. real property holding corporation to be used as a basis for an early refund. This was rejected because the Service already has such authority under § 1445(c)(2) and § 1.1445-3(c)(4).

Exceptions to Withholding; Purchase of a Residence of $300,000 or Less (§ 1.1445–2(d)(1))

A commentator suggested that the definition of "residence" is unclear. This definition has been clarified to indicate that a U.S. real property interest is acquired for use as a residence if on the date of the transfer, the transferee has definite plans to reside at the property for at least 50 percent of the number of days that the property is used by any person during each of the first two 12-month periods following the date of the transfer. Days that the property will be vacant are not taken into account.

A suggestion that corporations, partnerships and trusts be allowed to purchase a "residence" was rejected as inconsistent with the intent of section 1445. A suggestion that the definition of a residence include the purchase of land with the intent to build a residence on such land in the future was also rejected for the same reason.

Coordination with Nonrecognition Provisions (§ 1.1445–2(d)(2))

Section 1.1445–2T(d)(2)(ii)(A) of the Temporary Regulations provides that the general rules regarding nonrecognition transactions contained in § 1.1445–2(d)(2)(i) do not apply if the

transferee and transferor are related persons within the meaning of § 1.897–1(i). Several commentators suggested that this rule be deleted because it has the effect of requiring withholding on most corporate reorganizations. This suggestion was adopted. Commentators also suggested that § 1.1445–2T(d)(ii)(B) of the Temporary Regulations be deleted. This suggestion was rejected because it is not believed that deletion of this rule should be considered until regulations under section 897 (d) and (e) are published. In the interim, taxpayers may request certificates of reduced withholding from the Service. Finally, comments that the "reason to know" standard of § 1.1445–2T(d)(ii)(C) of the Temporary Regulations be deleted were rejected. The "reason to know" standard is needed to insure that the transferor is in fact entitled to nonrecognition treatment, especially in the case of related party transfers.

Foreclosures (§ 1.1445–2(d)(3))

In response to numerous comments, the special foreclosure rules of § 1.1445–2(d)(3) have been substantially amended. The amendments take the perspective that a transferee in a foreclosure sale should be liable for withholding to the extent of the cash flow (with a limit of 10 percent of the amount realized on the transfer by the transferor) to the nonresident alien debtor.

The rules regarding transfers of a U.S. real property interest pursuant to a deed in lieu of foreclosure have been revised. Generally, withholding equal to 10 percent of the amount realized by the debtor/transferor on the transfer must be withheld by the transferee. However, no withholding is required if: (1) The transferee is the only person with a security interest in the property, (2) no cash or other property [other than incidental fees incurred with respect to the transfer) is paid, directly or indirectly, to any person with respect to the transfer, and (3) the notice requirements of § 1.1445–2(d)(3)(iii) are satisfied. If cash or other property is paid to any person, or a person other than the transferee has a security interest in the property, a certificate of reduced withholding may be requested.

Commentators have indicated that non-creditor purchasers at a foreclosure sale have no means of establishing the debts secured by the property and, thus, cannot determine the "excess amount" under § 1.1445–2T(d)(3)(i)(B). To remedy this problem, the new rules provide as follows. A transferee that acquires a U.S. real property interest in a foreclosure must withhold tax under the general rules of section 1445(a). However, if the transferee complies with certain notice requirements (see, § 1.1445–2(d)(3)(ii) and (iii)), the lesser of the amount withheld or the "alternative amount" (as later defined) need not be reported and paid over to the Service until the 20th day following the final determination by a court or trustee with jurisdiction over the foreclosure action regarding the distribution of the amount realized from the foreclosure.

The "alternative amount" is the entire amount, if any, determined by a court or trustee that accrues to the debtor/transferor out of the amount realized from the foreclosure sale. For this purpose, in determining the amount that accrues to the debtor/transferor, any security interest that is terminated, assumed by another person, or to which the property was subject is not taken into account. Any difference between the amount withheld at the time of the foreclosure sale and the amount to be reported and paid over to the Service should be transferred to the court or trustee with jurisdiction over the foreclosure action.

In order to inform the court or trustee with jurisdiction over the foreclosure action of the transferee's actions with respect to withholding under the special foreclosure rules, the transferee must give the court or trustee notice on the day the property is transferred. The information that must be reported to the court or trustee is set forth in § 1.1445–2(d)(3)(ii)(A). A transferee must also provide notice to the court or trustee regarding the amount that is reported and paid over to the Service. The information that must be reported is set forth in § 1.1445–2(d)(3)(ii)(B).

The general notice requirements with respect to the Service are set forth in § 1.1445–2(d)(3)(iii). A special rule was adopted to ameliorate the reporting requirements for lending institutions that are already required to report with respect to foreclosures. A person required under section 6050J to file Form 1099–A does not have to comply with the notice requirement of § 1.1445–2(d)(3)(iii)(A) if the alternative amount is zero. However, the reporting rules of § 1.1445–2(d)(3)(ii) must be complied with.

Section 1.1445–3 Adjustments to Amount Required To Be Withheld Pursuant to Withholding Certificate; General Rules. (§ 1.1445–3(a))

Section 1.1445–3(a) provides that the Internal Revenue Service has 90 days to respond to an application for a withholding certificate. Many applications have been substantially incomplete when submitted and, thus, require time consuming communication with the applicant and resulting significant delays before sufficient information is presented to the Service in order that action can be taken on the application. Accordingly, § 1.1445–3(a) has been clarified to indicate that the 90-day response period will not begin until an application for a withholding certificate is substantially complete. Clarification of the procedure involving applications for early refunds have also been made. Corresponding changes have been made in § 1.1445–6(a).

Applications for Withholding Certificate (§ 1.1445–3(b))

One commentator suggested that the regulations address the procedure an applicant should follow when the facts relevant to an application for a withholding certificate have changed. This suggestion has been adopted by the addition of new §§ 1.1455–3(f) and 1.1455–6(f).

Agreement for Payment of Tax (§ 1.1455–3(e))

Several commentators have suggested that, with respect to an agreement for the payment of tax under § 1.1445–3(e)(2)(ii) (which covers the amount of tax that would otherwise be required to be withheld pursuant to section 1445(a)), interest accrue from the date the withholding tax would otherwise be due (as opposed to the date the agreement has been entered into). This suggestion has been adopted.

Section 1.1445–3(e)(2)(iii) provides that an agreement for the payment of tax which covers the transferor's maximum tax liability must include agreement for the payment of an additional 25 percent of such liability as security for certain interest and penalties that may accrue. Several commentators suggested that the requirement of agreement to pay the additional 25 percent be deleted. This suggestion was rejected because the additional 25 percent is needed to secure the payment of interest and penalties which would accrue in any case in which the Service actually had to rely upon the security provided (*i.e.*, where the transferor fails to file an income tax return within the prescribed time period.)

Early Refunds (§ 1.1445–3(g))

The provisions regarding early refunds (formerly contained in § 1.1445–3T(f) of the Temporary Regulations) have been clarified to indicate that a request for an early refund may be made at any time prior to the date the transferor's tax return is due (without extensions). Corresponding clarification has been made in § 1.1445–6(g).

Section 1.1445–4 Liability of Agents; Duty To Provide Notice of False Certification or Statement to the Transferee (§ 1.1445–4(a))

Section 1.1445–5(b)(3)(ii) provides that a transferee may rely on a non-foreign certification for two years. A commentator suggested that, if an agent represents a transferor that is a foreign corporation which has provided a non-foreign certificate to a transferee prior to such agent's employment and without his knowledge, the agent should not be liable if the certification is false. This suggestion was adopted in § 1.1445–4(a)(2).

Definition of Transferor's Agent or Transferee's Agent (§ 1.1445–4(f))

Several amendments are made to the definition of transferor's agent and transferee's agent. In response to taxpayer comment, the exclusion for settlement officers and clerical personnel has been expanded to indicate that the obtaining of title insurance reports and reports concerning the condition of the real property (*e.g.*, termite reports) will not cause an escrow company (or any other person performing such tasks) to be considered an agent of the transferee or transferor. Further, the transmission of documents between the parties to the transaction will not cause a person to be considered an agent.

An exclusion from the term "agent" for the board of directors of a cooperative housing corporation and the governing body of a condominium association has been adopted for persons functioning exclusively in their capacity as directors with respect to the transaction. A person is not considered to be acting exclusively in his capacity as a director or governing agent with respect to the transaction, however, if such person provides any business advice relating to the merits of the transaction. A parallel exclusion has been provided for the managing agent of these entities.

Section 1.1445–5 Distributions by Entities Rules of General Application § 1.1445–5(b)(1)

The rules of § 1.1445–5T(b)(1) of the Temporary Regulations have been amended to clarify that if a transfer of a U.S. real property interest is exempt from withholding under the rules of § 1.1445–5, then no withholding is required under the general rules of section 1445(a) and § 1.1445–1.

Coordination With Nonrecognition Provisions (§ 1.1445–5(b)(2))

Section 1.1445–5(b)(2) requires an entity or fiduciary to determine whether gain is to be recognized under section 897 and the applicable nonrecognition provisions. One commenter suggested that an entity or fiduciary be allowed to rely on the foreign interest holder's representation that it is subject to a nonrecognition provision. This suggestion was rejected because the entity or fiduciary is in a better position to make this determination.

Interest Holder not a Foreign Person (§ 1.1445–5(b)(3))

One commentator suggested that the two-year period for reliance on a certification should be increased to three or even four years. This comment was rejected since the period begins to run following the close of the calendar year in which the certification is given and therefore already applies to three calendar years.

Public Offerings of Stock (§ 1.1445–5(b)(4)(ii)

In response to public comment, the rules regarding withholding on interests in publicly traded stock have been clarified with respect to initial public offerings of stock. Parallel rules appear in § 1.1445–2(c)(2).

Effect of Withholding (§ 1.1445–5(b)(7))

One commentator suggested that the regulations clarify the effect of withholding with respect to a disposition of a U.S. real property interest by a U.S. person. Accordingly, the regulations provide in § 1.1445–5(b)(7) that a U.S. person may credit any tax withheld under section 1445(e) against his U.S. income tax liability. Early refunds can also be obtained. Parallel rules appear in § 1.1445–1(f).

Effective Dates—Tiered Partnerships (§ 1.1445–5(b)(8)(vi))

In response to public comment, an effective date rule has been provided with respect to a tiered partnership. The rule provides that no withholding is required upon the disposition of a U.S. real property interest by a partnership which is directly owned, in whole or in part, by another partnership until the effective date of a Treasury Decision published under section 1445(e) providing rules governing this issue.

Dispositions of U.S. Real Property Interests by Domestic Partnerships, Trusts, and Estates (§ 1.1445–5(c)(1)); General rules

The final regulations concerning transactions subject to section 1445(e)(1) have been amended in accordance with sections 311(b)(4) and 1810(f)(4) of the Tax Reform Act of 1986.

Section 1.1445–5(c)(1)(ii) now provides the general rule that a partnership must withhold a tax equal to 34 percent (28 percent during a transition period) of each foreign partner's distributive share of the gain realized by the partnership upon the disposition of each U.S. real property interest. This rule does not apply, however, to dispositions by publicly traded partnerships, which are now subject to special rules set forth in § 1.1445–8T. Further, a partnership that is not publicly traded and that has more than 100 partners may elect to apply the large partnership rules of § 1.1445–5(c)(3).

The rules regarding withholding on a disposition of a U.S. real property interest by a domestic trust or estate have been amended to reflect the fact that a trust or estate is a taxable entity. Section 1.1445–5(c)(1)(iii) requires that a trust or estate establish an account (called the "U.S. real property interest account") in which the gains and losses realized from the disposition of U.S. real property interests during the taxable year of the trust or estate are aggregated. A fiduciary must withhold 34 percent (28 percent during a transition period) of any distribution to a foreign beneficiary that is attributable to the balance in the account on the day of the distribution. Distributions by a trust or estate are deemed to be attributable first to any balance in the U.S. real property interest account and then to other amounts. Amounts remaining in the account at the close of the year are not subject to withholding tax under section 1445 (but they may be subject to U.S. income tax in the hands of the trust).

The rules regarding withholding on dispositions of U.S. real property interests by a grantor trust have also been amended to reflect changes made by the Tax Reform Act of 1986.

Belated Notice of False Certification (§ 1.1445–5(c)(2)(ii)(B))

Section 1.1445–5(c)(2)(ii)(B) provides that, if a partnership or fiduciary receives belated notice of a false certification of non-foreign status, the partnership or fiduciary must withhold the lesser of the amount normally required to be withheld or the amount of the partner's or beneficiary's remaining interest in the income or assets of the partnership. Several commentators expressed concern that this rule would cause partnerships to liquidate prematurely a portion of their assets to satisfy the withholding tax obligation.

While it is acknowledged that the rule contained in § 1.1445–5(c)(2)(ii)(B) may cause some partnerships to liquidate assets prematurely, these situations should be rare and the present rule is needed to assure proper withholding under section 1445(e). Accordingly, the comment was rejected.

The rule in § 1.1445–5T(c)(2)(i)(B)of the Temporary Regulations required amounts withheld under that section to be reported and paid over to the Service within 10 days of the time the partnership or fiduciary learns that the certification is false. One commentator suggested that the 10-day period should be extended to 60 days consistent with §§ 1.1445–5(d)(2)(i)(B) and 1.1445–5(e)(2)(iii)(B). This suggestion was adopted.

Large Partnerships (§ 1.1445–5(c)(3)); In general

The rules regarding large partnerships and large trusts have been amended to reflect changes made by the Tax Reform Act of 1986 and to clarify certain matters. Rules regarding partnerships and trusts, interests in which are regularly traded on an established securities market, and real estate investment trusts have been substantially changed and are therefore being published as temporary and proposed regulations under § 1.1445–8T.

One commentator suggested that the large partnership rules of § 1.1445–5(c)(3) should be available to all partnerships. The comment was rejected because the large partnership rules were intended to apply to larger entities whose numerous transactions would have required multiple filings of complex information. The simplification of the administrative rules with respect to large partnerships is not warranted for small partnerships.

Another commentator suggested that the definition of large partnership contained in § 1.1445–5(c)(3) should have the number of required partners reduced from 100 to 35. This comment was also rejected because no information was provided to justify reducing the number of partners to 35.

In response to a comment, the large partnership rules have been amended in § 1.1445–5(c)(3)(ii) to allow large partnerships and large trusts that make recurring sales of unsevered growing crops and timber to withhold at a 10 percent rate on the total amount realized on such transfers, less the amount of prior distributions relating to such transfers.

Distributions by Foreign Corporations (§ 1.1445–5(d)(1))

Section 1.1445–5(d)(1) generally provides that tax will not be assessed and collected from a foreign corporation distributing a U.S. real property interest under both sections 897 and 1445(e)(2). However, § 1.1445–5(d)(1) of the Temporary Regulations provided that separate penalties for failure to comply with the two sections may be asserted. A commentator suggested that if a foreign corporation has fulfilled the total amount of the substantive tax liability under section 897T(d) by virtue of withholding under section 1445(e)(2), it should not face penalties or interest for failure to file a separate Form 1120F since no tax would be due in any event. This comment was rejected because withholding is not a substitute for filing a return required under section 897.

Belated Notice of False Certification (§ 1.1445–5(e)(2)(iii)(B))

Section 1.1445–5T(e)(2)(iii)(B) of the Temporary Regulations generally provided that with respect to a 10 percent (or greater) shareholder, reliance on a false certification will not be excused and that the corporation may be held "fully liable" under § 1.1445–5T(b)(6) of the Temporary Regulations for failure to withhold. A commentator noted, however, that § 1.1445–5T(e)(2)(iii)(B) further provided, in apparent contradiction, that no penalties arose during a 60-day grace period beginning on the day after the false certification is discovered. This contradiction was clarified by indicating that a corporation will be held fully liable under § 1.1445–5(b)(6) as of (but not before) the date specified in § 1.1445–5(e)(2)(iii)(B).

Regulatory Flexibility Act and Executive Order 12291

Although a notice of proposed rulemaking that solicited public comment was issued, the Internal Revenue Service concluded when the notice was issued that the regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 did not apply. Accordingly, the final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6). The Commissioner of Internal Revenue has determined that these regulations are not major regulations subject to Executive Order 12291. Accordingly, a regulatory impact analysis is not required and has not been prepared.

Paperwork Reduction Act

These regulations were submitted to the Office of Management and Budget for review under the Paperwork Reduction Act and approved under OMB number 1545–0902.

Drafting Information

The principal author of this regulation is Jeffrey Dorfman of the Office of the Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects

26 CFR 1.861–1 through 1.997–1

Income taxes, Aliens, Exports, DISC, FSC, Foreign investments in U.S., Foreign tax credit, Sources of income, United States investments abroad.

26 CFR 1.1441–1 through 1.1465–1

Income taxes, Aliens, Foreign corporations.

26 CFR 1.6001 through 1.6109

Income taxes, Administration of procedure, Payment of tax.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 1 and 602 are amended as follows:

Paragraph 1. The authority for Part 1 is amended by the following citation:

Authority: 26 U.S.C. 7805 * * * § 1.1445–5 also issued under 26 U.S.C. 1445 (e)(6).

Par. 2. Section 1.897–1 is amended by revising paragraphs (c)(2)(iii)(A), (d)(2)(i) and (n) to read as follows. Paragraph (c)(2)(iii) is republished.

§ 1.897–1 Taxation of foreign investment in United States real property interests, definition of terms.

* * * * *

(c) *United States real property interest.* * * *

(2) *Exceptions and special rules.* * * *

(iii) *Publicly-traded corporations.* If, at any time during the calendar year, any class of stock of a domestic corporation is regularly traded on an established securities market, an interest in such corporation shall be treated as a U.S. real property interest only in the case of:

(A) A regularly traded interest owned by a person who beneficially owned more than 5 percent of the total fair market value of that class of interests at any time during the five-year period ending either on the date of disposition of such interest or other applicable determination date (or the period since June 18, 1980, in shorter), or

* * * * * *

(d) *Interest other than an interest solely as a creditor.* * * *

(2) *Interests in real property other than solely as creditor*—(i) *In general.* An interest in real property other than an interest solely as a creditor includes a fee ownership, co-ownership, or leasehold interest in real property, a time sharing interest in real property, and a life estate, remainder, or reversionary interest in such property. The term also includes any direct or indirect right to share in the appreciation in the value, or in the gross or net proceeds or profits generated by, the real property.

A loan to an individual or entity under the terms of which a holder of the indebtedness has any direct or indirect right to share in the appreciation in value of, or the gross or net proceeds or profits generated by, an interest in real property of the debtor or of a related person is, in its entirety, an interest in real property other than solely as a creditor. An interest in production payments described in section 636 does not generally constitute an interest in real property other than solely as a creditor. However, a right to production payments shall constitute an interest in real property other than solely as a creditor if it conveys a right to share in the appreciation in value of the mineral property. A production payment that is limited to a quantum of mineral (including a percentage of recoverable reserves produced) or a period of time will be considered to convey a right to share in the appreciation in value of the mineral property. The rules of this paragraph (d)(2)(i) are illustrated by the following example.

* * * * * *

(n) *Regularly traded.* A class of interests that is traded on an established securities market is considered to be "regularly traded" if it is regularly quoted by brokers or dealers making a market in such interests. A class of interests shall be presumed to be regularly traded if the corporation has a total of 500 or more shareholders. Stock of a corporation that is described in section 851 (a)(1) and units of a unit investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 to 80b–2) shall be treated as regularly traded on an established securities market. Interests in a domestic entity that are traded on a foreign securities market shall not be considered to be regularly traded on an established securities market unless such interests are—

(1) Traded in registered form, and

(2) Registered pursuant to provisions of the Securities Exchange Act of 1934, 15 U.S.C. 78.

Par. 3. Section 1.897–2 is amended by revising paragraph (b)(2)(v), the first sentence of paragraph (c)(4)(ii), the introductory text of paragraph (g)(1)(ii)(A), the introductory text of paragraph (g)(2)(ii), the first sentence of paragraph (g)(3), and paragraphs (h) and (i) to read as follows. In addition, the date "December 31, 1965" in each of the fourth and fifth sentences of example (1) in paragraph (c)(5) is revised to read "December 31, 1985", and the date "April 7, 1966" in the first and second sentences of example (2) in paragraph (c)(5) is revised to read "April 7, 1986."

§ 1.897–2 United States real property holding corporations.

* * * * * *

(b) *U.S. real property holding corporation.* * * *

(2) *Alternative test.* * * *

(v) *Effect on interest-holders and related persons.* For the effect on interest holders and related persons of reliance on a statement issued by a corporation that made a determination as to whether it was a U.S. real property holding corporation under the provisions of § 1.897–2(b), see §§ 1.897–2(g)(1)(ii)(A) and 1.897–2(g)(2)(ii).

* * * * * *

(c) *Determination dates for applying U.S. real property holding corporation test.* * * *

(4) *Valuation date methods.* * * *

(ii) *Alternative valuation date method for determination dates other than the last day of the taxable year.* For purposes of paragraph (c)(3)(i) of this section, if an applicable determination date under paragraph (c) (1), (2), or (3) of this section is other than the last day of the taxable year, property may be valued as of the later of the last day of the previous taxable year or the date such property was acquired.

* * * * * *

(g) *Establishing that a corporation is not a U.S. real property holding corporation.* * * *

(1) *Foreign persons disposing of interest* * * *

(ii) *Statement from corporation*—(A) *In general.* A foreign person disposing of an interest in a domestic corporation may establish that the interest was not a U.S. real property interest as of the date of the disposition by requesting and obtaining from the corporation a statement that the interest was not a U.S. real property interest as of that date. However, a corporation's statement shall not be valid for purposes of this rule, and thus may not be relied upon for purposes of establishing that an interest was not a U.S. real property interest, unless the corporation complies with the notice requirements of paragraph (h) (2) or (h)(4) of this section.

* * * * * *

(2) *Corporations determining U.S. real property holding corporation status.* * * *

(ii) *Statement from corporation.* A corporation may determine whether or not an interest in a second corporation was a U.S. real property interest as of its own determination date by obtaining from the second corporation's a statement that the interest was not a U.S. real property interest as of that date. However, the second corporation statement shall not be valid for purposes of this rule, and thus may not be relied upon for purposes of establishing that an interest was not a U.S. real property interest, unless such corporation complies with the notice requirements of paragraph (h)(2) or (h)(4) of this section

* * * * * *

(3) *Requirements not applicable.* If at any time during the calendar year any class of stock of a corporation is regularly traded on an established securities market, the requirements of this paragraph (g) shall not apply with respect to any holder of an interest in such corporation other than a person who holds an interest described in § 1.897–1(c)(2)(iii) (A) or (B). * * *

* * * * * *

(h) *Notice requirements applicable to corporations*—(1) *Statement to foreign interest-holder*—(i) *In general.* A domestic corporation must, within a reasonable period after receipt of a request from a foreign person holding an interest in it, inform that person whether the interest constitutes a U.S. real property interest. No particular form is required for this statement, which need only indicate the corporation's determination. The statement must be dated and signed by a responsible corporate officer who must verify under penalties of perjury that the statement is correct to his knowledge and belief.

(ii) *Required determination.* For purposes of the statement required by paragraph (h)(1)(i) of this section, an interest in a corporation is a U.S. real property interest if the corporation was a U.S. real property holding corporation

on any determination date during the 5-year period ending on the date specified in the interest-holder's request, or on the date such request was received if no date is specified (or during such shorter period ending on the date that is applicable pursuant to section 897(c)(1)(A)(ii). However, an interest in a corporation is not a U.S. real property interest if such interest is excluded under section 897(c)(1)(B).

(2) *Notice to the Internal Revenue Service.* If a foreign interest holder requests that a domestic corporation provide a statement described in paragraph (h)(1) of this section, then such corporation must provide a notice to the Internal Revenue Service in accordance with this paragraph (h)(2). No particular form is required for such notice, but the following must be provided:

(i) A statement that the notice is provided pursuant to the requirements of § 1.897–2(h)(2);

(ii) The name, address, and identifying number of the corporation providing the notice;

(iii) The name, address, and identifying number (if any) of the foreign interest holder that requested the statement (this information may be omitted from the notice if fully set forth in the statement to the foreign interest holder attached to the notice).

(iv) Whether the interest in quesiton is a U.S. real property interest;

(v) A statement signed by a responsible corporate officer verifying under penalties of perjury that the notice (including any attachments thereto) is correct to his knowledge and belief. A copy of any statement provided to the foreign interest holder must be attached to the notice. The notice must be mailed to the Assistant Commissioner (International), Director, Office of Compliance, OP:I:C:E:866, 1325 K Street, NW., Washington, DC 20225 on or before the 30th day after the statement referred to in § 1.897–2(h)(1) is mailed to the interest holder that requested it. Failure to mail such notice within the time period set forth in the preceding sentence will cause the statement provided pursuant to § 1.897–2(h)(1) to become an invalid statement.

(3) *Requirements not applicable.* The requirements of this paragraph (h) do not apply to domestically-controlled REITS, as defined in section 897(h)(4)(B). These requirements also do not apply to a corporation any class of stock in which is regularly traded on an established securities market at any time during the calendar year. However, such a corporation may voluntarily choose to comply with the requirements of paragraph (h)(4) of this section.

(4) *Voluntary notice to Internal Revenue Service*—(i) *In general.* A domestic corporation which determines that it is not a U.S. real property holding corporation—

(A) on each of the applicable determination dates in a taxable year, or

(B) pursuant to section 897(c)(1)(B), may attach to its income tax return for that year a statement informing the Internal Revenue Service of its determination. A corporation that has provided a voluntary notice described in this § 1.897–2(h)(4)(i) for the immediately preceding taxable year and that does not have an event described in § 1.897–2(c)(1) (ii), (iii) or (iv) prior to receiving a request from a foreign person under § 1.897–2(h)(1), is exempt from the notice requirement of § 1.897–2(h)(2).

(ii) *Early termination of real property holding corporation status.* A corporation that determines during the course of its taxable year that interests in it have ceased to be U.S. real property interests pursuant to the rules of section 897(c)(1)(B) may, on the day of its determination or thereafter, provide a statement to the Assistant Commissioner (International); Director, Office of Compliance, OP:I:C:O: 666; 950 L'Enfant Plaza South, SW.; COMSAT Building; Washington, DC 20024, informing the Service of its determination. No particular form is required but the statement must set forth the corporation's name, address, identification number, a brief statement regarding its determination and the date such determination was made. Such statement will enable foreign interest-holders to dispose of their interests without being subject to section 897(a), as provided in paragraph (g) of this section.

(5) *Supplemental statements*—(i) *By corporations with substantial intangible assets.* A corporation that is subject to the requirements of paragraph (h)(2) of this section (or that voluntarily complies with the requirements of paragraph (h)(4) of this section) must submit a supplemental statement to the Internal Revenue Service if—

(A) Such corporation values any of the intangible assets described in § 1.897–1(f)(1)(ii) (other than goodwill or going concern value) by a method other than the purchase price or book value methods described in § 1.897–1(o)(4); and

(B) The fair market value of such intangible assets equals or exceeds 25 percent of the total of the fair market values of the assets the corporation is considered to hold in accordance with the provisions of paragraphs (d) and (e) of this section.

The supplemental statement must inform the Internal Revenue Service that the corporation meets the criteria of subdivisions (A) and (B) of this paragraph (h)(5)(i), and must summarize the methods and calculations upon which the corporation's determination of the fair market value of its intangible assets is based. In addition, the supplemental statement must list any intangible assets that were purchased from any person that have been valued by the corporation at an amount other than their purchase price, and must provide a justification for such a departure from the purchase price. The supplemental statement must be attached to or incorporated in the statement provided under paragraph (h)(2) or (h)(4) of this section.

(ii) *Corporation not valuing goodwill or going concern value at purchase price.* A corporation that is subject to the requirements of paragraph (h)(2) of this section (or that voluntarily complies with the requirements of paragraph (h)(4) of this section) must submit a supplemental statement to the Internal Revenue Service if such corporation values goodwill or going concern value pursuant to § 1.897–1(o)(4)(iii). The supplemental statement must set forth that it is made pursuant to this paragraph (h)(5)(ii), and must summarize the methods and calculations upon which the corporation's determination of the fair market value of such intangible assets is based. In addition, the supplemental statement must list any such assets that were purchased from any person that have been valued by the corporation at an amount other than their purchase price, and must provide a justification for such a departure from the purchase price. The supplemental statement must be attached to or incorporated in the statement provided under paragraph (h)(2) or (h)(4) of this section.

(iii) *Corporation using alternative U.S. real property holding corporation test.* A corporation that is subject to the requirements of paragraph (h)(2) of this section (or that voluntarily complies with the requirements of paragraph (h)(4) of this section) must submit a supplemental statement to the Internal Revenue Service if—

(A) Such corporation utilizes the rule of paragraph (b)(2) of this section (regarding the book values of assets held by the corporation) to presume that it is not a U.S. real property holding corporation; and

(B) Such corporation is engaged in or is planning to engage in a trade or business of mining, farming, or forestry, or of buying and selling or developing real property, or of leasing real property to tenants.

The supplemental statement must inform the Internal Revenue Service that the corporation meets the criteria of subdivisions (A) and (B) of this paragraph (h)(5)(iii), and must be attached to or incorporated in the statement provided under paragraph (h)(2) or (h)(4) of this section.

(iv) *Corporation determining real property holding corporation status of second corporation.* A corporation that is subject to the requirements of paragraph (h)(2) of this section (or that voluntarily complies with the requirements of paragraph (h)(4) of this section) must submit a supplemental statement to the Internal Revenue Service if such corporation independently determines whether or not an interest in a second corporation is a U.S. real property interest, pursuant to paragraph (g)(2)(iv) of this section. The supplemental statement must set forth that it is made pursuant to this paragraph (h)(5)(iv) and must briefly summarize the facts upon which the corporation's determination is based and the sources of the information relied upon by the corporation. The supplemental statement must be attached to or incorporated in the statement provided under paragraph (h)(2) or (h)(4) of this section.

(i) *Transition Rules*—(1) *General waiver of penalties for failure to file.* If a foreign person disposed of an interest in a domestic corporation between June 18, 1980 and January 23, 1987, and such person establishes under the rules of paragraph (g) of this section at any time that the interest disposed of was not a U.S. real property interest, then such person shall not be subject to tax under section 897 and shall not be subject to penalties (or interest) for failure to file an income tax return with respect to such disposition.

(2) *Foreign persons that met the requirements of prior regulations.* A foreign person that disposed of an interest in a domestic corporation between June 18, 1980 and January 23, 1987, shall be deemed to have satisfied the requirements of paragraph (g) of this section with respect to such disposition if such person established under prior temporary or prior final regulations issued under section 897 that the interest disposed of was not a U.S. real property interest.

* * * * *

§ 1.897–3 [Amended]

Par. 4. Section 1.897–3(a) is amended by revising the reference therein to "§ 1.1445–7T" to read "§ 1.1445–7." Section 1.897–3(c)(4) is amended by revising the reference therein to "§ 1.897–1(c)(2) (i) or (ii)" to read "§ 1.897–1(c)(2)(iii) (A) or (B)."

Par. 5. The following sections are added immediately after § 1.1443–1.

§ 1.1445–1 Withholding on dispositions of U.S. real property interests by foreign persons: In general (temporary).

(a) *Purpose and scope of regulations.* These regulations set forth rules relating to the withholding requirements of section 1445. In general, section 1445(a) provides that any person who acquires a U.S. real property interest from a foreign person must withhold a tax of 10 percent from the amount realized by the transferor foreign person (or a lesser amount established by agreement with the Internal Revenue Service). Section 1445(e) provides special rules requiring withholding on distributions and certain other transactions by corporations, partnerships, trusts, and estates. This § 1.1445–1 provides general rules concerning the withholding requirement of sections 1445(a), as well as definitions applicable under both section 1445(a) and 1445(e). Section 1.1445–2 provides for various situations in which withholding is not required under section 1445(a). Section 1.1445–3 provides for adjustments to the amount required to be withheld by transferees under section 1445(a). Section 1.1445–4 prescribes the duties of agents in transactions subject to withholding under either section 1445(a) or 1445(e). Section 1.1445–5 provides rules concerning the withholding required under section 1445(e), while § 1.1445–6 provides for adjustments to the amount required to be withheld under section 1445(e). Finally, § 1.1445–7 provides rules concerning the treatment of a foreign corporation that has made an election under section 897(i) to be treated as a domestic corporation.

(b) *Duty to withhold*—(1) *In general.* Transferees of U.S. real property interests are required to deduct and withhold a tax equal to 10 percent of the amount realized by the transferor, if the transferor is a foreign person and the disposition takes place on or after January 1, 1985. Neither the transferee's duty to withhold nor the amount required to be withheld is affected by the amount of cash to be paid by the transferee. Amounts withheld must be reported and paid over in accordance with the requirements of paragraph (c) of this section. Failures to withhold and pay over are subject to the liabilities set forth in paragraph (e) of this section. If two or more persons are joint transferees of a U.S. real property interest, each such person is subject to the obligation to withhold. That obligation is fulfilled with respect to each such person if any one of them withholds and pays over the required amount in accordance with the rules of this section. If the amount realized (as defined in paragraph (g)(5) of this section) by the transferor is zero, then no withholding is required. For example, if a real property interest is transferred as a gift (i.e, the recipient does not assume any liabilities or furnish any other consideration to the transferor) then no withholding is required. Withholding is not required with respect to dispositions that takes place before January 1, 1985, even if the first payment of consideration is made after December 31, 1984.

(2) *U.S. real property interest owned jointly by foreign and non-foreign transferors.* The amount subject to withholding under paragraph (b)(1) of this section with respect to the transfer of a U.S. real property interest owned by one or more foreign persons (as defined in § 1.897–1(k)) and one or more non-foreign persons shall be determined by allocating the amount realized from the transfer between (or among) such transferors based upon the capital contribution of each transferor with respect to the property and by aggregating the amounts allocated to any foreign person (or persons). For this purpose, a husband and wife will each be deemed to have contributed 50 percent of the aggregate capital contributed by such husband and wife. See § 1.1445–1(f)(3)(iv) with respect to the crediting of the amount withheld between or among joint foreign transferors.

(3) *Options to acquire a U.S. real property interest.*—

(i) *No withholding on grant of option.* No withholding is required under section 1445 with respect to any amount realized by the grantor on the grant of an option to acquire a U.S. real property interest.

(ii) *No withholding upon lapse of option.* No withholding is required under section 1445 with respect to any amount realized by the grantor upon the lapse of an option to acquire a U.S. real property interest.

(iii) *Withholding required upon the sale or exchange of option.* A transferee of an option to acquire a U.S. real property interest must deduct and withhold a tax equal to 10 percent of the amount realized by the transferor upon the disposition. This § 1.1445–1(b)(3)(iii) does not apply to require withholding upon the initial grant of an option.

(iv) *Withholding required on exercise of option.* If the holder exercises an option to purchase a U.S. real property

interest, the amount paid for the option shall be considered an amount realized by the grantor/transferor upon the transfer of the property with respect to which the option was granted, and shall thus be subject to withholding on the day that such underlying property is transferred. The preceding sentence applies regardless of whether or not the terms of the option specifically provide that the option price is applied to the purchase price.

(4) Exceptions and modifications. The duty to withhold under section 1445(a) is subject to the exceptions and modifications contained in §§ 1.1445–2 and 1.1145–3. Generally, § 1.1445–2 provides rules for determining that withholding is not required because either the transferor is not a foreign person or the interest transferred is not a U.S. real property interest. In addition, § 1.1445–2 provides exceptions to the withholding requirement, including a rule that exempts from withholding any person who acquires a U.S. real property interest for use as a residence for a contract price of $300,000 or less. If withholding is required under section 1445(a), § 1.1445–3 allows the amount withheld to be modified pursuant to a withholding certificate issued by the Internal Revenue Service. If a transferee cannot withhold the full amount required because the first payment of consideration for the transfer does not involve sufficient cash (or other liquid assets convertible into cash, such as foreign currency), then a withholding certificate must be obtained pursuant to § 1.1445–3.

(c) *Reporting and paying over of withheld amounts*—(1) *In general.* A transferee must report and pay over any tax withheld by the 20th day after the date of the transfer. Forms 8288 and 8288–A are used for this purpose, and must be filed with the Internal Revenue Service Center, Philadelphia, PA, 19255. Pursuant to section 7502 and regulations thereunder, the timely mailing of Forms 8288 and 8228–A will be treated as their timely filing. Form 8288–A will be stamped by the IRS to show receipt, and a stamped copy will be mailed by the IRS to the transferor (at the address reported on the form) for the transferor's use. See §§ 1.1445–1(f) and 1.1445–3(f).

(2) *Pending application for withholding certificate*—(i) *In general.*

(A) *Delayed reporting and payment with respect to application submitted by transferee.* If an application for a withholding certificate with respect to a transfer of a U.S. real property interest is submitted to the Internal Revenue Service by the transferee on the day of or at any time prior to the transfer, the transferee must withhold 10 percent of the amount realized as required by paragraph (b) of this section. However, the amount withheld, or a lesser amount as determined by the Service, need not be reported and paid over to the Service until the 20th day following the Service's final determination with respect to the application for a withholding certificate. For this purpose, the Service's final determination occurs on the day when the withholding certificate is mailed to the transferee by the Service or when a notification denying the request for a withholding certificate is mailed to the transferee by the Service. An application is submitted to the Service on the day it is actually received by the Service at the address provided in § 1.1445–1(g)(10) or, under the rules of section 7502, on the day it is mailed to the Service at the address provided in § 1.1445–1(g)(10).

(B) *Delayed reporting and payment with respect to application submitted by transferor.* If an application for a withholding certificate with respect to a transfer of a U.S. real property interest is submitted to the Internal Revenue Service by the Transferor on the day of or any time prior to the transfer, such transferor must provide notice to the transferee prior to the transfer. No particular form is required but the notice must set forth the name, address, and taxpayer identification number, if any, of the transferor, a brief description of the property which is the subject of the application, and the date the application was submitted to the Service. The transferee must withhold 10 percent of the amount realized as required in paragraph (b) of this section but need not report or pay over to the Service such amount (or a lesser amount as determined by the Service) until the 20th day following the Service's final determination with respect to the application.

The Service will send a copy of the withholding certificate or copy of the notification denying the request for a withholding certificate to the transferee. For this purpose, the Service's final determination will be deemed to occur on the day when the copy of the withholding certificate or the copy of the notification denying the request for a withholding certificate is mailed by the Service to the transferee (or transferees). An application is submitted to the Service on the day it is actually received by the Service at the address provided in § 1.1445–1(g)(10) or, under the rules of § 7502, on the day it is mailed to the Service at the address provided in § 1.1445–1(g)(10).

(ii) *Anti-abuse rule (A) In general.* A transferee that in reliance upon the rules of this paragraph (c)(2) fails to report and pay over amounts withheld by the 20th day following the date of the transfer, shall be subject to the payment of interest and penalties if the relevant application for a withholding certificate (or an amendment to the application for a withholding certificate) was submitted for a principal purpose of delaying the transferee's payment to the IRS of the amount withheld. Interest and penalties shall be assessed on the amount that is ultimately paid over (or collected pursuant to the agreement) with respect to the period between the 20th day after the date of the transfer and the date on which payment is made (or collected).

(B) *Presumption.* A principal purpose of delaying payment of the amount withheld shall be presumed if—

(*1*) The transferee applies for a withholding certificate pursuant to § 1.1445–3T(c) based on a determination of the transferor's maximum tax liability, and

(*2*) Such liability is ultimately determined to be equal to 90 percent or more of the amount that was otherwise required to be withheld and paid over. However, the presumption created by the previous sentence may be rebutted by evidence establishing that delaying payment of the amount withheld was not a principal purpose of the transaction.

(d) *Contents of Forms 8288 and 8288–A*—(1) *Transactions subject to section 1445(a).* Any person that is required to file Forms 8288 and 8288–A pursuant to section 1445(a) and the rules of this section must set forth thereon the following information:

(i) The name, identifying number (if any), and home address (in the case of an individual) or office address (in the case of any entity) of the transferee(s) filing the return;

(ii) The name, identifying number (if any), and home address (in the case of an individual) or office address (in the case of any entity) of the transferor(s);

(iii) A brief description of the U.S. real property interest transferred, including its location and the nature of any substantial improvements in the case of real property, and the class or type and amount of interests transferred in the case of interests in a corporation that constitute U.S. real property interests;

(iv) The date of the transfer;

(v) The amount realized by the transferor, as defined in paragraph (g)(5) of this section;

(vi) The amount withheld by the transferee and whether withholding is at the statutory or reduced rate; and

(vii) Such other information as the Commissioner may require.

For purposes of paragraph (d)(1) (i) and (ii), mailing addresses may be provided in addition to, but not in lieu of, home addresses or office addresses.

(2) *Transactions subject to section 1445(e).* Any person that is required to file Forms 8288 and 8288–A pursuant to the rules of § 1.1445–5 must set forth thereon the following information:

(i) The name, identifying number (if any), and office address of the entity or fiduciary filing the return;

(ii) The amount withheld by the entity or fiduciary;

(iii) The date of the transfer;

(iv) In the case of a transaction subject to withholding pursuant to section 1445(e)(1) and § 1.1445–5(c):

(A) A brief description of the U.S. real property interest transferred, as described in paragraph (d)(1)(iii) of this section;

(B) The name, identifying number (if any), and home address (in the case of an individual) or office address (in the case of an entity) of each holder of an interest in the entity that is a foreign person; and

(C) Each such interest-holder's pro rata share of the amount withheld;

(v) In the case of a distribution subject to withholding pursuant to section 1445(e)(2) and § 1.1445–5(d):

(A) A brief description of the U.S. real property interest transferred, as described in paragraph (d)(1)(iii) of this section; and

(B) The amount of gain recognized upon the distribution by the corporation.

(vi) In the case of a distribution subject to withholding pursuant to section 1445(e)(3) and § 1.1445–5(e):

(A) A brief description of the property distributed by the corporation;

(B) The name, identifying number (if any), and home address (in case of an individual) or office address (in the case of an entity) of each holder of an interest in the entity that is a foreign person;

(C) The amount realized upon the distribution by each such foreign interest holder; and

(D) Each foreign interest-holder's pro rata share of the amount withheld; and

(vii) Such other information as the Commissioner may require.

(e) *Liability of transferee upon failure to withhold*—(1) *In general.* Every person required to deduct and withhold tax under section 1445 is made liable for that tax by section 1461. Therefore, a person that is required to deduct and withhold tax but fails to do so may be held liable for the payment of the tax and any applicable penalties and interest.

(2) *Transferor's liability not otherwise satisfied*—(i) *Tax and penalties.* Except as provided in paragraph (e)(3) of this section, if a transferee is required to deduct and withhold tax under section 1445 but fails to do so, then the tax shall be assessed against and collected from that transferee. Such person may also be subject to any of the civil and criminal penalties that apply. Corporate officers or other responsible persons may be subject to a civil penalty under section 6672 equal to the amount that should have been withheld and paid over.

(ii) *Interest.* If a transferee is required to deduct and withhold tax under section 1445 but fails to do so, then such transferee shall be liable for the payment of interest pursuant to section 6601 and the regulations thereunder. Interest shall be payable with respect to the period between—

(A) The last date on which the tax imposed under section 1445 was required to be paid over by the transferee, and

(B) The date on which such tax is actually paid. Interest shall be payable with respect to the entire amount that is required to be deducted and withheld. However, if the Service issues a withholding certificate providing for withholding of a reduced amount, then, for the period after the issuance of the certificate, interest shall be payable with respect to that reduced amount.

(3) *Transferor's liability otherwise satisfied*—(i) *Tax and penalties.* If a transferee is required to deduct and withhold tax under section 1445 but fails to do so, and the transferor's tax liability with respect to the transfer was satisfied (or was established to be zero) by—

(A) The transferor's filing of an income tax return (and payment of any tax due) with respect to the transfer, or

(B) The issuance of a withholding certificate by the Internal Revenue Service establishing that the transferor's maximum tax liability is zero,

then the tax required to be withheld under section 1445 shall not be collected from the transferee. Such transferee's liability for tax, and the requirement that such person file Forms 8288 and 8288–A, shall be deemed to have been satisfied as of the date on which the transferor's income tax return was filed or the withholding certificate was issued. No penalty shall be imposed on or collected from such person for failure to return or pay the tax, unless such failure was fraudulent and for the purpose of evading payment. A transferee that seeks to avoid liability for tax and penalties pursuant to the rule of paragraph (e)(3)(i) must provide sufficient information for the Service to determine whether the transferor's tax liability was satisfied (or was established to be zero).

(ii) *Interest.* If a transferee is required to deduct and withhold tax under section 1445 but fails to do so, then such person shall be liable for the payment of interest under section 6601 and regulations thereunder. Such transferee's liability for the payment of interest shall not be excused by reason of the deemed satisfaction, pursuant to subdivision (i) of this paragraph (e)(3), of the transferee's liability under section 1445, because the deemed satisfaction of that liability is the equivalent of the late payment of a liability, on which interest must be paid. Interest shall be payable with respect to the period between—

(A) The last date on which the tax imposed under section 1445 was required to be paid over, and

(B) The date (established from information supplied to the Service by the transferee) on which any tax due is paid with respect to the transferor's relevant income tax return, or the date the withholding certificate is issued establishing that the transferor's maximum tax liability is zero.

Interest shall be payable with respect to the entire amount that is required to be deducted and withheld. However, if the Service issues a withholding certificate providing for withholding of a reduced amount, then for the period after the issuance of the certificate interest shall be payable with respect to that reduced amount.

(4) *Coordination with entity with holding rules.* For purposes of section 1445(e) and §§ 1.1445–5, 1.1445–6, 1.1445–7, and 1.1445–8, the rules of this paragraph (e) shall be applied by—

(i) Substituting the words "person required to withhold" for the word "transferee" each place it appears in this paragraph (e), and

(ii) Substituting the words "person subject to withholding" for the word "transferor" each place it appears in this paragraph (e).

(f) *Effect of withholding on transferor.*—(1) *In general.* The withholding of tax under section 1445(a) does not excuse a foreign person that disposes of a U.S. real property interest from filing a U.S. tax return with respect to the income arising from the disposition. Form 1040NR, 1041, or 1120F, as appropriate, must be filed, and any tax due must be paid, by the filing deadline generally applicable to such person. (The return may be filed by such later date as is provided in an extension granted by the Internal Revenue Service.) Any tax withheld under section 1445(a) shall be credited against

the amount of income tax as computed in such return.

(2) *Manner of obtaining credit or refund.* A stamped copy of Form 8288–A will be provided to the transferor by the Service (under paragraph (c) of this section), and must be attached to the transferor's return to establish the amount withheld that is available as a credit. If to establish the amount with that is available as a credit. If the amount withheld under section 1445(a) constitutes less than the full amount of the transferor's U.S. tax liability for that taxable year, then a payment of estimated tax may be required to be made pursuant to section 6154 or 6654 prior to the filing of the income tax return for that year. Alternatively, if the amount withheld under section 1445(a) exceeds the transferor's maximum tax liability with respect to the disposition (as determined by the IRS), then the transferor may seek an early refund of the excess pursuant to§ 1.1445–3(g), or a normal refund upon the filing of a tax return.

(3) *Special rules*—(i) *Failure to receive Form 8288–A.* If a stamped copy of Form 8288–A has not been provided to the transferor by the Service, the transferor may establish the amount of tax withheld by the transferee by attaching to its return substantial evidence (*e.g.*, closing documents) of such amount. Such a transferor must attach to its return a statement which supplies all of the information required by § 1.1445–1(d) (except such information that was not obtained after a diligent effort).

(ii) *U.S. persons subjected to withholding.* If a transferee withholds tax under section 1445(a) with respect to a person who is not a foreign person, such person may credit the amount of any tax withheld against his income tax liability in accordance with the provisions of this § 1.1145–1(f) or apply for an early refund under 1.1445–3(f).

(iii) *Refund in case of installment sale.* A transferor that takes gain into account in accordance with the provisions of section 453 shall not be entitled to a refund of the amount withheld, unless a withholding certificate providing for such a refund is obtained from the Internal Revenue Service pursuant to the provisions of § 1.1445–3.

(iv) *Joint foreign transferors.* If two or more foreign persons jointly transfer a U.S. real property interest, each transferor shall be credited with such portion of the amount withheld as such transferors mutually agree. Such transferors must request that the transferee reflect the agreed-upon crediting of the amount withheld on the Forms 8288–A filed by the transferee. If the foreign transferors fail to request that the transferee reflect the agreed-upon crediting of the amount withheld by the 10th day after the date of transfer, the transferee must credit the amount withheld equally between (or among) the foreign transferors. In such case, the transferee is indemnified pursuant to section 1461 against any claim by a transferor objecting to the resulting division of credits. For rules regarding the amount realized allocated to joint foreign and non-foreign transferors, see § 1.1445–1(b)(2).

(g) *Definitions*—(1) *In general.* Unless otherwise specified, the definitions of terms provided in § 1.897–1 shall apply for purposes of this section and §§ 1.1445–2 through 1.1445–7. For purposes of section 1445 and the regulations thereunder, definitions of other relevant terms are provided in this paragraph (g). In addition, the term "residence" is defined in 1.1445–2(d)(1), the terms "transferor's agent" and "transferee's agent" are defined in 1.1445–4(f), and the term "relevant taxpayer" is defined in 1.1445–6(a)(2).

(2) *Transfer.* The term "transfer" means any transaction that would constitute a disposition for any purpose, of the Internal Revenue Code and regulations thereunder. For purposes of §§ 1.1445–5 and 1.1445–6, the term includes distribution to shareholders of a corporation, partners of a partnership and beneficiaries of a trust or estate.

(3) *Transferor.* The term "transferor" means any person, foreign or domestic, that disposes of a U.S. real property interest by sale, exchange, gift, or any other transfer. The term "U.S. real property interest" is defined in § 1.897–1(c).

(4) *Transferee.* The term "transferee" means any person, foreign or domestic, that acquires a U.S. real property interest by purchase, exchange, gift, or any other transfer.

(5) *Amount realized.* The amount realized by the transferor for the transfer of a U.S. real property interest is the sum of.

(i) The cash paid, or to be paid.

(ii) The fair market value of other property transferred, or to be transferred, and

(iii) The outstanding amount of any liability assumed by the transferee or to which the U.S. real property interest is subject immediately before and after the transfer.

The term "cash paid or to be paid" does not include stated or unstated interest or original issue discount (as determined under the rules of sections 1271 through 1275).

(6) *Contract price.* The contract price of a U.S. real property interest is the sum that is agreed to by the transferee and transferor as the total amount of consideration to be paid for the property. That amount will generally be equal to the amount realized by the transferor, as defined in paragraph (b)(5) of this section.

(7) *Fair market value.* The fair market value of property means the price at which the property would change hands between an unrelated willing buyer and willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of all relevant facts.

(8) *Date of transfer.* The date of transfer of a U.S. real property interest is the first date on which consideration is paid (or a liability assumed) by the transferee. However, for purposes of section 1445(e) (2), (3), and (4) and §§ 1.1445–5(c)(1)(iii) and 1.1445–5(c)(3) only, the date of transfer is the date of the distribution that gives rise to the obligation to withhold. For purposes of this paragraph (g)(8), the payment of consideration does not include the payment, prior to the passage of legal or equitable title (other than pursuant to an initial contract for purchase), of earnest money, a good-faith deposit, or any similar sum that is primarily intended to bind the transferee or transferor to the entering or performance of a contract. Such a payment will not constitute a payment of consideration solely because it may ultimately be applied against the amount owed to the transferor by the transferee. Such a payment is presumed to be earnest money, a good faith deposit, or a similar sum if it is subject to forfeiture in the event of a failure to enter into a contract or a breach of contract. However, a payment that is not forefeitable may nevertheless be found to constitute earnest money, a good faith deposit, or a similar sum.

(9) *Identifying number.* Pursuant to § 1.897–1(p), an individual's identifying number is the social security number (or the identification numbers assigned by the Internal Revenue Service). The identifying number of any other person is its United States employer identification number.

(10) *Address of Assistant Commissioner (International).* Any written communication directed to the Assistant Commissioner (International) is to be addressed as follows: Assistant Commissioner (International); Director, Office of Compliance, OP:I:C:E:666; 950 L'Enfant Plaza South, SW.; COMSAT Building; Washington, DC 20024.

§ 1.1445–2 Situations in which withholding is not required under section 1445(a).

(a) *Purpose and scope of section.* This section provides rules concerning various situations in which withhold is not required under section 1445(a). In general, a transferee has a duty to withhold under section 1445(a) only if both of the following are true:

(1) The transferor is a foreign person: and

(2) The transferee is acquiring a U.S. real property interest.

Thus, paragraphs (b) and (c) of this section provide rules under which a transferee of property can ascertain that he has no duty to withhold because one or the other of the two key elements is missing. Under paragraph (b), a transferee may determine that no withholding is required because the transferor is not a foreign person. Under paragraph (c), a transferee may determine that no withholding is required because the property acquired is not a U.S. real property interest. Finally, paragraph (d) of this section provides rules concerning exceptions to the withholding requirement.

(b) *Transferor not a foreign person*—(1) *In general.* No withholding is required under section 1445 if the transferor of a U.S. real property interest is not a foreign person. Therefore, paragraph (b)(2) of this section provides rules pursuant to which the transferor can provide a certification of non-foreign status to inform the transferee that withholding is not required. A transferee that obtains such a certification must retain that document for five years, as provided in paragraph (b)(3) of this section. Except to the extent provided in paragraph (b)(4) of this section, the obtaining of this certification excuses the transferee from any liability otherwise imposed by section 1445 and § 1.1445–1(e). However, section 1445 and the rules of this section do not impose any obligation upon a transferee to obtain a certification from the transferor, thus, a transferee may instead rely upon other means to ascertain the non-foreign status of the transferor. If, however, the transferee relies upon other means and the transferor was, in fact, a foreign person, then the transferee is subject to the liability imposed by section 1445 and § 1.1445–1(e).

A transferee is in no event required to rely upon other means to ascertain the non-foreign status of the transferor and may demand a certification of non-foreign status. If the certification is not provided, the transferee may withhold tax under section 1445 and will be considered, for purposes of sections 1461 through 1463, to have been required to withhold such tax.

(2) *Transferor's certification of non-foreign status*—(i) *In general.* A transferee of a U.S. real property interest is not required to withhold under section 1445(a) if, prior to or at the time of the transfer, the transferor furnishes to the transferee a certification that—

(A) States that the transferor is not a foreign person.

(B) Sets forth the transferor's name, identifying number and home address (in the case of an individual) or office address (in the case of an entity), and

(C) Is signed under penalties of perjury.

In general, a foreign person is a nonresident alien individual, foreign corporation, foreign partnership, foreign trust, or foreign estate, but not a resident alien individual. In this regard, see § 1.897–1(k). However, a foreign corporation that has made a valid election under section 897(i) is generally not treated as a foreign person for purposes of section 1445. In this regard, see § 1.1445–7. Pursuant to § 1.897–1(p), an individual's identifying number is the individual's Social Security number and any other person's identifying number is its U.S. employer identification number. A certification pursuant to this paragraph (b) must be verified as true and signed under penalties of perjury by a responsible officer in the case of a corporation, by a general partner in the case of a partnership, and by a trustee, executor, or equivalent fiduciary in the case of a trust or estate. No particular form is needed for a certification pursuant to this paragraph (b), nor is any particular language required, so long as the document meets the requirements of this paragraph (b)(2)(i). Samples of acceptable certifications are provided in paragraph(b)(2)(iii) of this section.

(ii) *Foreign corporation that "has made election under section 897(i).* A foreign corporation that has made a valid election under section 897(i) to be treated as a domestic corporation for purposes of section 897 may provide a certification of non-foreign status pursuant to this paragraph (b)(2). However, an electing foreign corporation must attach to such certification a copy of the acknowledgment of the election provided to the corporation by the Internal Revenue Service pursuant to § 1.897–3(d)(4).

An acknowledgment is valid for this purpose only if it states that the information required by § 1.897–3 has been determined to be complete.

(iii) *Sample certifications*—(A) *Individual transferor.* "Section 1445 of the Internal Revenue Code provides that a transferee (buyer) of a U.S. real property interest must withhold tax if the transferor (seller) is a foreign person. To inform the transferee (buyer) that withholding of tax is not required upon my disposition of a U.S. real property interest, I, [*name of transferor*], hereby certify the following:

1. I am not a nonresident alien for purposes of U.S. income taxation;

2. My U.S. taxpayer identifying number [Social Security number] is ————; and

3. My home address is:

————————————

————————————

I understand that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement I have made here could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct, and complete. [Signature and Date]"

(B) *Entity transferor.* "Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon the disposition of a U.S. real property interest by [*name of transferor*], the undersigned hereby certifies the following on behalf of [*name of transferor*]:

1. [*Name of transferor*] is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations):

2. [*Name of transferor*]'s U.S. employer identification number is ————, and

3. [*Name of transferor*]'s office address is

————————————

[*Name of transferor*] understands that this certification may be disclosed to the Internal Revenue Service by transferee and that any false statement contained herein could be punished by fine, imprisonment or both.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of [*name of transferor*]. [Signature and date] [Title ————]

(3) *Transferee must retain certification.* If a transferee obtains a transferor's certification pursuant to the rules of this paragraph (b), then the transferee must retain that certification until the end of the fifth taxable year following the taxable year in which the transfer takes place. The transferee must retain the certification, and make it avaliable to the Internal Revenue Service when requested in accordance with the requirements of section 6001 and regulations thereunder.

(4) *Reliance upon certification not permitted*—(i) *In general.* A transferee may not rely upon a transferor's certification pursuant to this paragraph (b) under the circumstances set forth in either subdivision (ii) or (iii) of this paragraph (b)(4). In either of those circumstances, a transferee's withholding obligation shall apply as if a certification had never been obtained, and the transferee is fully liable pursuant to section 1445 and § 1.1445–1(e) for any failure to withhold.

(ii) *Failure to attach IRS acknowledgment of election.* A transferee that knows that the transferor is a foreign corporation may not rely upon a certification of non-foreign status provided by the corporation on the basis of election under section 897(i), unless there is attached to the certification a copy of the acknowledgment by the Internal Revenue Service of the corporation's election, as required by paragraph (b)(2)(ii) of this section.

(iii) *Knowledge of falsity.* A transferee is not entitled to rely upon a transferor's certification if prior to or at the time of the transfer the transferee either—

(A) Has actual knowledge that the transferor's certification is false; or

(B) Receives a notice that the certification is false from a transferor's or transferee's agent, pursuant to § 1.1445–4.

(iv) *Belated notice of false certification.* If after the date of the transfer a transferee receives a notice that a certification is false, then that transferee is entitled to rely upon the certification only with respect to consideration that was paid prior to receipt for the notice. Such a transferee is required to withhold a full 10 percent of the amount realized from the consideration that remains to be paid to the transferor if possible. Thus, if 10 percent or more of the amount realzed remains to be paid to the transferor then the transferee is required to withhold and pay over the full 10 percent. The transferee must do so by withholding and paying over the entire amount of each successive payment of consideration to the transferor until the full 10 percent of the amount realized has been withheld and paid over. Amounts so withheld must be reported and paid over by the 20th day following the date on which each such payment of consideration is made. A transferee that is subject to the rules of this paragraph (b)(4)(iv) may not obtain a withholding certificate pursuant to § 1.1445–3, but must instead withhold and pay over the amounts required by this paragraph.

(c) *Transferred property not a U.S. real property interest*—(1) *In general.* No withholding is required under section 1445 if the transferee acquires only property that is not a U.S. real property interest. As defined in section 897(c) and § 1.897–1(c), a U.S. real property interest includes certain interests in U.S. corporations, as well as direct interests in real property and certain associated personal property. This paragraph (c) provides rules pursuant to which a person acquiring an interest in a U.S. corporation may determine that withholding is not required because that interest is not a U.S. real property interest. To determine whether an interest in tangible property constitutes a U.S. real property interest the acquisition of which would be subject to withholding, see § 1.897–1 (b) and (c).

(2) *Interests in publicly traded entities.* No withholding is required under section 1445(a) upon the acquisition of an interest in a domestic corporation if any class of stock of the corporation is regularly traded on an established securities market.

This exemption shall apply if the disposition is incident to an initial public offering of stock pursuant to a registration statement filed with the Securities and Exchange Commission. Similarly, no withholding is required under section 1445(a) upon the acquisition of an interest in a publicly traded partnership or trust. However, the rule of this paragraph (c)(2) shall not apply to the acquisition, from a single transferor in a single (or related transferors (as defined in § 1.897–1(i)) transaction (or related transactions), of an interest described in § 1.897–1(c)(2)(iii)(B) (relating to substantial amounts of non-publicly traded interests in publicly traded corporations) or to similar interests in publicly traded partnerships or trusts. The person making an acquisition described in the preceding sentence must otherwise determine whether withholding is required, pursuant to section 1445 and the regulations thereunder. Transactions shall be deemed to be related if they are undertaken within 90 days of one another or if it can otherwise be shown that they were undertaken in pursuance of a prearranged plan.

(3) *Transferee receives statement that interest in corporation is not a U.S. real property interest*—(i) *In general.* No withholding is required under section 1445(a) upon the acquisition of an interest in a domestic corporation, if the tranferor provides the transferee with a copy of a statement, issued by the corporation pursuant to § 1.897–2(h), certifying that the interest is not a U.S. real property interest. In general, a corporation may issue such a statement only if the corporation was not a U.S. real property holding corporation at any time during the previous five years (or the period in which the interest was held by its present holder, if shorter) or if interests in the corporation ceased to be United States real property interests under section 897(c)(1)(B). (A corporation may not provide such a statement based on its determination that the interest in question is an interest solely as a creditor). See § 1.897–2 (f) and (h). The corporation may provide such a statement directly to the transferee at the transferor's request. The transferor must request such a statement prior to the transfer, and shall, to the extent possible, specify the anticipated date of the transfer. A corporation's statement may be relied upon for purposes of this paragraph (c)(3) only if the statement is dated not more than 30 days prior to the date of the transfer. A transferee may also rely upon a corporation's statement that is voluntarily provided by the corporation in response to a request from the transferee, if that statement otherwise complies with the requirements of this paragraph (c)(3) and § 1.897–2(h).

(ii) *Reliance on statement not permitted.* A transferee is not entitled to rely upon a statement that a corporation is not a U.S. real property holding corporation if, prior to or at the time of the transfer, the transferee either—

(A) Has actual knowledge that the statement is false, or

(B) Receives a notice that the statement is false from a transferor's or transferee's agent, pursuant to § 1.1445–4.

Such a transferee's withholding obligations shall apply as if a statement had never been given, and such a transferee may be held fully liable pursuant to § 1.1445–1(e) for any failure to withhold.

(iii) *Belated notice of false statement.* If after the date of the transfer, a transferee receives notice that a statement provided under § 1.1445–2(c)(3)(i) (that an interest in a corporation is not a U.S. real property interest) is false, then such transferee may rely on the statement only with respect to consideration that was paid prior to the receipt of the notice.

Such a transferee is required to withhold a full 10 percent of the amount realized from the consideration that remains to be paid to the transferor, if possible. Thus, if 10 percent or more of the amount realized remains to be paid to the transferor, then the transferee is required to withhold and pay over the full 10 percent. The transferee must do so by withholding and paying over the entire amount of each successive payment of consideration to the transferor, until the full 10 percent of the amount realized has been withheld and paid over. Amounts so withheld must be reported and paid over by the 20th day following the date on which each such payment of consideration is made. A transferee that is subject to the rules of this § 1.1445–2(c)(3)(iii) may not obtain a withholding certificate pursuant to § 1.1445–3, but must instead withhold and pay over the amounts required by this paragraph.

(d) *Exceptions to requirement of withholding*—(1) *Purchase of residence for $300,000 or less.* No withholding is required under section 1445(a) if one or more individual transferees acquire a U.S. real property interest for use as a residence and the amount realized on the transaction is $300,000 or less. For purposes of this section, a U.S. real property interest is acquired for use as a residence if on the date of the transfer the transferee (or transferees) has definite plans to the transferee to reside at the property for at least 50 percent of the number of days that the property is used by any person during each of the first two 12-month periods following the date of the transfer. The number of days that the property will be vacant is not taken into account in determining the number of days such property is used by any person. A transferee shall be considered to reside at a property on any day on which a member of the transferee's family, as defined in section 267(c)(4), resides at the property. No form or other document need be filed with the Internal Revenue Service to establish a transferee's entitlement to rely upon the exception provided by this paragraph (d)(1). A transferee who fails to withhold in reliance upon this exception, but who does not in fact reside at the property for the minimum number of days set forth above, shall be liable for the failure to withhold (if the transferor was a foreign person and did not pay the full U.S. tax due on any gain recognized upon the transfer). However, if the transferee establishes that the failure to reside the minimum number of days was caused by a change in circumstances that could not reasonably have been anticipated at the time of the transfer, then the transferee shall not be liable for the failure to withhold.

The exception provided by paragraph (d)(1) does not apply in any case where the transferee is other than an individual even if the property is acquired for or on behalf of an individual who will use the property as a residence. However, this exception applies regardless of the organizational structure of the transferor (i.e., regardless of whether the transferor is an individual, partnership, trust, corporation, etc.).

(2) *Coordination with nonrecognition provisions*—(i) *In general.* A transferee shall not be required to withhold under section 1445(a) with respect to the transfer of a U.S. real property interest if—

(A) The transferor notifies the transferee, in the manner described in paragraph (d)(2)(iii) of this section, that by reason of the operation of a nonrecognition provision of the Internal Revenue Code or the provisions of any United States treaty the transferor is not required to recognize any gain or loss with respect to the transfer, and

(B) By the 20th day after the date of the transfer the transferee provides a copy of the transferor's notice to the Assistant Commissioner (International), at the address provided in § 1.1445–1(g)(10), together with a cover letter setting forth the name, identifying number (if any), and home address (in the case of an individual) or office address (in the case of an entity) of the transferee providing the notice to the Service. The rule of this paragraph (d)(2)(i) is subject to the exceptions set forth in paragraph (d)(2)(ii). For purposes of this paragraph (d)(2) a nonrecognition provision is any provision of the Internal Revenue Code for not recognizing gain or loss.

(ii) *Exceptions.* A transferee may not rely upon the rule of paragraph (d)(2)(i) of this section, and must therefore withhold under section 1445(a) with respect to the transfer of a U.S. real property interest, if either:

(A) The transferor qualifies for nonrecognition treatment with respect to part, but not all, of the gain realized by the transferor upon the transfer, or

(B) The transferee knows or has reason to know that the transferor is not entitled to the nonrecognition treatment claimed by the transferor.

In either of the above circumstances the transferee or transferor may request a withholding certificate from the Internal Revenue Service pursuant to the rules of § 1.1445–3.

(iii) *Notice of nonrecognition treatment.* No particular form is required for a transferor's notice to a transferee that it is not required to recognize gain or loss with respect to a transfer. The notice must be verified as true and signed under penalties of perjury, by a responsible officer in the case of a corporation, by a general partner in the case of a partnership, and by a trustee or equivalent fiduciary in the case of a trust or estate. The following information must be set forth in paragraphs labelled to correspond with the letter set forth below:

(A) A statement that the document submitted constitutes a notice of a nonrecognition transfer pursuant to the requirements of § 1.1445–2(d)(2);

(B) The name, identifying number (if any), and home address (in the case of an individual) or office address (in the case of an entity) of the transferor submitting the notice;

(C) A statement that the transferor is not required to recognize any gain or loss with respect to the transfer;

(D) A brief description of the transfer; and

(E) A brief summary of the law and facts supporting the claim that recognition of gain or loss is not required with respect to the transfer.

(iv) *Transitional rule.* Solely for purposes of the exemption from withholding provided by this paragraph (d)(2), prior to the effective date of a Treasury decision under section 897 (d) and (e) the applicability of a nonrecognition provision shall be determined without regard to the effect of section 897 (d) or (e) upon a particular transaction. Until such a Treasury decision becomes effective, a transferor to whom the exceptions of paragraph (d)(2)(ii) of this section do not apply may therefore provide the notice described in paragraph (d)(2)(iii) if he would qualify for nonrecognition treatment with respect to the transfer without regard to the effect of section 897 (d) or (e).

(3) *Special procedural rules applicable to foreclosures*—(i) *Amount to be withheld—(A) foreclosures.* A transferee that acquires a U.S. real property interest pursuant to a repossession or foreclosure on such property under a mortgage, security agreement, deed of trust or other instrument securing a debt must withhold tax under section 1445(a) equal to 10 percent of the amount realized on such sale. Such amount must be reported and paid over to the Service under the general rules of § 1.1445–1. However, if the transferee complies with the notice requirements of § 1.1445–2(d)(3) (ii) and (iii), such transferee may

report and pay over to the Service on or before the 20th day following the final determination by a court or trustee with jurisdiction over the foreclosure action, the lesser of:

(*1*) The amount otherwise required to be withheld under section 1445(a), or

(*2*) The "alternative amount" as defined in the succeeding sentence. The alternative amount is the entire amount, if any, determined by a court or trustee with jurisdiction over the matter, that accrues to the debtor/transferor out of the amount realized from the foreclosure sale. The amount of any mortgage, lien, or other security agreement secured by the property, that is terminated, assumed by another person, or otherwise extinguished (as to the debtor/transferor) shall not be treated as an amount that accrues to the debtor/transferor for purposes of this § 1.1445–2(d)(3)(i)(A). If the alternative amount is zero, no withholding is required. Any difference between the amount withheld at the time of the foreclosure sale and the amount to be reported and paid over to the Service must be transferred to the court or trustee with jurisdiction over the foreclosure action. Amounts withheld, if any, are to be reported and paid to the Service by using Forms 8288 and 8288–A in conformity with § 1.1445–1(d).

(B) *Deeds in lieu of foreclosures.* A transferee of a U.S. real property interest pursuant to a deed in lieu of foreclosure must withhold tax equal to 10 percent of the amount realized by the debtor/transferor on the transfer. However, no withholding is required if:

(*1*) The transferee is the only person with a security interest in the property,

(*2*) No cash or other property (other than incidental fees incurred with respect to the transfer) is paid, directly or indirectly, to any person with respect to the transfer, and

(*3*) The notice requirement of § 1.1445–2(d)(3) are satisfied.

The amount withheld, if any, must be reported and paid over to the Service not later than the 20th day following the date of transfer. In a case where withholding would otherwise be required, a withholding certificate may be requested in accordance with § 1.1445–3.

(ii) *Notice to the court or trustee in a foreclosure action*—(A) *Notice on day of purchase.* A transferee in a foreclosure sale that chooses to use the special rules applicable to foreclosures must provide notice to the court or trustee with jurisdiction over the foreclosure action on the day the property is transferred with respect to such transferee's withholding obligation. No particular form is necessary but the notice must set forth the transferee's name, home address in the case of an individual, office address in the case of an entity, a brief description of the property, the date of the transfer, the amount realized on the sale of the foreclosed property and the amount withheld under section 1445(a).

(B) *Notice whether amount withheld or alternative amount is reported and paid over to the Service.* A purchaser/transferee in a foreclosure that chooses to use the special rules applicable to foreclosures must provide notice to the court or trustee with jurisdiction over the foreclosure action regarding whether the amount withheld or the alternative amount will be (or has been) reported and paid over to the Service. The notice should set forth all the information required by the preceding paragraph (d)(3)(ii)(A), the amount withheld or alternative amount that will be (or has been) reported and paid over to the Service, and the amount that will be (or has been) paid over to the court or trustee.

(iii) *Notice to the Service*—(A) *General rule.* A transferee that in reliance upon the rules of this paragraph (d)(3) withholds an alternative amount (or does not withhold because the alternative amount is zero) must, on or before the 20th day following the final determination by a court or trustee in a foreclosure action or on or before the 20th day following the date of the transfer with respect to a transfer pursuant to a deed in lieu of foreclosure, provide notice thereof to the Assistant Commissioner (International) at the address provided in § 1.1445–1(g)(10). (The filing of such a notice shall not relieve a creditor of any obligation it may have to file a notice pursuant to section 6050J and the regulations thereunder.) No particular form is required but the following information must be set forth in paragraphs labelled to correspond with the numbers set forth below.

(*1*) A statement that the notice constitutes a notice of foreclosure action or transfer pursuant to a deed in lieu of foreclosure under § 1.1445–2(d)(3).

(*2*) The name, identifying number (if any) and home address (in the case of an individual) or office address (in the case of an entity) of the purchaser/transferee.

(*3*) The name, identifying number (if any), and home address (in the case of an individual) or office address (in the case of an entity) of the debor/transferor.

(*4*) In a foreclosure action, the date of the final determination by a court or trustee regarding the distribution of the amount realized from the foreclosure sale. In a transfer pursuant to a deed in lieu of foreclosure, the date the property is transferred to the purchaser/transferee.

(*5*) A brief description of the property.

(*6*) The amount realized from the foreclosure sale or with respect to the transfer pursuant to a deed in lieu of foreclosure.

(*7*) The alternative amount.

(B) *Special rule for lenders required to file Form 1099–A where the alternative amount is zero.* A person required under section 6050J to file Form 1099–A does not have to comply with the notice requirement of § 1.1445–2(d)(3)(iii)(A) if the alternative amount is zero. In such case, the filing of the Form 1099–A will be deemed to satisfy the notice requirments of § 1.1445–2(d)(3)(iii)(A).

(iv) *Requirements not applicable.* A transferee is not required to withhold tax or provide notice pursuant to the rules of this paragraph (d)(3) if no substantive withholding liability applies to the tansfer of the property by the debtor/transferor. For example, if the debtor/transferor provides the transferee with a certification of non-foreign status pursuant to paragraph (b) of this section, then no substantive withholding liability would exist with respect to the acquisition of the property from the debtor transferor. In such a case, no withholding of tax or notice to the Internal Revenue Service is required of the transferee with respect to the repossession or foreclosure.

(v) *Anti-abuse rule.* If a U.S. real property interest is transferred in foreclosure or pursuant to a deed in lieu of foreclosure for a principal purpose of avoiding the requirements of section 1445(a), then the provisions of this paragraph (d)(3) shall not apply to the transfer and the transferee shall be fully liable for any failure to withhold with respect to the transfer. A principal purpose to avoid section 1445(a) will be presumed (subject to rebuttal on the basis of all relevant facts and circumstances) if:

(A) The transferee acquires property in which it, or a related party, has a security interest;

(B) The security interest did not arise in connection with the debtor/transferor's or a related party's or predecessor in interest's acquisition, improvement, or maintenance of the property; and

(C) The total amount of all debts secured by the property exceeds 90 percent of the fair market value of the property.

(4) *Installment payments.* A transferee of a U.S. real property interest is not required to withhold under section 1445 when making installment payments on an obligation arising out of a dispositions that took place before January 1, 1985. With respect to disposition that take place after December 31, 1984, the transferee shall be required to satisfy its entire withholding obligation within the time specified in § 1.1445–1(c) regardless of the amount actually paid by the transferee. Thereafter, no withholding is required upon further installment payments on an obligation arising out of the transfer. A transferee that is unable to satisfy its entire withholding obligation within the time specified in § 1.1445–1(c) may request a withholding certificate pursuant to § 1.1445–3.

(5) *Acquisitions by governmental bodies.* No withholding of tax is required under section 1445 with respect to any acquisition of property by the United States, a state or possession of the United States, a political subdivision thereof, or the District of Columbia.

(6) *Foreign government—(i) As transferor.* Pursuant to section 892 and regulations thereunder, foreign governments and international organizations (as defined in § 1.892–1(b) and section 7701(a)(18), respectively) are subject to U.S. tax only with respect to income arising from commercial activities. Therefore, a foreign government on international organization that disposes of a U.S. real property interest not held for use in a commercial activity may present a notice of nonrecognition treatment pursuant to paragraph (d)(2) of this section, and thereby avoiding withholding by the transferee of the property.

A foreign government that disposes of a U.S. real property interest or the transferee of the property may obtain a withholding certificate from the Internal Revenue Service that confirms the applicability of section 892, but neither is required to do so. Rules concerning the issuance of withholding certificates are provided in § 1.1445–3.

(ii) *As transferee.* A foreign government or international organization that acquires a U.S. real property interest is fully subject to the requirements of section 1445 and the regulations thereunder. Therefore, such an entity is required to withhold tax upon the acquisition of a U.S real property interest from a foreign person.

(7) *Withholding certificate obtained by transferee or transferor.* No withholding is required under section 1445(a) if the transferee is provided with a withholding cerfiticate that so specifies. Either the transferor or the transferee may seek a withholding certificate from the Internal Revenue Service, pursuant to the provisions of § 1.1445–3.

(8) *Amount realized by transferor is zero.* If the amount realized by transferor on a transfer of a U.S. real property interest is zero, no withholding is required.

§ 1.1445–3 Adjustments to amount required to be withheld pursuant to withholding certificate.

(a) *In general.* Withholding under section 1445(a) may be reduced or eliminated pursuant to a withholding certificate issued by the Internal Revenue Service in accordance with the rules of this section. A withholding certificate may be issued by the Service in cases where reduced withholding is appropriate (see paragraph (c) of this section), where the transferor is exempt from U.S. tax (see paragraph (d) of this section), or where an agreement for the payment of tax is entered into with the Service (see paragraph (e) of this section). A withholding certificate that is obtained prior to a transfer notifies the transferee that no withholding is required. A withholding certificate that is obtained after a transfer has been made may authorize a normal refund or an early refund pursuant to paragraph (g) of this section. Either a transferee or transferor may apply for a withholding certificate. The Internal Revenue Service will act upon an application for a withholding certificate not later than the 90th day after it is received. Solely for this purpose (i.e., determining the day upon which the 90-day period commences), an application is received by the Service on the date that all information necessary for the Service to make a determination is provided by the applicant. (For rules regarding whether an application for a withholding certificate has been timely submitted, see § 1.445–1(c)(2).) The Service may deny a request for a withholding certificate where, after due notice, an applicant fails to provide information necessary for the Service to make a determination. The Service will act upon an application for an early refund not later than the 90th day after it is received. An application for an early refund must either (1) Include a copy of a withholding certificate issued by the Service with respect to the transaction or, (2) be combined with an application for a withholding certificate. Where an application for an early refund is combined with an application for a withholding certificate, the Service will act upon both applications not later than the 90th day after receipt. In the case of an application for a certificate based on non-conforming security under paragraph (e)(3)(v) of this section, and in unusually complicated cases, the Service may be unable to provide a final withholding certificate by the 90th day. In such a case the Service will notify the applicant, by the 45th day after receipt of the application, that additional processing time will be necessary. The Service's notice may request additional information or explanation concerning particular aspects of the application, and will provide a target date for final action (contingent upon the application's timely submission of any requested information). A withholding certificate issued pursuant to the privisions of this section serves to fulfill the requirements of section 1445(b)(4) concerning qualifying statements, section 1445(c)(1) concerning the transferor's maximum tax liability, or section 1445(c)(2) concerning the Secretary's authority to prescribe reduced withholding.

(b) *Applications for withholding certificates*—(1) *In general.* An application for a withholding certificate must be submitted to the Assistant Commissioner (International), at the address provided in § 1.445–1(g)(10), 1325 K St. NW., Washington. DC 20225. An application for a withholding certificate must be signed by a responsible officer in the case of a corporation, by a general partner in the case of a partnership, by a trustee, executor, or equivalent fiduciary in the case of a trust or estate, and in the case of an individual by the individual himself. A duly authorized agent may sign the application but the application must contain a valid power of attorney authorizing the agent to sign the application on behalf of the applicant. The person signing the application must verify under penalties of perjury that all representations made in connection with the application are true, correct, and complete to his knowledge and belief. No particular form is required for an application, but the application must set forth the information described in paragraphs (b), (2), (3), and (4) of this section.

(2) *Parties to the transaction.* The application must set forth the name, address, and identifying number (if any) of the person submitting the application (specifying whether that person is the transferee or transferor), and the name, address, and identifying number (if any) of other parties to the transaction (specifying whether each such party is a transferee or transferor). The applicant must determine if an identifying number exists for each party concerned and if none exists for a particular party the application must so state. The address provided in the case of an individual

must be that individual's home address, and the address provided in the case of an entity must be that entity's office address. A mailing address may be provided in addition to, but not in lieu of, a home address or office address.

(3) *Real property interest to be transferred.* The application must set forth information concerning the U.S. real property interest with respect to which the withholding certificate is sought, including the type of interest, the contract price, and, in the case of an interest in real property, its location and general description, or in the case of an interest in a U.S. real property holding corporation, the class or type and amount of the interest.

(4) *Basis for certificate*—(i) *Reduced withholding.* If a withholding certificate is sought on the basis of a claim that reduced withholding in appropriate, the application must include:

(A) A calculation of the maximum tax that may be imposed on the disposition in accordance with paragraph (c)(2) of this section. Such calculation must be accompanied by a copy of the relevant contract and depreciation schedules or other evidence that confirms the contract price and adjusted basis of the property. If no depreciation schedules are provided, the application must state the nature of the use of the property and why depreciation was not allowable. Evidence that supports any claimed adjustment to the maximum tax on the disposition must also be provided;

(B) A calculation of the transferor's unsatisfied withholding liability, or evidence supporting the claim that no such liability exists, in accordance with paragraph (c)(3) of this section; and

(C) In the case of a request for a special reduction of withholding pursuant to paragraph (c)(4) of this section, a statement of law and facts in support of the request.

(ii) *Exemption.* If a withholding certificate is sought on the basis of the transferor's exemption from U.S. tax, the application must set forth a brief statement of the law and facts that support the claimed exemption. In this regard, see paragraph (d) of this section.

(iii) *Agreement.* If a withholding certificate is sought on the basis of an agreement for the payment of tax, the application must include a signed copy of the agreement proposed by the applicant and a copy of the security instrument (if any) proposed by the applicant. In this regard, see paragraph (e) of this section.

(c) *Adjustment of amount required to be withheld*—(1) *In general.* The Internal Revenue Service may issue a withholding certificate that excuses withholding or that permits the transferee to withhold an adjusted amount reflecting the transferor's maximum tax liability. The transferor's maximum tax liability is the sum of—

(i) The maximum amount which could be imposed as tax under section 871 or 882 upon the transferor's disposition of the subject real property interest, as determined under paragraph (c)(2) of this section, and

(ii) The transferor's unsatisfied withholding liability with respect to the subject real property interest, as determined under paragraph (c)(3) of this section.

In addition, the Internal Revenue Service may issue a withholding certificate that permits the transferee to withhold a reduced amount if the Service determines pursuant to paragraph (c)(4) of this section that reduced withholding will not jeopardize the collection of tax.

(2) *Maximum tax imposed on disposition.* The first element of the transferor's maximum tax liability is the maximum amount which the transferor could be required to pay as tax upon the disposition of the subject real property interest. In the case of an individual transferor that amount will generally be the contract price of the property minus its adjusted basis, multiplied by the maximum individual income tax rate applicable to long term capital gain. In the case of a corporate transferor, that amount will generally be the contract price of the property minus its adjusted basis, multiplied by the maximum corporate income tax rate applicable to long term capital gain, currently 28 percent. However, that amount must be adjusted to take into account the following:

(i) Any reduction of tax to which the transferor is entitled under the provisions of a U.S. income tax treaty;

(ii) The effect of any nonrecognition provision that is applicable to the transaction;

(iii) Any losses realized and recognized upon the previous disposition of U.S. real property interests during the taxable year;

(iv) Any amount that is required to be treated as ordinary income; and

(v) Any other factor that may increase or reduce the tax upon the disposition.

(3) *Transferor's unsatisfied withholding liability*—(i) *In general.* The second element of the transferor's maximum tax liability is the transferor's unsatisfied withholding liability. That liability is the amount of any tax that the transferor was required to but did not withhold and pay over under section 1445 upon the acquisition of the subject U.S. real property interest or a predecessor interest. The transferor's unsatisfied withholding liability is included in the calculation of maximum tax liability so that such prior withholding liability can be satisfied by the transferee's withholding upon the current transfer. Alternatively, the transferor's unsatisfied withholding liability may be disregarded for purposes of calculating the maximum tax liability, if either—

(A) Such prior withholding liability is fully satisfied by a payment that is made with the application submitted pursuant to this section; or

(B) An agreement is entered into for the payment of that liability pursuant to the rules of paragraph (e) of this section.

Because section 1445 only requires withholding after December 31, 1984, no transferor's unsatisfied withholding liability can exist unless the transferor acquired the subject or predecessor real property interest after that date. For purposes of this paragraph (c), a predecessor interest is one that was exchanged for the subject U.S. real property interest in a transaction in which the transferor was not required to recognize the full amount of the gain or loss realized upon the transfer.

(ii) *Evidence that no unsatisfied withholding liability exists.* For purposes of paragraph (b)(4)(i)(B) of this section (concerning information that must be submitted with an application for a withholding certificate), evidence that the transferor has no unsatisfied withholding liability includes any one of the following documents:

(A) Evidence that the transferor acquired the subject or predecessor real property interest prior to January 1, 1985;

(B) A copy of the Form 8288 that was filed by the transferor, and proof of payment of the amount shown due thereon, with respect to the transferor's acquisition of the subject or predecessor real property interest;

(C) A copy of a withholding certificate with respect to the transferor's acquisition of the subject or predecessor real property interest, plus a copy of Form 8288 and proof of payment with respect to any withholding required under that certificate;

(D) A copy of the non-foreign certification furnished by the person from whom the subject or predecessor U.S. real property interest was acquired, executed at the time of that acquisition;

(E) Evidence that the transferor purchased the subject or predecessor real property for $300,000 or less, and a statement signed by the transferor under penalties of perjury, that the transferor purchased the property for use as a

residence within the meaning of § 1.1445–2(d)(1);

(F) Evidence that the person from whom the transferor acquired the subject or predecessor U.S. real property interest fully paid any tax imposed on that transaction pursuant to section 897.

(G) A copy of a notice of nonrecognition treatment provided to the transferor pursuant to § 1.1445–2(d)(2) by person from whom the transferor acquired the subject or predecessor U.S. real property interest; and

(H) A statement, signed by the transferor under penalties of perjury, setting forth the facts and circumstances that supported the transferor's conclusion that no withholding was required under section 1445(a) with respect to the transferor's acquisition of the subject or predecessor real property interest.

(4) *Special reduction of amount required to be withheld.* The Internal Revenue Service may, in its discretion, issue a withholding certificate that permits the transferee to withhold a reduced amount based upon a determination that reduced withholding will not jeopardize the collection of tax. A transferor that requests a withholding certificate pursuant to this paragraph (c)(4) is required pursuant to paragraph (b)(4)(i)(C) of this section to submit a statement of law and facts in support of the request. That statement must explain why the transferor is unable to enter into an agreement for the payment of tax pursuant to paragraph (e) of this section.

(d) *Transferor's exemption from U.S. tax*—(1) *In general.* The Internal Revenue Service will issue a withholding certificate that excuses all withholding by a transferee if it is established that:

(i) The transferor's gain from the disposition of the subject U.S. real property interest will be exempt from U.S. tax, and

(ii) The transferor has no unsatisfied withholding liability.

For the available exemptions, see paragraph (d)(2) of this section. The transferor's unsatisfied withholding liability shall be determined in accordance with the provisions of paragraph (c)(3) of this section. A transferor that is entitled to a reduction of (rather than an exemption from) U.S. tax may obtain a withholding certificate to that effect pursuant to the provisions of paragraph (c) of this section.

(2) *Available exemptions.* A transferor's gain from the disposition of a U.S. real property interest may be exempt from U.S. tax because either:

(i) The transferor is an integral part or controlled entity of a foreign government and the disposition of the subject property is not a commercial activity, as determined pursuant to section 892 and the regulations thereunder; or

(ii) The transferor is entitled to the benefits of an income tax treaty that provides for such an exemption (subject to the limitations imposed by section 1125(c) of Pub. L. 96–499, which, in general, overrides such benefits as of January 1, 1985).

(e) *Agreement for the payment of tax*—1. *In general.* The Internal Revenue Service will issue a withholding certificate that excuses withholding or that permits a transferee to withhold a reduced amount, if either the transferee or the transferor enters into an agreement for the payment of tax pursuant to the provisions of this paragraph (e). An agreement for the payment of tax is a contract between the Service and any other person that consists of two necessary elements. Those elements are—

(i) A contract between the Service and the other person, setting forth in detail the rights and obligations of each; and

(ii) A security instrument or other form of security acceptable to the Director, Foreign Operations District.

(2) *Contents of agreement*—(i) *In general.* An agreement for the payment of tax must cover an amount described in subdivision (ii) or (iii) of this paragraph (e)(2). The agreement may either provide adequate security for the payment of the chosen amount in accordance with paragraph (e)(3) of this section, or provide for the payment of that amount through a combination of security and withholding of tax by the transferee.

(ii) *Tax that would otherwise be withheld.* An agreement for the payment of tax may cover the amount of tax that would otherwise be required to be withheld pursuant to section 1445(a). In addition to the amount computed pursuant to section 1445(a), the applicant must agree to pay interest upon that amount, at the rate established under section 6621, with respect to the period between the date on which the tax imposed by section 1445(a) would otherwise be due (*i.e.*, the 20th day after the date of transfer) and the date on which the transferor's payment of tax with respect to the disposition will be due under the agreement. The amount of interest agreed upon must be paid by the applicant regardless of whether or not the Service is required to draw upon any security provided pursuant to the agreement. The interest may be paid either with the return or by the Service drawing upon the security.

(iii) *Maximum tax liability.* An agreement for the payment of tax may cover the transferor's maximum tax liability, determined in accordance with paragraph (c) of this section. The agreement must also provide for the payment of an additional amount equal to 25 percent of the amount determined under paragraph (c) of this section. This additional amount secures the interest and penalties that would accrue between the date of a failure to file a return and pay tax with respect to the disposition, and the date on which the Service collects upon that liability pursuant to the agreement. Such additional amount will only be collected if the Service finds it necessary to draw upon any security provided due to the transferor's failure to file a return and pay tax with respect to the relevant disposition.

(3) *Major types of security*—(i) *In general.* The following are the major types of security acceptable to the Service. Further details with respect to the terms and conditions of each type may be specified by Revenue Procedure.

(ii) *Bond with surety or guarantor.* The Service may accept as security with respect to a transferor's tax liability a bond that is executed with a satisfactory surety or guarantor. Only the following persons may act as surety or guarantor for this purpose

(A) A surety company holding a certificate of authority from the Secretary as an acceptable surety on Federal bonds, as listed in Treasury Department Circular No. 570, published annually in the **Federal Register** on the first working day of July;

(B) A person that is engaged within or without the United States in the conduct of a banking, financing, or similar business under the principles of § 1.864–4(c)(5), and that is subject to U.S. or foreign local or national regulation of such business. If that person is otherwise acceptable to the Service; and

(C) A person that is engaged within or without the United States in the conduct of an insurance business that is subject to U.S. or foreign local or national regulation, if that person is otherwise acceptable to the Service.

(iii) *Bond with collateral.* The Service may accept as security with respect to a transferor's tax liability a bond that is secured by acceptable collateral. All collateral must be deposited with a responsible financial institution acting as escrow agent, or, in the Service's discretion, with the Service. Only the following types of collateral are acceptable:

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(A) Bonds, notes, or other public debt obligations of the United States, in accordance with the rules of 31 CFR Part 225; and

(B) A certified, cashier's, or treasurer's check, drawn on an entity acceptable to the Service that is engaged within or without the United States in the conduct of a banking, financing, or similar business under the principles of § 1.864–4(c)(5) and that is subject to U.S. or foreign local or national regulation of such business.

(iv) *Letter of credit.* The Service may accept as security with respect to a transferor's tax liability an irrevocable letter of credit. The Service may accept a letter of credit issued by an entity acceptable to the Service that is engaged within or without the United States in the conduct of a banking, financing, or similar business under the principles of § 1.864–4(c)(5) and that is subject to U.S. or foreign local or national regulation of such business. However, the Director will accept a letter of credit from an entity that is not engaged in trade or business in the United States only if such letter may be drawn on an advising bank within the United States.

(v) *Guarantees and other non-conforming security*—(A) *Guarantee.* The Service may in its discretion accept as security with respect to a transferor's tax liability the applicant's guarantee that it will pay such liability. The Service will in general accept such a guarantee only from a corporation, foreign or domestic, any class of stock of which is regularly traded on an established securities market on the date of the transfer.

(B) *Other forms of security.* The Service may in unusual circumstances and at its discretion accept any form of security that if finds to be adequate. An application for a withholding certificate that proposes a form of security that does not conform with any of the preferred types set forth in paragraph (e)(3) (ii) through (iv) of this section or any relevant Revenue Procedure must include:

(*1*) A detailed statement of the facts and circumstances supporting the use of the proposed form of security, and

(*2*) A memorandum of law concerning the validity and enforceability of the proposed form of security.

(4) Terms of security instrument. Any security instrument that is furnished pursuant to this section must provide that—

(i) The amount of each deposit of estimated tax that will be required with respect to the gain realized on the subject disposition may be collected by levy upon the security as of the date following the date on which each such deposit is due (unless such deposit is timely made);

(ii) The entire amount of the liability may be collected by levy upon the security at any time during the nine months following the date on which the payment of tax with respect to the subject disposition is due, subject to release of the security upon the full payment of the tax and any interest and penalties due. If the transferor requests an extension of time to file a return with respect to the disposition, then the Director may require that the term of the security instrument be extended until the date that is nine months after the filing deadline as extended.

(f) *Amendments to application for withholding certificate*— (1) *In general.* An applicant for a withholding certificate may amend an otherwise complete application by submitting an amending statement to the Assistant Commissioner (International), at the address provided in § 1.1445–1(g)(10). The amending statement shall provide the information required by § 1.1445–3(f)(3) and must be signed and accompanied by a penalties of perjury statement in accordance with § 1.1445–3(b)(1).

(2) *Extension of time for the Service to process reqests for withholding certificates*—(i) *In general.* If an amending statement is submitted, the time in which the Internal Revenue Service must act upon the amended application shall be extended by 30 days.

(ii) *Substantial amendments.* If an amending statement is submitted and the Service finds that the statement substantially amends the facts of the underlying application or substantially alters the terms of the withholding certificate as requested in the initial application, the time within which the Service must act upon the amended application shall be extended by 60 days. The applicant shall be so notified.

(iii) *Amending statement received after the requested withholding certificate has been signed by the Assistant Commissioner (International).* If an amending statement is received after the withholding certificate, drafted in response to the underlying application, has been signed by the Assistant Commissioner (international) or his delegate and prior to the day such certificate is mailed to the applicant, the time in which the Service must act upon the amended application shall be extended by 90 days. The applicant will be so notified.

(3) *Information required to be submitted.* No particular form is required for an amending statement but the statement must provide the following information:

(i) *Indentificoation of applicont.* The amending statement must set forth the name, address and identifying number (if any) of the person submitting the amending statement (specifying whether that person is the transferee or transferor).

(ii) *Date of underlying application.* The amending statement must set forth the date of the underlying) application for a withholding certificate.

(iii) *Real property interest to be (or that hos been) transferred.* The amending statement must set forth a brief description of the real property interest with respect to which the underlying application for a withholding certificate was submitted.

(iv) *Amending information.* The amending statement must fully set forth the basis for the amendment including any modification of the facts supporting the application for a withholding certificate and any change sought in the terms of the withholding certificate.

(g) *Early refund of overwithheld amounts.* If a transferor receives a withholding certificate pursuant to this section, and an amount greater than that specified in the certificate was withheld by the transferee, then pursuant to the rules of this paragraph (f) the transferor may apply for a refund (without interest) of the excess amount prior to the date on which the transferor's tax return is due (without extensions). (Any interest payable on refunds issued after the filing of a tax return shall be determined in accordance with the provisions of section 6611 and regulations thereunder.) An application for an early refund must be addressed to the Assistant Commissioner (International), at the address provided in § 1.1445–1(g)(10). No particular form is required for the application, but the following information must be set forth in separate paragraphs numbered to correspond with the number given below:

(1) Name, address, and identifying number (if any) of the transferor seeking the refund;

(2) Amount required to be withheld pursuant to withholding certificate issued by Internal Revenue Service;

(3) Amount withheld by transferee (attach a copy of Form 8288–A stamped by IRS pursuant to § 1.1445–1(c));

(4) Amount to be refunded to transferor. An application for an early refund cannot be processed unless the required copy of Form 8288–A (or substantial evidence of the amount withheld in the case of a failure to receive Form 8288–A as provided in § 1.1445–1(f)(3)) is attached to the application. If an application for a withholding certificate based upon the transferor's maximum tax liability is submitted after the transfer takes place, then that application may be combined with an application for an early refund. The Service will act upon a claim for refund within the time limits set forth in paragraph (a) of this section.

§ 1.1445–4 Liability of agents.

(a) *Duty to provide notice of false certification or statement to transferee.* A transferee's or transferor's agent must provide notice to the transferee if either—

(1) The transferee is furnished with a non-U.S. real property interest statement pursuant to § 1.1445-2(c)(3) and the agent knows that the statement is false; or

(2) The transferee is furnished with a non-foreign certification pursuant to § 1.1445–2(b)(2) and either (i) the agent knows that the certification is false, or (ii) the agent represents a transferor that is a foreign corporation. An agent that represents a transferor that is a foreign corporation is not required to provide notice to the transferee if the foreign corporation provided a non-foreign certification to the transferee prior to such agent's employment and the agent does not know that the corporation did so.

(b) *Duty to provide notice of false certification or statement to entity or fiduciary.* A transferee's or transferor's agent must provide notice to an entity or fiduciary that plans to carry out a transaction described in section 1445(e) (1), (2), (3), or (4) if either—

(1) The entity or fiduciary is furnished with a non-U.S. real property interest statement pursuant to § 1.1445–5(b)(4)(iii) and the agent knows that such statement is false; or

(2) The entity or fiduciary is furnished with a non-foreign certification pursuant to § 1.1445–5(b)(3) (ii) and either (i) the agent knows that such certification is false, or (ii) the agent represents a foreign corporation that made such a certification.

(c) *Procedural requirements—(1) Notice to transferee, entity, or fiduciary.* An agent who is required by this section to provide notice must do so in writing as soon as possible after learning of the false certification or statement, but not later than the date of the transfer (prior to the transferee's payment of consideration). If an agent first learns of a false certification or statement after the date of the transfer, notice must be given by the third day following that discovery. The notice must state that the certification or statement is false and may not be relied upon. The notice must also explain the possible consequences to the recipient of a failure to withhold. The notice need not disclose the information on which the agent's statement is based. The following is an example of an acceptable notice."This is to notify you that you may be required to withhold tax in connection with *(describe transaction).* You have been provided with a certification of non-foreign status (or a non-U.S. real property interest statement) in connection with that transaction. I have learned that that document is false. Therefore, you may not rely upon it as a basis for failing to withhold under section 1445 of the Internal Revenue Code. Section 1445 provides that any person who acquires a U.S. real property interest from a foreign person must withhold a tax equal to 10 percent of the total purchase price. (The term 'U.S. real property interest' includes real property, stock in U.S. corporations whose assets are primarily real property, and some personal property associated with realty.) Any person who is required to withhold but fails to do so can be held liable for the tax. Thus, if you do not withhold the 10 percent tax from the total that you pay on this transaction you could be required to pay the tax yourself, if what you are acquiring is a U.S. real property interest and the transferor is a foreign person. Tax that is withheld must be promptly paid over to the IRS using Form 8288. For further information see sections 897 and 1445 of the Internal Revenue Code and the related regulations."

(2) *Notice to be filed with IRS.* An agent who is required by paragraph (a) or (b) of this section to provide notice to a transferee, entity, or fiduciary must furnish a copy of that notice to the Internal Revenue Service by the date on which the notice is required to be given to the transferee, entity, or fiduciary. The copy of the notice must be delivered to the Assistant Commissioner (International) at the address provided in § 1.1445–1 and must be accompanied by a cover letter stating that the copy is being filed pursuant to the requirements of this § 1.1445–4(c)(2).

(d) *Effect on recipient.* A transferee, entity, or fiduciary that receives a notice pursuant to this section prior to the date of the transfer from any agent of the transferor or transferee may not rely upon the subject certification or statement for purposes of excusing withholding pursuant to § 1.1445–2 or § 1.1445–5. Therefore, the recipient of a notice may be held liable for any failure to deduct and withhold tax under section 1445 as if such certification or statement had never been given. For special rules concerning the effect of the receipt of a notice after the date of the transfer, see §§ 1.1445–2(b)(4)iv) and 1.1445–5 (c), (d) and (e).

(e) *Failure to provide notice.* Any agent who is required to provide notice but who fails to do so in the manner required by paragraph (a) or (b) of this section shall be held liable for the tax that the recipient of the notice would have been required to withhold under section 1445 if such notice had been given. However, an agent's liability under this paragraph (e) is limited to the amount of compensation that that agent derives from the transaction. In addition, an agent who assists in the preparation of, or fails to disclose knowledge of, a false certification or statement may be liable for civil or criminal penalties.

(f) *Definition of transferor's or transferee's agent*—(1) *In general.* For purposes of this section, the terms "transferor's agent" and "transferee's agent" means any person who represents the transferor or transferee (respectively)—

(i) In any negotiation with another person (or another person's agent) relating to the transaction; or

(ii) In settling the transaction.

(2) *Transactions subject to section 1445(e).* In the case of transactions subject section 1445(e), the following definitions apply.

(i) The term "transferor's agent" means any person that represents or advises an entity or fiduciary with respect to the planning, arrangement, or consummation by the entity of a transaction described in section 1445(e) (1), (2), (3), or (4).

(ii) The term "transferee's agent" means any person that represents or advises the holder of an interest in an entity with respect to the planning, arrangement or consummation by the entity of a transaction described in section 1445(e) (1), (2), (3), or (4).

(3) *Exclusion of settlement officers and clerical personnel.* For purposes of this section, a person shall not be treated as a transferor's agent or transferee's agent with respect to any transaction solely because such person performs one or more of the following activities.

(i) The receipt and disbursement of any portion of the consideration for the transaction;

(ii) The recording of any document in connection with the transaction; or

(iii) Typing, copying, and other clerical tasks.

(iv) The obtaining of title insurance reports and reports concerning the condition of the real property that is the subject of the transaction; or

(v) The transmission or delivery of documents between the parties.

(4) *Exclusion for governing body of a condominium association and the board of directors of a cooperative housing corporation.* The members of a board, committee or other governing body of a condominium association and the board of directors and officers of a cooperative housing corporation will not be deemed agents of the transferor or transferee if such individuals function exclusively in their capacity as representatives of such association or corporation with respect to the transaction. In addition, the managing agent of a cooperative housing corporation or condominium association will not be deemed to be an agent of the transferee or transferor if such person functions exclusively in its capacity as a managing agent. If a person's activities include advising the transferee or transferor with respect to the transfer, this exclusion shall not apply.

§ 1.1445–5 Special rules concerning distributions and other transactions by corporations, partnerships, trusts, and estates (temporary).

(a) *Purpose and scope.* This section provides special rules concerning the withholding that is required under section 1445(e) upon distributions and other transactions involving domestic or foreign corporations, partnerships, trusts, and estates. Paragraph (b) of this section provides rules that apply generally to the various withholding requirements set forth in this section. Under section 1445(e)(1) and paragraph (c) of this section, a domestic partnership or the fiduciary of a domestic trust or estate is required to withhold tax upon the entity's disposition of a U.S. real property interest if any foreign persons are partners or beneficiaries of the entity. Paragraph (d) provides rules concerning the requirement of section 1445(e)(2) that a foreign corporation withholding tax upon its distribution of a U.S. real property interest to its interest-holders. Finally, under section 1445(e)(3) and paragraph (e) of this section a domestic U.S. real property holding corporation is required to withhold tax upon certain distributions to interest-holders that are foreign persons. Paragraphs (f) and (g) of this section are reserved to provide rules concerning transactions involving interests in partnerships, trusts, and estates that will be subject to withholding pursuant to sections 1445(e)(4) and (5).

(b) *Rules of general application*—(1) *Double withholding not required.* If tax is required to be withheld with respect to a transfer of property in accordance with the rules of this section, then no additional tax is required to be withheld by the transferee of the property with respect to that transfer pursuant to the general rules of section 1445(a) and § 1.1445–1. If tax is required to be withheld under section 1441 or 1442 with respect to a transfer of property, withholding shall not be required under section 1445 or § 1.1445–5.

If a transfer of a U.S. real property interest described in section 1445(e) is exempt from withholding under the rules of this section, then no withholding is required under the general rules of section 1445(a) and § 1.1445–1.

(2) *Coordination with nonrecognition provisions*—(i) *In general.* Withholding shall not be required under the rules of this section with respect to a transfer described in section 1445(e) of a U.S. real property interest if—1445(e) if—

(A) By reason of the operation of a nonrecognition provision of the Internal Revenue Code or the provisions of any treaty of the United States no gain or loss is required to be recognized by the foreign person with respect to which withholding would otherwise be required; and

(B) The entity or fiduciary that is otherwise required to withhold complies with the notice requirements of paragraph (b)(2)(ii) of this section. The entity or fiduciary must determine whether gain or loss is required to be recognized pursuant to the rules of section 897 and the applicable nonrecognition provisions of the Internal Revenue Code. An entity or fiduciary may obtain a withholding certificate from the Internal Revenue Service that confirms the applicability of a nonrecognition provision, but is not required to do so. For purposes of this paragraph (b)(2), a nonrecognition provision is any provision of the Internal Revenue Code for not recognizing gain or loss. If nonrecognition treatment is available only with respect to part of the gain realized on a transfer, the exemption from withholding provided by this paragraph (b)(2) shall not apply. In such cases a withholding certificate may be sought pursuant to the provisions of § 1.1445–6.

(ii) *Notice of nonrecognition transfer.* An entity or fiduciary that fails to withhold tax with respect to a transfer in reliance upon the rules of this paragraph (b)(2) must be the 20th day after the date of the transfer deliver a notice thereof to the Assistant Commissioner, (International), at the address provided in § 1.1445–1(g)(10). No particular form is required for a notice of transfer, but the following information must be set forth in paragraphs labelled to correspond with the letter set forth below:

(A) A statement that the document submitted constitutes a notice of a nonrecognition transfer pursuant to the requirements of § 1.1445–5(b)(2)(ii);

(B) The name, office address, and identifying number (if any) of the entity of fiduciary submitting the notice;

(C) The name, identifying number (if any), and home address (in the case of an individual) or office address (in the case of an entity) of each foreign person with respect to which withholding would otherwise be required;

(D) A brief description of the transfer; and

(E) A brief statement of the law and facts supporting the claim that recognition of gain or loss is not required with respect to the transfer.

(iii) *Transition rule.* Solely for purposes of the exemption from withholding provided by this paragraph (b)(2), prior to the effective date of a Treasury decision under section 897(e) the applicability of a nonrecognition provision to a particular transfer shall be determined without regard to the effect of that section.

(3) *Interest-holder not a foreign person*—(i) *In general.* Pursuant to the provisions of paragraphs (c) and (e) of this section, an entity or fiduciary is required to withhold with respect to certain transfers of property if a holder of an interest in the entity is a foreign person. For purposes of determining whether a holder of an interest is a foreign person, and entity or fiduciary may rely upon a certification of nonforeign status provided by that person in accordance with paragraph (b)(3)(ii) of this section. Except to the extent provided in paragraph (b)(3)(iii) of this section, such a certification excuses the entity or fiduciary from any liability otherwise imposed pursuant to section 1445(e) and regulations thereunder. However, no obligation is imposed upon an entity or fiduciary to obtain certifications from interest-holders; an entity or fiduciary may instead rely upon other means to ascertain the nonforeign status of an interest-holder. If the entity or fiduciary does rely upon other means but the interest-holder proves, in fact, to be a foreign person, then the entity or fiduciary is subject to any liability imposed pursuant to section 1445 and regulations thereunder.

An entity or fiduciary is not required to rely upon other means to ascertain the non-foreign status of an interest-holder and may demand a certification of non-foreign status. If the certification is not provided, the entity or fiduciary may withhold tax under section 1445 and will be considered, for purposes of sections 1461 through 1463, to have been required to withhold such tax.

(ii) *Interest-holder's certification of non-foreign status*—(A) *In general.* For purposes of this section, an entity or fiduciary may treat any holder of an interest in the entity as a U.S. person if that interest-holder furnishes to the entity or fiduciary a certification stating that the interest-holder is not a foreign person, in accordance with the provisions of paragraph (b)(3)(ii)(B) of this section. In general, a foreign person is a nonresident alien individual, foreign corporation, foreign partnership, foreign trust, or foreign estate, but not a resident alien individual. In this regard, see § 1.897–1(k).

(B) *Procedural rules.* An interest-holder's certification of non-foreign status must—

(*1*) State that the interest-holder is not a foreign person;

(*2*) Set forth the interest-holder's name, identifying number, home address (in the case of an individual), or office address (in the case of an entity), and place of incorporation (in the case of a corporation); and

(*3*) Be signed under penalties of perjury.

Pursuant to § 1.897–1(p), an individual's identifying number is the individual's Social Security number and any other person's identifying number is its U.S. employer identification number. The certification must be signed by a responsible officer in the case of a corporation, by a general partner in the case of a partnership, and by a trustee, executor, or equivalent fiduciary in the case of a trust or estate. No particular form is needed for a certification pursuant to this paragraph (b)(3)(ii)(B), nor is any particular language required, so long as the document meets the requirements of this paragraph. Samples of acceptable certifications are provided in paragraph (b)(3)(ii)(D) of this section. An entity may rely upon a certification pursuant to this paragraph (b)(3)(ii)(B) for a period of two calendar years following the close of the calendar year in which the certification was given.

If an interest holder becomes a foreign person within the period described in the preceding sentence, the interest-holder must notify the entity prior to any further dispositions or distributions and upon receipt of such notice (or any other notification of the foreign status of the interest-holder) the entity may no longer rely upon the prior certification. An entity that obtains and relies upon a certification must retain that certification with its books and records for a period of three calendar years following the close of the last calender year in which the entity relied upon the certification.

(C) *Foreign corporation that has made an election under section 897(i).* A foreign corporation that has made a valid election under section 897(i) to be treated as a domestic corporation for purposes of section 897 may provide a certification of non-foreign status pursuant to this paragraph (b)(3)(ii). However, an electing foreign corporation must attach to such certification a copy of the acknowledgment of the election provided to the corporation by the Internal Revenue Service pursuant to § 1.897–3(d)(4).

An acknowledgment is valid for this purpose only if it states that the information required by § 1.897–3 has been determined to be complete.

(D) *Sample certifications*—(*1*) *Individual interest-holder.* "Under section 1445(e) of the Internal Revenue Code, a corporation, partnership, trust or estate must withhold tax with respect to certain transfers of property if a holder of an interest in the entity is a foreign person. To inform {*name of entity*} that no withholding is required with respect to my interest in it, I, {*name of interest-holder*}, hereby certify the following:

1. I am not a nonresident alien for purposes of U.S. income taxation;

2. My U.S. taxpayer identifying number (Social Security number) is _____; and

3. My home address is _____

I agree to inform [name of entity] promptly if I become a nonresident alien at any time during the three years immediately following the date of this notice.

I understand that this certification may be disclosed to the Internal Revenue Service by (*name of entity*) and that any false statement I have made here could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct, and complete.

[*Signature and date*]"

(*2*) *Entity interest-holder.* "Under section 1445(e) of the Internal Revenue Code, a corporation, partnership, trust, or estate must withhold tax with respect to certain transfers of property if a holder of an interest in the entity is a foreign person. To inform {*name of entity*} that no withholding is required with respect to {*name of interest-holder*}'s interest in it, the undersigned hereby certifies the following on behalf of [*name of interest-holder*]:

1. [*Name of interest-holder*] is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);

2. [*Name of interest-holder*]'s U.S. employer identification number is _____; and

3. [*Name of interest-holder*]'s office address is _____

and place of incorporation (if applicable) is _____

[*Name of interest holder*] agrees to inform {*name of entity*} if it becomes a foreign person at any time during the three year period immediately following the date of this notice.

[*Name of interest-holder*] understands that this certification may be disclosed to the Internal Revenue Service by {*name of entity*} and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct, and complete, and I further declare that I have authority to sign this document on behalf of [*name of interest-holder*].

{*Signature and date*}
{*Title*}"

(ii) *Reliance upon certification not permitted.* An entity or fiduciary may not rely upon an interest-holder's certification of non-foreign status if, prior to or at the time of the transfer with respect to which withholding would be required, the entity or fiduciary either—

(A) Has actual knowledge that the certification is false;

(B) Has received a notice that the certification is false from a transferor's or transferee's agent, pursuant to § 1.1445–4; or

(C) Has received from a corporation that it knows to be a foreign corporation a certification that does not have attached to it a copy of the IRS acknowledgment of the corporation's election under section 897(i), as required by paragraph (b)(3)(ii)(C) of this section. Such an entity's or fiduciary's withholding obligations shall apply as if a statement had never been given, and such an entity or fiduciary may be held fully liable pursuant to § 1.1445–1(e) for any failure to withhold. For special rules concerning an entity's belated receipt of a notice concerning a false certification, see paragraphs (c)(2)(ii) and (e)(2)(iii) of this section.

(4) *Property transferred not a U.S. real property interest*—(i) *In general.* Pursuant to the provisions of paragraphs (c) and (d) of this section, an entity or fiduciary is required to withhold with respect to certain transfers of property, if the property transferred is a U.S. real property interest. (In addition, taxable distributions of U.S. real property interests by domestic or foreign partnerships, trusts, and estates will be subject to withholding pursuant to section 1445(e)(4) and paragraph (f) of this section after publication of a Treasury decision under sections 897 (e)(2) and (g). As defined in section 897(c) and § 1.897–1(c), a U.S. real property interest includes certain interests in U.S. corporations, as well as direct interests in real property and certain associated personal property. This paragraph (b)(4) provides rules pursuant to which an entity (or fiduciary thereof) that transfers an interest in a U.S. corporation may determine that withholding is not required because the interest transferred is not a U.S. real property interest. To determine whether an interest in tangible property constitutes a U.S. real property interest the transfer of which would be subject to withholding, see § 1.897–1 (b) and (c).

(ii) *Interests in publicly traded entities.* Withholding is not required under paragraph (c) or (d) of this section upon an entity's transfer of an interest in a domestic corporation if any class of stock of the corporation is regularly traded on an established securities market. This exemption shall apply to a disposition incident to an initial public offering of stock pursuant to a registration statement filed with the Securities and Exchange Commission.

Similarly, no withholding is required under paragraph (c) or (d) of this section upon an entity's transfer of an interest in a publicly traded partnership or trust. However, the rule of this paragraph (b)(4)(ii) shall not apply to the transfer, to a single transferee (or related transferees as defined in § 1.897–1(i)) in a single transaction (or related transactions), of an interest described in § 1.897–1(c)(2)(iii)(B) (relating to substantial amounts of non-publicly traded interests in publicly traded corporations) or of similar interests in publicly traded partnerships or trusts. The entity making a transfer described in the preceding sentence must otherwise determine whether withholding is required, pursuant to section 1445(e) and the regulations thereunder. Transactions shall be deemed to be related if they are undertaken within 90 days of one another or if it can otherwise be shown that they were undertaken in pursuance of a prearranged plan.

(iii) *Corporation's statement that interest is not a U.S. real property interest.* (A) *In general.* No withholding is required under paragraph (c) or (d) of this section upon an entity's transfer of an interest in a domestic corporation if, prior to the transfer, the entity or fiduciary obtains a statement, issued by the corporation pursuant to § 1.897–2(h), certifying that the interest is not a U.S. real property interest. In general, a corporation may issue such a statement only if the corporation was not a U.S. real property holding corporation at any time during the previous five years (or the period in which the interest was held by its present holder, if shorter) or if interests in the corporation ceased to be United States real property interests under section 897(c)(1)(B). (A corporation may not provide such a statement based on its determination that the interest in question is an interest solely as a creditor.) See § 1.897–2 (f) and (h). A corporation's statement may be relied upon for purposes of this paragraph (b)(4)(iii) only if the statement is dated not more than 30 days prior to the date of the transfer.

(B) *Reliance on statement not permitted.* An entity or fiduciary is not entitled to rely upon a statement that an interest in a corporation is not a U.S. real property interest, if, prior to or at the time of the transfer, the entity or fiduciary either—

(*1*) Has actual knowledge that the statement is false, or

(*2*) Receives a notice that the statement is false from a transferor's or transferee's agent, pursuant to § 1.1445–4.

Such an entity's or fiduciary's withholding obligations shall apply as if a statement had never been given, and such an entity or fiduciary may be held fully liable pursuant to § 1.1445–1(e) for any failure to withhold. For special rules concerning an entity's belated receipt of a notice concerning a false statement, see paragraphs (c)(2)(iii) and (d)(2)(i) of this section.

(5) *Reporting and paying over of withheld amounts*—(i) *In General.* An entity or fiduciary must report and pay over to the Internal Revenue Service any tax withheld pursuant to section 1445(e) and this section by the 20th day after the date of the transfer (as defined in § 1.1445–1(g)(8). Forms 8288 and 8288–A are used for this purpose and must be filed with the Internal Revenue Service Center, Philadephia, PA 19255. The contents of Forms 8288 and 8288–A are described in § 1.1445–1(d). Pursuant to section 7502 and regulations thereunder, the timely mailing of Forms 8288 and 8288–A by U.S. mail will be treated as their timely filing. Form 8288–A will be stamped by the Internal Revenue Service to show receipt, and a stamped copy will be mailed by the Service to the interest-holder, at the address shown on the form, for the interest-holder's use. See paragraph (b)(7) of this section. If an application for a withholding certificate with respect to a transfer of a U.S. real property interest was submitted to the Internal Revenue Service on the day of or at any time prior to the transfer, the entity or fiduciary must withold the amount required under section 1445(e) and the rules of this section. However, the amount withheld, or a lesser amount as determined by the Service, need not be reported and paid over to the Service until the 20th day following the Service's final determination. For this purpose, the Service's final determination occurs on the day when the withholding certificate is mailed to the applicant by the Service or when a notification denying the request for a withholding certificate is mailed to the applicant by the Service. An application is submitted to the Service on the day it is actually received by the Service at the address provided in § 1.1445–1(g)(10) or, under the rules of section 7502, on the day it is mailed to the Service at the address provided in § 1.1445–1(g)(10). For rules concerning the issuance of withholding certificates, see § 1.1445–6.

(ii) *Anti-abuse rule.* An entity or fiduciary that in reliance upon the rules of this paragraph (b)(5)(ii) fails to report and pay over amounts withheld by the 20th day following the date of the transfer, shall be subject to the payment of interest and penalties if the relevant application for a withholding certificate (or an amendment of the application for a withholding certificate) was submitted for a principle purpose of delaying the payment to the IRS of the amount withheld. Interest and penalties shall be assessed on the amount that is ultimately paid over, with respect to the period between the 20th day after the date of the transfer and the date on which payment is made.

(6) *Liability upon failure to withhold.* For rules regarding liability upon failure to withhold under section 1445(e) and this § 1.1445–5, see § 1.1445–1(e).

(7) *Effect of withholding by entity or fiduciary upon interest holder.* The withholding of tax under section 1445(e) does not excuse a foreign person that is subject to U.S. tax by reason of the operation of section 897 from filing a U.S. tax return. Thus, Form 1040NR. 1041. or 1120F, as appropriate must be filed and any tax due must be paid, by the filing date otherwise applicable to such person (or any extension thereof). The tax withheld with respect to the foreign person under section 1445(e) (as shown on Form 8288–A) shall be credited against the amount of income tax as computed in such return, but only if the stamped copy of Form 8288–A provided to the entity or fiduciary (under paragraph (b)(5) of this section) is attached to the return or substantial evidence of the amount of tax withheld is attached to the return in accordance with the succeeding sentence. If a stamped copy of Form 8288–A has not been provided to the interest-holder by the Service, the interest-holder may establish the amount of tax withheld by the entity or fiduciary by attaching to its return substantial evidence of such amount. Such an interestholder must attach to its return a statement which supplies all of the information required by § 1.1445–1(d) (2) (expect such information that was not obtained by a diligent effort.) If the amount withheld under section 1445(e) constitutes less than the full amount of the foreign person's U.S. tax liability for that taxable year, then a payment of estimated tax may be required to be made pursuant to section 6154 or 6654 prior to the filing of the income tax return for the year. Alternatively, if the amount withheld under section 1445(e) exceeds the foreign person's maximum tax liability with respect to the transaction (*as reflected* in a withholding certificate issued by the Internal Revenue Service pursuant to § 1.1445–6), then the foreign person may seek an early refund of the excess pursuant to § 1.1445–6(f). A foreign person that takes gain into account in accordance with the provisions of section 453 shall not be entitled to a refund to the amount withheld, unless a withholding certificate providing for such a refund is obtained pursuant to §1.1445–6. If an entity or fiduciary withholds tax under section 1445(e) with respect to a beneficial owner of an interest who is not a foreign person, such beneficial owner may credit the amount of any tax withheld against his income tax liability in accordance with the provisions of this § 1.1445–5(b)(7) or apply for an early refund under § 1.1445–6(g).

(8) *Effective dates*—(i) *Partnership, trust, and estate dispositions of U.S. real property interests.* The provisions of section 1445(e)(1) and paragraph (c) of this section, requiring withholding upon certain dispositions of U.S. real property interests by domestic partnerships, trusts, and estates, shall apply to any disposition on or after January 1, 1985.

(ii) *Certain distributions by foreign corporations.* The provisions of section 1445(e)(2) and paragraph (d) of this section, requiring withholding upon distributions of U.S. real property interests by foreign corporations shall apply to distributions made on or after January 1, 1985.

(iii) *Distributions by certain domestic corporations to foreign shareholders.* The provisions of section 1445(e)(3) and paragraph (e) of this section, requiring withholding upon distributions by U.S. real property holding corporations to foreign shareholders, shall apply to distributions made on or after January 1. 1985.

(iv) *Taxable distributions by domestic or foreign partnerships, trusts, and estates.* The provisions of section 1445(e)(4), requiring withholding upon certain taxable distributions by domestic or foreign partnerships, trusts, and estates, shall apply to distributions made on or after the effective date of a Treasury decision under section 897 (e)(2)(B)(ii) and (g).

(iv) *Disposition of interests in partnerships, trusts, and estates.* The provisions of section 1445(e)(5), requiring withholding upon certain dispositions of interests in partnerships, trusts, and estates, shall apply to dispositions on or after the effective date of a Treasury decision under section 897(g).

(vi) *Tiered Partnerships.* No withholding is required upon the disposition of a U.S. real property interest by a partnership which is directly owned, in whole or in part, by another domestic partnership (but only to the extent that the amount realized is attributable to the partnership interest of that other partnership) until the effective date of a Treasury Decision published under section 1445(e) providing rules governing this matter.

(c) *Dispositions of U.S. real property interests by domestic partnerships, trusts, and estates*—(1) *Withholding required*—(i) *In general.* If a domestic partnership, trust, or estate disposes of a U.S. real property interest and any partner, beneficiary, or owner of the entity is a foreign person, then the partnership or the trustee, executor, or equivalent fiduciary of the trust or estate must withhold tax with respect to each such foreign person in accordance with the provisions of subdivision (ii) or (iii), of this paragraph (c)(1) (as applicable). The withholding obligation imposed by this paragraph (c) applies to the fiduciary of a trust even if the grantor of the trust or another person is treated as the owner of the trust or any portion thereof for purposes of the Internal Revenue Code. Thus, the withholding obligation imposed by this paragraph (c) applies to the trustee of a land trust or similar arrangement, even if such a trustee is not ordinarily treated under the applicable provisions of local law as a true fiduciary.

(ii) *Disposition by partnership.* A partnership must withhold a tax equal to 3.4 percent of each foreign partner's distributive share of the gain realized by the partnership upon the disposition of each U.S. real property interest. Such distributive share of the gain must be determined pursuant to the principles of section 704 and the regulations thereunder. However, the partnership must withhold at the rate of 28 percent if the disposition occurs after November 21, 1986, and the partnership's taxable year before January 1, 1987. See sections 311(b)(4) and 1810(f) of the Tax Reform Act of 1986. The rate of withholding applicable to dispositions that occured before November 22, 1986 shall be determined pursuant to the temporary regulations in effect at that time. For the rules applicable to partnerships, interests in which are regularly traded on an established securities market, see § 1.1445–8T.

(iii) *Disposition by trust or estate.*—(A) *In general.* A trustee, fiduciary, executor or equivalent fiduciary (hereafter collectively referred to as the fiduciary) of a trust or estate having one or more foreign beneficiaries must withhold tax in accordance with the rules of this § 1.1445–5(c)(1)(iii). Such a fiduciary must establish a U.S. real property interest account and must enter in such account all gains and losses realized during the taxable year of the trust or estate from dispositions of U.S. real property interests. The fiduciary must withhold 34 percent of any distribution to a foreign beneficiary that is attributable to the balance in the U.S. real property interest account on the day of the distribution. A distribution from a trust or estate to a beneficiary (domestic or foreign) shall, solely for purposes of section 1445(e)(1), be deemed to be attributable first to any balance in the U.S. real property interest account and then to other amounts. However, a distribution that occurs prior to the transfer of a U.S. real property interest in a taxable year or at any other time when the amount contained in the U.S real property interest account is zero, is not subject to withholding under this § 1.1445–5(c)(1)(iii). The U.S. real property interest account is reduced by the amount distributed to all beneficiaries (domestic and foreign)

attributable to such account during the taxable year of the trust or estate. Any ending balance of the U.S. real property interest account not distributed by the close of the taxable year of the trust or estate is cancelled and is not carried over (or carried back) to any other year. Thus, the beginning balance of such account in any taxable year of the trust or estate is always zero. For rules applicable to grantor trusts see § 1.1445–5(c)(1)(iv). For rules applicable to trusts interest in which are regularly traded on an established securities market and real estate investment trusts, see § 1.1445–8.

(B) *Transition rules.* The following rules shall apply for purposes of determining the amount required to be withheld under section 1445 by az trust or estate—

(*1*) In the case of disposition of U.S. real property interest that occured before November 22, 1986, the applicable withholding requirements shall be determined pursuant to the temporary regulations under section 1445 in effect at that time;

(*2*) In the case of disposition of U.S. real property interests occurring after November 21, 1986 but before [30 days after date of publication of this regulation], the applicable withholding requirement shall be determined pursuant to the temporary regulations under section 1445, but substituting a 28 percent withholding rate for any other rate specified therein;

(*3*) In the case of distributions occurring after January 23, 1987 during a taxable year of the trust or estate that began before January 1, 1987, the applicable withholding requirements shall be determined pursuant to these final regulations, but susbstituting a 28 percent withholding rate for the 34 percent rate specified herein;

(*4*) In the case of distributions occurring after January 23, 1987 during a taxable year of the trust or estate that began after December 31, 1986, the applicable withholding requirements shall be determined pursuant to these final regulations; and

(*5*) If a trust or estate withholds under section 1445 with respect to a disposition of a U.S. real property interest, then the amount of gain realized on such disposition shall not be added to the U.S. real property interest account of the trust or estate for the taxable year of the disposition.

(C) *Example.* On January 1, 1987, A establishes a domestic trust (which has as its taxable year, the calendar year) for the benefit of B, a nonresident alien, and C, a U.S. citizen. The trust is not a trust subject to sections 671 through 679. Under the terms of the trust, the trustee, T, is given discretion to distribute income and corpus of the trust to provide for the reasonable needs of B and C. During the trust's 1987 taxable year, T disposes of three parcels of vacant land located in the United States. The following chart illustrates the computation of the amount subject to withholding under section 1445 with respect to distributions made by T to B and C during 1987.

Date	Parcel sold	Gains or (loss) realized	Distributions to C	Distributions to B (before withholding)	Section 1445 withholding (34 percent rate)	U.S. real property interest account
Jan. 1, 1987		D				0
Mar. 1, 1987						140,000
Mar. 5, 1987	Parcel 1	140,000	5,000	10,000	3,400	125,000
Mar. 15, 1987			10,000	5,000	1,700	110,000
May 1, 1987	Parcel 2	300,000				410,000
May 15, 1987	Parcel 3	(50,000)				260,000
Dec. 1, 1987			170,000	170,000	57,800	20,000
Jan. 1, 1987						0

(iv) *Disposition by grantor trust.* The trustee or equivalent fiduciary of a trust that is subject to the provisions of subpart E of part I of subchapter J (sections 671 through 697) must withhold a tax equal to 34 percent of the gain realized from each disposition of a U.S. real property interest to the extent such gain is allocable to a portion of the trust treated as owned by a foreign person under subpart E of part I of subchapter J. However the fiduciary must withhold tax at the rate of 28 percent if the disposition occurs after November 21, 1986, and the trust's taxable year began before January 1, 1987. See sections 311 (b)(4) and 1810(f) of the Tax Reform Act of 1986. The rate of withholding applicable to dispositions that occurred before November 22, 1986, shall be determined pursuant to the temporary regulations in effect at that time.

(2) *Withholding not required under paragraph (c)*—(i) *Transactions covered elsewhere.* No withholding is required under this paragraph (c) with respect to the distribution of a U.S. real property interest by a partnership, trust, or estate. Such distributions shall be subject to withholding under section 1445(e)(4) and paragraph (f) of this section on the effective date of a Treasury decision published under section 897(e)(2) and (g). See paragraph (b)(8)(iv) of this section. Withholding with respect to the disposition of an interest in a partnership, trust, or estate shall be required only as provided in section 1445(e)(5) and paragraph (g) of this section. No withholding is at this time required under those provisions. See paragraph (b)(8)(v) of this section.

(ii) *Interest-holder not a foreign person*—(A) *In general.* A domestic partnership, trust, or estate that disposes of a U.S. real property interest shall not be required to withhold with respect to any partner or beneficiary that it determines, pursuant to the rules of paragraph (b)(3) of this section, not to be a foreign person.

(B) *Belated notice of false certification.* If after the date of the transfer a partnership or fiduciary learns that a partner's or beneficiary's certification of non-foreign status is false, then that partnership or fiduciary shall be required to withhold, with respect to the foreign partner or beneficiary that gave the false certification, the lessor of—

(*1*) The amount otherwise required to be withheld under the rules of this paragraph (c), or

(*2*) An amount equal to that partner's or beneficiary's remaining interests in the income or assets of the partnership, trust, or estate. Amounts so withheld must be reported and paid over by the 60th day following the date on which the partnership or fiduciary learns that the certification is false. For rules concerning the notifications of false certifications that may be required to be given to partnerships and fiduciaries, see § 1.1445–4(b).

(iii) *Property disposed of not a U.S. real property interest*—(A) *In general.* No withholding is required under this paragraph (c) if a domestic partnership, trust, or estate that disposes of property determines pursuant to the rules of paragraph (b)(4) of this section that the property disposed of is not a U.S. real property interest.

(B) *Belated notice of false statement.* If after the date of the transfer a partnership or fiduciary learns that a corporation's statement (that an interest in the corporation is not a U.S. real property interest) is false, then that partnership or fiduciary shall be required to withhold, with respect to each foreign partner or beneficiary, the lesser of—

(*1*) The amount otherwise required to be withheld under the rules of this paragraph (c), or

(*2*) An amount equal to that partner's or beneficiary's remaining interests in the income or assets of the partnership, trust, or estate.

Amounts so withheld must be reported and paid over by the 60th day following the date on which the partnership or fiduciary learns that the statement is false. For rules concerning the notifications of false statements that may be required to be given to partnerships or fiduciaries, see § 1.1445–4(b).

(iv) *Withholding certificate.* No withholding is required under this paragraph (c) with respect to the transfer of a U.S. real property interest if the Internal Revenue Service issues a withholding certificate that so provides. For rules concerning the issuance of withholding certificates, see § 1.1445–6.

(v) *Nonrecognition transactions.* For special rules concerning transactions entitled to nonrecognition of gain or loss, see paragraph (b)(2) of this section.

(3) *Large partnerships or trusts—(i) In general.* If a partnership or trust has more than 100 partners or beneficiaries, then the partnership or fiduciary of the trust may elect to withhold in accordance with the provisions of this § 1.1445–5(c)(3) in lieu of withholding in the manner required by § 1.1445–5(c)(1). However, the rules of this § 1.1445–5(c)(3) shall not apply to any partnership or trust interests in which are regularly traded on an established securities market or to any real estate investment trust. See, § 1.1445–8T.

(ii) *Amount to be withheld.* A partnership or trust electing to withhold under this § 1.1445–5(c)(3) shall withhold from each distribution to a foreign person an amount equal 34 percent of the amount attributable to section 1445(e)(1) transfers. However, the partnership or trust must withhold at the rate of 28 percent if the distribution occurs after November 21, 1986, and the partnership's or trust's taxable year began before January 1, 1987. The rate of withholding applicable to distributions that occurred before November 22, 1986 shall be determined pursuant to the temporary regulations in effect at that time.

(iii) *Amounts attributable to section 1445(e)(1) transfers.* A distribution is attributable to section 1445(e)(1) transfers to the extent of the partner's or beneficiary's proportionate share of the current balance of the entity's section 1445(e)(1) account. A distribution from a partnership or trust that has made an election under this § 1.1445–5(c)(3) shall be deemed first to be attributable to a section 1445(e)(1) transfer to the extent of the balance in the section 1445(e)(1) account. An entity's section 1445(e)(1) account shall be equal to—

(A) The total amount of net gain realized by the entity upon all transfers of U.S. real property interests carried out by the entity after the date of its election under this § 1.1445–5(c)(3); minus

(B) The total amount of all distributions by the entity to domestic and foreign distributees from such account.

(iv) *Special rules for entities that make recurring sales of growing crops and timber.* An entity that makes an election under § 1.1445–5(c)(3) and that makes recurring sales of growing crops and timber may further elect to determine the amount subject to withholding under the rules of this § 1.1445–5(c)(3)(iv). Such an entity must withhold from each distribution to a foreign partner or beneficiary an amount equal to 10 percent of such partner's or beneficiary's proportionate share of the current balance of the entity's gross section 1445(e)(1) account. An entity's gross section 1445(e)(1) account equals—

(A) The total amount realized by the entity upon all transfers of U.S. real property interest carried out by the entity after the date of its election under this § 1.1445–5(c)(3)(iv); minus

(B) The total amount of all distributions to domestic and foreign distributees from such account.

An entity that elects to compute the amount subject to withholding under this § 1.1445–5(c)(3)(iv), shall make such election in accordance with § 1.1445–5(c)(3)(vi) and shall be subject to the provisions otherwise applicable under § 1.1445–5(c)(3).

(v) *Special rules regarding publicly traded partnerships, trust and real estate investment trusts.* [Reserved].

(vi) *Procedural rules.* An election under paragraph (c)(3) may be made by filing a notice thereof with the Assistant Commissioner (International), at the address provided in § 1.1445–1(g)(10). The notice must be submitted by a general partner (in the case of a partnership) or the trustee or equivalent fiduciary (in the case of a trust). The notice must set forth the name, office address, and identifying number of the partnership or fiduciary making the election, and, in the case of a partnership, must include the name, office address, and identifying number of the general partner submitting the election. An election under this paragraph (c)(3) may be revoked only with the consent of the Internal Revenue Service. Consent of the Service may be requested by filing an application to revoke the election with the Assistant Commissioner (International) at the address stated above. This application must include all information provided to the Service with the election notice and must provide an explanation of the reasons for revoking the election. The application to revoke an election must also specify the amount remaining to be distributed in the section 1445(e)(1) account or the gross section 1445(e)(1) account.

An entity that ceases to qualify under section 1.1445–5(c)(3) because such entity does not have more than 100 partners or beneficiaries may revoke its election only with the consent of the Internal Revenue Service.

(d) *Distributions of U.S. real property interests by foreign corporations*—(1) *In general.* A foreign corporation that distributes a U.S. real property interest must deduct and withhold a tax equal to 34 percent of the amount of gain recognized by the corporation upon the distribution. However, the foreign corporation must withhold at the rate of 28 percent if the corporation's taxable year began before January 1, 1987. The amount of gain required to be recognized by the corporation must be determined pursuant to the rules of section 897 and any other applicable section. For special rules concerning the applicability of a nonrecognition provision to a distribution, see paragraph (b)(2) of this section. The withholding liability imposed by this paragraph (d) applies to the same taxpayer that owes the related substantive income tax liability pursuant to the operation of section 897. Only one such liability will be assessed and collected from a foreign corporation, but separate penalties for failures to comply with the two requirements will be asserted.

(2) *Withholding not required*—(i) *Property distributed not a U.S. real property interest*—(A) *In general.* No withholding is required under this paragraph (d) if a foreign corporation that distributes property determines pursuant to the rules of paragraph (b)(3) of this section that the property distributed is not a U.S. real property interest.

(B) *Belated notice of false statement.* If after the date of a distribution described in paragraph (d)(1) of this section a foreign corporation learns that another corporation's statement (that an interest in that other corporation is not a U.S. real property interest) is false, then the foreign corporation may not rely upon that statement for any purpose. Such a foreign corporation's withholding obligations under this paragraph (d)

shall apply if a statement had never been given, and such a corporation may be held fully liable pursuant to § 1.1445–5(b)(5) for any failure to withhold. Amounts withheld pursuant to the rule of this paragraph (d)(2)(i)(B) must be reported and paid over by the 60th day following the date on which the foreign corporation learns that the statement is false. No penalties or interest will be assessed for failures to withhold prior to that date. For rules concerning the notifications of false statements that may be required to be given to foreign corporations, see § 1.1445–4(b).

(ii) *Withholding certificate.* No withholding is required under this paragraph (d) with respect to a foreign corporation's distribution of a U.S. real property interest if the distributing corporation obtains a withholding certificate from the Internal Revenue Service that so provides. For rules concerning the issuance of withholding certificates, see § 1.1445–6.

(e) *Distributions of foreign persons by U.S. real property holding corporations*—(1) *In general.* A domestic corporation that distributes any property to a foreign person that holds an interest in the corporation must deduct and withhold a tax equal to 10 percent of the fair market value of the property distributed to the foreign person, if—

(i) The foreign person's interest in the corporation constitutes a U.S. real property interest under the provisions of section 897 and regulations thereunder; and

(ii) The property is distributed either—

(A) In redemption of stock under section 302; or

(B) In liquidation of the corporation pursuant to the provisions of Part II of Subchapter C (sections 331 through 341). For the treatment of a domestic corporation's transfer of a U.S. real property interest to a foreign interest-holder in a distribution to which section 301 applies, see sections 897(f), 1441, and 1442.

(2) *Withholding not required*—(i) *Foreign person's interest not a U.S. real property interest.* Withholding is required under this paragraph (e) only with respect to distributions to foreign persons holding interests in the corporation that constitute U.S. real property interests. In general, a foreign person's interest in a domestic corporation constitutes a U.S. real property interest if the corporation was a U.S real property holding corporation at any time during the shorter of (A) the period in which the foreign person held the interest or (B) the previous five years (but not earlier than June 19, 1980). See section 897(c) and §§ 1.897–1(c) and 1.897–2 (b) and (h). However, an interest in such a corporation ceases to be a U.S. real property interest after all of the U.S. real property interests held by the corporation itself are disposed of in transactions on which gain or loss is recognized. See section 897(c)(1)(B) and §1.897–2(f)(2). Thus, if a U.S. real property holding corporation in the process of liquidation does not elect section 337 nonrecognition treatment upon its sale of all U.S. real property interests held by the corporation, and recognizes gain or loss upon such sales, interests in that corporation cease to be U.S. real property interests. Therefore, no withholding would be required with respect to that corporation's subsequent liquidating distribution to a foreign shareholder of property other than a U.S. real property interest.

(ii) *Nonrecognition transactions.* For special rules concerning the applicability of a nonrecognition provision to a distribution described in paragraph (e)(1) of this section, see paragraph (b)(2) of this section.

(iii) *Interest-holder not a foreign person*— (A) *In general.* A domestic corporation shall not be required to withhold under this paragraph (e) with respect to a distribution of property to any distributee that it determines, pursuant to the rules of paragraph (b)(3) of this section, not to be a foreign person.

(b) *Belated notice of false certification.* If after the date of a distribution described in paragraph (e)(1) of this section a domestic corporation learns that an interest-holder's certification of non-foreign status is false, then the corporation may rely upon that certification only if the person providing the false certification holds (or held) less than 10 percent of the value of the outstanding stock of the corporation. With respect to less than 10 percent interest-holders, no withholding is required under this paragraph (e) upon receipt of a belated notice of false certification. With respect to 10 percent or greater interest-holders, the corporation's withholding obligations under this paragraph (e) shall apply as if a certification had never been given, and such a corporation may be held fully liable pursuant to § 1.1445–5(b)(6) for any failure to withhold as of the date specified in this § 1.1445–5(e)(2)(iii)(B). Amounts withheld pursuant to the rule of this paragraph (e)(2)(iii)(B) must be reported and paid over by the 60th day following the date on which the corporation learns that the certification is false. No penalties or interest for failures to withhold will be assessed prior to that date. For rules concerning the notifications of false certifications that may be required to be given to U.S. real property holding corporations, see § 1.1445–4(b).

(iv) *Withholding certificate.* No withholding, or reduced withholding, is required under this paragraph (e) with respect to a domestic corporation's distribution of property if the distributing corporation obtains a withholding certificate from the Internal Revenue Service that so provides. For rules concerning the issuance of withholding certificates, see § 1.1445–6.

(f) *Taxable distributions by domestic or foreign partnerships, trusts, or estates.* [Reserved]

(g) *Dispositions of interests in partnerships, trusts, and estates.* [Reserved]

§ 1.1445–6 Adjustments pursuant to withhold certificate of amount required to be withheld under section 1445(e).

(a) *Withholding certificate for purposes of section 1445(e)*—(1) *In general.* Pursuant to the provisions of § 1.1445–5 (c)(2)(iv), (d)(2)(ii), and (e)(2)(iv), withholding under section 1445(e) may be reduced or eliminated pursuant to a withholding certificate issued by the Internal Revenue Service in accordance with the rules of this § 1.1445–6. A withholding certificate may be issued in cases where adjusted withholding is appropriate (e.g., because of the applicability of a nonrecognition provision—see paragraph (c) of this section), where the relevant taxpayers are exempt from U.S. tax (see paragraph (d) of this section), or where an agreement for the payment of tax is entered into with the Service (see paragraph (e) of this section). A withholding certificate that is obtained prior to a transfer allows the entity or fiduciary to withhold a reduced amount or excuses withholding entirely. A withholding certificate that is obtained after a transfer has been made may authorize a normal refund or an early refund pursuant to paragraph (g) of this section. The Internal Revenue Service will act upon an application for a withholding certificate not later than the 90th day after it is received. (The Service may deny a request for a withholding certificate where, after due notice, an applicant fails to provide the information necessary to make a determination.) Solely for this purpose (i.e., determining the day upon which the 90 day period commences), an application is received by the Service on the date when all information necessary for the Service to make a determination is provided by the applicant. (For rules regarding whether an application has been timely submitted, see § 1.1445–5(b)(5)). The Internal Revenue Service will act upon an application for an early refund not later than the 90th day after it is received. An application for an early refund must either (i) include a copy of a withholding certificate issued by the Service with respect to the transaction, or (ii) be combined with an application for a withholding certificate. Where an application for an early refund is combined with an application for a withholding certificate, the Service will act upon both applications not later than the 90th day after receipt. Either an entity, a fiduciary, or a relevant taxpayer (as defined in paragraph (a)(2) of this section) may apply for a withholding certificate. An entity or fiduciary may apply for a withholding certificate with respect to all or less than all relevant taxpayers. For special rules concerning the issuance of a withholding certificate to a foreign corporation that has made an election under section 897(i), see § 1.1445–7(d).

(2) *Relevant taxpayer.* For purposes of this section, the term "relevant taxpayer" means any foreign person that will bear substantive income tax liability by reason of the operation of section 897 with respect to a transaction upon which withholding is required under section 1445(e).

(b) *Applications for withholding certificates*—(1) *In general.* An application for a withholding certificate pursuant to this § 1.1445–6 must be submitted in the manner provided in § 1.1445—3 (b). However, in lieu of the information required to be submitted pursuant to § 1.1445–3(b)(4), the applicant must provide the information required by paragraph (b)(2) of this section. In addition, the information required by paragraph (b)(3) of this section must be submitted with the application.

(2) Basis for certificate—(i) *Adjusted withholding.* If a withholding certificate is sought on the basis of a claim that adjusted withholding is appropriate, the application must include a calculation, in accordance with paragraph (c) of this section, of the maximum tax that may be imposed on each relevant taxpayer with respect to which adjusted withholding is sought. The application must also include all evidence necessary to substantiate the claimed calculation, such as records of adjustments to basis or appraisals of fair market value.

(ii) *Exemption.* If a withholding certificate is sought on the basis of a relevant taxpayer's exemption from U.S. tax, the application must set forth a brief statement of the law and facts that support the claimed exemption. See paragraph (d) of this section.

(iii) *Agreement.* If a withholding certificate is sought on the basis of an agreement for the payment of tax, the application must include a copy of the agreement proposed by the applicant and a copy of the security instrument (if any) proposed by the applicant. In this regard, see paragraph (e) of this section.

(3) *Relevant taxpayers.* An application for withholding certificate pursuant to this section must set forth the name, identifying number (if any) and home address (in the case of an individual) or office address (in the case of an entity) of each relevant taxpayer with respect to which adjusted withholding is sought.

(c) *Adjustment of amount required to be withheld.* The Internal Revenue Service may issue a withhold certificate that excuses withholding or that permits an entity or fiduciary to withholding an adjusted amount reflecting the relevant taxpayers' maximum tax liability. A relevant taxpayer's maximum tax liability is the maximum amount which that taxpayer could be required to pay as tax by reason of the transaction upon which withholding is required. In the case of an individual taxpayer that amount will generally be the gain realized by the individual, multiplied by the maximum individual income tax rate applicable to long term capital gain, currently 20 percent. In the case of a corporate taxpayer, that amount will generally be the gain realized by the corporation, multiplied by the maximum corporate income tax rate applicable to long term capital gain, currently 28 percent. However, that amount must be adjusted to take into account the following:

(1) Any reduction of tax to which the relevant taxpayer is entitled under the provisions of a U.S. income tax treaty;

(2) The effect of any nonrecognition provision that is applicable to the transaction;

(3) Any losses previously realized and recognized by the relevant taxpayer during the taxable year by reason of the operation of section 897;

(4) Any amount realized upon the subject transfer by the relevant taxpayer that is required to be treated as ordinary income under any provision of the Code; and

(5) Any other factor that may increase or reduce the tax upon the transaction.

(d) *Relevant taxpayer's exemption from U.S. tax*—(1) *In general.* The Internal Revenue Service will issue a withholding certificate that excuses withholding by an entity or fiduciary if it is established that a relevant taxpayer's income from the transaction will be exempt from U.S. tax. For the available exemptions, see paragraph (d)(2) of this section. If a relevant taxpayer is entitled to a reduction of (rather than an exemption from) U.S. tax, then the entity or fiduciary may obtain a withholding certificate to that effect pursuant to the provisions of paragraph (c) of this section.

(2) *Available exemptions.* A relevant taxpayer's income from a transaction with respect to which withholding is required under section 1445(e) may be exempt from U.S. tax because either:

(i) The relevant taxpayer is an integral part or controlled entity of a foreign government and the subject income is exempt from U.S. tax pursuant to section 892 and the regulations thereunder; or

(ii) The relevant taxpayer is entitled to the benefits of an income tax treaty that provides for such an exemption (subject to the limitations imposed by section 1125(c) of Pub. L. 96–499, which, in general overrides such benefits as of January 1, 1985).

(e) *Agreement for the payment of tax*—(1) *In general.* The Internal Revenue Service will issue a withholding certificate that excuses withholding or that permits an entity or fiduciary to withhold a reduced amount, if the entity, fiduciary, or a relevant taxpayer enters into an agreement for the payment of tax pursuant to the provisions of this paragraph (e). An agreement for the payment of tax is a contract between the Service and the entity, fiduciary, or relevant taxpayer that consists of two necessary elements. Those elements are—

(i) A contract between the Service and the other person, setting forth in detail the rights and obligations of each; and

(ii) A security instrument or other form of security acceptable to the Director, Foreign Operations District.

(2) *Contents of agreement*—(i) *In general.* An agreement for the payment of tax must cover an amount described in subdivision (ii) or (iii) of this paragraph (e)(2). The agreement may either provide adequate security for the payment of the chosen amount with respect to the relevant taxpayer in accordance with paragraph (e)(3) of this section or provide for the payment of that amount through a combination of security and withholding of tax by the entity or fiduciary.

(ii) *Tax that would otherwise be withheld.* An agreement for the payment of tax may cover the amount of tax that would otherwise be required to be withheld with respect to the relevant taxpayer pursuant to section 1445(e). In addition to the amount computed pursuant to section 1445(e), the applicant must agree to pay interest

upon that amount, at the rate established under section 6621, with respect to the period between the date on which withholding tax under section 1445(e) would otherwise be due and the date on which the relevant taxpayer's payment of tax with respect to the disposition will be due. The amount of interest agreed upon must be paid by the applicant regardless of whether or not the Service is required to draw upon any security provided pursuant to the agreement. The interest may be paid either with the return or by the Service drawing upon the security.

(iii) *Maximum tax liability.* An agreement for the payment of tax may cover the relevant taxpayer's maximum tax liability, determined in accordance with paragraph (c) of this section. The agreement must also provide for the payment of an additional amount equal to 25 percent of the amount determined under paragraph (c) of this section. This additional amount secures the interest and penalties that would accrue between the date of the relevant taxpayer's failure to file a return and pay tax with respect to the disposition, and the date of which the Service collects upon that liability pursuant to the agreement.

(iv) *Allocation of payment.* An agreement for the payment of tax pursuant to this section must set forth an allocation of the payment provided for by the agreement among the relevant taxpayers with respect to which the withholding certificate is sought. In the case of an agreement that covers an amount described in subdivision (ii) of this paragraph (e)(2), such allocation must be based upon the amount that would otherwise be required to be withheld with respect to each relevant taxpayer. In the case of an agreement that covers an amount described in subdivision (iii) of this paragraph (e)(2), such allocation must be based upon each relevant taxpayer's maximum tax liability.

(3) *Major types of security.* The major types of security that are acceptable to the Internal Revenue Service for purposes of this section are described in § 1.1445–3(e)(3).

(4) *Terms of security instrument.* Any security instrument that is furnished pursuant to this section must contain the terms described in § 1.1445–3(e)(4).

(f) *Amendments to application for withholding certificates*—(1) *In general.* An applicant for a withholding certificate may amend an otherwise complete application by submitting an amending statement to the Assistant Commissioner (International) at the address provided in § 1.1445–1(g)(10). The amending statement shall provide the information required by § 1.1445–6(f)(3) and must be signed and accompanied by a penalties of perjury statement in accordance with § 1.1445–6(b).

(2) *Extension of time for the Service to process requests for withholding certificates*—(i) *In general.* If an amending statement is submitted, the time in which the Internal Revenue Service must act upon the amended application shall be extended by 30 days.

(ii) *Substantial amendments.* If an amending statement is submitted and the Service finds that the statement substantially amends to the facts of the underlying application or substantially alters the terms of the withholding certificate as requested in the initial application, the time within which the Service must act upon the amended application shall be extended by 60 days. The applicant shall be so notified.

(iii) *Amending statement received after the requested withholding certificate has been signed by the Assistant Commissioner (International).* If an amending statement is received after the withholding certificate, drafted in response to the underlying application, has been signed by the Assistant Commissioner (International) or his delegate and prior to the day such certificate is mailed to the applicant, the time in which the Service must act upon the amended application shall be extended by 90 days.

(3) *Information required to be submitted.* No particular form is required for an amending statement but the statement must provide the following information:

(i) *Identification of applicant.* The amending statement must set forth the name, address, and identifying number (if any) of the person submitting the amending statement.

(ii) *Date of application.* The amending statement must set forth the date of the underlying application for a withholding certificate.

(iii) *Real property interest to be (or that has been) transferred.* The amending statement must set forth a brief description of the real property interest with respect to which the underlying application for a withholding certificate was submitted.

(iv) *Amending information.* The amending statement must fully set forth the basis for the amendment including any modification of the facts supporting the application for a withholding certificate and any change sought in the terms of the withholding certificate.

(g) *Early refund of overwithheld amounts.* If the Internal Revenue Service issues a withholding certificate pursuant to this section, and an amount greater than that specified in the certificate was withheld by the entity or fiduciary, then pursuant to the rules of this paragraph (g) a relevant taxpayer may apply for an early refund of a proportionate share of the excess amount (without interest) prior to the date on which the relevant taxpayer's return is due (without extensions). An application for an early refund must be addressed to the Assistant Commissioner (International), at the address provided in § 1.1445–1(g)(10). No particular form is required for the application, but the following information must be set forth in separate paragraphs numbered to correspond with the numbers given below:

(1) Name, address, and identifying number (if any) of the relevant taxpayer seeking the refund;

(2) Amount required to be withheld pursuant to withholding certificate;

(3) Amount withheld by entity or fiduciary (attach a copy of Form 8288–A stamped by IRS pursuant to § 1.1445–5(b)(4) or provide substantial evidence of the amount withheld in the case of a failure to receive Form 8288–A, as provided in § 1.1445–5(b)(7)); and

(4) Amount to be refunded to the relevant taxpayer.

An application for an early refund cannot be processed unless the required copy of Form 8288–A or substantial evidence of the amount withheld in the case of a failure to receive Form 8288–A (as provided in § 1.1445–5(b)(7)) is attached to the application. If an application for a withholding certificate is submitted after the transfer takes place, then that application may be combined with an application for an early refund. The Service will act upon a claim for refund within the time limits set forth in § 1.1445–6(a)(1).

§ 1.1445–7 Treatment of foreign corporation that has made an election under section 897(i) to be treated as a domestic corporation (temporary).

(a) *In general.* Pursuant to section 897(i) a foreign corporation may elect to be treated as a domestic corporation for purposes of sections 897 and 6039C. A foreign corporation that has made such an election shall also be treated as a domestic corporation for purposes of the withholding required under section 1445, in accordance with the provisions of this section.

(b) *Withholding under section 1445(a)*—(1) *Dispositions by corporation.* A foreign corporation that has made an election under section 897(i) may provide a transferee with a certification of non-foreign status in connection with the corporation's disposition of a U.S. real property interest. However, in accordance with the provisions of §§ 1.1445–2(b)(2)(ii) and 1.1445–5(b)(3)(ii)(C), such an electing foreign corporation must attach to such certification a copy of the acknowledgment of the election provided to the corporation by the Internal Revenue Service pursuant to § 1.897–3(d)(4) which states that the information required by § 1.897–3 has been determined to be complete.

(2) *Dispositions of interests in corporation.* Dispositions of interests in electing foreign corporations shall be subject to the withholding requirements of section 1445(a) and the rules of §§ 1.1445–1 through 1.1445–4. Therefore, if a foreign person disposes of an interest in such a corporation, and that interest is a U.S. real property interest under the provisions of section 897 and regulations thereunder, then the transferee is required to withhold under section 1445(a).

(c) *Withholding under section 1445(e).* Because a foreign corporation that has made an election under section 897(i) is treated as a domestic corporation for purposes of determining withholding obligations under section 1445, such a corporation is not subject to the requirement of section 1445(e)(2) that a foreign corporation withhold at the corporate capital gain rate from the gain recognized upon the distribution of a U.S. real property interest. Such a corporation is subject to the provisions of section 1445(e)(3). Thus, if interests in an electing corporation constitute U.S. real property interests, then the corporation is required to withhold with respect to the non-dividend distribution of any property to an interest-holder that is a foreign person. See § 1.1445–5(e). Dividend distributions (distributions that are described in section 301) shall be treated as provided in sections 897(f), 1441 and 1442. In addition, if interests in an electing foreign corporation do not constitute U.S. real property interests, then distributions by such corporation shall be treated as provided in sections 897(f) (if applicable), 1441 and 1442.

(Approved by the Office of Management and Budget under control number 545–0902.)

Par. 6. Sections 1.1445–1, 1.1445–2, 1.1445–3, 1.1445–4 1.1445–5, 1.1445–6, and 1.1445–7 are removed as of January 23, 1987.

§ 1.6012–1 [Amended]

Par. 7. Section 1.6012–1(b)(2)(i) is amended by adding the following sentence after the second sentence thereof: "In addition, this subdivision does not apply to a nonresident alien individual who has income for the taxable year that is treated under section 871(b)(1) as effectively connected with the conduct of a trade or business within the United States by reason of the operation of section 897."

OMB Control Numbers Under the Paperwork Reduction Act (26 CFR Part 602)

Par. 8. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 9. Section 602.101 (c) is amended by inserting in the appropriate place in the table "1.1445–1 . . . 1545–0902," "1.1445–2 . . . 1545–0902," "1.1445–3 . . . 1545–0902," "1.1445–4 . . . 1545–0902," "1.1445–5 . . . 1545–0902," "1.1445–6 . . . 1545–0902," and "1.1445–7 . . . 1545–0902."

Lawrence B. Gibbs,
Commissioner of Internal Revenue.

Approved: December 9, 1986.

J. Roger Mentz,
Assistant Secretary of the Treasury.

[FR Doc. 86–28511 Filed 12–18–86; 4:47 pm]

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26 CFR Parts 1 and 602

[T.D. 8114]

Income Taxes; Withholding Upon Dispositions of U.S. Real Property Interests by Publicly Traded Partnerships, Publicly Traded Trusts and Real Estate Investment Trusts

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides temporary Income Tax Regulations relating to the withholding that is required upon the disposition of a U.S. real property interest by publicly traded partnerships, publicly traded trusts, and real estate investment trusts. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the Federal Register.

DATE: The regulations are effective with respect to distributions following January 23, 1987, with respect to dispositions of U.S. real property interests. However, at the option of any person who by these regulations would be treated as a withholding agent, that person may apply these regulations to any distributions occurring on any date after December 24, 1986, as long as no other person also acts as a withholding agent with respect to the same distribution.

FOR FURTHER INFORMATION CONTACT: John M. Zoscak, Jr. of the Office of the Associate Chief Counsel (International) within the Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC 20224 (Attn: CC:INTL:Br2); Telephone (202) 566–3289 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary Income Tax Regulations (26 CFR Part 1) under section 1445. Section 1445 was added to the Internal Revenue Code by section 129 of the Tax Reform Act of 1984. Technical amendments were made by section 1810(f) of the Tax Reform Act of 1986. On December 31, 1984, proposed additions to the Income Tax Regulations (26 CFR Part 1) under section 1445 were published in the **Federal Register** (49 FR 50739) by cross-reference to Temporary Income Tax Regulations (26 CFR Parts 1 and 6a) published the same day (49 FR 50667). A public hearing concerning the proposed regulations was held on January 17, 1986. Final regulations regarding section 1445 (other than matters considered in these temporary regulations) are being published simultaneously with these temporary regulations.

In view of the significant changes in these rules, and after consideration of the comments received regarding distributions from publicly traded partnerships, publicly traded trusts and real estate investment trusts, revised Temporary Regulations with respect to such distributions are being republished.

Need for Temporary Regulations

Section 1445 is generally effective for dispositions of U.S. real property interests occurring after December 31, 1984. Some taxpayers have argued that they have found it difficult to apply section 1445 to publicly traded partnerships and trusts and real estate investment trusts (REITS), with respect to their dispositions of U.S. real property interests. See Discussion, below. The proper application of section 1445 is dependent upon the Service's specification of the manner in which the requirements of the statute will be administered. Because of the need for immediate guidance in this regard both to Service personnel and to the public, the Internal Revenue Service has found it to be impractical to issue these

temporary regulations with the notice and public comment procedure under section 553(b) of title 5 of the United States Code.

Discussion

Under the prior Temporary Regulations (§ 1.1445–5T(c)(3)(ii)), publicly traded partnerships, publicly traded trusts, and REITS are required to obtain certificates of non-foreign status from their interest holders in order to be excused from withholding tax liability. Commenters have argued that such entities are unable to ascertain the non-foreign status of interest holders at the time of distributions, because of rapid turnovers in the interests. Interests in these entitles are frequently held by major financial institutions (or chains of such institutions) as nominees, and obtaining certificates of non-foreign status from the beneficial owner at the end of the chain of legal ownership may be difficult. In view of the practical difficulties that may result from requiring withholding at the level of the publicly traded partnership, publicly traded trust, or REIT, commenters have suggested that withholding can be more effectively achieved by placing the burden of withholding upon those who are in a position to know the non-foreign status of an interest holder. Accordingly, the special rules set forth in § 1.1445–8T have been developed. These rules require that withholding be performed by the person that makes a payment relating to a distribution attributable to the disposition of a U.S. real property interest by a publicly traded partnership, publicly traded trust, or REIT to a foreign person.

Pursuant to § 1.1445–8T(a), the rules of § 1.1445–8T apply to all partnerships and trusts, interests in which are regularly traded on an established securities market, and all real estate investment trusts (hereinafter referred to collectively as the "subject entities").

Section 1.1445–8T(b) provides rules for determining the person required to withhold with respect to distributions governed by § 1.1445–8T. Section 1.1445–8(b)(1) provides that the primary responsibility to withhold rests with the partnership, trust or REIT. However, if a person (1) is a nominee (as defined in § 1.1445–8T(d)), (2) receives a distribution attributable to a disposition of a U.S. real property interest by a subject entity, (3) receives the distribution for payment to any foreign person or the account of any foreign person, and (4) receives notice in accordance with § 1.1445–8T(f), then such person is required to satisfy the withholding requirements of section 1445(e)(1) and § 1.1445–8T. A person obligated to withhold is referred to as a withholding agent.

Section 1.1445–8T(b)(3) provides that a withholding exemption granted under § 1.1441–4(f), which exempts a person from withholding under section 1441 or section 1442, also exempts that person from withholding under § 1.1445–8T(b), provided that the letter that grants the exemption under § 1.1441–4(f) identifies another person as the withholding agent, and such other person agrees in writing to serve as the withholding agent for purposes of § 1.1445–8T(b).

Section 1.1445–8T(c) provides rules governing the amount to be withheld with respect to distributions by the subject entitles. A distinction is drawn between REITS and publicly traded partnerships and trusts because of the unique rules that govern the taxation of REITs under section 857 of the Code. With respect to publicly traded partnerships and trusts, the large partnership and trust rules of § 1.1445–5T(c)(3) apply.

With respect to REITS, § 1.1445–8T(c) revises the rules of the prior Temporary Regulations. Under the prior Temporary Regulations (§ 1.1445–5T(c)(4)), REITs were treated as publicly traded trusts and, thus, were required to use the section 1445(e)(1) account. This had the effect of characterizing REIT distributions as, first, composed of gain from the sale or exchange of a U.S. real property interest and, second, composed of other income (*e.g.*, rent). This characterization could conflict with rules under section 857. In order to avoid any such conflict, § 1.1445–8T(c)(2)(ii) provides that the amount subject to withholding under section 1445 is the amount of any distribution, determined with respect to each share or certificate of beneficial interest, which the REIT designates as a capital gain dividend (as defined in section 857(b)(3)(C)) multiplied by the number of shares or certificates of beneficial interest held by the foreign person. If the REIT designates a prior distribution as a capital gain dividend, the prior distribution is not subject to withholding. Rather, subsequent distributions are to be recharacterized as capital gain distributions until section 1445 capital has been effected on the amount of the prior capital gain dividend. This recharacterization applies only for purposes of section 1445 and does not control, in any manner, any computations made under section 857. It is understood that recharacterizing REIT distributions in the manner described above will affect the characterization of income for purposes of withholding under section 1441. This is necessary to insure collection of tax under section 1445. The rate of withholding is 34 percent (28 percent during a transition period).

A withholding agent is not restricted to relying on a certification of non-foreign status from an interest holder in order to establish the absence of a withholding tax liability. Section 1.1445–8T(e) provides that a withholding agent may also rely on the statements and address provided on Form 1001, Form W–8, or Form W–9 to determine whether an interest holder is a foreign person.

Since the withholding agent will often be a person other than the first payor of the distribution, it is necessary to provide the withholding agent with notice as to the amount subject to withholding. The notice requirement, which is stated in § 1.1445–8T(f), is met by complying with the notice provisions of 17 CFR 240.10(b)–17(b) (1) or (3) issued under authority of the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.* Since withholding agents will have ready access to information published pursuant to the notice provisions of 17 CFR 240.10(b)–17(b) (1) or (3), requiring that a subject entity give actual notice of the amount subject to withholding was viewed as an unnecessary burden. Taxpayers are invited to comment, however, as to whether a system of actual notice should also be provided for in the regulations.

The rules for reporting and paying over withheld amounts with respect to distributions described in § 1.1445–8T(b) have been changed. Generally, the new rules apply the system adopted for reporting and paying over withheld amounts under section 1441 and 1442. This approach was taken because that system is generally familiar to potential withholding agents under § 1.1445–8T and the specialized system developed under section 1445 is unnecessary in this context. Thus, § 1.1445–8T(g) provides that a withholding agent must report and pay over withheld amounts pursuant to section 1461 and the regulations thereunder and § 1.6302–2. Form 1042 and Form 1042S will be used for this purpose. It should be noted that these procedures apply solely with regard to distributions subject to the special rules of § 1.1445–8T; all other withholding required under section 1445 will continue to be reported and paid over using Forms 8288 and 8288A.

The rules of § 1.1461–4 control the timing and manner of obtaining refunds of overwithheld amounts. Thus, the early refund procedure set forth in § 1.1445–6(g) does not apply to persons whose payments were withheld upon under § 1.1445–8T.

Regulatory Flexibility Act And Executive Order 12291

The Internal Revenue Service has determined that the proposed rule is interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6). The Commissioner of Internal Revenue has determined that the proposed rule is not a major regulation subject to Executive Order 12291. Accordingly, a regulatory impact analysis is not required and has not been prepared.

Paperwork Reduction Act

These regulations were submitted to the Office of Management and Budget for review under the Paperwork Reduction Act and approved under OMB number 1545–0096.

Drafting Information

The principal author of this regulation is John M. Zoscak, Jr. of the Office of the Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects

26 CFR 1.1441–1 through 1.1465–1

Income taxes, Aliens, Foreign corporations.

26 CFR Part 602

Reporting and recordkeeping requirements

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 1 and 602 are amended as follows:

Income Tax Regulations

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 1.1445–8T also issued under 26 U.S.C. 1445(e)(6).

Par. 2. Section 1.1445–8T is added immediately after § 1.1445–7, to read as follows.

§ 1.1445–8T Special rules regarding publicly traded partnerships, publicly traded trusts and real estate investment trusts (REITS) (temporary).

(a) *Distributions to which this section applies.* The rules of this § 1.1445–8T apply to distributions from—

(1) Any partnership or trust, interests in which are regularly traded on an established securities market (regardless of the number of its partners or beneficiaries), and

(2) Any REIT (regardless of the form of its organization).

(3) *Obligation to withhold*—(1) *In general.* If an entity described in § 1.1445–8T(a) distributes an amount attributable to the disposition of a U.S. real property interest, then such entity must withhold tax with respect to each holder of an interest in the entity that is a foreign person in accordance with the general rules of § 1.1445–T(a) and (b) of this § 1.1445–8T(b). However, a person that—

(i) Is a nominee (as defined in paragraph (d) of this § 1.1445–8T),

(ii) Receives a distribution attributable to the disposition of a U.S. real property interest directly from an entity described in § 1.1445–8T(a) or indirectly from such entity through a nominee,

(iii) Receives the distribution for payment to any foreign person, or the account of any foreign person, and

(iv) Receives notice pursuant to § 1.1445–8T(f), shall be required to withhold in accordance with the general rules of section 1445(e)(1) and this § 1.1445–8T(b) and shall be fully liable under § 1.1445–5(b)(6) for failure to do so. A person obligated to withhold by reason of this § 1.1445–8T(b) is referred to as a withholding agent.

(2) *Person designated to act for withholding agent.* The rules stated in § 1.1441–7(b)(2) regarding a person designated to act for a withholding agent shall apply for purposes of this § 1.1445–8T.

(3) *Effect of withholding exemption granted under § 1.1441–4(f).* A letter issued by a district director under the provisions of § 1.1441–4(f), which exempts a person from withholding under section 1441 or section 1442, shall also exempt that person from withholding under this § 1.1445–8T(b), provided that—

(i) The letter identifies another person as the withholding agent for purposes of section 1441 or 1442, and

(ii) Such other person enters into a written agreement, with the district director who issued the letter, to be the withholding agent for purposes of § 1.1445–8T(b).

The exemption granted, and the corresponding withholding obligation imposed, by this § 1.1445–8T(b)(3) shall apply with respect to the first distribution made after the agreement described in the preceding sentence is executed, and shall continue to apply to all distributions made during the period in which the exemption granted under § 1.1441–4(f) is in effect.

(4) *Payment other than in money.* The rule stated in § 1.1441–7(c) regarding payment other than in money shall apply for purposes of this § 1.1445–8T.

(c) *Amount to be withheld*—(1) *Distribution from a partnership or trust.* The amount to be withheld with respect to a distribution by a partnership or trust under this § 1.1445–8T shall be computed in accordance with § 1.1445–5(c)(3).

(2) *REITS*—(i) *In general.* The amount to be withheld with respect to a distribution by a REIT under this § 1.1445–8T shall be equal to 34 percent of the amount subject to withholding, as defined in § 1.1445–8T(c)(2)(ii). However, the REIT must withhold at the rate of 28 percent if the distribution occurs before January 1, 1987.

(ii) *Amount subject to withholding*—(A) *In general.* The amount subject to withholding is the amount of any distribution, determined with respect to each share or certificate of beneficial interest, designated by a REIT as a capital gain dividend, multiplied by the number of shares or certificates of beneficial interest owned by the foreign person.

(B) *Designation of prior distribution as capital gain.* If a REIT designates a prior distribution, in whole or in part, as a capital gain dividend, such prior distribution shall not be subject to withholding under this § 1.1445–8T. Rather, a REIT must recharacterize (solely for purposes of section 1445(e)(1)) each distribution, determined with respect to each share or certificate of beneficial interest, made on the day of, or any time subsequent to, such designation as capital gain until such recharacterized amounts equal the amount of the prior distribution designated as a capital gain dividend.

(d) *Definition of nominee.* For purposes of this § 1.1445–8T, the term "nominee" means a domestic person that holds an interest in an entity described in § 1.1445–8T(a) on behalf of another domestic or foreign person.

(e) *Determination of non-foreign status by withholding agent.* A withholding agent may rely on a certificate of non-foreign status pursuant to § 1.1445–2(b) or on the statements and address provided to it on Form 1001, Form W–8, or Form W–9 to determine whether an interest holder is a foreign person. Reliance on these documents will excuse the withholding agent from liability imposed under section 1445(e) in the absence of actual knowledge that the interest-holder is a foreign person. A

withholding agent may also employ other means to determine the status of an interest-holder, but, if the withholding agent relies on such other means and the interest-holder proves, in fact, to be a foreign person, then the withholding agent is subject to any liability imposed pursuant to section 1445 and the regulations thereunder for failure to withhold.

(f) *Notice of a distribution.* A partnership or trust satisfies the notice requirement of § 1.1445–8T(b)(1)(iv) by giving notice of a distribution that is attributable to the disposition of a U.S. real property interest in accordance with 17 CFR 240.10(b)–17(b) (1) or (3) issued pursuant to the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.*; notice requirements with respect to dividends. A REIT satisfies the notice requirement of § 1.1445–8T(b)(1)(iv) by giving notice of a distribution, all or any portion of which it designates, or recharacterizes (as explained in § 1.1445–8T(c)(2)(ii)(B)), as a capital gain dividend in accordance with 17 CFR 240.10(b)–17(b) (1) or (3), with respect to each share or certificate of beneficial interest.

(g) *Reporting and paying over withheld amounts.* With respect to a distribution described in § 1.1445–8T(b), withholding agent must report and pay over to the Internal Revenue Service any amount required to be withheld pursuant to the rules and procedures of section 1461, the regulations thereunder and § 1.6302–2. Forms 1042 and 1042S are to be used for this purpose.

(h) *Early refund procedure not available.* The early refund procedure set forth in § 1.1445–6(g) shall not apply to persons withheld upon under the rules of this § 1.1445–8T. For adjustment of over-withheld amounts, see § 1.1461–4.

PART 602—[AMENDED]

Par. 3. The authority citation for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805

Par. 4. Section 602.101(c) is amended by inserting in the appropriate place in the table "§ 1.1445–8T . . . 1545–0096".

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: December 9, 1986.

J. Roger Mentz,

Assistant Secretary of the Treasury.

[FR Doc. 86–28509 Filed 12–18–86; 4:47 pm]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

Amendments to the North Dakota Permanent Regulatory Program; Correction

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule; correction.

SUMMARY: This notice explains and corrects an ambiguity in the Director of OSMRE's approval of a proposed amendment submitted by the State of North Dakota as a modification to its permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

FOR FURTHER INFORMATION CONTACT: Mr. Jerry R. Ennis, Director, Office of Surface Mining Reclamation and Enforcement, Casper Field Office, Federal Building, 100 East B. Street, Room 2128, Casper, Wyoming 82601–1918; Telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION: On May 30, 1986, the State of North Dakota submitted proposed amendments to its approved permanent regulatory program. The amendment package consisted of revisions to the approved North Dakota regulations. The amended section of the regulations, North Dakota Administrative Code (NDAC), and a brief description of the amended subject areas affected by this notice are as follows: Sections 69–05.2–16–04(1)(b) and 69–05.2–16–09(22) concerning criteria for allowing the removal of sedimentation ponds and other treatment facilities prior to the end of the revegetation responsibility period.

On October 21, 1986, the Director approved the amendment submitted by North Dakota on May 30, 1986, including amendments to NDAC 69–05.2–16–04(1)(b) and 69–05.2–16–09(22) (51 FR 37271). The preamble discussion at 51 FR 37272 contained ambiguous statements regarding supplemental seedings into established vegetation stands. To clear up the confusion surrounding this issue, revisions to the preamble discussion are as follows:

On page 51 FR 37272 (October 21, 1986), third column, the second paragraph should read "The Federal rule at 30 CFR 816.46(b)(5) requires satisfaction of two similar, separate tests for siltation structure removal; however, it does not contain the exception to the timeframe of the last augmented seeding, as does the North Dakota amendment. The Director finds that since the purpose of siltation structures is to prevent additional contributions to the streamflow that are caused by mining disturbances and North Dakota requires that the disturbed area be stabilized and revegetated prior to sedimentation pond removal and Phase III bond release, the intent of the Federal rule is met by North Dakota's provisions. Further, North Dakota's "last augmented seeding" is the seeding that actually provides established vegetation that is effectively controlling erosion. Since North Dakota's exception specifies that the supplemental seeding must be into an established vegetation stand that is effectively controlling erosion, the supplementary seeding has no effect on the sedimentation pond removal timeframe."

Dated: December 18, 1986.

Brent Wahlquist,

Assistant Director, Program Policy.

[FR Doc. 86–28888 Filed 12–23–86; 8:45 am]

BILLING CODE 4310–05–M

VETERANS ADMINISTRATION

DEPARTMENT OF DEFENSE

38 CFR Part 21

Veterans Education; Effective Date of Refund Upon Disenrollment From VEAP

AGENCY: Veterans Administration and Department of Defense.

ACTION: Final Regulations.

SUMMARY: The law provides a few veterans with the opportunity to choose between receiving benefits under 38 U.S.C. Ch. 34 (commonly called the Vietnam Era G.I. Bill) or VEAP (Post-Vietnam Era Educational Assistance Program). Once such a veteran begins receiving benefits under the Vietnam Era G.I. Bill, he or she may never receive benefits under VEAP. VA regulations have not provided for a refund of the veteran's contributions to the VEAP fund when this situation occurs unless the veteran applied for a refund. This amended regulation permits a refund even if the veteran does not fill out an application for it, and provides an effective date for the refund.

EFFECTIVE DATE: October 27, 1986.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW, Washington, DC 20420 (202) 233–2092.

SUPPLEMENTARY INFORMATION: On pages 20846 and 20847 of the **Federal Register** of June 9, 1986, there was published notice of intent to amend Part 21 to provide refunds to those veterans who choose to receive benefits under the 38 U.S.C. Ch. 34 rather than under 38 U.S.C. Ch. 32. Interested people were given 31 days to submit comments, suggestions or objections.

The VA and the Department of Defense received one letter. The letter writer was concerned because the regulation does not state how the veteran will be notified of the fact that his or her contributions will be refunded once he or she chooses to receive benefits under 38 U.S.C. Ch. 34.

At the time that the veterans chooses to receive benefits under 38 U.S.C. Ch. 34 the VA will notify him or her of the fact that his or her contributions will be refunded. However, the agency does not think that detailed procedures such as this belong in the Code of Federal Regulations. Placing them there would tend to unduly restrict the ability of the VA to administer education programs most efficiently. Accordingly, this regulation is being made final with no change from the proposal.

The VA and the Department of Defense have determined that this final regulation does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veteran's Affairs and the Secretary of Defense certify that this final regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulation affects only individuals. It will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.120.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: October 27, 1986.

Thomas K. Turnage,

Administrator.

A. Lukeman,

Major General, USMC, Deputy Assistant Secretary of Defense.

November 21, 1986.

PART 21—[AMENDED]

38 CFR Part 21. VOCATIONAL REHABILITATION AND EDUCATION, is amended by revising § 21.5064 paragraph (b)(2) to read as follows:

§ 21.5064 Refund upon disenrollment.

* * * * *

(b) *Effective date of refund.*

* * * * *

(2) If an individual voluntarily disenrolls from the program after discharge or release from active duty under other than dishonorable conditions, the effective date of the refund or his or her contributions shall be determined as follows.

(i) If an individual described in § 21.5040.(g)(1) voluntarily disenrolls by deciding to receive educational assistance allowance under 38 U.S.C. Ch. 34 rather than electing to receive educational assistance allowance under Ch. 32 his or her contributions shall be refunded no earlier than 60 days after the VA first authorized benefits for the veteran under Ch. 34.

(ii) If an individual voluntarily disenrolls under circumstances other than those described in subparagraph (i) of this paragraph, the individual's contributions shall be refunded within 60 days of receipt by the VA of an application for a refund from the individual.

* * * * *

(38 U.S.C. 1602, 1623, 1632)

[FR Doc. 86–28868 Filed 12–23–86; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–4–FRL–3131–5; AL–008]

Approval and Promulgation of Implementation Plans; Alabama; Bubble for Union Camp's Prattville Mill

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is today approving a revision to the Alabama SIP which involves the approval of an emissions trading action (bubble) at Union Camp's kraft pulp mill in Prattville, Alabama (Autauga County). The pollutant involved is total suspended particles (TSP). Autauga County is designated attainment for both the primary and secondary National Ambient Air Quality Standard (NAAQS) for TSP. Specifically covered under this bubble are the #1 recovery boiler (point of decreasing emissions) and the #1 power boiler (point of increasing emissions). Approval of this bubble will allow Union Camp to burn more wood waste (i.e., bark) in the #1 power boiler, with no change in total allowable TSP emissions from the mill. While there is a possibility that actual emissions will increase by as much as 251 pounds per hour, ambient dispersion modeling conducted by EPA demonstrates that there will be no significant degradation in air quality.

DATE: This action will be effective on February 23, 1987 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSEES: Copies of the material submitted by Alabama may be examined during normal business hours at the following locations:

Public information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365

Library, Office of the Federal Register, 1100 L Street, NW., Room 8301, Washington, DC.

Alabama Department of Environmental Management, Air Division, 1751 Federal Drive, Montgomery, Alabama 36109

FOR FURTHER INFORMATION CONTACT: Roger O. Pfaff of the EPA Region IV Air Programs Branch at the above EPA

address, telephone 404-347-3286 (FTS 257-3286).

SUPPLEMENTARY INFORMATION:

Background

On December 16, 1982, Union Camp Corporation asked the Alabama Department of Environmental Management (ADEM) to consider their proposal for an emissions trading action (bubble) for total suspended particulate (TSP) emissions at their kraft pulp mill in Prattville, Alabama (Autauga County): Specifically, the bubble involves particulate emissions from the plant's #1 wood waste power boiler (increasing emissions) and the #1 recovery boiler (decreasing emissions). Autauga County is designated attainment for both the primary and secondary TSP NAAQS under section 107 of the Clean Air Act (Act).

The ADEM formally submitted the bubble proposal to EPA on January 21, 1983, and requested parallel processing. EPA and the State resolved various identified problem areas in the proposal and the State submitted necessary revisions on June 22, 1983. After further review EPA then proposed to approve the Union Camp TSP bubble in the January 25, 1984, **Federal Register** (49 FR 3096) and provided a 30-day public comment period. No public comments were received, but the State did submit supplementary information on January 20, 1984, March 9, 1984, and October 9, 1985, in response to EPA concerns. Because there are now new facts and a new modelling analysis, EPA is again providing opportunity for comment.

Additionally, Union Camp Corporation has provided EPA with technical information to further support their bubble proposal.

This information supports the use of an opacity limit in conjunction with a mass emissions cap as the compliance mechanism on the power boiler. This matter is discussed in more detail in a Technical Support Document which is available at EPA's Region IV office.

Discussion

The emissions trade at Union Camp's Prattville plant will not cause a change in total allowable emissions from the mill. The following table indicates the allowable emissions limits before and after the trade:

TABLE I

Source	Allowable emissions before trade (lbs/hr)	Allowable emissions after trade (lbs/hr)
No. 1 power boiler	433	589
No. 1 recovery boiler	216	60
Total allowable emissions	649	649

However, while total allowable emissions will not change, the bubble could result in an increase in actual emissions. The following table (Table II) indicates, for each boiler, the average actual emissions before and the maximum allowable emissions after the trade:

TABLE II

Source	Average actual emissions before trade (lbs/hr)	Maximum allowable emissions after trade (lbs/hr)
No. 1 power boiler	263	589
No. 1 recovery boiler	135	60
Total emissions	398	649

As part of the bubble, Alabama has made provisions for federally enforceable limits on each of the boilers involved, in the form of revised State Implementation Plan (SIP) regulatory requirements. These are discussed below.

Power boiler

Prior to the bubble, the No. 1 power boiler burned a combination of natural gas, oil and/or wood-waste and actual emissions averaged 263 lbs/hr. As a result of this bubble, an increase in actual emissions at the power boiler will result. Such an increase in actual emissions will cause the opacity to increase beyond the current statewide limit of 20%.

Because of this, Alabama has revised Chapter 4 (Control of Particulate Emissions), section 8—Wood Waste Boilers, subsection 4.8.4, of its regulations to establish special conditions for this power boiler. The previous limit in the SIP was 0.30 grains per standard dry cubic foot adjusted to 50% excess air. There is no change in control equipment for the power boiler. The revision, adopted by the State on December 9, 1983, states: (a) The allowable particulate emissions shall be 2.43 pounds per million Btu (lb/MBtu) heat input from bark, with the additional requirement that particulate emissions from such units shall not exceed 589 pounds per hour.

(b) In lieu of the opacity limits contained in Part 4.1 (the existing statewide 20% limit), such units shall not discharge into the atmosphere any air containment of an equivalent opacity greater than that designated as forty percent (40%) opacity, as determined by moving one-hour averages of transmissometer data. If the transmissometer is not working properly, EPA Reference Method 9 (40 CFR Part 60, Appendix A) shall serve as the compliance technique.

Union Camp has demonstrated to Region IV that this 40% opacity limit on the power boiler will be an indicator of compliance with the applicable particulate mass emission limit. The demonstration was made on the basis of 16 stack tests run in 1981 and 1982 to generate grain loading (particulate concentration) versus opacity data. It should be noted that this demonstration by Union Camp would indicate that further stack testing would be necessary if an opacity limit of 40% was exceeded.

The data generated in the stack tests were mathematically correlated to arrive at an opacity limit which would be used to monitor compliance with the mass standard. For the purpose of this bubble and based upon the results of the 16 stack tests, Region IV believes that the 40% opacity limit is a good indicator of compliance and will serve to protect the mass limit. However, in order to document violation of the mass standard, EPA test method 5 (40 CFR Part 60, Appendix A) would have to be utilized. ADEM has assured EPA (via permit conditions) that annual emission tests will continue to be required for the two units along with annual recertification of the transmissometers in the stacks. This is discussed in detail in a Technical Support Document which is available for inspection at EPA Region IV's Atlanta office.

Since compliance with the lb/hr emission standards is, in the case of the power boiler, contingent upon the source limiting its bark burning rate, the inclusion of a federally enforceable limitation on loading rate and a federally enforceable provision to monitor loading rate would normally be required. Otherwise, the source would be permitted to operate above a level which has been predicted to result in an emission rate which exceeds the lbs/hr emission rate. Although this bubble does not contain a federally enforceable limit on load nor load monitoring requirement, approval of this bubble is warranted given the stringency of the opacity limit. Approval in this instance, however, is not intended to set a precedent for the acceptability of future actions of this type. Federally enforceable load limitations and federally enforceable load monitoring provisions normally will be required in future SIP revisions, where compliance with the emission limit is based on the source limiting its loading rate. Furthermore, if it proves in practice that the opacity limit in this bubble is not sufficient to protect the mass limit, the inclusion of a bark loading limit may be required.

Recovery Boiler

To establish an enforceable limit for the Union Camp #1 recovery boiler, Alabama revised Chapter 4, Section 7—Kraft Pulp Mills Subsection 5, of its regulations. This regulation, adopted on March 7, 1984, applies to chemical recovery boilers constructed before 1972 at kraft pulp mills in Autauga County and provides that allowable particulate emissions shall be 1.11 pounds per air-dried ton of pulp (lbs/ADTP) (60 lbs/hr). The previous SIP limit was 4.0 lbs/ADTP (216 lbs/hr). Also, Alabama's existing statewide 20% opacity limit (Alabama regulations 4.1.1.(a)) will continue to be applicable to this recovery boiler.

The decrease in emissions at the recovery boiler, as indicated in Table II, resulted from the replacement of an electrostatic precipitator (ESP) in May 1982. The actual emissions from the new ESP were 7.4 lbs/hr in May 1982 and at the time Union Camp applied for the bubble in December 1982.

Attainment and Maintenance of the NAAQS

The April 7, 1982 (47 FR 15076) emissions trading policy and a February 17, 1983, guidance memo by Sheldon Myers, Director of OAQPS, entitled Emissions Trading Policy—Technical Clarifications, allow the use of a limited Level I or Level II air quality modeling analysis to determine if the NAAQS will be attained and maintained. In a Level I analysis, if the trade does not result in a net increase in applicable baseline (allowable) emissions, the sources are located within 250 meters of each other, and no increase in allowable emissions occurs at the source with the lower effective plume height, dispersion modeling will not be required.

In a Level II analysis, only limited modeling involving the specific emission sources subject to the trade is needed if there is no net increase in applicable baseline emissions and if emissions after the trade will not cause a significant ambient air quality impact. The maximum air quality impact (delta) due to the trade must be determined both spatially and temporarily using a full year of meteorological data with a refined model. In addition, all national ambient air quality standards (NAAQS) averaging periods must be considered when performing the air quality equivalence analysis. In a Level II analysis for TSP, the significance levels are 10 $\mu g/m^3$ (24-hour) and 5 $\mu g/m^3$ (annual).

The Leval I analysis was used as a basis for proposing approval of this bubble in the January 25, 1984, **Federal Register** notice. Following EPA proposed approval of this bubble, EPA determined that a Level I analysis would not meet the applicable policy requirements since an increase in emissions would occur at the source with the lower effective plume height. However, the trade does meet all of the criteria for a Level II analysis, which has since been conducted. In order to meet the requirements for the Level II analysis, the State and EPA each conducted air quality modeling for the two sources in the trade to determine if the change in emissions would exceed the relevant Level II significance values under the emissions trading policy.

The State used the COMPTER model which, at present, is not an EPA approved guideline model. Therefore, in order to expedite the bubble review, the EPA Region IV office performed the analysis with the Industrial Source Complex model (ISC), using a full year of Montgomery, Alabama, National Weather Service hourly meteorological data. A number of different ISC computer runs were made to determine the area of maximum impact. The final ISC analysis was refined to the nearest 100 meters. In the EPA analysis, a maximum increase of no more than 9.2 $\mu g/m^3$ for 24 hours and an annual increase of 1.0 $\mu g/m^3$ were found at receptors showing maximum impact. Since these levels are less than the Level II significance levels no further evaluation of ambient impact is necessary before approval. The maximum increases calculated were based on the emission rates in Table II.

It should be particularly noted that because there may be a net increase in actual emissions as a result of this trade, EPA modeled the ambient effects of the trade assuming the maximum possible increase in actual emissions (i.e., the difference between average actual emissions before the trade and maximum allowable emissions after the trade). Nevertheless, the Level II analysis of only the sources in the trade showed that the maximum increase in actual emissions which could result from the trade would have no significant impact on ambient air quality and therefore, EPA believes that that increase will not interfere with maintenance of the TSP NAAQS and PSD increment.

Prior to replacement of the ESP in May 1982, average actual particulate emissions from the recovery boiler were 135 lbs/hr. The Level II modeling analysis predicted an increase in the 24-hour ambient concentration of 9.2 μ/m^3 based upon these emissions. After replacement of the ESP in May 1982 and at the time of the application to bubble (December 1982), the actual emissions were 7.4 lbs/hr. Prior to the bubble application, EPA never required a control strategy demonstration that the allowable emissions will attain and maintain the NAAQS and protect the PSD increments for this area. However, in evaluating the acceptability of this SIP revision, a full PSD increment analysis was performed. EPA is relying here on the Level II modeling which predicts that the actual emissions increase which potentially accompany the approval of this bubble will not produce significant increases in TSP concentrations at any site for any 24-hour or annual period. The emissions trading policy allows the use of a Level II analysis to determine whether a trade will have a significant ambient impact. In short, the area is designated attainment, there are no measured exceedances of the NAAQS at the closest ambient monitors in Montgomery (which is located in the next county), and EPA has not found under section 110(a)(2)(H) that the area's TSP SIP is substantially inadequate. Since the Level II modeling as performed shows that this trade will not result in significant increases in actual total suspended particulate (TSP) concentrations as of May 1982 when the ESP was replaced, EPA believes that the trade will not interfere with maintenance of the TSP NAAQS and PSD increments.

PSD Analysis

The increase in emissions from the power boiler, as a result of this bubble application, was analyzed to determine if the increase in emissions would constitute a major modification under PSD regulations. In 1972, the boiler was capable of accommodating the burning of wood waste (including bark) and no additional wood handling equipment was necessary to increase the wood waste burning rate. Further, there is no current construction permit limitation which prohibits increased use of bark. Based upon its review of this proposed action, EPA has determined that a PSD review, including a BACT analysis, was not necessary to be performed in approving this bubble application. An air quality impact analysis was performed, however, to see whether the TSP PSD increment could be violated as a result of the emissions trade.

Emissions which would affect increment consumption are as follows:

1. Increases in actual particulate emissions from the power boiler (589–263=326TPY) since the baseline date in 1977.

2. Decrease in actual particulate emissions from the recovery boiler (135–60=75TPY) since the baseline date in 1977.

3. Increase in particulate emissions from a 1977 expansion at the mill. This expansion underwent a PSD review which resulted in a 1$\mu g/m^3$, 24-hour maximum PSD increment increase and a decrease in the annual PSD increment.

Since that time, there have been no other increases or decreases in particulate emissions and no increment consuming emissions related to construction.

Based upon information from the Alabama Department of Environmental Management, the Union Camp, Prattville facility is located in an isolated area in Autauga County and there are no other facilities which would contribute to the consumption of TSP PSD increment. Since it is possible there will be a net increase in actual emissions resulting from the trade, EPA modeled the two sources using the difference between actual emissions on the baseline date and allowable emissions after the trade. Predicted concentrations were 9.2°γ/μ^3, 24-ηοθρσ μαχιμθμ ανδ λεσσ τηαν 1$\mu g/m^3$, annual geometric mean. Thus the PSD increment potentially consumed, as a result of this bubble and the 1977 expansion, is well below the PSD increments of 37 $\mu g/m^3$, 24-hour maximum and 19 $\mu g/m^3$, annual geometric mean.

EPA is publishing this action without prior proposal of the new facts (e.g., Level II modeling analysis) because EPA views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this Federal Register, unless with 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices, one notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective February 23, 1987.

Final Action

EPA is today approving the Alabama SIP revision described above, including the trade (bubble) at Union Camp's Prattville, Alabama kraft pulp mill. This bubble was submitted under and is being approved in accord with EPA's 1982 interim emissions trading policy (47 FR 15076) and is consistent with the requirements for "pending" bubbles in the final policy (51 FR 43814).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 23, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

Incorporation by reference of the State Implementation Plan for the State of Alabama was approved by the Director of the Federal Register on July 1, 1982.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Particulate matter, Incorporated by reference.

Dated: December 16, 1986.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart B—Alabama

2. Section 52.50 is amended by adding paragraph (c)(38) as follows:

§ 52.50 Identification of plan.

* * * * *

(c) * * *

(38) Bubble for Union Camp Corporation's Prattville, Alabama kraft pulp mill, submitted on January 21, 1983, January 20, 1984, and March 9, 1984, by the Alabama Department of Environmental Management (ADEM).

(i) Incorporation by reference.

(A) Alabama Department of Environmental Management Resolution and Regulation 4.8.4, dealing with control of particulate emissions from wood waste boilers, was adopted on December 9, 1983.

(B) Alabama Environmental Management Commission Resolution and Regulation 4.7.5, dealing with particulate emissions from kraft pulp mills, was adopted on March 7, 1984.

(ii) Other material.

(A) None.

[FR Doc. 86–28741 Filed 12–23–86; 8:45 am]
BILLING CODE 6560–50–M

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40 CFR Part 180

[OPP–300119A; FRL 3131–9]

Revocation of DDT and TDE Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document (1) revokes the tolerances for residues of the insecticide DDT [a mixture of 1,1,1-trichloro-2,2-bis (*p*-chlorophenyl)ethane and 1,1,1-trichloro-2-(*o*-chlorophenyl)2-(*p*-chlorophenyl)ethane) and its degradation products, TDE [or DDD (1,1-dichloro-2,2-bis(*p*-chlorophenyl)ethane)] and DDE [1,1-dichloro-2,2-bis(*p*-chlorophenyl)ethylene]; (2) revokes the tolerances established specifically for residues of TDE; (3) lists the action levels EPA is recommending to the Food and Drug Administration (FDA) and the Food Safety and Inspection Service (FSIS) of the U.S. Department of Agriculture (USDA) to replace the revoked tolerances; and (4) lists EPA recommendations to FDA, FSIS, and the Agricultural Marketing Service (AMS) of USDA regarding existing action levels for commodities bearing residues for which tolerances had not been established. This rule was initiated by the Environmental Protection Agency to remove pesticide tolerances for which related registered uses have been cancelled. A related final rule document, [OPP–300120A], appearing elsewhere in this issue of the Federal Register, addresses revocation of food/feed additive limitations for DDT and TDE.

EFFECTIVE DATE: Effective on December 24, 1986.

ADDRESS: Written objections, identified by the document control number [OPP–300119A], may be submitted to the: Hearing Clerk, Environmental Protection Agency, Rm. 3708 (A–110), 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Patricia Critchlow, Registration Division (TS–767), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703–557–1806).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of March 13, 1985 (50 FR 10077), which (1) Proposed the revocation of all existing tolerances in 40 CFR 180.147 and 180.147b for residues of the insecticide DDT and its degradation products, TDE and DDE; (2) proposed the deletion of the related § 180.147a which discusses residues of DDT in corn feed products; (3) proposed the revocation of the tolerances in § 180.187 established specifically for residues of TDE; and (4) proposed the revision of § 180.138 to delete the entry of 3.5 ppm for the combined residues of DDT and toxaphene in or on soybeans. The toxaphene tolerance on soybeans will not be changed since § 180.138 also includes a separate entry of 2 ppm for toxaphene in or on soybeans.

The March 13 Federal Register notice also listed the action levels which EPA intended to recommend to FDA and FSIS to replace the tolerances once the rule revoking the regulation was final. The action levels would cover unavoidable pesticide residues which can continue to occur in the tolerance-related food and feed commodities because of the persistence of the pesticides in the environment. The notice also listed EPA's intended recommendations to FDA, FSIS, and AMS regarding revision of existing action levels for food and feed commodities for which tolerances had not been established and which may contain unavoidable residues of the pesticides because of environmental contamination.

No requests for referral to an advisory committee were received. However, a number of interested persons submitted comments regarding the proposed revocation action.

The Conservation Law Foundation of New England, Inc. (CLF) indicated support for the tolerance revocation proposal and for the setting of action levels, but only where necessary to cover residues of cancelled pesticides which persist in the environment. They also suggested that such action levels should be lowered over time as residues decline. The CLF expressed concern that dicofol contains DDT, and therefore suggested that EPA recommend replacement action levels for DDT at sufficiently low levels to discourage the continued use of dicofol as well as the illegal use of DDT.

EPA agrees that action levels should be recommended to replace revoked tolerances only when necessary to cover residues of cancelled pesticides that continue to persist in the environment and unavoidably contaminate food and feed commodities. EPA plans to reassess all its recommended action levels in the future on a regular basis so that the action levels may be lowered as residues decline. EPA believes that the action levels being recommended to replace the tolerances for DDT and TDE are sufficiently low to discourage any illegal use of these cancelled pesticides. These action levels are also consistent with the Agency's proposed regulatory position on dicofol (Position Document 2/3; 50 FR 33008, August 15, 1985).

The National Food Processors Association (NFPA) and the Pineapple Growers Association of Hawaii (PGAH) indicated their opposition to EPA's revocation of the existing tolerances for residues of persistent pesticides such as DDT before such residues have fully dissipated from the environment. These organizations also expressed concern that the setting of replacement action levels may not be legal under the recent decision of the United States Court of Appeals for the District of Columbia in *Community Nutrition Institute (CNI)* v. *Young*, 757 F. 2d 354 (D.C. Cir. 1985).

In order to eliminate any implied sanctioning of the use of pesticides whose registrations have been cancelled for food safety reasons and of the presence of residues in food and feed commodities from such use, EPA considers it appropriate to revoke tolerances and food/feed additive regulations for residues of such pesticides. There are major differences between tolerances and action levels. A tolerance is set before the fact to cover residues which will result from legal and purposeful use of the pesticide. An action level is a more appropriate mechanism for situations involving residues which persist in the environment after the once-legal use of that pesticide has been halted. With regard to the concern of NFPA and PGAH that the setting of replacement action levels may not be legal in light of the Court of Appeals decision in the CNI case, the Agency notes that the Supreme Court has recently reversed the Court of Appeals decision. The Court gave deference to FDA's interpretation that the Federal Food, Drug, and Cosmetic Act provides flexibility to set action levels under section 402(a), rather than promulgate tolerances by formal rulemaking pursuant to section 406. The Agency also notes that it does not interpret section 406 as applying to residues of pesticide chemicals in food; rather, sections 402[a][2][B], 402[a][2][C], 408, and 409 govern the issue of whether food bearing such residues is adulterated.

The NFPA also stated that action levels do not provide sufficient legal protection to food producers (but did not specify in what manner) and further indicated that NFPA also opposed the 1982 policy statement (47 FR 42956, September 29, 1982) which describes EPA's policy on the revocation of tolerances for cancelled pesticides and the replacement of these tolerances with action levels for unavoidable residues of these pesticides. The basis for their opposition was that the setting and revising of action levels does not afford the public the same hearing rights and procedural protections provided for tolerance rulemaking actions under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA).

EPA believes that its procedures regarding the recommendation of replacement action levels afford adequate legal protection to food producers. As a matter of policy, the Agency will provide notice and the opportunity to comment on recommended action levels at the proposal stage of a tolerance revocation action. When a determination is reached to further decrease action levels, the Agency will publish a notice in the Federal Register of that determination and provide an opportunity to comment before making its final recommendations on action levels to FDA or USDA.

The Regional Administrator for EPA's Region V (which includes the states of Illinois, Indiana, Michigan, Ohio, and Wisconsin) opposed the proposal that FDA continue to enforce the current action level of 5 parts per million for residues in fish. The Regional Administrator argued that this action level did not provide adequate protection of human health and that possibly it was inconsistent with statutory authority, policy, and proposed guidelines regarding risk-benefit assessments. He also suggested that the action level derivation process, particularly regarding fish, should be reevaluated.

The Southern California Coastal Water Research Project (SCCWRP) was concerned that EPA might be recommending the fish action level based on economics far more than on risk; SCCWRP suggested that EPA should base the action level more on risk and also indicated that the risk estimates of the Carcinogen Assessment Group (CAG) would require the action level for DDT in fish to be considerably lower than EPA has recommended.

BEST COPY AVAILABLE

Several other commenters expressed concern about the current action level in fish and indicated that they have regional fish residue data and fish consumption statistics which they wish to submit for EPA's analysis and consideration before the Agency makes its final recommendation on the fish action level. Not all of the commenters submitted their data at that time, however, and until this additional information is received and can be evaluated, the Agency has decided to make no recommendation at this time regarding the current DDT action level in fish. The Agency does believe that the factors listed in the 1982 policy statement for setting appropriate action levels are basically sound and need not be changed. Therefore, these factors will continue to be used as guidance by the Agency in assessing the appropriate action level for fish.

When EPA has accumulated more data and studied the situation thoroughly, the Agency will reassess the fish action level and determine what recommendation to make to FDA for action levels. As part of this reassessment, EPA intends to also study further the concerns about pesticides in fish in various regional areas where members of specific population subgroups may consume fish at rates above the "national average." Because action levels enforced by FDA apply to fish in interstate commerce, it would be very difficult, if not impossible, for FDA to enforce and defend in court differing "regional" limits. However, EPA recognizes that some population groups may be at higher risk because of the frequency and amount of fish consumed locally. It is usually not possible, however, to set an enforcement limit for this situation while also satisfying the criteria for setting an appropriate national limit.

If a potential local health problem exists, a state or locality may issue guidance on the quantity of contaminated fish which may be consumed without appreciable risk to the health of local consumers, based on an assessment of the level of the contaminant and on fish consumption patterns, or may take other action.

This final rule revoking the tolerances for DDT and TDE is being issued in accordance with EPA's 1982 policy statement and the action levels being recommended are based on the factors cited in that statement, i.e., the action levels are set at the level necessary to protect the public health while taking into account the extent to which the residues cannot be avoided. As environmental residues continue to dissipate, risk will gradually decrease and action levels may be lowered.

EPA believes that during the time period that residues of DDT and its degradation products continue to occur in food, the potential risk from dietary exposure to such residues will be low. Based on the monitoring data which were used to formulate its action level recommendations, EPA has determined that most foods and feeds contain no detectable residues of DDT, DDT's degradation products or TDE, or contain residues which are generally below the recommended action levels. Only a few foods and feeds on the action level list contain residues at or near the maximum limits being recommended. In fact, most of the foods and feeds contain residues well below the recommended action level. Thus, the occurrence of unavoidable residues is not a widespread or commonplace situation. In addition, the level of exposure will continue to decrease as environmental residues decrease.

Another commenter argued against setting replacement action levels lower than the existing tolerances for DDT/TDE and appeared to be in favor of continuing the existing tolerances as they are, describing the proposed action levels as being "unnecessary because the existing tolerances are adequate."

It is not clear whether the commenter is opposed to the proposed revocation action or to individual replacement action levels being lower than the existing tolerances. Justification of the revocation action is discussed earlier in this document; and available monitoring data on residue levels for the pesticides support the individual replacement action levels. Further, the existing tolerances are higher in most cases than what would be "adequate" to cover the current levels of residues occurring in food and feed from the environment.

Rohm & Haas Company expressed concern about the absence of food/feed additive action levels for processed food and feed commodities derived from raw agricultural commodities for which tolerances were proposed for revocation, where DDT would be expected to concentrate, and further recommended establishment of "appropriate" food/feed additive action levels in certain specific processed commodities.

EPA's review of available data indicated that processing would not result in residue concentrations above the action levels being recommended. Because, with several exceptions, it was not necessary in the past to have separate food/feed additive regulations for DDT/TDE residues concentrating in processed food (i.e., the tolerances were sufficient to cover residues in processed food), EPA would expect the same situation to hold for the recommended action levels. The exceptions are covered in a related final rule [OPP-300120A], appearing elsewhere in this issue of the **Federal Register**, which addresses revocation of food/feed additive limitations for DDT and TDE. Where residue concentration may occur in certain processed commodities, an action level is being recommended at a level higher than the action level for the related raw commodity.

Another commenter argued in favor of DDT as a pesticide but did not indicate what he proposed that EPA should do in lieu of tolerance revocation accompanied by establishment of replacement action levels.

As stated previously in response to other commenters, EPA considers its proposed action to be appropriate and necessary.

EPA is basing its recommended action levels for DDT and TDE on residue monitoring data from the late 1970's. A reassessment of these action levels, using updated surveillance data, is planned for late 1986. If any revision of the action levels is subsequently deemed appropriate, a notice to that effect will be published in the **Federal Register** with an opportunity for public comment. However, the Agency does not wish to delay its revocation of the DDT and TDE tolerances and is thus proceeding with this action.

Based on the information considered by the Agency and discussed in detail in the March 13, 1985, proposal and in this final rule, the Agency is hereby: (1) Revoking all existing tolerances in 40 CFR 180.147 and 180.147b for residues of DDT and its degradation products, TDE and DDE; (2) deleting the related § 180.147a which discusses residues of DDT in corn feed products; (3) revoking all existing tolerances in 40 CFR 180.187 established specifically for TDE; and (4) revising § 180.138 to delete the entry of 3.5 ppm for combined residues of DDT and toxaphene in or on soybeans.

EPA is recommending to FDA and FSIS the following action levels for the sum of DDT, TDE, and DDE residues, expressed in parts per million (ppm), to replace the following tolerances which are being revoked for residues of DDT, DDT's degradation products, and TDE:

TABLE 1.—RECOMMENDED ACTION LEVELS

Commodities	Tolerances (ppm) being revoked		Recommended action levels (ppm) DDT/TDE/DDE
	DDT	TDE	
Apples	0.5	7	0.1
Apricots	0.5	7	0.2
Artichokes	1		0.5
Asparagus	1		0.5
Avocados	3.5		0.2
Beans (dried).	0.5	7 (beans)	0.2
Beans (except dried beans).	7	7 (beans)	0.2
Beets (roots and tops).	1		0.2
Blackberries	0.5	3.5	0.1
Blueberries (huckleberries).	0.5	7	0.1
Boysenberries.	0.5	3.5	0.1
Broccoli	1	1	0.5
Brussels sprouts.	1	1	0.5
Cabbage	1	1	0.5
Carrots	3.5	1	3
Cauliflower	1	1	0.5
Celery	1		0.5
Cherries	0.5	3.5	0.2
Citrus fruits	3.5	3.5	0.1
Collards	1		0.5
Corn, fresh sweet K+CWHR.	3.5	3.5	0.1
Cottonseed	4		0.1
Cranberries	7		0.1
Cucumbers	0.5	7	0.1
Currants	0.5		0.1
Dewberries	0.5	3.5	0.1
Eggplants	0.5	7	0.1
Endive (escarole).	1		0.5
Fat of meat from cattle, goats, hogs, horses, and sheep.	5		(1)
Gooseberries.	0.5		0.1
Grapes	7	7	0.05
Guavas	0.5		0.2
Hops (fresh)	20		0.1
Kale	1		0.5
Kohlrabi	1	1	0.5
Lettuce	7	1	0.5
Loganberries	0.5	3.5	0.1
Mangoes	0.5		0.2
Melons	0.5	7	0.1
Milk	[2] 0.05	[3] 1.25	
Mushrooms	1		0.5
Mustard greens.	1		0.5
Nectarines	0.5	7	0.2
Okra	1		0.2
Onions (dry bulb).	1		0.2
Papayas	3.5		0.2
Parsnips (roots and tops).	1		0.2
Peaches	05	7	0.2
Peanuts	0.5		0.2
Pears	0.5	7	0.1
Peas	0.5	1	0.2
Peppermint hay.	50		0.5
Peppers	7	7	0.1
Pineapples	7		0.2
Plums (fresh prunes).	0.5	3.5	0.2
Potatoes	1		1
Pumpkins	0.5	7	0.1
Quinces	0.5	7	0.1
Radishes (roots and tops).	1		0.2
Raspberries	0.5	3.5	0.1
Rutabagas (roots and tops).	1	1 (roots); 7 (tops)	0.2
Soybeans (dry).	[4] 1.5		0.2
Spearmint hay.	50	1	0.5
Spinach	1	1	0.5
Squash	0.5	7	0.1
Squash, summer.	0.5	7	0.1
Strawberries	0.5	3.5	0.1
Sweet potatoes.	1		1
Swiss chard	1		0.5
Tomatoes	7	7	0.05
Turnips (roots and tops).	1	1 (roots); 7 (tops)	0.2
Youngberries.	0.5		0.1

[1] Covered by the existing action level of 5 ppm in fat, meat, and meat byproducts from cattle, goats, horses, sheep, swine, poultry, and rabbits (fat basis), which is recommended to continue at the current level.
[2] Equivalent to 1.25 ppm in milk-fat.
[3] Fat basis.
[4] Includes the tolerance of 3.5 ppm for combined residues of DDT and toxaphene in or on soybeans (dry form), of which residues of DDT shall not exceed 1.5 ppm; see 40 CFR 180.138 (toxaphene).

EPA is recommending to FDA and AMS the following action levels for the sum of DDT, TDE, and DDE residues to replace existing action levels for residues of DDT, DDT's degradation products, and TDE:

TABLE 2.—RECOMMENDED REPLACEMENT ACTION LEVELS

Commodities	Existing action levels (ppm) DDT/TDE/DDE	Recommended action levels (ppm) DDT/TDE/DDE
Cocoa beans, whole raw bean	2 (DDT only)	1
Eggs	1.5	0.5

EPA is recommending that FDA and FSIS retain the following action levels for the sum of DDT, TDE, and DDE residues:

TABLE 3.—ACTION LEVELS TO REMAIN IN EFFECT

Commodities	Existing and Recommended Action Levels (ppm) DDT/TDE/DDE
Barley grain (human food)	0.5
Barley grain (animal feed)	0.5
Corn grain (animal feed)	0.5
Corn grain (human food)	0.5
Fat, meat, and meat byproducts from cattle, goats, horses, sheep, swine, poultry, and rabbits (fat basis)	5
Hay	0.5
Milo sorghum grain (animal feed)	0.5
Milo sorghum grain (human food)	0.5
Rice grain (animal feed)	0.5
Rice grain (human food)	0.5
Rye grain (animal feed)	0.5
Rye grain (human food)	0.5
Wheat grain (animal feed)	0.5
Wheat grain (human food)	0.5

The commodity definition, "Fat of calves, cattle, chickens, ducks, geese, goats, horses, rabbits, sheep, swine, and turkeys," which was listed in the proposed rule, has been modified as shown in the first footnote to Table 1 and in Table 3 to agree with the commodity definition used by FSIS.

As discussed earlier in this document, EPA will defer making a recommendation to FDA regarding the current 5 ppm action level for the sum of DDT, TDE, and DDE residues on fish (edible portion).

Elsewhere in this issue of the Federal Register, the Agency is issuing a related final rule [OPP-300120A] which revokes food and feed additive regulations under 21 CFR Parts 193 and 561 for residues of DDT and TDE in processed food and feed commodities.

Any person adversely affected by this regulation revoking the tolerances may, within 30 days after the date of publication of this regulation in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections submitted must specify the provisions of the regulation deemed objectionable and the

grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

This document has been reviewed by the Office of Management and Budget as required by Section 3 of Executive Order 12291.

In order to satisfy requirements for analysis as specified by Executive Order 12291 and the Regulatory Flexibility Act, the Agency has analyzed the costs and benefits of the revocation of tolerances for these pesticides. This analysis is available for public inspection in Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Executive Order 12291

As explained in the proposal published on March 13, 1985, the Agency has determined, pursuant to the requirements of Executive Order 12291, that the revocation of these tolerances will not cause adverse economic impacts on significant portions of U.S. enterprises.

Regulatory Flexibility Act

This rulemaking has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354; 94 Stat. 1164, 5 U.S.C. 601 *et seq.*) and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations. The reasons for this conclusion are discussed in the March 13, 1985, proposal.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 15, 1986.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

§ 180.138 [Amended]

2. In § 180.138 by removing the entry at "3.5 ppm for soybeans (dry form)".

§ 180.147 [Removed]

3. Section 180.147 is removed.

§ 180.147a [Removed]

4. Section 180.147a is removed.

§ 180.147b [Removed]

5. Section 180.147b is removed.

§ 180.187 [Removed]

6. Section 180.187 is removed.

[FR Doc. 86–28744 Filed 12–23–86; 8:45 am]
BILLING CODE 6560–50–M

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40 CFR Part 180

[OPP–300121A; FRL–3131–8]

Revocation of Aldrin and Dieldrin Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This document (1) revokes the tolerances for residues of the insecticide aldrin and its epoxidation product dieldrin, resulting from application of aldrin; (2) revokes the tolerances established specifically for residues of dieldrin; (3) lists the action levels EPA is recommending to the Food and Drug Administration (FDA) to replace the revoked tolerances; and (4) lists EPA recommendations to FDA and to the Food Safety and Inspection Service (FSIS) and the Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture (USDA) regarding existing action levels for commodities bearing residues for which tolerances had not been established. This rule was initiated by the Environmental Protection Agency to remove pesticide tolerances for which related registered uses have been cancelled.

EFFECTIVE DATE: Effective on December 24, 1986.

ADDRESS: Written objections, identified by the document control number [OPP–300121A], may be submitted to the: Hearing Clerk, Environmental Protection Agency, Rm. 3708 (A–110), 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail Patricia Critchlow, Registration Division (TS–767), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1806).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of March 13, 1985 (50 FR 10080), which (1) proposed the revocation of all existing tolerances in 40 CFR 180.135 for residues of the insecticide aldrin and its epoxidation product dieldrin, resulting from application of aldrin; and (2) proposed the revocation of tolerances in § 180.137 established specifically for residues of dieldrin.

The March 13 **Federal Register** notice also listed the action levels which EPA intended to recommend to FDA to replace the tolerances once the rule revoking the tolerances is final. The action levels would cover unavoidable pesticide residues which can continue to occur in the tolerance-related food and feed commodities because of the persistence of the pesticides in the environment. The notice also listed EPA's intended recommendations to FDA, FSIS, and AMS regarding revision of existing action levels for food and feed commodities for which tolerances had not been established and which may contain unavoidable residues of the pesticides because of environmental contamination.

No requests for referral to an advisory committee were received. However, a number of interested persons submitted comments regarding the proposed revocation action.

The Conservation Law Foundation of New England, Inc. (CLF) indicated support for the tolerance revocation proposal and for the setting of action levels, but only where necessary to cover residues of cancelled pesticides which persist in the environment. They also suggested that such action levels should be lowered over time as residues decline.

EPA agrees that action levels should be recommended to replace revoked tolerances only when necessary to cover residues of cancelled pesticides that continue to persist in the environment and unavoidably contaminate food and feed commodities. EPA plans to reassess all its recommended action levels in the future on a regular basis so that the action levels may be lowered as residues decline.

The National Food Processors Association (NFPA) and the Pineapple Growers Association of Hawaii (PGAH) indicated their opposition to EPA's revocation of the existing tolerances for residues of persistent pesticides such as aldrin and dieldrin before such residues have fully dissipated from the environment. These organizations also expressed concern that the setting of replacement action levels may not be legal under the recent decision of the United States Court of Appeals for the District of Columbia in *Community Nutrition Institute (CNI)* v. *Young*, 757 F. 2d 354 (D.C. Cir. 1985).

In order to eliminate any implied sanctioning of the use of pesticides whose registrations have been cancelled for food safety reasons and of the presence of residues in food and feed

commodities from such use, EPA considers it appropriate to revoke tolerances for residues of such pesticides. There are major differences between tolerances and action levels. A tolerance is set before the fact to cover residues which will result from legal and purposeful use of the pesticide. An action level is a more appropriate mechanism for situations involving residues, which persist in the environment after the once-legal use of that pesticide has been halted. With regard to the concern of NFPA and PGAH that the setting of replacement action levels may not be legal in light of the Court of Appeals decision in the CNI case, the Agency notes that the Supreme Court has recently reversed the Court of Appeals decision. The Court gave deference to FDA's interpretation that the Federal Food, Drug, and Cosmetic Act provides flexibility to set action levels under section 402(a) rather than promulgate tolerances by formal rulemaking pursuant to section 406. The Agency also notes that it does not interpret section 406 as applying to residues of pesticide chemicals in food; rather, sections 402(a)(2)(B), 402(a)(2)(C), 408, and 409 govern the issue of whether food bearing such residues is adulterated.

The NFPA also stated that action levels do not provide sufficient legal protection to food producers (but did not specify in what manner) and further indicated that NFPA also opposed the 1982 policy statement (47 FR 42956; September 29, 1982) which describes EPA's policy on the revocation of tolerances for cancelled pesticides and the replacement of these tolerances with action levels for unavoidable residues of these pesticides. The basis for their opposition was that the setting and revising of action levels does not afford the public the same hearing rights and procedural protections provided for tolerance rulemaking actions under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA).

EPA believes that its procedures regarding the recommendation of replacement action levels afford adequate legal protection to food producers. As a matter of policy, the Agency will provide notice and the opportunity to comment on recommended action levels at the proposal stage of a tolerance revocation action. When a determination is reached to further decrease action levels, the Agency will publish a notice in the **Federal Register** of that determination and provide an opportunity to comment before making its final recommendations on action levels to FDA or USDA.

The Regional Administrator for EPA's Region V (which includes the states of Illinois, Indiana, Michigan, Ohio, and Wisconsin) opposed the proposal that FDA continue to enforce the current action level of 0.3 part per million for residues in fish. The Regional Administrator argued that this action level did not provide adequate protection of human health and that possibly it was inconsistent with statutory authority, policy and proposed guidelines regarding risk-benefit assessments. He also suggested that the action level derivation process, particularly regarding fish, should be reevaluated.

The Southern California Coastal Water Research Project (SCCWRP) was concerned that EPA might be recommending the fish action level based on economics far more than on risk; SCCWRP suggested that EPA should base the action level more on risk and also indicated that the risk estimates of the Carcinogen Assessment Group (CAG) would require the action level for residues of aldrin and dieldrin in fish to be considerably lower than EPA has recommended.

The National Wildlife Foundation's Great Lakes Natural Resource Center (NWF/GLNRC) opposed retention of the existing action level for residues of aldrin and dieldrin in fish, indicating that the action level presents an increased (and unacceptably high) cancer risk (10–3) to consumers of fish containing that level of residues. NWF/GLNRC also stated that they considered the recommended action level in fish to be in conflict with EPA's Ambient Water Quality Criteria for Aldrin/Dieldrin (1980), and therefore recommended that EPA publish in the **Federal Register** a discussion of any data or risk assessments showing a lower risk, or other considerations (e.g., economic) leading to the decision to retain the existing action level. This commenter did not suggest setting a particular lower action level, but only stated that "there are a number of remedial measures available . . . to reduce human exposure to aldrin/dieldrin contamination of fish. The commenter did not indicate what those remedial measures might include.

Several other commenters expressed concern about the current action level in fish and indicated that they have regional fish residue data and fish consumption statistics which they wish to submit for EPA's analysis and consideration before the Agency makes its final recommendation on the fish action level. Not all of the commenters submitted their data at that time, however, and until this additional information is received and can be evaluated, the Agency has decided to make no recommendation at this time regarding the current aldrin and dieldrin action levels in fish. The Agency does believe that the factors listed in the 1982 policy statement for setting appropriate action levels are basically sound and need not be changed. Therefore, these factors will continue to be used as guidance by the Agency in assessing the appropriate action levels for fish.

When EPA has accumulated more data and studied the situation thoroughly, the Agency will reassess the fish action level and determine what recommendation to make to FDA for the action level. As part of this reassessment, EPA intends to also study further the concerns about pesticides in fish in various regional areas where members of specific population subgroups may consume fish at rates above the "national average." Because action levels enforced by FDA apply to fish in interstate commerce, it would be very difficult, if not impossible, for FDA to enforce and defend in court differing "regional" limits. However, EPA recognizes that some population groups may be at higher risk because of the frequency and amount of fish consumed locally. It is usually not possible, however, to set an enforcement limit for this situation while also satisfying the criteria for setting an appropriate national limit.

If a potential local health problem exists, a state or locality may issue guidance on the quantity of contaminated fish which may be consumed without appreciable risk to the health of local consumers, based on an assessment of the level of the contaminant and on fish consumption patterns, or may take other action.

This final rule revoking the tolerances for aldrin and dieldrin is being issued in accordance with EPA's 1982 policy statement and the action levels being recommended are based on the factors cited in that statement, i.e., the action levels are set at the level necessary to protect the public health while taking into account the extent to which the residues cannot be avoided. As environmental residues continue to dissipate, risk will gradually decrease and action levels may be lowered.

EPA believes that during the time period that residues of aldrin and dieldrin products continue to occur in food, the potential risk from dietary exposure to such residues will be low. Based on the monitoring data which

were used to formulate its action level recommendations, EPA has determined that most foods and feeds contain no detectable residues of aldrin or dieldrin, or contain residues which are generally below the recommended action levels. Only a few foods and feeds on the action level list contain residues at or near the maximum limits being recommended. In fact, most of the foods and feeds contain residues well below the recommended action level. Thus, the occurrence of unavoidable residues is not a widespread or commonplace situation. In addition, the level of exposure will continue to decrease as environmental residues decrease.

Scallop Corporation, a Royal Dutch/Shell company, submitted comments stating that they are not opposed to the revocation action and setting of replacement action levels if these actions are an administrative result of the 1975 cancellation action and if the replacement action levels being recommended are based on a determination of the residues actually occurring in the environment, rather than on toxicological data submitted in connection with the current termiticide proceedings (termiticides were not subject to the 1975 cancellation action). Scallop pointed out that a review of toxicological data for aldrin and dieldrin was underway at EPA in connection both with the Special Data Call-ins on termiticides and with the Registration Standard for the termiticide use of aldrin and dieldrin.

EPA has discussed the basis for the recommended action levels previously in the proposed rule of March 13, 1985. As stated therein, the recommended action levels were determined based on residues occurring in the environment, as evidenced by residue monitoring data acquired from FDA and USDA. The Agency will reassess these action levels periodically based upon new information which becomes available to the Agency.

EPA is basing its recommended action levels for aldrin and dieldrin on residue monitoring data from the late 1970's. A reassessment of these action levels, using updated surveillance data, is underway with completion planned by the end of 1986. If any revision of the action levels is subsequently deemed appropriate, a notice to that effect will be published in the **Federal Register** with an opportunity for public comment. However, the Agency does not wish to delay its revocation of the aldrin and dieldrin tolerances and is thus proceeding with this action.

Based on the information considered by the Agency and discussed in detail in the March 13, 1985, proposal and in this final rule, the Agency is hereby: (1) Revoking all existing tolerances in 40 CFR 180.135 for the residues of aldrin and its epoxidation product dieldrin, resulting from application of aldrin, and (2) revoking all existing tolerances in 40 CFR 180.137 established specifically for dieldrin.

EPA is recommending to FDA the following action levels for the sum of aldrin and dieldrin residues, expressed in parts per million (ppm), to replace the following tolerances that are being revoked for residues of aldrin and dieldrin:

TABLE 1.—RECOMMENDED ACTION LEVELS

Commodities	Tolerances (ppm) being revoked		Recommended action levels (ppm)
	Aldrin[1]	Dieldrin	
Alfalfa	[2] 0 (0.03)	0	0.03
Apples	0	0.1	0.03
Apricots	0	0.1	0.03
Asparagus	0.1	0.1	0.03
Bananas		0.1	0.02
Barley, grain	0.02	0.02	0.02
Barley, straw	0.1	0.1	0.03
Beans	[2] 0 (0.05)	0	0.05
Beets, garden	[2] 0 (0.05)	0	0.1
Beets, garden, tops	[2] 0 (0.05)	0	0.05
Beets, sugar	0		0.1
Beets, sugar, tops	0		0.05
Blackeyed peas	[2] 0 (0.05)	0	0.05
Broccoli	0.1	0.1	0.03
Brussels sprouts	0.1	0.1	0.03
Cabbage	0.1	0.1	0.03
Cantaloupe	0.1		[4]
Carrots	0	0.1	0.1
Cauliflower	0.1	0.1	0.03
Celery	0.1		0.03
Cherries	0.1	0.1	0.03
Clover	[2] 0 (0.03)	0	0.03
Collards	[2] 0 (0.05)	0	0.05
Corn, forage	[2] 0 (0.03)	0	0.03
Corn, grain	[2] 0 (0.03)	0	0.02
Corn, pop	[2] 0 (0.03)	0	0.02
Cowpeas	[2] 0 (0.05)	0	0.05
Cowpeas, hay	[2] 0 (0.03)	0	0.03
Cranberries	0.1	0.1	[4]
Cucumbers	0.1	0.1	0.1
Eggplant	0.1	0.1	0.05
Endive (escarole)	[2] 0 (0.05)	0	0.05
Garlic	[2] 0 (0.05)		0.1
Grain sorghum	[2] 0 (0.03)	0	0.02
Grain sorghum, forage	[2] 0 (0.03)	0	0.03
Grapefruit	0.05	0.05	0.02
Grapes	0.1	0.1	[4]
Horseradish	0	0.1	0.1
Kale	[2] 0 (0.05)	0	0.05
Kohlrabi	[2] 0 (0.05)	0	0.05
Leeks	[2] 0 (0.05)		0.1
Lemons	0.05	0.05	0.02
Lespedeza	[2] 0 (0.03)	0	0.03
Lettuce	0.1	0.1	0.03
Limes	0.05	0.05	0.02
Mangoes	0.1	0.1	0.03
Muskmelons	0.1		[3]
Mustard greens	[2] 0 (0.05)	0	0.05
Nectarines	0.1	0.1	0.03
Oats, grain	0.02	0.02	0.02
Oats, straw	0.1	0.1	0.03
Onions	0	0.1	0.1
Oranges	0.05	0.05	0.02
Parsnips	0	0.1	0.1
Peaches	0.1	0.1	0.02
Peanuts	[2] 0 (0.05)		0.5
Peanuts, hay	[2] 0 (0.03)		0.03
Pears	0	0.1	0.03
Peas	[2] 0 (0.05)	0	0.05
Peas, hay	[2] 0 (0.03)	0	0.03
Pimentos	0.1	0.1	0.05
Pineapple	0.1		0.03
Plums (fresh prunes)	0.1	0.1	0.03
Potatoes	0.1	0.1	0.1
Pumpkins	0.1		0.1
Quinces	0	0.1	0.03
Radishes	0	0.1	0.1
Radishes, tops		0.1	0.03
Rice, grain	0.05		0.02
Rice, straw	0.1		0.03
Rutabagas	[2] 0 (0.05)	0	0.1
Rye, grain	0.02	0.02	0.02
Rye, straw	0.1	0.1	0.03
Salsify, roots	0	0.1	0.1
Salsify, tops	[2] 0 (0.05)	0	0.05

TABLE 1.—RECOMMENDED ACTION LEVELS—Continued

Commodities	Tolerances (ppm) being revoked		Recommended action levels (ppm)
	Aldrin[1]	Dieldrin	
Shallots	[2] 0 (0.05)		0.1
Soybeans	[2] 0 (0.05)	0	0.05
Soybeans, hay	[2] 0 (0.03)	0	0.03
Spinach	[2] 0 (0.05)	0	0.05
Squash, summer	0.1	0.1	0.1
Squash, winter	0.1		0.1
Strawberries	0.1	0.1	[4]
Swiss chard	[2] 0 (0.05)	0	0.05
Tangerines	0.05	0.05	0.02
Tomatoes	0.1	0.1	0.05
Turnips	[2] 0 (0.05)	0	0.1
Turnips, tops	[2] 0 (0.05)	0	0.05
Watermelons	0.1		[3]
Wheat, grain	0.02	0.02	0.02
Wheat, straw	0.1	0.1	0.03

[1] Total residues of aldrin and dieldrin, resulting from application of aldrin.

[2] The limits in parentheses, which were being used by FDA for enforcing the "zero" tolerances, took into account current analytical methodology capabilities and anticipated unavoidable, background levels of these residues.

[3] Covered by the action level of 0.10 ppm which is recommended to replace the existing action level of 0.15 ppm in melons.

[4] Covered by the action level of 0.05 ppm in commodities in the crop group "small fruits and berries" (as defined in 40 CFR 180.34(f)) which is recommended to replace the existing action level of 0.05 ppm in small fruits.

EPA is recommending to FDA the following action level for the sum of aldrin and dieldrin residues to replace the existing action level for residues of aldrin and dieldrin in melons.

TABLE 2.—RECOMMENDED REPLACEMENT ACTION LEVEL

Commodity	Existing action level (ppm) Aldrin/ Dieldrin	Recommended action level (ppm) Aldrin/ Dieldrin
Melons	0.15	0.10

EPA is recommending that FDA, FSIS, and AMS retain the following action levels for the sum of aldrin and dieldrin residues. Commodities affected, and listed below, include processed food and feed commodities as well as raw agricultural commodities. There are no established food additive tolerances in 21 CFR Parts 193 or 561 for residues of aldrin or dieldrin which would be subject to revocation under section 409(h) of the Federal Food, Drug, and Cosmetic Act; therefore, a separate **Federal Register** notice addressing food additive tolerances or replacement action levels will not be published.

TABLE 3.—ACTION LEVELS TO REMAIN IN EFFECT

Commodities	Existing and Recommended Action Levels (ppm) Aldrin/ Dieldrin
Animal feed (processed)	0.03

TABLE 3.—ACTION LEVELS TO REMAIN IN EFFECT—Continued

Commodities	Existing and Recommended Action Levels (ppm) Aldrin/ Dieldrin
Artichokes	0.05
Eggs	0.03
Fat, meat, and meat byproducts of cattle, goats, horses, sheep, swine, poultry, and rabbits (fat basis)	0.3
Fats and oils (animal and vegetable) (animal feed)	0.3
Figs	0.05
Hay	0.03
Milk, raw (fat basis)	0.3
Small fruits and berries [5]	0.05
Sugarbeet pulp	0.1

[5] Refer to 40 CFR 180.34(f) for the list of commodities covered by the crop group "small fruits and berries."

The commodity definition "Fat of calves, cattle, chickens, ducks, geese, goats, horses, rabbits, sheep, swine, and turkeys," which was listed in the proposed rule, has been modified as shown in Table 3 above to agree with the commodity definition used by FSIS.

The proposal to revoke the tolerances for aldrin and dieldrin discussed action levels for the crops blackberries, blueberries, boysenberries, currants, dewberries, elderberries, gooseberries, huckleberries, loganberries, and raspberries. FDA now indicates that the current FDA Compliance Policy Guide, which lists pesticide action levels, uses the crop group name "small fruits" in lieu of the individual crop names; therefore, FDA has requested that EPA revise its recommendations for action levels for aldrin and dieldrin to reflect the crop group rather than the individual crops which comprise the group. The crop group name, as it appears in the current 40 CFR 180.34(f), is "small fruits and berries."

The proposal to revoke the tolerances for aldrin and dieldrin also discussed the action levels of 0.3 ppm for residues in butter and manufactured dairy products, as well as raw milk. FDA now indicates that the action level in raw milk will automatically apply to any processed milk product and, therefore, separate action levels for the processed products such as butter are not necessary. EPA is recommending that FDA retain the current action level of 0.3 ppm for residues of aldrin and dieldrin in raw milk.

As discussed earlier in this document, EPA is not making a recommendation to FDA at this time regarding the current 0.3 ppm action level for the sum of aldrin and dieldrin residues in fish (edible portion).

Any person adversely affected by this regulation revoking the tolerances may, within 30 days after the date of publication of this regulation in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

This document has been reviewed by the Office of Management and Budget as required by section 3 of Executive Order 12291.

In order to satisfy requirements for analysis as specified by Executive Order 12291 and the Regulatory Flexibility Act, the Agency has analyzed the costs and benefits of the revocation of tolerances for this chemical. This analysis is available for public inspection in Room 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Executive Order 12291

As explained in the proposal published on March 13, 1985, the Agency has determined, pursuant to the requirements of Executive Order 12291, that the revocation of these tolerances will not cause adverse economic impacts on significant portions of U.S. enterprises.

Regulatory Flexibility Act

This rulemaking has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354; 94 Stat. 1164, 5 U.S.C. 601 *et seq.*) and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations. The reasons for this conclusion are discussed in the March 13, 1985 proposal.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 15, 1986.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

§ 180.135 [Removed]

2. Section 180.135 is removed.

§ 180.137 [Removed]

3. Section 180.137 is removed.

[FR Doc. 86–28745 Filed 12–23–86; 8:45 am]
BILLING CODE 6560–50–M

40 CFR Part 180

[OPP–300123A; FRL–3131–7]

Revocation of Chlordane Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document (1) revokes all interim tolerances and permanent tolerances for residues of the insecticide chlordane; (2) lists the action levels EPA is recommending to the Food and Drug Administration (FDA) to replace the revoked tolerances; and (3) lists EPA's recommendations to FDA and the Food Safety and Inspection Service (FSIS) of the U.S. Department of Agriculture (USDA) regarding existing action levels for commodities bearing residues for which tolerances had not been established. This rule was initiated by the Environmental Protection Agency to remove pesticide tolerances for which related registered uses have been cancelled.

EFFECTIVE DATE: Effective on December 24, 1986.

ADDRESS: Written objections, identified by the document control number [OPP–300123A], may be submitted to the: Hearing Clerk, Environmental Protection Agency, Rm. 3708 (A–110), 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Patricia Critchlow, Registration Division (TS–767), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1806).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of June 5, 1985 (50 FR 23717), which proposed the revocation of all tolerances in 40 CFR 180.122 and the interim tolerances in 40 CFR 180.319 for residues of the insecticide chlordane.

The June 5 **Federal Register** notice also listed the action levels which EPA intended to recommend to FDA to replace the tolerances once the rule revoking the tolerances is final. The action levels would cover unavoidable pesticide residues which can continue to occur in the tolerance related food and feed commodities because of the persistence of the pesticide in the environment. The notice also listed EPA's intended recommendations to FDA and FSIS regarding retention of existing action levels for food and feed commodities for which tolerances had not been established and which may contain unavoidable residues of the pesticide because of environmental contamination.

No requests for referral to an advisory committee were received. However, several interested persons submitted comments regarding the proposed revocation action.

The National Food Processors Association (NFPA) and the Pineapple Growers Association of Hawaii (PGAH) indicated their opposition to EPA's revocation of the existing tolerances for residues of persistent pesticides such as chlordane before such residues have fully dissipated from the environment. These organizations also expressed concern that the setting of replacement action levels may not be legal under the recent decision of the United States Court of Appeals for the District of Columbia in *Community Nutrition Institute (CNI)* v. *Young*, 757 F. 2d 354 (D.C. Cir. 1985).

In order to eliminate any implied sanctioning of the use of pesticides whose registrations have been cancelled for food safety reasons and of the presence of residues in food and feed commodities from such use, EPA considers it appropriate to revoke tolerances for residues of such pesticides. There are major differences between tolerances and action levels. A tolerance is set before the fact to cover residues which will result from legal and purposeful use of the pesticide. An action level is a more appropriate mechanism for situations involving residues which persist in the environment after the once-legal use of that pesticide has been halted. With regard to the concern of NFPA and PGAH that the setting of replacement action levels may not be legal in light to the Court of Appeals decision in the CNI case, the Agency notes that the Supreme Court has recently reversed the Court of Appeals decision. The Court gave deference to FDA's interpretation that the Federal Food, Drug, and Cosmetic Act provides flexibility to set action levels under section 402(a) rather than promulgate tolerances by formal rulemaking pursuant to section 406. The Agency also notes that it does not interpret section 406 as applying to residues of pesticide chemicals in food; rather, sections 402(a)(2)(B), 402(a)(2)(C), 408, and 409 govern the issue of whether food bearing such residues is adulterated.

The NFPA also stated that action levels do not provide sufficient legal protection to food producers (but did not specify in what manner) and further indicated that NFPA also opposed the 1982 policy statement (47 FR 42956, September 29, 1982) which describes EPA's policy on the revocation of tolerances for cancelled pesticides and the replacement of these tolerances with action levels for unavoidable residues of these pesticides. The basis for their opposition was that the setting and revising of action levels does not afford the public the same hearing rights and procedural protections provided for tolerance rulemaking actions under section 408 of the FFDCA.

EPA believes that its procedures regarding the recommendation of replacement action levels afford adequate legal protection to food producers. As a matter of policy, the Agency will provide notice and the opportunity to comment on recommended action levels at the proposal stage of a tolerance revocation action. When a determination is reached to further decrease action levels, the Agency will publish a notice in the Federal Register of that determination and provide an opportunity to comment before making its final recommendations on action levels to FDA or USDA.

The Regional Administrator for EPA's Region VII (which includes the states of Iowa, Kansas, Missouri, and Nebraska) expressed concern about the proposal that FDA continue to enforce the current action level of 0.3 part per million for residues of chlordane in fish, indicating that this action level might not be sufficiently low to provide adequate protection of human health and that possibly it was inconsistent with Agency policy on replacement action levels as well as with human health protection processes in other EPA programs. The Regional Administrator also recommended that the Agency conduct a thorough review of fish residue data, collected on a nationwide basis, to better determine the extent of chlordane contamination in the U.S., and further suggested that the action level risk assessment process, particularly regarding fish, be critically examined.

EPA has been advised of the availability of additional regional fish residue data and fish consumption statistics which need to be submitted for analysis and consideration before the Agency makes its final recommendation on the fish action level.

Until this additional information is received and can be evaluated, the Agency has decided to make no recommendation at this time regarding the current chlordane action level in fish. When EPA has accumulated more data and studied the situation throughly, the Agency will reassess the fish action level and determine what recommendation to make to FDA for the action level.

As part of this reassessment, EPA intends also to study further the concerns about pesticides in fish in various regional areas where members of specific population subgroups may consume fish at rates above the "national average." Because action levels enforced by FDA apply to fish in interstate commerce, it would be very difficult, if not impossible, for FDA to enforce and defend in court differing "regional" limits. However, EPA recognizes that some population groups may be at higher risk because of the frequency and amount of fish consumed locally. It is usually not possible, however, to set an enforcement limit for this situation while also satisfying the criteria for setting an appropriate national limit.

If a potential local health problem exists, a state or locality may issue guidance on the quantity of contaminated fish which may be consumed without appreciable risk to the health of local consumers, based on an assessment of the level of the contaminant and on fish consumption patterns.

EPA believes that the factors listed in the 1982 policy statement for setting appropriate action levels are basically sound and need not be changed. Therefore, these factors will continue to be used as guidance by the Agency in assessing the appropriate action level for fish.

This final rule revoking the tolerances for chlordane is being issued in accordance with EPA's 1982 policy statement and the action levels being recommended are based on the factors cited in that statement, i.e., the action levels are set at the level necessary to protect the public health while taking into account the extent to which the residues cannot be avoided. As environmental residues continue to dissipate, risk will gradually decrease and action levels may be lowered. EPA plans to reassess all its recommended action levels in the future on a regular basis so that the action levels may be lowered as residues decline.

It is EPA's opinion that during the period of time that residues of chlordane and its degradation products continue to occur in food, the potential risk from dietary exposure to such residues will be low. Based on the monitoring data which were used to formulate its action level recommendations, EPA has determined that most foods and feeds contain no detectable residues of chlordane and its degradation products, or contain residues which are generally below the recommended action levels. It is important to recognize that only a few foods and feeds on the action level list contain residues at or near the maximum limits being recommended. In fact, most of the foods and feeds contain residues well below the recommended action level. Thus, the occurrence of unavoidable residues is not a widespread or commonplace situation. In addition, the level of exposure will, continue to decrease as environmental residues decrease.

Based on the information considered by the Agency and discussed in detail in the June 5, 1985, proposal and in this final rule, the Agency is hereby: (1) Revoking all tolerances for residues of chlordane listed in 40 CFR 180.122, and (2) revoking the interim tolerances listed in 40 CFR 180.319 specifically for residues of chlordane.

EPA is recommending to FDA the action levels listed below, expressed in parts per million (ppm), to replace the following tolerances which are being revoked for residues of chlordane. For consistency with existing FDA action levels, all recommended action levels are for "the sum of residues of *cis*- and *trans*-chlordane, *cis*- and *trans*-nonachlor, oxychlordane (octachlor epoxide), alpha, beta, and gamma chlordene, and chlordene."

TABLE 1.—RECOMMENDED ACTION LEVELS

Commodities	Tolerances (ppm,) being revoked, Chlordane	Recommended action levels (ppm), Chlordane
Apples	0.3	0.1
Apricots	0.3	0.1
Beans	0.3	0.1
Beets (with or without tops)	0.3	0.1
Beets, greens alone	0.3	0.1
Blackberries	0.3	0.1
Blueberries (huckleberries)	0.3	0.1
Boysenberries	0.3	0.1
Broccoli	0.3	0.1
Brussels sprouts	0.3	0.1
Cabbage	0.3	0.1
Carrots	0.3	0.1
Cauliflower	0.3	0.1
Celery	0.3	0.1
Cherries	0.3	0.1
Citrus fruits	0.3	0.1
Collards	0.3	0.1
Corn	0.3	0.1
Cucumbers	0.3	0.1
Dewberries	0.3	0.1
Eggplant	0.3	0.1
Grapes	0.3	0.1
Kale	0.3	0.1
Kohlrabi	0.3	0.1
Lettuce	0.3	0.1
Loganberries	0.3	0.1
Melons	0.3	0.1
Nectarines	0.3	0.1
Okra	0.3	0.1
Onions	0.3	0.1
Papayas	0.3	0.1
Peaches	0.3	0.1
Peanuts	0.3	0.1
Pears	0.3	0.1
Peas	0.3	0.1
Peppers	0.3	0.1
Pineapples	0.3	0.1
Plums (fresh prunes)	0.3	0.1
Potatoes	0.3	0.1
Quinces	0.3	0.1
Radishes (with or without tops)	0.3	0.1
Radishes, tops	0.3	0.1
Raspberries	0.3	0.1
Rutabagas (with or without tops)	0.3	0.1
Rutabagas, tops	0.3	0.1
Squash	0.3	0.1
Strawberries	0.3	0.1
Summer squash	0.3	0.1
Sweet potatoes	0.3	0.1
Tomatoes	0.3	0.1
Turnips (with or without tops)	0.3	0.1
Turnips, greens	0.3	0.1
Youngberries	0.3	0.1

EPA is recommending to FDA the action levels listed below to replace the following interim tolerances for residues of chlordane, listed in 40 CFR 180.319, which are being revoked.

TABLE 2.—RECOMMENDED ACTION LEVELS (FOR INTERIM TOLERANCES)

Commodities	Interim tolerances (ppm) being revoked, Chlordane	Recommended action levels (ppm), Chlordane
Asparagus	0.1	0.1
Bananas	0.03	0.1
Mustard greens	0.1	0.1
Parsnips	0.2	0.1
Pumpkins	0.1	0.1
Spinach	0.1	0.1
Swiss chard	0.1	0.1

The proposed rule (50 FR 23717, June 5, 1985) stated that EPA planned to recommend that FDA retain its existing action level of 0.8 ppm in rendered animal fat. FDA has since indicated that a lower action level of 0.3 ppm would be adequate, based on residue monitoring data from 1982 through 1985, and would also be consistent with FSIS' action level in fat of livestock.

Therefore, EPA is recommending to FDA the following action level to replace the current action level for residues of chlordane in the processed feed commodity, rendered animal fat.

TABLE 3.—RECOMMENDED REPLACEMENT ACTION LEVEL

Commodity	Existing action level (ppm), Chlordane	Recommended action level (ppm), Chlordane
Animal fat (rendered)	0.8	0.3

EPA is recommending that FDA and FSIS retain the following action levels for residues of chlordane.

TABLE 4.—ACTION LEVELS TO REMAIN IN EFFECT

Commodities	Existing and recommended action levels (ppm), Chlordane
Animal feed (processed)	0.1
Fat, meat, and meat byproducts from cattle, goats, horses, sheep, swine, poultry, and rabbits (fat basis)	0.3

The commodity definition "Fat of meat from cattle, goats, hogs, horses, sheep, poultry, and rabbits," which was listed in the proposed rule, has been modified as shown in Table 4 above to agree with the commodity definition used by FSIS.

Commodities affected by the action level recommendations listed above in Tables 3 and 4 include processed animal feed and the processed feed commodity rendered animal fat, which is used as an animal feed ingredient. There are no established feed additive tolerances in 21 CFR Part 561 for residues of chlordane which would be subject to revocation under section 409(h) of the Federal Food, Drug, and Cosmetic Act; therefore, a separate Federal Register notice addressing feed additive tolerances or replacement action levels will not be published.

As discussed earlier in this document, EPA is not making a recommendation to FDA at this time regarding the current 0.3 ppm action level for chlordane residues on fish (edible portion).

Any person adversely affected by this regulation revoking the tolerances may, within 30 days after the date of publication of this regulation in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

This document has been reviewed by the Office of Management and Budget as required by section 3 of Executive Order 12291.

In order to satisfy requirements for analysis as specified by Executive Order 12291 and the Regulatory Flexibility Act, the Agency has analyzed the costs and benefits of the revocation of tolerances for this pesticide. This analysis is available for public inspection in Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Executive Order 12291

As explained in the proposal published on June 5, 1985, the Agency has determined, pursuant to the requirements of Executive Order 12291, that the revocation of these tolerances will not cause adverse economic impacts on significant portions of U.S. enterprises.

Regulatory Flexibility Act

This rulemaking has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1164, 5 U.S.C. 601 *et seq.*) and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small

organizations. The reasons for this conclusion are discussed in the June 5, 1985, proposal.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recordkeeping and reporting requirements.

Dated: December 15, 1986.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

§ 180.122 [Removed]

2. Section 180.122 is removed.

§ 180.319 [Amended]

3. Section 180.319 is amended by removing the entries for "Chlordane".

[FR Doc. 86-28746 Filed 12-23-86; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 261

[SW-FRL-3133-7]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA is correcting an error presented in a final rule denying delisting petitions from five petitioners which appeared in the **Federal Register** on November 13, 1986 (51 FR 41100).

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information, contact Ms. Lori DeRose, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-5096.

SUPPLEMENTARY INFORMATION: EPA is correcting an error in one paragraph presented in a final rule on November 13, 1986 which denied delisting petitions filed by five petitioners. One petitioner addressed in that rule, Lacks Industries, located in Grand Rapids, Michigan, was erroneously identified as having been previously granted a temporary exclusion for its petitioned waste. The notice should have correctly identified the Light Metals Coloring Company, Inc., located in Southington, Connecticut, as one of the three facilities that had previously been granted a temporary exclusion for their petitioned waste. As a result of this correction, the paragraph now correctly identifies the effective date of Light Metals Coloring Company's petition denial as May 13, 1987, and the effective date of Lacks Industries petition as November 13, 1986. This notice corrects the discussion presented in the November 13, 1986 final rule.

* * * * *

Dated: December 18, 1986.

J.W. McGraw,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

The following correction is made to SW-FRL-3108-8, the Hazardous Waste Management System: Identification and Listing of Hazardous Waste final rule published in the **Federal Register** on November 13, 1986 (51 FR 41101). The paragraph entitled "**EFFECTIVE DATE**" should be corrected to read:

EFFECTIVE DATE: For the three petitioners, GMC, Light Metals Coloring Co., Inc., and Radford Army Ammunition Plant, which have temporary exclusions, the effective date of this decision is May 13, 1987; for the other petitioners, the effective date is November 13, 1986.

[FR Doc. 86-28895 Filed 12-23-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

46 CFR Part 515

[Docket No. 86-15]

Filing of Tariffs by Marine Terminal Operators Exculpatory Provisions

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission amends its rules governing the filing of terminal tariffs by marine terminal operators to prohibit tariff provisions that exculpate or otherwise relieve marine terminal operators from liability for their own negligence, or that imposed upon others the obligation to indemnify or hold harmless terminal operators from liability for their own negligence.

EFFECTIVE DATE: February 23, 1987.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5740.

SUPPLEMENTARY INFORMATION: By the publication of a Notice of Proposed Rulemaking in the **Federal Register** on April 25, 1986 (51 FR 15655-56) the Commission gave notice of its intent to prohibit exculpatory provisions in tariffs filed by marine terminal operators. Specifically, the proposed rule would add a new section to the Commission's regulations governing the filing of tariffs by marine terminal operators contained in Part 515, CFR. As proposed the new § 515.7, "Exculpatory Tariff Provisions," would provide as follows:

No terminal tariff shall contain provisions that exculpate or otherwise relieve marine terminal operators from liability for their own negligence, or that impose upon others the obligation to indemnify or hold-harmless the terminals from liability for their own negligence.

The Commission also requested comments on a possible exception to the general prohibition. The exception would allow terminal operators and users to negotiate an arrangement whereby the user may voluntarily assume liability for certain operations in exchange for operational and rate concessions from the operator. The proposed form of the exception was stated as follows:

Terminal tariffs may contain hold-harmless and indemnification provisions for specific risks and hazards in terminal operations that port facility users have agreed to assume from the terminal operator but only if such provisions plainly indicate that such assumption by the users is in consideration for the terminal operator's specific concomitant concessions in rates or relinquishment of control to the user over the operations for which the user is assuming liability or providing indemnification.

Comments in response to the Notice were filed by fifteen parties representing both terminal operators [1] and users [2]

[1] The following terminal operators filed comments: Board of Trustees of the Galveston Wharves, Galveston, Texas; Board of Port Commissioners, City of Oakland, California; Port of Houston Authority of Harris County, Texas; Lake Charles Harbor and Terminal District; Massachusetts Port Authority; Port of Seattle; South Carolina State Ports Authority; and, Global Terminal and Container Service, Inc.

[2] The following terminal users filed comments: Hampton Roads Shipping Association; Hampton Roads Maritime Association; West Gulf Maritime Association; Crowley Maritime Corporation; Master Contracting Stevedore Association of the Pacific Coast, Inc.; Association of Ship Brokers and Agents (U.S.A.), Inc.; and, Matson Navigation Company, Inc. (for itself and on behalf of its terminal operating subsidiary, Matson Terminals, Inc.)

reflecting a range of opinion on the proposed rule and possible exception.

Two commenters, Hampton Roads Shipping Association and Hampton Roads Maritime Association, support the proposal. Crowley Maritime Corporation and Lake Charles Harbor and Terminal District endorse the exception to the proposed rule, thereby presumably also supporting the underlying rule.

Several commenters express support for the rule but oppose the exception as published. The Board of Trustees of the Galveston Wharves, Galveston, Texas requests that the exception include terminal agreements containing liability insurance requirements. West Gulf Maritime Association and the Association of Ship Brokers & Agents (USA), Inc. oppose exceptions of any kind. The Master Contracting Stevedore Association of the Pacific Coast, Inc. also opposes any exceptions, and would extend the rule to apply to terminal agreements and leases and specify the various forms of exculpatory provisions prohibited by the rule. In its initial comments, Matson Navigation Company, Inc./Matson Terminals, Inc. (Matson) opposes the exception as it applies to terminal tariffs and argues that any understanding permitted by the exception should be required to be filed as an agreement. Subsequently, Matson filed supplemental comments stating it had given this matter "further consideration" and now supports the position of the Master Contracting Stevedore Association of the Pacific Coast, Inc.

Several commenters express dissatisfaction with the rule and exception as proposed and suggest revisions or clarifications. The Port of Houston Authority of Harris County, Texas argues that ports need protection from nuisance suits and that the Commission should: (1) Consider a comparative negligence rule; (2) allow terminal operators to require users to obtain liability insurance; and, (3) not require a formal agreement for the exception to apply. The Port of Seattle agrees and further points out that the exception overrides any need for the rule. The Board of Port Commissioners, City of Oakland and the South Carolina State Ports Authority urge the Commission to clarify the proposed rule to specify that terminal users may not use the regulation to exculpate themselves from liability for which they are responsible.

Global Terminal and Container Services, Inc. (Global) opposes the rule as it applies to its particular terminal services. Its terminal facility is said to be a "wheeled" container holding yard, which allegedly renders it a "bailee" of containers. Global believes that under the proposed rule it could be held liable for damages without a showing of negligence on its part. Exculpatory clauses which would limit a bailee's liability to cases of actual negligence are alleged to be reasonable and lawful. Global submits that the published exception is insufficient to remedy the situation.

Massachusetts Port Authority (MPA) opposes any regulation in this area. It argues that the free market should dictate port tariff practices. Alternatively, MPA takes the position that if the rule is adopted then the exception should also be adopted.

Upon review of the comments, the Commission has determined to promulgate a final rule in this proceeding prohibiting exculpatory clauses in terminal tariffs with no exceptions permitted. The discussion in the Notice of Proposed Rulemaking, which is incorporated here by reference, made clear that the prohibition against any form of exculpatory provisions in terminal tariffs is one that has been firmly established by the Commission in its decisions. Nothing presented in the comments filed in this proceeding prompts the Commission to alter its position on such provisions. Accordingly, that position will be codified in a Commission regulation.

Specific liability-shifting agreements between terminal operators and users will only be permitted, if at all, in marine terminal agreements filed with the Commission under section 15 of the 1916 Act or section 5 of the 1984 Act. By separate Notice issued this date in response to a Petition for Rulemaking by the Master Contracting Stevedore Association of the Pacific Coast, Inc. the Commission is instituting a proceeding on the question of the lawfulness of exculpatory clauses in terminal leases and agreements and whether a rule should be promulgated addressing such provisions. Docket No. 86-32, *Exculpatory Provisions in Marine Terminal Agreements and Leases.*

As was noted in the Notice of Proposed Rulmaking in this proceeding, in all but one of the several Commission cases which addressed liability-shifting tariff provisions, those provisions were held to be unlawful under section 17 of the Shipping Act, 1916 (1916 Act), 46 U.S.C. app. 816, and section 10(d) of the Shipping Act of 1984 (1984 Act), 46 U.S.C. app. 1709(d).[3] The provisions were found to have been unfairly imposed by the terminal operator through the exercise of greatly superior bargaining power resulting from public-utility-type market conditions for terminal facilities. We therefore see little validity to the suggestion advanced in some comments that "free market forces" exist and should govern the promulgation of liability provisions in terminal tariffs.

Similarly, the argument that the proposed rule would somehow allow terminal users to exculpate themselves from liability for their own negligence is unfounded. There is no indication in the language of the rule or in the case law giving rise to the rule that would lend any support to this argument.

We also find unpersuasive the contention that the rule somehow infringes on the comparative negligence doctrine in maritime and admiralty law. Under that doctrine, negligence is measured in terms of percentage, and any damages allowed are diminished in proportion to the amount of negligence attributable to the person for whose injury recovery is sought. *Black's Law Dictionary* 255 (5th ed. 1979). Exculpatory tariff provisions are, in fact, an attempt to override the traditional application of the comparative negligence doctrine in damage suits resulting from terminal accidents.

Some comments argue, however, that there is nothing unreasonable, and hence unlawful, about a terminal operator and user agreeing upon a liability-shifting arrangement after an arms-length negotiation over the terms and conditions for the use of such facilities. In support of this argument, some commenters allege that actual industry conditions at particular terminal facilities are compatible with the so-called "quid pro quo" exception noted in the Notice of Proposed Ruelmaking.

No exception to the general rule prohibiting exculpatory clauses in terminal tariffs is being adopted or will be permitted. The reason favoring a "quid pro quo" exception is that if there generally exists a rough equality of

[3] The only decision in which the Commission found that a liability-shifting tariff provision was justified on the basis of the arrangement between the terminal operator and the user is *West Gulf Maritime Association v. Port of Houston Authority*, 22 F.M.C. 420, 453 (1980). However, it is important to note that, in that case, it was specifically found that the liability-shifting provision was "not imposed for the purpose of escaping liability for one's own negligence." *Id.* Accordingly, this case is not viewed as involving a truly *exculpatory* tariff provision.

bargaining power between terminal users and operators in the negotiation of the terms and conditions of the use of terminal facilities, reflected in terminal tariffs, then "users" will obtain some significant consideration for their assumption of the port authorities' potential liability. Theoretically, the exception would impose no additional burdens or significant restrictions on the commercial flexibility of the parties; it would only affect terminal tariffs in situations where there is an imbalance of bargaining power. The problem is that if there is, in fact, a general absence of equality of bargaining power between "users" and operators, the exception might only serve to foster litigation over whether negotiations over the provisions are "*bona fide*" and whether consideration flowing to the "user" is adequate. In short, if general equality of bargaining power existed between operators and "users," the exception would be superfluous and unnecessary. Alternatively, where there is a general inequality of bargaining power, as we find to be the case in the promulgation of exculpatory liability-shifting provisions in terminal tariffs, the exception would be ineffective. In either event, there appears to be no basis for providing an exception to the general rule prohibiting exculpatory provisions, at least insofar as terminal tariffs are concerned.[4]

As noted above, any exception to a general rule prohibiting exculpatory clauses in tariffs would most appropriately be permitted, if at all, through an agreement between the parties filed pursuant to the 1916 or 1984 Acts. The appropriate vehicle to consider the general propriety of such exceptions in terminal lease agreements is the separate rulemaking proceeding which the Commission is concurrently instituting.

Finally, it should be noted that the effective date of this final rule is 60 days after its publication in the **Federal Register**, rather than the customary 30 days. This extended period should allow those subject to the final rule's requirements ample time to conform their tariffs to those requirements.

The Commission has determined that this rule is not a "major rule" as defined in Executive Order 12291, dated February 17, 1981, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographical region; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete in domestic or export markets.

The Chairman of the Federal Maritime Commission certifies pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units or small government organizations.

The Paperwork Reduction Act, 44 U.S.C. 3501–3502, does not apply to this Notice of Final Rulemaking because the amendments to Part 515 of Title 46, Code of Federal Regulations, do not impose any additional reporting or recordkeeping requirements or collection of information from members of the public which require the approval of the Office of Management and Budget.

List of Subjects in 46 CFR Part 515

Freight, Harbors, Reporting and recordkeeping requirements, Warehouses.

PART 515—[AMENDED]

Therefore, for the reasons set forth above, Part 515 of Title 46, Code of Federal Regulations, is amended as follows:

1. The authority citation to Part 515 is revised to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 816, 820, 841a, 1709, 1714 and 1716.

2. A new § 515.7, entitled "Exculpatory Tariff Provisions," is added to read as follows:

§ 515.7 Exculpatory Tariff Provisions.

No terminal tariff shall contain provisions that exculpate or otherwise relieve marine terminal operators from liability for their own negligence, or that impose upon others the obligation to indemnify or hold-harmless the terminals from liability for their own negligence.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 86–28929 Filed 12–23–86; 8:45 am]

BILLING CODE 6730-01-M

[4] Exception to the rule, although suggested as a possibility in dicta in *I. Charles Lucidi v. Stockton Port District*, 22 F.M.C. 20, 29 (I.D. 1979), has never been formally accepted by the Commission.

DEPARTMENT OF DEFENSE

Department of the Navy

48 CFR Parts 5242 and 5252

Department of the Navy Federal Acquisition Regulations; Policy Concerning Navy Requests for Refunds

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its policy and associated clause concerning refunds for overpriced spare parts and items of support equipment. This revision clarifies the definition of intrinsic value, establishes a time limit for mandatory refunds, establishes conditions under which a contractor is not liable for a refund, and establishes a maximum unit price for items subject to the clause.

EFFECTIVE DATE: December 4, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Sidney Tronic, Office of the Assistant Secretary of the Navy (Shipbuilding and Logistics), Contracts and Business Management (CBM–BPC) Washington, DC. 20360–5000, Telephone (202) 692–3558/9.

SUPPLEMENTARY INFORMATION:

1. Background

As published on June 3, 1986 at 51 FR 19842–19843, the Navy promulgated guidance and a clause effective April 28, 1986 which provides for the Navy to be entitled to mandatory refunds in the event that the price paid by the Navy for a spare part or item of support equipment exceeds the part's or item's intrinsic value. On October 16, 1986 at 51 FR 36828–36830, the Navy published a proposed revision to its policy and clause, and invited comments by 17 November 1986 on the proposed changes. Comments were received from eight companies and two industrial associations. The following summarizes significant comments, suggestions, and actions taken regarding the Navy's proposed revision of its spares refunds policy and clause.

Policy and Clause are Unnecessary

It was suggested that many of the spare parts pricing problems that prompted the Navy to issue its policy and clause have now been corrected by voluntary industry action and that there is no need for a mandatory refunds clause. The Navy recognizes that some companies have taken constructive steps to deal with spare parts pricing problems, but believes that overpricing problems may continue and that voluntary refunds are inadequate to protect the Navy's interests.

Navy Should Wait For DOD-wide Policy

It was suggested that a DOD-wide policy may be forthcoming and that the Navy should suspend its mandatory refund requirement until a DOD-wide policy is issued. Although other DOD activities are aware of its initiative, there has been no effort to pursue a DOD-wide policy on refunds, other than a case at the DAR Council that permanently lowers the level required to approve a voluntary refund and also restates DOD policy to pursue contractual remedies before non-contractual ones.

Inconsistent With Concept of Fixed Pricing

It was again suggested that the Navy's clause is contrary to the concept of fixed pricing in that it allows the Government after completion of negotiations to reopen the contract pricing process. The Navy recognizes industry's concern and, although the Navy considers this a problem inherent in any mandatory refund policy, has taken steps to eliminate potential uses of its refunds policy for unintended purposes. The policy has been revised to indicate that it is not intended to diminish the responsibility of Navy contracting personnel to properly price spares, nor is it intended to serve as a mechanism for recovery of excess profits. In addition, the policy and the clause have been revised to indicate that, for purposes of determining the Navy's entitlement to a refund, an item's intrinsic value is considered as of the date of agreement on price.

Replace "Intrinsic Value" with "Reasonable Value"

It was suggested that for consistency the concept of intrinsic value should be replaced with the concept of reasonable value, since the objective of DOD pricing policy is to negotiate fair and reasonable prices. It was also suggested that the definition of intrinsic value should be revised to recognize the quantity ordered. The Navy disagrees with both suggestions. For a number of reasons, including the quantity ordered and the nature of the contractor's primary business, a price that is considered to be reasonable in accordance with FAR cost principles for a particular procurement may exceed what a person would normally expect to pay for the item. The Navy's use of "intrinsic value", as defined in the clause, is intended to insure that the Navy is fully aware if it pays a price that is considered to be "reasonable" in accordance with cost principles but that significantly exceeds what a person normally would expect to pay for the item.

Time Limit For Refund Requests Is Too Long

Concern was expressed that a four year period after delivery of an item was too long for the Navy to be able to request refunds. The Navy has reduced the refund period to two years after delivery of the item.

Return of Unusuable Parts Or Items

Concern was expressed that the Navy's unilateral right to return an item to the contractor for a refund of the price in full would allow the Navy to return obsolete or otherwise unusable parts. The Navy understands this concern and has revised the clause so that the Navy can return an item for a full refund only if the contractor agrees.

Definition Of Support Equipment

It was suggested that a definition of the support equipment intended to be covered by the clause should be provided. Rather than define "support equipment", the Navy has revised the clause to make it inapplicable to items with unit prices in excess of $100,000 (or $25,000 in some instances). It is felt that this change satisfies the basic concern that prompted the suggestions to define "support equipment".

Contractor Notification That Price Exceeds Intrinsic Value

Concern was expressed that the proposed new paragraph which provided contractors with relief from refund liability created a conflict between the contractor's obligation to perform under an unpriced order and the contractor's obligation to perform an intrinsic value analysis. The paragraph has been revised in three ways: (i) It is revised to require timely notice from the contractor, (ii) It is revised such that the contractor's obligation to deliver an item after the contractor notifies the contracting officer that the proposed price will exceed intrinsic value is not dependent on receiving additional direction from the contracting officer, and (iii) It is revised to delete language limiting the Government's libility for incurred costs.

Identification Of Alternative Items Or Sources

Concern was expressed about contractors having to identify alternative items or sources in the event that the contractor notified the contracting officer that the price the contractor would propose would exceed intrinsic value. The Navy did not intend to force a contractor to perform a detailed analysis of potential alternative items or sources. Therefore, the clause has been revised to require notification of "known" alternative items or sources, "if any".

Exemption For Items Covered By Cost Or Pricing Data

It was suggested that the clause should not apply to items covered by certified cost or pricing data, or for which prices were established after a Government cost analysis. The Navy disagrees because cost or pricing data is used to establish the "reasonableness" of an item and not necessarily its "intrinsic value" (as defined in the clause). In addition, the Navy believes that an item may technically be covered by certified cost or pricing data when it is purchased as part of a larger procurement, and, yet, not be the subject of detailed cost or pricing data specific to it. Nevertheless, the Navy has elected to make the clause inapplicable to items with a unit price in excess of $100,000, or in excess of $25,000 if the contractor submitted, and certified the currency, accuracy, and completeness of, cost or pricing data applicable to the the item.

2. Statutory and Regulatory Requirements

This rule will not have a significant economic effect on a substantial number of small entities and therefore the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) is not applicable. The Paperwork Reduction Act (44 U.S.C. 3501 et seq.) does not apply to this rule because it does not impose any additional reporting requirements on the public.

List of Subjects in 48 CFR Parts 5242 and 5252

Government procurement.

Adoption of Amendments

For the reasons set out in the preamble, Parts 5242 and 5252 of Title 48, Code of Federal Regulations, are amended as follows.

1. Part 5242 is revised to read as follows:

PART 5242—CONTRACT ADMINISTRATION

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DOD Directive 5000.35

Subject 5242.90—Refunds Requirements (Spares and Support Equipment)

5242.9000 Requests for refunds.

(a) *Policy.* (1) This subpart establishes uniform policy and procedures on requesting refunds for spare parts or items of support equipment. This policy is not intended to diminish the responsibility of Navy contracting personnel to properly price spare parts and items of support equipment. Further, it is not intended to serve as a mechanism for the recovery of excess profits.

(2) In accordance with the guidance set forth in paragraph (c) below, contracting activities shall request a refund whenever the contract price of any spare part or item of support equipment significantly exceeds the item's intrinsic value as defined in the clause at 5252.242–9000. Refunds shall be requested only for the difference between the intrinsic value of the item at the time an agreement on price was reached and the contract price. Refunds will not be requested to recoup the amount of cost decreases that occur over time due to productivity gains (beyond economic quantity considerations) or changes in market conditions.

(b) *Examples.* The following are examples of circumstances which may establish a basis for a refund request or pricing adjustment:

(1) A technical or engineering analysis results in a determination that the intrinsic value is significantly lower than the historical price.

(2) The price paid for an item bought competitively in similar quantity and circumstances (e.g., urgency, delivery terms) is significantly less than the former sole source price.

(3) Prices paid to the manufacturer of an item indicate the amount previously charged by the prime contractor for the item significantly exceeded the intrinsic value of the prime contractor's efforts in providing the item.

(c) *Solicitation provisions.* The contracting officer shall insert the clause at 5252.242–9000 in solicitations, Basic Ordering Agreements, and contracts (as defined in FAR 2.101) which contain or may contain requirements for spare parts or items of support equipment, except those contracts awarded as a result of competitive small purchase procedures and orders under federal supply schedules. If added to existing contracts, the clause will not apply to items or components ordered by the Government prior to the date of incorporation of the clause into the contract. Heads of Contracting Activities (HCAs) are delegated, without power of redelegation, authority to establish monetary thresholds below which refunds will not be requested.

2. Part 5252 is revised to read as follows:

PART 5252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DOD Directive 5000.35

Subpart 5252.2—Texts of Provisions and Clauses

5252.242–9000 Refunds.

As prescribed in 5242.9000 insert the following clause:

Refunds (Spares and Support Equipment) (Dec. 86)

(a) In the event that the price of a spare part or item of support equipment delivered under this contract significantly exceeds its intrinsic value, the contractor agrees to refund the difference. Refunds will only be made for the difference between the intrinsic value of the item at the time an agreement on price was reached and the contract price. Refunds will not be made to recoup the amount of cost decreases that occur over time due to productivity gains (beyond economic purchase quantity considerations) or changes in market conditions.

(b) For purposes of this clause, the intrinsic value of an item is defined as follows:

(1) If the item is one which is sold, or is substantially similar or functionally equivalent to one that is sold in substantial quantities to the general public, intrinsic value is the established catalog or market price, plus the value of any unique requirements, including delivery terms, inspection, packaging, or labeling.

(2) If there is no comparable item sold in substantial quantities to the general public, intrinsic value is defined as the price an individual would expect to pay for the item based upon an economic quantity as defined in FAR 52.207–4, plus the value of any unique requirements, including delivery terms, inspection, packaging, or labeling.

(c) At any time up to two years after delivery of a space part or item of support equipment, the contracting officer may notify the contractor that based on all information available at the time of the notice, the price of the part or item apparently exceeds its intrinsic value.

(d) If notified in accordance with paragraph (c) above, the contractor agrees to enter into good faith negotiations with the Government to determine if, and in what amount, the Government is entitled to a refund.

(e) If agreement pursuant to paragraph (d) above cannot be reached, and the Navy's return of the new or unused item to the contractor is practical, the Navy, subject to the contractor's agreement, may elect to return the item to the contractor. Upon return of the item to its original point of government acceptance, the contractor shall refund in full the price paid. If no agreement pursuant to paragraph (d) above is reached, and return of the item by the Navy is impractical, the contracting officer may, with the approval of the Head of the Contracting Activity, issue a contracting officer's final decision on the matter, subject to contractor appeal as provided in the Disputes clause.

(f) The contractor will make refunds, as required under this clause, in accordance with instructions from the contracting officer.

(g) The contractor shall not be liable for a refund if the contractor advised the contracting officer in a timely manner that the price it would propose for a spare part or item of support equipment exceeded its intrinsic value, and with such advice, specified the estimated proposed price, the estimated intrinsic value, and known alternative sources or items, if any, that can meet the requirement.

(h) This clause does not apply to any spare parts or items of support equipment whose price is determined through adequate price competition. This clause also does not apply to any spare part or item of support equipment with a unit price in excess of $100,000; or in excess of $25,000 if the contractor submitted, and certified the currency, accuracy and completeness of, cost or pricing data applicable to the item.

(End of Clause)

December 17, 1986.

Harold L. Stoller, Jr.,

CDR, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 86–28863 Filed 12–23–86; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171 and 172

[Docket HM–145F, Amdt. Nos. 171–90, 172–108]

Hazardous Substances; Delay of Effective Date

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: This document changes the effective date for compliance with the final rule issued under Docket HM–145F, Amendment Numbers 171–90 and 172–108, entitled *Hazardous Substances*, which was published in the Federal Register on Friday, November 21, 1986 (51 FR 42174), by delaying its effective date to afford shippers sufficient time to comply with the rule and to permit continued use, for a limited period of time, of preprinted shipping paper descriptions and package markings which would otherwise be rendered obsolete by the final rule. The effect of this action is to relieve shippers of some of the costs associated with complying with new requirements for hazardous substances.

EFFECTIVE DATE: July 1, 1987, except as follows: Any material which is subject to the Hazardous Materials Regulations as a hazardous substance under the regulations in effect on December 31, 1986, for which the reportable quantity was not changed by Amendment No. 172–108, may be offered for transportation and transported in accordance with the regulations in effect on December 31, 1986, until January 1, 1988. However, immediate compliance with Amendment Nos. 171–90 and 172–108 is authorized.

The provisions of 49 CFR 172.101(j) do not apply to Amendment No. 172–108.

FOR FURTHER INFORMATION CONTACT: Lee Jackson (202) 366–4488 or George Cushmac (202) 366–4545, Office of Hazardous Materials Transportation, RSPA, Washington, DC 20590. Questions about hazardous substance designations or reportable quantities should be directed to the Environmental Protection Agency (EPA). Call the RCRA/Superfund hotline at (800) 424–9346 or, in Washington, DC (202) 382–3000.

SUPPLEMENTARY INFORMATION: On November 17, 1986, RSPA issued a final rule amending the Hazardous Materials Regulations (HMR) to incorporate into the HMR, as hazardous materials, all substances designated as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). This action was necessary to comply with the Superfund Amendments and Reauthorization Act of 1986. In the final rule, hazardous substances and their reportable quantities (RQs) were listed in an Appendix to § 172.101. In addition, the final rule contained amendments making the HMR applicable to these hazardous substances. The effective date in the rule was January 1, 1987.

At the time of the adoption of the final rule, there were approximately 300 hazardous substances with their reportable quantities, designated by EPA in 1978 pursuant to section 311 of the Federal Water Pollution Control Act (FWPCA), which were placed in the HMR in 1980. Under CERCLA, additional hazardous substances and reportable quantities were designated, and the original substances that were designated under the FWPCA were retained, but some of their reportable quantities were changed.

The final rule changes the requirements for designating hazardous substances on shipping papers and for package markings for the original hazardous substances (those designated under the FWPCA), as well as for hazardous substances more recently designated under CERCLA. The final rule under Docket HM–145F allows, under the provisions of § 172.101(j), the continued use of shipping papers prepared, and packages marked, under existing requirements in the HMR (i.e., for the original FWCPA hazardous substances) for up to one year *provided that the RQ designation had not changed* (see discussion at 51 FR 42175).

The RQs for several widely used chemicals, which were hazardous substances under the FWPCA, have been adjusted (changed) by EPA under section 102 of CERCLA. For example, the RQ for calcium hypochlorite has been lowered from 100 pounds to 10 pounds. Other chemicals which were not designated hazardous substances under the FWPCA are designated hazardous substances under CERCLA and would otherwise be subject to the new requirements after January 1, 1987. However, RSPA has learned that many thousands of packages of chemicals, whose RQ's were changed, or which were not designated hazardous substances, have been prepared, overpacked, and palletized. To require compliance with the new requirements by January 1, 1987, would require that these overpacked units be broken down and the individual boxes be marked and re-overpacked. RSPA believes that this burden is unreasonable and is extending until July 1, 1987, the effective date of the final rule adopted under Docket HM–145F for hazardous substances whose RQ's have changed or which are newly designated. However, shipping descriptions for hazardous substances whose RQ's were not changed and which conform to the regulations in effect on December 31, 1986, may be used until January 1, 1988.

These provisions allow shippers to use up existing stocks of preprinted shipping papers and package markings which would otherwise be rendered obsolete. If RSPA were to provide relief only from shipping papers and package marking requirements, similar to that provided under § 172.101(j), then carriers would be faced with the possibility of being offered materials which are regulated as hazardous substances without their being identified as such. For this reason, RSPA believes it necessary to provide temporary relief from all provisions of the final rule that pose a new burden. It should be noted that the effective date permits immediate compliance with the final rule even though not required until the dates specified.

Administrative Notices

1. The relief adopted herein is applicable to regulations mandated by the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99–499, October 17, 1986). Because those regulations were to be adopted within 30 days of enactment, I find under 5 U.S.C. 553, that notice and public procedure on the rule and the delay in effective date are contrary to the public interest. In addition, due to the limited time available to prepare the final rule and this delay in effective date, no determinations have been made under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.).*

2. Under the terms of "DOI Regulatory Policies and Procedures" (44 FR 11034, February 26, 1979), I have determined that the rulemaking was an emergency rulemaking because it was governed by a short-term statutory deadline, therefore, no determination is made as to whether it is "significant".

3. I certify that neither this rulemaking nor the delay in effective date requires an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, *et seq.*

Although the provisions of Pub. L. 99–499 provide insufficient time for RSPA to perform required analyses and make required findings under the statutory, regulatory, and executive authorities noted above, the agency is aware that a rulemaking of such broad and immediate applicability may produce significant impacts on industry segments, a substantial number of which may be small enterprises. In order to comply with the mandate of Pub. L. 99–499, RSPA has chosen a regulatory approach which both complies with the purpose of the Congress and presents the least possible disruption to the regulatory scheme of the HMR.

Because RSPA's role in regulating hazardous substances is directly tied to EPA's ongoing hazardous substances responsibility, primarily through that agency's determination of reportable quantities, there will be a mechanism for RSPA's oversight of the transportation impacts of these amendments as the agency conducts rulemaking to provide concordance with EPA requirements. As the need for adjustments to these amendments is demonstrated, RSPA will modify the requirements to the extent consistent with the intent of Congress expressed in Pub. L. 99–499.

A number of errors in the List of Hazardous Substances and Reportable Quantities have been brought to RSPA's attention. RSPA is preparing a correction document on the final rule

which will correct errors in the List and in the regulatory language of the rule. It is planned for publication before the end of January, 1987

Issued in Washington, DC on December 19, 1986 under authority delegated in 49 CFR 1.53.

M. Cynthia Douglass,

Administrator, Research and Special Programs, Administration.

[FR Doc. 86-29014 Filed 12-23-86; 8:45 am]

BILLING CODE 4910-60-M

49 CFR Part 173

[Docket No. HM-166V; Amdt. No. 173-198]

Hazardous Materials: Uranium Hexafluoride: Petitions for Reconsideration; Notice of Public Meeting

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Revision to the final rule (Amendment No. 173-198).

SUMMARY: This document revises the final rule published on November 18, 1986, in the **Federal Register** (51 FR 41631) under Docket HM-166V, Amendment Nos. 172-107 and 173-198, regarding the transportation of uranium hexafluoride (UF_6) to permit the continued use of all packagings for UF_6 until June 30, 1987 after which time UF_6 packaging must meet the design, fabrication and marking requirements specified in American National Standards Institute (ANSI) Standard N14.1-1982 or an earlier edition thereof. Also, RSPA is announcing a public meeting and soliciting comments on the standards applicable to, and the use of, packaging that do not meet these ANSI standards, the effect of requiring these packagings to meet these ANSI standards or other restrictions, and information on standards to which these packagings may have been manufactured. This action is in response to petitions for reconsideration which have been received by RSPA and is necessary to avoid a potential disruption in defense and civilian nuclear activities that would be caused by immediate implementation of the packaging standards promulgated under Docket 166V for all UF_6 shipments.

DATES: The efffective date is January 1, 1987. The public meeting will be held on March 2, 1987, beginning at 9:00 a.m. Comments for use at the public meeting should be received by February 15, 1987.

ADDRESSES: The public meeting will be held at the U.S. Department of Transportation, Nassif Building, Room 2230, 400 Seventh Street SW., Washington, DC. Address comments to Dockets Branch, Office of Hazardous Materials Transportation (DHM-53), U.S. Department of Transportation, Washington, DC 20590. Comments should identify the docket and be submitted in five copies. The Dockets Branch is located in Room 8426 of the Nassif Building, 400 Seventh Street SW., Washington, DC. Office hours are 8:30 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Michael E. Wangler, Technical Division, Office of Hazardous Materials Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366-4545.

SUPPLEMENTARY INFORMATION: On November 18, 1986, RSPA published a final rule under Docket HM-166V, Amendment Nos. 172-107 and 173-198, in the **Federal Register** (51 FR 41632), which adopted standards for the design, fabrication, inspection, testing and marking of packagings used for the transport of UF_6. The final rule followed a notice of proposed rulemaking (NPRM) under Docket HM-166V, which was published on April 11, 1986 (51 FR 12529). Since the publication of the final rule, RSPA has received 5 petitions for reconsideration in accordance with the provisions of 49 CFR 106.35. The petitioners requested reconsideration of the application of packaging standards and extension of the effective date of the final rule. This document modifies a requirement addressing design and fabrication of packaging used for the transport of UF_6 (§ 173.420(a)(2)). Packaging not manufactured in accordance with ANSI Standard N14.1-1982 or an earlier edition of this standard may not be used after June 30, 1987. All other provisions of the final rule will remain unchanged.

Two petitioners have indicated that approximately 50,000 cylinders are currently being used as packaging for the transport of UF_6. Most of these cylinders were manufactured before the publication of ANSI Standard N14.1-1982. Most of these cylinders are owned by the U.S. Department of Energy (USDOE), whose uranium enrichment program provides UF_6 for national defense programs as well as the domestic and foreign nuclear power industry. RSPA acknowledged in the final rule that some cylinders, manufactured before 1982, would not meet the new requirement. RSPA proposed to permit continued use of the cylinders through exemptions granted under the provisions of Part 107 of the Hazardous Materials Regulations (HMR). However, all petitioners have noted that the time period between the publication date and the effective date of the final rule is too short to obtain exemptions. RSPA agrees with the petitioners. A delay in the implementation of the requirement for design and fabrication of all UF_6 packaging is justified.

Although RSPA acknowledged in the final rule that some packagings may not conform to the packaging requirements and, therefore, could be continued in use only under the terms of exemptions, RSPA believed that the number would be small and promulgation of the design and fabrication requirement covering all other cylinders would enhance safety. RSPA had received comments on the NPRM addressing the potential impact on existing cylinders, but RSPA was not aware of the degree of impact. Based upon the new information submitted by the petitioners for reconsideration, RSPA now believes that § 173.420(a)(2) of the final rule could have an adverse effect on the entire industry and requires further consideration before its implementation. RSPA also believes that the transport of UF_6 cylinders is a matter of such general applicability and future effect that it should be addressed by means of the rulemaking process rather than the exemption process. In addition, upon reexamination of packaging standards, RSPA believes that packagings manufactured in accordance with ANSI Standard 14.1-1971 are acceptable for transportation UF_6.

To facilitate RSPA revaluation of the requirements of UF_6 cylinders not manufactured in accordance with ANSI Standard 14.1-1982 or an earlier edition of the standard, the public is invited to submit information regarding (1) the effects of the requirement that all packagings be designed and fabricated in accordance with ANSI standards, including the technical and economic impacts of implementing the requirements; (2) the effect of permitting continued use of existing cylinders that do not conform to ANSI standards (grandfathering) and any restrictions or conditions that should be placed on their continued use; (3) all of the standards to which existing cylinders have been manufactured; and (4) any other relevant information regarding design and fabrication of non-ANSI packagings. Comments should be submitted to RSPA by February 15, 1987. Additionally, RSPA will hold a public meeting on March 2, 1987, beginning at 9 a.m. at the U.S. Department of Transportation (Room 2230 of the Nassif Building, 400 Seventh Street SW., Washington, DC) to explore more fully the information submitted by the public.

In consideration of the factors discussed above, the RSPA is revising Amendment 173-198 in the following manner: After June 30, 1987, packagings used for transport of UF_6 must be designed, fabricated, and marked in accordance with ANSI Standard N14.1-1982, or a previous edition thereof.

Administrative Notices

The RSPA has determined that the rulemaking and this amendment (1) are not "major" under Executive Order 1291; (2) are not "significant" under DOT's regulatory policies and procedures (44 FR 11034); (3) will not affect not-for-profit enterprises, or small governmental jurisdictions; and (4) do not require an environmental impact statement under the National Environmental Policy Act (40 U.S.C. 4321 et seq.). A regulatory evaluation is available for review in the docket. Based on limited information concerning the size and nature of entities likely affected, I certify that the regulation and this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 49 CFR Part 173

Hazardous materials transportation, Packaging, Radioactive materials. In consideration of the foregoing, 49 CFR Part 173 is amended as follows:

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

1. The authority citation for 49 CFR Part 173 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808; 49 CFR 1.53(e), unless otherwise noted.

2. § 173.420(a)(2) is revised to read as follows:

§ 173.420 Uranium hexafluoride (fissile and low specific activity).

(a) • • •

(2) After June 30, 1987, packagings must be designed, fabricated, and marked in accordance with American National Standard N14.1-1982, or a previous edition thereof.

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Issued in Washington, DC, on December 19, 1986 under authority delegated in 49 CFR Part 1.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[FR Doc. 86-29013 Filed 12-23-86; 8:45 am]

BILLING CODE 4910-60-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 346 Sub-No. 20]

Exemption From Regulation Storage Leases

AGENCY: Interstate Commerce Commission.

ACTION: Notice of final rules [exemption].

SUMMARY: The Commission is adopting final rules exempting the leasing of railroad equipment for non-transportation storage purposes from the provisions of 49 U.S.C. Subtitle IV, except for the car shortage and traffic emergency situations specified at 49 U.S.C. 11123. The exemption will enable railroads to make more efficient use of their rail assets and remove potential interpretive conflicts in existing case law. It will not have an adverse effect on any of the goals of the rail transportation policy of 49 U.S.C. 10101a. A new § 1039.20 of Title 49 of the Code of Federal Regulations is added.

EFFECTIVE DATE: These rules will be effective on January 23, 1987.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Proposed rules in this proceeding were published at 51 FR 7964, March 7, 1986. Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commmission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

This decision will not significantly affect either the quality of the human environment or energy conservation. We certify that this decision will not have a significant economic effect on a substantial number of small entities.

List of Subjects in 49 CFR 1039

PART 1039—[AMENDED]

Railroads.

Title 49 of the CFR is amended as follows:

1. The authority citation for 49 CFR Part 1039 continues to read as follows:

Authority: 49 U.S.C. 10321, 10505, 10706, 10713, 10762, and 11105; 5 U.S.C. 553.

2. A new § 1039.20 is added to read as follows:

§ 1039.20 Storage leases.

Storage leases for all equipment for all carriers are exempt from the provisions of 49 U.S.C. Subtitle IV except for 49 U.S.C. 11123. Nothing in this exemption should be construed to affect our jurisdiction under section 10505 or our ability to enforce this decision or any subsequent decision made under authority of this exemption section. This exemption shall remain in effect, unless modified or revoked by a subsequent decision of this Commission.

Decided: December 8, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Commissioner Lamboley dissented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 86-28874 Filed 12-23-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 604 and 653

[Docket No. 60617-6230]

Red Drum Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this final rule to implement the Fishery Management Plan for the Red Drum Fishery of the Gulf of Mexico (FMP). The rule (1) establishes quotas and harvest limitations for the directed and non-directed commercial red drum fisheries, harvest limits for the recreational fishery, and procedures for annual modification of the quotas, and (2) establishes permitting and reporting requirements for certain participants in the fishery. The intended effect of this rule is to prevent overfishing while achieving optimum yield from the red drum fisheries on a continuing basis.

EFFECTIVE DATE: December 19, 1986.

ADDRESS: The final regulatory impact review/regulatory flexibility analysis may be obtained from Donald W. Geagan, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Donald W. Geagan, 813-893-3722.

SUPPLEMENTARY INFORMATION: The Secretary of Commerce (Secretary)

prepared the Fishery Management Plan for the Red Drum Fishery of the Gulf of Mexico (FMP) under the authority of section 304(c) of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Proposed regulations to implement the FMP were published on October 8, 1986 (51 FR 36035). Comments on the FMP and proposed rule were invited through November 8, 1986. These regulations implement the FMP. The Secretary promulgated an emergency rule (51 FR 23551, June 30, 1986) that limited the directed net harvest of red drum from the exclusive economic zone (EEZ) to one million pounds during its 90-day effective period (June 25 to September 23, 1986); it also limited non-directed fisheries to five percent of red drum by weight of the total catch aboard a vessel. The directed fishery was closed on July 20, 1986 (51 FR 26554, July 24, 1986; corrected at 51 FR 27413, July 31, 1986). The Secretary extended the emergency regulations (51 FR 34219, September 26, 1986) for a second 90-day period, until December 22, 1986

The preamble to the proposed rulemaking contained a description of the red drum fishery, the condition of the stocks, and the historical participation of the recreational and commercial sectors in the fishery. Major problems in the fishery, including limited scientific data, increased harvest of the spawning stock in the EEZ, and growth overfishing in nearshore waters, were also discussed. This background information is not repeated here.

Comments and Responses

Sixty comments on the proposed rule were received from 28 commenters. Commenters included the U.S. Coast Guard, Florida Department of Natural Resources, a recreational fishing organization, two local chapters of conservation organizations, recreational fishermen, and two commercial fishing organizations. Most of the comments were critical of the proposed rule, however, comments from the two conservation organizations and the two commercial fishing organizations were generally supportive. Approximately 250 commenters provided comments on the FMP related to the proposed rule during the comment period for the rule, which are addressed in and appended to the final environmental impact statement.

Incidental Catch Allowance

A recreational fishing organization and several recreational fishermen opposed an incidental catch allowance by recommending no allowable catch in the EEZ. Two commercial fishing organizations favored an incidental catch allowance. Objections were based on the need to protect the spawning stock while the status of the offshore stock is determined through a stock assessment program. The Secretary does not agree. Elimination of an incidental catch provision would unduly disrupt the fisheries for black drum, blue runner, crevalle jack, ladyfish, and shrimp which often take red drum as an incidental catch. Disallowance of an incidental catch of red drum would disrupt the prosecution of a fishery for these species and result in wastage from discarding a valuable resource.

About 200,000 pounds of the incidental catch of red drum is from the shrimp trawl fishery. This estimate is based upon historical landings which have been, for the most part, in compliance with State law. Because incidental catch from individual shrimp trawl vessels is small, the number of vessels is large, and the places of landing are widely distributed along the Gulf of Mexico coast, it would be impossible for Federal agents to enforce a Federal limit fairly and effectively. Furthermore, it is not practicable to attempt to estimate the total incidental catch of red drum in the shrimp fishery contemporaneously with the harvest so as to require discard of red drum when 200,000 pounds of red drum are caught. Therefore, the incidental catch allowance of 200,000 pounds of red drum for shrimp trawl vessels will be implemented by requiring that landings of red drum caught incidentally to the trawl fishery be landed in compliance with the laws of the State of landing. This method of regulation should encourage trawl fishermen to adhere to historical fishing patterns and discourage efforts to increase their incidental catch of red drum above historical levels.

Landings of incidental catch by purse seine, trammel net, and gill net vessels are limited to 5 percent by weight of other species per trip with a limit of 100,000 pounds for the fishing year for all vessels using this gear. The 100,000-pound limit was determined to be reasonable, based upon historical levels of incidental catch in these fisheries. This limit should avoid severe disruption of directed fisheries while ensuring that the impact on the red drum resource is minimal.

The recreational catch allowance (bag limit) is one red drum per person per trip from the EEZ, or the limit provided by State law, whichever is more restrictive. Compliance with this limit should reduce the recreational catch in the EEZ from an estimated 850,000 pounds to 350,000 per year.

Resource Assessment Program

The Florida Department of Natural Resources (FDNR) questioned the motive for the proposed sale of one million pounds of red drum harvested for research, and a recreational fishing organization and several recreational fishermen objected to the harvest level as excessive and unnecessary. Two commercial fishing organizations generally favored the proposed research program. NOAA's proposal to allow sale of the harvest was based on the fact that high mortality would result from the proposed tag recovery methods and that sale would minimize research costs. However, to ensure that the stock would not be harmed, NOAA has redesigned its research program for tag recovery to minimize mortality of red drum and will fund the entire cost of the program. This is a prudent course of action in the face of existing uncertainties regarding the status of the stock.

Supersession of State Laws

The FDNR, a recreational fishing organization, and several recreational fishermen urged that fish harvested in the EEZ in compliance with Federal law should nonetheless be subject to the laws of each State in which they are landed or to which they are ultimately delivered. To do this would require that the regulations applicable in the EEZ be modified for each fisherman according to his domicile, the place of landing, and the ultimate destination of the fish landed.

Several commentors on the FMP or regulations characterized the provision in the proposed rule and the draft FMP which allowed red drum lawfully harvested in the EEZ to be landed without regard to State laws as "preemption" of State laws. This characterization is wrong. Neither the proposed regulations nor these final regulations would affect State laws applicable to fishing in State waters. A State will continue to be able to regulate the catching, retention, or disposition of red drum harvested in its waters as it sees fit, consistent with its laws and constitution, and the Constitution of the United States. The Federal Government has a responsibility to manage fisheries in the EEZ. Nevertheless, State laws would effectively nullify Federal fishing regulations in the EEZ if States could prohibit not only the landing of fish caught in State waters, but the landing of fish legally caught in the EEZ under Federal regulations.

It may become more difficult for States to enforce their landing laws if fish caught beyond State waters under a more liberal Federal regime can be landed. On the other hand, it would not ordinarily be fair, absent circumstances justifying such treatment, to apply different rules to people fishing in the EEZ based solely upon their State of citizenship. Inconsistent Federal and State regulations may legally exist in the EEZ and in State waters, but that is not usually the best way to regulate a fishery ranging over a wide geographical area. Experience in other fisheries has led to the conclusion that the best way to regulate is by Federal regulations and State regulations which are as similar as possible. When Federal regulations and State regulations are consistent, the question of conflict between Federal harvesting laws and State landing laws does not arise, and the ability of each jurisdiction to enforce its laws is not diminished by problems of proving where the fish were caught. However, it is impossible to harmonize Federal law with the laws of each of the States on the Gulf of Mexico when these State laws differ significantly from each other. We will therefore continue to encourage that all the Gulf States adopt compatible regulations so that Federal and State regulations applicable to red drum could more easily be harmonized throughout the Gulf. NOAA plans to continue to work with the States to that end.

Recognizing State conservation efforts and desiring to cooperate, NOAA decided that all landings except the incidental catch taken by gill nets, trammel nets, and purse seines should remain subject to State laws. Landings of red drum lawfully harvested in the EEZ by gill nets, trammel nets, and purse seines are exempt from State landing, possession, and sales laws. Vessels using such gear must provide six hours' advance notice of landing any incidental catch of red drum and are subject to permitting and recordkeeping requirements. Because shrimp trawl vessels are excluded from the definitions of the directed and non-directed red drum fisheries, these vessels are exempt from the permitting and reporting requirements. Additional reporting and recordkeeping requirements for dealers and processors may be imposed by the States to ensure that only legally harvested fish move through commercial channels. If, as the result of further research, a directed commercial harvest quota is ultimately established, NOAA intends to cooperate with the States so that supersession of State laws with respect to the landing of the harvest of the directed fishery can be accomplished with the minimum of disruption of laws applicable to State waters.

Eliminate Commercial Fishing

Numerous recreational fishermen recommended eliminating all directed commercial fishing for red drum and commercial utilization of the incidental catch of red drum. Directed commercial fishing will not be permitted during the first year of the regulations, but an incidental catch of red drum will be allowed as explained above.

Eliminate Net Fishing

Numerous recreational fishermen recommended eliminating gill nets and purse seines from the fishery. Primary objections to nets were their efficiency and the fear of overfishing. Directed fishing will be prohibited, but an incidental catch of red drum will be allowed as explained above. Banning a type of gear solely because it is efficient could be inconsistent with National Standard 5 of the Magnuson Act. Overfishing will be prevented by quotas. NMFS will monitor catches through the stringent recordkeeping and reporting requirements, and will prohibit the landing of incidental catch if the quota is reached. If a directed fishery is permitted in 1988 or later, it will be monitored to ensure that the quota is not exceeded.

Other Species in the Fishery

The proposed rule identified four other species of fishes (black drum, blue runner, crevalle jack, and ladyfish) that occur in close association with red drum and are often taken by the same gear. These species were included in the fishery for data collection purposes only.

Although comments on the proposed rule were silent on including these other species in the fishery (except for two commercial fishing organizations that supported their inclusion), numerous objections were received from State marine resource agencies and government officials, the Council, and the conservation community in commenting on the FMP. They largely believed that these species were included to establish predominance of the fishery in the EEZ, and thereby lay the groundwork for future preemption of State law. Since the inclusion of these species would not masurably facilitate NOAA's ability to respond to a sudden and unexpected need to regulate one of these other species (an FMP amendment would be required), NOAA removed these species from the FMP. NOAA believes that the emergency authority of the Secretary is available in the event that an unforeseen need to regulate these species arises, and has included only red drum in the definition of the fishery. Removing these additional species from the FMP eliminates the need for their inclusion in the final rule.

At-sea Enforcement and Permit Requirements

The U.S. Coast Guard pointed out that the regulations will be difficult to enforce because of non-uniform requirements in State and Federal waters.

This problem is inherent in every fishery management plan where Federal and State laws differ. Differing restrictions for State and Federal jurisdictions generally require at-sea enforcement capability. However, the requirement of permits and recordkeeping and reporting for vessels using purse seines and entanglement gear (gill nets and trammel nets) should alleviate many of the problems associated with enforcing and monitoring the incidental catch allowance. Certain technical inconsistencies between the FMP and proposed regulations have been corrected in accordance with Coast Guard recommendations.

1987 Commercial Quota

Two commercial fishing organizations maintained that a reasonable commercial quota for the directed net fishery should be allowed for 1987. These organizations argued that aerial survey data gathered over the past six to eight months, coupled with the 1986 fishing effort data, would demonstrate that a directed net fishery for 1987 could be allowed. The Secretary does not agree that a directed net fishery should be permitted, while the status of the stock is still uncertain. The empirical data from aerial surveys will not be fully analyzed until March 1987 and aerial surveys are only a portion of the research to be conducted by NOAA in 1987. The Secretary, therefore, has decided that no directed net harvest in the EEZ for 1987 is in the best interest of conservation of the resource. For subsequent years, the quota adjustment procedures will be used for annual preseason specification of a commercial quota, if any.

Changes From Proposed Rule

The final rule differs from the proposed rule in the following respects for the reasons discussed above and to clarify other minor aspects of the regulations.

Section 653.2.

Definitions of "Commercial fishing" and "Recreational fishing" have been

added to clarify the distinction between recreational and commercial activities.

The definitions of "Directed red drum fishery" and "Non-directed red drum fishery" have been deleted and replaced by definitions of "Directed commercial red drum fishing (fishery)" and "Non-directed commercial red drum fishing (fishery)". A definition has been added for "Recreational fishing". The new definitions delineate more clearly the specific user groups subject to various provisions of the regulations.

The definition of "Fishery Conservation Zone (FCZ)" has been deleted and replaced by a definition of "Exclusive Economic Zone (EEZ)". "EEZ" has been substituted for "FCZ" throughout the regulations.

Section 653.4.

This section applies to all commercial fishing vessels which may take red drum. Paragraphs have been added regarding issuance and duration of permits. The wording has been clarified and simplified.

Section 653.5.

Paragraph (b) has been restructured. Paragraph (b)(1) contains the original logbook requirement, and a new paragraph (b)(2) has been added to require advance notification of intent to land red drum. Paragraphs (b)(1) through (b)(10) have been redesignated (b)(1)(i) through (b)(1)(x).

Paragraph (c) has been reworded to provide more flexibility regarding submission of reports.

Paragraph (g) has been added regarding reports to States.

Section 653.7.

A new paragraph (a)(1) is added to address violations of the Magnuson Act and paragraphs (a) (1) through (15) are renumbered (a) (2) through (16).

Section 653.21.

The total allowable harvest in paragraph (a) has been reduced from 300,000 pounds to 100,000 pounds. This reduction reflects the deletion of shrimp trawls, which are expected to have an incidental red drum catch of 200,000 pounds, from the definition of non-directed commercial red drum fishing. Shrimp vessels landing incidental catches of red drum will be subject to State laws.

Section 653.22.

The existing paragraph has been designated as paragraph (a). New paragraphs (b), (c), and (d) have been added to address harvest limitations applicable to the non-directed commercial, directed commercial, and recreational fisheries, respectively.

A new paragraph (e) has been added to indicate that red drum taken from the EEZ by shrimp vessels will be subject to State landing and possession laws.

Section 653.23.

Paragraph (c) has been deleted as unnecessary.

Section 653.24.

The second sentence of paragraph (c) has been revised by inserting the words "and affected States" after the word "Council."

Paragraph (d)(2) has been revised to read "Implementing or modifying quotas and associated harvest limitations." This will ensure that harvest limitations will be compatible with the preseason adjustments of quotas. This paragraph is not limited to commercial vessels.

Classification

The Secretary determined that the FMP is necessary for the conservation and management of the red drum fishery and that it is consistent with the Magnuson Act and other applicable law.

The Secretary prepared a final environmental impact statement for this FMP; a notice of availability was published on December 12, 1987 (51 FR 44834).

The Administrator, NOAA, determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291.

The Administrator also finds that, to avoid a period of unregulated fishing after the expiration of the emergency rule, it is impracticable and contrary to the public interest to delay for 30 days the effective date of this rule, under section 553 (b) and (d) of the Administrative Procedure Act.

The Secretary prepared a final regulatory flexibility analysis which describes the effects this rule will have on small business entities. You may obtain a copy of the combined final regulatory flexibility analysis and regulatory impact review from the address above.

This rule contains a collection of information requirement subject to the Paperwork Reduction Act. The collection of this information has been approved by the Office of Management and Budget, OMB Control Number 0648–0177.

The Secretary determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Alabama, Florida, Louisiana, and Mississippi. Texas does not have an approved coastal zone management program. This determination was submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. Mississippi, Louisiana and Florida responded that the FMP was inconsistent with their NOAA-approved coastal zone management programs. The consistency concerns of each of these States was addressed by NOAA prior to this final rule's being approved by the Secretary. To the extent permitted under Federal law, the final rule has been modified to eliminate any inconsistencies. The Secretary concluded that this final rule is consistent, to the maximum extent practicable, with the enforceable and approved policies of the coastal zone management programs of Mississippi, Louisiana, and Florida.

NOAA initiated a section 7 consultation under the Endangered Species Act and a biological assessment was prepared, submitted, and reviewed. It was concluded that the management measures in this final rule will not affect any endangered or threatened species.

List of Subjects

50 CFR Part 604

OMB control numbers, Paperwork Reduction Act, Reporting and recordkeeping requirements.

50 CFR Part 653

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 19, 1986.

William E. Evans,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 604 is amended and 50 CFR Part 653 is revised as follows:

PART 604—[AMENDED]

1. The authority citation for Part 604 continues to read as follows:

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520 (1982).

2. The table in § 604.1 is amended by adding the following entry in numerical order by section number:

§ 604.1 OMB control numbers assigned under the Paperwork Reduction Act.

* * * * *

50 CFR part or section where the information collection requirement is located	Current OBM control No. (all numbers begin 0648–)
. . . . .	
§ 653.5	-0177
. . . . .	

3. Part 653 is revised to read as follows:

PART 653—RED DRUM FISHERY OF THE GULF OF MEXICO

Subpart A—General Provisions

Sec.

653.1 Purpose.
653.2 Definitions.
653.3 Relation to other laws.
653.4 Permits and fees.
653.5 Reporting requirements.
653.6 Vessel identification. [Reserved]
653.7 Prohibitions.
653.8 Enforcement.
653.9 Penalties.

Subpart B—Management Measures

653.20 Seasons.
653.21 Commercial quotas.
653.22 Harvest limitations.
653.23 Closures.
653.24 Quota adjustment procedures.
653.25 Specifically authorized activities.
Appendix—Figure 1.

Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General Provisions

§ 653.1 Purpose.

The purpose of this part is to implement the Fishery Management Plan for the Red Drum Fishery of the Gulf of Mexico prepared by the Secretary of Commerce.

§ 653.2 Definitions.

In addition to the definitions in the Magnuson Act, and unless the context requires otherwise, the terms used in this part have the following meanings:

Acceptable biological catch (ABC) means a range of harvest levels which can be taken from a stock of fish while maintaining the stock at or near maximum sustainable yield and ensuring that recruitment overfishing does not occur. ABC may vary due to fluctuating recruitment, abundance, and intensity of fishing effort.

Authorized officer means—

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any special agent of NMFS;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Secretary of Transportation to enforce the provisions of the Magnuson Act; or

(d) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Center Director means the Director, Southeast Fisheries Centers, NMFS, 75 Virginia Beach Drive, Miami, FL 33149; telephone 305–361–5761, or a designee.

Commercial fishing means fishing or fishing activities which result in the harvest of fish one or more of which (or parts thereof) are sold, traded or bartered.

Commercial quota means the maximum permissible level of annual commercial harvest of red drum in the EEZ specified after consideration of biological, social, and economic factors within the range of ABC.

Dealer means the person who first receives fish by way of purchase, trade, or barter from a fisherman.

Directed commercial red drum fishing (fishery) means any commercial fishing activity, other than shrimp trawling, in which the weight of red drum landed exceeds five (5) percent of the total weight of all other fish on board.

Exclusive economic zone (EEZ) means the area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishing means any activity, other than scientific research conducted by a scientific research vessel, which involves

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking, or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraph (a), (b), or (c) of this definition.

Fishing vessel means any vessel, boat, ship, or other craft including aircraft which is used or equipped to be used for, or of a type which is normally used for

(a) Fishing; or

(b) Aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, as amended (16 U.S.C. 1801 *et seq.*).

NMFS means the National Marine Fisheries Service.

Non-directed commercial red drum fishing (fishery) means any commercial fishing activity, except shrimp trawling, in which the weight of red drum landed does not exceed five percent of the total weight of all other fish on board.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any vessel, means—

(a) Any person who owns that vessel in whole or in part;

(b) Any charterer of the vessel, whether bareboat, time, or voyage; or

(c) Any person who acts in the capacity of a charterer, including, but not limited to, parties to a management agreement, operating agreement, or other similar arrangement that bestows control over the destination, function or operation of the vessel; and

(d) Any agent designated as such by any person described in paragraphs (a), (b), or (c) of this definition.

Person means any individual (whether or not a citizen of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Processor means a person who processes fish or fish products or parts thereof for commercial use or consumption.

Recreational fishing means fishing or fishing activities which result in the harvest of fish and none which fish (or part thereof) is sold, traded, or bartered.

Red drum means *Sciaenops ocellatus*, also called redfish.

Regional Director means the Director, Southeast Region, NMFS, Duval Building, 9450 Koger Boulevard, St. Petersburg, FL 33702 (telephone 813–893–3141), or a designee.

Secretary means the Secretary of Commerce or a designee.

Trip means a fishing trip, regardless of duration, which begins with departure from a dock, berth, beach, seawall, or ramp and which terminates with return to a dock, berth, beach, seawall, or ramp.

Vessel of the United State means—

(a) Any vessel documented under Chapter 121 of Title 46, United States Code; or

(b) Any vessel numbered under Chapter 123 of Title 46, United States Code, and measuring less than five tons;

(c) Any vessel numbered under Chapter 123 of Title 46, United States

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Code, and used exclusively for pleasure; and

(d) Any vessel not equipped with propulsion machinery of any kind and used exclusively for pleasure.

§ 653.3 Relation to other laws.

(a) Persons affected by these regulations should be aware that other Federal and State statutes and regulations may apply to their activities.

(b) Certain responsibilities relating to data collection and enforcement may be performed by authorized State personnel under a cooperative agreement entered into by the State, the U.S. Coast Guard, and the Secretary.

(c) These regulations apply within the boundaries of any national park, monument, or marine sanctuary in the Gulf of Mexico.

§ 653.4 Permits and fees.

(a) *Applicability.* Permits are required for all vessels fishing in the EEZ in the directed and non-directed commercial red drum fisheries which possess or land red drum.

(b) *Issuance.* Except as provided in Subpart D of 15 CFR Part 904, permits will be issued by the Regional Director. Permits must be applied for by the owner or operator of such vessel on forms provided by the Regional Director. The owners and operators of vessels issued such permits must comply with the terms and conditions stated thereon.

(c) *Fees.* A fee may be assessed for any permit issued under this section. The cost of the permit, if any, will be posted on the application form and will be limited to the administrative cost of issuing the permit, which may not exceed $10.00.

(d) *Display.* A permit issued under this section must be carried aboard the vessel at all times and presented for inspection upon request of an authorized officer.

(e) *Transfer.* A permit issued under this section is not transferable or assignable and is valid only for the vessel for which it is issued.

(f) *Duration.* Permits will remain valid for the term specified thereon unless revoked, suspended, or modified under Subpart D of 15 CFR Part 904.

(g) *Sanctions.* Permits are subject to sanction and denial under the procedures found at Subpart D of 15 CFR Part 904.

§ 653.5 Reporting requirements.

(a) *Directed commercial red drum fishery.* [Reserved]

(b) *Non-directed commercial red drum fishery.* Owners or operators of vessels fishing in the non-directed commercial red drum fishery, if selected by the Center Director, must—

(1) Maintain logbooks as provided by the Center Director and submit to the Center Director as required all information specified therein. The information submitted must include, but not necessarily limited to, the following:

(i) Name and address of owner or operator;

(ii) Name and official number of vessel and vessel's home port;

(iii) Port and time of departure and arrival;

(iv) Pounds of total catch by species;

(v) Pounds of red drum landed;

(vi) Location of catch either by latitude and longitude, loran, or by grid zone (Appendix—Figure 1) as specified on logbook form;

(vii) Gear used;

(viii) Depth of water fished;

(ix) Number and time of sets; and

(x) To whom the red drum catch was sold.

(2) Report the following information by radiotelephone or other suitable means to Dr. Andrew Kemmerer, NMFS, or his designee, at 601–762–4591, at least six hours prior to landing:

(i) Name and address of owner or operator;

(ii) Name of vessel; and

(iii) Port and time of arrival.

(c) *Dealers and processors.* Dealers and processors of red drum harvested from or landed in the Gulf of Mexico and who are selected by the Center Director must report to the Center Director such information as he may request and in the form and manner as he may require. The information required to be submitted must include, but is not necessarily limited to, the following:

(1) Dealer's or processor's name and address;

(2) State and county where red drum were landed;

(3) Total poundage of red drum received during the reporting period;

(4) Total poundage of red drum from State waters by each gear type; and

(5) Total poundage of red drum landed from the EEZ by each gear type.

(d) *Spotter aircraft.* [Reserved]

(e) *Inspection.* The owner or operator of commercial, charter, or recreational vessels, and dealers or processors of red drum are required upon request to make red drum or parts thereof available for inspection by the Center Director or his designee for the collection of additional information or for inspection by an authorized officer.

(f) *Observers.* [Reserved]

(g) *State reports.* A State may require such additional reports from dealers and processors as may be necessary to enforce State laws applicable to the harvesting of red drum in State waters.

§ 653.6 Vessel identification. [Reserved]

§ 653.7 Prohibitions.

(a) It is unlawful for any person to do any of the following:

(1) Fish for, take, retain, or land red drum in the commercial directed or non-directed red drum fishery without a permit as required by § 653.4(a) or in violation of the Magnuson Act, this part, or any regulation or permit issued under the Magnuson Act or this part;

(2) Fail to display the permit aboard a permitted vessel as required by § 653.4(d);

(3) Fail to comply with a term or condition stated on a permit issued under § 653.4;

(4) Falsify or fail to report information required to be submitted by § 653.4 and § 653.5;

(5) Fail to make fish available for inspection as required by § 653.5(e);

(6) Fail to comply immediately with enforcement and boarding procedures specified in § 653.8;

(7) Fail to comply with the limitations specified in § 653.22;

(8) Retain on board a vessel, land, sell, trade, or barter red drum taken in the EEZ after any closure as specified in § 653.23 has been invoked;

(9) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, land, or export any fish or parts thereof taken or retained in violation of the Magnuson Act, this part, or any other regulation under the Magnuson Act;

(10) Refuse to allow an authorized officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, or any other regulation or permit issued under the Magnuson Act;

(11) Forcibly assault, resist, oppose, impede, intimidate, threaten, or interfere with any authorized officer in the conduct of any search or inspection described in paragraph (a)(10) of this section;

(12) Resist a lawful arrest for any act prohibited by this part;

(13) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this part;

(14) Transfer directly or indirectly, or attempt to so transfer, any U.S. harvested red drum to any foreign fishing vessel, while such vessel is in the EEZ, unless the foreign fishing vessel has been issued a permit under Section 204 of the Magnuson Act which authorizes the receipt by such vessel of U.S. harvested red drum;

(15) Interfere with, obstruct, delay, or prevent by any means a lawful investigation or search in the process of enforcing this part; or

(16) Interfere with, obstruct, delay, or prevent in any manner the seizure of illegally taken red drum or the final disposition of such red drum through the sale of the red drum.

(b) It is unlawful to violate any other provision of this part, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

§ 653.8 Enforcement.

(a) *General.* The operator of, or any other person aboard any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) If the size of the vessel and the wind, sea, and visibility conditions allow, loudhailer is the preferred method of communicating between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF–FM or high frequency radiotelephone will be employed. Hand signals, placards, or voice may be employed by an authorized officer and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop.

(4) Failure of a vessel's operator to stop his vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes *prima facie* evidence of the offense of refusal to permit an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must:

(1) Guard Channel 16, VHS–FM, if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

(3) Except for those vessels with a freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and his party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer, provide a manrope or safety line, and illumination for the ladder; and,

(5) Take such other action as necessary to facilitate boarding and ensure the safety of the authorized officer and the boarding party.

(d) *Signals.* The following additional signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals and appropriate action by a vessel operator is not required. However, knowledge of these signals by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "AA" repeated (·– ·–) [1] is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "RY–CY" (·–· –·–– –·–· –·––) means "you should proceed at slow speed, a boat is coming to you." This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) "SQ3" (··· ––·– ···––) means "you should stop or heave to; I am going to board you."

(4) "L" (·–··) means "you should stop your vessel instantly."

§ 653.9 Penalties.

Any person or fishing vessel found to be in violation of this part is subject to the civil and criminal penalty provisions and forfeiture provisions of the Magnuson Act, to 15 CFR Part 904 (Civil Procedures), and other applicable law.

[1] Period (·) means a short flash of light; dash (–) means a long flash of light.

Subpart B—Management Measures

§ 653.20 Seasons.

The initial fishing season for red drum is from 0001 hours (local time) December 23, 1986, until 2400 hours (local time) December 31, 1987. Subsequent fishing seasons correspond to the calendar year.

§ 653.21 Commercial quotas.

(a) The total allowable harvest of red drum for the directed commercial red drum fishery in the EEZ is zero.

(b) The total allowable harvest of red drum for the non-directed commercial red drum fishery in the EEZ is 100,000 pounds.

§ 653.22 Harvest limitations.

(a) *Directed commercial red drum fishery.* No red drum may be harvested from the EEZ in the directed commercial red drum fishery.

(b) *Non-directed commercial red drum fishery.* Fishing vessels fishing in the non-directed commercial fishery may not land red drum the total weight of which exceeds five percent of the total weight of all other fish aboard such vessel. Vessels fishing in the non-directed commercial fishery must conduct their operations in a way that minimizes wastage of red drum.

(c) *Recreational red drum fishery.* Fishing vessels fishing in the recreational red drum fishery may not have on board in the EEZ or land red drum harvested from the EEZ in excess of one red drum per person per trip. A State landing or possession law that is more restrictive than this limitation applies to red drum taken in the recreational fishery in the EEZ and landed in that State. Red drum in excess of the applicable bag limit must be released immediately with a minimum of harm.

(d) *Transfer at sea.* Red drum harvested from or possessed in the EEZ may not be transferred from a fishing vessel to any other vessel.

(e) The landing and possession laws of the State where landed will apply to red drum taken from the EEZ by shrimp vessels.

§ 653.23 Closures.

(a) The Secretary, by publication of a notice in the **Federal Register**, will close the directed commercial red drum fishery when the quota as specified in § 653.21(a)(1) is reached or is projected to be reached.

(b) The Secretary, by publication of a notice in the **Federal Register**, will prohibit the landing of red drum from the non-directed commercial red drum

fishery when the quota for such fishery as specified in § 653.21(a)(2) is reached or is projected to be reached.

§ 653.24 Quota adjustment procedures.

(a) The Southeast Fisheries Center, NMFS, will assess the condition of the red drum stock on an annual basis. The Center Director will provide the Regional Director with an assessment report by October 1 which includes a recalculation of maximum sustainable yield (MSY), if necessary, and a range of ABC for the EEZ for the upcoming fishing year along with a description of the biological consequences of levels of harvest within the ABC range.

(b) The Regional Director will consider economic, social, and biological impacts of various levels of harvest within the ABC range and will recommend quotas in the EEZ for the next fishing year that are consistent with the objectives of the FMP. If changes are needed in MSY or the quotas from the previous year, NMFS will advise the Secretary of any recommendations.

(c) The Secretary will review NMFS' recommendations, supporting rationale, and other relevant information. If, after consulting with the Gulf of Mexico Fishery Management Council and affected States, the Secretary concurs that NMFS' recommendations are consistent with the objectives of the FMP, the national standards, and other applicable law, he will publish in the **Federal Register** any proposed preliminary changes prior to the appropriate fishing year. A 30-day period for public comment will be afforded. After consideration of public comments, the Secretary may publish in the **Federal Register** any final changes for that fishing year.

(d) Appropriate preseason changes in the regulations which may be implemented by the Secretary in the **Federal Register** include:

(1) Adjusting the estimate of MSY for red drum.

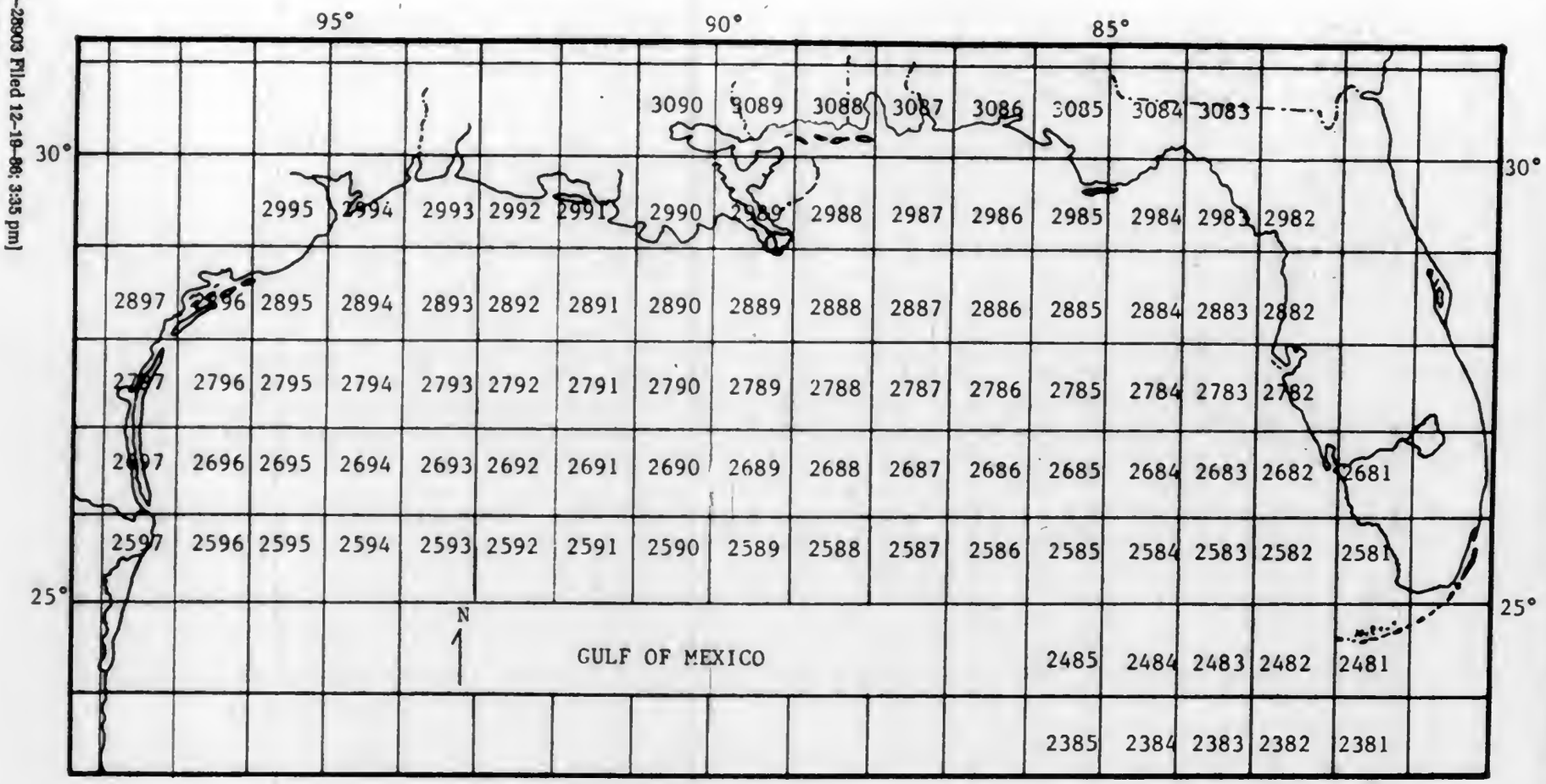
(2) Establishing or modifying quotas and associated harvest limitations.

§ 653.25 Specifically authorized activities.

The Secretary may authorize, for the acquisition of information and data, activities otherwise prohibited by these regulations.

BILLING CODE 3510-22-M

FIGURE 1 - STATISTICAL GRIDS FOR REPORTING THE HARVEST OF RED DRUM



[FR Doc. 86-28903 Filed 12-19-86; 3:35 pm]
BILLING CODE 3510-22-C

Proposed Rules

Federal Register
Vol 51, No. 247
Wednesday, December 24, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 91

[Docket No. 84-042]

Cleaning and Disinfecting of Export Aircraft

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposed to amend the regulations governing the exportation of animals and animal products from the United States by adding regulations to require the cleaning and disinfecting of aircraft prior to their being used to export animals from the United States. These proposed regulations appear to be necessary to help ensure that aircraft used to export animals from the United States are not contaminated with disease and to encourage international trade in animals from the United States.

DATE: Your written on this proposed rule will be considered if we receive them no later than February 23, 1987.

ADDRESS: Send written comments to Steven R. Poore, Acting Assistant Director, Regulatory Coordination, APHIS, UDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments are in response to Docket Number 84-042. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holdays.

FOR FURTHER INFORMATION CONTACT: Dr. Najam Q. Faizi, Import-Export Operations Staff, VS, APHIS, USDA, Room 762, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8383.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 91 (the regulations) govern the inspection and handling of livestock for exportation from the United States. Among other things, the regulations contain provisions in Subpart D, § 91.18, concerning the cleaning and disinfecting of surface vessels (ships) used to export animals from the United States. These regulations are designed to help ensure that such ships are not contaminated with disease organisms or vectors of communicable disease which could infect the animals being transported.

It is established that means of conveyance, including ships and aircraft, can become contaminated with disease organisms or with vectors of communicable disease, such as flies, ticks, lice, and mites. Animals transported in contaminated conveyances may become infected with disease. For this reason, § 91.18 of the regulations requires cleaning and disinfection of ships before they can be used to export animals from the United States. However, the regulations do not require cleaning and disinfecting of similarly used aircraft, even though most animals exported from the United States are exported in aircraft, not in ships. This failure to require cleaning and disinfecting of aircraft used to export animals from the United States could result in a serious disease outbreak, and could discourage international sales of animals from the United States.

Therefore, it is proposed to add a new Subpart E to require the cleaning and disinfecting of aircraft prior to their use to export animals from the United States. The proposed Subpart E would read as follows:

Subpart E—Cleaning and Disinfection of Aircraft

§ 91.41 Cleaning and disinfecting of aircraft

Immediately prior to loading, the stowage area of aircraft to be used to export animals under the provisions of this part shall, under the supervision of an inspector, be cleaned and disinfected using a freshly prepared solution of 4 percent sodium carbonate and 0.1 percent sodium silicate. In addition, immediately prior to loading, all loading ramps, fittings, and equipment to be used in loading the animals on the aircraft shall be cleaned and disinfected using approved disinfectant listed in § 71.10 of this Chapter. After such cleaning and disinfecting, the inspector shall sign and deliver to the captain of the aircraft or other responsible official of the airline involved, a document stating that the aircraft has been properly cleaned and disinfected, and stating further the date, the carrier, the flight number, and the name of the airport and the city and state in which it is located.

These cleaning and distinfection requirements would be adequate to ensure that aircraft that are used to export animals from the United States are not contaminated with disease organisms.

Section 91.18 of the regulations lists the disinfectants approved for disinfecting vessels, fittings, utensils, and equipment used when exporting animals. The only listed disinfectant that does not damage the interior of the aircraft is a solution of 4 percent sodium carbonate plus 0.1 percent sodium silicate. Therefore, this disinfectant is proposed for disinfecting the stowage area of aircraft. The proposed regulations would also require that the disinfectant solution be "freshly prepared." This requirement appears to be necessary to ensure that the disinfectant, which loses its effectiveness over time, is strong and effective when applied to the stowage area of the aircraft.

It is also proposed to require that loading ramps, fittings, and other equipment, used in the loading of export animals on board aircraft, be cleaned and disinfected. This appears to be necessary to help ensure that such ramps, fittings, and equipment are not contaminated by disease organisms, which could be transmitted to animals in later shipment when the same ramps, fittings, and equipment are used. It is proposed that any of the disinfectants approved for use on vehicles under § 71.10 of the regulations could be used for this purpose. These disinfectants have all been shown to be effective.

It is also proposed to provide that the inspector who supervises the cleaning and disinfecting shall sign and deliver to the responsible airline official a document stating that the aircraft has been properly cleaned and disinfected. This provision appears necessary so that the responsible airline official can prove that the cleaning and disinfecting was properly completed.

It appears that adoption of the regulations would help to protect and encourage international trade in animals from the United States by providing a mechanism whereby foreign buyers could be assured that aircraft and equipment used to load animals on the aircraft for export from the United States are not contaminated with disease organisms.

Inspector

The regulations in Part 9, Subpart A, § 91.1(d) define "inspector" as "[a]n inspector of Veterinary Services." The Animal and Plant Health Inspection Service, of which Veterinary Services is a part, employs inspectors of both Veterinary Services and Plant Protection and Quarantine. All these inspectors are trained and qualified to perform the inspections required under the regulations in Part 91, including the provisions of proposed new Subpart E. Therefore, it is proposed to amend the definition of "inspector" to read: "An inspector of the Animal and Plant Health Inspection Service."

Miscellaneous

This document would also make certain nonsubstantive changes in the regulations for the purposes of clarity.

Executive Order 12291 and Regulatory Flexibility Act

This action has been reviewed in conformance with Executive Order 12291 and has been determined to be not a "major rule." The Department has determined that this rule would not have an effect on the economy of $100 million of more; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It is not anticipated that the proposed regulations, if adopted, would have any significant economic impact on any entities. No delay in the departure of aircraft would be caused by these requirements. In addition, most airlines already clean and disinfect the stowage area of their aircraft prior to transporting animals from the United States. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015)

List of Subjects in 9 CFR Part 91

Animal disease, Animal welfare, Exports, Humane animal handling, Livestock and livestock products, Transportation.

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

Accordingly, it is proposed to amend the regulations in 9 CFR Part 91 as follows:

The authority citation for Part 91 would continue to read as follows:

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 612, 613, 614, 618; 46 U.S.C. 466a, 466b; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 91.1, the terms would be rearranged alphabetically without paragraph designations and the definition of "inspector" would be revised to read as follows:

§ 91.1 Definitions.

* * * * *

Inspector. An inspector of the Animal and Plant Health Inspection Service.

* * * * *

§ 91.18 [Amended]

3. In § 91.18, paragraph (b) would be revised to read as follows:

* * * * *

(b) 4 percent sodium carbonate plus 0.1 percent sodium silicate.

* * * * *

4. In Part 91, a new Subpart E consisting of § 91.41 would be added to read as follows:

Subpart E—Cleaning and Disinfecting of Aircraft

Sec.
91.41 Cleaning and disinfectiong of aircraft.

Subpart E—Cleaning and Disinfecting of Aircraft

§ 91.41 Cleaning and disinfecting of aircraft.

Immediately prior to loading, the stowage area of aircraft to be used to export animals under the provisions of this part shall, under the supervision of an inspector, be cleaned and then disinfected using a freshly prepared solution of a 4 percent sodium carbonate plus 0.1 percent sodium silicate. In addition, immediately prior to loading, all loading ramps, fittings, and equipment to be used in loading the animals on the aircraft shall be cleaned and disinfected using an approved disinfectant listed in § 71.10 of this chapter. After such cleaning and disinfecting, the inspector shall sign and deliver to the captain of the aircraft or other responsible official of the airline involved, a document stating that the aircraft has been properly cleaned and disinfected, and stating further the date, the carrier, the flight number, and the name of the airport and the city and state in which it is located.

Done at Washington, DC, this 17th day of December 1986.

J.K. Atwell,
Deputy Administrator, Veterinary Services

[FR Doc. 86-28667 Filed 12-23-86; 8:45 am]
BILLING CODE 3410-34-M

9 CFR Parts 160 and 161

[Docket No. 86-048]

Requirements and Standards for Accredited Veterinarians

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to prohibit an accredited veterinarian from performing official duties associated with livestock in which the accredited veterinarian or any member of the accredited veterinarian's immediate family has a financial interest. This action appears necessary to help ensure that accredited veteranarians avoid both conflicts of interest and the appearance of conflicts of interest in performing their official duties.

DATE: Written comments must be received on or before February 23, 1987.

ADDRESS: Written comments concerning this proposed rule should be submitted to Steven R. Poore, Acting Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in response to Docket Number 86-048. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Robert E. Wagner, Senior Staff Veterinarian, Regulatory Communications and Compliance Policy Staff, VS, APHIS, USDA, Room 827, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; (202) 436-8565.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR, Subchapter I, contain, among other things, a code of ethics, called "Standards for Accredited Veterinarians," by which accredited veterinarians are required to conduct their official duties. This code of ethics currently does not prohibit an accredited veterinarian from performing official duties associated with livestock in which the accredited veterinarian or any member of the accredited veterinarian's immediate family has a financial interest. However, any accredited veterinarian performing official duties associated with these livestock could have a potential conflict of interest, since family ties could influence the accredited veterinarian to misrepresent facts concerning the livestock.

Departmental experience indicates that most accredited veterinarians voluntarily refrain from performing official duties associated with livestock in which they or members of their immediate family have a financial interest. Nevertheless, the Department believes that unethical behavior, or even the appearance of impropriety, by some accredited veterinarians could seriously undermine Federal and cooperative veterinary programs. The Department proposes, therefore, to amend Part 161 by adding a new provision to the "Standards for Accredited Veterinarians" which would prohibit an accredited veterinarian from performing official duties associated with livestock in which the accredited veterinarian or any member of the accredited veterinarian's immediate family has a financial interest.

If adopted, this proposal should help ensure that accredited veterinarians avoid both conflicts of interest and the appearance of conflicts of interest in conducting their official duties.

In conjunction with the proposed provision, the Department also proposes to add two definitions to 9 CFR Part 160 as follows:

"Immediate family." An accredited veterinarians spouse, parents and step-parents, parents-in-law and step-parents-in-law, brothers and sisters and their spouses, step-brothers and step-sisters and their spouses, brothers-in-law and sisters-in-law and their spouses, and children and step-children and their spouses.

"Official duties." Functions specifically assigned to accredited veterinarians by Subchapters A, B, C, and D of this chapter, and by cooperative State-Federal disease control and eradication programs.

The proposed definition of "immediate family" includes the relatives of an accredited veterinarian who, the Department believes, are most likely to be in a position to influence the accredited veterinarian if the accredited veterinarian performs official duties associated with livestock in which they have a financial interest.

The proposed definition of "official duties" includes only duties specifically assigned to accredited veterinarians by Subchapters A, B, C, and D of Chapter 1, Title 9, Code of Federal Regulations; and by cooperative State-Federal disease control and eradication programs. The definition does not include general veterinary services, which may be provided by any licensed veterinarian.

This proposal also would correct minor inconsistencies in a definition and a footnote in Part 160.

Executive Order 12291 and Regulatory Flexibility Act

This action has been review in conformance with Executive Order 12291 and has been determined to be not a "major rule." The Department has determined that this action would not have a significant effect on the economy; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and should have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Also, it appears that the amendments proposed by this document are consistent with the practices of the vast majority of accredited veterinarians.

Under the circumstances explained above, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR 3015, Subpart V.)

List of Subjects in 9 CFR Parts 160 and 161

Veterinarians.

Accordingly, it is proposed to amend Parts 160 and 161, Title 9, Code of Federal Regulations, as follows:

PART 160—DEFINITION OF TERMS

1. The authority citation for Part 160 would be revised to read as set forth below:

Authority: 15 U.S.C. 1828; 21 U.S.C. 102, 105, 111–114, 114a, 114a–1, 115, 116, 120, 121, 125, 134b, 134f, 612, and 613; and 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 160.1, all paragraph designations would be removed and all definitions placed in alphabetical order.

3. In § 160.1, the definition of "Accredited veterinarian" would be amended by replacing the words "Parts 1, 2, 3, and 11 of Subchapter A, and Subchapters" with "Subchapters A,".

4. In § 160.1, footnote 1 would be amended by replacing the words "Part 11 of Subchapter A, and Subchapters" with "Subchapters A," by adding a parenthesis after "employed veterinarians"; and by adding the word "veterinarians" before the phrase "are authorized to perform. . . ."

5. In § 160.1, two new definitions would be added in alphabetical order to read as follows:

§ 160.1 Definitions.

* * * * *

"Immediate family." An accredited veterinarian's spouse, parents and step-parents, parents-in-law and step-parents-in-law, brothers and sisters and their spouses, step-brothers and step-sisters and their spouses, brothers-in-law and sisters-in-law and their spouses, and children and step-children and their spouses.

"Official duties." Functions specifically assigned to an accredited veterinarian by Subchaptera A, B, C, and D of this chapter, and by cooperative State-Federal disease control and eradication programs.

PART 161—REQUIREMENTS AND STANDARDS FOR ACCREDITED VETERINARIANS AND SUSPENSION OR REVOCATION OF SUCH ACCREDITATION

6. The authority citation for Part 161 would continue to read as set forth below:

Authority: 15 U.S.C. 1828; 21 U.S.C. 105, 111–114, 114a, 114a–1, 116, 120, 121, 125, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

7. In § 161.3, a new paragraph (m) would be added to read as follows:

§ 160.3, Standards for Accredited Veterinarians.

* * * * *

(m) An accredited veterinarian shall not perform official duties associated with livestock in which the accredited veterinarian or any member of the accredited veterinarian's immediate family has a financial interest.

Done at Washington, DC, this 17th day of December, 1986.

J.K. Atwell, Deputy Administrator,
Veterinary Services.

[FR Doc. 86–28666 Filed 12–23–86; 8:45 am]
BILLING CODE 3410–34–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40 and 70

Materials Safety Regulation Review Study Group Report; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Availability of report and request for comment; correction.

SUMMARY: This document corrects a notice of availability appearing in the **Federal Register** on December 17, 1986 (51 FR 45122) that requests public comment on the report developed by the Materials Safety Regulation Review Study Group. This action is necessary to correct an inadvertent error in the computation of the comment closing date. The comment closing date for this document should be changed from January 16, 1987 to February 17, 1987.

DATE: Submit comments by February 17, 1987. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Mail comments or suggestions to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard E. Cunningham, Director, Division of Fuel Cycle and Material Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 427–4485.

Dated at Bethesda, Maryland, this 19th day of December, 1986.

For the U.S. Nuclear Regulatory Commission.

Donnie H. Grimsley,
Director, Division of Rules and Records, Office of Administration.

[FR Doc. 86–28920 Filed 12–23–86; 8:45 am]
BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86–NM–215–AD]

Airworthiness Directives: Boeing Model 747 and 757 Series Airplanes.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD), applicable to Boeing Models 747 and 757 airplanes, which would require inspection of the passenger door emergency power reservoir for integrity of the pressure relief rupture disk, repair, if necessary, and replacement of defective disk retainers. This action is prompted by numerous reports of emergency power reservoirs found to be prematurely discharged. This condition, if not corrected, would render the emergency power reservoir incapable of providing power to assist in opening the door quickly when required for emergency evacuation.

DATES: Comments must be received on or before February 16, 1987.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 86–NM–215–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable Boeing service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124; the applicable H. R. Textron service information may be obtained from H. R. Textron, 25200 West Rye Canyon Road, Valencia, California 91355. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certificate Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Pliny Brestel, Airframe Branch, ANM–120S; telephone (206) 431–1931. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 86–NM–215–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

Operators of Boeing Models 747 and 757 airplanes have reported a number of instances in which the passenger door emergency power reservoir was found to be discharged. Investigation revealed a sharp edge defect on the pressure relief rupture disk retainer which had scored the pressure relief rupture disk, causing it to rupture prematurely. Further investigation revealed that the defective retainers are installed only on certain emergency power reservoirs, the serial numbers of which are listed in H. R. Textron Service Bulletin Number 803300–52–05. A discharged emergency power reservoir would be incapable of providing power to assist in opening the door quickly during an emergency evacuation.

The FAA has reviewed and approved Boeing Alert Service Bulletins 747–52A2201 (for Model 747 airplanes), and 757–52A0022 (for Model 757 airplanes), both dated September 15, 1986, which reference H. R. Textron (manufacturer of

the emergency power reservoir) Service Bulletin No. 803300–52–05, dated September 15, 1986, which describes procedures for the inspection and repair, if necessary, of the passenger door emergency power reservoirs to ensure installation of acceptable pressure relief rupture disks and retainers.

Since this condition is likely to exist or develop on other airplanes of the same type design, an AD is proposed that would require inspection of the emergency power reservoir, repair, if necessary, and replacement in accordance with the service bulletins referenced above.

It is estimated that 157 Boeing Model 747 and 64 Boeing Model 757 airplanes of U.S. registry would require inspection and repair, if necessary, of the passenger door emergency power reservoirs, which would require a maximum of 2,182 total manhours to accomplish. At an estimated cost of $40 per manhour, the cost impact of this AD on U.S. operators is estimated to be $87,280.

For the reasons discussed above, the FAA has determined that this document involves a proposed regulation which is not major under Executive Order 12291 and is not a signficant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 747 and 757 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–499, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to all Model 747 and 757 series airplanes, certificated in any categorty. To ensure proper passenger door operation during emergency evacuation, accomplish the following, unless previously accomplished:

A. Within 60 days after the effective date of this AD, inspect the serial number on the passenger door emergency power reservoirs in accordance with Boeing Service Bulletin 747–52A2201 (for Model 747 airplanes) or 757–52A0022 (for Model 757 airplanes), both dated September 15, 1986, or later FAA-approved revisions.

1. If no serial number is found which matches one listed in H. R. Textron Service Bulletin 803300–52–05, dated September 15, 1986, no further action is necessary.

2. For any reservoir on which the serial number matches one listed in the H. R. Textron Service Bulletin referenced above, determine if the reservoirs is fully charged. If any discharged emergency power reservoir is found, modify before further flight in accordance with the applicable Boeing Service Bulletin referenced above.

Note: These units may have been installed on airplanes other than those listed in the Boeing Service Bulletins referenced above.

B. For each emergency power reservoir with a serial number listed in H. R. Textron Service Bulletin 803300–52–05, dated Setember 15, 1986, determine on a daily basis that the reservoir is fully charged. This daily procedure may be discontinued once the reservoir is modified in accordance with the applicable Boeing Service Bulletin referenced above. If any discharged emergency power reservoir is found, modify before further flight in accordance with the applicable Boeing Service Bulletin referenced above.

C. Within 12 months after the effective date of this AD, modify all emergency power reservoirs listed in H. R. Textron Service Bulletin 803300–52–05, dated September 15, 1986, in accordance with the applicable Boeing Service Bulletin referenced above.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certifciation Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposal who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124–2207. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on December 17, 1986.

Frederick M. Isaac,

Acting Director Northwest Mountain Region.

[FR Doc. 86–28878 Filed 12–23 86; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[INTL–88–86]

Withholding Upon Dispositions of U.S. Real Property Interests by Publicly Traded Partnerships, Publicly Traded Trusts and Real Estate Investment Trusts

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document provides proposed Income Tax Regulations relating to the withholding that is required upon the disposition of a U.S. real property interest by publicly traded partnerships, publicly traded trusts and real estate investment trusts. In the Rules and Regulations portion of this **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to these matters. The text of those temporary regulations also serves as the comment document for this proposed rulemaking.

DATE: Written comments and requests for a public hearing must be delivered or mailed before February 23, 1987.

ADDRESS: Send comments and requests for a public hearing to Commissioner of Internal Revenue, Attention, CC:LR:T (INTL–88–86), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: John M. Zoscak, Jr. of the Office of the Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attn: CC:INTL:Br2); Telephone 202–566–3289 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** add new § 1.1445–8T to 26 CFR Part 1. The final regulations that are proposed to be based on the temporary regulations would amend 26 CFR Part 1 by placing the rules of these temporary regulations at an appropriate place in the final

regulations under section 1445 of the Internal Revenue Code. For the text of the temporary regulations, see T.D. 8114 published in the Rules and Regulations portion of this issue of the **Federal Register**.

Regulatory Flexibility Act and Executive Order 12291

The Commissioner of Internal Revenue has determined that these proposed rules are not major rules as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Although this document is a notice of proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein the interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Paperwork Reduction Act

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these collection of information requirements may be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is John M. Zoscak, Jr., of the Office of the Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects

26 CFR §§ 1.1441–1 through 1.14465–1

Income taxes, Aliens, Foreign corporations.

26 CFR Part 602

Reporting and recordkeeping requirements.

Proposal of Regulations

The temporary regulations, [T.D. 8114], published in the Rules and Regulations portion of this issue of the **Federal Register**, are hereby also proposed as final regulations under section 1445 of the Internal Revenue Code of 1954.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 86–28510 Filed 12–18–86; 4:48 pm]

BILLING CODE 4830–01–M

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26 CFR Parts 1 and 602

[LR–132–86]

Deposit of Estimated Income Tax by Certain Private Foundations and Tax-Exempt Organizations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross reference to temporary regulations.

SUMMARY: This document provides proposed regulations regarding deposits of estimated income taxes by certain private foundations and tax-exempt organizations. Changes to the applicable tax law were made by the Tax Reform Act of 1986. In the Rules and Regulations portion of this **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to deposits of estimated taxes by such entities; the text of those temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATE: Written comments and requests for a public hearing must be delivered or mailed by January 23, 1987, due to the imminent effective date set by section 1542 of the Tax Reform Act of 1986.

ADDRESS: Please mail or deliver comments to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–132–86), 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: John A. Tolleris of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T) (202–566–3590, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend Parts 1 and 602 of Title 26 of the Code of Federal Rgulations. New § 1.6302–1T is added to Part 1 of Title 26 of the Code of Federal Regulations. When the substance of § 1.6302–1T is promulgated as a final regulation, § 1.6302–1(a) will be revised to reflect the new provisions. For the text of the temporary regulations, see FR Doc. 86–28935 (TD 8117) published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations explains this addition to the Income Tax Regulations.

Non-Applicability of Executive Order 12291

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Regulatory Flexibility Act

The Secretary of the Treasury has certified that this rule will not have a significant impact on a substantial number of small entities because the economic and any other secondary or incidental impact of the requirement for quarterly tax payments flows directly from the underlying statute. A regulatory flexibility analysis, therefore, is not required under the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Paperwork Reduction Act

The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests that persons submitting comments on the requirements to OMB also send copies of those comments to the Service.

Drafting Information

The principal author of these proposed regulations is John A. Tolleris of the Legislation and Regulations Division of the Office of the Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations, on matters of both substance and style.

Comments and Requests for a Public Hearing

Before adoption of these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 86-28936 Filed 12-23-86; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Reopening of the Public Comment Period on a Modification to the Kentucky Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Reopening of comment period.

SUMMARY: OSMRE is reopening the public comment period on the substantive adequacy of certain program amendments submitted by the Commonwealth of Kentucky as a modification to the Kentucky permanent regulatory program (herinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments pertain to the establishment of a bond pool and bond pool fund.

This notice sets forth the times and locations that the Kentucky program and the proposed amendments are available for public inspection and the comment period during which interested persons may submit written comments on the proposed program elements.

DATE: Written comments not received on or before January 8, 1987, will not necessarily be considered.

ADDRESS: Written comments should be mailed or hand delivered to: W. Hord Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504.

FOR FURTHER INFORMATION CONTACT: W. Hord Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504; Telephone: (606) 233-7327.

SUPPLEMENTARY INFORMATION:

I. Public Coment Procedures

Availability of Copies

Copies of the Kentucky program, the proposed modifications to the program, and all written comments received in response to this notice will be available for review at the OSMRE Offices and the Offices of the State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays.

Lexington Field Office, Office of Surface Mining, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504;

Office of Surface Mining Reclamation and Enforcement, Room 5315A, 1100 L Street, N.W., Washington, D.C. 20240;

Bureau of Surface Mining Reclamation and Enforcement, Capitol Plaza Tower, Third Floor, Frankfort, Kentucky 40601.

Pursuant to 30 CFR 732.17(h)(2)(ii), each requester may receive, free of charge, one single copy of the proposed amendment by contacting OSMRE's Lexington Field Office listed under "**ADDRESSES.**"

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanation in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Lexington, Kentucky Field Office will not necessarily be considered and included in the Administrative Record for the final rulemaking.

II. Background on the Kentucky State Program

On December 30, 1981, Kentucky resubmitted its proposed regulatory program to OSMRE. On April 13, 1982, the Secretary approved the program subject to the correction of 12 minor deficiencies. The approval was effective upon publication of the notice of conditional approval in the May 18, 1982 **Federal Register** (47 FR 21404-21435). Information pertinent to the general background on the Kentucky State Program, including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Kentucky program can be found in the May 18, 1982 **Federal Register** notice. Subsequenty actions concerning the conditions of approval and program amendments are identified at 30 CFR 917.11, 917.15, 917.16 and 917.17.

III. Submission of Program Amendments

On September 5, 1986, Kentucky submitted to OSMRE, pursuant to 30 CFR 732.17, certain revisions to the Kentucky regulatory program. The revisions were intended to implement Kentucky Senate Bill No. 130 (codified at KRS 350.700 through 350.990) which was approved by OSMRE on July 18, 1986 (51 FR 26002). The proposed rules were intended to address the requirement at 30 CFR 917.16(c)(1) that requires Kentucky, prior to implementation of Senate Bill No. 130, to submit and obtain OSMRE approval or regulations to implement the bill. The submission included emergency rules at 405 KAR 10:200E and regular rules at 405 KAR 10:200 which would supersede the emergency rules upon promulgation and approval.

On October 6, 1986, OSMRE announced receipt of the rules and opportunity for public comment and a public hearing in the **Federal Register** (51 FR 35532). The public comment period closed on November 5, 1986. The public hearing scheduled for October 31, 1986, was not held because no one requested an opportunity to testify.

On December 4, 1986, Kentucky submitted modifications to its September 5 submission. The December 4 submission contains modifications to 405 KAR 10:200. These proposed amendments have completed Kentucky's promulgation process and therefore, replace and supersede the emergency rules at 405 KAR 10:200E. Language has been added at 405 KAR 10:200 section 4 and 6 concerning financial statements. Revisions have been made at 405 KAR 10:200 sections 7(1)(g) and (2)(g) concerning the exclusion of the applicant's worst 12-month period from consideration when determining the applicant's compliance record. Revisions have been made to 405 KAR 10:200 section 8 concerning the transition of bonded areas is existing permits to the bond pool fund. Changes have been made in section 9 concerning

record keeping, reporting of extraction tonnages and payment of tonnage fees. The provisions in section 9 for deferral of fees for stockpile coal have been deleted.

Therefore, OSMRE is reopening the public comment period for a period of fifteen days to allow public comments on the proposed program amendments as modified. Comments should specifically address the issue of whether the proposed amendments are in accordance with SMCRA and no less effective than its implementing regulations.

List of Subjects in 30 CFR Part 917

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: December 18, 1986.

H. Leonard Richeson,

Acting Assistant Director, Program Policy.

[FR Doc. 86-28887 Filed 12-23-86 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 935

Public Comment Procedures and Opportunity for Public Hearing on Proposed Modifications to the Ohio Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for a public comment period and for requesting a public hearing on the substantive adequacy of a program amendment submitted by Ohio as an amendment to the State's permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendment submitted consists of proposed changes to Ohio's excess spoil rules. The amendment is proposed to address deficiencies in Ohio's regulatory program with regard to the disposal of excess spoil and to correct typographical and grammatical errors that were noted in OSMRE's September 18, 1986 approval of Ohio's excess spoil rules (51 FR 33034).

This notice sets forth the times and locations that the Ohio program and proposed amendment will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed for the public hearing.

DATES: Written comments from the public not received by 4:30 p.m., January 23, 1987, will not necessarily be considered in the decision on whether the proposed amendment should be approved and incorporated into the Ohio regulatory program. If requested, a public hearing on the proposed amendment has been scheduled for January 13, 1987. Any person interested in speaking at the hearing should contact Ms. Rose Hatfield at the address or telephone number listed below by January 8, 1987. If no person has contacted Ms. Hatfield by that date to express an interest in the hearing, the hearing will be cancelled. If only one person requests an opportunity to speak at the public hearing, a public meeting, rather than a hearing, may be held and the results of the meeting included in the Administrative Record.

ADDRESS: The public hearing if requested, is scheduled for 1:00 p.m. in Room 202, Columbus Field Office, 2242 South Hamilton Road, Columbus, Ohio 43227.

Written comments and requests for an opportunity to speak at the hearing should be directed to Ms. Nina Rose Hatfield, Field Office Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43227; Telephone: (614) 866-0578.

Copies of the Ohio program, the proposed amendment to the program, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for public review at the OSMRE Field Office listed above and at the OSMRE Headquarters Office and the office of the State regulatory authority listed below, during normal business hours Monday through Friday, excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Room 5315A, 1100 "L" Street NW., Washington, DC 20240

Ohio Division of Reclamation, Building B, Fountain Square, Columbus, Ohio 43224

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43227; Telephone: (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

The Ohio program was approved effective August 16, 1982, by notice published in the August 10, 1982 **Federal Register** (47 FR 34688). Information pertinent to the general background, revisions, modifications, and amendments to the Ohio program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program can be found in the August 10, 1982 **Federal Register.** Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11 and 935.15.

II. Submission of Revisions

By letter dated October 8, 1986, the Ohio Department of Natural Resources, Division of Reclamation submitted a proposed amendment to Ohio's regulatory program at 1501:13-9-07. The proposed changes to OAC section 1501:13-9-07 include the requirement to analyze the foundation conditions of an excess spoil fill for the possible effects on underground mine workings. This amendment was required by OSMRE in the September 18, 1986 approval of Ohio's excess spoil regulations (51 FR 33034). There are also some minor editorial changes and typographical corrections.

The full text of the proposed program amendment submitted by Ohio is available for public inspection at the addresses listed above. Upon request to OSMRE's Field Office Director, each person may receive, free of charge, one single copy of the proposed amendment. The Director now seeks public comment on whether the proposed amendment is no less effective than the Federal regulations. If approved, the amendment will become part of the Ohio program.

III. Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C., 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from Sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: December 15, 1986.

James W. Workman,

Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 86-28889 Filed 12-23-86; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 357

[Department of the Treasury Circular, Public Debt Series, No. 2-86]

Regulations Governing Book-Entry Treasury Bonds, Notes, and Bills

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Notice of extension of time for submission of comments.

SUMMARY: This document extends until January 30, 1987, the deadline for submission of comments on the proposed new rules governing Treasury securities maintained in the commercial book-entry system known as the Treasury/Reserve Automated Debt Entry System ("TRADES"). The proposed rulemaking was published in the **Federal Register** on November 28, 1986 (51 FR 43027), and comments were to be received on or before December 29, 1986.

DATE: Comments must be received on or before January 30, 1987.

ADDRESS: Send comments to the Office of the Chief Counsel, Bureau of the Public Debt, E Street Building, Washington, DC 20239-0001.

FOR FURTHER INFORMATION CONTACT: Virginia Rutledge, Attorney-Advisor (202/535-4890) or Cynthia Reese, Senior Attorney and Special Assistant (202/376-4320).

SUPPLEMENTARY INFORMATION: The Department has received a number of requests to extend the comment period on the proposed TRADES regulations. Given the complexity of the issues and the desire of the Department of the Treasury to receive comprehensive, carefully considered comments from as wide a group of participants in the Government securities market as possible, the Department has decided to extend the comment period to January 30, 1987.

Dated: December 22, 1986.

W.M. Gregg,

Commissioner of the Public Debt.

[FR Doc. 86-28997 Filed 12-23-86; 8:45 am]

BILLING CODE 4810-35-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-3133-4]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA proposes to approve a revision to the Illinois State Implementation Plan (SIP) for Volatile Organic Compound (VOC). The revision, if finally approved, would provide for a compliance date extension from Illinois' Rule 35 IAC 215.204(h) from October 1, 1982, until April 1, 1986, for Fedders-USA's facility, which is located in Effingham, Illinois. This SIP revision would allow Fedders-USA additional time to reformulate the coatings used in manufacturing large appliances. This action is taken in response to a February 13, 1986, request from the State of Illinois.

DATE: Comments on this revision and on the proposed USEPA action must be received by January 23, 1987.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Uylaine E. McMahan, at (312) 886-6031, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.)

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan (312) 886-6031.

SUPPLEMENTARY INFORMATION: On February 13, 1986, the Illinois Environmental Protection Agency (IEPA) submitted a proposed revision to its ozone SIP for Fedders-USA's facility located in Effingham, Effingham County, Illinois. Effingham County is designated as an attainment area for ozone.

This SIP revision request is in the form of a January 9, 1986, Opinion and Order of the Illinois Pollution Control Board (IPCB), PCB 83-47. It grants Fedders-USA a compliance date extension for VOC control requirements from October 1, 1982, until April 1, 1986, and provides for a legally enforceable compliance program. The variance is intended to provide Fedders-USA with additional time to comply, through development of low solvent coating technology.

Under the existing federally approved SIP, each of Fedders-USA's large appliance coating lines is subject to a limit of 2.8 pounds of VOC per gallon of coating, the emission limitation contained in Rule 35 IAC 35 215.204(h) of Chapter 2: Air Pollution of the Illinois Pollution Control Board Rules and Regulations. Final compliance with this emission limitation is required by October 1, 1982. The proposed SIP revision would extend the date for final compliance for Fedders-USA to no later than April 1, 1986.

USEPA is proposing approval of this SIP revision compliance until April 1, 1986, because the proposed SIP revision will not interfere with the maintenance of the ozone national ambient air quality standards (NAAQS). Fedders-USA is located in Effingham County, which has always been designated as an attainment area for the pollutant ozone. This proposed SIP revision does not include a permanent relaxation or a compliance date extension past April, 1, 1986. Approval of this proposed SIP revision will not cause any increase in emissions; and, therefore, maintenance of the NAAQS will not be affected by the compliance date extension. USEPA's policies with regard to compliance date extensions are directed toward those areas not having attained the NAAQS and are not applicable to this revision, because Effingham County is now and has always been designated attainment for ozone. If USEPA ultimately approves the compliance date extension, the waiver from the requirement of 1 year of preconstruction ozone monitoring required by the Prevention of Significant Deterioration (PSD) regulations is terminated for Effingham County, for the period of the variance.

USEPA is providing a 30-day comment period on this notice of proposed rulemaking. Public comments receieved on or before (30 days from date of publication) will be considered in USEPA's final rulemaking. All comments will be available for inspection during normal business hours at the Region V office listed at the front of this notice.

Under 5 U.S.C. 605(b) the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Authority: 42 U.S.C. 7401-7462.

Dated: August 5, 1986.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 86-28896 Filed 12-23-86; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[A-5-FRL-3132-3]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing to approve a draft revision to the Ohio State Implementation Plan (SIP) for the Coulton Chemical Plant in Toledo, Ohio and for the E.I. duPont de Nemours and Company facility in Miami, Ohio. The revision is in the form of Permits to Operate for the two facilities. The permits require the installation and operation of continuous emission monitors for sulfur dioxide.

This revision was submitted by the State to satisfy section 110(a)(2)(F) of the Clean Air Act and 40 CFR 51.19, and to address a remand from the Sixth Circuit Court of Appeals concerning continous emission monitoring for sulfur dioxide. (*Northern Ohio Lung Association* v. *U.S. Environmental Protection Agency*, 572 F.2d 1182 (6th CIR. 1978), Hereafter "Nola Remand.") The revision that USEPA proposes action on today is a draft. Before USEPA can take final action on the plan, the State must submit a final plan which is substantially identical to the plan on which USEPA is proposing action today.

DATE: Comments on this revision and on the proposed USEPA action must be received by January 23, 1987.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Debra Marcantonio, at (312) 886-6088, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.)

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio (312) 886-6088.

SUPPLEMENTARY INFORMATION: Section 110(a)(1) of the Clean Air Act (Act) requires each State to adopt and submit to USEPA a plan which provides for attainment and maintenance of the primary and secondary national ambient air quality standards. The plan for achieving the secondary standard may be submitted as part of a State's plan for achieving the primary standard or as a separate plan. The primary standard plan must provide for attainment no later than 3 years from plan approval. Attainment of the secondary standard must be within a reasonable time.

Under section 110(c) of the Act, USEPA promulgated its substitute sulfur dioxide plan for the State of Ohio on August 27, 1976, which set emission limitations for Ohio sources to assure that the State of Ohio attain and maintan the national ambient air quality standards for sulfur dioxide (SO_2). See 41 FR 36324, 41 FR 52155, and 42 FR 27588. The Federal was designed to ensure attainment of both the primary and secondary sulfur dioxide standards within 3 years of plan approval.

On February 9, 1978, the United States Court of Appeals for the Sixth Circuit remanded to USEPA for its further consideration two aspects of the plan. *Northern Ohio Lung Association* v. *USEPA*, 572 F.2d 1182 (6th Cir. 1978). The Court held that the plan did not comply with the requirements of section 110(a)(2)(F) of the Act and did not include specific provisions for meeting the secondary ambient air quality standards for SO_2.

USEPA previously addressed the secondary standard portion of the remand on October 6, 1981 (46 FR 49123), and July 28, 1982 (47 FR 32121). This notice address the portion of the sulfur dioxide remand regarding section 110(a)(2)(F) of the Clean Air Act which requires appropriate sources to monitor their own emissions.

On January 27, 1981 (46 FR 8481), USEPA approved a significant portion of Ohio's sulfur dioxide SIP which replaced USEPA's August 27, 1976, plan. (Effective date was subsequently delayed until April 13, 1982 (47 FR 15782)). Amendments were approved by USEPA on April 20, 1982 (47 FR 16784), and May 13, 1982 (47 FR 20586). The SO_2 plan in Ohio is no longer the Federal plan promulgated by USEPA but, in most cases, is the revised State SO_2 plan. Therefore, Ohio submitted a draft revision to the SIP to satisfy both section 110(a)(2)(F) of the Clean Air Act and 40 CFR 51.19 as they pertain to sulfur dioxide emissions, and to address the remand from the Sixth Circuit Court of Appeals. Before USEPA can take final action on the plan, the State must submit a final plan which is substantially identical to the draft on which USEPA is proposing action today.

Section 110(a)(2)(F)

According to section 110, SIPs must require the installation of equipment to monitor emissions from stationary sources, the periodic reporting of such emissions, and the correlation of such reports with any emission limitations. To implement this provision of section 110, USEPA promulgated regulations identifying the minimum emission monitoring requirements (40 CFR Part 51, Appendix P). For SO_2, continuous emission monitoring is required for the following source categories:

(1) Fossil fuel-fired steam generators greater than 250 Million British Thermal Units per hour (MMBTU/HR) which have installed SO_2 pollution control equipment control equipment, and

(2) Sulfuric acid plants of greater than 30 tons per day production capacity.

(1) Fossil Fuel-Fired Generating Units—Ohio SIP

Currently, there are only two fossil fuel-fired steam generating units greater than 250 MMBTU/HR that have SO_2 pollution control equipment in Ohio: C&SOE Conesville—Units 5 and 6.

Continuous emission monitoring of SO_2 for Conesville Units 5 and 6 were already installed to satisfy New Source Performance Standards (NSPS) requirements at 40 CFR Part 60 Subpart D.

On December 21, 1976 (41 FR 55575), and December 22, 1981 (46 FR 62065), USEPA delegated authority to implement NSPS to Ohio. Because Subpart D (fossil fuel-fired generators which commenced construction after August 17, 1971) and Subpart Da (electric utility steam operating units which commenced construction after September 18, 1978) both require the installation and operation of continuous emission monitors for SO_2, and new fossil fuel-fired generator greater than 250 MMBTU/HR in Ohio will be required to have continuous emission monitors. Thus, all existing and future fossil fuel-fired generating units in Ohio subject to the control requirements of Subpart D, and Da, will comply with the requirements of Section 110(a)(2)F).

(2) Sulfuric Acid Plants—Ohio SIP

As noted in a letter dated September 5, 1985, from Ohio EPA, there are only two sulfuric acid plants with greater than 300 tons per day production capacity in Ohio (Coulton Chemical and E.I. duPont). This letter is contained in the docket for this proposed action. On April 30, 1986, Ohio EPA submitted a draft revision to the Ohio SIP in the form of operating permits for Coulton Chemical and for E.I. duPont.

A. Coulton Chemical Company

The State submitted two permits to operate (identified as A-Plant and B-Plant) for the Coulton Chemical Company in Lucas County. The State required that Terms and Conditions listed in item 3 of the permits be incorporated into the Ohio SIP.

Condition 3 references a compliance time schedule for installing and operating continuous emission monitoring equipment. The schedule requires completing of testing and calibration of installed continuous emission monitoring within 18 months of issuance of the permit for A-Plant, and by July 3, 1987, for B-Plant. Ohio EPA requested USEPA to act on these compliance schedules as part of Condition 3. Additionally, Condition 3 requires these facilities to submit quarterly reports pursuant to 40 CFR Part 51, Appendix P. Paragraph 4 documenting all instances of sulfur dioxide emissions in excess of the limitations specified in OAC Rule 3745-18-53(X). This rule is indentical to the currently effective SIP for this source as contained in 40 CFR 52.1881(b)(39)(vi)(B). USEPA finds that the continuous emission monitoring requirements for SO_2 in these permits satisfy 40 CFR Part 51, Appendix P.

B. E.I. DuPont

The State submitted a permit to operate for the E.I. DuPont Fort Hill Plant in Miami. The State requested that Terms and Conditions listed in item 3 of the permits be incorporated into the Ohio SIP. Condition 3 requires the source to operate and maintain existing equipment to continuously monitor and record the SO_2 emission from the source as required by 40 CFR 60.13. Additionally, Condition 3 requires this facility to submit quarterly reports pursuant to 40 CFR 60.7 and 60.84, documenting all instances of sulfur dioxide emission in excess of the Ohio SIP. The continuous emission monitoring requirements for SO_2 in these permits satisfy 40 CFR Part 51, Appendix P.

As noted above, USEPA delegated authority to implement NSPS to Ohio. Because 40 CFR Part 60 Subpart H requires the installation and operation of continuous emission monitors for SO_2, any new sulfuric acid production unit in Ohio will be required to have continuous emission monitors. Thus, all existing and future applicable sulfuric acid plants in Ohio will comply with the requirements of section 110(a)(2)(F).

USEPA Action

USEPA is proposing to approve the requirements for SO_2 continuous emission monitors in the operational permits for Coulton Chemical and E.I. duPont as a revision to the Ohio SIP. These SIP revisions, coupled with Ohio's NSPS delegation, satisfy the requirements of section 110(a)(2)(F) for the SO_2 SIP and respond to the NOLA remand.

The revision that USEPA proposes action on today is a draft. Before USEPA can take final action on the plan, the State must submit a final plan which is substantially identical to the plan on which USEPA is proposing action today.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Authority: 42 U.S.C. 7401–7642.

Dated: June 30, 1986

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 86–28897 Filed 12–3–86; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

46 CFR Parts 560 and 572

[Docket No. 86–32]

Filing of Agreements by Persons Subject to Shipping Act, 1916 and Shipping Act of 1984—Exculpatory Provisions in Marine Terminal Agreements and Leases

AGENCY: Federal Maritime Commission.

ACTION: Petition for Rulemaking Referred to Administrative Law Judge for Hearing.

SUMMARY: The Federal Maritime Commission has determined to hold evidentiary hearings on the possible necessity of promulgating a rule prohibiting marine terminal operators from including exculpatory provisions in agreements and leases for terminal facilities and services. This matter is therefore being referred to an Administrative Law Judge for hearing and decision.

ADDRESS: Office of Administrative Law Judges, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5750.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5725.

SUPPLEMENTARY INFORMATION: The Master Contracting Stevedore Association of the Pacific Coast, Inc. (MCSA) has filed a Petition for Rulemaking (Petition) requesting that the Commission promulgate a rule prohibiting exculpatory clauses in terminal leases and agreements. Specifically, MCSA requests either: (1) A separate rulemaking prohibiting exculpatory provisions in terminal leases and agreements; or, (2) extending the rule proposed in Docket No. 86–15—*Filing of Tariffs by Marine Terminal Operators—Exculpatory Provisions*, 51 FR 15655; April 28, 1986 to prohibit exculpatory provisions in agreements and leases; [1] or, (3) consolidating its requested rulemaking with Docket No. 86–15.

The Commission published MCSA's Petition in the **Federal Register** (51 FR 25101; July 10, 1986) and requested comments from interested parties. Comments have been filed by the National Association of Stevedores (NAS); the American Association of Port Authorities; the Port of Seattle; the Port of Houston Authority of Harris County, Texas; the Port of Long Beach; the Board of Trustees of the Galveston Wharves, Galveston, Texas; the Port Authority of New York and New Jersey; the Port of Oakland; the Port of Corpus Christi Authority of Nueces Country, Texas; and the Puerto Rico Ports Authority (hereinafter collectively referred to as "the Ports").

The Petition for Rulemaking

In its Petition, MCSA argues that the underlying premises for the Commission's proposed rule in Docket No. 86–15 are equally applicable to terminal leases and agreements. MCSA claims that local port authorities exercise monopoly control over public facilities and that, as a result, terminal users seeking to enter into leases or agreements for the use of such facilities have no choice but to accede to liability and indemnity provisions dictated by the port authority.

MCSA states that such exculpatory provisions take several forms, including: (1) The basic "red letter" clause; (2) the "port as named assured" clause; and, (3) the "loaned equipment/borrowed servant" clause. These are explained as follows. "Red letter" clauses are those that require the lessee to indemnify and hold-harmless the lessor from all claims arising out of the use of the leased premises, including those due to the negligence of the lessor, in part or in whole. "Named assured" provisions require the lessee to obtain liability insurance naming the lessor as the insured. These latter clauses are said to have the effect of exculpating the lessor because the insurance company generally does not pursue a subrogation claim against its insured, the lessor, and attributes the loss to the lessee. "Borrowed servant" provisions impute control over all facilities and personnel subject to the lease or agreement to the lessee, thereby shifting all liability to the lessee even though the lessor maintains substantial authority and control over the premises.

MCSA submits that all three types of clauses are equally exculpatory and should be prohibited by rule. A flat prohibition on exculpatory clauses, with no exception, is urged.

Position of Commenters

NAS generally supports the Petition. It argues that the conditions described by MCSA exist not only on the West Coast but nationwide. NAS believes exculpatory provisions should be banned from terminal tariffs as proposed in Docket No. 86–15, without any exceptions. It submits that the rationale of the rule proposed in Docket No. 86–15 applies equally to terminal leases and agreements.

The Ports oppose the relief requested. They generally argue that there is no factual basis supporting MCSA's allegations of the exercise of monopoly power by the port authorities and that, unlike tariffs that are unilaterally imposed, leases and agreements are generally the product of "arms-length" negotiations. It is argued that there is keen competition between port authorities in attempting to obtain long-term use agreements and leases for the terminal facilities they own. The Ports generally contend that the prohibition suggested by MCSA would give the terminal user an unfair advantage in bargaining with port authorities.

Finally, the Ports argue that there is allegedly no similarity between the process by which terminal tariffs are promulgated and the negotiation of terminal leases and agreements. Moreover, market conditions relevant to the use of terminal facilities pursuant to a port authority tariff are said to be dissimilar to those applicable to leases and agreements.

Discussion

The Petition and comments filed in response to the Petition reflect a polarization of opinion as to whether the Commission should regulate the use of exculpatory provisions in terminal leases and agreements. The stevedoring interests, representing the terminal facility "users" most affected by such provisions, favor an absolute ban on the practice. The public port authority interests, representing the chief beneficiaries of such provisions, oppose any Commission regulation in this area.

The primary source of the Commission's authority to regulate the practices of marine terminal operators is found in section 10(d)(1) of the Shipping Act of 1984 (1984 Act), 46 U.S.C. app. 1709(d), and section 17 of the Shipping Act, 1916 (1916 Act), 46 U.S.C. app. 816, depending on whether the foreign commerce or the domestic offshore commerce is involved. Both sections require marine terminal operators to "establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property."

Therefore, the issue raised by the Petition and comments in response is whether the inclusion of liability-shifting provisions in terminal leases and agreements constitutes an unjust and unreasonable practice in violation of section 10(d)(1) of the 1984 Act or section 17 of the 1916 Act. Because this is essentially a factual question, reliable information on not only the prevailing market conditions but all relevant facts and circumstances concerning terminal lease and agreement negotiations is essential to a proper disposition of the Petition. That type of information is lacking here. The Petition and comments mostly argue broad generalities concerning the existence or absence of monopolistic bargaining power on the part of marine terminal operators. The mere fact that such provisions are common, or even prevalent, in marine terminal agreements and leases does not, in and of itself, establish that the practice is unjust or unreasonable.

In light of the current absence of any reliable factual information, denying *or* granting the Petition at this time would not appear appropriate. As noted above, more information concerning the facts and circumstances surrounding the negotiating process that gives rise to these provisions is necessary in order to determine their lawfulness. This would necessarily include consideration of whether the terminal operator in negotiating terminal leases and agreements exercises "monopolistic bargaining power." [2]

Additionally, there may be other considerations which, in a particular fact situation, may bear on the legality of exculpatory liability-shifting clauses in terminal leases and agreements. These considerations and circumstances also were not discussed in the Petition or comments to any sufficient degree. Accordingly, no factual basis exists here to support either granting or denying MSCA's Petition.

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[1] In Docket No. 86–15 the Commission proposed to include in its rules governing the filing of tariffs by marine terminal operators, a prohibition against the publication of exculpatory liability-shifting provisions in such tariffs. The Commission also requested comments on whether an exception to this prohibition, that would allow "quid pro quo" agreements concerning such provisions, should be allowed. By separate notice published this date the Commission is issuing a final rule prohibiting exculpatory provisions in terminal tariffs without exception.

Continued

[2] The Commission has found that liability-shifting provisions in terminal tariffs are unreasonable if they are unilaterally imposed on a "take it or leave it" basis under conditions where there is an inequality of bargaining power between "users" and the terminal operators and where there is an obvious lack of consideration flowing to the "user" in exchange for assuming the terminal operator's liability. *See, Southeastern Maritime Co. v Georgia Ports Authority*, 23 S.R.R. 530, 546 (I.D. 1985), *adopted*, 23 S.R.R. 941, 944 (FMC 1986).

Therefore, it appears that some form of evidentiary proceeding is necessary to develop a full factual record upon which a reasoned decision on the Petition can be made. An informal notice and comment rulemaking does not produce the kind of factual record that, in the Commission's opinion, is necessary in this matter.

Formal or evidentiary rulemaking on the other hand provides for the taking of evidence concerning the issues that the Commission deems to be relevant at public hearings before an Administrative Law Judge and the issuance of an initial decision, with any recommended rule. *See,* 46 CFR 502.141. This would appear to be the most appropriate procedure here.

Therefore, the Commission has determined that the Petition for Rulemaking should be referred to an Administrative Law Judge to conduct an evidentiary hearing and issue an initial decision, based upon the entire record developed herein, including recommending any appropriate rule. Specifically, the hearing should address the following issues:

(1) Whether the practice of including exculpatory liability-shifting provisions in marine terminal leases and agreements is unjust and unreasonable in violation of section 10(d)(1) of the 1984 Act, or section 17 of the 1916 Act;

(2) Whether the Commission should by rule prohibit exculpatory liability-shifting provisions in marine terminal agreements and leases; and,

(3) Whether the Commission should allow any exceptions to such a prohibition if a prohibition is found to be warranted and necessary.

Therefore, it is ordered, that the Petition for Rulemaking is referred to the Commission's Office of Administrative Law Judges for the purpose of conducting a hearing and issuing an initial decision in accordance with this Order; and,

It is further ordered, that the hearing in this proceeding shall commence no later than May 4, 1987, an initial decision shall be issued no later than November 9, 1987 and a final decision shall be issued by the Commission no later than March 7, 1988; and,

It is further ordered, that all parties that filed comments in response to the original Petition for Rulemaking in this proceeding shall be permitted to participate in the hearing ordered above; and,

It is further ordered, that the Commission's Bureau of Hearing counsel is also made a party to this proceeding; and,

It is further ordered, that additional interested parties may be granted intervention in this proceeding in accordance with Rule 72 of the Commission's Rules of Practice and Procedure (46 CFR 502.72). By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 86-28931 Filed 12-23-86; 8:45 am]
BILLING CODE 6730-01-M

Notices

Federal Register
Vol. 51, No. 247
Wednesday, December 24, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

December 19, 1986.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

• *Agricultural Marketing Service*
Dairy Promotion and Research Order
DA-15, DA-16, DA-17, DA-18, DA-19, DA-20, and DA-26
Recordkeeping; On occasion; Monthly; Annually
State or local governments; Farms; Businesses or other for-profits; Small businesses or organizations; 16,260 responses 8,412 hours; not applicable under 3504(h)
Vern Burkholder (202) 447-6932

• *Animal and Plant Health Inspection Service*
7 CFR 319, 321, 352—Foreign Quarantine Notices
PPQ 368, 533, 546, 564, 587 and 587(MD)
On occasion
Individuals or households; State or local governments; Farms; Businesses or other for-profit; Non-profit institution; Small businesses or organizations; 164,545 responses; 32,919 hours; not applicable under 3504(h)
Mr. William Forster (301) 436-5233

• *Animal and Plant Health Inspection Service*
9 CFR Part 166 Swine Health Protection
VS Form 13-15 and VS Form 13-16
Recordkeeping; On occasion
Farms; Small businesses or organizations; 224 responses; 136 hours; not applicable under 3504(h)
D.F. Schwindaman (301) 436-8438

New

• *Food and Nutrition Service*
Study of Implementation and Impact of Current School Lunch Income Verification Requirements
One-time survey
Individuals or households; 12,608 responses; 6,304 hours; not applicable under 3504(h)
David Goodwin (703) 756-3115

Reinstatement

• *Farmers Home Administration*
7 CFR 1951-G, Borrower Supervision, Servicing and Collection of Single Family Housing Loan Accounts
FmHA-1951-23
On occasion
Individuals or households; 13,000 responses; 5,665 hours; not applicable under 3504(h)
Jack Holston (202) 382-9736

• *Farmers Home Administration*
7 CFR 1951-A, Account Servicing Policies
FmHA-1951-39
On occasion
Individuals or households; Farms; Businesses or other for-profit; Small businesses or organizations; 28,030 responses; 51,024 hours; not applicable under 3504(h)
Jack Holston (202) 382-9736

Revision

• *Agricultural Marketing Service*
Honey Research, Promotion, and Consumer Information Order
Recordkeeping; On occasion; Monthly; semi-annually
Individuals or households; Farms; Businesses or other for-profit; Small businesses or organizations; 61,023 responses; 2,259 hours; not applicable under 3504(h)
Jerry Brooks (202) 447-5057

• *Animal and Plant Health Inspection Service*
National Animal Health Mon oring System (NAHMS)
NAHMS 1, NAHMS 2, NAHN CLOSEOUT NAHMS
Monthly; Annually
Farms; 22,500 responses, 6,750 hours; not applicable under 3504(h)
Dr. L.J. King (301) 436-8087

Donald E. Hulcher,

Acting Departmental Clearance Officer.

[FR Doc. 86-28932 Filed 12-23-86; 8:45 am]
BILLING CODE 3410-01-M

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of New Privacy Act system of records.

SUMMARY: Notice is hereby given that USDA proposes to create a new Privacy Act system of records USDA/ASCS-28, entitled "Claims Data Base (Automated), USDA/ASCS."

EFFECTIVE DATE: This notice will be adopted without further publication in the **Federal Register** on January 23, 1987, unless modified by a subsequent notice to incorporate comments received from the public. A waiver of the review period provided for in 5 U.S.C. 552a(o), has been requested of the Office of Management and Budget. Although the Privacy Act requires only that the portion of the system which describes

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the "routine uses" of the system be published for comment, USDA invites comment on all portions of this notice. Comments must be received by the contact person listed below on or before January 23, 1987.

FOR FURTHER INFORMATION CONTACT: Dale R. Phillips, Department of Agriculture, Agricultural Stabilization and Conservation Service (ASCS), Fiscal Division, P.O. Box 2415, Washington, DC 20013, telephone (202) 447–4039.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act, 5 U.S.C. 552a, USDA is creating a new system of records to be maintained by the Agricultural Stabilization and Conservation Service (ASCS). The purpose of this notice is to announce the creation and character of this system of records maintained by ASCS for ASCS and Commodity Credit corporation (CCC). The system contains data on delinquent debts of agricultural producers. The purpose of this system is to provide ASCS Fiscal Division with the necessary information to ensure collection of the overdue debts of agricultural producers. Maintenance and use of this system is intended to increase the efficiency of the Fiscal Division in collecting these overdue debts.

A "Report on New System," required by 5 U.S.C. 552a(o), as implemented by OMB Circular A–130, was sent to the President of the Senate, the Speaker of the House of Representative and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget on December 19, 1986.

Signed at Washington, DC on December 17, 1986.

Richard E. Lyng,

Secretary of Agriculture.

USDA/ASCS–28

SYSTEM NAME:

Claims Data Base (Automated), USDA/ASCS.

SYSTEM LOCATION:

Kansas City Management Office, USDA/ASCS, 8930 Ward Parkway, Kansas City, MO 64114.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Agricultural producers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information identifying the delinquent debtor, such as name, address, producer identification number (social security number or taxpayer identification number); information relating to claim identification, such as claim control number, which is comprised of a State and county code and an alpha-numeric control number; codes identifying the type of claim and the basis for establishing the claim; identification of programs under which the claim arose; date the claim arose; loan, farm or contract number; interest rate applied to claim; the date interest on the claim starts and the principal amount of the claim; information related to claims actions and status changes which have occurred since the claims was initially established, such as transfers from originating ASCS office to other ASCS State or county offices and referrals to the Office of the General Counsel for legal action; termination of claims actions; changes in claim amount resulting from compromises, addition of collection or court costs and brief remarks which identify or clarify actions being taken by the ASCS office submitting the claim information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 1281–1393; 7 U.S.C. 1421–1449 and 15 U.S.C. 714–714p.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

USDA employees maintain and update the system with expanded claims data for assistance in preparation of the SF–220 report (Report on Status of Accounts and Loans Receivable from the Public) and the production of other debt management reports. (1) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto. (2) Referral to the Department of Justice when (a) the agency, or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected. (3) Disclosure in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when (a) the agency, or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or (d) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the court is a use of the information contained in the records that is compatible with the purpose for which the records were collected. (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office at the request of the individual. (5) Referral of delinquent commercial debt information, which is filed in the system, to a commercial credit reporting agency for it to make the information publicly available. Only that information directly related to the identity of the debtor and history of the claim will be released. Debtor information will consist of the following: the debtor's name, address, taxpayer identification number, and other information necessary to establish the identity of the debtor; the amount, status, and history of the claim, and the program under which the claim arose. (6) Referral to a collection or servicing contractor, or a local, State, or Federal agency, when ASCS determines a referral is appropriate for servicing or collecting the debtor's account or as provided for in contracts with servicing or collection agencies. (7) Referral to the Internal Revenue Service to enable it to offset and satisfy past-due, legally enforceable debts owed to USDA against Federal income tax refunds.

DISCLOSURES PURSUANT TO 5 U.S.C. 552A(B)(12):

Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Claims Data Base records are stored on disk files.

RETRIEVABILITY:

Records can be accessed by producer identification number (if available), farm number or State, county and claim number.

SAFEGUARDS:

On-line access to data in the Claims Data Base (Automated) is controlled by password protection. The data base is duplicated on magnetic tape files.

RETENTION AND DISPOSAL:

Claim records remain on the data base for four months after a claim has been zero-balanced, at which time the data is transferred from disk to tape files. The data is retained on tape files for one year. Data on magnetic tape files is then written over for disposal.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Kansas City Management Office, ASCS, USDA, 8930 Ward Parkway, Kansas City, Missouri 64114.

NOTIFICATION PROCEDURE:

An individual may request information as to whether the system contains records pertaining to such individual from the Director, Kansas City Management Office, ASCS, USDA, 8930 Ward Parkway, Kansas City, Missouri 64114. A request for information regarding an individual should include: Full name, address, ZIP code, producer identification number (if available), farm number or claim number, and any other pertinent information to help identify the file. Before information about any record is released, the System Manager may require the individual to provide proof of identity or require the requester to furnish an authorization from the individual to permit release of information.

RECORD ACCESS PROCEDURES:

Same as notification procedure. An individual who wishes to request access to records in the system relating to that individual or who wishes to request correction of records believed to be in error should submit a written request to the System Manager. (The regulations governing access to records and contesting contents of records are set forth at 7 CFR 1.110–1.123).

CONTESTING RECORD PROCEDURES:

Same as record access procedures.

RECORD SOURCE CATEGORIES:

Records in this system come primarily from documents submitted by the ASCS county office maintaining farm records on the individual producer. Information in these records is obtained directly from the individuals in the system.

[FR Doc. 86–28870 Filed 12–23–86; 8:45 am]

BILLING CODE 3410–16–M

Privacy Act of 1974; Systems of Records; Debt Collection Act of 1982

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of Revision of Privacy Act Systems of Records.

SUMMARY: The USDA hereby provides notice of intent to disclose certain information in the Privacy Act systems of records USDA/ASCS–7, entitled "County Office Employees Administrative Expense File—USDA/ASCS", and USDA/ASCS—24, entitled "Subsidiary Personnel, Pay and Travel Records-USDA/ASCS", on delinquent consumer debts to consumer credit reporting agencies, and to revise the routine uses of the system of records from which these disclosures will be made.

EFFECTIVE DATE: January 23, 1987. Written comments must be received by the contact person listed below on or before January 23, 1987.

FOR FURTHER INFORMATION CONTACT: Dale R. Phillips, Department of Agriculture, Agricultural Stabilization and Conservation Service (ASCS), Fiscal Division, P.O. Box 2415, Washington, DC 20013, telephone (202) 447–4039.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act, 5 U.S.C. 552a, ASCS maintains the systems of records, USDA/ASCS–7, entitled "County Office Employees Administrative Expense File" and USDA/ASCS–24, entitled "Subsidiary Personnel, Pay and Travel Records". The records that are kept in USDA/ASCS–7 consist of personnel, travel and pay information on ASCS county and community committee members, and ASCS county office employees. The records that are kept in USDA/ASCS–24 consist of personnel, travel and pay information on ASCS employees.

USDA is publishing notice of "Disclosures Pursuant to 5 U.S.C. 552a(b)(12)" related to overdue debts of employees and individuals. Disclosure may now be made from these systems to "consumer reporting agencies", as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act (31 U.S.C. 3701(a)(3)).

Before disclosing delinquent consumer debtor information, ASCS will follow the due process requirements established in 31 U.S.C. 3711(f), as implemented by 4 CFR 102.5 of the Federal Claims Collection Standards. Only that information directly related to the identity of the debtor and the history of the claim will be released. Debtor information will consist of the following: name, address, taxpayer identification number, and other information necessary to establish the identity of the individual or employee; the amount, status, and history of the claim, and the program under which the claim arose.

Two new routine uses are to be added to USDA/ASCS–24. The first allows release of information from the system to congressional offices from the record of an individual in response to an inquiry from the congressional office at the request of that individual. The second routine use allows release, in limited circumstances, of information to federal, state, local or foreign agencies charged with investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule or regulation issued pursuant to that law.

In addition, USDA is also publishing new routine uses to inform the public of the uses to be made of information in the system.

Four routine uses are being added to both USDA/ASCS–7 and USDA/ASCS–24. The first routine use allows information contained in both systems of records to be reported to collecting or servicing contractors or other government agencies when ASCS or CCC determines that it is appropriate for servicing a debtor's account. Release of information under this routine use is authorized by the Debt Collection Act. The second and third routine uses allow information which is relevant and necessary to litigation to be disclosed, in certain limited circumstances, to the Department of Justice and in proceedings before a court or adjudicative body. These uses are being promulgated to address concerns expressed by the district court in *Krohn v. Department of Justice*, Civil No. 78–1536 (D.D.C. March 19, 1984) and is designed to restrict the amount of information released during litigation. The fourth routine use is authorized by the Spending Reduction Act of 1984 which established a tax refund offset program by which agencies could request that tax refunds of persons

indebted to it be reduced by the amount of the debt with the amount offset being paid instead to the creditor agency. The CCC and ASCS are participating in this program.

Accordingly, USDA revises the full texts of the systems of records, USDA/ASCS–7, "County Office Employees Administrative Expense File, USDA/ASCS", (Privacy Act Issuances, 1984 Compilation, Volume 1, page 8) and USDA/ASCS–24, "Subsidiary Personnel, Pay and Travel Records—USDA/ASCS", (Privacy Act Issuances, 1984 Compilation, Volume 1, page 14) to read as printed below.

Signed at Washington, DC on December 17, 1986.

Richard E. Lyng,

Secretary of Agriculture.

USDA/ASCS–7

SYSTEM NAME:

County Office Employees Administrative Expense File, USDA/ASCS.

SYSTEM LOCATION:

Kansas City Management Office, USDA/ASCS, 8930 Ward Parkway, Kansas City, MO 64114.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

ASCS county and community committee members, and employees who are employed in county ASCS offices on a full or part-time basis.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains the names of all county ASCS committee members and employees and information such as: Identifying number (social security number); race code; sex code; county code; biweekly amount of payroll check, including deduction amounts for FICA, Federal, State and local withholding, FEHBA, FEGLI (Optional), NASCOE dues, and bonds. Also records of the date of birth; CO grade and step; service computation; date of last WGI; health code; cumulative and current retirement deduction; and date severance pay ceases.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

16 U.S.C. 590.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Referral to Internal Revenue Service for total annual income as required by the Internal Revenue Code. (2) Referral to State Revenue Board and local tax authorities for tax withholding or as required by Internal Revenue Code. (3) Referral to Office of Personnel Management for fringe benefits withholdings, 5 U.S.C. 8331, 8701, 8901. (4) Referral to Social Security Administration for FICA withholdings. (5) Referral to the general public in annual directories of county committee members. (6) Referral annually of summary data produced on microfilm to the Federal Civilian Personnel Records Center, St. Louis, Missouri, as a permanent record of employee's service with ASCS. (7) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the status, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto. (8) Referral to the Department of Justice when (a) the agency, or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected. (9) Disclosure in a proceeding before a court of adjudicative body before which the agency is authorized to appear, when (a) the agency, or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or (d) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the court is a use of the information contained in the records that is compatible with the purpose for which the records were collected. (10) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office at the request of the individual. (11) Referral to a collection or servicing contractor, or a local, State, or Federal agency, when ASCS determines a referral is appropriate for servicing or collecting the debtor's account or as provided for in contracts with servicing or collection agencies. (12) Referral to the Internal Revenue Service to enable it to offset and satisfy past-due, legally enforceable debts owed to USDA against Federal income tax refunds.

DISCLOSURES PURSUANT TO 5 U.S.C. 552A(B)(12):

Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEMS:

STORAGE:

Stored on magnetic tape by the Kansas City Computer Center, 8930 Ward Parkway, Kansas City, Missouri 64114.

RETRIEVABILITY:

Records are indexed by social security number.

SAFEGUARDS:

Records are kept in a fireproof vault in a secured area of the building.

RETENTION AND DISPOSAL:

Maintained indefinitely on a currently updated basis.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Administrator, Management, ASCS, USDA, P.O. Box 2415, Washington, DC 20013.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether this system contains records pertaining to such individual from the Director, Kansas City Management Office, ASCS, USDA, 8930 Ward Parkway, Kansas City, Missouri 64114. A request for information regarding an individual should include: full name, address, ZIP code, social security number, and the ASCS county office where the employee/committee member is employed. Before information about any record is released, the System Manager may require the individual to provide proof of identity or require the requester to furnish an authorization from the individual to permit release of information.

RECORD ACCESS PROCEDURES:

Same as notification procedures. An individual who wishes to request access to records in the system relating to that individual or who wishes to request correction of records believed to be in error should submit a written request to the appropriate official referred to in the preceding paragraph. (The regulation governing access to records and contesting contents of records are set forth at 7 CFR 1.110–1.123).

CONTESTING RECORD PROCEDURES:

Same as record access procedure.

RECORD SOURCE CATEGORIES:

Information in these records is based primarily on information obtained directly from the employee, and comes from scannable documents prepared by the ASCS county office where the individual is employed.

USDA/ASCS–24

SYSTEM NAME:

Subsidiary Personnel, Pay and Travel Records—USDA/ASCS.

SYSTEM LOCATION:

Any ASCS office where individual is employed at the address shown in the local telephone directory under the heading, "United States Government, Department of Agriculture, Agricultural Stabilization and Conservation Service."

CATEGORIES OF INDIVIDUAL COVERED BY THE SYSTEM:

Individual employed by ASCS, except county office employees and committee members.

CATEGORIES OF RECORDS IN THE SYSTEM:

Agency copies of personnel actions, training records, performance ratings, earnings statements, time and attendance reports, travel authorizations and vouchers, payroll deduction records, service record cards, record of accountable documents charged to employee, appeal cases, and conflict of interest statements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 7 CFR 2.65.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Answer inquiries from prospective employers when employee gives immediate supervisor or co-worker as reference. (2) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto. (3) Referral to the Department of Justice when (a) the agency, or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected. (4) Disclosure in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when (a) the agency, or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or (d) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the court is a use of the information contained in the records that is compatible with the purpose for which the records were collected. (5) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office at the request of the individual. (6) Referral to a collection or servicing contractor, or a local, State, or Federal agency, when ASCS determine a referral is appropriate for servicing or collecting the debtor's account or as provided for in contracts with servicing or collection agencies. (7) Referral to the Internal Revenue Service to enable it to offset and satisfy past-due, legally enforceable debts owed to USDA against Federal income tax refunds.

DISCLOSURES PURSUANT TO 5 U.S.C. 552A(B)(12):

Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders at addresses referenced above.

RETRIEVABILITY:

Indexed by name of individual employee.

SAFEGUARDS:

Kept in file cabinets at addresses referenced above.

RETENTION AND DISPOSAL:

Maintained in active status during the employee's tenure at the organizational entity. After transfer or separation, maintained in inactive status to be used to answer employment inquiries. Conflict of interest statement retained 2 years after employee is separated.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Administrator, Management, ASCS, USDA, P.O. Box 2415, Washington, DC 20013.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether this system contains records pertaining to him by contacting the head of the office where the records are located. If the specific location of the records is not known, the individual should address his request to the Director, Information Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013, who, if necessary, will refer it to the appropriate office. A request for information pertaining to an individual should contain: full name, address, ZIP code, taxpayer identification number, name of the system of records, year of records in question, and any other pertinent information to help identify the file. Before information about any record is released, the System Manager may require the individual to provide proof of identify or require the requester to furnish an authorization from the

individual to permit release of information.

RECORD ACCESS PROCEDURES:

Same as notification procedure. An individual who wishes to request access to records in the system relating to that individual or who wishes to request correction of records believed to be in error should submit a written request to the System Manager. (The regulations governing access to records and contesting contents of records are set forth at 7 CFR 1.110–1.123).

CONTESTING RECORD PROCEDURES:

Same as record access procedures.

RECORD SOURCE CATEGORIES:

Information in these records is obtained directly from the employee, the Office of Personnel Management, and agency-initiated documents.

[FR Doc. 86–28871 Filed 12–23–86; 8:45 am]

BILLING CODE 3410–18–M

Federal Grain Inspection Service

Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), a notice is hereby given of the following committee meeting:

Name: Federal Grain Inspection Service Advisory Committee.

Date: January 20, 1987.

Place: U.S. Department of Agriculture, 1400 Independence Avenue SW., Room 3501 South Building, Washington, DC 20250.

Time: 8:30 a.m.

Purpose: To provide advice to the Administrator of the Federal Grain Inspection Service on the efficient and economical implementation of the U.S. Grain Standards Act of 1976, in order to assure the normal movement of grain in an orderly and timely manner.

The agenda includes: (1) An FGIS update on the "Commitment to Quality" report, (2) financial matters, (3) implementation of the Grain Quality Improvement Act of 1986, (4) a wheat classification update, and (5) other matters.

The meeting will be open to the public. Public participation will be limited to written statements unless otherwise requested by the Committee Chairman. Persons, other than members, who wish to address the Committee at the meeting or submit written statements before or at the meeting should contact W. Kirk Miller, Administrator, FGIS, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 382–0219.

Dated: December 19, 1986.

W. Kirk Miller,

Administrator.

[FR Doc. 86–28933 Filed 12–23–86; 8:45 am]

BILLING CODE 3410–EN–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Economic Development Administration, Commerce.

Title: Special Adjustment Assistance Application

Form Number: Agency—ED–540; OMB—0610–0058

Type of Request: Revision of a currently approved collection

Burden: 75 respondents; 406 reporting hours

Needs and Uses: The information is needed to receive funds under the Title IX Program of the Economic Development Administration. The Program responds to both sudden and long-term economic dislocation in particular communities. New and specific information is required from each applicant to identify the problems to be addressed and possible solutions. No other program in the Agency is designed to address these special adjustment needs.

Affected Public : State or local and non-profit institutions

Frequency: Annually

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Timothy Sprehe, 395–4814

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: December 17, 1986.

Ed Michaels,

Departmental Clearance Officer, Information Management Division, Office of Informotion Resources Management.

[FR Doc. 86–28914 Filed 12–23–86; 8:45 am]

BILLING CODE 3510–CW–M

National Oceanic and Atmospheric Administration

[Modification No. 1 to Permit No. 467]

Marine Mammals; Permit Modification; Dr. Herman M. Louis (P166B)

Notice is hereby given that, pursuant to the provisions of § 216.33 (d) and (e) of the Regulationis Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Scientific Research Permit No. 467 issued to Dr. Louis M. Herman, Kewalo Basin Marine Mammal Laboratory, University of Hawaii, 1129 Ala Moana Boulevard, Honolulu, Hawaii 96814, on May 18, 1984 (49 FR 22369) is modified as follows:

Section B.5 is replaced by:

5. This Permit is valid with respect to the taking authorized herein until December 31, 1988. The terms and conditions of this Permit (Sections B and C) shall remain in effect as long as one of the marine mammals taken hereunder is maintaned in captivity under the authority and responsibility of the Permit Holder.

This modification becomes effective December 24, 1986.

Documents submitted in connection with the above Permit and modification are available for review in the following offices:

Protected Species Division, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Room 805, Washington, DC;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415; and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: December 16, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc.86–28904 Filed 12–23–86; 8:45 am]

BILLING CODE 3510–22–M

[Modification No. 1 to Permit No. 564]

Marine Mammals; Permit Modification; Dr. Sidney Lees (P382)

Notice is hereby given that, pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Parts 216), and § 220.24 of the regulations on endangered species (50 CFR Parts 217 through 227), Scientific Research Permit No. 564 issued to Dr. Sidney Lees, Bioengineering Department, Forsyth Dental Center, 140 Fenway, Boston, Massachusetts 02115, on August 28, 1986 (51 FR 31962) is modified as follows:

Section B.5 is replaced by:

5. The authority to import this material shall extend from the date of issuance through March 31, 1987. The terms and conditions of this Permit shall remain in effect as long as the material imported hereunder is maintained under the authority and responsibility of the Pemit Holder.

The modification becomes effective December 24, 1986.

As required by the Endangered Species Act of 1973 issuance of this modification is based on a finding that such modification:

(1) Was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of the modification, and (3) will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This modification was issued in accordance with, and is subject to Parts 220 through 222 of Title 50 CFR of the National Marine Fisheries Service regulations governing endangered species permits (39 FR 41367), November 27, 1974.

Documents submitted in connection with the above Permit and modification are available for review in the following offices:

Protected Species Division, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Room 805, Washington, DC; and

Director, Northeast Region, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Date: December 16, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86–28905 Filed 12–23–86 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Navigation Improvements at Bayou La Batre, AL

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a DEIS.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

The proposed action is to prepare a DEIS to evaluate the environmental impact of providing navigation improvements at Bayou La Batre, Alabama.

2. Alternatives

The following basic alternatives will be evaluated:

a. No action—This alternative will be the "without" project conditions against which impacts will be measured.

b. Deepening and widening of the Bayou La Batre Harbor channels to include depths up to 22 feet.

c. Various dredged material disposal concepts including: upland, Gulf of Mexico, open water in Mississippi Sound, and island nourishment.

3. Scoping Process

a. The scoping process, as outlined by the Council on Environmental Quality in the November 29, 1978 **Federal Register**, National Environmental Policy Act—Regulations, will be utilized to involve Federal, State, and local agencies and other interested persons. Identification of significant issues to be addressed in the EIS will be determined through the scoping process. The agencies and individuals' views and concerns will be obtained through personal, telephone, and mail contact in lieu of a formal scoping meeting.

b. Coordination with the U.S Fish and Wildlife Service, as required by the Fish and Wildlife Coordination Act and the Endangered Species Act, is being undertaken. Coordination required by other laws and regulations will also be conducted.

4. DEIS Preparation

It is estimated that the DEIS will be available to the public in September 1987.

ADDRESS: Questions about the proposed action and DEIS can be answered by: Dr. Susan Ivester Rees, PD–EC, U.S. Army Engineer District, Mobile, P.O. Box 2288, Mobile, Alabama 36628.

Dated: December 10, 1986.

Roy A. Prince,

Lieutenant Colonel, CE, Acting District Engineer.

[FR Doc. 86–28858 Filed 12–23–86; 8:45 am]

BILLING CODE 3710–CR–M

Department of the Navy

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Marine Corps Advertising Awareness and Attitude

Tracking Study

None

The collection of information will provide unique data on the awareness of Marine Corps Advertising, the awareness of benefits and advantages offered for joining the Marine Corps, perceptions of specific attributes and benefits of joining the Marine Corps and the general opinion of the Marine Corps.

Individuals

Responses 500

Burden hours 165

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson-Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 746–0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Captain Frank L. Henry, Headquarters, U.S. Marine Corps, Washington, DC 20380–0001, telephone (202) 694–1786.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

December 18, 1986.

[FR Doc. 86–28836 Filed 12–23–86; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a new information collection.

ADDRESS: Send comments to Franklin S. Reeder, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. C.W. Mathews, Office of Federal Acquisition and Regulatory Policy, GSA, (202) 523–3856.

SUPPLEMENTARY INFORMATION:

a. Purpose

Rights in Data is a regulation which concerns the rights of the Government and organizations, with which the Government contracts, to information developed under such contracts. The delineation of such rights is necessary in order to protect the contractor's rights to not disclose proprietary data, and to ensure that data developed with public funds is available to the public.

b. Annual Reporting Burden

This is estimated as follows: Respondents, 1,100; responses per respondent, 1; total annual responses, 1,100; hours per response, 2.7; total reporting hours, 3,000; and total recordkeeping hours, 27,000.

Obtaining Copies of Proposals

Requesters may obtain copies from the FAR Secretariat (VRS), Room 4041, GSA Building, Washington, DC 20405, telephone (202) 523–4755. Please cite proposal pending OMB approval of recordkeeping requirements concerning FAR Subpart 27.4, Rights in Data and Copyrights.

Dated: December 18, 1986.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 86–28869 Filed 12–23–86; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF EDUCATION

Intergovernmental Advisory Council on Education; Meeting

AGENCY: Intergovernmental Advisory Council on Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Intergovernmental Advisory Council on Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend and that a portion of the meeting will be closed to the public.

DATE: January 12, 1987.

ADDRESS: Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Dr. James G. Horn, Executive Director (A), Intergovernmental Advisory Council on Education, 513 Reporter's Building, 300 7th Street, SE., Washington, DC 20202.

SUPPLEMENTARY INFORMATION: The Intergovernmental Advisory Council on Education was established under section 213 of the Department of Education Organization Act (20 U.S.C. 3423). The Council was established to provide assistance and make recommendations to the Secretary and the President concerning intergovernmental policies and relations pertaining to education.

A portion of the Council meeting on January 12, 1987 will be closed to the public for discussions about the Council's recommendation to the Secretary for the appointment of an Executive Director. The meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. Appendix 2) and under exemption (6) of section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409; 5 U.S.C. 552b(c)(6). The discussion of the recommendation to the Secretary will touch upon matters that would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in an open session.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

The proposed agenda includes:

—Recommendation to the Secretary for appointment of an Executive Director

—Old and New Business

Records are kept of all Council proceedings, and are available for public inspection at the Intergovernmental Advisory Council on Education, 513 Reporter's Building, 300 7th Street, SW., from 9:00 a.m. to 5:00 p.m.

Signed at Washington, DC on December 19, 1986.

Peter R. Greer,

Deputy Under Secretary.

Tentative Agenda—Intergovernmental Advisory Council On Education, January 12, 1987, Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202

I. Discussion of Council's recommendation to the Secretary for the appointment of an Executive Director

II. Old Business

A. Committee Reports

1. Update of efforts to place IACE under GEPA
2. Review of Job Training Task Force Report
3. Reports from other Committees

III. New Business

Agenda item I will be closed to the public.

[FR Doc. 86–28902 Filed 12–23–86; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Extension of Public Comment Period on the Proposed Intertie Access Policy and the Draft Intertie Development and Use Environmental Impact Statement

AGENCY: Bonnville Power Administration (BPA), DOE.

ACTION: Extension of public comment period.

SUMMARY: In response to public inquiries and comments, BPA is extending the public comment period on both the Proposed Intertie Access Policy and the Draft Intertie Development and Use Environmental Impact Statement (51 FR 39904, November 3, 1986).

DATES: The comment period will end at 5 p.m., January 16, 1987.

ADDRESS: Written comment should be submitted to Ms. Donna L. Geiger, Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Danley, Public Involvement office, at the address listed above, 503–230–3478. Oregon callers may use 800–452–8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800–547–6048. Information may also be obtained from:

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551;

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211, East Seventh Avenue, Eugene, Oregon 97401, 503–687–6952;

Mr. Wayne Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2516;

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060;

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509–662–4377, extension 379;

Mr. Terry Esvelt, Puget Sound Area Manager, 415 First Avenue North, Room 250, Seattle, Washington 98109, 206–442–4130;

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–522–6226;

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706; and

Mr. Friederic D. Rettenmund, Boise District Manager, Room 376, 550 West Fort Street, Boise, Idaho 83724, 208–334–9137.

Issued in Portland, Oregon, on December 19, 1986.

Roger E. Seifert,

Deputy Assistant Administrator, Bonneville Power Administration, Washington, DC Office.

[FR Doc. 86–29086 Filed 12–23–86; 8:54 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. CP83–14–123]

Northern Natural Gas Co., Division of Internorth Inc.; Request for Public Comment

December 19, 1986.

On December 8, 1986, the U.S. Court of Appeals for the District of Columbia Circuit remanded the record in *Northern Natural Gas Company* v. *F.E.R.C.*, 780 F.2d 59 (D.C. Cir. 1985), *on rehearing en banc*, No. 84–1516, to the Federal Energy Regulatory Commission. Under review in that proceeding are two Commission orders: *Northern Natural Gas Company*, Docket No. CP83–14–000, "Order Approving Flexible Rates," 27 FERC ¶ 61,299 (1984), and *Northern Natural Gas Company*, Docket No. CP83–14–039, "Order Denying Rehearing," 28 FERC ¶ 61,230 (1984).

In the orders under review, the Commission granted Northern Natural Gas Company, Division of Internorth Inc. (Northern) a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act, 15 U.S.C. 717 f(c), to sell natural gas under two new rate schedules at flexible, discount rates to existing customers with alternate fuel capability. The Commission conditioned the certificate to require that Northern credit to its non-discount customers all fixed costs recovered by the discount sales until Northern's next rate case.

In *Northern Natural* v. *F.E.R.C.*, a panel of the court held that the revenue crediting requirement fell outside the scope of the Commission's authority in a section 7 certification proceeding as delineated by the court's opinion in *Panhandle Eastern Pipeline Company* v. *F.E.R.C.*, 613 F.2d 1120 (D.C. Cir. 1979), *cert. denied*, 449 U.S. 889 (1980). The issue before the *en banc* court on rehearing is whether the court should continue to adhere to its decision in *Panhandle* that the Commission may not, when issuing a certificate, use its conditioning authority under section 7(e) of the Natural Gas Act to alter rates previously approved by the Commission for customers that will not receive service under that certificate.

The court's order directs the Commission to respond to the following questions regarding Northern's application to implement its discount, flexible rate sales program for existing customers:

1. Whether the Commission has jurisdiction pursuant to 7 of the Natural Gas Act to entertain petitioner's application or whether such an application must be filed pursuant to 4 of the Act.

2. Whether petitioner's application sought authorization to provide a new sale or service and, if so, what new sale or service would be provided pursuant to that authorization.

3. What criteria the Commission employs in determining whether an application submitted pursuant to 7 seeks authorization to provide a new sale or service.

4. If the Commission determines that it may entertain an application pursuant to 7 for a reason other than that the provision of a new sale or service is involved, what criteria are used in making that determination.

The court's order suggests that the Commission, prior to preparing its responses, invite comment as to whether the Commission has jurisdiction pursuant to section 7 of the Natural Gas Act to entertain Northern's application. Accordingly, the Commission invities all interested persons to submit written comments, views, and arguments on the issues raised by the court's questions. Since the court's order directs the Commission to respond by February 17, 1987, all comments must be received by the Commission by 4:30 p.m., January 15, 1987, to allow time for their consideration.

Comments must be submitted to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and reference Docket No. CP83–14–123. An original and 14 copies should be filed.

All comments will be placed in the public file for Docket No. CP83–14–123 and available for public inspection in the Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, DC., during regular business hours.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–28924 Filed 12–23–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER87–59–000 et al.]

San Diego Gas & Electric Co. et al.

December 18, 1986

Take notice that the following filings have been made the Commission:

1. San Diego Gas and Electric Co.

[Docket No. ER87–59–000]

Take notice that on December 5, 1986 San Diego Gas and Electric Company (SDG&E) tendered for filing Amended Exhibit A to the Interchange Agreement between SDG&E and Deseret Generation and Transmission Cooperative (Deseret).

In addition, SDG&E tendered for filing an Amended Exhibit A as supplements to the following Rate Schedules:

(1) Interconnection and Exchange Agreement with Imperial Irrigation District (IID); Supplement No. 1 to Supplement No. 6 to Rate Schedule FERC No. 65.

(2) Interconnection Agreement with Public Service Company of New Mexico

(PNM); Supplement No. 2 to Supplement No. 1 to Rate Schedule FERC No. 66.

(3) Power Coordination Agreement with Arizona Public Service Company (APS); Supplement No. 1 to Rate Schedule FERC No. 70.

Amended Exhibit A provides that incremental fuel cost is to be based on current, rather than historical, fuel expenses.

SDG&E requests Waiver of the Commission's prior notice requirements and an effective date of November 1, 1986 for each Amended Exhibit A.

Copies of this filing were served upon the Public Utilities Commission of the State of California, Deseret, IID, PNM and APS.

Comment date: December 31, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Boston Edison Co.

[Docket No. ER87-159-000]

Take notice that on December 15, 1986, Boston Edison Company (Boston Edison) of Boston, Massachusetts, submitted Supplement 1 to its Rate Schedule No. 68 for the sale of unit power from its Pilgrim Nuclear unit to Commonwealth Electric Company (Commonwealth). The purpose of this filing is to implement Section C-6.3.1 of the Unit power contract to charge for decommissioning charges.

Boston Edison requests waiver of the sixty day notice period. Boston Edison states that copies of this filing have been served on Commonwealth and on the Massachusetts Department of Public Utilities.

Comment date: December 31, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Bolston Edison Co.

[Docket No. ER87-160-000]

Take notice that on December 15, 1986, Boston Edison Company (Boston Edison) of Boston, Massachusetts, submitted Supplement 1 to its Rate Schedule No. 113 for the sale of unit power from its Pilgrim Nuclear unit to Reading Municipal Light Department (Reading). The purposes of this filing is to implement Section C-6.3.1 of the Unit power contract to charge for decommissing charges.

Boston Edison requests waiver of the sixty day notice period. Boston Edison states that copies of this filing have been served on Reading an d on the Massachusetts Department of Public Utilities.

Comment date: December 31, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Kansas Gas and Electric Co.

[Docket No. ER86-696-001]

Take notice that Kansas Gas and Electric Company (KG&E) on November 10, 1986 tendered for filing additional data with respect to a Settlement Agreement and proposed Transmission Service Agreement superseding FERC Rate Schedule No. 157 between KG&E and the City of Girard, Kansas (City).

This filing is necessary as a result of a deficiency letter issued by the Director of the Division of Electric Power Application Review.

Copies of the filing were served upon the City of Girard, Kansas and the Utilities Division of the Kansas Corporation Commission.

Comment date: December 31, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-28872 Filed 12-23-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP87-128-000, et al.]

Transcontinental Gas Pipe Line Corp., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Transcontinental Gas Pipe Line Corp.

[Docket No. CP87-128-000]

December 17, 1986.

Take notice that on December 15, 1986, Transcontinental Gas Pipe Line Corporation (Applicant), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP87-128-000 an application pursuant to section 7 of the natural Gas Act, as amended, and the rules and regulations of the Federal Energy Regulatory Commission for a limited-term certificate of public convenience and necessity, with pre-granted abandonment authority, authorizing Applicant to transport natural gas to its distribution customer, Union Gas Company (Union), for the account of Carbonaire Co., Inc. (Carbonaire), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Specifically, Applicant is requesting authorization to transport to Union on behalf of Carbonaire, quantities of natural gas up to 4,000 dt equivalent of natural gas per day pursuant to a transportation agreement among Transco, Carbonaire and Union.

It is explained that Carbonaire would purchase the gas to be transported hereunder from Transco Energy Marketing Company (TEMCO) and/or Mississippi Fuel Gas Company (Mississippi Fuel), each of which can deliver gas to Applicant. Applicant indicates that pursuant to the transportation agreement, Applicant would receive the gas at the existing points of interconnection between Applicant and the TEMCO producer-sellers and/or Mississippi Fuel's delivery point, and would deliver equivalent quantities (less quantities retained for compressor fuel and line loss make-up) at the existing point of delivery to Union at Palmerton near Wind Gap, Monroe County, Pennsylvania, and that Union would in turn deliver such gas to Carbonaire for use in its production facilities in Palmerton, Pennsylvania (Palmerton facilities).

Applicant states that its Compressor Station No. 65, located on its main line at the Louisiana-Mississippi border, represents the terminu of its gas production area and the beginning of the market area. Applicant indicates that the proposed transportation from Station No. 65 north to Union would be on a firm basis and from south of Station No. 65, in the production area, would be on an interruptible basis.

Applicant avers that the instant application is closely related to its proceeding in Docket No. CP86-747-000, wherein Applicant was authorized to transport up to the dt equivalent of 3,000 Mcf of gas per day for New Jersey Zinc Company, Inc. (New Jersey Zinc), on a firm basis. It is indicated that Carbonaire's Palmerton facilities are located at, and totally enclosed within, New Jersey Zinc's plant at Palmerton, which furnished Carbonaire with a variety of services, including steam, water and elvcticity, but not natural gas which Carbonaire requires as a feedstock for the production of carbon dioxide and ammonia.

It is stated that absent transportation by Applicant of a reliable supply of economically priced gas purchased by Carbonaire from producers or marketers, feedstock costs will force the closure of the Palmerton facilities. As in the proceeding in Docket No. CP86-747-000, Applicant avers that it does not view its request for authority to transport gas for Carbonaire as establishing some type of precedent with regard to the method of awarding available capacity and priority of transportation service on Applicant's system in the context of Order No. 436. Rather, Applicant states that it views the instant application as a solution to the unique situation in which Carbonaire finds itself.

For the firm transportation downstream of Station No. 65, Applicant proposes to charge Carbonaire initially the maximum rates and charges set forth in Rate Schedule FT, accepted subject to refund in Docket No. RP87-9-000. It is indicated that the maximum FT rate includes a monthly demand charge of $3.20 per dt equivalent of gas and a charge of 14.4 cents for each dt equivalent of gas transported, plus 3.6 percent fuel retention. Applicant also indicates that all transportation upstream of Station No. 65, which is interruptible, would be based initially upon the maximum rates and charges applicable to Applicant's Part 284 transactions, accepted subject to refund in Docket No. RP86-111-000. It is indicated that such rate is 2.4 cents per dt equivalent of gas for each 25-miles increment of haul with a minimum charge of 4.8 cents per dt equivalent of gas. Applicant indicates that it would also collect the current Gas Research Institute surcharge. For gas received in the production area and delivered to Union, Transco states that it would initially retain 6.6 percent of the quantities for fuel and line loss make-up.

It is averred that the transportation agreement provides for a limited term expiring on November 15, 1990. Applicant requests pre-granted authority to abandon the transportation service on such date. However, if during the term Carbonaire should discontinue any of the processes at the Palmerton facilities and its gas requirements be reduced accordingly, Applicant requests pre-granted authority to then abandon the service to the extent of such reduction. And, if during the term Carbonaire's Palmerton facilities should cease operation, Applicant requests pre-granted authority to abandon the service as of the date of such cessation of operation.

It is indicated that no additional facilities are required to render the proposed firm transportation service. Applicant indicates that in Docket No. CP86-406-000, authorization was issued permitting and approving partial abandonment of service to Union, which reduced Union's firm Rate Schedule CD-3 allocation from 19,560 dt equivalent of gas per day to 10,350 dt equivalent of gas per day. Such reduction furnishes more than adequate capacity to accommodate the maximum 4,000 dt equivalent per day transportation service proposed herein.

Applicant further states that by filing the subject application, it is not electing "non-discriminatory access" as such term is described and defined in §§ 284.8(b) and 284.9(b) of the Commission's Regulations (promulgated in Order No. 436).

Comment date: December 31, 1987, in accordance with Standard Paragraph F at the end of this notice.

Texas Gas Transmission Corp.

[Docket No. CP87-114-000]

December 16, 1986

Take notice that on December 8, 1986, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP87-114-000 a request pursuant to §§ 157.205 and 157.212 of the Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) to add two (2) receipt points to serve Consolidated Gas Supply Corporation (Consolidated), under the authorization issued to it in Docket No. CP82-407-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas states one new point of receipt is located at the existing interconnection between Texas Gas's and Texas Eastern Transmission Corporation's (Texas Eastern's) pipeline facilities in Jefferson Davis Parish, Louisiana (Iowa Point), and the second new point of receipt is located at the existing interconnection between Texas Gas's and Texas Eastern's pipeline facilities in Evangeline Parish, Louisiana (Evangeline Point), as more fully described in the amendment to the transportation agreement between Consolidated and Texas Gas.

Texas Gas is presently authorized to transport up to 50,000 Mcf per day of natural gas on a best-efforts interruptible basis for Consolidated, pursuant to a Transportation Agreement dated March 20, 1978, and a Certificate of Public Convenience and Necessity issued August 22, 1978, in Docket No. CP78-331-000. Texas Gas further states the addition of these two receipt points will not affect the quantity of natural gas transported. Texas Gas asserts that such natural gas will be used by Consolidated as part of its system supply.

Comment date: February 2, 1987, in accordance with Standard Paragraph G at the end of this notice.

3. ANR Pipeline Co.

[Docket No. CP87-127-000]

December 18, 1986.

Take notice that on December 2, 1986, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP87-127-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing greater flexibility for an existing exchange and transportation and a new transportation service on behalf of Midwestern Gas Transmission Company (Midwestern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR states that it presently provides a natural gas exchange service on behalf of Midwestern pursuant to a contract dated July 17, 1967, certificated by the Federal Power Commission in Docket No. CP66-109, and filed as Rate Schedule X-1 of ANR's FERC Gas Tariff Original Volume No. 2.

ANR states that pursuant to the existing exchange service Midwestern may deliver up to 30,000 Mcf of natural gas per day from its northern system to ANR at Marshfield, Wisconsin, and ANR exchanges such volumes into Midwestern's southern system near Joliet in Will County, Illinois.

ANR proposes to continue the exchange of system supply gas (exchange gas) and to transport and exchange volumes (transportation gas) for Midwestern, in each case from Midwestern's northern system at Marshfield, Wisconsin, to Midwestern's southern system in Will County, Illinois. The aggregate maximum daily quantity on each day shall be the lesser of 30,210 dekatherm (dt) equivalent or a quantity of natural gas equal to the difference between ANR's contract demand under Midwestern's Rate Schedule CD-2 and ANR's purchases on that day under Midwestern's Rate Schedule CD-2; the mix of exchange gas and transportation gas on each day to be determined by Midwestern. ANR proposes to charge Midwestern 5.9 cents per dt equivalent of natural gas for the volumes of

transportation gas, and to retain 1.9 percent of such volumes for fuel and use. The exchange of exchange gas would continue to be performed on a fee-free basis.

ANR also proposes to provide transportation and exchange services on behalf of Midwestern incident to Midwestern's transportation for Minnegasco, Inc. ANR proposes to transport for Midwestern from Midwestern's southern system in Will County, Illinois, to its northern system at Marshfield, Wisconsin, up to 50,385 dt equivalent of natural gas per day, for which ANR proposes to charge Midwestern 4.4 cents per dt equivalent transported.

Comment date: January 8, 1987, in accordance with Standard Paragraph F at the end of this notice.

4. Midwestern Gas Transmission Co.

[Docket No. CP87-106-000]

December 18, 1986.

Take notice that on December 2, 1986, Midwestern Gas Transmission Company (Midwestern), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP87-106-000 an application for a certificate of public convenience and necessity pursuant to sections 7(b) and 7(c) of the Natural Gas Act authorizing firm and interruptible transportation services and permission to abandon service of certain contract demand sales volumes, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Midwestern states that it proposes to render a firm transportation service for Minnegasco, Inc. (Minnegasco) of the dekatherm (dt) equivalent of 50,000 Mcf of natural gas per day from the point of interconnection of Midwestern and TransCanada PipeLines, Ltd. (TransCanada) near Emerson, Manitoba (the Emerson Receipt Point), to a point on Midwestern's northern system near Cambridge, Minnesota (the Delivery Point). Midwestern also states that it proposes to render an interruptible transportation service for Minnegasco of volumes of natural gas containing up to 111,000 dt equivalent of natural gas per day. For such interruptible service Midwestern states that natural gas is to be made available by Minnegasco at either the Emerson Receipt Point or at the interconnection of Midwestern and ANR Pipeline Company (ANR) near Marshfield, Wisconsin (the Marshfield Receipt Point), and is to be redelivered by Midwestern at the Delivery Point. In addition, Midwestern proposes to construct and operate a tap to deliver gas to Minnegasco on its existing 24-inch line near Cambridge, Isanti County, Minnesota, at an estimated cost of $45,000.00.

For the service proposed herein, Midwestern proposes to charge Minnegasco an initial rate of $2.54 per dt equivalent as the monthly demand charge for the firm transportation service and a commodity rate of 4.07 cents per dt equivalent actually delivered, fuel and use costs, and appropriate revenue credits and gas supply refunds. Midwestern also proposes a minimum monthly bill that provides for a minimum monthly commodity charge at a 75 percent load factor, but, Midwestern states, allows credits for volumes transported on an interruptible basis. Midwestern proposes to charge an initial rate for the interruptible transportation service of 12.42 cents per dt equivalent delivered, plus fuel and use costs, and appropriate revenue credits and gas supply refunds.

Midwestern further states that it proposes to reduce its presently authorized firm sale of dt equivalent of 271,000 Mcf of natural gas per day to ANR under Midwestern's Rate Schedule CD-2 to the dt equivalent of 221,000 Mcf of natural gas per day. Midwestern states that this reduction is necessary to provide the proposed firm transportation service to Minnegasco. Midwestern also avers that TransCanada has agreed to reduce its daily contract demand for sales to Midwestern, and ANR has agreed to Midwestern reducing Midwestern's sales obligation under Rate Schedule CD-2 to ANR, by an amount corresponding to 50,000 Mcf of natural gas per day.

Comment date: January 8, 1987, in accordance with Standard Paragraph F at the end of this notice.

5. Midwestern Gas Transmission

[Docket No. CP87-107-000]

December 18, 1986.

Take notice that on December 2, 1986, Midwestern Gas Transmission Company (Midwestern), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP87-107-000 an application for a certificate of public convenience and necessity pursuant to section 7(c) authorizing increased flexibility for existing transportation, increased availability of transportation, and additional interruptible transportation on behalf of ANR Pipeline Company (ANR), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Midwestern states that it seeks authority to provide more flexibility in the transportation for ANR of quantities of natural gas delivered to Midwestern by TransCanada Pipelines Ltd. (TransCanada) at Emerson, Manitoba, and redelivered to ANR by Midwestern at Marshfield, Wisconsin. It is stated that under existing authorizations, all such quantities must be sold by TransCanada either to Midwestern, for resale to ANR under Midwestern's Rate Schedule CD-2, or directly by TransCanada to ANR with transportation supplied by Midwestern under Rate Schedule T-2. Midwestern here proposes to provide transportation for ANR, from Emerson to Marshfield, of gas purchased by ANR from sellers other than TransCanada. Midwestern further proposes to increase the quantity of natural gas that ANR can designate as transportation (within the 321,000 Mcf of natural gas per day capacity currently available to ANR) from the current firm dekathern (dt) equivalent of 50,000 Mcf of natural gas per day available under Midwestern's presently existing Rate Schedule T-2, to that firm quantity plus "priority interruptible" transportation quantity of 151,050 dt equivalent of natural gas per day. It is stated that at no time would deliveries to ANR of sales, firm transportation, and "priority interruptible" transportation quantities exceed ANR's firm capacity entitlement. Finally, Midwestern proposes to allow ANR further interruptible overrun transportation rights of 50,350 dt equivalent of natural gas per day with no priority over any other interruptible transporters on the northern system.

Midwestern proposes to charge ANR Midwestern's effective 100 percent load factor daily demand rate for "priority interruptible" and interruptible transportation services. Midwestern further proposes to credit charges to ANR under Midwestern's Rate Schedule CD-2 a portion of the revenues received.

Comment date: January 8, 1987, in accordance with Standard Paragraph F at the end of this notice.

6. Southern Natural Gas Co.

[Docket No. CP87-61-000]

December 18, 1986.

Take notice that on November 10, 1986, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP87-61-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing Southern to transport natural gas on behalf of West Point Pepperell, Atlanta Gas Light Company (Atlanta) and Alabama Gas Corporation (Alagasco), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern proposes to transport up to 0.65 billion Btu equivalent of gas per day for West Point Pepperell to West Point Pepperell's plant in LaGrange, Georgia and up to 6.8 billion Btu equivalent of gas per day for West Point Pepperell to West Point Pepperell's plants in Fairfax, Langdale, Lanett, Shawmut and Riverview, Alabama. Additionally, Southern proposes to transport up to 1.0 billion Btu equivalent of gas per day for Atlanta, acting as agent for West Point Pepperell, to West Point Pepperell's plants in Milledgeville and Newnan, Georgia, and up to 6.4 billion Btu equivalent of gas per day for Alagasco acting as agent for West Point Pepperell, to West Point Pepperell's plants in Opelika, Fairview, and Lanier, Alabama.

It is stated that gas purchased by West Point Pepperell from SNG Trading, Inc., would be delivered to Southern for transportation at numerous existing points on Southern's contiguous pipeline system in offshore Louisiana, Louisiana, Alabama and Mississippi. Southern indicates that it would redeliver the gas to West Point Pepperell at existing interconnections in Troup County, Georgia (LaGrange Transportation) and in Fairfax, Shawmut, Lanett, Langdale and Riverview, Alabama (Fairfax Transportation). Southern states that it would redeliver the gas to Atlanta at an existing interconnection in Paldwin County, Georgia, and to Alagasco at various existing interconnections in the general areas of Opelika and Fairfax-Shawmut, Alabama.

Southern requests that the proposed transportations be authorized for a term of one year from the date of any Commission order issued herein.

Southern would charge Atlanta 48.2 cents per million Btu equivalent for the transportation service except that it would charge 77.6 cents per million Btu equivalent for volumes transported and redelivered by Southern on any day to Atlanta under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's Rate Schedule OCD on such day to Atlanta, exceeded the daily contract demand of Atlanta.

Southern would charge Alagasco 39.9 cents per million Btu equivalent for the transportation service except that it would charge 64.9 cents per million Btu equivalent for volumes transported and redelivered by Southern on any day to Alagasco under any and all transportation agreements with Southern (excluding that certain long-term transportation agreement among Southern, Alagasco, and Alabama Interstate Supply dated October 1, 1984), when added to the volumes of gas delivered under Southern's OCD Rate Schedule on such day to Alagasco, exceeded the daily contract demand of Alagasco.

Southern would charge West Point Pepperell 77.8 cents per million Btu equivalent for the proposed transportation of up to 0.65 billion Btu equivalent of gas (LaGrange Transportation), and 64.9 cents per million Btu equivalent for the proposed transportation of up to 6.8 billion Btu equivalent of gas (Fairfax Transportation).

It is stated that Southern would also collect from West Point Pepperell, Atlanta, and Alagasco the GRI surcharge of 1.35 cents per Mcf, or such other GRI funding unit or surcharge as the Commission or other governmental authority may from time to time by order of general or specific applicability or otherwise prescribe or approve.

Southern indicates that all transportation services would be conditioned upon the availability of capacity sufficient for Southern to perform the proposed services without detriment or disadvantage to Southern's obligations to its customers.

Comment date: January 8, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-28873 Filed 12-23-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Proposed Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of special procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of a total of $812,491.16 (plus accrued interest) obtained from Kalama Chemical, Inc. (Case No. HEF-0507), Landsea Holding Company (Case No. HEF-0573), and Oil-Tex Petroleum Co., Inc./David E. Myres (Case No. KEF-0082). The OHA has tentatively determined that the funds will be distributed in accordance with the DOE's Statement of Modified Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986).

DATE AND ADDRESS: Comments must be filed in duplicate within 30 days from the date of publication of this notice in the Federal Register and should be addressed to: **Federal Register** and should be addressed to: Office of

Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should display a reference to the applicable case number.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 100 Independence Avenue, SW. Washington, DC. 20585 (202) 252–2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy (DOE), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute monies obtained from Kalama Chemical, Inc., Landsea Holding Company, and Oil-Tex Petroleum, Co./David E. Myres. These firms remitted monies to the DOE to settle possible pricing violations with respect to their sales of crude oil. The firm's payments are being held in an interest-bearing escrow account pending distribution by the DOE.

The DOE has tentatively decided that distribution of the monies received from the three consent order firms will be governed by the DOE's Statement of Modified Restitutionary Policy in Crude Oil Cases, 51 F.R 27899 (August 4, 1986). That policy states that crude oil overcharge monies will be divided among the states, the Federal Government, and eligible purchasers of petroleum products.

Under the plan we are proposing, refunds to the states would be distributed in proportion to each state's consumption of petroleum products. Refunds to eligible purchasers would be based on the number of gallons of crude oil or refined products which they purchased and the extent to which they can demonstrate injury.

Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments must be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1:00 p.m. and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: December 17, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Names of Firm:
Kalama Chemical, Inc.
Landsea Holding Company
Oil-Tex Petroleum Co., Inc./David E. Myres

Dates of Filing:
August 8, 1984
March 18, 1985
November 19, 1986

Case Numbers:
HEF–0507
HEF–0573
KEF–0082

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. *See* 10 CFR Part 205, Subpart V. These procedures enable the DOE to refund monies to those injured by alleged violations of the DOE pricing regulations.

The ERA has filed Petitions for the Implementation of Special Refund Procedures with respect to funds obtained from Kalama Chemical, Inc., Landsea Holding Company, and Oil-Tex Petroleum Company/David E. Myres. To date, these three firms have remitted to the DOE a total of $812,491.16 pursuant to consent orders entered into by the firms and the DOE.[1] As of October 31, 1986, $80,920.10 in interest has accrued on that amount. This Proposed Decision sets forth the OHA's tentative plan to distribute these funds. Comments are solicited.

The general guidelines which the OHA may use to formulate and implement a plan to distribute funds are set forth in 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of alleged or adjudicated violations or cannot ascertain the amount of each person's injury. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

We have considered the ERA's requests to implement Subpart V procedures with respect to the monies received from the three firms and have determined that such procedures are appropriate.

These three cases involve alleged violations of the crude oil reseller regulations, 10 CFR Part 212, Subparts F and L, or the entitlements regulations, 10 CFR 211.66, 211.67 and 211.69. They are therefore subject to the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, issued on July 28, 1986. 51 FR 27899 (August 4, 1986) (hereinafter referred to as the "MSRP"). The MSRP was issued in conjunction with the approval by the United States District Court for the District of Kansas of a settlement agreement in *The DOE Stripper Well Litigation*, M.D.L. 378.[2] On August 8, 1986, the OHA announced its intention to follow the MSRP, 51 FR 29686 (August 20, 1986).[3]

The MSRP provides that a refund process will be employed for restitution of alleged crude oil violation amounts held in escrow by the DOE or received in the future, using the special refund procedures codified at 10 CFR Part 205, Subpart V. Under that process, the OHA will accept and process refund applications from persons who claim they were injured by alleged crude oil violations. Up to 20 percent of the alleged crude oil violation amounts may be reserved initially for refunds to claimants who prove injury. The MSRP calls for the remaining 80 percent of the funds to be disbursed to the state and federal governments for indirect restitution. After all valid claims are paid, any remaining funds from the reserve will also be divided between the state and federal governments. The federal government's share of the funds will ultimately be deposited into the general fund of the Treasury of the United States.

The OHA will institute a claims process, pursuant to the MSRP, for the $812,491.16 involved in these proceedings. We have decided to reserve initially the full 20 percent—$162,498.23—of the alleged crude oil violation amounts for direct refunds to claimants, in order to ensure that sufficient funds will be available for refunds to injured persons. The amount of the reserve may be adjusted later if circumstances warrant such action. In order to receive a refund from the crude oil funds involved in this Decision, we propose that a claimant will be required to file an application for refund. The application should be clearly labelled "Application for Crude Oil Refund" and should contain: (1) The name or names of the applicant's business and a short description of the applicant's use of petroleum products; (2) a statement identifying the petroleum products which the applicant purchased during the period of crude oil price controls (August 19, 1973 through January 27, 1981), the number of gallons of each product purchased, and the total number of gallons on which the applicant bases its claim; (3) a description of the method by which the applicant determined its purchase volumes, and a description of its method of estimation if the applicant used estimates to determine its purchase volumes; (4) a showing that the applicant was injured by the alleged overcharges; and (5) a statement that neither the applicant, its parents, subsidiaries, affiliates, successors nor assigns has waived any right it may have to receive a refund in the case.[4] *MAPCO, Inc.*, 15 DOE ¶ _____, No. HEF–0577 (November 7, 1986).

The OHA will evaluate applications for refund from purchasers of refined petroleum products using methods similar to those which the OHA has used to evaluate claims based on refined product overcharges pursuant to 10 CFR Part 205, Subpart V. *Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 at 88,869 (1986) (*Mountain Fuel*). As in non-crude oil cases, applicants will be required to document their purchase volumes and to prove that they were injured by the alleged overcharges (i.e., that they did not pass the overcharges on to their own customers). *Id.* However, end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to be injured. *Greater Richmond Transit Company*, 15 DOE ¶ 85,028 (1986). The standards for showing injury which the OHA has developed in analyzing and deciding non-crude oil claims will also apply to claims based on crude oil overcharges. *See, e.g., Dorchester Gas Corp.*, 14 DOE ¶ 85,240 (1986).

Refunds will be calculated on the basis of a per gallon refund amount derived by dividing the crude oil overcharge monies received to date in these three cases ($812,491.16) by the total U.S. consumption of petroleum products during the period of federal petroleum price controls.[5] *Mountain Fuel*, 14 DOE at 88,867–68. The volumetric refund amount in each of these three proceedings is set out in the Appendix to this Decision and Order. The total volumetric refund amount for the three proceedings is $0.00000040202 per gallon, to which interest will be added.

We propose that the remaining 80 percent of the funds—$649,992.93—be immediately disbursed to the state and federal governments for indirect restitution. We propose to direct the DOE's Office of the Controller to segregate this amount and distribute $162,498.23 plus appropriate interest to the states and $487,494.70 plus appropriate interest to the federal government.[6] The share or ratio of the funds in the state account which each state will receive if these procedures are adopted, based on each state's consumption of petroleum products during the period of price control, is listed in Exhibit H to the Final Settlement Agreement in the *Stripper Well Litigation, reprinted in* 6 Fed. Energy Guidelines ¶ 90,509 at 90,687.

Before taking the action we have proposed in this Decision, we intend to publicize our proposal and solicit comments on it. Comments regarding the tentative distribution process set forth in this Proposed Decision should be filed with the OHA within 30 days of publication in the **Federal Register**.

It Is Therefore Ordered That:

The refund amounts remitted by Kalama Chemical, Inc., Landsea Holding Company, and Oil-Tex Petroleum Co., Inc./David E. Myres shall be distributed in accordance with the foregoing Decision.

APPENDIX

OHA case	Name of firm	Consent order No.	Date of filing	Principal remitted as of Oct. 31, 1986	Volumetric refund
HEF–0507	Kalama Chemical, Inc	N00S80474	Aug. 8, 1984	[1] $697,491.16	$0.00000034512
HEF–0573	Landsea Holding Company	940X00220	Mar. 18, 1985	55,000.00	.00000002721
KEF–0082	Oil-Tex Petroleum Co., Inc./David E. Myres.	6A0X00312	Nov. 19, 1986	60,000.00	.00000002969
Total				812,491.16	.00000040202

[1] Kalama's total consent order amount is $1,000,000.00. The amount still owed is $302,508.84 plus interest on the unpaid balances.

[FR Doc. 86–28867 Filed 12–23–86; 8:45 am]

BILLING CODE 6450–01–M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures..

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $100,000 obtained as the result of a Consent Order which the DOE entered into with the Winston Refining Company (currently Amber Refining, Inc.) located in Forth Worth, Texas.

DATE AND ADDRESS: Applications for refund of a portion of the Winston Consent Order fund must be filed within 90 days of publication of this notice in the **Federal Register** and should be addressed to: Winston Refining Company Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–2860.

[1] One of the firms, Kalama Chemical, Inc., is making quarterly payments to the DOE with a final payment due on October 1, 1988. As noted in the Appendix, Kalama has an outstanding liability of $302,508.84 plus interest. We propose that these funds, when remitted to the DOE, be disbursed pursuant to the procedures proposed in this Decision.

[2] For a detailed discussion of the events in the Stripper Well Litigation which brought about the MSRP, see *Stripper Well Exemption Litigation*, 14 DOE ¶ 85,382 (1986).

[3] The OHA is evaluating comments on that notice.

[4] Pursuant to the Settlement Agreement, escrow funds were established for refiners, resellers, retailers, agricultural cooperatives, airlines, privately owned utilities, surface transporters, and rail and water transporters. Firms which claim refunds for crude oil overcharges from those escrow funds waive their rights to receive refunds from Subpart V cases based on alleged oil overcharges.

[5] It is estimated that 2,020,997,335,000 gallons of petroleum products were consumed in the United States during the period August 1973 through January 1981. *Mountain Fuel*, 14 DOE at 88,868 n.4 (1986).

[6] This distribution reflects a ratio of 25 percent to the state governments and 75 percent to the federal government. Under the terms of the Stripper Well Settlement Agreement, the states received an advance of $200 million from funds which would otherwise have been disbursed to the DOE. In order to reimburse the DOE for this advance, the Settlement Agreement provides that for amounts which the OHA transfers to the state and federal governments in excess of $100 million, the DOE shall receive 75 percent and the states shall receive 25 percent. This arrangement shall continue until the OHA has distributed the next $400 million under the 75/25 arrangement. Settlement Agreement, paragraph II.B.3.c.ii.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order, set forth below. The Decision relates to a consent order entered into by Winston Refining Company (Winston) of Forth Worth, Texas, which settled possible pricing violations in the firm's sales of covered petroleum products to customers during the August 19, 1973 through January 27, 1981 consent period.

A proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the Winston consent order funds was issued on October 2, 1986. 51 FR 36285 (October 9, 1986).

As the Decision and Order published with this Notice indicates, applications for refunds may now be filed by customers who purchased covered products from Winston during the audit period. Applications will be accepted provided they are filed no later than 90 days after publication of this Decision and Order in the **Federal Register**. The specific information required in an application for refund is set forth in the Decision and Order.

Dated: December 17, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Oder of the Department of Energy

Special Refund Procedures

Name of Firm: Winston Refining Company
Date of Filing: July 19, 1985
Case Number: HEF–0589

Under the procedural regulations of the Department of Energy, the Economic Regulatory Administration (ERA) of the DOE may petition the Office of Hearings and Appeals (OHA) to formulate and implement special refund procedures in order to remedy the effect of alleged violations of the DOE price and allocation regulations. See 10 CFR Part 205, Subpart V. The ERA filed such a petition on July 19, 1985 requesting that OHA establish special refund procedures for the distribution of monies received pursuant to a consent order entered into by the DOE and Winston Refining Co. (Winston) of Forth Worth, Texas.[1]

[1] Reference in this proceeding to Winston Refining Company also refer to Amber Refining, Inc. and Forth Worth Refining Co. (Winston's successor and predecessor firms respectively).

I. Background

Winston is a "refiner" of crude oil as that term was defined in 10 CFR 212.31. During the relevant time period, Winston was subject to the Mandatory Petroleum Price Regulations, and specifically to the refiner price rule provisions of 10 CFR Part 212, Subpart E. An ERA audit of Winston's business records uncovered probable violations of the price regulations with respect to Winston's sales of refind petroleum products during the period from August 19, 1973 through January 27, 1981 (the audit period). In order to settle all claims and disputes between Winston and the DOE regarding Winston's compliance with DOE price regulations in sales of covered products during the audit period (hereinafter referred to as consent order period), the DOE and Winston entered into a consent order, effective December 30, 1983, in which Winston agreed to pay $100,000 to the DOE.[2] According to the ERA's Petition, Winston has complied with the terms of the consent order. The $100,000 paid by Winston is currently being held by the U.S. Treasury in an interest-bearing escrow account pending distribution by the DOE.

On October 2, 1986, we issued a Proposed Decision and Order in which we determined that it was appropriated to establish a special refund proceeding with respect to the Winston consent order fund. In that Proposed Decision, we tentatively set forth procedures to distribute refunds to parties which were injured by Winston's alleged pricing violations in sales of refined petroleum products during the consent order period. Specifically, we proposed to disburse funds in the first stage of the proceeding to claimants who could demonstrate that they were adversely affected by Winston's alleged overcharges during the consent order period. We indicated that we would consider claims from any individual or firm that could show that it purchased covered products from Winston during the consent order period. We also stated that the money available after payment of refunds to eligible claimants in the first stage would be distributed during a second-stage process and we pointed out that the ultimate disposition of those second stage funds would not be determined until after completion of the first stage.

The Proposed Decision was published in the **Federal Register** on October 9, 1986 (51 FR 36285), and comments on the proposed refund mechanism were due to be submitted within 30 days of publication. Comments were received from the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island and West Virginia. These comments requested that any monies remaining in the Winston settlement fund after refunds are made to Winston customers which filed meritorious claims be distributed to the states for use in energy-related projects. No comments were received which addressed the proposed mechanics of the refund process itself.

The purpose of this Decision and Order is to establish procedures to be used for filing and processing claims in the first stage of the Winston refund proceeding. This Decision sets forth the information that a purchaser of Winston covered products should submit in order to establish eligibility for a portion of the consent order funds.[3] Any funds remaining after all refund applications have been considered will be disbursed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986, Pub. L. 99–509, Title III, Fed. Energy Guidelines, ¶ 11,700.

II. Jurisdiction

The Subpart V regulations set forth general guideliens by which OHA may formulate and implement a plan of distribution for funds received as a result of enforcement proceedings. It is the DOE policy to use the Subpart V process to distribute such funds. For a detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribution refunds as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981). As we stated in the Proposed Decision, we have determined that a Subpart V proceeding is an appropriate method for distributing the Winston consent order fund. Therefore, we will grant the FRA's petition and assume jurisdiction over

[2] The consent order does not apply to Winston's compliance with the DOE allocation regulations, including the Crude Oil Entitlements Program.

[3] Information in the Winston audit file indicates that three Winston customers, McLean Trucking Company, E–Z Serve Inc., and Energy specialist, Inc., are firms which had corporate affiliations with Winston. On the basis of this information, in the Proposed Decision, we proposed to establish a rebuttable presumption that these firms were not injured by Winston's alleged overcharges and therefore should receive no refund in this proceeding. We have received no comments in opposition to this proposal, and will therefore adopt this presumption. *See Warren Holding Co./Puriton Oil Co.*, 13 DOE ¶ 85,337 (1985). Similarly, we have received no objections to our proposal that Basin Products, Inc., a firm which served as Winston's sales agent during portions of the consent order period, should be excluded from participation in the proceeding. Accordingly, this proposal will be adopted.

the funds received pursuant to the Winston consent order.

III. Refund Procedures

A. Eligible Claimants

In the first stage, refund monies will be distributed to firms and individuals who were injured by Winston's pricing practices during the consent order period. A partial list of former Winston customers is attached to this Decision as an Appendix. In order to be eligible for a refund, each claimant will be required to provide information concerning the volume of Winston covered products it purchased during the consent order period. As in previous Subpart V Decisions, we find that those customers who purchased covered products from Winston during the consent order period for ultimate consumption (end-users) absorbed Winston's alleged overcharges. They will therefore not be required to make a further demonstration of injury in order to receive a refund. In contrast, firms who resold the covered products purchased from Winston (i.e., retailers, wholesalers and refuners, collectively referred to as "resellers") will be required to demonstrate that they did not pass on cost increases implemented by Winston to their own customers. *See, e.g., Office of Enforcement*, 8 DOE ¶ 82,597 (1981). This can be done by showing that during the period covered by the consent order they would have kept their prices at the same level had the alleged overcharges not occurred. While there are a variety of means by which a claimant could make this showing, a reseller should generally demonstrate that at the time it purchased covered products from Winston, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges. In addition, the claimant must show that it had a "bank" of unrecovered costs in order to demonstrate that it did not subsequently recover these costs by increasing its prices.[4] The maintenance of a bank would not, however, automaticaliy establish injury. *See Tenneco Oil Co.*, 10 DOE ¶ 85,014 (1982); *Vickers Energy Corp./Standard Oil Co.*, 10 DOE ¶ 85,036 (1982); *Vickers Energy Corp./Koch Industries, Inc.*, 10 DOE ¶ 85,038 (1982).

In the Proposed Decision, we suggested that resellers which made spot purchases from Winston should be presumed to have suffered no injury. We received no adverse comments on this proposal. Accordingly, we have established a rebuttable presumption that any spot purchaser of Winston's covered products during the consent order period was able to pass through to its customers any overcharges it incurred. We will, however, consider evidence from a spot purchaser which establishes that it was unable to recover the product prices it paid to Winston and the extent to which it was injured by the spot purchase(s). *See Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,200 (1982).

In the Proposed Decision, we indicated our intention to establish a presumption of injury with respect to small claims made by resellers. Under thast presumption, resellers whose refund claims were at, or below a threshold amount of $5,000 would be presumed to have absorbed the alleged overcharges and would not be required to provide further evidence of injury in order to be eligible for a refund. This presumption is based on our belief that with small claims the cost to the firm of gathering evidence of injury could exceed the expected refund and that consequently, without simplified procedures, some injured parties would be effectively denied opportunity to obtain a refund. Since we have received no adverse comments regarding this presumption, we shall adopt it for this proceeding. This presumption will also apply to those firms whose potential claim may exceed the $5,000 threshold but who elect to forego that portion of their claim in excess of $5,000. However, in view of our presumption that spot purchasers were not injured by the alleged Winston overcharges, no threshold will apply to applications filed by spot purchasers, since, regardless of the magnitude of their refund claims, all spot purchases must demonstrate that they absorbed Winston's alleged overcharges.

As we indicated in the Proposed Decision, we will establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in these situations. *See, e.g., Ubon Oil Co.*, 9 DOE ¶82,541 at 85,225 (1982). *See also* 10 CFR 205.286(b)

B. Calculation of Refund Amounts

In the Proposed Decision, we indicated our intention to use a volumetric method to divide the consent order fund among applicants who demonstrate that they are eligible to receive refunds. This method presumes that the alleged Winston overcharges were spread equally over all of the gallons of covered products sold by Winston during the consent order period. We shall adopt this method since we did not receive any adverse comments regarding this subject. The per gallon volumetric factor is equal to the consent order fund divided by the total volume of covered products which Winston sold during the consent order period.[5] In this case, the volumetric factor equals $0.00013 ($100,000 divided by 769,031,896 gallons). Refunds will be calculated by multiplying the volumetric factor by the total volume of the covered products purchased by the applicant during the consent order period deemed eligible for refunds. The interest that has accrued on the money in the escrow account will be added to the refund of each successful claimant in proportion to the size of its refund.

C. Application for Refund Procedures

We have concluded that applications for refunds should now be accepted from parties who purchased covered products during the consent order period and believed they have been injured by Winston's pricing practices. Applications must be filed within 90 days after publication of this Decision and Order in the Federal Register. *See* 10 CFR 205.286. An application must be in writing, signed by the applicant, and specify that it pertains to the Winston Refining Company Consent Order Fund, Case No. HEF–0589.

All applications for refund must be filed in duplicate. A copy of each

[4] Some of the motor gasoline sales covered by the consent order occurred subsequent to the amendments of the reseller/retailer price rule that eliminated the bank requirement for retailers and most resellers. *See* 10 CFR 212.93(a)(2), 44 FR 42542 (July 19, 1979) (effective July 15, 1979); 45 FR 29546 (May 2, 1980) (effective May 1, 1980); 45 FR 81255 (December 10 1980)). Accordingly, retailers and most resellers will not be required to submit bank information concerning any purchases of motor gasoline they may have made after July 15, 1979 and May 1, 1980, respectively.

[5] The volmetric method, which attributes injury on a uniform basis to each gallon of covered product sold, recognizes that the computation of specific overcharges in individual transactions is extremely difficult. In any event the consent order was intended to resolve the doe allegations by means of a negotiated settlement. A continuation of the attempt to establish specific overcharge amounts would therefore be contrary to the purposes of the consent order. Since the volumetric method places all refund claimants on an equal footing and is relatively easy to administer, previous special refund Decisions have concluded that it is equitable, efficient, and the best general method of distributing refund monies. *Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,198–99 (1982). However, we recognize that the impact on any individual purchaser could have been greater than that estimated using the volumetric factor and ny purchaser may file a refund application based on a claim that it suffered a disproportionate share of the alleged overcharges. *See, Amtel, Inc.*, 12 DOE ¶ 85,073 at 88,233–34 (1984).

application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, 1000 Independence Avenue, SW., Washington, DC. Any applicant who believes that its application contains confidential information must so indicate on the first page of its application and submit two additonal copies of its application from which the information which the applicant claims is confidential has been deleted, together with a statement specifying why any such information is privileged or confidential. Each application must indicate whether the applicant or any person acting on its instructions has filed or intends to file any other application or claim of whatever nature regarding the matters at issue in the underlying Winston enforcement proceeding. Each application must also include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. Section 1001. In addition, the applicant should furnish us with the name, title, and telephone number of a person who may be contacted by the OHA for additional information concerning the application. All applications should be sent to: Winston Refining Company Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585. All applications for refund received within the time limit specified will be processed pursuant to 10 CFR 205.284 and the procedures set forth in this Decision and Order.

In order to assist applicants in establishing eligibility for a portion of the consent order funds, the following subjects should be covered in each application:

A. Each applicant should certify that it purchased covered product(s) from Winston during the consent order period and list its purchase volumes by product for each month of the consent order period for which a refund is claimed.

B. Each applicant should specify how it used the Winston covered product(s) which form the basis for its refund claim—i.e., whether it was a reseller or ultimate consumer.

C. If the applicant is a reseller who wishes to claim a refund in excess of $5,000, it should also

(i) State whether it maintained banks of unrecouped product cost increases from November 1, 1973 through the termination of the applicable banking regulations, and furnish OHA with quarterly bank calculations.

(ii) State whether it or any of its affiliates have filed any other applications for refund in which they have referred to their banks to demonstrate injury.

(iii) Submit evidence to establish that it did not pass on the alleged injury to its customers. For example, a firm may submit market surveys to show that price increases to recover alleged overcharges were infeasible.

D. The applicant should report whether it is or has been involved as a party in any DOE or private section 210 enforcement actions. If these actions have terminated, the applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should briefly describe the action and its current status. Of course, the applicant is under a continuing obligation to keep the OHA informed of any change in status while its application for refund is pending. *See* 10 CFR 205.9(d).

It is Therefore Ordered That:

(1) Applications for refund from the funds remitted to the Department of Energy by Winston Refining Company pursuant to the Consent Order executed on December 30, 1983 may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the Federal Register.

Dated: December 17, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Appendix

Alvarando Oil Company
Advance Petroleum Dist. co.
Alkek Oil Corporation
Astro Gas & Oil, Inc.
D.W. Ball Oil Company
B&B Petroleum Products
Bob-O-Link Oil Company
Bolivar Oil Company
J.H. Briscoe Oil Company
James Browder Oil Company
Marvin Browder Oil Company
R.E. Buckley Oil Co., Inc.
Carroll & Perkins Oil Co.
Christopher Oil Company
Caruthers Oil Co.
Cleburne Oil Co.
County Line Service Station
Dee and Dee Oil Co.
East Texas Petroleum, Inc.
Dixie Petroleum Company
Enderby Gas Company
Erwin Oil Company
Enterprise Products Inc.
Felts Distributing Company
Foremost Petroleum Co. Inc.
Fort Worth Butane Gas Co.
General Fuel Oil Co.
W.L. Gipson
Guthrie Oil Company
Gas house Company
Stratoflex Inc.
Hampton Molasses Company
Hampton Oil Co.
H-M-M Distributing Corp.
Bob Hams Oil Company
Coastal Transport Co., Inc.
Home Petroleum Corporation
Hi-Low Corporation
Tauber Oil Company
Barney Holland Oil Co.
Hollis Distributing Company
Independent Oil Company
Industrial Fuels, Inc.
J-Mc Oil Company
Krum Oil Company
Kemp Oil Company
Lone Star Gas Company
Paul Little Distributing
M&A Petroleum Company
Jack Long
Magic City Petroleum Co., Inc.
Marco Distributors
Michener Oil Co.
M&M Oil Co.
MU-Way Oil Company
Oils Unlimited
Petroleum Industries, Inc.
Petroleum Products Dist.
Pioneer Oil Company
Powell Grain & Gin Co.
Quality Oil Company
Ed Prather
Red Hat oil Company
C.B. Rogers, Jr.
Paul Rogers
Snager Oil Company
Sello Petroleum Co.
Southwest Oil & Gas Co.
Solvent Specialty Co.
Spindor Bros. Tire Co.
Supreme Oil Dist. Co.
Teague Oil Company
Thomas Oil Distributing Company
Thrift Oil Company
Thrift Mart, Inc.
Thunderbird Petroleum Company
United Petroleum Company
Union Texas Petroleum
Western Commercial Transport
Astro, Inc.
Permian Corporation
V.A. Hospital (Dallas)
General Fuel Oil Company
Southern Asphalt Company
Texas Creosote Company
Dallas Power & Light Co.
Texas Electric Service Company
Wright Asphalt Company
Trumbull Asphalt Co.
H.L. Gage
L.P.G., Inc.
Pride Refining, Inc.
Longview Refining Company
Crystal Oil Co.
Wood County Refining Co.
Tenneco Oil Co.
Trinagle Reefineries, Inc.
Vickers Petroleum Company
Sun Oil Company
Humble Oil and Refining Co.
Mobil Oil Corporation
M.K.T. Railroad
C.R.I.&P. Railroad
A.T.&S.F. Railroad
Fort Worth Petroleum Prod. Corp.
Carswell A.F.B.
Exxon Corporation
General Dynamics
Naval Air Station (Grand Prairie)
Continental Oil Company
Grand Forks A.F.B.
Southwest Airmotive
Bell Oil & Gas Co.
Barksdale A.F.B.
H.T. Dodson
Fort Hood
Fort Walters
Sheppard A.F.B.
Biggs Field
VAnce A.F.B.Bob Harris Oil Co.

APPENDIX.—CALCULATION OF RATIOS FOR DISTRIBUTION TO STATES AND TERRITORIES—M.D.L. 378

State	Consumption	Ratio
Alabama	626,803,520	0.01534512450
Alaska	158,047,980	.00386926023
American Samoa	7,275,000	.00017810331
Arizona	418,994,930	.01025764719
Arkansas	519,811,670	.01272579770
California	3,738,318,300	.09154432453
Colorado	439,201,360	.01075233249
Connecticut	683,689,220	.01696259040
Delaware	193,932,730	.00474777469
District of Columbia	97,574,860	.00238877935
Florida	1,887,260,800	.04620307312
Georgia	906,819,880	.02226890961
Guam	60,196,000	.00147368165
Hawaii	280,655,260	.00687087703
Idaho	167,843,790	.00410418057
Illinois	1,878,159,080	.04593129065
Indiana	1,006,156,560	.02463227660
Iowa	532,229,590	.01302980621
Kansas	457,905,310	.01121023378
Kentucky	523,601,010	.01281856663
Louisiana	971,591,210	.02378606310
Maine	300,279,730	.00735131456
Maryland	731,363,020	.01790490359
Massachusetts	1,396,309,100	.03432278036
Michigan	1,391,772,090	.03407274419
Minnesota	706,814,580	.01735286297
Mississippi	557,786,510	.01365548061
Missouri	806,514,320	.01974472423
Montana	184,882,510	.00452621123
Nebraska	301,217,700	.00737427752
Nevada	165,454,200	.00405057600
New Hampshire	190,375,330	.00466068401
New Jersey	1,507,862,710	.03691482302
New Mexico	267,574,460	.00655063871
New York	3,162,994,520	.07743502253
No. Mariana Islands	3,763,000	.00009212409
North Carolina	916,800,700	.02244470625
North Dakota	149,717,090	.00366530709
Ohio	1,534,904,170	.03757684000
Oklahoma	504,488,400	.01235066023
Oregon	404,894,790	.00991245384
Pennsylvania	1,901,863,900	.04656058461
Puerto Rico	389,132,000	.00952655624
Rhode Island	161,953,570	.00396487514
South Carolina	486,978,850	.01192199923
South Dakota	146,053,570	.00357562067
Tennessee	660,920,850	.01618036977
Texas	3,013,545,120	.07377626891
Utah	240,978,330	.00589952410
Vermont	97,782,860	.00239338678
Virgin Islands	186,953,000	.00462586318
Virginia	1,048,324,650	.02566416199
Washington	623,786,920	.01527127344
West Virginia	244,121,480	.00597647330
Wisconsin	718,698,070	.01759484583
Wyoming	166,569,650	.00407788395
Totals	40,847,079,480	1.00000000000

[FR Doc 86-28866 Filed 12-23-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-64007; FRL-3130-7]

Intent To Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to cancel.

SUMMARY: EPA is issuing a notice of intent to cancel certain pesticide registrations under section 6(b) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). The registrations which the Agency intends to cancel are held by registrants whom the Agency, after a good faith effort, has been unable to contact. Persons adversely affected by this notice may request a hearing in accordance with the provisions of 40 CFR Part 164.

DATES: All registrations will be cancelled at the end of 30 days from the date of publication or receipt of this notice by registrants, unless a hearing has been requested by a person adversely affected by this notice, or the Agency is provided with a correct and current address of an affected registrant.

A request for a hearing by an affected registrant or the registrant's correct and current address must be received by the Agency on or before January 23, 1987, or 30 days after receipt by mail by the affected registrant of this notice, whichever is the later date.

A request for a hearing submitted by any other adversely affected person must be received on or before January 23, 1987.

ADDRESS: Hearing requests must be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Stanley J. Austin, Registration Support and Emergency Response Branch, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 716C, Crystal Mall Building #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-4360).

SUPPLEMENTARY INFORMATION: Over the years, EPA has been unable to contact certain pesticide registrants at the addresses on file at the Agency or appearing on current pesticide product labels. EPA's inability to communicate with these registrants impairs the Agency's ability to discharge its statutory mandate to regulate pesticide products and their impact on the environment. Furthermore, it creates an undesirable situation in that some registrants may unknowingly be in violation of the Act and escape burdens assumed by other registrants in compliance with the Act.

Section 6(b) of FIFRA allows the Administrator to issue a notice of intent to cancel a pesticide's registration if that ". . . pesticide or its labeling or other material required to be submitted does not comply with the provisions of this Act. . . ."

Section 3(c)(1)(A) of FIFRA and 40 CFR 162.10(a)(1)(ii) make it a condition of registration that a registrant's address be filed with the Agency and appear on the label of the registrant's pesticide product. In addition, section 12(a)(1)(E) of FIFRA makes it unlawful to distribute, sell, offer for sale, hold for sale, ship, deliver or offer for delivery to any person a misbranded pesticide. Under FIFRA section 2(q)(2)(C)(i), failure to have the registrant's correct address on the label of its pesticide product constitutes misbranding. Therefore, failure of a registrant to submit a correct and current address and include such address as part of the label of its pesticide products is in violation of the Act's provisions and is grounds for cancellation of that registrant's registrations.

EPA issued a policy statement, published in the **Federal Register** of March 5, 1986 (51 FR 7634), indicating that the Agency may decide to initiate cancellation proceedings for registrations held by registrants whom the Agency has, after good faith efforts, been unable to contact by mail. This notice implements that policy.

This notice will be sent to all affected registrants by certified mail to the most current addresses the Agency has in its files. For the purposes of this notice, the Agency will consider validated non-delivery as receipt and the date of validated non-delivery as the date of receipt in those instances where actual receipt is not accomplished.

The impact of these cancellations on the agricultural economy is difficult to determine. It is believed that some or all of the pesticide products subject to this cancellation action are no longer on the market. Some of the pesticide products have no agricultural uses. At worst, the impact on the agricultural economy is expected to be slight.

Pursuant to section 6(b), the Secretary of Agriculture has reviewed this notice and has no comments. The Science Advisory Panel has waived its right (under section 25(d)) to review this notice.

Registrations Subject To Cancellation

The following registrations are subject to cancellation under this notice.

Registrant	Registration Nos.
ADCO Chemical & Supply Co., 2301 W. Board Street, Columbus, OH 43204.	33276-01
Alcor Products, 109 N. Vineland, City of Industry, CA 91744.	36238-9559
Alladin Laboratories, Inc., 3030 S. Ocean Ave., Box 569, Freeport, NY 11520.	34858-04, 34858-05, 34858-06, 34858-07
American Maintenance Equip., 178 South Kalamath Street, Denver, CO 80223.	17912-01, 17912-02, 17912-03
Amsco Solvents & Chemical Co., 4619 Reading Road, Cincinnati, OH 45229.	34894-01, 34894-03
Anco Refining Company, 681 Main Street, Belleville, NJ 07109.	20957-01, 20957-02, 20957-05
Andy's Independent Pest Control, P.O. Box 32514401, S.I. 35- & Country Mall, Temple, TX 76501.	45997-01
Aqualar, P.O. Box 3780, Oak Park, MI 48237.	34896-01
Aqua Marine Pools, Inc., 740 Creative Dr., Box 68332, Lakeland, FL 33805.	48028-01
A to Z Products, P.O. Box 8, Dunedin, FL 33528.	32338-01
Aquarius Pool Repair & Service Co., 987 State Road, 434 Winn-Dixie Shopping Plaza, Longwood, FL 32750.	45327-01
Aquatherm Inc., 2233 West 2nd Street, Santa Ana, CA 92703.	12468-01, 12468-03, 12468-04
Arizona Sulphur Company, 5340 West Bethany Road, Box 863, Glendale, AZ 85311.	35377-01, 35377-02, 35377-5863 35377-5664, 35377-7184
Atlanta Chemex Company, 217 Whitehall St., Atlanta, GA.	14167-9294, 14167-9313
A.T.S. Laboratories, 936 Ledge Road, Medina, OH 44256.	35378-01
Avervoe Chemical Co., Inc., 416 Aldo Ave., Box 263, Santa Clara, CA 95050.	34746-01
Axon Corporation, P.O. Box 171222, Memphis, TN 38117.	34771-02, 34771-06, 34771-07
B&M International, Inc., P.O. Box 1116, Thibodaux, LA 70301.	36999-01, 36999-02, 36999-03, 36999-04, 36999-05, 36999-06, 36999-07, 36999-08, 36999-09, 36999-10, 36999-11, 36999-12, 36999-13, 36999-14, 36999-15, 36999-16, 36999-17, 36999-18, 36999-33, 36999-34, 36999-35,
Barton Pool and Patio Supplies, 1400 W. Broadway, Barton, FL 33830.	46489-01
Basco Products Company, P.O. Box 142, Highway 49, S., Clarkadale, MS 38614.	18960-02, 18902-03
Bayside Pools, Inc., 1991 N.E. 147th Terrace, N. Miami, FL 33181.	47913-01
Biggers & Associates, P.O. Box 2819, Columbus, OH 43204.	32494-01
Biodet, Inc., Box A, Schaumburg, IL 60193.	40054-01, 40054-02, 40054-03, 40054-04, 40054-05, 40054-06, 40054-07, 40054-08, 40054-09, 40054-10, 40054-11, 40054-12
Braco Products, 901 Utica, #36, Corpus Christi, TX 78418.	52859-01
Brand Development Corp., P.O. box 483, New York, NY 10021.	33801-01
Cam Chem Inc., P.O. Box 295, 21636 Road 152, Tulare, CA 93274.	10969-8835, 10969-8836, 10969-8837
Can AM Industries, 13635 Alondra Blvd., Santa Fe Springs, CA 90607.	34319-6801, 34319-6802, 34319-6803, 34319-6804
Capsule Products, Inc., Box 20431, 2645 Perth St., Dallas, TX 75220.	42784-01
Carrillo & Company, 6th Ave., Pedro D. Correa, Rio Piedras, PR 00923.	22521-01
Castle Chemical Corp., 830 Grand Blvd., Deer Park, NY 11729.	29910-01, 29910-02, 29910-03, 29910-04, 29910-05, 29910-06, 29910-07
Cato Chemical Company, 1728 Mary Street, Honolulu, HI 96819.	35031-5397, 35031-10287, 35031-10288
Ceslin Chemicals, 6501 Arlington Expressway, Bldg. A, Suite 106, Arlington Ctr., Jacksonville, FL 33211.	34132-01, 34132-02 34132-06
Central Arkansas Industrial Service, Inc., P.O. Box 223, Conway, AR 72032.	36406-01, 36406-02
Chem-Tech International, Inc., 2037 West 14th Avenue, Denver, CO 80204.	45025-03
Climaco Corporation, Two North Riverside Plaza, Chicago, Il 60606.	42675-01
Clinipad Corporation, 75 Camp Ave., Stamford, CT 06907.	31973-01
Club Chemical Corporation, 1542 Fayette, El Cajon, CA 92020.	48478-01
Cominex Inc., 30 Main Street, Box 336, Warrenton, VA 22186.	47873-01
Consumer Chemical Corporation, 9 Bridle Lane, Poughkeepsie, NY 12603.	19214-01
Consumer Economics, 129 St. Andrews Blvd., Charleston, SC 29407.	33562-01
Critter Chemco, Inc., 10685 E. 51st Ave., Denver, CO 802391.	35958-01, 35958-02
Crouch Chemicals, 8755 S.W. 129th St., Miami, FL 33165.	17814-9544
Crystal Clear Co., 8043 Jackson Rd., Ann Arbor, MI 48103.	42397-01
Delta Chemicals, Chempac Division, Lucon Dr., Deer Park, NY 11729.	23611-01, 23611-02, 23611-03, 23611-04, 23611-05, 23611-06, 45055-01, 45055-02
Desert Fly Control of Arizona, Inc., 5303 E. Fairview, Chandler, AZ 85224.	
De Oox Inc., 1032 W. Robinson Street, Orlando, FL 32805.	34179-01 34179-9547
De Tranna Enterprises, 63 Eastman Raod, Memphis, TN 38109.	45079-01
Dillon Chemical Co., Division of V.A. Snell & Comapny, 1622 S. San Marcos, San Antonio, TX 78207.	17873-3843
Diversey Hawaii Ltd., 960115 Kanehameha Highway, Aiea, HI 96701.	35034-6809, 35034-6810, 35034-6811, 35034-6812, 35034-6813
3-D Petroleum Products, Inc., 560 Hudson Street, Hackensack, NJ 07601.	45090-01, 45090-02, 45090-03, 45090-04, 45090-05, 45090-06

Dated: December 12, 1986.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-28995 Filed 12-23-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51654; FRL 3133-5]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of nineteen such PMNs and provides a summary of each.

DATES: Close of Review Period:

P 87-306 and 87-307—March 4, 1987

P 87-308—March 7, 1987

P 87-309, 87-310, 87-311, 87-312, 87-313, 87-314, 87-315, 87-316 and 87-317—March 8, 1987

P 87-318, 87-319, 87-320, 87-321 and 87-322—March 9, 1987

P 87-323 and 87-324—March 11, 1987.

Written comments by:

P 87-306 and 87-307—February 2, 1987

P 87-308—February 5, 1987

P 87-309, 87-310, 87-311, 87-312, 87-313, 87-314, 87-315, 87-316 and 87-317—February 6, 1987

P 87-318, 87-319, 87-320, 87-321 and 87-322—February 7, 1987

P 87-323 and 87-324—February 8, 1987.

ADDRESS: Written comments, identified by the document control number "[OPTS-51654]" and the specific PMN number should be sent to: Document Control Officer (TS-790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M Street SW., Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: Effective with this notice, a non-substance change in format is being initiated for information published under sections 5(d)(2) and 5(h)(6) of the Toxic Substances Control Act. Toxicity data will only appear in the notice when submitted with the PMN. Exposure and environmental release/disposal information will no longer be published in the notice. The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 87-306

Manufacturer. Confidential.

Chemical. (S) Humic acids, calcium salts.

Use/Production. (G) Open, non-dispersive. Prod. range: Confidential.

P 87-307

Manufacturer. Dow Corning Corporation.

Chemical. (G) Silicone glycol copolymer.

Use/Production. (S) Surfactant. Prod. range: Confidential.

Toxicity Data. Acute oral: 4.1 g/kg; Acute dermal: > 2.0 g/kg; Irritation: Skin—Slight-irritant, Eye—Moderate conjunctival iritis.

P 87-308

Manufacturer. Confidential.

Chemical. (G) Aliphatic linear segmented polyurethane prepolymer.

Use/Production. (S) Site-limited precursor for preparation of water based coating. Prod. range: Confidential.

P 87-309

Importer. CIBA-GEIGY Corporation.

Chemical. Benzophenonetetracarboxylic anhydride—aromatic amine polyimide.

Use/Importer. (S) Industrial coatings for semiconductor devices, liquid crystal displays and hybrid circuit manufacturing. Import range: Confidential.

Toxicity Data. Acute oral: > 5,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant, Skin sensitization: Non-sensitizer.

P 87-310

Manufacturer. Confidential.

Chemical. (G) Polyamide/styrene—maleic copolymer.

Use/Production. (G) Lacquer resin. Prod. range: Confidential.

P 87-311

Manufacturer. American Hoechst Corporation.

Chemical. (g) Substituted azo naphthalene sulfonic acid.

Use/Production. (S) Industrial fiber reactive dye. Prod. range. Confidential.

Toxicity Data. Acute oral: > g/kg; Irritation: Skin—Non-irritant, Eye—Mild.

P 87-312

Manufacturer. American Hoechst Corporation.

Chemical. (G) Substituted azo napthalene sulfonic acid.

Use/Production. (S) Fiber reactive dye for cellulosic and nylon fibers. Prod. range: Confidential.

Toxicity Data. Acute oral: > 5 g/kg; Irritation: Skin—Non-irritant, Eye—Mild.

P 87-313

Manufacturer. American Hoechst Corporation.

Use/Production. (S) Industrial fiber reactive dye. Prod. range: Confidential.

Toxicity Data. Acute oral: > g/kg; Irritation: Skin—Mild Eye—Mild.

P 87-314

Manufacturer. Interchem, Incorporated.

Chemical. (G) Dicyanate ester oligomer.

Use/Production. (S) Industrial thermoset resin for use in fiber reinforced structural and electrical composites; encapsulation of electronic components; and heat curable adhesives. Prod. range: Confidential.

Toxicity Data. Skin Sensitization; Sensitizer.

P 87-315

Manufacturer. Interchem, Incorporated.

Chemical. (G) Dicyanate ester oligomer.

Use/Production. (S) Industrial thermoset resin for use in fiber reinforced structural and electrical composites; encapsulation of electronic components; and heat curable adhesives. Prod. range: Confidential.

Toxicity Data. Skin Sensitization; Sensitizer.

P 87-316

Manufacturer. Interchem, Incorporated.

Chemical. (G) Dicyanate ester oligomer.

Use/Production. (S) Industrial thermoset resin for use in fiber reinforced structural and electrical composites; encapsulation of electronic components; and heat curable adhesives. Prod. range: Confidential.

Toxicity Data. Skin Sensitization; Sensitizer.

P 87-317

Importer. Confidential.

Chemical. (G) Isoindoline yellow.

Use/Importer. (G) Colorant. Import range: Confidential.

Toxicity Data. Acute oral: 5,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Slight, Ames test—Non-mutagenic.

P 87-318

Importer. Parexel International Corporation.

Chemical. (S) Benzene, 1,1'-[ethanediylbis(oxy)]bis[3-methyl-.

Use/Import. (S) Site-limited and industrial sensitizer in coating agent for thermal papers. Import range: 25,000 to 40,000 kg/yr.

Toxicity Data. Acute oral: > 5,000 mg/kg; Acute dermal: > 2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Irritant, Inhalation: 2.96 g/m³ air.

P 87-319

Manufacturer. Confidential.

Chemical. (G) Methacrylate capped polyurethane-polyester/polyether oligomer.

Use/Import. (S) Graphic-arts printing plate. Prod. range: Confidential.

P 87-320

Manufacturer. Confidential.

Chemical. (G) Modified (alkyl) carboxylic acid.

Use/Import. (S) Industrial extreme preasure additive (component) for metal working fluids. Import range; Confidential.

P 87-321

Manufacturer. The Dow Chemical Company.

Chemical. (G) MDI Polyurethane prepolymer.

Use/Production. (S) Industrial manufacture of polyurethane elastomers. Prod. range: Confidential.

P 87-322

Manufacturer. The Dow Chemical Company.

Chemical. (G) Modified ABS.

Use/Production. (S) Industrial extrusion and injection molding of plastic articles. Prod. range: Confidential.

P 87-323

Manufacturer. Confidential.

Chemical. (G) Poly(oxy-1,2-ethanediyl),-substituted-hydroxy-, C 16-20 alkyl ethers.

Use/Production. (G) Industrial surfactant. Prod. range: Confidential.

P 87-324

Importer. Fallek Chemical Company.

Chemical. (S) 2 Hexyl decanol (2-hexa decanol).

Use/Import. (S) Industrial base for ethoxylation; solvent for perfumes others emollients; emollient for cosmetics; and lubricant machinery, etc. Import range: 40,000 to 500,000 kg/yr.

Toxicity Data. Acute oral: < 33/kg.

Dated: December 16, 1986.

Denise Devoe,

Acting Division Director, Information Management Division.

[FR Doc. 86-28898 Filed 12-23-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-42092; FRL-3134-9]

Testing Consent Agreement Development for Alkyl Phthalates; Solicitation for Interested Parties

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA's procedures for requiring the testing of chemical substances and mixtures under section 4 of the Toxic Substances Control Act (TSCA) include the adoption of enforceable consent agreements (ECAs) and the promulgation of test rules. ECAs may be adopted where consensus on an industry test program is reached in a timely manner by EPA, affected manufacturers and/or processors, and other interested parties. If timely consensus cannot be reached or appears unlikely, and the Agency makes certain statutory findings under TSCA, EPA issues test rules. In this notice, EPA announces its tentative evaluation of environmental effects and chemical fate testing needs for the alkyl phthalates chemical category, announces a public meeting to discuss such testing, and requests all persons desiring to have the status of "interested parties" in any negotiations of an ECA for the alkyl phthalates to notify EPA of that interest.

DATES: Submit written notice of interest to be designated an interested party on or before January 21, 1987. A public meeting will be held on January 7, 1987.

ADDRESS: Submit written request to be an "interested party" in triplicate, identified by the document control number (OTPS-42-92) to:

TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office or Toxic Substances, Rm. E-543, 401 M St. SW., Washington, DC 20460, (202) 554-1404.

Persons interested in attending the public meeting should notify EPA by telephone on or before January 6, 1987.

SUPPLEMENTARY INFORMATION: EPA has issued amendments to the procedural regulation in 40 CFR Part 790 (51 FR 23706; June 30, 1986), which govern the development and implementation of testing requirements under section 4 of TSCA. These amendments establish procedures for using ECAs to develop testing requirements under section 4 of the Act. This notice serves three purposes under those procedures. First, it requests "interested parties" who wish to participate in testing negotiations for the alkyl phthalates to identify themselves to EPA. Second, it announces a public meeting to initiate testing negotiations for this chemical. Third, it proposes a target schedule for implementation of the consent agreement process.

I. Identification of Interested Parties

Under 40 CFR 790.22, the testing negotiation procedures are initiated by the publication of a **Federal Register** notice which invites persons interested in participating in or monitoring negotiations for the development of an ECA to notify the Agency in writing. Those individuals and groups who respond to EPA's notice by the deadline established in the notice will have the status of "interested parties" and will be afforded opportunities to participate in the negotiations process. These "interested parties" will not incur any obligations by being designated "interested parties." The procedures for these negotiations are described in 40 CFR 790.22. Individuals and groups desiring to have the status of "interested parties" in the development of the ECA for the alkyl phthalates should submit a written request to the Agency at the address given above on or before January 7, 1987.

II. Public Meeting

A public meeting will be held on January 7, 1987, in Rm. 103, Notheast Mall, EPA Headquarters, 401 M St., SW., Washington, DC 20460, to announce EPA's preliminary testing determination for environmental effects and chemical fate testing of the alkyl phthalates and to initiate testing negotiations. Persons interested in attending this meeting should notify the EPA TSCA Assistance Office by telephone at the number listed above on or before January 6, 1987.

III. Timetable for Negotiating Test Agreement

In accordance with the procedures for the development of ECAs established in 40 CFR 790.22, and the Agency's plans to propose a test rule for the alky phthalates by late 1987 (if an ECA cannot be developed in that time), the following target schedule is established for the alkyl phthalates:

January 7, 1987—Public meeting to initiate testing negotiations. Also, deadline for notice of interested party designations.

April 9, 1987—Decision by EPA on whether to use consent order or test rule.

May 14, 1987—Draft consent order sent to interested parties (if EPA decides to use consent order).

September 14, 1987 Issuance of consent order.

Authority: 15 U.S.C. 2603.

Dated: December 19, 1986.

Joseph J. Merenda,

Director, Existing Chemical Assessments Division.

[FR Doc. 86-29012 Filed 12-23-86; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3131-2]

Science Advisory Board; Closed Meeting

Under Pub. L. 92-463, notice is hereby given that a meeting of an ad-hoc Subcommittee of the Science Advisory Board will be held in Washington, DC on January 12-13, 1987 to determine the recipients of the Agency's 1986 Scientific and Technological Achievement Cash Awards. These awards are established to give honor and recognition to EPA employees who have made outstanding contributions in the advancement of science and technology through their research and development activities, and who have published their results in peer-reviewed journals.

Pursuant to the appropriate provision of the Federal Advisory Committee Act, section 10(d) of 5 U.S.C. Appendix 1, and the appropriate provision of the Government in the Sunshine Act, 5 U.S.C. 552b(d)(6), I have determined that this meeting may be closed to the public. In determining the actual cash amount of each award, the Agency requires full and frank advice from the Science Advisory Board. This advice will involve professional judgments on those employees whose published research results are deserving of a cash award as well as those that are not. In addition, the Board will advise on the amount of money to be allocated for each award. Discussions of such a personal nature, where disclosure would constitute an unwarranted invasion of personal privacy, may be closed to the public under section 10(d) of 5 U.S.C. Appendix 1. In accordance with the provision of the Federal Advisory Committee Act, minutes of the meeting will be kept for Agency and Congressional review.

The Science Advisory Board shall be responsible for maintaining records of the meeting and for providing an annual report setting forth a summary of the meeting consistent with the policy of 5 U.S.C. Appendix 1 section 10(d).

For further information contact: Terry Yosie at (202) 382-4126.

Dated: December 16, 1986.

Lee M. Thomas,

Administrator.

[FR Doc. 85-28747 Filed 12-23-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Statement of Policy Regarding Disclosure by the FDIC of Statutory Enforcement Actions

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Change in effective date.

SUMMARY: The Federal Deposit Insurance Corporation (the "FDIC") is postponing until July 1, 1987, implementation of its May 6, 1985 statement of policy which provides for the FDIC to publicly disclose the final orders it issues in conjunction with formal enforcement actions. This delay will provide the FDIC with additional time to develop a uniform disclosure approach with the other Federal banking agencies that may make the policy statement unnecessary.

EFFECTIVE DATE: December 24, 1986.

FOR FURTHER INFORMATION CONTACT: Robert F. Storch, Planning and Program Development Specialist, Division of Bank Supervision, Federal Deposit Insurance Corporation, Washington, DC 20429, telephone (202) 898-6905.

SUPPLEMENTARY INFORMATION: On May 6, 1985, the Board of Directors of the FDIC adopted a statement of policy, originally scheduled to become effective on January 1, 1986, which provides for the FDIC to publish and make available to the public in press releases the names of all banks and persons to whom the FDIC has issued final orders in conjunction with formal enforcement actions. In addition, brief descriptions of the nature of the enforcement actions taken and summaries of the orders are to be incorporated into the press releases for each action disclosed. This policy applies to insurance termination orders, cease-and-desist orders, removal orders, suspension orders, civil money penalty orders, and capital directives.

The statement of policy was originally scheduled to become effective on January 1, 1986. However, the effective date was postponed first to July 1, 1986, and then to January 1, 1987, to provide an opportunity for the FDIC to work with the other federal banking agencies to develop an approach for disclosures by banks that would make the policy statement unnecessary. The FDIC finds that additional time is needed to pursue that alternative and is, therefore, delaying the effective date of its existing policy statement on disclosure of enforcement actions for an additional six months.

Accordingly, the Statement of Policy Regarding Disclosures by the FDIC of Statutory Enforcement Actions that was adopted by the FDIC Board of Directors on May 6, 1985 (50 FR 20619) and amended by the Board of Directors on December 16, 1985 (50 FR 52557) and June 23, 1986 (51 FR 22866) is further amended by removing the date "January 1, 1987" from the seventh paragraph and inserting in its place the date "July 1, 1987."

By order of the Board of Directors. Dated at Washington, DC, this fifth day of December, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-28907 Filed 12-23-86; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreements pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington DC 20573, within 10 days after the date of the Federal Register in which the notice appears. The requirements for comments are found in § 572.603 of the Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-003939-002

Title: Long Beach Terminal Agreement.

Parties:

City of Long Beach

Metropolitan Stevedoring Company

Synopsis: The proposed amendment would delete a portion of the preferentially assigned premises and adjust the compensation to be paid pursuant to the agreement. The parties have requested a shortened review period.

Agreement No.: 224-004070-003.

Title: San Francisco Terminal Agreement.

Parties:

San Francisco Port Commission (Port)

Stevedoring Services of America (SSA).

Synopsis: The proposed amendment would permit SSA to provide terminal and stevedoring services, on a case-by-case basis at Port marine terminal facilities which are otherwise unassigned.

Agreement No.: 202-009648A-035.

Title: Inter-American Freight Conference.

Parties:

A. Bottacchi S.A. De Navegacion C.F.I. e.I.

A/S Ivarans Rederi

Brazil-America Container Line

Companhia Maritima Nacional

Companhia De Navegacao Lloyd Brasileiro

Companhia De Navegacao Maritima Netumar

Empresa Lineas Maritimas Argentinas Sociedad Anonima (ELMA S/A)

Empresa De Navegacao Allianca S.A.

Flota Mercante Del Estado

Frota Amazonica S.A.

Georgia-Aztec Line

Van Nievelt Goudriaan & Co. B.V.

Kimberly Navigation Company

Reefer Express Lines Pty. Ltd.

R.M.C. Lines, Inc.

Transportacion Maritima Mexicana S.A.

United States Lines, Inc.

Synopsis: The proposed amendment would permit the parties to offer intermodal service under single-factor, through rates in the agreement trade.

Agreement No.: 224-010736-001.

Title: Long Beach Terminal Agreement.

Parties:

City of Long Beach (Port)

Long Beach Container Terminal, Inc.

Synopsis: The proposed amendment would revise the agreement's compensation formula to account for additional construction costs of the Port's marine terminal at berths 6 to 10 inclusive, Pier A. The parties have requested a shortened review period.

Agreement No.: 224-010902-001.

Title: San Francisco Terminal Agreement.

Parties:

San Francisco Port Commission

Zim American Israeli Shipping Co., Inc.

Synopsis: The proposed amendment would establish a per container wharfage rate for "By-Pass Containers."

Agreement No.: 224-011044.

Title: Tampa Terminal Agreement.

BEST COPY AVAILABLE

Parties:
Tampa Port Authority
Bermuda Star Line, Inc. (BSL)

Synopsis: The proposed amendment would grant BSL non-exclusive, preferential use of a passenger terminal facility in Tampa, Florida.

Agreement No.: 212-011045.
Title: Trans-Atlantic Revenue Apportionment Agreement.
Parties:
Atlantic Container Line (C.I.E.)
Gulf Container Line (GCL), B.V.
Compagnie Generale Maritime (CGM)
Dart-ML Limited
Hapag-Lloyd AG
Trans Freight Lines
Sea-Land Service, Inc.
Nedlloyd Lijnen, B.V.

Synopsis: The proposed amendment would provide for the averaging and apportionment of net revenue among the parties in respect to the transport of specified commodities in the trade between U.S. Atlantic ports and inland and coastal points via such ports, and ports and points in the United Kingdom and Republic of Ireland, Denmark, Scandinavia, Poland, U.S.S.R. Baltic Ports, East and West Germany, Belgium, France (Bayonne/Dunkirk range) and the Netherlands.

By Order of the Federal Maritime Commission.

Dated: December 19, 1986.

Joseph C. Polking,

Secretary.

[FR Doc. 86-28926 Filed 12-23-86; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 86-31]

New Orleans Steamship Association v. Plaquemines Port, Harbor and Terminal District; Filing of Complaint and Assignment

Notice is given that a complaint filed by the New Orleans Steamship Association against the Plaquemines Port, Harbor and Terminal District was served December 19, 1986. Complainant alleges, among other matters, that respondent has violated sections 10(b)(11), 10(b)(12) and 10(d)(1) of the Shipping Act of 1984 through the application of its current terminal tariff which, in turn, was amended to comply with the Commission's decision in Docket No. 83-2—New Orleans Steamship Association v. Plaquemines Port, Harbor and Terminal District. (Order Adopting Initial Decision served September 16, 1986).

This proceeding has been assigned to Administrative Law Judge Norman D. Kline Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statement, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by December 21, 1987, and the final decision of the Commission shall be issued by April 21, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 86-28930 Filed 12-23-86; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. App. 1716) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License Number: 2628
Name: Spatzer International, Inc.
Address: 11 John Street, New York, NY 10038
Date Revoked: November 1, 1986
Reason: Failed to maintain a valid surety bond

License Number: 2780
Name: Muller Air Freight, Inc. (also dba Muller Air Freight, Inc. Ocean Division)
Address: 5341 W. 104th St., Los Angeles, CA 90045
Date Revoked: November 10, 1986
Reason: Requested revocation voluntarily

License Number: 1729
Name: Bostrum-Warren, Inc. (A Washington Corporation)
Address: c/o 3200 4th Ave., South, Seattle, WA 98124
Date Revoked: November 22, 1986
Reason: Failed to maintain a valid surety bond

License Number: 2309
Name: American Shipping Company
Address: 9410 W. Flager St., Unit #110, Miami, FL 33174
Date Revoked: November 22, 1986
Reason: Failed to maintain a valid surety bond

License Number: 2013
Name: Personal Forwarding, Inc.
Address: 51 East 42nd Street, New York, NY 10017
Date Revoked: November 25, 1986
Reason: Surrendered license voluntarily

License Number: 1263
Name: Donald W. Reichow dba Expires International Forwarding
Address: 17350 E. Temple Ave. #436, La Puente, CA 91744
Date Revoked: November 26, 1986
Reason: Surrendered license voluntarily

License Number: 1021
Name: Melvin Export Shipping Services, Inc.
Address: 40 Rector St., #1525, New York, NY 10006
Date Revoked: November 26, 1986
Reason: Surrendered license voluntarily

License Number: 2916
Name: American Freight Exchange, Inc.
Address: 149-10 183rd Street, #228, Jamacia, NY 11413
Date Revoked: November 5, 1986
Reason: Surrendered license voluntarily

License Number: 1946
Name: Jose A. Fernandez, dba Ultramar Forwarding
Address: 854 N.W. 87th Ave., #509, Miami, FL 33172
Date Revoked: December 4, 1986
Reason: Surrendered license voluntarily

License Number: 900
Name: AFI/PASHA Worldwide Forwarders, Inc.
Address: 5725 Paradise Drive, Corte ,Madera, CA 94925
Date Revoked: December 5, 1986
Reason: Surrendered license voluntarily

License Number: 2131
Name: The A. W. Fenton Company, Inc., a New York corporation
Address: 19 Rector Street, New York, NY 10006
Date Revoked: December 5, 1986
Reason: Surrendered license voluntarily

License Number: 3003
Name: General Gumina dba International
Address: 10,700 Northwest Freeway, Houston, TX 77092
Date Revoked: December 6, 1986
Reason: Failed to maintain a valid surety bond

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 86-28927 Filed 12-23-86; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 86N-0251]

Bioequivalence of Solid Oral Dosage Forms; Notice of Availability of Transcript and Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the written transcript of the public hearing recently held on the bioequivalence of solid oral dosage forms. The hearing was held on September 29 through October 1, 1986, in Washington, DC. FDA is also announcing that written comments to the public docket on this matter may not be submitted.

DATE: Written comments by February 23, 1987.

ADDRESS: Written requests for a copy of the transcript or comments concerning the transcript to the Dockets Management Branch (HFA-305), Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. (Send two self-addressed adhesive labels to assist the Branch in processing your requests.)

FOR FURTHER INFORMATION CONTACT: Donald B. Hare or Edwin V. Dutra, Jr., Center for Drugs and Biologics (HFN-203), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2784.

SUPPLEMENTARY INFORMATION:

Background

On September 29 through October 1, 1986, FDA held a Bioequivalence Hearing in Washington, DC. The primary purpose of the hearing was to provide an opportunity for all interested persons to express their views on the scientific principles and procedures FDA uses to make a finding of bioequivalence between immediate release solid oral dosage forms. Over 50 formal presentations were made at the hearing by representatives from, among others, various segments of the pharmaceutical industry, professional societies, governmental agencies, and academia.

Transcript

A transcript of the hearing was made from an audio recording. The transcript, which is approximately 800 pages in length, is on public display in the Dockets Management Branch (address above) under docket number 86N-0251. Photocopies of the transcript made by FDA will cost 10 cents per page plus postage. Printed, bound copies of the transcript are available from a private source at a cost of $50 per copy postpaid. The address for the private source is "Proceedings," FDA Bioequivalence Hearing, P.O. Box 100, Maple Glen, PA 19002. A check in U.S. funds made out to "Proceedings" must be enclosed with orders for copies from the private source.

Comment Period

The public docket for the hearing will be kept open until February 23, 1987. On or before that date, any interested person may submit written comments concerning the issues discussed at the Bioequivalence Hearing. Persons who made presentations at the hearing may also submit comments to supplement their presentations or make additional points. Comments should identify the docket number 86N-0251. Handling of comments will be expedited if the docket number is also printed in the lower left-hand corner of the mailing envelope.

Task Group

The agency has formed a task group to evaluate the presentations, comments, questions, and suggestions made at the 3-day hearing. This group will also review all comments submitted to the public docket. After this group evaluates and reviews these materials it will submit a report to the Office of the Commissioner. This report will include a recommendation for what, if any, actions it considers appropriate for the agency to take concerning the bioequivalence program.

Dated: December 18, 1986.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-28911 Filed 12-19-86; 3:14 pm]

BILLING CODE 4160-01-M

[Docket No. 79P-0060 et al.]

Approved Variances for Laser Light Shows; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administraiton (FDA) is announcing that variances from the performance standard for laser products have been approved by FDA's Center for Devices and Radiological Health (CDRH) for 13 organizations that manufacture and produce laser light shows, light show projectors, or both. The projectors provide a laser light display to produce a variety of special lighting effects. The principal use of these products is to provide entertainment to general audiences.

DATES: The effective dates and termination dates of the variances are listed in the table below under "SUPPLEMENTARY INFORMATION."

ADDRESS: The applications and all correspondence on the applications have been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Sally Friedman, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), FDA has granted each of the 13 organizations listed in the table below a variance from the requirements of § 1040.11(c) (21 CFR 1040.11(c)) of the performance standard for laser productions.

Each variance permits the listed manufacturer to introduce into commerce a demonstration laser product assembled and produced by the manufacturer, which is its particular variety of laser light show, laser light show projector, or both. Each laser product involves levels of accessible laser radiation in excess of Class II levels but not exceeding those required to perform the intended function of the product.

CDRH has determined that suitable means of radiation safety and protection are provided by constraints on the physical and optical design and by warnings in the user manual and on the products. Therefore, on the effective dates specified in the table below, FDA approved the requested variances by a letter to each manufacturer from the Deputy Director of CDRH.

So that each product may show evidence of the variance approved for the manufacturer of the product, each product shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) a variance number, which i the FDA docket number, and the effective date of the variance as specified in the table below.

Docket No.	Organization granted the variance	Demonstration laser product	Effective date/ termination date
79P-0060 (renewal)	Laser Presentations, Inc., 1009C McKinley Avenue, Columbus, OH 43222.	Laser Presentations Cell IIIb or Class IV LP Model Series laser projectors and the laser light shows known as Laser 1 or Laser Space Theatre assembled and produced by Laser Presentations, Inc., containing the Model LP-4 or LP-4K(1) projectors.	Oct. 20, 1986-Sept. 19, 1988.
79P-0192 (renewal)	Jacksonville Museum of Arts and Sciences, Alexander Brest Planetarium, 1025 Gulf Life Drive, Jacksonville, FL 32207.	Jacksonville Museum of Arts and Sciences, Alexander Brest Planetarium laser light show incorporating the firm's Class IV argon/krypton and helium-neon laser projection system.	Oct. 20, 1986-June 26, 1988.
80P-0174 (renewal)	Laser Artistry, Inc., 402 East Oak Street, P.O. Box 220, Oak Creek, WI 53154.	Model L-100 laser projector and laser light shows incorporating this projector which are produced by Laser Artistry, Inc.	Nov. 4, 1986-Oct. 30, 1988.
80P-0448 (renewal)	Laser Presentations, Inc., 1009C McKinley Avenue, Columbus, OH 43222.	Room Laser Shows produced by Laser Presentations, Inc, utilizing projectors from their LP series.	Oct. 20, 1986-Dec. 15, 1988.
80P-0214 (renewal)	Laser Presentations, Inc., 1009C McKinley Avenue, Columbus, OH 43222.	Laser Space Theatre Sky Beacon Display manufactured, assembled, and produced by Laser Presentations, Inc., containing an argon ion laser with a maximum output power of 2 watts (all lines).	Oct. 7, 1986-Oct. 7, 1988.
81P-0044 (renewal)	Laser Art Productions, 909 East Trafficway Street, Springfield, MO 65802.	Laser Art Productions laser, light show incorporating the firm's Model Series LAP 265 laser projectors using kryton, argon, helium-neon, and/or helium-cadmium lasers with a maximum power of up to 8 watts.	Oct. 29, 1986-Apr. 9, 1988.
82P-0141 (renewal)	Fiske Planetarium, University of Colorado, Box 408, Boulder, CO 80309.	Fiske Planetarium laser light show which incorporates Class IV argon and HeNe laser projection systems.	Oct. 7, 1986-June 8, 1987.
84V-0290 (renewal)	J.C.I.L. Laser Systems, 6669 Gatehouse Lane, Las Vegas, NV 89108.	J.C.I.L. Laser Systems laser light show which incorporates the Laser Media Model LMS laser projection system.	Oct. 29, 1986-Nov. 29, 1988.
84V-0357 (renewal)	Dallas Sidekicks, c/o Reunion Arena, 777 Sports Street, Dallas, TX 75207.	Sidekicks Laser Show and the incorporated Class IV argon laser projection system.	Oct. 20, 1986-Oct. 29, 1988.
86V-0194	Lasertainment, 551 N.E. 49th Avenue, Columbia Heights, MN 55421.	Lasertainment laser light show using the Laser Fantasy Class IIIb Model Rainbow HeNe laser projection system.	Oct. 16, 1986-Oct. 16, 1988.
86V-0226	Visulux, 2665 South Drive, Santa Clara, CA 95051	Visulux Model LASER 1000 Large Screen Color Display Projector and displays assembled and produced by Visulux with this laser projector. The projector contains Class IV argon and dye lasers.	Aug. 19, 1986-Aug. 19, 1988.
86V-0370	Wrather Port Properties, Ltd., Queen Mary, Long Beach, CA 90801.	Wrather Port Properties, Limited laser light show for the Queen Mary Exhibit incorporating the Class IV Laser Media LMS laser projector system with Class IV argon and krypton ion lasers and Class III helium-neon lasers.	Oct. 7, 1986-Oct. 7, 1988.
86V-0394	Omni Ventures, 440 North Omni International, Atlanta, GA 30335.	Omni Ventures' laser light show, "Canis Major I," incorporating the firm's Canis Major laser projection system containing a Coherent Radiation Model CR-12 argon laser.	Nov. 4, 1986-Nov. 4, 1988.

In accordance with § 1010.4, the applications and all correspondence on the applications have been placed on public display under the designated docket numbers in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177–1179 (42 U.S.C. 263f) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.86).

Dated: December 15, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86-28860 Filed 12-23-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86M-0481]

Sarns Inc./3M; Premarket Approval of the Therapore™ Therapeutic Apheresis System

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Sarns Inc./3M, Ann Arbor, MI, for premarket approval, under the Medical Device Amendments of 1976, of the Therapore™ Therapeutic Apheresis System. After reviewing the recommendation of the Gastroenterology-Urology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by January 23, 1987.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (FHA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Susanne R. Rohrer, Center for Devices and Radiological Health (HFZ-420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7750.

SUPPLEMENTARY INFORMATION: On December 18, 1985, Sarns Inc./3M, Ann Arbor, MI 48106, submitted to CDRH an application for premarket approval of the Therapore™ Therapeutic Apheresis System. The device is a cross-flow plasma filtration system for therapeutic plasma exchange. The Therapore™ Therapeutic Apheresis System, consisting of a pump console, control panel, and tubeset, is indicated for use in performing therapeutic plasma separation from whole blood in a clinical setting to remove circulating plasma components or protein bound toxins.

On July 29, 1986, the Gastroenterology-Urology Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On November 18, 1986, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Docket Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Susanne R. Rohrer (HFZ-420), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before January 23, 1987, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: December 12, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86-28861 Filed 12-23-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 76P-0418]

Approved Variance for the Model LS-4 Mammographic X-Ray System; Availability; Elscint, Inc.

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that an amendment to a variance from the performance standard for radiographic equipment has been approved by FDA's Center for Devices and Radiological Health (CDRH) for the Model LS-4 Mammographic X-Ray System manufactured by Elscint, Inc. The radiographic system incorporates microfocus X-ray tubes and is used in magnification radiography of the breast.

DATES: The amendment to the variance became effective August 19, 1986, and terminates March 27, 1989.

ADDRESS: The application and all correspondence on the application have been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FUR FURTHER INFORMATION CONTACT: Tracy Donovan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), CDRH has granted Elscint, Inc., 751 Expressway Dr., Itasca, IL 60143, an amendment to its variance from a provision of the performance standard for radiographic equipment (21 CFR 1020.31) for the Model LS-4 Mammographic X-Ray System. This system is similar to the product that was covered under Elscint's original variance, the MAM III Mammographic X-Ray System.

The specific provision of the standard from which a variance has been granted pertains to the provision of § 1020.31(h)(2) that mobile or portable x-ray systems (other than dental) be provided with a means to limit the source-to-skin distance to not less than 30 centimeters. All other provisions of the performance standard remain applicable to the product.

CDRH has determined that the X-ray system (1) provides suitable means of radiation safety and protection; and (2) is intended for the special purpose of direct radiographic magnification, which cannot be accomplished with equipment meeting all requirements of the standard. Therefore, on August 19, 1986, CDRH approved the requested variance by a letter to the manufacturer from the Deputy Director of CDRH.

So that the product may show evidence of the variance approved for the manufacturer, the product shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) a variance number, which is the FDA docket number appearing in the heading of this notice, and the effective date of the variance.

In accordance with § 1010.4, the application and all correspondence on the application have been placed on public display under the designated docket number in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177-1179 (42 U.S.C. 263f)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.86).

Dated: December 15, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86-28862 Filed 12-23-86; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

National Cancer Institute; Meetings

Pursuant to Pub. Law 92-463, notice is hereby given of the meetings of the Board of Scientifc Counselors and its Subcommittees of the Division of Cancer Prevention and Control, National Cancer Institute, National Institutes of Health.

These meetings will be open to the public to discuss administrative details or other issues relating to committee activities as indicated in the notice. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A-06, National Institutes of Health, Bethesda, Maryland 20892-3100 (301/496-5708) will provide summaries of meetings and rosters of members upon request. Other information pertaining to the meetings can be obtained from the Executive Secretary, Linda Bremerman, National Cancer Institute, Building 31, Room 4A-32, National Institutes of Health, Bethesda, Maryland 20892-3100 (301/496-9569).

Meeting on January 8, 1987, is being published less than 15 days before the meeting due to the conflicting schedules of the members.

Name of Committee: Center and Community Oncology Subcommittee.

Date of Meeting: January 8, 1987, 8:30 a.m.-4 p.m.

Place of Meeting: Building 31, Conference Room 7, 9000 Rockville Pike, Bethesda, Maryland 20892-3100.

Agenda: Discuss current and future programs of the Centers and Community Oncology Program.

Name of Committee: Cancer Control Science Subcommittee.

Date of Meeting: January 9, 1987, 10 a.m.-4 p.m.

Place of Meeting: Building 31, Room 5A–16, 9000 Rockville Pike, Bethesda, Maryland 20892–3100.

Agenda: Discuss current and future programs of the Cancer Control Science Program.

Name of Committee: Prevention Subcommittee.

Date of Meeting: January 21, 1987, 2–5 p.m.

Place of Meeting: Building 31, Room 11A–10, 9000 Rockville Pike, Bethesda, Maryland 20892–3100.

Agenda: Discuss current and future programs of the Prevention Program.

Name of Committee: Budget and Evaluation Subcommittee.

Date of Meeting: January 21, 1987, 7:30–9:30 p.m.

Place of Meeting: Building 31A, Conference Room 2, 9000 Rockville Pike, Bethesda, Maryland 20892–3100.

Agenda: Review of budgetary and fiscal items.

Name of Committee: Board of Scientific Counselors, Division of Cancer Prevention and Control.

Date of Meeting: January 22–23, 1987, 8:30 a.m.—adjournment.

Place of Meeting: Building 31, Room 10, 9000 Rockville Pike, Bethesda, Maryland 20892–3100.

Agenda: Review progress of programs within the Division and review of concepts being considered for funding.

Dated: December 18, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86–28960 Filed 12–23–86; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Insitutute; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Cancer advisory Board Subcommittee on Cancer Inforamtion, National Cancer Institute, January 5, 1987, at the Embassy Suites Hotel, 555 N.W. 62nd Street, Fort Lauderdale, Florida, 33309, Conference Room, Second Floor.

The entire meeting will be open to the public from 8 a.m. to 3 p.m. to develop a proposal for Board sponsored Public Participation Hearings. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Mr. J. Paul Van Nevel, Executive Secretary, Subcommittee on Cancer Information, National Cancer Advisory Board, National Cancer Institute, National Institutes of Health, Building 31, Room 10A29, Betheda, Maryland 20892 (301/496–6631) will furnish substantive program information.

This notice is being published less than 15 days prior to the meeting because of the difficulty of coordinating the attendance of the members as they had conflicting commitments.

Dated: December 18, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86–28961 Filed 12–23–86; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Health Resources and Services Administration; Statement of Organization, Functions and Delegations of Authority

Part H, Chapter HB (Health Resources and Services Administration) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (47 FR 38409–24, August 31, 1982, as amended most recently at 51 FR 44380–81, December 9, 1986) is amended to change the name of the California, Bemidji, and Nashville Program Offices to California, Bemidji, and Nashville Area Offices in the Indian Health Service.

Uder *Section HB–10, Organization and Functions,* amend the statement for the Indian Health Service (HBN) by deleting the functional statement for the Indian Health Service Area Offices, HBNFL-HBHFW, and substitute the following: Aberdeen Area Office (HBNFL); Albuquerque Area Office (HBNFM); Billings Area Office (HBNFP); Navajo Area Office (HBNFN); California Area Office (HBNFQ); Oklahoma City Area Office (HBNFR); Phoenix Area Office (HBNFS); Alaska Native Health Area Office (HBNFT); Nashville Area Office (HBNFU); Bemidji Area Office (HBNFV); Portland Area Office (HBNFW).

The mission of IHS is accomplished in the field through line elements called Area Offices. Within these can be Subarea Offices, Service Units, Special Programs, Hospitals, Medical Centers, Health Centers, Health Stations, and other elements. Each Area Office is headed by a Director who reports to the Director of IHS. For the population serviced by their respective health delivery systems, each Area Office is responsible for: (1) Participating in and establishing goals and objectives, and interpreting and determining policies and priorities within the framework of IHS policy in pursuit of the IHS mission; (2) delivering and assuring the delivery of high quality comprehensive health services; (3) providing coordination or assuring the coordination of IHS activities and resources internally and externally with those of other governmental and nongovernmental program, and promoting optimum utilization of all available health resources; (4) participating in the development and demonstration of alternative means and techniques of health services management and delivery to provide Indian tribes and other Indian community groups with optimal ways of participating in the Indian Health programs; and (5) assuring the development of individual and tribal capacities to participate in the operation of IHS commensurate with the means and modalities which Indian tribal groups deem appropriate to their needs and circumstances.

Dated: December 16, 1986.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 86–28890 Filed 12–23–86; 8:45 am]

BILLING CODE 4160–15–M

Social Security Administration

Disability Advisory Council; Meetings

AGENCY: Social Security Administration, HHS.

ACTION: Notice of meetings.

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463), this notice announces the schedule and proposed agenda of forthcoming meetings of the Disability Advisory Council (the Council). The Council is scheduling regular meetings in Washington, DC at which medical and vocational experts will be invited to speak. In addition, the Council is scheduling field hearings at which public officials, representatives of civic and public interest organizations, and concerned citizens may speak. This notice also describes the purpose, structure, and termination date of the Council.

DATES: See **SUPPLEMENTARY INFORMATION.**

ADDRESSES: See **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Douglas Badger, Executive Director, Disability Advisory Council, P.O. Box 17064, Baltimore, Maryland 21203, (301) 594–8177.

SUPPLEMENTARY INFORMATION:

A. Regular Council meetings are scheduled as follows:

Place: Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Dates: January 15, 1987, 10:00 a.m. to 5:00 p.m.; January 16, 1987, 9:00 a.m. to 4:00 p.m.

Agenda: Vocational Rehabilitation.

Dates: February 19, 1987, 10:00 a.m. to 5:00 p.m.; February 20, 1987, 9:00 a.m. to 4:00 p.m.

Agenda: Vocational Rehabilitation.

Dates: March 19, 1987, 10:00 a.m. to 5:00 p.m.; March 20, 1987, 9:00 a.m. to 4:00 p.m.

Agenda: Use of Medical Specialists in Disability Determinations.

Dates: April 23, 1987, 10:00 a.m. to 5:00 p.m.; April 24, 1987, 9:00 a.m. to 4:00 p.m.

Agenda: Work Evaluation.

Dates: May 21, 1987, 10:00 a.m. to 5:00 p.m.; May 22, 1987, 9:00 a.m. to 4:00 p.m.

Agenda: Work Incentives and Disincentives.

Dates: June 18, 1987, 10:00 a.m. to 5:00 p.m.; June 19, 1987, 9:00 a.m. to 4:00 p.m.

Agenda: Work Incentives and Disincentives.

Dates: July 16, 1987, 10:00 a.m. to 5:00 p.m.; July 17, 1987, 9:00 a.m. to 4:00 p.m.

Agenda: Work Incentives and Disincentives.

Dates: August 20, 1987, 10:00 a.m. to 5:00 p.m.; August 21, 1987, 9:00 a.m. to 4:00 p.m.

Agenda: Work Incentives and Disincentives.

Dates: September 16, 1987, 10:00 a.m. to 5:00 p.m.; September 17, 1987, 9:00 a.m. to 5:00 p.m.; September 18, 1987, 9:00 a.m. to 4:00 p.m.

Agenda: Prepare and Review Report.

Dates: October 15, 1987, 10:00 a.m. to 5:00 p.m.; October 16, 1987, 9:00 a.m. to 4:00 p.m.

Agenda: Review and Review Report.

B. Field hearing scheduled as follows:

Place, Date, and Agenda

Place: Federal Building, Room 8544, (8th Floor), 300 N. Los Angeles Street, Los Angeles, CA 90012.

Date: January 7, 1987, 9:00 a.m. to 5:00 p.m.

Agenda: Vocational Rehabilitation.

Additional field hearings will be scheduled in other major cities across the nation. These additional field hearings will be announced by a notice in the **Federal Register.**

The Council is established and governed by the provisions of section 12102 of Pub. L. 99–272.

The purposes of the Council are to study and make recommendations on the medical and vocational aspects of disability under the Social Security and Supplemental Security Income (SSI) programs. The Council may engage technical assistance in order to carry out its purposes. Studies must include: (1) The effectiveness of vocational rehabilitation programs for Social Security and SSI beneficiaries; (2) the question of using specialists to complete medical and vocational evaluations at the State agency disability decisionmaking level, including the question of requiring medical specialists to complete the medical portion of each case review and any assessment of residual functional capacity in other than mental impairment cases; (3) alternative approaches to work evaluation, the feasibility of providing work evaluation stipends, and screening criteria for work evaluation referrals; and (4) possible criteria for assessing the probability that an applicant or recipient of benefits based on disability will benefit from rehabilitation services.

The Council is to submit a report, specified in Pub. L. 99–272, consisting of the findings and any recommendations to the Secretary of Health and Human Services (the Secretary). The Secretary, in turn, is to submit the report to the Congress and to the Board of Trustees of the Federal Disability Insurance Trust Fund.

The statute provides that the Council terminate after the specified report is submitted to the Congress.

The Secretary has appointed the members of the Council in accordance with the provisions of the statute. The Council is chaired by Dr. John E. Affeldt.

The Council meetings announced in this notice and all field hearings are open to the public to the extent that space is available. Transcripts of the Council meetings and of the field hearings are available to the public on an at-cost-of duplication basis. The transcripts can be ordered from the Executive Director of the Council. The transcripts and all written submissions will become part of the record for these proceedings.

Regular Council Meetings

The regular Council meetings are to conduct the business of the Council and to hear testimony of medical and vocational experts who are invited to speak. However, anyone wishing to submit his or her views and/or questions for consideration by the Council should send them to the Executive Director of the Council at the address shown above.

Field Hearings

The Council will conduct these field hearings as an informal forum. After an opening statement by the chairperson, the public comment portion of the hearing will begin. The Council will accept requests to speak from public officials, representatives of civic and public interest organizations, and concerned citizens. As many speakers will be scheduled at each meeting site as time permits. Because the meeting hours will be limited, individuals are encouraged to speak about the issues on which they feel most strongly and to submit further written comments on other issues. Persons unable to speak at the meetings may submit written comments. In order to assure that everyone wishing to speak will be given the opportunity, the chairperson may limit the time allotted to each speaker.

Any public official, representative of an organization, or individual desiring to participate at a field hearing should write or telephone the Executive Director of the Council for the specific meeting information and provide the following: (1) Name; (2) business address; (3) telephone number during normal working hours; (4) capacity in which presentation will be made, i.e., public official, organization presentation, or citizen; and (5) time desired. Late requests and requests to speak received on the day of the meeting will be honored as time permits.

Dated: December 19, 1986.

W. Douglas Badger,

Executive Director, Disability Advisory Council.

[FR Doc. 86–28891 Filed 12–23–86; 8:45 am]

BILLING CODE 4190–11–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30948]

Central of Georgia Railroad Company, et al., Joint Project for Relocation of a Line of Railroad; Exemption

On November 26, 1986, Central of Georgia Railroad Company (CG), CSX Transportation, Inc. (CSX), and Southern Railway Company (Southern) filed a notice of exemption under 49 CFR 1180.2(d)(5) for a joint project to relocate a line of railroad.

CG operates over approximately 3,886.7 feet of track, known as the "Spring Track," extending from Survey Station 0+94.5 to Survey Station 39+81.2 in Atlanta, GA. CSX has operated over the "Spring Track" under a trackage rights agreement with CG

approved in Finance Docket No. 26311 (not printed) served November 9, 1970. The line is used by CSX to move only overhead or bridge traffic. No CSX served shippers are located on the line. The State of Georgia (Georgia) has exercised an option to purchase a portion of the "Spring Track" right-of-way in the vicinity of the Georgia World Congress Center.[1] This necessitates relocation of CSX's operations to Southern and CG lines which parallel CG's "Spring Track." To facilitate this relocation, Southern has constructed an 800-foot long track segment off its main line to connect with CSX at Jones Avenue and states that this is spur track exempt from Commission jurisdiction under 49 U.S.C. 10907.[2] This connection will require CSX to install a standard crossover between its track in the area of Jones Avenue and to construct about 200 feet of new track.[3] To complete the relocation, CSX proposes to acquire overhead trackage rights over the following line segments of Southern and CG:

Segment I—Survey Station 381+30 to Survey Station 401+53 on Southern's No. 1 main, a distance of 2,023 feet;

Survey Station 396+50 to Survey Station 418+50 on Southern's track No. 153–68, a distance of 2,200 feet;

Survey Station 403+37 to Survey Station 408+46 on Southern's track No. 153–72, a distance of 509 feet; and

Survey Station 401+53 to Survey Station 419+40 on Southern's track No. 153–73, a distance of 1,787 feet.

Segment II—Survey Station 373+69 to Survey Station 381+30 on Southern's new connecting track, a distance of 761 feet.

Segment III—Survey Station 15513+15 to Survey Station 15518+95 on CG's Spring Track, a distance of 580 feet.

Segment IV—Survey Station 15518+95 to Survey Station 15530+68 on CG's Spring Track, a distance of 1,173 feet; and

Survey Station 15530+68 to Survey Station 15535+65 on CG's Circle Track, a distance of 497 feet.

Under these trackage rights, CSX will continue to transport only overhead or bridge traffic, and will serve no shippers located on Southern or CG's lines.

The joint project involves the relocation of a line of railroad that does not disrupt service to shippers. Accordingly, it falls within the class of transactions identified at 49 CFR 1180.2(d)(5). The Commission categorically exempted these transactions under 49 U.S.C. 10505 in *Railroad Consolidation Procedures*, 366 I.C.C. 75 (1982). The Commission determined that line relocations embrace trackage rights transactions such as the one proposed here. *See D.T. & I.R.—Trackage Rights*, 363 I.C.C. 878 (1981).

Use of this exemption will be conditioned on appropriate labor protection. Any employees affected by the trackage rights agreement will be protected by the conditions in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Decided: December 15, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 86–28734 Filed 12–23–86; 8:45 am]

BILLING CODE 7035–01–M

[1] This will result in CG's abandonment of this portion of the line. Although this abandonment could possibly be exempted here as an incident of the relocation proposal [*see* Finance Docket No. 30639, *Louisiana & Ark. Ry. Co—Track. Rights Exempt.—Illinois C.G. R.R. Co. and New Orleans Term. Co.* (not printed), served April 17, 1985], CG intends to seek separate abandonment authority.

[2] This notice should in no way be interpreted as determinative of the issue of whether this track is an exempt spur track.

[3] Construction of and operation over connecting tracks to not fall under an existing class exemption. That part of the transaction requires approval under 49 U.S.C. 10901 or exemption under 49 U.S.C. 10505. A separate decision will follow concerning the construction phase of the transaction.

[Finance Docket No. 30936]

Delaware Otsego Corporation, et al; exemption from Prior Approval Requirements

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission grants an exemption under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 11343: (1) For Staten Island Railway Corporation (SIRY) to purchase substantially all of the common stock of Rahway Valley Railroad Company (RVRR) and Rahway Valley Railroad Company (RVC) and thereby acquire control of RVRR and RVC; and (2) for The New York, Susquehanna and Western Railway Corporation, and the Delaware Otsego Corporation to obtain indirect control of RVRR and RVC through the purchase.

DATES: This decision will be effective on December 26, 1987. Petitions to reopen must be filed by January 13, 1987.

ADDRESSES: Send pleadings referring to Finance Docket No. 30936 to:.

(1) Office fo the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

and

(2) Petitioner's representative: William P. Quinn, 1800 Penn Mutual Tower, 510 Walnut Street, Philadelphia, PA 19106

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (D.C. Metropolitan area) or call toll free (800) 424–5403.

Decided: December 15, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Commissioner Lamboley concurred in the result.

Noreta R. McGee,

Secretary

[FR Doc. 86–28813 Filed 12–23–86; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 30946]

Robet D. Krebs; Exemption From 49 U.S.C. 11322

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts Robert D. Krebs from the prior approval requirements of 49 U.S.C. 11322 to permit him to hold both a position on the Board of Directors of Phelps Dodge Corporation and his current position as President and Chief Operating Officer and a director of Santa Fe Southern Pacific Corporation.

DATES: This exemption is effective on January 23, 1987. Petitions to stay must be filed by January 5, 1987, and petitions for reconsideration must be filed by January 13, 1987.

ADDRESSES: Send pleadings referring to Finance Docket No. 30946 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Milton E. Nelson, Jr., Robert R. Cowell, 224 South Michigan Avenue, Chicago, IL 60604

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolian area) or toll free (800) 424–5403.

Decided: December 16, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 86–28875 Filed 12–23–86; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–12 (Sub-No. 110X)]

Southern Pacific Transportation Co.; Exemption; Abandonment in Fort Bend County, TX

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903 *et seq.*, the abandonment by Southern Pacific Transportation Company of approximately 15.77 miles of track in Fort Bend County, TX, subject to standard labor protection conditions.

DATES: This exemption will be effective on December 27, 1986. Petitions to reopen must be filed by January 13, 1987.

ADDRESSES: Send pleadings referred to Docket No. AB–12 (Sub-No. 110X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Gary A. Laasko, One Market Plaza, San Francisco, CA 94105

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to: T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 86–28876 Filed 12–23–86; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; Cooperative Research and Development Agreement; Babcock and Wilcox

Notice is hereby given that, pursuant to Section 6(a) of the National Cooperative Research Act of 1984, Pub. L. 98–462 ("the Act"). The Babcock & Wilcox Company and Seitz-Filter-Werke, Theo & Geo Seitz GMBH und Co. have filed a written notification simultaneously with the Attorney General and with the Federal Trade Commission disclosing (1) the identities of the parties to a cooperative research and development agreement that became effective August 22, 1986 and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the venture and its general activities are given below.

The parties to the cooperative research and development agreement are:

The Babcock & Wilcox Company, 3315 Old Forest Road, Lynchburg Road, Lynchburg, VA 24506–0935

Seitz-Filter-Werke, Theo & Geo Seitz GMBH und Co., Planiger Strasse 137, Postfach 2363, D–6550 Bad Keuznach, Federal Republic of Germany

Under the agreement the parties will engage in cooperative research and development activities relating to the design and development of filtration processes, methods and devices for use in applications such as power plants and the licensing of technology developed by such cooperative research.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 86–28942 Filed 12–23–86; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[Docket No. 86–03]

Irving M. Greenfarb, D.O.; Revocation of Registration

On December 5, 1985, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Irving M. Greenfarb, D.O. (Respondent), 160 Littleton Road, Morris Plains, New Jersey 07950 proposing to revoke his DEA Certificate of Registration AG4091714 and deny any pending applications for renewal of that registration. The statutory predicate for the Order to Show Cause was that Respondent's continued registration with the Drug Enforcement Administration would be inconsistent with the public interest as defined in 21 U.S.C. 823(f). The basis for this allegation was Respondent's prescribing of excessive quantities of the controlled substance methaqualone outside the scope of his professional practice and for no legitimate medical purpose, and the fact that on August 7, 1985, after a jury trial in the United States District Court for the Southern District of New York Respondent was found guilty of conspiracy to illegally distribute controlled substances, and illegal distribution of controlled substances.

In a letter dated December 31, 1985, Respondent, through counsel, requested a hearing on the issues raised in the Order to Show Cause. The matter was placed on the docket of Administrative Law Judge Francis L. Young. The hearing in this matter was originally set for June 17–20, 1986 in New York City. Due to Respondent's ill health, the hearing was cancelled and rescheduled for November 25, 1986 in Washington, DC. Respondent's counsel requested a stay of the administrative proceeding due to the pending appeal of Respondent's criminal conviction in the United States Court of Appeals for the Second Circuit. The request for a stay was denied by the Administrative Law Judge. In a letter dated November 24, 1986, Respondent's counsel advised the Administrative Law Judge that Respondent's criminal conviction had been affirmed by the United States Court of Appeals for the Second Circuit and that Respondent did not intend to participate in the hearing. The Administrative Law Judge found that the Respondent had waived his right to a hearing and terminated the proceedings on November 25, 1986.

The Administrator finds that Respondent has waived his right to a hearing in this matter and now enters his final order in this matter without a

hearing and based upon the investigatetive file and the record as it appears. 21 CFR 1301.57.

The Administrator finds that Respondent worked at Jorum Associates, Inc., first in Staten Island and then at a clinic located at 201 E. 34th Street in New York City from March 1, 1981 until February, 1982. From February, 1982 through June 15, 1982, Respondent worked at a related clinic at 290 5th Avenue in New York City. Respondent worked one or two days a week at the clinics for a total of 74 days from March, 1981 through June, 1982. The clinics at which Respondent worked represented that they treated individuals with insomnia.

On May 12, 1982, a DEA Special Agent, acting in an undercover capacity, went to the clinic where Respondent worked at 290 5th Avenue in New York City. Upon entering the clinic the Agent was asked to complete a questionnaire. After completing the questionnaire, the Agent received a physical examination by a physician's assistant. He then went into Respondent's office with the physician's assistant and told the Respondent he was unemployed and had trouble sleeping. Respondent told the Agent not to drink fluids with caffeine and listen to the radio before sleeping. He also wrote the Agent a prescription for 50 Quaalude tablets. The Agent left Respondent's office after 5 minutes and paid the receptionist $200. The Agent was told not to return for 30 days. On May 19, 1982, the Special Agent, acting in an undercover capacity, returned to the clinic at 290 5th Avenue and provided another name to the receptionist. He received a physical examination by the physician's assistant, and went into Respondent's office with the physician's assistant. The Agent told Respondent that he was unemployed and had trouble sleeping. The Respondent again told the Agent not to drink fluids with caffeine before sleeping. As he was talking to the Agent, Respondent began to write a prescription for 52 tablets of Quaalude. The Agent paid the receptionist upon leaving the office the fee of $200.

On May 24, 1982, a search warrant was executed at the clinic at 290 5th Avenue, New York City. Respondent was present. Patient files and various other records were seized. An analysis of Respondent's patient files, and the prescriptions that he wrote for Quaalude during the period March, 1981 through June, 1982 showed that he wrote approximately 3,489 prescriptions for Quaalude totalling 190,160 tablets during the 74 days that he worked at the clinics. The Respondent wrote as many as 140 prescriptions for Quaalude in one day. Respondent prescribed Quaalude for over 96% of the individuals who he saw at the clinic.

On December 13, 1984, Respondent was indicted along with three other physicians and four individuals in the United States District Court for the Southern District of New York for conspiracy to illegally distribute Quaalude, and two counts of illegal distribution of Quaalude. On August 7, 1985, following a five week jury trial, Respondent was found guilty on all three counts. On July 22, 1986, during the pendency of these proceedings, Respondent was sentenced in the United States District Court for the Southern District of New York. Respondent was sentenced to 2½ years of imprisonment, 2 years special parole, and a $15,000 fine.

Several physicians testified at the trial and also provided letters to the Government which stated that upon review of selected patient files and the procedures at the clinics where Respondent worked that it was their professional opinion that the clinic was merely acting as a front for the distribution of Quaalude outside of medical practice. They further stated that the clinic was a sham operation, not intended to seriously treat patients.

The Administrator concludes that the continued registration of Respondent to prescribe, administer, dispense or otherwise handle controlled substances would be inconsistent with the public interest. This is exhibited by Respondent's controlled substance-related felony convictions in United States District Court for the Southern District of New York. These convictions alone provide the requisite statutory grounds for revocation of Respondent's DEA Certificate of Registration pursuant to 21 U.S.C. 824(a)(2).

Respondent's activities caused the diversion of thousands of Quaalude tablets, a much abused controlled substance which is now in Schedule I of the Controlled Substances Act. Respondent was clearly acting outside the scope of professional practice by participating in an operation devoted solely to the illegal distribution of Quaalude. Respondent has failed in his duty as a physician and a DEA registrant.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AG4091714 previously issued to Irving Greenfarb, D.O., be and hereby is revoked effective January 23, 1987. Any outstanding applications for renewal of this registration are hereby denied.

Dated: December 18, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86-28912 Filed 12-23-86; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL SCIENCE FOUNDATION

Advisory Review Panel for Engineering Research Centers; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Review Panel for Engineering Research Centers.

Date and time: January 22, 23, and 24, 1987, 8:30 to 5:00 each day.

Place: Green Park Room, Park Hyatt Hotel, 24th at M Street NW., Washington, DC.

Type of meeting: Closed.

Contract person: Lewis G. Mayfield, Division Director, Cross-Disciplinary Research, Directorate for Engineering, National Science Foundation, 1800 G Street NW., Washington, DC 20550, 202-357-9707.

Purpose of meeting: To provide advice and recommendations concerning Engineering Research Center proposals.

Agenda: To review and evaluate Engineering Research Center proposals requesting NSF support to establish a center to develop fundamental knowledge in engineering fields that will enhance the international competitiveness of U.S. industry and prepare engineers to contribute through better engineering practice.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

December 18, 1986.

[FR Doc. 86-28840 Filed 12-23-86; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Systematic Biology; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Systematic Biology.

Date and time: January 12 & 13, 1987—8:30 a.m. to 5 p.m. each day.

Place: Room 1243, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of meeting: Closed.

Contract person: Dr. James E. Rodman, Acting Program Director, Systematic Biology, (202) 357-9588, Room 215, National Science Foundation, Washington, DC 20550.

Summary minutes: May be obtained from the Contact Person at the above address.

Purpose of meeting: To provide advice and recommendations concerning support for research in systematic biology.

Agenda: Review and evaluation of research proposals and projects as part of the selection process of awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

December 18, 1986.

[FR Doc. 86-28843 Filed 12-23-86; 8:45 am]

BILLING CODE 7555-01-M

COMMITTEE ON EQUAL OPPORTUNITIES IN SCIENCE AND ENGINEERING; MEETING

The National Science Foundation announces the following meeting:

Name: Committee on Equal Opportunities in Science and Engineering.

Dates: Wednesday, Thursday, and Friday, January 21, 22, and 23, 1987.

Time: Wednesday: 1:00 p.m.-5:00 p.m.; Thursday: 9:00 a.m.-5:00 p.m.; Friday: 9:00 a.m.-12:00 p.m.

Place: Room 540.

Type of meeting: Open.

Contact person: Dr. Elvira Doman, Executive Secretary, National Science Foundation, Room 321G0 1800 G Street NW., Washington, DC 20550 Telephone: 202/357-7975.

Purpose of committee: Responsible for all Committee matters relating to the participation in and opportunities for education, training, and research for minorities, women and disabled persons in science and engineering, and the impact of science and engineering on them.

Minutes: May be obtained from the contact person listed above.

Agenda: The Committee will consider mechanism to increase participation of minorities, women and disabled persons in Foundation programs, research projects, and all NSF advisory committees. It will also advise the Director on how to modify NSF policies and procedures relating to minority, women, and disabled persons as well as internal distribution of funds to implement this program.

December 18, 1986.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 86-28841 Filed 12-23-86; 8:45 am]

BILLING CODE 7555-01-M

Materials Research Advisory Committee; Meeting

The National Science Foundation announces the following meeting:

Name: Materials Research Advisory Committee.

Date and Time: Thursday & Friday, January 8 & 9, 1987, 8:30 a.m. to 5:00 p.m.

Place: Room 540, National Science Foundation, 1800 "G" Street, NW., Washington, DC 20550.

Type of Meeting: Part Open—OPEN: January 8, 8:30 a.m. to noon; CLOSED: January 8, Noon to 5 p.m.; January 9, 8:30 a.m. to 5 p.m.

Contact person: Dr. Lewis H. Nosanow, Director, Division of Materials Research, Room 406, National Science Foundation, Washington, DC 20550. Telephone: (202) 357-9794.

Minutes: May be obtained from the Contact Person, Dr. Lewis H. Nosanow, at the above stated address.

Purpose of meeting: To carry out oversight review of the Materials Research Laboratories Program, Materials Research Groups Program, Instrumentation for Materials Research Program, National Facilities Program and the Special Programs in Materials Research Section.

Agenda *Open: Thursday, January 8, 1987—8:30 a.m. to Noon:*

8:30 a.m.—Coffee and donuts

9:00 a.m.—Introduction and explanation of work plan for meeting.

9:30 a.m.—Staff Briefing on Programs

- Overview, Special Programs in Materials Research Section
- Materials Research Laboratories Program
- Materials Research Groups Program
- Instrumentation for Materials Research Program
- National Facilities Program

12:00 noon—Working Lunch;

Organization of Subcommittee work

Closed: January 8, 1987, noon to 5 p.m.; January 9, 1987, 8:30 a.m. to 5:00 p.m.

Oversight review of the above programs. Review and comparison of declined proposals (and supporting documentation) with successful awards, including how merit review is applied to actions.

Reason for closing: The meeting will consist of a review of grant and declination jackets that contain the names of applicant institutions and principal investigators and privileged information contained in declined proposals. The meeting will also include a review of the merit review documentation pertaining to the applicants. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

December 18, 1986.

[FR Doc. 86-28842 Filed 12-23-86; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-255]

Consumers Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-20, issued to Consumers Power Company (the licensee), for operation of the Palisades Plant located in Covert Township in Van Buren County, Michigan.

The amendment request proposes the addition of operability requirements for the two diesel fire pumps to augment the service water under certain service water pump failure conditions. It also proposes a maximum service water inlet temperature as a limiting condition for operation with respect to post design basis accident cooling for various rooms and necessary components. The attendant surveillance requirement for monitoring service water inlet temperature is also proposed to be added. This amendment request also includes by reference a previous request dated November 24, 1980 regarding a minimum water level to be maintained in the containment spray piping and maximum containment pressure during reactor operation. However, insufficient information was provided to support these latter changes and the licensee provided no evaluation with regard to a no significant hazards finding for these proposals. Therefore, the proposed changes associated with the November 24, 1980 submittal are not being considered by the staff at this time as

part of this action but will be processed as part of a future proposed action when the licensee provides the required evaluations.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility or a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

That part of the application being considered at this time, i.e., the operability requirements for fire pumps, the limit on maximum service water inlet temperature, and the addition of surveillance requirements for temperature, were evaluated by the licensee with regard to a finding of no significant hazards consideration as follows:

This change to the Technical Specifications imposes additional requirements for containment cooling by limiting service water inlet temperatures and requiring operable diesel fire pumps.

This change does not result in an increase in the probability or consequences of an accident or malfunction. The additional restrictions provided for service water temperature and diesel fire pumps will ensure that the probability or consequences will remain as previously analyzed.

These changes do not create the possibility of an accident or malfunction of a different type. The additional restrictions have been provided to ensure that the Service Water System heat removal will attain the minimum values needed for previously evaluated accidents.

The margin of safety provided by the Technical Specifications will not be reduced by these changes. The additional restrictions for service water inlet temperature and diesel fire pumps results in an enhancement to safety.

The staff concurs in these findings, noting that the use of the fire water pumps to backup service water has always been a design feature of the plant and was previously approved in the Systematic Evaluation Program for Palisades in 1983 for the case of inoperability of two service water pumps. The proposed service water inlet temperature limit, while maintaining the margin of safety on the limiting cooler, provides additional margin of safety with the increased cooling capability on other heat loads.

In addition, the Commission has provided guidance of examples that are considered not likely to involve significant hazards considerations (51 FR 7751, March 6, 1986). This amendment request matches example (ii) in that it involves a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications. Therefore, the staff proposes a preliminary determination that no significant hazards are involved in this amendment request.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing. Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 am to 5:00 pm. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 23, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Ashok C. Thadani: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Judd L. Bacon, Esq., Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i) through (v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated December 2, 1986, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Van Zoeren Library, Hope College, Holland, Michigan.

Dated at Bethesda, Maryland, this 16th day of December 1986.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Director, PWR Project Directorate #8, Division of PWR Licensing-B.

[FR Doc. 86–28923 Filed 12–23–86; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–329/330]

Consumers Power Co., Midland Plant, Units 1 and 2; Order Revoking Construction Permits

I

Construction Permit Nos. CPPR–81 and CPPR–82 authorized construction of the Midland Plant, Units 1 and 2, located just south of the City of Midland in Midland County, Michigan. The Construction Permits are held by Consumers Power Company (CPC). Both Construction Permits were issued on December 15, 1972. The latest construction completion dates in the Permits, as amended, were December 1, 1984 and July 1, 1984, respectively. CPC filed timely requests on May 24, 1984 and September 11, 1984, to extend the latest completion dates to December 1, 1989 and July 1, 1989, respectively.

II

On July 1, 1986, CPC informed the Commission that it planned to convert Unit 1 at Midland to a gas-fired unit and to abandon Unit 2 in-place. It also stated that it is withdrawing its request to extend the Construction Permits' latest completion dates. By motion dated July 11, 1986, CPC requested the Atomic Safety and Licensing Board (ASLB) to authorize withdrawal of its applications for licenses to operate Units 1 and 2 at Midland. The ASLB, in a Memorandum and Order dated September 26, 1986, ordered that the action on CPC's motion seeking authorization to withdraw the operating license applications be deferred pending preparation by the staff and consideration by the ASLB of an environmental assessment. The staff conducted an inspection of the Midland site on October 15 and 16, 1986, to determine, among other things, whether CPC's site stabilization plan, outlined in the October 2, 1986, CPC letter, had been completed satisfactorily and to determine whether the site stabilization plan considered all critical site areas. The NRC staff verified that CPC had satisfactorily restored the site to an environmentally stable condition and that Units 1 and 2 are not capable of being operated as utilization facilities. An Environmental Assessment and Finding of No Significant Impact was published in the **Federal Register** on November 20, 1986 (51 FR 42024).

On December 17, 1986, the ASLB issued a Memorandum and Order granting the July 11, 1986, CPC motion. Pursuant to 10 CFR 51.32 the Commission has determined that the revocation of these Construction Permits will have no significant impact on the environment.

III

A notice of withdrawal of the Midland Plant, Units 1 and 2, operating license applications is also being published in the **Federal Register.**

For the reasons set forth above, it is hereby ordered that Construction Permit Nos. CPPR–81 and CPPR–82 are revoked.

This Order is effective upon its date of issuance.

Dated at Bethesda, Maryland, this 18th day of December 1986.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Director, Division of PWR Licensing-B, Office of Nuclear Reactor Regulation.

[FR Doc. 86–28918 Filed 12–23–86; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–329, 50–330]

Consumers Power Co., Midland Plant, Units 1 and 2; Withdrawal of Application for Operating License and Termination of Proceeding

On July 11, 1986, Consumers Power Company (CPC) filed a motion which requested authorization for withdrawal of its application for licenses to operate Units 1 and 2 at Midland and for dismissal of the operating license proceeding before the NRC Atomic Safety and Licensing Board (ASLB). On December 17, 1986, the ASLB issued a Memorandum and Order granting the motion and authorizing the staff to permit withdrawal of the operating license application subject to such conditions as the NRC staff finds to be warranted. The ASLB premised its authorization on certain commitments made by CPC.

The NRC staff finds that no conditions are warranted. However, it notes CPC's commitment to take the appropriate steps to assure that the structures, facilities and surrounding areas will be stable and suitable for their intended use in the contemplated plant in the event the site is used for a gas-fired cogeneration facility. the NRC staff also notes CPC's commitment to modify the Emergency Cooling Water Reservoir (ECWR) by backfilling and then trenching to the #003 outfall structure on the east side of the cooling pond, so that the entire ECWR can be gravity-drained in the event the site is completely abandoned. CPC has also committed to notify the NRC staff when conversion to a gas-fired facility begins or, alternatively, when the site is abandoned.

The site of the Midland Plant, Units 1 and 2, is located just south of the City of Midland in Midland County, Michigan. The Construction Permits, CPPR-81 and CPPT-82, were issued on December 15, 1972. On May 24, 1984 and September 11, 1984, CPC filed timely requests to extend the completion dates to December 1, 1989 and July 1, 1989, respectively. On July 1, 1986, CPC withdrew its request to extend the latest completion dates in its Construction Permits. An environmental Assessment and Finding of No Significant Impact was published in the **Federal Register** on November 20, 1986 (51 FR 42024).

Correspondence concerning this application will continue to be maintained at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555 and at the Grace A. Dow Memorial Library, 1710 West St. Andrews Road, Midland, Michigan 48640 for at least one year.

Dated at Bethesda, Maryland, this 18th day of December 1986.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Standardization and Special Projects Directorate, Division of PWR Licensing-B, Office of Nuclear Reactor Regulations.

[FR Doc. 86-28917 Filed 12-23-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-278, License No. DPR-56, EA 86-59]

Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Unit 3); Order Imposing Civil Monetary Penalties

I

Philadelphia Electric Company, Philadelphia, Pennsylvania 19101 (licensee), is the holder of License No. DPR-56 issued by the Nuclear Regulatory Commission (Commission/NRC). This license authorizes the licensee to operate the Peach Bottom Atomic Power Station, Unit 3, Delta, Pennsylvania in accordance with the conditions specified therein.

II

During March 18-21, 1986, an NRC inspection was conducted at Peach Bottom to review the circumstances associated with an event that occurred at Unit 3 involving the withdrawal of a control rod during reactor startup in a sequence different from that specified in the control rod program. As a result of the inspection, it was found that the licensee has not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalties was served upon the licensee by letter dated June 9, 1986. The Notice states the nature of the violations, the provisions of the Commission's requirements that the licensee has violated, and the amount of civil penalties proposed for the violations.

An answer dated July 23, 1986 to the Notice of Violation and Proposed Imposition of Civil Penalties was received from the licensee.

III

After consideration of the statements of fact, explanation, and argument for mitigation of the proposed civil penalties contained in your response and as set forth in the Appendix to this Order, the Director, Office of Inspection and Enforcement, has determined that the penalties proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalties should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L., 96-295), and 10 CFR 2.205, it is hereby ordered that: The licensee pay civil penalties in the amount of Two Hundred Thousand Dollars ($200,000) within thirty days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

V

The licensee may, within thirty days of the date of this Order, request a hearing. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy of the hearing request also shall be sent to the Assistant General Counsel for Enforcement, Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. If the licensee fails to request a hearing within thirty days of the date of this Order, the provisions of this Order shall be effective without further proceedings and, if payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee violated NRC requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalties and

(b) Whether, on the basis of such violations, this Order should be sustained.

Dated at Bethesda, Maryland, this 12h day of December 1986.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

Appendix—Evaluation and Conclusion

In Philadelphia Electric Company's July 23, 1986 response to the Notice of Violation and Proposed Imposition of Civil Penalties (Notice) dated June 9, 1986, the licensee acknowledges the occurrence of the violations stated in the Notice but requests mitigation of the civil penalty amount from $200,000 to $100,000. Provided below are (1) a restatement of the violations, (2) a summary of the licensee's response including their reasons for requesting mitigation, and (3) the NRC evaluation of the licensee's response.

Restatement of Violations

I.A. Technical Specification 6.8.1 requires that written procedures shall be established, implemented, and maintained covering the activities of Appendix A of Regulatory Guide 1.33, November 1972. Appendix A of Regulatory Guide 1.33 states in part that the activity of "Hot Standby to Minimum Load (nuclear startup)" requires procedures.

Technical Specifications 6.8.1 is implemented by the Peach Bottom General Procedure GP-2, Appendix 1, Revision 3, "Startup Rod Withdrawal Sequence Instructions." Step 13 of GP-2 requires the reactor operator to withdraw control rod 02-23.

Contrary to the above, at 1:28 a.m. on March 18, 1986, while at step 13 of GP-2, Appendix 1, the reactor operator withdrew control rod 10-23 rather than rod 02-03 and incorrectly documented that rod 02-23 had been withdrawn.

B. Technical Specification Limiting Condition for Operation 3.3.B.3.b requires that whenever the reactor is in the startup or run mode below 25% rated power, the Rod Worth Minimizer shall be operable or a second licensed operator shall verify that the operator at the reactor console is following the control rod program.

Contrary to the above, at 1:28 a.m. on March 18, 1986, while the reactor was in the startup mode below 25% power and the Rod Worth Minimizer was inoperable, the second licensed operator did not verify adherence to the control rod program and identify that a wrong control rod (10-23) was withdrawn. The second licensed operator also incorrectly documented that rod 02-23 had been withdrawn.

This is a Severity Level III Problem (Supplement I). (Civil Penalty—$100,000 assessed equally among the violations.)

II.A. Technical Specification Limiting Condition for Operation 3.3.B.3.a and 3.3.A.2.d. require that whenever the reactor is in the startup or run mode below 21% rated power, the Rod Sequence Control System (RSCS) shall be operable, and no position switches shall be bypassed unless the control rods are moved in sequence to their correct position and the actual rod position is known.

Contrary to the above, between 2:30 and 2:55 a.m. on March 18, 1986, when a Group 3 rod withdrawal was attempted while the reactor was in the startup mode below 21% rated power, a rod block occurred. The RSCS position switch for rod 02-03 was bypassed to the full-out position by the Shift Supervisor and Shift Superintendent when in fact the rod was full-in.

B. Technical Specification Surveillance Requirement 4.3.A.2.d requires that a second licensed operator verify a control rod is in its correct position before the RSCS function is bypassed.

Contrary to the above, on March 18, 1986 when the RSCS function was bypassed for control rod 02-23, the second licensed operator failed to verify that control rod 02-23 was in the correct position.

This is a Severity Level III Problem (Supplement I). (Civil Penalty—$100,000 assessed equally among the violations.)

Summary of Licensee's Response

The licensee acknowledges the occurrence of the violations as stated in the Notice of Violation and Proposed Imposition of Civil Penalties, but requests that the proposed penalties in the cumulative amount of $200,000 be reduced to the base civil penalty amount of $100,000. The licensee states that the increase of the base civil penalty amount in this case is excessive, unwarranted, and does not properly consider the mitigation and escalation factors set forth in the "General Statement of Policy and Procedures for NRC Enforcement Actions," 10 CFR Part 2, Appendix C.

The licensee contends that the NRC basis for escalating the amount of the proposed civil penalties, namely, the licensee's history of personnel errors involving failures to adhere to procedures and not paying attention to detail, is insufficient. Also, the licensee argues that two of the civil penalties issued to Peach Bottom in the past three years were mitigated based on the licensee's corrective actions. Further, the licensee maintains that the NRC, in considering its request for mitigation, should consider the prompt managerial actions in identifying and reporting the event, as well as the comprehensive corrective actions taken subsequent to the event.

NRC Evaluation

The NRC staff carefully reconsidered the mitigation and escalation factors identified in the Enforcement Policy. In evaluating the licensee's request for mitigation of the civil penalties based on prompt identification and reporting, the NRC staff considered, among other things, the length of time the violations existed prior to discovery, the opportunity available to discover the violations, and the promptness and completeness of any required reports. In this case, numerous opportunities had existed for four licensed operators to identify and correct the problem had they been more attentive to the details of their duties, including adherence to safety procedures. Since these errors were not promptly identified by personnel who have a significant role in the safe operation of the plant, mitigation of the civil penalties based on this factor is not appropriate.

The NRC staff also recognizes the corrective actions taken by the licensee subsequent to the event, including disciplinary actions, restructuring and reassigning certain nuclear station management, and reviewing the incident with station operations personnel. While the NRC staff acknowledges the need for these actions, the NRC staff does not view them as sufficiently extensive to warrant mitigation, since the licensee focused narrowly on the failure of certain individuals through minor disciplinary actions of an administrative nature rather than on the broad management responsibility in overseeing personnel performance. The licensee has taken the position that no additional emphasis is needed to improve management oversight and contends that a pattern of inattention to detail or failure to adhere to procedural requirements does not exist at Peach Bottom. The NRC staff disagrees with the licensee's assessment, particularly in light of the licensee's enforcement history. Improved management involvement and oversight is needed at the Peach Bottom facility to preclude the recurrence of significant personnel errors in the future. Since the licensee failed to undertake vigorous and extensive corrective actions in this regard, mitigation is inappropriate.

The licensee contends that its past performance did not warrant escalation of the civil penalty. To the contrary, the enforcement history in the area of personnel performance has been poor. Therefore, escalation of the civil penalties by 100 percent is appropriate and warranted in this case. As described in the NRC letter dated June 29, 1986 transmitting the Notice of Violation and Proposed Imposition of Civil Penalties, three previous civil penalties issued for violations of technical specifications involved violations that resulted from personnel errors. Although the licensee is correct in stating that one of these previous civil penalties, as well as a civil penalty issued on May 30, 1985 for violation of radiation protection requirements, were partially mitigated based on the licensee's corrective actions, the NRC staff considers it appropriate to escalate the current civil penalty because those previous corrective actions were not fully effective in precluding recurrence of such personnel errors. In addition, the NRC staff evaluated the licensee's claim that the enforcement conference conducted on June 29, 1986 involved an issue of "fitness for duty" rather than the inattentiveness of a licensed operator. The NRC staff believes this example also demonstrates an attitude of inattention to duties in the control room for which corrective actions were not effective and further reinforces the necessity for effective management involvement in the area of personnel performance of their duties.

NRC Conclusion

The violations occurred as originally stated. The NRC staff concludes that the licensee's corrective actions were not sufficiently extensive nor was the identification of the problem sufficiently prompt to warrant mitigation of the proposed penalties. Rather, the staff concludes that it is appropriate to escalate the base civil penalties based on the licensee's prior poor performance in the area of adherence to procedures. Given the number of licensed operators, including two supervisors involved, a significant civil penalty is warranted. Accordingly, the civil penalties in the amount of Two Hundred Thousand Dollars ($200,000) should be imposed.

[FR Doc. 86-28921 Filed 12-23-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 30-09664, License No. 35-15727-01, EA 86-134]

Star-Jet Services, Inc; Order Imposing Civil Monetary Penalties

I

Star-Jet Services, Inc. (licensee), 9208 West Reno, Olkahoma City, Oklahoma, is the holder of License No. 35-15727-01 issued by the Nuclear Reglatory Commission (NRC). License No. 35-15727-01 authorizes use of byproduct material for oil and gas well logging and tracer studies in oil and gas wells and is due to expire January 31, 1990.

II

In inspection of the licensee's activities under its license was conducted on April 21, 1986. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. These results were discussed with licensee representatives during an enforcement conference on July 18, 1986.

A written Notice of Violation and Proposed Imposition of Civil Penalties was served upon the licensee by letter dated September 4, 1986. This Notice stated the nature of the violations, the license conditions that were violated, and amount of civil penalties proposed. An answer dated September 30, 1986 to the Notice of Violation and Proposed Imposition of Civil Penalties was received from the licensee.

III

After consideration of the answer received, and the statements of fact, explanations, and arguments for remission of the proposed civil penalties contained therein, the Director, Office of Inspection and Enforcement, has determined, as set forth in the Appendix to this Order, that the penalties proposed for the violation designated in the Notice of Violation and Proposed Imposition of Civil Penalties should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2282, P.L. 96–295, and 10 CFR 2.205, it is hereby ordered that: The licensee pay civil penalties in the total amount of Five Hundred Dollars ($500) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The licensee may, within 30 days of the date of this Order, request a hearing. A request for hearing shall be addressed to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy of the hearing request shall be sent to the Assistant General Counsel for Enforcement, Office of the General Counsel, at the same address. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings and, if payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee violated NRC requirements set forth in the Notice of Violation and Proposed Imposition of Civil Penalties, and

(b) Whether, on the basis of such violations, this Order should be sustained.

For the Nuclear Regulatory Commission.

Dated at Bethesda, Maryland, the 12th day of December 1986.

James M. Taylor,

Director, Office of Inspection and Enforcement.

Appendix—Evaluation and Conclusion

The violations and associated civil penalties were identified in the Notice of Violation and Proposed Imposition of Civil Penalties dated September 4, 1986. The licensee responded by letter dated September 30, 1986. In its response, the licensee admitted the violations; however, it requested remission of the civil penalties. Provided below is (1) a restatement of each violation, (2) a summary of the licensee's request for remission, and (3) the NRC's evaluation of the licensee's response.

Restatement of Violotions

1. 10 CFR 20.105(b) requires that radiation levels is unrestricted areas, be limited so that, if an individual was continuously present in the areas, the individual could not receive a dose in excess of two millirems in any one hour or a dose in excess of 100 millirems in any seven consecutive days.

Contrary to this requirement, on April 21, 1986, the NRC inspector measured radiation levels of 17 mR/hr at the point of contact with the licensee's building (an unrestricted area) and 4.5 mR/hr at three feet from outside of the building.

2. 10 CFR 20.201(b) requires that each licensee shall make or cause to be made surveys as may be necessary for it to comply with 10 CFR Part 20. 10 CFR 20.105 specifies the radiation levels permissible in an unrestricted area.

Contrary to these requirements, as of April 21, 1986, the NRC inspector found through interviews that the licensee had made no surveys of the area where radioactive sources were stored in order to determine if radiation levels exceeded allowable limits for unrestricted areas.

3. License Condition 18 requires that licensed activities shall be conducted in accordance with statements, representations, and procedures contained in the radioactive material license application dated January 31, 1984, and the licensee's letter dated November 29, 1984.

Figure 4(a) of the operating procedures included with the license application requires that licensed materials be stored in a designated radioactive materials and waste area located outside and behind the shop area.

Contrary to this requirement, on April 26, 1986, the NRC inspector found radioactive sources stored in the shop area instead of the designated radioactive materials and waste area.

4. 10 CFR 20.307(a) requires that licensed materials stored in an unrestricted area be secured against unauthorized removal from the place of storage.

Contrary to this requirement, the NRC inspector found on April 21, 1985, that radioactive sources were stored in the shop area (an unrestricted area) in ulocked containers and cabinets.

5. License Condition 9.D authorizes the use by the licensee of iridium-192 for tracer studies in oil and gas wells only.

Contrary to this condition, on April 21, 1986, the NRC inspector found that iridium was used and stored in a device for "scattered gamma ray logging."

Summary of Licensee's Request for Remission

The licensee's September 30, 1986 response addresses what the licensee has done to ensure that the violations do not recur. The licensee states, however, that it should not have a pay a fine in any amont. The licensee notes the severe economic downturn in the idustry and the considerable expense it has incurred by hiring a consultant to support the radiation safety program. The licensee argues that modifications to its radiation safety program will enhance licensee performance more than a fine.

NRC'S Response

The licensee's request for remission is based on the effectiveness of its corrective actions. The Enforcement Policy allows for corrective actions to be considered in assessing a civil penalty. Where corrective actions are deemed unusually prompt and extesive, a civil penalty may be reduced by as much as 50 percent. However, in this case the NRC has concluded that the licensee's corrective actions were neigher unusually prompt nor unusually extensive and, therefore do not warrant reduction of the proposed civil penalties.

Conclusions

The licensee did not deny the violations. Thus, based on this and its own findings, the NRC concludes that the violations occurred as stated in the Notice of Violation and Proposed Imposition of Civil Penalties and that no mitigation of the proposed civil penalties is warranted. Therefore, civil penalties in the amount of $500 should be imposed.

[FR Doc. 86–28915 Filed 12–23–86; 8:45 am]
BILLING CODE 7590–01–M

[Docket Nos. 50–445 and 50–446, Permit Nos. CPPR–126 and CPPR–127, EA 86–09]

Texas Utilities Electric Co. (Comanche Park Steam Electric Station Unit 1); Order Imposing Civil Monetary Penalties

I

Texas Utilities Electric Company (the licensee) is the holder of Construction Permit Nos. CPPR–126 and 127 (Construction Permits) issued by tghe Nuclear Regulatory Commission (the NRC or the Commission). The Construction Permits authorize contruction of the Comanche Peak Steam Electric Station, Units 1 and 2. The Construction Permits will expire on August 1, 1988 and August 1, 1987, respectively.

II

Safety inspections of the licensee's activities were conducted during various times from July, 1984–December, 1985. A separate inspection to evaluate the CPSES Unit 1 as-built cable tray inspection program was conducted during the period November 18–December 18, 1985. The results of this inspection were discussed with licensee representatives during an enforcement conference on December 18, 1985.

A written Notice of Violation and Proposed Imposition of Civil Penalties (Notice) was subsequently served upon the licensee by letter dated May 2, 1986. This Notice stated the nature of the violations, the provisions of the NRC regulations that were violated, and proposed civil penalties in the amount of $50,000 for the violations set out in the Notice in Appendix B to the May 2, 1986 letter.

The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalties in a letter dated August 4, 1986 and requested mitigation of the civil penalty associated with the deficiencies identified in cable tray as-built inspection program described in Violation I.A.

III

Upon consideration of the licensee's response and the statements of fact, explanation, and arguments for mitigation of the proposed civil penalty contained therein, as set forth in the Appendix to this Order, the Director, Office of Inspection and Enforcement, has determined that the violation occurred as stated and the penalty proposed for the violation designated in the Notice of Violation and Proposed Imposition of Civil Penalties should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, P.L. 96–295), and 10 CFR 2.205, it is hereby ordered that: The licensee pay the civil penalty in the amount of Fifty Thousand Dollars ($50,000) within thirty days of the date of this Order, by check, draft, or money order payable to the Treasurer of the United States and mailed to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

V

The licensee may, within 30 days of the date of this Order, request a hearing. A request for hearing shall be addressed to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy of the hearing request also shall be sent to the Assistant General Counsel for Enforcement at the same address. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. Upon failure of the licensee to request a hearing within thirty days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licenses violated NRC requirements set forth in the Notice of Violation and Proposed Imposition of Civil Penalties referred to herein, and

(b) Whether, on the basis of such violation, this Order should be sustained.

For the Nuclear Regulatory Commission.

Dated at Bethesda, Maryland, the 15th day of December, 1986.

James M. Taylor,

Director, Office of Inspection and Enforcement.

Appendix

On May 2, 1986, a Notice of Violation and Proposed Imposiitions of Civil Penalties (Notice) was issued for violations identified during inspections conducted at various times from July, 1984—December, 1985 proposing civil penalties in the amount of $50,000. Texas Utilities Electric Company (TUEC) did not pay the proposed $50,000 civil penalties for the violations in Appendix B. TUEC admitted Violation I.A of Appendix B, but requested mitigation of the civil penalty amount associated with Violation I.A. Since TUEC did not request mitiation for Violation I.B, only Violation I.A is discussed below. The proposed $50,000 civil penalties were assessed equally between the two violations.

Restatement of Violation I.B

10 CFR Part 50, Appendix B, Criterion X requires, in part, that a program for inspection of activities affecting quality be established and executed by or for the organization performing the activity to verify conformance with the documented instructions, procedures, and drawings for accomplishing the activity. In addition, Criterion XVIII requires, in part, that a comprehensive system of planned and periodic audits be carried out to verify compliance with all aspects of the quality assurance program and to determine the effectiveness of the program.

The Comanche Peak Steam Electric Station (CPSES) Final Safety Analysis Report (FSAR), section 17.1.10, states, in part, ". . . inspection planning is utilized to assure conformance to procedures, drawings specifications, codes, standards, and other documented instructions." The CPSES FSAR, section 17.1.18 states, in part, with respect to audits, "TUGCO requires that planned and periodic audits be performed to verify compliance with all aspects of the quality assurance program to determine effectiveness of the program. . . ."

Section 3.0 of Texas Utilities Generating Company (TUGCO) Engineering Procedure TNE–AB–CS–1, Revision 1, dated September 30, 1985, "As-Built Procedure, Cable Tray Hanger Design Adequacy Verification," states, in part, ". . . The 'as-designed' drawing will be marked up by the 'as-built' walkdown team in red . . . to denote actual dimenesion/configuration of the CTH attributes that are to be 'as-built.' The QC inspector will verity all dimension/configuration on the redlined drawing. . . ."

Contrary to the above, as of the inspection from November 18—December 18, 1985, attributes of a number of cable tray hangers located in the Reactor Building and Fuel Building related to tray size, tray span, tray clamps, member size, weld qualitative measurements, dimenional measurements, bolt size, and member orientation were not either correctly determined by walkdown engineers or correctly verified by quality control inspectors for 15 of 32 cable trays that had been walked down prior to the NRC inspection. In addition, the licensee failed to perform audits of these activities.

Summary of Licensee's Response

TUEC admits the violation occurred as stated. Although TUEC does not agree with some of the examples documented in Inspection Report 50–445/85–19, the number of examples with which it does agree indicated that the Unit 1 Cable Tray Hanger (CTH) as-built program was not properly implemented.

The licensee believes the primary reasons for the violation and its failure to identify that the Unit 1 CTH As-Built Program was not being properly implemented were: (1) Directives given by the Unit 1 CTH, Walkdown Manager were contrary to procedures (2) production quotas were set by the Unit 1 CTH Walkdown Manager which tended to encourage walkdown engineers to violate the engineering procedure, and (3) surveillance by Quality (QC) supervision was inadequate.

The licensee reqeusts mitigation of the civil penalty associated with this violation becaus of its extensive corrective actions. TUEC initiated a Corrective Action Request to address the problem, suspended the program in November, 1985 when the problem was identified, and did not resume the program until late January, 1986. The licensee contends that its reviews and investigation in response to the Unit 1 CTH as-built program resulted in a multitude of corrective actions by engineering and QC regarding the conduct of the program and the assocaited inspection activities, and lists fifteen of these significant actions in its response.

NRC Evaluation of Licensee's Response

After a thorough review of the licensee's response and its request for mitigation of the civil penalty, the NRC staff has concluded that the violation occurred as set forth in the

Notice and that no additional information was provided by the licensee which was not known to the staff at the time the Notice was issued. The staff has evaluated the licensee's request for mitigation, and after considering the factors allowed by the Enforcement Policy, determining that mitigation of Civil penalties would not be appropriate.

The NRC staff, when assessing civil penalties associated with this violation, recognized the licensee's extensive corrective actions taken after this violation was identified. The staff acknowledged in the May 2, 1986 letter that TUEC "took extensive actions to address the problems." However, when a breakdown in the quality verification program occurrsk, as was the case here, extensive corrective actions are necessary to reestablish confidence in the affected structures, systems, and components.

While the NRC staff acknowledges that TUEC has taken these extensive actions, these actions were necessary considering the lengthy duration of the violation and its pervasiveness. In fact, the NRC staff believed that escalation of the civil penalties could have been appropriate because of the duration of the violation, the many examples involved and the number of opportunities the licensee had to identify and to correct the problem. In view of the extent and significance of the problem, the corrective actions taken were not extra-ordinary and were required to verify the quality of the installation of the CTHs after construction was essentially completed. Therefore, on balance, the NRC staff was not believe mitigation of the civil penalty associated with Violation I.A. is warranted and is imposing the full amount of civil penalties associated with the violations in Appendix B to emphasize to the licensee the importance of promptly identifying and correcting significant problems while activities are in progress.

Conclusion

Mitigation of the proposed civil penalties is not warranted. Accordingly, civil penalties in the amount of Fifty Thousand Dollars ($50,000) are imposed.

[FR Doc. 86-28916 Filed 12-23-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-325 and 50-324]

Carolina Power and Light Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from the requirements of Appendix R to 10 CFR 50 to Carolina Power & Light Company (the licensee), for the Brunswick Steam Electric Plant, Units 1 and 2, located in Brunswick County, North Carolina.

Environmental Assessment

Identification of Proposed Action

The exemptions would modify Appendix R requirements as follows:

1. Approve alternate fire protection features in the Reactor Buildings for Units 1 and 2 for safe shutdown system separation (Fire Areas RB1-1 and RB2-2, licensee items 7.2.1 and 7.2.3.)
2. Approve alternate fire protection features in the ECCS room for Units 1 and 2 for safe shutdown separation features and for unrated penetrations (Fire Areas RB1-6 and RB2-6, licensee items 7.2.2 and 7.2.4).
3. Approve alternate fire protection features for safe shutdown system separation in the Diesel Generator Building Basement (Fire Area DB-1, licensee item 7.2.5).
4. Approve alternate fire protection features for safe shutdown system separation for the Service Water Building (Fire Area SW-1, licensee item 7.2.6).
5. Approve alternate fire protection features for full area supressions for the Diesel Generator Building (Fire Area DG-8, licensee item 7.2.7).
6. Approve alternate fire protection features for suppression in any "area, room or zone" where alternate shutdown capability is provided for rooms in the control and diesel generator buildings (licensee items 7.2.8 and 7.2.9).
7. Approve alternate fire protection features for fire suppression and detection, and emergency lighting for the east yard (licensee items 7.2.10 and 7.2.11).

The Need for the Proposed Action

The proposed exemptions are needed because the features described in the licensee's request regarding the existing fire protection at its plant for these items are the most practical method for meeting the intent of Appendix R and literal compliance would not significantly enhance the fire protection capability.

Environmental Impacts of the Proposed Action

The proposed exemptions will provide a degree of fire protection that is equivalent to that required by Appendix R for other areas of the plant such that there is no increase in the risk of fires at these facilities. Consequently, the probability of fires has not been increased and the post-fire radiological releases will not be greater than previously determined nor do the proposed exemptions otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with these proposed exemptions.

With regard to potential nonradiological impacts, the proposed exemptions involve features located entirely within the restricted areas as defined in 10 CFR Part 20. The exemptions do not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemptions.

Alternate Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statement (operating license) for the Brunswick Steam Electric Plant, Units 1 and 2.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of no Significant Impact

The Commission has determined to prepare an environmental impact statement for the proposed exemptions.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for the exemptions dated April 24, 1984, as supplemental December 21, 1984 and October 28, 1985, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Southport-Brunswick County Library, 108 W. Moore St., Southport, North Carolina 20461.

Dated at Bethesda, Maryland, this 18th day of December, 1986.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, BWR Project Directorate #2, Division of BWE Licensing.

[FR Doc. 86-28919 Filed 12-23-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-338 and 50-339]

Virginia Electric and Power Co. and Old Dominion Electric Cooperative, North Anna Power Station, Units No. 1 and 2; Issuance of Environmental Assessment and Finding no Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating Licenses No. NPF-4 and No. NPF-7 issued to Virginia Electric and Power Company and Old Dominion Electric Cooperative (the licensees), for the operation of North Anna Power Station, Units No. 1 and 2, located in Louisa County, Virginia.

Identification of Proposed Action

The amendment would consist of changes to the operating license authorizing an extension in the expiration date for the Unit 1 Facility Operating License NPF-4 from February 18, 2011 to April 1, 2018 and for the Unit 2 Facility Operating License NPF-4 from February 19, 2011 to August 21, 2020.

The amendment to the licenses is responsive to the licensee's application dated August 22, 1986, as supplemented by letters dated December 5, and December 10, 1986. The NRC staff has prepared an Environmental Assessment of the Proposed Action, "Environmental Assessment by the Office of Nuclear Reactor Regulation Relating to the Change in Expiration Dates of Facility Operating License Nos. NPF-4 and NPF-7, Virginia Electric Power Company et al., North Anna Power Station, Units No. 1 and No. 2," dated December 18, 1986.

Summary of Environmental Assessment

The NRC staff has reviewed the potential environmental impacts of the proposed change in the expiration dates of the Operating Licenses for North Anna Power Station, Unit Nos. 1 and 2. This evaluation considered the previous environmental studies, including the "Final Environmental Statement Related to Operation of North Anna Power Station, Units 1, 2, 3 and 4", dated April 1973, and more recent NRC policy.

Radiological Impacts

Although the population in the vicinity of North Anna, Units 1 and 2 has increased slightly, the site requirements of 10 CFR Part 100 are still met with regard to Exclusion Area Boundary, Low Population Zone, and nearest population center distances. In addition, the proposed additional years of reactor operation do not increase the annual public risk from reactor operation.

With regard to normal plant operation, the licensee complies with NRC guidance and requirements for keeping radiation exposures "as low as is reasonably achievable" (ALARA) for occupational exposures and for radioactivity in effluents. The licensee would continue to comply with these requirements during any additional years of facility operation and also apply advanced technology where available and appropriate.

Non-Radiological Impacts

The NRC review identified no additional degradation of the habitat surrounding North Anna with regard to indigenous plant and animal species for the additional years of facility operation. In addition, the National Pollutant Discharge Elimination System permit provides additional environmental protection.

Finding of no Significant Impact

The staff has reviewed the proposed change to the expiration dates of the North Anna Power Station, Units 1 and 2 Facility Operating Licenses relative to the requirements set forth in 10 CFR Part 51. Based upon the environmental assessment, the staff concluded that there are no significant radiological or nonradiological impacts associated with the proposed action and that the proposed license amendments will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed amendments.

For further details with respect to this action, see (1) the request for amendments dated August 22, 1986 as supplemented by letters dated December 5, and December 10, 1986, (2) the Final Environmental Statement Related to the Operation of North Anna Power Station, Units 1, 2, 3 and 4, dated April 1973, and (3) the Environmental Assessment dated December 18, 1986. These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC., and at the Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093, and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Dated at Bethesda, Maryland, this 18th day of December 1986.

For the Nuclear Regulation Commission.

Daniel G. McDonald,

Acting Director, PWR Project Directorate No. 2, Division of PWR Licensing-A, Office of Nuclear Reactor Regulation.

[FR Doc. 86-28922 Filed 12-23-86; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 1-0170]

Issuer Delisting; Application To Withdraw From Listing and Registration; Amoco Corporation (Guarantees of Cyprus Mines Corporation's 8½% Sinking Fund Debentures due April 15, 2001 in the Original Principal Amount of $100,000,000)

December 15, 1986.

Amoco Corporation ("Company") has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the New York Stock Exchange, Inc. ("NYSE").

The reasons alleged in the application for withdrawing this security from listing and registration includes the following:

Cyprus Mines Corporation ("Cyprus Mines") is a Delaware corporation and wholly-owned subsidiary of Cyprus Minerals Company ("Cyprus Minerals"), also a Delaware corporation. Cyprus Mines has outstanding $82 million in principal amount of its 8½% Sinking Fund Debentures (excluding $14 million in principal amount beneficially owned by Cyprus Minerals), which are listed on the NYSE, and are unconditionally guaranteed by the Company. Prior to July 1, 1985, the Cyprus entities were indirect, wholly-owned subsidiaries of the Company. On July 1, 1985, the stock of Cyprus Minerals was distributed to Amoco shareholders in a tax-free "spin-off".

On November 7, 1986, Cyprus Mines applied to the Commission for permission to withdraw the 8½% Sinking Fund Debentures from listing and registration on the NYSE.[1] In light of Cyprus Mines application, the Company sees no purpose in continuing the listing of the Guarantees since they relate only to the underlying Debentures as guaranteed and are not a separate security.

Any interested person may, on or before January 7, 1987, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the

[1] The Commission published notice of the Cyprus Mines delisting application in Securities Exchange Act Release No. 23818, November 17, 1986, 51 FR 42154.

Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-28884 Filed 12-23-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15485; File No. 812-6505]

Franklin AGE High Income Fund, Inc., et al.; Application

December 17, 1986.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application under the Investment Company Act of 1940 ("1940 Act").

Applicants: AGE High Income Fund, Inc.; Birr, Wilson Money Fund; Franklin California Tax-Free Income Fund, Inc.; Franklin New York Tax-Free Income Fund, Inc.; Franklin California Tax-Free Trust; Franklin Tax-Free Trust; Franklin Corporate Cash Management Fund; Franklin Custodian Funds, Inc.; Franklin Equity Fund; Franklin Federal Money Fund; Franklin Federal Tax-Free Income Fund; Franklin Gold Fund; Franklin Money Fund; Franklin Option Fund; Franklin Tax-Exempt Money Fund; Franklin New York Tax-Exempt Money Fund; Franklin Pennsylvania Investors Fund; and Industrial Fiduciary Trust ("Funds") and Franklin Advisers, Inc.

Relevant 1940 Act Section and Rule: Exemption requested *under* section 17(d) and Rule 17d-1.

Summary of Application: Applicants seek an order permitting the Funds and all future investment companies for which subsidiaries or affiliates of Franklin Resources, Inc. serve as investment managers to deposit uninvested cash balances into a single joint account to be used to enter into one or more large repurchase agreements.

Filing Date: October 17, 1986. An amendment to the application was filed on November 24, 1986.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on January 12, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for attorneys, by certificate. Request notification of the date of hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, c/o Murray L. Simpson, Esq., Gaston Snow & Ely Bartlett, 101 California Street, Suite 3000, San Francisco, CA 94111.

FOR FURTHER INFORMATION CONTACT: Philip J. Niehoff, Esq., (202) 272-2048, or H.R. Hallock, Jr., Esq., (202) 272-3030 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicants' Representations:

1. The Funds all registered under the 1940 Act as open-end, diversified management investment companies. With the exception of Birr, Wilson Money Fund, which has entered into an investment management contract with BWC Management Company, each of the Funds has entered into a management contract with either Franklin Distributors, Inc. or Franklin Advisers, Inc., subsidiaries of Franklin Resources, Inc.

2. Each of the Funds (except for the U.S. Government Series of Franklin Custodian Funds, Inc.) is presently authorized to invest in repurchase agreements. Each of the Funds that currently possesses the authority to engage in repurchase agreements has established uniform systems and standards that comply with the requirements regarding repurchase agreements set forth by the SEC in its published releases, guidelines and interpretations.

3. In the normal case, at the end of each trading day each of the Funds has uninvested cash balances in its custodial bank. The uninvested cash of each Fund is normally invested in federal securities, overnight repurchase agreements with a bank or major brokerage house, or other short-term investments authorized by its investment policies in order to earn additional income for that Fund. Presently each Fund separately pursues, secures, and implements such investments, resulting in certain inefficiencies and increased costs, and limiting the return which some or all of the Funds could otherwise achieve. In addition, there can remain, in the respective account of each Fund, some amount which is received too late or is too small to be effectively invested in a separate transaction and/or at a rate reflecting the cost and investment risk of the transaction.

4. The Funds propose to establish a joint account for the purpose of engaging in repurchase agreements. At the conclusion of its daily trading activity, each Fund would automatically transfer its remaining uninvested cash into the joint account. The joint account would not be distinguishable from any other account maintained by a Fund with its custodian bank except that monies from each Fund could be deposited in the custodian bank on a commingled basis. The account would not have any separate existence which would have indicia of a separate legal entity. The sole function of this account would be to provide a convenient way of aggregating what otherwise would be the one or more individual daily transactions for each Fund necessary to manage their respective daily uninvested cash balances.

5. The joint account would operate as follows: (a) A separate cash account would be established at the custodian bank into which each Fund would deposit its daily uninvested net cash balances; (b) cash in the joint account would be invested in repurchase agreements collateralized by suitable U.S. Government obligations; (c) all investments held by the joint account would be valued on an amortized cost basis, (d) each Fund valuing its assets on the basis of amortized cost would use the average maturity of the joint account for the purpose of computing the Fund's average portfolio maturity with respect to the portion of its assets held in such account on that day; (e) in order to assure that there would be no opportunity for one Fund to use any part of a balance of the joint account credited to another Fund, no Fund would be allowed intentionally to create a negative balance in the joint account for any reason, although it would be permitted to draw down its entire balance at any time; (f) each Fund would participate in the income earned or accrued in the joint account and all instruments (*i.e.*, cash and U.S. Government securities) held in the joint account on the basis of the percentage of the total amount in the account on any day represented by its share of the

account; (g) Franklin Advisers, Inc. would administer the investment of the cash balances in and operation of the joint account and will not collect any separate fees for the management of the joint account; and (h) the administration of the joint account would be within the fidelity bond coverage required by section 17(g) of the 1940 Act and Rule 17g-1 thereunder.

6. Each of the Funds would participate in the proposed joint account on the same basis as every other Fund in conformity with its respective fundamental investment objectives, policies and restrictions. Franklin Advisers, Inc. would have no monetary participation in the joint account, but would be responsible for investing monies in the account, establishing accounting and control procedures, ensuring the equal treatment of each Fund, and ensuring that the assets of the Funds would continue to be held under proper bank custodial procedures.

7. The joint account would save the Funds substantial amounts in yearly transaction fees, allow the Funds to negotiate higher rate of return, reduce the possibility of errors by reducing the number of trade tickets and allow the Funds greater flexibility to cover excess cash near the end of each trading day. Applicants estimate that the Funds would have had an aggregate savings of approximately $426,400 in transaction fees alone for the 12 months ended August, 1986, if the joint account had been in place.

8. Any future Funds that participate in the joint account would be required to do so on the same terms and conditions as the existing Funds.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-28881 Filed 12-23-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24271]

Filings Under the Public Utility Holding Company Act of 1935 ("Act"); The Narragansett Electric Co. and Arkansas Power & Light Co.

December 18, 1986.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 12, 1987, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Narragansett Electric Company (70-7207)

The Narragansett Electric Company ("Narragansett"), 280 Melrose Street, Providence, Rhode Island 02901, a wholly owned, electric utility subsidiary of New England Electric System, a registered holding company, has filed a post-effective amendment to the applicant-declaration in this matter pursuant to sections 6(b), 9(a), 10, and 12(b) of the Act and Rules 42 and 50 promulgated thereunder.

By order in this matter dated May 29, 1986 (HCAR No. 24113), Narragansett was authorized to acquire through December 31, 1987, any or all of its outstanding First Mortgage Bonds, Series J, N, O, and P, aggregating $73.7 million. Narragansett was also authorized to issue and sell up to $75 million of new first mortgage bonds to finance the acquisitions. Narrangansett had indicated that the Series P Bonds would be acquired through one or more tender offers to bondholders at a price not exceeding 116.25% of their principal amount, plus accrued interest, and that the new bonds isssued to cover the acquisition of its Series P Bonds would have an interest rate not exceeding 8½%.

Narragansett now states that the $40 million of Series P Bonds outstanding are proposed to be acquired through one or more tender offers and/or purchases on the open market at a price up to but not exceeding 120% of their principal amount, plus accrued interest, and that the new bonds issued to cover the acquisition of its Series P Bonds will have an interest rate up to but not in excess of 9¼%. In all other respects the proposed transactions remain unchanged.

Arkansas Power & Light Company (70-7315)

Arkansas Power & Light Company ("AP&L"), Capital Towers, P.O. Box 551, Little Rock, Arkansas 72203, an electric utility subsidiary of Middle South Utilities, Inc., a registered holding company, has filed a declaration pursuant to section 12(b) of the Act and Rule 45 thereunder.

AP&L's wholly owned subsidiary, Associated Natural Gas Company ("Associated "), is self-insured up to $125,000 per accident against any and all liabilities it may incur under the Workers' Compensation Law of Missouri. Missouri law requires the parent company of such a self-insured subsidiary to guarantee the payment of all such liabilities of the subsidiary. AP&L proposes to issue such a guaranty up to a maximum of $125,000 per accident. AP&L also requests authorization to enter into such further guarantees of Associated's workers' compensation liabilities as may be necessary and beneficial through December 31, 1990. During the past five years, the amount of Missouri workers' compensation claims actually paid by Associated was $2,077.04 in 1981, $5,954.75 in 1982, $688.86 in 1983, $3,529.98 in 1984 and $6,624.28 in 1985.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-28883 Filed 12-23-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15486; File No. 812-6514]

Nuveen Municipal Bond Fund, Inc., et al.; Application, December 17, 1986

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Nuveen Municipal Bond Fund, Inc.; Nuveen Tax-Exempt Money Market Fund, Inc.; Nuveen Tax-Free Reserves, Inc.; Tax-Free Accounts, Inc.; Nuveen California Tax-Free Fund, Inc.; Nuveen Tax-Free Bond Fund, Inc.; Nuveen Insured Tax-Free Fund, Inc.; and Nuveen Tax-Free Money Market Fund, Inc.

Relevant 1940 Act Sections and Rule: Exemption requested under sections 6(c)

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and 17(d) and Rule 17d–1 from sections 13(a)(2), 17(d), 18(f)(1) and 22 (f) and (g) and the rules thereunder.

Summary of Application: Applicants seek an order to permit them to establish a deferred compensation plan for the non-interested directors of each of the above-mentioned funds and future funds advised by the same investment adviser as those funds.

Filing Date: The application was filed on October 27, 1986 and amended on November 12, 1986.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 P.M. on January 12, 1986. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for attorneys, by certificate. Request notification of the date of the hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 Fifth Street NW, Washington, DC 20549. Applicants, c/o Jane E. Edstrom, Esq., John Nuveen & Co., Incorporated, 333 West Wacker Drive, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Philip J. Niehoff, Esq., (202) 272–2048, or H.R. Hallock, Jr., Esq., (202) 272–3030 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations: 1. The Applicants are diversified, open-end management investment companies each having as one of its objectives the provision of tax-exempt income to its investors. Each fund is advised by Nuveen Advisory Corp., a wholly-owned subsidiary of John Nuveen & Co. Incorporated, the principal underwriter of the Applicants.

2. Each of the Applicants' Board of Directors consists of eight persons, five of whom are not "interested persons" as defined in section (2)(a)(19) of the 1940 Act. The membership of each Board of Directors is identical. Each director who is not an "interested person" of John Nuveen & Co. Incorporated or any of its affiliates receives a fee from each Applicant for serving as a director and is reimbursed for travel expenses incurred in attending Board of Directors meetings. The directors do not receive any other remuneration from the Applicants. The amounts received from the Applicants are, and are expected to continue to be, insignificant in comparison to the total assets of each Applicant.

3. Each Applicant proposes to adopt a deferred compensation plan ("Plan") to permit each non-interested director to elect to defer receipt of fees which would otherwise be payable to him for services performed after the date of the election. The election will continue in effect for each subsequent calendar year unless changed by the participating director prior to January 1 of the year in which the fee is accrued. The Plan will be administered by the Chairman of the Board, President, and Executive Vice President of the Applicants and such other persons as the Board of Directors of the Applicants designate (collectively "Administrators"). A participating director may not serve as an Administrator.

4. Amounts deferred under the Plan will be credited to a book account at the time that they would otherwise have been paid to the electing director. No shares in the Applicant will be purchased for the account with any amounts deferred under the Plan. All amounts in the accounts will be credited with earnings at a rate equal to the average net earnings rate on shares of the Applicant at the end of each calendar quarter. The Administrators will be empowered to change the earnings rate to the prevailing 90-day U.S. Treasury Bill rate at the beginning of each calendar quarter.

5. Amounts deferred under the Plan will become payable in cash at the time (end of a specified calendar year or termination of the directors service) and in the manner (lump sum or five annual installments) the director specifies.

Deferred amounts will continue to accrue earnings until paid. At the Administrators' discretion, a director may also receive deferred amounts plus accrued interest if the director becomes totally and permanently disabled or demonstrates severe financial hardship. The Administrators will also be empowered to accelerate payments under the Plan in the event of an Applicant's liquidation, dissolution, or the distribution of all or substantially all of an Applicant's assets and property to its shareholders or a change in the law that would have the effect of working a financial hardship on the participating directors if the accleration did not occur. In the event of the director's death, amounts payable to him will be payable to his designated beneficiary or his estate. In all other events the directors right to receive payments will be non-transferable.

6. Deferral of directors fees in accordance with the Plan will have a negligible effect on an Applicant's assets, liabilities, and net income per share. Title to, and beneficial ownership of, any assets that the Applicants may earmark to pay the amount deferred, will at all times remain in the Applicants and neither the participating directors nor any beneficiary of a director will have *any* property interest in any specific assets of the Applicants. Amounts credited to the deferred compensation accounts will not be construed to be held in trust or escrow or in any form of asset segregation. The participating directors only interest will be a contractual right to receive the payments credited to his deferred liability director's accounts. No participating director will have greater rights than the rights of an unsecured general creditor of the Applicants. Furthermore, the Plan will not obligate the Applicants to retain a director in such capacity.

7. The Plan possesses none of the characteristics of senior securities that lead to the adoption of restrictions pertaining to such securities, the restrictions on transferability or negotiability of the deferred fees will have no adverse affects on the Applicants' shareholders, and the deferral of fees under the Plan should be viewed as not being issued for services, but in return for the Applicants not being issued for services, but in return for the Applicants not being required to pay such fees on a current basis. Similarly, the Plan does not involve joint transactions between an Applicant and the participating directors within the meaning of section 17(d) of the 1940 Act and Rule 17d–1 thereunder. The agreement does not possess the profit-sharing characteristics required for a joint transaction as contemplated by the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–28882 Filed 12–23–86; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

T.F. Green State Airport, Warwick, RI; Approval of Noise Compatibility Program

AGENCY: Federal Aviation Administration, DOT.

ACTION: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Rhode Island Department of Transportation (RI DOT) under the provisions of Title I of the Aviation Safety and Noise Abatement Act (ASNA) of 1979 (Pub. L. 96–193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and non-federal responsibilities in Senate Report No. 96–52 (1980). On March 3, 1986, the FAA determined that the noise exposure maps, submitted by the RI DOT under Part 150, were in compliance with applicable requirements. On August 26, 1986, the Administrator approved the T.F. Green State Airport noise compatibility program. All of the recommendations of the program were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the T.F. Green State Airport noise compatibility program is August 26, 1986.

FOR FURTHER INFORMATION CONTACT: M. Ashraf Jan, Federal Aviation Administration, New England Region, Airports Division, ANE–610, 12 New England Executive Park, Burlington, Massachusetts 01803. Documents reflecting this FAA action may be obtained from the same individual

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for T.F. Green State Airport, effective August 26, 1986.

Under section 104(a) of the Aviation Safety and Noise Abatement Act (ASNA) of 1979, an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with FAR Part 150 is a local program, not a Federal program. The FAA does not substitute its judgement for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Aviation Safety and Noise Abatement Act of 1979, and is limited to the following determinations: The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150; program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses; program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes or aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the Navigable Airspace and Air Traffic Control Systems, or adversely affecting other powers and responsibilities of the Administrator as prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, State, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982. Where Federal funding is sought, requests for project grants must be submitted to the FAA Regional Office in Burlington, Massachusetts.

The RI DOT submitted to the FAA, on December 6, 1985, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from September 1981 through September 1984. The T.F. Green State Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on March 3, 1986. Notice of this determination was published in the **Federal Register** on March 12, 1986.

The T.F. Green State Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to beyond the year 1990. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on March 3, 1986, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180 day period shall be deemed to be an approval of such program.

The submitted program contained 20 proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective August 26, 1986. Outright approval was granted for 19 specific program elements. The 20th program element-Voluntary Nighttime Restrictions for Scheduled Air Carrier Operations (Noise Abatement Measure #7, Record of Approval)—was approved. But the approval is limited to the voluntary agreement itself. The legality or effect of the aircraft noise reduction legislation enacted and approved by the Sate of Rhode Island in 1985 or any implementing state policies has not been assessed and is not addressed in the FAA's Record of Approval. To the extent that any future state DOT policy formalizing the voluntary agreement was intended to be included within the Part 150 submittal, that item is disapproved pending submission of information needed to permit a full evaluation of its impacts. This disapproval is solely to prevent automatic approval of an unstudied proposal under section 104(b) of the ASNA Act and does not reflect an FAA judgement with respect to the merits of such policy.

The overall program has two components: a. Noise Abatement Measures, including airport physical changes, airport management changes, and airport and airspace procedural

changes, and b. Land Use Planning Measures, including corrective policies, preventive policies, and compensatory policies. Noise Abatement Measures include: Construction of fillet at Runways 5R–23L and 10–28 intersection for an easier exit requiring less thrust; replacing the diagonal taxiway with a parallel taxiway serving Runway 5R; construction of a noise barrier parallel to Runway 5R extension; incorporating noise barrier considerations in the design of proposed air cargo buildings; displacing landing threshold on Runway 5L; physical isolation of maintenance runups; voluntary nighttime restrictions for scheduled air carrier operations; auxiliary power unit restrictions; restrictions on aircraft repositioning under power; pre-takeoff runup restrictions; informational program on reverse thrust; rotational runway use program; helicopter operating procedures; and restrictions on 180 degree turns on runway. The Land Use Planning Measures include: voluntary land acquisition within Ldn 75 contours; sound proofing Pilgrim High School; sound proofing of residential structures within Ldn 65 contours; rezoning selected residential properties between Ldn 70–75 contours; amending subdivision regulation; and amending the building code for sound proofing in the noise impact area.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on August 26, 1986. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the RI DOT.

Issued in Burlington, Massachusetts, on November 20, 1986.

William Williams, Jr.,

Acting Director, New England Region.

[FR Doc. 86–28856 Filed 12–23–86; 8:45 am]

BILLING CODE 4910–13–M

Tri-Cities Airport, Pasco, WA; Approval of Noise Compatibility Program

AGENCY: Federal Aviation Administration, DOT.

ACTION: The Federal Aviation Administration (FAA) announced its findings on the noise compatibility program submitted by the Port of Pasco under the provisions of Title I of the Aviation Safety and Noise Abatement Act (ASNA) of 1979 (Pub. L 96–193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and non-Federal responsibilities in Senate Report No. 96–52 (1980). On May 16, 1986, the FAA determined that the noise exposure maps submitted by the Port of Pasco under Part 150 were in compliance with applicable requirements. On October 16, 1986, the Administrator approved the Tri-Cities Airport noise compatibility program.

EFFECTIVE DATE: The effective date of the FAA's approval of the Tri-Cities Airport noise compatibility program is October 16, 1986.

FOR FURTHER INFORMATION CONTACT: Dennis G. Ossenkop; Federal Aviation Administration; Northwest Mountain Region; Airports Division, ANM–611; 17900 Pacific Highway South; C–68966; Seattle, Washington 98168. Documents reflecting this FAA action may be obtained from the same individual.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Tri-Cities Airport, effective October 16, 1986.

Under section 104(a) of the Aviation Safety and Noise Abatement Act (ASNA) of 1979, an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operators for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such a program to be developed in consultation with interested and affected parties including the state, local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatability program developed in accordance with FAR Part 150 is a local program, not a Federal program. The FAA does not substitute its judgement for that of the airport proprietor with respect to which measuers should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Aviation Safety and Noise Abatement Act of 1979, and is limited to the following determinations:

The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types of classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government.

Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the Navigable Airspace and Air Traffic Control Systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, State, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does nor constitute a commitment by the FAA to financially assist in the implementation of the program not a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Seattle, Washington.

The Port of Pasco submitted to the FAA on February 27, 1986, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted at Tri-Cities Airport. The Tri-Cities Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on May 16, 1986. Notice of this determination was published in the **Federal Register** on May 30, 1986.

The Tri-Cities Airport noise compatibility study contains a proposed noise compatibility program of actions designed for phased implementation bv airport management and adjacent jurisdictions. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on May 16, 1986, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained 7 proposed actions for noise mitigation on and off the airport and for review and monitoring of the program. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective October 16, 1986.

Approval was granted for all 7 program elements. On-airport actions include installation of a noise monitoring system and preferential runway use. Off-airport elements include zoning, avigation easements, and preventive land use planning and policies.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on October 16, 1986. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Tri-Cities Airport.

Issued in Seattle, Washington on November 19, 1986.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 86–28857 Filed 12–23–86; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: City of Richmond, VA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in the City of Richmond, Virginia.

FOR FURTHER INFORMATION CONTACT: Robert B. Welton, District Engineer, Federal Highway Administration, P.O. Box 10045, Richmond, Virginia 23240–0045, telephone (804) 771–2682.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Virginia Department of Highways and Transportation (VDH&T), will prepare an environmental impact statement (EIS) on a proposal to provide a fourlane facility on Warwick Road from Route 60 (Midlothian Turnpike) to Bells Road.

The proposed highway project involves three alternative roadway alignments. One alternative involves upgrading the existing two-lane facility, while the other two alternatives would be on new location.

The proposed project will provide improved traffic flow from Route 60 to Bells Road.

There are also three alternatives to the proposed project under consideration:

(1) Null or No-Build Condition—which includes all elements of the Regional Transportation Plan with the exception of the proposed project.

(2) Mass Transit—evaluate the ability of mass transit to accommodate the transportation demands in the study area.

(3) Traffic System Maintenace—to evaluate the ability of non-major construction activities on the existing roadway network to accommodate the transportation demands in the study area.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies and to private organizations and citizens who have previously expressed interest in this proposal. No formal scoping meeting is planned at this time. The Draft EIS will be available for public and agency review and comment. Following publication of the DEIS, a public hearing will be held. Public notice will be given of the time and place of the hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the DEIS should be directed to the FHWA at the address provided above.

Catalog of Federal Domestic Assistance Program number 20.205, Highway Research, Planning and Construction. The provisions of OMB Circular No. A–95 regarding State and local clearinghouse review of Federal and Federally assisted programs and projects apply to this program.

Issued on: December 16, 1986.

Robert B. Welton,

District Engineer, Richmond, Virginia.

[FR Doc. 85–28859 Filed 12–23–85; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement: Vernon County, WI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway improvement project in Vernon County, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Mr. Michael M. Moravec, Environmental Coordinator, Federal Highway Administration, 4502 Vernon Boulevard, Madison, Wisconsin 53705–4905; telephone (608) 264–5947.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Wisconsin Department of Transportation, is currently preparing an Environmental Impact Statement for relocation of State Trunk Highways 33 (5 miles) and 131 (2.5 miles) between Rockton and Ontario in Vernon County, Wisconsin. Both highway segments were constructed in 1927 with 20- to 22-foot-wide driving surfaces, 1- to 2-foot shoulders, and vertical and horizontal alignments that are considerably below current design standards. The subject highway segments include several substandard bridges, two of which are posted for one-way traffic, one of which has a clear roadway width of 13 feet. Portions of the roads lie within the Kickapoo River floodplain, resulting in their being closed to traffic several times per year.

Planning, environmental, and engineering studies are underway to develop transportation improvement alternatives. The EIS will assess the need, location, and environmental impacts of alternatives including: (1) *The No-Build Alternative*—Assumes the continued use of the existing facilities with the maintenance necessary to insure their use; (2) *Existing Alignment*—Rebuild to current standards; (3) *Previously Approved New Alignment*—Would relocate the roads out of the Kickapoo River floodplain; (4) *A Modificotion of the Previously Approved New Alignment to Avoid 4(f)/6(f) Lands in Wildcat Mountain State Park;* and (5) *A Modificotion of the Previously Approved New Alignment to Reduce its Visibility from Wildcat Mountain State Park.*

Coordination and scoping process: Coordination activities will begin soon and will involve agencies that are identified as having an interest in or jurisdiction by law regarding the proposed action. A January 15, 1987 date has been established for the formal scoping meeting. Agencies will be notified by mail of this date. In addition, coordination will continue with local units of government, private interest

groups, and local citizens, including public meetings.

Comments and suggestions are invited from all interested parties to insure that the full range of issues related to the proposed action are addressed and all significant issues identified. Comments or questions concerning this proposed action and the EIS should be directed to FHWA at the address provided.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: December 18, 1986.

Frank M. Mayer,
Division Administrator, Madison, Wisconsin.
[FR Doc. 86-28838 Filed 12-23-86; 8:45 am]
BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

[DEPT. Circ. 570, 1986 Rev., Supp. No. 7]

Surety Companies Acceptable on Federal Bonds; Statewide Insurance Co.

A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following company under sections 9304 to 9308, Title 31, of the United States Code. Federal bond approving officers should annotate their reference copies of the Treasury Circular 570, 1986 Revision, on page 23951 to reflect this addition:

Statewide Insurance Company.
Business Address: P.O. Box 799, Waukegan, Illinois 60079.
Underwriting Limitation:[b] *$189,000.*
Surety Licenses:[c] IL, AZ. Incorporated in: Illinois.
Federal Process Agents.[d]

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The certificates are subject to subsequent annual renewal so long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to Underwriting Limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20226, telephone (202) 634-2119.

Dated: December 9, 1986.

Mitchell A. Levine,
Assistant Commissioner, Comptroller, Financial Management Service.
[FR Doc. 86-28910 Filed 12-23-86; 8:45 am]
BILLING CODE 4810-35-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: 7-8 January 1987.

Times of meeting: 0830-1700 hours.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board's Ad Hoc Subgroup for the Army Biological Defense Program will meet to review the TOR and to set up guidelines for conducting the study. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,
Administrative Officer, Army Science Board.
[FR Doc. 86-29133 Filed 12-23-86; 12:17 pm]
BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: 8-9 January 1987.

Times Of meeting: 1200-1700 hours, 8 January, 0800-1700 hours, 9 January.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board's Ad Hoc Subgroup for the Army Information Management Area Concepts and Architecture will meet to hear briefings on evolution of the Army's Information Mission Area and current Information Management architectural initiatives. This meeting will be closed to the public in accordance with section 552(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,
Administrative Officer, Army Science Board.
[FR Doc. 86-29134 Filed 12-23-86; 12:17 pm]
BILLING CODE 3710-08-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 247
Wednesday, December 24, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Tuesday, January 6, 1987 at 10:00 a.m.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints:
5. Inv. 701-TA-267 and 268 (F) and 731-TA-304 and 305 (F) (Top-of-the-stove stainless steel cooking ware from Korea and Taiwan)—briefing and vote.
6. Inv. 731-TA-321/325 (F) (Certain unfinished mirrors from the Federal Republic of Germany, Italy, Japan, Portugal, and the United Kingdom)—briefing and vote.
7. Inv. 731-TA-367/370 (P) (Color picture tubes from Canada, Japan, Republic of Korea, and Singapore)—briefing and vote.
8. Any items left over from previous agenda: none.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

Kenneth R. Mason,
Secretary.
December 18, 1986.

[FR Doc. 86-28976 Filed 12-22-86; 10:40 am]
BILLING CODE 7020-02-M

LEGAL SERVICES CORPORATION

TIME AND DATE: The meeting will commence at 9:00 p.m., Friday, January 2, 1987 and will reconvene at 10:00 a.m. on Saturuda, January 3, 1987, and continue until all official business is completed.

PLACE: Capitol Holiday Inn, Mars Room. 550 C Street, SW., Washington, DC 20024.

STATUS OF MEETING: Closed. The meeting is to be closed to discuss personnel and personal matters under The Government in the Sunshine Act [5 U.S.C. 552b (c) (2), (6), and (9)(B)] and 45 CFR 1622.5 (a), (e), and (g).

MATTERS TO BE CONSIDERED:

1. Personal and Personnel Matters

CONTACT PERSON FOR MORE INFORMATION: Timothy H. Baker, Executive Office, (202) 863-1839.

Date issued: December 19, 1986

Timonthy H. Baker,
Secretary.
[FR Doc. 86-28943 Filed 12-22-86; 9:45 am]
BILLING CODE 6820-35-M

Corrections

Federal Register
Vol. 51, No. 247
Wednesday, December 24, 1986

This section of the FEDERAL REGISTER contains editorial corrections of previously published Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1106

[Docket Nos. A0-231-A54 et al.]

Milk in the Texas and Certain Other Marketing Areas; Order Amending Orders

Correction

In the issue of Friday, December 19, 1986, on page 45575 in the first column a correction to FR Doc. 86-27870 appeared. In the third item, the reference to the section being corrected should have read "§ 1106.52 (a)(8)(i)".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-943-07-4220-10; 032; OR-37548]

Oregon; Proposed Withdrawal and Opportunity for Public Meeting

Correction

In notice document 86-27106 appearing on page 43675 in the issue of Wednesday, December 3, 1986, make the following corrections in the land description for "T. 20 S., R. 5 W.,":

1. On page 43675, in "Sec. 9", the fifth and sixth lines should read "E½SE¼ NW¼SW¼SW¼E½SW¼SW¼SW¼, NE¼NE¼SE¼, W½NE¼SE¼, W½SE¼NE¼SE¼,".

2. On the same page, in "Sec. 21", the first line should read "Sec. 21, W½E½NE¼NE¼, W½NE¼NE¼,".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 617

Trade Adjustment Assistance for Workers

Correction

In rule document 86-28397 beginning on page 45867 in the issue of Monday, December 22, 1986, make the following correction:

On page 45868, in the first column, the **EFFECTIVE DATE** should have read "January 22, 1987".

BILLING CODE 1505-02-M

federal register

Wednesday
December 24, 1986

Part II

Department of Energy

Federal Energy Regulatory Commission

18 CFR Parts 270 and 284
Ceiling Prices; Old Gas Pricing Structure; Order Granting Rehearing in Part, Denying Rehearing in Part, and Clarifying Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 270 and 284

Ceiling Prices; Old Gas Pricing Structure

[Docket Nos. RM86-3-003 Through -068]

Issued December 15, 1986.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order granting rehearing in part, denying rehearing in part, and clarifying final rule.

SUMMARY: The Federal Energy Regulatory Commission is granting in part and denying in part rehearing of, and clarifying, its final rule establishing new ceiling prices under sections 104(b)(2) and 106(c) of the Natural Gas Policy Act of 1978. The final rule also established a "good faith negotiation rule" with which producers must comply before collecting a higher price under an existing contract, absent voluntary renegotiation of the contract. In addition, the final rule provided blanket transportation certificates to interstate pipelines which formerly purchased gas released under the good faith negotiation rule in order to facilitate marketing of that gas to a new purchaser. On rehearing, the Commission modifies the regulations governing the rates charged by releasing pipelines for transportation of the gas in order to assure that those rates are the same as those for comparable transportation under Order No. 436. The Commission also authorizes upstream interstate pipelines that provided transportation of gas immediately before its release to continue transporting that gas on behalf of any shipper. Finally the Commission on rehearing clarifies the operation of the good faith negotiation rule in various respects and makes several minor modifications in the regulations implementing that rule.

EFFECTIVE DATE: January 23, 1987.

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SUPPLEMENTARY INFORMATION:

[Docket Nos. RM86-3-003 through -068; Order No. 451-A]

Ceiling Prices; Old Gas Pricing Structure; Order Granting Rehearing in Part, Denying Rehearing in Part, and Clarifying Final Rule

Issued: December 15, 1986.

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Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

I. Introduction

On June 6, 1986, the Commission issued Order No. 451 modifying the price structure of old natural gas pursuant to its authority under sections 104(b)(2) and 106(c) of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301-3432 (1982), and adopting regulations governing implementation of the revised price structure. 51 FR 22168 (June 18, 1986). The order became effective on July 18, 1986.[1] Numerous requests for rehearing have been filed challenging virtually all aspects of Order No. 451. This Order No. 451-A denies rehearing of Order No. 451 for the most part. However, certain modifications to the implementing procedures are adopted and various provisions of the rule are clarified.

II. Background

In November 1985, the Secretary of Energy, acting pursuant to section 403 of the Department of Energy Organization Act,[2] issued and transmitted to this Commission for its consideration and action a proposed rule to reform the pricing structure for certain categories of natural gas subject to ceiling prices under sections 104 and 106 of the NGPA. According to the Department of Energy (DOE), the separately vintaged pricing system for old natural gas established by the NGPA distorted price signals in the natural gas market, raised consumer prices above market-clearing levels, inhibited efficient production of least-cost supplies, and would, unless modified, result in the loss of some 11 trillion cubic feet of old gas reserves. DOE argued that overall prices for gas had not fallen to market-clearing levels, despite the current surplus of available supplies, due to the cushion provided by old gas ceiling prices and that as a result consumers had not realized the full benefit of market competition. DOE also argued that the NGPA's old gas pricing system failed to assign a reasonable share of the replacement cost of new gas supplies to purchasers of old gas and concluded that the old gas ceiling prices should be corrected to take into account current competition in natural gas markets. DOE therefore proposed that

[1] On July 18, 1986, the Commission stayed the effectiveness of Order No. 451 until July 30, 1986, at the request of the United States Court of Appeals for the Eighth Circuit. 35 FERC ¶ 61,067. The stay was granted in order to allow additional time for the court to consider a petition filed on July 1, 1986, by KN Energy, Inc. requesting issuance of a writ of prohibition or, alternatively, a writ of mandamus directing the Commission to vacate Order No. 451. On August 19, 1986, the Court denied KN's petition. *In re KN Energy, Inc.*, No. 86-1806 (8th Cir. Aug. 19, 1986).

[2] 42 U.S.C. 7173 (1982).

the Commission exercise its authority under sections 104(b)(2) and 106(c) of the NGPA to eliminate vintage-based pricing of old gas by establishing a uniform ceiling price equal to the highest current ceiling price for old gas, that being the post-1974 vintage, with a price of $2.57 per MMBtu as of June 1986.[3]

DOE also proposed a "good faith negotiation rule" under which "first sellers" [4] would be given a one-time right to request their purchasers to nominate a price the purchaser was willing to pay, up to the new ceiling. If the purchaser nominated the ceiling price, the sale would continue at the new ceiling price. If the purchaser nominated a lower price, the seller could accept the price and continue sales at that price. Alternatively, the seller could reject the nominated price, in which case sales would continue at the existing price, but the seller would have the right at any time to sell the gas to another purchaser at a higher price provided the sale was for a term of at least two years. In that event, the seller would be released from any further obligation in law or contract to the existing purchaser upon 30-days notice. DOE also proposed that the Commission exercise its authority under NGPA section 107(b) by establishing higher incentive prices for production enhancement gas and creating certain new categories of gas eligible for the higher incentive prices.

Notice of the proposed rule was issued in the **Federal Register** on November 25, 1985 (50 FR 48540). On December 20, 1985, the Commission issued a notice establishing a schedule for public comments on the proposed rule.[5] The Commission requested comments by interested parties concerning the scope of Commission authority to implement the proposal, including the elements of the just and reasonable rate standard applicable to old gas prices, the operation of indefinite price escalation clauses in old gas contracts, the relationship of the proposed rule to the Commission's block billing proposal in Docket No. RM85-1-000 and the likely response of the market in developing old gas supplies. On February 26, 1986, the Commission issued a notice providing for the filing of reply comments and scheduling a two-day public conference for discussion of issues involved in the proposed rule.[6] Initial comments were filed by February 25, 1986, and reply comments were filed by March 27, 1986. Over 160 initial comments and over 40 reply comments were received from numerous producers, pipelines, and gas distribution companies, as well as DOE, the United States Department of Justice, consumer representatives, members of Congress, States, State regulatory agencies, Cities, trade and business associations, and individuals.

In Order No. 451, the Commission adopted DOE's old gas price proposal, establishing a new, alternative ceiling price of $2.57 per MMBtu for old gas subject to Commission jurisdiction under NBPA sections 104 and 106. The Commission jurisdiction under NGPA 104 and 106. The Commission also adopted a modified version of the good faith negotiation rule. The good faith negotiation rule proposed by DOE was modified by allowing purchasers, in response to price renegotiation requests of a first seller, to request price renegotiation of any gas sold under the contract placed on the bargaining table by the producer as well as all gas sold under other contracts with the same first seller which include any old gas. Each party is allowed 60 days to respond to price nomination requests of the other party, and each party is given 30 days to respond to the other party's price nomination. If no agreement on repricing is reached, the producer may abandon sales to the purchaser and the purchaser may terminate its purchases. The effectiveness of the good faith negotiation rule was deferred until November 1, 1986, in order to enable both purchasers and first sellers to become familiar with its terms and to encourage contracting parties to enter into voluntary contract renegotiations in lieu of mandatory renegotiation under the good faith negotiation procedures.[7] Adandoning producers were granted blanket certificates of public convenience and necessity authorizing the sale of gas abandoned or released under the rule, and rate filing requirements were waived for such sales. DOE's proposals to require that any sale of abandoned gas be for a term of at least two years and at a price higher than that offered by the existing purchaser were not adopted. The Commission instead provided firm sales customers of interstate pipelines with a right of first refusal enabling them to purchase abandoned or released gas by agreeing to meet the terms offered by any potential third-party purchaser. Interstate pipelines which are not open-access transporters under Order No. 436 [8] were granted blanket transportation authorization and are deemed to have agreed to transport abandoned or released gas to their existing customers or to interconnected pipelines. Action on DOE's incentive price proposal was deferred pending further Commission review.

III. *Requests for Rehearing*

The Commission received 62 requests for rehearing challenging virtually every aspect of Order No. 451. (*See* Appendix A.) Applicants seeking rehearing argue variously that in adopting the rule the Commission exceeded the scope of its authority, that even assuming sufficient authority, the rationales for the rule are inadequate or invalid, that various provisions of the rule are unlawful, that the rule is unbalanced in favor of particular categories of affected parties, and that various terms and provisions of the rule require clarification. The Commission has reviewed the arguments set forth in the rehearing requests and concludes they do not justify making any significant changes in the basic terms of the rule. However, the Commission agrees that certain modifications should be made, mostly involving the procedures of the good faith negotiation rule and transportation rates. The Commission also grants numerous requests for clarification of various terms and provisions of the rule.

IV. Discussion of Rehearing Issues

A. Commission Authority

In Order No. 451 the Commission acted to reform the price structure of old gas under the authority of sections 104(b)(2) and 106(c) of the NGPA and rejected arguments of various commenters that Congress' incorporation in the NGPA of the prices and price structure for old gas in effect

[3] Under DOE's proposal the new ceiling price would continue to be adjusted for inflation each month. First sellers would be entitled to claim the new ceiling price only if authorized by contract. However, since approximately 90 percent of old gas is sold under contracts containing sufficient authorization in the form of indefinite price escalation clauses, most old gas producers would be entitled to claim the new ceiling price.

[4] *See* NGPA section 2(21), 15 U.S.C. 3302(21) (1982).

[5] 50 FR 52935 (Dec. 27, 1985).

[6] 50 FR 7583 (Mar. 5, 1986).

[7] On July 17, 1986, the Commission issued an Interim Order on Rehearing to confirm that contract amendments may be made outside the good faith negotiation procedures. 36 FERC ¶ 61,058. The Commission has also delayed the date on which good faith negotiation may be initiated until December 18, 1986. 37 FERC ¶ 61,077.

[8] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Docket No. RM85-1-000, Order No. 436, 50 FR 42408, 42,372 (Oct. 18, 1985), corrected at 50 FR 45907 (Nov. 5, 1985); Order No. 436-A, 50 FR 52,217 (Dec. 23, 1985); Order No. 436-B, 51 FR 6398 (Feb. 24, 1986); Order No. 436-C, 51 FR. 11566 (April 4, 1986); Order No. 436-D, 51 FR 11569 (April 4, 1986); Order No. 436-E, 51 FR 11566 (April 4, 1986); appeals docketed *sub nom.* Associated Gas Distributors *et al.* v. FERC, Nos. 85-1811 *et al.* (D.C. Cir.).

prior to enactment of the NGPA deprived the Commission of authority to alter that structure under the authority of the Natural Gas Act (NGA). The Commission concluded that the terms of sections 104(b)(2) and 106(c) are unambiguous and specifically authorize the Commission to modify the prices and price structure of old gas, subject only to the just and reasonable standard of the NGA.

Requests for rehearing. Numerous rehearing applicants reiterate the arguments made in their comments that sections 104(b)(2) and 106(c) do not provide authority for the Commission's promulgation of a single maximum lawful price for all old gas, and the consequent elimination of the system of tiered prices based on the date the wells were drilled.[9] Applicants argue that Congress intended to leave old gas under the largely original-cost-based price ceilings in effect at the time of enactment of the NGPA in order to protect consumers from the effects of deregulation of new gas prices and prevent a financial windfall to producers of old gas, while at the same time stimulating addition of new reserves, and that the Commission's action in Order No. 451 is thus at odds with the basic purpose and design of the NGPA.

Applicants argue that the Commission's authority to increase old gas prices under sections 104(b)(2) and 106(c) is limited to applying the rate-making principles embodied in the last producer rate orders issued by the Federal Power Commission before enactment of the NGPA, Opinion Nos. 770 and 770–A.[10] These orders modified a decision in the previous national rate order, Opinion No. 699–H,[11] to gradually eliminate vintaging, and re-established a vintaged-based price structure for old gas. Applicants argue, therefore, that the Commission now lacks authority to eliminate the system of vintage pricing adopted in Opinion No. 770 or to base old gas ceiling prices on cost methods different from those from which the old gas prices adopted in that proceeding were derived. UDC argues that the Commission had never adopted a purely replacement-cost-based rate for old flowing gas prior to enactment of the NGPA and that Congress, therefore, could not have intended to allow the use of this methodology to raise ceiling prices for old gas under the authority of section 104(b)(2) of the NGPA.[12]

Several applicants argue that the United States Supreme Court's discussion of the NGPA in *Public Service Commission of New York* v. *Mid-Louisiana Gas Co.*[13] *supports the conclusion that the Commission is precluded from eliminating vintaging, and that the Commission may increase old gas prices under the authority of sections 104(b)(2) and 106(c) only when traditional NGA principles would dictate a higher price, such as when costs have increased at a rate in excess of the statutory inflation adjustment.*[14] *UDC cites Mid-Louisiana* for the proposition that the vintaged price structure for old gas became unalterable upon passage of the NGPA:

> The statute evinces careful thought about the extent to which producers of 'old gas'—the gas already dedicated to interstate commerce before passage of the NGPA—would be able to enjoy incentive pricing. Section 104 of the statute directly incorporates part of the 'vintaging' pattern that previously existed under the NGA.[15]

Several applicants argue that the Commission's authority under sections 104(b)(2) and 106(c) is limited to granting "special relief" on a case-by-case basis, where the otherwise applicable ceiling prices are insufficient to allow producers to recover their production costs.[16] These applicants cite a Commission order terminating a proposed rulemaking on special relief regulations where sections 104(b)(2) and 106(c) were described as providing authority under the NGPA to continue granting special relief in accordance with procedures and standards developed under the NGA.[17] The PUC of California also cites *Interstate Natural Gas Association of America* v. *FERC* [18] for the proposition that Congress did not intend to permit the Commission to raise old gas prices across the board, but only on a case-by-case basis.[19]

Other applicants argue that because the new ceiling price is well above current market prices for natural gas, Order No. 451 constitutes *de facto* deregulation of old gas, in contravention of Congress' intent under the NGPA to leave old gas "forever regulated." [20] These applicants note that the Commission repeatedly asserted its goal of providing for "market-responsive prices" for old gas by means of the regulations promulgated in Order No. 451. They argue, however, that the Supreme Court has construed the NGA as prohibiting the Commission's reliance on prevailing prices in the marketplace to determine just and reasonable rates, citing *FPC* v. *Texaco, Inc.*[21]

Commission Response. The Commission recognizes that section 104(b)(1) of the NGPA was intended to directly incorporate the just and reasonable rates, and thus the cost-based prices according to vintage, in effect at the time of the NGPA's enactment. Further, the Commission agrees that Congress considered this provision for old gas prices to be a significant feature of the NGPA's design, intended to mitigate the effects on consumers of allowing higher prices for new gas. The Commission expressed the same rationale for its decision to retain vintage-based rates in Opinion No. 770. However, the applicants have not cited, nor has the Commission found, any legislative history whatsoever on section 104(b)(2),[22] or the virtually identical sections 106(c) and 109(b)(2), that raises any doubt about its plain meaning. If Congress had intended old gas prices to be forever subject to the ceilings in effect when the NGPA was enacted, subject only to the statutory inflation adjustment, sections 104(b)(2) and 106(c) would not have been included in the NGPA. The authority granted to the Commission under these provisions to increase old gas prices above the otherwise applicable maximum lawful prices is too clear to admit any doubt. By inclusion of these provisions, Congress authorized the Commission to review and revise old gas prices in light of current conditions. The *only* limitations imposed by section 104(b)(2) on the Commission's authority to restructure old gas prices is that such

[9] United Distribution Companies (UDC) at 15–37; American Public Gas Association (APGA) at 12–20; Maryland Peoples Counsel/National Association of State Utility Consumer Advocates (MPC NASUCA) at 8–13; KN Energy, Inc. (KN) at 13–17; Northern Natural Gas Company (Northern Natural) at 5–10; Florida Cities at 5–8; Public Service Commission of New York (N.Y. PSC) at 2–8; Public Service Commission of the District of Columbia (D.C. PSC) at 8–13; Interstate Natural Gas Association of America (INGAA) at 6–7; Michigan and the Michigan Public Service Commission (Michigan) at 2–5; Laclede Gas Company (Laclede) at 2–6.

[10] 56 FPC 509 (1976) and 56 FPC 2698 (1976).

[11] 56 FPC 604 (1974).

[12] UDC at 17–20.

[13] 463 U.S. 319, 333–35 (1983).

[14] UDC at 31–33; MPC NASUCA at 11–12.

[15] 463 U.S. at 334.

[16] D.C. PSC at 8–9; California Public Utilities Commission (Cal. PUC) at 15–17; Southern California Gas Company (SoCal) at 10–12.

[17] FERC Statutes and Regulations, Regulations Preambles (1982–1985), ¶ 30,565 at 30,928.

[18] 716 F.2d 1 (D.C. Cir. 1983), *cert. denied*, Exxon Corp. v. Interstate Natural Gas Assoc., 465 U.S. 1108 (1984).

[19] PUC of California at 16.

[20] Northern Natural at 11–13; Minnesota Department of Public Safety (Minnesota DPS) at 2–3; INGAA at 8–9; APGA at 16–17; Kansas Power & Light Company (KP&L) at 14–16; N.Y. PSC at 13–15.

[21] 417 U.S. 380 at 397–99 (1978).

[22] 15 U.S.C. 3314(b)(2) (1982).

prices must be just and reasonable within the meaning of the Natural Gas Act and may not be lower than the ceiling prices established under section 104(b)(1).

Nothing in section 104(b)(2) or the NGPA's legislative history supports the applicants' argument that Congress intended to limit the scope of the Commission's discretion under the NGA to utilize whatever methodology it chooses to establish rates for old gas, so long as the end result is just and reasonable. The record of the debates on the NGPA demonstrates that Congress was clearly aware of the broad scope of that discretion. Senator Abourezk, for example, stated during the Senate's debate on the NGPA on September 19, 1978:

> In addition, it is critical to point out that the law [NGA] does not require that the price set by the FERC be cost-based, except that, in the absence of full cost justification, the FERC must show the tangible benefits to consumers. This is the "end result test" established in FPC against Hope Natural Gas Co. . . .
>
> Nothing prevents FERC setting the rate at whatever level is necessary actually to elicit new supply. . . .[23]

Senator Kennedy also stated, later the same day:

> I want to remind Senators that the means of increasing production is already available in the form of the Federal Energy Regulatory Commission Authority. Sufficient authority already exists to establish prices which will bring forth gas at a "just and reasonable" price and to vary that price according to conditions.[24]
>
> However, except for the proscription against reducing old gas prices from the ceilings otherwise applicable under sections 104(b)(1) and 106(b), Congress did not limit the Commission's authority to establish old gas prices under the just and reasonable standard of the NGA.[25]

The statements by the Supreme Court in *Public Service Commission of New York* v. *Mid-Louisiana Gas Co., supra,* do not support the applicants' assertions that the Commission lacks authority under section 104(b)(2) to eliminate vintage pricing for old gas. In *Mid-Louisiana* the Court held that interstate pipelines that owned gas wells were entitled to have their intracorporate transfers of gas treated as "first sales" and thus be subject to the pricing provisions of the NGPA. The statement from *Mid-Louisiana,* quoted above, is part of a general description of the NGPA's pricing provisions and not a holding on the scope of the Commission's authority. The Court accurately described section 104(b)(1) as directly incorporating the existing pattern of vintaged prices. However, the Court also referred to section 104(b)(2): "[T]he statute recognizes that the ceiling [under section 104(b)(1)] may be too *low* and authorizes the Commission to raise it whenever traditional NGA principles would dictate a higher price." [26] As discussed more fully in succeeding sections, the Commission in this proceeding has revised the old gas price structure on the basis of reasonable and previously approved principles of regulation fully consistent with the just and reasonable standard of the NGA and the Court's comments in *Mid-Louisiana.*

While the Commission recognizes the benefits of market-responsive prices in a competitive environment, it does not in this proceeding rely exclusively on market forces to establish just and reasonable prices. Thus, the price of old gas has not been deregulated *de facto* or otherwise. Order No. 451 allows for sales of old gas *to be* negotiated in light of current market conditions, but with a protective ceiling price based on long-term replacement costs. Because current market prices for natural gas are *generally* below the alternative ceiling price established for old gas by Order No. 451, the good faith negotiation procedures are expected to result in prices for old gas that are market-responsive. However, old gas prices can respond to market forces only within the just and reasonable ceiling price, and thus remain regulated.

The Supreme Court's decisions in the *Mobile* and *Sierra* cases [27] established the doctrine, preserved in this proceeding, that the agreement of the parties sets the lawful rate for a utility service under the NGA, so long as the contract rate does not exceed the rate found just and reasonable by the Commission. Thus, market forces will operate within the regulated ceiling price for old gas under Order No. 451 as under any other rate ceiling established by the Commission under the NGA, or under NGPA ceiling prices for other categories of gas.

B. Old Gas Price Structure

In the final rule the Commission determined that the record in this proceeding demonstrated that the old gas price structure was a principal source of market distortion, that it caused producers to abandon prematurely easily accessible supplies, and caused consumers to react to misleading market signals. The Commission concluded that the old gas price structure was a central factor contributing to current market anomalies, characterized by falling wellhead prices, unresponsive citygate prices, fuel switching, loss of loads, and excess production and transmission capacity. The Commission therefore determined that the old gas price structure was unjust and unreasonable and should be abolished.

In adopting the final rule, the Commission confirmed the view that the then-existing old gas price structure was outmoded, and characterized by distortions, inequities, inefficiencies and disincentives, that demanded reform.[28] Prior to issuance of Order No. 451, it had been nine years since the last national ratemaking was completed. Thus, the economic data and information concerning replacement costs, commodity values, and other factors which were considered by the Commission in formulating the old gas prices had been overtaken by events, which include the current market realities of excess deliverability and declining investment in exploration and development and the imperative need for national energy self-sufficiency. The former system of vintaged rates for old gas failed to accurately reflect the cost and market value of certain categories of old gas; thus, it discouraged production of old gas reserves, reflected an unwarranted disparity between old and new gas prices, was unnecessarily

[23] 124 Cong. Rec. 30,018 (September 19, 1979).

[24] 124 Cong. Rec. 30,023 (September 19, 1979).

[25] While the Commission has asserted that sections 104(b)(2), 106(c), and 109(b)(2) provide authority to grant special relief in the form of higher prices for old gas from certain wells or leases, it has never suggested that the authority granted by these provisions is limited to granting relief on a case-by-case basis. FERC Statutes and Regulations, Regulations Preambles (1982–1985) ¶ 30,565. Nor is this authority so limited by the decision of the United States Court of Appeals for the D.C. Circuit in Interstate Natural Gas Association of America v. FERC, *supra,* that the Commission lacked authority under the NGPA to allow higher prices for natural gas by altering the standard for measuring its Btu content. Section 104(b)(2) specifies circumstances where the Commission is authorized to increase gas prices, without limiting the exercise of that authority to individual cases.

[26] 319 U.S. at 333 (emphasis in original).

[27] United Gas Pipe Line Co. v. Mobile Gas Corp., 350 U.S. 332 (1956); FPC v. Sierra Pacific Power Co., 350 U.S. 348 (1956).

[28] The former price structure for old gas consisted of 15 separate categories based for the most part on the vintage-based price categories and related prices established by the Commission in national rate proceedings in Opinion Nos. 749 (pre-1973 gas) (54 FPC 3060 (1975)) and 770–A (post-1972 gas) (56 FPC 2698 (1976)) and which were in effect as of April 1977. These rates were incorporated in the NGPA, subject to increase by the Commission to a new maximum lawful price, if just and reasonable within the Natural Gas Act.

complex, and caused distortion in the market because of the unequal access of pipelines and distributors to various categories of old gas supplies.

The Commission found most persuasive studies showing that if current old gas prices were held at their present levels, approximately 11 Tcf of old gas reserves would not be produced. The 11 Tcf of old gas reserves not produced as a result of vintaging would have been replaced by higher-priced energy supplies. In part these incremental supply requirements would be met by foreign imports of both oil and gas and the nation's energy security would thereby be compromised and its trade balance weakened. Regardless of the source of the incremental supplies, however, the nation's energy users would be required to pay more for these incremental supplies than would be necessary.

The Commission utilized as one basis for judging the justness and reasonableness of the NGPA old gas prices, the four criteria employed by the Commission in its notice requesting supplemental comments in Docket No. RM85-1-000 (Part D), issued on October 9, 1985.[29] Under these standards, a just and reasonable rate must (1) permit efficiency in the production and consumption of natural gas, (2) permit fair competition, (3) prevent wasteful depletion, and (4) respond to changing conditions in the industry. The former vintaged old gas prices failed to meet these standards and were therefore found no longer just and reasonable.

Requests for rehearing. A number of rehearing applicants challenge the Commission's findings concerning the price structure of old gas.[30] A large number of these parties continue to argue that the major cause of distortion in the natural gas market is the rigidity of existing contract relationships, not vintaging. They also argue that the Commission appears at one time to have shared this view—notably in Order No. 436—and that the Commission's "change" of position is inconsistent.[31] In this vein, Northwest Central asserts that the Commission acted arbitrarily "in failing to resolve issues involving new gas with above-market prices and high take-or-pay contracts." [32] Putting it another way, KP&L asserts that the Commission's finding that the vintaging pricing structure is responsible for current market disorders was arbitrary.[33] NI-Gas appears to acknowledge as beneficial the fact that Order No. 451 addresses the causes of distortion (vintage rates), but argues that the rule provides "no symptomatic relief" [34] from contracts.

MPC/NASUCA renew assertions that the competitive advantages associated with disproportionate access to the old gas vintages no longer exist. MPC/NASUCA confirm that what they refer to are the bidding wars of the 1978–1981 period of relative supply scarcity. During that period, pipelines with relatively larger cushions of old gas vintages were able to outbid their competitors, not on the basis of efficiency of operation and management, but solely based on the amount of "old" gas they could roll-in without adversely affecting their weighted average cost of gas (WACOG) vis-a-vis other pipelines.[35] Since all WACOG's are now above market-clearing levels, MPC/NASUCA insist that the distorting effects of what they admit are "artificially low prices" [36] have been expended.

KN asserts that because Congress incorporated "part of the vintaging pattern" into the NGPA, the Commission no longer has the discretion to eliminate vintaging, even if it did have that discretion under the NGA. KN claims that the Commission's staff "acknowledged the fact that the Commission has no clear legal authority to eliminate vintaging," [37] in the staff analysis attached to the 1982 Notice of Inquiry in Docket No. RM82–26–000.

Finally, a number of applicants take issue with the Commission's perception that the old gas "cushions" enjoyed by some pipelines are the result of historical accident. Northern Natural, for example, asserts that the cushions "in most cases" reflect years of prudent and effective management.[38]

Commission response. Applicants have generally raised arguments previously made in comments and reply comments to the final rule. The Commission has already considered and disposed of these arguments. The Commission finds nothing new that would impel it to change its determination that the old gas vintage price structure had become unjust and unreasonable and should therefore be replaced.

The Commission reaffirms that the former ceiling price structure for old gas is the *primary* cause of continuing price distortions to consumers in natural gas markets. This is not to say it is the *only* cause.

The former old gas prices distorted consuming patterns in two ways. First, consumers supplied by pipelines with access to large quantities of the below market-priced vintages are misled into the false belief that they can continue to buy incremental units of gas for less than the true market price. These pipelines are then required to meet their customers' demands by bidding up the price of new gas. Second, consumers supplied by pipelines with limited access to low-priced categories of gas are required to pay higher than necessary prices because these pipelines have to purchase incremental supplies whose price has been distorted by pipelines who had large quantities of below market-priced gas and who have bid up the price of new gas to meet their own customers' demands. Consequently, customers of high cost pipelines have attempted to switch to either less expensive gas supplies or alternative fuels when able, thus causing their original pipeline supplier to lose load and attempt to shift costs to those customers without the ability to switch supplies or fuels. Likewise, customers supplied by pipelines with access to large quantities of the below market-priced vintages will not consider the use of alternative supplies even though those supplies may be cheaper when the incremental supplies' marginal cost is compared with the marginal cost being paid by their pipeline supplier.

These same price signal distortions also distort producers' exploration, development and production decisions. Specifically, producers selling new supplies find that pipelines endowed with a below-market cushion of old gas are willing to pay otherwise above-market prices in order to secure new supplies to meet their growing demand. This in turn encourages the development of more new high-cost marginal supplies at costs which exceed that which an undistorted market would be willing to pay, while producers of below-market-priced old gas vintages are discouraged from making investments needed to maximize production of easily available

[29] 50 FR 42372 (Oct. 18, 1985).

[30] Associated Gas Distributors (AGD) at 8; The Kansas Power and Light Company, Kansas Public Service Company, and Missouri Public Service Company (KP&L; *et al.*) at 26–27; (MPC NASUCA at 24–26; Northern Natural at 9; D.C. PSC at 4; Northern Illinois Gas Company (NI-Gas) at 9; Interstate Power Company at 4; KN at 15–17; Northwest Central Pipeline Corporation (Northwest Central) at 23–24; Midwest Energy Inc. (Midwest) at 4–5.

[31] AGD at 8; KP&L *et al.* at 26–27.

[32] Northwest Central at 29.

[33] KP&L *et al.* at 27.

[34] NI-Gas at 9.

[35] *See* Order No. 451, 51 FR at 22181 and n.110.

[36] MPC/NASUCA at 25.

[37] KN at 13–17 *citing* Staff Analysis, Impact of the NGPA on Current and Projected Natural Gas Markets (Notice of Inquiry), IV FERC Stats. & Regs. ¶ 35,512 at 35,573–74 (1982). KN's assertions related to the Commission's authority to eliminate vintaging has already been addressed in Part IV.A., *supra*.

[38] Northern Natural at 9. *See also* Interstate Power Company at 4; Midwest at 4–5.

production from existing fields. Correcting these distortions which arise primarily from the old gas price structure was the central purpose of the notice of inquiry in Docket No. RM82–26–000,[39] was integral to the proposal in Docket No. RM85–1–000,[40] and was finally accomplished in Order No. 451.[41] Notwithstanding the assertions of certain applicants to the contrary, the Commission has neither changed positions nor been inconsistent. The elimination of vintaging, coupled with the good faith negotiation process, will help bring economic rationality and more competition to the natural gas markets and will provide a framework for overhauling rigid contract structures. In the more economically rational market-responsive environment created by Order No. 451, lower cost gas will be produced first, and higher cost gas produced only later, as needed.

Applicant NI-Gas is correct, in at least acknowledging that Order No. 451 addresses the root causes of market distortion by collapsing the vintage rates, than are those applicants such as AGD who insist that the contractual "symptoms" of vintaging are the root problem. Treating the cause of an ailment will provide relief from the symptoms in due course. The Commission cannot concur that Order No. 451, by treating vintaging as a root cause, provides no symptomatic relief whatsoever for these contract problems. Under the good faith negotiation process established by the rule,[42] pipelines as well as producers may effect the renegotiation of many "problem" contracts entered into in the context of the old vintage structure. Moreover, Order No. 451 provides room for and encourages negotiations outside of the good faith negotiation process.[43] Thus Order No. 451 addresses both the primary cause and the symptoms of the existing market distortions. AGD, KP&L, and Northwest Central's assertions of inconsistency with, or departure from, Order No. 436 and the Notice of Inquiry are therefore without merit.

The Commission must similarly reject again the contentions of those petitioners such as MPC/NASUCA, who assert that the distortions engendered by the vintage structure no longer exist. MPC/NASUCA admit the old vintages were "artificially low" and had a distorting effect in the past.[44] MPC/NASUCA confirm the Commission's assumption in Order No. 451 that the distortion they refer to is a narrower concept than the Commission's, because it is limited to the immediate effects of the bidding wars of the 1978–1981 period of relative supply scarcity. During that period, pipelines were able to bid-up new supplies to distorted, above-market levels by "rolling-in" the old gas with the new. In response to applicant MPC/NASUCA's insistence that the distorting effect of the "artificially low" vintages has dissipated, the record in this proceeding demonstrates the continuing correlation between various pipelines' access to cushion gas and the pipelines' WACOGs. Unless the vintage structure is corrected now, during a transient period of opportunity when bidding-up of new gas and ability to roll-in high price new supplies with old gas has temporarily subsided, the cycle could repeat itself. Pipelines with low WACOGs have an inherently distorting impact on the market, because they need not contract for new gas supplies based on any fair measure of competitive equality. Far from being dissipated, the distortions inherent in having the old vintages priced "artificially low" thus persist today, and would be renewed to full vigor as the gas bubble dissipates and supplies tighten in the years ahead. The current decline in rig counts [45] testifies to the danger of the full-blown reappearance of these now quiescent distortions.

Current market realities make it plain that there will not likely be extensive new investment in order to add additional high cost supplies at this time. The most efficient way of adding incremental supplies is to stimulate production of low-cost gas, which represents an assured and reliable supply available at the lowest reasonable cost. Therefore the Commission took action to provide the incentive to produce these reliable low cost supplies by establishing the new just and reasonable rate for such gas in the final rule.

In addition, gas from wells with low price ceilings may be prematurely abandoned and resources lost absent the elimination of below-market price ceilings. The sooner these distortions are eliminated, and a more market-responsive environment allowed to develop under the negotiation initiatives encouraged by Order No. 451, the better. Otherwise, some resources will remain underproduced, or even permanently lost, while other, marginal resources are developed at higher cost and before they are needed. Consumers on deep cushion pipelines will continue to be misled as to the true cost of replacing the gas they consume, while consumers on pipelines less well-endowed will continue to pay higher prices for their supplies.

KN's assertion that the staff analysis attached to the 1982 Notice of Inquiry in Docket No. RM 82–26–000 "acknowledged the fact that the Commission has no clear legal authority to eliminate vintaging" is puzzling, when actually the staff concluded that "the Commission probably has the legal authority to eliminate vintaging, if such elimination is found to be just and reasonable, by setting a single just and reasonable rate for all gas currently vintaged." [46] The analysis goes on to note the alternative adoption and elimination of vintaging in the past, the courts' approval of the Commission's discretion in this regard, and the policy imperatives that would support elimination of the NGPA vintages as follows: [47]

> The Commission alternatively embraced and backed away from vintaging throughout the 1960's and 1970's. The elimination of vintaging has, therefore, been considered by the Commission and reviewed by the courts on several occassions.
>
> * * * * *
>
> On judicial review of Opinion No. 699–H, the Court recognized that the Commission was not bound by its previous vintaging policies, but that the Commission should "be permitted latitude to evaluate old experiments and modify or abandon them when [its] best judgment require[s] such course of action." [*Shell Oil Co. v. FPC*, 520 F.2d 1061, 1077–78 (5th Cir. 1975), *cert. denied*, 426 U.S. 941 (1976).]
>
> * * * * *
>
> [T]he principal difference between eliminating vintaging and not eliminating vintaging would not be the average price paid

[39] *See* Order No. 451, 51 FR at 22181 n.105 (June 18, 1986).

[40] *Id.* at 22182 ("[V]intaging is the major cause of the market distortions identified by the Commission in Docket No. RM85-1-000. . . .").

[41] AGD argues that in Order No. 436, the Commission attributed market disorders to rigid contracts, but in Order No. 451 attributed them to the vintage pricing system. Since Order No. 436's, "principal mission" was market analysis, the Order No. 436 approach should have been adopted according to AGD. Yet the approach of Part D of Order No. 436 dealt by indirection with the problem the Commission addressed directly in Order No. 451. Thus there was no divergence from the "mission" of Order No. 436 as alleged by petitioner AGD. *See* AGD at 8. Both orders have a role to play in developing a more market-responsive industry framework. *See also* Part V. B., *infra*.

[42] Order No. 451, 51 FR 22204–09 (June 18, 1986).

[43] *See also* Interim Order On Rehearing, issued July 17, 1986, Docket No. RM86–3–002, 36 FERC ¶61,058, designed to encourage voluntary renegotiation by clearly permitting contract amendments, if the parties desire, without loss of rights under the good faith negotiation rule.

[44] MPC/NASUCA at 25.

[45] Hughes Rig Count as of Nov. 11, 1985 was 1,895; as of Nov. 10, 1986 it declined to 874. *See* Oil & Gas Journal, week of Nov. 17, 1986, at 76.

[46] Appendix A.—Staff Analysis, Impact of the NGPA on Current and Projected Natural Gas Markets (Notice of Inquiry), IV FERC Stats. & Regs. ¶ 35,512 at 35,573 (1982).

[47] *Id.* at 35,573–74.

by consumers, but the distribution of wealth among producers and the ability of interstate and intrastate pipelines to compete with and among one another for new supplies. [footnote omitted.]

* * * * *

Finally, vintaging may discriminate unreasonably against customers of pipelines that have a much smaller price cushion. If pipelines with low weighted average costs are in a better position to obtain new supplies, their customers are more certain of delivery of their supplies and lower prices. This advantage is the result of a pipeline's historical, fortuitous opportunities to contract for large volumes of low-priced vintaged gas and bears no rational relationship to its customers' demands or priority uses.

If anything, this analysis supports the final rule as issued and the rationales therein. Far from being an abrupt departure in policy, Order No. 451 should be understood as the culmination of a long study of the market-ordering problem, begun in the 1982 Notice of Inquiry.

Finally, the Commission disagees with the assertions of Northern Natural and others that the disparity among pipelines' old gas cushions in most cases reflects more prudent and effective management by those pipelines endowed with the larger cushions.[48] While some pipeline managements may have geen more effective in negotiating for lower price supplies than others, a far more important factor was the fortuitous geographic location of certain pipelines near plentiful low-cost supplies subject to lower vintage prices. Moreover, the Commission anticipates that after Order No. 451 is fully implemented, and "the dust has settled" somewhat, those pipelines will continue to benefit from proximity to such fields and this advantage will be reflected in relatively lower WACOG's for such pipeline systems vis-a-vis competing pipelines. While the final rule will not result in absolutely level WACOGs, it should reduce the current spread in gas prices that comprise these WACOGs, by providing a framework for moderate increases in some old gas prices and commensurate reductions in some new gas prices. The final rule, by contributing to a more economically efficient market will benefit those managements that are most genuinely competitive and skillful by increasing their access to gas that may now be shut-in, and will enable them to bring that gas to market.

C. Ceiling Price

In Order No. 451 the Commission adopted DOE's proposal to establish the old gas ceiling price at a level equal to the existing ceiling price for post-1974 gas. That price was $2.57 per MMBtu as of June 1986, and is currently $2.61 MMBtu. In selecting the post-1974, vintage rate as the ceiling price for old gas, the Commission relied on the theory of replacement cost pricing. The Commission found that prices based on replacement/cost were necessary to assure an adequate long-term supply of natural gas, to eliminate distortion and excessive disparity in prices as between new and old gas prices, and to make the price structure of natural gas more economically efficient. (51 FR at 22186–87). The Commission relied on the fact that the FPC had approved eventual pricing of all natural gas, including old flowing gas, at replacement cost levels, and the resulting elimination of vintaging, in the first national producer rate proceeding, Opinion No. 699–H, [49] was affirmed by the courts.[50]

In determining whether DOE's proposed ceiling price was representative of current replacement costs, the Commission reviewed the discounted cash flow (DCF) methodology used by the FPC in Opinion No. 770 to establish the post-1974 vintage rate. The Commission also considered an updated Opinion No. 770 DCF cost study submitted by Indicated Producers. The Commission concluded that the long-term replacement cost of gas was within a range between the post-1974 vintage rate of $2.57 per MMBtu (as of June 1986) and the Indicated Producers' updated replacement cost estimate of $2.77 per MMBtu. The Commission selected the post-1974 vintage ceiling price as the ceiling price for old gas. The Commission stated that while the $2.57 per MMBtu rate might not reflect post-1976 DCF inputs as accurately as the Producers' study, the lower estimate was more reasonable under the circumstances because it recognizes that any prediction or replacement cost is subject to constant change in input variables and that adopting the lower estimate would protect consumers.

The Commission emphasized that the post-1974 rate adopted would operate only as a ceiling price, and that prices actually paid for old gas in the market pursuant to the good faith negotiation rule are likely to be substantially below the ceiling price as long as the current deliverability surplus continues. At such time as the market clears and supply and demand come into balance, the market price for old gas will increase. When this happens, the ceiling price will prevent market forces from driving the price of old gas above the level of replacement costs and will thus assure that old gas prices remain just and reasonable.

Requests for rehearing. Numerous parties seek rehearing of the Commission's decision in Order No. 451 to adopt a ceiling price for flowing gas based on replacement costs.[51] These parties argue that old gas prices must be based, either wholly or at least inpart, on historical or original costs. Many rehearing applicants cite *City of Detroit* v. *FPC*, 230 F.2d 819 (D.C Cir. 1956), and *Farmers Union Central Exchange, Inc.* v. *FERC*, 734 F.2d 1486 (D.C. Cir. 1984), in support of the claimed need to rely on historical costs. They further argue that the Commission in Order No. 451 erroneously relied on certain FPC and judicial decisions, notably FPC Opinion Nos. 699–H and 749 and their respective affirming court decisions, *Shell Oil Co.* v. *FPC*, 520 F.2d 1061 (5th Cir. 1975), and *Tenneco Oil Co.* v. *FERC*, 571 F.2d 834 (5th Cir. 1978), as supporting reliance on replacement costs in establishing old gas ceiling prices.

Rehearing applicants also argue that even if replacement cost pricing of old gas could be justified in theory, the record in this case does not support such a policy. They argue that the FPC's decision in Opinion No. 699–H to grant higher prices for old gas and phase out vintaging were based on a finding made by the Commission and accepted by the reviewing court that in light of the natural gas shortage which then existed, a massive infusion of funds was required to help finance the search for new supplies. These parties argue that since gas deliverability now exceeds demand, there is no reason to believe that producers need additional revenues from sales of old gas to finance increased levels of exploration. It is alleged that under these circumstances, raising the ceiling price for old gas results in windfall profits for producers of old gas.[52]

A number of rehearing applicants also argue that the ceiling price adopted by the Commission has not been shown to accurately represent current replacement costs and that the Commission's finding in Order No. 451 that the post-1974 rate is representative of current replacement costs is not supported by substantial evidence.[53] They argue, for example, that the Commission failed to consider evidence that gas production costs, inflation rates and fuel prices have changed significantly since the Opinion No. 770 replacement cost formula was adopted and that, in particular, the cost of drilling for gas had declined in real terms since Opinion No. 770 was issued in 1976.[54] They argue that rather than relying on the Opinion No. 770 cost analysis adjusted for inflation or the updated study submitted by Indicated Producers, the Commission should have prepared an independent calculation of current replacement costs.[55] Several parties also allege procedural errors in the Commission's consideration and determination of the ceiling price issue.

Commission response. In the Commission's judgement, the arguments presented on the replacement cost issue are without merit and do not justify modifying the old gas ceiling price adopted in Order No. 451. The Commission has previously considered and rejected assertions by the rehearing applicants that the Commission's authority to approve rates as just and reasonable under the NGA has been circumscribed as the result of enactment of the NGPA and that as a consequence the Commission may not adopt rate methodologies different from those used to determine the rates in effect at the time the NGPA was enacted. The Commission has likewise rejected contentions that adopting the post-1974 rate for flowing gas amounts to *de facto* deregulation of old gas. The Commission's reasoning on these issues is set forth in the discussion in section IV. A. *supra* and need not be repeated here. The principal issues raised by the rehearing applicants with respect to the level of the new ceiling price for old gas are (1) whether the Commission may properly base its determination of the just and reasonable rate for old gas on replacement cost, (2) whether the Commission's decision to do so is supported by the record, and (3) whether the post-1974 rate is representative of current replacement costs.

In Order No. 451, the Commission reviewed applicable Commission orders and court decisions pertinent to the establishment of just and reasonable producer rates under the NGA. (51 FR 22185–86). The Commission noted that a vintaged rate structure was adopted with approval of the Supreme Court in the original *Permian Basin Area Rate Proceeding*, Opinion No. 468, 34 FPC 159 (1965), that the Commission moved toward the establishment of uniform producer rates based on replacement costs in the first nationwide rate proceeding, Opinion No. 699-H, also with judicial approval, *Shell Oil, supra*, and that the Commission subsequently reinstated vintaging with court approval in the second national rate proceeding, Opinion No. 770, 56 FPC 509 (1976). The Commission concluded that the issues of replacement costs versus historical costs as well as vintage-based rates versus uniform rates are matters within the Commission's reasonably exercised discretion. 51 FR 22. The Commission has carefully considered the arguments presented by the rehearing applicants and concludes that they do not provide any basis for modifying the conclusions reached by the Commission in Order No. 451 concerning the Commission's authority to eliminate vintaging through the establishment of a uniform ceiling price for old gas based on replacement costs.

The reliance by numerous parties on the *City of Detroit* case in support of the proposition that gas producer rates must be based either in whole or in part on historical or original costs is misplaced. *City of Detroit* involved a pipeline rate proceeding in which the FPC authorized the pipeline to charge the so-called "field price" or "commodity value" for its own gas production. In setting aside this part of the FPC's order, the Court stated as follows (230 F.2d at 818–19) (emphasis added):

> When we refer to an 'increase' we mean an increase in the rates above those which would result from use of the *conventional rate base method*. For, though we hold that method not to be the only one available under the statute, it is essential in such a case as this that it be used as a basis of comparison. It has been repeatedly used by the Commission and repeatedly approved by the courts, as a means of arriving at lawful just and reasonable rates under the Act. Unless it is continued to be used at least as a point of departure; the whole experience under the Act is discarded and no anchor, as it were, is available by which to hold the terms 'just and reasonable' to some recognized meaning.

It has long been recognized that the rate standards set forth in the *City of Detroit* are not directly or specifically applicable to the establishment of gas producer rates. In reviewing the FPC's Opinion No. 586 establishing the producer rates for the Hugoton-Anadarko area, the United States Court of Appeals for the Ninth Circuit stated, with reference to *City of Detroit*, that "that case involved a single pipeline company cost-of-service problem. The application of that decision to a review, as in the case before us, of a producer-area rate opinion and order is questionable to say the least." [56] The Commission likewise rejects the assertions of the rehearing applicants that the old gas ceiling price adopted in Order No. 451 violates standards for just and reasonable rates set forth in *Farmers Union*. In Opinion No. 154 (the *Williams* proceeding), which was the subject of the *Farmers Union* decision, the Commission proposed to adopt certain unconventional ratemaking methods for the purpose of determining rates for oil pipelines. These methods were adopted for a number of reasons including the Commission's interpretation of the legislative history of the Lodge Amendment to the Hepburn Act adopted by Congress in 1906.[57] The Commission acknowledged that the methods adopted in Opinion No. 154 result in rates substantially in excess not only of those derived through application of traditional cost-of-service methodologies but also of those estimated by the Commission to be normally obtainable through the operation of market forces. The court in *Farmers Union* rejected the cost methodologies proposed by the Commission, finding that the Commission's rejection of original cost ratemaking lacked both evidentiary support and "economic common sense," 734 F.2d at 1515. The court held that oil pipeline rates must be set within the zone of reasonableness and that "presumed market forces may not

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[48] Midwest Energy Inc. (Midwest) is wrong in assuming that the Commission intended to suggest that KN and other pipelines with low WACOGs "secured their present low cost status by sharp or improper practices." Midwest at 4. Rather, the Commission views artifically low WACOGs on some systems as primarily adventitious, with management decisions having some effect on what is essentially a fortuitous phenomenon.

[49] 52 FPC 1604 (1974). See also Opinion No. 639, 48 FPC 1299 (1972).

[50] Shell Oil Co. v. FPC, 520 F.2d 1061 (5th Cir. 1985), *cert. denied* 426 U.S. 941 (1976).

[51] American Gas Association (AGA) at 5–7; INGAA at 4–7; UDC at 15–31; AGD at 2–3; Northern Distributor Group (NDG) at 3–6; Cal. PUC at 17–20; N.Y. PSC at 2–10; Texas Eastern Transmission Corporation (Texas Eastern) at 25–31; Florida Cities at 6–18; Southern Natural Gas Company (Southern Natural) at 6–11; Southern California Gas Company (SoCal) at 12–15; KP&L *et al.* at 6–9; Laclede at 6–13; Peoples Gas Light and Coke and North Shore Gas Company (Peoples Gas *et al.*) at 4–10.

[52] UDC at 31; Cal. PUC at 14; Florida Cities at 11; Southern Natural at 11; SoCal at 14; Peoples Gas *et al.* at 19; KP&L *et al.* at 16.

[53] AGA at 8–10; AGD at 3–4; Minnesota DPS at 4–5; SoCal at 15–16; Peoples Gas *et al.* at 21–22.

[54] AGA at 8; INGAA at 8; KP&L *et al.* at 24; SoCal at 16.

[55] Natural Gas Pipeline Company of America and United Gas Pipe Line Company (Natural and United) at 79; Peoples Gas *et al.* at 23; Southern Natural at 8; Minnesota DPS at 5.

[56] In re Hugoton-Anadarko Area Rate Case, 466 F.2d 974, 989 (9th Cir. 1972). The court went on to cite the Supreme Court's decision in Wisconsin v. FPC, 373 U.S. 294 (1963), concerning the view expressed in *City of Detroit* that cost of service must be used "at least as a point of departure." The Supreme Court there stated that "whatever the court may have meant in that context, it is clear that it did not have before it any question relating to the area rate method." 373 U.S. at 310, n.16.

[57] *See* Williams Pipe Line Company, 21 FERC ¶ 61,260 at 61,582, n.78 and n.124 (1982).

comprise the principal regulatory constraint," *id.* at 1530.

We believe that due to the substantial differences in regulatory context, *Farmers Union* is no more applicable to gas producer regulation than *City of Detroit.* More importantly, there is no parallel between the methods adopted in *Williams* and those adopted in Order No. 451. The rate adopted in Order No. 451 is in no way designed merely to restrain "gross overreaching" or solely as a protection against "egregious exploitation and gross abuse," *id.* at 1502. Order No. 451 establishes a cost-based rate within the zone of reasonableness established by reference to prior FPC and court-approved ratemaking principles and is supported by sound economic and regulatory policy.

The Commission also rejects the arguments of the rehearing applicants that Order No. 451 violates *City of Detroit* and *Farmers Union* not only for failure to adopt an original-cost ratemaking methodology but also for its alleged reliance on market forces to establish the rates actually charged. The establishment of a ceiling price based on replacement costs which, under existing market conditions, is in excess of prevailing market prices does not constitute an abdication of the Commission's regulatory responsibility in favor of market pricing. Any such argument ignores the very real limitation represented by the ceiling price. The rate actually charged, while possibly below replacement cost, cannot exceed that level. Contracting parties have always been and continue to be free to negotiate prices up to but not in excess of applicable ceiling prices. Under the *Mobile-Sierra* doctrine, negotiated, below-ceiling prices are the lawful just and reasonable rates. There is no reason to assume that sales should uniformly be made at the ceiling price. The fact that particular sales can and undoubtedly will be made at prices lower than the ceiling price in no way supports the suggestion that the ceiling price is without regulatory force or effect.

In Order No. 451, the Commission relied on the FPC's first national rate proceeding, Opinion No. 699–H, as support for the pricing of old gas based on replacement cost. The Commission also relied on FPC Opinion No. 749 as supporting the Commission's discretion to consider replacement costs in setting just and reasonable rates for old flowing gas. Several applicants argue that these interpretations are erroneous, that the FPC never totally eliminated vintaging or established a single price for all NGA regulated gas, and that there is thus no valid precedent for the Commission's adoption of the post-1974 rate for all flowing gas.[58]

It will be helpful in considering the arguments of the rehearing applicants briefly to review the FPC's decisions in the national producer rate proceedings conducted prior to enactment of the NGPA. In Opinion No. 699–H, the FPC established a just and reasonable rate of 50 cents per Mcf for 1973–74 biennium gas, with annual escalations of one cent per Mcf. The Commission also ruled that the 1973–74 biennium gas would be entitled to be priced at the rate established for each succeeding period. 52 FPC at 1636. The FPC in Opinion No. 699–H also extended its policy originally adopted in Opinion No. 639 of eliminating vintaging through the vehicle of allowing replacement contracts (contracts which replace expired or expiring contracts) to receive the new gas price. 52 FPC at 1631–32. The agreement of the purchaser to pay the higher rate was required, *id.* The FPC acknowledged that its decisions in Opinion No. 699–H would lead over an extended period of time to a uniform rate for all gas sold in interstate commerce. In support of its policy, the FPC stated as follows (52 FPC at 1637):

> This uniform price will constitute a recognition of the fact that gas is a consumable, irreplaceable commodity and not a service which can be renewed by man. Thus, there is no rational basis for setting differing price levels based upon date of discovery, lease acquisition, contract, or well commencement or completion over an extended period of time.

In opinion No. 749, the FPC established the national rate for gas flowing in interstate commerce prior to January 1, 1973. The FPC adopted a uniform old gas rate of 29.5 cents per Mcf based on a 1972 test year, thereby eliminating the vintage categories of old gas adopted in various prior area rate proceedings.[59] In the second national rate proceeding for new gas, the FPC adopted a full DCF cost methodology resulting in a 1975–76 biennium rate of $1.42 per Mcf. In light of the magnitude of this increase over the pre-existing new gas rate of 50 cents per Mcf, the FPC reimposed vintaging. It did provide, however, that upon contract expiration, old gas would still be entitled to the 1973–74 biennium rate of 50 cents adopted in Opinion No. 699–H.

Rehearing applicants argue that Commission reliance on Opinion No. 699–H is misplaced because (1) it did not eliminate vintaging immediately but rather over time as old gas contracts expired; (2) it was based on a shortage situation and the need for infusion of capital to producers; and (3) the devintaging policy was reversed in Opinion No. 770. The Commission recognizes the difference between Opinion No. 699–H and Order No. 451 in the manner in which devintaging would be accomplished; the Commission also recognizes that the FPC's devintaging plan was discontinued in Opinion No. 770. These facts, however, do not invalidate Opinion No. 699–H as a precedent for the elimination of vintaging through establishment of a replacement-cost-based ceiling price.

First, Order No. 451, like Order No. 699–H, does not authorize producers to immediately or automatically collect the post-1974 rate. Whereas Opinion No. 699–H required producers to execute replacement contracts and thus obtain their purchasers' approval in order to obtain the new gas ceiling price, Order No. 451 requires producers to negotiate their old gas contracts with their purchasers pursuant to the good faith negotiation rule and does not require any purchaser to pay the new ceiling price without its consent. Producers may abandon sales of old gas if no price agreement is reached, but purchasers may also release higher-priced gas subject to renegotiation if no price agreement is reached. Thus, while there are differences between Opinion No. 699–H and Order No. 451, there are also fundamental similarities. In the Commission's judgment, the ratemaking policy incorporated in Order No. 451 is significantly similar, even analogous to that in Opinion No. 699–H, and the Commission therefore believes that Opinion No. 699–H may properly and reasonably be relied upon as precedent supporting the findings and conclusions adopted in Order No. 451.

The Commission also believes that the efficacy of Opinion No. 699–H as a precedent is not diminished by the later issuance by the FPC of Opinion No. 770. A review of the pertinent cases decided by the FPC prior to enactment of the NGPA reveals clearly that the FPC was given reasonable discretion to determine whether to require or discontinue vintaging and whether to rely on historical or replacement costs, so long as its decisions were within the zone of reasonableness and supported by the record. The fact that the Commission

[58] INGAA at 6–7; UDC at 23–27; Florida Cities at 13–16; Laclede at 9–12.

[59] Producers were permitted to continue to collect certain special rates and area rates which were higher than the Opinion No. 749 ceiling price. 54 FPC at 3093.

initially instituted vintaging, later moved to abandon it, and subsequently reinstated it, all with judicial approval, supports this view.

The Commission also rejects arguments that Order No. 451 misinterprets or misapplies the decision in *Tenneco, supra.* In Order No. 451, the Commission relied on *Tenneco* for the proposition that the Commission has discretion to select between historical or replacement cost in establishing just and reasonable rates for old gas. The Commission relied on the court's statement that "Insofar as theories of regulation are concerned, the choice between actual and replacement cost is for the Commission to make, subject to the sole requirement that the end result be within the 'zone of reasonableness.'" 571 F.2d at 840. Parties objecting to the Commission's reliance on *Tenneco* point out that the court also noted in its opinion that under the Constitution as well as the NGA, producers are only entitled to a fair return on their "actual costs" [60] and that the FPC's Opinion No. 749, which was the subject of the *Tenneco* decision, did not actually adopt replacement cost pricing for old gas.

The Commission believes that *Tenneco,* in affirming the FPC's old gas pricing policy adopted in Order No. 749, is relevant to the issue of replacement cost pricing. Although the FPC did not in Opinion No. 749 adopt a flowing gas ceiling price based solely on replacement costs, it did eliminate vintaging of old gas through the adoption of a uniform ceiling price based on then-current (1972) exploration and development costs rather than purely historical costs. 54 FPC at 3105. As the court in *Tenneco* observed (571 F.2d at 837–38):

> In calculating costs, the Commission made a number of judgments challenged here. It chose to measure exploration and development costs by using a 1972 test year, even though many of the wells from which the gas comes were developed at a lower cost years earlier.

The Commission does not concede that its findings in Order No. 451 are in any way based on a misinterpretation or distortion of the holding in *Tenneco.* Although Opinion No. 749 and the related decision in *Tenneco* are not as directly relevant to the replacement cost issue as Opinion No. 699–H, we believe they support the Commission's discretion to eliminate vintaging of old gas and to choose between replacement and historical cost in setting just and reasonable rates for old gas. Clearly *Tenneco* does not support the claim by rehearing applicants that old gas ceiling prices must remain vintaged as well as based on historical costs. For the reasons discussed above, the Commission reaffirms its determination in Order No. 451 that it is permissable for the Commission to establish a uniform ceiling price for old gas based on replacement costs.

The next principal issue to be considered is whether the record in this proceeding supports the Commission's decision in Order No. 451 to base the ceiling price for old gas on replacement costs. A number of parties argue that the FPC's decision in Opinion No. 699–H was justified on the basis of the then-existing natural gas shortage in the interstate market and the need for "vastly expanded exploration and development programs to meet future demand. . . ." 52 FPC at 1613.[61] It is argued that the NGPA, which eliminated the interstate-intrastate regulatory dichotomy and incorporated incentive prices for new gas and special rates to support continuing or incremental production from old wells, has resulted in a gas surplus and that there is therefore no emergency need to increase old gas prices as a means of financing exploration for increased supplies. New York Public Service Commission, for example, argues that the use of replacement cost as a basis for old gas ceiling prices would be lawful only if the Commission could find that the resulting additional producer revenues are necessary to provide investment funds needed for adequate exploration and development of new supplies and that such additional revenues will actually be used for that purpose. According to New York, "the Commission has not made any such finding and none would be possible on the basis of the record before it." [62]

The Commission agrees that the FPC's decision in Opinion No. 699–H was based on the gas shortage which then existed and the need to finance a greatly increased program of exploration and development of additional supplies; the Commission likewise agrees that the present market is characterized by oversupply in relation to demand. It follows that the rationale relied upon by the Commission in Opinion No. 699–H is not applicable in light of present industry conditions. However, the Commission disagrees with the suggestion that replacement cost pricing of old gas can be justified solely and exclusively on the grounds specified in Opinion No. 699–H. We believe that replacement cost pricing is supported by the record in this proceeding, albeit for reasons different from those set forth in Opinion No. 699–H.

In Order No. 451, the Commission reviewed the record and concluded that the pre-existing old gas price structure was unjust and unreasonable (51 FR 22179–83). The Commission determined that the old gas price structure was the principal cause of distortion in the natural gas market, prevented fair competition, failed to accurately reflect the cost and market value of the many categories of old gas, and resulted in inefficient production and the potential loss of trillions of cubic feet of old gas reserves. The Commission also noted that the elimination of vintaging had been contemplated since the inception of formal producer price regulation commencing with the FPC's original Statement of General Policy No. 61–1 in 1960 (51 FR 22182). The Commission further noted (51 FR 22182–83) that the courts reviewing its orders had observed that the vintage-based pricing system was anomalous, *Placid Oil Co. v. FPC,* 483 F.2d 880 (5th Cir. 1973), and resulted in a "gargantuan inequity." *Tenneco, supra.* (51 FR at 22185). The Commission further found that under the partially decontrolled pricing system adopted by the NGPA, it was inevitable that where old gas prices were frozen at levels equal to only a fraction of replacement cost, prices of unregulated supplies would become disproportionately high to enable producers to realize overall prices over the long term at least equal to replacement cost (51 FR 22166). The Commission found that this is what occurred following enactment of the NGPA, that the resulting price distortions between new and old gas are a prime cause of dysfunction in today's natural gas market, and that further exacerbation of the distortion in natural gas prices is likely to occur at such time as the current surplus is eliminated and supply and demand come into balance. (51 FR 22187).

The Commission has reviewed the arguments of the rehearing applicants and finds they provide no basis for

[60] The pertinent portion of the Court's decision reads as follows (571 F.2d at 840):

> The "zone of reasonableness" is wide. The producers, under the Constitution as well as the [NGA], are at bottom, only entitled to a fair return on their actual costs, i.e., a rate which, if anticipated at the time their wells were dug would be sufficient to "maintain financial integrity, attract necessary capital, and fairly compensate investors for the risks they assumed." *Permian,* 390 U.S. at 792, 88 S.Ct. at 1373. Subsequent increases in operating costs would be taken into consideration, but replacement value would not.

[61] The FPC in Opinion No. 699–H stated that "the magnitude of the drilling effort that will be required to elicit the supply of gas necessary to fulfill reasonable future demands calls for massive capital commitments." 52 FPC at 1638 (footnote omitted). This finding was accepted by the reviewing court in Shell Oil Co. v. FPC, 520 F.2d at 1077 (5th Cir. 1975).

[62] N.Y. PSC at 8.

modifying the conclusions reached in Order No. 451. The Commission has reviewed and reaffirms its findings in Order No. 451 that the existing old gas price structure is unjust and unreasonable and should be replaced by a uniform old gas ceiling price based on replacement cost. The Commission believes the issues related to both the old and new price structure for old gas were fully considered in Order No. 451 and that the determinations made were fully justified for the reasons stated.

The Commission is convinced that it is essential in selecting a proper cost basis for old gas ceiling prices to recognize the fundamental differences between the exploration for, and production and sale of natural gas and the providing of traditional utility services. As the Commission has previously observed, natural gas is a "consumable, irreplacesble commodity and not a service which can be renewed by man." Opinion No. 699–H, 52 FPC at 1637. An electric generating plant can be constructed which may last for decades and produce electricity virtually on demand and in the amounts desired. Similarly, a pipeline can be constructed for use over an extended period through which gas can be transported on demand and in the quantities desired. The same is true for other utility services such as transportation or telephone service. By contrast, natural gas is a non-renewable energy resource. The total supply of gas, while not precisely known, is finite, and the ultimate stock provided by nature cannot be replenished. The compelling need to replace natural gas consumed is the driving force behind the entire natural gas industry. It is reasonable that consumers of gas should pay prices up to but not in excess of the cost of replacing the volumes which they consume. Gas prices that are equal to only a fraction of replacement cost encourage the rapid, inefficient consumption of this non-renewable resource.

The Commission firmly believes that it is inconsistent with logic, common sense and economic reality to have multiple, binding ceiling prices for a fungible commodity, whether it be bushels of wheat, bars of gold, bales of cotton, barrels of oil or Btus of natural gas. *Placid Oil, supra.* Of course, uniform pricing of natural gas is not possible absent total deregulation. However, the adoption of a uniform ceiling price reflecting replacement costs constitutes a significant step in the right direction and the most the Commission can do within the limits of its statutory authority. In Opinion No. 770, the FPC held that reimposition of vintaging was necessary to "preclude the exaction of excessive and unjustifiable economic rent from flowing gas." 56 FPC at 521 (1976). The Commission rejects this finding in Opinion No. 770 to the extent it implies that in workably competitive wellhead markets any economic rent realized by producers for the sale of flowing gas could be judged to be "excessive and unjustifiable." The Commission is finding in this rulemaking that pricing old gas at its replacement cost over the long-term will assure that economic rents exacted by all producers for all gas will be most responsive to competitive conditions in wellhead markets as mandated by the NGPA. If competitive conditions in energy markets permit producers a higher return in exploration and development than in other endeavors, then such investments will be made. If energy markets do not permit the producer a higher return on exploration and development than on other investments, then the economic rents may not be reinvested in additional drilling. In both cases, the economic rents are allocated in a market-responsive manner consistent with the competitive conditions mandated by the NGPA. For this reason, the Commission finds that this rule will not result in the "exaction of excessive and unjustifiable economic rent from flowing gas." Furthermore, in Order No. 451 the Commission determined that some old gas prices would increase while other old gas prices would decrease under the good faith negotiation provisions. The Commission also found that the increased ceiling price for pre-1974 gas would allow some old gas wells to operate to a lower pressure and level of production, thereby permitting the wells to produce a greater percentage of resources-in-place. Without this price incentive the Commission estimated that a significant amount of old gas would not be produced. For these reasons, the Commission concludes that the record as well as economic common sense and sound regulatory policy dictate that the ceiling price of old gas be based on replacement rather than historical costs.

In considering the means by which to implement replacement cost pricing, the Commission reaffirms its support for the analysis submitted by DOJ. DOJ argues persuasively that in a competitive industry, market forces drive prices toward the producer's marginal cost. 51 FR at 22186. In the terminology of producer regulation, this means replacement cost. Thus, in a competitive industry, market prices will reflect replacement cost and regulation is theoretically unnecessary.

There can be no reasonable doubt that the natural gas producing industry is workably competitive. The Commission so found in Order No. 451, citing Congress' implicit finding of competitiveness in enacting the NGPA, judicial acknowledgments of such congressional intent, and the declining trend in gas prices since 1984 resulting from conditions of oversupply. (51 FR at 22195–96.) Other available evidence supports the finding of a competitive natural gas market among sellers. EIA, for example, prepared a comprehensive study of the concentration of interstate sellers in some nine regional producing areas and 26 production sub-areas.[63] The results of this study indicate a low level of seller concentration in every market except Alaska and similarly low levels of seller concentration in 23 of 26 producing areas.[64] These findings are consistent with and support conclusions reached in earlier studies.[65]

Despite the Commission's finding of competition among sellers of natural gas and the resulting absence of any real need for wellhead price controls, the Commission nevertheless, out of necessity as well as an abundance of caution, adopts the post-1974 ceiling price recommended by DOE. The basis for Commission approval of this ceiling price is replacement cost. The Commission recognizes that there is no perfect formula for calculating replacement cost. Because of the characteristics of the natural gas producing industry, including high risk, price variability, joint products, and fluctuating costs, there can be no one price which is precisely representative of replacement cost. The Commission believes, however, that the DCF model adopted by the FPC in Opinion No. 770 is the most reasonable method available for purposes of estimating current replacement costs.

As outlined in detail in Order No. 451 (51 FR 22185–88) the post-1974 rate had

[63] Richard P. O'Neill, James B. Tobin, and Henry Clarius, "Pipeline Mergers and Their Potential Impact on Natural Gas Markets," *Natural Gas Monthly*, Energy Information Administration, February 1986.

[64] *Ibid.* at Tables F3 and F4. Data for the remaining 3 areas was inadequate or incomplete. Most sales in these areas were in intrastate commerce or in certain instances only a few sales occurred. These areas together accounted for less than 1 percent of total interstate sales in 1984.

[65] Joseph P. Mulholland, *The Economic Structure and Behavior in the Natural Gas Production Industry*, Federal Trade Commission, February 1979. Ronald R. Braeutigam, "The Deregulation of Natural Gas," in *Case Studies in Regulation: Revolution and Reform*, ed. by Leonard W. Weiss and Michael W. Klass, Little, Brown and Co. (Boston: 1981).

its origin in Opinion No. 770, in which the FPC adopted a rate for post-1974 gas of $1.42 per Mcf. The rate was increased by one cent per quarter until enactment of the NGPA and thereafter adjusted according to the NGPA's monthly inflation adjustment. The Commission concluded that the DCF cost methodology adopted in Order No. 770 remained a reasonable method of calculating the replacement cost of gas. The Commission also held that in light of the adjustment-for-inflation feature of the NGPA, it was reasonable to assume the current post-1974 ceiling price remained representative of replacement costs absent a showing that the inflation adjustment had either overstated or understated changes in the cost of finding and producing gas since enactment of the NGPA. The Commission also considered and found reasonable the replacement cost study submitted by Indicated Producers demonstrating a 1985 replacement cost of $2.77 per MMBtu. The Producers' study represent an updated application of the Opinion No. 770 methodology incorporating recent data concerning productivity, reserve additions, income tax liability, drilling costs, and industry capital structure.[66]

Certain rehearing applicants argue that the Commission has failed adequately to demonstrate that the post-1974 rate is representative of current replacement costs. Several applicants argue that the Commission's assumption, based on the NGPA monthly adjustment factor, that the post-1974 rate remains representative is without adequate support, and that such an assumption is belied by the fact that drilling costs have actually declined. Several applicants also question the Commission's reliance on the Indicated Producers' replacement cost study.

The Commission agrees that the NGPA's inflation adjustment factor, in and of itself, does not assure that the original Opinion No. 770 rate will remain representative of replacement cost. The Commission agrees therefore that it would be improper to rely solely on the inflation factor to justify the reasonableness of the current post-1974 rate. However, the Commission has not relied solely on the NGPA's adjustment factor; the Commission also carefully reviewed the updated Opinion No. 770 study submitted by Indicated Producers and found that it to be reasonable and to confirm the reasonableness of the post-1974 rate proposed by DOE. Rehearing applicants' objections to the Commission's reliance on the Producers' study are without merit. The Producers' study was submitted as part of the initial comments of Indicated Producers. All parties had an opportunity to respond to all of the issues raised in the initial comments including the Producers' replacement cost study. No party has presented any facts, evidence, or information whatsoever, either in their reply comments or on rehearing, challenging the validity of the Producers' study as representing a valid estimate of current replacement costs based on the Opinion No. 770 DCF model.

The Commission has again reviewed the study and finds that it represents an accurate and reasonable application of the Opinion No. 770 methodology. The Commission therefore properly adopts this study as representing a reasonable measure of the current replacement cost of natural gas, and finds its underlying assumptions to be reasonable. The Commission specifically approves as reasonable the Producers' productivity factor of 145 Mcf per successful gas well foot drilled. The Commission likewise adopts as reasonable the Producers' drilling costs of $70.10 per foot for successful wells and $59.67 per foot for dry holes. In estimating 1985 drilling costs, Producers' trended actual 1984 costs downward based on data reported by EIA and API.[67] Successful well costs were adjusted downward 21 percent from $88.73 per foot (actual) in 1984 to $70.10 (estimated) in 1985; dry hole costs were adjusted downward 10 percent from $66.52 (actual) in 1984 to $59.67 (estimated) in 1985. [68] However, if the index-based adjustment procedure actually utilized by the FPC in Opinion No. 770 (56 FPC at 543) were applied to actual 1984 drilling costs the result would be estimated 1985 drilling costs of $83.94 per foot for successful wells and $62.93 per foot for dry holes.[69]

Producers' 1985 drilling cost estimates may thus fairly be characterized as conservative.

Several applicants allege procedural flaws in the Commission's consideration of replacement costs.[70] They argue that there was insufficient notice of the Commission's intent to rely on the Opinion No. 770 DCF cost analysis in establishing the ceiling price for old gas and that the Commission should reopen the record and prepare its own cost study which would then be subject to further comment by all interested persons.[71]

The issue of replacement cost pricing has been raised throughout these proceedings. DOE's proposal was based in part on the fact that the old gas price structure failed to assign a reasonable share of replacement costs to purchasers of old gas. 50 FR at 48541 (November 29, 1985). DOE and Indicated Producers among others, specifically relied in their initial comments on the concept of replacement cost to support DOE's old gas pricing proposal,[72] and the issue was fully discussed in the parties' reply comments. In fact, the Commission requested reply comments for the very purpose of providing an opportunity to respond to each issue. It is noteworthy that the ceiling price proposed by DOE and adopted in Order No. 451 is a replacement cost price; the source of the post-1974 rate in Opinion No. 770 is a matter of common knowledge. The argument that interested persons did not have full opportunity in this proceeding to submit their views on the issue of replacement cost pricing is thus simply not credible.

The Commission also rejects the suggestion that the record in this proceeding is incomplete or inadequate without a separate 1985 replacement cost study prepared by the Commission or its staff. It is true that the Commission staff developed proposed cost models in the prior national rate proceedings. However, those proceedings involved issues concerning cost methodology as well as cost level and various parties submitted cost studies incorporating a variety of suggested methodologies.[73] Here, however, no question of methodology is involved. The Commission has found the Opinion No. 770 DCF method to be reasonable, and the only thing necessary to do is apply the Opinion No. 770 methodology. Indicated Producers

[66] The Commission also notes a recent study of oil and gas replacement costs presented to the Cost Study Committee of the Independent Petroleum Association of America, finding a current replacement cost of $4.00 per Mcf for gas. *See* "Analyst Suggests True Oil Replacement Costs Cause Heavy Financial Pressure," *The Oil Daily* (November 20, 1986), p. 2.

[67] Indicated Producers' initial comments, Appendix A, Exhibit B, Schedule 3. Actual 1985 drilling costs have not yet been reported by the Joint Association Survey.

[68] *Ibid.*

[69] The current value for the adjustment index used in Opinion No. 770 is obtained from IPAA Report of the Cost Study Committee, Midyear Meeting, Nashville, Tennessee, May 1, 1986, Table I. That index is 94.6, representing a decline of 5.4 percent from 1984. Applying this adjustment factor to actual 1984 drilling costs results in $83.94 per foot for successful wells and $62.93 per foot for dry holes.

[70] NDG at 13; APGA at 78–80.

[71] NDG at 13; APGA at 78–80.

[72] DOE at 19–22, 36–37; Indicated Producers at 31–34, 41–46, Appendices A and C.

[73] *See, e.g.*, Opinion No. 770, 56 FPC at 519.

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did this in the DCF study included in their initial comments. The Commission has critically reviewed the study and reaffirms its prior conclusion that the Indicated Producers' study is reasonable and properly reflects application of the Opinion No. 770 principles. The Commission notes that the Tax Reform Act of 1986 was enacted subsequent to the issuance of Order No. 451. The Tax Reform Act modified certain of the assumptions used in the Producers' DCF study, notably the federal corporate income tax rate and allowance for investment tax credits (ITC). The Tax Reform Act provides for a corporate tax rate of 34 percent (effective July 1, 1987) are compared to the 46 percent used by Producers and for elimination of ITC in contrast to the eight percent rate used by Producers. Substituting these changes in tax provisions in place of those utilized by Producers' results in a slight overall reduction in the 1985 replacement cost estimate from $2.77 to $2.71 per MMBtu.

As a further check on the reasonableness of the 1985 estimated replacement cost, the Commission has calculated replacement costs for each year 1979 through 1984 using the Opinion No. 770 DCF methodology and the Producers' application of that methodology. Actual drilling costs and actual productivity values for each year were utilized. The resulting replacement costs, which vary from $3.05 per MMBtu in 1979 to over $6.00 per MMBtu in 1982 are shown in the following table. The average replacement cost for the entire 1979–1984 period is $3.98 per MMBtu.

Year	Successful well cost $/foot [74]	Dry holes $/foot [74]	Productivity Mcf/foot [75]	Replacement cost with 4% escalator
1979	80.54	63.21	148	$3.05
1980	94.87	72.08	130	4.07
1981	121.70	86.83	202	3.32
1982	145.96	102.52	130	6.13
1983	108.37	77.75	155	3.86
1984	86.73	66.52	143	3.44

[74] Based on actual costs and footage published in the Joint Association Survey 1979–1984.
[75] For 1979, Reserves of Crude Oil, Natural Gas Liquids, and Natural Gas in the U.S. and Canada and U.S. Productive Capacity, AGA-API-CPA. For 1980–1984, U.S. Crude Oil, Natural Gas, and Natural Gas Liquids Reserves, Annual Reports, DOE-EIA.

These results demonstrate the variability of replacement cost estimates from year to year. It may be seen, however, that the Producers' estimate of $2.77 ($2.71 adjusted for tax changes) is conservative when measured in relation to the total range of annual replacement cost values resulting from application of the Opinion No. 770 model. For the foregoing reasons, the Commission denies the requests for rehearing on the ceiling price issue and reaffirms its conclusion that the old gas ceiling price adopted in Order No. 451 is just and reasonable within the meaning of the NGA.

D. Supply Response

In Order No. 451, the Commission found that eliminating vintaging will substantially increase recoverable old gas reserves through delayed abandonment of wells. The Commission reasoned that the increased ceiling prices for pre-1974 gas will allow wells to operate to a lower pressure and level of production before the net present value of future costs outstrip the net present value of future revenues, thereby permitting the wells to produce a greater percentage of reserves. The Commission reached this conclusion after a careful review of various studies in the record, including those by DOE, Indicated Producers and AGA, concerning the effect of eliminating vintaging on recoverable reserves.

Those studies generally followed a methodology first developed in an April 1983 study by the Shell Oil Company estimating the increased production from total decontrol of natural gas prices. Under that methodology, the increase in recoverable reserves in the fourteen largest gas fields in the United States is first estimated. This is done by estimating (1) the pressure at which each field would be abandoned under current prices, (2) the lower abandonment pressure of the fields under the new ceiling prices, and (3), based on these estimates and reserve data for the fields, the resulting increase in recoverable reserves. The fourteen field data is then extrapolated to a nationwide basis to estimate the total increase in production. This is done in such a way as to account for the fact that some old gas may qualify for NGPA incentive or deregulated prices in any event and other old gas, including that subject to fixed rate clauses, may not receive an increased rate. (The fourteen field data does not take those factors into account.) The Indicated Producers' study predicted an increase in recoverable reserves from eliminating vintaging of 16 Tcf. DOE estimated an increase of 9 to 12 Tcf, with its best estimate 11 Tcf. AGA predicted an increase of approximately a third that predicted by DOE. The Commission found the DOE estimate to be the most reliable of the three. The Commission's analysis of the AGA study revealed a number of errors not made by DOE, which caused AGA to underestimate the probable supply response. Similarly, the Shell study contained errors causing an overestimate of the probable supply response.[76] The Commission, however, emphasized the uncertainty of any prediction of the exact amount of the increase, since many of the relevant variables, including future market prices, are uncertain.

Rehearing requests. On rehearing, a number of applicants attack the Commission's finding of a substantial increase in recoverable reserves through delayed abandonment. Only AGA, however, makes a detailed critique of the Commission's reliance on the DOE study.[77] AGA contends that, in estimating the supply response from the fourteen fields, the DOE study improperly assumed prics would rise to the new ceiling price,[78] used outdated data from different time periods for reserves and abandonment pressures, and failed to account for the fact that under current law producers may in many cases collect compression costs in addition to the ceiling price. AGA also contends that the DOE study made errors in extrapolating the fourteen field data to a national level. Allegedly, the DOE study improperly included some intrastate gas in its predicted increase. It also failed to account for the fact that most of the predicted increase would occur in any event under the NGPA section 108 incentive prices for stripper wells.[79] Finally, it used 1981 national reserve figures in making the extrapolation, thus failing to account for the fact that the reserves produced since 1981 are no longer available for increased production.

Other applicants for rehearing, while not addressing the specifics of the DOE and other studies, question the general conclusion that eliminating vintaging will substantially increase recoverable reserves. Several applicants state that the increased production cannot occur during a time, such as now, when there is a natural gas surplus. Others contend that, even assuming increased production of old gas and a concomitant lowering of overall prices as predicted by the Commission, the result will be a sharp decrease in new drilling and stripper well activity, causing a decrease in new production. This allegedly will offset the increased production of old gas, causing a gas shortage and higher prices. Furthermore, some applicants contend, the incremental cost of the increased

[76] The errors in the AGA and Shell studies are fully discussed in Part iV. D of Order No. 451, 51 FR at 22191–22193.
[77] AGA at 10–17.
[78] *See also* Northern Natural at 29.
[79] APGA at 34 contends that the increased supply response could also occur pursuant to special relief.

production of the old gas (the increased cost of all old gas divided by the increase in recoverable reserves) will be exorbitant

Commission response. The Commission continues to believe that eliminating vintage will cause a substantial increase in recoverable reserves of old gas. Furthermore, nothing raised on rehearing causes the Commission to modify its belief that DOE's study predicting an approximate 11 Tcf increase is the most convincing analysis in the record of that increase.

In its rehearing request, AGA again contends that DOE made a number of errors in estimating the increase in recoverable reserves in the fourteen field study. Several of AGA's allegations of error are incorrect, and AGA has not shown that the other allleged errors affect the validity of DOE's prediction of a substantial increase in reserves in the fourteen fields. First, AGA contends that DOE incorrectly assumed that old gas prices would rise to the new alternative ceiling price (now $2.61) rather than to the current market price alleged to be approximately $1.90.[80] AGA alleges that if DOE had used $1.90, its prediction of increased production would have been cut by one-third. The Commission rejects this contention.

For purposes of predicting the increase in recoverable old gas reserves, estimated average prices over the next twenty to forty years should be used, since old gas is not expected to be exhausted before then. While future gas prices cannot be projected with certainty, it is unlikely that current depressed prices will continue indefinitely. The current low price of gas has resulted in a dramatic drop in drilling activity.[81] Therefore, it appears inevitable that the current surplus deliverability will disappear and that as a result prices will increase in order to maintain an equilibrium between supply and demand. For these reasons, the Commission believes that DOE's projection that gas prices will reach the new ceiling price by 1990 is reasonable. This price thus seems a reasonable basis for projecting the supply response from eliminating vintaging, since the majority of abandonment decisions will be made after 1990. In addition, even pre-1990 abandonment decisions will take into account expected higher future prices since producers abandon wells only when the net present value of total predicted future costs exceed the net present value of total predicted future revenues.[82]

Second, AGA contends that much of the increased production claimed from the fourteen fields as a result of Order No. 451 would occur in any event because of the availabiity of the compression allowance under NGPA section 110.[83] Section 271.1104(d)(iv) of the Commission's regulations allows a producer to collect such allowances[84] in addition to the maximum lawful price, if the producer's contract expressly authorizes collection of compression costs and if the compression facility was installed after enactment of the NGPA.[85] AGA argues, in effect, that when DOE determined the pressure at which each of the fourteen fields would be abandoned at current prices, it assumed that current prices equal the existing ceiling prices, failing to take into account producers' ability to collect more than the current ceiling prices through a compression allowance. In view of the authorization for producers to collect those allowances, this assumption allegedly was improper and may have resulted in a substantial overestimate of the overall supply response. AGA contends that EIA's May 1986 *Analysis of DOE's Notice of Proposed Rulemaking, Ceiling Prices: Old Gas Pricing Structure* (EIA Study) (at 22–25) demonstrates that where pipelines pay compression costs, producers are able to produce 46 percent of the gas which DOE claims will be produced as a result of the new ceiling price.

It is unclear whether the DOE study accurately accounts for compression allowances in calculating current abandonment pressures for the fourteeen fields. However, even if it does not, the Commission does not believe that such an omission would significantly affect the reliablity of the DOE Study. The Commission's regulations authorize producers to collect compression costs only when expressly authorized to do so by contract. The EIA study relied on by AGA indicates that producers actually collect compression costs with respect to only 28 percent of sections 104 and 106 gas subject to compression. Thus, even assuming that pipelines' payment of compression costs does bring about 46 percent of the production increase claimed by DOE, that 46 percent increase would occur in ony 28 percent of the cases under present contractual arrangements. The alleged error in the DOE study, therefore, could at most cause an overestimate of increased production by 12.4 percent (28 percent of 46 percent equals 12.4 percent) assuming pipelines do not agree to bear a significantly greater percentage of compression costs than they now do.

Furthermore, the Commission does not believe that, even in those cases where pipelines assume compression costs, the supply response from the rule would be reduced by 46 percent. While the producer could charge the compression allowance in addition to the existing ceiling price, it could also charge the compression allowance in addition to the new ceiling price.[86] Thus, to the extent DOE ignored compression allowances, it not only failed to take into account any additional production that the allowance permits under existing law, it also failed to take into account the additional production that the allowance would permit under the new price ceiling. The two factors would largely offset one another.[87]

Finally, the Commission observes that while the EIA study predicts a supply response of 8.4 Tcf assuming all compression costs are borne by pipelines but 15.9 Tcf if they are borne by producers, EIA's overall predicted production increase is 11.7 Tcf, based on the fact pipelines assume compression costs only 28 percent of the time. That figure agrees very well with the DOE study's predicted 11 Tcf increase.

The third error alleged by AGA in DOE's calculation of increased production from the fourteen fields is DOE's use of unreliable reserve and

[80] *See also* Northern Natural at 29 and Florida Cities at 21.
[81] Northern Natural at 29–30.
[82] If, despite the facts stated above, prices fail to rise to the new ceiling price (perhaps because of competition from alternative fuels) then it is likely that recoverable reserves will not increase as much as projected by DOE. However, any market force sufficiently strong to keep old gas prices significantly below the new ceiling price indefinitely into the future in the face of the current collapse in drilling activity is likely to be strong enough to keep overall prices from rising. In addition, the increased production of old gas (although less than projected by DOE) would be all the more important, since at such low prices very litte new gas could be expected to be found and produced.
[83] *See also* KP&L *et al.* at 25–26
[84] The allowance is]¢ per stage of compression not to exceed 18¢, plus compensation for the cost of fuel or power to drive the compressor.
[85] *But see* Texas Eastern Transmission Corp. v. FERC, 769 F.2d 1053 (5th Cir. 1985, *cert. denied*, 106 S. Ct. 1967 (1986) (Permits recovery of fuel and power costs to operate compressors constructed prior to the NGPA).
[86] Based on the discussion in IV. D., Commission response, above, the Commission believes that the market will generally permit such collection over the 20 to 40 year period of the predicted supply response.
[87] It should also be noted that the compression allowance is relatively small compared with price increases permitted by this rule. The allowance is only 6¢ per compression stage up to a maximum of 18¢ plus fuel costs. This compares to an increase in the ceiling price for pre-1973 gas, for example, from 52¢ to $2.57.

pressure data. AGA asserts that DOE improperly used reserve data for each of the fields published in 1970; that data allegedly is so outdated, having been collected for example at a time when the average wellhead price was only 17¢, as no longer to be reliable. AGA also reiterates its earlier criticism of DOE for estimating pressures in each of the fourteen fields based on field depth and other factors rather than relying on actual measurements of field pressure. AGA's assertion that DOE used 1970 reserve figures is inaccurate. It is apparent from DOE's reply comments that, unlike the 1983 Shell study and the Indicated Producers' study, DOE used figures for reserves from a 1980 AGA study presented to Congress' Office of Technology Assessment (OTA) for its consideration in preparing a February 1984 report entitled *Effects of Decontrol on Old Gas Recovery.*[88]

More importantly, AGA has not shown that any inaccuracies in DOE's reserve and pressure data are significant enough to affect the essential conclusion that the increased production from the fourteen fields will be substantial. In its comments, AGA submitted a study using updated reserve data, actual field pressures, and an assumed $1.90 market price for old gas to estimate the increased production from the fourteen fields. That study shows increased production of 2.3 Tcf, nearly half DOE's prediction of 5.7 Tcf. Such an increase, as the Commission observed in Order No. 451, would still be significant. Furthermore, the AGA study contains errors leading it to *underestimate* the probable increased production in the fourteen fields. As already discussed above, the AGA study improperly assumed a market price for old gas of $1.90 rather than the new ceiling price. In addition, as fully discussed in Order No. 451, the AGA study used reserve and pressure data from different years causing a further underestimate of increased production in the fourteen fields.[89] In its rehearing request, AGA does not contest Order No. 451's criticism of its study on this basis.

The Commission has now considered all contentions raised on rehearing concerning increased production from the fourteen fields. None alter the Commission's belief that elimination of vintaging will cause a substantial increase in recoverable reserves in the fourteen fields.

Once increased production in the fourteen fields has been estimated there remains the task of extrapolating the fourteen field results to a national level and accounting for production that would occur in any event under existing incentives. DOE accomplished this task by a three step procedure. First, it extrapolated the fourteen field results to a national level by multiplying those results by the ratio of ultimate national reserves to ultimate reserves in the fourteen fields.[90] Next, DOE reduced its estimate of national increased production by four percent, in order to account for production which would have occurred in any event under existing section 108 incentive prices for stripper wells. Finally, in order to adjust for the 1983 Shell study's failure to account for other gas that would receive adequate prices to stimulate full economic production under current regulations, DOE scaled down its estimate of increased production by the ratio of DOE's estimate of the total reserves responsive to eliminating vintaging (66 Tcf) to Shell's (115 Tcf) or about 57 percent. Neither AGA nor other rehearing applicants attack the adjustment made in the first step of DOE's extrapolation procedure. However, they do attack the adjustments made in the second and third steps.

First, AGA claims that the stripper well adjustment is too small. It notes that 40 percent of all producing wells are stripper wells and that to date over 100,000 wells have qualified as stripper wells. AGA contends that these facts suggest that most section 104 and 108 wells will eventually qualify as stripper wells, thus providing the production response anticipated under Order No. 451 without collapsing old gas vintages.

AGA's contentions on this point are not persuasive. While the Commission can confirm that as of March 1986, over 100,000 wells have qualified for stripper well pricing under NGPA section 108 nationwide, over 50 percent of all such wells are located in a limited geographic area, in the Appalachian region of the country.[91] Moreover, the average daily production from these wells is extremely low, conservatively estimated in most cases at fifteen Mcf per day or less.[92]

Thus, stripper wells are not for the most part located in areas where substantial reserves of old gas are located. The OTA study confirms that an unknown percentage of stripper applications are new, low production wells, and are not examples of how the stripper incentive has prolonged well lives.[93] In West Virginia, which accounts for almost one-quarter of all stripper wells, for example, producer filings since 1984 are generally made for NGPA section 103, with a later filing for a section 108 determination for the same well approximately three months later.[94] Thus, these wells are not old gas wells whose life has been prolonged by obtaining stripper well status, but instead are new, low-production wells. Even though we do not know precisely how many stripper wells are new wells nationwide, under current market conditions this is more likely to be the case than not.

AGA's contention might have had more relevance prior to 1984 when market prices were not as depressed as they are currently. In the past, a producer might actually obtain the stripper well ceiling price of approximately $4.00 per MMBtu.[95] Thus it would be worth the administrative effort and expense to qualify an old well as a stripper well in order to obtain that price. Under current conditions, however, the purchaser is not likely to pay the full stripper well ceiling price, even if the old well obtains a stripper well determination.[96] In the past, when

[89] DOE reply comments at 4.

[90] *See* 51 FR at 22192.

[91] Data on the number and location of NGPA section 108 stripper wells is derived from Forms 121 filed with the Commission. Of the over 100,000 stripper wells nationwide, about 11,000 are located in Ohio, 1,700 in New York, 28,000 in West Virginia, 13,000 in Pennsylvania, and 3,500 in Kentucky, for a total of 58,000 in the Appalachian region, or over 50 percent of all stripper wells.

[92] In 1983, the average daily per well production from a gas well in the States of Ohio, New York, West Virginia, Pennsylvania, and Kentucky was 15 Mcf, 19 Mcf, 14 Mcf, 13 Mcf, and 15 Mcf, respectively. Since stripper wells comprise approximately 62 percent of the total number of producing gas wells in these states, and the average per day per well production figures include other wells, the per day production from stripper wells is probably even lower. *See* Interstate Oil Compact Commission, The Oil and Gas Compact Bulletin, Vol. XLIII, No. 2 (Dec. 1984) at S–2 (United States 1983 Production of Oil and Gas by States).

[93] Office of Technology Assessment Staff Memorandum on the Effects of Decontrol on Old Gas Recovery, prepared by the Energy and Materials Program (Feb. 1984) at 50.

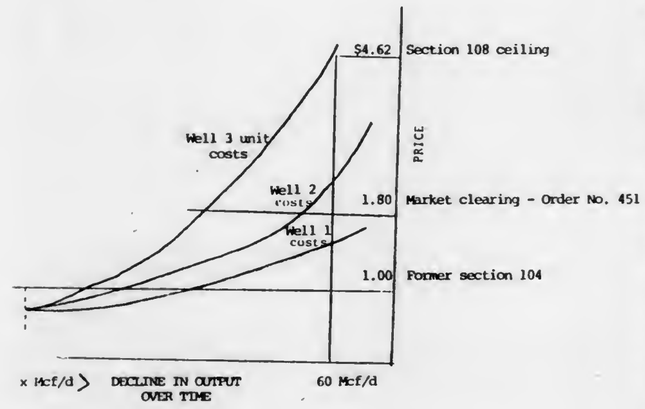
[94] Prior to 1984, before gas prices became extremely depressed, producers would more commonly file for NGPA sections 102 and 107 determinations, as well as section 103, and then later file for a section 108 determination for the same well after completing a 90-day production period in order to prove that the well did not exceed an average of 60 Mcf per production day, so as to meet the definition of stripper well natural gas under NGPA section 108(b). *See* Interstate Oil Compact Commission, The Oil and Gas Compact Bulletin, Vol. XLIV, No. 1 (June, 1985) at 51.

[95] $4.018 per MMBtu in August 1984.

[96] The stripper well ceiling prices as of July, 1986 was $4.615 per MMBtu. Under current conditions it is unlikely a producer will receive anywhere near that price, however.

the cost of operating an old gas well exceeded the revenues generated at the old vintage price the operator may have continued production until the well could qualify as a stripper well because the operator knew it could obtain the section 108 ceiling price once the well qualified. In today's market this is not a certainty and the well will more likely be abandoned and production is lost. (The diagram at the margin graphically illustrates this syndrome.) Plainly, the market, including consumers, producers, pipelines, distribution companies, and industrial end-users are better off with less new gas and more old gas that is now being abandoned if this additional old gas can be acquired at a price below that of new gas. This is what the final rule will accomplish, which the mere availability of the section 108 price does not.

In this diagram, the section 108 price provides an adequate incentive for Well 1, may provide less than adequate incentive for Well 2 (the production costs exceed the NGPA section 104 price for an extended period before the section 108 price is obtained, and the producer may rightfully question whether the stripper price will clear the market), and provides a definitely inadequate incentive for Well 3.



(Diagram represents locus of supply costs for three old gas wells over time and several price/output relations; these are but three of the multitude of possible cost/output relationships. As pressure drops and production decreases over time, a higher price is needed to prevent abandonment. The NGPA section 108 price may not be the best economic incentive, since to qualify for this stripper well price, output must be no more than 60 Mcf/day (unless special ruling is obtained).)

"x" indicates production *greater than* 60 Mcf per day, declining, as time passes, until it reaches 60. The curved lines indicate the increase in per unit costs.

AGA also claims that DOE overestimated total national responsive reserves when it scaled down the predicted increase in nationwide recoverable reserves by the ratio of its estimate of responsive reserves to Shell's. Allegedly, this meant DOE failed to account sufficiently for Shell's overestimate of responsive reserves. As explained in Order No. 451, DOE calculated its 66 Tcf estimate of responsive reserves by (1) determining the percentage of each category of gas likely to respond to higher prices allowed by eliminating vintaging, (2) multiplying the amounts of gas in each category on December 31, 1980, by those percentages, and (3) totalling the results. In doing this, DOE relied on data in a study prepared for AGA.[97] AGA alleges DOE made two errors in performing this calculation.

First, AGA contends that DOE erred in including 10 percent of section 105 intrastate gas, or 3.9 Tcf, in responsive reserves. AGA argues that intrastate gas will generally be unaffected by Order No. 451 because most is deregulated and the remainder is either section 105 gas (intrastate gas sold under contracts existing on the date of enactment of the NGPA) not subject to Order No. 451 or is eligible for the higher NGPA section 102 price.[98] The Commission believes that some intrastate gas is properly included in the estimate of gas affected by Order No. 451, and that DOE's estimate of that amount is reasonable for the following reasons. Although Order No. 451 does not permit higher prices for section 105 gas, Order No. 451 does permit section 106(b) gas (intrastate gas sold under rollover contracts) to qualify for higher prices. All section 105 and 106(b) gas sold under contracts which provided for prices of $1.00 or less on December 31, 1984, remains subject to ceiling prices well below the alternative ceiling price provided by Order No. 451.[99] Thus, all gas presently subject to section 106(b) which was sold under such low-priced contracts is properly included in responsive reserves. So also is section 105 gas sold under such contracts if those contracts will expire in time to permit the gas to qualify for the alternative ceiling price before abandonment.

DOE's estimate of responsive intrastate gas does not include any present section 106(b) gas and to that extent may actually underestimate responsive intrastate gas. DOE does include section 105 gas sold under low-priced contracts which will expire by 1995 permitting the gas to qualify for the section 106(b) ceiling price. DOE appears to have reasonably estimated the amount of that gas. Based on EIA data, which AGA does not contest, DOE states that about 35 percent of intrastate old gas is sold under contracts which provided for prices of $1.00 or less on December 31, 1984. About 28 percent of these contracts will expire by 1995. Since 28 percent of 35 percent is about 10 percent, DOE concluded that 10 percent of intrastate gas (or 3.9 Tcf) May reasonably be considered responsive to the higher prices provided by Order No. 451.[100] The Commission finds the DOE calculation reasonable and rejects AGA's contention that intrastate gas should be excluded altogether from the responsive reserve base. In any event, the Commission observes that intrastate gas accounts for only 5.9 percent of the

[97] *See* DOE reply comments at 14.

[98] AGA at 16.

[99] *See* NGPA Section 121(a)(3), 15 U.S.C. 3331(a)(3) (1982).

[100] *See* DOE reply comment at 15.

total 66 Tcf responsive reserve base found by DOE. Thus, even if DOE has overestimated the intrastate gas responsive to elimination of vintaging, the resulting error in the overall 11 Tcf estimate of increased production under Order No. 451 would be minimal.

AGA's second criticism of DOE's calculation of responsive reserves is that DOE failed to exclude all gas produced through 1985. Instead, DOE's calculation was based on December 31, 1980 reserves. AGA contends that gas produced or abandoned since 1980 should have been excluded since such gas is no longer available to be produced as a result of the elimination of vintaging. The Commission finds this criticism of DOE's calculation of responsive reserves without merit. In the first place, the increased production as a result of eliminating vintaging is, by definition, production which, because uneconomic, cannot occur under present ceiling prices. Thus, production of gas which is economic under present ceiling prices should not affect the increased production to be obtained through eliminating vintaging unless as a result the gas field is entirely abandoned. It follows that AGA is incorrect in suggesting that production since 1981 under existing ceiling prices reduced the increase in production from eliminating vintaging. Secondly, as explained in more detail in Order No. 451,[101] DOE properly used December 31, 1980 reserves in order to use consistent data in adjusting for the Shell study's overestimate of responsive reserves. The original Shell study had extrapolated the fourteen field results to a national level by multiplying those results by the ratio of January 1981 national reserves responsive to decontrol to January 1981 reserves in the fourteen fields. Shell had estimated January 1981 responsive reserves to be 115 Tcf. Since DOE scaled down its prediction of increased production by the ratio of its estimate of responsive reserves to Shell's 115 Tcf estimate and Shell's estimate was for January 1, 1981, consistency required that DOE use an estimate for the same period. If, as AGA suggests, DOE's estimate of responsive reserves should be reduced to account for production since 1980, then the Shell estimate should also be similarly adjusted so that consistent figures may be used in determining the ratio. If this were done, the adjustment to the two figures would probably approximately cancel one another out, leaving the ratio used to account for Shell's overestimate of responsive reserves approximately the same.

The Commission has now considered all contentions raised on rehearing alleging specific errors in the DOE study. While the Commission has rejected these contentions and continues to believe that the DOE study is the most reliable olf the studies concerning supply response in the present record, the Commission wishes to emphasize that no estimate of the increasae in recoverable reserves from this rule can be exact. As the Commission stated in Order No. 451, "Overall the only certainty about future natural gas supplies is their extreme uncertainty." [102] Any estimate of increased production under this rule must be based on predictions concerning future market prices and future behavior of producers and purchasers over the next twenty and more years which cannot be made with any certainty. For example, the DOE study is based on a prediction that market prices will rise to the new ceiling price. If they do not, the supply response will not be as great as predicted. In addition, the DOE study assumes that purchasers will not agree in the future to pay a higher percentage of compression costs than they now do. If, however, purchasers did agree to pay a higher percentage of compression costs, some of the supply response predicted by DOE from this rule would occur even if this rule were not adopted. On the other hand, DOE's 11 Tcf estimate of increased reserves does not include any increase in production from water-drive reservoirs as a result of this rule. However, some increased production from partial water drive reservoirs may occur. Some of those reservoirs may be susceptible to permanent loss of recoverable reserves when subjected to sharply curtailed takes of gas. It may well be that more favorable take provisions will be negotiated as a result of this rule that will permit an increase in the amount of in-place gas resources that will ultimately be recovered. Such higher rates of take and greater recovery of in-place reserves could moderate producer demands for a higher contract price because of the enhanced cash flow resulting from such increased takes.

Nevertheless, regardless of the uncertainties of predicting the precise amount by which recoverable resources will be increased by this rule, the Commission believes it clear that there will be a significant increase. There is a direct relationship between price levels and the length of time operation of a well remains economic. Since pre-1975 gas will receive a substantial price increase as a result of this rule, recoverable resources must also increase. This finding is supported by the fact that all the studies, including AGA's agree that there will be a significant increase in recoverable resources.

Some rehearing applicants question the general conclusion that eliminating vintaging will substantially increase recoverable reserves. First, several petitioners [103] observe that there is currently a surplus of deliverable gas estimated as high as 2.49 Tcf for 1986. The petitioners claim that it makes little sense to expect additional production to occur during a time of surplus. The Commission disagrees with this contention. The increased production of old gas expected to occur as a result of this rule is from wells which are currently subject to ceiling prices ranging from 52¢ to $1.66 for large producers and 62¢ to $2.18 for small producers. Thus, Order No., 451 will permit much of this gas to receive substantial price increases, thereby making its production economic, and yet still permit it to undersell much gas that is already in the market. There is no reason not to expect such gas to find a market, even during a time of surplus. In any event, as discussed above, the surplus will not last indefinitely, particularly in light of the current collapse in drilling activity and the Commission's action to create more competition.[104] DOE, for example, predicts that the surplus will be dissipated by 1988 under current regulation and 1987 if vintaging is eliminated.[105] Most of the increased production from eliminating vintaging will thus occur after dissipation of the surplus.

Some petitioners for rehearing contend that, even if the increased production of old gas occurs and causes overall prices to decline, this will discourage new drilling and result in the abandonment of many existing stripper wells.[106] They argue that over the longer term, the loss of stripper and some new gas production will offset, and thereby cancel out the benefits of, the increased old gas production. The Commission understands that under Order No. 451 some high-cost gas may not be produced immediately in the same time frame as under current regulations because of lower prices in the near term for such gas although the Commission would expect that renegotiation to lower prices will cause some portion of higher priced gas to be produced and sold at lower prices as has occurred in the current market. Exploration for and development of other higher-cost new gas will be delayed. However, these are precisely the intended effects of Order No. 451 which will cause overall prices to be less than they otherwise would be. The increased supply of lower-cost old gas will replace some higher cost gas immediately and delays the need to engage in expensive exploration and development of high-cost new gas.

Finally, some rehearing requests reiterate the contention that, even assuming increased production of old gas occurs, it will be beneficial since its incremental cost will be exorbitant.[107] In response, the Commission reiterates its rationale for rejecting this contention in Order No. 451. The high incremental cost estimates are obtained by determining the purchasers' increased cost of purchasing all old gas as a result of Order No. 451 and dividing the result by DOE's estimate of increases in recoverable reserves. This calculation fails to take into account the reduction in price of high-cost gas which will occur as a result of this rule. The petitioners' contentions that higher cost gas will not come down in price as predicted by the Commission are considered in the next section.[108]

[101] 51 FR at 22193.

[102] 51 FR at 22194.

[103] Ohio Consumers Counsel at 7; Florida Cities at 20; Northwest Central at 41.

[104] The Commission notes that after the Commission issued Order No. 451, the Energy Information Administration (EIA) released the advance summary of its year-end report on the U.S natural gas reserves. EIA's data indicates overall, natural gas reserve additions in the lower-48 states declined to 77.9% of production in 1985, and U.S. proved gas reserves declined for the fourth year in a row. *See* U.S. Department of Energy, Energy Information Administration, Advance Summary of U.S. Crude Oil, Natural Gas, and Natural Gas Liquids Reserves, 1985 Annual Report (Washington D.C., September 1986).

[105] The overall lower prices brought about by the rule will cause the surplus to dissipate faster than it otherwise would.

[106] Elizabethtown Gas Company (Elizabethtown) at 5; KP&L *et al.* at 25; Florida Cities at 31; AGA at 13; and APGA at 44.

[107] Peoples Gas *et al.* at 13; Cal. PUC at 6; NI-Gas at 13; Florida Cities at 25; AGD at 4; UDC at 42; and Northwest Central at 25, 40.

[108] The Citizen/Labor Energy Coalition (C/LEC) at 4–6 contends that Order No. 451 improperly relied on the May 1986 EIA Study in its findings concerning the supply response. This applicant states that the EIA Study's supply response estimate relied heavily on full implementation of Order No. 436. Without the transportation rights provided by full implementation, the supply response allegedly would decline significantly. It is, of course, true that producers must be able to obtain transportation of their gas in order to obtain the full benefit of the market-responsive pricing permitted by this rule. However, even if Order No. 436 is not adopted by every pipeline, the transportation provisions of Order No. 451 should enable producers to obtain the necessary transportation. Second, the applicant states that the Commission's failure to adopt DOE's proposal for incentive prices would reduce the supply response projected by EIA. However, that failure can have no effect on the EIA Study's prediction of an 11.7 Tcf supply response through delayed abandonment. Finally, the Commission notes that in any event it does not rely on the EIA Study in its holdings concerning the supply response except to the extent applicants themselves have relied on the EIA Study to challenge the Commission's holdings.

[109] *See, generally,* Order No. 451, 51 FR 22195–204 (June 18, 1986).

[110] *Id.* at 22197–98.

[111] *See* Foster and Reddick, "Analysis of High Cost Gas Purchases by Contract Termination Date," *Gas Energy Review* (Vol. 13, No. 12, American Gas Association, December 1985); AGA Initial Comments, "1986 Base Case, U.S. Energy Information Administration, Analysis of Natural Gas Contracts, Volume I: Old Interstate Gas," *Service Report,* Table 3 (February 1986) (RNGD–86–01).

[112] Order No. 451, 51 FR 22198–203 (June 18, 1986).

[113] AGA at 4.

[114] Order No. 451, 51 FR 22207 (June 18, 1986).

E. Price Response

In Order No. 451, the Commission considered the comments and data in the record regarding the likely impact of the DOE proposal on consumer gas prices and pipelines' weighted average costs of gas (WACOGs). The Commission concluded that the most likely impact would be further downward pressure on consumer prices and WACOGs. It found that the higher ceiling price for old gas would eliminate the price distortions of the gas cushion. It also found that the higher ceiling price would lead to a reduction in wellhead prices for high-cost gas to market-clearing levels responsive to competition mandated by the NGPA.[109]

The Commission also concluded that, over the long-run, pricing old gas at its replacement cost would call forth additional supplies of gas not likely to be available under vintage pricing, and that these additional supplies would put downward pressure on future wellhead prices.[110] In analyzing the numerous studies and statistics in the record and in the public domain [111] concerning the likely price impact of the DOE proposal, the Commission stated that the real issue was not *whether* overall gas prices would come down in response to higher old gas prices, it was *how fast* such prices would come down. Based on the record as well as on the behavior of pipeline purchased gas costs (PGAs) before and after the partial deregulation of wellhead prices on January 1, 1985, the Commission concluded that any renegotiation of old gas prices to replacement cost levels under the DOE proposal would be more than offset by reductions in high-cost gas prices.[112]

However, the Commission also found that, despite the likely reduction in overall gas prices, it was impossible to predict with certainty whether some consumers or some pipeline systems would face short term transitional increases in their gas costs before the lower overall prices and enhanced supplies are made available to all pipelines under the rule. For this reason, the Commission modified the good faith negotiation procedure in the final rule in order to give the purchaser the right to renegotiate the prices of all gas, including new gas, in contracts which contain some old gas where the producer requests any old gas price renegotiation. Under this modification, the American Gas Association (AGA) estimated that at least one-third of all new gas potentially would be subject to price renegotiation by purchasers, because it is contained in "multi-vintage" contracts which cover some old gas eligible for renegotiation to the new ceiling price established by the final rule.[113] To the extent large quantities of this new gas, as well as high-cost categories of old gas, are already priced above spot market prices or individual pipeline WACOGs, Order No. 451 concluded that the modifications to the good faith negotiation procedure would give pipeline purchasers substantial added leverage to bargain both old and new gas prices to market-responsive levels.

Finally, the Commission included two additional protections in Order No. 451.

First, the Commission provided to firm sales customers of a pipeline a right of first refusal to any old gas released by the pipeline to the open market as a result of unsuccessful price renegotiation. This right of first refusal would assure that those customers with least access to alternative gas supplies—especially sole-supplied, full-requirements customers of pipelines that have not chosen to provide open access transportation under Order No. 436—would have the ability to keep inexpensive old gas supplies on-system by matching any bids for the gas released to the open market.[114] In addition, the final rule provides such customers (and others) with transportation authority in order to receive the gas.

Second, the Commission stated its intention to assure that the PGAs reflect prudent renegotiating practices by pipelines under the rule, instead of projecting purchased gas costs based on the worst possible outcome of such

renegotiation.[115] This scrutiny would assure that pipelines cannot choose to pass through to their customers any higher old gas prices requested by producers without exercising their bargaining rights under the good faith negotiation procedure.[116]

For these reasons, the Commission concluded that Order No. 451 would not unreasonably increase consumer gas prices over the short-term, and over the long-term would reduce city-gate gas prices in response to more competitive wellhead markets and enhanced supplies.[117]

Requests for rehearing. On rehearing, a number of pipelines, distribution companies, and their trade associations argue that the Commission lacked substantial evidence in the record to determine the impact of the final rule on pipeline WACOGs and consumer prices.[118] These applicants state that the final rule is based on economic theory, not credible evidence, and that there will be substantial pressure on pipelines to bid the highest price for old gas under the rule, because wellhead markets are not workably competitive.[119]

INGAA, AGA, and most pipelines acknowledge that, by including multi-vintage contracts in the renegotiation process, Order No. 451 gives partial recognition to the problem of high-cost new gas contracts. However, they criticize the final rule as being inadequate to remedy the whole problem, because it does not give purchasers the right to bring all gas contracts to the bargaining table.[120] Texas Eastern, Transco, and others argue the final rule will increase old gas prices without forcing high-cost gas prices down, unless purchasers are given the right to initiate renegotiation of high-cost gas contracts which do not cover some old gas.[121]

Several applicants argue that the final rule will not only force pipelines to reduce takes of high-cost gas, thus increasing the take-or-pay costs associated with such contracts. The problem, these applicants say, is not low old gas prices, it is take-or-pay costs.[122] Other applicants allege that the recent decreases in pipeline WACOGs cited in the final rule are largely due to pipelines exercising market-outs and maximizing old gas takes, and that the only high-cost gas contracts remaining are those with rigid, non-market-responsive terms not susceptible to market pressures if old gas prices increase.[123]

A number of applicants argue that the inclusion of multi-vintage contracts in the good faith negotiation procedure will not help "deep cushion" pipelines—those pipelines with large quantities of cheap old gas and very little high-cost gas under the same or other contracts. Nothwithstanding any overall reduction in gas prices nationwide, applicants say, these pipelines face inevitable price increases under Order No. 451, because they lack enough high-cost gas to offset against old gas price increases sought by their suppliers.[124]

Some applicants argue that producers will never initiate price renegotiation of their old gas unless they believe that higher prices are available in the marketplace for all their gas subject to renegotiation, regardless of whether or not their pipeline purchaser exercises its renegotiation rights. Thus, these applicants say, the final rule guarantees higher prices unless purchasers are permitted to initiate price renegotiation on their own.[125] Similarly, some applicants argue the Commission cannot have it both ways: increased gas supplies cannot result without higher prices to consumers, and lower consumer prices cannot occur without reducing supplies.[126]

On the other hand, some pipelines, distribution companies, trade associations, and state commissions agree with the Commission's conclusion that wellhead markets are workably competitive, or otherwise laud the Commission's goal of raising the ceiling price for old gas to market-clearing levels.[127]

Producer applicants generally agree that under current competitive conditions in wellhead markets, the higher old gas ceiling price will bring gas prices down to market-clearing levels.[128] But producers argue that the inclusion of multi-vintage contracts is unnecessary to achieve this goal. In support of these conclusions, these applicants cite the experience of wellhead markets under partial deregulation and argue that market forces are forcing renegotiation of high-cost, take-or-pay contracts without the need for regulatory intervention in such contracts through the good faith negotiation procedure. Producers also point out that including new gas in the good faith negotiation procedure is unwarranted because issues relating to take-or-pay and new gas prices would be brought to the bargaining table voluntarily anyway.[129] Finally, producers generally agree that Order No. 451 will go far in removing a primary source of current price disorders in natural gas markets—the "price cushion" created by existing old gas vintage price ceilings.[130]

Maryland People's Counsel and the National Association of State Utility Consumer Advocates (MPC/NASUCA) allege that Order No. 451 will not reduce gas prices because the natural gas industry—including the pipeline segment—is not workably competitive in the absence of meaningful access to transportation. The fact that the wellhead market may be competitive does not mean that the entire industry is competitive, MPC/NASUCA say. Therefore, without transportation access, local distribution companies and consumers will have no alternative to increased old gas costs passed along by pipelines under Order No. 451. MPC/NASUCA also allege, as discussed *supra* in IV. B., that the previous price distortions of the old gas "cushion" have been largely eliminated, and that the current WACOGs of pipelines that enjoyed a cushion are no longer below market-clearing levels and that such pipelines no longer retain artificial advantages over other pipelines in bidding for new gas.[131]

A group of industrial end-users commends the Commission for expanding the scope of the rule to cover multi-vintage contracts, but argues that any old gas price increases should be tied to reductions in high-priced new gas over the same period of time, in order to avoid any short-term increases in the price of gas on certain pipeline systems.[132]

Florida Cities argue that if the Commission is correct in its finding that wellhead gas markets are competitive, then any increase in old gas prices under Order No. 451 will be matched by a decrease in new gas prices, and the consumer will get no price benefits under the rule.[133] In support of this view, Florida Cities cite the Commission staff's findings in the 1982 Notice of Inquiry on wellhead price issues, as well as a study commissioned by the Natural Gas Supply Association (NGSA).[134] Similarly, AGD argues that contract rigidities, not low old-gas prices, are the real source of gas market distortions, citing the Commission's own conclusions in Order No. 436.[135] Finally, INGAA and others allege that Order No. 451 will increase cash flow to producers, and therefore reduce, not increase, their incentive to renegotiate high-cost problem contracts.[136]

Commission response. Many of the applications for rehearing on the price response issue appear to misunderstand the Commission's fundamental purpose in promulgating the final rule. As the Commission stated:

> It is clear that consumers have suffered shortages and higher prices under the current price system for old gas, and these distortions can only cause more damage to consumers in the future, if existing reserves continue to be sold on a basis less than replacement cost. Keeping old gas rates below replacement cost can only revive shortages and high prices for future generations of consumers.
>
> The final rule is not intended to balance the interests of present consumers and present producers, it is intended to balance the needs of future consumers for long-term reliable gas service, with the protection of present consumers from exploitation by producers.[137]

For this reason, Order No 451 does not guarantee a particular wellhead price for old gas to either producers or pipelines. Instead, it leaves to both parties the opportunity to renegotiate old gas prices subject to the full competitive conditions in wellhead markets mandated by the NGPA *and* to the protection of a just and reasonable price ceiling. In this way, in times of surplus, such as now, old gas prices are likely to fluctuate below the price ceiling and possibly below long-term replacement costs. In times of adjustment as supply and demand move into equilibrium, old gas prices may move higher, but never in excess of the new ceiling price. Under the rule's renegotiation requirement, the Commission has assured that short-term price impacts, if any, are subject to the consent of individual pipeline systems, rather than be incurred suddenly by virtue of the automatic operation of indefinite price escalators in existing contracts.

To the extent old gas prices will be gradually renegotiated under Order No. 451 to market-responsive levels, the Commission and most applicants agree the prices will more closely approximate the replacement cost of all gas. However, to the extent the previous old gas vintage pricing system has permitted a small minority of interstate pipeline systems to artificially maintain their overall gas prices below even today's depressed spot market prices, Order No. 451 is in no way intended to exempt such pipelines—or their customers—from the pressures in the marketplace to renegotiate their prices upward to competitive levels.

On the contrary, Order No. 451 is expressly intended to remove the artificial price advantages these pipelines and their producer suppliers have enjoyed in the past and to instead require them to gradually renegotiate their prices under open market conditions, even if those market conditions may place upward pressure on their WACOGs. The Commission recognized in Order No. 451 that a small number of these pipelines could face gas price increases during a transition period, but that these price increases would not be unreasonable in light of the overall benefits of the rule. For this reason, the Commission rejects those applications which request the rule be modified to guarantee somehow that *no* pipeline will face *any* increased wellhead gas prices under Order No. 451. To guarantee no wellhead price increases whatsoever would undermine the fundamental purpose of the rule, which is to assure that old gas prices will more accurately reflect market clearing prices and thus reduce the previously distorting effect of the old gas vintaging system.

The crux of the price response issue on rehearing, then, is not whether any pipelines and their customers will face higher gas costs, but whether or not any such increases will be unreasonable.

Applicants generally concede that the inclusion of multi-vintage contracts in the "good faith negotiation" procedure will limit substantially the number of pipelines who will be exposed to increased old gas prices without any corresponding "right" to reduce other gas prices. However, applicants variously argue that (1) some pipelines do not possess enough high-cost gas under multi-vintage contracts to offset old gas price increases; (2) some "deep cushion" pipelines do not possess enough high-cost gas to offset against old gas price increases, regardless of multi-vintage contracts; or (3) even if pipelines possess enough high-cost gas, their producers will not initiate old-gas price renegotiation unless they are sure they can obtain higher prices for all their gas, including take-or-pay payments for high-cost gas which the pipeline can terminate purchasing under the rule. Therefore, applicants conclude, pipelines and customers inevitably will face unreasonable price increases or lost supplies or both.

In response to these alleged problems, the Commission has reviewed the American Gas Association's (AGA) rehearing application, which included as Appendix A a study entitled "Economic Impacts of Order No. 451."[138] Appendix

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[115] In a recent PGA filing by Colorado Interstate Gas Company, for example, the Commission rejected CIG's estimate of the net effect of impending negotiations under Order No. 451 and disallowed recovery of projected gas cost increases for lack of adequate supporting data. 36 FERC ¶ 61,406 (1986). The Commission took similar action with respect to a PGA filing by KN Energy, Inc. which also included an estimate of the net effect of Order No. 451. 37 FERC ¶ 61,198 (1986).

[116] *Id.* at 22,203.

[117] *Id.* at 22,204.

[118] *See, e.g.*, INGAA at 9–11; UDC at 37; Panhandle Eastern Pipe Line Company, Trunkline Gas Company, and Trunkline LNG Company (Panhandle and Trunkline) at 4–5; Florida Cities at 23–24; Northern Natural at 28–32; Southern Natural at 5.

[119] *See, e.g.*, Northwest Central at 2–4; AGD at 10; APGA at 35–45; Northern Natural at 32.

[120] *See, e.g.*, INGAA at 10–11; AGA at 28–29; Northwest Pipeline Corporation at 4; ANR Pipeline Company and Colorado Interstate Gas Company (ANR and CIG) at 9; Natural and United at 2, 7; Transwestern Pipeline Company (Transwestern) at 4; Arkla Inc. (Arkla) at 10–11; Northern Natural at 37; Transcontinental Gas Pipe Line Corporation (Transco) at 4–6; Florida Gas Transmission Company (Florida Gas) at 4, 18–19; Texas Gas Transmission Corporation (Texas Gas) at 5; Texas Eastern at 4–5.

[121] *See, e.g.*, Transco at 6–7; Texas Eastern at 17–19.

[122] *See, e.g.*, AGD at 8–9; Peoples Gas *et al.* at 8–9; UDC at 52; INGAA at 12–15; APGA at 37–40.

[123] *See, e.g.*, INGAA at 11, AGD at 8–9, MPC NASUCA at 28–30; NI-Gas at 8–12; N.Y. PSC at 15–16; Tennessee Gas Pipeline Company (Tennessee) at 10–13.

[124] *See, e.g.*, Northern Natural at 34–36; Interstate Power Company at 4; Midwest at 1–3; Northwest Central at 45; KP&L *et al.* at 20; Kentucky Public Service Commission (Kentucky PSC) at 2.

[125] *See, e.g.*, INGAA at 11; Transco at 4; Pacific Gas and Electric Company (PG&E) at 2, 4; Arkla at 5, 8–10.

[126] *See e.g.*, Florida Cities at 23–24; Ohio Consumers Counsel at 6–8.

[127] *See, e.g.*, Transco at 4; Cal. PUC at 23–27; El Paso Natural Gas Company (El Paso) at 1–2; Baltimore Gas and Electric Company (BG&E) at 1; Process Gas Consumers Group, American Iron and Steel Institute, and Georgia Industrial Group (PGC) at 2.

[128] *See*, e.g., Indicated Producers at 2.

[129] *See*, e.g., Indicated Producers at 4–8.

[130] *See*, e.g., Independent Petroleum Association of America (IPAA) at 1; Indicated Producers at 2–"

[131] MPC/NASUCA at 17–28.

[132] *See, e.g.*, PGC at 12–14.

[133] Florida Cities at 2–3.

[134] *Id.* at 23–24.

[135] AGD at 8.

[136] INGAA at 10; Kentucky PSC at 2; N.Y. PSC at 16.

[137] Order No. 451, 51 FR 22203 (June 18, 1986).

[138] Rehearing Petition of American Gas Association, Appendix A, attaching "Economic Impacts of Order No. 451" Docket No. RM86-3-000 (July 3, 1986), (Issue Brief 1986-24); also see "AGA Forecasts Lower Gas Prices for this Winter," *Washington Letter* (American Gas Association, October 31, 1986) ("The nationwide average price of natural gas to residential customers this winter is forecast to be 6 percent lower than the price last winter, $5.28 per MMBtu versus $5.60 per MMBtu, according to an AGA analysis . . . The projection is based on an analysis of PGA filings made with FERC by 25 interstate pipeline companies representing about 95 percent of interstate gas purchases. According to AGA, the PGAs show that, on a nationwide average basis, the price pipelines will pay to buy gas this winter will be 32 cents per MMBtu lower than last winter. Analysis of pipeline tariff data indicates that this saving will be passed on to the distribution companies. The average field purchase price projected by the pipelines for this winter is $2.14 per MMBtu, compared with $2.46 per

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A analyzed data available to the public on gas contracts between major pipelines and major producers compiled by the Energy Information Administration from FERC Purchased Gas Adjustment Filings covering the first half of 1986. The data indicate for each pipeline the total amount and average contract price of old gas from each producer and the total amount and average contract price of any new gas covered by the same old gas contract. EIA also reports the total volumes and average price for both old and new gas covered by these contracts as well as the total volumes and average price for all contracts with each producer.

Appendix A then assumed a market price of $1.80 per MMBtu, which AGA said is in line with a benchmark refiner acquisition cost of crude oil of $17.50 per barrel and with trends in the spot gas market where prices are generally below $1.50/MMBtu—in some cases below $1.25/MMBtu. The assumed price was also in line with recent market-out prices by interstate pipelines, according to AGA.

For Order No. 451 as formulated, Appendix A also assumed that producers would nominate contracts to only those pipelines where the price of gas flowing under *all* old gas and multi-vintage contracts is less than the assumed $1.80/MMBtu market price. Given that the producer can nominate at any time, AGA said, it is unreasonable to assume that a producer would nominate to any pipeline where, in the aggregate, its average price for all contracts with old gas is above current market prices.

Appendix A also apparently assumed that once a producer nominated its contracts to a pipeline, the pipeline would agree to pay a price for the gas equivalent to the assumed market price, regardless of whether the gas is surplus to the pipeline's system supply needs. Another apparent assumption is that the price of new gas not covered by multi-vintage contracts nominated by a producer will not come down in response to the upward pressure on old gas prices. However, AGA does note recent trends in pipeline purchases indicating that anticipated WACOGs have been reduced from a $2.52/MMBtu average in early 1986 to $2.30/MMBtu at mid-year, due to reductions in takes of new, high-cost gas. In addition, AGA notes that if the market price of gas is in fact lower than the assumed $1.80/MMBtu, the impacts of Order No. 451 would be less than those calculated in Appendix A because fewer volumes of gas would be nominated for renegotiation by producers.

Based on all these assumptions, Appendix A concludes that average pipeline gas costs would be at least $0.08/MMBtu (3%) higher in 1986 than they would otherwise be—a WACOG of $2.60/MMBtu compared to $2.52/MMBtu. According to AGA, this increase would vary significantly among pipeline systems, depending primarily on the amount and price of old gas under contract to each system. Some pipeplines would be minimally affected, because their contracts with producers have average prices higher than the current market level. Other pipelines with proportionally more low-cost old gas under contract, could expect their WACOGs to rise as much as $0.53/MMBtu (over 30%), according to AGA.

The Commission has also reviewed the PGA data for the first half of 1986 which underlies AGA's Appendix A. These data, excerpts of which are attached as Appendix B [138a] to this order, indicate that 16 of 20 major interstate pipelines have weighted average costs of Order No. 451-eligible, unaffiliated old gas and multi-vintage gas above $1.80/MMBtu. Of the remaining 4 pipelines with WACOGs of unaffiliated old and multi-vintage gas below $1.80/MMBtu, two (Northern Natural at $1.63/MMBtu and Transwestern at $1.72/MMBtu) serve end-use markets which are subject to either intense interfuel competition (Transwestern) [139] or surplus system supplies (Northern). Both pipelines have settlements pending before the Commission under which their customers and shippers would be provided open access to alternative suppliers consistent with Order No. 436.

One pipeline (KN Energy at a WACOG of $1.11/MMBtu for eligible old and multi-vintage gas) has as its largest old gas supplier a former affiliate which was spun off recently to KN's common shareholders (Plains Petroleum Corporation). On October 1, 1986, KN filed its regularly scheduled annual PGA which proposed an increase of only 11.83¢/MMBtu in its average purchased gas cost over the next twelve months relating to the new effects of Order No. 451, market-outs, and a decrease in purchases associated with Cities Service. Because KN did not provide adequate support for the projection, the Commission accepted and suspended the PGA increase contingent on KN eliminating the Order No. 451 adjustment without prejudice to KN filing an out-of-cycle PGA with detailed support. 37 FERC ¶ 61,198 (1986).

The final pipeline (Northwest Central with an old and multi-vintage gas WACOG of $1.19/MMBtu) could offset over two-thirds of any old gas price increase to $1.80/MMBtu, by reducing its new gas WACOG from a current $3.63/MMBtu to $1.68/MMBtu, its current all-gas WACOG. This is also a large percentage reduction, but the Commission considers it unlikely that Northwest Central's old gas suppliers will be able to sustain price increases in excess of their pipeline purchaser's all-gas WACOG of $1.68/MMBtu. In addition, Northwest Central and its customers apparently recognize the substantial bargaining leverage contained in a right of first refusal such as that given a non-Order No. 436 pipeline's customers under Order No. 451.[140]

The Commission considers it reasonable to conclude that a pipeline experiencing a substantial contraction of its sales demand, as most have since 1982, will have additional bargaining leverage with its old gas producers, especially where its firm sales customers rely on the pipeline's system supply, and interconnecting pipelines have experienced a similar reduction in their sales demand.[141]

The Commission therefore rejects the assertion of the rehearing applicants that pipelines and their customers do not possess enough high-cost gas on their system, whether under multi-vintage contracts or not, to offset old gas price increases. The Commission believes that producers will nominate their old gas contracts cautiously and gradually, consistent with the risks they face in exposing their current old and multi-vintage contracts to the uncertainty of spot wellhead markets in the midst of surplus deliverability and post-NGPA gas-on-gas competition in end-use and city-gate markets. Because of these competitive market conditions, the Commission also concludes that it is likely that old gas price renegotiation on individual pipeline systems will follow the pace of changes in the pipeline's overall WACOG, neither faster nor slower.

The Commission also rejects the allegation by applicants that producers will not initiate old gas price renegotiation unless they are sure they can obtain higher prices for all their gas. This is a circular argument that old gas prices will not be market-responsive because producers will not seek higher prices unless they perceive that the market is willing to pay those prices. In any case, this argument does not alter the requirements of Order No. 451 that old gas prices be the price negotiated in light of market conditions or the ceiling price, *whichever is lower.*

The objection that Order No. 451's price response consideration is based on economic theory, not substantial evidence, must likewise be dismissed. Applicants' own numerous references to PGA data themselves confirm the downward flexibility of WACOGs since January 1, 1985, and belie the assertion that WACOGs will not be similarly flexible under Order No. 451. The Commission also notes that this WACOG flexibility will only increase as most pipelines elect to offer open access transportation under Order No. 436. The transitional transportation provisions in Order No. 451 assure the availability of this increased flexibility to all pipeline customers, regardless of their status under Order No. 436.

However, the Commission reiterates that it intends to strictly scrutinize pipeline PGAs filed to reflect Order No. 451 price negotiations, in order to monitor closely pipelines who bid the highest price for old gas without exercising their renegotiation rights under the rule. The Commission retains the ability, on a case-by-case basis, to determine the prudence of pipelines' purchasing practices under the rule.

MPC/NASUCA's assertion that Order No. 451 will increase gas prices unless transportation access is available, must be dismissed.[142] Order No. 451 contains a transitional transportation provision and a right of first refusal which together provide access to transportation even where a pipeline is not an Order No. 436 transporter.[143] In addition, Order No. 451 expressly finds that any unduly discriminatory refusal by a pipeline to provide transportation for old gas released under the rule would constitute a violation of section 5(a) of the Natural Gas Act.[144]

In response to Florida Cities' allegation that Order No. 451 will only transfer income from one group of producers to another without increasing supplies, the Commission reiterates its finding that, over the long-term, the higher ceiling price for old gas will call forth additional old gas supplies as supply and demand move into equilibrium in gas markets. But for the new ceiling price, natural gas markets could face more cycles of boom and bust in the drilling industry such as those that have led to low reserve replacement ratios and shortages to consumers in the past.

In response to INGAA, AGD, and others alleging that by failing to deal with take-or-pay, Order No. 451 addresses the wrong problem, and contradicts the Commission findings in Order No. 436, the Commission refers applicants to numerous notices of inquiry, proposed and final rules and other orders. Substantial evidence has been presented in all these other dockets as well as in this rulemaking regarding the continuing market distortions caused by below-market vintage price ceilings for old gas. [145]

The Commission therefore must reject the argument that Order No. 451 does not address a real problem in gas markets. Furthermore, the Commission believes that, as a general matter, purchasers can, and are, successfully renegotiating high-cost gas contracts with inflexible take-or-pay clauses. Adoption of Order No. 451 should accelerate that process. As the Commission observed in Order No. 451, an NGSA survey of producers shows that they have settled over two-thirds of their outstanding take-or-pay liabilities and that most of the remaining liability is of recent origin. Also an NGSA survey of interstate pipeline financial statements filed with the Securities and Exchange Commission shows pipelines repeatedly stating that they expect to renegotiate take-or-pay contracts. Furthermore, an AGA study, submitted with its initial comments and later updated, projects that natural gas markets will force high-cost "market unresponsive" gas prices down 11% a year between 1984 and 1988. [146]

The elimination of vintaging can only accelerate this process. Pipelines will be able for the first time to offer higher prices for old gas in return for voluntary renegotiation of take-or-pay contracts. Furthermore, since the old gas cushion currently protecting high-priced contracts through rolled-in pricing will be eliminated, both pipelines and producers will find it mutually advantageous to renegotiate such contracts in order to retain a market for their supplies in the face of competition from cheaper gas and alternate fuels. Presumably, a producer would rather sell gas than have its wells shut in, because the pipeline cannot market the gas under the terms of their original contract, or go through the difficulty of a lawsuit to enforce an uneconomic contract. [147] It appears, therefore, that purchasers have sufficient bargaining power to bring down the price of high-cost gas sold under take-or-pay contracts. Order No. 451 further reinforces that power with respect to such gas sold under multi-vintage contracts containing old gas by permitting the purchaser to request that

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MMBtu last winter, according to the analysis. While average costs vary from one pipeline to another, most systems expect price declines this winter, says AGA").

[138a] Appendix B may be obtained from the Commission.

[139] The Commission rejects the contention of the California PUC that Order No. 451 will cause substantial increases in the WACOGs of Transwestern and El Paso, the two interstate pipelines serving California. El Paso's WACOG is even less likely to increase significantly than Transwestern's since the average price of its unaffiliated old gas is $2.12, substantially above AGA's assumed market price of $1.80. The seven California PUC estimates of potential increased annual costs to California consumers under Order No. 451, which range from 79 to 501 million dollars based on varying assumptions concerning the prices of old and multi-vintage gas, all underestimate the ability of purchasers to reduce the price of net, multi-vintage gas under Order No. 451. The estimates assume that the price of new gas in multi-vintage contracts will either (1) not be renegotiated at all, (2) be renegotiated only down to $3.00, or (3) be renegotiated down to $2.58, the new ceiling price, while all old gas is renegotiated up to that ceiling price. However, the purchaser has the right, once the producer seeks a higher price for any old gas, to request that the producer nominate a new price for new gas in multi-vintage contracts or above-market old gas. The purchaser may abandon purchases of such gas if dissatisfied with the price nominated. Given these rights, it seems totally unrealistic to assume that pipelines will continue to pay prices substantially above the current market price of approximately $1.80 for new gas in multi-vintage contracts (or old gas) when the producer seeks a higher price for below-market old gas.

[140] *See* Northwest Central's Order No. 436 settlement proposal, Docket Nos. RP86-32-000, RP86-68-000, where Northwest sought to reserve the right to defer implementation of the settlement if Order No. 451 is not modified to give a right of first refusal to Order No. 436 pipelines.

[141] In order to assist pipelines in renegotiating their contracts in such situations, the Commission has at certain pipelines' request, authorized blanket limited-term abandonment by the pipeline's suppliers. *See* Southern Natural Gas Co., 36 FERC ¶ 61,401 (1986), and Transcontinental Gas Pipe Line Corp., 36 FERC ¶ 61,403 (1986). Such authority provides pipelines additional flexibility to voluntarily renegotiate high-cost as well as low-cost jurisdictional gas as an alternative to renegotiation under the good faith negotiation rule.

[142] MPC/NASUCA at 17–28.

[143] Order No. 451, 51 FR 2211–13 (June 18, 1986).

[144] *Id.* at 22112–13.

[145] *See, e.g.*, Order No. 451, 51 FR at 22175 nn. 60, 61, and 63. *See also* DOE Proposal, 50 FR 48540 (Nov. 25, 1985), Interstate Transportation of Gas for Others, 50 FR 114 (Jan. 2, 1985) Notice of Inquiry (NOI); Natural Gas Pipeline Ratemaking, Risk, and Financial Implications After Partial Wellhead Decontrol, 50 FR 3801 (Jan. 28, 1985) (NOI, Phase II); Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 50 FR 24130 (June 7, 1985).

[146] 51 FR at 22197 and 22202.

[147] There are often considerable pressures on the producer to produce and sell its gas. In addition to the obvious needs to cover costs, debts, and royalty payments, there is often the risk that a failure to produce will cause the producer to lose the ability to recover the gas or make future recovery more expensive. Water can seep into nonproducing wells, and if the well is in a jointly-owned field an individual producer's show can "drain away" toward other producing wells.

the producer nominate a new price for any gas in such contracts and permitting the purchaser to discontinue purchases if dissatisfied with the purchasers' nominated price. Furthermore, it is conceivable that successful price renegotiation pursuant to or as a result of Order No. 451 of the higher price gas will make the prices more competitive for resale, thus increasing the volume sold and reducing the pipeline purchaser's exposure to potential take-or-pay liability under such contracts. At the same time, however, the Commission does recognize that Order No. 451's substantial downward pressure on high-cost gas prices may expose certain pipelines to some additional liability for take-or-pay prepayments for gas not taken under certain specific contracts. The Commission also expressly reaffirms its policy to expeditiously review take-or-pay "buyouts," including such "buyouts" under contracts subject to Order No. 451, in order that the parties may adjust to these new competitive pressures as smoothly as possible.

In Order No. 436, we reaffirmed our earlier policy statement on "Regulatory Treatment of Payments Made in Lieu of Take-or-Pay Obligations," and indicated that pipelines may seek to recover take-or-pay buyouts in rate filings under section 4 of the NGA on a case-by-case basis. [147]

For all these reasons, the Commission denies rehearing on the price response issue, and reaffirms its conclusion that Order No. 451 is unlikely to cause any unreasonable increase in gas prices to consumers or pipelines.

F. *Good faith negotiation rule.* In Order No. 451, the Commission adopted a "good faith negotiation rule" primarily in order to assure that old gas is priced at the lower of the new ceiling price or the market price. While producers must have contractual authority to collect the ceiling price, existing contracts may provide that authority, for example by an indefinite price escalation clause. In order to prevent indefinite price escalation clauses from automatically raising prices to the new ceiling price regardless of the market price, the Commission required that parties to existing contracts, who do not voluntarily negotiate a new or amended contract price, comply with the good faith negotiation rule before collecting higher prices. That rule gives both parties an opportunity to assess the value of the gas in light of competition and other market forces. A second purpose of the good faith negotiation rule is to assure fairness in the renegotiation of multi-vintage contracts and give purchasers an opportunity to reduce substantially their cost of new gas contained in multi-vintage contracts. The rule does this by providing for the renegotiation of new gas in multi-vintage contracts containing some old gas. Finally, the Commission sought to encourage voluntary renegotiation as an alternative to the formal procedures of the good faith negotiation rule.

The good faith negotiation rule operates generally as follows. The rule establishes a three step procedure by which contracts are placed on the bargaining table. In step 1, the producer may request the purchaser to nominate a new price for any old gas sold under contracts or service obligations in effect on July 18, 1986, and which authorize a higher price. In step 2, the purchaser may, within 30 days of the producer's request in step 1, request that the producer nominate a new price for any old or other gas sold under the contracts covered by the producer's request. In addition, the purchaser may request the producer to nominate a new price for any gas sold under any other contract between the parties which contains some old gas. In step 3, the producer may, within 30 days of the purchaser's request in step 2, request the purchaser to nominate a new price for any old gas in the contracts brought to the negotiating table by the purchaser in step 2.

Once a nomination request is made by either party, the other party has 60 days in which to nominate a price. The party requesting the nomination then has 30 days in which to decide whether to accept the nominated price. However, if the purchaser nominates the highest price permitted by the contract, the producer must accept the nomination. If a nominated price is accepted, sales continue under the existing contract at the nominated price. If a party rejects a nominated price, it may, upon 30-days notice, cease sales or purchases from the wells subject to the nomination request, and abandonment is deemed granted. However, a producer may not give the 30-days notice until it has entered into a contract to sell the gas to a new purchaser. In the interim between rejection of a nominated price and abandonment, sales continue at the existing price. Whenever any gas previously sold to a non-Order No. 436 pipeline is eligible for release under the good faith negotiation rule, the producer must give the pipeline's firm sales customers a right of first refusal before selling released jurisdictional gas to a third party. [148]

No contract may be renegotiated more than once under the good faith negotiation rule. Parties may renegotiate a contract at any time without using the good faith negotiation rule. However, voluntary renegotiation after July 18, 1986, prevents any subsequent renegotiation of the contract under the good faith negotiation rule, unless the parties mutually agree in writing to retain their rights under the rule. [149] In order to give the parties time to familiarize themselves with the operation of the rule and to voluntarily renegotiate their contracts, the Commission provided that producers may not proceed under the good faith negotiation rule before November 1, 1986. [150] The Commission has since postponed the start of good faith negotiation to December 18, 1986.

Rehearing requests. Pipelines, distributors, and state utility commissions contend that the good faith negotiation rule is illegal and unfairly weighted in favor of producers. They contend that the provision of the rule permitting producers who have rejected the purchaser's price nomination to abandon sales upon thirty-days notice grants blanket abandonment in violation of section 7(b) of the NGA. [151] That section provides that producers may not terminate sales until the Commission has found, after a hearing, that the present or future public convenience or necessity warrants the abandonment. These parties contend that the Commission improperly held that it could provide the required hearing and make the necessary findings on a generic basis in the present rulemaking proceeding. The applicants contend that, in deciding whether abandonment is in

[147] FERC Stats. & Regs. ¶ 30,665 at 31,564. *See also*, FERC Stats. & Regs. ¶ 30,637 (1985). *See also*, orders setting Tennessee Gas Pipeline Co. (RP86-119-003) 36 FERC ¶ 61,032 (1986), Transwestern Pipeline Co. (RP86-126-000) 36 FERC ¶ 61,048 (1986), Mountain Fuel Resources, Inc. (RP86-87-000) 36 FERC ¶ 61,150 (1986), and ANR Pipeline Co. (RP86-169-000) 37 FERC ¶ 61,080 (1986), for hearing, where the Commission has set for hearing rate proposals addressing costs related to payments for past and future take-or-pay buyouts.

[148] Issues raised on rehearing concerning the right of first refusal shall be considered in the succeeding section of this order.

[149] The parties' right to mutually agree to retain their rights under the good faith negotiation rule was not in the rule as originally adopted by Order No. 451 but was added by the Interim Order on Rehearing issued July 18, 1986.

[150] A chart illustrating the operation of the good faith negotiation rule, as modified on rehearing, is attached to this order as Appendix C.

[151] Pacific Gas & Electric Co. (PG&E) at 17; Cal PUC at 31; Elizabethtown at 7; Missouri PSC at 5; Northern Natural at 13; KN at 28; KP&L *et al.* at 16; ANR and CIG at 4; Southern Natural at 16; Union Gas System, Inc. (Union) at 8; AGD at 9, 11; UDC at 12, 45, 48; Northwest Central at 9, 10, 14; APGA at 46-51; Peoples Gas *et al.* at 10.

the public interest, the Commission must consider a number of factors which require analysis of facts concerning specific persons and transactions such as the relative needs for the gas of the existing and prospective purchasers and the markets they serve. Allegedly, the Commission can consider such factors only on a case-by-case basis. The applicants also observe that the Supreme Court has held that putting the abandonment decision solely in the hands of the producer would violate section 7(b). [152] The applicants contend the good faith negotiation rule does exactly that.

Pipelines, distributors, and consumer representatives also contend that the Commission erroneously held that the good faith negotiation rule does not violate the *Mobile-Sierra* doctrine. [153] In *United Gas Pipe Line Co. v. Mobile Gas Corp.* 350 U.S. 332 (1956), the Supreme Court held that a natural gas company may not unilaterally change its contract, but that the Commission may modify contracts when necessary in the public interest. These petitioners contend that, since the producer initiates renegotiation and decides whether to accept the nominated price or reject it and abandon sales, the rule allows the producer to abrogate the contract unilaterally. The petitioners also contend that the Commission neither made, nor could make, a finding that permitting contract abrogation is in the public interest. They assert that permitting such abrogation under the good faith negotiation rule undermines the stable supply arrangements which the Supreme Court found in *Mobile* were essential to the health of the natural gas industry.

Pipelines, distributors, and consumer representatives also contend that the good faith negotiation rule is unfairly weighted in favor of producers, thereby preventing the achievement of the Commission's goal of creating more market-responsive pricing and the benefits that flow therefrom. The primary objections are (1) that only producers can initiate the process, [154] and (2) that purchasers cannot obtain the renegotiation of contracts containing only new gas. [155] These features allegedly permit a producer to limit renegotiation to situations where its increased revenues from old gas are likely to outweigh its increased revenues from new gas, and give the purchaser no recourse. In addition, new gas sold separately from old gas is not subject to the good faith negotiation procedures. As a result, petitioners claim, a large proportion of new gas subject to non-market-responsive contracts will never come down in price. In addition, some old gas sold under multi-vintage contracts will not rise in price and therefore will be prematurely abandoned, contrary to the Commission's goal of maximizing production of old gas.

Beyond the alleged discrimination against pipelines generally, petitioners claim that the good faith negotiation rule also discriminates among pipelines in that pipelines purchasing both old and new gas under separate contracts will experience greater increases in their gas purchase costs than those who generally purchase gas under multi-vintage contracts. These petitioners seek modification of the rule to eliminate the alleged discriminatory features; they also seek numerous other changes, including, for example, clarification of the effect of abandonment on a purchaser's take-or-pay obligations.

Most producers do not question the legality of the good faith negotiation rule. However, some contend that permitting purchasers to seek renegotiation of non-jurisdictional gas in multi-vintage contracts containing some old gas is beyond the Commission's authority. [156] These petitioners contend that section 601 of the NGPA expressly prohibits the Commission from regulating the sale of gas removed from its NGA jurisdiction. Therefore, the Commission allegedly erred in holding that it could subject non-jurisdictional gas to renegotiation as a condition of a producer's eligibility for a higher ceiling price for jurisdictional old gas. Other producers, while not contesting the Commission's authority to include non-jurisdictional gas in the good faith negotiation rule, contend that such inclusion is unwise as a matter of policy. [157] They argue that Order No. 451 amply demonstrates that competition will bring down the price of new gas in any event, and that the inclusion of new gas serves only to render the good faith negotiation rule overly complex and thus discourages negotiations under the rule.

Producers contend that the good faith negotiation rule is unfairly weighted against them in a number of other respects which will be addressed in the succeeding discussion. Producers, like pipelines, distributors, and consumer representatives, request numerous clarifications and minor alterations in the rule.

Commission response. The Commission will first consider the rehearing applicants' major challenges to the legality of the good faith negotiation rule. It will then address the applicants' various other requests for clarification or modification of the rule.

1. Legality of the Good Faith Negotiation Rule

a. *Abandonment under the good faith negotiation rule does not violate NGA section 7(b).* The Commission firmly believes that Order No. 451's grant of abandonment if the purchaser fails to nominate an acceptable price comports with the requirements of NGA section 7(b). The Commission properly found in Order No. 451, after due hearing, that the present and future public convenience or necessity permit abandonment when the conditions set forth in the good faith negotiation rule are met. The ultimate criterion in determining whether abandonment should be granted under section 7(b) is the public interest. [158] As the Commission stated in Order No. 451, abandonment under the good faith negotiation rule is in the public interest, since it is necessary to ensure that the goals of Order No. 451 of increased production of old gas and overall lower prices described in sections IV. D. and E. *supra* are achieved. Those goals cannot be achieved unless producers can obtain the market-responsive prices permitted by the rule. Without the possibility of abandonment, purchasers under existing contracts could prevent producers from obtaining those prices by insisting on continuation of the present price. In addition, requiring individual producers to file abandonment applications and considering those applications on a

[152] United Gas Pipe Line Co. v. McCombs 442 U.S. 529, 539 (1979).

[153] Missouri PSC at 3; Northern Natural at 22; ANR and CIG at 5; UDC at 50; Northwest Central at 31; APGA at 52.

[154] PG&E at 4; NI-Gas at 17; Panhandle and Trunkline at 16; Transwestern at 9; INGAA at 14; Texas Gas at 7; Natural and United at 9; Texas Eastern at 17; Transco at 7; ANR and CIG at 11; Arkla at 8; Florida Gas at 15; Tennessee at 16; AGD at 15; and AGA at 19.

[155] AGA at 28; AGD at 9; Tennessee at 16; MPC/NASUCA at 33; PG&E at 6; Peoples Gas *et al.* at 25; Cal. PUC at 27; Kentucky PSC at 3; NI-Gas at 15; SoCal at 5; Williston Basin Interstate Pipeline Company (Williston) at 12; El Paso at 4; Northwest Pipeline Corporation at 9; Transwestern at 13; INGAA at 14; Texas Gas at 7; Missouri PSC at 7; BG&E at 1; Texas Eastern at 8; Transco at 6; ANR and CIG at 8; Florida Gas at 18; Arkla at 10; D.C. PSC at 4; Northwest Central at 51.

[156] Atlantic Richfield *et al.* at 3, 7.

[157] Indicated Producers at 4.

[158] Transcontinental Gas Pipe Line Corp. v. FPC, (*Transco*), 488 F.2d 1325, 1328 (D.C. Cir. 1973), *cert. denied*, 417 U.S. 921 (1974).

case-by-case basis is an inadequate solution. That would cause lengthy delays before abandonments could be granted, given the vast number of producers in the nation and the Commission's limited resources. Achievement of the goals of increased production and lower overall prices would thereby be substantially delayed. Thus, granting abandonment in the present proceeding, if the conditions set forth in the good faith negotiation rule are met, is in the interest of the natural gas market as a whole and is necessary to bring about market-responsive prices for old gas and overall lower prices.

It is true, as a number of petitioners note, that before granting abandonment the Commission must consider all factors relevant to the public interest and that historically, under standards developed in cases such as *Michigan Consolidated Gas Co.* v. *FPC*[159] and *Transco, supra,* these factors have included (1) a comparison of the needs of the existing purchaser and the prospective purchaser of the gas and of the markets which each serve, (2) a presumption in favor of continued service and the relative diligence of the respective pipelines in providing for adequate supplies, (3) the contractual arrangements between the parties, and (4) the environmental impact of the abandonment decision. However, in the recent case of *Felmont Oil Corporation and Essex Offshore, Inc.*,[160] the Commission rejected the notion that the public interest cannot evolve as conditions change or that the Commission cannot revisit and revise the abandonment policy of the *Transco* and *Michigan Consolidated* cases in light of changed industry conditions, regulatory context and valid policy objectives. The Commission stated that enactment of the NGPA has virtually eliminated the concerns which formed the basis of the Commission's traditional abandonment policy. Instead, experience under the NGPA demonstrates that reliance on market forces to allocate supplies of gas works to the benefit of the public by preventing shortages. Thus, in *Felmont,* the Commission held that these facts permit the Commission, when considering abandonment applications, to shift its focus, from the interests of specific customers and their access to particular sources of supply, to the interests of the market as a whole. Pursuant to this shift in the identification of the public interest, the Commission in *Felmont* permitted abandonment of certain low-cost old gas supplies which the pipeline had shut in in order to take higher-cost new gas subject to take-or-pay obligations. The Commission stated that such abandonment served the interest of the market as a whole since it would permit the low-cost gas to enter the marketplace, displace higher-cost gas, and help to reduce the overall cost of gas. So also, by the abandonment granted here through the good faith negotiation rule, the Commission seeks to permit old gas to enter the marketplace, placing downward pressure on overall prices.

Of course, as petitioners for rehearing point out, the Commission in *Felmont* stated that it would continue to weigh the factors which it previously considered, including the parties' comparative needs, their contract arrangements, and the environmental and economic consequences of the abandonment. And the petitioners observe that the Commission did carefully consider those factors in *Felmont,* considering evidence concerning the specific parties there involved. The petitioners contend that the Commission has not, and cannot, consider those factors in the present rulemaking proceeding, since such consideration requires case-by-case analysis.

In this proceeding, the Commission could and did consider all relevant factors involved in determining the overall public interest. The Commission believes that generally a purchaser's loss of gas under abandonment provisions of the good faith negotiation rule should not cause it, or the market it serves, to experience a shortage of supply. The move to market-responsive prices for new gas over the last eight years under the NGPA has already eliminated shortages of gas. Allowing old gas prices also to rise to market-responsive levels up to replacement cost will ensure that present adequate supplies of gas continue into the forseeable future.[161] Therefore, there is no reason to believe that purchasers losing supplies under this rule should have difficulty replacing those supplies. In addition, the lower overall prices brought about by this rule should allow the purchaser to replace lost supplies at reasonable prices.[162] Furthermore, this rule protects the interests of the firm sales customers of non-Order No. 436 pipelines by granting them a right of first refusal. Of course, initially at least, some persons, particularly those who benefited from the distortions inherent in the old vintage-based ceiling price structure, may experience price increases. However, such isolated instances are outweighed by the benefits to the market as a whole described above. Since abandonment occurs under the good faith negotiation rule only if the purchaser has chosen not to pay the price provided for under the contract, in effect terminating the contract, there is nothing in the parties' contractual arrangements militating against abandonment. The presumption in favor of continued service under these circumstances is outweighed by the need to obtain the overall benefits for the public described above.[163] As the Commission discusses in section V. C. of this order, the Commission does not believe that this rule will have any significant adverse environmental consequences. The Commission concludes that it properly found in Order No. 451 that granting abandonments under the good faith negotiation rule is required by the public interest. Since the public interest is "the ultimate criterion under section 7(b)," [164] the standards for granting

[159] 283 F.2d 204 (1960), *cert. denied,* 364 U.S. 913 (1960).

[160] Opinion No. 245, Docket No. Ci84–10–000, 33 FERC ¶ 61,333 (1985); appeal docketed *sub nom.* Consolidated Edison of N.Y. v. FERC (D.C. No. 86–1168).

[161] *See* the discussion in Part IV. D. above.

[162] In short, the Commission relies on market forces to assure that purchasers have adequate supplies at reasonable cost. Such reliance on market forces in the context of NGA section 7(b) is supported by the Supreme Court's decision in *FCC* v. *WNCN Listeners Guild,* 450 U.S. 582 (1981). That case involved a similar requirement that the FCC determine whether the "public interest, convenience, and necessity" permit radio station license renewals or transfers. Among the factors to be considered in making the necessary determination is whether granting the renewal or transfer will promote diversity in entertainment programming. The FCC issued a policy statement that it would not consider this factor in individual cases since it could rely on market forces to promote diversity. The Supreme Court upheld the policy statement, holding that the FCC had provided a rational explanation of its reliance on the market. In the present order and in Order No. 451, the Commission has provided a detailed explanation why under this rule market forces should assure adequate supplies at reasonable costs. *See* Order No. 451, 51 FR at 22194–22204. *See* sections IV. D. and E. of this order.

[163] The relative diligence of purchasers in providing for adequate natural gas supplies has less relevance in determining the public interest in a time of surplus rather than shortage. That factor is primarily of use in determining relative equities when allocating shortages among two pipelines that both lack adequate supplies. When all purchasers have adequate supplies, it is difficult to find that any have lacked diligence in obtaining such supplies. The effect of this rule is to provide an adequate economic incentive to ensure production of available lower-cost reserves that otherwise probably would not be available to those purchasers.

[164] *Transco,* 468 F.2d at 1328.

abandonment under section 7(b) have been met.[166]

The Commission also rejects rehearing applicants' contention that granting abandonment under the good faith negotiation rule is contrary to *United Gas Pipe Line Co.* v. *McCombs,* 442 U.S. 529 (1979). In that case, the Supreme Court reversed a lower court holding that, upon depletion of reserves, a producer may abandon sales without obtaining any prior Commission approval. The Court reasoned that permitting abandonment without prior commission approval would leave the abandonment determination "as a practical matter, in the producer's control, a result clearly at odds with Congress' purpose to regulate the supply and price of natural gas." [166] The present case is distinguishable from *McCombs* since no abandonment without prior Commission approval is here involved. The Commission has in Order No. 451 granted prior approval of abandonments under the good faith negotiation rule as being in the public interest.

One applicant [167] asserts that section 1(a) of the Interstate Commerce Act (ICA) has been interpreted as requiring the Interstate Commerce Commission (ICC) to consider requests for abandonment of service by railroads on a case-by-case basis. The applicant notes that section 1(a) of the ICA is virtually identical to section 7(b) of the NGA, requiring a finding that the "present or future public convenience and necessity" permits abandonment of service. Accordingly, the applicant argues that section 7(b) should also be interpreted as requiring case-by-case consideration of abandonment requests.

The Commission's review of precedent concerning the ICC's authority under section 1(a) and other relevant provisions of the ICA indicates that, far from supporting the proposition that section 7(b) of the NGA requires case-by-case determinations, that precedent supports the Commission's grant of abandonment in Order No. 451. Both sections 14 and 210 [168] of the ICA, requiring that the ICC find that grants of a license to engage in particular activities are in the "public interest," have been interpreted as permitting the ICC to make generic findings applicable to all license applications that the public interest standard is met. [169] This is so even though the ICC previously granted such licenses on a case-by-case basis. Since the ultimate criterion under section 7(b) of the NGA is also in the public interest, these cases support the Commission's action here. Of the two cases cited by the applicant, one [170] merely states generally that the ICC must balance the interests of presently served customers with those of the carrier and the transportation system. It does not state that the balancing must be done on a case-by-case basis. The other [171] does contain dicta that certain legislative history relied on by the appellant for one point does not address that point, but indicates "that 'public convenience and necessity' must be determined in each case on the basis of the factors that are presented in that instance. *See* H.R. Rep. No. 456, 66th Cong. 1st Sess. 146–52 (1919)." The Commission's review of the document cited reveals no indication that findings of public convenience and necessity must be made on a case-by-case basis. Rather, the essential issue raised in the course of legislative consideration of the section appears to have been whether the states or the Federal government should have jurisdiction to make the determinations.

Finally, the Commission has provided the hearing required by section 7(b) in the present proceeding. The Commission has provided all segments of the natural gas industry an opportunity to file initial and reply comments. Two days of public hearings were held. All interested persons have had the opportunity to present further arguments on rehearing. The only argument as to why this opportunity for hearing is inadequate is that the Commission allegedly cannot consider all relevant factors, including the effects of individual abandonments on affected parties, other than on a case-by-case basis. That argument has been answered above. [172]

b. *The good faith negotiation rule does not violate the Mobile-Sierra doctrine.* The Commission also rejects contentions by various rehearing petitioners from all segments of the natural gas industry that the good faith negotiation rule violates the *Mobile-Sierra* doctrine. Pennzoil Company and Pennzoil Producing Company contend that the good faith negotiation rule unlawfully abrogates indefinite price escalation clauses in existing contracts. Those clauses allegedly authorize collection of the just and reasonable rate established by this rule. Yet the good faith negotiation rule does not permit a producer to collect that price until it has given the purchaser an opportunity to renegotiate the contract in question and certain other contracts. Pennzoil argues that, since the Commission has found the new ceiling price to be just and reasonable, the Commission cannot make the requisite finding that abrogation of the indefinite price escalation clause is in the public interest.

The Commission first observes that it has not found that automatic collection of the new ceiling price is necessarily appropriate, even though the new ceiling price is within the zone of reasonableness for replacement costs, and therefore just and reasonable. The Commission recognizes that the new ceiling price may be above prevailing market prices. Accordingly, the Commission adopted the good faith

[166] Some applicants also rely on various statements in Order No. 436–A (50 FR at 52259) concerning the expedited abandonment policy established in Order No. 436 (*see* 18 CFR 2.77) to contend that the Commission must consider abandonments on a case-by-case basis. It is true that in Order No. 436–A the Commission emphasized that abandonment applications based on the Commission's policy statement at § 2.77 would be granted only on a case-by-case basis. However, nothing in that order was intended as a statement that the Commission could not in appropriate circumstances grant abandonment in a rulemaking proceeding such as the present. For the reasons stated above, the Commission believes that it is appropriate to grant abandonment in the final rule when the conditions set forth in the good faith negotiation rule are met. Furthermore, the Commission observes that, at the request of certain pipelines, it has granted limited-term abandonment authority to numerous suppliers of the pipeline rather than as in *Felmont,* considering only the abandonment of a specific contract between one producer and the pipeline. *See, e.g.,* Southern Natural Gas Co., 36 FERC ¶ 61,401 (1986) and Transcontinental Gas Pipe Line Corp., 36 FERC ¶ 61,403 (1986).

[167] 442 U.S. at 536.

[168] Northwest Central at 13–14.

[169] 49 U.S.C. 10924 and 10930. (Former sections 14 and 210 have recently been revised and recodified as 10924 and 10930).

[170] American Trucking Associations, Inc. v. United States, 602 F.2d 444 (D.C. Cir. 1979). National Tour Brokers Ass'n v. ICC, 671 F.2d 528 (D.C. Cir. 1982).

[171] Chicago and North Western Transportation Co. v. Kalo Brick & Tile Co., 450 U.S. 311, 321 (1981).

[172] Farmland Industries Inc. v. U.S., 642 F.2d 208, 211 n. 5 (7th Cir. 1981).

[172] Some applicants claim that in Order No. 451 the Commission improperly relied on Phillips Petroleum Co. v. FPC, 475 F.2d 842, 848–52 (10th Cir. 1973) and American Public Gas Ass'n v. FPC, 567 F. 2d 1016, 1064–67 (D.C. Cir. 1977), in holding that the hearing provided in the present proceeding satisfies the section 7(b) hearing requirement. The Commission disagrees. While those cases involved the issue whether the Commission may establish area and national rates in rulemaking proceedings without violating the hearing requirements of NGA sections 4 and 5, those sections require similar findings concerning the public interest as does section 7(b). Applicants also attack the Commission's reliance on Texaco v. FPC, 377 U.S. 33, 44 (1964), and FPC v. Moss, 424 U.S. 494, 500–01 (1976). The Commission recognizes that those cases are not precisely on point. Nevertheless, *Texaco* supports the proposition that the Commission has discretion to establish expeditious administrative methods in order to achieve its regulatory purposes and *Moss* supports the proposition that the Commission may pre-grant abandonment even though years may elapse before the abandonment actually occurs.

negotiation rule, as an integral part of obtaining the new ceiling price, in order to assure that producers do not collect above-market prices for gas under existing contracts with indefinite price escalation clauses. Without that rule the price of the 90 percent of old gas sold under such contracts would automatically escalate to the ceiling price regardless of the market price. This would not be a just and reasonable result in the sense of providing for the lowest reasonable rate under NGA section 5(a). Thus, the requirement that producers comply with the good faith negotiation rule clearly is in the public interest, and provides for a transitional graduation toward the ultimate just and reasonable ceiling available under the rule.

Furthermore, the Commission believes that that rule does not abrogage indefinite price escalation clauses for the same reasons the court in *Pennzoil Co.* v. *FERC (Pennzoil II)*[173] held that the Commission's requirement of specific contractual authority for collection of the section 107(c)(5) ceiling price also does not abrogate indefinite price escalation clauses in violation of the *Mobile-Sierra* doctrine. As the Commission made clear in Order No. 451, indefinite price escalation clauses may provide the necessary *contractual* authority to collect the alternative ceiling price; however, in order to assure that the rate actually *collected* is just and reasonable, the Commission requires compliance with the good faith negotiation rule unless the parties voluntarily renegotiate. In other words, while the indefinite price escalation clause continues to provide contractual authority to collect the highest just and reasonable price allowed by law, the alternative ceiling price is allowed by law only if parties specifically agree to it under the good faith negotiation rule or otherwise. Since the ceiling price adopted under section 104 and 106 is just and reasonable and since the purpose of the good faith negotiation rule is to assume that the price collected thereunder is the lowest just and reasonable price within that ceiling, the rule clearly furthers the Commission's legitimate regulatory policies.[174]

Pipelines, distributors, and consumer representatives also claim that the good faith negotiation rule violates the *Mobile-Sierra* doctrine, although for different reasons. They claim the rule permits producers to terminate contracts unilaterally and that the Commission cannot make the necessary finding that such termination is in the public interest since it adversely affects pre-existing supply arrangements. The Commission fully discussed this issue in Order No. 451. While permitting producers and purchasers to terminate their contracts, the good faith negotiation rule requires that as a condition for seeking the alternative ceiling price otherwise provided for by the contract's indefinite price escalation clause, producers must give the purchaser an opportunity to seek a lower price under that contract and certain other contracts. Any termination of the contract results from the purchaser's decision to offer a price lower than that provided by the contract. Since any contract termination occurs only through the parties' mutual exercise of their rights under the good faith negotiation rule, there is no unilateral contract termination in violation of the *Mobile-Sierra* doctrine. Nor is there any need for the Commission to make a finding that permitting unilateral abrogation of the contracts is in the public interest, since none is permitted. In any event, in the discussion above finding that abandonment under the good faith negotiation rule is permitted by the public convenience or necessity, the Commission has shown that any mututal contract termination and abandonment which occurs under the good faith negotiation rule is in the public interest in spite of its effect on the parties' past supply arrangements.

c. *The Commission has authority to permit purchasers to seek lower prices for non-jurisdictional gas under the good faith negotiation rule.* Several producers[175] contend that the Commission exceeded its authority by permitting purchasers, in step 2, to seek a lower price for any new gas, including non-jurisdictional gas, in any contract between the parties which includes old gas. These applicants point out that NGPA section 601 removes certain new gas from the Commission's NGA jurisdiction. They assert that conditioning a producer's right to obtain the new just and reasonable rate for old gas on renegotiating non-jurisdictional gas amounts to backdoor regulation of that gas in violation of NGPA section 601. They find support for this view in *Pennzoil Co.* v. *FERC* (*Pennzoil I*) 645 F. 2d 360 (5th Cir. 1981), holding that the Commission lacks authority to regulate non-jurisdictional gas sales in the guise of contract interpretation.

The Commission has not exceeded its authority. It does not seek to reregulate sales on non-jurisdictional gas through the good faith negotiation rule. Rather, as described above, it seeks to establish a condition of eligibility to ensure that the price collected for old jurisdictional gas is just and reasonable. As described in Order No. 451, purchasers may have agreed to a higher price for new gas, including non-jurisdictional gas, in a multi-vintage contract in reliance on the fact that the lower cost of the old gas reduced the average price under the contract. The Commisison believes that in such circumstances it would be unjust and unreasonable for the producer to collect, pursuant to the new price ceiling, a higher price for the old gas, whether from the existing purchaser or from a new purchaser after abandonment, without giving the existing purchaser under the contract an opportunity to renegotiate the price of the new gas. The Commission also believes it would be unjust and unreasonable to permit a producer to renegotiate only those multi-vintage contracts where it will gain a net increase in price because the contracts contain primarily old gas. The provision of the good faith negotiation rule permitting purchasers to seek a lower price in step 2 for any gas in contracts containing some old gas follows from this reasoning. Accordingly, the Commission believes that, pursuant to its authority recognized in *Pennzoil II* to define criteria for eligibility for a ceiling price in order to further its legitimate regulatory policies, it may include this provision in the good faith negotiation rule.[176]

The producers seek to distinguish *Pennzoil II* primarily on two grounds. First, they contend that the rationale of that case applies only to "special rates," such as the NGPA section 107(c)(5) ceiling price, which Congress authorized the Commission to establish "to the extent necessary" to achieve a stated goal. Eligibility criteria allegedly are permissible as a means of limiting the special rate to that gas which requires the special rate to achieve the stated goal. Producers claim that rates established under sections 104 and 106 are not such special rates. However, the Commission sees no significant distinction between the rate involved in *Pennzoil II* and that involved here. The Commission may establish higher ceiling prices under sections 104 and 106 only to the extent such prices are just and reasonable under the NGA. As described above, that is the purpose of this condition in the good faith negotiation rule.

Second, producers contend that the Commission cannot find, as required by *Pennzoil II*, that the condition here involved is reasonably calculated to further its legitimate regulatory policies.

The producers claim that the regulatory policy here involved is the prevention of premature abandonment of low-cost old gas, that requiring producers to submit non-jurisdictional gas to renegotiation does not serve this purpose, and that to do so is contrary to the stated goal, since some producers may thereby be discouraged from seeking the price increases for old gas necessary to keep that gas in production. Producers also state that, since the Commission expects new gas prices to be renegotiated downward in any event, there is no need to require producers to submit new gas sold under multi-vintage contracts to renegotiation in step 2.

The Commission believes that the condition here involved is reasonably calculated to further its regulatory policies. When the Commission establishes a just and reasonable rate, it must balance a number of factors, some of which conflict with one another. In the present case, the Commission must balance the need for higher prices for old gas to avoid premature abandonment with fairness to purchasers. The Commission recognizes that conditioning higher prices for old gas on renegotiation of the price of any other gas may discourage some producers from seeking higher prices and thus reduce to some extent the increased production sought in this rule. On the other hand, purchasers may have relied on low prices for old gas in agreeing to pay higher prices for new gas, whether that new gas is in multi-vintage contracts or not. Thus, failure to condition higher prices for old gas on renegotiation of other gas prices may involve unfairness to purchasers. The Commission has balanced these two concerns by conditioning higher prices for old gas on renegotiation only of the price of new gas sold under multi-vintage contracts between the producer and purchaser including some old gas. Requiring the renegotiation of all new gas prices, including that sold under separate contracts, could make the rule so costly to producers that few would seek higher old gas prices, thereby preventing achievement of the rule's goal of increased old gas production. Also, the relationship between old and new gas prices is less clear when the two are sold under separate contracts. However, as discussed above, where the two are sold under the same contract, the contractual relationship is so intertwined that it would be unfair to allow renegotiation of one of the strands of consideration to permit higher old gas prices with no provisions for renegotiation of other threads of the contractual balance related to new gas prices.

It is true that the Commission expects new gas prices to be renegotiated downward as a result of the market forces released under this rule. However, there could, over the short term, be a lag between a producer obtaining a higher price for old gas under the good faith negotiation rule and market forces having their full effect on the new gas price. The purchaser's rights in step 2 assure that that lag does not occur with respect to new gas sold in multi-vintage contracts. The fact that market forces will bring down new gas prices does, however, reduce the Commission's concern about the fairness of excluding from step 2 of the good faith negotiation rule new gas sold separately. Finally, since about two thirds of new gas is sold under separate contracts,[177] limiting the new gas the producers must submit to renegotiation to new gas sold with old gas means that the costs of seeking higher prices for old gas should not be so high as to discourage producers from seeking higher prices for a sufficient amount of old gas to permit significant increased production. The Commission concludes that permitting purchasers to seek renegotiation of the price of all new gas, including non-jurisdictional gas sold in contracts with old gas, furthers the Commission's legitimate regulatory policies and is permitted by the authority to establish eligibility requirements for NGPA prices confirmed in Pennzoil II. The Commission has not reregulated new gas. Rather, it has simply sought to assure that the price obtained for jurisdictional sections 104 and 106 gas is just and reasonable.

d. *The good faith negotiation rule is not unfairly weighted in favor of producers.* The Commission now turns to contentions of many pipelines, distributors, and consumer representatives that the good faith negotiation rule is unfairly weighted in favor of producers, since only producers can initiate the process and purchasers cannot obtain renegotiation of new gas not sold in multi-vintage contracts with old gas. These provisions of the rule allegedly have three major discriminatory effects preventing achievement of the Commission's goal of market-responsive pricing for all gas. First, they allow most high-cost, non-market-responsive new gas to escape downward renegotiation under the good faith negotiation rule. As previously noted, approximately two thirds of new gas is sold in separate contracts containing no old gas which cannot be renegotiated under the good faith negotiation rule.[178] Also, not all of the remaining high-cost gas will be renegotiated under the good faith negotiation rule. The fact that only producers can initiate good faith negotiation allows producers to limit renegotiation under the rule to situations where the potential for increased revenues from higher old-gas prices outweighs the risk of decreased revenues from lower prices for new gas sold with old gas. The failure of the good faith negotiation rule to reach non-market-responsive, new-gas contracts allegedly means that overall gas prices will increase as a result of higher old-gas prices, since applicants believe that the Commission's contention that competition will lower the price of high-cost gas apart from the good faith negotiation rule is unsupported by substantial evidence.

The second discriminatory effect alleged by applicants is that some purchasers will be more adversely affected than others. Some purchasers buy a higher percentage of their new gas under multi-vintage contracts than do others. Those purchasing more of their

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[173] 671 F.2d 119, 124–25 and nn.13 and 14 (5th Cir. 1982).

[174] This discussion should alleviate the concern of one applicant (El Paso at 16–18) that, because the Commission allegedly has found the new ceiling price to be just and reasonable, an indefinite price escalation clause might be interpreted as agreement to pay the new ceiling price. Under this interpretation, a purchaser's failure to nominate the new ceiling price would constitute a breach of the indefinite price escalation clause. As stated above, the Commission has not found automatic collection of the new ceiling price necessarily just and reasonable. It is only just and reasonable to the extent agreed to under the good faith negotiation rule or as a result of voluntary renegotiation. Thus, no purchaser is in any way obligated to pay the new just and reasonable ceiling price. Rather, the producer, as a condition of eligibility for making a transition toward the higher rate, is required to give the purchaser an opportunity to negotiate for a lower price.

[175] Atlantic Richfield et al.

[176] *See also Texas Eastern Transmission Corp.* v. *FERC*, 769 F.2d 1053 (5th Cir. 1986).

[177] AGA at 4.

[178] A number of applicants claim that the exclusion of new gas sold under separate contracts from the good faith negotiation process is particularly arbitrary in light of two additional factors. First, the rationale for inclusion of new gas in multi-vintage contracts allegedly applies equally when old and new gas is sold to a purchaser under separate contracts. In both cases, the purchaser relied on its ability to roll in the low-cost old gas with high-cost new gas in agreeing to pay higher prices for the old gas. Second, the decision whether to include old and new gas in one contract or separate contracts was largely an arbitrary drafting decision. Indeed, the Commission allegedly encouraged separate contracts under § 272.102(c) of its regulations as in effect before 1980 (AGA at 30–31).

new gas under separate contracts will have less ability to renegotiate downward the price of that gas than those purchasing more of their new gas under contracts containing old gas. Similarly, producers selling most of their new and old gas under separate contracts will obtain a higher net price increase than those selling more gas in multi-vintage contracts.

Finally, applicants contend that, to the extent producers refrain from seeking higher prices for their old gas under the good faith negotiation rule in order to avoid renegotiation of the price of new gas sold under multi-vintage contracts, the beneficial effects claimed by the Commission from higher old-gas prices will not occur. The old gas will be prematurely abandoned. This will impede achievement of the Commission's goal of lowering overall prices.

Applicants contend that for these reasons the good faith negotiation rule is arbitrary and capricious, grants undue preferences to particular producers and pipelines and provides for unjust and unreasonable rates in violation of NGA section 5. Applicants propose two main changes in the rule to avoid these problems and provide market-responsive pricing for all gas. First, they propose that purchasers be permitted to initiate good faith negotiations, at least with respect to any contract containing any old gas. Applicants contend that, having found the present vintage-based pricing system unjust and unreasonable, the Commission has the legal authority under NGA section 5 to allow purchasers to initiate good faith negotiations as the necessary remedy to eliminate the present unjust and unreasonable rates. Second, they propose that, once the producer seeks a higher price for any old gas, the purchaser should be able to seek lower prices for new gas covered by any contract between the parties, regardless of whether that contract contains old gas. The applicants argue that, if the Commission has legal authority to condition eligibility for higher old gas prices on renegotiating all gas in multi-vintage contracts, that same authority permits it to condition higher old-gas prices on renegotiation of gas in all contracts with the purchaser. Another proposal is to allow any purchaser from a particular producer to exercise its rights under step 2 of the good faith negotiation rule once that producer has requested one of its purchasers to nominate a price in step 1.[179]

[179] AGA at 27; PG&E at 5; NI-Gas at 17; Williston at 12.

Tennessee [180] proposes a more radical solution of replacing the entire good faith negotiation rule with a requirement that bilateral market-out clauses be included in all contracts. Process Gas Consumers Group (PGC) [181] proposes that the Commission require that a producer be required to file an affidavit agreeing to renegotiate fully all its contracts with any interstate pipeline that accepts Order No. 436 before seeking a higher price under any contract. PGC contends this would give pipelines a greater incentive to accept Order No. 436 and also make a producer more willing to risk potential renegotiation of all its higher-priced supplies since the pipeline's acceptance of Order No. 436 would give the producer needed non-discriminatory access to wider markets for all its gas, not just released supplies.

The Commission does not believe that the good faith negotiation rule as adopted is discriminatory or that it must be altered to permit purchasers to initiate the process and to renegotiate all new gas prices. Applicants' contentions proceed from a false predicate; they assume that non-market-responsive, high-cost new gas prices will not come down unless purchasers are given a means to bring them down under the good faith negotiation rule. This is not true. As explained in detail in Section IV. E. of Order No. 451,[182] the Commission believes that competitive forces in the natural gas market, including competition from alternative fuels, increased production of old gas, and more accurate price signals, will force down the price of non-market-responsive gas, wholly apart from the good faith negotiation rule. Therefore, it is unnecessary to modify the rule in any of the ways suggested in order for the increased production of old gas encouraged by this rule to bring overall prices down. The two-thirds of new gas which cannot be renegotiated under the good faith negotiation rule will nevertheless respond to competitive forces in the natural gas market which will be strengthened by increased production resulting from this rule. The record amply demonstates that higher gas prices have, in fact, fallen as a result of competitive forces.[183] Also, producers not immediately initiating good faith negotiation, because they believe any increased revenues from old gas will be more than offset by lost revenues from new gas sold with old gas, will find the price of their high-cost gas nevertheless coming under heavy competitive pressure as other producers take advantage of the rule. Purchasers may reduce takes of the high-cost gas. Thus, it may well become worthwhile for them to seek the higher prices permitted by the market for their old gas in order to offset the inevitable decline in the price of their high-price gas.

The fact that high-cost gas will respond to competitive market forces even though not subject to renegotiation under the good faith negotiation rule should also prevent the various other discriminatory effects alleged by applicants. Because prices of all new gas will come down, purchasers buying their new and old gas under separate contracts should not experience higher gas costs over the long term any more than those purchasing such gas under multi-vintage contracts. Producers selling most new and old gas under separate contracts should not obtain higher prices than those selling primarily under multi-vintage contracts. Also, since most producers are likely to seek eventually over an extended period of time higher prices for old gas, little old gas will remain at present low regulated prices and thus be prematurely abandoned, contrary to some applicants' contentions.

For these reasons alone there is no need to amend the good faith negotiation rule to avoid discrimination. In addition, there are other grounds for rejecting the proposed amendments to the good faith negotiation rule. First, the Commission doubts its authority to permit purchasers to initiate the process, since that might result in purchasers' unilaterally terminating high-cost contracts in violation of the *Mobile-Sierra* doctrine as embodied in NGPA section 101(b)(9).[184] Under the good faith negotiation rule as adopted, if the producer does not want to risk the pipeline terminating purchases of high-cost gas, it need not invoke the good faith negotiation procedures. The purchaser too has an opportunity to prevent the contract from terminating, by paying the contract price or voluntarily renegotiating. Thus, termination of purchases results only from mutual decisions by the producer and purchaser. The situation would be very different if the purchaser could

[180] At 4–9.

[181] At 12–14.

[182] 51 FR at 22194–22, 197.

[183] See also "First to Pay, Last to Gain," a report by the Citizen/Labor Energy Coalition issued October 1986, showing that from the first half of 1984 to the first half of 1986 the wellhead price of gas dropped 65 cents per Mcf or 24 percent.

[184] See *Pennzoil Co. v. FERC*, 671 F.2d 119, 125 (5th Cir. 1982).

invoke the good faith negotiation procedures; then the purchaser's right to terminate would arise not because the producer chose to grant the purchaser such a right as a condition of obtaining the benefit it sought. Rather, the purchaser's right to terminate would arise from its unilateral action in initiating good faith negotiation.

Nor is the Commission convinced by the applicants' contention that it has authority to grant purchasers the right to initiate good faith negotiation under section 5 of the NGA. Applicants contend that that authority arises because the Commission has found in Order No. 451 that the present pricing structure is unjust and unreasonable. However, the Commission only found that the present rigid, vintage-based old gas price structure is unjust and unreasonable. The Commission has not found that gas prices for new gas are unjust and unreasonable. In fact, the current much lower prices for large amounts of new gas renegotiated or subject to market outs could not be found unjust or unreasonable. In any event, the Commission lacks authority to find new gas prices unjust and unreasonable. Some new gas prices are set pursuant to NGPA price ceilings and the remainder are set in the open market pursuant to deregulation. All such rates are deemed to be just and reasonable under section 601(b) of the NGPA. However, based on the Commission's finding that the old gas prices have become unjust and unreasonable, the Commission reformed the old gas pricing structure to set new just and reasonable ceiling prices pursuant to NGPA sections 104 and 106. Accordingly, it provided for renegotiation of new gas prices only where the old and new gas volumes were so inextricably intertwined, because covered by the same contract, that such renegotiation may be conceived of as part of the adjustment of the old gas price under the contract. All terms of such a multi-vintage contract are so interrelated that it would not be equitable to adjust the old gas prices under the contract without allowing the new gas price aspects of the contract to be open to adjustment in turn.

While rehearing applicants have argued for the Commission's authority to permit purchasers to seek renegotiation of all new gas prices, including that not sold with old gas, after producers have initiated the process, the Commission believes there are strong policy reasons not to do so, apart from the fact competition will force down new-gas prices in any event. If a producer's request for the purchaser to nominate a new price for old gas in step 1 instantly gave the purchaser the right to renegotiate all other contracts with the producer including those not containing old gas, the potential cost to a producer of initiating good faith negotiation would in many instances undoubtedly be greater, perhaps far greater, than under the current procedure so that fewer producers would initiate the process. This would seriously impede achievement of the Commission's goal of market responsive prices for old gas so as to avoid premature abandonment of that gas. Without higher prices for old gas and the resulting increased production of old gas, the competitive pressures forcing down high-cost prices would be lessened.

The Commission rejects the contention that it arbitrarily distinguished new gas sold in multi-vintage contracts containing some old gas from new gas sold separately. It is, of course, true that purchasers may have relied on their ability to roll in high-cost new gas with low-cost old gas in agreeing to pay a higher price for the new gas, regardless of whether the new gas was purchased in a multi-vintage contract with old gas or separately. In striking the balance previously described between the need for higher prices for old gas and fairness to purchasers, the Commission determined that fairness to purchasers required giving them a right to renegotiate under the good faith negotiation rule all new gas sold under the same contract with old gas. This assures that there is no significant lag between the producer's obtaining a higher price for old gas sold under such contracts and the purchaser's obtaining a lower price for the new gas. Again, all terms of multi-vintage contract relations are interrelated and it would not be fair to disrupt the mutuality of consideration between the parties. Accordingly, the rule applies to such contracts. However, in order not to render negotiations under the good faith negotiation rule so costly to producers so that in the short run few would initiate such negotiations, the Commission believes it appropriate to exclude new gas sold under separate contracts from negotiations under the good faith negotiation rule. While this may result in some lag between the producer's obtaining a higher price for the old gas and the purchaser's obtaining a lower price for the new gas, the market forces released by this rule, including more accurate price signals and increased production of old gas, should bring down the price of the new gas sold under separate contracts. Therefore, the Commission concludes that exclusion of that gas from the good faith negotiation process is not unfair to purchasers.

The Commission also rejects the separate proposals of Tennessee and PGC. The Commission believes these proposals to be unnecessary since, as stated above, new-gas prices are expected to come down in any event. In addition, since as explained above, the Commission has not found new-gas prices to be unjust and unreasonable, the Commission doubts its authority to require market-out clauses to be included in all contracts. In any event, while the Commission recognizes the value of market-out clauses in encouraging market-responsive pricing, such clauses should be adopted through negotiation between the parties, not Commission fiat. The Commission is handicapped in analyzing PGC's proposal by the fact that the details of that proposal are unclear. For example, PGC does not state what rights Order No. 436 pipelines would have if they failed to reach agreement with the producer on a lower price for new gas. If the existing contract price would continue in effect, the proposal appears to grant pipelines no additional rights over what they now have. Presumably, however, PGC intends the pipeline to have rights similar to those granted under the good faith negotiation rule. Granting Order No. 436 pipelines greater bargaining rights than non-Order No. 436 pipelines and other purchasers who are not pipelines at all appears unfair and possibly in violation of the prohibition against undue preference. Furthermore, allowing all Order No. 436 pipelines the right to demand lower prices for new gas or terminate purchases if the producer seeks a higher price for any old gas with any purchaser appears to suffer from the infirmity that it would discourage producers from seeking higher prices for old gas, thus impeding achievement of the goals of this rulemaking.

For all of the above reasons, the Commission rejects the contention that the good faith negotiation rule is unfairly weighted in favor of producers because it does not permit purchasers to intiate the process and does not provide for renegotiation of new gas sold under separate contracts. The Commission accordingly declines to adopt any of the various suggestions to alter these features of the rule.

2. Response to Other Suggested Clarifications and Modifications of the Good Faith Negotiation Rule

The Commission has now considered all of the major challenges to tne legality

of the good faith negotiation rule made by rehearing applicants. Applicants from all segments of the natural gas industry have, however, also requested numerous clarifications and alterations of specific aspects of the good faith negotiation rule. Most applicants seek to increase the bargaining rights of their segment of the industry. Since the Commission believes that bargaining rights under the rule as adopted are balanced, it generally rejects the suggested modifications. However, the Commission does make several minor changes in the rule.

The Commission will first consider (a) issues involving generally the three-step nomination procedure by which contracts are placed on the bargaining table for negotiation under the good faith negotiation rule. It will then discuss, in order, (b) issues specifically concerning the producer's right in step 1 to request that the purchaser nominate a new price for old gas, (c) issues concerning the purchaser's right in step 2 to request that the producer nominate a new price for any gas in the contract placed on the bargaining table in step 1 or any other contract including old gas, (d) issues concerning the producer's right to request that the purchaser nominate a new price for old gas in contracts brought to the bargaining table in step 2, (e) issues concerning the rule that no contract may be renegotiated more than once under the good faith negotiation rule, (f) issues concerning the parties' rights to abandon sales or terminate purchasers of gas, and (g) issues concerning the operation of the good faith negotiation rule in certain specific situations.

a. *General issues concerning the three-step nomination procedure.* First, several applicants [185] request that the Commission postpone the start of negotiations under the good faith negotiation rule from November 1, 1986 to at least January 1, 1987. These applicants contend that otherwise old gas price increases and abandonment may occur during the winter heating season. Also, one contends that a delay will provide more time for resolution of Order No. 436 settlements, thus enabling both pipelines and their customers to make their pricing decisions based on more accurate knowledge of the market structure under which they will be operating. Finally, they express concern that good faith negotiation might start before the Commission acts on their rehearing requests.

The Commission has previously postponed the date on which a producer is permitted to make a nomination request until December 18, 1986 in order to assure that no party is required to renegotiate a contract under the good faith negotiation rule until the Commission has resolved the issues raised on rehearing.[186] In this order, the Commission further postpones the initiation of good faith negotiation until January 23, 1987. The amendments to the good faith negotiation rule adopted in this order do not become effective until that date. This further postponement of the initiation of good faith negotiation will therefore avoid any confusion which might otherwise arise if the rule were changed after negotiation had already begun under it. The postponement of the initiation of good faith negotiation ensures that no abandonments or price increases not agreed to by the purchaser will occur during the winter heating season. The purchaser may prevent any abandonment from occurring until at least 90 days after the January 23, 1987, start of good faith negotiation, or April 23, 1987, and probably longer. A purchaser has up to 60 days to respond to a producer's nomination requests. If the producer rejects the price nomination, it must negotiate a contract with a new purchaser, and then give the purchaser 30-day notice before abandoning the sales to the purchaser. Furthermore, if the pipeline is a non-Order No. 436 pipeline and the new purchaser is not a firm sales customer of that pipeline, the producer must also give the firm sales customers a right of first refusal, a process taking an additional 30 days, before giving the 30-days notice of abandonment. The only price increases occurring under the good faith negotiation procedures significantly before April 23, 1987, would be those resulting from a producer's acceptance of the purchaser's price nomination.[187] Since such price increases are voluntarily agreed to by the purchaser, the Commission sees no reason to postpone their effect through further delaying initiation of the good faith negotiation rule. The Commission also does not believe that any further delay in the effectiveness of the good faith negotiation rule would significantly affect the number of pipelines whose Order No. 436 status has been clarified.

A large number of applicants, primarily pipelines and distributors,[188] request that the Commission require that all producer requests for price nominations under the good faith negotiation rule be made within a specified period after the date when producers may initiate good faith negotiation. Many suggest one year as an appropriate period. The applicants contend that without this requirement producers might postpone exercising their rights under the good faith negotiation rule indefinitely, waiting for market conditions to improve so that they can obtain a greater increase in old gas prices while incurring a smaller decrease in new gas prices. This allegedly would permit the indefinite continuation of the present vintage-based rates found unjust and unreasonable in Order No. 451 in violation of NGA section 5, and postpone achievement of the Commission's goals of increased production of old gas and resulting lower overall prices. Also, purchasers' uncertainty over their supply arrangements allegedly would be indefinitely prolonged. Finally, when price increases did occur, they could be unreasonably large because obtained during a time of shortage.

The Commission has determined not to place a time limit on initiation of good faith negotiation. The purpose of this rulemaking is to create market-responsive pricing for old gas up to replacement costs. A limitation on when the producer can invoke good faith negotiation would be contrary to this goal. It is difficult to see any significant harm to an individual purchaser from a producer's delay in seeking renegotiation, since the purchaser is entitled to continue to buy the gas at the existing low price until renegotiation is sought. If the purchaser is concerned about security of supply, it can seek to enter long-term contracts with other sellers or offer voluntary renegotiation to the existing seller. Furthermore, the Commission anticipates that the effect of good faith negotiation nationwide will probably be a gradual phase-in of the higher old gas prices in an evolutionary fashion reflecting individual producer decisions on initiation and continued voluntary negotiation. An arbitrary time limit could force either premature initiation with a rush of good faith negotiation nationwide or in the alternative the loss of good faith negotiation rights by many producers unwilling to initiate the process before

[185] *See* Minnesota DPS at 8 and NI-Gas at 22–23.

[186] 37 FERC ¶ 61,077 (1986).

[187] These could occur by about 60 days after initiation of good faith negotiations, or March 24, 1987.

[188] Tennessee at 24; PG&E at 5; Peoples Gas *et al.* at 24; Cal PUC at 28; SoCal at 2; Panhandle and Trunkline at 15; El Paso at 15; Northwest Central at 54; Transwestern at 16; AGA at 25; INGAA at 16; Texas Eastern at 19; Transco at 8; ANR and CIG at 23; D.C. PSC at 5; Arkla at 14; Florida Cities at 8; Arkla at 14; and Florida Gas at 22.

the deadline. The Commission wants to ensure that it provides fully for the evolutionary phase-in of higher old gas prices over time to maximize the price and supply responses. Finally, the Commission rejects the contention that NGA section 5 requires limiting the time in which the producers can initiate good faith negotiation in order to force elimination of current unreasonable rates. The Commission has found that the existing rigid vintage-based old gas pricing structure is unjust and unreasonable. By establishing the alternative ceiling price and permitting producers to seek higher prices under the good faith negotiation rule, the Commission has eliminated the existing rigid old gas pricing structure by permitting market-responsive pricing up to replacement cost. Having done that, the Commission should now let the market work and not interfere in it by specifying the time in which producers must exercise their rights.

Third, several applicants [189] request that the Commission clarify that a party requested to nominate a new price may also seek changes in the non-price terms of the contract. The Commission agrees that when a party is requested to nominate a new price, in may include in its nomination changes in any term of the contract. It would be inconsistent with the Commission's goal of encouraging market-responsive pricing to limit the contract terms subject to renegotiation. Terms other than price can have a significant effect on the economic value of a bargain to either party.[190] Parties should not be restricted in the types of contract changes they can make in order to reach agreement on a new contractual relationship satisfactory to both. Accordingly paragraph (a)(7) has been included in § 270.201, as revised.

However, the requirement that the producer accept the purchaser's nomination of the highest price permitted under the contract will not apply if the purchaser nominates the highest price permitted by the contract but includes in its nomination a change in another contract term. The reasons for requiring the producer to accept a nomination of the highest permitted price is that the purchaser has agreed to abide by the existing contract, which provides for payment of that price. If the purchaser seeks to change terms in the contract, then it has not agreed to abide by the existing contract. Furthermore, it would be improper to allow a purchaser to impose on the producer a change in any contract term by the simple expedient of including such change in a nomination of the simple expedient of including such change in a nomination of the highest permitted price. No change in the contract should occur other than through the mutual agreement of the parties.[191] Section 270.201(d) and (e) have been amended accordingly.

One applicant [192] request that the Commission clarify the mechanics of requesting and making price nominations under the good faith negotiation rule. First, it suggests that both parties be required to send their requests for price nominations by U.S. mail, return receipt requested. Since the 60 days for responding to the nomination request run from the day of receipt, this requirement would enable the person making the request to know when the 60-day period begins to run. The Commission adopts this suggestion. Not only will this provision enable the sender to know the date of receipt, but also it is consistent with the requirements in § 270.201(g) (2) and (3) that the tender of the right of first refusal and its acceptance be made by U.S. mail, return receipt requested. For the same reasons, the Commission similarly requires that responses to nomination requests and acceptance or rejection thereof, as well as notices of abandonment or termination of purchases, be made by U.S. mail, return receipt requested.[193]

Second, the applicant seeks clarification of when nominations should be considered as having been made. Consistent with the usual rule that service of a document is accomplished on the date it is deposited in the mail,[194] a party's price nomination will be considered made on that date. Finally, the applicant asks to whom nomination requests and price nominations should be addressed and whether the contract's notice provision governs. The notice provision does govern. In the absence of such a provision, the parties should work out this matter among themselves.[195]

One applicant [196] states that the purchaser's price nomination in response to the producer's step 1 nomination request should be due on the same day as the producer's price nomination in response to the purchaser's step 2 nomination request. The rule, as adopted, provides for the purchaser's price nomination to be made 30 days before the producer's. The applicant argues that this is unfair since it allows the producer to see the purchaser's nominated price before it nominates a price for the gas covered by purchaser's nomination request. The Commission rejects this proposal. While the producer can see the price nominated by the purchaser before nominating a price in response to the purchaser's step 2 nomination request, the purchaser can see the producer's nominated price before responding to the producer's step 3 nomination request. These sequential price nominations are inherent in the structure of the good faith negotiation rule, and the Commission does not believe that any imbalance in the parties' negotiating rights results.

b. *The producer's rights in step 1.* A producer cannot request the purchaser to nominate a higher price under the good faith negotiation rule unless its contract provides authority for collection of the higher price. [197] In Order No. 451 the Commission stated that if a contract contained an indefinite price escalation clause but the parties had executed an amendment providing for a fixed price lower than the applicable maximum lawful price for a set period less than the term of the contract, the producer could make a nomination request at any time but any new price agreed to would not take effect until expiration of the fixed price. An applicant [198] states that such

[189] AGA at 35 n.44; INGAA at 17; Panhandle and Trunkline at 17; and ANR and CIG at 21.

[190] This does not, however, make non-price terms part of the price paid under the contract. *See* Declaratory Order, Transporation of Liquid and Liquefiable Hydrocarbons by Natural Gas Pipelines, 22 FERC ¶ 60,013 (1983), *reh'g denied*, 24 FERC ¶ 61,004 (1983), *aff'd*. Texas Eastern Transmission Corporation v. FERC, 769 F.2d 1053 (5th Cir. 1985), *cert. denied*, 106 S. Ct. 1967 (1986).

[191] Tennessee contends (at 20–22) that the producer should at least be required to accept the purchaser's nomination where it nominates the highest permitted price but seeks insertion of a market-out clause. Tennessee argues that this would provide for more market-responsive pricing of gas in the future. For the reasons stated above, the Commission rejects this proposal. While the Commission recognizes the value of market-out clauses in encouraging market-responsive pricing, the Commission believes that insertion of such clauses into contracts should not occur through Commission fiat or the unilateral action of one party, but through mutual agreement of both parties in light of current market conditions. A party desiring a long-term agreement without a market-out clause should have the ability to negotiate for such agreement through offering appropriate inducements to the other party.

[192] Tennessee at 33–34.

[193] Accordingly, paragraph (a)(5) has been included in § 270.201, as revised.

[194] *See* 18 CFR 385.2010(g)(1) (1986).

[195] As the Commission stated in Order No. 451, parties may extend any deadlines for action under the good faith negotiation rule by mutual agreement. In response to an applicant's request (Indicated Producers at 22), the Commission has codified this right in § 270.201(a)(6) of its regulations.

[196] Northwest Central at 57.

[197] Section 270.201 (a) (2) (ii) (A).

[198] ANR and CIG at 29.

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amendments may be for indefinite periods, for example until further notice or until some benchmark price is reached. It requests that the Commission clarify the producer's rights under the good faith negotiation rule in such circumstances. The Commission believes that the same rule should apply regardless of whether the amendment is for a definite or indefinite period, but it has determined to modify the rule stated in Order No. 451 so that the producer may not request that the purchaser nominate a price until the fixed price amendment has expired pursuant to its terms. Thus, in the situation hypothesized by the applicant, no nomination request may be made until the necessary notice is given or the benchmark price is reached. [199] This rule is necessary to prevent the producer from obtaining a right to abandon sales through rejection of the purchaser's nomination price before it has contractual authority to increase prices. It is also consistent with the general principle that producers must have contractual authority for higher prices in order to initiate good faith negotiation. [200]

A contract must have been in effect on July 18, 1986, in order to be renegotiated under the good faith negotiation rule. One producer applicant, [201] however, contends that where a producer signed a rollover contract before issuance of Order No. 451 but the contract had not been signed by the purchaser by July 18, 1986, signature by the purchaser after July 18, 1986, should not preclude the contract from renegotiation under the good faith negotiation procedures even though the contract was not in effect on July 18. Without this change, the applicant claims, the purchaser could deny the producer its right to renegotiation under the good faith negotiation rule by purposefully delaying signing the rollover contract. The Commission sees no reason to change the rule as suggested by this applicant. Once the Commission had issued Order No. 451 on June 6, the producer should have been as aware of its rights under Order No. 451 as the purchaser. If the producer wanted to reconsider its offer to the purchaser in light of Order No. 451 it should have withdrawn that offer. If it failed to do so, the purchaser would be entirely within its rights to sign the contract and a binding agreement would result not subject to renegotiation under the good faith negotiation rule.

One producer applicant [202] requests that the Commission modify the provision that the producer must accept the purchaser's nomination of the highest price permitted by the contract to make that provision inapplicable where that contract contains a market-out clause. The applicant contends that otherwise the provision would permit a purchaser to deprive the producer of its right to abandon sales or obtain transportation to an alternative purchaser by nominating the highest price and then, a month later, exercising the market-out clause to reduce the price of the gas. The Commission will not modify the good faith negotiation rule as suggested. The producer, having originally agreed to the market-out clause, should abide by the consequences of its agreement. Since market-out clauses encourage market-responsive pricing, the Commission sees no reason why it should interfere with their operation in a rulemaking designed to encourage market-responsive pricing. In any event, if the situation postulated by the applicant were to occur, the applicant would not be entirely without remedy. It could apply to the Commission for an individual abandonment pursuant to NGA section 7(b).

Finally, another producer applicant [203] requests that the Commission permit a producer, when it makes a nomination request in step 1, to stipulate that neither it nor the purchaser can make any nomination requests with respect to casinghead gas sold under contracts otherwise subject to the negotiations. Casinghead gas is a by-product of oil production. The applicant's primary reason for desiring the right to exclude casinghead gas is apparently that a purchaser's termination of purchases of such gas under the good faith negotiation rule might adversely affect the producer's oil production. Conceivably, if the producer could not find an alternative purchaser for the casinghead gas, the producer could be required to shut in the oil production.

The Commission refuses to adopt the applicant's suggested modification of the good faith negotiation rule. It would be contrary to the Commission's goal of market-responsive pricing to allow the producer to insulate certain gas from renegotiation. The producer should take into account any concern about the effect of abandonment on its oil production in deciding whether to initiate good faith negotiations and whether to accept the purchaser's nominated price. In addition, as will be described later, the Commission is lengthening the notice the purchaser must give the producer before terminating purchases. This should give the producer a greater opportunity to find another purchaser for the casinghead gas and avoid any loss of oil production. The Commission concludes that the suggested modification would add unnecessary complexity to the good faith negotiation rule.

c. *The purchaser's rights in step 2.* A number of applicants request clarifications concerning precisely what contracts containing some old gas the purchaser may bring to the bargaining table in step 2. First, clarification is sought concerning precisely what gas is considered old gas for purposes of permitting the purchaser to put a contract on the bargaining table. For example, if a contract contains gas committed or dedicated to interstate commerce on the date of enactment of the NGPA which now receives the section 108 stripper price, could the purchaser bring that contract to the bargaining table in step 2? [204] The old gas must be actually priced under NGPA sections 104 and 106. Thus, a contract containing all new gas on July 18 except for some old gas priced under section 108 could not be brought to the bargaining table by the purchaser. The Commission's rationale for including contracts containing some old gas in step 2 would not apply in such circumstances since the purchaser could not be relying on low-priced section 104 or 106 gas to bring down the average price paid under the contract to reasonable levels. [205]

Second, one applicant [206] ask *when* the contract must contain old gas. It observes that a contract may have originally covered old gas but later all the old gas wells may either have qualified for NGPA incentive prices or been abandoned. It suggests that the Commission require that the contract cover old gas on the date the first seller makes his nomination request in step 1. The Commission agrees that to avoid ambiguity there must be a reference date for purposes of determining whether a contract covers old gas. However, the Commission believes that that date should be the effective date of this rule, July 18, 1986. This date will enable all parties to determine with certainty what contracts are potentially subject to good faith negotiation. It will also prevent a producer from insulating a contract from renegotiation by delaying initiation of the good faith negotiation procedures until all that contract's old gas wells are abandoned or qualify for NGPA incentive prices. A contract will be considered to cover old gas if on July 18, 1986 it covered any wells subject to the section 104 or 106 price ceilings for which the Commission has not authorized permanent abandonment. Thus, the mere fact no old gas was sold on that date does not necessarily mean that the contract does not cover old gas. [207] The requirement that abandonment have been granted should avoid disputes whether a well was only temporarily shut in or depleted. [208]

Third, one applicant [209] requests clarification whether, when a purchaser has contracts naming different divisions of a single corporation as the seller, and the producer makes a nomination request with respect to one division's contract, the purchaser may bring to the bargaining table the other division's contract in step 2. Another applicant [210] requests clarification that, where a producer has contracts with two affiliated corporations and requests one to nominate a price, the other may not seek renegotiation in step 2, of its contracts. The Commission believes that, for purposes of determining whether a "purchaser" has contracts with a "seller" containing some old gas subject to renegotiation in step 2, individual corporations should be considered single, but separate, sellers and purchasers. Thus, two divisions of one corporation are nevertheless the same seller, and the purchaser may bring to the bargaining table all contracts with both divisions. However, affiliated corporations with separate corporate identities are separate purchasers (or sellers), and contracts with one affiliate cannot be brought to the bargaining table in step 2 if only a contract with the other was brought to the bargaining table in step 1.

Fourth, one applicant [211] requests clarification whether an umbrella settlement covering many separate contracts, some containing old gas and some only new gas, is an existing contract subject to renegotiation in step 2. If such an umbrella settlement is an existing contract, the purchaser could seek to renegotiate the new gas contracts solely because the producer previously agreed to provide price or take-or-pay relief in the umbrella settlement. The Commission agrees that a producer should not be penalized for entering into such umbrella settlements. It intends that the phrase "existing contract . . . that includes the sale of any old gas" [212] should refer to base contracts, not umbrella settlements.

Fifth, two applicants request clarification whether a producer's request, after expiration of an existing contract, to collect the new ceiling price under a rollover or replacement contract trigger the purchaser's right under step 2 of the good faith negotiation rule. Amoco [213] states that a producer's request for a rollover contract at the new ceiling price should not constitute a nomination request under the good faith negotiation procedures permitting the purchaser to obtain renegotiation of other contracts containing old gas in step 2. ANR and CIG, [214] however, take the opposite position, stating that the occurrence of a contractual rollover should constitute a request for a price nomination under the good faith negotiation rule to the extent the underlying contract contains an indefinite price escalation clause.

The Commission generally agrees with Amoco, not ANR and CIG. The good faith negotiation rule applies only to contracts (or the underlying service obligation) in effect on July 18, 1986. When a producer seeks to negotiate a rollover contract after July 18, 1986 to replace an expired contract, it is negotiating a contract not in effect on July 18, and the good faith negotiation rule is inapplicable. Negotiation of the rollover contract is entirely voluntary, and neither party thereafter has any rights under the good faith negotiation rule. If a producer and pipeline voluntarily enter a rollover contract, the execution of the rollover terminates any further rights under the good faith negotiation rule.

Of course, old gas sales may be continuing under the expired contract pursuant to the service obligation of a certificate of public convenience or necessity. If the service obligation was in effect on July 18, 1986, [216] the producer may pursuant to the good faith negotiation procedures seek a higher price for old gas sold under an expired contract pursuant to the service obligation. However, if the producer does so, the purchaser may in step 2 seek renegotiation of all other contracts with the producer containing old gas. in the absence of the purchaser's agreement to a higher price either voluntarily or under the good faith negotiation procedures, the producer may not collect from that purchaser the new ceiling price for gas sold pursuant to a service obligation. If the producer could collect up to the new ceiling price without the purchaser's agreement, there would be no assurance that the producer was obtaining mutually agreeable prices. This would violate the Commission's objective of permitting collection only of mutually agreed-upon prices or the ceiling price, whichever is lower.

Sixth, two applicants [216] express concern that some producers may seek to avoid renegotiation of their new gas in step 2 by transferring or assigning either their old gas or their new gas to an affiliated entity so that all new and old gas is in separate contracts. The Commission does not believe that this is a significant danger under the rule as adopted. Mere assignment to another corporate entity of old or new gas covered by a multivintage contract without amendment of the sales contract itself could not insulate the new gas from renegotiation in step 2. This is because the original owner of the gas would still appear on the contract with the purchaser as the seller of that gas. The purchaser is entitled to obtain renegotiation in step 2 of all gas sold under the contract as it was on July 18,

[199] Of course, if the contract also covered some gas with a price ceiling lower than the price set in the fixed price amendment, the producer could, before the amendment expired, request that the purchaser nominate a higher price for that gas up to the price set by the amendment. However, such request would prevent the producer from making any subsequent nomination request under the good faith negotiation rule after the fixed-price amendment expired. *See* § 270.201 (a) (4) (ii).

[200] This rule would not apply where the purchaser had imposed a unilateral price increase moratorium. In that case, since the producer had not agreed to the moratorium, the producer would retain contractual authority to collect a higher price and could initiate good faith negotiation any time after January 23, 1987.

[201] Amoco Production Company (Amoco) at 8.

[202] Plains Petroleum Company (Plains) at 2–4.

[203] Indicated Producers at 16.

[204] *See* ANR and CIG at 26 and IPAA at 3.

[205] Paragraph (a)(2)(i) has been included in § 270.201, as revised, to clarify the definition of "old gas."

[206] IPAA at 2.

[207] Paragraph (a)(2)(ii)(B) is included in § 270.201, as revised, to resolve this ambiguity.

[208] For the same reasons, the expired contracts subject to renegotiation under the good faith negotiation rule will be considered to include all expired contracts as to which the Commission has not authorized abandonment as of July 18, 1986. Gas sold under the expired contract need not have actually been flowing on July 18, 1986. This rule provides certainty as to which expired contracts are subject to the good faith negotiation rule. The Commission recognizes that in some instances abandonment may not have been granted even though all gas wells subject to the expired contract are depleted. However, in many such circumstances, neither party is likely to have an interest in renegotiating the contract in any event, and the rule should cause no hardship.

[209] El Paso at 20.

[210] Samson Resources Company (Samson) at 3–4.

[211] Indicated Producers at 29

[212] Section 270.201(b)(2).

[213] at 8.

[214] at 28–29.

[216] Even if the contract expired after July 18, 1986, the service obligation is considered to have been in effect on that date so long as the contract was in effect on that date.

[216] ANR and CIG at 22 and Arkla 12.

1986, by the seller regardless of whether the seller claims someone else owns the gas. Furthermore, if the contract were amended after July 18, 1986, to reflect the assignment, the amendment would deprive the producer of any rights under the good faith negotiation rule in any event, unless both the producer and the purchaser mutually agreed in writing to preserve their rights under the good faith negotiation rule.[217]

Finally, the provision for purchasers to make a nomination request in step 2 with respect to the same gas subject to the seller's step 1 nomination request[218] has caused confusion among some rehearing applicants. Some applicants appear to believe that a purchaser's request that a producer nominate a price for old gas covered by the producer's nomination request relieves the purchaser of its obligation to nominate a price in response to the producer's nomination request, thus depriving the producer of the opportunity to accept or reject a price nomination by the purchaser.[219] One applicant requests that the Commission amend the rule to eliminate any right by the purchaser in step 2 to request the producer to nominate a price for gas covered by the producer's step 1 request.

The Commission permitted purchasers to make nomination requests with respect to gas covered by the producer's request so that purchasers and producers would have identical bargaining rights with respect to old gas. Without this provision, the producer could foreclose the purchaser from obtaining a lower price for, or terminating purchases of, any old gas by including all such gas in its nomination request in step 1. Even if the purchaser nominated a price lower than the existing contract price in response to the producer's nomination request, the producer could simply reject the purchaser's nomination and continue sales at the existing contract price. Accordingly, the Commission believes that this provision should be retained. However, the Commission does clarify that a purchaser's request in step 2 that the producer nominate a price for old gas covered by the producer's request in step 1 does not relieve the purchaser of its obligation to nominate a price in response to the producer's request. Rather, in such circumstances negotiations must continue under the good faith negotiation rule until either (1) one party has accepted the other's price nomination resulting in a binding contract at the accepted price or (2) both parties have rejected the other's price nomination resulting in each having the right to terminate sales or purchases.

d. *The producer's rights in step 3.* One applicant[220] requests that the Commission permit a producer in step 3 to request that the purchaser nominate a price for any gas, including new gas, which the purchaser introduced in step 2. Under the rule as adopted, the producer may only request that the purchaser nominate a price for any *old* gas covered by the contracts the purchaser brought to the bargaining table while the purchaser can make nomination requests with respect to both old and new gas. The applicant alleges that the suggested change would make the parties' bargaining rights more balanced, since the fact that only the purchaser can renegotiate both old and new gas means only it can threaten to terminate the contract with respect to both old and new gas if dissatisfied with the producer's nominated price. The Commission does not adopt the suggested modification. Since new gas is mostly high priced, it would appear that the producer would gain little additional bargaining power by threatening to discontinue sales of that gas. Any benefits to be gained by giving the producer this right would be outweighed by the increased cumbersomeness of the rule. In any event, the Commission believes that the bargaining rights of the parties under the good faith negotiation rule, as adopted, are appropriately balanced.

e. *The rule that no contract may be renegotiated more than once under the good faith negotiation rule.* Numerous applicants request various clarifications and modifications to the provision of the good faith negotiation rule as adopted by Order No. 451 that an existing contract may not be renegotiated under the good faith negotiation rule if the parties "have renegotiated the price or any other terms for the sale of any old gas under the contract after July 18, 1986, with or without using the good faith negotiation procedures of this section."[221] First, a number of applicants[222] state that the blanket nature of this provision could cause the unnecessary deferral of routine contract amendments necessary for operational reasons, such as changes in delivery points, quality specifications, and billing procedures. It could also discourage other beneficial amendments such as take-or-pay settlements. This is because a producer would be reluctant to enter into any contract modifications, no matter how minor, until it had reviewed its contracts with the purchaser to determine the consequences of the loss of its rights under the good faith negotiation rule.

In response to Indicated Producer's emergency motion to clarify § 270.201(a)(3)(i) in order to resolve this problem, the Commission issued an interim order on rehearing on July 17, 1986. In that order, the Commission amended § 270.201(a)(3)(i), subject to further consideration in the rehearing order, to permit parties amending their contracts after July 18, 1986, mutually to consent to preserve their rights under the good faith negotiation rule. The Commission continues to believe that this is the correct solution to the problem raised by the applicants and reaffirms the amendment made in the interim order on rehearing.[223]

The purpose of § 270.201(a)(3)(i) as adopted in Order No. 451 was to encourage voluntary renegotiation of contracts in light of the new ceiling price as a substitute for negotiation under the good faith negotiation rule. Without some such provision, purchasers who voluntarily renegotiated contracts with their producers would be subject to requests for further renegotiation under the good faith negotiation rule. In such circumstances, purchasers might well be reluctant to renegotiate their contracts voluntarily. The amendment adopted in the interim rehearing order avoids deterring such voluntary negotiation, since the producer would retain its rights under the good faith negotiation rule only if the purchaser so agreed. At the same time, it accomplishes the goal of permitting parties, if they desire, to make routine or, for that matter, substantial amendments without loss of their rights under the good faith negotiation rule.[224]

[217] The Commission disagrees with Arkla's concern about possible circumvention between the June 6, 1986 issuance of Order No. 451 and July 18, 1986, since, as noted above, purchasers had the ability to protect themselves during that period by refusing to agree to contract amendments. Purchasers should have been as aware of their step 2 rights during that period as sellers. In addition, there is no evidence that sellers sought to separate a significant amount of new gas from old gas during that period.

[218] 51 FR at 22206, note 281.

[219] *See* Indicated Producers at 31–32 and Amoco at 8–9.

[220] Indicated Producers at 15–16.

[221] § 270.201(a)(3)(i), as adopted by Order No. 451.

[222] Indicated Producers at 24; Panhandle and Trunkline at 17; Transwestern at 22; INGAA at 17; Florida Gas at 26; and AGA at 34.

[223] This provision now appears in paragraph (a)(4)(i) of § 270.201, as revised.

[224] One party (IPAA), in a motion for reconsideration filed August 13, 1986, requests that the Commission modify the amendment adopted in the interim rehearing order to provide that parties

Continued

The other solutions to the problem suggested by applicants are not adopted since each would either deter voluntary renegotiation or fail to solve the problem. These suggestions are as follows:

1. Delete § 270.201(a)(3)(i), thereby allowing producers to invoke their rights under the good faith negotiation procedures, regardless of whether they have previously renegotiated existing contracts for the sale of old gas informally. This suggestion would deter voluntary negotiations because it would enable producers potentially to secure economic concessions for the sale of old gas one time through informal, voluntary negotiations and a second time under the formalities of the good faith negotiation rule.

2. Delete the phrase "or any other terms" from the clause in question, so that only informal renegotiations of the *price* of old gas after July 18, 1986, would bar subsequent resort to the good faith negotiation procedures. This suggestion deters voluntary renegotiation because it would permit producers to exact economic concessions under existing contracts without technically increasing the price of old gas, and later seek price increases under the good faith negotiation procedures.

3. Establish the date when producers may initiate good faith negotiations,[226] rather than July 18, as the date after which informal amendments to existing contracts would preclude subsequent resort to the good faith negotiation procedures. This proposal, however, would continue to stifle minor contract changes after January 22, 1987, since no change could be made after that date without loss of rights under the good faith negotiation rule.

Two applicants[226] request clarification that § 270.201(a)(4)(i)[227] does not operate to deprive producers of their rights under the good faith negotiation rule when there is a price change as a result of a preexisting contract cause. Examples of such contract clauses are price redetermination clauses which call for establishment of a new price at periodic intervals, either by some previously stipulated formula or by negotiation, and inflation adjustment clauses providing for monthly or quarterly automatic price escalations. The Commission believes that when a contract provides for an automatic price change pursuant to a stipulated formula so that no additional negotiations between the parties are required to determine the price, then § 270.201(a)(4)(i) does not operate to deprive the producer of its rights under the good faith negotiation rule. No voluntary renegotiation has occurred. However, if the contract clause requires negotiations to establish a new price, when voluntary renegotiation has occurred and § 270.201(a)(4)(i) does apply. The parties could, of course, mutually agree in writing to preserve their rights under the good faith negotiation rule.

Finally, one applicant[228] contends that § 270.201(a)(3)(i), while prohibiting producers from making nomination requests under the good faith negotiation rule with respect to a contract voluntarily amended after July 18, 1986, unfairly permits purchasers to make nomination requests with respect to such contracts. Although the rule as adopted technically permits the applicant's interpretation, the Commission did not intend to permit purchasers to make nomination requests in such circumstances. Accordingly, the Commission further amends § 270.201(a)(3)(i), now paragraph (a)(4)(i), in order to clarify its intent in this regard.

f. *Abandonment under the good faith negotiation rule.* Numerous applicants seek clarification and modification of the provisions of the good faith negotiation rule concerning abandonment. The most significant issue concerning abandonment is the effect of abandonment on a purchaser's take-or-pay obligations under the existing contract. In particular, numerous pipelines, distributor, and consumer representative applicants[229] observe that a pruchaser at the time of abandonment may, pursuant to its take-or-pay obligation, have paid for gas but not taken it. However, the contract may provide the purchaser a chance to make up that gas over a particular period which has not yet expired. Most applicants request that the Commission require that in such circumstances the producer repay the take-or-pay payment if abandonment occurs under the good faith negotiation rule. Barring that requirement, the applicants desire that the Commission at least require that the purchaser's make-up rights under the contract survive the abandonment. The applicants also state that at the time of abandonment the purchaser may be subject to an accrued obligation to make a take-or-pay payment, but it may not yet have made the payment. Most applicants request that the Commission state that the purchaser is relieved of any accrued obligations to make take-or-pay payments upon abandonment. Applicants contend that the requested clarifications would avoid any inequity resulting from allowing producers to be paid twice for the same gas, first when they collect take-or-pay payments and second when they sell the gas to a new purchaser after release.

The Commission does not believe it appropriate to establish procedures as to how the parties' take-or-pay obligations are affected when a contract is terminated under the good faith negotation rule. The Commission believes that resolution of such obligations is part of the renegotiation process and disputes should be settled in accordance with the respective state laws governing the administration of contracts.

Pipeline, distributor, and consumer representative applicants suggest a number of other changes to the abandonment provisions of the good faith negotiation rule to prevent unfairness to them. Several applicants[230] request that the Commission limit the time within which either party may exercise its right to abandon sales or terminate purchases. For example, some applicants propose that a party be required to exercise its

voluntarily amending a contract *retain* their rights under the good faith negotiation rule unless they mutually agree in writing to waive those rights. IPAA claims that the amendment as adopted may permit a purchaser to trick an unsophisticated producer into loss of its rights under the good faith negotiation rule by proposing a minor contract amendment and not informing the producer of the necessity to expressly preserve or lose its rights under the good faith negotiation rule. IPAA also notes that some contract amendments are so minor that parties may not recognize them as renegotiations involving potential loss of rights under the good faith negotiation rule. The Commission declines to adopt IPAA's proposed change in the amendment adopted in the interim order on rehearing. The Commission believes that participants in a regulated industry such as the natural gas industry will become sufficiently familiar with the relevant regulations, and will be able to protect their interests. All persons have constructive, if not actual, notice of all duly published regulations, and as business participants in the natural gas arena, should be aware of possible loss of their rights under the good faith negotiation rule if they amend their contracts. Thus, producers can protect their own interests. However, the Commission is concerned about possible sharp practices by pipelines with respect to small producers hypothesized by IPAA. If such a case presents itself, the Commission may address the matter in the context of that concrete circumstance.

[226] Formerly November 1, 1986, now January 23, 1987.

[227] This provision was in paragraph (a)(3)(i) of § 270.201 in Order No. 451, but now appears in paragraph (a)(4)(i) in § 270.201, as revised.

[228] Indicated Producers at 28–29.

[229] PG&E at 7; NI-Gas at 19; SoCal at 8; El Paso at 14, 18; Panhandle and Trunkline at 14; Transwestern at 21; INGAA at 16; Natural and United at 12; Texas Eastern at 24; Transco at 8; ANR and CIG at 24; Florida Gas at 24; Tennessee at 18; UDC at 49; Northwest Central at 55; and AGA at 32.

[230] *See* El Paso at 15–16, and Arkla at 14–16.

right of abandonment within one year of the accrual of that right through its rejection of the other party's price nomination. Essentially, the applicants argue that allowing a party to reserve its abandonment right indefinitely would create unnecessary uncertainty for the other party and make future planning by that party difficult. The Commission believes that such a limitation on the parties' abandonment rights would be an unnecessary interference in the marketplace and refuses to adopt it. The primary concern of the applicants is with a pipeline waiting for its producer to abandon sales to the pipeline. While a producer's failure to exercise its abandonment rights for an indefinite time might cause the pipeline some uncertainty, it would also benefit the pipeline since sales would continue at the existing low price until abandonment occurred. Futhermore, given this fact, the Commission believes most producers have a strong incentive to exercise their abandonment rights expeditiously. Therefore, in most cases the problem of the pipeline being placed in indefinite uncertainty should be avoided.

Order No. 451 requires that, before the producer can abandon sales, it must enter into a contract to sell to a third party. In the notice of proposed rulemaking, DOE proposed that the Commission require that the new contract be for a higher price than that nominated by the existing purchaser and be for a term of at least two years. The Commission did not adopt these requirements. Several applicants [231] contend that the Commission should reinstitute these requirements. They contend that the Commission erred in finding these provisions unnecessary since producers are unlikely to sell to another purchaser unless they can obtain a better bargain. They argue that a producer may sell gas to a third party in a short-term agreement at a price less than that nominated by the existing purchaser solely for the purpose of freeing itself from its existing service obligation. Then, when market prices rise, it would be in a position to collect the higher prices. In the interim between expiration of the short-term agreement and higher market prices it might even shut in the gas. Two applicants [232] observe that a sale at a lower price might be more valuable to the producer in any event if the new purchaser agreed to take more volumes and that the new purchaser might well be able to take more than the existing pipeline purchaser.

The Commission continues to believe that the two-year and higher price requirements are unnecessary and unwise. As stated in Order No. 451, those requirements are inconsistent with the Commission's objective of encouraging market-responsive natural gas contracts. The two-year requirement would effectively prohibit market-out clauses for that period. Such clauses have been instrumental in permitting pipelines to reduce their purchased gas costs in recent years. Furthermore, if the Commission required that new contracts be for a higher price, it would also have to prohibit the existing purchaser from nominating any change in the contract other than price. Otherwise, it would be difficult to determine whether the new purchaser's offer was, in fact, worth more to the existing producer, since non-price terms may have a significant effect on the economic value of a bargain. Numerous applicants have stressed the importance of permitting existing purchasers to nominate changes in contract terms other than price as enabling them to renegotiate unfavorable non-price terms in existing contracts.

Even if there is danger that some producers may enter short-term contracts at lower prices to eliminate their service obligations, the Commission believes that that danger is outweighed by the interest in permitting parties to negotiate new contracts freely, without restriction as to the terms they can negotiate. In any event, the Commission continues to believe that producers are unlikely to sell to a third party at terms less favorable than those offered by the existing purchaser. Furthermore, the Commission notes that the increased bargaining power Order No. 451 grants purchasers with respect to higher-priced new gas should enable purchasers to negotiate more effectively to keep the lower-priced old gas. Finally, the producer cannot sell to non-firm sales customers of a non-Order No. 436 pipeline without giving the firm sales customers a right of first refusal. If a producer were to arrange a sale to a third party at an artificially low price solely to eliminate its service obligation, the firm sales customers could benefit from the lower price through exercise of the right of first refusal.

Two pipeline applicants [233] request that the Commission limit the term of any abandonment authorized under the good faith negotiation rule to two years, but provide that the abandonment will become permanent at the end of that period if the parties do not then reach agreement for continued sales. The applicants state that this would give producers an opportunity to sell to another purchaser in the spot market over the next several years, during which the natural gas surplus deliverability is expected to continue, but will give pipelines an opportunity to protect their historic access to these valuable supplies at the end of that period when the surplus is likely to be largely dissipated. The Commission refuses to adopt this proposal. The good faith negotiation rule, as adopted, gives the purchaser ample opportunity to negotiate to keep the gas when responding to the producer's nomination request. Giving the pipeline an automatic right under the good faith negotiation rule to regain the gas two years after abandonment would create unnecessary uncertainty.[234] It would also prevent the producer from negotiating a long-term contract with another purchaser in violation of the Commission's goal of maximizing the parties' rights to freely negotiate concerning old gas.

Finally, the same two pipeline applicants [235] request that the Commission state that a pipeline will not be deemed negligent for the loss of gas pursuant to the abandonment provisions of the good faith negotiation rule, even though the pipeline later has to curtail sales because of a shortage of supplies. The applicants state that, because of current market conditions, pipelines may not be able to nominate a high enough price to keep all their old gas. However, in the future, market conditions may change and shortages occur. It would be unfair in such circumstances, the applicants claim, to hold the pipeline negligent for any resulting curtailments. The Commission can make no blanket statement concerning a pipeline's liability for future claims of negligence based on events which have not yet occurred. The Commission assumes that parties will negotiate in good faith based on current and forseeable market and supply conditions. To the extent a pipeline acts prudently and in good faith to do what is in the best interests of its customers, the Commission would not intervene at a later date to hold that pipeline negligent for unforseeable events. The

[231] Northern Distributor Group (NDG) at 14; Northern Natural at 34; ANR and CIG at 16; Northwest Central at 53.

[232] ANR and CIG at 17.

[233] ANR and CIG at 18–20.

[234] Of course, the pipeline could seek a limited-term abandonment of the type granted in *Southern Natural Gas Co.*, 36 FERC ¶ 61,401 and *Transcontinental Gas Pipe Line Corp.*, 36 FERC ¶ 61,403 if its producers voluntarily agree.

[235] ANR and CIG at 20.

Commission cannot, of course, speculate on how a court would decide any negligence suit brought to it.[236]

Producer applicants also claim that various provisions of the good faith negotiation rule must be modified to prevent unfairness to them. One producer applicant [237] contends that the 30-days notice purchasers must give producers before terminating purchases is too short. The applicant states that because of various factors, including the difficulty of finding purchasers for the relatively small packages of gas which may be released and of arranging transportation to the new purchaser, thirty days is generally too short a time in which to arrange new sales. As a result, the gas is likely to be shut in before a new purchaser is found. Such shut-ins allegedly cause serious operational difficulties for producers. Neighboring wells belonging to other producers may drain the shut-in well. The well might not produce when reopened. The leases may be terminated for cessation of commercial production. The applicant notes that these problems do not arise when the producer abandons sales to the purchaser, since the producer cannot abandon sales until it has arranged for a new sale. The applicant requests that the Commission require that the purchaser give the producer at least 120 days before terminating purchases.

The 30-days notice that Order No. 451 requires purchasers to give producers before terminating purchases is the same notice that the producer must give the purchaser before abandoning sales. Thus, the purchaser has the same time in which to arrange to purchase replacement supplies as the producer has to arrange to sell to an alternative purchaser. The purchaser, too, may have difficulties in arranging to purchase from another producer. Thus, the Commission is reluctant to lengthen the notice the purchaser must give the producer before terminating purchases. However, the Commission does recognize that the producer has one difficulty that the purchaser does not face. The producer must give a pipeline's firm sales customers a right of first refusal before selling to any other purchaser. This process takes up to thirty days itself after an agreement has been entered into with the alternative purchaser. Therefore, if the producer seeks to sell to a purchaser other than a firm sales customer of the pipeline, it would be virtually impossible for it to arrange the sale within the 30-days notice given by the original purchaser of the termination of purchases. A pipeline receiving notice of abandonment of sales by the producer does not face this problem in arranging to purchase gas from another producer. There is generally no right of first refusal with which it must comply. In light of these facts, the Commission has determined to lengthen the notice the purchaser must give the producer before terminating purchases to 60 days to give more time for the producer to arrange another sale. Sections 270.201 (c)(2) and (f)(3) are amended accordingly. The notice the producer must give the purchaser will remain at 30 days.

The same applicant [238] also requests that the Commission eliminate the requirement that the producer enter into a contract to sell the gas to a third party before abandoning sales to the original purchaser. The applicant states that this requirement is unfair since there is no comparable requirement applicable to purchasers when they terminate purchases. In addition, the applicant suggests that the producer's ability to abandon sales without having arranged for a new purchaser would give it additional bargaining power to obtain agreement from the purchaser that neither will terminate sales or purchases until both have made alternate arrangements. The Commission rejects this proposal. The purpose of the requirement that the producer contract to sell the gas to another party is to assure that the old gas with its relatively lower price continues to flow to the market-place. There is no similar policy reason for imposing a comparable requirement on purchasers that they arrange to purchase gas from another producer before terminating purchases from the first producer.

Finally, a number of applicants from all segments of the natural gas industry request that the Commission expend the abandonment permitted under the good faith negotiation rule in various ways. First, two pipeline applicants [239] request that the Commission provide for abandonment, at the request of the purchaser, of gas under any contract which has expired and cannot be renegotiated. The applicants state that there are many expired jurisdictional contracts with terms favorable to the producer for which purchasers have been seeking to renegotiate rollover contracts. However, the producers have no incentive to renegotiate such rollover contracts since in the absence of abandoment the purchaser allegedly must continue purchasing gas under the unfavorable terms of the expired contract. The Commission sees no need to modify the good faith negotiation rule to deal with this situation. If the producer requests that the purchaser nominate a price with respect to any contract with a purchaser, the purchaser could seek renegotiation of the expired contract in question.[240] If dissatisfied with the producer's nomination, it could terminate purchases under the contract. If the producer does not make a nomination request with respect to any contract, the only way to deal with the problem raised by the applicants through the good faith negotiation rule would be to permit the purchaser to initiate negotiations under the rule. The Commission refuses to do that for the reasons discussed in IV, F, 1, d above.

Second, four pipeline and distributor applicants [241] request that the Commission provide for abandonment when the parties voluntarily agree to it as part of a voluntary renegotiation outside the scope of the good faith negotiation rule.[242] These applicants contend that such abandonment would be consistent with the Commission's desire to encourage renegotiation. Without providing for such abandonment, if the parties entered into a voluntary agreement involving abandonment, parties would either have to file an individual application or proceed through the good faith negotiation procedures. The Commission refuses to provide the additional abandonment authority to cover this situation. Such abandonment would provide a means for the parties to avoid granting the pipeline's firm sales customers a right of first refusal, unless the Commission also required that the producer grant the firm sales customers a right of first refusal in such circumstances. In any event, there is no significant hardship in requiring the parties either to apply for an individual abandonment or a blanket limited term abandonment of the type granted in *Southern Natural Gas Co.*, 36 FERC ¶ 61,401, or go through the good faith negotiation procedures. The abandonments would likely be granted since unopposed and no fee would be required.

Third, one producer applicant [243] proposes that the Commission provide

[236] *See* Opinion No. 248, 35 FERC ¶ 61,043, *reh'g denied*, 35 FERC ¶ 61,340 (1986).

[237] Indicated Producers at 9–15.

[238] Indicated Producers at 14.

[239] El Paso at 15–16 and Florida Gas at 20–22.

[240] Since the contract is subject to the Commission's NGA jurisdiction it likely contains some gas priced under section 104 or 106(a).

[241] El Paso at 19; Natural at 11; Arkla at 6; AGA at 40.

[242] AGA would limit such abandonment to gas previously priced higher than the pipeline's WACOG.

[243] Amoco at 7.

pre-granted abandonment and transportation rights similar to those provided under the good faith negotiation rule where the parties agree under the good faith negotiation procedures to include a bilateral market-out clause in their contract and one of the parties later terminates purchases pursuant to such a clause. The applicant contends that, without such rights, producers might be reluctant to accept a purchaser's price nomination with a market-out clause, since the purchaser could later exercise that right, and the producer would have lost its rights under the good faith negotiation rule to abandon sales and market the gas elsewhere. The Commission rejects this proposal as unwise in policy and adding unnecessary complexity to the good faith negotiation rule. The Commission believes that the parties themselves should negotiate any changes in their contractual relationship. These changes include insertion of market-out clauses and the conditions which must be met for such clauses to be exercised. Therefore, the Commission will not require, for example, that pipelines exercising a market-out clause must transport the released gas. A producer with the concerns outlined above should seek the pipeline's agreement not to oppose abandonment and to transport the released gas if the pipeline exercises the market-out clause. Absent such agreement, the producer could refuse the pipeline's price nomination if it includes a market-out clause. In addition, the Commission observes that if the purchaser terminates purchases pursuant to a market-out clause agreed to under good faith negotiation procedures, the producer can seek abandonment from the Commission.

Fourth, one applicant [244] requests that the Commission permit the purchaser to terminate its contract with the producer within 180 days after the producer's rejection of the purchaser's nomination. The applicant expresses concern that, if the purchaser does not have this right, a producer could reject the purchaser's nomination and continue sales indefinitely at the existing price while waiting for gas prices to firm up. The purchaser would be unable to purchase alternative supplies becauses of its contractual obligation to the producer, but nevertheless could lose the gas sold it by the producer at any time. There is no need to amend Order No. 451 as suggested by the applicant, since purchasers already have the ability to prevent occurrence of the situation described by the applicant. If a purchaser did not desire to continue its existing contractual relationship with the producer in the event the producer rejects its price nomination, it may in step 2 request that the producer nominate a price for the gas covered by the producer's step 1 request.[245] It can then either accept the producer's nomination or reject the nomination and terminate purchases.

Finally, another applicant [246] expresses concern that the good faith negotiation rule may permit a purchaser, after rejecting the producer's price nomination requested in step 2, to terminate purchases of all relatively high-cost post-1974 and new gas, without foregoing its contractual right to purchase that gas, while simultaneously continuing to purchase the cheaper pre-1975 old gas. The applicant suggests that the Commission prevent such a situation from arising by providing that the contract is automatically terminated whenever the purchaser discontinues any purchases. The Commission believes that the applicant's concern is unjustified. If the purchaser terminates purchases of any gas, the terms of the existing contract no longer apply to that gas and the producer may sell that gas to another party.[247] It is true that the purchaser's termination of purchases of some gas does not affect the producer's obligation to sell to the purchaser all other gas covered by the contract. However, the producer has the right under the good faith negotiation rule to request the purchaser to nominate a price with respect to any old gas. If dissatisfied with the price nominated, it may abandon sales of that gas. Accordingly, there is no reason to believe that a pipeline would be able to selectively terminate purchases of high-cost gas but require the producer to continue sales of cheap old gas.

g. *Operation of the good faith negotiation rule with respect to multiple working interest owners, natural gas processing plants, and advance payment contracts.* Four applicants request that the Commission clarify the operation of the good faith negotiation rule when a number of persons own undivided interests in a lease, yet all the gas is sold under single a contract to the purchaser. Before discussing this issue, the Commission observes that multiple working interest owners generally enter into an operating agreement governing the operation of their lease. The operating agreement names one of their number or a third party as the operator of the lease. In the operating agreement, some working interest owners may authorize the operator to enter into sales contracts on their behalf. These owners thus do not sign the sales contract [246] and are referred to as non-signatory co-owners of the lease. Other working interest owners, however, do not authorize the operator to contract on their behalf, but join in and sign the same contract signed by the operator. These owners are referred to as signatory co-owners of the lease.

One producer applicant [249] requests that the Commission clarify that the operator's nomination request in step 1 affects only its working interest and not those of the non-signatory parties represented by it. This applicant is concerned that an operator's step 1 nomination request might permit the purchaser in step 2 to bring to the bargaining table all its contracts with a non-signatory co-owner, even though that owner did not desire to initiate good faith negotiation with respect to the first contract or any other contract. Another producer applicant [250] requests that the Commission clarify that each signatory co-owner may proceed separately under the good faith negotiation rule. In addition, it states that, where only one signatory co-owner initiates good faith negotiation the purchaser should not be able in step 2 to bring to the bargaining table the gas of any other co-owner even though that gas is sold under the same contract as the first co-owner's. Two pipeline applicants, however,[251] ask that the Commission state that where there are multiple working interest owners, all must initiate good faith negotiation together or not at all. Otherwise, they claim, pipelines will be faced with difficult operational problems if one co-owner obtains abandonment under the good faith negotiation rule and sells to a third party but other co-owners continue to sell to the pipeline. Another pipeline applicant [252] simply requests clarification of how the good faith negotiation rule works when there are multiple working interest owners without taking a position as to how it should work.

The Commission recognizes that the good faith negotiation rule, as adopted in Order No. 451, is ambiguous concerning the rights of multiple working interest owners. Accordingly it has amended the rule to clarify these rights as explained below. [253] Generally any co-owner of a lease with a direct contractual relationship with the purchaser and may initiate good faith negotiations separately without implicating the gas of other co-owners. A co-owner who has authorized another to contract on his behalf has no direct contractual relationship with the purchaser and may not initiate the good faith negotiation procedures. Its gas becomes subject to good faith negotiation only through the good faith negotiations of the person contracting on its behalf. In other words, its gas is treated as if owned by that person.

Therefore, since each signatory co-owner has a direct contractual relationship with the purchaser, each may initiate good faith negotiations separately. If one signatory co-owner does so, then in step 2 the purchaser may bring to the bargaining table only that co-owner's gas, sold under the contract covered by the initial request or under other contracts containing old gas to which that co-owner is also signatory. Following completion of the three-step nomination procedure, neither the co-owner nor the purchaser may make further nomination requests under the good faith negotiation rule with respect to that co-owner's gas sold under any contract which either brought to the bargaining table. However, the other signatory co-owners may at any time make nomination requests with respect to their gas, and the purchaser will have the same rights with respect to their gas as it did with respect to the first co-owner's.

Non-signatory owners are treated differently since they do not have a direct contractual relationship with the purchaser. Because they have authorized the operations to contract on their behalf, they cannot make nomination requests under the good faith negotiation rule. However, any nomination by the operator must cover the gas of the non-signatory co-owners represented by it, as well as its own gas. When the operator makes a nomination request, the purchaser may in step 2 request that the operator nominate a new price both for its gas and that of any non-signatory co-owners sold under the contract brought to the bargaining table by the operator. The purchaser also may request that the operator nominate a price both for its gas and that of non-signatory co-owners sold under any other contract with the operator containing old gas. This includes the gas of non-signatory co-owners not included in the first contract. However, the purchaser cannot request that the operator nominate a new price for any other gas of the non-signatory co-owners not covered by a contract with the operator.

Following completion of the three-step nomination procedure, neither the operator nor the purchaser may make subsequent nomination requests under the good faith negotiation rule with respect to the gas of the operator and non-signatory co-owners sold under contracts which either the operator or purchaser brought to the bargaining table. However, other signatory co-owners may at any time make nomination requests with respect to their gas and the purchaser will then have the same rights with respect to their gas which it previously had with respect to that of the operator and the non-signatory co-owners. In short, the operator is treated like any other signatory co-owner except that the gas of the non-signatory co-owners on whose behalf it contracted is treated as if owned by the operator.

The operation of these procedures may be illustrated by the following example. Both old and new gas from three leases is sold to a single purchaser under three separate contracts. The operators and other working interest owners of the leases are as shown on the diagram in the margin.[254] Either A, B, or C may initiate good faith negotiation with respect to Lease 1. D and E, however, as non-signatory co-owners, may not make nomination requests with respect to that lease.[255] If B, as a signatory co-owner of Lease 1, requests that the purchaser nominate a new price for its old gas sold under the Lease 1 contract, the purchaser may request that B nominate a new price for any of B's gas sold under the Lease 1 and 3 contracts. It may not make a nomination request with respect to any other gas sold under these contracts. Nor may it make a nomination request with respect to B's gas sold under the Lease 2 contract, since B is only a non-signatory co-owner of that lease.

Any price agreed upon between the purchaser and B will apply only to B's gas. The existing price will continue to apply with respect to the other working interest owners' gas. Similarly, if B and the purchaser fail to reach agreement and one abandons sales or purchases, the abandonment will apply only to B's gas.[256] Neither B nor the purchaser may subsequently renegotiate the price of B's gas in Leases 1 and 3 under the good faith negotiation rule. However, all other gas remains subject to renegotiation under the good faith negotiation rule, including B's gas in Lease 2.

If A, as the operator of Lease 1, makes a nomination request with respect to old gas sold from that lease, it must make the request both with respect to its gas and to that of the non-signatory co-owners D and E. The purchaser may then request A to nominate a new price for A, D, and E's gas sold under the Lease 1 contract. It also may request A to nominate a new price for A, B, D, and F's gas sold under the Lease 2 contract since A is the operator of that lease. The purchaser may not make nomination requests with respect to any other gas sold under the Lease 1 and 2 contracts, since the remaining gas is owned by signatory co-owners not covered by A's original nomination request.[257] Finally, even though A and E are non-signatory co-owners of Lease 3, the purchaser may not request that A nominate a new price for any gas sold under the Lease 3 contract since A is neither the operator nor a signatory co-owner of that lease.[258] Likewise, the purchaser may not request that D nominate a new price for any gas sold under the Lease 3 contract since D was a non-signatory party to the Lease 1 contract nominated by A.

One applicant [259] requests that the Commission describe the operation of the good faith negotiation rule with respect to natural gas processing plants. It states that typically a number of producers sell gas to a processor under percentage of proceeds contracts and the processor then sells the gas to a pipeline under a separate contract. The

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[244] NI-Gas at 18.

[245] *See* discussion *supra* in the last two paragraphs of IV, F, 2. c above.

[246] Amoco at 8.

[247] *See* §§ 270.201(f) (4) and (5).

[248] The sales contract may indicate that the operator is acting on their behalf and name them.

[249] Indicated Producers at 27.

[250] Samson at 5–6.

[251] Panhandle and Trunkline at 16.

[252] Tennessee at 34.

[253] Paragraph (a)(2)(iii) has been included in § 270.201, as revised, and the language now appearing in paragraph (a)(4) has been revised.

[254] The diagram is not printed in the Federal Register. A copy may be obtained from the Commission.

[255] Of course, E as a signatory co-owner of Lease 2 could request the purchaser to nominate a price for its gas sold under the Lease 2 contract. If it did that, the purchaser could not make a nomination request with respect to its gas sold under the Lease 1 and 3 contracts, since E is a non-signatory co-owner of those leases.

[256] While abandonment with respect to one working interest owner's gas may cause some operational difficulties, the Commission does not believe these difficulties to be insuperable. Split-stream sales are common. Thus, it should be possible for a working interest owner to sell its gas to a different purchaser than the other working interest owners sell to. In addition, producers can adjust production from wells. Therefore, if a working interest owner fails to find a new purchaser for gas released under the good faith negotiation rule, it should be possible to make the necessary adjustments in production to account for this.

[257] This is true even though the signatory co-owner of Lease 2 is E, one of non-signatory co-owners in Lease 1.

[258] If A were a signatory co-owner of Lease 3, the purchaser could request that A nominate a price for its gas covered by the Lease 3 contract.

[259] Samson at 6–7.

applicant asks specifically (1) whether the processor is a first seller that can initiate good faith negotiation and (2) whether the processor's nomination request would trigger a right by the pipeline in step 2 to bring to the bargaining table all its contracts with the behind-the-plant producers which contain some old gas.

A natural gas processor selling gas under the circumstances described is a first seller of natural gas.[260] Accordingly, it is entitled to request under the good faith negotiation rule that the pipeline nominate a new price for any old gas sold under its contract with the pipeline. The purchaser may in step 2 request that the processor nominate a new price for any gas sold under the contract covered by the processor's request and any other contract with the processor containing old gas. This includes new gas which the processor may buy from a behind-the-plant producer in a percentage of proceeds contract covering only new gas, so long as there is old gas in the processor's contract with the pipeline. However, the pipeline may not make a nomination request with respect to any gas sold by the behind-the-plant producers directly to the pipeline under separate contracts. The pipeline may only reach gas sold under contracts with the person who makes the step 1 request.

The behind-the-plant producers selling to the processor under percentage of proceeds contracts are in a position somewhat analogous to that of non-signatory working interest owners. They may not make a nomination request directly to the pipeline since they have no contract with the pipeline. In addition, they cannot initiate good faith negotiations with the processor, since they lack contractual authority to obtain a higher price from the processor. Their contracts permit them to collect only a particular percentage of what the processor collects from the pipeline. Thus, only the processor can initiate good faith negotiation with respect to the behind-the-plant producers' gas sold to the processor in a percentage of proceeds contract. The behind-the-plant producers will receive from the processor the agreed-upon percentage of whatever price the processor obtains from the pipeline for the relevant gas under the good faith negotiation rule or through voluntary negotiations.

A producer who sells directly to the pipeline but nevertheless has its gas processed in the natural gas processing plant would, of course, be in an entirely different position. Its rights would be more analogous to those of a signatory working interest owner. It could initiate good faith negotiations with the pipeline, and its rights would be unaffected by any good faith negotiation conducted by the processor with respect to its contract with the pipeline.

Finally, two applicants [261] ask that the Commission clarify the operation of the good faith negotiation rule with respect to advance prepayment contracts. Pursuant to the advance payment program, which was terminated in 1975, [262] the Commission permitted pipelines to enter into advance payment agreements with producers. Under such agreements the pipeline would make an advance payment to the producer for use in exploring for gas on specified acreage. The agreement generally dedicated to the pipeline all gas produced from the acreage and provided for repayment of the advance payment. Once gas was discovered, separate sales contracts were entered into between the producer and purchaser. The applicants request that the Commission clarify that where there are outstanding advance payments when gas is released under the good faith negotiation rule, the producer must repay those amounts. The applicant also states that some gas dedicated to a purchaser under an advance payments contract may have subsequently qualified for NGPA incentive prices and thereby become "new" gas. The applicant requests that the Commission nevertheless treat that gas as old gas for purposes of the good faith negotiation rule, apparently to ensure that purchasers may seek the renegotiation of that gas if the producer initiates good faith negotiation with the purchaser.

The Commission first observes that virtually all advance payments have already been repaid due to the deadlines for repayment the Commission established when it prohibited parties from entering into further advance payment agreements after December 31, 1975. This fact is reflected in current rate filings which show little or no advance payments in rate base. In any event, nothing in Order No. 451 negates or supersedes the requirements in the Commission's various orders concerning the advance payment program that these payments be repaid.[263] Such requirements remain applicable regardless of whether gas is released under the good faith negotiation rule.

Finally, the Commission sees no reason to treat gas dedicated to a purchaser under an advance payment agreement differently from any other gas. To the extent such gas has qualified for NGPA incentive or deregulated prices, it is subject to renegotiation under the good faith negotiation rule to the same extent as any other similar gas.

G. *Right of first refusal.* In Order No. 451, the Commission provided that, whenever any gas previously sold to a pipeline which has not accepted Order No. 436 is abandoned under this rule, the producer must give that pipeline's firm sales customers a right of first refusal before selling released jurisdictional gas to anyone else. If the producer packages the jurisdictional gas with other gas, the producer must give the firm sales customers a right of first refusal with respect to the entire package. The procedures established by Order No. 451 governing the right of first refusal generally track those governing the right of first refusal which NGPA section 315(b) requires sellers to give to existing purchasers of certain gas removed from the Commission's NGA jurisdiction.

In granting a non-Order No. 436 pipeline's firm sales customers a right of first refusal, the Commission observed that those customers may have relied on the pipeline's continued access to low-cost old gas pursuant to the producer's NGA service obligation. The Commission stated that the right of first refusal should enable the firm sales customers to purchase gas released under Order No. 451 at a price approximately equal to or less than the pipeline's WACOG. Thus, the firm sales customers' access to an adequate supply of gas at reasonable cost is protected.

Rehearing requests. Producers and some large end-users request that the Commission eliminate the right of first refusal given firm sales customers of non-Order No. 436 pipelines. The producer applicants' [264] primary contention is that the right makes difficult the marketing of their gas, since third parties are reluctant to bid for gas when the firm sales customers can take away any favorable deal they obtain. Producers and large end-users [265] also claim that the right unfairly discriminates against new customers and interruptible customers of the pipeline by giving the firm sales customers a preferential right to the gas.

[260] NGPA section 2(21). 15 U.S.C. 3301(21) (1982). *See also* 18 CFR 270.202(h) (1986).

[261] ANR and CIG at 10–11.

[262] 54 FPC 3046 (1975).

[263] FPC Order Nos. 410, 499, and Order Terminating Advance Payment Program, 54 FPC 3046 (1975).

[264] Indicated Producers at 17.

[265] PGC at 4.

Pipelines, distributors and consumer representatives generally seek expansion of the right of first refusal. Pipelines and some public service commissions from consuming States [266] request that the Commission grant pipelines a right of first refusal superior to their customers'. These applicants state that such a right would recognize the existing contractual commitment of the gas to the pipeline and the pipeline's reliance on that commitment to provide it adequate supplies to serve its customers. At the same time, however, producers could still obtain a market price for the gas. A right of first refusal for pipelines would also better protect the rights of all their customers, since all of them benefit from the pipeline's exercise of its right, whereas only particular firm sales customers benefit from the exercise of the right of first refusal as provided by Order No. 451. Also, a pipeline's right of first refusal allegedly would discourage producers from rejecting the pipeline's price nomination, and then arranging a short-term sale of the gas to a third party at a price lower than that offered by the pipeline, solely for the purpose of permitting it to abandon its service obligation to the pipeline. Some applicants, believing that the existing purchaser can only nominate a price change and not a change in other terms of the contract, state that a right of first refusal for pipelines would also give them an opportunity to obtain gas under the more favorable non-price terms generally offered today than when the pipelines originally purchased the gas. These include market-out rights.

Pipelines, distributors, and consumer representatives also request that the Commission extend the right of first refusal to the firm sales customers of Order No. 436, as well as non-Order No. 436, pipelines.[267] They state that the Commission's rationale for according that right to the customers of non-Order No. 436 pipelines applies equally to the customers of Order No. 436 pipelines. Both sets of customers relied on their pipeline's continued access to the old gas dedicated to it as assuring access to an adequate supply of gas at reasonable prices. The applicants disagree with the Commission's contention that the customers of an Order No. 436 pipeline have less need for the right of first refusal since they "could purchase gas from any producer connected to that pipeline and have the gas transported to them." [268] The applicants state that, unlike the Order No. 451 right of first refusal, Order No. 436 does not give firm sales customers any right to purchase gas from producers connected to the pipeline, but only transportation authority for the pipeline. In fact, one applicant contends that the customers of the Order No. 436 pipeline may have a greater need for the right of first refusal since the pipeline may have less ability to nominate a high enough price because its system supply sales will be under such intense competitive pressure from off-system spot gas. Finally, the applicants state that a right of first refusal is a valuable right, since it allows the customer to avoid the time and expense of finding a seller and negotiating from scratch an agreement with it. Rather, the purchaser can exercise the right of first refusal and be relatively confident that it is purchasing the gas at the best available market price. Applicants state that it is unfair to grant such a valuable commercial right to some firm sales customers and not others solely on the basis of whether their pipeline has accepted Order No. 436.

Order No. 451 provides that if several firm sales customers accept a third party offer, the producer has discretion to determine to which it will sell. Some pipelines, distributors, and consumer representatives [269] contend that this right improperly allows the producer to discriminate among the customers. They state a producer will likely choose to sell to large firm customers instead of smaller customers. The larger customers with greater need for gas are a more desirable market. In addition, if the producer is a pipeline affiliate, it may sell to fuel-switchable customers, rather than the pipelines' firm sales customers who must buy the affiliated pipeline's system supply in any event. One applicant [270] proposes that the Commission provide that full requirements firm sales customers shall have priority over all other firm sales customers in the exercise of the right of first refusal.

Commission response. The Commission rejects proposals by producers and large end-users to eliminate the right of first refusal. The Commission continues to believe that giving firm sales customers of non-Order No. 436 pipelines that right is desirable in order to protect their continued access to adequate supplies at reasonable costs since they relied on the pipeline's continued access to such gas under its service obligation. Thus, the right of first refusal supports the Commission's decision to grant abandonment to producers under section 7(b) of the NGA, if the producer and pipeline fail to reach agreement under the good faith negotiation procedures.

The Commission does not believe that the obligation to give firm sales customers this right unduly burdens producers. NGPA section 315(b) already requires that producers grant a similar right to the existing purchaser for certain gas removed from the Commission's NGA jurisdiction. The producer's obligations under section 315(b) have not had a significant adverse effect on producers' ability to market their gas by discouraging third parties from bidding for the gas. There appears no reason why the right of first refusal obligation imposed by Order No. 451 should have a more significant adverse effect. It is of course true, as pointed out by Indicated Producers,[271] that many pipelines have large numbers of firm sales customers and therefore a producer may, after arranging a sale to a third party, have to give the right of first refusal to many persons. The Commission recognizes that this may place some administrative burdens on the producer. However, the Commission believes that these burdens are mitigated by the requirement that pipelines provide producers with the names and addresses of their firm sales customers. The Commission believes that any burdens on producers from granting the right of first refusal are outweighed by the need to provide firm sales customers the protection afforded by that right.[272] Finally, the Commission rejects the contention that granting the right to firm sales customers unfairly discriminates against new and interruptible customers. As explained

[266] ANR and CIG at 14; Arkla at 16; Florida Gas at 23; Tennessee at 22; Northwest Central at 47; California PUC at 29; N.Y. PSC at 16; Kentucky PSC at 3.

[267] Missouri PSC at 9; PG&E at 6; Minnesota DPS at 8; NDG at 15; Cal. PUC at 29; NI-Gas at 21; SoCal at 7; El Paso at 11; INGAA at 17; Missouri PSC at 8; KP&L *et al.* at 29; ANR and CIG at 16; Arkla at 17; AGD at 16; Northwest Central at 52; AGA at 38; APGA at 61.

[268] 51 FR at 22207.

[269] APGA at 61–62; AGD at 11–12; Missouri PSC at 9; MPC/NASUCA at 23; Arkla at 19–21.

[270] Arkla at 20.

[271] At 18.

[272] Indicated Producers (at 18) also contends that the right of first refusal granted by Order No. 451 may act as a disincentive for pipelines to accept Order No. 436. It states that the present good faith negotiation procedures may "allow non-Order No. 436 transporters and their customers to lock-up old gas while selectively discontinuing the purchase of high-cost supplies." The Commission rejects this argument. Obviously, there are a vast number of factors a pipeline must consider in determining whether it is advantageous for it to become an Order No. 436 pipeline. This one-sentence assertion, unsupported by any analysis, does not convince the Commission that the right of first refusal under Order No. 451 provides an advantage to pipelines rendering them less likely to accept Order No. 436.

above, the firm sales customers may have relied on the pipeline's continued access to old gas pursuant to the producer's NGA service obligation as insuring their access to an adequate supply of gas at reasonable prices. An interruptible customer could not similarly rely on access to the pipeline's old gas since, as an interruptible customer, it was subject to loss of that gas in any event. A new customer obviously never relied on the pipeline's access to the old gas.[273]

The Commission now turns to the contentions of various applicants that the right of first refusal should be modified. First, the Commission rejects the proposal that pipelines be granted a right of first refusal. Pipelines already have an adequate opportunity to negotiate for continued purchases of the old gas under the good faith negotiation rule, a right that their firm sales customers lack. Furthermore, granting a pipeline a right of first refusal would remove any incentive it has to negotiate in good faith under the good faith negotiation rule. Since that rule requires that in the absence of agreement producers continue sales to the existing purchaser at the existing price until the producer finds another purchaser, a pipeline with a right of first refusal would have every incentive to nominate an unreasonably low price, comfortable in the fact that if the price was rejected and the producer found another purchaser willing to pay a higher market price the pipeline could then exercise its right of first refusal. Thus, as a practical matter, granting pipelines a right of first refusal could largely sabotage the proper operation of the good faith negotiation rule. Furthermore, it is not necessary, as argued by some applicants, to grant this right to pipelines in order to give them an opportunity to obtain relief from unfavorable non-price terms in the existing contracts. As stated in the previous section, the pipeline may in its price nomination propose changes in any other term of the contract.

The Commission also rejects the proposal that the right of first refusal be extended to the firm sales customers of an Order No. 436 pipeline. Those customers do not have the same need for the right as the customers of a non-Order No. 436 pipeline. Order No. 451 provides the customers of a non-Order No. 436 pipeline only limited transportation rights over that pipeline. They can obtain transportation only of gas formerly sold to the pipeline and released under the good faith negotiation rule. The customers of an Order No. 436 pipeline, by contrast, have much broader transportation rights. They can obtain transportation of any gas whether or not formerly sold to the pipeline or released under the good faith negotiation rule. Thus, there is less need to protect their access to the released old gas formerly sold to the pipeline.

Even assuming applicants are correct that the cost of an Order No. 436 pipeline's system supply may be more likely to increase than that of a non-Order No. 436 pipeline, the customers of the Order No. 436 pipeline are adequately protected by their ability to purchase non-system supply gas and obtain transportation. Finally, while, as some applicants point out, the right of first refusal may be a valuable commercial right, the Commission believes it should grant that right only to those with a need for it. As already discussed, the firm sales customers of an Order No. 436 pipeline do not need that right.

The Commission also refuses to alter the provision that, when more than one firm sales customer exercises its right of first refusal, the producer may in its discretion determine to which it will sell. The Commission is not convinced that the discrimination alleged by various applicants will occur. Any attempt to establish a priority system governing the producer's selection of the firm sales customers to which it will sell would complicate the rule and place additional administrative burdens on the parties. Therefore, the Commission is reluctant to establish such a system.

One applicant [274] requests that the Commission clarify that gas not released under the good faith negotiation rule, and thus not subject to the right of first refusal, may not be included in the agreement with a third party offered to the firm sales customers for their right of first refusal. The applicant is concerned that otherwise a producer and third party might include a large amount of unreleased gas in the third party agreement in order to preclude acceptance by most firm sales customers who have no need for so much gas. The Commission agrees that the offer to the third party must include only gas released under the good faith negotiation rule in order to avoid circumvention in the manner suggested by the applicant. In Order No. 451, the Commission did provide that where the offer to the third party encompasses "non-jurisdictional, as well as jurisdictional gas, the right of first refusal will apply to the entire offer." The non-jurisdictional gas referred to was intended to include only non-jurisdictional gas released under the good faith negotiation rule.

The same applicant also requests that the Commission clarify that where a pipeline and a local distribution company are divisions of the same corporation and no sales contract exists between the two, the local distribution company should nevertheless be considered a firm sales customer of the pipeline division for purposes of the right of first refusal. The Commission agrees. If the two were separate but affiliated corporations, the local distribution company would fall within the definition of firm sales customer. There appears no reason to distinguish between the two situations.

Another applicant [275] requests that the Commission clarify whether a firm transportation customer of the pipeline has a right of first refusal. It does not. That right is limited to firm *sales* customers, those being the customers who relied on the pipeline's access to old gas as ensuring their access to adequate supplies at reasonable cost.

One other applicant [276] requests that the Commission lengthen the 20-day deadline for firm sales customers to accept or reject the third party offer. The applicant contends that the 20-day period provides no opportunity to bargain with the producer. There is no need to provide such opportunity since under the regulations governing the right of first refusal the customer must either accept or reject the offer. Any counteroffer constitutes a rejection. The 20-day response period is the same period provided under the regulations governing the section 315(b) right of first refusal. The Commission is not aware that 20 days has proven too short under section 315(b).

Finally, the Commission addresses the relationship between the existing purchaser's section 315(b) bona fide offer and right of first refusal rights and their customers' Order No. 451 right of first refusal. Section 315(b) requires that when a contract for the sale of NGPA section 102(c), 103(c), or 107(c)(1)–(4) gas which was subject to the Commission's NGA jurisdiction on the day before enactment of the NGPA expires or is terminated, the seller must give the existing purchaser a bona fide offer and right of first refusal before selling to a third party. One applicant [277] claims that the Commission has not made any provision in the good faith negotiation rule for the original purchaser's section 315(b) rights.

It is true that on occasion the existing purchaser may have rights under section 315(b) after release of gas under the good faith negotiation rule. Such rights would, of course, arise only with respect to non-jurisdictional sections 102(c), 103(c), and 107(c)(1)–(4) gas released by the pipeline since that is the only gas to which section 315(b) applies.[278] Where such rights do arise in the context of the good faith negotiation rule, the Commission believes that the producer's nomination of a price for the relevant gas in response to the purchaser's step 2 request constitutes the bona fide offer required by section 315(b), and no additional bona fide offer need be given. However, the producer must still give the existing purchaser its right of first refusal with respect to released sections 102(c), 103(c), and 107(c)(1)–(4) gas dedicated to interstate commerce on the day before enactment of the NGPA pursuant to the procedures set forth at § 277.206 of the Commission's regulations. There is, however, no overlap between the section 315(b) and Order No. 451 rights of first refusal. According to the usual practice, the producer must offer only the gas covered by section 315(b) to a third party and present any offer substantially accepted in principle to the original purchaser. In order to comply with § 277.206 the producer must either (1) sell the gas to the third party under the terms of an offer rejected by the original purchaser or (2) sell the gas to the original purchaser.[279] Thus, the gas covered by section 315(b) will never be available for packaging with released jurisdictional gas in a third party offer covered by the Order No. 451 right of first refusal.

H. Blanket Sales Certificates

In Order No. 451, the Commission promulgated a new regulation, 18 CFR 157.301, granting producers blanket authorization to sell gas abandoned under the good faith negotiation rule for resale in interstate commerce. Section 157.301 also provides pre-granted abandonment authorization to discontinue sales of gas upon termination of a contract of sale, requires annual reports of sales initiated under the blanket certificate during the preceding calendar year, and waives rate filing requirements for sales under the blanket certificate.

In their request for rehearing ANR Pipeline Company (ANR) and Colorado Interstate Gas Company (CIG) state that the order appears to require that the abandoned gas *must* be sold for resale in interstate commerce.[280] ANR and CIG assert that such a limitation on the sale of abandoned gas is desirable to assure continued gas supply to the interstate market, and request a clarification from the Commission that the sales of the abandoned gas are so limited. Florida Gas Transmission Company and Transwestern Pipeline Company, on the other hand, argue that the Commission lacks jurisdiction over sales of abandoned gas, except for certain gas from the Outer Continental Shelf (OCS), and seek a Commission declaration that the blanket sales authority granted under the new § 157.301 is only required for such sales, and that abandoned gas can otherwise be sold free from Commission regulation.[281]

None of these applicants correctly stated the effect of abandonment under the good faith negotiation rule. When a producer abandons sales of gas under the rule, the producer is free to sell the abandoned gas to whomever it chooses—whether to an end-user, an interstate pipeline, an intrastate pipeline, or a marketer. A limitation on the sale of abandoned gas to the interstate market, as requested by ANR and CIG, would not be good policy. The Commission sees no need to erect a regulatory barrier to movement of the abandoned gas in response to market forces, or to perpetuate the dichotomy between the interstate and intrastate gas markets that Congress sought to eliminate in passing the NGPA.

Under section 7(c) of the Natural Gas Act, sales of natural gas for resale in interstate commerce require certificate authority from the Commission. Although section 601(a) of the NGPA removed certain gas from the Commission's NGA jurisdiction, some of which may be released under the good faith negotiation rule, the only released gas which needs and therefore receives abandonment authority under the rule is the gas which has not been removed from the Commission's NGA jurisdiction. Therefore, since the gas which is abandoned under the good faith negotiation rule has not been removed from the Commission's NGA jurisdiction, the sale of such gas for resale in interstate commerce requires NGA certificate authority. The new § 157.301 grants that authority. No certificate authority is needed for any other sales of the abandoned gas or for sales of gas released under the rule which has been removed from the Commission's NGA jurisdiction.

Tennessee Gas Pipeline Company asks if the blanket certificate authority granted by § 157.301 is limited to the first sale of the abandoned gas, or if is it applicable to all subsequent sales of such gas.[282] The blanket certificate authority under § 157.301 applies to any sale of the abandoned gas by the party who received abandonment authority under the good faith negotiation rule. Thus, if abandoned gas has been sold under the authority of § 157.301 and such sales have then been abandoned under § 157.301(b) (pre-granted abandonment), subsequent sales from the same wells or leases may also be made under § 157.301. However, the sales authority of § 157.301 is available only to the first seller (or its successor) who has abandoned sales of the gas under the good faith negotiation rule. A reseller who purchases such gas must have its own certificate authority to sell the gas for resale in interstate commerce.

Indicated Producers request the Commission to extend the due date for reports of sales made under the authority of the blanket certificate from March 1 to June 1, asserting that data relating to sales during the latter months of the preceding calendar year will frequently not be available from wells operated by other parties and from gas processing plants until several months after the end of the year.[283] The Commission will extend the due date of such reports until April 1 because it appears that some additional time is warranted. If relevant data is not available to a producer until after April 1, an amended report should be filed.

Kansas Power and Light Company *et al.* (KP&L et al.) argue that the Commission erred by failing to provide a hearing before granting blanket sales

[273] The Commission also rejects PGC's alternative proposal for protecting firm sales customers' access to low-cost old gas without giving them a right of first refusal (at 4–7). That proposal is to give the firm sales customers exclusive rights to purchase the gas for thirty days after its release. However, thereafter the producer would be free to sell to anyone else unencumbered by any right of first refusal. The Commission does not believe this proposal gives adequate protection to the firm sales customers. A producer could simply refuse to negotiate with them and then sell to another purchaser after 30 days.

[274] Arkla at 22–23.

[275] ANR and CIG at 28.

[276] APGA at 63.

[277] APGA at 59.

[278] The fact the purchaser terminated the contract would not deprive it of its section 315(b) rights. *See* Order No. 95–A, FERC Stats. and Regs. ¶ 30,690 (1986) at 30,164–65.

[279] Section 277.204(b).

[280] ANR and CIG at 27.

[281] Florida Gas at 12–15; Transwestern at 6–10. Florida Gas and Transwestern's position on this issue is not entirely clear. They may be arguing that the sale of abandoned gas requires certificate authority only if the sale is for resale in interstate commerce, *i.e.*, a jurisdictional sale under the NGA.

[282] Tennessee at 34.

[283] Indicated Producers at 32.

authorization under § 157.301 because Section 7(c) of the NGA requires that a hearing be held before issuance of a certificate of public convenience and necessity.[284] The Commission believes that the opportunities afforded in this proceeding for comments, reply comments, public hearing, and requests for rehearing satisfy the hearing requirement of section 7(c).[285] The Commission has already found that sale of the abandoned gas for resale in interstate commerce by a producer already authorized to sell the gas to an existing interstate purchaser is in the public interest. A requirement of additional hearings on individual applications for authority to sell such abandoned gas would be unnecessary and impose a detrimental regulatory barrier to the continued movement of the gas in the interstate market, especially since producers have the option to sell the abandoned gas elsewhere without a certificate.

I. Transportation Authority

In the final rule the Commission noted the concern of many commenters that pipelines may release gas under the good faith negotiation rule but then refuse to provide transportation to another purchaser. Since a pipeline which can refuse to transport the released gas to an alternative market is in a position to extract unreasonable concessions from the producer to the detriment of the market generally, or even to refuse to negotiate at all, the Commission acted pursuant to its NGA section 5(a) and other statutory authority to prevent such forms of undue discrimination. Accordingly, the Commission provided for the availability of transportation services by pipelines not subject to the open-access provisions of Order No. 436. The transportation service was authorized to any of the releasing pipeline's existing customers (whether firm or interruptible, sales or transportation customers) and to any interconnecting pipeline. This transportation requirement was a condition on the right of the existing pipeline purchaser to terminate purchases of gas from a first seller under the rule, and on the pipeline's right to nominate contracts or volumes of gas other than those nominated by the producer.[286] The limited transportation requirement assures that the pipeline's existing customers, especially firm sales customers, have continuing access to their original gas supply, and that released gas will find a ready market. The Commission noted that the transportation authorization would ensure that the released gas under the new ceiling price would be brought to market, would serve the public convenience and necessity under NGA section 7, prevent undue discrimination in violation of NGA section 5(a), and would thereby lower prices for all consumers and ensure the just and reasonable operation of the new ceiling price.[287]

In order to avoid regulatory cost to the pipeline, or unnecessary delay in achieving market-responsive benefits to consumers, the Commission provided a blanket transportation certificate under section 7(c) of the NGA to jurisdictional pipelines not already transporting under Order No. 436.[288] The Commission stated that refusals to transport would be scrutinized carefully under the Natural Gas Act and other applicable law.

Requests for rehearing. Several pipelines and others have challenged the grant of transportation authority and the transportation requirement in the rule, alleging that these provisions are outside the scope of the Commission's authority under the Natural Gas Act and NGPA.[289] Such applicants characterize the transportation provisions in the rule as an unlawful imposition of common carrier status on unwilling pipelines. Tennessee and KN Energy both devote several pages of their rehearing applications to a discussion of the legislative history of the Natural Gas Act and the specific language of section 602(b)(2) of the NGPA, to support the proposition that Congress provided that "[n]o person shall be subject to regulation as a common carrier . . . by reason of any transportation . . . authorized by the Commission under section 311(a) of this Act." 15 U.S.C. 3371(a) (1982).[290] The Commission rejects the argument that Order No. 451 subjects transporters to common carrier regulation. Rather, the transportation requirement is a case-specific-requirement arising out of the particular circumstances of individual pipelines, their certificate obligations, and their duty not to discriminate unduly. Some of the applicants also argue that the transportation authority and new ceiling price are so "of one piece" that if the transportation provisions are held to be legally flawed or to require modification, the new ceiling price would become unjust and unreasonable.[291]k

Producers and large industrial consumers of natural gas consider the transportation requirements fully supportable under applicable statutes and Commission precedents, but believe the transportation authorization is too narrow in scope.[292] These applicants urge that the transportation authority be broadened to include intermediate upstream or downstream pipelines if the rule is to have the optimum desired effect of increasing market responsiveness in the natural gas industry.[293] Others suggest that intrastate pipeline transportation should be included,[294] or that the authorized transportation should cover Order No. 436 (open access) pipelines to ensure that transportation of released gas to new purchasers will be adequate.[295]

Commission response. We disagree with the applicants alleging that the transportation authority promulgated in Order No. 451 is beyond the Commission's statutory authority. The transportation obligation placed on a pipeline in certain circumstances is supported by statute and case law, as discussed *infra*.

The statutory provisions relevant to the Order No. 451 transportation requirement include NGPA sections 104, 106, and 501,[296] and Natural Gas Act

[284] KP&L et al. at 18.

[285] *See* Area Rates for the Appalachian and Illinois Basin Areas, 44 FPC 1112 at 1117–1120 and 1132 (1970).

[286] See 18 CFR. 270.201(h).

[287] The Commission found that "failure to condition [avoidance of] the new ceiling price with a transportation provision would cause the new ceiling price to be unjust and unreasonable under section 5(a) of the NGA," insofar as the gas would not be brought to market. 51 FR 22213 (June 18, 1986). This has been apparently misconstrued by some petitioners as an indication that the new ceiling price is somehow not within the zone of reasonableness absent the transportation requirement. This issue is discussed *infra*.

[288] *See* Order No. 451, Appendix B, for pipelines already indicating intent to provide non-discriminatory transportation at the date of issuance. 51 FR 22222–23 (June 18, 1986). Pipelines transporting Gas under the blanket certificate would not become subject to the open-access requirements of Order No. 436 (18 CFR 284.8(b) and 284.9(b)) solely by reason of such transportation. Moreover, when requested by the first seller to provide transportation, intermediary pipelines not subject to Order No. 436 open-access requirements, and upstream from the pipeline releasing gas under the rule, may use the separate transportation certificate under section 7(c) of the NGA provided by new § 284.228.

[289] *See, e.g.*, APGA at 63–68; AGD at 12; and ANR and CIG at 5–6; Florida Gas at 6–12; Texas Eastern at 21–22; MPC/NASUCA at 33–34.

[290] Tennessee at 25–28; KN at 20–25.

[291] *See e.g.*, KP&L *et al.* at 9–10; Southern Natural at 12.

[292] Indicated Producers, PGC.

[293] *See, e.g.*, Indicated Producers at 18–24, PGC at 7–9.

[294] IPAA at 5.

[295] Amoco at 3.

[296] 15 U.S.C. 3314, 3316, and 3411 (1982).

sections 5, 7, and 16.[297] In particular, section 5(a) and its interaction with these other provisions is the central focus of our statutory authority here. Section 5(a) provides that when the Commission finds that

> any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order . . . .

15 U.S.C. 717d(a) (1982). Certain applicants simply ignore these relevant statutory provisions and instead focus on NGPA section 311.[298] No "common carrier" status has been mandated that would contravene NGPA section 602(b)(2). Rather, the statutory authority for the essential transportation requirement is found in sections 5(a) and 7 of the Natural Gas Act (NGA), and the general grants of authority in the NGA and NGPA, namely, NGA section 16 and NGPA section 501(a),[299] in conjunction with NGPA sections 104(b)(2) and 106(c).

Some applicants challenge the Commission's power to condition rates under NGPA sections 104(b)(2) and 106(c) and NGA sections 5(a) and 7.[300] As previously emphasized, the Commission's authority here derives from a harmonious interrelationship of NGA section 5 with sections 7 and 16, not from any of them in isolation.

Other applicants acknowledge that the Commission has such authority that may be used to effect access to gas, but argue that the Commission overreached its authority in this instance.[301] These applicants contend that it constitutes an abuse of the Commission's discretion to preserve the pipeline purchaser's transportation obligation as part of the good faith negotiation procedures. This is simply a plea to substitute these applicants' judgment of what requirements are in the public interest for the Commission's. This suggestion is rejected because the Commission finds the public interest will be served by the transportation obligation—by the protection of the existing firm customers and the continuance of the flow of gas to the market—and this is integral to the functioning of the rule.[302] The Commission therefore confirms that the rule, *as promulgated*, benefits all participants in the process—consumers, transmission and distribution companies, and producers—and declines to remove the important transportation obligation from releasing pipelines.

KN and others appear to misapprehend the interrelationship between the Commission's authority to establish just and reasonable rates for the transportation and sale of natural gas under NGA section 5, the new just and reasonable ceiling price, and the transportation requirement. Certain language in the order may be the source of the misapprehension. Accordingly, the Commission would note that its statement that the "failure to condition the new ceiling price with a transportation provision would cause the new ceiling price to be unjust and unreasonable under section 5(a) of the NGA," [303] merely reflects its conclusion that failure to condition avoidance of the new just and reasonable ceiling price on the availability of transportation would cause the new ceiling price to become unjust and unreasonable under section 5(a) of the NGA, insofar as the gas would not be brought to market, the market-responsive benefits of the rule would not be achieved, and the rights of first refusal granted to firm sales customers would be frustrated in operation. Thus, the focus of the transportation provision is not on price *qua* price, but on the essential need to get the gas to market.

There was, in short, no intention to imply that the new just and reasonable ceilinc price is outside the "zone of reasonableness" absent transportation. Rather, the price bid for the section 104 or 106 gas, whether up to the new ceiling or below it, will elicit neither the supply nor price response which is the underlying purpose of the rule, if the gas cannot be brought to market. In that case, the new "just and reasonable" ceiling price would be the product of a meaningless exercise, since lacking the ancillary but integral transportation the gas would have much greater difficulty reaching the market, and the benefits of the rule would be commensurately delayed or curtailed. Furthermore, the significant role of the right of first refusal in protecting firm sales customers and consumers would be frustrated directly and completely without the availability of transportation. In the absence of assured transportation, the right of first refusal would be a hollow gesture, because it could not operate without a separate, contestable transportation authorization. Consequently, the Commission would be seriously constrained in its analysis of the just and reasonable result without the availability of transportation.[304]

As one court has stated, " 'just and reasonable' is merely a term of art for the public interest. . . ." [305] No one

[297] 15 U.S.C. 717d, 717f, and 717o (1982).

[298] They state that while section 311(a)(1) of the NGPA permits the Commission to authorize interstate pipelines to provide interstate transportation for local distribution companies and intrastate pipelines, section 602(b)(2) of the NGPA provides that no person shall be subject to regulation as a common carrier by reason of any section 311(a) transportation. However, the transportation policy of Order No. 451 is not predicated on NGPA section 311(a).

[299] Section 16 of the NGA provides that "[t]he Commission shall have power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this act." 15 U.S.C. 717o (1982). Section 501(a) of the NGPA provides that "[t]he Commission . . . is authorized to perform any and all acts (including any appropriate enforcement activity), and to prescribe, issue, amend, and rescind such rules and orders as it may find necessary or appropriate to carry out its functions under this Act." 15 U.S.C. 3411(a) (1982).

[300] *See, e.g.*, APGA at 64 n.2, ("section 5(a) contains *no express authority to order transportation*") quoting Order No. 436, FERC Stats. & Regs. ¶ 30,665, p. 31,500 (1985) (emphasis in the original); and APGA at 67 ("the Commission cites its conditioning power under NGPA sections 104(b) and 106(c) as statutory authority authorizing it to impose a mandatory transportation obligation . . . [but] cites no legislative history or case law to support this assertion . . . .")

[301] *See e.g.*, Northern Natural at 25 ("To the extent conditions may be attached to an exercise of this authority at all, these conditions may extend only to the regulated entities that are *changing* the rates" (emphasis in original)). Yet, the pipeline ceasing purchase of high-cost gas (or any gas for that matter) under Order No. 451 is effectively changing its rates as well. INGAA at 13–14 takes a slightly different tack. While acknowledging the Commission's conditioning power, INGAA objects to the transportation provision. ("While INGAA disagrees with the assertion by the Commission of an authority to require pipelines to transport gas, we do not doubt generally that the Commission's conditioning authority can lawfully affect the access of deregulated gas into interstate commerce," *citing* FPC v. Transcontinental Gas Corp. 365 U.S. 1 (1961). *See also* Tennessee at 28–30. Tennessee acknowledges that where "the purchaser will have been granted a valuable right . . . the condition may be lawfully attached." Tennessee at 30.

[302] Because transportation is being required pursuant to NGA sections 5, 7, and 16 the rule is changed by deleting the phrase "deemed to agree" and conforming changes are made at §§ 270.201(h) and 284.225(a) of the regulations.

[303] 51 FR 22213 (June 18, 1986).

[304] This distinguishes Order No. 451 from Opinion No. 245 cited by some petitioners in support of recission of the transportation authorization. Felmont Oil Corporation and Essex Offshore, inc., 33 FERC ¶ 61,333 (1985), *reh'g denied*, 34 FERC ¶ 61,296 (1986), petition for review pending *sub nom.* Consolidated Edison Company of New York, *et al.* v. FERC, D.C. Cir. Nos. 86–1168 *et al.* In Opinion No. 245 the Commission was concerned solely with crafting a proper limited term abandonment so as to protect the rights of all of the several parties in a single abandonment proceeding. Under Order No. 451, however, omission of transportation access would, as discussed in the text, undermine the just and reasonable result.

[305] Pennzoil Co. v. FERC, 645 F.2d 360 at 392 n.27 (5th Cir. 1981).

should misapprehend any language in Order No. 451 as a statement that the new alternative ceiling price under NGPA sections 104 and 106 is not prescribed in the public interest, and just and reasonable as within the reasonable range of replacement costs. However, newly priced gas must be keyed to the availability of transportation, or the market-responsive benefit of the rule would be lost, and the public interest benefits of the new ceiling price also lost. It is in this sense that the new ceiling is only just and reasonable in conjunction with the accompanying transportation provision.

The facilitation of market-responsive pricing undertaken in Order No. 451 by continuation of the transportation requirement for released gas under the Order No. 451 procedures fully comports with NGA and NGPA goals of adequate supply at a reasonable cost. By requiring a pipeline to continue to provide transportation for released volumes, the pipeline is prevented from unduly discriminating against the existing seller and harming competition by denying a producer transportation and thereby blocking the benefits of the final rule.[306] The Commission's authority serves as a "first line of defense" against anticompetitive practices.[307]

Nor must the Commission make specific findings for each pipeline; it can exercise its authority under NGA sections 5(a), 7, and 16 generically as it did here.[308] While the seller's side of the wellhead market is workably competitive, considerable evidence suggests that pipeline buyers in the wellhead market have significant market power. Recent studies by EIA [309] and Broadman,[310] for example, reach this conclusion.

In the final rule, the Commission is using its section 5(a) authority to require that the blanket transportation authorization established by the rule be utilized by the former pipeline purchaser. This is, in effect, a continuation of the pipeline's existing service obligation to move the gas to market.[311] If a pipeline refuses, without Commission authorization, to *continue to* transport the volumes of gas its facilities were dedicated to transport, under the circumstances of this rule, that will be considered an unauthorized abandonment, separate and apart from the seller's abandonment of the "sale".[312] The pipeline's abandonment must be considered in light of its "obligation, deeply imbedded in the law, to continue service." [313] This is particularly apposite in the context of the good faith negotiation procedures, should the pipeline's existing firm sales customers—those for whose benefit the facilities were certificated and whose rates supported those facilities—exercise their right of first refusal and purchase the released gas. It is also important so that producers will have market access for these certificated gas supplies.

This Order No. 451 transportation requirement then is not "common carriage" as argued by some commenters. Rather, it is a requirement that in particular circumstances the former pipeline purchaser must utilize the blanket transportation authorization granted under the rule, because it is not being relieved of its existing obligation to move the gas, in order to further the Commission's goals under NGA section 5(a) of protecting existing customers, moving gas to market, and achieving the just and reasonable benefits of the rule.

A number of petitioners note the Commission's authority to direct extension or improvement of transportation facilities under NGA section 7(a).[314] Yet Order No. 451 is not grounded on the exercise of NGA section 7(a) authority and thus allegations of exceeding that authority are misplaced. No extension, improvement, or establishment of facilities occurs under Order No. 451. Rather, existing facilities are likely to be used as they were before, only the business relationships of the parties will have been changed. Accordingly, citations to section 7(a) cases in support of the proposition that the Commission cannot impose transportation obligations are not on point,[315] since under Order No. 451, the Commission is exercising its section 5(a) authority (in conjunction with the other statutory bases discussed herein).

Nor is there any violation of the "able and willing" requirement of NGA section 7(e),[316] as argued by some commenters.[317] If a pipeline elects to bid a lower price than the price which it is obligated to pay under the existing contract and to accept the right to counternominate higher priced old gas (above market levels) in old gas contracts and high-cost gas in multi-vintage contracts for possible reduction, the purchaser signals that it will seek to abandon purchases of that gas if its price terms are not met. If a purchaser is willing and able to purchase and transport gas sold under the producer's certificate, (a finding which was made by the Commission in granting the certificate in the first place,) the Commission finds as a matter of law that the purchaser remains "able and willing" to continue transporting gas released under Order No. 451. The pipeline cannot simply refuse to transport the gas and by that act thwart the Commission's exercise of its remedial authority under sections 5(a) and 16. Nor can the pipeline, by that act, relieve itself of its existing service obligation to transport the gas.

Both the NGA and the NGPA confer general grants of authority to the Commission which have been interpreted broadly by the courts and which support the transportation obligation in the final rule. Under the broad authority granted pursuant to section 501 of the NGPA and section 16 of the Natural Gas Act, the Commission may act to prevent and/or eliminate distortions in the natural gas markets in conjunction with its specific authority

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[306] *Cf.* Richmond Power & Light v. FERC, 574 F.2d 610, 623 (D.C. Cir. 1978) (Even though the Commission has no authority to compel transmission service, a different case is presented when the agency acts to prevent undue discrimination or anticompetitive activities).

[307] *See* Gulf States Utilities Co. v. FPC, 411 U.S. 747, 760 (1973).

[308] *See* Wisconsin Gas Co. v. FERC, 770 F.2d 1144 (D.C. Cir. 1985).

[309] Richard P. O'Neill, James B. Tobin, and Henry Clarius, "Pipeline Mergers and Their Potential Impact on Natural Gas Markets," *Natural Gas Monthly*, Energy Information Administration, February 1986, p. XXVIII.

[310] Harry G. Broadman, "Elements of Market Power in the Natural Gas Pipeline Industry", The Energy Journal, Vol 7, No. 1 (1986), p. 136.

[311] United Gas Pipe Line Co. v. FPC, 385 U.S. 83 (1966); Panhandle Eastern Pipe Line Co. v. FERC, 803 F.2d 726 (D.C. Cir. 1986).

[312] *See, e.g.*, United Gas Pipe Line Co. v. McCombs, 442 U.S. 529 (1979); California v. Southland Royalty Co., 436 U.S. 519 (1978); Sunray Mid-Continent Oil Co. v. FPC, 364 U.S. 137 (1960).

[313] See Michigan Consolidated Gas Co. v. FPC, 283 F.2d 204, 214 (D.C. Cir. 1960), *cert. denied*, 364 U.S. 913 (1960).

[314] 15 U.S.C. 717f(a) (1982). *See e.g.*, Southern Natural at 20–21 *citing Rural Energy Systems, Inc.*, 34 FERC ¶ 61,389 (1986).

[315] *See, e.g.*, Southern Natural at 20–21 *citing* Panhandle Eastern Pipe Line Co. v. FPC, 204 F.2d 875, 879–81 (3rd Cir. 1953); Panhandle Eastern Pipe Line Co., 15 FPC 46, 56–59 (1956), *aff'd sub nom.* Central West Utility Co. v. FPC, 247 F.2d 306, 311 (1957); Consolidated Gas Supply Corp., 28 FERC ¶ 61,350 (1984).

[316] 15 U.S.C. 717f(e) (1982) ("[A] certificate shall be issued . . . if it is found that the applicant is able and willing properly to do the acts and to perform the service proposed . . . .")

[317] *See, e.g.*, KN at 31 and at 34 *citing* Atlantic Refining Co. v. Public Service Commission of New York, 360 U.S. 378 (1959), FPC v. Texaco, 417 U.S. 380, 394 (1974); Hunt v. FPC 308 F.2d 334, 341 (5th Cir. 1962) *rev'd on other grounds*, 376 U.S. 515 (1964); Northern California Power Agency v. FPC, 514 F.2d 184, 189 (D.C. Cir. 1975). Not only are these cases inapposite from the perspective of the purchaser's abandonment of its purchases, the facilities to be used for the required transportation will be adequate for the service proposed, since they are already being utilized for that purpose. *See* Northern Natural Gas Co., 25 FPC 540, 544 (1961).

under NGPA sections 104(b)(2) and 106(c), and NGA sections 5(a) and 7. Such general grants of authority, of which NGA section 16 and NGPA section 501 are examples, are "not restricted to procedural minutiae, and . . . authorize means of regulation not spelled out in detail, provided the agency's action conforms with the purposes and policies of Congress and does not contravene any terms of the Act." [318] More recently, in *Northern Natural Gas Co.* v. *FERC*, 785 F.2d 338, 343 (D.C. Cir. 1986), the court held that Congress has granted broad remedial authority in section 16 of the Natural Gas Act to carry out the difficult task of regulating the natural gas industry "under appropriate equitable circumstances" and found it appropriate for the Commission to construe its authority broadly.[319]

The statutes discussed herein (NGA sections 5, 7, 16 and NGPA sections 104, 106 and 501) support the Commission's authority, and those applicants that assert there is no statutory basis for an obligation to continue service to bring the gas to market are in error.

Adjustment to transportation authorization. After careful consideration of various commenters' requests,[320] the Commission has determined to expand the transportation authorization in the rule to cover upstream, third-party pipelines which may transport the released gas for redelivery into the system of the former pipeline purchaser. The Commission finds that providing a voluntarily assumable blanket transportation authorization for upstream "feeder" pipelines will serve the twin public interest goals of protecting existing firm customers *and* continuing the flow of gas to the market.

The Commission believes upstream pipelines with available capacity will thus be able to utilize the blanket authorization provided without any regulatory delay or impediment, in order to provide essential transportation services to the same extent they had previously.

The Commission does not believe any blanket transportation authorization is required for interconnecting pipelines downstream of the former pipeline purchaser. Under the final rule, the former pipeline purchaser is already required to deliver the released gas to any interconnecting pipeline, which may continue to transport the gas under such transportation authorization as already exists, or which it may obtain in the future. Interconnecting downstream pipelines thus have the right to purchase released gas and have it delivered by the releasing pipeline to the point of interconnection. Transportation beyond that point requires separate authorization.

In any situation where a producer or end-user believes it is being unduly discriminated against by any third-party upstream or downstream pipeline with respect to transportation services, it may request the Commission to intercede and remedy the situation through the filing of a complaint pursuant to 18 CFR 385.206. The Commission intends the transportation authorization under Order No. 451 to be self-implementing, however, and anticipates that such complaints will be rare.

The Commission also denies requests for expansion of the transportation authority to intrastate pipelines, Canadian producers, domestic producers on a non-releasing pipeline system, or to producers without any old gas.[321] This will in no way be unduly discriminatory or harm such entities. Intrastate producers are in large part beyond this Commission's jurisdiction. In any event, consistent with the goal of eliminating disparities between the interstate and intrastate markets, the rule already provides that gas subject to section 106(b) is eligible for the alternative ceiling price if the seller and purchaser so agree. As for Canadian producers, the Order No. 451 program arises out of the old gas ceiling adjustment provided for in NGPA sections 104 and 106 and does not involve Canadian gas, which is free from any constraints as to price under Title I of the NGPA.[322] In the more market-responsive arena provided by the final rule, Canadian producers as well as domestic producers, whether on non-releasing pipelines or not, will find *less* discrimination and preference as gas sales and purchases become more market-driven. Competitive sellers will more easily find an available market, and may obtain transportation under existing procedures.

Indicated Producers request the Commission to clarify that the first seller may be a shipper under the blanket transportation certificate. Indicated Producers state that there is language in the text of the rule indicating that if a first seller requests transportation service, a separate transportation certificate under section 7(c) is necessary,[323] and request a clarification that the first seller, as well as any other shipper, is entitled to receive transportation under the blanket certificate.[324] The Commission grants the requested clarification that the transportation certificate applies to transportation on behalf of the first seller taking part in the good faith negotiation procedures and to any shipper. This clarification is intended to be consistent with the discussion *supra* regarding upstream and downstream third-party pipelines, however. Thus, although the final rule authorizes and requires transportation by the releasing pipeline on behalf of any shipper-purchaser, the blanket transportation authorization extended to upstream, third-party pipelines is available for their voluntary utilization, but their decision to utilize or not utilize the authorization will be subject to review. Similarly, downstream interconnecting pipelines may not unduly discriminate in the use of their existing transportation authorizations, or authorizations they may obtain in the future. In the vast majority of circumstances then, the Commission anticipates that pipelines both upstream and downstream of the former pipeline purchaser will continue to provide transportation services as before, while billing the actual purchaser or contractor of the transportation service instead of the former pipeline purchaser. Only the former pipeline purchaser is *obligated* to provide transportation to any customer or interconnecting pipeline under the transportation authorization established in the final rule. Refusals to transport by upstream or downstream pipelines may be unduly discriminatory or otherwise unlawful, however, and will be given close and prompt scrutiny in the unlikely event they occur. Unlike former pipeline purchasers, upstream pipelines have no incentive not to continue transporting as before. Accordingly, the Commission finds no current need to make use of the transportation certificate mandatory for upstream pipelines.

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[318] Mesa Petroleum Co. v. FPC, 441 F.2d 182, 187 (5th Cir. 1971), *citing* Niagara Mohawk Power Corp. v. FPC, 379 F.2d 158.

[319] *See also* Consolidated Gas Transmission Corp. v. FERC, 771 F.2d 1536, 1550–51 (D.C. Cir. 1985); Public Service Comm'n of the State of N.Y. v. FPC, 327 F.2d 893, 897 (D.C. Cir. 1964). (Section 16 of the Natural Gas Act held to provide a basis for the Commission to cope with unforeseen problems, and is not confined to procedural regulations, but is a broad grant of authority.)

[320] *See, e.g.*, Indicated Producers at 22–24; PGC at 7–9.

[321] *See* Independent Petroleum Ass'n of Canada; Westcoast Transmission Co., Ltd. and Westcoast Resources, Inc.; IPAA.

[322] 15 U.S.C. 3311(b)(4)(A) (1982).

[323] Indicated Producers at 21.

[324] Id.

J. Transportation Rates

In the final rule the Commission determined that the transportation thereunder would be provided as far as practicable in accordance with the terms and conditions requested by the first seller and its purchaser and at rates promulgated as part of the rule. The rates were based on the § 284.7 concepts established in Order No. 436 and codified in 18 CFR 284.7. In order to expedite access of existing firm sales customers to released gas, such customers were given a right of first refusal.

Where an existing firm sales customer requested transportation of released gas within its existing firm sales contract demand, its cost for such transportation was not to exceed that which it would have incurred in purchasing the gas from the releasing pipeline. To achieve this result, the rate was based on the appropriate components of the commodity charge in the customer's applicable sales rate schedule, with a credit for volumes of gas transported against any minimum commodity bill obligation. This rate was essentially the commodity sales rate of the pipeline less purchased gas costs. No demand charge or reservation fee was assessed since that would be recovered from the customer as part of its sales demand rate.

Where an existing firm sales customer requested transportation of released gas in excess of its existing contract demand, or the gas was transported to any pipeline or customer other than an existing customer on a firm basis, the rate was to be based on a transportation rate schedule on file with the Commission that conformed to 18 CFR 284.7 and either § 284.8(d) for firm service or § 284.9(d) for interruptible service. (Thus, the firm rate could include an appropriate reservation fee since the costs associated with use of capacity for transportation in excess of contract demand are not otherwise recovered from such customers as part of any sales demand rate.) Until such rates become effective, the pipeline must use the rate in one of the pipeline's rate schedules on file with the Commission which the pipeline determines covers service comparable to the transportation service authorized.

Requests for reheoring. A number of applicants have raised questions regarding the practical application of the transportation rates established in the final rule. They raise questions about the priority of access to the transportation authorized under Order No. 451, and the relationship of transportation priorities under Order No. 436. Pipeline applicants are concerned that they may underrecover some of their costs and ask that their sales obligations be reduced commensurate with volumes released. Consumers and producers are concerned that the transportation authorization be truly effective in bringing gas to market, and that the transportation rates be non-discriminatory so as to achieve this goal. Distribution companies raise technical questions about the determination of transportation rates under Order No. 451, the impact of existing pipeline tariffs, and the interplay with Order No. 436.

Commission response. The Commission will not grant the requests of several applicants.[325] that a pipeline's sales obligations associated with contract demand for a firm sales customer exercising its right of first refusal under the rule be commensurately reduced, and converted into a firm transportation obligation. Nothing in the rule is intended to unilaterally affect the existing obligations of the pipeline. However, there is likewise nothing in the rule that prevents the pipeline and the firm sales customer from mutually agreeing to changes in existing obligations, or that prevents the pipeline from filing an amendment to its certificate. The Commission recognizes, however, that a firm sales customer who elects to exercise the right of first refusal and have gas transported in lieu of purchasing gas from the pipeline, without a corresponding reduction in the pipeline's sales obligation, should compensate the pipeline for any costs associated with standing by to resume sales service should the firm sales customer subsequently elect to purchase gas from the pipeline rather than transportion service. Accordingly, the Commission shall grant the applicants' request that pipelines be allowed to assess a standby charge where appropriate.[326] The Commission believes that this charge in conjunction with the rate revisions discussed below will ensure that a pipeline receives neither more nor less for providing transportation than it would for providing sales service. A firm customer purchasing transportation service in excess of contract demand under § 284.225(d)(2) of the regulations may already be paying a reservation fee conforming to § 284.8(d).[327] A firm customer purchasing transportation service within contract demand under revised § 284.225(d)(1) should be subject to the same obligation, unless it is already paying a demand charge related to its sales service.

Under § 284.225(d)(1) the Commission intended the pipeline to collect all appropriate transmission, storage, and gathering components in the commodity rate, less purchased gas costs, properly associated with the provision of transportation service. Thus, applicants' assertions of underrecovery, though understandable, are misplaced. Tennessee Gas Pipeline Company expressed the concern, for example, that the credit to the pipeline's minimum commodity bill by volume of gas transported may result in undercollection by the pipeline of the "production cost component" of its sales commodity rate.[328] This is resolved by the Commission clarifying that pipelines may revise their sales rate schedule to recover the costs associated with standing by to serve a firm sales customer who does not reduce contract demand. The standby charge may include production costs if the costs are incurred in providing standby service. Thus, no undercollection would occur. The production cost component should not be included in the transportation rate whether or not transportation is within or in excess of contract demand. If transportation is within contract demand, then a standby charge (associated with sales service) may include production costs. If transportation is in excess of contract demand, then production costs are recovered through the currently effective sales rates. Accordingly, the volumetric credit to the minimum commodity bill in § 284.255(d)(1) is appropriate. The Commission will amend the regulatory text at § 285.225(d)(1) to more clearly follow the § 284.7 concept and include all appropriate transportation cost components, and will allow a pipeline to revise its sales rate schedules to provide a standby service. Thus, the rate for equivalent services paid by distributors, end-users, and others will essentially be the same.

This will address the concerns of Process Gas Consumers Group and others that distributors should not be entitled to any more favorable transportation rate than any other shipper.[329] This is consistent with Order No. 436 which established that market-responsiveness is best served by transportation rates that are unbundled and cost-based, whether they apply to existing firm sales distribution customers or to other shippers, and whether within, or in excess of, contract demand.

Under revised § 284.225(d)(1), a pipeline shall file for a rate schedule applicable to firm sales customers which meets the requirements of §§ 284.7 and 284.8(d). To the extent the firm sales customer is currently paying a demand charge related to sales service, the pipeline must waive any § 284.8(d) reservation fee that would otherwise be charged. In addition, the pipeline, as already indicated, may include an appropriate revision to its sales rate schedules to recover costs associated with the pipeline's standing by to serve a firm rate schedule customer who does not reduce its contract demand.[330] Volumes of gas transported will continue to be credited against any minimum bill obligation pursuant to § 284.225(d)(1)(iii). Of course, a firm sales customer and a pipeline that mutually agree to reduce the pipeline's sales obligation, will have to the same extent agreed to reduce any credit required under § 284.225(d)(1)(iii). Thus, all customers who request firm transportation will be served under the pipeline's firm transportation rate schedule designed in accordance with § 284.7. Existing firm sales customers will be protected from paying twice for the same capacity by the reqnirement in revised § 284.225(d)(1)(ii) that pipelines must waive the transportation reservation fee to the extent transportation and sales do not exceed their current contract levels.[331]

AGD poses two questions with respect to the § 284.225(d)(2) transportation rates for service "in excess of contract demand" to existing firm sales customers. AGD first asks how this excess is determined and whether daily, monthly, or annual contract demand is used. Second, AGD states that since the rate can only be determined after the fact (*i.e.*, until the contract demand is determined, however it is measured, one cannot determine if it has been exceeded), a rate so defined "offends the 'filed rate doctrine' and lends itself to retroactive ratemaking."[332]

In response to AGD's first question, contract demand should be determined pursuant to the contractual arrangement of the parties. Although under many of the more recently executed gas purchase contracts, contract demand may be measured daily, whatever time frame the applicable contract provides for determining contract demand shall govern. As to AGD's second question, the determination of whether the purchaser is within or in excess of contract demand is inherently different from retroactive ratemaking, which involves a change in an established rate, not a determination of which rate to apply. The filed rate doctrine simply requires that providers have a rate on file for different components of service, and that no rate is legal other than the filed rate.[333] The situation under § 284.225(d)(2) is no different from that under current tariffs that require a charge for overruns. The rate is on file for overruns, but the rate cannot be charged until overruns occur, just as the reservation fee in § 284.225(d)(2) cannot be charged unless the firm volumes transported are in excess of the sales contract demand, however measured. Thus the filed rate doctrine is in no way offended by §284.225(d)(2).

Several applicants raise questions related to the adjustment of existing tariff restrictions to comport with the requirements of Order No. 451. The General Service Customer Group note that its members are generally not allowed to purchase natural gas from any natural gas company other than Panhandle Eastern Pipe Line Company (Panhandle) pursuant to Section 1.9 of the GeneralTerms and Conditions of Panhandle's Tariff.[334] Panhandle also seeks guidance on this situation, and notes that full requirements customers purchasing gas under a rate schedule requiring that all of their gas be purchased from the pipeline, but which then purchase gas released under the good faith negotiation procedures, will be in violation of that rate schedule.

The Commission intends that full requirements tariff provisions are waived to the extent necessary to meet the objectives of Order No. 451. Otherwise the right of first refusal granted to existing firm sales customers in Order No. 451 would be a nullity. For a pipeline with a full requirements or sole supplier clause, the pipeline's election to bid less than the highest price permitted under its existing contract necessarily includes an agreement to waive any existing contract and tariff provisions that would prevent an existing firm sales customer from exercising its right of first refusal. No further authorization will be necessary as common sense requires this for the final rule to operate as intended. Accordingly, such full requirements or sole supplier tariff restrictions should be deemed waived with respect to firm sales customers who purchase gas released under the final rule. Since the Commission finds no cost shifting involved in these full requirements customers exercising their right of first refusal and requesting transportation, the Commission finds no basis to justify any rate schedule reclassification because of Order No 451.

Several applicants ask whether transportation on Order No. 436 pipelines should be made pursuant to Order No. 451. Amoco Production Company suggests that where a pipeline exercises its right under the good faith negotiation procedure to discontinue purchases, it should be permitted to transport that gas for the producer unrestricted by the first-come, first-served provisions of Order No. 436.[335] AGD asks for what time period the transportation service is authorized, and also asks how the service relates to the principle of first come, first-served.[336] AGA requests a similar clarification and asks, in addition, where transportation is provided to an existing customer under Order No. 451 and the pipeline subsequently elects to operate under Order No. 436, is the existing customer

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[325] *See, e.g.*, Transwestern at 18–20; Natural and United at 14.

[326] The Commission does not intend to permit such standby charges to be "loaded" with inappropriate costs so as to make the rate so exorbitant that it prevents operation of the rule.

[327] Where a customer purchases firm service under § 284.8(d), that section permits the pipeline to impose a reservation fee or charge on the shipper as a condition for providing such service.

[328] Tennessee at 32–33.

[329] *See, e.g.*, PGC at 10–12.

[330] As is now the case with the rates in § 284.225(d)(2) and (3), until the rate in revised § 284.225(d)(1) becomes effective, the pipeline must use the rate in one of the pipeline's transportation rate schedules on file with the Commission which the pipeline determines covers service comparable to the transportation service authorized under § 284.225(d)(1). The Commission emphasizes that the transportation authorization is self-executing and further that the interim rate requirements for the authorized transportation services do not require any separate regulatory approval by the Commission and do not provide the pipeline with any discretion to avoid or delay providing the transportation services under the interim rate provision. Rather, the pipeline must provide the services using a rate schedule already on file.

[331] "The pipeline must waive the transportation reservation fee to the extent that a customer pays for facilities associated with such transportation service through demand charges under its firm sales rate schedule."

[332] AGD at 14.

[333] Arkansas Louisiana Gas Co. v. Hall, 453 U.S. 571, 578 (1981); Montana-Dakota Utilities Co. v. Northwestern Public Service Commission, 341 U.S. 246, 251–54 (1951).

[334] General Service Customer Group at 4. Seventy percent of the gas sales in 1985 on Panhandle's system were to General Service Buyers and Small General Service Buyers under Panhandle' full requirements tariff provision.

[335] Amoco at 5–6.

[336] AGD at 13–14. AGD also asks how the Order No. 451 service is to be integrated with existing tariffs and service, which question is addressed *supra*.

given a higher priority than any of the pipeline's other existing customers? AGA asks further whether the existing customer could change its receipt or delivery points after the pipeline opted for Order No. 436, or whether it makes any difference whether the existing customer was receiving the Order No. 451 gas within or in excess of contract demand.[337]

To answer the central question, if an Order No. 451 pipeline subsequently becomes an Order No. 436 pipeline, any shippers under Order No. 451 have priority over new shippers: among the pre-existing shippers, they will likely stand in the same priority vis-a-vis themselves after the open-access election under Order No. 436 as they did before it, but this will depend on how their pre-Order No. 436 relationships are constructed. Transportation of gas released by pipelines already participating under Order No. 436 will be made pursuant to Order No. 436 inasmuch as the Order No. 451 transportation authorization is only available to non-open-access pipelines. In some cases, transportation of the released gas through the releasing pipeline on behalf of any purchaser requesting such transportation will continue until the supply is exhausted, in other cases, upon the expiration of a contract.[338] The priorities that would pertain under Order No. 436 if receipt or delivery points were changed, or if deliveries were made within or in excess of contract demand would continue to apply.

AGA indicates that situations exist where gas that may be released under Order No. 451 is currently being transported through some gathering or short-haul pipeline upstream of the releasing pipeline. AGA suggests that if the releasing pipeline continues to transport the gas through this short-haul pipeline it should be made whole in the event it pays the short-haul pipeline for this transportation service.[339] To respond, since the releasing pipeline will no longer be obliged to purchase the released volumes, it is no longer responsible for the transportation of the released volumes with upstream gatherers or short-haul pipelines. Since it is the existing firm sales customer that, having exercised its right of first refusal, will be purchasing directly from the producer, the firm sales customer (or producer-seller) will have to make its own arrangement with the upstream gatherer for transportation into the releasing pipeline.[340]

Two remaining questions also appear to warrant clarification. ANR Pipeline Company and Colorado Interstate Gas Company (ANR and CIG) ask whether an existing firm *transportation* customer of a releasing pipeline has any rights of purchase or transportation with respect to released gas, and if transportation for such a non-sales customer is to be firm or interruptible.[340a] The brief answer is that only existing firm sales customers have a vested interest in the gas released under the final rule, and only they will have a right of transportation *and* of first refusal thereunder. If they do not exercise their right of first refusal, however, transportation is available to *all* sales and transportation customers pursuant to § 284.225(c), depending on whom the producer seller executes an agreement with.

Florida Gas Transmission Company (Florida Gas) states that the Commission has not expressly limited its rule to take into account factors such as full requirements customers and "transportation rates under existing tariffs which either do not exist or are different from those required under the Commission's rule."[340b] The Commission has already indicated, *supra*, that gas transportation under Order No. 451 operates *pro tanto* to supersede full requirements or sole supplier tariff obligations. Florida Gas' statement regarding transportation tariff rates that do not exist is puzzling. The reference is apparently to the language in §§ 284.225(d) (1), (2) and (3) that requires the pipeline to use as an interim rate "the rate in one of the pipeline's transportation rate schedules on file with the Commission which the pipeline determines covers service comparable to transportation service authorized under this section."[340c] The Commission does not understand Florida Gas' objection and believes that Florida Gas and other pipelines will have sufficiently comparable rates on file until the new § 284.7 rate is established. In particular circumstances, if a pipeline company requires further guidance on this issue, it may request it on a case-by-case basis.

V. Other Issues

A. Gas Subject to Rule

1. Pipeline and Affiliate Production

In Order No. 451 the Commission determined that old gas produced by an interstate pipeline or an affiliate of an interstate pipeline for the pipeline's system supply would be eligible for the new alternative ceiling price, subject to the requirements of the affiliated entities test set forth in section 601(b)(1)(E) of the NGPA.[341] The Commission noted that such eligibility would be consistent with existing Commission policy under Order Nos. 391 and 391-A.[342] Those orders implemented the Supreme Court decision in *Public Service Commission of New York v. Mid-Louisiana Gas Co.*[343] that interstate pipelines are entitled to have intracorporate transfers of gas from their own wells treated as "first sales" and thus be subject to the pricing provisions of the NGPA. After the issuance of Order No. 451, the United States Court of Appeals for the D.C. Circuit remanded Order Nos. 391 and 391-A to the Commission for reconsideration of whether pipelines are entitled to the same prices for their own natural gas production under section 104 of the NGPA as are independent producers.[344]

APGA requests the Commission to grant rehearing on the applicability of the alternative ceiling price of Order No. 451 to pipeline production and to postpone a final ruling thereon pending its action on the remand of Order Nos. 391 and 391-A.[345] APGA also argues that the potential for abuse of the good faith negotiation procedures between an interstate pipeline and its production division or affiliate supplier is very high, and that it will be difficult for the Commission to "police" such abuses under the affiliated entities test. Therefore, APGA urges the Commission not to apply the alternative ceiling price for old gas to affiliate or pipeline production. In the alternative, APGA urges the Commission to impose special safeguards on renegotiations of the price of affiliate or pipeline production, such as mandatory arbitration or mediation by an impartial third party, auditing of renegotiations by the Commission staff, or spot auditing of renegotiated prices, to assure compliance with the affiliated entities test.[346]

In *Phillips Petroleum Co.* v. *FERC*, *supra*, the Court noted that prior to the enactment of the NGPA, pipeline production from wells drilled on or before January 1, 1973, (old wells) on leases acquired on or before October 7, 1969, (old leases) was priced on the basis of the actual cost while independent producer rates were based on average costs of production within an area, or nationwide, as was pipeline production from new leases and new wells on old leases. Although the Commission attempted to perpetuate this pricing system after enactment of the NGPA by defining "first sale" to exclude intracorporate transfers of pipeline production from old wells on old leases,[347] the Commission was reversed by the Supreme Court in *Mid-Louisiana, supra*. The Commission then issued regulations in Order Nos. 391 and 391-A which applied the same ceiling prices under section 104 to pipeline production as to gas purchased from independent producers, asserting that, "the *Mid-Louisiana* decision requires parity treatment for producer and pipeline production."[348] However, the Court of Appeals in the *Phillips* case concluded that the Commission misinterpreted *Mid-Louisiana* as requiring absolute parity of pricing. According to the Court in *Phillips*, section 104 of the NGPA could be interpreted to permit parity of pricing for independent producer and pipeline production, but the Commission would have to offer a reasoned rationale for that interpretation and not base such a conclusion on its erroneous belief that *Mid-Louisiana* mandated such a result.

The Commission must determine on remand of the *Phillips* case whether section 104(b)(1) of the NGPA incorporated the cost-of-service rate for each particular pipeline's production from its old wells on old leases or applied the just and reasonable rates established by the Commission for independently produced gas to such pipeline production. However, in Order No. 451 the Commission established an alternative ceiling price under the authority of section 104(b)(2) and the just and reasonable standard of the NGA, and determined that pipeline production would be eligible for that alternative ceiling price, along with all other old gas, regardless of what the otherwise applicable ceiling price might be under section 104(b)(1). Therefore, the resolution of the issue remanded to the Commission in *Phillips*, a question of interpreting section 104(b)(1), does not affect the Commission's decision in this proceeding that the alternative ceiling price for old gas is available for pipeline production.

The Commission believes that interstate pipelines and their affiliate suppliers should be eligible to receive the alternative ceiling price for old gas established in Order No. 451 for the same reasons and under the same conditions as independent producers. The reasons adduced in Order No. 451 for permitting an increase in old gas prices apply to gas owned by pipelines as well as gas owned by independent producers.

The Commission intends to give special scrutiny to a pipeline's recovery of its costs of purchasing repriced old gas from its own production division or an affiliate and believes that the affiliated entities test will effectively serve to limit a pipeline's recovery of such costs to levels no higher than the costs of comparable purchases from other non-affiliated suppliers. While there are unresolved issues concerning the mechanics of applying the affiliated entities test,[349] there should be no more difficulty in applying that test, when those issues are resolved, to prices paid by a pipeline to its affiliated suppliers or its own production division for repriced old gas than for other categories of gas. It is thus unnecessary to impose any "special safeguards" on these transactions beyond the requirements of the affiliated entities test. Accordingly, the Commission will deny APGA's application to grant rehearing on this issue.

2. Minimum Rate and Fixed-Price Gas

The Commission noted in Order No. 451 that contracts for the sale of old gas at the minimum rate or at a fixed rate less than the applicable maximum lawful price would not be eligible for renegotiation under the good faith negotiation procedures because such contracts lack the contractual authority to increase prices necessary to invoke those procedures. Nevertheless, the Commission said that old gas sold under such contracts could be repriced up to the alternative ceiling price if, and only if, the purchaser agreed to pay a higher price after the effective date of Order No. 451.

APGA argues that the alternative ceiling price for old gas should not apply to gas sold under minimum rate or fixed price contracts, even if the purchaser agrees to pay a higher price, because the producers "hold the trump cards under the . . . good faith renegotiation procedure . . . [and] will have the ability to extract major concessions from pipelines." APGA also argues that the Commission should not give producers the right to collect increased rates under their lowest-cost minimum rate and fixed-price contracts without giving pipelines a corresponding right to renegotiate price decreases under their high-cost "problem" contracts.[350]

Since the possibility of abandonment under the good faith negotiation procedures is not available for sales under minimum rate or fixed-price contracts, the Commission fails to see how a producer can secure a purchaser's agreement to pay a higher price for old gas subject to such contracts without making some concession of comparable value to the purchaser. In fact, purchasers have the same right to seek voluntary renegotiations of price under their high-cost problem contracts as producers with minimum rate or fixed-priced contracts. Accordingly, the Commission sees no reason for disqualifying old gas sold under minimum rate or fixed-price contracts from eligibility for the alternative ceiling price, provided the purchaser agrees to a higher price.

3. Optional Procedure Certificates

Tenneco Oil Company and Felmont Oil Corporation seek clarification or rehearing on the applicability of the alternative ceiling price of Order No. 451 to old gas sold under an "optional procedure certificate" issued under the authority of § 2.75 of the Commission's regulations. Nothing in Order No. 451

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[337] AGA at 36-37.

[338] 51 F.R. 22213 (June 18, 1986). (Authorization for "transportation will continue until the supply is exhausted, or . . . [until] transportation of such gas ceases upon the expiration of a contract where a pipeline subsequently becomes subject to Order No. 436.") *Id.*

[339] AGA at 37.

[340] This situation appears related to the issue of whether the blanket transportation should be expanded to cover all jurisdictional transportation arrangements applicable to the gas released, whether upstream or downstream. As discussed in part IV. I., *supra*, the blanket transportation authorization applies to the pipeline releasing gas under Order No. 451 and to any upstream pipeline, and is required to be utilized as a mandatory obligation for the former purchasing pipeline and as a voluntarily assumable blanket authorization for upstream "feeder" pipelines. Transportation through pipelines downstream of the releasing pipeline will be pursuant to section 7(c) certificates or pursuant to Order No. 436. Thus, transportation from the seller to the former pipeline purchaser or to any interconnecting line may proceed without further regulatory approval, with billing of applicable rates now to be made to the parties actually purchasing the transportation services.

[340a] ANR and CIG at 28.

[340b] Florida Gas at 11.

[340c] *See* 18 CFR 284.225(d) (2) and (3) and revised 284.225(d)(4) (51 FR 22221).

[341] Section 601(b)(1)(E) provides that a first sale of natural gas between an interstate pipeline and its affiliate within the NGPA's maximum lawful price shall be deemed to be just and reasonable if the amount paid does not exceed the amount paid in comparable first sales between persons not affiliated with the interstate pipeline.

[342] 49 F.R. 33649 (Aug. 27, 1984); 50 FR 14374 (Apr. 12, 1985); 18 CFR 270.203 (1986).

[343] 463 U.S. 319 (1983).

[344] Phillips Petroleum Co. v. FERC, 792 F.2d 1165 (D.C. Cir. 1986).

[345] APGA at 69-71.

[346] APGA at 71-73.

[347] Order No. 58, 44 FR 66577 (Nov. 20, 1979); Order No. 98, 45 FR 53091 (Aug. 11, 1980); 18 CFR 270.203 (1983).

[348] Order No. 391-A, 50 FR at 14378, 31 FERC ¶ 61,036 (Apr. 10, 1985).

[349] *See, e.g.*, Tennessee Gas Pipeline Company, 30 FERC ¶ 63,027 (1985), currently pending before the Commission on exceptions to the initial decision.

[350] APGA at 73-74.

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addresses optional procedure certificates.

In 1972 the Federal Power Commission established a special procedure for certification of new gas sales in interstate commerce at rates in excess of the otherwise applicable maximum lawful rate if the producer waived its right to seek future rate increases. Both Tenneco and Felmont hold certificates issued under those procedures under which old gas is currently being sold at contract rates well below current market prices—57 cents per Mcf under a Tenneco contract and 45 cents per Mcf under a Felmont contract. Tenneco and Felmont ask the Commission to clarify or to amend, if necessary, the regulations promulgated in Order No. 451 so they will have an opportunity under the good faith negotiation procedures to renegotiate higher prices for old gas sold under their optional procedure certificates.

In Order Nos. 64 and 64–A,[351] the Commission determined that producers operating under optional procedure certificates could not collect NGPA prices for gas not removed by section 601 of the NGPA from the Commission's NGA jurisdiction. The United States Court of Appeals for the Fifth Circuit upheld those orders.[352] Even if a contract underlying an optional procedure certificate provides contractual authority for escalation to higher rates found just and reasonable by the Commission, rate increases would be barred by the producer's agreement to waive the effect of indefinite price escalator clauses in order to receive an optional procedure certificate.[353] Producers are also barred from increasing their rates except in accordance with the originally certificated contract by the requirement of § 2.75(m) of the Commission's regulations that they waive their rights to make rate filings under section 4 of the NGA. Holders of optional procedure certificates will therefore be ineligible to initiate renegotiations of their underlying contracts under the good faith negotiation rule because such contracts will lack indefinite price escalator clauses, or their rights under such clauses will have been waived in order to qualify for the certificate. However, purchasers may voluntarily negotiate with their producers to reprice old gas within the new alternative ceiling price of Order No. 451. If a purchaser agrees to pay increased prices for such gas, a producer may file a petition for a waiver of the regulation's prohibition against rate filings under section 4 of the NGA.[354]

4. Existing contracts with area rate clauses

The Independent Petroleum Association of America (IPAA) notes that the applicability of the good faith negotiation procedures is limited to contracts that provide authority for the first seller to collect a higher price upon establishment by the Commission of a higher maximum lawful price. IPAA argues that this test "leaves open" all of the interpretive issues addressed by the Commission in the Order No. 23 series [355] regarding whether area rate clauses in existing contracts permit the collection of NGPA ceiling prices. IPAA suggests that the Commission declare that a contract with any form of area rate clause is eligible for renegotiation under the good faith negotiation procedures.

The Commission declines to adopt this suggestion, but believes that past proceedings under Order No. 23–B have already resolved most issues of contract interpretation that might arise under the good faith negotiation rule. Order No. 23–B established certain procedures to determine whether particular price escalation clauses authorize increases to NGPA maximum lawful prices. The most commonly discussed price escalation clause, called an "area rate" clause, escalates the price to whatever lawful rate the Commission allows in an area rate proceeding. Thousands of area rate clauses have been filed by pipelines as part of their "evidentiary submission" [356] and reviewed under the Order No. 23–B procedures. To the extent area rate clauses have been found under those procedures to authorize escalation to NGPA prices, such clauses provide authority for escalation to the alternative ceiling price established by the Commission in Order No. 451. Nevertheless, the Commission cannot say that an existing contract with "any form" of area rate clause will be eligible for renegotiation under the good faith negotiation rule. Whether a contract provides authority to collect a higher price upon establishment by the Commission of a higher maximum lawful price depends on the language of the contract and the intent of the parties. Unresolved disputes concerning such contractual authority may be resolved under the procedures established by Order No. 23–B. However, the argument frequently made in Order No. 23–B proceedings, that area rate clauses authorize escalation to higher rates set by the Commission but not to the NGPA rates set by Congress, will not likely be available to protest the authority of area rate clauses to increase rates to the Commission-set rates of Order No. 451.

B. Block Billing

In the final rule the Commission concurred with the view of most commenters that the block billing [357] proposal in Docket No. RM85–1–000 (Part D) and the Department of Energy proposal that was adopted in modified form by the final rule were to a large extent mutually exclusive. The Commission indicated that any action on block billing would be deferred to the Docket No. RM85–1–000 proceedings.

Rehearing requests. Certain applicants question the Commission's decision to defer action on block billing.[358] Panhandle, for example, asserts that, "[r]ather then taking steps which would require producers to sell gas at market prices, the Commission [in Order No. 451] is attempting to provide higher price levels to producers while otherwise maintaining the contractual status quo . . . ." [359] KP&L argues that the Commission erred "by failing to consider *now* its block billing proposal." [360] and that Order No. 451 does not explain why the block billing proposal does not present an alternative superior to the rule adopted. APGA, for its part, also argues that block billing was a superior alternative for resolving the disparity between old and new gas prices. APGA asserts further that Order No. 451 exceeds the Commission's statutory authority, but block billing would correct the pricing distortions the Commission found to be unjust and unreasonable in the final rule without exceeding the breadth of its statutory authority. APGA states that the

[351] 45 FR 5685 (Jan. 24, 1980); 45 FR 16171 (Mar. 13, 1980).

[352] *Columbia Gas Development Corp.* v. *FERC*, 651 F.2d 1146 (5th Cir. 1981).

[353] *Id.* at 1153; 18 CFR 2.75(f) (1986).

[354] *Id.* at 1160.

[355] Order No. 23, 44 FR 16695 (Mar. 20, 1979); Order No. 23–B, 44 FR 38634 (July 3, 1979); Order on Rehearing of Order No. 23–B, 44 FR 48174 (Aug. 17, 1979).

[356] See 18 CFR 154.94(j) (1984).

[357] Block billing would require pipelines to bill their customers separately for old gas (Block 1) and new gas (Block 2). Block 1 old gas is gas which was committed to interstate commerce when the NGPA was enacted. This gas is subject to the relatively low price ceilings established by NGPA sections 104, 106(a) and 109. Block 2 new gas is gas whose price has been decontrolled or is subject to the relatively high incentive prices established by other sections of the NGPA. Under the block billing proposal, a pipeline's customers could purchase a specified percentage of the pipeline's Block 1 gas based on their level of purchases during the period 1979–1984.

[358] *See, e.g.*, APGA at 74–78; KP&L *et al.* at 22–24; and Panhandle and Trunkline at 10–11.

[359] Panhandle and Trunkline at 11.

[360] KP&L *et al.* at 22.

Commission has sounded the "death knell" for the block billing proposal.[361]

Commission response. The Commission believes it is premature for applicants to characterize Order No. 451 as sounding the final tocsin for the block billing proposal. The Commission does intend to review that proposal at a date after Order No. 451 has an opportunity to operate so that its effects can be gauged. Based on the comments received, the Commission determined that the benefits of Order No. 451 might have been undercut, or made more difficult to measure, had the proposal been put into effect simultaneously with Order No. 451. Moreover, there was evidence that the block billing proposal would merely have shifted inefficiencies to different parts of an already distorted market.[362] It was argued, for example, that the anticipated consumer savings from block billing would not reach consumers because a distributor entitled to a large block of old gas (Block 1) may, by rolling-in Block 2 costs, obscure the true value of the overall supply to its customers, but at a lower level in the distribution chain.[363] After analysis of the evidence compiled in this proceeding, the Commission determined that the most direct means of avoiding market distortion is by eliminating the artificially low gas cushion.

Contrary to the assertions of Panhandle and others, the rule adopted does not maintain the "contractual status quo" but rather offers more of an opportunity for mutuality in negotiations.[364] Under block billing, the pipeline would not be free to offer price changes for old gas, but under Order No. 451 it is free to establish any negotiating posture it wishes, *and* may also seek renegotiation of other contracts. The Commission intends to make a final disposition of the block billing proposal in due course, but will do so in Docket No. RM85–1–000 (Part D).

In essence, those applicants objecting to the Commission's deferral of action on block billing would have had the Commission exercise its judgment differently. As with so many issues in this final rule, the Commission could have drawn a line elsewhere—perhaps to adopt block billing concurrently; or perhaps to reject it on the merits now. That the Commission instead wished the processes in Order No. 451 to operate for a time without concurrent implementation of block billing (which many commenters doubted even could be administered concurrently),[365] does not make the Commission's decision unreasonable or outside its authority.[366]

C. Response to Administrative Law and Procedural Claims

1. Transportation and Right of First Refusal Provisions

Requests for rehearing. Several applicants argue that the Commission failed to provide commenters with adequate notice and an opportunity to comment on the transportation provisions and the right of first refusal provisions adopted in Order No. 451.[367] Applicants point out that DOE's initial proposal for Order No. 451 contained no mention of transportation for gas released under the good faith negotiation procedures or a right of first refusal. Therefore, they argue that by adopting these provisions, the Commission violates the requirements of the Administrative Procedure Act (APA) that agencies provide notice, a concise statement of the basis and purpose of the proposed rule, and an opportunity to comment.[368] According to these applicants, the Commission did not have an opportunity to adequately examine the impact of the transportation requirements or the right of first refusal on the wide range of interests that will be affected by the adoption of these provisions. Additionally, applicants argue that persons adversely affected by the blanket transportation and right of first refusal provisions were not afforded an opportunity to file comments and otherwise participate in this rulemaking proceeding. Applicants, therefore, request the Commission to either vacate Order No. 451 because of this legal deficiency, or invite additional comment.

Commission response. The final rule in this proceeding did not violate the requirements of the APA. Although DOE's proposal and the Commission's notice of procedural schedule preceding Order No. 451 did not specifically provide provisions for transportation and the right of first refusal in connection with the good faith negotiation rule, the Commission was not required to renotice the new provisions and provide for additional comments.

Federal agencies have considerable flexibility under the APA to make changes—even substantial changes—in final rules based on comments submitted during the comment period without renoticing the new provisions.[369] Rulemaking proceedings would never be terminated if the APA were interpreted to require starting the proceeding over again each time the Federal agency modifies a proposed rule in response to comments submitted during the proceeding.[370] As long as the changes represent a logical outgrowth of the initial notice, or develop the rule originally proposed, neither the APA nor the courts require Federal agencies to provide interested persons with a new opportunity to comment.[371]

The Commission concludes that the notice for Order No. 451 fairly apprised interested persons of the issues before the Commission. The Commission believes that the public could determine that gas released under the good faith negotiation procedures involved the issues of transportation and protecting the public interest. In fact, a number of commenters raised the transportation issue in their initial comments. Several commenters expressed concern that pipelines might release gas under the good faith negotiation rule, and then refuse to provide transportation for the released gas to other purchasers.[372] These commenters proposed several alternative solutions to the transportation problem. The Commission notes that since these issues were raised in initial comments, an opportunity was provided for response to these comments not only in

[361] APGA at 75.

[362] *See* Supplemental Comments of Texaco Inc., filed Feb. 25, 1986, Docket No. RM86–3–000, at 9–10.

[363] *See* J. Kalt "Old Gas Decontrol, FERC's Block Billing for Pipelines, and the Winners and Losers in Natural Gas Policy" (Study sponsored by Natural Gas Supply Association) (1985) at 15. ("In so far as distribution companies are likely to engage . . . in rolled-in pricing of their own, Block Billing would serve primarily to push the problems of gas pricing one step further down the distribution chain.")

[364] *See* Panhandle and Trunkline at 11.

[365] 51 FR 22210 n.271 (June 18, 1986).

[366] See Capital Cities Communication, Inc. v. FCC, 554 F.2d at 1139 (1976). Also, where the Commission exercises its remedial authority, its discretion is "if anything, at zenith." Niagara Mohawk Power Corp. v. FPC, 379 F.2d 153, 159 (D.C. Cir. 1967).

[367] *See e.g.*, ANR Pipeline Company and Colorado Interstate Westcoast Transmission Company, Ltd. and Westcoast Resources, Inc.; KN Energy, Inc.; Northern Distributor Group; American Public Gas Association; and Northwest Central Pipeline Corporation.

[368] 5 U.S.C. 553(b) (1982).

[369] *See* Mid-Tex Elextric Cooperative, Inc. v. FERC, 773 F.2d 327, 339 (D.C. Cir. 1985); Pennzoil Co. v. FERC, 645 F.2d 360, 371 (5th Cir. 1981); American Iron & Steel Institute v. EPA, 568 F.2d 284, 293 (3rd Cir. 1977); International Harvester Co. v. Ruckelshaus, 478 F.2d 615, 632 n.51 (D.C. Cir. 1973).

[370] International Harvester Co. v. Ruckelshaus, 478 F.2d 615, 632 n.51 (D.C. Cir. 1973); Kennecott v. United States EPA, 780 F.2d 445, 459 (4th Cir. 1985).

[371] Connecticut Light and Power Co. v. NRC, 673 F.2d 525, 533 (D.C. Cir.), *cert. denied*, 459 U.S. 835 (1982); *see also*, Chocolate Manufacturers Ass'n of United States v. Black, 755 F.2d 1098, 1102 (4th Cir. 1985).

[372] *See e.g.*, Texaco, Inc. (Texaco); Natural Gas Supply Association (NGSA); Indicated Producers; and PGC.

reply comments,[373] but also during the public hearing.[374]

The initial comments, the alternatives proposed in the initial comments, the reply comments, and the testimony presented at the public hearing, made it clear to the Commission that without some provision for transportation added to the final rule, producers could not effectively market the released gas to other customers. Therefore, the Commission concluded from comments submitted that there was no assurance that first sellers could market released gas unless their existing purchasers are operating under the open access transportation provision of Order No. 436.[375] In addition, the Commission concluded that in order for the benefits of Order No. 451 to be realized in terms of both supply and price response, released gas must be marketed in an efficient and effective manner, and therefore promulgated the transportation provisions.

Specifically, the Commission provided limited blanket authority for an existing pipeline purchaser to transport gas released under the good faith negotiation provisions of Order No. 451. In particular, pipelines that release gas must transport any gas released to existing customers or to any interconnecting pipeline, as a condition of the ability of the existing pipeline purchaser to terminate purchases of gas from a first seller under the Order No. 451. This condition would ensure that the price for released gas will continue to be competitive. Without this condition the Commission concluded that both consumers and pipelines would be restricted in their access to gas supplies released under the rule.

The Commission granted the right of first refusal to provide pipeline's firm sales customers, primarily local distribution companies, the ability to protect their access to adequate gas supplies at reasonable costs, since they relied on the pipelines continued access to such gas under its service obligations. The right of first refusal was a logical outgrowth of the abandonment provisions of the good faith negotiation rule. In particular, no natural gas company may abandon jurisdictional facilities, or service rendered by jurisdictional facilities absent a finding that gas supplies are depleted, service is unwarranted, or "that the present or future public convenience or necessity permit such an abandonment."[376] The right of first refusal supports the Commission's finding that the abandonments permitted under the good faith negotiation rule are in the present or future public convenience or necessity.

The Commission also recognized that the right of first refusal could not be exercised unless transportation services are available to the customer. Hence, under the final rule, if a pipeline purchaser chooses to terminate purchases of gas, the right of first refusal and the limited transportation authority ensure that the pipeline's existing customers, especially firm sales customers, have a means of keeping the released gas on-system and of getting the gas transported for their use.

The Commission emphasizes that an ongoing dialog, which began with initial comments filed in this proceeding, continues as the Commission reviews and responds to the petitions for rehearing. The Commission concludes therefore that the adoption of the transportation provision and the right of first refusal were logical outgrowths from the original DOE proposal and the comments thereon filed with the Commission. In addition, the Commission believes that the proposal and comments adequately framed the issues so that commenters were aware of the need to include transportation authority and the right of first refusal in the final rule and had an adequate opportunity to present their views in reply comments, the public hearing, and on rehearing.

2. Environmental impacts

NEPA requires Federal agencies to prepare an environmental impact statement (EIS) any time their actions will or may have a significant effect on the quality of the human environment.

Rehearing petitions. Northwest Central and KN Energy argue that Order No. 451 violates section 102(2)(c) of the National Environmental Policy Act (NEPA).[377] In particular, these applicants argue that the Commission, in violation of NEPA's procedural requirements, failed to consider the environmental impact of raising the price of old gas, which may cause some industrial customers to switch from natural gas to No. 6 fuel oil.

Commission response. The Commission does not believe that it needs to perform a NEPA review of Order No. 451. An environmental analysis of any major Federal action is premised on the existence of a foreseeable direct connection between the Federal action and an environmental effect. This rulemaking has no such foreseeable direct connection, both because of the nature of the rulemaking and because of the rulemaking's relationship to the natural gas marketplace.

With respect to the nature of the rulemaking, Order No. 451 does no more than allow producers to collect a higher price for old gas or to seek alternative markets for their gas pursuant to the Commission's statutory authority. Order No. 451 does not impose any obligation on any person to purchase or sell old gas. It does not require or authorize any person to construct facilities for these purchases or sales. The order by itself does not directly cause any activities having environmental effects.

With respect to the rulemaking's relationship to the natural gas marketplace, the rulemaking is coincident to a variety of economic conditions and activities which themselves may independently have environmental and economic impacts. These intervening economic conditions and activities include the terms of existing and future natural gas contracts, patterns of industrial, commercial and residential gas consumption, the level of industrial activity, general economic conditions, the price of alternative fuels, the marketability of gas, fuel-switching in relation to conversion costs, and gas conservation efforts. In this instance, the rulemaking cannot be said to have any direct environmental effect whatsoever in light of these intervening considerations. In this connection, Northwest Central's[378] argument, that this rulemaking will affect the environment adversely due to fuel-switching that results from higher gas prices, is inaccurate. It fails to account for the marketability of the gas, the price of alternative fuels, and other intervening conditions that will restrain purchasers from agreeing to unnecessarily high prices for old gas and prevent producers from seeking higher prices or the abandonment of service obligations if the producer and pipeline fail to reach agreement under the good faith negotiation rule.

It is unnecessary for the Commission to undertake a NEPA review in this proceeding because of the diverse considerations that are involved. In fact, the Commission has determined that environmental review under NEPA is not necessary if the variables involved render any environmental consequences unforeseeable.[379] The Commission believes in the continued validity of this approach. NEPA does not require agencies to engage in environmental impact statements, when the causal relationship between a Federal action and certain environmental effects is remote and conjectural.[380] The Commission believes that this principle applies here. There is no direct connection between Order No. 451 and any changed patterns of consumption or other market effects, much less the environmental effects of any such actions, that would warrant examination of the issue beyond the economic considerations that the Commission has already taken into account.[381]

D. Filing Fees

In Order No. 451 the Commission said there will be no change in applicable rate filing requirements but that filing requirements would be waived for sales of gas abandoned under the good faith negotiation rule and resold under a blanket certificate.[382] Indicated Producers request the Commission also to waive fees applicable to filings made by producers to collect a price for old gas renegotiated under the rule.[383] Absent such a waiver, there will allegedly be a disincentive to voluntary renegotiation of old gas prices with existing purchasers and an incentive to seek abandonment under the good faith negotiation procedures and resell the abandoned gas under a blanket certificate. IPAA asserts that renegotiations under the rule will trigger an "avalanche" of producer rate filings, which the Commission may wish to avoid by amending the regulations to waive rate filings engendered by negotiations under the rule.[384]

Small producers, *i.e.*, producers not affiliated with a major pipeline company and with jurisdictional sales of less than 10,000,000 Mcf of natural gas per year, are exempt from all rate filing requirements under existing regulations to the extent these rates are authorized by contract.[385] The Commission does not believe that rate change filings by large producers resulting from Order No. 451 will impose an unmanageable administrative burden on the Commission's staff or be unduly burdensome to the producers. The filing fee for producer rate changes is $400, an amount that recovers the costs of processing such filings.[386] The Commission does not believe that the filing fee will substantially affect a large producer's decision to renegotiate the price with an existing purchaser or seek abandonment under the good faith negotiation procedures. Accordingly, the Commission will not waive the filing requirement or the filing fees for producer rate change filings resulting from renegotiated old gas prices under Order No. 451.

E. Requests for Stay

A relatively small number of the applications for rehearing included requests for stay of the effectiveness of Order No. 451. On July 28, 1986, the Commission denied the requests of KN Energy, Inc. and certain Florida Cities for an immediate stay of the effectiveness of the final rule.[387] At that time the Commission noted that several other applicants had requested a stay pending judicial review, in the event their applications for rehearing were denied. These applicants included the American Public Gas Association (APGA), the Interstate Power Company, the Northern Distributor Group, and Laclede Gas Company. On December 5, 1986, AGA, APGA, AGD and UDC also filed a joint petition for a stay of the effective date of the good faith negotiation procedures. The Commission has evaluated the arguments made by these applicants and has in the main denied the requests for rehearing.

In reviewing requests for stay, the Commission applies the standard set forth in the Administrative Procedure Act, 5 U.S.C. § 705 (1982), *i.e.*, if the Commission finds that "justice so requires."[388] For essentially the reasons set forth in its order of July 28, 1986,[389] the Commission finds that justice does not require postponing the effective date of Order No. 451, and the requests for stay not heretofore disposed of are therefore denied.

F. Effective Date and Paperwork Reduction Act Statement

The amendments to the Commission's regulations adopted in this order on rehearing will become effective on January 23, 1987. The effectiveness of the date on which a producer is

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[373] *See e.g.*, PGC; Indicated Producers; MPC/NASUCA; and Exxon Company.

[374] *See e.g.*, Nicholas J. Bush, NGSA; Charles Jordan, Chevron U.S.A.; Ralph Pearson, Texaco; Ken Notary, Chemical Manufacturing Assn.; William Bennett, Amoco; and Edward Grenier, PGC.

[375] As explained more fully in Order No. 451 and elsewhere in this order on rehearing, the Commission found it necessary to include transportation provisions which would ensure availability of transportation service if a pipeline were not operating under the transportation authority of Order No. 436.

[376] 15 U.S.C. 717f(b) (1982).

[377] 42 U.S.C. 4332(2)(c) (1982).

[378] Northwest Central at 37.

[379] *See* Opinion No. 770, "National Rates for Jurisdictional Sales of Natural Gas," RM75-14, issued July 27, 1976, 58 FPC 509, *reh. denied*, Opinion No. 770-A, 56 FPC 2698 (1976), *aff'd*, American Public Gas Ass'n v. FPC, 567 F.2d 1016 (D.C. Cir. 1977), *cert. denied*, 435 U.S. 907 (1978); Order No. 94-C, "Regulations Implementing Section 110 of the Natural Gas Policy Act of 1978 and Establishing Policy Under the Natural Gas Act," RM80-47-002, *et al.*, issued May 24, 1983, FERC Stats. & Regs., Regulation Preambles (1982-1985), ¶ 30,454.

[380] *See e.g.*, Citizen Advocates for Responsible Expansion v. Dole, 770 F.2d 423 (5th Cir. 1985); Save the Bay, Inc. v. United States Corps of Engineers, 610 F.2d 322, 326 (5th Cir. 1980); Sierra Club v. Hodel, 544 F.2d 1036, 1039 (9th Cir. 1976); Citizens Committee Against Interstate Route 675 v. Lewis, 542 F. Supp. 496, 531 (S.D. Ohio 1982). In addition, the regulations of the Council on Environmental Quality, the agency responsible for administering NEPA, also recognize that there are some Federal actions which, by their nature, do not raise the kind of environmental concerns against which NEPA is intended to guard. These are described as actions which do not individually or cumulatively have a significant effect on the human environment. Neither an environmental assessment nor an environmental impact statement is required for such actions. *See* 40 CFR 1508.4 (1985).

[381] Of particular note are Section IV. D., Supply Response; Section IV. E., Price Response, and Section IV. F., Good Faith Negotiation Rule. Applicants' allegations that the Commission has violated its own regulations by not performing NEPA review are incorrect. The Commission's own regulations require the preparation of an environmental impact statement when the Commission determines that the contemplated activity is a "major federal action significantly affecting the quality of the human environmental." The regulations do not address the situation at issue in this order where the Commission believes that no NEPA review is required. *See* 18 CFR 2.80-2.82 (1986).

[382] 51 FR 22209-10 (June 18, 1986).

[383] Indicated Producers at 30-31.

[384] IPAA at 4-5.

[385] 18 CFR 157.40 (1986).

[386] 18 CFR 381.203 (1986).

[387] 51 FR 27529 (Aug. 1, 1986), 36 FERC ¶ 61,102 (1986).

[388] *See, e.g.*, Arkansas Louisiana Gas Co., 23 FERC ¶ 61,324 (1983). The applicants have framed their arguments under the four factors listed in *Virginia Petroleum Jobbers Ass'n.* v. *FPC*, 259 F.2d 921 (*D.C. Cir. 1958*), and *Metropolitan Area Transit Comm.* v. *Holiday Tours, Inc.*, 559 F.2d 841 (D.C. Cir. 1977). Even using those factors, the Commission believes the requests for stay should be denied. As discussed more fully in the text of this order, the Commission has exercised its broad jurisdiction over the parties and contracts affected by Order No. 451 in a balanced way that cannot fairly be characterized as *ultra vires*. Assertions of irreparable harm are also unfounded. Even if the courts modify Order No. 451 on review, only money adjustments need be made to make parties whole. Economic damages, even if they do derive from agency action, are insufficient to constitute "irreparable harm." *See, e.g., Wisconsin Gas Co.* v. *FERC*, 758 F.2d 669 at 674 (D.C. Cir. 1985), *citing* Virginia Petroleum Jobbers Ass'n., 259 F.2d at 925. Moreover, Order No. 451, by providing a significantly greater degree of market-responsiveness in the gas markets will benefit a broad spectrum of the public. A delay in implementation will harm this broad spectrum of parties which includes consumers, end-users, local distribution companies, producers, marketers and pipelines generally. On balance, the long-term public interest benefits of the rule to consumers and to the industry as a whole outweighs any initial detriment to those few entities that benefited from a distorted market. This militates against any stay of the rule and instead underscores the need for its prompt implementation.

[389] Order Denying Petitions for Stay of Order No. 451, Docket Nos. RM86-3-000, RM86-3-002, 36 FERC ¶ 61,102, 51 FR 27529 (Aug. 1, 1986).

permitted to make a nomination request under the good faith negotiation rule in Order No. 451 (18 CFR 270.201) is further postponed until January 23, 1987.

The information collection provisions in this rule are being submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act [390] and OMB's implementing regulations.[391] Interested persons can obtain information on these information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (Attention: Ellen Brown (202) 357–8272). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer of the Federal Energy Regulatory Commission).

List of Subjects

18 CFR Part 270

Natural gas, Price controls, Reporting and recordkeeping requirements.

18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission is amending Parts 270, and 284, Title 18, *Code of Federal Regulations as* set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 270—[AMENDED]

1. The authority citation for Part 270 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12,009, 3 CFR 142 (1978); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982).

2. Section 270.201 is amended by revising paragraphs (a), (b)(1)(i), (b)(3), (c)(2), (d), (e)(1), and (f)(3) to read as follows:

§ 270.201 Good faith negotiation procedures.

(a) *Applicability, definitions, and general rules.* (1) This section applies to requests for renegotiation of the price of old gas sold under an existing contract.

(2) For purposes of this section:

(i) "Old gas" means natural gas which, if sold, would be subject to a maximum lawful ceiling price under section 104 or 106(a) of the NGPA.

(ii)(A) "Existing contract" means a contract in effect on July 18, 1986, or an expired contract pursuant to which sales of natural gas are continuing on that date under the service obligation of a certificate of public convenience and necessity, that includes the sale of any old gas and provides authority for the first seller to collect a higher price upon establishment by the Commission of a higher maximum lawful price.

(B) An existing contract includes the sale of old gas if, on July 18, 1986, the contract encompasses the sale of any gas that has not been abandoned under section 7(b) of the Natural Gas Act and which, if sold, would be priced as old gas, whether or not any old gas is sold on that date.

(iii) The terms "first seller" and "party to a contract" include:

(A) An owner of a working interest in an oil or gas lease that has a direct contractual relationship with a purchaser for a "first sale" of gas, as defined in section 2(21) of the NGPA; and

(B) An operator of an oil or gas lease that has a direct contractual relationship with a purchaser for a "first sale" on behalf of any owner of a working interest in the lease that does not have such a relationship.

(3)(i) Any existing contract under which old gas is sold may be renegotiated or amended at any time to provide for a price up to the alternative maximum lawful price under § 271.402(c)(7)(i) of this chapter without using the good faith negotiation procedures.

(ii) A price for old gas that exceeds the otherwise applicable maximum lawful price under § 271.402 of this chapter may be collected under an existing contract only if the first seller and purchaser agree upon a price up to the alternative maximum lawful price under § 271.402(c)(7)(ii) in accordance with this section.

(4) A party to an existing contract may not request a nomination of a price under the provisions of this section for any gas sold under the contract, if that party:

(i) And the purchaser or first seller have renegotiated the price or any other term for the sale of any old gas under the contract after July 18, 1986, without using the good faith negotiation procedures of this section, and have not agreed in writing to preserve their rights under this section;

(ii) Has previously requested nomination of a price under paragraph (b)(1) of this section for any gas sold under the contract; or

(iii) Has been requested under this section to nominate a price for any gas sold under the contract, and the last date has passed under paragraphs (b)(2) or (b)(3) of this section to request the other party to nominate a price for gas sold under the contract.

(5) Any request for nomination of a price under this section, any nomination of a price in response to such a request, and any notice of abandonment of sales or termination of purchases under this section must be sent by U.S. mail, return receipt requested.

(6) Any deadline under this section for requesting a nomination of a price, or for nominating a price in response to such a request, may be extended by mutual agreement of the parties in writing.

(7) A party nominating a price may propose a change in any other term of the existing contract, and for purposes of this section, the terms "nominated price" and "nomination" may include such a proposed change.

(b) *Requests for negotiation and nomination of price.*

(1)(i) At any time after January 23, 1987, a first seller may request the purchaser to nominate a price at which the purchaser is willing to continue buying old gas under any existing contract by submitting a written request to the purchaser, and may specify the wells or category of wells under each contract for which the first seller requests a renegotiated price.

* * * * *

(3) Within 30 days after receiving a request from a purchaser for nomination of a price for any gas under a contract that is not named in the first seller's request and that includes the sale of any old gas, the first seller may request the purchaser to nominate a price at which the purchaser is willing to continue buying any old gas under that contract, including old gas for which the purchaser has requested a nomination of price by the first seller, by submitting a written request to the purchaser.

* * * * *

(c) *No response to request for nomination.*

* * * * *

(2) If the first seller does not nominate a price in writing within 60 days after receiving the purchaser's request for nomination of a price, the purchaser may terminate its purchases of all or part of the gas named in its request for nomination at any time upon 60-days written notice to the first seller.

(d) *Purchaser's nomination of highest price.* If the purchaser nominates in writing the highest price to which an existing contract price could escalate with the purchaser's agreement under § 271.402(c)(7)(ii) of this chapter, and the purchaser does not propose a change in any term of the contract, sales must continue at the nominated price under the terms of the existing contract.

(e) *Purchaser's nomination of lower price; first seller's options.* (1) If the purchaser nominates in writing a price less than the highest price to which the existing contract price could escalate or proposes a change in any other term of the contract, the first seller must accept or reject the nominated price in writing within 30 days after receiving the nomination. If the first seller does not accept the purchaser's nominated price in writing within 30 days, the nominated price is deemed rejected.

* * * * *

(f) *First seller's nomination of price; purchaser's options.*

* * * * *

(3) If the purchaser rejects the nominated price, the purchaser may at any time terminate its purchases of all or part of the gas named in its request for nomination upon 60-days written notice to the first seller.

* * * * *

§ 270.201 [Amended]

3. In § 270.201, the first sentence of paragraph (h) is amended by removing the phrase "is deemed to have agreed to" and inserting in lieu thereof the word "must".

PART 284—[AMENDED]

4. The authority citation for Part 284 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7107–7352 (1982); E.O. 12,009, 3 CFR 142 (1978).

§ 284.225 [Amended]

5. In § 284.225, paragraph (a) is amended by removing the phrase "is deemed to have agreed to" and inserting in lieu thereof the word "must".

6. The table of contents for Part 284 is amended by adding a new section to Subpart G to read as follows:

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY OF 1978 AND RELATED AUTHORITIES

* * * * *

Subpart G—Blanket Certificates Authorizing Certain Transportation by Interstate Pipelines on Behalf of Others and Service by Local Distribution Companies

Sec.

* * * * *

284.226 Transportation by interstate pipelines upstream of pipelines releasing gas under the good faith negotiation procedures.

* * * * *

7. Section 284.225 is amended by revising paragraph (d) to read as follows:

§ 284.225 Transportation by interstate pipelines of gas released under the good faith negotiation procedures.

* * * * *

(d) *Transportation rates*—(1) *Transportation service within contract demand.* If a pipeline provides transportation of gas to an existing customer under this section and, as a result, the total volumes of gas sold and transported to that customer on a firm basis do not exceed existing firm contract demand by that customer, the pipeline:

(i) Must base its transportation rate for such gas on the rate in a transportation rate schedule on file with the Commission that conforms to § 284.7 and § 284.8(d);

(ii) Must waive any transportation reservation fee to the extent that a customer pays for facilities associated with such transportation service through demand charges under its firm sales rate schedule;

(iii) Must credit the volumes of gas transported against any minimum commodity bill obligation; and

(iv) May recover costs, on an Mcf or MMBtu basis, associated with standing by to serve a firm sales rate schedule customer that does not reduce its contract demand, if the pipeline revises its sales rate schedules on file with the Commission.

(2) *Transportation service in excess of contract demand.* If a pipeline provides transportation of gas to an existing customer under this section and, as a result, the total volumes of gas sold and transported to that customer exceed existing firm contract demand to that customer, the transportation rate for such gas must be the rate in a transportation rate schedule on file with the Commission that conforms to § 284.7 and either § 284.8(d) for firm service or § 284.9(d) for interruptible service.

(3) *Transportation service for other customers.* If a pipeline provides transportation of gas under this section to any pipeline or customer other than an existing customer on a firm basis, the transportation rate for such gas must be the rate in a transportation rate schedule on file with the Commission that conforms to § 284.7 and either § 284.8(d) for firm service or § 284.9(d) for interruptible service.

(4) *Interim rates.* If a pipeline does not have a transportation rate schedule on file with the Commission that conforms to § 284.7 and either § 284.8(d) for firm service of § 284.9(d) for interruptible service, the pipeline must file such a rate schedule within 60 days after first providing transportation service under this section. Until such a rate schedule becomes effective, the pipeline must provide the transportation service using the rate in one of the pipeline's transportation rate schedules on file with the Commission which the pipeline determines covers service comparable to transportation service authorized under this section.

* * * * *

8. Part 284 is amended by adding a new § 284.228 to read as follows:

§ 284.226 Transportation by interstate pipelines upstream of pipelines releasing gas under the good faith negotiation procedures.

(a) *Applicability.* This section applies to any upstream interstate pipeline that is not subject to the non-discriminatory access provisions of § 284.8(b) or § 284.9(b) of this chapter and that provided transportation of gas immediately prior to its release by any interstate pipeline due to termination or abandonment under the good faith negotiation procedures in § 270.201 of this chapter. Such upstream pipelines were those authorized under a certificate of public convenience and necessity to transport natural gas, prior to the release of that gas due to termination or abandonment under § 270.201 (c), (e), or (f) of this chapter, along any line between the wellhead and a pipeline that must transport the gas under § 270.201(h) of this chapter.

(b) *Blanket Certificate.* Such upstream interstate pipelines are granted a blanket certificate of public convenience and necessity that authorizes transportation of natural gas released due to termination or abandonment under § 270.201 (c), (e) or (f) of this chapter on behalf of any shipper to any interstate pipeline releasing gas under § 270.201 of this chapter, under the same terms and conditions as previously provided to the releasing pipeline.

(c) *Transportation rates.* The rates charged by such third-party, upstream pipelines for transportation under this section shall be identical to the rates charged under any pre-existing transportation authorization for the

[390] 44 U.S.C. 3501–3520 (1982).

[391] 5 CFR 1320 (1986).

same service previously provided to the releasing pipeline.

(d) *Reporting requirements.* An interstate pipeline that transports gas under the certificate granted by this section is subject to the reporting requirements of § 284.223(f).

Editorial Note: These appendixes will not appear in the Code of Federal Regulations.

APPENDIX A.—REQUESTS FOR REHEARING BY APPLICANT AND SUBDOCKET NUMBERS

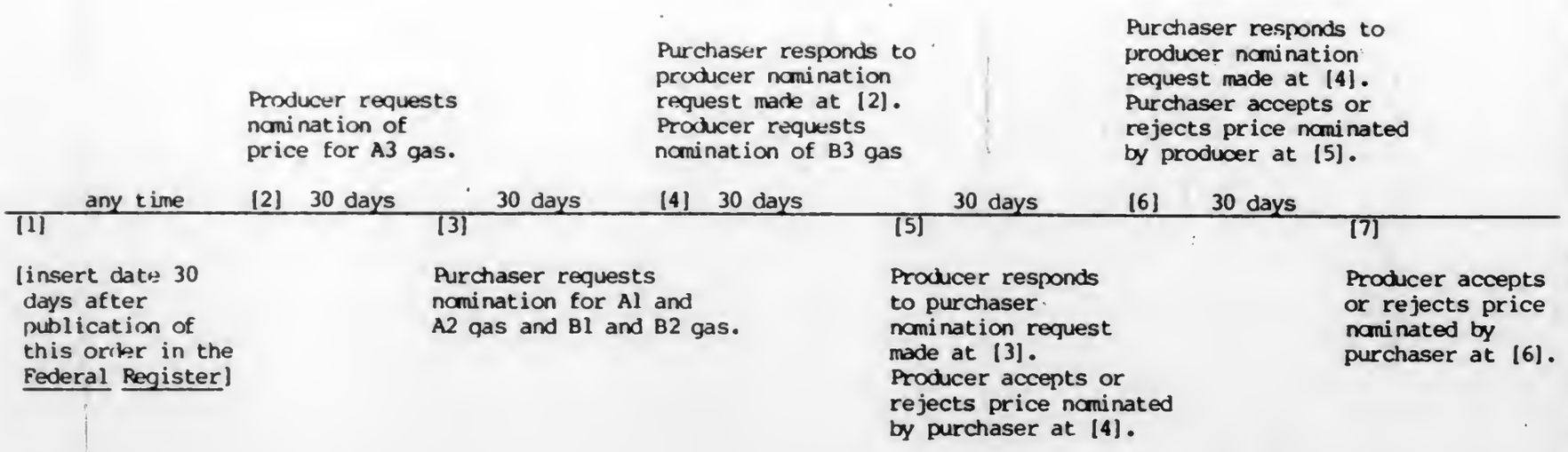
Applicant	Subdocket
American Gas Association (AGA)	003, 068
American Paper Institute (API)	066
American Public Gas Association (APGA)	004, 068
ANR Pipeline Company and Colorado Interstate Gas Company (ANR and CIG).	047
Amoco Production Company (Amoco)	064
Associated Gas Distributors (AGD)	029, 068
Arkla, Inc. (Arkla)	049
Atlantic Richfield Company, Chevron U.S.A. Inc., Cities Service Oil and Gas Corporation, Exxon Corporation, Hunt Oil Company, Mobil Oil Corporation, *et al.*; Sun Exploration and Production Company, et al. and Union Oil Company of California (Atlantic Richfield et al.).	060
Baltimore Gas and Electric Company (BG&E)	032
Citizen/Labor Energy Coalition (C/LEC)	005
California Public Utilities Commission (Cal. PUC).	015
District of Columbia Public Service Commission (D.C. PSC).	048
Elizabethtown Gas Company (Elizabethtown)	022
El Paso Natural Gas Company (El Paso)	023
Felmont Oil Corporation (Felmont)	024
Florida Gas Transmission Company (Florida Gas).	053
Florida Cities	062
General Service Customer Group	065
Interstate Power Company	012
Indicated Producers	018
Independent Petroleum Association of America (IPAA).	031, 067
Independent Petroleum Association of Canada (IPAC).	033
Interstate Natural Gas Association of America (INGAA).	039
KN Energy, Inc. (KN)	006
Kansas Power and Light Company, Kansas Public Service Company, and Missouri Public Service Company (KP&L *et al.*).	042
Kentucky Public Service Commission (Kentucky PSC).	058
Laclede Gas Company (Laclede)	009
Lone Star Gas Company	034
Minnesota Department of Public Service (Minnesota DPS).	011
Missouri Public Service Commission (Missouri PSC).	030
Michigan and the Michigan Public Service Commission (Michigan).	035
Maryland People's Counsel and National Association of State Utility Consumer Advocates (MPC/NASUCA).	046
Midwest Energy Inc. (Midwest)	050
Northern Illinois Gas Company (NI-Gas)	016
Northern Distributor Group (NDG)	013
Northern Natural Gas Company (Northern Natural).	027
Northwest Pipeline Corporation (Northwest)	036
Northwest Central Pipeline Corporation (Northwest Central).	055
New York Public Service Commission (N.Y. PSC).	057
Natural Gas Pipeline Company of America and United Gas Pipe Line Company (Natural and United).	040
Ohio Consumer's Counsel	007
Ohio Public Utilities Commission (Ohio PUC)	014
Peoples Gas Light and Coke Company and North Shore Gas Company (Peoples Gas *et al.*).	010
Plains Petroleum Company (Plains)	017
Process Gas Consumers Group, American Iron and Steel Institute, and Georgia Industrial Group (PGC).	020
Pennzoil Company and Penrzoil Producing Company (Pennzoil).	028
Panhandle Eastern Pipe Line Company, Trunkline Gas Company, and Trunkline LNG Company (Panhandle and Trunkline).	037
Pacific Gas and Electric Company (PG&E)	008
Southern California Gas Company (SoCal)	019
Samson Resources Company (Samson)	041
Southern Natural Gas Company (Southern Natural).	054
Texas Eastern Transmission Corporation (Texas Eastern).	043
Transcontinental Gas Pipe Line Corporation (Transco).	044
Tenneco Oil Company (Tenneco)	045
Tennessee Gas Pipeline Company (Tennessee).	061
Texas Gas Transmission Corporation (Texas Gas).	063
Transwestern Pipeline Company (Transwestern).	038
Union Gas System, Inc. (Union Gas)	059
United Distribution Companies (UDC)	025, 068
Westcoast Transmission Company Ltd., and Westcoast Resources, Inc. (Westcoast).	026
Williston Basin Interstate Pipeline Company (Williston Basin).	021

Appendix B

[Appendix B may be obtained from the Commission.]

BILLING CODE 6717-01-M

APPENDIX C



Contracts involved	
Contract A	Contract B
1. Post-1974 gas	1. Post-1974 gas
2. New gas	2. New gas
3. flowing gas	3. flowing gas

Notes

1. Process ends as to particular gas categories when agreement is reached.
2. Each contract may be negotiated only once under good faith rule.
3. Either producer or purchaser may abandon or discontinue sales or purchases (some or all) at any time after its rejection of nominated price. Producer must have contract with new purchaser. Producer must give 30 days notice. Purchaser must give 60 days notice.
4. Firm sales customers of non-Order 436 pipelines get right of first refusal as to all abandoned gas. Non-Order 436 pipelines must transport.

[FR Doc. 86-28473 Filed 12-23-86; 8:45am]
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federal register

Wednesday
December 24, 1986

Part III

Environmental Protection Agency

40 CFR Parts 260, 264, 265, and 271
Hazardous Waste Management System; Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 264, 265, and 271

[FRL-3075-9]

Hazardous Waste Management System; Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Under authority of the Hazardous and Solid Waste Amendments (HSWA) of 1984 to the Resource Conservation and Recovery Act (RCRA), EPA is proposing rules to minimize the presence of free liquids in containers holding hazardous waste that are disposed in hazardous waste landfills. The Agency is proposing to prohibit the disposal of containers holding liquid hazardous wastes and free liquids while continuing to exempt certain containers that are specifically designed to hold small quantities of liquid hazardous wastes. Today's proposed rule would require that if hazardous liquids or free liquids in containers are solidified by the use of an absorbent, the absorbent material must not be biodegradable and the absorbent/waste mixture must not release liquids when compressed under pressures experienced in landfills. EPA is also proposing a test protocol in order to determine whether a waste containing hazardous liquids or free liquids when solidified by the use of a non-biodegradable absorbent, would release the free liquids under pressures experienced in landfills. These rules do not apply to owners and operators of landfills in which only polychlorinated biphenyl (PCB) chemical waste regulated under 40 CFR Part 761 are disposed. However, PCBs mixed with a RCRA hazardous waste must comply with all requirements under both RCRA and the Toxic Substances Control Act (TSCA) (40 CFR Part 761). In cases where applicable requirements of the two statutes differ, the most stringent requirements apply.

DATES: Comment date: Comments on these proposed amendments will be accepted until February 23, 1987.

ADDRESS: The public must send an original and two copies of its comments to: EPA RCRA Docket (S-212) (WH-562), 401 M Street SW., Washington, DC 20460.2

Place the docket #F-86-CLIP FFFFF on your comments. For additional details about the OSW docket see the "OSW Docket" section in "SUPPLEMENTARY INFORMATION."

FOR FURTHER INFORMATION CONTACT: For general information and for a copy of today's proposed text, contact the RCRA Hazardous Waste Hotline, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, telephone 800/424-9346 (382-3000 in Washington, DC). For specific information on this amendment, contact Paul Cassidy, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4654.

SUPPLEMENTARY INFORMATION:

OSW Docket

The OSW Docket is located at: EPA RCRA Docket (Sub-basement), 401 M Street SW., Washington, DC 20460.

The docket is open from 9:30 to 3:30 Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials. Call Mia Zmud at 475-9327 or Kate Blow at 382-4675 for appointments. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $.20/page.

Copies of the following documents are available for *viewing only* in the OSW docket room:

1. "Sorbent Pressure Test Development", Report prepared by Research Triangle Institute.
2. "Liquid Release Test for Liquid Loaded Sorbents—Single Laboratory Evaluation of Test Equipment", Research Triangle Institute, April 1986.
3. "Structurally Stable Absorbents", Mason and Hanger-Silas Mason, Co., August 1986.
4. "Development of Criteria to Distinguish Acceptable Absorbents for Containerized Hazardous Liquids", K.W. Brown, March 1986.
5. "List of Commonly Available Absorbents", GCA Corporation, May 1985.
6. Letter and Report to Paul Cassidy from Chemical Waste Management, February 1986.
7. "A Review of Biodegradability Testing of Absorbents", SCS Engineers, January 1986.
8. Letter to Paul Cassidy from Janic F. Artiola, K.W. Brown & Associates, November 12, 1985.

Preamble Outline

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3. Minimizing the Presence of Free Liquids in Containers Holding Hazardous Waste
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I. Background

1. Previous Regulations

On May 19, 1980, EPA promulgated regulations that established most of the basic elements of the hazardous waste management program required by Subtitle C of the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6921 et seq. See 45 FR 33066 et seq. (May 19, 1980). Part 265 of those regulations sets forth interim status standards that apply to owners and operators of existing hazardous waste treatment, storage, and disposal facilities pending their receipt of a permit that establishes more detailed requirements under the standards of Part 264. With certain limited exceptions, § 265.314(b), as originally promulgated, would have forbidden the placement in a landfill of a container holding liquid hazardous wastes or free liquids after November 19, 1981.

On February 25, 1982, EPA proposed (1) alternative methods of restricting containerized liquid wastes in landfills, and (2) a paint filter test that was intended to be used to determine the presence of free liquids in containers. See 47 FR 8307 et seq. (February 25, 1982). One method of restricting wastes, the so-called 25 percent by volume method, would have restricted the allowable volumetric fraction of the total volume of the landfill that could have been used for disposal of containers holding free liquids In the other method, EPA proposed that each container be limited to a prescribed maximum percentage of liquid hazardous waste. The Agency also extended the date by 90 days for compliance with § 265.314(b) to allow time for consideration of this new approach.

On March 11, 1982, in response to two petitions for reconsideration of this extension, EPA held a public hearing to consider whether some interim control might be advisable pending full resolution of the issues concerning containerized liquids. On March 22, 1982, EPA imposed interim restrictions on the disposal of containerized liquid wastes in landfills pending full rulemaking on the issue. See 47 FR 12316 et seq. (March 22, 1982). Under these interim rules (§ 265.314(b)) (redesignated as § 265.314(c) in the current regulations), no container holding free-standing liquids could be placed in a landfill.

On July 26, 1982, EPA issued Part 264 standards for use in issuing final permits for facilities that treat, store, or dispose of hazardous wastes. See 47 FR 32274 et seq. (July 26, 1982). These standards are applicable to owners and operators of new and existing hazardous waste land treatment, storage, and disposal facilities. EPA also amended § 264.314(b) (redesignated as § 264.314(d) in the current regulations) by restricting the disposal of containerized liquids in a manner identical to the interim status standards promulgated on March 22, 1982.

On April 30, 1985, EPA issued a final rule requiring that the Paint Filter Liquids Test be used to determine the presence of free liquids in either a bulk or a containerized waste. The requirement was added in §§ 264.314(c) and 265.314(d). See 50 FR 18370 (April 30, 1985).

On November 8, 1984, the Hazardous and Solid Waste Amendments (HSWA) to RCRA were signed into law. Section 3004(c)(2) of the HSWA requires the Agency to "promulgate final regulations which minimize the disposal of containerized liquid hazardous waste in landfills, and minimize the presence of free liquids in containerized hazardous waste to be disposed of in landfills." The statute also directs EPA to ensure that these regulations specifically prohibit the disposal in landfills of liquids that have been absorbed in materials that biodegrade or that release liquids when compressed as might occur during routine landfill operations.

2. Minimizing The Disposal Of Containerized Liquid Hazardous Waste In Landfills

The recent Amendments to RCRA (HSWA) require that the Administrator of EPA promulgate final regulations that minimize the disposal of containerized liquid hazardous wastes in landfills. The legislative history to section 3004(c)(2) shows that when Congress developed this amendment, they gave serious consideration to prohibiting outright the disposal of all containers of liquid hazardous wastes into any landfill. However, the legislative history suggests that Congress intended to allow EPA to provide an exemption from the ban for the disposal of very small quantities of liquid wastes, particularly for the disposal of lab packs specifically desinged for very small quantities of laboratory wastes. The use of the term "minimize" in section 3004(c)(2)(A) reflects this intent. See, e.g., S. Rep. No. 284, 98th Congress, 1st Session 22 (1983); 129 Cong. Rec. H8141 (daily ed. Oct. 6, 1983) (statement of Rep. Breaux).

The Agency construes the provision to mean that free liquids will be prohibited from being placed in a landfill, except if the free liquids meet certain exemptions or are properly treated (solidified). It is evident that the amendment language allows hazardous liquids to be absorbed under specific conditions in a container and then placed in a landfill. The language states that the disposal of containerized liquid hazardous waste in landfills is to be minimized. One way to minimize the disposal of containers holding hazardous liquids or free liquids is to effectively treat the hazardous liquids (i.e., convert them to solids). Once converted to solids, the amendment does not permit the disposal of the nonliquid waste in a landfill.

Currently §§ 264.314(d) and § 265.314(c) prohibit the placement of containers holding free liquids in a landfill unless certain exemptions are met. The current regulations allow exemptions to the above liquids requirements as follows: (1) All free-standing liquid has been removed by decanting or other methods, has been mixed with an absorbent or solidified so that free-standing liquid is no longer observed, or has been otherwise eliminated; (2) the container is very small, such as an ampule; (3) the container is designed to hold free liquids for use other than storage, such as a battery or capacitor; or (4) the container is a lab pack and is disposed of accordingly.

"Free liquids" are liquids that readily separate from the solid portion of a waste under ambient temperature and pressure. See 40 CFR 260.10. "Free-standing liquids" are those that form a distinct layer above the solid layer in the container, usually during transportation. Free-standing liquids are a subset of free liquids.

In today's rule, the Agency is proposing to eliminate the exemption regarding free-standing liquids in §§ 264.314(d)(1) and § 265.314(c)(1) in order to minimize the disposal of containerized liquid hazardous waste. (See Section 3 of this preamble for further details.) Thus, today's proposal will prohibit the landfilling of certain free liquids that have been disposed in landfills in the past. The Agency will allow containerized liquids to be treated (i.e., converted to a solid) by the use of non-biodegradable absorbents under specific conditions. The Agency will regulate the disposal of liquids to ensure that they are treated in such a manner as to prevent the future release of the liquids due to landfill pressures.

In today's proposal, the Agency will continue to allow exemptions for only the containers discussed below: Lab packs, ampules, batteries, and capacitors. These exemptions are currently codified in § 264.314(d)(2), (3), and (4), and § 265.314(c)(2), (3), and (4). In restricting the exemptions to only these containers, the Agency is indeed minimizing the disposal of containerized liquid hazardous wastes in landfills since most hazardous liquids are disposed of in 55-gallon drums rather than in these containers.

Congress mandated that the Agency minimize rather than eliminate disposal of containerized liquids; therefore, the Agency is not prohibiting all liquids from being placed in a landfill. Containers that are specifically designed to hold small quantities of liquid hazardous waste (i.e., lab packs, ampules, batteries, and capacitors) will continue to be allowed as the only exemptions to the prohibition of landfill disposal of containers holding liquid hazardous wastes. The intent behind these exemptions is not only to uphold the general restriction on the disposal in landfills of containers holding liquid hazardous wastes, but also to allow the disposal of specific containers, such as lab packs that are carefully designed and prepared for relatively safe management of such liquids, and ampules, batteries, and capacitors that contain a small quantity of free liquids. These types of containers, owing to their size and their packaging requirements, will not contain large amounts of liquids and thus can be landfilled without needing to eliminate the liquids.

Lab packs (discussed in §§ 264.316 and 265.316) are most commonly used by laboratories that produce small amounts of many different wastes. These wastes are commonly collected in small containers that range in size from an ampule to 5-gallon pails. The small containers must be a design and constructed of a material that will not react dangerously with, be decomposed by, or be ignited by the waste contained therein. (See §§ 264.316(a) and 265.316(a).) The small containers are usually placed within a 55-gallon drum (the regulations require the outer container to be no more than 110-gallon capacity) and surrounded by a sufficient amount of compatible absorbent material before the drum is placed in a landfill. Containers holding incompatible wastes are prohibited from placement in the same drum (lab pack) in case of possible ruptures. Furthermore, reactive wastes other than cyanide- or sulfide-bearing wastes are prohibited from disposal in lab packs unless the waste is rendered non-reactive prior to packaging. See §§ 264.316 and 265.316. The American Chemical Society reported that the average lab pack contains 3 gallons of hazardous liquid with a maximum of 15 gallons. Approximately 100,000 lab packs are used each year in the U.S. with a cost to the user of $200 to $350 per pack to dispose.

The disposal of lab packs in landfills will therefore continue to be allowed because the Agency believes that such disposal is safe because of the small quantities of waste involved. However, the final Land Disposal Restrictions rule published on November 7, 1986, does not exclude from the land disposal restrictions lab packs if they contain solvents designated as F001–F005 or other restricted wastes. See 51FR 40584 (November 7, 1986).

The concept of lab packs was developed for the disposal of small containers of laboratory wastes. The disposal of a lab pack is a costly alternative for a generator that has a large quantity of liquid wastes to be disposed. Since the cost of lab pack disposal is high, it is not economical for large volumes of liquid wastes to be lab packed. Lab packs are generally used for small amounts of wastes generated by chemistry or hospital laboratories or other small quantity generators, who wish to employ environmentally safe disposal methods. Incineration costs for bulk liquids range from $0.30 to $4.20 per gallon whereas the average cost of lab pack disposal ranges from $67 to $117 per gallon..

The prohibition on landfilling containerized liquid hazardous waste applies to 55-gallon drums and other similar containers, but does not apply to devices that function as containers for hazardous materials during their useful lives, such as batteries or capacitors, or to very small containers, such as ampules. These types of containers are not likely to contribute substantial volumes of liquid to most landfills, and the difficulty of opening and emptying them appears to outweigh the small benefit gained by such action.

For the reasons discussed above, the Agency believes that the continued exemption for lab packs, ampules, batteries, and capacitors results in a minimization of the disposal of containerized liquid hazardous wastes in landfills. Based on this relief, the Agency is continuing to allow an exemption for these types of containers.

The Agency is requesting comments on two issues concerning the disposal of batteries and lab packs. The Agency is aware that lead acid batteries can be disposed of in hazardous waste landfills; however, a large percentage of lead acid batteries are being reclaimed. The Agency is concerned that disposal of lead acid batteries, without proper drainage, could cause problems in the landfill environment, namely, the release of the lead into the environment. The Agency has not in today's proposal required that batteries be drained prior to landfill disposal because we feel that batteries only contain small quantities of hazardous wastes. The Agency, however, specifically seeks comments on whether the current regulations should require the proper drainage of batteries prior to landfill disposal or remain unchanged (i.e., not require drainage.).

The second issue concerns the disposal of lab packs. The Agency has not proposed any rule changes to the lab pack requirements today. However, today's proposal prohibits use of biodegradable absorbents for all other non-exempt containers. The Agency is requesting comments on whether or not the elimination of biodegradable absorbents should apply to lab packs also, or whether biodegradable absorbents should still be allowed to be used in lab packs, since lab packs contain an average of only three gallons of hazardous liquids.

3. Minimizing The Presence Of Free Liquids In Containers Holding Hazardous Waste

Section 3004(c)(2)(B) requires that the Agency minimize the presence of free liquids in containerized hazardous wastes to be disposed of in landfills. The intent of Congress in requiring the Agency to minimize the presence of free liquids in containers is to reduce the risk of cover subsidence and groundwater contamination due to the collapse of metal drums from decay and subsequent release of liquids. If the drums collapse or leak after the post-closure period, significant uncontrolled releases and subsidence of the cover could occur at a time when the leachate collection and removal system (if present) is no longer operated, the ground water may no longer be routinely monitored, and the final cover is no longer maintained. The presence of liquids can dramatically affect the integrity of the landfill as well as increae the mobility of wastes leaving the landfill. Furthermore, hazardous liquids can cause liner failure by contributing hydraulic pressure on the liner as well as weakening the liner through chemical interactions. After a liner is breached, the liquid hazardous wastes can present a serious threat to groundwater resources below the landfill because they react with other wastes in the landfill and enhance the mobility of hazardous wastes leaving the landfill. Congress was very clear both in its desire to minimize the presence of free liquids in containerized wastes and in its rationale for its concern regarding such disposal.

The current regulations (§§ 264.314(d) and 265.314(c)), promulgated prior to the HSWA and in effect until today's proposal becomes final, allow containers holding free liquid to be placed in a landfill if all "free-standing liquid" is removed, mixed with an absorbent, or solidified so that free-standing liquid is no longer observed or is otherwise eliminated.

Prior to the HSWA, the Agency was aware of an inconsistency between the disposal requirements for containerized liquids and for bulk liquids. The March 22, 1982, interim control measure for container created an inconsistency in the Agency's regulations that carried over into the July 26, 1982, regulations. The inconsistency was that for bulk (or non-containerized) liquids, the disposal of "free liquids" in a landfill was prohibited (with certain exemptions), whereas for containerized liquids, the disposal of "free-standing liquids" was prohibited. This inconsistency allowed owners or operators who landfilled containers to treat the liquids in the containers to an endpoint (i.e., removing "free-standing liquids" rather than free liquids) that was less stringent than that for bulk liquids.

Because of Congress' concern over free liquids in landfills, the Agency is proposing new requirements that would

regulate the disposal of "free liquids" as opposed to "free-standing liquids." Today's proposal will require that (with the exception of ampules, batteries, capacitors, and lab packs) all containerized free liquids be solidified by a non-biodegradable absorbent prior to being placed in a landfill. The waste/absorbent mixture must not release liquids as determined by the Liquids Release Test (LRT) (Method 9096). The Agency believes that the proposed change regulating free liquids will accommodate Congress' concern about the disposal of free liquids.

Today's proposal does not impose any requirements on the number of containers that must be opened and tested for the presence of free liquids. Curently, containers are being inspected for the presence of "free-standing liquids" in accordance with a facility's written waste analysis plan (see §§264.13(b) and 265.13(b)). Those containers that were previously inspected for free-standing liquids will now be tested for the presence of free liquids. The number of containers that must be opened and inspected for the presence of free liquids will depend upon the specific language in the facility's general waste analysis plan.

In order to check for the presence or absence of free liquids (in cases that do not require the use of LRT), the Paint Filter Liquids Test (Method 9095), as promulgated on April 30, 1985, must be used (see Section 10). The Paint Filter Liquids Test is the appropriate test to use in meeting the Congressional intent to minimize the presence of free liquids because that test was specifically promulgated in order to determine the presence or absence of free liquids in either a containerized or a bulk hazardous liquid waste.

4. Biodegradable Absorbents

Section 3004(c)(2) of RCRA provides that the final regulations concerning containerized hazardous liquids shall prohibit the disposal in landfills of liquids that have been absorbed in materials that biodegrade.

Congress has prohibited the disposal of liquids that have been absorbed in materials that biodegrade because when they biodegrade, they collapse and release free liquids, creating the very situation that Congress is attempting to avoid. Congress mandated that the Agency promulgate regulations minimizing the presence of liquids in landfills in order to reduce the potential migration and leaching of hazardous constituents and the potential for subsidence. The use of biodegradable absorbents in the attempt to minimize or eliminate liquids before landfilling is counterproductive because the effects of gravity or of flushing actions within the landfill would eventually transport constituents that have been released by the biodegraded absorbent. See, e.g., 130 Cong. Rec. S9177 (July 25, 1984) (section-by-section analysis of Chafee amendment).

The current regulations for the disposal of containerized liquids do not prohibit the use of biodegradable absorbents. Agency policy, however, has been to promote the use of non-biodegradable absorbents as a good management practice for the reasons stated above.

The Agency is today proposing to allow containerized liquids to be solidified by only non-biodegradable absorbents. Under today's proposal, a material is defined as biodegradable if its total organic carbon content is greater than one (1) percent. A material that has a total organic carbon content greater than one percent will be prohibited from being used as a solidification material for containerized hazardous liquids.

At present, the Agency is proposing the use of total organic carbon as a criteria to distinguish between biodegradable versus non-biodegradable materials. Carbon is an element that forms organic compounds in combination with hydrogen and oxygen. If an absorbent material has carbon present in its elemental composition, it will then be susceptible to breakdown or biodegradation. The Agency proposes using a limit of one percent (1%) or more total organic carbon content as the criteria to determine whether a material is biodegradable. If the total organic carbon content is less than one percent, the Agency considers the absorbent to be inorganic and thus non-biodegradable.

The threshold of one percent total organic carbon was based upon the best scientific judgment of several experts in the field of soil chemistry. Obviously, a material containing no organic carbon would be considered inorganic and therefore nonbiodegradable. The allowance for up to one percent of total organic carbon allows for the realities of commercial production of absorbents. It is likely that small amounts of organic contamination may occur in the production of absorbents. Likewise, some manufacturers may purposely add very small quantities of organic materials as additives in order that their products may be packed or otherwise handled more easily. These additives are not related to the materials' absorbent properties.

Any biologically synthesized carbon-based (organic) sorbents such as wood fiber, corn cobs, and cellulose are considered biodegradable. Man-made organic sorbents are considered biodegradable given sufficient time. On the other hand, sorbents derived from secondary minerals, such clays and zeolites, of which most common aggregate sorbents are composed, have silicon-aluminum structures with no carbon present, and would therefore be considered inorganic and thus non-biodegradable.

In order to calculate the organic carbon present in an absorbent, the Agency recommends that the regulated community use the modified Mebius procedure (Page, A.L., ed., 1982. Methods of Soil Analysis. Part 2. Chemical and Microbial Properties, Second edition. Number 9 (Part 2). American Society of Agronomy, Inc., Madison). This procedure is a standard soil test using an acid dichromate digestion of the sorbent material followed by a titration to determine the amount of organic carbon oxidized. Owners/operators should obtain the absorbent they plan to use from the manufacturer and perform the test to see if the particular absorbent is non-biodegradable, i.e., contains less than one percent total organic carbon. In lieu of performing this test, the owner/operator can obtain the necessary testing data directly from the manufacturer. Testing for organic carbon need be done only once. A new test will be required only if there is a change in the manufacturing process that will affect carbon content. EPA specifically requests comments on the total organic carbon approach, and on the appropriate test for total organic carbon. EPA also requests comments on the procedure for obtaining proof that the absorbent is non-biodegradable (i.e., whether the owner/operator or manufacturer provides the testing data) and whether it matters who supplies the testing data.

The Agency is also requesting comments on how organic polymers and pozzolanic materials should be treated in regard to the criteria for biodegradation. The Agency's proposed criteria for biodegradation would eliminate from use as absorbents any organic polymers or pozzolanic material that are now used or are under consideration for use if their TOC is greater than one percent. Polymers would be eliminated due to their high total organic carbon content. However, some polymers may not release the absorbed liquid waste even under pressure. Pozzolanic materials such as

fly ash may have a TOC greater than one percent. The amount of carbon remaining in the ash is likely a function of the efficiency of the combustion process. Therefore, the Agency is willing to accept comments on how organic polymers and pozzolanic materials should be included in the Agency's approach (i.e., using TOC as an indicator of biodegradation). If commenters believe that organic polymers and pozzolanic materials should be allowed to be used, even if the TOC is greater than one percent, can the Agency be certain that these materials will not release liquids under pressure? Should today's proposed Liquids Release Test be used? Should the Agency allow materials (organic polymers and pozzolanic materials) with a TOC greater than one percent to be used without evaluating the material's resistance to biodegradation? If the Agency were to evaluate a materials resistance to biodegradation, what test method and what period of time (years) should be used?

Another issue that the Agency is requesting comments on is the use of absorbent pillows. The Agency is interested in gaining knowledge concerning when and how often absorbent pillows are used. The Agency also specifically requests comments on how absorbent pillows can be tested using the Liquid Release Test. Can a representative sample be obtained from an absorbent pillow, or does another pressure test need to be specified in order to test absorbent pillows? Would absorbent pillows (i.e., their contents) be considered biodegradable by today's proposal? Are absorbent pillows used only to clean up spills that must be absorbed quickly?

A biodegradable material is a material that is capable of being decomposed by microorganisms (i.e., natural biological processes). The rate of biodegradation (i.e., over what time should a material be evaluated in order to determine whether it is non-biodegradable or biodegradable) is not taken into account for the reasons discussed below.

Virtually all organic materials will be degraded sooner or later by the action of the biological environment, since (1) organic materials contain one or more components that can be utilized as a food source by organisms, (2) organic materials will be affected by the chemical actions of organisms, and (3) most earth environments are mild enough to support some biological activity.

The statutory language requires that EPA prohibit the disposal of liquids that have been absorbed in materials that biodegrade. EPA construes this language to mean that Congress was concerned with materials that biodegrade in a hazardous waste landfill environment. Unfortunately, the concept of biodegradability is complex when related to the disposal of containerized liquids that have been solidified by the use of an absorbent material. No standard test exists for determining whether an absorbent material is biodegradable. The number of absorbent materials that are used, and those that are being developed, to solidify liquid wastes is large, and determining rates of biodegradation for these absorbents would be extremely complex since there is no standard test. Another issue affecting biodegradation rates is the environment in which an absorbent material is tested. The rate of biodegradation under anaerobic conditions may be different from the rate under aerobic conditions. Therefore, the Agency believes that a uniform rate of biodegradation would be difficult to set. The Agency, however, specifically solicits comments on whether the Agency should use a biodegradation rate as a method of determining when an absorbent should be considered biodegradable.

5. Structurally Stoble Absorbents

Section 3004(c)(2) further states that the final regulations shall prohibit the disposal in landfills of liquids that have been absorbed in materials that release liquids when compressed as might occur during routine landfill operations.

In order to implement this provision, EPA is today proposing that the waste absorbent mixture must not release liquids as determined by the Liquid Release Test. The Agency had considered another option when implementing the section 3004(c)(2) mandate. That option was to develop a test to determine whether certain absorbents alone (i.e., as a pure product) were to be considered "structurally stable." For the liquids in landfills issue, a structurally stable material is one that does not release liquids when compressed. Since most materials (absorbents) are in a dry state before they are used, testing a dry material before it has been used in the field does not necessarily provide information about whether these materials will release liquids in a hazardous waste landfill when compressed.

EPA therefore developed a test procedure that could be used in determining if liquids could be released from liquid/sorbent mixtures when subjected to compressive forces as experienced in landfills. This effort has resulted in the development of a test, known as the Liquids Release Test (LRT), which EPA is proposing for use in the evaluation of liquid/sorbent mixtures for potential liquid release. This test is set forth in Appendix A to this regulation. EPA is also proposing incorporation of this test into its Solid Waste Testing Manual (SW-846) as Method 9096. The text of the test is available from EPA through the RCRA Hotline at 800/424-9346, (382-3000 in Washington, DC).

The LRT has been evaluated in a single laboratory evaluation of ruggedness and precision, and is currently being evaluated in a multi-laboratory collaborative study. A discussion regarding the LRT's development and evaluation appears below.

6. Development of Liquids Release Test (LRT)

EPA began its development of the LRT with a number of general objectives. It was determined that the test should be qualitative (pass or fail), sensitive to liquid release, easily adapted to indicating release of liquids over a range of pressures, reproducible, easily conducted in the field, and relatively quick and easy to run.

In order to meet these objectives, EPA began investigating two different types of tests that could be used to detect liquid release under pressure (Ref. 1). These were a centrifugation test and a confined compression test. The centrifugation test uses centrifugal action to apply compressive forces on samples of the liquid/sorbent mixture. Specially designed centrifugation tubes were used to physically separate the sample from any liquids that may be forced out of the sample due to the applied compressive forces. This was necessary, as using common centrifugation tubes would allow re-absorption of any released liquid phase back into the sorbent (Ref. 1).

Centrifugation was initially investigated as a quick prescreen to perhaps a more elaborate test. Such a test could be conducted in minutes, was fairly simple, could accommodate a wide range in pressures, and had several other distinct advantages. For example, almost all facilities that have laboratories also have a centrifuge. However, centrifugation also suffers from a number of overwhelming disadvantages.

For example, centrifugation is severely limited by the relatively small sample size that can be accommodated in most readily available (and reasonably affordable) centrifuges. This can contribute to variability, primarily because of the difficulty in obtaining representative samples. Variability can also be caused by the great variety in centrifuges that are commercially available. In addition, centrifugation suffers other problems. For example, when evaluating dark liquids such as oils, it may not always be possible to see a distinct liquid phase in the centrifuge tube. Finally, field application of centrifugation would be difficult.

These factors led EPA to reject centrifugation and to develop a confined compression type test. After a review of available equipment and test methodologies for potential application, it was determined that fabrication of test equipment would be required (Ref. 1).

Laboratory testing, including both development and subsequent evaluation of the test, focused on two typical sorbent materials, Fuller's Earth and Floor Dry, and two liquids, 0.01 N aqueous calcium sulfate and a 5 percent acetone/water solution. The sorbent materials were selected to provide a range in sorbent characteristics used commercially. The calcium sulfate solution was selected because it is widely relied on by researchers and practitioners as a standard liquid for investigation of landfill liner permeability. When mixed with sorbent materials, this solution can serve as a benchmark against which other liquids can be compared. The acetone solution was selected as a representative solvent solution found at hazardous waste landfills (Ref. 1). Additional sorbents and liquids (including oils) were also investigated (Ref. 2). ... EXT. 023 (PART 2, PROPOSED RULES)...A24DE2 62640 Mealey 12-22-86 J. 94-999 F. 1079-1082 —A24DE2.023

Testing of these sorbent/liquid combinations centered around the liquid loading (weight/weight percent liquid), at which a liquid-loaded sorbent might be expected to just begin to release liquid. This was necessary as it is likely that most of the testing conducted in response to today's proposed regulation would be at or near this critical point. Generators and owner/operators of TSD facilities, for obvious economic reasons, would wish to load sorbent materials with the maximum amount of liquid, and the majority of their testing would likely be focused on determining the maximum allowable loading.

The majority of the initial testing was conducted at a pressure of 15 to 45 psi (Ref. 1). Because of resource constraints, evaluation of the test (i.e., single laboratory precision and ruggedness) was conducted at a pressure of 45 psi (Ref. 2). The value of 45 psi was chosen because EPA believes it to be typical of most landfill pressures. The pressure to which landfilled sorbent materials may be subjected depends on a number of factors, including the depth of the facility, the nature and depth of the cover material, and the type of equipment used during landfilling operations. The Liquid Release Test was designed to be applied over a range of pressures. In other words, the test was developed independent from the manner in which the standard test pressure was determined, and would be appropriate for any reasonable pressure chosen for the test.

The concept of a confined compression test involves subjecting materials in a confined (rigid wall) apparatus, to a compressive force and examining various effects on the material. Several types of equipment, involving the same general design, but different means of pressure application were examined. The first device examined, known as a consolidometer, was designed and used at Duke University for measuring the permeability of soils under various degrees of consolidation. This device was modified slightly for use in the LRT and appears in Figure 1.

The top and bottom of the unit were constructed of polyvinyl chloride (PVC) while the cylinder and piston were made of transparent cast acrylic. A ceramic filter stone was used to distribute pressure evenly over the surface of the sample. While EPA recognized that the final equipment used for the LRT must be chemically resistant, this device served as an inexpensive means of investigating and consolidometer-type apparatus.

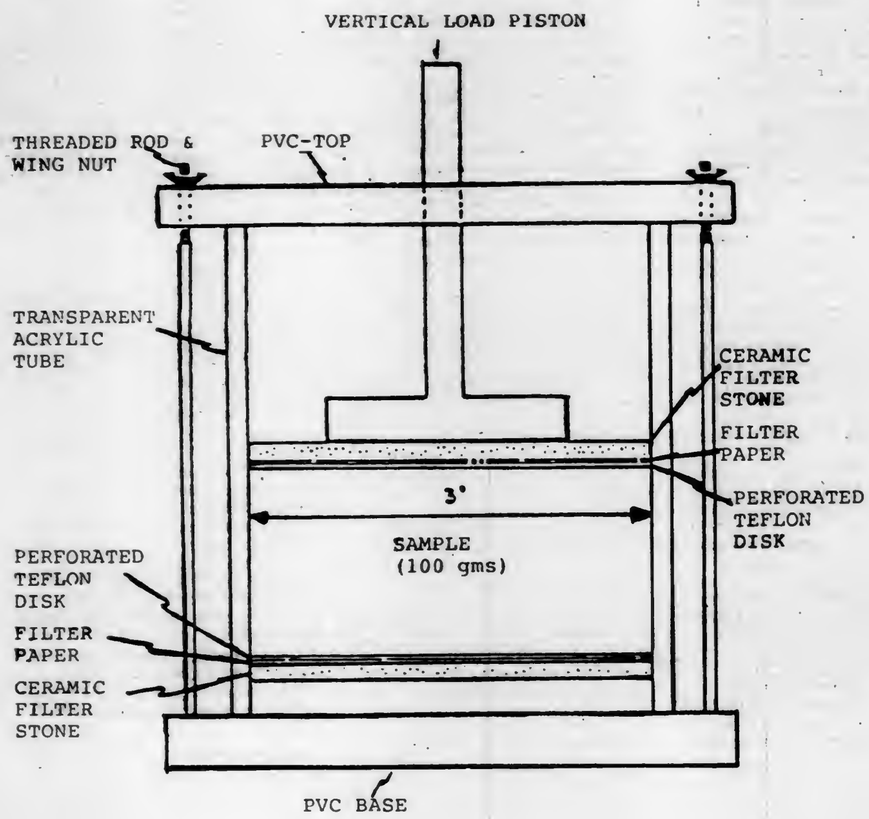
The apparatus employs two perforated TEFLON® disks to physically separate the sample from absorptive filter papers, which are used to detect liquid release. The TEFLON® disks serve to prevent the filter paper from collecting liquid by capillary suction. Pressure is applied to the sample from a vertical load piston, which is driven by a hydraulic press.

Consolidation of the sample is measured at 15-second intervals for the first minute of the test, and at one minute intervals thereafter. The pressure is continued until equilibrium conditions are achieved. Equilibrium was defined as a consolidation rate of less than 0.001 cm per minute. This equilibrium was achieved for all samples within 10 minutes from initial application of the pressure. Selected long-term (i.e., > 10 minutes) tests were also run to confirm that consolidation had reached a steady value within ten minutes. Following termination of the pressure, the test units are dismantled and the filter papers are examined for the presence of liquid (Ref. 1).

Typical results, in terms of the liquid loading (weight to weight percent) which produces liquid on the filter paper at two pressures are indicated in Table 1 (Ref. 1).

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Figure 1: Modified Consolidometer



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TABLE 1.—LIQUID RELEASE USING MODIFIED CONSOLIDOMETER AT VARIOUS PRESSURES (WEIGHT/WEIGHT PERCENT LIQUID)

Sorbent	Liquids			
	Calcium sulfate (0.01 N)		Acetone (5 percent)	
	15 psi	45 psi	15 psi	45 psi
Fuller's Earth (clay based)	>70	>55	>75	>60
Floor Dry (silica-based)	>160	>140	>90	>90

The consolidometer (see Figure 1) was then modified in an attempt to extend its capabilities. Provision was made to permit the liquid to drain into a collection vessel, which would permit the test to be applied in a quantitative sense (i.e., measuring the amount of liquid released). In addition, modifications were also made to permit the use of standard weights, in lieu of a hydraulic system for application of pressure. It was determined that while the hydraulic system worked well, its potential field application was limited. In addition, most hydraulic systems would be unable to maintain a steady pressure on the sample without constant adjustment (Ref. 1).

While limited testing with the device modified as described above compared well to testing done with the previous design, there is a real drawback to the use of weights that caused EPA to examine yet another approach. Specifically, due to the need to address pressures like 45 psi, and the limitations in the size of the test cell (i.e., it must be large enough to accommodate a reasonable sample size—100 grams), the weights required are excessive (in the neighborhood of 250 to 500 lbs) (Ref. 1 and 2).

The third (and final) approach to pressure application examined was the use of pneumatic or gas pressure. This design would easily accommodate a reasonable sample size (i.e., 100 grams), and allow use of the same general type of devices, with the perforated TEFLON® disks and absorptive filter papers, as shown in Figure 1. The only real difference is in the mode of pressure application, which entails use of a piston driven by compressed gases (e.g., air or nitrogen).

It was about this time that EPA was in the development stages of a device, known as the Zero-Headspace Extractor (ZHE), which was intended for use in evaluating the leaching characteristics of volatile compounds from wastes under conditions of zero headspace. This device was being developed in conjunction with the new Toxicity Characteristic Leaching Procedure (TCLP), which was proposed on January 14, 1986 (51 FR 1602) for use in the Land Disposal Restrictions Rule and on June 13, 1986 (51 FR 21648) for use in expanding the Extraction Procedure (EP) Toxicity Characteristic (40 CFR 261.24).

The ZHE uses gas pressure to force a piston against a sample to, in effect, squeeze any releasable liquid from the material, and lends itself to application in the Liquid Release Test. In addition, the perforated TEFLON® disk and absorptive filter paper set up can be easily accommodated within the ZHE, as depicted in Appendix A—Figure 1. Note that although the TCLP and the LRT use the same device, the two tests are unrelated.

EPA is proposing use of the ZHE for the LRT. Although the device is fairly expensive (i.e., $1200 to $1500), many laboratories already have the device for use in conducting the TCLP. In addition, since the device is powered by gas pressure, the only additional equipment needed to run the test in the field would be a pressure regulator, a balance, tedlar bags or syringes, and a gas cylinder, hand pump, or compressor. The LRT is presented in Appendix A, and the parameters of concern in running the test are discussed in Section 8 of this preamble.

Note that EPA also considered application of air pressure directly to the sample (i.e., no piston). This approach, however, was not pursued because air would tend to channel through and around the spaces in the material, and would not result in application of the required pressure to the sample.

In addition, to increase the data base for the method, four additional sorbent materials, in combination with three liquids, have been evaluated to determine the range in which the various sorbents/liquid combinations can release liquid. The results are provided in Table 2 (Ref. 2):

TABLE 2: SORBENT LOADING AT WHICH LIQUID WAS RELEASED USING ZERO-HEADSPACE EXTRACTOR AT 45 PSI (WEIGHT/WEIGHT % LIQUID)

Sorbent	Diesel fuel	Trichloroethylene	Xylene
Fly ash (Bituminous Coal)	<10	>42	<10
S-N-D (Silica Based)	>40	>78	>45
Flocrco (Silica Based)	>65	>115	>65
Floor Dry (Silica Based)	>80	>140	>80

The Liquid Release Test protocol requires that samples of absorbent/liquid mixtures be tested only once for the detection of liquids being released under pressure. As discussed in section 8 of the preamble, the Agency is concerned that a test duration beyond 30 minutes might result in a significant disruption of offsite commercial landfill operations. This disruption might have the counter-productive effect of encouraging operators to sample fewer barrels of waste for the presence of free liquids, in order to maintain a certain rate of waste processing activities. The Agency is concerned that requiring additional quality assurance procedures (i.e., testing waste/absorbent mixtures a second or third time) to confirm an initial no-release finding would increase this disruption. Such additional testing might result in a total analytical processing time for an individual sample of 60 to 90 minutes, depending upon the number of times that the test needed to be repeated. The Agency is interested in comments concerning quality assurance procedures. What other procedures can the Agency use to increase the probability of detecting liquids in samples that may initially pass the Liquids Release Test (i.e., show no evidence of liquids) without imposing additional time delays for testing?

7. Additional Test Results Obtained During the Development of the Liquids Release Test (LRT)

The Agency conducted two additional laboratory testing programs of liquid-absorbent mixtures that also helped in the development of the Liquids Release Test. The first involved a cylindrical chamber with a plunger that had weights mounted on it. A glass capillary tube was fitted to the conical bottom of the chamber in an attempt to measure the volume of liquid compressed out of the sorbent. A description of this testing program is discussed in reference 3. Disadvantages of the first testing program included the manner in which the initial and final liquid concentrations were obtained (i.e., the modified ASTM ash test). Small sample sizes were used in the ash test which

leads to unreproducible results. The glass capillary, although capable of determining whether liquids have been compressed out of the sorbent, did not function in its intended manner. The surface tension of organic liquids tested was not adequate to have a strong meniscus form. Finally, the use of weights was a problem as discussed above.

The second laboratory testing program that contributed to the development of the LRT is discussed in reference 4. The use of different designs and additional liquid/sorbent combinations was accomplished during this work. The sorbents that were used in this testing program and throughout the other laboratory testing are characterized as to their mineralogical content in this report.

8. Evaluation of Liquid Release Test

The proposed LRT was evaluated in a single laboratory for ruggedness and precision, and is presently undergoing evaluation in a multilaboratory collaborative study. The design and results of the collaborative study will be announced in the **Federal Register** when completed. The design and results of the single laboratory evaluation are summarized below (Ref. 2).

Ruggedness testing was done principally to determine the procedure's sensitivity to minor variations in the different test conditions. This testing is necessary to determine which parameters in the test are subject to significant variations and thus need to be controlled or defined more carefully. Single laboratory precision is also determined from the ruggedness data. Table 3 provides the parameters in the test that were evaluated for ruggedness. A discussion of these parameters and the results follow. All testing was done on the floor dry sorbent and with the 5% acetone solution.

TABLE 3: LRT PARAMETERS EVALUATED FOR RUGGEDNESS

Parameter	LRT Specification	Difference tested
(1) Test Duration	30 minutes	30 and 35 minutes
(2) Sample Holding Time.	48 hours	24 and 360 hours
(3) Liquid Loading (weight/weight %).	–	95.5% and 96.6%
(4) Test Pressure	45 psi	45 and 50 psi
(5) Rate of Pressure Application.	within 90 seconds.	within 10 seconds and within 90 seconds
(6) Device Orientation.	piston moving upwards.	right side up and upside down
(7) Sample size	100 ± 0.1 grams.	100 and 105 grams

These parameters are all discussed below.

The proposed procedure (LRT) has been applied to the evaluation of Liquid-loaded sorbents and has been determined to provide results similar to those obtained with the previous devices (i.e., those involving weights) investigated. The test duration of 30 minutes for the LRT was selected to overcome the frictional forces of the piston O-rings against the side-walls of the container (Ref. 2). Also, since the ZHE apparatus has been selected as the device in which liquid/absorbent mixtures are to be tested, 30 minutes is needed to provide results similar to those obtained with the previous devices investigated (i.e., those involving weights), due to the time that appears to be needed to overcome the friction between the internal teflon disks and the walls of the cylinder

Although the Agency has selected 30 minutes as the proposed length of the test, the Agency is concerned with the length of the test. The results of the ruggedness evaluation (Ref. 2) indicated that none of the parameters investigated showed a significant difference at the 5 percent level. The test method may therefore be considered to be rugged with respect to the test conditions investigated. Note, however, that the effect of test duration was significant at the 10 percent level and very nearly so at the 5 percent level. The significance of this observation is that while the test is considered to be adequately rugged with respect to test duration, a longer test duration may provide different results in a small percentage of test runs.

However, a 30-minute time limit may prove disruptive to offsite commercial landfills which process large numbers of containers. A long time period will have some impact on the sampling of containers (i.e., the number of containers inspected and processed will be reduced, as compared to a shorter test duration). The Agency does not want a time limit that may cause problems, such as backlogs of containers or inadequate sampling to eliminate these backlogs. Therefore, the Agency is willing to accept comments on the test duration of the LRT. If upon evaluating these comments, the Agency finds a significant impediment to using a 30-minute test duration, the Agency may instead choose a ten-minute duration in order to assure that the thoroughness of drum sampling is not compromised.

In summary, the value of 45 psi that was used in the evaluation of the LRT was selected because it is representative of pressures found in landfills. The test pressure parameter is discussed at length in Section 9 of today's preamble. As stated previously, the LRT was developed independent from the manner in which the appropriate standard test pressure was developed. The LRT would be appropriate for any reasonable pressure chosen for the test.

The sample size used in the evaluation was selected because it is a commonly used representative sample size among the regulated community.

The effect of sample storage (Parameter 2) was evaluated in this effort in order to determine the effects, if any, of long sample storage times. This was necessary since samples were stored for as long as 15 days before testing during the test's development phase, and because samples may likely be stored for periods of time during the conduction of the ongoing collaborative evaluation. As a result of this evaluation, the Agency found that sample storage time did not alter the results of the test; however, sample testing should be done within 48 hours.

As indicated previously, most of the LRT testing was done on sorbent/liquid samples that were loaded such that they would be right around the critical range where liquid release might be expected to be observed on the filter paper. This was necessary as, for economic reasons, the majority of testing would be designed to provide the maximum liquid loading for liquid/sorbent combinations. The third parameter, liquid loading, was designed to provide results within the range for which one to two positive tests would be expected for every three tests run. This was necessary to make the data analyzable and the results interpretable, in terms of being able to describe quantitatively the ruggedness and precision of the test.

Note that the range of liquid loading investigated (i.e., 95.5 to 96.5 weight/weight %) for the Floor Dry/5% Acetone, is different for the range of liquid release determined initially for the same material, as shown in Table 1. This was due to the fact that a different lot of the sorbent material was used in preparing the samples for the ruggedness testing than was used in the earlier development work. It is apparent that different lots of the same material can have different sorptive properties.

The fifth parameter, rate of pressure application, was examined because work on the ZHE with the TCLP had indicated that instantaneous application of high pressures could cause the filter to rupture. Hence, the LRT was examined under conditions of fast and slow pressure build-up.

The sixth parameter examined, device orientation, was examined in an attempt to determine if it made a difference as to which direction the piston travelled (i.e., upwards or downwards). Although the ruggedness test showed no significant effects with device orientation, both devices tested are oriented so that the piston travels up for the LRT. This orientation was selected to avoid the necessity of flipping the device over after loading, which was shown to disturb the sample.

The ruggedness test was designed based on the need to have a high probability (i.e., 0.9) of finding a difference as great as 0.33 (i.e., at least one positive in three tests) in a one tail statistical evaluation test at the 5 percent significance level. In order to give statistically significant answers, the ruggedness test was conducted at a liquid loading for which the expected proportion of releases was approximately 0.5. Accordingly, if one of the parameters (Table 4) were to change the test results by 0.33 or greater, this would indicate that controlling the parameter may be critical to obtaining reproducible results.

As far as precision is concerned, the observed standard deviation of a single test series (i.e., 3 test runs) indicated the test to be of adequate precision (Ref. 2). Based on the average for the entire set of data generated during the ruggedness tests, the standard deviation for a set of three tests is approximately 0.29.

The Agency is proposing use of the LRT in response to the HSWA requirement to prohibit the disposal in landfills of liquids that have been absorbed in materials that release liquids when compressed, as might occur during routine landfill operations.

9. Selection of Appropriate Pressure for the Liquids Release Test

In regard to the appropriate pressure for today's proposed test, the Agency is proposing that the owner/operator use a value of 50 psi or a value equivalent to the pressure at the landfill in question. The LRT evaluation was conducted at 45 psi; however, it is important to remember that the LRT was developed independent from the manner in which the standard test pressure (50 psi) was selected. The value of 50 psi was selected assuming a bulk density of 70 lbs/ft ^{3} and a depth of 100 ft.

A quick survey of landfill depths conducted prior to the development of the release test indicated that most landfill depths were below 60 feet. The maximum depth was 100 feet. Pressure is a function of depth and bulk density. Soil bulk densities of 110 to 120 lbs/ft ^{3} are not unusual for soil; however, liquid loaded sorbents are not expected to be in this range. The Agency assumes that liquid loaded sorbents will have a bulk density of approximately 60–70 lbs/ft ^{3}; therefore at the maximum depth of 100 feet, this would correspond to a pressure of approximately 50 psi. This option would result in a safety factor being incorporated into the test for shallower landfills (i.e., less than 100 ft).

Another option would be to provide flexibility in the selection of the appropriate pressure value. In this option, the Agency could allow the landfill owner/operator and the permit writer to determine on a case-by-case basis the appropriate pressure value based on the conditions at the landfill in question. The Agency believes that, in either option, the pressure should be calculated at the deepest point in the landfill. The Agency solicits comments on the two alternative approaches. The Agency specifically requests comments on whether a maximum value should be used in all cases (i.e., 50 psi) or whether flexibility should be allowed in determining the correct value of pressure for which the test should be conducted. Is 50 psi the correct value for a maximum pressure? Is the Agency's assumption concerning the bulk density range (60–70 lbs/ft ^{3}) of liquid loaded sorbents correct?

10. Relationship Of The Paint Filter Liquids Test To Todays Proposed Lquids Release Test

There is an interrelationship between the Paint Filter Liquids Test and the LRT. In some situations, a facility may be required to conduct both tests. For example, containerized wastes *without* any absorbents must be tested for the presence or absence of free liquids using the Paint Filter Liquids Test. See §§ 264.314(c) and 265.314(d). If a containerized waste material fails the Paint Filter Liquids Test (i.e., contains free liquids), and is treated (solidified) by the addition of a non-biodegradable absorbent, then today's proposed liquid release test must also be used to determine whether the waste/absorbent mixture will release further liquids under pressure. If liquids are detected in the form of wetness on the filter paper, then additional non-biodegradable absorbent material must be added in order to pass the liquid release test. Once the waste/absorbent mixture passes the liquids release test, it does not need to be retested to pass the Paint Filter Liquids Test.

If, on the other hand, the containerized waste without any absorbents passes the Paint Filter Liquids Test (i.e., is a solid), then this containerized waste is allowed to be disposed in a landfill without further testing. If the waste passes the Paint Filter Liquids Test, it is considered a solid and is therefore not prohibited from being placed in a landfill under section 3004(c)(2).

Under proposed §§ 264.13(c)(3) and 265.13(c)(3), the owner or operator will be required to determine if the generator has added an absorbent to a containerized liquid hazardous waste (see Section 11 of today's preamble). As noted above, today's proposal requires the use of the proposed liquids release test when a non-biodegradable absorbent has been added to solidify the containerized liquids. Owners or operators who know that a non-biodegradable absorbent has been added to solidity the containerized liquids and who employ the Paint Filter Liquids Test rather than the liquids release test will not be in compliance with today's proposal. If the owner or operator adds a non-biodegradable absorbent to the waste or if they determine that the generator added a non-biodegradable absorbent, then the liquids release test is required initially. Re-testing to pass the Paint Filter Liquids Test is unnecessary because the Agency believes that the liquid release test is more stringent than the Paint Filter Liquids Test. The Agency believes that a liquid/absorbent mixture tested under pressure for 30 minutes, during which time no wetness on the filter paper appears, would indeed pass the 5 minutes, no pressure, Paint Filter Liquids Test.

A facility's waste analysis plan requires that either all containers or some percentage of containers be tested, depending on site-specific circumstances, so that a detailed chemical and physical analysis of the waste is obtained. The Agency does not expect that waste analysis plans will change a great deal based on today's proposal; therefore, the frequency of testing using the LRT for conttainerized wastes will be determined based on the facility's current waste analysis plan.

The previous discussion centered on when to use the Paint Filter Liquids Test or the Liquids Release Test. The Agency will accept comments on whether or not the LRT should be used for only continerized wastes, or whether it should also be used for all wastes that are to be disposed in landfills, which would include bulk wastes. Very limited data developed during the refinery listing program indicate that some wastes may pass the Paint Filter Liquids Test but not the filter step in the TCLP which is similar to the LRT. Subjecting all wastes (whether liquids, solids,

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containerized, or bulk) that are to be disposed in a landfill to a pressure test would remove additional liquids from the landfill. Using one test for containerized wastes would eliminate room for error (i.e., the question of whether an absorbent had been added to a container). All containers must bear up to the same stresses; therefore, all wastes should meet the same standards prior to disposal regardless of whether absorbents have been added or not. In light of HSWA and the concerns on the placement of liquids in landfills, the Agency is specifically requesting comments on whether the LRT should replace the Paint Filter Liquids Test as the test for determining if a waste contains free liquids.

11. Conforming Changes

As a result of adding the requirement for the liquid release to §§ 264.314 and 265.314, several minor conforming changes are being proposed. These conforming changes will add references to existing reference list in Subparts B and E of Part 264 and in Subparts B, E, and N of Part 265. Specifically, technical conforming changes are being made to §§ 264.13 (General Waste Analysis), 264.73 (Operating Record), 265.13 (General Waste Analysis), 265.73 (Operating Record), 265.302 (General Operating Requirements).

In order to comply with the requirements of today's proposal relating to containerized hazardous wastes, the owner/operator of an off-site landfill receiving containerized wastes must determine whether an absorbent material has been added to the containerized waste. Thus, in addition to amending §§ 264.13(b)(6) and 265.13(b)(6) to require the owner/operator to specify in the waste analysis plan the method to be used to (1) determine if the absorbent/waste mixture will release further liquids under pressure, and (2) determine the total organic carbon content, today's proposal would also require the owner/operator of a off-site landfill to specify the procedures to be used to determine whether the generator has added absorbents to the containerized waste.

The generator may supply the information in writing to the owner/operator that identifies any absorbent added to the waste. The information must be sufficiently detailed to allow the owner/operator to determine whether the absorbent is less than or equal to one percent (1%) total organic carbon. If the owner/operator does not receive this information in writing from the generator, the owner/operator must perform an analysis to find out whether absorbents were added and whether they are less than or equal to one percent total organic carbon. The owner/operator must put the results of any analysis or the information received from the generator in the operating records under §§ 264.73(b)(3) or 265.73(b)(3) along with the results of the LRT. If the owner/operator determines that absorbents were added, the containerized waste may be landfilled only if it meets the requirements proposed in §§ 264.314(d)(2) or 265.314(d)(2).

The Agency considered other options in developing the above approach. One option was to change the instructions of the uniform manifest (Subpart B of Part 262) to require the generator to identify any absorbent material added to the containerized waste. EPA rejected this option because allowing the owner/operator to determine the procedures to be used to obtain the information gives the owner/operator the flexibility to make appropriate arrangements with the generator while avoiding unnecessary paperwork.

Another approach was to create a presumption that absorbent materials were added to the containerized waste. This approach would require an owner/operator who was subject to an enforcement action for violations of §§ 264.314(d)(2) or 265.314(d)(2) to bear the burden of proof in demonstrating that absorbents were not added. EPA decided that a presumption was not warranted since it would be burdensome to require the owner/operator to perform the tests or refute the presumption for all shipments of containerized wastes. The presumption would be reasonable in cases where a substantial part of the containerized wastes would be expected to have absorbents added to them; however, the Agency did not have information indicating that this was the case.

By adopting the approach proposed in the rule, EPA believes that it is codifying existing industry practice. EPA believes that the off-site landfills already require extensive waste analysis information from the generator before they accept the generator's waste for disposal. By requiring that this information be placed in the operating record, EPA is enabling the owner/operator to demonstrate compliance with §§ 264.314(d)(2) or 265.314(d)(2).

II. State Authority

I. Applicability of Rules in Authorized States

Under Section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under newly enacted section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in authoirzed States in the interim.

Today's rule will be promulgated pursuant to section 3004(c)(2) of RCRA, a provision added by HSWA. Therefore, it would be added to Table 1 in § 271.1(j) which identifies the Federal program requirements that are promulgated pursuant to HSWA and take effect in all States, regardless of their authorization status. States may apply for either interim or final authorization for the HSWA provisions identified in Table 1 as discussed in the following section of this preamble.

2. Effect on State Authorizations

As noted above, EPA will implement the standards in today's rule (when finalized) in authorized States until they modify their programs to adopt these rules and the modification is approved by EPA. Because the rule will be promulgated pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final authorization under section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantively

equivalent or equivalent to EPA's. The procedures and schedule for State program modifications under section 3006(b) are described in 40 CFR 271.21. The same procedures should be followed for section 3006(g)(2).

40 CFR 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes, and must subsequently submit the modifications to EPA for approval. The deadlines for the State to modify its program for this proposed regulation will be determined by the date of promulgation of the final rule in accordance with § 271.21(e). These deadline can be extended in exceptional cases (40 CFR 271.21(e)(3)). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

States with authorized RCRA programs may already have requirements similar to those in today's proposed rule. These State regulations have not been assessed against Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, a State is not authorized to carry out these requirements in lieu of EPA until the State program modification is approved. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law. In implementing the Federal program, EPA will work with States under cooperative agreements to minimize duplication of efforts. In many cases, EPA will be able to defer to the States in their efforts to implement their programs, rather than take separate actions under Federal authority.

States that submit official applications for final authorization less than 12 months after promulgation of EPA's regulations may be approved without inlcuding standards equivalent to those promulgated. However, once authorized, a State must modify its program to include standards substantially equivalent or equivalent to EPA's within the time periods discussed above.

III. Compliance with Executive Order 12291

Executive Order 12291 (Section 3(b)) requires that all regulatory agencies prepare a Regulatory Impact Analysis for all "major" rules. Section 1(b) defines "major" rules as those that are likely to result in:

1. An annual effect on the economy of $100 million or more,
2. A major increase in costs or prices for consumers or individual industries, or
3. Significant adverse effects on competition, employment, investment, productivity, innovation, or international trade.

EPA's analysis indicates that the rule prohibiting disposal of containers holding liquids and free liquids does not constitute a "major" rule.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq) requires a Federal Agency to prepare a Regulatory Flexibility Analysis (RFA) for all regulations that have "a significant economic impact on a substantial number of small entities," where:

- "Substantial number" means more than 20 percent of the affected small entities;
- "Small" is determined by the SBA loan eligibility criteria, unless an alternative definition is proposed and justified; and
- "Significant economic impact" occurs if:
  - Annual compliance costs (annualized capital, operating, reporting, etc.) increase total production costs for relevant products or processes by more than 5 percent, or
  - Compliance costs as a percent of sales for small entities is 10 percent or more as a percent of sales than for large entities, or
  - Capital costs for compliance are a significant portion of capital available (considering internal cash flow and external financing opportunities), or
  - Closures of small entities are likely to result.

EPA certifies that this proposed regulation will not have a significant economic impact on a substantial number of small entities; therefore, no Regulatory Flexibility Analysis is needed.

V. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3502. The public should submit comments on these requirements to the Office of Information and Regulatory Affairs, OMB, 730 Jackson Place, NW., Washington, DC, marked: "Attention: Desk Officer for EPA." The final rule will respond to any OMB, or public comments on the information collection requirements.

VI. References

1. "Sorbent Pressure Test Development," Report prepared by Research Triangle Institute.
2. "Liquid Release Test for Liquid Loaded Sobents—Single Laboratory Evaluation of Test Equipment," Report prepared by Research Triangle Institute, April 1986.
3. "Structurally Stable Absorbents," Report prepared by Mason and Hanger-Silas Mason, Co., August 1985.
4. "Development of Criteria to Distinguish Acceptable Sorbents for Containerized Hazardous Liquids," Report prepared by K.W. Brown, March 1986.

List of Subjects

40 CFR Part 260

Administrative practice and procedure, Hazardous materials, Waste treatment and disposal.

40 CFR Part 264

Hazardous materials, Packaging and containers, Reporting requirements, Security measures, Surety bonds, Waste treatment and disposal.

40 CFR Part 265

Hazardous materials, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Waste Treatment and disposal, Water supply.

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: December 8, 1986.

Lee M. Thomas,

Administrator.

For the reasons set forth in the preamble, 40 CFR Parts 260, 264, 265 and 271 are proposed to be amended as set forth below.

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for Part 260 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001 through 3007, 3010, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 as amended, [42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930 and 6974].

2. Section 260.11 is amended by revising the fourth reference in paragraph (a) to read as follows:

§ 260.11 References

(a) * * *

"Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846 [Second Edition, 1982 as amended by Update I (April, 1984), Update II (April, 1985), and

Update III [Insert month and year of final publication in FR)]. The second edition of SW–846 and updates I, II, are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20401, (202) 783–3228, on a subscription basis.

* * * * *

Part 264—Standards For Owners and Operators of Hazardous Waste Treatment, Storage, And Disposal Facilities

3. The authority citation for Part 264 continues to read as follows:

Authority: Sections 1006, 2002(a), 3004, 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 as amended (42 U.S.C. 6905, 6912(a), 6924, and 6925).

4. Section 264.13 is amended by revising paragraph (b)(6) and by adding paragraph (c)(3) to read as follows:

§ 264.13 General Waste Analysis

* * * * *

(b) * * *

(6) Where applicable, the methods that will be used to meet the additional waste analysis requirements for specific waste management methods as specified in §§ 264.17, 264.314 (c) and (d), and 264.341.

* * * * *

(c) * * *

(3) The procedures that the owner or operator of an off-site landfill receiving containerized hazardous waste will use to determine whether a hazardous waste generator has added a biodegradable absorbent material to the waste in the container.

5. Section 264.73 is amended by revising paragraph (b)(3) to read as follows:

§ 264.73 Operating Record.

* * * * *

(b) * * *

(3) Records and results of waste analysis peformed as specified in §§ 264.13, 264.17, 264.314 (c) and (d), and 264.341.

* * * * *

6. Section 264.314 is amended by revising paragraph (d) to read as follows:

§ 264.314 Special Requirements for bulk and containerized liquids.

* * * * *

(d)(1) Containers holding free liquids must not be placed in a landfill unless:

(i) The container is very small, such as an ampule; or

(ii) The container is designed to hold free liquids for use other than storage, such as a battery or capacitor; or

(iii) The container is a lab pack as defined in § 264.316 and is disposed of in accordance with § 264.316; or

(2) The containerized liquids or free liquids have been solidified by the use of an absorbent material and, if solidified, (i) the total organic carbon content of the absorbent material is less than or equal to 1.0 percent, and (ii) the waste/absorbent mixture does not release liquids as determined by Method 9096 (Liquids Release Test) as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods."

[EPA Publication No. SW–846].

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

7. The authority citation for Part 265 continues to read as follows:

Authority: Sections 1006, 2002(a), 3004, 3005, and 3015, Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935).

8. Section 265.13 is amended by revising paragraph (b)(6) and by adding paragraph (c)(3) to read as follows:

§ 265.13 General waste analysis.

* * * * *

(b) * * *

(6) Where applicable, the methods that will be used to meet the additional waste analysis requirements for specific waste management methods as specified in §§ 265.193, 265.225, 265.252, 265.273, 265.314 (c) and (d), 265.345, 265.375, and 265.402.

* * * * *

(c) * * *

(3) The procedures that the owner or operator of an off-shore landfill receiving containerized hazardous waste will use to determine whether a hazardous waste generator has added a biodegradable absorbent material to the waste in the container.

9. Section 265.73 is amended by revising paragraph (b)(3) to read as follows:

§ 265.73 Operating record.

* * * * *

(b) * * *

(3) Records and results of waste analyses and trial tests performed as specified in §§ 265.13, 265.193, 265.225, 265.252, 265.273, 265.314 (c) and (d), 265.341, 265.375, and 265.402.

* * * * *

10. Section 265.302 is amended by revising the comment at the end of the section to read as follows:

§ 265.302 General operating requirements.

* * * * *

[*Comment:* As required by § 265.13, the waste analysis plan must include analyses needed to comply with §§ 265.312, 265.313, and 265.314 (c) and (d). As required by § 265.73, the owner or operator must place the results of these analyses in the operating record of the facility.]

11. Section 265.314 is amended by revising paragraph (c) to read as follows:

§ 265.314 Special requirements for bulk and containerized liquids.

* * * * *

(c)(1) Containers holding free liquids must not be placed in a landfill unless:

(i) The container is very small, such as an ampule; or

(ii) The container is designed to hold free liquids for use other than storage, such as a battery or capacitor; or

(iii) The container is a lab pack as defined in § 265.316 and is disposed of in accordance with § 265.316; or

(2) The containerized liquids or free liquids have been solidified by the use of an absorbent material and, if solidified, (i) the total organic carbon content of the absorbent material is less than or equal to 1.0 percent, and (ii) the waste/absorbent mixture does not release liquids as determined by Method 9096 (Liquids Release Test) as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods."

[EPA Publication No. SW–846].

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

12. The authority citation for Part 271 continues to read as follows:

Authority: Sections 1006, 2002(a), and 3006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a) and 6926).

13. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication:

§ 271.1 Purpose and scope.

* * * * *

Table 1.—Regulations Implementing the Hazardous and Solid Waste Amendments of 1984

Date	Title of regulation
* * * * *	
[Insert date of publication in *FR*].	Containerized Hazardous Liquids
* * * * *	

[FR Doc. 86–28381 Filed 12–23–86; 8:45 am]
BILLING CODE 6560–50–M

federal register

Wednesday
December 24, 1986

Part IV

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 723, 724, 845 and 846

Surface Coal Mining and Reclamation Operations; Initial Regulatory Program and Permanent Regulatory Program; Individual Civil Penalties; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 723, 724, 845 and 846

Surface Coal Mining and Reclamation Operations; Initial Regulatory Program and Permanent Regulatory Program; Individual Civil Penalties

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the U.S. Department of the Interior (DOI) proposes to amend its Initial and Permanent Regulatory Program procedures to provide for the assessment of individual civil penalties against officers, directors and agents of corporate permittees in accordance with section 518(f) of the Surface Mining Control and Reclamation Act of 1977.

DATES: *Written Comments:* OSMRE will accept written comments on the proposed rule until 5 p.m. Eastern time on March 4, 1987.

Public Hearings: Upon request, OSMRE will hold public hearings on the proposed rule in Washington, DC; Denver, Colorado; and Lexington, Kentucky at 9:30 a.m. local time on February 25, 1987. Upon request, OSMRE will also hold public hearings in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee and Washington, where Federal regulatory programs are in effect, at times and on dates to be announced prior to the hearings. OSMRE will accept requests for public hearings until 5:00 p.m. Eastern time on January 23, 1987. Individuals wishing to attend but not testify at any hearing should contact the person identified under "For Further Information Contact" beforehand to verify that the hearing will be held.

ADDRESSES: *Written Comments:* Hand-deliver to the Office of Surface Mining, Administrative Record, Room 5315, 1100 L Street, NW., Washington, DC; or mail to the Office of Surface Mining, Administrative Record, Room 5315L, 1951 Constitution Avenue, Washington, DC 20240.

Public Hearings: Department of the Interior Auditorium, 18th and C Streets, NW., Washington, DC; Brooks Towers, 2nd Floor Conference Room, 1020 15th Street, Denver, Colorado; and Suite 28 Conference Room, 340 Legion Drive, Lexington, Kentucky. The addresses for any hearings scheduled in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee and Washington will be announced prior to the hearings.

Request for public hearings: Submit orally or in writing to the person and address specified under "**FOR FURTHER INFORMATION CONTACT.**"

FOR FURTHER INFORMATION CONTACT: Andrew F. DeVito, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202/343-5241 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of the Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practical, commenters should submit three copies of their comments (see "**ADDRESSES**"). Comments received after the close of the comment period (see "**DATES**") may not be considered or included in the Administrative Record for the final rule.

Public Hearings

OSMRE will hold public hearings on the proposed rule by request only. The times, dates and addresses scheduled for hearings at three locations are specified previously in this notice (see "**DATES**" and "**ADDRESSES**"). The times, dates and addresses for the hearings at the remaining locations have not yet been scheduled, but will be announced in the **Federal Register** at least 7 days prior to any hearings which are held at these locations.

Any person interested in participating at a hearing at a particular location should inform Mr. DeVito (see "**FOR FURTHER INFORMATION CONTACT**") either orally or in writing of the desired hearing location by 5:00 p.m. Eastern time on January 23, 1987. If no one has contacted Mr. DeVito to express an interest in participating in a hearing at a given location by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSMRE requests that persons who testify at a hearing give the transcriber a written copy of their testimony. To assist OSMRE in preparing appropriate questions, OSMRE also requests that persons who plan to testify submit to OSMRE at the address previously specified for the submission of written comments (see "**ADDRESSES**") an advance copy of their testimony.

II. Background

Section 518 of the Surface Mining Control and Reclamation Act of 1977 (the Act), 30 U.S.C. 1201 *et seq.*, authorizes the Secretary of the Interior to assess civil and criminal penalties for violations of the Act. Under section 518(a) any person who violates any permit condition or any other provision of Title V of the Act may be assessed a civil penalty, not to exceed $5,000 per violation for each day the violation continues. Section 518(a) requires the Secretary to consider the following criteria in determining the amount of the penalty: (i) The permittee's history of previous violations at the particular surface coal mining operation; (ii) the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public; (iii) whether the permittee was negligent; and (iv) the demonstrated good faith of the permittee charged in attempting to achieve rapid compliance after notification of the violation.

Under section 518(h) if a violation is not abated within the period set in a notice of violation or order the assessment of a minimum penalty of $750 for each day during which the violation remains unabated is mandatory. Under section 518(f) if a violation is committed by a corporate permittee or a failure or refusal to comply with certain specified orders occurs, then any director, officer or agent of the corporate permittee who willfully and knowingly authorized, orderd or carried out such violation, failure or refusal is subject to the same civil penalties as may be imposed upon the corporate permittee under section 518(a), and to the same criminal sanctions under section 518(e).

Section 518(f) of the Act reads in part as follows:

> Whenever a corporate permittee violates a condition of a permit . . . or fails or refuses to comply with any order issued under section 521 of this Act, or any order incorporated in a final decision issued by the Secretary under this Act . . . any director, officer, or agent of such corporation who willfully and knowingly authorized, ordered, or carried out such violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment that may be imposed upon a person under subsections (a) and (e) of this section.

In order to distinguish between a penalty assessed against a corporate permittee under section 518(a) and a penalty assessed against a corporate officer, director or agent under section 518(f), OSMRE refers to the former penalty as a "civil penalty," and the latter penalty as an "individual civil penalty."

On December 13, 1977, OSMRE promulgated in 30 CFR Part 723 initial program regulations for the assessment of civil penalties under the provisions of section 518 of the Act. 42 FR 62702. On March 13, 1979, OSMRE promulgated its permanent program regulations in Part 845 for the assessment of civil penalties under section 518 of the Act. 44 FR 15461. On September 4, 1980, OSMRE revised the regulations in Parts 723 and 845 and incorporated provisions authorizing enforcement action against corporate officers, directors and agents under section 518(f) of the Act. 30 CFR 723.15 and 845.15; 45 FR 58780.

The current regulations in Parts 723 and 845 prescribe a point system by which OSMRE calculates the amount of the penalty to be assessed under section 518(a). 30 CFR 723.13 and 723.14; 845.13 and 845.14. The assessment system is based on the four criteria set forth in section 518(a), and provides for a waiver of the formula upon a determination by the Director that there are exceptional factors which render the penalty demonstrably unjust. 30 CFR 723.16 and 845.16. The regulations permit OSMRE to assess separately a civil penalty for each day of a continuing violation, from the date of issuance of the notice of violation or cessation order to the date set for abatement. 30 CFR 723.15(a) and 845.15(a). Whenever a violation resulting in a notice of violation or cessation order has not been abated within the prescribed abatement period, OSMRE assesses an additional penalty of $750 for each day the violation remains unabated. 30 CFR 723.15(b) and 845.15(b). The $750 penalty is assessed pursuant to section 518(h) and is in addition to the daily civil penalty assessed under the point system pursuant to section 518(a). Under 30 CFR 723.15(b) and 845.15(b), penalties assessed under section 518(h) of the Act may not be assessed for more than 30 days or exceed $22,500.

Sections 723.15(b) and 845.15(b) further provide that if a violation is not abated within 30 days, OSMRE must take appropriate action pursuant to sections 518(e) (criminal penalties), 518(f) (individual civil penalties), 521(a)(4) (permit suspension or revocation for a pattern of violations), or 512(c) (requests for temporary or permanent injunctions).

On January 31, 1985, Judge Barrington D. Parker of the United States District Court for the District of Columbia issued an order (Revised Parker Order) in the case of *Save Our Cumberland Mountains, Inc., et al. v. Clark, et al.*, No. 81-2134 (D.D.C. 1985). The Revised Parker Order resulted from a settlement agreement entered into by the Secretary. Among other matters, the Revised Parker Order addresses the circumstances under which the Secretary would use his authority under section 518(f) of the Act to impose individual civil penalties on officers, directors and agents of corporate permittees. The Revised Parker Order also requires OSMRE to consider the use of authority under section 518(a) to assess individual civil penalties for each day of a continuing violation, and to propose a regulation governing the use of such authority. This notice is being published in accordance with the Revised Parker Order.

As a result of the Revised Parker Order, OSMRE has examined its existing rules and policies related to the assessment of civil penalties. Most civil penalties are assessed based upon the point system set forth in 30 CFR 723.13-723.14 and 30 CFR 845.13-845.14. The use of this point system does not appear practical for, nor strictly applicable to, the assessment of individual civil penalties. The point system does not give the Secretary sufficient flexibility to assess a penalty which fairly considers the particular actions or inactions of an individual. For example, §§ 723.13(b)(1) and 845.13(b)(1) consider the history of the permittee's previous violations without respect to the individual's involvement with them. Although §§ 723.16 and 845.16 provide that the point system can be waived in appropriate cases, in the absence of a rule setting forth procedures for imposing individual civil penalties the simple exercise of the waiver provision would leave OSMRE and the State regulatory authorities without sufficient guidance on how to weigh the actions of an individual and how to calculate an appropriate civil penalty.

This proposed rule would establish a regulatory scheme for imposing individual civil penalties under section 518(f) of the Act. It is modeled in part on the regulations of the Mine Safety and Health Administration (MSHA), U.S. Department of Labor. The legislative history of the Act indicates that the enforcement provisions in the Act, including those in section 518(f), were modeled after similar provisions in the Federal Coal Mine Health and Safety Act of 1969 (Pub. L. 91-173). *See* S. Rep. No. 128, 95th Cong., 1st Sess. 58 (1977). Section 109(c) of Federal Coal Mine Health and Safety Act of 1969 is the predecessor of section 110(c) of the Federal Mine Safety and Health Act of 1977 (Pub. L. 95-164), which is administered by MSHA.

Both sections 109(c) and 110(c) provide for the imposition of an individual civil penalty in language nearly identical to that found in section 518(f) of the Act. Consequently, OSMRE has reviewed the regulations of MSHA at 30 CFR Part 100 for guidance in developing proposed Parts 724 and 846, which set forth the manner in which OSMRE would assess individual civil penalties under section 518(f) of the Act.

Once a final rule governing the imposition of individual civil penalties is promulgated, the States which have achieved primacy will need to amend their regulatory programs in order to contain penalties which are no less stringent than those set forth in sections 518(a) and 518(f) of the Act, and to provide State procedures which are the same as or similar to the procedures contained in sections 518 and 521 of the Act and consistent with those in the final Federal rules. See 30 U.S.C. 1268(i) and 30 CFR 840.13 (a) and (c).

This edition of the **Federal Register** also contains rules being govern the filing of a petition for review of a notice of individual civil penalty assessment. They should be read in conjunction with this proposed rule in order to better understand the regulatory scheme being proposed by the Department.

III. Discussion of the Proposed Rule

Extension of time to request a conference—§§ 723.1 and 723.18; §§ 845.1 and 845.18

In addition to conforming changes to §§ 723.1 and 845.1, the proposed rule would amend §§ 723.18 and 845.18 to extend the time within which a person may request a conference to review a proposed assessment or reassessment of a civil penalty under section 518(a). The time would be extended from the present 15 days from mailing to 30 days following the receipt of a notice or order of proposed assessment or reassessment.

Scope—§ 724.1; § 846.1

Under the proposed rule, Parts 724 and 846 would govern the assessment of individual civil penalties against officers, directors and agents of corporate permittees in accordance with section 518(f) of the Act. Under section

518(f), an officer, director or agent may be assessed an individual civil penalty who willfully and knowingly authorized, ordered, or carried out a violation of a condition of a permit issued pursuant to a Federal Program, a Federal lands program, Federal enforcement pursuant to section 502 of the Act, or Federal enforcement of a State program pursuant to section 521 of the Act, or failed or refused to comply with any order issued under section 521 of the Act, or any order incorporated in a final decision issued by the Secretary under the Act, except an order incorporated in a decision issued under sections 518(b) or 703 of the Act.

Definitions—§ 724.5; § 846.5

While a civil penalty against a corporate permittee under section 518(a) is assessed on a strict liability standard, an individual civil penalty under section 518(f) would require knowing and willful conduct on the part of the individual. Neither the Act nor the legislative history defines the terms "knowingly" and "willfully." In order to provide guidance to the individuals who may be subject to penalty assessments as well as to those who would assess individual civil penalties, OSMRE proposes to define these terms. The proposed rule also contains a definition for the phrase "violation, failure or refusal".

Knowingly: Under the proposed definition, and individual acts "knowingly" if he/she knew or had reason to know that he or she authorized, ordered or carried out some act or omission of the corporate permittee which consitituted a violation, failure or refusal specified in section 518(f). A person would have "reason to know" when he/she had such information as would lead a person exercising reasonable care to acquire knowledge of the facts in question or to infer their existence.

This definition is based in part upon the assumption that persons holding a position of officer, director or agent are responsible for the actions which they have authority to control by virtue of the position they hold. This definition is consistent with the prevailing interpretation of the term "knowingly" as used in the individual civil penalty provision of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(c). *See Secretary of Labor* v. *Kenny Richardson*, 2 MSHC 1114, 1120 (1981), *aff'd, Richardson* v. *Secretary of Labor*, 689 F.2d 632 (6th Cir. 1982).

Violation, failure, or refusal: This term is defined because it is used in a number of places in the proposed rule. Under the proposed definition, violation would mean a violation of a condition of a permit issued pursuant to a Federal Program, a Federal lands program, Federal enforcement pursuant to section 502 of the Act, or Federal enforcement of a State program pursuant to section 521 of the Act. Failure or refusal would mean a failure or refusal to comply with any order issued under section 521 of the Act, or any order incorporated in a final decision issued by the Secretary under the Act, except an order incorporated in a decision issued under sections 518(b) or 703 of the Act. The exception for sections 518(b) and 703 are required by section 518(f).

Section 518(f) of the Act specifically prohibits the Secretary from assessing penalties for failure to comply with an order incorporated in a civil penalty decision rendered under section 518(b), presumably because it would be counter-productive to assess an individual civil penalty for the nonpayment of the original civil penalty assessed against the corporate permittee. In addition, pursuant to section 518(f), the Secretary may not assess an individual civil penalty for failure to obey a decision of the Secretary issued pursuant to section 703 of the Act for discrimination against any employee who has filed or caused to be filed any proceeding under the Act or against anyone who has or will testify in any such proceeding.

Willfully: In civil statutes the term "willfully" generally refers to an act or omission which is intentional, knowing, voluntary and conscious, as distinguished from an act which is merely accidental or negligent. *See e.g., Messina Construction Corp.* v. *OSHA*, 505 F. 2nd 701 (1st Cir. 1974). Also, the courts have consistently construed "willfully" in civil statutes to encompass conduct which is plainly indifferent to statutory or regulatory requirements. *See e.g., Alabama Power Co.* v. *FERC*, 584 F. 2d 750, 752 (5th Cir. 1978).

Accordingly, under the proposed definition an individual acts willfully if he/she does so either "intentionally, voluntarily, consciously, or with careless disregard or plain indifference to legal requirements." This proposed definition is broader than the definition of "willful violation" currently found in 30 CFR 701.5 and 843.5. OSMRE believes that this broader definition will provide OSMRE maximum flexibility in enforcing the individual civil penalty provision of the Act while keeping well within the bounds of sound statutory construction.

When a Civil Penalty May Be Assessed—§ 724.12; § 846.12

Under §§ 724.12(a) and 846.12(a) of the proposed rule, the Secretary may assess an individual civil penalty whenever an individual knowingly and willfully authorized, ordered or carried out (i) a violation by a corporate permittee of any permit condition or any requirement of the Act or implementing regulation, or (ii) the failure or refusal of the corporate permittee to comply with any order under section 521 of the Act or other order incorporated in a final decision of the Secretary. This penalty would be assessed against an individual only after a cessation order had been issued to the corporate permittee and remained unabated for 30 days. Such a procedure would be consistent with the requirements of paragraphs 9 and 12 of the Revised Parker Order and also with OSMRE's policy of using the assessment of an individual civil penalty as an alternative enforcement mechanism. See 30 CFR 723.15(b)(2) and 845.15(b)(2).

Amount of Individual Civil Penalty—§ 724.14; § 846.14

Section 518(f) subjects a corporate officer, director or agent to the same civil penalty that may be imposed upon a person or corporation under section 518(a) of the Act. OSMRE interprets this to mean that the relevant criteria of section 518(a) are to be applied, and that the daily ceiling in section 518(a) on the amount to the penalty must be observed when assessing a civil penalty against an individual. OSMRE does not interpret section 518(a) as requiring the amount of the penalty assessed against the individual to be the same as that assessed against the corporation. This interpretation is reasonable since all of the criteria used in assessing a section 518(a) penalty against a corporation might not apply to a corporate official charged under section 518(f).

This interpretation of the phrase "subject to the same civil penalties" is consistent with how the Department of the Interior interpreted the same phrase in section 109(c) of the Federal Coal Mine Health and Safety Act of 1969 when it administered that law from 1969 to 1977. Section 109(c) of the Federal Coal Mine Health particular surface coal mining operation which would be considered when assessing a penalty. OSMRE believes that a reasonable reading of sections 518(a) and 518(f) together supports this result.

A central goal of the Act and its implementing regulations is the protection of the environment from the adverse effects of surface coal mining operations (see section 102(a) of the Act). In many instances, a chief consequence of a corporate permittee's violation of the Act and subsequent failure or refusal to abate such violation is environmental damage. Section 518(a) directs OSMRE to consider the seriousness of the underlying violation when assessing an individual civil penalty.

OSMRE believes that if a violation leads to environmental damage, the extent of the damage is to be considered. One accurate indicator of its gravity is the amount of money it would cost to abate the violation and/or reclaim the affected area. Accordingly, in measuring the harm to the environment pursuant to the criteria in §§ 724.14(a)(2) and 846.14(a)(2) OSMRE could base its assessment, as a whole or in part, upon the estimated cost to repair the damage caused by a failure to abate the violation.

OSMRE recognizes that in many cases the harm caused by the permittee's violation, failure or refusal cannot be repaired. Accordingly, when assessing individual civil penalties, §§ 724.14(a)(2) and 846.14(a)(2) would allow OSMRE to consider that an individual has taken an action which has caused "irreparable damage to the environment", as defined at 30 CFR 701.5.

Section 518(a) also directs that the health and safety of the public be considered in the civil penalty assessment process. Accordingly, this criterion also is incorporated into the proposed rule in §§ 724.14(a)(2) and 846.14(a)(2).

In the case of a civil penalty assessment against a permittee, section 518(a) requires the Secretary to consider whether the permittee was negligent. OSMRE believes that this criterion is not directly applicable to the assessment of individual civil penalties because section 518(f) of the Act requires knowing and willful conduct, which goes beyond merely negligent behavior.

Finally, section 518(a) requires the Secretary to consider the demonstrated good faith of a permittee in attempting to achieve rapid compliance after notification of a violation, failure or refusal. Sections 724.14(a)(3) and 846.14(a)(3) list this criterion, which along with the other criteria would be used by OSMRE in deciding whether to assess a separate individual civil penalty for each day of a continuing violation, failure or refusal pursuant to §§ 724.14(b) and 846.14(b).

Sections 724.14(b) and 846.14(b) gives OSMRE broad discretion to assess a separate individual civil penalty for any or all days of a continuing violation, failure or refusal from the date of service of the notice of violation, cessation order or other order until the abatement of the violation or compliance with any final order or decision. The authority for this requirement derives from section 518(a), which allows OSMRE to consider each day of a continuing violation a separate violation. In determining whether to assess separate penalties for continuing violations, failures and refusals, the proposed rule requires OSMRE to consider the factors in §§ 724.14(a) and 846.14(a).

While the proposed rule allows the assessment of a separate individual civil penalty for any or all days of a continuing violation, failure or refusal, from the date of service of the notice of violation, cessation order or other order, in some instances a willful and knowing refusal to comply may not be provable until the period set for abatement has expired.

Procedures for Assessment of Individual Civil Penalty—§ 724.17; § 846.17

Under §§ 724.17(a) and 846.17(a) of the proposed rule, OSMRE shall serve a notice of individual civil penalty assessment on the individual who is being assessed a penalty. The notice of proposed assessment would include a narrative setting forth the reasons for the civil penalty and the amount assessed.

Under §§ 724.17(b) and 846.17(b), the assessment would become a final order of the Secretary and payable 30 days after service of the notice of assessement unless within the 30-day period the individual files a petition for review or agrees to a schedule or plan for the abatement or correction of the violation. Unlike §§ 723.19(a) and 845.19(a), which cover other civil penalty assessments, the proposed rule does not require an individual to prepay the penalty before he or she appeals. The Act does not mandate prepayment of the individual civil penalties. Because no prepayment is required, the proposed rule does not contain a provision for assessment conferences. A notice of individual civil penalty assessment could be appealed to an administrative law judge, and, under the proposed OHA rules, then to the Interior Board of Land Appeals at its discretion.

Under proposed §§ 724.17(c) and 846.17(c), OSMRE would establish that for purposes a serving notices of individual civil penalty assessments and final orders, service would be sufficient if it would satisfy the Federal Rules of Civil Procedure. This would ensure that future issues concerning service would be minimized and resolved in a uniform manner.

Payment of Penalty—§ 724.18; § 846.18

Under §§ 724.18(a) and 846.18(a), if pursuant to proposed §§ 724.17(b) and 846.17(b) no petition for review is filed or no agreement is entered into, the penalty would become due to OSMRE upon service of a final order on the individual.

Under §§ 724.18(b) and 846.18(b), if the individual assessed a penalty filed a petition for administrative review as provided in §§ 724.17(b) and 846.17(b), and if the final administrative review results in a final order affirming, increasing, or decreasing the proposed penalty, proposed §§ 724.18(b) and 846.18(b) provide that the penalty shall be due 30 days from the issuance of the order.

Under §§ 724.18(c) and 846.18(c), if the OSMRE and the corporate permittee or individual have agreed in writing on a plan for the abatement of or compliance with the unabated order, the individual named in the notice of individual civil penalty assessment may postpone payment until receiving either a final order from OSMRE that the penalty is due 30 days from the date of such final order or written notice that abatement or compliance is satisfactory and the penalty has been withdrawn.

IV. Procedural Matters

Federal Paperwork Reduction Act

There are no information collection requirements in the proposed rule which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

Executive Order 12991

The Department of the Interior has examined the proposed rule according to the criteria of Executive Order 12991 (February 17, 1981) and has determined that it is not major and does not require a regulatory impact analysis.

Regulatory Flexibility Act

The Department of the Interior has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the proposed rule will not have a significant economic impact on a substantial number of small entities. The rule governs the assessment of civil penalties personally upon individual corporate officers, directors or agents for violations of certain provisions of the Act rather than upon the corporate entities engaged in coal mining. No burden would be imposed upon entities operating in compliance with the Act.

National Environmental Policy Act

OSMRE has prepared a draft environmental assessment, and has made an interim finding that the proposed rule would not significantly affect the quality of the human

environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The draft environmental assessment is on file in the OSMRE Administrative Record at the address previously specified (see **"ADDRESSES"**). A final environmental assessment will be completed and a final finding made on the significance of any resulting impacts prior to promulgation of the final rule.

List of Subjects

30 CFR Part 723

Administrative practice and procedure, Penalties, Surface mining, Surface Mining Reclamation and Enforcement Office, Underground mining.

30 CFR Part 724

Administrative practice and procedure, Law enforcement, Penalties, Surface mining, Surface Mining Reclamation and Enforcement Office, Underground mining.

30 CFR Part 845

Administrative practice and procedure, Law enforcement, Penalties, Reporting and recordkeeping requirements, Surface mining, Surface Mining Reclamation and Enforcement Office, Underground mining.

30 CFR Part 846

Administrative practice and procedure, Law enforcement, Penalties, Surface mining, Surface Mining Reclamation and Enforcement Office, Underground mining.

Accordingly, it is proposed to amend 30 CFR Parts 723 and 845, and to add 30 CFR Parts 724 and 846 as follows:

Dated: November 6, 1986.

J. Steven Griles,

Assistant Secretary for Land and Minerals Management.

SUBCHAPTER B—INITIAL PROGRAM REGULATIONS

PART 723—CIVIL PENALTIES

1. The authority citation for Part 723 continues to read as follows:

Authority: Surface Mining Control and Reclamation Act of 1977, secs. 201, 501, 518 (30 U.S.C. 1211, 1251, 1268), unless otherwise noted.

2. Section 723.1 is revised to read as follows:

§ 723.1 Scope.

This part covers the assessment of civil penalties under section 518 of the Act for violations of a permit condition, any provision of Title V of the Act, or any implementing regulations, except for the assessment of individual civil penalties under section 518(f), which is covered by Part 724. This part governs when a civil penalty is assessed and how the amount is determined, and sets forth applicable procedures. This part applies to cessation orders and notices of violation issued under Part 722 of this chapter during a Federal inspection.

3. Section 723.18(a) is revised to read as follows:

§ 723.18 Procedures for assessment conference.

(a) The Office shall arrange for a conference to review the proposed assessment or reassessment, upon written request of the person to whom the notice or order was issued, if the request is received within 30 days from the date the proposed assessment or reassessment is received.

* * * * *

4. In Subchapter B, Part 724 is added to read as follows:

PART 724—INDIVIDUAL CIVIL PENALTIES

Sec.
724.1 Scope.
724.5 Definitions.
724.12 When an individual civil penalty may be assessed.
724.14 Amount of individual civil penalty.
724.17 Procedure for assessment of individual civil penalty.
724.18 Final assessment and payment of penalty.

Authority: Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*)

§ 724.1 Scope.

This part covers the assessment of individual civil penalties under section 518(f) of the Act.

§ 724.5 Definitions.

For purposes of this part:

Knowingly means that an individual knew or had reason to know in authorizing, ordering or carrying out an act or omission on the part of a corporate permittee that such act or omission constituted a violation, failure or refusal.

Violation, failure or refusal means—

(a) A violation of a condition of a permit issued pursuant to a Federal Program, a Federal lands program, Federal enforcement pursuant to section 502 of the Act, or Federal enforcement of a State program pursuant to section 521 of the Act; or

(b) A failure or refusal to comply with any order issued under section 521 of the Act, or any order incorporated in a final decision issued by the Secretary under the Act, except an order incorporated in a decision issued under sections 518(b) or 703 of the Act.

Willfully means that an individual acted either intentionally, voluntarily or consciously, or with intentional disregard or plain indifference to legal requirements in authorizing, ordering or carrying out a corporate permittee's action or omission that constituted a violation, failure or refusal.

§ 724.12 When an individual civil penalty may be assessed.

(a) Except as provided in paragraph (b) of this section, the Office may assess an individual civil penalty against any corporate director, officer or agent of a corporate permittee who knowingly and willfully authorized, ordered or carried out—(1) The violation by the corporation of any condition of the permit or of any requirement of the Act or implementing regulation; or (2) the failure or refusal by the corporate permittee to comply with any order issued under section 521 of the Act or other order incorporated in a final decision issued by the Secretary under the Act.

(b) The Office shall not assess an individual civil penalty—(1) Until a cessation order has been issued to the corporate permittee and the cessation order remains unabated for 30 days; or (2) for an order incorporated in a final decision of the Secretary issued pursuant to sections 518(b) or 703 of the Act and the implementing regulations.

§ 724.14 Amount of individual civil penalty.

(a) In determining the amount of an individual civil penalty assesed under § 724.12, the Office shall consider the criteria specified in section 518 of the Act, including:

(1) The individual's history of authorizing, ordering or carrying out previous violations, failures or refusals at the particular surface coal mining operation;

(2) The seriousness of the violation, failure or refusal (as indicated by the extent of damage and/or the cost of reclamation), including any irreparable harm to the environment and any hazard to the health or safety of the public; and

(3) The demonstrated good faith of the individual charged in attempting to achieve rapid compliance after notice of the violation, failure or refusal.

(b) The Office may assess a separate individual civil penalty for each day the violation, failure or refusal continues, from the date of service of the underlying notice of violation, cessation order or other order incorporated in a final decision issued by the Secretary until abatement or compliance is achieved.

§ 724.17 Procedure for assessment of individual civil penalty.

(a) *Notice.* The Office shall serve each individual assessed an individual civil penalty a notice of individual civil penalty assessment, including a narrative explanation of the reason for the penalty and the amount assessed.

(b) *Final order and opportunity for review.* The notice of individual civil penalty assessment shall become a final order of the Secretary and payable 30 days after service upon the individual unless—

(1) The individual files within 30 days of service of the notice of individual civil penalty assessment a petition for review in accordance with 43 CFR 4.1300 *et seq.*; or

(2) The Office and the individual or responsible corporate permittee agree to a schedule or plan for the abatement or correction of the violation, failure or refusal within 30 days of service of the notice of the individual civil penalty assessment.

(c) *Service.* For purposes of this section and § 724.18, service is sufficient if it would satisfy the Federal Rules of Civil Procedure (1985 Edition).

§ 724.18 Final assessment and payment of penalty.

(a) *No abatement or appeal.* If a notice of individual civil penalty assessment become a final order in the absence of a petition for review or abatement agreement, the penalty shall be due upon service of a final order on the individual.

(b) *Appeal.* If an individual assessed a civil penalty files a petition for review in accordance with 43 CFR 4.1300 et seq., the penalty shall be due 30 days from the date of issuance of a final administrative order affirming, increasing or decreasing the proposed penalty.

(c) *Abatement agreement.* Where the Office and the corporate permittee or individual have agree in writing on a plan for the abatement of or compliance with the unabated order, an individual named in a notice of individual civil penalty assessment may postpone payment until receiving either a final order from the Office that the penalty is due 30 days from the date of such final order or written notice that abatement or compliance is satisfactory and the penalty has been withdrawn.

SUBCHAPTER L—PERMANENT PROGRAM ENFORCEMENT AND INSPECTION AND ENFORCEMENT PROCEDURES

PART 845—CIVIL PENALTIES

5. The authority citation for Part 845 reads as follows:

Authority: Sections 102, 201, 501(b), 517, 518, 521, 523, and 525 of Pub. L. 95–87, 91 Stat. 448, 449, 468, 498, 499, 504, 510 and 511 (30 U.S.C. 1202, 1211, 1251, 1267, 1268, 1271, 1273, and 1275).

6. Section 845.1 is revised to read as follows:

§ 845.1 Scope.

This part covers the assessment of civil penalties under section 518 of the Act with respect to cessation orders and notices of violation issued under Part 843 (Federal Enforcement), except for the assessment of individual civil penalties under section 5189(f), which is covered in Part 846.

7. Section 845.18, paragraph (a) is revised to read as follows:

§ 845.18 Procedures for assessment conference.

(a) The Office shall arrange for a conference to review the proposed assessment or reassessment, upon written request of the person to whom the notice or order was issued, if the request is received within 30 days from the date the proposed assessment or reassessment is received.

* * * * *

8. In Subchapter L, Part 846 is added to read as follows:

PART 846—INDIVIDUAL CIVIL PENALTIES

Sec.
846.1 Scope.
846.5 Definitions.
846.12 When an individual civil penalty may be assessed.
846.14 Amount of individual civil penalty.
846.17 Procedure for assessment of individual civil penalty.
846.18 Final assessment and payment of penalty.

Authority: Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*)

§ 846.1 Scope.

This part covers the assessment of individual civil penalties under section 518(f) of the Act.

§ 846.5 Definitions.

For purposes of this part:

Knowingly means that an individual knew or had reason to know in authorizing, ordering or carrying out an act or omission on the part of a corporate permittee that such act or omission constituted a violation, failure or refusal.

Violation, failure or refusal means—

(a) A violation of a condition of a permit issued pursuant to a Federal Program, a Federal lands program, Federal enforcement pursuant to section 502 of the Act, or Federal enforcement of a State program pursuant to § 521 of the Act; or

(b) A failure or refusal to comply with any order issued under section 521 of the Act, or any order incorporated in a final decision issued by the Secretary under the Act, except an order incorporated in a decision issued under section 518(b) or 703 of the Act.

Willfully means that an individual acted either intentionally, voluntarily or consciously, or with intentional disregard or plain indifference to legal requirements in authorizing, ordering or carrying out a corporate permittee's action or omission that constituted a violation, failure or refusal.

§ 846.12 When an individual civil penalty may be assessed.

(a) Except as provided in paragraph (b) of this section, the Office may assess an individual civil penalty against any corporate director, officer or agent of a corporate permittee who knowingly and willfully authorized, ordered or carried out—

(1) The violation by the corporation of any condition of the permit or of any requirement of the Act or implementing regulation; or

(2) The failure or refusal by the corporate permittee to comply with any order issued under section 521 of the Act or other order incorporated in a final decision issued by the Secretary under the Act.

(b) The Office shall not assess an individual civil penalty—

(1) Until a cessation order had been issued to the corporate permittee and the cessation order remains unabated for 30 days; or

(2) For an order incorporated in a final decision of the Secretary issued pursuant to sections 518(b) or 703 of the Act and the implementing regulations.

§ 846.14 Amount of individual civil penalty.

(a) In determining the amount of an individual civil penalty assessed under § 846.12, the Office shall consider the criteria specified in section 518(a) of the Act, including:

(1) The individual's history or authorizing, ordering or carrying out previous violations, failures or refusals at the particular surface coal mining operation;

(2) The seriousness of the violation, failure or refusal (as indicated by the extent of damage and/or the cost of reclamation), including any irreparable harm to the environment and any hazard to the health or safety of the public; and

(3) The demonstrated good faith of the individual charged in attempting to

achieve rapid compliance after notive of the violation, failure or refusal.

(b) The Office may assess a separate individual civil penalty for each day the violation, failure or refusal continues, from the date of service of the underlying notice of violation, cessation order or other order incorporated in a final decision issued by the Secretary until abatement or compliance is achieved.

846.17 Procedure for Assessment of individual civil penalty.

(a) *Notice.* The Office shall serve on each individual assessed an individual civil penalty a notice of individual civil penalty assessment, including a narrative explanation of the reason for the penalty and the amount assessed.

(b) *Final order and opportunity for review.* The notice of individual civil penalty assessment shall become a final order of the Secretary and payable 30 days after service upon the individual unless—

(1) The individual files within 30 days of service of the notice of individual civil penalty assessment a petition for review in accordance with 43 CFR 4.1300 *et seq.*; or

(2) The Office and the individual or responsible corporate permittee agree to a schedule or plan for the abatement or correction of the violation, failure or refusal within 30 days of service of the notice of the individual civil penalty assessment.

(c) *Service.* For purposes of this section and § 846.18, service is sufficient if it would satisfy the Federal Rules of Civil Procedure (1985 Edition).

§ 846.18 Final assessment and payment of penalty.

(a) *No abatement or appeal.* If a notice of individual civil penalty assessment becomes a final order in the absence of a petition for review or abatement agreement, the penalty shall be due upon service of a final order on the individual.

(b) *Appeal.* If an individual assessed a civil penalty files a petition for review in accordance with 43 CFR 4.1300 *et seq.*, the penalty shall be due 30 days from the date of issuance of a final administrative order affirming, increasing or decreasing the proposed penalty.

(c) *Abatement agreement.* Where the Office and the corporate permittee or individual have agreed in writing on a plan for the abatement of or compliance with the unabated order, and individual named in a notice of individual civil penalty assessment may postpone payment until receiving either a final order from the Office that the penalty is due 30 days from the date of such final order or written notice that abatement or compliance is satisfactory and the penalty has been withdrawn.

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Wednesday
December 24, 1986

Part V

Department of the Interior

Office of Hearings and Appeals

43 CFR Part 4

Special Rules Applicable to Surface Coal Mining Hearings and Appeals; Individual Civil Penalties; Proposed Regulations

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

Special Rules Applicable to Surface Coal Mining Hearings and Appeals; Individual Civil Penalties

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Proposed regulations.

SUMMARY: These proposed rules provide procedures for administrative review of the proposed assessment of an individual civil penalty against a director, officer, or agent of a corporation under section 518(f) of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1268(f) (1982).

DATE: Comments on the proposed rules are due February 23, 1987.

ADDRESS: Comments may be hand delivered or addressed to: Director, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Will A. Irwin, Board of Land Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Phone: 703–235–3750.

SUPPLEMENTARY INFORMATION: These rules set forth the procedures for administrative review of the proposed assessment of individual civil penalties under section 518(f) of the Act, 30 U.S.C. 1268(f). (Companion proposed rules under section 518(f) prepared by the Office of Surface Mining Reclamation and Enforcement are also published in this section of the **Federal Register**.) That section provides:

(f) Whenever a corporate permittee violates a condition of a permit issued pursuant to a Federal program, a Federal lands program or Federal enforcement pursuant to section 502 or Federal enforcement of a State program pursuant to section 521 of this Act or fails or refuses to comply with any order issued under section 521 of this Act, or any order incorporated in a final decision issued by the Secretary under this Act except an order incorporated in a decision issued under subsection (b) of this section or section 703 of this Act, any director, officer, or agent of such corporation who willfully and knowingly authorized, ordered, or carried out such violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment that may be imposed upon a person under subsections (a) and (e) of this section.

Subsection (a), in turn, provides:

Sec. 518. (a) In the enforcement of a Federal program or Federal lands program, or during Federal enforcement pursuant to section 502 or during Federal enforcement of a State program pursuant to section 521 of this Act, any permittee who violates any permit condition or who violates any other provision of this title, may be assessed a civil penalty by the Secretary, except that if such violation leads to the issuance of a cessation order under section 521, the civil penalty shall be assessed. Such penalty shall not exceed $5,000 for each violation. Each day of continuing violation may be deemed a separate violation for purposes of penalty assessments. In determining the amount of the penalty, consideration shall be given to the permittee's history of previous violations at the particular surface coal mining operation; the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public; whether the permittee was negligent; and the demonstrated good faith of the permittee charged in attempting to achieve rapid compliance after notification of the violation.

Rules for the assessment of civil penalties under section 518(a) are set forth in 30 CFR Parts 723 and 845.

Section 518(f) was modeled after section 109(c) of the Federal Coal Mine Health and Safety Act of 1969 (Mine Safety Act), 30 U.S.C. 820(c). *See* S. Rep. No. 28, 94th Cong., 1st Sess. 184 (1975). (For legislative history of section 109(c), *see* H.R. Rep. No. 563, 91st Cong., 1st Sess. 11–12, *reprinted in* 1969 U.S. Code Cong. & Ad. News 2513–14). Therefore, where appropriate, cases decided under the Mine Safety Act have been used as guidance in formulating certain provisions of these proposed rules.

Section 4.1300 states that these rules govern review of the proposed assessment of an individual civil penalty against a ctor, officer, or agent of a corporation. Rules for review of proposed assessments against other persons are set forth in 43 CFR 4.1150 *et seq.*

The individual served with a notice of proposed assessment of a civil penalty under section 518(f) may file a petition for review with the Hearing Division of the Office of Hearings and Appeals. 4.1302 provides that the petition must be filed within 30 days of service of notice of the proposed assessment. 43 CFR 4.1107(f) governs the effective filing date. Failure to timely file a petition shall result in an admission of liability for the proposed penalty and cause any tardy petition to be dismissed.

Section 4.1303(a) provides that a petition shall contain a concise statement of the facts that entitle the individual to administrative relief from the imposition of the proposed penalty. The petition must be accompanied by a copy of the notice of proposed assessment and a copy of the permit, order, or final decision that the corporate permittee is charged with violating or failing or refusing to comply with. The petition should also contain a statement whether the individual wishes an evidentiary hearing or not. Unlike an operator or permittee assessed under section 518(a), an individual is not required to forward the proposed amount of the penalty with the petition for placement in an escrow account in accordance with section 518(c). *See* S. Rep. No. 128, 95th Cong., 1st Sess. 58–59 (1977).

A petition initiates a proceeding in the Office of Hearings and Appeals. Section 4.1303(b) therefore provides that copies of a petition must be served on the appropriate Field or Regional Solicitor of the Department of the Interior in accordance with 43 CFR 4.1109. The current addresses of Field and Regional Solicitors and the states for which they are responsible for Surface Mining Act cases are:

For cases arising in Arizona, Arkansas, California, Colorado, Iowa, Kansas, Louisiana, Missouri, Nebraska, Nevada, New Mexico, Oklahoma, Texas, Utah: Office of the Regional Solicitor, U.S. Department of the Interior, P.O. Box 3156, Tulsa, Oklahoma 74101. Phone 918–581–7502.

For cases arising in Connecticut, Delaware, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, and West Virginia: Office of the Field Solicitor, U.S. Department of the Interior, Suite 502J, U.S. Post Office and Courthouse, Pittsburgh, Pennsylvania 15219. Phone 412–644–4455.

For cases arising in Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia: Office of the Field Solicitor, U.S. Department of the Interior, P.O. Box 15006, Knoxville, Tennessee 37901. Phone 615–673–4233.

For cases arising in Alaska, Hawaii, Idaho, Oregon, Montana, Minnesota, North Dakota, South Dakota, Washington, Wisconsin, and Wyoming: Office of the Regional Solicitor, U.S. Department of the Interior, Denver Federal Center, P.O. Box 25007, Denver, Colorado 80225. Phone 303–236–8444.

Any party or other person shall serve any other documents being filed subsequently with OHA on all other parties and all other persons participating in the proceeding.

Under § 4.1304, the Office of Surface Mining Reclamation and Enforcement (OSM) shall have up to 30 days to file an answer or motion responding to the petition. If OSM elects not to file an answer or motion it shall file a statement to that effect within the same time limit. An individual may amend a petition as a matter of right before receipt of OSM's answer, motion, or statement and may file a motion for leave to amend the petition thereafter under § 4.1305. Section 4.1306 provides for notice of the hearing, which shall be of record and governed by 5 U.S.C. 554.

Section 4.1307 sets forth the elements to be proved, the burdens of proof, and the standard of proof for individual civil penalty proceedings. Since OSM is the proponent of the imposition of the penalty, under § 4.1307(a) it bears the initial burden of proof, *i.e.*, the burden of going forward with the evidence of a prima facie case. 5 U.S.C. 556(d); *Environmental Defense Fund* v. *EPA*, 548 F.2d 998, 1012–15 (D.C. Cir. 1976). The ultimate burden of persuasion of a preponderance of the evidence rests with the individual. *Old Ben Coal Corp.* v. *Interior Board of Mine Operations Appeals*, 523 F.2d 25, 34–41 (7th Cir. 1975). The existence of a corporate violation of failure or refusal to comply with an order may be considered in the individual civil penalty proceeding. *Kenny Richardson*, 2 MSHC 1114, 1116–17 (1981), *aff'd, Richardson* v. *Secretary of Labor*, 689 F.2d 632 (6th Cir. 1982); *Everett L. Pritt*, 8 IBMA 216, 84 I.D. 960 (1977). Individual civil penalty proceedings may be consolidated with proceedings initiated under 43 CFR 4.1150, 4.1160, or 4.1180. 30 U.S.C. 1268(b); 43 CFR 4.1113. If a corporate permittee's violation or failure or refusal to comply with an order has been upheld in a final decision on administrative review, under § 4.1307(b) it will be considered established for purposes of a proceeding under section 518(f). Under § 4.1307(c), the individual bears the ultimate burden of persuasion by a preponderance of the evidence.

The administrative law judge's decision, under § 4.1308, shall contain findings of fact and conclusions of law on each of the elements of the case set forth in § 4.1307. 43 CFR 4.1127. *See Dean Trucking Co.*, 1 IBSMA 105, 86 I.D. 201 (1979). If he concludes that the individual is liable for the assessed penalty, he shall include in his decision an order that the penalty be paid to OSM no later than 30 days after the date of issuance of the decision, absent the filing of a petition for discretionary review in accordance with § 4.1309.

Any party to an individual civil penalty proceeding may file a petiton for discretionary review of an administrative law judge's decision with the Board of Land Appeals in accordance with 43 CFR 4.1309.

Determination of Effects

Because these proposed rules merely provide the details of administrative review procedures, the Department has determined that the proposed rules are not major, as defined by Exec. Order No. 12291, and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

National Environmental Policy Act

The Department has determined that this proposed rule will not significantly affect the quality of the human environment on the basis of the categorical exclusion of regulations of a procedural nature set forth in 516 DM 2, Appendix 1, Section 1.10.

Paperwork Reduction Act

The proposed rules contain no information collection requirements requiring Office of Management and Budget approval under 44 U.S.C. 3507.

The author of these regulations is Will A. Irwin, Administrative Judge, Board of Land Appeals, Office of Hearings and Appeals.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure, penalties, surface mining.

For the reasons stated in the preamble and under the authority of 30 U.S.C. 1201 *et seq.*, §§ 4.1300 through 4.1309 of Subpart L of Part 4 of Title 43 of the *Code of Federal Regulations* are proposed to be added as set forth below:

Dated: December 16, 1986.

Paul T. Baird,

Director.

PART 4—[AMENDED]

1. The authority for 43 CFR Part 4, Subpart L continues to read as follows:

Authority: 30 U.S.C. 1256, 1260, 1261, 1268, 1271, 1272, 1275, 1293; 5 U.S.C. 301.

2. The authority for Part 4, Subpart M, continues to read as follows:

Authority: 5 U.S.C. 301.

3. 43 CFR Part 4, Subpart M, is amended by redesignating existing §§ 4.1300–4.1310 as §§ 4.1600–4.1610. All references to §§ 4.1300–4.1310 are changed to references to §§ 4.1600–4.1610.

4. 43 CFR Part 4, Subpart L, is amended by adding a new center heading and §§ 4.1300–4.1309 to read:

Petitions for Review of Individual Civil Penalty Assessments Under Section 518(f) (30 U.S.C. 1268(f))

Sec.

4.1300 Scope.
4.1301 Who may file.
4.1302 Time for filing.
4.1303 Contents and service of petition.
4.1304 Answer, motion, or statement of OSM.
4.1305 Amendment of petition.
4.1306 Notice of hearing.
4.1307 Elements; burdens of proof.
4.1308 Decision by administrative law judge.
4.1309 Petition for discretionary review.

Petitions for Review of Individual Civil Penalty Assessments Under Section 518(f) (30 U.S.C. 1268(f))

§ 4.1300 Scope.

These regulations govern petitions for review of a proposed assessment of an individual civil penalty under section 518(f) of the Act against a director, officer, or agent of a corporation.

§ 4.1301 Who may file.

Any individual served a notice of proposed assessment of an individual civil penalty may file a petition for review with the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, VA 22203. Phone: 703–235–3800.

§ 4.1302 Time for filing.

(a) A petition for review of the proposed assessment of an individual civil penalty must be filed within 30 days of service of the notice of proposed assessment.

(b) No extension of time will be granted for filing a petition for review of the proposed assessment of a civil penalty as required by paragraph (a) of this section. Failure to file a petition for review within the time period provided in paragraph (a) shall be deemed an admission of liability by the individual, whereupon the notice of proposed assessment of the civil penalty assessed shall become a final order of the Secretary and any tardy petition shall be dismissed.

§ 4.1303 Contents and service of petition.

(a) An individual filing a petition for review of a proposed assessment of an individual civil penalty shall provide—

(1) A concise statement of facts entitling the individual to relief;

(2) A copy of the notice of proposed assessment;

(3) A copy of the permit(s), order(s) or final decision(s) that the corporate permittee is charged with violating or failing or refusing to comply with; and

(4) A statement whether the individual requests or waives the opportunity for an evidentiary hearing.

(b) Copies of the petition shall be served in accordance with 43 CFR 4.1109 (a) and (b).

§ 4.1304 Answer, motion, or statement of OSM.

OSM shall have 30 days from receipt of a copy of a petition to file with the Hearings Division an answer or a motion or a statement that it will not file an answer or motion in response to the petition.

§ 4.1305 Amendment of petition.

(a) An individual filing a petition may amend it once as a matter of right before receipt of an answer, motion, or statement of OSM made in accordance with § 4.1304. Thereafter, a motion for leave to amend the petition shall be filed with the administrative law judge.

(b) OSM shall have 30 days from receipt of a petition amended as a matter of right to file an answer, motion, or statement in accordance with § 4.1304. If the administrative law judge grants a motion to amend a petition, the time for OSM to file an answer, motion, or statement shall be set forth in the order granting it.

§ 4.1306 Notice of hearing.

The administrative law judge shall give notice of the time and place of the hearing to all interested parties. The hearing shall be of record and governed by 5 U.S.C. 554.

§ 4.1307 Elements; burdens of proof.

(a) OSM shall have the burden of going forward with evidence to establish a prima facie case that

(1) A corporate permittee violated a condition of a permit or of any requirement of the Act or implementing regulations or failed or refused to comply with an order issued under section 521 of the Act or an order incorporated in a final decision by the Secretary under the Act (except an order incorporated in a decision issued under section 518(b) or 703 of the Act or implementing regulations);

(2) The individual is a director, officer, or agent of the corporation; and

(3) The individual willfully and knowingly authorized, ordered, or carried out the corporate permittee's violation or failure or refusal to comply.

(b) The existence of a corporate permittee's violation of a condition of a permit or of any requirement of the Act or implementing regulations or of a corporate permittee's failure or refusal to comply with an order issued under section 521 of the Act or an order incorporated in a final decision by the Secretary under the Act (except an order incorporated in a decision issued under section 518(b) or 703 of the Act or implementing regulations) is conclusively established if the violation or order has been upheld in a final decision in a proceeding under 43 CFR 4.1150–4.1158, 4.1160–4.1171, or 4.1180–4.1187, and 4.1270 or 4.1271.

(c) The individual shall have the ultimate burden of persuasion by a preponderance of the evidence.

§ 4.1308 Decision by administrative law judge.

(a) The administrative law judge shall issue a written decision containing findings of fact and conclusions of law on each of the three elements set forth in § 4.1307.

(b) If the administrative law judge concludes that the individual is liable for a civil penalty, he shall order that it be paid to OSM no later than 30 days from the date of issuance of the decision absent the filing of a petition for discretionary review in accordance with § 4.1309.

§ 4.1309 Petition for discretionary review.

(a) Any party may petition the Board to review an order or decision by an administrative law judge disposing of a civil penalty proceeding under § 4.1308.

(b) A petition under this section shall be filed on or before 30 days from the date of receipt of the order or decision sought to be reviewed and the time for filing may not be extended.

(c) A petitioner under this section shall list the alleged errors of the administrative law judge and shall attach a copy of the order or decision sought to be reviewed.

(d) Any party may file with the Board a response to the petition for review within 10 days of receipt of a copy of such petition.

(e) Not later than 30 days from the filing of a petition under this section, the Board shall grant or deny the petition in whole or in part.

(f) If the petition is granted the rules is §§ 4.1273–4.1276 are applicable.

[FR Doc. 86–28886 Filed 12–23–86; 8:45 am]
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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: January 29; at 9 am.

WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.

RESERVATIONS: Mildred Isler 202–523–3517

PORTLAND, OR

WHEN: February 17; at 9 am.

WHERE: Bonneville Power Administration Auditorium, 1002 N.E. Holladay Street, Portland, OR.

RESERVATIONS: Call the Portland Federal Information Center on the following local numbers:
Portland 503–221–2222
Seattle 206–442–0570
Tacoma 206–383–5230

LOS ANGELES, CA

WHEN: February 18; at 1:30 pm.

WHERE: Room 8544, Federal Building, 300 N. Los Angeles Street, Los Angeles, CA.

RESERVATIONS: Call the Los Angeles Federal Information Center, 213–894–3800

SAN DIEGO, CA

WHEN: February 20; at 9 am.

WHERE: Room 2S31, Federal Building, 880 Front Street, San Diego, CA.

RESERVATIONS: Call the San Diego Federal Information Center, 619–293–6030

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Federal Register
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Presidential Documents

Title 3—

The President

Notice of December 23, 1986

Continuation of Libyan Emergency

On January 7, 1986, by Executive Order No. 12543, I declared a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of the Government of Libya. On January 8, 1986, by Executive Order No. 12544, I took additional measures to block Libyan assets in the United States. Because the Government of Libya has continued its actions and policies in support of international terrorism, the national emergency declared on January 7, 1986, and the measures adopted on January 7 and January 8, 1986, to deal with that emergency, must continue in effect beyond January 7, 1987. Therefore, in accordance with Section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Libya. This notice shall be published in the **Federal Register** and transmitted to the Congress.

Ronald Reagan

THE WHITE HOUSE,
December 23, 1986.

[FR Doc. 86-29169
Filed 12-23-86; 3:06 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 51, No. 248
Monday, December 29, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 640]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 640 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period December 28, 1986, through January 1, 1987. Such action is needed to balance the supply of fresh navel oranges with the demand for such period, due to the marketing situation confronting the orange industry.

DATE: Regulation 640 (§ 907.940) is effective for the period December 28, 1986, through January 1, 1987.

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202-475-3914.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their behalf. Thus, both statutes have small entity orientation and compatibility.

This rule is issued under Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1986-87 adopted by the Navel Orange Administrative Committee. The committee met publicly on December 22, 1986, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a vote of 8 to 6, a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports that the market for navel oranges has improved.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. To effectuate the declared purposes of the act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Agricultural Marketing Service, Marketing agreements and orders, California, Arizona, Oranges (navel).

PART 907—[AMENDED]

1. The authority citation for 7 CFR Part 907 continues to read:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 907.940 Navel Orange Regulation 640 is added to read as follows:

§ 907.940 Navel Orange Regulation 640.

The quantities of navel oranges grown in California and Arizona which may be handled during the period December 28, 1986, through January 1, 1987, are established as follows:

(a) District 1: 553,000 cartons;
(b) District 2: 97,000 cartons;
(c) District 3: Unlimited cartons;
(d) District 4: Unlimited cartons;

Dated: December 23, 1986.

Thomas R. Clark,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86-29202 Filed 12-24-86; 8:45 am]
BILLING CODE 3410-02-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 370, 372, 373, 375, and 386

[Docket No. 60966-6166]

Qualified General License; Abolishment

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: Sections 4(a)(2) and (5)(e) of the Export Administration Act of 1979, as amended, no longer contain provisions regarding the authorization and use of the Qualified General License (QGL). A QGL authorizes multiple exports of certain commodities for certain end uses to approved consignees who are located in Country Groups Q, W, and Y. Since its establishment in 1980, only seven applications for a QGL have been received, only four licenses issued, and only one license used. The QGL has not been used since 1984. Therefore, due to the removal of the statutory provisions endorsing the QGL and its nonutilization, Export Administration has decided to abolish the Qualified General License. Accordingly, provisions regarding the license are being removed from the

Export Administration Regulations (15 CFR Parts 368–399).

EFFECTIVE DATE: December 29, 1986.

FOR FURTHER INFORMATION CONTACT: John Black or Patricia Muldonian, Regulations Branch, Export Administration, Department of Commerce, Washington, DC 20230 (Telephone: (202) 377–2440).

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerece rules, comments from the public are always welcome. Written comments (six copies) should be submitted to: Joan Maguire, Regulations Branch, Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule does not contain a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects

15 CFR Part 370

Administrative practice and procedure, Exports.

15 CFR Parts 372, 373, 375, and 386

Exports, Reporting and recordkeeping requirements.

Accordingly, Parts 370, 372, 373, 375, and 386 of the Export Administrative Regulations are amended as follows:

1. The authority citations for 15 CFR Parts 370, 372, and 375 continue to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97–145 of December 29, 1981, and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

2. The authority citations for 15 CFR Parts 373 and 386 continue to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97–145 of December 29, 1981, and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223, 50 U.S.C. 1701 *et seq.*; E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985), as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986).

§ 370.2 [Amended]

3. In § 370.2, the definition for "Qualified General License" is removed.

4. In § 372.2, paragraph (b)(4) is removed and reserved.

§ 372.11 [Amended]

5. In § 372.11, in paragraph (e)(2)(ii), the words "Project License, Distribution License, or Qualified General License; or" are revised to read "Project License or Distribution License; or"; and the references in paragraph (e)(7) to "a Qualified General License (see § 373.4(g));" and in paragraph (g)(3)(iii) to "Qualified General License," are removed.

§ 373.4 [Amended]

6. Section 373.4 is removed.

§ 375.3 [Amended]

7. In § 375.3, in paragraph (d)(7), the reference to "Qualified General License (§ 373.4)," is removed.

§ 386.2 [Amended]

8. In § 386.2, in footnote 3 to paragraph (d) heading, the reference to "a Qualified General License (§ 373.4)," is removed.

Dated: December 22, 1986.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration

[FR Doc. 86–29021 Filed 12–24–86; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket No. 86N–0282]

Confirmation of Effective Date for [Phthalocyaninato(2-)] Copper; Migration From Nonabsorbable Sutures

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of September 15, 1986, for the final rule that amended the color additive regulations by removing the provision that prohibits the migration of [phthalocyaninato(2-)] copper from nonabsorbable sutures to the surrounding tissues.

EFFECTIVE DATE: Effective date confirmed: September 15, 1986.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 13, 1986 (51 FR 28929), FDA amended 21 CFR Part 74 of the color additive regulations in 21 CFR 74.3045 by removing paragraph (c)(1)(iii), which contained the provision that prohibited migration of [phthalocyaninato(2-)] copper from nonabsorbable sutures to the surrounding tissues.

FDA gave interested persons until September 12, 1986, to file objections or requests for a hearing. The agency recevied no objections or requests for a hearing on the final rule. Therefore, FDA had concluded that the final rule published in the **Federal Register** of August 13, 1986, should be confirmed.

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the August 13, 1986, final rule. Accordingly, the amendments promulgated thereby became effective September 15, 1986.

Dated: December 18, 1986.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–28965 Filed 12–24–86; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 203

Treasury Tax and Loan Depositaries

AGENCY: Financial Management Service, Treasury.

ACTION: Final rule.

SUMMARY: This rule establishes an additional class of securities eligible as collateral for use by Treasury Tax and Loan depositaries. The action is necessitated by the introduction of the Treasury issued zero-coupon security STRIPS. This will allow depositaries to pledge STRIPS at a predetermined value, which will differ from face value.

EFFECTIVE DATE: March 1, 1987.

FOR FURTHER INFORMATION CONTACT: Faith McCray, (202) 634–5506.

SUPPLEMENTARY INFORMATION:

List of Subjects in 31 CFR Part 203

Administration of Treasury tax and loan arrangements, Collateral security, Compensation, Obligations, Options, Termination.

For the reasons set forth in the preamble, Title 31, Part 203, Subpart D of the Code of Federal Regulations, is amended as follows:

PART 203—TREASURY TAX AND LOAN DEPOSITARIES

1. The authority citation for Part 203 continues to read as follows:

Authority: Sec. 8, Act of Sept. 24, 1917, Chapter 58, 40 Stat. 291, as amended (31 U.S.C. 771); Sec. 6302(c), Internal Revenue Code of 1954; and Secs. 1, 2, and 3, Pub. D. 95–147, 91 Stat. 1227 (31 U.S.C. 1038).

2. Section 203.15 is amended by adding paragraph (d)(10) to read as follows:

§ 203.15 Collateral security requirements.

* * * * *

(d) * * *

(10) Zero-coupon obligations of the U.S. Government marketed as "Treasury STRIPS": At value assigned by the Secretary of the Treasury, and adjusted as required.

* * * * *

Dated: December 18, 1986.

Russell D. Morris,

Assistant Commissioner, Federal Finance.

[FR Doc. 86–28909 Filed 12–24–86; 8:45 am]

BILLING CODE 4810–35–M

Office of Foreign Assets Control

31 CFR Part 545

South African Transactions Regulations

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: This rule amends the South African Transactions Regulations, 31 CFR Part 545 (the "Regulations"), to implement sections 308 and 310 of the Comprehensive Anti-Apartheid Act of 1986, Pub. L. 99–440, 100 Stat. 1086, as amended by H.J. Res. 756, Pub. L. 99–631, 100 Stat. 3515 ("the Act"). Section 308 prohibits United States depository institutions from accepting, receiving, or holding deposit accounts from the South African Government or its controlled entities, except for diplomatic or consular accounts authorized by the President (Regulations, § 545.209). Section 310 prohibits U.S. nationals from making any new investment in South Africa (Regulations, § 545.210). These sections became effective on November 16, 1986. The Treasury Department is also amending the Regulations to reflect approval by the Office of Management and Budget of the information collection provision contained in § 545.807 of the Regulations.

EFFECTIVE DATE: All sections except § 545.423 are effective at 12:01 a.m. Eastern Standard Time, November 16, 1986. Section 545.423 is effective at 12:01 a.m., Eastern Daylight Time, October 2, 1986.

FOR FURTHER INFORMATION CONTACT: Marilyn L. Muench, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, 1331 G Street, NW., Washington, DC 20220 (telephone: 202/376–0408).

SUPPLEMENTARY INFORMATION: The initial set of amendments to the Regulations, implementing the immediately effective provisions of the Act, was published on November 19, 1986 (51 FR 41906). The amendments published today implement §§ 308 and 310 of the Act, effective November 16, 1986. Section 309 of the Act, banning importation of South African uranium ore, uranium oxide, coal, and textiles into the United States, will become effective on December 31, 1986. Regulations implementing this provision will be issued at a later date.

Section 545.209 prohibits depository institutions located in the United States from accepting, receiving, or holding deposit accounts of the South African Government or its controlled entities, with the exception of diplomatic and consular accounts authorized by the Office of Foreign Assets Control by specific license.

Section 545.210 prohibits U.S. nationals from making new investments in South Africa, unless the new investment is in a firm owned by South African victims of apartheid. Section 545.319 defines "new investment" to include a commitment or contribution of funds or other assets, and a loan or other extension of credit. Exceptions are made for reinvestment of profits earned by a U.S.-controlled South African entity in that or another South African entity; contributions required to enable a U.S.-controlled South African entity to operate in an economically sound manner, without expanding its operations; and for the ownership or control of an interest in a South African entity, or of securities of the South African Government or a South African entity issued prior to October 2, 1986, and the transfer or acquisition of such a pre-October 2 interest or security, where no payment, contribution of funds or assets, or credit to the entity or issuer results. Trading in South African securities issued on or after October 2, 1986 is prohibited, whether by direct purchase, purchase of American Depository Receipts evidencing such securities, mutual fund investment or reinvestment, or otherwise (§§ 545.415).

New investment does not include expenses to comply with the Code of Conduct (Sullivan principles) in § 208 of the Act (§ 545.417); market-rate sales of goods, services or technology (§ 545.418); purchase of a residence for personal use by the purchasing U.S. national (§ 545.419); opening and holding personal bank accounts in South Africa by U.S. nationals permanently resident in that country, or corporate bank accounts for U.S. businesses doing business through permanent establishments in South Africa (§ 545.420); opening and holding bank accounts in South Africa used strictly to pay for and clear transactions (§ 545.420); or charitable contributions (§ 545.421).

Since these regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective

date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply. Because these regulations are issued with respect to a foreign affairs function of the United States, they are not subject to Executive Order 12291 of February 17, 1981, dealing with Federal regulations. The information collection requests contained in this document are being submitted to the Office of Management and Budget (OMB) under the Paperwork Reductions Act of 1980, 44 U.S.C. 3501 *et seq.* Notice of OMB action on this request will be published in the **Federal Register.**

List of Subjects in 31 CFR Part 545

Banks, Investments, Loans, Namibia, Reporting and recordkeeping requirements, and South Africa.

PART 545—SOUTH AFRICAN TRANSACTIONS REGULATIONS

31 CFR Chapter V, Part 545, is amended as set forth below:

1. The "Authority" citation for Part 545 is revised to read as follows:

Authority: 50 U.S.C. 1701 et seq.; E.O. 12532, 50 FR 36861, Sept. 10, 1985; E.O. 12535, 50 FR 40325, Oct. 3, 1985; Pub. L. No. 99-440, 100 Stat. 1086; H.J. Res. 756, Pub. L. 99-631, 100 Stat. 3515; E.O. 12571, 51 FR 39505, Oct. 29, 1986.

2. Section 545.203 is amended by adding a new paragraph (e) to read as follows:

§ 545.203 Effective dates.

* * * * *

(e) The effective date of the prohibitions in §§ 545.209 and 545.210 is 12:01 a.m. Eastern Standard Time, November 16, 1986.

3. Section 545.209 is added to read as follows:

§ 545.209 Prohibition on South African Government bank accounts.

A United States depository institution may not accept, receive, or hold a deposit account from the Government of South Africa or from any agency or entity owned or controlled by the Government of South Africa, except for such accounts which may be authorized pursuant to specific license for diplomatic or consular purposes.

4. Section 545.210 is added to read as follows:

§ 545.210 Prohibition on new investment in South Africa.

(a) No national of the United States may, directly or through another person, make any new investment in South Africa.

(b) The prohibition contained in this section shall not apply to a firm owned by black South Africans, provided that prior registration of new investment in such a firm is filed pursuant to § 545.603.

5. Section 545.304 is revised to read as follows:

§ 545.304 Loan.

(a) The term "loan" means any transfer or extension of funds or credit on the basis of an obligation to repay, or any assumption or guarantee of the obligation of another to repay an extension of funds or credit, including, but not limited to, overdrafts; currency swaps; the purchase by a financial institution in the United States of debt securities issued by the Government of South Africa after November 11, 1985; the purchase of debt or equity securities issued by the Government of South Africa or a South African entity on or after October 2, 1986; the purchase of a loan made by another person; the sale of financial assets, including precious metals, subject to an agreement to repurchase; a renewal or refinancing whereby new funds or credits are transferred or extended to a prohibited borrower or recipient; or the issuance of a standby letter of credit.

(b) The term "loan" does not include normal short-term trade financing for goods or services having a maturity not exceeding one year, as by commercial letters of credit, bankers' acceptances eligible for discount by a Federal Reserve Bank pursuant to para. 7 of section 13 of the Federal Reserve Act (12 U.S.C. 372), or similar trade credits; sales on open account in cases where such sales are normal business practice; or the rescheduling of existing loans, if no new funds or credits are thereby transferred or extended to a prohibited borrower or recipient.

§ 545.306 Government of South Africa; South African Government.

6. Section 545.306 is revised to delete therefrom the final phrase: ", as defined in § 545.307."

§ 545.307 [Removed]

7. Section 545.307 is removed.

8. Section 545.311 is revised to read as follows:

§ 545.311 Prohibited borrower.

The term "prohibited borrower" means a person, including the Government of South Africa, to whom the making of a loan or other extension of credit is prohibited by the terms of § 545.202(a) or 545.210(a).

9. Paragraph (c) of § 545.313 is revised to read as follows:

§ 545.313 National of the United States; U.S. national.

* * * * *

(c) For purposes of §§ 545.206, 545.208, and 545.210 of this part, the terms "national of the United States" and "U.S. national" also mean a person located in the United States.

10. Section 545.317 is added to read as follows:

§ 545.317 Code of Conduct.

The term "Code of Conduct" means the Code of Conduct set forth in § 208(a) of the Act, as well as the additional actions stated in, or adopted pursuant to, that section which are intended to promote the end of the apartheid system.

11. Section 545.318 is added to read as follows:

§ 545.318 Controlled South African entity.

The term "controlled South African entity" means—

(a) A corporation, partnership, or other business association or entity organized in South Africa and owned or controlled, directly or indirectly, by a national of the United States; or

(b) A branch, office, agency, or sole proprietorship in South Africa of a national of the United States.

12. Section 545.319 is added to read as follows:

§ 545.319 New investment.

For purposes of § 545.210, the term "new investment" means—

(a) A commitment or contribution of funds or other assets; and

(b) A loan or other extension of credit, as defined in § 545.304; but

(c) Does not include—

(1) The reinvestment of profits generated by a controlled South African entity into that same controlled South African entity or the investment of such profits in a South African entity;

(2) Contributions of money or other assets where such contributions are necessary to enable a controlled South African entity to operate in an economically sound manner, without expanding its operations; or

(3)(i) The ownership or control of a share or interest in a South African entity, or a controlled South African entity, or a debt or equity security issued by the Government of South Africa or a South African entity before October 2, 1986, or

(ii) The transfer or acquisition of such a share, interest, or debt or equity security, if any such transfer or acquisition does not result in a payment, contribution of funds or assets, or credit to a South African entity, a controlled South African entity, or the Government of South Africa.

13. Section 545.320 is added to read as follows:

§ 545.320 Prohibited recipient.

The term "prohibited recipient" means a person in whom the making of a new investment is prohibited pursuant to § 545.210.

14. Section 545.321 is added to read as follows:

§ 545.321 United States depository institution.

(a) For purposes of § 545.209, the term "United States depository institution" means a depository institution located in the United States, but does not include the foreign branches of a depository institution organized in the United States, or the parents, subsidiaries, branches or offices located outside the United States of a depository institution organized under foreign law.

(b) For purposes of this section, the term "depository institution" means a depository institution as defined in section 19(b)(1) of the Federal Reserve Act, 12 U.S.C. 461(b)(1).

15. Section 545.404 is revised to read as follows:

§ 545.404 Rescheduling existing loans.

Provided that no new funds or credits are thereby transferred or extended to a prohibited borrower or a prohibited recipient, §§ 545.202 and 545.210 do not prohibit a national of the United States or a financial institution in the United States from rescheduling loans or otherwise extending the maturities of existing loans, or from charging fees, or interest at commercially reasonable rates, in connection therewith.

16. Section 545.406 is revised to read as follows:

§ 545.406 Loans through intermediaries.

Sections 545.202 and 545.210 prohibit a national of the United States or a financial institution in the United States from making a loan to any person in the United States or a foreign country, where the U.S. national or financial institution has reason to believe that the loan is being obtained for, or on behalf of, a prohibited borrower or recipient, and that the relevant funds or credit will be made available to a prohibited borrower or recipient.

17. Section 545.408 is revised to read as follows:

§ 545.408 Approval of loans by foreign affiliates.

Sections 545.202 and 545.210 prohibit nationals of the United States or financial institutions in the United States from approving loans by their foreign affiliates to prohibited borrowers or recipients.

18. Section 545.409 is revised to read as follows:

§ 545.409 Loan participations.

Sections 545.202 and 545.210 prohibit a national of the United States or a financial institution in the United States from purchasing, or otherwise acquiring a participation in, all or part of any loan made by any other person or persons to a prohibited borrower or recipient, regardless of the date of the original loan. However, the prohibition of § 545.202 does not apply if, in the case of a financial institution, it is obligated to make the purchase under an agreement entered into before September 9, 1985, or, in the case of a national of the United States that is not a financial institution in the United States, it is obligated to make the purchase under an agreement entered into before October 2, 1986. The prohibitions of §§ 545.202 and 545.210 do not apply to the acquisition of all or part of a loan made by any other person or persons to a prohibited borrower or recipient if such acquisition is incidental to the purchase or acquisition of an entity or all or substantially all of the assets of an entity that has previously made, or acquired a participation in, such a loan.

19. Section 545.410 is revised to read as follows:

§ 545.410 South African law.

If, under applicable laws of South Africa, a national of the United States or a financial institution in the United States cannot obtain enough information from a person in South Africa to enable it reasonably to conclude that a loan is not being obtained for, or on behalf of, a prohibited borrower or recipient, or that a new investment is not being made in, or with respect to, a prohibited recipient, §§ 545.202 or 545.210 prohibits the loan or new investment.

20. Section 545.415 is added to read as follows:

§ 545.415 Trading in South African securities; American Depositary Receipts; recapitalizations.

(a) For purposes of the prohibition on new investment in § 545.210, the ownership, control, transfer or acquisition of (1) a debt or equity security issued by the Government of South Africa or a South African entity, or (2) an American Depositary Receipt (ADR) evidencing an interest in such a security, is authorized provided that no interest represented by the security or ADR was issued on or after October 2, 1986.

(b) Shares issued by a South African entity on or after October 2, 1986 in a stock split or similar recapitalization transaction, in a merger or other reorganization, or as a stock dividend, with respect to its shares issued on or prior to that date, will be deemed issued on the date of issuance of the underlying shares for the purposes of § 545.210, provided that, except as permitted in § 545.319(c)(1), such split, recapitalization, reorganization, or dividend does not result in a payment, contribution of funds or assets, or credit to, or for the benefit of, the South African issuer from, or on behalf of, the security holder. This treatment is not available for shares acquired on or after October 2, 1986 through the exercise of warrants or preemptive rights. Rights or warrants received on or after October 2, 1986 with respect to shares issued prior to that date may, however, be sold by the security holder, or on an ADR holder's behalf by the depositary.

21. Section 545.416 is added to read as follows:

§ 545.416 Trading in commodities.

Trading in commodities futures or options thereon with respect to South African commodities will be treated as the purchase or sale of the underlying goods. However, no such commodities subject to import prohibitions may be imported into the United States on or after the effective date of a relevant import prohibition.

22. Section 545.417 is added to read as follows:

§ 545.417 Expenses to comply with Code of Conduct.

Expenses incurred by U.S. nationals to comply with the Code of Conduct will not be treated as prohibited new investment in South Africa.

23. Section 545.418 is added to read as follows:

§ 545.418 Sales of goods, services, and technology.

Purchases and sales of goods, services, and technology in arms' length transactions on normal commercial terms will generally not be treated as new investment in South Africa for purposes of the prohibition in § 545.210.

24. Section 545.419 is added to read as follows:

§ 545.419 Real estate acquisition.

The purchase of real estate in South Africa for use as a residence by the purchasing individual U.S. national will not be treated as new investment in South Africa for purposes of § 545.210,

provided that no commercial or rental use is made of such real estate.

25. Section 545.420 is added to read as follows:

§ 545.420 Bank accounts in South Africa.

(a) The opening and holding of personal bank accounts in South Africa by an individual resident in South Africa, or of corporate or similar accounts by an entity that is a U.S. national doing business through a permanent establishment in South Africa, will not be treated as a "loan" or "new investment" for purposes of § 545.202 or 545.210.

(b) The opening and holding of non-interest-bearing demand deposit or call accounts in South Africa by a U.S. national located outside South Africa will not be treated as a "loan" or "new investment" for purposes of § 545.202 or 545.210, where such accounts are used exclusively to pay for and clear transactions with South African entities.

26. Section 545.421 is added to read as follows:

§ 545.421 Charitable contributions.

Contributions to charitable organizations engaged in social welfare, public health, religious, educational, and emergency relief activities in South Africa will not be treated as "new investments" for purposes of § 545.210.

27. Section 545.422 is added to read as follows:

§ 545.422 Foreign exchange transactions.

A foreign exchange transaction executed at current market prices, for immediate or future delivery but without an extension of credit, will not be deemed a "loan" as defined in § 545.304.

28. Section 545.423 is added to read as follows:

§ 545.423 Confirmation of short-term trade credits.

The confirmation of short-term trade financing instruments, such as commercial letters of credit, is authorized, provided that the instrument being confirmed is not within the definition of "loan" in § 545.304.

29. Section 545.424 is added to read as follows:

§ 545.424 Firm owned by black South Africans.

For purposes of § 545.210, the term "firm owned by black South Africans" means an entity owned by South African victims of apartheid.

30. Section 545.603 is added to read as follows:

§ 545.603 Registration of new investment in firms owned by black South Africans.

Every person making a new investment in a firm owned by black South Africans pursuant to the exception to the prohibition on new investment in § 545.210(b) shall, prior to making such new investment, file with the Office of Foreign Assets Control a report with respect to such investment, including: (a) The name and address of the U.S. national making the investment; (b) the name of the black-owned firms, (c) full information on the black-owned firm's ownership, sufficient to demonstrate its eligibility under § 545.210(b); and (d) the amount and nature of the U.S. national's new investment.

31. Section 545.604 is added to read as follows:

§ 545.604 Registration of contributions necessary to enable a controlled South African entity to operate in an economically sound manner.

Every person making a contribution necessary to enable a controlled South African entity to operate in an economically sound manner, pursuant to the exception to the prohibition on new investment in § 545.317(c)(2), shall, prior to making such contribution, file with the Office of Foreign Assets Control a report with respect to such contribution, including: (a) the name and address of the U.S. national making the contribution; (b) the name and address of the controlled South African entity; (c) full information on the circumstances requiring the contribution, sufficient to demonstrate its eligibility under § 545.319(c)(2); and (d) the amount and nature of the U.S. national's contribution.

32. Section 545.901 is revised to read as follows:

§ 545.901 Paperwork Reduction Act notice.

The information collection requirements in §§ 545.503, 545.504, 545.601, and 545.602 have been approved by the Office of Management and Budget (OMB) and have been assigned control number 1505–0091. The information collection requirements of § 545.807 have been approved by OMB and have been assigned control number 1505–0097.

Dated: December 12, 1986.

Dennis M. O'Connell,

Director, Office of Foreign Assets Control.

Approved: December 19, 1986.

Francis A. Keating II,

Assistant Secretary (Enforcement).

[FR Doc. 86–29172 Filed 12–23–86; 4:42 pm]

BILLING CODE 4810–25–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 61

[Docket No. A–4–FRL–3134–3]

Standards of Performance for New Stationary Sources; National Emission Standards for Hazardous Air Pollutants; State Authority Delegations; Tennessee; Mississippi; and Kentucky:

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation.

SUMMARY: On April 11, 1986, Knox County, Tennessee requested that EPA delegate authority for implementation and enforcement of certain standards in 40 CFR Part 60 (Standards of Performance for Stationary Sources) and 40 CFR Part 61 (National Emissions Standards for Hazardous Air Pollutants) (listed under "SUPPLEMENTARY INFORMATION").

On July 30, 1986, the State of Mississippi requested delegation of authority for the implementation and enforcement of all NSPS and NESHAP that had been promulgated since June 25, 1986. The Commonwealth of Kentucky requested delegation for five NSPS categories on September 19, 1986.

EPA's review of pertinent state and local laws, rules and regulations showed them to be adequate for the implementation and enforcement of these federal standards. For the reasons described below, however, EPA did not delegate any of the NESHAP regulations. The NSPS regulations were delegated as requested.

DATES: The effective dates of the delegations are: Knox County, Tennessee, July 1, 1986; Mississippi, September 22, 1986; and Kentucky, November 10, 1986.

ADDRESSES: Copies of the requests for delegation of authority and EPA's letters of delegation of authority may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV—Air Programs Branch, 345 Courtland Street, N.E., Atlanta, Georgia 30365

Knox County Department of Air Pollution, City/County Building, Suite L222, 400 Main Street, Knoxville, Tennessee 37902

Bureau of Pollution Control, Mississippi Department of Natural Resources, P.O. Box 10385, Jackson, Mississippi 39209

Kentucky Division of Air Pollution Control, Fort Boone Plaza, 18 Reilly Road, Building #2, Frankfort, Kentucky 40601

FOR FURTHER INFORMATION CONTACT: Rosalyn D. Hughes of the EPA Region IV Air Programs Branch, at the above address and telephone number (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: Sections 101, 111(c)(1) and 112(d)(1) of the Clean Air Act authorize EPA to delegate authority to implement and enforce the standards set out in 40 CFR Part 60, Standards of Performance for New Stationary Sources (NSPS) and CFR Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAP).

On April 11, 1986, Knox County, Tennessee requested delegation of authority of NSPS for Subparts Na (Secondary Emissions from Basic Oxygen Process Steelmaking Facilities) and AAa (Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed after Auguest 17, 1986), and NESHAP for Subpart B (Radon–222 Emissions from Underground Uranium Mines).

After a thorough review of the request, the Regional Administrator determined that such a delegation was appropriate for some of these source categories with all the conditions set forth in the delegation letter of December 13, 1985. Knox County sources subject to the requirements of Subparts Na and AAa of 40 CFR Part 60 will now be under the jurisdiction of Knox County, Tennessee. Subpart B of 40 CFR Part 61 was not delegated to Knox County because the proper technical guidance had not yet developed by EPA. Also, since there are no existing or anticipated uranium mines in Knox County, EPA preferred not to delegate authority for this NESHAP.

On July 30, 1986, the State of Mississippi requested delegation of authority of NSPS for Subparts Na (Secondary Emissions from Basic Oxygen Process Steelmaking Facilities), LLL (Onshore Natural Gas Processing: SO_2 Emissions), and OOO (Nonmetallic Mineral Processing Plants) and NESHAP for Subparts B (Radon–222 Emissions from Underground Uranium Mines), H (Radionuclide Emissions from Department of Energy Facilities), I (Radionuclide Emissions from Facilites Licensed by the Nuclear Regulatory Commission and Federal Facilities not Covered by Subpart H), and K (Radionuclide Emission from Elemental Phosphorous Plants).

After a thorough review of the request, the Regional Administrator determined that such a delegation was appropriate for some of these source categories with all the conditions set forth in the delegation letter of November 20, 1981.

Mississippi sources subject to the requirements of Subparts Na, LLL and OOO of 40 CFR Part 60 will now be under the jurisdiction of Mississippi. Subparts B, H, I and K of 40 CFR Part 61 were not delegated to Mississippi because EPA has not developed the proper technical guidance. However, once the guidance is developed, EPA will review each request on a case-by-case basis.

The Commonwealth of Kentucky requested delegation of authority for NSPS Subparts BB (Kraft Pulp Mills), EE (Surface Coating of Metal Furniture), FFF (Flexible Vinyl and Urethane Coating and Printing), JJJ (Petroleum Dry Cleaners), and PPP (Wool Fiberglass Insulation and Manufacturing Plants) on September 19, 1986.

After a thorough review of the request the Regional Administrator determined that such a delegation was appropriate for these source categories with all the conditions set forth in the delegation letter of March 18, 1977. Kentucky sources subject to the requirements of Subparts BB, EE, FF, JJJ and PPP of 40 CFR Part 60 will now be under the jurisdiction of Kentucky.

I certify, pursuant to 5 U.S.C. section 605(b), that this delegation will not have a significant economic impact on a substantial number of small entities.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Authority: Section 111 of the Clean Air Act (42 U.S.C. 7411).

Dated: December 16, 1986.

Lee A. DeHihns, III,

Deputy Regional Administrator.

[FR Doc. 86–29015 Filed 12–24–86; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[OPP–300154A; FRL 3135–2]

Raw Agricultural Commodities; Definitions and Interpretations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule amends 40 CFR 180.1 by adding a definition for the term "tolerance with regional registration." This Agency-initiated regulation applies only to tolerances supported by residue data from specific growing regions on specific raw agricultural commodities.

EFFECTIVE DATE: Effective on December 29, 1986.

ADDRESS: Written objections, identified by the document control number [OPP–300154A], may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Donald R. Stubbs, Emergency Response and Minor Use Section (TS–767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1806).

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of November 12, 1986 (51 FR 40983), which proposed adding a definition in 40 CFR 180.1 for "tolerance with regional registration".

Since regional registrations are geographically restricted, as determined by the residue data submitted in support of the pesticide tolerance, the Agency concludes that it will be useful to distinguish a tolerance for regional registration in a separate subsection of the appropriate tolerance regulations under 40 CFR 180.101 through 180.999.

There were not comments or requests for referral to an advisory committee received in response to the proposed rule.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 17, 1986.
Douglas D. Campt,
Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.1 is amended by adding paragraph (n) to read as follows:

§ 180.1 Definitions and interpretations

* * * * *

(n) The term "tolerance with regional registration" means any tolerance which is established for pesticide residues resulting from the use of the pesticide pursuant to a regional registration. Such a tolerance is supported by residue data from specific growing regions for a raw agricultural commodity. Individual tolerances with regional registration are designated in separate subsections in 40 CFR 189.101 through 180.999, as appropriate. Additional residue data which are representative of the proposed use area are required to expand the geographical area of usage of a pesticide on a raw agriculatural commodity having an established "tolerance with regional registration." Persons seeking geographically broader registration of a crop having a "tolerance with regional registration" should contact the appropriate EPA product manager concerning additional residue data required to expand the use area.

[FR Doc. 86-29018 Filed 12-24-86; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 180

[PP 6E3347/R858; FRL-3135-1]

Pesticide Tolerance for O,O-Diethyl O-(2-Isopropyl-6-Methyl-4-Pyrimidinyl) Phosphorothioate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule

SUMMARY: This rule establishes a tolerance for residues of the insecticide *O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate (hereafter referred to as "diazinon") in or on the raw agricultural commodity ginseng. The regulation to establish a maximum permissible level for residues of diazinon in or on ginseng was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: Effective on December 29, 1987.

ADDRESS: Written objections, identified by the document control number [PP 6E3347/R858], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail:

Donald R. Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-1806).

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of November 12, 1986 (51 FR 40987), which announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, submitted pesticide petition 6E3347 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project and the Agricultural Experiment Stations of Kentucky and Wisconsin proposing the establishment of a tolerance for residues of the insecticide diazinon in or on the raw agricultural commodity ginseng at 0.75 part per million (ppm).

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted and other relevant information have been evaluated and discussed in the proposed rulemaking. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 17, 1986.
Douglas D. Campt,
Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.153 is amended by adding and alphabetically inserting the raw agricultural commodity ginseng to read as follows:

§ 180.153 O,O-Diethyl O-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Ginseng	0.75
* * * * *	

[FR Doc. 86-29019 Filed 12-24-86; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

National Flood Insurance Administration

44 CFR Part 64

[Docket No. FEMA 6742]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et seq.). Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the comunities will be published in the **Federal Register**. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains

PART 64—[Amended]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding an alphabetical sequence new entries to the table.

§ 64.6 List of Eligible Communities.

State	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified	Date [1]
Region I					
Maine	Belgrade, town of, Kennebec County.	230232B	Dec. 10, 1975, Emerg. Jan. 16, 1987, Reg. Jan. 16, 1987, Susp.	Jan. 31 1975, May 14, 1976 & Jan 16, 87.	Jan. 16, 1987
Vermont	Burlington, city of, Chittenden County.	500032C	Apr. 5, 1973, Emerg. Nov. 15, 1978, Reg. Jan. 16, 1987, Susp.	July 19, 1984, Nov. 15, 1978 & Jan 16, 1987.	Do.
Region II					
New York	Delaware, town of, Sullivan County.	360818E	Apr. 4, 1975, Emerg. Nov. 16, 1983, Reg. Jan. 16, 1987, Susp.	June 28, 1974, Jan. 3, 1975, June 25, 1976, Jan. 21, 1977, Nov. 16, 1983 & Jan. 16, 1987.	
Region III					
Virginia	Buchanan County, unincorporated areas.	510024B	Nov. 8, 1974, Emerg. Jan. 16, 1987, Reg. Jan. 16, 1987 Susp.	July 17, 1978 & Jan. 16, 1987	Do.
Do	Iron Gate, town of, Alleghany County,.	510220	May 13, 1975, Emerg. Jan 16, 1987, Reg. Jan. 16, 1987 Susp.	Aug. 30, 1974, Mar. 19, 1976 & Jan. 16, 1987.	Do.
Do	Lebanon, town of,, Russell County,.	510222B	Jan. 24, 1975, Emerg. Jan. 16, 1987, Reg. Jan. 16, 1987, Susp.	May 10, 1974, June 25, 1976 & Jan. 16, 1987.	Do.
Region IV					
Florida	Lafayette County, unincorporated areas.	120131B	Sept. 17, 1975, Emerg. Jan. 16, 1987, Reg. Jan. 16, 1987, Susp.	May 27, 1977 & Jan. 16, 1987	Do
Do	Branford, town of, Suwannee County.	120301B	Sept. 12, 1975, Emerg. Jan. 16, 1987, Reg. Jan. 16, 1987, Susp.	Jan. 9, 74, Nov. 7, 1975 & Jan. 16, 1987.	Do.

State	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified	Date [1]
Kentucky	Stanton, city of,, Powell County	210196B	July 7, 1975, Emerg. Jan. 16, 1987, Reg. Jan. 16, 1987, Susp.	May 24, 1974, Mar. 5, 1976 & Jan. 16, 1987.	Do.
Tennessee	Pulaski, city of, Giles County	470067C	Apr. 14, 1975, Emerg. Jan. 16, 1987, Reg. Jan. 16, 1987, Susp.	May 24, 1974, Jan. 30, 1976, Aug. 29, 1980 & Jan. 16, 1987.	Do.
Do	Waynesboro, city of,, Wayne County.	470201	Feb. 13, 1976, Emerg. Jan. 16, 1987, Reg. Jan. 16, 1987, Susp.	June 14, 1974, Dec. 24, 1976 & Jan. 16, 1987.	Do.
Region V					
Minnesota	Winona County, unincorporated areas.	270525C	May 16, 1974, Emerg. Jan. 16, 1984, Reg. Jan. 16, 1987, Susp.	Oct. 26, 1976, Apr. 21, 1978, Oct. 18, 1974 & Jan. 16, 1984.	Do.
Region VI					
Arkansas	Clinton, city of,, Van Buren County.	050211C	Aug. 15, 1975, Emerg. Jan. 16, 1987, Reg. Jan. 16, 1987, Susp.	June 21, 1974, June 4, 1976, July 17, 1979 & Jan. 16, 1987.	Do.
Minimal conversions					
Region VII					
Pennsylvania	Burrell, township of, Armstrong County.	421309B	Oct. 25, 1977, Emerg. Nov. 1, 1986, Reg. Jan. 16, 1987, Susp.	Sept. 20, 1974, June 11, 1976 & Nov. 1, 1986.	Nov. 1, 1986.
Region VIII					
Utah	Junction, town of,, Piute County	490096B	Jan. 7, 1975, Emerg. Jan. 16, 1987, Reg. Jan. 16, 1987, Susp..	Aug 8, 1975 & Jan. 16, 1987	Jan. 16, 1987.

[1] Date certain Federal assistance no longer available in special flood hazard areas.
Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Harold T. Duryee,
Administrator, Federal Insurance Administration.
[FR Doc. 86-29024 Filed 12-24-86; 8:45 am]
BILLING CODE 6718-03-M

44 CFR Part 64

[Docket No. FEMA 6741]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the fifth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street SW., Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION:

The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood may, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains.

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of Eligible Communities.

State and County	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified
Michigan:				
Grand Traverse	Blair, township of	260780—New	Nov. 13, 1986, emergency	
St. Joseph	Fabius, township of	260781—New	do	
Shiawassee	New Haven, township of	260521	do	July 25, 1975
Chippewa	Soo, township of	260378	do	Nov. 26, 1976
Mississippi: Jackson	Gautier, city of	280332—New	do	
Montana: Hill	Hingham, town of	300095	do	July 11, 1975
Ohio: Williams	Edgerton, village of	390826A	do	Sept. 29, 1978
Tennessee: Union	Luttrell, city of	470209	do	Sept. 3, 1976
Iowa: Chickasaw	Lawler, city of	190067B	July 25, 1975, emergency; Aug. 1, 1986, regular; Aug. 1, 1986, suspended; Nov. 3, 1986 Reinstated.	June 26, 1974, Jan. 2, 1976 and, Aug. 1, 1986
Ohio: Athens	Jacksonville, village of [1]	390019B	March 21, 1977, emergency; June 3, 1986, Regular; June 3, 1986, Suspended; Nov. 13, 1986, reinstated.	July 17, 1974, Apr. 16, 1976 and, June 3, 1986
Michigan:				
Chippewa	Bruce, township of	260375	Nov. 25, 1986, emergency	
Livingston	Hartland, township of	260784—New	do	
Grand Traverse	Long Lake, township of	260782—New	do	
Cheboygan Emmet Counties	Mackinaw City, village of	260675	do	
Chippewa	Superior, township of	260380	do	
Wayne	Taylor, city of	260728	do	
South Dakota: Davison	Ethan, city of	460111	do	
Vermont: Addison	Bristol, town of	5000018	May 30, 1975, emergency; Aug. 5, 1986, Regular; Aug. 5, 1986, suspended; Nov. 14, 1986, reinstated.	Aug. 9, 1974, Sept. 24, 1976 and, Aug. 5, 1986
Massachusetts: Dukes	Gosnold, town of	250071A	Sept. 29, 1977, emergency; June 4, 1980, regular; June 4, 1980, suspended; Nov. 18, 1986, reinstatted.	Dec. 20, 1974
Missouri: Moniteau [2]	Unincorporated areas	290237	June 20, 1983, emergency; Oct. 17, 1986, regular; Oct. 17, 1986, suspended; Nov. 20, 1986, reinstated.	Sept. 30, 1983 and Oct. 17, 1986
Alaska:	Kenai Peninsula borough [2]	020012	June 19, 1970, emergency; March 18, 1980, suspended; Nov. 20, 1986, reinstated.	July 5, 1983
Region III				
Pennsylvania: Forest	Harmony, township of	421645A	Nov. 5, 1986, suspension withdrawn	July 16, 1975 and, Nov. 5, 1986
Washington	Washington, city of	420861A	do	Nov. 12, 1976 and, No. 5, 1986
Region IV				
Kentucky: Jassamine	Wilmore, city of	210311	do	July 25, 1975 and, Nov. 5, 1986
South Caroline: Charleston	Charleston, city of	455412D	do	Apr. 9, 1971, May 25, 1973, July 1, 1974, Sept. 3, 1976 and, Nov. 5, 1986
Region V				
Illinois: Madison	Highland, city of	170445B	do	March 8, 1974, May 21, 1976 and, Nov. 5, 1986
Region VII				
Iowa: Johnson	North Liberty, city of	190630A	do	Apr. 23, 1976 and, Nov. 5, 1986
Region I				
Massachusetts:	Braintree, town of Norfolk	250233C	Nov. 19, 1986, suspension withdrawn	Aug. 2, 1974, June 1, 1978, Nov. 19, 1986
Maine:	Litchfield, town of Kennebec	230238B	do	Feb. 7, 1975, Oct. 8, 1976 and, Nov. 19, 1986
Region III				
Pennsylvania: Somerset County	Paint, borough of	420800B	do	July 26, 1974, Dec. 26, 1975 and, Nov. 19, 1986
Westmoreland:	Southwest Greensburg, borough of	420901C	do	Feb. 1, 1974, Sept. 26, 1975, June 30, 1976 and, Nov. 19, 1986
Region IV				
Kentucky: Hancock	Lewisport, city of	210093B	do	Feb. 1, 1974, Oct. 17, 1975 and, Nov. 19, 1986
Region V				
Wisconsin: Dunn	Boyceville, village of	550119B	do	June 14, 1974, Aug. 6, 1976 and, Nov. 19, 1986
Ashland:	Mellen, city of	550007B	do	Dec. 17, 1973, May 14, 1976 and, Nov. 19, 1986
Region VII				
Kansas:				
Sedgwick:	Pack City, city of	200963A	do	Nov. 19, 1986
Marion:	Peabody, city of	200208	do	June 26, 1974, Nov. 21, 1975 and, Nov. 19, 1986
Missouri:				
St. Charles:	Flinthill, village of	290883B	do	Dec. 9, 1980 and, Nov. 19, 1986
Pike:	Annada, village of	290287A	do	Feb. 7, 1975 and, Nov. 19, 1986
Region X				
California: Marin	Unincorporated areas	060173	do	Feb. 25, 1977 and, March 1, 1982
Minimal Conversion				
Wisconsin: Rusk	Bruce, village of	550370	do	May 24, 1974, May 26, 1976 and, Sept. 1, 1986

BEST COPY AVAILABLE

State and County	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified
		REGION III—MINIMAL CONVERSIONS		
Pennsylvania:	Boggs, township of	421301B	Nov. 1, 1986, suspension withdrawn	Aug. 30, 1974, Apr. 9, 1976 and, Nov. 1, 1986
	Burrell, township of	421303B	do	Sept. 20, 1974, June 11, 1976 and, Nov. 1, 1986
Pennsylvania:				
Clarion	Clarion, borough of	421500A	do	Nov. 29, 1974 and, Nov. 1, 1986
Clarion	Clarion, township of	421507B	do	Nov. 29, 1974, Feb. 4, 1977 and, Nov. 1, 1986
Armstrong	Cowanshannock, township of	421230B	do	Sept. 13, 1974, Dec. 31, 1976 and, Nov. 1, 1986
Do.	Hovey, township of	422299A	do	Jan. 24, 1975 and, Nov. 1, 1986
Do.	North Buffalo, township of	421310B	do	Apr. 5, 1974, June 18, 1976 and, Nov. 1, 1986
Lawrence	Perry, township of	421796B	do	Jan. 10, 1975, Jan. 16, 1980 and, Nov. 1, 1986
Armstrong	Plumcreek, township of	421313B	do	Sept. 6, 1974, June 18, 1976 and, Nov. 1, 1986
Armstrong	Rayburn, township of	421314A	do	Feb. 21, 1975 and, Nov. 1, 1986
Lawrence	Scott, township of	421799B	do	Jan. 31, 1975, Aug. 22, 1980 and, Nov. 1, 1986
Lawrence	Slippery Rock, township of	422466B	do	Apr. 14, 1978 and, Nov. 1, 1986
Carbon	Towamensing, township of	421458A	do	Dec. 20, 1974 and, Nov. 1, 1986
Fulton	Taylor, township of	421663C	do	Dec. 20, 1974, Aug. 8, 1980 and, Sept. 1, 1986
		REGION V		
Wisconsin: Grant	Lancaster, city of	550150B	do	May 31, 1974 and, Aug. 5, 1986

[1] Minimal conversions.
[2] Declared disaster areas.
Kenai Peninsula borough's application includes the following cities: City of Seldovia; City of Kachenak; City of Seward.
Kenai Peninsula borough's application does not include the following cities: City of Homer, and City of Soldotna.
Code for reading 5th column: Emerg.—Emergency, Reg.—Regular, Susp.—Suspension, Rein.—Reinstatement.

Harold T. Duryee,
Administrator, Federal Insurance Administration.

[FR Doc. 86-29023 Filed 12-24-86; 8:45 am]
BILLING CODE 6718-03-M

44 CFR Part 64

[Docket No. FEMA 6740]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule, correction.

SUMMARY: This rule corrects the final rule amending § 64.6 published in the **Federal Register** on Monday, December 1, 1986, 51 FR 43199. On that page in the last line of the first table the State for the Town of Rhineland is erroneously listed as Tennessee. The correct State is Missouri. Please amend records accordingly.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

PART 64—[AMENDED]

The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Issued: December 17, 1986.

Harold T. Duryee,
Administrator, Federal Insurance Administration.

[FR Doc. 86-28999 Filed 12-24-86; 8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-194; RM-5386, 5519]

Radio Broadcasting Services; Lampasas and Sunset Valley, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 256C1 for Channel 257A at Lampasas, Texas, and modifies the license of Station KLTD(FM) to specify operation on the new frequency, at the request of Ronald K. Witcher. Concurrence by the Mexican government has been obtained for the Lampasas substitution. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 22, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (204) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-194, adopted October 30, 1986 and released December 8, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202, paragraph (b), the Table of FM Allotments is amended, under Texas, by revising Channel 257A to 256C1 for Lampasas.

Mark N. Lipp,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-28119 Filed 12-24-86; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 681

[Docket No. 60982-6182]

Western Pacific Spiny Lobster Fisheries; Extension of Effective Date of Emergency Interim Rule

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule; extension of effective date.

SUMMARY: The Secretary of Commerce (Secretary) extends an emergency rule now in effect to resolve an enforcement problem for spiny lobsters in the western Pacific. It closes all lobster fishing within 20 nautical miles of Laysan Island, and within the exclusive economic zone (EEZ) landward of the 10-fathom curve in the Northwestern Hawaiian Islands (NWHI). The intended effect is to ensure the effectiveness of these designated areas as refuge areas for spiny lobster.

EFFECTIVE DATES: In § 681.7, paragraph (b)(1) and in § 681.23, paragraphs (a) and (b) are suspended from December 27, 1986 through March 26, 1987. In § 681.7, new paragraph (b)(7) and in § 681.23, new paragraphs (c) and (d) are added, to be effective from December 27, 1986 through March 26, 1987.

ADDRESS: Send comments to E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731. A copy of the environmental assessment prepared for this rule may be obtained from the Regional Director.

FOR FURTHER INFORMATION CONTACT: Doyle E. Gates, Administrator, Western Pacific Program Office, 2570 Dole Street, Room 106, Honolulu, Hawaii 96822-2396, 808-955-8831.

SUPPLEMENTARY INFORMATION: Under section 305(e)(1) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), the Secretary of Commerce (Secretary), following a recommendation of the Western Pacific Fishery Management Council (Council), determined that an emergency existed in the spiny lobster fishery and closed all lobster fishing within 20 nautical miles of Laysan Island and within the EEZ landward of the 10-fathom curve in the NWHI from September 26, 1986, through December 26, 1986, (51 FR 3499, October 1, 1986). The Secretary has extended the emergency rules through March 26, 1987.

The areas described above were intended to be refuge areas, but the Fishery Management Plan for the Spiny Lobster Fisheries for the Western Pacific Region (FMP) only mentions a prohibition against spiny lobster fishing in refuge areas because spony lobster was the only resource harvested at the time of plan implementation. Slipper lobster now are harvested in large numbers; therefore, to prevent adverse effects on the spiny lobster resource through the harvesting of slipper lobster in refuge areas, the refuge areas will remain closed to all lobster fishing through March 26, 1987. An amendment to the FMP to permanently adopt the emergency rule is under review.

Emergency rules are exempt from the normal review procedures of Executive Order 12291 as provided for in section 8(a)(1) of that order. This rule is being reported to the Office of Management and Budget, with an explanation as to why it is not possible to follow the procedures of that order.

(16 U.S.C. 1801 *et seq.*)

Lists of Subjects in 50 CFR Part 681

Fisheries, Reporting requirements.

Dated: December 22, 1986.

Joseph W. Angelovic,
Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR Part 681 is amended as follows:

PART 681—WESTERN PACIFIC SPINY LOBSTER FISHERIES

1. The authority citation for Part 681 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 681.7, paragraph (b)(1) is suspended from December 27, 1986 through March 26, 1987. A new paragraph, (b)(7) is added, effective from December 27, 1986, through March 26, 1986, to read as follows:

§ 681.7 Prohibitions.

* * * * *

(b) * * *

(7) Fish for, take, or retain lobsters;

(i) By methods other than lobsters traps or by hand for spiny lobster, as specified in § 681.24, or

(ii) From closed areas for lobsters, as specified in § 681.23.

3. In § 681.23, paragraphs (a) and (b) are suspended from December 27, 1986, through March 26, 1987. New paragraphs (c) and (d) are added, effective from December 27, 1986, through March 26, 1987, to read as follows:

§ 681.23 Closed areas (refugia).

* * * * *

(c) All lobster fishing is prohibited within 20 nautical miles of Laysan Island.

(d) All lobster fishing is prohibited within the FCZ landward of the 10 fathom curve as depicted on National Ocean Survey Charts, Numbers 19022, 19019, and 19016.

[FR Doc. 86-29081 Filed 12-23-86; 10:23 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 51, No. 248
Monday, December 29, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 330

[Docket No. 85-396]

Mandatory Notification of Arrival

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the regulations to require that certain aircraft and watercraft directly notify USDA personnel in advance of their arrival at United States ports. This action appears to be necessary to help ensure that USDA personnel are prepared to perform required inspections and other activities immediately upon arrival of the aircraft or watercraft, thereby helping to ensure that plant diseases and pests, and animal and poultry diseases are not introduced or disseminated into the United States.

DATE: Comments must be received on or before February 27, 1987.

ADDRESS: Send written comments to Steven R. Poore, Acting Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments are in response to Docket No. 85-396. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Don R. Thompson or Charles A. Havens, Field Operations Support Staff, PPQ, APHIS, USDA, Room 663, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 (301) 436-8295.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the terms of sections 1, 5, 7, and 9 of the Plant Quarantine Act (7 U.S.C. 154, 159, 160, and 162), the Department may restrict or prohibit the importation of articles into the United States in order to prevent entry of tree, plant, or fruit disease, or injurious insects, new to or not theretofore widely prevalent or distributed within and throughout the United States. Further, section 106 of the Federal Plant Pest Act (7 U.S.C. 150ee) authorizes the Department to restrict or prohibit the importation of articles into the United States in order to prevent entry of other plant pests such as nematodes and mites. In addition, pursuant to the terms of sections 105 and 111 of the Animal Quarantine Acts (9 U.S.C. 105, 111), the Department may inspect all imported animals and other items related to such animals, and may take such measures as deemed proper, including seizing, disposing of, and quarantining any hay, straw, forage, or similar materials, or any meats, hides, or other animal products, in order to prevent the introduction of the contagion of any contagious, infectious, or communicable disease of animals and/or poultry into the United States. Finally, pursuant to the terms of section 306 of the Tariff Act of June 17, 1930 (19 U.S.C. 1306), the importation of cattle, sheep, or other ruminants, or swine, or of fresh, chilled, or frozen meat of such animals from any country in which rinderpest or foot-and-mouth disease exists is either prohibited or restricted, and such animals and products may be seized and disposed of in order to prevent the dissemination of foot-and-mouth disease and rinderpest, into or within the United States.

Plant Protection and Quarantine inspectors and Veterinary Service inspectors, both of the U.S. Department of Agriculture, Animal and Plant Health Inspection Service, carry out these authorities by inspecting certain carriers and travelers arriving at U.S. ports. Such carriers and travelers could knowingly or unknowingly transport injurious plant diseases or pests, or the contagion of contagious, infectious, or communicable diseases of animals and/or poultry, into the United States.

From an operational standpoint, effective inspections can only be performed if APHIS inspectors are prepared to perform inspections immediately upon arrival of the carrier at the port. This is because any significant time lag between arrival of the carrier and performance of required inspections or other activities could result in the removal, knowingly or unknowingly, of articles which could carry or transmit injurious plant diseases or pests or the contagion of contagious, infectious, or communicable diseases of animals and/or poultry.

However, due to staffing levels, distances which must be traveled, and other administrative considerations concerning operations at airports and harbors, APHIS personnel cannot meet the arriving aircraft or watercraft which require inspections if they are not informed, in advance, of the date, time, and location each carrier will arrive.[1] Therefore, in order to help ensure that this necessary information is available to APHIS in a timely fashion, it is proposed to amend the regulations to add a new § 330.111 to read as follows:

Section 330.111 Advance notification of arrival of aircraft, ships, and other watercraft.

The pilot of any aircraft, master of any watercraft, or other representative of any aircraft or watercraft arriving in the United States from any place outside thereof, or arriving in the continental United States from Hawaii or any territory or possession of the United States, shall notify the Animal and Plant Health Inspection Service, Plant Protection and Quarantine (PPQ) office which serves the intended port of arrival, and shall notify all subsequent ports in the United States at which such aircraft, or watercraft arrives, of such arrivals as follows:

(a) Notification must be received by the appropriate PPQ office not less than 12 hours in advance of the anticipated arrival of the aircraft or watercraft at the port;

(b) Notification may be made by radio, wire, telephone, or any other means; and

(c) Notification must include the following information:

(1) The name or other identification of the individual aircraft or watercraft;

(2) The date and estimated time of arrival at the port;

[1] It should be noted that other carriers arriving in the United States, such as trains, buses, cars, etc., must enter the United States at specific, restricted entry points other than airports and harbors. These entry points are staffed and operated so that all inspections and other required functions can be performed in a timely fashion, without advance notification of the arrival of individual carriers. For these reasons, advance notification of the arrival of these carriers does not appear to be necessary.

(3) The specific location of arrival (dock, pier, wharf, berth, mole, anchorage, gate, facility, etc.) and;

(4) The names of all ports outside the continental United States at which the carrier has embarked crew of passengers or loaded cargo destined for the United States since its most recent call at a port in the continental United States.

(d) If the estimated time of arrival of the aircraft or watercraft changes by more than one hour, or if the planned date of arrival or specific location of arrival (dock, pier, wharf, berth, mole, anchorage, gate, facility, etc.) changes, the PPQ office which serves the port of arrival shall be notified of such change immediately.

(e) If the port of arrival of the aircraft or watercraft changes after the PPQ office which serves the originally-intended port of arrival has been notified of the anticipated arrival of the carrier, both that PPQ office and the PPQ office which serves the new port of arrival shall be notified of such change immediately.

(f) If the location of arrival of the watercraft is an anchorage, the PPQ office which serves the port of arrival shall be notified, as soon as possible after the watercraft arrives at such anchorage, of the dock, pier, wharf, berth, mole, facility, etc., to which the watercraft will move thereafter, and the date and estimated time of arrival at such dock, pier, wharf, berth, mole, facility, etc.

(g) *Notwithstanding* any other provisions of this section, the PPQ office which serves the port of arrival need not be notified in advance of any aircraft or watercraft which meets one of the following conditions:

(1) The aircraft or watercraft is not regularly engaged in the business of carrying passengers or cargo for a fee;

(2) The aircraft has been granted continuing landing rights by the U.S. Customs Service;

(3) The aircraft has been inspected in Hawaii or a territory or possession of the United States by an inspector and precleared based on a determination by such inspector that the aircraft contained only articles that are not prohibited or restricted importation into the United States under the provisions of 7 CFR Chapter III and 9 CFR Chapter I;

(4) The aircraft has been inspected in a foreign port by an inspector and precleared based on a determination by such inspector that the aircraft contained only articles that are not prohibited or restricted importation into the United States under the provisions of 7 CFR Chapter III and 9 Chapter I; or

(5) The aircraft has been inspected by personnel of the United States armed forces, including the U.S. Coast Guard, in Hawaii or a territory or possession of the United States, or in a foreign port, and precleared based on a determination by such personnel that the aircraft contained only articles that are not prohibited or restricted importation into the United States under the provisions of 7 CFR Chapter III and 9 CFR Chapter I.

(6) The pilot of the aircraft, master of the watercraft, or other representative of the aircraft or watercraft has been informed, in writing, by a PPQ inspector that such notification is not required.

The proposed regulations would require only aircraft and watercraft which require inspection services to notify United States ports in advance of their arrival.

All required information would have to be provided to the PPQ office which serves the port of arrival. Many required inspections and other activities performed in connection with the arrival of aircraft and watercraft are performed under Veterinary Services authority, and many ports have Veterinary Services offices. However, PPQ inspectors at the ports perform all initial inspections. Also, the PPQ offices at all ports of entry are prepared and equipped to receive notification of the arrival of aircraft and watercraft. Therefore, the proposed regulation would require that arriving carriers notify the PPQ office at the port of arrival.

It appears that the PPQ office which serves the port of arrival needs a minimum of 12 hours advance notice of the arrival of an aircraft or watercraft. This time is necessary in order to arrange schedules and transportation for personnel to meet the carrier when it arrives.

The name or other identification of the aircraft or watercraft, estimated time and date of arrival, and specific location of arrival, are all needed to help ensure than an inspector can meet the carrier at the time and place it arrives at the port and can provide immediate inspection services. The information concerning prior ports of call is required to help PPQ personnel determine the exact inspection services which may be required.

Under the proposed regulations, certain aircraft and watercraft would be exempted from the requirement that they provide advance notification of their arrival at United States ports. These exceptions fall into four categories: (1) Aircraft and watercraft which are not regularly engaged in the business of carrying passengers or cargo for a fee; (2) aircraft which have been granted continuing landing rights by the U.S. Customs Service; (3) aircraft which have been inspected under specified conditions by specified personnel and which have been precleared based on a determination that they contain only articles that allow unrestricted importation into the United States under the provisions of 7 CFR Chapter III and 9 CFR Chapter I; and (4) aircraft and watercraft of which the pilot, master, or other representative, as appropriate, has been informed in writing by a PPQ inspector that such notification is not required at subsequent consecutive ports in the United States.

Advance notice of arrival of precleared aircraft and watercraft does not appear to be necessary because these carriers have been individually determined in advance not to require inspection at their U.S. ports of arrival. Therefore, an inspector does not need to meet and inspect these carriers when they arrive, and no personnel or travel arrangements need to be made. Likewise, advance notice of arrival of aircraft which have been granted continuing landing rights by U.S. Customs Service does not appear to be necessary. The arrival schedules of these aircraft are published, and PPQ offices at the various ports receive copies in advance. Therefore, individual notification of the arrival of these carriers is not necessary.

With regard to aircraft and watercraft which are not regularly engaged in the business of carrying passengers or cargo for a fee, most of these carriers are private carriers traveling between Canada and the United States or between Mexico and the United States. Statistics compiled by the Animal and Plant Health Inspection Service over the last 10 years show that no significant disease or pest risk is posed by these carriers. In addition, due to the large numbers of these carriers, it is not practical to inspect each of these carriers arriving in the United States.

Finally, a PPQ inspector may, under certain circumstances, inform the representative of a carrier in writing that the carrier is not required to notify subsequent consecutive ports in the United States in advance of its arrival. Such circumstances would include, but not be limited to, cases where a carrier was inspected at one port in the United States and found to contain only articles that are allowed unrestricted importation into the United States under the provisions of 7 CFR Chapter III and 9 CFR Chapter I. In these cases, further inspections would not be necessary at

subsequent consecutive ports in the United States.

Executive Order 12291 and Regulatory Flexibility Act

This proposed rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department it has been determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed action would, with certain exceptions, affect all aircraft and watercraft arriving at United States ports from specified points outside the United States and from specified points within the United States. However, this proposed action would require that such aircraft and watercraft merely inform PPQ in advance of their arrival at United States ports. Existing requirements for inspection, sealing, and quarantine would not be affected by adoption of this proposal.

Under the circumstances explained above, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act.

In accordance with section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the information collection provisions that are included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Written comments concerning any information collection provisions should be submitted to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. A duplicate copy of such comments should be submitted to Steven R. Poore, Acting Assistant Director, Regulatory Coordination, APHIS, USDA, 6505 Belcrest Road, Hyattsville, MD 20782.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 7 CFR Part 330

Customs duties and inspection, Garbage, Imports, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Soil, Stone and quarry products, Transportation.

PART 330—FEDERAL PLANT PEST REGULATIONS: GENERAL; PLANT PESTS; SOIL, STONE, AND QUARRY PRODUCTS; GARBAGE

Under the circumstances described above, it is proposed to amend the regulations in Part 330, 7 CFR Chapter III, as follows:

1. The authority citation for Part 330 would be revised to read as follows and the authority citations following the sections in Part 330 are removed:

Authority: 7 U.S.C. 147a, 150bb, 150dd–150ff, 161, 162, 164a, 450, 2260; 19 U.S.C. 1306; 21 U.S.C. 111, 114a; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 44 U.S.C. 3507; 7 CFR 2.17, 2.51, and 371.2(c).

§ 330.100 [Amended]

2. In § 330.100, the paragraph designations would be removed, the defintions would be rearranged in alphabetical order, and the following defintion would be added in alphabetical order:

Arrival (arrive). The estimated time of docking or landing.

3. In Part 330, a new § 330.111 would be added to read as follows:

§ 330.111 Advance notification of arrival of aircraft, ships, and other watercraft.

The pilot of any aircraft, master of any watercraft, or other representative of any aircraft or watercraft arriving in the United States from any place outside thereof, or arriving in the continented United States from Hawaii or any territory or possession of the United States, shall notify the Animal and Plant Health Inspection Service, Plant Protection and Quarantine (PPQ) office which serves the intended port of arrival, and shall notify all subsequent ports in the United States at which such aircraft or watercraft arrives, of such arrivals as follows:

(a) Notification must be received by the appropriate PPQ office not less than 12 hours in advance of the anticipated arrival of the aircraft or watercraft at the port;

(b) Notification may be made by radio, wire, telephone, or any other means; and

(c) Notification must include the following information:

(1) The name or other identification of the individual aircraft or watercraft;

(2) The date and estimated time of arrival at the port;

(3) The specific location of arrival (dock, pier, wharf, berth, mole, anchorage, gate, facility, etc.), and;

(4) The names of all ports outside the continental United States at which the carrier has embarked crew or passenagers or loaded cargo destined for the United States since its most recent call at a port in the continental United States.

(d) If the estimated time of arrival of the aircraft or watercraft changes by more than one hour, or if the planned date of arrival or specific location of arrival (dock, pier, wharf, berth, mole, anchorage, gate, facility, etc.) changes, the PPQ office which serves the port of arrival shall be notified of such changes immediately.

(e) If the port of arrival of the aircraft or watercraft changes after the PPQ office which serves the originally-intended port of arrival has been notified of the anticipated arrival of the carrier, both that PPQ office and the PPQ office which serves the new port of arrival shall be notified of such change immediately.

(f) If the location of arrival of the watercraft is an anchorage, the PPQ office which serves the port of arrival shall be notified, as soon as possible after the watercraft arrives as such anchorage, of the dock, pier, wharf, berth, mole, facility, etc., to which the watercraft will move thereafter, and the date and estimated time of arrival at such dock, pier, wharf, berth, mole, facility, etc.

(g) *Notwithstanding* any other provision of this section, the PPQ office which serves the port of arrival need not be notified in advance of any aircraft or watercraft which meets one of the following conditions:

(1) The aircraft or watercraft is not regularly engaged in the business of carrying passengers or cargo for a fee;

(2) The aircraft has been granted continuing landing rights by the U.S. Customs Service;

(3) The aircraft has been inspected in Hawaii or a territory or possession of the United States by an inspector and precleared based on a determination by such inspector that the aircraft contained only articles that are not prohibited or restricted importation into the United States under the provisions of 7 CFR Chapter III and 9 CFR Chapter I;

(4) The aircraft has been inspected in a foreign port by an inspector and precleared based on a determination by such inspector that the aircraft contained only articles that are not prohibited or restricted importation into the United States under the provisions of 7 CFR Chapter III and 9 Chapter I; or

(5) The aircraft has been inspected by personnel of the United States armed forces, including the U.S. Coast Guard, in Hawaii or a territory or possession of the United States, or in a foreign port, and precleared based on a determination by such personnel that the aircraft contained only articles that are not prohibited or restricted importation into the United States under the provisions of 7 CFR Chapter III and 9 CFR Chapter I.

(6) The pilot of the aircraft, master of the watercraft, or other representative of the aircraft or watercraft has been informed, in writing, by a PPQ inspector that such notification is not required at subsequent consecutive ports in the United States.

Done at Washington, DC, this 33nd day of December 1986.

W. Helms,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 86–29005 Filed 12–24–86; 8:45 am]

BILLING CODE 3410-34-M

9 CFR Part 75

[Docket No. 85–023]

Equine Infectious Anemia

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the regulations in 9 CFR Part 75 to allow, under certain conditions, the interstate shipment of horses and other equines which have been tested and found positive for equine infections anemia to an approved stockyard for sale for immediate slaughter. This action appears to be necessary to encourage the slaughter of animals affected with equine infectious anemia.

DATE: Written comments must be received on or before February 27, 1987.

ADDRESS: Written comments concerning this proposed rule should be submitted to Steven R. Poore, Acting Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in reference to Docket Number 85–023. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. C. A. Gipson, Program Planning Staff, VS, APHIS, USDA, Room 845, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8321.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 75 (referred to below as the regulations) contain, among other things, provisions concerning the interstate movement of horses, asses, ponies, mules, and zebras which have been tested and found postive for equine infectious anemia (referred to below as EIA), also known as swamp fever.

The regulations are designed to help stop the spread of EIA. The regulations in § 75.4(b) provide that reactor animals may be moved interstate, under certain conditions, only: (1) For immediate slaughter; (2) to a diagnostic or research facility; or (3) to the animal's home farm.

Euthanasia and slaughter of EIA reactor animals are the most effective means of eradicating EIA. This is because euthanasia and slaughter eliminate diseased animals as sources of infection.

Although euthanasia and slaughter are most effective, several factors discourage owners of EIA reactor animals from disposing of their animals by these methods. First, owners are discouraged from euthanizing their animals because they receive no money for salvage of the animal and thereby incur a total financial loss. Second, even if owners send their affected animals to slaughter and they do receive money for salvage, they are discourged from slaughtering their animals because of the difficulty and cost of shipping the animal to slaughter.

Only 13 slaughtering establishments in the contiguous 48 States slaughter EIA reactor equines. Because of the geographical distribution of these establishments, equine owners in many states must ship their reactor animals long distances to be slaughtered, sometimes hundreds of miles. Because animal owners almost always have only one EIA reactor to dispose of at a time, the cost of shipment can be extremely high. The high cost discourages many owners. Owner who do decide to pay the shipping costs often have difficulty locating a willing shipper. Shippers make a greater profit hauling a full load of animals. They are therefore reluctant to haul a single animal and some shippers simply refuse to do so. The result of this situation is that animals which would otherwise be slaughtered are instead kept by their owners. Rather than being eliminated as possible sources of infection, these animals remain as potential sources of disease.

It appears that allowing the interstate movement of EIA reactor animals to an approved stockyard for sale and immediate shipment to slaughter would encourage owners of EIA reactor animals to dispose of them, thus removing such animals as sources of infection. It appears that under such a system it would be less expensive and easier for owners of reactor animals to dispose of them. It also appears that the effectiveness of the current program to help stop the spread of EIA would be enhanced. Therefore, this document proposes to amend the regulations to allow, under certain conditions, the movement of EIA reactor animals interstate to an approved stockyard for sale and immediate shipment to slaughter. This doucment also proposes to add a definition of "approved stockyard" to the regulations.

Specifically, the proposed amendments would provide that animals affected with EIA could be shipped interstate to no more than one approved stockyard for sale and immediate shipment to slaughter. In addition, such animals would be rquired, within 30 days of their arrival at the approved stockyard to be shipped from the market directly to slaughter.

It appears to be necessary to require such EIA reactor animals to be shipped interstate only to approved stockyards. This appears to be necessary to help ensure that such animals do not spread EIA while in marketing channels. Stockyards would be approved to handle EIA reactor animals only if they enter into an agreement which sets forth the standards necessary to obtain and maintain approval. Since those legally responsible for operation of the stockyard can ensure that the standards necessary for approval are met, it appears to be appropriate to have the operator of the stockyard enter into such an agreement. This proposal sets forth the specific agreement in § 75.4(c).

Specifically, this proposal provides for shipment of certain horses and other equines interstate through specifically approved stockyards, thereby facilitating interstate movement while reducing the cost of movement to owners of such animals. The standards contained in the agreement set forth in proposed § 75.4(c) are necessary to ensure that horses and other equines are received, handled, and released by the stockyards in accordance with the regulations and in a manner which would help ensure the prevention of the

spread of EIA. It also appears that records would be maintained which would allow tracing of such animals if needed to locate the source of an EIA infection and stop spread of the disease.

In addition, it appears to be necessary to require that EIA reactor animals pass through no more than one stockyard before shipment to slaughter, and to limit the length of time to 30 days that EIA reactor animals would be allowed to remain at the stockyard prior to shipment to slaughter. These restrictions appear to be necessary to minimize any disease risk posed by such animals by helping to ensure that such animals do not reenter commercial channels after they are sold for slaughter, and by helping to ensure that such animals are slaughtered expeditiously.

Finally, it appears that adoption of the proposed regulations would pose no significant additional disease risk. EIA reactor animals already move intrastate through stockyards to slaughter, and it is anticipated that fewer than 500 EIA reactor animals a year would move interstate through stockyards to slaughter under the proposed regulations.

Executive Order 12291 and Regulatory Flexibility Act

The proposed rule is in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this proposed rule would not have a significant annual effect on the economy and would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It is anticipated that the number of EIA reactor horses and other equines which would be moved interstate under the amended provisions of Part 75 would be insignificant compared with the total number of horses and other equines moved interstate.

Under the circumstances explained above, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 0579–0051.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR 3015, Subpart V).

List of Subjects in 9 CFR Part 75

Animal diseases, Contagious equine metritis, Dourine, Equine, Equine infectious anemia, Horses, Quarantine, Transportation.

PART 75—COMMUNICABLE DISEASE IN HORSE, ASSES, PONIES, MULES, AND ZEBRAS

Accordingly, it is proposed to amend 9 CFR Part 75 as follows:

1. The authority citation for Part 75 would continue to read as follows:

Authority: 21 U.S.C. 111–113, 115, 117, 120, 121, 123–126, 134–134(h); 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 75.4, the heading would be revised to read as follows:

§ 75.4, Interstate movement of equine infectious anemia reactors and approval of laboratories, diagnostic facilities, research facilities, and stockyards.

3. In § 75.4, paragraph (a) would be amended to add, in alphabetical order, the following definition:

* * * * *

Approved stockyard. A stockyard, livestock market, or other premises, under state or federal veterinary supervision where horses or other equines are assembled for sale or sale purposes, and which has been approved by the Deputy Administrator under this Part.

* * * * *

4. In § 75.4, paragraph (b) would be amended to change "(b)(1), (b)(2), or (b)(3)" in the first sentence to read "(b)(1), (b)(2), (b)(3), or (b)(4)", to change the period at the end of paragraph (b)(3) to "; and", and to add a new paragraph (b)(4) to read as follows:

(b) * * *

(4) The reactor is moved interstate through no more than one approved stockyard for sale for immediate slaughter, and is moved within 30 days of its arrival at the approved stockyard direct to slaughter at a Federally inspected slaughtering establishment operating under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) or to a State-inspected slaughtering establishment that has inspection by a State representative at the time of slaughter.

* * * * *

5. In § 75.4, the heading to paragraph (c) would be revised to read *"Approval of Laboratories, Diagnostic or Research Facilities, and Stockyards."* and a new paragraph (c)(3) would be added to read as follows:

§ 75.4 Interstate movement of equine infectious anemia reactors and approval of laboratories, diagnostic facilities, research facilities, and stockyard.

* * * * *

(c) * * *

(3) The Deputy Administrator will approve stockyards to handle reactors moved interstate under paragraph (b)(4) of this section when the operator [4] of the stockyard executes the following agreements:

Agreement for Specifically Approved Stockyard for Handling Known Equine Infectious Anemia Reactor Horses and Other Equines Pursuant to Title 9 of the Code of Federal Regulations

(Name of Stockyard) _____
(Address of Stockyard) _____

I, (name of operator), operator of (name of stockyard), hereby agree to maintain and operate this stockyard at (premises location) in accordance with each of the provisions set forth herein.

Cooperation

(1) An accredited veterinarian, State representative, or Veterinary Services representative shall be on the stockyard premises on sale days to perform duties in accordance with State and Federal Regulations.

(2) The State animal health official and the Veterinarian in charge shall be furnished with a current schedule of sale days which apply to the stockyard and any revision to the schedule of sale days prior to implementation of such revision.

(3) State representatives and Veterinary Services representatives shall be granted, during normal business hours, access to stockyard premises and facilities to determine compliance with the requirements of Title 9, Code of Federal Regulations and the Standards of this agreement.

Handling of Horses and Other Equines

(4) Horses and other equines shall be received, handled, and released by the stockyard only in accordance with Title 9 of the Code of Federal Regulations.

(5) Any horses and other equines classified as equine infectious anemia reactors and accepted by the stockyard for sale shall be: (a) Placed in quarantined pens and (b) consigned from the stockyard only to a slaughtering establishment in accordance with Title 9, Code of Federal Regulations, Part 75.

(6) Horses and other equines which are not classified as equine infectious anemia reactors shall not be placed in quarantined pens without prior cleaning and disinfection of such pens in accordance with paragraph 9 of this agreement.

Facilities

(7) Quarantined pens for the confinement of horses and other equines classified as equine infectious anemia reactors shall be (a) clearly placarded "Quarantined," "Equine Infectious Anemia," or "Swamp Fever" and (b) cleaned and disinfected in accordance with Title 9, Code of Federal Regulations, § 71.4 before being used to pen horses and other equines which are not equine infectious anemia reactors.

(8) Serviceable equipment for cleaning and disinfecting shall be furnished and maintained with adequate disinfectant on hand.

Cleaning and Disinfection

(9) The stockyard shall be cleaned and disinfected in accordance with Title 9, Code of Federal Regulations, § 71.4.

Fly Control Program

(10) The stockyard shall have in effect a fly control program utilizing at least one of the following: baits, fly strips, electric bug killers ("Fly Zappers", "Fly Snappers", or similar equipment), periodic pesticide spraying.

Records

(11) Any document relating to animals which are or have been in the stockyard shall be maintained by the stockyard for a period of 1 year.

(12) State representatives and Veterinary Services representatives shall be granted, during normal business hours, access to all documents required to be maintained pursuant to paragraph 11 of this agreement and authority to reproduce such documents upon request.

I, ———, hereby acknowledge receipt of a copy of Title 9, Code of Federal Regulations, Parts 71 and 75 and hereby acknowledge that I have been informed and understand that failure to abide by the provisions of this agreement constitutes a basis for the withdrawal of approval from this stockyard.

Request Approval
*Operator of the Stockyard _____
Date——— _____

Recommended Approval
State and Animal Health Official _____
Date——— _____

*The operator shall be the individual legally responsible for the day-to-day operations of the specifically approved stockyard.

Recommended Approval
Veterinarian in Charge _____
Date——— _____

Approval Granted
Deputy Administrator, Veterinary Services —
Date——— _____

6. In § 75.4, the heading to paragraph (d) would be revised to read *"Denial and Withdrawal of Approval of Laboratories, Diagnostic or Research Facilities, and Stockyards."*

7. In § 75.4, paragraph (d) introductory text, would be amended to insert "or of any stockyard to handle reactors under this Part," after "or of any diagnostic or research facility to receive reactors moved interstate," and to insert "or stockyard" after "the laboratory or diagnostic or research facility".

8. In § 75.4, the introductory sentence of paragraph (d) would be further amended to change the period to a comma and to add "or, in the case of a stockyard, upon a determination that the stockyard is not maintained and operated in accordance with the standards specified in the agreement entered into by the operator of such stockyard."

9. In § 75.4, paragraph (d)(1) would be amended to add "or stockyard after "laboratory or facility".

10. In § 75.4, paragraph (d)(2) would be amended to add "or stockyard after "laboratory or facility" wherever it appears in the paragraph.

11. In § 75.4, a new paragraph (d)(5) would be added to read as follows:

§ 75.4 Interstate movement of equine infectious anemia reactors and approval of laboratories, diagnostic facilities, research facilities, and stockyards.

* * * * *

(d) * * *

(5) Approval for a stockyard to handle reactors under this Part will be automatically withdrawn by the Deputy Administrator when the operator of the approved stockyard notifies the Deputy Administrator, in writing, that the stockyard no longer handles reactors moved interstate under this Part.

Done at Washington, DC, this 22nd day of December 1986.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 86–29004 Filed 12–24–86; 8:45 am]

BILLING CODE 3410-34-M

[4] The operator shall be the individual legally responsible for the day-to-day operations of the specifically approved stockyard.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701 and 741

Organization and Operations of Federal Credit Unions; and Requirements for Insurance and Voluntary Termination of Insurance

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: On June 19, 1986, the NCUA Board issued a proposed rule, Part 706 of the NCUA Rules and Regulations—Member Business Loans by Federally-Insured Credit Unions (*see* 51 FR 23234, June 28, 1986). The comment period closed on September 30, 1986. This proposed rule is a revision of the June 19 proposal and reflects changes and amendments resulting from the comments received. Based upon the suggestions of some of the commenters, the revised proposed rule has been integrated with the existing lending rules for Federal credit unions (FCU's) and rules on requirements for insurance for all federally-insured credit unions. The rule is again being issued as a proposal to give all interested parties an opportunity to comment on those amendments that were not part of the original proposal and also to allow for further comment on all aspect of the rule.

DATE: Comments must be received on or before January 30, 1987.

ADDRESS: Send comments to Rosemary Brady, Secretary, National Credit Union Administration Board, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: J. Leonard Skiles, Regional Director, Region V (Austin), 611 East 6th Street, Suite 407, Austin, TX 78701; or D. Michael Riley, Director, Office of Examination and Insurance, or Steven R. Bisker, Assistant General Counsel, 1776 G. St., NW., Washington, DC 20456, or telephone: (512) 482–5131 (Mr. Skiles) or (202) 357–1065 (Mr. Riley) or (202) 357–1030 (Mr. Bisker).

SUPPLEMENTARY INFORMATION: Approximately 350 comment letters were received concerning Proposed Part 706—Member Business Loans by Federally-Insured Credit Unions. Approximately half of the commenters supported a regulation, although almost all of these commenters recommended changes to the proposed rule. Almost half of the comments were from FCU's and about one-third from federally-insured state chartered credit unions (FISCU's). Comments were also received from the national credit union trade associations, state credit union leagues, state credit union supervisors, and members of the U.S. Congress. Of the FCU's and FISCU's commenting, there was about an even split between those in favor of a rule and those opposed. The sections of the proposal eliciting the most comments were § 706.1(a)—Definition of "member business loan"; § 706.2—Limitations on member business loans (10% of reserves for one individual and 300% of reserves for all loans in the aggregate); § 706.3—Written loan policies; § 706.6(a)—Prohibition on loans to directors; and § 706.6(d)—

Limitation on loans to nonnatural persons.

The NCUA Board remains firmly convinced that regulation of business lending acitivity by federally-insured credit unions is warranted and necessary. Recent call report data indicates that, system-wide, approximately $1 billion in business loans are held by federally-insured credit unions. Through NCUA's examination process, it is known that in excess of $300 million of these loans are classified as problem (delinquent, substandard, nonperforming) loans. This is a problem loan ratio of at least 30%, as compared to an average 2% ratio of delinquent loans in credit unions' consumer loan portfolios. Further, as discussed in the preamble to the previous proposal, a limited number of liquidations and serious problem cases involving business loan losses by credit unions with nonexistent or totally inadequate policies and procedures have resulted in millions of dollars in losses to the National Credit Union Share Insurance Fund in recent years. These are losses that are indirectly borne, dollar for dollar, by all federally-insured credit unions.

The Board believes that reasonable regulation will assist in addressing these problems without placing a burden on credit unions that operate sound business loan programs. These revised proposed rules incorporate substantial changes designed to address legitimate concerns of the commenters while accomplishing the goal of safe and sound operation of business loan programs by those credit unions that choose to offer such loans in order to meet the needs of their membership.

Further, it is recognized that regulation alone cannot ensure safe and sound operation of business loan programs. Concentrated education and training efforts are being undertaken by NCUA, the state regulators, credit union trade associations and other credit union organizations, and such efforts will continue in the coming months.

Major Changes From Prior Proposed Rule

Structural Change

This proposed rule is integrated into the existing rule, § 701.21 (12 CFR 701.21), Loans to Members and Lines of Credit to Members, and the existing rule, Part 741 (12 CFR Part 741), Requirements for Insurance and Voluntary Termination of Insurance, rather than adding a new Part 706, as previously proposed. The NCUA Board is now proposing to add a new subsection (h), Member Business Loans, to § 701.21 and to amend subsections (a), (c)(5), (c)(8), and (d)(5) of § 701.21; and add a new § 741.3, Minimum Loan Policy Requirements, to Part 741.

Substantive Changes

Definition of "Member Business Loan"

Many commenters suggested that business loans which are fully secured by either a 1 to 4 family residential dwelling or the member's shares in the credit union, or that are fully guaranteed as to principal and interest by a government agency (Federal or state), be excluded from the definition of member business loan. The Board agrees and has amended the definition accordingly. The 1 to 4 family dwelling provision does not exclude loans to fund real estate development projects from the definition of member business loan. The exclusion is intended for members who use their homes (primary or secondary residence) as collateral on a loan. Additionally, the definition has been revised to clarify what types of loans NCUA intends to be covered by the rule. The $25,000 trigger amount remains in the proposal. The definition of "member business loan" now appears as proposed § 701.21(h)(1)(i).

300% Aggregate Business Loan Limit

NCUA has learned, through comments received and the latest call report data, that a number of credit unions presently have financially sound business loan portfolios in excess of the 300% limit. Rather than mandating a specific aggregate limit in a rule, it is proposed that the responsibility for establishing appropriate limits be placed with each credit union's board of directors. The proposed 300% limit has been eliminated and instead it is proposed that each credit union's board be required to establish, in their written loan policies (*see* proposed § 701.21(h)(2)(i)(c)), the maximum amount of credit union assets, in relation to reserves, that will be invested in member business loans.

Loans-To-One-Borrower Limit

The initial proposal established a 10% of reserves limit. Many of the commenters stated that the limit was too low and that it would severely restrict legitimate and sound business lending activity. Some commenters argued that the establishment of such a limit was contrary to the FCU Act since the Act provides a higher limit (10% of unimpaired capital and surplus) than the proposed rule. The Board does not agree. The FCU Act establishes an absolute limit rather than the authority for any one member to borrow up to that amount. The Board believes that a limit on individual business loan borrowing is necessary for safety and soundness reasons, and, pursuant to its general rulemaking authority, has proposed a limit that is separate and distinct from the ceiling provided in the Act.

The new proposed § 701.21(h)(2)(ii) raises the loan-to-one-borrower limit to 20% of reserves. The Board notes that the limit established here compares with similar limits set by other Federal financial institution regulators. Further, the rule provides that a greater amount may be approved for FCU's by the NCUA Board or, with respect to FISCU's subject to the rule, by the NCUA Board in coordination with the state credit union supervisory authority (*see* proposed § 741.3).

Written Loan Policy

This aspect of the proposed rule was generally supported by the commenters. The provisions concerning written business loan policies are now found in proposed § 701.21(h)(2)(i). This part of the proposal now includes certain items that were previously separate provisions of the rule—qualified loan officer (former § 706.4) and recordkeeping and reporting requirements (former § 706.7). Section 701.21(h)(2)(i)(F) now provides that a credit union's board of directors, as part of their business loan policy, shall address the qualifications and experience of personnel involved in making and administering business loans. The Board notes, in this regard, that while training is important, it alone is not a substitute for actual business lending experience. Proposed § 701.21(h)(2)(i)(L) calls for the periodic disclosure to members of the total number and dollar amount of business loans (governed by the rule) and the total number and dollar amount of permitted business loans to officials and employees. This provision replaces proposed § 706.7. Also, the NCUA call report (5300) will be modified so that reporting of business loans to the supervisory authorities is consistent with the requirements of subsection (L).

Several commenters pointed out that the requirement that a borrower's financial reports be updated quarterly was excessive and costly, and in many instances, particularly with agricultural loans, impractical. Proposed § 701.21(h)(2)(i)(H) addresses this matter and now provides that, among other things, tax returns and financial statements be maintained and updated on an annual or more frequent basis as determined by the board of directors.

An important part of the lending policy is loan diversification. The issue of diversification is addressed in

subsections (C), (D), and (E). It is essential that credit unions address (1) the maximum amount of their assets, in relation to reserves, that will be invested in business loans and in a given category or type of such loans, and (2) the maximum amount of their assets, in relation to reserves, that will be loaned to any one member or group of associated members. Proper diversification and asset-liability management goes a long way to minimize unforeseen changes in circumstance that result in loan failures. Diversification helps to ensure that a downward cycle in one area will not unduly impact on the credit union's solvency.

Prohibition on Loans to Insiders

The proposed § 706.6(a) prohibited the granting of member business loans to any director, official, committee member, employee, or to any associated member of such individual, or to an immediate family member of such individual. The initial proposal generated a substantial number of comments in strong opposition to the prohibition on loans to directors. It was argued that volunteer directors are unfairly discriminated against by the prohibition.

The Board has reconsidered this issue and, as reflected in the new proposed rule, agrees that volunteer officials (directors and committee members) should be allowed to obtain business loans *on the same terms and conditions* as other qualifying members. It is the Board's view, however, that compensated senior management employees of a credit union should not be placed in a situation where their responsibility to the credit union is pitted against their personal financial interest.

A review of recent liquidations and supervisory cases involving combined problems of business lending and insider abuses reveals that salaried (as opposed to volunteer) management officials have been at the heart of the problem in virtually every case. Further, these individuals receive direct compensation for their job performance and it is not necessary to be able to offer business loans in order to retain their services. Salaried management officials who have legitimate outside business interests can and should obtain financing elsewhere for these endeavors. Accordingly, the Board proposes to prohibit these individuals from obtaining business loans from their credit union. Nonpreferential loans for other purposes would be permitted (assuming the individual is a member of the credit union).

Thus, the new proposed § 701.21(h)(3) revises the prior proposal by prohibiting the granting of member business loans *only* to certain specified nonvolunteer senior management employees—any director who is compensated as such, the credit union's chief executive officer (this individual typically has the title of President or Treasurer/Manager), all assistant chief executive officers, and the chief financial officer (usually has title of Comptroller). To prevent circumvention of the prohibition, it also applies to any associated member or immediate family member of such employees. Finally, to ensure that each credit union has addressed this issue and expressly identified those specific management positions within the credit union that are subject to the prohibition, § 701.21(h)(2)(i)(M) would require that the affected employee be identified, by position, in the credit union's written loan policies.

Nonpreferential Treatment

The proposed Part 706 did not specifically address nonpreferential business loan treatment for officials. This limitation already exists in § 701.21(d)(5) with respect to all other loans. The Board believes that it should equally apply to business loans and has amended § 701.21(d)(5) accordingly.

Proposed § 741.3 requires FISCU's to follow the limitations in § 701.21(d)(5). FISCU's must adhere to these limitations with respect to *all* loans and not simply member business loans. This is more inclusive than the previously proposed rule.

The granting of loans with preferential rates, terms, and conditions has been used as a way to otherwise compensate officials who could not legally be compensated. The proposed prohibition effectively limits such circumvention. The Board believes that the limitation is necessary because loans underwritten to officials with rates, terms, and conditions that are out of line with the credit union's normal lending policies often result in losses to the credit union. The Board considers this type of lending to be unsafe and unsound and has, therefore, proposed to prohibit it for all federally-insured credit unions. It is noted that, pursuant to proposed § 741.3, states that adopt equivalent rules will obtain an exemption for federally-insured state-chartered credit unions from NCUA's rule. Based on discussions between representatives of NCUA and various state regulators, it is understood that a number of states already have established comparable rules and that this action will cause other states to consider doing so.

Prohibited Fees

Formerly proposed § 706.6(b) is now incorporated into an amended § 701.21(c)(8). The proposed amendment to § 701.21(c)(8) broadens the scope of the prohibition to include any commission, fee, or other compensation received in connection with loan servicing and collection activities. At present, the rule does *not* include servicing and collection activities. It should be emphasized that this provision would not preclude an individual who is a noncommissioned salaried employee from receiving his/her salary for performing one or more of the activities listed in this section.

This is another area where individual motives for pecuniary gain come into conflict with decisions and actions that should be made solely to benefit the credit union. Section 701.21(c)(8) has been in effect for some time with respect to Federal credit unions and has proven useful in preventing insider abuses.

As with the limitation on preferential loan treatment, the limitation of fees is proposed, by § 741.3, to be applicable to all FISCU's. A clear and more comprehensive prohibition against insider dealing will assist in avoiding problems that have occurred in credit unions in a limited number of cases and in other segments of the financial industry on a more widespread basis. The rule is consistent with and enhances credit unions' distinct identity as member-owned and member-oriented financial cooperatives. Here again, pursuant to § 741.3, individual states would have the option of obtaining an exemption from NCUA's rule by adopting equivalent rules for federally-insured state credit unions.

Loans to Nonnatural Persons

The limitation proposed in § 706.6(d) that a federally-insured credit union shall not make a member business loan to a nonnatural person in excess of its shares at the credit union has been eliminated from the new proposed rule. It is believed that the effect of such a limitation would be to keep the corporation, business, etc., from being directly involved in the loan transaction and otherwise sign the loan and/or security agreement and note. If the nonnatural person is to benefit from the loan, it should be a direct party to the transaction and be liable on the loan.

A provision similar to that previously proposed is currently contained in Article XII, Section 1 of the FCU Bylaws. The Board intends to amend this bylaw provision at the same time it finalizes these proposed provisions on member

business loans. The amended bylaw will provide an exception for loans for a business or commercial purpose that are made jointly to one or more natural person members and a business organization in which they have a majority ownership interest. It would permit the loan to exceed shares of the nonnatural person in the credit union if all the borrowers are jointly and severally liable on the full loan amount.

Exemption From Rule For FISCU's

Recognizing the importance of the dual chartering system, and in light of several comments received on the June proposal, the Board has proposed in § 741.3 to exempt FISCU's from coverage under these proposed rules if the state regulatory authority adopts equivalent regulations as determined by the NCUA Board. The Board is committed to processing such exemption requests quickly, and will consider and act on any internal delegations of authority necessary to accomplish that goal. States may wish to adopt equivalent rules and obtain an exemption for one or more of three general subjects addressed by these rules: business loans, prohibited fees (to officials and employees), and nonpreferential treatment (of officials). If a state does not adopt such regulations, its FISCU's will be subject to these rules and all required NCUA reviews and approvals will be handled in coordination with the state credit union supervisory authority.

The Board expects that these proposed rules will be final and effective on or about July 1, 1987. Those states desiring to exempt their federally-insured credit unions from the rules may wish to have state-issued rules in place on or before that time. If NCUA's rules become effective before a state has enacted its own rules, federally-insured state-chartered credit unions in that state *will* be subject to NCUA's rules until such time as the state provides rules that are determined to be equivalent.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board has determined and certifies that the proposed amendments, if adopted, will not have a significant economic impact on a substantial number of small credit unions (primarily those under $1 million dollars in assets). According to information available to the NCUA, business loans are not made by a significant number of small credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The Board previously submitted its information collection requirements to the Office of Management and Budget and received conditional approval. Since the requirements have been modified to some extent in proposed § 701.21(h)(2)(i) and a new collection requirement provided by § 701.21(h)(4)(ii), they have again been submitted to OMB for approval.

Written comments and recommendations regarding the collection requirements should be forwarded directly to the OMB desk officer at the following address:

OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503
Att: Robert Neil

List of Subjects in 12 CFR Parts 701 and 741

Credit Unions, Business loans.

By the National Credit Union Administration Board on December 17, 1986.

Rosemary Brady,

Secretary of the Board

Accordingly, NCUA proposes to amend 12 CFR Part 701 of its regulations as follows:

PART 701—[AMENDED]

1. The authority for Part 701 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766(a) and 1789(a)(11).

2. Section 701.21(a) is revised to read:

§ 701.21 Loans to members and lines of credit to members.

(a) *Statement of Scope and Purpose.* Section 701.21 complements the provisions of section 107(5) of the Federal Credit Union Act (12 U.S.C. § 1757(5)) authorizing Federal credit unions to make loans to members and issue lines of credit (including credit cards) to members. Section 107(5) of the Act contains limitations on matters such as loan maturity, rate of interest, security, and prepayment penalties. Section 701.21 interprets and implements those provisions. In addition, § 701.21 states the NCUA Board's intent concerning preemption of state laws, and expands the authority of Federal credit unions to enforce due-on-sale clauses in real property loans. Also, while § 701.21 generally applies to Federal credit unions only, its provisions may be used by state-chartered credit unions with respect to alternative mortgage transactions in accordance with Title VIII of Pub. L. 97-320, and certain provisions apply to loans made by federally-insured state-chartered credit unions as specified in § 741.3. Finally, it is noted that § 701.21 does not apply to loans by Federal credit unions to other credit unions (although certain statutory limitations in section 107 of the Act apply), nor to loans to credit union organizations (which are governed by section 107(5)(D) of the Act and § 701.27 of this Part).

3. Section 701.21(c)(5) is revised to read:

(5) *Ten percent limit.* No loan or line of credit advance may be made to any member if such loan or advance would cause that member to be indebted to the Federal credit union upon loans and advances made to the member in an aggregate amount exceeding 10% of the credit union's total unimpaired shares and surplus. In the case of member business loans as defined in § 701.21(h)(1)(i), additional limitations apply as set forth in Section 701.21(h)(2)(ii).

4. Section 701.21(c)(8) is revised to read:

(8) *Prohibited fees.* A Federal credit union shall not make any loan or extend any line of credit if, either directly or indirectly, any commission, fee or other compensation is to be received by the credit union's directors, officials, committee members, or employees, or any immediate family members of such individuals, in connection with underwriting, insuring, servicing, or collecting the loan or line of credit. However, salary (except commissions) for employees is not prohibited by this section. For purposes of this section, "immediate family member" means a spouse, or a child, parent, grandchild, grandparent, brother or sister, or the spouse of any such individual.

5. Section 701.21(d)(5) is revised to read:

(5) *Nonpreferential treatment.* The rates, terms and conditions on any loan or line of credit either made to, or endorsed or guaranteed by

(i) An official,

(ii) An immediate family member of an official, or

(iii) Any individual having a common ownership, investment or other pecuniary interest in a business enterprise with an official or with an immediate family member of an official

shall not be more favorable than the rates, terms and conditions for comparable loans or lines of credit to other credit union members. "Immediate family member" means the spouse of an official, or a child, parent, grandchild, grandparent, brother or sister of an official, or the spouse of any such individual.

6. A new Section 701.21(h) is added to read:

(h) *Member business loans*—(1) *Definitions.* (i) "Member business loan" means any loan, line of credit, or letter of credit, the proceeds of which will be used for a commercial, corporate, business, or agricultural purpose, except that the following shall not be considered a "member business loan" regardless of purpose:

(A) A loan that is fully secured by a lien on a 1 to 4 family residential dwelling that is the member's primary or secondary residence.

(B) A loan that is fully secured by shares in the credit union.

(C) A loan, the proceeds of which are used for a commercial, corporate, business, or agricultural purpose, made to a borrower or an associated member (as defined in (iii)), which, when added to other such loans to the borrower or associated member, is less than $25,000.

(D) A loan, the repayment of which is fully insured or fully guaranteed by, or where there is an advance commitment to purchase in full by, any agency of the Federal government or of a state or any of its political subdivisions.

(ii) "Reserves" means all reserves, including the Allowance for Loan Losses account, and undivided earnings or surplus.

(iii) "Associated Member" means any member with a common ownership, investment or other pecuniary interest in a business or commercial endeavor.

(iv) "Immediate Family Member" means a spouse, or a child, parent, grandchild, grandparent, brother or sister, or the spouse of any such individual.

(2) *Requirements.* A Federal credit union may make member business loans only in accordance with the applicable provisions of § 701.21 (a) through (g) above and the following additional requirements:

(i) Written loan policies. The board of directors must adopt specific business loan policies and review them at least annually. The policies shall, at a minimum, address the following:

(A) Types of business loans that will be made.

(B) The credit union's trade area for business loans.

(C) Maximum amount of credit union assets, in relation to reserves, that will be invested in business loans.

(D) Maximum amount of credit union assets, in relation to reserves, that will be invested in a given category or type of business loan.

(E) Maximum amount of credit union assets, in relation to reserves, that will be loaned to any one member or group of associated members, subject to § 701.21(h)(2)(ii) below.

(F) Qualifications and experience of personnel involved in making and administering business loans.

(G) Analysis of the ability of the borrower to repay the loan, including length of time the business has been in operation; balance sheet, trend and structure analysis; ratio analysis of cash flow, income and expenses, and tax data; leveraging; and comparison with industry averages.

(H) Financial statements will be obtained, and other documentation required to be maintained and updated, including tax returns, will be updated on an annual or more frequent basis.

(I) Collateral requirements, including loan-to-value ratios; appraisal, title search and insurance requirements; steps to be taken to secure various types of collateral; and how often the value and marketability of collateral is reevaluated.

(J) Appropriate interest rates and maturities of business loans.

(K) Loan monitoring, servicing and follow-up procedures, including collection procedures.

(L) Provision for periodic disclosure to the credit union's members of the number and aggregate dollar amount of member business loans, and the number and aggregate dollar amount of such loans made to officials and employees of the credit union that are subject to this section.

(M) Identification, by position, of those senior management employees prohibited by subsection (h)(3) from receiving member business loans.

(ii) Loans to one borrower. Unless a greater amount is approved by the NCUA Board, the aggregate amount of outstanding member business loans to any one member or group of associated members shall not exceed 20% of the credit union's reserves. If any portion of a member business loan is secured by shares in the credit union, or insured or guaranteed by, or subject to an advance commitment to purchase by, any agency of the Federal government or of a state or any of its political subdivisions, such portion shall not be calculated in determining the 20% limit.

(iii) Allowance for loan losses

(A) The determination whether a member business loan will be classified as substandard, doubtful, or loss, for purposes of the valuation allowance for loan losses, will rely on factors not limited to the delinquency of the loan. Nondelinquent loans may be classified, depending on an evaluation of factors, including, but not limited to, the adequacy of analysis and documentation.

(B) Loans classified shall be reserved as follows:

(*1*) Loss loans at 100% of outstanding amount;

(*2*) Doubtful loans at 50% of outstanding amount; and

(*3*) Substandard loans at 10% of outstanding amount unless other factors (e.g., history of such loans at the credit union) indicate a greater or lesser amount is appropriate.

(3) *Prohibitions.* (i) Senior management employees. A Federal credit union may not make member business loans to the following nonvolunteer, senior management employees, or to any associated member or immediate family member of such employees:

(A) Any member of the Board of Directors who is compensated as such.

(B) The credit union's chief executive officer (typically this individual holds the title of President or Treasurer/Manager).

(C) Any assistant chief executive officers (e.g., Assistant President, Vice President, or Assistant Treasurer/Manager).

(D) The chief financial officer (Comptroller).

(ii) "Equity kickers." A Federal credit union shall not grant a member business loan where a portion of the amount of income to be received by the credit union in conjunction with such loan is tied to the profit of the business or commercial endeavor for which the loan is made.

(4) Effective date. (i) Section 701.21(h) is effective [effective date of final rule]. On and after that date, a Federal credit union may make member business loans only after adopting and implementing written loan policies as required by § 701.21(h)(2)(i). All member business loans made on or after that date must be in full compliance with § 701.21(h).

(ii) On or before [effective date of final rule], a Federal credit union must notify the NCUA Regional Director, in writing, of any outstanding member business loans made prior to that date that do not satisfy the requirements of § 701.21(h).

7. An Appendix is added to Section § 701.21(h) to read:

Appendix to § 701.21(h)—Classifications

Substandard—Loan is inadequately protected by the current sound worth and paying capacity of the obligor or of the collateral pledged, if any. Loans classified must have a well-defined weakness or weaknesses that jeopardize the liquidation of the debt. They are characterized by the distinct possibility that the credit union will

sustain some loss if the deficiencies are not corrected. Loss potential, while existing in the aggregate amount of substandard loans, does not have to exist in individual loans classified substandard.

Doubtful—A loan classified doubtful has all the weaknesses inherent in one classified substandard, with the added characteristic that the weaknesses make collection or liquidation in full, on the basis of currently existing facts, conditions, and values, highly questionable and improbable. The possibility of loss is extremely high, but because of certain important and reasonably specific pending factors which may work to the advantage and strengthening of the loan, its classification as an estimated loss is deferred until its more exact status may be determined. Pending factors include: proposed merger, acquisition, or liquidation actions, capital injection, perfecting liens on additional collateral, and refinancing plans.

Loss—Loans classified loss are considered uncollectible and of such little value that their continuance as loans is not warranted. This classification does not necessarily mean that the loan has absolutely no recovery or salvage value, but rather is not practical or desirable to defer writing off this basically worthless asset even though partial recovery may occur in the future.

PART 741—[AMENDED]

§ 741.3 through 741.9 [Redesignated as §§ 741.4 through 741.10]

9. Sections 741.3 through 741.9 are redesignated as §§ 741.4 through 741.10 respectively

The authority for Part 741 continues to read as follows:

Authority: 12 U.S.C. 1766, 12 U.S.C. 1781, 12 U.S.C. 1789.

10. A new § 741.3 is added to read:

§ 741.3 Minimum Loan Policy Requirements.

Any credit union which is insured pursuant to Title II of the Act must adhere to the requirements stated in § 701.21(h) concerning member business loans, § 701.21(c)(8) concerning prohibited fees, and § 701.21(d)(5) concerning nonpreferential loans. State-chartered, NCUSIF-insured credit unions in a given state are exempt from these requirements if the state regulatory authority for that state adopts equivalent regulations as determined by the NCUA Board. In nonexempt states, all required NCUA reviews and approvals will be handled in coordination with the state credit union supervisory authority.

[FR Doc. 86-28877 Filed 12-24-86; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33-6682; File No. S7-31-86]

Prospectus Delivery During Quiet Period

AGENCY: Securities and Exchange Commission.

ACTION. Proposed Rule.

SUMMARY. The Commission today is publishing for comment two alternative rule proposals to amend Rule 174, adopted under section 4(3) of the Securities Act of 1933 ("Act"), by reducing or eliminating the 40 or 90 day dealer prospectus delivery period for registered securities offerings of issuers that were not reporting companies prior to filing their registration statements. The first proposal would reduce the delivery period to 25 days after an offering of securities included in the Consolidated Tape Association transaction reporting system or NASDAQ securities that have been designated for trading in the National Market System ("reported securities"). The first proposal also would eliminate the prospectus delivery period for transactions in reported securities of registrants meeting specified size, public float and operating history criteria. The alternative proposal would shorten the applicable delivery period to 25 days following the offering of securities that are listed and registered on a national securities exchange or for which quotation information is disseminated in the NASDAQ electronic inter-dealer quotation system. Neither proposal would change the specified prospectus delivery period for transactions in other publicly offered securities.

DATE: Comments must be received on or before March 1, 1987.

ADDRESS: Comment letters should refer to File No. S7-31-86 and be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission. Washington. DC 20549. Comments will be available for public inspection and copying in its Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Larisa Dobriansky (202) 272-2589, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

Pursuant to its authority under sections 4(3) and 19(a) [1] of the Act,[2] the Commission is proposing to reduce or in some cases eliminate the period during which dealers must deliver a prospectus in connection with secondary market transactions in securities that are the subject of a registration statement filed under that Act. Under section 4(3) of the Act, dealers must deliver a statutory prospectus [3] for a period of 40 or 90 days, depending upon the status of the registrant, after the later of (1) the effective date of the registration statement or (2) the first date on which the securities were bona fide offered to the public unless the Commission specifies a shorter period.[4] Currently, dealers have such a delivery obligation only with respect to the securities of previously non-reporting companies.[5]

The Commission believes that changes are warranted in the prospectus delivery requirements for newly registered securities [6] that are traded in specified markets. Significant developments have occurred in the operation and surveillance of the trading markets in recent years. Market information is disseminated more efficiently now because there have been considerable improvements in quotation and trade reporting. Market surveillance capabilities also have been enhanced. Furthermore, where quotation and last sale reporting exist, there is more orderly trading of publicly offered securities in an aftermarket, as well as a greater ability to detect unusual price movements and abusive trading practices.

Accordingly, the Commission today is proposing for comment two alternative amendments to Rule 174. The first proposal ("Proposal I") would reduce the applicable prospectus delivery period to 25 days following a public offering for transactions in equity securities that qualify as "reported securities"—*i.e.*, exchange-listed securities [7] or NASDAQ securities [8] designated for trading in the national market system.[9] for which real-time last sale information is required to be reported pursuant to an effective transaction reporting plan.[10] Proposal I also would eliminate the delivery requirement for aftermarket transactions in reported common stock of those registrants satisfying criteria relating to the company's size public float and operating history.

The alternative proposal ("Proposal II") is based on the recommendations contained in a rulemaking petition filed by the Securities Industry Association ("SIA").[11] Proposal II would amend Rule 174 to reduce the designated prospectus delivery period to 25 days for dealers trading in newly issued securities that are listed on a national securities exchange or quoted in the NASDAQ system.

Both proposals would retain any prospectus delivery period for secondary market transactions in all other securities registered in a public offering and preserve the prospectus delivery requirement for a dealer acting as an underwriter or effecting transactions in an unsold allotment or subscription of securities.[12]

II. Background.

In its rulemaking petition to the Commission, the SIA asserted that the existing prospectus delivery requirement under Section 4(3) of the Act and Rule 174 thereunder hinders the ability of dealers [13] to issue research reports and written recommendations during the designated delivery period after the commencement of a public offering.[14] During that period of time, all dealers,[15] whether or not they participate in the distribution of registered securities, must comply with the prospectus delivery requirements of Section 5 of the Act [16] when offering or selling securities in the aftermarket. The SIA stated that as a consequence of the Section 5 restrictions, which apply during the prospectus delivery period,[17] that period is "quiet." [18]

The Act originally prescribed a period of one year for delivering a prospectus after the commencement of any registered public offering.[19] That statutory period was reduced to 40 days in 1954. [20]

In 1963, the Commission submitted to Congress its *Special Study of the Securities Markets* ("Special Study"),[21] which, among other things, examined in depth the new issues upsurge of 1959–1962. The Special Study determined that certain underwriting, distribution and trading practices employed by particular underwriters and dealers exacerbate the demand for IPO issues,[22] thus causing immediate and substantial premiums over the initial offering prices and distorting the picture of supply and demand in the trading markets for such new issues.[23] The Study also found that

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[1] 15 U.S.C. 77d(3) and 77s(a).

[2] 15 U.S.C. 77a-77aa (1982).

[3] 15 U.S.C. 77j(a).

[4] 15 U.S.C. 77d(3)(B). If the securities of the issuer have not been sold previously pursuant to an earlier effective registration statement ("initial public offering" or "IPO"), the applicable period specified in section 4(3) is 90 days otherwise, the designated period is 40 days.

[5] A non-reporting company, for purposes of this Release, refers to a company that prior to the time of filing a registration statement under the Act is not required to file reports under the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. 78a-78kk *et seq.* (1982)). Rule 174 (17 CFR 230.174), adopted under section 4(3), provides, with respect to either the 40 or 90 day period, that a prospectus does not have to be delivered in transactions in the securities of an issuer that prior to filing a Securities Act registration statement is a reporting company under the Exchange Act. If a company previously has offered registered securities to the public, the 40 day delivery period would apply to transactions in the newly registered securities of that company if its obligation to file reports under section 15(d) of the Exchange Act (15 U.S.C. 78o(d)) has lapsed.

[6] For purposes of simplicity in discussing the alternative proposals in this Release, both IPO and non-IPO securities currently subject to the delivery obligation under section 4(3) and Rule 174 shall be referred to herein as "newly registered or newly issued securities" or "new issues."

[7] The term "exchange-listed security" means any equity security which is registered under Section 12(b) of the Exchange Act (15 U.S.C. 781(b)) and is listed and registered on a national securities exchange.

[8] The term "NASDAQ security" means any equity security registered under Section 12(g) of the Exchange Act (15 U.S.C. 781(g)) and for which quotation information is disseminated in the National Association of Securities Dealers Automated Quotation System ("NASDAQ").

[9] Rule 11Aa2-1 under the Exchange Act ("NMS Securities Rule") sets forth the criteria and procedures by which certain NASDAQ securities are designated as national market system securities ("NASDAQ/NMS security"). 17 CFR 240.11Aa2-1. A primary effect of designation as an NMS security is that the security is subject to real-time last sale reporting requirements similar to those applicable to most exchange-listed securities. The Commission has proposed an amendment to Rule 11Aa2-1 that would result in the designation as NMS securities of all over-the-counter ("OTC") or exchange-listed securities for which transactions are reported pursuant to an effective transaction reporting plan approved by the Commission under Rule 11Aa3-1 (17 CFR 240.11Aa3-1) under the Exchange Act. See Release No. 34-23817 (November 17, 1986) (51 FR 42856).

[10] Rule 11Aa3-1 ("transaction reporting rule") defines an "effective transaction reporting plan" as a plan for collecting, processing and disseminating transaction reports in reported securities which has been approved by the Commission. Transaction reports for eligible exchange-listed securities from all markets are collected and disseminated in the "consolidated transaction reporting system" pursuant to such a plan administered by the Consolidated Tape Association ("CTA"). Currently, eligible securities include those listed on the New York Stock Exchange ("NYSE") and the American Stock Exchange ("AMEX") and regional exchange listings that substantially meet the AMEX or NYSE listing criteria. The CTA members are the New York, American, Boston, Cincinnati, Midwest, Pacific and Philadelphia Stock Exchanges, and the National Association of Securities Dealers ("NASD"). Transaction reports for transactions in NASDAQ/NMS securities are collected and disseminated through the NASDAQ system pursuant to an effective transaction plan administered by the NASD. NASDAQ securities and exchange-listed securities included in a consolidated transaction reporting system are "reported securities." *See* 17 CFR 240.11Aa3-1(a)(4).

[11] The Securities Industry Association petition ("SIA Petition") was submitted on April 1, 1985 pursuant to Rule 4(a) of the Commission's Rules of Practice. 17 CFR 201.4(a). A copy of this petition is available for public inspection in File No. S7-31-86. The SIA's proposed amendments have been modified to conform with the style of Proposal I and to extend them to transactions in non-IPO securities subject to the 40 day delivery period.

[12] 15 U.S.C. 77d(3). The provisions of Rule 15c2-8 under the Exchange Act (17 CFR 240.15c2-8) requiring prospectus delivery would not be affected by the proposals contained in this Release.

[13] Under section 2(12) of the Act (15 U.S.C. 77b(12)), and as used throughout this Release, the term "dealer" includes a "broker".

[14] SIA Petition at 3.

[15] The brokers' transactions exemption in section 4(4) of the Act (15 U.S.C. 77d(4)) applies to brokers' transactions executed upon customers' orders on any exchange or in the over-the-counter market but not to the solicitation of such orders.

[16] 15 U.S.C. 77e.

[17] The restrictions placed on the distribution of information by dealers apply at least from the time an issuer reaches an understanding with the firm that is to act as managing underwriter until the completion of the offering and the period of 40 or 90 days during which dealers must deliver a prospectus. Release No. 33-5010 (October 7, 1969) at 2 [34 FR 18130].

[18] SIA Petition at 3. The SIA states that during the delivery period following a public offering dealers refrain from issuing research reports and other communications lest such communications be deemed prospectuses that do not meet the requirements of Section 10 of the Act (15 U.S.C. 77j). *Id.* Sections 5(b)(1) (15 U.S.C. 77e(b)(1)) and 2(10) (15 U.S.C. 77b(10)) of the Act, taken together, require that any communication that would be deemed to be such a prospectus must be preceded or accompanied by a prospectus that meets the requirements of Section 10(a) of the Act (15 U.S.C. 77j(a)).

[19] The legislative history of the Act indicates that "[t]he period of a year [was] arbitrarily taken because, generally speaking, the average public offering has been distributed within a year, and the imposition of requirements upon the dealer so far as that year is concerned is not burdensome." H.R. Rep. No. 85, 73d Cong., 1st Sess. 16 (1933).

[20] Congress recognized that the one-year provision was an unrealistic one because offerings ordinarily are completed within a relatively short period of time after the registration statement becomes effective. H.R. Rep. No. 1542, 83d Cong., 2d Sess. 14 (1954); S. Rep. No. 1036, 83d Cong., 2d Sess. 6-7 (1954).

[21] *Report of the Special Study of the Securities Markets of the Securities and Exchange Commission*, H.R. Doc. No 95, 88th Cong., 1st Sess. (1963).

[22] A hot new issue is an IPO security whose price in the aftermarket rises to a substantial premium over the initial offering price, because the demand exceeds the size of the offering. *Report of Securities and Exchange Commission Concerning the Hot Issues Markets* (1984) at 1 ("Hot Issues Report").

[23] Special Study at 553-556. The following are examples of abusive market-related practices and problems identified by the Special Study: (1) "Tie-in" arrangements by which underwriters require customers, as a condition of participation in a hot issue offering, either to purchase additional shares of the same issue at a later time and at an increased price, or to participate in another hot issue offering;

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demand for IPO securities was stimulated further in some cases by promotional market letters, advisory recommendations, articles in the financial press and other planned publicity.[24] The Special Study, therefore, recommended the extension of the prospectus delivery period to 90 days for IPO securities to ensure that prospectuses would reach aftermarket purchasers "who frequently purchased at premium prices [and] probably needed the benefits of the information contained in the prospectus more than the original distributees." [25]

In contrast, the Study recommended that the 40 day requirement be eliminated in connection with securities offerings of issuers subject to the periodic reporting requirements of the Exchange Act.[26] The Study concluded that those continuous reporting requirements operate to provide a "reservoir of reliable, reasonably current, publicly available data about an issuer." [27]

Prompted by the Commission's findings and recommendations in the Special Study, the Act was amended in 1964 to extend from 40 to 90 days the prospectus delivery period for aftermarket transactions by dealers in IPO securities. The amendments also authorized the Commission to shorten the 40 and 90 day delivery periods by rule, regulation or order.[28]

In 1964, pursuant to its newly granted authority, the Commission adopted Rule 174 to shorten or eliminate the prospectus delivery periods specified in section 4(3) of the Act for certain types of offerings.[29] The rule established a maximum delivery period of 40 days for aftermarket transactions in the securities of any issuer which prior to the filing of its initial registration statement under the Act had a class of outstanding securities listed on a national securities exchange.[30]

In 1970, the Commission amended Rule 174 to eliminate the statutory period for transactions in the securities of an issuer which is subject to the periodic reporting requirements of the Exchange Act prior to the registered public offering, whether or not it is an IPO.[31] The information supplied by the reports filed under that Act and made available to the marketplace was deemed to be an adequate substitute for prospectus delivery by dealers in aftermarket transactions.[32]

In 1984, the Commission again examined the hot issues phenomenon. In the Hot Issues Report it submitted to Congress, the Commission concluded that problem hot issues, characterized by fraudulent or manipulative practices, constitute a small portion of all initial public offerings.[33] In addition to the Commission's vigorous enforcement response to hot issues abuses, the Report noted that regulatory responses by the Commission and the NASD have been successful in curbing hot issues excesses.[34]

Furthermore, the Hot Issues Report concluded that the disclosure system has been working well.[35] The Report noted that, "the Commission has developed detailed disclosure rules that are intended to assure that information is properly transmitted to persons making investment decisions." [36] In particular, the Report pointed out that the Commission has expanded the requirements for the distribution of preliminary prospectuses relating to IPO securities.[37] These changes have resulted in earlier dissemination of more specific corporate information into the marketplace.

III. Discussion

The section 4(3) prospectus delivery requirement is a prophylactic measure which reduces the vulnerability of the offering process to hot issues abuses. The Commission is seeking to refine that obligation for securities offerings of companies that prior to the time of filing their registration statements under the Act were not required to file reports under the Exchange Act ("non-reporting company"). The Commission seeks to amend Rule 174 in a manner that maintains the availability of information concerning such securities and retains the statutory obligation for those offerings that are most susceptible to manipulative and deceptive practices. The proposed amendments would in no way diminish responsibility and potential liability to investors for such practices under the antifraud provisions of the securities laws.[38]

The alternative proposals to amend Rule 174 attempt to define those classes of securities offerings that are not as vulnerable to manipulation and other hot issues-type abuses because of listing standards, NASD and Exchange surveillance and the required market information. Qualification, filing and disclosure requirements have been established for trading in certain markets to assure that timely and continuous corporate and market information concerning new issues is available. The listing standards assure that the issuers of securities traded in such markets have satisfied certain financial thresholds. Finally, improvements in quotation and trade reporting have resulted in more efficient dissemination of information in certain markets, and increased surveillance capabilities have led to more orderly trading. Accordingly, it appears appropriate to reduce reliance on prospectus delivery requirements and to rely instead on listing standards, filing and disclosure requirements of trading entities, and market information to minimize the potential for abuse for certain new issues.

The two alternative amendments to Rule 174 proposed today differ with respect to the class of securities offerings for which the delivery period would be reduced, or eliminated in certain cases. Proposal I would be limited to reported securities. Proposal II would extend to all exchange-listed and NASDAQ-traded securities. In addition, Proposal I would define a class of new issues that, because of the issuer's size, operating history and public float, would be treated like issues of reporting companies and, thus, would be exempt under Rule 174 from a section 4(3) prospectus delivery requirement. The proposals also differ with respect to the date from which the reduced delivery period would run.

A. Proposal I

1. 25-day period

Under Proposal I, the applicable prospectus delivery period would be shortened to 25 calendar days for newly registered equity securities that qualify for transaction reporting under an effective transaction reporting plan [39] as of the date that the registration statement is declared effective. The 25 day delivery period would run from either the effective date of the registration statement or the date of the first bona fide offering to the public, whichever is later. Real-time last sale information must be made available for this class of securities, which consists of exchange-listed securities that qualify for transaction reporting pursuant to the Consolidated Tape Association ("CTA") Plan and NASDAQ/NMS securities.[40] In addition, quotations for reported securities must be firm as to the quoted price and size in accordance with the Commission's firm quotation rule.[41] The Commission adopted these requirements to increase market efficiency and enhance opportunities for public investors to obtain best execution of their orders.[42]

The current qualification criteria for NASDAQ/NMS designation and CTA reporting, which are summarized in the chart at the end of this section, set minimum standards relating to the issuer, the distribution of the security, and market activity of the security.[43] NASDAQ/NMS and CTA reported securities must be registered pursuant to Section 12 of the Exchange Act.[44] CTA reported securities must be listed on the AMEX or the NYSE or be listed on a regional exchange and substantially meet the AMEX or NYSE listing requirements.[45] Currently, designation as an NASDAQ/NMS security is automatic if the issuer meets specified mandatory criteria. If an issuer satisfies the voluntary criteria outlined below, it may become an NMS issuer upon application to the NASD.[46]

Standard	I. NASDAQ/NMS CRITERIA			II. CTA issues		
	Tier 1—Mandatory inclusion	Tier 2—Voluntary NASDAQ/NMS inclusion		1. NYSE standards*	2. AMEX standards*/**	
		Alternative 1	Alternative 2		Alt. 1	Alt. 2
Total assets		$2 million	$2 million			
Net tangible assets	$2 million			$18 million	$4 million	$12 million
Capital and surplus	$1 million	$1 million	$8 million			
Net income		$300,000 in Latest or 2 or 3 Last fiscal years.		$2.5 M. latest fiscal year and $2 M. Previous 2 fiscal years or $6.5 M. aggregate past 3 years and $4.5 M. latest fiscal year.	$400,000	
Operating history			4 years	3 years		5 years
Public float (shares)	500,000	350,000	800,000	1.1 million	500,000	1 million
Market value of float	$5 million	$2 million	$8 million	$18 million	$3 million	$10 million
Minimum bid	$10 for 5 business days.	$3			$5	
Trading volume	Average 600,000 shares/month for 6 months.					
Shareholders of record	300	300	300	2,000	1,000	3,000

*The exchanges have limited discretion to list securities that do not precisely satisfy these criteria.
**The AMEX listing standards are being revised currently. *See* SE-AMEX-86-29.

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(2) "parking arrangements" under which underwriters temporarily deposit shares in bogus accounts for the benefit of the promoters or underwriters; (3) the use of escrowed investor funds by underwriters or promoters before an offering is completed; (4) delays in the delivery of stock certificates and in executing orders; (5) use of "wooden tickets" whereby investors receive confirmations of purchases that they never ordered; (6) excessive compensation for underwriters; (7) "withholding" substantial blocks of new stock in order to restrict supply; and (8) "free-riding" by placing stocks in the accounts of affiliates or insiders of a dealer.

[24] *Id.* at 556.

[25] *Id.*

[26] *Id.* at 557.

[27] *Id.* at 593.

[28] Securities Acts Amendments of 1964, Pub. L. No. 88-467, 78 Stat. 565 (August 20, 1964), Sec. 12.

[29] Release No. 33-4749 (Dec. 23, 1964) [29 FR 19099].

[30] *Id.* The prospectus delivery requirements also were eliminated for certain offerings made to employees, and certain offerings of American Depositary Receipts, non-convertible fixed interest debt securities and voting trust certificates. The amendments also provided that in the case of shelf registrations the offering of subsequent tranches would not trigger a new delivery period.

[31] Release No. 33-5101 (November 19, 1970) [35 FR 18457]. This amendment was based on the Commission's recommendations set forth in the Special Study and reiterated in its 1969 report entitled, *Disclosure to Investors—A Reappraisal of Federal Administrative Policies Under the '33 and '34 Acts* ("Wheat Report") (1969), Chapter IV, 14–16.

[32] Release No. 33-5010 (October 7, 1969)[34 FR 18130].

[33] Hot Issues Report at 2, 77. The Hot Issues Report analyzed 735 IPOs that commenced between January 1, 1980 and August 31, 1983 and involved securities that subsequently were traded in the NASDAQ system.

[34] *Id.* at 78.

[35] *Id.* at 41, 61.

[36] *Id.* at 45.

[37] *Id. See* Release No. 33-4968 (April 24, 1969) [34 FR 7235]; Rule 15c2-8 under the Exchange Act (17 CFR 240.15c2-8); Rules 460 and 461 under the Act (17 CFR 230.460, 461).

[38] *See* Section 12(2) of the Act (15 U.S.C. 771(2)); Section 17(a) of the Act (15 U.S.C. 77q(a)) Section 10(b) of the Exchange Act (15 U.S.C. 78j(b)) and Rules 10b-5 10b-6 thereunder (17 CFR 240.10b-5, 10b-6).

[39] 17 CFR 240.11Aa3-1.

[40] Included in this class currently are certain securities listed on regional exchanges that are not eligible for CTA reporting but are designated as NMS securities. The exchange transactions in such securities are exempt temporarily from last sale reporting requirements, pending the development of a facility to consolidate the reporting of OTC and exchange transactions and quotations for such securities. However, OTC transactions in such securities are subject to real-time last sale reporting through NASDAQ facilities. *See* Release No. 34-22412 (September 16, 1985) [50 FR 38640].

[41] 17 CFR 240.11Ac1-1.

[42] *See* Release No. 34-17549 (February 17, 1981) [46 FR at 13996].

[43] The Commission has proposed amendments to its Exchange Act rules governing the designation of securities qualified for trading in a national market system (Rule 11Aa2-1, the NMS Securities Rule) and transaction reporting (Rule 11Aa3-1). See Release No. 3423817 (November 17 1986) [51 FR 42856]. These amendments would result in (i) the designation as NMS securities of all reported securities; and (ii) the amendment of the transaction reporting rule to require the NASD to designate which NASDAQ securities are subject to transaction reporting. In conjunction with these proposed amendments to the Commission's rules, the NASD has filed with the Commission a proposed rule change and reporting plan amendment (SR-NASD-86-27 and Release Nos. 34-23816 [November 17, 1986] [51 FR 42960] and 34-23819 (November 17, 1986) [51 FR 42963] respectively) that would incorporate into the NASD's rules and reporting plan designation standards based on the Tier 2 NMS criteria (*see* chart for NASDAQ/ NMS criteria *infra*) currently contained in the NMS Securities Rule, and include certain corporate governance criteria previously proposed by the NASD (*see* Release No. 34-22505 (October 4, 1985), [50 FR 41697]). The NASD's proposal does not incorporate the current Tier 1 NMS mandatory designation criteria (*see* chart for NASDAQ/NMS criteria *infra*). The NASD's proposed eligibility standards for its transaction reporting plan would recognize the need to be flexible in applying its specific criteria.

[44] 15 U.S.C. 78l.

[45] *See* Release No 34-15250 (October 20, 1978) at 33 [43 FR at 50611, n.63].

[46] The NASD's proposed rule change referred to supra, footnote 43, would codify the existing NASD interpretation that IPOs substantially meeting the designated criteria are eligible for last sale reporting, as of the effective date of the registration statement, upon prior application and with the written consent of the managing underwriter that immediate inclusion in the NMS is desired.

2. Elimination of the prospectus delivery period

Proposal I also would eliminate the prospectus delivery period for aftermarket transactions in the reported security of a registrant that satisfies certain criteria.[47] In effect, the proposed exemption would treat qualifying registrants in the same manner as Rule 174 currently treats companies that are reporting under the Exchange Act prior to filing their registration statements. To qualify for this exemption, a registered offering of common stock must qualify for the 25 day delivery period and the issuer must meet the criteria set forth below:

(1) The issuer of the common stock had annual revenues of at least $100,000,000 in each of its last three most recently completed fiscal years;

(2) The issuer had total assets of at least $100,000,000 at the close of each of its last two most recently completed fiscal years;

(3) At least 2,000,000 of the shares of the security outstanding after the registered offering will be held by persons other than directors, officers, or persons owning beneficially 10 percent or more of the outstanding shares of the security; and

(4) In connection with the registered offering, the issuer has a firm commitment from underwriters or others (subject only to customary conditions precedent, including "market outs") for the purchase of all the securities being offered.[48]

The proposed criteria are intended to define a class of issuers whose size and operating history, as well as the substantial liquidity of the market for their securities, render them less like new issues susceptible to hot issues abuses and more like offerings currently exempt from section 4(3) requirements.

To arrive at these criteria, a preliminary review was undertaken of approximately 660 common stock IPO registrations that were declared effective in the period March 1985 through February 1986. This review was intended to determine the common characteristics of those offerings for which an exemption comparable to that used for offerings of reporting companies would be appropriate. Based on the issuer's size and year of incorporation, as well as the size of the distribution, approximately 145 of those 660 offerings were selected for review to determine, among others things, the operating history of the company and the public float of the securities. Approximately 10 of those 145 offerings would have met the proposed criteria. Of these, 6 involved securities that were CTA reported or NMS designated on the effective date of the registration statement. The other four involved securities that were NMS eligible on the date of effectiveness and became NMS designated within 40 days of that date.

The qualifying offerings spanned a broad spectrum of industries and the asset and revenue tests did not appear to disadvantage unduly any particular industry. Specific comment is requested, however, on whether the asset and revenue tests should be in the disjunctive to assure that particular industries are not affected adversely by this proposal. If the criteria were in the disjunctive, about 7 more of the 145 offerings that were reviewed would have qualified for the exemption.

While the respective time periods proposed under the revenue and asset tests parallel audited financial statement requirements for registration statements,[49] comment is solicited on whether five years of such financial information should be required in order to parallel Regulation S–K selected financial data requirements.[50] Comment also is requested on whether the asset and/or revenue thresholds should be set at lower levels if five years of such information is required.

The requirement that at least a certain number of the shares outstanding after a registered offering be held by non-affiliates of the issuer is intended to be an objective standard for broad dissemination of the shares to the public. The firm commitment requirement is designed to assure that the registrant meets that public float criterion. Specific comment is requested on the appropriateness of these standards and whether other criteria would be preferable to achieve the same purposes.

The Commission recognizes that the criteria proposed are substantial and that other offerings could be viewed as appropriate for exemption from the Section 4(3) and Rule 174 prospectus delivery requirements. However, the Commission believes it appropriate to gain experience first with a limited class of securities offerings before determining the appropriateness of extending the exemption to a larger class. Specific comment is requested on the appropriateness of the proposed criteria and whether other criteria are more suitable to achieve the purposes of the exemption.

B. Proposal II

Proposal II is based on the petition submitted by the SIA. Under this proposal, the 40 or 90 day prospectus delivery period would be reduced to 25 calendar days after the commencement of a registered public offering if, as of the date of effectiveness, the securities are listed and registered on a national securities exchange or authorized for quotation in an electronic interdealer quotation system sponsored and governed by the rules of a registered securities association, such as NASDAQ, the quotation system sponsored and governed by the NASD.[51] The 25 day delivery period would run from the effective date of the registration statement.

Proposal II would extend to a broader range of securities than Proposal I. Proposal II would cover those securities, whether listed on a regional exchange or traded solely in the OTC market, for which real-time last sale reporting is not provided pursuant to a transaction reporting plan. These would include regional exchange-listed securities that do not substantially meet AMEX listing standards or are not NMS designated.

The listing standards of the regional exchanges vary. The requirements of several of the exchanges range from at least $1 to $2 million in assets (total or net tangible assets) and from at least 750 to 1,000 shareholders of record in the case of common stock and specify a public float of at least 250,000 shares.[52] For listing in the NASDAQ system, an issuer must have at least $2 million in total assets, $1 million in total capital and surplus, 300 shareholders and a public float of 100,000 shares.[53]

In its rulemaking petition, the SIA relies on the requirements imposed by section 12(b) [54] of the Exchange Act for registration of securities on an exchange, as well as the filing and disclosure requirements for listing in the NASDAQ system to assure the dissemination of timely and material information to public investors. The SIA also contends that it is appropriate to extend relief under Rule 174 to all NASDAQ securities because the NASD requires that real-time quotations be disseminated for securities authorized for quotation on NASDAQ [55] and that such securities be subject to regular and continuous two-way price quotations by at least two market makers.

In this regard, the Commission seeks comment on whether Proposal I or II is the more appropriate approach in light of the transaction reporting requirements for CTA reported and NMS designated securities.

IV. General Request for Comment

Any interested persons wishing to submit written comments on the rule amendments which are the subject of this release to suggest additional changes, or to submit comments on other matters that might have an impact on the proposals contained herein, are requested to do so.

In addressing the alternative proposals, commentators are specifically requested to direct their attention to certain areas. The Commission seeks specific comment on the appropriate number of days by which the relevant statutory period should be shortened and, in this regard, requests commentators to supply empirical data underlying their views or suggestions. The Commission specifically requests comment on whether a 40 day period, as used in the statute, or a shorter time period, such as 10 days, would be a more appropriate time period than the 25 day period included in both Proposals I and II. In this regard, the Commission requests price and volume data for IPO securities for the first 10, the first 25, the first 40 and the first 90 trading days respectively after the effective date of the registration statement. Commentators also should address whether the applicable time period should run from the registration date or instead from the date the securities were offered if that date is later.

The Commission also is considering a specific exclusion from any of the proposals in this Release for "blank check" offerings. These offerings are especially susceptible to manipulative and deceptive trading practices, particularly in the case of smaller offerings. In general, "blank check" registered offerings concern securities registrations that do not specify at the time of effectiveness investment or business plans. Specific comment is sought as to the necessity, appropriateness and scope of such an exclusion. The Commission also solicits comment as to any other exclusions from relief that may be necessary for investor protection.

Commentators are requested to focus on the various standards set forth in Proposals I and II for selecting those newly issued securities as to which the statutory period may be eliminated or shortened, consistent with investor protection, and are asked to suggest any other, more appropriate standards or criteria and to provide their reasons and bases for such suggestions. Comment is specifically requested on whether it would be advisable to combine certain elements of each of the proposals.

V. Cost-Benefit Analysis

The Commission believes that the proposed amendments to Rule 174 would lessen the regulatory burdens imposed by that rule upon dealers and issuers without compromising investor protection from manipulative and deceptive trading practices. The alternative proposals seek only to reduce the dealer prospectus delivery period where market processes assure the availability and dissemination of timely and continuous corporate and market information. The Commission believes that by relaxing the prospectus delivery obligation through a reduction of the time period these proposals would facilitate research and communication by dealers and reduce considerably costs associated with prospectus delivery under Rule 174.

To evaluate fully the benefits and costs associated with the proposed amendments to Rule 174, the Commission requests commentators to provide views and data as to the costs and benefits of each of the proposals. Specific comment is requested on the benefits that would result from the respective proposals and the various parts of each proposal. In terms of potential sources of cost with respect to each proposal, commentators are requested to provide quantified information and to address the adequacy of investor protection as well as compliance costs associated with prospectus delivery. The Commission seeks specific comment as to whether any, and if so which, of the criteria reflected in the proposals are sufficient to protect against market manipulation and other hot issues abuses and to ensure adequate information dissemination for these new issues. The Commission also seeks comment and data as to the costs imposed by the existing system and as to the cost savings that would be expected to result from implementation of each proposal.

VI. Summary of the Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") pursuant to the Regulatory Flexibility Act ("RFA") [56] regarding the proposed amendments to Rule 174. The IRFA states that the proposed alternative amendments would reduce, or in certain cases eliminate, the 40 or 90 day dealer prospectus delivery period for securities offerings of issuers that were not reporting companies prior to filing their registration statements. The IRFA states that both alternatives seek to reduce the prospectus delivery period where market processes assure the availability and dissemination of timely and continuous corporate and market information. The IRFA notes that both proposals would retain the existing prospectus delivery period for transactions in publicly offered securities that are not covered by the respective proposals and preserve the prospectus delivery requirement for a dealer acting as an underwriter or effecting transactions in an unsold allotment or subscription of securities. The IRFA indicates that neither of the alternative proposals would impose additional reporting or recordkeeping requirements on nor increase regulatory compliance costs for small entities, including small brokers and dealers. The IRFA points out that by relaxing the delivery obligation through a reduction of the time period either proposal would facilitate research and communication by dealers and reduce considerably costs associated with prospectus delivery under Rule 174.

The IRFA indicates that Proposal I would affect those small issuers that meet Tier 2 criteria [57] of NMS securities, and have total assets of $5,000,000 or less. Likewise, the IRFA points out that Proposal II would affect the offerings of issuers with total assets of $5,000,000 or less to the extent their securities are authorized for quotation in NASDAQ. With respect to either proposal, the IRFA notes that according to Commission estimates fewer than 50 small entities are listed on national securities exchanges.

The IRFA also states that Proposal I would affect those small brokers and

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[47] As noted above, this proposal would not eliminate the prospectus delivery requirement under section 4(3) and Rule 174 for a dealer acting as an underwriter, including dealer sales of any securities taken down as part of an overallotment option, or for any dealer effecting transactions in an unsold allotment or subscription of securities.

[48] The term "firm commitment" shall be construed in the same manner as that term has been interpreted under Rules 10b–9 and 15c2–4 (17 CFR 240.10b–9, 15c2–4). *See* Letter to Sullivan and Cromwell dated August 2, 1985, regarding the First Boston Corporation (File No. TP85–415).

[49] *See* 17 CFR 210.3–01, 3–02.

[50] *See* Item 301(a) of Regulation S–K, 17 CFR 229.301(a).

[51] This rule proposal would not apply to OTC securities for which transaction quotations are solely listed by the National Quotation Bureau in the "pink sheets." *See* Release No. 34–21470 (November 8, 1984) [49 FR at 45119].

[52] *See e.g.*, Philadelphia Stock Exchange Rule 803(a) (CCH) ¶ 2803; Pacific Stock Exchange Rule I. Section 3(b) (CCH) ¶ 3025; Midwest Stock Exchange Article XXVIII, Rule 7 (CCH) ¶ 1897; Boston Stock Exchange Rules, Chapter XXVII, Section 1 (CCH) ¶ 2280.

[53] NASD Manual (CCH) ¶ 1754 at 1567.

[54] 15 U.S.C. 78*l*(b).

[55] NASD Manual, Schedule D to the By-Laws (CCH) ¶ 1754 at 1561, 1567.

[56] 5 U.S.C. 604.

[57] 17 CFR 240.11Aa–2.

dealers which trade NMS Securities; while Proposal II would affect those small brokers and dealers which trade NASDAQ securities. As noted in the IRFA, the Commission believes that by reducing the period for prospectus delivery, the proposed rules would lower the costs of compliance for those small issuers and small brokers and dealers covered by each of the proposals.

The IRFA solicits comments on any possible costs that either of the proposals might have on small entities and on possible alternatives to the proposed amendments that would reduce costs further.

A copy of the IRFA may be obtained by contacting Larisa E. Dobriansky (202) 272–2589, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street NW Washington, DC 20549.

VII. Statutory Basis and Text of Proposed Amendments Authority

The amendments to the Commission's rules are being proposed by the Commission pursuant to sections 4 and 19 of the Securities Act of 1933.

List of Subjects in 17 CFR Part 230

Reporting and recordkeeping requirements, securities.

Text of Proposals

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read in part, as follows:

Authority: Sections 230.100 to 230.174 issued under section 19, 48 Stat. 85 as amended 15 U.S.C. 77s * * *

2. Section 230.174 is amended by redesignating paragraphs (d) and (e) as (e) and (f) respectively and adding new paragraph (d) to read in one of the following ways.

Proposal I

§ 230.174 Delivery of prospectus by dealers; exemptions under section 4(3) of the Act.

* * * * *

(d) Where the registration statement relates to the security of an issuer that is not subject immediately prior to the time of filing the registration statement, to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 and, as of the effective date of the registration statement, transactions in the registered security will be required to be reported pursuant to an effective transaction reporting plan, in accordance with Rule 11Aa3–1 under that Act.

(1) No prospectus need be delivered if each of the following criteria is met:

(i) The registration statement relates to an offering of common stock as to which the registrant has a firm commitment from underwriters or others (subject only to customary conditions precedent, including "market outs") for the purchase of all the securities being offered;

(ii) The issuer had annual revenues of at least $100,000,000 in each of the last three most recently completed fiscal years;

(iii) The issuer had total assets of at least $100,000,000 in each of the last two most recently completed fiscal years; and

(iv) At least 2,000,000 of the outstanding number of shares of the stock after the registered public offering will be held by persons other than directors, officers, or persons owning beneficially 10 percent or more of the outstanding shares of the security.

(2) If one or more of the criteria specified in paragraphs (d)(1) (i) through (iv) is not met, no prospectus need be delivered after the expiration of twenty-five calendar days from the effective date of the registration statement or the first date upon which the security was bona fide offered to the public, whichever is later.

* * * * *

Proposal II

§ 230.174 Delivery of prospectus by dealers; exemptions under Section 4(3) of the Act.

* * * * *

(d) Where the registration statement relates to the security of an issuer that is not subject, immediately prior to the time of filing the registration statement, to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 and, as of the effective date of the registration statement, the security is listed and registered on a national securities exchange or authorized for quotation in an electronic inter-dealer quotation system sponsored and governed by the rules of a registered securities association, no prospectus need be delivered after the expiration of twenty-five calendar days after the effective date of the registration statement.

* * * * *

By the Commission

Jonathan G. Katz,

Secretary

December 18, 1986.

[FR Doc. 86–29042 Filed 12–24–86; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 166

[CGD 85–097]

Port Access Routes; Approach to Tampa Bay, FL; Study Results

AGENCY: Coast Guard, DOT.

ACTION: Notice of study results.

SUMMARY: This notice publishes the results of the Port Access Route Study opened by announcement in the **Federal Register** on December 12, 1985 (50 FR 50808 corrected at 51 FR 1257). The study considered the fairway anchorage sites and areas adjacent to the shipping safety fairway in the approach to Tampa Bay, Florida. As a result of this study, the Coast Guard recommends: The southern Tampa Fairway Anchorage Area be eliminated; a new fairway anchorage area be established to the west of the existing northern Tampa Fairway Anchorage Area; the new fairway anchorage area and the northern Tampa Fairway Anchorage Area be designated the Western Tampa Fairway Anchorage and the Eastern Tampa Fairway Anchorage.

FOR FURTHER INFORMATION CONTACT: LTJG D. Reese, Project Manager, Office of Navigation (G–NSS–2), Room 1606, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington DC 20593, telephone (202) 267–0364, between 8:00 a.m. and 3:30 p.m., Monday through Friday. Information is also available from LTJG Harry D. Craig, Seventh Coast Guard District (mps), Miami, FL 33130, (305) 350–5651.

SUPPLEMENTARY INFORMATION:

Background

The Ports and Waterways Safety Act (PWSA) (33 U.S.C. 1223) authorizes the Coat Guard to designate necessary shipping safety fairways and fairway anchorages to allow vessels an unobstructed, safe access to United States ports.

A shipping safety fairway is an area in which no fixed structures are permitted, and therefore may inhibit exploration and exploitation of mineral resources in the area so designated. A shipping safety fairway may be viewed as a necessary compromise between convenient mineral exploitation and concern for navigation safety.

A fairway anchorage is an anchorage area contiguous to and associated with a fairway, in which fixed structures may be permitted with a two mile spacing limitation (33 CFR 166.200(c)(1)).

To ensure that the interests of all affected parties are considered, the PWSA mandates that a port access route study be conducted before new shipping safety fairways or fairway anchorages are designated. Publication of a study notice advises all bidders in future lease sales within the study area that occupancy rights may be restricted by a routing ssytem developed as a result of the study (33 U.S.C. 1223(c)(4)). Once a designation is made under the authority of the PWSA, the paramount right of navigation is recognized within the designated area.

In the interest of promoting a multiple use approach to offshore waters, the Coast Guard, as far as practicable, will try to minimize impacts on leases which were granted before a study is announced.

When the study results indicate no new routing measures are necessary in an area, notice of this conclusion is published in the **Federal Register**. Although study results may have concluded no new routing measures were necessary, areas for which results have been published may be studied again as changes in conditions warrant evaluation.

The port access routing needs in the area were previously studied in 1980 and the study results were published in the **Federal Register** on October 1, 1981 (46 FR 48376). The Department of the Interior (DOI) had only a small number of tracts in the area open for bid in 1981, none of which overlapped the Tampa Bay Shipping Safety Fairway. Also, no navigational problems were anticipated at that time, and no additional routing measures were recommended during the study.

In February 1985, the Tampa Port Authority, on behalf of the Tampa Bay maritime community, expressed concern about the present fairway anchorages in relation to a Tampa Harbor deepening project. The Tampa Harbor deepening project was conducted by the Corps of Engineers (COE) and is expected to result in an increase in deep draft vessel traffic. The project has required the use of designated spoil areas within the Tampa Bay Shipping Safety Fairway adjacent to the southern Tampa Fairway Anchorage Area (32 CFR 166.200(d)(49)(i)). The resulting depth of water (operational draft of 33 feet, 6 inches) has reduced the safety and convenience of access to and from the southern anchorage area to the fairway. The Tampa Port Authority requested consideration be given to redescribing and establishing new fairway anchorages. The Coast Guard determined that a study of the situation was warranted and invited the public to submit information and comments.

Method

The Port Access Route Study for the approach to Tampa Bay was conducted by the Seventh Coast Guard District. The study encompassed the following geographical positions:

Latitude	*Longitude*
(1) 27°45'00" N.	83°30'00" W.
(2) 27°45'00" N.	82°50'00" W.
(3) 27°27'00" N.	82°50'00" W.
(4) 27°27'00" N.	83°50'00" W.
(5) 27°45'00" N.	83°30'00" W.

During the study the Coast Guard consulted with Federal and state agencies and considered the views of representatives of the maritime community, port and harbor authorities and other parties who may be affected by the study results.

The Coast Guard solicited comments on a specific alternative presented by the Tampa Port Authority and on particular issues to be examined during the study.

Summary of Comments

A total of 12 comments were received on the need for a fairway anchorage in the approach to Tampa Bay. Seven of the comments acknowledged notification of the study and expressed an interest in the study results. The five remaining substantive comments were from an oil company and government agencies. The Fish and Wildlife Service of the Department of Interior (DOI) indicated they had no identifiable use conflicts with the proposed anchorage sites. The Bureau of Land Management of the DOI indicated the Federal Mineral Ownership would not be adversely impacted by the proposal. The Minerals Management Service (MMS) of the DOI anticipated no conflicts between the their oil and gas activities and the fairway anchorage proposal. MMS also stated that "indications are that any impact on oil and gas resources would be low." The Army COE indicated the proposal to establish a new deeper draft fairway anchorage and eliminate the old southern fairway anchorage would be satisfactory. They also informed the Seventh Coast Guard District, "there are no dredging disposal areas proposed in or adjacent to the proposed fairway anchorage or the existing northern fairway anchorage area." The comment by the oil company stated the proposed fairway anchorage did not conflict with current or planned activities of the company.

Facts and Findings

A. A Tampa Port Authority census of vessels indicated an average of five vessels would call on the port of Tampa on any given day. Many of these vessels must remain in a fairway anchorage until a berth is available. The Tampa Port Authority also estimated 720 vessels a year use the fairway anchorages adjacent to the Tampa Bay Fairway.

B. Dry bulk carriers lightly loaded are the major users (50%) of the shipping safety fairway and fairway anchorage areas. Their average draft is less than or equal to 30 feet. Other vessels using the fairway and fairway anchorage have an average draft of 23–24 feet and use the fairway anchorage to load and reload. Recreational boaters stay out of the area and fishing in the study area is primarily limited to sports fishing.

C. The Tampa Port Authority projects a 6–10% increase over the next 3 years in the number of vessels using the fairway anchorage.

D. The Tampa Harbor Deepening project is complete with the exception of dredging being done alongside docks. The now deepened channel (operational draft of 43 feet) will permit an increased number of deeper draft vessels to use the Tampa Harbor.

E. The Naitonal Ocean Service is conducting a wire drag test of the proposed fairway anchorage areas. Preliminary results are expected in December 1986.

F. The study area is subject to average winds of 10–15 knots and average seas of 1–10 feet with seasonal gusting and gale winds, thunderstorms, fog, and hurricane activity.

G. The proposed fairway anchorage will provide better holding grounds, deeper water, better landmarks, and a natural lee for boaring pilots in rough weather.

H. Vessel use of fairways and fairway anchorages are not mandatory, nor is the direction of traffic in a fairway. However, vessel traffic traditionally stays to the right to create an inbound and outbound flow of traffic. Under the existing northern and southern fairway anchorages, vessels inbound would use the southern anchorage and vessels outbound would use the northern anchorage. Establishing the proposed anchorage would place both anchorages on the same side of the fairway. Present statistics indicate an average of two vessels per day use the anchorages. The

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cross traffic generated by this change will have a negligible impact upon safe navigation in this area.

Conclusions

Based on the above facts and findings, the Seventh Coast Guard District has reached the following conclusions:

1. A new fairway anchorage is necessary to provide a deeper, safer, and more navigable fairway anchorage in the approach to Tampa Bay.

2. Establishing a new fairway anchorage to the west of the present northern fairway anchorage site (33 CFR 166.200 (d)(49)(i)) and eliminating the southern fairway anchorage site (33 CFR 166.200(d)(49)(ii)) would best meet the expected needs of the vessel traffic in the area.

3. The existing northern anchorage area has a draft from 27–36 fet and should be recommended for shallower draft vessels. The existing northern anchorage area should also be renamed the Eastern Tampa Fairway Anchorage Area.

4. The proposed new fairway anchorage area has a draft from 42–66 feet and should be recommended for deeper draft vessels. The new anchorage area would be designated the Western Tampa Fairway Anchorage Area and would be described as follows:

The area within rhumb lines [North American Datum of 1927 (NAD–27)] joining points at:

Latitude	Longitude
27°39'00" N.	83°01'00" W.
27°36'48" N.	83°01'00" W.
27°36'48" N.	83°05'06" W.
27°39'00" N.	83°05'06" W.

Dated: December 16, 1986.

Martin H. Daniell,

Rear Admiral, U.S. Cost Guard, Chief, Office of Navigation.

[FR Doc. 86–29053 Filed 12–24–86; 8:45 am]

BILLING CODE 4910–14–M

46 CFR Part 150

[CGD 84–025]

Incinerator Vessels; Safety Rules

ACTION: Notice of availability of the FONSI.

SUMMARY: In FR Doc. 86–18660, beginning on page 30241 in the **Federal Register** issue of Monday, August 25, 1986, the Coast Guard published a comprehensive set of proposed safety rules (NPRM) for incinerator vessels carrying bulk hazardous wastes for the purpose of incineration at sea. A Draft Evaluation of economic and environmental impact associated with the NPRM was prepared along with a statement announcing a finding of no significant environmental impact (FONSI). These documents were placed in the rulemaking docket and made available for public comment during the 60 day comment period provided for the NPRM. However, a specific statement giving public notice of the availability of the FONSI in the docket was not included in the preamble to the NPRM. To ensure full public participation with respect to the environmental considerations involved in this rulemaking, the Coast Guard is giving specific notice of the FONSI's availability for public comment for an additional 45 day comment period. Interested persons are invited to comment on the FONSI and the environmental assessment in the Draft Evaluation by submitting written views, data, or arguments.

DATE: Comments must be received on or before February 12, 1987.

ADDRESSES: Comments should be mailed to the Commandant (G–CMC/21) (CGD 84–025), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593. Comments may be delivered to and will be available for inspection and copying at the Marine Safety Council (G–CMC/21), Room 2110, U.S. Coast Guard, 2100 Second Street, SW., Washington, DC between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: LCDR David B. Crawford, Office of Marine Safety, Security and Environmental Protection, (202) 267–1217.

SUPPLEMENTARY INFORMATION: The Draft Evaluation and FONSI may be inspected and copied at the Marine Safety Council (G–CMC/21) at the address listed above under **ADDRESSES.** Copies may also be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

As stated above, interested persons are invited to comment on the FONSI and environmental assessment by submitting written views, data, or arguments. Comments should include the names and addresses of persons making them, identify the NPRM (CGD 84–025) and this notice, and give reasons for each comment.

The FONSI will be further evaluated in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this rulemaking.

December 22, 1986.

J. W. Kime,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 86–29052 Filed 12–24–86; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[Docket No. 86–422; RM–4637, RM–4813; FCC 86–463]

Radio Frequency Devices; Control and Security Alarm Devices

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to increase the permitted level of spurious radio frequency emissions occurring in the restricted frequency bands above 1000 MHz, as detailed in § 15.205(a) of the regulations, and to revise the method used to average emissions. This action was initiated by petitions for rule making filed by the Door Operator and Remote Controls Manufacturers Association, the Security Equipment Industry Association, and Transcience Industries.

DATES: Comments must be received on or before March 12, 1987, and Reply Comments must be received on or before April 13, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John A. Reed, Technical Standards Branch, Office of Engineering and Technology, (202) 653–7313.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, adopted October 22, 1986, and released December 12, 1986.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rule Making

1. The Commission has before it four petitions to amend the regulations and the text procedures used by the Commission for Part 15 control and security alarm devices. These are: (1) a petition for rule making, RM–4637, filed on October 5, 1983, by the Door Operator and Remote Controls Manufacturers Association (DORCMA); (2) a petition for rule making, RM–4813, filed on June 12, 1984, by the Security Equipment Industry Association (SEIA); (3) requests for waiver and stay filed on October 12, 1984, by Transcience Industries; and, (4) a petition for partial stay filed on November 21, 1984, by SEIA.

2. The petitions requested a number of changes in both the measurement procedures used by the Commission and the technical standards applicable to the equipment. After full consideration of the petitions and comments, the Commission feels that the emission levels in the restricted frequency bands above 1000 MHz should be changed and a small adjustment in the measurement procedure should be given further consideration. Specific details concerning these proposed changes are shown at the end of this Notice. Although the petitions requested other changes to the regulations, there is no new evidence or compelling reasons beyond those already addressed in the proceedings that established the regulations for control and security alarm devices to persuade us to consider any other changes to those earlier decisions.

3. Because of the wide variation in alternative emission levels proposed for the restricted frequency bands above 1000 MHz, a public meeting was held on May 23, 1986, in an effort to more fully understand the problem being considered by industry in meeting the technical standards. Comments filed in response to this meeting pointed out that there is no technical justification to the existing limit of 125 uV/m at 3 meters. Further, there have been no cases of interference reported to the Commission from the millions of operating devices which currently exceed this limit. Thus, the majority of comments stated that they believed that a limit of 500 uV/m at 3 meters is a more reasonable level.

4. The Commission is not fully convinced that the present level of 125 uV/m is necessary to protect services in the restricted bands or that this limit does not impose an unnecessary economic burden on the industry. Therefore, the Commission is proposing to amend the regulations to permit a spurious emission level from control and security alarm devices of up to 500 uV/m at 3 meters in the restricted bands above 100 MHz.

5. The regulation that details the procedure to average a pulsed emission was based on the use of a field strength meter. Thus, the regulation specified an averaging period of 100 milliseconds, in accordance with ANSI specification C63.2–1980. However, a number of manufacturers and the Commission's Laboratory staff employ spectrum analyzers. In order to obtain a more accurate measurement of the field strength of the radiated signal when using a spectrum analyzer, the measurement should be made by averaging a pulsed emission over one complete pulse train, including blanking intervals, or over 10 milliseconds, whichever is the shorter time interval.

6. Following adoption of a final order in this proceeding, it is proposed that, within two years, all equipment submitted to the Commission's Laboratory for authorization must demonstrate compliance with the regulations. Further, within 30 months, all equipment manufactured must comply with the regulations. No cut-off date on the marketing of equipment produced under the previously issued stay or waivers is being proposed. This will allow manufacturers to provide replacement components.

7. Comments to this proposal are due on or before (90 days from release), and reply comments are due on or before (120 days from release). Comments and reply comments will be available for public inspection at the Commission's Dockets Reference Room at its Washington, DC location.

1. The authority citation for Part 15, is revised to read as follows and the citations following the sections are removed.

Authority: Secs. 4, 302, 303, 307, 48, Stat., as amended, 1066, 1082, 1083; 47, U.S.C. 154, 302, 303, 307.

List of Subjects in 47 CFR Part 15

Communications equipment, Radio, Reporting requirements, Security measures.

Part 15 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 15—RADIO FREQUENCY DEVICES

2. Section 15.122 is amended by revising the note under paragraph (a) to read as follows:

§ 15.122 Periodic operation in the bands 40.66–40.70 MHz and above 70 MHz.

* * * * *

(a) * * *

Note.—For pulsed operation, the measured field strength shall be determined by averaging over one complete pulse train, including blanking intervals, as long as the pulse train does not exceed 0.1 seconds. As an alternative or in those cases where the pulse train exceeds 0.1 seconds, the measured field strength shall be determined from the average absolute voltage during a 0.1 second interval when the field strength is at its maximum value. The exact method of calculating the average field strength shall be submitted with any application for equipment authorization.

* * * * *

2. Section 15.205 is amended by revising the introductory text of paragraph (a), removing the note under paragraph (a), adding new paragraphs (a)(1) and (a)(2), and by revising paragraph (b) and its note to read as follows.

§ 15.205 Technical standards.

(a) The fundamental frequency, modulation components and out-of-band emissions from the transmitter as well as the associated receiver shall not fall within any of the bands listed below:

* * * * *

(1) Emissions in these bands from the transmitter or an associated receiver shall not exceed 15 uV/m at 3 meters on frequencies equal to or below 1000 MHz.

(2) On frequencies above 100 MHz, emissions in these bands from the transmitter or an associated receiver shall not exceed 500 uV/m at 3 meters, or the spurious emission limits specified in paragraph (b) of this section, whichever is the lower value. A power density level may be measured to show the equivalent of uV/m limit.

(b) In addition to compliance with the provisions of paragraph (a) of this section, the transmitter is limited to operation on the frequencies specified below. Emission of radio frequency energy on the fundamental frequency and the spurious and out-of-band emissions from the transmitter shall not exceed the levels in the following table:

Fundamental frequency (MHz)	Field strength of fundamental (uV/m at 3m)	Field strength of out-of-band and spurious (uV/m at 3m)
40.66 to 40.70	2,250	225
70 to 73	1,250	125
75.4 to 108	1,250	125
118 to 121.4	1,250	125
121.6 to 130	1,250	125
130 to 156.7	1,250 to 2,770 (1)	125 to 380 (1)
156.9 to 174	2,780 to 3,750 (1)	280 to 375 (1)
174 to 240	3,750	375
285 to 328.6	4,800 to 6,610 (1)	500 to 660 (1)
335.4 to 404	6,890 to 9,750 (1)	690 to 975 (1)
406.2 to 470	9,840 to 12,500 (1).	985 to 1,250 (1)

Fundamental frequency (MHz)	Field strength of fundamental (uV/m at 3m)	Field strength of out-of-band and spurious (uV/m at 3m)
470 and above	12,500	1,250

(1) Linear interpolation

Note.—For pulsed operation, the measured field strength shall be determined by averaging over one complete pulse train, including blanking intervals, as long as the pulse train does not exceed 0.1 seconds. As an alternative or in those cases where the pulse train exceeds 0.1 seconds, the measured field strrength shall be determined from the average absolute voltage during a 0.1 second interval when the field strength is at its maximum value. The exact method of calculating the average field strength shall be submitted with any application for equipment authorization.

* * * * *

William J. Tricarico,

Secretary.

[FR Doc. 86-28764 Filed 12-24-86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF ENERGY

Office of the Secretary

48 CFR Parts 951, 952 and 970

Acquisition Regulations Concerning Travel

AGENCY: Department of energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) proposes to amend the DOE Acquisition Regulation (DEAR) to implement General Services Administration (GSA) Bulletin Federal Property Management Regulations (FPMR) A-90, Availability of Government Travel Discounts to Government Contractors, dated August 15, 1986. The GSA bulletin requests agencies to make information available to contracting officers and, where appropriate, to cost-reimbursable contractors, regarding the use of discount airfares through specified airlines, reduced hotel/motel rates and reduced car rental rates. The proposed rulemaking affects three parts of the DEAR: an addition to 48 CFR Part 951, Use of Government Sources by Contractors, which outlines the travel discount airfares program being made available to employees of cost-reimbursable contractors, 48 CFR 952, Solicitation Provisions and Contract Clauses, which sets forth the provision to be included in solicitations and the clause to be included in eligible contracts and contract modifications to effect the travel discounts, and 48 CFR Part 970, DOE Management and Operating (M&O) Contracts which references the two preceding regulations as they apply to M&O contracts.

DATE: Written comments must be received by January 28, 1987.

ADDRESS: Comments should be addressed to: William T. Stevenson, Business and Financial Policy, Branch (MA-421.2), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

William T. Stevenson, Business and Financial Policy, Branch (MA-421.2), Procurement and Assistance Management Directorate, Washington, DC 20585, (202) 252-8193.

Prentice Cook, Office of the General Counsel for Procurement and Finacne (GC-34), Washington, DC 20585, (202) 252-1526.

SUPPLEMENTARY INFORMATION:

I. Background
II. Procedural Requirements
A. Review Under Executive Order 12291
B. Review Under the Regulatory Flexibility Act
C. Paperwork Reduction Act
D. National Environmental Policy Act
E. Public Hearing
III. Public Comments

I. Background

Under Section 644 of the DOE Organization Act, Pub. L. 95-91 (42 U.S.C. 7254), the Secretary of Energy is authorized to prescribe such procedural rules and regulations as may be deemed necessary or appropriate to accomplish the functions vested in that position. Accordingly, the DEAR was promulgated with an effective date of April 1, 1984 (49 FR 11992, March 28, 1984), 48 CFR Chapter 9.

The purpose of this rulemaking is to revise the DEAR, as necessary, to implement GSA Bulletin FPMR A-90, Availability of Government Travel Discounts to Government Contractors, dated August 15, 1986. The bulletin announced the conditions of availability of the GSA contract airline discount fares, reduced hotel/motel rates and car rental rates to cost-reimbursable contractors. Regulations governing the use of contract airlines are contained in FPMR Temporary Regulation A-30, dated October 1, 1986, which provides that cost-reimbursable contractors working for the Government may use the same discounted contract airfares available to Federal employees while traveling on Government business, provided the contract airline agrees to the arrangement and the destination(s) are included in the city-pairs contracts negotiated by GSA with the airline(s). The regulation also provides that eligible cost-reimbursable contractor employees, with a proper identification letter from the authorizing agencies, may use a Government Transportation Request (GTR), Standard Form 1169, cash or a personal credit card, depending upon the requirements of the airline to obtain discount airfares.

Identification of the participating contract airlines and airline city-pairs schedules are contained in the Federal Travel Directory (FTD) (ISSN: 0278-0941), published monthly by GSA. The FTD also contains the names of participating car rental agencies. Participating hotels/motels are listed in the Federal Hotel/Motel Discount Directory, published annually by GSA. Both publications are available through the Government Printing Office, Superintendent of Documents, Washington, DC 20402.

DEAR Part 951, Use of Government Sources by Contractors, is proposed to be amended by the addition of DEAR 951.70 entitled, "Contractor Employee Travel Discounts," which describes the scope, policy, and responsibilities for administering the travel discount program.

DEAR Part 952, Solicitation Provisions and Contract Clauses, is proposed to be amended by the addition of DEAR 952.251-70 entitled, "Contractor Employee Travel Discounts," which provides the authorizing solicitation provision and contract and contract modification clause for cost-reimbursable contracts.

DEAR Part 970, DOE Management and Operating Contracts, is proposed to be amended by the addition of DEAR 970.5204-53, Contractor Employee Travel Discounts, which provides that the solicitation provisions and contract clauses at DEAR 952.251.70, are to be incorporated in DOE M&O contracts.

II. Procedural Requirements

A. Review Under Executive Order 12291

This Exeutive order entitled, "Federal Regulations," requires that certain regulations be reviewed by the Office of Management and Budget (OMB) prior to their promulgation. OMB Bulletin 85-7 exempts all but certain types of procurement regulations from such review. This proposed rule does not involve any of the topics requiring prior review under the bulletin and is, accordingly, exempt from such review.

B. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96-354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. This rule will have no impact on interest rates, tax policies or liabilities, the costs of goods or services or other direct economic factors. It will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Paperwork Reduction Act

FPMR 101-41.2, Passenger Transportation Services Furnished for the Account of the United States, requires agencies or agents using the GTR, Standard Form 1169, to periodically list all tickets issued for each GTR and to forward the list along with copies of all paid tickets to the GSA Office of Transportation Audits. Since the information collected moves directly from the agencies or agents to GSA, responsibility for recordkeeping and paperwork burden rests with GSA. For this reason, the Department has requested an OMB control number from GSA. Contractors will not be required to perform any additional paperwork beyond that which contractors would have prepared prior to the issuance of GSA Bulletin A-90 to obtain airline tickets, hotel/motel reservations or car rental reservations.

D. National Environmental Policy Act

DOE has concluded that promulgation of this rule would not represent a major Federal action having a significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 432, *et seq.*, 1976), or the Council on Environmental Quality Regulations (40 CFR Part 1020), and therefore does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

E. Public Hearing

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law and that the proposed rule should not have a substantial impaction the nation's economy or large numbers of individuals or businesses. Therefore, pursuant to Pub. L. 95-91, the DOE Organization Act, the Department does not plan to hold a public hearing on this proposed rule.

III. Public Comments

Interested persons are invited to participate by submitting data, views or arguments with respect to the proposed DEAR amendments set forth in this notice. All written comments received will be carefully assessed and fully considered prior to publication of the proposed amendments as a final rule.

List of Subjects in 48 CFR Parts 951, 952, and 970.

Government procurement.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is proposed to be amended as set forth below.

Issued in Washington, DC on December 8, 1986.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

1. The authority citation for Parts 951, 952 is revised to read as follows and Part 970 continues to read:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), and Sec. 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254).

PART 951—USE OF GOVERNMENT SOURCES BY CONTRACTORS

2. Subpart 951.70 Contractor employee travel discounts is proposed to be added as follows:

Subpart 951.70—Contractor Employee Travel Discounts

Sec.
951.7000 Scope of subpart.
951.7001 General policy.
951.7002 Responsibilities.

Subpart 951.70—Contractor Employee Travel Discounts

951.7000 Scope of subpart.

The General Services Administration (GSA), and in some cases the Department of Defense (DOD) Military Traffic Management Command, negotiate agreements with commercial organizations to provide certain discounts to contractors performing travel under Government cost-reimbursable contracts (CRCs). In the case of discount airfares and hotel/motel room rates, the GSA has established agreements with several airlines and thousands of hotels/motels to extend discounts which were previously only available to Federal employees on official travel status. DOD has negotiated agreements with car rental companies for special rates with unlimited mileage which were also to be used by only Federal employees on official Government business. GSA Bulletin Federal Property Management Regulations (FPMR) A-90, dated August 15, 1986, makes these three travel discounts available to Government cost-reimbursable contractors at the option of the vendor.

951.7001 General policy.

Contracting officers will encourage Department of Energy CRCs to use Government travel discounts to the maximum extent practicable in accordance with contractual terms and conditions. However, vendors providing the service may require that the Government contractor employees furnish a letter of identification signed by the authorizing contracting officer. Contracting officers shall provide cost-type contractors with a "Standard Letter of Identification" when appropriate to do so. An example of a "Standard Letter of Identification" is included as an attachment to GSA Bulletin A-90 and at 952.251-70(e).

(a) FPMR Temporary Regulation A-30 governs the use of contract airlines and provides that CRCs working for the Government are authorized, but not required, to obtain the same contract fares offered to Federal employees, subject to the discretion of participating contract airlines. FPMR Temporary Regulation A-30 further provides that CRCs may obtain contract fares by use of a Government Transportation Request, Standard Form 1169, cash or personal credit card. The Federal Travel Directory (FTD) (ISSN: 0278-0441), published monthly by GSA, identifies air carriers that have agreed to permit CRCs to purchase contract fares when traveling on official Government business.

(b) The Federal Hotel/Motel Discount Directory (no form number), published yearly by GSA, lists all participating lodging locations with which GSA has negotiated rates for use by Federal travelers. The directory lists rates and facilities, and identifies those which also offer their Federal discount rates to Government contractors. Hotels/motels participating in travel discounts may, at their option, extend the reduced rates to not only CRCs but to employees of firms working under any type of Government contract. Hotels/motels usually require identification signed by the contracting officer (see above).

(c) Participating car rental firms offering discounted rates to Federal travelers, including those offering discount rates to Government contractor employees, are published in the "Rental Car Information" section of the FTD and should be used as the first source of supply for contractor car rental needs. GSA Bulletin FPMR G-166 provides guidelines and overall procedures to be used in obtaining discount car rental rates. Reduced car rental rates are

offered, at the vendor's option, to Government contractor employees, with appropriate identification signed by the contracting officer (see above). Accepted methods of payment include cash and personal credit cards.

951.7002 Responsibilities.

Contracting officers will include in all cost-reimbursable solicitations and resulting contracts, or contract modifications, the provision or clause, as applicable, at 952.251-70 when significant costs involving travel by air carrier, ground transportation by rental car and lodging at a hotel or motel will be required in connection with the performance of the contract. Contracting officers may furnish Government contractors with the identification letter for presentation to contract airline, hotel/motel or car rental firm (see 951.7001 above), depending upon the requirements of the vendor.

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Subsection 952.251-70, Contractor employee travel discounts, is proposed to be added as follows:

952.251-70 Contractor employee travel discounts.

Contractor Employee Travel Discounts

To the maximum extent practicable, consistent with contract-authorized travel requirements, contractor employees shall make use of the travel discounts offered to Federal travelers, through use of contracted airlines discount airfares, hotels and motels lodging rates and car rental companies, which are available to contractor employees performing official Government contract business. Vendors providing these services may require that the contractor employee traveling on Government business be furnished with a letter of identification signed by the authorized contracting officer.

(a) *Contracted airlines.* Airlines participating in travel discounts are listed in the Federal Travel Directory (FTD), published monthly by the General Services Administration (GSA). Regulations governing the use of contracted airlines are contained in the Federal Property Management Regulations, Temporary Regulation A-30. Temporary Regulation A-30 stipulates that cost reimbursable contractor employees may obtain discount airfares by use of a Government Transportation Request (GTR), Standard Form 1169, cash or personal credit cards. When the GTR is used, contracting officers may issue a blanket GTR for a period of not less than two weeks nor more than one month. In unusual circumstances, such as prolonged or international travel, the contracting officer may extend the period for which a blanket GTR is effective to a maximum of three months. Contractors will ensure that their employees traveling under GTRs provide the GTR number to the contracted airlines for entry on individual tickets and on month-end billings to the contractor.

(b) *Hotels/motels.* Participating hotels and motels which extend discounts are listed in the Federal Hotel/Motel Discount Directory. The directory is published annually by GSA and shows rates, facilities, and identifies by code, those which offer reduced rates, to cost-reimbursable contractor employees while traveling on official contract business.

(c) *Car rentals:* The Military Traffic Management Command, Department of Defense, negotiates rate agreements with car rental companies for special flat rates and unlimited mileage. These terms are available to cost-reimbursable contractor employees while traveling on official contract business. Participating car rental companies are listed in the FTD, published monthly by the GSA.

(d) *Procedures for obtaining service.* (1) In the case of Federal contracted airlines, when travel discount airfares are ordered through the issuance of a GTR either directly to the contractor, or to a Scheduled Airline Travel Office (SATO) or Federal Travel Management Center (FTMC), the contractor shall be provided a letter of identification signed by the cognizant contracting officer and it shall accompany the order. In appropriate instances, such as geographical proximity, contractors may obtain discount airfares through a Department of Energy travel office or a cooperating local travel agency when neither a SATO or FTMC is available. Whatever the ticketing source, the contractor employee is obligated to obtain the lowest available airfare, including discount airfares, offered by a commercial airline.

(2) In the case of hotel and motel accommodations, reservations may be made by the contractor employee directly with the hotel or motel but the employee must display, on arrival, the letter of identification and any other identification required by the hotel or motel proprietorship.

(3) For car rentals, generally the same procedures as in (ii) above will be followed in arranging reservations and obtaining discounts.

(e) *Standard letter of identification.* Contractors shall prepare for the authorizing contracting officer a letter of identification based on the following format:

Format for Government Contractors to Qualify for Travel Discounts

(To be typed on agency official letterhead)

To: (*Source of ticketing, accommodations or rental*)

Subject: Official Travel of Government Contractor

(*Full name of traveler*), bearer of this letter, is an employee of (*company name*) which is under contract to this agency under the Government contract (*contract number*). During the period of the contract (*give dates*), the employee is eligible and authorized to use available discount rates in accordance with your contract and/or agreement with the Federal Government.

(Signature, title and telephone number of the contracting officer)

PART 970—MANAGEMENT AND OPERATING CONTRACTS

4. Subsection 970.5204-53 is proposed to be added as follows:

970.5204-53 Contractor employee travel discounts.

Insert the contract clause at 952.251-70 when the circumstances described in 951.7002 apply.

[FR Doc. 86-28908 Filed 12-24-86; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 684

Bottomfish and Seamount Groundfish Fisheries; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The Western Pacific Fishery Management Council will hold public hearings on a limited entry proposal for the Bottomfish and Seamount Groundfish Fishery Management Plan for the Northwestern Hawaiian Islands (NWHI). A proposal to control entry into the NWHI bottomfish and seamount groundfish fisheries will be presented, together with rationales for the proposal. The public will be invited to present views on the proposal and the floor will be opened for questions and discussion. Written comments are welcome on the proposal.

DATES: The first hearing will be held Monday, January 5, 1987, and the second hearing will be held Tuesday, January 6, 1987. Both hearings will begin at 7:00 p.m. Written comments on the proposal should be received by February 2, 1987.

ADDRESSES: The first hearing will be held at the Kauai Regional Library, 4344 Hardy, Lihue, Kauai; and the second hearing will be held at the McCoy Pavilion, Ala Moana Beach Park, Honolulu, Hawaii. Written comments should be sent to the Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, Hawaii 96813.

FOR FURTHER INFORMATION CONTACT: Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 808-523-1368, or FTS 808-541-1974.

Dated: December 22, 1986.

Richard B Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-29082 Filed 12-24-86; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register

Vol. 51, No. 248

Monday, December 29, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Packers and Stockyards Administration

Certification of Central Filing System; Arkansas

The Statewide central filing system of Arkansas is hereby certified, pursuant to section 1324 of the Food Security Act of 1985, on the basis of information submitted by W. J. "Bill" McCuen, Secretary of State, for all farm products produced in that State.

This is issued pursuant to authority delegated by the Secretary of Agriculture.

Authority: Sec. 1324(c)(2), Pub. L. 99-198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR 2.17(e)(3), 2.56(a)(3), 51 FR 22795.

Dated: December 22, 1986.

B.H. (Bill) Jones,

Administrator, Packers and Stockyards Administration.

[FR Doc. 86-29055 Filed 12-24-86; 8:45 am]

BILLING CODE 3410-KD-M

Soil Conservation Service

Duck Creek Watershed, AR

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service; U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Duck Creek Watershed, Lonoke and Prairie Counties, Arkansas.

FOR FURTHER INFORMATION CONTACT: Gene Sullivan, State Conservationist, Soil Conservation Service, 5423 Federal Office Building, 700 West Capitol Avenue, Little Rock, Arkansas 72201, telephone (501) 378-5445.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Gene Sullivan, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection which provides accelerated technical and financial assistance for installing land treatment measures to control erosion. Land treatment measures include the no-tillage method of crop production, terraces with underground outlets, diversions, waterways, land smoothing, and contour farming.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Gene Sullivan.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provision of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Gene Sullivan,

State Conservationist.

Dated: December 17, 1986.

[FR Doc. 86-29057 Filed 12-24-86; 8:45 am]

BILLING CODE 3410-16-M

Dunn Creek Watershed, AR

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service; U.S. Department of Agricultural, gives notice that an environmental impact statement is not being prepared for the Dunn Creek Watershed, Lonoke and Prairie Countries, Arkansas.

FOR FURTHER INFORMATION CONTACT: Gene Sullivan State Conservationist, Soil Conservation Service, 5423 Federal Office Building, 700 West Capital Avenue, Little Rock, Arkansas 72201, telephone (501) 378-5445.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Gene Sullivan, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection which provides accelerated technical and financial assistance for installing land treatment measures to control erosion. Land treatment measures include the no-tillage method of crop production, terraces with underground outlets, diversions, waterways, land smoothing, and contour farming.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Gene Sullivan.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires

intergovernmental consultation with State and local officials.)

Dated: December 17, 1986.

Gene Sullivan,

State Conservationist.

[FR Doc. 86-29058 Filed 11-24-86; 8:45 am]

BILLING CODE 3410-16-M

Bayou Penchant-Lake Penchant Watershed, LA; Environmental Statement

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Bayou Penchant-Lake Penchant Watershed, Terrebonne Parish, Louisiana.

FOR FURTHER INFORMATION CONTACT: Horace J. Austin, State Conservationist, Soil Conservation Service, 3737 Government Street, Alexandria, Louisiana 71302, telephone (318) 473-7751.

SUPPLEMENTARY INFORMATION: The Environmental Assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Horace J. Austin, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns watershed protection. The planned works of improvement include the development and implementation of marsh conservation management plans. The cumulative total of work installed via utilization of these plans will include: Thirty-four acres of critical area plantings; forty-three miles of shoreline erosion protection plantings; forty-seven structures for water control (weirs); fifty-three earthen channel dams; and seventy-four miles of low level dikes.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the Environmental Assessment are on file and may be reviewed by contacting Horace Austin.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: December 15, 1986.

Horace J. Austin,

State Conservationist.

[FR Doc. 86-28972 Filed 12-24-86; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 31-86]

Proposed Foreign-Trade Zone With Subzone for Cooper Tire Plant, Findlay, OH; Extension of Comment Period

The period for comments on the above case, involving a general-purpose zone in Findlay, Ohio, and a subzone for the tire manufacturing plant of Cooper Tire and Rubber Company in Findlay (51 FR 37617, 10/23/86) is extended to January 23, 1987, to allow interested parties additional time in which to comment on the proposal.

Comments in writing are invited during this period. Submissions shall include 5 copies. Material submitted will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania Ave. NW., Washington, DC 20230.

Dated: December 17, 1986.

John J. DaPonte, Jr.,

Executive Secretary.

[FR Doc. 86-28988 Filed 12-24-86; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-122-016]

Choline Chloride From Canada; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On November 6, 1986 the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on choline chloride from Canada. The review covers Chinook Chemicals Co., Ltd. and the period April 30, 1984 through October 31, 1985.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in the preliminary results.

EFFECTIVE DATE: December 29, 1986.

FOR FURTHER INFORMATION CONTACT: Edward Haley or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5289/5255.

SUPPLEMENTARY INFORMATION:

Background

On November 6, 1986 the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 40346) the preliminary results of its administrative review of the antidumping duty order on choline chloride from Canada (49 FR 45469, November 16, 1984). The Department has completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of choline chloride, currently classifiable under item 439.5055 of the Tariff Schedules of the United States Annotated. Choline chloride is marketed in several forms including, but not limited to, a solution of 70 percent choline chloride in water (aqueous choline chloride) or in potencies of 50 to 60 percent dried on a cereal carrier.

The review covers Chinook Chemicals Co., Ltd. and the period April 30, 1984 through October 31, 1985.

Final Results of the Review

We invited interested parties to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in the preliminary results. We determine that a *de minimis* weighted-average margin of 0.17 percent exists for Chinook Chemicals Co., Ltd. for the period April 30, 1984 through October 31, 1985.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, since the margin for Chinook is *de minimus*, the Department waives the estimated antidumping duty cash deposit required under section 751(a)(1) of the Tariff Act for that firm. For any shipments of this merchandise from an exporter whose first shipments occurred after October 31, 1985 and who is unrelated to Chinook Chemicals Co., Ltd., the Department also waives the cash deposit requirement. These waivers are effective for all shipments of choline chloride entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act [19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: December 18, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-28989 Filed 12-24-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-601]

Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Cooking Ware From Korea

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: Because of clerical errors, we are amending our final determination in this investigation and directing the U.S. Customs Service to adjust the cash deposit or bonding rates as follows:

Manufacturer/producer/exporter	Percent	
	From	To
Kyung Dong	28.28	8.36
Namil	1.36	0.75
All Others	12.40	8.10

The cash deposit or bonding rates for Bum Koo, Dae Sung, and Hai Dong are unchanged.

EFFECTIVE DATE: December 29, 1986.

FOR FURTHER INFORMATION CONTACT: Alain Letort or Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: 202/377-0186 (Letort) or 202/377-0161 (Taverman).

SUPPLEMENTARY INFORMATION: On November 28, 1986, we published a final determination of sales at less than fair value on certain stainless steel cooking ware from the Republic of Korea (51 FR 42873).

Subequent to the publication of the final determination, we discovered certain clerical errors in our calculations. We have corrected these errors and are consequently amending our final determination by changing the weighted-average margins.

Accordingly, the cash deposit or bonding rates listed in the "Suspension of Liquidation" section of the final determination are amended to read

not have authorized that export or reexport; (4) Further, LAS currently has a contract with the U.S.S.R. which calls for LAS to supply equipment of a similar type and nature to equipment in the two transactions which are the principal focus of the Department's investigation; (5) Again, export or reexport of this equipment to the U.S.S.R. would not be authorized by the Department; (6) That the respondents have had substantial business experience in import and export transactions involving scientific and technical products; (7) Respondent LAS was a consignee of licenable U.S. technology and commodities under a distribution license in 1978 and, as such, the respondent would have had considerable experience handling U.S.-controlled commodities and reason to know the requirements of the Regulations; (8) In 1977, respondent LAS, in a statement made by its President in connection with a distribution license application, expressly stated that LAS would "comply with the U.S. Export Administration Regulations", including the provision pertaining to the general distribution license procedure; (9) The respondents knew or had reason to know the requirements of the Regulations at the time of the occurrence of the alleged illegal reexportation here in question; (10) An investigation by the Department into these alleged violations is ongoing; (11) French authorities are also investigating into the matters which gave rise to the Department's request for this order; and, (12) A violation may be likely to occur in the future unless action is taken to prevent respondents from gaining access to U.S.-origin goods and technical data.

In its renewal request, the Department contends, and the above facts support the contention, that the activities of the respondents in connection with the export and reexport of U.S.-origin goods demonstrate that they may have engaged in deliberate and covert violations of the Act and Regulations, and demonstrate the likelihood of future violations by them unless action is taken to preclude such attempts.

While the respondents state in their opposition to renewal that some of the above points, upon which previous renewals of this order were also based, lack of relevance or supporting evidence, the Department has, in my view, provided adequate evidence to support each point in this and previous submissions. I find that all of these points are relevant to the legal issues involved in the decision to renew the TDO, although taken alone any one point might be insufficient to make the Department's case. However, taken together these points provide reason to believe a violation of the Act is imminent.

Therefore, based on the record before me, I find that renewal of the order temporarily denying export privileges to respondents is necessary in order to prevent an imminent violation and to give notice to companies in the United States and abroad to cease dealing with respondents in goods and technical data subject to the Act and the Regulations in order to reduce the substantial likelihood that respondents will continue to engage in activities which are in violation of the Act and the Regulations.

Accordingly, it is hereby ordered:

I

All outstanding validated export licenses in which any respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation.

II

The respondents, their successors or assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported or to be exported from the United States in whole or in part, or that are otherwise subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to any export license application submitted to the Department, (b) in preparing or filing with the Department any export license application or reexport authorization, or any document to be submitted therewith, (c) in obtaining or using any validated or general export license or other export control document, (d) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported, and (e) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

III

After notice and opportunity for comment, such denial may be made applicable to any person, firm, corporation, or business organization with which any respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

IV

No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any respondent or any related party, or whereby any respondent or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any respondent or any related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data export or to be exported from the United States.

V

In accordance with the provisions of § 388.19(e) of the Regulations, any respondent may, at any time, appeal this temporary denial order by filing with the Office of Administrative Law Judges, U.S. Department of Commerce, Room H-6716, 14th Street and Constitution Avenue, NW., Washington, DC 20230, a full written statement in support of the appeal.

VI

This order shall become effective on December 19, 1986 and shall remain in effect for 60 days.

VIII

In accordance with the provisions of § 388.19(d) of the Regulations, the Department may seek renewal of this temporary denial order by filing a written request not later than 20 days before the expiration date. Any respondent may oppose any request to renew this temporary denial order by filing a written submission with the Deputy Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of this order.

A copy of this order renewing the temporary denial of export privileges shall be served upon the respondents and published in the **Federal Register**.

Dated: December 19, 1986.

Theodore W. Wu,

Deputy Assistant Secretary for Export Enforcement.

[FR Doc. 86-28991 Filed 12-24-86; 8:45 am]

BILLING CODE 3510-25-M

Short Supply Review on Certain Hot Rolled Steel Sheets: Request for Comments

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short supply determination under Paragraph 8 of the U.S.-Korea Arrangement Concerning Trade in Certain Steel Products, and Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products with respect to certain hot rolled carbon steel sheets.

DATE: Comments must be submitted no later than ten days from publication of this notice.

ADDRESS: Send all comments to Nicholas C. Tolerico, Acting Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, Room 3099.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, Room 3099, (202) 377-0159.

SUPPLEMENTARY INFORMATION: Paragraph 8 of the U.S.-Korea Arrangement Concerning Trade in Certain Steel Products and Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products provide that if the U.S. "determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product. . . ."

We have received a short supply request for the following sizes of hot rolled carbon steel sheets meeting ASTM specification A-568:

(a) In widths ranging between 24 and 53 inches, thicknesses ranging between 0.09 and 0.17 inch, and coil weights ranging between 8,500 and 27,000 pounds, to be used in the manufacture of galvanized and cold rolled sheet.

(b) In widths ranging between 26 and 38 inches, thicknesses ranging between 0.074 and 0.080 inch, and coil weights ranging between 8,500 to 20,000 pounds, to be used in the manufacture of tin plate.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than ten days from publication of this notice. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify that portion of their submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B-099 at the above address.

December 19, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-28992 Filed 12-24-86; 8:45 am]

BILLING CODE 3510-DS-M

Department of Energy; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No. 86-311.

Applicant: U.S. Department of Energy, Argonne, IL 60439.

Instrument: Mass Spectrometer System, Model SIMSLAB MKII.

Manufacturer: VG Instruments Inc., United Kingdom.

Intended use: See notice at 51 FR 34238.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides a guaranteed spatial resolution of 500 Å(50 nm) liquid metal ion gun. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-28993 Filed 12-24-86; 8:45 am]

BILLING CODE 3510-DS-M

Lehigh University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No. 86-332.

Applicant: Lehigh University, Bethlehem, PA 10815.

Instrument: Polarization Analyzer with Accessories,

Manufacturer: University of Windsor, Canada.

Intended use: See notice at 51 FR 37623.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides analysis capability of vacuum ultraviolet radiation of wavelengths below 120 nm. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-28994 Filed 12-24-86; 8:45 am]

BILLING CODE 3510-DS-M

Masters, Mates and Pilots MATES Program; Decision for Duty-Free Entry of Scientific Instrument; Correction

In FR Doc. 86–22228 at page 35019 in the **Federal Register** of October 1, 1986, DOCKET NUMBER 82–00194 is hereby amended to delete the word "not" from column 2, line 28. The sentence should read:

The foreign article does meet the applicant's original specification dated September 17, 1978 for a 31° field of view, as confirmed in the communication dated April 28, 1961 by the foreign manufacturer.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–28995 Filed 12–24–86; 8:45 am]

BILLING CODE 3510–DS–M

Mississippi State University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC

Docket No. 86–218.

Applicant: Mississippi State University, Mississippi State, MS 39762.

Instrument: Gas Chromatograph/Mass Spectrometer/Data System, Model MS 80 with Accessories.

Manufacturer: Kratos Analytical Instruments, United Kingdom.

Intended use: See notice at 51 FR 22843.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides an accuracy of mass measurement of 5 ppm on peaks down to 5% of the base peak and is capable of multiple ion monitoring (e.g., chlorinated dibenzo-p-dioxin analysis) and integrating peak areas of each ion during data acquisition providing a quantitative report. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–28996 Filed 12–24–86; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–602]

Certain Carbon Steel Butt-Weld Pipe Fittings From Japan: Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that certain carbon steel butt-weld pipe fittings (butt-weld pipe fittings) from Japan are being, or are likely to be, sold in the United States at less than fair value, and have notified the U.S. International Trade Commission (ITC) of our determination. We have also directed the U.S. Customs Service to continue to suspend liquidation of all entries of butt-weld pipe fittings from Japan that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margins as described in the "Continuation of Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: December 29, 1986.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp or Karen S. DiBenedetto, (202) 377–1769 and (202) 377–1778, respectively, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230..

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that butt-weld pipe fittings from Japan are being, or are likely to be, sold in the United States at less than fair value as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d) (the Act). The margins range from 0.13 percent to 270.20 percent, and the weighted-average margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

On February 24, 1986, we received a petition in proper form filed by the U.S. Butt-Weld Fittings Committee on behalf of the U.S. industry producing butt-weld pipe fittings, in compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36). The petition alleged that imports of the subject merchandise from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are causing material injury, or threaten material injury, to a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated the investigatin on March 17, 1986 (51 FR 10070, March 24, 1986), and notified the ITC of our action.

On April 2, 1986, the ITC found that there is a reasonable indication that imports of butt-weld pipe fittings from Japan are materially injuring a U.S. industry (U.S. ITC Pub. No. 1834, April 1986).

On April 28, 1986, we presented questionnaires to Awaji Sangyo K.K. (Awaji) and Nippon Benkan Kogyo Co. Ltd. (Nippon Benkan) which account for approximately 80 percent of the exports to the United States during the period of investigation. An extension of time in which to respond was granted to both companies.

On June 11, 1986, we received the narrative versions of the questionnaire responses. On June 20, 1986, we received the computer tape version of the responses from both companies. Both of the questionnaire responses were insufficient. They did not include full product descriptions. Thus, we were unable to make such or similar merchandise comparisons. In one response, we could not determine whether certain sales were to home market or third country customers. The responses also contained contradictory information. In addition, the computer data bases did not fully reflect the information in the response or printed data bases. We requested corrected responses. Also, respondents did not submit proper nonproprietary summaries on a timely basis. On August 4, 1986, we issued an affirmative preliminary determination (51 FR 28734, August 11, 1986).

On August 6 and 12, 1986, we received requests for postponement of the final determination from the respondents. We granted the request and postponed our final determination until December 19, 1986 on September 3, 1986 (51 FR 32117, September 9, 1986). On September 12, 1986, Awaji Sangyo K.K. submitted a revised response. On September 12 and 15, 1986, Nippon Benkan Kogyo Company Ltd. submitted a revised response.

On October 27 through 31, 1986, we verified the information provided by the respondents at their facilities in Japan. On November 7, 1986, we held a hearing to provide all parties with an opportunity to comment on relevant issues.

Standing Issue

One U.S. producer, Tube Turns, Inc., opposes this investigation and maintains that the petition was not filed "on behalf of" a U.S. industry, as required by section 732(b)(1) of the Act.

As we have previously stated, neither the Act nor the Commerce Regulations requires a petitioner to establish affirmatively that it has the support of a majority of a particular industry. *See. e.g., Final Affirmative Countervailing Duty Determination: Certain Fresh Atlantic Groundfish from Canada,* (51 FR 10041, 10043, March 24, 1986). The Department relies on petitioner's representation that it has, in fact, filed on behalf of the domestic industry, until it is affirmatively shown that this is not the case. Where domestic industry members opposing an investigation provide a clear indication that there are grounds to doubt a petitioner's standing, the Department will review whether the opposing parties, do, in fact, represent a major proportion of the industry. We determined that Tube Turns, the only member of the domestic industry to oppose the investigation, does not represent a major proportion of that industry.

Scope of Investigation

The products covered by this investigation are certain carbon steel butt-weld type pipe fittings, other than couplings, under 14 inches in inside diameter, whether finished or unfinished, that have been formed in the shape of elbows, tees, reducers, caps, etc., and, if forged, have been advanced after forging. These advancements may include any one or more of the following: coining, heat treatment, shot blasting, grinding, die stamping or painting. These fittings are currently provided for under item 610.8800 of the *Tariff Schedules of the United States Annotated (TSUSA).* Induction pipe bends classifiable under item 610.8800 which have at one or both ends tangents that equal or exceed 12 inches in length are excluded from the scope of this investigation.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price to the foreign market value. The period of investigation is September 1, 1985 through February 28, 1986.

United States Price

As provided in section 772(b) of the Act, for sales by Awaji and Nippon Benkan, we based the United States price on purchase price because their butt-weld pipe fittings were sold to unrelated purchasers in the United States prior to importation. We made deductions from CIF prices for ocean freight, marine insurance, brokerage, and foreign inland freight, as appropriate.

Foreign Market Value

In accordance with section 773(a)(1)(A) of the Act, we based foreign market value for both Awaji Sangyo and Nippon Benkan on sales in the home market. We compared sales of such or similar merchandise to U.S. sales. We established comparison groups on the basis of type of fitting, diameter, wall thickness, and the type of pipe used in the manufacture of the fitting. We made deductions from ex-warehouse and FOB prices for inland freight, discounts and rebates, as appropriate. We made an adjustment for differences in credit terms between the respective markets, in accordance with § 353.15(a) of our regulations. We made adjustments to Awaji's prices for differences in technical services, post-sale warehousing and advertising expenses which were shown to be directly related to the sales under consideration, in accordance with § 353.15(a) of our regulations. We rejected claims for similar adjustments for Nippon Benkan since the expenses were not shown to be directly related to the sales under consideration. Where commissions were paid to unrelated agents in one market, we offset them with indirect selling expenses in the other market, in accordance with § 353.15(c) of our regulations. Where appropriate, we made adjustments for differences in physical characteristics, in accordance with § 353.16 of our regulations. We also deducted home market packing costs and added U.S. packing costs.

In calculating foreign market value, we made currency conversions from Japanese yen to U.S. dollars using certified exchange rates in accordance with § 353.56(a)(1) of our regulations.

Petitioner's Comments

Petitioner's Comment 1: Petitioner claims that Nippon Benkan's sales of standard pipe fittings in the United States should be compared with its sales of standard pipe fittings in Japan because both products are manufactured from seamless pipe. Petitioner further argues that comparisons should not include fittings made from welded pipe because these fittings vary widely in price from seamless fittings and, are therefore, less similar than seamless fittings.

DOC Response: We agree. We determined that seamless fittings sold in the home market meet the requirements for such or similar merchandise under section 771(16)(B) of the Act since they are like the fittings sold to the United States in component materials, in purposes for which used, and they are approximately equal in commercial value. The fittings made from welded pipe fall under section 771(16)(C) of the Act since they are different in component materials and commercial value. Since the statutory preference is for comparisons to merchandise falling under 771(16)(B), we limited our comparisons to seamless fittings.

Petitioner's Comment 2: Petitioner claims that the "special rule" on exchange rates does not apply in this proceeding since fluctuations of exchange rates were not temporary and the respondents have not adjusted their prices to reflect sustained fluctuations in a reasonable period of time.

DOC Response: We agree. During the period of investigation, the value of the dollar declined steadily against the yen. During that period, the respondents did not demonstrate that they had revised their prices to the United States in response to the changes in the relationship of the dollar and the yen. Therefore, we have determined that respondents have not "acted within a reasonable period of time to take into account price differences resulting in sustained changes in prevailing exchange rates" as required by § 353.56(b) of our regulations.

Petitioner's Comment 3: Petitioner argues that the Department should calculate a single margin for finished and unfinished fittings.

DOC Response: We agree. See our response to Respondents' Comment 4.

Petitioner's Comment 4: Petitioner argues that respondents' inland freight and packing costs should be recalculated since they were based on average costs over a six month period.

DOC Response: We used actual verified costs incured in the period of investigation. These costs were recalculated on a month by month basis.

Petitioner's Comment 5: Petitioner argues that Nippon Benkan's claim for rebates should be denied because they are not directly related to sales of carbon steel butt-weld pipe fittings and,

therefore, are not directly related to the sales under consideration.

DOC Response: We disagree. We verified that the rebates are directly related to sales of butt-weld pipe fittings during the period of investigation and deducted the rebates.

Petitioner's Comment 6: Petitioner argues that Nippon Benkan's claim for credit adjustment should be denied because it did not provide the ITA with actual credit expenses on individual sales made during the period of investigation.

DOC Response: We disagree. Nippon Benkan calculated its credit costs based on average interest rates and number of days between shipment and payment. This is in accordance with established Department practice.

Petitioner's Comment 7: Petitioner argues that Nippon Benkan's claim for an adjustment based on earnings attributable to hedges on exchange rate fluctuation should be denied because the earnings are not directly related to sales of pipe fittings during the period of investigation and it is not the Department's policy to consider currency fluctuations in calculating credit expenses.

DOC Response: We agree. Nippon Benkan's practice of borrowing dollars in order to earn additional yen during a period of currency adjustment is not directly related to sales of butt-weld pipe fittings during the period of investigation. In addition, it is Department policy not to consider the effect of currency fluctuation in calculating credit expenses, even when the earnings derived from the changes in currency value are directly related to payment terms.

Petitioner's Comment 8: Petitioner argues that Nippon Benkan's claim for an adjustment for technical services should be denied since these services are not part of the terms of sale.

DOC Response: We agree. We verified that the nature of the services claimed is that of general sales promotion as opposed to technical services and cannot be tied to the sales under investigation.

Petitioner's Comment 9: Petitioner argues that Nippon Benkan's claim for warehousing expenses should be denied because it is not considered a condition of sale.

DOC Response: We agree. Nippon Benkan has not demonstrated that the warehousing costs were incurred pursuant to contractual requirements. Therefore, we determined that the costs are not directly related to butt-weld pipe fittings.

Petitioner's Comment 10: Petitioner argues that Nippon Benkan's claim for selling expenses should be denied because the expenses are not directly related to sales of carbon steel butt-weld pipe fittings.

DOC Response: We agree. The claim is based on indirect selling expenses such as salaries and travel expenses incurred by salesmen. As such, the expenses are not directly related to the sales under consideration.

Petitioner's Comment 11: Petitioner argues that Nippon Benkan has not provided sufficient detail concerning its allegation of ocean freight charges and insurance charges.

DOC Response: We verified that the charges tied to the shipments to the United States and that the costs were calculated on that basis.

Petitioner's Comment 12: Petitioner claims that Nippon Benkan should be required to provide actual customs brokerage fees instead of the averaged figures that were provided in the response.

DOC Response: The brokerage fees were verified and the allocation to individual pipe fittings based on average costs incurred during the period was used. We determined that this allocation was reasonable. Any revision of methodology would result in an insignificant change to individual calculations.

Petitioner's Comment 13: Petitioner argues that Awaji's claim for a loading charge should be denied because it is an element of warehousing expenses which are not a condition of sale.

DOC Response: We disagree. We verified that the warehousing costs were incurred pursuant to a specific contract requirement. We therefore, made an adjustment for the costs of warehousing and related loading activities to reflect the differences in circumstances of sale.

Petitioner's Comment 14: Petitioner argues that Awaji's claim for adjustments to account for physical differences in the merchandise is based on slight differences and that the claim should be examined critically.

DOC Response: We verified the claimed adjustments and found that they were calculated on the basis of differences in the direct costs of manufacture of the products being compared. Therefore, we have allowed Awaji's claim.

Petitioner's Comment 15: Petitioner argues that Awaji's claim for technical services should be denied if it is not directly related to individual sales of butt-weld fittings and that any adjustment should be made to individual sales, rather than to all sales.

DOC Response: Although we could not tie these services to individual sales, we verified that they were directly related to the sales under consideration and that the expenses were properly allocated to sales to specific customers receiving the services.

Petitioner's Comment 16: Petitioner argues that Awaji's claim for an advertising adjustment should be denied because it is plainly institutional advertising rather that specific advertising on butt-weld pipe fittings.

DOC Response: We verified that a portion of the advertising claimed is directly related to butt-weld pipe fittings and is directed at ultimate purchasers of the fittings. Other portions relate directly to other products. Therefore, we allowed that portion of the claim which is related to butt-weld pipe fittings.

Petitioner's Comment 17: Petitioner argues that Awaji should not include expenses for other products, not included in this investigation, in the commission offset adjustment.

DOC Response: We verified that the expenses included in the offset claim were general selling expenses and that these expenses had been allocated reasonably.

Petitioner's Comment 18: Petitioner argues that in determining whether Awaji is engaging in "trading company dumping" the Department should make product-by-product comparisons of acquisition costs to prices of the products Awaji purchases for resale from an unrelated supplier.

DOC Response: Since we did not know whether Awaji's supplier was aware that the merchandise was destined to the United States and these products constituted a small portion of Awaji's sales to the United States, we did not include these sales in our comparisons.

Respondents' Comments

Respondents' Comment 1: Awaji and Nippon Benkan argue that the Department must employ its ninety day "lag" rule and apply the exchange rate in effect during the fourth quarter of 1985 for calculations on sales during the first quarter of 1986.

DOC Response: We disagree. See our response to Petitioner's Comment 2.

Respondents' Comment 2: Nippon Benkan argues that the Department should use third country sales in its price comparisons.

DOC Response: We disagree. We determined that there were sufficient home market sales of such or similar merchandise to form an adequate basis of determining foreign market value.

Respondents' Comment 3: Nippon Benkan argues that the Department should take into account the effect of exchange rate fluctuations on its credit expenses associated with U.S. sales when doing the LTFV calculations.

DOC Response: We disagree. See our response to Petitioner's Comment 7.

Respondents' Comment 4: Nippon Benkan argues that the Department should calculate separate margins for finished and unfinished fittings.

DOC Response: We disagree. We consider finished and unfinished fittings to be one class or kind of merchandise. In addition, we compared unfinished fittings sold to the United States to finished fittings sold in the home market since the finishing of the fitting was a very minor operation and did not negate their consideration as similar merchandise. We normally issue one rate for all products within the class or kind of merchandise.

Respondents' Comment 5: Nippon Benkan argues that the Department should include all fittings sold in its home market regardless of the type of pipe used in the manufacturing process in making fair value comparisons.

DOC Response: We disagree. See our response to Petitioner's Comment 1.

Respondents' Comment 6: Nippon Benkan argues that the Department should adjust home market prices by the amount of rebates paid to its customers.

DOC Response: We agree. See our response to Petitioner's Comment 5.

Respondents' Comment 7: Nippon Benkan claims that its allocation of average packing, inland freight, customs brokerage, and warehousing costs is appropriate.

DOC Response: See our response to Petitioner's Comments 4, 9, and 12.

Respondents' Comment 8: Nippon Benkan argues that the Department should take into account its actual cost of credit as provided in their response.

DOC Response: We agree. See our response to Petitioner's Comment 6.

Respondents' Comment 9: Nippon Benkan argues that the Department should take into account their technical service expense when making its price comparisons.

DOC Response: We disagree. See our response to Petitioner's Comment 8.

Interested Parties' Comments

Interested Parties' Comment 1: TSI Industries and Silbo Steel claim that the Department lacks jurisdiction to conduct these investigations since petitioner lacks standing.

DOC Response: We disagree. See the "Standing Issue" section of this notice.

Interested Parties' Comment 2: TSI Industries and Silbo Steel claim that the Department's acceptance of the refiled petitions was improper.

DOC Response: We disagree. See the "Standing Issue" of this notice.

Interested Parties' Comment 3: TSI Industries and Silbo Steel argue that induction pipe bends belong to the same class or kind of merchandise as butt-weld pipe fittings and that their exclusion would facilitate circumvention of any antidumping order.

DOC Response: We disagree. Petitioner has agreed to exclude certain induction pipe bends described in the "Scope of Investigation" section of this notice. We generally base the scope of an investigation on the petitioner's wishes. TSI Industries and Silbo Steel have not provided any convincing rationale as to why induction pipe bends should be included in the scope of investigation.

Interested Parties' Comment 4: Sumitomo Corporation of America (SCOA) argues that the Department should exclude induction pipe bends imported by SCOA because they are not of the same class or kind of merchandise as that covered by the antidumping petition.

DOC Response: We agree. Induction pipe bends described in the "Scope of Investigation" section of this notice have been excluded from the scope. The petitioner has agreed with this exclusion.

Verification

As provided in section 776(a) of the Act, we verified all information used in this determination by using standard verification procedures, including examination of all relevant sales and accounting records.

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to continue to suspend liquidation of all entries of butt-weld pipe fittings from Japan that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register.**

The United States Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted-average margin percentage
Awaji Sangyo, K.K.	30.83
Nippon Benkan Kogyo Limited Co.	65.81
All others	62.79

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports are materially injuring, or are threatening material injury to, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or canceled. However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on butt-weld pipe fittings from Japan entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which foreign market value exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Paul Freedenberg,

Assistant Secretary for Trade Administration.

[FR Doc. 86-29037 Filed 12-24-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-009]

Color Television Receivers, Except for Video Monitors, From Taiwan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On October 21, 1986 the Department of Commerce published the preliminary results of its administrative

review of the antidumping duty order on color television receivers, except for video monitors, from Taiwan. The review covers nine manufacturers and/or exporters of this merchandise to the United States and generally the period October 19, 1983 through March 31, 1985.

We gave interested parties an opportunity to comment on the preliminary results. Based on the comments we received we have changed the final results from those presented in our preliminary results of review for AOC, Capetronic, Fulet, RCA, Sampo, Shin-Shirasuna, and Tatung.

EFFECTIVE DATE: December 29, 1986.

FOR FURTHER INFORMATION CONTACT: Elizabeth P. Klages or David P. Mueller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–1130/2923.

SUPPLEMENTARY INFORMATION:

Background

On October 21, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 37317) the preliminary results of its administrative review of the antidumping duty order on color television receivers, except for video monitors, from Taiwan (49 FR 18337, April 30, 1984). We began this review under our old regulations. After the promulgation of our new regulations, the petitioners, respondents, and an importer, requested in accordance with § 353.53(a) of the Commerce Regulations that we complete the administrative review. The Department has now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of color television receivers, except for video monitors, complete or incomplete, from Taiwan. The order covers all color television receivers regardless of tariff classification.

The merchandise is currently classifiable under item numbers 684.9246, 684.9248, 684.9250, 684.9252, 684.9253, 684.9255, 684.9256, 684.9258, 684.9262, 684.9263, 684.9270, 684.9275, 684.9655, 684.9656, 684.9658, 684.9660, 684.9663, of the Tariff Schedules of the United States Annotated. The review covers nine manufacturers and/or exporters of Taiwanese color television receivers, except for video monitors, to the United States, and generally the period October 19, 1983 through March 31, 1985.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results as provided by § 353.53a(c) of the Commerce Regulations. We received comments from the petitioners (International Brotherhood of Electrical Workers, International Union of Electronic, Electrical, Technical, Salaried and Machine Workers, AFL–CIO–CLC, Independent Radionic Workers of America, Industrial Union Department, AFL–CIO), Zenith Electronics Corporation, and the respondents, AOC International, Fulet, Sampo, RCA, Shin-Shirasuna, and Tatung. We received additional comments from the respondents concerning mathematical or clerical errors. We have corrected such errors but have not addressed them specifically in this notice.

Comment 1: The petitioners argue that the Department should conduct complete reviews of Hitachi and Sampo based on their October 15, 1985 timely request for review. The Department is obliged to conduct a review when properly requested to do so.

Department's Position: We disagree, and have denied petitioners' request for administrative review in its entirety. Section 353.53a of the Commerce Regulations allows domestic interested parties to request review of specified individual producers or exporters "if the requesting person states why the person desires the Secretary to review those particular producers or exporters." The purpose of this requirement, as explained in the preamble to this regulation, is to "help the Department focus on the potential respondents which the requester believes to be most important to the requester." (No such requirement is placed on requests by producers and exporters, since their requests can only cover one firm—their own.) The requirement of a statement of reasons from domestic requesters, while not intended to be a difficult hurdle to overcome, is necessary in view of the Department's limited resources. 50 FR 32556, 32557 (Aug. 13, 1985).

Petitioners' request listed eight specific firms and added a request to review any other company that may have exported the merchandise during the review period. This last portion of the request was denied because it is not a request to review specified individual firms, as required by the regulations.

As to the eight firms listed in the petitioners' request, for five of those firms (not including Hitachi and Sampo) the sole reason given for the request was that these firms had already requested administrative reviews. This amounts to no reason at all, and in any case, does not fulfill the purpose of the requirement of a statement of reasons: to inform the Department as to which firms the petitioners believe to be the most important for review purposes. For the remaining firms, including Hitachi and Sampo, the reason offered was that these firms had been included in the fair value investigation and petitioners had no reason to believe their pricing behavior had changed in the meantime. This is not a sufficient reason for initiating a review, since under the new regulations, the Department no longer reviews foreign producers and exporters merely because they were included in an antidumping or countervailing duty order.

For these reasons, we rejected petitioner' request for administrative review, and have only reviewed those firms who filed individual requests. Since Hitachi did not request a review, no review was conducted. For Sampo, whose request covered only part of the review period, we reviewed only those entries covered by the request.

Comment 2: Zenith and the petitioners argue that the Department should have implemented the Court of International Trade's ("the CIT's") ruling in *Zenith* v. *United States (April 24, 1986) and adjusted United States price for the rebate or forgiveness of internal taxes upon the exportation of the merchandise. This would require the Department to add to United States price an amount equol to the tax that would have been imposed by the Taiwanese government upon the exported merchandise were it not exported.*

AOC, Fulet, Sampo, and Tatung state that the Department has properly decided to allow a full adjustment for the ROC commodity tax, an indirect tax not collected on exports. They argue that the Department has incorrectly concluded that pending resolution of the passthrough issue, it must readopt its discredited position of deducting the amount of the uncollected tax from home market price. This approach, which the Department characterizes as "the best information available," disregards the express, final ruling of the Zenith case that the adjustment be made to United States price, and misuses the statutory provisions for "best information available."

Department's Position: As directed by the CIT in *Zenith*, we are now attempting to formulate a methodology for calculating the amount of indirect taxes passed through in the home market, which should then be added to United States price. Because the remand in the Japanese case and the current court case concerning the first adminstrative review of the Korean color television order are still before the CIT, we have assumed full passthrough of indirect taxes in this review, for the reasons stated in our final determination of sales at less than fair value on Grand and Upright Pianos from Korea, (50 FR 37561 (1985)), and have subtracted the full amount of these taxes from foreign market value.

Comment 3: Zenith and petitioners contend that the preliminary margins for Shirasuna and Capetronic should be deemed significant and that cash deposits should be collected if the preliminary margins are the final margins. The Department must explain, on a case-by-case basis, why a particular margin is deemed to be *de minimis* in the circumstances presented.

Department's Position: In *Carlisle Tire and Rubber Co.* v. *United States*,——C.I.T.——, Slip Op. 86–45 (April 29, 1986), the Court of International Trade held that the Department must either promulgate a rule in accordance with the Administrative Procedure Act establishing 0.5 percent as the *de minimis* standard for its determinations, or must explain the basis for each individual determination in which it decides that a weighted-average dumping margin below 0.5 percent is *de minimis*. The Department has elected the first of the two options given it by the Court, and has promulgated a proposed rule establishing 0.5 percent as the *de minimis* standard for all antidumping and countervailing duty determinations. 51 FR 35495–35531 (October 6, 1986). In accordance with this proposed rule, we have not required a cash deposit for Capetronic.

After correction of an error, as noted by petitioners in Comment 34, we have revised Shirasuna's cash deposit rate because it is no longer *de minimis*.

Comment 4: The petitioners urge that foreign market value for Shirasuna should be constructed value and not third country sales prices. Shirasuna's sales to Canada are not adequately voluminous to serve as the source of a fair foreign market value for this administrative review. Petitioners also urge that Shirasuna deliberately sought to create a fictitious market in Canada within the meaning of the antidumping statute.

Zenith urges the Department to evaluate the adequacy of Shin-Shirasuna and Capetronic's sales to third-countries and to recalculate the weighted-average margins relying upon constructed value as the basis for foreign market value. The same market viability guideline of 5.0 percent applied to home market sales expressed as a percentage of world-wide sales, should also be applied to the third country sales expressed as a percentage of world-wide sales. Although a preference for price-based FMV, calculated on the basis of third country sales when necessary, is evident in the law, constructed value may be used *notwithstanding* the existence of sales to third countries.

Department's Position: We disagree. In the case of Shirasuna, we evaluated the Canadian sales and found them not to be at less than the cost of producing the merchandise. We found that Shirasuna's sales to Canada and Capetronic's sales to Brazil were adequate for comparison purposes. The sales of such or similar merchandise to both markets would have been large enough for use in a home market comparison situation, according to the test set out in § 353.4 of our regulations. Therefore, we can reasonably conclude that these third-country sales are viable for use in our analysis, because of the statute's preference for foreign market value based on sales to a third country rather than constructed value. In the case of Shirasuna, we believe that our determination that the Canadian market is viable refutes petitioners' claim that this market is fictitious.

Comment 5: The petitioners argue that the Department erred in not adjusting downward the average home market accounts receivable to account for the time lag between the respondent's receipt of payment from customers and payment of taxes to the Taiwanese government.

Department's Position: We disagree. Because Taiwanese manufacturers generally pay taxes to the government within several days of withdrawal of the merchandise from the warehouse, we have determined that no adjustment is necessary. We verified this payment procedure for both Tatung and AOC International.

Comment 6: The petitioners urge the Department to offset the average duration of accounts receivable by the average duration of accounts payable to ascertain the true working capital needs in calculating home market imputed credit adjustments.

Department's Position: We disagree. Section 773(a)(4)(B) of the Tariff Act permits only adjustments to account for differences in the circumstances surrounding the sale of the merchandise. The petitioners' argument would require us to adjust for factors relating to cost of production, which are unrelated to the *sales* at issue. We are satisfied that the imputed method based on the average balance of accounts receivable accurately reflects the credit costs respondents incurred on sales of the merchandise.

Comment 7: The petitioners fear that the Department may have incorrectly included in its duty drawback adjustments import duties attributable to materials not physically remaining in the color television receivers exported to the United States, but rather malfunctioned, broken, wasted, or otherwise consumed in the production of that merchandise. Since materials consumed in the production process are not exported, any rebates attributable to those consumed materials are not by reason of exportation, and thus are not allowable under section 772(d)(1)(B) of the Act.

Department's Position: When a Taiwanese manufacturer maintains a government-regulated duty-bonded factory, it can apply for an exemption of customs duties only on imported parts which are in fact incorporated in exported merchandise. Since materials that are consumed in the factory are never exported, no duty drawback is ever received for them. Both AOC and Tatung had duty-bonded factories. Our verification of AOC International and Tatung demonstrated this correspondence between the applications for exemption of duties for imported parts and the subsequent exploration of the finished product. We do not apply the countervailing duty standard of "physical incorporation" in analyzing duty drawback in antidumping proceedings. (See *Stainless Steel Cooking Ware from Taiwan and Korea*).

Comment 8: The petitioners argue that the Department incorrectly allowed AOC's home market advertising claims as indirect and direct for the periods January 1985 through March 1985, and December 1983 through December 1984, respectively. AOC should not be permitted to allocate its claimed home market advertising expenses over net, rather than gross, sales. The Department also incorrectly allowed all of AOC's United States advertising as indirect expenses. AOC's classification of its United States advertising expenses as directed at the trade rather than at end-users was defective, since it was based on advertisements in trade magazines that are read by the general public. Further, AOC failed to report any advertising expenses for the period January 1985 through March 1985.

Department's Position: The home market advertising expenses chosen for verification met our criteria for a direct circumstance of sale adjustment for the

period December 1983 through December 1984, because all of the television advertisements during this period were generic (*i.e.*, non-model-specific) and, therefore, were directly related to sales of color televisions. In our preliminary determination, we disallowed as a direct expense AOC's advertising expenses for the period January 1985 through March 1985 because they were inappropriately allocated. AOC has reallocated these expenses, and we are satisfied that this adjustment accurately reflects the amounts we verified. This reallocation was necessary because advertising expenses should be absorbed by the value of sets actually sold which is best represented by net sales.

With regard to AOC's United States advertising expenses, incidental readership of trade publications by members of the general public does not change the characterization of the expense. Because information for the period January 1985 through March 1985 was not available at the time of preparation of the response, we used the previous year's expenses as the best information available to estimate AOC's advertising experience for this period.

Comment 9: The petitioners assert that the Department should have calculated a weighted-average short-term interest rate for AOC's home market credit expense based on the period of review. The Department should not have included notes receivable in AOC's calculation of turnover rate. In addition, AOC's accounts receivable and notes receivable during the period January 1985 through March 1985 should be excluded from the Department's home market credit calculation. The petitioners also urge the Department to impute a credit expense for the period between the time of export and the time of invoice and add this expense to the United States credit expense claimed by AOC for its purchase price sales.

Department's Position: Because of the 18 month review period, we believe that respective fiscal year interest rates more accurately reflect a company's credit expense experience than use of a weighted-average over the entire review period. For the period January 1985 through March 1985, we have changed our calculation and used AOC's short-term interest rate as the best information available. During our verification of AOC, we encountered no evidence that notes receivable should not be included in AOC's credit calculation for the period December 1983 through December 1984. However, we agree with the petitioners that AOC's accounts receivable and notes receivable should be excluded from the home market credit calculation for the period January 1985 through March 1985 because AOC's selling agent was solely responsible for sales of color televisions during this period. During this period, only AOC's selling agent's credit costs should be reflected in the calculation. We also agree with the petitioners' statement that the Department should impute a credit expense for AOC's purchase price sales for the period between the export of the merchandise from Taiwan and subsequent invoicing by AOC U.S.A.

Comment 10: The petitioners assert that AOC incorrectly included in its home market indirect selling expense claim all of the indirect selling expenses of its CTV Export Division and all of its headquarter's expenses. Further, the Department should deny AOC's indirect selling expense claim in the home market for the period January 1985 through March 1985 because AOC's selling agent failed to report these expenses for this period, and because only expenses incurred by the selling agent are legitimate selling expenses warranting an adjustment. In addition, all of AOC's indirect selling expenses incurred prior to December 1983 should be allocated to exports, since AOC only began selling television receivers in the home market in December 1983. Finally, the Department should use best information available to adjust for AOC's United States indirect selling expenses for the period January 1985 through March 1985 because AOC failed to report these expenses.

Department's Position: At verification, we established that export division expenses for sales to the United States were correctly included in AOC's U.S. indirect selling expense claim. Petitioners are mistaken in their interpretation of the response. AOC's indirect selling expenses, prior to December 1983, when it began sales in the home market, should be allocated to all exported color televisions and not only to sales to the United States. As the best information available, we used AOC's United States indirect selling expenses for 1984 for the period January 1985 through March 1985. We used AOC's home market indirect selling expenses experience as the best information available to estimate its selling agents' experience for the period January 1985 through March 1985.

Comment 11: The petitioners point out that the Department should continue to follow its policy and reject AOC's home market warranty expense claim for servicemen's salaries and benefits as a direct expense. Commerce has held in many cases that these expenses should be treated as indirect selling expenses, since these salaries would have been paid regardless of the sales under consideration. See *e.g., Study of Antidumping Adjustment Methology* 45–46 (1986). The Department should also deny AOC's home market warranty claim for the period January 1985 through March 1985 because AOC's selling agent failed to submit its own warranty expense data for this period. The petitioners, therefore, urge the Department to assume that AOC's United States warranty expenses were equal to home market expenses and use this data as the best information available. Finally, the Department failed to make an adjustment for warranty expenses associated with purchase price sales transactions during the period January 1985 through March 1985.

Department's Position: We agree with the petitioners and have treated AOC's home market warranty expense claim for salaries and benefits as an indirect expense. However, the petitioners are mistaken in their interpretation of AOC's warranty claim for the period January 1985 through March 1985. Beginning in June 1984, AOC began to use outside service shops as repair shops as well as their own technicians. During the period January 1985 through March 1985, AOC's selling agent continued this practice. We verified actual repair information for this period. We have also excluded AOC's selling agent's salaries and benefits from our direct warranty adjustment.

We believe that monthly warranty expense data best reflect a company's experience and have accepted AOC's United States warranty claim for the period of review.

We agree with petitioners concerning a warranty expense adjustment for purchase price sales during the period January 1985 through March 1985 and have corrected the error.

Comment 12: The petitioners and Zenith request that the Department correct a mathematical error in its calculation of AOC's royalty expenses associated with United States exporter's sales price transactions.

Department's Position: We agree and have corrected the error.

Comment 13: The petitioners urge the Department to calculate AOC's foreign market value on the basis of all home market sales, including those to employees, related affiliates, hotels, and institutions. Petitioners argue that the sales appear to have been made at arm's length, and AOC has not substantiated its claim that these sales were made outside the ordinary course of trade.

Department's Position: We disagree. Because sales to employees, related affiliates, hotels, and institutions are not at the same commercial level of trade as dealer sales, we did not consider these sales in our analysis of foreign market value. (See § 353.19 of the Commerce Department regulations.) Therefore, it was unnecessary to consider whether it would have been appropriate to disregard these related party transactions under § 353.22 of our regulations, or to determine whether they were made in the ordinary course of trade.

Comment 14: The petitioners urge the Department to allocate all of AOC's cost variances to the color television division as best information available in its contructed value calculations. AOC allocated its variances across all products based on standard costs. Petitioners believe this methodology fails to include all costs actually incurred in the production of color television receivers. The Department also erred by not allocating a portion of AOC's shut-down and special bonus labor costs incurred in December 1985 to labor costs during the period January 1985 through March 1985. In addition, the Department should consider only the general expenses and profit on sales of the class or kind of merchandise incurred during the administrative review period October 19, 1983 through March 31, 1985 in its constructed value calculations.

Department's Position: Since AOC does not maintain variances on a product line basis, we cannot determine if they change according to division. We have, therefore, accepted AOC's allocation across all products as the best information available. We agree with the petitioners concerning shut-down and special bonus labor costs and have used AOC's experience in 1984 as the best information available. We have allocated the percentage of these costs from 1984 to labor costs during the period January 1985 through March 1985. At verification, AOC demonstrated its general expense calculation for constructed value purposes. We are satisfied that AOC attributed its general expenses to the class of kind of merchandise subject to review. Because general expenses and profit were below 10 and 8 percent, respectively, we used the statutory minimums in our constructed value calculations.

Comment 15: The petitioners state that the Department correctly compared rotary models sold by AOC in the United States with rotary models sold by AOC in the home market. They urge the Department to continue these comparisons in its final analysis. In addition, however, the petitioners request the Department to calculate a single weighted-average foreign market value for the 13-inch and 19-inch home rotary models, respectively, being used for comparison purposes, since AOC sold a very small quantity of rotary models in the home market during the review period.

Department's Position: We have continued to use the rotary-to-rotary comparisons in our final analysis because we found the home market to be viable. We see no reason to use a weighted-average foreign market value in this situation.

Comment 16: The petitioners argue that the Department should not accept Sampo's calculation of one weighted-average price over the entire review period for home market model K–1422ST.

Department's Position: We agree. We have used monthly prices in our analysis. To the extent that sales of home market model K–1442 were contemporaneous with United States sales, we showed a preference for this model over the K–1422ST.

Comment 17: The petitioners urge the Department to reject the data submitted by Sampo on November 13, 1986 regarding adjustments to the home market price of model K–1422ST as being untimely.

Department's Position: We disagree. Because there was a lack of data for this model, we requested this information. Therefore, we do not consider it untimely and have used the data in our analysis.

Comment 18: The petitioners believe that Sampo's physical difference in merchandise claims are suspect and should be carefully reviewed by the Department.

Department's Position: We have reviewed Sampo's claims and consider them to be reasonable.

After further consideration of the distortive effects of excluding duty from part's prices in an adjustment to foreign market value for physical differences in merchandise, we conclude that duty-paid parts prices do reflect the actual purchase price paid by the manufacturer. We have, therefore, followed the methodology in *Bicycle Tubes and Tires from Taiwan*, and whenever possible, using the information respondents have provided in their responses or at verification, we have added duties back into the physical difference claims.

Comment 19: The petitioners urge the Department to continue to reject Sampo's claimed circumstance-of-sale adjustment for bad debt losses incurred in its home market. Sampo's November 13, 1986 revised submission was untimely.

Sampo argues that its original bad debt adjustment should be used in the final determination as a circumstance-of-sale. adjustment. Bad debt losses calculated by Samp constitute expenses that accurately reflect its historical experience with bad debt and bear a direct relationship to the sales under consideration.

Department's Position: Bad dedt is by its nature an indirect selling expense since, under generally accepted accounting principles, bad debt is recovered over time by future price increases. We have treated this claim as an indirect selling expense. See our recent final determination of sales at less than fair value concerning *Mirrors in Stock and Lehr End Sizes from the United Kingdom.*

Comment 20: The petitioners argue that the Department incorrectly allowed Sampo's home market after-sale warehousing claim.

Department's Position: We disagree. We have accepted Sampo's average monthly after-sale warehousing costs on a model-specific basis as the most accurate estimate of actual costs during the review period.

Comment 21: The petitioners state that the Department errred in allowing Sampo's claim for a "red package" discount on home market sales. The Department should follow its precedent set forth in the fair value investigation and deny this claim.

Department's Position: We disagree. In the fair value investigation, we disallowed this claim because Sampo could only substantiate it based on sales of all products rather than solely on color televisions. Sampo's calculations in the current review are based on actual payments for sales of color television to dealers who met the eligibility requirements for the program.

Comment 22: The petitioners argue that the Department erred in allowing Sampo's home market warranty expenses because they include salesmens' or technicians' salaries. These salaries are indirect selling expenses.

Department's Position: We agree and have disallowed the servicing labor cost portion of Sampo's warranty expense claim as a direct expense, since salaries are an indirect expense which cannot be attributed to specific sales.

Comment 23: The petitioners contend that unless Fulet's home market basket category of "accommodation sales" can be broken down into distinct categories

similar to the categories established for Fulet's United States "accommodation sales," the Department should reject use of Fulet's home market "accommodation sales" in its final analysis and base foreign market value solely on sales to home market retailers. The so-called "accommodation sales" include sales to employees, sample sales, promotional sales, and gifts.

Department's Position: Although Fulet's "accommodation sales" category does include sales to various categories of customers, we believe that use of these sales resulted in the closest possible concordance between levels of trade in both markets.

Comment 24: The petitioners and Zenith note that the Department apparently inadvertently excluded 30 United States transactions from its analysis.

Department's Position: We agree and have corrected the error.

Comment 25: The petitioners argue that the Department erred by allowing Fulet's full home market warranty expense claim. Fulet's claim consisted primarily of company-employed technicians' salaries and benefits, which the Department has traditionally disallowed as warranty expenses. Further, parts and other warranty expenses claimed were not model-specific but allocated by service job percentages. Since the Department only allows model-specific warranty claims and generally disallows allocations, Fulet's warranty expense claim should be disallowed.

Department's Position: We agree, as stated above at Comment 11, that technicians' salaries and benefits are indirect expenses. We have reduced Fulets's warranty claim by these amounts. Parts costs were provided by model by month and we have accepted this portion of the claim.

Comment 26: The petitioners argue that the Department erred in allowing Fulet's overstated direct credit adjustment to foreign market value.

Department's Position: We disagree. Based on our methodology noted at Comment 9 above, we have included both notes receivables and accounts receivables in Fulet's credit calculation. Because Fulet was unable to provide a specific turnover ratio for color televisions, we have used its calculation based on all home market sales as the best measurement of its experience.

Comment 27: The petitioners argue that the Department should deny Fulet's direct home market advertising claim because it is severely overstated, is not presented in an actual model-specific manner as required and is not allocated according to the Department's accepted methodologies.

Department's Position: We disagree. The petitioners have misinterpreted Fulet's response. Based on information submitted during the course of this review, we are satisfied that Fulet's advertising expense claim was allocated according to the Department's accepted methodology and actual, model-specific information.

Comment 28: The petitioners argue that the Department incorrectly compared Nettek's United States sales with sales to Panama, which they allege were below the cost of production. The Department should use constructed value as its comparison.

Department's Position: The petitioners' allegation that Nettek was selling to Panama at less than cost was received 10 days prior to the due date of these final results. Because of the short time period between the submission of comments and the completion of this review within our administrative time limit, we were unable to analyze whether Nettek had sales below cost during the review period. The petitioners had sufficient information prior to the preliminary determination concerning Nettek's sales to allow the filing of a timely allegation of sales at less than the cost of production.

Comment 29: The petitioners state that the Department correctly denied Tatung's home market warranty expense claim on the ground that Tatung has failed to calculate warranty expenses on a model-by-model basis. The Department should continue to deny this claim despite the revised submission received after publication of the preliminary results.

Department's Position: We disagree. We requested the model-specific data and its satisfies our criteria. Therefore, we have accepted Tatung's revised warranty expense claim. Tatung demonstrated at verification that the commissions portion of its claim was directly related to sales.

Comment 30: The petitioners contend that if the Department considers allowing any of Tatung's home market warranty expenses as direct expenses, fairness and equity demand that the Department also consider Tatung's warranty expenses in the United States as direct expenses. A respondent should not be permitted to submit partial, selective information which, if accepted by the Department, would tend to mask dumping margins.

Department's Position: We disagree. Because Tatung could not break out its U.S. warranty claim on a model-specific basis, we have continued to treat these expenses as indirect selling expenses.

Comment 31: The petitioners argue that the Department erroneously reduced foreign market value by the amounts claimed by Tatung for discounts and rebates paid on trade-ins of merchandise. As the Department decided in the final results of review on drycleaning machinery from West Germany, (50 FR 32154 August 8, 1985), such reductions simply represent the value of the traded-in merchandise to the company.

Department's Position: We agree and have reduced the claim to exclude this portion for trade-ins of merchandise.

Comment 32: The petitioners argue that the Department should deny Tatung's home market post-sale warehousing claim. The warehousing was not apparently undertaken as a contractual obligation, but merely to position the merchandise for immediate delivery into the home market.

Department's Position: We disagree. At verification, we reviewed documents pertaining to actual color television after-sale warehousing costs. We are satisfied that these after-sale costs are directly related to sales during the review period.

Comment 33: The petitioners argue that the Department should reject Tatung's home market inland freight claim, which is purportedly based on the transportation of color television from the head office warehouse to regional warehouses. The verification report does not substantiate Tatung's claim that these expenses are tied to actual purchases of the merchandise under review.

Department's Position: The petitioners have misunderstood our treatment of Tatung's inland freight claim. We consider transportation of merchandise from the head office warehouse to regional warehouses to be a general expense, since the regional warehouses are used for general storage as well as distribution. For this reason, expenses incurred in moving television receivers to the regional warehouses cannot be either directly or indirectly related to sales of the merchandise. We did not include this portion of inland freight in our preliminary analysis and have continued this methodology in our final determination.

Comment 34: The petitioners argue that the Department erroneously used Shirasuna-Japan's purchase price and not Shirasuna-Taiwan's actual expense in calculating material costs. The Department incorrectly averaged production costs in performing its cost of production and constructed value analysis. In addition, petitioners believe that Shirasuna grossly understated its

Taiwanese and Japanese GS&A expenses by allocating corporate GS&A expenses to color televisions on the basis of shipment value and by not including a reasonable allocation of freight, export, and interest expenses, respectively. Information available to petitioners indicates that the Department may have failed to take into account significant start-up production costs incurred by Shirsuna in Taiwan.

Department's Position: We agree with petitioners that we incorrectly used Shirasuna-Japan's purchase price for certain parts costs. We have increased the cost of these parts by the appropriate percentage mark-up. We disagree that we incorrectly averaged production costs, however. We believe that the correct way to compare material costs to selling price is by averaging these costs over the period of review. Taiwanese GS&A should be allocated on the basis of cost of goods sold rather than shipment value. However, because actual GS&A, including this adjustment, is below 10 percent, we used the statutory minimum. We are satisfied through our verification that the Japanese GS&A portion does include a reasonable allocation of the cited expenses. We also found no evidence of costs not included in the response.

Comment 35: The petitioners assert that the Department erred in accepting Shirasuna's credit expense claim on sales to Canada. The Department should reject Shirasuna's actual claim in favor of imputed credit adjustments.

Department's Position: We disagree. We prefer actual expenses to an imputed calculation and have continued to use Shirasuna's credit claim on sales to Canada.

Comment 36: The petitioners contend that the Department inadvertently allocated Shirasuna's per-unit bank charge amount to two specific sales based on the number of units involved in each transaction. Each sale was subject to the bank charge. In addition, the Department's calculation of a weighted-average foreign market value was incorrect.

Department's Position: We agree and have corrected both calculation errors.

Comment 37: Zenith argues that the Department has made duty drawback adjustments for AOC, Fulet and Sampo for the amount of import duties included in home market model costs, not for the amount of duties forgiven on export models.

Department's Position: For Fulet, we applied the amount of duties paid on the home market models to the United States merchandise because the comparison models were virtually identical. AOC calculated the import duties actually paid on home market sets and applied these amounts to the export models. Although we agree with Zenith's argument, we do not possess the data to recalculate these adjustments. We believe that these amounts provide the best estimate of duties forgiven on export models and have used them in our analyses as the best information available. For the second administrative review, we will solicit the appropriate information for use in our analysis.

Sampo properly calculated a customs duty rate for the U.S. models and applied this rate to materials used to determine the amount of duty forgiven upon export of the merchandise.

Comment 38: Zenith argues that the Department is not within its authority to make circumstance-of-sale adjustments to constructed value. The Department should delete all adjustments from its constructed value calculations. Zenith also points to the use of constructed value for one comparison for Sampo and states that the Department's circumstance-of-sale adjustment removes an amount in excess of such expenses that were included in the constructed value.

Department's Position: We disagree. Section 773(a)(4)(B) of the Act provides that where it is established that the amount of any difference between United States price and foreign market value is due to differences in circumstances of sale, "due allowance shall be made." Section 773(a) of the Act does not distinguish constructed value from any other method of determining foreign market value. Thus, circumstance-of-sale adjustments are required where constructed value is used as the basis for foreign market value, just as they are required where home market or third-country prices are used. *See* the final results of review on certain electric motors from Japan, (48 FR 14719, April 5, 1983), (49 FR 32827, August 15, 1984).

Circumstance-of-sale adjustments are necessary in constructed value cases because while general and administrative expense allocations will be the same in any market, selling expense allocations will differ by market. These circumstance-of-sale adjustments became necessary when the Department began using home market selling expenses instead of U.S. selling expenses in its constructed value calculations. *See* the final determination of sales at less than fair value on cellular mobile telephones and subassemblies from Japan, 50 FR 45447, October 31, 1985).

Accordingly, because the offset provision applies to foreign market value, and since cosntructed value is a form of foreign market value, we have allowed the claimed adjustment up to the amount of the indirect selling expenses applicable to sales in the United States. We have corrected our inadvertent error, however, and have adjusted downward the amount of indirect selling expenses removed from Sampo's constructed value calculation.

Comment 39: Zenith argues that antidumping-related legal expenses are selling expenses. The Department should correct its exporter's sales price calculations by deducting the amount of these expenses which respondents paid during the period of review.

Department's Position: We disagree. It is our practice as stated in our *Study of Antidumping Adjustments Methodology and Recommendations for Statutory Change* not to consider legal fees paid in connection with litigation resulting from an earlier antidumping investigation to be an expense related to sales made in the period of review. We view legal fees incurred at the administrative stage of an antidumping proceeding as meriting similar treatment since they are incurred in defending against an allegation of dumping. As such, they are not expenses incurred in selling merchandise in the United States. Further, to deduct antidumping legal fees as selling expenses would effectively discriminate against those respondents who seek legal counsel in proceedings before the Import Administration.

Comment 40: Zenith argues that the Department should reduce the ESP offset for AOC and Tatung by the amount of expenses associated with obtaining credit and selling on credit, and increase the ESP deduction by the same amount. For Fulet and Sampo, the Department should quantify and remove from ESP these general and administrative credit expenses and all other expenses incurred in Taiwan on ESP sales. Additionally, the Department should ensure that for all four companies none of the expenses deducted from ESP were also included in the offset to foreign market value. Zenith urges the Department to ensure that all expenses incurred in Taiwan on ESP sales are removed from RCA's ESP sales.

Department's Position: The record is not clear as to whether the above expenses are included in United States indirect selling expenses or home market indirect selling expenses. Zenith did not raise this issue in time for the Department to collect the necessary information in order to determine the

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appropriate adjustments. Since we do not have the information to establish what these expenses might be, we cannot make the recommended adjustments.

Comment 41: Zenith notes an input error in Tatung's revised comptuer printout for the preliminary determination.

Department's Position: We agree and have corrected the error.

Comment 42: Zenith urges the Department to recalculate certain of Fulet's ESP sales to account for missing movement expenses.

Department's Position: Since no suspension of liquidation occurred on these entries, we have disregarded these ESP sales in our analysis of Fulet.

Comment 43: Zenith points out a calculation error related to certain of Capetronic's production costs and urges the Department to incorporate this correction in its final results.

Department's Position: We agree and have made the correction.

Comment 44: Zenith argues that the Department should not consider RCA's submission of November 14, 1986 in its final results. RCA's submission is untimely and in no way cures the earlier failure to submit data on the sales under review.

Deportment's Position: We agree. The information submitted by RCA is not germane to the review period, is based on estimates and was submitted too late to be considered in this review. RCA originally failed to respond to the Department's questionnaire regarding sales to related customers. We have continued to use the best information available, the highest rate of responding firms, in our final results.

Comment 45: Capetronic notes an error in the calculation of material and fabrication costs for model EC1OR.

Department's Position: We agree and have corrected the error.

Comment 46: Capetronic requests that the credit cost adjustment for certain sales of model PC5 be corrected. During the verification, Capetronic believed that the Department had requested credit cost information with respect to only one U.S. sale of model PC5.

Department's Position: We agree. Capetronic has submitted the correct credit cost adjustments for the additional U.S. sales of model PC5, based on the methodology we reviewed at verification. We have accepted these data and have made the appropriate corrections to the calculations.

Comment 47: RCA submits that the Department should deduct from the constructed value for each such or similar category of merchandise an amount equal to the indirect selling expenses reported by RCA for sales of the same merchandise during the period. The indirect selling expenses should be deducted from the constructed value, up to the amount of indirect selling expenses incurred on U.S. sales or an industry average.

Department's Position: We disagree. For RCA, we used the statutory minimum of general expenses according to section 773(e)(B)(1) of the Act because there were no sales in the home market. If there was selling experience in the home market, we would build indirect selling expenses into the constructed value and then adjust for them according to § 353.15 of the regulations. However, because RCA made no sales in the home market, we did not build indirect expenses into this amount and therefore cannot make the requested adjustment.

Comment 48: RCA submits that the foreign market value should be adjusted for differences in circumstances of sale between the U.S. and home market, by deducting from foreign market value the direct selling expenses reported on U.S. sales or the Taiwan industry average direct selling expenses incurred on sales of such or similar merchandise in the home market.

Department's Position: We disagree. See our response to Comment 47. Direct expenses were not built into the constructed value calculation. We used the statutory minimum of 10 percent for general expenses.

Comment 49: Shin-Shirasuna requests the Department to rule that its combination unit is excluded from the scope of the proceeding and to recalculate Shirasuna's weighted-average margin based upon sales other than those of model EEE. If the Department does not exclude Model EEE from the scope of this proceeding, Shirasuna requests that the Department calculate and state a separate rate for the combination unit.

Department's Position: On November 7, 1985, the Department received a scope exclusion request from Shirasuna for model EEE, a six inch portable color television with radio. To determine whether this model was within the scope of the antidumping order, we reviewed the descriptions of the merchandise in the petition, the ITC determination, and the antidumping duty order. Combination units such as this were neither specifically included in nor excluded from these prior scope descriptions. Because these prior scope descriptions are ambiguous as to whether a unit consisting of several items, including a television, is covered by the order, we used the four criteria set forth in *Diversified Products Corp. v. United States*, 6 C.I.T. 155 (1983) in making our determination. These are the physical characteristics of the merchandise, the uses for which the merchandise is imported, the expectations of the ultimate purchasers, and the channels of trade in which the merchandise moves.

The physical characteristics of this model point to the prominence of the television function. The cost of the television portion represents at least 75 percent of the total cost of the unit. We consider that the consumer purchases the unit primarily for the television function, since the majority of the cost of the unit is attributable to the production of the television receiver. Other features are incidental and used secondarily to the television receiver. This unit moves through the same channels of trade as conventional color televisions, and is imported for use as a color television, for receiving a broadcast signal and reproducing it in video and audio form. The fact that this unit is in combination with another feature does not alter this primary function.

We have determined that, based on the above considerations, this unit is covered by this antidumping duty order on color television receivers. Accordingly, models AVC13, TC7, and PC5, imported by Emerson Radio Corporation are also included in the scope of this order.

With regard to Shirasuna's request that we state a separate rate for the unit, the Department does not generally calculate separate rates for subcategories of the class or kind of merchandise covered by an order.

Comment 50: Shin-Shirasuna asserts that regardless of whether the Department calculates a separate rate for Shirasuna's combination unit, model CCC is such or similar to model EEE, assuming the Department fails to exclude model EEE from the scope of the proceeding.

Department's Position: We agree and have continued to use this comparison in our final determination.

Comment 51: Shin-Shirasuna argues that the Department should calculate the foreign market value of the January 12, 1984 sale of model EEE based upon the price of Model CCC sold to Canada on April 18, 1984. Application of a reasonably expanded version of the 90–45 day rule would permit a price-to-price comparison, a preferable result under the legislative history of the statute.

Department's Position: We disagree. Section 773(a)(1) of the Act provides that foreign market value is the price at the "time such merchandise is first sold within the United States." When there are no home market sales made in the same month as the U.S. sale, we try to find home market sales made as close in time to the U.S. sales as possible. A contemporaneity rule has arisen from this endeavor in which we use a home market sale up to 90 days prior and 60 days after the date of the U.S. sale. When there are instances in which no home market sales of the comparison model are made in the same month as the U.S. sale, we then use this contemporaneity rule to choose a weighted-average foreign market value to compare with that U.S. sale. We believe this approach is reasonable and applicable to use in this third-country analysis. In this case, we have applied the 90-60 day rule and the referenced sale falls outside this time period.

Comment 52: AOC, Fulet, Sampo, and Tatung argue that the Department may not legally impute an interest "cost" in ESP transactions for the time merchandise remains in the importer's warehouse. The opportunity cost of holding inventory is not reported in either the importers' or the parent companies' books, is not required by accounting principles of Taiwan or the United States warehouse, and is a cost of manufacture rather than a "selling expense."

Department's Position: We disagree. We have determined that we should impute an interest expense for the period between date of shipment from Taiwan and date of sale in the United States because the opportunity cost of holding inventory is a "real" expense which the companies cannot isolate from their pool of interest expenses.

Comment 53: AOC, Fulet, Sampo, and Tatung argue that the Department may not legally assess antidumping duties at a rate higher than that set forth in its preliminary determination in the original fair value investigation, for any entry made before the date of publication of the International Trade Commission's (ITC's) final injury determination. In the case of Sampo, the maximum applicable to entries before the publication of the International Trade Commission's final determination is 0.64 percent. The Department never published the amended preliminary bonding rate of 11.34 percent in the Federal Register and therefore the change is without legal effect.

Department's Position: We disagree. While the Department has authority to assess duties on entries made between the Department's final determination and the date of publication of the ITC's final determination at a rate equal to the rate established in the final determination which may be a rate higher than the rate established in the preliminary less-than-fair-value determination, the Department does not have authority to assess duties in excess of the Department, preliminary determination for entries baetween the date of the Department's preliminary and final affirmative determinations. This practice is based on a reasonable interpretation of section 737(a) of the Act in light of the statutory scheme for a final antidumping determination which quantifies the degree of a respondent's price discrimination more accurately than the preliminary determination. See also § 353.23 of the proposed antidumping regulations, (51 FR 29046, 29065 August 13, 1986).

Section 737(a) was enacted to implement Article 11(1) of the GATT Antidumping Code, which prohibits collection of the diifference between *any security posted during the investigation* and the antidumping duty finally assessed if the latter exceeds the former.

See Report of the Committee on Finance, United States Senate, on H.R. 4537, S. Rep. No. 96–249, 96th Cong., 1st Sess. 77 (1979), Report of the Committee on Ways and Means, House of Representatives, to Accompany H.R 4537, H.R. Rep. No. 96–317, 96th Cong., 1st Sess. 70 (1979). In investigations such as the one at hand , where an order is issued after affirmative preliminary and final determinations by both the Department and the ITC, estimated duties are collected under section 733(d)(2) of the act at rates established at two different stages in the investigation. Initially, liquidation is suspended and estimated duties collected or bonds posted at the rate established in the Department's preliminary determination. However, because the dumping margin established in the final determination is based on verified information afte all the parties have had an opportunity to comment, it is a better estimate of the degree of price discrimination than the preliminary deposit rate, which was based only on the best information available to the Department at that time. Accordingly, once the final determination is published, estimated duties are collected or bonds are posted until the order is issued at the final, rather than preliminary rate.

Thus, for purposes of determining the cap rates—i.e., the maximum rate at which duties can be assessed on entries entered up to the date of the ITC's final determination—we are governed by section 737(a), which precludes the ultimate assessment of duties on those entries at rates higher than "a cash deposit collected as security for an estimated antidumping duty under Section 733(d)(2)." Nothing in this provision limits its application to the deposit rate established in the preliminary determination, as respondents argue. Rather, where read in light of its legislative history and the statutory scheme for preliminary and final determinations, section 737(a) clearly allows for two cap rates in cases where the department's preliminary and final determinations were affirmative.

Accordingly, we will issue instructions to Customs to assess duties on entries entered prior to the date of the ITC's final determination consistent with the above-described practice.

Comment 54: AOC urges the Department to classify its adverstisements as direct advertising applicable to all home market color televisons. It is unreasonable to rule that certain advertisements are product-specific, when the overwhelming thrust of the ad applies to all AOC televisions.

Department's Position: We disagree. Model-specific advertising which identifies a comparison model must be applied as a direct expense solely to sales of that model.

Comment 55: Sampo argues that the Department should use weighted-average prices of the K–1422ST for the whole review period because monthly prices were not representative of foreign market value.

Department's Position: We disagree. See our response to Comment 16.

Comment 56: Sampo argues that the Department should use the adjustments for the 1422ST that are being reported, rather than best information available.

Department's Position: We agree. See our response to Comment 17.

Comment 57: Sampo notes that the Department incorrectly calculated the difference-in-merchandise adjustments.

Department's Position: We agree and have corrected the computational errors. See our response to Comment 18 for the Department's revised treatment of differences in the physical characteristics of the merchandise.

Comment 58: AOC urges the Department to use the revised inland freight figures it has provided.

Department's Position: We disagree. In our preliminary determination, we calculated AOC's inland freight claim according to the allocation methodology used by AOC in its questionnaire response. We consider these figures to be calculated more accurately than those revised by respondent.

Comment 59: AOC claims that the Department incorrectly calculated constructed value for those of its models that had no comparable home market sales. The Department's calculation

improperly double-counts a portion of home market indirect selling expenses. The department failed to deduct the appropriate percentage of indirect selling expenses from constructed value for the 1984–1985 period.

Department's Position: We deducted corporate indirect selling expenses from general expenses and included color televisions-specific indirect selling expenses. Because the color television indirect expenses were based on sales value, we adjusted them by the ratio of cost of manufacture to sales revenue for the entire corporation.

Comment 60: Tatung argues that the Department should revise the calculation of general expenses for constructed value. The percentage for general expenses used in the preliminary determination included expenses for sales of products other than color televisions and for sales other than those in the usual wholesale quantities. General expenses should reflect expenses borne by home market dealer sales of color televisions, because these are the sales of the class or kind of merchandise under review, in the usual wholesale quantities.

The Department should include Tatung's claim for home market warranty expenses in the circumstance-of-sale adjustments to constructed value.

Department's Position: We agree with Tatung's argument for including general expenses related to dealer sales of color televisions in our constructed value calculations. However, Tatung's methodology of allocating total home market selling expenses by the ratio of color television dealer sales to total home market sales is flawed. The resulting figure is not an accurate representation of Tatung's selling expenses for the color television division. Therefore, we have continued to use the methodology we adopted in our preliminary determination. Because we have allowed Tatung's warranty expense as a direct expense (see Comment 29), we have included it in our constructed value calculations.

Final Results of the Review

As a result of the comments received, we have revised our preliminary results for AOC, Capetronic, Fulet, RCA, Sampo, Shin-Shirasuna, and Tatung, and we determined that the following weighted-average margins exist:

Manufacturer/exporter	Time period	Margin (pct)
AOC International, Inc	10/19/83–3/31/85	1.38
Capetronic (BSR) Ltd	10/19/83–3/31/85	.46
Fulet Electronic Industrial Co., Ltd	10/19/83–3/31/85	2.09
Nettek corp., Ltd	10/19/83–3/31/85	
RCA Taiwan, Ltd	10/19/83–3/31/85	5.24
Sampo Corp	04/01/84–3/31/85	10.14
Shinlee Corp	10/19/83–3/31/85	10.14
Shin-Shirasuna Electric Co	10/19/83–3/31/85	.56
Tatung Co	10/19/83–3/31/85	4.01

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. Further, as provided for in section 751(a) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. Since the margin for Capetronic is less than 0.5 percent and therefore *de minimis* for cash deposit purposes, the Department shall not require a cash deposit of estimated antidumping duties for these firms. For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after March 31, 1985 and who is unrelated to any reviewed firm, a cash deposit of 10.14 percent shall be required. These deposit requirements are effective for all shipments of Taiwanese color television receivers, except for video monitors, complete or incomplete, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: December 18,1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86–29038 Filed 12–24–86; 8:45 am]

BILLING CODE 3510-DS-M

[A–351–606]

Preliminary Determination of Sales at Less Than Fair Value; Tubeless Steel Disc Wheels From Brazil

AGENCY: Import Administration, International Trade Administration, commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain tubeless steel disc wheels from Brazil are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination. We have directed the U.S. Customs Service to suspend the liquidation of all entries of certain tubeless steel disc wheels that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make our final determination by March 4, 1987.

EFFECTIVE DATE: December 29, 1986.

FOR FURTHER INFORMATION CONTACT: William D. Kane or Charles E. Wilson, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202)377–1766 or (202)377–5288.

Preliminary Determination

We have preliminarily determined that tubeless steel disc wheels from Brazil are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b(b)). We made fair value comparisons on sales of the class or kind of merchandise to the United States during the period of investigation, December 1, 1985, through May 31, 1986. Comparisons were based on United States price and foreign market value, based on the constructed value of the merchandise provided by the respondents. The weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

On May 23, 1986, we received a petition filed in proper form from the Budd Company, on behalf of the domestic manufacturers of tubeless steel disc wheels. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of certain tubeless steel disc wheels from Brazil are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or threaten material injury to, a United States industry. After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the ITC of our action and initiated such an investigation on June 12, 1986 (51 FR 21952, June 17, 1986). On July 7, 1986, the ITC determined that there is a reasonable indication that imports of tubeless steel disc wheels from Brazil are materially injuring a U.S. industry (51 FR 25752, July 16, 1986).

On July 9, 1986, we presented antidumping duty questionnaires to Borlem S.A.-Impreedimentos Industrias (Borlem), and FNV-Veiculos E Equipamentos S.A. (FNV). Respondents were requested to answer the questionnaire in 30 days. On August 11, 1986, we received a response from FNV. Borlem requsted and received a two-week extension in which to respond. On August 18, 1986, we requested additional information from FNV. On August 25, 1986, a response was received from Borlem. On September 10, 1986, we requested additional information from Borlem. On September 16, 1986, the petitioner alleged that Borlem was selling in their home market at less than the cost of producing the merchandise. On September 18, 1986, we requested cost information from Borlem. We received additional information from FNV on August 22, September 15 and 23, October 6, and December 5, 1986. We received additional information from Borlem on September 19, October 8 and 14, and December 5, 9 and 11, 1986. On October 9, 1986, at the request of the petitioner, we extended the date of our preliminary determination to December 19, 1986 (51 FR 37050, October 17, 1986).

Scope of Investigation

The products covered by this investigation are tubeless steel disc wheels, designed to be mounted with pneumatic tires, with a rim width diameter of 22.5 inches or greater, suitable for use on class 6, 7 and 8 trucks, including buses, tractors and semi-trailers, as currently provided for under number 692.3230 of the *Tariff Schedules of the United States Annotated* (TSUSA).

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States purchase price to the foreign market value for the companies under investigation using data provided in the responses. We investigated sales of tubeless steel disc wheels sold during the period December 1, 1985, through May 31, 1986.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent United States price, since the merchandise was sold to unrelated U.S. purchasers prior to importation. We calculated purchase price based on the packed, CIF or C&F prices to unrelated purchasers in the United States. Where necessary, we corrected Borlem's reported prices to reflect actual prices paid. We made deductions, where appropriate, for foreign inland freight, foreign port charges, ocean freight and ocean insurance.

Foreign Market Value

In accordance with section 773(a)(2) of the Act, we used the constructed value of the exported merchandise to determine foreign market value for FNV, because there were no sales of such or similar merchandise in the home market or to third countries. In accordance with section 773(b) of the Act, we used the constructed value of the exported merchandise to determine foreign market value for Borlem, because sales in the home market were found to be made at prices below the cost of producing the merchandise for an extended period of time, in substantial quantities which would not permit recovery of all costs within a reasonable period of time in the normal course of trade. We made adjustments, where appropriate, for differences in credit costs and for selling expenses as an offset to U.S. sales commissions.

Pursuant to § 353.56 of the Commerce regulations, we made currency conversions at the rates certified by the Federal Reserve Bank.

Constructed Value/Cost of Production

For Borlem's cost of production and for constructed value the Department relied upon the respondent's submissions and made adjustments when costs were not included or not appropriately valued in accordance with the Department's methodology. The following adjustments were made:

(1) For constructed value purposes, we used costs associated with the month closest to the month of export of the merchandise, because the merchandise is produced according to shipment schedules. Direct home market selling expenses were included in constructed value for the months of December 1985–May 1986. Because the submissions did not include home market selling expenses for the month of June, U.S. direct selling expenses were used as a surrogate. Therefore, for constructed value purposes, "circumstance of sale" adjustments were made for all months except June because U.S. direct selling expenses were utilized.

(2) Short-term financial expenses were included. This amount was an estimate derived from the interest expense reflected on the respondent's financial statements which was then adjusted to account for the long-term interest expenses and credit expenses.

(3) The "monetary correction," made by the company at the end of February 1986 to its financial results to account for the full effects of inflation for the period, was not included. Since replacement costs were used for the cost of production and detailed data needed to adjust the monetary correction to account for the effects of the use of replacement costs was not available, the Department did not include the monetary correction.

For FNV, the Department calculated the constructed value based on the respondent's submission and made adjustments when the costs did not appear to include or value appropriately such costs in accordance with the Department's methodology.

Therefore, the Department made the following adjustments:

(1) The long-term interest expenses, indirect selling expense and administrative expenses were calculated in the response as a percentage of sales revenue. This percentage was then applied to the costs of manufacturing. The Department recalculated the expenses as a percentage of costs of sales, so that the percentage was derived from the base to which it was applied.

(2) Short-term financial expenses were included. This amount was based on an estimate derived from the respondent's interest expense from the financial statements and was adjusted to account for long term interest expenses and credit expenses.

(3) Direct home market selling expenses were included in the constructed value.

(4) The "monetary correction" made by the company at the end of February 1986 to these financial results to account for the full effects of inflation, was not included in the constructed value. Since replacement costs were used for the cost of production and detailed data needed to adjust the monetary correction to account for the effects of the use of replacement costs was not available, the Department did not include the monetary correction.

Verification

We will verify all information used in making our final determination in accordance with section 776(a) of the Act. We will use standard verification procedures, including examination of relevant sales and financial records of the companies under investigation.

Suspension of Liquidation

In accordance with section 773(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of tubeless steel disc wheels from Brazil that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amounts by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Margin percentage
Borlem	24.85
FNV	5.75
All others	11.28

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information either publicly or under administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a United States industry, before the later of 120 days after our preliminary affirmative determination on 45 days after our final determination.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 1:00 p.m., on February 16, 1987, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary, Import Administration, Room B-099, at the above address within 10 days of this notice's publication.

Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by February 9, 1987. Oral presentation will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673(f)).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

December 19, 1986.

[FR Doc. 85-29039 Filed 12-24-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-333-601, A-333-602]

Postponement of Final Countervailing and Antidumping Duty Determinations; Certain Fresh Cut Flowers From Peru

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the respondent in these investigations that the final antidumping duty determination be postponed for 105 days from publication of our antidumping duty preliminary determination, as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)); and that we have postponed our final determinations as to whether sales of certain fresh cut flowers from Peru are subject to countervailing duties and have occurred at less than fair value until not later that February 16, 1987. In addition, we are rescheduling the public hearing in the antidumping duty investigation.

EFFECTIVE DATE: December 29, 1986.

FOR FURTHER INFORMATION CONTACT: Terri Feldman (Antidumping Duty) or Karen Busler (Countervailing Duty), Office of Investigation, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-0160 (Feldman) or 377-4198 (Busler).

Case History

On May 21, 1986, we received antidumping and countervailing duty petitions filed by the Floral Trade Council of Davis, California on certain fresh cut flowers from Peru. In compliance with the filing requirements of § 353.36 of our regulations (19 CFR 353.36), the antidumping petition alleged that imports of certain fresh cut flowers from Peru are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act) and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate an antidumping duty investigation, and on June 10, 1986, we initiated such an investigation (51 FR 21947, June 17, 1986). The preliminary affirmative determination in this antidumping investigation was made on October 28, 1986.

In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the countervailing duty petition alleged that manufacturers, producers, or exporters in Peru of certain fresh cut flowers directly or indirectly receive benefits which constitute bounties or grants within the meaning of section 303 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on June 10, 1986, we initiated such an investigation (51 FR 21959, June 17, 1986). On July 7, 1986, the ITC preliminary determined that there is a reasonable indication that imports of certain fresh cut flowers cause material injury to a U.S. industry (USITC Pub. No. 1887). On October 20, 1986 we issued a preliminary affirmative determination in the countervailing duty investigation (51 FR 37948, October 27, 1986).

On November 4, 1986, petitioners filed a request for extension of the deadline date for the final determination in the countervailing duty investigation to correspond with the date of the final determination in the antidumping duty investigation.

Section 705(a)(1) of the Traffic Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984, provides that when a countervailing duty investigation is "initiated simultaneously with an [antidumping] investigation * * * which involves imports of the same class or kind of merchandise from the same or other countries, the administering authority, if requested by the petitioner, shall extend the date of the final determination [in the countervailing duty investigation] . . . to the date of the final determination" in the antidumping investigation (19 U.S.C. 1671d(a)(1)). Pursuant to this provision, we granted an extension of the deadline date for the final determination in the countervailing duty investigation of certain fresh cut flowers from Peru to January 12, 1986, the deadline for the final determination in the antidumping duty investigation. To comply with the requirements of Article 5, paragraph 3 of the Subsidies Code, the Department will direct the U.S. Customs Service to terminate the suspension of liquidation in the countervailing duty investigation on February 24, 1986, which is 120 days from the date of publication of the preliminary determination in this case. No cash deposits or bonds for potential countervailing duties will be required for merchandise which enters after February 24, 1986. The suspension of liquidation will not be resumed unless and until the ITC issues a final injury determination and the Department publishes a final countervailing duty order in this case. We will also direct the U.S. Customs Service to hold any entries suspended prior to February 24, 1986, until the conclusion of this investigation.

On November 12, 1986 counsel for respondent requested that the Department extend the period for the final determinations in the countervailing and antidumping duty investigations to 105 days from publication of our preliminary affirmative antidumping determination in accordance with section 735(a)(2)(A) of the Act.

Section 735(a)(2)(A) of the Act provides that the Department may postpone its final determination concerning sales at less than fair value until not later than 135 days after the date on which it published a notice of an affirmative preliminary determination, if exporters who account for a significant portion of the merchandise which is the subject of the investigation request a postponement.

The respondent is qualified to make such a request since it accounts for all exports of the merchandise under investigation. If a qualified exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request. Accordingly, the Department will issue final determinations in these cases not later than February 16, 1987.

The public hearing in the antidumping duty investigation is also being postponed until 10:00 a.m. on January 9, 1987, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Accordingly, prehearing briefs must be submitted to the Deputy Assistant Secretary by January 2, 1987. Oral presentations will be limited to issues raised in the briefs. Posthearing briefs are due no later than 7 days after transcripts of the hearing are made available. All written views should be filed in accordance with 19 CFR 353.46, no later than 30 days before the final determination is due at the above address in at least 10 copies.

This notice is published pursuant to section 735(d) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

December 19, 1986.

[FR Doc. 86-29040 Filed 12-24-86; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Evaluation of State/Territorial Coastal Management Programs, Coastal Energy Impact Programs and National Estuarine Research Reserves

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management.

ACTION: Notice of availability of evaluation findings.

SUMMARY: Notice is hereby given of the availability of the evaluation findings for the Hawaii's Waimanu National Estuarine Research Reserve. Section 315(f) of the Coastal Zone Management Act of 1972, as amended, (CZMA) requires a periodic review of the performance of each Reserve with respect to its operation and management. A copy of the assessment and detailed findings for this program may be obtained on request from: John H. McLeod, Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue, N.W., Washington, DC 20235 (telephone: 202/673-5104).

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: December 15, 1986.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 86-29062 Filed 12-24-86; 8:45 am]

BILLING CODE 3510-08-M

Intent to Evaluate Performance

AGENCY: National Oceanic and Atmospheric Administration National Ocean Service Office of Ocean and Coastal Resource Management.

ACTION: Notice of intent to evaluate.

SUMMARY: The National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management (OCRM), announces its intent to evaluate the performance of the Hawaii Coastal Management Program (CMP); American Samoa CMP; Oregon CMP; Alabama CMP; Virgin Island CMP; Maine's National Estuarine Research Reserve (NERR); Maryland's NERR; and North Carolina's NERR through March 31, 1987. The reviews of coastal management programs will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972, as amended, (CZMA) which requires a continuing review of the performance of coastal states with respect to coastal management, including detailed findings concerning the extent to which the state has implemented and enforced the program approved by the Secretary of Commerce, addressed the coastal management needs identified in section 303(2)(A) through (I) of the CZMA, and adhered to the terms of any grant, loan or cooperative agreement funded under CZMA. The reviews of National Estuarine Research Reserves are conducted pursuant to section 315(f) of the CZMA, as amended by Pub. L. 99-272, which requires the Secretary of Commerce to evaluate periodically the operation and management of each reserve, including education and interpretive activities, and the research being conducted within the reserve. The reviews involve consideration of written submissions, a site visit to the state, and consultations with interested Federal, state and local agencies and members of the public. Public meetings will be held as part of the site visits. The state will issue notice of these meetings. Copies of each state's most recent performance report, as well as the OCRM's notification letter and supplemental information request letter to the state are available upon request from the OCRM. Written comments from all interested parties on each of those programs to the contact listed below are encouraged at this time. OCRM will place subsequent notice in the **Federal Register** announcing the availability of the Final Findings based on each evaluation once these are completed.

FOR FURTHER INFORMATION CONTACT: John H. McLeod, Evaluation

Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue NW., Washington, DC 20235 (telephone: 202/673-5104).

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: December 15, 1986.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 86-29063 Filed 12-24-86; 8:45 am]

BILLING CODE 3510-08-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1987; Additions and Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to and deletion from Procurement List.

SUMMARY: This action adds to and deletes from Procurement List 1987 commodities to be produced by and service to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: December 29, 1986.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On June 6, 1986, July 3, 1986, July 18, 1986, and September 12, 1986, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (51 FR 20688, 24429, 26033, 39702, and 32516) of additions to and deletion from Procurement List 1987, November 3, 1986 (51 FR 39945).

Additions

After consideration of the relevant matter presented, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-47c, 85 Stat. 77 and 41 CFR 51-2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodities and service listed.

c. The action will result in authorizing small entities to produce the commodities procured by and service provided by the Government.

Accordingly, the following commodities and service are hereby added to Procurement List 1987:

Commodities

Bag, Urine Collection, 6530-01-074-6600
Coat, Women's Pajama, 6531-02-01-222-6565, 6532-01-222-31166
Trousers, Women's Pajama, 6532-01-226-2961, 6532-01-226-2962
Robe, Dressing, Women's, 6532-01-215-7965
Skirt, Woman's, 8410-01-187-1415, 8410-01-187-1416, 8410-01-187-1417, 8410-01-187-1418, 8410-01-187-1419, 8410-01-187-1420, 8410-01-187-1421, 8410-01-187-1422, 8410-01-187-1423, 8410-01-187-1424, 8410-01-187-1425, 8410-01-187-1426, 8410-01-187-1427, 8410-01-187-1428, 8410-01-187-1429, 8410-01-187-1430, 8410-01-187-1431, 8410-01-187-1432, 8410-01-187-1433, 8410-01-187-1434, 8410-01-187-1435, 8410-01-187-1436, 8410-01-187-1437, 8410-01-187-1438, 8410-01-187-1439, 8410-01-187-1440, and 8410-01-187-1441.

Service

Reproduction Services
Army Materiel Command Headquarters
Alexandria, Virginia

Deletions

After consideration of the relevant matter presented, the Committee has determined that the service listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

Accordingly, the following service is hereby deleted from the Procurement List 1987:

Service

Janitorial/Custodial, U.S. Courthouse, 120 North Henry Street, Madison, Wisconsin.

C.W. Fletcher,

Executive Director.

[FR Doc. 86-29028 Filed 12-24-86; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1987; Proposed Additions and Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to and delete from Procurement List 1987 commodities to be produced by and services to be provided by workshops for the blind or other severely handicapped.

DATE: Comments must be received on or before January 29, 1987.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2), 85 Stat. 77 and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions and deletion, all entities of the Federal Government will be required to procure the commodities and services listed below from wordshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1987, November 3, 1986 (51 FR 39945).

Commodities

Skid, Wooden, 3990-00-NSH-0056 23", 3990-00-NSH-0057 30" (Requirements for Defense Depot, Ogden, Utah only)
Cabinet, Storage, 7125-00-559-6223
Mattress, Innerspring, 7210-00-NIB-0003 (38 × 80"), 7210-00-NIB-0004 (53 × 80") (Requirements for nonappropriated Fund Activities of the Armed Forces)
Box Spring, 7210-00-NIB-0005 (38 × 80"), 7210-00-NIB-006 (38 × 80") (Requirements for nonappropriated Fund activities of the Armed Forces)
Pad, Desk, Blotter, 7520-00-224-7238)

Services

Commissary Shelf Stocking, Branch Commissary Store, Mayport, Florida
Commissary Warehouse Service, Sheppard Air Force Base, Texas
Machining Parts (Requirements of the Naval Supply Center, Charleston, South Carolina only)
Janitorial/Custodial, Buildings 46, 228, and 963, Robins Air Force Base, Georgia

Deletion

It is proposed to delete the following commodities from Procurement List 1987, November 3, 1986 (51 FR 39945):

Commodities

Valve, Ball, 4820-00-052-4651, 4820-00-052-4653

C.W. Fletcher,

Executive Director.

[FR Doc. 86-29029 Filed 12-24-86; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Defense Science Board Task Force on B-1B Defensive Avionics; Meeting Cancellation

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Defense Science Board Task Force on B-1B Defensive Avionics for December 15, 1986 as published in the **Federal Register** (Vol. 51, No. 230, Monday, December 1, 1986, FR Doc. 86-26879) has been cancelled.

Linda Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 19, 1986.

[FR Doc. 86-29009 Filed 12-24-86; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on B-1B Defensive Avionics; Meeting Cancellation

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Defense Science Board Task Force on B-1B Defensive Avionics for December 17 and 29, 1986 as published in the **Federal Register** (Vol. 51, No. 230, Monday, December 1, 1986, FR Doc. 86-26880) has been cancelled.

Dated: December 19, 1986.

Linda Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Dated: December 19, 1986.

[FR Doc. 86-29010 Filed 12-24-86; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

TACAN Aerospace Corp.; Intent To Grant Partially Exclusive Patent License

Pursuant to the provisions of § 841.14 of Title 32, Code of Federal Regulation (32 CFR 841, July 1, 1985), the Department of the Air Force announces its intention to grant to TACAN Aerospace Corporation of Carlsbad, California, a corporation of the State of California, a royalty bearing partially exclusive license under United States Patent Application, Serial No. 497,443 entitled "Distortion Free Fiber Optic System," filed May 23, 1983 by Michael M. Salour and Gustav W. Fehrenback.

Any objection thereto, together with a request for an opportunity to be heard, if desired, should be directed in writing to the addressee set forth below within 60 days from the publication of this notice.

All communications concerning this notice should be sent to: Mr. Donald J. Singer, Chief, Patents Division, Office of The Judge Advocate General, HQ USAF/JACP, 1900 Half Street SW., Washington, DC 20324-1000, Telephone No. 202-475-1386.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-29036 Filed 12-24-86; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army, Corps of Engineers

Cancellation of Notice of Intent To Prepare a Draft Environmental Impact Statement

Cancellation of Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the City of Rossville, Kansas, flood protection study.

Agency: U.S. Army Corps of Engineers, Kansas City District, DOD.

Action: Cancellation of Notice of Intent To Prepare a Draft Environmental Impact Statement.

Summary: A Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the City of Rossville, Kansas, flood protection study was published in the March 28, 1985 **Federal Register.** In a letter dated March 21, 1986, the City rejected the tentatively recommended flood protection plan because of the financial responsibility required of the City as local sponsor. The study and EIS process are therefore terminated.

Address: Questions concerning this notice should be directed to Mr. Mike Bronoski, Environmental Resources Branch, Kansas City District, Corps of Engineers, 700 Federal Building, 601 E. 12th Street, Kansas City, Missouri 64106-2896. Telephone (816) 374-2648 or FTS 758-2648.

Dated: December 17, 1986.

Robert R. Ruf,

Chief, Environmental Resources Branch.

[FR Doc. 86-29064 Filed 12-24-86; 8:45 am]

BILLING CODE 3710-KN-M

[Supplement II]

Revised Intent to Prepare Draft; Final Environmental Impact Statement Operations, Maintenance, and Minor Improvements of the Federal Facilities at Sault Ste. Marie, MI (July 1977); Operation of the Lock Facilities to 31 January ± 2 Weeks

AGENCY: U.S. Army Corps of Engineers, Dod.

ACTION: Revised notice of intent to prepare a draft environmental impact statement (DEIS).

SUMMARY:

Proposed Action

A proposal for a limited extension of lock operations at Sault Ste. Marie, Michigan to permit vessel transits to 31 January ± 2 weeks is being reviewed. The FEIS for Operations, Maintenance, and Minor Improvements of the Federal Facilities at Sault Ste. Marie, Michigan was filed with CEQ in November 1977. A Supplement to the Operation and Maintenance EIS for the Federal Facilities at Sault Ste. Marie, Michigan addressing Limited Season Extension of Operation to 8 January ± 1 week was filed with EPA in October 1979. The original Notice of Intent for this proposal was published in the **Federal Register** in Volume 45, Number 47, on March 7, 1980.

Alternatives

The considered alternatives are:

a. No action—maintaining the current Sault Lock operation limit at 8 January ± 1 week.

b. Extending operation of the lock complex to 31 January ± 2 weeks.

Scoping Process

a. Public Involvement

The Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act do not require scoping for supplemental EISs. However, since the issuance of the first (1979) Supplement, the Corps of Engineers has had continuing coordination with various state and Federal agencies including:

U.S. Department of the Interior, Fish and Wildlife Service (including both the Regional Office and the East Lansing Field Office);
U.S. Coast Guard;
U.S. Department of Commerce, National Oceanic and Atmospheric Administration (NOAA);
Michigan Department of Natural Resources; and Michigan Department of Transportation.

b. Significant Issues

The extension of lock operation would benefit industry and commercial navigation by allowing for reduced transportation rates and reduction of stockpiling costs. Specific biological concerns that will be addressed include impacts on benthos, wetlands, waterfowl, and mammals. The EIS will also address potential impacts from spills of oil and hazardous materials, the suspension of bottom sediments by vessel induced currents, and winter damage to shore structures.

Environmental Review and Consultation Requirements

The following laws will be addressed in the draft Supplemental EIS:

Archeological and Historic Preservation Act, as amended, 16 U.S.C. 469, *et seq.;* Clean Air Act, as amended 42 U.S.C. 1857h–7, *et seq.;* Clean Water Act, as amended, (Federal Water Pollution Control Act) 33 U.S.C. 1251, *et seq.;* Coastal Zone Management Act, as amended, 16 U.S.C. 1451, *et seq.;* Endangered Species Act, as amended, 16 U.S.C. 1531, *et seq.;* Estuary Protection Act, 16 U.S.C. 1221, *et seq.;* Federal Water Project Recreation Act, as amended, 16 U.S.C. 460–1(12), *et seq.;* Fish and Wildlife Coordination Act, as amended, 16 U.S.C. 661, *et seq.;* Land and Water Conservation Fund Act, as amended, 16 U.S.C. 4601–4601–11, *et seq.;* Marine Protection, Research and Sanctuaries Act, 33 U.S.C. 1401, *et seq.;* National Historic Preservation Act, as amended, 16 U.S.C. 470a, *et seq.;* National Environmental Policy Act, as amended, 42 U.S.C. 4321, *et seq.;* Rivers and Harbors Act, 33 U.S.C. 401 *et seq.;* Watershed Protection and Flood Prevention Act, 16 U.S.C. 1001, *et seq.;* and Wild and Scenic Rivers Act, as amended, 16 U.S.C. 1271, *et seq.* The following Executive Orders and Memoranda will be addressed: Flood Plain Management (E.O. 11988) Protection of Wetlands (E.O. 11990); Environmental Effects Abroad of Major Federal Actions (E.O. 12114); Analysis of Impacts on Prime and Unique Farmlands (CEQ Memorandum, 11 Aug 80); and Intergovernmental Review of Federal Programs (E.O. 12372).

Estimated Date of FEIS—Draft Supplement Release

It is anticipated that the draft supplement will be available to the public in January 1987.

Address

If you would like further information on this proposed action and draft supplement EIS, please notify: Mr. Les E. Weigum, U.S. Army Engineer District, Detroit, Chief, Environmental Analysis Branch, P.O. Box 1027, Detroit, Michigan 48231, Commercial Telephone Number: 313–226–6752, FTS Telephone Number: 226–6752.

Dated: December 15, 1986.

C. Argiroff,

Chief, Planning Division.

[FR Doc. 86–28973 Filed 12–24–86; 8:45 am]

BILLING CODE 3710–GA–M

Military Traffic Management Command; Directorate of Personal Property; International Program; Solicitation

AGENCY: Military Traffic Management Command (MTMC).

ACTION: Notice of the continued solicitation for movement of international commercial air unaccompanied baggage (UB) and household goods (HHG) under the Direct Procurement Method (DPM). The DPM commercial air solicitation was first announced in Volume 49 **Federal Register** dated October 3, 1984, page 390095.

SUMMARY: The fourth six-month cycle for the worldwide movement of DPM UB and HHG via commercial air will be effective April 1, 1987. The solicitation package for the April rate cycle will be distributed in December 1986. Those carriers not already participating, but who wish to do so, must notify MTMC by January 1, 1987, to receive copies of the solicitation. The system has been automated and rates must be submitted via magnetic tape.

The air freight forwarders/carriers submitting the most favorable offer will be awarded all traffic moving via DPM commercial air, between the origin/destination points. Estimated tonnages will be provided. However, there is no guarantee that any tonnage will move under this solicitation. The Government reserves the right to use any method of shipment.

For further information contact: Ms. Eunice Anderson or Mrs. Naomi King, HQ, Military Traffic Management Command, ATTN: MT–PPC (Room 408), Falls Church, Virginia 22041–5050, (202) 756–2385.

Joseph R. Marotta,

Colonel, GS, Director of Personal Property.

[FR Doc. 86–28974 Filed 12–24–86; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

National Advisory Council on Adult Education

AGENCY: National Advisory Council on Adult Education.

ACTION: Public hearings on reauthorization of the Adult Education Act.

SUMMARY: This notice sets forth the schedule of forthcoming public hearings on the reauthorization of the Adult Education Act. In order to accommodate those wishing to participate in the hearings, please contact the Council offices for further information. This notice also describes the functions of the Council. Notice of this activity is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND ADDRESSES: Public Hearings.

January 13, 1986, Nashville State Technical Institute, 120 White Bridge Road, Nashville, Tennessee

January 14, 1986, Newark Public Library, Main Branch, 4th floor auditorium, 5 Washington Street, Newark, New Jersey

January 21, 1986, Denver Indian Center, 4407 Morrison Road, Denver, Colorado

January 22, 1986, North Seattle Community College, Green Room, College Center Building, 9600 College Way Boulevard, Seattle, Washington

April 1, 1986, E. Manfred Evans Community Adult School, 717 North Figueroa Street, Los Angeles, California.

All hearings will be held from 10:00 a.m. to 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Karen Shepard Saunders, Administrative Officer, National Advisory Council on Adult Education, 2000 L Street N.W., Suite 570, Washington, DC 20036 (202/634–6300).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Adult Education is established under section 313 of the Adult Education Act (20 U.S.C. 1209). The Council is established to:

Advise the Secretary in the preparation of general regulations and with respect to policy matters arising in the administration of this title, including policies and procedures governing the approval of State plans under section 306 and policies to eliminate duplication, and to effectuate the coordination of programs under this title and other programs offering adult education activities and services.

The Council shall review the administration and effectiveness of programs under this title, make recommendations with respect thereto, and make annual reports to the President of its findings and recommendations (including recommendations for changes in this title and other Federal laws relating to adult education activities and services). The President shall transmit each such report to the Congress together with his comments and recommendations.

Records are kept of all Council proceedings, and are available for public inspection at the office of the National Advisory Council on Adult Education, 2000 L Street NW., Suite 570, Washington, DC 20036, from the hours of 8:30 a.m. to 5:30 p.m.

Signed at Washington, DC on December 19, 1986.

Lynn Ross Wood,

Executive Director, National Advisory Council on Adult Education.

[FR Doc. 86–29065 Filed 12–24–86; 8:45 am]

BILLING CODE 4000–01–M

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before January 28, 1987.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, (202) 426–7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: December 22, 1986.

Carlos U. Rice,

Acting Director, Information Technology Services.

Office of Postsecondary Education

Type of Review: Revision
Title: Guaranteed Student Loan (GSL) Tape Dump Procedures and PLUS Loan Tape Dump Procedures
Agency Form Number: E40–15P
Frequency: Annually
Affected Public: State or local governments; non-profit institutions
Reporting Burden:
Responses: 69
Burden Hours: 2273
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: The collection of this information is needed to describe the characteristics of borrower under the Guaranteed Student Loan (GSL), Supplemental Loans for Students (SLS) and PLUS programs; to assess the impact of various legislative, regulatory, and budgetary proposals in terms of program costs and students served; and to monitor borrowere fraud and abuse in the programs.

Type of Review: Revision
Title: Lender's Request for Interest and Special Allowance for Loans Made from Tax-Exempt Funds
Agency Form Number: ED 799A
Frequency: Quarterly
Affected Public: Businesses or other for profit
Reporting Burden:
Responses: 300
Burden Hours: 351.90
Recordkeeping Burden:
Recordkeepers: 75
Burden Hours: 112.50

Abstract: This form is used by tax exempt lenders participating in the Guaranteed Student Loan Program (GSLP) to request payments for loans issued under this program. Changes made to the special allowance portion of the lender's request are a result of the Higher Education Amendments of 1986.

Type of Review: Revision
Title: Lender's Request for Interest and Special Allowance
Agency Form Number: ED 799
Frequency: Quarterly
Affected Public: Businesses or other for profit
Reporting Burden:
Responses: 48,000
Burden Hours: 79,200
Recordkeeping Burden:
Recordkeepers: 12,000
Burden Hours: 18,000

Abstract: This form is used by lenders participating in the Guaranteed Student Loan Program (GSLP) to request payment for loans issued under this program. Changes made to the special allowance portion of the lender's request are a result of the Higher Education Amendments of 1986.

[FR Doc. 86–29078 Filed 12–24–86; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Department of Energy Organization

Pursuant to 5 U.S.C. 552(a)(1) the following description of the Department of Energy central and field organization is provided.

Legislative Background: The Department of Energy (DOE) was established by the Department of Energy Organization Act (Act) Pub. L. 95–91. The Department was activated on October 1, 1977, by the Executive Order 12009, dated September 13, 1977, published on September 15, 1977, at 42 FR 46267. The Act consolidated major Federal energy functions into one department, transferring to DOE all the responsibilities of the former Energy Research and Development Administration; the Federal Energy Administration; the Federal Power Commission; and the Alaska, Bonneville, Southeastern, and Southwestern Power Administrations, formerly components of the Department of the Interior, as well as the power marketing functions of the Department of the Interior's Bureau of Reclamation. Also transferred to DOE were certain energy related functions of the Interstate Commerce Commission and the Departments of Commerce, Housing and Urban Development, Navy, and Interior.

Departmental Officers: The Secretary, Deputy Secretary and Under Secretary

are the principal officers of the Department established by section 202(a) of the Act. The Secretary directs and supervises the administration of the Department, decides major energy policy and planning issues, and acts as the principal energy advisor to the President. The Deputy Secretary assists the Secretary in deciding major energy policy and planning issues and acts for and exercises the functions of the Secretary during the absence or disability of the Secretary or in the event the Office of the Secretary is vacant. The Under Secretary has been designated by the Secretary as Chief Operating Officer of the Department responsible for overseeing Departmental program management in addition to having primary responsibility for energy conservation as mandated by Pub. L. 95–91.

Organization Structure: Although the Department of Energy Organization Act established certain principal positions and components of the Department and prescribed some Headquarters and field organization features, it did not mandate key organization and management principles such as a detailed organization structure and management and operating philosophy. The Secretary of Energy, under section 643 of the Act, is authorized to establish, alter, consolidate, or discontinue organizational components within DOE, except for the abolition of statutorily mandated components or functions transferred to DOE by the Act that are vested in any component.

The Departmental organization structure and operating philosophy is based on the concept of centralized policy development and program planning at the Headquarters with decentralized program implementation and project management at various field organizational elements.

The DOE Headquarters concentrates on providing management direction and broad policy overview, planning and budgeting, allocating resources, and maintaining relations with the Congress and other Federal agencies. Within this operating structure, there are no bureaus or equivalent independent components except the Federal Energy Regulatory Commission, an independent regulatory commission.

DOE has centralized program and administrative management organizations at Headquarters to provide policy and guidance for effective and efficient operations. Execution of programs is accomplished principally through various decentralized multi-program field components that report directly to the Office of the Secretary. In addition to contract administration and oversight, these field organizations also have administrative management responsibilities.

The DOE philosophy is that project management should be placed close to the site of operations whenever possible and that management of energy research and development, weapons programs, and other program execution activities should be assigned to field organizations. Wtih the exception of power marketing functions and selected special purpose programs, the Department has placed responsibility for program execution with eight DOE Operations Offices. The resulting field structure permits maximum utilization of the eight Operations Offices which must be maintained at specific field locations for management of very large Government-Owned, Contractor-Operated (GOCO) facilities.

Additional Information: Additional information on the overall DOE organization and management structure may be obtained from the current edition of the *United States Government Manual* on sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; or through writing to the Chief of Freedom of Information and Privacy Acts, MA–232.1, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

For detailed information on the organization and functions of Departmental field components contact the respective information offices at the following locations.

Special Purpose Offices

Manager, Pittsburgh Naval Reactors Office, P.O. Box 109, West Mifflin, PA 15122 (412) 476–7200
Manager, Schenectady Naval Reactors Office, P.O. Box 1069, Schenectady, NY 12301 (518) 563–4690
Director, Naval Petroleum Reserves in CA, P.O. Box 11, Tupman, CA 93276 (805) 763–2121
Director, Naval Petroleum and Oil Shale Reserves in Colorado, Utah and Wyoming, 800 Werner Court, Suite 342, Casper, WY 82601 (307) 261–5161
Manager, Office of Scientific and Technical Information, P.O. Box 62, Oak Ridge, TN 37830 (615) 576–1193
Director, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, WV 26505 (304) 291–4672
Director, Pittsburgh Energy Technology Center, P.O. Box 10940, Pittsburgh, PA 15236 (412) 675–5914

Operations Offices

Manager, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, NM 87115 (505) 846–3301
Manager, Chicago Operations Office, 9800 South Cass Avenue, Argonne, IL 60439 (312) 972–2041
Manager, Idaho Operations Office, 785 DOE Place, Idaho Falls, ID 83402 (208) 526–0271
Manager, Nevada Operations Office, P.O. Box 14100, Las Vegas, NV 89114 (702) 295–3521
Manager, Oak Ridge Operations Office, P.O. Box E, Room 1012, Oak Ridge, TN 37831 (615) 576–0885
Manager, Richland Operations Office, 825 Jadwin Avenue, P.O. Box 550, Richland, WA 99352 (509) 376–8274
Manager, San Francisco Operations Office, 1333 Broadway, Wells Fargo Building, Oakland, CA 94612 (415) 273–4358
Manager, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801 (803) 725–2889

Power Administrations

Administrator, Alaska Power Administration, P.O. Box 50, Juneau, AK 99802 (907) 586–7405
Administrator, Bonneville Power Administration, P.O. Box 3621–A, Portland, OR 97208 (503) 230–4087
Administrator, Southeastern Power Administration, Samuel Elbert Building, Elberton, GA 30635 (404) 283–3261
Administrator, Southwestern Power Administration, P.O. Box 1619, Tulsa, OK 74101 (918) 581–7426
Administrator, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401 (303) 231–1574

Issued at Washington, DC on December 19, 1986.

Harry L. Peebles,

Director of Administration.

[FR Doc. 86–29089 Filed 12–24–86; 8:45 am]

BILLING CODE 6450–01–M

Conservation and Renewable Energy Office

National Energy Extension Service Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: National Energy Extension Service Advisory Board Subcommittee.
Date and Time: Thursday, January 22, 1987, 8:00 a.m.—5:00 p.m.; Friday, January 23, 1987, 8:00 a.m.—12:00 noon.
Place: The Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington DC 20008.
Contact: Susan D. Heard, Department of Energy, Forrestal Building—6A061, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: 202–586–8290.

Purpose of the Board

The Board was established to carry on a continuing review of the National Energy Extension Service and the plans and activities of each State in implementing Energy Extension Service programs. Additionally, the Board is responsible for reporting on an annual basis to the Congress, the Secretary of Energy, and the Director of the Energy Extension Service.

Tentative Agenda

Thursday, January 22, 1987

- Preparation of a draft of the Board's Eighth Annual Report
- Public comment (10 minute rule)

Δ *Friday January 23, 1987*

- Preparation of a draft of the Board's Eighth Annual Report
- Public comment (10 minute rule)

Public Participation

The meeting is open to the public. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Susan D. Heard at 202–586–8290. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts

Available for public review and copying at the Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday thru Friday, except Federal holidays.

Issued at Washington, DC on December 19, 1986.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 86–29092 Filed 12–24–86; 8:45am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket No. 86–63–NG]

ANR Pipeline Co.; Application To Amend Import Authorization

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application to amend authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on November 19, 1986, of an application from ANR Pipeline Company (ANR) to amend its existing import authorization, based on November 14, 1986, amending agreement between ANR and its supplier ProGas Limited (ProGas) of Calgary, Alberta, Canada. The amending agreement (1) extends the term of the arrangement for a seven-year period from November 1, 1987, to October 31, 1994; (2) reduces take-or-pay obligations; (3) provides for a two-part demand/commodity pricing structure that would result in a price paid to ProGas of $1.56 (U.S.) per MMBtu at a 100 percent load factor; (4) provides for periodic price reviews; and (5) allows ANR to assign its rights and obligations to the gas to others.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than January 28, 1987.

FOR FURTHER INFORMATION:

Chuck Boehl, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 252–6050;
Diane Stubbs, Office of General Counsel, Natural Gas and Mineral Leasing, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 252–6667.

SUPPLEMENTARY INFORMATION: On April 24, 1981, in DOE/ERA Opinion and Order No. 32 (1 ERA ¶ 70,530; Order No. 32), ANR was authorized to import Canadian gas from ProGas for the period from November 1, 1982, to October 31, 1987, under a gas sales contract dated May 17, 1979. The agreement provided for the sale of a maximum quantity of 75,000 Mcf of natural gas per day. The contract set the price at the rate prescribed by the Canadian government for gas exported to the U.S. Order No. 32 authorized an import price not to exceed $4.94 (U.S.) per MMBtu, the border price at that time. The volumes purchased by ANR currently enter the U.S. at Emerson, Manitoba, through pipeline facilities of Great Lakes Transmission Company (Great Lakes). Great Lakes delivers the gas to ANR at an existing delivery point near Farwell, Michigan.

On November 14, 1986, ANR and ProGas agreed to contract changes which would (1) extend the term of the import from October 31, 1987, through October 31, 1994; (2) reduce ANR's take-or-pay obligation to 2.75 percent of ANR's sales which, based on sales in the year ending October 31, 1986, would be approximately 10 Bcf compared to about 21 Bcf under the present agreement; (3) effective November 1, 1986, reduce the price and provide for a demand charge of $12.17 per Mcf and a commodity price of $1.16 per MMBtu or a 100 percent load factor price of $1.56 per MMBtu; (4) allow a one-year grace period to make up deficiencies before any take-or-pay payments are due; (5) provide for periodic price reviews; and (6) allow ANR to use its authorization to import gas for others. This purchase for others would be gas ProGas agrees to make available at a "special commodity charge" and provides a vehicle for spot purchases by ANR for itself or on behalf of third parties. Gas purchased under this agreement would count toward ANR's take-or-pay requirements. ANR asserts that the proposed amendment is consistent with the public interest and that its request for authority to import for others is consistent with previously issued orders for authorization for the import of spot gas.

The decision on this application will be made consistent with the Secretary of Energy's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). The objective of this policy, with its strong emphasis on competitive arrangements and contract flexibility, is to free commercial parties from undue government interference and allow them to negotiate contract terms which are market-responsive over the term of the agreement. Parties who may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant has asserted that this import arrangement is competitive. Parties opposing the

arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceedings, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 252-9478. They must be filed no leter than 4:30 p.m., January 28, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of ANR's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 18, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-29093 Filed 12-24-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-R-79-43B]

Electric and Gas Utilities Covered in 1987 by Titles I and III of the Public Utility Regulatory Policies Act of 1978 and Titles II and VII of the National Energy Conservation Policy Act of 1978 and Requirements for State Regulatory Authorities To Notify the Department of Energy

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice.

SUMMARY: Sections 102(c) and 301(d) of the Public Utility Regulatory Policies Act of 1978 (PURPA) and section 211(b) of the National Energy Conservation Policy Act (NECPA) require the Secretary of Energy to publish a list before the beginning of each calendar year, identifying each electric utility and gas utility to which Titles I and and III of PURPA and Titles II and VII of NECPA apply during such calendar year. The 1987 list is published here as two separate tabulations. Appendix A lists the covered utilities by State, and Appendix B lists them alphabetically.

Each State regulatory authority is required, pursuant to sections 102(c) and 301(d) of PURPA and section 211(b) of NECPA, to notify the Secretary of Energy of each electric utility and gas utility on the list for which such State regulatory authority has ratemaking authority. In addition, written comments are requested on the accuracy of the list of electric utilities and gas utilities.

DATE: Notifications by State regulatory authorities and written comments must be received by no later than 4:30 p.m. on February 14, 1987.

ADDRESS: Notifications and written comments should be forwarded to: Department of Energy, Coal and Electricity Division, 1000 Independence Avenue, SW., (Room GA-076, Docket No. ERA-R-79-43B, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Steven Mintz, Coal and Electricity Division, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue, SW., Room GA-076, Washington, DC 20585, 202/252-9506.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to sections 102(c) and 301(d) of the Public Utility Regulatory Policies Act of 1978 (PURPA), Pub. L. 95-617,92 Stat. 3117 *et seq.* (16 U.S.C. 2601) *et seq.*), and section 211(b) of the National Energy Conservation Policy Act (NECPA), Pub. L. 95-619,92 Stat. 3206 *et seq.*, (42 U.S.C. 8211 *et seq.*), hereinafter referred to as the "Acts," the Department of Energy (DOE) is required to publish a list of utilities to which Titles I and III of PURPA and Titles II and VII of NECPA apply in 1987. State regulatory authorities are required by the above cited Acts to notify the Secretary of Energy as to their ratemaking authority over the listed utilities. The inclusion or exclusion of any utility on or from the list does not affect the legal obligations of such utility or the responsible authority under the Acts.

The term "State regulatory authority" means any state, including the District of Columbia and Puerto Rico, or a political subdivision thereof, and any agency or instrumentality, either of which has authority to fix, modify, approve, or disapprove rates with respect to the sale of electric energy or natural gas by any utility (other than such State agency) and in the case of a utility for which the Tennessee Valley Authority (TVA) has ratemaking authority, the term "State regulatory authority" means the TVA.

Title I of PURPA sets forth ratemaking and regulatory policy standards with respect to electric utilities. Section 102(c) requires the Secretary of Energy to publish a list, before the beginning of each calendar year, identifying each electric utility to which Title I applies during such calendar year. An electric is defined as any person, State agency or Federal agency, which sells electric energy. An electric utility is covered by Title I for any calendar year if it had total sales of electric energy for purposes other than resale in excess of 500 million kilowatt-hours during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year. An electric utility is covered in 1987 if it exceeded

the threshold in any year from 1976-1985.

Title III of PURPA addresses ratemaking and other regulatory policy standards with respect to natural gas utilities. Section 301(d) of Title III requires the Secretary of Energy to publish a list, before the beginning of each calendar year, identifying each gas utility to which Title III applies during such calendar year. A gas utility is defined as any person, State agency or Federal agency, engaged in the local distribution of natural gas and the sale of natural gas to any ultimate consumer the natural gas. A gas utility is covered by Title III if it had total sales of natural gas for purposes other than resale in excess of 10 billion cubic feet during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year. A gas utility is covered in 1987 if it exceeded the threshold in any year from 1976—1985.

Title II, Part 1, of NECPA, addresses residential conservation programs, and Title VII of NECPA, enacted as part of the Energy Security Act, Pub. L 96-294, 94 Stat. 611 *et seq.* (42 U.S.C. 8701 *et seq.),* addresses commercial building and multi-family dwelling conservation programs. Section 211(b) of contains a requirement, similar to that of PURPA, that the Secretary of Energy publish a list of electric and gas utilities to which Titles II and VII apply. The NECPA requirements for coverage of electric utilities and gas utilities differ from the PURPA requirements in only three respects:

(1) The threshold for electric utilities is 750 million kilowatt-hours for purposes other than resale;

(2) A utility is covered for any calendar year if it exceeded the threshold during the second preceding calendar year. A utility is covered in 1987 if it exceeded the threshold in 1985; and

(3) Only utilities which have residential sales are covered by Title II and only utilities which have sales to commerical buildings or multi-family dwellings are covered by Title VII.

In compiling the list published today, DOE revised the 1986 list (50 FR 53244, December 30, 1985), upon the assumption that all entities included on the 1986 list are properly included on the 1987 list unless DOE has information to the contrary. In doing this, DOE took into account information which was received from the Rural Electrification Agency, or included in public documents, regarding entities which exceeded the PURPA and NECPA thresholds for the first time in 1985. DOE believes that it will become aware of any errors or omissions in the list published today by means of the comment process called for by this notice. DOE will, after consideration of any comment and other information available to DOE, provide written notice of any further additions or deletions to the list.

II. Notification and Comment Procedures

Not later than 4:30 p.m. on February 14, 1987, each State regulatory authority must notify the Department of Energy in writing of each utility on the list over which it has ratemaking authority. Five copies of such notification should be submitted to the address indicated in the "ADDRESS" section of this Notice and should be identified on the outside of the envelope and on the document with the designation "Docket No. ERA-R-79-43B." Such notification should include:

1. A complete list of electric utilities and gas utilities over which the State regulatory authority has ratemaking authority;

2. Legal citations pertaining to the ratemaking authority of the State regulatory authority; and

3. For any listed utility known to be subject to other ratemaking authorities within the State for portions of it service area, a precise description of the portion to which such notification applies.

All interested persons, including State regulatory authorities, are invited to comment in writing, no later than 4:30 p.m. on February 14, 1987, on any errors or omissions with respect to the list. Five copies of such comments should be sent to the address indicated in the "ADDRESS" section of this Notice and should be identified on the outside of the envelope and on the document with the designation "Docket No. ERA-R-79-43B." Written comments should include the commenter's name, address and telephone number.

All notifications and comments received by DOE will be available for public inspection in the Freedom of Information Reading Room, Room 1E-190, 1000 Independence Avenue, SW., Washington, DC 20585 between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday.

III. List of Electric Utilities and Gas Utilities

DOE is publishing in Appendix A and Appendix B, two different tabulations of the list of utilities which meet both PURPA and NECPA coverage requirements. In both appendices, the listed utilities not covered by NECPA are noted. As stated above, the inclusion or exclusion of any utility on or from the lists does not affect its legal obligations or those of the responsible State regulatory authority under PURPA and NECPA.

Appendix A is a tabulation of utilities which separately identifies, by State, and each State regulatory authority, the covered utilities it regulates, and other covered utilities in the State which are not regulated by the State regulatory authority. This tabulation, including explanatory notes, is based on information provided to DOE by State regulatory authorities in response to the December 30, 1985 Federal Register Notice (50 FR 53244) requiring each State regulatory authority to notify DOE of each utility on the list over which it has ratemaking authority, comments received with respect to that notice, and information subsequently available to DOE.

The utilities classified in Appendix A as not regulated by the State regulatory authority may in fact be regulated by local municipal authorities. These municipal authorities would be State agencies as defined by PURPA, and thus have responsibilities under PURPA identical to those of the State regulatory authority. Therefore, each such municipality is to notify DOE of each utility on the list over which it has ratemaking authority.

In Appendix B, the utilities are listed alphabetically, subdivided into electric utilities and gas utilities, and further subdivided by type of ownership: investor-owned utilities, publicly-owned utilities, and rural cooperatives.

The changes to the 1986 list of electric and gas utilities are as follows:

Additions

*Alcorn County Electric Power Association (MS)
*Coast Electric Power Association (MS)
*Duncan Valley Electric Cooperative, Inc. (AZ)
*Palmetto Electric Cooperative, Inc. (SC)
*Sevier County Electric System (TN)
*Tombigbee Electric Power Association (MS)
Trans Louisiana Gas Company (LA)

Modifications

Change—Columbia Gas of West Virginia (WV) to—Mountaineer Gas Company (WV)
Change—Consolidated Gas Supply Corporation (WV) to—Hope Gas, Incorporated (WV)
Change—Washington Gas Light Company (VA) to—Northern Virginia Natural Gas (VA)

Asterisk (*) Removed

Nantahala Power and Light Company (NC)

Erroneously Listed in 1984 List

Arkansas-Louisiana Gas Company (TX)

(Public Utility Regulatory Policies Act of 1978, Pub. L. 97-617, 92 Stat. 3117 *et seq.* (16 U.S.C. 2601 *et seq.*); National Energy

Conservation Policy Act, Pub. L. 95–619, 92 Stat. 3206 *et seq.*, (42 U.S.C. 8211 *et seq.*))

Issued in Washington, DC, on December 16, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

Appendix A

All gas utilities listed below had natural gas sales, for purposes other than resale, in excess of 10 billion cubic feet in 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984 or 1985. All except those marked (*) are covered by PURPA Title III, and NECPA Titles II and VII Utilities marked (*) are not covered by NECPA Titles II and VII because they either did not exceed the NECPA threshold of 10 billion cubic feet in 1985 for purposes other than resale, or do not have residential or commercial sales.

All electric utilities listed below had electric energy sales, for purposes other than resale, in excess of 500 million kilowatt-hours in 1976, 1977, 1978, 1979, 1980, 1981, 1983, 1984 or 1985. All, except those marked (*) are covered by PURPA Title I and NECPA Titles II and VII. Utilities marked (*) are not covered by NECPA Titles II and VII because they either did not exceed the NECPA threshold of 750 million Kilowatt-hours in 1985 for purposes other than resale, or do not have residential or commerical sales.

State: Alabama

Regulatory Authority: Alabama Public Service Commission.

Gas Utilities

Investor-Owned:
- Alabama Gas Corporation
- * Alabama-Tennessee Natural Gas Company
- Mobile Gas Service Corporation
- Northwest Alabama Gas Dist.

Electric Utilities

Investor-Owned:
- Alabama Power Company

The following covered utilities within the State of Alabama are not regulated by the Alabama Public Service Commission:

Electric Utilities

Publicly-Owned:
- Decatur Electric Department
- * Dothan Electric Department
- Florence Electric Department
- Huntsville Utilities

Rural Electric Cooperatives:
- Rural Electric System

State: Alaska

Regulatory Authority: Alaska Public Utilities Commission.

Gas Utilities

Investor-Owned:
- Enstar Natural Gas Company

Electric Utilities

Rural Electric Cooperatives:
- Chugach Electric Association

Publicly-Owned:
- * Anchorage Municipal Light & Power Department

State: Arizona

Regulatory Authority: Arizona Corporation Commission.

Gas Utilities

Investor-Owned:
- Southern Union Gas Company
- Southwest Gas Corporation

Electric Utilities

Investor-Owned:
- Arizona Public Service Company
- Tucson Electric Power Company

Publicly-Owned:
- * Trico Electric Cooperative, Inc.

The following covered utilities within the State of Arizona are not regulated by the Arizona Corporation Commission:

Electric Utilities

Publicly-Owned:
- Salt River Project Agricultural Improvement and Power District

Rural Electric Cooperative:
- *Duncan Valley Electric Cooperative, Inc.

State: Arkansas

Regulatory Authority: Arkansas Public Service Commission.

Gas Utilities

Investor-Owned:
- Arkansas-Louisiana Gas Company
- Arkansas-Okahoma Gas Corporation
- Arkansas Western Gas Company
- Associated Natural Gas Company

Electric Utilities

Investor-Owned:
- Arkansas Power and Light Company
- Empire District Electric Company
- Oklahoma Gas and Electric Company
- Southwestern Electric Power Company

Rural Electric Cooperatives:
- * First Electric Cooperative Corporation

The following covered utility within the State of Arkansas is not regulated by the Arkansas Public Service Commission:

Publicly-Owned:
- * North Little Rock Electric Department

State: California

Regulatory Authority: California Public Utilities Commission.

Gas Utilities

Investor-Owned:
- Pacific Gas and Electric Company
- San Diego Gas and Electric Company
- Southern California Gas Company
- Southwest Gas Corporation

Electric Utilities

Investor-Owned:
- Pacific Gas and Electric Company
- Pacific Power and Light Company
- San Diego Gas and Electric Company
- Sierra Pacific Power Company
- Southern California Edison Company

The following covered utilities within the State of California are not regulated by the California Public Utilities Commission:

Electric Utilities

Publicly-Owned:
- Anaheim Public Utilities Department
- Burbank Public Service Department
- *Glendale Public Service Department
- Imperial Irrigation District
- Los Angeles Department of Water and Power
- Modesto Irrigation District
- Palo Alto Electric Utility
- Pasadena Water and Power Department
- Riverside Public Utilities
- Sacramento Municipal Utility District
- Santa Clara Electric Department
- Turlock Irrigation District
- Vernon Municipal Light Department

Gas Utilities

Publicly-Owned:
- Long Beach Gas Department

State: Colorado

Regulatory Authority: Colorado Public Utilities Commission.

Gas Utilities

Investor-Owned:
- Greeley Gas Company
- Iowa Electric Light and Power Company
- Kansas-Nebraska Natural Gas Company
- Peoples Natural Gas Company, Division of Internorth, Inc.
- Public Service Company of Colorado

Publicly-Owned:
- Colorado Springs Department of Utilities (Jurisdiction only sales to another gas utility)

Electric Utilities

Investor-Owned:
- Public Service Company of Colorado
- Southern Colorado Power Division of Centel

The following covered utilities within the State of Colorado are not regulated by the Colorado Public Utilities Commission:

Gas Utilities

Publicly-Owned:
- Colorado Springs Department of Utilities (except sales to another gas utility)

Electric Utilities

Publicly-Owned:
- Colorado Springs Department of Utilities

Rural Electric Cooperatives:
- *Intermountain Rural Association
- Moon Lake Electric Association

State: Connecticut

Regulatory Authority: Connecticut Department of Public Utility Control

Gas Utilities

Investor-Owned:
- Connecticut Light and Power Company
- Connecticut Natural Gas Corporation
- Southern Connecticut Gas Company

Electric Utilities

Investor-Owned:
- Connecticut Light and Power Company
- United Illuminating Company.

Publicly-Owned:
- *Groton Public Utilities

State: Delaware

Regulatory Authority: Delaware Public Service Commission.

Gas Utilities

Investor-Owned:
- Delmarva Power and Light Company

Electric Utilities

Investor-Owned:
- Delmarva Power and Light Company

State: District of Columbia

Regulatory Authority: Public Service Commission of the District of Columbia

Gas Utilities

Investor-Owned:
- Washington Gas Light Company

Electric Utilities

Investor-Owned:
- Potomac Electric Power Company

State: Florida

Regulatory Authority: Florida Public Service Commission.

Gas Utilities

Investor-Owned:
- *City Gas Company of Florida
- Peoples Gas System

Electric Utilities

Investor-Owned:
- Florida Power Corporation
- Florida Power and Light Company
- Gulf Power Company
- Tampa Electric Company

Publicly-Owned: The Florida Public Service Commission has rate structure jurisdiction over the following utilities—
- Gainesville Regional Utilities
- Jacksonville Electric Authority
- Lakeland Department of Electricity and Water
- *Ocala Utilities
- Orlando Utilities Commission
- Tallahassee, City of

Rural Electric Cooperative: The Florida Public Service Commission has rate structure jurisdiction over the following utilities—
- Clay Electric Cooperative
- Lee County Electric Cooperative
- *Sumter Electric Cooperative, Inc.
- Withlacoochee River Electric Cooperative

State: Georgia

Regulatory Authority: Georgia Public Service Commission.

Gas Utilities

Investor-Owned:
- Atlanta Gas Light Company
- Gas Light Company of Columbus

Electric Utilities

Investor-Owned:
- Georgia Power Company
- Savannah Electric and Power Company

The following utilities within the State of Georgia are not regulated by the Georgia Public Service Commission.

Electric Utilities

Publicly-Owned:
- *Albany Water, Gas & Light Commission
- *Dalton Water, Light & Sink

Rural Electric Cooperatives:
- *Douglas County Electric Membership Corporation
- Cobb Electric Membership Corporation
- *Flint Electric Membership Corporation
- Jackson Electric Membership Corporation
- North Georgia Electric Membership Corporation
- *Walton Electric Membership Corporation

State: Hawaii

Regulatory Authority: Hawaii Public Utilities Commission.

Gas Utilities

None.

Electric Utilities

Investor-Owned:
- Hawaiian Electric Company, Inc.

State: Idaho

Regulatory Authority: Idaho Public Utilities Commission.

Gas Utilities

Investor-Owned:
- Intermountain Gas Company
- Washington Water Power Company

Electric Utilities

Investor-Owned:
- Idaho Power Company
- Pacific Power and Light Company
- Utah Power and Light Company
- Washington Water Power Light Company

State: Illinois

Regulatory Authority: Illinois Commerce Commission.

Gas Utilities

Investor-Owned:
- Central Illinois Light Company
- Central Illinois Public Service Company
- Illinois Power Company
- Iowa-Illinois Gas and Electric Company
- North Shore Gas Company
- Northern Illinois Gas Company
- Panhandle Eastern Pipeline Company
- Peoples Gas, Light and Coke Company

Electric Utilities

Investor-Owned:
- Central Illinois Light Company
- Central Illinois Public Service Company
- Commonwealth Edison Company
- Illinois Power Company
- Interstate Power Company
- Iowa-Illinois Gas and Electric Company
- Union Electric Company

The following covered utility within the State of Illinois is not regulated by the Illinois Commerce Commission:

Electric Utilities

Publicly-Owned:
- Springfield Water, Light and Power Department

State: Indiana

Regulatory Authority: Indiana Public Service Commission.

Gas Utilities

Investor-Owned:
- Indiana Gas Company
- Northern Indiana Public Service Company
- Southern Indiana Gas and Electric Company
- Terre Haute Gas Corporation

Publicly-Owned:
- Citizens Gas and Coke Utility

Electric Utilities

Investor-Owned:
- Indiana and Michigan Electric Company
- Indianapolis Power and Light Company
- Northern Indiana Public Service Company
- Public Service Company of Indiana
- Southern Indiana Gas and Electric Company

Publicly-Owned:
- *Richmond Power and Light

State: Iowa

Regulatory Authority: Iowa Commerce Commission.

Gas Utilities

Investor-Owned:
- Interstate Power Company
- Iowa Electric Light and Power Company
- Iowa-Illinois Gas and Electric Company
- Iowa Power and Light Company
- Iowa Public Service Company
- Iowa Southern Utilities Company
- Peoples Natural Gas Company, Division of Internorth, Inc.

Electric Utilities

Investor-Owned:
- Interstate Power Company
- Iowa Electric Light and Power Company
- Iowa-Illinois Gas and Electric Company
- Iowa Power and Light Company
- Iowa Public Service Company
- Iowa Southern Utilities Company
- Union Electric Company

Publicly-Owned: The Iowa Commerce Commission has service and safety regulation over the following utilities—
- *Muscatine Power and Water
- Omaha Public Power District

State: Kansas

Regulatory Authority: Kansas State Corporation Commission.

Gas Utilities

Investor-Owned:
- Anadarko Production Company
- Arkansas-Louisiana Gas Company
- Gas Service Company

Greeley Gas Company
Kansas-Nebraska Natural Gas Company
Kansas Power and Light Company
Panhandle Eastern Pipeline Company
Peoples Natural Gas Company, Division of Internorth, Inc.
Union Gas System Inc.

Electric Utilities

Investor-Owned:
Empire District Electric Company
Kansas City Power and Light Company
Kansas Gas and Electric Company
Kansas Power and Light Company
Southwestern Public Service Company
Western Power Division of Centel

Rural Electric Cooperatives:
Midwest Energy Incorporated

The following covered utility within the State of Kansas is not regulated by the Kansas State Corporation Commission:

Electric Utilities

Public-Owned:
Kansas City Board of Public Utilities

State: Kentucky

Regulatory Authority: Kentucky Energy Regulatory Commission.

Gas Utilities

Investor-Owned:
Columbia Gas of Kentucky, Inc.
Louisville Gas and Electric Company
Union Light, Heat and Power Company
Western Kentucky Gas Company

Electric Utilities

Investor-Owned:
Kentucky Power Company
Kentucky Utilities Company
Louisville Gas and Electric Company
Union Light, Heat and Power Company

Rural Electric Cooperatives:
Green River Electric Corporation
Henderson-Union Rural Electric Cooperative Corporation

The following covered utilities within the State of Kentucky are not regulated by the Kentucky Energy Regulatory Commission.
Bowling Green Municipal Utilities
Owensboro Municipal Utilities
Pennyrile Rural Electric Cooperative Corporation
Warren Rural Electric Cooperative Corporation
West Kentucky Rural Electric Cooperative Corporation

State: Louisiana

Regulatory Authority: Louisiana Public Service Commission.

Gas Utilities

Investor-Owned:
Arkansas-Louisiana Gas Company
Entex, Inc.
Gulf States Utilities Company
Louisiana Gas Service Company
New Orleans Public Service, Inc. (East and West Bank)
Trans Louisiana Gas Company

Electric Utilities

Investor-Owned:
Arkansas Power and Light
Central Louisiana Electric Company
Gulf States Utilities Company
Louisiana Power and Light Company (West Bank)
New Orleans Public Service, Inc. (East Bank)
Southwestern Electric Power Company

Rural Electric Cooperatives:
Dixie Electric Membership Corporation

The following covered utilities within the State of Louisiana are not regulated by the Louisiana Public Service Commission:

Electric Utilities

Publicly-Owned:
Lafayette Utilities System

Rural Electric Cooperatives:
Southwest Louisiana Electric Membership Corporation

State: Maine

Regulatory Authority: Maine Public Utilities Commission.

Gas Utilities

None.

Electric Utilities

Investor-Owned:
Bangor Hydro-Electric Company
Central-Maine Power Company

State: Maryland

Regulatory Authority: Maryland Public Service Commission.

Gas Utilities

Investor-Owned:
Baltimore Gas and Electric Company
Washington Gas Light Company

Electric Utilities

Investor-Owned:
Baltimore Gas and Electric Company
*Conowingo Power Company
Delmarva Power and Light Company of Maryland
Potomac Edison Company
Potomac Electric Power Company

Rural Electric Cooperatives:
Southern Maryland Electric Cooperative, Inc.

State: Massachusetts

Regulatory Authority: Massachusetts Department of Public Utilities

Gas Utilities

Investor-Owned:
Bay State Gas Company
Boston Gas Company
Colonial Gas Energy System
Commonwealth Gas Company
Lowell Gas Company

Electric Utilities

Investor-Owned:
Boston Edison Company
Cambridge Electric Light Company
Commonwealth Electric Company
Eastern Edison Company
Massachusetts Electric Company
Western Massachusetts Electric Company

State: Michigan

Regulatory Authority: Michigan Public Service Commission.

Gas Utilities

Investor-Owned:
Consumers Power Company
Michigan Consolidated Gas Company
Michigan Gas Utilities Company
Michigan Power Company
Southeastern Michigan Gas Company
Wisconsin Public Service Corporation

Electric Utilities

Investor-Owned:
Consumers Power Company
Detroit Edison Company
Indiana and Michigan Electric Company
*Lake Superior District Power Company
*Michigan Power Company
Upper Peninsula Power Company
Wisconsin Electric Power Company
Wisconsin Public Service Corporation

The following covered utilities within the State of Michigan are not regulated by the Michigan Public Service Commission:

Gas Utilities

Investor-Owned:
Battle Creek Gas Company

Electric Utilities

Publicly-Owned:
Lansing Board of Water and Light

State: Minnesota

Regulatory Authority: Minnesota Public Utility Commission.

Gas Utilities

Investor-Owned
Inter-City Gas Company
Interstate Power Company
Iowa Electric Light and Power Company
Minnegasco, Inc.
Northern States Power Company
Peoples Natural Gas Company-Division of InterNorth, Inc.

Electric Utilities

Investor-Owned:
Interstate Power Company
Minnesota Power and Light Company
Northern States Power Company
Otter Tail Power Company

Rural Electric Cooperative:
*Dakota Electric Association

The following covered utility within the State of Minnesota is not regulated by the Minnesota Public Service Commission:

Electric Utilities

Publicly-Owned:
*Rochester Department of Public Utilities

Rural Electric Cooperatives:
*Anoka Electric Cooperative

State: Mississippi

Regulatory Authority: Mississippi Public Service Commission.

Gas Utilities

Investor-Owned:

Entex, Inc.
Mississippi Valley Gas Company

Electric Utilities

Investor-Owned:
Mississippi Power and Light Company
Mississippi Power Company

The following covered utilities within the State of Mississippi are not regulated by the Mississippi Public Service Commission.

Electric Utilities

Rural Electric Cooperatives:
*Alcorn County Electric Power Association
*Coast Electric Power Association
*4-County Electric Power Association
*Singing River Electric Power Association
*Southern Pine Electric Power Association
Tombigbee Electric Power Association

State: Missouri

Regulatory Authority: Missouri Public Service Commission

Gas Utilities

Investor-Owned:
Associated Natural Gas Company
Gas Service Company
Laclede Gas Company Consolidated
Missouri Public Service Company
Peoples Natural Gas Company Division of InterNorth, Inc.

Electric Utilities

Investor-Owned:
Empire District Electric Company
Kansas City Power and Light Company
Missouri Public Service Company
St. Joseph Light and Power Company
Union Electric Company

The following covered utilities within the State of Missouri are not regulated by Missouri Public Service Commission.

Gas Utilities

Investor-Owned:
Cities Service Gas Company

Publicly-Owned:
Springfield City Utilities

Electric Utilities

Publicly-Owned:
*Independence Power and Light Department
Springfield City Utilities

State: Montana

Regulatory Authority: Montana Public Service Commission.

Gas Utilities

Investor-Owned:
Montana-Dakota Utilities Company
Montana Power Company

Electric Utilities

Investor-Owned:
Black Hills Power and Light Company
Montana-Dakota Utilities Company
Montana Power Company
Pacific Power and Light Company
Washington Water Power Company

State: Nebraska

Regulatory Authority-Nebraska Public Service Commission.

The Commission does not regulate the rates and service of the gas and electric utilities of the State of Nebraska.

The following covered utilities within the State of Nebraska are not regulated by the Nebraska Public Service Commission.

Electric Utilities

Publicly-Owned:
Lincoln Electric System
Nebraska Public Power District
Omaha Public Power District

Gas Utilities

Investor-Owned:
Gas Service Company
Iowa Electric Light and Power Company
Iowa Public Service Company
KN Energy, Inc.
Minnegasco, Inc.
Northwestern Public Service Company
Peoples Natural Gas Company Division of Internorth, Inc.

The governing body of each Nebraska municipality exercises ratemaking jurisdiction over gas utility rates, operations and services provided by a gas utility within its city or town limits. These municipal authorities would be State agencies as defined by PURPA, and thus have responsibilities under PURPA identical to those of the State regulatory authority.

Publicly-Owned:
Metropolitan Utilities District of Omaha

State: Nevada

Regulatory Authority: Nevada Public Service Commission.

Gas Utilities

Investor-Owned:
Southwest Gas Corporation

Electric Utilities

Investor-Owned:
Idaho Power Company
Nevada Power Company
Sierre Pacific Power Company

State: New Hampshire

Regulatory Authority: New Hampshire Public Utilities Commission.

Electric Utilities

Investor-Owned:
Public Service Company of New Hampshire

State: New Jersey

Regulatory Authority: New Jersey Department of Energy Board of Public Utilities.

Gas Utilities

Investor-Owned:
Elizabethtown Gas Company
New Jersey Natural Gas Company
Public Service Electric and Gas Company
South Jersey Gas Company

Electric Utilities

Investor-Owned:
Atlantic City Electric Company
Jersey Central Power and Light Company
Public Service Electric and Gas Company
Rockland Electric Company

State: New Mexico

Regulatory Authority: New Mexico Public Service Commission.

Gas Utilities

Gas Company of New Mexico

Electric Utilities

Investor-Owned:
El Paso Electric Company
Public Service Company of New Mexico
Southwestern Public Service Company
Texas-New Mexico Power Company

Rural Electric Cooperative:
*Lea County Electric Cooperative, Inc.

State: New York

Regulatory Authority: New York Public Service Commission.

Gas Utilities

Investor-Owned:
Brooklyn Union Gas Company
Columbia Gas of New York, Inc.
Consolidated Edison Company of New York, Inc.
Long Island Lighting Company
National Fuel Gas Distribution Corporation
New York State Electric and Gas Corporation
Niagara Mohawk Power Corporation
Orange and Rockland Utilities
Rochester Gas and Electric Corporation

Electric Utilities

Investor-Owned:
Central Hudson Gas and Electric Corporation
Consolidated Edison Company of New York
Long Island Lighting Company
New York States Electric and Gas Corporation
Niagara Mohawk Power Corporation
Orange and Rockland Utilities
Rochester Gas and Electric Corporation

The following covered utility within the State of New York is not regulated by the New York Public Service Commission:

Electric Utilities

Publicly-Owned:
Power Authority of New York

State: North Carolina

Regulatory Authority: North Carolina Utilities Commission.

Gas Utilities

Investor-Owned:
North Carolina Natural Gas Corporation
Piedmont Natural Gas Company
Public Service Company, Inc. of North Carolina

Electric Utilities

Investor-Owned:
Carolina Power and Light Company
Duke Power Company
Nantahala Power & Light Company

Virginia Electric and Power Company

The following covered utilities within the State of North Carolina are not regulated by the North Carolina Utilities Commission:

Electric Utilities

Publicly-Owned:
Fayetteville Public Works Commission
*Greenville Utilities Commission
*High Point Electric Utility Department
*Rocky Mount Public Utilities
*Wilson Utilities Department

Rural Electric Cooperatives:
*Blue Ridge Electric Membership Corp.
*Rutherford Electric Membership Corporation

State: North Dakota

Regulatory Authority: North Dakota Public Service Commission.

Gas Utilities

Investor-Owned:
Montana Dakota Utilities Company
Northern States Power Company

Electric Utilities

Investor-Owned:
Montana Dakota Utilities Company
Northern States Power Company
Otter Tail Power Company

State: Ohio

Regulatory Authority: Ohio Public Utilities Commission.

Gas Utilities

Investor-Owned:
Cincinnati Gas and Electric Company
Columbia Gas of Ohio, Inc.
Dayton Power and Light Company
East Ohio Gas Company
National Gas and Oil Company
West Ohio Gas Company

Electric Utilities

Investor-Owned:
Cincinnati Gas and Electric Company
Cleveland Electric Illuminating Company
Columbus and Southern Ohio Electric Company
Dayton Power and Light Company
Monongahela Power Company
Ohio Edison Company
Ohio Power Company
Toledo Edison Company

The following covered utilities within the State of Ohio are not regulated by the Ohio Public Utilities Commission:

Electric Utilities

Publicly-Owned:
*Cleveland Division of Light and Power

Rural Electric Cooperatives:
South Central Power Company

State: Oklahoma

Regulatory Authority: Oklahoma Corporation Commission

Gas Utilities

Investor-Owned:
Arkansas-Louisiana Gas Company
Arkansas-Oklahoma Gas Corporation
Gas Service Company
Lone Star Gas Company
Oklahoma Natural Gas Company
Southern Union Gas Company
Union Gas System Inc.

Electric Utilities

Investor-Owned:
Empire District Electric Company
Oklahoma Gas and Electric Company
Public Service Company of Oklahoma
Southwestern Public Service Company

Rural Electric Cooperative:
*Cotton Electric Cooperative

Gas Utilities

Investor-Owned:
Cities Service Gas Company

State: Oregon

Regulatory Authority: Public Utility Commissioner of Oregon.

Gas Utilities

Investor-Owned:
Cascade Natural Gas Corporation
Northwest Natural Gas Company

Electric Utilities

Investor-Owned:
*CP National Corporation
Idaho Power Company
Pacific Power and Light Company
Portland General Electric Company

The following covered utilities within the State of Oregon are not regulated by the Public Utility Commissioner of Oregon:

Electric Utilities

Publicly-Owned:
Central Lincoln People's Utility District
*Clatskanie People's Utility District
Eugene Water and Electric Board
*Springfield Utilities Board

Rural Electric Cooperatives:
*Umatilla Electric Cooperative Association

State: Pennsylvania

Regulatory Authority: Pennsylvania Public Utility Commission.

Gas Utilities

Investor-Owned:
Carnegie Natural Gas Company
Columbia Gas of Pennsylvania, Inc.
Equitable Gas Company
National Fuel Gas Distribution Corporation
North Penn Gas Company
Pennsylvania Gas and Water Company
Peoples Natural Gas Company
Philadelphia Electric Company
T.W. Phillips Gas and Oil Company
UGI Corporation

Electric Utilities

Investor-Owned:
Duquesne Light Company
Metropolitan Edison Company
Pennsylvania Electric Company
Pennsylvania Power Company
Pennsylvania Power and Light Company
Philadelphia Electric Company
*UGI—Luzerne Electric Company
West Penn Power Company

The following covered utility within the State of Pennsylvania is not regulated by the Pennsylvania Public Utility Commission:

Gas Utilities

Investor-Owned:
Phildelphia Gas Works

State: Puerto Rico

Regulatory Authority: Puerto Rico Public Service Commission.

Gas Utilities

None.

Electric Utilities

None.

The following covered utility within Puerto Rico is not regulated by the Puerto Rico Public Service Commission:

Electric Utilities

Publicly-Owned:
Puerto Rico Electric Power Authority

State: Rhode Island

Regulatory Authority: Rhode Island Public Utilities Commission.

Gas Utilities

Investor-Owned:
Providence Gas Company

Electric Utilities

Investor-Owned:
Blackstone Valley Electric Company
Narragansett Electric Company

State: South Carolina

Regulatory Authority: South Carolina Public Service Commission.

Gas Utilities

Investor-Owned:
Carolina Pipeline Company
Piedmont Natural Gas Company
South Carolina Electric and Gas Company

Electric Utilities

Investor-Owned:
Carolina Power and Light Company
Duke Power Company
South Carolina Electric and Gas Company

The following covered utilities within the State of South Carolina are not regulated by the South Carolina Public Service Commission:

Electric Utilities

Publicly-Owned:
South Carolina Public Service Authority

Rural Electric Cooperatives:
*Berkeley Electric Cooperatives, Inc.
*Palmetto Electric Cooperative, Inc.

State: South Dakota

Regulatory Authority: South Dakota Public Utilities Commission.

Gas Utilities

Investor-Owned:
Iowa Public Service Company
Minnegasco, Inc.
Montana-Dakota Utilities Company
Northwestern Public Service Company

Electric Utilities

Investor-Owned:
Black Hills Power and Light Company
Iowa Public Service Company
Montana-Dakota Utilities Company
Northern States Power Company
Northwestern Public Service Company
Otter Tail Power Company

The following covered utility within the State of South Dakota is not regulated by the South Dakota Public Service Commission:

Electric Utilities

Publicly-Owned:
Nebraska Public Power District

State: Tennessee

Regulatory Authority: Tennessee Public Service Commission.

Gas Utilities

Investor-Owned:
Chattanooga Gas Company
Nashville Gas Company

Electric Utilities

Investor-Owned:
Kingsport Power Company

The following covered utilities within the State of Tennessee are not regulated by the Tennessee Public Service Commission:

Electric Utilities

Publicly-Owned:
*Bristol Tennessee Electric System
Chattanooga Electric Power Board
*Clarksville Department of Electricity
*Cleveland Utilities
*Greensville Light and Power System
Jackson Utility Division—Electric Department
Johnson City Power Board
Knoxville Utilities Board
*Lenoir City Utilities Board
Memphis Light Gas and Water Division
*Murfreesboro Electric Department
Nashville Electric Services
*Sevier County Electric System

Rural Electric Cooperatives:
*Appalachian Electric Cooperative
Cumberland Electric Membership Corporation
*Duck River Electric Membership Corporation
*Gibson County Electric Membership Corporation
*Meriwether Lewis Electric Cooperative
Middle Tennessee Electric Membership Corporation
*Southwest Tennessee Electric Membership Corporation
*Tri-County Electric Membership Corporation
*Upper Cumberland Electric Membership Corporation
Volunteer Electric Cooperative

Gas Utilities

Publicly-Owned:
Memphis Light, Gas and Water Division

State: Tennessee

Regulatory Authority: Tennessee Valley Authority.

Gas Utilities

None.

Electric Utilities

Publicly-Owned:
*Bowling Green Municipal Utilities
*Bristol Tennessee Electric System
Chattanooga Electric Power Board
*Clarksville Department of Electricity
*Cleveland Utilities
Decatur Electric Department
Florence Electric Department
*Greeneville Light and Power System
Huntsville Utilities
Jackson Utility Division—Electric Department
Johnson City Power Board
Knoxville Utilities Board
*Lenoir City Utilities Board
Memphis Light, Gas and Water Division
*Murfreesboro Electric Department
Nashville Electric Service
*Sevier County Electric System

Rural Electric Cooperatives:
*Appalachian Electric Cooperative
Cumberland Electric Membership Corporation
*Duck River Electric Membership Corporation
*Four-County Electric Power Association
*Gibson County Electric Membership Corporation
*Meriwether Lewis Electric Cooperative
Middle Tennessee Electric Membership Corporation
North Georgia Electric Membership Corporation
Pennyrile Rural Electric Cooperative Corporation
*Southwest Tennessee Electric Membership Corporation
*Tombigbee Electric Power Association
*Tri-County Electric Membership Corporation
*Upper Cumberland Electric Membership Corporation
Volunteer Electric Cooperative
Warren Rural Electric Cooperative Corporation
*West Kentucky Rural Electric Cooperative Corporation

State: Texas

Regulatory Authority: Texas Public Utility Commission.

Gas Utilities

Investor-Owned:
None.

Electric Utilities

Investor-Owned:
Central Power and Light Company
El Paso Electric Company
Gulf States Utilities
Houston Lighting and Power Company
Southwestern Electric Power Company
*Southwestern Electric Service Company
Southwestern Public Service Company
Texas-New Mexico Power Company
Texas Utilities Electric Company
West Texas Utilities Company

Publicly-Owned:
*Lower Colorado River Authority

Rural Electric Cooperatives:
*Bluebonnet Electric Cooperative, Inc.
*Guadalupe Valley Electric Cooperative
Pedernales Electric Cooperative
*Sam Houston Electric Cooperative

The governing body of each Texas municipality exercises exclusive original jurisdiction over electric utility rates, operations and services provided by an electric utility (whether privately owned or publicly owned), within its city or town limits, unless the municipality has surrendered this jurisdiction to the Texas Public Utility Commission. The Commission hears *de novo* appeals from the decisions of such municipalities. These municipal authorities would be State agencies as defined by PURPA, and thus have responsibilities under PURPA identical to those of a State regulatory authority.

The municipally-owned electric utilities listed below are not under the commission's original ratemaking jurisdiction.

Electric Utilities

Publicly-Owned:
Austin Electric Department
Garland Electric Department
*Lubbock Power and Light
San Antonio City Public Service Board

State: Texas

Regulatory Authority: Railroad Commission of Texas.

Gas Utilities

Investor-Owned:
Energas Company
Entex, Inc.
Lone Star Gas Company, a division of ENSERCH Corp.
Southern Union Company

The governing body of each Texas municipality exercises exclusive original ratemaking jurisdiction over gas utility rates, operations, and services provided by a gas utility within its city or town limits, subject to appellate review by the Railroad Commission of Texas. These municipal authorities would be State agencies as defined by PURPA and thus have responsibilities under PURPA identical to those of a State regulatory authority.

The following covered utilities within the State of Texas are not regulated by the Railroad Commission of Texas. (The Railroad Commission's appellate authority does not extend to municipally owned gas utilities.)

Gas Utilities

Public-Owned:
City Public Service Board (San Antonio)

State: Utah

Regulatory Authority: Utah Public Service Commission.

Gas Utilities

Investor-Owned:
Mountain Fuel Supply Company

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Electric Utilities

Investor-Owned:

Utah Power and Light Company

Rural Electric Cooperatives:

Moon Lake Electric Association

State: Vermont

Regulatory Authority: Vermont Public Service Board.

Gas Utilities

None.

Electric Utilities

Investor-Owned:

Central Vermont Public Service Corporation
Green Mountain Power Corporation
Public Service Company of New Hampshire

State: Virginia

Regulatory Authority: Virginia State Corporation Commission.

Gas Utilities

Investor-Owned:

Columbia Gas of Virginia, Inc.
Commonwealth Gas Services, Inc.
Northern Virginia Natural Gas
Virginia Natural Gas

Electric Utilities

Investor-Owned:

Appalachian Power Company
Delmarva Power and Light Company
*Old Dominion Power Company
Potomac Edison Company
Potomac Electric Power Company
Virginia Electric and Power Company

Rural Electric Cooperatives

Northern Virginia Electric Cooperative
Rappahannock Electric Cooperative

The following covered utility within the State of Virginia is not regulated by the Virginia State Corporation Commission.

Gos Utilities

Publicly-Owned:

City of Richmond, Virginia, Department of Public Utilities

Electric Utilities

Publicly-Owned:

*Danville Water, Gas & Electric

State: Washington

Regulatory Authority: Washington Utilities and Transportation Commission.

Gas Utilities

Investor-Owned:

Cascade Natural Gas Corporation
Northwest Natural Gas Company
Washington Natural Gas Company
Washington Water Power Company

Electric Utilities

Investor-Owned:

Pacific Power and Light Company
Puget Sound Power and Light Company
Washington Water Power Company

The following covered utilities within the State of Washington are not regulated by the Washington Utilities and Transportation Commission.

Electric Utilities

Publicly-Owned:

*Port Angeles Light and Water Department
Public Utility District No. 1 of Benton County
Public Utility District No. 1 of Chelan County
Public Utility District No. 1 of Clark County
Public Utility District No. 1 of Cowlitz County
*Public Utility District No. 1 of Douglas County
*Public Utility District No. 1 of Franklin County
Public Utility District No. 1 of Grant County
Public Utility District No. 1 of Grays Harbor County
*Public Utility District No. 1 of Lewis County
Public Utility District No. 1 of Snohomish County
*Richland Energy Service Department
Seattle City Light Department
Tacoma Public Utility—Light Division

State: West Virginia

Regulatory Authority: West Virginia Public Service Commission.

Gas Utilities

Investor-Owned:

Equitable Gas Company
Hope Gas, Incorporated
Mountaineer Gas Company

Electric Utilities

Investor-Owned:

Appalachian Power Company
Monongahela Power Company
Potomac Edison Company
Virginia Electric and Power Company
Wheeling Electric Company

State: Wisconsin

Regulatory Authority: Wisconsin Public Service Commission.

Gas Utilities

Investor-Owned:

Madison Gas and Electric Company
Northern States Power Company
Wisconsin Fuel and Light Company
Wisconsin Gas Company
Wisconsin Natural Gas Company
Wisconsin Power and Light Company
Wisconsin Public Service Corporation

Electric Utilities

Investor-Owned:

*Lake Superior District Power Company
Madison Gas and Electric Company
Northern States Power Company
Wisconsin Electric Power Company
Wisconsin Power and Light Company
Wisconsin Public Service Corporation

State: Wyoming

Regulatory Authority: Wyoming Public Service Commission.

Gas Utilities

Investor-Owned:

Cheyenne Light Fuel and Power Company
Kansas-Nebraska Natural Gas Company
Montana-Dakota Utilities Company
Mountain Fuel Supply Company

Electric Utilities

Investor-Owned:

Black Hills Power and Light Company
Montana-Dakota Utilities Company
Pacific Power and Light Company
Utah Power and Light Company

Rural Electric Cooperative:

Tri-Country Electric Association, Inc.

Appendix B

Electric Utilities

All utilities listed below had electric energy sales, for purposes other than resale, in excess of 500 million kilowatt hours in 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984 or 1985. All except those marked (*) are covered by PURPA Title I and NECPA Titles II and VII. Utilities marked (*) either did not exceed the NECPA threshold of 750 million kilowatt-hour in 1985 for purposes other than resale, or do not have residential or commerical sales and therefore, are not covered by NECTA Titles II and VII. The utilities listed more than once have sales in more than one State, and those States are indicated by abbreviations in parentheses.

Investor-Owned:

Alabama Power Company
Appalachian Power Company [VA]
Appalachian Power Company [WV]
Arizona Public Service Company
Arkansas Power & Light Company [AR]
Arkansas Power & Light Company [LA]
Atlantic City Electric Company
Baltimore Gas & Electric Company
Bangor Hydro-Electric Company
Black Hills Power & Light Company [MT]
Black Hills Power & Light Company [SD]
Black Hills Power & Light Company [WY]
Blackstone Valley Electric Company
Boston Edison Company
Cambridge Electric Light Company
Carolina Power & Light Company [NC]
Carolina Power & Light Company [SC]
Central Hudson Gas & Electric Corporation
Central Illinois Light Company
Central Illinois Public Service Company
Central Louisiana Electric Company
Central Maine Power Company
Central Power & Light Company
Central Vermont Public Service Corporation
Cincinnati Gas & Electric Company
Cleveland Electric Illuminating Company
Columbus and Southern Ohio Electric Company
Commonwealth Edison Company
Commonwealth Electric Company
Connecticut Light & Power Company
*Conowingo Power Company
Consolidated Edison Company of New York
Consumer Power Company
*CP National Corporation
Dayton Power & Light Company
Delmarva Power & Light Company [DE]
Delmarva Power & Light Company [VA]
Delmarva Power & Light Company of Maryland
Detroit Edison Company

Duke Power Company [NC]
Duke Power Company [SC]
Duquesne Light Company
Eastern Edison Company
El Paso Electric Company [NM]
El Paso Electric Company [TX]
Empire District Electric Company [AR]
Empire District Electric Company [KS]
Empire District Electric Company [MO]
Empire District Electric Company [OK]
Florida Power Corporation
Florida Power & Light Company
Georgia Power Company
Green Mountain Power Corporation
Gulf Power Company
Gulf States Utilities Company [LA]
Gulf States Company [TX]
Hawaiian Electric Company Inc.
Houston Lighting & Power Company
Idaho Power Company [ID]
Idaho Power Company [NV]
Idaho Power Company [OR]
Illinois Power Company
Indiana & Michigan Electric Company [IN]
Indiana & Michigan Electric Company [MI]
Indianapolis Power & Light Company
Interstate Power Company [IA]
Interstate Power Company [IL]
Interstate Power Company [MN]
Iowa Electric Light & Power Company
Iowa-Illinois Gas & Electric Company [IA]
Iowa-Illinois Gas & Electric Company [IL]
Iowa Power & Light Company
Iowa Public Service Company [LA]
Iowa Public Service Company [SD]
Iowa Southern Utilities Company
Jersey Central Power & Light Company
Kansas City Power & Light Company [KS]
Kansas City Power & Light Company [MO]
Kansas Gas & Electric Company
Kansas Power & Light Company
Kentucky Power Company
Kentucky Utilities Company
Kingsport Power Company
*Lake Superior District Power Company [MI]
*Lake Superior District Power Company [WI]
Long Island Lighting Company
Louisiana Power & Light Company
Louisville Gas & Electric Company
Madison Gas & Electric Company
Massachusetts Electric Company
Metropolitan Edison Company
*Michigan Power Company
Minnesota Power & Light Company
Mississippi Power Company
Mississippi Power & Light Company
Missouri Public Service Company
Monongahela Power Company [OH]
Monongahela Power Company [WV]
Montana-Dakota Utilities Company [MT]
Montana-Dakota Utilities Company [ND]
Montana-Dakota Utilities Company [SD]
Montana-Dakota Utilities Company [WY]
Montana-Dakota Power Company
Nantahala Power & Light Company
Narragansett Electric Company
Nevada Power Company
New Orleans Public Service Inc.
New York State Electric & Gas Corporation
Niagara Mohawk Power Company
Northern Indiana Public Service Company
Northern States Power Company [MN]
Northern States Power Company [ND]
Northern States Power Company [SD]
Northern States Power Company [WI]
Northwestern Public Service Company
Ohio Edison Company
Ohio Power Company
Oklahoma Gas & Electric Company [AR]
Oklahoma Gas & Electric Company [OK]
Old Dominion Power Company
Orange & Rockland Utilities
Otter Tail Power Company [MN]
Otter Tail Power Company [ND]
Otter Tail Power Company [SD]
Pacific Gas & Electric Company
Pacific Power Light Company (CA)
Pacific Power Light Company (ID)
Pacific Power Light Company (MT)
Pacific Power Light Company (OR)
Pacific Power Light Company (WA)
Pacific Power Light Company (WY)
Pennsylvania Electric Company
Pennsylvania Power & Light Company
Pennsylvania Power Company
Philadelphia Electric Company
Portland General Electric Company
Portland General Electric Company
Potomac Edison Company (MD)
Potomac Edison Company (VA)
Potomac Edison Company (WV)
Potomac Edison Power Company (DC)
Potomac Edison Power Company (MD)
Potomac Edison Power Company (VA)
Public Service Company of Colorado
Public Service Company of Indiana
Public Service Company of New Hampshire (NH)
Public Service Company of New Hampshire (VT)
Public Service Company of New Mexico
Public Service Company of Oklahoma
Public Service Electric and Gas Company
Puget Sound Power & Light Company
Rochester Gas & Electric Corporation
Rockland Electric Company
St. Joseph Light & Power Company
San Diego Gas & Electric Company
Savannah Electric & Power Company
Sierra Pacific Power Company (CA)
Sierra Pacific Power Company (NV)
South Carolina Electric & Gas Company
Southern California Edison Company
Southern Colorado Power Division of Centel (CO)
Southern Indiana Gas & Electric Company
Southwestern Electric Power Company (AR)
Southwestern Electric Power Company (LA)
Southwestern Electric Power Company (TX)
Southwestern Electric Service Company
Southwestern Public Service Company (KS)
Southwestern Public Service Company (NM)
Southwestern Public Service Company (OK)
Southwestern Public Service Company (TX)
Tampa Electric Company
Texas-New Mexico Power Company
Texas Utilities Electric Company
Toledo Edison Company
Tucson Electric Power Company
*UGI-Luzerne Electric Division
Union Electric Company (LA)
Union Electric Company (IL)
Union Electric Company (MO)
Union Light, Heat & Power Company
United Illuminating Company
*Upper Peninsula Power Company
Utah Power & Light Company (ID)
Utah Power & Light Company (UT)
Utah Power & Light Company (WY)
Virginia Electric & Power Company (NC)
Virginia Electric & Power Company (VA)
Virginia Electric & Power Company (WV)
Washington Water Power Company (ID)
Washington Water Power Company (MT)
Washington Water Power Company (WA)
West Penn Power Company
West Texas Utilities Company
Western Massachusetts Electric Company
Western Power Division of Centel (KS)
Wheeling Electric Company
Wisconsin Electric Power Company (MI)
Wisconsin Electric Power Company (WI)
Wisconsin Power & Light Company
Wisconsin Public Service Corporation (MI)
Wisconsin Public Service Corporation (WI)

Publicly-Owned:

*Albany Water, Gas & Light Commission (GA)
Anaheim Public Utilities Department (CA)
*Anchorage Municipal Light & Power Department (AK)
Austin Electric Department (TX)
*Bowling Green Municipal Utilities (KY)
*Bristol Tennessee Electric System (TN)
*Brownsville Public Utility Board (TX)
Burbank Public Service Department (CA)
Central Lincoln People's Utility District (OR)
Chattanooga Electric Power Board (TN)
*Clarksville Department of Electricity (TN)
*Clatskanie People's Utility District (OR)
*Cleveland Division of Light & Power (OH)
*Cleveland Utilities (TN)
Colorado Springs Department of Utilities (CO)
*Dalton Water, Light & Sink (GA)
*Danville Water, Gas & Electric (VA)
Decatur Electric Department (AL)
*Dothan Electric Department (AL)
Eugene Water & Electric Board (OR)
Fayetteville Public Works Commission (NC)
Florence Electric Department (AL,TN)
Gainesville Regional Utilities (FL)
Garland Electric Department (TX)
Glendale Public Service Department (CA)
*Greeneville Light & Power System (TN)
*Greenville Utilities Commission (NC)
*Groton Public Utilities (CT)
*High Point Electric Utility Dept. (NC)
Huntsville Utilities (AL)
Imperial Irrigation District (CA)
*Independence Power & Light Department (MO)
Jackson Utility Division—Electric Department (TN)
Jacksonville Electric Authority (TN)
Johnson City Power Board (TN)
Kansas City Board of Public Utilities (KS)
Knoxville Utilities Board (TN)
Lafayette Utilities System (LA)
Lakeland Department of Electricity and Water (FL)
Lansing Board of Water & Light (MI)
*Lenoir City Utilities Board (TN)
Lincoln Electric System (NE)
Los Angeles Department of Water and Power (CA)
*Lower Colorado River Authority (TX)

*Lubbock Power & Light (TX)
Memphis Light, Gas & Water Division (TN)
Modesto Irrigation District (CA)
*Murfreesboro Electric Dept. (TN)
*Muscatine Power & Water (IA)
Nashville Electric Service (TN)
Nebraska Public Power District (NE)
Nebraska Public Power District (SD)
*North Little Rock Electric Department (AR)
*Ocala Utilities (FL)
Omaha Public Power District (IA)
Omaha Public Power District (NE)
Orlando Utilities Commission (FL)
*Owensboro Municipal Utilities (KY)
Palo Alto Electric Utility (CA)
Pasadena Water & Power Department (CA)
*Power Authority of New York (NY)
*Port Angeles Light & Water Department (WA)
Public Utility District No. 1 of Benton County (WA)
Public Utility District No. 1 of Chelan County (WA)
Public Utility District No. 1 of Clark County (WA)
Public Utility District No. 1 of Cowlitz County (WA)
*Public Utility District No. 1 of Douglas County (WA)
*Public Utility District No. 1 of Franklin County (WA)
Public Utility District No. 1 of Grant County (WA)
Public Utility District No. 1 of Grays Harbor County (WA)
*Public Utility District No. 1 of Lewis County (WA)
Public Utility District No. 1 of Snohomish County (WA)
Puerto Rico Electric Power Authority
*Richland Energy Services Department (WA)
*Richmond Power & Light (IN)
Riverside Public Utilities (CA)
*Rochester Department of Public Utilities (MN)
*Rocky Mount Public Utilities (NC)
Sacramento Municipal Utility District (CA)
Salt River Project Agricultural Improvement and Power District (AZ)
San Antonio City Public Service Board (TX)
Santa Clara Electric Department (CA)
Seattle City Light Department (WA)
*Sevier County Electric System (TN)
South Carolina Public Service Authority
*Springfield City Utilities (MO)
*Springfield Utilities Board (OR)
Springfield Water, Light & Power Department (IL)
Tacoma Public Utilities—Light Divison (WA)
*Trico Electric Cooperative, Inc. (AZ)
Tallahassee, City of (FL)
Turlock Irrigation District (CA)
Vernon Municipal Light Department (CA)
*Wilson Utilities Department (NC)

Rural Electric Cooperatives

*Alcorn County Electric Power Association (MS)
*Anoka Electric Cooperative (MN)
*Appalachian Electric Cooperative (TN)
*Berkeley Electric Cooperative (SC)
*Bluebonnet Electric Cooperative, Inc. (TX)
*Blue Ridge Electric Membership Corporation (NC)
Chugach Electric Association (AK)
Clay Electric Cooperative (FL)
*Coast Electric Power Association (MS)
Cobb Electric Membership Corporation (GA)
*Cotton Electric Cooperative (OK)
Cumberland Electric Membership Corporation (TN)
*Dakota Electric Association (MN)
*Douglas County Electric Membership Corporation (GA)
Dixie Electric Membership Corporation (LA)
Duck River Electric Membership Corporation (TN)
*Duncan Valley Electric Cooperative, Inc. (AZ)
*First Electric Cooperative Corporation (AR)
*Flint Electric Membership Corporation (GA)
*Four County Electric Power Association (MS)
*Gibson County Electric Membership Corporation (TN)
Green River Electric Corporation (KY)
*Guadalupe Valley Electric Cooperative (TX)
Henderson-Union Rural Electric Cooperative Corporation (KY)
*Intermountain Rural Electric (CO)
Jackson Electric Membership Corporation (GA)
*Lea County Electric Cooperative, Inc. (NM)
Lee County Electric Cooperative (FL)
*Meriweather Lewis Electric Cooperative (TN)
Middle Tennessee Electric Membership Corporation (TN)
*Midwest Energy Incorporated (KS)
Moon Lake Electric Association (CO)
*Northern Virginia Electric Cooperative (VA)
North Georgia Electric Membership Corporation (TX)
*Palmetto Electric Cooperative, Inc. (SC)
Pedernales Electric Cooperative Corporation (TX)
Pennyrile Rural Electric Cooperative Corporation (KY, TN)
Rappahannock Electric Cooperative (VA)
Rural Electric System (AL)
*Rutherford Electric Membership Corporation (NC)
*Sam Houston Electric Cooperative (TX)
*Singing River Electric Power Association (MS)
South Central Power Company (OH)
Southern Maryland Electric Cooperative, Inc. (MD)
*Southern Pine Electric Power Association (MS)
Southwest Louisiana Electric Membership Corporation (LA)
*Southwest Tennessee Electric Membership Corporation (TN)
*Sumter Electric Cooperative (FL)
*Tombigbee Electric Power Association (MS)
Tri-County Electric Association, Inc. (WY)
*Tri-County Electric Membership Corporation (TN)
*Umatilla Electric Cooperative Association (OR)
*Upper Cumberland Electric Membership Corporation (TN)
Volunteer Electric Cooperative (TN)
*Walton Electric Membership Corporation (GA)
Warren Rural Electric Cooperative Corporation (KY)
*West Kentucky Rural Electric Cooperative Corporation (KY)
Withlacoochee River Electric Cooperative (FL)

Federal Agencies

*Bonneville Power Administration (OR)
*Tennessee Valley Authority (TN)
*Western Area Power Administration (CO)

Gas Utilities

All gas utilities listed below had natural gas sales, for purposes other than resale, in excess of 10 billion cubic feet in 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984 or 1985. All except those marked (*) are covered by PURPA Title III and NECPA Titles II and VII. Utilities marked (*) are not covered by NECPA Titles II and VII because they either did not exceed the NECPA threshold of 10 billion cubic feet in 1985 for purposes other than resale, or do not have residential or commercial sales. The utilities listed more than once have sales in more than one State and those States are indicated by abbreviations in parentheses.

Investor-Owned

Alabama Gas Corporation
Alabama-Tennessee Natural Gas Company
Anadarko Production Company
Arkansas-Louisiana Gas Company (AR)
Arkansas-Louisiana Gas Company (KS)
Arkansas-Louisiana Gas Company (LA)
Arkansas-Louisiana Gas Company (OK)
Arkansas-Oklahoma Gas Corporation (AR)
Arkansas-Oklahoma Gas Corporation (OK)
Arkansas Western Gas Company
Associated Natural Gas Company (AR)
Associated Natural Gas Company (MO)
Atlanta Gas Light Company
Baltimore Gas & Electric Company
Battle Creek Gas Company
Bay State Gas Company
Boston Gas Company
Brooklyn Union Gas Company
Carnegie Natural Gas Company
Carolina Pipeline Company
Cascade Natural Gas Corporation (OR)
Cascade Natural Gas Corporation (WA)
Central Illinois Light Company
Central Illinois Public Service Company
Chattanooga Gas Company (TN)
Cheyenne Light, Fuel and Power Company
Cincinnati Gas and Electric Company
Cities Services Gas Company (covered by NECPA only)
*City Gas Company of Florida
Colonial Gas Energy System
Columbia Gas of Kentucky, Inc.
Columbia Gas of New York, Inc.
Columbia Gas of Ohio, Inc.
Columbia Gas of Pennsylvania, Inc.
Columbia Gas of Virginia, Inc.
Commonwealth Gas Company
Commonwealth Gas Service Incorporated
Commonwealth Gas Services, Incorporated
Connecticut Light & Power Company
Connecticut Natural Gas Corporation
Consolidated Edison Company of New York, Inc.
Consumers Power Company
Dayton Power & Light Company
Delmarva Power & Light Company (DE)
East Ohio Gas Company
Elizabethtown Gas Company
Energas Company
Enstar Natural Gas Company
Entex Inc. (LA)
Entex Inc. (MS)
Entex Inc. (TX)
Equitable Gas Company (PA)
Equitable Gas Company (WV)
Gas Company of New Mexico
Gas Light Company of Columbus
Gas Service Company (KS)
Gas Service Company (MO)
Gas Service Company (NE)
Gas Service Company (OK)
Greeley Gas Company (CO)
Greeley Gas Company (KS)
Gulf States Utilities Company
Hope Gas, Incorporated
Illinois Power Company
Indiana Gas Company
Inter City Gas Company
Intermountain Gas Company
Interstate Power Company (IA)
Interstate Power Company (MN)
Iowa Electric Light & Power Company (CO)
Iowa Electric Light & Power Company (IA)
Iowa Electric Light & Power Company (MN)
Iowa Electric Light & Power Company (NE)
Iowa-Illinois Gas & Electric Company (IA)
Iowa-Illinois Gas & Electric Company (IL)
Iowa Power & Light Company
Iowa Public Service Company (IA)
Iowa Public Service Company (NE)
Iowa Public Service Company (SD)
Iowa Southern Utilities Company
Kansas-Nebraska Natural Gas Company (CO)
Kansas-Nebraska Natural Gas Company (KS)
Kansas-Nebraska Natural Gas Company (WY)
Kansas Power & Light Company
KN Energy, Inc.
Laclede Gas Company Consolidated
Lone Star Gas Company (OK)
Lone Star Gas Company, a division of ENSERCH Copr. (TX)
Long Island Lighting Company
Louisiana Gas Service Company
Louisville Gas & Electric Company
Lowell Gas Company
Madison Gas & Electric Company
Michigan Consolidated Gas Company
Michigan Gas Utilities Company
Michigan Power Company
Minnegasco, Inc. (MN)
Minnegasco, Inc. (NE)
Minnegasco, Inc. (SD)
Mississippi Valley Gas Company
Missouri Public Service Company
Mobile Gas Service Corporation
Montana-Dakota Utilities Company (MN)
Montana-Dakota Utilities Company (MT)
Montana-Dakota Utilities Company (ND)
Montana-Dakota Utilities Company (SD)
Montana-Dakota Utilities Company (WY)
Montana Power Company
Mountaineer Gas Company
Mountain Fuel Supply Company (UT)
Mountain Fuel Supply Company (WY)
Nashville Gas Company
National Fuel Gas Distribution Corporation (NY)
National Fuel Gas Distribution Corporation (PA)
National Gas and Oil Company
New Jersey Natural Gas Company
New Orleans Public Service, Inc.
New York State Electric & Gas Corporation
Niagara Mohawk Power Company
North Carolina Natural Gas Corporation
North Shore Gas Company
Nothern Illinois Gas Company
Northern Indiana Public Service Company
Northern Natural Gas Company (KS)
Northern Natural Gas Company (NE)
Nothern States Power Company (MN)
Nothern States Power Company (ND)
Nothern States Power Company (WI)
North Penn Gas Company
Northwest Alabama Gas District
Northwest Natural Company (OR)
Northwest Natural Gas Company (WA)
Northwestern Public Service Company (NE)
Northwestern Public Service Company (SD)
Oklahoma Natural Gas Company
Orange & Rockland Utilities
Pacific Gas & Electric Company
Panhandle Eastern Pipeline Company (IL)
Panhandle Eastern Pipeline Company (KS)
Pennsylvania Gas & Water Company
Peoples Gas, Light and Coke Company
Peoples Gas System
Peoples Natural Gas Company
Peoples Natural Gas Company, Division of Internorth, Inc. (IA)
Peoples Natural Gas Company, Division of Internorth, Inc. (IA)
Peoples Natural Gas Company, Division of Internorth, Inc. (KS)
Peoples Natural Gas Company, Division of Internorth, Inc. (MN)
Peoples Natural Gas Company, Division of Internorth, Inc. (MO)
Peoples Natural Gas Company, Division of Internorth, Inc. (NE)
Philadelphia Electric Company
Piedmont Natural Gas Company (NC)
Piedmont Natural Gas Company (SC)
Providence Gas Company
Public Service Company of Colorado
Public Service Company, Inc. of North Carolina
Public Service Electric and Gas Company
Rochester Gas & Electric Corporation
San Diego Gas & Electric Company
South Carolina Gas & Electric Company
South Jersey Gas Company
Southeastern Michigan Gas Company
Southern California Gas Company
Southern Connecticut Gas Company
Southern Indiana Gas & Electric Company
Southern Union Company (TX)
Southern Union Gas Company (AZ)
Southern Union Gas Company (OK)
Southwest Gas Corporation (AZ)
Southwest Gas Corporation (CA)
Southwest Gas Corporation (NV)
Terre Haute Gas Corporation
Trans Louisiana Gas Company
T.W. Phillips Gas and Oil Company
UGI Corporation
Union Gas System, Inc. (KS)
Union Gas System, Inc. (OK)
Union Light, Heat & Power Company (KY)
Virginia Natural Gas
Washington Gas Light Company (DC)
Washington Gas Light Company (MD)
Washington Gas Light Company (VA)
Washington Natural Gas Company
Washington Water Power Company (ID)
Washington Water Power Company (WA)
West Ohio Gas Company
Western Kentucky Gas Company
Wisconsin Fuel & Light Company
Wisconsin Gas Company
Wisconsin Natural Gas Company
Wisconsin Power & Light Company
Wisconsin Public Service Corporation (MI)
Wisconsin Public Service Corporation (WI)

Public-Owned

Citizens Gas & Coke Utility (IN)
City of Richmond, Virginia, Department of Public Utilities (VA)
City Public Services Board (San Antonio) (TX)
Colorado Springs, Department of Utilities (CO)
Long Beach Gas Department (CA)
Memphis Light, Gas & Water Division (TN)
Metropolitan Utilities District of Omaha (NE)
Philadelphia Gas Works (PA)
Springfield City Utilities (MO)

[FR Doc. 86-28963 Filed 12-24-86; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. ERA-FC-87-05; OFP Case No. 55121-9333-03-12]

Acceptance of Petition for Exemption and Availability Certification by Georgia-Pacific Corp.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of acceptance.

SUMMARY: On November 20, 1986, Georgia-Pacific Corporation (Georgia-Pacific) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent exemption due to a lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum, for a proposed MFBI No. 3 power boiler located at the Georgia-Pacific Corporation in Franklin, Ohio, from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act"). Title II of FUA prohibits the use of petroleum and natural gas as a primary energy source in any new major fuel-burning installation (MFBI) consisting of a boiler. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing

the exemption based on lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum are found at 10 CFR 503.32.

The proposed MFBI for which the position is being filed is a boiler to be installed in a roofing felt mill. Steam generated by the boiler is to be used primarily in drying felt sheets in the mill's felt machine and for building heating.

The existing natural gas and No. 6 fuel oil fired boiler has deteriorated with age and repair is impractical.

The proposed MFBI will be a package water tube design boiler rated for 100,000 lbs per hour of steam generation. The steam conditions at the outlet of the boiler non-return valve will be 170 Psig, 375 degrees F (saturated). The boiler will be housed in a new prefabricated structure. It is planned to use natural gas as the primary fuel and No. 6 fuel oil as the secondary or backup fuel with price a consideration in selecting the primary fuel.

ERA has determined that the petition includes sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3.

As provided for in sections 701(c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding are available upon request at: Department of Energy, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the Federal Register.

DATES: Written comments are due on or before February 12, 1987. A request for public hearing must also be made within this 45-day public comment period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-093, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket No. ERA-FC-87-05 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Xavier Puslowski, Coal & Electricity Fivision, Office of Fuels Programs, Department of Energy, Forrestal Bldg., Rm. Ga-093, 1000 Independence Avenue SW., Washington, DC 20585, Telephone (202) 252-4708

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue SW., Washington, DC 20585, Telephone (202) 252-6947.

SUPPLEMENTARY INFORMATION: Section 212(a)(1)(A)(ii) of the Act and 10 CFR 503.32 provide for a permanent exemption due to a lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. In accordance with the requirements of § 503.32(b), Georgia-Pacific's petition includes the following evidence in order to make the demonstrations required by this section:

(1) Duly executed certifications required under paragraph (a) of this section;

(2) Exhibits containing the basis for certifications required under paragraph (a) of this section;

(3) Environmental impact analysis, as required under § 503.13;

(4) Fuels search, as required under § 503.14; and

(5) All data required by § 503.6 (cost calculation).

In processing this exemption, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR 1500 *et seq.*; and DOE's guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the Federal Register as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

Pursuant to 10 CFR 501.3, ERA hereby accepts Georgia-Pacific's petition for a permanent exemption for lack of alternate fuel supply. ERA retains the rights, however, to request additional relevant information at any time during the pendency of these proceedings.

As provided in 10 CFR 501.3(b)(4), acceptance of this petition for exemption by ERA does not constitute a determination that the petitioner is entitled to the exemption requested. That determination will be based on the entire record of these proceedings, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC on December 19, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-29088 Filed 12-24-86; 8:45 am]

BILLING CODE 6450-01-M

Proposed Remedial Order to McWhirter Distributing Co., Inc.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed remedial order to McWhirter Distributing Co., Inc.

SUMMARY: Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to McWhirter Distributing Co., Inc. This Proposed Remedial Order alleges violations in the amount of $191,072 plus interest, resulting from McWhirter's wholesale sales of motor gasoline during the time period April 1979 through September 1979 at prices in excess of the company's lawful selling prices. The alleged violations primarily affect California wholesale purchasers and ultimate consumers.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from: Office of Freedom of Information Reading Room, United States Department of Energy, Forrestal Building, Room 1E-190, 1000 Independence Avenue, SW., Washington, DC 20585.

Within fifteen (15) days of publication of this Notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, United States Department of Energy, Forrestal Building, Room 6F-078, 1000 Independence Avenue, SW., Washington, DC 20585, in accordance with 10 CFR 205.193. The Notice shall be filed in duplicate, shall briefly describe how the person would be aggreived by issuance of the Proposed Remedial Order as a final order and shall state the person's intention to file a Statement of Objections.

Pursuant to 10 CFR 205.193(c), a person who files a Notice of Objection shall on the same day serve a copy of the Notice upon:

Sandra K. Webb, Director, Economic Regulatory Administration, U.S. Department of Energy, One Allen Center, Suite 610, 500 Dallas Street, Houston, Texas 77002

and upon:

Marshall Staunton, Acting Solicitor and Administrator, Economic Regulatory Administration, U.S. Department of Energy, Room 3H-017, RG-40, 1000 Independence Ave., SW., Washington, DC 20585

Issued in Washington, DC, on the 18th day of December 1986.

Marshall Staunton,

Acting Solicitor and Administrator, Economic Regulatory Administration.

[FR Doc. 86-29091 Filed 12-24-86; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Residential Energy Consumption Survey (RECS) Forms EIA-457A Through H; and Residential Transportation Energy Consumption Survey (RTECS) Forms EIA-141, "National Survey of Fuel Purchases for Vehicles—Purchase Log and Supplementary Questionnaire," and EIA-429, "National Survey of Fuel Purchases for Vehicles—Background Questionnaire."

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of request for Comments.

SUMMARY: The Energy Information Administration (EIA) solicits comments on the proposed survey forms for the 1987 RECS (Forms EIA-457A-H) and the 1988 RTECS, Forms EIA-141 and EIA-429.

DATE: Written comments must be submitted within 30 days of the publication of this notice.

ADDRESSES: Address comments to: Wendel Thompson, EI-651, U.S. Department of Energy, Mail Stop 1H-053, 1000 Independence Avenue SW., Washington, DC 20585, Telephone (202) 252-1119.

FOR FURTHER INFORMATION: To obtain additional information or copies of the proposed forms, contact Wendel Thompson at the address listed above.

SUPPLEMENTARY INFORMATION: .

I. Background
II. Current Actions
III. Request for Comments

I. Background

In order to fulfill its responsibilities under Section 52 of the Federal Energy Administration Act of 1974, Pub. L. 93-275, the EIA is required to publish and otherwise make available to the public, high quality statistical data that contains "such information as is required to provide a description of and facilitate analysis of energy supply and consumption within and affecting the United States on the basis of such geographic areas and economic sectors as may be appropriate . . ."

To meet this responsibility, as well as internal DOE requirements that are dependent on accurate data, the EIA has developed an ongoing program of national sample surveys on energy consumption in the manufacturing, nonresidential, residential and residential transportation sectors.

The RECS has been designed by EIA to collect data on energy consumption in the residential sector. Information about the housing unit is collected through voluntary personal interviews with a representative national sample of approximately 5,600 households. These personal interviews collect data on energy use within the home including the use of heating fuels, appliance usage and conservation practices. Data on actual energy consumption and expenditures are obtained from fuel records maintained by the households' fuel suppliers. The RECS has been conducted in 1980, 1981, 1982, and 1984. Beginning with the 1987 survey, the RECS will be conducted on a triennial basis.

The RTECS provides information on how energy is used by households for personal transportation. The RTECS sample, which consists of approximately 4,000 households, is drawn from the larger sample selected for participation in the RECS. Data are collected through a combination of mail and telephone interviews over a 12-month period. The survey provides data on the number and types of vehicles used regularly by household members for personal transportation. For each vehicle, data are collected on annual miles traveled, gallons of fuel purchased, type of fuel used, price paid for fuel, and certain vehicle characteristics such as the type of transmission and the presence of air-conditioning.

The RTECS has been conducted in 1983 and 1985. Beginning in 1988, the RTECS will be conducted on a triennial basis.

II. Current Actions

For the 1987 RECS, the EIA proposes to make no major substantive changes to the household [EIA-457A-D] and fuel supplier [EIA-457E-H] forms used on the 1984 survey. The forms will be updated to collect information for calendar year 1987 and the residential energy tax credit questions will be dropped from the household survey.

For the 1988 RTECS, EIA proposes to eliminate Form EIA-141 by dropping some questions outright and by transferring others to the Form EIA-429. The questions to be eliminated are the "fuel purchase log" quesitons which consist of (1) odometer readings for the beginning and end of the month and concurrent fuel gauge readings; and (2) for each purchase of fuel, the purchase date, odometer reading on that date, number of gallons purchased, total cost of fuel, price per gallon, whether the tank was filled, and a fuel tank reading.

The questions that will be transferred from the Form EIA-141 to the Form EIA-429 are the supplementary questions which collect beginning and end-of-year odometer readings, type of fuel used, and family income for the survey year. The odometer reading information is obtained at the beginning and end of the year by means of a mail survey; the other information on Form EIA-429 is obtained by a telephone interview at the beginning of the year.

Form EIA-429 will be updated to collect information for calendar year 1988 and the questions on odometer readings, fuel type, and income added from the EIA-141. As a consequence of dropping the fuel purchase log questions, five new questions have been added to the Form EIA-429. These questions are required to permit the estimation of miles per gallon (MPG) from Environmental Protection Agency certification MPG files for each vehicle, and the subsequent estimation of annual consumption and expenditures for fuel. These questions are (1) the type of fuel system (carbuereted, fuel-injected or diesel); (2) the drive train (front, rear, or four-wheel drive); (3) the vehicle identification number; (4) full or self-service fuel purchase and; (5) method of payment (cash or credit card).

III. Request for Comments

Prospective respondents, data users and other interested parties should comment on the proposed extensions within 30 days of the publication of this notice. The following general guidelines are provided to assist in the preparation of responses. When providing comments, please indicate to which form(s) each comment applies.

As a potential respondent:

A. Are the instructions and definitions clear and sufficient? If not, what instructions require clarification?

B. Can the data be submitted using the definitions included in the instructions?

C. Can data be submitted in accordance with the response time specified in the instructions?

D. How many hours, including time for preparation and administrative review, would you require to complete and submit the required form(s)?

E. What is the estimated cost of completing this form(s), including the direct and indirect costs associated with the data collection? Direct cost should include all costs, such as administrative costs, directly attributable to providing this information.

F. How can the form(s) be improved?

G. Do you know other Federal, State, or local agencies that collect similar data? If you do, specify the agency, the data elements, and the means of collection.

As a potential data user:

A. Can you use data at the levels of detail indicated on the form(s)?

B. For what purposes would you use the data? Be specific.

C. How could the form(s) be improved to better meet your specific needs?

D. Are there alternate sources of data and do you use them? What are their deficiencies and/or strengths?

EIA is also interested in receiving comments from persons regarding their views on the need for the collection of the information contained in the residential and residential transportation enerrgy consumption surveys.

Comments submitted in response to this notice will be summarized and/or included in the requests for OMB approval of these data surveys; they also will become a matter of public record.

Authority: Sections 13(b), 5(b), 5(a), and 52 of Public Law 93-275, Federal Energy Administration Act of 1974, as amended (15 U.S.C. 772(b), 764(b), 764(a) and 790(a)).

Issued in Washington, DC on December 19, 1986.

Yvonne Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 86-29090 Field 12-24-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RM85-1-160]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol-Bishop Pipeline Corp.; Order Granting Rehearing for Further Consideration

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

Issued December 18, 1986.

Bishop Pipeline Corporation has filed a request for rehearing in the above-captioned docket. Rehearing of the order denying clarification issued on October 20, 1986 in the above-captioned matter is granted solely for the purpose of affording the Commission additional time to consider the request for rehearing. Pursuant to Rule 713(b) of the Commission's Procedural Rules, no answer to this order, or to the request for rehearing, will be entertained.

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 86-28975 Filed 12-24-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER87-167-000, et al.]

Illinois Power Co., et al; Electric rate and corporate regulation filings

December 19, 1986.

Take notice that the following filings have been made with the Commission:

1. Illinois Power Company

[Docket No. ER87-167-000]

Take notice that Illinois Power Company ("the Company") on December 15, 1986 tendered for filing proposed changes in the following rate schedules:

Rate Schedule FERC No. 100, Partial Requirements Wholesale Service Agreement applicable to the City of Highland; Rate Schedule FERC No. 107, Short Term Energy Transmission Agreement applicable to the City of Highland; FERC Electric Tariff Original Volume 2, Wholesale Electric Transportation Service Schedule, Service Agreement applicable to the City of Highland.

The Company states that with the present rates it would earn an inadequate rate of return on electric sales to the City of Highland during the twelve months ended December 31, 1985. The Company states that the electric rate changes made by this filing are necessary to more fully provide compensation for increases in costs. The Company proposes the increased rates become effective on September 1, 1986 as agreed to by the Company and the City of Highland, and the Company requests that the Commission grant a waiver of its notice requirement pursuant to § 35.11 of the Commission's Regulations.

Copies of this filing were served upon the City of Highland and the Illinois Commerce Commission, Springfield, Illinois.

Comment date: December 31, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. The Montana Power Company

[Docket No. ER87-166-000]

Take notice that on December 15, 1986, The Montana Power Company (MPC) tendered for filing pursuant to section 205 of the Federal Power Act an agreement dated October 6, 1986 for the sale of firm energy to Portland General Electric during the year ending February 1987.

MPC has requested waiver of the notice provisions of § 35.3 of the Commission's regulations in order to make that agreement effective as of March 2, 1986, in accordance with its terms.

Comment date: December 31, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Columbus & Southern Ohio Electric Company

[Docket No. ER87-162-000]

Take notice that American Electric Power Service Corporation (AEP) on December 15, 1986 tendered for filing on behalf of its affiliate Columbus & Southern Ohio Electric Company (CSOE), Supplement No. 2 dated November 1, 1986 to the Agreement dated June 1, 1983, between SCOE and the City of Columbus, Ohio (Columbus). The Commission has previously designated the 1983 Agreement as CSOE's Rate Schedule FERC No. 33.

Supplement No. 2 establishes a new interconnection point between the parties at Columbus' O'Shaughnessy Hydroelectric Project and provides for a new service, entitled Transfer Service, which will allow the transfer of power and energy from the O'Shaughnessy Interconnection Point to other points of interconnection between the parties. The demand rate for Transfer Service will be $2.00 per kilowatt per month reserved by City.

Copies of this filing were served upon Columbus and the Public Utilities Commission of Ohio.

It is requested that the Commission permit this Supplement to become effective January 1, 1986.

Comment date: December 31, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power & Light Company

[Docket No. ER87-161-000]

Take notice that Florida Power & Light Company (FPL), on December 15, 1986, tendered for filing: (1) A Contract for Interchange Service Between Florida Power & Light Company and the Utility Board of the City of Key West, Florida ("Contract"); and (2) Cost Support Schedules C, F, and G (together with Cost Support Schedule F Supplements) which support the daily capacity charges for sales under Service Schedule B (Short-Term Firm Interchange Service) of the Contract. The Contract has been executed by both parties.

FPL respectfully requests that the proposed Contract and Cost Support Schedules C, F, and G (together with Cost Support Schedule F Supplements) be made effective April 1, 1987. According to FPL, a copy of this filing was served upon the Utility Board of the City of Key West, Florida and the Florida Public Service Commission.

Comment date: December 31, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power & Light Company

[Docket No. ER87-163-000]

Take notice that Florida Power & Light Company (FPL), on December 15, 1986, tendered for filing as an initial rate schedule a Short Term Agreement to Provide Power and Energy by Florida Power & Light Company to Utility Board of the City of Key West, Florida and Cost Support Schedules C, D, E, F, and G (together with Cost Support Schedule F Supplements) which support the rates for sales under the Short Term Agreement.

The new rate schedule provides for the sale of power and energy from FPL to the Utility Board of the City of Key West, Florida for a specified term commencing on or about April 1, 1987, which is the estimated in-service date of the 138 kV transmission line connecting Key West to mainland Florida, and ending December 31, 1989. FPL respectfully requests that the proposed Short Term Agreement and Cost Support Schedules C, D, E, and G (together with Cost Support Schedule F Supplements) be made effective on or about April 1, 1987. According to FPL, a copy of this filing was served upon the Utility Board of the City of Key West, Florida and the Florida Public Service Commission.

Comment date: December 31, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29031 Filed 12-24-86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9606-002]

Burlington Energy Development Associates; Surrender of Preliminary Permit

December 18, 1986

Take notice that the Burlington Energy Development Associates, permittee for the Quequechan River Project No. 9606 has requested that the Preliminary permit be terminated. The preliminary permit for Project No. 9606 was issued on May 30, 1986, and would have expired on April 30, 1989. The project would have been located on the Quequechan River, in Bristol County, Massachusetts.

The permittee filed the request on November 13, 1986, and the preliminary permit for Project No. 9606 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29032 Filed 12-24-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF87-108-000]

Monarch Cogeneration 1986-1; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

December 18, 1986.

On December 8, 1986, Monarch Cogeneration 1986-1 (Applicant), of P.O. Box 85376, San Diego, California 92138-5376, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in an area known as Little Signal Hills in Kern County, California. The facility will consist of two combustion turbine generators and two heat recovery steam generators. The primary energy source will be natural gas. The net electric power production capacity of the facility will be 16.4 MW. Thermal energy recovered from the facility will be used in enhanced oil recovery operation. Installation of the facility began on June 1, 1986.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29033 Filed 12-24-86; 8:45 am]

BILLING CODE 6716-01-M

[Docket No. CP87-122-000]

Williston Basin Interstate Pipeline Co.; Notice of Application

December 19, 1986.

Take notice that on December 11, 1986, Williston Basin Interstate Pipeline Company (Williston), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP87-122-000

an application pursuant to section 7(c) of the Natural Gas Act for authorization to establish Rate Schedule T–6 and to transport gas under such rate schedule on behalf of end-use customers of Montana-Dakota Utilities Co. (MDU), on a limited-term basis, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Williston seeks to establish Rate Schedule T–6 under which Williston would provide interruptible transportation service on behalf of retail end-use customers of its wholesale customers. Williston states that the rate applicable to Rate Schedule T–6 service is a fully-allocated rate developed from the cost-of-service underlying Williston's currently effective rates. Williston also proposes to transport gas on behalf of twenty existing end-use customers of MDU. Williston states that such transportation service would be for a two year term commencing January 1, 1987, and further requests pre-granted abandonment authorization to discontinue the transportation service at the end of the aforementioned term.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 2, 1987, file with the Federal Energy Regulatory Commission, Washington, 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests field with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessry for Williston to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–29034 Filed 12–24–86; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–3134–6]

Environmental Impact Statements; Availability

Note.—The notice of availability which would have normally been scheduled for Friday, December 26, 1986, is being published in the Monday, December 29, 1986, Federal Register due to the closing of Government offices on December 26, 1986. For all environmental impact statements filed during the week of December 15 through December 19, 1986, the minimum 45 and 30 day comment periods will be calculated from Friday, December 26, 1986.

Responsible Agency

Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075.

Availability of Environmental Impact Statements Filed December 15, 1986 Through December 19, 1986 Pursuant to 40 CFR 1506.9.

EIS No. 860511, Final, FHW, IA, Greenhill Road Construction, IA–57 Dike Road in Cedar Falls to Hackett Road Bypass in Waterloo, Black Hawk County, Due: January 28, 1987, Contact: H.A. Willard (515) 233–1664.

EIS No. 860512, Draft, COE, PR, Rio La Plata River Basin Multipurpose Flood Control Plan, Due: February 9, 1987, Contact: Jose Martinez (809) 753–4193.

EIS No. 860513, Final, AFS, SEV, Intermountain Region National Forest System Lands, Noxious Weeds and Poisonous Plants Control Program, Continuation, Due: January 26, 1987, Contact: Jeffery Foss (801) 625–5561.

EIS No. 860514, Final, AFS, PRO, 1985–2030 Resources Planning Act Program, Amendment to the Forest and Rangeland Renewable Resource Planning Act, Due: January 26, 1987, Contact: Thomas Hamilton (202) 382–8235.

EIS No. 860515, Draft, VAD, NC, Northern California VA National Cemetery, Development, Alameda and Merced Counties, Due: February 9, 1987, Contact: Susan Livingstone (202) 233–2922.

EIS No. 860516, Draft, FHW, NC, Silas Creek Parkway Completion, Silas Creek Parkway to North Point Boulevard, Winston-Salem, Forsyth County, Due: February 9, 1987, Contact: Kenneth Bellamy (919) 856–4346.

EIS No. 860517, Draft, FHW, NC, US 311 Bypass/High Point East Belt, US 311 North of High Point to US 311 South of Archdale, Guilford and Randolph Counties, Due: February 9, 1987, Contact: Kenneth Bellamy (919) 856–4346.

EIS No. 860518, Final, FHW, TN–27 Improvement, Corridor V, Alabama State Line to TN–156, Marion County, Due: January 26, 1987, Contact: Charles Ptak (615) 251–5394.

EIS No. 860519, Report, COE, NC, Atlantic Intracoastal Waterway Maintenance, Cape Fear River to South Carolina State Line, Brunswick County, Contact: Chris Correale (919) 343–4745.

EIS No. 860520, Final, CDB, MI, Jefferson/Conner Industrial Revitalization Project, Relocation, Demolition and Acquisition, Grants, Wayne County, Due: January 26, 1987, Contact: Thomas Andrews (313) 224–6380.

EIS No. 860521, Final, FHW, PA, I–95/LR–1000 Completion, Benjamin Franklin Bridge to Walt Whitman Bridge, Philadelphia County, Due: January 26, 1987, Contact: Manuel Marks (717) 782–2222.

Amended Notices

EIS No. 860441, Draft, BPA, SEV, Pacific Northwest-Pacific Southwest Intertie, Capacity Increase and Long-Term Intertie Access Policy Development, Due: January 16, 1987, Published FR 10–31–86—Review period extended.

EIS No. 860428, DSuppl, COE, GA, Lake Alma Project, Reservior Construction and Development, Outdoor Recreation Opportunities, 404 Permit, Bacon County, Due: January 16, 1987, Published FR 10–24–86—Review period extended.

Dated: December 22, 1986.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 86–29079 Filed 12–24–86; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3134–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared December 8, 1986 through December 12, 1986 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act (CAA) and section 102(2)(c) of the National Environmental Policy Act (NEPA) as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5076/73. An explanation of the ratings assigned to draft enviromental impact statements (EISs) was published in FR dated February 7, 1986 (51 FR 4804).

Draft EISs

ERP No. D–CDB–F89027–MI, Rating EO2, Jefferson/Conner Industrial Revitalization Project, Relocation, Demolition and Acquisition, CDBG/UDAG/Sect. 108 Loan, MI. **SUMMARY:** EPA's review resulted in objections to the release of Federal funds for this project. EPA expressed concerns regarding identification and disposal of hazardous materials, noise impacts, and air quality impacts.

ERP No. D–COE–H32009–00, Rating 3, Mississippi R. Locks and Dam 26 Replacement Construction, Second Lock, Upper Mississippi and Illinois Rivers, IL and MO. **SUMMARY:** EPA believes the information presented in the draft EIS is insufficient to determine the adverse impacts, either direct, indirect or cumulative, resulting from the second lock construction. EPA's major concerns are: (1) Lack of evaluation of impacts of navigable tributaries, (2) lack of evaluation of cumulative impacts from rehabiliation of navigation system locks and dams, (3) lack of data on increased frequency of spills of toxic and hazardous materials, and (4) lack of information and induced development impacts. In addition, measures to avoid or minimize impacts were not evaluated, and no mitigation is proposed for unavoidable impacts. EPA believes that the deficiencies are of such a magnitude that additional evaluations should received public review at the draft stage. EPA, therefore, recommends that a supplemental or revised draft EIS be prepared. Unless the issues addressed can be resolved prior to the filing of the final EIS, this EIS is a candidate for a referral to the Council on Environmental Quality.

ERP No. D–COE–L36100–OR, Rating EO2, Malheur Lake Flood Damage Reduction Plan, OR. **SUMMARY:** EPA believes there is ample environmental and economic justification to implement a nonstructural alternative. The primary reason for rating the structural alternative EO is that unavoidable adverse impacts to the fishery and habitat of the Malheur River would be extensive. It is very likely that Oregon Water Quality Standards would be exceeded for temperature and suspended solids. Additional evaluation of benefits and costs of each of the alternatives should show even greater economic advantages to the nonstructural alternative then indicated in the draft EIS.

ERP No. D–FHU–L40154–OR, Rating EC2, I–5/Pacific Highway Improvements, Hayesville Interchange to Battle Creek Interchange, 404 Permit, Right-of-Way Acquisition, OR. **SUMMARY:** EPA's review finds the draft EIS discusses mitigation measures for minimizing adverse water quality effects from construction and operation of the proposed highway improvements, but does not consider the growth-induced nonpoint source water pollution from the increases in impervious surfaces. EPA suggests that the water quality impacts section be expanded in the final EIS to include growth-induced impacts. Futher, it is unclear whether the wetlands proposed for creation will equal the functional value of the wetlands lost.

Final EISs

ERP No. F–AFS–G65040–NM, Carson Nat'l Forest, Land and Resource Mgmt. Plan, NM. **SUMMARY:** EPA has no objections to the proposed action as described.

ERP No. F–AFS–G65044–NM, Lincoln Nat'L Forest, Land and Resource Mgmt. Plan, NM. **SUMMARY:** EPA has no objections to the proposed action as described.

ERP No. F–BLM–J70005–WY, Lander Resource Area, Resource Mgmt. Plan, WY. **SUMMARY:** EPA identified several unresolved issues, particularly concerns for protection and monitoring of water quality standards, such as for designated and existing beneficial uses. EPA requested more complete responses regarding: water quality standards (WQS) compliance (including for mining); clarity in comparing water quality, watershed protection, and air quality effects by alternative; WQS monitoring guidance; sulfur dioxide emission quantification and reporting for oil and gas operations; and interagency coordination plans. EPA questions the inference in the final EIS that the State has the responsibility for monitoring compliance with WQS on BLM land.

ERP No. FA–FHW–B40026–RI, Woonsocket Industrial Highway/RI–99 Construction, I–295 Interchange to RI–146/RI–146A With Connection to RI–122/Mendon Rd., 404 permit, RI. **SUMMARY:** EPA believes that the final supplemental EIS fails to provide a balanced, objective discussion of the differing values required by the coincident, but competing, jurisidictions of section 404 of the Clean Water Act and 4(f) of the Department of Transportation Act. EPA waits for the Corps of Engineers to confront this question in a forthright manner in their 404(b)(1) Evaluation and public interest review. EPA believes all three alternatives offer advantages and disadvantages from an environmental point of view and may be permitted under the EPA 404(b)(1) Guidelines. On this basis, EPA would not be opposed to any of the three. Finally, EPA supports the conceptual mitigation wetland plan, but there are several issues which must be resolved prior to the issuance of any Section 404 permit.

ERP No. F–FHW–E40235–TN, I–40/75 and Interchange Improvements, East of Pellissippi Parkway to East of Papermill Road, 404 Permit, TN. **SUMMARY:** EPA is concerned about noise impacts and the presence of karst geologic features. EPA recommended methods to accommodate karst areas. EPA also requested to be kept informed regarding the status of probable noise barrier implementation.

ERP No. F–MMS–A02218–00, 1987 Central and Western Gulf of Mexico OCS Oil and Gas Sales Nos. 110 and 112, lease Offering, Off the Coasts of AL, MS, LA, and TX. **SUMMARY:** EPA noted the inclusion of stipulations for protection of biologically sensitive offshore habitats in the proposed Notice of Sale for Sale #110, and urged inclusion of such stipulations in Sale #112. EPA also recommended that applicability of the live bottom stipulation to lease blocks remain consistent with the application in previous sales.

ERP No. F–UAF–K11029–NV, Groom Mtn. Range Addition, Nellis AFB, Bombing and Gunnery Range, Renewed Withdrawal from Public Lands, NV. **SUMMARY:** The final EIS adequately addressed the concerns EPA had raised on the draft EIS.

Regulations

ERP No. R–CGD–A20023–00, 33 CFR Parts 151 and 158, Control of Residues and Mixtures Containing Oil or Noxious Liquid Substances; and 46 CFR Parts 98, 151, 153, and 172, Pollution Rules for Ships Carrying Hazardous Liquids (51 FR 34332). **SUMMARY:** EPA did not identify any significant issues which would require substantive changes, but discussed the implications of RCRA and CERCLA on the MARPOL requirements. EPA also pointed out to the Coast Guard that some states may regulate tank ventilation, or emissions resulting therefrom, under authorities granted in

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the CAA and suggested that language to this effect be included in the regulations.

Dated: December 22, 1986.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 86-29080 Filed 12-24-86; 8:45 am]

BILLING CODE 6560-50-M

[SAB-FRL-3134-8]

Science Advisory Board; Executive Committee; Open Meeting

Under Pub. L. 92-463, notice is hereby given of a meeting of the Executive Committee of the Science Advisory Board on January 15-16, 1987. The meeting will be held at the U.S. Environmental Protection Agency, 401 M Street SW. On January 15, the meeting will be held in Room #2, South Conference Center. On January 16, the meeting will be held in the Administrator's Conference Room 1101 West Tower. The meeting will begin on January 15 at 9:00 a.m. and will adjourn at approximately 12:00 noon on January 16.

The major purpose of the meeting is to establish the Board's scientific review agenda for the first half of 1987; to discuss the current activities of EPA's Risk Assessment Forum; to discuss the preliminary evaluation of the Office of Research and Development's proposed budget for Fiscal Year 1988 (if the budget has not yet been made public, this discussion will occur in Executive Session); reports of SAB committees and subcommittees; and other issues of member interest.

The meeting is open to the public. Any member of the public wishing to attend, obtain information, or submit written comments should contact Dr. Terry F. Yosie, Director, Science Advisory Board or Mrs. Joanna Foellmer located at 401 M Street SW, Washington, DC 20460 or call (202) 382-4126 by close of business January 7, 1987.

Dated: December 19, 1986.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 86-29020 Filed 12-24-86; 8:45 am]

BILLING CODE 6550-50-M

[OPPE-FRL-3135-3]

Two Open Meetings of the Advisory Committee Negotiating Regulations Governing Major and Minor Modifications of Resource Conservation and Recovery Act (RCRA) Permits

As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), we are giving notice of two open meetings of the Advisory Committee negotiating regulations governing major and minor modifications of Resource Conservation and Recovery Act (RCRA) permits.

The first will be held on Tuesday and Wednesday, January 13 and 14, 1987, at The Conservation Foundation, 1255 23rd Street, NW., First Floor Library, Washington, DC. On Tuesday, the meeting will start at 10:00 a.m. and will run until 5:00 p.m. On Wednesday, the meeting will start at 9:15 a.m. and will run until approximately 4:00 p.m. The purpose of the meeting is to reach consensus on the substantive issues which the Committee has identified for resolution. The second has been scheduled for Monday, January 26, 1987, at the Conservation Foundation from 10:00 a.m. until 4:00 p.m. The purpose of this meeting is to ratify language reflecting the Committee's agreed upon consensus.

If interested in receiving more information, please contact Kathy Tyson, at (202) 382-5352.

Dated: December 19, 1986.

Milton Russell,

Assistant Administrator.

[FR Doc. 86-29155 Filed 12-24-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Training and Fire Programs Directorate; Board of Visitors for the Emergency Management Institute; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name: Board of Visitors (BOV) for the Emergency Management Institute (EMI)
Dates of Meeting: February 2-3, 1987
Place: Federal Emergency Management Agency, National Emergency Training Center, Emergency Management Institute Conference Room, Building N, Emmitsburg, MD 21727
Time:
February 2—8:30 a.m. to 5:00 p.m.
February 3—8:30 a.m. to Agenda Completion
Proposed Agenda: New Business; Oath of Office for New Members; Program Orientation; Review of Course Curriculum

The meeting will be open to the public with approximately 10 seats available on a first-come, first-serve basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, Emergency Management Institute, Training and Fire Programs Directorate, 16825 South Seton Avenue, Emmitsburg, Maryland, 21727 (telephone number, 301-447-1251) on or before January 20, 1987.

Minutes of the meeting will be prepared by the Board and will be available for public viewing in the Associate Director's Office, Training and Fire Programs Directorate, Federal Emergency Management Agency, Building N, National Emergency Training Center, Emmitsburg, MD 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: December 18, 1986.

James P. McNeill,

Associate Director, Training and Fire Programs.

[FR Doc. 86-29026 Filed 12-24-86; 8:45 am]

BILLING CODE 6718-01-M

[FEMA-784-DR]

Major Disaster and Related Determinations; Washington

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Washington (FEMA-784-DR), dated December 15, 1986, and related determinations.

DATED: December 15, 1986.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3616.

Notice: Notice is hereby given that, in a letter of December 15, 1986, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288), as follows:

I have determined that the damage in certain areas of the State of Washington resulting from severe storms and flooding during the period November 22 to 29, 1986, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93-288. I therefore declare that such a major disaster exists in the State of Washington.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93-288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

Pursuant to section 408(b) of Pub. L. 93-288, you are authorized to advance to the State its 25 percent share of the Individual and Family Grant program, to be repaid to the United States as indicated in the Governor's request.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Ms. Joan Hodgins of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Washington to have been affected adversely by this declared major disaster and are designated eligible as follows:

Lewis County for Individual Assistance and Public Assistance.
King, Pierce, and Snohomish Counties for Individual Assistance.
Cowlitz and Wahkiakum Counties and the Town of Snoqualmie in King County for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Julius W. Becton, Jr.,

Director.

[FR Doc. 86-29000 Filed 12-24-86; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreements pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC, 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-002813-005.
Title: San Francisco Terminal Agreement.
Parties:
San Francisco Port Commission (Port)
California Stevedore & Ballast Company (CSBS)
Synopsis: The proposed amendment would permit CSBS to provide terminal and stevedoring services, on a case-by-case basis at Port marine terminal facilities which are otherwise unassigned.

Agreement No.: 224-003753-006
Title: Baltimore Terminal Agreement
Parties:
Maryland Port Administration (Port)
ITO Corporation of Baltimore (ITO)
Synopsis: The proposed amendment would extend ITO's current lease at the Port's South Locust Point Marine Terminal until April 30, 1987.

Agreement No.: 207-009498-007
Title: Atlantic Container Line Agreement (ACL)
Parties:
The Cunard Steam-Ship Company, plc
Intercontinental Transport (ICT) B.V.
Compagnie Generale Maritime
Rederiaktiebolaget Soya
Aktiebolaget Svenska Amerika Linien
Rederiaktiebolaget Transatlantic
Synopsis: The proposed amendment would modify the geographic scope of the agreement so that, in the limited context of positioning and repositioning voyages of ACL G3 vessels to and from Asia for lengthening, cargo can be carried between U.S. ports, and points via such ports, on the one hand, and Asian ports, and points via such ports on the other. This extension of the trade will apply only to one positioning and repositioning voyage for each G3 vessel.

Agreement No.: 224-011046
Title: Long Beach Terminal Agreement
Parties:
City of Long Beach (Port)
SSM Carbon (SSM)
Synopsis: The proposed agreement would permit SSM to construct a petroleum coke storage shed on the Port's Pier G for proprietary and/or contract dry bulk storage and shipping of petroleum coke and/or other dry bulk commodities.

By Order of the Federal Maritime Commission.

Dated: December 22, 1986.

Joseph C. Polking,

Secretary.

[FR Doc. 86-29035 Filed 12-24-86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Compagnie Financiere de Suez; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 16, 1987.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Compagnie Financiere de Suez and Banque Indosuez*, Paris, France; to acquire 51 percent of the common stock of Macro Holdings, Inc. currently and to acquire the remaining 49 percent of the common stock of Macro Holdings within five years. Compagnie Financiere de Suez and Banque Indosuez propose to engage in the following activities

through GNP Commodities, Inc., a subsidiary of Macro Holdings: (i) Acting as a futures commission merchant in the execution and clearance of (a) futures contracts and options on such futures contracts as are permissible under § 225.25(b)(18) of the Board's Regulation Y, and (b) futures contracts and options contracts on stock indexes and municipal bond indexes, which have been approved by Board orders; and (ii) providing advice to financial institutions and other financially sophisticated customers of GNP Commodities, as is permissible under § 225.25(b)(19) of Regulation Y, with regard to the futures contracts and options on such futures contracts (other than stock index contracts) that GNP Commodities brokers. Compagnie Financiere de Suez and Banque Indosuez also have applied to provide securities brokerage services pursuant to § 225.25(b)(15) of Regulation Y, through GNP Securities, Inc., a subsidiary of Macro Holdings.

Board of Governors of the Federal Reserve System, December 19, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-28966 Filed 12-24-86; 8:45 am]

BILLING CODE 6210-01-M

First Essex Bancorp, Inc. et al.; Corrections

This notice corrects two previous Federal Register documents.

1. [FR Doc. 86-28002], published at page 44946 of the issue for Monday, December 15, 1986.

Under the Federal Reserve Bank of Boston, the entry for First Essex Bancorp, Inc. is corrected to read as follows:

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *First Essex Bancorp, Inc.*, Lawrence, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of First Essex Savings Bank, Lawrence, Massachusetts. First Essex Savings Bank engages in the sale and underwriting of life insurance and annuities pursuant to Massachusetts law.

Comments on this application must be received by January 10, 1987.

2. [FR Doc. 86-24522], published at page 39713 of the issue for Thursday, October 30, 1986.

Under the Federal Reserve Bank of Cleveland, the entry for PNC Financial Corp. is corrected to read as follows:

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *PNC Financial Corp.*, Pittsburgh, Pennsylvania; to acquire 100 percent of the voting shares of the successor by merge of Blue Grass Acquisition Corporation, Lexington, Kentucky, and Citizens Fidelity Corporation, Louisville, Kentucky, and thereby indirectly acquire Citizens Fidelity Bank and Trust Company, Louisville, Kentucky; Citizens Fidelity Bank and Trust Company, Lexington, Lexington, Kentucky; Citizens Fidelity Bank and Trust Company Hardin County, Elizabethtown, Kentucky; Citizens Fidelity Bank Winchester, Winchester, Kentucky; Citizens Fidelity (Ohio), N.A., Cincinnati, Ohio; Indiana; Indiana Southern Bank, Sellersburg, Indiana; the successor by merger with United Bank of Indiana, N.A. Clarksville, Indiana, and First Midwest Bank and Trust Company, New Albany, Indiana; Madison National Bank of Richmond, Richmond, Kentucky, and Mercer County Bank of Harrodsburg, Harrodsburg, Kentucky. Comments on this application must be received by January 9, 1987.

Board of Governors of the Federal Reserve System, December 19, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-28967 Filed 12-24-86; 8:45 am]

BILLING CODE 6210-01-M

First Tennessee National Corp., et al.; Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 12, 1987.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Tennessee National Corporation*, Memphis, Tennessee; to engage *de novo* through its subsidiary, FTB Futures Corporation, Memphis, Tennessee, as an introducing broker, under the Commodity Exchange Act, and to engage in soliciting and accepting orders for the purchase and sale of commodities for future delivery, specifically financial futures, on or subject to the rules of any contract market pursuant to § 225.25(b)(18) of the Board's Regulation Y. Orders will be executed by an unrelated third party futures commission merchant.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Skiatook Bancshares, Inc.*, Skiatook, Oklahoma; to engage *de novo* through its subsidiary, First Exchange Mortgage, Inc., Skiatook, Oklahoma, in making, acquiring, and servicing loans and other extensions of credit as would be made by a mortgage company pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 19, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-28968 Filed 12-24-86; 8:45 am]

BILLING CODE 6210-01-M

Rittenhouse Financial Services, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act 12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted from processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 12, 1987.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Rittenhouse Financial Services, Inc.*, Philadelphia, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of The Rittenhouse Trust Company, Philadelphia, Pennsylvania.

In connection with this application, Applicant has applied to engage directly in investment advisory and securities brokerage services pursuant to § 225.25(b)(4) and (b)(15) of the Board's Regulation Y.

B. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Chouteau County Bancshares, Inc.*, Fort Benton, Montana; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank of Fort Benton, Fort Benton, Montana.

In connection with this application, Applicant has also applied to acquire Fort Benton Insurance Agency, Inc., Fort Benton, Montana, a general insurance agency located in a community with a population not exceeding 5,000 pursuant to § 225.25(b)(8) (iii) of the Board's Regulation Y. These activities will be conducted in the area within a 35 mile radius of Fort Benton, Montana.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Security Pacific Corporation*, Los Angeles, California, and SPC/OFS Acquisition, Inc., Los Angeles, California; to acquire 100 percent of the voting shares of Orbanco Financial Services Corporation, Portland, Oregon, and thereby indirectly acquire The Oregon Bank, Portland, Oregon. SPC/OFS Acquistion, Inc., Los Angeles, California, has also applied to become a bank holding company.

In connection with this application, Applicants have also applied to acquire Orbanco Real Estate Services Co., Portland, Oregon, and thereby engage in mortgage banking pursuant to § 225.25(b)(1) of the Board's Regulation Y; American Data Services, Inc., Portland, Oregon, and thereby engage in data processing activities to the extent authorized by § 225.25(b)(7) of the Board's Regulation Y; and Orbanco Securities Corporation, Portland, Oregon, and thereby engaged in the business of providing brokerage services with respect to money market instruments to the extent authorized by § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 19, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-28969 Filed 12-24-86; 8:45 am]

BILLING CODE 6210-01-M

Richard C. Stark, Jr. et al.; Acquisitions of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 8, 1987.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *C. Richard Stark, Jr.*, Woolstock, Iowa; to acquire 25.36 percent of the voting shares of First American Bank Group, Ltd., Fort Dodge, Iowa, and thereby indirectly acquire First American State Bank, Fort Dodge, Iowa.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Matthew L. Blevins*, Houston, Texas; to acquire 68 percent of the voting shares of First Charter Bank, Denver, Colorado.

2. *FirstBank Holding Company Employee Stock Ownership Plan*, Lakewood, Colorado; to acquire 2 percent of the voting shares of FirstBank Holding Company of Colorado, Inc., Lakewood, Colorado, and thereby indirectly acquire Vail FirstBank Industrial Bank, Vail, Colorado; FirstBank of West Arvada, N.A., Arvada, Colorado; FirstBank of Aurora, N.A., Aurora, Colorado; FirstBank of Avon, Avon, Colorado; FirstBank of Boulder, N.A., Boulder, Colorado; FirstBank at Breckenridge, Breckenridge, Colorado; FirstBank of Castle Rock, N.A., Castle Rock, Colorado; FirstBank of Denver, N.A., Denver, Colorado; FirstBank of Cherry Creek, N.A., Denver,

Colorado; FirstBank at Arapahoe/Yosemite, Englewood, Colorado; FirstBank of Erie, Erie, Colorado; FirstBank of Tech Center, N.A., Englewood, Colorado; FirstBank of Colorado, N.A., Jefferson County, Colorado; FirstBank of Lakewood, N.A., Lakewood, Colorado; FirstBank of Westland, N.A., Lakewood, Colorado; FirstBank of Academy Park, Lakewood, Colorado; FirstBank of Villa Italia, N.A., Lakewood, Colorado; FirstBank of Littleton, N.A., Littleton, Colorado; FirstBank of Wadsworth/Coal Mine, N.A., Littleton, Colorado; FirstBank of Arapahoe, County, N.A., Littleton, Colorado; FirstBank of North Longmont, N.A., Longmont, Colorado; FirstBank of South Longmont, N.A., Longmont, Colorado; FirstBank of Minturn, Minturn, Colorado; FirstBank of Silverthorne, N.A., Silverthorne, Colorado; FirstBank of Vail, Vail, Colorado; FirstBank at 88th/Wadsworth, N.A., Westminster, Colorado; FirstBank of Wheat Ridge, N.A., Wheat Ridge, Colorado.

3. *Forrest L. Clay*, Worland, Wyoming, Charles B. Metz, Sheridan, Wyoming, and Newell B. Sargent, Worland, Wyoming; to acquire 61.08 percent of the voting shares of Centennial Bancorporation, Thermopolis, Wyoming, and thereby indirectly acquire First National Bank at Thermopolis, Thermopolis, Wyoming, and 56.2 percent of the voting shares of First State Bank of Shoshoni, Shoshoni, Wyoming.

4. *Stephen J. Jatras*, Robert W. Allen, Mrs. C.C. Bledsoe, and Cam Coors, Inc., all of Tulsa, Oklahoma, CCI Corporation, The Fourth National Bank of Tulsa, Trustee of Gable Profit Sharing Plan and Trust, Century Healthcare, David H. Burton, Engineering Design Group, March Development Co., John D. Williams, James W. Smith, KCUB, Inc., William E. Manley, N.L. Sevinson, Billy G. Hill, Lewis Companies, Gilbert D. Waldman and World Industries, Inc., all of Tulsa, Oklahoma, Vienson Oil and Gas, Edna Mae Pine, and Pellie Pine Harlan, all of Okmulgee, Oklahoma, and Charles P. Eslcike, Horeshoe Bay, Texas; to acquire Fourth National Corporation, Tulsa, Oklahoma, and thereby indirectly acquire Fourth National Bank of Tulsa, Tulsa, Oklahoma, and United Bancshares, Inc., Tulsa, Oklahoma, and thereby indirectly acquire United Bank, Tulsa, Oklahoma.

Board of Governors of the Federal Reserve System, December 19, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-28970 Filed 12-24-86; 8:45 am]

BILLING CODE 6210-01-M

U.B. Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 13, 1987.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *U.B. Bancshares, Inc.*, Bucyrus, Ohio; to become a bank holding company by acquiring 80 percent of the voting shares of United Bank, N.A., Bucyrus, Ohio.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *The Colonial BancGroup, Inc.*, Montgomery, Alabama; to merge with F&M Holding Company, Inc., Foley, Alabama, and thereby indirectly acquire Farmers and Merchants Bank, Foley, Alabama.

2. *Pontchartrain Bancshares, Inc.*, Metairie, Louisiana; to become a bank, holding company by acquiring 100 percent of the voting shares of Pontchartrain State Bank, Metairie, Louisiana.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Apple River Corporation*, Apple River, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Apple River State Bank, Apple River, Illinois.

2. *Traer Shares, Inc.*, Traer, Iowa; to acquire 100 percent of the voting shares of Kupka's Inc., Traer, Iowa, First Community Bank and Trust, Traer, Iowa, and First National Bank of Tama County, Dysart, Iowa.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoening, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Central Kansas Bancshares, Inc.*, Kansas City, Missouri; to acquire Jayhawk Bancshares, Inc., Lawrence, Kansas, and thereby indirectly acquire Lawrence National Bank & Trust Company, Lawrence, Kansas, and Kansas Bancshares, Inc., Wichita, Kansas, and thereby indirectly acquire City Bank & Trust Company, Wichita, Kansas.

2. *Prague Bancorp, Inc.*, Prague, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of Prague National Bank, Prague, Oklahoma.

Board of Governors of the Federal Reserve System, December 19, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-28971 Filed 12-24-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on December 19, 1986.

Public Health Service

(Call Reports Clearance Officer on 202-245-2100 for copies of packages.)

Food and Drug Administration

Subject: Medical Device Notification and Safety Alert Guideline—NEW
Respondents: Businesses or other for-profit; Small businesses or organizations

National Institutes of Health

Subject: National Library Medicine Online Services Application Packet—Extension—(0925-0223)
Respondents: Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations
OMB Desk Officer: Bruce Artim

Health Care Financing Administration

(Call Reports Clearance Officer on 301-594-8650 for copies of package.)

Subject: Information Collection Requirements in BPO-41P Adjustment of Federal Share for Untashed or Cancelled Checks 45 CFR Sections 201.5(a)(3), 201.67(c)(2) and 201.67(d)(2)—NEW—HCFA-R-67
Respondents: State or local governments
OMB Desk Officer: Fay S. Iudicello

Office of Human Development Services

(Call Reports Clearance Officer on 202-472-4415 for copies of package.)

Subject: State Long Term Care Ombudsman Report—Reinstatement—(0980-0121)
Respondents: State or local governments
OMB Desk Officer: Judy Egan

Family Support Administration

(Call Reports Clearance Officer on 202-245-1704 for copies of package.)

Subject: WIN Certification Report (117-A); SAU Certification Record (SAU-4)—Extension—(0980-1057)
Respondents: State or local governments
Subject: WIN Grant Change Report (117-B) WIN Grant Change Record (IM-9)—Extension—(0980-0157)
Respondents: State or local governments
Subject: Referral For WIN Registration (Individual) (IM-3)—Extension—(0980-0111)
Respondents: Individuals or households; State or local governments
Subject: WIN Financial Status Report—Extension—(0980-0110)
Respondents: State or local governments
OMB Desk Officer: Judy Egan

Copies of the above information collection clearance packages can be obtained by calling the Reports Clearance Officer on the number shown above.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, Attn: (name of OMB Desk Officer)

Dated: December 22, 1986.

Barbara S. Wamsley,

Acting Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 86-28908 Filed 12-24-86; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 86N-0505]

Veterinary Export Drugs; Ivermectin for Dogs

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Merck & Co., Inc., has filed an application requesting approval for the export of the drug "ivermectin for dogs" to Japan and Canada.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Beverly E. Bartolomeo, Center for Veterinary Medicine (HFV-102), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4500.

SUPPLEMENTARY INFORMATION: The Drug Amendments of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 382)) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency provide a notice in the Federal Register within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Merck & Co., Inc., Rahway, NJ 07065, has filed an application requesting approval for the export of the drug "ivermectin for dogs" to Japan and Canada. Although the application was received in the Office of the Secretary on December 9, 1986, it was not received and filed in the Center for Veterinary Medicine until December 12, 1986, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by January 8, 1987, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

Dated: December 22, 1986.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-29117 Filed 12-23-86; 10:57 am]

BILLING CODE 4160-01-M

Social Security Administration

Finding Regarding Foreign Social Insurance or Pension System; Guatemala

AGENCY: Social Security Administration, HHS.

ACTION: Notice of finding regarding foreign social insurance or pension system—Guatemala.

Finding: Section 202(t)(1) of the Social Security Act (42 U.S.C. 402(t)(1)) prohibits payment of monthly benefits to any individual who is not a United States citizen or national for any month after he or she has been outside the United States for 6 consecutive months. This prohibition does not apply to such an individual where one of the exceptions described in sections 202(t)(2) through 202(t)(5) of the Social Security Act (42 U.S.C. 402 (t)(2) through (t)(5)) affects his or her case.

Section 202(t)(2) of the Social Security Act provides that, subject to certain residency requirements of section 202(t)(11), the prohibition against payment shall not apply to any

individual who is a citizen of a country which the Secretary of Health and Human Services finds has in effect a social insurance or pension system which is of general application in such country and which:

(a) Pays periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death; and

(b) Permits individuals who are United States citizens but not citizens of that country and who qualify for such benefits to receive those benefits, or the actuarial equivalent thereof, while outside the foreign country regardless of the duration of the absence.

The Secretary of Health and Human Services has delegated the authority to make such a finding to the Commissioner of Social Security. The Commissioner has redelegated that authority to the Director of the International Policy Staff. Under that authority the Director of the International Policy Staff has approved a finding that Guatemala, beginning October 13, 1978, has a social insurance system of general application which:

(a) Pays periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death; and

(b) Permits United States citizens who are not citizens of Guatemala to receive such benefits, or their actuarial equivalent, at the full rate without qualification or restriction while outside Guatemala.

Accordingly, it is hereby determined and found that Guatemala has in effect, beginning October 13, 1978, a social insurance system which meets the requirements of section 202(t)(2) of the Social Security Act (42 U.S.C. 402(t)(2)).

This revises our previous finding (publishing September 3, 1960 at 25 FR 8582) that Guatemala does not have in effect a social security insurance or pension system which meets the requirements of section 202(t)(2) of the Social Security Act.

FOR FURTHER INFORMATION CONTACT: J. Joseph Rausch, Room 1104, West High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594–6123.

(Catalog of Federal Domestic Assistance Programs No. 13.802 Social Security—Disability Insurance; 13.803 Social Security—Retirement Insurance; 13.805 Social Security—Survivors Insurance)

Elizabeth K. Singleton,

Director, International Policy Staff.

[FR Doc. 86–28998 Filed 12–24–86; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Bureau of Indian Affairs

Record of Decision on the Jackpile-Paguate Uranium Mine Reclamation

AGENCY: Bureau of Land Management and Bureau of Indian Affairs, Interior.

ACTION: Notice of record of decision.

SUMMARY: The Bureau of Land Management (BLM) and Bureau of Indian Affairs (BLA), U.S. Department of the Interior, have released a Record of Decision (ROD) on the Jackpile-Paguate Uranium Mine Reclamation Project. The decision was based on the reclamation objectives listed in the Final Environmental Impact Statement (FEIS), the analysis contained in the FEIS, and public comments. Copies of the ROD are available for public review at the BLM and BIA Offices in Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT:

Michael J. Pool, EIS Team Leader, Rio Puerco Resource Area, BLM, Albuquerque District Office, 435 Montano NE., Albuquerque, NM 87107, (505) 761–4577

William C. Allan, Area Environmental Specialist, Albuquerque Area Office, BIA, P.O. Box 26567, Albuquerque, NM 87125–6567, (505) 766–3374.

Dated: December 5, 1986.

Monte G. Jordan,

Acting State Director, Bureau of Land Management.

Sidney L. Mills,

Area Director, Bureau of Indian Affairs.

[FR Doc. 86–29066 Filed 12–24–86; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[AA220–06–4322–12]

Bureau Forms Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau's Clearance Officer and to the Office of Management and Budget, Interior Department Desk Officer, Washington, DC 20503, Telephone (202) 395–7340.

Title: Grazing Preference Statement, 43 CFR 4130.1.

Abstract: This form is used as a grazing permit application which states the recognized grazing preference (use) as a reminder and allows the applicant to show requested changes for the coming grazing season.

Bureau Form Number: 4130–3.

Frequency: Annually.

Description of Respondents: Livestock grazing permittees on the public land.

Annual Responses: 7,665.

Annual Burden Hours: 1,794.

Bureau Clearance Officer (alternate): Rebecca Daugherty (202) 653–8853.

Dated: October 24, 1986.

Henry R. Smith,

Assistant Director, Land and Renewable Resources.

[FR Doc. 86–29067 Filed 12–24–86; 8:45 am]

BILLING CODE 4310–84–M

[AZ–020–07–4212–13; A–22502]

Realty Action; Exchange of Public Lands, Pima County, AZ

The following described Federal lands are being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian, Arizona

T. 17 S., R. 15 E.,
Section 5, Lots 1–3, S½NE¼, SE¼NW¼, S½;
Section 7, NE¼NE¼;
Section 8, N½NE¼NE¼, SW¼NE¼NE¼, W½SE¼NE¼NE¼; NW¼NE¼, S½NE¼, W½, SE¼.

Comprising 1184.73 Acres.

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice will segregate the affected public lands from appropriation under the public land laws, including the mining laws, but not the mineral leasing laws or from exchange pursuant to Federal Land Policy and Management Act of 1976.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: December 16, 1986.

Paul J. Buff,

Acting District Manager.

[FR Doc. 86–29069 Filed 12–24–86; 8:45 am]

BILLING CODE 4310–32–M

[NM–910–4121–09]

Extension of Public Comment Period on Proposed Mineral Exchange in San Juan and McKinley Counties, New Mexico; Albuquerque District, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Extension of public comment period on mineral exchange.

SUMMARY: On November 12, 1986, a Federal Register Notice of Reality Action, [Vol. 51, No. 216, pg. 41025 thru 41026), announced the proposed McKinley County Coal Exchange (NM–57802). The project involved the exchange of 4,280.26 acres of Federal coal estate for 6,263.45 acres of coal owned by the Cerrillos Land Company. In addition, Cerrillos Land Company included in the exchange 4,869.69 acres of mineral estate in the Chaco Cultural National Historic Park and Outlier Protection Sites.

The notice identified a 45 day comment period which is due to end on December 29, 1986. Due to a request for extension of the comment period, an extension of 15 days is being granted.

The public comment period for the Notice of Realty Action is now extended through close of business on January 13, 1987. All other information in the December 12, 1986, Federal Register Notice remains unchanged.

FOR FURTHER INFORMATION CONTACT: Bob Muller, Bureau of Land Management, Albuquerque District Office, commercial phone (505) 761–4553, FTS 474–4553.

Dated: December 19, 1986.

Michael F. Reitz,

Associate District Manager.

[FR Doc. 86–29068 Filed 12–24–86; 8:45 am]

BILLING CODE 4310–FB–M

[ID–943–07–4220–11; I–05279]

Proposed Continuation of Withdrawal; Idaho

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The Forest Service, Department of Agriculture proposes a 39.24 acre withdrawal for the Blackstone Administrative Site, continue for an additional 25 years, and a 560 acre withdrawal for the Minnetonka Recreation Area, continue for an additional 99 years based upon the anticipated remaining life of both projects. The lands will remain closed to surface entry and mining, but have been and will remain open to mineral leasing.

DATE: Comments should be received on or before March 30, 1987.

ADDRESS: Comments should be sent to: Idaho State Director, Bureau of Land Management, 3380 Americana Terrace, Boise, ID 83706.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, Idaho Stae Office, 208–334–1735.

The Forest Service proposes that the existing land withdrawal made by Public Land Order 1479 of September 5, 1957, for the Blackstone Administrative Site, be continued for a period of 25 years and the Minnetonka Recreation Area, be continued for a period of 99 years, pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The land is described as follows:

Boise Meridian, Idaho

Blackstone Administrative Site

T. 15 S., R. 43 E.
Sec. 17, lot 1.

Minnetonka Recreation Area

T. 15 S., R. 42 E.
Sec. 26, W½E½, W½;
Sec. 27, E½NE¼.

The land described above aggregates 599.24 acres in Bear Lake County.

The withdrawal is essential for protection of substantial capital improvements on the Administrative Site and the Recreation Area. The withdrawal closed the land to surface entry and mining but not mineral leasing. No change in the segregate effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued, and if so, for how long. The final determination of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: December 12, 1986.

William E. Ireland,

Chief, Realty Operations Section

[FR Doc. 86–29070 Filed 12–24–86; 8:45 am]

BILLING CODE 4310–GG–M

[ES–970–07–4910–10–2410; ES 33248 Alabama]

Alabama; Proposed Reinstatement of Federal Oil and Gas Lease ES 33248.

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed reinstatement of a terminated oil and gas lease.

SUMMARY: Federal oil and gas lease ES 33248 terminated automatically by operation of law on August 1, 1986 (30 U.S.C. 186).

FOR FURTHER INFORMATION CONTACT: Mr. Charles Johnson at (703) 274–0160.

SUPPLEMENTARY INFORMATION: 1. A petition for reinstatement of ES 33248 was filed by Bay City Minerals Inc. (Lessee) under section 31D of the Mineral Leasing Act of 1920, as amended by the Federal Oil and Gas Royalty Management Act of 1982 (96 Stat. 2447).

2. The lessee has met all the following requirements of reinstatement:

(a) $500—Reimbursement of Department Administrative Cost
(b) $605—Back Rental Payment
(c) $126—Estimated Publication Cost

3. The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5.00 per acre per year, and royalty increased to 16⅔ percent beginning August 1, 1986.

G. Curtis Jones, Jr.,

State Director.

[FR Doc. 86–28977 Filed 12–24–86; 8:45 am]

BILLING CODE 4310–GJ–M

[AZ 020–07–4212–12; A 22448]

Arizona; Exchange of Public Lands: Amendment

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Realty Action: Amendment to Notice of Realty Action, exchange of public lands Arizona.

This amends Notice of Realty Action A 22448, published November 18, 1986 and amended December 11, 1986 by identifying the following additional 1760 acres of state land to be conveyed to the United States.

Gila and Salt River Meridian, Arizona

T. 21 S., R. 18 E.,
Sec. 15, SW¼
Sec. 16, All
Sec. 20, E½
Sec. 21, All

Dated: December 17, 1986.

Paul J. Buff,

Acting District Manager.

[FR Doc. 86-28978 Filed 12-24-86; 8:45 am]

BILLING CODE 4310-32-M

[AZ-020-07-4212-13; A-19162]

Arizona; Exchange of Public and Private Land in Pima County

The following described federal lands have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian, Arizona

T. 12 S., R. 11 E.,
Section 33, Lots 2, 6, 7, 11, S½ of Lot 3, Lot 5 less 10 acres, E½SW¼NE¼, E½E½W½SW¼NE¼, E½W½E½W½SW¼NE¼.

Comprising 237.41 acres, more or less.

In exchange for these lands, the United States will acquire the following described lands from John J. Woodin:

Gila and Salt River Meridian, Arizona

T. 11 S., R. 8 E.,
Section 36, N½N½NE¼, SW¼NW¼NE¼, N½SE¼NE¼NE¼, SW¼NE¼, W½SE¼NE¼, SE¼SE¼NE¼, W½NE¼SE¼NE¼, NW¼.

Comprising 290 acres.

The purpose of this exchange is to acquire the non-federal lands which contain important desert bighorn sheep habitat, as well as providing habitat for numerous other wildlife species. The exchange is consistent with the Bureau's planning system. The public interest will be well served by completing the exchange.

The value of the lands to be exchanged are approximately equal; full equalization of values will be achieved by payment to the United States by Mr. Woodin.

Lands to be transferred from the United States in this exchange will be subject to the following reservations, terms and conditions:

1. A right-of-way for ditches and canals constructed by the authority of the United States, pursuant to the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

Private lands to be acquired by the United States will be subject to the following reservations, terms and conditions:

1. All minerals in the subject land are reserved to the State of Arizona.

2. The right of Trico Electric Company to continue existing use of the land for electrical transmission and distribution lines.

Publication of this notice in the **Federal Register** segregates the described federal lands from appropriation under the public land laws, including the mining laws, but not from the mineral leasing laws or from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. This segregation shall terminate upon issuance of a document conveying title to such lands or upon publication in the **Federal Register** of a notice of termination of the segregation, or the expiration of two years from the date of publication, whichever occurs first.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange, including the environmental analysis and the record of public discussions, is available for review at the Phoenix Resource Area Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

For a period of 45 days interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Any adverse comments will be evaluated by the Arizona State Director, who may sustain, vacate, or modify this realty action and issue a final determination. In the absence of any objection, this realty action will become the final determination of the Department of the Interior.

Dated: December 15, 1986.

Henri R. Bisson,

Acting District Manager.

[FR Doc. 86-28979 Filed 12-24-86; 8:45 am]

BILLING CODE 4310-32-M

Fish and Wildlife Service

Marine Mammal Annual Report Availability, Calender Year 1985

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of calendar year 1985 Marine Mammal Annual Report.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has issued the 1985 annual report on administration of the marine mammals under its jurisdiction, as required by section 103(f) of the Marine Mammal Protection Act of 1972. The report covers the period January 1, 1985, to December 31, 1985, and was submitted to the Congress on November 6, 1986. By this notice, the public is informed that the report is available and that any interested individual may secure a copy by written request to the Service.

ADDRESS: Written requests for copies should be addressed to: Publications Unit, U.S. Fish and Wildlife Service, Department of the Interior, 18th and C Streets NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Mr. LeRoy W. Sowl, Chief, Division of Fish and Wildlife Management Assistance, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240, 202-632-2202.

SUPPLEMENTARY INFORMATION: The Service is responsible for eight species of marine mammals under the jurisdiction of the Department of the Interior, as assigned by the Marine Mammal Protection Act of 1972 (MMPA). These species are polar bear, sea and marine otters, walrus, manatees (three species) and dugong. The report reviews the Service's marine mammal-related activities during the report period. Administrative actions discussed include MMPA appropriations, marine mammals in Alaska, endangered and threatened marine mammal species (specifically the West Indian manatee and the sea otter in California), law enforcement activities, scientific research and public display permits, certificates of registration, research, Outer Continental Shelf environmental studies and international activities.

This notice was prepared by Jeffrey L. Horwath, Wildlife Biologist, Division of Fish and Wildlife Management Assistance, 202-632-2202.

Dated: December 17, 1986.

Frank Dunkle,

Director.

[FR Doc. 86-29027 Filed 12-24-86; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Development Operations Coordination; ODECO Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that ODECO Oil & Gas Company has submitted a DOCD describing the activities it proposes to conduct on Leases OCS 072 and 073, Blocks 12 and 19, respectively, South Pelto Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an offshore base located at Aransas Pass, Texas.

DATE: The subject DOCD was deemed submitted on December 15, 1986.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Wholesalers Pkwy., Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: December 17, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-28980 Filed 12-24-86; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Tenneco Oil Exploration and Production Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Tenneco Oil Exploration and Production Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4536, Block A-22, Mustang Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an offshore base located at Dulac and Houma, Louisiana.

DATE: The subject DOCD was deemed submitted on December 15, 1986.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Wholesalers Pkwy., Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: December 17, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-28981 Filed 12-24-86; 8:45 am]

BILLING CODE 4310-MR-M

Information Collection Submitted for Review

The justification for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the information collection requirement and related explanatory material may be obtained by contacting Jeane Kalas on 303-231-3046. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer at the telephone number listed below and to the Office of Management and Budget Interior Department Desk Officer Washington, DC 20502, telephone 202-395-7313.

Title: Application for Reward for Original Information.

Abstract: The Secretary of the Interior is authorized to pay a reward for information resulting in the recovery of royalty or other payments owed the United States from any oil or gas leases on Federal lands or the Outer Continental Shelf. To claim a reward, individuals must voluntarily, and on their own initiative, submit an Application for Reward for Original Information. The information requested on the application enables the Minerals Management Service to determine amount and pay the reward.

Bureau Form Number: MMS-4280.

Frequency: On occasion.

Description of Respondents: Individuals.

Annual Responses: 12.

Annual Burden Hours: 6.

Bureau Clearance Officer: Dorothy Christopher 703-435-6213.

Dated: September 5, 1986

Jerry D. Hill,

Associate Director for Royalty Management.

[FR Doc. 86-29071 Filed 12-24-86; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given the ARCO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 1608 and 2137, Block 60, Lease OCS-G 2938, Block 17, and Lease OCS-G 2943, Block 59, South Pass Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on December 17, 1986.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Wholesalers Pkwy., Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised §250.34 of Title 30 of the CFR.

Dated: December 19, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-29072 Filed 12-24-86; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701-TA-283 and 731-TA-364 (Preliminary)]

Acetylsalicylic Acid (Aspirin) From Turkey

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines, [2] pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Turkey of bulk acetylsalicylic acid, [3] provided for in item 410.72 of the Tariff Schedules of the United States, which are alleged to be subsidized by the Government of Turkey. The Commission also determines, [2] pursuant to section 733(a) of the Act (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Turkey of bulk acetylsalicylic acid which are alleged to be sold in the United States at less that fair value (LTFV).

Background

On October 31, 1986, petitions were filed with the Commission and the Department of Commerce by Monsanto Co., St. Louis, MO, alleging that an industry in the United States is materially injured and threatened with materials injury by reason of imports of bulk acetylsalicylic acid from Turkey which are subsidized by the Government of Turkey and sold in the United States at LTFV. Accordingly, effective October 31, 1986, the Commission instituted preliminary countervailing duty investigation No. 701-TA-283 (Preliminary) and preliminary antidumping investigation No. 731-TA-364 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 7, 1986 (51 FR 40524). The conference was held in Washington, DC, on October 20, 1986, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on December 15, 1986. The views of the Commission are contained in USITC Publication 1926 (December 1986), entitled "Certain Acetylsalicylic Acid from Turkey: Determinations of the Commission in Investigations Nos. 701-TA-283 and 731-TA-364 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

By order of the Commission.

Issued: December 16, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-28945 Filed 12-24-86; 8:45 am]

BILLING CODE 7020-02-M

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Chairman Liebeler dissenting; Commissioner Lodwick not participating.

[3] The product covered by these investigations is acetylsalicylic acid (aspirin) containing no additives other than inactive substances (such as starch, lactose, cellulose, or coloring material) and/or active substances in concentrations less than that specified for particular non-prescription drug combinations of aspirin and active substances as published in the *Handbook of Non-Prescription Drugs*, 8th edition, American Pharmaceutical Association, and is not in tablet, capsule, or similar forms for direct human consumption.

[332-241]

Competitive Position of Canadian Live Cattle and Beef in U.S. Markets

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

EFFECTIVE DATE: December 15, 1986.

SUMMARY: At the request of the United States Senate Committee on Finance, the Commission has instituted investigation No. 332-241 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), for the purpose of gathering and presenting information on the competitive position of Canadian live cattle and beef in U.S. markets.

FOR FURTHER INFORMATION CONTACT: David E. Ludwick or Thomas Westcot, Agriculture, Fisheries, and Forest Products Division, U.S. International Trade Commission, Washington, D.C. 20436, telephone (202) 724-1763 and 724-0095, respectively.

Background and Scope of Investigation

As requested by the Committee on Finance, the Commission in its report will seek to:

(A) Describe the United States and Canadian industries, including elements such as number of producers, industry concentration, and geographic distribution.

(B) Describe the United States and Canadian markets in terms of consumption levels and trends, production cycles, and both import and export levels and trends.

(C) Describe in detail the trade in cattle between the United States and Canada, including a discussion of how variations in the levels of exports correlate with changes in exchange rates. To the extent possible, the Commission should assess the regional impact of imports by determining their geographic concentration.

(D) Describe the effect on trade in live cattle of: Tariffs, quotas, voluntary restraint agreements, countervailing and antidumping duties, and health and sanitary regulations, including regulations with respect to Bluetongue disease.

(E) Identify Federal, State, and Provincial government assistance programs that are available to the cattle growing and processing industries. Such government assistance programs may include assistance that reduces fixed costs, that reduces variable costs, or that enhances revenues.

(F) Discuss all other factors with a significant bearing on competitive conditions, including product prices and transportation costs.

The Committee requested that the Commission report the results of its investigation no later than 9 months after receipt of the request, or by July 17, 1987.

Public Hearing:

The Commission will hold a hearing in connection with the investigation at a time and place to be announced.

Written submissions

Interested persons are invited to submit written statements concerning the investigation. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirement of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. To be assured of consideration by the Commission, written statements should be received at the earliest practicable date, but not later than March 1, 1987. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

Hearing-impaired persons are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724-0002.

Issued: December 17, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-28946 Filed 12-24-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-253]

Electrically Resistive Monocomponent Toner; Commission Decision Not To Review Initial Determination Designating the Investigation More Complicated

AGENCY: U.S. International Trade Commission.

ACTION: Nonreview of an initial determination (ID) declaring the investigation more complicated and extending the deadline for completion of the investigation by 3 months.

SUMMARY: The Commission has determined not to review an ID (Order No. 7) declaring the above-captioned investigation more complicated, and extending the deadline for completion of the investigation by 3 months, i.e., until November 20, 1987.

FOR FURTHER INFORMATION CONTACT: Edwin J. Madaj, Jr., Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0146.

SUPPLEMENTARY INFORMATION: The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in § 210.53 of the Commission's Rules of Practice and Procedure (19 CFR 210.53).

On November 19, 1986, the presiding administrative law judge (ALJ) issued both an order (Order No. 6) granting respondents Canon, Inc., and Canon, U.S.A., Inc. leave to amend their answer to the complaint to add an additional affirmative defense and an ID (Order No. 7) designating the investigation more complicated within the meaning of § 210.59 of the Commission's rules (19 CFR 210.59). All procedural deadlines were extended for 3 months. Complainant Aunyx Corp. had indicated that it reserved the right to move to for a more complicated designation if the motion to amend the answer was granted, while the Commission investigative attorney had argued that the investigation should be declared more complicated if leave to amend the answer was granted. The ID indicated that the basis for the more complicated desgination was that the already complex antitrust issues of the investigation had been made even more involved by the new affirmative defense of respondents' rights under certain U.S. patents. The ID also found that unless the investigation was declared more complicated, there would be insufficient time for adequate discovery and proper development of the record.

The Commission received no petitions for review of the ID nor any comments from other Government agencies.

Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing-impaired individuals are advised that information concerning this investigation can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.

Issued: December 12, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-28947 Filed 12-24-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-288 (Final)]

Erasable Programmable Read Only Memories (EPROM'S) From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pusuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is materially injured by reason of imports from Japan of erasable programmable read only memories (EPROM's), provided for in item 687.74 of the Tariff Schedules of the United States, which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective March 17, 1986, following a preliminary determination by the Department of Commerce that imports of EPROM's from Japan were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 2, 1986 (51 FR 11358). Subsequently, the Department of Commerce extended the date of its final determination and, accordingly, the Commission revised its schedule with a notice published in the **Federal Register** of May 7, 1986 (51 FR 16905).

On July 30, 1986, Commerce entered into an agreement with Japan that suspended the investigation pursuant to section 734 of the Act (19 U.S.C. 1673c) (51 FR 28253, August 6, 1986).[3] on August 26, 1986, however, petitioners filed a request to continue the investigation pursuant to section 734(g)(2) of the Act (19 U.S.C. 1673c(g)(2)) and, on October 30, 1986, Commerce published a final affirmative determination of sales at LTFV (51 FR 39680).

Notice of the continuation of the Commission's final investigation and of a hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary to the Commission and by publishing the

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Chairman Liebeler dissenting.

[3] The Commission published its suspension notice in the **Federal Register** of August 20, 1986 (51 FR 29708).

notice in the Federal Register of November 12, 1986 (51 FR 41028). The hearing was held in Washington, DC, on November 19, 1986, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce of December 15, 1986. The views of the Commission are contained in USITC Publication 1927 (December 1986), entitled "Erasable Programmable Read Only Memories (EPROM's) From Japan: Determination of the Commission in Investigation No. 731-TA-288 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By order of the Commission.
Issued December 16, 1986.

Kenneth R. Mason,
Secretary.

[FR Doc. 86-28948 Filed 12-24-86; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 337-TA-260]

Feathered Fur Coats and Pelts, and Process for the Manufacture Thereof; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337 and 19 U.S.C. 1337a.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on November 10, 1986, under section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and under 19 U.S.C. 1337a, on behalf of David Leinoff, 71 Park Avenue, New York, New York 10016, and David Leinoff, 208 West 29 Street, New York, New York 10001. An amended complaint was filed on November 24, 1986. The complaint, as amended, alleges unfair methods of competition and unfair acts in the importation into the United States of certain feathered fur coats and pelts, and in their sale, by reason of alleged infringement of at least claim 1 of U.S. Letters Patent 3,760,424 and further alleged manufacture abroad by a process which, if practiced in the United States, would infringe at least claim 5 of the U.S. Letters Patent 3,760,424. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: Deborah S. Strauss, Esq., or Ethel L. Morgan, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-523-1233 and 202-523-0113, respectively.

Authority

The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on December 9, 1986, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation into the United States of certain feathered fur coats and pelts, or in their sale, by reason of alleged infringement of claim 1 of U.S. Letters Patent 3,760,424, and further alleged manufacture abroad by a process which, if practiced in the United States, would infringe claim 5 of U.S. Letters Patent 3,760,424, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

David Leinoff, 71 Park Avenue, New York, New York 10016
David Leinoff, Inc., 208 West 29 Street, New York, New York 10001

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Jindo Fur Salon, C.P.O. Box 242, Yu Yeong Shopping Arcade, 1 Taewon Main Street, Seoul, Korea
Jindo Fur Salon, 1500 Kapiolani Boulevard, Honolulu, Hawaii 96814
Asia Fur Company, 6/F Winner Building, 36, Man Yue Street, Hung Hom, Kowloon, Hong Kong
Hong Kong Tientsin Fur Co. Ltd., 8/F Blocks D&E, Winner Building, 36 Man Yue Street, Kowloon, Hong Kong
Peking Fur Store Ltd., Unit E, Freder Center, 4/F, 3 Mok Cheong Street, Hung Hom, Kowloon, Hong Kong
Excelsior Fur Co., Ltd., Flat B, 7/E Speedy Industrial Building, 114 How Ming Street, Kung Tong, Kowloon, Hong Kong
Papadopouli Kevrekidis & Co., 36 S. Athanasion Street, Kastoria, Greece
Papadopouli Kevrekidis & Co., 231 West 29 Street, New York, New York 10001
China National Produce and Animal By-Products Import and Export Corporation, 82, Dong An Men Street, Beijing, Peoples Republic of China
Sunry Import Export Corp., Suite 125 Paramus Plaza, 120 Route 17N, Paramus, New Jersey 07652
E. Vassou Brothers, Inc., 20561 N. Zouzouli, Kastoria, Greece

(c) Deborah S. Strauss, Esq., and Ethel L. Morgan, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 701 E Street NW, Room 126 and Room 122, respectively, Washington, DC 20436, shall be the Commission investigative attorneys, party to this investigation; and

(3) The following entity is not named as a respondent in this investigation but shall be served with a copy of the notice of investigation, the complaint, and § 210.26 of the rules: Tannimpex, Vorosmarty UTCA 35, H-1395, P.O. Box 406, Budapest, Hungary.

(4) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to § § 201.16(d) and 210.21(a) of the rules (19 CFR 201.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of a service of the complaint. Extensions of time for submitting responses will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find that facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, DC 20436, telephone 202-523-0471. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.
Issued: December 15, 1986.

Kenneth R. Mason,
Secretary.

[FR Doc. 86-28949 Filed 12-24-86; 8:45 am]
BILLING CODE 7020-02-M

[Inv. No. 337-TA-255]

Garment Hangers; Change of the Commission Investigative Attorney

Before Paul J. Luckern, Administrative Law Judge.

Notice is hereby given that, as of this date, Ethel Lenardson Morgan, Esq., of the Office of Unfair Import Investigations will be the Commission investigative attorney in the above-cited investigatoin instead of Juan Cockburn, Esq. and Gary Rinkerman, Esq.

The Secretary is requested to publish this Notice in the Federal Register.

Dated: December 18, 1986.
Respectfully submitted,

Arthur Wineburg,
Director, Office of Unfair Import Investigations, U.S. International Trade Commission.

[FR Doc. 86-28950 Filed 12-24-86; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 337-TA-243]

Luggage Products; Commission Decision Not to Review Initial Determination Terminating One Respondent

AGENCY: U.S. International Trade Commission.

ACTION: Nonreview of initial determination terminating the investigation as to one respondent.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) granting a joint motion to terminate the investigation as to respondent Pungkook Industrial Co., Ltd. (Pungkook) on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Randi S. Field, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0261.

SUPPLEMENTARY INFORMATION: On February 12, 1986, Lenox, Incorporated (Lenox), through its Division Hartmann Luggage Company (Hartmann), filed a section 337 complaint with the Commission alleging unfair methods of competition and unfair acts in the importation and sale of certain luggage products. The Commission's notice of investigation divided Lenox's allegations into the following alleged unfair acts: (1) Violation of section 43(a) of the Lanham Act; (2) common-law trademark infringement; (3) trademark dilution; (4) trade dress misappropriation; (5) passing off; and (6) unfair competition. 51 FR 10580 (March 27, 1986). The notice of investigation listed twelve respondents which were alleged to be in violation of section 337.

On November 3, 1986, complainant Lenox, through Hartmann, and respondent Pungkook filed a joint motion to terminate the investigation as to Pungkook on the basis of a settlement agreement.

On November 19, 1986, the presiding administrative law judge (ALJ) issued an ID (Order No. 62) granting the joint motion to terminate the investigation as to Pungkook on the basis of a settlement agreement. No petitions for review were filed nor were any government agency or public comments received with regard to the ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rule 210.53 (19 CFR 210.53).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-1626. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.
Issued: December 15, 1986.

Kenneth R. Mason,
Secretary.

[FR Doc. 86-28951 Filed 12-24-86; 8:45 am]
BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-356 through 363 (Preliminary)]

Portland Hydraulic Cement and Cement Clinker From Colombia, France, Greece, Japan, Mexico, the Republic of Korea, Spain, and Venezuela

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] [3] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Colombia, France, Greece, Japan, Mexico, the Republic of Korea, Spain, and Venezuela of portland hydraulic cement and cement clinker, provided for in item 511.14 [4] of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value (LTFV).

Background

On October 30, 1986, a petition was filed with the Commission and the Department of Commerce by counsel on behalf of the American Cement Trade Alliance alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of portland hydraulic cement and cement clinker from Colombia, France, Greece, Japan, Mexico, the Republic of Korea, Spain, and Venezuela. Accordingly, effective October 30, 1986, the Commission instituted preliminary antidumping investigations Nos. 731-TA-357 through 363 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Commissioner Eckes determines that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of portland hydraulic cement and cement clinker from Colombia, France, Greece, Japan, Mexico, the Republic of Korea, Spain, and Venezuela, which were allegedly sold in the United States at less than fair value (LTFV).

[3] Commissioner Stern did not participate in these determinations.

[4] These investigations do not include white, nonstaining portland hydraulic cement, provided for in TSUS item 511.11, or oil well cement, provided for in TSUS item 511.14.

Federal Register of November 21, 1986, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on December 15, 1986. The views of the Commission are contained in USITC Publication 1925 (December 1986), entitled "Portland Hydraulic Cement and Cement Clinker from Colombia, France, Greece, Japan, Mexico, the Republic of Korea, Spain, and Venezuela: Determinations of the Commission in Investigations Nos. 731–TA–356 through 363 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

By order of the Commission.

Issued: December 16, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–28953 Filed 12–24–86; 8:45 am]

BILLING CODE 7020–02–M

Investigation No. 701–TA–281 (Final)

Stainless Steel Pipes and Tubes From Sweden

AGENCY: United States International Trade Commission.

ACTION: Institution of a final countervailing duty investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notices of the institution of final countervailing duty investigation No. 701–TA–281 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Sweden of stainless steel pipes, tubes, hollow bars, and blanks therefor, all of the foregoing of circular cross section, whether welded or seamless, provided for in items 610.37, 610.51, and 610.52 of the Tariff Schedules of the United States, which have been found by the Department of Commerce, in a preliminary determination, to be subsidized by the Government of Sweden. Commerce will make its final subsidy determination in this investigation on or before February 17, 1987, and the Commission will make its final injury determination by April 3, 1987 (see sections 705(a) and 705(b) of the act (19 U.S.C. 1671d(a) and 1671d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: December 6, 1986.

FOR FURTHER INFORMATION CONTACT: Daniel Leahy (202–523–1376), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 701 of the act (19 U.S.C. 1671) are being provided to manufacturers, producers, or exporters in Sweden of stainless steel pipes, tubes, hollow bars, and blanks therefor. The investigation was requested in a petition filed on September 5, 1986 by the Specialty Tubing Group.[1] In response to that petition the Commission conducted a preliminary countervailing duty investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that industries in the United States were materially injured by reason of imports of the subject merchandise.

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

[1] The Specialty Tubing Group consists of the following firms: Al Tech Specialty Steel Corp., Allegheny Ludlum Steel Corp., ARMCO-Specialty Steel Division, Carpenter Technology Corp., Damascus Tubular Products, and Trent Tube Division, Crucible Materials Corp.

Staff Report

A public version of the prehearing staff report in this investigation will be placed in the public record on February 13, 1987, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on February 26, 1987, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on February 13, 1987. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on February 19, 1987, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is February 23, 1987.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written Submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing shoud be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on March 5, 1987. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before March 5, 1987.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of §201.6 of the Commission's rules (19 CFR 201.6).

Authority: This investigation is being conducted under the authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: December 17, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–28955 Filed 12–24–86; 8:45 am]

BILLING CODE 7020–02–M

[332–240]

U.S. Global Competitiveness; Oilseed and Products Industry

AGENCY: United States International Trade Commission.

ACTION: Institution of an investigation and scheduling of public hearing.

EFFECTIVE DATE: December 10, 1986.

FOR FURTHER INFORMATION CONTACT: John Reeder, Agriculture, Fisheries, and Forest Products Division, Office of Industries, U.S. International Trade Commission, Washington, DC 20436, telephone: 202–724–1754.

Background and Scope of Investigation

The Commission, instituted the investigation, No. 332–240, on December 10, 1986, under section 332[g] of the Tariff Act of 1930 (19 U.S.C. 1332(g)), following receipt on October 30, 1986, of a letter requesting the investigation from the Committee on Finance of the U.S. Senate.

As requested by the Committee, the Commission will investigate and report on the international competitiveness of the U.S. oilseed and products industry. More specifically, the Commission intends to investigate and report on the U.S. oilseed and products industry and its major foreign competitors in order that it might determine the impact of global competition on the industry and assess how the industry is responding to such forces. The Commission expects to report the results of its investigation to the Committee not later than August 28, 1987.

The investigation is one of a series of six investigations involving the global competitiveness of U.S. industries requested by the Committee. As requested by the Committee and as in the case of those other studies (which involve the textile mill, petrochemicals, steel sheet and strip, automotive parts, and optical fibers industries, investigation Nos. 332–229 through 332–233), the Commission will analyze and address in this report (1) measures of the current competitiveness of the U.S. industry in domestic and foreign markets; (2) competitive strengths of U.S. and major foreign competitors in these markets; (3) the nature of the main competitive problems facing the U.S. industry; (4) sources of the main competitive problems and extent to which they involve special transitory or reversible situations, as opposed to fundamental or structural problems; and (5) the importance of foreign and U.S. markets to future competitiveness in terms of economies of scale, growth rates, and preempting of market advantages.

Public Hearing

The Commission will hold a public hearing on this investigation as well as the five others in this series (investigation Nos. 332–229 through 332–233) at the United States International Trade Commission Building, 701 E Street NW., Washington, DC, beginning at 10:00 a.m. on February 24, 1987. All persons shall have the right to appear in person or be represented by counsel, to present information and to be heard. Persons wishing to appear at the public hearing should file requests to appear and prehearing briefs (original and 14 copies) with the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, not later than noon, February 2, 1987.

Written Submissions

Interested persons are invited to submit written statements concerning the investigation. Written statements should be received by the close of business on April 27, 1987. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 210.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested parties. All submissions should be addressed to the Secretary, United States International Trade Commission, 701 E Street NW., Washington, DC 20436.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724–0002.

By order of the Commission.

Issued: December 16, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–28952 Filed 12–24–86; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 751–TA–11]

Salmon Gill Fish Netting of Manmade Fibers From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. 1675(b)), that an industry in the United States would not be materially injured or threatened with material injury nor would the establishment of an industry in the United States be materially retarded by reason of imports of salmon gill fish netting of manmade fibers [2] from Japan covered by antidumping order T.D. 72–158 if that portion of the order concerning salmon gill fish netting were to be revoked.

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Fish netting of continuous polyamide fibers (including nylon), consisting of monofilament yarns measuring not more than 0.806 millimeter in maximum cross-sectional dimension or multifilament yarns or cordage measuring not more than 210 denier, or a combination of the foregoing yarns or cordage, of double or triple-knot construction, dyed or otherwise colored (except white), having a stretch mesh size of not less than 4⅛ inches and not more than 8¼ inches. Such netting is provided for in item 355.45 of the Tariff Schedules of the United States.

Background

On April 18, 1972, the Commission determined that an industry in the United States was being injured within the meaning of the Antidumping Act, 1921, by reason of imports from Japan of fish netting of manmade fibers determined by the Secretary of Treasury to be sold or likely to be sold at less than fair value (*Fish Nets and Netting of Manmade Fibers from Japan . . . .*, investigation No. AA1921–85, TC Publication 477 (1972)).

On June 1, 1972, the Department of the Treasury issued a finding of dumping (T.D. 72–158), and published notice of the finding in the **Federal Register** (37 FR 11560, June 9, 1972).

On June 20, 1986, the Commission received a request to institute a third review investigation and modify its affirmative determination in investigation No. AA1921–85.[3] The request was filed under section 751(b) of the Tariff Act of 1930 (19 U.S.C. 1675(b)), by George R. Tuttle, P.C. on behalf of Seattle, Washington/Portland Oregon, importers of salmon gill fish netting of manmade fibers.

On July 3, 1986, the Commission requested written comments as to whether the changed circumstances alleged by the petitioners were sufficient to warrant a third review investigation (51 FR 24451). Written comments were received from the law firm of Arnold & Porter on behalf of the Fishing Nets and Twine Division of the Japan Textile Products Exporters' Association, Osaka, Japan; Jovanovich Supply Co., Seattle, WA, an importer of the subject merchandise; and the petitioner, all supporting the request for instituting the investigation. Written comments were also received from the law firm of Taft, Stettinius & Hollister on behalf of the American Cordage and Twine Manufacturers (ACTM) opposing the request to institute a review investigation.

On the basis of the comments filed, the Commission instituted investigation No. 751–TA–11, effective August 20, 1986. Notice of the institution of the Commission's investigation and of the public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** (51 FR 29708). The hearing was held in Washington, DC, on October 30, 1986, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on December 12, 1986. The views of the Commission are contained in USITC Publication 1921 (December 1986), entitled, "Salmon Gill Fish Netting on Manmade Fibers From From Japan: Determination of the Commission in Investigation No. 751–TA–11 Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By order of the Commission.

Issued: December 15, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–28954 Filed 12–24–86; 8:45 am]

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[3] The two prior review investigations were *Salmon Gill Fish Netting of Manmode Fibers From Japan: Determination of the Commission in Investigation No. 751–TA–5.* . . . , USITC Publication 1234, March 1982; and *Salmon Gill Fish Netting of Monmode Fibers from Japan: Determination of the Commission in Investigation No. 751–TA–7.* . . . , USITC Publication 1387, June 1983.

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 290 (Sub-No. 2)]

Railroad Cost Recovery Procedures

AGENCY: Interstate Commerce Commission.

ACTION: Notice of approval of rail cost adjustment factor and decision.

SUMMARY: The Commission has decided to approve a restated version of the cost index and RCAF filed by the Association of American Railroads (AAR) under the procedures of Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures.* Application of the index, as adjusted, for third quarter 1986 forecast error, provides for a first quarter 1987 RCAF of 1.062. Since there is a bank of credits sufficient to offset any increase in maximum RCAF rate levels maximum adjusted base rates may not exceed the current ceiling of 1.057. No rate actions are ordered.

DATES: Effective January 1, 1987.

FOR FURTHER INFORMATION CONTACT: Robert C. Hasek (202) 275–0938 or William T. Bono (202) 275–7354.

SUPPLEMENTARY INFORMATION: By decision served January 2, 1985 (50 FR 87, January 2, 1985) we outlined the procedures for the calculation of the all inclusive index of railroad input costs and the methodology for the computation of the RCAF. These procedures replaced an interim methodology which was formerly used. AAR is required to calculate the forecasted index on a quarterly basis and submit it on the fifth day of the last month of each calendar quarter.

We have reviewed AAR's calculations of the index for the first quarter of 1987 and find that, with the exception of the lease rental portion of the equipment rents component, these calculations comply with the rules contained in our decision served January 2, 1985. AAR's handling of lease rentals is acceptable on an interim basis.

The indexing rules call for the lease rental portion of the equipment rents component of the index to be calculated using actual data. On November 15, 1985, AAR filed a petition to reopen this proceeding for the purpose of modifying our rule concerning this component. AAR's petition is currently under consideration. At this time we will continue to accept use of the Producer Price Index for Industrial Commodities, less Fuel, Power and Related Products as a surrogate for the lease rental portion of the equipment rents component of the index. We have previously observed that the lease rental portion of the index is only 2.3 percent of the total and is not likely to have a major effect on the RCAF.

In our decision served December 27, 1985, we restated a lump sum payment to certain members of the United Transportation Union by amortizing it over the life of the present union contract with interest calculated using the three-month Treasury Bill rate. We instructed AAR to continue this calculation by amortizing the principal balance over the remaining quarters using a three-month Treasury Bill interest rate available seven days prior to the submission date of the quarterly index. New labor contracts with the Brotherhood of Railroad Signalmen, the Brotherhood of Maintenance of Way Employees, the Brotherhood of Railway Carmen and the International Brotherhood of Firemen and Oilers have become effective during the fourth quarter of 1986. These contracts also contain lump sum provisions. We have verified the calculations for these and other lump sum payments and find that they comply with our instructions.

Our decision served September 19, 1986 requested AAR to quantify the effect of new labor contract conditions on the wage rates used in the labor portion of the index. Since that time AAR has established a special committee to quantify the effect of work rule savings on the hourly wage rate which is the major component of the labor index. The committee has conducted a survey of AAR member railroads and quantified several additional work rule savings. The results of that survey are reflected in a first quarter 1987 reduction of 22.1 cents in the hourly wage rate.

In a decision served October 17, 1986, we made substantial modifications to the rules in this proceeding. Maximum RCAF rate levels were reduced from 1.069 to 1.057 effective November 17, 1986. Additionally, a bank of credits was established to hold down maximum RCAF rate levels in order to offset differences between the maximum RCAF rate level and the level of the quarterly RCAF for the period beginning January 1, 1986. A forecast error adjustment was also approved on a six-month lag basis in order to compensate for overstatements and understatements in the level of the forecasted RCAF. All of the actual data needed for the calculation of an RCAF is available after six months. Finally, we decided that maximum RCAF rate levels will rise and fall with the quarterly RCAF after the bank of credits is exhausted.

This is the first quarterly decision issued under the modified rules. It includes an adjustment to the first quarter 1987 RCAF to compensate for forecast error occurring in the third quarter of 1986. Application of the forecast error adjustment reduced AAR's first quarter 1986 preliminary RCAF calculation by .009 resulting in a published first quarter of 1.062. We will include an adjustment for fourth quarter 1986 forecast error to our next quarterly decision and continue to make an adjustment each quarter thereafter. Calculation of the adjustment and its application to the preliminary first quarter 1987 RCAF are shown in Table A of the appendix.

This is also the first quarterly decision in this proceeding to employ a bank of credits as an offsetting factor to hold down maximum RCAF rate levels. The decision served October 17, 1986 established a bank of credits which is to be used to offset increases in the level of the quarterly RCAF. It also added an opportunity cost adjustment to be applied to the credits in the bank on a quarterly basis. (see decision served October 17, 1986 p. 13) Although AAR did submit its calculation of the bank of credits for each quarter beginning January 1, 1986 it did not employ an opportunity cost adjustment for any of the credits which accumulated during 1986. We have restated AAR's calculations to include an opportunity cost adjustment. That adjustment was applied to the total accumulation of credits using the three-month Treasury Bill interest rate available seven days prior to the filing date of the AAR proposals filed during 1986. Our calculations are shown in Table C of the appendix to this decision.

Our decision served October 17, 1986 stated that we would treat the ordered rollback as if it had occurred at the beginning of the quarter for the purposes of establishing the bank. We made this determination to simplify the process because it was uncertain when rates would actually be reduced. The actual rollback occurred on November 17, 1986 almost exactly halfway through the quarter. Accordingly, we have reconsidered this matter and have decided that, the amount to be banked, will be based on the fact that maximum RCAF rate levels were at the 1.069 level for half the quarter and at the 1.057 level for half the quarter.

Finally, we observe that since the published first quarter 1987 RCAF of 1.062 is higher than the current maximum RCAF rate level of 1.057 the bank of credits will be reduced slightly. If the published quarterly RCAF level remains above 1.057 in future quarters further reductions in the bank will occur. We will continue to calcualte the size of the bank of credits and include that information in each quarterly decision as long as there are any remaining credits.

We find the RCAF for the first quarter of 1987 to be 1.062. This figure was calculated by adjusting the preliminary first quarter 1987 RCAF for the third quarter 1986 forecast error. Since there is a bank of credits sufficient to offset any increase in maximum RCAF rate levels, adjusted base rates may not exceed the current ceiling of 1.057. No rate actions are ordered.

The indices and RCAF derived from AAR's first quarter 1987 calculations are shown in Table A of the Appendix to this decision. The adjustment for third quarter 1986 forecast error is also shown in Table A. Table B shows the third quarter 1986 index and RCAF calculated on both an actual basis and a forecasted basis for comparative purposes. Table C shows our calculation of the bank of credits (including the application of an opportunity cost adjustment) used to offset increases in the RCAF.

This decision will not significantly affect the quality of the human environment or the conservation of energy resources. This proceeding will not have a significant adverse impact on a substantial number of small entities because these procedures simplify a formerly complex and burdensome rate increase procedure.

Authority: 49 U.S.C. 10321, 10707a, 5 U.S.C. 553.

Decided: December 19, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Commissioner Andre commented with a separate expression.

Noreta R. McGee,

Secretary.

Appendix

TABLE A.—EX PARTE NO. 290 (SUB-NO. 2)

[All inclusive index of railroad input costs]

Line No.	Index component	1985 weights (percent)	Fourth quarter 1986 forecast	First quarter 1987 forecast
1.	Labor	48.6	158.2	163.3
2.	Fuel	9.7	49.2	49.2
3.	Materials and supplies	7.6	104.2	102.9
4.	Equipment Rents	9.0	145.6	145.1
5.	Depreciation	8.7	117.2	117.0
6.	Other items [1]	18.4	120.9	121.3
7.	Weighted average	100.0	131.7	135.1
8.	Linked index [2]		126.2	129.5
9.	Preliminary Rail Cost Adjustment Factor [3] (10/1/82=100) 120.9		1.044	1.071
10.	Adjustment for third quarter 1986 forecast error [4]		XXX	(.009)
11.	First quarter 1987 RCAF		XXX	1.062

[1] Other items are a combination of Purchased Services, Casualties and Insurance, General and Administrative, Other Taxes and Loss and Damage, all of which are measured by the Producer Price Index for Industrial Commodities, less Fuel, Power and Related Products.

[2] Linking is necessitated by a change to 1985 weights beginning with the fourth quarter 1986. The following formula was used for the third quarter 1986 index:

1st Quarter 1987 Index (1985 Weights) divided by 4th Quarter 1986 Index (1985 Weights) multiplied by 4th Quarter 1986 Index equals Linked Index (Linked Index) (1980 Weights to 1984 Weights)

or:

135.1 divided by 131.7 multiplied by 126.2 equals 129.5

[3] The denominator was rebased to an October 1, 1982 level in accordance with the requirements to the Staggers Rail Act of 1980.

[4] Third quarter 1986 forecast error adjustment is calculated as follows:

1. Third quarter 1986 RCAF calculated using forecasted data—1.040
2. Third quarter 1986 RCAF calculated using actual data—1.031
3. Difference (line 1 minus line 2.). Since the actual third quarter 1986 RCAF was lower than the forecast the difference will be subtracted from the first quarter 1986 preliminary RCAF—.009

TABLE B.—EX PARTE NO. 290 (SUB-NO. 2)

[Comparison of Third Quarter 1986 Index Calculated on Both a Forecasted and an Actual Basis]

Line No.	Index component	1984 weights (percent)	Third quarter 1986 forecast	Third quarter 1986 actual
1.	Labor	50.5	153.5	153.5
2.	Fuel	10.8	51.7	41.1
3.	Materials and Supplies	7.8	105.9	105.9
4.	Equipment Rents	9.4	151.9	152.6
5.	Depreciation	7.4	116.8	117.0
6.	Other Items	14.1	120.4	120.6
7.	Weighted Average	100.0	131.3	130.2
8.	Linked Index		125.7	124.7
9.	Rail Cost Adjustment Factor		1.040	[1] 1.031

[1] For comparative purposes only, an RCAF for the third quarter 1986 has been calculated using actual data. The published RCAF for the third quarter 1986 was computed using forecasted data.

TABLE C.—EX PARTE NO. 290 (SUB-NO. 2)

[Calculation of RCAF Credits and Application of Opportunity Cost Adjustment]

Quarter 1986	RCAF		Maximum RCAF rate level	Quarterly interest rate [1] (percent)	Credits		
	Forecast data	Actual data			Quarterly [2]	Total before opportunity cost adjustment [3]	Total after opportunity cost adjustment [4]
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1	1.069	1.062	1.069	1.74	0.007	0.007	0.007
2	1.023	1.027	1.069	1.5375	.042	.049	.050
3	1.040	1.031	1.069	1.33	.029	.079	.080
4	1.044	(5)	(5)	1.3375	.019	.099	.100

[1] Quarterly interest rate is the three-month Treasury bill interest rate available for the sales of February 24, 1986; May 27, 1986; August 25, 1986, and November 24, 1986, divided by four.

[2] Quarters 1 and 2, Col. (4) − Col. (3), Quarter 3, Col. (4) − Col. (2), Quarter 4, see [4].

[3] Col. (6) + Col. (8) for Prior Quarter (except 1st quarter 1986).

[4] Col. (7) × 1. + Col. (5) Interest Rate.
[5] Actual data not available at this time.
[6] Fourth quarter 1986 credit calculations shown below:

	Maximum RCAF rate level [a] (1)	RCAF for 4th quarter (2)	Credit [b] (3)	Time factor (4)	Weighted amount [c] (5)
1.	1.069	1.044	.025	0.5	0.0125
2.	1.057	1.044	.013	.5	.0065
3. Total	xxxx	xxxx	xxxx	xxxx	.0190

[a] The maximum RCAF rate levels in effect during the fourth quarter 1986 were 1.069 October 1 through November 16 and 1.057 November 17 through December 31.
[b] Col. (1) — Col. (2)
[c] Col. (3) × Col. (4)

[FR Doc. 86-29007 Filed 12-24-86; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. AB-19 Sub-No. 123X]

The Baltimore and Ohio Railroad Co. and the Home Avenue Railroad Co.; Abandonment and Discontinuance of Service Exemption; Montgomery County, OH

AGENCY: Interstate Commerce Commission.
ACTION: Notice of exemption.

SUMMARY: The Commission exempts from prior approval under 49 U.S.C. 10903, *et seq.*, the discontinuance of service by The Baltimore and Ohio Railroad Company and abandonment by the Home Avenue Railroad Company of two portions of track subject to standard labor protection.

DATES: This exemption is effective on January 28, 1987. Petitions to stay must be filed by January 13, 1987, and petitions for reconsideration must be filed by January 23, 1987.

ADDRESSES: Send pleadings referring to Docket No. AB-19 (Sub-No. 123X) to:
(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Petitioners' representatives:
Lawrence H. Richmond, 100 No. Charles Street, Baltimore, MD 21201,
and
Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202

FOR FURTHER INFORMATION CONTACT: Joseph Dettmar, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC, 20423, or call 289-4357 (DC Metropolitan area), or toll-free (800) 424-5403.

Decided: December 19, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Vice Chairman Simmons dissented with a separate expression.

Noreta R. McGee,
Secretary.

[FR Doc. 86-29083 Filed 12-24-86; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree in Clean Air Act Enforcement Action; Atlantic Sugar Association

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a consent decree in *United States* v. *Atlantic Sugar Association* was lodged with the United States District Court for the Southern District of Florida on December 5, 1986. The consent decree requires Atlantic Sugar to comply with applicable Clean Air Act requirements governing emissions of particulate matter, implement certain operation and maintenance procedures for three years, and pay a civil penalty of $85,000.

The Department of Justice will receive for thirty (30) days from the publication date of this notice, written comments relating to the decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and refer to *United States* v. *Atlantic Sugar Association*, 90-5-2-1-878.

The consent decree can be examined at the office of the United States Attorney, 155 S. Miami Avenue, Room 600, Miami, Florida 33130, the Region IV Office of the Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia, and at the Environmental Enforcement Section, Land and Natural Resources Division, U.S. Department of Justice, (Room 1515), Ninth and Pennsylvania Avenue NW., Washington, DC 20530. Copies of the consent decree can be obtained in person or by mail from the Environmental Enforcement Section at the above address.

F. Henry Habicht II,
Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86-29082 Filed 12-24-86; 8:45 am]
BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act; International Paper Co.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on December 16, 1986 a proposed Consent Decree in *United States* v. *International Paper Company*, Civil Action No. CV85-3440, was lodged with the United States District Court for the Western District of Louisiana (Shreveport Division). The complaint in this enforcement action was filed on December 3, 1985 against International Paper Company ("IPC") under sections 111 and 113 of the Clean Air Act ("the Act"), 42 U.S.C. 7411 and 7413, seeking civil penalties and injunctive relief to abate excessive total reduced sulfur emissions by IPC's two recovery furnaces at its kraft pulp mill located near Mansfield, Louisiana. The complaint alleged violations of New Source Performance Standards ("NSPS") applicable to recover furnaces at kraft pulp mills. 40 CFR 60.283. The proposed Consent Decree ("Decree") requires IPC to undertake a comprehensive program, in accordance with a compliance schedule, to attain and thereafter maintain compliance with the NSPS for total reduced sulfur emissions ("TRS") from kraft pulp mills. The Decree requires IPC to continue a program, already undertaken, to improve the permanent diffusion washer filtrate system in the mill's wet bottom precipitators. The Decree requires demonstration of completion of the entire compliance program on or before March 15, 1987. In addition, the Decree requires the monitoring of compliance with NSPS for TRS while it is in force as well as stipulated penalties for failure to comply with the Decree. Finally, the Decree provides for payment of a $70,000 civil penalty for past violations of the Act.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *International Paper Company*, D.J. Ref. No. 90-5-2-1-858.

The proposed Consent Decree may be examined at the office of the United States Attorney, Room 31B12, Federal Building, Shreveport, Louisiana and at the United States Environmental Protection Agency, Region VI, 1201 Elm Street, Dallas, Texas 75270. Copies of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Room 1521, U.S. Department of Justice, 9th and Pennsylvania Avenue NW., Washington, DC 20530. In requesting a copy, please enclose a check in the amount of $1.60 payable to the Treasurer of the United States.

F. Henry Habicht II,
Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86-28983 Filed 12-24-86; 8:45 am]
BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustments assistance issued during the period December 1, 1986-December 5, 1986 and December 8, 1986-December 12, 1986.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-17,753; Genex Corp., Paducah, KY
TA-W-18,218; Rockwell International Corp., Flow Control Div., Barberton, OH
TA-W-17,967; Consolidated Metco, Inc., Sidney, OH
TA-W-18,245; General Refractories Co., Sproul, PA
TA-W-18,032; BWAB, Inc., Sidney, MT
TA-W-17,733; Armstrong Rubber Co., Des Moines, IA
TA-W-17,906; Perry Gas Processors, Inc., Odessa, TX
TA-W-18,248; Aletex, Inc., Crestview, FL
TA-W-17,969; Keystone Carbon Co., St Marys, PA
TA-W-17,896; Miller-Picking Corp., Johnstown, PA
TA-W-17,578; L & S Bearing Co., Oklahoma City, OK
TA-W-17,995; Belfast Manufacturing, Belfast, ME
TA-W-18,121; Guilford Industries, Inc., East Douglas, MA
TA-W-18,289; Duncan Oil, Inc., Denver, CO
TA-W-18,197; Emerald Mines Corp., Waynesburg, PA
TA-W-17,416; Cross Country Clothes, Northampton, PA
TA-W-17,883; Harvard Industries, Inc., Anchor Swan Division, Bucyrus, OH
TA-W-17,721; Esterline Angus Instrument Corp., Speedway, IN
TA-W-18,185; Simonds Cutting Tools, Newcomerstown, OH
TA-W-17,944; Better Maid Frocks, Elizabeth, NJ
TA-W-17,981; Allen Gauge & Tool Co., Inc., Gauge Dept., Pittsburgh, PA

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-17,878; Coleman Clothes Co., Hialeah, FL

Separations at the subject firm were due to a domestic transfer of operations.

TA-W-17,892; Bethlehem Steel Corp., Burns Harbor Plant, Chesterton, IN

Aggregate U.S. imports of steel plant, sheet and strip did not increase as required for certification.

TA-W-17,971; Magnetic Peripherals, Inc., (Control Data Corp.), Minnetonka, MN

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,048; J & J Steel Supply Co., Odessa, TX

Aggregate U.S. imports of oil storage tanks are negligible.

TA-W-18,706; Exeter Drilling Co., Denver, CO

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,692; Ranger Fuel Corp., Bolt Preparation Plant, Wyoming County, WV

Aggregate U.S. imports of coal are negligible.

TA-W-18,436; BTA Oil Producers, Midland, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,702; Halliburton Services, Hays, KS

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,025; Pennzoil Co., Headquartered in Houston, TX

Aggregate U.S. imports of gasoline distillate fuel oil, lubricants, and natural gas did not increase as required for certification.

TA-W-18,049; Falcon Refinery, Ingleside, TX

Aggregate U.S. imports of gasoline distillate fuel oil did not increase as required for certification.

TA-W-17,998; Consolidated Cigar Co., Berwick, PA

Aggregate U.S. imports of cigars did not increase as required for certification.

TA-W-18,090; Cannelton Industries, Peyton, WV

Aggregate U.S. imports of coal are negligible.

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TA–W–17,983; Weyerhauser, Plywood Plant Springfield, OR

Aggregate U.S. imports of softwood plywood and veneer are negligible.

TA–W–18,438; Pennsylvania Mines Corp., Barnesboro, PA

Aggregate U.S. imports of coal are negligible.

TA–W–18,263; Coastal Tank Lines, Marysville, MI

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,401; Del Penn Steel Sales Corp., Philadelphia, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,282; Hydrill Co., Houston, TX

Aggregate U.S. imports of pipe and tubing did not increase as required for certification.

TA–W–18,578; Ryan-Beth Coal Co., Man, WV

Aggregate U.S. imports of coal are negligible.

TA–W–17,518; General Motors Corp., Linden, NJ

U.S. imports did not contribute importantly to employment and production declines at the subject plant.

TA–W–17,975; Twilight Industries, Belle Vernon, PA

Aggregate U.S. imports of coal are negligible.

TA–W–18,239; Wheeling, Pittsburgh Steel Corp., Allenport, PA

Aggregate U.S. imports of cold Rolled sheet and carbon steel pipe and tubing did not increase as required for certification.

TA–W–18,223; Elkay Mining Co., Rita, WV

Aggregate U.S. imports of coal are negligible.

TA–W–18,206; Westmoreland Coal Co., Clothier, WV

Aggregate U.S. imports of coal are negligible.

TA–W–18,605; Dresser Industries, Magcobar Group, Olney, IL

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,391 and TA—W–18,595; Waterland Enterprises, Odessa, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–17,617; Rockwell International Corp., Municipal and Utility Div., Uniontown, PA

Aggregate U.S. imports of liquid and gas meters are negligible.

TA–W–18,630; Teledyne Exploration, Houston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,632; M.H. Brackeen Jr. Oilfiled Soles & Service, Inc., Corpus Christi, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,634; The Permian Corporation, Hays, KS

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,669; Som's Well Service, Guymon, OK

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,681; Don L. Burris, Petroleum, Consultant, Midland, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,682; Great Bend Well Service, Inc., Great Bend, KS

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,631; Petro-Lewis Corp., Catorina, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,635; Equipment Renewal Co., Carrizo Spring, TX

Aggregate U.S. imports of oilfield equipment are negligible.

TA–W–18,186; Allen Testproducts, Kolomozoo, MI

Worker separations at the subject plant are attributable to a transfer of production to another domestic plant.

TA–W–18,609; Stanley Well Service, Inc., Bryan, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,615; Wilson Drilling, Ltd, East Albion, IL

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,617; BC Service Company, Wickett, TX

The workers' firm does not produce an article as required for certification.

TA–W–18,618; Frontier Petroleum Services, Inc., Levelland, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,619; Precision Geophysical, Inc., Houston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,620; Target Geophysical, Inc., Denver, CO

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,440; Perfection Services, Inc., Laredo. TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,442; Halliburton Services, Flora, IL

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,443; Welex-A Halliburton Company, Houston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,447; Air Equipment Rental, Inc., Victoria, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,453; Mundy Maintenance Circle, Inc., Houston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,454; Daniel Internotional Corp., Greenville, SC

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,456 Modern Mochine Shop, Inc., Laredo, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,458; Alpha Consulting, Inc., Pintex Petroleum Corporation, Bolder, CO

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,460; Estate of William C. Hells, A Partnership, Deaver, CO

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,462; Dresser Atlas, McAllen, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,465; Pride Oil Well Service, Alice, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,471; TRJ Corporation, Abilene, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,472; American Drilling & Exploration Co., Inc., Corpus Christi, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,476; Lance Drilling Corporation, Laredo, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,477 Emphasis Oil Operations, Russell, KS

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,460; Drilling Chemicals, Inc., Carthage, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,461; Lloyd Schoenheit Truck and Tractor Service, Inc., Grayville, IL

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

Affirmative Determinations

TA–W–17,592; Punxsutawney Sportswear, Punxsutawney, PA

A certification was issued covering all workers of the firm separated on or after June 11, 1985.

TA–W–18,244; GTE Sylvania, Winchester, KY

A certification was issued covering all workers of the firm separated on or after September 16, 1985.

TA–W–17,531; Newton Garment Co., Newton, NJ

A certification was issued covering all workers of the firm separated on or after May 27, 1985 and before June 1, 1986.

TA–W–17,994; Hilla's Fashions, Sheppton, PA

A certification was issued covering all workers of the firm separated on or after August 28, 1985.

TA–W–17,200; Printronix/Data Printer Division, Malden, MA

A certification was issued covering all workers of the firm engaged in employment related to the assembly of printed circuit boards and those engaged in employment related to the subassembly of hammer actuators and the electro mechanical subassembly separated on or after September 12, 1985.

TA–W–17,378; RCA Consumer Electronics Ferrites Division, Indianapolis, IN

A certification was issued covering all workers of the firm separated on or after October 2, 1985.

TA–W–17,773; El Paso Assemblies, Inc., Auto Assemblies, Inc., El Paso, TX

A certification was issued covering all workers of the firm separated on or after June 17, 1985.

TA–W–17,238; Wheeling-Pittsburgh Steel Corp., Monessen, PA

A certification was issued covering all workers of the firm separated on or after September 12, 1985.

TA–W–17,356; Nunn Bush Shoe Co., Edgerton, WI

A certification was issued covering all workers of the firm separated on or after September 26, 1985.

TA–W–18,204; Johnson Steel & Wire Co., Inc., Worcester, MA

A certification was issued covering all workers of the firm separated on or after September 2, 1985.

TA–W–18,348; Arrow Womenswear, Brantley, AL

A certification was issued covering all workers of the firm separated on or after September 30, 1985.

TA–W–17,820; C.C. Conn. Ltd, Abilene, TX

A certification was issued covering all workers of the firm separated on or after July 15, 1985.

TA–W–17,948; Stratojac Corp., Hammond, IN

A certification was issued covering all workers of the firm separated on or after August 13, 1986.

TA–W–18,333; Leblond Makino Machine Tool Co., Cincinnati, OH

A certification was issued covering all workers of the firm separated on or after September 24, 1985.

TA–W–18,452; Carter-Day Co., Fridley Plant, Minneapolis, MN

A certification was issued covering all workers of the firm separated on or after September 30, 1985.

TA–W–17,664; Scottdale Mochine Foundry and Construction Co., Scottdale, PA

A certification was issued covering all workers of the firm separated on or after June 20, 1985.

TA–W–16,007; Tran-Spectra, Inc., Greenfield, TN

A certification was issued covering all workers of the firm separated on or after August 4, 1985.

TA–W–17,486; Energy Manufacturing Co., St. Paul, MN

A certification was issued covering all workers of the firm separated on or after May 1, 1986 and before August 1, 1986.

TA–W–18,284; Teleflex, Inc., Marine Division, Limerick, PA

A certification was issued covering all workers of the firm separated on or after September 23, 1985.

TA–W–18,126; Bassin Drilling Corp., Odessa, TX

A certification was issued covering all workers of the firm separated on or after September 4, 1985.

TA–W–17,925; American Valve Manufacturing Corp., Coxsackie, NY

A certification was issued covering all workers of the firm separated on or after August 26, 1985.

TA–W–17,662; Berkel, Inc., Versailles, IN

A certification was issued covering all workers of the firm separated on or after June 17, 1985.

TA–W–17,649; Westinghouse Electric Corp., Attica, NY

A certification was issued covering all workers of the Attica, New York plant separated on or after June 26, 1985.

TA–W–17,609; Westinghouse Electric Corp., Cheektowaga, NY

A certification was issued covering all workers of the Cheektowaga, New York plant separated on or after June 2, 1985.

TA–W–18,055; Pel-Tex Oil Co., Inc., Houston, TX

A certification was issued covering all workers of the firm separated on or after July 30, 1985.

TA–W–17,626; Aluminum Co. of America Logan's Ferry Works, New Kensington, PA

A certification was issued covering all workers of the firm separated on or after July 1, 1985.

TA–W–17,710; Century Electric, Inc., McMinnville, TN

A certification was issued covering all workers of the firm separated on or after June 23, 1985.

TA–W–17,621; American Shallow Den, Inc., Waskom, TX

A certification was issued covering all workers of the firm separated on or after June 17, 1985.

TA–W–17,616; Wood Industrial Products Co., Conshohocken, PA

A certification was issued covering all workers of the firm separated on or after June 24, 1985.

TA–W–17,698; Peerless Footwear, Inc., Telford, PA

A certification was issued covering all workers of the firm separated on or after June 16, 1985.

TA–W–17,815; Cooper Industries, Arrow Hart Div., Hartford, CT

A certification was issued covering all workers of the firm separated on or after July 29, 1985.

TA–W–17,682; Happ Manufacturing Co., Division of Oxford Industries, Macon, GA

A certification was issued covering all workers of the firm separated on or after July 9, 1985 and before December 14, 1986.

TA–W–17,713; Mountain City Manufacturing Vandling, PA

A certification was issued covering all workers of the firm separated on or after July 3, 1985 and before August 31, 1986.

TA–W–17,985; Murata Erie North America, Inc., Ceramic Disc Capacitor Div., Rockmart, GA

A certification was issued covering all workers of the firm separated on or after August 19, 1985.

TA–W–18,279; Hanna Nickel Smelting Co., Riddle, OR

A certification was issued covering all workers of the firm separated on or after September 23, 1985.

TA–W–17,590; Good Luck Glove Co., Georgiana, AL

A certification was issued covering all workers of the firm separated on or after June 12, 1985 and before July 27, 1986.

TA–W–17,718; Good Luck Glove Co., Hugo, OK

A certification was issued covering all workers of the firm separated on or after October 1, 1985 and before November 3, 1986.

TA–W–18,357; Dorr-Oliver, Inc., Fogelsville, PA

A certification was issued covering all workers of the firm separated on or after September 26, 1985.

TA–W–17,851; Cullman Lingerie Corp., Cullman, AL

A certification was issued covering all workers of the firm separated on or after October 1, 1985 and before December 31, 1986.

TA–W–17,412; Active Generation, Inc., Trenton, TN

A certification was issued covering all workers of the firm separated on or after October 15, 1985.

TA–W–17,553; Ronco Manufacturing Co., Ronco, PA

A certification was issued covering all workers of the firm separated on or after May 7, 1985 and before April 10, 1986.

TA–W–18,288; W.A. Mancrief & Sons, Kamay, TX

A certification was issued covering all workers of the firm separated on or after September 4, 1985.

TA–W–18,308; B–J Oil Company, Plainsville, KS

A certification was issued covering all workers of the firm separated on or after September 18, 1985.

TA–W–17,747; Ramsey Piston Division, TRW Automotive Products, Manchester, MO

A certification was issued covering all workers of the firm separated on or after July 15, 1985.

TA–W–18,485; Southern Union Exploration Co., Dallas, TX

A certification was issued covering all workers of the firm separated on or after September 29, 1985.

TA–W–17,829 and TA–W–17,875; Clark Material Systems Technology Co., Battle Creek MI and Georgetown, KY

A certification was issued covering all workers of the Battle Creek MI plant of the firm separated on or after October 14, 1985 and covering all workers of the Georgetown, KY plant of the firm separated on or after July 31, 1985.

TA–W–17,686; Rovan Dress, Jersey City, NJ

A certification was issued covering all workers of the firm separated on or after July 8, 1985 and before May 28, 1986.

TA–W–17,613; Muench-Kreuzer Candle, Syracuse, NY

A certification was issued covering all workers of the firm separated on or after June 24, 1985.

TA–W–17,712; Tennessee Fan Co., Fayetteville, TN

A certification was issued covering all workers of the firm separated on or after June 17, 1985.

I hereby certify that the aforementioned determination were issued during the period December 1, 1986–December 5, 1986 and December 8, 1986–December 12, 1986. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: December 16, 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86–29085 Filed 12–24–86; 6:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 7, 1987.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 7, 1987.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 16th day of December 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm	Location	Date received	Date of petition	Petition No.	Articles produced
General Electric (IUE)	Pittsfield, MA	12/4/86	12/1/86	TA-W-18, 747	Large power transformers.
Rochester Film Division of Poulenc, Inc. (UAW)	Rochester, NY	12/8/86	12/1/86	TA-W-18, 748	Microfilm.
Cabot Corporation (Workers)	Pampa, TX	12/8/86	12/1/86	TA-W-18, 749	Natural gas.
Broughton Lumber Co. (Company)	Cooks, WA	12/5/86	11/14/86	TA-W-18, 750	Softwood lumber and logging operations.
Broughton Lumber Co. (Company)	Underwood, WA	12/5/86	11/14/86	TA-W-18, 751	Softwood lumber.
Geophysical Service, Inc. (Workers)	Denver, CO	12/8/86	11/25/86	TA-W-18, 752	Seismic data services.
Medical Products Corp. (Workers)	Racine, WI	12/8/86	11/25/86	TA-W-18, 753	Silicon rubber catheters.
Conoco, Incorporated (Workers)	Great Bend, KA	12/8/86	12/9/86	TA-W-18, 754	Crude oil.
Alliance Drop Forge (Workers)	Alliance, OH	12/8/86	12/2/86	TA-W-18, 755	Conveyor chains, industrial hardware.
Technicare, A Division of Johnson and Johnson (Workers)	Solon, OH	12/8/86	11/25/86	TA-W-18, 756	Medical diagnostic machines.
Sabine Corporation (Workers)	Midland, TX	12/5/86	11/24/86	TA-W-18, 757	Crude oil and natural gas.
Western Tank Company (Workers)	Odessa, TX	12/10/86	11/26/86	TA-W-18, 758	Welded steel storage tank.
Walvenne World Wide, Inc. (Workers)	Hannibal, MO	12/10/86	12/1/86	TA-W-18, 759	Men's shoes and boats.
Atlas Crankshaft Corp. (UAW)	Fostoria, OH	12/10/86	11/29/86	TA-W-18, 760	Crankshafts, gears and valves.
Do-Ray Lamp Company (Company)	Colorado City, CO	12/10/86	11/25/86	TA-W-18, 761	Automotive safety lighting and accessories.
Conveyor Belt Service Inc. (Workers)	Virginia, MN	12/11/86	12/3/86	TA-W-18, 762	Repair and splice conveyor belts.
Weyerhaeuser Company (IWWA)	North Bend, OR	12/9/86	12/2/86	TA-W-18, 763	Softwood logs.
Rio Grande Drilling (Workers)	Port O'Connor, TX	12/5/86	11/24/86	TA-W-18, 764	Offshore oil drilling.
Cantera Petroleum, Inc. (Workers)	Denver, CO	12/11/86	11/3/86	TA-W-18, 765	Crude oil and natural gas.
General Portland, Inc. (Workers)	Forth Worth, TX	12/11/86	11/18/86	TA-W-18, 766	Oil well cement and portland cement.
J.W. McCutchen Drilling (Workers)	Wichita Falls, TX	12/11/86	12/1/86	TA-W-18, 767	Oil drilling.
Switches, Inc. (USAW)	Logansport, IN	12/11/86	12/1/86	TA-W-18, 768	Solenoids, voltage regulations.
American Pipe & Steel (Workers)	Houston, TX	12/11/86	11/20/86	TA-W-18, 769	Service-thread and couple steel tubing.
Mannesmann Demag Wean (Workers)	Youngstown, OH	12/11/86	12/3/86	TA-W-18, 770	Heavypresses, tube mills.
Amerada Hess (Workers)	Midlan, AK	12/12/86	12/5/86	TA-W-18, 771	Exploration of oil and gas.
French Tool and Mfg (Workers)	Midland, TX	12/12/86	12/1/86	TA-W-18, 772	Blenders, acid pumpers slurry mixers.
Geophysical Services (Workers)	Midland, TX	12/12/86	12/4/86	TA-W-18, 773	Seismic exploration for oil.
Marathon Oil Co. (Workers)	Midland, TX	12/12/86	12/3/86	TA-W-18, 774	Oil and gas production.
Injection Footwear (Workers)	Miami, FL	12/12/86	12/4/86	TA-W-18, 775	Shoes.
Blake Drilling Inc. (Workers)	Midland, TX	12/12/86	12/2/86	TA-W-18, 776	Drills oil wells.
Sedco Forex Schlumberger (Workers)	Ventura, CA	12/2/86	11/25/86	TA-W-18, 777	Offshore oil drilling.
Jones & Lamson Machine Co., Inc. (UE)	Springfield, VT	12/15/86	11/19/86	TA-W-18, 778	Lathes.
Camel Outdoor Products (UTWA)	Knoxville, TN	12/15/86	12/1/86	TA-W-18, 779	Tents and camping gear.
LTV Steel Corp. (Workers)	Houston, TX	12/15/86	12/1/86	TA-W-18, 780	Sells steel.
MP Industries (Workers)	Tyler, TX	12/15/86	11/24/86	TA-W-18, 781	Molded rubber oil field equipment.

[FR Doc. 86–29087 Filed 12–29–86; 8:45 am]

BILLING CODE 4510–30–M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the

geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I:

New Jersey:
NJ 86-2 (Jan. 3, 1986) ..... pp. 382, 389.
NJ 86-3 (Jan. 3, 1986) ..... pp. 601, 611.
Pennsylvania:
PA 86-24 (Jan. 3, 1986) ..... p. 964

Volume II:

Arkansas: AR86-7 (Jan. 3, pp. 21-22. 1986).

Volume III:

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the Country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 19th day of December 1986.

James L. Valin,

Assistant Administrator.

[FR Doc. 86-28839 Filed 12-24-86; 8:45 am]

BILLING CODE 4510-27-M

Bureau of Labor Statistics

Response to Comments on Changes in Local Area Unemployment Statistics (LAUS) Procedures

AGENCY: Bureau of Labor Statistics, Labor.

ACTION: Changes in local area unemployment statistics methodology.

SUMMARY: As a result of the comments received during the **Federal Register** comment period, the Bureau of Labor Statistics has confirmed its intention to introduce the methodological improvements cited in its **Federal Register** Notice, dated October 24, 1986 and republished on November 7, 1986 at 51 FR 40527. The improvements include the mandatory introduction of new procedures for multi-county employment disaggregation and the estimation of unemployed exhaustees. Optional methodological revisions will be introduced in the estimation of agricultural employment and the estimation of Federal and Railroad unemployment. The optional changes may be made mandatory in 1988.

FOR FURTHER INFORMATION CONTACT: Sharon Brown 202-523-1807.

Dated at Washington, DC, this 19th day of December 1986.

Janet L. Norwood,

Commissioner.

[FR Doc. 86-29094 Filed 12-24-86; 8:45 am]

BILLING CODE 4510-24-M

Mine Safety and Health Administration

[Docket No. M-86-216-C]

South Ridge Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

South Ridge Coal Company, P.O. Box 2, Sacramento, Pennsylvania 17968 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Little Diamond Slope (I.D. No. 36-07780) located in Schuylkill County, Pennsylvania. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Petitioner states that no such safety catch or device is available for the steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of this anthracite mine.

3. Petitioner further believes that if "makeshift" safety devices were installed, they would be activated on knuckles and curves when no emergency existed and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope, above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 28, 1987. Copies of the petition are available for inspection at that address.

Dated: December 18, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-29095 Filed 12-24-86; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 86-88]

NASA Advisory Council, Space Systems and Technology Advisory Committee (SSTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee, Reliability, Diagnostics and Quality Assurance Ad Hoc Task Team.

DATE AND TIME: January 13, 1987, 8:30 a.m. to 4:30 p.m.; January 14, 1987, 8:30 a.m. to 12:30 p.m.

ADDRESS: Building 1219, Room 225, Langley Research Center, Hampton, VA 23665.

FURTHER INFORMATION CONTACT: Mr. John Smith, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2834.

SUPPLEMENTARY INFORMATION: The NAC Space Systems and Technology Advisory Committee was established to provide overall guidance and direction to the space systems research and technology activities in the Office of Aeronautics and Space Technology (OAST). The purpose of the team is to ensure that the technology program has the necessary design base to support development of the predictive techniques, design tools, and test methods required for future spaceflight missions. The meeting will be open to the public up to the seating capacity of the room (approximately 30 persons including the task team members and other participants).

Type of Meeting: Open.

Agenda

January 13, 1987.
8:30 a.m.—Review and assess the OAST technology program which contributes to the development of predictive techniques, design tools, and test methods for support of future spaceflight missions.
4:30 p.m.—Adjourn.

January 14, 1987.
8:30 a.m.—Discussion and preparation of interim report.
12:30 p.m.—Adjourn.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

December 18, 1986.

[FR Doc. 86-29006 Filed 12-24-86; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reudction Act (44 U.S.C. Chapter 35).

DATES: Comment on this information must be submitted by January 19, 1987.

ADDRESSES: Send comments to Mrs. Judy Egan, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, N.W., Room 3208, Washington, DC 20503; (202-395-6880). In addition, copies of such comments may be sent to Ms. Marianna Dunn, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5464).

FOR FURTHER INFORMATION CONTACT: Ms. Marianna Dunn, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202-682-5464); from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests approval for the revision of a currently approved collection. The entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Challenge III Grants Application Guidelines FY 1988/89.

OMB Number: 3135-0046
Frequency of Collection: One-time.
Respondents: Non-profit institutions
Use: Guideline instructions and applications elicit relevant information from nonprofit organizations that apply for funding under specific Program categories. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the peer review process.
Estimated Number of Respondents: 250.
Estimated Hours for Respondents to Provide Information 25,000.

Murray R. Welsh,

Director, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 86-29084 Filed 12-24-86; 8:45 am]

BILLING CODE 7537-01-M

Humanities Panel; Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786-0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency action, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to

subsections (c)(4), (5) and (9)(B) of section 552b of Title 5, United States Code.

1. Date: January 12, 1987
   Time: 8:00 a.m. to 5:00 p.m.
   Room: 415
   Program: This meeting will review applications submitted for Museums and Historical Organizations, submitted to General Programs, for projects beginning after July 1, 1987.
2. Date: January 15–16, 1987
   Time: 8:00 a.m. to 5:00 p.m.
   Room: 415
   Program: This meeting will review applications submitted for Museums and Historical Organizations, submitted to General Programs, for projects beginning after July 1, 1987.
3. Date: January 22–23, 1987
   Time: 8:00 a.m. to 5:00 p.m.
   Room: 415
   Program: This meeting will review applications submitted for Museums and Historical Organizations, submitted to General Programs, for projects beginning after July 1, 1987.
4. Date: January 29–30, 1987
   Time: 8:00 a.m. to 5:00 p.m.
   Room: 415
   Program: This meeting will review applications submitted for Museums and Historical Organizations submitted to General Programs, for projects beginning after July 1, 1987.

Stephen J. McCleary,
Advisory Committee Management Officer.
[FR Doc. 86–29011 Filed 12–24–86; 8:45 am]
BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on General Electric Reactors (ABWR)/Safety Philosophy, Technology, and Criteria; Revised

The Federal Register published on Friday, December 19, 1986 (51 FR 45371) contained notice of a joint meeting of the ACRS Subcommittees on General Electric Reactors (ABWR)/Safety philosophy, Technology, and Criteria to be held on Wednesday, January 7 1987, 9:00 a.m., Room 1046, 1717 H Street, NW., Washington, DC. To the extent practical the meeting will be open to public attendance. However, portions of the meeting may be closed to discuss information provided the agency from a foreign source (FOIA Exemption (b)1 and safeguards information (FOIA Exemption (b)4). All other items regrading this meeting remain the same as previously announced.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Richard Major (telephone: 202/634–1414) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: December 19, 1986.

Thomas G. McCreless,
Assistant Exective Director for Technical Activities.
[FR Doc. 86–29074 Filed 12–24–86; 8:45 am]
BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Nuclear Regulatory Commission; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reaction Safeguards will hold a meeting on January 8–10, 1987, in Room 1046, 1717 H Street, NW., Washington, DC. Notice of this meeting was published in the Federal Register on November 20, 1986.

Thursday, January 8, 1987

8:30 a.m.–8:40 a.m.: Report of ACRS Chairman (Open)—The ACRS Chairman will report briefly regarding items of current interest to the Committee.

8:40 a.m.–10:45 a.m.: General Electric Advanced BWR (Open/Closed)—Discuss scope of review, applicable criteria, etc., regarding the prelicensing agreement for consideration of this project.

Portions of this session will be closed as necesary to discuss Proprietary Information applicable to this project.

11:00 a.m.–12:00 Noon: Meeting with NRC Director, Office of Nuclear Reactor Regulation (Open)—Discuss items of mutual interest regarding the NRC regulatory process and safety-related matters.

1:00 p.m.–2:30 p.m.: Implementation of NRC Safety Goal Policy (Open)—Subcommittee report and briefing regarding the status of NRC activities regarding implementation of the NRC Safety Goal Policy.

2:30 p.m.–2:50 p.m.: Future Activities (Open)—Discuss anticipated ACRS subcommittee activities and topics proposed for consideration by the full Committee. Discuss topics for future meeting with NRC Commissioners.

2:50 p.m.–3:15 p.m.: ACRS Subcommittee Activity (Open)—Hear and discuss ACRS subcommittee report regarding seismic reevaluation of the Diablo Canyon Nuclear Plant.

3:30 p.m.–6:30 p.m.: Improved Light Water Reactors (Open)—Discuss proposed ACRS report to the NRC regarding the characteristics of improved light water reactors.

Friday, January 9, 1987

8:30 a.m.–9:30 a.m.: Meeting with NRC Executive Director for Operations (Open/Closed)—Discuss proposed NRC Staff Reorganization and assignment of personnel and its impact on ACRS activities.

Portions of this session will be closed as necessary to discuss internal NRC personnel rules and practices as well as information the release of which would represent a clearly unwarranted invasion of personal privacy.

9:30 a.m.–10:30 a.m.: Systems Interactions (Open)—Briefing and discussion of NRC Staff resolution of ACRS comments in its report of May 13, 1986 on Proposed Resolution of USI A–17, Systems Interactions in Nuclear Power Plants.

10:45 a.m.–11:15 a.m.: Suppression Pool Bypass (Open)—Discuss proposed priority for resolution of Generic Issue 61, SRV Discharge Line Break in the Airspace of Mk I/Mk II Containments.

11:15 a.m.–12:00 Noon: Appointment of New ACRS Member (Closed)—Discuss the qualifications of candidates proposed for appointment to the ACRS.

This session will be closed as necessary to discuss internal agency personel policies and practices as well as information the release of which would represent a clearly unwarranted invasion of personal privacy.

1:00 p.m.–6:30 p.m.: Improved Light Water Reactors (Open)—Discuss proposed ACRS report to the NRC regarding the characteristics of improved light water reactors.

Saturday, January 10, 1987

8:30 a.m.–12:30 p.m.: ACRS Reports to NRC (Open/Closed)—Discuss proposed ACRS reports to the NRC regarding items considered during this meeting.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to the matters being discussed.

1:30 p.m.–2:30 p.m.: ACRS Subcommittee Activities (Open/Closed)—Hear and discuss reports of designated ACRS subcommittees regarding safety-related activities.

including activities of NRC regional offices, performance of solid state devices under adverse environmental conditions, TVA management problems and the proposed NRC Safety Research Program. Allocation of ACRS resources will also be discussed.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to the matter being discussed and to discuss information the release of which would be likely to significantly frustrate the NRC in the performance of its statutory function.

Procedures for the conduct of and participation in ACRS meetings were published in the Federal Register on October 20, 1986 (51 FR 37241). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meetings may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, R. F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meeting may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss information that involves the internal personnel rules and practices of the NRC [5 U.S.C. 552b(c)(2)], information that involves Proprietary Information [5 U.S.C. 552b(c)(4)] applicable to the facility being discussed, information the release of which would represent a clearly unwarranted invasion of personal privacy [5 U.S.C. 552b(c)(6)], and information the premature release of which would be likely to significantly frustrate the NRC in the performance of its statutory function per 5 U.S.C. 552b(c)(9).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to prevent oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634–3265), between 8:15 a.m. and 5:00 p.m.

Dated: December 19, 1986.

John C. Hoyle,
Advisory Committee Management Officer.
[FR Doc. 86–29075 Filed 12–24–86; 8:45 am]
BILLING CODE 7590–01–M

[Docket Nos. 50–266 and 50–301]

Wisconsin Electric Power Co.; Point Beach Nuclear Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the technical requirements of Appendix R to 10 CFR Part 50 to Wisconsin Electric Power Company (the licensee), for the Point Beach Nuclear Plant, Units 1 and 2, located in Manitowoc County, Wisconsin.

Environmental Assessment

Identification of Proposed Action

The Exemption would allow alternatives to the following requirements of 10 CFR Part 50 Appendix R, Section III.G:

1. Service Water Pump Room, Elevation 7 feet 0 inch, to the extent that 20 feet separation free of intervening combustibles is not provided in this zone pursuant to III.G.2.b.
2. Residual Heat Removal Pump Fire Zone, Elevation 19 feet 3 inches, to the extent that an automatic fire suppression system is not installed within this zone pursuant to III.G.2.b.
3. Auxiliary Building Fire Area, Elelvations −19 feet 3 inches; −5 feet 3 inches; 8 feet; 26 feet; and 46 feet, to the extent that an automatic fire suppression system is not installed throughout the area pursuant to III.G.2.b.
4. Auxiliary Building, Elevation 46 feet, to the extent that a 3-hour fire rated floor barrier is not provided in the central part of the zone pursuant to III.G.2.a.

The Need for the Proposed Action

The proposed Exemption is needed because the features described in the licensee's request regarding the existing level of fire protection and proposed modifications at the plant are the most practical method of meeting the intent of Appendix R and literal compliance would not significantly enhance the fire protection capability.

Environmental Impacts of the Proposed Action

The proposed Exemption would provided a degree of fire protection equivalent to that required by Appendix R such that there would be no increase in the risk of fires at this facility. Consequently, the probability of fires would not be increased and the post-fire radiological releases would not be greater than previously determined. Neither would the proposed Exemption otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed Exemption.

With regard to potential non-radiological impacts, the proposed Exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed Exemption.

Alternatives to the Proposed Action

Since we have concluded that the environmental effects of the proposed action are negligible, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested Exemption. This would not reduce the environmental impacts or significantly enhance the fire protection capability in meeting the intent of Appendix R.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement related to the operation of the Point Beach Nuclealr Plant Units 1 and 2.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies. The staff did retain Franklin Research Center as a consultant during the review of the proposed Exemption.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the

human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed Exemption.

For further details with respect to this action, see the application for Exemption dated April 28, 1983, and the supplements dated October 26, 1983, December 11, 1985, May 9, 1986 and October 10, 1986 which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Dated at Bethesda, Maryland, this 19th day of December, 1986.

For the Nuclear Regulatory Commission.

Richard F. Dudley,

Acting Director, Project Directorate No. 1, Division of PWR Licensing-A

[FR Doc. 86-29073 Filed 12-24-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-416 and 50-417]

Mississippi Power and Light Co., Middle South Energy and South Mississippi Electric Power Association (Grand Gulf Nuclear Station, Units 1 and 2), Exemption Providing for Control of all Activities Within the Site Exclusion Area

I

Mississippi Power and Light Company (MP&L), Middle South Energy (MSE, recently renamed System Energy Resources, Inc., SERI) and South Mississippi Electric Power Association (SMEPA), (joint licensess) are the holders of Facility Operating License No. NPF-29 and Construction Permit No. CPPR-119, which authorize the operation and the construction of the Grand Gulf Nuclear Station Units 1 and 2, respectively, (the facility). The facility consists of boiling water reactors located in Claiborne County, Mississippi.

II

The Commission's regulations in 10 CFR 100.11 require that the site exclusion area should be determined of such size that an individual located on its boundary during a postulated accident would not receive radiation doses greater than those specified. The Commission's regulations in 10 CFR 100.3 define the exclusion area, in this regard, to be an area within ". . . which the reactor licensee has the authority to determine all activities including exclusion or removal of personnel and property from the area . . ." and also "Activities unrelated to Operation of the reactor may be permitted in an exclusion area under appropriate limitations, provided that no significant hazard to the public health and safety will result."

The NRC staff had based its previous findings, as set forth in the Safety Evaluation Report, NUREG-0831, September 1981, that the licensees met the requirements of 10 CFR Part 100 in this regard on the basis, provided in the FSAR, that the licensees owned all of the mineral rights within the exclusion area. By letter dated December 2, 1986 the licensees advised that there were inaccuracies in the FSAR regarding ownership of mineral rights. That letter indicated that SERI and SMEPA own substantial, but not all of the mineral rights in the exclusion area.

III

By letter dated December 10, 1986 the licensees requested an exemption up until April 30, 1987 from the requirements for exclusion area control of 10 CFR Part 100 and specifically from the 10 CFR 100.3 definition of exclusion area. Inasmuch as the definition of exclusion area pertains to its incorporation by reference in the requirements of 10 CFR 100.11(a)(1), the staff has treated this submittal as a request for partial exemption from 10 CFR 100.11(a)(1) insofar as it incorporates by reference the definition of "exclusion area" in 10 CFR 100.3(a). The request for exemption relies on an interim basis for the licensees' control of activities while the licensees prepare further information to demonstrate long term control of activities and full compliance with 10 CFR Part 100.

For the interim period the licensees state that the licensee to be responsible for licensed activities, System Energy Resources, Inc., has and will continue to have complete control of the surface rights within the exclusion area and thus complete control of ingress to and egress from the exclusion area. The present ownership of the GGNS facilities, the exclusion area surface rights and the mineral rights will be unchanged by the transfer of control of licensed activities from MP&L to SERI. There are no known current attempts to exploit the mineral rights within the exclusion area. The licensee states further that pursuers of mineral rights could be denied access to the GGNS site unit such time as legal action had been taken to settle any issues in this regard.

The licensee describes the process, under the laws of the State of Mississippi, that a mineral rights owner is required to follow and concludes that this process would provide ample prior notification and adequate time to either resolve the matter with pursuers of mineral rights or to take action to ensure protection of the public health and safety.

The licensee states that under the law of the State of Mississippi mineral owners and lessees have no legal right to use physical force or to create a public disturbance to gain access to property in order to explore for or extract minerals.

The licensee states that the potential for exploitation of mineral rights on the GGNS site appears remote due to past unsuccessful exploratory activities in the vicinity of the site.

The licensee has also provided a commitment to expeditiously notify the NRC in the event any party requests permission from SERI to conduct seismic operations, file an application for a permit to drill a well, or take any other action indicating an intent to explore for minerals on the GGNS site.

The NRC staff concludes that on the basis of there being no current attempts to exploit mineral rights, the licensee's control of the surface rights, and the substantial amount of time and effort required for a mineral rights owner to gain the necessary approvals and prepare for any actual activities affecting the exclusion area, that there is a vanishingly small probability that any such activities would occur during an interim period proposed by the licensee for the finalization of this issue. Accordingly, the NRC staff concludes that SERI does have sufficient authority during this interim period to control activities within the exclusion area consistent with the underlying purpose of 10 CFR Part 100. For these reasons the staff finds that the requested exemption is acceptable.

The staff will continue its review of the licensee's basis, to be provided in early January 1987, for establishing long term control of activities within the exclusion area related to the ownership of mineral rights. The NRC staff will require, as the resolution to this matter, that the licensee demonstrate, consistent with the requirement of 10 CFR Part 100, that it has the authority on a permanent basis to determine all activities within the exclusion area including the exclusion and removal of personnel and property from the area and the control of other activities so as not to interfere with the normal operations of the facility.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a)(1) this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii) are present justifying this partial temporary exemption, namely that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The purpose of the rule is to require that the licensees be able to control all activities within the exclusion area including the exclusion or removal of personnel and property and those activities unrelated to reactor operation which could pose a significant hazard to the public health and safety. The interim measures cited by the licensee are sufficient to achieve this underlying purpose up until April 30, 1987, pending receipt and review of the licensees' proposed long term solution to the matter in early January 1987.

Accordingly, the Commission hereby grants a partial exemption as described in Section III above from 10 CFR 100.11(a)(1) insofar as it incorporates the 10 CFR 100.3 definition of exclusion area, until April 30, 1987.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment (December 16, 1986, 51 FR 45072).

This Exemption is effective upon issuance.

Dated at Bethesda, Maryland this 20th day of December 1986.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Division of BWR Licensing.

[FR Doc. 86-29076 Filed 12-24-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-417]

Mississippi Power & Light Co.; System Energy Resources, Inc.; South Mississippi Electric Power Association; Issuance of Amendment to Construction Permit

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 8 to Construction Permit No. CPPR-119 for the Grand Gulf Nuclear Station, Unit 2 (GGNS) to reflect transfer of control and performance of licensed activities from Mississippi Power and Light Company (MP&L) to System Energy Resources, Inc. (formerly named Middle South Energy, Inc.).

By letters dated September 2, 1986, as amended by letters dated October 4, 13 and 24, and as supplemented on November 20, 21 and December 2 and 3, 1986, MP&L, System Energy Resources, Inc. (SERI) and the South Mississippi Electric Power Association (SMEPA), the joint licensees, requested that the Construction Permit CPPR-119 be amended to substitute SERI for MP&L as the licensee authorized to construct GGNS Unit 2.

The issuance of this amendment to Construction Permit No. CPPR-119 complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commissions' regulations in 10 CFR Chapter I, which is set forth in Amendment No. 8. Prior public notice of Amendment No. 8 was not required, since the amendment does not involve a significant hazards consideration. Notice of the proposed transfer of control was published in the Federal Register on December 3, 1986 (51 FR 43695), and the Commission has, pursuant to 10 CFR 50.80, duly authorized transfer of control over activities licensed under CPPR-119 by letter dated December 20, 1986.

For further details with respect to this action see: (1) The application for amendment, dated September 2, 1986 and October 4, 13, 24, November 20, 21, December 2 and 3, 1986, (2) Amendment No. 8 to Construction Permit No. CPPR-199, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, 20555, and at the Local Public Document Room at the Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

In addition, a copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Director, Division of BWR Licensing, Office of Nuclear Reactor Regulation.

Dated at Bethesda, Maryland, this 20th day of December, 1986.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, BWR Project Directorate No. 4, Division of BWR Licensing.

[FR Doc. 86-29077 Filed 12-24-86; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Docket No. C87-1; Order No. 732]

Complaint of National Manufactured Housing Federation; Order on Filing of Complaint of National Manufactured Housing Federation

Issued: December 19, 1986.

Before Commissioners: Janet D. Steiger, Chairman; Bonnie Guiton, Vice Chairman; John W. Crutcher; Henry R. Folsom; Patti Birge Tyson.

On December 11, 1986, National Manufactured Housing Federation (NMHF) filed a complaint with the Commission under 39 U.S.C. 3662. NMHF asserts that the Postal Service's policy to provide delivery equipment at the Service's expense to developments of detached single-family homes while refusing to provide this service to developments containing predominantly single-section manufactured homes (*i.e.*, "mobile or trailer homes") violates the policy in the Postal Reorganization Act prohibiting unreasonable discrimination among mail users in the provision of postal services. 39 U.S.C. 403(c). NMHF requests that the Commission "work with NMHF and the Postal Service" to change the policy so that "mobile or trailer home developments" receive the same treatment with respect to the Postal Service's provision of delivery equipment received by other developments of detached, single-family homes.

NMHF states that it represents the interests of the manufactured housing industry which includes developers and owners of manufactured housing developments and wholesalers, retailers, and producers of manufactured homes. NMHF states that it is also an advocate for residents that live in manufactured home developments. NMHF alleges that the interest of those it represents is adversely affected by Postal Service's policies concerning the provision of delivery equipment [*i.e.*, parcel lockers and Neighborhood Delivery Collection Box Units (NDCBU's)] at the Service's expense to residential developments that exercise the option to receive mail by centralized delivery. NMHF cites a Postal Service directive which states that in residential delivery areas where a builder or owner chooses to receive mail by centralized delivery, "the Postal Service will . . . purchase, install and maintain pedestal mounted neighborhood delivery and collection boxes and parcel lockers." (Message No. 8080 from Eugene C. Hagburg, Assistant Postmaster General, Delivery Services, October 2, 1984). That same directive also states that the

Postal Service will not provide delivery equipment to trailer parks. When NMHF sought clarification of this policy, in a letter dated August 18, 1986, addressed to NMHF President H.E. Blogram from Assistant Postmaster General Andrew S. Walker, USPS explained that its policy not to provide delivery equipment to mobile or trailer home developments did not apply to modular or manufactured housing assembled on site. NMHF complains that under this policy, postal patrons in developments of detached, single-family homes are spared the expense of purchasing and installing centralized delivery equipment while patrons in developments of predominantly single-section manufactured homes must bear the expense.

NMHF estimates that there are approximately 12 million residents of manufactured homes and about half of this figure live in single-section manufactured homes. Thus, NMHF argues that the Postal Service's policy refusing to provide delivery equipment to residents of single-section manufactured home developments has a substantial nationwide impact.

NMHF complains that the Postal Service's treatment of single-section manufactured housing communities is unduly discriminatory and arbitrary. NMHF argues that the Postal Service has no rational basis relevant to postal service purposes for making a distinction between manufactured single-section housing developments and other kinds of detached single family housing developments in the provision of delivery equipment. NMHF charges that the Postal Service's refusal to provide centralized delivery equipment to single-unit manufactured home developments violates section 403(c) of the Postal Reorganization Act that prohibits the Postal Service from making ". . . undue or unreasonable discrimination among users of the mails . . .," or granting ". . . any undue or unreasonable preference to any such user . . ." in the provision of postal services. (39 U.S.C. 403(c)).

Under the Commission's rules of practice (39 CFR 3001.84) the Postal Service has 30 days to file an answer to a complaint. As explained below, we are invoking rule 85 (39 CFR 3001.85) with respect to informal methods of resolution. We will thus postpone the formal answer until the outcome of informal approaches is clear. The Postal Service and the parties will be notified of the date for filing an answer to the complaint of NMHF.

It is Commission policy and practice "to encourage the resolution and settlement of complaints by informal procedures . . ." (39 CFR 3001.85). Taking this into consideration and noting that NMHF has not specifically requested a hearing in its complaint filing but has merely requested the Commission's assistance in bringing about the proposed change, we believe that informal procedures would be the best route to take at this time. Therefore, pursuant to rule 85, the Chairman will appoint a coordinator of informal resolution efforts. The scheduling of any formal procedures such as hearing dates and due date for petitions of intervention will be postponed, until it is clear that such procedures are needed.

Although the issue of whether formal hearings will be needed is undecided, at this time we are appointing Stephen A. Gold, Director of the Office of the Consumer Advocate, to represent the public in this proceeding.

It is ordered:

(1) The Commission will employ informal procedures, pursuant to section 85 of the rules of practice, in this case.

(2) Stephen A. Gold, Director of the Office of the Consumer Advocate, is appointed to represent the interests of the general public in this proceeding.

By the Commission.

Charles L. Clapp,

Secretary.

[FR Doc. 86-28959 Filed 12-24-86; 8:45 am]

BILLING CODE 7715-01-M

RAILROAD RETIREMENT BOARD

Termination of the Milwaukee Railroad Restructuring Administration Account and the Payment of Supplemental Unemployment Insurance Benefits and Administrative Costs

Pursuant to 31 U.S.C. 1555, the Railroad Retirement Board has determined that the purposes for which these appropriations were made have been fulfilled, that on further obligations will be incurred against these appropriations and the unobligated balances of $186,280.62 in the Milwaukee Railroad Restructuring Administration Account and $545,416.37 available for the payment of supplemental unemployment insurance benefits and administrative costs will be withdrawn and redeposited in the general fund of the Treasury.

By Authority of the Board.

Dated December 17, 1986.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 86-28984 Filed 12-24-86; 8:45 am]

BILLING CODE 4310-16-M

SECURITIES AND EXCHANGE COMMISSION

Agency Information Collection Activities Under OMB Review

Agency Clearance Officer: Kenneth Fogash (202) 272-2142.

Upon written request, copy available from: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, Washington, DC 20549.

Revision; Regulation S-K, Form 20-F; SEC File No. 270-3.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for approval a proposed amendment regarding the elimination of the requirement for registrants to disclose quantified information on the effects of inflation and changes in prices.

The potential respondents include all entities that file registration statements or reports pursuant to the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, or the Investment Company Act of 1940.

Submit comments to OMB Desk Officer: Robert Neal (202) 395-3785, Office of Information and Regulatory Affairs, Room 3235, NEOB, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

December 18, 1986.

[FR Doc. 86-29043 Filed 12-24-86; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-23902; File No. SR-BSECC-86-02]

Self-Regulatory Organizations; Boston Stock Exchange Clearing Corp.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78(b)(1), notice is hereby given that on November 3, 1986, the Boston Stock Exchange Clearing Corporation ("BSECC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described below. The Commission is publishing notice to solicit comment on the rule change.

The proposed rule change revises BSECC's Institutional Services Fee Schedule. The revised fees allow BSECC to recover increased costs resulting from fee increases of the Depository Trust Company. The proposal also has been revised to reflect different costs associated with different transaction volumes and, when possible, to identify and price services more discreetly.

BSECC believes that the proposal is consistent with Section 17A of the Act, because it will provide for the equitable allocation of fees and other charges among BSECC members. BSECC stated in its filing that the proposal also is consistent with BSECS's policy that service fees fairly cover associated costs.

The rule change has become effective, pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

You may submit written comment within 21 days after notice is published in the **Federal Register**. Please file six copies of your comment with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, with accompanying exhibits, and all written comments, except for material that may be withheld from the public under 5 U.S.C. 552, will be available at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of the filing also will be available for inspection and copying at the principal office of BSECC. All submissions should refer to File No. SR-BSECC-86-02 and should be submitted by January 20, 1987.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: December 16, 1986.

Jonathan G. Katz,

Secretary.

BOSTON STOCK EXCHANGE CLEARING CORPORATION INSTITUTIONAL SERVICE FEE SCHEDULE

[Additions *italicized* and deletions [bracketed]]

	Fees
[Settlement items]	[$10.50]
Transaction charges:	
Trade settlement:	
First 1 to 200 trades	*$12.50*
From 201 to 400 trades	*10.00*
From 401 to 600 trades	*7.50*
From 601 to 800 trades	*5.00*
Over 800 trades	*3.50*

BOSTON STOCK EXCHANGE CLEARING CORPORATION INSTITUTIONAL SERVICE FEE SCHEDULE—Continued

[Additions *italicized* and deletions [bracketed]]

	Fees
Securities movements for no money:	
First 1 to 400 items	*4.00*
From 401 to 600 items	*2.00*
601 items and over	*1.00*
Accounts will be billed a minimum of $750 per month for transactions:	
[Withdrawals]	[*$10.50*]
Other activity charges:	
Urgent withdrawal (nominee)	*15.00*
Withdrawal by transfer	*7.50*
Regular deposit	*3.50*
Legal deposit	*10.00*
Reorganization	*35.00*
[Maintenance (per issue per month)]	[.50]
Monthly maintenance:	
DTC eligible issues	(1)
DTC ineligible items	(2)
Miscellaneous charges (e.g. postage, communications, etc.) incurred by the corporation on behalf of member	(3)

[1] *At DTC Rate.*
[2] *At DTC Rate for Eligible Issues.*
[3] Direct Bill-back.

[FR Doc. 86-29044 Filed 12-24-86; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-23905; Filed No. SR-CBOE-86-35]

Self-Regulatory Organizations; Proposed Rule Change by the Chicago Board Options Exchange, Inc.; Relating to Liability of Exchange for Actions of Order Book Officials

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 28, 1986, the Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change for interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change modifies the liability provisions relating to order book disputes. Currently, members may bring claims in arbitration against the Exchange for losses relating to the Exchange's operation of the order book, but the Exchange does not have a reciprocal right to bring actions against members. The rule change would confer such a right upon the Exchange. The proposed rule change would also waive the specific dollar limit on Exchange liability. The rule as amended would limit a party's liability to the lesser of (1) the loss which would have been incurred by the claimant if an uncompared trade had been closed out at the opening of trading on the day provided under exchange rules; or (2) the actual loss realized by the claimant.

Next, the rule proposal would extend from one day to ten days the period within which any party, absent reasonable justification or excuse, must submit to the opposing party a writing of the claim. This requirement is not jurisdictional and does not abrogate the time limits set forth in Chapter XVIII, relating to arbitration in general.

Included as well is a specific incorporation by reference of the Exchange's arbitration rules. Finally, there is a new section which would preclude Exchange liability for claims arising from use of certain technological facilities provided by the Exchange, including electronic order routing, file, trade match, trade processing, price reporting, quotation and execution systems.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

There are two substantive purposes to the proposed rule change. First, while members may now bring claims in arbitration against the Exchange for losses relating to the Exchange's operation of the order book, the Exchange does not have a reciprocal right to bring actions against members. The proposed rule change would confer such a right upon the Exchange. Second, in the past when the Exchange has received requests from members for arbitration against the Exchange it has, as a matter of policy, routinely waived

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the rule's one day time limitation on submission of a writing. It appears reasonable to extend the time period from one day to ten days, and to apply this time period to all parties, absent reasonable justification or excuse. This requirement is intended to ensure that notice is given after a party becomes aware of a complaint, and to avoid undue delays. This requirement is not jurisdictional and does not abrogate the time limits set forth in Chapter XVIII.

The new Section (b)(4) of the Rule states the existing practice of applying the regular arbitration rules of Chapter XVIII to arbitrations involving the Exchange.

Section (c), relating to limits on exchange liability, has been substantially revised. Sections (c)(1)–(c), which spell out specific limits on Exchange liability, are deleted for two reasons. First, because the Exchange will now have the ability to arbitrate against members, it is not equitable to limit the Exchange's liability to a greater extent than a member's liability in member-Exchange disputes. Second, trading conditions have changed dramatically since the Exchange's liability limits were set. For example, average order size and overall volume have increased substantially. Thus, the exposure in order handling has increased. It seems appropriate, therefore, to experiment with a waiver of these liability limits. Section (c) has been modified to conform with the revisions permitting a member or the Exchange to be a claimant.

New Section (f) reaffirms that the Exchange is not liable to a member for systems-related claims, per Rule 6.7.

The proposed rule change is consistent with the Securities Exchange Act of 1934, and in particular Section 6(b)(5) thereof because it will protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 20, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 17, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-29045 Filed 12-24-86; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-23903; SR-NASD-86-32]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD"), on October 29, 1986, submitted copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend Schedule C of the NASD By-Laws to require transactions in listed securities executed off an exchange in the United States between 4:00 and 4:30 p.m. Eastern Time to be reported to the Consolidated Tape Association ("CTA") through the NASDAQ system.

Notice of the proposed rule change was given in Securities Exchange Act Release No. 23780, published in the Federal Register (51 FR 41555; November 17, 1986). A complete description of the amendments is contained in that release. No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, and in particular, the requirements of section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30-3(a)(12).

Dated: December 17, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-29046 Filed 12-24-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23897; File No. SR-PCC-86-07]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Pacific Clearing Corp. Amending its Officer's Certificate, and Certificate of Incumbency

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 [the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 18, 1986, the Pacific Clearing Corporation ("PCC") filed with the Commission the proposed rule change described below. The Commission is publishing this notice to solicit comments on the proposed rule change.

PCC's proposed rule change revises the wordings of its current Participant Certificates to provide clearer language.

PCC states the proposed rule change is consistent with section 17A9b)(3)(F) of the Act in that the proposal promotes the prompt and accurate clearance and settlement of securities transactions.

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Act and subparagraph (e) of the Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the change if it appears to the Commission that it is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the proposal. Persons making written submissions should file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth St., NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth St., NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of PCC. All submissions should refer to File No. SR-PCC-86-07 and should be submitted by January 20, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 16, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-29047 Filed 12-24-86; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-23898; File No. SR-PSDTC-86-11]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Pacific Securities Depository Trust Co. Amending its Pledgeholder Agreement

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 31, 1986, the Pacific Securities Depository Trust Company ("PSDTC") filed with the Commission the proposed rule change described below. The Commission is publishing this notice to solicit comments on the proposed rule change.

PSDTC's proposed rule change amends its current Pledge-holder Agreement. PSDTC states that its current Pledgeholder Agreement has been in use since 1975 and has never been updated to reflect changes made to its By-laws, Rules, and Procedures.

Furthermore, PSDTC states that the proposed rule change is consistent with section 17A(b)(3)(F) of the Act in that the proposal assures the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible and fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of the Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the change if it appears to the Commission that it is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the proposal. Persons making written submissions should file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth St., NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of PCC. All submissions should refer to File No. SR-PCC-86-07 and should be submitted by January 20, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 16, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-29047 Filed 12-24-86; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-23898; File No. SR-PSDTC-86-11]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Pacific Securities Depository Trust Co. Amending Its Pledgeholder Agreement

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 31, 1986, the Pacific Securities Depository Trust Company ("PSDTC") filed with the Commission the proposed rule change described below. The Commission is publishing this notice to solicit comments on the proposed rule change.

PSDTC's proposed rule change amends its current Pledge-holder Agreement. PSDTC states that its current Pledgeholder Agreement has been in use since 1975 and has never been updated to reflect changes made to its By-laws, Rules, and Procedures.

Furthermore, PSDTC states that the proposed rule change is consistent with section 17A(b)(3)(F) of the Act in that the proposal assures the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible and fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of the Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the change if it appears to the Commission that it is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the proposal. Persons making written submissions should file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth St., NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth St., NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of PSDTC. All submissions should refer to File No. SR-PSDTC-86-11 and should be submitted by January 20, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 16, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-29048 Filed 12-24-86; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-23896; File No. SR-PSDTC-86-12]

Pacific Securities Depository Trust Co.; Self Regulatory Organizations

In the matter of Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Pacific Securities Depository Trust Company Amending Its Certificate As To Beneficial Ownership and Indemnity Agreement, Certificate As To Beneficial Ownership of Foreign Securities, Officer's Certificate, And Certificate of Incumbency.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 18, 1986, the Pacific Securities Depository Trust Company ("PSDTC") filed with the Commission the proposed rule change described below. The Commission is publishing this notice to solicit comments on the proposed rule change.

PSDTC's proposed rule change revises the wordings of its current Participant Certificates to provide clearer language.

PSDTC states the proposed rule change is consistent with section 17A(b)(3)(F) of the Act in that the proposal promotes the prompt and accurate clearance and settlement of securities transactions.

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Act and subparagraph (e) of the Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the change if it appears to the Commission that it is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the proposal. Persons making written submissions should file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth St., NW., Washington DC 20549. Copies of the filing, all subsequent amendments, all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth St., NW., Washington DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of PSDTC. All submissions should refer to File No. SR-PSDTC-86-12 and should be submitted by January 20, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 16, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-29049 Filed 12-24-86; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments should be submitted within 21 days of this publication in the Federal Register. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Office before the deadline.

Copies: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Elizabeth M. Zaic, Small Business Administration, 1441 L Street, NW., Room 200, Washington, DC 20416. Telephone: (202) 653–6623

OMB Reviewer: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395–7340

Title: Request for Fixed Program Participation Term (FPPT) Extension

Frequency: On occasion

Description of Respondents: 8(a) firms wishing an extension of its FPPT must provide a narrative summary detailing the firms progress.

Annual Responses: 300

Annual Burden Hours: 2,400

Type of Request: Reinstatement

Dated: December 19, 1986.

Elizabeth M. Zaic,

Deputy Director, Office of Administrative Services, Small Business Administration.

[FR Doc. 86–29001 Filed 12–24–86; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 989]

Certification by the Secretary of State To make Available Assistance to the Public Security Forces of El Salvador

Pursuant to section 660(d) of the Foreign Assistance Act of 1961, as amended, I hereby certify, under the authority delegated by Presidential Determination 86–2, that the Government of El Salvador has made significant progress during the six-month period preceding this determination in eliminating any human rights violations, including torture, incommunicado detention, detention of persons solely for the non-violent expression of their political views, or prolonged detention without trial.

This certification shall be reported to the Congress immediately, together with a full description of the assistance to be provided and of the purposes to which it is to be directed. None of the assistance so provided shall be furnished until 30 days after this notification is made to the Congress, as required by law.

This certification shall be published in the **Federal Register.**

Dated: November 22, 1986.

George P. Shultz,

Secretary of State.

Justification for Determination To Provide Assistance to Public Security Forces of El Salvador

Section 660(d) of the Foreign Assistance Act of 1961 authorizes the President to provide assistance to public security forces of El Salvador, upon determination that there has been significant progress during the preceding six months in eliminating any human rights violations, including torture, incommunicado detention, detention of persons solely for the nonviolent expression of their political views, or prolonged detention without trial. The authority to make this determination has been delegated to the Secretary of State by the President.

Human Rights Overview

During the past six months, the Salvadoran Government has continued its program to eliminate human rights abuses by extremists of both the far left and the far right. This is strongly demonstrated by the continued reduction in the level of political violence. Between January and July 1986, according to press reports monitored by our embassy, there were 151 civilian deaths due to possible political violence by the left, the right, abusers of authority, unidentified assailants, and civilians caught in crossfire in military actions. This compares with 205 deaths due to political violence during the same period of 1985. A large proportion of the apparently politically motivated murders were apparently committed by the guerrillas. It is possible, given the circumstances of the incidents, that some of the deaths were criminally rather than politically motivated. Similar progress is expected in the July 16 to November 16 period; the reports are still being analyzed.

The government of President Jose Napoleon Duarte is committed to protecting the civilian population as much as possible from the violence of the internal conflict. In September 1984, President Duarte issued stringent rules of engagement for the use of aerial firepower, intended to reduce as much as possible the loss of civilian lives. These guidelines have been effective. Although guerrilla sources have alleged that "indiscriminate bombing" has taken place near civilian populations, we are unaware of any claim, even by the rebels' clandestine radio stations, of civilians killed by aerial bombs during 1986, even though major military operations with heavy air support have occurred during this period.

The FMLN, however, continue and are increasing their practice of indiscriminate placing of guerrilla fabricated, pressure-detonated or wire-tripped land mines and booby traps in roads, trails, and fields. In addition to killing and injuring military personnel, the explosions kill or maim innocent civilians. From January through July, the press reported 53 civilians killed and 172 wounded by these devices. Many of the victims were children, and many lost a limb. Although El Salvador's respected Archbishop Monsignor Arturo Rivera y Damas has repeatedly called upon the guerrillas to cease this practice, indiscriminate land mine warfare is now the major source of civilian death and injuries in El Salvador.

The guerrilla organizations have continued their periodic "traffic bans" during which the insurgents set up roadblocks, burn vehicles which try to transit the roads, mechinegun private vehicles and passenger buses which do not heed their signal to halt, and rob and sometimes murder civilians who do stop. The latest traffic stoppage was initiated August 24, 1986.

Torture, Incommunicado Detention, Prolonged Detention Without Trial

Very few allegations of physical abuse have been brought against the public security forces during the past six months. Most allegations involve sleep or food deprivation, standing for long periods of time, forced exercise, threats, and "psychological pressure," rather than the gross physical abuse previously alleged. Salvadoran law calls for immediate notification of family members, the governmental Human Rights Commission (CDH) and the International Committee of the Red Cross (ICRC) whenever a detention occurs. All parties agree that compliance by the security forces is excellent. The committee of political prisoners, an FMLN support organization in Salvadoran prisons, has made a number of allegations of torture while in police custody. Examinations and interviews by neutral human rights monitoring organizations have not revealed credible evidence to support the allegations. There have been no verifiable allegations of physical torture in police custody during the six-month period covered by this report.

Incommunicado detention under Legislative Decree 50, which covers "State of Emergency" crimes against national security, may last no more than eight days, at which time the ICRC, the CDH, and the Archbishopric's Office of Legal Aid and Human Rights (Tutela Legal) have access to the detainee in private interviews. In a substantial number of cases these organizations are permitted access before the eighth day. Prompt notification to these organizations of detentions has greatly reduced claims of persons "disappearing" after arrest. Though the security forces try to contact the families of arrestees, sometimes the telegram carriers cannot locate the address given by the arrestee. In these cases, the organizations which receive notification can pass on the notification when contacted by the family, or sometimes locate the family themselves.

Inadequate investigative skills and facilities have led in the past to prolonged detention before trial and, in some cases, to abuse of prisoners to obtain confessions. Because of a shortage of trial judges, antiquated procedures, and statutory anachronisms, prolonged detention is still a problem for many prisoners. The Salvadoran government's Revisory Commission is addressing the problems of procedures and statutes in its ongoing work. There are now three Decree 50 judges, instead of just one, who are working to reduce the backlog of state of emergency cases.

Archbishop Rivera y Damas noted in a September 29, 1986, interview on Salvadoran television that human rights were now "truly respected" although he added that under wartime conditions individual violations still do occur. Although isolated abuses of authority by individual military, security or rural defense force personnel remain an area of concern, arrests and prosecutions in such cases now occur. In February 1986, for example, four members of a civil defense unit in San Ramon, a suburb of San Salvador, were arrested for the murders of there brothers which they allegedly committed in late January. In May, a soldier was arrested and turned over to the courts for the rape of a young girl near Nejapa, San Salvador Department. In July, two municipal policemen from Mexicanos, San Salvador Department, were convicted of two 1983 murders.

Under the Duarte Administration, investigation and prosecution of past abuses has continued. Witnesses were presented in the Romero case in 1986, though the court did not consider their evidence conclusive; the Las Hojas case was kept open past its July deadline by the presentation of new evidence; the triggermen in the Sheraton case were convicted last February and new evidence was presented by the government on November 10 in a move to reopen the case against the alleged intellectual author of the crime. The Special Investigative Unit's most publicized operation was the May 1986 excavation of the well in Armenia, where local civil defensemen are alleged to have thrown the bodies of a number of their victims between 1980–1982. With local residents and TV cameras recording the events, SIU personnel were lowered some 150 feet into the dry well and excavated several meters of earth and debris, locating four human skulls and other bones, some of which were identified on the scene by dental fillings and other physical evidence. This evidence, together with new testimony provided by local residents impressed with the professionalism of the SIU, has enabled the reinstatement of charges against the defendants.

The most politically significant prosecution undertaken by the Duarte Administration in 1986 is the kidnapping-for-ransom case in which several well-known Salvadorans, including active-duty army officers and a former officer against whom charges had been dismissed in the Sheraton case, have been detained or are the subjects of arrest warrants. The case has reached the first instance (trial) level of the Decree 50 court system.

Detention of Persons for Non-violent Expression of Views

As noted in the previous report, interviews with high officials of the Revolutionary Democratic Front (FDR), political arm of the guerrillas, are frequently broadcast in Salvadoran radio stations and paid advertisements by the FDR and other groups opposed to the government. Peaceful strikes and anti-government demonstrations proceed without interference from the authorities. Restrictions on freedom of press, which were not being enforced in any case, were removed from the state-of-emergency legislation in May. Many publications, including those of the nation's universities, frequently publish polemical attacks against the government. San Salvador's University of Central America (UCA) magazine, ECA, recently published a long article by Joaquin Villalobos, leader of the guerrilla Peoples Revolutionary Army (ERP).

Ten members of ostensible human rights groups were arrested between May 20–29, partly on the basis of information collected by the police, and partly on the basis of statements by the first arrestee, identified herself as a member of the National Resistance (political arm of one of the guerrilla groups fighting the government), and detailed in public and in private the organizations' ties to the guerrillas. The detainees were arrested as members of guerrilla groups, not for membership in these "human rights" organizations, which three of the ten arrestees asserted were infiltrated and manipulated by the insurgency. Allegations that the detainees were tortured or "brainwashed" into making the confessions are without foundation. Though under police protective custody, they have complete freedom of movement. Two of the three, without security force escorts of presence, in October 1986 attended an informal Embassy-sponsored discussion by an American journalist, Salvadoran labor leaders, U.S. Embassy officers, and the director of the Tutela Legal. It was clear from their conversations that they were speaking of their own free will.

Description of Assistance

Counterterrorism operations in El Salvador combine police and military techniques. The close relationship between counterterrorism and the fight against guerrilla insurgents is demonstrated by the armed left's clear capacity to use materiel and training in their urban campaign, their ability to mass forces, their ability to plan strategically and tactically, and the priority placed on the terror campaign in a national strategy to destabilize the government.

In response to the terrorist threat, which combines elements of guerrilla

warfare with open criminality in urban and rural areas, training was provided during FY 1986 to more than 2,000 members of the Salvadoran public security forces. This training, primarily by Salvadoran cadre under the supervision of U.S. military trainers, focused on paramilitary skills in an effort to upgrade the capability of the security force personnel to meet safely and effectively the terrorist threat. Training included instruction on human rights presented by Salvadoran chaplains, lawyers and psychologists. The training has begun to prepare the security forces to face the existing terrorist threat. Significant progress to date has been noted in professionalism, notably in awareness of the rights of innocent citizens and the international norms for human rights.

In addition to the training, 85 crew cab trucks and 25 heavy duty police cars with associated spare parts support and radio equipment were provided. Additional hand-held radios with repeaters were also supplied. To support the vehicles, a military trainer was provided to upgrade the vehicle maintenance capability of the security force shops.

Approximately $3.1 million was used for the counterterrorism support provided in FY 1986. The majority of this, approximately $2.5 million, was from previously unobligated FYs 1984 and 1985 Foreign Military Sales credits. The remainder, mainly trainer costs, came from FY 1986 MAP funds.

Assistance Program in FY 1987

The program for FY 1987 is intended to parallel and complement the assistance provided in FY 1986. Training will continue to focus heavily on paramilitary skills to provide the public security forces the basic capability to serve as an effective deterrent to terrorist activity and guerrilla insurgent action. These forces will have the capability to counter successfully the threat in a manner consistent with accepted human rights practices, protection of citizens and internal discipline. All three factors will continue to be emphasized as an integral part of all instruction programs.

Salvadoran cadre will again provide most of the instruction under the supervision of U.S. military trainers. U.S. participation is primarily monitoring and ensuring that program goals are met. The security forces are developing self-sufficiency in training and will be able to continue in the future with professional police training modeled on U.S. standards. Training will involve both active security force personnel and training for recruits. Additionally, refresher training emphasizing critical skills will be conducted for some personnel previously trained during FY 1986.

The Training Curriculum

Basic Skills

—Public Relations/Human Rights
—Physical Fitness
—Personal Hygiene
—Weapons Marksmanship
—Weapons Maintenance
—First Aid
—Individual Movement Techniques
—Use and Maintenance Of Radios
—Reporting Procedures
—Prisoner Handling
—Challenge And Password
—Map Reading/Land Navigation
—Vehicle Maintenance

Advanced Techniques

—Target discrimination, to ensure maximum safety to civilians and fellow public security forces in congested areas and in rural operations with heavy cover;
—Counterambush techniques, to permit greater security while patrolling in both urban and rural environments;
—Roadblock security and conduct, to permit safer and more effective control of streets and highways, a prime terrorist target;
—Safe entry of buildings, to improve techniques in raids on safehouses, headquarters and other terrorist strongholds;
—Urban search techniques using cordon procedures, to permit rapid response and seizure of persons fleeing or in hiding; and
—Rappelling techniques for egress from a helicopter, to permit insertion of forces at key points in a coordinated operation, to ensure that discovery of unexpected guerrilla strength can be met with a rapid response.

As a means to link the distinct areas of the counterterrorism training and the related security force training accomplished through the Department of State's Anti-Terrorism Assistance Program, continued training programs oriented toward basic patrolman skills are considered essential. Two or three civilian personnel, with extensive knowledge of day-to-day precinct operations, may be used to conduct this area of training.

Equipment

In coordination with this training, the following equipment will be provided under the FY 1987 Military Assistance Program:

Transportation Equipment

—Two-ton dual cab pickup trucks
—Heavy duty patrol vehicles, outfitted to standard police specifications
—Vehicle spares and test equipment

Communications Equipment

—Repeaters, fixed
—Repeaters, mobile
—Vehicle radios
—Hand-held radios and associated equipment
—Communications test equipment

Weapons

—12 gauge shotguns for use in patrol vehicles
—9mm pistols for use as a sidearms

Equipment is helping to meet the transportation (patrol) requirements for the three largest cities, San Salvador, Santa Ana and San Miguel, where the greatest urban threat exists. Communications, so vital to an effective counterterrorist program, are being provided at a minimum, effective level to permit the security forces to conduct patrol and defensive operations and to better provide security for the Salvadoran populace.

Moreover, Salvadoran public security force officials are constant targets for both terrorists and common criminals. Since the Zona Rosa murders, 33 public security personnel have been killed and 60 wounded in terrorist incidents. The guerrillas possess advanced weapons such as the M–16 assault rifle. The public security forces defend themselves and the public using the G–3 rifle and the outdated Argentine 9mm submachine gun, both ill-suited for in-city use. Acquisition of standard 12 gauge shotguns and pistols would vastly improve the ability of the public security forces to defend themselves while minimizing the risk to bystanders. Suitable weapons training should also be provided.

Funding

Not more than $6.6 million of MAP funds will be devoted to training and equipment costs of which not more than $5.6 million will be devoted to equipment, divided almost equally between transportation and communications items and including a limited number of defense weapons. Approximately $0.5 million is marked for U.S. trainers in-country. The remaining funds will be used as necessary to support the police academy and scientific laboratory.

Assistance provided to the security forces in FY 1986 and that projected for FY 1987 will only meet the most pressing needs. Actual needs would require funding at levels more than three times the amounts we have been able to provide out of scarce security assistance resources.

[FR Doc. 86–28985 Filed 12–24–86; 8:45 am]
BILLING CODE 4710–06–M

[Public Notice No. 966]

Certification To Authorize Military Assistance and Sales for Guatemala

Subject

Certification to Authorize Military Assistance and Sales for Guatemala.

Pursuant to section 703(a) of the International Security and Development Cooperation Act of 1985 (Pub. L. 99–83), and the authority vested in me by Executive Order 12163, as amended, I hereby certify that:

(1) An elected civilian government is in power in Guatemala and has submitted a formal written request to the United States for the assistance, sales, or financing to be provided.

(2) The Government of Guatemala made demonstrated progress during the preceding year—

(A) in achieving control over its military and security forces,

(B) toward eliminating kidnappings and disappearances, forced recruitment into the civil defense patrols, and other abuses by such forces of internationally recognized human rights, and

(C) in respecting the internationally recognized human rights of its indigenous Indian population.

This certification shall be reported to the Congress immediately and shall be published in the **Federal Register**.

December 8, 1986.

George P. Shultz,

Secretary of State.

[FR Doc. 86–28986 Filed 12–24–86; 8:45 am]
BILLING CODE 4710–06–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements; Submitttals to OMB on December 17, 1986

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation on December 17, 1986, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler, Annette Wilson, or Cordelia Shepherd, Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street SW., Washington, DC 20590, telephone (202) 366–4735, or Gary Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, (202) 395–7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on December 17, 1986.

DOT No: 2834
OMB No: 2120–0507
By: Federal Aviation Administration
Title: SFAR–36 Development of Major Repair Data
Form(s): None
Frequency: On occasion
Respondents: Repair stations, air carriers, air taxis, and commercial operators

Need/Use: SFAR–36 relieves qualifying applicants (repair stations, air carriers, air taxis, and commercial operators) of the burden of obtaining FAA approval of data developed by them for major repairs on a case-by-case basis and provides for one time approvals.

DOT No: 2835
OMB No: 2125–0065
By: Federal Highway Administration
Title: Driver Qualification Files (Regularly Employed Drivers and Intermittent, Casual, or Occasional Drivers)
Form(s): None
Frequency: Other: While employed or 3 years
Respondents: Motor carriers operating in the interstate or foreign commerce

Need/Use: To meet FHWA requirements that motor carriers maintain a qualification file for regular drivers and nonregular drivers to assure that a driver is qualified and continues to be qualified at all times to drive a commercial vehicle in the interstate or foreign commerce.

DOT No.: 2836
OMB No.: 2125–0037
By: Federal Highway Administration
Title: Inspection, Repair and Maintenance, and Driver Vehicle Inspection Report
Form(s): None
Frequency: On occasion
Respondents: Drivers and Motor Carriers

Need/Use: Used to identify defects likely to affect safety of operation and to record inspection.

DOT No.: 2837
OMB No.: 2120–0065
By: Federal Aviation Administration
Title: Airport Development Aid Program/Planning Grant Program (ADAP/PGP)
Form(s): FAA Forms 5100–100/60/61/62/63
Frequency: On occasion, quarterly and annually
Respondents: Airport sponsors and planning agencies

Need/Use: The FAA collects information from airport sponsors and planning agencies in order to administer the Airports Grants programs. Data is used to determine eligibility, assure proper use of Federal funds and assure project accomplishment.

DOT No.: 2838

OMB No.: New
By: National Highway Traffic Safety Administration
Title: 49 CFR Part 544, Insurer Reporting Requirements—Motor Vehicle Theft Law Enforcement Act of 1984
Form(s): None
Frequency: Annually
Respondents: Businesses/small businesses
Need/Use: Insurance companies and rental/leasing companies are required to provide information to NHTSA on comprehensive insurance premiums charged by insurers of motor vehicles due to vehicle thefts and distribution of stolen vehicle parts.

DOT No.: 2839
OMB No.: 2125-0528
By: Federal Highway Administration
Title: Marketing of Vehicles—HM Private Carriers
Form(s): None
Frequency: Recordkeeping/one time requirement
Respondents: Motor Carriers
Need/Use: To meet FHWA requirement that a motor vehicle operated by a private carrier transporting hazardous materials must be marked or placecarded on both sides with the carrier's name and address.

DOT No.: 2840
OMB No.: 2120-0508
By: Federal Aviation Administration
Title: SFAR 27-5, Fuel Venting and Exhaust Emission Requirements for Turbine Engine Powered Airplanes
Form(s): None
Frequency: On occasion (Labeling Requirement)
Respondents: Manufacturers of Turbine Engine Powered Airplanes
Need/Use: Date of manufacture and compliance status stamped on nameplate of each turbojet engine permit rapid determination by FAA inspectors, owners, and operators whether an engine can legally be installed and operated on an aircraft in the USA.

DOT No.: 2841
OMB No.: 2115-0096
By: United States Coast Guard
Title: Oil Pollution Prevention Records, Alternatives and Exemptions
Form(s): N/A
Frequency: On occasion
Respondents: Bulk oil facilities and vessel operators
Need/Use: This information collection requirement consolidates two previously submitted collections—(1) Oil Pollution Prevention Records and (2) Oil Pollution Prevention Alternatives. The collection is needed to allow vessel or terminal operators flexibility in complying with the Pollution Prevention Regulations. The recordkeeping requirement is needed and used by Coast Guard inspectors to determine whether the vessel or facility operator is complying with the regulatory requirements for testing, inspections, designations and other requirements.

DOT No: 2842
OMB No: 2115-0089
By: United States Coast Guard
Title: Recordkeeping/Reporting Requirements in Rules for Ships Carrying Hazardous Liquids
Form(s): CG-4602B
Frequency: On occasion
Respondents: Chemical Tanker Operators
Need/Use: This information collection requirement is needed to aid in controlling safety and pollution hazards arising from bulk liquid cargo shipments. The information is used by the Coast Guard for the following purposes: (1) To assist technical officers in evaluating vessel designs; and (2) to assist port safety and marine inspection personnel responsible for enforcing the regulations. It is also used by (1) crewmembers to maintain safety of operations related to the cargoes and (2) other people boarding the vessels to avoid danger from cargo operations.

DOT No: 2843
OMB No: 2115-0064
By: United States Coast Guard
Title: Certificate of Registration
Form(s): CG-4510
Frequency: On occasion
Respondents: U.S. Registered Pilots of the Great Lakes
Need/Use: This is a recordkeeping requirement used by registered pilots for identification purposes. The pilots are required to carry this document at all times when in the service of a vessel.

DOT No: 2844
OMB No: New
By: Urban Mass Transportation Administration
Title: Telephone Survey of Private Sector Organizations
Form(s): None
Frequency: One-time only
Respondents: Businesses or other for-profit or non-profit institutions
Need/Use: The survey is needed to study the experience of private organizations in providing transportation services to the elderly and handicapped. Special attention is to be given to funding sources and the relationships existent between private sector organizations, particularly the management and organization of transportation services for the elderly and handicapped whose programs have been successful.

DOT No: 2845
OMB No: New
By: Maritime Administration
Title: Determination of Fair and Reasonable Rates for the Carriage of Dry Bulk Preference Cargoes in less than full shiploads on U.S.-Flag Commercial Liner Vessels (46 CFR Part 383)
Form(s): N/A
Frequency: Annually/quarterly
Respondents: Ship owners/ship operators
Need/Use: Data needed to calculate rates for U.S.-Flag vessels carrying preference cargoes. Data will verify accuracy and completeness of rates and make it possible to determine the lowest cost of Government cargoes.

Issued in Washington, DC on December 17, 1986.

John E. Turner,
Director of Information Resource Management.

[FR Doc. 86-28958 Filed 12-24-86; 8:45 am]
BILLING CODE 4910-62-M

Aviation Proceedings; Agreements Filed During the Week Ending December 12, 1986

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

Docket No. 44549

Parties: Members of International Air Transport Association.
Date Filed: December 8, 1986.
Subject: Bank Settlement Plan—Jamaica.
Proposed Effective Date: January 1, 1987.

Docket No. 44553

Parties: Members of International Air Transport Association.
Date Filed: December 9, 1986.
Subject: TC3 Specific Commodity Rates Board.
Proposed Effective Date: January 1, 1987.

Phyllis T. Kaylor,
Chief, Documentary Services Division.

[FR Doc. 86-28957 Filed 12-24-86; 8:45 am]
BILLING CODE 4910-62-M

Coast Guard

[CGD-86-073]

Policy for Implementing the Vessel Load Line Amendments of 1986

ACTION: Notice.

SUMMARY: The laws related to the assignment of load lines for vessels have been revised and renumbered, ultimately requiring a revision of Coast Guard regulations. Until promulgation of new regulations, the present regulations continue in effect under the corresponding provision of this legislation. This notice sets forth Coast Guard policy applicable during the transition period and information on future rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. W.A. Cleary, Jr., Room 1308, U.S. Coast Guard Headquarters, Marine Technical and Hazardous Materials Division (G-MTH-3), 2100 Second St. SW., Washington, DC 20593-0001, 202/267-2988.

SUPPLEMENTARY INFORMATION: On October 21, 1986, the President signed into law the Omnibus Reconciliation Act of 1986 (Pub. L. 99-509), which included provisions to revise and consolidate laws related to load lines and measurement of vessels as parts C and J of Subtitle II of Title 46, United States Code. Though the primary purpose of this legislation was to codify existing law, certain substantive changes were incorporated in Part C—Load Lines of Vessels. Because of these changes and the complete renumbering and consolitation of provisions, ultimately the Coast Guard will have to amend the existing load line regulations to conform to Part C. However, until new regulations are promulgated, the existing regulations will continue to apply under authority of the corresponding provisions of the new Act.

Major Changes to the Law as Codified in Title 46, United States Code

(a) The definition of "domestic voyage" section (5101 (1)) has been expanded to include, in general, all places subject to the jurisdiction of the United States.

(b) The $50.00 per inch overloading penalty has been changed to a new flexible penalty based on the "economic benefit from overloading" (section 5116(b)).

(c) The application of load line law is now based on vessel length rather than tonnage and includes all vessels of 79 ft. or more in length in the navigable waters of the United States or, if U.S. owned or registered, anywhere in the world (section 5102). Exceptions from applicability include those previously authorized, such as inland vessels not operating beyond the boundary lines of the U.S. (except those in the Great Lakes), and the three following new exceptions: public vessels of the U.S. on a domestic voyage, small passenger vessels on a domestic voyage, and vessels of the working fleet of the Panama Canal Commission not on a foreign voyage.

(d) Sections 5104 (b) and (e) and 5108 authorize the Secretary of Transportation to consider certain extenuating factors and to grant special exemptions. These exemptions apply to vessels whether on domestic or international voyages, although vessels on international voyages remain limited to the exemptions permitted under Article 6 of the International Convention of Loadlines, 1966.

(e) Section 5105 sets forth the standard functional safety areas which have been used in load line surveying since the International Load Line Convention, 1930. This section provides the rationale for, and the responsibility to carry out, load line surveys.

(f) Section 5110 provides a basis in law for special regulations for submersible vessels.

(g) Section 5116 increases the monetary penalties for violating the law or regulations, for submerging the load line, for failing to record a change in loading or stability conditions, for violating a detention order, and for altering, concealing, or removing a mark. This is the first monetary civil penalty increase since these penalties were introduced in 1929 and 1935.

Coast Guard Policy

Until superseded by new regulations, the Coast Guard will apply existing regulations and the following policies:

(a) Under the expanded exemption authority in section 5108, the Coast Guard will continue to honor the exemption for river barges on fair weather voyages in southern Lake Michigan specifically authorized by Congress in 1984. This exemption will be retained in future Coast Guard regulations.

(b) The increased penalties in section 5116 will be applied to violations of the appropriate existing regulations.

(c) New vessels on domestic voyages which are under 150 gross tons but 79 feet or more in length may be assigned a load line but are not required to have one until the implementing regulations are promulgated. However, when the new regulations have been promulgated and are in effect, all such vessels built after January 1, 1986, will have to comply with the load line regulations applicable to vessels engaging on international voyages. All vessels of 79 feet or more in length on international voyages have been required to have a load line since 1968.

(d) Whether on international or domestic voyages, surveys of vessels under 79 feet in length will not be conducted, because existing standards are not considered appropriated for vessels of that size. Since vessels under 79 feet in length are not required to have load lines the Coast Guard is not planning to develop standards for these vessels.

(e) The existing load line certificate forms will continue to be used until revised by regulation. Citations in the existing forms are deemed to refer to the corresponding provisions in the new Act.

Future Regulations

Because the new law provides for the continued applicability of existing regulations, an immediate regulatory revision is not critical to the operation of the load line program. However, as rulemaking project (CGD86-013) has been initiated to eventually conform Coast Guard regulations to the requirements and section designations of the new law. Certain portions of the regulations which require little or no change, such as those relating to international voyages under International Convention on Load Lines, 1966, may be handled separately for earlier promulgation. Further notice of these rulemakings and an opportunity to comment on all proposals will be provided.

J.W. Kime,
Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

December 22, 1986

[FR Doc. 86-29054 Filed 12-24-86; 8:45 am]
BILLING CODE 4910-14-M

Federal Aviation Administration

[Summary Notice No. PE-86-22]

Petitions for Exemption; Summary and Dispositions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and

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participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: January 19, 1987.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on December 19, 1986.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought, disposition
25129	American Flyers, Inc.	14 CFR 141.5(b)	To allow petitioner to operate its pilot training school in Cleveland, Ohio, as a fully accredited pilot ground school without meeting the requirement that this school be operated as a provisional school for two years.
20994	Trans-Colorado Airlines	14 CFR 135.161(a)(2)	To allow petitioner to operate its Swearingen SA 226TC and SA 227AC aircraft under instrument flight rules or visual flight rules over-the-top using the manufacturer's approved performance data.
25122	Wings West Airlines, Inc.	14 CFR 135.181	To allow petitioner to utilize drift down procedures in lieu of meeting the requirements of the regulations.
24283	American Flyers, Inc.	14 CFR 141.65	Extension of Exemption No. 4287 to allow petitioner to hold examining authority for flight instruction and airline transport pilot written tests.
25103	Air Wisconsin	14 CFR 121.371(a) and 121.379	To allow petitioner to use on its British Aerospace, Fokker F-27, and Short Brothers, Ltd., aircraft certain engines, components, and spare parts that have been manufactured, repaired, tested, or inspected by persons outside of the United States who do not hold U.S. airman certificates.
25137	Meadowlark Soaring School	14 CFR 91.42	To allow the petitioner to rent the JANUS CM, operating under an experimental certificate, exclusively for instruction purposes.
23290	Air Transport Association of America	14 CFR 121.311(f) and 121.391(d)	Extension of Exemption No. 4296 to allow certain of petitioner's member airlines' and other similarly situated certificate holders' required flight attendants in the B757 aircraft to have a seat for takeoff and landing in the passenger compartment that meets the seat requirements of § 25.785 of the FAR and is located near the overwing exits rather than being located near required floor level emergency exits.
25111	Holcomb, Timothy O.	14 CFR 61.39(a)(1)	To allow petitioner to extend the 24-hour limitation to be eligible for a flight test until he returns to the United States or receives approval to take the flight test outside of the United States.
25108	Classic Aircraft Corporation	14 CFR 45.21 and 45.29	To allow petitioner to install 2-inch high N-numbers on its Waco YMF-5 open cockpit biplane rather than the 12-inch high N-numbers required by the regulations.
24427	United States Ultralight Foundation	14 CFR 103.1(a), (b), (e)(1), and (e)(4)	Extension of Exemption No. 4274 to allow petitioner to operate a two-place powered ultralight vehicle of not more than 250 pounds empty weight for the purpose of flight instruction.
25119	Chicago Airlines, Inc.	14 CFR 121.371(a) and 121.378	To allow petitioner to use on its Netherlands-built Fokker F-27 and SAB 340 aircraft certain engines, components, and appliances that have been manufactured, repaired, tested, overhauled, or inspected by persons outside of the United States who do not hold U.S. airman certificates.
20816 and 20817	Zephyrhills Parachute Center	14 CFR 91.15 (a)(2), 105.43(a)(2), and 91.47.	Extension of Exemption No. 4301 to allow foreign nationals to participate in petitioner's skydiving events without complying with the parachute equipment and packing requirements and to allow petitioner to transport 49 parachutists in the Lockheed L-18 aircraft during parachute competitions.
23908	Piedmont Airlines, Inc.	14 CFR 121.371(a) and 121.378	To allow petitioner to purchase components and services from original equipment manufacturers in support of its Boeing 737-300 aircraft.
23717	Garrett Turbine Engine Co.	14 CFR § 87.21(e)	To amend Exemption No. 4228A to extend the exemption as it applies to the TFE731-5 engine series until August 9, 1989. The present exemption extends from August 9, 1985, to August 9, 1987, and exempts all models of the Garrett Turbine Engine Company TFE731 engines from the smoke standards set forth in 40CFR87 and enforced under SFAR 27. The maximum smoke number is limited to fifty (50) by the exemption.
22473	Ransome Airlines	14 CFR 93.123	Petitioner requests an extension of current Exemption No. 3752B, which permits two additional commuter operators per hour at Washington National Airport. The additional slots may be used only by STOL aircraft. Continuation of the exemption would permit further evaluation of RNAV approaches to the cross runways at National Airport.
013NM	British Aerospace	14 CFR 25.571(e)(e)	To allow type certification of the Model BAE ATP without showing that the airplane is capable of successfully completing a flight during which likely structural damage occurs as a result of propeller blade impact.
24441	Northern Pacific Transport, Inc.	14 CFR 91.31(a)	Reconsideration or amendment of Exemption No. 4050 to allow petitioner to operate four leased McDonnel Douglas DC-8A aircraft, S/N 44644, 44648, 44660, and 44675, at a 5 percent increased zero fuel and landing weight for the purpose of hauling fish of the Alaskan fishing industry, fuel, and private carriage of property. Petitioner seeks the removal of the geographic limitation of Exemption No. 466. *GRANTED, December 1, 1986.*
25096	American Trans Air	14 CFR 121.310 and 25.812(e)	To allow petitioner a 1-month extension from the compliance date of November 26 for meeting emergency exit lighting requirements. *DENIED, December 1, 1986.*
25124	Executive Air Charter, Inc.	14 CFR 121.310 and 25.812(e)	To allow petitioner a 4-day extension from the compliance date of November 26 for meeting emergency exit lighting requirements. *DENIED, December 1, 1986.*
25078	SkyWest Airlines, Inc.	14 CFR 135.337 and 135.339	To allow petitioner to use certain instructor pilots of Embraer Aircraft Corporation to train its initial cadre of pilots in the Embraer 120 aircraft without holding U.S. certificates and ratings and without meeting all of the applicable training requirements of Subpart H of Part 135. *GRANTED, December 1, 1986.*
25014	Shields Aviation	14 CFR 141.65	To allow petitioner's chief flight instructor to conduct final course check rides in lieu of the FAA district office's designated pilot examiners. *DENIED, November 26, 1986.*

PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought, disposition
25053	Crew Pilot Training	14 CFR 61.63(d)(2) and (3), 61.157(d)(1), and 121.407(a)(1)(ii).	To allow petitioner to operate a DC-9, FAA-approved flight training school by utilizing FAA flight simulators for a portion of the training and flight check without petitioner holding a Part 121 certificate. *GRANTED, November 26, 1986.*
22708	40-Mile Air, Inc.	14 CFR 135.261(b)(1) and (c)	To allow petitioner to conduct operations under the provisions of § 135.267 relating to pilot flight time limitations and rest requirements in scheduled operations, in lieu of the more stringent requirements of § 135.261(b) and (c). *DENIED, November 24, 1986.*
24839	Burke and Burke	14 CFR 45.29	To allow petitioner to operate a Hughes Model 500C rotorcraft that displays 6-inch high N-numbers in place of the 12-inch high N-numbers on the fuselage or tail rotor boom. *DENIED, November 12, 1986.*
21789	Air Transport Association of America	14 CFR 61.49	Extension of Exemption No. 3474 to allow petitioner's member airlines and similarly situated Part 121 certificate holders to allow their airman employees to retake a written or flight test without waiting 30 days provided that the Part 121 authorized instructor has given the applicant flight or ground instruction, as appropriate, and finds that applicant competent to pass the test. *GRANTED, November 14, 1986.*
25025	Continental Airlines, Inc.	14 CFR 121.371(a) and 121.378	To allow petitioner to contract with original equipment manufacturers and foreign repair stations which are certificated and appropriately rated under the French, Italian, West German, and United Kingdom civil aviation authorities for inspection, repair, and overhaul of selected aircraft parts to support its Airbus Industrie (Airbus) A-300 B4 aircraft program. *GRANTED, November 5, 1986.*
028CE	Beech Aircraft Corp	14 CFR § 23.2	A one-year temporary exemption from the effective date of Amendment 23-32 which states that all airplanes manufactured after December 12, 1985 must meet requirements of Section 23.785(g) relative to restraint systems on side-facing seats. *DENIED, December 9, 1986.*

[FR Doc. 86-29003 Filed 12-24-86; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Genessee County, NY

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for proposed a highway project in Genessee County, New York.

FOR FURTHER INFORMATION CONTACT: Roger H. Edwards, Director, Facilities Design Division, New York State Department of Transportation, State Campus, 1220 Washington Avenue, Albany, New York 12232, Telephone: (518) 457-6452.

or

Victor E. Taylor, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 9th Floor, Clinton Avenue and North Pearl Street, Albany, New York 12207, Telephone: (518) 472-3616.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration, in cooperation with the New York State Department of Transportation, is preparing an Environmental Impact Statement on a proposal to replace the existing bridge carrying Walnut Street over the Tonawanda Creek in the City of Batavia, Genessee County.

The alternatives being considered include replacement of the bridge on new alignment, replacement of the bridge on existing alignment, and taking no action.

The scoping process for this project has begun and includes coordination with interested public and private agencies, organizations and individuals to identify issues to be addressed during the course of the project. The draft EIS will be available for public and agency review and comment. No formal scoping meeting is planned at this time.

Agencies and individuals interested in submitting comments or questions should contact the NYSDOT or FHWA at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this progam)

Victor E. Taylor,

Division Administrator, Federal Highwoy Administration, Albany, New York.

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Research and Special Programs Administration

Pipeline Safety User Fees

This notice states the policies and practices that the Research and Special Programs Administration (RSPA) has adopted to implement the pipeline safety user fee provisions of the Consolidated Omnibus Reconciliation Act of 1985 (Reconciliation Act) (Pub. L. 99-272; April 7, 1986). The policies and practices are in effect for fiscal year 1987, which began October 1, 1986. They will also apply to ensuing fiscal years unless changed by further notice.

Background

Section 7005(a)(1) of the Reconciliation Act requires the Secretary of Transportation (whose responsibility in the matter is executed by RSPA) to establish "a schedule of fees based on the usage, in reasonable relationship to volume-miles, miles, revenues, or an appropriate combination thereof, of natural gas and hazardous liquid pipelines." The Secretary is to "take into consideration the allocation of departmental resources" in establishing such schedule. Procedures for the collection of fees must be established under section 7005(a)(2).

According to section 7005(a)(3) of the Reconciliation Act, the fees are to be assessed to persons operating:

(A) All pipeline facilities subject to the Hazardous Liquid Pipeline Safety Act of 1979 [HLPSA] (49 U.S.C. app. 2001 *et seq.*); and

(B) All pipeline transmission facilities and all liquefied natural gas [LNG] facilities subject to the jurisdiction of the Natural Gas Pipeline Safety Act of 1968 [NGPSA] (49 U.S.C. app. 1671 *et seq.*).

However, under section 7005(c) the use of the fees collected is restricted to "activities" authorized by these two safety statutes. Thus, the fee assessments are limited to persons who operate pipeline facilities that are subject to RSPAS's pipeline safety regulations. In category (A) above, these facilities include those interstate and intrastate pipelines carrying petroleum, petroleum products, or anhydrous ammonia covered by 49 CFR Part 195.

Category B includes interstate and intrastate natural gas transmission lines subject to 49 CFR Parts 191 and 192, and liquefied natural gas facilities to which 49 CFR Part 193 applies. Because the jurisdiction of the HLPSA is broader than the current scope of Part 195, if RSPA were to issue regulations under the HLPSA for liquid pipeline facilities not now covered by Part 195, the operators of these facilities would then become liable for user fees. Such facilities might include pipelines carrying liquids not now classified as hazardous under Part 195; pipelines carrying petroleum, petroleum products, or anhydrous ammonia by gravity or at a stress level of 20 percent or less of the specified minimum yield strength of the pipe; and terminal storage facilities associated with hazardous liquid pipelines.

On July 16, 1986, RSPA published a notice in the **Federal Register** (51 FR 25782) announcing its user fee policies and collection procedures for fiscal year 1986. Adopting an alternative permitted by the Reconciliation Act, RSPA established the fee schedule for pipelines as a pro rata share of total program costs based on the number of miles of pipeline (gas transmission or hazardous liquid) each operator had in service at the beginning of fiscal year 1986. The mileage of gas transmission lines was determined from calendar year 1984 annual reports filed in accordance with Part 191. Adjustments were permitted for any overcharge due to mileage discrepancies between calendar year 1984 and fiscal year 1986. The current mileage of hazardous liquid pipelines was determined by operator inquiry.

The Reconciliation Act sets a limit on fee assessments of 105 percent of fiscal year appropriations. However, for fiscal year 1986, user fees were based on 105 percent of projected total program costs, since these costs could be accurately determined at the time of assessment, which was late in the fiscal year. In accordance with the directive to consider the allocation of departmental resources, total program costs were divided 80 percent for gas and 20 percent for liquid, less the costs of State grants-in-aid, in accordance with fiscal year 1986 budget estimates.

Thus allowing for the 95 percent/5 percent authorized split of appropriated grant-in-aid funds between gas and liquid State programs and the 5 percent of gas program costs allocable to LNG activities, the fiscal year 1986 fee schedule for pipelines was as follows:

User fee per mile equals Gas (liquid) pipeline user fees divided by Total gas transmission (liquid) miles

Gas pipeline user fees equals (1.05)(gas program costs) minus Total LNG user fees

Liquid pipeline user fees equals (1.05)(liquid program costs)

Gas program costs equals (.8)(Total program cost minus total grants) plus (.95)(total grants)

Liquid program costs equals (.2)(total program costs minus total grants) plus (.05)(total grants)

To save disproportionate collection costs, operators with less than 10 miles of gas transmission lines or 30 miles of hazardous liquid pipelines were exempted from any fee assessment.

The user fee schedule for LNG facilities was established on the basis of storage capacity and number of LNG plants.

LNG facility storage capacity (bbl.)		Number of plants	Operator assessment
At least	But less than		
	10,000	22	$1,250
10,000	100,000	15	2,500
100,000	250,000	16	3,750
250,000	500,000	24	5,000
500,000		14	7,500

This schedule resulted in a reasonable distribution of total fees, which were determined approximately as follows:

Total LNG user fees equals (1.05) (.05) (Gas program costs)

Public Participation

The relatively short time between enactment of the Reconciliation Act (Apil 17, 1986) and the deadline for collection of fees (September 30, 1986) made it impracticable for RSPA to provide a suitable period for public comment before the policies and practices for fiscal year 1986 fee assessments were formulated and adopted as final. In its notice of fiscal year 1986 policies, RSPA did, however, invite interested persons to comment on them to help determine whether they should be continued, modified, or replaced for use in fiscal year 1987.

RSPA received written comments from 33 persons on its policies and practices for assessing user fees. Most of the comments came from pipeline companies in the form of a protest letter accompanying payment of the fee and objecting to any assessment of a user fee. The others, from pipeline companies, trade associations, and State agencies, were in response to the invitation to comment included in the notice.

Assessing Local Distribution Companies

About 40 percent of the commenters objected to assessment of fees against intrastate pipelines that are under the safety regulatory jurisdiction of a State agency. Of this group, some contended that Congress did not intend to impose pipeline user fees on local gas distribution companies. They based their arguments on the legislative history. In particular, an excerpt from House Report 99-300 was cited, wherein at page 497 the Energy and Commerce Committee (the Committee) states the following with reference to a Committee print which formed the basis for the pipeline user fees provision of the Reconciliation Act:

> In addition, under paragraph (a)(2), the Secretary may establish such procedures as are necessary for ease of administration and to prevent inefficient, duplicative, or counter-productive collection costs. The Committee expects that DOT will not ordinarily impose user fees on local distribution companies. Some of these companies are so small that the cost of collecting the fee may equal or even exceed the company's fair share of total program costs. Moreover, to the extent that transmission pipelines serving them lawfully pass on user fees to them in their rates, local gas distribution companies are in reality contributing to DOT's safety program costs.

These commenters focused attention on the Committee's expection that "DOT will not ordinarily impose user fees on local distribution companies." Of course, even when viewed out of context, "not ordinarily" does not mean never, leaving room for assessment in some cases. When viewed in its proper context though, it's clear that the Committee had something in mind other than wholesale exemption of local distribution companies. The Committee was concerned that the Secretary's collection procedures be designed to minimize the costs of collecting fees. This RSPA did by exempting from assessment operators with less than 10 miles of transmission lines. Had the Committee intended that all local distribution companies be exempt from paying fees, it certainly could have included in the bill specific language that would have exempted them, but it did not.

Furthermore, the Reconciliation Act, as reported out by conference and enacted, eliminated much of the discretion the Committee originally provided the Department in its bill in regard to imposition of fees. In the Act the scope of assessment was narrowed to operators of transmission facilities and LNG facilities. Based on a reasonable reading of section 7005(a)(3) of the Reconciliation Act, which clearly imposes fee liability on persons that operate all pipeline transmission facilities, RSPA does not agree that Congress intended to exclude local distribution companies from user fee assessments. Section 7005(a)(3) further supports this conclusion by extending liability for fees to operators of LNG facilities. Most of these facilities are operated by local distribution companies.

Another argument often raised by local distribution companies was that the fee assessments were unfair, since they would have to pay twice: once directly, and then indirectly when their gas suppliers, the interstate transmission companies, pass their assessments to them in the form of increased rates. Although it is not a foregone conclusion that all assessments to interstate transmission companies will simply be passed to local distribution companies and industrial customers, RSPA believes that this is a likely result. However, it is equally likely that any costs passed through to the local distribution companies will in turn be passed to their customers, the consumers of gas. This ability of local distribution operators to pass fee costs to consumers significantly lessens the alleged inequity of having to pay twice.

In considering this fairness issue, RSPA notes that Congress left the Department little discretion in making assessments, by declaring which facilities are subject to user fees. Furthermore, Congress was aware of the fairness issue. As reported on page 494 of House Report 99-300, the Committee recognized RSPA's concern about "whether it would be fair to assess fees against just the largest users." In addition, the Committee recognized the General Accounting Office view: "We believe that it is equitable for interstate pipeline operators and their customers to finance DOT's safety inspections, because the risks that these inspections reduce are entirely created by the pipeline operations." (It is important to understand that the customers of interstate pipeline operators that GAO thought it equitable to assess are to a very large extent local distribution companies). The Committee resolved the equity concern by concluding that "imposition of such fees would be an extremely small financial burden on pipeline operators, and customers."

Pipeline Transmission Facilities

A few local distribution companies also argued that the "transmission lines" in their systems are not the type of "pipeline transmission facilities" that Congress intended to subject to user fees. They said that their pipelines only meet the structural definition of "transmission line" for reporting purposes under Part 191 (i.e., operates at a hoop stress of 20 percent or more of specified minimum yield strength). Accordingly, they do not meet the functional aspects of the definition (i.e., transmit gas from production to storage or between storage fields, or for making wholesale sales). (The definition of "transmission line" is contained in the instructions for completing the Annual Report for transmission and Gathering Systems, Form RSPA 7100.2-1, which under 49 CFR 191.13 must be filed with RSPA by operators of intrastate distribution systems that contain transmission lines. The same definition appears in 49 CFR Part 192.) These commenters, however, did not explain how the structural versus functional distinction is significant under the Reconciliation Act and RSPA can discern no significance.

In the absence of a definition of "pipeline transmission facilities" in the Reconciliation Act or any discussion of the meaning of the term in the legislative history, RSPA applied the established regulatory definition of "transmission line." Applying the term in this way constitutes a reasonable interpretation of its meaning. It also facilitates the administration of users fees by enabling RSPA to use available mileage data for transmission lines. Considering that fees collected from operators of "pipeline transmission facilities" are to fund RSPA's activities under the NGPSA, it is fair to assume Congress meant the term to be applied consistent with the terminology of regulations issued under the NGPSA.

Jurisdiction Over Intrastate Pipelines

Some commenters who operate intrastate pipelines that are under the safety jurisdiction of a certified State agency argued that these pipelines are not legally subject to pipeline user fees because they are not subject to the NGPSA or the HLPSA. The notion that these pipelines are not under the jurisdiction of the NGPSA or the HLPSA comes from a provision in each statute which excludes them from DOT's authority "to prescribe safety standards and enforce compliance with such standards." (49 USC app. 1674 and 2004).

The purpose of this provision, however, is to allow certified State agencies, rather than DOT, to enforce the Federal safety standards against intrastate pipelines under State jurisdiction. It by no means removes these intrastate pipelines from DOT's general regulatory authority under each statute. This general regulatory authority includes the power to issue safety standards applicable to intrastate pipelines that are later adopted and enforced by certified State agencies, the power to issue and enforce hazardous facility orders against intrastate pipelines, the authority to collect information or require accident reports from operators of intrastate pipelines, and the authority to inspect intrastate pipelines to monitor the performance of certified State agencies in enforcing compliance with the Federal standards. Inasmuch as intrastate pipelines under the enforcement authority of a certified State agency still come under the NGPSA or HLPSA for these general regulatory purposes, and DOT conducts activities to carry out these purposes, the user fee assessments against these intrastate pipelines are legitimate under the Reconciliation Act.

Relating Fees to Grants-in-aid

Some intrastate operators and State agencies contended that DOT user fees for intrastate pipelines were unfair because they were not assessed in proportion to DOT's share of State enforcement costs as represented by the grant-in-aid payments to the State. These commenters were concerned that in States that pay more of their enforcement costs than other States, because they receive less grant-in-aid funds than other States, the fees DOT collects in excess of its grant-in-aid expenditures go to subsidize the enforcement programs of other States.

This alleged inequity arose because in fiscal year 1986 each pipeline operator was assessed a pro rata share, based on mileage, of DOT's total gas or liquid program costs, including total State grant-in-aid costs. Thus, in South Carolina, for example, which elects not to receive grant-in-aid funds, intrastate gas operators may have paid for some small portion of DOT's total gas program costs that were not actually incurred in South Carolina. This situation would have been minimized, of course, had South Carolina accepted the grant-in-aid funds that were available to it.

RSPA believes, however, that the Reconciliation Act does not allow the fee schedule to be established in relation to State-by-State grant-in-aid expenditures. The Act tightly controls RSPA's discretion in setting fees. Fees must be based on miles, volume-miles, or revenue, and in "consideration of the allocation of departmental resources." This last control on RSPA's discretion allows higher fees for facilities that demand a disproportionate share of DOT resources and allocation according to whether costs are due to gas or liquid

lines. However, it would greatly expand the intent of this provision to establish fees on the basis of grants to State agencies.

No doubt more grant money is allocated to some States than others, but State sharing of Federal program costs is inherent in the Federal system of government. Any attempt to introduce State based expenditures into the fee schedules would require complex formulations that would only serve parochial not Federal interests. Moreover, it would require mileage or other data on a State basis, which is not available except through further industry inquiries. In enacting user fees, Congress did not intend any formulation that would be unduly burdensome to administer. In view of these considerations and the controls on discretion, RSPA has not changed its assessment policy to allocate fees according to State grant-in-aid allocations.

Mileage as Fee Basis

About 30 percent of the commenters objected to pipeline mileage as the basis for assessing fees. There were two main arguments raised against using mileage as the fee basis: (1) Volume-miles is a more accurate indicator of the pipeline "usage" for which fees are assessed. (2) Mileage alone does not reflect DOT's enforcement expenditures which are focused more on pipelines of large capacity in populated areas, than on long, low pressure, small diameter lines in slightly populated areas.

RSPA recognizes there are good arguments in favor of using volume-miles rather than mileage as an assessment basis. However, in determining an appropriate assessment basis, RSPA favors pipeline mileage because it is simple to administer and serves as an indication of the allocation of resources. In RSPA's experience, long pipelines of small diameter require just as much if not more enforcement effort than shorter pipelines of large diameter. Furthermore, mileage was supported by the trade associations representing the industry that commented on the notice. Therefore, RSPA continues to believe that mileage is the best method for assessments, and will use mileage for the fiscal year 1987 fee assessments.

Administrative Procedure

A few commenters argued that the administrative procedure by which the user fee schedule was adopted was improper. These commenters objected to the lack of a comment period in advance of establishment of the fee schedule. RSPA regrets that because of the relatively short time between enactment of the Reconciliation Act (April 7, 1986) and the statutory deadline by which RSPA had to collect pipeline mileage data and assess and collect fees (September 30, 1986), it was impracticable to permit public participation in the development of the fee assessment and collection policies for fiscal year 1986. It was decided, however, to announce the fee assessment and collection policies in the **Federal Register** before formal assessment notices were mailed, and to request comments that would be considered for future fiscal year assessments. A comment period in advance of assessment was not required by the Reconciliation Act, and RSPA believes that publication of the July 16 **Federal Register** notice satisfied all legal obligations under the Administrative Procedure Act for publication of statements of agency policy and interpretation developed to implement the pipeline user fee provisions of the reconciliation Act.

Jointly Owned Pipelines

One of the commenters requested that jointly owned (or leased), or partnership pipelines, with undivided interests, be assessed only once. After payment of the fee, its cost would then be shared by agreement among the individual owners. RSPA did not deliberately assess a single pipeline more than once. But, this result could have occurred if the same pipeline was reported by each of the joint owners in annual reports submitted under Part 191 or in response to the mileage inquiries RSPA made last summer. Joint operators in this situation who believe they were overcharged for fiscal year 1986 may request an adjustment. To prevent any similar overcharges for fiscal year 1987, RSPA suggests that the operators involved notify RSPA as soon as possible which of them is to pay the fee. RSPA will then delete the overlapping mileage from its calculation of assessment per mile.

Method of payment

One commenter remarked that RSPA's policy of requiring certified checks or money orders within 30 days of assessment was too burdensome. The 30-day period was needed in 1986 to meet the Congressional intent that collections be made in the same fiscal year as costs incurred. Since this should not cause a problem in 1987, RSPA will allow operators at least 60 days after assessment before payment is due and interest charges begin to run. Also, upon further consideration, RSPA believes that payment by personal or corporate check is acceptable, and will be allowed in 1987 as an alternative to certified checks or money orders.

Hearing

Several operators requested an opportunity to meet with RSPA to discuss the arguments they made against the user fee policies. These requests have not been granted because the issues raised were not unusual, and adequate non-conflicting information germane to the issues was available from other sources without holding an individual or public hearing.

Fiscal year 1987 Assessments and Collection Procedures

In consideration of the foregoing, RSPA has adopted the 1986 fee schedule for use in fiscal year 1987 and later years, with the exception that the amounts actually assessed will be based on fiscal year appropriations instead of projected total program costs.

Mileage data for gas transmission lines will continue to be taken from the calendar year annual reports. For liquid pipelines, however, the mileage collected in the summer of 1986 will be used until updated mileage information becomes available through establishment of an annual report requirement, which will be proposed next year.

The LNG assessments will be the same, but may vary proportionately in future years as expenditures changes.

The procedures for collecting fees will not change in 1987 except with regard to the payment method, as noted above, and in making necessary adjustments. Adjustments for mileage discrepancies will be made by subtracting the amount of recognized overcharge from the amount due or by remitting any over-payment, instead of making a deduction from the subsequent fiscal year assessment. However, if at the end of a fiscal year the actual program costs are less than the fiscal year assessments based on appropriations, the difference will be applied as a credit to reduce the next year's assessments.

The assessments for fiscal year 1987 shoud be mailed in February 1987. Mailings in future years will depend on the timing of fiscal year appropriations, but should not be sooner than February of the fiscal year concerned.

Issued in Washington, DC on December 22, 1986.

Robert L. Paullin,

Director, Office of Pipeline Safety.

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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 614]

Commerce in Explosives; List of Explosive Materials

Pursuant to the provisions of section 841(d) of Title 18, United States Code, and 27 CFR 55.23, the Director, Bureau of Alcohol, Tobacco, and Firearms, must publish and revise at least annually in the Federal Register a list of explosives determined to be within the coverage of 18 U.S.C. Chapter 40, Importation, Manufacture, Distribution and Storage of Explosive Materials. This Chapter covers not only explosives, but also blasting agents and detonators, all of which are defined as explosive materials in section 841(c) of Title 18, United States Code.

Accordingly, the following is the 1987 List of Explosive Materials subject to regulation under 18 U.S.C. Chapter 40, which includes both the list of explosives (including detonators) required to be published in the Federal Register and blasting agents. The list is intended to also include any and all mixtures containing any of the materials in the list. Materials constituting blasting agents are marked by an asterisk. While the list is comprehensive, it is *not* all inclusive. The fact that an explosive material may not be on the list does not mean that it is not within the coverage of the law if it otherwise meets the statutory definitions in section 841 of Title 18, United States Code. Explosive materials are listed alphabetically by their common names followed by chemical names and synonyms in brackets. This revised list supersedes the List of Explosive Materials dated December 10, 1985 (50 FR 50578) and will be effective as of January 1, 1987.

List of Explosive Materials

A

Acetylides of heavy metals.
Aluminum containing polymeric propellant.
Aluminum ophorite explosive.
Amatex.
Amatol.
Ammonal.
Ammonium nitrate explosive mixtures (cap sensitive).
*Ammonium nitrate explosive mixtures (non cap sensitive).
Aromatic nitro-compound explosive mixtures.
Ammonium perchlorate having particle size less than 15 microns.
Ammonium perchlorate composite propellant.
Ammonium picrate [picrate of ammonia, Explosive D].
Ammonium salt lattice with isomorphously substituted inorganic salts.
*ANFO [ammonium nitrate-fuel oil].

B

Baratol.
Baronol.
BEAF [1, 2-bis (2, 2-difluoro-2-nitroacetoxyethane)].
Black powder.
Black powder based explosive mixtures.
*Blasting agents, nitro-carbo-nitrates, including non cap sensitive slurry and water-gel explosives.
Blasting caps.
Blasting gelatin.
Blasting powder.
Blasting [bis (trinitroethyl) carbonate].
BTNEN [bis (trinitroethyl) nitramine].
BTTN [1,2,4 butanetriol trinitrate].
Butyl tetryl.

C

Calcium nitrate explosive mixture.
Cellulose hexanitrate explosive mixture.
Chlorate explosive mixtures.
Composition A and variations.
Composition B and variations.
Composition C and variations.
Copper acetylide.
Cyanuric triazide.
Cyclotrimethylenetrinitramine [RDX].
Cyclotetramethylenetetranitramine [HMX].
Cyclotol.

D

DATB [diaminotrinitrobenzene].
DDNP [diazodinitrophenol].
DEGDN [diethyleneglycol dinitrate].
Detonating cord.
Detonators.
Dimethylol dimethyl methane dinitrate composition.
Dinitroethyleneurea.
Dinitroglycerine [glycerol dinitrate].
Dinitrophenol.
Dinitrophenolates.
Dinitrophenyl hydrazine.
Dinitroresorcinol.
Dinitrotoluene-sodium nitrate explosive mixtures.
DIPAM.
Dipicryl sulfone.
Dipicrylamine.
DNDP [dinitropentano nitrile].
DNPA [2, 2-dinitropropyl acrylate].
Dynamite.

E

EDDN [ethylene diamine dinitrate]
EDNA.
Ednatol.
EDNP [ethyl 4, 4-dinitropentanoate].
Erythritol tetranitrate explosives.
Esters of nitro-substituted alcohols.
EGDN [ethylene glycol dinitrate].
Ethyl-tetryl.
Explosive conitrates.
Explosive gelatins.
Explosive mixtures containing oxygen releasing inorganic salts and hydrocarbons.
Explosive mixtures containing oxygen releasing inorganic salts and nitro bodies.
Explosive mixtures containing oxygen releasing inorganic salts and water insoluble fuels.
Explosive mixtures containing oxygen releasing inorganic salts and water soluble fuels.
Explosive mixtures containing sensitized nitromethane.
Explosive mixtures containing tetranitromethane (nitro form).
Explosive nitro compounds of aromatic hydrocarbons.
Explosive organic nitrate mixtures.
Explosive liquids.
Explosive powders.

F

Fulminate of mercury.
Fulminate of silver.
Fulminating gold.
Fulminating mercury.
Fulminating platinum.
Fulminating silver.

G

Gelatinized nitrocellulose.
Gem-dinitro aliphatic explosive mixtures.
Guanyl nitrosamino guanyl tetrazene.
Guanyl nitrosamino guanylidene hydrazine.
Guncotton.

H

Heavy metal azides.
Hexanite.
Hexanitrodiphenylamine.
Hexanitrostilbene.
Hexogene or octogene and a nitrated N-methylaniline.
Hexolites.
HMX [cyclo-1,3,5,7-tetramethylene-2,4,6,8-tetranitramine; Octogen].
Hydrazinium nitrate/hydrazine/aluminum explosive system.
Hydrazoic acid.

I

Igniter cord.
Igniters.
Initiating tube systems.

K

KDNBF [potassium dinitrobenzo-furoxane].

L

Lead azide.
Lead mannite.
Lead mononitroresorcinate.
Lead picrate.
Lead salts, explosive.
Lead styphnate [styphnate of lead, lead trinitroresorcinate].
Liquid nitrated polyol and trimethylolethane.
Liquid oxygen explosives.

M

Magnesium ophorite explosives.
Mannitol hexanitrate.
MDNP [methyl 4,4-dinitropentanoate].
MEAN [monoethanolamine nitrate].
Mercuric fulminate.
Mercury oxalate.
Mercury tartrate.
Metriol trinitrate.
Minol-2 [40% TNT, 40% ammonium nitrate, 20% aluminum].
MMAN [monomethylamine nitrate]; methylamine nitrate.

Mononitrotoluene-nitroglycerin mixture.
Monopropellants.

N

NIBTN [nitroisobutametriol trinitrate].
Nitrate sensitized with gelled nitroparaffin.
Nitrated carbohydrate explosive.
Nitrated glucoside explosive.
Nitrated polyhydric alcohol explosives.
Nitrates of soda explosive mixtures.
Nitric acid and a nitro aromatic compound explosive.
Nitric acid and carboxylic fuel explosive.
Nitric acid explosive mixtures.
Nitro aromatic explosive mixtures.
Nitro compounds of furane explosive mixtures.
Nitrocellulose explosive.
Nitroderivative of urea explosive mixture.
Nitrogelatin explosive.
Nitrogen trichloride.
Nitrogen tri-iodide.
Nitroglycerine [NG, RNG, nitro, glyceryl trinitrate, trinitroglycerine].
Nitroglycide.
Nitroglycol [ethylene glycol dinitrate, EGDN]
Nitroguanidine explosives.
Nitroparaffins Explosive Grade and ammonium nitrate mixtures.
Nitronium perchlorate propellant mixtures.
Nitrostarch.
Nitro-substituted carboxylic acids.
Nitrourea.

O

Octogen [HMX].
Octol [75 percent HMX, 25 percent TNT].
Organic amine nitrates.
Organic nitramines.

P

PBX [RDX and plasticizer].
Pellet powder.
Penthrinite composition.
Pentolite.
PYX [2,6-bis(picrylamino)-3,5-dinitropyridine
Perchlorate explosive mixtures.
Peroxide based explosive mixtures.
PETN [nitropentaerythrite, pentaerythrite tetranitrate, pentaerythritol tetranitrate].
Picramic acid and its salts.
Picramide.
Picrate of potassium explosive mixtures.
Picratol.
Picric acid (explosive grade).
Picryl chloride.
Picryl fluoride.
PLX [95% nitromethane, 5% ethylenediamine].
Polynitro aliphatic compounds.
Polyolpolynitrate-nitrocellulose explosive gels.
Potassium chlorate and lead sulfocyanate explosive.
Potassium nitrate explosive mixtures.
Potassium nitroaminotetrazole.

R

RDX [cyclonite, hexogen, T4, cyclo-1,3,5,-trimethylene-2,4,6,-trinitramine; hexahydro-1,3,5-trinitro-S-triazine].

S

Safety fuse.
Salts of organic amino sulfonic acid explosive mixture.
Silver acetylide.
Silver azide.
Silver fulminate.
Silver oxalate explosive mixtures.
Silver styphnate.
Silver tartrate explosive mixtures.
Silver tetrazene.
Slurried explosive mixtures of water, inorganic oxidizing salt, gelling agent, fuel and sensitizer (cap sensitive).
Smokeless powder.
Sodatol.
Sodium amatol.
Sodium azide.
Sodium dinitro-ortho-cresolate.
Sodium nitrate-potassium nitrate explosive mixture.
Sodium picramate.
Squibs.
Styphnic acid.

T

Tacot [tetranitro-2,3,5,6-dibenzo-1,3a,4,6a-tetrazapentalene].
TATB [triaminotrinitrobenzene].
TEGDN [triethylene glycol dinitrate].
Tetrazene [tetracene, tetrazine, 1(5-tetrazolyl)-4-guanyl tetrazene hydrate].
Tetranitrocarbazole.
Tetryl [2,4,6 tetranitro-N-methylaniline].
Tetrytol.
Thickened inorganic oxidizer salt slurried explosive mixture.
TMETN (trimethylolethane trinitrate).
TNEF [trinitroethyl formal].
TNEOC [trinitroethylorthocarbonate].
TNEOF [trinitroethyl orthoformate].
TNT [trinitrotoluene, trotyl, trilite, triton].
Torpex.
Tridite.
Trimethylol ethyl methane trinitrate composition.
Trimethylolthane trinitrate-nitrocellulose.
Trimonite.
Trinitroanisole.
Trinitrobenzene.
Trinitrobenzoic acid.
Trinitrocresol.
Trinitro-meta-cresol.
Trinitronaphthalene.
Trinitrophenetol.
Trinitrophloroglucinol.
Trinitroresorcinol.
Tritonal.

U

Urea nitrate.

W

Water bearing explosives having salts of oxidizing acids and nitrogen bases, sulfates, or sulfamates (cap sensitive).
Water-in-oil emulsion explosive compositions.
Xanthamonas hydrophilic colloid explosive mixture.

FOR FURTHER INFORMATION CONTACT: Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226 (202–566–7591).

Stephen E. Higgins,
Director.
December 18, 1986.
[FR Doc. 86–29056 Filed 12–24–86; 8:45 am]
BILLING CODE 4810–31–M

VETERANS ADMINISTRATION

Advisory Committee on Cemeteries and Memorials; Meeting

The Veterans Administration gives notice that a meeting of the Administrator of Veterans Affairs' Advisory Committee on Cemeteries and Memorials, authorized by 38 U.S.C. 1001, will be held at the Central Office of the Veterans Administration, 810 Vermont Avenue, NW., Washington, 20420, on February 13, 1987, in Room 1010.

The session will begin at 9:00 a.m. to conduct routine business. The meeting will be open to the public up to the seating capacity which is about twenty persons. Those wishing to attend should contact Mrs. Ann Stone in the Office of the Chief Memorial Affairs Director (phone 202–223–2396) not later than 12 noon, EST January 23, 1987.

Any interested person may attend, appear before, or file a statement with the Committee. Individuals wishing to appear before the Committee should indicate this in a letter to the Chief Memorial Affairs Director (40) at 810 Vermont Avenue, NW., Washington, DC 20420. In any such letters, the writers must fully identify themselves and state the organization or association or person they represent. Also, to the extent practicable, letters should indicate the subject matter they want to discuss. Oral presentations should be limited to 10 minutes in duration. Those wishing to file written statements to be submitted to the Committee must also mail, or otherwise deliver, them to the Chief Memorial Affairs Director. Letters and written statements as discussed above must be mailed or delivered in time to reach the Chief Memorial Affairs Director by 12 noon EST January 23, 1987. Oral statements will be heard only between 9 and 10 a.m.

Dated: December 9, 1986.
By direction of the Administrator.

Rosa Maria Fontanez,
Committee Management Officer.
[FR Doc. 86–29030 Filed 12–24–86; 8:45 am]
BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 248
Monday, December 29, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION
TIME AND DATE: 11:00 a.m., January 2, 1987.
PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Market Surveillance Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.
Jean A. Webb,
Secretary of the Commission.
[FR Doc. 86–29102 Filed 12–23–86; 11:06 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION
TIME AND DATE: 10:00 a.m., January 6, 1987.
PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.
STATUS: Open.
MATTERS TO BE CONSIDERED:
Application of the Chicago Mercantile Exchange for designation as a contract market in Feeder Cattle Options
Termination of the pilot status for agricultural options and options on physicals
Addendum to the second Quarter Goals—Cattle Survey
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.
Jean A. Webb,
Secretary of the Commission.
[FR Doc. 86–29103 Filed 12–23–86; 11:07 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION
TIME AND DATE: 10:00 a.m., January 13, 1987.
PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.
STATUS: Open.
MATTERS TO BE CONSIDERED: Briefing by the National Futures Association.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.
Jean A. Webb,
Secretary of the Commission.
[FR Doc. 86–29104 Filed 12–23–86; 11:08 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION
TIME AND DATE: 10:30 a.m., January 13, 1987.
PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Rule enforcement review.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.
Jean A. Webb,
Secretary of the Commission.
[FR Doc. 86–29105 Filed 12–23–86; 11:09 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION
TIME AND DATE: 11:00 a.m., January 13, 1987.
PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Enforcement Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.
Jean A. Webb,
Secretary of the Commission.
[FR Doc. 86–29106 Filed 12–23–86; 11:10 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION
TIME AND DATE: 11:00 a.m., January 16, 1987.
PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Market Surveillance Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.
Jean A. Webb,
Secretary of the Commission.
[FR Doc. 86–29107 Filed 12–23–86; 11:11 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION
TIME AND DATE: 10:00 a.m., January 21, 1987.
PLACE: 2033 K Street, NW., Washington, DC, 5th Floor Hearing Room.
STATUS: Open.
MATTERS TO BE CONSIDERED:
Application of the New York Futures Exchange for designation as a futures contract market in the Russell 1000, 2000, 3000 Indices
Application of the Chicago Mercantile Exchange for designation as a contract market in Random Length Lumber options
Proposed amendments to Part 9—Rules relating to the review of Exchange disciplinary or other adverse action
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.
Jean A. Webb,
Secretary of the Commission.
[FR Doc. 86–29108 Filed 12–23–86; 11:12 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION
TIME AND DATE: 11:00 a.m., January 21, 1987.
PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Rule enforcement review.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.
Jean A. Webb,
Secretary of the Commission.
[FR Doc. 86–29109 Filed 12–23–86; 11:13]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION
TIME AND DATE: 11:30 a.m., January 21, 1987.
PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Enforcement Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.
Jean A. Webb,
Secretary of the Commission.
[FR Doc. 86–29110 Filed 12–23–86; 11:14 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION
TIME AND DATE: 11:00 a.m., January 23, 1987.
PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86–29111 Filed 12–23–86; 11:15 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., January 30, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86–29112 Filed 12–23–86; 8:45 am]

BILLING CODE 6351–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:40 p.m. on Thursday, December 18, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to:

(A) adopt a resolution: (1) Making funds available for the payment of insured deposits made in First Bank & Trust Co., Booker, Texas, which was closed by the Acting Banking Commissioner for the State of Texas on Thursday, December 18, 1986; (2) accepting the bid of The First National Bank of Perryton, Perryton, Texas, for the transfer of the insured and fullyt secured or preferred deposits of the closed bank; and (3) designating The First National Bank of Perryton, Perryton, Texas, as the agent for the Corporation for the payment of insured and fully secured or preferred deposits of the closed bank;

(B)(1) accept the highest acceptable bid which may be submitted in accordance with the "Instructions for Bidding" for the transfer of the insured deposits made in Lago Vista National Bank, Lago Vista, Texas, which was closed by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, on Thursday, December 18, 1986, or (2) in the event no acceptable bid for an insured deposit transfer transaction is submitted, make funds available for the payment of the insured deposits of the closed bank; and

(C)(1) accept the highest acceptable bid which may be submitted in accordance with the "Instructions for Bidding" for the purchase of assets of and the assumption of the liability to pay deposits made in Landmark National Bank, Denver, Colorado, which was scheduled to be closed later in the day by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, or (2) in the event no acceptable bid for a purchase and assumption transaction is submitted, accept the highest acceptable bid for an insured deposit transfer transaction which may be submitted, or (3) in the event no acceptable bid for either type of transaction is submitted, make funds available for the payment of the insured deposits of the closed bank.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: December 22, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86–29141 Filed 12–23–86; 12:04 pm]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:07 a.m. on Friday, December 19, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Accept the highest acceptable bid which may be submitted in accordance with the "Instructions for Bidding" for a purchase an assumption transaction, or (2) in the event no acceptable bid for a purchase and assumption transaction is submitted, accept the highest acceptable bid for an insured deposit transfer transaction which may be submitted, or (3) in the event no acceptable bid for either type transaction is submitted, make funds available for the payment of the insured deposits of the closed bank, with respect to each of the following: (a) Farmers State Bank, Lueders, Texas, an insured State nonmember bank scheduled for closing later in the day by the Acting Banking Commissioner for the State of Texas, and (b) Lakeland State Bank, Pequot Lakes, Minnesota, an insured State nonmember bank scheduled for closing later in the day by the Commissioner of Commerce for the State of Minnesota.

At that same meeting, the Board of Directors also considered a personal matter.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(2), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: December 22, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86–29142 Filed 12–23–86; 12:04 pm]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, January 5, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed purchase of check-sorter equipment within the Federal Reserve System.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forwerd from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m., two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 23, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–29150 Filed 12–23–86; 12:36 pm]

BILLING CODE 6210–01–M

NATIONAL LABOR RELATIONS BOARD

Notice of Meeting

TIME AND DATE: 11:30 a.m., Thursday, December 18, 1986.

PLACE: Board Conference Room, Sixth Floor 1717 Pennsylvania Avenue, NW.

STATUS: Part of this meeting will be closed to the public. The rest of the meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Portion Closed to the Public

Selection of Officer-in-Charge of Subregion 36

Portion Open to Public

Procedures for selection of Regional Directors and Officers-in-Charge

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, Washington, D.C. 20570, Telephone: (202) 254–9430.

Dated, Washington, DC 18 December 1986.

By direction of the Board.

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 86–29171 Filed 12–23–86; 3:23 pm]

BILLING CODE 7545–01–M

POSTAL SERVICE BOARD OF GOVERNORS

Notice of Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. section 552b), hereby gives notice that it intends to hold meetings at 1:00 p.m. on Monday, January 5, 1987, in Washington, DC, and at 8:30 a.m. on Tuesday, January 6, 1987, in the Benjamin Franklin Room, U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC. As indicated in the following paragraph, the January 5 meeting is closed to public observation. The January 6 meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

At its meeting on December 1, 1986, the Board voted in accordance with the provisions of the Government in the Sunshine Act to close to public observation its meeting scheduled for January 5, 1987, to consider: (1) A new Deputy Postmaster General and (2) the Postal Rate Commission's Recommended Decision on Destination-BMC Parcel Post. (See 51 FR 44711, December 11, 1986.)

Agenda

Monday Session

January 5, 1987—1:00 p.m. (Closed)

1. Consideration of a new Deputy Postmaster General.
2. Consideratin of Postal Rate Commission's Recommended Decision on Destination-BMC Parcel Post.

Tuesday Session

January 6, 1987—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, December 1–2, 1986.
2. Remarks of the Postmaster General.
3. Selection of Chairman and Vice Chairman.
4. Appointment of Audit Committee Members by Chairman.
5. Annual Report on Open Meeting Compliance.
6. Briefing on Procurement Study.
7. Annual Report of the Postmaster General.
8. Capital Investments:
   a. Mid-Hudson, New York, GMF.
   b. Computerized Forwarding System II.
   c. Integrated Logistics Support System.
9. Tentative agenda for February 2–3, 1987, meeting in Washington, DC.

David F. Harris,

Secretary.

Paul J. Kemp,

Alternate Liaison Officer for the U.S. Postal Service.

[FR Doc. 86–29131 Filed 12–23–86; 8:45 am]

BILLING CODE 7710–12–M

Corrections

Federal Register
Vol. 51, No. 248
Monday, December 29, 1986

This section of the FEDERAL REGISTER contains editorial corrections of previously published Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

Carnegie-Mellon University; Decision on Application for Duty-Free Entry of Scientific Instrument; Carnegie-Mellon University

Correction

In notice document 86-28415 appearing on page 45368 in the issue of Thursday, December 18, 1986, make the following correction:

In the second column, following the first paragraph, the docket number should read "86-279".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-3130-5]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Extension of Comment Period

Correction

In proposed rule document 86-28493 beginning on page 45485 in the issue of Friday, December 19, 1986, make the following correction:

On page 45486, in the second column, in the last paragraph, in the tenth line, "not" should read "now".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-100032; FRL-3129-1]

Arthur D. Little, Inc.; Transfer of Data

Correction

In notice document 86-28246 beginning on page 45171 in the issue of Wednesday, December 17, 1986, make the following correction:

On page 45172, in the first column, in the second line, "dicortophos" should read "dicrotophos".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-060-07-4212-14]

Realty Action; Direct Sale of Public Lands in Campbell County, WY

Correction

In notice document 86-27802 appearing on page 44690 in the issue of Thursday, December 11, 1986, make the following correction:

On page 44690, under the table "Parcels", in column two, the fifth line should read "Section 27: Lot 1".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-060-07-4212-14]

Realty Action; Modified Competitive Sale of Public Lands in Johnson, Campbell, and Crook Counties, WY

Correction

In notice document 86-27801 beginning on page 44690 in the issue of Thursday, December 11, 1986, make the following correction:

On page 44690, under the table "Parcels", in the second column, the sixth line should read "Section 1: NE¼SW¼".

BILLING CODE 1505-01-D

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Note: The listing of public laws enacted during the second session of the 99th Congress has been completed.

Last listing: November 20, 1986.

The listing will be resumed when bills are enacted into public law during the first session of the 100th Congress which convenes on January 6, 1987.

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[2] No amendments to this volume were promulgated during the period July 1, 1984 to June 30, 1986. The CFR volume issued as of July 1, 1984, should be retained.

[3] No amendments to this volume were promulgated during the period July 1, 1985 to June 30, 1986. The CFR volume issued as of July 1, 1985 should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

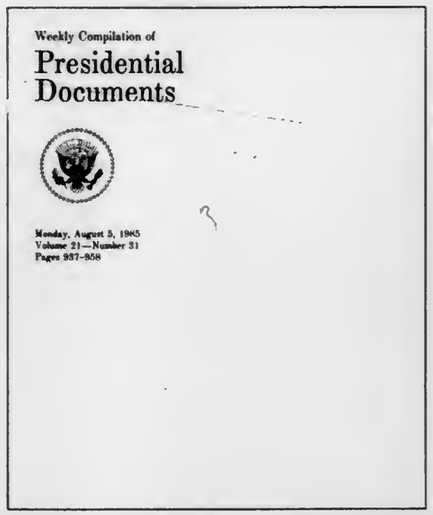
[5] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

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2. The relationship between the Federal Register and Code of Federal Regulations.
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4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: January 29; at 9 am.

WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.

RESERVATIONS: Mildred Isler 202-523-3517

PORTLAND, OR

WHEN: February 17; at 9 am.

WHERE: Bonneville Power Administration Auditorium, 1002 N.E. Holladay Street, Portland, OR.

RESERVATIONS: Call the Portland Federal Information Center on the following local numbers:
Portland 503-221-2222
Seattle 206-442-0570
Tacoma 206-383-5230

LOS ANGELES, CA

WHEN: February 18; at 1:30 pm.

WHERE: Room 8544, Federal Building, 300 N. Los Angeles Street, Los Angeles, CA.

RESERVATIONS: Call the Los Angeles Federal Information Center, 213-894-3800

SAN DIEGO, CA

WHEN: February 20; at 9 am.

WHERE: Room 2S31, Federal Building, 880 Front Street, San Diego, CA.

RESERVATIONS: Call the San Diego Federal Information Center, 619-293-6030

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Parts 302 and 305

Recommendations of the Administrative Conference Regarding Administrative Practice and Procedure

AGENCY: Administrative Conference of the United States.

ACTION: Recommendations and Bylaw Amendment.

SUMMARY: The Administrative Conference of the United States, at its Thirty-third Plenary Session, adopted five recommendations.

Recommendation 86-4, The Split-Enforcement Model for Agency Adjudication, calls to Congress' attention certain problems which have arisen when rulemaking and adjudication responsibilities are assigned to different agencies under the same regulatory statute, and suggests how these problems may be avoided in future legislation. Recommendation 86-5, Medicare Appeals, proposes improvements in the Medicare appeals process. Recommendation 86-6, Petitions for Rulemaking, suggests how agencies may improve handling of petitions for the issuance of rules. Recommendation 86-7, Case Management as a Tool for Improving Agency Adjudication, calls on the agencies to adopt improved management processes for the prompt and efficient handling of adjudicative proceedings. Recommendation 86-8, Acquiring the Services of "Neutrals" for Alternative Means of Dispute Resolution, seeks to help the agencies broaden the supply of qualified mediators and other neutrals who provide services in connection with the use of alternative means of dispute resolution.

The bylaw amendment provides for staggered terms for Conference members appointed pursuant to 5 U.S.C. 573(b)(6).

Recommendations of the Administrative Conference are published in full text in the Federal Register upon adoption. Complete lists of recommendations and statements, together with the texts of those deemed to be of continuing general interest, are published in the Code of Federal Regulations (1 CFR Parts 305 and 310).

DATES: These recommendations were adopted December 4-5, 1986; and issued December 19, 1986.

FOR FURTHER INFORMATION CONTACT: Richard K. Berg, General Counsel (202-254-7065).

SUPPLEMENTARY INFORMATION: The Administrative Conference of the United States was established by the Administrative Conference Act, 5 U.S.C. 571-576. The Conference studies the efficiency, adequacy and fairness of the administrative procedures used by federal agencies in carrying out administrative programs, and makes recommendations for improvements to the agencies, collectively or individually, and to the President, Congress, and the Judicial Conference of the United States (5 U.S.C. 574(1)).

At its Thirty-third Plenary Session, held December 4-5, 1986, the Assembly of the Administrative Conference of the United States adopted five recommendations.

Recommendation 86-4 is addressed to the statutory enforcement model in which rulemaking and adjudication responsibilities are assigned to separate agencies. A Conference study revealed that where enforcement responsibilities are split between two agencies, conflicts are likely to arise unless Congress specifies clearly the respective responsibilities of the agencies. The recommendation warns of this problem and suggests how these conflicts may be avoided. In particular it urges that Congress indicate to which agency the courts should look for authoritative expressions of law or policy.

Recommendation 86-5 suggests improvements in the Medicare appeals process. The Conference recommends, among other things, publication of standards used in making coverage and payment determinations, and allowing public comment on important interpretations of Medicare benefits and on decisions pertaining to the coverage of new technologies. The Conference also recommends improved notice to beneficiaries, and more timely review of hospital appeals. Finally, the Conference makes a number of specific suggestions for further research and study in this area.

Recommendation 86-6 advises agencies on how to improve their handling of petitions for the issuance, amendment, or repeal of rules. More specifically, agencies are advised to adopt procedural rules containing specified basic procedures for the processing of petitions for rulemaking. In addition, agencies are urged to take other steps, when warranted by the circumstances, to facilitate the response to petitions.

Recommendation 86-7 sets forth management processes to move cases along quickly within the bounds of fairness. It calls on administrative law judges, presiding officers, and all others who adjudicate or oversee proceedings to take steps to define key issues early, reduce parties' opportunity for procedural maneuvering, and decide cases more expeditiously. Agencies are encouraged, among other things, to use casehandling: flexible, step-by-step time goals to move cases promptly, management systems that pinpoint and deal with problem cases, and a variety of other methods to limit issues in contention and resolve disputes promptly.

Recommendation 86-8 seeks to help agencies broaden the supply of qualified mediators and other neutrals, inside and outside the government, to provide services for federal agencies' use of alternative means of dispute resolution. Following up on earlier Conference recommendations calling for agencies to employ these "ADR" methods in a broad range of controversies, the recommendation advises agencies on specific steps; addresses the qualifications that agencies should and should not require; encourages agencies to take advantage of opportunities to train and employ federal personnel as neutrals in resolving disputes; and recommends establishment of rosters of potential neutrals from which agencies could draw. It also addresses issues involved in agencies' procurement of the services of private parties to serve as neutrals in mediations, negotiated rulemakings, minitrials and arbitrations.

The transcript of the Plenary Session will be available for public inspection at the Conference's offices at Suite 500, 2120 L Street, N.W., Washington, D.C.

List of Subjects

1 CFR Part 302

Administrative practice and procedure.

1 CFR Part 305

Adjudication, Administrative practice and procedure, Alternative dispute resolution, Medicare, Rulemaking.

PART 302—BYLAWS OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1. The authority citation for Part 302 continues to read as follows:

Authority: 5 U.S.C. 552, 571–576.

2. Paragraph (b) of 1 CFR 302.2 is revised to read as follows:

§ 302.2 Membership.

* * * * *

(b) Terms of Non-Government Members. Non-Government members are appointed by the Chairman with the approval of the Council. One-half of the non-Government memberships shall be filled by appointments made on or after July 1 of each year, and each term will expire on June 30 of the second year thereafter. To avoid shortening the term of any non-Government member in service as of the effective date of this paragraph (b), the Chairman shall, by random selection, designate one-half of the non-Government members to serve terms terminating on June 30, 1988, and the other half to serve terms terminating on June 30, 1989. No non-Government members, other than senior fellows, shall at any time be in continuous service beyond four full terms.

* * * * *

PART 305—RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

2. The authority citation for Part 305 continues to read as follows:

Authority: 5 U.S.C. 571–576.

3. The table of contents to Part 305 of Title 1 CFR is amended to add the following new sections:

Sec.
305.86–4 The Split-Enforcement Model for Agency Adjudication (Recommendation No. 86–4).
305.86–5 Medicare Appeals (Recommendation No. 86–5).
305.86–6 Petitions for Rulemaking (Recommendation No. 86–6).
305.86–7 Case Management as a Tool for Improving Agency Adjudication (Recommendation No. 86–7).
305.86–8 Acquiring the Services of "Neutrals" for Alternative Means of Dispute Resolution (Recommendation No. 86–8).

4. Section 305.86–4 is added to Part 305 as follows:

§ 305.86–4 The Split-Enforcement Model for Agency Adjudication (Recommendation No. 86–4).

Separation of functions in administrative adjudication has usually been achieved through internal barriers within the agency which separate and insulate those employees who judge from those who investigate and prosecute. The chains of command, however, come together at the top in the person of the head or heads of the agency, who, through subordinates, are responsible for all three functions. Internal separation of functions is sanctioned and contemplated by the Administrative Procedure Act. When combined with the protections accorded to administrative law judges who preside over adjudicatory hearings, it appears, on the whole, to have worked satisfactorily in providing fair and impartial factfinding, while permitting the agency to speak with a single voice on matters of law and policy. Yet the experience with internal separation of functions has never entirely silenced the critics who argue that it is impossible to achieve evenhanded justice when enforcement and adjudicative functions are lodged in the same agency.

Congress has, therefore, on a number of occasions sought to carry separation of functions a step further. In the Occupational Safety and Health Act of 1970, an agency in the Department of Labor, the Occupational Safety and Health Administration (OSHA), was assigned the responsibility for promulgating industrial health and safety standards and for enforcing these standards through inspections and the filing of complaints against employers. The responsibility for adjudicating such complaints, however, was assigned to a wholly independent three-member agency, the Occupational Safety and Health Review Commission (OSHRC), which employs administrative law judges to hear enforcement cases brought by OSHA and to issue initial decisions subject to commission review. A similar division of responsibilities was created in the area of mine safety and health in the Federal Mine Safety and Health Amendments Act of 1977. This statute assigned rulemaking and enforcement to the Mine Safety and Health Administration in the Department of Labor and adjudication to the independent Federal Mine Safety and Health Review Commission (FMSHRC).[1]

[1] The system for enforcing certain provisions of the Federal Aviation Act also conforms generally to this model but was not part of the study. *See* 49 App. U.S.C. § 1903(a)(9).

An Administrative Conference study of the experience with the "split-enforcement model" used in the occupational safety and mine safety legislation was unable to conclude whether this model achieves greater fairness in adjudication than does the traditional structural model. Fairness is an important but an unquantifiable and subjective value. Therefore, the Conference takes no position on whether the split-enforcement model is preferable to a structure in which responsibilities for rulemaking, enforcement and adjudication are combined within a single agency. Our study did reveal, however, that because Congress, in enacting the Occupational Safety and Health Act, did not specify clearly the respective responsibilities of OSHA and OSHRC in resolving questions of law and policy, unnecessary conflicts have arisen between the agencies and there has been confusion expressed by reviewing courts over which agency's views were entitled to the greater deference. For a variety of reasons these conflicts and confusion have been largely avoided in the later enacted mine safety legislation.

Recommendation

1. Where Congress establishes an enforcement scheme in which rulemaking and prosecution are assigned to one agency and adjudication to another agency, it should make clear in which agency it intends to place programmatic responsibility and direct the courts to look to that agency for authoritative expressions of law or policy. Congress should also attempt to foresee other areas of potential conflict, such as control over litigation and settlements, and should so far as possible specify the respective responsibilities of each agency and the procedures for resolving disagreements.

2. Generally speaking, Congress should provide that in adjudicatory challenges to standards promulgated pursuant to agency statutory authority, the adjudicatory agency must accept the rulemaking agency's interpretation of the standard unless it can be shown that the rulemaking agency's interpretation is arbitrary, capricious, or otherwise not in accordance with the law. So far as is practical, the rulemaking agency should provide notice to the affected public concerning the administrative interpretation of its rules and regulations, the policies that they represent, and their intended implementation in enforcement.

3. Where uncertainties exist with regard to the responsibilities of agencies already implementing split-enforcement schemes, Congress should act to resolve those uncertainties consistent with the foregoing, if the agencies are unable to do so.

5. Section 305.86–5 is added to Part 305 as follows:

§ 305.86–5 Medicare Appeals (Recommendation No. 86–5).

The Medicare program, since 1965, provides health insurance for nearly all elderly and most disabled Americans. The program relies on hospitals, nursing homes and other health care institutions (under "Part A" of the program) and physicians and suppliers (under "Part B") to provide benefits to its beneficiaries.

This program, serving 30 million persons, has been administered since 1977 by the Health Care Financing Administration (HCFA), within the Department of Health and Human Services (HHS). Congress purposefully created a decentralized system, with implementation by localized carriers and intermediaries, primarily insurance companies. HCFA contracts with these organizations to administer the millions of claims made by beneficiaries each year and the resulting payments to providers. For Part A these organizations are known as "fiscal intermediaries" and for Part B they are referred to as "carriers." Additionally, statutorily-mandated peer review organizations (PROs), made up of physician controlled organizations under contract with HCFA, have been given new responsibility to decide many disputes raised by beneficiaries and hospitals under Part A. To guide its contractors, HCFA issues health insurance manuals containing detailed instructions, though they normally are not published through notice-and-comment rulemaking.

HCFA also issues "national coverage decisions" on whether new medical technologies and procedures are covered by Medicare. These decisions are sometimes made after a recommendation is sought from the HHS Office of Health Technology Assessment (OHTA). Only when OHTA advice is sought does HCFA publish notice in the Federal Register. In most cases, affected manufacturers, providers, and beneficiaries have no notice or opportunity to file comments on proposed action, and neither HCFA nor OHTA has published its decisionmaking procedures or its criteria for making these decisions.

Rapidly rising program expenditures, especially inflation in hospital care costs, led Congress to take a number of steps to control costs. In 1982, the PRO system was created and was delegated important responsibility to deny Medicare payment for inappropriate or unnecessary services and to sanction providers for improper practices. In the following two years Congress froze physician charges for fifteen months and completely revamped the reimbursement system for hospitals by creating the "prospective payment system" under which Medicare pays hospitals a predetermined fixed price for each patient case (according to a classification system of some 470 Diagnosis Related Groupings or DRGs), regardless of the actual costs incurred in treating the patient. The prices are subject to annual updating and the classification system is to be reviewed annually. Congress created the advisory Prospective Payment Assessment Commission to participate in this process. Additionally, to mitigate fears that the prospective payment system might lead to unnecessary brief admissions or premature release of patients, Congress charged the PROs with the responsibility for monitoring hospital admissions and discharge practices. In the first years of this program, hospital admissions for the elderly declined for the first time since 1965, the average length of stay also declined and there was a greater utilization of outpatient services. Moreover, many hospitals have made record profits under the new system while reducing the rate of inflation in hospitals costs. There has also been a marked increase in physician (Part B) services, as patients have moved out of hospital and into outpatient care, and to greater reliance on home health services.

The Medicare appeals system is a patchwork with differing administrative and judicial review requirements for beneficiaries and providers and differing rules for Part A and Part B appeals.

Under Part A, most cases are beneficiary appeals primarily involving coverage determinations. Initial determinations are by PROs if hospital services are involved and by fiscal intermediaries for other Part A services. A reconsideration step is built in. After this "paper review," administrative review is then available by an administrative law judge in the Social Security Office of Hearings and Appeals if the amount in controversy exceeds $100 ($200 in hospital cases). The SSA Appeals Council may review and reverse the ALJ's decision on its own motion. Judicial review in the district court is available for the beneficiary if the amount in controversy is $1000 ($2000 in hospital cases).

Providers who have disputes concerning reimbursement under Part A (over $10,000) may bring appeals to the Provider Reimbursement Review Board (PRRB), a five-member board within HHS. (Appeals involving amounts between $1,000 and $10,000 are heard by fiscal intermediaries.) The Secretary may review PRRB decisions on his own motion and providers have a right to judicial review. The PRRB's effectiveness as an independent adjudicator of provider payments disputes has been called into question by provider groups who have raised concerns about its independence, jurisdiction, slowness and its procedures for handling group appeals. Moreover, the PRRB's role under the prospective payment system has been changing. The Board does retain jurisdiction over appeals remaining under the old system and over some key issues concerning allowable costs, and availability of payments under the new system. But, HCFA rulings and regulations have constrained the PRRB's jurisdiction in prospective payment rate cases and provided that it may not order retrospective correction of errors in those rates. Moreover, some key provider appeals such as those involving errors in DRG assignment have been transferred to PROs. No further review is available in such cases.

Until passage of the Omnibus Budget Reconciliation Act of 1986, Pub. L. 99–509, there was no administrative and judicial review of Part B claims. However, under the new law, beneficiaries with disputed claims of over $500 (and physicians who have accepted assignment of such claims) have a right to a hearing before an administrative law judge, and to subsequent judicial review if the claim exceeds $1,000. Previously there was no judicial review and beneficiaries with Part B claims exceeding $100 were limited to a "fair hearing" before an officer selected by the carrier. (This procedure will continue for claims between $100 and $500 under the new legislation.)

The new legislation also made several other important changes in the laws affecting Medicare. The legislation:

—authorized persons affiliated with providers to represent beneficiaries in Part A appeals as long as no financial liability is imposed in connection with the representation;
—requires that HCFA regulations regarding the Medicare program provide for a 60-day comment period;
—requires expanded notice procedures for medicare patients concerning their hospital discharge rights;
—mandates various new requirements on PROs to review beneficiary complaints and to review the quality of care provided; and
—expands appeal rights in home health care cases involving so-called "technical denials" of benefits.

The Conference welcomes these changes. Indeed, at the time of their enactment, the Conference was actively considering recommendations concerning some of them. Other aspects of the process, however, also deserve modification or, at least, further study. We therefore call upon HCFA to continue its efforts to improve the implementation of this important program by heeding the following specific suggestions.

Recommendation

I. Publication of Policies

A. The Health Care Financing Administration (HCFA) should keep up to date and provide reasonable access to all standards, guidelines and procedures used in making coverage and payment determinations under Part A and Part B of the Medicare program.

B. In promulgating interpretations of Medicare benefits likely to have substantial impact on the public, HCFA should adopt procedures that allow for public comment (either pre-promulgation or post-adoption). See ACUS Recommendation 76–5.

C. HCFA by regulation (or Congress by legislation if necessary) should require fiscal intermediaries and carriers to publish and provide reasonable access to all insurance industry rules or other screening devices used in making coverage and payment determinations under Part A and Part B.

D. HHS should introduce more openness and regularity into the procedure for issuing "national coverage decisions" pertaining to new medical technologies and procedures, through: (1) Development of published decisional criteria; (2) providing for notice and inviting comments in such cases, both in HCFA's decisionmaking process and in

the process by which the HHS Office of Health Technology Assessment supplies recommendations to HCFA; and (3) providing for internal administrative review or reconsideration of such decisions.

II. Administrative Appeal Procedures

A. HCFA should continue to develop and assess the adequacy and timing of notice to beneficiaries about coverage and payment decisions on medical benefits and appeal rights regarding these decisions.

B. Because of the increased caseload in Medicare appeals adjudication anticipated after the recent enactment of new appeal rights in Part B cases, HHS should consider whether modification of the existing adjudicatory system is necessary, including whether to establish a Medicare appeals division with its own administrative law judges and review procedure.

C. When resolving hospital rate appeals under the prospective payment system, the Provider Reimbursement Review Board should be authorized, by regulation (or, if necessary, by legislation) to assume jurisdiction of an individual hospital's appeal in a manner that affords timely relief to successful appellants.

III. Suggestions for Further Study

HCFA should undertake or support additional research in the following areas:

A. An empirical study of the role, performance and procedures of:

(1) Fiscal intermediaries and carriers in making coverage and payment determination under Part A and Part B;

(2) Peer review organizations in adjudicating Part A appeals by beneficiaries and by hospitals under the prospective payment system.

B. A comprehensive analysis of the current administrative arrangement by which hospital payment rates are updated under the prospective payment system (taking into account the need for fair ratemaking, timely resolution of disputes and budgetary controls), including an assessment of the Prospective Payment Assessment Commission in this process.

C. An examination of the future role and responsibilities of the Provider Reimbursement Review Board under the prospective payment system, including its jurisdiction, need for expedited review procedures for group appeals, qualifications for membership, adequacy of budget and administrative support, and the need for independence from the rest of the Department.

D. An examination of whether or not the implementation of the statutorily-mandated peer review program should be done to a greater extent through notice-and-comment rulemaking, rather than through reliance upon program instructions and contract provisions.

E. A study of HCFA's use of statistical sampling techniques to determine project overpayments to a provider for a given year, and whether the use of these techniques may effectively deny beneficaries or providers the opportunity to challenge payment determinations based on actual claims experience.

F. A study of whether, in hospital rate appeals, HCFA should allow retroactive correction of erroneous calculations of a hospital's payment rate for affected prior years under the prospective payment system, and payment to hospital accordingly.

G. A study of the process by which ALJ reversals of claim denials are implemented by intermediaries and providers, including the need for tighter accounting of payments to beneficiaries and reimbursements to providers.

H. An examination of the feasibility and utility of setting internal time guidelines for each stage of the Medicare appeals process, including reconsiderations; ALJ hearings and Appeals Council review.

6. Section 305.86–6 is added to Part 305 as follows:

§ 305.86–6 Petitions for Rulemaking (Recommendation No. 86–6).

The Administrative Procedure Act (APA) requires each federal agency to give interested persons the right to petition for the issuance, amendment, or repeal of a rule, 5 U.S.C. § 553(e). The APA also requires that agencies conclude matters presented to them within a reasonable time, 5 U.S.C. § 555(b), and give prompt notice of the denial of actions requested by interested persons, 5 U.S.C. § 555(e). The APA does not specify the procedures agencies must follow in receiving, considering, or disposing of public petitions for rulemaking.[1] However, agencies are expected to establish and publish such procedures in accordance with the public information section of the APA. *See* Attorney General's Manual on the Administrative Procedure Act 38 (1947). An Administrative Conference study of agency rulemaking petition procedures and practices found that while most agencies with rulemaking power have established some procedures governing petitions for rulemaking, few agencies have established sound practices in dealing with petitions or responded promptly to such petitions.

This Recommendation sets forth the basic procedures that the Conference believes should be incorporated into agency procedural rules governing petitions for rulemaking. In addition, the Conference encourages agencies to adopt certain other procedures and policies where appropriate and feasible. The Conference feels that, beyond this basic level, uniform specification of agency petition procedures would be undesirable because there are significant differences in the number and nature of petitions received by agencies and in the degree of sophistication of each agency's community of interested persons.

Agencies should review their rulemaking petition procedures and practices and, in accordance with this Recommendation, adopt measures that will ensure that the right to petition is a meaningful one. The existence of the right to petition reflects the value Congress has placed on public participation in the agency rulemaking process. The Administrative Conference has recognized, in past recommendations, the benefits flowing from public participation in agency rulemaking and from publication of the means for such participation.[2] The absence of published petition procedures, excessive or rigidly-enforced format requirements, and the failure to act promptly on petitions for rulemaking may undermine the public's right to file petitions for rulemaking.

Some agencies currently have petition-for-rulemaking procedures that are more elaborate than those recommended in this Recommendation. This Recommendation is not intended to express a judgment that such procedures are inappropriate or that the statutes mandating particular procedures should be amended. Nor is the Recommendation intended to alter the prior position of the Conference recommending elimination of the categorical exemptions of certain types of rulemaking from the APA's rulemaking requirements. *See* Recommendations 69–8 and 73–5. To the extent Congress or agencies adopt those recommendations, they should also expressly apply the right to petition to those types of rulemaking.

Recommendation

1. Agencies should establish by rule basic procedures for the receipt, consideration, and prompt disposition of petitions for rulemaking. These basic procedures should include: (a) Specification of the address(es) for the filing of petitions and an outline of the recommended contents of the petition, such as the name, address, and telephone number of the petitioner, the statutory authority for the action requested, and a description of the rule to be issued, amended, or repealed; (b) maintenance of a publicly available petition file; and (c) provision for prompt notification to the petitioner of the action taken on the petition, with a summary explanatory statement.

2. In addition, agencies should, where appropriate and feasible:

a. make their petition procedures expressly applicable to all types of rules the agency has authority to adopt;

b. provide guidance on the type of data, argumentation, or other information the agency needs to consider petitions;

c. develop effective methods for providing notice to interested persons that a petition has been filed and identify the agency office or official to whom inquiries and comments should be made; and,

d. establish internal management controls to assure the timely processing of petitions for rulemaking, including deadlines for completing interim actions and reaching conclusions on petitions and systems to monitor compliance with those deadlines.

7. Section 305.86–7 is added to Part 305 as follows:

§ 305.86–7 Case Management as a Tool for Improving Agency Adjudication (Recommendation No. 86–7).

Reducing the delay, expense and unproductive legal maneuvering found in many adjudications is recognized as a crucial factor in achieving substantive justice. In recent years, the negative side effects of civil litigation and agency adjudication procedures have begun to receive increased attention, and many judges, informed scholars and other experienced observers now cite lawyer control of the pace and scope of most cases as a major impediment. In the federal judicial sphere, and increasingly in the state judiciary, a consensus is developing that efficient case management is part of the judicial function, on a par with the traditional duties of offering a fair hearing and a wise, impartial decision. Many federal district judges have begun to practice and advocate increased intervention to shape and delimit the pretrial or prehearing process.

Some federal agencies have begun to make regular use of case management processes wherein those who decide cases interject their informed judgment and experience early in the pretrial stage, and consistently thereafter, to move cases along as quickly as possible within the bounds of procedural fairness. One such agency is the Department of Health and Human Services ("HHS"), whose Departmental Grant Appeals Board ("DGAB" or "Board") makes active, planned use of special managerial procedures. The Board, which decides cases brought by state and local governments or other recipients of HHS grant funds, has a three-tiered process that relies extensively on use of action-forcing procedures for completing each stage of a case. The Board adjudicates almost all its cases—well over two hundred dispositions and one hundred written decisions annually with an average "amount in controversy" in excess of one million dollars—in three to nine months. Most disputes before it involve financial issues concerning the allowability of grantee expenditures, but the Board's jurisdiction extends also to disputes over grant terminations and some renewals. A recent study [1] indicates that the Board's process reduces the opportunity for maneuvering by the parties, facilitates an expeditious, inexpensive disposition of all but the most complex cases, and is overwhelmingly approved by most attorneys who practice before it.

The Board's success should not be discounted because won in an environment unusually favorable to efficient dispute resolution.[2] The fact is that similar procedures are now used with apparently equal success at other agencies. They merit the attention of appeals boards, administrative panels, administrative law judges ("ALJs") and all others involved in the decisional process. Though recognizing that many factors affect the procedures to be followed in any particular dispute, the Administrative Conference encourages this trend toward reducing the transaction costs of agency proceedings and believes that this is a key responsibility of all presiding officers and their supervisors. The Conference has, in several contexts, already called on federal agencies to make greater use of internal time limits,[3] alternative means of dispute resolution,[4] and case management and other techniques [5] to expedite and improve their case handling. The Conference now calls upon all personnel who conduct or oversee processing of adjudicative proceedings for the federal government to make more determined efforts to use the kinds of case management methods described below as may be appropriate.

Recommendation

The Conference encourages the prompt, efficient and inexpensive processing of adjudicative proceedings. Federal agencies engaged in formal and informal adjudication should consider applying the following case management methods to their proceedings, among them the following:

1. *Personnel management devices.* Use of internal agency guidelines for timely case processing and measurements of the quality of work products can maintain high levels of productivity and responsibility. If appropriately fashioned, they can do so without compromising independence of judgment. Agencies possess and should exercise the authority, consistent with the ALJ's or other presiding officer's decisional independence, to formulate written criteria for measuring case handling efficiency, prescribe procedures, and develop techniques for the expeditious and accurate disposition of cases. The experiences and opinions of presiding officers should play a large part in shaping these criteria and procedures. The criteria should take into account differences in categories of cases assigned to judges and in types of disposition (e.g., dismissals, dispositions with and without hearing). Where feasible, regular, computerized case status reports and supervision by higher level personnel should be used in furthering the systematic application of the criteria once they have been formulated.

2. *Step-by-step time goals.* Case management by presiding officers and their supervisors should be combined with procedures designed to move cases promptly through each step in the proceeding. These include (a) a program

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[1] But other statutes expressly create the right to petition for rulemaking, and some of these statutes specify procedures to be followed in the petitioning process.

[2] *See* Recommendation 69–8, *Elimination of Certain Exemptions from the APA Rulemaking Requirements*, 1 C.F.R. § 305.69–8; Recommendation 71–6, *Public Participation in Administrative Hearings*, 1 C.F.R. § 305.71–6; Recommendation 73–5, *Elimination of the "Military or Foreign Affairs Function" Exemption from APA Rulemaking Requirements*, 1 C.F.R. § 305.73–5; Recommendation 76–5, *Interpretive Rules of General Applicability and Statements of General Policy*, 1 C.F.R. § 305.76–5; and Recommendation 83–2, *The "Good Cause" Exemption from APA Rulemaking Requirements*, 1 C.F.R. § 305.83–2.

[1] This recommendation is based largely on the report "Model for Case Management: The Grant Appeals Board" by Richard B. Cappalli (1986), which explores how the methods described separately below interact in an integrated case management system.

[2] *E.g.*, a moderate caseload per judge, a shared program objective among all parties and a long-term relationship between the agency and the claimant.

[3] Recommendation 78–3 calls on all agencies to use particularized deadlines or time limits for the prompt disposition of adjudicatory and rulemaking proceedings, either by announcing schedules for particular cases or adopting rules with general timetables for their various categories of proceedings. *Time Limits on Agency Actions*, 1 CFR § 305.78–3. The Conference has also called on agencies to establish productivity norms and otherwise exercise their authority to prescribe procedures and techniques for accurate, expeditious disposition of Social Security claims and disputes under grants. *E.g., Procedures for Determining Social Security Disability Claims*, 1 CFR § 305.76–2; *Resolving Disputes under Federal Grant Programs*, 1 CFR § 305.82–2.

[4] Recommendation 86–3 calls on agencies to make greater use of mediation, negotiation, minitrials, and other "ADR" methods to reduce the delay and contentiousness accompanying many agency decisions. *Agency Use of Alternative Means of Dispute Resolution*, 1 CFR § 305.86–3. The Conference has called previously for using mediation, negotiation, informal conferences and similar innovations to decide certain kinds of disputes more effectively. *E.g., Procedures for Negotiating Proposed Regulations*, 1 CFR §§ 305.82–4, .85–5; *Negotiated Cleanup of Hazardous Waste Sites Under CERCLA*, 1 CFR § 305.84–4; *Resolving Disputes under Federal Grant Programs*, 1 CFR § 305.82–2.

[5] Many of the practices recommended herein reflect the advice contained in the *Manual for Administrative Law Judges*, prepared for the Conference by Merritt Ruhlen. Recommendation 73–3 advises on using case management in adjudicating benefit and compensation claims. It calls for continuous evaluation of adjudicative performance pursuant to standards for measuring the accuracy, timeliness and fairness of agency procedures. *Quality Assurance Systems in the Adjudication of Claims of Entitlement to Benefits or Compensation*, 1 CFR § 305.73–3. In addition, Recommendation 69–6 urges agencies to compile and use statistical caseload data about their proceedings. *Compilation of Statistics on Administrative Proceedings by Federal Departments and Agencies*, 1 CFR § 305.69–6.

of step-by-step time goals for the main stages of a proceeding, (b) a monitoring system that pinpoints problem cases, and (c) a management committed to expeditious processing. Time guidelines should be fixed in all cases for all decisional levels within the agency, largely with the input of presiding officers and others affected. While the guidelines should be flexible enough to accommodate exceptional cases and should maintain their non-obligatory nature, they should be sufficiently fixed to keep routine items moving and ensure that any delays are justified. Agencies should encourage a management commitment by including specific goals or duties of timely case processing in pertinent job descriptions.

3. *Expedited options.* Agencies should develop, and in some instances require parties to use, special expedited procedures. Different rules may need to be developed for handling small cases as well as for larger ones that do not raise complex legal or factual issues.

4. *Case file system.*

(a) Agencies should develop procedures to ensure early compilation of relevant documents in a case file. This will help the presiding officer delineate the legal and factual issues, the parties' positions and the basis for the action as promptly as possible. The presiding officer may then structure the process suitably and issue preliminary management directives.

(b) Disputes preceded by party interactions or investigations which create a substantial factual record, as in most contract and grant disputes, are especially amenable to this approach. Cases involving strong fact conflicts or in which data are peculiarly within the possession of one party who has motivations to suppress them may be less suitable for a case file system.

5. *Two stage resolution approaches.* In proceedings where the case file system is less appropriate, as where factual conflicts render discovery important, agencies should consider using a two-phase procedure.

(a) Phase one might be an abbreviated discovery phase directed by a responsible official, with the product of that discovery forming the "appeal file" for the next phase. Alternatively, parties could be channeled into a private dispute resolution mode, such as mediation, negotiation or arbitration, which, even if unsuccessful, can serve to define major issues and to advance development of the record. Before employing this alternative, agencies would have to determine whether the confidentiality rule that normally attaches to arbitration, medication and negotiation is so critical that it cannot be abandoned for the sake of a more efficient second stage.

(b) A second stage, if necessary, should proceed under active case management, as recommended.

6. *Seeking party concessions and offering mediation.* Presiding officers should promote party agreement and concessions on procedural and substantive issues, as well as on matters involving facts and documents, to reduce hearing time and sometimes avoid hearings altogether. Agencies should also (a) encourage decisional officers to resolve cases (or parts thereof) informally, (b) provide their officers training in mediation and other ADR methods, and (c) routinely offer parties the services of trained mediators.

7. *Questioning techniques.* (a) Requests for clarification or development of record. If a party makes a statement in a notice of appeal, brief, or other submission which a presiding officer does not understand, doubts, or wishes clarified, the officer should consider requiring the party to expand upon its position. The ambiguity may relate to a factual matter, or an interpretation of a legal precedent or a document. Similarly, by preliminary study of the case file, the presiding officer could identify missing information and require the party with access to such infomation to remedy the deficiency. The officer could also issue "invitations to brief" difficult questions of statutory interpretation or the like.

(b) Written questions for conference or hearing. The presiding officer should manage cases so as to limit issues, proof, and argument to core matters. Having ascertained the factual and legal ambiguities in each side's case by careful study of the briefs and documentation submitted, the presiding officer should structure a prehearing conference or hearing as a forum for addressing these ambiguities by seeking responses to carefully formulated questions and providing appropriate opportunity for rebuttal. In this way, and by otherwise seeking to identify the specific questions in dispute early on, the presiding officer would focus parties' attention on key issues and deflect unproductive procedural maneuvers.

8. *Time extension practices.* Time extensions should be granted only upon strong, documented justification. While procedural fairness mandates that deadlines may be extended for good cause, presiding officers should be aware that casual, customary extensions have serious negative effects on an adjudicatory system, its participants, and those wishing access thereto. Stern warnings accompanying justified extensions have had good success in curtailing lawyers' requests for additional time.

9. *Joint consideration of cases with common issues.* Whenever practicable and fair, cases involving common questions of law or fact should be consolidated and heard jointly. Consolidation could include unification of schedules, briefs, case files and hearings.

10. *Use of telephone conferences and hearings.* Presiding officers should take full advantage of telephone conferences as a means to hear motions, to hold prehearing conferences, and even to hear the merits of administrative proceedings where appropriate. While telephone conferences may be either employed regularly for handling selected matters or limited to a case-by-case basis at the suggestion of the presiding officer or counsel, experience suggests that maximum benefits are derived when telephone conferences are made presumptive for certain matters.

11. *Intra-agency review.* Any subsequent intra-agency review of an initial adjudicative decision should generally be conducted promptly pursuant to flexible, preestablished time guidelines and review standards.

12 *Training.* Agencies should offer, and presiding officers seek, training in case management, mediation, negotiation and similar methods, and should be alert to take advantage of them. The training should be carried out with the advice and aid of other federal agencies and groups with expertise.

8. Section 305.88–6 is added to Part 305 as follows:

§ 305.88–6 Acquiring the Services of "Neutrals" for Alternative Means of Dispute Resolution (Recommendation No. 86–3).

The Administrative Conference has repeatedly encouraged agencies to take advantage of mediation, negotiation, minitrials, binding arbitration and other alternative means of dispute resolution ("ADR").[1] While some agencies have begun to employ these methods to reduce transaction costs and reach better results, many disputes are still being resolved with unnecessary formality, contentiousness and delay. This recommendation is aimed at helping agencies begin to explore specific avenues to expand their use of ADR services.

A key figure in the effective working of various modes of ADR, including negotiated rulemaking, is the "neutral"—a person, usually serving at the will of the parties, who generally presides and seeks to help the parties reach a resolution of their dispute. These neutrals, often highly skilled professionals with considerable training in techniques of dispute resolution, can be crucial to using ADR methods with success.[2] For agencies to use ADR effectively, they should take steps to develop routines for deciding when and how these persons can be employed, to identify qualified neutrals, and to acquire their services.

The diversity of roles played by neutrals and the uncertainty as to certain applicable legal requirements present complications for agencies considering uses of ADR. Neutrals may be specially trained and accredited, or may simply hold themselves out as having certain expertise, experience or credibility. They may be called on to make binding decisions, consistent with applicable statutory and regulatory requirements, when opposing positions cannot be reconciled, or they may simply render advice to the parties. Time may be of the essence in acquiring their services, as in many arbitrations, but in some instances may be a minor consideration. Costs of using outside neutrals may range from a few thousand dollars (for the services of a minitrial advisor) to six figures (for convening and facilitating a large-scale negotiated rulemaking). These differences render specific advice difficult to give in advance. Agencies, Congress, courts, and others who employ ADR methods or review their use should nonetheless observe certain guidelines intended to accomplish the following goals:

■ *Supply.* Broadening the base of qualified, acceptable individuals or organizations, inside and outside the government, to provide ADR services.

■ *Qualifications.* Insuring that neutrals have adequate skills, technical expertise, experience or other competence necessary to promote settlement, while avoiding being too exclusive in the selection process.

■ *Acquisition.* Identifying existing methods, or developing new techniques, for expeditiously acquiring the services of neutrals at a reasonable cost and in a manner which (a) insures a full and open opportunity to compete and (b) enables agencies to select the most qualified person to serve as a neutral, given that the protracted nature of the government procurement process is often inconsistent with the goals of ADR and the need to avoid delays.[3]

■ *Authority.* Minimizing any uncertainty under the "delegation" doctrine or similar theories that may adversely affect the authority of some neutrals to render a binding decision. This consideration, however, should not prove troublesome where neutrals merely aid the parties in reaching agreement (as in nearly all mediations, minitrials and negotiated rulemakings).

These proposals are intended to help agencies meet the challenge of reaching these goals in a time of reduced resources and in a milieu in which many affected interests may oppose change.

Recommendation

A. Availability and Qualifications of Neutrals

1. Agencies and reviewing bodies should pursue policies that will lead to an expanded, diverse supply of available neutrals, recognizing that the skills required to perform the services of a dispute resolution neutral will vary greatly depending on the nature and complexity of the issues, the ADR method employed, and the importance of the dispute. Agencies should avoid unduly limiting the pool of acceptable individuals though the use of overly restrictive qualification requirements, particularly once agencies have begun to make more regular use of ADR methods. While skill or experience in the process of resolving disputes, such as that possessed by mediators and arbitrators, is usually an important criterion in the selection of neutrals, and knowledge of the applicable statutory and regulatory schemes may at times be important, other specific qualifications should be required only when necessary for resolution of the dispute. For example:

(a) Agencies should not necessarily disqualify persons who have mediation, arbitration or judicial experience but no specific experience in the particular ADR process being pursued.

(b) While agencies should be careful not to select neutrals who have a personal or financial interest in the outcome, insisting upon "absolute neutrality"—*e.g.*, no prior affiliation with either the agency or the private industry involved—may unduly restrict the pool of available neutrals, particularly where the neutral neither renders a decision nor gives formal advice as to the outcome.

(c) Agencies should insist upon technical expertise in the substantive issues underlying the dispute or negotiated rulemaking only when the technical issues are so complex that the neutral could not effectively understand and communicate the parties' positions without it.

2. Agencies should take adavantage of opportunities to make use of government personnel as neutrals in resolving disputes. These persons may include agency officials not otherwise involved in the dispute or employees from other agencies with appropriate skills, administrative law judges, members of boards of contract appeals, and other responsible officials. The Administrative Conference, Federal Mediation and Conciliation Service ("FMCS"), the Department of Justice (particularly the Community Relations Service ("CRS")) and other interested agencies should work to encourage imaginative efforts at sharing the services of federal "neutrals," to remove obstacles to such sharing, and to increase parties' confidence in the selection process.

3. Congress should consider providing FMCS, CRS and other appropriate agencies with funding to train their own and other agencies' personnel in the particular skills needed to serve in minitrials, negotiated rulemakings, and other ADR proceedings.

4. The Administrative Conference, in consultation with FMCS, should assist other agencies in identifying neutrals and acquiring their services and in establishing rosters of neutral advisors, arbitrators, convenors, facilitators, mediators and other experts on which federal agencies could draw when they wished. The rosters should be based, insofar as possible, on full disclosure of relevant criteria (education, experience, skills, possible bias, and the like) rather than on strict requirements of actual ADR experience or professional certification. Agencies should also consider using rosters of private groups (*e.g.*, the American Arbitration Association). The Conference, FMCS or another information center should routinely compile data identifying disputes or rulemakings in which neutrals have participated so that agencies and parties in future proceedings can be directed to sources of information pertinent to their selection of neutrals.

5. Agencies should take advantage of opportunities to expose their employees to ADR proceedings for training purposes, and otherwise encourage their employees to acquire ADR skills. Employees trained in ADR should be listed on the rosters described above, and their services made available to other agencies.

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[1] In Recommendation 86–3, the Conference called on agencies, where not inconsistent with statutory authority, to adopt alternatives to litigation and trial-type hearings such as mediation, minitrials, arbitration and other "ADR" methods. *Agencies' Use of Alternative Means of Dispute Resolution*, 1 CFR 305.86–3. In the rulemaking sphere, Recommendations 82–4 and 85–5 have been instrumental in promoting agency experimentation with negotiated rulemaking, which involves convening potentially interested parties to negotiate the details of a proposed rule. *Procedures for Negotiating Proposed Regulations*, 1 CFR §§ 305.82–4 and 85–5. *See also, Negotiated Cleanup of Hazardous Waste Sites Under CERCLA*, 1 CFR 305.86–4; *Resolving Disputes Under Federal Grant Programs*, 1 CFR 305.82–2; and *Case Management as a Tool for Improving Agency Adjudication*, 1 CFR 305.88–7.

[2] *See* the Glossary in the Appendix for brief descriptions of the roles of neutrals in various proceedings.

[3] While there may be situations in which agencies can obtain the services of a qualified outside neutral without following formal procurement procedures, acquisitions of neutrals' services are generally governed by the Competition in Contracting Act, Pub. L. No. 98–369, Title VII, 98 Stat. 1175, which mandates full and open competition for contracts to supply goods and services to the federal government, and the Federal Acquisition Regulations, 48 CFR Chapter 1, Parts 1–53, which sets forth detailed procedures for conducting competitive procurements.

B. Acquiring Outside Neutrals' Services

1. In situations where it is necessary or desirable to acquire dispute resolution services from outside the government, agencies should explore the following methods:

(a) When authorized to employ consultants or experts on a temporary basis (e.g., 5 U.S.C. § 3109), agencies should consider utilizing that authorization in furtherance of their ADR or negotiated rulemaking endeavors.

(b) Agencies contemplating ADR or negotiated rulemaking projects involving private neutrals should, as part of their acquisition planning process pursuant to the Federal Acquisition Regulation ("FAR") Part 7,[4] periodically give notice in the *Commerce Business Daily* and in professional publications of their needs and intentions,[5] so as to allow interested organizations and individual ADR neutrals to inform the agency of their interest and qualifications.

(c) Where speed is important and the amount of the contract is expected to be less than $25,000, agencies should use the streamlined small purchase procedures of Subpart 13.1 of the Federal Acquisition Regulation [6] in acquiring the services of outside neutrals, particularly minitrial neutral advisors, mediators and arbitrators.

(d) Agencies that foresee the need to hire private neutrals for numerous proceedings should consider the use of indefinite quantity contracts as vehicles for identifying and competitively acquiring the services of interested and qualified neutrals who can then be engaged on an expedited basis as the need arises. Agencies should, where possible, seek contracts with more than one supplier. In fashioning such indefinite quantity contracts, agencies should take care to comply with the following:

(1) Agency contracts should specify a minimum quantity, which could be a non-nominal dollar amount rather than a minimum quantity of services.[7]

(2) Negotiation of individual orders under the contract is desirable, but should generally adhere to the personnel, statements of work, and cost rates or ceilings set forth in the basic indefinite quantity contract, so as to minimize "sole source" issues.

(e) Agencies should also consider:

(1) Entering into joint projects for acquiring neutrals' services by using other agencies' contractual vehicles.

(2) Using other contracting techniques, such as basic ordering agreements and schedule contracts, where appropriate to meet their needs for neutrals' services.

(3) Proposing a deviation from the FAR or amending their FAR supplements, where appropriate.

(f) Agencies should evaluate contract proposals for ADR neutrals' services on the qualifications of the offeror, but cost alone should not be the controlling factor.[8]

2. The Civilian Agency Acquisition Council and Defense Acquisition Regulatory Council should be receptive to agency or Administrative Conference proposals for deviations from,[9] or amendments to, the FAR to adapt procurement procedures to the unique requirements of ADR processes, consistent with statutory mandates.

3. In the absence of appropriate considerations suggesting a different allocation of costs, in minitrials and arbitration the parties customarily should share equally in the costs of the neutrals' services.

Glossary

Mediator. A mediator is a neutral third party who attempts to assist parties in negotiating the substance of a settlement. A mediator has no authority to make any decisions that are binding on either party.

Convenor/Facilitator. Negotiated rulemakings generally proceed in two phases, one using a "convenor" and the other a "facilitator." In the first (convening) phase, a neutral called a convenor studies the regulatory issues, attempts to identify the potentially affected interests, and then advises the agency concerning the feasibility of convening representatives of these interests to negotiate a proposed rule. If the agency decides to go forward with negotiating sessions, the convenor assists in bringing the parties together. In the second (negotiating) phase, a neutral called a facilitator manages the meetings and coordinates discussions among the parties. When the parties request, a facilitator may act as a mediator, assisting the negotiators to reach consensus on the substance of a proposed rule. The roles of convenor and facilitator sometimes overlap, and often both functions are performed by the same person or persons. Neither a convenor nor a facilitator has authority to make decisions that are binding on the agency or on the participating outside parties.

Neutral Advisor. A minitrial is a structured settlement process in which each party to a dispute presents a highly abbreviated summary of its case before senior officials of each party authorized to settle the case. In this recommendation, it is presumed that the government is one party to the dispute. In some (but not all) minitrials, a neutral advisor participates by hearing the presentations of the parties and, optionally, providing further assistance in any subsequent attempt to reach a settlement. Typically, a neutral advisor is an individual selected by the parties. Duties of a neutral advisor may include presiding at the presentation, questioning witnesses, mediating settlement negotiations, and rendering an advisory opinion to the parties. In no event does a neutral advisor render a decision that is binding on any party to a minitrial.

Arbitrator. An arbitrator is a neutral third party who issues a decision on the issues in dispute after receiving evidence and hearing argument from the parties. Arbitration is a less formal alternative to adjudication or litigation, and an arbitrator's decision may or may not be binding. Arbitration may be chosen voluntarily by the parties, or it may be required by contract or statute as the exclusive dispute resolution mechanism.

Dated: December 19, 1986.

Richard K. Berg,

General Counsel.

[FR Doc. 86-28944 Filed 12-29-86; 8:45 am]

BILLING CODE 6116-01-M

[4] 48 CFR Part 7.

[5] Agencies are required to give *Commerce Business Daily* notice for all contract solicitations in which the government's share is likely to exceed $10,000. 15 U.S.C. 637(e); 48 CFR 5.201(a). For procurements between $10,000 and $25,000 in which the agency reasonably expects to receive at least two offers, no such notice is required. Pub. L. No. 98-577, October 18, 1986, Title IX, Section 922.

[6] 48 CFR Subpart 13.1. This Subpart allows agencies to make purchases in amounts less than $25,000 without following all of the formalities prescribed in the FAR for ordinary procurements. If the procurement is for less than $10,000, the agency need not advertise it in advance in the *Commerce Business Daily*. 48 CFR 5.201(a). None of these provisions relieves the agency of its mandate to obtain competition.

[7] 48 CFR 15.504(a)(2).

[8] 48 CFR 15.605(c).

[9] 48 CFR 1.402.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

United States Standards for Grades of Frozen Leafy Greens

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to revise the voluntary United States Standards for Grades of Frozen Leafy Greens. The revision was developed by the U.S. Department of Agriculture at the request of the frozen vegetable industry. This final rule will change the allowance for blemishes in leaf style spinach by allowing a larger tolerance (area measurement) for blemished leaves. Its effect will be to improve the standards and encourage uniformity and consistency in commercial practices which will facilitate the trading of frozen leafy greens.

EFFECTIVE DATE: January 29, 1987.

FOR FURTHER INFORMATION CONTACT: Harold A. Machias, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-6247.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures and Executive Order 12291 and has been designated as a "nonmajor" rule. It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not result in significant adverse effects on competition, employment, investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601), because it reflects current marketing practices.

The current voluntary grade standards for frozen leafy greens have been in effect since October 12, 1983. The grade standards were last revised to include frozen spinach under the grade standards for frozen leafy greens since they contained similar narrative text. Spinach was included as a "type" of leafy greens.

In May 1984, the USDA received a request from the American Frozen Food Institute (AFFI) to change the U.S. grade standards for frozen leafy greens on the behalf of frozen spinach processors from California. The industry stated that applying frozen leafy greens allowances for blemished leaves to frozen spinach has resulted in a more restrictive tolerance than was applied to frozen spinach in the previous standards. Industry studies conducted by technical personnel indicated that increasing the tolerance for leaf style spinach from each four square centimeters to each six square centimeters, using the same acceptance quality level criteria, would be more in line with the previous grade standards.

On April 7, 1986, a proposed rule was published in the Federal Register (51 FR 11744). The comment filing period ended May 7, 1986. The National Food Processors Association (NFPA), a scientifically and technically based trade association that represents 600 food processing companies, commented on the proposal. NFPA's comment supported the proposal to revise the voluntary U.S. Standards for Grades of Frozen Leafy Greens to redefine the definition of blemished leaves for frozen leaf style spinach so that each six square centimeters of blemished area is counted as one defect. NFPA indicated this change will bring the standards in line with current industry practices and facilitate the trading of frozen leafy greens. No other comments were received.

After review of this comment and in order to improve the standards and encourage uniformity and consistency in commercial practices, the USDA hereby revises the grade standards by changing § 52.1374, Definitions of terms, (b) *Blemished.*

List of Subjects in 7 CFR Part 52

Fruits, Vegetables, Food grades and standards.

PART 52—[AMENDED]

Accordingly, the Subpart—United States Standards for Grades of Frozen Leafy Greens (7 CFR Part 52.1371—52.1383) is amended as follows:

1. The authority citation for Part 52 is revised to read as follows:

Authority: Agricultural Marketing Act of 1946, Secs. 203, 205, 60 Stat. 1087, as amended, 1080, as amended (7 U.S.C. 1622, 1624).

2. In Part 52, § 52.1374, paragraph (b) is revised to read as follows:

§ 52.1374 Definitions of terms.

* * * * *

(b) *Blemished* means any unit affected by discoloration or other means to the extent that the appearance or eating quality is adversely affected. For leafy greens other than leaf style spinach, each 4 cm^2 in leaf style or each 2 cm^2 in chopped and pureed styles (aggregate area measurement) is counted as one defect. In leaf style spinach only, each 6 cm^2 is counted as one defect.

* * * * *

Done at Washington, DC on December 18, 1986.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 86-29143 Filed 12-29-86; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1403

Referral of Delinquent Debt Information to Credit Reporting Agencies

AGENCY: Commodity Credit Corporation, Agriculture Department.

ACTION: Final rule.

SUMMARY: This final rule provides for the referral to credit reporting agencies of information with respect to delinquent debts owed to Commodity Credit Corporation (CCC). This action, which is usual and customary in commerce, is being taken as an incentive for delinquent debtors to repay debts owed to CCC.

EFFECTIVE DATE: December 30, 1986.

FOR FURTHER INFORMATION CONTACT: Dale R. Phillips, Claims Specialist, Fiscal Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013 (202) 447-4639.

SUPPLEMENTARY INFORMATION: This action has been reviewed in conformance with Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "not major." It has been determined that the provisions of this rule will not result in: (1) Annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, federal, State or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or in the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

This activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental

consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

The titles and numbers of the Federal Domestic Assistance Programs to which this proposed rule applies are: Commodity Loans and Purchases, 10.051; Cotton Production Stabilization, 10.052; Dairy Indemnity Program, 10.053; Feed Grain Production Stabilization, 10.055; Storage Facilities and Equipment Loans, 10.056; Wheat Production Stabilization, 10.058; Rice Production Stabilization, 10.065; Grain Reserve Program 10.067; as listed in the Catalog of Federal Domestic Assistance.

Background

CCC makes loans, guarantees, and payments and enters into contracts in connection with its activities under which various individuals, organizations and entities become indebted to CCC. At the close of fiscal year 1986 the amount of delinquent debt owed to CCC exceeded $130,000,000.

CCC has authority under section 4(k) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b(k)) to make final and conclusive settlement and adjustment of any claims by or against the Corporation. As an aid in effective debt management, CCC will submit information to credit reporting agencies with respect to delinquent debts owed to CCC. This policy is consistent with customary business practices of the private sector, the Federal Claims Collection Standards (FCCS), (4 CFR Part 102), and Office of Management and Budget (OMB) Circular A–129.

The Debt Collection Act of 1982 (Act) (Pub. L. 97–365) amended section 3 of the Federal Claims Collection Act (FCCA) (31 U.S.C. 3711(f)) to authorize the head of an agency, in attempts to collect delinquent debts owed by an individual, to disclose information relating to such debts to a consumer reporting agency. The Act also amended the Privacy Act of 1974 (5 U.S.C. 552a(b)) to permit such disclosure of information under certain conditions.

This final rule establishes procedures under which CCC will refer information with respect to delinquent debts to credit reporting agencies.

In disclosing information with respect to delinquent debts, CCC will follow the requirements of the FCCS. Only that information directly related to the identity of the debtor and the history of the claim will be released. Debtor information will consist of: the debtor's name, address, taxpayer identification number, and other information necessary to establish the identity of the debtor; the amount, status, and history of the claim; and the program under which the claim arose.

On March 25, 1986, CCC published a proposed rule in the **Federal Register** (51 FR 10222) concerning the referral of delinquent debt information to credit reporting agencies. The supplementary information contained in the proposed rule set forth the basis and purpose of the proposed rule. A 30-day period through April 24, 1986, was provided for written comments from the public with respect to the proposed rule. The only comment received was from the Office of Finance and Management (OFM), an agency within the Department of Agriculture. There were no comments received from the general public with respect to the proposed rule.

After considering the comment received, as well as modifications indicated from CCC's internal review of the proposed rule, CCC is adopting the proposed rule as a final rule with minor changes.

OFM suggested changes that, if adopted, would provide for referral of non-delinquent accounts of CCC to credit reporting agencies. It was OFM's position that such changes should be made in order for CCC's regulations to be consistent with USDA's interim rule on debt collection published at 50 FR 7721 (February 26, 1985) and OMB Circular A–129, which provide for the referral of all commercial debts to credit reporting agencies.

Due to the nature of CCC's operation, the reporting of only delinquent debts is consistent with such general policy. For example, price support loans made by CCC to producers are secured by collateral which may be forfeited to CCC in payment of the loans at maturity, with no liability on the part of the producers to CCC for any deficiency unless the deficiency is due to fraud, unauthorized removal, or similar cause. When a price support loan is made it will not be reported as a debt to a credit reporting agency because there may never be any liability on the part of the producer to pay any deficiency. However, when a claim arises for a loan deficiency for which the producer is liable, the amount thereof will be reported as a delinquent debt to credit reporting agencies.

The Department of Agriculture has signed agreements with credit reporting agencies which may be used by all USDA agencies and staff offices. These agreements provide the necessary assurances to USDA agencies that the credit reporting agencies are in compliance with applicable laws relating to providing credit information. Accordingly, all references to such agreements and assurances have been changed to refer to agreements entered into by USDA, instead of CCC, with credit reporting agencies.

In 7 CFR 1403.22(b) the reference to a $100 threshhold has been deleted. All delinquent debts, regardless of amount, will be subject to referral to credit reporting agencies.

Finally, the 30-day time requirement for CCC to notify the credit reporting agencies of changes which have occurred with respect to a claim has been deleted in § 1403.26(a). The 30-day limit was too restrictive and did not allow CCC sufficient time to obtain information and accomplish record update. A statement has been added to § 1403.26(a) to indicate that changes will be made at each tape update submission, which is presently scheduled on a quarterly basis.

Except for minor, nonsubstantive changes in wording and format, the proposed rule published at 51 FR 10222 is adopted as a final rule, with the changes specified.

List of Subjects in 7 CFR Part 1403

Commodity Credit Corporation, Credit reporting procedures, Delinquent debts.

Accordingly, 7 CFR Part 1403 is amended as follows:

Final Rule

1. The authority citation for Part 1403 is revised to read as follows:

Authority: Sec. 4, Pub. L. 80–89, 62 Stat. 1070, as amended (15 U.S.C. 714b).

2. The Part heading of 7 CFR Part 1403 is revised to read as follows:

PART 1403—DELINQUENT DEBTS

3. The Table of Contents is amended by adding a new subpart heading at the beginning and by adding the Table of Contents for Subpart B at the end as follows:

Subpart A—Interest on Delinquent Debts

* * * * *

Subpart B—Referral of Delinquent Debt Information to Credit Reporting Agencies

Sec.
1403.21 Purpose.
1403.22 Definitions.
1403.23 Determination of delinquency.
1403.24 Demand for payment.
1403.25 Notice to debtor.
1403.26 Subsequent disclosure and verification.
1403.27 Source of delinquent debt information.
1403.28 Information disclosure limitations.
1403.29 Attempts to locate debtor.
1403.30 Request for review of the indebtedness.
1403.31 Disclosure to credit reporting agencies.
1403.32 Request regarding information from a system of records.

4. Sections 1403.1 through 1403.6 are designated as Subpart A, and a new subpart heading is added before 7 CFR 1403.1 to read as follows:

Subpart A—Interest on Delinquent Debts

5. A new Subpart B, consisting of §§ 1403.21 through 1403.32, is added following 7 CFR 1403.6 to read as follows:

Subpart B—Referral of Delinquent Debt Information to Credit Reporting Agencies

§ 1403.21 Purpose.

This subpart specifies the procedures that will be followed and the rights that will be afforded to debtors in connection with the reporting by Commodity Credit Corporation (CCC) to credit reporting agencies of information with respect to delinquent debts owed to CCC.

§ 1403.22 Definitions.

(a) *"Credit reporting agency"* means—
(1) A reporting agency as defined at 4 CFR 102.5(a) or
(2) Any entity which has entered into an agreement with the Department of Agriculture (USDA) concerning the referral of credit information.

(b) *"Debt" and "claim"* are deemed synonymous and are used interchangeably herein. The debt or claim is an amount of money which has been determined by an appropriate agency official to be owed to CCC by any individual, organization or entity, except another federal agency, State, local or foreign government or agencies thereof, Indian tribal governments, or other public institutions. The debt or claim may have arisen from loans, loan guarantees, overpayments, fines, penalties, or other causes.

(c) *"Delinquent debt"* means:
(1) Any debt owed to CCC that has not been paid by the date specified in the applicable contract, agreement or initial notification of indebtedness; and
(2) Any overdue amount owed to CCC by a debtor which is the subject of an installment payment agreement which the debtor has failed to satisfy under the terms of such agreement.

(d) *"System of records"* means a group of any records under the control of CCC or ASCS from which information is retrieved by the name of the individual, organization or other entity or by some identifying number, symbol, or other identification assigned to the individual, organization or other entity.

§ 1403.23 Determination of delinquency.

Prior to disclosing information to a credit reporting agency in accordance with this subpart, the claims official who has jurisdiction over the claim shall be responsible for reviewing the claim and determining that it is valid and overdue.

§ 1403.24 Demand for payment.

The claims official responsible for carrying out the provisions of this subpart with respect to the debt shall send to the debtor appropriate written demands for payment in terms which inform the debtor of the consequences of failure to make payment, in accordance with guidelines established by the Executive Vice President, CCC, and consistent with the Federal Claims Collection Standards at 4 CFR 102.2.

§ 1403.25 Notice to debtor.

(a) In accordance with guidelines established by the Executive Vice President, CCC, the claims official responsible for disclosure of information with respect to the delinquent debts to a credit reporting agency shall send written notice to the debtor informing such debtor:
(1) Of the basis for the indebtedness;
(2) That the payment of the debt is overdue;
(3) That CCC intends to disclose to a credit reporting agency that the debtor is responsible for the debt and that such disclosure shall be made not less than 60 days after notification to such debtor;
(4) Of the specific information intended to be disclosed to the credit reporting agency;
(5) Of the rights of such debtor to a full explanation of the claim and to dispute any information in the records of CCC concerning the claim;
(6) Of the debtor's right to administrative appeal or review with respect to the claim and how such review shall be obtained; and
(7) Of the date on which or after which the information will be reported to the credit reporting agency.

(b) The content and delivery standards for demand letters and notices sent under this section shall be consistent with the Federal Claims Collection Standards at 4 CFR 102.2. It is contemplated that the demand under § 1403.24 and the notice under § 1403.25 will usually be combined into one document.

§ 1403.26 Subsequent disclosure and verification.

(a) CCC shall notify each credit reporting agency to which the original disclosure of delinquent debt information was made of any substantial change in the condition or amount of the claim. Changes in delinquent debt information which occur subsequent to submission of the original information will be reflected on the tape files submitted to the credit reporting agencies during the next scheduled update period. A substantial change in condition may include, but is not limited to, notice of death, cessation of business, or relocation of the debtor. A substantial change in the amount may include, but is not limited to, payments received, additional amounts due, or offsets made with respect to the debt.

(b) CCC shall promptly verify or correct, as appropriate, information about the claim on request of such credit reporting agency for verification of any or all information so disclosed. The records of the debtor shall reflect any correction resulting from such request.

§ 1403.27 Source of delinquent debt information.

Information provided to a credit reporting agency on delinquent debts shall be derived from systems of records maintained by CCC or ASCS.

§ 1403.28 Information disclosure limitations.

CCC shall limit delinquent debt information disclosed to credit reporting agencies to:
(a) the name, address, taxpayer identification number, and other information necessary to establish the identity of the debtor;
(b) the amount, status, and history of the claim; and
(c) the CCC program under which the claim arose.

§ 1403.29 Attempts to locate debtor.

Before disclosing delinquent debt information to a credit reporting agency, CCC shall take reasonable action to locate a debtor for whom CCC does not have a current address in order to send the notification provided for in § 1403.25 of this subpart.

§ 1403.30 Request for review of the indebtedness.

(a) Before disclosing delinquent debt information to a credit reporting agency, CCC shall, upon request of the debtor, provide for a review of the claim, including an opportunity for reconsideration of the initial decision concerning the existence or amount of the claim, in accordance with applicable

administrative appeal procedures set forth in 7 CFR Part 780. This review shall only consider defenses or arguments which were not available or could not have been available at any previous 7 CFR Part 780 appeal proceeding. It is not the purpose of the hearing provided by this section to reconsider previous decisions which are administratively final.

(b) Upon receipt of a request for review, within 30 days from the date of a notice to the debtor of intent to refer delinquent debt information to a credit reporting agency, CCC shall suspend its schedule for disclosure of delinquent debt information to a credit reporting agency until such time as a final decision is made on the request.

(c) Upon completion of the review, the reviewing official shall transmit to the debtor a written notification of the decision. If appropriate, notification shall inform the debtor of the scheduled date on or after which information concerning the debt will be provided to the credit reporting agency. The notification shall, if appropriate, also indicate any changes in the information to be disclosed to the extent such information differs from that provided in the initial notification.

§ 1403.31 Disclosure to credit reporting agencies.

(a) In accordance with guidelines established by the Executive Vice President, CCC, the responsible claims official shall report to credit reporting agencies delinquent debt information specified in § 1403.28.

(b) The agreements entered into by USDA and the appropriate credit reporting agencies provide the necessary assurances to CCC that the credit reporting agencies to which information will be provided are in compliance with the provisions of all the laws and regulations of the United States relating to providing credit information.

(c) Disclosure of information to credit reporting agencies shall be comprised of the information set forth in the initial determination or any modification thereof after notice and review as provided for by §§ 1403.25(a) and 1403.30.

(d) This section shall not apply to disclosure of delinquent debts when:

(1) The debtor has agreed to repay the debt, and such agreement is still valid; or

(2) The debtor has filed for review of the debt and the reviewing official or employee has not issued a decision on the review.

§ 1403.32 Request regarding information from a system of records.

(a) Upon written request of a debtor, CCC shall:

(1) Notify a debtor if a system of records maintained by CCC or ASCS contains any record pertaining to such debtor and permit access by the debtor to such records;

(2) Review a request by a debtor for correction or amendment to a record; and

(3) Consider an appeal by a debtor whose request for correction or amendment has been denied under paragraph (2) of this subsection.

(b) All requests or appeals under this section shall be made in accordance with the rules set forth in the Secretary's regulations at 7 CFR 1.110–1.123 and shall be submitted to the Director, Kansas City Management Office, ASCS/USDA, 8930 Ward Parkway, Kansas City, Missouri 64114.

Signed at Washington, DC, on December 19, 1986.

Richard E. Lyng,

Secretary.

[FR Doc. 86–29167 Filed 12–29–86; 8:45 am]

BILLING CODE 3410–05–M

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7 CFR Parts 1421 and 1427

Rice and Upland Cotton Programs

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: An interim rule published in the **Federal Register** on September 11, 1986 (51 FR 32297), that amended the regulations found at 7 CFR Parts 1421 and 1427 to implement (1) the 1986 rice marketing certificate program; (2) the upland cotton inventory protection program; and (3) the upland cotton first handler program is adopted as a final rule. These programs are authorized by section 603 of the Food Security Act of 1985 and section 103A(a)(5)(D) of the Agricultural Act of 1949, as amended.

EFFECTIVE DATE: December 30, 1986.

FOR FURTHER INFORMATION CONTACT: Charles V. Cunningham, Leader, Fibers Group, Commodity Analysis Division, USDA–ASCS, Room 3741, South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 447–7954. The Final Regulatory Impact Analysis describing the options considered in developing this final rule is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "major." It has been determined that these provisions will result in an annual effect on the economy of $100 million or more.

The titles and numbers of the Federal Assistance Programs to which this final rule applies are: Commodity Loans and Purchases—10.051; Rice Production Stabilization—10.065; and Cotton Production Stabilization—10.052 as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to the provisions of this final rule since the Commodity Credit Corporation ("CCC") is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this final rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

An interim rule was published in the **Federal Register** on September 11, 1986 (51 FR 32297), amending the regulations found at 7 CFR Parts 1421 and 1427 to implement the 1986 rice marketing certificate program (authorized by section 603 of the Food Security Act of 1985), the upland cotton inventory protection program, and the upland cotton first handler program (both authorized by section 103A(a)(5)(D) of the Agricultural Act of 1949, as amended). The interim rule provided for a 60-day public comment period which ended November 10, 1986. No comments were received with respect to the interim rule.

After a review of the interim rule, it was determined that no changes in the interim rule were necessary. Therefore, the interim rule will be adopted as a final rule without change.

List of Subjects

7 CFR Part 1421

Grains, Loan programs—agriculture, Price support program, Rice, Surety bonds, Warehouses.

7 CFR Part 1427

Cotton, Loan programs—agriculture, Packaging and containers, Price support programs, Surety bonds, Warehouses.

Final Rule

Accordingly, the interim rule published at 51 FR 32297, which amended 7 CFR Parts 1421 and 1427, is hereby adopted as a final rule without change.

Signed at Washington, DC, on December 22, 1986.

Milton J. Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 86–29139 Filed 12–29–86; 8:45 am]

BILLING CODE 3410–05–M

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7 CFR Part 1446

Peanut Warehouse Storage Loans and Handler Operations for the 1986 Through 1990 Crops; Corrections

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule; corrections.

SUMMARY: This document makes corrections by deleting extraneous or erroneous words which could result in incorrect interpretations in a Final Rule relating to peanuts which was published on Friday, December 12, 1986 (51 FR 44758).

FOR FURTHER INFORMATION CONTACT: David Kincannon (ASCS), 202–382–0152.

SUPPLEMENTARY INFORMATION: The following corrections are made in the **Federal Register** Document 86–27953 appearing on the following three pages.

On page 44760, center column, third paragraph down beginning with: "The June 17, 1986, interim rule . . .", 9th line, omit last word: "be", and on the 10th line omit the first word: "submitted".

§ 1446.71 [Corrected]

On page 44765, center column, § 1446.71 entitled "Administration", paragraph (b), entitled "Limitation of authority," in the fifth line of paragraph (b) omit the first word: "not".

§ 1446.125 [Corrected]

On page 44778, third column, § 1446.125 entitled "Loss of Peanuts," 6th line down, omit the second word: "shall".

Milton J. Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 86–29138 Filed 12–29–86; 8:45 am]

BILLING CODE 3410–05–M

Rural Electrification Administration

7 CFR Part 1784

Discounted Prepayments on REA Notes

AGENCY: Rural Electrification Administration, Agriculture Department.

ACTION: Interim Rule With Request for Comments.

SUMMARY: Rural Electrification Administration (REA) hereby amends 7 CFR Chapter XVII by adding Part 1784, Discounted Prepayments on REA Notes. The new part establishes policies and procedures to implement the provisions of section 306B of the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.) ("Act"). Section 306B authorizes the Administrator of REA ("Administrator") to permit REA borrowers through September 30, 1987, to prepay REA Notes at the lesser of the outstanding balance due or the present value discounted from the face value at maturity at a rate set by the Administrator. These regulations provide a formula for computing the amount which the borrower must pay and establish certain other requirements which borrowers must meet. As a result of the interim rule, borrowers will be allowed, for a specific period, to prepay all outstanding REA Notes with private financing.

DATE: Interim Rule effective December 30, 1986; written comments must be received by REA January 29, 1987.

ADDRESS: Comments should be addressed to: Director, Program Analysis Staff, U.S. Department of Agriculture, Rural Electrification Administration, Room 0014–S, 14th & Independence Avenue, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Thomas M. Scanlon, Director, Program Analysis Staff, U.S. Department of Agriculture, Rural Electrification Administration, 14th & Independence Avenue, SW., Washington, DC 20250, Telephone: 202–382–1946.

SUPPLEMENTARY INFORMATION: Pursuant to the Act, REA hereby amends 7 CFR Chapter XVII by adding a new part concerning discounted prepayments on REA Notes. This action has been reviewed in accordance with Executive Order 12291, Federal Regulations. This acting does not: (1) Have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs of prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; (3) result in significant adverse effects on competition, employment, investment or productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets and therefore has been determined to be "not major." This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule does not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq. (1976)], and therefore, does not require an environmental impact statement or an environmental assessment. This program is listed in the Catalog of Federal Domestic Assistance under No. 10.850, Rural Electric Loans and Guarantees and No. 10.851, Rural Telephone Loans and Loan Guarantees. For the reasons set forth in the Final Rule related Notice to 7 CFR Part 3015, Subpart V (50 FR 47034, November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Interim Rule With Request for Public Comment

Public Law 99–509 requires that implementing regulations be issued within 60 days after the date of enactment, which was October 21, 1986. In order to meet this time frame, the Agency shortened the normal 30 day comment period on the proposed rule to 15 days. The draft comment period ended on December 17, 1986. Based on the comments the Agency received, a number of substantive changes have been made. In order to meet the statutory deadline for issuing implementing regulations and at the same time provide the public an additional opportunity to comment on the changes, REA is issuing an interim rule with request for public comment. Since the Act requires these regulations to be published and effective 60 days from October 21, 1986, REA finds that good cause exists to make the interim rule effective upon publication. The interim rule is effective upon publication, thereby enabling borrowers to proceed with the application procedure.

Background

REA provides long-term loans and loan guarantees to eligible borrowers for the purpose of furnishing and improving electric and telephone service in rural areas. The REA Notes evidencing the loans made pursuant to the Act bear

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interest at either two or five percent. The REA Notes, as well as the proceeds from the sale, assignment or prepayment of the REA Notes are assets of the Rural Electrification and Telephone Revolving Fund ("Fund") to be used for such purposes as are permitted by the Act including honoring loan guarantees. Public Law 99–509, enacted October 21, 1986, amended the Act by adding section 306B which provides that REA Notes may not be sold nor prepaid at a value less than the face value of the outstanding balance, except when sold to or prepaid by the borrower at the lesser of the outstanding balance due on the REA Notes or their present value discounted from the face value at maturity at a rate set by the Administrator ("Discounted Present Value"). The exception is effective for the period ending September 30, 1987.

The regulations implement section 306B by providing a formula for computing the Discounted Present Value of REA Notes and establishing other terms and conditions of prepayment. The formula to determine the Discounted Present Value of the REA Notes uses, as the discount rate, the average yield on "'Aa" rated utilities published in Moody's Public Utility News Reports.

Among the terms and conditions of prepayment are the following:

(a) Borrowers must prepay all REA Notes;

(b) The borrower must agree, as a condition for additional loans or loan guarantees pursuant to Titles I, II, and III of the Act, that it will reimburse the Fund for losses associated with the prepayment of REA Notes; and

(c) Borrowers which are parties to wholesale power contracts with an REA financed power supplier will be required to provide assurances to the Administrator that they will meet their obligations to such power supplier.

Comments

In the Notice of Proposed Rulemaking (NPR), REA invited interested parties to file comments on or before December 17, 1986. Although some comments were received after that date, all responses received have been considered in preparing this Interim Rule with Request for Additional Comments.

In addition to Congressman Ed Jones, Chairman of the Subcommittee on Conservation, Credit and Rural Development, of the House Committee on Agriculture, comments were received from the nine different organizations. They are: (1) Vinson and Elkins, Attorneys at Law (on behalf the Guadalupe Valley Electric Cooperative, Guadalupe, Texas), (2) Missouri Telephone Company, Columbia, Missouri, (3) Basin Electric Power Cooperative, Bismarck, North Dakota, (4) Public Utilities No. 1 of Douglas County, East Wenatchee, Washington, (5) National Rural Utilities Cooperative Finance Corporation, Washington, D.C., (6) Colorado-Ute Electric Association, Inc., Montrose, Colorado, (7) National Rural Electric Cooperative Association, Washington, D.C., (8) National Rural Telecom Association and the United States Telephone Association, Washington, D.C., (joint comments), and (9) the National Telephone Cooperative Association.

Most of the comments opposed the provision of the rule that stated that borrowers who prepay at the Discounted Present Value could not seek additional financial assistance under the Act.

The regulations have been revised to provide that borrowers participating in the prepayment program are not precluded from obtaining additional financial assistance pursuant to the Act. Borrowers must agree, as a condition for additional loans or loan guarantees pursuant to Titles I, II and III of the Act, that they will reimburse the Fund for the losses associated with the prepayment of REA Notes. Prepayments offer an opportunity to implement a fundamental objective of the Act, that is, assisting borrowers to develop their ability to achieve the financial strength needed to enable them to satisfy their credit needs from their own financial organizations and other sources. (See, for example, the statement of Congressional policy, May 11, 1973, Public Law 93–82, 87 Stat. 65; 7 U.S.C. 930).

Those borrowers participating in the prepayment program will through the refinancing of debt improve their financial strength. This improvement comes at some cost to the Revolving Fund since the REA Notes will be prepaid at a discount from the Government's present value. The borrowers therefore receive a benefit from the prepayment while the Fund experiences a loss. Loans and loan guarantees are obligations of the Fund and therefore could deplete the Fund. The Agency believes that borrowers wishing to receive the benefits of the prepayments should agree to reimburse the Fund for losses associated with the prepayment of REA Notes as a condition to receiving additional loans and loan guarantees. Not only does this policy carry out the intent of Congress to move borrowers into private sector financing, it also represents prudent management of the Fund since it would preserve the remaining assets of the Fund, making the assets available for, among other purposes, financial assistance to borrowers who either were unable or unwilling to participate in the prepayment and hence did not receive the benefits associated with prepayment—the improvement in financial strength.

The next most often stated comment was the borrowers should not be required to prepay loans they have received from the Rural Telephone Bank (RTB), or from a non-REA lender under an REA guarantee. The comments argued that this provision would, in many cases, discourage prepayment and, in some cases, make it uneconomical.

After consideration of all of the comments, REA has revised the regulations to require only prepayments of direct and insured REA loans. This does not prohibit borrower from prepaying their RTB loans or REA guaranteed loans. However, it is no longer required.

One organization stated that REA should not require the prepayment of all REA direct and insured loans.

Although Pub. L. 99–509 does not specifically require the prepayment of all REA direct and insured loans, it does not prohibit such prepayment requirement. REA believes that this prepayment requirement is consistent with the objective of enabling and encouraging borrowers to obtain financing from private sources. In addition by allowing borrowers who participate in the program to retain even one outstanding loan from REA will mean that the REA servicing costs associated with that borrower will not be measurably reduced.

Another comment was in opposition to the requirement that borrowers not be permitted additional advances under approved loans. Borrowers will be allowed to continue to receive advances on RTB loans and guaranteed loans notwithstanding prepayment. Borrowers will be permitted to receive advances on REA loans until the prepayment agreement is executed.

Two organizations opposed the requirement that borrowers who participate in the program agree not to use tax-exempt financing to prepay REA loans. This requirement is consistent with the provisions of the Office of Management and Budget Circular A–70, Policies and Procedures for Federal Credit Programs, dated August 24, 1984. REA believes that it is within the discretion of the Administrator to impose such a requirement since to allow borrowers to use tax-exempt financing would have the effect of giving a third benefit to the borrower at the expense of the Government. The first is the initial subsidy associated with the loan, the second is the discount on the prepayment itself, and the third would be the loss of revenue to the U.S. Treasury.

Another comment centered on whether REA financed power supply systems who have had one or more distribution systems prepay their REA loans, would still be eligible for the same level of financial assistance as power supply systems who did not have any distribution members participate in the program.

It is not REA's intention to restrict financial assistance to power supply systems based on their members' participation in the prepayment program. REA will consider providing financial assistance to meet the power supply needs of Act beneficiaries being served by those distribution borrowers participating in the prepayment program.

Another comment concerned the magnitude of participating in the program and the disposition of the proceeds. It is REA's intention that the proceeds will be used to meet the obligations of the Rural Electrification and Telephone Revolving Fund, including advances on approval loans, interest expense, payments under the guarantee provision, and any other legal obligations of the Fund.

At this time, REA does not know what the extent of participation by borrowers will be. However, the Administrator has reserved the right to restrict the applications which may be approved, taking into account the financial interests and administrative considerations of the Government.

List of Subjects in 7 CFR Part 1784

Administrative practice and procedure, Electric utilities, Telephone utilities.

In view of the above REA amends 7 CFR XVII by adding the following Part 1784.

PART 1784—DISCOUNTED PREPAYMENTS ON REA NOTES

Secs.

1784.1 Purpose.
1784.2 Definitions.
1784.3 Prepayment.
1784.4 Discounted present value.
1784.5 Eligibility criteria
1784.6 Application procedure.
1784.7 Approval of applications.
1784.8 Prepayment agreement.
1784.9 Security.
1784.10 Loan fund audit
1784.11 Closing.
1784.12 Other prepayments.

Authority: 7 U.S.C. 901–950b; Title 1, Subtitle B, Pub. L. 99–509; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23, delegation of authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72.

§ 1784.1 Purpose.

This Part sets forth the policies and procedures of REA whereby electric and telephone borrowers may prepay outstanding REA Notes at the Discounted Present Value of the REA Notes with private financing.

§ 1784.2 Definitions.

As used in this Part:

(a) "Act" means the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*).

(b) "Administrator" means the Administrator of REA.

(c) "Discounted Present Value" shall have the meaning specified in § 1784.4.

(d) "Fund" means the Rural Electrification and Telephone Revolving Fund established pursuant to the Act.

(e) "REA" means the Rural Electrification Administration, an agency of the United States Department of Agriculture.

(f) "REA Loan Agreement" means the agreement between the borrower and REA providing for loans pursuant to the Act.

(g) "REA Notes" means those notes, bonds or other obligations evidencing indebtedness created by loans made pursuant to Titles I, II or III of the Act (7 U.S.C. 901–940).

§ 1784.3 Prepayment.

Through September 30, 1987, the Administrator may, pursuant to this Part, permit eligible electric and telephone borrowers to prepay all outstanding REA Notes issued or assumed by such borrowers and held in the Fund, upon paying the lesser of the outstanding balance or the Discounted Present Value.

§ 1784.4 Discounted Present Value.

The Discounted Present Value shall be calculated five business days before prepayment is made by summing the present values of all remaining payments by using the following formula:

$$\text{Present Value} = \sum_{k=1}^{n} \frac{P_k}{\prod_{i=1}^{k} \left[1.0 + \left(\frac{D1_i}{365} + \frac{D2_i}{366}\right) \times I\right]}$$

Where:

P_k = Total payment including interest, due on the kth payment date following the prepayment date.

n = Total number of remaining payments dates.

I = The discount rate, in decimals, which shall be the average rate on utility bonds bearing a rating of "Aa" as set forth in that issue of Moody's Public Utility News Reports most recently published prior to the date on which Discouted Present Value is calculated.

$D1_i$ = Number of days in the ith payment period that are in a non-leap year (365 day year).

$D2_i$ = Number of days in the ith payment period that are in a leap year (366 day year).

§ 1784.5 Eligibility criteria.

To be eligible to prepay REA Notes at the Discounted Present Value a borrower must comply with the following criteria:

(a) The borrower must be current on all payments due on its outstanding REA Notes and all other payment obligations owed to REA and the Rural Telephone Bank.

(b) The borrower must agree to prepay all of its outstanding REA Notes.

(c) The borrower must identify the source of private financing that will be used to refinance its outstanding REA Notes, which financing may not include obligations the income of which is exempt from taxation under the Internal Revenue Code of 1986.

(d) The borrower must have expended all funds advanced on account of the REA Notes for the purposes for which such funds were advanced.

(e) The borrower must agree to a rescission of the unadvanced balance of the REA Notes.

(f) The borrower must agree that the borrower, its successors or assigns, shall pay to the Government, as a condition of receiving additional loans or loan guarantees pursuant to Titles I, II and III of the Act, an amount equal to the aggregate of the difference with respect to each of the REA Notes between the

amount outstanding on the REA Note and the Discounted Present Value of the REA Note upon prepayment with interest accuring quarterly; the interest rates shall be the rates provided in the respective REA Notes.

(g) If the borrower is a party to a wholesale power contract with a power supplier financed pursuant to the Act, the borrower must provide the Administrator with such assurances as the Administrator may request that it will meet its obligations to the power supplier.

§ 1784.6 Application procedure.

Any borrower seeking to prepay its REA Notes under this Part should apply to the appropriate REA Area Director by submitting:

(a) A board resolution that: (1) Requests approval of the prepayment of the borrower's outstanding REA Notes, and (2) states the intent of the borrower to comply with all eligibility criteria set forth in Section 1784.5 of this Part.

(b) A list of all REA Notes together with the outstanding amount on such notes.

(c) Such additional information as the Administrator shall request.

§ 1784.7 Approval of applications.

The applications will ordinarily be reviewed and, if satisfactory, approved, and closing schedule based on the order in which executed prepayment agreements are received. The Administrator may limit the number of applications approved and closings scheduled from time to time taking into account, among other matters, the financial interests and administrative considerations of the Government.

§ 1784.8 Prepayment agreement.

Upon approving an application for prepayment under this Part, the Administrator shall notify the borrower and deliver to the borrower for its execution a prepayment agreement which shall set forth and provide:

(a) The REA Notes to be prepaid and when the Discounted Present Value will be calculated.

(b) The place and conditions for closing.

(c) Agreement that the unadvanced balance of REA Notes shall be rescinded.

(d) Agreement that the borrower, or its successors or assigns, shall pay to the Government, as a condition of receiving additional loans or loan guarantees pursuant to Titles I, II and III of the Act, an amount equal to the aggregate of the difference with respect to each of the REA Notes between the amount outstanding on the REA Note and the Discounted Present Value of the REA Note upon prepayment with interest accruing quarterly; the interest rates shall be the rates provided in the respective REA Notes.

(e) Assurances that the borrower will meet its obligations to any power supplier financed pursuant to the Act.

(f) Such other terms and conditions as the Administrator deems appropriate.

§ 1784.9 Security.

If, after prepayment of REA Notes, the Government should continue to hold liens on the borrower's property that secure loans made or guaranteed pursuant to the Act, the Administrator of REA or the Governor of the Rural Telephone Bank, as the case may be, will consider request for the accommodation of such liens for the purpose of providing security for loans the proceeds of which were used to prepay REA Notes. Such lien accommodations shall be limited in amount to the Discounted Present Value of the REA Notes plus such costs, as the Administrator shall determine to be reasonable, incurred by the borrower in obtaining such loans.

§ 1784.10 Loan fund audit.

Within 6 months of closing REA shall have the right to audit transactions involving the REA construction fund established and maintained by the borrower pursuant to the terms of the REA Loan Agreement and to inspect all books, records, accounts and other documents and papers of the borrower. Should REA determine that the borrower has made disbursements of funds advanced pursuant to REA Notes which do not comply with the requirements of the REA Loan Agreement, the borrower shall be required to pay to the Government an amount equal to the difference between the amount which the borrower prepaid on such REA Notes evidencing REA loan funds which were improperly disbursed and the amount which the borrower would otherwise have been required to return to the Government as a result of noncompliance if the borrower had not prepaid such REA Notes. (See 7 CFR 1711)

§ 1784.11 Closing.

(a) The borrower shall be responsible for obtaining all approvals necessary to consummate the transaction as required by the prepayment agreement including such approvals as may be required by regulatory bodies and other lenders.

(b) The REA Notes shall be prepaid at a closing to be held in accordance with the prepayment agreement; provided, however, that no closing may be scheduled for after September 30, 1987. At closing, a borrower shall prepay the REA Notes by paying to the Government an amount equal to the Discounted Present Value of the REA Notes. The closing shall otherwise be conducted as prescribed in the prepayment agreement.

§ 1784.12 Other prepayments.

REA loan documentation generally permits borrowers to prepay REA Notes by paying the outstanding balance due thereon. Nothing in this Part shall prohibit any borrower from prepaying its outstanding REA Notes in accordance with the terms thereof. The provisions of this Part shall not be applicable to such prepayment.

Dated: December 24, 1986.

Jack Van Mark,

Acting Administrator.

[FR Doc. 86-29291 Filed 12-29-86; 8:45 am]

BILLING CODE 3410-15-M

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 86-122]

Brucellosis in Cattle; State and Area Classifications; Correction

AGENCY: Animal and Plant Health Inspection Service (APHIS), USDA.

ACTION: Interim rule; correction.

SUMMARY: APHIS is correcting the amendatory language of an interim rule which amended the regulations by changing the brucellosis classification status of certain locations. The interim rule published on December 1, 1986 (51 FR 43170-43172) amended § 78.20 but should have amended § 78.41. Accordingly, APHIS is correcting those regulations as set forth below.

FOR FURTHER INFORMATION CONTACT: Dr. Jan D. Huber at (301) 436-5965.

Correction

The following corrections are made to FR Doc. 86-26936, published on December 1, 1986, on pages 43170-43172:

§ 78.41 [Correctly amended]

1. On page 43171, third column, Part 78, amendatory language for item two is corrected to read as follows:

"2. In § 78.41, paragraph (c), the listing for 'Florida' is revised to read as follows:"

2. The heading for "§ 78.20" is corrected to read "§ 78.41."

3. On page 43171, third column, Part 78, amendatory language for items three and four are corrected to read as follows:

"3. In § 78.41, paragraph (c), the listing for 'Texas' is revised to read as follows:"

"4. In § 78.41, paragraph (d), the listing for 'Florida' is amended by removing the following counties: Citrus, Flagler, Hernando, Lake, Levy, Marion, Orange, Pasco, Pinellas, Seminole, Sumter, and Volusia".

4. On page 43172, first column, Part 78, amendatory language for item five is corrected to read as follows:

"5. In § 78.41, paragraph (d), the listing for 'Texas' is amended by removing the following counties: Bastrop, Caldwell, Denton, Dimmit, Falls, Frio, Gonzales, Grayson, Guadalupe, Lee, Milam, and Wilson".

Done in Washington, DC, this 23rd day of December, 1986.

J.K. Atwell,

Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 86-29137 Filed 12-29-86; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563

[No. 86-1260]

Regulation of Direct Investment by Insured Institutions

Dated: December 23, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: Interim rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is adopting an interim final amendment to its regulation governing investments by institutions the accounts of which are insured by the FSLIC ("insured institutions") in equity securities, real estate, service corporations, and operating subsidiaries ("direct investments"). This amendment will defer the expiration of the rule from January 1, 1987, to March 15, 1987. The Board also intends shortly to reopen the comment period through February 6, 1987 on the proposal of September 11, 1986, to extend the direct investment rule for two years. During this time, the Board will hold a public hearing on January 29 and January 30, 1987, concerning extension of the direct investment rule for a longer period. The Board will extend the comment period regarding the proposal and announce the time and place of the hearing and the procedures that will govern its conduct of the hearing in a separate notice to be published in the Federal Register.

EFFECTIVE DATE: January 1, 1987.

FOR FURTHER INFORMATION CONTACT: Christina M. Gattuso, Staff Attorney, (202) 377-6649, Regulations and Legislation Division, Office of General Counsel; or Joseph A. McKenzie, Director, Policy Analysis Division, Office of Policy and Economic Research, (202) 377-6763; Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On January 31, 1985, the Board adopted a new regulation governing direct investments by insured institutions. Board Res. No. 85-79-A, 50 FR 6912 (Feb. 19, 1985) (codified at 12 CFR 563.9-8). The regulation created a process of supervisory review and approval by the Board's Principal Supervisory Agents ("PSAs") of certain types of direct investment and of aggregate direct investment above certain threshold amounts. The regulation includes qualitative criteria for investment by institutions in equity securities, as well as diversification requirements applicable to investment in any one issuer of securities or in any one real estate project. The direct investment regulation was designed to allow institutions the flexibility to exercise their investment powers, as independently authorized by applicable law, in a manner that would expose neither the institutions themselves nor the FSLIC insurance fund to an unacceptable level of risk. At the same time, the Board sought to ensure that these institutions continued to fulfill their obligations to provide economical home financing.

Because of the complexity of the problems the rule sought to address, the Board believed it important to assess, after sufficient experience with the rule, whether the approach taken was effective in controlling risk and whether further regulatory action was required. 50 FR at 6927. Therefore, by its own terms, the direct investment rule was to expire on January 1, 1987.

On September 11, 1986, the Board proposed to amend the direct investment rule to defer its expiration from January 1, 1987 to January 1, 1989. Board Res. No. 86-982, 51 FR 32925 (Sept. 17, 1986). Since publication of the proposal, the Board has received written public comments, which are summarized below. In addition to comments on many of the substantive aspects of the direct investment rule, the Board has also received petitions from thirty-two members of the Federal Home Loan Bank System ("FHLBank System") requesting a public hearing on issues raised by the proposal. Those petitioners have asserted that under its own regulations the Board is required to provide a public hearing. For the reasons discussed below, the Board has concluded that it is not bound to afford the petitioners a hearing with respect to this rulemaking. Nonetheless, the Board has concluded that such a hearing would aid informed decisionmaking and thereby serve the public interest. Therefore, on January 29 and 30, 1987, the Board will hold a public hearing on the direct investment rule, including the issues of whether the rule is needed and, if so, in what form. The particulars of the hearing—its time, place, duration, and the procedures that will govern it—will be announced shortly in the Federal Register.

In the meantime, pending completion and review of the hearing proceedings, the Board finds that the public interest is best served by reopening the comment period and by a short delay in the expiration of the direct investment rule. Two reasons support this delay.

First, the Board lacked a quorum at a time when it would otherwise have been able to act upon the proposal. The new Board members, in particular, need more time to weigh the issues prior to deciding them. Extending the comment period and holding a hearing will be productive of this end.

Second, the Board believes that preservation of the status quo with regard to insured institutions' direct investments is appropriate to ensure the orderly outcome of its public hearing. Having determined that it will hold a hearing, the Board believes it would be unwise to alter its direct investment regulation, or to allow the rule to expire, until it has had the opportunity to consider carefully the results of the hearing. To modify the regulation in the meantime would undermine the role of the hearing in the Board's deliberative process. Moreover, lapse or modification of the rule now would subject insured institutions to uncertainty stemming from their inability to determine, in advance of final action by the Board following the hearing, what rule would govern their direct investments. Accordingly, the Board today adopts an interim rule that delays the direct investment regulation's expiration date until March 15, 1987.

Summary and Discussion of Comments

The Board received 83 public comments in response to the proposal. The majority of comments (45) were

submitted by insured institutions. Of the remainder, 7 were submitted by industry trade associations, 5 by law firms representing insured institutions, 3 by economic consultants representing insured institutions, and 23 by Members of Congress.

Six comments expressed support for the proposal. Three comments supported the proposal with certain suggested modifications. Nineteen comments opposed the proposal. Twenty-eight comments requested an extension of the comment period and thirty-two members of the Federal Home Loan Bank System ("FHLBank System") petitioned for a hearing on the proposed rule. Although the comment period ended on October 17, 1986, the Board has considered late-filed letters in an effort to maximize public participation in the rulemaking. After carefully considering the issues raised by the comments, which are fully discussed below, the Board has determined to defer expiration of the direct investment regulation only to March 15, 1987. Additionally, as discussed in more detail below, the Board determined to reopen the public comment period until February 6, 1987 and to hold a public hearing on the direct investment rule.

Procedural Issues

The Board believes that its decision to hold a hearing is, in itself, adequate response to those commenters who raised procedural objections to its proposal. Because the Board disagrees with the rationale set forth by those commenters, it is taking this opportunity to summarize and respond to their views so that the record will contain a clear statement of reasons for the Board's action.

A. Comment Period Extension

Many commenters asserted that the comment period following publication of the proposal was inadequate and requested various extensions of the comment period. One commenter argued that the scope of the requested comments was impermissibly narrow. Two commenters contended that the duration of the comment period, the Board's lack of express statutory authority to adopt the rule, and the Board's failure to consider regulatory alternatives violated the Administrative Procedure Act ("APA") (5 U.S.C. 551 *et seq.*). Thirty-two members of the FHLBank System petitioned for a public hearing on the proposal pursuant to 12 CFR 507.10.

The comment period following publication of the proposal extended from September 17, 1986 until October 17, 1986. The APA does not require any specific time period for public comment on proposals. However, the Board's policies (Board Res. No. 80–584, 45 FR 63135 (Sept. 23, 1980)) and rules (12 CFR 508.13) generally provides for 60-day comment periods in the absence of circumstances justifying a shorter period, which in no event may be less than 15 days. The Board has received and considered 83 public comments. As it noted in the proposal, the Board provided for a 30-day rather than a 60-day comment period because the direct investment regulation had been previously published for public comment and because the public interest required prompt Board action.

B. Public Hearing

As discussed above, the Board has determined to hold a public hearing with respect to whether, and for how long, the expiration of the direct investment rule should be delayed after March 15, 1987. The Board wishes to emphasize that its decision to hold a public hearing, as discussed above, is discretionary; the Board is not legally bound to follow such a procedure. The Board believes that a hearing will aid its decisionmaking process for several reasons. First, some of the issues raised in the comments bear further study. Moreover, since publication of the direct investment proposal in September 1986, two new members have been appointed to the Board. A public hearing and the additional time for study and review that such a hearing will afford the new Board an opportunity for careful deliberation before undertaking final action with respect to direct investment.

However, neither the APA nor the Board's regulations require a public evidentiary hearing in connection with the type of informal rulemaking involved here. *See generally* 5 U.S.C. 553; 12 CFR Parts 507–09 (1986). The rule is one of general applicability; it is not adjudicatory in nature. Consequently, a hearing is not required under the APA; however, the Board may, in its discretion, determine to hold such a hearing under the APA. With regard to the interim extension of the rule the Board is today adopting, the Board believes that its consideration of the written data, views, and arguments submitted by interested members of the public with respect to the direct investment proposal enables it to discharge its administrative responsibilities in a fully satisfactory manner without the delay that a hearing would entail.

Two commenters asserted that the terms of § 507.10 are nondiscretionary and therefore the Board is required to hold a public hearing on the proposal if 25 members of the FHLBank System petitioned for such a hearing pursuant to § 507.10. Section 507.10 provides, in pertinent part, that "[a]fter receipt of written requests therefor to the Secretary to the Board . . . of at least 25 members of the Federal Home Loan Bank System . . . the Board will fix a time and place for a hearing *on a proposed amendment* or upon an expiring regulation *relating to Federal Home Loan Banks to which petitioners object.*" 12 CFR 507.10 (1986) (emphasis added). As noted above, the Board has received petitions for a hearing from 32 members of the FHLBank System.

These commenters argued that the Board is required to hold a hearing on the proposal because the direct investment regulation relates to the FHLBanks for the following reasons. First, the rule is directed at the safety and credit eligibility of member institutions, which, in turn, affect the activities and stability of a primary creditor of those institutions, the FHLBanks. Second, the Board has also linked the direct investment rule to the paramount purpose and function of the FHLBanks—"maintenance of a system of sound and economic home financing." 50 FR 6912 (Feb. 19, 1985). Third, the Board has directly involved the FHLBanks, through the PSA system, in the administration and operation of the direct investment rule.

The Board finds these contentions unpersuasive. A review of the history of § 507.10 shows that this provision has been included in the FHLBank System regulations since 1940, when it was added to provide substantially the same procedures relating to amendments as were set forth at the time in the regulations governing Federal associations and FSLIC-insured institutions.[1] From 1940 to 1948, the provision required the Board to set a hearing "on a proposed amendment or upon an existing regulation to which petitioners object." In 1948, the Board substantially narrowed the right to a hearing by amending the section to read "on a proposed amendment or upon an existing regulation *relating to Federal Home Loan Banks* to which petitioners object." 13 FR 8263, 8264 (1948) (emphasis added).

As noted above, the regulations for the Federal Savings and Loan System and the FSLIC contained identical, parallel provisions from 1938 through 1949. See 24 CFR 201.2, 301.22 (1948). In 1949, these provisions were substantially revised and provided that Federal associations or FSLIC-insured institutions could request a hearing with respect to any application or petition which was denied or disapproved by the Board.[2] 14 FR 3980, 3981 (1949); 15 FR 680, 686 (1950). In 1970, these sections were revoked. 35 FR 2509, 2515 (1970).

Based on the history of § 507.10 which shows that its applicability has become increasingly narrow, the Board concludes that the section applies only to proposed amendments and existing regulations whose primary function is to regulate the activities and operations of FHLBanks.[3] Consequently, the Board does not believe that the direct investment regulation, which primarily acts to regulate investment activities of insured institutions, is the type of regulation contemplated by § 507.10. Therefore, the Board finds that § 507.10 does not mandate a hearing on the proposed extension of the direct investment regulation.

Statutory Authority

Several commenters contended that extension of the direct investment rule would exceed the Board's statutory authority. These commenters asserted that the Board has no statutory authority to extend a regulation that preempts the enactments of state legislatures authorizing unlimited or less restrictive direct investment by insured institutions. These commenters also argued that the proposal is in direct contravention of Congressional purpose in creating the dual banking system.

The same issues were raised by commenters with respect to the promulgation of the direct investment rule and were fully addressed by the Board in the preamble to the reproposed rule of December 1984 ("December Reproposal") and the 1985 final direct investment regulation.[4] *See* Board Res. No. 84–715, 49 FR 48743 (Dec. 14, 1984), Board Res. No. 85–79–A, 50 FR 6812 (Feb. 19, 1985).

As explained at length in the preamble to both the December Reproposal and the final rule, the Board believes that these commenters take an unduly restrictive view of the Board's authority and responsibility to carry out the purpose of title IV of the National Housing Act ("NHA") (12 U.S.C. 1724–30) and the Federal Home Loan Bank Act ("Bank Act") (12 U.S.C. 1421–29). Among the most important purposes of these two acts is the development and maintenance of a system of sound and economical home financing. An additional, closely related purpose of the NHA is the protection of the FSLIC fund and depositors from undue risk. The Board continues to believe that the direct investment regulation enables the Board to carry out both of these objectives without intruding upon the regulatory power of the states. For a more detailed discussion of the Board's statutory authority to adopt this proposal, *see*, 50 FR at 6913–14 and 49 FR at 48745–46.

Description of Interim Rule

While the arguments and evidence offered by commenters raise important issues which merit further review, the Board also believes that a limited extension is appropriate for the reasons discussed above. Consequently, as discussed above, the Board has determined to defer the expiration date of the rule to March 15, 1987, and, in a separate notice soon to be published in the Federal Register, to reopen the comment period on the September 11, 1986, proposal through February 6, 1987, and to announce a public hearing on January 29 and 30, 1987.

Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following regulatory flexibility analysis:

1. *Need for and objectives of the rule.* These elements are incorporated above in **SUPPLEMENTARY INFORMATION.**

2. *Issues raised by Comments and Agency Assessment and Response.*

These elements are incorporated above in **SUPPLEMENTARY INFORMATION.**

3. *Significant alternatives minimizing small-entity impact and agency response.*

The requirements of the interim final regulation are based upon the Board's determination that it needs further time to decide upon the merits of the issues presented and that the public interest requires that the status quo be maintained for a brief period pending Board action.

List of Subjects in 12 CFR Part 563

Bank deposit insurance, Investments, Reporting and recordkeeping requirements, Saving and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby amends Part 563, Subchapter D, Chapter V, Title 12, *Code of Federal Regulations*, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 10, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 4, 80 Stat. 824, sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 202, 96 Stat. 1489, as amended (12 U.S.C. 1729(f)); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 1981, 3 CFR, 1943–1948 Comp., p. 1071.

§ 563.9–8 [Amended]

2. Paragraph (h) of § 563.9–8 is amended by removing the date "January 1, 1987" and inserting in lieu thereof the date "March 15, 1987."

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Acting Secretary.

[FR Doc. 86–29286 Filed 12–29–86; 8:45 am]

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[1] From 1938 through 1949, the regulations governing Federal associations and FSLIC-insured institutions provided that upon written request from seven FSLAC members or 50 Federal associations (or 50 insured institutions), the Board will fix a time and place for a hearing "on a proposed amendment or upon an existing regulation to which petitioners object." *See* 24 CFR 201.2, 301.22 (1948).

[2] In 1949, section 141.2 (formerly § 201.2) was redesignated as section 142.2 and was revised to read, in pertinent part, as follows: "Any person who has made an application or petition to the Board pursuant to any provision of Parts 143 [Incorporation, Organization and Conversion], 144 [Charter and Bylaws], 145 [Operations], or 146 [Merger, Dissolution and Reorganization] may request a hearing thereon, provided such application or petition has been denied or disapproved by the Board." 14 FR 3980, 3981 (1949). In 1950, § 161.22 (formerly § 307.22) was redesignated as § 167.2 and the text of the section was revised to conform to § 142.2 with the only major difference in language being "pursuant to any provision of Parts 162 [Application for Insurance], 163 [Operations], 164 [Settlement of Insurance], or 165 [Termination of Insurance] . . ." 15 FR 686, 686 (1950).

[3] The Board notes that the courts have consistently held that an agency's interpretation of its own regulations is controlling unless plainly erroneous or inconsistent. *See, e.g., United States v. Lorionoff*, 431 U.S. 864 (1977); *Belco Petroleum Corp. v. Federal Regulatory Commission*, 589 F.2d 661 (D.C. Cir. 1978). *See also Udall v. Tallman*, 380 U.S. 1, 4 (1966) ("[t]he Secretary's interpretation may not be the only one permitted by the language of the orders, but it is clearly a reasonable interpretation; courts must therefore respect it.").

[4] The Board initially proposed the direct investment rule for comment on May 10, 1984. *See* Board Res. No. 84–227, 49 FR 20719 (May 16, 1984). On the basis of comments received, the Board modified the May proposal and issued a reproposed rule on direct investment. *See* Board Res. 84–715, 49 FR 48743 (Dec. 14, 1984). On January 31, 1985, the Board adopted the final direct investment rule. *See* Board Res. No. 85–79–A, 50 FR 6812 (Feb. 19, 1985).

DEPARTMENT OF COMMERCE

15 CFR Part 21

[Docket No. 60468-6205]

Debt Collection Act of 1982; Administrative Offset

AGENCY: Department of Commerce.

ACTION: Final rule.

SUMMARY: The Debt Collection Act of 1982 (Pub. L. 97-365) authorizes the Federal Government to collect debts owed it by means of administrative offset (31 U.S.C. 3716). This final rule establishes procedures which the Department of Commerce (hereinafter referred to as "the Department") will follow in making administrative offsets.

EFFECTIVE DATE: These regulations shall take effect January 29, 1987.

FOR FURTHER INFORMATION CONTACT: Roger J. Mallet, Office of Finance and Federal Assistance, Office of the Secretary, Department of Commerce, Room 6827, Herbert C. Hoover Building, 14th & Constitution Avenue, NW., Washington, DC 20230, telephone (202) 377-2324.

SUPPLEMENTARY INFORMATION: The Debt Collection Act of 1982 (the Act) amends the Federal Claims Collection Act of 1966 by enhancing the Government's ability to collect money owed it through the establishment of new debt collection techniques such as administrative offset. This rule contains the Department's provisions to implement administrative offsets in collecting delinquent accounts. The provisions are consistent with the Federal Claims Collection Standards issued jointly by the Department of Justice and the General Accounting Office (4 CFR 101.1 et seq.).

The Act states that administrative offset is the withholding of money payable by the United States to, or held by the United States on behalf of a person, to satisfy a debt owed the United States by that person. For example, an administrative offset could be initiated by the Department against payments to be made by another Federal department or agency to a debtor on a Federal loan, contract, or a grant. For administrative offset, the Act requires that the agency observe notice and procedural requirements before any offset is made. Administrative offsets may be made to satisfy an outstanding debt up to ten years from the date the Government's right to collect the debt first accrued. In defining "person", the Act states that administrative offset does not apply to an agency of the United States Government, or of a State or local government.

The administrative offset procedures issued by the Department cover such aspects of offset as: (1) Coordinating collection action with another Federal agency (for example, when the Commerce Department needs another Federal agency to collect the money by offset), (2) notifying debtors prior to offsets being made, (3) providing the debtor with the opportunity to review the Department's records related to the particular debt, (4) providing the debtor with the opportunity to enter into a debt repayment agreement with the Department, and (5) establishing time periods in which the debtor must notify the Department of his or her election of any of these procedures. Review of the record includes a review by the debtor of the written record pertaining to the debt, and, in some situations, an oral hearing. The conditions for these two procedures are outlined in this rule.

Specific procedures, based on regulations (5 CFR Part 831, Subpart R) issued by the Director, Office of Personnel Management (OPM), for offset against amounts payable from the civil service retirement and disability fund are covered in this rule.

Executive Order 12291

This final rule has been reviewed and has been determined not to be a "major rule" as defined in Executive Order 12291 dated February 17, 1981, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, state or local Government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The Department believes that this rule will have no "significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Pub. L. 96-354, Stat. 1164 (5 U.S.C. 605(b)). The General Counsel has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. This conclusion is reached because the rule does not, in itself, impose any additional requirements upon small entities, accordingly, no regulatory flexibility analysis is required.

Paperwork Reduction Act

Under section 3518 of the Paperwork Reduction Act of 1980 and 5 CFR 1320.3(C), the information contained in this regulation is not subject to the Office of Management and Budget review and approval.

Discussion of Final Rule

The Department published a proposed rule on administrative offsets in the **Federal Register** (51 FR 18605) on May 21, 1986. The proposed rule provided for a 30-day comment period. The comment period ended June 20, 1986, and during that time no comments were received from the public. Therefore, the proposed rule with minor changes is being published as the Department's final rule pertaining to administrative offset. In developing the final rule, two sections of the proposed rule—s 21.9, Stay of Offset, and s 21.14, Notice of Offset—were removed from the text and the remaining sections renumbered accordingly.

The provisions of § 21.9 included rights already provided to a debtor by other provisions of the Department's Administrative Offset Regulations, that is (1) the right to request a review of the determination of indebtedness or the opportunity to enter into a written repayment agreement; and (2) until these processes are completed, administrative offset would not ordinarily be taken unless such action is necessary to prevent substantial prejudice to the Government's ability to collect the debt. Section 21.14, Notice of Offset, provided that a final notice be sent to a debtor before the actual offset takes place.

During final review of the regulations, the Department decided that both sections should be removed because they did not advance or increase a debtor's rights but would only serve to further delay pursuit of the remedy or create the possibility that the offset collection procedures could become substantially more complicated than contemplated under the Federal Debt Collection Act. It was also determined that removal of these sections would not affect the debtor's right to due process as required by 31 U.S.C. 3716 or as already provided by other provisions of these regulations.

Other minor changes were made to clarify wording regarding receipt of documents which would allow the Department to control the established period of times designated for specific actions.

List of Subjects in 15 CFR Part 21

Claims.

For the reasons set forth above, Part 21 will be added to 15 CFR Subtitle A to read as follows:

PART 21—ADMINISTRATIVE OFFSET

Sec.
21.1 Definitions.
21.2 Purpose and scope.
21.3 Department responsibilities.
21.4 Notification requirements before offset.
21.5 Exceptions to notification requirements.
21.6 Written agreement to repay debt.
21.7 Review of Department records related to the debt.
21.8 Review within the Department of a determination of indebtedness.
21.9 Types of reviews.
21.10 Review procedures.
21.11 Determination of indebtedness.
21.12 Coordinating administrative offset within the Department and with other federal agencies.
21.13 Procedures for administrative offset: single debts.
21.14 Procedures for administrative offset: multiple debts.
21.15 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund.
21.16 Collection against a judgment.
21.17 Liquidation of collateral.
21.18 Collection in installments.
21.19 Additional administrative collection action.

Authority: 31 U.S.C. 3716; 4 CFR Part 102.

§ 21.1 Definitions.

For purposes of this subpart:

(a) The term "administrative offset" means satisfying a debt by withholding of money payable by the Department to, or held by the Department on behalf of a person, to satisfy a debt owed the Federal Government by that person.

(b) The term "person" includes individuals, businesses, organizations and other entities, but does not include any agency of the United States, or any State or local government.

(c) The terms "claim" and "debt" are deemed synonymous and interchangeable. They refer to an amount of money or property which has been determined by an appropriate agency official to be owed to the United States from any person, organization, or entity, except another Federal agency, a State or local government, or Indian Tribal Government.

(d) Agency means:

(1) An Executive department, military department, Government corporation, or independent establishment as defined in 5 U.S.C. 101, 102, 103, or 104, respectively.

(2) The United States Postal Service; or

(3) The Postal Rate Commission.

(e) Debtor means the same as "person."

(f) "Department" means the Department of Commerce.

(g) "Secretary" means the Secretary of the Department of Commerce.

(h) "Assistant Secretary for Administration" means the Assistant Secretary for Administration of the Department of Commerce.

(i) "United States" includes an "agency" of the United States.

(j) "Waiver" means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by a person to the United States.

(k) "Departmental Unit" means an individual operating or administrative component within the Department of Commerce.

(l) "Departmental Unit Head" means the head of an individual operating or administrative component within the Department of Commerce responsible for debt collection.

(m) "Notice of Intent" means a demand notice sent by the Department to the debtor indicating not only the amount due, but also the Department's intent to offset all or some of the amount due from other source(s) of Federal payment(s) that may be due the debtor.

(n) "Workout Group" means Departmental debt collection specialist(s) assigned to collection of a delinquent debt when the claim is 30 or more days past due.

§ 21.2 Purpose and scope.

(a) The regulations in this subpart establish procedures to implement section 10 of the Debt Collection Act of 1982 (Pub. L. 97-365), 31 U.S.C. 3716. Among other things, this statute authorizes the heads of each agency to collect a claim arising under an agency program by means of administrative offset, except that no claim may be collected by such means if outstanding for more than 10 years after the agency's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsibility to discover and collect such debts.

(b) Unless otherwise provided for by statute, these regulations do not apply to an agency of the United States, a State government, or unit of general local government. In addition, these procedures do not apply to debts arising under the Internal Revenue Code (26 U.S.C. 1-9602), the Social Security Act (42 U.S.C. 301-1397f), the tariff laws of the United States; or to contracts covered by the Contract Dispute Act of 1978 (41 U.S.C. 601-613).

(c) The regulations cover debts owed to the United States from any person, organization or entity, including debts owed by current and former Department employee, or other Federal employees, while employed in one capacity or another by the Department of Commerce.

(d) Debts or payments which are not subject to administrative offset under 31 U.S.C. 3716, unless otherwise provided for by contract or law, may be collected by administrative offset under the common law or other applicable statutory authority.

(e) Departmental unit head (and designees) will use administrative offset to collect delinquent claims which are certain in amount in every instance and which collection is determined to be feasible and not prohibited by law.

§ 21.3 Department responsibilities.

(a) Each Departmental unit which has delinquent debts owed under its program is responsible for collecting its claims by means of administrative offset when appropriate and best suited to further and protect all the Government's interests.

(b) The Departmental unit head (or designee) will determine the feasibility and cost effectiveness of collection by administrative offset on a case-by-case basis, exercising sound discretion in pursuing such offsets, and will consider the following:

(1) The debtor's financial condition;

(2) Whether offset would substantially interfere with or defeat the purposes of the Federal program authorizing the payments against which offset is comtemplated; and

(3) Whether offset best serves to further and protect all of the interests of the United States.

(c) Before advising the debtor that the delinquent debt will be subject to administrative offset, the Departmental unit workout group shall review the claim and determine that the debt is valid and overdue. In the case where a debt arises under the programs of two or more Department of Commerce units, or in such other instances as the Assistant Secretary for Administration or his/her designee may deem appropriate, the Assistant Secretary, or his or her designee, may determine which Departmental unit workout group or official(s) shall have responsibility for carrying out the provisions of this subpart.

(d) Administrative offset shall be considered by Department units only after attempting to collect a claim under section 3(a) of the Federal Claims Collection Act of 1966, as amended;

except that no claim under this Act that has been outstanding for more than 10 years after the debt first accrued may be collected by means of administrative offset, unless facts, material to the right to collect the debt, were not known and could not reasonably have been known by the official of the Department who was charged with the responsibility to discover and collect such debts. When the debt first accrued should be determined according to existing laws regarding the accrual of debts, such as under 28 U.S.C. 2415.

§ 21.4 Notification requirements before offset.

A debt is considered delinquent by the Department if it is not paid within 15 days of the due date, or if there is no due date, within 30 days of the billing date.

(a) The Departmental unit head (and designees) responsible for carrying out the provisions of this subpart with respect to the debt shall ensure that appropriate written demands are sent to the debtor in terms which inform the debtor of the consequences of failure to cooperate in payment of the debt. The first demand letter should be sent within ten (10) days after the date the debt becomes delinquent. A total of three progressively stronger written demand letters, at not more than 30 calendar day intervals, will normally be made unless (1) a response to the first or second demand indicates that a further demand would be futile; (2) the debtor's response does not require any or immediate rebuttal; and/or (3) the bureau determines to pursue offset under the procedures specified in 4 CFR 102.3, Collection by Administrative Offset. In determining the timing of the demand letters, Departmental unit heads should give due regard to the need to act promptly; so as a general rule, if it is necessary to refer the debt to the Department of Justice for action, such referral can be made within one year of the final determination of the facts and the amount of the debt. When Departmental unit heads (and designees) deem it appropriate to protect the Government's interests (for example, to prevent the statute of limitations, 28 U.S.C. 2415, from expiring), written demand for payment may be preceded by other appropriate collection actions (also see § 21.10(c)).

(b) The Department official responsible for collection of the debt (generally an accounting or finance officer) shall ensure that an initial written demand notice is sent to the debtor, informing such debtor of:

(1) The amount and basis for the indebtedness and whatever rights the debtor may have to seek review within the Department;

(2) The applicable standards for assessing interest, penalties, and administrative costs (4 CFR 102.13);

(3) That the debtor has a right to inspect and copy Department records related to the debt, as determined by responsible Departmental official(s), and that such request to inspect and copy must be postmarked or received by the Department no later than 30 days after the date of the (first) demand letter;

(4) The name, mailing address, and telephone number of the Department workout group employee who can provide a full explanation of the claim and answer all related questions, as well as explain procedures to the debtor for inspecting and copying records related to the debt.

(c) The responsible Department officials shall exercise due care to insure that demand letters are mailed or hand delivered on the same day that they are actually dated. If evidence suggests that the debtor is no longer located at the address of record, reasonable action shall be taken by the Departmental unit workout group to obtain a current address, including skip-trace assistance from the Internal Revenue Service and/or private sector credit reporting bureaus.

(d) Where applicable, the Departmental unit workout group must inform the debtor in a second demand letter, (Notice of Intent) of:

(1) The nature and amount of the debt;

(2) That the Department intends to collect the debt by administrative offset until the debt and all accumulated interest and other charges are paid in full;

(3) That the debtor has a right to obtain review within the Department of the initial determination of indebtedness, and that such request to have a review of the basis of indebtedness must be postmarked or received by the Department no later than 30 days after the date of the second demand letter (Notice of Intent); and

(4) That the debtor may enter into a written agreement with the responsible Department official(s) to repay the debt if such a request is made and received by the Department no later than 30 days after the date of the second demand letter (Notice of Intent).

If the sum of the proposed offset does not fully cover the amount of the debt owed, the Departmental unit workout group shall also include in this second demand letter (Notice of Intent) the notice provisions to debtors required by the Debt Collection Act of 1982, and other regulations of the Department, pertaining to disclosure of the delinquent debt to credit reporting agencies, referral to private collection agencies, salary offset, possible Internal Revenue Service offset of tax refunds, and referral of the debt to the Justice Department for action to the extent inclusion of such is appropriate and practical.

(5) That if payment or a request for review is not received within the 30-day period, the offset process will be initiated.

§ 21.5 Exceptions to notification requirements.

(a) In cases where the notice specified in § 21.4 has previously been provided to the debtor in connection with the same debt under some other proceeding, such as a final audit resolution determination, the Department is not required to duplicate those requirements before effecting administrative offset.

(b) If the time before payment is to be made to the debtor does not reasonably permit the completion of the procedures specified in § 21.4, and failure to take offset would substantially prejudice the Government's ability to collect the debt, then administrative offset action will be taken without notification. The offset will be promptly followed by the completion of the procedures specified in § 21.4 (also see § 21.10(c)).

§ 21.6 Written agreement to repay debt.

(a) A debtor will be provided with an opportunity to enter into a written agreement with the responsible Departmental official(s) to repay the debt owed if the following conditions are met and if specific conditions exist that limit his or her ability to immediately repay the debt.

(1) Notification by debtor. The debtor may, in response to the first written demand or Notice of Intent, propose a written agreement for delayed lump sum or installment payments to repay the debt as an alternative to administrative offset. Any debtor who wishes to do this must submit a proposed written agreement signed by the debtor to repay the debt, including interest, penalties, and administrative costs determined by the Department as due. This proposed written agreement must be received by the workout group individual specified in § 21.4(b)(4) within 60 calendar days of the date of the Department's initial written demand letter, or if in response to the Notice of Intent, within 30 calendar days of the date of the Department's Notice of Intent.

(2) Department response. In response to timely notification by the debtor as

described in paragraph (a)(1) of this section, the Departmental unit head (or designee) will notify the debtor within 30 calendar days whether the debtor's proposed written agreement for repayment is acceptable. It is within the discretion of the Departmental unit head (or designee) to accept a repayment agreement instead of proceeding by offset. However, if the debt is delinquent and the debtor has not disputed its existence or amount, the Departmental unit head (or designee) should accept a repayment agreement instead of offset only if the debtor is able to establish that offset would result in undue financial hardship or would be against equity and good conscience. Before accepting a repayment agreement, the Departmental unit head (or designee) will also consider factors such as the financial statements provided by the debtor, the amount of the debt, the length of the proposed repayment period (generally not to exceed 3 years), whether the debtor is willing to sign a confess-judgment note or give collateral, and past dealings with the debtor. In making this determination, the Departmental unit head (or designee) will balance the Department's interest in collecting the debt against the financial hardship to the debtor (see § 21.18). A Departmental unit head (or designee) may deem a repayment plan to be abrogated if the debtor should, after the repayment plan is signed, fail to comply with the terms of the plan.

§ 21.7 Review of Department records related to the debt.

(a) *Notificotion by debtor.* A debtor who intends to inspect or copy Department records related to the debt must send a letter to the Departmental unit workout group employee specified in § 21.4(b)(4) stating his or her intentions. The letter must be postmarked or received by the Department within 30 calendar days of the date of the Department's *first* demand letter.

(b) *Department response.* In response to timely notification by the debtor as described in paragraph (a) of this section, the Departmental unit workout group will notify the debtor within 10 days of the request of the location and time when the debtor may inspect or copy agency records related to the debt, as well as provide the debtor with the name and telephone number of the contact person who may provide assistance to the debtor for ensuring that copies are made of all appropriate documents related to the debt. The debtor may also request that such records be copied and mailed. The responsible Department official(s) will provide access to records within 15 days from the date of the debtor's request for access, or mail the records to the debtor within such time period. Mailing of records by Departmental official(s) will be by certified or registered mail. The debtor will have 25 days from the date of access or 30 days from the date the records were mailed, to review the records and pay the debt or to petition the Department of a review of the determination of indebtedness.

§ 21.8 Review within the Department of a determination of indebtedness.

(a) Notification by debtor. A debtor who receives an initial demand for payment under the procedures, or a Notice of Intent (see § 21.4(d)), has the right to request Department review of the determination of indebtedness. To exercises this right, the debtor must send a letter requesting review to the Departmental unit workout group individual identified in § 21.4(b)(4). The letter must explain why the debtor seeks review and must be postmarked within 60 calendar days of the date of the first demand letter, (or 30 days from the Notice of Intent), or if a request has been made by the debtor to copy or have relevant records mailed, within the calendar-day time period provided in § 21.7(b), above.

(b) *Department response.* In response to a timely request for review of the initial determination of indebtedness, the Departmental unit head (or designee) will notify the debtor whether review will be by (1) oral hearing, or (2) by administrative review of the record. The notice to the debtor will include the procedures (see § 21.11) used by Departmental officials for administrative review of the record, or will include information on the date, location and procedures to be used if review is by an oral hearing.

§ 21.9 Types of reviews.

The Department will provide the debtor with an opportunity for an oral hearing, or an administrative review of the documentation relating to the debt, under the following conditions.

(a) *Oral hearing.* The Departmental unit head (or designee) will provide the debtor with a reasonable opportunity for hearing if:

(1) An applicable statute authorizes or requires the Department to consider waiver of the indebtedness, the debtor requests waiver of the indebtedness involved, and the waiver determination turns on credibility or veracity; or

(2) The debtor requests reconsideration of the debt and the Departmental unit head (or designee) determines that the question of the indebtedness cannot be resolved by review of the documentary evidence.

An oral hearing need not be a formal (evidentiary type) hearing. However, hearing officials should carefully document all significant matters discussed at the hearing.

(b) *Administrative review of written record.* Unless the Departmental unit head (or designee) determines that an oral hearing is required (see paragraph (a) of this section), the unit head (or designee) will provide for a review of the written record(s) (a review of the documentary evidence related to the debt, in the form of a "paper hearing").

§ 21.10 Review procedures.

(a) The oral hearing will be conducted as follows:

(1) The hearing official will take necessary steps to ensure that the hearing is conducted in a fair and expeditious manner. If necessary, the hearing officer may administer oaths of affirmation.

(2) The hearing official need not use the formal rules of evidence with regard to admissibility of evidence or the use of evidence once admitted. However, parties may object to clearly irrelevant material.

(3) The hearing official will record all significant matters discussed at the hearing. There will be no "official" record or transcript provided for these hearings.

(4) A debtor may represent himself or herself or may be represented by an attorney or other person. The Department will be represented by the General Counsel or his designee.

(5) The General Counsel (or designee) will proceed first by presenting evidence on the relevant issues. The debtor then presents his or her evidence regarding these issues. The General Counsel then may offer evidence to rebut or clarify the evidence introduced by the debtor.

(b) *Administrative review of the record:* The Departmental unit head (or designee) will designate an official of the Department as hearing official who will review administrative determinations of indebtedness which are not reviewable under criteria provided in § 21.9(a) for justifying an oral hearing. The hearing official will review all material related to the debt which is in the possession of the Department. The hearing official will make a determination based upon a review of this written record, which may include a request for reconsideration of the determination of indebtedness, or such other relevant material submitted by the debtor.

(c) The Department may effect an administrative offset against a payment to be made to a debtor prior to the completion of any of the due process procedures required by this section, if failure to take the offset would substantially prejudice the Department's ability to collect the debt. For example, if the time before the payment is to be made to the debtor by another Federal department or agency would not reasonably permit the completion of due process procedures, the offset may be accomplished by the Department. Such offset prior to completion of due process review hearing will be promptly followed by the completion of review and decision by the hearing official on the validity of the debt. Amounts recovered by offset in these instances, but later found not owed to the agency, will be promptly refunded.

§ 21.11 Determination of indebtedness.

(a) Following the hearing or the review of the record, the hearing official will issue a written decision which includes the supporting rationale for the decision. The decision of the hearing official is the Department unit's final action with regard to the particular administrative offset.

(b) Copies of the hearing official's decision will be distributed to the General Counsel (or designee) for the Department, the Director of the Department's Office of Finance and Federal Assistance, the appropriate Departmental unit accounting/finance officer, the debtor and the debtor's attorney or other representative, if applicable.

(c) If appropriate, this decision shall inform the debtor of the scheduled date on or after which administrative offset will begin. The decision shall also, if appropriate, indicate any changes in the information to the extent such information differs from that provided in the initial notification under § 21.4.

§ 21.12 Coordinating administrative offset within the Department and with other Federal agencies.

Departmental units will cooperate with other Federal departments and agencies in effecting collection by administrative offset. Whenever possible, Departmental units should comply with requests from within the Department and from other Federal agencies to initiate administrative offset procedures to collect debts owed the United States, unless the requesting office or agency has not complied with the Federal Claims Collections Standards, or the agency's implementing regulations, or the request would otherwise be contrary to law or the best interests of the United States.

(a) *When the Department is owed the debt.* When the Department is owed a debt, but another Federal agency is responsible for making the payment to the debtor against which administrative offset is sought, the other agency will not initiate the requested administrative offset until the Department provides responsible officials at that agency with a written certification that the debtor owes the Department a debt (including the amount and basis for the debt and the due date of the payment) and that the Department has complied with the applicable provisions of Part 102, "Standards for the Administrative Collection of Claims," of the Federal Claims Collection Standards, as well as the Department's implementing regulations on administrative offsets.

(b) When another agency is owed the debt. The Department may administratively offset money it owes to a person who is indebted to another agency if requested to do so by that agency. Such a request must be accompanied by a certification by the requesting agency that the person owes the debt (including the amount and basis for the debt) and that the creditor agency has complied with the applicable Federal Claims Collection Standards, as well as the agency implementing regulations on administrative offsets. The request from another Federal agency for Department cooperation in the offset should be sent to:

Director, Office of Finance and Federal Assistance, Room 6827, Herbert C. Hoover Building, Washington, D.C. 20230

§ 21.13 Procedures for administrative offset: single debts.

(a) Administrative offset will commence 31 days after the date of the Notice of Intent, unless the debtor has requested a hearing (see § 21.8) or has entered into a repayment agreement (see § 21.6).

(b) When there is review of the debt within the Department, administrative offset will begin after the hearing officer's determination has been issued under § 21.11 and a copy of the determination is received by the Departmental unit's accounting or finance office, except for the provision provided in § 21.10(c) when immediate action is determined necessary to ensure the Department's position in collection of the delinquent debt.

§ 21.14 Procedures for administrative offset: multiple debts.

The Departmental units will follow the procedures identified in (§ 21.13) for the administrative offset of a single debt. However, when collecting multiple debts by administrative offset, responsible Departmental officials should apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

§ 21.15 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund.

(a) Unless otherwise prohibited by law, the Department may request that monies which are due and payable to a debtor from the Civil Service Retirement and Disability Fund be administratively offset in reasonable amounts in order to collect debts owed to the United States by the debtor. Such requests shall be made by the Departmental unit workout officials to the appropriate officials of the Office of Personnel Management (OPM) in accordance with their regulations and procedures.

(b) When making a request for administrative offset under paragraph (a) of the section, the responsible workout group debt collection official shall include a written certification that:

(1) The debtor owes the United States a debt, including the amount and basis for the debt;

(2) The Department has complied with all applicable statutes, regulations, and procedures of the Office of Personnel Management; and

(3) The Department has complied with the requirements of the applicable provisions of the Federal Claims Collection Standards and these regulations, including any required hearing or review.

(c) If a Departmental unit workout group decides to request administrative offset under paragraph (a) of this section, the responsible debt collection official should make the request as soon as practical after completion of the applicable due process procedures so the Office of Personnel Management may identify and "flag" the debtor's account in anticipation of the time when the debtor becomes eligible and requests to receive payments from the fund. This will satisfy any requirement that offset be initiated prior to expiration of the applicable statute of limitations. At such time as the debtor makes a claim for payments from the fund, and if at least a year has elapsed since the administrative offset request was originally made, the debtor should be permitted to offer a satisfactory repayment plan in lieu of offset upon establishing to the appropriate Departmental unit head (or designee) that changed financial circumstances would render the offset unjust.

(d) If the Department collects part or all of the debt by other means before deductions are made or completed under paragraph (a) of this section, the Department official responsible for collecting the debt will act promptly to modify or terminate the agency's request for administrative offset under paragraph (a) of this section.

(e) In accordance with procedures established by the Office of Personnel Management, the Department may request an offset from the Civil Service Retirement and Disability Fund prior to completion of due process procedures.

§ 21.16 Collection against a judgment.

Collection by administrative offset against a judgment obtained by a debtor against the United States shall be accomplished in accordance with 31 U.S.C. 3728.

§ 21.17 Liquidation of collateral.

If the Department holds security or collateral which may be liquidated through the exercise of a power of sale in the security instrument, or a nonjudicial foreclosure, liquidation should be accomplished by such procedures if the debtor fails to pay the debt within a reasonable time after demand or pursuant to the contract of the parties, unless the cost of disposing of the collateral would be disproportionate to its value or special circumstances require judicial foreclosure. The Department collection official should provide the debtor with reasonable notice of the sale, an accounting of any surplus proceeds, and any other procedures required by contract or law. Collection from other sources, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety or insurance concern unless such action is expressly required by statute or contract.

§ 21.18 Collection in installments.

(a) Whenever feasible, and unless otherwise provided by law, debts owed to the United States, together with interest, penalties, and administrative costs should be collected in one lump sum. This is true whether the debt is being collected by administrative offset or by another method, including voluntary payment. However, if the debtor is financially unable to pay the indebtedness in one lump sum, the responsible Departmental official(s) may accept repayment in regular installments (See § 21.6). Prior to approving such repayments, financial statements shall be required from the debtor who represents that he/she is unable to pay the debt in one lump sum. A responsible Departmental official who agrees to accept payment in regular installments should obtain a legally enforceable written agreement from the debtor which specifies all of the terms of the arrangement and which contains a provision accelerating the debt in the event the debtor defaults. The size and frequency of installment payments should bear a reasonable relationship to the size of the debt and the debtor's ability to pay. If possible, the installment payments should be sufficient in size and frequency to liquidate the Government's claim in not more than three years. Installment payments of less than $50 per month should be accepted only if justifiable on the grounds of financial hardship or for some other reasonable cause. If the debt is an unsecured claim for administrative collection, attempts should be made to obtain an executed confess-judgment note, comparable to the Department of Justice Form USA-70a, from a debtor when the total amount of the deferred installments will exceed $750. Such notes may be sought when an unsecured obligation of a lesser amount is involved. When attempting to obtain confess-judgment notes, Departmental units should provide their debtors with written explanation of the consequences of signing the note, and should maintain documentation sufficient to demonstrate that the debtor has signed the note knowingly and voluntarily. Security for deferred payments other than a confess-judgment note may be accepted in appropriate cases. A Departmental units head (or designee) may accept installment payments notwithstanding the refusal of a debtor to execute a confess-judgment note or to give other security.

(b) If the debtor owes more than one debt and designates how a voluntary installment payment is to be applied as among those debts, that designation must be followed. If the debtor does not designate the application of the payment, the Department debt collection official should apply payments to the various debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

§ 21.19 Additional administrative collection action.

Nothing contained in this subpart is intended to preclude the utilization of any other administrative remedy which may be available.

Dated: December 22, 1986.

Sonya G. Stewart,

Director, Office of Finance and Federal Assistance.

[FR Doc. 86-29183 Filed 12-29-86; 8:45 am]

BILLING CODE 3510-FA-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 175

[Docket No. 85F-0484]

Indirect Food Additives: Adhesives and Components of Coatings

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of synthetic paraffin components for food-contact use. This action responds to a petition filed by Moore and Munger Marketing, Inc.

DATES: Effective December 30, 1986. Objections by January 29, 1987.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of November 4, 1985 (50 FR 45874), FDA announced that a petition (FAP 5B3891) had been filed by Moore and Munger Marketing, Inc., 140 Sherman St., Fairfield, CT 06430, proposing that § 175.250 *Paraffin (synthetic)* (21 CFR 175.250) be amended to provide for the safe use of synthetic paraffin components for food-contact use.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the additive is safe for the proposed use, and that the food additive regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As

provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before January 29, 1987, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 175 is amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR Part 175 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 175.250 is amended by adding a new sentence at the end of paragraph (a) and by revising paragraph (b)(1) to read as follows:

§ 175.250 Paraffin (synthetic).

(a) * * * This mixture can be fractionated into its components by a solvent separation method, using synthetic isoparaffinic petroleum hydrocarbons complying with § 178.3530 of this chapter.

(b) * * *

(1) *Congealing point.* There is no specification for the congealing point of synthetic paraffin components, except those components that have a congealing point below 93° C when used in contact with food Types III, IVA, V, VIIA, and IX identified in Table 1 of § 176.170(c) of this chapter and under conditions of use E, F, and G described in Table 2 of § 176.170(c) of this chapter shall be limited to a concentration not exceeding 15 percent by weight of the finished coating. The congealing point shall be determined by ASTM method D938–71 (Reapproved 1981), "Standard Test Method for Congealing Point of Petroleum Waxes, Including Petrolatum," which is incorporated by reference. Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

Dated: December 18, 1986.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86–29120 Filed 12–29–86; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Parts 176 and 178

[Docket No. 86F–0059]

Indirect Food Additives; Paper and Paperboard Components; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of dipropylene glycol dibenzoate in polyvinyl acetate coatings for paper and paperboard intended to contract aqueous and fatty food and to correct the Chemical Abstracts Registry Number currently listed for the additive in the food additive regulations. This action responds to a petition filed by Velsicol Chemical Corp.

DATES: Effective December 30, 1986; objections by January 29, 1987.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HH–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 14, 1986 (51 FR 8898), FDA announced that a petition (FAP 5B3893) had been filed by Velsicol Chemical Corp., 341 East Ohio St., Chicago, IL 60611 (now 5600 North River Rd., Rosemont, IL 60018), proposing that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the safe use of dipropylene glycol dibenzoate in polyvinyl acetate coatings intended to contact food. The petition also requested the correction of the Chemical Abstracts Registry Number currently listed for dipropylene glycol dibenzoate in § 176.180 *Components of paper and paperboard in contact with dry food* (21 CFR 176.180) to read "CAS Reg. No. 27138–31–4".

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the additive as a plasticizer for polyvinyl acetate coatings on paper and paperboard in contact with aqueous and fatty food is safe, and that § 176.170 should be amended as set forth below. FDA is also correcting the Chemical Abstracts Registry Number for dipropylene glycol dibenzoate in § 176.180. Finally, the agency is deleting the entry for dipropylene glycol dibenzoate in § 178.3740 *Plasticizers in polymeric substances* (21 CFR § 178.3740) because the listing is redundant with the listing of the additive in 21 CFR 176.180 and in the new entry in 21 CFR 176.170.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this rule as announced in the Notice of Filing for FAP 5B3893 (March 14, 1986; 51 FR 8898). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

Any person who will be adversely affected by this regulation may at any time on or before January 29, 1987, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Parts 176 and 178

Food Additives; Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Food Safety and Applied Nutrition, Parts 176 and 178 are amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR Part 176 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10, 5.61.

2. Section 176.170 is amended in paragraph (b)(2) by alphabetically inserting a new item in the table to read as follows:

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(b) * * *

(2) * * *

List of substances	Limitations
* * * * *	
Dipropylene glycol dibenzoate (CAS Reg. No. 27138–31–4).	1. For use only as a plasticizer for polyvinyl acetate coatings at a level not to exceed 5 percent by weight of the coating solids under conditions described in paragraph (c) of this section, table 2, condition of use E. 2. For use only as a plasticizer for polyvinly acetate coatings at a level not to exceed 10 percent by weight of the coating solids under conditions described in paragraph (c) of ths section, table 2, conditions of use F and G.
* * * * *	

* * * * *

§ 176.180 [Amended]

3. Section 176.180 *Components of paper and paperboard in contact with dry food* is amended in the table in paragraph (b)(2) by revising the Chemical Abstracts Registry Number under the item "Dipropylene glycol dibenzoate" to read "CAS Reg. No. 27138–31–4."

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

4. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10, 5.61.

§ 178.3740 [Amended]

5. Section 178.3740 *Plasticizers in polymeric substances* is amended in paragraph (b) in the table by removing the item "Dipropylene glycol dibenzoate."

Dated: December 18, 1986.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86–29119 Filed 12–29–86; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 178

[Docket No. 86F–0163]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for additional uses of calcium bis[monoethyl(3,5-di-*tert*-butyl-4-hydroxybenzyl)-phosphonate] as a stabilizer in articles or components of articles intended to contact food. This action is in response to a petition filed by Ciba-Geigy Corp.

DATES: Effective December 30, 1986; objections by January 29, 1987.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 13, 1986 (51 FR 17537), FDA announced that a petition (FAP 6B3920) had been filed by Ciba-Geigy, Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) of the food additive regulations be amended to provide for additional uses of calcium bis[monoethyl(3,5-di-*tert*-butyl-4-hydroxybenzyl)-phosphonate] as a stabilizer in articles or components of articles intended to contact food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied

Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before January 29, 1987, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a bearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. In § 178.2010(b) by adding 12 new entries to the list of limitations for "Calcium bis[monoethyl(3,5-di-*tert*-butyl-4-hydroxybenzyl) phosphonate]" to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * *	* * *
Calcium bis[monoethyl(3,5-di-*tert*-butyl-4-hydroxybenzyl)phosphonate] (CAS Reg. No. 65140-91-2).	For Use Only: * * * 3. In adhesives complying with § 175.105 of this chapter. 4. At levels not to exceed 0.5 percent by weight of pressure-sensitive adhesives complying with § 175.125 of this chapter. 5. At levels not to exceed 0.5 percent by weight of rosins and rosin derivatives complying with § 175.300(b)(3)(v) of this chapter. 6. At levels not to exceed 0.5 percent by weight of can and cement formulations complying with § 175.300(b)(3)(xxxi) of this chapter. 7. At levels not to exceed 0.5 percent by weight of side seam cement formulations complying with § 175.300(b)(3)(xxxii) of this chapter. 8. At levels not to exceed 0.5 percent by weight of petroleum alicyclic hydrocarbon resins complying with § 175.320(b)(3) of this chapter. 9. At levels not to exceed 0.5 percent by weight of rosin and rosin derivatives complying with § 176.170(a)(5) of this chapter; and petroleum alicyclic hydrocarbon resins, or the hydrogenated product thereof, complying with § 176.170(b)(2) of this chapter. 10. At levels not to exceed 0.5 percent by weight of resins and polymers used as components of paper and paperboard in contact with dry food in compliance with § 176.180 of this chapter. 11. At levels not to exceed 0.5 percent by weight of closures with sealing gaskets complying with § 177.1210 of this chapter. 12. At levels not to exceed 0.5 percent by weight of the finished rubber article complying with § 177.2600 of this chapter. 13. At levels not to exceed 0.5 percent by weight of petroleum hydrocarbon resin and rosins and rosin derivatives complying with § 178.3800(b). 14. At levels not to exceed 0.5 percent by weight of reinforced wax complying with § 178.3850.
* * *	* * *

Dated: December 18, 1986.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-29122 Filed 12-29-86; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the change of sponsor of a new animal drug application (NADA) from Western Research Laboratories, Inc., to Pharmaceutical Basics, Inc.

EFFECTIVE DATE: December 30, 1986.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine (HFV-238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6243.

SUPPLEMENTARY INFORMATION: Pharmaceutical Basics, Inc., 301 South Cherokee St., Denver, CO 80223, has informed FDA of a change of sponsor of NADA 102-824 for phenylbutazone tablets from Western Research Laboratories, Inc. Pharmaceutical Basics, Inc., a wholly owned subsidiary of VPF, Inc., has confirmed the change of ownership. In addition, the change of sponsor from Western Research Laboratories, Inc., to Pharmaceutical Basics, Inc., has been confirmed. This change of sponsor does not involve any changes in manufacturing facilities, equipment, procedures, or production personnel. The regulations in 21 CFR 510.600(c)(1) and 21 CFR 510.600(c)(2) are amended to reflect the new sponsor.

As a result of this action, Western Research Laboratories, Inc., is no longer the sponsor of any approved NADA's. Therefore, 21 CFR 510.600(c) is amended to remove the firm.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Sec. 512, 701(a), 52 Stat. 1055, 82 Stat. 343-351 (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

2. Section 510.600 is amended in paragraph (c)(1) by removing the entry for "Western Research Laboratories, Inc.," and adding a new sponsor entry alphabetically, and in paragraph (c)(2) by revising the entry for "000832," to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * *	* * *
Pharmaceutical Basics, Inc., 301 South Cherokee St., Denver, CO 80223	000832
* * *	* * *

(2) * * *

Drug labeler code	Firm name and address
* * *	* * *
000832	Pharmaceutical Basics, Inc., 301 South Cherokee St., Denver, CO 80223.
* * *	* * *

Dated: December 19, 1986.

Marvin A. Norcross,

Associate Director for New Animal Drug Evaluation.

[FR Doc. 86-29118 Filed 12-29-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF STATE

22 CFR Parts 121, 123, 124, 125, 126, 127, 128

[Departmental Regulations 108.855]

South Africa and the International Traffic in Arms Regulations (ITAR)

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Comprehensive Anti-Apartheid Act of October 2, 1986, (Pub. L. 99-440), as amended, contains a prohibition on the export of items on the U.S. Munitions List to South Africa. This final rule implements the requirements of the Act. It also makes several unrelated amendments to the ITAR to correct or clarify certain provisions.

EFFECTIVE DATE: December 30, 1986.

FOR FURTHER INFORMATION CONTACT: J. Smaldone, Chief, Arms Licensing Division, Office of Munitions Control, (202) 235-9761, or Edward Cummings, Office of the Legal Adviser, Department of State, (202) 647-4110.

SUPPLEMENTARY INFORMATION: Section 317 of the Comprehensive Anti-Apartheid Act of 1986, (October 2, 1986, Pub. L. 99-440), as amended, (the Act) provides that no item on the United States Munitions List (22 CFR Part 121) may be exported to South Africa. Exceptions are provided under certain limited circumstances for items that are not covered by the United Nations Security Council Embargo against South Africa. Section 318 of the Act provides that licenses may not be issued in such exceptional circumstances unless Congress is notified thirty days in advance.

Section 317 of the Act codifies existing U.S. policy on the enforcement of the U.N. arms embargo. The embargo had its origin in 1962, when President Kennedy decided not to permit any further sales to South Africa of arms which might be used to enforce that country's apartheid policy. On August 7, 1963, the U.N. Security Council adopted Resolution 181, which called upon all states voluntarily to ". . . cease forthwith the sale and shipment of arms, ammunition of all types, and military vehicles to South Africa." In response to this request, the U.S. arms embargo was extended in 1963 to cover all arms sales. The policy was outlined in a United Nations speech in August of that year by Ambassador Adlai Stevenson, who told the Security Council that the United States expected to bring to an end the sale of all military equipment to the South African Government by the end of 1963. Ambassador Stevenson specified that exceptions would be permitted for the fulfillment of existing contracts and that the United States reserved the right to interpret this policy in the light of requirements for ensuring international peace and security. He added that the United States was taking this step to show its deep concern about South Africa's failure to abandon apartheid.

The guidelines for executing this policy were established in 1964 and prohibited the sale of items for use in combat or training by military, paramilitary, or police forces. The guidelines prohibited the sale of all military equipment and items of significant use in training or combat, as well as equipment and materials for the production and maintenance of arms and ammunition. They provided for the contractual and common defense exceptions to which Ambassador Stevenson had referred and also contained a provision for dealing with so-called gray area cases. They specified that items of distinct nonmilitary utility (but in no case any arms, ammunition, or items of a weapons nature) could be exported to South Africa if ordered by and for civilian nongovernmental users.

On November 4, 1977, the Security Council adopted a mandatory resolution (No. 418) under Chapter VII of the U.N. Charter Act. The Security Council required that all States ". . . cease forthwith any provision to South Africa of arms and related materials of all types, including the sale or transfer of weapons and ammunition, military vehicles and equipment, paramilitary police equipment, and spare parts for the aforementioned, and shall cease as well the provision of all types of equipment and supplies, and grant of licensing arrangements, for the manufacture or maintenance of the aforementioned." On November 28, 1986, the Security Council adopted voluntary Resolution 591, which broadens the embargo.

The U.S. has strictly enforced the U.N. arms embargo. No exceptions have been made to the prohibitions contained in Security Council Resolution 418 since it entered into force.

It has also been the policy of the U.S. to prohibit exports to South Africa of certain articles not covered by the U.N. embargo. The U.S. embargo continues to be broader than that contained in Security Council Resolutions 418 and 591. Both the State and Commerce Departments have promulgated rules to implement the U.S. policy.

For example, the Department of State does not license any export of U.S. Munitions List items to the South African Government, including the military or police. Section 126.1 of the ITAR provides that it is the policy of the United States to deny licenses and other approvals with respect to defense articles and defense services destined for or originating in certain countries, including any country with respect to which the United States maintains an arms embargo. South Africa is such a country. The U.S. Munitions List does

contain items that are not covered by the 1977 U.N. embargo, and exceptions have been considered in exceptional cases for exports of some of these items to non-governmental entities in South Africa. Exceptions have been permitted since the entry into force of the U.N. embargo only if the item was clearly not covered by the U.N. embargo. The licenses granted in recent years have been for items such as cryptographic devices for automatic teller machines to be used by commercial banks.

In addition to these rules, the Commerce Department has promulgated rules to prohibit exports of items (e.g., computers) subject to its export jurisdiction which might be used by the police and military and apartheid enforcing agencies. These regulations also implement section 108(n) of the Export Administration Amendments Act of 1985 (July 12, 1985, Pub. L. 99–64, 99 Stat. 137, 50 U.S.C. App. 2405 note). Items under the export jurisdiction of Commerce may not be exported to the military or police in South Africa. The only exceptions relate to medical supplies and devices to be used to prevent unlawful interference with international civil aviation.

Finally, the U.S. voted in favor of the voluntary Security Council arms import embargo of December 13, 1984 (Resolution 558). Section 1(d) of the President's Executive Order on South Africa of September 9, 1985 ordered a strict implementation of this import embargo, and Treasury has published the necessary regulations (see 50 FR 42157 and 27 CFR 47.21 (category XXII) and § 47.52(c)). The U.S. has gone beyond the terms of the voluntary embargo (e.g., by prohibiting the import of manufacturing data to produce South African weapons in the U.S.). Section 302 of the Act codifies this import prohibition, and no changes to State or Treasury regulations are necessary to implement this prohibition.

The Comprehensive Anti-Apartheid Act includes a specific provision on Munitions List exports largely because of some uncertainty regarding existing U.S. practice. The Department of State accordingly believes that it would be advisable to amend the ITAR to make clear the requirements of the U.N. embargo and the Act.

In addition, changes are made to other provisions in the ITAR to correct technical errors or omissions in the final rule of December 6, 1984 revising the ITAR (49 FR 47682). These changes also clarify or update the requirements of the ITAR and standarize some of the clauses and information required with respect to commercial agreements relating to defense articles.

For example, questions have arisen as to who must complete the required end user certificate with respect to manufacturing license agreements. Section 124.10 is amended to make clear that the foreign end user must complete the form. Section 124.14 is amended by requiring that agreements on exports to warehouses outside the U.S. contain the standard clause (currently in § 124.9) on the duration of certain obligations after the termination of the agreements. Section 126.8 is revised to make clear when prior approval is required to make certain proposals with respect to arms sales and agreements.

The following amendments deal with a foreign affairs function of the United States and are thus excluded from the major rule procedures of Executive Order 12291 (46 FR 13193) and the procedures of 5 U.S.C. 553 and 554. The basic regulations that are amended by this final rule were the subject of public comment because of the desirability of obtaining the public's views. However, the amendments deal with statutory requirements that have entered into force and consequently the regulations are promulgated as a final rule.

List of Subjects in 22 CFR Parts 121, 123, 124, 125, 126, 127, and 128

Arms and Munitions exports.

Accordingly, for the reasons set forth in the preamble, Title 22, Chapter I, Subchapter M, of the Code of Federal Regulations, is amended as set forth below:

PART 121—THE UNITED STATES MUNITIONS LIST

1. The authority citation for Part 121 continues to read as follows:

Authority: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

2. In § 121.1, Category VIII, paragraphs (g) and (j) are redesignated as paragraphs (j) and (g), respectively, and paragraphs (h) and newly redesignated (j) are revised to read as follows:

§ 121.1 General. The United States Munitions List.

* * * * *

Category VIII—Aircraft, Spacecraft, and Associated Equipment

* * * * *

(h) Developmental aircraft and components thereof which have a significant military applicability, excluding aircraft components concerning which Federal Aviation Agency certification has been granted.

* * * * *

(j) Components, parts, accessories, attachments, and associated equipment (including ground support equipment) specifically designed or modified for the articles in paragraphs (a) through (i) of this category, excluding aircraft tires and propellors used with reciprocating engines.

PART 123—LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

3. The authority citation for Part 123 continues to read as follows:

Authority: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

§ 123.10 [Amended]

4. In § 123.10, paragraph (e) is amended by changing the phrase "significant military equipment" to "major defense equipment."

PART 124—MANUFACTURING LICENSE AGREEMENTS, TECHNICAL ASSISTANCE AGREEMENTS, AND OTHER DEFENSE SERVICES

5. The authority citation for Part 124 continues to read as follows:

Authority: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

6. In § 124.10, paragraph (a)(4) is amended by revising the first sentence and paragraph (b) is amended by revising paragraph (1) to read as follows:

§ 124.10 Additional clauses required only in manufacturing license agreements.

(a) * * *

(4) "If the U.S. Government has made financial or other contributions to the design and development of any licensed article, any charges for technical assistance or know-how relating to the item in connection with purchases of such articles from licensee or sublicensees with funds derived through the U.S. Government must be proportionately reduced to reflect the U.S. Government contributions, and subject to the provisions of paragraphs (a) (2) and (3) of this section, no other royalties, fees or other charges may be assessed against U.S. Government funded purchases of such articles. * * *

* * * * *

(b) * * *

(1) "A completed nontransfer and use certificate (DSP–83) must be executed by the foreign end-user and submitted to the Department of State of the United States before any transfer may take place."

* * * * *

7. In § 124.12, paragraph (a)(7) is added to read as follows:

§ 124.12 Required information in letters of transmittal.

(a) * * *

(7) A statement indicating whether any foreign military sales credits or loan guarantees are or will be involved in financing the agreement.

* * * * *

8. In § 124.14, paragraph (c) is amended to add new paragraph (8) to read as follows:

§ 124.14 Exports to warehouses or distribution points outside the United States.

* * * * *

(c) * * *

(8) "All provisions in this agreement which refer to the United States Government and the Department of State will remain binding on the parties after the termination of the agreement."

* * * * *

PART 125—LICENSES FOR THE EXPORT OF TECHNICAL DATA AND CLASSIFIED DEFENSE ARTICLES

9. The authority citation for Part 125 continues to read as follows:

Authority: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

10. In § 125.4, paragraph (a) is amended by revising the second sentence and paragraph (b)(5) and the first sentence of paragraph (b)(13) are revised to read as follows:

§ 125.4 Exemptions of general applicability.

(a) * * * These exemptions, except for paragraph (b)(13) of this section, do not apply to exports to proscribed destinations under § 126.1. * * *

* * * * *

(b) * * *

(5) Technical data in the form of basic operations, maintenance, and training information relating to a defense article lawfully exported or authorized for export to the same recipient. This exemption applies only to exports by the original exporter. Intermediate or depot-level repair and maintenance information may be exported only under a license or agreement approved specifically for that purpose;

* * * * *

(13) Technical data approved for public release (i.e., unlimited distribution) by the cognizant U.S. Government department or agency.

* * *

* * * * *

PART 126—GENERAL POLICIES AND PROVISIONS

11. The authority citation for Part 126 is revised to read as follows:

Authority: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958 (42 FR 4311, January 18, 1977); E.O. 11322, 32 FR 119; 22 U.S.C. 2658; Sec. 317, Comprehensive Anti-Apartheid Act of 1986 (22 U.S.C. 5067); E.O. 12571 (51 FR 39505, October 27, 1986).

12. In § 126.1, the last sentence in paragraph (a) is revised and paragraph (c) is added to read as follows:

§ 126.1 Prohibited shipments to or from certain countries.

(a) *General.* * * * The exemptions provided in the regulations in this subchapter, except § 123.17 and § 125.4(b)(13) of this subchapter, do not apply with respect to exports to or originating in any of such proscribed countries or areas.

* * * * *

(c) *South Africa.* South Africa is subject to an arms embargo and thus to the policy specified in paragraph (a) of this section. In accordance with section 317 of the Comprehensive Anti-Apartheid Act of 1986 (Pub. L. 99–440), exceptions may be made to this policy only if the Assistant Secretary for Politico-Military Affairs determines that (1) the item is not covered by United Nations Security Council Resolution 418 of November 4, 1977 and (2) the item is to be exported solely for commercial purposes and not for use by the armed forces, police, or other security forces of South Africa or for any other similar purpose. Such exceptions are subject to the prior congressional notification requirements specified in section 318 of that Act.

13. Section 126.8 is revised to read as follows:

§ 126.8 Proposals to foreign persons relating to significant military equipment.

(a) *General.* Certain proposals to foreign persons for the sale or manufacture abroad of significant military equipment require either the prior approval of, or prior notification to, the Office of Munitions Control.

(1) Sale of significant military equipment: prior approval requirement. The approval of the Office of Munitions Control is required before a U.S. person may make a proposal or presentation designed to constitute a basis for a decision on the part of any foreign person to purchase significant military equipment on the United States Munitions List whenever all the following conditions are met:

(i) The value of the significant military equipment to be sold is $14,000,000 or more; and

(ii) The equipment is intended for use by the armed forces of any foreign country other than a member of the North Atlantic Treaty Organization, Australia, New Zealand, or Japan; and

(iii) The sale would involve the export from the United States of any defense article or the furnishing abroad of any defense service including technical data; and

(iv) The identical significant military equipment has not been previously licensed for permanent export or approved for sale under the Foreign Military Sales Program of the Department of Defense, to any foreign country.

(2) Sale of significant military equipment: prior notification requirement. The Office of Munitions Control must be notified in writing at least thirty days in advance of any proposal or presentation concerning the sale of significant military equipment whenever the conditions specified in paragraphs (a)(1) (i) through (iii) of this section are met and the identical equipment has been previously licensed for permanent export or approved for sale under the FMS Program to any foreign country.

(3) Manufacture abroad of significant military equipment. The approval of the Office of Munitions Control is required before a U.S. person may make a proposal or presentation designed to constitute a basis for a decision on the part of any foreign person to enter into any manufacturing license agreement or technical assistance agreement for the production or assembly of significant military equipment, regardless of dollar value, in any foreign country, whenever (i) the equipment is intended for use by the armed forces of any foreign country; and (ii) the agreement would involve the export from the United States of any defense article or the furnishing abroad of any defense service including technical data.

(b) *Definition or "Proposal or Presentation".* The terms "proposal or presentation designed to constitute a basis for a decision . . . to purchase" or to "enter into any . . . agreement" mean the communication of information in sufficient detail that the person communicating that information knows or should know that it would permit an intended purchaser to decide either to acquire the particular equipment in question or to enter into the manufacturing license agreement or technical assistance agreement. For example, a presentation which describes

the equipment's performance characteristics, price, and probable availability for delivery would require prior notification or approval, as appropriate, where the conditions specified in paragraph (a) of this section are met. By contrast, the following would not require prior notification or approval: advertising or other reporting in a publication of general circulation; preliminary discussions to ascertain market potential; or merely calling attention to the fact that a company manufactures a particular item of significant military equipment.

(c) *Satisfaction of Requirements.* (1) The requirement of this section for prior approval is met by any of the following:

(i) A written statement from the Office of Munitions Control approving the proposed sale or agreement or approving the making of a proposal or presentation.

(ii) A license issued under § 125.2 or § 125.3 for the export of technical data relating to the proposed sale or agreement to the country concerned.

(iii) A temporary export license issued under § 123.27 relating to the proposed sale or agreement for a demonstration to the armed forces of the country of export.

(iv) With respect to manufacturing license agreements or technical assistance agreements, the application for export licenses pursuant to the two preceding subparagraphs must state that they are related to possible agreements of this kind.

(2) The requirement of this section for prior notification is met by informing the Office of Munitions Control by letter at least 30 days before making the proposal or presentation. The letter must comply with the procedures set forth in paragraph (d) of this section and must identify the relevant license, approval, or FMS case by which the identical equipment had previously been authorized for permanent export or sale. The Office of Munitions Control will provide written acknowedgement of such prior notification to confirm compliance with this requirement and the commencement of the 30-day notification period.

(d) *Procedures.* Unless a license has been obtained pursuant to § 128.8(c)(ii) or (iii), a request for prior approval to make a proposal or presentation with respect to significant military equipment, or a 30-day prior notification regarding the sale of such equipment, must be made by letter to the Office of Munitions Control. The letter must outline in detail the intended transaction, including usage of the equipment involved and the country (or countries) involved. Seven copies of the letter should be provided as well as seven copies of suitable descriptive information concerning the equipment.

(e) *Statement to accompany licensing requests.* (1) Every application for an export license or other approval to implement a sale or agreement which meets the criteria specified in paragraph (a) of this section must be accompanied by a statement from the applicant which either:

(i) Refers to a specific notification made or approval previously granted with respect to the transaction; or

(ii) Certifies that no proposal or presentation requiring prior notification or approval has been made.

(2) The Department of State may require a similar statement from the Foreign Military Sales contractor concerned in any case where the United States Government receives a request for a letter of offer for a sale which meets the criteria specified in paragraph (a) of this section.

(f) *Penalties.* In addition to other remedies and penalties prescribed by law or this subchapter, a failure to satisfy the prior approval or prior notification requirements of this section may be considered to be a reason for disapproval of a license, agreement or sale under the FMS Program.

(g) *License for technical data.* Nothing in this section constitutes or is to be construed as an exemption from the licensing requirement for the export of technical data that is embodied in any proposal or presentation made to any foreign persons.

PART 127—VIOLATIONS AND PENALTIES

14. The authority citation for Part 127 continues to read as follows:

Authority: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311, 22 U.S.C. 401; 22 U.S.C. 2658.

§§ 127.6, 127.7, 127.8, and 127.9 [Amended]

15. In Part 127, remove the words "Director, Bureau of Politico-Military Affairs" and add in their place, the words "Assistant Secretary for Politico-Military Affairs" in the following places.

(a) Section 127.6(a) introductory text and (b).
(b) Section 127.7(b).
(c) Section 127.8.
(d) Section 127.9(a).

PART 128—ADMINISTRATIVE PROCEDURES

16. The authority citation for Part 128 continues to read as follows:

Authority: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658; E.O. 12291, 46 FR 1981.

§§ 128.4, 128.9, 128.10, 128.11, and 128.13 [Amended]

17. In Part 128, remove the words "Director, Bureau of Politico-Military Affairs" and add in their place, the words "Assistant Secretary for Politico-Military Affairs" in the following places:

(a) Section 128.4(b).
(b) Section 128.9(b).
(c) Section 128.10.
(d) Section 128.11(a) and (b).
(e) Section 128.13(c).
(f) Section 128.15(a).
(g) Section 128.15(b)(4).

Dated: December 19, 1986.

John C. Whitehead,

Deputy Secretary of State.

[FR Doc. 86-29100 Filed 12-29-86; 8:45 am]

BILLING CODE 4710-26-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[T.D. 8118]

Disclosure of Return Information to the Bureau of the Census

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations to authorize the disclosure of an additional item of return information to the Bureau of the Census for use in statutory statistical programs, delete the authority to disclose those items of return information which the Bureau no longer needs for such programs, and delete the authority of the Federal Trade Commission to obtain return information for certain statistical purposes and transfer such authority to the Bureau of the Census. The amendments to the regulations will provide guidance to Internal Revenue Service personnel responsible for disclosure of this information.

DATES: The amendments to the regulations are effective as of December 30, 1986.

FOR FURTHER INFORMATION CONTACT: David E. Dickinson of the Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224 (Attention: CC:LR:T) (202-566-6655, not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On March 28, 1986, the Federal Register published proposed amendments to the Regulations on Procedure and Administration (26 CFR Part 301) under section 6103 of the Internal Revenue Code of 1954 (51 FR 10635). Under section 6103(j)(1) of the Code, upon written request from the Secretary of Commerce, the Internal Revenue Service is to furnish the Bureau of the Census such tax return information as may be prescribed by Treasury regulations for statutorily authorized statistical activities. An itemized description of such return information is currently provided by § 301.6103(j)(1)-1 of the Regulations on Procedure and Administration. Similar disclosures to the Federal Trade Commission for a limited statistical purpose are authorized by section 6103(j)(2) of the Code and § 301.6103(j)(2)-1 of the regulations.

Further, because employment tax returns and employment tax return information are filed initially with the Social Security Administration rather than the Internal Revenue Service under the combined annual wage reporting system, the regulations also authorize the Social Security Administration to disclose directly to the Census Bureau and FTC certain employment tax return information, subject to statutory restrictions designed to protect the confidentiality of such information.

Periodically, the disclosure regulations are amended to reflect the changing statistical needs of the Census Bureau for tax information, and this rulemaking updates the regulations.

The Service did not receive any written comments in response to the notice of proposed rulemaking. No public hearing was requested or held. Accordingly, the proposed regulations are adopted as proposed.

Description of Amendments to Regulations

In properly conducting economic censuses as part of its economic statistics programs, the Census Bureau needs the employer identification number of each affiliated corporation listed on Form 851.

On the other hand, the Census Bureau no longer uses certain information from employment tax returns.

These regulations amend § 301.6103(j)(1)-1 to add the above item to the list of disclosable tax return information while deleting those employment tax return items no longer required.

Also, because responsibility for preparation of the Quarterly Financial Report has been shifted from the FTC to the Census Bureau, these amendments reflect this shift by deleting present regulatory authority to disclose certain corporation tax return information to the FTC and moving it to the Census Bureau.

Non-Applicability of Executive Order 12291

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Regulatory Flexibility Analysis

Although a notice of proposed rulemaking that solicited public comment was issued, the Internal Revenue Service concluded when the notice was issued that the regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 did not apply. Accordingly, the final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Drafting Information

The principal author of these regulations is David E. Dickinson of the Office of the Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations both on matters of substance and style.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

Amendments to the Regulations

Accordingly, 26 CFR Part 301 is amended by adopting, without change, the regulations proposed as a notice of proposed rulemaking published in the Federal Register on March 28, 1986 (51 FR 10635), to read as follows:

PART 301—[AMENDED]

Paragraph 1. The authority for Part 301 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 301.6103(j)(1)-1 also issued under 26 U.S.C. 6103(j).

Par. 2. Section 301.6103(j)(1)-1 is amended by revising paragraph (b)(2)(iii), by revising paragraph (b)(3)(xi) and (xii) and adding a new paragraph (b)(3)(xiii) immediately thereafter, and by revising paragraph (b)(5) and adding a new paragraph (b)(6) immediately thereafter. The introductory text of paragraph (b)(2) is republished. The revised and added provisions read as follows:

§ 301.6103(j)(1)-1 Disclosures of return information to officers and employees of the Department of Commerce for certain statistical purposes and related activities.

* * * * *

(b) *Disclosure of return information to officers and employees of the Bureau of the Census.* * * *

(2) Officers or employees of the Service will disclose to officers and employees of the Bureau of the Census for purposes of, but only to the extent necessary in, conducting, as authorized by Chapter 5 of Title 13, United States Code, demographic, economic, and agricultural statistics programs and censuses and related program evaluation—* * *

(iii) From an employment tax return—

(A) Taxpayer identifying number (as described in section 6109) of the employer,

(B) Total compensation reported,

(C) Master file tax account number,

(D) Taxable period covered by such return,

(E) Employer code,

(F) Document locator number,

(G) Record code,

(H) Total number of individuals employed in the taxable period covered by the return,

(I) Total taxable wages paid for purposes of Chapter 21, and

(J) Total taxable tip income reported for purposes of chapter 21; and * * *

(3) * * *

(xi) From Form 1065, including Schedule F, if any, total sales of livestock and produce raised and other farm income and gross and net profits from farming;

(xii) From Form 1120S, the names and taxpayer identifying numbers of, and the number of shares of stock owned by, no more than 10 shareholders of the corporation; and

(xiii) From Form 851, the employer identification number of each corporation named on such return.

* * * * *

(5) Subject to the requirements of paragraph (d) of this section and § 301.6103(p)(2)(B)-1, officers or employees of the Social Security Administration to whom the following return information has been disclosed as provided by section 6103(l) (1)(A) or (5)

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may disclose such return information to officers and employees of the Bureau of the Census for necessary purposes described in paragraph (b) (2) or (3) of this section—

(i) From Form SS–4, all information reflected on such return; and

(ii) From Form 1040, Schedule SE—

(A) Taxpayer identifying number of self-employed individual,

(B) Business activities subject to the tax imposed by Chapter 21,

(C) Net earnings from farming,

(D) Net earnings from nonfarming activities,

(E) Total net earnings from self-employment, and

(F) Taxable self-employment income for purposes of chapter 2.

(6)(i) Officers or employees of the Service will disclose the following return information (but not including return information described in section 6103(o)(2)) reflected on the return of a corporation with respect to the tax imposed by Chapter 1 to officers and employees of the Bureau of the Census for purposes of, but only to the extent necessary in, developing and preparing, as authorized by law, the Quarterly Financial Report—

(A) From the business master files of the Service—

(*1*) Taxpayer identity information (as defined in section 6103(b)(6)),

(*2*) Consolidated return and final return indicators,

(*3*) Principal industrial activity code,

(*4*) Partial year indicator,

(*5*) Annual accounting period,

(*6*) Gross receipts less returns and allowances,

(*7*) Net income or loss, and

(*8*) Total assets; and

(B) From Form SS–4—

(*1*) Month and year in which such return was executed,

(*2*) Taxpayer identity information,

(*3*) Principal industrial activity, geographic, firm size, and reason for application codes.

(ii) Subject to the requirements of paragraph (d) of this section and § 301.6103(p)(2)(B)–1, officers or employees of the Social Security Administration to whom return information described in paragraph (b)(6)(i)(B) of this section with respect to a corporation has been disclosed as provided by section 6103(l)(1)(A) may disclose such return information to officers and employees of the Bureau of the Census for a purpose described in this paragraph (b)(6).

* * * * *

§ 301.6103(j)(2)–1 [Removed]

Par. 3 Section 301.6103(j)(2)–1 is removed.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: December 16, 1986.

J. Roger Mentz,

Assistant Secretary of the Treasury.

[FR Doc. 86–29193 Filed 12–29–86; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD5–026]

Temporary Deviation From Drawbridge Operation Regulations for Bridge Across Atlantic Intracoastal Waterway, at Fairfield, NC

AGENCY: Coast Guard, DOT.

ACTION: Drawbridge operation; deviation from regulation.

SUMMARY: The Coast Guard has granted a temporary deviation from the regulations for the drawbridge across the Atlantic Intracoastal Waterway at mile 113.8 at Fairfield, North Carolina. The purpose of this deviation from the regulations is to allow the project contractor for the U.S. Army Corps of Engineers, the owner of the bridge, to renovate and repair the bridge without interruptions for bridge openings during specified hours each day. The repairs are expected to be completed by February 15, 1987.

DATES: This temporary deviation from the regulations becomes effective on December 15, 1986, and terminates on February 15, 1967, or earlier if bridge repairs are completed ahead of schedule.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Commander (oan), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or telephone number (804) 398–6222.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would have been impracticable since the request for the regulation was not received until December 1, 1986, and there was insufficient time remaining to publish a proposal in advance of the repairs without delaying needed repairs to this bridge.

Recent emergency repairs to this bridge have just been completed, and the contractor for the current maintenance project is on site and prepared to proceed with the work. Also, the work is taking place during a time of year when vessel traffic on the Atlantic Intracoastal Waterway is at a minimum, thereby reducing the adverse effects of the temporary deviation on waterway traffic.

Drafting Information:

The drafters of this notice are Ann B. Deaton, project officer, and CDR Robert J. Reining, project attorney.

List of Subjects in 33 CFR Part 117

Bridges.

Temporary Deviation From Drawbridge Regulations

In consideration of the foregoing, the regulations in § 117.5 of Title 33, Code of Federal Regulations, do not apply to the bridge across the Atlantic Intracoastal Waterway, mile 113.8, at Fairfield, North Carolina.

From December 15, 1986, until February 15, 1987, of earlier if bridge repairs are completed ahead of schedule, the bridge may remain closed to vessel traffic from 8 a.m. to 5 p.m. daily, except that, the bridge shall open at 12 noon for all accumulated and approaching vessels. At all other times, the bridge shall open on signal.

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g), 117.35(d).

Dated: December 12, 1986.

B.F. Hollingsworth,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 86–29050 Filed 12–29–86; 8:45 am]

BILLING CODE 4910–14–M

Federal Railroad Administration

49 CFR Part 225

[Docket No. RAR–2, Notice No. 8]

Adjustment of Monetary Threshold for Reporting Accidents/Incidents

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This rule increases the reporting threshold from $4,900 to $5,200 for railroad accidents/incidents involving property damage that occurs during calendar year 1987. This action is needed to ensure that the FRA reporting requirements reflect cost increases that have occurred since the reporting threshold was last computed in 1984. In addition, FRA is amending one section in 49 CFR Part 225 to make a minor technical improvement in the regulation.

EFFECTIVE DATE: This rule becomes effective on January 1, 1987.

FOR FURTHER INFORMATION CONTACT: Principal Program Person: Gloria D. Swanson, Office of Safety, (RRS–21), FRA, 400 Seventh Street SW., Washington, DC 20590, Phone (202) 366–0538.

SUPPLEMENTARY INFORMATION:

Background

Section 225.19(c) of 49 CFR requires that the dollar figure that constitutes the reporting threshold for railroad accidents/incidents will be adjusted every two years, in accordance with the procedures outlined in Appendix A to Part 225. Based on increased cost for labor and material, the FRA has determined that the current reporting threshold of $4,900 should be increased to $5,200, and §§ 225.5 and 225.19 are being amended accordingly. Appendix A is also being amended to reflect the most recent calculations and procedures used to determine the new threshold.

In addition, FRA is revising § 225.7(a) to change the mailing address for requesting copies of reports.

Regulatory Impact

This proposal has been evaulated in accordance with existing regulatory policies. It will not have an adverse economic impact on any entity because it does not place any new requirements or burdens on the public. Accordingly, it is certified that the proposal will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It does not constitute a major Federal action significantly affecting the quality of the human environment and, therefore, an Environmental Impact Statement is not required. The proposal does not constitute a major rule under the terms of Executive Order 12291 and does not constitute a significant rule under the Department of Transportation regulatory policies and procedures. Moreover, the economic consequences of the proposal are so minimal that it does not warrant further regulatory evaluation. The information collection requirements of the existing regulation have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and will remain unchanged through adoption of this proposal.

Notice and Public Procedure

Since the amendment merely adjusts the reporting threshold for accidents/incidents in accordance with procedures specified in long standing regulation (49 CFR 225.19) and imposes no additional burden on any person, the FRA concludes that notice and public procedure are not necessary. In addition, FRA is making this rule effective in less than thirty days so that accident data will be compiled on a uniform basis throughout calendar year 1987.

List of Subjects in 49 CFR Part 225

Railroad safety.

For reasons set out in the preamble, Part 225 of Chapter II of Title 49 of the Code of Federal Regulations is amended as follows:

PART 225—[AMENDED]

1. The authority for 49 CFR Part 225 is revised to read as follows:

Authority: Secs. 1 and 6, Accident Reports Act (45 U.S.C. 38 and 42); Sec. 6 (e) and (f), Department of Transportation Act (49 U.S.C. 1655 (e) and (f)); Secs. 202 and 208, Federal Railroad Safety Act of 1970 (45 U.S.C. §§ 431 and 471); Sec. 1.49 (g) and (m), Regulations of the Office of the Secretary of Transportation (49 CFR 1.49 (g) and (m)).

2. By revising § 225.5(b)(2) to read as follows:

§ 225.5 Definitions.

As used in the part—

* * * * *

(b) "Accident/Incident" means:

* * * * *

(2) Any collision, derailment, fire, explosion, act of God, or other event involving operation of railroad on-track equipment (standing or moving) that results in more than $5,200 in damages to railroad on-track equipment, signals, tract, track structures, and roadbed;

* * * * *

3. By revising § 225.7(a) to read as follows:

§ 225.7 Public examination and use of reports.

(a) Accident/Incident reports made by railroads in compliance with these rules shall be available to the public in the manner prescribed by Part 7 of this Title. Accident/Incident reports may be inspected at the Office of Safety, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590. Written requests for a copy of a report should be addressed to the Executive Director, FRA, 400 Seventh Street, SW., Washington, DC 20590, and be accompanied by the appropriate fee prescribed in Part 7 of this Title. To facilitate expedited handling, each request should be clearly marked "Request for Accident/Incident Report."

* * * * *

§ 225.19 [Amended]

4. By revising the second sentence in § 225.19(b) and by revising the first, third and fifth sentences of § 225.19(c) to read as follows:

* * * * *

(b) *Group I—Rail-highway grade crossing.* * * * In addition, whenever a rail-highway grade crossing accident/incident results in more than $5,200 damages to railroad on-track equipment, signals, tracks, track structures, or roadbed, that accident/incident must be reported to the FRA on Form FRA F6180.54. * * *

(c) *Group II—Rail Equipment.* Rail equipment accidents/incidents are collisions, derailments, fires, explosions, acts of God, or other events involving the operation of railroad on-track equipment (standing or moving) that results in more than $5,200 in damages to railroad on-track equipment, signals, track, track structures, or roadbed, including labor costs and all other costs for repair or replacement in kind. * * * If the property of more than one railroad is involved in an accident/incident, the $5,200 threshold is calculated by including the damages suffered by all of the railroads involved. * * * The $5,200 reporting threshold will be reviewed periodically and will be adjusted in increments of $100 every 2 years in accordance with the procedures outlined in Appendix A of this part.

* * * * *

5. By revising Appendix A to read as follows:

Appendix A—Procedure for Determining Reporting Threshold

1. Wage figures used for track direct labor rates will be based on the "Average straight time rate" shown in the "Recapitulation of Group of Employees," for Group 300 Maintenance of Way Structures Employees. This information appears in the most recent annual edition (Year 1985) of "Statement A300 of the Interstate Commerce Commission, Bureau of Accounts, Wage Statistics of Class I Railroads in the United States."

2. Wage figures used for mechanical direct labor rates will be based on the "Average straight time rate" shown in the "Recapitulation of Group of Employees," for Group 400 Maintenance of Equipment and Stores Employees. This information appears in the most recent annual edition (Year 1985) of "Statement A300 of the Interstate Commerce Commission, Bureau of Accounts,

Wage Statistics of Class 1 Railroads in the United States."

3. Fringe benefit surcharges will be added to the average straight time rates for mechanical and track employees based on the Railroad Cost Index data developed for the Interstate Commerce Commission under the provisions of 49 CFR Part 1102. This information was published in summarized form in the September 24, 1984 edition of the **Federal Register** (49 FR 37481).

4. To calculate the index number for mechanical labor, divide the present (1986) mechanical wage rate of $20.48 by the previous (1984) mechanical wage rate of $19.16. The result is a mechanical labor index number of 1.07 for 1986.

5. The track labor index number is calculated by dividing the present (1986) track wage rate of $19.23 by the previous (1984) track wage rate of $18.02. The result is a track labor index number of 1.07 for 1986.

6. Calculation of the labor index number is as follows: [(track labor index number) 1.07 × .20] + [mechanical labor index number) 1.07 × .80] = labor index number of 1.07.

7. The mechanical material index number is calculated by first totaling the present (1986) cost of the following mechanical materials:

Quantity	Description	1984	1986
8	33" CS wheels	$1,983	$1,940
8	8 by 11" roller bearings	1,221	1,235
4	Roller bearing axles	1,783	1,946
4	8 by 11" roller bearing truck sides (750 lbs).	3,399	3,397
2	8 by 11" truck bolsters (1,000 lbs).	2,533	2,532
2	E couplers	686	534
4	Brake beams	315	339
1	AB cylinder	96	95
1	AB reservoir	263	299
1	ABD control valve	1,155	1,250
500 lbs	Steel bar	445	500
1,000 lbs	Steel sheets	890	1,000
1,000 lbs	Steel plates	890	1,000
8	Brake shoes	52	58
8	Roller bearing adapters	151	140
24	Outer coil springs	222	174
800	Board feet hardwood lumber.	408	378
1	Traction motor	34,400	36,500
60 feet	1¼" brake pipe	65	66
1	Hand brake	225	245
	Total mechanical material.	51,182	53,626

The mechanical material index number is determined by dividing the present (1986) total cost for these mechanical materials ($53,626) by the previous (1984) total cost for mechanical materials ($51,182). The result is 1.05.

8. The track material index number is calculated by first totaling the present (1986) cost of the following track materials:

Quantity	Description	1984	1986
4,500	Ties, wooden	$81,000	$99,000
250 tons	Rail	137,500	140,000
90 tons	Tie plates	49,500	50,400
27,000	Spikes (5.8 tons)	4,406	4,406
800	Joint bars (25.4 tons).	22,000	24,000
2,000	Track bolts	1,200	3,000
1	Frog	4,300	4,300
1	Switch	4,000	4,000
	Total track material.	303,906	329,108

The track material index number is determined by dividing the present (1986) total cost for these track materials ($329,108) by the previous (1984) total cost for track materials ($303,908). The result is 1.08.

9. Calculation of the material index number is as follows: [(track material index number) 1.08 × .20] + [(mechanical material index number 1.05 x .80] = material index number of 1.06.

10. Calculation of the threshold index number is as follows: [(labor index number) 1.07 × .40] + [(material index number) 1.06 × .60] = threshold index number of 1.06.

11. In order to calculate the new reporting threshold, multiply the existing reporting threshold $4,900 by the threshold index number of 1.06. The result is $5,194. This result, when rounded to the nearest $100.00, is the new accident/incident reporting threshold figure of $5,200.

Issued in Washington, DC on December 23, 1986.

John H. Riley,

Administrator.

[FR Doc. 86-29165 Filed 12-29-86; 8:45 am]

BILLING CODE 4910-06-M

Proposed Rules

Federal Register
Vol. 51, No. 249
Tuesday, December 30, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 831

Civil Service Retirement System; Court-Ordered Payments

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) proposes to expedite the processing of court-ordered payments and competing claims for benefits from the Civil Service Retirement System through a change in administrative procedures. This proposed rule also establishes age 18 as the age for direct payment of survivor annuity benefits and clarifies certain terminology.

DATE: Comment must be received on or before January 29, 1987.

ADDRESSES: Send comments to Reginald M. Jones, Jr., Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, P.O. Box 57, Washington, DC 20044, or deliver to OPM, Room 4351, 1900 E Street, NW, Washington, DC.

Send court orders affecting retirement benefits under Subpart Q of Part 831 to the Office of Retirement Programs, Office of Personnel Management, P.O. Box 17, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Patricia A. Rochester, (202) 632-4682.

SUPPLEMENTARY INFORMATION: The current regulations for processing cases involving competing claimants (§ 831.109(g) of Title 5, Code of Federal Regulations) and court orders affecting benefits payable from the Civil Service Retirement and Disability Fund (Subpart Q of Part 831 of Title 5, Code of Federal Regulations) require a time-consuming, three-step process involving two reviews within OPM and then providing that OPM's "final" decision, if contested, be reviewed by the Merit Systems Protection Board (MSPB) before payments are started. This proposed rule would eliminate the "initial decision" step. OPM would simply issue a "final" decision and offer an opportunity to appeal directly to MSPB. This would give full weight to the statutory requirement relating to court orders and competing claimants, and would streamline the processing of these cases and eliminate the "escrowing" of funds, allowing payment to the person(s) found to be entitled as soon as our final decision is issued. Payment would continue pending the outcome of any appeal to the MSPB.

Section 831.111 proposes to incorporate existing administrative practices into regulation. Section 8334 of title 5, United States Code, limits the right to make deposits and redeposits to "employees." The Civil Service Commission (CSC)—predecessor to OPM—used a broad definition of "employee" for this purpose. In addition to "employee," "former employees" are also allowed to make deposits or redeposits up to time of final adjudication of an annuity application, if: (1) They are entitled to an annuity based on other service for which contributions have been made; or (2) they had begun installment payments on a redeposit while currently employed but did not complete the redeposit prior to separation. We are proposing to incorporate this CSC definition, which OPM has continued to use into regulation in § 831.111(a).

Proposed § 831.111(b) is intended to clarify the rule for determining whether an individual died as an employee, a separated employee, or a retiree. The status assigned affects the entitlement of survivors. The two factors to be considered are: (1) Whether the person separated from his or her position in the Federal service; and (2) whether the person met all the requirements for retirement including filing an application.

Under these proposed rules, if the person was not separated from the service at the time of death, he or she was an "employee." If the person was separated from the service at the time of death and met all the requirements for retirement including filing an application, he or she was a "retiree." If the person was separated from the service at the time of death, but did not qualify for retirement or did not apply, he or she was a "separated employee" and, except as provided in section 8341(f) of title 5, United States Code, the person's survivor(s) would be qualified only for a lump-sum payment of unpaid retirement deductions.

Proposed § 831.111(c) would state that a person becomes a retiree rather than an employee for survivor election purposes on the date that annuity begins to accrue. This definition would conform with the definition of "time of retirement" for survivor election purposes in § 831.603.

Proposed § 831.112 would allow payment of survivor annuity benefits directly to children who have attained age 18, regardless of the age of majority in the jurisdiction where the child resides. This is a rule of administrative convenience and is consistent with other Federal policies, such as the voting rights and responsibilities granted 18-year-olds under the 26th Amendment.

These proposed regulations also make a number of changes in Subpart Q, which deals with court orders requiring payment of civil service retirement benefits to legally separated or former spouses. The most significant of these changes is the definition of "qualifying court order," under § 831.1704. Previously, an order that divided benefits but specifically directed the employee to pay the former spouse was not considered a qualifying court order if the employee objected to direct payment by OPM. We are proposing to amend § 831.1704 to make such orders qualifying unless the court expressly instructs us *not* to pay the former spouse directly. In other words, in the absence of a specific prohibition within the court order itself, OPM now will apportion an employee's retirement benefits based on an order that directs the employee to pay the former spouse—as long as the order is otherwise qualifying.

The amendment proposed in § 831.1705 would require people requesting that we honor court orders affecting future benefits of employees who have not yet retired to provide the affected employee's current address so we can give notice of our intent to honor the order.

OPM routinely receives state court orders requiring payment of a portion of a retiree's civil service retirement annuity to a legally separated or former spouse and reaches an "initial" decision concerning the validity and applicability

of these court orders. However, before implementing this decision (i.e., starting court-ordered payments), current regulations provide the retiree a 30-day period following the notice during which he or she may contest the court order. If contested, payments are further delayed until all administrative appeals—including an appeal to the MSPB—have been exhausted. The court-ordered payments are in effect "escrowed" during the entire period.

In order to begin the payments required under 5 U.S.C. 8345(j) more expeditiously, proposed § 831.1707 sets up one-step decisionmaking procedures for handling court orders that affect employee retirements benefits. Parallel procedures for handling order awarding former spouse survivor annuities are adopted in proposed § 831.1708. Both sections require us to review the order as soon as we have received all the documentation required under § 831.1705. This is a change from the prior rule that we would not determine whether an order is qualifying until benefits became payable.

Both sections require that we notify all known parties affected by our decision on whether the order is qualifying. Decisions under these sections will be executed immediately if benefits are payable. The previous period of 30 days to contest the OPM decision is eliminated. An affected party who disagrees with our decision may appeal to the MSPB.

To allow a reasonable time for processing, court orders will be applied only to benefits accruing on or after the first day of the second month after receipt of the required documentation (§ 831.1711(a)(3)).

Proposed § 831.1709(c) would eliminate the current "escrow" requirement while the validity of an order is being challenged in court. The proposed practice is to honor without delay any order that we determine to be valid, unless a court directs otherwise.

Because of the change proposed in the definition of qualifying court order in § 831.1704, Guideline V in Appendix A of Subpart Q is no longer correct or necessary, and we are proposing to eliminate it.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations will only affect retirement payments to retired Government employees and spouses.

List of Subjects in 5 CFR Part 831

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income tax, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.
Constance Horner,
Director.

PART 831—RETIREMENT

Accordingly, OPM proposes to amend 5 CFR Part 831 as follows:

Subpart A—Administration and General Provisions

1. The authority citation for Subpart A of Part 831 continues to read as follows:

Authority: 5 U.S.C. 8347; § 831.102 also issued under 5 U.S.C. 8334; § 831.106 also issued under 5 U.S.C. 552a; § 831.108 also issued under 5 U.S.C. 8336(d)(2).

2. In § 831.109, paragraphs (a) and (g) are revised and a new paragraph (b)(3) is added to read as follows:

§ 831.109 Initial decision and reconsideration.

(a) *Who may file.* Except as noted in paragraphs (b), (c), and (g) of this section, any individual or agency whose rights or interests under the Civil Service Retirement System are affected by an initial decision by OPM may request OPM to review its initial decision.

(b) * * *

(3) A decision on court orders affecting civil service retirement benefits will be made in accordance with Subpart Q of this part.

* * * * *

(g) *Competing claimants.* (1) Competing claimants are applicants for survivor benefits based on the service of an employee or Member when—

(i) A benefit is payable based on the service of the employee or Member; and

(ii) Two or more claimants have applied for benefits based on the service of the employee or Member; and

(iii) An OPM decision in favor of one claimant will adversely affect another claimant(s).

(2) In cases involving competing claimants, the Associate Director or his or her designee will issue a final decision that will be in writing, will fully set forth findings and conclusions, and will contain notice of the right to appeal provided in § 831.110. Copies of the final decision will be sent to all competing claimants.

(3)(i) When OPM receives applications from competing claimants before any payments are made based on the service of the employee or Member, OPM will begin payments to the claimant(s) found entitled in the decision issued under paragraph (g)(2) of this section.

(ii) When OPM does not receive an application from a competing claimant(s) until after another person has begun to receive payments based on the service of the employee or Member, the payments will continue until a decision is issued under paragraph (g)(2) of this section. When a decision is issued under paragraph (g)(2) of this section, OPM will—

(A) If OPM affirms its earlier decision, continue payments to the claimant(s) who was originally determined to be entitled; and

(B) If OPM reverses its earlier decision, suspend payment to the claimant(s) who was originally determined to be entitled and immediately begin payment to the claimant(s) determined to be entitled in OPM's decision under paragraph (g)(2) of this section. OPM will not take action to collect the overpayment until the time limit for filing an appeal has expired or MSPB has issued a final decision on a timely appeal, whichever comes later.

3. New §§ 831.111 and 831.112 are added to Subpart A to read as follows:

§ 831.111 Definitions of employee.

(a) *Determinations involving an employee's ability to make a deposit or redeposit.* For purposes of making a deposit or redeposit under section 8334 of title 5, United States Code, "employee" means—

(1) A person currently employed in a position subject to the civil service retirement law; and

(2) A former employee (whose annuity has not been finally adjudicated) who retains civil service retirement annuity rights based on a separation from a position in which retirement deductions were properly withheld and remain (or have been redeposited in whole or in part) in the Civil Service Retirement and Disability Fund.

(d) *Determinations involving survivor benefits at an employee's or former employee's death.*

(1) "Employee" for purposes of determining a person's status at the time of death means that the employee had not been separated from the service prior to his or her death, even if the person had applied for retirement and the application had been approved.

(2) "Retiree" or "annuitant" for purposes of determining a person's status at the time of death means that the person had been separated from the service and had met all the requirements to receive an annuity including having filed an application for the annuity prior to his or her death.

(c) *Determinations involving an election of survivor benefits.* Except as provided in paragraph (b) of this section, for purposes of survivor benefit elections, a person ceases to be an "employee" and becomes a "retiree" or "annuitant" on the date when the person's annuity begins to accrue, even if that date is before the date of separation from service.

§ 831.112 Payments to children.

For purposes of section 8345(e) of title 5, United States Code, people who have attained age 18 are considered adults regardless of the age of majority in the jurisdiction in which they reside.

Subpart Q—Court Orders Affecting Civil Service Retirement Benefits

4. The authority citation for Subpart Q of Part 831 continues to read as follows:

Authority: 5 U.S.C. 8347.

§ 831.1703 [Amended]

5. In § 831.1703, the definition of "Associate Director" is revised to read as follows:

"Associate Director" means the Associate Director for Retirement and Insurance in the OPM or an OPM official authorized to act on his or her behalf.

* * * * *

6. In § 831.1704, paragraph (c)(1) is revised to read as follows:

§ 831.1704 Qualifying court orders.

* * * * *

(c)(1) For purposes of payment from employee retirement benefits, the court order must either state the former spouse's entitlement to a portion of employee retirement benefits, or direct an employee, Member, or retiree to pay a portion of employee retirement benefits to the former spouse. OPM will not pay a former spouse directly if the court order expressly instructs OPM not to do so.

* * * * *

7. In § 831.1705, paragraph (b)(4) is revised and a new paragraph (b)(5) is added to read as follows:

§ 831.1705 Applications by former spouse.

* * * * *

(b) * * *

(4) The current mailing address of the former spouse; and

(5) If the employee has not retired under CSRS or died, the current mailing address of the employee.

* * * * *

8. Sections 831.1707, 831.1708, and 831.1709 are revised to read as follows:

§ 831.1707 Processing court orders affecting employee retirement benefits.

(a) Upon receipt of a court order affecting employee retirement benefits without an item of documentation required under § 831.1705, the Associate Director will notify the person submitting the order which item(s) is necessary to document the claim and that the claim cannot be processed without the missing item(s).

(b) Upon receipt of a court order affecting employee retirement benefits with all the documentation required under § 831.1705, the Associate Director will review the court order to determine whether it is a qualifying court order under § 831.1704 and whether the employee or Member affected by the order is receiving or entitled to receive employee retirement benefits.

(c) If the Associate Director determines that the order is not a qualifying court order, the Associate Director will send a notice to the employee and a final decision to the former spouse.

(1) The notice to the employee will state that OPM has received a court order from the former spouse but OPM has determined that the court order is not a qualifying court order.

(2) The final decision to the former spouse will—

(i) Acknowledge receipt of the court order;

(ii) State that the court order is not a qualifying court order and identify the paragraph(s) of § 831.1704 under which the court order failed to qualify; and

(iii) State the right to appeal the decision to the Merit Systems Protection Board and the procedure and time limit for submitting an appeal.

(d) If the Associate Director determines that the court order is a qualifying court order and the employee is immediately eligible to receive employee retirement benefits, the Associate Director will send a final decision to both the employee and the former spouse.

(1) The final decision to the employee will state—

(i) That OPM has received a court order affecting employee retirement benefits and the date that OPM received the documentation required by § 831.1705;

(ii) The applicable law and regulations under which OPM is required to comply with the court order;

(iii) That the order is a qualifying court order under applicable law and regulations;

(iv) The effect that compliance with the court order will have on employee retirement benefits;

(v) How the former spouse's share of retirement benefits was computed;

(vi) In cases affecting annuity payments, that the retiree's annuity will be reduced effective with benefits accruing on the first day of the second month after OPM's receipt of the required documentation;

(vii) That the order must be honored unless entitlement terminates under § 831.1709; and

(viii) That the employee may appeal the decision to the Merit Systems Protection Board and the procedure and time limit for submitting an appeal.

(2) The final decision to the former spouse will state—

(i) That OPM has received the court order affecting employee retirement benefits and the date that OPM received the documentation required by § 831.1705;

(ii) The applicable law and regulations under which OPM is required to comply with the court order;

(iii) That the order is a qualifying court order under applicable law and regulations;

(iv) How the former spouse's share of retirement benefits was computed;

(v) That, if the former spouse disagrees with the computation, he or she may appeal the decision to the Merit Systems Protection Board and the procedure and time limit for submitting an appeal;

(vi) In cases affecting annuity payments, that the former spouse's share of the retiree's annuity will begin to accrue effective on the first day of the second month after OPM's receipt of the required documentation and will be paid on the first day of the month after accrual; and

(vii) The order will continue to be honored unless entitlement terminates under § 831.1709.

(e) If the Associate Director determines that the court order is a qualifying court order and the employee is not immediately eligible to receive employee retirement benefits, the Associate Director will send a final decision to both the employee and the former spouse.

(1) The final decision to the employee will state—

(i) That OPM has received a court order affecting employee retirement benefits and the date when OPM received the documentation required by § 831.1705;

(ii) The applicable law and regulations under which OPM is required to comply with the court order;
(iii) That the order is a qualifying court order under applicable law and regulations;
(iv) The effect that compliance with the court order will have, under current law and regulations, on future employee retirement benefits, when payable;
(v) How the former spouse's share of retirement benefits would be computed under current law and regulations;
(vi) That the order must be honored unless entitlement terminates under § 831.1709; and
(vii) That the employee may appeal the decision to the Merit Systems Protection Board and the procedure and time limit for submitting an appeal.
(2) The final decision to the former spouse will state—
(i) That OPM has received the court order affecting employee retirement benefits and the date when OPM received the documentation required by § 831.1705;
(ii) The applicable law and regulations under which OPM is required to comply with the court order;
(iii) That the order is a qualifying court order under applicable law and regulations;
(iv) How the former spouse's share of retirement benefits would be computed under current law and regulations;
(v) That, if the former spouse disagrees with the computation, he or she may appeal the decision to the Merit Systems Protection Board and the procedure and time limit for submitting an appeal;
(vi) That, in accordance with § 831.1706, nothing is payable before employee retirement benefits are payable to the employee; and
(vii) That the order will be honored when employee retirement benefits become payable unless entitlement terminates under § 831.1709.

§ 831.1708 Processing court orders affecting survivor annuity benefits.

(a) Upon receipt of a court order affecting survivor annuity benefits without an item of documentation required under § 831.1705, the Associate Director will notify the person submitting the order which item(s) is necessary to document the claim and that the claim cannot be processed without the missing item(s).
(b) Upon receipt of a court order affecting survivor annuity benefits with all the documentation required under § 831.1705, the Associate Director will review the court order to determine whether it is a qualifying order under § 831.1704 and whether the employee or Member affected by the order is receiving employee retirement benefits or has died.
(c) If the Associate Director determines that the order is not a qualifying court order, the Associate Director will send a notice to the employee or survivor and a final decision to the former spouse.
(1) The notice to the employee or survivor will state that OPM has received a court order from the former spouse but OPM has determined that the court order is not a qualifying court order.
(2) The final decision to the former spouse will—
(i) Acknowledge receipt of the court order;
(ii) State that the court order is not a qualifying court order and the law and regulations under which the court order failed to qualify; and
(iii) State the right to appeal the decision to the Merit Systems Protection Board and the procedure and time limit for submitting an appeal.
(d) If the Associate Director determines that the court order is a qualifying court order and the employee has died, the Associate Director will send a final decision to the former spouse and other claimant whose interest is adversely affected by the court order.
(1) The final decision to any other claimant whose interest is adversely affected by the court order will state—
(i) That OPM has received a court order affecting the survivor annuity benefits and the date that OPM received the documentation required by § 831.1705;
(ii) The applicable law and regulations under which OPM is required to comply with the court order;
(iii) That the order is a qualifying court order under applicable law and regulations;
(iv) The effect that compliance with the court order will have on the claimant's entitlement to benefits;
(v) That the order must be honored unless entitlement terminates under § 831.1709; and
(vi) That the claimant may appeal the decision to the Merit Systems Protection Board and the procedure and time limit for submitting an appeal.
(2) The final decision to the former spouse will state—
(i) That OPM has received the court order affecting the survivor annuity benefits and the date that OPM received the documentation required by § 831.1705;
(ii) The applicable law and regulations under which OPM is required to comply with the court order;
(iii) That the order is a qualifying court order under applicable law and regulations;
(iv) How the former spouse's survivor annuity was computed;
(v) That, if the former spouse disagrees with the computation, he or she may appeal to the Merit Systems Protection Board and the procedure and time limit for submitting and appeal;
(vi) That the survivor annuity will begin to accrue effective on the first day of the second month after OPM's receipt of the required documentation; and
(vii) That the order will continue to be honored unless entitlement terminates under § 831.1709.
(e) If the Associate Director determines that the court order is a qualifying court order and the employee is alive and receiving a retirement annuity, the Associate Director will send a final decision to both the retiree and the former spouse.
(1) The final decision to the retiree will state—
(i) That OPM has received a court order awarding survivor annuity benefits and the date that OPM received the documentation required by § 831.1705;
(ii) The applicable law and regulations under which OPM is required to comply with the court order;
(iii) That the order is a qualifying court order under applicable law and regulations;
(iv) The effect that compliance with the court order will have on annuity benefits and survivor election;
(v) How the amount of reduction to provide the former spouse annuity benefit was computed;
(vi) That the reduction will be effective on the first day of the second month after receipt of the documentation required by § 831.1705;
(vii) That the order must be honored unless entitlement terminates under § 831.1709; and
(viii) That the employee may appeal the decision to the Merit Systems Protection Board and the procedures and time limit for submitting an appeal.
(2) The final decision to the former spouse will state—
(i) That OPM has received the court order awarding survivor annuity benefits and the date that OPM received the documentation required by § 831.1705;
(ii) The applicable law and regulations under which OPM is required to comply with the court order;
(iii) That the order is a qualifying court order under applicable law and regulations;
(iv) How the former spouse annuity benefit will be computed;
(v) That, if the former spouse disagrees with the computation, he or she may appeal to the Merit Systems Protection Board and the procedure and time limit for submitting an appeal;
(vi) That nothing is payable before the death of the retiree; and
(vii) That the order will be honored unless entitlement terminates under § 831.1709.
(f) If the Associate Director determines that the court order is a qualifying court order and the employee has not retired, the Associate Director will send a final decision to both the employee and the former spouse.
(1) The final decision to the employee will state—
(i) That OPM has received a court order awarding survivor annuity benefits and the date that OPM received the documentation required by § 831.1705;
(ii) The applicable law and regulations under which OPM is required to comply with the court order;
(iii) That the order is a qualifying court order under applicable law and regulations;
(iv) The effect that compliance with the court order will have, under current law and regulations on future annuity benefits, when payable;
(v) How the reduction in future annuity benefits would be computed under current law and regulations;
(vi) That the order must be honored unless entitlement terminates under § 831.1709; and
(vii) That the employee may appeal the decision to the Merit Systems Protection Board and the procedure and time limit for submitting an appeal;
(viii) That nothing is payable before the death of the employee; and
(vii) That the order will be honored when the employee dies unless entitlement terminates under § 831.1709.

§ 831.1709 Termination of former spouse benefits.

(a) OPM will terminate, a recurring payment of or a future interest in, employee retirement benefits to a former spouse whenever—
(1) The retiree dies;
(2) A contemporaneous or subsequent court order supersedes or sets aside the qualifying court order or directs that OPM stop the payments; or
(3) Termination is required by the terms of the court order awarding benefits to the former spouse.
(b) OPM will terminate, a recurring payment of or a future interest in, survivor annuity benefits to a former spouse whenever—
(1) The former spouse dies;
(2) The former spouse remarries before attaining age 55;
(3) A contemporaneous or subsequent court order determines that the qualifying court order awarding the survivor annuity benefits is invalid; or
(4) Termination is required by the terms of the court order awarding benefits to the former spouse.
(c) OPM will honor a qualifying court order that appears valid on its face despite the pendency of an appeal or other attack on the validity of the qualifying court order unless the original or reviewing court has issued a stay of the qualifying court order or has ordered OPM not to honor the qualifying court order pending the appellate or collateral review. Automatic stays under state law will not be honored unless the original or reviewing court issues a document suspending the effect of the qualifying court order pending the review of the qualifying court order.

9. In § 831.1711, paragraph (a)(3) is revised to read as follows:

§ 831.1711 Effective dates.

(a) * * *
(3) Benefits payable to a former spouse from a retiree's annuity begin to accrue no earlier than the first day of the second month after OPM's receipt of the required documentation, and terminate no later than the last day of the month before the death of the retiree.
* * * * *

Appendix A to Subpart Q of Part 831—Guidelines for Interpreting State Court Orders Dividing Civil Service Retirement Benefits [Amended]

10. In Appendix A to Subpart Q of Part 831, Guideline V is removed.

[FR Doc. 86-29192 Filed 12-29-86; 8:45 am]
BILLING CODE 8325-01-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM-50-46]

State of Maine; Filing of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Receipt of Petition for Rulemaking.

SUMMARY: The Commission is publishing for public comment this notice of receipt of a petition for rulemaking dated October 14, 1986, which was filed with the Commission by the State of Maine. The petition was docketed by the Commission on October 17, 1986, and has been assigned Docket No. PRM-50-46. The petitioner requests that the Commission amend its regulations in three areas pertaining to emergency planning.

DATE: Submit comments by March 2, 1987. Comment received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. For a copy of the petition write: Division of Rules and Records, Office of Administration, 4000 MNBB, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Acting Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492-7086 or Toll Free (800) 368-5642.

SUPPLEMENTARY INFORMATION:

I. Grounds for the Petition

In support of the three areas that the petitioner requested be amended, the petitioner offers that under § 50.47(c)(2), the plume exposure pathway emergency

planning zone is generally about 10 miles in radius and the emergency planning zone for the ingestion pathway is an area about 50 miles in radius. The petitioner states that as a result of the Chernobyl nuclear disaster, Russia evacuated roughly 135,000 people within a 19-mile radius around Chernobyl, and that the fallout from the accident reached all over Europe, contaminating crops, milk, and animals.

The petitioner further states that, notwithstanding Three Mile Island and Chernobyl, the nuclear industry has argued, in recent discussions in the Advisory Committee on Reactor Safeguards, that a 2-mile emergency planning zone is sufficient for evacuation purposes.

II. Proposed Amendments to 10 CFR Part 50

The petitioner proposes that § 50.47 be amended to—

1. Expand both the emergency planning zone for the plume exposure pathway and for the ingestion pathway;

2. Require that emergency planning be done before any construction of a nuclear facility is permitted and that the governor or governors of any affected State approve the emergency plans as a precondition to construction; and

3. Require that offsite emergency preparedness findings be made before any fuel loading and/or low power operations are permitted.

Dated at Washington, DC this 22d day of December 1986.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 86-29190 Filed 12-29-86; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229 and 249

[Release Nos. 33-6681, 34-23912; File No. S7-30-86]

Disclosure of the Effects of Inflation and Changes in Prices

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Commission proposes to amend its rules governing the disclosure of the effects of inflation and changes in prices to conform them with the provisions of a statement of financial accounting standards that has been approved for issuance by the Financial Accounting Standards Board ("FASB"). These proposed rules would amend Items 302 and 303 of Regulation S-K; Item 9 to Part 1 of the test of Form 20-F; and Sections 501.05, 504, and 505 of the Codification of Financial Reporting Policies. The Commission is proposing rule amendments at this time to facilitate its prompt action on a final FASB standard. The FASB has issued an exposure draft that would eliminate the requirement for companies to disclose supplemental information of the effects of inflation and changes in prices and the Board approved final issuance of this standard on December 2, 1986. Such disclosure requirements apply currently to publicly traded companies that meet certain size tests. The Commission's rules embrace these supplemental disclosures by allowing registrants to combine these disclosures with other disclosures required by the Commission. These proposed rule amendments will delete references to the FASB requirements while continuing to encourage registrants to voluntarily present quantified supplemental disclosures on the effects of inflation and changes in prices. However, Regulation S-K will continue to require registrants to discuss, where material, the impact of inflation on their financial statements in Management's Discussion and Analysis ("MD&A"). These existing rules provide for considerable flexibility in the form of a narrative discussion of management's views. No specific numerical financial data need be presented. This release also clarifies that registrants are not required to indicate in their Management's Discussion and Analysis that inflation has no material impact on their financial statements when such is the case.

Item 329.302 of Regulation S-K currently indicates that information on the effects of changing prices on business enterprises shall be presented by registrants subject to the reporting provisions of applicable statements of Financial Accounting Standards issued by the FASB. The purpose of this rule was to require the presentation as supplementary financial information the disclosure called for by SFAS 33, as amended on various occasions. The Commission interprets this rule to encompass the most recent amendment to SFAS 33 which, in effect, makes the presentation of this data voluntary for financial reports filed with the Commission after December 2, 1986.

DATE: Comments should be received by the Commission on or before January 29, 1987.

ADDRESS: Comments should refer to File No. S7-30-86 and be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Washington, DC 20549. All comments will be available for public inspection at the Commission's Public Reference Room.

FOR FURTHER INFORMATION CONTACT: James R. Bradow, Office of the Chief Accountant (202-272-2130), or Howard P. Hodges, Jr., Division of Corporate Finance (202-272-2553), Securities and Exchange Commission, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The FASB's exposure draft, "Financial Reporting and Changing Prices" (dated September 30, 1986),[1] provides a summary of Statement of Financial Accounting Standards No. 33 as well as the Board's and others activities in reviewing this Statement since it was introduced in 1979. Statement of Financial Accounting Standards No. 89, approved by the FASB on December 2, 1986, adopts the provisions of this Exposure Draft with no substantive changes.[2] This Statement is effective for financial statements issued after December 2, 1986. The FASB received substantial input in response to its decision to commit itself to a comprehensive review of SFAS 33 five years after its issuance in 1979. SFAS 89, which is the result of this comprehensive review, eliminates the requirement to present supplementary information on the effects of changing prices while continuing to encourage reporting of this, or similar, information. This Statement includes guidelines on measurement and presentation of supplementary information on the effects of inflation and changing prices for those enterprises that wish to continue making the disclosures. These guidelines are principally a codification of the current FASB standards dealing with disclosure of inflation-adjusted information. SFAS 89 indicates, however, that entities are not discouraged from experimenting with other forms of disclosure.

The Commission has issued various releases relative to the presentation of inflation-adjusted information. On March 23, 1976, the Commission issued Accounting Series Release No. 190 that mandated disclosure of replacement cost data for certain registrants. In that release, the Commission encouraged

[1] Copies of the Exposure Draft are available from the Financial Accounting Standards Board, High Ridge Park, P.O. Box 3821, Stamford, Connecticut, 06905-0821.

[2] This final Statement is expected to be available from the FASB around December 20, 1986. See prior footnote for information on requesting copies of FASB documents.

experimentation with replacement cost disclosures and permitted considerable flexibility in the way the disclosures could be displayed. To encourage development of these disclosures in good faith, the Commission in Accounting Series Release No. 253 (December 9, 1976) provided a "safe harbor" to those registrants that disclosed such information. These "safe harbor" rules were expanded in Accounting Series Release No. 287 (February 17, 1981) and will remain in place for those registrants that provide voluntary disclosure of inflation-adjusted information as discussed in this release.

Accounting Series Release No. 299 (September 26, 1981) indicated the need for all registrants to provide a meaningful discussion of the effects of changing prices on the registrant's business as part of their Management's Discussion and Analysis. That release contains various illustrations of the types of narrative disclosures made by registrants in their MD&A. Those illustrations should continue to be useful to registrants when responding to the requirements of Item 303(a) of Regulation S-K with regard to disclosure of the impact of inflation. However, Item 303(a) does not require registrants to discuss the impact of inflation when such impact does not materially affect the financial statements.

The Commission concurs with the FASB in encouraging experimentation with disclosures on the impact of inflation on financial statements, while reminding registrants that any such disclosures need to present a balanced picture of the impacts of inflation and not be misleading. Item 303(a) of Regulation S-K continues to allow registrants that elect to voluntarily disclose quantified supplemental information on the effects of changing prices to either combine such presentation with their MD&A or include it elsewhere in their annual report with appropriate cross-referencing to the MD&A.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act [5 U.S.C. 605(b)], the Chairman of the Commission has certified that the proposed amendments will not, if adopted, have a significant impact on a substantial number of small entities. This certification, including the reasons therefore, is attached to this release.

Request for Comment

The Commission invites written comments on the proposed amendments as described herein. Pursuant to section 23(a) of the Securities Exchange Act, the Commission has considered the impact of these proposals on competition and is not aware at this time of any burden that the proposals, if adopted, would impose on competition. However, the Commission specifically invites comments as to whether the proposed amendments would have an adverse effect on competition. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under the Act. [17 C.F.R. 228.503(a).]

List of Subjects in 17 CFR Parts 229 and 249

Reporting and recordkeeping requirements, Securities.

Text of Proposed Rules

In accordance with the foregoing, Title 17, Chapter II, of the Code of Federal Regulations is proposed to be amended as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S-K

1. The authority citation for Part 229 continues to read, in part, as follows:

Authority: Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 12, 13, 14, 15(d), 23(a), 48 Stat. 892, 894, 901; secs. 205, 209, 48 Stat. 906, 908; sec. 203(a), 49 Stat. 704; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 301, 54 Stat. 857; secs. 8, 202, 68 Stat. 985, 986; secs. 3, 4, 5, 8, 78 Stat. 565-568, 569, 570-574; sec. 1, 79 Stat. 1051; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3-5, 28(c) 84 Stat. 1435, 1497; sec. 105(b) 88 Stat. 1503; secs. 6, 7, 10, 11, 60 Stat. 117, 128, 129, 155; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78l, 78m, 78n, 78*l*(d), 78w(a)

* * * * *

§ 229.201 [Amended]

2. By amending the Instructions to § 229.201 to remove paragraph 3 and redesignate paragraphs 4 through 8 as paragraphs 3 through 7.

§ 229.302 [Amended]

3. By amending § 229.302 to remove paragraph (b) and redesignate paragraph (c) as paragraph (b) of § 229.302.

4. By amending § 229.303 by revising paragraphs 8 and 9 to the *Instructions to Paragraph* 303(a) to read as follows:

§ 229.303 (Item 303) Management's discussion and analysis of financial condition and results of operations.

(a) *Full fiscal years.* * * *

Instructions to Paragraph 303(a).

* * * * *

8. Registrants may discuss the effects of inflation and changes in prices in whatever manner appears appropriate under the circumstances. All that is required is a brief textual presentation of management's views. No specific numerical financial data need be presented except as Rule 3-20(c) of Regulation S-X (§ 210.3-20(c) of this chapter) otherwise requires. However, registrants may elect to voluntarily disclose supplemental information on the effects of changing prices as provided for in Statement of Financial Accounting Standards No. 89, "Financial Reporting and Changing Prices" or through other supplemental disclosures. The Commission encourages experimentation with these disclosures on order to provide the most meaningful presentation of the impact of price changes on the registrant's financial statements.

9. Registrants that elect to disclose supplementary information on the effects of changing prices may combine such explanations with the discussion and analysis required pursuant to this Item or may supply such information separately with appropriate cross-reference.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for Part 249 continues to read as follows:

Authority: *The Securities Act of 1934*, 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

§ 249.220 [Amended]

6. By amending Form 20-F, § 249.220(f) by removing paragraph 8 under Item 9 and redesignating paragraphs 9, 10, 11 and 12 as paragraphs 8, 9, 10 and 11.

Codification Update

The "Codification of Financial Reporting Policies" announced in Financing Reporting Release 1 (April 15, 1982) [47 FR 21028] is updated to:

1. Delete the text of old § 501.05.a, entitled as follows:

501.05.a General.

2. Add new § 501.05.a. as follows:

501.05.a. General.

The Commission believes that management for all registered companies should focus on translating the potentially confusing situation concerning inflation into a meaningful discussion of the effects of changing prices on the registrant's business. Consequently, Item 303 requires that registrants include at least a narrative discussion of the effects of inflation and changing prices, where material. The Commission's objective is to elicit useful disclosures concerning the impact of inflation without imposing an undue competetional burden. Registrants may elect to provide supplemental disclosure on the effects of inflation and changing prices as provided for in SFAS 89, "Financial Reporting and

Changing Prices," or otherwise. Registrants that elect to include these supplemental disclosures are allowed to provide a cross reference to the location of such information.

3. Delete the text of old § 501.05.e., entitled as follows:

501.05.e Impact of Inflation on Plant Assets and Depreciation.

4. Add new § 501.05.e., as follows:

501.05.e Impact of Inflation on Plant Assets and Depreciation.

Under generally accepted accounting principles, companies record plant assets at actual cost and allocate these costs to income over the assets' useful lives. During inflationary periods, therefore, depreciation charges are understated and net income overstated under the historical cost model to the extent that the current costs of plant assets exceed original costs. The Commission encourages narrative discussion of the extent of the difference between historical cost and current cost. Information on relative asset ages can also assist users in developing their own estimates of price-adjusted amounts.

5. Delete the second paragraph of section 504, entitled as follows:

504 Selected Financial Data

6. Include in section 504 the following as the new second paragraph:

The deletion of summary of operations and the substitution of selected Financial Data reflected the Commission's concern that operations summaries duplicated information otherwise available in income statements and may have unduly emphasized income over other enterprise performance measures. The Commission recognizes that a detailed specification of the contents or format of a summary might not cure the preceived deficiencies. Accordingly, the revisions strike a reasonable balance between specified content and a flexible approach which permits registrants to select the data which best indicates performance. For example, those registrants who present information relating to the impact of inflation and current prices on their business are encouraged to combine this information with the information required by the rule.

7. Delete the text of old section 505, entitled as follows:

505 Information on the Effects of Changing Prices

8. Add new section 505, as follows:

505 Information on the Effects of Changing Prices

The Commission provides a safe harbor rule for information on the effects of changing prices disclosed by registrants pursuant to Item 303 Regulation D–K relating to the management's discussion and analysis. This safe harbor was provided by amendment of the previously existing safe harbor rule for projections (adopted as a part of the rules and regulations under the various Securities Acts) to extend its coverage to information on the effects of changing prices.

By The Commission.

Jonathan G. Katz,

Secretary.

December 18, 1986.

Regulatory Flexibility Act Certification

I, John S.R. Shad, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b) that the proposed amendments to Regulation S–K and Form 20–F to eliminate mandated disclosure regarding inflation and changes in prices, contained in Securities Act Release No. 6681 will not have a significant economic impact on a substantial number of small entities. The reason for this certification is that the amendments, if adopted, do not and will not affect small entities. Registrants voluntarily providing such information under the proposed amendments would be permitted to discuss the effects of inflation and changing prices in any appropriate manner.

John S.R. Shad,

Chairman.

December 18, 1986.

[FR Doc. 86–29196 Filed 12–29–86; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 310 and 314

[Docket No. 86N–0392]

Revision of Rules Governing Postmarketing Reporting of Adverse Drug Reactions

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to revise the regulations governing the postmarketing reporting of adverse drug reactions. Specifically, the agency is proposing to modify the regulation's 15-day Alert reports. The proposed changes would focus FDA's prompt review on those reports that are truly significant in order to provide more safety to people who use therapeutic medicinals. In addition, the agency is proposing to clarify the reporting obligations of a drug firm conducting a clinical or epidemiological study with a marketed drug. The changes are intended to improve the effectiveness of the adverse drug reaction reporting process.

DATE: Comments by March 2, 1987.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Steven H. Unger, Center for Drugs and Biologics (HFN–362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8049.

SUPPLEMENTARY INFORMATION: FDA is proposing several changes to the rules governing the reporting of adverse drug experiences associated with the use of marketed new drug products to improve patient safety by improving the effectiveness of FDA's postmarketing surveillance of these products.

The Primary purpose of FDA's adverse drug experience reporting system is to signal potentially serious safety problems with marketed drugs, focusing especially on newly marketed drugs. Although premarket testing discloses a general safety profile of a new drug's comparatively common adverse effects, the larger and more diverse patient populations exposed to the marketed drug provides, for the first time, the opportunity to collect information on rare, latent, and long-term effects. Signals are obtained from a variety of sources, including reports from patients, treating physicians, foreign regulatory agencies, and clinical investigators. Information derived from the adverse drug experience reporting system contributes directly to increased public health protection because such information enables FDA to make important changes to the product's labeling (such as adding a new warning) and, when necessary, to initiate removal of a new drug from the market.

The current regulations (21 CFR 314.80) require that a drug manufacturer (and any other person whose name appears on the labeling of a drug product) make a 15-day "Alert report" for (1) any adverse experience associated with use of its product that is both serious and unexpected; and (2) any significant increase in the frequency of any adverse drug experience that is both serious and expected. Other adverse experiences are required to be reported at quarterly intervals for the first 3 years following approval, and annually thereafter. The regulations define "serious," "unexpected," and "increased frequency" in order to clarify the 15-day reporting requirement. These regulations were published in the **Federal Register** of February 22, 1985 (50 FR 7452), and become effective August 22, 1985. A minor change to the definition of "increased frequency" was published in the **Federal Register** of July 3, 1986 (51 FR 24476).

An important distinction between periodic submissions and the 15-day Alert report is that the 15-day designation separates out those reports that, because of their potentially serious implications for patient safety, are to receive intensive, direct evaluation by a health care professional in FDA. In contrast, periodic reports are handled in a more automated way. Here, the summary of each periodic report is reviewed by a health care professional, and the reports themselves are entered into the computer file where they can be retrieved when there is a suspicion of a problem with either the drug or the type of reaction identified in the report.

Thus, reports of already labeled reactions are stored for future reference. Such storage is appropriate because labeled reactions are already known and described in the product's label, and the agency routinely reviews the computer file for each drug as an added precaution.

Conversely, the reports that receive the most attention, the 15-day Alert reports, are intended for reports of serious, unlabeled reactions. When a serious, unlabeled reaction is reviewed by FDA staff, the computer file is checked to see if other similar reactions, described in 15-day or periodic reports, have been received. Because of the high significance of 15-day Alert reports, it is crucial that they not be mixed with less important, more routine reports. If significant reports are diluted with a mass of relatively routine and nonsensitive reports, or incomplete and poorly documented reports, true signals that may justify FDA action (such as product labeling revisions) may be lost, or at a minimum unduly delayed, thereby leading to less patient protection.

The intent of the proposed modifications is to facilitate the identification of truly important signals and, thus, make the drug surveillance system more effective in helping FDA take prompt and appropriate action on marketed drug products in order to improve public health protection. As described below, FDA's experience over the past year has been that large volumes of either duplicative or nonserious reports have been reported as 15-day Alert reports. Indeed, during 1986, between 25 percent and 40 percent of the approximately 40,000 reports submitted by manufacturers were 15-day reports. This influx of nonserious, duplicative, or incomplete reports seriously hinders FDA's ability to detect signals of serious reactions in a systematic and effective manner. The proposed changes are described below.

I. Revision of the Definition of "Serious" Adverse Experiences

As noted above, the current regulations require the marketer of a new drug product to report to FDA any adverse drug experience that is both serious and unexpected no later than 15 days after learning of the experience. A "serious" adverse experience is defined as "an adverse drug experience that is life-threatening, is permanently disabling, requires in-patient hospitalization, or requires prescription drug therapy." In addition, an adverse drug experience with one of the following outcomes is always considered serious: death, congenital anomaly, cancer, or overdose." Thus, an adverse drug experience is "serious" if it results in any of the outcomes listed in the definition.

The agency is proposing to delete "requires prescription drug therapy" from the definition of "serious" adverse drug experience. The agency has found that the "requires prescription drug therapy" element of the definition has resulted in the submission of large numbers of 15-day reports that either are too preliminary to be informative or are not sufficiently severe to warrant consideration as a 15-day report. In addition, because almost all important and severe reactions requiring prescription drug therapy also satisfy other criteria of seriousness (in that, for example, they result in hospitalization or death), the most significant reactions will continue to be reported to FDA as 15-day reports even in the absence of the prescription drug therapy criterion. In the very few cases where this is not so, instances of the same reaction with other patients that do meet other criteria for "serious" (because, for example, the other patients were hospitalized) can be anticipated. Moreover, reactions that do not satisfy any of the criteria of "serious" will still be reported to FDA in periodic reports (quarterly during the first 3 years of marketing a new drug), and become part of the agency's more comprehensive data base. The only difference, therefore, is the reporting time and not whether the adverse reaction is reported.

For purposes of postmarketing surveillance, the limited informational value of "prescription drug therapy" reports is illustrated by the findings of an agency-conducted study of 237 consecutive applicant-submitted reports of adverse experiences classified as "serious" solely because the experiences resulted in prescription drug therapy. The agency found that, of these 237 reports, only 2 conveyed a signal about a drug product that was arguably serious and that was not also conveyed contemporaneously either by other 15-day Alert reports or by other means (e.g., through reports in the medical literature). Moreover, because both of these reports were for products approved within the previous 3 years, the signals would have been received by the agency relatively soon thereafter in quarterly reports. Reports under the heading of requiring treatment with a prescription drug submitted as "serious" 15-day Alert reports included such reactions as hiccups (treated with an antibiotic) and joint pain (treated with an antihypertensive).

A second agency study disclosed similar results. In the second study, the agency looked at 141 consecutive applicant-submitted reports of reactions classified as serious only by the criterion of requiring prescription drug therapy. Of these 141 reports, only 1 represented a potentially important signal that was not conveyed by other reports based on criteria other than "requiring prescription drug therapy." Once again, this one signal would still have been received through the periodic report if a 15-day report had not been required. Copies of these two FDA studies have been placed on file in the docket for this proposed rule in the agency's Dockets Management Branch.

In conclusion, the change proposed in the definition of "serious" is designed to make the adverse drug reaction system more likely to detect important signals rapidly. In this way, this change is designed to make the system a more effective public health tool because the system would be more sensitive to early warning signals. With this revision, the definition of "serious" would read as follows: " 'Serious' means an adverse drug experience that is fatal or life-threatening, is permanently disabling, requires inpatient hospitalization, or is a congenital anomaly, cancer, or overdose."

II. Obligations of a Sponsor Conducting a Clinical Study

Currently, the holder of an approved marketing application for a drug product who sponsors a postmarketing clinical study of that drug under an investigational new drug application (IND) is subject to the adverse drug reaction reporting requirements of both the IND regulations (Part 312) and the new drug regulations (Part 314). Under the IND requirements, the sponsor must report to its IND file "any findings associated with use of a drug that may suggest significant hazards, contraindications, side-effects, and precautions pertinent to the safety of the

drug"; "alarming" findings must be reported immediately. (See 21 CFR 312.1(a)(6).) (Although "associated with use of a drug" is not defined under current IND regulations, the IND Rewrite proposed rule stated the agency's understanding of the term, defining it to mean "there is a reasonable possibility that the event may have been caused by the drug.") In addition, the current regulations require periodic reports on the progress of the study. (See 21 CFR 312.1(a)(5).) Progress reports summarize what the sponsor has learned about the safety and effectiveness of the investigational drug and also convey much data about the experiences of individual subjects with the drug.

The holder of an approved application that sponsors a clinical study of its approved drug product is also subject to the adverse drug experience reporting requirements of Part 314. Under the current new drug application (NDA) requirements, the holder of the approved application must report to FDA any serious and unexpected adverse experience or any increased frequency of a serious and expected experience no later than 15 days after determining that a report is required. The applicant must review all potential sources of information about adverse drug experiences, including reports from individual medical practitioners, reports from the scientific literature, as well as reports from clinical studies. If an applicant receives information from one of these sources that meets the regulatory definition of a serious and unexpected adverse drug experience, the applicant must notify FDA about the experience *whether or not the applicant believes there is a reasonable possibility that the drug caused the experience.* (Emphasis added.) This nondiscretionary reporting obligation is sensible with respect to reports by physicians in a spontaneous reporting context, where the reporter presumably exercises discretion in deciding whether to report, withholding reports of events that seem obviously not to be caused by the drug; anything that meets the reporter's standard for a plausible relationship to the drug ought to be transmitted to the agency. This approach is not sensible, however, in a clinical trial context. Clinical trials are conducted in an environment characterized by intense monitoring of individual subjects with attention to all adverse events, whether or not such events seem plausibly drug-related. In clinical studies, the initial reports of adverse events do not necessarily reflect any judgment about causal relationships. In that setting, if the sponsor, in its capacity as holder of an approved application, is not allowed to screen out those reports that the sponsor believes should not be attributed to the drug, the sponsor (as applicant) must transmit to its approved application file many reports of little value to FDA's postmarketing surveillance responsibilities. The need to review and process such reports dilutes FDA's efforts to identify the more significant adverse experiences associated with use of approved products, thereby decreasing the protection afforded to the public.

For these reasons, FDA now proposes to modify reporting requirements for adverse drug experiences arising in clinical trials using marketed drugs. Specifically, the agency proposes to revise the adverse drug experience reporting requirements in Part 314 to exempt an applicant from the obligation to report an adverse drug experience obtained from a postmarketing clinical study of the drug to its approved NDA file unless the experience represents both a reportable finding within the meaning of § 312.1(a)(6) and a finding that must be reported under § 314.80. Thus, under this proposal, the only time an adverse experience will be reported both to the IND file and to the NDA file is when that experience is both a "serious" and "unexpected" adverse experience within the meaning of § 312.80 and a reportable find under the provisions of § 312.1(a)(6).

III. Other Changes

In the **Federal Register** of July 3, 1986 (51 FR 24476), FDA adopted a rule requiring adverse drug experience reporting for marketed prescription drugs not the subject of approved applications (21 CFR 310.305). Those rules were patterned after the adverse drug experience reporting provisions adopted previously. To ensure consistency between these two sets of rules, the agency is proposing to revise § 310.305 to adopt changes identical to those proposed in this document for § 314.80.

Finally, the agency is proposing to revise § 314.80(c)(2)(iii), (e) to eliminate periodic reporting requirements for adverse drug experience information obtained from postmarketing epidemiological/surveillance studies (except for information regarding 15-day Alert reports.) Routine information derived from such studies has proven to be of little help to the agency's postmarketing surveillance program. This proposed revision does not affect the requirement that applicants submit post-marketing studies pertinent to safety, including epidemiological studies, in their annual reports under 21 CFR 314.81(b)(2)(vi).

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

FDA has carefully analyzed the regulatory impact of the proposed rule in accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96-354). The proposed rule would make minor modifications to the rules governing the reporting to FDA of adverse drug experiences associated with use of marketed drug products. Therefore, the agency concludes that the proposed rule is not a major rule as defined in Executive Order 12291. Further, FDA certifies that the proposed rule, if adopted, will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act.

Interested persons may, on or before March 2, 1987, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 310

Administrative practice and procedure, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 314

Administrative practice and procedure, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act, it is proposed that Parts 310 and 314 be amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR Part 310 is revised to read as follows:

Authority: Secs. 501, 502, 503, 505, 701, 705, 52 Stat. 1049–1053 as amended, 1055–1056 as amended, 67 Stat. 477 as amended (21 U.S.C. 351, 352, 353, 355, 371, 374, 375) (5 U.S.C. 553); 21 CFR 5.10, 5.11.

2. Section 310.305 is amended by revising paragraph (b)(4) and redesignating existing paragraph (c)(1) as paragraph (c)(1)(i) and adding new paragraph (c)(1)(ii) to read as follows:

§ 310.305 Records and reports concerning adverse drug experiences on marketed prescription drugs for human use without approved new drug applications.

* * * * *

(b) * * *

(4) "Serious" means an adverse drug experience that is fatal or life-threatening, is permanently disabling, requires inpatient hospitalization, or is a congenital ancmaly, cancer, or overdose.

* * * * * *

(c) *Reporting requirements—15-day "Alert reports."* (1)(i) * * *

(ii) A person identified in paragraph (c)(1)(i) of this section is not required to submit a 15-day "Alert report" for an adverse drug experience obtained from a postmarketing clinical study (whether or not conducted under an investigational new drug application) unless the applicant concludes that there is a reasonable possibility that the drug caused the adverse experience.

* * * * * *

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG OR AN ANTIBIOTIC DRUG

3. The authority citation for 21 CFR Part 314 continues to read ad follows:

Authority: Secs. 501, 502, 503, 505, 506, 507, 701, 52 Stat. 1049–1053 as amended, 1055–1056 as amended, 55 Stat. 851, 59 Stat. 463 as amended (21 U.S.C. 351, 352, 353, 355, 356, 357, 371); 21 CFR 5.10, 5.11.

4. Section 314.80 is amended in paragraph (a) by revising the definition of "Serious," in the introductory text of paragraph (c) by revising "20857" to read "20852," in paragraphs (c)(1), (c)(2)(ii)(*b*), and (f)(1) by revising "(Drug Experience Report)" to read "(Adverse Reaction Report)," in paragraphs (d)(2), (f)(3) and (f)(4) by revising "Drug and Biological Product Experience" to read "Epidemiology and Surveillance," and by revising paragraphs (c)(2)(iii) and (e) to read as follows:

§ 314.80 Postmarketing reporting of adverse drug experiences.

(a) * * *

"Serious" means an adverse drug experience that is fatal or life-threatening, is permanently disabling, requires inpatient hospitalization, or is a congenital anomaly, cancer, or overdose.

* * * * * *

(c) * * *

(2) * * *

(iii) Periodic reporting, except for information regarding 15-day Alert reports, does not apply to adverse drug experience information obtained from postmarketing studies (whether or not conducted under an investigational new drug application), from reports in the scientific literature, and from foreign marketing experience.

* * * * * *

(e) *Postmarketing studies.* (1) An applicant is not required to submit a 15-day Alert report under paragraph (c) of this section for an adverse drug experience obtained from a postmarketing clinical study (whether or not conducted under an investigational new drug application) unless the experience is also reportable under § 312.1(a)(6) of this chapter.

(2) The applicant shall separate and clearly mark reports of adverse drug experiences that occur during a postmarketing study as being distinct from those experiences that are being reported spontaneously to the applicant.

* * * * * *

Dated: December 10, 1986.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 86-29161 Filed 12-29-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 51

[LR-34-82]

Definition of Property for Purposes of the Windfall Profit Tax; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the windfall profit tax on domestic crude oil imposed by Title 1 of the Crude Oil Windfall Profit Tax Act of 1980. The proposed regulations clarify the meaning of the term "property" for purposes of the windfall profit tax.

DATES: The public hearing will be held on Wednesday, February 25, 1987, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Tuesday, February 10, 1987.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, ATTN: CC:LR:T (LR-34-82), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: B. Faye Easley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, telephone 202-566-3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 4996 of the Internal Revenue Code of 1954. The proposed regulations appeared in the **Federal Register** for Thursday, September 25, 1986 (51 FR 34095). The proposed regulations relating to the definition of "property" for purposes of the windfall profit tax that were published in the **Federal Register** on November 10, 1982 (47 FR 50924) were withdrawn.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than Tuesday, February 10, 1987 and outline of oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the Government and answers to these questions.

Because of controlled access restrictions attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be make after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Donald E. Osteen,

Director, Legislation and Regulations Division.

[FR Doc. 86-29194 Filed 12-29-86; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-9-FRL-3135-6]

Approval and Promulgation of Implementation Plans; California State Ozone Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to disapprove a South Coast Air Quality Management District (AQMD) volatile organic compound (VOC) control regulation submitted by the State of California for inclusion into the State Implementation Plan (SIP). This rule, Rule 1115, was submitted by the State on July 10, 1984 and controls emissions from new automobile surface coating operations. This rule is not approvable because it is a relaxation from existing SIP requirements and the relaxation has not been justified by technical data demonstrating the need for the relaxation; further, the revised rule allows emissions in excess of those which would be allowed through the use of reasonably available control technology (RACT).

DATES: Comments must be submitted before January 29, 1987, for consideration by EPA.

ADDRESSES: Comments should be addressed to: Regional Administrator, Attn: Air Management Division, State Implementation Plan Section (A-2-3), Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105.

A copy of the submitted regulation and EPA's evaluation are available at the above address for public inspection during normal business hours. A copy of the submitted regulation is also available for review at the following locations:

California Air Resources Board, 1102 "Q" Street, P.O. Box 2815, Sacramento, CA 95812

South Coast Air Quality Management District, 9150 Flair Drive, El Monte, CA 91731.

FOR FURTHER INFORMATION CONTACT: Dennis Beauregard, State Implementation Plan Section (A-2-3), Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-7639 (FTS) 454-7639.

SUPPLEMENTARY INFORMATION:

Background

On July 6, 1982, EPA approved for inclusion in the California SIP South Coast AQMD Rule 1115, as submitted by the State on January 28, 1981 (see FR 29231). That rule, applicable to new automobile coating facilities in the South Coast, limits the transfer efficiency and VOC content for each coating line in use in a facility. The Rule was approved as at least satisfying minimum Clean Air Act (CAA) requirements for regulations which reflect reasonably available control technology (RACT).

On July 10, 1984, the State submitted an amended version of Rule 1115. EPA has reviewed this revised regulation for consistency with CAA requirements, the Code of Federal Regulations (CFR), and EPA policy. EPA has found the submitted regulation to be deficient with respect to the above requirements and is proposing to disapprove the regulation in this notice. The revised regulation and EPA's evaluation are described below.

The submitted regulation, Rule 1115, was amended to revise transfer efficiencies and VOC content limits, clarify definitions and to establish VOC content limits for the new basecoat/clearcoat (BC/CC) topcoat system.

The EPA-approved version of Rule 1115 correlates specific transfer efficiencies with a corresponding VOC content for a given coating. The submitted amendment to Rule 1115 no longer makes that correlation but rather is now structured to associate an application *method* with a VOC content limit for a given coating for the purposes of equivalency calculations only. This has the effect of removing any requirement to achieve specific transfer efficiencies from the rule entirely. In addition, for each method, there are two possible transfer efficiencies, depending upon whether the user purges the paint gun with or without collection of the purged paint (if purged material is collected in closed containers, fewer VOC's are emitted to the atmosphere). Collection of the purged material for reuse is considered by the amended rule to result in an increase in transfer efficiency of 9-13%. Numerically, transfer efficiencies have been revised as follows: for electrophoretic applied primer, no change; for primer surfacer and spray primer, revised from 65% T.E. to 30% (without collection of purged material) or 39% (with collection) T.E.; for topcoat (non PC/CC), no change; for final repair primer and final reoair topcoat, revise from 65% T.E. to 40% or 50% T.E. Existing VOC content limits are retained with the exception of topcoat and final repair (primer, surfacer and topcoat) coatings. For topcoats, the VOC content limit was relaxed from 275 g/l to 380 g/l (3.2 lbs./gal.). For the final repair coat, the limit was relaxed from 590 g/l to 780 g/l (6.5 lbs./gal.).

New limits were established for the BC/CC topcoat system. These were set at 590 g/l (4.9 lbs./gal.) for the basecoat and 405 g/l (3.4 lbs./gal.) for the clearcoat. The VOC content of the final repair coat for the BC/CC is limited to 4.9 lbs./gal.

The rule also includes limits for primer surfacer, spray primer and topcoat for use with the BC/CC system different than those above. In this case, the primer surfacer and spray primer have limits of 3.8 lbs./gal. at 62%, 75% or 95% transfer efficiency (depending on voltage and purge practices) while the topcoat limit is 4.9 lbs./gal. at 62% or 75% transfer efficiency.

EPA Evaluation

EPA has evaluated this rule revision and finds that it is not consistent with the Clean Air Act, 40 CFR Part 51 or EPA policy. Section 172 of the Clean Air Act requires states to adopt regulations for nonattainment areas which reflect reasonably available control technology (RACT) at a minimum in order to attain and maintain the National Ambient Air Quality Standards (NAAQS). The revised rule allows emissions from automobile surface coating operations in excess of those which would result from the application of RACT. EPA is therefore proposing to disapprove the revision because it fails to satisfy the requirements of section 172 of the Clean Air Act.

The revised rule also fails to satisfy the requirements of 40 CFR 51.10, which requires that SIPs provide for attainment of the NAAQS as expeditiously as practicable. The amended rule fails to provide for expeditious attainment, because it allows for emissions in excess of those which would result from the application of RACT, thus failing to obtain emission reductions that could contribute to the attainment of the National Ambient Air Quality Standard (NAAQS) for ozone.

EPA has developed and implemented a policy for determining whether emission limits and schedules contained in SIP revisions are appropriate and expeditious. The policy has stated that arbitrary variations from the recommended limits (relaxations) are inappropriate, except under a case-by-case review with certain criteria in mind. Specifically, a demonstration of the inappropriateness of the emission limit must be made, the proposed level of control must be the maximum reasonably attainable by the affected sources(s), reasonable further progress must be maintained, and the revision must not jeopardize attainment (see policy memorandum, Richard G. Rhoads, Director, CPPD to Regional Offices, October 6, 1978). No such demonstration has been made in this case. EPA therefore could not consider approval of this revision which relaxes existing SIP control requirements particularly in an area such as the South Coast which cannot attain the NAAQS by December 31, 1987.

None of the above statutory or policy requirements have been met in this submittal of Rule 1115, and EPA is therefore, proposing to disapprove amended Rule 1115.

Copies of EPA's detailed evaluations including the policy memoranda are available at the Region 9 address above.

EPA Proposed Action

EPA proposes to disapprove South Coast Rule 1115 since it is inconsistent with the Clean Air Act, 40 CFR Part 51 and EPA policy.

Regulatory Process

EPA is not imposing any additional requirements on small entities through its action in this notice. Consequently, EPA believes this action will not have a significant economic impact on a substantial number of small entities. Therefore, under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

Under Executive Order 12291, today's action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401-7642.

Dated: June 4, 1986.

John Wise,

Deputy Regional Administrator.

[FR Doc. 86-29156 Filed 12-29-86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Six Month Extension; Reopening of Comment Period on Proposed Endangered Status for Bruneau Hot Spring Snail (Family Hydrobiidae)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of six-month extension and reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service gives notice that it is extending by six months the period of consideration and is reopening the comment period on the proposal to add this species to the list of endangered wildlife. This species is thought to occur only in two small hot springs and their immediate outflows in Owyhee County, Idaho. The major threat to this species is the drastic and continuing reduction in spring flows. New information that questions the range, population status, and impact of present threats to the species has been received since the previous comment period; primarily from the Idaho Department of Water Resources. There is substantial disagreement regarding the sufficiency or accuracy of the available data. The Service believes that to ensure the accuracy of any final decision concerning the appropriateness of listing, these concerns and any other new information must be considered. In order to do this, we extend the period of consideration by six months and reopen the comment period on this proposed rule. The Service's goal is to base its final decision on the most sufficient and accurate scientific information available.

DATE: The comment period on the proposal is reopened until February 6, 1987.

ADDRESSES: Written comments and materials should be sent to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 NE Multnomah Street, Suite 1692, Portland, Oregon 97232. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the Regional Endangered Species Division at the above Regional Office address.

FOR FURTHER INFORMATION CONTACT: Mr. Jay Gore, U.S. Fish and Wildlife Service, 4696 Overland Road, Room 576, Boise, Idaho 83705 (503/334-1806 or FTS 554-1806).

SUPPLEMENTARY INFORMATION:

Background

The first collections of this species were made in 1952 and 1953. Dr. Dwight W. Taylor of Tiburon, California, has studied the anatomy of the species and determined that it represents a previously unknown genus and species of the snail family Hydrobiidae. The adults of this species reach only about 5 millimeters in length of the shell. The species is thought to occur in only two small thermal springs or seep areas and their immediate outflows. The snails have been found in these habitats on rocks, gravel, mud, and algal film. The springs and proximal outflows, which constitute the most important habitat, are on land administered by the Bureau of Land Management (BLM). Downstream habitat is on private land.

Section 4(b)(5)(E) of the Endangered Species Act of 1973, as amended, requires that a public hearing be held, if requested within 45 days of the publication of a proposed rule. The Service held a public hearing on December 10, 1985 in Boise, Idaho. Based on statements given that not all interested parties could reach this location, another hearing was held on January 15, 1986 in Bruneau, Idaho.

The comment period on the proposal originally closed on October 21, 1985. In order to accommodate the initial hearing, the public comment period was reopened until December 31, 1985. To accommodate the second hearing, the Service reopened the public comment period until February 1, 1986. At the time of the hearing and subsequently, the Idaho Department of Water Resources and others questioned the Service's analysis of available scientific information. In particular, they contend that surveys of available habitat have been incomplete and that the analysis of human induced impacts was erroneous. There is, therefore, substantial disagreement regarding the sufficiency or accuracy of the available data relevant to determining whether the species should be listed as endangered. In order to solicit additional data and adequately respond to the concerns raised and any others, the Service extends by six months the period of consideration, pursuant to the Endangered Species Act of 1973, section 4(b)(6)(A)(i)(III) and (B)(i), 16 U.S.C. 1533(b)(6)(A)(i)(III) and (B)(i), and reopens the comment period. Written comments may now be submitted for this proposal until February 6, 1987 to

the Service office in the Addresses section.

Author

The primary author of this notice is Mr. Jim A. Bottorff, U.S. Fish and Wildlife Service, 500 NE Multnomah Street, Suite 1692, Portland, Oregon 97232 (503/231-6131 or FTS 429-6131).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened Wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: December 23, 1986.

David F. Riley,

Acting Regional Director.

[FR Doc. 86-29236 Filed 12-28-86; 10:53 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 51, No. 249
Tuesday, December 30, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Proposed Determinations Regarding Support Prices for Pulled Wool and Mohair for the 1987 Marketing Year

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of proposed determinations.

SUMMARY: This notice sets forth certain proposed determinations concerning the price support levels for pulled wool and mohair for the 1987 marketing year. These determinations are required to be made pursuant to the National Wool Act of 1954, as amended.

EFFECTIVE DATE: Comments must be received on or before January 29, 1987, in order to be assured of consideration.

ADDRESS: Dr. Howard C. Williams, Director, Commodity Analysis Division, USDA-ASCS, Room 3741, South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Janise A. Zygmont, Agricultural Economist, Commodity Analysis Division, USDA-ASCS, Room 3758, South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 475-4645. A Preliminary Regulatory Impact Analysis has been prepared and is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation No. 1512-1 and has been designated as "not major." It has been determined that these proposed determinations will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since there is no requirement that the Commodity Credit Corporation (CCC) publish a notice of proposed rulemaking in accordance with 5 U.S.C. 553 or any other provision of law with respect to the subject matter of this notice.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

The title and number of the Federal assistance program to which this notice applies are: National Wool Act Payments, 10.059, as found in the Catalog of Federal Domestic Assistance.

Section 703(a) of the National Wool Act of 1954, as amended ("Wool Act"), provides that the Secretary of Agriculture shall support the prices of wool and mohair to producers by means of loans, purchases, payments or other operations. It has been determined that the prices of wool and mohair will be supported for the 1986 to 1990 marketing years by means of payments to producers.

Section 703(b) of the Wool Act provides that the level of support for shorn wool for each of the marketing years 1982 through 1990 shall be 77.5 percent of an amount which is determined by multiplying 62 cents (the support price in 1965) by the ratio of: (1) The average parity index (the index of prices paid by farmers, including commodities and services, interest, taxes, and farm wage rates) for the three calendar years immediately preceding the calendar year in which such support price is being determined and announced to (2) the average parity index for the three calendar years 1958, 1959, and 1960, rounding the result to the nearest full cent. Based on current reported parity indices the calculation for the 1987 shorn wool support price (grease basis) is as follows:

(1) Average parity index, calendar years 1983-1985	1118.7
(2) Average parity index, calendar years 1958-1960	297.3
(3) Ratio of 1118.7 to 297.3	3.7629
(4) 3.7629×62 cents per pound (1965 support price)	$2.3330
(5) 77.5%×$2.3330	$1.8081
(6) $1.8081 rounded to nearest full cent	$1.81

Section 703(c) of the Wool Act provides that the support prices for pulled wool and for mohair shall be established at such levels, in relationship to the support price for shorn wool, as the Secretary of Agriculture determines will maintain normal marketing practices for pulled wool, and as the Secretary determines is necessary to maintain approximately the same percentage of parity for mohair as for shorn wool. Section 703(c) further provides that the support price for mohair must be within a range of 15 per centum above or below the comparable percentage of parity at which shorn wool is supported.

The Wool Act provides that the Secretary shall establish and announce, to the extent practicable, support price levels for wool and mohair sufficiently in advance of each marketing year, as will permit producers to plan their production for such marketing year. Accordingly, the following method for calculating the support prices for pulled wool and mohair for the 1987 marketing year are being proposed.

Proposed Determinations

A. Support Price—Pulled Wool

The support price for pulled wool for the 1987 marketing year cannot be determined until the 1987 average market price for shorn wool is calculated, which should occur by April 1988. It is proposed that the method for calculating the support price for pulled wool shall be as follows. Once the average market price for shorn wool is known, the support price for pulled wool will be determined by subtracting the 1987 average market price for shorn wool from the 1987 support price of shorn wool and multiplying that number by 5 pounds (the amount of wool pulled from the pelt of an average 100-pound

unshorn lamb). The result is then multiplied by 80 percent which is a quality adjustment factor which recognizes that unshorn lamb pelts contain a shorter staple and a lower quality wool than wool shorn from other sheep.

B. Support Price—Mohair

It is proposed that the support price for mohair for the 1987 marketing year shall be determined based on the October 1986 parity prices for mohair and shorn wool. The following percentages are being considered in the final computation of the mohair support price:

(1) 85 percent of the percent of parity at which shorn wool is supported.

(2) A percentage equal to the percent of parity at which shorn wool is supported

(3) 115 percent of the percent of parity at which shorn wool is supported.

Interested persons are encouraged to comment on the proposed method of calculation for payments on pulled wool and the proposed levels of price support for mohair.

Consideration will be given to any data, views and recommendations which are submitted with respect to the above items.

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714 b and c); secs. 702–708, 68 Stat. 910–912, as amended (7 U.S.C. 1781–1787).

Signed at Washington, DC on December 22, 1986.

Milton J. Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 86–29140 Filed 12–29–86; 8:45 am]

BILLING CODE 3410-05-M

Packers and Stockyards Administration

Certification of Central Filing System

The Statewide central filing system of Louisiana is hereby certified, pursuant to section 1324 of the Food Security Act of 1985, on the basis of information submitted by Bob Odom, Commissioner of Agriculture, for farm products produced in that State as follows:

Cabbage	Milo
Cantalopes	Mushrooms
Cauliflower	Oats
Corn	Onions
Cotton	Oranges
Cucumbers	Peaches
Cushaw	Peanuts
Flowers, Shrubs and Ornamentals	Peas
Garlic	Pecans
Grapes	Peppers
Grass	Rice
Hay	Rye Grass Seed
	Sorghum Grain
Soybeans	Cattle
Squash	Chickens
Strawberries	Crawfish
Sugarcane	Goats
Sunflower Seed	Hogs
Sweet Potatoes	Honeybees
Sweet Sorghum	Horses
Tomatoes	Mink
Watermelons	Oysters
Wheat	Quail
Eggs	Prawns
Honey	Sheep
Milo	Shrimp
Alligators	Turkeys
Catfish	

This is issued pursuant to authority delegated by the Secretary of Agriculture.

Authority: Sec. 1324(c)(2), Pub. L. 99–198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR 2.17(e)(3), 2.56(a)(3), 51 FR 22795.

Dated: December 23, 1986.

B.H. (Bill) Jones,

Administrator, Packers and Stockyards Administration.

[FR Doc. 86–29187 Filed 12–29–86; 8:45 am]

BILLING CODE 3410-KD-M

ARMS CONTROL AND DISARMAMENT AGENCY

General Advisory Committee on Arms Control and Disarmament; Closed Meeting

In accordance with the Federal Advisory Committee Act, as amended, the U.S. Arms Control and Disarmament Agency announces the following meeting:

Name: General Advisory Committee on Arms Control and Disarmament.

Date: January 15, 1987.

Time: 9:15 AM.

Place: State Department Building, Washington, DC.

Type of meeting: Closed.

Contact person: William B. Staples, Executive Secretary, U.S. Arms Control and Disarmament Agency, Room 5933, Washington, DC 20451, (202) 647–8478.

Purpose of Advisory Committee: To advise the Director of the U.S. Arms Control and Disarmament Agency on arms control and disarmament policy and activities, and from time to time to advise the President and the Secretary of State respecting matters affecting arms control, disarmament, and world peace.

Agenda

Will present the following discussions and presentations:

January 15

Receive briefings on and discuss arms control related issues relative to U.S./Soviet Space defense programs.

Reason for closing: The GAC members will be reviewing and discussing matters specifically required by Executive Order to be kept secret in the interest of national defense and foreign policy.

Authority to close meeting: The closing of this meeting is in accordance with a determination by the Director of the U.S. Arms Control and Disarmament Agency dated December 22, 1986, made pursuant to the provisions of Section 10(d) of the Federal Advisory Committee Act as amended.

William J. Montgomery,

Committee Management Officer.

[FR Doc. 86–29237 Filed 12–30–86; 8:45 am]

BILLING CODE 6820-32-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–019]

Cyanuric Acid and its Chlorinated Derivatives From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration,Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to requests by the respondents, the Department of Commerce has conducted an administrative review of the antidumping duty orders on cyanuric acid and its chlorinated derivatives from Japan. The review covers two manufacturers of this merchandise exported to the United States and the period April 1, 1984 through March 31, 1985. The review indicates the existence of no dumping margins for these firms during the period.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: December 30, 1986.

FOR FURTHER INFORMATION CONTACT: Kathleen Kelleher or Linnea Bucher, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2923/5255.

SUPPLEMENTARY INFORMATION:

Background

On December 19, 1986 the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 45495) the final results of its last administrative review of the antidumping duty orders on cyanuric acid and its chlorinated derivatives from Japan. We began the current review of the orders under our old regulations. After the promulgation of our new regulations, the respondents requested in accordance with section § 353.53a(a) of the Commerce Regulations that we complete the administrative review. We published a notice of initiation of the antidumping duty administrative review on January 21, 1986 (51 FR 2747). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of cyanuric acid (also known as isocyanuric acid) and its chlorinated derivatives (dichloro isocyanurates, *i.e.*, sodium dichloro isocyanurate, potassium dichloro isocyanurate, and sodium dichloro isocyanurate dihydrate, and trichloro isocyanuric acid) used in the swimming pool trade. We categorize the merchandise as cyanuric acid, dichloro isocyanurates and trichloro isocyanuric acid, which we determine are separate classes or kinds of merchandise. These products are sold in three basic consistencies: Powder, granular, and tablet. The merchandise is currently classifiable under item number 425.1050 of the Tariff Schedules of the United States Annotated.

The review covers two manufacturers of Japanese cyanuric acid and its chlorinated derivatives exported to the United States, Nissan Chemical Industries, Ltd. and Shikoku Chemicals Corporation, and the period April 1, 1984 through March 31, 1985.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act, because sales were made to unrelated Japanese trading firms for export to the United States and the manufacturers knew the destination of the merchandise at the time of the sale. Purchase price was based on the packed, f.o.b. price to the unrelated trading firms in Japan. We made adjustments, where applicable, for Japanese inland freight, insurance, and brokerage and handling. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on the packed, delivered price to unrelated purchasers in the home market. We made adjustments, where applicable, for inland freight, insurance, rebates, competitive discounts, credit expenses, advertising and promotion, and differences in packing. We denied a claim for after-sale price revisions. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist for the period April 1, 1984 through March 31, 1985:

Manufacturer	Margin (percent)
Nissan Chemical Industries, Ltd.:	
Dichloro isocyanurates	0
Trichloro isocyanuric acid	0
Shikoku Chemicals Corporation:	
Cyanuric acid	0
Dichloro isocyanurates	0
Trichloro isocyanuric acid	0

Interested parties may submit written comments on these preliminary results within 21 days of the date of publication of this notice and may request disclosure and/or a hearing within 5 days of the date of publication. Any hearing, if requested, will be held 21 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

Further, as provided for by section 751(a)(1) of the Tariff Act, since there were no margins for any of the products reviewed the Department shall not require a cash deposit of estimated antidumping duties for Nissan Chemical Industries, Ltd. or Shikoku Chemicals Corporation.

For any future shipments from a new manufacturer/exporter not covered in this or the prior administrative review, whose first shipments occurred after March 31, 1985 and who is unrelated to any reviewed firm, no cash deposit shall be required. These deposit requirements are effective for all shipments of Japanese cyanuric acid and its chlorinated derivatives (except cyanuric acid produced by Nissan Chemical Industries, Ltd.) entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53(a)).

Dated: December 22, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86–29184 Filed 12–29–86; 8:45 am]

BILLING CODE 3510-DS-M

[A–351–607]

Preliminary Determination of Sales at Less Than Fair Value; Disposable Paint Filters and Strainers From Brazil

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that disposable paint filters and strainers (paint filters and strainers) from Brazil are being, or are likely to be, sold in the United States at less than fair value. We have also preliminarily determined that critical circumstances do not exist in this investigation. We have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to suspend the liquidation of all entries of paint filters and strainers from Brazil that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make our final determination by March 9, 1987.

EFFECTIVE DATE: December 30, 1986.

FOR FURTHER INFORMATION CONTACT: Steven Lim or Charles Wilson, Office of Investigations, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377–5332 or 377–5288.

Preliminary Determination

We have preliminarily determined that paint filters and strainers from Brazil are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b(b)). We made fair value comparisons on virtually all of the sales of paint filters and strainers to the United States during the period of

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investigation, February 1 through July 31, 1986. Comparisons were based on United States price and foreign market value, based on third country sales provided by respondent. The weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

On July 15, 1986, we received a petition filed in proper form by the Louis M. Gerson Co., Inc. on behalf of the domestic industry producing paint filters and strainers. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of paint filters and strainers from Brazil are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or threaten material injury to, a United States industry. After reviewing the petition, we determined that the petition contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the ITC of our action and initiated such an investigation on August 4, 1986 (51 FR 28737, August 11, 1986). On August 29, 1986, the ITC determined that there is a reasonable indication that imports of paint filters and strainers from Brazil are materially injuring a U.S. industry (51 FR 32257, September 10, 1986).

On August 28, 1986, we presented antidumping duty questionnaires to Cia Industrial Celulose e Papel Guiba (CELUPA). Respondent was requested to answer the questionnaire in 30 days. On September 16, 1986, respondent requested an extension of the due date for the questionnaire response. On September 22, 1986, we granted the respondent a two-week extension. We received a response on October 14, 1986. In a letter dated November 12, 1986, the Department requested supplemental information. Supplemental responses were submitted by the respondent on November 25 and 26, 1986.

Scope of Investigation

The products covered by this investigation are disposable paint filters and strainers of paper, containing cotton gauze, provided for in item 256.9080 of the *Tariff Schedules of the United States Annotated* (TSUSA), disposable paint filters and strainers of cotton gauze, containing paper, provided for in item 386.5300 of the TSUSA, and disposable paint filters and strainers of man-made fibers, provided for in item 389.6270 of the TSUSA.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value for the company under investigation using data provided in the response. The period of investigation is from February 1, 1986 through July 31, 1986.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent the United States price since the merchandise was sold to unrelated U.S. purchasers prior to importation. We calculated the purchase price based on the packed, C&F price to unrelated purchasers in the United States. We made deductions for port charges, foreign inland freight and ocean freight.

Foreign Market Value

In accordance with section 773(a) of the Act, we have preliminarily determined that CELUPA had no sales of paint filter and strainers in Brazil during the period of investigation. The petitioner alleged that sales to third countries were at prices below the cost of producing the merchandise. We examined production costs which included all appropriate costs for materials, fabrication and general expenses. We found sufficient sales in Switzerland above the cost of production to allow us to use Swiss prices in accordance with section 773(a)(1)(B) for foreign market value.

We calculated third country price on the basis of the packed, C&F prices to unrelated customers in Switzerland. We made deductions for port charges, foreign inland freight and ocean freight. We made a circumstances-of-sale adjustment for differences in credit expenses pursuant to § 353.15 of the Commerce Regulations. Since CELUPA did not receive payment on some shipments, we used the offered credit terms to calculate these credit expenses. We also made an adjustment for differences in U.S. and Swiss commissions in accordance with § 353.15 of the Commerce Regulations. We have disallowed an adjustment for differences in physical characteristics of the merchandise because we were unable to reconcile various data submitted by respondent.

Pursuant to § 353.56 of Commerce's Regulations, we made currency conversions at the rates certified by the Federal Reserve Bank.

Preliminary Negative Determination of Critical Circumstances

Petitioner has alleged that critical circumstances exist with respect to imports of paint filters and strainers from Brazil. For purposes of section 733(e)(1) of the Act, critical circumstances exist if we find that:

(A) (i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 733(e)(1)(B), we generally consider the following data in order to determine whether massive imports have taken place: (1) The volume and value of the imports; (2) seasonal trends; and (3) the share of domestic consumption accounted for by the imports. Based on our analysis of recent import statistics, we find that there is no reasonable basis to believe that imports of the subject merchandise from Brazil have been massive over a relatively short period. We examined the import statistics from Brazil for periods of four months prior to and after the filing of the petition. Accordingly, we do not have to consider whether section 733(e)(1)(A) of the Act applies in this case. Therefore, we preliminarily determine that critical circumstances do not exist with respect to imports of paint filters and strainers from Brazil.

Verification

We will verify all information used in making our final determination in accordance with section 776(a) of the Act. We will use standard verification procedures, including examination of relevant sales and financial records of the company under investigation.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of paint filters and strainers from Brazil which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register. The U.S. Customs Service shall require a cash deposit or the posting of a bond on all entries equal to the estimated weighted-average amounts by which the foreign market value of the merchandise subject to this investigation exceeded the United States price as shown in the table below. This suspension of liquidation will remain in effect until further notice.

Manufacturer/seller/exporters	Weighted-average Margin percentage
CELUPA	3.43
All others	3.43

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a United States industry, before the later of 120 days after our preliminary affirmative determination or 45 days after our final determination.

Public Comment

In accordance with § 353.47 of the Commerce Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on February 6, 1987, at the U.S. Department of Commerce, Room 1412, 14th Street and Constitution Avenue, NW., Washington, DC. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending, and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by January 23, 1987. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

December 22, 1986.

[FR Doc. 86-29185 Filed 12-29-86; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Receipt of Application for a General Permit to Incidentally Take Marine Mammals

Notice is hereby given that the following application has been received to take marine mammals incidental to the pursuit of commercial fishing operations within the U.S. exclusive economic zone during 1987 as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the regulations thereunder.

Northeast Fisheries Center, National Marine Fisheries Service/GRYF, People's Republic of Poland have applied for a Category 1: "Towed or Dragged Gear" general permit to take up to 15 small cetaceans in the North Atlantic Ocean.

The Northeast Fisheries Center, holds a scientific research permit to retain for biological studies, marine mammals taken by nations fishing in U.S. waters. The Center also conducts a fisheries research program with GRYF of Poland which provides for the commercial use of fish taken aboard Polish vessels.

In 1986, four cetaceans were taken in the research fishery.

The application is available for review in the Office of the Assistant Administrator for Fisheries, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Room 805, Washington, DC.

Dated: December 22, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-29125 Filed 12-29-86; 8:45 am]

BILLING CODE 3510-22-M

Patent and Trademark Office

Disposition of British Abridgements 1855-1972

The U.S. Patent and Trademark Office (PTO) is offering to any interested party one set of classified British Abridgements, 1855-1972. These documents are stored at a warehouse in the Springfield, Virginia area. There are five skids of documents with approximately 20 boxes per skid. The Manager of the PTO Scientific Library must be contacted within two weeks of publication of this notice. This set is being offered on a first come, first served basis. After verification by the Manager of this transaction, the interested party must arrange for the removal of these documents from storage at his/her own expense within 30 days. Inquiries should be directed to: Commissioner of Patents and Trademarks, Washington, DC 20231, Attention: Manager, Scientific Library [9703-557-2955].

Dated: December 19, 1986.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 86-29130 Filed 12-29-86; 8:45 am]

BILLING CODE 3510-16-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Solicitation of Public Comment on Bilateral Negotiations During 1987

December 22, 1986.

The U.S. Government anticipates holding negotiations during 1987 concerning expiring bilateral agreements covering certain cotton, wool and man-made fiber textiles and apparel from Bangladesh (January 31, 1988), China (December 31, 1987), Costa Rica (December 31, 1987), Egypt (December 31, 1986), Hungary (December 31, 1987) Mexico (December 31, 1987), Romania (December 31, 1987) and Uruguay (June 30, 1987). The dates noted in parenthesis are the expiration dates of the agreements.)

The purpose of this notice is to invite any party wishing to comment or provide data or information regarding these agreements, or comment on domestic production of availability of textiles and apparel affected by these agreements, to submit such comments or information in ten copies to Mr. William H. Houston III, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the negotiations is not yet established, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW.,

Washington, DC. Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-29178 Filed 12-29-86; 8:45 am]

BILLING CODE 3510-DR-M

Establishment of Import Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in the People's Republic of China

December 22, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on December 29, 1986. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566-8791. For information on embargoes and quota re-openings, please call (202) 377-3715. For information on categories on which consultations have been requested call (202) 377-3740.

Background

On October 22, 1986, a notice was published in the **Federal Register** (51 FR 37470), which established import restraint limits for cotton and man-made in Categories 330/630 and 435, produced or manufactured in China and exported to the United States during the ninety-day period which began on September 29, 1986 and extends through December 27, 1986. The notice also stated that the Government of the People's Republic of China is obligated under the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated August 19, 1983, as amended, if no mutually satisfactory solution is reached on levels for these categories during consultations, to limit its imports during the twelve-month period immediately following the ninety-day consultation period to 2,754,697 dozen (Category 330/630) and 8,550 dozen (Category 435).

No solution has been reached in consultations on mutually satisfactory limits for these categories. The United States Government has decided, therefore, to control imports of cotton, wool and man-made fiber textile products in Categories 330/630 and 435, exported during the twelve-month period beginning on December 28, 1986 and extending through December 27, 1987, at the levels described above. The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of the People's Republic of China, further notice will be published in the **Federal Register**.

In the event the limits established for the ninety-day period have been exceeded, such excess amounts, if allowed to enter, will be charged to the levels established for the designated twelve-month period.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 22, 1986.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated August 19, 1983 as amended, between the Governments of the United States and the People's Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on December 29, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in Categories 330/630 and 435, produced or manufactured in the People's Republic of China and exported during the twelve-month period which begins on December 28, 1986 and extends through December 27, 1987, in excess of the following levels of restraint:

	12-mo. restraint levels [1] (doz)
Category:	
330/630	2,754,697
435	8,550

[1] The levels have not been adjusted to account for any imports exported after December 27, 1986.

Textile products in Categories 330/630 and 435 which are in excess of the ninety-day levels previously established shall be subject to this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 550709), as amended on April 17, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF Schedules of the United States Annotated (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-29179 Filed 12-29-86; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Restraint Limits for Certain Man-Made Fiber Textile Products From Singapore

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on December 23, 1986. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 535-6736. For information on embargoes and quota re-openings, please call (202) 377-3715.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 31 and June 5, 1986, between the Governments of the United States and Singapore provides, among other things, for percentage increases in certain categories during and agreement year for swing, provided corresponding reductions in equivalent square yards are made in other specific limits or sublimits during the same year to account for the application of swing. Pursuant to the terms of the agreement, the import restraint limit established for Category 604, produced or manufactured in Singapore and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986, is being increased from 1,498,000 dozen to 1,519,400 dozen. The limit for Category 631 is being reduced from 300,000 dozen pairs to 275,049 dozen pairs to account for swing applied to Category 604.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 22, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: On June 12, 1986, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry for consumption, or withdrawal from warehouse for consumption, of cotton, wool and man-made fiber textile products in certain specified categories, produced or manufactured in Singapore and exported during the twelve-month period beginning on January 1, 1986 and extending through December 31, 1986, in excess of designated restraint limits. The Chairman further advised you that the restraint limits are subject to adjustment.[1]

Effective on December 23, 1986 the directive of June 12, 1986 is hereby amended to include adjusted restraint limits for the following categories:

Category	Adjusted 12-month restraint limit [1]
604	1,519,400 pounds.
631	275,049 dozen pair.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1985.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-29177 Filed 12-23-86; 3:59 pm]

BILLING CODE 3510-DR-M

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China; Effective on January 1, 1987

December 23, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1987. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Customs port or call (202) 566-6828. For information on embargoes and quota re-openings, please call (202) 377-3715.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China establishes specific limits for Categories 313, 314, 315, 317, 320-P (only T.S.U.S. items 320.—through 322.—and 328.—through 328.—with statistical suffixes 21, 22, 24, 31, 38, 49, 57, 74, 80 and 98), 331, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 345, 347/348, 350, 351, 352, 359-C (only T.S.U.S.A. numbers 381.0822, 381.6510, 384.0928 and 384.5222), 359-V (only T.S.U.S.A. numbers 381.0258, 381.0554, 381.3949, 381.5800, 381.5920, 384.0451, 384.0648, 384.0650, 384.0651, 384.3449, 384.3450, 384.4300, 384.4421 and 384.4422), 361, 363, 369-L (only T.S.U.S.A. numbers 706.3210, 706.3650, and 706.4111), 410, 434, 436, 438, 443, 444, 445/446, 447, 448, 605-T (only T.S.U.S.A. number 310.9500), 613-C&R, 631, 634, 635, 636, 639, 640, 641, 645/646, 647, 648, 649, 651, 652 and 669-P (only T.S.U.S.A. number 385.5300); and the bilateral agreement of September 8 and 9, 1986 establishes a specific limit for Category 670-L, produced or manufactured in China and exported during the twelve-month period which begins on January 1, 1987 and extends through December 31, 1987. Categories 339, 345, 347/348, 636 and 639 have been adjusted for carryforward used in 1986 and Categories 313, 314, 315, 339, 341, 342, 636, 641, 645/646 and 648 are subject to phased entry procedures.

The agreement also provides a consultation mechanism for categories of textile products which are not subject to specific ceilings and for which levels may be established during the year. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs, in accordance with the terms of the bilateral agreements, to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of textile products in the designated categories, produced or manufactured in the People's Republic of China and exported during the twelve-month period beginning on January 1, 1987 and extending through December 31, 1987 in excess of the indicated restraint limits.

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 F.R. 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff

[1] The agreement of May 31 and June 5, 1986 concerning cotton, wool and man-made fiber textile products from Singapore provides, in part, that specific limits may be increased by not more than seven percent during an agreement year, provided that an equal quantity in square yards equivalent is deducted from another specific limit.

Schedules of the United States Annotated (1987).

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Commitee for the Implementation of Textile Agreements

December 23, 1986

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilaterial Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China; pursuant to the bilateral agreement of September 8 and 9, 1986; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in China and exported during the twelve-month period beginning on January 1, 1987 and extending through December 31, 1987, in excess of the following restraint limits:

Category	12-mo restraint limit
313	53,395,280 square yards.
314	16,882,632 square yards.
315	171,400,000 square yards.
317	16,872,960 square yards of which not more than 3,374,592 square yards shall be in T.S.U.S. items 320.—through 331.—with statistical suffixes 50, 87 and 93.
320–P [1]	14,904,448 square yards.
331	3,952,323 dozen pairs.
333	63,206 dozen.
334	234,327 dozen.
335	314,737 dozen.
336	125,664 dozen.
337	1,008,141 dozen.
338	881,263 dozen of which not more than 631,138 dozen shall be in T.S.U.S.A. numbers 381.0240 and 381.4130.
339	978,035 dozen.
340	677,090 dozen.
341	514,087 dozen.
342	195,684 dozen.
345	87,290 dozen.
347/348	1,908,806 dozen.
350	108,180 dozen.
351	352,497 dozen.
352	1,369,399 dozen.
359–C [2]	781,397 pounds.
359–V [3]	1,446,154 pounds.
361	3,106,553 numbers.
363	22,298,844 numbers.
369–L [4]	4,079,250 pounds.
410	2,162,612 square yards of which not more than 1,734,170 square yards shall be TSUSA numbers 335.5500, 336.1505, .1540, .5000, .6210, .6270, .6275, .6410, .6470, .6475, 337.5030, .5055, .5090, .5500, 339.0500, 363.1500, 363.7000 and not more than 1,734,170 square shall be in TSUSA numbers 336.1000, .1510, .2000, .2500, .3000, .3500, .4000, .5500, .6205, .6260, .6265, .6405, .6460, .6465, 377.5080.
434	11,935 dozen.
436	13,159 dozen.
438	22,442 dozen.
443	10,146 dozen.
444	15,455 dozen.
445/446	265,380 dozen.
447	72,025 dozen.
448	19,251 dozen.
605–T [5]	468,000 pounds.
613–C&R [6]	25,679,084 square yards.
631	806,140 dozen pairs.
634	447,383 dozen.
635	465,318 dozen.
636	354,864 dozen.
639	957,776 dozen.
640	1,204,294 dozen.
641	1,011,928 dozen.
645/646	676,431 dozen.
647	878,511 dozen.
648	1,130,631 dozen.
649	652,421 dozen.
651	543,400 dozen of which not more than 97,185 dozen shall be in T.S.U.S.A. numbers 384.222 and 384.8632.
652	1,872,000 dozen.
669–P [7]	2,798,888 pounds.
670–L [8]	24,024,000 pounds.

[1] In Category 320, only T.S.U.S. items 320.—, 321.—, 322.—, 326.—, 327.— and 328.—; with statistical suffixes 21, 22, 24, 31, 36, 49, 57, 74, 80 and 98.

[2] In Category 359, only T.S.U.S.A. numbers 381.0822, 381.6510, 384.0928 and 384.5222.

[3] In Category 359, only T.S.U.S.A. numbers 381.0258, 381.0554, 381.3949, 381.5800, 381.5920, 384.0451, 384.0648, 384.0650, 381.0651, 384.3449, 384.3450, 384.4300, 384.4421 and 384.4422.

[4] In Category 369, only T.S.U.S.A. numbers 706.3210, 706.3650, and 706.4111.

[5] In Category 605, only T.S.U.S.A. number 310.9500.

[6] In Category 613, only T.S.U.S.A. numbers 338.5039, .5042, .5043, .5047, .5048, .5053, 5054, .5058, .5059, .5044, .5050, .5055, 5060, .5063, .5064, .5067, .5068, .5071, .5078, .5074, .5083, .5086, .5091, .5094, .5097.

[7] In Category 669, only T.S.U.S.A. number 385.5300.

[8] In Category 670–L, only T.S.U.S.A. numbers 706.3415, 706.4130 and 706.4135.

In carrying out this directive, entries of textile products in the foregoing categories, with the exception of Category 410, produced or manufactured in China, which have been exported to the United States on and after January 1, 1986 and extending through December 31, 1986, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during the twelve-month period beginning on January 1, 1986 and extending through December 31, 1986. In the event the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter with the exceptions noted below.

Merchandise exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986 in Categories 313, 314, 315, 339, 341, 342, 636, 641, 645/646 and 648, shall be permitted entry into the United States for consumption, or withdrawal from warehouse for consumption, in each of the 30-day periods in the following amounts during the indicated periods in 1987:

Category and period	Amount to be entered
313:	
January 2–31	8,009,292 square yards.
February 1–March 2	8,009,292 square yards.
March 3–April 1	8,009,292 square yards.
April 2–May 1	8,009,292 square yards.
May 2–31	8,009,292 square yards.
314:	
January 2–31	3,376,526 square yards.
February 1–March 2	3,376,526 square yards.
March 3–April 1	3,376,526 square yards.
April 2–May 1	3,376,526 square yards.
May 2–31	3,376,526 square yards.
315:	
January 2–31	17,140,000 square yards.
February 1–March 2	17,140,000 square yards.
March 3–April 1	17,140,000 square yards.
(Later staged entry amounts to be determined at a later date	
339:	
January 2–31	205,536 dozen.
February 1–March 2	205,536 dozen.
March 3–April 1	205,536 dozen.
April 2–May 1	205,536 dozen.
May 2–31	205,536 dozen.
341:	
January 2–31	102,817 dozen.
February 1–March 2	102,817 dozen.
March 3–April 1	102,817 dozen.
April 2–May 1	102,817 dozen.
May 2–31	102,817 dozen.
342:	
January 2–31	39,137 dozen.
February 1–March 2	39,137 dozen.
March 3–April 1	39,137 dozen.
April 2–May 1	39,137 dozen.
May 2–31	39,137 dozen.
636:	
January 2–31	74,486 dozen.
February 1–March 2	74,486 dozen.
March 3–April 1	74,486 dozen.
April 2–May 1	74,486 dozen.
May 2–31	74,486 dozen.
641:	
January 2–31	202,386 dozen.
February 1–March 2	202,386 dozen.
March 3–April 1	202,386 dozen.
April 2–May 1	202,386 dozen.
May 2–31	202,386 dozen.
645/646:	
January 2–31	135,286 dozen.
February 1–March 2	135,286 dozen.
March 3–April 1	135,286 dozen.
April 2–May 1	135,286 dozen.
May 2–31	135,286 dozen.
648:	
January 2–31	226,126 dozen.
February 1–March 2	226,126 dozen.
March 3–April 1	226,126 dozen.
April 2–May 1	226,126 dozen.
May 2–31	226,126 dozen.

Merchandise entered in 1987 in the foregoing categories, exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986, plus goods exported during the twelve-month period which begins on January 1, 1987 and extends through December 31, 1987, shall not together exceed the 1987 limits established for such goods in this directive.

The restraint limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of August 19, 1983, between the Governments of the United States and the People's Republic of China, which provide, in part, that: (1) With the exception of Category 315, certain specific limits may be exceeded by not more than 5 or 7 percent of its square yard equivalent total, provided that the amount of the increase is compensated for by an equivalent square yard decrease in one or more other specific limits in that agreement year; (2) subject to consultations, specific limits may be increased for carryover and carryforward up to 10 percent of the applicable category limit in any agreement year according to the terms specified in the agreement; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement will be made to you by letter.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607) December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-29206 Filed 12-29-86; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Import Restraint Limits for Certain Cotton Textile Products Produced or Manufactured in the Dominican Republic

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on December 30, 1986. For further information contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the Quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes, and quota re-openings, please call (202) 377-3715.

Background

On May 28, 1986 a notice was published in the **Federal Register** (51 FR 19248) which establishes specific limits for Categories 340 and 644, among others, produced or manufactured in the Dominican Republic and exported during the period which began on June 1, 1986 and extends through May 31, 1987. The current agreement of December 30, 1983 between the Governments of the United States and the Dominican Republic will remain in effect. However, as a result of consultations held June 30 and July 1, 1986, the Governments of the United States and the Dominican Republic agreed on a new bilateral agreement concerning trade in cotton and man-made fiber textile products in Categories 340 and 644, produced or manufactured in the Dominican Republic and exported during the period which began on December 1, 1986 and extends through May 31, 1988.

The new agreement establishes a designated consultation level for cotton textile products in Category 340, produced or manufactured in the Dominican Republic and exported during the six-month period which began on December 1, 1986 and extends through May 31, 1987 at a level of 95,000 dozen. In the directive that follows this notice, the CITA Chairman directs the Commissioner of Customs to prohibit entry for consumption, or withdrawal from warehouse for consumption, of cotton textile products in Category 340 in excess of the designated limit.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 23, 1986.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel the directive issued to you on May 22, 1986 by the Chairman, Committee for the Implementation of Textile Agreements, concerning cotton and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the period which began on June 1, 1986 and extends through May 31, 1987.

Effective on December 30, 1986, the restraint period established for Category 340 in the directive of May 22, 1986 is hereby amended to be for a six-month period which began on June 1, 1986 and extended through November 30, 1986.

In addition, effective on December 30, 1986, you are directed to prohibit entry into the United States for consumption or withdrawal from warehouse for consumption, of cotton textile products in Category 340, produced or manufactured in the Dominican Republic and exported during the six-month period which began on December 1, 1986 and extends through May 31, 1987, in excess of 95,000 dozen.

In carrying out this directive, entries of cotton textile products in Category 340, produced or manufactured in the Dominican Republic, which have been exported to the United States on and after June 1, 1986 and extending through November 30, 1986, shall, to the extent of any unfilled balances, be charged against the level of restraint established for such goods during the period beginning on June 1, 1986 and extending through November 30, 1986. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this letter for the six-month period which began on December 1, 1986.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption

to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-29207 Filed 12-29-86; 8:45 am]

BILLING CODE 3510-DR-M

Establishment of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blends and Other Vegetable Fiber Textile Products From the Republic of Korea Effective on January 1, 1987

December 23, 1986.

The Chairman of the Committee for the Implementation of Textile Agreement (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, as issued the directive published below to the Commissioner of Customs to be effective on January 1, 1987.

FOR FURTHER INFORMATION CONTACT: Eve Anderson, International Trade Specialist, Office of Textile and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566-8041. For information on embargoes and quota re-openings, please call (202) 377-3715.

Background

The Bilateral Textile Agreement of November 21 and December 4, 1986, between the Governments of the United States and the Republic of Korea establishes restraint limits for Categories 300-320, 360-363, 369-0, 400-429, 464-469, 600-627 and 665-669 and 670-0, as a group (Group I), and within the group individual categories 300/301, 310/318, 313, 314, 315, 317, 319, 320, 410, 604, parts of 605, 611, 612, 613, 614 and parts of 669; categories 330-354, 359, 431-448, 459, 630-654 and 659, as a group (Group II), and within the group individual categories 331, 333/334, 335, 336, 337/637, 338/339, 340, 341, 342, 345, 347/348, 350, 351, 352, 353/354/653/654, 359-H, 363, 433/434/ 435, 436, 438, 440, 442, 443, 444, 445/446, 447, 448, 459-W, 631, 632, 633/634/635, 636, 638/639, parts of 640, 641, 642, 643, 644, 645/646, 647/648, 649, 650, and parts of 659; Categories 831-844 and 847-859, as a group, (Group III) and within the group individual categories 835, 836 and 840; Categories 845 and 846 as a group, (Group IV); and Categories 369-L and 670-L/870, as a group, (Group VI), and within the group individual categories 369-L, 670-L/870, produced or manufactured in Korea and exported during the twelve-month period which begins on January 1, 1987 and extends through December 31, 1987. Accordingly, the letter which follows this notice from the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption of cotton, wool, man-made fiber, silk blends and other vegetable fiber textile products in the foregoing categories that have been exported during the aforementioned agreement period in excess of the designated amounts.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 550709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

This letter and the action taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 23, 1986.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Textile Agreement on November 21 and December 4, 1986, between the Governments of the United States and the Republic of Korea; and in accordance with the provisions of Executive Order 11651 or March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blends and other vegetable fiber textile products in the following categories, produced or manufactured in the Republic of Korea and exported during the twelve-month period beginning on January 1, 1987 and extending through December 31, 1987, in excess of the indicated restraint limits:

Category	12-mo restraint limit
Group I	
300-320, 360-363, 369-O [1], 400-429, 464-469, 600-627, 665-669 and 670-O [2].	422,177,651 square yards equivalent.
Group II	
330-354, 359, 431-448, 459 630-654 and 659.	681,482,398 square yards equivalent.
Group III	
831-844 and 847-859.	21,543,022 square yards equivalent.
Group VI	
369-L [3] 670-L/870-L [4].	62,621,550 square yards equivalent.
300/301	5,273,987 pounds.
310/318	3,913,578 square yards.
313	51,643,256 square yards.
314	2,759,532 square yards.
315	23,576,580 square yards.
317	16,995,156 square yards.
319	8,272,201 square yards.
320	25,206,239 square yards.
331	498,386 dozen pairs.
333/334	69,834 dozen.
335	71,308 dozen.
336	44,153 dozen.
337/637	66,625 dozen of which not more than 43,306 dozen shall be in Category 337 and not more than 43,306 dozen shall be in Category 637.
338/339	735,936 dozen.
340	249,127 dozen.
341	185,000 dozen.
342	74,594 dozen.
345	67,369 dozen.
347/348	322,942 dozen.
350	12,841 dozen.
351	112,896 dozen.
352	137,284 dozen.
353/354/653/654	226,243 dozen.
359-H [5]	4,360,094, pounds.
363	1,699,741 numbers.
369-L	512,500 pounds.
410	4,613,204 square yards.
433/434	17,198 dozen of which not more than 13,130 dozen shall be in Category 433 and not more than 6,734 dozen shall be in Category 434.
435	31,287 dozen.
436	13,244 dozen.
438	62,808 dozen.
440	212,318 dozen.
442	44,754 dozen.
443	26,838 dozen.
444	4,064 dozen.

Category	12-mo restraint limit
445/446	51,944 dozen.
447	83,036 dozen.
448	31,488 dozen.
459-W [6]	187,790 dozen.
604	602,680 dozen.
605-C [7]	2,676,451 dozen.
605-O [8]	735,438 pounds.
611	2,363,906 square yards.
612	97,232,393 square yards.
613	23,474,946 square yards.
614-O [9]	12,384,243 square yards.
614-W [10]	9,214,919 square yards.
631	231,801 dozen pairs.
632	1,759,797 dozen pairs.
633/634/635	1,424,909 dozen of which not more than 179,988 dozen shall be in Category 633, not more than 829,137 dozen shall be Category 634 and not more than 629,520 dozen shall be in Category 635.
636	220,762 dozen.
638/639	5,578,444 dozen.
640-D [11]	3,790,961 dozen.
640-O [12]	2,548,970 dozen.
641	981,078 dozen.
642	80,242 dozen.
643	61,055 dozen.
644	88,305 dozen.
645/646	3,365,629 dozen.
647/648	1,176,425 dozen.
649	513,270 dozen.
650	18,790 dozen.
659-C [13]	448,944 pounds.
659-H [14]	2,474,530 pounds.
659-S [15]	304,681 pounds.
669-C [16]	2,007,338 pounds.
669-F [17]	697,605 pounds.
669-P [18]	3,863,346 pounds.
669-T [19]	5,324,616 pounds.
670-L/870 [20]	32,160,000 pounds of which not more than 26,650,000 pounds shall be in Category 670-L and not more than 6,030,000 pounds shall be in 870-L.
835	27,135 dozen.
836	74,740 dozen.
840	115,575 dozen.
845	2,310,433 dozen.
846	852,994 dozen.

[1] In Category 369, all T.S.U.S.A.'s except those listed in footnote #3.
[2] In Category 670, all T.S.U.S.A. numbers except those listed in footnote #4.
[3] In Category 369, only T.S.U.S.A. numbers 706.3210, 706.3650, and 106.4111.
[4] In Category 670, only T.S.U.S.A. numbers 706.3415, 706.4130 and 706.4135.
[5] In Category 359, only T.S.U.S.A. numbers 702.0600 and 702.1200.
[6] In Category 459 only T.S.U.S.A. numbers 702.7500 and 702.8000.
[7] In Category 605, only T.S.U.S.A. numbers 316.5500 and 316.5800.
[8] In Category 605, only T.S.U.S.A. numbers except 316.5500 and 316.5800.
[9] In Category 614, only T.S.U.S.A. numbers except those in footnote 10.
[10] In Category 614, only T.S.U.S.A. numbers 338.1000, 338.1505, 338.1508, 338.1511, 338.1525, 338.1531, 338.1552, 338.1554, 338.1556, 338.1558, 338.1562, 338.1564, 338.1568 and 338.1572.
[11] In Category 640, only T.S.U.S.A. numbers 381.3132, 381.3134, 381.9535 381.9540, 381.9968, 381.8666, 381.6972 and 381.3558.
[12] In Category 640, only T.S.U.S.A. numbers except those in footnote 11.
[13] In Category 659, only T.S.U.S.A. numbers 381.3325, 381.9805, 384.2205, 384.2530, 384.8606, 384.8607, and 384.9310.
[14] In Category 659, only T.S.U.S.A. numbers 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560, 703.1000, 703.1610, 703.1620, 703.1630, 703.1640, and 703.1650.
[15] In Category 659, only T.S.U.S.A. numbers 381.2340, 381.3170, 381.9100, 381.9570, 384.1920, 384.2339, 384.8300, 384.8400, and 384.9353.
[16] In Category 669, only T.S.U.S.A. numbers 348.0065, 348.0075, 348.0565 and 348.0575.
[17] In Category 669, only T.S.U.S.A. numbers 355.4520 and 355.4530.
[18] In Category 669, only T.S.U.S.A. number 385.5300.
[19] In Category 669, only T.S.U.S.A. numbers 386.1105 and 389.6210.
[20] See footnote 4.

In carrying out this directive, entries of textile products in categories 300-320, 360-363, 369-O, 400-429, 464-469, 600-627, 665-669 and 670-O, as a group (Group I); 330-354, 359, 431-448, 459, 630-654 and 659, as a group (Group II); 831-844 and 847-859, as a group (Group III); except September 1-December 31, 1986 for Categories 369-L, 670-L/870, as a group (Group VI) and individual categories 835, 836, 840, 845 and 846 and all other categories which have been exported to the United States on and after January 1, 1986 and extending through December 31, 1986, shall, to the extent of any unfilled balances be charged against the restraint limits established for such goods during that twelve-month period. In the event the levels established for these categories have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The 1987 levels are subject to adjustment according to the provisions of the bilateral Textile Agreement of November 21 and December 4, 1986, as amended, which provide, in part, that: (1) During any agreement year percentages, provided a corresponding reduction in square yards equivalent is made in one or more other specific limits and (2) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any adjustment under the foregoing provisions will be made to you by letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 51575), May 3, 1983 (48 FR 19924), December 14, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. (a) (1).

Sincerely,

William H. Houston,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-29206 Filed 12-29-86; 8:45 am]

BILLING CODE 3510-DR-M

Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Macau; Effective on January 1, 1987

December 23, 1986.

The Chairman of the Committee for Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1987. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 29, 1983 and January 9, 1984 between the Governments of the United States and Macau establishes an aggregate limit and within the aggregate, a group limit for Categories 300-354, 359-369, and 600-654, 659-669 and a group limit for 400-448, and 459-469.

Within those overall limits are individual limits for Categories 331, 333/334/335, 336, 338, 339, 340, 341, 342, 345, 347/348, 350, 351, 359, 442, 445/446, 631, 633/634/635, 636, 638/639, 640, 641, 645/646, 647/648, 652 and 659, for the agreement year which begins on January 1, 1987 and extends through December 31, 1987.

In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs, in accordance with the terms of the

bilateral agreement, to prohibit entry into the United States for consumption of cotton, wool and man-made fiber textile products in the foregoing categories, produced or manufactured in Macau and exported during the twelve-month period which begins on January 1, 1987 and extends through December 31, 1987 in excess of the designated limits.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement but are designed to assist only in the implementation of certain of its provisions.

William H. Houston III,

Chairman, Committee for the Implementation of Textiles Agreements.

Committee for the Implementation of Textile Agreements

December 23, 1986

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; as pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 28, 1983 and January 9, 1984, between the Governments of the United States and Macau; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, prodcued or manufactured in Macau and exported during the twelve-month period which begins on January 1, 1987 and extends through December 31, 1987, in excess of the indicated restraint limits:

Category	12-mo. restraint limit
300–354, 359–369, 600–654, 659–669, 400–488, 459–469, as a group.	69,486,728 square yards equivalent.
300–354, 359–369, 600–654, 659–669, as a group.	67,193,784 square yards equivalent.
400–448, 459–469, as a group.	1,609,262 square yards equivalent.
331	200,000 dozen pairs.
333/334/335 [1]	134,755 dozen of which not more than 69,838 dozen shall be in Category 333/335. [3]
336	17,500 dozen.
338	175,417 dozen.
339	746,360 dozen.
340	168,149 dozen.
341	108,453 dozen.
342	39,326 dozen.
345	19,022 dozen.
347/348	400,500 dozen.
350	15,000 dozen.
351	13,462 dozen.
359	152,174 pounds.
442	5,556 dozen.
445/446	72,813 dozen.
631	200,000 dozen pairs.
633/634/635 [2]	284,312 dozen.
636	15,453 dozen.
638/639 [4]	14,410,988 square yards equivalent.
640	60,906 dozen.
641	100,810 dozen.
645/646	151,666 dozen.
647/648	305,958 dozen.
652	149,583 dozen.
659	203,724 pounds.

[1] The conversion factor is 41.0 dozen.
[2] The conversion factor is 41.0 dozen.
[3] The conversion factor is 41.3 dozen.
[4] The conversion factor is 16.0 dozen square yards.

In carrying out this directive entries of textile products in the foregoing categories, except Categories 636, 659 and 652, produced or manufactured in Macau, which have been exported to the United States on and after January 1, 1986 and extending through December 31, 1986, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during that period. In the event the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter. Textile products in the expected categories, which have been exported before January 1, 1987, shall be subject to this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of December 29, 1983 and January 9, 1984, which provide, in part, that: (1) Within the aggregate and applicable group limits, specific limits may be exceeded by designated percentages; (2) these same limits may be increased for carryover and carryforward and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement, referred to above, will be made to you by letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533 (a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-29211 Filed 12-29-86; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Import Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Thailand; Effective January 1, 1987

December 23, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1987. For further information contact Kathy Davis, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 535-9480. For information on embargoes and quota re-openings, please call (202) 377-3715.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 27 and August 8, 1983, as amended and extended, establishes, among other things, restraint limits for cotton, and man-made fiber textile products in Categories 300–320, 600–627, 360–369, 665–669, 400 and 464–469, as a group (Group I), and within the group individual categories 300, 301pt. (only TSUSA numbers 300.6025, 300.6027, and 300.6028), 301pt. (only TSUSA numbers 302.—26 and 302.—28), 313, 314, 315, 317, 319, 320, 604, 604–A (only TSUSA number 310.5049), 605–T (only TSUSA number 310.9500), 611, 613 and 669–P (only TSUSA number 385.5300); cotton and man-made fiber apparel categories 330–359, 630–659, as a group (Group II) and within the group individual categories 331, 334/335, 336, 337, 338/339, 340, 341, 347/348, 631, 634/635, 638, 639, 640, 641, 645/646, 647/648, 651; wool fabric and apparel categories 410–459, as a group (Group III), and within the group individual categories 434, 438, 442, and 445/446 during the agreement year beginning on January 1, 1987. In the letter published below the Chairman, Committee for the Implementation of Textile Agreements, directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of textile products in the foregoing categories, produced or manufactured in Thailand and exported during the twelve-month period beginning on January 1, 1987, in excess of the designated restraint limits. The January 1, 1987 through December 31, 1987 limit for Categories 330–359, and 630–659, as a group, has been reduced by 9,050,000 square yards equivalent according to the amendment of November 25, 1985.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1987).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 23, 1986.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 27, and August 8, 1983, as amended and extended on November 25 and 27, 1985, between the Governments of the United States and Thailand; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1987, entry into the United States for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Thailand and exported during 1987, in excess of the indicated restraint limits:

Category	12-mo restraint limit
Group II	
330–359, 630–659.	84,357,994 square yards equivalent.
331	553,903 dozen pairs.
334/335	72,544 dozen.
336	64,200 dozen.
337	69,550 dozen.
338/339	795,783 dozen.
340	138,580 dozen.
341	146,311 dozen.
347/348	247,530 dozen.
631	229,982 dozen pairs.
634/645	506,613 dozen.
638	164,712 dozen.
639	1,502,617 dozen.
640	294,250 dozen.
641	218,783 dozen.
645/646	99,738 dozen.
647/648	564,898 dozen.
651	33,704 dozen.
669–P [1]	2,332,000 pounds.
300	5,300,000 pounds.
301 [2]	5,300,000 pounds.
301 [3]	1,060,000 pounds.
313	14,644,733 square yards.
314	10,731,054 square yards.
315	21,462,108 square yards.
317	7,322,366 square yards.
319	7,574,862 square yards.
320	12,498,522 square yards.
604	883,734 pounds of which not more than 513,202 pounds shall in T.S.U.S.A. number 310.0549.
605–T [4]	581,896 pounds.
611	4,179,429 square yards.
613	17,359,058 square yards.
Group III	
410–459	3,030,000 square yards.
434	11,500 dozen.
438	15,150 dozen.
442	13,635 dozen.
445/446	15,603 dozen.

[1] In Category 669, only T.S.U.S.A. number 385.5300.
[2] In Category 301, only T.S.U.S.A. numbers 300.6026 and 300.6028.
[3] In Category 301, only T.S.U.S.A. numbers 302.—26 and 302.—28.
[4] In Category 605, only T.S.U.S.A. number 310.9500.

In carrying out this directive cotton, wool and man-made fiber textile products in the foregoing categories, produced or manufactured in Thailand and exported to the United States on and after December 1, 1985 and extending through December 31, 1986, shall, to the extent of any unfilled balances, be charged against the restraint limits established for goods during that thirteen-month period.

The 1987 levels are subject to adjustment according to the terms of the bilateral agreement of July 27, and August 8, 1983, as amended and extended between the Governments of the United States and Thailand, which provide, in part, that: (1) under certain specified conditions and non-apparel specific limit or sublimit may be exceeded by not more than 7 percent, provided that the amount of the increase is compensated for by an equal square yard equivalent decrease in another specific limit in the same group; (2) specific levels of restraint may be increased for carryover and carryforward up to 11 percent of the applicable category limit; and (3) administrative arrangements of adjustments may be made to resolve problems arising in the implementation of the agreement.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1987).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-29205 Filed 12-29-86; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Malaysia; Effective on January 1, 1987

December 22, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1987. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce,

(202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement between the Governments of the United States and Malaysia, effected by exchange of notes dated July 1 and 11, 1985, as amended, establishes specific limits for cotton, wool and man-made fiber textile products in Categories 331, 333/334/335, 336, 337/637, 338/339, 340, 341, 342/642/842, 345, 347/348, 351/651, 369–S (only TSUSA number 366.2840), 438 pt. (women's knit shirts and blouses in TSUSA numbers 384.1307, 384.1309, 384.2711, 384.5434, 384.5910, 384.6310, 384.7724 and 384.9640), 445/446, 604, 605–T (only TSUSA number 310.9500), 613, 631, 634, 635, 636, 638/639, 640, 641, 645/646, 647/648, produced or manufactured in Malaysia and exported during the twelve-month period beginning on January 1, 1987 and extending through December 31, 1987. The agreement also establishes restraint limits for cotton fabrics in Categories 310 through 320, as a group, with sublimits for Categories 310/318, 311, 312, 313, 314, 315, 316, 317, 319 and 320.

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of cotton, wool and man-made fiber textile products in the foregoing categories in excess of the designated twelve-month restraint limits.

A description of textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on July 29, 1986 (51 FR 27068) and on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 22, 1986.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated July 1 and 11, 1985, as amended, between the Governments of the United States and Malaysia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, your are directed to prohibit, effective on January 1, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made and vegetable fiber textile products in the following categories, produced or manufactured in Malaysia and exported during the twelve-month period beginning on January 1, 1987 and extending through December 31, 1987, in excess of the following restraint limits:

Category	12-mo restraint limit
310–320	47,700,000 square yards.
310–318	2,120,000 square yards.
311	19,080,000 square yards.
312	19,080,000 square yards.
313	19,080,000 square yards.
314	19,080,000 square yards.
315	19,080,000 square yards.
316	19,080,000 square yards.
317–S [1]	2,120,000 square yards.
317–O [2]	19,080,000 square yards.
319	19,080,000 square yards.
320	19,080,000 square yards.
331	696,744 dozen pairs.
333/334/335	112,617 dozen of which not more than 56,309 dozen shall be in Category 333, not more than 50,678 dozen shall be in Category 334 and not more than 56,309 dozen shall be in Category 335.
336	73,034 dozen.
337/637	201,400 dozen.
338/339	573,036 dozen of which not more than 224,048 dozen shall be in Category 339.
340	391,195 dozen.
341	285,394 dozen.
342/642/842	215,000 dozen.
345	83,427 dozen.
347/348	234,664 dozen of which not more than 122,700 dozen shall be in Category 348.
351/651	135,000 dozen.
369–S [3]	955,060 pounds.
438 pt. [4]	11,221 dozen.
445/446	26,523 dozen.
604	1,534,673 pounds.
605–T [5]	295,000 dozen.
613	18,020,000 square yards.
631	393,260 dozen pairs.
634	252,810 dozen.
635	168,540 dozen.
636	143,100 dozen.
638/639	249,735 dozen.
640	292,136 dozen.
641	640,452 dozen.
645/646	191,012 dozen.
647/648	898,880 dozen of which not more than 584,272 dozen shall be knit in TSUSA numbers 381.2350, .2370, .2375, .2859, .6679, .8531, .8730, .8815, .8835, .8840, .9234, 384.1926, .1927, .1929, .1950, .2010, .2015, .2017, .2030, .2040, .2050, .2267, .2722, .5482, .7756, .8241, .8242, .8244, .8245, .8247, .8256, .8258, .8262, .8263, .8265, .8682.

[1] In Category 317, only TSUSA items 320.—through 331.—with statistical suffixes 50, 87 and 93.

[2] In Category 317, only TSUSA items 320.—through 331.—with statistical suffixes 51, 52, 83, 85, 89, 91 and 95.

[3] In Category 369, only TSUSA number 366.2840.

[4] In Category 438, only TSUSA numbers 384.1307, 384.1309, 384.2711, 384.5434, 384.5910, 384.6310, 384.7724 and 384.9640.

[5] In Category 605, only TSUSA number 310.9500.

In carrying out this directive, entries of textile products in the foregoing categories, produced or manufactured in Malaysia, which have been exported to the United States on or after the control periods beginning on January 1, 1986, May 1, 1986, September 1, 1986 and October 1, 1986 and extending through December 31, 1986, shall to the extent of any unfilled balances, be charged against the limits established for such goods during those control periods. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the limits set forth in this letter.

The limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of July 1 and 11, 1985, as amended, between the Governments of the United States and Malaysia which provide, in part, that: (1) Specific limits or sublimits may be exceeded by not more than 5 percent, provided a corresponding reduction in equivalent square yards is made in one or more other specific limits during the same agreement year; (2) specific limits may be adjusted for carryover and carryforward up to 11 percent of the applicable category limits; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement referred to above will be made to you by letter.

A description of textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on July 29, 1986 (51 FR 27068) and on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-29180 Filed 12-29-86; 8:45 am]

BILLING CODE 3510-DR-M

Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Philippines; Effective on January 1, 1987

December 22, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1987. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 535–6735. For information on embargoes and quota re-openings, please call (202) 377–3715.

Background

The Governments of the United States and the Republic of the Philippines have agreed to extend their expiring Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of November 24, 1987, as amended, for three months, beginning on January 1, 1987, and extending through March 31, 1987. The agreement, as amended and extended, includes an aggregate limit for Categories 300–354, 359–369, 400–448, 459–469, 600–654 and 659–669 and within the aggregate, specific limits for 330, 331, 333/334, 335–NT, 335–T, 336–NT, 336–T, 337–NT, 337–T, 338/339, 340, 341–NT, 341–T, 342–NT, 345, 347, 348–NT, 348–T, 351, 352–NT, 431, 433, 435, 443, 445/446, 447, 459, 604, 631–W (only TSUSA numbers 704.3215, 704.8525 and 704.9000), 631–O (all TSUSA numbers except 704.3215, 704.8525 and 704.9000), 633, 634, 635–NT, 635–T, 636–NT, 638/639, 640, 641–NT, 641–T, 642–NT, 643, 645/646–NT, 646–T, 647, 648–NT, 648–T, 649, 650, 651, 652–NT, 659–NT, 659–T and 666, produced or manufactured in the Philippines and exported during the aforementioned three-month period. This agreement also includes designation consultation levels for categories 369, 369–S, 605, 605–T and 669, among others. In the letter published below, the CITA Chairman directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of textile products in the aggregate and individual limits which are in excess of those limits.

A description of the cotton, wool and man-made fiber textile categories in terms of TSUSA numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 22, 1986.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of November 24, 1982, as amended and extended, between the Governments of the United States and the Philippines; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, and man-made fiber textile products in the following categories, produced or manufactured in the Philippines and exported during the period beginning on January 1, 1987 and extending through March 31, 1987, in excess of the following restraint limits:

Category	12-mo restraint limit
300–354, 359–369, 400–448, 459–469, 600–654 and 659–669, as a group.	94,077,161 square yards equivalent.
330	335,887 dozen.
331	174,645 dozen pairs.
333/334	22,804 dozen.
335–NT	10,395 dozen.
335–T	10,963 dozen.
336–NT	8,234 dozen.
336–T	112,055 dozen.
337–NT	12,678 dozen.
337–T	102,603 dozen.
338/339	226,964 dozen.
340	72,437 dozen.
341–NT	27,018 dozen.
341–T	21,058 dozen.
342–NT	16,179 dozen.
345	9,165 dozen.
347	75,398 dozen.
348–NT	65,935 dozen.
348–T	61,300 dozen.
351	19,993 dozen.
352–NT	29,340 dozen.
363	940,637 numbers
369	375,153 pounds of which not more than 212,500 pounds shall be in TSUSA number 366.2840.
431	37,675 dozen.
433	856 dozen.
435	571 dozen.
443	577 dozen.
445/446	4,823 dozen.
447	1,713 dozen.
459	30,821 pounds.
604	555,412 pounds.
605	263,057 pounds of which not more than 87,500 pounds shall be in TSUSA number 310.9500.
631–W [1]	106,090 dozen pairs.
631–O [2]	506,261 dozen pairs.
633	5,556 dozen.
634	57,340 dozen.
635–NT	65,769 dozen.
635–T	10,559 dozen.
636–NT	12,715 dozen.
638/639	235,321 dozen.
640	29,428 dozen.
641–NT	52,143 dozen.
641–T	21,654 dozen.
642–NT	16,512 dozen.
643	13,397 dozen.
645/646–NT	26,646 dozen.
646–T	71,075 dozen.
647	27,167 dozen.

Category	12-mo restraint limit
648–NT	16,988 dozen.
648–T	52,160 dozen.
649	1,065,341 dozen.
650	5,763 dozen.
651	29,390 dozen.
652–NT	171,576 dozen.
659–NT	410,419 pounds.
659–T	1,047,742 dozen.
666	54,315 pounds.
669	187,500 pounds.

[1] In Category 631, only TSUSA nunmbers 704.3215, 704.8525, and 704.9000.
[2] In Category 631, all TSUSA numbers except those in Footnote 1.

In carrying out his directive entries of textile products in the foregoing categories, except Category 351, produced or manufactured in the Philippines, which have been exported to the United States on and after January 1, 1986 and extending through December 31, 1986, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during that twelve-month period. In the event the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter.

A description of the cotton, wool, and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedule of the United States Annotated (1986).

In carrying out the above directions, the Commissioner of Customs should contstrue entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533 (a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–29161 Filed 12–29–86; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Import Limits for Certain Cotton Textile Products From the Socialist Republic of Romania Effective on January 1, 1987

December 23, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1987. For further information contact Kathryn Cabral, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

Background

The Bilateral Cotton Textile Agreement of January 28 and March 31, 1983 between the Governments of the United States and the Socialist Republic of Romania establishes a group limit for cotton textile products in Categories 330–333, 335–359 (Group II), individual limits within the group for Categories 335, 340 and 347/348 and designated consultation levels for cotton textile products in Categories 313, 314, 315, 320, 333, 334, 334pt. (all TSUSA numbers except 381.0211, 381.3905)) 338, 338 pt. (not T-shirts and sweats), 339, 352, 359, 361 and 369, produced or manufactured in Romania and exported during the twelve-month period which begins on January 1, 1987 and extends through December 31, 1987. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs, in accordance with the terms of the bilateral agreement, to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption of textile products in the foregoing categories exported during the twelve-month period which begins on January 1, 1987 and extends through December 31, 1987, in excess of the designated limits.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 23, 1986.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton Textile Agreement of January 28 and March 31, 1983, between the Governments of the United States and the Socialist Republic of Romania; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in the following categories, produced or manufactured in Romania and exported during the twelve-month period beginning on January 1, 1987 and extending through December 31, 1987, in excess of the following restraint limits:

Category	12-month restratint limit
330–333, 335–359, as a group.	30,404,937 square yards equivalent.
313	2,000,000 square yards equivalent.
314	1,500,000 square yards equivalent.
315	1,500,000 square yards equivalent.
320	2,000,000 square yards equivalent.
333	66,298 dozen.
334	257,153 dozen.
334 pt.[1]	36,320 dozen.
335	73,536 dozen.
338	256,000 dozen of which not more than 97,222 dozen shall be in T.S.U.S.A. numbers other than 381.0230, 381.0240, 381.3516, 381.4120, 381.4130, 381.4337, 381.6610, 381.8506, 381.9924 and 381.0425.
339	138,889 dozen.
340	168,832 dozen.
347/348	301,279 dozen.
352	181,818 dozen.
359	652,174 dozen.
361	483,871 dozen.
369	652,174 dozen.

[1] In Category 334, all T.S.U.S.A. numbers except 381.0211, 381.3905.

In carrying out this directive, entries of textile products in the foregoing categories, except for Categories 313, 314, 315, 320, 334 and 369, produced or manufactured in Romania, which have been exported to the United States on and after January 1, 1986 and extending through December 31, 1986, shall to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during that period. In the event the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter.

The levels set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of January 28 and March 31, 1983 between the Governments of the United States and Romania, which provide in part, that: (1) Specific limits or specific sublimits may be exceeded by not more than seven percent for swing in any agreement period; (2) these same levels may be adjusted for carryover and carryforward up to 11 percent of the applicable category limit or sublimit; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement, referred to above, will be made to you by letter.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–29209 Filed 12–29–86; 8:45 am]

BILLING CODE 3510-DR-M

Deduction in Charges for Imports of Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

December 22, 1986.

On June 16, 1986, a notice was published in the **Federal Register** (51 FR 21788) which established individual and group limits for certain cotton, wool and man-made fiber textile products, including Categories 337, 341, 348, 604, 637 and 641, produced or manufactured in Singapore and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986.

According to the provisions of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 31 and June 5, 1986 between the Governments of the United States and the Republic of Singapore, and as a result of discussions between the Governments of the United States and Singapore, CITA has determined that the disputed amounts of possible 1985 overshipments charged to the 1986 limits for Categories 337, 340, 341, 348, 604, 637 and 641 should be deducted.

Consequently, effective on December 10, 1986, the Chairman of the Committee for the Implementation of Textile Agreements directed the Commissioner of Customs to deduct the following 1985 imports charged to the 1986 limits for Categories 337, 340, 341, 348, 604, 637 and 641. However, the charges for Categories 340, 348 and 641 will be deducted pending the results of the data investigation to be completed in 1987.

Category	Amount deducted
337	16,884 dozen.
340	22,536 dozen.
341	3,468 dozen.
348	2,447 dozen.
604	11,294 dozen.
637	7,426 dozen.
641	10,293 dozen.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 535-6736. For information on embargoes and quota re-openings, please call (202) 377–3715.

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–29182 Filed 12–29–86; 8:45 am]

BILLING CODE 3510-DR-M

Import Restraint Limits for Certain Textiles and Textile Products of Silk Blends and Vegetable Fibers (Other Than Cotton) Produced or Manufactured in Taiwan

December 23, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on December 30, 1986. For further information contact Kathy Davis, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566–8791. For information on embargoes and quota reopenings, please call (202) 377–3715.

Background

On October 14 and 22, 1986, the American Institute in Taiwan (AIT) and the Coordination Council for North American Affairs (CCNAA) exchanged letters further amending and extending the bilateral agreement of November 18, 1982, as previously amended, concerning textiles and textile products of cotton, wool and man-made fibers to include textiles and textile products of silk blends and vegetable fibers, other than cotton, produced or manufactured in Taiwan and exported during the period beginning on January 1, 1986 and extending through December 31, 1988.

The new agreement establishes, among other things, a prorated group limit for apparel of silk blends and vegetable fibers (other than cotton) in Categories 831, 832, 833, 834, 835, 836, 838, 840, 842, 843, 844, 846, 847, 850, 851, 852, 858 and 859, and prorated individual limits for Categories 845 and 870, produced or manufactured in Taiwan and exported during the period which began on August 1, 1986 and extends through December 31, 1986.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on July 29, 1986 (51 FR 27068).

This letter and the action taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

William H. Houston III,

Chairman, Committee for the Implementation of Textiles Agreements.

Committee for the Implementation of Textile Agreement

December 23, 1986.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the bilateral agreement of November 18, 1982, as amended and further extended, concerning textiles and textile products of cotton, wool, man-made fibers, silk blends and vegetable fibers (other than cotton), produced or manufactured in Taiwan; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on December 30, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of textiles and textile products in the following categories, produced or manufactured in Taiwan and exported during the prorated period which began on August 1, 1986 and estends through December 31, 1986:

Category	5-month limit [1]
831, 832, 833, 834, 835, 836, 838, 840, 842, 843, 844, 846, 847, 850, 851, 852, 858 and 859 as a group (III).	3,688,935 square yards equivalent.
845	353,196 dozen.
870	2,140,825 pounds.

[1] The limits have not been adjusted to account for any imports exported after July 31, 1986.

In carrying out this directive, entries of textile products in the foregoing categories, produced or manufactured in Taiwan and exported before August 1, 1986 shall not be subject to this directive. Missing charges for the group and category limits will be provided by separate letter.

Textile products in the foregoing categories which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1448(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The limits are subject to adjustment in the future pursuant to the provisions of the agreement of November 18, 1982, as amended and extended, which provide, in part, that: (1) The group limit may be exceeded by designated percentages and (2) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement. Any appropriate adjustments under these provisions of the bilateral agreement will be made to you by letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on July 29, 1986 (51 FR 27068).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-29210 Filed 12-29-86; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Socialist Federal Republic of Yugoslavia Effective on January 1, 1987

December 23, 1986.

The chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1987. For further information contact Kathryn Cabral, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 26 and 27, 1978, as amended and extended, between the Governments of the United States and the Socialist Federal Republic of Yugoslavia establishes, among other things, specific limits for man-made fiber textile products in Categories 604-A, 645/646 and 666, produced or manufactured in Yugoslavia and exported during the fourteen-month period which began on November 1, 1986 and extends through December 31, 1987. The agreement also establishes specific limits for cotton, wool and man-made fiber textile products in Categories 340/640, 341/641, 433, 434, 435, 442, 443/643, 444 and 447/448, produced or manufactured in Yugoslavia and exported during the twelve-month period beginning on January 1, 1987 and extending through December 31, 1987. The letter from the Chairman of the Committee for the Implementation of Textile Agreements published below directs the Commissioner of Customs to prohibit entry for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the foregoing categories in excess of the designated limits.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 23, 1986.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 26 and 27, 1978 between the Governments of the United States and the Socialist Federal Republic of Yugoslavia, as amended and extended; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made textile products in the following categories, produced or manufactured in Yugoslavia and exported during the periods beginning on November 1, 1986 and January 1, 1987 and extending through December 31, 1987, in excess of the following limits:

Category	12-month restraint limit, January 1, 1987-December 31, 1987
340/640	360,400 dozen.
341/641	235,000 dozen.
433	7,821 dozen.
434	8,671 dozen.
435	36,254 dozen.
442	10,750 dozen.
443/643	22,629 dozen of which not more than 8,500 dozen shall be in Category 443.
444	7,521 dozen.
447/448	47,945 dozen of which not more than 28,563 shall be in Category 447 and not more than 28,563 shall be in Category 448.

Category	14-month restraint limit, November 1, 1986-December 31, 1987
604-A [1]	700,000 pounds.
645/646	128,333 dozen.
666	2,216,667 pounds.

[1] In Category 604, only TSUSA numbers 310.5049 and 310.6042.

In carrying out this directive entries of textile products in the foregoing categories, except Categories 341, 442, 604-A, 641, 645, 646, and 666, produced or manufactured in Yugoslavia, which have been exported to the United States during the twelve-month period which began on January 1, 1986 and extended through December 3, 1986, shall, to the extent of any unfilled balances, be charged against the restraint limits established for such goods during that twelve-month period. In the event the restraint limits established for that period have been exhausted by previous entries, such goods shall be subject to the limits set forth in this letter.

The limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of October 26 and 27, 1978, as amended and extended, between the Governments of the United States and the Socialist Federal Republic of Yugoslavia which provide, in part, that: (1) Carryforward and carryover may not exceed 11 percent and swing may not exceed 6 percent for cotton and man-made fiber and 5 percent for wool; (2) special shift up to 10 percent may be available in Categories 340/640 and 341/641.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-29212 Filed 12-29-86; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange: Proposed Amendments Relating to the Standard and Poor's 500, the Standard and Poor's 100 and the Standard Poor's OTC Stock Price Index Futures Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Chicago Mercantile Exchange ("CME" or "Exchange") has submitted a proposal which would amend the terms and conditions of its Standard and Poor's 500, Standard and Poor's 100, and Standard and Poor's OTC Stock Price Index futures contracts. Each of these contracts is settled in cash on the basis of a final settlement price that is defined in the contracts in terms of the value of the appropriate underlying Standard and Poor's Stock Price Index. The amendments being proposed by the CME would change the final settlement price for each of the contracts from the closing quotation of the index underlying each contract as of the third Friday of the delivery month to a special quotation of the index based on the opening pirce of the component stocks in the index as of the third Friday. In addition, the amendments would change the last day of trading for each of the Standard and Poor's Stock Price Index futures contracts from the third Friday to the preceding business day. The Exchange has proposed to implement the amendments, upon Commission approval, for existing as well as newly listed contracts. The Commodity Futures Trading Commission ("Commission") has determined that the proposed amendments and manner of implementation are of major economic significance and that, accordingly, publication of the proposed amendments is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments should be received on or before January 29, 1987.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the CME Standard and Poor's Stock Price Index futures contracts.

FOR FURTHER INFORMATION CONTACT: Ronald Hobson, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254-7303.

SUPPLEMENTARY INFORMATION: The current terms and conditions of the Standard and Poor's 500, Standard and Poor's 100 and Standard and Poor's OTC Stock Price Index contracts specify that futures trading shall terminate on the third Friday of the contract, or delivery, month and that the final settlement price shall be the closing quotation of the Standard and Poor's 500, the Standard and Poor's 100 or the Standard and Poor's OTC Stock Price Index, respectively, on the last day of trading.

The CME proposes to settle these stock index futures contracts on a value of the underlying indices that is based on the opening rather than the closing prices of their component stocks. In particular, the final settlement value of the indices would be calculated using the opening prices on the morning of the third Friday of the contract month rather than the closing prices for that day. All trading in the expiring futures would cease at the normal close of trading on the preceding business day. Because trading in the CME option on the Standard and Poor's 500 futures contract terminates at the same time as the underlying futures, that option contract also would be affected by these amendments. The Exchange is basing its proposed amendments primarily on the view of the New York Stock Exchange (NYSE) that its capacity to provide liquid markets at expirations under current procedures is strained and that this strain would be relieved by a switch to expirations using opening prices. In this regard, the Exchange noted that opening procedures on the NYSE enable NYSE specialists to handle large order imbalances better and that the proposed stock index futures settlement procedures therefore will likely diminish

stock price volatility at the time of futures expirations.

The Exchange has proposed that these amendments be made effective upon Commission approval for existing as well as for newly listed contracts. In doing so, the Exchange has noted the potential impact of this plan of implementation on existing positions in the subject futures contracts, existing positions in the option on the Standard and Poor's 500 future, and existing intermarket spread positions involving other derivative products. The Exchange has judged the impact on existing positions in the subject futures contracts and existing spread positions not to be significant. With respect to the value of existing positions in the option on the Standard and Poor's 500 future, the Exchange has noted that it believes the implementation plan would have a negligible effect if sufficiently in advance of a particular expiration.

In accordance with section 5a(12) of the Commodity Exchange Act, 7 U.S.C. 7a(12) (1982), the Commission has determined that the proposal submitted by the CME concerning the final settlement prices and last trading days for its Standard and Poor's Stock Price Index contracts, as well as the proposed plan of implementation, are of major economic significance and that the receipt of public comment on the proposal will assist the Commission in its review. The amendments being proposed by the CME are printed below, using bracketing to indicate deletions and italics to indicate additions:

* * * * *

Standard and Poor's 500

4002. Futures Call

G. Termination of Trading

[Futures trading shall terminate on the third Friday of the contract month. If the closing quotation for the Standard and Poor's 500 Stock Price Index is not published on that day, or that day is not an Exchange business day, futures trading shall terminate on the first preceding business day for which a closing quotation of the Index is published].

Futures trading shall terminate on the business day immediately preceding the day of determination of the Final Settlement Price.

4003. DELIVERY

A. Final Settlement Price

[The final settlement price shall be the closing quotation of the Standard and Poor's 500 Stock Price Index on the last day of trading].

The Final Settlement Price shall be determined on the third Friday of the contract month or, if the Standard and Poor's 500 Stock Price Index is not published for that day, on the first preceding day for which the Index is published.

The Final Settlement Price shall be a special quotation of the Standard and Poor's 500 Stock Price Index based on the opening prices of the component stocks in the index.

Standard & Poor's 100

4202. FUTURES CALL

G. Termination of Trading

[Futures trading shall terminate on the third Friday of the contract month. If the closing quotation for the Standard and Poor's 100 Stock Price Index is not published on that day, or that day is not an Exchange business day, futures trading shall terminate on the first preceding business day for which a closing quotation of the Index is published].

Futures trading shall terminate on the business day immediately preceding the day of determination of the Final Settlement Price.

4203. DELIVERY

A. Final Settlement Price

[The final settlement price shall be the closing quotation of the Standard and Poor's 100 Stock Price Index on the last day of trading].

The Final Settlement Price shall be determined on the third Friday of the contract month or, if the Standard and Poor's 100 Stock Price Index is not published for that day, on the first preceding day for which the Index is published.

The Final Settlement Price shall be a special quotation of the Standard and Poor's 100 Stock Price Index based on the opening prices of the component stocks in the index.

* * * * *

Standard & Poor's OTC 250

4302. FUTURES CALL

G. Termination of Trading

[Futures trading shall terminate on the third Friday of the contract month. If the closing quotation for the Standard and Poor's OTC Industrial Price Stock is not published on that day, or that day is not an Exchange business day, futures trading shall terminate on the first preceding business day for which a closing quotation of the Index is published].

Futures trading shall terminate on the business day immediately preceding the day of determination of the Final Settlement Price.

4303. FINAL SETTLEMENT

A. Final Settlement Price

[The Final Settlement Price shall be the closing quotation of the Standard and Poor's OTC Industrial Stock Price Index on the last day of trading].

The Final Settlement Price shall be determined on the third Friday of the contract month or, if the Standard and Poor's OTC Industrial Stock Price Index is not published for that day, on the first preceding day for which the Index is published.

The Final Settlement Price shall be a special quotation of the Standard and Poor's OTC Industrial Stock Price Index based on the opening prices of the component stocks in the index.

* * * * *

The Commission is seeking comment not only on the amendments themselves but also on the CME's plan of implementation.

In this regard the Commission is requesting comment from interested parties concerning the impact of implementation on existing positions in the subject futures contracts, the option on the Standard & Poor's futures contract and spread position between the subject contracts and other derivative markets. Where appropriate, the Commission requests that commentors differentiate between the impact on existing contracts which have varying lengths of time until expiration. The Commission notes that the Exchange has publicly stated that it proposes to make these changes effective for the March expiration and, therefore, requests commentors to address the relative effects on existing positions if the changes are made for either the March or June expirations.

The materials submitted by the Exchange in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFT Part 145 (1984)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, DC 20581, by January 29, 1987.

Issued in Washington, DC, on December 23, 1986.

Jean A. Webb,

Secretary.

[FR Doc. 86-29234 Filed 12-29-86; 8:45 am]

BILLING CODE 6351-01-M

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Proposed Collection of Information; Children's Sleepwear Flammability Standards

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1981 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for approval of a proposed collection of information in the form of an enforcement program for the children's sleepwear flammability standards, with a requested expiration date of September 30, 1987.

The purpose of this program is to determine the level of compliance within the children's sleepware industry with the requirements of the Standard for the Flammability of Children's Sleepwear: Sizes 0 through 6X (16 CFR Part 1615) and the Standard for the Flammability of Children's Sleepwear: Sizes 7 through 14 (16 CFR Part 1616).

The standards were issued to reduce unreasonable risks of burn injuries and deaths from fires associated with children's sleepwear. The standards are applicable to children's pajamas, nightgowns, robes, and other items of children's apparel intended to be worn primarily for sleeping or activities related to sleeping, and the fabrics used or intended for use in those garments.

Additional Details About the Request for Approval of a Collection of Information.

Agency Address: Consumer Product Safety Commission, Washington, DC 20207.

Title of Information Collection: FY 1987 Children's Sleepware Enforcement Program.

Type of Request: Approval of new plan.

Frequency of Collection: One time.

General Description of Respondents: Firms which manufacture children's sleepwear garments in sizes 0 through 14.

Estimated Number of Respondents: 50.

Total Estimated Number of Hours for All Respondents: 400.

Comments: Comments on this request for approval of a collection of information should be addressed to Marina Gatti, Desk Officer, Officer of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone (202) 395-7340. Copies of the request for approval of a collection of information are available from Francine Shacter, Office of Program Management and Budget, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6529.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: December 22, 1986.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 86-29099 Filed 12-29-86; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: Tues. & Wed., 13-14 January 1987.

Times of meeting: 0730-1700 hours each day.

Place: Armament Research Development & Engineering Center, Building 1, Room 460, Dover, New Jersey 07801.

Agenda

The Army Science Board Ad Hoc Subgroup for Effectiveness Review of ARDEC will meet for the purpose of reviewing additional ARDEC programs, conducting discussions with personnel, touring Benet Laboratories, and conducting discussions with tenant activities (PM's and AMCCOM elements). The panel will meet in executive session to discuss their observations and begin preparations for the draft report. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 86-29302 Filed 12-29-86; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Date of meeting: 14 January 1987.

Times of meeting: 0830-1700 hours.

Place: Pentagon, Washington, DC.

Agenda

The Army Science Board's Functional Subgroup on Research and New Initiatives will meet to discuss: Army Long Range Planning Guidance: Army Technology Demonstration Plan; and the Technology Forecasts of AMC, MRDC, COE, DCSPER, USAF and DARPA. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified, proprietary information, and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 86-29303 Filed 12-29-86; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: 14-15 January 1987.

Times of meeting: 0900-1100 hours, 14 January, CIA; 1200-1700 hours, 14 January, Pentagon; 0830-1230 hours, 15 January, Pentagon.

Place: CIA Headquarters & Pentagon, Washington, DC.

Agenda

The Army Science Board's Ad Hoc Subgroup for the Chemical/Biological Warfare Intelligence will meet to discuss HUMINT collection procedures

and discussion that touch on that subject. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 86–29301 Filed 12–29–86; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting of Weapons Effectiveness Task Force

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Weapon Effectiveness Task Force will meet January 20–21, 1987, from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to review the Navy's ability to maximize weapon effectiveness through both hardware design and tactical employment, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact Lt. Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Dated: December 18, 1986.

Harold L. Stoller,

Commander, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 86–29123 Filed 12–29–86; 8:45 am]

BILLING CODE 3810–AE–M

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting of Industrial Base and National Security Task Force

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Industrial Base and National Security Task Force will meet January 27–28, 1987, from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to review the Navy's policies in several broad areas, including mobilization readiness, production surge capacities, weapon system acquisition strategies, potential resource vulnerabilities, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Dated: December 23, 1986.

Harold L. Stoller,

Commander, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 86–29124 Filed 12–29–86; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

National Graduate Fellows Program Board; Meeting

AGENCY: National Graduate Fellows Program Board.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule of a forthcoming meeting of the National Graduate Fellows Program Board. Notice of this meeting is required under section 931 of the Federal Advisory Committee Act (Pub. L. 92–463, section 10(a)(2)). This document is also intended to notify the general public of their opportunity to attend.

DATES: January 8, 9, 1987.

ADDRESS: Georgetown Marbury Hotel, 3000 M Street, NW., Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Louise R. White, Office of Higher Education Programs, Room 3082, 400 Maryland Avenue, SW., Washington, DC 20202, (202–245–9758).

SUPPLEMENTARY INFORMATION: The National Graduate Fellows Program is established under HEA, Title IX, Part C, section 931 (20 U.S.C. 1134h–k) and advises the Secretary on the conduct of the program.

This meeting of the National Graduate Fellows Program Board is open to the public.

The agenda: The Board will examine the competition for fellowships for the coming year and discuss priorities. Selection of reviewers will also be discussed along with the changes in the reauthorized Higher Education Act which, among other things, will rename the program the Jacob K. Javits Graduate Fellowship Program.

Records are kept on the Board proceedings and are available for public inspection at the Office of Higher Education Programs, from 8:00 a.m. to 4:00 p.m., ROB–3, 7th & D Streets, SW., Room 3082, Washington, DC 20202.

Dewey L. Newman,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 86–29333 Filed 12–29–86; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Columbia Gas Transmission Corporation, Complainant, vs. Transcontinental Gas Pipeline Corporation, Respondent; Complaint

December 22, 1986.

Take notice that on November 26, 1986, Columbia Gas Transmission Corporation, 1700 MacCorkle Ave., SE., Charleston, West Va. 25314, filed "An Answer in Support of Petition of Philadelphia Electric Corporation and Petition, Complaint and Request for Declaratory Order of Columbia Gas Transmission Corporation" pursuant to Rules 206, 207, 212, and 217 of the Commisison's Rules of Practice and Procedure. Briefly, Columbia requests the same relief requested by Philadelphia Electric Corporation (PECO) in Docket No. CP87–37–000 with respect to Columbia's exercise of its own right to convert firm sales entitlements from Transco to firn transportation. Columbia has fur requested that its petition, which was filed in the same docket as PECO's complaint, be consolidated with PECO's.

Columbia states that it is a firm sales customer of Transco and that it received a letter from Transco dated July 28, 1986 in which Transco announced that it would initiate new section 311 transportation services absent a Commission waiver. Columbia states that it notified Transco, by letter dated August 22, 1986, of its election to convert 15 percent of its firm sales entitlements to transportation under three service agreements between Transco and Columbia.[1] Columbia further states that by letter dated November 14, 1986, Transco responded by refusing Columbia's request. By letter dated November 17, 1986, Columbia requested that Transco receive its volumes of transportation gas at certain Transco-Columbia interconnections and redeliver the gas at specified delivery points.

Columbia argues that Transco, in commencing new section 311 service without a Commission waiver, opened itself up to the conditions in section 284.10 including contract reduction/conversion requests. Columbia requests that the Commission:

(1) Find that the conversion option exercised by Columbia in its August 22, 1986 letter was in conformity with § 284.10 and that it is effective as of October 21, 1986, or, at the latest, January 1, 1987;

(2) Order Transco to provide the firm transportation that Columbia has requested in its November 17, 1986 letter and order Transco to acknowledge and implement a 15 percent conversion in Columbia's entitlements, under the service agreements effective October 21, 1986;

(3) Consolidate Columbia's petition with PECO's petition in this docket; and

(4) Order such other relief as may be appropriate.

Any person desiring to be heard or to make any protest with reference to said complaint or motion to consolidate should on or before December 30, 1986, file with the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). Pursuant to Rule 213, Transco is ordered to submit its answer no later than December 30, 1986. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–29126 Filed 12–28–86; 8:45 am]

BILLING CODE 6717–01–M

[1] Specifically, Columbia's August 22, 1986 letter to Transco (Exhibit A to Columbia's complaint) requested to convert 15 percent of its contract demand under three service agreements: (1) The Service Agreement dated October 30, 1957 between Transco and Atlantic Seaboard Corp., (2) the Service Agreement dated October 15, 1959 between Transco and Atlantic Seaboard; and (3) the Service Agreement dated September 17, 1962 between Transco and Manufacturer's Light and Heat Company.

[Docket No. QF87–173–000]

Environmental Recovery of America, Inc.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

December 22, 1986.

On December 22, 1986, Environmental Recovery of America, Inc. (Applicant) of Suite 10B, 157 East 72nd Street, New York, New York 10022, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Raritan, New Jersey. The facility will consist of two combustion turbine generators and two heat recovery steam generators (HRSG's). Steam recovered from the HRSG's will be used for pharmaceutical processes. The primary energy source will be natural gas with No. 2 diesel fuel as back-up. The net electric power production capacity of the facility will be 10 MW. Installation of the facility will begin in January 1988.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–29127 Filed 12–29–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER87–168–000 et al.]

Electric Rate and Corporate Regulation Filings; Montaup Electric Co. et al.

December 23, 1986.

Take notice that the following filings have been made with the Commission:

1. Montaup Electric Co.

[Docket No. ER87–168–000]

Take notice that on December 15, 1986, Montaup Electric Company ("Montaup") filed an agreement between itself and the Massachusetts Municipal Wholesale Electric Company ("MMWFC") for the sale of capacity and energy from Canal Unit No. 2.

This agreement is for a nine-year period beginning November 1, 1986. MMWEC's entitlement percentage changes every 6 months as follows:

From November 1, 1986 through Apri1 30, 1987, and all other November through April winter periods, MMWEC's share will be 8.562% (30 MW).

From May 1, 1987 through October 31, 1987, and all other May through October summer periods, MMWEC's share will be 5.137% (30 MW).

The capacity charge rate will be $4.78 per kw/month. Attachment A describes this rate, which was accepted in Docket No. ER87–36–000, Supplement 2, Rate Schedule FERC No. 60, Town of Braintree.

Montaup requests waiver of the 60-day notice requirement in order to place this rate schedule in effect on November 1, 1986. Negotiations took longer than expected due to uncertainty concerning the final entitlement percentages and term of the agreement. This agreement is mutually beneficial to both Montaup and MMWEC. Failure to grant waiver of the 60-day notice requirement would increase MMWEC's energy cost and lower Montaup's demand revenue. If the waiver is granted, there would be no

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effect upon purchasers under other rate schedules.

Copies of the filing were served on MMWEC and the Massachusetts Department of Public Utilities.

Comment date: January 2, 1987, in accordance with Standard Paragraph E at the end of this document.

2. Central Hudson Gas & Electric Corp.

[Docket No. ER87-165-000]

Take notice that Central Hudson Gas & Electric Corporation (Central Hudson), on December 15, 1986, tendered for filing as a rate schedule an executed agreement dated August 28, 1986 between Central Hudson and the New York Power Authority. The proposed rate schedule provides for Electric Transmission Service and Standby Electric Service for generation associated with NYPA's Ashokan Hydro Electric Generating Plant.

The rate schedule provides for a monthly transmission charge of $1.48 per kilowatt and a standby charge of $7.61 per kilowatt per month during the summer and winter peak periods. Central Hudson states that a copy of its filing was served on NYPA.

Comment date: January 2, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Consolidated Edison Co. of New York, Inc.

[Docket No. ER87-164-000]

Take Notice that on December 15, 1986 Consolidated Edison Company of New York, Inc. ("Con Edison") tendered for filing Supplement No. 12 to its Electric Rate Schedule FERC No. 42, for transmission, distribution and delivery service to the Power Authority of the State of New York ("PASNY"). PASNY uses Con Edison's services under Schedule No. 42 to deliver electricity to PASNY's governmental retail customers in Con Edison's service area. Con Edison's charges to PASNY are based on the maximum level of demand reached by the governmental customers each month, except that charges to PASNY customers with on-site generating equipment purchasing back-up electricity from PASNY are based on a contracted-for level of demand. Supplement No. 12 will allow PASNY, in cases where a governmental customer installs on-site generating equipment qualifying under the Commission's cogeneration and small power production rules (18 CFR Part 292), to elect to be billed under either of the above rate forms, *i.e.*, either on the basis of the maximum monthly demand or on a contracted-for level of demand.

The New York Public Service Commission ("NYPSC") approved this tariff revision on October 22, 1986, and PASNY has agreed to these revisions. Con Edison is requesting permission to put these revisions into effect on the date authorized by the NYPSC, *i.e.*, as of Octoher 27, 1986. The effect of these revisions, if any, will be a reduction in the revenues that Con Edison would otherwise have realized under the rate schedule.

Copies of the filing have been served upon PASNY and the NYPSC.

Comment date: January 2, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Public Service Co. of Indiana, Inc.

[Docket No. ER87-169 000]

Take notice that Public Service Company of Indiana, Inc. (PSI), on December 16, 1986, tendered for filing proposed changes in its FERC Electric Tariff, Original Volume No. 1 (7th Revision); FERC Electric Tariff, Original Volume 2 (5th Revision) and Electric Rate Schedules FERC Nos. 234 and 236. Such changes in rates are the result of an uncontested rate increase negotiated between PSI and the following parties:

(1) Cities and Towns (meaning the municipal utilities who are direct customers of PSI).

(2) City of Logansport, Indiana.

(3) Henry and Jackson County Rural Electric Membership Corporations.

(4) Indiana Municipal Power Agency.

The proposed changes would increase revenues by $5.9 million based upon the twelve-month period ending March, 1984.

As part of the negotiations between the parties, PSI has requested the following:

(1) Waiver of the notice requirements under § 35.3 of the Commission's Regulations under the Federal Power Act and an effective date of February 1, 1987, without suspension.

(2) Waiver of the requirements under § 35.13 of the Commission's Regulations under the Federal Power Act not specifically addressed or complied with in the filing.

Certificates of Concurrence were filed on behalf of the parties.

Copies of the filing were served upon the Public Service Commission of Indiana, the City of Logansport, Indiana, Henry and Jackson County Rural Electric Membership Corporations, the Indiana Municipal Power Agency, and the Indiana municipalities of Advance, Bainbridge, Brooklyn, Coatesville, Dublin, Dunreith, Edinburg, Hagerstown, Knightstown, Ladoga, Lewisville, Montezuma, New Ross, Pittsboro, Rockville, South Whitley, Spiceland, Straughn, Thorntown, Veedersburg, Waynetown and Williamsport.

Comment date: January 2, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragaph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission. 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29128 Filed 12-29-86; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FIFRA Docket Nos. 562 et al.; FRL-3131-4]

Pesticide Products Containing Diazinon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of objections and request for hearing.

Notice is hereby given, pursuant to Section 164.8 of the Rules of Practice, 40 CFR 164.8, promulgated under the Federal Insecticide Fungicide, and Rodenticide Act, as amended, 7 U.S.C. 136 *et seq.* that objections and requests for a hearing were filed by certain registrants and users of pesticide products containing Diazinon in connection with the Administrator's notice of intent to cancel registrations and deny applications of pesticide products containing Diazinon. The Administrator's notice of intent was published on October 1, 1986, 51 Fed. Reg. 35034. An amendment to the notice of intent was published on December 16, 1986, 51 FR 45039. These proceedings have been consolidated for hearing by order of the Chief Administrative Law Judge dated November 17, 1986.

For information concerning the issues involved and other details of these proceedings, interested persons are referred to the dockets of these proceedings on file with the Hearing Clerk, Environmental Protection Agency, (Mail Code A-110); Room 3708, Waterside Mall, 401 M Street SW., Washington, DC 20460. (202-382-4865).

Frank W. Vanderheyden,

Administrative Law Judge.

Dated: December 18, 1986 at Washington, DC.

[FR Doc. 86-29158 Filed 12-29-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL HOME LOAN BANK BOARD

FirstSouth, F.A., Pine Bluff, AR; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners Loan Act of 1933, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for FirstSouth, F.A., Pine Bluff, Arkansas on December 4 , 1986.

Dated: December 22, 1986.

Nadine Y. Washington,

Acting Secretary.

[FR Doc. 86-29097 Filed 12-29-86; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

Ray M. Bain et al.; Acquisition of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 14, 1987.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Ray M. Bain,* George Sides, Monty Boozer, Stanley Schaeffer, Robert Jones, Joe Josselet and Jimmy Ross, all of Dimmitt, Texas; S. L. Garrison, Hereford, Texas; Ray Joe Riley, Hart, Texas; and James A. Clark, Albuquerque, New Mexico; to acquire 100 percent of the voting shares of Plains Bancorp, Inc., Dimmitt, Texas, and thereby indirectly acquire First State Bank, Dimmitt, Texas.

Board of Governors of the Federal Reserve System, December 22, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-29113 Filed 12-29-86; 8:45 am]

BILLING CODE 6210-01-M

Madison Agency, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 16, 1987.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Madison Agency, Inc., Madison, Minnesota;* to engage *de novo* in the activity of acting as investment or financial advisor to the extent of providing portfolio investment advice to any other person pursuant to § 225.25(b)(4)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 22, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-29114 Filed 12-29-86; 8:45 am]

BILLING CODE 6210-01-M

Mercantile Bancshares, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 15, 1987.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Mercantile Bancshares, Inc.*, Jonesboro, Arkansas; to acquire Mercantile Corporation, Jonesboro, Arkansas, and thereby engage in data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 22, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-29115 Filed 12-29-86; 8:45 am]

BILLING CODE 6210-01-M

Turner Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 13, 1987.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Turner Bancshares, Inc.*, Kansas City, Kansas; to merge with Kaw Valley Bancshares Inc., Kansas City, Kansas, and thereby indirectly acquire Kaw Valley State Bank and Trust, Kansas City, Kansas.

B. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Catahoula Holding Company*, Kenner, Louisiana; to acquire 80 percent of the voting shares of Jena Holding Company, Jena, Louisiana, and thereby indirectly acquire LaSalle State Bank, Jena, Louisiana. Comments on this application must be received by January 15, 1987.

Board of Governors of the Federal Reserve System, December 22, 1986.

James McAfee

Associate Secretary of the Board.

[FR Doc. 86-29116 Filed 12-29-86; 8:45 am]

BILLING CODE 6210-01-M

Security Pacific Corp.; Proposal To Engage in Brokerage and Clearing Activities

Security Pacific Corporation, Los Angeles, California ("Security Pacific"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)), for permission to engage in brokerage and clearance activities through two *de novo*, wholly owned, indirect subsidiaries, Security Pacific Options Trading Corp. ("SPOT") and Security Pacific Options Services Corp. ("SPOSC"), respectively. SPOT and SPOSC will provide brokerage and clearance services, respectively, to participants in the Security Pacific Over-the-Counter Options Trading System (the "OTC System"). The OTC System is designed to facilitate the trading of put and call options on Treasury Securities ("Options") through the furnishing of brokerage, clearance and margin services. The above activities will be provided nationwide through offices located in New York. The Options will be issued by General Electric Credit Corporation's wholly owned subsidiary, General Electric Credit Corporation Option Corporation, and will be guaranteed by General Electric Credit Corporation. Security Pacific contends that these activities are permissible under § 225.25(b) (3), (15) and (16) of Regulation Y (12 CFR 225.25(b)(3), (15) and (18)) and, in any event, are so closely related to banking or managing or controlling banks as to be a proper incident thereto within the meaning of section 4(c)(8) of the Bank Holding Company Act and thus permissible for bank holding companies.

Comments are requested on whether the proposed activities are "so closely related to banking or managing or controlling banks," and whether the proposal as a whole can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests or unsound banking practices."

Any request for a hearing on these questions should comply with § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)).

The notice may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of San Francisco.

Any comments or request for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than January 15, 1987.

Board of Governors of the Federal Reserve System, December 24, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-29335 Filed 12-29-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Council Meeting

Summary: This notice sets forth the schedule and proposed agenda of the meeting of the National Advisory Council on Alcohol Abuse and Alcoholism. This committee meeting will be open for discussion of administrative announcements and program developments. The committee will be performing initial review of applications for Federal assistance. Therefore, portions of the meeting will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552(b)(6) and 5 U.S.C. app. 210(d). Notice of this meeting is required under the Federal Advisory Committee Act, Pub. L. 92-463.

Date and Time: January 29-30: 10:30 a.m.

Place: National Institutes of Health, Wilson Hall, Building 1, 9000 Rockville Pike, Bethesda, Maryland.

Status of Meeting: Open—January 29: 10:30 a.m.-5:00; Closed—Otherwise.

Contact: James Vaughan, Room 16C-20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4375.

Purpose: The Council advises the Secretary, Department of Health and Human Services, regarding policy direction and program issues of national significance in the area of alcohol abuse and alcoholism. Reviews all grant applications submitted, evaluates these applications in terms of scientific merit and adherence to Department policies, and makes recommendations to the Secretary with respect to approval and amount of award.

Substantive information may be obtained from the contact person listed above. Summaries of meetings and rosters of committee members may be obtained from Ms. Diana Widner, Committee Management Officer, Room 16C-20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4375.

Estelle O. Brown,

Committee Management Assistant, Alcohol Drug Abuse, and Mental Health Administration.

[FR Doc. 86-29132 Filed 12-29-86; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

[Docket No. 86F-0484]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to extend existing uses and to provide for additional uses of tetrakis [methylene (3,5-di-*tert*-butyl-4-hydroxy-hydrocinnamate)] methane as an antioxidant and/or stabilizer for polymers.

FOR FURTHER INFORMATION CONTACT: Mary Lipien, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 [21 U.S.C. 348(b)(5)]), notice is given that a petition (FAP 6B3966) has been filed by Ciba-Geigy Corp., Three Skyline Drive, Hawthorne, NY 10532, proposing that § 178.2010 *Antioxidant and/or stabilizers for polymers* (21 CFR 178.2010) be amended to extend existing uses and to provide for additional uses of tetrakis [methylene (3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate)] methane as an antioxidant and/or stabilizer for polymers.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: December 18, 1986.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-29121 Filed 12-29-86; 8:45 am]

BILLING CODE 4160-01-M

Office of Human Development Services

Privacy Act of 1974; Elimination of Two Systems of Records and Revisions in Two Systems of Records

AGENCY: Office of Human Development Service, HHS.

ACTION: Notification of Elimination of two systems of records and revisions in two systems of records.

SUMMARY: In accordance with the requirements of the Privacy Act, 5 U.S.C. 552a, the Office of Human Development Services (OHDS) is publishing this notice to eliminate two systems of records because they no longer are needed. Also, the notice will revise the routine use section in the two remaining HDS systems of records and the safeguards section in one of the remaining systems.

The first elimination is a system of records that was maintained by the Administration on Aging, OHDS entitled "Longitudinal Evaluation of the National Nutrition Program for the Elderly." The second elimination is a system of records maintained by the Administration on Developmental Disabilities (ADD), OHDS, entitled "Developmental Disabilities Complaints and Correspondence Files."

The paragraphs in the routine use sections concerning litigation have been revised, in accordance with OMB guidance, in the two remaining OHDS systems of records entitled, "HDS Distribution Publications Mailing List" and "Records Maintained on Individuals for Program Evaluation Purposes Under Contract." Information has been added to the section on safeguards in the system of records for the "HDS Distribution Mailing List."

DATES: The deletions are effective on December 30, 1986.

OHDS invites interested persons to submit comments on the revisions to the routine use sections on or before January 29, 1987.

OHDS will adopt the revised routine use without further notice 60 days after the date of publication unless comments are received which would result in a contrary determination.

ADDRESS: Please address comments to the HDS Privacy Act Coordinator at the address listed below. The comments received will be available for public inspection from 9 a.m. to 5 p.m., Monday through Friday, at that address.

FOR FURTHER INFORMATION CONTACT: Willie Etheridge, OHDS Privacy Act Coordinator, Room 334-F, Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, D.C. 20201, Telephone: (202) 245-2892.

SUPPLEMENTARY INFORMATION: Effective with this publication, we are eliminating two systems of records. The first system of records is 09-80-0022, Longitudinal Evaluation of the National Nutrition Program for the Elderly, HHS/OHDS/AoA, which was published last in the **Federal Register** on October 13, 1982 (47 FR 45404). This system contained data derived from program reviews and data identifying individual variable characteristics. The program review data included performance variables, level of participation, structural and organizational variables, operational problems, and project and site history. Data on individuals included information about nutritional status, health status, isolation, life satisfication, longevity and institutionalization. The study was completed in May 1983, and proper record close-out procedures were followed.

The second system of records that we are eliminating is 09-80-0002, Developmental Disabilities Complaints and Correspondence Files HHS/OHDS/ADD, which was published in the **Federal Register** on October 13, 1982 (47 FR 45402). The Administration on Developmental Disabilities (ADD) published a notice of this system in anticipation of keeping records containing the names and addresses of individuals submitting correspondence, responses and exchanges of materials associated with investigations of complaints. No such records were ever collected using personal identifiers and, upon review, ADD has decided not to maintain or use such a system that would contain personal identifiers.

We are revising the routine use section in the remaining two OHDS systems of records: 09–80–0020, HDS Publication Distribution Mailing List, HHS/OHDS/OPA, and 09–80–0100, Records Maintained on Individuals for Program Evaluation Purposes Under Contract, HHS/OHDS, which were published last in the **Federal Register** on May 31, 1983 [48 FR 24209) and March 20, 1984 [49 FR 10369), respectively. The purpose of the revision is two-fold, first to be consistent with guidance issued on May 24, 1965, by the Office of Management and Budget on disclosure of Privacy Act records during litigation and second, to provide more information on safeguarding the HDS mailing list records.

The litigation routine use in the past has been limited to the Department of Justice for the purpose of defending the Federal Government (where HHS is affected), the Department and employees of the Department in litigation action. The revision broadens the routine use to permit disclosures of records to a court or other tribunal, or to another party before such tribunal. The purpose of the litigation routine use remains the same, and the Department still must determine that such disclosures are compatible with the purpose for which the records were collected.

As a result of a review of the notices on HDS systems of records, the following technical changes have been made: (1) More descriptive information has been added to the paragraph on "Safeguards" in the routine use section of the notice on HDS' mailing list; and (2) the name of the office in which the system manager is located, as set forth in the "System Manager" section of the notice on records for program evaluation under contract, has been changed to reflect an organizational change in OHDS.

Dated: December 16, 1986.

Jean K. Elder,

Acting Assistant Secretary for Human Development Services

In accordance with the above:

A. The routine use section and safeguards section of system of records 09–80–0020, HDS Publications Distribution Mailing List, HHS/OHDS/OPA is revised as follows:

09–80–0020

SYSTEM NAME:

HDS Publications Distribution Mailing List, HHS/OHDS/OPA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

1. Disclosure may be made to a Congressional office from the record of an individual in response to a verified inquiry from the Congressional office made at the written request of that individual.

2. Disclosure may be made to the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when:

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

Is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

* * * * *

SAFEGUARDS:

1. *Authorized Users:* Only authorized personnel within the Department may access the HDS mailing list.

2. *Physical Safeguards:* Computer tapes are stored in locked files in secured areas. Computer terminals are in secured areas.

3. *Procedural Safeguards:* Employees who maintain the tapes in this system are instructed to grant regular access only to authorized users. Data stored in computers are accessed through the use of passwords/keywords known only to authorized personnel. These passwords/keywords are changed frequently.

4. *Implementation Guidelines:* Part 6, "Automated Information System Security" of the HHS Information Resources Management Manual.

* * * * *

B. The system of records notice 09–80–0100, Records Maintained on Individuals for Program Evaluation Purposes Under Contract, HHS/OHDS, is amended by revising paragraphs three and four in the routine use section and revising the section on system management to reflect an organizational change as follows:

09–80–0100

SYSTEM NAME:

Records Maintained on Individuals for Program Evaluation Purposes Under Contract, HHS/OHDS.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

DISCLOSURE MAY BE MADE TO:

* * * * *

3. A Congressional office from the record of an individual in response to a verified inquiry from the Congressional office made at the written request of that individual.

4. The Department of Justice, to a court or other tribunal, or to another party before such tribunal, when:

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determine that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

* * * * *

SYSTEM MANAGER AND ADDRESS:

Director, Office of Policy, Planning and Legislation, OHDS, Hubert H. Humphrey Building, Room 306–E, 200 Independence Avenue, SW, Washington, D.C. 20201, Telephone: (202) 245–7027.

* * * * *

[FR Doc. 86–29174 Filed 12–29–86; 8:45 am]

BILLING CODE 4130–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–86–1663]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ACTION: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Fishman, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names the telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

PROPOSAL: Notice of Termination, Suspension or Reinstatement of Assistance Payment Contract.
OFFICE: Housing.
FORM NUMBER: HUD–93114.
FREQUENCY OF SUBMISSION: On Occasion.
AFFECTED PUBLIC: Individuals or Households, Businesses or Other For-Profit, and Federal Agencies or Employees.
ESTIMATED BURDEN HOURS: 19,240.
STATUS: Reinstatement.
CONTACT: Fred W. Pfaender, HUD, (202) 755–6672. Robert Fishman, OMB, (202) 395–6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 15, 1986.

PROPOSAL: Supplemental Application and Processing Form—Housing for the Elderly or Handicapped.
OFFICE: Housing.
FORM NUMBER: HUD 92013–E.
FREQUENCY OF SUBMISSION: On Occasion.
AFFECTED PUBLIC: Businesses or Other For-Profit and Non-Profit Institutions.
ESTIMATED BURDEN HOURS: 300.
STATUS: Extension.
CONTACT: Edward M. Winiarski, HUD, (202) 755–5743. Robert Fishman, OMB (202) 395–6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act 42 U.S.C. 3535(d).

Dated: December 5 1986.

PROPOSAL: Preliminary Site Report by Indian Housing Authority.
OFFICE: Public and Indian Housing.
FORM NUMBER: HUD 3188.
FREQUENCY OF SUBMISSION: On Occasion.
AFFECTED PUBLIC: State or Local Governments and Non-Profit Institutions.
ESTIMATED BURDEN HOURS: 2,560.
STATUS: Extension.
CONTACT: Patricia S. Arnaudo, HUD, (202) 755–1015. Robert Fishman, OMB, (202) 395–6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act 42 U.S.C. 3535(d).

Dated: November 21, 1986.

PROPOSAL: Emergency Shelter Grants Program.
OFFICE: Community Planning and Development.
FORM NUMBER: SF–424 and Narrative.
FREQUENCY OF SUBMISSION: Annually and On Occasion.
AFFECTED PUBLIC: State of Local Governments and Non-Profit Institutions.
ESTIMATED BURDEN HOURS: 6,480.
STATUS: New.
CONTACT: James R. Broughman, HUD, (202) 755–5977; Robert Fishman, OMB, (202) 395–6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 15, 1986.

PROPOSAL: Tenant Data Summary.
OFFICE: Public and Indian Housing.
FORM NUMBER: HUD–50058.
FREQUENCY OF SUBMISSION: On Occasion.
AFFECTED PUBLIC: State of Local Governments and Non-Profit Institutions.
ESTIMATED BURDEN HOURS: 2,421,000.
STATUS: Extension.
CONTACT: Joyce Ann Bassett, HUD, (202) 426–0744; Robert Fishman, OMB, (202) 395–6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 5, 1986.

PROPOSAL: Request for Final Endorsement of Credit Instrument.
OFFICE: Housing.
FORM NUMBER: HUD–92023.
FREQUENCY OF SUBMISSION: On Occasion.
AFFECTED PUBLIC: Businesses or Other For-Profit and Non-Profit Institutions.
ESTIMATED BURDEN HOURS: 465.
STATUS: Extension.
CONTACT: Kerry J. Mulholland, HUD, (202) 426–0283; Robert Fishman, OMB, (202) 395–6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 15, 1986.

PROPOSAL: Comprehensive Improvement Assistance Program (CIAP) Survey Instrument: Physical Needs Assessment, 24 CFR 868.18.
OFFICE: Public and Indian Housing.
FORM NUMBER: HUD–52827.

FREQUENCY OF SUBMISSION: On Occasion.

AFFECTED PUBLIC: State of Local Governments and Non-Profit Institutions.

ESTIMATED BURDEN HOURS: 9,600.

STATUS: Extension.

CONTACT: Pris P. Buckler, HUD, (202) 755–6640; Robert Fishman, OMB, (202) 395–6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 11, 1986.

John T. Murphy,

Director, Information Policy and Management Division.

[FR Doc. 86–29152 Filed 12–29–86; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Housing–Federal Housing Commissioner

[Docket No. N–86–1653; FR–2307]

Section 8 Housing Vouchers—Notice of Funding Availability for a Limited Number of Section 8 Opt Outs

AGENCY: Office of the Assistant Secretary for Housing–Federal Housing Commissioner, HUD.

ACTION: Notice of funding availability.

SUMMARY: This Notice announces availability of fiscal year 1987 funding authority under the Department's Housing Voucher Program for two limited purposes. This limited notice is required because of specific time constraints facing families in certain section 8 "opt out" projects. For these reasons, the Department announces that limited fiscal year 1987 housing voucher funding will be available for the following purposes: (1) For families in section 8 New Construction or Substantial Rehabilitation projects where the owner has sole discretion to "opt-out" of an additional term of assistance under the section 8 Housing Assistance Payments Program and does so; and (2) For families in section 8 Loan Management Set-Aside projects (Part 886, Subpart A) where the owner and HUD do not agree to renew the contract of assistance for an additional term.

EFFECTIVE DATE: December 29, 1986.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Housing Voucher Division, Office of Elderly and Assisted Housing, Room 8122, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410 telephone (202) 755–6477. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

In 1983, Congress authorized a Housing Voucher Program under section 8(o) of the United States Housing Act of 1937 (the 1937 Act) (see section 207 of the Housing and Urban-Rural Recovery Act of 1983, Pub. L. 98–181 (the 1983 Act)). Since this authorization, HUD has published four Notices of Funding Availability (NOFA). (See the Federal Register issues of July 12, 1984, 49 FR 28458; February 28, 1985, 50 FR 8196; May 8, 1985, 50 FR 19475; and March 31, 1986, 51 FR 10932.)

The Department expects to publish its generally applicable requirements for its fiscal year 1987 housing voucher funding authority within the next two months. However, the Department is aware of specific project types which may require housing voucher funding before we are able to issue this fiscal year's NOFA. Accordingly, we announce the availability of housing voucher funding for the specific purposes described below.

This Notice of Funding Availability

Two previously authorized uses of housing voucher funding include providing assistance to families living in "opt-out" projects in both section 8 New Construction or Substantial Rehabilation projects where the owner has sole discretion to "opt-out" of an additional term of assistance under the section 8 Housing Assistance Payments Program and does so, and section 8 Loan Management Set-Aside projects (Part 886, Subpart A) where the owner and HUD do not agree to renew the Section 8 housing assistance payments contract for an additional term.

A limited number of housing vouchers (less than 500) are needed to provide continuing assistance to families living in projects in which the owner's housing assistance contracts are not being renewed (for either reason stated in the preceding paragraph). The Department continues to support this use of housing voucher funding authority, and Congress provided funding for a limited number of "opt-out" units in HUD's fiscal year 1987 appropriations. (See section 101(g), Pub. L. 99–500 (approved October 18, 1986), making appropriations as provided for in H.R. 5313, 99th Cong., 2d Sess. (1986) (as passed by the House of Representatives and by the Senate), to the extent and in the manner provided for in H.R. Rep. No. 977, 99th Cong., 2d Sess. (1986).)

The Department intends to make available housing voucher funding for approximately 500 housing vouchers for this purpose before the publication of the FY 1987 NOFA for all components of the Housing Voucher Program.

Housing Voucher Program Requirements

A Public Housing Agency administering housing vouchers, including the "opt-out" housing vouchers authorized in this Notice, must use the applicable program requirements published in the Federal Register by HUD. These requirements were last published on March 31, 1986 (51 FR 10936–10948). Housing voucher funding also will be subject to any revised program requirements in the FY 1987 NOFA, when it is published.

Other Matters

An environmental finding under the National Environmental Policy Act (42 U.S.C. 4321–4347) is unnecessary since the Housing Voucher Program is part of the section 8 Existing Housing Program, which is categorically excluded under HUD regulations at 24 CFR 50.20(d).

Authority: Section 8(o) of the U.S. Housing Act of 1937 (42 U.S.C. 1437f); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: December 18, 1986.

Thomas T. Demery,

Assistant Secretary for Housing–Federal Housing Commissioner.

[FR Doc. 86–29151 Filed 12–29–86; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[93470–1221]

Division of Law Enforcement; Endangered Species Convention; Foreign Law Notification, Singapore

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Information No. 12.

Subject: Singapore-Wildlife Importations.

This is a Schedule III notice.

Source of foreign law information: United States through the Department of State and the Government of Singapore.

Action by the Fish and Wildlife Service: On September 25, 1986, the U.S. Fish and Wildlife Service published Notice of Information No. 9 advising the public that it would refuse to clear all wildlife and wildlife products imported into the United States declaring Singapore as the country of origin or which were exported or re-exported from Singapore. The Fish and Wildlife Service advised the Government of Singapore that resumption of trade in wildlife would be dependent upon certain actions on the part of the Singapore Government. First, Singapore must comply with the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); although accession to CITES by Singapore was not a condition of the resumption of trade. Secondly, Singapore must identify the country of origin of wildlife and wildlife products re-exported to the United States. Finally, Singapore must provide assistance to the Fish and Wildlife Service in investigations involving questions concerning the legality of wildlife or wildlife products exported or re-exported from Singapore.

In response to Notice of Information No. 9, the Government of Singapore has taken a number of positive steps to demonstrate a good faith effort to meet the requirements for the resumption of trade in wildlife and wildlife products. Singapore has enacted legislation to prohibit the trade in rhinoceros products, an Appendix I CITES species that is particularly vulnerable to illegal trade. Further, Singapore has assured the United States that it will provide acceptable documentation for all wildlife and wildlife products exported or re-exported from the country, and will assist the Fish and Wildlife Service in conducting investigations into known or suspected illegal wildlife trade. Finally, on November 30, 1986, Singapore notified the CITES Secretariat of its accession to the Convention, which will become effective on March 1, 1987.

Based upon these positive actions on the part of the government of Singapore and upon the belief that it will continue to fulfill its responsibilities as a responsible trading country in wildlife and wildlife products, the Fish and Wildlife Service rescinds Notice of Information No. 9 effective January 1, 1987. Subsequent to 12:01 a.m. local U.S. time on that date, importations of wildlife and wildlife products that declare Singapore as the country of origin or which are exported or re-exported from Singapore will be subject to same inspection and clearance procedures required for other such importations. Such wildlife and wildlife products must be accompanied by documentation that meets all requirements of both CITES and more restrictive U.S. laws and regulations, where applicable. However, the public is placed on notice that the mere presentation of an export or re-export document issued by Singapore will not result in pro-forma clearance of the accompanying shipment. Any export or re-export document accompanying a wildlife shipment from Singapore must fully comply with all provisions of CITES and more restrictive U.S. laws and regulations, including indicating the country of origin of the wildlife. In addition, any wildlife or wildlife product that has been exported or re-exported from Singapore must have been lawfully taken, possessed and exported from the country of origin. Any wildlife or wildlife product that fails to meet all provisions of CITES or more restrictive U.S. laws and regulations may be subject to refusal of clearance, detention or seizure, as appropriate under U.S. law and Fish and Wildlife Service policy. Further, the importer may be subject to applicable civil or criminal penalties and such wildlife may subsequently be subject to forfeiture.

Effective date: January 1, 1987.

Expiration date: Not Applicable.

FOR FURTHER INFORMATION CONTACT: Thomas L. Striegler, Division of Law Enforcement, U.S. Fish and Wildlife Service, P.O. Box 28006, Washington, DC 20005, Telephone: 202–343–9242.

Dated: December 18, 1986.

Frank Dunkle,

Director.

[FR Doc. 86–29160 Filed 12–29–86; 8:45 am]

BILLING CODE 4310–55–M

Arctic National Wildlife Refuge, Alaska; Draft Resource Assessment and Legislative Environmental Impact Statement; Public Hearing

AGENCY: Fish and Wildlife Service.

ACTION: Notice of Public Hearing Revision.

SUMMARY: This notice announces a change in the time of the public hearing that will be held in Washington, DC, on the draft Arctic National Wildlife Refuge (NWR), Alaska, Coastal Plain Resource Assessment and Legislative Environmental Impact Statement (LEIS) (16 U.S.C. 3142).

DATE: January 9, 1987—10:00 a.m. to 5:00 p.m.

ADDRESS: Washington, DC—Main Interior Building Auditorium, 18th and C Streets, NW.

FOR FURTHER INFORMATION CONTACT: Nancy Marx, U.S. Fish and Wildlife Service, Division of Refuges, 18th and C Streets, NW., Room 2343, Washington, DC 20240, (202) 343–3922.

SUPPLEMENTARY INFORMATION: A notice of availability of the draft Arctic NWR report/LEIS was published in the Federal Register on November 24, 1986. The December 15, 1986, Federal Register contained a notice of public hearings to be held in Anchorage and Kaktovik, Alaska, and Washington, DC, on the draft report/LEIS. The dates, times and locations of the Alaska hearings remain unchanged.

The starting time of the January 9, 1987, Washington, DC, hearing has been changed from 1:30 p.m. to 10:00 a.m. in order to accommodate an anticipated large number of persons wishing to present comments. The hearing will end promptly at 5:00 p.m.

Persons wishing to present oral comments should sign up at the desk located at the auditorium entrance beginning at 9:00 a.m. on the date of the hearing. Time allotted to each speaker may be limited to allow all interested parties the opportunity to speak. Speakers should therefore summarize their oral comments and provide a full written copy of their comments for the record.

Dated: December 23, 1986.

Ronald E. Lambertson,

Acting Director.

[FR Doc. 86–29213 Filed 12–29–86; 3:46 pm]

BILLING CODE 4310–55–M

Bureau of Land Management

[NM–010–07–4322–02]

District Grazing Advisory Board Meeting; Albuquerque, NM.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Albuquerque District Grazing Advisory Board Meeting.

SUMMARY: The Bureau of Land Management's Albuquerque District Grazing Advisory Board will meet on Friday, January 23, 1987, at 10:00 a.m., in the BLM Albuquerque District Office Building located at 435 Montano N.E., in Albuquerque, New Mexico.

The Board's agenda will include:

1. A discussion of the new Board's objectives and scope.
2. A description of the Albuquerque District's range improvement program and allotment management plan effort.
3. Development of the Board's recommendations for 1987 range improvement projects.
4. Election of officers.

Time will be provided for public comments during the appropriate agenda items. The Albuquerque District Grazing Advisory Board was chartered by the Secretary of the Interior on May

14, 1986. This will be the first meeting of the Board. Minutes of the meeting will be available for public inspection within 30 days following the meeting in the Albuquerque District Office located at 435 Montano NE., Albuquerque, New Mexico 87107. For more information contact Alan Hoffmeister, Public Affairs Officer, (505) 761–4504.

Michael F. Reitz,

Associate District Manager.

[FR Doc. 86–29136 Filed 12–29–86; 8:45 am]

BILLING CODE 4310-FB-M

[WY-940-07-4520-12]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Filing of Plats of Survey.

SUMMARY: The plats of survey of the following described lands were officially filed in the Wyoming State Office, Bureau of Land Management, Cheyenne, Wyoming, effective 10:00 a.m., December 16, 1986.

Sixth Principal Meridian

T. 55 N., R. 93 W.

The plat showing a subdivision of original lot 1, Sec. 27, T. 55 N., R. 93 W., Sixth Principal Meridian, Wyoming, was accepted November 24, 1986.

This supplemental plat was prepared to meet certain administrative needs of this Bureau.

T. 53 N., R. 70 W.

The plat representing the dependent resurvey of the Thirteenth Standard Parallel North, through R. 70 W., the north boundry and the subdivisional lines, T. 53 N., R. 70 W., Sixth Principal Meridian, Wyoming, Group No. 464, was accepted November 24, 1986.

This survey was executed to meet certain administrative needs of this Bureau.

T. 42 N., R. 71 W.

The plat representing the dependent resurvey of the west boundary and the subdivisional lines, T. 42 N., R. 71 W., Sixth Principal Meridian, Wyoming, Group No. 433, was accepted November 24, 1986.

T. 43 N., R. 71W.

The plat representing the dependent resurvey of the south, west and north boundaries and the subdivisional lines, T. 43 N., R. 71 W., Sixth Principal Meridian, Wyoming, Group No. 433, was accepted November 24, 1986.

T. 32 N., R. 118 W.

The plat representing the dependent resurvey of a portion of the Eighth Standard Parallel North, through R. 118 W., portions of the west boundary and subdivisional lines, and the subdivision of certain sections, T. 32 N., R. 118 W., Sixth Principal Meridian, Wyoming, Group No. 430, was accepted November 24, 1986.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

ADDRESS: All inquiries concerning these lands should be sent to the Wyoming State Office, Bureau of Land Management, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.

Dated: December 18, 1986.

Dennis D. Bland,

Acting Chief Cadastral Surveyor for Wyoming.

[FR Doc. 86–29135 Filed 12–29–86; 8:45 am]

BILLING CODE 4310-22-M

National Park Service

Delta Region Preservation Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Delta Region Preservation Commission will be held at 7:30 p.m., CST, on February 16, 1987, at the Jefferson Parish East Bank Council Chamber, 3330 North Causeway Boulevard, Metairie, Louisiana.

The Delta Region Preservation Commission was established pursuant to Pub. L. 92–265, section 907(a) to advise the Secretary of the Interior in the selection of sites for inclusion in Jean Lafitte National Historical Park, and in the implementation and development of a general management plan and of a comprehensive interpretive program of the natural, historic, and cultural resources of the Region.

The matter to be discussed at this meeting includes:

—Projected Development Schedules for the Park

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, Jean Lafitte National Historical Park.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact James Isenogle, Superintendent, Jean Lafitte National Historical Park, U.S. Customs House, 423 Canal Street, Room 206, New Orleans, Louisiana 70130, telephone 504/589–3882. Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of Jean Lafitte National Historical Park.

Dated: December 16, 1986.

Keith E. Miller,

Acting Regional Director, Southwest Region.

[FR Doc. 86–29203 Filed 12–2–86; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 20, 1986. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register, criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by January 14, 1987.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Dallas County

Plantersville, *Antique Store (Plantersville MRA)*, Off AL 22
Plantersville, *Christian Church and Parsonage (Plantersville MRA)*, Off AL 22
Plantersville, *Doctor's Office (Plantersville MRA)*, jct. of First Ave. N of Oak St. and First Ave.
Plantersville, *Driskell-Martin House (Plantersville MRA)*, NW jct. of Cherry St. and First Ave.
Plantersville, *Todd House (Plantersville MRA)*, S side of Oak St. W of First Ave.

ARIZONA

Cochise County

Council Rocks Archaeological District

CALIFORNIA

Orange County

Huntington Beach, *Helme-Worth Store and House*, 513–519 Walnut St. and 128 Sixth St.

Yolo County

Woodland, *Yolo County Courthouse*, 725 Court St.

GEORGIA

Rabun County

USDA—Forest Service Site No. GAO5S17

UTAH

Weber County

Ogden, *Dalton, John L. and Elizabeth, House*, 2622 Madison Ave.

[FR Doc. 86–29306 Filed 12–29–86; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–55 (Sub-No. 186X)]

CSX Transportation, Inc.; Exemption for Abandonment in Chattanooga, TN

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts CSX Transportation, Inc., from the requirements of 49 U.S.C. 10903, *et seq.*, to abandon a 0.64-mile line of railroad in Chattanooga, TN, subject to standard employee protective conditions.

DATES: This exemption will be effective on January 28, 1987. Petitions to stay must be filed by January 8, 1987, and petitions for reconsideration must be filed by January 20, 1987.

ADDRESSES: Send pleadings referring to Docket No. AB–55 (Sub-No. 186X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423; (2) Petitioner's representative: Charles M. Rosenberger, 500 Walter Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area), or toll-free (800) 424–5403.

Decided: December 18, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 86–29041 Filed 12–29–86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

National Studies of the Incidence of Missing Children

AGENCY: Office of Juvenile Justice and Delinquency Prevention (OJJDP), Justice.

ACTION: Notice of issuance of solicitation for applications from public or private not-for-profit research organizations to conduct a national study of the incidence of missing children. One cooperative agreement will be awarded competitively to conduct this study.

SUMMARY: Pursuant to the Missing Children's Assistance Act, Title IV, section 404(b)(3) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, The Office of Juvenile Justice and Delinquency Prevention (OJJDP), is sponsoring a comprehensive national study of the incidence of missing children as mandated by this section. The study is being undertaken for the purpose of developing valid, reliable estimates of the number of children missing—either voluntarily or involuntarily—in a given year. Results from this study are intended to improve our understanding of both the extent and nature of the problem and particularly the context and consequences of missing.

OJJDP will select the eligible public agency or private nonprofit applicant which presents the most cost effective and reasoned approach; and which best demonstrates the organizational capability, knowledge of and experience in the field of survey research dealing with rare and sensitive issues. The project period is for 24 months, during which the principal study will be conducted and a final report issued and analyses of data and preparation of additional reports will be completed. In addition, through collaboration and cooperation with other OJJDP research efforts in the area of missing children, this effort will contribute to the development of a strategy for meeting the legislative mandate to conduct periodic studies of the incidence of missing children.

Up to $1 million is anticipated to be awarded in Fiscal Year 1987 for the initial 12-month budget period.

DATE: The deadline for receipt of applications is February 27, 1987.

FOR FURTHER INFORMATION CONTACT: Barabara Allen-Hagen, Social Science Analyst, at 202/724–5929, National Institute for Juvenile Justice and Delinquency Prevention, 633 Indiana Ave., NW., Washington, DC 20531.

SUPPLEMENTARY INFORMATION:

National Incidence Studies of Missing Children: Outline of Solicitation

I. Introduction and Background
II. Study Goals and Objectives
III. Research Design Issues
  A. Methodological Pilot Studies
  B. Unresolved Issues
IV. Dollar Amount and Duration
V. Eligibility Requirements
VI. Major Responsibilities of Successful Applicant
VII. Application Requirements
VIII. Procedures and Criteria for Selection
  A. Organizational Capability
  B. Understanding of the Problem
  C. Response to Research Design Issues
  D. Implementation Plan
  E. Budget
IX. Deadline for Submission of Applications
X. Civil Rights Compliance

National Studies of the Incidence of Missing Children

I. Introduction and Background

The problem of missing children has increasingly become a focus of national concern. While no one is certain of the exact magnitude of the problem, even the most conservative estimates would place the number of children missing each year from their homes—either voluntarily or involuntarily—in the hundreds of thousands. While most of the children eventually return home, many may become victims of physical or sexual abuse and, in some cases, even homicide. Although we understand some of the parameters of the problem, there is much that we need to know to formulate Federal, a state and local policy. For this reason, the Congress of the United States mandated the Office of Juvenile Justice and Delinquency Prevention to:

Periodically conduct national incidence studies to determine for a given year the actual number of children reported missing each year, the number of children who are victims of abduction by strangers, the number of children who are victims of parental kidnappings and the number of children who are recovered each year. (Section 404(b)(3) Missing Children's Assistance Act, Title IV of the Juvenile Justice and Delinquency Act of 1974, as amended.)

To respond to this mandate and the need for more accurate information on both the extent and nature of the missing children phenomenon, the Office of Juvenile Justice and Delinquency Prevention is inviting applications from non-profit organizations to demonstrate their capability to conduct such a survey.

II. Study Goals and Objectives

A principal goal of this study is to develop valid, reliable national estimates of the numbers and types of missing children. Our current knowledge about the extent and nature of the problem of missing children, which is based in part on existing statistics, is inadequate. Some of the frequently cited statistics have no scientific basis and others were derived from studies that differed substantially in terms of: definition of the incident and the study population; the study design and sampling methods; units of analysis, methods for producing national estimates from the sample data, etc. The numbers based on these efforts have contributed more to a debate about the absolute numbers and added little to our understanding of the nature of the problem. In contrast, this study is intended to provide both reliable national estimates as well as useful information on the characteristics of these events to guide the development of effective prevention strategies and the development of effective responses by parents, the justice system and policy makers to the problem of missing children.

In order to effectively target national, state and local resources to respond to this problem, it is necessary to improve our knowledge of the context and consequences of the missing child experience. Therefore, while the study must be designed to develop reliable national estimates of the incidence of missing children in each major category, an important aspect of the study is to establish profiles of missing children and descriptions of significant aspects of the incidents themselves.

The results of the national incidence study should have immediate utility in terms of responding to the mandate of the Missing Children's Assistance Act and to congressional inquiries. It should also provide guidance in terms of future plans for fulfilling the Act's requirement for periodic studies of the incidence of missing children.

III. Research Design Issues

Methodological Pilot Studies

In August 1985, the Office convened a panel of researchers from different fields who had studied other issues having similarly complex definitional and methodological problems. The purpose of this meeting was to gain insights from their experience that would benefit the design of the national incidence study of missing children. Based on the advice of this panel the Office has undertaken a number of pilot tests to answer selected methodological questions regarding the feasibility of various approaches to the national study.

(1) The first pilot study involved using Random-Digit—

Dialing as a means of selecting two samples of approximately 500 households containing children. To test the reliability of the survey questionnaire and procedure, each of the two samples contained a number of seeded telephone numbers of actual cases which had been recorded by ISEARCH, the State of Illinois Missing Children's Clearinghouse. One of the principal goals of this study was to determine the level of cooperation of respondents and whether the instrument, the procedures and methods elicited correct responses with adequate detail on critical aspects of the incident. A copy of the refined questionnaire used in the second RDD sample is available upon request.

(2) The second pilot study was designed to test the feasibility of using Network or Multiplicity Sampling techniques for both estimation purposes as well as for locating rare or difficult to find populations for study. This method has been used in epidemiology studies of the prevalance of cancer, diabetes and heroin addiction and has also been used to efficiently study minority Vietnam Veterans. The Network Sampling technique is also being tested for use in criminal victimization surveys. This method allows respondents to report an incident which may have occured to someone in their extended family, neighborhood or their workplace. One of the purposes of this test is to determine which "networks" produce reasonably productive and reliable responses for the purposes of producing national estimates. As in the RDD pilot study, questions were asked regarding the possibility of conducting interviews with children who had been missing and returned. Again, for purposes of testing the validity of this approach, the pilot included a seeded sample of telephone numbers of households that had reported a missing child.

(3) The third approach being explored is referred to as Capture-Recapture, a technique which has been used in studies of illegal immigration, drug abuse, and more recently in estimating the homeless populations. Its application to studying missing children is in developing a methodology for estimating the number of runaway/homeless youth living away from home whose status may not be reported by other survey methods. In exploring the utility of this approach, the researcher will attempt to identify those places and agencies with which these youth are likely to make contact, such as community-based youth services, shelters for runaways and other welfare service contact points. These places would serve as "capture" points for enumeration which would be sampled several times over the course of data collection. In addition to determining the logistical feasibility of collecting data from these agencies, another critical aspect of this pilot effort is to determine the extent to which the assumptions about characteristics and flow of juveniles into and out of a missing status can be incorporated into the mathematical model used for estimation purposes.

Unresolved Issues

The results of these pilot studies will be presented to a review panel in early 1987, at which time issues that have been resolved will be incorporated into the overall design of the national study. While the pilot studies will answer questions related to the general reliability of telephone surveys, there are a number of issues that the pilot studies did not definitively address. In order to be selected to conduct the national study, the successful applicant must demonstrate a sufficient understanding of the nature of this research problem and offer creative, responsible solutions to the following issues related to the design of the national study:

Definitional Issues. Constructing operational definitions for the study is one of the most critical aspect of the study as they significantly affect the validity and reliability of the national estimates. At a minimum the definitions of the categories of missing children must address the statutory definition of a "missing child" (Section 403 (1))[1], and be responsive the requriements of the national incidence study (Section 404(b)(3)). Applicants must discuss their approach to constructing meaningful definitions for purposes of this study. Applicants must also operationally define the term "incidence" in the context of this study, keeping in mind the statutory requirements to provide estimates for a given year.[2]

[1] Statutory Definition of "missing child" (Section 403(1)): Any individual less than 18 years of age whose whereabouts are unknown to such individual's legal custodian if:

(A) the circumstances surrounding such individual's disappearance indicate that such individual may possibly have been removed by another from the control of such individual's legal custodian without such custodian's consent; or,

(B) the circumstances of the case strongly indicate that such individual is likely to be abused or sexually exploited.

[2] Because of the interest in obtaining preliminary information by the Summer of 1987, OJJDP will consider using annual periods other than the calendar year.

Continued

Sample Selection. Assume, for purposes of developing the application, that an RDD sample will be chosen as the most cost-effective means of obtaining a national probability sample to obtain national estimates on the incidence of missing children. Applicants must discuss the potential bias this method presents for selected portions of the population, and indicate what, if any, measures should be taken to compensate for potential bias in the national estimates.

Related to sample selection is the choice of respondent to interview. Applicants should propose principal target population(s) (e.g., general public, parents/guardians, children, etc.) appropriate for meeting specific study objectives. Applicants should present their rationale for selecting a particular population and discuss the implications of that choice on developing national estimates and for addressing specific study objectives.

Sample Size and Required Precision of Estimates. As mentioned above, one of the major goals of the study is to develop reliable national estimates of the number and types of missing children. Beyond knowing that children abducted by strangers are the rarest of missing children cases, there are no reliable estimates of the true incidence of these cases for any time period. This gap in information was not filled by the pilot studies, nor was it an intended outcome of those studies. Therefore, in order to estimate the required sample size for achieving reliable national estimates, an "educated guess" of the true incidence of these cases is needed. Applicants must propose sample sizes necessary to achieve various levels of confidence for different margins of error (allowing as necessary for different assumptions about adjustments needed for design effects). This will require the applicant to formulate a number of options based on hypothetical rates and recommend a defensible approach(s) given the goals of the study, the nature of the phenomenon and the limited resources available to carry out the study.

Questionnaire Content. Applicants must indicate how their approach to the design and execution of the study maximizes the opportunity to collect important information on the context and consequences of the incident. Applicants must outline the major research questions that the survey methods and instrument will attempt to answer and indicate specifically how definitional issues will be addressed in the construction of the survey instrument(s).

In summary, applicants must demonstrate their understanding of the potential threats to the validity of the national estimates and specify measures that will minimize the impact of these sources of error on the study results.

IV. Dollar Amount and Duration

One cooperative agreement will be awarded. The project period for this effort will be 24 months. Section VI., below, outlines the major activities and tasks to be completed during the project period with major milestones and completion dates specified. Up to $1 million has been allocated for one project award this fiscal year. Applicants must propose a cost-effective budget that specifically relates the costs to the tasks to be undertaken in the first (12-month) phase of the project. In addition, applicants must outline projected costs for proposed activities for the subsequent (12-month) budget period. Duration and funding for the second phase will be based on the satisfactory performance of the grantee and the best interests of the government in pursuing the activities outline in section VI.

V. Eligibility Requirements

Applications are invited from public agencies and private not-for-profit organizations only. For-profit organizations are not eligible for funding under Title IV Missing Children's Assistance Act (Section 406(a)) and therefore will not be considered for receipt of the cooperative agreement as an applicant or as a co-applicant with another eligible organization. Participation by profit-making organizations is permissible only as contractors providing goods or services required by eligible applicants.

Eligible organizations may choose to submit joint proposals with other eligible organizations as long as one organization is designated in the application as the applicant and any co-applicants are designated as such. Together co-applicants must meet the eligibility requirements specified in A. and B.

The applicant must have experience in the following areas in order to be eligible for consideration:

A. Prior experience in the design and implementation of large national surveys requiring direct interviewing of individuals on topics of potentially sensitive nature.

B. Demonstrated knowledge of the issues associated with missing children, runaways, homeless youth and victimization of children in general.

The applicant must have the management and financial capability to effectively implement a project of this size and scope. Applicants who fail to demonstrate that they have the capability to manage this program will be ineligible for funding consideration.

VI. Major Responsibilities of the Successful Applicant

The organization selected to conduct this research project will be responsible for all aspects of the project, whether carried out directly or contracted to other organizations or individuals, and, for the development of all products on time.

The successful applicant will have specific responsibility for developing a research design, appropriate methodology and instrumentation that are responsive to the goals and objectives of the study as outlined in this solicitation. This will include making the necessary provisions to incorporate the findings and recommendations of the review panel that evaluates the results of the pilot studies. A project advisory board will be appointed with the concurrence of OJJDP and will meet at least twice during the course of the project to review plans, instruments and products.

In addition to submitting all financial and progress reports required by this agency, the grantee will be responsible for preparing the following products:

1. A comprehensive research design which incorporates the recommendations of the design panel within 45 days of award.

2. An advance report on the findings of the national survey within twelve months of award.

3. A comprehensive final report on the entire study within 18 months of the award date which is suitable for nationwide dissemination.

4. In addition to the reports specified in 1–3 above, up to three special issues papers on topics to be identified in the application and developed subject to the approval of OJJDP. At least two of these reports shall be developed in the first 18 months of the project. One of these reports should focus on developing future strategies to respond to the legislative mandate to conduct periodic studies of the incidence of missing children.

5. Preparation of public use data tapes with all potential identifiers stripped, and with complete documentation to be submitted to the National Criminal Justice Data Archive at the University of Michigan within 18 months of award.

Since this project will be awarded as a cooperative agreement, rather than a grant or contract, OJJDP will work collaboratively with the recipient and will collaborate with the recipient in making major decisions throughout the course of the project including the final research design and methodology, definitions of terminology, advisory board members, subjects of topical reports, etc. Any and all noncompetitive contracts in excess of $10,000 (with the exception of clerical support services) proposed by the sucessful applicant are subject to prior agency approval based on an adequate sole source justification. In addition, it is expected that the grantee will work cooperatively with other research grantees in areas of mutual interest.

VII. Application Requirements

All applicants must submit a completed Standard Form 424, Application for Federal Assistance (SF 424), including a program narrative, a detailed budget, and a budget narrative. All applications must include the following information outlined in Section VII of the solicitation in Part IV, Program Narrative of the application.

In submitting collaborative applications between two or more organizations, the relationships among the parties must be set forth in the application. As a general rule, organizations which describe their working relationship in the development of products and the delivery of services as primarily cooperative or collaborative in nature will be considered as co-applicants. Those organizations which are primarily procuring services or products from another organization would not be considered as co-applicants. In the event of a co-applicant submission, one co-applicant must be designed as the payee to receive and disburse project funds and be responsible for the supervision and coordination of the activities of the other co-applicants. Under this arrangement each organization would agree to be jointly and severally responsible for all project funds and services. Each co-applicant must sign the SF-424 and indicate their acceptance of the conditions of joint and several responsibility with the other co-applicants.

A. Organizational Capability

Applicants must demonstrate that they are eligible to compete for this cooperative agreement on the basis of the eligibility criteria established in Section V. of this solicitation. Applicants must concisely describe how their organizational experience and capabilities will enable them to achieve the goals and objectives of this study.

In addition to the assurances provided in Part V, Assurances (SF-424), applicants must also demonstrate that their organization has or can establish fiscal controls and accounting procedures which assure that Federal funds available under this agreement are disbursed and accounted for properly.

B. Understanding a Study Goals and Objectives

Applicants must discuss their understanding of goals and objectives of the study and the nature of the phenomenon under investigation. The applicants should outline the specific study objectives that will be addressed and described the related data analysis plans. Applicants should also discuss the projects that will be developed and their potential contribution to our knowledge about the extent and nature of the problem.

C. Reponse to Research Design Issues

This section of the application will be the principal means for the applicant to demonstrate their understanding of the challenges this project poses and their ability to design a study that meets acceptable standards or research. Applicants must describe how they would address the unresolved issues raised in section III. Research Design Issues.

D. Implementation Plan

Applicants shall describe how they will allocate the available resources to implement the strategy presented in their application. Applicants must develop an implementation plan which addresses the activities and functions described in section VI. Major Responsibilities of Successful Applicant. At a minimum the plan must include:

a. An organizational chart depicting the roles and describing the responsibilities of key organizational components;

b. A list of key personnel responsible for managing and implementing the study. Applications must present position descriptions and qualifications for key personnel.

c. A concise discussion of the coordination, data collection and management and quality control issues related to the program design and how their proposal would address these issues.

d. A detailed time-task plan for the 24-month project period, clearly identifying major milestones. This must include designation of organizational responsibility and a schedule for the completion of the products identified in Section IV.B. The application must also outline the anticipated activities and milestones for the remaining 12-month budget period.

E. Budget

Applicants shall provide a detailed budget for the first 12 months of the project with a detailed justification for all costs, including the bases for computation of these costs and an estimated budget for the activities proposed to be performed during the final 12-month budget period. Applications submitted by co-applicants and/or those containing contract(s) must include detailed budgets for each organization's expenses. Applicants should highlight innovative, cost-effective measures of their proposal. In addition, applicants must submit a projected budget for the extended period.

When proposing different sample sizes, it is important to differentiate fixed and variable costs for different sample sizes given different lengths of questionnaires.

VIII. Procedures and Criterio for Selection

All applications will be evaluated and rated based on the extent to which they meet the following weighted criteria. Applications will be reviewed in terms of their responsiveness to the specifications in the solicitation; their organizational capability to achieve the goals and objectives of the study; their attention to substantive issues in the design; their implementation plan; the cost-effectiveness of the proposed budget.

A. Organizational Capability (20 Points)

The extent and quality of organizational and staff experience in the design and implementation of national surveys of comparable content and scope. Special consideration will be given to experience in research associated with the study of missing children, runaways, homeless youth and child victimization in general.

The presence and extent of adequate fiscal controls and accounting procedures to ensure that the applicant can effectively implement a project of this size and scope, and to ensure the proper disbursal and accounting of federal funds.

B. Understanding of the Problem (10 Points)

Proposals will be evaluated in terms of their understanding of both the substantive issues and the goals and objectives of the study.

C. Response to Research Design Issues (35 Points)

Responsiveness of the proposal to issues related to the research design. The clarity, comprehensiveness, and appropriateness of their preliminary research design and sampling plan for accomplishing the objectives of this study. Special consideration will be given for an applicant's responsiveness to the unresolved research design issues raised in section III.

D. Implementation Plan (20 Points)

Appropriateness of allocation of resources to accomplish the goals and objectives of the study within the initial 12-month project period. Particular attention will be paid to the clarity and reasonableness of the time-task plan which identifies organizational, and individuals' roles and responsibilities for the completion of significant tasks and development of products.

E. Budget (15 Points)

Applicants must include a 12-month budget with a detailed narrative justifying the costs as specified in section VII.E. Applications will be rated based on the cost-competitiveness, completeness, reasonableness and appropriateness of the budget in relation to the tasks to be accomplished.

Applications will be evaluated by a peer review panel. The application which receives the highest total score on the above criteria will be recommmended for funding to the Administrator, OJJDP, provided that required changes in the application can be successfully negotiated. The final decision will be made by the OJJDP Administrator.

IX. Deadline for Submission of Applications

Deadline for submission is February 27, 1987. One signed original and five copies of the application must be mailed or delivered to the Research & Program Development Division, Office of Juvenile Justice and Delinquency Prevention (OJJDP), Room 782,633 Indiana Avenue, NW, Washington, DC 20531, by 5:30 p.m. on that day. Those applications mailed to the above address must be postmarked *before* February 27, 1987. The necessary forms for applications may be obtained by writing to OJJDP. Questions regarding the solicitation may be directed to Barbara Allen-Hagen, 202/724-5929, or at the above address.

X. Civil Rights Compliance

A. All recipients of OJJDP assistance, including any contractors, must comply with the non-discrimination requirements of the Juvenile Justice and Delinquency Prevention Act of 1974 as amended; Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973 as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulations 28 CFR Part 42, Subparts C, D, E, and G.

B. In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office of Civil Rights Compliance (CRC) of the Office of Justice Programs.

C. Applicants shall maintain such record and submit to the OJJDP upon request timely, complete and accurate data establishing the fact that no person or persons will be or have been denied or prohibited from participation in, benefits of, or denied or prohibited from obtaining employment in connection with any program activity funded in whole or in part with funds made available under this program because of their race, national origin, sex, religion, handicap or age. In the case of any program under which a primary recipient of Federal funds extends financial assistance to any other recipient or contracts with any other persons(a) or group(s), such other recipient, person(s) or group(s) shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to assure its civil rights compliance obligations under any grant award.

Approved:

Verne L. Speirs,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

Dated: December 22, 1986.

John J. Wilson,

Certifying Officail

[FR Doc. 86-29204 Filed 12-29-86; 8:45 am]

BILLING CODE 4410-18-M

Drug Enforcement Administration

Quotas for Controlled Substances in Schedules I and II

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of established 1987 aggregate production quotas.

SUMMARY: This notice establishes 1987 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act.

DATE: This order is effective upon publication.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, 1405 I Street NW., Washington, DC 20537, Telephone: (202) 633-1366.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S. Code 826) requires that the Attorney General establish aggregate production quotas for all controlled substances listed in Schedules I and II each year. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration (DEA) by § 0.100 of Title 28 of the Code of Federal Regulations.

On Wednesday, September 24, 1986, a notice of the proposed 1987 aggregate production quotas for certain controlled substances in Schedules I and II was published in the **Federal Register** (51 FR 33936). All interestd parties were invited to comment on or object to those proposed aggregate production quotas on or before October 24, 1986.

As to methylphenidate, Ciba-Geigy, through counsel, has filed objections and comments to the proposed aggregate production quota for 1987. MD Pharmaceutical, through counsel, also filed objections and comments and requested a hearing on the proposed aggregate production quota. Issues relative to the 1986 aggregate production quota and individual manufacturing quotas for methylphenidate are currently in litigation before an Administrative Law Judge. *In the Matter of Methylphenidote Quotas—1986*, Docket No. 86-52. It would be premature for DEA to grant MD Pharmaceutical's request for a hearing until the conclusion of the proceedings concerning the 1986 methylphenidate quotas. Similarly, it would be premature to respond to the objections and comments raised by Ciba-Geigy until the conclusion of the 1986 methylphenidate quota proceedings. In order to ensure that these firms manufacturing methylphenidate may remain in production during the pendency of the hearings concerning the 1986 quotas, a final initial aggregate production quota will be established for this interim period. No other comments were received.

Pursuant to sections 3(c)(3) and 3(e)(2)(b) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Therefore, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S. Code 826) and delegated to the Administrator of the Drug Enforcement Administration by § 0.100 of Title 28 of the Code of Federal Regulations, the Administrator of the Drug Enforcement Administration hereby orders that the 1987 aggregate production quotas for Schedules I and II controlled substances, expressed as grams of anhydrous acid or base, be established as follows:

Basic Class and Established 1987 Quotas

Schedule I:	
Alfentanil	10,000
2,5-Dimethoxyamphetamine	10,500,000
Lysergic Acid Diethylamide	18
3-4-Methylenedioxyamphetamine	5
3,4-Methylenedioxymethamphetamine	5
Tetrahydrocannabinols	30,000
Schedule II:	
Amobarbital	887,000
Amphetamine	325,000
Cocaine	800,000
Codeine (for sale)	58,001,000
Codeine (for conversion)	4,064,000
Desoxyephedrine	1,360,000
1,300,000 grams for the production of levodesoxyephedrine for use a noncontrolled, nonprescription product and 60,000 grams for the production of methamphetamine.	
Dextropropoxyphene	69,637,000
Dihydrocodeine	823,000
Dihydrocodeine (for conversion)	129,000
Diphenoxylate	584,000
Ecgonine (for conversion)	650,000
Fentanyl	5,800
Hydrocodone	1,859,000
Hydromorphone	196,000
Levorphanol	22,500
Meperidine	11,282,000
Methadone	1,510,000
Methadone Intermediate (4-Cyano-2-dimethyl-amino-4,4-diphenylbutane)	1,886,000
Methamphetamine (for conversion)	1,938,000
Methylphenidate	1,566,000
Mixed Alkaloids of Opium	10,500
Morphine (for sale)	2,078,000
Morphine (for conversion)	62,557,000
Opium (tinctures, extracts, etc. expressed in terms of USP powdered opium)	1,506,000
Oxycodone (for sale)	2,333,000
Oxycodone (for conversion)	256,000
Oxymorphone	2,500
Pentobarbital	12,000,000
Phencyclidine	47
Phenmetrazine	100,000
Phenylacetone (for conversion)	755,000
1-Piperidinocyclohexanecarbonitrile [for conversion)	54
Secobarbital	1,963,000
Sufentanil	300
Thebaine	6,954,000

DEA will review the above established quotas early in 1987 to take into consideration actual 1986 sales and actual December 31, 1986 inventories as well as other information which might be available to DEA. At that time, DEA will again consider those comments received in response to the proposal of September 24, 1986.

Dated: December 9, 1986.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 86-29096 Filed 12-29-86; 8:45 am]

BILLING CODE 4410-09-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee on Metal Components; Meeting

The ACRS Subcommittee on Metal Components will hold a meeting on January 15 and 16, 1987, Room 1046, 1717 H Street, NW, Washington, DC

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Thursday, January 15, 1987—8:30 A.M. until the conclusion of business

Friday, January 16, 1987—8:30 A.M. until the conclusion of business

The Subcommittee will: (1) Hear a status report of the Whipjet program (application of broad scope GDC-4 criteria) as applied to lead plant Beaver Valley Unit 2; (2) review public comments on NUREG-0313, Revision 2 (long range fix for BWR-IGSCC problems), and (3) review other related matters i.e., Surry feedwater pipe failure and its licensing implications.

Oral statement may be presented by members of the public with concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff members as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussion with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Elpidio Igne (telephone 202/634-1414) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: December 23, 1986.

Morton W. Libarkin,

Assistant, Executive Director for Project Review.

[FR Doc. 86-29101 Filed 12-29-86; 8:45 am]

BILLING CODE 7590-01-M

Bi-Weekly Notice; Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (Pub. L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular bi-weekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the

Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This bi-weekly notice includes all amendments issued, or proposed to be issued, since the date of publication of the last bi-weekly notice which was published on December 17, 1986 (51 FR 45191), through December 18, 1986.

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless is receives a request for a hearing.

Comments should be addressed to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

By January 30, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitoner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonble specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisifies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazard consideration, the Commission may issue the amendment and make it immmediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the peitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Branch Chief*): Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this notice **Federal Register**. A copy of the petition should also be sent to the Executive Legal Director, U.S.Nuclear Regulatory Commission, Washington,

DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i) through (v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Arizona Public Service Co. et al., Docket Nos. STN 50–528 and STN 50–529, Palo Verde Nuclear Generating Station (PVNGS), Units Nos. 1 and 2, Maricopa County, AZ

Date of amendment request: July 14, 1986, as supplemented December 2, 1986.

Description of amendment request: The proposed amendment would modify the Technical Specifications (Appendix A to Facility Operating Licenses No. NPF–41 for PVNGS Unit 2) to delete Technical Specifications ¾.3.3.3.7, ¾.7.11, ¾.7.12, B ¾.3.3.7, B ¾. 7.11 and B ¾.7.12. These Technical Specifications deal with the fire protection program. The fire protection program is covered by operating license conditions (NPF–41, Paragraph 2.C.7 and NPF–51, Paragraph 2.C.6) and is described in the Final Safety Analysis Report. The license conditions ensure that the fire protection program will be maintained as it is currently constituted. Approval of the amendment request would enable the licensees to make minor changes to the fire protection program without requiring a formal Technical Specifications change.

The proposed amendment would add Technical Specification 6.9.3 on each unit to require reporting in accordance with 10 CFR 50.73 of violations of the requirement of the fire protection program described in the Final Safety Analysis Report which would have adversely affected the ability to achieve and maintain safe shutdown in the event of a fire.

The proposed amendments would revise Unit 1 operating license (NPF–41) condition 2.C.(7) to requir the licensees to implement and maintain in effect all provisions of the approved fire protection program as described in the Final Safety Analysis Report, and to allow the licensees to make changes to the approved fire protection program without prior approval of the NRC only if those changes would not adversely affect the ability to achieve and maintain safe shutdown in the event of a fire.

NRC Generic Letter 86–10, dated April 24, 1986, provided guidance to licensees to request a revised fire protection license condition and to request removal of the Fire Protection Technical Specifications. The licensees' proposed amendment is in response to that Generic Letter.

Basis for proposed no significant hazards considerotion determination. The Commission has provided standards for determining whether a significant hazards consideration exists in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed changes do not significantly increase the probability or consequences of an accident previously evaluated, because no changes to safety systems or setpoints are proposed. The proposed changes relocate the fire protection program from the Technical Specifications to the FSAR. This change will not affect the functioning of the fire protection program, which will be maintained pursuant to the facilities' operating licenses. No change will be made to the program that conflicts with the requirements of the licenses.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated, because these changes do not affect the operation or function of any safety-related equipment. The fire protection program requirements will continue to be maintained. No new modes of operation are being introduced. The fire protection program will still have adequate controls under the provisions of the license conditions. Eliminating the specific fire protection requirements of the Technical Specifications will not introduce the possibility for a new or different kind of type of accident.

The proposed changes do not involve a significant reduction in a margin of safety because the program is to remain unchanged. For any future changes to the program, the requirements of the license conditions and the FSAR will be upheld.

Based on the above considerations, the Commission proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Attorney for licensees: Mr. Arthour C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

NRC Project Director: George W. Knighton.

Commonwealth Edison Co., Docket No. 50–373, La Salle County Station, Unit 1, La Salle County, IL

Date of amendment request: December 15, 1986.

Description of amendment request: This proposed amendment, if approved, would revise the La Salle Unit 1 Operating License No. NPF–11 by modifying, for only 1 Cycle (Cycle 2), Technical Specifications 3/4.1.3.2, 3/4.1.3.3, 3/4.1.3.4, and 3/4.1.3.6. The licensee is requesting the approval to allow operation with the Control Rod Drive (CRD) 10–47 withdrawn for the remainder of this cycle.

On November 22, 1986, while performing the surveillance test required of CRDs on Unit 1, CRD 10–47 became uncoupled (loss of position 48 indication and receipt of the overtravel alarm). Rod 10–47 was inserted to position 44 to recouple. Upon withdrawal, the drive failed to reach position 48 (full out). Subsequent trouble shooting revealed the following:

a. The blade was following the drive (verified by neutron monitoring),

b. The drive could not be moved to position 48 or overtravel, but only to position between 47 and 48 (the overtravel alarm was never received again following the initial uncoupling event, position 48 position lights up, but neither position 48 or the rod fully withdrawn indicators light up), and

c. Coupling verification cannot be performed by the normal method (with the drive at position 48, demanding a single notch withdrawal and verifying that the drive does not go into the overtravel position). CRD 10–47 has been fully inserted (along with its three symmetric drives). This complies with Technical Specification 3.1.3.6.

The licensee is requesting modification because the present neutronic configuration in the core will be affecting its refueling process in the future if these CRD are held in the core for the rest of this cycle. The licensee has looked into correcting this problem, but the only solution is to remove the reactor head and remove the CRD from above, which is a very time consuming process. In addition, the licensee is proposing the following contingency actions to minimize the impact of this perturbation:

(1) CRD 10–47 will be fully inserted and disarmed when less than or equal to 20 percent power. This negates any rod drop accident concerns which have a major impact at low power.

(2) During the withdrawal of CRD 10–47 to its present core assignment position (46), neutron instrumentation (local power range monitor and traversing incore probe) will be monitored to verify that the control blade is following the drive. If the neutron instrumentation response does not verify that the rod is following the drive, CRD 10–47 will be inserted into the core.

(3) CRD 10–47 will be exercised weekly.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined, and the staff agrees, that the requested amendment per 10 CFR 50.92 does not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because the probability or consequence of a Control Rod Drop Accident is not increased since CRD 10–47 will be inserted when the unit is at less than or equal to 20 percent power, which is when the impact of a Control Rod Drop Accident is most severe; and neutron instrumentation response will be verified when the CRD (10–47) is withdraw at greater than 20 percent power. Should instrumentation response not occur during the withdrawal of CRD 10–47, the rod will be inserted. Degradation of scram performance is not expected; however, scram times of CRD 10–47 will be monitored and conservatively measured for surveillance purposes.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because all possible combinations of accidents involving potentially uncoupled rods have been analyzed and the analysis provided the basis for the Control Rod Drop Accident. That event is discussed in item 1 above.

3. Involve a significant reduction in the margin of safety because the Bank Position Withdrawal Sequence rules allow for the rod to be inserted to position 00 and still be in an analyzed condition. Verification of instrumentation response ensures rod following when the drive is withdrawn. Degradation of scram performance is not expected; however, scram times of CRD 10–47 will be monitored and will be conservatively measured for surveillance purposes.

Accordingly, the Commission proposes to determine that the requested change to the La Salle Unit 1 involves no significant hazards considerations.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Attorney for the Licensee: Isham, Lincoln and Burke, Suite 840, 1120 Connecticut Avenue, NW., Washington, DC 20036.

NRC Project Director: Elinor Adensam.

Commonwealth Edison Co., Docket Nos. 50–295 and 50–304, Zion Nuclear Power Station, Unit Nos. 1 and 2, Benton County, IL

Date of application for amendments: October 10, 1986.

Description of amendments request: These amendments would correct an error in the existing Technical Specifications involving the calculated value for K(z) at the twelve foot level shown on Figure 3.2–9.

The following tracks the acceptance and use of a 1.42 "Fq x P" value for Zion fuel at the 12' level for the Small Break Loss-of-Coolant Accident (SBLOCA) line of the Hot Channel Factor Operating envelope, and supports the correction of the recent error discovered in Zion Technical Specification K(z) curve, Figure 3.2–9.

The SBLOCA was reanalyzed for Zion Unit 1 Cycle 2 to accommodate an increase in the LOCA K(z) envelope third line segment from (12', 0.44) to (12', 0.63) for a maximum Fq at rated power of 2.25 (Reference (1)). The K(z) values are normalized Fq(z) values for the "Heat Flux Hot Channel Factor Normalized Operating Envelope". In order to calculate K(z) at the 12' level, you would take the Fq(12') and divide by the maximum Fq. As the K(z) value, not the actual Fq value, was reported for the 12' level in the Zion Unit 1 Cycle 2 RSE, as 12' Fq would be back calculated as such:

@12':

K(z)=Fq(z)/max Fq

0.63=Fq(12')/2.25

Fq(12')=1.4175

The Reference (1) RSE was submitted to the NRC and, as part of their review, CECo was requested to provide additional SBLOCA information. The additional information requested by the NRC was provided in Reference (2). Reference (3), in part, provided NRC approval for a Zion Unit 1 Cycle 2 revised K(z) third line segment. In none of the first 3 references was the actual 12' level Fq value of 1.42 reported, only the K(z) value.

Technical Specifications require normalized Fq values for the K(z) curve but the SBLOCA analysis is performed using the un-normalized Fq value. The 1975 SBLOCA analysis has an actual Fq of 1.42 (Reference (4)) but it is standard practice to report a K(z) value that is normalized to the max Fq and then rounded down to two decimal places. As such, the value for the 12' K(z) is 0.6311+ but was reported as 0.63. It was because CECo had conservatively calculated the 12' Fq as 1.4175 (see above) that Westinghouse issued the Reference (4) letter (attached), and it was that reference for which an internal file search showed that the SBLOCA 12' operating envelope endpoint first appeared as a 1.42 Fq, not the rounded 0.63 K(z) or its back calculated Fq equivalent.

Thus, the current, correct value of K(z) at the 12' level is simply obtained by:

$$\frac{1.412}{2.32} = 0.612$$

References

(1) Reload Safety Evaluation for Zion Nuclear Power Plant Unit 1, Cycle 2 dated November 1975.

(2) CECo Response to NRC Request for Additional Information, G. L. Plimi to R. A. Purple dated April 19, 1976.

(3) NRC/SER dated May 12, 1976 Supporting Amendment Nos. 20/17 to Facility Operating Licenses DPR–39 and 48.

(4) Westinghouse Letter 82CW*–G–080, J. M. Corkle to H. E. Bliss dated May 21, 1982; Subject—"K(z) LOCA Envelope for Zion".

Basis for proposed no significant hazards considerotion determination: The Commission has provided standards for determining whether a

significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility or a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided the following discussion regarding the above three criteria:

Criterion 1

This change involves correcting an error in the upper core line segment of the Normalized Hot Channel Factor (K[z]) curve. This conservative reduction has the effect of restricting the allowable power densities in the upper 1.2 feet of the core to ensure that the core is operating within the bounds of Zion's safety analyses. This restriction ensures that all postulated Loss of Coolant Accidents (LOCA) will produce results that are bounded by the current LOCA analyses.

In addition, the correction of this error has no effect on probability of a primary system pipe rupture, which is the accident of interest. There is no relationship between the allowable power density in the upper 1.2 feet of Zion's reactor core and the integrity of the reactor coolant system.

Thus, this proposed amendment has no effect on the probability or consequences of any previously evaluated accident.

Criterion 2

The reduction in the allowable power densities in the upper 1.2 feet of Zion's reactor cores have no effect on any of Zion's systems. In addition, this power produced in this region is transmitted directly to the surrounding coolant. Thus, a slight reduction in the local heat transfer to the reactor coolant will not produce any effects or perturbations that might induce the failure or malfunction of another component.

The integrity of the upper segment of Zion's core is postulated to be threatened by the occurrence of DNB following LOCAs and such events as uncontrolled rod withdrawal, and excessive load increase. The pre-existing protective features for this class of events will not be altered by this proposed change. Based upon the lack of system and component interaction discussed above the specific accident sequences contained in the Zion Safety Assessment will not be affected by the reduction in the allowable power densities in the upper 1.2 feet of Zion's core.

This proposed change is more conservative than the current, erroneous Technical Specification. Thus, the exclusion of a small segment of operating flexibility cannot have any effect on plant operation.

Based upon the above discussion, this proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3

This proposed change is more conservative than the current Technical Specifications. It will require the maintenance of lower power densities in the upper core regions than is currently allowed. However, this change will also correct an error in the Technical Specifications, making it consistent with the assumptions contained in Zion's safety analyses.

Thus, the margin of safety will be increased to a level consistent with Zion's LOCA analyses as a result of this change.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. This proposed change corrects an error in the current Figure 3.2–9. Thus, example (i) is applicable in this instance. Example (i) states:

(i) A purely administrative change to Technical Specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature.

Accordingly, the Commission proposes to determine that the proposed changes to the Technical Specification involve no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Attorney to licensee: P. Steptoe, Esq., Isham, Lincoln and Beale, Counselors at Law, Three First National Plaza, 51st Floor, Chicago, Illinois 60602.

NRC Project Director: Steven A. Varga.

Connecticut Yankee Atomic Power Co., Docket No. 50–213, Haddam Neck Plant, Middlesex County, CT.

Dote of amendment request: November 24, 1986.

Description of amendment request: The proposed amendment would change the expiration date for the Haddam Neck Plant Operating License, DPR–61, from May 26, 2004 to June 29, 2007, forty years from its June 30, 1967 issuance.

Basis for proposed no significant hazards consideration determination: The currently licensed term for the Haddam Neck Plant is 40 years commencing with issuance of the construction permit (May 26, 1964). Accounting for the time that was required for plant construction, this represents an effective operating license term of 37 years for the Haddam Neck Plant. The Connecticut Yankee Atomic Power Company (the licensee) application requests a 40-year operating license term for the Haddam Neck Plant.

The licensee's request for extension of the operating license is based primarily on the fact that a 40-year service life was considered during the design and construction of the plant. Although this does not mean that some components will not wear out during the plant lifetime, design features were incorporated which maximize the inspectability of structures, systems and equipment. Surveillance and maintenance practices, which are implemented in accordance with the ASME code and the facility technical specifications, provide assurance that any unexpected degradation in plant equipment will be identified and corrected.

The original design of the reactor pressure vessel (RPV) and associated internals considered the effects of thirty (30) years of operation at full power with a plant capacity factor of 90% (27 Effective Full Power Years (EFPY)). Analyses, however, have demonstrated that the RPV is qualified for at least forty (40) years of operation at full power with a plant capacity factor of 80% (32 EFPY). First, CYAPCO evaluated expected cumulative neutron fluences over a forty-year service life and concluded that this will not be a limiting consideration. CYAPCO submitted informatioin to the NRC to demonstrate that the Haddam Neck RPV complies with the final rule governing assessment of pressurized thermal shock for at least a 40-year period of operation and confirms that the RPV complies with 10 CFR Part 50, Appendix G, relative to the shift in nil-ductility reference temperature for 32 EFPY. In addition, the Haddam Neck RPV surveillance progrram set forth in Section 4.10 of the technical specifications monitors the radiation-induced changes in the mechanical and impact properties of pressure vessel materials in accordance with 10 CFR Part 50, Appendix H. This program provides a means of monitoring the cumulative effects of power operation.

The licensee has performed aging analyses for all safety-related electrical equipment in accordance with 10 CFR 50.49, "Environmental qualification of electrical equipment important to safety for nuclear power plants," identifying qualified lifetimes for this equipment. These lifetimes will be incorporated into plant equipment maintenance and replacement practices to ensure that all safety-related electrical equipment remains qualified and available to perform its safety function regardless of the overall age of the plant.

Based upon the above, the licensee concluded that extension of the operating license for the Haddam Neck Plant to allow a 40-year service life is consistent with the safety analysis in that all issues associated with plant aging have already been addressed. Since the proposed amendment involves no changes in the technical specifications or safety analyses, the licensee conclude that the proposed amendment would not: (i) Involve any significant increase in the probability or consequences of an accident previously evaluated; or (ii) create the possibility of a new or different kind of accident from any accident previously evaluated; or (iii) involve any reduction in the margin of safety.

The staff has reviewed the licensee's determination and concur with its conclusions. Therefore, based on the above, the Commission proposes to determine that the proposed amendment, which would provide a 40 year operating life for the Haddam Neck Plant, involves no significant hazards considerations.

Local Public Document Room location: Russell Library, 123, Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry, and Howard, Counselors at Law, City Place, Hartford, Connecticut 01603–3499.

NRC Project Director: Christopher I. Grimes.

Consumers Power Co., Docket No. 50–255, Palisades Plant, Van Buren County, MI

Dote of amendment request: December 19, 1985.

Description of amendment request: The proposed changes to the Technical Specifications would delete out of date footnotes and incorrect references to a motor control center.

Basis for proposed no significant hazards determination: The staff has evaluated the proposed amendment and determined that it involves no significant hazards consideration. In accordance with the criteria set forth in 10 CFR 50.92(c), the proposed amendment does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed amendment merely deletes out of date footnotes that are no longer applicable and deletes references to an incorrect motor control center. Specifically with regard to the latter, the proposed amendment recognizes references to an incorrect motor control center (MCC–9), and further recognizes that the inclusion of the correct motor control center (merely a location descriptor), would be unnecessary. The proposed changes have no impact on plant design or operations; hence, the probability or consequences of previously evaluated accidents are unrelated.

(2) Create the possibility of a new different kind of accident previously evaluated because the proposed amendment does not introduce any new equipment or modes of operation at the Palisades Plant that could create the possibility of a new or different kind of accident from that which was previously evaluated.

(3) Involve a significant reduction in the margin of safety, because these changes are considered to be administrative. There are no changes being made to hardware or in the manner that plant systems are being operated as a result of this license amendment. Therefore, the margin of safety is not being compromised or changed.

Furthermore, the proposed amendment fits example (i) of the types of amendments that are considered not likely to involve significant hazards considerations published in the **Federal Register** on March 6, 1986 (51 7751), in that it is considered to be a purely administrative change to the Technical Specifications, i.e., a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature.

Based on the preceding assessment, the staff proposes to determine that this proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esquire, Consumer Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: Ashok C. Thadani.

Consumers Power Co., Docket No. 50–255, Palisades Plant, Van Buren County, MI

Date of amendment request: September 29, 1986.

Description of amendment request: This amendment request supersedes in its entirety the request dated January 11, 1985 which superseded a request dated December 20, 1982. The December 20, 1982 request was noticed in the **Federal Register** on October 26, 1983 (48 FR 49582). Due to the multiple number of superseding submittals and the length of time that has passed since the initial notice, the staff has chosen to re-notice the request. The proposed changes involve the Technical Specifications for Administrative Controls. The requested changes would clarify existing requirements, bring closer agreement to the terminology of the NRC Standard Technical Specifications, incorporate overtime work limitations stated in NRC Generic Letter 82–12, change the titles of some of the staffing positions, and modify the minimum shift crew according to the requirements of 10 CFR 50.54(m).

Basis for proposed no significant hazards determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards consideration. In accordance with the criteria set forth in 10 CFR 50.92(c), the proposed amendment does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed amendment merely involves changes in nonemclature and format for closer consistency with the NRC Standard Technical Specifications and current organizational reporting relationships and titles within the plant and corporate relationships. The proposed change also incorporate current regulatory requirements related to staff working hours (NUREG–0737, Item I.A.1.3.) and shift manning (10 CFR 50.54(m)). The deletion of requirements related to Environmental Qualification and Primary System Surveillance Evaluation and Review that have become obsolete by NRC regulations as well as other redundant specifications has also been proposed. The proposed changes have not impact on plant design or operation; hence, the probability or consequences of previously evaluated accidents are unaltered.

(2) Create the possibility of a new or different kind of accident previously evaluated because the proposed amendment does not introduce any new equipment or modes of operstion at the

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Palisades Plant that could create the possibility of a new different kind of accident from that which was previously evaluated.

(3) Involve a significant reduction in the margin of safety, because these changes are considered to be administrative. There are no changes being made to hardware or in the manner that plant systems are being operated as a result of this license amendment. Therefore, the margin of safety is not being operated as a result of this license amendment. Therefore, the margin of safety is not being compromised or changed.

Furthermore, the proposed amendment fits example: (i) Of the types of amendments that are considered not likely to involve significant hazards considerations published in the Federal Register on March 6, 1986 (51 FR 7751), in that it represents a purely administrative change to technical specifications, i.e., a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature.

Based on the preceding discussion, the staff proposes to determine that this proposed amendment involves no significant hazards consideration.

Local Public Document Room location Van Zoeren Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esquire, Consumer Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director Ashok C. Thadani.

Detroit Edison Co., Docket No. 50-341, Fermi-2, Monroe County, MI

Dates of amendment request February 4, 1986, and June 7, 1986.

Description of amendment request. This proposed amendment, if approved, would revise the Fermi-2 Operating License No. NPF-43 Plant Technical Specification Table 3.6.3.-1 entitled, "Primary Containment Isolation Valves," to delete isolation valve numbers T50-406A and T50-406B from the Primary Containment Monitoring Systems (PCMS).

The PCMS is used to continuously monitor hydrogen and oxygen concentration in the containment drywell during a LOCA and during a post-LOCA event. Valves Nos. T50-406A and T50-406B remote-manual isolation valves used in that system. At the time of Fermi-2 licensing, the PCMS was not environmentally qualified to meet the requirements of IEEE 323-1974, IEEE 344-1975 and NUREG-0588; and the operating license was granted to the licensee based on its commitment to environmentally qualify the PCMS post-licensing. The PCMS has been upgraded accordingly, but, as a result of the modifications made to meet environmental qualification requirements, the valves in question are no longer required for containment isolation. At present, the PCMS sample line in which these two valves are installed has been sealed closed by weld-capping. The Technical Specification change proposed would enable both valves to be removed from the PCMS and the sample line permanently weld-capped.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The license has determined that the change proposed to Technical Specification Table 3.6.3-1: (1) does not involve a significant increase in the probability or consequences of an accident previously evaluated, because elimination of the containment isolation valves would not increase the probability or consequences of an accident evaluated in the FSAR. Instead, elimination of these valves would be expected to reduce the probability of releases of radioactivity due to the elimination of active containment isolation components which could fail. Radioactive release through containment leakage would also be expected to decrease due to the elimination of a potential leak path; (2) does not create the possibility of a new or different kind of accident from any previously evaluated because the containment isolation function that the two valves being deleted served will be provided by other isolation valves in the PCMS upstream of the deleted valves; and (3) does not involve a significant reduction in safety margin for the reasons stated in (1) and (2), in that permanent capping of the line will provide an equivalent of safety to that provided by the isolation valve if not an increased margin of safety.

The Commission agrees with the licensee's determinations and proposes to determine that the requested change does not involve a significant hazards consideration.

Local Public Document Room location Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for the Licensee John Flynn, Esq., 2000 Second Avenue, Detroit, Michigan 48226.

NRC Project Director Elinor Adensam.

Florida Power and Light Co., Docket Nos. 50-250 and 50-251, Turkey Point Plant Unit 3 and 4, Dade County, FL

Date of amendments request August 25, 1986 and supplemented on November 14, 1986.

Description of amendments request: The proposed amendment modifies the technical specification Limiting Condition for Operation (LCO) for the control room ventilation system to allow implementation of modifications required to satisfy NUREG-0737, control room habitability concerns. NUREG-0737 NRC Task Action Plan Item III.D.3.4, Control Room Habitability, requred that licenses assure that control room operators will be adequately protected against the effects of accidental releases to toxic and radioactive gases, and that the nuclear power plant can be safety operated or shut down under design basis accident conditions (Criterion 19—Control Room, of Appendix A, General Design Criteria for Nuclear Power Plants, to 10 CFR Part 50).

Florida Power and Light (FPL), in letters dated July 9, 1981, June 9 and July 22, 1982, August 8 and November 3, 1983, and April 17, 1985, provided responses to the NUREG-0737 control room habitability concerns, and proposed modifications to meet the criteria identified in NUREG-0737, Item III.D.3.4. The NRC, in safety evaluations dated November 25, 1983, and May 8, 1985, concluded that the control room ventilation system modifications proposed by FPL were acceptable.

Modification of the control room ventilation system to implement control room habitability requirements will require that the system be out of service for period of up to 45 days. The current technical specifications specify that the control room ventilation system can be inoperable (during power operation) for a period of 3½ days. A one time additional 45 day LCO in conjunction with the current 3½ day LCO is necessary to permit implementation of the required modifications without forcing a dual unit outage.

Basis for proposed no significant hazards consideration determination:

The proposed changes to the Turkey Point Technical Specifications are:

Pages 3.4-6, 3.4-7

The technical specification for the control room ventilation system (T.S. 3.4.7) is revised to permit the system to be inoperable for up to 45 days to implement the NUREG-0737, Item III.D.3.4., Control Room Habitability modifications.

The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Operation of Turkey Point Units 3 and 4 in accordance with the proposed amendment would *not*:

(1) Involve a significant increase in the probability or consequence of an accident previously evaluated. During the period the control room ventilation system will be inoperable, normal operation of the system (i.e. temperature/humidity control and maintenance of a positive pressure in the control room) will be minimally impacted by implementation of the modifications. Portions of the control room ventilation system duct work will be temporarily sealed while the emergency recirculation portion of the system is being modified. Failure of equipment associated with normal operation of the system would not be more likely during the modification period.

As stated, the modifiction will primarily be confined to the emergency recirculation portion of the system, whose function is to ensure that the control room will remain habitable during and following design basis accident conditions. Under the current design, post-accident control room habitability is ensured by automatic actuation of the control room HVAC system to the emergency recirculation mode of operation in response to a containment ventilation isolation signal. Approximately 250 cfm of outside air makeup is obtained to provide a positive control room pressure, thereby minimizing the amount of unfiltered in-leakage and ensuring an acceptable control room environment. A temporary filtration system consisting of a high efficiency particulate air (HEPA) and charcoal filter, unit, together with an air supply fan and interconnecting duct assembly, will be installed to ensure a commensurate degree of protection during the 45 days period required to implement the modifications. This temporary system provides an alternate means of maintaining control room habitability under accident conditions.

Therefore, operation of the facility in accordance with proposed change does not affect the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. As noted above, the modification is primarily confined to the emergency recirculation portion of the system whose function is to ensure that the control room will remain habitable during and following design basis accident conditions. The temporary system ensures a commensurate degree of protection for the time required to implement the modifications. The loss of the temporary system would result in the same consequences as considered for loss of the emergency recirculation portion of the original system. Therefore, operation of the facility in accordance with the proposed change does not create the possibility of a new or different accident from any accident previously evaluated.

(3) Involve a significant reduction in a margin of safety. Design requirements for the temporary filtration system, including system sizing, air flow requirements, and filter unit efficiency, will be sufficient to ensure that radiation exposure to control room personnel under accident conditions will be consistent with the requirements for the existing recirculation system and General Design Criterion 19 (GDC-19) of Appendix A to 10 CFR Part 50. The temporary system will operate continuously during the modification period, be powered from existing safety-related busses, require no manual operator actions, operators will be trained and temporary procedures will be in place.

The temporary system will be periodically tested and operability maintained in accordance with the current Technical Specification requirements. Both the design and operation of the temporary system will ensure a commensurate degree of protection for the required time, thus maintaining the margin of safety. Therefore, operation of the facility in accordance with the proposed changes does not involve a reduction in margin of safety.

Based on the above discussion, operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated, or create the possibility of a new or different kind of accident from any accident previously evaluated, or involve a significant reduction in a margin of safety. Therefore, the staff proposes to determine that the proposed amendments do not involve a significant hazards consideration.

Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzer, P.C., 1615 L Street, NW., Washington, DC 20036.

NRC Project Director: Lester S. Rubenstein.

GPU Nuclear Corp., et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, PA

Date of amendment request. November 3, 1986.

Description of amendment request. The proposed amendment revises the TMI-1 Technical Specifications (TSs) to support the core reload for Cycle 6 operation. The core design changes for Cycle 6 include an increase in cycle lifetime to 425 effective full power days (EFPDs) with the incorporation of burnable poison rod assemblies (BPRAs) to aid in reactivity control and the use of gray axial power shaping rods (APSRs). The fresh fuel in hydraulically and geometrically similar to the irradiated fuel remaining from previous cycles. The fresh fuel has a slightly higher initial fuel enrichment than previous fuel. The proposed TS revisions account for changes in power peaking and control rod worths for Cycle 6. A Cycle 6 specific analysis was conducted to generate TS Limiting Conditions for Operation. Additionally, revised reactor protection system instrumentation errors specific to TMI-1 instruments and based on updated Babcock & Wilcox (B&W) error combination methods were used to establish Cycle 6 setpoint limits.

Basis for proposed no significant hazards consideration determination. The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if it meets three standards as described in 10 CFR 50.92. The Commission's staff has reviewed the licensee's analysis concerning no significant hazards considerations and

finds their analysis satisfactory. Each standard is discussed in turn.

Standard 1

The proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. The licensee reviewed the TMI–1 Final Safety Analysis Report (FSAR) Chapter 14 accidents that depend upon core reactivity parameter changes to determine the effects of the Cycle 6 reload. The licensee used standard analytical techniques and codes previously approved by the Commission for their analysis. Except for accidents affected by core isotopic inventory, the licensee's analysis concludes that reload dependent events are bounded by the original Chapter 14 FSAR analyses. Accidents affected by core isotopic inventory changes include loss of electric power, steam generator tube failure, fuel handling accident, maximum hypothetical accident, loss of coolant accident (LOCA), waste gas tank rupture, and control rod ejection. These transients and accident analyses are still bound by thermal and reactivity assumptions in the original safety analysis but show increases in radiological considerations. Specifically, the projected thyroid dose for FSAR Chapter 14 accidents affected by isotopic inventory changes increase by a maximum of 17% for Cycle 6 compared to the original licensing basis. This 17% increase does not represent a change due solely to the Cycle 6 reload but is the result of fuel management changes over the last two cycles. The increases were predicted to occur due to the fuel management changes which commenced for Cycle 4. The limit of 10 CFR Part 100 for projected thyroid dose in a maximum of 300 REM. For six of the seven accidents of concern, the FSAR Chapter 14 analysis predicts a thyroid dose of less than 11 REM. A 17% increase in these cases remains well within the limits of 10 CFR Part 100 and is not significant. For the remaining accident, a LOCA, the analysis results are not affected by reload specific changes since a generic type analysis is conducted. Therefore, the amendment would not involve a significant increase in the probability or consequences of accidents previously evaluated.

Standard 2

The proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. Cycle 6 is designed as a standard B&W in-out-in low leakage core. The controlling reactivity dependent parameters are bounded by FSAR Chapter 14 accident analyses. Cycle 6 fresh fuel assemblies are hydraulically and geometrically similar to previously irradiated fuel assemblies. Therefore, operation in accordance with the proposed amendment for Cycle 6 would not create the possibility of a new or different kind of accident from any accident previously evaluated.

Standard 3

The proposed amendment would not involve a significant reduction in a margin of safety. Cycle 6 characteristics are conservative with respect to previous accident analyses. As discussed in Standard 1, there is a project increase in thyroid exposure for accidents affected by isotopic inventory changes, but this increase in thyroid exposure is not significant as the final result is still well within 10 CFR Part 100 limits. Safety criteria, as described in the TS basis, are preserved by the revised limits. Therefore, Cycle 6 operation would not involve a significant reduction in a margin of safety.

Accordingly, based on the above discussions, the Commission proposes to determine that the proposed amendment does not involve significant hazards considerations.

Local Public Document Room location. Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Attorney for licensee. Ernest L. Blake, Jr., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director. John F. Stolz.

Kansas Gas and Electric Co., Kansas City Power and Light Co., Kansas Electric Power Cooperative, Inc., Docket No. 50–482, Wolf Creek Generating Station, Coffey County, KS

Date of amendment request: November 7, 1986.

Description of amendment request: The purpose of the license amendment request to incorporate technical specification LCO and surveillance requirements for the steam generator Atmospheric Relief Valves (ARVs) into the Wolf Creek Operating license is to assure the availability of mitigating equipment assumed in the Steam Generator Tube Rupture (SGTR) analysis. The technical specification requirements constitute additional limitations on facility operations and satisfy, in part, the specific requirements of License Condition 2.C (11) of the operating license. No requirements on ARV operability have been included in the existing Wolf Creek Technical Specifications because the ARVs have not been required in the mitigation of postulated accidents and transients.

Basis for proposed no significant hazards consideration determination: In accordance with the requirements of 10 CFR 50.92, the licensee has submitted the following no significant hazards determination:

The proposed Technical Specifications for steam generator Atmospheric Relief Valves (ARV's) incorporate new requirements into the Wolf Creek Operating License. These requirements constitute additional limitations on facility operations to assure operability of the ARV's and to impose operating restrictions if less than the required number of ARV's is available.

The proposed specifications do not involve a significant hazards consideration because operation of Wolf Creek Generating Station (WCGS) in accordance with the proposed requirements would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The ARV's are not relied upon for mitigation of accidents or transients, other than the Steam Generator Tube Rupture (SGTR) event, previously evaluated in the WCGS Final Safety Analysis Report (FSAR). The Limiting Conditions for Operation (LCO) do not alter the manner in which ARV operation was considered in previous accident and transient analyses. Surveillance testing of ARV's, which involves stroke testing, is performed (in accordance with existing surveillance test program procedures) with the block valves closed. Thus, a plant transient is precluded. To assure that the ARV's are available for mitigation of a postulated SGTR event, the proposed specifications establish surveillance requirements and restrictions on ARV operability consistent with the assumptions used in the SGTR event analysis submitted to the NRC in accordance with WCGS License Condition 2.c(11). Therefore, the proposed Technical Specification requirements would neither increase the probability of an accident nor increase the consequences of accidents previously evaluated.

2. Create the possiblity of a new or different kind of accident from any previously evaluated. Establishing new LCO and surveillance requirements for the existing WCGS ARV's does not result in the possibility of new or different types of accidents.

3. Involve a significant reduction in a margin of safety. The proposed Technical Specifications assure that the margin of safety established in the current SGTR analysis is maintained. As discussed in items 1 and 2 above, the proposed LCO and surveillance requirements do not alter the margins to safety established in previous accident and transient analysis or in established surveillance test programs.

Based on the above analysis the licensee has concluded that the

proposed revisions to the Wolf Creek Generating Station Technical Specifications involve no significant hazards consideration. The NRC staff has reviewed the licensee's significant hazards consideration determination and agrees with the licensee's analysis. Additionally, the NRC has established guidance concerning the determination of whether a significant hazards consideration exists by providing certain examples (51 FR 7751) of amendments not likely to involve a significant hazards consideration. The proposed ARV Technical Specifications conform to NRC example (ii) "A change that constitutes an additional limitation, restriction or control not presently included in the technical specifications, e.g., a more stringent surveillance requirement."

The staff has, therefore, made a proposed determination that the licensee's request does not involve a significant hazards consideration.

Local Public Document Room location: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas, 66801 and Washburn University School of Law Library, Topeka, Kansas.

Attorney for licensee. Jay Silberg. Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: B.J. Youngblood.

Maine Yankee Atomic Power Co., Docket No. 50–309, Maine Yankee Atomic Power Station, Lincoln County, ME

Date of amendment request: February 3, 1986 and December 8, 1986.

Description of amendment request: The proposed amendment would:

1. Add administrative controls to limit overtime of staff personnel so that the Commission's policy concerning staff overtime limits at nuclear plants is implemented.

2. Allow for the use of the dual role of Senior Reactor Operator and a Shift Technical Advisor by including provisions that would allow two options of the Commission Policy Statement on Engineering Expertise on shift.

Basis for propsed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed changes conform to: (1) The additional requirements on limiting overtime on staff and (2) the option of using a combined Senior Reactor Operator/Shift Technical Advisor in lieu of a Shift Technical Advisor assigned to an operating shift. These changes are consistent with the Commission's policy statements contained in USNRC Policy Statement on Nuclear Plant Staff Working Hours (*47 FR 7352; February 18, 1982*) and in *USNRC Policy Statement on Engineering Expertise on Shift* (*50 FR 43621; October 28, 1985*).

Thus the proposed amendments do not involve any increase in the probability or consequences of an accident previously evaluated. In addition, these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated and they do not involve any reduction in a margin of safety. Based on the above, the staff proposes to determine that the proposed amendment would involve no significant hazards considerations.

Local Public Document Room location: Wiscasset Public Library, High Street, Wiscasset, Maine.

Attorney for licensee: J.A. Ritscher, Esq., Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02210.

NRC Project Director: Ashok C. Thadani.

Maine Yankee Atomic Power Company, Docket No. 50–309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of amendment request: November 25, 1986 and December 8, 1986.

Description of amendment request: This proposed amendment would change the maximum nominal enrichment of the fuel allowed to be used in the reactor core for operating Cycle 10 and beyond. Maine Yankee is currently in Cycle 9 operation. In the proposed amendment, the fuel enrichment specification would change from a maximum nominal weight percent of 3.30 U–235 to 3.50 weight percent U–235.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazard exists as stated in 10 CFR 50.92(2). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of a facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The proposed change in enrichment would not increase the consequences of accidents previously analyzed. The adequacy of a given core design must be demonstrated for each core prior to core reloading. The fuel enrichment is only one factor that must be considered in this determination. The fuel enrichment itself does not directly impact the results of the plant safety analysis. Factors such as the number and placement of fresh fuel assemblies, the exposure distribution and placement of the fuel assemblies remaining from previous cycles, the number and placement of burnable poison rods, and the core operational strategy have a more significant impact.

The facility's fuel and storage areas have been analyzed for enrichments of 3.5 weight percent U–235. The results of these analyses indicate that handling and storage of 3.5 weight percent enriched fuel does not involve an unreviewed safety question. The result of these analyses are within the acceptance criterion defined in Technical Specification 1.1, "Fuel Storage" of K_{eff} less than or equal to 0.095.

Maine Yankee's application to increase the capacity of the spent fuel pool, which was approved in 1984 when the NRC issued Amendment 75 to Maine Yankee's Operating Licensing, assumed several conservative assumptions in the criticality calculations. These included:

- Fresh fuel of 3.5 weight percent U–235.
- No soluble boron in the pool water.
- No axial or radial neutron leakage from the racks.
- 68°F water in the pool (the lowest anticipated temperature of the pool).
- A value of boron loading in the BORAL plates such that there is a 95% probability that the boron concentration will, with 95% confidence, be greater than that value.
- Worst case values of mechanical parameters including center-to-center spacing, BORAL plate thickness, etc.

The effective multiplication factor (K_{eff}) was less than 0.95 for the redesigned spent fuel storage racks when loaded with standard fuel assemblies having a fuel enrichment of 3.5 weight percent.

New fuel is stored dry in racks that have a center-to-center spacing of 20 inches (FSAR, Chapter 5). This dimension provides a considerable margin of subcriticality even if the new fuel storage area were filled with demineralized water.

The new fuel storage area was analyzed for a fuel enrichment of 3.5 weight percent. Conditions of varying moderator density, ranging from dry to flooded conditions, were considered. The results of this analysis indicate that the acceptance criteria for K_{eff} as identified in the Standard Review Plan (NUREG–0800, Section 9.1.1) are satisfied.

An evaluation has also been performed to determine the effect of higher fuel enrichment on the fuel handling accident. The evaluation has resulted in the determination that an increase in fuel enrichment will not by itself affect the mixture of fission product nuclides. Although a higher enrichment fuel cycle may result in fuel burnup consisting of a slightly different mixture of nuclides, the effect is insignificant because the isotopic mixture of an irradiated assembly is relatively insensitive to the fuel assembly's initial enrichment and the doses from postulated accidents are not significantly affected and continue to be acceptable.

Operation of Maine Yankee with 3.5 weight percent enriched fuel will not create any new or different kinds of accidents from those previously evaluated.

Fuel handling and storage of fuel with enrichment of 3.5 weight percent U–235 does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The evaluation performed for each reload core assures that the core design meets appropriate safety limits, including a consideration of a significant reduction in the margin of safety. The results of preliminary evaluations performed for Cycle 10, the first reload core introducing 3.5 weight percent U–235 fuel, show that all applicable acceptance criteria will be met.

The margin to criticality for fuel assemblies of 3.5 weight percent in the Maine Yankee fuel pool storage racks is not reduced and meets the NRC acceptance criterion of 0.95 for K_{eff} even with the many conservative assumptions used in the calculation of K_{eff} assuming 3.5 weight percent fresh fuel. Similar conclusions have been reached for the new fuel storage area.

Based on the above, the staff proposes to determine that the proposed amendment would involve no significant hazards considerations.

Local Public Document Room location: Wiscasset Public Library, High Street, Wiscasset, Maine.

Attorney for licensee: J. A. Ritscher, Esq., Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02210.

NRC Project Director: Ashok C. Thadani.

Mississippi Power & Light Co., Middle South Energy, Inc., South MS Electric Power Association, Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, MS

Date of amendment request: October 7, 1986 as revised December 5, 1986.

Description of amendment request: The amendment would change the Technical Specifications (TSs) in two areas: (1) Change TS 3/4.1.4.2, "Rod Pattern Control System," and associated Bases 3/4.1.4 to specify conditions for which the rod pattern controller function of the rod pattern control system (RPCS) may be bypassed for the purpose of properly positioning out-of-sequence control rods; and, (2) change TS 3/4.4.5, "Specific Activity," associated Bases 3/4.4.5, Table 4.11.2.1.2–1, "Radioactive Gaseous Waste Sampling and Analysis Program," and TS 6.9, "Reporting Requirements," to eliminate an action statement which requires reactor shutdown if reactor coolant radioactive iodine transients (iodine spikes) occur over a cumulative operating time greater than 800 hours in a 12-month interval and to change requirements for reporting specific activities that exceed the radioiodine activity limit from special reports to the annual report required by TS 6.9.1.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has provided an analysis of significant hazards considerations in its October 7, 1986, request for a license amendment, as revised December 5, 1986. The licensee has concluded with appropriate bases, that the proposed amendment satisfies the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards considerations.

The NRC staff has made a preliminary review of the licensee's submittal. A summary of staff's review follows.

Change (1) allows bypassing of the rod pattern controller function in the rod pattern control system (RPCS) for operable control rods as well as inoperable control rods. The purpose of the rod pattern controller function is to control the rod withdrawal and insertion sequences so that any control rod could not be worth enough to result in exceeding the fuel damage limit in the event of a control rod drop accident. The Final Safety Analysis Report (FSAR) analysis of a worst case control rod drop accident in which eight control rods are bypassed resulted in a peak fuel enthalpy less than the fuel damage limit. The previous Technical Specifications allowed up to eight inoperable control rods to be bypassed under certain conditions. Change (1) would allow up to eight operable control rods to be bypassed under specified conditions. The change does not involve a significant increase in the probability of an accident previously evaluated because it does not involve equipment or systems that move control rods. The change does not involve a significant increase in the consequences of an accident previously evaluated because the conditions under which operable control rods may be bypassed will keep control rod worths within the bounds of those considered in the worst case control rod drop accident analyzed in the FSAR. For the same reasons the change does not create the possibility of a new or different kind of accident from any accident previously evaluated nor does it involve a significant reduction of a margin of safety.

Change (2) eliminates an action statement which requires reactor shutdown if radioactive iodine in the coolant exceeds specified limits. This change was suggested by the NRC staff in Generic Letter No. 85–19, "Reporting Requirements on Primary Coolant Iodine Spikes". The limits on specific activity in the reactor coolant were imposed to assure that the offsite radiological doses resulting from a main steam line break outside containment would be within the guideline values of 10 CFR Part 100. This limits of radioactive iodine in the reactor coolant for steady state operations and for transients (iodine spikes) would not be changed. The elimination of the action statement which restricted cumulative operation during iodine spiking to less than 800 hours per year would increase the probability that a steam line break accident could occur during an iodine spike. However, as reported in Generic Letter 85–19, quality of nuclear fuel and fuel management has been greatly improved in recent years, such that coolant iodine activity is maintained well below the specified limits. The increased probability of a steam line break accident during an iodine spike is not significant because of the decreased coolant iodine activity for present reactors using improved fuels and fuel management. Accordingly, the deletion of the action statement does not involve a significant increase in the probability or consequences of an accident previously evaluated. The deletion of the action statement would not create the possibility of a new or different kind of accident from any accident previously evaluated because plant equipment or procedures are not changed. Because the specific activity limits in the specification are not changed, deletion of the aciton statement would not involve a significant reduction in a margin of safety.

Change (2) also changes the requirements for reporting iodine activities that exceed the limits of the Technical Specifications. Requirements for reporting to the NRC the results of analyses of the samples of reactor coolant would be changed from the presently required special reports within 30 days and 92 days to the annual report required by TS 6.9.1. The information to be included in the annual report is similar to that previously required but has been changed to more clearly designate the results from the specific activity analysis. Prompt reporting of significant coolant iodine activities is required under 10 CFR 50.72(B)(1)(ii) which specifies that serious degradation of principal safety barriers including fuel cladding, be reported to the NRC within one hour. Because the present Commission's rules require prompt reporting of serious degradation of the fuel and the content of reports of specific activities exceeding Technical Specification limits is essentially the same, the change in reporting requirements in change (2) would not (a) involve a significant increase in the probability or conseqences of an accident previously evaluated; or (b) create the possibility of a new or different kind of accident from any accident previously evaluated; or (c) involve a significant reduction in a margin of safety.

Accordingly, for the reasons cited above, the Commission proposed to determine that these two changes do not involve significant hazards considerations.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Attorney for licensee: Nicholas S. Reynolds, Exquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036.

NRC Project Director: Walter R. Butler.

Northeast Nuclear Energy Co., et al., Docket No. 50–336 Millstone Nuclear Power Station, Unit No. 2, New London County, CT

Date of amendment request: October 29, 1986.

Description of amendment request: By application for license amendment dated October 29, 1986, Northeast Nuclear Energy Company, et al. (the licensee), requested changes to the technical Specifications (TS) for Millstone Unit 2 related to primary system iodine spiking: (1) The requirement in TS 3.4.8., "Specific Activity", that operation, outside predetermined primary coolant activity limits, not exceed 10 percent of the unit's total yearly operating time would be deleted; and (2) the current "special report" requirement in TS 6.9.2i associated with primary coolant activity would be replaced by an annual report requirement in TS 6.9.1.4.

Basis for proposed no significant hazards consideration determination: On September 27, 1985, the NRC issued Generic Letter (GL) 85–19, "Reporting Requirements on Primary Coolant Iodine Spikes." The purpose of GL 85–19 was to propose that licensees be relieved of certain unnecessary requirements associated with primary system activity, as follows:

> As part of our continuing program to delete unnecessary reporting requirements, we have reviewed the reporting requirements related to primary coolant specific activity levels, specifically primary coolant iodine spikes. We have determined that the reporting requirements for iodine spiking can be reduced from a short-term report (Special Report or Licensee Event Report) to an item which is to be included in the Annual Report. The information to be included in the Annual Report is similar to that previously required in the Licensee Event Report but has been changed to more clearly designate the results to be included from the specific activity analysis and to delete the information regarding fuel burnup by core region.
>
> In our effort to eliminate unnecessary Technical Specification requirements, we have also determined that the existing requirements to shut down a plant if coolant iodine activity limits are exceeded for 800 hours in a 12-month period can be eliminated. The quality of nuclear fuel has been greatly improved over the past decade with the result that normal coolant iodine activity (i.e. In the absence of iodine spiking) is well below the limit. Appropriate actions would be initiated long before accumulating 800 hours above the iodine activity limit. In addition, 10 CFR 50.72(b)(1)(iii) requires the NRC to be immediately notified of fuel cladding failures that exceed expected values or that are caused by unexpected factors. Therefore, this Technical Specification limit is no longer considered necessary on the basis that proper fuel management by licensees and existing reporting requirements should preclude ever approaching the limit.
>
> Licensees are expected to continue to monitor iodine activity in the primary coolant and take responsible actions to maintain it at a reasonably low level (i.e., accumulated time with high iodine activity should not approach 800 hours).

The licensee's application dated October 29, 1986 was submitted in response to GL 85–19.

The proposed changes to the TS do not involve a significant increase in the probability or consequences of an accident previously evaluated. As indicated in GL 85–19, the improved quality of fuel and the existence of adequate reporting requirements precludes the operation of the facility with primary system activity that is excessive. Excessive primary system activity would be of concern in the event of an accident involving release of reactor coolant. Finally, the proposed changes to the TS do not involve the creation of a new or different type of accident or a reduction in a safety margin since no changes in plant equipment, operating modes or safety analyses are involved. Based upon the above, the Commission proposes to determine that the proposed changes to TS 3.4.8, 6.9.2 and 6.9.1.4 involve no significant hazards considerations.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee. Gerald Garfield, Esq., Day, Berry and Howard, One Constitution Plaza, Hartford, Connecticut 06103.

NRC Project Director: Ashok C. Thadani.

Northeast Nuclear Energy Co., et al., Docket No. 50–245, Millstone Nuclear Power Station, Unit No. 1, New London County, CT

Date of amendment request: November 20, 1986.

Description of amendment request: The proposed amendment adds new requirements to the technical specifications for a Halon 1301 Fire Suppression System inside the cable vault room. It necessitates changes to technical specification sections 3.12.C.3

and 3.12.C.4 Table 3.12.2 to add the cable vault to the list of areas having Halon 1301 fire suppression systems and to increase the total number of cable vault fire detection instruments available from 15 to 28 and the minimum number required from 12 to 24.

Basis for proposed no significant hazards consideration determination: The purpose of the Halon 1301 Fire Suppression System is to limit and control fires in the cable vault before damage to redundant control cables can occur. This will be accomplished through the use of cross-zoned early-warning smoke detection instruments and the quick release of the Halon 1301 fire suppressant agent into the cable vault.

NNECO has reviewed the proposed changes to the technical specifications pursuant to 10 CFR 50.59 and 10 CFR 50.92 and has determined that they do not constitute an unreviewed safety question and do not involve a significant hazards consideration. The proposed changes to the technical specifications reflect the installation of a new Halon 1301 Fire Suppression System that will enhance the fire suppression capabilities in the cable vault while maintaining the limiting conditions for operation and surveillance requirements already existing for other Halon 1301 systems. The changes involve no significant hazards because they do not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. These proposed changes reflect the installation of a new system and maintain limiting conditions for operation and surveillance requirements which are already proven acceptable for operation of similar Halon 1301 systems.

(2) Create the possibility of a new or different kind of accident from any previously analyzed. The proposed new system interfaces only with non-vital power. Installation of this new system enhances the fire suppression capabilities in the cable vault.

(3) Involve a significant reduction in a margin of safety. The proposed changes involve the limiting conditions for operation and surveillance requirements for a new suppression system similar to those already existing for other Halon 1301 systems. Hence, the margin of safety is increased.

The Commission has provided guidance concerning the application of standards in 10 CFR 50.92 by providing certain examples (51 FR 7750, March 6, 1986) of license changes involving no significant hazards consideration. The staff has reviewed the proposed change and concludes that it falls within the envelope of example (ii) in that the change would constitute an additional limitation, restriction or control not included in the current technical specifications. As described above, the addition of a new Halon 1301 Fire Suppression System in an area where one did not exist before constitutes a control not presently included in the technical specifications.

Based on the information provided by the licensee, the staff proposes to determine that the license amendment request involves no significant hazards consideration.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry, & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: Christopher I. Grimes.

Pennsylvania Power and Light Co., Docket Nos. 50-387 and 50-388, Susquehanna Steam Electric Station, Unit 1 and 2, Luzerne County, PA

Date of amendment request: October 17, 1986.

Description of amendment request: The proposed amendments would revise the Susquehanna Steam Electric Station (SSES) Unit 1 and Unit 2 License Condition 2.D of Licenses NPF-14 and NPF-22 to include change X to SSES Physical Security Plan. Specifically the following two changes are proposed:

a. Eight-year updates of security clearances would be discontinued.

b. The Condensate Transfer and Storage Systems would be deleted from the list of vital equipment.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's request and made the following determination.

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because:

a. Initial security clearance investigations followed by continual behavior observation are adequate to determine the reliability and trustworthiness of employees; and

b. Changes involving the vital equipment list are administrative in nature since the equipment being removed from the list is not vital and serves no safety-related function. There are no design or procedural changes involved.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because:

a. The Commission's regulations do not require that security clearances be updated. Removing this requirement from the PP&L employees places them on the same footing as the contractor personnel. There is no reason to believe that the PP&L employees are any less reliable or trustworthy than the contractor personnel; and

b. There are no design or procedural changes involved with the changes to the vital equipment list.

3. The proposed changes do not involve a significant reduction in margin of safety because: a. Continual behavior observation has been demonstrated to be far more effective than security clearance updates in identifying significant changes in employee circumstances related to reliability and trustworthiness; and

b. The Condensate Transfer and Storage System has no safety-related function. Its interface with safety-related systems is not expected to adversely affect the performance of the safety functions of those systems.

Based on the above consideration, the Commission proposes to determine that the proposed changes do not involve significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street NW., Washington, DC 20036.

NRC Project Director. Elinor G. Adensam

Public Service Co. of CO, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Platteville, CO

Date of amendment request: This proposed amendment to the Fort St. Vrain Technical Specifications (TS) implements Phase II of the licensee's Inservice Inspection Program (ISI). These changes are based on an earlier submittal, dated November 27, 1985, and comments made by the NRC in a letter dated May 30, 1986. Many of the proposed changes involve testing of pumps and valves. The detailed surveillance procedures which implement these inspections will follow the guidance of the ADME Code, Section XI, Division 1 or 2, as appropriate.

The first phase of the ISI Program was implemented by Amendment No. 33 to Facility Operating License DPR-34, dated March 8, 1983.

Basis for proposed no significant hazards consideration determination: The proposed changes to the Technical Specification Surveillance Requirements generally expand the scope of inservice examination and testing that is currently performed at the Fort St. Vrain Nuclear Generating Station. These changes provide greater assurance of plant safety and reliability.

Individual surveillance requirements have been evaluated in detail by the licensee. The results of these reviews revealed that existing surveillance requirements generally were adequate in light of plant operating experience, importance to safety, unique design features and limitations, as well as ASME Code development for future reactor designs. Minor modifications to surveillance intervals were made to reflect operating experience, and to provide operating flexibility. Additional tests were included to assure the operability and accuracy of instrumentation which can be used for monitoring the structural integrity of major plant equipment. Additional component testing was recommended, as a result of detailed reviews of plant systems, either when components important to safe plant shutdown and cooling were not in the scope of the current Technical Specifications, or when the testing method could be improved to provide additional assurance of component reliability.

The proposed changes to the Technical Specifications reflect additional surveillances as required by inservice inspection and testing requirements.

The changes follow example (ii) of those provided by the Commission in 51 FR 7751 as examples of amendments that are not considered likely to involve significant hazards considerations. Therefore, it is the staff's initial determination that the proposed amendment does not involve any significant hazards considerations.

Local Public Document Room location. Greeley Public Library, City Complex Building, Greeley, Colorado.

Attorney for licensee: Bryant O'Donnell, Public Service Company of Colorado, P.O. Box 840, Denver, Colorado 80201-0840.

NRC Project Director: Herbert N. Berkow.

Notice of Issuance of Amendment to Facility Operating License

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments, satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) The applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

Arizona Public Service Co., et al. Docket Nos. STN 50-528 and STN 50-529, Palo Verde Nuclear Generating Station, Units 1 and 2, Maricopa County, AZ

Date of applications for amendments: October 16, 1986 (three applications), as supplemented November 26 and December 5, 1986.

Brief description of amendments: The amendments revised the licenses to authorize additional time to complete sale and leaseback transactions previously authorized by the Commission for Arizona Public Service Company, El Paso Electric Company, and Public Service Company of New Mexico.

Date of issuance: December 11, 1986.

Effective date: December 11, 1986.

Amendment Nos: 11 and 6.

Facility Operating License Nos.: NPF-41 and NPF-51: Amendments revised the licenses.

Dated of initial notice in the **Federal Register:** November 5, 1986 (51 FR 40275). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 11, 1986.

No significant hazards consideration comments were received: No

Local Public Document Room location: Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Arkansas Power & Light Co., Docket No. 50-368, Arkansas Nuclear One, Unit 2, Pope County, AR

Date of application of amendment: April 25, 1986.

Brief description of amendment: The amendment revised the Technical Specifications pertaining to the Refueling Water Tank maximum solution temperature, the periodic verification of moderator temperature coefficient and the minimum shutdown margin for operating Modes 1 through 4.

Date of issuance: December 11, 1986.

Effective date: December 11, 1986.

Amendment No.: 81.

Facility operating license no. NPF-6: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register.** September 24, 1986 (51 FR 33942 and 33943).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 11, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Tomlinson Library, Arkansas

Tech University, Russellville, Arkansas 72801.

Carolina Power & Light Co., Docket No. 50-324, Brunswick Steam Electric Plant, Unit 2, Brunswick County, NC

Date of application for amendment: August 22, 1986.

Brief description of amendment: The amendment revises the main steam line high radiation scram and isolation setpoints, on a one time, short-term basis, to facilitate test injections of hydrogen into the reactor coolant. The test is scheduled to be performed in late November or mid-December, 1986. The test is expected to be completed within about one week of its start.

Date of issuance: December 10, 1986.

Effective date: December 10, 1986.

Amendment No.: 131.

Facility Operating License No. DPR-62: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 24, 1986 (51 FR 33944) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 10, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Units 1 and 2, Ogle County, IL

Date of application for amendments: August 13, 1986 and August 27, 1986.

Description of amendments: The amendment approves changes to the Technical Specifications that: (1) Replaces "86% of total volume" with "50%" for the water level in the ultimate heat sink cooling tower basin; (2) permits a crosstie between Units 1 and 2 Class IE 125-vdc buses; and (3) deletes two pages that are no longer effective.

Date of issuance: December 12, 1986.

Effective date: December 12, 1986.

Amendment No.: 5.

Facility Operating License Nos. DPR-37 and DPR-66: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 8, 1986 (50 FR 36084).

The Commission's related evaluation of the amendments is contained in a Safety Evauation dated December 12, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61103.

Commonwealth Edison Co., Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Unit Nos. 1 and 2, Benton County, IL

Date of application for amendments: September 19, 1986.

Brief description of amendments: These amendments will allow one battery charger assigned to a 125 V.D.C. bus of a unit in either cold shutdown or refueling to be used to fulfill the battery charger operability requirement of a D.C. bus of an operating unit. These amendments represent granting in part and denying in part of the licensee's request. This one time change will be in effect until the replacement effort is completed or until January 31, 1987, whichever comes first. The Notice of Denial will be issued later.

Date of issuance: December 8, 1986.

Effective date: December 8, 1986.

Amendment Nos.: 99 and 89.

Facility Operating License Nos. DPR-39 and DPR-48: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 22, 1986 (51 FR 37507):

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 8, 1986.

No significatnt hazards consideration comments received: No.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Duke Power Co., Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, NC

Date of application for amendments: December 13, 1985.

Brief description of amendments: The amendments: (1) Revise the reporting requirements related to primary coolant iodine spikes, (2) delete the existing Technical Specifications (TS) requirements to shut down the facility if coolant iodine activity limits are exceeded for 800 hours in a 12-month period, and (3) clarify the sampling technique to allow analysis of a non-degassed reactor coolant system (RCS) sample for determination of total specific activity. The changes in items (1) and (2) are in accordance with NRC Generic Letter No. 85-19 dated September 17, 1985.

Date of issuance: December 8, 1986.

Effective date: December 8, 1986.

Amendment Nos.: 66 and 47.

Facility Operating License Nos. NPF-9 and NPF-17: Amendments revised the Technical Specifications.

Date of initial notice in the **Federal Register:** August 27, 1986 (51 FR 30571).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 8, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Duke Power Co., Dockets Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units Nos. 1, 2 and 3, Oconee County, SC

Date of application for amendments: August 27, 1986, as supplemented on September 29, 1986.

Brief description of amendments: These amendments revised the Station's common Technical Specifications to add operability requirements of monitors and surveillance items required by the addition of the radwaste facility at the Oconee Nuclear Station. The amendments also deleted certain outdated footnotes with the gaseous process and effluent monitoring instrumentation.

Date of issuance: December 17, 1986.

Effective date: December 17, 1986.

Amendment Nos.: 152, 152 and 149.

Facility Operating License Nos. DPR-38, DPR-47 and DPR-55: Amendments revised the Technical Specifications.

Date of initial notice in the **Federal Register:** October 8, 1986 (51 FR 36089) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 17, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina 29691.

GPU Nuclear Corp., et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, PA

Date of application for amendment: August 25, 1986, as revised on October 1, 1986.

Brief description of amendment: This amendment added Technical Specification (TS) requirements for operation and testing of the newly installed Fuel Handling Building (FHB) Engineered Safety Features (ESF) Air Treatment System. Consequently, similar requirements previously in place for the Auxiliary and FHB Air Treatment System were changed and/or deleted to reflect their revised accident mitigation role. The FHB ESF Air Treatment System was designed and installed to protect against fuel handling accidents. As such, the Auxiliary and FHB Air Treatment System will no longer be credited for mitigating this type of accident. TS Design Features were changed to include a new FHB release point. Additionally, gaseous effluent instrumentation, sample, and analysis TS requirements were added to incorporate the FHB ESF Air Treatment System. Administrative and editorial changes to improve clarity and incorporate newer standards were also incorporated. It should be noted, this amendment only partially approved the GPU Nuclear TS change request. The request to delete one particular Auxiliary and FHB Air Treatment System requirement was denied and noticed in **Federal Register** accordingly.

Date of issuance: December 12, 1986.

Effective date: December 12, 1986 and shall be implemented within 60 days or prior to fuel movement.

Amendment No.: 122.

Facility Operating License No. DPR-50: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 22, 1986 (51 FR 37511). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 12, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

GPU Nuclear Corp., et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, PA

Date of application for amendment: February 1, 1985, as revised September 30, 1985.

Brief description of amendment: This amendment provides clarification to existing Technical Specifications to ensure that the regulating control rod power silicon controlled rectifier (SCR) electronic trips are trip tested monthly and prior to startup. The amendment also provides conditions for operability for control rod drive trip breakers and diverse trip devices, and the regulating control rod power SCR electronic trips.

Date of issuance: December 16, 1986.

Effective date: December 16, 1986.

Amendment No.: 123.

Facility Operating License No. DPR-50: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 6, 1985 (50 FR 46213). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 16, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Indiana and Michigan Electric Co., Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, MI

Date of application for amendments: January 27, 1986.

Brief description of amendments: The Technical Specification changes add provisions for independent testing of the undervoltage and shunt trip attachments and make one editorial change to delete statements that are no longer used.

Date of Issuance: December 10, 1986.

Effective date: December 10, 1986.

Amendment Nos.: 99 and 86.

Facility Operating License Nos. DPR-58 and DPR-74: Amendments revised the Techical Specifications.

Date of initial notice in **Federal Register:** March 12, 1986 (51 FR 8595) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 10, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room locotion: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Long Island Lighting Co., Docket No. 50-322, Shoreham Nuclear Power Station, Suffolk County, NY

Date of application for amendment: January 20, 1986.

Brief description of amendment: This amendment eliminates the Technical Specification requirement for performing a monthly sampling and an analysis for dissolved and entrained gases if no waste batch of liquid effluents is released during the month. It also corrects an error in the basis for the location of the control milk sample in the radiological environmental monitoring program.

Date of Issuance: December 9, 1986.

Effective date: December 9, 1986.

Amendment No.: 4.

Facility Operating License No. NPR-36: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register** March 26, 1986 (51 FR 10463) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 9, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Shoreham-Wading River Public Library, Route 25A, Shoreham, New York 23212.

Maine Yankee Atomic Power Co., Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, ME

Date of application for amendment: January 29, 1986, as supplemented July 29, 1986 and August 28, 1986.

Brief description of amendment: The amendment deleted the definition of containment intergrity in the Definitions Section of the TS since the definition appears in the actual TS concerning containment integrity; clarifies sections of the TS by restating TS where appropriate; corrects typographical errors; and deletes certain requirements which are included in other portions of the TS.

Date of Issuance: December 11, 1986.

Effective date: December 11, 1986.

Amendment No.: 91.

Facility Operating License No. DPR-36: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 22, 1986 (51 FR 37502 at 37516).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 11, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wiscasset Public Library, High West, Wiscasset, Maine.

Mississippi Power & Light Co., Middle South Energy, Inc., South Mississippi Electric Power Assoc., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, MS

Date of application for amendment: September 12, 1986 as supplemented November 7, 1986.

Brief description of amendment: Changes License Condition 2.C(25)(b) by adding maintenance and surveillance requirements for the Transamerica Delaval, Inc. emergency diesel generators.

Date of Issuance: December 9, 1986.

Effective date: December 9, 1986.

Amendment No.: 26.

Facility Operating License No NPF-29: This amendment revised the Operating License.

Date of initial notice in **Federal Register:** October 8, 1986 (51 FR 36097) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 9, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, NE

Date of amendment request: September 17, 1986.

Brief description of amendment: The amendment changes the technical Specifications to incorporate the Cycle 11 reload operating limitations.

Date of issuance: December 9, 1986.

Effective date: December 9, 1986.

Amendment No.: 106.

Facility Operating License No. DPR-62: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 8, 1986 (51 FR 36099). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 9, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Public Service Co. of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Platteville, CO

Date of application for amendment: May 22, 1986.

Brief description of amendment: The proposed change to the Technical Specifications incorporates a new requirement which will allow the performance of Xenon Stability testing. The purpose of the testing is to show that power perturbations will be dampened.

Date of issuance: December 15, 1986.

Effective date: December 15, 1986.

Amendment No.: 49.

Facility Operating License No. DPR-34: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 3, 1985 (50 FR 27508). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 15, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Greeley Public Library, City Comlex Building, Greeley, Colorado.

Southern California Edison Co., et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, CA

Date of application for amendment: June 13, and August 28, 1986, as supplemented by letter dated November 4, 1986.

Brief description of amendments: The amendments revise the Technical Specifications concerning: (1) The fuel handling area vent gaseous airborne radiation monitor and (2) the minimum capacity of the refueling machine and the corresponding overload cutoff limit.

Date of issuance: December 12, 1986.

Effective date: December 12, 1986, to be implemented within 30 days of issuance.

Amendment Nos.: 56 and 45.

Facility Operating License Nos. NPF-10 and NPF-15: Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** October 8, 1986 (51 FR 36104 and 51 FR 36105).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 12, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: General Library, University of California at Irvine, Irvine, California 92713.

Washington Public Power Supply System, Docket No. 50-397, WNP-2, Richland, WA

Date of amendment request: August 18, 1986.

Brief description of amendment: This amendment revised Section 3.4.3.8. (Turbine Overspeed Protection System) of the WNP-2 Technical Specifications by changing the turbine valve test interval from weekly to monthly.

Date of Issuance: December 11, 1986.

Effective date: December 11, 1986.

Amendment No.: 34.

Facility Operating License No. NPF-21: Amendment revises the Technical Specifications.

Date of initial notice in the **Federal Register:** September 24, 1986 (51 FR 33960).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 11, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Washington Public Power Supply System, Docket No. 50-397, WNP-2, Richland, WA

Date of amendment request: January 31, 1986.

Brief description of amendment: This amendment revises Section 3.4.6.1 (Pressure/Temperature Limits) of the WNP-2 Technical Specifications by shifting the relationships in the pressure/temperature curves, Figures 3.4.5.1-1 and 3.4.6.1-2, 30°F higher at 20% of the preservice hydrostatic test pressure. This change is in compliance with the requirements of paragraph IV.A.2 of Appendix G to 10 CFR Part 50.

Date of issuance: December 17, 1986.

Effective date: December 17, 1986.

Amendment No.: 35.

Facility Operating License No. NPF-21: Amendment revises the license.

Date of initial notice in the **Federal Register:** August 27, 1986 (51 FR 30583).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 17, 1986.

No Significant Hazards Consideration comments received: No.

Local Public Document Room location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Dated at Bethesda, Maryland this December 22, 1986.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Division of BWR Licensing.

[FR Doc. 86-29168 Filed 12-29-86; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Northwest Conservation and Electric Power Plan; Model Conservation Standards; Extended Comment Period on New Construction at Federal Facilities and on Surcharge Recommendation for Space Heat Conversion Standards

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of extended opportunity to comment regarding model conservation standards for new construction at federal agency facilities and regarding a surcharge recommendation for space heating conversion standards.

SUMMARY: On April 27, 1983, the Pacific Northwest Electric Power and Conservation Planning Council (Council) adopted a Northwest Conservation and Electric Power Plan (Plan) including model conservation standards (MCS) (48 FR 24493, June 1, 1983). On December 4, 1985, the Council adopted amendments to the MCS (51 FR 7364, March 3, 1986) which were later incorporated in the 1986 plan amendments (51 FR 16239, May 1, 1986). On November 20, 1986, the Council published proposed amendments to the MCS for new residential and commercial construction and announced a heating, comment and consultation schedule (51 FR 42031). The Council is now extending the comment period on two issues involved in the current MCS amendment process: (1) MCS for new construction at federal facilities and (2) whether there should be a surcharge recommendation for space heating conversion standards.

DATES AND ADDRESSES: Written comments regarding proposed amendments involving MCS for new construction at federal agency facilities and whether there should be a surcharge recommendation for space heating conversion standards should be received in the Council's central office no later than 5:00 p.m. Friday, February 13, 1987. The period for oral public comment and consultation sessions will continue through 5:00 p.m. Friday, February 13, 1987.

The Council will also accept oral comment at its February 11-12, 1987 meeting. The Council expects to take final action on this portion of the proposed MCS-related amendments at its March 11-12, 1987 meeting.

Guidelines for Submitting Written Comments

1. All written comments must be sent to the Council's central office, Attn: Dulcy Mahar, Director of Public Information and Involvement, 850 S.W. Broadway, Suite 1100, Portland, Oregon 97205 and must be received by 5:00 Friday, February 13, 1987. Comments received after that date will not be considered.

2. Comments should be clearly marked "Comments on Model Conservation Standards for Federal Agency Customers" and "Comments on Subcharge Recommendation for Conversion Standards."

3. Written comments should be specific and concise.

4. If appropriate, submit a "marked up" copy of the proposed MCS (or appropriate sections) indicating suggestions and/or revisions. Suggested deletions should be lined out and placed in parentheses. Suggested new language should be underlined.

5. Please type (double-space) comments, if possible. Use only one side of the paper.

6. Provide ten (10) copies of all comments and supporting materials if at all possible.

Additional Consultations

Individuals or groups wishing to discuss these portions of the proposed MCS rule, in addition to commenting at the February 11-12, 1987 Council meeting and submitting written comments, may contact the central or state offices of the Council listed below. To the extent that schedules allow, consultations will be held upon request until the end of the comment period at 5:00 p.m. Friday, February 13, 1987.

Central Office, Attn: Ruth Curtis, 850 S.W. Broadway, Suite 1100, Portland, Oregon 97205 (503) 222-5161, 1-800-222-3355 (regional toll-free), 1-800-452-2324 (Oregon toll-free)

Idaho Council Office, Attn: Beth Heinrich, Statehouse Mail; Towers Building, 450 West State, Boise, Idaho 83720 (208) 334-2956

Montana Council Office, Attn: Terri Wilner, Capitol Station, Helena, Montana 59620 (406) 444-3952

Oregon Council Office, Attn: Judi Hertz, 505C State Office Building, 1400 S.W. Fifth Avenue, Portland, Oregon 97201 (503) 229-5171

Western Washington Council Office, Attn: Tess Nesbush, Olympic Tower Building, Suite 700, 217 Pine Street, Seattle, Washington, 98101 (206) 464-6519

Eastern Washington Council Office, Attn: Carol McAllister, Eastern Washington University, Anderson Hall #34, North 9th and Elm Street, P.O. Box B, Cheney, Washington 99004 (509) 359-7352.

FOR FURTHER INFORMATION CONTACT: Dulcy Mahar, Director of Public Information and Involvement, at the address and telephone numbers listed above for the Council's central office in Portland, Oregon.

SUPPLEMENTARY INFORMATION: On November 13, 1986, the Council decided to initiate an amendment process to consider amending the current model conservation standards for new residential and commercial construction and to re-examine the surcharge recommendation. On November 14, 1986, interested parties were notified by letter concerning this amendment process, and notice of this process was published in the **Federal Register** (51 FR 42031, November 20, 1986). Public hearings on the proposed amendments were held in the four northwest states. Written comments postmarked by December 22, 1986 were accepted, and oral public comment and consultation sessions will continue through January 9, 1987.

Independent of this amendment process, the Council received three petitions to enter rulemaking to add to or amend the MCS. CASE (Citizens for an Adequate Supply of Energy) filed two petitions: One asking for model conservation standards for Bonneville's direct service industry (DSI) customers, and the other asking for model conservation standards for Bonneville's federal agency customers. The Natural Resources Defense Council (NRDC) and Northwest Conservation Act Coalition (NCAC) petitioned the Council to revise the model conservation standards for new commercial buildings, to adopt model conservation standards for residential weatherization programs, and to restore the surcharge recommendation for space heating conversation standards.

The Council took action on these petitions at its December 11, 1986 meeting. It deferred action on CASE's petition for MCS for the DSIs and on NRDC/NCAC's petition for MCS for residential weatherization. It granted the request of NRDC/NCAC to update the commercial MCS new buildings, with the understanding that this will be a single integrated process on a schedule to be developed later. The Council also acknowledged that the current MCS amendment process addresses exemptions from the lighting budgets of the commercial MSC.

At its December 11, 1986 meeting, the Council also clarified that the current MCS amendment process addresses the issue of whether conversion standards should include a surcharge recommendation. However, in order that this issue, also raised in NRDC/NCAC's petition, could receive more attention, the Council extended the deadline for submitting written comments and holding consultations on the issue of surcharge for space heating conversion standards.

Similarly, the Council clarified that the current MCS amendment process on new construction encompasses the issue of MCS for new residential and commercial buildings at federal agency facilities. However, in order to assure a full airing of this issue raised in CASE's petition, the Council extended the deadline for submitting written comments and holding consultations on the issue of MCS for federal agency customers. Further, the Council committed to assess the conservation potential of existing buildings and other electricty uses at federal agency facilities as part of the next major Power Plan revision.

Although the issues of whether there should be a conversion surcharge and MCS for new construction at federal agency facilities are addressed in the current MCS amendment process, the Council invites additional comment on these two issues so that they receive the airing sought by the petitioners. *The Council emphosizes thot this extended comment period is limited to these two issues.* The written comment period for the remaining issues in the current MCS amendment process closed with comments postmarked by December 22, 1986, although consultations will continue through January 9, 1987.

Proposed Amendments

The portion of the proposed rule in the current MCS amendment process which addresses conversion standards is as follows:

The Model Conservation Standard for Buildings Converting to Electric Space Conditioning

The Council's Model Conservation Standard for residential and commercial buildings converting to electric space conditioning is that state or local governments or utilities should take actions through codes, alternative programs or a combination thereof to achieve electric power savings from buildings which convert to electric space conditioning. These savings should be comparable to those savings that would be achieved if each building coverting to electric space conditioning were upgraded to include all regionally cost-effective electricity conservation measures. Although the conversion standard is highly recommended, the Council is not recommending, at this time, that a surcharge be imposed for failure to act accordingly.

In the extended comment period on MCS for federal agency facilities, the Council will consider the addition of an action plan item which would be as follows:

Proposed Federal Agencies MCS

Bonneville should work with federal agencies within the region toward the goal of achieving the Council's MCS in all new buildings built by federal agencies in the region and in all buildings being converted to electric heat by federal agencies in the region. In undertaking this task, Bonneville should recognize existing authorities of federal agencies and should familiarize itself with the recently proposed standard for new federal residential buidings published by the U.S. Department of Energy (August 20, 1986 **Federal Register**) and with the proposed standard for federal commercial buildings which USDOE is scheduled to publish at a later date.

Edward Sheets,

Executive Director.

[FR Doc. 86-29129 Filed 12-29-86; 8:45 am]

BILLING CODE 0000-00-M

POSTAL RATE COMMISSION

[Docket No. C84-1; Docket No. C87-2]

ANPA Complaint Relating to Detached Address Labels Used With Certain Third-Class Mail

AGENCY: Postal Rate Commission.

ACTION: Notice and order.

SUMMARY: Notice is hereby given that Commission Order No. 733 makes certain determinations with respect to a complaint filed by the American Newspaper Publishers Association regarding detached address labels used in connection with the delivery of certain third-class mail. These determinations have the effect (1) of creating a new, separate docket (No. C87-2) to consider matters raised in ANPA's December 15, 1986 filing; (2) of superseding and terminating Docket No. C84-1; and (3) of setting new deadlines for certain filings by various parties.

DATES: The Postal Service's answer to the Docket No. C87-2 complaint is due January 14, 1987. ANPA's statement of intention to provide evidence is due January 28, 1987. Statements from other parties who believe issues in Docket No. C87-2 require an evidentiary hearing are also due January 28, 1987.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, Assistant General Counsel, Postal Rate Commission, 1333 H Street NW., Suite 300, Washington, DC 20268-0001; telephone (202) 789-6820.

SUPPLEMENTARY INFORMATION: Having considered comments filed by various parties in connection with recent motion practice related to the detached label complaint of the American Newspaper Publishers Association (ANPA), the Commission issues Order No. 733 (Order Giving Notice of Complaint Superseding Docket. No. C84-1). The Order, which appears with this notice, relates a brief procedural history of Docket No. C84-1, Complaint of ANPA Respecting Use of Detached Address Labels with Third-Class Bulk Regular Rate Flats, notes ANPA's recent amendment of its complaint, and finds that the amended complaint supercedes the original detached label complaint. It also finds that certain changed circumstances warrant evaluation of the issues now presented by ANPA in a new, separate docket. Accordingly, the Order terminates Docket No. C84-1, creates new Docket No. C87-2 and sets deadlines for various filings by ANPA, the Postal Service and other parties. As noted in the Order, the general subject matter of the two complaint dockets is the same, but the relief sought by ANPA and the supporting rationale in superseding Docket No. C87-2 differ from Docket No. C84-1.

This notice serves to direct other persons or parties whose interests might be affected by the Commission's determinations to Order No. 733 and to other related documents on file at the Commission.

[Docket Nos. C84-1 and Docket No. C87-2; Order No. 733]

ANPA Complaint (Use of Detached Address Labels); Order Giving Notice of Complaint Superseding Docket No. C84-1

Issued: December 19, 1986.

Before Commissioners: Janet D. Steiger, Chairman; Bonnie Guiton, Vice Chairman; John W. Crutcher; Henry R. Folsom; Patti Birge Tyson.

Docket No. C84-1 was initiated when the American Newspaper Publishers Association [ANPA] filed a Complaint Respecting Use of Detached Address Labels With Third-Class Bulk Regular Rate Flats on October 4, 1983. Order No. 559, issued April 9, 1984, suspended proceedings on this complaint to allow parties to pursue settlement negotiations. The case has been largely dormant since that time. On October 8, 1986, the Postal Service filed a motion to dismiss Docket C84-1 for lack of prosecution. ANPA filed an opposition to the Postal Service motion.

On December 15, 1986 ANPA filed a motion to amend its revised complaint. ANPA states the purpose of its amended complaint is to narrow the focus of the proceeding thereby conserving the resources of the Commission, the Postal Service and intervening parties. We find that the complaint filed by ANPA on December 15, supersedes the complaint filed in October 1983. The general subject matter of the two complaints is the same, the use of detached mailing labels with third-class bulk rate regular flat mail, even though the relief sought is different, as are parts of the legal rationale mentioned in the accompanying motion.

When Docket No. C84-1 was suspended, several motions were pending which turn, at least in part, on matters which would be changed to some extent by the amendment ANPA has presented. Additionally, since the initial complaint was filed, an omnibus rate case has been decided and several changes have been made to Postal Service regulations which control detached label mailing practices.

To address the issues raised by ANPA in the context of the existing record in Docket C84-1 would be unnecessarily confusing. We find that clarity and understanding would be aided if any evaluation of the issues now presented by ANPA is conducted in a separate, new docket. Therefore we will establish a new complaint docket to consider the complaint filed by ANPA on December 15, 1986.

It is well within our authority to manage our docket efficiently to establish a new case limited to the issues ANPA now wishes to present. *City of San Antonio* v. *C.A.B.* 374 F.2d 326 (1967). Since we had yet to exercise our discretion on whether C84-1 warranted hearings pursuant to 39 U.S.C. 3662, no party is disadvantaged by the establishment of a successor, more focused, docket.

Postal Service should provide its answer pursuant to rule 84 on or before January 14, 1987. The document filed with this complaint, titled Motion for Leave to Amend Complaint, will be made a part of this new docket and treated as a further statement of the reasons for filing the new complaint. In providing an answer to the December 15 complaint, Postal Service need not answer statements presented in this additional explanatory filing.

ANPA has requested the Commission to hold proceedings in conformity with 39 U.S.C. 3624, which provides that the Commission shall not issue a recommended decision without providing the opportunity for a hearing on the record. ANPA has not indicated whether it wishes to make an evidentiary presentation in support of its complaint, or whether it believes that the question it raises can be resolved without evidentiary hearings. The scope of matters in controversy will not be fully known until after Postal Service provides its answer; however, ANPA is directed to file a statement indicating whether it desires an evidentiary hearing, the nature of the evidence it would present at such a hearing, and the date when such evidence can be filed with the Commission. This material will be due January 28, 1987, two weeks after Postal Service is to file its answer.

Because this new complaint supersedes an existing docket, all those who have participated in Docket C84-1 will have intervenor status in new Docket C87-2. Thus no new notices of intervention are required from parties who have intervened in C84-1. Any party other than ANPA which believes that resolution requires evidentiary hearings should file a statement to that effect by January 28, 1987, describing the factual issues which require evidentiary presentations.

It is ordered:

1. The American Newspaper Publishers Association Amended Complaint Respecting Use of Detached Address Cards with Third Class Bulk Regular Rate Flats shall be docketed as C87-2.

2. Docket C87-2 shall supersede Docket C84-1.

3. Docket C84-1 is terminated. Pending motions in that docket are denied as moot, without prejudice to presenting substantive arguments contained therein in other dockets.

4. Postal Service answer to the complaint in Docket C87-2 is due January 14, 1987.

5. ANPA will provide a statement of its intention to provide evidence on January 28, 1987.

6. Parties which believe that factual issues requiring an evidentiary hearing are present in this case shall file a statement to that effect by January 28, 1987.

By the Commission.

Cyril J. Pittack,

Acting Secretary.

[FR Doc. 86-29201 Filed 12-29-86; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, 450 Fifth Street, NW., Washington, DC 20549

Extension

Rules 8b-1 Through 8b-32 [17 CFR 270.8b-1 Through 8b-32]

File No. 270-135

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rules 8b-1 through 8b-32, a family of rules under Section 8b which provides standard instructions for filing registration statements under the Investment Company Act of 1940.

Comments should be submitted to OMB Desk Officer: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503.

Dated: December 17, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-29197 Filed 12-29-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications of Boston Stock Exchange, Inc., for Unlisted Trading Privileges and of Opportunity for Hearing

December 19, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Aristech Chemical Corporation
Common Stock, $1.00 Par Value (File No. 7-9463)

Affiliated Publications, Inc.
Common Stock, $.01 Par Value (File No. 7-9464)

Franklin Resources, Inc.
Common Stock, $.01 Par Value (File No. 7-9465)

Cateret Savings Bank
Common Stock, $.01 Par Value (File No. 7-9466)

Gelco Corporation
Depository Receipts (File No. 7-9467)

Intermedics, Inc.
Common Stock, Par Value $0.10 (File No. 7-9467)

MEI Diversified, Inc.
Common Stock, Par Value $0.05 (File No. 7-9468)

Reebok International, Ltd
Common Stock, $.01 Par Value (File No. 7-9479)

Turner Broadcasting Systems
Common Stock, $.125 Par Value (File No. 7-9470)

UNUM Corporation
Common Stock, $.10 Par Value (File No. 7-9471)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 13, 1987, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds,

based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary

[FR Doc. 86-29198 Filed 12-29-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications of Philadelphia Stock Exchange, Inc. for Unlisted Trading Privileges and of Opportunity for Hearing

December 19, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Boston Celtics Limited Partnership
Units of Limited Partnership Interests (File No. 7-9460)
Medtronic, Inc.
Common Stock, $0.10 Par Value (File No. 7-9461)
NCNB Corporation
Common Stock, $.250 Par Value (File No. 7-9462)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 13, 1986, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-29199 Filed 12-29-86; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15484; 812-6516]

Rightime Fund, Inc.; Application For Exemption

AGENCY: Securities and Exchange Commission ("SEC").

DATE: December 17, 1986.

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940").

APPLICANT: The Rightime Fund, Inc.

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) from section 19(b) and Rule 19b-1.

SUMMARY OF APPLICATION: Applicant seeks an order to allow monthly distributions of long-term capital gains realized by its series, The Rightime Government Securities Fund ("Series") from options on Government Securities (hereinafter defined) and Futures Contracts (hereinafter defined).

FILING DATE: The application was filed on October 28, 1986, and amended on December 16, 1986.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC no later than 5:30 p.m., on January 12, 1987. Request a hearing in writing giving the nature of your interest, the reasons for the request, and the issues contested. Serve Applicant with the request, either personally or by mail, and also send it to Secretary, SEC, along with proof or service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary, SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549; Applicant, The Benson East Office Plaza, Jenkintown, PA 19046.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Meryl Dewey (202) 272-3038 or Special Counsel H. R. Hallock, Jr. (202) 272-303 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

APPLICANT'S REPRESENTATIONS:

1. Applicant is registered as a diversified, open-end, management investment company authorized to offer shares in series.

2. The Series' investment objective is to provide its shareholders with a high current return which it pursues by (i) investing in debt obligations issued or guaranteed by the U.S. Government, its agencies or instrumentalities or instruments secured by such securities and by investing in and earning premiums from transactions involving related options, futures and options on futures; (ii) writing covered call options and secured put options; (iii) purchasing put options; and (iv) entering into closing purchase and sale transactions with respect to certain of such options (all of the foregoing collectively, "Government Securities"). The Series may enter into contracts for the purchase or sale of future delivery of fixed income securities ("Futures Contracts"). The Series also intends to purchase and write options to buy or sell Futures Contracts. Further, the Series is authorized to lend certain Government Securities and enter into repurchase agreements with the sellers of such securities.

3. The Series will pay dividends from net investment income monthly. Distributions of net short-term capital gains from options transactions and net short-term capital gains from other sources will be made monthly. Distributions of any net long-term capital gains realized on sales of investments will be distributed annually.

4. Under the 1984 amendments to section 1256 of the Internal Revenue Code, 60% of the gain or loss with respect to option premiums on Government Securities and Futures Contracts is now treated as long-term, rather than short-term, capital gain or loss. Section 1256 was amended to eliminate certain tax abuses relating to the realization of short-term capital losses from options transactions and there is no evidence that Congress intended to limit the frequency with which registered investment companies may distribute capital gains from options transactions.

5. Under the Tax Reform Act of 1986 ("Current Tax Law"), while long-term capital gains are still distinguished from short-term capital gains, all such gains will eventually be taxed at the rates applicable to regular income. However, long-term capital gains may still be used to offset long-term capital losses. Thus, unless the requested order is granted, investors who receive gains to which section 1256 is applicable will be placed in the worst possible position—gains will be received only once a year, but the characterization of such gains as long-term will no longer yield as great a benefit to them. To the extent that the Current Tax Law continues to make any distinction between short- long-term capital gains, Applicant wishes to distribute these gains monthly to shareholders since investors have come to expect more frequent distributions of such gains.

6. Applicant could elect out of section 1256 with respect to certain options but such election would deprive shareholders of the benefits of being taxed at the lower rates applicable to long-term capital gains on the relevant portion of the Series' distributions. Specifically, the Current Tax Law provides for a transition period in 1987 during which the maximum tax on long-term capital gains will be 28% instead of the 38.5% top rate which will otherwise be applicable to short-term capital gains. Additionally, if Applicant made this election, the Current Tax Law would deprive the Series of the benefit of offsetting long-term capital losses against long-term capital gains. Thus, it is not in the best interest of shareholders to elect out of section 1256.

7. None of the purposes of section 19(b) and Rule 19b-1 which, with certain exemptions, prohibit distributions of long-term capital gains more than once every twelve months, will be served by a strict application of these provisions to 60% of the capital gains generated by certain options transactions as: (1) Characterizations of these gains as long-term capital gains would not make investors likely to confuse them with dividends out of net interest income since investors have always received quarterly distributions of these gains, which were considered to be short-term capital gains until section 1256 was amended; and (ii) distributions of capital gains from distributions out of net investment income will be clearly distinguished in the notice to shareholders accompanying the distribution.

8. Section 18(b) and Rule 19b-1 were also intended to prevent churning of portfolios in contravention of a stated goal of long-term capital appreciation. The revised treatment of 60% of certain capital gains is not expected to affect the investment decisions or distribution practices of the Series, which has as its investment objective high current return, not long-term capital appreciation.

9. Monthly distribution of long-term capital gains from options transactions will not increase administrative expenses because Applicant proposes to make monthly distributions of short-term capital gains on behalf of the Series.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-29149 Filed 12-29-86; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-7098]

Issuer Delisting; Application of Saunders Systems, Inc. (Now Ryder Truck Rental, Inc.) ($1.20 Convertible Exchangeable Preference Stock), To Withdraw From Listing and Registration

December 19, 1986

Saunders Systems, Inc. ("Company") (now Ryder Truck Rental, Inc.), has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc. ("Amex")

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

Pursuant to an Agreement and Plan of Merger dated as of June 26, 1986 among Ryder System, Inc. (the parent company of Ryder Truck Rental, Inc. ("RTR")), RYDERCORP (a sister subsidiary of RTR) and Saunders System, Inc. ("Saunders"), RYDERSCORP was merged on September 30, 1986 into Saunders and each share of the two classes of the common stock of Saunders, par value $1.00 per share, was converted into the right to receive $12.50 in cash. Accordingly, Saunders became a wholly-owned subsidiary of Ryder System, Inc. and a sister subsidiary of RTR. The Common stock of Saunders ceased to be traded or listed on the exchange and is no longer registered under Section 12 except that it became convertible only into $15.15 in cash per share rather than being convertible into Saunders common stock, as it had been previously.

On October 31, 1986, Saunders was merged into RTR, and all shares of the Preference Stock survived the merger, although they were now converted by operation of law into equivalent shares of $1.20 Convertible Exchangeable Preference Stock, $1.00 Par Value, of RTR. At such time, there were less than 204,000 shares of Preference Stock outstanding in the hands of less than 125 holders. Many of the shares of Preference Stock had been converted into Saunders common stock prior to the first merger of RYDERCORP into Saunders, and more had been converted into $15.15 in cash prior to the second merger of Saunders into RTR. The transfer agent for the preference Stock continues to receive requests from holders of the Preference Stock to convert their shares into cash. It is reasonable to expect that requests for conversion will continue. The Preference Stock is redeemable on March 31, 1987 at the price of $10.96 per share, and the holders have been advised that redemption is intended to take place.

Notwithstanding the change in circumstances described above, Saunders would have continued to be, and RTR now is, subject to the reporting requirements under the Act by virtue of the registration of the Preference Stock under the Act and its listing on the Exchange. The financial statements of RTR have not previously been made public, and it would be a great burden to management to have to make them public, and to make public reports on behalf of RTR, because management already has the same reporting burdens for Ryder Systems, Inc. In view of that consideration, the small number of holders and shares of Preference Stock outstanding, the very limited trading market for the Preference Stock, the effective lack of appreciation potential inherent in the Preference Stock and the reasonable expectation that all shares of Preference Stock will be converted into cash prior to redemption on March 31, 1987, management believes that the expense of preparing and filing periodic reports under the Exchange Act for RTR, including the cost of preparing audited financial statements of RTR, is disproportionate to any benefit to the holders of the Preference Stock. In addition, management believes that preparation of periodic reports for RTR exerts burdens and demands which are unnecessary under the circumstances.

Any interested person may, on or before January 13, 1987, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretory.

[FR Doc. 86-29200 Filed 12-29-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceeding; Agreements Filed During the Week Ending December 19, 1986

The following agreements were filed with the Department of Transportion under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

Docket No. 44562 R-1 & R-2

Parties: Members of International Air Transport Association.

Dated Filed: December 16, 1986.

Subject: Special Mtg; Passenger Agency Conference.

Proposed Effective Dcte: Janaury 1, 1987.

Docket No. 44563

Parties: Members of International Air Transport Association.

Dated Filed: December 16, 1986.

Subject: Amend Dalian-Tokyuo GCRs and SCRs.

Proposed Effective Date: April 1, 1987.

Docket No. 44564 R-1—R-16

Parties: Members of International Air Transport Association.

Dated Filed: December 16, 1986.

Subject: 1987-88 Worldwide Passenger Fare Resos.

Proposed Effective Date: April 1, 1987.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 86-29146 Filed 12-29-86; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity, and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended, December 19, 1986

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 44576

Date Filed: December 19, 1986.

Due Date for Answers, Conforming Applicotions, or Motion to Modify Scope: January 16, 1987.

Description: Application of Anglo Airlines Limited, pursuant to section 402 of the Act and Subpart Q of the Regulations, requests a foreign air carrier permit to engage in the charter foreign air transportation of property between points in the United States, on the one hand, and points in the United Kingdom and points outside the United Kingdom on the other.

Docket No. 44577

Date Filed: December 19, 1986.

Due Date for Answers, Conforming Applicotions, or Motions to Modify Scope: January 16, 1987.

Description: Application of Soundair Corporation pursuant to section 402 of the Act and Subpart Q of the Regulations, requests a foreign air carrier permit to operate a class 9-2, International, Regular Specific Point, commercial air service, using fixed wing aircraft, to transport persons, goods and mail, between Toronto, Ontario, Canada, and Cleveland, Ohio.

Docket No. 44578

Date Filed: December 19, 1987.

Due Dote for Answers, Conforming Applications, or Motions to Modify Scope: January 16, 1987.

Description: Application of Soundair Corporation pursuant to section 402 of the Act and Subpart Q of the Regulations, requests a foreign air carrier permit to operate a class 9-2, International, Regular Specific Point, commercial air service to transport persons, goods and mail, using fixed wing aircraft between Toronto, Ontario, Canada, and Indianapolis, Indiana.

Phyllis T. Kaylor,

Chief, Documentory Services Division.

[FR Doc. 86-29147 Filed 12-29-86; 8:45 am]

BILLING CODE 4910-62-M

Office of the Secretary

Privacy Act of 1974; Employee Counseling Services Program Records DOT/ALL-5

The Department of Transportation herewith publishes a notice relating to the proposed implementation of a system of records to cover all records maintained by the Department pertaining to Employee Counseling Services Programs for civilian employees. The records will include case files of current and former employees who have been counseled or otherwise treated regarding alcohol or drug abuse or for personal or emotional health problems.

Any person or agency may submit written comments on the proposed new system to the Privacy Act Officer (M-34), Room 7109, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590. Comments must be received within 30 days to be considered.

If no comments are received, the proposed changes will become effective 60 days from the date of issuance. If comments are received, the comments will be considered and where adopted, the document will be republished with the changes.

Issued in Washington, D.C., December 18, 1986.

Jon H. Seymour,

Assistont Secretory for Administration.

Narrative Statement for the Department of Transportation, Office of the Secretary, Office of Personnel Establishment of Employee Counseling Services Program Records System

The Office of the Secretary proposes to establish the Employee Counseling Services Program Records System, DOT/ALL-5 on a Department-wide basis to cover all records maintained by the Department of Transportation's (DOT) Operating Administrations pertaining to Employee Counseling Services Programs for civilian employees.

The purpose of the system and the authorities under which it is maintained are described under the appropriate headings in the attached copy of the system notice prepared for publication in the **Federal Register.**

Access to these records is subject to strict guidelines governing their disclosure (42 U.S.C. 4541 et seq, 21 U.S.C. 1101 et seq, and 42 CFR Part 2) and participation in the programs is limited to employees of the Department. As a result, the probable or potential effects of this proposal on the privacy of the general public is minimal.

A description of the steps taken by the Department to safeguard these records is given under the appropriate heading of the attached **Federal Register** system of records notice.

The purpose of this report is to comply with Office of Management and Budget Circular, A-130, Appendix 1, 50 FR 52730 (1985).

DOT/ALL-5

SYSTEM NAME:

Employee Counseling Services Program Records.

SYSTEM LOCATION:

Records are maintained in the office of the Employee Counseling Service which provides counseling to the employee.

Note.—In order to meet the statutory requirement that agencies provide appropriate prevention, treatment, and rehabilitation programs and services for employees with alcohol or drug problems, and to better accommodate establishment of a health service program to promote employees' physical and mental fitness, it may be necessary for the Department of Transportation (DOT) to negotiate for use of the counseling staff of another Federal, State, or local government, or private sector agency or institution. This system also covers records on DOT employees that are maintained by another Federal, State, or local government, or private sector agency or institution under such a negotiated agreement.

SECURITY CLASSIFICATION

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former DOT employees who have been counseled or otherwise treated regarding alcohol or drug abuse or for personal or emotional health problems.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system include documentation of visits to employee counselors (Federal, State, or local government, or private) and the diagnosis, recommended treatment, results of treatment, and other notes or records of discussions held with the employee made by the counselor. Additionally, records in this system may include documentation of treatment by a private therapist or a therapist at a Federal, State, local government, or private institution.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3301 and 7901, 21 U.S.C. 1101, 42 U.S.C. 4541 and 5461, and 44 U.S.C. 3101.

PURPOSE:

These records are used to document the nature of the individual's problem and progress made and to record an individual's participation in and the results of community or private sector treatment or rehabilitation programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose information to medical personnel to the extent necessary to meet a genuine medical emergency.

b. To disclose information if authorized by an appropriate court order granted after application showing good cause.

c. To disclose information to the Department of Justice or other appropriate Fedeal agencies in defending claims against the United States, when the claim is based upon an individual's mental or physical condition and is alleged to have arisen because of activities of DOT in connection with the individual.

d. To disclose information to qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report or otherwise disclose patient identities in any manner (when such records are provided to qualified researchers employed by DOT, all patient identifying information shall be removed)

Note.—DOT's general routine uses (49 FR 15345) do not apply to this system of records. Disclosure of these records beyond officials of DOT having a bona fide need for them, or to the person to whom they pertain, is rarely made as disclosures of information pertaining to an individual with a history of alcohol or drug abuse must be limited in compliance with the restriction of the Confidentiality of Alcohol and Drug Abuse Patient Records regulations, 42 CFR Part 2. Records pertaining to the physical and mental fitness of employees are, as a matter of DOT policy, afforded the same degree of confidentiality and are generally not disclosed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders.

RETREIEVABILITY:

These records are retrieved by the name or social security number of the individual on whom they are maintained or by a unique case file identifier.

SAFEGUARDS:

These records are maintained in locked file cabinets with access strictly limited to employees directly involved in the DOT's Employee Counseling Services Program.

RETENTION AND DISPOSAL:

Records are maintained for three to six years after the employee's last contact with DOT's Employee Counseling Services Program.

SYSTEM MANAGER AND ADDRESS:

Director of Personnel, Office of the Secretary, Department of Transportation, Room 9101, 400 7th Street, SW., Washington, D.C. 20590.

NOTIFICATION PROCEDURE:

DOT employees wishing to inquire whether this system of records contains information about them should contact the DOT Employee Counseling Services Program coordinator who arranged for counseling or treatment. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of Birth.

RECORD ACCESS PROCEDURES:

DOT employees wishing to request access to records pertaining to them should contact the DOT Employee Counseling Services Program coordinator who arranged for counseling or treatment. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of Birth.

An individual must also follow DOT's regulations regarding maintenance of and access to records pertaining to individuals (49 CFR Part 10).

CONTESTING RECORDS PROCEDURES:

DOT employees wishing to request amendment to these records should contact the DOT Employee Counseling Services Program coordinator who arranged for counseling or treatment. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of Birth.

An individual must also follow DOT's regulations regarding maintenance of and access to records pertaining to individuals (49 CFR Part 10).

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the individual to whom it applies, the supervisor of the individual if the individual was referred by the supervisor, the Employee Counseling Service Program staff member who records the counseling session, and

therapists or institutions providing treatment.

[FR Doc. 86-29145 Filed 12-29-86; 8:45 am]
BILLING CODE 4910-62-M

Federal Aviation Administration

Palm Beach International Airport, West Palm Beach, FL; FAA Approval of Noise Compatibility Program

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by Palm Beach County under the provisions of Title I of the Aviation Safety and Noise Abatement Act (ASNA) of 1979 (Pub. L. 96-193) and 14 CFR Part 150. These findings are made in recognition of the description of federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On May 15, 1986, the FAA determined that the noise exposure maps submitted by Palm Beach County under Part 150 were in compliance with applicable requirements. On November 12, 1986, the Administrator approved the Palm Beach International Airport (PBI) noise compatibility program. Twenty-four of the 26 actions of the program were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the PBI noise compatibility program is November 12, 1986.

FOR FURTHER INFORMATION CONTACT: Pablo G. Auffant, Community Planner, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, Florida 32812, telephone (305) 648-6583. Documents reflecting this FAA action may be obtained from the same individual.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for PBI effective November 12, 1986.

Under Section 104(a) the Aviation Safety and Noise Abatement Act (ASNA) of 1979, an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, Government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with FAR Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measure should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Aviation Safety and Noise Abatement Act of 1979, and is limited to the following determinations:

The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government.

Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the Navigable Airspace and Air Traffic Control Systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, Section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Orlando, Florida.

Palm Beach County submitted to the FAA on December 13, 1985, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from 1983 through 1985. The PBI noise exposure maps were determined by FAA to be in compliance with applicable requirements on May 16, 1986. Notice of this determination was published in the **Federal Register** on June 9, 1986.

The PBI study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to (or beyond) the year 1990. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in Section 104(b) of the Act. The FAA began its review of the program on May 16, 1986, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained 26 proposed actions for noise mitigation. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective November 12, 1986.

Approval was granted for 24 of the 26 program actions.

These determinations are set forth in detail in the Record of Approval endorsed by the Administrator on November 12, 1986. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of Palm Beach County.

Issued in East Point, Georgia, December 5, 1986.

Thomas M. Ackerman,

Program Specialist, Planning and Development Branch, Airports Division, Southern Region.

[FR Doc. 86-29166 Filed 12-29-86; 8:45 am]
BILLING CODE 4910-13-M

Federal Highway Administration

Uniform Relocation and Real Property Acquisition for Federal and Federally-Assisted Programs; Fixed Payment for Moving Expenses—Residential Moves

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: The purpose of this Notice is to publish changes in the moving expense schedule for displaced persons in the States of Connecticut and Delaware.

EFFECTIVE DATE: January 1, 1987.

FOR FURTHER INFORMATION CONTACT: John Wineberg, Relocation Division, Office of Right-of-Way (202-366-2039); or Reid Alsop, Office of the Chief Counsel (202-366-1371), Federal Highway Administration, 400 Seventh Street, SW., Washington DC, 20590. Office hours, Monday—Friday are from 7:45 a.m. to 4:15 p.m., ET.

SUPPLEMENTARY INFORMATION: Section 202(b) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, 84 Stat. 1894, provides that a displaced individual or family may elect to be paid for moving expenses on the basis of a moving expense schedule. To ensure statewide uniformity among all agencies operating under the Act, the common rule, governing agency implementation of the Act, promulgated by each Federal agency on February 27, 1986 at 51 FR 6999, provides that moving expense schedules approved by the Federal Highway Administration (FHWA) shall be used.

The purpose of this Notice is to revise the schedules that were published on January 14, 1986, (51 FR 1591) and March 14, 1986, (51 FR 8937), to reflect changes in the moving expense schedules that have been made by the following States:

Table I—Personalty—Connecticut and Delaware.

Table II—Mobile Homes—Delaware.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

(42 U.S.C. 4622(b); 49 CFR 25.302(a); 49 CFR 1.48(cc)).

Issued on December 19, 1986.

Robert E. Farris,

Deputy Federal Highway Administrator, Federal Highway Administration.

TABLE I.—PERSONALTY

[Payment for moving and related expenses]

State	Occupant provides furniture									Occupant does not provide furniture	
	Number of rooms of furniture—										
	1	2	3	4	5	6	7	8	9	First room	Each additional room
Alabama	100	150	200	250	300					(1)	(1)
Alaska	200	250	300							100	50
Arizona	50	100	150	200	250	300				25	15
Arkansas	100	160	200	240	280	300				50	30
California	100	200	300							50	50
Colorado	120	180	240	300						30	20
Connecticut	150	200	250	300						15	15
Delaware	100	150	200	250	300					40	20
District of Columbia	100	135	170	210	250	290	300			35	15
Florida	100	150	200	250	300					50	50
Georgia	140	180	220	260	300					50	10
Guam	48	85	120	168	205	240	300			10	10
Hawaii	65	100	135	175	215	255	295	300		45	30
Idaho	60	100	140	180	220	260	300			20	10
Illinois	50	100	150	200	250	300				25	15
Indiana	60	120	180	240	300					35	15
Iowa	75	140	195	240	275	300				30	12
Kansas	60	120	180	240	300					30	10
Kentucky	65	130	195	260	300					35	25
Louisiana	100	140	180	220	260	300				40	15
Maine	50	100	150	200	250	300				25	15
Maryland	100	150	200	250	300					20	10
Massachusetts	90	150	200	250	300					25	15
Michigan	65	130	180	240	300					50	10
Minnesota	75	150	200	250	300					30	15
Mississippi	100	150	200	250	300					50	25
Missouri	50	100	150	200	250	300				25	10
Montana	100	150	200	250	300					50	25
Nebraska	75	150	225	300						25	25
Nevada	150	200	250	300						50	50
New Hampshire	100	200	300							25	15
New Jersey	120	180	240	300						25	15
New Mexico	158	235	300							(2)	(2)
New York	120	170	215	260	300					50	25
North Carolina	70	110	160	210	260	300				40	30
North Dakota	75	125	150	200	250	275	300			30	15
Ohio	100	150	200	250	300					50	25
Oklahoma	100	150	200	250	300					40	15
Oregon	150	225	300							75	30

BEST COPY AVAILABLE

TABLE I.—PERSONALTY—Continued

[Payment for moving and related expenses]

State	Occupant provides furniture									Occupant does not provide furniture	
	Number of rooms of furniture—										
	1	2	3	4	5	6	7	8	9	First room	Each additional room
Pennsylvania	140	220	300							50	50
Puerto Rico	75	120	165	210	255	300				25	25
Rhode Island	70	140	210	250	275	300				25	10
South Carolina	150	250	300							40	30
South Dakota	100	150	200	250	300					50	15
Tennessee	75	100	150	200	250	300				25	15
Texas	95	140	190	245	300					50	25
Utah	75	100	130	155	180	210	240	270	300	25	15
Vermont	100	150	200	250	300					25	15
Virginia	60	120	180	240	300					40	10
Virgin Islands	105	150	195	240	275	300				35	35
Washington	100	150	200	250	300					25	25
West Virginia	100	150	200	250	300					40	20
Wisconsin	80	150	210	260	300					50	30
Wyoming	60	120	180	240	260	300				40	20

[1] Furnished units including sleeping rooms. Occupant does not provide furniture.

First room	2 rooms	3 rooms	4 rooms	5 rooms	6 rooms	Each additional room
$35	$55	$80	$100	$125	$145	$20

[2] Furnished units including sleeping rooms. Occupant does not provide furniture.

First room	2 rooms	3 rooms	4 rooms	5 rooms	6 rooms	7 rooms	8 rooms
$68	$129	$160	$193	$224	$256	$288	$300

TABLE II.—MOBILE HOMES

State	Miles		Area—Square Feet		Width—Feet		Allowance dollars
	More than	But not more than	More than	But not more than	More than	But not more than	
Alabama			0	200			165
			200	400			225
			400	600			285
			600				300
Alaska							300
Arizona			0	300			150
			300	400			200
			400	500			250
			500				300
Arkansas					0	10.0	200
					12.0		300
California							[1]
Colorado							[2]
Connecticut [3]					0	8.5	100
					8.5	10.5	150
					10.5	12.5	200
					12.5		250
Delaware			0	300			150
			301	450			200
			451	500			250
			551				300
Florida							300

TABLE II.—MOBILE HOMES—Continued

State	Miles		Area—Square Feet		Width—Feet		Allowance dollars
	More than	But not more than	More than	But not more than	More than	But not more than	
Georgia							300
Guam			0	300			130
			300	400			180
			400	500			210
			500	600			240
			600	700			270
			700				300
Hawaii			0	300			130
			300	400			180
			400	500			210
			500	600			240
			600	700			270
			700				300
Idaho			0	200			100
			200	400			150
			400	600			200
			600	800			250
			800				300
Illinois	0	24			0	8.5	100
					8.5	10.5	150
					10.5	12.5	200
					12.5		250
	24	50			0	8.5	150
					8.5	10.5	200
					10.5	12.5	250
					12.5		300
Indiana					0	12.0	175
Iowa	0	25			0	8.0	130
					8.0	10.0	150
					10.0	12.0	180
					12.0		230
	25	50			0	8.0	140
					8.0	10.0	170
					10.0	12.0	200
					12.0		300
Kansas			0	200			80
			200	400			160
			400	600			240
			600				300
Kentucky [4]					0	8.0	285
					8.0		300
Louisiana					0	10.0	200
					10.0	12.0	250
					12.0	14.0	300
Maine					0	8.0	150
					8.0	10.0	200
					10.0	12.0	250
					12.0		300
Maryland			0	200			110
			200	400			140
			400	600			165
			600	800			195
			800	1,000			220
			1,000	1,200			250
			1,200				300
Massachusetts			0	200			80
			200	400			140
			400	600			200
			600				300
Michigan					0	8.0	145
					8.0	10.0	230
					10.0	12.0	280
					12.0		300
Minnesota [4]					0	8.0	200
Mississippi			0	300			200
			300	400			250
			400				300
Missouri			0	200			100

TABLE II.—MOBILE HOMES—Continued

State	Miles		Area—Square Feet		Width—Feet		Allowance dollars
	More than	But not more than	More than	But not more than	More than	But not more than	
			200	400			150
			400	600			200
			600	800			250
			800				300
Montana [4]					0	10.0	150
					10.0	12.0	200
					12.0	14.0	225
					14.0		275
Nebraska							300
Nevada					0	8.0	200
					8.0		300
New Hampshire							300
New Jersey			0	200			100
			200	400			150
			400	600			200
			600	800			250
			800				300
New Mexico [4, 5]	0	20			0	8.5	206
					8.5	10.5	279
					10.5	12.5	288
					12.5		300
	20	50			0	8.5	243
					8.5	10.5	288
					10.5		300
New York			0	300			200
			300	500			250
			500				300
North Carolina [4, 6]					0	12.0	200
					12.0		300
North Dakota			0	200			125
			200	400			175
			400	600			225
			600	800			275
			800				300
Ohio							300
Oklahoma					0	10.0	250
					10.0		300
Oregon			0	200			150
			200	600			300
			600				300
Pennsylvania							300
Rhode Island					0	8.0	225
					8.0	10.0	250
					10.0	12.0	275
					12.0		300
South Carolina [4]					0	10.0	175
					10.0	12.0	200
					12.0	14.0	250
					14.0		300
South Dakota							300
Tennessee [4]					0	10.0	100
					10.0		150
Texas					0	8.5	175
					8.5	10.5	235
					10.5		300
Utah [4]	0	10			0	8.0	140
					8.0	10.0	145
					10.0	12.0	165
					12.0		200
	10	25			0	8.0	145
					8.0	10.0	155
					10.0	12.0	175
					12.0		225
	25	50			0	8.0	150
					8.0	10.0	160
					10.0	12.0	190
					12.0		250
Vermont							300

TABLE II.—MOBILE HOMES—Continued

State	Miles		Area—Square Feet		Width—Feet		Allowance dollars
	More than	But not more than	More than	But not more than	More than	But not more than	
Virginia			0	200			150
			200	400			200
			400	600			250
			600	800			300
Washington							300
West Virginia			0	300			150
			300	450			200
			450	550			250
			550				300
Wisconsin					0	8.0	150
					8.0	10.0	200
					10.0	12.0	250
					12.0		300
Wyoming [4]					0	8.5	135
					8.5	10.5	165
					10.5	12.5	210
					12.5		300

[1] Width to 8'
Length 40' $200.
Over 40' $300.
Width over 8' $300.
[2] Under 8' x 40' —Unskirted $150.
Over 8' x 40' —$300.
[3] Plus $50 for expandable trailer.
[4] $300 for double trailer.
[5] Escort fee included.
[6] Personalty only. Width: Under 10 feet—$60, 10 feet—$70, 12 feet and over—$100, Doubles—$175.

[FR Doc 29148 Filed 12-29-86; 8:45 am]
BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

National Driver Register Advisory Committee; Public Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App. I), notice is hereby given of a meeting of the National Driver Register Advisory Committee to be held on January 20 and 21, 1987, in Washington DC. The meeting will be held at the DOT Headquarters Building from 9:00 a.m. to 4:30 p.m. on January 20, and from 8:30 a.m. to 10:00 a.m. on January 21, in room 6200. Issues to be discussed are: NDR status, State Pilot Test issues, the Commercial Driver License Information System, the accessibility of NDR information to trucking companies and the coordination and use of the NDR by other Federal Agencies, and a report on American Association of Motor Vehicle Administrators 5-year plan.

The meeting is open to the interested public, but may be limited in attendance to the space available. Members of the public may present a written statement to the Committee at any time. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Additional information is available from the NHTSA Executive Secretariat, Room 5221, 400 Seventh Street, SW., Washington, DC 20590, telephone 202-366-2870.

Issued in Washington, DC on December 22, 1986.

Sharon R. Goldstein,

Acting Director, Executive Secretariat.

[FR Doc. 86-29144 Filed 12-29-86; 8:45 am]
BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 39-86]

Treasury Notes of Series AH-1988; Interest Rate

Washington, December 18, 1986.

The Secretary announced on December 17, 1986, that the interest rate on the notes designated Series AH-1988, described in Department Circular—Public Debt Series—No. 39-86 dated December 11, 1986, will be 6-¼ percent. Interest on the notes will be payable at the rate of 6-¼ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 86-29175 Filed 12-29-86; 8:45 am]
BILLING CODE 4810-40-M

[Supplement to Department Circular—Public Debt Series—No. 40-86]

Treasury Notes of Series R-1990; Interest Rate

Washington, December 19, 1986.

The Secretary announced on December 18, 1986, that the interest rate on the notes designated Series R-1990, described in Department Circular—Public Debt Series—No. 40-86 dated December 11, 1986, will be 6-⅝ percent. Interest on the notes will be payable at the rate of 6-⅝ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 86-29176 Filed 12-29-86; 8:45 am]
BILLING CODE 4810-40-M

United States Mint

Privacy Act of 1974—Routine Uses

AGENCY: United States Mint, Treasury.

ACTION: Notice of routine uses for Treasury/Mint 00.003 Cash Receivable Accounting Information System, and Treasury/Mint 00.006 Employee and Former-Employee Travel and Training Accounting Information System.

SUMMARY: Pursuant to the requirements of the Privacy Act of 1974, the Director of the United States Mint gives notice of the new routine uses for Treasury/Mint 00.003 and Treasury/Mint 00.006 record systems. The purpose of these routine uses is (1) to take advantage of certain debt collection procedures, techniques, and services authorized by the Debt Collection Act of 1982, Pub. L. 97–365; and (2) to allow for a computer match with the Department of Defense to identify current DoD active and reserve military, civilian, or retired military personnel currently receiving compensation from DoD who have defaulted on obligations owed to Treasury and who do not have a current repayment plan in effect; and to seek the attachment of salary or benefit payments in order to discharge the debt in accordance with the Debt Collection Act of 1982 upon certification by Treasury that due process requirements and other provisions of law or administrative regulations have been met. A computer match will also be performed with the Office of Personnel Management and the U.S. Postal Service, with the Department of the Treasury accomplishing the match, for the reasons set forth above.

DATES: Comments must be received no later than 30 days after the publication of this notice.

The proposed new routine uses shall take effect without further notice January 29, 1987, unless comments received on or before that date. The notice of disclosure under 5 U.S.C. 552a (b) (12) is effective December 30, 1986.

ADDRESS: Comments may be sent to: Chief, Administrative Programs Division, United States Mint, 633 Third Street, N.W., Room 639, Washington, D.C. 20220, (202) 376–0540.

FOR FURTHER INFORMATION CONTACT: Myles Schulberg, Chief, Administrative Programs Division, 633 Third Street, N.W., Washington, D.C. 20220, (202) 376–0540.

SUPPLEMENTARY INFORMATION: Part 1: Routine Uses for Debt Collection Purposes.

The first use is the routine disclosure of debtor records to debt collector operations. 31 U.S.C. 3718 authorizes the head of an agency to enter into contracts for collection services to recover indebtedness owed the United States Government. Such contracts will necessitate the disclosure of data in a debtor's file. The contractor shall be subject to the Privacy Act of 1974 to the extent specified in 5 U.S.C. 552a (m). Debtor information will consist of the following: The individual's name, address, taxpayer identification number, and other information necessary to establish the identity of the individual; the amount, status, and history of the claim; and the agency or program under which the claim arose. By contract, the debt collection agency selected will be responsible for complying with the Privacy Act. In addition, collection agencies and their employees may be subject to criminal penalties provided for in the Privacy Act and are considered for this purpose, employees of the agency. The U.S. Mint intends to avail itself of such services whenever necessary to collect its debts. Appropriate protective clauses will be incorporated into all contracts.

The second use is the disclosure of debtor information to consumer reporting agencies for commercial credit reports. These reports will be used internally by the U.S. Mint in assessing a debtor's ability to repay a debt or they may be released to a debt collection agency or to the Department of Justice. Claims referred to the Department of Justice for litigation must be accompanied by current credit data. (4 CFR 105.2) Such reports must support a reasonable prospect of effecting enforced collection. In most cases, a commercial credit report is the only means of obtaining the needed information.

The Debt Collection Act constitutes the necessary authority to meet the Privacy Act's "compatibility" requirement for the above-described routine uses. That is, it provides a statutory basis for the agency to consider such disclosures as compatible with the purpose for which the data was originally collected.

The third use entails the disclosure of certain debtor information to consumer reporting agencies. The purpose of the disclosure is to make available delinquency and default data to private sector extenders of credit. Congress in 31 U.S.C. 3711 (f)(1) authorized use of this service as a tool to encourage repayment of an overdue debt. To guard against indiscriminate disclosures in this area, Congress placed stringent limitations on the procedures to be observed when releasing debtor information. Hence, before disclosing debtor information, the U.S. Mint will comply with the due process requirements established in 31 U.S.C. 3711 (f)(1) and only that information related to the identity of the debtor and the history of the claim will be released. Debtor information will consist of the following: The individual's name, address, taxpayer identification number, and other information necessary to establish the identity of the individual, the amount, status, and history of the claim, and the agency or program under which the claim arose.

Although disclosure of debtor information to consumer reporting agencies falls under the (b)(12) exemption of the Privacy Act (5 U.S.C. 552a (b)(12)), and not the (b)(3) exemption for routine uses (5 U.S.C. 552a (b)(3)), the intended use by the U.S. Mint of such data is being published at the end of the routine use sections for Treasury/Mint 00.003, Treasury/Mint 00.006. This is being done in accordance with OMB's Guidelines on the Relationship of the Debt Collection Act of 1982 to the Privacy Act of 1974. (48 FR 15556, April 11, 1983.) The primary concern is editorial consistency.

Part II: Routine Use to Permit Computer Matching.

The U.S. Mint will participate in an offset project authorized under the Deficit Reduction Act of 1984 which provides that IRS would offset tax refunds owed to a taxpayer against any delinquent debt owed by the taxpayer to federal departments and agencies. However, before this tax refund offset program is implemented, the Department of the Treasury must first verify that the delinquent debtor is not a current or former federal employee with either salary or retirement benefits that could be used to reduce the debt. In order to determine whether persons involved are current or former employees, it will be necessary to match this file with that of the Department of Defense, Office of Personnel Management, and the U.S. Postal Service. The Department of the Treasury is hereby publishing a routine use to allow for disclosure of this information to these agencies.

The Department of Defense will publish a matching notice concerning this effort as required by Office of Management and Budget (OMB) guidelines. The Treasury Department will publish a matching notice as required by OMB guidelines to conduct the computer matching with OPM and the U.S. Postal Service. Prior to making any such disclosures, Departmental system managers will assure adherence to the requirements contained in the OMB guidelines for conducting computer matching programs.

TREASURY/MINT 00.003

SYSTEM NAME:

Cash Receivable Accounting Information System—Treasury/Mint.

SYSTEM LOCATION:

Washington, D.C., United States Mint, Judiciary Square Building, 633 Third Street, N.W.; Philadelphia, PA, United States Mint, Independence Mall, Denver, CO, United States Mint, 320 West Colfax Avenue; San Francisco, CA, United States Assay Office, 155 Hermann Street; West Point, N.Y., United States Bullion Depository; Fort Knox, KY, United States Bullion Depository.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and former employees of the United States Mint and members of the general public who have: (a) Served on jury duty when employed by the United States Mint. (b) Paid for lost government property belonging to the Mint. (c) Purchased numismatic items from Mint sales outlets.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Cash received from Mint employees who have served on jury duty or received witness fees. (2) Cash received from Mint employees and general public for lost government property, assay sample work and cash sales of over-the-counter numismatic items.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5537 (Fees for jury service); 31 U.S.C. 5132 (Sale of numismatic items).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES.

Routine disclosure of information contained in this system of records may be made to the U.S. Department of Justice in connection with actual or potential criminal or civil litigation, and in connection with requests for legal advice. Disclosure may be made during a judicial or administrative proceeding. Routine disclosure of information may be made to furnish another federal agency information to effect interagency salary or other administrative offset; to furnish a consumer reporting agency information to obtain commercial credit reports; to furnish a debt collection agency information for debt collection services; to furnish a consumer reporting agency with delinquency and default data which will be made available to private sector extenders of credit. Identifying information may be disclosed to the Department of Defense, the Office of Personnel Management, and the U.S. Postal Service for the purpose of conducting a computer match to identify delinquent debtors who are also current or former federal employees with salary or retirement benefits that could be used to reduce the debt.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a (b)(12): Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681 a(f)) or the Debt Collection Act of 1982 (31 U.S.C. 3701 (a)(3)(B)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper Documents.

RETRIEVABILITY:

Name or number substitute.

SAFEGUARDS:

Storage in locked filing cabinets with access by authorized accounting personnel.

RETENTION AND DISPOSAL:

General Records Control Schedule, GAO rules and regulations, United States Mint Records Control Schedule. Destroyed in accordance with General Services Administration regulations.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director for Budget and Finance, United States Mint, Judiciary Square Building, 633 3rd Street, NW, Washington, D.C. 20220; Budget and Accounting Officer, United States Mint, Independence Mall, Philadelphia, PA 19106; Budget and Accounting Officer, United States Mint, 320 West Colfax Avenue, Denver, CO 80204; Budget and Accounting Officer, United States Assay Office, San Francisco, CA 94102; Officer in Charge, United States Bullion Depository, Fort Knox, KY 40121; Budget and Accounting Officer; United States Bullion Depository, West Point, NY 10996.

NOTIFICATION PROCEDURE:

Same as included in System Manager. An employee or former employee is required to show an identification such as: (A) Employee identification, (B) Driver's license, (C) Other means of identification including social security number and date of birth.

RECORD ACCESS PROCEDURES:

For information on procedures for gaining access to and contesting records, individuals may contact the following official: Chief, Administrative Programs Division, United States Mint, Room 639, Judiciary Square Building, Washington, D.C. 20220

CONTESTING RECORD PROCEDURES:

See access above.

RECORD SOURCE CATEGORIES:

Mint employees and appropriate agency officials.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

TREASURY/MINT 00.006

SYSTEM NAME:

Employee and Former Employee Travel and Training Accounting Information System—Treasury/Mint.

SYSTEM LOCATION:

Washington, D.C., United States Mint, Judiciary Square Building, 633 3rd Street, NW; Philadelphia, PA, United States Mint, Independence Mall; Denver, CO, United States Mint, 320 West Colfax Avenue; San Francisco, CA, United States Assay Office, 155 Hermann Street; West Point, NY, United States Bullion Depository; Fort Knox, KY, United States Bullion Depository.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and former employees of the United States who have engaged in travel and training.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) SF 1166 Voucher and Schedule of Payments with supporting documents such as: (A) SF 1012 Travel Voucher, (B) SF 1038 Application and Account for Advance of Funds, (2) Travel Authorities, (3) Government Travel Request SF 1169, (4) Request, Authorization, Agreement and Certification of Training.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Chapter 41 (Training) and Chapter 57 (Travel).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES.

Routine disclosure of information contained in this system of records may be made to the U.S. Department of Justice in connection with actual or potential criminal or civil litigation, and in connection with requests for legal advice. Disclosure may be made during a judicial or administrative proceeding. Routine disclosure of information may be made to furnish another federal

agency information to effect interagency salary or other administrative offset; to furnish a consumer reporting agency information to obtain commercial credit reports; to furnish a debt collection agency information for debt collection services; to furnish a consumer reporting agency with delinquency and default data which will be made available to private sector extenders of credit. Identifying information may be disclosed to the Department of Defense, the Office of Personnel Management, and the U.S. Postal Service for the purpose of conducting a computer match to identify delinquent debtors who are also current or former federal employees with salary or retirement benefits that could be used to reduce the debt.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper Documents.

RETRIEVABILITY:

Name or number substitute.

SAFEGUARDS:

Storage in locked filing cabinets with access by authorized accounting personnel only.

RETENTION AND DISPOSAL:

General Records Control Schedule, GAO rules and regulations, United States Mint Records Control Schedule. Destroyed in accordance with General Services Administration regulations.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director for Budget and Finance, United States Mint, Judiciary Square Building, 633 3rd Street, NW., Washington, D.C. 20220; Budget and Accounting Officer, United States Mint, Independence Mall, Philadelphia, PA 19106; Budget and Accounting Officer, United States Assay Office, 155 Hermann Street, San Francisco, CA 94102; Budget and Accounting Officer, United States Bullion Depository, West Point, NY 10996; Officer in Charge, United States Bullion Depository, Fort Knox, KY 40121.

NOTIFICATION PROCEDURE:

Same as included in System Manager. An employee or former employee is required to show an identification such as: (A) Employee identification, (B) Drivers license, (C) Other means of identification including social security number and date of birth.

RECORD ACCESS PROCEDURES:

For information on procedures for gaining access to and contesting records, individuals may contact the following official: Chief, Administrative Programs Division, United States Mint, Room 639, Judiciary Square Building, Washington, D.C. 20220.

CONTESTING RECORD PROCEDURES:

See access above.

RECORD SOURCE CATEGORIES:

Mint employees and appropriate agency officials.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

John F.W. Rogers,

Assistant Secretary of the Treasury (Management).

[FR Doc. 86-29195 Filed 12-29-86; 8:45 am]

BILLING CODE 4810-37-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 249
Tuesday, December 30, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of December 29, 1986, January 5, 12 and 19, 1987.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of December 29

No Commission Meetings

Week of January 5

Tentative

Thursday, January 8

10:00 a.m.
Briefing on Status of Safety Goal Implementation (Public Meeting)
2:00 p.m.
Discussion/Possible Vote on Full Power Operating License for Shearon Harris (Public Meeting)

Friday, January 9

10:00 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Proposed Order on Shearon Harris (Tentative)

Week of January 12

Tentative

Wednesday, January 14

10:00 a.m.
Briefing on Status of Palisades (Public Meeting)
10:00 a.m.

Thursday, January 15

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)
2:00 p.m.
Discussion/Possible Vote of Full Power Operating License for Byron-2 (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 19

Tentative

Thursday, January 22

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Briefing on Status of Palisades (Public Meeting) *moved* from January 15 to January 14. Discussion/Possible Vote of Full Power Operating License for Byron-2 *added* to January 15.

TO VERIFY THE STATUS OF MEETING CALL (RECORDING)—(202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Andrew Bates (202) 634-1410.

December 24, 1986.

Andrew L. Bates,

Office of the Secretary.

[FR Doc. 86-29376 Filed 12-24-86; 2:13 pm]

BILLING CODE 7590-01-M

Corrections

Federal Register
Vol. 51, No. 249
Tuesday, December 30, 1986

This section of the FEDERAL REGISTER contains editorial corrections of previously published Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1987, Addition

Correction

In notice document 86-28619 beginning on page 45506 in the issue of Friday, December 19, 1986, make the following correction:

On page 45511, in the second column, under **Commodities**, "8455-00-261-4510" should read "8455-00-261-4501".

BILLING CODE 1505-01-D

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; R-0577]

Truth in Lending; Proposed Update to Official Staff Commentary

Correction

In proposed rule document 86-28316 beginning on page 45342 in the issue of Thursday, December 18, 1986, make the following correction:

On page 45343, in the third column, in the 16th line, "redefined" should read "refunded".

BILLING CODE 1505-01-D

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R-0577]

Truth in Lending; Right of Rescission

Correction

In rule document 86-28315 beginning on page 45296 in the issue of Thursday, December 18, 1986, make the following correction:

On page 45297, in the first column, in the EFFECTIVE DATE, "December 6" should read "December 16".

BILLING CODE 1505-01-D

federal register

Tuesday
December 30, 1986

Part II

Department of Energy

Bonneville Power Administration

Proposed Transmission and Wholesale Power Rate Adjustment, Public Hearings, and Opportunities for Public Review and Comment

DEPARTMENT OF ENERGY

Bonneville Power Administration

Proposed Wholesale Power Rate Adjustment, Public Hearings, and Opportunities for Public Review and Comment

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of and Opportunities for Review and Comment. *BPA File No:* WP–87.

BPA requests that all comments and documents intended to become part of the Official Record compiled in the process of adjusting wholesale power rates contain the file number designation WP–87.

SUMMARY: The Pacific Northwest Electric Power Planning and Conservation Act (Pacific Northwest Power Act) indicates that BPA must establish and periodically revise BPA's rates so that they are adequate to recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, and to recover the Federal investment in the Federal Columbia River Power System (FCRPS). BPA is proposing to revise its wholesale power rate schedules, effective October 1, 1987, in order to produce sufficient revenue to fulfill its statutory requirements. Section 7 of the Pacific Northwest Power Act controls the establishment of BPA's rates.

Through a separate public process, BPA has completed an initial review of program cost levels for the fiscal year (FY) 1988 and 1989 budgets. This public process has influenced revenue requirement data for BPA's rate case. The Administrator will not reexamine program level decisions in the rate case. However, further opportunity for informal public comment has been established outside the rate case.

Opportunities will be available for interested persons to review the proposed rates and the supporting studies, to participate in hearings, and to submit written comments. During the development of the final rate proposal, BPA will evaluate all written and oral comments received in this process. Consideration of comments and more current data may result in the final rate proposal differing from the rates proposed in this notice.

Responsible Official: Ms. Shirley R. Melton, Director, Division of Rates, is the official responsible for the development of BPA's rates.

DATES: Persons wishing to become a formal "party" to the proceedings must notify BPA in writing of their intention to do so. The petitions to intervene must be received by January 9, 1987, and should be addressed as follows: Hon. Dean F. Ratzman, Hearing Officer, c/o Geoffrey Kronick, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212. In addition, a copy of the intervention must be served on BPA's Office of General Counsel/APR, P.O. Box 3621, Portland, Oregon 97208.

A prehearing conference, required by the rate procedures, will be held before the Hearing Officer at 9:00 a.m. on January 16, 1987, at the Auditorium, Building DOB1, 5411 Hwy. 99, Vancouver, Washington. BPA will prefile the testimony of its witnesses at the prehearing conference.

Registration for the prehearing conference will begin at 8:30 a.m. The Hearing Officer will act on all intervention petitions and oppositions to intervention petitions, establish additional procedures, establish a service list, establish a procedural schedule, and consolidate parties with similar interests for purposes of filing jointly sponsored testimony and briefs and for expediting cross-examination. A notice of the dates and times of the hearings will be mailed to all parties of record.

BPA proposes the following schedule for the formal hearings required by section 7(i) of the Pacific Northwest Power Act. A final schedule will be established by the Hearing Officer.

December 30, 1986—Initial studies available at BPA's Office of Public Involvement (Public Reference Room), 1002 NE. Holladay, 6th Floor, Portland, Oregon.
January 16, 1987—Prehearing Conference and BPA Direct Case Filed
January 26–30, 1987—BPA Witness Clarification
February 18, 1987—Parties' Direct Case Filed
March 16, 1987—Rebuttal Testimony Filed
April 6–24, 1987—Cross-Examination
June 15, 1987—Draft Record of Decision
July 31, 1987—Final Record of Decision

Two series of public field hearings regarding BPA's proposal will be held in various regional locations. At the first series, BPA will provide information concerning the ratemaking process and the issues in this rate case, and a synopsis of the rate proposal. Both the public's comments contained in a verbatim transcript of the hearings and all written comments received during the entire rate process will be made a part of the Official Record. The hearing officer may allow reasonable questioning of participants by BPA counsel. Presentation of testimony and evidence from formal parties will not be allowed at the field hearings.

Registration for the field hearings will be at 7 p.m., and the hearings will begin at 7:30 p.m. The dates and locations are:

February 3—The Cougar Room, Ridpath Hotel, W. 515 Sprague, Spokane, Washington.
February 4—The Guild Hall, The Sherwood Inn, 8402 S. Hosmer, Tacoma, Washington.
February 5—The Orcas Room, Everett Pacific Hotel, 3105 Pine St., Everett, Washington.
February 6—The Carriage Room, 748 W. Broadway, Jackson, Wyoming.
February 9—The Klamath Room, Red Lion Inn—Columbia River, 1401 N. Hayden Island Dr., Portland, Oregon.
February 10—Main Harris Hall, Lane County Building, 125 E. 8th, Eugene, Oregon.
February 11—Richland Federal Building, 825 Jadwin Avenue, Richland, Washington.
February 12—Burley Inn, 800 N. Overland Avenue, Burley, Idaho.

A second series of field hearings may be scheduled near the end of the formal hearings. These field hearings will provide the public an additional opportunity to comment, based on their review of the evidence presented in the formal hearings. BPA will consider the public's comments in the Draft Record of Decision. The hearing schedule and locations will be announced in newspapers in the region.

Written comments may be submitted until the close of all hearings. The last day for receipt of written comments will be specified in a later **Federal Register** notice (currently expected to be published in May 1987).

ADDRESSES: Written comments not submitted at the hearings should be submitted to Ms. Donna L. Geiger, Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen S. Johnson, Public Involvement office, at the address listed above, 503–230–3478. Oregon callers may use 800–452–8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800–547–6048. Information may also be obtained from:

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE., Irving Street, Portland, Oregon 97232, 503–230–4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503–687–6952.

Mr. Wayne Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509–662–4377, extension 379.

Mr. Terence G. Esvelt, Puget Sound Area Manager, 415 First Avenue North, Room 250, Seattle, Washington 98109, 206–442–4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–522–6226.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. Frederic D. Rettenmund, Boise District Manager, 550 West Fort Street, Room 376/Box 035, Boise, Idaho 83724, 208–334–9137.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Procedures Governing Rate Adjustments and Public Participation
II. Elements of the Pacific Northwest Power Act
A. Services
B. Costs
C. Rates
III. Wholesale Power Rate Schedules and General Rate Schedule Provisions
IV. Major Studies and Issues
A. Major Studies
B. Wholesale Power Rates

On November 7, 1986, BPA published in the **Federal Register** a notice of "Intent to Revise Wholesale Power Rates to Become Effective October 1, 1987; Request for Recommendations and Suggestions." 51 FR 40484. The notice satisfied certain contractual provisions between BPA and its customers by indicating that the revised rates are expected to become effective on October 1, 1987.

In order to assess its current rates, BPA determined the amount of revenue required to meet its financial obligations. The total revenue requirement for FY 1988 is $3.05 billion and for FY 1989 is $3.11 billion. BPA has determined that these revenue requirements would exceed the revenues BPA would expect to collect under its current rates. These FY 1988 and FY 1989 revenue requirements translate into an increase of 13.1 percent in the average Priority Firm Power rate, a 0.9 percent increase in the Industrial Firm Power rate, a 3.3 percent increase in the Surplus Firm Power rate, a 0.9 percent increase in the New Resources Firm Power rate, and a 6.0 percent increase in the average cost of nonfirm energy over the proposed 24-month rate period.

The proposed wholesale power rates have been prepared in accordance with BPA's statutory authority to develop rates, including the Bonneville Project Act of 1937, as amended, 16 U.S.C., 832 e and f (1976); the Flood Control Act of 1944, 16 U.S.C., 825 *et seq* (1976); the Regional Preference Act, 16 U.S.C., 837 *et seq* (1976); the Federal Columbia River Transmission System Act, 16 U.S.C., 838 g and h (1974); and the Pacific Northwest Electric Power Planning and Conservation Act of 1980, 16 U.S.C., 839 *et seq* (Supp. V, 1981).

BPA proposes that its wholesale power rate schedules and the General Rate Schedule Provisions (GRSPs) associated with these schedules become effective upon interim approval or final confirmation and approval by the Federal Energy Regulatory Commission (FERC). BPA will request FERC approval effective October 1, 1987. These rates are proposed to be in effect for differing periods of times. Section I.A. of the GRSPs specifies the proposed effective period for each rate.

The 1987 wholesale power rate schedules, and the GRSPs associated with these rate schedules, supersede BPA's 1985 rate schedules (which became effective July 1, 1985) to the extent stated in the Availability section of each 1987 rate schedule. These schedules and GRSPs shall be applicable to all BPA contracts, including contracts executed both prior to and subsequent to enactment of the Pacific Northwest Power Act.

In developing the proposed wholesale power rates, BPA considered many factors, including revenue requirements, costs of service, marginal costs, environmental impacts, ease of administration, revenue stability, rate continuity, ease of comprehension, economic efficiency, and statutory obligations. The major studies that have been prepared to support the proposed wholesale rates will be available for examination on December 30, 1986, at BPA's Public Reference Room, BPA Headquarters Building, 6th floor, 1002 NE., Holladay, Portland, Oregon. The studies also may be requested by phone or in writing from BPA's Public Involvement office and will be available at the Prehearing Conference. The wholesale power rate studies are:

1. Revenue Requirement Study
2. Segmentation Study
3. Loads and Resources Study
4. Marginal Cost Analysis
5. Section 7(b)(2) Rate Test Study
6. Wholesale Power Rate Development Study

To request any of the above studies by telephone, call BPA's document request line: 800–841–5867 for Oregon, 800–624–9495 for Washington, Idaho, Montana, California, Wyoming, Utah, and Nevada. Other callers should use 503–230–3478. Please request the study by its above title. Also state whether you require the accompanying published technical documentation; otherwise the study alone will be provided. (For example, ask for the "Revenue Requirement Study and Technical Documentation".)

An environmental assessment documenting the environmental impacts of the proposed rates and alternatives will be available.

I. Procedures Governing Rate Adjustments and Public Participation

Section 7(i) of the Pacific Northwest Power Act, 16 U.S.C. 839e(i), requires that rates be set according to certain procedures. These procedures include issuance of a **Federal Register** notice announcing the proposed rates; one or more hearings; the opportunity to submit written views, supporting information, questions, and arguments; and a decision by the Administrator based on the record developed during the hearing process. This proceeding will be governed by BPA's "Procedures Governing Bonneville Power Administration Rate Hearings," 51 FR 7611 (March 5, 1986), which implements, and in most instances expands, these statutory requirements. The proceedings for BPA's proposal to adjust transmission rates will be combined with the proceedings for BPA's proposal to adjust wholesale power rates.

BPA's procedures provide for publication of a notice of the proposed rates, a prehearing conference, a hearing, receipt of written comments, preparation of decisional documents, a decision, and the transmittal of the decision with supporting documentation to the Federal Energy Regulatory Commission. The procedures require that the Administrator specify in the **Federal Register** notice whether expedited rules will be used. In order to give the public the maximum opportunity to participate and have its views considered, the Administrator has determined and hereby gives notice that expedited rules of procedure will not apply to this proceeding. The hearing will be conducted according to the rule for general rate proceedings, § 1010.9 of BPA's Procedures Governing Bonneville Power Administration Rate Hearings.

In addition to its formal hearing process, BPA will also convene a series of public hearings at certain locations throughout the region. The purpose of these hearings is to present to interested members of the public a synopsis of BPA's rate proposal. The hearings will be held at the times and locations previously listed. The conduct of these hearings will be substantially the same as that of the public field hearings held for BPA's 1981, 1982, 1983, and 1985 rate proceedings. BPA staff will summarize the proposed rates after which the public will have an opportunity to present its comments, views, and opinions about the proposed rates.

BPA distinguishes between "participants in" and "parties to" the hearings. Apart from the formal hearing process, BPA will receive comments, views, opinions, and information from "participants," who are defined in the procedures as any person who may express his views, but who does not intervene as a party. Participants' written comments will be made part of the official record of the case. The participant category gives the public the opportunity to participate and have its views considered without assuming the obligations incumbent upon "parties." Participants are not entitled to participate in the prehearing conference, cross-examine parties' witnesses, seek discovery, serve or be served with documents, and are not subject to the same procedural requirements as parties. Participants, however, will be provided regular letters during the rate hearings summarizing the proceedings and are provided the opportunity to request materials presented during the hearings.

The second category of interest is that of a "party" as defined in §§ 1010.2 and 1010.4 of "The Procedures Governing Bonneville Power Administration Rate Hearings." 51 FR 7611 (March 5, 1986). Parties may participate in the prehearing conference, may call and cross-examine witnesses, and are entitled to service of documents from all other parties. Parties may also be cross-examined and required to serve documents on the other parties. To avoid unnecessary delay, cross-examination by parties may be limited by the Hearing Officer. Where parties have substantially similar positions, the Hearing Officer may appoint lead counsel to conduct cross-examination. If a party demonstrates that it would not be represented adequately in the joint presentation of an issue or issues, the Hearing Officer may permit separate examination or argument regarding such issue or issues.

In order to facilitate discovery and promote the efficient use of cross-examination, the Hearing Officer may schedule one or more transcribed sessions for the purpose of allowing parties and BPA to question witnesses about the contents of their prepared testimony. Cross-examination will be scheduled by the Hearing Officer as necessary following completion of the filing of all parties and BPA's direct cases, rebuttal testimony, discovery, and clarification. Parties will have the opportunity to file initial briefs at the close of cross-examination.

Persons wishing to become a formal "party" to BPA's rate proceeding must so notify BPA in writing. Petitions to intervene shall state the name and address of the person and the person's interests in the outcome of the hearing. Petitioners may designate no more than two representatives upon whom service will be made. BPA customers and customer groups whose rates are subject to revision in the hearing will be granted intervention, based on a petition filed in conformity with this section. Other petitioners must explain their interests in sufficient detail to permit the Hearing Officer to determine whether they have a relevant interest in the hearing. Any opposition to a petition to intervene must be filed and served at least 24 hours before the January 16 prehearing conference. All timely applications will be ruled on by the Hearing Officer. Late interventions are strongly disfavored. Opposition to an untimely petition to intervene shall be filed and served within 2 days after service of the petition. Intervention petitions will be available for inspection in the Public Reference Room of BPA's Office of Public Involvement, 6th Floor, 1002 NE. Holladay, Portland, Oregon. Interventions are subject to § 1010.4 of BPA's Procedures Governing Bonneville Power Administration Rate Hearings.

After the close of the hearings, BPA will file a Draft Record of Decision. The Hearing Officer will extend an opportunity to other parties to evaluate the record and analyze the law through briefs. The Draft Record of Decision will provide a written evaluation of the record addressing significant technical issues. The Hearing Officer also will extend an opportunity to all parties to file reply briefs.

Persons need not attend the hearings in order to have their views included in the record. Written comments may be included in the record if they are submitted before the close of the hearings. Written views, supporting information, questions, and arguments should be submitted to BPA's Public Involvement Manager.

The record will include, among other things, the transcripts of the hearings, written material submitted by the parties and participants, documents developed by the BPA staff, and other material accepted into the record by the Hearing Officer. The Hearing Officer then will review the record, will supplement it if necessary, and will certify the record to the Administrator for decision.

The Administrator will develop the final proposed rates based on the entire record, including the record certified by the Hearing Officer, comments received from participants in the field hearings, other material and information submitted to or developed by the Administrator, and any other comments received during the rate development process. The basis for the final proposed rates will be expressed in the Administrator's Record of Decision. The Administrator will serve copies of the Administrator's Record of Decision on all parties and will file the final proposed rates together with the record with the Federal Energy Regulatory Commission (FERC) for confirmation and approval.

II. Elements of the Pacific Northwest Power Act

The rate schedules contained in this publication are proposed in accordance with the Pacific Northwest Power Act, which was signed into law on December 5, 1980. The proposed rate schedules reflect many requirements contained principally in the Pacific Northwest Power Act's rate directives (section 7), as well as the conditions related to classes of customers and services contained in the Pacific Northwest Power Act's power sales directives (section 5).

A. *Services.* BPA's public body, cooperative, and Federal agency customers are entitled to have their current and future power requirements met by BPA. In addition, the residential and small farm consumers of investor-owned utilities (IOUs) share in the benefits of what are now BPA's lowest-cost resources.

The IOUs' net firm power requirements in the region (in excess of their own firm resources in the year prior to the Pacific Northwest Power Act) also can be served by BPA. These loads would be served at a different rate, as described below, but would retain the benefits of Federal system integration, reserves, risk sharing, and nonfirm energy supplies.

BPA's direct-service industrial (DSI) customers have received 20-year contracts for industrial power. These contracts include significant BPA rights to restrict service to the DSIs. These rights provide the region with a major portion of the planning and operating services that help to keep costs lower to all of the region's consumers.

B. *Costs.* The Act identifies three distinct resource pools, commonly referred to as the Federal base system resources (FBS), the exchange resources under section 5(c) of the Pacific Northwest Power Act (Exchange), and new resources.

The first pool, the FBS, is defined by section 3(10) of the Pacific Northwest Power Act as: (1) The Federal Columbia River Power System hydroelectric projects; (2) the resources acquired by the Administrator under long-term contracts in force on the effective date of the Pacific Northwest Power Act; and (3) the resources acquired by the Administrator in an amount necessary to replace reductions in capability of the resources in (1) and (2). For the test years FY 1988 and FY 1989, the FBS used in developing rates includes the existing hydroelectric system, 30 percent of the output of the Trojan nuclear plant, 72 percent of the output from Hanford Generating Project, and the net-billed portions of the Washington Public Power Supply System plants 1, 2, and 3.

The Exchange resource pool consists of the power that BPA purchases from utilities, primarily IOUs, under the provisions of section 5(c), for the direct benefit of their residential and small farm consumers. For the rate period, the power eligible for exchange purchase is equal to 100 percent of the residential and small farm loads of the individual utilities in the region. BPA is directed to acquire the power at the offering utility's average system cost. The average system cost is determined using a methodology developed by BPA, pursuant to section 5 of the Pacific Northwest Power Act, in consultation with its customers, State regulatory bodies in the region, and the Pacific Northwest Electric Power Conservation Planning Council (Northwest Power Planning Council) (see 49 FR 39,293 (1984), and 50 FR 4,970 (1985)). BPA must then sell an equivalent amount of power to the utility under the rate schedule that is in effect for sales of wholesale Priority Firm power for exchanging utilities. The benefits of this exchange are to be passed through to the participating utility's residential and small farm loads within that region.

While the exchange provisions of the Pacific Northwest Power Act were presumed to benefit primarily investor-owned utility residential ratepayers, the average system cost methodology also permits publicly owned utilities to exchange. Thus, a portion of the projected exchange resource, exchange cost, and exchange load in this proposal is attributable to this public agency exchange.

The third resource pool is the "new resource" pool. It includes all new resources developed, purchased, or otherwise acquired by BPA other than Exchange resources and FBS replacements.

C. *Rates.* The costs of the various resource pools described above, plus the other costs incurred by the Administrator, must be recovered in a manner consistent with section 7 of the Pacific Northwest Power Act and provisions of other applicable law.

Section 7(b) directs the Administrator to establish a rate or rates for power sold to meet the general requirements of the public body, cooperative, and Federal agency customers within the region as well as power sold to utilities participating in the residential power exchange to serve their residential and small farm consumers. The 7(b) rate is to be based on FBS costs, and to the extent that the loads exceed the capability of the FBS, exchange resource costs. For test years FY 1988 and FY 1989, 7(b) loads exceed the capability of the FBS. Consequently, a portion of BPA's exchange resources is allocated to the 7(b) rate class.

In addition, section 7(b)(2) of the Pacific Northwest Power Act directs the Administrator to ensure that amounts to be charged for firm power for the general requirements of the public agency customers do not exceed an amount determined by certain assumptions contained in section 7(b)(2). In order to determine whether the public agency rate exceeds this level, BPA has conducted a separate study based on the section 7(b)(2) methodology and interpretation developed in a separate 7(i) proceeding. The results of this study indicate that, without adjustment the public agency rate would exceed this level. Hence, costs above this level have been allocated to other rates.

For test years FY 1988 and FY 1989, the DSIs are allocated the costs of resources remaining after serving 7(b) load, the majority of which are exchange resources. However, section 7(c)(2) of the Pacific Northwest Power Act directs that the rates charged the DSI customers beginning July 1, 1985, are to be based on the wholesale rates charged BPA's preference customers as adjusted for the margin typical of those charged by the region's public utilities for electricity sold to retail industrial consumers, and, pursuant to section 7(c)(3) of the Pacific Northwest Power Act, for the value associated with BPA's contractual rights to restrict DSI load for reserve purposes. In addition, BPA must ensure that the rates charged DSI customers are not lower than those in effect in the year ending June 30, 1985. Consistent with these statutory requirements, BPA has implemented a 10-year variable rate for its aluminum smelter DSIs that ties the price of power for these purchasers to the market price of aluminum. These statutory directives and the Variable rate may cause potential reallocations of costs and credits among customer classes.

III. Wholesale Power Rate Schedules and General Rate Schedule Provisions

Schedule PF–87—Priority Firm Power Rate

Section I. Availability

This schedule is available for the contract purchase of firm power or capacity to be used within the Pacific Northwest. Priority Firm Power may be purchased by public bodies, cooperatives, and Federal agencies for resale to ultimate consumers, for direct consumption, construction, test and start-up, and station service.

Utilities participating in the exchange under section 5(c) of the Pacific Northwest Electric Power Planning and Conservation Act (Pacific Northwest Power Act) may purchase Priority Firm Power pursuant to their Residential Purchase and Sale Agreements.

In addition, Bonneville Power Administration (BPA) may make power available to those parties participating in exchange agreements which use this rate schedule as the basis for determining the amount or value of power to be exchanged.

This schedule supersedes Schedule PF–85 which went into effect on an interim basis on July 1, 1985.

Section II. Rate

This rate schedule includes the Preference rate and the Exchange rate. The Preference rate is available for the general requirements of public body, cooperative and Federal agency customers and includes credit attributed to the provision of section 7(b)(2) of the Pacific Northwest Power Act. The Exchange rate is available for all other sales under the rate schedule including all purchases of residential and small farm exchange power pursuant to the Residential Purchase and Sale Agreements and power purchased or valued at the Priority Firm Power rate for other than general requirements.

A. *Preference Rate.* 1. *Demand Charge.* a. $3.62 per kilowatt of billing demand occurring during all Peak Period hours.

b. No demand charge during Offpeak Period hours.

2. *Energy Charge.* a. 19.3 mills per kilowatthour of billing energy for the billing months September through March;

b. 15.3 mills per kilowatthour of billing energy for the billing months April through August.

B. *Exchange Rate.* 1. *Demand Charge.* a. $3.71 per kilowatt of billing demand occurring during all Peak Period hours.

b. No demand charge during Offpeak Period hours.

2. *Energy Charge.* a. 20.0 mills per kilowatthour of billing energy for the billing months September through March;

b. 15.9 mills per kilowatthour of billing energy for the billing months April through August.

Section III. Billing Factors

In this section, billing factors are listed for each of the following types of purchasers: Computed requirements purchasers (section III.A), purchasers of residential exchange power pursuant to the Residential Purchase and Sale Agreements (section III.B), and metered requirements purchasers and those Priority Firm Power purchasers not covered by sections III.A and III.B (section III.C).

A. *Computed Requirements Purchasers.* Purchasers designated by BPA as computed requirements purchasers pursuant to power sales contracts shall be billed in accordance with the provisions of this subsection.

1. *Billing Demand.* The billing demand for actual, planned, and contracted computed requirements purchasers shall be the higher of the billing factors "a" and "b," below:

a. the lower of:

(1) the larger of the Computed Peak Requirement or the Computed Average Energy Requirement; or

(2) the Measured Demand, before adjustment for power factor.

b. the lower of:

(1) the Computed Peak Requirement, or

(2) 60 percent of the highest Computed Peak Requirement during the previous 11 billing months (Ratchet Demand).

2. *Billing Energy.* The billing energy for actual, planned, and contracted computed requirements purchasers shall be:

a. for the months September through March, the sum of:

(1) 67 percent of the Measured Energy (excluding unauthorized increase), and

(2) 33 percent of the Computed Energy Maximum;

b. for the months April through August, the sum of:

(1) 77 percent of the Measured Energy (excluding unauthorized increase), and

(2) 23 percent of the Computed Energy Maximum.

B. *Purchasers of Residential Exchange Power.* Purchasers buying Priority Firm Power under the terms of a Residential Purchase and Sale Agreement shall be billed as follows:

1. *Billing Demand.* The billing demand shall be the demand calculated by applying the load factor, determined as specified in the Residential Purchase and Sale Agreement, to the billing energy for each billing period.

2. *Billing Energy.* The billing energy shall be the energy associated with the utility's residential load for each billing period. Residential load shall be computed in accordance with the provisions of the purchaser's Residential Purchase and Sale Agreement.

C. *Metered Requirements Purchasers, Other Purchasers Not Covered by Sections III.A and III.B. Above.* Purchasers designated as metered requirements customers and purchasers taking or exchanging power under this rate schedule who are not otherwise covered by sections III.A and III.B shall be billed as follows:

1. *Billing Demand.* The billing demand shall be the Measured Demand as adjusted for power factor, unless otherwise specified in the power sales contract.

2. *Billing Energy.* The billing energy shall be the Measured Energy, unless otherwise specified in the power sales contract.

Section IV. Adjustments and Special Provisions

A. *Power Factor Adjustment.* The adjustment for power factor, when specified in this rate schedule or in the power sales contract, shall be made in accordance with the provisions of both this section and section III.C.1 of the General Rate Schedule Provisions (GRSPs). The adjustment shall be made if the average leading power factor or average lagging power factor at which energy is supplied during the billing month is less than 95 percent.

To make the power factor adjustment, BPA shall increase the billing demand by 1 percentage point for each percentage point or major fraction thereof (0.5 or greater) by which the average leading power factor or average lagging power factor is below 95 percent. BPA may elect to waive the adjustment for power factor in whole or in part.

B. *Low Density Discount (LDD).* BPA shall apply a discount to the charges for all Priority Firm Power sold to purchasers who are eligible for an LDD. Eligibility for the LDD and the amount of the discount (3, 5, or 7 percent) shall be determined pursuant to section III.C.3 of the GRSPs.

C. *Irrigation Discount.* BPA shall apply an irrigation discount, equal to 4.9 mills per kilowatthour, to the charges for qualifying energy purchased under this rate schedule. The irrigation discount shall be applied after calculation of the Low Density Discount. The discount shall apply only to energy purchased during the billing months of April through October. Eligibility for the irrigation discount and reporting requirements shall be determined pursuant to section III.C.4 of the GRSPs.

D. *Conservation Surcharge.* The Northwest Power Planning Council has recommended that a conservation surcharge be imposed on those customers subject to such surcharge as determined by the Administrator in accordance with BPA's Policy to Implement the Council-Recommended Conservation Surcharge. The Conservation Surcharge shall be applied pursuant to section III.C.7 of the GRSPs and subsequent to any other rate adjustments.

E. *Cost Recovery Adjustment Clause.* The Cost Recovery Adjustment Clause described in section III.C.5 of the GRSPs shall be applied to all purchases and exchanges under this rate schedule. The percentage increase or decrease calculated in sections III.C.5.a and II.C.5.b of the GRSPs shall be applied uniformly to the demand and energy charges contained in sections II.A and II.B and the irrigation discount contained in section IV.C of this rate schedule.

F. *Outage Credit.* Pursuant to section 7 of the General Contract Provisions, BPA shall provide an outage credit to any purchaser for those hours for which BPA is unable to deliver the full billing demand during that billing month due to an outage on the facilities used by BPA to deliver Priority Firm Power. Such credit shall not be provided if BPA is able to serve the purchaser's load through the use of alternative facilities or if the outage is for less than 30 minutes. The amount of the credit shall be calculated according to the provisions of section III.C.2 of the GRSPs.

G. *Unauthorized Increase.* BPA shall apply the charge for Unauthorized Increase to any purchaser of Priority Firm Power taking demand and energy in excess of its contractual entitlement.

1. *Rate for Unauthorized Increase.* 62.7 mills per kilowatthour.

2. *Calculation of the Amount of Unauthorized Increase.* Each 60-minute clock-hour integrated or scheduled demand shall be considered separately in determining the amount that may be considered an unauthorized increase. BPA first shall determine the amount of unauthorized increase related to demand and shall treat any remaining unauthorized increase as energy-related.

a. *Unauthorized Increase in Demand.* That portion of any Measured Demand during Peak Period hours, before adjustment for power factor, which exceeds the demand that the purchaser is contractually entitled to take during the billing month and which cannot be assigned:

(1) to a class of power that BPA delivers on such hour pursuant to contracts between BPA and the purchaser; or

(2) to a type of power that the purchaser acquires from sources other than BPA and that BPA delivers during such hour, shall be billed:

(1) in accordance with the provisions of the "Relief from Overrun" exhibit to the power sales contract; or

(2) if such exhibit does not apply or is not a part of the purchaser's power sales contract, at the rate for Unauthorized Increase, based on the amount of energy associated with the excess demand.

b. *Unauthorized Increase in Energy.* The amount of Measured Energy during a billing month which exceeds the amount of energy which the purchaser is contractually entitled to take during that month and which cannot be assigned:

(1) to a class of power which BPA delivers during such month pursuant to contracts between BPA and the purchaser; or

(2) to a type of power which the purchaser acquires from sources other than BPA and which BPA delivers during such month, shall be billed:

(1) in accordance with the provisions of the "Relief from Overrun" exhibit to the power sales contract; or

(2) as unauthorized increase if such exhibit does not apply or is not a part of the purchaser's power sales contract.

H. *Coincidental Billing Adjustment.* Purchasers of Priority Firm Power who are billed on a coincidental basis and who have diversity charges or diversity factors specified in their power sales contracts shall have their charges for billing demand adjusted according to the provisions of section III.C.6 of the GRSPs. Computed requirements purchasers are not subject to the Coincidental Billing Adjustment for scheduled power.

I. *Energy Return Surcharge.* Any purchaser who preschedules in accordance with sections 2(a)(4) and 2(c)(2) of Exhibit E of the power sales contract and who returns, during a single offpeak hour, more than 60 percent of the difference between that purchaser's computed peak requirement and computed average energy requirement for the billing month shall be subject to the following surcharge for each additional kilowatthour so returned:

1. 3.64 mills per kilowatthour for the months of April through November;

2. 1.54 mills per kilowatthour for the months of December through March.

Section V. Resource Cost Contribution

In compliance with section 7(j) of the Pacific Northwest Power Act, BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the PF–87 rate is 79.7 percent FBS and 20.3 percent Exchange.

B. The forecasted average cost of resources available to BPA under average water conditions is 19.0 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 29.0 mills per kilowatthour.

Section VI. General Provisions

Sales of power under this schedule shall be subject to the GRSPs and the following acts, as amended: the Bonneville Project Act, the Flood Control Act of 1944, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Power Act.

Schedule IP–87—Industrial Firm Power Rate

Section I. Availability

This schedule is available to direct-service industrial (DSI) customers for both the contract purchase of Industrial Firm Power and the purchase of Auxiliary Power if requested by the DSI customer and made available by BPA. If a DSI customer purchasing power under this rate schedule requests and BPA makes available power under another applicable wholesale rate schedule the IP–87 rate schedule is available for that portion of power purchased not covered under the alternative rate schedule. This rate schedule supersedes Schedule IP–85 which went into effect on an interim basis on July 1, 1985.

Section II. Rate

The following rates shall be applied when first quartile service is provided under this rate schedule in accordance with the terms of a purchaser's Power Sales Contract dated August 25, 1981. A separate billing adjustment for the reserves provided by the purchasers of Industrial Firm Power is not contained in this rate schedule; the value of reserves credit has been included in the determination of the demand and energy charges.

Any contractual reference to the IP Premium Rate shall be deemed to refer to the demand and energy charges set forth below. Any reference to the IP Standard Rate shall be deemed to refer to the same demand and energy charges minus the Discount for Quality of Service.

A. *Demand Charge.* 1. $4.21 per kilowatt of billing demand occurring during all Peak Period hours.

2. No demand charge during Offpeak Period hours.

B. *Energy Charge.* 1. 19.7 mills per kilowatthour of billing energy for the billing months September through March;

2. 15.7 mills per kilowatthour of billing energy for the billing months April through August.

Section III. Billing Factors

A. *Billing Demand.* The billing demand shall be the BPA Operating Level during the Peak Period as adjusted for power factor. If there is more than one BPA Operating Level during the Peak Period within a billing month, the billing demand shall be a weighted average of the BPA Operating Levels during the Peak Period for the billing month. The BPA Operating Level is defined in section III.A.10 of the General Rate Schedule Provisions (GRSPs). If BPA has agreed to serve a portion of a DSI load under an alternative rate schedule, the billing demand under the IP–87 rate schedule shall be specified in the contract initiating such arrangement.

However, if BPA has agreed, pursuant to section 4 of the direct-service industrial power sales contract, to sell Industrial Firm Power on a daily demand basis (transitional service), this section of the rate schedule shall not apply, and BPA shall bill the purchaser in accordance with the provisions of section V.C.3 of the GRSPs.

B. *Billing Energy.* The billing energy shall be the Measured Energy for the billing month, minus any kilowatthours on which BPA assesses the charge for unauthorized increase.

However, if BPA has agreed to serve only a portion of the DSI's load under the IP rate schedule, the billing energy for the power purchased under the IP rate shall be specified in the contract initiating such arrangement.

Section IV. Adjustments and Special Provisions

A. *Discount for Quality of First Quartile Service.* 1. *Application and Amount of First Quartile Discount.* If a purchaser requests discounted rate service, a discount of 0.6 mills per kilowatthour of billing energy shall be granted. This billing credit shall be applied to the monthly billing energy under section III.B for all power purchased under this rate schedule. No credit shall be applied to those purchases subject to unauthorized increase charges under section IV.D of this rate schedule.

2. *Eligibility Requirements for First Quartile Discount.* To qualify for the First Quartile Discount the purchaser must request discounted rate service in writing by April 2 of each calendar year. By virtue of making such request, the Purchaser is agreeing to accept the level and quality of First Quartile service described in section 6 of the Variable Industrial Rate contract. Such acceptance includes the waiver of contract rights provided in section 6.a(2)(a) of said contract.

B. *Curtailments.* BPA shall charge the DSI for curtailments of the lower three quartiles in accordance with the provisions of section 9 of the power sales contract. BPA shall apply the demand charge in effect at the time of the curtailment in the computation of the amount of the curtailment charge. In the event that a purchaser is found to be eligible to have a portion of their load served under an alternative rate schedule, application of the curtailment charge shall be specified in the contract instituting such arrangement.

C. *Cost Recovery Adjustment Clause.* The Cost Recovery Adjustment Clause described in section III.C.5 of the GRSPs and shall be applied to all power purchases under this rate schedule.

Application of the Cost Recovery Adjustment Clause shall result in a uniform percentage adjustment applied to the demand and energy charges, contained in section II, and the first quartile discount, if applicable, contained in section IV.A.1.

1. *Applicable Percentage if Cost Recovery Variance is Negative.* (Actuals Less Than Planned Funds from Operations.)

The percentage adjustment applied uniformly to the rate parameters specified in above section IV.C shall be determined pursuant to section III.C.5.c of the GRSP.

2. *Applicable Percentage if Cost Recovery Variance is Positive.* (Actuals Greater Than Planned Funds from Operations.)

The percentage adjustment applied uniformly to the rate parameters specified in above section IV.C shall be the lower of:

a. the percentage determined pursuant to section III.C.5.d. of the GRSPs, or

b. 3.5 percent.

D. *Unauthorized Increase.* 1. *Rate for Unauthorized Increase.* 62.7 mills per kilowatthour.

2. *Application of the Charge.* During any billing month, BPA may assess the unauthorized increase charge on the number of kilowatthours associated with the DSI Measured Demand in any one 60-minute clock-hour, before adjustment for power factor, that exceed the BPA Operating Level for that clock-hour, regardless of whether such Measured Demand occurs during the Peak or Offpeak Period.

E. *Power Factor Adjustment.* The adjustment for power factor, when specified in this rate schedule or in the power sales contract, shall be made in accordance with the provisions of both this section and section III.C.1 of the GRSPs. The adjustment shall be made if the average leading power factor or average lagging power factor at which energy is supplied during the billing month is less than 95 percent.

To make the power factor adjustment, BPA shall increase the billing demand by one percentage point for each percentage point or major fraction thereof (0.5 or greater) by which the average leading power factor or average lagging power factor is below 95 percent. BPA may elect to waive the adjustment for power factor in whole or in part.

F. *Outage Credit.* Pursuant to section 7 of the General Contract Provisions, BPA shall provide an outage credit to any DSI for those hours for which BPA is unable to deliver the full billing demand during that billing month due to an outage on the facilities used by BPA to deliver Industrial Firm Power. Such credit shall not be provided if BPA is able to serve the DSI's load through the use of alternative facilities or if the outage is for less than 30 minutes. The amount of the credit shall be calculated according to the provisions of section III.C.2 of the GRSPs.

Section V. Resource Cost Contribution

In compliance with section 7(j) of the Pacific Northwest Power Act, BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the IP-87 rate is 99.4 percent Exchange and 0.6 percent New Resources.

B. The forecasted average cost of resources available to BPA under average water conditions is 19.0 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 29.0 mills per kilowatthour.

Section VI. General Provisions

Sales of power under this schedule shall be subject to the GRSPs and the following acts, as amended: the Bonneville Project Act, the Flood Control Act of 1944, the Regional Preference Act (Pub. L. 88-552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Power Act.

Schedule VI-87—Variable Industrial Power Rate

Section I. Availability

This schedule is available to direct service industrial (DSI) customers for purchases under the Power Sales Contract implementing the Variable Industrial Power rate schedule (Variable Rate Contract) of: (1) Industrial Firm Power; and (2) Auxiliary Power if requested by the DSI customer and made available by BPA. This schedule is available only for that portion of a DSI's load used in primary aluminum reduction including associated administrative facilities, if any. By virtue of incorporation of this rate schedule and associated General Rate Schedule Provisions (GRSPs) in the Variable Rate Contract. DSIs electing to purchase power under this rate schedule contractually agree to the terms and conditions of this rate schedule. A DSI further agrees to waive for that portion of their load designated to purchase power at the VI rate, all rights they might otherwise have to purchase power at the Industrial Firm Power Rate Schedule for the duration of the Variable Rate Contract. The VI-86 Rate Schedule was granted interim approval by the FERC on July 31, 1986. In accordance with provisions contained in schedule VI-86, section III.A. of schedule VI-87 has been adjusted and supersedes section III.A. of schedule VI-86. Section VI.J. supplements schedule VI-86. GRSPs effective July 1, 1985, as revised effective August 1, 1986, and as revised in the 1987 rate case and in subsequent wholesale rate filings are applicable to this rate schedule.

Section II. Term of the Rate

This rate schedule shall take effect on August 1, 1986, and shall terminate at midnight June 30, 1996, unless BPA elects to exercise its unilateral option to terminate the rate at midnight June 30, 1991. This termination right is described in section VI.E. of this rate schedule. Actions to invoke an early termination shall comply with section VI.E. of this rate schedule and with the provisions and stipulations set forth in the Variable Rate Contract.

Section III. Rate

A. *Revised Rate Charges Subject to Rate Case Adjustments.* The following rates shall apply to Industrial customers that meet the eligibility requirements and elect to purchase power under the Variable Industrial Power Rate Schedule. These rates shall remain in effect until the next Rate Adjustment Date, at which point the rates shall be adjusted following the procedures set forth in section VI.C. of this rate schedule, unless the Cost Recovery Adjustment Clause triggers, at which point the rates shall be adjusted following the procedures set forth in section VI.G of this rate schedule. In addition, the Lower Rate Limit also will be subject to a biennial adjustment pursuant to section VI.B. of this rate schedule. The formula to be used in the calculation of the monthly power bill is contained in section IV. A separate billing adjustment for the value of the reserves provided by purchasers of Industrial Firm Power is not contained in this rate schedule; the value of reserves credit has been included in the determination of the Plateau Energy Charge.

1. *Base Variable Industrial Rate.* a. *Demand Charge.* $5.37 per kilowatt of billing demand occurring during the Peak Period. No demand charge is applied during Offpeak Period hours.

b. *Plateau Energy Charge.* 16.3 mills per kilowatthour of billing energy.

2. *First Quartile Service Discount.* 0.5 mills per kilowatthour of billing energy.

3. *Lower Rate Limit.* 8.5 mills per kilowatthour of billing energy.

4. *Upper Rate Limit.* 22.1 mills per kilowatthour of billing energy.

B. *Initial Rate Parameters Subject to Annual Adjustments.* The following rate parameters shall be used in determining the power bills for customers electing to purchase power under the Variable Industrial Power rate schedule. These parameters will be adjusted annually starting on July 1, 1987, and every July 1 thereafter, in accordance with the procedures contained in section VII.B. of the GRSPs.

1. *Lower Pivot Aluminum Price.* 61 cents per pound.

2. *Upper Pivot Aluminum Price.* 72 cents per pound.

Section IV. Formula

The Variable Industrial Power rate is a formula rate tied to the U.S. market price of aluminum. Under this rate schedule, the monthly energy charge varies in response to changes in the average price of aluminum in U.S. markets.

A. *Demand Charge.* 1. The Demand Charge, as stated in section III.A.1.a. of this rate schedule, remains constant over all aluminum prices. The demand charge is applied to billing demand occurring during all Peak Period hours for all billing months.

2. No demand charge during Offpeak Period hours.

B. *Energy Charge.* 1. *Plateau Energy Charge.* When the monthly billing aluminum price (described in section VII.A. of the GRSPs) is between the Lower Pivot Aluminum Price and the Upper Pivot Aluminum Price (as stated in sections III.B.1. and III.B.2. of this rate schedule), the monthly energy charge shall be the Plateau Energy Charge as stated in section III.A.1.b. of this rate schedule.

2. *Reductions to Plateau Energy Charge.* When the monthly billing aluminum price is less than the Lower Pivot Aluminum Price, the monthly energy charge shall be the greater of:

a. The Plateau Energy Charge − (LP − MAP)*(LS) where:

LP = the Lower Pivot Aluminum Price as stated in section III.B.1. of this rate schedule.

MAP = the monthly billing aluminum price in cents per pound determined pursuant to section VII.A. of the GRSPs.

LS = lower slope = 1 mill per kilowatthour divided by 1 cent per pound.

or;

b. the Lower Rate Limit as stated in section III.A.3. of this rate schedule.

3. *Increases to Plateau Energy Charge.* When the monthly billing aluminum price is greater than the Upper Pivot Aluminum Price, the monthly energy charge shall be the lesser of:

a. The Plateau Energy Charge + (MAP − UP)*(US) where:

MAP = the monthly billing aluminum price in cents per pound, as determined according to section VII.A. of the GRSPs.

UP = the Upper Pivot Aluminum Price as stated in section III.B.2. of this rate schedule.

US = upper slope = 0.75 mills per kilowatthour divided by 1 cent per pound.

or;

b. the Upper Rate Limit, as stated in section III.A.4. of this rate schedule.

Section V. Billing Factors

A. *Billing Demand.* 1. *Billing Demand for Customers Whose Entire BPA Load is Served at the Variable Industrial Power Rate.* The billing demand for power purchased shall be the BPA Operating Level during the Peak Period as adjusted for power factor. If there is more than one BPA Operating Level during the Peak Period within a billing month, the billing demand shall be a weighted average of the BPA Operating Levels during the Peak Period for the billing month. The BPA Operating Level is defined in section III.A.10 of the GRSPs.

2. *Billing Demand for Customers When Only a Portion of Their Total BPA Load is Served at the Variable Rate.* The Billing Demand shall be the portion of the BPA Operating Level attributable to the VI rate as determined by the method specified in the Variable Rate Contract.

3. *Billing Demand During Periods of Transitional Service.* If BPA has agreed, pursuant to section 4 of the direct-service industrial power sales contract, to sell Industrial Firm Power on a daily demand basis (transitional service), this section of the rate schedule shall not apply, and BPA shall bill the purchaser in accordance with the provisions of section V.C of the GRSPs.

B. *Billing Energy.* The billing energy for power purchased shall be the Measured Energy for the billing month, minus any kilowatthours on which BPA assesses the charge for unauthorized increase.

Section VI. Other Adjustments and Special Provisions

A. *Lower and Upper Pivot Aluminum Prices.* Effective July 1, 1987, and every July 1 thereafter, the Lower and Upper Pivot Aluminum Prices set forth in section III.B of the rate schedule shall be adjusted following the procedures set forth in section VII.B of the GRSPs. The adjusted Lower and Upper Pivot Aluminum Prices shall supersede the Lower and Upper Pivot Aluminum Prices contained in section III.B of the rate schedule. The revised Lower and Upper Pivot Aluminum Prices shall be used for billing purposes and subsequent adjustments to the Lower and Upper Pivot Aluminum Prices.

B. *Lower Rate Limit.* Beginning with the July 1, 1988 annual adjustment date and every second July 1 thereafter, the Lower Rate Limit as stated in section III.A.3. shall be increased by 1 mill per kilowatthour. The revised Lower Rate Limit shall supersede the Lower Rate Limit as stated in section III.A.3. of the rate schedule. This increase is in addition to rate adjustment increases in the Lower Rate Limit described in section VI.C. of this rate schedule. In the event that a rate adjustment date and the annual adjustment date occur simultaneously, the Lower Rate Limit shall be adjusted first for changes in the Plateau Energy Charge pursuant to section VI.C. of this rate schedule, and then increased by 1 mill per kilowatthour. The revised Lower Rate Limit shall be used for billing purposes and subsequent rate adjustments.

C. *Rate Adjustments.* The overall rate level of this rate shall be subject to adjustment in BPA's general wholesale power rate case following the procedures and directives of the Pacific

Northwest Power Act. The overall rate level consists of the Demand Charge, Plateau Energy Charge, and First Quartile Service Adjustment contained in sections III.A.1 and III.A.2; these shall be adjusted by a uniform percentage based on the percentage change in the overall rate level. The Lower and Upper Rate Limits as stated in sections III.A.3 and III.A.4 of this rate schedule shall be adjusted by an amount equal to the change, in mills per kilowatthour, in the Plateau Energy Charge The Lower and Upper Pivot Aluminum Prices shall not be adjusted in the rate case; rather, they shall be adjusted pursuant to the procedures described in section VII.B of the GRSPs. The lower and upper slopes shall not be adjusted. The rate for unauthorized increase shall be separately determined in each rate case.

D. *Discount for Quality of First Quartile Service.* If a purchaser requests First Quartile service with other than Surplus FELCC, a discount contained in section 111.A.2 of this rate schedule shall be granted. This billing credit shall be applied to the monthly billing energy under section V.B. for all power purchased under this rate schedule. No credit shall be applied to those purchases subject to unauthorized increase charges under section VI.G. of this rate schedule. To qualify for the First Quartile Discount the purchaser must waive any rights to Surplus FELCC to insure that BPA is able to market its firm surplus, including, but not limited to, any right to service with Surplus FELCC ahead of borrowed firm energy and the storage of Surplus FELCC prior to January 10 for service to the First Quartile after January. However, BPA will not restrict First Quartile service except when necessary to protect service to firm loads.

E. *Termination Provision.* The Administrator may terminate the Variable Industrial Power rate effective midnight June 30, 1991, upon a determination that significant changes in the conditions and expectations under which this rate was offered render the continuation of the Variable Industrial rate inconsistent with BPA's stated goals and objectives. BPA shall provide notification of such a determination pursuant to the provisions of the Variable Rate Contract. As part of the notification procedures, BPA shall provide a reasonable opportunity for interested parties to comment on BPA's determination, as well as to examine the comments submitted by other parties, prior to BPA taking final action to cancel the rate. If BPA determines that the Variable Industrial rate will remain in place until midnight June 30, 1996, BPA shall provide notice that so states and no additional action by BPA will be required.

F. *Curtailments.* BPA shall charge the customer for curtailments of the lower three quartiles in accordance with the provisions of section 9 of the power sales contract and the provisions contained in the Variable Rate Contract.

G. *Unauthorized Increase.* 1. Rate for Unauthorized Increase. 62.7 mills per kilowatthour.

2. Application of the Charge. During any billing month, BPA may assess the unauthorized increase charge on the number of kilowatthours associated with the DSI Measured Demand in any one 60-minute clock-hour, before adjustment for power factor, that exceed the BPA Operating Level for that clock-hour, regardless of whether such Measured Demand occurs during the Peak or Offpeak Period.

H. *Power Factor Adjustment.* The adjustment for power factor, when specified in this rate schedule or in the power sales contract, shall be made in accordance with the provisions of both this section and section III.C.1 of the GRSPs. The adjustment shall be made if the average leading power factor or average lagging power factor at which energy is supplied during the billing month is less than 95 percent.

To make the power factor adjustment, BPA shall increase the BPA Operating Level by 1 percentage point for each percentage point or major fraction thereof (0.5 or greater) by which the average leading power factor or average lagging power factor is below 95 percent. BPA may elect to waive the adjustment for power factor in whole or in part.

I. *Outage Credit.* Pursuant to section 7 of the General Contract Provisions, BPA shall provide an outage credit to any DSI to whom BPA is unable to deliver the full billing demand during that billing month due to an outage on the facilities used by BPA to deliver Industrial Firm Power. Such credit shall not be provided if BPA is able to serve the DSI's load through the use of alternative facilities or if the outage is for less than 30 minutes. The amount of the credit shall be calculated according to the provisions of section III.C.2 of the GRSPs.

J. *Cost Recovery Adjustment Clause.* The Cost Recovery Adjustment Clause described in section III.C.5 of the GRSPs shall be applied to all power purchases under this rate schedule consistent with the procedures to adjust the Variable Industrial rate and the provisions of the Variable Rate Contract.

Application of the Cost Recovery Adjustment Clause shall result in a percentage adjustment to be applied uniformly to the demand and Plateau Energy charges contained in section III.A.1 of this rate schedule and to the First Quartile discount specified in section III.A.2 of this rate schedule. The Lower and Upper Rate Limits stated in sections III.A.3 and III.A.4 of this rate schedule shall be adjusted by an amount equal to the change, in mills per kilowatthour, to the Plateau Energy charge due to application of the Cost Recovery Adjustment Clause. The adjusted rate parameters shall be used for billing purposes and supersede the rate charges subject to the adjustment contained in section III.A of this rate schedule. The adjusted rate parameters shall also be used in subsequent rate adjustments pursuant to section III.B of this rate schedule and to subsequent biennial adjustments to the lower rate limit pursuant to section VI.B of this rate schedule.

1. *Applicable Percentage if Cost Recovery Variance is Negative.* (Actuals Less Than Planned Funds from Operations.)

The percentage adjustment applied uniformly to the rate parameters specified in the above section IV.G shall be determined pursuant to section 5.c of the GRSPs.

2. *Applicable Percentage if Cost Recovery Variance is Positive.* (Actuals Greater Than Planned Funds from Operations.)

The percentage adjustment applied uniformly to the rate parameters specified in the above section IV.G shall be the lower of:

a. The percentage determined pursuant to 5.d. of the GRSPs, or

b. 1.7 percent.

Section VII. Resource Cost Contribution

In compliance with section 7(j) of the Pacific Northwest Power Act, BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the VI–87 rate is 99.4 percent Exchange and 0.6 percent New Resources.

B. The forecasted average cost of resources available to BPA under average water conditions is 19.0 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 29.0 mills per kilowatthour.

Section VIII. General Provisions

Sales of power under this schedule shall be subject to the GRSPs and the following Acts, as amended: the Bonneville Project Act, the Flood Control Act of 1944, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Power Act.

Schedule SI–87—Special Industrial Power Rate

Section I. Availability

This rate schedule is available to any DSI purchaser using raw minerals indigenous to the region as its primary resource and qualifying for this special power pursuant to the procedures established in section 7(d)(2) of the Pacific Northwest Power Act. This schedule is available for the contract purchase of this special class of industrial power and also for the purchase of Auxiliary Power if requested by the DSI and made available by BPA. The Special Industrial Offpeak rate available for Hanna Nickel Smelting Company pursuant to the Amendatory Agreement executed July 1, 1985, remains in force and is retained herein. Except for the Special Industrial Offpeak rate, schedule SI–87 supersedes schedule SI–85 which went into effect on an interim basis on July 1, 1985.

Section II. Rate

This rate schedule contains the Standard Special Industrial Power Rate and the Special Industrial Offpeak Rate. The Standard Special Industrial Power Rate is available to any qualifying DSI for full service provided during all hours of the day. The Special Industrial Offpeak Rate is a lower rate available to the Hanna Nickel Smelting Company (Hanna) for service during periods specified by BPA. A separate billing adjustment for the value of the reserves provided by purchasers of this special class of Industrial Power is not contained in the rate schedule; the adjustment is reflected in the Standard Special Industrial Power Rate.

A. *Standard Special Industrial Power Rate.* 1. *Demand Charge.* a. $3.24 per kilowattmonth of billing demand occurring during all Peak Period hours.

b. No demand charge during Offpeak Period hours.

2. *Energy Charge.* a. 17.8 mills per kilowatthour of billing energy for the billing months September through March;

b. 13.8 mills per kilowatthour of billing energy for the billing months April through August.

B. *Special Industrial Offpeak Rate.* 1. *Demand Charge.* No demand charge in any hour of the day.

2. *Energy Charge.* 7.0 mills per kilowatthour of billing energy during all billing months.

Section III. Billing Factors

A. *Billing Demand.* 1. *Standard Special Industrial Power Rate.* The billing demand for power purchased under the Standard Special Industrial Power Rate shall be the BPA Operating Level during the Peak Period as adjusted for power factor. If there is more than one BPA Operating Level during the Peak Period within a billing month, the billing demand shall be a weighted average of the Peak Period BPA Operating Levels for the billing month. The BPA Operating Level is defined in section III.A.10 of the General Rate Schedule Provisions (GRSPs).

However, if BPA has agreed, pursuant to section 4 of the direct-service industrial power sales contract, to sell Special Industrial Power on a daily demand basis (transitional service), this section of the rate schedule shall not apply, and BPA shall bill the purchaser in accordance with the provisions of section V.C of the GRSPs.

2. *Special Industrial Offpeak Rate.* There is no billing demand for purchases under the Special Industrial Offpeak rate.

B. *Billing Energy.* The billing energy under both the Standard Special Industrial and Special Industrial Offpeak Rates shall be the Measured Energy for the billing month, minus any kilowatthours on which BPA assesses the charge for unauthorized increase.

The kilowatthours of billing energy shall be prorated among the respective billing demands for the billing month.

Section IV. Selection of the SI–87 Rate for the Hanna Nickel Smelting Company

All purchasers, except for Hanna, shall purchase power under the Standard Special Industrial Power rate. Hanna shall have the option to select one of two types of service, standard service or offpeak service. In this case, BPA will provide standard service under the Standard Special Industrial Power Rate and offpeak service under the Special Industrial Offpeak Rate. Unless BPA receives a formal request from Hanna for service under the Special Industrial Offpeak Rate, all service will be standard service provided under the Standard Special Industrial Power Rate. To change the type of service provided and the associated rate, Hanna shall submit a formal request for service under the preferred rate option in accordance with the terms of the power sales contract providing for purchases under this rate schedule. Once Hanna has elected to purchase under one of the two options, all purchases of Special Industrial Power shall be subject to the terms and conditions of that rate option until such time that Hanna requests the other type of service.

Section V. Service Under the Special Industrial Offpeak Rate

BPA shall designate the hours during which offpeak service will be available, and shall provide at least 2 weeks notice before changing those designated hours. BPA shall identify at least 10 and up to 13 hours on each day Monday through Friday, 15 hours on Saturday, and 24 hours on Sunday, during which offpeak service will be available to the purchaser.

If Hanna has elected to be served under the Special Industrial Offpeak Rate, the Hanna may request, during the designated offpeak periods, service in an amount not to exceed the purchaser's Contract Demand. During all other hours Hanna shall curtail service to a level not to exceed 15 percent of Contract Demand.

Section VI. Adjustments and Special Provisions

A. *Curtailments.* BPA shall charge the DSI for curtailments in accordance with the provisions of the DSI's power sales contract. Any curtailment charge levied shall be computed using the Standard Special Industrial Power Rate.

B. *Unauthorized Increase Charge.* 1. *Rate for Unauthorized Increase.* 62.7 mills per kilowatthour.

2. *Application of the Charge.* During any billing month, BPA may assess the unauthorized increase charge on the number of kilowatthours associated with the DSI Measured Demand in any one 60-minute clock-hour, before adjustment for power factor, that exceed the BPA Operating Level for that clock-hour, regardless of whether such Measured Demand occurs during the Peak or Offpeak Period.

If BPA is providing service to Hanna under the Special Industrial Offpeak Rate, the amount by which Hanna's Measured Demand exceeds 15 percent of its Contract Demand during any hour other than the specified special hours shall be considered unauthorized increase.

C. *Power Factor Adjustment.* The adjustment for power factor, when specified in this rate schedule or in the power sales contract, shall be made in accordance with the provisions of both this section and section III.C.1 of the GRSPs. The adjustment shall be made if the average leading power factor or average lagging power factor at which energy is supplied during the billing month is less than 95 percent.

To make the power factor adjustment for service under the Standard Special

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Industrial Power Rate, BPA shall increase the billing demand by one percentage point for each percentage point or major fraction thereof (0.5 or greater) by which the average leading power factor or average lagging power factor is below 95 percent. For service under the Special Industrial Offpeak Rate, BPA shall increase the billing energy by one percentage point for each percentage point or major fraction thereof (0.5 or greater) by which the average leading power factor or average lagging power factor is below 95 percent. BPA may elect to waive the adjustment for power factor in whole or in part.

D. *Outage Credit.* Pursuant to section 7 of the General Contract Provisions, BPA shall provide an outage credit to any purchaser for those hours for which BPA is unable to deliver the full billing demand during that billing month due to an outage on the facilities used by BPA to deliver Special Industrial Power. Such credit shall not be provided if BPA is able to serve the purchaser's load through the use of alternative facilities or if the outage is for less than 30 minutes. In addition, no credit shall be applied to purchases under the Special Industrial Offpeak Rate. The amount of the credit shall be calculated according to the provisions of section III.C.2 of the GRSPs.

E. *Extended Service Provision.* The terms of this rate schedule may be extended for a period not to exceed June 30, 1990, in accordance with the Amendatory Agreement effective July 1, 1985, with the Hanna Nickel Smelting Company (Hanna). The Amendatory Agreement contains Hanna's agreement to make certain investments in a wet screening process at its Riddle facility.

Section VII. Resource Cost Contribution

In compliance with section 7(j) of the Pacific Northwest Power Act, BPA has made the following determinations:

A. The SI–87 rate is not based on the cost of resources.

B. The forecasted average cost of resources available to BPA under average water conditions is 19.0 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 29.0 mills per kilowatthour.

Section VIII. General Provisions

Sales of power under this schedule shall be subject to the GRSPs and the following acts, as amended: the Bonneville Project Act, the Flood Control Act of 1944, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Power Act.

Schedule CF–87—Firm Capacity Rate

Section I. Availability

This schedule is available for the purchase of Firm Capacity without energy on a Contract Demand basis. This schedule is available only to those purchasers holding Firm Capacity contracts executed prior to July 1, 1985. It supersedes Schedule CF–85 which went into effect on an interim basis on July 1, 1985.

Section II. Rate

$44.28 per kilowatt per year of Contract Demand, billed monthly at the rate of $3.69 per kilowattmonth of Contract Demand.

Section III. Billing Factors

The billing demand shall be the Contract Demand.

Section IV. Adjustments and Special Provisions

A. *Conservation Surcharge.* The Northwest Power Planning Council has recommended that a conservation surcharge be imposed on those customers subject to such surcharge as determined by the Administrator in accordance with BPA's Policy to Implement the Council-Recommended Conservation Surcharge. The Conservation Surcharge shall be applied in accordance with section II.C.7 of the General Rate Schedule Provisions (GRSPs) and subsequent to any other rate adjustments.

B. *Extended Peaking Surcharge.* The monthly capacity rate specified in section II above shall be increased by the following extended peaking surcharge to compensate BPA for each hour that the purchaser's monthly demand duration exceeds 8 hours:

1. $0.0946 per kilowatt per hour of extended peaking for the months April through October;

2. $0.0533 per kilowatt per hour of extended peaking for the months November through March.

The charge shall be adjusted pro rata for each portion of an hour of extended peaking supplied to the purchaser.

The purchaser's monthly demand duration shall be determined by dividing:

1. the kilowatthours supplied to the purchaser under this rate schedule between the hours of 7 a.m. and 10 p.m. on the day of maximum kilowatthour use during those hours, provided such day is not a Sunday, by

2. The purchaser's Contract Demand for such month.

The purchaser's extended peaking shall be the amount by which the purchaser's monthly demand duration exceeds 8 hours. The extended peaking surcharge shall not be applied during periods when BPA does not require the delivery of peaking replacement energy by the purchaser.

C. *Energy Return Surcharge.* The energy associated with the delivery of Firm Capacity must be returned to BPA in accordance with the terms of the purchaser's Firm Capacity Contract. Unless waived by BPA, any purchaser whose energy returns during any single hour exceed 60 percent of the purchaser's Contract Demand during any single hour shall be subject to the following surcharge for each additional kilowatthour so returned:

1. 3.64 mills per kilowatthour for the months April through October, and

2. 1.54 mills per kilowatthour for the months November through March.

D. *Cost Recovery Adjustment Clause.* The Cost Recovery Adjustment Clause described in section III.C.5 of the GRSPs shall be applied to all purchases under this rate schedule. The percentage increase or decrease calculated in sections III.C.5.a and III.C.5.b of the GRSPs shall be applied to the demand charges contained in sections II.A and II.B of this rate schedule.

Section V. Resource Cost Contribution

In compliance with section 7(j) of the Pacific Northwest Power Act, BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the CF–87 rate is 76.8 percent FBS and 23.2 percent Exchange for contract year service.

B. The forecasted average cost of resources available to BPA under average water conditions is 19.0 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 29.0 mills per kilowatthour.

Section VI. General Provisions

Sales of power under this schedule shall be subject to the GRSPs and the following acts, as amended: The Bonneville Project Act, the Flood Control Act of 1944, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Power Act.

Schedule CE–87—Emergency Capacity Rate

Section I. Availability

This schedule is available for the purchase of capacity:

A. When an emergency exists on the purchaser's system, or

B. When the purchaser wishes to displace higher-cost firm capacity resources which are otherwise available to meet the purchaser's load, provided the purchaser requests such capacity and BPA has capacity available for such purpose.

This schedule supersedes Schedule CE–85 which went into effect on an interim basis on July 1, 1985.

Section II. Rate

A. *Demand Charge.* $1.11 per kilowatt of demand per calendar week or portion thereof.

B. *Intertie Charge.* The demand charge specified above shall be increased by $0.15 per kilowatt per week for capacity made available at the Oregon-California or Oregon-Nevada border for delivery over the Pacific Northwest-Pacific Southwest (Southern) Intertie.

Section III. Billing Factors

The billing demand shall be the maximum amount requested by the purchaser and made available by BPA during a calendar week. If BPA is unable to meet subsequent requests by a purchaser for delivery at the demand previously established during such week, the billing demand for that week shall be the lower demand which BPA is able to supply.

Section IV. Billing Period

Bills shall be rendered monthly.

Section V. Special Provision

Energy delivered with such capacity shall be returned to BPA within 7 days of the date of delivery and shall be returned at times and rates of delivery agreed to by both the purchaser and BPA prior to delivery. BPA may agree to accept the return energy after the normal 7 day return period provided that such delay has been mutually agreed upon prior to delivery.

Section VI. Resource Cost Contribution

In compliance with section 7(j) of the Pacific Northwest Power Act, BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the CE–87 rate is 76.8 percent FBS and 23.2 percent Exchange.

B. The forecasted average cost of resources available to BPA under average water conditions is 19.0 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 29.0 mills per kilowatthour.

Section VII. General Provisions

Sales of power under this schedule shall be subject to the General Rate Schedule Provisions (GRSPs) and the following acts, as amended: The Bonneville Project Act, the Flood Control Act of 1944, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Power Act.

Schedule NR–87—New Resource Firm Power Rate

Section I. Availability

This schedule is available for the contract purchase of firm power or capacity to be used within the Pacific Northwest. New Resource Firm Power is available to investor-owned utilities (IOUs) under net requirements contracts for resale to ultimate consumers, direct consumption, or use in construction, test and start up, and station service.

New Resource Firm Power also is available to any public body, cooperative, or Federal agency to the extent such power is needed to serve any increase in power requirements as defined in section 3.(13) of the Pacific Northwest Power Act as interpreted in Notice of Final Action (46 FR 44353, September 3, 1981).

In addition, BPA may make this rate available to those parties participating in exchange agreements that use this rate schedule as the basis for determining the amount or value of power to be exchanged.

This schedule supersedes Schedule NR–85 which went into effect on an interim basis on July 1, 1985.

Section II. Rate

A. *Demand Charge.* 1. $4.53 per kilowatt-month of billing demand occurring during all Peak Period hours.

2. No demand charge during Offpeak Period hours.

B. *Energy Charge.* 1. 25.5 mills per kilowatthour of billing energy for the billing months September through March;

2. 21.2 mills per kilowatthour of billing energy for the billing months April through August;

Section III. Billing Factors

In this section billing factors are listed for computed requirements purchasers (section III.A), metered requirements purchasers, and those New Resource Firm Power purchasers not covered by section III.A. (section III.B.).

A. *Computed Requirements Purchasers.* Purchasers designated by BPA as computed requirements purchasers pursuant to power sales contracts shall be billed in accordance with the provisions of this section.

1. *Billing Demand.* The billing demand for actual, planned, and contracted computed requirements purchasers shall be the higher of the billing factors "a" and "b," below:

a. The lower of:

(1) The larger of the Computed Peak Requirement or the Computed Average Energy Requirement;

(2) The Measured Demand, before adjustment for power factor; or

b. The lower of:

(1) The Computed Peak Requirement; or

(2) 60 percent of the highest Computed Peak Requirement during the previous 11 billing months (Ratchet Demand).

2. *Billing Energy.* The billing energy for actual, planned, and contracted computed requirements purchasers shall be:

a. For the months September through March, the sum of:

(1) 50 percent of the Measured Energy, and

(2) 50 percent of the Computed Energy Maximum;

b. for the months April through August, the sum of:

(1) 55 percent of the Measured Energy, and

(2) 45 percent of the Computed Energy Maximum.

B. *Metered Requirements Purchasers and Other Purchasers Not Covered By Section III.A, Above.* Purchasers designated as metered requirements customers and purchasers taking power under this rate schedule who are not otherwise covered by section III.A shall be billed as follows:

1. *Billing Demand.* The billing demand shall be the Measured Demand as adjusted for power factor, unless otherwise specified in the power sales contract. However, purchasers who previously used the Firm Energy rate schedule, FE–2, either in the computation of their power bills or in the determination of the value of an exchange account, shall not be charged for demand under this rate schedule.

2. *Billing Energy.* The billing energy shall be the Measured Energy, unless otherwise specified in the power sales contract.

Section IV. Adjustments and Special Provisions

A. *Power Factor Adjustment.* The adjustment for power factor, when specified in this rate schedule or in the power sales contract, shall be made in accordance with the provisions of both this section and section III.C.1 of the General Rate Schedule Provisions

(GRSPs). The adjustment shall be made if the average leading power factor or average lagging power factor at which energy is supplied during the billing month is less than 95 percent.

To make the power factor adjustment, BPA shall increase the billing demand by one percentage point for each percentage point or major fraction thereof (0.5 or greater) by which the average leading power factor or average lagging power factor is below 95 percent. BPA may elect to waive the adjustment for power factor in whole or in part.

B. *Cost Recovery Adjustment Clause.* The Cost Recovery Adjustment Clause described in section III.C.5 of the GRSPs shall be applied to all purchases and exchanges under this rate schedule. The percentage increase or decrease calculated in section II.C.5.a and III.C 5.b of the GRSPs shall be applied uniformly to the demand and energy charges contained in sections II.A and II.B of this rate schedule, and the irrigation discount contained in section IV.C of this rate schedule.

C. *Irrigation Discount.* BPA shall apply an irrigation discount, equal to 4.9 mills per kilowatthour, to the charges for qualifying energy purchased under this rate schedule. The irrigation discount shall be applied after calculation of the Low Density Discount. The discount shall apply only to energy purchased during the billing months of April through October. Eligibility for the irrigation discount and reporting requirements shall be determined pursuant to section III.C.4 of the GRSPs.

D. *Conservation Surcharge.* The Northwest Power Planning Council has recommended that a conservation surcharge be imposed on those customers subject to such surcharge as determined by the Administrator in accordance with BPA's Policy to Implement the Council-Recommended Conservation Surcharge. The Conservation Surcharge shall be applied in accordance with section III.C.7 of the GRSPs and subsequent to any other rate adjustments.

E. *Unauthorized Increase.* BPA shall apply the charge for Unauthorized Increase to any purchaser of New Resource Firm Power taking demand and/or energy in excess of its contractual entitlement.

1. *Rate for Unauthorized Increase.* 62.7 mills per kilowatthour.

2. *Calculation of the Unauthorized Increase.* Each 60-minute clock-hour integrated or scheduled demand shall be considered separately in determining the amount which may be considered an unauthorized increase. BPA shall first determine the amount of unauthorized increase related to demand and shall then treat any remaining unauthorized increase as energy-related.

a. *Unauthorized Increase in Demand.* That portion of any Measured Demand during Peak Period hours, before adjustment for power factor, that exceeds the demand which the purchaser is contractually entitled to take during the billing month and that cannot be assigned:

(1) to a class of power which BPA delivers on such hour pursuant to contracts between BPA and the purchaser; or

(2) to a type of power which the purchaser acquires from sources other than BPA and which BPA delivers during such hour, shall be billed:

(1) in accordance with the provisions of the "Relief from Overrun" exhibit to the power sales contract; or

(2) if such exhibit does not apply or is not a part of the purchaser's power sales contract, at the rate for Unauthorized Increase, based on the amount of energy associated with the excess demand.

b. *Unauthorized Increase in Energy.* The amount of Measured Energy during a billing month that exceeds the amount of energy which the purchaser is contractually entitled to take during that month and that cannot be assigned:

(1) to a class of power that BPA delivers during such month pursuant to contracts between BPA and the purchaser; or

(2) to a type of power that the purchaser acquires from sources other than BPA and that BPA delivers during such month, shall be billed:

(1) in accordance with the provisions of the "Relief from Overrun" exhibit to the power sales contract; or

(2) as unauthorized increase if such exhibit does not apply or is not a part of the purchaser's power sales contract.

F. *Coincidental Billing Adjustment.* Purchasers of New Resource Firm Power who are billed on a coincidental basis and who have diversity charges or diversity factors specified in their power sales contracts shall have their charges for billing demand adjusted according to the provisions of section III.C.6 of the GRSPs. Computed requirements purchasers are not subject to the Coincidental Billing Adjustment for scheduled power.

G. *Outage Credit.* Pursuant to section 7 of the General Contract Provisions, BPA shall provide an outage credit to any purchaser for those hours for which BPA is unable to deliver the full billing demand during the billing month due to an outage on the facilities used by BPA to deliver New Resource Firm Power. Such credit shall not be provided if BPA is able to serve the purchaser's load through the use of alternative facilities or if the outage is for less than 30 minutes. The amount of the credit shall be calculated according to the provisions of section III.C.2 of the GRSPs.

H. *Energy Return Surcharge.* Any purchaser who preschedules in accordance with sections 2(a)(4) and 2(c)(2) of Exhibit E of the Power Sales contract and who returns, during a single offpeak hour, more than 60 percent of the difference between that purchaser's estimated computed peak requirement and estimated computed average energy requirement for the billing month shall be subject to the following surcharge for each additional kilowatthour so returned:

1. 3.64 mills per kilowatthour for the months of April through October, and

2. 1.54 mills per kilowatthour for the months of November through March.

Section V. Resource Cost Contribution

In compliance with Section 7(i) of the Pacific Northwest Power Act, BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the NR–87 rate is 100.0 percent Exchange.

B. The forecasted average cost of resources available to BPA under average water conditions is 19.0 mills per kilowatthour

C. The forecasted cost of resources to meet load growth is 29.0 mills per kilowatthour.

Section VI. General Provisions

Sales of power under this schedule shall be subject to the GRSPs and the following acts, as amended: the Bonneville Project Act, the Flood Control Act of 1944, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Power Act.

Schedule SP–87—Short-Term Surplus Firm Power Rate

Section I. Availability

This rate schedule is available for the purchase of Surplus Firm Power or capacity for the period ending September 30, 1992, including purchases under the Western Systems Power Pool (WSPP) agreements. This schedule also is available for use in tandem with Schedule SL–87 for sales of Long-Term Surplus Firm Power, with SP–87 applicable during some or all of the same period ending September 30, 1992. BPA is not obligated to make power or energy available under this rate schedule if such power or energy would displace sales under the IP–87, VI–87,

PF–87, and NR–87 rate schedules. Schedule SP–87 supersedes schedule SP–85 and associated GRSPs, except in the case of contracts for sales under schedule SP–85 which become effective on or before September 30, 1987.

Section II. Rate

A. *Contract Rate.* 1. *Demand Charge.*

a. For contracts that specify 12 months of service per year, $56.52 per kilowatt per year of Contract Demand billed monthly at the rate of $4.71 per kilowatt of Contract Demand occurring during all Peak Period hours in each billing month.

b. For contracts that specify service for fewer than 12 months per year, the monthly demand charge shall be assessed only for the specified service months at the rate of $4.71 per kilowatt of Billing Demand occurring during the Peak Period plus:

$4.71* (12—specified service months)* .25 divided by specified service months

c. No demand charge during Offpeak Period hours.

2. *Energy Charge.* 24.4 mills per kilowatthour of Billing Energy.

B. *Flexible Rate.* 30.9 mills per kilowatthour of Billing Energy. The rate may be specified at a higher or lower charge, as mutually agreed by BPA and the purchaser. In no case shall the rate exceed 100 percent of the fixed and variable unit costs of generation and transmission of BPA's highest cost resource including exchange resources. No resource cost determination is needed for sales at less than or equal to the Contract rate.

C. *Intertie Service.* Rates shall be increased for delivery of Short-Term Surplus Firm Power over the Pacific Northwest-Pacific Southwest Intertie. The adder shall be either of the following:

1. 1.6 mills per kilowatthour; or,

2. $0.63 per kilowatt per month.

Section III. Billing Factors

The billing factors shall be the Measured Demand and Measured Energy, unless otherwise specified in the contract.

Section IV. Adjustments and Special Provisions

A. *Power Factor Adjustment.* The adjustment for power factor for BPA customers that are billed for Short-Term Surplus Firm Power on metered amounts, when specified in this rate schedule or in the contract, shall be made in accordance with the provisions of both this section and section III.C.1 of the General Rate Schedule Provisions (GRSPs). The adjustment shall be made if the average leading power factor or average lagging power factor at which energy is supplied during the billing month is less than 95 percent.

To make the power factor adjustment, BPA shall increase the billing demand or energy by one percentage point for each percentage point or major fraction thereof (0.5 or greater) by which the average leading power factor or average lagging power factor is below 95 percent. BPA may elect to waive the adjustment for power factor in whole or in part.

B. *Extended Peaking Surcharge.* 1. For contract purchases of capacity, the monthly capacity rate specified in section II.A above shall be increased by the following extended peaking surcharge to compensate BPA for each hour that the purchaser's monthly demand duration exceeds 8 hours:

a. $0.0946 per kilowatt per hour of extended peaking for the months April through October;

b. $0.0533 per kilowatt per hour of extended peaking for the months November through March.

The charge shall be adjusted pro rata for each portion of an hour of extended peaking supplied to the purchaser.

2. The purchaser's monthly demand duration shall be determined by dividing:

a. The kilowatthours supplied to the purchaser under this rate schedule between the hours of 7 a.m. and 10 p.m. on the day of maximum kilowatthour use during those hours, provided such day is not a Sunday, by

b. The purchaser's Contract Demand for such month.

3. The purchaser's extended peaking shall be the amount by which the purchaser's monthly demand duration exceeds 8 hours. The extended peaking surcharge shall not be applied during periods when BPA does not require the delivery of peaking replacement energy by the purchaser.

C. *Energy Return Surcharge.* The energy associated with the delivery of contract capacity purchases must be returned to BPA in accordance with the terms of the contract under which purchases are made. Unless waived by BPA, any purchaser whose energy returns during any single hour exceed 60 percent of the purchaser's Contract Demand during any single hour shall be subject to the following surcharge for each additional kilowatthour so returned:

1. 3.64 mills per kilowatthour for the months April through October;

2. 1.54 mills per kilowatthour for the months November through March.

Section V. Resource Cost Contribution

In compliance with section 7(i) of the Pacific Northwest Power Act, BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the SP–87 rate is 99.4 percent Exchange and 0.6 percent New Resources.

B. The forecasted average cost of resources available to BPA under average water conditions is 19.0 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 29.0 mills per kilowatthour.

Section VI. General Provisions

Sales of power under this schedule shall be subject to the GRSPs and the following acts, as amended: the Bonneville Project Act, the Flood Control Act of 1944, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Power Act.

Schedule SL–87—Long-Term Surplus Firm Power Rate

Section I. Availability

This rate schedule is available for the long-term purchase of Surplus Firm Power or capacity for contracts with BPA having a term of up to 20 years. This schedule also may be used in tandem with Schedule SP–87 and applied to long-term sales of Surplus Firm Power for the period beginning on or before October 1, 1992.

Section II. Rate

A. *Demand Charge.* 1. $4.71 per kilowatt of billing demand occurring during the Peak Period in each billing month.

2. For contracts that specify service for fewer than 12 months per year, the monthly demand charge shall be assessed only for the specific service months at the rate of 4.71 per kilowatt of Billing Demand occurring during the Peak Period plus:

$4.71* (12—specified service months)* .25 divided by specified service months

3. No demand charge during Offpeak Period hours.

B. *Energy Charge.* 24.4 mills per kilowatthour of billing energy.

C. *Intertie Service.* Rates shall be increased for delivery of Long-Term Surplus Firm Power over the Pacific Northwest-Pacific Southwest Intertie. The adder shall be either of the following:

1. 1.6 mills per kilowatthour; or,

2. $0.63 per kilowatt per month.

Section III. Billing Factors

The billing factors shall be the Contract Demand and Measured Energy, unless otherwise specified in the contract.

Section IV. Adjustments and Special Provisions

A. *Escalation Factor.* 1. *Calendar Year Adjustment.* Each January 1, each rate component of the Long-Term Surplus Firm Power rate shall be increased as follows:

$SL_n = SL_{n-1} * 1.02$.

where SL_n = The demand and energy charges of the Long-Term Surplus Firm Power rate in effect beginning each January 1 of the relevant calendar year.

SL_{n-1} = The Long-Term Surplus Firm Power demand and energy charges in effect on December 31 of the previous calendar year.

2. *Adjustment Resulting From Adoption of New Priority Firm Power Rate Schedules.* On the effective date of any future Priority Firm Power (PF) rate adjustment, the rate for Long-Term Surplus Firm Power (SL_n) as determined in section IV.A.1 above, shall be adjusted as follows:

$SL_{new} = SL_n * PF_{new}$ divided by PF_{prev}

where SL_{new} = The effective surplus firm power demand and energy charges as adjusted to reflect a new PF rate.

PF_{new} = The newly adjusted average PF rate or successor rate(s) (in mills per kilowatthour). Such average rate shall be calculated at the load factor of the proposed sale, and assume a uniform demand in all months. If there is more than one PF rate, the average shall be determined by a weighting based on forecasted sales in the relevant rate case.

PF_{prev} = The average PF rate or successor rate(s) (in mills per kilowatthour) in effect during the previous rate period. Such average rate shall be calculated at the load factor of the proposed sale, and assuming a uniform demand in all months. If there is more than one PF rate, the average shall be determined by a weighting based on forecasted sales in the relevant rate case.

B. *Power Factor Adjustment.* The adjustment for power factor for BPA customers that are billed for Long-Term Surplus Firm Power on metered amounts, when specified in this rate schedule or in the contract, shall be made in accordance with the provisions of both this section and section III.C.1 of the General Rate Schedule Provisions (GRSPs). The adjustment shall be made if the average leading power factor or average lagging power factor at which energy is supplied during the billing month is less than 95 percent

To make the power factor adjustment. BPA shall increase the billing demand or energy by one percentage point for each percentage point or major fraction thereof (0.5 or greater) by which the average leading power factor or average lagging power factor is below 95 percent. BPA may elect to waive the adjustment for power factor in whole or in part.

C. *Extended Peaking Surcharge.* 1. For contract purchases of capacity, the monthly capacity rate specified in section I.A. above shall be increased by the following extended peaking surcharge to compensate BPA for each hour that the purchaser's monthly demand duration exceeds 8 hours:

a. $0.0946 per kilowatt per hour of extended peaking for the months April through October, and

b. $0.0533 per kilowatt per hour of extended peaking for the months November through March.

The charge shall be adjusted pro rata for each portion of an hour of extended peaking supplied to the purchaser.

2. The purchaser's monthly demand duration shall be determined by dividing:

a. The kilowatthours supplied to the purchaser under this rate schedule between the hours of 7 a.m. and 10 p.m. on the day of maximum kilowatthour use during those hours, provided such day is not a Sunday, by

b. The purchaser's Contract Demand for such month.

3. The purchaser's extended peaking shall be the amount by which the purchaser's monthly demand duration exceeds 8 hours. The extended peaking surcharge shall not be applied during periods when BPA does not require the delivery of peaking replacement energy by the purchaser.

4. The extended peaking surcharge shall be subject to the escalation factor specified in section IV.A. above.

D. *Energy Return Surcharge.* 1. The energy associated with the delivery of contract capacity purchases must be returned to BPA in accordance with the contract terms. Unless waived by BPA, any purchaser whose energy returns during any single hour exceed 60 percent of the purchaser's Contract Demand during any single hour shall be subject to the following surcharge for each additional kilowatthour so returned:

a. 3.64 mills per kilowatthour for the months April through October;

b. 1.54 mills per kilowatthour for the months November through March.

2. The energy return surcharge shall be subject to the escalation factor specified in section IV.A. above.

Section V. Resource Cost Contribution

In compliance with section 7(j) of the Pacific Northwest Power Act, BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the SL–87 rate is 99.4 percent Exchange and 0.6 percent New Resources.

B. The forecasted average cost of resources available to BPA under average water conditions is 19.0 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 29.0 mills per kilowatthour.

Section VI. General Provisions

Sales of power under this schedule shall be subject to the GRSPs and the following acts, as amended: the Bonneville Project Act, the Flood Control Act of 1944, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Power Act.

Schedule FD–87—Short-Term Firm Displacement Power Rate

Section I. Availability

This schedule is available for the short-term contract purchase of Firm Displacement Power or capacity by Pacific Northwest utilities for use within the Pacific Northwest for the period ending September 30, 1992. Generation from resources displaced by Firm Displacement purchases shall be exported from the Pacific Northwest on a firm basis for a period of at least 3 years. This schedule may be used in tandem with schedule FL–87 for sales of Long-Term Firm Displacement Power, with FD–87 applicable during some or all of the short-term period ending September 30, 1992.

Section II. Rate

A. *Contract Rate.* 1. *Demand Charge.*

a. For contracts that specify 12 months of service per year, $54.36 per kilowatt per year of Contract Demand billed monthly at the rate of $4.53 per kilowatt of Contract Demand occurring during the Peak Period in each billing month.

b. For contracts that specify service for fewer than 12 months per year, the monthly demand charge shall be assessed only for the specified service months at the rate of $4.53 per kilowatt of Billing Demand occurring during the Peak Period plus:

$4.53* (12—specified service months) * .25 divided by specified service months

c. No demand charge during Offpeak Period hours.

2. *Energy Charge.* 23.7 mills per kilowatthour of Billing Energy.

B. *Flexible Rate.* Energy and/or demand charges for Short-Term Firm Displacement Power may be specified at rates higher or lower than the above charges, as mutually agreed upon by BPA and the purchaser. The rate shall not exceed 100 percent of the fixed and variable costs of generating and transmitting BPA's highest cost resource, including exchange resources.

Section III. Billing Factors

The billing factors shall be the Contract Demand and Contract Energy.

Section IV. Adjustments and Special Provisions

A. *Extended Peaking Surcharge.* 1. For contract purchases of capacity, the monthly capacity rate specified in section I.A above shall be increased by the following extended peaking surcharge to compensate BPA for each hour that the purchaser's monthly demand duration exceeds 8 hours:

a. $0.0946 per kilowatt per hour of extended peaking for the months April through October;

b. $0.0533 per kilowatt per hour of extended peaking for the months November through March.

The charge shall be adjusted pro rata for each portion of an hour of extended peaking supplied to the purchaser.

2. The purchaser's monthly demand duration shall be determined by dividing:

a The kilowatthours supplied to the purchaser under this rate schedule between the hours of 7 a.m. and 10 p.m. on the day of maximum kilowatthour use during those hours, provided such day is not a Sunday, by

b. The purchaser's Contract Demand for such month.

3. The purchaser's extended peaking shall be the amount by which the purchaser's monthly demand duration exceeds 8 hours. The extended peaking surcharge shall not be applied during periods when BPA does not require the delivery of peaking replacement energy by the purchaser.

B. *Energy Return Surcharge.* The energy associated with the delivery of Firm Displacement capacity must be returned to BPA in accordance with the terms of the purchaser's Firm Displacement contract. Unless waived by BPA, any purchaser whose energy returns during any single hour exceed 60 percent of the purchaser s Contract Demand during any single hour shall be subject to the following surcharge for each additional kilowatthour so returned:

1. 3.64 mills per kilowatthour for the months April through October;

2. 1.54 mills per kilowatthour for the months November through March.

Section V. Resource Cost Contribution

In compliance with section 7(j) of the Pacific Northwest Power Act, BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the FD–87 rate is 100.0 percent Exchange.

B. The forecasted average cost of resources available to BPA under average water conditions is 19.0 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 29.0 mills per kilowatthour.

Section VI. General Provisions

Sales of power under this schedule shall be subject to the General Rate Schedule Provisions and the following Acts, as amended: The Bonneville Project Act, the Flood Control Act of 1944, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Power Act.

Schedule FL–87—Long-Term Firm Displacement Power Rate

Section I. Availability

This schedule is available for the long-term purchase of Firm Displacement Power or capacity by Pacific Northwest utilities for use within the Pacific Northwest for contracts having a term from 5 to 20 years. Generation from resources displaced by Firm Displacement purchases shall be exported from the Pacific Northwest on a firm basis during the contract period. This schedule may be used in tandem with schedule FD–87 and applied to long-term sales of Firm Displacement power for the period beginning on or before October 1, 1992. Schedule FL–87 supersedes schedule FD–85 and associated GRSPs, except in the case of contracts for sales under schedule FD–85, which become effective on or before September 30, 1987.

Section II. Rate

A. *Demand Charge.* 1. For contracts that specify 12 months of service per year, $54.36 per kilowatt per year of Contract Demand billed monthly at the rate of $4.53 per kilowatt of Contract Demand occurring during the Peak Period in each billing month.

2. For contracts that specify service for fewer than 12 months per year, the monthly demand charge shall be assessed only for the specified service months at the rate of $4.53 per kilowatt of Billing Demand occurring during the Peak Period plus:

$4.53* (12—specified service months) * .25 divided by specified service months

3. No demand charge during Offpeak Period hours.

B. *Energy Charge.* 23.7 mills per kilowatthour of Billing Energy.

Section III. Billing Factors

The billing factors shall be the Contract Demand and Contract Energy.

Section IV. Adjustments and Special Provisions

A. *Escalation Factor.* 1. *Calendar Year Adjustment.* Each January 1, each rate component of the Long-Term Firm Displacement Power rate shall be increased as follows:

$FL_n = FL_n - 1$ multiplied by 1.02

where FL_n = The demand and energy charges of the Long-Term Firm Displacement Power rate in effect beginning each January 1 of the relevant calendar year.

$FL_n - 1$ = The Long-Term Firm Displacement Power demand and energy charges in effect on December 31 of the previous calendar year.

2. *Adjustment Resulting From Adoption of New Priority Firm Power Rate Schedules.* On the effective date of any future Priority Firm Power (PF) rate adjustment, the rate for Long-Term Firm Displacement Power (FL_n) as determined in section IV.A.1. above, shall be adjusted as follows:

$FL_{new} = FL_n$ multiplied by F_{new} divided by PF_{prev}

where FL_{new} = The effective Long Term Firm Displacement Power demand and energy charges as adjusted to reflect a new PF rate.

PF_{new} = The newly adjusted average PF rate or successor rate(s) (in mills per kilowatthour). Such average rate shall be calculated at the load factor of the proposed sale, and assume a uniform demand in all months. If there is more than one PF rate, the average shall be determined by a weighting based on forecasted sales in the relevant rate case.

PF_{prev} = The average PF rate or successor rate(s) (in mills per kilowatthour) in effect during the previous rate period. Such average rate shall be calculated at the load factor of the proposed sale, and assuming a uniform demand in all months. If

there is more than one PF rate, the average shall be determined by a weighting based on forecasted sales in the relevant rate case.

B. *Extended Peaking Surcharge.* 1. For contract purchases of capacity, the monthly capacity rate specified in section I.A. above shall be increased by the following extended peaking surcharge to compensate BPA for each hour that the purchaser's monthly demand duration exceeds 8 hours:

a. $0.0946 per kilowatt per hour of extended peaking for the months April through October, and

b. $0.0533 per kilowatt per hour of extended peaking for the months November through March.

The charge shall be adjusted pro rata for each portion of an hour of extended peaking supplied to the purchaser.

2. The purchaser's monthly demand duration shall be determined by dividing:

a. The kilowatthours supplied to the purchaser under this rate schedule between the hours of 7 a.m. and 10 p.m. on the day of maximum kilowatthour use during those hours, provided such day is not a Sunday, by

b. The purchaser's Contract Demand for such month.

3. The purchaser's extended peaking shall be the amount by which the purchaser's monthly demand duration exceeds 8 hours. The extended peaking surcharge shall not be applied during periods when BPA does not require the delivery of peaking replacement energy by the purchaser.

4. The extended peaking surcharge shall be subject to the escalation factor specified in section IV.A above.

C. *Energy Return Surcharge.* 1. The energy associated with the delivery of Long Term Firm Displacement capacity must be returned to BPA in accordance with the terms of the purchaser's Firm Displacement contract. Unless waived by BPA, any purchaser whose energy returns during any single hour exceed 60 percent of the purchaser's Contract Demand during any single hour shall be subject to the following surcharge for each additional kilowatthour so returned:

a. 3.64 mills per kilowatthour for the months April through October;

b. 1.54 mills per kilowatthour for the months November through March.

2. The energy return surcharge shall be subject to the escalation factor specified in section IV.A. above.

Section V. Resource Cost Contribution

In compliance with section 7(j) of the Pacific Northwest Power Act, BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the FL–87 rate is 100.0 percent Exchange.

B. The forecasted average cost of resources available to BPA under average water conditions is 19.0 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 29.0 mills per kilowatthour.

Section VI. General Provisions

Sales of power under this schedule shall be subject to the General Rate Schedule Provisions and the following Acts, as amended: the Bonneville Project Act, the Flood Control Act of 1944, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Power Act.

Schedule NF–87—Nonfirm Energy Rate

Section I. Availability

This schedule is available for the purchase of nonfirm energy to be used both inside and outside the United States including sales under the Western Systems Power Pool (WSPP) agreements and sales to consumers. This schedule also applies to energy delivered for emergency use under the conditions set forth in section V.A of the General Rate Schedule Provisions (GRSPs). BPA is not obligated to offer nonfirm energy to any purchaser that results in displacement of firm power purchases under BPA's Power Sales Contracts. The offer of nonfirm energy under this schedule shall be determined by BPA. Schedule NF–87 supersedes Schedule NF–85 which went into effect on an interim basis on July 1, 1985, and was subsequently revised on an emergency basis and approved on an interim basis on May 1, 1986.

Section II. Rates

The average cost of Nonfirm Energy is 23.0 mills per kilowatthour. The NF–87 rate schedule provides for upward and downward flexibility from this average cost. All rates in this rate schedule shall be subject to the NF Rate Cap contained in section IV.C of the GRSPs.

A. *Standard Rate.* The Standard rate is any offered rate not to exceed the NF Rate Cap specified in section IV.C of the GRSPs.

B. *Market Expansion Rate.* The Market Expansion rate is any offered rate below the Standard rate in effect. BPA may have one or more Market Expansion rates in effect simultaneously.

C. *Incremental Rate.* The Incremental rate is the Incremental Cost of energy plus 2.0 mills per kilowatthour, where the Incremental Cost is defined as all identifiable costs (expressed in mills per kilowatthour) that BPA would have avoided had it not produced or purchased the energy being sold under this rate

D. *Contract Rate.* The Contract rate is 14.9 mills per kilowatthour of billing energy.

Section III. Adjustments to Rates

A. *Guaranteed Delivery Surcharge.* A surcharge of 2.0 mills per kilowatthour of billing energy is applied to guaranteed delivery of nonfirm energy under the Standard rate and Market Expansion rate.

B. *Intertie Adder.* All rates specified shall be increased by 1.6 mills per kilowatthour for nonfirm energy scheduled for delivery over the Pacific Northwest-Pacific Southwest Intertie.

Section IV. Billing Factors

The billing energy for nonfirm energy purchased under this rate schedule shall be the Measured Energy unless otherwise specified by contract.

Section V. Application and Eligibility

Any time that BPA has nonfirm energy for sale, the Standard rate, the Market Expansion rate, the Incremental rate, the Contract rate, or a combination of these rates may be in effect.

A. *Standard Rate.* The Standard rate is:

1. available for all purchases of nonfirm energy; and

2. applies to nonfirm energy purchased pursuant to the Relief from Overrun Exhibit to the power sales contract.

B. *Market Expansion Rate.*

1. *Application of the Market Expansion Rate.* The Market Expansion rate applies when BPA determines that all markets at the Standard rate have been satisfied and BPA offers additional nonfirm energy

2. *Market Expansion Rate Qualification Criteria.* In order to purchase Nonfirm Energy at the Market Expansion rate, a purchaser must:

a. Have a displaceable resource, displaceable purchase of electricity, or

b. Be an end-user load with a displaceable alternative fuel source.

In addition, a purchaser must demonstrate one of the following:

a. Shutdown or reduction of the output of the displaceable resource in an amount equal to the amount of Market Expansion rate energy purchased; or

b. Reduction of a displaceable purchase and the output of the resource associated with that purchase, in an amount equal to the amount of Market Expansion rate energy purchased; or

c. Shutdown or reduction of the identified output of the resource(s) indirectly in an amount equal to the amount of Market Expansion rate energy purchased. For example, the purchase may be used to run a pumped storage unit; or

d. That an end-user alternate fuel source is reduced in an amount equivalent to the amount of Market Expansion rate energy purchased.

3. *Eligibility Criteria for Market Exponsion Rate.* a. When only one Market Expansion rate is offered:

Purchasers qualifying under section V.B.2 who purchased Nonfirm Energy directly from BPA are eligible to purchase power under the Market Expansion rate offered if the decremental cost of the qualifying resource, purchase, or qualifying alternative fuel source is lower than the Standard rate in effect plus two mills per kilowatthour.

Purchasers qualifying under section V.B.2.b who purchase Nonfirm Energy through a third party are eligible to purchase power under the Market Expansion rate offered if the cost of the qualifying alternative fuel source is lower than the Standard rate in effect plus 4 mills per kilowatthour.

b. When more than one Market Expansion rates are offered:

Purchasers qualifying under section V.B.2 who purchase Nonfirm Energy directly from BPA are eligible to purchase power under the Market Expansion rate if the decremental cost of the qualifying resource, purchase, or qualifying alternative fuel source is lower than the Standard rate in effect plus 2 mills per kilowatthour. The rate applicable to a purchaser shall be the highest Market Expansion rate offered that is below the purchaser's qualifying decremental cost minus 2 mills per kilowatthour.

Purchasers qualifying under section V.B.2.b who purchase Nonfirm Energy through a third party are eligible to purchase power under the Market Expansion rate if the decremental cost of the qualifying alternative fuel source is lower than the Standard rate plus 4 mills per kilowatthour. The rate applicable to a purchaser shall be the highest Market Expansion rate offered that is below purchaser's qualifying decremental cost minus 4 mills per kilowatthour.

C. *Incremental Rate.* The Incremental rate applies to sales of energy:

1. that is produced or purchased by BPA concurrently with the nonfirm energy sale;

2. that BPA may at its option not produce or purchase; and

3. that has an Incremental Cost greater than the Standard rate (plus the Intertie Adder, if applicable) less 2.0 mills per kilowatthour.

D. *Contract Rate.* The Contract rate applies to contracts (except power sales contracts offered pursuant to sections 5(b), 5(c), and 5(g) of the Pacific Northwest Power Act) that refer to the Contract rate:

1. for the sale of nonfirm energy; or

2. for determining the value of energy.

E. *Western System Power Pool Transactions.* BPA may make available Nonfirm Energy for transactions under the Western System Power Pool (WSPP) agreement. WSPP sales shall be subject to the terms and conditions specified in the WSPP agreement and shall be consistent with regional and public preference. The rate for transactions under the WSPP agreement is any rate within the limits specified by the Standard, Market Expansion, and Incremental rates but may differ from the actual rate offered for non-WSPP transactions in any hour. The rate for WSPP transactions is independent of any other rate offered concurrently under this rate schedule outside that agreement.

F. *End-User Rate.* BPA may agree to a Nonfirm Energy rate or rate formula for nonfirm purchases by end-users. Such rate or rate formula shall be within the limits specified for the Standard and Market Expansion rates but may differ from the actual rates offered during any hour.

Section VI. Delivery

A. *Rate of Delivery.* BPA shall determine the amount of nonfirm energy to be made available for each hour. Such determination shall be made for each applicable nonfirm energy rate.

B. *Guaranteed Delivery.* 1. *Availability.* BPA will determine the amount and duration of Nonfirm Energy to be offered on a guaranteed basis. Such daily or hourly amounts may be as small as zero or as much as all the nonfirm energy that BPA plans to offer for sale on such days.

2. *Conditions.* Scheduled amounts of guaranteed nonfirm energy may not be changed except:

a. When BPA and the purchaser mutually agree to increase or decrease the scheduled amounts; or

b. When BPA must reduce nonfirm energy deliveries in order to serve firm loads because of unexpected generation or transmission loss.

Section VII. Resource Cost Contribution

Pursuant to section 7(j) of the Pacific Northwest Power Act, BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the average cost of Nonfirm Energy is 54.2 percent FBS, 0.2 percent New Resources, and 45.6 percent Exchange.

B. The forecasted average cost of resources available to BPA under average water conditions is 19.0 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 29.0 mills per kilowatthour.

Section VIII. General Provisions

Sales of energy under this schedule shall be subject to the General Rate Schedule Provisions and the following Acts, as amended: Bonneville Project Act, the Flood Control Act of 1944, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Power Act.

Schedule SS–87—Share-the-Savings Rate

Section I. Availability

This rate schedule is available for the contract purchase of Nonfirm Energy to be used both inside and outside the United States for the displacement of a qualifying resource, displaceable purchase of electricity, or end-user load that can be served with alternate fuel sources. Nonfirm Energy will be made available under this rate schedule only to purchasers who have executed a contract with BPA specifying use of the Share-the-Savings Rate. BPA is not obligated to offer Nonfirm Energy to any purchaser that results in displacement of firm power purchases under BPA's Power Sales Contracts. The offer of Nonfirm Energy under this rate schedule shall be determined by BPA. Schedule SS–87 supersedes Schedule SS–85 which went into effect on an interim basis on July 1, 1985.

Section II. Rate

The rate shall depend on the Decremental Cost, expressed in mills per kilowatthour, of the qualifying resource, displaceable purchase of electricity, or end-user load that can be served with alternative fuel sources. Decremental Cost, as used in this rate schedule, shall be defined in the applicable contract.

A. *Economy Energy Rate.* For Decremental Cost equal to or greater than 23.0 mills per kilowatthour, the rate shall be 50 percent of the Decremental

Cost plus 6.0 mills per kilowatthour of billing energy.

B. *Displacement I Rate.* For Decremental Cost less than 23.0 mills per kilowatthour and greater than or equal to 8.0 mills per kilowatthour, the rate shall be 75 percent of the Decremental Cost.

C. *Displacement II Rate.* For Decremental Cost less than 8.0 mills per kilowatthour, the rate shall be Decremental Cost minus 2.0 mills per kilowatthour.

Section III. Billing Factors

The billing energy for Nonfirm Energy purchased under this rate schedule shall be the Measured Energy unless otherwise specified in the Share-the-Savings Rate contract.

Section IV. Application and Eligibility

At any time that BPA makes Nonfirm Energy available under this rate schedule, one or more of the rates identified in section II may be in effect concurrently. During any period in which Nonfirm Energy is offered BPA may impose a floor price, expressed in mills per kilowatthour, below which Nonfirm Energy is not available under this rate schedule. The floor shall be specified by BPA at the time Nonfirm Energy is offered, the duration of which shall be determined by BPA.

A. *General Requirements.* 1. In order to purchase Nonfirm Energy under the Share-the-Savings Rate, the purchaser must have executed a contract specifying application of the Share-the-Savings Rate Schedule.

2. A purchaser must have a displaceable resource, displaceable purchase of electricity, or be an end-user load with a displaceable alternate fuel source.

3. End-user loads with alternate fuel sources may not use the Decremental Cost of a displaceable purchase of electricity to qualify for this rate.

4. Identified resources may be displaced indirectly; for example, by using the purchase to run a pumped storage unit.

B. *Displacement Rate Service.* Purchasers of Displacement rate energy, under either Displacement I or II rate or both, must demonstrate one of the following:

1. Shutdown or reduction of the output of the displaceable resource in an amount equal to the amount of Displacement Rate energy purchased; or

2. Reduction of a displaceable purchase and the output of the resource associated with that purchase, in an amount equal to the amount of Displacement Rate energy purchased; or

3. Shutdown or reduction of output of the identified resource(s) indirectly in an amount equal to the amount of Displacement Rate energy purchased. For example, the purchase may be used to run a pumped storage unit; or

4. That an end-user alternate fuel source is reduced in an amount equivalent to the amount of Displacement Rate energy purchased.

C. *BPA Service Priority.* When Nonfirm Energy is available under this rate schedule, BPA shall determine the applicable rate (or rates) based on the Decremental Cost of the displaceable resource, displaceable purchase of electricity, resource to be displaced indirectly, or displaceable end-user alternate fuel source. BPA will sell Nonfirm Energy under this rate schedule consistent with regional and public preference.

Section V. Resource Cost Contribution

In compliance with section 7(j) of the Pacific Northwest Power Act, BPA has made the following determinations:

A. The SS–87 rate is not based on the cost of BPA resources.

B. The forecasted average cost of resources available to BPA under average water conditions is 19.0 mills per kilowatthour

C. The forecasted cost of resources to meet load growth is 29.0 mills per kilowatthour.

Section VI. General Provisions

Sales of power under this schedule shall be subject to the General Rate Schedule Provisions and the following Acts, as amended: The Bonneville Project Act, the Flood Control Act of 1944, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Power Act.

Schedule EB–87—Energy Broker Rate

Section I. Availability

This rate schedule may be applied to both sales and purchases of Nonfirm Energy among those participants in the Western Systems Coordinating Council (WSCC) Energy Broker System between whom agreements for energy transmission have been transacted. BPA shall determine the availability of energy to be provided under this rate schedule. This schedule supersedes Schedule EB–85, which went into effect on an interim basis on July 1, 1985.

Section II. Rate

The following formula shall be used in determining the rate at which power will be sold or purchased at the Energy Broker rate:

$$EB\text{–}87 = \frac{BP + SP}{2}$$

where:

EB–87 = Energy Broker Rate,
BP = Quoted Buy Price, and
SP = Quoted Sell Price.

The Energy Broker will identify potential transactions when the Sell Price is at least 4.0 mills per kilowatthour less than the Buy Price. The final transaction rate for brokered Nonfirm Energy will be based on splitting the difference between the quoted Buy and Sell Prices, with the settlement for wheeling charges and energy losses determined in accordance with Exhibit A of the WSCC Broker Transmission Service Agreement.

When a transaction involving BPA takes place on the Energy Broker System, the BPA Buy Price and BPA Sell Price shall be defined as follows:

A. The BPA Buy Price is the estimated decremental or equivalent expense per kilowatthour that otherwise would have been incurred by BPA in generating or purchasing power from alternative sources in lieu of brokered energy scheduled for delivery to BPA during that hour.

B. The BPA Sell Price is the estimated incremental or equivalent expense per kilowatthour that would be incurred by BPA in supplying broker-identified energy scheduled for delivery during such hour to the buyer from resources that are available to supply power during that hour as determined by BPA.

Section III. Billing Factors

The billing energy for power purchased under this rate schedule shall be the Measured Energy unless otherwise specified in the power sales contract.

Section IV. Delivery

BPA shall determine the amount of delivery for Energy Broker energy to be made available to each purchaser for each hour that Energy Broker energy is requested.

Section V. Resource Cost Contribution

In compliance with section 7(j) of the Pacific Northwest Power Act, BPA has made the following determinations:

A. The cost contribution of different resource categories to the EB–87 rate is based upon the specific resource(s) offered during the scheduled time of sale.

B. The forecasted average cost of resources available to BPA under

average water conditions is 19.0 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 29.0 mills per kilowatthour after displacement by BPA's available secondary energy.

Section VI. General Provisions

Sales of power under this schedule shall be subject to the General Rate Schedule Provisions (GRSPs) and the following acts, as amended: The Bonneville Project Act, the Flood Control Act of 1944, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Power Act.

Schedule RP–87—Reserve Power Rate

Section I. Availability

This schedule is available for the purchase of power:

A. In cases where a purchaser's power sales contract states that the rate for Reserve Power shall be applied;

B. For which BPA determines no other rate schedule is applicable; and

C. To serve a purchaser's firm power load in circumstances where BPA does not have a power sales contract in force with such purchaser, and BPA determines that this rate should be applied.

This rate schedule may be applied to power purchased by entities outside the United States.

This rate schedule supersedes Schedule RP–85 which went into effect on an interim basis on July 1, 1985.

Section II. Rate

A. *Demand Charge.* 1. $3.55 per kilowatt of billing demand occurring during all Peak Period hours.

2. No demand charge during Offpeak Period hours.

B. *Energy Charge.* 1. 25.2 mills per kilowatthour of billing energy.

Section III. Billing Factors

The factors to be used in determining the billing for power purchased under this rate schedule are as follows:

A. *Billing Demand.* If applicable, the billing demand shall be the Contract Demand as specified in the power sales contract. Otherwise the billing demand shall be the Measured Demand as adjusted for power factor.

B. *Billing Energy.* The billing energy shall be the Contract Demand multiplied by the number of hours in the billing month, if use of the Contract Demand for determining billing energy is specified in the power sales contract. Otherwise the billing energy for such purchasers shall be the Measured Energy.

Section IV. Power Factor Adjustment

The adjustment for power factor, when specified in this rate schedule or in the power sales contract, shall be made in accordance with the provisions of both this section and section III.C.1 of the General Rate Schedule Provisions (GRSPs). The adjustment shall be made if the average leading power factor or average lagging power factor at which energy is supplied during the billing month is less than 95 percent.

To make the power factor adjustment, BPA shall increase the billing demand by one percentage point for each percentage point or major fraction thereof (0.5 or greater) by which the average leading power factor or average lagging power factor is below 95 percent. BPA may elect to waive the adjustment for power factor in whole or in part.

Section V. Resource Cost Contribution

In compliance with section 7(j) of the Pacific Northwest Power Act, BPA has made the following determinations:

A. The RP–87 rate is not based on the cost of resources.

B. The forecasted average cost of resources available to BPA under average water conditions is 19.0 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 29.0 mills per kilowatthour.

Section VI. General Provisions

Sales of power under this schedule shall be subject to the GRSPs and the following acts, as amended: The Bonneville Project Act, the Flood Control Act of 1944, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Power Act.

General Rate Schedule Provisions

Section I. Adoption of Revised Rate Schedules and General Rate Schedule Provisions

A. *Approval of Rates.* These 1987 rate schedules and General Rate Schedule Provisions (GRSPs) shall become effective upon interim approval or final confirmation and approval by the Federal Energy Regulatory Commission (FERC). BPA will request FERC approval effective October 1, 1987. BPA proposes that the following schedules, and the GRSPs associated with these schedules, be effective for two years: PF–87, IP–87, CE–87, CF–87, NR–87, SS–87, NF–87, EB–87, and RP–87. The VI–87 rate schedule reflects adjustments of and supplements to the rate schedule VI–86 and associated GRSPs (which are to be in effect for 10 years). Sections III.A and VI.J of the VI–87 rate schedule are to be in effect for two years. BPA proposes that rate schedule SI–87 be effective two years, except for the Special Industrial Offpeak rate provision, which is to remain in effect through June 30, 1990, pursuant to an Amendatory Agreement between BPA and Hanna Nickel Smelting Company executed July 1, 1985.

BPA proposes that the following schedules, and the GRSPs associated with these schedules, be effective for five years: FD–87 and SP–87. BPA proposes that the Nonfirm Energy Rate Cap be effective for 12 years. BPA proposes that the following schedules be effective for 20 years: FL–87 and SL–87.

B. *General Provisions.* These 1987 rate schedules, and the GRSPs associated with these rate schedules, supersede BPA's 1985 rate schedules (which became effective July 1, 1985) to the extent stated in the Availability section of each 1987 rate schedule. These schedules and GRSPs shall be applicable to all BPA contracts, including contracts executed both prior to and subsequent to enactment of the Pacific Northwest Power Act.

Section II. Types of BPA Service

A. *Priority Firm Power.* Priority Firm Power is electric power (capacity, energy, or capacity and energy) that BPA will make continuously available for resale to ultimate consumers, or for direct consumption, construction, test and start-up, and station service by public bodies, cooperatives, and Federal agencies. (Construction, test and start-up, and station service are defined in section V.B of these GRSPs.)

Utilities participating in the exchange under section 5(c) of the Pacific Northwest Power Act may purchase Priority Firm Power pursuant to their Residential Purchase and Sale Agreements.

In addition, BPA may make Priority Firm Power available to those parties participating in exchange agreements specifying use of the Priority Firm rate for determining the amount or value of power to be exchanged.

Power purchased under the power rate schedule is to be used to meet the purchaser's actual firm load within the Pacific Northwest. Such power may be restricted in accordance with the Restriction of Deliveries section of these GRSPs (section V.E). However, BPA shall not restrict Priority Firm Power until Industrial Firm Power has been restricted in accordance with the provisions of section II.C of these GRSPs.

Any increase in energy consumption of a load as defined in:

1. Section 3(13) of the Pacific Northwest Power Act, or

2. Section 8 of any BPA utility power sales contract, shall be considered New Resource Firm Power and shall be served under the New Resource Firm Power rate.

B. *New Resource Firm Power.* New Resource Firm Power is electric power (capacity, energy, or capacity and energy) that BPA will make continuously available:

1. For any new large single load as defined in section 3(13) of the Pacific Northwest Power Act and as described in section 8 of any BPA utility power sales contract,

2. For firm power purchased by investor-owned utilities pursuant to power sales contracts with BPA, and

3. For construction, test and start-up, and station service for facilities owned or operated by investor-owned utilities.

New Resource Firm Power is to be used to meet the purchaser's actual firm load within the Pacific Northwest. Such power may be restricted in accordance with the Restriction of Deliveries section of these GRSPs (section V.E). However, BPA shall not restrict New Resource Firm Power until Industrial Firm Power has been restricted in accordance with the provisions of section II.C of these GRSPs.

C. *Industrial Firm Power.* Industrial Firm Power is electric power that BPA will make continuously available to a direct-service industrial (DSI) purchaser pursuant to the DSI's power sales contract and subject to:

1. The restriction applicable to deliveries of all firm power pursuant to the Uncontrollable Forces and Continuity of Service provisions of the General Contract Provisions of the power sales contract, and

2. The restrictions given in the Restriction of Deliveries section of the power sales contract.

D. *Special Industrial Power.* Special Industrial Power is electric power which BPA will make continuously available to any DSI that qualifies for the Special Industrial Power rate pursuant to section 7(d)(2) of the Pacific Northwest Power Act. This power is similar in nature to Industrial Firm Power, but is subject to greater restriction by BPA. Special Industrial Power is made available to the qualifying DSI upon adoption of, and subject to, an amendment modifying its power sales contract.

E. *Auxiliary Power.* Auxiliary Power is that power which a DSI requests and which BPA agrees to make available to serve that portion of the DSI's load which is in excess of the DSI's Operating Demand for Industrial Firm Power or Special Industrial Power.

F. *Firm Capacity.* Firm Capacity is capacity that BPA assures will be available in the amount(s) and during the period(s) specified in the power sales contract. The energy associated with this capacity must be returned to BPA. Firm Capacity may be restricted pursuant to the Restriction of Deliveries section of these GRSPs (section V.E).

G. *Surplus Firm Power.* Surplus Firm Power is firm power (capacity, energy, or capacity and energy) in excess of the amount required to meet BPA's existing contractual obligations to provide firm service. Surplus Firm Power may be used either for resale or direct consumption by purchasers both inside and outside the United States. Such power however, may be restricted pursuant to the Restriction of Deliveries section of these GRSPs (section V.E).

H. *Nonfirm Energy.* Nonfirm Energy is supplied or made available by BPA to a purchaser under an arrangement that does not have the guaranteed continuous availability feature of firm power. Nonfirm energy is mostly sold under the Nonfirm Energy rate schedule, NF–87. Nonfirm energy also may be supplied under the Share-the-Savings rate schedule, SS–87, which is available as an experimental rate for contract purchase. Nonfirm energy sales also may be made under the Energy Broker rate schedule, EB–87, which is available to Western Systems Coordinating Council (WSCC) members participating in the Energy Broker System.

In addition, BPA also can make nonfirm energy available under the Nonfirm Energy rate schedule to the Western Systems Power Pool (WSPP) subject to terms and conditions agreed upon by the members participating in the WSPP and in accordance with BPA policy for such arrangements.

However, Nonfirm Energy that has been purchased under a guarantee provision in the Nonfirm Energy rate schedule shall be provided to the purchaser in accordance with the provisions of that schedule and the power sales contract if applicable. BPA may make Nonfirm Energy available to purchasers both inside and outside the United States.

I. *Reserve Power.* Reserve Power is firm power sold to a purchaser:

1. In cases where the purchaser's power sales contract states that the rate for Reserve Power shall be applied;

2. to provide service when no other type of power is deemed applicable; and

3. to serve the purchaser's firm power loads under circumstances where BPA does not have a power sales contract in force with the purchaser.

Sales of Reserve Power are subject to the Restriction of Deliveries section of these GRSPs (section V.E).

J. *Firm Displacement Power.* Firm Displacement Power is firm power (capacity, energy, or capacity and energy) that BPA makes available to Pacific Northwest utilities for use within the Pacific Northwest. The purchased power will replace the generation from resources that is exported from the Pacific Northwest on a firm basis for a period of at least 3 years. Such power may be restricted pursuant to the Restriction of Deliveries section of the GRSPs (section V.E).

Section III. Billing Factors and Billing Adjustments

A. *Billing Factors for Demand.* 1. *Measured Demand.* The purchaser's Measured Demand shall be determined in the manner described in this section. Measured Demand shall be that portion of the metered or scheduled demand that is purchased from BPA under the applicable rate schedule. For those contracts to which BPA is a party and that provide for delivery of more than one class of electric power to the purchaser at any point of delivery, the portion of each 60-minute clock-hour integrated demand assigned to any class of power shall be determined pursuant to the power sales contract. The portion of the total Measured Demand so assigned shall constitute the Measured Demand for each such class of power.

The Measured Demand shall be determined from the metered demand or the scheduled demand, as hereinafter defined. The Measured Demand shall be determined on either a coincidental or a noncoincidental basis, as provided in the purchaser's power sales contract.

a. Metered Demand. The metered demand in kilowatts shall be the largest of the 60-minute clock-hour integrated demands, adjusted as specified in the power sales contract, at which electric energy is delivered to a purchaser:

(1) At each point of delivery for which the metered demand is the basis for determination of the Measured Demand,

(2) During each time period specified in the applicable rate schedule, and

(3) During any billing period.

Such largest integrated demand shall be determined from measurements made either in the manner specified in the power sales contract or as provided in section VI.A. herein. In determining the metered demand, BPA shall exclude any abnormal integrated demands due to or resulting from:

(1) Emergencies or breakdowns on, or maintenance of, the Federal system facilities, and

(2) Emergencies on the purchaser's facilities, provided that such facilities have been adequately maintained and prudently operated, as determined by BPA.

b. *Scheduled Demand.* The scheduled demand in kilowatts shall be the largest of the hourly demands at which electric energy is scheduled for delivery to a purchaser:

(1) To each system for which scheduled demand is the basis for determination of the Measured Demand,

(2) During each time period specified in the applicable rate schedule, and

(3) During any billing period.

Scheduled amounts are deemed delivered for the purpose of determining billing demand.

2. *Ratchet Demand.* The Ratchet Demand in kilowatts shall be the maximum demand established during a specified period of time either during or prior to the current billing period. The demand on which the ratchet is based is specified in the relevant rate schedule or in these GRSPs. For utilities purchasing under the PF or NR rate schedules, the Ratchet Demand is based on the highest demand during prior billing months. When the Ratchet Demand is used as a billing factor, BPA shall have specified in the appropriate schedules or GRSPs:

a. The period of time over which the ratchet shall be calculated,

b. The type of demand to be used in the calculation, and

c. The percentage (if any) of that demand which will be used to calculate the Ratchet Demand.

3. *Contract Demand.* The Contract Demand shall be the maximum number of kilowatts that the purchaser agrees to purchase and BPA agrees to make available, subject to any limitations included in the power sales contract. BPA may agree to make deliveries at a rate in excess of the Contract Demand at the request of the purchaser, but shall not be obligated to continue such excess deliveries. Any contractual or other reference to Contract Demand as expressed in kilowatthours shall be deemed, for the purpose of these GRSPs, to refer to the term "Contract Energy."

4. *Computed Peak Requirement.* For purchasers designated to purchase on the basis of computed requirements, the Computed Peak Requirement shall be determined as specified in the purchaser's power sales contract. That specification is provided in:

a. Sections 16, 17(c), and 17(f), as adjusted by other sections of the contract, for actual computed requirements purchasers;

b. Sections 16, 17(a), and 17(f), as adjusted by other sections of the contract, for planned computed requirements purchasers; and

c. Sections 16 and 17(b), as adjusted by other sections of the contract, for contracted computed requirements purchasers.

5. *Computed Average Energy Requirement.* For computed requirements purchasers, the Computed Average Energy Requirement shall be determined as specified in the purchaser's power sales contract. That specification is provided in:

a. Sections 16, 17(c), and 17(f), as adjusted by other sections of the contract, for actual computed requirements purchasers;

b. Sections 16, 17(a), and 17(f), as adjusted by other sections of the contract, for planned computed requirements purchasers; and

c. Sections 16 and 17(b), as adjusted by other sections of the contract, for contracted computed requirements purchasers.

6. *Operating Demand.* The Operating Demand is that demand which is established by each DSI in accordance with section 5(b) of the DSI's power sales contract. Unless the DSI has requested, and BPA has granted, an Auxiliary Demand, the Operating Demand establishes a limit with respect to:

a. The demand which the purchaser may impose on BPA; and

b. The total amount of energy during a billing month which the DSI is entitled to purchase from BPA.

7. *Curtailed Demand.* A Curtailed Demand is the number of kilowatts of industrial power (Industrial Firm Power or Special Industrial Power) during the billing month which results from the DSI's request for such power in amounts less than the Operating Demand therefor. Each purchaser of industrial power may curtail its demand according to the terms of its power sales contract (which permits up to three levels of Curtailed Demand each month).

8. Restricted Demand. Restricted Demand is the number of kilowatts of industrial power (either Industrial Firm Power or Special Industrial Power) that results when BPA has restricted delivery of such power for one clock-hour or more. BPA shall make such restrictions according to the terms of the DSI's power sales contract. In a given billing month, there are as many possible levels of Restricted Demand for a DSI as there are number of restrictions.

9. *Auxiliary Demand.* Auxiliary Demand is the number of kilowatts of Auxiliary Power that a DSI requests and that BPA agrees to make available to serve a portion of the DSI's load during the period specified in the DSI's request. The DSI may request up to three levels of Auxiliary Demand during a billing month.

If BPA agrees to a request for Auxiliary Power but later becomes unable to supply such demand, the Restricted Demand for Auxiliary Power is deemed to be the Auxiliary Demand for such period of restriction. Auxiliary Power may be curtailed by the DSI according to the provisions of section 9(a) of the DSI's power sales contract.

BPA shall make Auxiliary Power available to Industrial Firm Power purchasers under the Industrial Firm Power Rate Schedule at the Standard Industrial Rate. Auxiliary Power sales to DSIs electing to purchase under the Variable Industrial Power Rate Schedule (VI–87) shall be made at the rate determined pursuant to section III of the VI–87 rate schedule. Auxiliary Power sales to DSIs purchasing under the Special Industrial Rate will be made only at the Standard Special Industrial Power Rate.

10. *BPA Operating Level.* The BPA Operating Level is, for the purpose of these rate schedules and GRSPs, an hourly amount of industrial power (Industrial Firm Power or Special Industrial Power) for a DSI that is equal to the lowest of the following demands during that hour:

a. Operating Demand plus Auxiliary Demand, if any;

b. Curtailed Demand; or

c. Restricted Demand.

The weighted average BPA Operating Level for each DSI can be determined by summing the hourly BPA Operating Levels and dividing by the number of hours in the billing month.

Each DSI must request service from BPA for each billing month in accordance with the terms of the power sales contract. The requested level of service will be the BPA Operating Level, provided BPA does not need to restrict the DSI and provided BPA agrees to supply any requested Auxiliary Demand. Each requested level of service may include a designation for both the Peak Period and the Offpeak Period. A DSI may request and BPA may agree to a level of service for the Offpeak Periods other than that in the Peak Period. If a DSI does not separately designate a requested level of service for the Peak and Offpeak Periods, the BPA Operating Level is the basis for determining if a DSI has incurred an unauthorized increase.

Any DSI whose Measured Demand, before adjustment for power factor, during any 1 hour exceeds the BPA

Operating Level for that hour shall be subject to unauthorized increase charges for each kilowatthour of unauthorized increase associated with each overrun.

Only the BPA Operating Level applicable during the Peak Period will be used in determining the Billing Demand for power purchased under the Industrial Firm Power rate schedule, the Variable Industrial Power rate schedule, and the Standard Rate under the Special Industrial rate schedule. During the Peak Period the BPA Operating Level may be no greater than the Operating Demand for the billing month unless the customer has requested, and BPA has agreed to supply, the Auxiliary Demand.

B. *Billing Factors for Energy.* 1. *Measured Energy.* The purchaser's Measured Energy shall be determined in the manner described in this section. Measured Energy shall be that portion of the metered or scheduled energy that is purchased from BPA under the applicable rate schedule. For those contracts to which BPA is a party and that provide for delivery of more than one class of electric power to the purchaser at any point of delivery, the portion of each 60-minute clock-hour integrated demand assigned to any class of power shall be determined pursuant to the power sales contract. The sum of the portions of the demands so assigned shall constitute the Measured Energy for each such class of power.

The Measured Energy shall be determined from the metered energy or the scheduled energy, as hereinafter defined.

a. *Metered Energy.* The metered energy for a purchaser shall be the number of kilowatthours that are recorded on the appropriate metering equipment, adjusted as specified in the power sales contract, and delivered to a purchaser:

(1) At all points of delivery for which metered energy is the basis for determination of the Measured Energy, and

(2) During any billing period.

The metered energy shall be determined from measurements made either in the manner specified in the power sales contract or as provided in section VI.A herein.

b. *Scheduled Energy.* The scheduled energy in kilowatthours shall be the sum of the hourly demands at which electric energy is scheduled for delivery to a purchaser:

(1) For each system for which scheduled energy is the basis for determination of the Measured Energy, and

(2) During any billing period.

Scheduled amounts are deemed delivered for the purpose of determining billing energy.

2. *Computed Energy Moximum.* The Computed Energy Maximum equals the product of the number of hours in the billing month and the Computed Average Energy Requirement.

3. *Contract Energy.* The Contract Energy shall be the maximum number of kilowatthours that the purchaser agrees to purchase and BPA agrees to make available, subject to any limitations included in the power sales contract.

C. *Billing Adjustments.* 1. *Power Factor Adjustment.* The formula for determining average power factor is as follows:

$$\text{Average power factor} = \frac{\text{Kilowatthours}}{\sqrt{(\text{Kilowatthours})^2 + (\text{Reactive kilovoltamperehours})^2}}$$

The data used in the above formula shall be obtained from meters that are ratcheted to prevent reverse registration. These data then shall be adjusted for losses, if applicable, before determination of the average power factor.

When deliveries to a purchaser at any point of delivery either:

a. Include more than one class of power, or

b. Are provided under more than one rate schedule and it is impracticable to meter the kilowatthours and reactive kilovoltamperehours for each class or rate schedule separately, the average power factor of the total deliveries for the month will be used, where applicable, as the power factor for all power delivered to such point of delivery.

To maintain acceptable operating conditions on the Federal system, BPA may, unless specifically otherwise agreed, restrict deliveries of power to a purchaser with a low power factor. Such restriction may be made to a point of delivery or to a purchaser's system at any time that the average leading power factor or average lagging power factor for all classes of power delivered to such point or to such system is below 75 percent.

2. *Outage Credit.* To the extent that BPA is unable to provide full service to a purchaser during the billing month as a result of interruptions in service due to reasons cited in the General Contract Provisions, BPA shall adjust the charges for those hours for billing demand for such purchaser to reflect BPA's inability to provide full service, provided such adjustment is mandated by the purchaser's power sales contract. The adjustment is provided on a point of delivery basis. To compute the adjustment for noncoincidentally billed systems, BPA shall determine the monthly demand charge(s) for the point(s) of delivery where the outage(s) occurred, multiply by the number of hours of outage, and divide by the total number of hours in the billing month. For coincidentally billed points of delivery, the adjustment shall apply only to those points of delivery at which BPA was unable to provide full service. For partial outages (such as an outage on one feeder in a substation with several feeders), BPA shall determine an equivalent interruption in order to arrive at the number of hours to be used in the calculation of the credit.

3. *Low Density Discount (LDD).* a. *Basic LDD Principles.* A predetermined discount shall be applied each billing month to the charges for all power purchased under the Priority Firm Power rate schedule by eligible purchasers as defined in section b, below. The discount shall be calculated on an annual basis and shall become effective with the first billing period in the calendar year. Retroactive billing for the LDD may be required if the data are not available by the January billing date. The level of the discount shall be determined from the following ratios:

(1) The purchaser's total electric energy requirements during the previous calendar year (the purchaser's firm sales, nonfirm sales to firm retail loads, sales for resale, and associated losses, but excluding nonfirm sales to nonfirm retail loads) divided by the value of the purchaser's depreciated electric plant (excluding generation plant) at the end of such year, and

(2) The average number of consumers (annual and seasonal consumers with residential, industrial, commercial, and irrigation accounts, but excluding separately billed services for water heating,electric space heating, and security lights) during the previous calendar year divided by the number of pole miles of distribution line at the end of such year. Distribution lines are defined as those that deliver electric energy from a substation or metering point, at a voltage of 34.5 kV or less, to the point of attachment to the consumer's wiring and include primary, secondary, and service facilities.

These calculations shall be based on data provided in the purchaser's annual financial and operating report. In calculating these ratios, BPA shall use data pertaining to the purchaser's entire electric utility system within the region. Results of the calculations shall not be rounded.

Customers who have not provided BPA with all four requisite pieces of annual data (see a.(1) and a.(2) above) by June 30 of each year shall be declared ineligible for the LDD effective with the June billing period for that year. BPA shall extend a customer's eligibility from the previous year through the June billing period of the following year and shall make any necessary retroactive adjustments once the new data have been processed. If no data have been received by December 31 for the previous calendar year. BPA shall assume that the utility did not qualify for an LDD for that year. Low Density Discounts issued from January 1 to June 30 shall be assumed to have been in error, and the utility shall be billed for any such discounts issued.

Revisions to the data used to calculate the amount of the LDD may be made by the purchaser for a period of up to 2 years from the first day to which the data apply. However, such revisions shall not apply to periods when the customer was ineligible for a discount due to late data submission.

b. *Eligibility Criteria.* To qualify for a discount, the purchaser must meet all five of the following eligibility criteria:

(1) The purchaser must serve as an electric utility offering power for resale;

(2) The purchaser must agree to pass the benefits of the discount through to the purchaser's consumers within the region served by BPA;

(3) The purchaser's average retail rate for the reporting year must exceed the average Priority Firm Power rate in effect for the qualifying period plus 10 percent. For CY 1987, the average Priority Firm Power rate shall be the average of the PF–85 rate for 9 months and the PF–87 Preference rate for 3 months. For CY 1988, the average Priority Firm Power rate shall be the PF–87 Preference rate.

(4) The purchaser's kilowatthour-to-investment ratio (Ratio 3.a.(1)) must be less than 100;

(5) The purchaser's consumers-per-mile ratio (Ratio 3.a.(2)) must be less than 12; and

(6) The purchaser must qualify for a discount based on the criteria in section c, below

c. *Discounts.* The purchaser shall be awarded the greatest discount for which that purchaser qualifies. The discounts and the qualifying criteria for those discounts are listed below.

(1) Three percent, for any purchaser for whom:

(a) The kilowatthour-to-investment ratio is equal to or greater than 25 but less than 35; or

(b) The consumers-per-mile ratio is equal to or greater than 5 but less than 7.

(2) Five percent, for any purchaser for whom:

(a) The kilowatthour-to-investment ratio is equal to or greater than 15 but less than 25; or

(b) The consumers-per-mile ratio is equal to or greater than 3 but less than 5.

(3) Seven percent, for any purchaser for whom:

(a) The kilowatthour-to-investment ratio is less than 15; or

(b) The consumers-per-mile ratio is less than 3.

4. *Irrigation Discount.* a. *Basic Irrigation Discount Principles.* A discount of 4.9 mills per kilowatthour shall be applied to the charges for qualifying irrigation energy purchased under the Priority Firm Power and New Resource Firm Power rate schedules, during the billing months of April through October. This discount shall be applied subsequent to calculation of the Low Density Discount, if applicable. Any energy on which the irrigation discount is claimed shall be metered separately by the purchaser, and used exclusively for irrigation or drainage pumping.

b. *Qualifying Energy Purchases.* The qualifying irrigation energy shall be determined as follows:

(1) All irrigation energy must be used exclusively for the purpose of irrigation and drainage pumping on agricultural land and be measured at the end-use irrigation customer's meter. The discount shall apply to the measured energy sales at the end-use.

(2) Energy subject to the discount must be purchased during the billing months of April through October.

(3) Purchasers of exchange energy under the Residential Purchase and Sale Agreement (RPSA) are eligible for the irrigation discount for the portion of their irrigation load qualifying for the exchange under the RPSA contracts.

(4) General requirements customers with their own resources are eligible for an irrigation discount for a portion of their irrigation sales equal to the share of their total load served by BPA (i.e., total irrigation sales multiplied by BPA billing energy divided by total utility system requirements for the billing month).

c. *Initiol Reporting Requirements.* Requests for the Irrigation Discount must include the following information:

(1) To receive an irrigation discount, a purchaser must file a request for the discount with its local BPA Area or District office by April 1 each year.

(2) In the request, the purchaser must certify that the irrigation energy is sold exclusively for use in irrigation and drainage pumping and that the discount is passed, in its entirety, to the irrigation consumer. BPA retains the right to verify, in a manner satisfactory to the Administrator, that the discounted energy is used for the sole benefit of the purchaser's irrigation load. The qualifying energy shall be measured at the end-use meter.

(3) The purchaser shall also list each irrigation account number in its request. If the purchaser is an exchanging utility, the purchaser shall also identify the size (in horsepower) of the connected load for each account. That account list shall be updated on a monthly basis if accounts are added, deleted, or changed. In addition, the utility shall state whether its irrigation consumers are billed monthly, bimonthly, or seasonally.

d. *Annual Reporting Requirements.* Purchasers shall submit an irrigation report to their local BPA Area or District office in order to receive the irrigation discount. Purchasers are required to report information related to irrigation energy on a monthly basis. In order to qualify for the discount, the purchaser must submit all data to BPA by December 31 of the calendar year in which the load occurred. Irrigation reports to BPA shall include the following monthly information for the reporting period:

(1) Utility name;

(2) Period for which the report is being made;

(3) Total irrigation sales and total qualifying irrigation energy sales by month;

(4) Total irrigation sales by month under 400 horsepower, for exchanging utilities; and

(5) Total utility system requirements by month (in kilowatthours).

The credit for the irrigation discount is contingent on submittal of actual monthly irrigation sales data based on BPA billing months. Utilities shall provide evidence that the full 4.9 mills per kilowatthour discount was passed through to the end-users' electricity bills.

5. *Cost Recovery Adjustment Clause.*

a. *Terms and Conditions.* The Cost Recovery Adjustment Clause applies to the Priority Firm Power, Industrial Firm Power, Variable Industrial Power, Firm Capacity, and New Resource Firm Power rate schedules, directly, and the Long-Term Surplus Firm and Long-Term Firm Displacement Power rate schedules through the escalation factors based on the Priority Firm rate schedule.

After the first 12 months of the rate period or September 30, 1988, whichever occurs first, BPA shall evaluate actual financial performance, by comparing BPA's actual fiscal year 1988 funds from operations (net revenues plus charges not requiring funds), to the fiscal year 1988 funds from operations that rates were designed to achieve. When this evaluation is performed, if actuals differ from planned funds from operations for the fiscal year (evaluation period) as specified herein, BPA shall adjust applicable 1987 wholesale power rate schedules beginning January 1, 1989, and ending September 30, 1989, (adjustment period).

Rate schedules subject to the Cost Recovery Adjustment Clause shall be adjusted only if BPA's actual fiscal year funds from operations are either:

(1) $60 million or greater above planned funds from operations, or

(2) $60 million or greater below planned funds from operations.

Any resulting upward rate adjustment shall not be greater than 10 percent.

In the event that BPA determines to extend its 1987 wholesale power rates beyond September 30, 1989, BPA shall apply the Cost Recovery Adjustment Clause evaluation each fiscal year following FY 1988 and apply the resulting adjustment, if warranted, to the January 1–September 30 period thereafter, for any adjustment period prior to a BPA general rate change. Future evaluation and application shall be in accordance with the provisions stated herein.

b. *Cost Recovery Adjustment Formula.* BPA shall determine the variance between actual and planned funds from operations for the evaluation period using the following formula:

CRV = AFFO − PFFO

where:

CRV = Evaluation period cost recovery variance (in millions of dollars): total underrecovery (if CRV is negative) or overrecovery (if CRV is positive) of planned funds from operations;

AFFO = Actual evaluation period funds from operations (in millions of dollars): BPA's reported fiscal year funds from operations calculated as the sum of net revenues, depreciation, and amortization of conservation and fish & wildlife investment;

PFFO = Planned evaluation period funds from operations (in millions of dollars); FY 1988 PFFO = $224.328; FY 1989 PFFO = $223.109; FY 1990 PFFO = $244.524; FY 1991 PFFO = $277.517. PFFO for evaluation periods subsequent to FY 1988 will be adjusted for any changes intended from the application of the Cost Recovery Adjustment Clause. The additional amount intended to be collected (rebated) during the previous application period due to triggering of the Cost Recovery Adjustment Clause shall be added to (subtracted from) PFFO for evaluation periods subsequent to FY 1988.

The Cost Recovery Adjustment Clause shall not be applied if the absolute value of CRV is less than or equal to $60 million.

c. *Application if CRV is Negative.* If the absolute value of CRV is greater than $60 million, and if CRV is negative, the percentage increase, rounded to the nearest tenth of a percent, shall be the lesser of:

(1) 10.0 percent; or

(2)

$$\frac{\text{CRU}}{\text{FR}} \times 100$$

where:

CRU = Cost Recovery Underrun is the absolute value of CRV minus $20 million;

FR = the sum of the forecasted revenues from the classes of service subject to the Cost Recovery Adjustment Clause for the adjustment period. For the period January 1, 1989 through September 30, 1989, FR = $1,401.0 million. FR does not include forecasted revenues from public exchange sales and sales from utilities where average system cost is deemed equal to BPA's PF rate. These two types of sales are subject to the Cost Recovery Adjustment Clause, but significant additional revenues could not be collected from them during the rate period through application of the Cost Recovery Adjustment Clause. For any subsequent adjustment periods, FR shall be calculated based on BPA's revenue projections made to demonstrate the adequacy of BPA's rates for that fiscal year to the Federal Energy Regulatory Commission.

d. *Application if CRV is Positive.* If the absolute value of CRV is greater than $60 million, and if CRV is positive, the percentage decrease rounded to the nearest tenth of a percent, unless otherwise specified in a rate schedule, shall be equal to:

$$\frac{\text{CRO}}{\text{FR}} \times 100$$

where:

CRO = Cost Recovery Overrun: CRV minus $20 million

FR = the sum of the forecasted revenues from the classes of service subject to the Cost Recovery Adjustment Clause for the adjustment period. For the period January 1, 1989 through September 30, 1989, FR = $1,401.0 million. FR does not include forecasted revenues from public exchange sales and sales from utilities where average system cost is deemed equal to BPA's PF rate. These two types of sales are subject to the Cost Recovery Adjustment Clause, but significant additional revenues could not be collected from them during the rate period through application of the Cost Recovery Adjustment Clause. For any subsequent adjustment periods, FR shall be calculated based on BPA's revenue projections made to demonstrate the adequacy of BPA's rates to the Federal Energy Regulatory Commission.

e. *Implementation of the Cost Recovery Adjustment.* BPA shall make an initial calculation within 45 days of the end of the evaluation period to identify the difference between AFFO and PFFO.

By November 15, 1988, BPA shall notify the purchasers under each applicable rate schedule of BPA's initial findings concerning the difference between AFFO and $224.328 million (PFFO) for the FY 1988 evaluation period. If no adjustment is required, the notice shall so state, identifying the basis for BPA's position, and no further action will be initiated by BPA. However, if BPA determines that an adjustment to the rates is required, BPA also shall provide written notice to all interested parties, by November 15, 1988, explaining how BPA arrived at its initial findings and how the proposed adjustment was calculated. Notice shall include BPA's data and assumptions; additional documentation shall be available upon request. In addition to written notification, BPA may, but is not obligated to, hold a public comment forum to clarify its determinations and solicit comments. Parties wishing to submit written comments must do so by close of business on December 15, 1988. Interested parties shall be afforded a reasonable opportunity to examine all comments received. Consideration of comments and more current information may result in the final adjustment differing from the proposed adjustment. Before implementing the adjustment, BPA shall notify all affected parties of the amount of the final adjustment.

In the event that no general change in BPA's rates is implemented and the Cost Recovery Adjustment Clause is applied in subsequent periods, comparable notice and comment requirements will apply.

6. *Coincidental Billing Adjustment.* Purchasers of Priority Firm Power and New Resource Firm Power shall be billed on a noncoincidental demand basis for power purchased at each point of delivery under the applicable rate schedule(s) unless the power sales contract specifically provides for coincidental demand billing among particular points of delivery. For the purpose of these rate schedules and GRSPs, the purchaser's noncoincidental demand is the sum of the highest hourly peak demands during the billing month for each of the purchaser's points of delivery. The purchaser's coincidental demand is the highest demand for the billing month calculated by summing, for each hour of every day, the purchaser's demands for power purchased under the applicable rate schedule at all coincidentally billed points of delivery.

7. *Conservation Surcharge.* The Conservation Surcharge shall be applied monthly and shall equal 10 percent of the customer's total monthly charge for all power purchased under each rate schedule subject to the surcharge. The PF, CF, and NR rate schedules are subject to the Conservation Surcharge. If only a portion of the customer's service area is subject to the surcharge, then the amount of the surcharge shall equal 10 percent of the total charge for all power purchases multiplied by: (a) the portion of the customer's total retail load that is subject to the surcharge, divided by (b) the customer's total retail load.

D. *Billing-Related Definitions.* 1. *Peak Period.* The Peak Period includes the hours from 7 a.m. through 10 p.m. on any day Monday through Saturday inclusive. There are no exceptions to this definition; that is, it does not matter whether the day is a normal working day or a holiday. Any charges based on Peak Period hours shall be computed starting with the 8 a.m. meter reading since this reading applies to the 7 o'clock hour (7 a.m. to 8 a.m.). The 10 p.m. meter reading (for the 9 p.m. to 10 p.m. period) is the last meter reading of the day applicable to the Peak Period.

2. *Offpeak Period.* The Offpeak Period includes all hours which do not occur during the Peak Period. Thus, the Offpeak Period consists of the hours from 10 p.m. to 7 a.m., Monday through Saturday and all hours on Sunday. This definition does not apply to the Special Industrial Offpeak Rate.

Section IV. Other Definitions

A. *Computed Requirements Purchasers.* 1. *Designation as a Computed Requirements Purchaser.* A purchaser shall be designated as a computed requirements purchaser if it is so designated pursuant to the provisions of its power sales contract.

When a purchaser operates two or more separate systems, only those systems designated by BPA will be covered by this section.

2. *Purpose of the Computed Requirements Designation.* Use of the computed requirements designation is intended to assure that each purchaser who purchases power from BPA to supplement its own firm resources will purchase amounts of firm capacity and firm energy substantially equal to that which the purchaser would otherwise have to provide on the basis of normal and prudent operations.

The amount of capacity and energy required for normal and prudent operations shall be determined pursuant to the purchaser's power sales contract.

B. *Definitions Relating to Nonfirm Energy.* 1. *Decremental Cost.* Unless otherwise specified in a contractual arrangement, decremental cost as applied to Nonfirm Energy transactions shall be defined as:

a. All identifiable costs (expressed in mills per kilowatthour) associated with the use of a displaceable thermal resource or end-user load with alternate fuel source to serve a purchaser's load that the purchaser is able to avoid by purchasing power from BPA, rather than generating the power itself or using an alternate fuel source; or

b. All identifiable costs (expressed in mills per kilowatthour) to serve the load of a displaceable purchase of energy that the purchaser is able to avoid by choosing not to make the alternate energy purchase.

All identifiable costs as used in the above definition may be reduced to reflect costs of purchasing BPA energy such as transmission costs, losses, or loopflow constraints that are agreed to by BPA and the purchaser.

C. *NF Rate Cap.* 1. *Application of the NF Rate Cap for This Effective Rate Period.* The NF Rate Cap shall dictate the highest rate at which BPA may offer Nonfirm Energy under the NF–87 rate schedule in any month. The NF Rate Cap shall be determined monthly and shall be equal to the greater of the following:

a. BASC; or

b BASC + .30(DEC − BASC)

Where

BASC = BPA's average system cost, determined by dividing BPA's total system costs by BPA's total system sales. For this rate period BASC has been determined to be 25.0 mills per kilowatthour.

DEC = The Average Oil Price as determined in accordance with section IV.C.3 of these GRSPs.

2. *Monthly Notification of NF Rate Cap.* BPA shall provide monthly notification to all of its customers of the NF Rate Cap as determined pursuant to section IV.C of these GRSPs. As part of this notification, BPA shall include its determination of the Average Oil Price. The announcement will be made at least 10 calendar days prior to the first day of the month in which the NF Rate Cap applies.

3. *Determination of BASC.* For purposes of determining BASC, the following definition shall apply:

a. BPA's total system costs shall be the sum of all BPA's costs forecasted in each general rate case for the applicable rate period, including total transmission costs, Federal base system costs, new resource costs, exchange resource costs, and other costs not specifically allocated to a rate pool, such as section 7(g) costs.

b. BPA's total annual system sales shall be the sum of all BPA's system firm and nonfirm sales forecasted each general rate case for the applicable test period.

4. *Average Oil Price Calculation.* The Average Oil Price shall be determined monthly by BPA. Actual transaction prices during the last complete calendar month prior to the month in which the Rate Cap applies shall be used in the calculation of the Average Oil Price. For purposes of this rate schedule, the Average Oil Price shall be based on the Singapore Cargo Price of LS Waxy Resid 0.3%S (Singapore Price) F.O.B. published in Platt's *Oilgram Price Report.* The

Average Oil Price for the month shall be rounded to the nearest cent and determined using the following formula:

$$\frac{(ASP * OTH) + TRAN}{0.615\ (kWh/bbl)(\$/mills)}$$

Where:

ASP=Average Singapore Price which is derived from the sum of the simple daily average of the highest and lowest Singapore price, expressed in dollars per barrel and rounded to the nearest cent, for last complete 1-month period divided by the number of days in that 1-month period.

TRAN=Transportation and Shipping costs. For the period October 1, 1987 through September 30, 1988, transportation/ costs shall be $1.65 per barrel. For the period October 1, 1988 through September 30, 1989, transportation costs shall be $1.70 per barrel. For periods beyond September 30, 1989, transportation/ cost shall be determined by multiplying $1.70 per barrel times a General Cost Index rounded to the nearest whole cent. For purposes of the NF Rate Cap, the General Cost Index shall be based on quarterly GNP Implicit Price Deflators for a calendar year as published by the U.S. Department of Commerce, Bureau of Economic Analysis. The General Cost Index for a month shall be determined by dividing the most recent published quarterly GNP Implicit Price Deflator by the GNP Implicit Price Deflator published for the second quarter of calendar year 1989.

OTH=1.10

The factor of 0.615 (kWh/bbl)($/mills) assumes 6.15 million Btu per barrel and a heat rate of 10,000 Btu per kilowatthour. The factor also restates the price determined by the oil formula in terms of mills per kilowatthour.

5. *Changes in the Average Oil Price Indicators.* Throughout the rate period, BPA will monitor the relationship between the Average Singapore Price and fuel prices reported by utilities. If, as a result of monitoring this relationship, BPA determines that the Average Singapore Price no longer serves as an approximation of utility fuel prices, BPA may develop and substitute an alternative indicator. BPA shall provide a 3-month notification to all its customers of its intent to substitute another indicator for the Average Singapore Price. As part of this notification, BPA shall explain the reason for changing indicators and propose a replacement indicator. Interested parties will have until close of business 3 weeks from the date of notification to submit written comments on BPA's findings and proposal. Consideration of comments and more current information may cause the final price indicator to differ from what was proposed. BPA shall notify all of its customers of the final determination 1 month prior to the month in which the price indicator will be used in the NF Rate Cap formula.

6. *Application of the NF Rate Cap for Future Rate Periods.* BPA shall apply the NF Rate Cap in the manner described above for a 12-year period beginning on the date the rates contained herein are made effective on an interim or final basis by the Federal Energy Regulatory Commission (FERC). For a 12-year period, the following provisions shall also apply:

a. The NF Rate Cap shall apply to all sales of nonfirm energy under any applicable rate schedule.

b. BASC shall be redetermined in each subsequent general rate case according to the above formula and will be in effect for the entire rate period over which the rates are in effect.

Section V. Application of Rates Under Special Circumstances

A. *Energy Supplied for Emergency Use.* A purchaser taking Priority Firm or New Resource Firm Power shall pay in accordance with the Nonfirm Energy rate schedule, NF–87, and Emergency Capacity rate schedule, CE–87, for any electric energy or capacity which has been supplied:

1. For use during an emergency on the purchaser's system, or

2. Following an emergency to replace energy secured from sources other than BPA during such emergency.

Mutual emergency assistance may, however, be provided and payment therefore settled under exchange agreements.

B. *Construction, Test and Start-Up, and Station Service.* Power for the purpose of construction, test and start-up, and station service shall be made available to eligible purchasers under the Priority Firm and New Resource Firm Power Rate Schedules. Such power must be used in the manner specified below:

1. Power sold for construction is to be used in the construction of the project.

2. Power sold for test and start-up may be used prior to commercial operation both to bring the project on line and to ensure that the project is working properly.

3. Power sold for station service may be purchased at any time following commercial operation of the project. Station service power may be used for project start-up, project shut-down, normal plant operations, and operations during a plant shut-down period.

C. *Application of Rates during Initial Operation Period—Transitional Service.*

1. *Eligibility for Transitional Service.* For an initial operating period, as specified in the power sales contract, beginning with the commencement of operation of a new industrial plant, a major addition to an existing plant, or reactivation of an existing plant or important part thereof, BPA may agree to bill the purchaser in accordance with the provisions of this section. This section shall apply to both:

a. DSIs having new, additional or reactivated plant facilities, and

b. utility purchasers serving industrial purchasers with power purchased from BPA. BPA will provide transitional service to utilities for only those industrial loads for which the demand can be separately metered by the utility and recorded on a daily basis.

2. *Calculation of the Daily Demand.* If BPA agrees to provide transitional service, the billing demand for the industrial load for the billing month shall be the average of the daily billing demands, as adjusted for power factor. The Daily Demand for each day shall be the higher of factors a. and b. below:

a. 100 percent of the Measured Demand for the day (regardless of whether such Measured Demand occurs during the Peak Period or the Offpeak Period); or

b. the highest daily billing demand that has occurred during the period of restoration as defined in section 4(e) of the power sales contract.

3. *Billing for Transitional Service.* Utilities receiving transitional service shall provide BPA with daily demand information for the industrial consumer for whom transitional service is provided. To compute the power bill for the point of delivery which includes the load being served with transitional service, BPA shall, at its discretion, either:

a. determine the demand for the pertinent point of delivery without the industrial load and then add the average daily demand for such industrial load; or

b. bill the entire point of delivery on a daily demand basis.

Daily demand billing shall not affect the level of any curtailment charge or energy charge assessed by BPA.

For DSIs purchasing Industrial Firm Power, transitional service is purchased at the effective rate, unless otherwise

requested by the DSI and approved by BPA. BPA will provide transitional service to purchasers of Special Industrial Power only under the Standard Special Industrial Power Rate.

D. *Changes in a DSI's BPA Operating Level.* If a DSI requests a waiver regarding the notice requirements specified in the DSI's power sales contract for a voluntary change in its BPA Operating Level, and if BPA does not grant the waiver, or if the DSI fails to give notice of such a change and does not request a waiver, the DSI shall be billed as if no notice has been provided until such time as the number of days in the notice period have passed. If, however, BPA agrees to waive the notice requirement, the power bill shall reflect the requested changes as of the requested effective date specified in the notice or, at BPA's discretion, a date of BPA's choosing within the notice period.

E. *Restriction of Deliveries.* Deliveries of capacity or energy to any purchaser may be restricted when operation of the facilities used by BPA to serve such purchaser is:

1. suspended,
2. interrupted,
3. interfered with,
4. curtailed, or
5. restricted

by the occurrence of any condition described in the Uncontrollable Forces or Continuity of Service sections of the General Contract Provisions of the power sales contract.

Section VI. Billing Information

A. *Determination of Estimated Billing Data.* If the amounts of capacity, energy, or the 60-minute integrated demands for energy purchased from BPA must be estimated from data other than metered or scheduled quantities, historical patterns, and pertinent weather data, BPA and the purchaser will agree on billing data to be used in preparing the bill. If the parties cannot agree on estimated billing quantities, derived by any method, a determination binding on both parties shall be made in accordance with the arbitration provisions of the power sales contract.

B. *Load Shift and Outage Reports.* Load shift and outage reports must be submitted to BPA within 4 days of the corresponding load shift or outage. Reports may be made by telephone, mail, or other electronic processes where available. If customer reports are not received in a timely manner, BPA has the option to withhold load shift or outage credit.

C. *Billing for New Large Single Loads.* Any BPA customer whose total load includes one or more New Large Single Loads (NLSL) as defined by section 3(13) of the Pacific Northwest Power Act or as determined by section 8 of the purchaser's power sales contract shall be billed for the NLSL(s) at the New Resource Firm Power Rate. The power requirements associated with the NLSL shall be established in a manner consistent with the provisions of this section.

The purchaser shall warrant to BPA that NLSLs are separately metered. The metering must include provisions for determining:

1. the NLSL demand during BPA's diurnal capacity billing periods,
2. the NLSL energy during BPA's energy billing periods, and
3. the NLSL reactive energy for the billing month.

The design for the metering equipment for the NLSL must be approved by BPA. Testing and inspections of such metering installations shall be as provided in the General Contract Provisions.

On a monthly basis, each purchaser of New Resource Firm Power shall report to BPA the quantity of power used by the NLSL during the *purchaser's* billing period. Data provided to BPA by the purchaser must be submitted to BPA within 2 normal working days of the date the purchaser reads the meters. BPA may elect to adjust the NLSL data for losses from the point of metering to the closest BPA point of delivery for the purchaser.

D. *Determination of Measured Demand.* 1. For points of delivery with fully operational metering under the Revenue Metering System (RMS), demand shall be measured from 0000 hours on the first day of the billing period through 2400 hours on the last day of the billing period.

2. For points of delivery that do not have RMS metering, demand shall be measured from 0000 hours on the first complete (24 hour) day of the available metering data through 2400 hours on the last complete day of the available metering data. Billing demand will be determined from the period of available metering data that most closely matches the official billing period of the customer.

E. *Determination of Measured Energy.* 1. For points of delivery with fully operational metering under RMS, energy shall be measured from 0000 hours on the first day of the billing period through 2400 hours on the last day of the billing period.

2. For points of delivery that do not have RMS metering, measured energy shall be the quantity of usage recorded on the meter between meter readings.

F. *Billing Month.* Meters normally will be read and bills computed at intervals of 1 month. A month is defined as the interval between meter-reading dates which normally will be approximately 30 days. If service is for less than or more than the normal billing month, the monthly charges stated in the applicable rate schedule shall be adjusted appropriately.

The calendar month in which the purchaser's meter is scheduled to be read determines the billing month. (Thus, a bill associated with a meter scheduled to be read on April 10 would be an April bill.) The charges for the winter and summer periods identified in the rate schedules apply to the purchaser's billing months.

G. *Payment of Bills.* Bills for power shall be rendered monthly by BPA. Failure to receive a bill shall not release the purchaser from liability for payment. Bills for amounts due BPA of $50,000 or more must be paid by direct wire transfer; customers who expect that their average monthly bill will not exceed $50,000 and who expect special difficulties in meeting this requirement may request, and BPA may approve, an exemption from this requirement. Bills for amounts due BPA under $50,000 may be paid by direct wire transfer or mailed to the Bonneville Power Administration, P.O. Box 6040, Portland, Oregon 97228–6040, or to another location as directed by BPA. The procedures to be followed in making direct wire transfers will be provided by the Office of Financial Management and updated as necessary.

1. *Computation of Bills.* Demand and energy billings for power purchased under each rate schedule shall be rounded to whole dollar amounts, by eliminating any amount which is less than 50 cents and increasing any amount from 50 cents through 99 cents to the next higher dollar.

2. *Estimated Bills.* At its option, BPA may elect to render an estimated bill for that month to be followed at a subsequent billing date by a final bill. Such estimated bill shall have the validity of and be subject to the same payment provisions as a final bill.

3. *Due Date.* Bills shall be due by close of business on the 20th day after the date of the bill (due date). This requirement holds also for revised bills (see section 6 below). Should the 20th day be a Saturday, Sunday, or holiday (as celebrated by the purchaser), the due date shall be the next following business day.

4. *Late Payment.* Bills not paid in full on or before close of business on the due date shall be subject to a penalty charge of $25. In addition, an interest charge of one-twentieth percent (0.05 percent) shall be applied each day to the sum of the unpaid amount and the penalty

charge. This interest charge shall be assessed on a daily basis until such time as the unpaid amount and penalty charge are paid in full.

Remittances received by mail will be accepted without assessment of the charges referred to in the preceding paragraph provided the postmark indicates the payment was mailed on or before the due date. Whenever a power bill or a portion thereof remains unpaid subsequent to the due date and after giving 30 days' advance notice in writing, BPA may cancel the contract for service to the purchaser. However, such cancellation shall not affect the purchaser's liability for any charges accrued prior thereto under such contract.

5. *Disputed Billings.* In the event of a disputed billing, full payment shall be rendered to BPA and the disputed amount noted. Disputed amounts are subject to the late payment provisions specified above. BPA shall separately account for the disputed amount. If it is determined that the purchaser is entitled to the disputed amount, BPA shall refund the disputed amount with interest, as determined by BPA's Office of Financial Management.

BPA retains the right to verify, in a manner satisfactory to the Administrator, all data submitted to BPA for use in the calculation of BPA's rates and corresponding rate adjustments. BPA also retains the right to deny eligibility for any BPA rate or corresponding rate adjustment until all submitted data have been accepted by BPA as complete, accurate, and appropriate for the rate or adjustment under consideration.

6. *Revised Bills.* As necessary, BPA may render a revised bill. A revised bill shall replace all previous bills issued by BPA that pertain to a specified customer for a specified billing period if the amount of the revised bill is less than the amount of the original bill. If the amount of the revision causes an additional amount to be due BPA beyond the original bill, a revised bill will be issued for the difference.

The date of the revised bill shall be determined as follows:

a. If the amount of the revised bill is equal to or less than the amount of the bill which it is replacing, the revised bill shall have the same date as the replaced bill.

b. If the amount of the revised bill is greater than the amount of the bill which it is replacing, the additional amount will be billed on a separate bill, and the date of the revised bill shall be its date of issue.

Section VII. Variable Industrial Rate Parameters and Adjustments

A. *Monthly Average Aluminum Price Determination.* 1. *Calculation of the Monthly Billing Aluminum Price.* The monthly billing aluminum price shall be determined by BPA for, each billing month. For purposes of this rate schedule, the monthly billing aluminum price shall be based on the average price of aluminum in U.S. markets during the third calendar month prior to the billing month. The average price of aluminum in U.S. markets shall be defined as the average U.S. Transaction Price reported for the month by *Metals Week*, in cents per pound, rounded to the nearest tenth of a cent.

2. *Notification of the Monthly Average Aluminum Price.* BPA shall provide, 45 days prior to the billing month, written notification to purchasers under this rate schedule of the monthly billing aluminum price to be used for billing purposes. Upon written request supporting documentation shall be provided.

3. *Changes in Aluminum Price Indicators.* In the event that BPA determines that factors outside its control render the monthly average U.S. Transaction Price unusable as an approximation of U.S. market prices, BPA may develop and substitute another indicator for prices in U.S. markets. BPA shall notify interested parties of its intent to do so at least 120 days prior to the billing month in which the change would become effective. In this notification, BPA shall explain the reason for the substitution and specify the replacement indicator it intends to use. BPA also shall describe the methodology to determine the monthly billing aluminum price to be used for billing purposes under this rate schedule and shall provide the necessary data to be used in the calculation. Interested persons will have until close of business three weeks from the date of the notification to provide comments. Consideration of comments and more current information may cause the final methodology and the substitute aluminum price index to differ from those proposed. BPA shall notify all affected parties, and those parties that submitted comments, of its final determination 90 days prior to the billing month the new indicator shall be effective.

B. *Annual Adjustments to the Lower and Upper Pivot Aluminum Prices.* On July 1, 1987, and every July 1 thereafter, the Lower and Upper Pivot Aluminum Prices, as stated in sections III.B. of the rate schedule, shall be subject to change for billing purposes as herein described. The term annual adjustment date shall refer to July 1 of each year.

1. *Implementation Procedures.* Beginning in 1987 and every year thereafter, prior to April 1 of that year, BPA shall provide the purchasers under this rate schedule preliminary written estimates of proposed adjustments to the Lower and Upper Pivot Aluminum Prices. By the last working day of the month of April, BPA shall notify interested parties in writing of BPA's revised determinations concerning changes to the Lower and Upper Pivot Aluminum Prices. BPA shall describe how the adjustments were determined and provide the data used in the calculations. In addition to written notification, BPA may, but is not obligated to, hold a public comment forum to clarify its determinations and solicit comments. Interested persons may submit comments on the determinations to BPA and other parties. Comments will be accepted until close of business on the last working Friday in May. Consideration of comments and more current information may result in the final adjustment differing from the proposed adjustment. By June 30 of each year, BPA shall notify all VI purchasers, those parties that submitted comments, and parties that requested notification, of the final determination.

2. *Annual Adjustment Procedures.* a. *Annual Adjustment of the Lower Pivot Aluminum Price.* Beginning with the July 1, 1987, annual adjustment date, for each year that the Variable Industrial rate is in effect, the Lower Pivot Aluminum Price as stated in section III.B.1 of the rate schedule shall be adjusted on the July 1 annual adjustment date. The Lower Pivot Aluminum Price shall be revised by multiplying 59 cents per pound by the Cost Escalation Index described in section VII.B.3.b of these GRSPs and rounded to the nearest tenth of a cent. The revised Lower Pivot Aluminum Price shall replace the Lower Pivot Aluminum Price as stated in section III.B.1 of the rate schedule and shall be used to determine the energy rate in the subsequent 12 billing months

b. *Annual Adjustment of the Upper Pivot Aluminum Price.* For each year that the Variable Industrial rate is in effect, the Upper Pivot Aluminum Price as stated in section III.B.2 of the rate schedule shall be adjusted on the July 1 annual adjustment date.

(1) *Annual adjustment for the period beginning July 1, 1987, and ending June 30, 1991.* The Upper Pivot Aluminum Price shall be revised by multiplying 72 cents per pound by the Cost Escalation Index described in section VII.B.3.c of these GRSPs and rounded to the nearest tenth of a cent. The revised Upper Pivot Aluminum Price shall supersede the Upper Pivot Aluminum Price as stated in section III.B.2 of the rate schedule and shall be used to determine the energy rate in the subsequent 12 billing months.

(2) *Annual Adjustment for the period beginning July 1, 1991, and ending June 30, 1996.* The Upper Pivot Aluminum Price will be adjusted such that the Average Historical Aluminum Price described in section VII.B.4 of these GRSPs is the mid-point between the adjusted Upper Pivot Aluminum Price and the Average Historical Lower Pivot Aluminum Price described in section VII.B.5 below, except as limited to the greater of 65 cents per pound or the adjusted Lower Pivot Point for the year.

The Upper Pivot Aluminum Price shall equal the greater of:

(a) (2)×(AAP)−ALP;

where:

AAP=the Average Historical Aluminum Price described in section VII.B.4 of these GRSPs.

ALP=the Average Historical Lower Pivot Aluminum Price described in section VII.B.5 of these GRSPs.

(b) 65.0 cents per pound escalated to current dollars using the Cost Escalator for the Upper Pivot Aluminum Price described in section VII.B.3.c of these GRSPs.

or;

(c) The adjusted Lower Pivot Aluminum Price for the year.

The revised Upper Pivot Aluminum Price' shall supersede the Upper Pivot Aluminum Price as stated in section III.B.2 of the rate schedule and shall be used to determine the energy rate in the subsequent 12 months.

3. *Cost Escalators.* a. The cost indices described below shall be used in calculating the appropriate cost escalators. Each index shall be rounded to the nearest one-tenth of a percent, or three significant places.

(1) *Electricity Cost Index.* The average VI–86 rate in mills per kilowatthour based on the Plateau Energy Charge and the Discount for Quality of First Quartile Service in effect on the April 1 preceding the annual adjustment date and a load factor of 98.5 percent; divided by 22.8 mills per kilowatthour (the average VI–86 rate assuming the plateau energy charge and the Discount for Quality of First Quartile Service in 1986).

(2) *Lobor Cost Index.* The annual average hourly earnings for the U.S. primary aluminum industry (SIC 3334) over the previous complete calendar year, from the Employment and Earnings, published by the U.S. Department of Labor, Bureau of Labor Statistics (BLS), divided by $14.20 per hour (the value of SIC 3334 earnings reported for 1985).

(3) *Alumina Cost Index.* The annual average of the monthly billing aluminum prices described in section VII.A of the GRSPs for the previous 1-year period beginning July 1 through June 30 divided by 50.8 cents per pound (the average U.S. Transaction price over the period April 1985 through March 1986).

(4) *Other Costs Index.* The annual average GNP Implicit Price Deflator for the previous complete calendar year, as published by the U.S. Department of Commerce, Bureau of Economic Analysis, divided by 1.117 (the value of the GNP Implicit Price Deflator for 1985 with 1982=1.000).

In the event the indices delineated above are discontinued or revised in a manner that BPA determines renders them unusable for calculating a consistent cost index, BPA will adjust or substitute another similar price index, following advance notification and opportunity for public comment as described in section VII.B.1. of these GRSPs.

b. The Cost Escalator for the Lower Pivot Aluminum Price shall be a weighted average of the four indices contained in section VII.B.3.a above. The following weights shall be assigned each index:

Electricity Cost Index	0.30
Labor Cost Index	.20
Alumina Cost Index	.20
Other Costs Index	.30

c. The Cost Escalator for the Upper Pivot Aluminum Price shall be a weighted average of the Electricity Cost and Other Cost Escalators as stated in sections VII.B.3.a.(1) and VII.B.3.a.(4) above. The following weights shall be assigned each index:

Electricity Cost Index—.25
Other Costs Index—.75

4. *Average Historical Aluminum Price.* Prior to the July 1, 1991, annual adjustment date and every annual adjustment date thereafter, an average historical aluminum price shall be calculated for the period the Variable rate has been in effect. The average historical aluminum price shall be determined following the procedures set forth below:

a. Each monthly billing aluminum price determined pursuant to section VII.A. of these GRSPs for the period August 1, 1986, through June 30 immediately preceding the annual adjustment date, shall be escalated to the current year dollars using the Price Deflator procedures described in section VII.B.6. below.

b. The sum of the escalated monthly billing aluminum prices shall be divided by the number of months in the period and rounded to the nearest tenth of a cent to obtain the Average Historical Aluminum Price.

5. *Average Historical Lower Pivot Aluminum Price.* Prior to the July 1, 1991, annual adjustment date and every annual adjustment date thereafter, the average of the Lower Pivot Aluminum Prices for the period the Variable Industrial rate has been in effect shall be calculated following the procedures set forth below:

a. The Lower Pivot Aluminum Price in each month for the period August 1, 1986, through June 30 of the calendar year preceding the annual adjustment date, shall be escalated to the current year's dollars using the Price Deflator procedures described in section VII.B.6. below.

b. The sum of the escalated monthly Lower Pivot Aluminum Prices shall be divided by the number of months in the period, and rounded to the nearest tenth of a cent to obtain an Average Historical Lower Pivot Aluminum Price.

6. *Price Deflotor Procedures.* For purposes of converting nominal dollars to real dollars in the calculation of the Average Historical Aluminum Price and the Average Historical Lower Pivot Aluminum Price, the following Price Deflator procedures shall be used:

a. Monthly billing aluminum prices and Lower Pivot Aluminum Prices for any calendar months July through December, shall be inflated by multiplying the price by the ratio of the GNP Implicit Price Deflator for the calendar year prior to the annual adjustment date divided by the Implicit Price Deflator for the calendar year in which the price occurred.

b. Monthly billing aluminum prices and Lower Pivot Aluminum Prices for any calendar months January through June, shall be inflated by multiplying the price by the ratio of the Implicit Price Deflator for the calendar year prior to the annual adjustment date divided by the Implicit Price Deflator for the calendar year prior to the year in which the price occurred.

Each price shall be rounded to the nearest tenth of a cent.

IV. Major Studies and Issues

A. *Major Studies.* 1. *Revenue Requirement Study.* The Bonneville Project Act, the Flood Control Act of 1944, the Federal Columbia River Transmission System Act, and the Pacific Northwest Power Act require

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BPA to design rates that are projected to return revenues sufficient to recover the cost of acquiring, conserving, and transmitting the electric power that BPA markets, including the amortization of the Federal investment in the FCRPS over a reasonable period, and to recover BPA's other costs and expenses. This Study includes a determination of whether current rates will produce enough revenue to satisfy BPA's repayment obligations.

In an order dated January 27, 1984 (49 FR 4130), the Federal Energy Regulatory Commission (FERC) set forth a number of requirements that would enable FERC to fulfill its obligations under the Pacific Northwest Power Act, which requires that transmission rates provide an equitable allocation of the costs of the Federal transmission system between Federal and non-Federal power using the system. The January 27, 1984, order requested the development of separate repayment studies for the generation and transmission portions of the FCRPS. Pursuant to the Commission's order, the 1987 Initial Revenue Requirement Study incorporates separate repayment studies for the generation and transmission components of the FCRPS for FY 1988 and FY 1989.

The Revenue Requirement Study for the 1987 initial rate proposal is based on revenue and cost estimates for FY 1988 and FY 1989. BPA's Revenue Requirement Study reflects actual amortization and interest payments paid through September 30, 1985. In addition, it reflects all FCRPS obligations incurred pursuant to the Pacific Northwest Power Act, including exchange costs.

BPA's total revenue requirement is determined within the Revenue Requirement Study. The study used for this proposal demonstrates that, for the two test years FY 1988 and FY 1989, the revenue requirements are projected to be $3.05 and $3.11 billion, respectively.

All expenses and obligations to be recovered through FCRPS rates must be functionalized between generation and transmission. The various methods for functionalization include the use of the Direction of Effort Study, specific identification, and the general application of constructive associations. The results of this process are then used to construct the separate generation and transmission revenue requirements used in the rate proposals.

The Revenue Requirement Study also includes the Repayment Study which demonstrates the adequacy of the proposed revenues to recover all the cost of the FCRPS over the repayment period.

2. *Segmentation Study.* BPA operates and maintains the Federal Columbia River Transmission System (FCRTS) in order to provide various transmission services throughout the region. Because most services do not require the use of the entire system, the FCRTS is divided into nine segments, each providing a distinct type of service. The nine segments are: integrated network, Pacific Northwest-Southwest (Southern) Intertie; Northern Intertie; Eastern Intertie; generation integration; fringe area; and delivery segments for public agency, direct-service industrial, and investor-owned utility customers.

The Segmentation Study categorizes the facilities of the FCRTS according to the types of services they provide, thereby identifying the associated costs of these services. This provides the basis for segmenting the projected transmission expenses used in BPA's rate proposals. This division of the FCRTS according to specific services is essential to the equitable allocation of transmission costs between Federal and non-Federal customers using the system.

3. *Loads and Resources Study.* The Loads and Resources Study presents all the load and resource data necessary for developing BPA's wholesale power rates. It is one of the first steps in preparing rates. This study incorporates results from load forecasts, resource analyses, and BPA's Resource Strategy.

BPA developed econometric forecasts of nongenerating public utility loads. These forecasts used employment data for Washington, Oregon, and Idaho as an input. A direct service industrial (DSI) load forecast was prepared using econometric models and economic analyses for nonaluminum loads and a computer simulation model for aluminum loads. The simulation model describes the operations of each aluminum plant in the Pacific Northwest based on projections of operating costs and the price of aluminum. Forecasts of investor-owned utility system loads and residential exchange loads used in the study are submitted to BPA by the respective utilities.

BPA's conservation savings estimates are developed using a variety of assumptions. This process is designed to reflect expected conditions in the region regarding loads, resource expenses, contracts, and concepts of flexibility. Estimating begins with the development of conservation supply curves that identify conservation availability as a function of cost, timing, current contracts, and technology. These curves are used in BPA's Least-Cost Mix Model, from which a least-cost schedule of annual conservation targets is determined through 2002. The targets, in combination with contractual considerations, penetration rates, and decisions about initiation and implementation rates, determine final conservation savings estimates.

Conservation acquisitions reflect the capability and flexibility concepts encouraged by the Northwest Power Planning Council's Power Plan. These concepts allow BPA to react to various circumstances and uncertainties.

The load/resource balance determines BPA's obligation during the test years and each corresponding 42-month critical period. It determines the magnitude of supply of surplus firm power in the region and on the Federal system in each critical period. These results stem from a hydroregulation study that incorporates system constraints such as the Water Budget for fish migration, the operation of thermal plants, and projected resource acquisitions. For this rate filing, two 42-month (critical period) hydro studies and two 40-year hydro studies were completed. The first set of studies starts in July 1987; the second set starts in July 1988. The 40-year studies determine nonfirm energy for the region.

BPA's customers determine those resources dedicated to serve their firm load. The firm surplus is used to serve firm load for the purposes of cost allocation, rate design, and revenue forecasting.

Capacity was analyzed using 1929–30 water conditions. The results are incorporated in the capacity rate development.

4. *Marginal Cost Analysis (MCA).* The Marginal Cost Analysis (MCA) is conducted by BPA to identify the marginal costs BPA would incur for new generation and transmission loads on seasonal, daily, and hourly bases. The MCA provides a basis for developing rates that promote economic efficiency. Questions relating to the measurement of marginal cost, application of marginal costs to rates, and the adjustment of such rates to the revenue requirement are considered in developing the MCA.

The marginal cost of generation is based on results from BPA's resource planning models—the Least Cost Mix Model (LCMM) and the System Analysis Model (SAM). The LCMM provides information concerning the types of resources and the annual cost of those resources acquired to meet load growth. The SAM provides information on the cost of operating those resources acquired to meet load growth. In addition, the SAM provides information on the cost of operating those resources in conjunction with the existing system and the level of secondary revenues experienced under expected water conditions. The marginal cost of generation is classified between capacity and energy using the cost of a generic combustion turbine as the least-cost source of capacity.

Two transmission segments, network and generation-integration, are considered in the MCA. The marginal cost of transmission network is based on projected transmission investments for fiscal years 1988–1995. It is classified to capacity and energy based on an analysis of the reasons causing transmission network investment.

The marginal cost of generation-integration is based on the cost of integrating a generic baseload thermal plant into BPA's transmission system. It is classified to capacity and energy in the same manner as the marginal cost of generation.

The marginal cost of generation energy is seasonally, but not diurnally, differentiated. The marginal cost of transmission network energy is neither seasonally nor diurnally differentiated. Marginal generation capacity cost variations occur hourly and diurnally but not seasonally. The marginal cost of generation capacity does not vary substantially between months. Therefore, generation capacity charges are not seasonally differentiated.

The classification results for the marginal cost of generation are used in the Wholesale Power Rate Development Study to uniformly classify generation costs. The results for seasonal and diurnal differentiation of the marginal cost of capacity are used to time differentiate capacity rates. Marginal cost results are also used directly in the development of the Reserve Power rate.

5. *Section 7(b)(2) Rate Test Study.* Section 7(b)(2) of the Pacific Northwest Power Act directs BPA to assure that the wholesale power rates effective after July 1, 1985, to be charged its public body, cooperative, and Federal agency customers (the 7(b)(2) customers) for their general requirements for the rate test period plus the ensuing 4 years are no higher than the costs of power to those customers for the same time period if specified assumptions are made. The effect of the rate test is to protect the 7(b)(2) customers' wholesale firm power rates from certain costs resulting from provisions of the Pacific Northwest Power Act. The rate test can result in a reallocation of costs from the 7(b)(2) customers to other rate classes. The Section 7(b)(2) Rate Test Study describes the application and results of the section 7(b)(2) rate test implementation methodology.

The rate projections and the actual rate test itself are performed by BPA's Supply Pricing Model (SPM). The SPM simulates BPA's ratesetting process, using load, resource, and cost data consistent with that used in this rate proposal. The assumptions and ratesetting processes such as load/resource balancing, cost allocation, and rate design are also consistent with this rate proposal. The SPM calculates two sets of wholesale power rates for BPA's preference customers: (1) a set of rates for the test period and the ensuing 4 years, assuming that section 7(b)(2) is not in effect (program case rates); and (2) a set for the same period considering the five assumptions listed in section 7(b)(2) (7(b)(2) case rates). Certain specified section 7(g) costs are subtracted from the program case rates. The SPM then discounts each year's rates to the test year of the relevant rate case, averages each set of discounted rates, and compares the two resulting averages rounded to the nearest tenth of a mill. If the average of the discounted program case rates less the 7(g) costs is larger than the average discounted 7(b)(2) case rates, the rate test triggers. If the rate test triggers, the amount of dollars to be reallocated in the test period (7(b)(2) amount) is calculated by multiplying the difference between the discounted program case and 7(b)(2) case rates by the general requirements loads of the preference customers. The 7(b)(2) amount is used as an adjustment to the allocated costs in the rate case test period.

The section 7(b)(2) rate test triggers in this proposal, causing costs to be reallocated in the test period. The Priority Firm rate applied to the general requirements of the 7(b)(2) customers has been reduced by the 7(b)(2) amount while all other rates, including the Priority Firm rate applied to customers purchasing under the Residential and Small Farm Power Exchange program, have been increased by an allocation of the 7(b)(2) amount.

6. *Wholesale Power Rate Development Study.* The Wholesale Power Rate Development Study combines the *Cost of Service Analysis* and the *Wholesale Power Rate Design Study* used in previous rate cases. This document consists of two sections. The first section performs all the steps in the rate development process previously performed in the Cost of Service Analysis. The second section performs all the steps in the rate development process previously performed in the Wholesale Power Rate Design Study.

a. *Cost of Service Analysis Section.* The Cost of Service Analysis (COSA) section of the Wholesale Power Rate Development Study apportions BPA's test year revenue requirement to customer classes based on the use of specific types of service by each customer class. BPA's revenue requirement is functionalized to transmission and generation in the Functionalization Study. Transmission costs are identified with segments of the transmission system in BPA's Segmentation Study. The results of these studies are used in the Cost of Service Analysis to determine the costs of providing such services to BPA's customers. The Cost of Service Analysis further identifies costs of specific types of service by performing the following steps.

Classification. BPA classifies costs to the energy and capacity components of electric power. In this rate case, generation costs are uniformly classified in the proportions of 80 percent of the generation costs to energy and 20 percent to capacity. This uniform classification adopted for the COSA is based on the results of BPA's Marginal Cost Analysis and reflects the relative costs of acquiring additional energy and capacity resources in both the long and the short run. Transmission costs are classified entirely to capacity.

Seasonal Differentiation. When costs of providing electric service vary substantially, whether by time of day or season of the year, it is appropriate to reflect this variation when allocating costs among customer classes and in the subsequent design of rates. Energy costs are seasonally differentiated on the basis of the cost of hydroelectric storage and the characteristics of the Federal generating system. Costs of generation capacity and transmission do not vary substantially between seasons; therefore, such costs are not seasonally differentiated.

Allocation. The final major step in the COSA is to allocate the functionalized, segmented, classified, and seasonally differentiated costs to customer classes.

Costs are allocated to classes of service on the basis of the relative use of services. Energy costs are allocated to customer classes on the basis of relative kilowatthour use by each class, and on the proportion of total load placed on each resource pool by that class. The measure used for allocating peaking capacity costs is the coincidental peak megawatt. Coincidental peak loads measure the contribution of each customer class's load to system peak loads. Because the power system is constructed in part to meet coincidental peak loads (relative to the system peak), the coincidental peak megawatt (rather than the customer's monthly peak load) is used as a basis for allocating the costs of generation and transmission capacity.

Costs of the nine Federal transmission system segments and exchange costs functionalized to transmission are allocated on the basis of coincidental peak megawatts that are not seasonally differentiated. Costs are allocated to customer classes on the basis of deemed use of the transmission system by power customers and on the basis of actual use of the transmission system by wheeling (non-Federal transmission) customers.

Costs not associated with resource pools are allocated to customer classes on the basis of total use of services without regard to the resource pools that provided that service.

B. *Wholesale Power Rate Design Section.* The COSA determines the costs of serving BPA's various customer classes. The Wholesale Power Rate Design section uses the allocated costs developed in the COSA as a starting point for designing rates which will recover BPA's total revenue requirement during the test period. It is the final step in the development of BPA's wholesale power rates. In the rate design section, the COSA results are modified: (1) To reflect BPA's rate design objectives; (2) to comport with contractual requirements; (3) to reflect the results of other BPA studies and commitments made in other public involvement processes under section 7(i) of the Pacific Northwest Power Act; and (4) to comport with requirements of applicable legislation, including the Bonneville Project Act, the Flood Control Act of 1944, The Federal Columbia River Transmission System Act, and the Pacific Northwest Power Act. BPA's rate design objectives include recovery of the revenue requirement, rate and revenue stability, practicality, fairness, and efficency.

Development of the 1987 wholesale power rates incorporates for the first time a number of provisions, including implementation of: (1) the Variable Industrial Power rate; (2) the IP–PF rate link; (3) allocation of costs and revenues resulting from the WNP–3 Settlement Exchange Agreements; (4) the triggering of the section 7(b)(2) rate test, and (5) a Cost Recovery Adjustment Clause.

Adjustments to the COSA results include the following:

Excess Revenue Credits. In the COSA, BPA allocates its entire test period revenue requirement to firm power loads on the basis of resources available under critical water conditions. Under normal circumstances, BPA is able to generate additional (secondary) energy which can be sold on a nonfirm basis. Revenues which BPA expects to receive from sales of nonfirm energy are credited to BPA's firm power and wheeling customers through rate design adjustments. BPA also includes in the revenues it credits to its firm power customers those revenues (opportunity costs) it expects to receive from sales to the DSI first quartile.

DSI First Quartile Service. The DSIs are not allocated costs in the COSA for service to their first quartile. BPA serves DSI first quartile loads with nonfirm energy. The opportunity costs, or revenues which BPA would have received for this power in other markets, are charged to the DSIs, thereby increasing their allocated costs. Revenues obtained by service to the first quartile from surplus firm power sold in the open market reduce the Surplus Firm Power revenue deficiency. Revenues received from service to the first quartile by nonfirm energy are credited to firm power rates.

Revenue Deficiencies. BPA is obliged to sell power at contractually fixed rates to two classes of customers, the Columbia Storage Power Exchange (CSPE) customers and capacity/energy exchange customers. In the COSA, BPA allocates costs to these customer classes. These COSA-allocated costs, adjusted for the excess revenue credit, are compared with the revenues BPA expects to receive under the contractually fixed rates for these customers. Any revenue deficiency is allocated through an adjustment affecting all other rate classes.

Surplus Power Open Market Revenue Deficiency. BPA expects to sell a portion of its surplus firm power at fully allocated cost. BPA assumes that the remainder of its surplus firm power will be sold in the open market at prices lower than the fully allocated cost, thereby causing a revenue deficiency. The difference between expected surplus power open market revenues and fully allocated cost is allocated to all other customers in the Surplus Power Open Market Revenue Deficiency Adjustment.

Special Industrial Adjustment. Legislation requires that BPA provide a special rate to direct-service industrial customers using raw minerals indigenous to the region as their primary resources. BPA has one such industrial customer to which it grants a special rate. The difference between revenues at that special rate and the fully allocated cost of service is a revenue deficiency which is allocated to all other firm power customers through the Special Industrial Adjustment.

Equalization of Demand Adjustment. BPA has historically applied the same demand charges for sales to firm capacity customers as are applied to its Priority Firm power customers. In order to achieve a uniform demand charge, a rate design adjustment is required.

7(c)(2) Adjustment. In BPA's post-1985 rates, the rates applicable to the DSIs are not based on the cost of serving the DSIs. Rather, the rates are a function of either the "floor" rate or the rates charged BPA's preference customers. BPA recently established a formula for this latter relationship. This formula (the IP–PF rate link) will be applied for the first time in the 1987 rate filing. In addition, the rate design for the DSIs in the 1987 rate filing continues to implement the Variable Industrial Power (VI) rate, tying the rate charged to BPA's aluminum smelter DSIs to the price of aluminum.

The 7(c)(2) adjustment is made to account for the difference between the costs allocated to the DSIs and the revenues resulting from the applicable DSI rate, incorporating any revenue variance from VI purchasers due to forecasted aluminum prices.

BPA determines the Priority Firm Power rate demand and energy charges and applies those charges to the DSI billing determinants. The result is the "applicable wholesale rate," to which is added the "net margin," yielding the DSI margin-based rate. The DSI revenues, based on assuming the margin-based rate, serve as the charge for power purchases and based on adjustments for aluminum smelters according to the formula contained in the VI rate schedule, are compared with the costs allocated to the DSIs. Any difference is either a revenue deficiency or surplus, and is allocated to all adjustable rates, including the Priority Firm Power rate.

This process is repeated until an additional repetition causes no change in the Priority Firm Power rate. The surplus or deficiency in revenues when comparing DSI revenues with DSI allocated costs is termed the "7(c)(2) delta," and is the amount of the 7(c)(2) adjustment. The allocation of this 7(c)(2) delta causes the relationship between the Priority Firm Power rate and the Industrial Firm Power rate to be maintained, and allows BPA to set all rates such that BPA can recover its total revenue requirement.

7(b)(2) Adjustment. Section 7(b)(2) of the Pacific Northwest Power Act provides rate protection to BPA's preference customers from certain costs resulting from the provisions of the Act. This is described in the Section 7(b)(2) Rate Test Study. The 7(b)(2) adjustment credits BPA's preference customers' rates to the extent necessary as Indicated in the Section 7(b)(2) Rate Test Study, and assigns the cost of such credit to rates applicable to other BPA customers. Because the loads of both BPA's preference customers and exchanging utilities are combined in the 7(b) rate pool, it is necessary to bifurcate the Priority Firm Power rate in order to grant the 7(b)(2) credit only to BPA's preference customers. Preference customers may purchase power from BPA at the Priority Firm Preference rate. For purposes of calculating the net benefit of the exchange to exchanging utilities, the Priority Firm Exchange rate is used. After the 7(b)(2) adjustment, BPA adjusts the margin-based rate applicable to the DSIs such that the applicable wholesale rate is based on the Priority Firm rate for public agencies which includes the 7(b)(2) credit. Any revenue deficiency resulting from such an adjustment is allocated to rates other than DSI rates and the Priority Firm rate for preference customers.

DSI Floor Rate Adjustment. BPA performs a test to determine whether the DSI margin-based rate is above is above or below a floor rate specified in section 7(c)(2) of the Pacific Northwest Power Act. If the DSI rate is below that floor rate, the DSI rate is raised to the floor rate, and a rate design adjustment is necessary to credit additional revenues from the DSIs to other firm power customers.

All of the above adjustments are made to the functionalized, classified, segmented and seasonalized costs allocated in the COSA as a starting point. Therefore the adjustments themselves are functionalized, classified, segmented, and seasonalized where appropriate. After all adjustments are made, the final rates are calculated.

Final rates calculated in the Wholesale Power Rate Development Study are included in BPA's General Rate Schedules. These rate schedules are applied in conjunction with BPA's General Rate Schedule Provisions (GRSPs) which define the applicability of the rate to the type of service provided.

B. *Wholesale Power Rates.* Individual rate schedules are discussed in section 1, below. Issues related to more than one schedule are presented in section 2.

1. *Description of Individual Rate Schedules.* a. *Priority Firm Power Rate, PF–87.* BPA sells Priority Firm Power to public bodies, cooperatives, Federal agencies, and utilities participating in the residential exchange under section 5(c) of the Pacific Northwest Power Act. This rate schedule is also available for the purchase of capacity which will require the return of associated energy. This power must be used to meet firm loads within the Pacific Northwest. Two power rates will be available under this rate schedule. One will be available for the general requirements of public bodies, cooperatives, and Federal agencies. The other will be available for all other purchasers eligible for Priority Firm Power, including utilities participating in the residential exchange.

The priority firm load is served with FBS and exchange resources. The PF–87 rate consists of a demand charge that is time-differentiated on hourly basis and an energy charge that is seasonally differentiated. A low density discount and an irrigation discount are available to qualifying utilities. The PF rate also includes the Cost Recovery Adjustment Clause, a new feature; and the Council-recommended Conservation Surcharge, a power factor penalty, and a charge for unauthorized increase. The billing factors for computed requirements customers taking priority firm power continue to be designed to enhance BPA's revenue stability.

b. *Industrial Firm Power Rate, IP–87.* The IP–87 rate schedule applies to sales of Federal power to BPA's DSI customers. The level of the IP–87 rate is a function of two elements, the Administrator's "applicable wholesale rates" to public agency customers and a net margin. The net margin has been established in an earlier section 7(i) proceeding establishing the IP–PF rate link.

The demand charge in the IP–87 rate remains constant throughout the rate period, but is time differentiated on an hourly basis. There is no demand charge for deliveries during offpeak hours. The energy charge is seasonally differentiated. The IP–87 rate also includes the Cost Recovery Adjustment Clause, a power factor adjustment, and a charge for unauthorized increases which may apply in both the peak and offpeak hours.

c. *Variable Industrial Power Rate, VI–87.* The VI–87 rate is available through a contractual agreement with aluminum smelter DSIs. All of BPA's aluminum smelter DSI customers have signed contracts to purchase power under the Variable Industrial Power rate. The VI–87 rate is a formula rate that changes when the price of aluminum decreases or increases outside of a range of aluminum prices specified in the rate schedule. Within the specified range of aluminum prices, the rate does not vary with aluminum prices. The level of the "plateau" rate is adjusted to follow the DSI margin-based rate.

The VI–87 rate contains a demand charge that remains constant throughout the rate period, but is differentiated on an hourly basis. The demand charge does not fluctuate with changes in aluminum prices. There is no demand charge during the offpeak period. The energy charge is not seasonally differentiated but varies with the price of aluminum according to a specified formula. A discount for first quartile service is also available for those purchasers that request first quartile service with other than Surplus FELCC. The VI–87 rate also includes the Cost Recovery Adjustment Clause, a power factor adjustment, and a charge for unauthorized increases which may apply in both the peak and offpeak hours.

d. *Special Industrial Power Rate, SI–87.* This rate schedule is available to purchasers qualifying for a special class of industrial power as provided in section 7(d)(2) of the Pacific Northwest Power Act. Section 7(d)(2) authorizes BPA to establish a special rate for any DSI using, as its primary resource, raw minerals indigenous to the Pacific Northwest region.

The only customer that currently qualifies for this Special Industrial rate is the Hanna Nickel Smelting Company. The SI–87 rate schedule contains two rate options, a Standard rate and an Offpeak rate. The Standard rate incorporates the value associated with BPA's ability to restrict Hanna's load under specific circumstances and has been increased to follow the increase in the PF–87 rate. The resulting SI–87 Standard rate is slightly below the PF–87 rate to approximate the rate Hanna would have paid absent the Pacific Northwest Power Act. The SI–87 Standard rate has an hourly differentiated demand charge and seasonally differentiated energy charges. The rate includes adjustments for power factor and unauthorized increase.

The Offpeak rate of 7 mills per kilowatthour proposed in the 1985 rate case has been extended. This extension is in accordance with the Amendatory Agreement effective July 1, 1985, with the Hanna Nickel Smelting Company. The Offpeak rate is an energy charge and does not contain a demand charge. Under the SI–87 Offpeak rate, Hanna must curtail power purchases during a contractually specified period within BPA's peak period to 15 percent of its Contract Demand.

e. *Firm Capacity Rate, CF–87.* The CF–87 rate applies to utilities purchasing firm capacity from BPA on an annual basis. Energy associated with this capacity is to be returned to BPA. CF–B7 loads are served with FBS and exchange resources. The rate includes the Cost Recovery Adjustment Clause, the Council-recommended Conservation Surcharge, an extended peaking surcharge for capacity taken in excess

of 8 hours per day, and a seasonally differentiated surcharge for rates of energy return in excess of 60 percent of Contract Demand. This rate schedule will be available only to purchasers who have executed contracts prior to July 1, 1985.

The extended peaking surcharge is based on the reduction in hydro peaking capability due to sustaining generation for an additional 10 hours per week. The returned energy surcharge is based on the reduction in hydro peaking capability due to high rates of energy being returned in any given hour, which causes a risk of spilled firm energy.

f. *Emergency Capacity Rate, CE–87.* The CE–87 rate schedule is applied to capacity used either to meet emergencies on the purchaser's system or to displace non-BPA resources. BPA provides such capacity to utilities on a weekly basis if it is requested and if excess capacity is available. The energy associated with the delivery of this capacity must be returned to BPA.

To determine the CE–87 rate, the Firm Capacity rate for a contract year was divided by the number of weeks in a year and then increased by 30 percent to cover additional administrative and general costs. Because costs associated with deliveries over the Pacific Northwest-Pacific Southwest (Southern) Intertie have not been allocated to this service category in the COSA, such deliveries are subject to an additional charge.

g. *New Resource Rate, NR–87.* The NR–87 rate is available for the purchase of firm power by investor-owned utilities under net requirements contracts for resale, direct consumption, or for use in construction, test and start-up, and station service. It is also available for service to new large single loads of public bodies, cooperatives, or Federal agencies. BPA also proposes that this rate schedule be available for the purchase of capacity which will require the return of associated energy.

Exchange energy costs are allocated to this class of service to serve the small amount of energy load forecasted during the test year. However, the NR–87 rate is set to approximate a rate based on both capacity and energy allocated exchange costs so that it can be applied to any load that qualifies for NR–87 service. The energy charges for the NR–87 rate reflect the increased cost to be collected through the energy charges due to setting the demand charge equal to the equalized demand charge. The demand charges are based on the Surplus Firm Power rate demand charges adjusted for intertie losses, and are diurnally time-differentiated. The rate also includes the new Cost Recovery Adjustment Clause.

h. *Short-Term Surplus Firm Power Rate, SP–87.* The SP–87 rate is available for the short-term purchase of Surplus Firm Power or capacity for the period ending September 30, 1992. The SP–87 rate consists of a Contract rate and a flexible rate. The Contract rate has demand and energy charges, and is based on the fully allocated cost of surplus firm power, made up of: Exchange resources and new resources. Demand charges are diurnally differentiated. The flexible rate is a market-based rate that is flexible upward and downward as mutually agreed upon by the contracting parties. The flexible rate may have a demand and energy component or an energy component only. Rates may not exceed 100 percent of the fixed and operating costs of BPA's highest cost resource. The SP rate includes an intertie service charge, an extended peaking surcharge for capacity sales, and an energy return surcharge.

i. *Short Term Firm Displacement Power Rate, FD–87.* The FD–87 rate is available for the contract purchase of Short-Term Firm Displacement Power or capacity by utilities in the Pacific Northwest for the period ending September 30, 1992. These purchases are for the purpose of meeting Pacific Northwest loads and allowing the export of the power displaced by FD purchases outside the Pacific Northwest.

This rate schedule is intended to help BPA to market its surplus firm power. The FD–87 rate is composed of a contract rate and a flexible rate. The contract rate is based on the fully allocated costs of surplus firm power and has demand and energy charges. The flexible rate is a market-based rate, whose rate level may be higher or lower than the contract rate. Short-term rates may have demand and energy charges or an energy charge only. Rates may not exceed 100 percent of the fixed and operating costs of BPA's highest cost resource.

j. *Long-Term Surplus Power Rate, SL–87.* The SL–87 rate is available for the long-term purchase of Surplus Firm Power or capacity for contracts having a term up to 20 years. Like the SP–87 rates, the SL–87 rate consists of a demand and energy charge based on the fully allocated cost of surplus resources: exchange resources and new resources. Demand charges are diurnally differentiated, and they may be adjusted to reflect partial year service.

Because of the 20-year term of SL–87, an escalation factor is included in the rate schedule. Each January 1, the demand and energy charges shall be increased by 2 percent of the previous rate; in addition, the SL–87 shall be increased by the same percentage increase as the PF rate, on the effective date of any future PF rate change.

Other adjustments in SL–87 are an intertie service charge, an extended peaking surcharge for capacity sales, and an energy return surcharge.

k. *Long Term Firm Displacement Rate, FL–87.* The FL–87 rate is available for the long-term purchase of Firm Displacement Power for contracts having a term of up to 20 years. The FL–87 rate consists of a demand and energy charge based on the fully allocated cost of surplus firm power. Demand charges are diurnally differentiated, and they may be adjusted to reflect partial year service.

Because of the 20-year term of FL–87, an escalation factor is included in the rate schedule. Each January 1, the demand and energy charges shall be increased by 2 percent of the previous rate; in addition, the SL–87 shall be increased by the same percentage increase as the PF rate, on the effective date of any future PF rate change.

Other adjustments in SL–87 are an intertie service charge, an extended peaking surcharge for capacity sales, and an energy return surcharge.

l. *Nonfirm Energy Rate, NF–87.* The NF–87 rate is available for the purchase of nonfirm energy both inside and outside the Pacific Northwest and outside the United States. The proposed NF–87 rate structure contains rates that are applicable under varying operating and marketing conditions. The NF–87 rate schedule contains a Contract rate and three rates that can be applied depending on market conditions: the Standard Rate, the Market Expansion Rate, and the Incremental Rate. All rates within the NF rate schedule are subject to an NF Rate Cap. The NF Rate Cap is defined as the greater of BPA's average system cost or BPA's average system cost plus 30 percent of the difference between gas/oil prices and BPA's average system cost. BPA's average system cost is determined for the rate period. Gas/oil prices are determined monthly based on prices published in Platt's Oilgram Report. BPA may sell nonfirm energy at one or more of the rates at the same time. When BPA determines that nonfirm energy can be sold on a guaranteed basis. BPA will offer guaranteed energy at amounts and for periods of time that BPA finds prudent. Any energy scheduled under the guarantee delivery provision shall be delivered except when BPA and the purchaser mutually agree to change the scheduled amounts or when BPA must reduce NF–87 deliveries to serve firm loads because of unexpected generation loss in the Pacific Northwest. Guaranteed nonfirm energy may be offered under any of the rates in the NF–87 schedule.

The Standard rate is BPA's rate of general applicability. The Standard rate allows flexibility of prices charged both above and below BPA's average cost of nonfirm energy, within the limits of the NF Rate Cap. The Standard rate will be offered at only one level at any time, and the level of that offer will depend on market conditions that BPA faces at a particular time.

Nonfirm energy sales may also be made at the Market Expansion rate when BPA is unable to sell all available FCRPS energy at the Standard rate. To qualify for the rate, the purchaser must demonstrate that purchases under the Standard rate would not be economic. The Market Expansion rate will help ensure that BPA displaces the greatest possible amount of thermal generation and will enhance NF–87 revenues. The rate is flexible and may be at any level that BPA offers below the Standard rate. BPA may offer more than one price level under the Market Expansion rate simultaneously. The Market Expansion rate is available whenever the decremental cost of the displaced resource or purchase is less than the applicable Standard rate plus 2.0 mills per kilowatthour. The Market Expansion rate is available for alternative fuel end-users. A purchaser must purchase at the highest market expansion price for which the purchaser's displaceable resource or purchase qualifies.

The NF–87 Incremental rate shall be applied to sales of energy produced or purchased concurrently with the Nonfirm Energy sale which BPA may, at its option, not produce or purchase, and when the incremental cost is greater than the Standard rate less 2.0 mills per kilowatthour. The rate shall be equal to the incremental cost of the power plus 2.0 mills per kilowatthour.

m. *Share-the-Savings Rate, SS–87.* The proposed SS–87 rate schedule is available for the purchase of nonfirm energy as an alternative to the NF–87 rate schedule. The SS–87 rate is available for purchasers both inside and outside the Pacific Northwest and outside the United States. In order to purchase nonfirm energy at the SS–87 rate, the purchaser must execute a contract with BPA specifying use of the SS–87 rate schedule. Purchasers contracting for use of the SS–87 schedule may not purchase under the NF–87 rate schedule during the term of the contract.

The SS–87 schedule consists of three rates. The rate for a particular purchaser shall depend on the decremental cost of the resource or purchase that will be displaced with a purchase under the SS–87 schedule. The three rates are the Economy Energy rate, the High Cost Displacement rate, and the Low Cost Displacement rate. Each of these rates specifies a price dependent on the decremental cost of the displaced resource or purchase, but each specifies a different portion of that cost to be recovered by the rate plus a different fixed adder.

n. *Energy Broker Rate, EB–87.* In October 1981, BPA entered into an agreement with the Western Systems Coordinating Council (WSCC) to participate in WSCC's Energy Broker Program. The Broker Program offered by WSCC is a communication and scheduling procedure for matching potential sellers of electric energy with potential buyers. The proposed EB–87 rate offered by BPA is available for both sale and purchase of nonfirm energy among participants in the WSCC Energy Broker System, between whom agreements for energy transmission have been transacted.

o. *Reserve Power Rate, RP–87.* The proposed RP–87 rate schedule is available for the purchase of: (1) Firm power to meet a purchaser's unanticipated load growth as provided in a purchaser's power sales contract; (2) power for which BPA determines no other rate schedule is applicable; or (3) power to serve a purchaser's firm power loads in circumstances where BPA does not have a power sales contract in force with such a purchaser, and BPA determines that the rate should be applicable. BPA expects that the RP–87 rate schedule will be used primarily to meet emergency power shortages on a purchaser's system and to charge, pursuant to the power sales contract, for unauthorized increases in the case of minimal power overruns.

The Reserve Power rate is based directly on the results of the Marginal Cost Analysis. The proposed RP–87 rate will provide BPA's customers with price signals that reflect the cost of producing additional kilowatts and kilowatthours, regardless of BPA's revenue requirement. An adjustment for power factor and a charge for unauthorized increase are also included in the RP–87 rate schedule.

2. *Other Rate Issues.* a. *Risk Mitigation.* BPA projected revenues are subject to significant variations due to variations in aluminum prices, fuel prices, economic conditions, and weather conditions. To reflect these risks, BPA performed a Risk Assessment Analysis for this filing. The Analysis indicated that the potential revenue underrecoveries exceed $300 million per year. To offset this revenue risk, BPA has included mitigation measures in this proposal. These measures include the cost recovery adjustment clause, excess revenue determination, and investment service coverage.

b. *Cost Recovery Adjustment Clause.* BPA has studied various methods of assuring its ability to repay the U.S. Treasury during the rate period. One of the risk management measures proposed is a Cost Recovery Adjustment Clause.

The purpose of the Cost Recovery Adjustment Clause is to enhance BPA's ability to make its scheduled U.S. Treasury payments with funds provided from current operations. The Cost Recovery Adjustment Clause is included in the Priority Firm, Industrial Firm, Variable Industrial, Firm Capacity, and New Resource Firm Power rate schedules.

The Cost Recovery Adjustment Clause compares actual financial performance with the financial results that rates were designed to achieve. When this comparison is performed, BPA will make an automatic adjustment to the rates charged specified customers if actuals are significantly different from planned financial results. This adjustment would increase or decrease rates, depending on whether actual financial performance was worse or better than forecast. These increases or decreases would be applied to all demand and energy charges of the rates to which they apply.

The comparison of actual performance to forecasted performance will be made following the first full year of the rate period, after Fiscal Year 1988. Any adjustment, to the extent one is warranted, would be calculated during October, November, and December 1988, and the adjustment would be applied to demand and energy revenues due from customers affected by the Cost Recovery Adjustment Clause during January through September 1989.

The proposed Cost Recovery Adjustment Clause would be applied only if BPA's FY 1988 funds from operations fell outside the predesignated range of either $60 million greater than planned or $60 million less than planned. Any resulting adjustment would cause an upward rate adjustment of no greater than 10 percent. The only limit on a downward rate adjustment is for the DSIs, who are subject to a floor rate.

If BPA's forecasts of revenues and costs determine that no change from

BPA's 1987 rates is warranted in 1989 or in any subsequent fiscal year, the Cost Recovery Adjustment Clause will be available for calendar years following FY 1989, or for any period prior to a BPA general rate filing.

c. *Excess Revenue Determination.* The excess revenues from nonfirm energy and surplus firm power were determined using 1939 water conditions instead of the average of the 40 water years 1929 to 1968, as had been assumed in rate filings prior to 1985.

d. *Investment Service Coverage.* The Investment Service Coverage is used in the determination of FCRPS revenue requirements to provide an acceptable level of interest coverage consistent with BPA's requirement to operate in accordance with sound business principles. The Investment Service Coverage increases the likelihood that BPA will be able to make its planned payments to the U.S. Treasury at the end of FYs 1988 and 1989. Further, the Investment Service Coverage is intended to improve BPA's financial condition as reflected in BPA's financial statements, and demonstrates the commitment and willingness of BPA to fully meet its obligations to the U.S. Treasury as planned.

e. *Application of NF Rate Cop for Future Rate Periods.* BPA is proposing an NF Rate Cap for a 12-year period to apply to all nonfirm energy sales.

Issued in Portland, Oregon on December 10, 1986.

Robert E. Ratcliffe,

Acting Administrator.

[FR Doc. 86-28962 Filed 12-29-86; 8:45 am]

BILLING CODE 6450-01-M

Proposed Transmission Rate Adjustment, Public Hearings, and Opportunities for Public Review and Comment

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice and Opportunities for Review and Comment. *BPA File No:* TR-87.

BPA requests that all comments and documents intended to become part of the Official Record compiled in the process of adjusting transmission rates contain the file number designation TR-87.

SUMMARY: The Pacific Northwest Electric Power Planning and Conservation Act (Pacific Northwest Power Act) states that BPA must establish and periodically revise BPA's rates so that they are adequate to recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, and to recover the Federal investment in the Federal Columbia River Power System (FCRPS). BPA is proposing to revise its transmission rate schedules, effective October 1, 1987, in order to produce sufficient revenue to fulfill its statutory requirements. Section 7 of the Pacific Northwest Power Act provides for the establishment of BPA's rates.

Through a separate public process BPA has completed an initial review of program cost levels for the fiscal year (FY) 1988 and 1989 budgets. This public process has influenced revenue requirement data for BPA's rate case. The Administrator will not re-examine program level decisions in the rate case. However, further opportunity for informal public comment has been established outside the rate case.

Opportunities will be available for interested persons to review the proposed rates and the supporting studies, to participate in hearings, and to submit written comments. During the development of the final rate proposal, BPA will evaluate all written and oral comments received in this process. Consideration of comments and more current data may result in the final rate proposal differing from the rates proposed in this notice.

Responsible Official: Ms. Shirley R. Melton, Director, Division of Rates, is the official responsible for the development of BPA's rates.

DATES: Persons wishing to become a formal party to the proceedings must notify BPA in writing of their intention to do so. The petitions to intervene must be received by January 9, 1987, and should be addressed as follows: Hon. Dean F. Ratzman, Hearing Officer, c/o Geoffrey Kronick, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212. In addition, a copy of the intervention petition must be served on BPA's Office of General Counsel/APR, P.O. Box 3621, Portland, Oregon 97208.

A prehearing conference, required by BPA's rate procedures, will be held before the Hearing Officer at 9 a.m. on January 16, 1987, at the Auditorium, Building DOB1, 5411 Hwy. 99, Ross Complex, Vancouver, Washington. Registration for the Prehearing Conference will begin at 8:30 a.m. BPA will prefile the testimony of its witnesses at the prehearing conference. The Hearing Officer will act on all intervention petitions and oppositions to intervention petitions; will establish additional procedures, a service list, and a procedural schedule; and will consolidate parties with similar interests for purposes of filing jointly sponsored testimony and briefs and for expediting cross examination. A notice of the dates and times of the hearings will be mailed to all parties of record.

BPA proposes the following schedule for the formal hearings required by section 7(i) of the Pacific Northwest Power Act. A final schedule will be established by the Hearing Officer.

December 30, 1986—Initial studies available at BPA's Office of Public Involvement (Public Reference Room), 1002 NE. Holladay, 6th Floor, Portland, Oregon;
January 16, 1987—Prehearing Conference and BPA Direct Case Filed;
January 26-30, 1987—BPA Witness Clarification;
February 18, 1987—Parties' Direct Case Filed;
March 16, 1987—Rebuttal Testimony Filed;
April 6-24, 1987—Cross-Examination;
June 15, 1987—Draft Record of Decision; and
July 31, 1987—Final Record of Decision.

Two series of public field hearings regarding BPA's proposal will be held in various regional locations. At the first series, BPA will provide information concerning the ratemaking process, the issues in this rate case, and a synopsis of the rate proposal. Public comments contained in a verbatim transcript of the hearings and all written comments received will be made a part of the Official Record. The hearing officer may allow reasonable questioning of participants by BPA counsel. Presentation of testimony and evidence from formal parties will not be allowed at the field hearings. Registration for the field hearings will be at 7 p.m., and the hearings will begin at 7:30 p.m. The dates and locations are:

February 3—The Cougar Room, Ridpath Hotel, H. 515 Sprague, Spokane, Washington;
February 4—The Guild Hall, The Sherwood Inn., 8402 S. Hosmer, Tacoma, Washington;
February 5—The Orcas Room, Everett Pacific Hotel, 3105 Pine St., Everett, Washington;
February 6—The Virginian, 750 W. Broadway, Jackson, Wyoming;
February 9—The Klamath Room, Red Lion Inn—Columbia River, 1401 N. Hayden Island Dr., Portland, Oregon;
February 10—Main Harris Hall, Lane County Building, 125 E. 8th, Eugene, Oregon;
February 11—Richland Federal Building, 825 Jadwin Avenue, Richland, Washington; and
February 12—Burley Inn, 800 N. Overland Avenue, Burley, Idaho.

A second series of field hearings will be scheduled near the end of the formal hearings. These field hearings will provide the public an additional opportunity to comment based on its review of the evidence presented in the formal hearings. BPA will consider the public comments in the Draft Record of Decision. The hearing schedule and locations will be announced in newspapers in the region.

Written comments may be submitted until the close of all hearings. The last day for receipt of written comments will be specified in a later **Federal Register** notice (currently expected to be published in May 1987).

ADDRESSES: Written comments not submitted at the hearings should be submitted to Ms. Donna L. Geiger, Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen S. Johnson, Public Involvement Office, at the address listed above, 503-230-3478. Oregon callers may use 800-452 8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800-547-6048. Information may also be obtained from:

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503-230-4551;
Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503-687-6952;
Mr. Wayne Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509-456-2518;
Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406-329-3060;
Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509-662-4377, extension 379;
Mr. Terence G. Esvelt, Puget Sound Area Manager, 415 First Avenue North, Room 250, Seattle, Washington 98109, 206-442-4130;
Mr. Thomas V. Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509-522-6226;
Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208-523-2706; and
Mr. Frederic D. Rettenmund, Boise District Manager, 550 West Fort Street, Room 376/Box 035, Boise, Idaho 83724, 208-334-9137.

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I. Background

On November 7, 1986, BPA published in the **Federal Register** a notice of "Intent to Revise Transmission Rates to Become Effective October 1, 1987; Request for Recommendations and Suggestions" (51 FR 40483). The notice satisfied certain contractual provisions between BPA and its customers by indicating that revised rates are expected to become effective on October 1, 1987. All 1987 transmission rates are proposed to be in effect for 2 years, through September 30, 1989, with the exception of the FPT-87.3 schedule, which would be effective 3 years, through September 30, 1990.

In developing the proposed transmission rates, BPA considered many factors, including revenue requirements, costs of service, environmental impacts, economic efficiencies, rate continuity, and contractual and statutory obligations. The major studies that have been prepared to support the proposed transmission rates will be available for examination on December 30, 1986, at BPA's Public Reference Room, BPA Headquarters Building, 6th floor, 1002 NE. Holladay, Portland, Oregon. The studies also may be requested by phone or in writing from BPA's Public Involvement office and will be available at the Prehearing Conference. The documents pertinent to the development of BPA's proposed transmission rates are the Revenue Requirement Study, Segmentation Study, Wholesale Power Rate Development Study, and Transmission Rate Design Study.

To request any of the above studies by telephone, call BPA's document line: 800-841-5867 for Oregon, 800-624-9495 for Washington, Idaho, Montana, California, Wyoming, Utah, and Nevada. Other callers should use 503-230-3478. Please request the study by its above title. Also state whether you require the accompanying published technical documentation, otherwise the study alone will be provided. (For example, ask for the "Revenue Requirement Study and Technical Documentation.")

Many transmission agreements were negotiated prior to the 1974 Federal Columbia River Transmission System Act (Transmission Act) and reflect conditions and policies prevalent at the time of negotiation. Provisions which differ between agreements include the types of facilities available, type of service, frequency of rate adjustments, determination of losses, and calculation of billing determinants. Some agreements, for example, specify that transmission rates can be changed annually, while other agreements limit rate adjustments to once every 3 years.

Many agreements prescribe the method and factors to be used in determining the cost of providing service and in designing rates. Many are "formula" power agreements and the factors specified in these agreements are the forerunners of the current Formula Power Transmission (FPT) rate schedules. Applicable legislation requires transmission system costs to be equitably allocated between Federal and non-Federal power utilizing the system. The cost of service portion of BPA's Wholesale Power Rate Development Study (WPRDS) determines the equitable allocation of costs and this allocation of costs determines the overall level of the transmission rates. In cases where BPA is required by contractual provisions to use a specific rate design method, such methods are used in this rate proposal. These rate design methods do not interfere with BPA's abilities to adjust the overall level of the rates.

Some transmission agreements do not permit changes in rate methodology. In some cases, the rates proposed in this notice will not be applicable to such agreements. BPA intends to apply its historical rate schedules to these agreements, as required.

II. Procedures Governing Rate Adjustments and Public Participation

Section 7(i) of the Pacific Northwest Power Act, 16 U.S.C. 839e(i), requires that rates be set according to certain procedures. These procedures include issuance of a **Federal Register** notice announcing the proposed rates; one or more hearings; the opportunity to submit written views, supporting information, questions, and arguments; and a decision by the Administrator based on the record developed during the hearing process. This proceeding will be governed by BPA's "Procedures Governing Bonneville Power Administration Rate Hearings" (51 FR 7611, March 5, 1986), which implements, and in most instances expands, these statutory requirements. The proceedings for BPA's proposal to adjust transmission rates will be combined with the proceedings for BPA's proposal to adjust wholesale power rates.

BPA's procedures provide for publication of a notice of the proposed rates, a prehearing conference, a

hearing, receipt of written comments, preparation of decisional documents, a decision, and the transmittal of the decision with supporting documentation to the Federal Energy Regulatory Commission. The procedures require that the Administrator specify in the **Federal Register** notice whether expedited rules will be used. In order to give the public the maximum opportunity to participate and have its views considered, the Administrator has determined and hereby gives notice that expedited rules of procedure will not apply to this proceeding. The hearing will be conducted according to the rule for general rate proceedings, § 1010.9 of BPA's "Procedures Governing Bonneville Power Administration Rate Hearings."

In addition to its formal hearing process, BPA also will convene a series of public hearings at certain locations throughout the region. The purpose of these hearings is to present to interested members of the public a synopsis of BPA's rate proposal. The hearings will be held at the times and locations previously listed. The conduct of these hearings will be substantially the same as that of the public field hearings held for BPA's 1981, 1982, 1983, and 1985 rate proceedings. BPA staff will summarize the proposed rates, after which the public will have an opportunity to present their comments, views, and opinions about the proposed rates.

BPA distinguishes between "participants in" and "parties to" the hearings. Apart from the formal hearing process, BPA will receive comments, views, opinions, and information from participants, who are defined in the procedures as any person who may express his views, but who does not intervene as a party. Participants' written comments will be made part of the official record of the case. The participant category gives the public the opportunity to participate and have its views considered without assuming the obligations incumbent upon parties. Participants are not entitled to participate in the prehearing conference, cross-examine parties' witnesses, seek discovery, or serve or be served with documents, and are not subject to the same procedural requirements as parties. Participants will, however, be provided regular letters during the rate hearings summarizing the proceedings and are provided the opportunity to request materials presented during the hearings.

The second category of interest is that of a "party" as defined in §§ 1010.2 and 1010.4 of "The Procedures Governing Bonneville Power Administration Rate Hearings." Parties may participate in prehearing conferences, may call and cross-examine witnesses, and are entitled to service of documents from all other parties. Parties also may be cross-examined and required to serve documents on the other parties. To avoid unnecessary delay, cross-examination by parties may be limited by the Hearing Officer. Where parties have substantially similar positions, the Hearing Officer may appoint lead counsel to conduct cross-examination. If a party demonstrates that it would not be represented adequately in the joint presentation of an issue or issues, the Hearing Officer may permit separate examination or argument regarding such issue or issues.

In order to facilitate discovery and promote the efficient use of cross-examination, the Hearing Officer may schedule one or more transcribed sessions for the purpose of allowing parties and BPA to question witnesses about the contents of their prepared testimony. Cross-examination will be scheduled by the Hearing Officer as necessary following completion of the filing of all parties' and BPA's direct cases, rebuttal testimony, discovery, and clarification. Parties will have the opportunity to file initial briefs at the close of cross-examination. The Hearing Officer will extend an opportunity to the parties to evaluate the record and analyze the law through briefs.

Persons wishing to become a formal party to BPA's rate proceeding must so notify BPA in writing. Petitions to intervene shall state the name and address of the person and the person's interests in the outcome of the hearing. Petitioners may designate no more than two representatives upon whom service of documents will be made. BPA customers and customer groups whose rates are subject to revision in the hearing will be granted intervention, based on a petition filed in conformity with this section. Other petitioners must explain their interests in sufficient detail to permit the Hearing Officer to determine whether they have a relevant interest in the hearing. Any opposition to a petition to intervene must be filed and served at least 24 hours before the January 16 prehearing conference. All timely applications will be ruled on by the Hearing Officer. Late interventions are strongly disfavored. Opposition to an untimely position to intervene shall be filed and served within 2 days after service of the petition. Intervention petitions will be available for inspection in the Public Reference Room of BPA's Office of Public Involvement, 6th Floor, 1002 NE Holladay, Portland, Oregon. Interventions are subject to Rule 1010.4 of the "Procedures Governing Bonneville Power Administration Rate Hearings."

After the close of the hearings, BPA will file a Draft Record of Decision. The Draft Record of Decision will provide a written evaluation of the official record addressing significant technical issues. The Hearing Officer also will extend an opportunity to all parties to file reply briefs.

Persons need not attend the hearings in order to have their views included in the record. Written comments may be included in the record if they are submitted before the close of the hearings. Written views, supporting information, questions, and arguments should be submitted to BPA's Public Involvement Manager.

The record will include, among other things, the transcripts of the hearings, written material submitted by the parties and participants, documents developed by the BPA staff, and other material accepted into the record by the Hearing Officer. The Hearing Officer then will review the record, will supplement it if necessary, and will certify the record to the Administrator for decision.

The Administrator will develop the final proposed rates based on the entire record, including the record certified by the Hearing Officer, comments received from participants in the field hearings, other material and information submitted to or developed by the Administrator, and any other comments properly received during the rate development process. The basis for the final proposed rates will be expressed in the Administrator's Record of Decision. The Administrator will serve copies of the Administrator's Record of Decision on all parties and will file the final proposed rates together with the record with FERC for confirmation and approval.

III. Transmission Rate Schedules and General Transmission Rate Schedule Provisions

Schedule FPT–87.1—Formula Power Transmission

Section I. Availability

This schedule supersedes schedule FPT–85.1 for all firm transmission agreements which provide that rates may be adjusted not more frequently than once a year. It is available for firm transmission of electric power and energy using the Main Grid and/or Secondary System of the FCRTS. This schedule is for full-year and partial-year service and for either continuous service or intermittent service so long as firm availability of service is required. For facilities at lower voltages than the Secondary System, a different rate schedule may be specified.

Section II. Rate

A. *Full-Year Service.* The monthly charge per kilowatt of billing demand shall be one-twelfth of the sum of the Main Grid Charge, the Secondary System Charge, and Intertie Charge, as applicable and as specified in the Agreement.

1. Main Grid Charge. The Main Grid Charge shall be the sum of one or more of the following component factors as specified in the Agreement:

a. Main Grid Distance Factor: The amount computed by multiplying the Main Grid Distance by $0.0246 per mile;

b. Main Grid Interconnection Terminal Factor: $0.22;

c. Main Grid Terminal Factor: $0.28;

d. Main Grid Miscellaneous Facilities Factor: $1.16;

2. Secondary System Charge. The Secondary System Charge shall be the sum of one or more of the following component factors as specified in the Agreement:

a. Secondary System Distance Factor: The amount determined by multiplying the Secondary System Distance by $0.1379 per mile;

b. Secondary System Transformation Factor: $2.19;

c. Secondary System Intermediate Terminal Factor: $0.83;

d. Secondary System Interconnection Terminal Factor: $0.41;

3. Intertie Charge. For use of the Southern (Pacific Northwest-Pacific Southwest) Intertie facilities: $5.93.

B. *Partial-Year Service.* The monthly charge per kilowatt of billing demand shall be as specified in Section II.A for all months of the year. For agreements whose term is 5 years or less and which specify service for fewer than 12 months per year, the monthly charge shall be:

1. During months for which service is specified, the monthly charge defined in Section II.A, and

2. During other months, the monthly charge defined in Section II.A multiplied by 0.2.

Section III. Billing Factors

Unless otherwise stated in the Agreement, the billing demand shall be the largest of:

A. The Transmission Demand;

B. The highest hourly Scheduled Demand for the month; or

C. The Ratchet Demand.

Section IV. General Provisions

Service provided under this transmission rate schedule shall be subject to the General Transmission Rate Schedule Provisions and the following Acts, as amended: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

The meaning of terms used in the transmission rate schedules shall be as defined in agreements or provisions which are attached to agreements or as in any of the above acts.

Schedule FPT–87.3—Formula Power Transmission

Section I. Availability

This schedule supersedes schedule FPT–83.3 for all firm transmission agreements which provide that rates may be adjusted not more frequently than once every 3 years. It is available for firm transmission of electric power and energy using the Main Grid and/or Secondary System of the FCRTS. This schedule is for full-year and partial-year service and for either continuous service or intermittent service so long as firm availability of service is required. For facilities at lower voltages than the Secondary System, a different rate schedule may be specified.

Section II. Rate

A. *Full-Year Service.* The monthly charge per kilowatt of billing demand shall be one-twelfth of the sum of the Main Grid Charge, the Secondary System Charge, and Intertie Charge, as applicable and as specified in the Agreement.

1. Main Grid Charge. The Main Grid Charge shall be the sum of one or more of the following component factors as specified in the Agreement:

a. Main Grid Distance Factor: The amount computed by multiplying the Main Grid Distance by $0.0246 per mile;

b. Main Grid Interconnection Terminal Factor: $0.22;

c. Main Grid Terminal Factor: $0.28;

d. Main Grid Miscellaneous Facilities Factor: $1.16;

2. Secondary System Charge. The Secondary System Charge shall be the sum of one or more of the following component factors as specified in the Agreement:

a. Secondary System Distance Factor: The amount determined by multiplying the Secondary System Distance by $0.1379 per mile;

b. Secondary System Transformation Factor: $2.19;

c. Secondary System Intermediate Terminal Factor: $0.83;

d. Secondary System Interconnection Terminal Factor: $0.41;

3. Intertie Charge. For use of the Southern (Pacific Northwest-Pacific Southwest) Intertie facilities: $5.93.

B. *Partial-Year Service.* The monthly charge per kilowatt of billing demand shall be as specified in Section II.A for all months of the year. For agreements whose term is 5 years or less and which specify service for fewer than 12 months per year, the charge shall be:

1. During months for which service is specified, the monthly charge defined in Section II.A, and

2. During other months, the monthly charge defined in Section II.A multiplied by 0.2.

Section III. Billing Factors

Unless otherwise stated in the Agreement, the billing demand shall be the largest of:

A. The Transmission Demand;

B. The highest hourly Scheduled Demand for the month; or

C. The Ratchet Demand.

Section IV. General Provisions

Service provided under this transmission rate schedule shall be subject to the General Transmission Rate Schedule Provisions and the following Acts, as amended: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

The meaning of terms used in the transmission rate schedules shall be as defined in agreements or provisions which are attached to agreements or as in any of the above acts.

Schedule IR–87—Intergration of Resources

Section I. Availability

This schedule supersedes IR–85 and is available for firm transmission service for electric power and energy using the Main Grid and/or Secondary System of the FCRTS. The definitions of Main Grid and Secondary Systems are the same as for the FPT–87.1 and FPT–87.3 rate schedules and are contained in the General Transmission Rate Schedule Provisions. For facilities at lower voltages than the Secondary System, a different rate schedule may be specified.

Section II. Rate

The monthly charge shall be the sum of A and B where:

A. *The Demand Charge Shall Be:*

1. $0.2680 per kilowatt of billing demand; or

2. For Points of Integration (POI) specified in the Agreement as being

short distance POI's, for which Main Grid and Secondary System facilities are used for a distance of less than 75 circuit miles, the following formula applies:

[0.2 + (0.8/75 × transmission distance)] ($0.2680 per kilowatt of billing demand)

Where:

the billing demand for a short distance POI is the demand level specified in the Agreement for such POI, and the transmission distance is the circuit miles between the POI for a generating resource of the customer and a designated Point of Delivery (POD) serving load of the customer. Short distance POI's are determined by BPA after considering factors in addition to transmission distance.

B. *The Energy Charge Shall Be:* 0.91 mills/kWh of billing energy.

Section III. Billing Factors

To the extent that the Agreement provides for the customer to be billed for transmission in excess of the Transmission Demand or Total Transmission Demand, as defined in the Agreement, at the nonfirm transmission rate (currently ET–87), such transmission service shall not contribute to either the Billing Demand or the Billing Energy for the IR rate provided that the customer requests such treatmment and BPA approves in accordance with the prescribed provisions in the Agreement.

A. *Billing Demond.* The billing demand shall be the largest of:

1. The Transmission Demand, except under General Transmission Agreements where a Total Transmission Demand is defined;

2. The highest hourly Scheduled Demand for the month; or

3. The Ratchet Demand.

B. *Billing Energy.* The billing energy shall be the monthly sum of scheduled kilowatt hours.

Section IV. General Provisions

Service provided under this transmission rate schedule shall be subject to the General Transmission Rate Schedule Provisions and the following Acts, as amended: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

The meaning of terms used in the transmission rate schedules shall be as defined in agreements or provisions which are attached to agreements or as in any of the above acts.

Schedule IS–87—Southern Intertie Transmission

Section I. Availability

This schedule supersedes IS–85 and is available for all transmission on the Southern (Pacific Northwest—Pacific Southwest) Intertie.

Section II. Rate

A. *Nonfirm Rate.* The charge for nonfirm transmission of non-BPA power shall be 1.6 mills/kWh of billing energy.

B. *Firm Service.* 1. *Firm Power Transmission Rate.* The charge for firm transmission service for firm power sales, as determined by BPA, of Pacific Northwest Scheduling Utilities shall be $.825 per kW per month of billing demand.

2. *Lost Opportunity Rate.* The charge for firm transmission service for firm transactions other than firm power sales of Pacific Northwest Scheduling Utilities described in Section II.B.1, above, shall be determined as specified below:

a. *Applicobility.* Firm transmission will only be made available to purchasers under this rate schedule who have executed a contract with BPA specifying use of the Lost Opportunity Rate. The following is a nonexclusive list of transactions to which the Lost Opportunity Rate may apply:

(1) Capacity/energy and seasonal exchanges;

(2) Capacity sales; and

(3) Transactions involving extraregional resources other than those dedicated to Pacific Northwest load (i.e., transactions involving resources other than Existing Pacific Northwest Resources).

b. *Rate.* The Lost Opportunity Transmission Rate shall not be less than the Firm Power Transmission Rate (Section 11.B.1, above) nor exceed BPA's Surplus Power Contract Rate (Schedule SP–87) for demand and energy. The rate shall be determined and adjusted by quantifying the impact of the transaction on BPA's net revenues.

c. *Implementation Procedures*—Upon request, BPA shall provide the customer for a given transaction under this rate schedule with preliminary written estimates of proposed charges, adjustments including considerations of value to BPA of the proposed arrangement, and the data underlying the quantification. BPA will provide for up to 30 days of public comment on the proposed quantification of the rate. Comments will be accepted until close of business on the last working day of the specified time period. Consideration of comments and more current information may result in the final charges differing from the proposed charges. BPA shall notify all parties requesting notification of the final determination of the Lost Opportunity Rate applicable to the transaction.

Section III. Billing Factors

A. For services under Section II.A, the billing energy shall be the monthly sum of the scheduled kilowatthours, plus the monthly sum of kilowatthours allocated but not scheduled. The amount of allocated but not scheduled energy that is subject to billing may be reduced prorata by BPA due to forced intertie outages, and other uncontrollable forces that may reduce intertie capacity.

B. The billing demand shall be the Transmission Demand as defined in the Agreement.

Section IV. General Provisions

Service provided under this transmission rate schedule shall be subject to the General Transmission Rate Schedule Provisions and the following Acts, as amended: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

The meaning of terms used in the transmission rate schedules shall be as defined in agreements or provisions which are attached to agreements or as in any of the above acts.

Schedule IN–87—Northern Intertie Transmission

Section I. Availability

This schedule supersedes IN–85 and is available for all transmission on the Northern Intertie.

Section II. Rate

The charge for transmission of non-BPA power on the Northern Intertie shall be 1.22 mills/kWh.

Section III. Billing Factors

Billing Energy. The billing energy shall be the monthly sum of the scheduled kilowatthours.

Section IV. General Provisions

Service provided under this transmission rate schedule shall be subject to the General Transmission Rate Schedule Provisions and the following Acts, as amended: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

The meaning of terms used in the transmission rate schedules shall be as defined in agreements or provisions which are attached to agreements or as in any of the above acts.

Schedule IE–87—Eastern Intertie Transmission

Section I. Availability

This schedule supersedes IE–85 and is available for all nonfirm transmission on the Eastern Intertie.

Section II. Rate

The charge for transmission of nonfirm energy on the Eastern Intertie shall be 2.08 mills/kWh.

Section III. Billing Factors

Billing Energy. The billing energy shall be the monthly sum of the scheduled kilowatthours.

Section IV. General Provisions

Service provided under this transmission rate schedule shall be subject to the General Transmission Rate Schedule Provisions and the following Acts, as amended: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

The meaning of terms used in the transmission rate schedules shall be as defined in agreements or provisions which are attached to agreements or as in any of the above acts.

Schedule ET–87—Energy Transmission

Section I. Availability

This schedule supersedes Schedule ET–85, unless otherwise specified in the Agreement, with respect to delivery using FCRTS facilities other than the Southern Intertie, Eastern Intertie, or the Northern Intertie, and is available for nonfirm transmission between points within the Pacific Northwest. BPA may interrupt service which is provided under this rate schedule.

Section II. Rate

The charge for such nonfirm transmission of non-Federal electric energy shall be 1.71 mills/kWh.

Section III. Billing Factors

Billing Energy. The billing energy shall be the monthly sum of scheduled kilowatthours.

Section IV. General Provisions

Service provided under this transmission rate schedule shall be subject to the General Transmission Rate Schedule Provisions and the following Acts, as amended: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

The meaning of terms used in the transmission rate schedules shall be as defined in agreements or provisions which are attached to agreements or as in any of the above acts.

Schedule MT–87—Market Transmission

Section I. Availability

This schedule is available for transmission with respect to Western Systems Power Pool (WSPP) transactions using FCRTS facilities for Transmission Services provided to participants under the WSPP agreement.

Section II. Rate

The charge shall be determined in advance by BPA. The charge shall not exceed 33 percent of the difference between the highest Decremental Cost of generation of the WSPP and the lowest Decremental Cost of generation of the WSPP as determined by the WSPP Operating Committee during the year prior to the effective date of the WSPP agreement. The Operating Committee may determine that a subsequent redetermination is necessary based upon the immediately preceding year's experience. However, the transmission charge shall not be less than 1 mill per kilowatthour.

Section III. Billing Factors

The billing factors shall be specified in advance by BPA, as to representing the Transmission Service use or reservation.

Section IV. General Provisions

Service provided under this transmission rate schedule shall be subject to the General Transmission Rate Schedule Provisions and the following Acts, as amended: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

The meaning of terms used in the transmission rate schedules shall be as defined in agreements or provisions which are attached to agreements or as in any of the above acts.

General Transmission Rate Schedule Provisions

Section I. Adoption of Revised Transmission Rate Schedules and General Transmission Rate Schedule Provisions

A. *Approval of Rates.* These rate schedules and General Transmission Rate Schedule Provisions (GTRSP) shall become effective upon interim approval or final confirmation and approval by the Federal Energy Regulatory Commission. BPA will request FERC approval effective October 1, 1987. BPA is requesting that all proposed Transmission Rate Schedules be effective for a period of 2 years, from October 1, 1987, through September 30, 1989, with the exception of the FPT 87.3 Schedule, which would be effective for a period of 3 years, through September 30, 1990.

B. *General Provisions.* These 1987 Transmission Rate Schedules and associated GTRSP supersede in their entirety BPA's 1985 Transmission Rate Schedules and GTRSP (which became effective July 1, 1985) but do not supersede prior rate schedules required by agreement to remain in force.

C. *Interpretation.* If a provision in the executed Agreement is in conflict with a provision contained herein, the former shall prevail.

Section II. Billing Factor Definitions and Billing Adjustments

A. *Billing Factors.* 1. *Scheduled Demand.* The largest of hourly amounts wheeled which are scheduled by the customer during the time period specified in the rate schedules.

2. *Metered Demond.* The Metered Demand in kilowatts shall be largest of the 60-minute clock-hour integrated demands measured by meters installed at each POD during each time period specified in the applicable rate schedule. Such measurements shall be made as specified in the Agreement. BPA, in determining the Metered Demand, will exclude any abnormal readings due to or resulting from (a) emergencies or breakdowns on, or maintenance of, the FCRTS; or (b) emergencies on the customer's facilities, provided that such facilities have been adequately maintained and prudently operated as determined by BPA. If more than one class of power is delivered to any POD, the portion of the metered quantities assigned to any class of power shall be as agreed to by the parties. The amount so assigned shall constitute the Metered Demand for such class of power.

3. *Transmission Demand.* The demand as defined in the Agreement.

4. *Total Transmission Demand.* The sum of the transmission demands as defined in the Agreement.

5. *Ratchet Demand.* The maximum demand established during the previous 11 billing months. Exception: If a Transmission Demand or Total Transmission Demand has been decreased pursuant to the terms of the Agreement during the previous 11 billing months, such decrease will be reflected in determining the Ratchet Demand.

B. *Billing Adjustments.* Average Power Factor. The adjustment for average power factor, when specified in a transmission rate schedule or in the Agreement, shall be made in accordance with the average power factor section of the General Wheeling Provisions.

To maintain acceptable operating conditions on the Federal system, BPA may restrict deliveries of power at any time that the average leading power factor or average lagging power factor for all classes of power delivered to such point or to such system is below 85 percent.

Section III. Other Definitions

Definitions of the terms below shall be applied to these provisions and the Transmission Rate Schedules, unless otherwise defined in the Agreement.

A. *Agreement.* An agreement between BPA and a customer to which these rate schedules and provisions may be applied.

B. *Decrementol Cost.* As used in the MT rate schedule, Decremental Cost is as defined in the WSPP agreement.

C. Eastern Intertie. The segment of the FCRTS for which the transmission facilities consist of the Townsend-Garrison double-circuit 500 kV transmission line segment including related terminals at Garrison.

D. *Electric Power.* Electric peaking capacity (kW) and/or electric energy (kWh).

E. *Entity.* An owner of a resource other than a Scheduling Utility.

F. *Existing Pacific Northwest Resources.* As used in the IS rate schedule, existing PNW resources are:

a. The Pacific Northwest resources of Scheduling Utilities that were operational on September 7, 1984;

b. The extraregional resources of Scheduling Utilities dedicated to Pacific Northwest load on September 7, 1984, which include pro rata portions of Montana Power Company's and Pacific Power and Light Company's shares of Colstrip 4 based on the ratio of their regional loads to their total loads and the Idaho Power Company's share of Valmy 2; and

c. The Pacific Northwest resources of Pacific Northwest Entities that were operational on September 7, 1984, and for which a continuing relationship had been established by that date with a Scheduling Utility or BPA to serve Pacific Northwest load.

Existing Pacific Northwest Resources do not include BPA resources.

G. *Firm Transmission Service.* Transmission service which BPA provides for any non-BPA power except for transmission service which is scheduled as nonfirm. If the firm service is provided pursuant to an Agreement, the terms of the Agreement may further define the service.

H. *Integrated Network.* The segment of the FCRTS for which the transmission facilities provide the bulk of transmission of electric power within the Pacific Northwest, excluding facilities not segmented to the network in the Wholesale Power Rate Development Study used in BPA's rate development.

I. *Main Grid.* As used in the FPT and IR rate schedules, that portion of the Integrated Network with facilities rated 230 kV and higher.

J. *Main Grid Distance.* As used in the FPT rate schedules, the distance in airline miles on the Main Grid between the POI and the POD. multiplied by 1.15.

K. *Main Grid Interconnection Terminal.* As used in the FPT rate schedules, Main Grid terminal facilities that interconnect the FCRTS with non-BPA facilities.

L. *Main Grid Miscellaneous Facilities.* As used in the FPT rate schedules, switching, transformation, and other facilities of the Main Grid not included in other components.

M. *Main Grid Terminal.* As used in the FPT rate schedules, the Main Grid terminal facilities located at the sending and/or receiving end of a line exclusive of the Interconnection terminals.

N. *Nonfirm Transmission Service.* Interruptible transmission service which BPA may provide for non-BPA power.

O. *Northern Intertie.* The segment of the FCRTS for which the transmission facilities consist of two 500 kV lines between Custer substation and the United States-Canadian border, one 500 kV line between Custer and Monroe Substations, and two 230 kV lines from Boundary substation to the United States-Canadian border, and the associated substation facilities.

P. *Point of Integration (POI).* Connection points between the FCRTS and non-BPA facilities where non-Federal power is made available to BPA for wheeling.

Q. *Point of Delivery (POD).* Connection points between the FCRTS and non-BPA facilities where non-Federal power is delivered to a customer by BPA.

R. *Scheduling Utility.* A utility, not including BPA, that operates a generation control area within the Pacific Northwest, and any utility within BPA's generation control area that schedules with BPA and is designated as a computed requirements customer.

S. *Secondary System.* As used in the FPT and IR rate schedules, that portion of the Integrated Network facilities with operating voltage of 115 kV or 69 kV.

T. *Secondary System Distance.* As used in the FPT rate schedules, the number of circuit miles of Secondary System transmission lines between the secondary POI or the Main Grid and the POD or the lower voltage FCRTS facilities which may be used on a use-of-facility basis.

U. *Secondary System Interconnection Terminal.* As used in the FPT rate schedules, the terminal facilities on the Secondary System that interconnect the FCRTS with non-BPA facilities.

V. *Secondary System Intermediate Terminal.* As used in the FPT rate schedules, the first and final terminal facilities in the Secondary System transmission path exclusive of the Secondary System Interconnection terminals.

W. *Secondary Transformation.* As used in the FPT rate schedules, transformation from Main Grid to Secondary System facilities.

X. *Southern Intertie.* The segment of the FCRTS for which the major transmission facilities consist of two 500 kV AC lines from John Day Substation to the Oregon-California border, a portion of the 500 kV AC line from Buckley Substation to Summer Lake Substation, and one 1,000 kV DC line between the Celilo Substation and the Oregon-Nevada border, and associated substation facilities.

Y. *Transmission Service.* As used in the MT rate schedule, Transmission Service is as defined in the WSPP agreement.

Section IV. Billing Information

A. *Payment of Bills.* Bills for transmission service shall be rendered monthly by BPA. Failure to receive a bill shall not release the customer from liability for payment. Bills for amounts due of $50,000 or more must be paid by direct wire transfer; customers who expect that their average monthly bill will not exceed $50,000 and who expect special difficulties in meeting this requirement may request, and BPA may approve, an exemption from this requirement. Bills for amounts due BPA under $50,000 may be paid by direct wire transfer or mailed to the Bonneville Power Administration. P.O. Box 6040. Portland, Oregon 97228–6040, or to another location as directed by BPA. The procedures to be followed in making direct wire transfers will be provided by the Office of Financial Management and updated as necessary.

1. Computation of Bills. The transmission billing determinant is the electric power quantified by the method specified in the Agreement or Transmission Rate Schedule. Scheduled power or metered power will be used.

The transmission customer shall provide necessary information to BPA for any computation required to determine the proper charges for use of the FCRTS, and shall cooperate with BPA in the exchange of additional information which may be reasonably useful for respective operations.

Demand and energy billings for transmission service under each applicable rate schedule shall be rounded to whole dollar amounts, by eliminating any amount which is less than 50 cents and increasing any amounts from 50 cents through 99 cents to the next higher dollar.

2. Estimated Bills. At its option, BPA may elect to render an estimated bill to be followed at a subsequent billing date by a final bill. The estimated bill shall have the validity of and be subject to the same payment provisions as a final bill.

3. Due Date. Bills shall be due by close of business on the 20th day after the date of the bill (due date). Should the 20th day be a Saturday, Sunday, or holiday (as celebrated by the customer), the due date shall be the next following business day.

4. Late Payment. Bills not paid in full on or before close of business on the due date shall be subject to a penalty charge of $25. In addition, an interest charge of one-twentieth percent (0.05 percent) shall be applied each day to the sum of the unpaid amount and the penalty charge. This interest charge shall be assessed on a daily basis until such time as the unpaid amount and penalty charge are paid in full.

Remittances received by mail will be accepted without assessment of the charges referred to in the preceding paragraph provided the postmark indicates the payment was mailed on or before the due date. Whenever a power bill or a portion thereof remains unpaid subsequent to the due date and after giving 30 days advance notice in writing, BPA may cancel the contract for service to the customer. However, such cancellation shall not affect the customer's liability for any charges accrued prior thereto under such agreement.

5. Disputed Billings. In the event of a disputed billing, full payment shall be rendered to BPA and the disputed amount noted. Disputed amounts are subject to the late payment provisions specified above. BPA shall separately account for the disputed amount. If it is determined that the customer is entitled to the disputed amount, BPA shall refund the disputed amount with interest, as determined by BPA's Office of Financial Management.

BPA retains the right to verify, in a manner satisfactory to the Administrator, all data submitted to BPA for use in the calculation of BPA's rates and corresponding rate adjustments. BPA also retains the right to deny eligibility for any BPA rate or corresponding rate adjustment until all submitted data have been accepted by BPA as complete, accurate, and appropriate for the rate or adjustment under consideration.

6. Revised Bills. At its option, BPA may render a revised bill. A revised bill shall replace all previous bills issued by BPA that pertain to a specified customer for a specified billing period if the amount of the revised bill is less than the amount of the original bill. If the amount of the revision causes an additional amount to be due BPA beyond the original bill, a revised bill will be issued for the difference.

The date of the revised bill shall be determined as follows:

a. If the amount of the revised bill is equal to or less than the amount of the bill which it is replacing, the revised bill shall have the same date as the replaced bill.

b. If the amount of the revised bill is greater than the amount of the bill which it is replacing, the date of the revised bill shall be its date of issue.

IV. Major Studies

BPA has prepared several analyses and studies in the process of developing the transmission rates presented in this notice. They are the Loads and Resources Study, Marginal Cost Analysis, Revenue Requirement Study, Segmentation Study, Wholesale Power Rate Development Study, and the Transmission Rate Design Study. The Revenue Requirement Study, the Segmentation Study, the cost of service section of the Wholesale Power Rate Development Study, and the Transmission Rate Design Study have the most direct bearing on the rates filed in this notice. Their relevance to the proposed transmission rates is described below.

A. *Revenue Requirement Study.* The Bonneville Project Act, the Flood Control Act, the Transmission System Act, and the Pacific Northwest Power Act require BPA to design rates that are projected to return revenues sufficient to recover the cost of producing, acquiring, conserving, and transmitting the electric power that BPA markets, and to recover the cost of transmission and generation facilities. The Revenue Requirement Study also includes a determination of whether current rates will produce enough revenue to satisfy BPA's repayment obligation.

The Federal Energy Regulatory Commission (FERC) has set forth a number of requirements that would enable the FERC to fulfill its obligations under the Pacific Northwest Power Act. 49 FERC 4130. BPA is required to establish transmission rates that provide an equitable allocation of the costs of the Federal transmission system between Federal and non-Federal power using the system. In addition, BPA is required to develop separate repayment studies for the generation and transmission portions of the FCRPS. The 1987 initial Revenue Requirement Study incorporates separate repayment studies for the generation and transmission components of the FCRPS for FY 1988 and FY 1989. The Revenue Requirement Study for the 1987 initial rate proposal is based on revenue and cost estimates for FY 1988 and FY 1989. In order to meet its fiscal responsibilities, BPA's Revenue Requirement Study reflects actual amortization and interest payments paid through September 30, 1985. In addition, it reflects all FCRPS obligations pursuant to the Pacific Northwest Power Act, including exchange costs.

BPA's total revenue requirement is determined within the Revenue Requirement Study. The study used for this proposal demonstrates that, for the two test years FY 1988 and FY 1989, the revenue requirements are projected to be $3.05 and $3.11 billion respectively.

All expenses and obligations to be recovered through FCRPS rates must be functionalized between generation and transmission. The various methods for functionalization include the use of the Direction of Effort Study, specific identification, and the general application of constructive associations. The results of this process are then used to construct the separate generation and transmission revenue requirements used in the rate proposals.

The Revenue Requirement Study also includes the Repayment Study which demonstrates the adequacy of the proposed revenues necessary to recover

all the cost of the FCRPS over the repayment period.

B. *Segmentation Study.* BPA operates and maintains the Federal Columbia River Transmission System (FCRTS) in order to provide various transmission services throughout the region. Because most services do not require the use of the entire system, the FCRTS is divided into nine segments, each providing a distinct type of service. The nine segments are: integrated network; Pacific Northwest-Southwest (Southern) Intertie; Northern Intertie; Eastern Intertie; generation integration; fringe area; and delivery segments for public agency, direct-service industrial, and investor-owned utility customers.

The Segmentation Study categorizes the facilities of the FCRTS according to the types of services they provide, thereby identifying the associated costs of these services. This provides the basis for segmenting the projected transmission expenses used in BPA's rate proposals. The results of the study include the historical and projected investment amount and the average of the last three years' operations and maintenance expenses. In addition, the facilities of the integrated network are similarly divided among distinct services.

This division of the FCRTS according to specific services is essential to the equitable allocation of transmission costs between Federal and non-Federal customers using the system.

C. *Wholesale Power Rate Development Study.* The Wholesale Power Rate Development Study (WPRDS) combines the Cost of Service Analysis and the Wholesale Power Rate Design Study used in previous rate filings. The first section of the WPRDS performs all the steps in the rate development process previously performed in the Cost of Service Analysis. The second section performs all the steps in the rate development process previously performed in the Wholesale Power Rate Design Study. The Wholesale Power Rate Design Study section does not directly relate to the development of transmission rates.

Cost of Service Analysis. The cost of service section of the Wholesale Power Rate Development Study apportions BPA's test year revenue requirement to customer classes based on the use of specific types of service by each customer class. The results of the Revenue Requirement and Segmentation Studies are used in the cost of service study to determine the costs of providing such services to BPA's customers. The cost of service study further identifies transmission costs of specific types of service by classification and allocation as described below.

Classification. BPA classifies costs to the energy and capacity components of electric power. In this rate filing, generation costs are uniformly classified with 80 percent of the generation costs to energy and 20 percent to capacity. This uniform classification adopted for the cost of service study is based on the results of BPA's Marginal Cost Analysis and reflects the relative costs of acquiring additional energy and capacity resources in both the long and the short run. Transmission costs are classified entirely to capacity.

Allocation. The final major step in the cost of service study is to allocate the functionalized, segmented, and classified costs to customer classes.

Costs are allocated to classes of service on the basis of the relative use of services. Energy costs are allocated to customer classes on the basis of relative kilowatthour use by each class and on the proportion of total load placed on each resource pool by that class. The measure used for allocating peaking capacity costs is the coincidental peak megawatt. Coincidental peak loads measure the contribution of each customer class's load to system peak loads. Because the power system is constructed to meet coincidental peak loads, the coincidental peak megawatt (rather than the customer's monthly peak load) is used as a basis for allocating the costs of generation and transmission capacity.

Costs of the nine Federal transmission system segments and exchange costs functionalized to transmission are allocated on the basis of coincidental peak megawatts that are not seasonally differentiated. Costs are allocated to customer classes on the basis of deemed use of the transmission system by power customers and on the basis of actual use of the transmission system by wheeling (non-Federal transmission) customers. The cost of service is the principal mechanism used to equitably allocate costs between Federal and non-Federal power utilizing the FCRTS.

D. *Transmission Rate Design Study.* 1. Transmission System Revenue Requirement Adjustment. Prior to the design of transmission rates, the WPRDS-derived network wheeling (IR and FPT) revenue requirement must be adjusted to account for revenue in excess of allocated costs. Revenue received from the ET–87 and the Nonfirm Energy (NF–87) rates are credited against the allocated costs of wheeling service derived in the WPRDS. The credit from the NF–87 rate is functionalized between generation and transmission by considering the transmission portion of the rate as the average cost per kilowatthour of transmitting energy for wholesale power services. The transmission credit is obtained by multiplying this average cost by the estimated nonfirm energy sales. It is then divided among those segments of the transmission system which carry nonfirm energy sales, except the three interties, in proportion to their allocated costs. The anticipated revenue associated with the ET–87 rates is credited against Network costs.

2. Proposed Wheeling Rate Schedules. a. *Formula Power Transmission (FPT).* The FPT–87 rate schedule is available for the firm wheeling of power. The form of this rate includes a distance or mileage component for transmission lines and various transformation and terminal charges. The FPT rate form is designed to reflect a wheeling formula which has been prescribed historically by contract provisions.

In the design of the FPT–87 rate, the first step is to quantify costs for the specific types of transmission facilities treated in the rate components. Estimates of the use of these facilities are determined from a power flow of the projected peak load period for the test year. The power flow study assumes certain resource and load conditions that BPA believes are reasonable for normal hydro conditions. Unit costs for the FPT rate components are derived by dividing facility cost by power flow facility use.

b. *Integration of Resources (IR).* The IR–87 rate is a flexible transmission service designed to reflect BPA's postage-stamp pricing policy. The IR service does not recognize specific contract paths, but rather provides access to all FCRTS facilities contained in the definitions of Main Grid and Secondary System.

The IR–87 rate is calculated by dividing the adjusted revenue requirement for the class into two equal parts to reflect a 50–50 classification of costs to capacity and energy. The quotient of these costs and the appropriate billing determinant (contract demand for capacity-related costs; total energy usage for energy) yields the rates.

As in the IR–85 rate a short-distance discount formula is retained in the proposed IR–87 rate. Utilities have a choice of either the FPT rate schedule or the IR–87 rate schedule as the only rate to apply to all of their firm wheeling needs over Main Grid and Secondary System facilities of the FCRTS, except as otherwise agreed by BPA. Utilities may choose the rate schedule which yields the lower total charge for transmission service.

c. *Incidental Energy Transmission (ET), Intertie (IN, IE, IS) Transmission, and Market Transmission (MT).* For this rate filing, rate schedules are again offered on the Northern and Southern Interties which apply to all wheeled power on these segments whatever the characteristics of the power. The IE rate schedule applies only to nonfirm energy wheeled on the Eastern Intertie. The ET rate will be limited to intraregional FCRTS facilities excluding the interties.

The schedule for Energy Transmission (ET–87) class of service is not allocated costs in the WPRDS. Accordingly it is necessary to determine the level of the rate by other means. The ET–87 rate is designed to approximate the rate level of firm wheeling charges on the network by dividing the WPRDS revenue requirement for the firm wheeling class by expected energy usage of firm wheeling on the system.

For the 1987 transmission rate proposal, BPA is proposing to restructure the Southern Intertie rates. The proposed IS–87 rate consists of three parts: (1) A mills per kilowatthour rate applicable to nonfirm use or hourly reservation of intertie capacity; (2) a $ per kW average cost-based rate for firm use, assured delivery; and (3) a charge to be determined, based on the impact to BPA net revenues for allowing wheeling service. This latter charge applies to a variety of transactions including firm use for capacity/energy and seasonal exchanges, and for transactions involving extraregional resources.

The Northern Intertie (IN–87) rate schedule is calculated by dividing segment costs by projected wheeling energy.

The Eastern Intertie (IE–87) rate is developed by dividing total costs by Colstrip demands assuming a 70 percent plant factor. Any revenues from this rate are credited against the revenue requirement from firm wheeling over the Eastern Intertie pursuant to the Townsend-Garrison Transmission (TGT–1) rate schedule.

BPA is proposing a new rate schedule in the 1987 transmission rate proposal called Market Transmission (MT–87). This rate schedule was developed for use among Western Systems Power Pool (WSPP) participants and has a flexible service charge with a ceiling, initially of 33 mills/kWh, and a floor of 1 mill per kilowatthour.

Other Studies. An environmental assessment documenting the environmental impacts of the proposed rates and alternatives will be available.

Issued in Portland, Oregon, December 10, 1986.

Robert E. Ratcliffe,

Acting Administrator.

[FR Doc. 86–28899 Filed 12–29–86; 8:45 am]

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Tuesday
December 30, 1986

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 216

North Pacific Fur Seal—Pribilof Island Population; Designation as Depleted; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 50219-6214]

North Pacific Fur Seal—Pribilof Island Population; Designation as Depleted

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; notice of meeting.

SUMMARY: The NMFS proposes to designate the Pribilof Island population of North Pacific fur seals as depleted under the Marine Mammal Protection Act (MMPA). This action is required by the MMPA when a species or population stock falls below its optimum sustainable population (OSP). Since the current Pribilof Island population of North Pacific fur seals is below 50 percent of the population levels observed in the 1940s and early 1950s, this population is believed to be below a level which can maintain maximum net productivity, the lower bound of the OSP range. If this population stock is designated as depleted, the MMPA requires that certain additional restrictions on taking and importation be applied.

DATES: Comments must be submitted on or before February 6, 1987; public meeting, January 21, 1987, 10 a.m.; requests to present oral comments must be received on or before January 13, 1987.

ADDRESSES: Written comments and requests to present oral comments may be mailed to Mr. Robert B. Brumsted, Acting Director, Office of Protected Species and Habitat Conservation, F/M4, NMFS, Washington, DC 20235; the meeting will be held in Room C117, Federal Building, 701 C Street, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Georgia Cranmore, 202–673–5351, or Michael Gosliner, 202–673–5206.

SUPPLEMENTARY INFORMATION:

Background

A Status Review of the North Pacific Fur Seal (*Callorhinus ursinus*) on the Pribilof Islands, Alaska, was prepared in response to a petition by the Humane Society of the United States to add the North Pacific fur seal to the U.S. List of Endangered and Threatened Wildlife, according to the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543). A notice of the NMFS determination not to list the fur seal as a threatened species, incorporating the complete text of the Status Review for the Pribilof Island population, was published in the **Federal Register** on March 6, 1985 (50 FR 9232). The denial of the ESA petition was based on a number of factors, including the size of the species population. However, conclusions regarding the status of the Pribilof Island population indicated that it is probably below 50 percent of its carrying capacity based on a comparison of current population levels and those observed in the 1940s and early 1950s.

Carrying capacity is the number of animals that a given ecosystem can support in terms of food availability, space requirements, and other factors. Carrying capacity can change if one or more of the environmental factors on which the population depends also changes. In the case of the Pribilof Island population of North Pacific fur seals, however, the Status Review concludes that the carrying capacity of the Bering Sea and North Pacific Ocean for fur seals has probably not changed significantly since peak numbers of animals were observed during the 1940s–1950s.

Carrying capacity is the upper bound of a range of population levels known as Optimum Sustainable Population (OSP). When consistent with its objective of maintaining the health and stability of the marine environment, the goal of the Marine Mammal Protection Act of 1972 (MMPA), 16 U.S.C. 1361–1407, is the maintenance of OSP for marine mammals. OSP as defined at 50 CFR 216.3 is a range of population levels from the largest supportable within the ecosystem (carrying capacity) to the population level that results in maximum net productivity (MNP). MNP is the greatest net annual increment in population numbers or biomass resulting from additions to the population due to reproduction and growth, less losses due to natural mortality (See 41 FR 55536, December 21, 1976).

The Status Review found that the population size of North Pacific fur seals at which maximum productivity would occur is approximately 60 percent of the carrying capacity. Since the Pribilof Island population is at less than 50 percent of carrying capacity, it falls below the lower bound of OSP, and is, by definition, depleted. The MMPA defines "depletion" to mean, among other things, "any case in which the Secretary [of Commerce], after consultation with the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under . . . this Act, determines that a species or population stock is below its optimum sustainable population . . . ." The Marine Mammal Commission (MMC) provided a formal recommendation to designate the Pribilof Island population of North Pacific fur seals as depleted under the MMPA.

Once a species or population stock has been designated as depleted, takings from that population are permitted only by Alaskan Natives for subsistence and handicraft purposes, for research purposes, and small incidental takes may be authorized under certain circumstances. In addition, the following MMPA restrictions apply: A depleted species or population stock is not eligible for a waiver of the moratorium on taking and importation, 16 U.S.C. 1371(a)(3)(A); it may not be taken or imported for public display purposes and no taking may be permitted in the course of commercial fishing operations, 16 U.S.C. 1371(a)(3)(B); it may not be taken pursuant to the small take exemption of section 101(a)(4), 16 U.S.C. 1371(a)(4); however, Pub. L. 99–659, signed November 14, 1986, extends the coverage of section 101(a)(5), 16 U.S.C. 1371(a)(5), to depleted species such that small incidental takes of such species or population stocks can be authorized for specified activities other than commercial fishing; and regulatory restrictions under the MMPA may be imposed on the taking of the species or stock by Alaskan Natives, 16 U.S.C. 1371(b). In the case of the Pribilof Island population of fur seals, subsistence regulations have already been issued under the authority of the Fur Seal Act of 1966, as amended (FSA) (16 U.S.C. 1151 et seq.) (See 51 FR 24828, July 9, 1986). Thus, the NMFS does not contemplate further rulemaking regarding native taking of fur seals as a consequence of a possible depletion designation.

Data collected by the NMFS this decade suggest that the number of fur seals taken in fishing operations in the North Pacific is insignificant (perhaps less than 50 per year based on observer reports including those taken in the Japanese high seas mothership salmon driftnet fishery, which may be from a different population), relative to the total fur seal population on the Pribilof Islands (about 800,000). Once the Pribilof Island population is designated as depleted, however, no further permits can be granted to allow incidental takes. Thus, any incidental take of fur seals from the Pribilof Islands during the course of commercial fishing operations will result in a violation of the MMPA. Assuming all reasonable efforts are made to avoid taking a depleted species, and that annual takes remain at insignificant levels, no serious adverse impacts are expected on foreign or domestic fishing fleets.

Until 1985, management of fur seals fell only partially within the purview of the MMPA by virtue of section 113. Section 113 provides that the MMPA shall not be considered to contravene the provisions of any existing international treaty or convention and its implementing legislation which applies to the taking of marine mammals. The exception created by section 113 of the MMPA clearly covered the Interim Convention on Conservation of North Pacific Fur Seals of 1957 and ensured that the Convention, and the FSA sections that implement the Convention, superseded application of the MMPA. These views received judicial approval in *International Fund for Animal Welfare* v. *Baldrige* (D.D.C. Civ. Action No. 84–1838 Order of the Court dated June 28, 1984). Judge Gesell found that the fur seal population was below its OSP level, but that the commercial harvest was not barred by the MMPA's moratorium on taking as long as the Convention remained in force.

From 1957 through 1984, a commercial harvest of fur seals on the Pribilof Islands was conducted under the authority of the Convention. The Convention came into force on October 14, 1957, and was extended in 1963, 1969, 1976, and 1980. Under the terms of the 1980 extension, the Convention expired on October 14, 1984. On October 12, 1984, the United States, Canada, Japan, and the Soviet Union signed a Protocol that, upon acceptance by all four nations, would have extended the Convention until October 13, 1988. Japan, Canada, and the Soviet Union ratified the 1984 Protocol. On March 20, 1985, the President transmitted the Protocol to the Senate, requesting its advice and consent. On June 13, 1985, a hearing was held on the Protocol before the Senate Committee on Foreign Relations, but no final action has yet been taken.

In consultation with the Departments of State and Justice, and the MMC, NOAA determined that no commercial harvest could be conducted under existing domestic law, absent Senate ratification of the Protocol extending the Convention or provisional application of the Protocol. Accordingly, on July 8, 1985 (50 FR 27914), the NMFS issued an emergency interim rule to govern subsistence taking of North Pacific fur seals for the 1985 season under the authority of section 105(a) of the FSA. The purpose of the interim rule was to limit the take of seals to a level providing for the legitimate subsistence needs of the Pribilovians and to restrict taking by sex, age, and season for herd management purposes. A permanent subsistence rule was proposed on May 15, 1986 (51 FR 17896), and a final rule was published on July 9, 1986 (51 FR 24828).

During consideration of the subsistence harvest regulations, a number of issues were raised concerning the OSP of the fur seals. In the preamble to the 1985 rule, the NMFS summarized the findings of the March 6, 1985 Status Review concerning OSP, and requested comments on and any additional data relevant to the issue of depletion for the North Pacific fur seal. At that time the MMC provided its formal recommendation to designate the Pribilof Island population of North Pacific fur seals as depleted under the MMPA. Four other commenters on the rule also requested a finding of depletion. Since a finding of depletion is a condition precedent to regulation of a subsistence harvest under the MMPA but not under the FSA, the NMFS chose not to make such a finding part of its 1986 proposed rulemaking, under section 105(a) of the FSA, and to address the issue independently. As noted by the MMC in comments on the interim rule, the designation of depletion carries with it certain restrictions which may affect the interests of private parties and other Federal and state agencies. Interested parties should therefore be provided an opportunity to review and comment on any proposed designation as an issue separate from any proposed subsistence rules.

When the proposed permanent rule on Subsistence Taking of North Pacific Fur Seals (51 FR 17898) was published on May 15, 1986, the NMFS indicated that any designation of depletion for fur seals would follow separate notice-and-comment rulemaking procedures. The use of informal rulemaking to designate a species as depleted is consistent with past practice. The Hawaiian monk seal (*Monachus schauinslandi*) and the bowhead whale (*Balaena mysticetus*) were declared depleted through informal rulemaking after 30-day comment periods (see 41 FR 24393 and 41 FR 30120 for Hawaiian monk seals and 42 FR 29946 and 42 FR 60149 for bowhead whales). Support for using informal rulemaking can be found in Section 102 of the MMPA. For example, section 102(d) provides that section 102 (b) and (c) prohibitions on importation shall not apply to items imported into the United States "before the date on which the Secretary publishes notice in the **Federal Register** of his proposed rulemaking with respect to the designation of the species or stock concerned as depleted . . ." 16 U.S.C. 1372(d). The use of informal rulemaking to make a depletion designation is supported by recommendation of the MMC.

Following publication of the proposed permanent rule on Subsistence Taking of North Pacific Fur Seals, the MMC repeated its request that the Pribilof Island population be designated as depleted. The U.S. Fish and Wildlife Service and the Center for Environmental Education also recommended a finding of depletion. The MMC stated its position that the designation of fur seals in this instance is mandatory and not optional since the population is below its OSP. The State of Alaska also addressed the depletion issue in its comments on the proposed rule. The Alaska Governor's Office urged a very careful and thorough review of all available scientific data before any proposal is made on this issue. The State further commented that "miscalculations about fur seals will have serious ramifications for management of other resources and for the Pribilof Islanders." The State questioned whether or not population levels attained during the 1940s and early 1950s reflect the actual long-term carrying capacity of the environment for fur seals, and whether or not the annual rate of decline is actually as high as reported.

In the preamble to the final permanent rule (51 FR 24833) the NMFS responded to comments on depletion by stating its intention to propose a separate rule designating the Pribilof Island population as depleted. The preamble to this rule would contain summaries of all pertinent scientific information for thorough public review and discussion prior to a final decision on the depletion designation.

During the final drafting stage of the proposed rule, the NMFS received two petitions, requesting rulemaking to designate the Pribilof Island population of North Pacific fur seals as depleted under the MMPA, from the following individuals:

(1) Donald C. Mitchell, on behalf of the Kokechik and Qaluyaat Fishermen's Associations, representing Yup'ik Eskimo commercial and subsistence fishermen, dated October 24, 1986; and

(2) Roger E. McManus, on behalf of the Center for Environmental Education, dated October 30, 1986.

Copies of these petitions may be obtained by writing to the address listed above.

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Interest has been expressed by Alaskan Native groups and some Congressional offices in a public meeting in Alaska on the proposed rule. Accordingly, the NMFS is announcing a meeting, on the date and at the address listed above, to accept oral comments and to answer any questions concerning the proposed rule.

Population Status

The general biology of the North Pacific (or northern) fur seal (*Callorhinus ursinus*) is described in Fiscus (1978), Lander (1979), and Fowler (in press (c)). In the eastern North Pacific, most of the fur seal population breeds on the Pribilof Islands, located in the eastern Bering Sea. Information on the distribution of fur seals may be found in Kajimura (1984), Fiscus (1978), and Bigg (1982).

Each spring, fur seals return to their breeding island from pelagic winter foraging grounds. Adult males arrive first and establish territories on the breeding rookeries. Pregnant females begin arriving in June and most pupping occurs in early July. Pups and older animals leave the islands in early November. The early winter migration takes them to the coasts of British Columbia, Washington, Oregon, and California. Older males appear to remain in the northern part of the range, while young males and females of all ages spend the winter feeding in the southern part. The northward migration begins in March to bring the animals back to the breeding colonies on the Pribilof Islands where the annual cycle is repeated.

Females generally begin giving birth to pups at about 5 to 6 years. Peak reproductive activity occurs between 7 to 14 years. The pregnancy rate of adult females is between 60 and 80 percent depending on age. Males reach peak reproductive activity at about 9 or 10. Fur seals from the Pribilof Islands feed in the vicinity of the islands during the breeding season and throughout their range during winter. Fur seals feed on a wide range of different fish and cephalopod species of about 20 to 30 cm in length. They are opportunistic feeders, and the composition of the diet appears to depend very heavily on the composition of suitably-sized forage species available (Kajimura 1984).

Research conducted on the Pribilof Island population of the North Pacific fur seal prior to the mid-1960s is reviewed by Scheffer, Fiscus, and Todd (1984). Research and management since the 1960s are documented in Roppel (1984). Additional information on the history of research and management of this population is found in Roppel and Davey (1965). Based on the data resulting from the research described in these publications, periodic descriptions of the status of the Pribilof Island population have been produced (e.g., Johnson 1975, Lander and Kajimura 1982, Lander 1979, and Fowler 1985a). Accounts of stock size, abundance, and trends can be found in the Workshop Reports of the Standing Scientific Committee of the North Pacific Fur Seal Commission (NPFSC) (NPFSC 1984), Lander (1979), Scheffer et al. (1984), and Fowler (1985a).

A scientific workshop was held in November 1983 to attempt to establish the status of the Pribilof Island population. However, the attendees concluded that "Given the available data and analyses, it is not possible to clearly determine whether the Pribilof fur seal population is currently at, above, or below carrying capacity levels; whether carrying capacity has changed significantly in the last two or three decades; or whether the observed population decline is due to declining — carrying capacity, increased mortality, or some combination of both." (Page 17, "Report of Workshop on Status of Northern Fur Seals, Pribilof Islands, November 14–16, 1983, Northwest and Alaska Fisheries Center, NMFS, Seattle, WA.)

The total population of North Pacific fur seals is between 1.19 and 1.23 million (Fowler 1985a), compared to the estimated 1.77 million seals in the late 1970s (Lander 1979). The reduced population level follows declines observed on Robben Island in the western Pacific, and especially on the Pribilof Islands. Approximately 72 percent of the total fur seal population breeds on the Pribilof Islands. The estimated Pribilof Island stock size in the late 1970s was 1.3 million and only 871,000 in 1983 (NPFSC 1984), a decline of one-third in less than a decade. The current (1986) population is about 800,000.

The number of pups born each year is one index of total population size. On St. Paul Island, the number of pups born increased from about 67,000 in 1912 to about 162,000 in 1924. No records exist for 1925 to 1939. There is some doubt concerning the validity of the 1940–1950s pup estimates, and, consequently, the size of the population existing at that time. For example, the estimate of the 1940 year class (469,000 pups born on St. Paul Island (York 1985a)) was based on a sample of only one rookery, with no confidence interval attached to the estimate. Thus, this estimate may have been seriously biased. Estimates of the size of the pup population in the early 1950s (about 450,000) are also open to question. These estimates were based on back calculations of bull counts in the late 1950s and early 1960s using a sample of adult males, whose age distribution may not have been representative of the adult male population. The female harvest (1956–68) is an additional factor that may have caused a bias in the original estimate of pups produced in the 1950s. It is possible that the estimates of pup numbers in the 1940s and early 1950s are too high and the decline in pup numbers from an estimated 450,000 in the mid 1950s to about 172,000 in the mid 1980s (or a decline of about 62 percent) may not be a true index of the decline in the population as a whole.

In view of the lack of complete reliability on the estimates of pups in the 1940s and early 1950s, other comparisons can be made to provide insight into the approximate level of decline in the population. For example, the mean pup estimate on St. Paul Island for the period 1962–1964 was 274,500, and the mean of the estimate for 1984–1986 was 174,600 or about 36 percent less. According to York and Hartley (1981) there would have been 60,000 more pups born by 1963 had there been no female harvest. This results in an estimated 334,500 pups born in 1956, for a decline of 48 percent to the 1984–86 estimate.

At the 1983 workshop on the status of fur seals, referenced above, the participants recognized that there were several indicators, in addition to pup numbers, that might suggest the current status of the population relative to the apparent peak in abundance in the 1940s and early 1950s. In 1983, harem bull estimates (down 53 percent), idle male estimates (down 56 percent), and commercial harvest levels (down 50 percent), had all declined significantly since the 1940s and early 1950s. The foregoing information, and preliminary analyses of photographs of rookery space utilization since about 1915, suggest a decline of about 50 percent in the population.

The reduction in the numbers of fur seals on the Pribilof Islands since 1950 is the result of at least two phases of decline separated by a period of limited increase. The first decline occurred between the mid 1950s and the late 1960s when the commercial harvest of female seals was allowed. Between the late 1960s and mid 1970s the number of pups born increased slightly. The second decline on the Pribilof Islands since 1950 started with a decrease in pup numbers in the mid to late 1970s and continues to the present. This trend is reflected in both the number of pups born and in the numbers of adult territorial males counted on both islands.

The rate of the second decline can be estimated in several ways. One method is to apply the model

$$N_t = N_o e^{-rt}$$

to the number of pups born on St. Paul Island from 1975 to 1985. N_t is number of pups born in year t and N_o is pups born at the beginning of the period. The linear regression equation is

$$Y_t = a + bt$$

where

Y_t is in (pups born in year t) and b is an estimate of r, the rate of decline.

This method results in an estimated decline of 5.6 percent per year ($p < 0.05$). Using population data from 1975 to 1985, other rate estimates may be derived but all fall within the range of 4 to 8 percent with the same confidence interval as the above analysis (Fowler 1985b).

There is some indication that pup numbers on St. Paul Island may have stabilized during the period 1981–1986 and this could signal an end to the decline (York and Kozloff 1986). A decline in pup numbers, similar to that observed on the Pribilofs, occurred on Robbin Island, USSR, but has apparently atabilized in recent years according to Soviet scientists. Between 1975 and 1981, the St. Paul herd declined 7.56 percent per year. Since 1981, there is no significant difference in the pup estimates on St. Paul Island, which have averaged 172,000 pups per year. Using data on St. Paul from 1981 to the present results in an estimated rate of decline of 1.8 percent. However, pups born on St. George Island appear to be declining at about 5–7 percent per year. In addition, direct counts of territorial males on St. Paul declined from 5,490 in 1980 to 4,372 in 1985, or by about 20 percent. Idle bull counts on St. Paul Island in 1986 were down 40 percent from 1985 (breeding bull counts were up only 4 percent) suggesting that a loss of cohorts during the previous 4–6 years may have been greater than predicted from current pup counts. Counts of idle males can be greatly affected by weather and interspecific behavior and thus we can not fully interpret this apparently significant one-year change.

Changes in the amount of food available for fur seals has been suggested as a factor in the decline of the Pribilof Island population. This would constitute a change in the carrying capacity of the environment. If food resources were limited, however, one would expect reduced mean body sizes, reduced growth rates, and higher pup mortality; and this is not the case. As reviewed in Fowler (1984a, in press (a)), for example, the average body size of both males and females has increased, a response more consistent with increased rather than decreased levels of food resources. Body length (in several age classes of both sexes) and tooth size show similar responses (Fowler 1982, in press (a)).

Catastrophic changes in food availability, that might explain a population decline of one-third in less than a decade, would likely result in increases in the length of the feeding cycle of fur seals at sea. However, recent work appears to indicate that feeding trips to sea have declined in duration during the decline in population numbers since the 1950s. This may be in response to increased food availability, and is consistent with the increase in pup weights observed by Kozloff and Briggs (1986).

Although food resources are probably the principal determinant of the carrying capacity for large mammals, other factors could also be important. These include diseases and toxic substances. The incidence of mortality due to disease remains to be evaluated. However, diseases usually cause precipitous change in population levels followed by gradual increases, a pattern very different from that observed for fur seals on the Pribilof Islands. Toxic substances in the form of heavy metals or organic pesticides might contribute to increased mortality. A number of recent studies have evaluated these possibilities (e.g., Goldblatt and Anthony (1983); Calambokidis and Peard (1982)). So far, all of the results indicate that existing levels of contaminants in fur seal tissues occur at low or safe levels.

Factors in the carrying capacity for fur seals also include the abiotic environment. Any changes in temperature or salinity, which correlate with changes in the population, might be thought to contribute to the population decline. For example, York (1985b) found a correlation between sea surface temperature at Pine Island, British Columbia, and juvenile survival for the first two years at sea. The correlation involves increased mortality with decreased temperatures (after a lag time). No mechanism has yet been identified to explain this correlation. The Standing Scientific Committee of the NPFSC examined a decline in the temperature of surface waters in the eastern Pacific Ocean. This decline (about 0.75 °C) occurred from 1945 to 1970 when the seal population was declining due to the female harvest. Since the mid 1970s the temperatures of both the North Pacific Ocean and the Bering Sea have returned to levels observed in the 1940s and 1950s, when the population was at a high and relatively stable level. Changes observed in the abiotic environment do not appear to be consistently related to changes in the fur seal population on the Pribilof Islands.

Biomass trends for red king crab and several species of groundfish in the eastern Bering Sea indicate that important components of the Bering Sea ecosystem have undergone dramatic change during the 1970s and early 1980s. These changes have been attributed to natural environmental variation as opposed to fishery related causes. While no definitive quantitative statements can be made about carrying capacity of this ecosystem, this information indicates that the Bering Sea ecosystem is dynamic. This characteristic suggests that the carrying capacity may not have been constant.

If changes have occurred in the resources or measurable abiotic components of the fur seal's ecosystem which would be detrimental to the Pribilof Island fur seal population, these changes have gone undetected in field studies. Fur seals, as indicators of current environmental conditions, show characteristics such as increased body size and increased pup survival that show that the ecosystem can still support a fur seal population as high as that observed in the 1940s and 1950s. The most apparent reason for the decline in North Pacific fur seals is a recent decline in survival of animals from the time they leave land to the time they return for reproduction. This conclusion was reached by the Standing Scientific Committee of the NPFSC (Fowler 1985a).

An important cause of the unexpected increase in at-sea mortality appears to be entanglement in marine debris, including fishing gear and plastic packing bands (Fowler 1985b). Although untested, entanglement has been implicated by correlation with several population parameters and may account for a large portion of the herd decline. At this time, available data do not support alternative causes for the fur seal decline but research is continuing on this question.

While there exists uncertainty regarding some of the underlying data, estimates indicate that the North Pacific fur seal population on the Pribilof Islands is currently below 50 percent of its carrying capacity, based on current population levels (about 800,000) compared to those of the 1940s and early 1950s (about 1.8 million). Since the late 1970s the Pribilof Island population has declined by one-third. Current pup

mortality on land, growth rates, and the variance in mortality rates on land and at sea are all characteristic of a population substantially below its carrying capacity (Fowler in press (b)). Based on empirical information for fur seals (Smith 1973) and interspecific comparisons (Fowler 1984b), the population at which maximum productivity (maximum natural growth of the total population) would occur is about 60 percent of the carrying capacity. Since the current population is below 50 percent of the levels observed in the 1940s and early 1950s (NPFSC 1983), the population is considered to be below levels which can maintain maximum net productivity, the lower bound of the OSP range.

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Classification

The NOAA Administrator determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This rule will not result in (a) an annual effect on the economy of $100 million or more; (b) a major increase in costs or prices; or (c) a significant adverse effect on the U.S. economy. A regulatory impact review concludes that this rule will have no economic effects save those nondiscretionarily mandated by statute. Consequently, the General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule if adopted, will not have a significant economic impact on a substantial number of small entities. Additionally, this rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

A designation of depletion in this instance, which is similar to a listing action under section 4(a) of the ESA, is categorically excluded from the requirement to prepare an environmental assessment (EA) or an environmental impact statement (EIS) (NOAA Directives Manual 02–10 Environmental Review Procedures, 49 FR 29647, para. 5.c.(3)(h), implementing the National Environmental Policy Act of 1969 (NEPA)). It is not expected that the designation action will have a significant effect on the human environment or come within any exception to the categorical exclusion. Any regulations or major actions resulting from the depletion designation, however, would be subject to the requirement to prepare and EA or EIS. A 1985 EIS was prepared on the Convention which includes a complete review of the environment of the Pribilof Islands, and EAs were published in July 1985 and May 1986 to assess impacts of the subsistence taking of fur seals on the Pribilof Islands. Copies of these NEPA documents are available by writing to the address listed above.

List of Subjects in 50 CFR Part 216

Administrative practices and procedure, Marine mammals, Penalties, Reporting and recordkeeping requirement.

Dated: December 22, 1986.

William E. Evans,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

PART 216—[AMENDED]

Accordingly, 50 CFR Part 216 Subpart A is proposed to be amended as follows:

1. The authority citation for Part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 et seq.

2. Section 216.15 is revised to read as follows:

§ 216.15 Depleted species.

The following species or population stocks have been designated by the Assistant Administrator as depleted under the provisions of the Act.

(a) Hawaiian monk seal (*Monachus schauinslandi*).

(b) Bowhead whale (*Balaena mysticetus*).

(c) North Pacific fur seal (*Callorhinus ursinus*), Pribilof Island population.

[FR Doc. 86–29096 Filed 12–23–86; 9:54 am]

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December 30, 1986

Part IV

Commission on the Bicentennial of the United States Constitution

45 CFR Part 2010

Constitution Bicentennial Educational Grant Program; Interim Rule and Announcement and Application Instructions

COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

45 CFR Part 2010

Constitution Bicentennial Educational Grant Program

AGENCY: Commission on the Bicentennial of the United States Constitution.

ACTION: Interim rule and request for comments.

SUMMARY: These regulations establish the basic policies and procedures that the Commission on the Bicentennial of the United States Constitution (Commission) will use to announce, solicit, award and manage the Constitution Bicentennial Educational Grant Program authorized by Title V of the Arts, Humanities, and Museums Amendments of 1985 (Pub. L. 99–194). This interim regulation is supplemented by a detailed grant program announcement appearing elsewhere in this issue and a set of grant procedures for organizations and individuals receiving grant assistance from the Commission. Copies of the Commission's grant procedures for organizations and individuals may be obtained from the Division of Educational Programs. Public comment is requested.

DATES: Effective Date: December 31, 1986. Comments must be received by March 2, 1987.

ADDRESS: 736 Jackson Place NW., Washington, DC 20503. Tel. (202) 653–5110.

FOR FURTHER INFORMATION CONTACT: Joseph Phelan, Director of Educational Programs, Commission on the Bicentennial of the U.S. Constitution, 736 Jackson Place NW., Washington, DC 20503 (202) 653–5110.

SUPPLEMENTARY INFORMATION:

Background

The Commission on the Bicentennial of the United States Constitution was established by Pub. L. 98–101, 97 Stat. 719 and signed into law by the President on September 29, 1983. The Commission is comprised of 23 members: the Honorable Warren Burger, retired Chief Justice of the United States, serves as Chairman of the Commission. Additional information on the Commission functions can be found in Title 45 of the Code of Federal Regulations, Part 2000. The organization and functions rule covering Commission operations was published in the **Federal Register** as a final rule on February 28, 1986 (see 51 FR 7220). Title V of the Arts, Humanities, and Museums Amendments of 1985 (Pub. L. 99–194) authorizes the Commission to make grants for the development of instructional materials and programs on the Constitution of the United States and the Bill of Rights which are designed for use by elementary or secondary students. In addition, the Commission is authorized under Title V of the Act to implement an annual national bicentennial Constitution and Bill of Rights competition for use in elementary and secondary schools. To implement this authority, the Commission established its grant-making authority within the Commission's Division of Educational Programs. The Director and professional staff of the Division of Educational Programs will administer the Constitution Bicentennial Educational Grant Program with guidance from the seven-member Commission Advisory Committee on Educational Projects. The provisions in this rule were approved by the Commission at its meeting on November 21, 1986.

Classification

This is not a major rule under E.O. 12291 since it has no significant impact upon the economy, nor does it affect prices or economic competition. This interim rule has no significant impact on the environment and preparation of an environmental impact statement is not necessary.

Compliance With Executive Order 12372

The Commission has determined that the Bicentennial Education Grant Program of this part are not subject to Executive Order 12372 on Intergovernmental Review of Federal Programs.

Public Comment

This is an interim rule which has been put into effect promptly so that grant awards can be made in time to celebrate the 200th anniversary of the signing of the U.S. Constitution in the fall of 1987. Public comments are requested for a period of 60 days beginning on December 31, 1986 and ending on March 2, 1987. All comments received during the comment period will be considered and, if changes are warranted, this rule will be amended accordingly.

Statutory Authority

This regulation is issued under the general powers granted to the Commission by Pub. L. 98–101 as amended, and Title V of Pub. L. 99–194.

List of Subjects in 45 CFR Part 2010

Elementary and secondary education, Grant programs—education, U.S. Constitution Bicentennial.

Issued in Washington, DC, on December 29, 1986.

Mark W. Cannon,
Staff Director.

For the reasons set out in the preamble and under the authorities cited above, a new Part 2010 is added to Title 45, Code of Federal Regulations, to read as follows:

CHAPTER XX—COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

PART 2010—CONSTITUTION BICENTENNIAL EDUCATIONAL GRANT PROGRAM

Subpart A—General

Sec.
2010.1 Program purpose.
2010.2 Eligible parties.
2010.3 Types of awards.
2010.4 Applicable laws and regulations.
2010.5 Program definitions.

Subpart B—Projects Assisted by the Commission

2010.10 What may be funded.
2010.11 What may not be funded.
2010.12 Funding priority.

Subpart C—How to apply for a grant

2010.20 Annual program announcement.
2010.21 Grant application kit.
2010.22 Administrative rejection of applications.

Subpart D—How Awards Are Made

2010.30 How applications are evaluated

Subpart E—Grantee Responsibilities

2010.40 The grant agreement.
2010.41 Post-award disputes and appeals.

Authority: 20 U.S.C. 959; Title V of Pub. L. 99–194; 99 Stat. 1346.

Subpart A—General

§ 2010.1 Program purpose.

The purpose of the Commission's Constitution Bicentennial Educational Grant Program is to fund the development of instructional materials and programs on the Constitution of the United States and the Bill of Rights. Instructional materials and programs developed with Commission funding must be designed for use by elementary and secondary school teachers and students.

§ 2010.2 Eligible parties.

Local educational agencies, private elementary and secondary schools, private organizations, individuals, and State and local agencies in the United States are eligible to apply for grant funding from the Commission. Grants will not be made to profit making organizations.

§ 2010.3 Types of awards.

(a) The Commission will make two types of awards with its authorized grant funding. The awards are as follows:

(1) $2,700,000 of the grant funding is available to support the Center for Civic Education's program for a National Bicentennial Competition on the Constitution and the Bill of Rights.

(2) $1,000,000 of the grant funding is available to fund the development of instructional materials and programs on the Constitution and Bill of Rights. Awards in this category of funding will be competitive and discretionary to eligible applicants as specified in § 2010.2 of this Part.

(b) A portion of the above amounts may be used for necessary Commission administrative expenses, including staff, required to operate this grant program.

§ 2010.4 Applicable laws and regulations.

The following laws, regulations, and procedures apply to applicants for and recipients of grants under this part:

(a) The Bicentennial Commission on the U.S. Constitution Act (Pub. L. 98–101).

(b) Title V of the Arts, Humanities, and Museums Amendments of 1985 (Pub. L. 99–194).

(c) The regulations in this Part 2010.

(d) The applicable Office of Management and Budget Circulars (A–87, A–21, A–122, A–102, A–110, and A–128).

(e) The Commission's Statement of General Grant Conditions For Organizations.

(f) The Commission's Statement of General Grant Conditions For Individuals.

(g) The Grant Agreement accompanying every assistance award.

§ 2010.5 Program definitions.

Program definitions applicable to the Commission's grant program are contained in the standard grant conditions for organizations and individuals.

Subpart B—Projects Assisted by the Commission

§ 2010.10 What may be funded.

(a) The Commission is authorized to fund the development of instructional materials and programs on the Constitution of the United States and the Bill of Rights for use in elementary and secondary schools. The Commission will accept grant proposals from any eligible party as specified in § 2010.2 of this Part.

(b) The Commission is also authorized to implement the National Bicentennial Competition on the Constitution and Bill of Rights. This is an on-going educational program that has been developed by the Center for Civic Education with prior federal assistance. Congress has directed the Commission to award a grant for program implementation to the Center. Consequently, no other grant proposals from any other party will be accepted for this program.

§ 2010.11 What may not be funded.

The following activities may not be assisted with Commission funding:

(a) Real Property acquisition.

(b) Construction.

(c) Study and research in pursuit of an academic degree.

(d) Activities of a partisan or political nature.

(e) Activities that would involve the Commission in the policy-making processes of any government or government agency.

§ 2010.12 Funding priority.

(a) The Commission will give priority to proposals that focus on strengthening the ability of elementary and secondary teachers to teach successfully the principles of the Constitution and the Bill of Rights to students. This may be through the development of instructional materials or through conferences and institutes. Important ideas and texts about the Constitution and Bill of Rights should be emphasized. Projected funded with Commission funds must demonstrate how students will benefit.

(b) The Commission believes that the objectives of paragraph (a) of this section are highly appropriate to conferences and institutes for elementary and secondary teachers or to the development of instructional materials. All proposed projects should focus on one or more of the following:

(1) The Constitution's provisions, antecedents, history, and the structure of the government it establishes.

(2) The relationship of the Constitution of American politics, society, and thought.

(3) The connection between self-government as outlined by the Constitution and the purposes of political life that are defined in the Declaration of Independence.

Subpart C—How to Apply for a Grant

§ 2010.20 Annual program announcement.

Once each year, the Commission makes available to the public a comprehensive grant program announcement explaining how to apply to the Commission for project assistance. Copies are available from the Commission upon written request. Although these regulations are controlling in any conflict with the grant program announcement, applicants are urged to study the program announcement carefully as proposals are developed.

§ 2010.21 Grant application kit.

Each year, the Commission develops a grant application kit which contains instructions and forms necessary to apply to the Commission for a grant. All applicants must use the forms and instructions provided by the Commission. Copies are available from the Commission upon written request.

§ 2010.22 Administrative rejection of applications.

An application may be administratively rejected without further consideration if any of the following are noted:

(a) The applicant is not an "eligible party" under § 2010.2 of this Part.

(b) The applicant is a suspended or debarred grantee with any other federal agency pursuant to Executive Order 12549.

(c) The application does not have an original signature.

(d) The application does not contain a budget and budget narrative.

(e) The application does not contain the required one-page proposal abstract.

(f) The application lacks any other required element.

Subpart D—How Awards Are Made

§ 2010.30 How applications are evaluated.

(a) On the basis of the selection criteria contained in the Grant Program Announcement, the Commission undertakes an administrative review and merit review of every application submitted for funding consideration.

(b) An administrative review is a review of an application for completeness and submission in conformity with the application requirements in the Grant Program Announcement.

(c) A merit review is a substantive review of the applicant's proposed activities in terms of appropriateness, feasibility, conformity with the Commission's priorities and the selection criteria, and the quality of the project staffing.

Subpart E—Grantee Responsibilities

§ 2010.40 The grant agreement.

(a) When the Commission awards a grant, the Commission's funding commitment to the recipient is formalized through a written bilateral grant agreement between the Commission and the grantee. The grant agreement will state the following:

(1) The names of the parties entering into the grant agreement.

(2) The amount of funding being provided by the Commission.

(3) The scope of activities authorized to be conducted by the grantee with Commission funding.

(4) The method of funding, the schedule of payments, and the dates interim financial and performance reports are due during the term of the grant agreement.

(5) Any special conditions that must be followed by the grantee during the term of the grant agreement.

(b) Grant agreements may incorporate by reference the grant proposal, grant budget, and the Commission's Statement of General Grant Conditions for Individuals or Organizations.

§ 2010.41 Post-award disputes and appeals.

(a) Should any post-award dispute arise between the Commission and a grantee, every attempt will be made to resolve the dispute informally between the Commission program officer, grantee and the Director of Educational Programs.

(b) If a dispute between the Commission and the grantee cannot be resolved informally, the grantee may appeal any adverse decision in writing to the General Counsel of the Commission. A written appeal must contain a discussion of the dispute, attempts to informally resolve any disagreements, and the practical and legal relief sought.

(c) The General Counsel may hold a factfinding conference with the disputing parties or decide the dispute on the written appeal record provided by the grantee and the Commission staff. The General Counsel shall issue a written decision of findings and conclusions within 30 days after receiving an appeal.

(d) If the decision of the General Counsel is adverse, the grantee may make a final appeal to the Chairman of the Commission within five days after receiving the decision of the General Counsel. The Staff Director of the Commission shall function as the Chairman's designee for receipt and processing of final administrative appeals to the Chairman. The decision of the Chairman is final.

[FR Doc. 86-29153 Filed 12-29-86; 8:45 am]
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COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

Constitution Bicentennial Educational Grant Program; Announcement and Application Instructions

AGENCY: Commission on the Bicentennial of the United States Constitution.

ACTION: Grant program announcement and application instructions.

SUMMARY: The Commission on the Bicentennial of the United States Constitution announces its newly established Constitution Bicentennial Educational Grant Program. The Commission is soliciting grant applications for the development of instructional materials and programs on the Constitution and Bill of Rights which are designed for use by elementary or secondary school students. This grant program announcement and application instructions informs all interested individuals and organizations about the closing dates for the receipt of applications for funding and how applications must be prepared for funding consideration by the Commission. The application instructions are based on the law and regulation which contain the key requirements for all applicants to follow in seeking funding from the Commission.

DATES: Applications will be accepted from January 2, 1987 until February 15, 1987 at 5:30 pm.

ADDRESS: For further information contact: Director of Educational Programs, Commission on the Bicentennial of the U.S. Constitution, 736 Jackson Place, NW., Washington, D.C. 20503, (202) 653-5110.

SUPPLEMENTARY INFORMATION:

Program Announcement for the Constitution Bicentennial Educational Grant Program

I. Introduction

The 200th Anniversaries of the signing and ratification of the United States Constitution present important opportunities to encourage renewed scholarly reflection about, and public interest in, the principles and foundations of constitutional government. In 1976, we celebrated the Bicentennial of the Declaration of Independence which sets forth the principles of just government. In 1987, we commemorate a Constitution which was designed to put those principles into practice and which has provided a stable and workable plan of government for 200 years.

Democratic, constitutional government depends upon an informed citizenry; yet studies have demonstrated a lack of citizen knowledge about the Constitution and American history. This has been especially true of students in recent years. It is an important task to encourage renewed vigor in the teaching of the fundamentals of American government and the Constitution in our elementary and secondary schools. Teachers of history, government, and social studies need encouragement and resources to do this job properly. The grants program outlined here is designed to help provide those resources and that encouragement.

Duties of the Commission

The Commission on the Bicentennial of the United States Constitution (the Commission) was established by Pub. L. 98-101, 97 Stat. 719, and signed by the President on September 29, 1983. Appointment of the Commission and designation of the Chairman was announced by the President on June 25, 1985; Commission members were sworn into office on July 30, 1985. The Honorable Warren E. Burger, then Chief Justice of the United States, was designated Chairman.

The Commission was created to promote and coordinate activities commemorating the 200th Anniversary of the United States Constitution. Section 6 of Pub. L 98-101 charges the Commission with the following duties:

1. To plan and develop activities appropriate to commemorate the bicentennial of the Constitution, including a limited number of projects to be undertaken by the Federal Government seeking to harmonize and balance the important goals of ceremony and celebration with the equally important goals of scholarship and education.

2. To encourage private organizations, and State and local governments to organize and participate in bicentennial activities commemorating or examining the drafting, ratification and history of the Constitution and the specific features of the document.

3. To coordinate, generally, activities throughout all the States.

4. To serve as a clearinghouse for the collection and dissemination of information about bicentennial events and plans.

Section 501(a) of Pub. L. 99-194 expanded the Commission's educational responsibilities by creating a Constitution Bicentennial Educational Grants Program "for the development of instructional materials and programs on the Constitution of the United States and the Bill of Rights . . . for use by elementary or secondary school students." The Commission is also required to fund an existing program to implement an Annual National Bicentennial Constitution and Bill of Rights Competition for use in elementary and secondary schools.

II. The Program Mandate

Title V of the Arts, Humanities, and Museums Amendments of 1985 (Pub. L. 99-194) and the subsequent appropriations act authorizes the Commission to make grants (1) "to local educational agencies, private elementary and secondary schools, private organizations, individuals, and State and local public agencies in the United States for the development of the instructional materials and programs on the Constitution of the United States and the Bill of Rights which are designed for use by elementary or secondary school students" and (2) to fund an existing program to implement an Annual National Bicentennial Constitution and Bill of Rights Competition for use by elementary and secondary schools.

To implement this authority, the Commission established its Constitution Bicentennial Educational Grants Program within the Commission's Division of Educational Programs. The Director and professional staff of the Division of Educational Programs will administer the Constitution Bicentennial Educational Grants Program with guidance from the seven-member Commission Advisory Committee on Educational Projects.

In keeping with its Congressional mandate, the Commission invites proposals for programs designed to provide elementary and secondary school teachers with a strengthened understanding of the Constitution, its antecedents, provisions, structure and history. Proposed programs should demonstrate how students will benefit and should result in instructional ideas, materials, and methods which teachers can share with others.

III. Who May Apply and What Can Be Funded

The Commission is authorized to accept applications from and award grants to:

(1) Local Educational Agencies;

(2) Private Elementary and Secondary Schools;

(3) Private Organizations;

(4) Individuals; and

(5) State and Local Public Agencies in the United States.

Grants will not be made to profit-making organizations.

Note: Colleges and universities are eligible to apply provided they fall under categories (1), (3), or (5) and the proposed project is designed for use in elementary and secondary schools.

What Activities May Be Funded

The Commission is authorized to fund the development of instructional materials and programs on the Constitution of the United States and the Bill of Rights for use in elementary and secondary schools.

The Commission is also authorized to implement the National Bicentennial Competition on the Constitution and Bill of Rights. This in an on-going educational program that has been developed by the Center for Civic Education with prior federal assistance. Congress has directed the Commission to award a grant for program development and implementation to the Center. Consequently, no other grant proposals from any other party will be accepted for a national bicentennial competition.

Priority Subject Areas for Grants

The Commission will give priority to proposals that focus on strengthening the ability of elementary and secondary teachers to teach successfully the principles and the history of the Constitution, the Bill of Rights, and subsequent amendments to students. This may be through the development of instructional materials or through conferences and institutes. Instructional materials may include audio and video tapes as well as printed curricular materials. Important ideas and texts about the Constitution and Bill of Rights should be emphasized. Projects funded with Commission funds must demonstrate how students will benefit.

The Commission anticipates that conferences will usually be one to three days in duration while institutes might last one to four weeks. The primary distinction between conferences and institutes is the depth of study on a particular topic. Yet the objectives of conferences and institutes are the same: to improve elementary and secondary school teaching and to produce instructional materials on the Constitution's origins, provisions, development, and contemporary application. Proposals for developing instructional materials independent of conferences or institutes are also encouraged.

Important outcomes of any proposal are enhancing the skill of teachers to teach the principles and the history of the Constitution, the Bill of Rights, and subsequent amendments to young students and developing improved instructional materials. The Commission believes that conferences and institutes will be more effective if teachers are given the opportunity to read materials and prepare lesson plans and teaching ideas prior to the conference or institute. Proposals for conferences, institutes, or for the development of instructional materials should focus on one or more of the following:

(1) The Constitution's antecedents, provisions, structure, amendments, and historical development.

(2) The relationship of the Constitution to American politics, society, and thought.

(3) The connection between self-government as outlined by the Constitution and the purposes of political life that are defined in the Declaration of Independence.

The examples listed below are illustrations of conferences, institutes, or instructional materials which might be developed. These examples are designed to serve as points of departure for other substantive proposals. Many of these suggestions for conferences or institutes can also be adapted to the development of instructional materials outside the format of a conference or an institute.

1. An *institute* for thirty secondary school social science teachers from area schools in which two constitutional scholars give a series of lectures and, with master teachers, lead workshops. *The Federalist*, Anti-Federalist documents, and other writings are used to gain a deeper understanding of the Constitution and Founding Era. Relying upon these texts, the lectures and workshops treat a variety of topics including the following: the extended commercial republic, separation of powers, federalism, legislative power, executive power, judicial power, the Bill of Rights, and subsequent amendments. Special teaching workshops are interspersed with the other activities in order for master teachers and participants to share ideas and formulate plans for developing and incorporating these materials into the classroom.

2. A small liberal arts college hosts a *conference* for fifty secondary school teachers of American history and government from a five state area in which constitutional scholars, curriculum specialists, and master teachers present a combined lecture/workshop program designed to improve basic knowledge about the creation of the Constitution and the birth of the Bill of Rights, and to provide ideas for using these materials in the classroom. Introduction to successful programs, suggestions for innovative teaching techniques, and guidelines for incorporating new materials into existing curricula are explored.

3. An *institute* for elementary school teachers, modeled after the secondary school institute, but the workshops and lectures are directed towards adapting the concepts implicit in the Constitution, the Bill of Rights, subsequent amendments, and our constitutional democracy into terms that can be understood by young children. An additional area of concern includes strengthening teachers' basic understanding of the Constitution, its antecedents, and its implications so that they can better interpret concepts for young students. The lectures and workshops include an exploration of ways to use music, art, or role-playing to bring the Founding period to life. An additional topic deals with the use of biographies as the basis for introducing young students to the Founders and constitutional concepts.

4. A *conference* for secondary school teachers which addresses the theory and practice of representation at the time of the Founding. The format combines scholarly lectures with discussions of primary source materials. The examination is divided into four segments: (1) 17th and 18th Century theory of representation; (2) pre-constitutional American theory and practices; (3) the theory of the Constitution; and, (4) the development of the American constitutional system. Readings are taken from Locke, the debates of the Constitutional Convention, *The Federalist*, Tocqueville, pamphlet literature, and modern texts.

5. *Development of curricular materials* consisting of lessons and a teacher's guide designed to improve teaching about the fundamentals of American constitutionalism in secondary schools. The lessons are designed to fit into existing courses and to complement standard high school textbooks on civics, American history, and American government. The lessons focus on *The Federalist* and the writing of the Anti-Federalists about the Constitution, the Bill of Rights, and subsequent amendments. The readings include substantial excerpts from the most important primary sources such as public documents, speeches, letters and essays which illustrate the range of opinions about the principles and the provisions of the Constitution and their historical development.

6. *Development of curricular materials and lesson plans* for students and teachers designed to enrich teaching about constitutional history in elementary schools. The lesson plans focus on the contributions of significant individuals to the success of the American experiment in constitutionalism and emphasize biographies. The lessons include those figures who supported the move for a revision of the Articles of Confederation, those who met at Philadelphia to draft a new Constitution, those who argued for and against the Constitution in the state ratifying conventions, and those who supported the move for the adoption of the Bill of Rights. Lessons are also devoted to those statesmen who contributed to the establishment and successful operation of the new government. Finally, some lessons might focus on the lives of private men and women who lived during this and later periods of American history.

7. A summer *institute* for elementary school educators designed to give elementary school teaching teams, composed of social studies teachers and media specialists, an academically stimulating background on the roots, historical development, and significance of the United States Constitution. Daily sessions held during the four-week resident institute examine the creation, ratification, and significance of the Constitution from historical, political and philosophical perspectives. Major texts from the humanities are used. Special interest groups are scheduled throughout each week along with workshops on educational theory, classroom methods and activities. Two prominent guest lecturers highlight the second and third weeks of the institute. Two follow-up workshops are held, one in November and another in March or April. During the school year following the institute, the Project Director visits the participants' schools and conducts on-site evaluations.

8. A four-week *institute* for secondary school teachers focuses on legal and philosophical dimensions of the United States Constitution. Objectives include: (1) providing a solid legal and philosophic understanding of the Constitution; (2) exploring the principles and continued vitality of the Constitution; (3) creating an appreciation of the relationship between philosophy and law in the Constitution; and, (4) developing skills for analyzing contemporary political problems in constitutional terms. The first two-week session is devoted to constitutional studies; the second two-week session to helping participants design study aids and learning tools for use in the classroom.

The Commission emphasizes that the projects discussed above are only examples. Those given here should not be substitutes for exemplary approaches that address the purpose of the Commission's Grant Program.

In planning projects and drafting proposals, the Commission suggests that applicants pay particularly close attention to the discussion of the review process and selection criteria contained in Sections V and VI.

What Activities May Not Be Funded

Real property acquisition, construction, and research undertaken in the pursuit of an academic degree may not be assisted with Commission funding. The Commission will not fund grant proposals of a partisan political nature, proposals to intervene in ongoing disputes, or proposals that would bring the Commission into the policymaking processes of any government or government agency. In addition, the Commission will not use political tests or political qualifications in selecting or monitoring any grantee.

IV. Budget Information

Allowable costs: The allowable project costs include salaries and wages for key personnel, administrative assistants and secretaries, fringe benefits, consultant fees, travel expenses (including subsistence costs when traveling) for key personnel and participants, stipends for participants, supplies and materials used in the project, services such a cost of duplication and printing, long distance telephone, equipment rental or purchase, postage, and other services not included in the other categories or in the indirect cost pool and related to the project objectives. Stipends should be the same for all participants in a particular institute or conference but the stipend for a particular institute or conference will be determined by the length of the institute or conference. Institutes may provide travel expenses, room and board (if residency is required), plus a stipend of up to $200 per week. Organizations applying to conduct an institute or conference are encouraged to consider seeking matching support for part of their project.

Schools and school systems should be asked to endorse the project. Schools from which the participants are finally selected are expected to contribute to the cost of the institute or conference (e.g. for one institute, schools may be expected to make a $200 cash contribution to the sponsoring institution for each participating teachers.) The Commission encourages cost-sharing from applicants it believes are capable of contributing to the support of an authorized project. Generally, the Commission's share of the total costs of an institute or conference is not expected to exceed 80 percent.

All cost must be reasonable, necessary to accomplish project objectives, allowable in terms of the applicable federal cost principles, auditable, and incurred during the grant period. Charges to the project of items such as salaries, fringe benefits, travel, and contractual services must conform to the written policies and established practices of the applicant organization.

Non-allowable Costs: Grant money may not be used as honoraria for individuals who simply speak at the conferences or institutes. The restriction shall not prohibit funds from being used to support individuals whose broader participation in a conference or institute includes a speech.

Anticipoted Grant Range: Curricular materials—$5,000–50,000; Institutes—$25,000–75,000; Conferences—$5,000–25,000.

V. Review Process

Although applicants must follow the format prescribed under "PROPOSAL CONTENT," the proposal should not simply mirror the examples or content of this announcement. We anticipate that this discussion will help the applicant to conceive and write a stronger proposal by alerting the applicant to the ways in which it will be read and judged.

Applicants will submit a narrative of their proposal which is limited fifteen double-spaced pages. The applicant may submit more than one proposal; the quality of each will be assessed independently.

The examination of grant applications begins with an "Administrative Review" for completeness and conformity with the application requirements stated in this announcement. After this review, the application will be given a "Merit Review," first by external reviewers and then by members of the Commission staff. The readers of the application may be faculty, educational administrators, government administrators or journalists. These readers are chosen for their ability to assess the significance of a broad range of important issues on the Constitution, the Bill of Rights, and subsequent amendments and they often have practical experience in educational programs. But they almost certainly will know little about a particular need, approach, or location. The application must therefore address a general audience and avoid jargon and technical language. Readers are asked to review a large number of applications so that they can gain perspective on relative

significance. It is, therefore, imperative that the application be limited to fifteen double-spaced pages.

The "Merit Review" will focus on the relative significance and importance of applications. Applicants should be sure to discuss (1) the constitutional issue or educational need being addressed; (2) the proposed activities in some detail; and (3) the desired results or outcomes of the project. The final stage of review by the Commission will include consideration of the feasibility of proposals as well as the full range of issues raised in this section. The external reviewers may include both generalists and specialists. Proposals may also be reviewed by other specialists later in the process when technical questions arise.

After thorough review of the applications, Commission staff may telephone applicants in order to verify or clarify information about the project. The Commission may also contact others who are in a position to know the applicant's work and plans, or who would be affected by the project. The Commission has set April 30, 1987, as its target date for award decisions.

Commissioners, Commission staff, and external reviewers will remove themselves from consideration of any application for a grant which might reasonably present the appearance of a conflict of interest. Individuals who believe they may have a potential conflict of interest arising from present to prior association with the applicant or for any other reason, shall bring the situation to the attention of the Commission's General Counsel for guidance.

Throughout the review process, external reviewers and Commission staff will make judgments about the extent to which a project will contribute to providing elementary and secondary teachers and students with a strengthened understanding of the Constitution and Bill of Rights.

VI. Selection Criteria

The Commission has developed the following criteria as general guidelines for judging all project proposals:

(1) The proposed project is designed to strengthen elementary and secondary teachers' capacity to appreciate our constitutional heritage, including the Bill of Rights, and to produce improved instructional materials which will help teach young students about the Constitution's provisions, antecedents, history, and the structure of government which it creates.

(2) The proposed project designed to benefit elementary and secondary students, and to be academically rigorous in a way that is appropriate for the age group toward which it is directed.

(3) The proposed project is cost-effective in that expenditures are reasonable and appropriate to the objective of the proposed project. Cost-effectiveness is especially important since the funds the Commission has discretion to grant are limited.

Although applicants are not being required to match or share costs in any of the activities proposed for Commission funding, the Commission encourages applications that include in-kind services or other sources of funding. Preference may be given to applicants who propose in-kind services in the project budget.

(4) Applicants have the capacity to carry out the project as evidenced by:

(a) Academic and administrative qualifications of the project personnel;

(b) Quality of project design; and

(c) Soundness of project management plan.

(5) Potential of the proposed project for wider dissemination and use by others. Both schools represented and organizations hosting an institute or conference should agree to implement the plans developed by the teachers during the program.

The decision to award grant funding is solely within the discretion of the Commission based upon its judgment of how best to fufill the statutory purposes of the grant program

VII. Submission Procedures and Closing Dates for Receipt of Proposals

Every application for a grant from the Commission must be made on application forms prescribed by the Commission. Photocopies of the forms are acceptable. A complete application package consists of the following item:

(1) Standard Form 424 with attachments;

(2) Proposal abstract (one page);

(3) Proposal narrative (5–15 *double-spaced* typed pages); and

(4) Proposal budget.

The closing date for receipt of grant application is February 15, 1987. Late applications will not be accepted.

The announced closing date and procedures for guaranteeing timely submission will be strictly observed. The Commission reserves the option to invite additional applications after the closing date, if grant funding is not exhausted. If new application are invited, notification will be placed in the **Federal Register.**

Applicants should also note that the closing date applies to both the date the application is mailed and the hand delivery date. A mailed application meets the requirement if it is mailed on or before the pertinent closing date and the required proof of mailing is provided. Proof of mailing may consist of one of the following; (a) a legibly dated U.S. Postal Service postmark; (b) a legible receipt with the date of mailing stamped by the U.S. Postal Service; (c) a dated shipping label, invoice or receipt from commercial carrier; or, (d) any other tangible proof of mailing acceptable to the Commission.

If an application is sent through the U.S. Postal Service, the Commission will not accept either of the following as proof of mailing:: (1) a private metered postmark; or, (2) a mail receipt that is not dated by the U.S. Postal Service. Please use first class mail. All applicants will receive acknowledgment notices upon receipt of proposals.

Mailing Address and Telephone:

Commission on the Bicentennial of the United States Constitution , 736 Jackson Place, NW, Washington, DC 20503, Attn: Direction of Education Programs, Educational Grant Program. Telephone (202) 653–5110

Final Proposals Sent by Mail;

February 15, 1987.

Hand Delivered Final Proposals:

Hand delivered final proposals will be accepted daily between the hours of 8:00 a.m. and 5:30 p.m., Eastern Standard Time except Saturdays, Sundays and Federal Holidays. Proposals will not be accepted after 5:30 p.m. on any closing date.

Number of copies of Final Proposal

All applicants must submit one (1) signed original application and four (4) copies. Each copy must be covered with a signed Standard Form 424.

Proposal Content

All applicants urged to develop proposals that are concise and clearly written. The proposal must contain the components listed below:

Title Page: Use Standard Form 424 (SF 424). Additional instructions are printed on the reverse side of SF 424.

Abstract: Attach a one-page, double-spaced abstract following SF 424. This is a key element in all applications, and should include: (1) a brief description of the project; (2) the proposed activities; and, (3) the project's intended outcome.

Budget: Applicants will prepare a complete budget including details of expenditures for salary, travel, etc. Indirect costs may be assessed at a rate previously approved by another agency of the federal government. Applicants who need to establish an indirect cost rate should contact the Commission.

Budget Explanotion: Applicants will include a budget statement explaining (1) the basis used to estimate major cost (professional personnel, consultants, travel and indirect costs) and any other costs that may appear unusual; and (2) how the major costs relate to the proposed budget activities.

Project Narrative: Applicants must provide a narrative statement limited to fifteen double-spaced typed pages. Include the following information:

(I.) *Project Description:* A description of the project activities and how they relate to the selection criteria;

(II.) *Outcome and Plans for Wider Impact:* A description of the project's outcome and prospects that the project will have a continuing impact and will benefit others beyond the program participants (provide an estimate of number of teachers/students who will benefit);

(III.) *Other Aspects of the Project:* A description of any other especially significant aspects of the proposed project; and

(IV.) *Personnel and Institutional Information:* For key project staff, please attach descriptions of relevant education and experience. (Applicants may submit as an appendix to the proposal up to ten pages of background information on their institutions or agencies which is relevant to a full understanding of the significance and feasibility of the proposed project.)

Equal Opportunity

The Commission on the Bicentennial of the United States Constitution is responsible for ensuring compliance with and enforcement of public laws prohibiting discrimination because of race, color, national origin, sex, handicap, and age in programs and activities receiving federal assistance under this grant program. Any person who believes he or she has been discriminated against in any program, activity, or facility receiving a Commission grant should write immediately to Lane V. Sunderland, Director of Educational Programs, Commission on the Bicentennial of the United States Constitution, 736 Jackson Place, NW., Washington, DC 20503.

Authority Citation

(20 U.S.C. 959; Title V of Pub. L. 99–194; 45 CFR Part 2010.)

Lane V. Sunderland,

Director, Educational Programs.

BILLING CODE 6340-01-M

OMB Approval No. 0348–0006

FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION (Mark appropriate box)	☐ NOTICE OF INTENT (OPTIONAL) ☐ PREAPPLICATION ☒ APPLICATION	2. APPLICANT'S APPLICATION IDENTIFIER	a. NUMBER b. DATE Year month day 19
		3. STATE APPLICATION IDENTIFIER NOTE: TO BE ASSIGNED BY STATE	a. NUMBER N/A b. DATE ASSIGNED Year month day N/A 19
		Leave Blank	

SECTION I—APPLICANT/RECIPIENT DATA

4. LEGAL APPLICANT/RECIPIENT
a. Applicant Name
b. Organization Unit
c. Street/P.O. Box
d. City
e. County
f. State
g. ZIP Code
h. Contact Person (Name & Telephone No.)

5. EMPLOYER IDENTIFICATION NUMBER (EIN)

6. PROGRAM (From CFDA)
a. NUMBER
MULTIPLE ☐
b. TITLE Bicentennial Education Grant Program

7. TITLE OF APPLICANT'S PROJECT (Use section IV of this form to provide a summary description of the project.)

8. TYPE OF APPLICANT/RECIPIENT
A—State; B—Interstate; C—Substate Organization; D—County; E—City; F—School District; G—Special Purpose District; H—Community Action Agency; I—Higher Educational Institution; J—Indian Tribe; K—Other (Specify):
Enter appropriate letter ☐

9. AREA OF PROJECT IMPACT (Names of cities, counties, states, etc.)

10. ESTIMATED NUMBER OF PERSONS BENEFITING

11. TYPE OF ASSISTANCE
A—Basic Grant; B—Supplemental Grant; C—Loan; D—Insurance; E—Other
Enter appropriate letter(s) ☐☐

12. PROPOSED FUNDING

a. FEDERAL	$ .00
b. APPLICANT	.00
c. STATE	.00
d. LOCAL	.00
e. OTHER	.00
f. Total	$ .00

13. CONGRESSIONAL DISTRICTS OF:
a. APPLICANT
b. PROJECT

14. TYPE OF APPLICATION
A—New; B—Renewal; C—Revision; D—Continuation; E—Augmentation
Enter appropriate letter ☐

15. PROJECT START DATE Year month day 19

16. PROJECT DURATION Months

17. TYPE OF CHANGE (For 14c or 14e)
A—Increase Dollars; B—Decrease Dollars; C—Increase Duration; D—Decrease Duration; E—Cancellation; F—Other (Specify):
Enter appropriate letter(s) ☐☐☐

18. DATE DUE TO FEDERAL AGENCY ► Year month day 19

19. FEDERAL AGENCY TO RECEIVE REQUEST

20. EXISTING FEDERAL GRANT IDENTIFICATION NUMBER

a. ORGANIZATIONAL UNIT (IF APPROPRIATE) Commission on the Bicentennial of the U.S. Constitution
b. ADMINISTRATIVE CONTACT (IF KNOWN) Director of Education
c. ADDRESS
736 Jackson Place, NW
Washington, D.C. 20503

21. REMARKS ADDED ☐ Yes ☐ No

SECTION II—CERTIFICATION

22. THE APPLICANT CERTIFIES THAT► To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.
a. YES, THIS NOTICE OF INTENT/PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____
b. NO, PROGRAM IS NOT COVERED BY E.O. 12372 ☒
OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW ☐

23. CERTIFYING REPRESENTATIVE
a. TYPED NAME AND TITLE
b. SIGNATURE

SECTION III—FEDERAL AGENCY ACTION

24. APPLICATION RECEIVED Year month day 19
25. FEDERAL APPLICATION IDENTIFICATION NUMBER
26. FEDERAL GRANT IDENTIFICATION

27. ACTION TAKEN
☐ a. AWARDED
☐ b. REJECTED
☐ c. RETURNED FOR AMENDMENT
☐ d. RETURNED FOR E.O. 12372 SUBMISSION BY APPLICANT TO STATE
☐ e. DEFERRED
☐ f. WITHDRAWN

28. FUNDING

a. FEDERAL	$ .00
b. APPLICANT	.00
c. STATE	.00
d. LOCAL	.00
e. OTHER	.00
f. TOTAL	$ .00

29. ACTION DATE► Year month day 19
30. STARTING DATE Year month day 19
31. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number)
32. ENDING DATE Year month day 19
33. REMARKS ADDED ☐ Yes ☐ No

NSN 7540-01-008-8162
PREVIOUS EDITION IS NOT USABLE
424-103
STANDARD FORM 424 PAGE 1 (Rev. 4-84)
Prescribed by OMB Circular A-102

GENERAL INSTRUCTIONS FOR THE SF–424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted in accordance with OMB Circular A–102. It will be used by Federal agencies to obtain applicant certification that states which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process have been given an opportunity to review the applicant's submission.

APPLICANT PROCEDURES FOR SECTION I

Applicant will complete all items in Section I with the exception of Box 3, "State Application Identifier." If an item is not applicable, write "NA." If additional space is needed, insert an asterisk "*," and use Section IV. An explanation follows for each item:

Item

1. Mark appropriate box. Preapplication and application are described in OMB Circular A–102 and Federal agency program instructions. Use of this form as a Notice of Intent is at State option. Federal agencies do not require Notices of Intent.
2a. Applicant's own control number, if desired.
2b. Date Section I is prepared (at applicant's option).
3a. Number assigned by State.
3b. Date assigned by State.
4a–4h. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of applicant, and name and telephone number of the person who can provide further information about this request.
5. Employer Identification Number (EIN) of applicant as assigned by the Internal Revenue Service.
6a. Use Catalog of Federal Domestic Assistance (CFDA) number assigned to program under which assistance is requested. If more than one program (e.g., joint funding), check "multiple" and explain in Section IV. If unknown, cite Public Law or U.S. Code.
6b. Program title from CFDA. Abbreviate if necessary.
7. Use Section IV to provide a summary description of the project. If appropriate, i.e., if project affects particular sites as, for example, construction or real property projects, attach a map showing the project location.
8. "City" includes town, township or other municipality.
9. List only largest unit or units affected, such as State, county, or city.
10. Estimated number of persons directly benefiting from project.
11. Check the type(s) of assistance requested.
   A. Basic Grant—an original request for Federal funds.
   B. Supplemental Grant—a request to increase a basic grant in certain cases where the eligible applicant cannot supply the required matching share of the basic Federal program (e.g., grants awarded by the Appalachian Regional Commission to provide the applicant a matching share).
   E. Other. Explain in Section IV.
12. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included. If the action is a change in dollar amount of an existing grant (a revision or augmentation under item 14), indicate only the amount of the change. For decreases, enclose the amount in parentheses. If both basic and supplemental amounts are included, breakout in Section IV. For multiple program funding, use totals and show program breakouts in Section IV. 12a—amount requested from Federal Government. 12b—amount applicant will contribute. 12c—amount from State, if applicant is not a State. 12d—amount from local government, if applicant is not a local government. 12e—amount from any other sources, explain in Section IV.
13b. The district(s) where most of action work will be accomplished. If city-wide or State-wide, covering several districts, write "city-wide" or "State-wide."
14. A. New. A submittal for project not previously funded.
   B. Renewal. An extension for an additional funding/budget period for a project having no projected completion date, but for which Federal support must be renewed each year.
   C. Revision. A modification to project nature or scope which may result in funding change (increase or decrease).
   D. Continuation. An extension for an additional funding/budget period for a project with a projected completion date.
   E. Augmentation. A requirement for additional funds for a project previously awarded funds in the same funding/budget period. Project nature and scope unchanged.
15. Approximate date project expected to begin (usually associated with estimated date of availability of funding).
16. Estimated number of months to complete project after Federal funds are available.
17. Complete only for revisions (item 14c), or augmentations (item 14e).
18. Date preapplication/application must be submitted to Federal agency in order to be eligible for funding consideration.
19. Name and address of the Federal agency to which this request is addressed. Indicate as clearly as possible the name of the office to which the application will be delivered.
20. Existing Federal grant identification number if this is not a new request and directly relates to a previous Federal action. Otherwise, write "NA."
21. Check appropriate box as to whether Section IV of form contains remarks and/or additional remarks are attached.

APPLICANT PROCEDURES FOR SECTION II

Applicants will always complete either item 22a or 22b *and* items 23a and 23b.

22a. Complete if application is subject to Executive Order 12372 (State review and comment).
22b. Check if application is not subject to E.O. 12372.
23a. Name and title of authorized representative of legal applicant.

FEDERAL AGENCY PROCEDURES FOR SECTION III

Applicant completes only Sections I and II. Section III is completed by Federal agencies.

26. Use to identify award actions.
27. Use Section IV to amplify where appropriate.
28. Amount to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions will be included. If the action is a change in dollar amount of an existing grant (a revision or augmentation under item 14), indicate only the amount of change. For decreases, enclose the amount in parentheses. If both basic and supplemental amounts are included, breakout in Section IV. For multiple program funding, use totals and show program breakouts in Section IV. 28a—amount awarded by Federal Government. 28b—amount applicant will contribute. 28c—amount from State, if applicant is not a State. 28d—amount from local government, if applicant is not a local government. 28e—amount from any other sources, explain in Section IV.
29. Date action was taken on this request.
30. Date funds will become available.
31. Name and telephone number of agency person who can provide more information regarding this assistance.
32. Date after which funds will no longer be available for obligation.
33. Check appropriate box as to whether Section IV of form contains Federal remarks and/or attachment of additional remarks.

☆ GPO : 1984 O - 421-526 (140)

DETACH AND, AS NECESSARY, STAPLE TO ABOVE SHEET.

SECTION IV—REMARKS *(Please reference the proper item number from Sections I, II or III, if applicable)*

OMB APPROVAL NO. 3312-0015
EXPIRES 12/89

APPLICATION FOR FEDERAL ASSISTANCE (Short Form)

PART I — Budget Data

Object Class Categories	Current Approved Budget (a)	Change Requested (b)	New or Revised Budget (c)
1. Personnel			
2. Fringe Benefits			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Stipend Expenses			
8. Other			
9. Total Direct Charges			
10. Indirect Charges			
11. TOTAL			
12. Federal Share			
13. Non-Federal Share			
14. Project Income			

15. Detail on Indirect Costs:

Type of Rate (Mark one box) ☐ Provisional ☐ Predetermined ☐ Final ☐ Fixed

Rate_____% Base $ _____ Total Amount $_____

16. ATTACH BUDGET EXPLANATION ON MAJOR COST ITEMS FOLLOWING THIS PAGE.

PART II — Program Narrative Statement

Project Narrative: APPLICANTS MUST PROVIDE A NARRATIVE STATEMENT LIMITED TO FIFTEEN DOUBLE-SPACED TYPED PAGES. Include the following information:

I) ***Project Description***: A description of the project activities and how they relate to the selection criteria;

II) ***Outcome and Plans for Wider Impact***: A description of the project's outcome and prospects that the project will have a continuing impact and will benefit others beyond the project participants:

III) ***Other Aspects of the Project***: A description of any other especially significant aspects of the proposed project: and

IV) ***Personnel and Institutional Information***: For key project staff, please attach descriptions of relevant education and experience. (Applicants may submit as an appendix to the proposal up to ten additional pages of background information on their institutions or agencies which is relevant to a full understanding of the significance and feasibility of the proposed project.)

INSTRUCTIONS

PART I

Items 1-11 – Enter on Lines 1-11 in Column (c) the total amounts needed for the project. If this is an application for *new grants*, leave Columns (a) and (b) blank. If this is an application for amendments, changes or supplements, show the current approved budget in Column (a); enter in Column (b) on the appropriate line(s) the amount of the change, amendment or supplement; add each line entry in Column (a) to the line entries in Column (b) and enter the total for each line in Column (c). The amounts shown in Column (c) represent the amount of the new or revised grant budget.

Item 12 — Enter the Federal share of the amount on Line 11.

Item 13 — Enter the non-Federal share of the amount on Line 11.

Item 14 — Enter the amount of estimated income, if any, to be generated by the project. Do not add or subtract this amount from the total project amount. The estimated amount of project income may be considered by the Federal grantor agency in determining the total amount of the grant award.

Item 15 — Enter the type of indirect cost rate (provisional, predetermined, final or fixed), the rate that will be in effect during the funding period, and the amount of the base to which the rate is applied.

PART II

The Project Narrative statement should show the need, objectives, approach, the geographical location of the project and the benefits expected to be obtained from the assistance. Attach any data that may be needed to establish the applicant's eligibility for receiving assistance under the Federal program. Refer to the Annual Program Announcement for more details.

PART III — ASSURANCES

The applicant hereby assures and certifies that it will comply with the regulations, policies, guidelines, and requirements including the applicable OMB Circulars Nos. (A-21. A-110, A-122, A-87, A-102, and A-128) as they relate to the application, acceptance and use of Federal funds for this Federally assisted project. The Applicant also assures and certifies with respect to the grant that:

1. It possesses legal authority to apply for the grant; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.
2. It will comply with Title VI of the Civil Rights Act of 1964(P.L. 88-352) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any project or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement.
3. It will comply with Title VI of the Civil Rights Act of 1964 (42 USC 2000d) prohibiting employment discrimination where (1) the primary purpose of a grant is to provide employment or (2) discriminatory employment practices will result in unequal treatment of persons who are or should be benefiting from the grant-aided activity.
4. It will comply with the provisions of the Hatch Act which limit the political activity of employees.
5. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act, as they apply to educational institution employees of State and local governments.
6. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.
7. It will give the grantor agency or the Comptroller General through any authorized representative the access to and the right to examine all records, books, papers, or documents related to the grant.
8. It will comply with all requirements imposed by the Federal grantor agency concerning special requirements of law, program requirements, and other administrative requirements approved in accordance with applicable Office of Management and Budget Circulars.
9. It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.
10. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 42 USC 4012a. Section 102(a) requires the purchase of flood insurance as a condition for the receipt of any Federal financial assistance for machinery, equipment, fixtures, and furnishings to be used in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards.
11. It will assist the Federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.0) by the activity, and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.

[FR Doc. 86-29154 Filed 12-29-86; 8:45 am]
BILLING CODE 6340-01-C

federal register

Tuesday
December 30, 1986

Part V

Department of Justice

Bureau of Prisons

28 CFR Parts 544, 545 and 551
Control, Custody, Care, Treatment, and Instruction of Inmates; Adult Basic Education (ABE) Programs and Inmate Financial Responsibility Program; Final Rule Correction, Interim Rule and Proposed Rule

BEST COPY AVAILABLE

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 544

Control, Custody, Care, Treatment, and Instruction of Inmates; Adult Basic Education (ABE) Programs

AGENCY: Bureau of Prisons, Justice.

ACTION: Notice of correction.

SUMMARY: This notice corrects an inadvertent omission of the public comment date for the Bureau of Prisons' interim rule on Adult Basic Education (ABE) Programs, previously published in the **Federal Register** November 21, 1986 (at 51 FR 42166). The effective date heading should have read, "**EFFECTIVE:** November 21, 1986; Public Comment must be received on or before January 30, 1987."

FOR FURTHER INFORMATION CONTACT: Hank Jacob, Office of General Counsel, Bureau of Prisons, Phone 202/272–6874.

Dated: December 22, 1986.

Norman A. Carlson,

Director, Bureau of Prisons.

[FR Doc. 86–29162 Filed 12–29–86; 8:45 am]

BILLING CODE 4410–05–M

28 CFR Part 551

Control, Custody, Care, Treatment, and Instruction of Inmates

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim rule.

SUMMARY: In this document, the Bureau of Prisons is publishing an amendment to its rule on Birth Control, Pregnancy, Child Placement, and Abortion. The revision is necessitated by a Congressional amendment in the Fiscal Year 1987 Continuing Resolution for Appropriations (Pub. L. 99–500) prohibiting the use of funds appropriated by this resolution to be used in paying for abortions, except in cases of rape or a danger to the mother's life.

DATES: Effective Date: December 30, 1986. Comments on the Interim Rule must be received on or before January 30, 1987.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 770, 320 1st Street NW., Washington, DC 20534. Comments received will be available for examination by interested persons at the above address.

FOR FURTHER INFORMATION CONTACT: Hank Jacob, Office of General Counsel, Bureau of Prisons, phone 202/272–6874.

SUPPLEMENTARY INFORMATION: In this document, the Bureau of Prisons is publishing an amendment to its final rule on Birth Control, Pregnancy, Child Placement, and Abortion. A final rule on this subject was published in the **Federal Register** June 29, 1979 (at 44 FR 38252 et seq.). The present amendment is necessitated by a congressional amendment to the Fiscal Year 1987 Continuing Resolution for Appropriations (Pub. L. 99–500) which prohibits the use of appropriated funds, including those of the Bureau of Prisons, from paying for abortions, except in cases of rape or danger to the mother's life. For this reason, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for advance public comment, and delay in effective date.

Based on this Congressional mandate, the Bureau of Prisons has decided to publish a completely revised § 551.23. While the rule will become effective immediately, the Bureau is interested in receiving public comment on the revised rules and suggestions on how the rule may be further refined/modified. Accordingly, the Bureau has decided to publish its revision as an interim rule with public comment invited. Public comment received on or before January 30, 1987 will be considered before publication of the final rule.

In addition to a revised § 551.23, § 551.24(d) is clarified by substituting the phrase "appropriately placed" for "appropriately cared for". The intent of the paragraph is unchanged

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 551

Prisoners.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), 28 CFR, Chapter V Part 551, Subpart C is amended.

Dated: December 22, 1986.

Norman A. Carlson,

Director.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 551—MISCELLANEOUS

1. The authority citation for Part 551 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4161–4166, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99; Pub. L. 99–500 (209).

Subpart C—Birth Control, Pregnancy, Child Placement, and Abortion

A. In Part 551, Subpart C, revise § 551:23 to read as follows:

§ 551.23 Abortion.

(a) The inmate has the responsibility to decide either to have an abortion or to bear the child.

(b) Pursuant to Congressional mandate (section 209 of Pub. L. 99–500, Fiscal Year 1987 Continuing Resolution for Appropriations), the Bureau of Prisons may pay for an abortion only where the life of the mother would be endangered if the fetus were carried to term or if the pregnancy is the result of rape. With the exception of the two above-mentioned circumstances, an inmate may elect to have an abortion, provided that she pays for the abortion with her own funds or through the assistance of community facilities.

(c) The Warden shall provide an interested inmate with medical, religious and social counseling to aid her in making the decision whether to have an elective abortion. If an inmate is in one of the two exception groups (see paragraph (b) of this section), and chooses to have an abortion, she shall sign a statement to that effect. Staff shall then arrange for the abortion at a hospital or clinic outside the institution. If an inmate does not fall in one of the two exception categories, but chooses to have an abortion, staff shall provide the inmate with information about the availability of community abortion facilities. The inmate shall sign a written statement acknowledging that she has been provided the counseling and information called for in this policy.

(d) The inmate shall sign a statement of responsibility for the decision to have an elective abortion, including an indication of the plans for payment for the abortion. A copy of this documentation is to be provided to the Medical Director. In those cases where the Bureau may not pay for the abortion, Bureau of Prisons appropriated funds may still be used for escort and reasonable transportation charges.

(e) At an inmate's written request, ordinarily submitted through the unit manager, the medical staff shall arrange for the elective abortion to take place at the appropriate clinic outside the institution.

B. In § 551.24, revise paragraph (d) to read as follows:

§ 551.24 Child placement.

* * * * *

(d) The institution staff shall work closely with community agencies and persons to ensure the child is appropriately placed. The staff shall give notice to the responsible community agency of the inmate's plan for her child. Child welfare workers may come to the institution in appropriate cases to interview and counsel an inmate.

[FR Doc. 86–29163 Filed 12–29–86; 8:45 am]

BILLING CODE 4410–05–M

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 545

Control, Custody, Care, Treatment, and Instruction of Inmates; Inmate Financial Responsibility Program

AGENCY: Bureau of Prisons, Justice.

ACTION: Extension of Comment Period.

SUMMARY: This notice extends the public comment date for the Bureau of Prisons' proposed rule on its Inmate Financial Responsibility Program, previously published in the **Federal Register**, November 21, 1986 (at 51 FR 42167). The public comment date is extended from December 22, 1986 to January 22, 1987.

DATED: The comment period is extended to January 22, 1987.

FOR FURTHER INFORMATION CONTACT: Hank Jacob, Office of General Counsel, Bureau of Prisons, Phone 202/272-6874.

Dated: December 22, 1986.

Norman A. Carlson,

Director, Bureau of Prisons.

[FR Doc. 86-29164 Filed 12-29-86; 8:45 am]

BILLING CODE 4410-05-M

federal register

Tuesday
December 30, 1986

Part VI

Department of Transportation

Research and Special Programs Administration

City of New York Appeal of Denial of Non-Preemption Determination No. NPD-1; Notice of Decision

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. NPDA-2]

City of New York Appeal of Denial of Non-Preemption Determination No. NPD-1

AGENCY: Research and Special Programs Administration, Department of Transportation.

ACTION: Decision on appeal from denial of non-preemption determination.

SUMMARY: On September 9, 1985, pursuant to section 112(b) of the Hazardous Materials Transportation Act (HMTA), the Department of Transportation issued an administrative ruling denying New York City's request for a waiver of preemption for its ordinance banning the transportation of spent nuclear fuel. Pursuant to 49 CFR 107.225, the City filed an administrative appeal to this ruling. This document contains the decision of the Department denying the appeal.

FOR FURTHER INFORMATION CONTACT: Barbara Betsock, Office of Chief Counsel, Research and Special Programs Administration at (202) 366-4400.

SUPPLEMENTARY INFORMATION:

Background

New York City's ban on transportation of spent nuclear fuel having been determined to be inconsistent with the Department's regulation for the highway routing of radioactive materials and thus preempted by section 112(a) of the HMTA, the City applied to the Department for a waiver of preemption under section 112(b) of the act. In Non-Preemption Determination No. NPD-1 (50 FR 37308, September 12, 1985), the Department denied the City's request for a waiver of preemption.

The City filed an administrative appeal to the denial of the waiver of preemption. Because of the extensive public interest in the matter and the precedential effect of this first non-preemption decision, the Department again solicited public comment. 50 FR 47321. Comments were received from the State of Connecticut, members of Congress, shippers of radioactive material, and private citizens and groups. Those comments have been considered in the preparation of this decision.

The City's Appeal

The City argues that the Department erred in failing to address the two statutory criteria concerning equivalent level of safety and burden on commerce and in denying its application for lack of a showing of exceptional circumstances. The City views the Department's ruling as involving a "novel interpretation of the legislative history of the Act which flies in the face of the plain language of the statute." Specifically, the City believes that section 112 of the HMTA leaves the Secretary no discretion to deny an application for preemption when the applicant demonstrates that its requirement provides an equivalent level of safety and does not unreasonably burden commerce. The City asserts that it has made such a demonstration.

The City also challenges that part of the reasoning underlying the Department's decision that deals with the existence of alternate routing authority vested in the States. Specifically, the City argues that the alternate routing authority is useless here because the Department's scheme does not provide a mechanism for resolution of disputes between States.

Finally, the City implies that it has been misled by the Department in its attempts to obtain a non-preemption determination. It describes the Department's interpretation of section 112 as "novel" and indicates that during consideration of its application, "the Department gave no hint that the City was proceeding improperly and in fact gave the City direction and advice as to the details of the study and methodology that would be acceptable . . ."

The Agency's Decision—Threshold Showing of Exceptional Circumstances

In the non-preemption determination on which this appeal is based (NPD-1), the Department announced that requests for such determinations will be considered on the merits only if an applicant can demonstrate that its inconsistent state or local rule is necessary, in light of exceptional local circumstances, to assure the adequate level of safety intended by the HMTA. An objective showing that exceptional circumstances render the level of safety provided by the Department's rule inadequate for that locale is sufficient for this threshold showing. The Department denied the City's application for a waiver of preemption because it failed to make this showing. The Department did not address, as unnecessary for a decision, the other criteria, namely whether the City's ordinance would provide a level of safety comparable to that intended by the uniform rule and whether the City's ordinance would unreasonably burden commerce. The City argues that the Department must address these criteria, that they are the only criteria which the Department may consider, and that, if the City's ordinance satisfies these criteria, the City is entitled to a waiver of preemption.

In order to make these arguments, the City ignores the legislative history underlying section 112(b) of the HMTA, which establishes the authority for granting waivers of preemption, and relies entirely on what it perceives to be a plain reading of section 112(b). However, the language of section 112(b) is not nearly so plain:

> Section 112(b) State Laws—Any requirement, of a State or political subdivision thereof, which is not consistent with any requirement set forth in this title, or in a regulation issued under this title, is not preempted *if*, upon the application of an appropriate State agency, the Secretary, determines, in accordance with procedures to be prescribed by regulation, that such requirement (1) affords an equal or greater level of protection to the public than is afforded by the requirements of tnis title or of regulations issued under this title and (2) does not unreasonably burden commerce. Such requirement shall not be preempted to the extent specified in such determination by the Secretary for so long as such State or political subdivision thereof continues to administer and enforce effectively such requirement.

(Emphasis added). Section 112(b) merely permits a waiver of preemption to be granted provided certain criteria are met. Neither explicit mandatory (e.g. "the Secretary shall") nor explicit permissive (e.g. "the Secretary, in her discretion, may") language is used, although the Congress which drafted the HMTA clearly knew how to express itself in those terms. *See*, for example, the explicitly permissive language allowing grants of exemption from regulations found in section 107(a) of the HMTA ("[t] he Secretary . . . is authorized"), and the explicitly mandatory language requiring issuance of regulations concerning transportation of radioactive materials on passenger aircraft in section 108(a) ("the Secretary shall"). Furthermore, the language of section 112(b) can be considered to convey a "plain meaning" only if the meaning is the one intended by Congress.

Since its adoption, the Department has viewed the language of section 112(b) to permit discretionary Secretarial action rather than, as the City argues, to require it. This view is wholly consistent with the statutory language and better effectuates the Congressional intent as evidenced by the statutory aims and the legislative history. Resort to the legislative history is appropriate for the purpose of

clarifying the meaning of the provision and to determine whether Congress provides the Secretary any guidance for the exercise of her discretion.

As discussed in the decision which forms the basis for this appeal, the legislative history provides specific guidance for the exercise of Secretarial discretion under section 112(b). Specifically, this guidance is found in the Senate Report that accompanied the language which ultimately became section 112(b):

> Section 112. (Relationship to Other Laws)
>
> This section sets out the general guidelines for how this bill, and regulations promulgated under it, are to interact . . . with the laws of States and other political subdivisions. The Committee endorses the principle of Federal preemption in order to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation. However, the Committee is aware that *certain exceptional circumstances may necessitate immediate action to secure more stringent regulations.* For the purpose of meeting such emergency situations, the Committee has provided that any State or political subdivision may request, and the Secretary *may grant*, approval of regulations which vary from Federal regulations, provided that they are equivalent or more stringent and place no burden on interstate commerce.

Sen. Rept. 1192 (93d Cong., 2d Sess.) at pp. 37-38 (Emphasis added). Congress intended the non-preemption determination authorized by section 112(b) to allow variance from the Federal rules to meet exceptional local need and not as a routine mechanism to defeat the uniformity Congress intended the HMTA to achieve.

The HMTA is based on two major policies as expressed by Congress in the Act and in the legislative history: (1) Transportation of hazardous materials should be regulated by the Secretary to assure an adequate level of safety and (2) the regulation of that transportation should be uniform nationwide. These policies assure the protection of public safety both directly (by establishing safety standards) and indirectly (by preventing confusion and transportation delays due to varying state and local requirements). To effectuate these policies, broad discretionary regulatory authority is centralized in the Department of Transportation to issue uniform standards providing adequate levels of safety. Congress specifically provided for the preemption of State and local rules which are inconsistent with the Federal scheme of regulation even though the State or local rule may provide for a greater level of safety in the enacting jurisdiction. The HMTA provides that variances from the uniform system of regulation are allowed so long as the DOT-established adequate levels of safety are maintained (in the enacting jurisdiction and in other jurisdictions affected by the enacting jurisdiction's rule) and commerce is not burdened unreasonably.

If, as the City argues, the Secretary were required to grant, without a showing of specific local need, requests for variances for state and local regulations which otherwise qualify (i.e. which will maintain adequate levels of safety and will not unreasonably burden commerce), the statutory scheme for uniform regulations which provide adequate levels of safety would be threatened. Furthermore, in the case of highway routing of radioactive materials, the uniformity of the national standards (achieved by the application of the regulations without regard to locale) would be jeopardized by parochial interests unrelated to safety, with local transportation "bans" becoming commonplace. Consider a situation in which shipments from one source heading west are involved. Assume that, under the DOT rules, the carrier may choose either of two preferred routes—a northwesterly route through State A or a southwesterly route through State B.

State A bans such shipments and seeks a non-preemption determination based upon a showing that the southwesterly route provides equivalent levels of safety and the ban does not unreasonably burden commerce. *Under the City's analysis*, the Secretary would be required to grant State A a waiver of preemption and the carrier would be forced to use the southwesterly route. State B then bans such shipments and seeks a non-preemption determination. Assuming that there is no alternate route which could provide an equivalent level of safety other than the now banned northwesterly route through State A, State B's request would be denied solely because State A was first in time to request a waiver. Under DOT's analysis, neither State could impose a ban and effectively export shipments of radioactive material to the neighboring State unless there were some exceptional circumstances making particular local routes unacceptable from a safety standpoint. DOT's reasoning provides for national safety and fairness. The City's rationale results in the exporting of a safety risk from one locale to another.

Timing of Interpretation

Although not explicitly stated, the City implies error in DOT's requiring a threshold showing of exceptional circumstances, arguing that DOT has not previously published this "interpretation". DOT was not required to do so in its publication of procedural reguations since the threshold showing goes to substance, not procedure. As the initial proceeding for a nonpreemption determination, NPD-1 was an appropriate forum in which to enunciate this statutorily-based requirement, particularly when, as discussed below, there is no prejudice to the rights of the affected parties. Assuming, for the sake of argument, that DOT should have previously published this criterion, failure to have done so does not amount to prejudicial error.

In the first place, Congress, not DOT, established a prerequisite showing of exceptional circumstances. In fact, DOT must consider whether this threshold showing has been made or a decision without such consideration could amount to reversible error upon judicial review. Secondly, the rights of the City have not been prejudiced by lack of knowledge of DOT's interpretation. As noted in the decision underlying this appeal, the City was informed by the 1982 interlocutory ruling (which the City had requested) that it had not supplied sufficient support to meet this threshold showing. The City resubmitted its application in 1984 proffering substantially the same showing with respect to exceptional circumstances. Two public commenters on the application noted the inadequacy of this showing. Although the Department allowed the City to file a "rebuttal" to public comments, the City chose to limit its supplemental filing to buttressing its comparative risk analysis and its contention that no unreasonable burden on commerce would occur. Further, in this appeal, the City has chosen to limit its challenge to the narrow legal issue of whether exceptional circumstances must be demonstrated rather than to attempt to make the showing. Finally, nothing precludes the City, either now or should exceptional circumstances develop later, from resubmitting an application for a non-preemption determination.

Preferred Route Selection as Alternate Procedure

The City reads DOT's comments concerning the availability of preferred route selection under HM-164 as prohibiting use of the non-preemption procedure to secure a variance for State or local regulations that effectively result in selection of routes other than those "preferred" within the meaning of HM-164. In doing so, the City misconstrues DOT's intention. Given the appropriate circumstances (including a

demonstrated need—the threshold showing), not present here, a non-preemption determination could be used to secure such a result. Absent those circumstances, the preferred route selection procedure established in HM-164 is the only available procedure, short of a change in the regulation, to secure the same result.

Although the City claims that DOT misled it by implying that a nonpreemption proceeding would be a proper way to achieve the result desired by the City, DOT notified the City in its 1982 interlocutory ruling of the requirement for a showing of exceptional circumstances as a prerequisite for this method. The City chose, for its own reasons, to ignore this early advice on its petition. While the City sought more specific guidance on the showing of equivalent levels of safety, it did not seek guidance on demonstrating exceptional circumstances and that demonstration remained the same throughout the proceeding.

As discussed above, the circumstances required for a non-preemption determination relate to need, that is, a specific State or local need for varying regulations to maintain the level of safety deemed adequate by the Secretary. In this proceeding, the City has relied on population density and lack of an Interstate bypass around the City to demonstrate this need. Although population density continues to play a role in the routing regulations, during their development in HM-164 the Department rejected population density as the major criterion in favor of time in transit. Mandatory use of Interstate bypasses, when available, was included in the rules as a uniform way to provide an incremental improvement in levels of safety in most cases. DOT recognized the special interest of States in the issue and crafted the rules to allow the States the ability, subject to extensive guidelines that assure consistency with the aims of the regulation, to select alternate preferred routes. The City has chosen not to avail itself of this procedure.

Instead, the City, having failed in the rulemaking to obtain the result it wanted, now asks DOT to grant variance from the regulations on the same grounds considered and rejected in the rulemaking. Granting the requested variance under these circumstances would not only violate the Congressional intent in allowing for waivers of preemption, but also constitute an arbitrary and capricious withdrawal of the authority recognized as properly lying with the States under the rule.

The City also argues that resort to the preferred route selection procedure under HM-164 would be futile in this case because of the lack of cooperation by Connecticut and that, in any case, the procedure is fatally flawed because of the lack of a Federal mechanism to resolve such disputes. On the contrary, a mechanism, namely, the non-preemption determination, is already available to "resolve disputes" or to otherwise solve problems when there is a need to assure the adequate levels of safety established by DOT. Here there is no indication that adequate levels are not maintained by use of the Interstate System through the City. Furthermore, the impacted State (Connecticut) strongly disagrees that the alternate routing would in fact result in even a marginal improvement in safety. In the face of this, Federal intervention to impose alternate routing would be unreasonable.

In arguing for mandated DOT dispute resolution in the absence of a safety need, the City misses the point of the preferred route selection process. Federal routing rules for radioactive material were not established out of any Federal concern that such shipments could not be transported safely; thus there is no real need for a dispute resolution mechanism in most cases since *adequate* levels of safety are achieved despite possible disputes. Indeed, DOT noted at the time HM-164 was adopted that, under the Federal regulatory scheme already in place, such shipments constitute very low risk hazardous materials shipments. Instead, the routing rules were established to ward off the possibility that communities in banning such shipments, would actually increase risks by forcing shipments onto circuitous, possibly secondary routes. In HM-164, DOT determined that use of the Interstate Highway System provides adequate levels of safety nationwide. The preferred route selection process is merely an optional means by which States can, if they wish, vary routes within the States consistent with the aims of the rule. Generally speaking, given the adequate level of safety provided by use of the Interstate System, selection of alternate preferred routing by States could be expected to increase safety only marginally. Furthermore, the Department recognizes that the alternate routing need not necessarily result in any increase in safety, but may be done by a State for other reasons unrelated to safety.

Rather than a waiver of preemption, what the City in fact seeks is a result which imposes alternate routing for shipments from Brookhaven through Connecticut. Of course, the grant of a waiver of preemption concerning a transportation ban would not necessarily "impose" specific alternate routes. However, that result may arise, practically speaking, from the lack of more than one alternate route. Here, despite DOT's advice to consider a generic case to obtain waiver for a transportation "ban," the City chose to limit its application to consideration of shipments from Brookhaven via only one of several possible highway routes through the City. If, as the City urges, the Department were to grant a waiver of preemption without any showing of exceptional circumstances justifying a Citywide transportation ban, that waiver would appropriately be limited to shipments from Brookhaven via the specific routing on which the application was based (i.e. Long Island Expressway, Clearview Expressway, Throgs Neck Bridge). A carrier could then use other preferred routes through the City. The result desired by the City, namely, alternate routing via Connecticut, would be frustrated because of the existence of these alternate preferred routes.

Conclusion

For the reasons discussed above, I affirm the decision of the Director, Office of Hazardous Materials Transportation, in NPD-1 denying the City's request for a non-preemption determination.

Issued in Washington, DC on December 23, 1986.

M. Cynthia Douglass,

Administrator.

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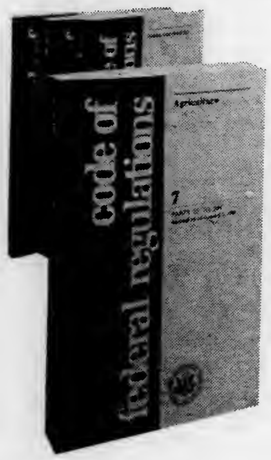
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Rules and Regulations

Federal Register
Vol. 51, No. 250
Wednesday, December 31, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 841

Federal Employees Retirement System—General Administration; Government Costs

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim rules and requesting comment on the rules to implement the Government cost provisions of the Federal Employees Retirement System (FERS) Act of 1986. These rules provide the methodology for computing Government agencies' shares of the cost of funding the basic benefits of FERS, the notice that will be provided for changes in rates, the appeal rights available to agencies, and the initial rates applicable to all agencies.

DATES: Interim rules effective January 1, 1987; comments must be received on or before March 2, 1987.

Agency appeals of the normal cost percentages must be filed no later than July 1, 1987.

ADDRESSES: Send comments to Frank D. Titus, Director, FERS Implementation Task Force; Retirement and Insurance Group; P.O. Box 884; Washington, DC 20044; or deliver to OPM, Room 3311, 1900 E Street, NW., Washington, DC.

Send or deliver agency appeals of the normal cost percentages to the Board of Actuaries, care of James W. Morrison, Jr., Associate Director for Retirement and Insurance, Office of Personnel Management, Room 4A10, 1900 E Street, NW., Washington, DC 20415.

Send requests for actuarial assumptions and data to the Office of the Actuary, Room 4307 STOP, Office of Personnel Management, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 632-5560.

SUPPLEMENTARY INFORMATION: The FERS Act of 1986, Pub. L. 99-335, created a new retirement system for some Federal employees. Section 8423 of title 5, United States Code, as added by FERS Act of 1986, provides for the payment of the Government's share of the cost of the retirement system under FERS. Employees contributions are established by law and constitute only a small fraction of the cost of funding the retirement system; employing agencies are required to pay the remaining costs. The amount of funding required, known as "normal cost," is the entry age normal cost of the provisions of FERS that relate to the Civil Service Retirement Fund (Fund). The normal cost must be computed by OPM in accordance with generally accepted actuarial practice and standards (using dynamic assumptions).

I. Normal Cost Regulations

Section 841.401 of the regulations provides the scope for the regulations in Subpart D, which cover (1) factors considered in the computation of the normal cost under FERS; (2) publication of notice of the normal cost rates for each category of employees; (3) agency appeals of rate determinations; and (4) methodology for determining the amount due from each agency.

Section 841.402 contains definitions for use in these regulations. With the exception of "normal cost percentage," section 841.402 does not repeat definitions of terms that are defined in FERS and used with their statutory meaning. These terms are (1) "Air traffic controller," as defined in section 2109(1) of title 5, United States Code, (2) "Congressional employee," as defined in section 8401(11)(B) of title 5, United States Code; (3) "Firefighter," as defined in section 8401(14) of title 5, United States Code; (4) "Law enforcement officer," as defined in section 8401(17) of title 5, United States Code; (5) "Member," as defined in section 8401(20) of title 5, United States Code; and (6) "Military reserve technician," as defined in section 8401(30) of title 5, United States Code. The term "agency head" is defined by reference to section 105 of title 5, United States Code.

The definitions of "age," "duration on the roll," and "service" contain instructions for rounding fractional years. These terms are used extensively in other definitions.

Sections 841.403 through 841.406 provide the factors considered in computing normal cost. Section 841.403 lists the categories of employees for which separate normal cost calculations must be made. Section 841.404 lists the demographic factors that must be considered. Section 841.405 requires that the economic assumptions of the Board of Actuaries of the Civil Service Retirement System must be used. Section 841.406 provides that OPM will compute Government-wide normal cost percentages for general use by all agencies except those with a special rate resulting from a successful appeal. All normal cost percentages (Government-wide and single agency) are rounded to the nearest one tenth of a percent.

Sections 841.407 and 841.408 regulate setting normal cost percentages. Section 841.407(a) provides that OPM will review and either confirm or modify the normal cost percentages at least every 5 years. Section 841.407(b) states the information that will be provided whenever normal cost percentages are confirmed or modified. This information includes (1) the Government-wide normal cost percentage and any single agency rates for each category of employees; (2) the effective date of any changes; (3) the address for obtaining information on the data and assumptions used in computing the normal cost percentages; (4) the time limit in which an agency may submit an appeal; and (5) the address for filing an appeal.

Section 841.408 regulates the effective date of changes in normal cost percentages. This section attempts to balance OPM's obligation to ensure that the retirement system is sufficiently funded with the agencies' need for sufficient warning of changes in their retirement costs. Changes in Government-wide normal cost percentages will not be effective for at least 3 months after publication. They will be effective at the beginning of a fiscal year unless waiting for the beginning of a fiscal year would cause the effective date to be less than 3 months after the date of publication.

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Section 841.408(b) contains a special effective date for the first normal cost percentages that are contained in Appendix A of these rules. This special effective date is necessary to provide funding as soon as FERS becomes operational.

Sections 841.409 through 841.412 regulate agency appeals of application of the Government-wide normal cost percentages to them. The Government-wide normal cost percentages are presumed to apply to all agencies. Agencies that can prove that the normal cost of FERS for their employees is lower than the Government-wide average have the right under section 8423(c) of title 5, United States Code, to appeal to the Board. An agency filing a successful appeal will receive a single agency rate based on the normal cost for that agency. This special rate will apply only to that agency.

Section 841.409(a) limits the right to appeal to agencies with at least 1,000 or 500 employees depending on the category for which the agency is seeking the single agency rate. Fewer employees would prevent any meaningful determination of a specific cost for the agency's employees. Section 841.409(b) provides a 6-month time limit for appeals. This much time is provided to allow agencies to prepare the actuarial report required by § 841.410(b), and still provide some reasonable finality to normal cost percentage determinations.

Section 841.410 regulates how agencies file appeals. Section 8423(c) of title 5, United States Code, limits the right to appeal to the head of the agency. This limitation is intended to ensure that the decision to appeal is taken only after serious consideration at the highest level of the agency.

Section 841.410(b) requires an actuarial report supporting an appeal. The report must specifically address each of the factors used in computing the normal cost percentages.

Section 841.411 regulates consideration of appeals. Paragraphs (a) and (b) of this section clarify that the appealing agency has the burden of proof on all issues. Paragraph (c) of this section absolutely bars consideration of a late appeal. Paragraph (d) of this section states the elements that the agency must establish to meet its burden of proof. The agency must convince the Board that the data used in the agency's actuarial analysis is sufficient and reliable. The agency must further convince the Board that the assumptions used in the agency's actuarial analysis are justified and that the factors when considered all together yield a different normal cost for the group at issue in the appeal from the normal cost for the same group calculated on a Government-wide basis. (As a general rule, 5 years of data are required for a sufficient and reliable actuarial analysis.) Because normal cost percentages are based on long range projections and necessarily contain some margin for error, a significantly different normal cost (i.e. a difference of 10% of the normal cost being appealed) must be shown before a single agency rate will be authorized.

Section 841.412 states the effect of a successful appeal. It provides that a special normal cost percentage will be prospectively applied to all employees in the agency in the relevant category for a period of at least 3 years. After the 3-year period, OPM may continue the rate if the agency shows it is still justified or place the agency back under the Government-wide normal cost percentage. The latter would give the agency a new appeal right.

Section 841.413 provides instructions to agencies for computing the amount they owe including the employee contributions. Each agency must determine the total amount of basic pay it pays to employees in each category of employees. The amount the agency must pay to OPM for each category of employees is the product of that total amount of basic pay multiplied by the appropriate normal cost percentage shown below and repeated in Appendix A to Subpart D of these regulations. This amount includes both the agency share and the employee contributions.

II. Normal Cost Percentages

The initial Government-wide cost percentages, including the employee contributions, are—

Members	23.5%
Congressional employees	23.6%
Law enforcement officers and firefighters	31.2%
Air traffic controllers	33.3%
Military reserve technicians	16.0%
All other employees	16.1%

OPM has an abundance of data on the general category of employees and used such data in calculating the normal cost for the group. Complete sets of data for the special categories has not previously been collected. For these groups the best available data have been utilized and mechanisms have been put in place to capture the data on a systematic basis in the future.

Information about the data and assumptions used in calculating these normal cost percentages is available upon written request to the address for such requests provided in the "addresses" section of this rulemaking document. All requests must be made in writing. Telephone requests will not be accepted.

Under section 553 (b)(3)(B) and (d)(3) of title 5, United States Code, I find that good reason exists for waiving the general notice of proposed rulemaking and to make these regulations effective in less than 30 days. Agencies begin to bear the cost of FERS effective at the beginning of the first pay period on or after January 1, 1987. Delaying the effective date of these regulations would place agencies in the untenable position of not knowing their obligations under FERS in time to act before payments are due. In addition, the volume of regulations necessary to implement the entire new retirement system and the need to have these regulations in place on the statutory effective date of that system (January 1, 1987) so that necessary forms and information pamphlets can be prepared, ordered, and distributed, and to allow the new retirement system to begin operation on its effective date, makes the publication of proposed rules impracticable.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Government agencies' share of the cost of funding the basic benefits of FERS.

List of Subjects in 5 CFR Part 841

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.
Constance Horner,
Director.

Accordingly, OPM is amending Title 5, Code of Federal Regulations, by adding Part 841 to read as follows:

PART 841—FEDERAL EMPLOYEES RETIREMENT SYSTEM—GENERAL ADMINISTRATION

Subpart A—[Reserved]

Subpart B—[Reserved]

Subpart C—[Reserved]

Subpart D—Government Costs

Sec.
841.401 Purpose and scope.
841.402 Definitions.

Sec.
841.403 Categories of employees for computation of normal cost percentages.
841.404 Demographic factors.
841.405 Economic assumptions.
841.406 Determination of normal cost percentages.
841.407 Notice of normal cost percentage determinations.
841.408 Effective date of normal cost percentages.
841.409 Agency appeal right.
841.410 Contents of petition for appeal.
841.411 Appeals procedure.
841.412 Rates determined by appeal.
841.413 Determinations of amount due from each agency.
Appendix A to Subpart D of Part 841—Table of Normal Cost Percentages

Subpart D—Government Costs

Authority: 5 U.S.C. 8461 and 8423.

§ 841.401 Purpose and scope.

(a) The purpose of this subpart is to regulate the Government contributions to the Civil Service Retirement Fund under FERS.

(b) This subpart covers—

(1) Factors considered in the computation of agency contributions under FERS;

(2) Publication of notice of the normal cost rates for each category of employees;

(3) Agency appeals of rate determinations; and

(4) Methodology for determining the amount due from each agency.

§ 841.402 Definitions.

In this subpart—

"Actuary" means an associate or fellow in the Society of Actuaries and one who is enrolled under section 3042 of Pub. L. 93-406, the "Employee Retirement Income Security Act of 1974."

"Administrative expenses" means the normal cost loading applicable to the administration of FERS.

"Age" means age, as of the beginning of the fiscal year, rounded to the nearest birthday.

"Agency head" means, for the executive branch agencies, the head of an executive agency as defined in 5 U.S.C. 105; for the legislative branch, the Secretary of the Senate, the Clerk of the House of Representatives, or the head of any other legislative branch agency; for the judicial branch, the Director of the Administrative Office of the United States Courts; for the Postal Service, the Postmaster General; for any other independent establishment that is an entity of the Federal Government, the head of the establishment.

"Board" means the Board of Actuaries of the Civil Service Retirement System.

"Category of employees" means a grouping of employees under § 841.403.

"Child survivor termination and death rates" means the rate, by age of the child, at which child survivor benefits terminate.

"CSRS" means subchapter III of chapter 83 of title 5, United States Code.

"Death and recovery rates for disability annuitants" means the rate, by age, sex, and duration on the roll, at which disability annuitants are removed from the annuity roll because of death; and the rate, by age, sex, and duration on the roll, at which disability annuitants are removed from the annuity roll because of recovery or restoration to earning capacity.

"Death and remarriage rates for surviving spouses" means the rate, based on the sex of the employee, age of the survivor annuitant, and the duration on the annuity roll, at which spousal survivor annuitants are removed from the annuity roll because of death; and the rate, based on the sex of the employee, age of the survivor annuitant, and the duration on the roll, at which survivor annuitants are removed from the annuity roll because of remarriage.

"Death rates for non-disability annuitants" means the rate, by age and sex of the annuitant, at which non-disability annuitants are removed from the annuity roll because of death.

"Disability retirement rates" means the rate, by age, sex, length of service, and whether the employees are eligible for social security disability benefits, at which employees retire for disability.

"Duration on the roll" means the number of full years on the annuity roll as of the beginning of the fiscal year.

"Economic Assumptions" means the assumptions used by the Board with respect to inflation, interest rates, and wage and salary growth.

"Employee death rates" means the rate, by age and sex of the employees and whether the employees are survived by spouses entitled to survivor annuities, at which employees die in service.

"Employees" means employees as defined in section 8401(11) of title 5, United States Code, and Members, as defined in section 8401(20) of title 5, United States Code.

"Family characteristics of annuitants" means, based on the annuitant's age and sex, and in some cases, on the type of annuity (regular, disability, or deferred), the number and average age of child survivors at the death of the annuitant, the percentage of annuitants with an annuity reduced to provide survivor benefits, the percentage of annuitants who actually leave a surviving spouse entitled to a survivor annuity at the annuitant's death, and the average age of the surviving spouse.

"Family characteristics of employees" means, based on the employee's age at death and sex, the number and average age of child survivors and the average age of the surviving spouse, per death of an employee with a survivor.

"FERS" means chapter 84 of title 5, United States Code.

"Involuntary retirement rates" means, by age and sex of the employee, the rate of involuntary retirements (discontinued service and optional early retirements).

"Merit salary increases" means salary increases, by age and length of service, that are not general salary increases. "Merit salary increases" include promotions and within-grade and similar increases based in whole or in part on employee performance, but do not include comparability increases, Postal Service COLA, or similar adjustments to entire pay scales; or premium pay.

"Military service rates" means the fraction, by age and sex, of employees who have military service to all employees, and the average length of military service and the salary on which their deposits to receive credit for military service are based for these employees.

"Normal cost percentage" or "normal cost" means the entry-age normal cost of the provisions of FERS which relate to the Fund, computed by the Office in accordance with generally accepted actuarial practice and standards (using dynamic assumptions) and expressed as a level percentage of aggregate basic pay.

"Service" means all creditable service, including military service, rounded to the nearest number of years as of the beginning of the fiscal year.

"Single agency rate" means a normal cost percentage for one category of employees in one agency. A single agency rate is set under § 841.412 as a result of a successful appeal.

"Voluntary retirement rates" means the rate, based on the sex, age, and service of the employee, of regular longevity retirements.

"Withdrawal rates" means the rate at which employees leave FERS-covered service without retiring, including employees who are paid refunds and employees who take deferred retirement. These rates are of two types: "not offset for reentry" and "offset for reentry." These rates are by age and service.

§ 841.403 Categories of employees for computation of normal cost percentages.

Normal cost percentages will be determined for each of the following groups of employees:

(a) Members;

(b) Congressional employees;

(c) Law enforcement officers and firefighters;

(d) Air traffic controllers;

(e) Military reserve technicians; and

(f) All other employees.

§ 841.404 Demographic factors.

(a) The Office of Personnel Management (OPM) will consider the factors listed below in determining normal cost percentages. To the extent data are available for the factor by specific category of employees, such data will be used. To the extent category specific data are not available, the most relevant available data will be used.

(1) Distributions of new entrants by age, sex, and service;

(2) Withdrawal rates;

(3) Merit salary increases;

(4) Voluntary retirement rates;

(5) Involuntary retirement rates;

(6) Disability retirement rates;

(7) Employee death rates;

(8) Military service rates;

(9) Family characteristics for employees;

(10) Death rates for non-disability annuitants;

(11) Death and recovery rates for disability annuitants;

(12) Child survivor termination and death rates;

(13) Family characteristics for annuitants; and

(14) Administrative expenses.

(b) Generally, each rate, ratio, or fraction must be separately considered to determine the rates for males and their survivors and the rates for females and their survivors, except those rates for child survivors and merit salary increases.

§ 841.405 Economic assumptions.

The determinations of the normal cost percentage will be based on the economic assumptions determined by the Board. When an agency's case is based in whole or in part on the pattern of merit salary increases specific to the agency or to a category of employees within the agency, the Board may require modification of the economic assumptions concerning salary and wage growth to take into account the combined effect of merit and general wage and salary increases.

§ 841.406 Determination of normal cost percentages.

(a) OPM will determine the Government-wide normal cost percentage for each category of employees. These normal cost percentages will be used by all agencies that have not been granted a single agency rate under § 841.412.

(b) Each normal cost percentage will be rounded to the nearest one-tenth of a percent.

§ 841.407 Notice of normal cost percentage determinations.

(a) No later than 5 years after the publication of a current notice of normal cost percentages, OPM will publish in the **Federal Register** a notice that will contain updated normal cost percentages.

(b) The notice of normal cost percentage will include a statement of—

(1) The Government-wide normal cost percentage and any single agency rates for each category of employees;

(2) The effective date of any changes made by the notice;

(3) The address for obtaining information on the data and assumptions used in computing the normal cost percentages;

(4) The time limit for submission of appeals under § 841.409; and

(5) The address for filing an appeal under § 841.409.

§ 841.408 Effective date of normal cost percentages.

(a) Except as provided in paragraph (b) of this section and in § 841.412, normal cost percentages stated in a notice of normal cost percentages under § 841.407 will be effective at the beginning of the first pay period commencing on or after the later of—

(1) Three months after the date of publication of the notice of normal cost percentages; or

(2) The first October 1 after the date of publication of the notice of normal cost percentages.

(b) The initial normal cost percentages will be effective at the beginning of the first pay period on or after January 1, 1987.

§ 841.409 Agency appeal right.

(a) An agency with at least 1,000 employees in the general category of employees or 500 employees in any of the special categories may appeal to the Board the normal cost percentage for that category as applied to that agency.

(b) No appeal will be considered by the Board unless the agency files, no later than 6 months after the date of publication of the notice of normal cost percentages under § 841.407, a petition for appeal that meets all the requirements of § 841.410.

§ 841.410 Contents of petition for appeal.

(a) To file an appeal, an agency head must, before expiration of the time limit, file with OPM—

(1) A letter of appeal;

(2) An actuarial report; and

(3) A certificate of eligibility (described in paragraph (d) of this section).

(b)(1) The letter of appeal must be in writing and signed by the agency head. Delegation of signatory authority is not permitted.

(2) The letter of appeal may contain any argument the agency wishes to make or may simply submit the actuarial report for consideration.

(c) The actuarial report must contain a detailed actuarial analysis of the normal cost of FERS benefits as applied to the employees of that agency in the category of employees for which the agency is appealing the use of the Government-wide rate. The actuarial report must—

(1) Be signed by an actuary;

(2) Use the economic assumptions under §841.405; and

(3) Specifically address and consider each of the demographic factors listed in § 841.404. The appealing agency is responsible for developing data relating to the first nine demographic factors as they relate to the category of agency employees for which the appeal is being filed. Government-wide demographic factors (available from OPM) will be presumed to be sufficient and reliable for factors 10 through 13 unless the appealing agency is able to demonstrate, through sufficient and reliable data relating to its employees or former employees, the use of alternative factors is appropriate. The fourteenth factor, administrative expenses, will be supplied by OPM.

(d) The certificate of eligibility is a letter from the agency's director of personnel certifying that the agency has the requisite 1,000 or 500 in the category of employees under consideration.

§ 841.411 Appeals procedure.

(a) A Government-wide normal cost percentage is presumed to apply to all agencies. Any agency appealing application of a Government-wide normal cost percentage to any category of employees in its workforce must demonstrate to the satisfaction of the Board that the normal cost percentage for that category of employees in that agency is significantly different from the Government-wide normal cost percentage.

(b) While an agency has an appeal pending, the Government-wide normal cost percentage continues to apply to that agency.

(c) The Board cannot consider an appeal unless all the documents required for a petition for appeal under § 841.410(a) are filed before expiration of the time limit for an appeal.

(d) The Board cannot sustain an appeal unless the Board finds that—

(1) The data used in the agency's actuarial analysis are sufficient and reliable (As a general rule, at least 5 years of data pertaining to any group of employees must be analyzed before the results are considered sufficient and reliable.);

(2) The assumptions used in the agency's actuarial analysis are justified;

(3) When all relevant factors are considered together, there is a demonstrated difference between the normal cost for the group at issue in the appeal and the normal cost for the same group calculated on a Government-wide basis; and

(4) The difference between the Government-wide normal cost percentage and the single agency rate would be at least 10 percent of the normal cost being appealed.

§ 841.412 Rates determined by appeal.

(a) If the Board finds that a different normal cost is warranted based on an agency appeal, it will establish a single agency rate for the category of employees in that agency.

(b) The single agency rate will be effective at the beginning of the first pay period beginning 30 days after the date of the Board's decision.

(c) A single agency rate may be higher or lower than the Government-wide rate and will remain in force for not less than 3 years.

(d) After a single agency rate has been in force for at least 3 years, OPM may—

(1) Require, no more often than annually, that the agency justify continuation of the rate; and/or

(2) When it publishes a notice of normal cost percentages under § 841.407, terminate the single agency rate.

§ 841.413 Determinations of amount due from each agency.

(a) For each pay period, each agency will determine the total amount of basic pay paid to employees in each category of employees.

(b) For each category of employees, the amount due from each agency for a pay period is the product of—

(1) The total amount of basic pay or employees in that category of employees in that agency; and

(2) The normal cost percentage.

APPENDIX A TO SUBPART D OF PART 841—TABLE OF NORMAL COST PERCENTAGES

Category of employees	Government-wide normal cost [1]
Members	23.5
Congressional employees	23.8
Law enforcement officers and firefighters	31.2
Air traffic controllers	33.3
Military reserve technicians	16.0
All other employees	16.1

[1] Percentages effective at the beginning of the first pay period commencing on or after Jan. 1, 1987.

All normal cost percentages in the above table include employee contributions.

[FR Doc. 86-29189 Filed 12-30-86; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Part 841

Federal Employees Retirement System—General Administration: Court Orders Affecting Retirement Benefits

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is publishing interim regulations to establish procedures for handling court-ordered payments for benefits under the new Federal Employees Retirement System (FERS). These regulations are necessary to implement provisions of the FERS Act of 1986 that require OPM to honor court orders entitling former spouses or legally separated spouses to benefits.

DATES: Interim rules effective January 1, 1987; comments must be received on or before March 2, 1987.

ADDRESSES: Send comments to Frank D. Titus, Director FERS Implementation Task Force; Retirement and Insurance Group; Office of Personnel Management; P.O. Box 884; Washington, DC 20044; or deliver to OPM, Room 3311, 1900 E Street, NW., Washington DC.

Send court orders affecting retirement benefits under Subpart I of Part 841 to Allotments Branch, Office of Personnel Management, P.O. Box 17, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 632-5560.

SUPPLEMENTARY INFORMATION: The FERS Act of 1986, Pub. L. 99-335, created a new retirement system for some Federal employees. Under this system OPM must honor qualifying court orders that give former spouses or legally separated spouses rights to benefits payable under FERS.

These regulations provide that OPM will review court orders when we receive them to determine whether they are qualifying under the criteria established by law and these regulations. When we determine that an order meets these criteria, we will notify the claimant that we will make payment under the court order. We will also notify the employee/retiree of our decision and his or her right to appeal the decision to the Merit Systems Protection Board (MSPB). Payments will be authorized immediately if they are otherwise payable without waiting for the outcome of any appeal. If we determine that a court order does not qualify for payment of benefits under FERS, we will notify the claimant of this decision, specify which criteria were not met, and provide the claimant with his or her right to appeal the decision to MSPB.

Payments from the annuity of a retiree terminate upon the death of the former spouse or legally separated spouse, or earlier if provided by a court order. Survivor annuity payments to a former spouse terminate upon his or her death, or upon remarriage before age 55.

Waiver of Notice of Proposed Rulemaking

Under 5 U.S.C. 553 (b)(3)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days. FERS is effective January 1, 1987, and OPM needs to have procedures in place to handle court orders that may arrive and affect employees who will be converted to FERS on January 1.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations will only affect retirement payments to retired Government employees and spouses.

List of Subjects in 5 CFR Part 841

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income tax, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.
Constance Horner,
Director.

Accordingly, OPM is amending Part 841 to add and reserve Subparts E through H and to add Subpart I to read as follows:

PART 841—FEDERAL EMPLOYEES RETIREMENT SYSTEM—GENERAL ADMINISTRATION

* * * * *

Subpart I—Court Orders Affecting Retirement Benefits

Sec.

841.901 Purpose.
841.902 Definitions.
841.903 Qualifying court orders.
841.904 Applications by former spouses and separated spouses.
841.905 Amounts payable.
841.906 Processing court orders dividing employee retirement benefits.
841.907 Processing court orders affecting survivor annuity benefits.
841.908 Termination of former spouse or separated spouse benefits.
841.909 Court orders preventing payment of refunds of contributions.
841.910 Effective dates.
841.911 Payment only to former spouses and separated spouses.
841.912 Limitations.
841.913 Guidelines on interpreting court orders.
841.914 Liability.
841.915 Receipt of multiple court orders.
841.916 Cost-of-living adjustments.
Appendix A to Subpart I of Part 841—Guidelines for Interpreting State Court Orders Dividing Employee Retirement Benefits
Appendix B to Subpart I of Part 841—Guidelines for Interpreting State Court Orders Awarding Survivor Annuity Benefits to Former Spouses

Subpart I—Court Orders Affecting Retirement Benefits

Authority: 5 U.S.C. 8461.

§ 841.901 Purpose.

This subpart regulates the Office of Personnel Management's adjudication of claims arising out of State court orders that affect retirement benefits under FERS. OPM must comply with qualifying court orders, decrees, or court-approved property settlements in connection with divorces, annulments of marriages, or legal separations of employees, Members, or retirees that award a portion of a former employee's or Member's retirement benefits or a survivor annuity to a former spouse or separated spouse. This subpart prescribes the procedures to be followed by—

(a) A former spouse when applying for benefits based on a court order under section 8445 or 8467 of title 5, United States Code;

(b) A separated spouse when applying for benefits based on a court order under section 8467 of title 5, United States Code; and

(c) The Associate Director in honoring court orders and in making payment to the former spouse.

§ 841.902 Definitions.

In this subpart—

"Associate Director" means OPM's Associate Director for Retirement and Insurance or an OPM official authorized to act on behalf of the Associate Director.

"Court order" means any judgment or property settlement issued by or approved by any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court in connection with, or incident to, the divorce, annulment of marriage, or legal separation of a Federal employee or retiree.

"Employee retirement benefits" means employees' and Members' annuities and refunds of retirement contributions but does not include survivor annuities or one-time payments made pursuant to sections 8424 (d) through (g) of title 5, United States Code.

"FERS" means chapter 84 of title 5, United States Code.

"Former spouse" means (a) in connection with a court order affecting employee retirement benefits, a living person whose marriage to an employee, Member, or retiree has been subject to a divorce or annulment; or (b) in connection with a court order awarding a former spouse annuity, a living person (1) who was married for at least 9 months to an employee, Member, or retiree with at least 18 months of creditable service under FERS; and (2) whose marriage to the employee was terminated prior to the death of the employee, Member, or retiree.

"Former spouse annuity" means a recurring benefit under FERS that is payable to a former spouse after the employee's, Member's, or retiree's death.

"Gross annuity" means the amount of a self-only annuity less any applicable survivor reduction but before any other deductions.

"Member" means a Member of Congress.

"MSPB" means the Merit Systems Protection Board.

"Net annuity" means the amount of annuity payable after deducting from the gross annuity any amounts that are (a) owed by the retiree to the United States; (b) deducted for health benefits premiums pursuant to 5 U.S.C. 8906; (c) deducted for life insurance premiums pursuant to 5 U.S.C. 8714a(d); or (d) deducted for Medicare premiums.

"Qualifying court order" means a court order that meets the requirements of § 841.903.

"Retiree" means a former employee or Member who is receiving recurring payments under FERS based on service by the employee or Member. "Retiree" does not include a current spouse, former spouse, child, or person with an insurable interest.

"Self-only annuity" means the recurring payment to a retiree who has elected not to provide a survivor annuity to anyone.

"Separated spouse" means a living person whose marriage to an employee, Member, or retiree is currently subject to a court order granting a legal separation.

§ 841.903 Qualifying court orders.

(a) A former spouse or separated spouse is entitled to a portion of an employee's retirement benefits only to the extent that the division of retirement benefits is expressly provided for by the court order. The court order must divide employee retirement benefits, award a payment from employee retirement benefits, or award a former spouse annuity.

(b) The court order must state the former spouse's or separated spouse's share as a fixed amount, a percentage or a fraction of the annuity, or by a formula that does not contain any variable whose value is not readily ascertainable from the face of the order or normal OPM files.

(c)(1) For payment from employee retirement benefits, the court order must either state the former spouse's or separated spouse's entitlement to a portion of employee retirement benefits, or direct an employee, Member, or retiree to pay a portion of employee retirement benefits to the former spouse or separated spouse. OPM will pay a former spouse or separated spouse directly unless the court order expressly instructs OPM not to do so.

(2) For awarding a former spouse annuity, the court order must either state the former spouse's entitlement to a survivor annuity or direct an employee, Member, or retiree to provide a former spouse annuity.

(d)(1) For affecting or awarding a former spouse survivor annuity, a court order modifying a decree of divorce or annulment, or modifying any court order or court approved property settlement incident to a decree of divorce or annulment, will not be honored if it is issued after the retirement of the employee or Member involved.

(2) A court order (including a modification of an earlier order) concerning a survivor annuity for a former spouse will not be honored if it is issued after the death of the employee, Member, or retiree involved.

§ 841.904 Applications by former spouses and separated spouses.

(a) A former spouse (personally or through a representative) or a separated spouse (personally or through a representative) must apply in writing to be eligible for benefits under this subpart. No special form is required.

(b) The application letter must be accompanied by—

(1) A certified copy of the court order granting employee retirement benefits and/or survivor benefits;

(2) A statement that the court order has not been amended, superseded, or set aside;

(3) Identifying information concerning the employee, Member, or retiree such as his or her full name, FERS claim number, date of birth, and social security number, if available;

(4) The current mailing address of the former spouse or separated spouse; and

(5) If the employee has not retired under FERS or died, the mailing address of the employee.

(c) When payments are subject to termination upon remarriage, no payment will be made until the former spouse submits to the Associate Director a statement in the form prescribed by OPM certifying—

(1) That a remarriage has not occurred;

(2) That the former spouse will notify the Associate Director within 15 calendar days of the occurrence of any remarriage; and

(3) That the former spouse will be personally liable for any overpayment to him or her resulting from a remarriage. The Associate Director may subsequently require recertification of these statements.

§ 841.905 Amounts payable.

(a) Money held by an employing agency or OPM that may be payable at some future date is not available for payment under court orders unless all of the conditions necessary for payment of the money to the former employee or Member have been met, including, but not limited to—

(1) Separation from a covered position in the Federal service;

(2) Application for payment of the money by the former employee or Member; and

(3) The former employee's or Member's immediate entitlement to payment of the money subject to the order.

(b) Waivers of employee or Member annuity payments under the terms of 5 U.S.C. 8465(a) exclude the waived portion of the annuity from availability for payment under a court order if such waivers are postmarked or received before the date that OPM receives a qualifying court order.

(c) Payment under a court order may not exceed—

(1) In cases involving employee or Members annuities, the net annuity;

(2) In cases involving refunds of contributions, the amount of the refund; and

(3) In cases involving former spouse annuities, the amount permitted under section 8445(b) of title 5, United States Code.

(d) In cases in which court orders award former spouse annuities—

(1) Except as provided in paragraph (d)(2) of this section, former spouse annuities based on qualifying court orders will commence and terminate in accordance with the court order.

(2) A court order will not be honored to the extent it would require an annuity to commence prior to the day after the employee, Member, or retiree dies, or the first day of the second month beginning after the date on which OPM received written notice of the court order together with the additional information required by § 841.904. Further, a court order will not be honored to the extent it requires an annuity to be terminated contrary to 5 U.S.C. 8445(c)(2).

(3) A court order will not be honored to the extent it is inconsistent with any joint designation or waiver previously executed under section 8416(a) of title 5, United States Code, respect to the former spouse involved.

§ 841.906 Processing court orders dividing employee retirement benefits.

(a) Upon receipt of a court order dividing employee retirement benefits without an item of documentation required under § 841.904, the Associate Director will notify the person submitting the order of which item(s) is necessary to document the claim and that the claim cannot be processed without the missing item(s).

(b) Upon receipt of a court order dividing employee retirement benefits with all the documentation required under § 841.904, the Associate Director will review the court order to determine whether it is a qualifying court order under § 841.903 and whether the employee or Member affected by the order is receiving or entitled to receive employee retirement benefits.

(c) If the Associate Director determines that the order is not a qualifying court order, the Associate Director will send a notice to the employee and a final decision to the former spouse or separated spouse.

(1) The notice to the employee will state that OPM has received a court order from the former spouse or separated spouse but OPM has determined that the court order is not a qualifying court order.

(2) The final decision to the former spouse or separated spouse will—

(i) Acknowledge receipt of the court order;

(ii) State that the court order is not a qualifying court order and identify the paragraph(s) of § 841.903 under which the court order failed to qualify; and

(iii) State the right to appeal the decision to MSPB and the procedure and time limit for submitting an appeal.

(d) If the Associate Director determines that the court order is a qualifying court order and the employee is immediately eligible to receive employee retirement benefits, the Associate Director will send a final decision to both the employee and the former spouse or separated spouse.

(1) The final decision to the employee will state—

(i) That OPM has received a court order affecting employee retirement benefits and the date that OPM received the documentation required by § 841.904;

(ii) The applicable law and regulations under which OPM is required to comply with the court order;

(iii) That the order is a qualifying court order under applicable law and regulations;

(iv) The effect that compliance with the court order will have on employee retirement benefits;

(v) How the former spouse's or separated spouse's share of retirement benefits was computed;

(vi) In cases affecting annuity payments, that the retiree's annuity will be reduced effective with benefits accruing on the first day of the second month after OPM's receipt of the required documentation;

(vii) That the order must be honored unless entitlement terminates under § 841.908; and

(viii) That the employee may appeal the decision to MSPB and the procedure and time limit for submitting an appeal.

(2) The final decision to the former spouse or separated spouse will state—

(i) That OPM has received the court order affecting employee retirement

benefits and the date that OPM received the documentation required by § 841.904;

(ii) The applicable law and regulations under which OPM is required to comply with the court order;

(iii) That the order is a qualifying court order under applicable law and regulations;

(iv) How the former spouse's or separated spouse's share of retirement benefits was computed;

(v) That, if the former spouse or separated spouse disagrees with the computation, he or she may appeal the decision to MSPB and the procedure and time limit for submitting an appeal;

(vi) In cases affecting annuity payments, that the former spouse's or separated spouse's share of the retiree's annuity will begin to accrue effective on the first day of the second month after OPM's receipt of the required documentation and will be paid on the first day of the month after accrual; and

(vii) The order will continue to be honored unless entitlement terminates under § 841.908.

(e) If the Associate Director determines that the court order is a qualifying court order and the employee is not immediately eligible to receive employee retirement benefits, the Associate Director will send a final decision to both the employee and the former spouse or separated spouse.

(1) The final decision to the employee will state—

(i) That OPM has received a court order affecting employee retirement benefits and the date when OPM received the documentation required by § 841.904;

(ii) The applicable law and regulations under which OPM is required to comply with the court order;

(iii) That the order is a qualifying court order under applicable law and regulations;

(iv) How the former spouse's or separated spouse's share of retirement benefits would be computed under current law and regulations;

(v) That, if the former spouse or separated spouse disagrees with the computation, he or she may appeal the decision to MSPB and the procedure and time limit for submitting an appeal;

(vi) That, in accordance with § 841.905, nothing is payable before employee retirement benefits are payable to the employee; and

(vii) That the order will be honored when employee retirement benefits become payable unless entitlement terminates under § 841.908.

§ 841.907 Processing court orders affecting survivor annuity benefits.

(a) Upon receipt of a court order affecting survivor annuity benefits without an item of documentation required under § 841.904, the Associate Director will notify the person submitting the order of which item(s) is necessary to document the claim and that the claim cannot be processed without the missing item(s).

(b) Upon receipt of a court order affecting survivor annuity benefits with all the documentation required under § 841.904, the Associate Director will review the court order to determine whether it is a qualifying order under § 841.903, and whether the employee or Member affected by the order is receiving or entitled to receive employee retirement benefits or has died.

(c) If the Associate Director determines that the order is not a qualifying court order, the Associate Director will send a notice to the employee or survivor and a final decision to the former spouse.

(1) The notice to the employee or survivor will state that OPM has received a court order from the former spouse but OPM has determined that the court order is not a qualifying court order.

(2) The final decision to the former spouse will—

(i) Acknowledge receipt of the court order;

(ii) State that the court order is not a qualifying court order and the regulations under which the court order failed to qualify; and

(iii) State the right to appeal the decision to MSPB and the procedure and time limit for submitting an appeal.

(d) If the Associate Director determines that the court order is a qualifying court order and the employee has died, the Associate Director will send a final decision to the former spouse and any other claimant whose interest is adversely affected by the court order.

(1) The final decision to any other claimant whose interest is adversely affected by the court order will state—

(i) That OPM has received a court order awarding survivor annuity benefits and the date that OPM received the documentation required by § 841.904;

(ii) The applicable law and regulations under which OPM is required to comply with the court order;

(iii) That the order is a qualifying court order under applicable law and regulations;

(iv) The effect that compliance with the court order will have on the claimant's entitlement to benefits;

(v) That the order must be honored unless entitlement terminates under § 841.908; and

(vi) That the claimant may appeal the decision to MSPB and the procedure and time limit for submitting an appeal.

(2) The final decision to the former spouse will state—

(i) That OPM has received the court order awarding the survivor annuity benefits and the date that OPM received the documentation required by § 841.904;

(ii) The applicable law and regulations under which OPM is required to comply with the court order;

(iii) That the order is a qualifying court order under applicable law and regulations;

(iv) How the former spouse's survivor annuity was computed;

(v) That, if the former spouse's disagrees with the computation, he or she may appeal to MSPB and the procedure and time limit for submitting an appeal;

(vi) That the survivor annuity will begin to accrue effective on the first day of the second month after OPM's receipt of the required documentation; and

(vii) That the order will continue to be honored unless entitlement terminates under § 841.908.

(e) If the Associate Director determines that the court order is a qualifying court order and the employee is alive and receiving a retirement annuity, the Associate Director will send a final decision to both the retiree and the former spouse.

(1) The final decision to the retiree will state—

(i) That OPM has received a court order awarding survivor annuity benefits and the date that OPM received the documentation required by § 841.904;

(ii) The applicable law and regulations under which OPM is required to comply with the court order;

(iii) That the order is a qualifying court order under applicable law and regulations;

(iv) The effect that compliance with the court order will have on annuity benefits and survivor election;

(v) How the amount of reduction to provide the former spouse annuity benefit was computed;

(vi) That the reduction will be effective on the first day of the second month after receipt of the documentation required by § 841.904;

(vii) That the order must be honored unless entitlement terminates under § 841.908; and

(viii) That the employee may appeal the decision to MSPB and the procedure and time limit for submitting an appeal.

(2) The final decision to the former spouse will state—

(i) That OPM has received the court order awarding survivor annuity benefits and the date that OPM received the documentation required by § 841.904;

(ii) The applicable law and regulations under which OPM is required to comply with the court order;

(iii) That the order is a qualifying court order under applicable law and regulations;

(iv) How the former spouse annuity benefit will be computed;

(v) That, if the former spouse disagrees with the computation, he or she may appeal to MSPB and the procedure and time limit for submitting an appeal;

(vi) That nothing is payable before the death of the retiree; and

(vii) That the order will be honored unless entitlement terminates under § 841.908.

(f) If the Associate Director determines that the court order is a qualifying court order and the employee has not retired, the Associate Director will send a final decision to both the employee and the former spouse.

(1) The final decision to the employee will state—

(i) That OPM has received a court order awarding survivor annuity benefits and the date that OPM received the documentation required by § 841.904;

(ii) The applicable law and regulations under which OPM is required to comply with the court order;

(iii) That the order is a qualifying court order under applicable law and regulations;

(iv) The effect that compliance with the court order will have, under current law and regulations, on future annuity benefits, when payable;

(v) How the reduction in future annuity benefits would be computed under current law and regulations;

(vi) That the order must be honored unless entitlement terminates under § 841.908; and

(vii) That the employee may appeal the decision to MSPB and the procedure and time limit for submitting an appeal.

(2) The final decision to the former spouse will state—

(i) That OPM has received the court order awarding survivor annuity benefits and the date that OPM received the documentation required by § 841.904;

(ii) The applicable law and regulations under which OPM is required to comply with the court order;

(iii) That the order is a qualifying court order under applicable law and regulations;

(iv) How the former spouse's survivor annuity benefits would be computed under current law and regulations;

(v) That, if the former spouse disagrees with the computation, he or she may appeal to MSPB and the procedure and time limit for submitting an appeal;

(vi) That nothing is payable before the death of the employee; and

(vii) That the order will be honored when the employee dies unless entitlement terminates under § 841.908.

§ 841.908 Termination of former spouse or separated spouse benefits.

(a) OPM will terminate a recurring payment of or a future interest in employee retirement benefits to a former spouse or separated spouse whenever—

(1) The retiree dies;

(2) A contemporaneous or subsequent court order supersedes or sets aside the qualifying court order or directs that OPM stop the payments; or

(3) Termination is required by the terms of the court order awarding benefits to the former spouse or separated spouse.

(b) OPM will terminate a recurring payment of or a future interest in survivor annuity benefits to a former spouse whenever—

(1) The former spouse dies;

(2) The former spouse remarries before attaining age 55;

(3) A contemporaneous or subsequent court order determines that the qualifying court order awarding the survivor annuity benefits is invalid; or

(4) Termination is required by the terms of the court order awarding benefits to the former spouse.

(c) OPM will honor a qualifying court order that appears valid on its face despite a pending appeal or other attack on the validity of the qualifying court order unless the original or reviewing court has issued a stay of the qualifying court order or has ordered OPM not to honor the qualifying court order pending the appellate or collateral review. Automatic stays under state law will not be honored unless the original or reviewing court issues a document suspending the effect of the qualifying court order pending the review of the qualifying court order.

§ 841.909 Court orders preventing payment of refunds of contributions.

(a) Payment of a refund of contributions to a former employee will be subject to the terms of any court order issued with respect to any former spouse or separated spouse, if—

(1) The court order expressly relates to any portion of the refund involved; and

(2) Payment of the refund would extinguish entitlement of the former spouse to a survivor annuity under section 8445 of title 5, United States Code, or the former spouse or separated spouse to any portion of an annuity under section 8467 of title 5, United States Code.

(b) For paragraph (a) of this section to have effect, OPM must be in receipt of the court order before authorizing payment of the refund.

(c)(1) In the event that OPM receives two or more court orders—

(i) When there are two former spouses, or a former spouse and a separated spouse, the court orders will be honored in the order in which they were issued until the contributions have been exhausted.

(ii) When there are two or more court orders or decrees relating to the same former spouse or separated spouse, the one issued last will be honored first.

(2) In no event will the amount paid out exceed the amount of the refund.

(d) OPM is not liable for any payment made from money due from or payable by OPM to any individual pursuant to a court order that is regular on its face, if such payment is made in accordance with this subpart.

§ 841.910 Effective dates.

(a) Except as provided in § 841.903(d), provisions of this subpart apply regardless of the date of issuance of the

court order or the date when the employee or Member retires.

(b)(1) The Associate Director will not increase the amount apportioned from current retirement benefits to satisfy an arrearage due the former spouse or separated spouse unless the court order states the amount of the arrearage and directs that it be paid from the employee retirement benefits. However, the Associate Director will honor the terms of a new or revised court order that either increases or decreases the former spouse's or separated spouse's entitlement. These changes will be prospective only.

(2) Benefits payable to a former spouse or separated spouse from a retiree's annuity begin to accrue no earlier than the first day of the second month after OPM's receipt of a qualifying court order and the documentation required by § 841.904, and terminate no later than the last day of the month before the death of the retiree.

(c) The survivor annuity for a former spouse commences and terminates in accordance with the court order. However, a court order will not be honored to the extent it would require an annuity to commence before—

(1) The day after the employee, Member, or retiree dies; or

(2) The first day of the second month beginning after OPM receives the court order, together with such additional information required by § 841.904, whichever is later.

Further, a court order will not be honored to the extent it requires an annuity to be terminated contrary to section 8445(c) of title 5, United States Code.

§ 841.911 Payment only to former spouses and separated spouses.

(a) Payments under this subpart may only be made to a former spouse, a separated spouse, or the representative of a former or separated spouse.

(b) No payment under this subpart may be made after the death of the former spouse or separated spouse.

(c) Upon the death of a former spouse or separated spouse receiving a portion of employee retirement benefits under this subpart, the former spouse's or separated spouse's share will revert to the retiree unless it is needed to comply with another qualifying court order awarding benefits to a living former spouse or separated spouse.

§ 841.912 Limitations.

(a) In honoring and complying with a court order, the Associate Director will not disrupt the scheduled method of accruing retirement benefits or the normal timing for making such payment, despite the existence in the order of a special schedule of accrual or payment of amounts due the former spouse or separated spouse.

(b) Payments from employee retirement benefits under this subpart will be discontinued whenever the retiree's annuity payments are suspended or terminated. If annuity payments to the retiree are restored, payment to the former spouse or separated spouse will also resume.

(c) Because the former spouse or separated spouse is entitled to payments from employee retirement benefits only while the former employee or Member is living, the former spouse or separated spouse is personally liable for any payments from employee retirement benefits received after the death of the retiree.

§ 841.913 Guidelines on interpreting court orders.

As circumstances require, OPM will publish in the Federal Register a notice of the guidelines it uses in interpreting court orders.

§ 841.914 Liability.

OPM is not liable for any payment made from employee retirement benefits pursuant to a court order if such payment is made in accordance with the provisions of this subpart.

§ 841.915 Receipt of multiple court orders.

Except as provided in § 841.909, in the event that OPM received two or more qualifying court orders—

(a) When there are two or more former spouses, or a former spouse and a separated spouse, the court orders will be honored in the order in which they were issued to the maximum extent possible under section 8445(b) of title 5, United States Code, and § 841.905.

(b) When there are two or more court orders relating to the same former spouse or separated spouse, the one issued last will be honored.

§ 841.916 Cost-of-living adjustments.

In cases when the court order apportions a percentage of the employee retirement benefit, the Associate Director will initially determine the amount of proper payment. That amount will be increased by future cost-of-living increases payable to the retiree unless the court order directs otherwise.

Appendix A to Subpart I of Part 841—Guidelines for Interpreting State Court Orders Dividing Employee Retirement Benefits

These guidelines explain the interpretation which the Office of Personnel Management (OPM) will place on terms and phrases frequently used in dividing benefits. These guidelines are intended not only for the use of OPM, but also for the legal community as a whole, with the hope that by informing attorneys, in advance, about the manner in which OPM will interpret terms written into court orders, the resulting orders will be more carefully drafted, using the proper language to accomplish the aims of the court.

I. Cost-of-Living and Solary Adjustments

A. Unless the court directly and unequivocally orders otherwise, decrees which divide annuities either on a percentage basis or by use of a formula will be interpreted as subject to adjustment for cost-of-living and salary adjustments occurring after the issuance of the decree.

B. On the other hand, decrees which award a former spouse or a separated spouse a specific dollar amount from the annuity will be interpreted as excluding cost-of-living and salary adjustments unless the court expressly orders their inclusion.

C. Orders which contain both a formula or percentage instruction and a corresponding fixed dollar amount will be interpreted as including the fixed amount only as the court's estimate of the initial amount of payment. The formula or percentage instruction will control in cases where conflicting instructions appear.

D. A formula containing an instruction to calculate the former spouse's or separated spouse's share effective at the time of divorce or separation will not be interpreted to prevent cost-of-living or salary adjustments. To award a fixed dollar amount based on the rate of annuity which would have been paid if retirement occurred at the date of divorce, the decree must either state the dollar amount of the award or explain with sufficient clarity that salary adjustments, as well as service, after the date of the decree are to be disregarded in computing the former spouse's or separated spouse's share.

II. Types of Annuity

A. Gross annuity will be interpreted as the amount of the annuity payable after any applicable survivor reduction but before any other deduction.

B. To divide an annuity before any applicable survivor deduction the decree must contain language to the effect that the division is to be made on the self-only annuity, the life rate annuity, or the annuity unreduced for survivor benefit, or equivalent language. A division of "gross annuity" will not accomplish this purpose.

C. Net annuity or disposable annuity will be interpreted to mean net annuity as defined in § 841.902.

D. Orders which fail to state the type of annuity which they are dividing will be interpreted as dividing gross annuity (defined above).

III. Calculating Time

A. The smallest unit of time which will be used in computing a formula in a decree is a month.

1. This policy is based on the provision of section 8411(a)(1) of title 5, United States Code, which allows credit for service for years or twelfth parts thereof. Requests to calculate smaller units of time will not be honored.

2. Smaller periods of time stated in terms of decimal fractions of a year contained in a decree will be limited in application to simple numerical operations performed using the extra precise number. Time calculations by the Office of Personnel Management will be no more precise than years and twelfth parts. For example, the share of a former spouse awarded a portion of the annuity equal to ½ of the fraction whose numerator is 12.883 years and whose denominator is the total service on which the annuity is based would be computed by taking ½ of the quotient obtained by dividing 12.883 by the total service measure in years and twelfth parts.

B. The term "military service" will generally be interpreted to include only periods of service within the definition of military service contained in section 8401(31) of title 5, United States Code, i.e., active duty military service. Civilian service with military organizations will not be included as "military service," except where the exclusion of such civilian service would be manifestly contrary to the intent of the court order.

C. When a decree contains a formula for dividing annuity which requires computation of service and unused sick leave has been used in the annuity computation (i.e., benefits under Part 845 of this chapter), the amount of credit attributable to the unused sick leave will be computed as service if the formula instructs the use of "creditable service" (or other phrase using "credit" or its equivalent), but will exclude the time attributable to unused sick leave if the formula is based on "years of service" or "total service." Credit for unused sick leave always accrues on the date of separation for immediate retirement; it is never apportioned over the time when earned.

IV. Distinguishing Between Divisions of Annuity and Refund of Contributions

A. Orders which are unclear about whether they are dividing an annuity or a refund of contributions will be interpreted as dividing an annuity.

B. Orders using "annuities," "pensions," "retirement benefits," or similar terms will be interpreted as dividing an annuity and whatever other employee benefits become payable, such as refunds. Orders which divide "contributions," "deductions," "deposits," "retirement accounts," "retirement fund," or similar terms will be limited to division of the amount which the employee has paid into the Civil Service Retirement Fund.

Appendix B to Subpart I of Part 841—Guidelines for Interpreting State Court Orders Awarding Survivor Annuity Benefits to Former Spouses

These guidelines explain the interpretation which the Office of Personnel Management (OPM) will place on terms and phrases frequently used in awarding survivor benefits. These guidelines are intended not only for the use of OPM, but also for the legal community as a whole, with the hope that by informing attorneys, in advance, about the manner in which OPM will interpret terms written into court orders, the resulting orders will be more carefully drafted, using the proper language to accomplish the aims of the court.

I. Insurable Interest Annuities

Two types of potential survivor annuities may be provided by retiring employees to cover former spouses. Sections 8417 and 8445 of title 5, United States Code, provides for "former spouse annuities." Sections 8420 and 8444 of title 5, United States Code, provide for "insurable interest annuities." These are distinct benefits, each with its own advantages.

A. OPM will enforce State court orders to provide section 8417 reductions or section 8445 annuities. These annuities are less expensive and have fewer restrictions than insurable interest annuities but the former spouse's interest will automatically terminate upon remarriage before age 55. To provide a section 8417 reduction or section 8445 annuity, the order must use terms such as "former spouse annuity," "section 8417 reduction," "section 8445 annuity," or "survivor annuity."

B. OPM will not enforce State court orders to provide "insurable interest annuities" under section 8420 or 8444. These annuities may only be elected at the time of retirement by a retiring employee who is not retiring under the disability provision of the law and who is in good health. The election may also be eliminated to provide a survivor annuity for a spouse acquired after retirement. The parties might seek to provide this type of annuity interest if the non-employee spouse expects to remarry before age 55, if the employee expects to remarry a younger second spouse before retirement, or if another former spouse has already been awarded a section 8445 annuity. However, the State court will have to provide its own remedy if the employee is not eligible for or does not make the election. OPM will not enforce the order. Language including the words "insurable interest" or referring to section 8420 or 8444 will be interpreted as providing for this type of survivor benefit.

C. In orders which contain internal contradictions about the type of annuity, such as "insurable interest annuity under section 8445," the section reference will control.

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5 CFR Part 842

Federal Employees Retirement System—Basic Annuity; Coverage

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim rules and requesting comments on the rules governing employee coverage under the Federal Employees' Retirement System (FERS) Act of 1986. These regulations are necessary to implement the Act. They will identify those employees who are covered by statute, and excluded by OPM.

DATES: Interim rules effective January 1, 1987; comments must be received on or before March 2, 1987.

ADDRESS: Send comments to Frank D. Titus; Director, FERS Implementation Task Force; Retirement and Insurance Group; P.O. Box 884, Washington, DC 20044; or deliver to OPM, Room 3311, 1900 E Street NW.; Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mary Sugar, (202) 632-5560.

SUPPLEMENTARY INFORMATION: The FERS Act of 1986, Pub. L. 99-335, created a new retirement system for many Federal employees. Employees who are covered by FERS will be covered by the basic retirement benefit, social security, and the thrift savings plan. OPM is responsible for administration of the basic retirement benefits. Social security benefits are administered by the Social Security Administration. The savings plan is administered by the Federal Retirement Thrift Investment Board. The basic retirement benefit of FERS becomes effective on January 1, 1987. To implement the basic retirement provisions on time, as well as to provide authoritative information about FERS for the "open season" materials for employees who can elect FERS coverage in 1987, OPM will be publishing a series of interim regulations in the near future. This regulation on employee coverage is one of the first in this series and is Subpart A of Part 842—Basic Annuity. The remaining subparts of Part 842 will address other basic annuity requirements including eligibility, computation, the special annuity supplement, and special provisions for certain employees.

Part 841 will address general administration under the FERS including normal cost computations for agency contributions. Part 843 will address survivor and lump-sum benefits. Part 844 will address disability benefits and Part 846 will address elections by employees to be covered under FERS.

Section 842.101 states the purpose of this regulation which is to identify the employees who are covered by statute, excluded by statute, and excluded by OPM.

Section 842.102 provides the definitions applicable to this subpart. The definitions of "employee" and "Member" are those contained in section 8401 of title 5, United States Code. They are included for the convenience of the reader. It should be

noted that employees of the Postal Service and the Postal Rate Commission are included by an amendment in section 306 of the FERS Act to title 39, United States Code.

Section 842.103 states the general rules for coverage under FERS. First, one must meet the definition of employee or Member, or specifically be covered by another provision of law. Second, because social security coverage is a major part of the FERS benefit package, one must be covered by social security. Third, employee deductions must be withheld from pay and the agency contributions must be made. Fourth, employees must be paid based on units of time. This provision is necessary to determine how much service an employee has. It has the impact of excluding piece workers who do not have a pre-established work schedule. (These individuals are currently excluded under the Civil Service Retirement System (CSRS) regulations in Part 831 of this chapter.)

Section 842.104 states the basic rules for variations and exceptions to automatic coverage under FERS. In enacting FERS, Congress essentially provided that all employees who have entitlement to a benefit under CSRS (i.e., 5 years of civilian service) have a choice of whether to stay under CSRS or to elect FERS coverage during the open season from july 1 through December 31, 1987. Employees now covered by CSRS interim provisions (with 1.3% retirement deductions and social security deductions) who have, as of December 31, 1986, less than 5 years of creditable civilian service and thus no entitlement to a CSRS benefit will be automatically covered by FERS. (Creditable civilian service includes service for which no retirement deductions were withheld and service for which deductions were refunded.)

Paragraph (a) of this section addresses reemployment under FERS. The annuity of a FERS retiree stops upon reemployment. He or she is then covered by FERS while reemployed unless reemployment is as a justice or judge (as defined in 28 U.S.C. 451) or is as an employee subject to another retirement system for Federal employees. When the period of reemployment ends, the annuity will be recomputed. Future regulations will cover reemployment in more detail.

Paragraph (b) of this section addresses employees with 5 or more years of service as of December 31, 1986, who are covered by CSRS and social security.

Paragraph (c) of this section states the options provided by law for employees who are rehired after January 1, 1987. It parallels the rule described above that permits individuals who complete 5 years of creditable civilian service, some of which was covered by CSRS or Foreign Service deductions, and who then are employed in a position covered by CSRS and FERS to have a choice of CSRS coverage offset by social security benefits or FERS.

Paragraph (d) of this section pertains to the opportunity of certain high-level officials to elect FERS coverage.

Paragraph (e) of this section addresses employees covered only by CSRS who may elect FERS. Agencies should note that the 5-year rule cited above does not apply to employees who are under "regular" CSRS deductions (normally 7%). An employee who was hired before 1984 who has only CSRS coverage remains covered only by CSRS, regardless of length of service, unless he/she elects FERS.

Paragraph (f) specifies that employees who have 5 or more years of creditable civilian service even though none of this service was covered by CSRS deductions or it was not covered by deductions on December 31, 1986, are not covered by FERS unless they elect this coverage. If FERS coverage is not elected, the employee remains under only social security coverage.

Section 842.105 contains the regulatory exclusions under OPM's discretionary authority to exclude temporary and intermittent employees. Under this authority, OPM is excluding employees who are serving under appointments limited to 1 year or less, and intermittent employees unless they are serving under career or career conditional appointments.

However, when final regulations are published, OPM intends to extend coverage to employees serving under temporary appointments limited to 1 year or less, provided they have 1 year of current continuous service in the same agency. Those with 1 year of current continuous service in the same agency would be able to acquire retirement coverage after the first year of current continuous service. We are not extending coverage to such "temporary" employees at this time because such a change could possibly have a significant impact on agencies and it is not necessary to implement this aspect of FERS on January 1. However, for the reasons stated below, we believe that FERS coverage should be extended to this new class of employees when the final rules are published. Consequently, we are requesting comments on the intended extension of coverage at this time.

Unlike CSRS, two of the three components of the FERS benefit, (social security and employee savings and matching Government contributions), are completely portable—they go with the employee to any employer. The basic benefit, while not fully portable, provides deferred benefits as early as age 55 with 10 years of service, disability and death benefits after only 18 months of service, and requires a very nominal employee contribution. Although FERS allows deposits for service performed before 1989, FERS will not allow employees to gain credit for non-covered employment occurring after 1988.

OPM believes the portability of FERS benefits, combined with the absence of any mechanism for obtaining credit for non-covered employment, makes FERS coverage appropriate for certain positions traditionally excluded from CSRS by regulation. Important disability protection will be provided under FERS in instances where the CSRS would have provided none had it covered the positions. In instances where an individual's employment is truly short term, overall Government costs will be minimized by the 5-year vesting requirement for retirement benefits other than death and disability and the 2- to 3-year vesting requirement for the automatic 1 percent Government contribution to a FERS employee's savings account.

Waiver of Notice of Proposed Rulemaking

Under 5 U.S.C. 553 (b)(3)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and making these regulations effective in less than 30 days. FERS is effective January 1, 1987. The volume of regulations necessary to implement the entire new retirement system and the need to have those regulations well in advance of the statutory effective date so that employees who will be covered by the system on January 1 can be accurately identified and all necessary preparations that are vital to the smooth operation of this new retirement system can be done.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect retirement coverage of Federal employees.

List of Subjects in 5 CFR Part 842

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending Title 5 of the Code of Federal Regulations to add Part 842 to read as follows:

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

Subpart A—Coverage

Sec.

842.101 Purpose.
842.102 Definitions.
842.103 General.
842.104 Exceptions and options.
842.105 Regulatory exclusions.

Subpart A—Coverage

Authority: 5 U.S.C. 8461; Section 842.106 also issued under 5 U.S.C. 8402(c)(1).

§ 842.101 Purpose.

This subpart restates the statutory provisions on coverage under the Federal Employees Retirement System (FERS) and contains regulatory exclusions.

§ 842.102 Definitions.

In this subpart—

"CSRS" means the Civil Service Retirement System as described in subchapter III of chapter 83 of title 5, United States Code;

"Employee" means the following individuals listed in 5 U.S.C. 8401(11) whose service is employment for the purposes of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1954:

(a) An employee as defined by 5 U.S.C. 2105;

(b) A U.S. Commissioner whose total pay for services performed as Commissioner is not less than $3,000 in each of the last three consecutive calendar years ending after December 31, 1954;

(c) An individual employed by a county committee established under 16 U.S.C. 590h(b);

(d) An individual employed by Gallaudet College;

(e) An individual appointed to a position on the office staff of a former President under section 1(b) of the "Act of August 25, 1958" (72 Stat 838);

(f) An alien (1) who was previously employed by the Government; (2) who is employed full time by a foreign government to protect or further the interests of the United States during an interruption of diplomatic or consular relations; and (3) for whose services reimbursement is made to the foreign government by the United States;

(g) A Congressional employee as defined in 5 U.S.C. 2107, including a temporary Congressional employee and an employee of the Congressional Budget Office; and

(h) The following individuals are excluded from the definition of "employee" in 5 U.S.C. 8401 (11):

(1) A justice or judge of the United States as defined by 28 U.S.C. 451;

(2) A temporary employee of the Administrative Office of the United States Courts or of a court named by 28 U.S.C. 610;

(3) A construction employee or other temporary, part-time, or intermittent employee of the Tennessee Valley Authority;

(4) A student employee as defined by 5 U.S.C. 5351;

(5) Teachers in dependents' schools of the Department of Defense in overseas areas, notwithstanding the nature of any employment during a recess period between two school years;

(6) An individual subject to another retirement system for Government employees (other than an employee of the United States Park Police, or the United States Secret Service) any of whose civilian employment after December 31, 1983, is employment subject to social security; and

(7) An individual excluded by OPM regulation in Section 842.105.

"FERS" means the Federal Employees Retirement System as described in chapter 84 of title 5, United States Code.

"Member" has the same meaning provided in 5 U.S.C. 2106, except that the term does not include an individual who irrevocably elects, by written notice to the official by whom such individual is paid, not to participate in FERS.

"OPM" means the Office of Personnel Management.

"Social security" means coverage under the Old Age, Survivors, and Disability Insurance (OASDI) programs of the Social Security Act.

§ 842.103 General.

To be covered under FERS, an individual must:

(a) Be an employee, Member, or specifically covered by another provision of law;

(b) Be covered by social security;

(c) Have retirement deductions withheld from pay and have agency contributions made; and

(d) Be paid based on units of time.

Except as provided in Section 842.104 and as excluded by Section 842.105, an employee or Member is covered by FERS.

§ 842.104 Exceptions and options.

(a) A FERS retiree who is reemployed is covered by FERS unless the reemployment service is as a justice or judge of the United States (as defined by 28 U.S.C. 451) or as an employee subject to another retirement system for Federal employees.

(b) An employee who is covered by CSRS and social security and who has 5 or more years of creditable civilian service under CSRS rules as of December 31, 1986, is subject to FERS only after electing FERS coverage.

(c) An employee who is covered by CSRS and social security and who completes 5 or more years of creditable civilian service under CSRS rules at the time of his or her last separation, and had some service covered by CSRS or the Foreign Service System, is subject to FERS only after electing FERS coverage.

(d) An individual who has served continuously (i.e., without a break in service of more than 365 days) since December 31, 1983, in one or more of the following positions is subject to FERS only after electing FERS coverage.

(1) The Vice President;

(2) A Member of Congress;

(3) A non-SES appointee to a position listed in 5 U.S.C. 5312 through 5317;

(4) A Senior Executive Service or Senior Foreign Service noncareer appointee; or

(5) An individual appointed by the President (or his designee) or the Vice President under section 105(a)(1), 107 (a)(1), or (b)(1) of title 3, United States Code, to a position for which the maximum rate of basic pay is at or above the rate for Level V of the Executive Schedule.

(e) An employee who is covered only by CSRS is subject to FERS coverage only after electing FERS coverage.

(f) An employee who has 5 or more years of creditable civilian service under CSRS rules as of December 31, 1986, even though none of this service was covered by CSRS deductions or it was not covered by deductions on December 31, 1986, is subject to FERS only after electing FERS coverage.

§ 842.105 Regulatory exclusions.

(a) OPM is authorized in 5 U.S.C. 8402(c)(1) to "exclude from the operation of this chapter an employee or group of employees in or under an Executive agency, the United States Postal Service, or the Postal Rate Commission, whose

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employment is temporary or intermittent, except an employee whose employment is part-time career employment (as defined in section 3401(2))." Therefore, under this authority, OPM is excluding the following:

(1) Employees serving under appointments limited to 1 year or less; and

(2) Intermittent employees serving under other than career or career conditional appointments.

(b) When an employee who is covered by FERS moves to a position listed in paragraph (a) of this section without a break in service or after a separation of 3 days or less, his or her FERS coverage will continue.

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 436

[Docket No. 3911S]

Tobacco (Guaranteed Production Plan) Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby revises and reissues the Tobacco (Guaranteed Production Plan) Crop Insurance Regulations (7 CFR Part 436), effective for the 1987 and succeeding crop years. The intended effect of this rule is to: (1) Change the method of calculating the insured's share of an indemnity on crops transferred before harvest; (2) provide for insurance coverage by type; (3) extend the end of the insurance period for certain types of tobacco; (4) change the method of calculating total production to count; (5) provide for use of a proportional value on damaged tobacco in adjusting for quality without determination of a price factor; (6) add a definition for "Average value per pound"; and (7) redefine the "Market price" definition. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is July 1, 1991.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Our current policy and loss adjustment procedure provides that any appraised production damaged by insurable causes can be adjusted for quality. This adjustment is determined through the adjuster's estimation of the proportional value of the damaged tobacco to the value of undamaged tobacco.

Once the proportional relationship is established, conversion to a price for comparison to the price of undamaged tobacco is required. The prices are then adjusted to appraised production to count through the automated indemnity calculation process using the price factor determined from the prices. A major reason for this complex process is to assure the mathematical accuracy of the price factor by removing the calculation from the adjuster's responsibility.

To simplify this process, FCIC has determined that the proportional relationship will be used without the determination of a price factor. Under this approach, the adjuster will continue to establish the appraised production (gross pounds) of unharvested marketable tobacco without regard to quality. The proportional value of the unharvested marketable tobacco, as a percentage of the value of undamaged unharvested tobacco, is then determined. This percentage (not to exceed 100 percent) is multiplied by the appraised production. The result will be appraised production to count against the production guarantee.

The advantages to this approach are:

1. The insured knows the final amount of appraised production to count when the claim is completed.

2. The quality adjustment process is easier to understand because it is no longer necessary to establish a price for unharvested tobacco (in an uncured condition) using a pricing system for harvested tobacco (in a cured or semi-cured condition).

3. Automated claims processing is simplified with the elimination of the adjustment for quality for appraised production from the computer system.

4. Claims preparation is simplified because fewer entries are required on the claim.

All quality of appraised production will be determined in accordance with this procedure.

Other than minor changes in language and format, the other principal changes in the Tobacco (Guaranteed Production Plan) policy are:

1. *Section 2*—Revise to allow insurance coverage by types of tobacco thereby permitting insureds to produce other types of tobacco which they may not wish to insure. The different types of tobacco are sufficiently distinguished to prevent production crossover.

Add a clause to change the method of calculating the insured's share of an indemnity on crops transferred before harvest. This limits indemnities to the insurable interest at the time of loss.

2. *Section 4b*—Remove. The reduction in production guarantee provision for unharvested acreage is contained in section 9.e.(3)(c).

3. *Section 7*—Change the end of the insurance period date for certain types of tobacco.

4. *Section 9*—Change the method of calculating total production to count by using an average value for the entire unit as opposed to separate loads or sales.

5. *Section 17*—Add a definition for "Average value per pound" to clarify its use in Section 9. Delete (1)(b) and (2)(a), and redesignate the remaining subsections accordingly. Amend the "Market price" definition to permit the the use of the "average price support" for specific types of tobacco and an alternate "season average price" when a price support is not in effect. The use of the "average price support" was the basis on which these types of tobacco were adjusted under the previous dollar plan of insurance. Its continued use will provide for an accurate and more easily administered loss adjustment procedure.

On Monday, October 20, 1986, FCIC published a Notice of Proposed Rulemaking in the **Federal Register** at 51 FR 37186, proposing to revise and reissue the Tobacco (Guaranteed Production Plan) Crop Insurance Regulations, effective for the 1987 and succeeding crop years to include the changes outlined above.

The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule. One comment was received from the National Association of Crop Insurance Agents (NACIA) which, while not directly addressing the proposed amendments to the tobacco crop insurance policy, did request reconsideration of unit guidelines for tobacco because NACIA feels that the unit guidelines, as presently constituted in 7 CFR Part 436, impose a unique hardship on landlords.

NACIA advises that differences may arise between a landlord's insurable unit and the insurable unit of a tenant under the present unit guidelines which require that all of the tobacco acreage for an insured identified by a single farm ASCS number be included in a single unit. Since ASCS farm numbers are constituted by operator, a farm owned by one landlord may have several insured tenants, each with a single unit while the landlord must be insured on a single unit. Since there is a perceived advantage to having a large number of small units for loss adjustment purposes, NACIA argues that the landlords are effectively discriminated against.

The present method of unit determination under this tobacco policy was adopted after high loss ratios were experienced during the 70's and 80's. Field hearings on unit division were held during 1985 and the Corporation is presently studying the entire unit division question from a policy as well as an actuarial position. The Corporation does not believe that enough information has been provided the Corporation to make the change requested by NACIA at this time and only in this policy. This is especially true since this change was not in the proposed rule and has not had the benefit of public notice and comment.

Although the claim is made that the requested change would be for the benefit of the insured and therefore does not require notice and comment, the Corporation notes that the change could lead to adverse loss experience which does affect the insured directly in the manner of premium increase. The change could also adversely affect the loss experience of the reinsured companies. The Corporation has therefore determined to leave the unit division rules in the guaranteed tobacco policy as they were for the 1986 crop year.

In reviewing these regulations, FCIC has determined that two types of tobacco grown in Ohio were inadvertently omitted from the list of insurable tobacco types in Section 2 of the Policy. These are Types 42 and 44 Cigar Filler tobacco. These tobacco types are included in the regulations outlined below.

With the addition of Types 42 and 44 to the list of insurable tobacco types, the proposed regulations, as published at 51 FR 37186, are hereby adopted as final.

Since the policy provisions contained in 7 CFR Part 436 must be filed by December 31, 1986, to be effective for the 1987 crop year, good cause exists for making this rule effective December 31, 1986.

List of Subjects in 7 CFR Part 436

Crop insurance, Tobacco (Guaranteed Production Plan).

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby revises and reissues the Tobacco (Guaranteed Production Plan) Crop Insurance Regulations (7 CFR Part 436), effective for the 1987 and succeeding crop years, to read as follows:

PART 436—TOBACCO (GUARANTEED PRODUCTION PLAN) CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1987 and Succeeding Crop Years

Sec.

436.1 Availability of the guaranteed plan of tobacco crop insurance.
436.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
436.3 OMB control numbers.
436.4 Creditors.
436.5 Good faith reliance on misrepresentation.
436.6 The contract.
436.7 The application and policy.

Authority: Secs. 506, 516, Pub L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

§ 436.1 Availability of the guaranteed plan of tobacco crop insurance.

Insurance shall be offered under the provisions of this subpart on tobacco in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 436.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for tobacco which will be included in the actuarial table on file in applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices set by the actuarial table for the crop year.

§ 436.3 OMB control numbers.

OMB control numbers are contained in Subpart H of Part 400, Title 7 CFR.

§ 436.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 436.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the tobacco insurance contract, whenever:

(a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation:

(1) Is indebted to the Corporation for additional premiums; or

(2) Has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the

insured person believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and

(b) The Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that:

(1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice;

(2) Said insured relied thereon in good faith; and

(3) To require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Requests for relief under this section must be submitted to the Corporation in writing.

§ 436.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the tobacco crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 436.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the tobacco crop as landlord, owner-operator, or tenant if the person wishes to participate in the program. The application shall be submitted to the Corporation at the service office on or before the applicable sales closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the sales closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1987 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a tobacco contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1987 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Tobacco (Guaranteed Production Plan) Insurance Policy for the 1987 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Guaranteed Production Plan of Tobacco—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects;

(4) Plant disease;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or subsection 9.e.(7).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing by you, any member of your household, your tenants, or employees;

(2) The failure to follow recognized good tobacco farming practices;

(3) The failure or breakdown of irrigation equipment or facilities;

(4) The failure to follow recognized good tobacco irrigation practices;

(5) The impoundment of water by any governmental, public, or private dam or reservoir project; or

(6) Any cause not specified in subsection 1.a. as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be any of the following tobacco types which you elect, which are grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table:

Flue Cured

Type 11A
Type 11B
Type 12
Type 13
Type 14

Fire Cured

Type 21
Type 22
Type 23

Burley

Type 31

Maryland

Type 32

Dark Air

Type 35
Type 36
Type 37

Cigar Filler

Type 41
Type 42
Type 44

Cigar Binder

Type 51
Type 52
Type 54
Type 55

Cigar Wrapper

Type 61

b. The acreage insured for each crop year will be tobacco planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share is your share as landlord, owner-operator, or tenant in the insured tobacco at the time of planting. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share on the earlier of:

(1) The time of loss; or

(2) The beginning of harvest.

d. We do not insure any acreage:

(1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(2) On which the tobacco was destroyed for the purpose of conforming with any other program administered by the United States Department of Agriculture;

(3) Which is destroyed, it is practical to replant to tobacco, and such acreage is not replanted;

(4) Initially planted after the final planting date set by the actuarial table unless you agree, in writing, on our form to coverage reduction;

(5) Planted to tobacco of a discount variety under the provisions of the tobacco price support program;

(6) Planted to a type or variety of tobacco not established as adapted to the area or excluded by the actuarial table;

(7) Designated as uninsurable by the actuarial table; or

(8) Planted for experimental purposes.

e. If insurance is provided for an irrigated practice, you must report as irrigated only the acreage for which you have adequate facilities and water, at the time of planting, to carry out a good tobacco irrigation practice.

f. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice.

You must report on our form:

a. All the acreage of insurable types of tobacco in the county in which you have a share;

b. The practice; and

c. Your share on the date of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any tobacco planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you submit on this report.

If you do not submit this report by the reporting date, we may elect to determine, by unit, the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage, levels, production, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. Coverage level 2 will apply if you do not elect a coverage level.

c. You may change the coverage level and price election on or before the sales closing date for submitting applications for the crop year as established by the actuarial table.

d. You must furnish a report of production to us for the previous crop year prior to the sales closing date for the subsequent crop year as established by the actuarial table. If you do not provide the required production report, we will assign a yield for the crop year for which the report is not furnished. The production report or assigned yield will be used to compute your production history for the purpose of determining your guarantee for the subsequent crop year. The yield assigned by us will be 75 percent of the yield assigned for the purpose of determining your guarantee for the present crop year. If you have filed a claim for the previous crop year, the yield determined in adjusting your indemnity claim will be used as your production report.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-fourth percent [1¼%] simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1983 crop year under the terms of the experience table contained in the tobacco policy for the 1984 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1993 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1984 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches when the tobacco is planted and ends at the earliest of:

a. Total destruction of the tobacco;

b. Weighing-in at the tobacco warehouse;

c. Removal of the tobacco from the unit (except for curing, grading, packing, or immediate delivery to the tobacco warehouse);

d. Final adjustment of a loss; or

e. The following dates immediately after the normal harvest period:

(1) Types 11 and 12	November 30
(2) Type 13	October 31.
(3) Type 14	October 15.
(4) Type 23	February 28.
(5) Types 21, 31, 35 and 37	March 15.
(6) Types 22 and 23	April 15.
(7) Type 22	May 15.
(8) All other types	April 30.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) During the period before harvest, the tobacco on any unit is damaged and you decide not to further care for or harvest any part of it;

(b) You want our consent to put the acreage to another use; or

(c) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the tobacco and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) For any unit of tobacco other than types 11, 12, 13, or 14, if probable loss is determined within 15 days prior to or during harvest, immediate notice must be given and a representative sample of the unharvested tobacco (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice unless we give you written consent to harvest the sample.

(4) Notice must be given immediately if any insured tobacco is destroyed or damaged by fire during the insurance period.

(5) If tobacco is not to be sold through auction warehouses and an indemnity is to be claimed, notice must be given to allow us 5 days to inspect the cured tobacco prior to its sale or other disposition.

(6) For any unit of tobacco of type 11, 12, 13, or 14 on which an indemnity is to be claimed and the tobacco stalks are to be destroyed, notice of loss must be given to us upon completion of harvest. The tobacco stalks must not be destroyed until we give consent.

(7) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, you must give us notice not later than 10 days after the earliest of:

(a) Total destruction of the tobacco on the unit;

(b) The date marketing or other disposal of the insured tobacco is completed on the unit; or

(c) The calendar date for the end of the insurance period.

b. You must obtain written consent from us before you destroy any of the tobacco which is not to be harvested.

c. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the tobacco on the unit;

(2) The date marketing or other disposal of the insured tobacco on the unit is completed; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of tobacco on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of tobacco to be counted (see subsection 9.e.);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the

unit will be computed on the information reported, but all production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production (in pounds) to be counted for a unit will include all harvested and appraised production.

(1) Harvested production which, due to insurable causes, has a value less than the market price for tobacco of the same type, will be adjusted by:

(a) Dividing the average value per pound of the harvested production by the recognized market price per pound; and

(b) Multiplying that product by the number of pounds of such damaged harvested tobacco.

(2) To enable us to determine the fair market value of tobacco not sold through auction warehouses, we must be given the opportunity:

(a) To inspect such tobacco before it is sold, contracted to be sold, or otherwise disposed of; and

(b) At our option to obtain additional offers on your behalf.

(3) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes;

(b) Not less than the guarantee for any acreage which is abandoned, damaged solely by an uninsured cause, or put to another use without our prior written consent; and

(c) Not less than 35 percent of the production guarantee per acre for all other unharvested acreage.

(4) We may make an appraisal of not less than the guarantee per acre for any acreage of tobacco type 11, 12, 13, or 14 on which the stalks have been destroyed prior to our consent.

(5) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of tobacco becomes general in the county and reappraised by us;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

(6) The amount of production of any unharvested tobacco may be determined on the basis of field appraisals conducted after the end of the normal harvest period.

(7) If you elect to exclude hail and fire as insured causes of loss and the tobacco is damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, "Request to Exclude Hail and Fire."

f. You must not abandon any acreage to us.

g. Any suit against us for an indemnity must be brought in accordance with the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial of the claim is received by you.

h. An indemnity will not be paid unless you comply with all policy provisions.

i. We have a policy of paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the **Federal Register** semiannually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

j. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the date the tobacco is planted for any crop year, any indemnity will be paid to the persons determined to be beneficially entitled thereto.

k. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance.

For the purpose of this subsection, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay you for your loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all tobacco produced on each unit, including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the crop year to which the records apply, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: Cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due if deducted from:

(1) An indemnity, will be the date you sign the claim; or

(2) Payment under another program administered by the United States Department of Agriculture, will be the date both such other payment and setoff are approved.

d. The cancellation and termination dates are:

State and County	Cancellation and termination dates
Alabama; Florida; Georgia; Surry, Wilkes, Caldwell, Burke, and Cleveland Counties, North Carolina and all North Carolina counties east thereof; and South Carolina.	March 31.
All other North Carolina counties and all other States.	April 15.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

f. The contract will terminate if no premium is earned for 3 consecutive years.

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date. Acceptance of changes will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of guaranteed tobacco crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding tobacco insurance in the county.

b. "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

c. "Average value per pound" means the total value of all harvested production from the unit divided by the harvested pounds.

d. "County" means:

(1) The county shown on the application;

(2) Any additional land located in a local producing area bordering on the county, as shown by the actuarial table; and

(3) Any land identified by an ASCS farm serial number for the county but physically located in another county within the state.

e. "Crop year" means the period within which the tobacco is normally grown and is designated by the calendar year in which the tobacco is normally harvested.

f. "Harvest" means the completion of cutting or priming of tobacco on any acreage from which at least 20 percent of the production guarantee per acre shown by the actuarial table is cut or primed.

g. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

h. "Insured" means the person who submitted the application accepted by us.

i. "Loss ratio" means the ratio of indemnity to premium.

j. "Market price":

(1) For types 11, 12, 13, 14, 21, 22, 23, 31, 35, 36, 37, 42, 44, 54, and 55, means the average price support level per pound for the insured type of tobacco as announced by the United States Department of Agriculture under the tobacco price support program. (If for any crop year a price support for the insured type is not in effect, we will use the season average price in the belt or area through the day tobacco sales are completed on any unit or part thereof which is harvested); and

(2) For types 32, 41, 51, 52, and 61, means the season average price for the applicable type of tobacco. (Such price will be the season average price for the current crop year for any unit or part thereof which is harvested).

k. "Person" means an individual, partnership, association, cooperation, estate, trust, or other legal entity, and whenever applicable, a State or a political subdivision or agency of a State.

l. "Planting" means transplanting the tobacco plant from the bed to the field.

m. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

n. "Tenant" means a person who rents land from another person for a share of the tobacco or a share of the proceeds therefrom.

o. "Unit" means all insurable acreage of an insurable type of tobacco in the county in which you have an insured share on the date of planting for the crop year and which is identified by a single ASCS farm serial number at the time insurance first attaches under this policy for the crop year. Units will be determined when the acreage is reported. We may reject or modify any ASCS reconstitution for the purpose of unit definition if the reconstitution was in whole or in part to defeat the purpose of the Federal Crop Insurance Program or to gain disproportionate advantage under this policy. Errors in reporting units may be corrected by us when adjusting a loss.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with the Appeal Regulations (7 CFR Part 400, Subpart J).

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice

Done in Washington, DC on November 17, 1986.

Edward Hews,

Deputy Manager, Federal Crop Insurance Corporation.

[FR Doc. 86-29388 Filed 12-30-86; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 648, Amdt. 1]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 648, Amendment 1, increases the quantity of such navel oranges that may be shipped during the period December 28, 1986, through January 1, 1987.

Such action is needed to balance the supply of fresh navel oranges with the demand for such period, due to the marketing situation confronting the orange industry.

DATE: Regulation 648, Amendment 1 (§ 907.940) is effective for the period December 28, 1986, through January 1, 1987.

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202–475–3914.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 Secretary's Memorandum 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their behalf. Thus, both statutes have small entity orientation and compatibility.

This amendment is issued under Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the marketing policy for 1986–87 adopted by the Navel Orange Administrative Committee. The committee conducted a telephone vote on December 24, 1986, to consider the current and prospective conditions of supply and demand and

recommended, by a vote of 6 to 5, a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports that the market for fresh navel oranges has improved, and, therefore, the amendment is needed because the current allotment is inadequate to meet navel orange demand.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this amendment is based and the effective date necessary to effectuate the declared policy of the Act. To effectuate the declared purposes of the Act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects In 7 CFR Part 907

Marketing agreements and orders, California, Arizona, Oranges (Navel).

PART 907—[AMENDED]

1. The authority citation for 7 CFR Part 907 continues to read:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.940 Navel Orange Regulation 640 is revised to read as follows:

§ 907.940 Navel Orange Regulation 640.

The quantities of navel oranges grown in California and Arizona which may be handled during the period December 28, 1986, through January 1, 1986, are established as follows:

(a) District 1: 744,000 cartons;
(b) District 2: 131,000 cartons;
(c) District 3: Unlimited cartons;
(d) District 4: Unlimited cartons.

Dated: December 29, 1986.

Thomas R. Clark,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86–29486 Filed 12–30–86; 3:45 pm]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 25 and 95

Access Authorization for Licensee Personnel

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to require each person who holds an NRC access authorization under these Parts and all future applicants for access authorization to complete a new standardized form. The final rule also requires that a security briefing be presented to each person prior to completing the new form. These final actions are necessary to adopt new requirements initiated by the National Security Council.

EFFECTIVE DATE: December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Richard A. Dopp, Chief, Facilities Security and Operational Support Branch, Division of Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–4124.

SUPPLEMENTARY INFORMATION: On March 11, 1983, the President approved a revision to National policy developed by the National Security Council. This revised policy, known as National Security Decision Directive (NSDD) 84, "Safeguarding National Security Information," directs each agency of the Executive Branch that originates or handles classified information to adopt internal procedures to safeguard against unlawful disclosures of classified information. Revisions to certain NRC regulations are needed in order to fulfill the requirements of NSDD–84 and comply with subsequent implementing instructions from the National Security Council and the Information Security Oversight Office (ISOO). Most significantly, NSDD–84 prescribes that a standardized nondisclosure agreement be executed by all persons authorized access to classified information. This document, entitled "Classified Information Nondisclosure Agreement" (SF 189–A), is to be executed as a condition prior to the United States Government authorizing an individual access to classified information. In addition to NRC employees and contractors, also affected are licensees and other personnel who may require access to National Security Information and/or Restricted Data related to a license or application for a license.

In order to implement the required use of the Agreement, two regulatory amendments are proposed. The first relates to those individuals currently holding an NRC access authorization and requires that such individuals must execute the SF 189–A within 365 days of the effective date of these amendments. Prior to the execution of the SF 189–A, such individuals should be given a security orientation briefing which shall include an explanation of the contents of the SF 189–A and the procedures to be followed in ascertaining whether other persons to whom they contemplate disclosing classified information have been approved for access to such information. These procedures include verification of the individual's level of access authorization and determining whether the individual to whom the information is to be disclosed has an established need-to-know. The second amendment relates to those new individuals yet to be processed for an access authorization and requires that such individuals execute the SF 189–A upon receipt of the access authorization notification. Prior to the execution of the SF 189–A, such individuals should be given a security orientation briefing in accordance with § 95.33 of this Chapter. Conforming amendments are being made to § 95.33 to require that the security orientation briefing include an explanation of the contents of the SF 189–A and the procedures to be followed in ascertaining whether other persons to whom they contemplate disclosing classified information have been approved for access to such information.

Because this is an amendment dealing with agency practice and procedure, the notice and comment provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(A). The amendment is effective upon publication in the **Federal Register**. Good cause exists to dispense with the usual 30-day delay in effective date because the amendment is of a minor and administrative nature dealing with a matter of agency procedure, a requirement for all persons currently holding NRC access authorizations and all future applicants for access authorizations to execute a "Classified Information Nondisclosure Agreement" (SF 189–A).

Environmental Impact: Categorical Exclusion

The NRC has determined that this final regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final regulation.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget approval number 3090–0230.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this final regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The Commission has decided that the backfit rule 10 CFR 50.109 shall not be applied to actions to change purely administrative reporting requirements which are not related to imposing more stringent safety or security requirements on the design, construction and operation of nuclear power plants. Single copies of the analysis may be obtained from Richard A. Dopp, Division of Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, telephone: (301) 492–4124.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect NRC licensees or other organizations which may require access to National Security Information and/or Restricted Data in connection with a license or application for license. There are 70 entities (which include fuel-cycle facilities, transportation companies, reactors and other organizations) that are currently required to meet the requirements of 10 CFR Parts 25 and 95. Because none of these has been determined to be small as defined by the Regulatory Flexibility Act of 1980, the Commission finds that this rule will not have a significant economic impact upon a substantial number of small entities.

List of Subjects

10 CFR Part 25

Classified information, Investigations, Penalty, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 95

Classified information, Penalty, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the Authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, the Independent Offices Appropriation Act of 1952 and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Parts 25 and 95.

PART 25—ACCESS AUTHORIZATION FOR LICENSEE PERSONNEL

1. The authority citation for Part 25 continues to read as follows:

Authority: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 10865, as amended, 3 CFR 1959–1963 COMP., p. 398 (50 U.S.C. 401, note); E.O. 12356, 47 FR 14874, April 6, 1982.

Appendix A also issued under 96 Stat. 1051 (31 U.S.C. 9701).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 25.13, 25.17(a), 25.33 (b) and (c) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 25.13 and 25.33(b) are also issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. A new § 25.18 is added to read as follows:

§ 25.18 Forms requirement for persons granted access authorizations.

Any licensee or other organization which employs individuals possessing an NRC access authorization pursuant to this Part shall have each individual execute, as a condition for continued eligibility for access authorization, and access to NRC classified information, a "Classified Information Nondisclosure Agreement" (SF 189–A). The SF 189–A form shall be completed and forwarded to the NRC Division of Security by (insert date of 365 days from effective date of this rule). Prior to executing the SF 189–A, the affected individual shall be given a security orientation briefing which shall include an explanation of the contents of the SF 189–A and the procedures to be followed in ascertaining whether other persons to whom they contemplate disclosing classified information have been approved for access to such information.

3. Section 25.23 is revised to read as follows:

§ 25.23 Notification of grant of access authorization.

The determination to grant access authorization will be furnished in writing to the licensee or organization that initiated the request. Upon receipt of the notification, the licensee or organization shall obtain, as a condition for grant of access authorization and access to classified information, an executed "Classified Information Nondisclosure Agreement" (SF 189–A) from the affected individual. The individual shall also be given a security orientation briefing in accordance with § 95.33 of this chapter. The signed SF 189–A must be promptly forwarded to the NRC Division of Security. Records of access authorization notification must be maintained by the licensee or requesting organization for one year after the access authorization has been terminated by the NRC Division of Security. This information may also be furnished to other representatives of the Commission, to licensees, contractors, or other Federal agencies. Notifications of access authorization will not be given in writing to the affected individual except:

(a) In those cases in which the determination was made as a result of a Personnel Security Hearing or by Personnel Security Review Examiners, or

(b) When the individual also is the official designated by the licensee to whom written NRC notifications are forwarded.

PART 95—SECURITY FACILITY APPROVAL AND SAFEGUARDING OF NATIONAL SECURITY INFORMATION AND RESTRICTED DATA

4. The authority citation for Part 95 continues to read as follows:

Authority: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 10865, as amended, 3 CFR 1959–1963 COMP., p. 398 (50 U.S.C. 401, note); E.O. 12356, 47 FR 14874, April 6, 1982.

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); 95.13, 95.15(a), 95.25, 95.27, 95.29(b), 95.31, 95.33, 95.35, 95.37, 95.39, 95.41, 95.43, 95.45, 95.47, 95.51, 95.53, and 95.57 are also issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)).

5. Section 95.33 is revised to read as follows:

§ 95.33 Security Education.

A Security education program shall be established and maintained by the licensee or license related organization which employs individuals possessing NRC personnel security access authorization under Part 25. The program shall include consideration and coverage of personnel access authorization requirements, the physical security features of the facilities, the classified nature of the work and the classification and sensitivity of the information. In addition, the program shall include an explanation of the contents of the "Classified Information Nondisclosure Agreement" (SF 189–A) and the procedures to be followed in ascertaining whether other persons to whom they contemplate disclosing classified information have been approved for access to such information. The procedures include verification of the individual's level of access

authorization and determining whether the individual to whom the information is to be disclosed has an established need-to-know. Each security education program shall provide for the security orientation and continuing security education of employees, and for the appropriate security instruction of terminating employees. Records reflecting an individual's initial and refresher security orientations and security termination shall be maintained for one year after termination of the individual's access authorization.

Dated at Bethesda, Maryland this 13th day of November, 1986.

For the Nuclear Regulatory Commission.

J.W. Roe,

Acting Executive Director for Operations.

[FR Doc. 86-29378 Filed 12-30-86; 8:45 am]

BILLING CODE 7590-01-M

10 CFR Part 50

Domestic Licensing of Production and Utilization Facilities: Minor Corrective Amendment

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to correct information that was inadvertently omitted in a section of 10 CFR Part 50 when an amendment in a final rule published in November 1986 superseded an amendment to the same section that was published in a final rule in August 1986. This amendment is necessary to inform the public of the correct wording of this affected section.

EFFECTIVE DATE: December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Acting Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-7086.

SUPPLEMENTARY INFORMATION: On August 4, 1986, a final rule entitled "Miscellaneous Amendments Concerning Physical Protection of Nuclear Power Plants" was published in the **Federal Register** (51 FR 27817). One of the amendments revised § 50.54(p) in its entirety, breaking the lengthy paragraph into three shorter paragraphs that included a direct and indirect reference to the "guard training and qualification plan" in (p)(1) and (p)(2), and gave specific instructions for the mailing of a report to the NRC Regional Offices and Headquarters in (p)(2).

Subsequently, a second final rule entitled "Domestic Licensing of Production and Utilization Facilities; Communications Procedures Amendments" was published on November 6, 1986 (51 FR 40303). Section 50.54(p) was also amended by this final rule, and the references to the guard training and qualification plan were omitted. The references to the Regional Offices and Headquarters with regard to the mailing of the report were also omitted. However, it was the intent of the second final rule to establish new procedures for submitting correspondence, reports, applications, etc.; therefore, that omission was deliberate. The mechanism used to indicate submittal information is the phrase in (p)(2) that reads "as specified in § 50.4".

The NRC finds that good cause exists to waive the 30-day deferred effective date provisions of the Administrative Procedure Act (5 U.S.C. 553(d)). Delaying the effective date of this rule would be contrary to the public interest because the affected licensees would not have complete information regarding changes to certain types of plans that would require a report to the NRC. Therefore, the rule is effective on publication in the **Federal Register.**

Environmental Impact—Categorical Exclusion

The NRC determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(3). Therefore neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) Existing requirements were approved by the Office of Management and Budget approval number 3150-0011.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire prevention, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

2. In § 50.54, paragraph (p) is revised to read as follows:

§ 50.54 Conditions of license.

* * * * *

(p)(7) The licensee shall prepare and maintain safeguards contingency plan procedures in accordance with Appendix C of Part 73 of this chapter for effecting the actions and decisions contained in the Responsibility Matrix of the safeguards contingency plan. The licensee may make no change which would decrease the effectiveness of a security plan, or guard training and qualification plan, prepared pursuant to § 50.34(c) or Part 73 of this chapter, or of the first four categories of information (Background, Generic Planning Base, Licensee Planning Base, Responsibility Matrix) contained in a licensee safeguards contingency plan prepared pursuant to § 50.34(d) or Part 73 of this chapter, as applicable, without prior approval of the Commission. A licensee desiring to make such a change shall submit an application for an amendment to the licensee's license pursuant to § 50.90.

(2) The licensee may make changes to the plans referenced in paragraph (p)(1) without prior Commission approval if the changes do not decrease the safeguards effectiveness of the plan. The licensee shall maintain records of changes to the plans made without prior Commission approval for a period of two years from the date of the change, and shall submit, as specified in § 50.4, a report containing a description of each change within two months after the change is made. Prior to the safeguards contingency plan being put into effect, the licensee shall have:

(i) All safeguards capabilities specified in the safeguards contingency plan available and functional,

(ii) Detailed procedures developed according to Appendix C to Part 73 available at the licensee's site, and

(iii) All appropriate personnel trained to respond to safeguards incidents as outlined in the plan and specified in the detailed Procedures.

(3) The licensee shall provide for the development, revision, implementation, and maintanence of its safeguards contingency plan. To this end, the licensee shall provide for a review at least every 12 months of the safeguards contingency plan by individuals independent of both security program management and personnel who have direct responsibility for implementation of the security program. The review must include a review and audit of safeguards contingency procedures and practices, an audit of the security system testing and maintenance program, and a test of the safeguards systems along with commitments established for response by local law enforcement authorities. The results of the review and audit, along with recommendations for improvements, must be documented, reported to the licensee's corporate and plant management, and kept available at the plant for inspection for a period of two years.

* * * * *

Dated at Bethesda, Maryland, this 17th day of December, 1986

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 86-29170 Filed 12-30-86; 8:45 am]

BILLING CODE 7590-01-M

10 CFR Part 110

Imports of Uranium from South Africa

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations concerning the import of uranium from South Africa under the general license. This action is necessary to implement the provision of the Comprehensive Anti-Apartheid Act of 1986, enacted October 2, 1986, which prohibits the import into the United States of uranium ore and uranium oxide produced or manufactured in South Africa. The final rule deletes the general import license with respect to the import of any uranium of South African origin, thereby precluding the import of this material unless a specific license is requested and obtained.

EFFECTIVE DATE: December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Elaine O. Hemby, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 492-7984 or Joanna M. Becker, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 492-7630.

SUPPLEMENTARY INFORMATION: On October 2, 1986, Public Law 99-440, the Comprehensive Anti-Apartheid Act of 1986 ("the Act"), was enacted to establish a framework to guide the efforts of the United States to help end the apartheid system in South Africa and to assist in the establishment of a nonracial, democratic form of government in that country. The Act imposes a wide range of measures against South Africa to undermine apartheid including a ban on the importation of uranium ore and oxide "produced or manufactured" in South Africa. The Treasury Department, in Executive Order 12571 of October 27, was delegated authority in the Executive Branch to implement the Act's provisions on the importation of uranium (Section 309(a)). The NRC, which has independent regulatory authority under the Atomic Energy Act over the import of uranium, must also implement provisions in its regulations to conform with the requirements of the Act and ensure that these provisions are consistent with the provisions of the Treasury Department's regulations.

South Africa, as used in the Act, includes the Republic of South Africa; any territory under the administration, legal or illegal, of South Africa (including Namibia); and the "bantustans" or "homelands", to which South African blacks are assigned on the basis of ethnic origin, including the Transkei, Bophuthatswana, Ciskei, and Venda.

Section 309(a) of the Act prohibits the importation into the United States of uranium ore and uranium oxide that is produced or manufactured in South Africa. The NRC's import regulations in 10 CFR 110.27 currently permit a person to import byproduct material or unirradiated source or special nuclear material, including uranium ore and uranium oxide, from any country under general license if the consignee in the United States is authorized to possess the material. To implement section 309(a), the NRC is amending its regulations in § 110.27 to delete the general license with respect to the import of any uranium of South African origin. A person wishing to import South African origin uranium which is no longer permitted for import under the general license in § 110.27 may submit a specific license request to import this material to the NRC for consideration. However, subject to further clarifications of the scope of the Act, such import license applications may be denied under existing law, including applications to import material intended for further processing in the U.S. (e.g., enrichment) and subsequent reexport to a third country.

It should also be noted that section 303 of the Act prohibits the import (with some exceptions not pertinent here), of any products grown, produced, manufactured by or otherwise exported by a "parastatal organization" of South Africa. A parastatal organization is defined as a corporation, partnership or other entity owned or controlled or subsidized by the South African Government, but not a corporation, partnership, or entity which previously received start-up assistance from the South African Industrial Development Corporation but which is now privately owned. This prohibition covers uranium in any form, as Senator Lugar noted in his remarks introducing S. 2701 (132 CONG. REC. S. 9889-9898, daily ed. July 30, 1986). The Treasury Department published regulations implementing this section on November 19, 1986 (51 FR 41907). The Department of State published a list of South African parastatal organizations on the same date (51 FR 41912).

Environmental Impact: Categorical Exclusion

The NRC has determined that the final rule in Part 110 is the type of action described in 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget under approval number 3150-0036.

Regulatory Analysis

The Commission has prepared a regulatory analysis of this final regulation. The analysis examines the costs and benefits of the regulation. The analysis is available for inspection in the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies of the analysis may be obtained from Elaine Hemby, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-7984.

Backfit Analysis

The NRC has determined that the backfit analysis provisions in 10 CFR 50.109 do not apply to amendments to 10 CFR Part 110 because Part 110 applies only to the export and import of nuclear facilities, material, and components and does not deal with domestic facilities. Therefore, a backfit analysis has not been prepared for this amendment.

List of Subjects in 10 CFR Part 110

Administrative practice and procedure, Classified information, Export, Import, Incorporation by reference, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Penalty, Reporting and recordkeeping requirements, Scientific equipment.

Pursuant to section 309(a) of Public Law 99-440, the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553 the following amendment to 10 CFR Part 110 is published as a document subject to codification.

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

1. The authority citation for Part 110 is revised to read as follows:

Authority: Secs. 51, 53, 54, 57, 63, 64, 65, 81, 82, 103, 104, 109, 111, 126, 127, 128, 129, 161, 181, 182, 183, 187, 189, 68 Stat. 929, 930, 931, 932, 933, 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2071, 2073, 2074, 2077, 2092-2095, 2111, 2112, 2133, 2134, 2139, 2139a, 2141, 2154-2158, 2201, 2231-2233, 2237, 2239); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 110.1(b)(2) also issued under Pub. L. 96-533, 94 Stat. 3138 (42 U.S.C. 2403). Section 110.11 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152) and secs. 54c. and 57d., 88 Stat. 473, 475 (42 U.S.C. 2074). Section 110.27 also issued under sec. 309(a), Pub. L. Law 99-440. Section 110.50(b)(3) also issued under sec. 123, 92 Stat. 142 (42 U.S.C. 2153). Section 110.51 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 110.52 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236). Sections 110.80-110.113 also issued under 5 U.S.C. 552, 554. Sections 110.130-110.135 also issued under 5 U.S.C. 553.

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); 110.20-110.29, 110.50, and 110.120-110.129 also issued under secs. 161b and i, 68 Stat. 948, 949, as amended (42 U.S.C. 2201 (b) and (i)); and 110.53 also issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Section 110.27 is revised to read as follows:

§ 110.27 Imports.

(a) Except as noted in paragraph (b) of this section, a general license is issued to any person to import byproduct, source, or social nuclear material if the consignee is authorized to possess the material under:

(1) A contract with the Department of Energy;

(2) An exemption from licensing requirements issued by the Commission; or

(3) A general or specific license issued by the Commission or a State with which the Commission has entered into an agreement under Section 274b. of the Atomic Energy Act.

(b) The general license in paragraph (a) of this section does not authorize:

(1) The import of source or special nuclear material in the form of irradiated fuel that exceeds 100 kilograms per shipment; or

(2) The import of uranium of South African origin in any form. As used in this paragraph, "South African origin" includes uranium from the Republic of South Africa; any territory under the administration, legal or illegal, of South Africa (including Namibia); and the "bantustans" or "homelands", to which South African blacks are assigned on the basis of ethnic origin, including the Transkei, Bophuthatswana, Ciskei, and Venda.

(c) Any person importing special nuclear material under this general license shall provide advance notification of imports to the Commission as specified in § 73.27 of this chapter.

Dated at Washington, DC, this 24th day of December 1986.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Acting Secretary of the Commission.

[FR Doc. 86-29377 Filed 12-30-86; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 309

Disclosure of Information

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Final rule; correction.

SUMMARY: The FDIC is correcting a final rule on its regulation dealing with disclosure of confidential information that was published in the July 30, 1980 edition of the **Federal Register** (45 FR 50550). This action reinstates in the Code of Federal Regulations the last sentence of § 309.6(c) introductory text and the last sentence of § 309.6(c)(7)(iv). Both sentences were inadvertently omitted from the 1981 Code of Federal Regulations and subsequent issues.

EFFECTIVE DATE: July 30, 1980.

FOR FURTHER INFORMATION CONTACT: Jen Hickson, (202) 898-3807.

SUPPLEMENTARY INFORMATION: Accordingly, the FDIC is correcting 12 CFR 309.6:

§ 309.6 [Corrected]

1. By adding to the end of paragraph (c) introductory text the following sentence: In any instance in which copies of FDIC reports of examination or other confidential records are furnished under the provisions of this § 309.6(c), all copies of the reports of examination and other information so furnished shall remain the property of the Corporation and under no circumstances shall the individual, concern or agency (or any director, officer, employee or agent of the foregoing) disclose or make public in any manner the reports or exempt records without express written authorization from the Director of the Corporation's Division of Bank Supervision as provided in § 309.6(c)(7).

2. By adding at the end of paragraph (c)(7)(iv) the following sentence: Before authorizing the disclosure, the Director of the Corporation's Division of Bank Supervision may require that both the party having custody of a copy of a Corporation report of examination or record and the party seeking access to the report or record agree to such limitations as the Director of the Corporation's Division of Bank Supervision deems necessary to protect the confidential nature of the record, the financial integrity of any bank to which the record relates and the legitimate privacy interests of any individual named in such report or record.

Dated: December 23, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-29317 Filed 12-30-86; 8:45 am]

BILLING CODE 6714-01-M

12 CFR Part 347

Foreign Activities of Insured State Nonmember Banks

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Final rule; correction.

SUMMARY: This document corrects Part 347 of FDIC's regulations by removing paragraphs (1), (2) and the undesignated paragraph at the end of § 347.3(a). The paragraphs were erroneously included in the Code of Federal Regulations after a revision of section 347.3(a) in the June 20, 1983 edition of the **Federal Register** (48 FR 28078, June 20, 1983).

EFFECTIVE DATE: July 20, 1985.

FOR FURTHER INFORMATION CONTACT: Jen Hickson, (202) 898-3807.

SUPPLEMENTARY INFORMATION: Accordingly, § 347.3(a) is amended by removing paragraphs (1), (2) and the undesignated paragraph at the end thereof.

Dated: December 23, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-29316 Filed 12-30-86; 8:45 am]

BILLING CODE 6714-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 123

Disaster Loans

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: A summary of the interest rates applicable to disaster loans prior to the effective date of current legislation appears at Appendix A to 13 CFR Part 123. Due to numerous statutory changes it has become impossible to effectively summarize the history of interest rates in a small space. This rule will eliminate the Appendix. Historical data will remain available in prior issues of the Code of Federal Regulations and the original **Federal Registers.**

EFFECTIVE DATE: December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Bernard Kulik, Deputy Associate Administrator for Disaster Assistance, Small Business Administration, 1441 L Street NW., Washington, DC 20416, 202-653-6879.

SUPPLEMENTARY INFORMATION: Appendix A of 13 CFR Part 123 contains historical information about interest rates applicable to disaster loans made in response to disasters declared from January 1, 1971, through April 18, 1984. Applications for such loans have already been processed. Questions or appeals arising from those periods must be resolved by review of the entire regulation in effect at the time. Therefore, the information in the summary appearing in Appendix A has no legal or practical effect on future loan applications.

Interest rates and effective dates have been changed several times since 1978. Therefore any short summary, by its nature, will be incomplete and confusing. More complete and accurate historical information may be found in prior editions of the Code of Federal Regulations and original **Federal Registers.** For these reasons, Small Business Administration deletes Appendix A and the reference to it in § 123.25(c).

Executive Order 12291

This regulation is not a major rule because it will not have an annual economic effect of $100 million. The Appendix is for historical information only, and does not affect the Agency's or any borrower's rights or liabilities.

Regulatory Flexibility Act

SBA is publishing this rule in final form pursuant to 5 U.S.C. 553(b) (A) and (B). SBA finds that notice of proposed rulemaking would be impractical and unnecessary. This rule does not change the rights of any entity or the responsibilities of the agency. The deletion removes language which has no continuing legal effect. More accurate statements of the information are available from other readily available sources. SBA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

It will impose no reporting or recordkeeping requirements.

List of Subjects in 13 CFR Part 123

Disaster assistance, Loan programs—business, Reporting and recordkeeping requirements, Small business.

PART 123—[AMENDED]

For the reasons set forth above, 13 CFR Part 123 is amended as follows:

1. The authority citation for part 123 continues to read as follows:

Authority: Secs. 5(b)(6), 7(b), (c), (f) of Small Business Act, 15 U.S.C. 634(b)(6), 636 (b), (c), (f); Pub. L. 98-270, Title III; Pub. L. 99-272, 18006, unless otherwise noted.

2. The Table of Contents is amended by removing the words "Appendix A" and the material that follows.

§ 123.25 [Amended]

3. Section 123.25, paragraph (c) is amended by removing the final sentence in parentheses.

Appendix A—[Removed]

4. Part 123 is amended by removing Appendix A.

Dated: December 23, 1986.

Charles L. Heatherly,

Acting Administrator.

[FR Doc. 86-29404 Filed 12-30-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-NM-148-AD; Amdt. 39-5501]

Airworthiness Directives; Boeing Models 727 and 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 727 and 737 series airplanes, that requires inspection and modification of the "B" system hydraulic pumps. This amendment requires either incorporation of an electrical ground fault protection system, which is an optional terminating action of the existing AD, or replacement of the hydraulic pumps with new or upgraded hydraulic pumps. This amendment is prompted by two recent reports of pump failures on Model 737 airplanes which caused fires that extensively damaged the airplanes.

DATE: February 2, 1987.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Alvin Habbestad, Systems and Equipment Branch, ANM-130S, Seattle Aircraft Certification Office; telephone (206) 431-1942. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive superseding an existing AD to require the installation of ground fault protection to the existing hydraulic pumps or installation of new or improved pumps, was published in the **Federal Register** on August 12, 1986 (51 FR 28832). The comment period closed October 6, 1986.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due

consideration has been given to the three comments received.

One commenter recommended adoption of the proposed AD as written and encouraged early issuance of the AD.

Another commenter recommended extending the compliance time from one year to two years because it anticipates a lead time of 10 months for the modification parts. The FAA does not concur. The airplane manufacturer has advised that the combined availability of the modification parts and pumps would not preclude meeting a compliance time of one year for accomplishing either of the two means of compliance required by the AD.

Another commenter suggested that the "default" system (ground fault protection system), required by paragraph A. of the AD, is "not the solution to solving the problem that now exists." The commenter advised that a newly designed pump, which would correct the existing problem, would be made available from a different supplier beginning in January 1987. The commenter requested that the compliance date be increased to two years to allow for the increased lead time for ordering, receiving, and installing the new and improved pumps. The FAA does not concur. The FAA has determined that the use of the ground fault protection circuit is an acceptable means to prevent fires associated with the failed pump motor. The FAA is aware that a new pump from a different manufacturer is undergoing acceptance tests; however, this product has not as yet been presented to the FAA for approval, nor has a specific date been established for its availability. Should an acceptable pump become available in the future, an operator who wished to install such a pump could apply for an alternate means of compliance under paragraph B. of the AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require adoption of the rule as proposed.

It is estimated that 186 Model 727 and 94 Model 737 airplanes of U.S. registry will be affected by this AD. If an operator elects to install ground fault protection circuit breakers, parts for the Models 727 and 737 are estimated to cost $2,650 per airplane, and will take approximately 24 manhours to install. If an operator elects to install new hydraulic pumps, parts for the Models 727 and 737 are estimated to cost $10,000 per airplane, and will require 10 manhours to install. If an operator elects to install "upgraded" pumps (existing pumps overhauled in a manner which makes them equivalent to new pumps), parts for the Models 727 and 737 are estimated to cost $8,400 per airplane, and will require 12 manhours to install. The estimated labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators will be from $2,486,400 to $2,912,000 to replace the pumps, or $1,010,800 to install a ground fault protection system.

For the reasons discussed above, the FAA has determined that this regulation is not considered major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Models 727 and 737 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 13 CFR 11.89.

§ 39.13 [Amended]

2. By superseding AD 76–22–08, Amdt. 39–2762, as follows:

Boeing: Applies to Boeing Models 727, 737–100, and 737–200 series airplanes, equipped with hydraulic system "B" Abex P/N 57186 pump motor, certificated in any category. Compliance required as indicated unless previously accomplished.

To prevent a hydraulic system "B" Abex P/N 57186 pump motor internal wiring fault from burning a hole in the case and igniting the escaping hydraulic fluid, which could ignite fuel leakage, accomplish the following:

A. Within one year after the effective date of this AD either:

1. Install the ground fault protection systems in the hydraulic system "B" Abex pump motor electric power circuits in accordance with Boeing Service Bulletin 727–29–47, Revision 2, dated October 8, 1976, or 737–29–1029, Revision 2, dated October 8, 1976, as applicable, or later FAA-approved revisions; or

2. Install the hydraulic "B" system motor driven pumps, either new or upgraded, in accordance with Boeing Service Bulletin 727–29–55 dated April 30, 1980, or 737–29–1036, dated April 30, 1980, or later FAA-approved revisions.

B. An alternate means of compliance or adjustment of compliance time, which provide an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This supersedes AD 76–22–08, Amendment 39–2762.

This amendment becomes effective February 2, 1987.

Issued in Seattle, Washington, on December 19, 1986.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 86–29222 Filed 12–30–86; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 86–223–AD; Amdt. 39–5500]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administrative (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes equipped with Pratt and Whitney Aircraft PW2037 engines, which requires inspection and modification, if necessary, of the thrust reverser control system, and modification of the monitoring system. This AD is prompted by reports of missing restrictor check valves from the control port of the thrust reverser isolation valves and a failure of the Engine Indication and Crew Alerting System (EICAS) to indicate an unlock thrust reverser condition. These conditions, if not corrected, could lead to an uncommanded deployment of a thrust reverser in flight.

EFFECTIVE DATE: January 12, 1987.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98168. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Pasion, Aerospace Engineer, Propulsion Branch, ANM–140S; telephone (206) 431–1974. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington, 98168.

SUPPLEMENTARY INFORMATION: During production testing on a Boeing Model 757 airplane, it was discovered that the restrictor check valves were omitted from the control port of both thrust reverser isolation valves. The restrictor check valve is used to prevent hydraulic control line pressure surges, generated by the isolation valve closure, from cyclically unlocking and attempting to extend the thrust reverser. Additional testing on another airplane also revealed that the Engine Indication and Crew Alerting System (EICAS) did not always display the reverser unlock condition. The absence of the reverse unlock caution display on EICAS, effectively masking a thrust reverser sleeve unlocked condition from the flight deck crew, and a delay in activation of the autorestow system, has been traced to magnetic coupling between the unlock and auto-reverser proximity sensors.

Consequences of a combination of pressure surges through the thrust reverse isolation valve and absence of an EICAS caution indication could allow the flight crew to attempt take off with a reverser unlocked. Further, if the auto-restow feature becomes inoperable, the potential exists of uncommanded deployment of a thrust reverser in flight.

The FAA has reviewed and approved Boeing Alert Service Bulletin 757–78A0006, dated August 7, 1986, which describes the inspection of the thrust reverser isolation valves for the installation of the restrictor valves; the installation of spacers under the thrust reverser unlock and auto-restow proximity sensors; and the operational test of the thrust reverser unlock indication system.

Since this condition is likely to exist or develop on other airplanes of this same type design, this AD requires inspection and modification in accordance with the service bulletin previously mentioned.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 757 series airplanes equipped with Pratt and Whitney Aircraft PW2037 engines, as listed in Boeing Alert Service Bulletin 757–78A0006, dated August 7, 1986, certificated in any category.

To minimize the potential for uncommanded deployment of a thrust reverser in flight, accomplish the following within 30 days after the effective date of this AD, unless previously accomplished:

A. Inspect and, if necessary, install a restrictor check valve on the control port of both thrust reverser isolation valves in accordance with Boeing Alert Service Bulletin 757–78A0006, dated August 7, 1986, or later FAA-approved revision.

B. Modify the unlock and auto-restow proximity sensors' installation in accordance with Boeing Alert Service Bulletin 757–78A0006, dated August 7, 1986, or later FAA-approved revision.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124–2207. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective January 12, 1987.

Issued in Seattle, Washington, on December 19, 1986.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 86–29227 Filed 12–30–86; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 86–CE–40–AD; Amdt. 39–5497]

Airworthiness Directives; British Aerospace Models HP 137 Mk.1, Jetstream Series 200 and Jetstream Model 3101 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to British Aerospace (BAe) Models HP 137 Mk.1, Jetstream Series 200 and Jetstream Model 3101 airplanes, which requires inspection and repair (if necessary) of the yoke pintle housing for the landing gear attachment spigot of the main leg forging. A case has been reported of a crack in this area of the forging, attributed to stress corrosion found during routine landing gear removal. This action will detect these cracks before landing gear failure and preclude the loss of the airplane.

DATE: *Effective Date:* January 30, 1987.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

ADDRESSES: BAe Mandatory Service Bulletin (MSB) No. 32–A–JA851226 dated December 19, 1985, and BAe Air Weapons Division (AWD) Service Bulletin (S/B) No. 32–19 dated December 19, 1985, applicable to this AD may be obtained from British Aerospace, Engineering Department, P.O. Box 17414, Dulles International Airport, Washington, DC 20041; Telephone (703) 435–9100. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Ted Ebina, Brussels Aircraft Certification Staff, AEU–100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, B–1000 Brussels, Belgium; Telephone 513.38.30; or Mr. Harvey Chimerine, FAA, ACE–109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374–6932.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring both initial and repetitive visual and eddy current inspections, and repair if necessary, of the yoke pintle housing for the landing gear attachment spigot of the main leg forging on all BAe Model HP 137 Mk.1, Jetstream Series 200 and Jetstream Model 3101 airplanes, was published in the **Federal Register** on September 29, 1986 (51 FR 34476). The proposal resulted from BAe, the manufacturer, receiving a report of a crack in the yoke pintle housing for the landing gear attachment spigot of the main leg forging. The reported crack, which was found during routine landing gear removal, has been attributed to stress corrosion. Consequently, BAe issued MSB No. 32–A–JA851226 dated December 19, 1985, applicable to BAe Model HP 137 Mk.1, Jetstream Series 200 and Jetstream Model 3101 airplanes, referencing BAe AWD S/B dated December 19, 1985, which requires both initial and repetitive visual and eddy current inspections, and repair if necessary, of the yoke pintle housing for the landing gear attachment spigot of the main leg forging. These inspections and repairs are required to prevent the development of hazardous cracks in the main landing gear forging.

The Civil Airworthiness Authority-United Kingdom (CAA–UK), which has responsibility and authority to maintain the continuing airworthiness of these airplanes in the United Kingdom, classified this BAe service bulletin and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes.

On airplanes operated under United Kingdom registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the CAA–UK combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA examined the available information related to the issuance of BAe MSB No. 32–A–JA851226 and BAe AWD No. 32–19 and the mandatory classification of this service bulletin by the CAA–UK, and concluded that the condition addressed by BAe MSB No. 32–A–JA851226 and BAe AWD No. 32–19 was an unsafe condition that may exist on other airplanes of this type certificated for operation in the United States. Accordingly, the FAA proposed an amendment to Part 39 of the FAR to include an AD on this subject.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Accordingly, the proposal is adopted without change. The FAA has determined that this regulation involves 26 airplanes at an approximate annual cost of $600 for each airplane or a total annual fleet cost of $15,600.

The cost of compliance with the proposed AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air Transportation, Aviation safety, Aircraft, Safety

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

British Aerospace: Applies to Models HP 137 Mk.1 (all serial numbers), Jetstream Series 200 (all serial numbers), and Jetstream Model 3101 airplanes (serial numbers 601 to 606) equipped with Main Landing Gear Type Numbers 1863 and 1864 (all suffixes), certificated in any category.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To prevent the development of hazardous cracks in the main landing gear pintle housing, accomplish the following:

(a) Within 300 landings and every 1200 landings thereafter: Conduct an eddy current inspection in accordance with Section 2 "Accomplishment Instructions", Part A "Non-destructive Testing" of British Aerospace (BAe) Mandatory Service Bulletin (MSB) No. 32–A–JA851226 dated December 19, 1985, Section 2 "Accomplishment Instructions" of BAe Air Weapons Division (AWD) Service Bulletin (S/B) No. 32–19 dated December 19, 1985. If cracks are found, before further flight, carry out repairs in accordance with AWD S/B No. 32–19.

(b) At intervals of 300 landings after the initial inspection, required by paragraph (a) of this AD, conduct a visual inspection in accordance with Section 2 "Accomplishment Instructions," Part B, "Visual Inspections" of AWD S/B No. 32–19. If indications of cracks are discovered, conduct an eddy current inspection in accordance with paragraph (a) of this AD. If cracks are found, before further flight, carry out repairs in accordance with AWD S/B No. 32–19.

(c) Within 300 landings after a heavy or abnormal landing, conduct an eddy current inspection in accordance with paragraph (a) of this AD.

(d) If the actual number of landings is unknown for the purpose of complying with this AD, one landing may be substituted for each one-half hour of flight unless the operator substantiates a different flight hours to landings ratio. This substantiation must be submitted to, and approved by, the Manager, Aircraft Certification Staff, address below.

(e) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(f) The intervals between the repetitive inspections required by this AD may be adjusted up to 10 percent of the specified interval to allow accomplishment of these inspections concurrent with other scheduled maintenance on the airplane.

(g) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Staff, AEU–100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, B–1000 Brussels, Belgium.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to British Aerospace, Engineering Department, P.O. Box 17414, Dulles International Airport, Washington, D.C. 20041; Telephone (703) 435–9100; or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on January 30, 1987.

Issued in Kansas City, Missouri, on December 16, 1986.

Edwin S. Harris,

Director, Central Region.

[FR Doc. 86–29230 Filed 12–30–86; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 86–CE–69–AD; Amdt. 39–5498]

Airworthiness Directives; Mitsubishi Heavy Industries, Ltd. (MHI) and Mitsubishi Aircraft International, Inc. (MAI) Airplanes, Models MU–2B–10, –15, –20, –25, –26, –26A, –30, –35, –36, –36A, –40, and –60

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Mitsubishi Heavy Industries, Ltd. (MHI) and Mitsubishi Aircraft International, Inc. (MAI) Models MU–2B–10, –15, –20, –25, –26, –26A, –30, –35, –36, –36A, –40, and –60, herein referred to as "MU–2B" airplanes, which requires modification of certain of these airplanes with manual ignition switches, and for all airplanes, the use of continuous ignition during flight in meteorological conditions shown to result in flameout until such conditions no longer exist. The FAA has received numerous reports of single and dual-engine flameouts attributed to known or suspected ice ingestion on airplanes powered by Garrett TPE–331 engines. Four in-flight and six ground flameouts were reported on MU–2B airplanes. The requirements of this AD will prevent significant power interruptions and spool down due to inadvertent flameout by providing a source of ignition to reestablish combustion quickly once the ingested ice has passed through the engine and a proper fuel/air mixture is reestablished.

DATES: *Effective Date:* December. 31, 1986. Comments for inclusion in the Rules Docket must be received on or before January 30, 1987.

Compliance: As prescribed within the body of the AD.

ADDRESSES: Garrett Turbine Engine Company (GTEC) Operating Information (OI) Letter 331–11 dated April 30, 1985, applicable to this AD may be obtained from GTEC, P.O. Box 5217, Phoenix, Arizona 85010; Telephone (602) 231–1000; or the Rules Docket at the address below. The GTEC OI Letter 331–11 dated April 30, 1985, and MHI Service Recommendation (SR) 066B dated November 13, 1986, or MAI SR 040/74–001, Revision A, dated December 11, 1986, may be obtained from Beech Aircraft Corporation (Licensee for Mitsubishi), P.O. Box 85, Wichita, Kansas 67201; Telephone (316) 681–7111. Send comments on the AD in duplicate to FAA, Central Region, Attention: Rules Docket, No. 86–CE–69–AD, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., FAA, Central Region, Project Support Section Foreign, ACE–109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374–6932.

SUPPLEMENTARY INFORMATION: Numerous U.S. certificated airplanes, including the Mitsubishi MU–2B airplanes, are powered by GTEC TPE–331 engines. The FAA has received reports of 53 single and dual-engine flameouts in the U.S. and overseas from operators of airplanes powered by these engines. All of these flameouts occurred during or after a known or suspected icing encounter and are attributed to ice ingestion causing an interruption of power and spool down of the engine. There were eleven reports of dual-engine flameouts, seven of those occurring in flight and four on the ground. In three of the seven in-flight reports, both engines flamed out during final approach, and in two of the three reports, the airplane landed without engine power. The ice ingestion/flameout event apparently occurs because of ice buildup prior to use of anti-ice protection, not using or prematurely turning off ignition, or anti-ice system failure. In some cases, crew action was based upon the mistaken belief that airframe and engine installations were free of the ice hazard because of clear air conditions with no visible moisture and no substantial airframe ice accretion.

Four in-flight and six ground flameouts were reported on the MU–2B airplanes. Analysis of these events, and coordination with the airframe and engine manufacturers has led to certain conclusions. The number of reports correlates very closely with exposure to an icing environment which is greatest for FAR 135 operators who fly approximately 2,000 hours per airplane per year, and in some regions, are routinely exposed to flight in an icing environment during the icing season on every flight at lower altitudes, with no opportunity to deviate from the route or delay departures substantially. These FAR 135 operators are also required to submit service difficulty reports (SDRs). FAR 91 operators submit SDRs on a voluntary basis only, and from the record, at a lower rate than the FAR 135 operators. The greater exposure and required reporting are believed to account for the apparent but incorrect assumption of a high rate of flameouts of engines installed on certain commuter airplanes, and no potential problem with engines installed on other airplanes.

The engine manufacturer commented that, despite some differences in gas path parameters between various models of TPE–331 engines installed in these airplanes, none of the differences were believed to have a significant effect on ice ingestion capability margin. These facts have led the FAA to conclude that the potential for flameout due to icing exists in all GTEC TPE–331 engine installations, and no model variant appears more or less susceptible to flameout due to design features of the engine or installation variances. It has been observed that, while some models of airplanes have accrued a substantial engine time with few flameouts, the data must be tempered by understanding that only a small fraction of the flight time, perhaps one hour per hundred, may be in an icing environment by FAR 91 operators. Also, for a twin engine airplane, the engine time is twice the flight time and the concern is dual engine flameouts per flight hour. These two considerations will thereby increase the apparent flameout per engine hour rate by an estimated factor of at least 200. While rate of occurrence is discussed, a singular event in the fleet is sufficient to initiate AD action.

From these facts, the FAA has observed that a dual engine flameout is possible at low altitudes and locations that could preclude a safe landing. It is also possible that total loss of power in

an icing environment will preclude the use of bleed-air powered surface de-icing equipment. Either of these conditions could result in a stall or stall/spin accident.

The GTEC has demonstrated that the power interruptions caused by a flameout event can be minimized by the use of an automatic-relite (auto-relite) ignition system which senses power or RPM loss, to energize the ignition exciter unit until power or RPM is restored, then de-energizes the ignition exciter unit.

In 1981, the FAA issued an Airworthiness Directive (AD) against certain airplanes requiring installation of an auto-relite for flight into known icing conditions. Since that time, ten flameout reports were received on that model with only two occurring in-flight. The eight ground flameouts occurred when the auto-relite was disabled. Verification of the in-flight events revealed that the flameouts occurred because the auto-relite was not enabled when the ignition selector was improperly set. The auto-relite system on the airplane model evidently functioned adequately to restore power quickly after an ice-induced in-flight flameout. A subsequent bird ingestion event also demonstrated the auto-relite effectiveness in other than ice ingestion events. Auto-relite is not presently required in another similar model. The latter model accrues approximately 21 percent less FAR 135 flight time than the former model. Seven in-flight flameout reports were received on the latter during the same period.

Considering the above facts, the FAA has concluded that: (1) The dual engine in-flight flameout is an unsafe condition; (2) Ice-induced dual-engine flameouts are probable; (3) No GTEC TPE-331 model engine can be excluded from the consequences of ice-induced flameout (except the TPE-331-14, which has auto-relite); (4) No model aircraft having a TPE-331 engine can be excluded from the probability of ice-induced flameout using fleet exposure times as substantiation of reliability when an ice-induced flameout event has been reported; (5) Continuous ignition or auto-relite is effective in rapidly restoring power after an ice-induced flameout.

The FAA has determined there are approximately 670 airplanes affected by this AD. The cost of compliance with the AD is estimated at $6.45 per additional ignition hour per airplane, and a one-time fleet cost of $566,000 for installation of the manual ignition switch.

Since the FAA has determined that the unsafe condition described herein is likely to exist or develop in other airplanes of the same type design, an AD is being issued requiring the use of continuous ignition when operating in actual or potential icing conditions, and installation of a manual ignition control switch on certain Mitsubishi Heavy Industries, Ltd. (MHI) and Mitsubishi Aircraft International, Inc. (MAI) Models MU-2B-10, -15, -20, -25, -26, -26A, -30, -35, -36, -36A, -40, and -60, airplanes. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

Although this action is in the form of a final rule which involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on the rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director. This rule may be amended in light of comments received. Comments that provide a factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effectiveness of the AD and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above. A report summarizing each FAA-public contact, concerned with the substance of this AD, will be filed in the Rules Docket.

The FAA has determined that this regulation is an emergency regulation that is not major under section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "ADDRESSES" at the location identified.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Mitsubishi Heavy Industries, Ltd. and Mitsubishi Aircraft International, Inc.: Applies to Models MU-2B-10, -15, -20, -25, -26, -26A, -30, -35, -36, -36A, -40, and -60 (all serial numbers) airplanes certificated in any category.

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent engine flameout when in or departing an icing environment, accomplish the following:

(a) Modify the airplanes not equipped with manual ignition switches.

(1) For MU-2B-10, -15, -20, -25, -26 (S/N 008 through 347 except S/N 313, 321), -30, -35, and -36 (S/N 501 through 696 except S/N 652, 661), modify the airplane as described in MHI SR 066B dated November 13, 1986, Instructions 1.0 through 8.0. Compliance with GTEC S/B TPE/TSE 331-74-0003 is optional.

(2) For MU-2B-25, -26, -26A (S/Ns 313SA, 321SA, 348SA through 364SA, and 360SA through 394SA), -35, and -36A (S/Ns 652SA, 661SA, 697SA through 699SA and 701SA through 730SA), modify the airplane as described in MAI SR 040/74-001, Revision A, dated December 11, 1986, Accomplishment Instructions paragraphs A-G. Compliance with GTEC S/B TPE/TSE 331-74-0003 is optional.

(b) For all airplanes, revise the airplane Pilot's Operating Manual and Airplane Flight Manual (POM/AFM) by inserting Appendix 1 of this AD in the "LIMITATIONS" section of the POM/AFM. Appendix 1 procedures supersede any other POM/AFM procedures which may be contradictory.

(c) The requirements of paragraph (b) of this AD may be accomplished by the holder of a pilot certificate issued under Part 61 of the Federal Aviation Regulations on any airplane owned or operated by him. The person accomplishing these actions must make the appropriate aircraft maintenance record entry as prescribed by FAR 91.173.

(d) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(e) An equivalent means of compliance with this AD may be used if approved by the Manager, Wichita Aircraft Certification Office, ACE-115W, 1800 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4400 for MAI airplanes, or the Western Aircraft Certification Office, ANW-170W, 15000 Aviation Boulevard, Hawthorne, California 90261; Telephone (213) 297-1351 for MHI airplanes.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to GTEC, P.O. Box 5217, Phoenix, Arizona 85010; Telephone (602) 231-1000; Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201; Telephone (316) 681-9111; or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on December 31, 1986.

Issued in Kansas City, Missouri, on December 16, 1986.

Edwin S. Harris,

Director, Central Region.

Appendix 1—Supplement to the POM/AFM, Mitsubishi MU-2B-10, -15, -20, -25, -26, -26A, -30, -35, -36, -36A, -40, and -60.

The CONTINUOUS IGNITION/MAN IGN switches shall be selected to ON during all operations in actual or potential icing conditions described herein:

(1) During takeoff and climb out in actual or potential icing conditions.

*(2) When ice is visible on, or shedding from propeller(s), spinner(s), or leading edge(s).

*(3) Before selecting ANTI-ICE, when ice has accumulated.

(4) Immediately, any time engine flameout occurs as a possible result of ice ingestion.

(5) During approach and landing while in or shortly following flight in actual or potential icing conditions.

*Note: If icing conditions are entered in flight without the engine anticing system having been selected, switch one ENGINE system to the ANTI-ICE ON position. If the engine runs satisfactorily, switch the second ENGINE system to the ANTI-ICE ON position and check that the second engine continues to run satisfactorily.

CAUTION

Flight in actual or potential icing conditions will be limited by duty cycle of the ignition system. Ignition system time limits must be observed to prevent exceeding duty cycle times. Operator should verify these limits for his particular installation.

For the purpose of this supplement, the following definition applies:

"Potential icing conditions in precipitation or visible moisture meteorological conditions:

(1) Begin when the OAT is +5 °C (+41 °F) or colder, and

(2) End when the OAT is +10 °C (+50 °F) or warmer."

The procedures and conditions described in this appendix supersede any other POM/AFM procedures and conditions which may be contradictory.

[FR Doc. 86-29228 Filed 12-30-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 86-ACE-03]

Alteration of Transition Area, Spencer, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this federal action is to alter the 700-foot transition area at Spencer, Iowa, to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the Spencer, Iowa, Municipal Airport, utilizing the Spencer VOR as a navigational aid. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR), and other aircraft operating under Visual Flight Rules (VFR).

EFFECTIVE DATE: February 12, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION: To enhance airport usage, an additional approach procedure is being developed for the Spencer, Iowa, Municipal Airport, utilizing the Spencer VOR as a navigational aid. The establishment of an instrument approach procedure based on this approach aid entails alteration of the transition area at Spencer, Iowa, at or above 700 feet above the ground, within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR), and other aircraft operating under Visual Flight Rules (VFR). Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B, dated January 2, 1986.

Discussion of Comments

On page 36563 of the **Federal Register**, dated October 14, 1986, the Federal Aviation Administration published a Notice of Proposed Rulemaking which would amend § 71.181 of Part 71 of the Federal Aviation Regulations, so as to designate a transition area at Spencer, Iowa. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 71 of the FAR (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Spencer, Iowa

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of the Spencer, Iowa, Municipal Airport (Lat. 43°09'45" N., Long. 95°11'30" W.) and within 4 miles each side of the Spencer VOR 314° radial, extending from the 6.5 mile radius zone to 8.5 miles northwest of the VOR; within 4 miles each side of the Spencer VOR 122° radial, extending from the 6.5 mile radius zone to 8.5 miles southeast of the VOR; within 3.75 miles each side of the Spencer VOR 122° radial, extending from the 6.5 mile radius zone to 12.5 miles southeast of the Spencer VOR; excluding that portion that overlies the Milford, Iowa, transition area.

This amendment becomes effective at 0901 UTC February 12, 1987.

Issued in Kansas City, Missouri, on December 16, 1986.

Clarence E. Newbern,

Acting Manager, Air Traffic Division.

[FR Doc. 86-29366 Filed 12-30-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-AGL-29]

Alteration of Transition Area—Harry W. Browne Airport, Saginaw, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to alter the existing Harry W. Browne Airport, Saginaw, Michigan, transition area to accommodate a new NDB Runway 27 Standard Instrument Approach Procedure (SIAP) to Harry W. Browne Airport.

The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 UTC, April 9, 1987.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

History

On Monday, November 3, 1986, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the Harry W. Browne Airport, Saginaw, Michigan, transition area (51 FR 39867).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the Harry W. Browne, Saginaw, Michigan, transition area to accommodate aircraft utilizing an NDB Runway 27 SIAP.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Saginaw Harry W. Browne Airport, MI—[Amended]

That airspace extending upward from 700 feet above the surface within a 5.5 mile radius of Harry W. Browne Airport (lat. 43°25'58" N., long. 83°51'43" W.); and within 2 miles each side of the 066° bearing from Harry W. Browne Airport, extending from the 5.5 mile radius to 6.5 miles east of the airport excluding that portion within the Saginaw Tri-City Airport, Michigan, transition area.

Issued in Des Plaines, Illinois, on December 15, 1986.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 86-29220 Filed 12-30-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-AEA-11]

Alteration to Control Zone, Calverton, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the configuration of the Calverton/Peconic Field Control Zone by deleting the southwest extension from the 5-mile radius zone. This action is taken, at the request of the using agency, to relinquish the airspace, and permit it to return to unrestricted public use.

EFFECTIVE DATE: 0901 UTC, February 12, 1987.

FOR FURTHER INFORMATION CONTACT: Glenn A. Bales, Airspace and Planning Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Fitzgerald Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Telephone: (718) 917-1228.

SUPPLEMENTARY INFORMATION:

History

On Thursday, July 31, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the Calverton, NY, Control Zone configuration at Calverton Naval Weapons Industrial Reserve Plant (Peconic Field) by deleting the southwest extension, within 3 miles each side of the Calverton, NY, VORTAC 210° radial, from the 5-mile radius zone. (51 FR 27422). Interested parties were invited to participate in this proposed rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7460.6 dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the configuration of the Calverton/Peconic Field Control Zone by deleting the southwest extension from the 5-mile radius zone. This action is taken, at the request of the using agency, to relinquish the airspace, and permit it to return to unrestricted public use. The FAA has determined that this amendment only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zone.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Calverton, NY. [Amended]

By removing the words "within 3 miles each side of the Calverton, NY, VORTAC 210° radial, extending from the 5-mile radius zone to 8.5 miles southwest of the VORTAC."

Issued in Jamaica, New York, on December 18, 1986.

Edmund Spring,

Manager, Air Traffic Division.

[FR Doc. 86-29365 Filed 12-30-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-AEA-2]

Alteration of Control Zone, Fort Eustis, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the published description at Fort Eustis, VA, to reflect minor adjustments to the parameters of the control zone. The intended effect of this action is to ensure segregation of aircraft, using a new NDB Runway 14 and Copter NDB 136° instrument approach procedure in instrument conditions, from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 UTC, February 12, 1987.

FOR FURTHER INFORMATION CONTACT: Glenn A. Bales, Airspace and Planning Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Fitzgerald Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Telephone: (718) 917-1228.

SUPPLEMENTARY INFORMATION:

History

On Friday, November 8, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the published description at Fort Eustis, VA, to reflect a minor realignment of the control zone. This action will provide segregation of aircraft, using a new NDB Runway 14 and Copter NDB 136° instrument approach procedure in instrument conditions, from other aircraft operating under visual weather conditions in controlled airspace (50 FR 46447). Interested parties were invited to participate in this proposed rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7460.6 dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations is to alter published description at Fort Eustis, VA, to reflect a minor realignment of the control zone. The FAA has determined that this amendment only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zone.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Fort Eustis, VA—[Revised]

That airspace within a 5-mile radius of the center (Lat. 37°07'45"N., Long. 76°36'45" W.), of Felker Army Airfield, Fort Eustis, VA; within 3 miles each side of the 316° bearing from Felker NDB, extending from the 5-mile radius zone to 8.5 miles northwest of the NDB; excluding the portion that coincides with the Newport News, VA, Control Zone. This Control Zone is effective during specific times established in advance by Notice to Airmen. The effective dates and times will thereafter be published continuously in the Airport/Facility Directory.

Issued in Jamaica, New York, on December 18, 1986.

Edmund Spring,

Manager, Air Traffic Division.

[FR Doc. 86-29363 Filed 12-30-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 75

[Airspace Docket No. 86-AWP-29]

Alteration of VOR Federal Airways, Reporting Points and Jet Routes—California

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments change the description of certain Federal Airways and Jet Routes in the state of California, by substituting the name Clovis for Pinedale, and changes the Pinedale, CA, Reporting Points. Recently, several incidents have occurred in which pilots proceeded to the wrong navigational aid (NAVAID) because of the similar sounding names of Palmdale and Pinedale. This action changes the name of Pinedale to Clovis wherever it appears but does not alter controlled airspace or airway configurations.

EFFECTIVE DATE: 0901 UTC, February 12, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9254.

BEST COPY AVAILABLE

The Rule

These amendments to Parts 71 and 75 of the Federal Aviation Regulations change the name to the Pinedale VORTAC to the Clovis VORTAC in the description of each airway and jet route in which the Pinedale VORTAC was used. There have been several incidents recorded where pilots misunderstood a clearance involving the Pinedale or Palmdale VORTAC and proceeded toward the wrong NAVAID. This action will preclude any confusion of the two NAVAIDs in the future. Because these actions are minor technical amendments which reflect a facility name change but do not affect airspace assignments, and are actions in which the public would not be particularly interested, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Sections 71.123, 71.203, 71.207, and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a full regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 75

Aviation safety, VOR Federal airways, Reporting points and jet routes.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) as amended (51 FR 8, 9, 6103 and 39649), are further amended, as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority. 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-23, V-165, V-230 and V-585—[Amended]

Wherever Pinedale appears substitute Clovis.

§ 71.203 [Amended]

3. Section 71.203 is amended as follows:

Pinedale, CA—[Remove].
Clovis, CA—[New].

§ 71.207 [Amended]

4. Section 71.207 is amended as follows:

Pinedale, CA—[Remove].
Clovis, CA—[New].

PART 75—[AMENDED]

5. The authority citation for Part 75 continues to read as follows:

Authority. 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

6. Section 75.100 is amended as follows:

J-65 and J-110—[Amended]

Wherever Pinedale appears substitute Clovis.

Issued in Washington, DC, on December 22, 1986.

Harold H. Downey,
Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-29231 Filed 12-30-86; 8:45 am]
BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 86-AWA-18]

Alteration and Establishment Jet Routes—Expanded East Coast Plan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a new Jet Route J-211 in the states of Maryland and Pennsylvania. This amendment is part of the Expanded East Coast Plan (EECP). The EECP's objective is to establish an improved air traffic system that is designed to reduce delays for aircraft en route to or departing from terminals in the eastern United States. The EECP is being implemented in several segments until completed.

EFFECTIVE DATE: 0901 UTC, February 12, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9254.

SUPPLEMENTARY INFORMATION:

History

On June 10, 1986, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to alter the descriptions of Jet Routes J-30, J-34, J-134, J-149, J-162, and J-518 and establish new J-211 (51 FR 20978). Due to numerous technical problems Jet Route J-211 was the only route that passed a flight check. Accordingly, the other proposed amendments have not been adopted. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes the amendment establishing J-211 is the same as proposed in the notice. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 75 of the Federal Aviation Regulations establishes new J-211. Currently, east coast traffic flows are saturated and compressed in the New York metropolitan area that substantial delays are experienced daily. The establishment of J-211, as part of the EECP, will alleviate this congestion and reduce delays to and from terminals in the eastern United States.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

PART 75—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 75 of the Federal Aviation Regulations (14 CFR Part 75) is amended as follows:

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J-211—[New]

From Johnstown, PA, via INT Johnstown 129° and Westminster, MD, 292° radials; to Westminster.

Issued in Washington, DC, on December 19, 1986.

Harold H. Downey,
Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-29232 Filed 12-30-86; 8:45 am]
BILLING CODE 4910-13-M

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14 CFR Part 91

[Docket No. 24394, Special Federal Aviation Regulation No. 47-1]

Special Flight Authorization for Noise Restricted Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: Special Federal Aviation Regulation (SFAR) 47 provides for limited issuance of special flight authorizations to conduct certain nonrevenue operations that are otherwise prohibited by the Part 91, Subpart E, noise restrictions. The current rule terminates on December 31, 1986. This rule extends SFAR 47 through December 31, 1987, and reduces the purposes for which a special flight authorization may be issued by not permitting the return to the United States of an exported aircraft except to hushkit or scrap the aircraft or to permit movements between storage locations in the United States.

EFFECTIVE DATE: Effective date of this amendment is January 1, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Tedrick, Noise policy and Regulatory Branch (AEE-110), Noise Abatement Division, Office of Environment and Energy, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591, telephone: (202) 267-3558.

SUPPLEMENTARY INFORMATION:

Background

Under Part 91 of the Federal Regulations (FAR), on or after January 1, 1985, no person may operate a civil subsonic turboject airplane with a maximum weight of more than 75,000 pounds to or from an airport in the United States unless that airplane has been shown to comply with Stage 2 of Stage 3 noise levels under Part 36. This restriction applies to U.S. registered aircraft that have standard airworthiness certificates and foreign registered aircraft that would be required to have a U.S. standard airworthiness certificate in order to conduct the operations intended for the airplane were it registered in the United States. SFAR 47 was adopted February 26, 1985 (50 FR 7751; February 26, 1985), to permit certain noncomplying operations of noise restricted aircraft which would be unlawful without a formal grant of exemption under FAR Part 11. The FAA has determined these limited issuance special flight authorizations to be very cost beneficial and time efficient to both the government and the private sector. However, SFAR 47 expires on December 31, 1986, and to permit the operation of remaining non-noise compliant airplanes to, from, or within the United States, this amendment extends SFAR 47 for a one year period until December 31, 1987.

Experience gained in the issuance of these special flight authorizations indicates that certain changes to the purposes for which SFAR 47 may be utilized are required. The adoption of this amendment precludes some operations now permitted by SFAR 47. However, applicants seeking authorization for operations previously permitted under SFAR 47 will still be able to petition for an exemption under FAR Part 11 for those operations.

This rule amends Section 2 of SFAR 47 so that operators importing or returning aircraft into the United States after export can only obtain special flight authorizations to permit them to deliver the aircraft to be scrapped or for modification to bring the aircraft into compliance with Stage 2 of Stage 3 noise levels. In addition, operations solely to change storage locations within the United States will no longer be authorized under SFAR 47. Aircraft in storage in the United States can still be exported, moved to be scrapped or modified to comply with the noise level requirements, but not to another point of storage in the United States. These changes are necessary to bring the SFAR into closer agreement with the long-standing public policy discussed under "Review of Comments" below.

This rule also amends Section 3 of SFAR 47 to require the applicant for a special flight authorization to supply a point of contact and information on the aircraft airworthiness status. Based on experience gained in administering SFAR 47, the provision of this information will reduce or eliminate delays in processing applications for SFAR 47 authorizations.

Effective Date

The final rule is effective January 1, 1987, which is less than 30 days after the date of publication. Such action is necessary for the FAA to have continuous and uninterrupted regulatory authority to grant exemptions (special flight authorizations to operators of qualifying aircraft. The public need to grant these exemptions constitutes good and sufficient cause to waive the normal 30-day waiting period.

Review of Comments

These amendments are based on Notice of Proposed Rulemaking No. 86-12 published in the Federal Register on August 18, 1986 (51 FR 29476). Interested persons have been afforded the opportunity to participate in the development of all aspects of this rulemaking by submitting written comments to the public regulatory docket. The period for submitting comments closed October 2, 1986. Five comments were received. They were carefully reviewed and considered in the issuance of this final rule. All five generally supported extension of the SFAR, but each went on to suggest proposed modifications. Four of the five commenters were from the Miami, Florida, area and they suggested allowing unlimited maintenance flights into Miami. The fifth commenter was an airline labor association that suggested extending the life of the SFAR to December 31, 1990.

Concerning maintenance flights to Miami, the FAA believes that such exemptions would provide only some short-term increase in business activity for Miami area certificated repair facilities. Several U.S. and foreign companies (including one in Miami) are currently producing and installing hushkits for DC-8's and Boeing 707's. As noncomplying aircraft are either retrofitted or scrapped, the economic significance of maintaining the remaining noncompliant aircraft will continue to shrink. At the same time, maintenance activity in support of complying airplanes will increase. More than 100 airplanes operated by U.S. and

foreign operators have been retrofitted to date.

Prior to adopting the original SFAR, the FAA carefully assessed the availability of repair facilities outside the United States for operators of noncomplying aircraft and found that they were entirely adequate to serve those aircraft which needed such service and could not be operated into the United States. Further, Miami is not the only location to which operators wish to fly their aircraft for maintenance. Large maintenance facilities exist at Marana, Arizona, and Smyrna, Tennessee, and requests have been made for exemptions and special flight authorizations to move aircraft to both locations. Other major facilities are located elsewhere in the United States, as well. In this respect, Miami is not unique, and there is no distinguishable rationale for extending SFAR 47 privileges to just that one city.

Finally, there would be a serious problem in administering the large number of special flight authorizations if purely maintenance flights were allowed. Each authorization must be processed and its terms enforced. Since the flights are limited to nonrevenue operations and no cargo or passengers may be carried except those directly concerned with the operation of the aircraft, the FAA's operations inspectors would have to expend substantial time to assure that the provisions of the special flight authorizations were met.

Similarly, the FAA does not agree with the commenter's suggestion to extend SFAR 47 through 1990. Since the original adoption of the FAA's aircraft noise compliance rule, Part 91, Subpart E (14 CFR Part 91) of the Federal Aviation Regulations in 1978, public policy has been to encourage removal of older, noisier airplanes from operations at all U.S. airports. U.S. operation of most noncomplying 3 and 4 engine airplanes became illegal on January 1, 1985. The SFAR is intended to provide a means for ferrying the last few noncompliant aircraft out of the country or to domestic locations for hushkitting; it is not intended to provide a permanent alternative to complying with the Part 91 regulation.

For the reasons discussed above, the FAA has decided not to adopt the commenters suggestions. Otherwise, this amendment and the reasons for its adoption are the same as those contained in Notice 86-12, and, unless otherwise indicated, the proposals contained in the Notice have been adopted without change.

Paperwork Reduction Act

The reporting requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0518.

Economic Impact

This rule has minimal economic impact. The rule provides an alternative from the exemption process for certain operations, reducing administrative costs upon operators and the FAA. While the operations are not without some noise costs, these costs can be characterized as trivial, since the number of operations at any one local airport will be extremely low in number.

Even though benefits will exceed costs for this proposal, the FAA finds that the SFAR is not likely to have significant economic impact upon a substantial number of small entities. The basis for this is the very low number of requests which FAA foresees as a result of the adoption of this proposal. This number should not exceed fifty over the life of the regulation. Accordingly, preparation of a full regulatory evaluation is not required.

List of Subjects in 14 CFR Part 91

Air carriers, Aviation safety, Safety, Aircraft, Aircraft pilots, Air traffic control, Pilots, Airspace, Air transportation, Airworthiness directives and standards.

Environmental Analysis

Pursuant to Department of Transportation "Policies and Procedures for Considering Environmental Impacts" (FAA Order 1050.1D), a Finding of No Significant Impact has been prepared. The changes proposed in this rule do not significantly affect the quality of the human environment.

Reason for Immediate Adoption

The timely extension of SFAR 47 will enable the uninterrupted issuance of limited special flight authorizations to permit certain noncomplying operations of noise restricted aircraft which would be unlawful without a formal grant of exemption under FAR Part 11. Because the ability to issue these limited special flight authorizations will expire after December 31, 1986, and because they are very cost beneficial and time efficient to both the government and the private sector, good cause exists to making this amendment effective in less than 30 days.

The Final Rule

Accordingly, the FAA amends Part 91 of the Federal Aviation Regulations (14 CFR Part 91) by amending Special Federal Aviation Regulation (SFAR) 47 as follows; effective January 1, 1987.

PART 91—[AMENDED]

1. The authority citation for Part 91 is revised to read as set forth below and the authority citations following Special Federal Aviation Regulation 47 are removed:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat 1180); 42 U.S.C. 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 21, 1983).

2. Paragraph 2(c) is amended by deleting the phrase "the sale, lease, or other disposition of the airplane; and" and substituting the phrase "scrapping the airplane" in its place.

3. Paragraph 2 is amended by deleting subparagraph (d).

4. Paragraph 3 is amended by adding new subparagraphs (h) and (i) to read as follows:

(h) The applicant's name and telephone number.

(i) Whether a special flight permit under FAR Part 21.197 or a special flight authorization under FAR Part 91.28 is required for the proposed flight.

5. Paragraph 5 is amended by deleting the word "1986" and substituting the word "1987" in its place.

The rule has minimal economic consequences. Accordingly, for reasons stated earlier the FAA had determined that: (1) The amendment does not involve a major rule under Executive Order 12291; (2) the amendment is not significant, and, because of its minimal economic consequence, it does not require a full Regulatory Evaluation under DOT Regulatory Polices and Procedures (44 FR 11034, February 26, 1979); and (3) it is certified that under the criteria of the Regulatory Flexibility Act that the amendment will not have significant economic impact on a substantial number of small entities. In addition, this rule will have little or no impact on trade opportunities for U.S. firms doing business overseas, or for foreign firms doing business in the United States.

Issued in Washington, DC, December 24, 1986.

Donald D. Engen,

Administrator.

[FR Doc. 86-29362 Filed 12-30-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 25156; Amdt. No. 1336]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for such SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-430), FAA Headquarters, Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates states as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC on December 12, 1986.

John S. Kern,

Director of Flight Standards.

Adoption of the Amendment

PART 97—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: Section 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/

DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective February 12, 1987

Santa Maria, CA—Santa Maria Public, VOR RWY 12, Amdt. 13
Joliet, IL—Joliet Park District, VOR RWY 12, Amdt. 10
Joliet, IL—Joliet Park District, RNAV RWY 12, Amdt. 11
Moline, IL—Quad-City, RADAR-1, Amdt. 7
Moline, IL—Quad-City, RNAV RWY Amdt. 8
Auburn, IN—Auburn Dekalb, VOR-A, Amdt. 7
Auburn, IN—Auburn Dekalb, VOR RWY 9, Amdt. 6
Fort Wayne, IN—Smith Field, VOR RWY 13, Amdt. 7
Kendallville, IN—Kendallville Muni, VOR-A, Amdt. 4
Nappanee, IN—Nappanee Muni, VOR/DME-A, Amdt. 3
Warsaw, IN—Warsaw Muni, VOR RWY 9, Amdt. 3
Warsaw, IN—Warsaw Muni, VOR RWY 27, Amdt. 3
Warsaw, IN—Warsaw Muni, SDF RWY 9, Amdt. 2
Lake Charles, LA—Lake Charles Muni, LOC BC RWY 33, Amdt. 16
Grand Forks, ND—Grand Forks-Mark Andrews Intl, VOR RWY 17R, Amdt. 4
Grand Forks, ND—Grand Forks-Mark Andrews Intl, VOR RWY 35L, Amdt. 5
Grand Forks, ND—Grand Forks-Mark Andrews Intl, LOC BC RWY 17R, Amdt. 10
Grand Forks, ND—Grand Forks-Mark Andrews Intl, ILS RWY 35L, Amdt. 9

. . . Effective January 15, 1987

Camden, AR—Harrell Field, VOR/DME RWY 36, Amdt. 6
Camden, AR—Harrell Field, NDB RWY 18, Amdt. 9
Dumas, AR—Billy Free Municipal, VOR/DME RWY 36, Amdt. 1
Merced, CA—Merced Muni, VOR RWY 12, Amdt. 5
Merced, CA—Merced Muni, LOC BC RWY 12, Amdt. 7
San Diego, CA—San Diego Intl-Lindbergh Field, LOC RWY 27, Amdt. 2
San Diego, CA—San Diego Intl-Lindbergh Field, NDB RWY 27, Amdt. 1
Indianapolis, IN—Indianapolis Intl, NDB RWY 31, Amdt. 12
Indianapolis, IN—Indianapolis Intl, ILS RWY 31, Amdt. 15
Bastrop, LA—Morehouse Memorial, VOR/DME-A, Amdt. 7
Bastrop, LA—Morehouse Memorial, NDB RWY 34, Amdt. 4
Lafayette, LA—Lafayette Regional, NDB RWY 21, Amdt. 2
New Orleans, LA—Lakefront, VOR-B, Amdt. 7
New Orleans, LA—New Orleans Intl (Moisant Field), LOC BC RWY 19, Amdt. 10
Fitchburg, MA—Fitchburg Muni, NDB RWY 32, Orig. CANCELLED
Fitchburg, MA—Fitchburg Muni, NDB-A, Orig.
Cortland, NY—Cortland County-Chase Field, VOR RWY 6, Amdt. 1
Pittsburgh, PA—Greater Pittsburgh Intl, ILS RWY 10R, Amdt. 3
Chester, SC—Chester Muni, VOR/DME RWY 23, Amdt. 3, CANCELLED
Chester, SC—Chester Muni, VOR/DME-A, Orig.
Brownwood, TX—Brownwood Muni, VOR RWY 17, Amdt. 9
Brownwood, TX—Brownwood Muni, LOC RWY 17, Amdt. 2
Pecos City, TX—Pecos Muni, VOR RWY 13, Amdt. 6
Newport News, VA—Patrick Henry Intl, ILS RWY 7, Amdt. 27
Bluefield, WV—Mercer County, ILS RWY 23, Amdt. 10

. . . Effective December 4, 1986

Southern Pines, NC—Moore County, VOR-A, Amdt. 1

. . . Effective December 3, 1986

Bakersfield, CA—Meadows Field, ILS RWY 30R, Amdt. 25

. . . Effective December 6, 1986

Jacksonville, TX—Cherokee County, VOR/DME RWY 13, Amdt. 1

[FR Doc. 86-29384 Filed 12-30-86; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 282

[Docket No. RM79-14]

Natural Gas Policy Act; Incremental Pricing

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order prescribing incremental pricing thresholds.

SUMMARY: The Director of the Office of Pipeline and Producer Regulation is issuing the incremental pricing acquisition cost thresholds prescribed by Title II of the Natural Gas Policy Act and 18 CFR 282.304. The Act requires the Commission to compute and publish the threshold prices before the beginning of each month for which the figures apply. Any cost of natural gas above the applicable threshold is considered to be an incremental gas cost subject to incremental pricing surcharging.

EFFECTIVE DATE: January 1, 1987.

FOR FURTHER INFORMATION CONTACT: Richard P. O'Neill, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8500.

Section 203 of the NGPA requires that the Commission compute and make available incremental pricing acquisition cost threshold prices prescribed in Title II before the beginning of any month for which such figures apply.

Pursuant to that mandate and pursuant to § 375.307(1) of the Commission's regulations, delegating the publication of such prices to the Director of the Office of Pipeline and Producer Regulation, the incremental pricing acquisition cost threshold prices for the month of January, 1987 are issued by the publication of a price table for the month. The incremental pricing acquisition cost threshold prices for months prior to those reflected on the table are found in § 282.304.

The incremental pricing thresholds for January, 1987 reflect a two-month lag adjustment described in the notice of the March 1, 1986 thresholds.

List of Subjects in 18 CFR Part 282

Natural gas.

Issued: December 23, 1986.

Richard P. O'Neill,

Director, Office of Pipeline and Producer Regulation.

TABLE I.—INCREMENTAL PRICING ACQUISITION COST THRESHOLD PRICES

CALENDAR YEAR 1986

	January	February	March	April	May	June	July	August	September	October	November	December
Incremental pricing threshold	$2.460	$2.467	$2.474	$2.481	$2.487	$2.493	$2.499	$2.504	$2.509	$2.514	$2.522	$2.530
NGPA section 102 threshold	4.166	4.191	4.216	4.241	4.264	4.287	4.310	4.332	4.354	4.376	4.408	4.431
NGPA section 109 threshold	2.539	2.546	2.553	2.560	2.566	2.572	2.578	2.583	2.588	2.593	2.601	2.609

TABLE I.—INCREMENTAL PRICING ACQUISITION COST THRESHOLD PRICES—Continued

CALENDAR YEAR 1986

	January	February	March	April	May	June	July	August	September	October	November	December
130 pct. of No. 2 fuel oil in New York City threshold	7.730	7.930	5.040	5.290	4.680	3.980	3.800	3.190	3.310	4.020	3.320	3.240

Calendar year 1987

	January
Incremental pricing threshold	$2.536
NGPA section 102 threshold	$4.459
NGPA section 109 threshold	2.617
130 pct. of No. 2 fuel oil in New York City threshold	4.09

[FR Doc. 86-29284 Filed 12-30-86; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 83F-0258]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of di-*n*-alkyl(C_6–C_{10})dimethylammonium chloride, *n*-alkyl(C_{12}–C_{16})benzyldimethylammonium chloride, tetrasodium ethylenediamine tetraacetate, and either *alpha*-alkyl(C_{11}–C15)-*omega*-hydroxypoly(oxyethylene) with 9 to 13 moles of ethylene oxide or *alpha*-(*p*-nonylphenyl)-*omega*-hydroxypoly(oxyethylene) with 9 to 13 moles of ethylene oxide, as components of a sanitizing solution to be used on food-contact surfaces. This action responds to a petition filed by Lonza, Inc.

DATES: Effective December 31, 1986; objections by January 30, 1987.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of September 8, 1983 (48 FR 40562), FDA announced that a petition (FAP 3H3735) had been filed by Lonza, Inc., Fair Lawn, NJ 07410, proposing that the food additive regulations be amended to provide for the safe use of di-*n*-alkyl(C_6–C_{10})dimethylammonium chloride, *n*-alkyl(C_{12}–C_{16})benzyldimethylammonium chloride, tetrasodium ethylenediamine tetraacetate, and either *alpha*-alkyl-(C_{11}–C_{15})-*omega*-hydroxypoly(oxyethylene) with 9 to 13 moles of ethylene oxide or *alpha*-(*p*-nonylphenyl)-*omega*-hydroxypoly(oxyethylene) with 9 to 13 moles of ethylene oxide, as components of a sanitizing solution to be used on food-contact surfaces.

FDA reviewed the safety of the individual food additives that are components of the sanitizing solution, as well as the safety of the starting materials used to manufacture the food additives. Although di-*n*-alkyl(C_6–C_{10})dimethylammonium chloride, *n*-alkyl(C_{12}–C_{16})benzyldimethylammonium chloride, tetrasodium ethylenediamine tetraacetate, and the ethoxylated emulsifiers, *alpha*-alkyl(C_{11}–C_{15})-*omega*-hydroxypoly(oxyethylene) with 9 to 13 moles of ethylene oxide and *alpha*-(*p*-nonylphenyl)-*omega*-hydroxypoly(oxyethylene with 9 to 13 moles of oxyethylene, have not been shown to cause cancer, the ethoxylated emulsifiers may contain minute amounts of ethylene oxide and 1,4-dioxane as byproducts of their production. These chemicals have been shown to cause cancer in test animals. Residual amounts of reactants and manufacturing aids, such as ethylene oxide and 1,4-dioxane, are commonly found as contaminants in chemical products, including most food additives.

I. Determination of Safety

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. The concept of safety embodied in the Food Additives Amendment of 1958 is explained in the legislative history of the provision: "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstances." H. Rept. 2284, 85th Cong., 2d Sess. 4 (1958). This definition of safety has been incorporated into FDA's food additive regulations (21 CFR 170.3(i)). The anticancer or Delaney clause of the Food Additives Amendment (section 409(c)(3)(A) of the act (21 U.S.C. 348(c)(3)(A))) provides further that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In the past, FDA has often refused to approve a use of an additive that contained or was suspected of containing even minor amounts of a carcinogenic chemical, even though the additive as a whole had not been shown to cause cancer. The agency now believes, however, that developments in scientific technology and experience with risk assessment procedures make it possible for FDA to establish the safety of additives that contain a carcinogenic chemical but that have not themselves been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6 published in the **Federal Register** of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though it contains a carcinogenic constituent.

Since that decision, FDA has approved the use of other color additives and food additives on the same basis. FDA fully explained the scientific, legal, and policy underpinnings for these decisions in the advance notice of proposed rulemaking on a policy for regulating carcinogenic chemicals in food and color additives, published in the **Federal Register** of April 2, 1982 (47 FR 14464).

The agency now believes that the Delaney or anticancer clause is not applicable unless the food additive as a whole is found to cause cancer. An additive that has not been shown to cause cancer, but that contains a carcinogenic constituent, may properly be evaluated under the general safety clause of the statute using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

The agency's position is supported by *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984).

That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which contains a carcinogenic chemical but has itself not been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list this color additive, the U.S. Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

II. Safety of Petitioned Use of the Additives

Sanitizing solutions are mixtures of additives in which each additive has a functional effect. The subject sanitizing solution contains two quaternary salts, (di-*n*-alkyl(C_8–C_{10})dimethylammonium chloride and *n*-alkyl(C_{12}–C_{18})-benzyldimethylammonium chloride), which are the active sanitizing agents; tetrasodium ethylenediamine tetraacetate, which functions as a chelating agent and also serves to lyse the bacteria; and one of the ethoxylated compounds, *alpha*-alkyl- (C_{11}–C_{15})-*omega*-hydroxypoly(oxyethylene) with 9 to 13 moles of ethylene oxide or *alpha*-(*p*-nonylphenyl)-*omega*-hydroxypoly(oxyethylene) with 9 to 13 moles of ethylene oxide, which function as emulsifiers and aid in the penetration of bacterial cells by the active ingredients.

A. Quaternary Ammonium Compounds

The two quaternary active ingredients in the subject sanitizing solution, di-*n*-alkyl(C_8–C_{10})dimethylammonium chloride and *n*-alkyl(C_{12}–C_{18})benzyldimethylammonium chloride, are used in currently regulated sanitizing solutions. These sanitizing solutions are listed in 21 CFR 178.1010(b)(16), (17), (18), (22), and (23). On the basis of the data submitted in support of these currently regulated uses and of the data contained in the food additive petition submitted in support of this sanitizing solution, FDA finds that the use of these quaternary ammonium compounds in the subject sanitizing solution is safe and effective.

B. Tetrasodium Ethylenediamine Tetraacetate

Tetrasodium ethylenediamine tetraacetate is used as an active ingredient in the sanitizing solution listed in 21 CFR 178.1010(b)(16). It is also regulated by FDA for use as a secondary direct food additive in 21 CFR 173.310 and 173.315. Based upon the agency's evaluation of safety and efficacy data available in this petition and submitted in support of the other listed uses of this additive, the agency concludes that tetrasodium ethylenediamine tetraacetate is safe and effective at the use levels set forth in this regulation.

C. Ethoxylated Emulsifier

FDA estimates that the petitioned use of *alpha*-alkyl(C_{11}–C_{15})-*omega*-hydroxypoly(oxyethylene) with 9 to 13 moles of ethylene oxide and *alpha*-(*p*-nonylphenyl)-*omega*-hydroxypoly(oxyethylene) formed from 9 to 13 moles of ethylene oxide will result in extremely low levels of exposure to these additives. The agency has calculated an estimated daily intake of *alpha*-alkyl(C_{11}–C_{15})-*omega*-hydroxypoly(oxyethylene) with 9 to 13 moles of ethylene oxide, or the alternative, *alpha*-(*p*-nonylphenyl)-*omega*-hydroxypoly(oxyethylene) with 9 to 13 moles of oxyethylene, based on considerations such as the migration of the additive under the most severe intended use conditions and the probable concentration of the additive in the daily diet from food-contact articles that contain these substances as a result of use of the sanitizing solution. The estimated daily intake for the additive (or the alternative) is 90 micrograms per person per day (0.03 part per million in the diet).

FDA does not ordinarily consider chronic testing to be necessary to determine the safety of an additive whose use will result in low exposure levels (Refs. 1 and 2) and has not required such testing here. Because these ethoxylated emulsifiers have not been shown to cause cancer, the anticancer clause does not apply to them.

The available data also revealed no adverse effect from *alpha*-alkyl(C_{11}–C_{15})-*omega*-hydroxypoly(oxyethylene) with 9 to 13 moles of ethylene oxide or *alpha*-(*p*-nonylphenyl)-*omega*-hydroxypoly(oxyethylene). However, these additives may contain 1,4-dioxane and ethylene oxide, substances that have been shown to cause cancer in test animals. Impurities such as 1,4-dioxane and ethylene oxide may be present as a result of manufacturing procedures used to produce these emulsifiers.

FDA has evaluated the safety of the ethoxylated additives under the general safety clause, using risk assessment procedures to estimate the upper bound risk presented by the 1,4-dioxane and ethylene oxide that may be present as impurities in the additive. Based on this evaluation, the agency has concluded that the additive is safe under the proposed conditions of use.

The risk assessment procedures that FDA used in this evaluation are similar to the methods that it has used to examine the risk associated with the presence of minor carcinogenic impurities in various other food and color additives that contain carcinogenic impurities (see, e.g., 49 FR 13018, 13019; April 2, 1984). This risk evaluation of the carcinogenic impurities ethylene oxide and 1,4-dioxane has two aspects: (1) Assessment of the worst case exposure to the impurities from the proposed use of the additive, and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

1. 1,4-Dioxane

Based on the fraction of the daily diet that may be in contact with surfaces containing *alpha*-alkyl(C_{11}–C_{15})-*omega*-hydroxypoly(oxyethylene) with 9 to 13 moles of ethylene oxide or *alpha*-(*p*-nonylphenyl)-*omega*-hydroxypoly(oxyethylene) with 9 to 13 moles of ethylene oxide, as well as the level of 1,4-dioxane that may be present in these additives (Ref. 5), FDA estimated the hypothetical worst case exposure to 1,4-dioxane from the use of these additives to be 2 nanograms per person per day. The agency used data in a carcinogenesis bioassay on 1,4-dioxane conducted for the National Cancer Institute (Ref. 4) to estimate the upper bound level of lifetime human risk from exposure to this chemical stemming from the proposed use of the ethoxylated emulsifiers in the sanitizing solution. The results of the bioassay on 1,4-dioxane demonstrated that the material was carcinogenic for female rats under the conditions of the study. The test material caused significantly increased incidences of squamous cell carcinomas and hepatocellular tumors in female rats.

The Center for Food Safety and Applied Nutrition's Cancer Assessment Committee reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on 1,4-dioxane. The committee further concluded that an estimate of the upper bound risk from potential exposure to 1,4-dioxane stemming from the proposed use of the ethoxylated emulsifiers could be calculated from the bioassay.

The agency used a quantitative risk assessment procedure (linear proportional model) to extrapolate from the dose used in the animal experiment to the very low doses encountered under the proposed conditions of use. This procedure is not likely to underestimate the actual risk from very low doses and may, in fact, exaggerate it because the extrapolation models used are designed to estimate the maximum risk consistent with the data. For this reason, the estimate can be used with confidence to determine to a reasonable certainty whether any harm will result from the proposed conditions and levels of use of the ethoxylated emulsifiers. Based on a worst case exposure of 2 nanograms per person per day, FDA estimates the upper bound limit of individual lifetime risk from potential exposure to 1,4-dioxane from the use of these ethoxylated emulsifiers is 7×10^{-11} or less than 7 in 100 billion. Because of the numerous conservatisms in the exposure estimate, lifetime averaged individual exposure to 1,4-dioxane is expected to be substantially less than the estimated daily intake, and therefore the calculated upper bound risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from exposure to 1,4-dioxane that results from the use of these ethoxylated emulsifiers.

2. Ethylene Oxide

Based on the fraction of the daily diet that may be in contact with surfaces containing the ethoxylated emulsifiers *alpha*-alkyl(C_{11}–C_{15})-*omega*-hydroxypoly(oxyethylene) with 9 to 13 moles of ethylene oxide and *alpha*-(*p*-nonylphenyl)-*omega*-hydroxypoly(oxyethylene) with 9 to 13 moles of ethylene oxide, as well as levels of ethylene oxide that may be present in the additive (Ref. 5), FDA estimated the hypothetical worst case exposure to ethylene oxide from the use of these ethoxylated emulsifiers to be 2 nanograms per person per day. The agency used data in a carcinogenesis bioassay on ethylene oxide conducted for the Institute of Hygiene, University of Mainz, West Germany (Ref. 3), to estimate the upper bound level of lifetime human risk from exposure to this chemical stemming from the proposed use of these ethoxylated emulsifiers. The results of the bioassay on ethylene oxide demonstrated that this material was carcinogenic for female rats under the conditions of the study. The test material caused significantly increased incidences of squamous cell carcinoma of the forestomach and carcinoma in situ of the glandular stomach.

The Center for Food Safety and Applied Nutrition's Cancer Assessment Committee reviewed the bioassay and other relevant data available in the literature and concluded that this information on ethylene oxide supported the finding of carcinogenicity. The committee further concluded that an estimate of the upper bound limit of lifetime human cancer risk from potential exposure to ethylene oxide could be made from the bioassay.

Based on a worst case exposure of 2 nanograms per person per day, FDA estimates, using a linear proportional model, that the upper bound limit of individual lifetime risk from potential exposure to ethylene oxide from the use of *alpha*-alkyl(C_{11}–C_{15})-*omega*-hydroxypoly(oxyethylene) with 9 to 13 moles of ethylene oxide and *alpha*-(*p*-nonylphenyl)*omega*-hydroxypoly(oxyethylene) with 9 to 13 moles of ethylene oxide, is 4×10^{-9} or less than 4 in 1 billion. Because of the numerous conservatisms in the exposure estimate, lifetime averaged individual exposure to ethylene oxide is expected to be substantially less than the estimated daily intake, and, therefore, the calculated upper bound risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from the exposure to ethylene oxide that results from the use of the ethoxylated emulsifiers *alpha*-alkyl(C_{11}–C_{15})-*omega*-hydroxypoly(oxyethylene) with 9 to 13 moles of ethylene oxide and *alpha*-(*p*-nonylphenyl)-*omega*-(*p*-hydroxypoly(oxyethylene) formed with 9 to 13 moles of ethylene oxide.

D. Need for Specifications

The agency has also considered whether a specification is necessary to control the amount of the ethylene oxide and 1,4-dioxane impurities in the ethoxylated emulsifiers. The agency finds that a specification is not necessary for the following reasons: (1) Because of the levels at which ethylene oxide and 1,4-dioxane are used in the production of these additives, the agency would not expect these impurities to become components of food at other than extremely small levels; and (2) the upper bound limit of lifetime risk from exposure, even under worst case assumptions, is very low, less than 7 in 100 billion for 1,4-dioxane and less than 4 in 1 billion for ethylene oxide.

E. Conclusion of Safety

FDA has evaluated the available toxicity data and the exposure calculation for the components of the sanitizing solution and has determined that they are safe for their proposed use.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. Under FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25), an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(1).

References

The following references have been placed on display in the Dockets Management Branch (address above) and may be reviewed by interested persons between 9 a.m. and 4 p.m., Monday through Friday:

1. Carr, G.M., "Carcinogenicity Testing Programs" *in* "Food Safety: Where Are We?" Committee on Agriculture, Nutrition, and Forestry, United States Senate, July 1979, p. 59.

2. Kokoski, C.J., "Regulatory Food Additive Toxicology" presented at the "Second International Conference on Safety Evaluation and Regulation of Chemicals," October 24, 1983, Cambridge, MA.

3. Dunkelberg, H., "Carcinogenicity of Ethylene Oxide and 1,2-Propylene Oxide upon Intragastric Administration to Rats," *British Journal of Cancer*, 46:924, 1982.

4. "Bioassay of 1,4-Dioxane for Possible Carcinogenicity," National Cancer Institute, NCI–CG–TR–80, 1978.

5. Memorandum dated February 13, 1986, from Food Additive Chemistry Evaluation Branch to Indirect Additives Branch, "Exposure to Ethylene Oxide (EO) and 1,4-Dioxane (DX)."

Objections

Any person who will be adversely affected by this regulation may at any time on or before January 30, 1987, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall

include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 178.1010 is amended by adding new paragraphs (b)(33) and (c)(28) to read as follows:

§ 178.1010 Sanitizing solutions.

* * * * *

(b) * * *

(33) An aqueous solution containing (i) di-*n*-alkyl-(C_8-C_{10})-dimethylammonium chloride compounds having average molecular weights of 332 to 361; (ii) *n*-alkyl(C_{12}-C_{18}) - benzyldimethylammonium chloride compounds having molecular weights of 351 to 380 and consisting principally of alkyl groups with 12 to 16 carbon atoms with no more than 1 percent of the groups with 8 to 10; and (iii) tetrasodium ethylenediamine tetraacetate. Additionally, the aqueous solution contains either *alpha*-(*p*-nonylphenyl)-*omega*-hydroxypoly-(oxyethylene) or *alpha*-alkyl(C_{11}-C_{15})-*omega*-hydroxypoly-(oxyethylene), each produced with 9 to 13 moles of ethylene oxide. The ratio of compound (i) to compound (ii) is 3 to 2.

(c) * * *

(28) Solutions identified in paragraph (b)(33) of this section shall provide, when ready to use, at least 150 parts per million and not more than 400 parts per million of active quaternary compounds. The adjuvants used with the quaternary compounds shall not exceed the amounts required to accomplish the intended technical effect. Tetrasodium ethylenediamine tetraacetate shall be added at a minimum level of 60 parts per million. Use of these sanitizing solutions shall be limited to conditions of water hardness not in excess of 300 parts per million.

Dated: December 22, 1986.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–29214 Filed 12–30–86; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Parts 2509, 2510, and 2550

Final Regulation Relating to Definition of Plan Assets; Corrections

AGENCY: Department of Labor.

ACTION: Final regulation; corrections.

SUMMARY: The Department of Labor is correcting the final regulation relating to the definition of plan assets which appeared in the **Federal Register** on November 13, 1986 (51 FR 41262).

FOR FURTHER INFORMATION CONTACT: Daniel J. Maguire, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210, (202) 523–9595.

SUPPLEMENTARY INFORMATION: On November 13, 1986, the Department of Labor promulgated a final regulation that describes what constitute assets of a plan for purposes of certain provisions of Title I of the Employee Retirement Income Security Act of 1974 and the related prohibited transaction provisions of the Internal Revenue Code (51 FR 41262). By this notice, the Department is making two corrections to this regulation which are described below.

Corrections

The following corrections are made in the final regulation relating to the definition of plan assets published in the **Federal Register** on November 13, 1986 (51 FR 41262).

1. Line 10 of paragraph (e) of § 2510.3–101 which appears in the second column on page 41282 is revised by adding the phrase "for the 12 month period following" after the word "or" in that line so that the introductory material in paragraph (e) reads as follows:

§ 2510.3–101 [Corrected]

* * * * *

(e) *"Real estate operating company".* An entity is a "real estate operating company" for the period beginning on an initial valuation date described in paragraph (d)(5)(i) and ending on the last day of the first "annual valuation period" described in paragraph (d)(5)(ii) (in the case of an entity that is not a real estate operating company immediately before the determination) or for the 12 month period following the expiration of an annual valuation period described in paragraph (d)(5)(ii) (in the case of an entity that is a real estate operating company immediately before the determination) if:

* * * * *

2. Line 15 of paragraph (k)(1) of § 2510.3–101 which appears in the third column on page 41284 which reads, "March 13, 1987 with an issuer of" is revised to read as follows: "March 13, 1987 with an issuer or".

Signed at Washington, DC, this 19th day of December 1986.

Dennis M. Kass,

Assistant Secretary, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 86–29334 Filed 12–30–86; 8:45 am]

BILLING CODE 4510–29–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2622

Employer Liability Underpayments and Overpayments; Change in Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment sets forth the interest rates applicable to employer liability underpayments and overpayments beginning January 1, 1987. The affected regulation incorporates the interest rates determined by another Federal agency. This amendment is being made to respond to a change in the timing and method of computing the interest rates brought about by the Tax Reform Act of 1986 and to add the new rates to the regulation's Appendix. This amendment is needed to notify pension plan administrators and plan sponsors of these changes.

EFFECTIVE DATE: January 1, 1987.

FOR FURTHER INFORMATION CONTACT: John Foster, Attorney, Corporate Policy and Regulations Department, Code 35100, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; telephone 202–778–8850 (2020–778–8859 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Under Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Pension Benefit Guaranty Corporation ("PBGC") collects employer liability from those persons described in ERISA section 4062(a) upon the termination of a single-employer pension plan without sufficient assets to pay all guaranteed benefits. Under § 2622.7 of the PBGC's employer liability regulation, interest on underpayments or overpayments of employer liability is charged or credited at the rate prescribed in section 6601(a) of the Internal Revenue Code ("Code").

Section 6601(a) provides for an interest rate determined under section 6621 of the Code. In the past, this rate has been semiannually adjusted, based on the average prime interest rate for the six month periods ending on September 30 and March 31. The rate would be effective January 1 or July 1 of the succeeding year, as applicable.

The Tax Reform Act of 1986 ("TRA"), however, changes the way the interest rate in section 6601(a) is computed and establishes differential rates of interest on underpayments and overpayments. Under TRA, the underpayment rate is the short-term Federal rate plus three percentage points; the interest rate on overpayments is the same Federal rate plus two percentage points. The short-term Federal rate, which is based on the three-month Treasury bill rate, is determined during the first month of a calendar quarter and the new rate is effective for the following calendar quarter.

On December 2, 1986, the Internal Revenue Service announced that for the calendar quarter beginning January 1, 1987, interest will be charged on underpayments at the rate of nine percent and paid on overpayments at the rate of eight percent (IR–86–163). Therefore, in accordance with 29 CFR 2622.7, the interest rate thereunder on underpayments will be nine percent for the three-month period beginning on January 1, 1987 and ending on March 31, 1987. The PBGC will pay an interest rate of eight percent on overpayments of employer liability for the same time period. These rates will continue in effect until such time as the IRS, in its quarterly reviews, changes the rates.

The interest rates used under the employer liability regulation are set forth in Appendix A to Part 2622. Because previously the section 6601(a) interest rate was a single rate applicable to both underpayments and overpayments of employer liability, the PBGC is amending Appendix A to Part 2622 to close out the table that is based on the pre-TRA single interest rate and to add a new table that provides for different interest rates for underpayments and overpayments. In the near future, the PBGC plans to conduct a new rulemaking proceeding to determine whether it should, in light of the TRA changes, continue to use the section 6601(a) rates under the employer liability regulation or whether it should adopt a new rate(s) for that purpose.

With respect to the late payment of premiums under 29 CFR Part 2610, the PBGC also uses the section 6601(a) interest rate, as mandated by ERISA section 4007(b). No action is required under that regulation, however, because the nine percent interest rate in effect for the July 1–December 31, 1986 time period is the same interest rate that will be in effect on January 1, 1987.

Because the interest rates prescribed by Part 2622 are those established by the Internal Revenue Service under Code section 6601(a), and the Appendix to Part 2622 merely collects and republishes those rates, the PBGC finds that notice of and public comment on this amendment would be unnecessary and contrary to the public interest. For the same reasons, the PBGC also finds that good cause exists for making this amendment effective without the 30-day waiting period set forth in 5 U.S.C. 553.

The PBGC also had determined that this rule is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; nor will it create a major increase in costs or prices for consumers, individual industries, or geographic regions; nor will it have significant adverse effects on competition, employment, investment, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2622

Business and industry, Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements, Small businesses.

In consideration of the foregoing, Appendix A to Part 2622 of Chapter XXVI of Title 29, Code of Federal Regulations, is hereby amended as follows:

PART 2622—EMPLOYER LIABILITY FOR WITHDRAWALS FROM AND TERMINATIONS OF SINGLE-EMPLOYER PLANS

1. The authority citation for Part 2622 continues to read as follows:

Authority: Secs. 4002(b)(3), 4062, 4063, 4064, 4067, 4068, Pub. L. 93–406, 88 Stat. 829, 1004, 1029, 1030, 1031, 1032, as amended by secs. 403(1), 403(g), 403(h), 403(i), Pub. L. 96–364, 94 Stat. 1208, 1301, 1302, and by sec. 11011, 11016, Pub. L. 99–272, 100 Stat. 82, 253, 268 (29 U.S.C. 1302(b)(3), 1362, 1363, 1364, 1367, 1368).

2. Appendix A to Part 2622 is amended by revising the title and adding a closing date entry to July 1, 1986, and by adding a new table to the appendix as follows:

Appendix A—Late Payment and Overpayment Interest Rates

The following table lists the late payment and overpayment interest rates under § 2622.7 for the specified time periods:

TABLE I.—LATE PAYMENT AND OVERPAYMENT INTEREST RATES THROUGH DEC. 31, 1986

From	Through	Interest rate (pct)
*	*	*
July 1, 1986	Dec. 31, 1986	9

The following table lists the late payment and overpayment interest rates under § 2622.7 for the specified time periods:

TABLE II.—LATE PAYMENT AND OVERPAYMENT INTEREST RATES AFTER DEC. 31, 1986

From	Through	Interest rate	
		Underpayment (pct)	Overpayment (pct)
Jan. 1, 1987		9	8

Issued in Washington, D.C., the 24th day of December 1986.

Royal S. Dellinger,

Acting Executive Director.

[FR Doc. 86–29306 Filed 12–30–86; 8:45 am]

BILLING CODE 7708–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 855

Use of United States Air Force Installations by Other Than United States Department of Defense Aircraft

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Final rule.

SUMMARY: This regulation establishes the responsibilities and describes the procedures for the use of United States Air Force installations by aircraft other than U.S. Department of Defense aircraft.

EFFECTIVE DATE: January 30, 1987.

ADDRESS: HQ USAF/PRPJ, Washington DC 20330–5000.

FOR FURTHER INFORMATION CONTACT: Ms. R.A. Young, HQ USAF/PRPJ, Washington, DC 20330–5000, telephone (202) 697–1796.

SUPPLEMENTARY INFORMATION: On November 13, 1986, the Department of the Air Force published a proposed rule on procedures for the use of United States Air Force installations by aircraft other than U.S. Department of Defense aircraft (51 FR 41121). No comments were received.

The Department of the Air Force has determined that this regulation is not a major rule as defined by Executive Order 12291 and is not subject to the relevant provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354). DD Forms 2400, 2401 and 2402 contain reporting or recordkeeping requirements under the criteria of the Paperwork Reduction Act of 1980 (Pub. L. 96–511), and have been approved by the Office of Management and Budget (OMB) under control number 0701–0050.

List of Subjects in 32 CFR Part 855

Aircraft, Federal buildings and facilities.

Accordingly, 32 CFR, Chapter VII, is amended by revising Part 855 as set forth below:

PART 855—USE OF UNITED STATES AIR FORCE INSTALLATIONS BY OTHER THAN UNITED STATES DEPARTMENT OF DEFENSE AIRCRAFT

Sec.

855.0 Purpose.

Subpart A—General Provisions

855.1 U.S. Air Force policy.
855.2 Definitions.
855.3 Aircraft exempt from the requirement for a civil aircraft landing permit or aircraft landing authorization number.

Subpart B—Unauthorized Landings

855.4 Unauthorized landings.
855.5 Emergency landings.
855.6 Inadvertent unauthorized landings.
855.7 Intentional unauthorized landings.

Subpart C—Civil Fly-in Procedures

855.8 Civil fly-ins.
855.9 Civil fly-in procedures.

Subpart D—Civil Aircraft

855.10 Condition for use of U.S. Air Force installations.
855.11 Types of civil use.
855.12 Approving authority.
855.13 Application procedures.
855.14 Processing procedures.
855.15 Insurance requirements.
855.16 Landing, parking, and storage fees.
855.17 Aviation fuel and oil purchases.
855.18 Supply and service charges.

Subpart E—Foreign Government Aircraft

855.19 General information.
855.20 Application procedures.
855.21 Processing procedures.
855.22 Approving authority.
855.23 Aviation fuel and oil purchases.
855.24 Foreign military sales (FMS) cargo.
855.25 Supply and service charges.
855.26 Landing, parking, and storage fees.
855.27 Waiver authority.

Subpart F—Joint-Use of a U.S. Air Force Installation

855.28 U.S. Air Force joint-use policy.
855.29 Procedures for sponsor.
855.30 Procedures for U.S. Air Force.

Authority: 10 U.S.C. 8012, 49 U.S.C. 1507.

§ 855.0 Purpose.

This part establishes the responsibilities and describes the procedures for the use of United States (U.S.) Air Force installations by aircraft other than U.S. Department of Defense (DOD) aircraft pursuant to section 1107 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1507). This part applies to all regular U.S. Air Force, Air National Guard, and U.S. Air Force Reserve installations with airfields. Major commands (MAJCOM) or separate operating agencies (SOA) may issue supplements to establish command-unique procedures permitted by and consistent with this part.

Subpart A—General Provisions

§ 855.1 U.S. Air Force policy.

U.S. Air Force policy is to permit civil aircraft use of U.S. Air Force airfields to the maximum extent feasible on an equitable basis. However, U.S. Air Force installations are established to facilitate the training required to maintain defense readiness and to provide the operational capacity necessary to defend the U.S.; therefore, careful consideration must be given to those external influences which could impair operational capabilities. U.S. Air Force requirements will take precedence over authorized civil aircraft use. This part carries the force of U.S. law, and exceptions are not authorized without prior appproval of HQ USAF/PRPJ. Any proposed exception or waiver will be evaluated as to current and future impact on U.S. Air Force policy and operations.

(a) The U.S. Air Force:

(1) Determines whether civil aircraft use of U.S. Air Force installations is compatible with current or future military activities.

(2) Normally authorizes civil aircraft use of U.S. Air Force installations only for flights operating in conjunction with official government business or where a formal joint-use agreement exists (Subpart F). However, if exceptional circumstances warrant, other types of use may be authorized. Federal Aviation Administration (FAA) certification is required for airfields used by carriers certified under Federal Aviation Regulation (FAR), Part 121 (passenger aircraft which exceed 30 passenger seats or cargo aircraft with a maximum certified takeoff weight over 12,500 pounds). HQ USAF/PRPJ will request that FAA issue an airport operating certificate under FAR, Part 139, as necessary. Exceptions to the requirement for certification are U.S. Air Force airfields used for:

(i) Emergencies.

(ii) Weather alternates.

(iii) Air taxi operations under FAR, Part 135.

(iv) Air carrier operations in support of contract flights exclusively for the DOD.

(3) Subject to the laws and regulations of the U.S., or to applicable international agreements with the country in which the U.S. Air Force installation is located, acts as clearing authority for civil aircraft use of U.S. Air Force installations.

(4) Reserves the right to suspend any operation which is inconsistent with national defense interests or deemed not in the best interests of the U.S. Air Force.

(5) Will terminate authorization to use a U.S. Air Force installation if the:

(i) User's liability insurance is cancelled.

(ii) User is reported as operating for other than the approved purpose, or otherwise in violation of this regulation or clearances and directives hereunder.

(6) Will not authorize civil use of U.S. Air Force installations:

(i) In substantial competition with civil airports by providing services or facilities which are already available in the private sector.

(ii) Solely for the convenience of passengers or aircraft operator.

(iii) Solely for transient aircraft servicing.

(iv) For private enterprise which promotes, benefits, or favors a specific commercial venture.

(v) For unsolicited proposals in procuring government business or contracts.

(vi) Solely for customs handling purposes.

(7) Will not authorize civil aircraft to operate at a closed U.S. Air Force airfield.

(8) Will not authorize civil aircraft use of U.S. Air Force ramps located on civil airfields. This paragraph does not apply to use of U.S. Air Force aero club facilities located on civil airfields (§855.11(i) of this part) or civil aircraft chartered by DOD and authorized use of loading or unloading facilities on the Air Force ramp (§ 855.11 (k) and (n) of this part).

(b) All civil aircraft operators must:

(1) Obtain prior authorization to land at U.S. Air Force installatons, except in an emergency or at bases specifically exempted by joint-use or international agreements.

(2) Ensure that pavement load-bearing capacity at installations requested for use will support aircraft to be operated.

(3) Have aircraft equipped with operating two-way radio equipment to obtain landing clearance from the air traffic control tower.

(4) Not assume that landing clearance granted by an air traffic control tower facility constitutes prior authorization.

(5) Obtain required diplomatic or overflight clearance.

(6) Pay applicable costs.

(7) File a flight plan before departing the U.S. Air Force installation.

(c) The installation commander:

(1) Exercises administrative and security control over both the aircraft and passengers while on the installation.

(2) May require civil users to delay, reschedule, or reroute arrivals or departures to preclude interference with military activities.

(3) Cooperates with customs, immigration, health, and other public authorities in connection with aircraft arrival and departure.

§ 855.2 Definitions.

(a) *Aircraft.* Any contrivance now known or hereafter invented, used, or designated for navigation of or flight in navigable airspace as defined in the Federal Aviation Act.

(b) *Airfield facilities.* Runways, taxiways, parking and servicing areas, air traffic control facilities, base operations, navigation aids, aircraft fire suppression and rescue services, and airfield lighting and aircraft arresting systems.

(c) *Authorized credit letter.* A letter of agreement which qualified operators must file with the U.S. Air Force to purchase U.S. Air Force aviation fuel and oil on a credit basis under the provisions of AFR 144–9.

(d) *Civil aircraft.* Any U.S. or foreign-registered aircraft owned by private individuals or corporations, and foreign government-owned aircraft which are operated for commercial purposes.

(e) *Civil aviation.* All flying activity by civil aircraft of any national registry, including:

(1) *Commercial aviation.* Civil aviation involving transportation of passengers or cargo for hire.

(2) *General aviation.* Civil aviation not involving the transportation of passengers or cargo for hire.

(f) *Civil fly-in.* Civil aircraft participation in U.S. Air Force sponsored or funded events such as, but not limited to, an open house or a safety seminar.

(g) *Closed airfield.* An airfield which is restricted from use by all aircraft.

(h) *DD Form 2400, Civil Aircraft Certificate of Insurance.* A certificate which states the amount of third-party liability insurance carried by the user and assures the U.S. government of advance notice of changes in the terms of coverage or policy cancellation.

(i) *DD Form 2401, Civil Aircraft Landing Permit.* An application which, when validated by a U.S. Air Force approving authority, authorizes the civil operator to use the installation under the terms of this regulation.

(j) *DD Form 2402, Civil Aircraft Hold Harmless Agreement.* An agreement, executed by the user, which releases the U.S. government from all liabilities incurred in connection with civil aircraft use of U.S. Air Force installations.

(k) *Government aircraft.* Aircraft owned, operated, or controlled for exclusive, long-term use by any department or agency of either the U.S. or a foreign government; and aircraft owned by any U.S. state, county, municipality or other political subdivision; or any aircraft for which a government has the liability responsibility. In the context of this regulation, this also includes foreign registered aircraft, which are normally commercially operated, that have been wholly chartered for use by foreign government heads of state for official state visits.

(l) *Government furnished or bailed aircraft.* U.S. government-owned aircraft provided to a government contractor for use in conjunction with a specific contractual requirement.

(m) *Installation commander.* An officer who commands a host support unit, host wing, or higher level host unit and has been identified by administrative order or command directive as "installation commander." He or she discharges the duties directed by U.S. statues or U.S. Air Force directives to be performed by the "installation commander."

(n) *Joint-use installation.* A U.S. Air Force installation where a specific written agreement exists between the U.S. Air Force and a local U.S. or foreign government agency for civil aviation use of U.S. Air Force controlled runways, taxiways, and other necessary facilities.

(o) *Loaned aircraft.* U.S. government-owned aircraft made available for use by another U.S. government agency or to a U.S. Air Force aero club. This does not include aircraft leased or loaned to nongovernmental entities which are treated as civil aircraft for purposes of this regulation.

(p) *Military aircraft.* Aircraft used exclusively in the military services of the U.S. or a foreign government and bearing appropriate military and national markings or carrying appropriate identification.

(q) *Official government business.* Activity in support of U.S. federal agencies located at or in the immediate vicinity of a U.S. Air Force installation, including non-appropriated fund activities. For elected or appointed federal, state, and local officeholders, official business is activity performed in fulfilling duties as a public official.

(r) *Public agency.* A state, or agency of a state, a municipality, or other political subdivision of a state, a tax supported organization, or Indian tribe or pueblo.

(s) *Unauthorized landing.* A landing at a U.S. Air Force installation by a civil aircraft operator, including both general and commercial aviation, who has not received prior authorization as required in § 855.10 of this part.

(t) *U.S. Air Force installation.* A defined area of real property for which the U.S. Air Force has operational jurisdiction and exclusive use of the airfield facility either by ownership, lease, or international agreement.

(u) *User.* The person, corporation, or other responsible entity operating civil aircraft at U.S. Air Force installations.

(v) *Weather alternate airport.* A U.S. Air Force installation used as a weather alternative airport as prescribed by Federal Aviation Regulations (FAR), international agreement, or other directives.

(Reporting and recordkeeping requirements in paragraphs (h), (i), and (j) were approved by the Office of Management and Budget under control number 0701–0050)

§ 855.3 Aircraft exempt from the requirements for a civil aircraft landing permit or aircraft landing authorization number.

(a) Any aircraft owned and operated by:

(1) Any other U.S. government agency.

(2) U.S. Air Force aero clubs established as prescribed in AFR 215–12.

(3) Aero clubs of other U.S. military services.

(4) A U.S. state, county, municipality, or other political subdivision, when operated to support official business at any level of government.

(b) Any civil aircraft under:

(1) Lease or contractual agreement for exclusive U.S. government use on a long-term basis and operated on official business by or for a U.S. government agency; for example, the FAA, Department of Interior, or Department of Energy. (The government normally holds liability responsibility for the aircraft.)

(2) Lease or contractual agreement to the U.S. Air Force for U.S. Air Force Civil Air Patrol (CAP) liaison purposes and operated by a U.S. Air Force CAP liaison officer on official U.S. Air Force business.

(3) CAP control for a specific mission directed by the U.S. Air Force.

(4) Contractual agreement to any U.S., state, or local government agency in support of operations involving safety of life or property as a result of a disaster.

(5) Government furnished property or bailment contract for use by a contractor, provided the federal, state, or local government has retained liability responsibilities.

(c) Civil aircraft transporting critically ill or injured individuals to or from a U.S. Air Force installation.

(d) Foreign government-owned aircraft falling within the purview of international reciprocal use agreements.

(e) Historic aircraft delivered to U.S. Air Force museums under the provisions of AFR 210–4.

Subpart B—Unauthorized landings

§ 855.4 Unauthorized landings.

The installation commander will identify an unauthorized landing as either an emergency landing, an inadvertent landing, or an intentional landing. An Unauthorized landing may be designated as inadvertent or intentional whether or not the operator has knowledge of the provisions of this regulation and whether or not the operator filed a flight plan identifying the installation as a destination. On all unauthorized landings, the aircraft should be allowed minimum ground time and the installation commander:

(a) Briefs the operator on this part and the FAA requirement for reporting the incident.

(b) Has the operator prepare a circumstantial report, sign DD Form 2402, and pay applicable charges. (In some instances, it may be necessary to arrange to bill the user for the appropriate charges.) DD Form 2402 need not be completed for commercial carriers if it is known the form is already on file at HQ USAF/PRPJ.

(c) After compliance with preceding requirements, directs the operator to depart the installation.

(d) In the U.S. or its possessions, notifies the nearest FAA general aviation district office for incidents involving general aviation and the air carrier district office for incidents involving air carriers.

(e) Within a foreign country, notifies appropriate U.S. Defense Attache Office (USDAO) in the country of aircraft registration. Providers an information copy of the report to the civil aviation authority of the country concerned.

(f) Prepares a report on the landing and submits the report with supporting documentation through channels to HQ USAF/PRPJ, Washington, DC 20330–5248.

§ 855.5 Emergency landings.

Any aircraft operator who experiences an inflight emergency may land at any U.S. Air Force installation without prior authorization. An inflight emergency is defined as a situation which makes continued flight hazardous.

(a) The U.S. Air Force will use any method or means to clear an aircraft or wreckage from the runway to preclude interference with essential military operations. Removal efforts should minimize damage to the aircraft or wreckage; however, military or other operational factors may be overriding.

(b) A user making an emergency landing:

(1) Is not charged a landing fee.

(2) Pays all costs for labor, material, parts, use of equipment, tools, and so forth, to include, but not limited to:

(i) Spreading foam on the runway.

(ii) Damage to runway, lighting, and navigation aids.

(iii) Rescue, crash, and fire control services.

(iv) Movement and storage of aircraft.

(v) Performance of minor maintenance.

(vi) Fuel or oil (AFR 144–9).

(3) Files a circumstantial landing report with the installation commander and completes DD Form 2402.

(c) The installation commander:

(1) Documents total cost incurred by the U.S. government. (Use Part 812 of this chapter for cost determination.)

(2) Collects payment of all charges incurred. (In some instances, it may be necessary to arrange to bill the user for the appropriate charges.)

(3) Prepares an emergency landing report if there are no survivors.

(4) Complies with appropriate portions of § 855.4 of this part.

(5) Handles an emergency landing by a foreign military or foreign government-owned aircraft in the same manner as for a U.S. government-owned aircraft.

§ 855.6 Inadvertent unauthorized landings.

(a) The installation commander may determine a landing to be inadvertent if the aircraft operator:

(1) Landed due to flight disorientation.

(2) Mistook the U.S. Air Force installation for a civil airport.

(b) Reporting procedures in § 855.4 of this part and normal landing fees (§ 855.16 of this part) are applicable. An unauthorized landing fee (§ 855.16 of this part) may be assessed to compensate the government for the added time, effort, and risk involved in an unauthorized landing. This unauthorized landing fee may be waived by the installation commander or a designated representative if, after interviewing the pilot-in-command and appropriate government personnel, it is determined that flying safety was not significantly impaired. The pilot-in-command may appeal the imposition of an unauthorized landing fee for an inadvertent landing to the MAJCOM, whose decision will be final. A subsequent inadvertent landing will be processed as an intentional unauthorized landing.

§ 855.7 Intentional unauthorized landings.

(a) The installation commander may categorize an unauthorized landing as intentional when substantial evidence demonstrates that the pilot knew the landing was unauthorized or the civil aircraft operator:

(1) Landed without an approved DD Form 2401 on board the aircraft.

(2) Landed for a purpose not approved on the DD Form 2401.

(3) Operated an aircraft not of a model or registration number on the approved DD Form 2401.

(4) Did not request or obtain the required final clearance from the installation commander or a designated representative at least 24 hours before aircraft arrival.

(5) Did not obtain landing clearance from the air traffic control tower.

(6) Landed with an expired DD Form 2401.

(7) Obtained landing authorization through fraudulent methods.

(8) Requested permission to land from any U.S. Air Force authority, including the control tower, and was denied.

(b) Reporting procedures in § 855.4 of this part and normal landing fees (§ 855.16 of this part) are applicable. Since intentional unauthorized landings increase reporting, processing, and staffing costs, the unauthorized landing fee (§ 855.16 of this part) for paragraphs (a) (1) through (6) of this section will be increased by 100 percent. The fee will be increased 200 percent for items in paragraphs (a) (7) and (8) of this section and when substantial evidence demonstrates the pilot knew the landing was unauthorized.

(c) Under the conditions described in paragraph (b) of this section, an installation commander in the U.S., its territories or its possessions may choose to detain the aircraft at the installation until:

(1) The unapproved landing has been reported to the appropriate civil aviation authority, HQ USAF/PRPJ, and the appropriate U.S. Attorney.

(2) The pilot or other competent authority of the owner has executed DD Form 2402 and prepared the circumstantial landing report.

(3) All applicable charges have been paid.

(d) The installation commander may, at his or her discretion, release the aircraft upon compliance with paragraphs (c) (1) and (2) of this section and payment of the inadvertent unauthorized landing charge, if he or she wishes to investigate the matter further before determining whether the circumstances warrant higher fees. The aircraft must not be released without obtaining bond, promissory notes, or other security for payment of the highest charge that might be assessed.

(e) The pilot and passengers will not be detained longer than is necessary for identification, although they may be permitted to remain in a lounge or other waiting area on the base at their request for such period as the installation commander may determine (normally not to exceed close of business hours at the home office of the entity owning the aircraft, if the operator does not own the aircraft). No person will be detained involuntarily after identification is complete without coordination from the appropriate U.S. Attorney, the MAJCOM, and HQ USAF/PRPJ.

(f) The unauthorized landing may be prosecuted as a criminal trespass, especially if a debarment letter has been issued. Repeated intentional unauthorized landings prejudice the user's FAA operating authority and jeopardize future use of any U.S. Air Force installation.

Subpart C—Civil Fly-In Procedures

§ 855.8 Civil fly-ins.

Civil aircraft operators may be invited to participate in a U.S. Air Force fly-in for a base sponsored or funded activity being held at a specified U.S. Air Force installation. They will be authorized use only during the period of the event.

§ 855.9 Civil fly-in procedures.

(a) The installation commander:

(1) Requests approval from the MAJCOM or SOA.

(2) Provides HQ USAF/PRPJ/XOOR/XOOO and SAF/PAC with the date and purpose of the fly-in.

(3) Ensures that DD Form 2402 is completed by each user. DD Forms 2400 and 2401 are not required for fly-in participants.

(b) The MAJCOM or SOA ensures HQ USAF/PRPJ/XOOR/XOOO and SAF/PAC are advised of the approval or disapproval for the fly-in.

Note.—This section does not apply to civil aircraft aerobatic performance or demonstrations (Part 837 of this chapter), or transport-type (revenue or nonrevenue) flights.

Subpart D—Civil Aircraft

§ 855.10 Conditions for use of U.S. Air Force installations.

The U.S. Air Force authorizes use of its installations for a specific purpose by a named individual or company (not transferable to a second or third party) which does not extend to other types of civil aviation use. An approved landing permit does not obligate the U.S. Air Force to provide supplies, equipment, or facilities other than the landing, taxiing, and parking areas (§ 855.17 and 18 of this part). Personnel on board are only authorized activities at the installation directly related to the type of use granted. All users are expected to submit their application (DD Forms 2400, 2401, and 2402) at least 30 days in advance of intended use and, except for weather alternate use, must contact the appropriate installation commander for final clearance at least 24 hours in advance of arrival. Failure to comply with either time limit may result in denied landing rights.

§ 855.11 Types of civil use.

Listed below are specific types of civil use the U.S. Air Force normally authorizes. Others may be considered if sufficient justification is provided. Application for each type of use must be made on a separate DD Form 2401. The letter following each type of use in paragraphs (a) through (p) of this section will be used when a landing permit number is assigned (§ 855.14(c) of this part).

(a) *Contractor or subcontractor personnel (A).* A U.S. or foreign contractor or subcontractor, operating corporate or personal aircraft, who uses a U.S. Air Force installation to fulfill the terms of a U.S. government contract. Verification: The contractor or subcontractor must indicate on the DD Form 2401 the current government contract numbers; the U.S. Air Force installation required for each contract; a brief description of the work to be performed; and the name, telephone number, and address of the government contracting officer.

Note.—Potential contractors may not land at U.S. Air Force installations for the purpose of pursuing or presenting an unsolicited proposal for procurement of government business.

(b) *Demonstration flights (B).* Permits an aircraft or aircraft component manufacturer to display or demonstrate aircraft (nonaerobatic) or installed components to U.S. government representatives who have procurement interest or authority, or certification responsibilities. Verification: Nonaerobatic demonstration or display must be contractural provision or presented at the request of an authorized U.S. government representative. The name, address, and telephone number of the requesting government representative or contracting officer and contract number must be included on the DD Form 2401.

(c) *Active duty U.S. military (C).* Authorizes active duty U.S. military members, operating their own aircraft or aircraft leased at their own expense, to use any U.S. Air Force installation for official duty transportation (temporary duty (TDY), permanent change of station, etc.) or for private, nonrevenue flights. (Members of the U.S. Public Health Service are considered active duty U.S. military.) Verification: Provide Social Security number in block 1 on DD Form 2401.

(d) *Reserve Forces (D).* Permits members of the U.S. Reserve Forces (including Reserve Officer Training Corps and National Guard) operating their own aircraft or aircraft leased at their own expense, to use a specific U.S. Air Force installation where their assigned unit is located to fulfill their official duty commitment or for TDY at other installations when on official travel orders. Verification: Request

routed through commander for an endorsement which validates military status and requirement for use of U.S. Air Force installations listed on permit application. When appropriate, travel orders must be on board the aircraft.

(e) *Civilian employees of the U.S. government (E).* Permits civilian employees of the U.S. government, operating their own aircraft or aircraft leased at their own expense, to use U.S. Air Force installations only for official government business travel. Verification: A copy of current travel orders or other official travel certificate must be on board the aircraft.

(f) *Special conveyance (F).* Permits government personnel to use a chartered aircraft for single flights between two or more points for official business only. The official directing the travel must authorize use of special conveyance and arrangements for hiring the aircraft must be made by a transportation office (AFR 75–8, volume I). Verification: A copy of official orders citing the special conveyance authorization must be on board the aircraft.

(g) *Retired U.S. military (G).* (Includes Regular and Reserve personnel receiving retirement pay and an identification card authorizing use of the commissary, base exchange, and military medical facilities.) Permits retired U.S. military members, operating their own or leased aircraft, to use a U.S. Air Force installation in conjunction with activities related to retirement entitlements authorized by law or regulation. Verification: A copy of retirement orders must be on file with the approving authority.

(h) *Civil Air Patrol (CAP) (H).* Permits aircraft owned and operated by the CAP or by a CAP member to use designated U.S. Air Force installations for official CAP activities. Verification: Endorsement of the application by HQ CAP-USAF/DO, Maxwell AFB AL 36112–5572.

(i) *Aero club member (I).* Permits individuals to operate their own aircraft into and out of the U.S. Air Force airfield where they hold active aero club membership. Verification: Written endorsement on the DD Form 2401 by the aero club manager which validates the individual's aero club membership. (Members using U.S. Air Force aero club facilities located on a civil airfield must provide the endorsement, and DD Forms 2400 and 2402 to the local commander. DD Form 2401 is not required.)

(j) *Weather alternate airport (J).* Permits scheduled air carriers to divert to a specified U.S. Air Force installation when weather conditions require a change from the original destination while in flight. Aircraft may not be dispatched from the point of departure to a U.S. Air Force airfield which has been designated as an approved weather alternate. Verification: Actual use is predicated on weather conditions at scheduled destination. Scheduled route structure must encompass the U.S. Air Force airfield requested for use.

(k) *Military Airlift Command (MAC) contract or charter (K).* Permits an air carrier to use a U.S. Air Force installation under the terms of a MAC contract. Landing permits for this type of use are processed by HQ MAC/TRC. Verification: International flights must have a MAC Form 8, Civil Aircraft Certificate, on board the aircraft. Domestic flights must have either a Certificate of LOGAIR Operations (U.S. Air Force—AFLC), a Certificate of QUICKTRANS (U.S. Navy), a Certificate of Courier Service Operations (MAC), or a Certificate of Intra-Alaska Operations (MAC) on board the aircraft.

(l) *U.S. government contract or charter operator (L).* Permits an air carrier to use a U.S. Air Force installation under the terms of a U.S. government contract or charter agreement by a U.S. government department or agency other than the DOD. Verification: Carrier must identify the chartering agency and provide the name, address, and telephone number of the government official procuring the transportation. An official government document must be on board the aircraft to substantiate that the flight is operating for a U.S. government department or agency. (National Aeronautics and Space Administration charters are identified by SF 1169, U.S. Government Transportation Request. Army and Air Force Exchange Service (AAFES) charters are identified by AAFES Form 4150–1, AAFES Purchase and Delivery Order.)

(m) *Contractor or subcontractor charter (M).* An operator who uses a U.S. Air Force installation for the transportation of U.S. or foreign contractor or subcontractor personnel or cargo in support of a current U.S. government contract. Verification: The contractor or subcontractor must provide written validation to the approving authority that the charter operator will be operating on their behalf in fulfilling the terms of a government contract, to include current government contract numbers and titles; the U.S. Air Force installations which are required; and the name, telephone number, and address of the government contracting officer.

(n) *DOD charter (N).* A civil aircraft operator who uses a U.S. Air Force installation for the official transportation of DOD personnel or cargo. Verification: Tender of service approved by the Military Transportation Management Command (MTMC) and an SF 1169 or SF 1103, U.S. Government Bill of Lading, on the aircraft to validate the operation is for the DOD (AFM 75–2). (Passenger charters arranged by the MTMC are assigned a commercial air movement (CAM) or civil air freight movement (CAFM) number each time a trip is awarded. Installations will normally be notified by message at least 24 hours in advance of a pending CAM operation.)

(o) *Media (O).* Permits representatives of the media to gather information about a U.S. government operation or event. Use will be considered on a case-by-case basis; for example, if other forms of transportation would preclude meeting a production deadline of if use would be in the best interest of the U.S. government, authorization would be warranted. DD Forms 2400 and 2402 should be on file with HQ USAF/PRPJ to ensure prompt telephone approval for validated requests. Verification: Concurrence of the installation commander, base operations officer, and public affairs officer.

(p) *Other.* Under certain circumstances, based on the justification provided, use of U.S. Air Force installations may be authorized for:

(1) Aircraft certification testing as required by FARs which does not involve use of Air Force testing hardware (P).

(2) Commercial development testing at Air Force flight test facilities (Part 835 of this chapter) (Q).

(3) Commercial charter operations (R).

(4) Commercial aircrew training flights (S).

(5) Private, nonrevenue producing flights (T).

(6) Temporary scheduled air service (U).

(7) Foreign government charter (V).

(8) Flights transporting foreign military sales (FMS) material (W). (Hazardous, oversized, or classified cargo only.) Verification: Cargo information must be provided as specified in § 855.24 of this part. Application must also include the Department of Transportation exemption number when harardous cargo is to be transported, if required.

(9) Certified flight record attempts. (X).

(10) Political candidates (Y). (For security reasons only.) Aircraft either owned or chartered explicitly for a Presidential or Vice Presidential candidate, including not more than one accompanying overflow aircraft for the candidate's staff and press corps. Candidate must be a Presidential or Vice Presidential candidate who is being furnished protection by the U.S. Secret Service. Aircraft clearance is predicated on the Presidential or Vice Presidential candidate being aboard one of the aircraft (either on arrival or departure). After normal duty hours, flight schedule changes must be reported through the HQ U.S. Air Force Operations Center. Normal landing fees will be charged. Fuel may be sold on a cash or credit basis (AFR 144–9). To reduce conflict with U.S. statutes and U.S. Air Force operational requirements, and to provide expeditious handling of aircraft and passengers, the following guidance applies for the installation commander:

(i) Minimum official (base officials) welcoming party.

(ii) No special facilities are to be provided.

(iii) No onbase political rallies or speeches.

(iv) No official transportation should be provided for unauthorized personnel (press, local populace, etc.). Verification: The Secret Service must confirm that use has been requested in support of their security responsibilities.

(11) Aircraft either owned or personally chartered for transportation of the President, Vice President, or a past President of the U.S.; the head of any U.S. federal department or agency; or a member of the Congress (Z). Use by other than the President or Vice-President must be for official government business. Any request received by MAJCOM or installation commanders from or for members of the Congress must be reported to the Director of Legislative Liaison (SAF/LL) as prescribed in AFR 11–7.

§ 855.12 Approving authority.

The authority to approve or disapprove civil aircraft use of U.S. Air Force installations is vested in:

(a) *Directorate of Programs and Evaluation, Deputy Directorate for Bases and Units (HQ USAF/PRPJ).* HQ USAF/PRPJ may act on any request for any type of civil aviation use; however, it reserves exclusive approval authority for the following:

(1) Use of multiple U.S. Air Force installations which are within the jurisdiction of multiple MAJCOMs or SOAs, except as delegated in paragraph (b) of this section.

(2) Those listed in § 855.11 (o) and (p) of this part except as specifically delegated to another approving authority.

(3) Joint use (§ 855.20 of this part).

(4) Any unusual or unique use not specifically authorized by this regulation.

(b) *MAJCOM, SOA, or installation commander.* With the exception of those uses reserved for HQ U.S. Air Force and HQ MAC approval (paragraphs (a) and (d) of this section), MAJCOMs, SOAs, or installation commanders may approve or disapprove applications (DD Forms 2400, 2401, and 2402) for types of use described in § 855.11 of this part at installations under their jurisdiction. Additionally, they may give approval for one-time, official business operations which are in the best interest of the U.S. government and do not violate other provisions of this regulation. As a minimum, for one-time flights authorized under this paragraph, insurance verification and a completed DD Form 2402 must be provided before the aircraft operates into the U.S. Air Force airfield. Authority to approve civil aircraft use of U.S. Air Force airfields on foreign soil may be limited. Commanders outside the continental U.S. (CONUS) must be familiar with international agreements which may render inapplicable, in part or in whole, provisions of this regulation.

(c) *Commander, Alaskan Air Command (AAC).* In addition to paragraph (b) of this section, the Commander, AAC, may approve and disapprove landing permits for use under § 855.11(p) (3) and (5) at Alaskan airstrips within the jurisdiction of HQ Tactical Air Command (TAC) and HQ AAC, with the exception of Shemya AFB. All use of Shemya AFB will be approved by HQ USAF/PRPJ. HQ AAC must provide HQ TAC/DOO with a copy of all permits approved for use of TAC airfields.

(d) *Commander, MAC.* In addition to paragraph (b) of this section, the Commander, MAC, may approve use of U.S. Air Force installations worldwide for flights in support of MAC contracts.

(e) *Commander, Pacific Air Forces (PACAF).* In addition to paragraph (b) of this section, the Commander, PACAF, may approve private, nonrevenue flights transiting Wake Island for refueling purposes.

(f) *Commander, Air Force Space Command (AFSPACECOM).* In addition to paragraph (b) of this section, the Commander, AFSPACECOM, may approve civil flights transiting Sondrestrom AFS, Greenland, for refueling purposes.

(g) *USDAO.* The USDAO, acting on behalf of HQ USAF/PRPJ, may approve a request for a one-time landing at a U.S. Air Force installation provided:

(1) The request is for official government business of either the U.S. or the country to which the USDAO is accredited.

(2) The U.S. Air Force installation is located within the country to which the USDAO is accredited.

(3) Approval will not violate any agreement with the host country.

(4) The installation commander concurs.

§ 855.13 Application procedures.

The prospective user can obtain a copy of this part (AFR 55–20) and the required forms from a U.S. Air Force installation or an approving authority. The user is responsible for reviewing the regulation and accurately completing the forms before submitting them to the approving authority (§ 855.12 of this part). The types of use normally authorized are specified in § 855.11 of this part. The verification required for each type of use must be included with the application. To allow time for processing, all documents and a self-addressed, stamped envelope should be submitted at least 30 days before the date of the first intended landing. The name of the user must be the same on all forms. Original handscribed signatures, not facsimile elements, are required on all forms. Prospective civil users of a U.S. Air Force installation must apply for authorization as follows:

(a) Have the insurance company or its authorized agent complete and sign DD Form 2400. The user name in item 3 of the DD Form 2400 must correspond with the user name in item 1 of DD Form 2401. All coverages must be stated in U.S. dollars. See table 1 for required minimum coverage. The DD Form 2400 is valid until 1 day before insurance expiration date. A DD Form 2400 with the statement "until cancelled" in lieu of a specific expiration date is valid for 2 years from the effective date. Upon expiration, the DD Form 2400 must be resubmitted along with DD Form 2401 for continued use of Air Force installations. The DD Form 2400 may be sent to the approving authority by either the user or insurer.

(b) Prepare and sign a separate set of DD Forms 2401 for each type of use requested. Submit DD Form 2401 in an original and two copies when HQ USAF/PRPJ is the approving authority, and an original and three copies for other approving authorities.

(1) Provide, in alphabetical order, the name and location of each U.S. Air Force installation requested for use. (The statement "Any U.S. Air Force Installation Worldwide" is acceptable for users performing MAC charters. "Any U.S. Air Force Installation Within the CONUS" is acceptable, if warranted by official government business, for other users.)

(2) Provide a brief explanation of purpose for use with verification for each type of use as specified in § 855.11 of this part. When the purpose for use does not correspond with the categories listed in § 855.11 of this part, it may be considered if sufficient justification is provided.

(3) Aircraft registration numbers are required unless the DD Form 2400 indicates coverage for "any aircraft of the listed model owned and or operated" in lieu of specific registration numbers (§ 855.15 of this part). All other aircraft information must be provided.

(4) The period of use is determined by the insurance expiration date shown on a completed DD Form 2400. Except where an earlier date of expiration is indicated on the permit, the landing permit will expire 1 day before the insurance coverage expiration date shown on DD Form 2400, or 2 years from the date the permit is issued when the insurance expiration date either exceeds 2 years or is indefinite (for example, "until cancelled").

(5) Once the DD Form 2401 has been approved and distributed, users may make no further entries or amendments without the consent of the approving authority.

(6) Upon expiration, resubmit DD Form 2401 along with DD Form 2400 for continued use of U.S. Air Force installations.

(c) Complete, sign, and send original DD Form 2402 to the approving authority. When the user is a corporation, the DD Form 2402 must be completed and signed by a second corporate officer (other than the officer executing DD Form 2402) to certify the signature of the first officer. As necessary, the U.S. Air Force also may require that the form be authenticated by an appropriately designated third official. Once the completed and signed DD Form 2402 has been accepted by an approving authority, and unless rescinded for cause, it is valid until obsolete, and need not be resubmitted to the same approving authority.

§ 855.14 Processing procedures.

Upon receipt of an application (DD Forms 2400, 2401, and 2402) for use of a U.S. Air Force installation, the approving authority:

(a) Determines the availability of the installation and its capability to accommodate the type of use requested.

(b) Determines the validity of the request and ensures all entries on DD Forms 2400, 2401, and 2402 are in conformance with this regulation.

(c) Approves DD Form 2401 (with conditions or limitations listed) by completing all items in the approving authority section. Installation commanders assign a permit number comprised of the last three letters of the installation's International Civil Aviation Organization (ICAO) code identifier, the last two digits of the calendar year, a four-digit number sequentially assigned, and a letter suffix (§ 855.11 of this part) indicating the type of use; such as ADW 86–001C. MAJCOMs, SOAs, and USDAOs use a three-position organization abbreviation; such as MAC 86–0002K.

(d) Disapproves the request if:

(1) Use interferes with current operations, security, or safety.

(2) Adequate civil facilities are collocated or available in the proximity of the requested U.S. Air Force installation when use is not required for official government business (§ 855.1(a)(8)).

(3) Use could result in substantial competition with civil airports or air carriers.

(4) Civil user has not fully complied with this regulation.

(e) Distributes the approved DD Form 2401 before the first intended landing, when possible, and:

(1) Retains original.

(2) Returns two copies to the user.

(3) Provides a copy to HQ USAF/PRPJ, when the approving authority is other than HQ USAF/PRPJ. HQ USAF/PRPJ will provide a computer printout of current landing permits to the MAJCOMs. The MAJCOMs will make distribution to the appropriate installations.

§ 855.15 Insurance requirements.

Each user who applies for permission to land at a U.S. Air Force installation must present proof of third-party liability insurance on DD Form 2400, with the amounts stated in U.S. dollars. The policy number, effective date, and expiration date are required. The statement "until cancelled" may be used in lieu of a specific expiration date. The geographical area of coverage must include the area where the U.S. Air Force installation of proposed use is located. If several aircraft or aircraft types are included under the same policy, a statement such as "all aircraft owned," "all aircraft owned and or operated," or "all aircraft operated," may be used in lieu of aircraft registration numbers. To meet the insurance requirements, either Split Limit coverage for Bodily Injury, Property Damage, and Passengers or a Single Limit coverage is required. The coverage carried will be at the expense of the user with an insurance company acceptable to the U.S. Air Force and must be current during the period the U.S. Air Force installation will be used. The liability required is computed on the basis of aircraft maximum gross takeoff weight (MGTOW) and passenger or cargo configuration. Minimum coverage will not be less than the amount indicated in table 1.

TABLE 1.—AIRCRAFT LIABILITY COVERAGE REQUIREMENTS

[Stated in U.S. dollars]

	Bodily injury	Property damage	Passenger
(a) Civil aircraft without passenger seats:			
12,500 pounds and under:			
Each person	$500,000		
Each accident	1,000,000	$500,000	
Over 12,500 pounds:			
Each person	500,000		
Each accident	5,000,000	3,000,000	
(b) Civil aircraft with passenger seats:			
12,500 pounds and under:			
Each person	500,000		$500,000
Each accident	1,000,000	500,000	500,000 × number of passenger seats
Over 12,500 pounds:			
Each person	500,000		500,000
Each accident	5,000,000	3,000,000	500,000 × 75% × number of passenger seats

(a) Any insurance presented as a single limit of liability or a combination of primary and excess coverage will be an amount equal to or greater than the minimums required for bodily injury, property damage, and passengers for each accident as indicated in table 1.

(b) Each user's policy will specifically provide that:

(1) The insurer waives any right or subrogation they may have against the U.S. by reason of any payment made under the policy for injury, death, or property damage that might arise out of or in connection with the insured's use of any U.S. Air Force installation.

(2) The insurance afforded by the policy applies to the liability assumed by the insured under DD Form 2402.

(3) If the insurer or the insured cancels or reduces the amount of insurance afforded under the listed policy before the expiration date indicated on DD Form 2400, the insurer will send written notice of policy cancellation or coverage reduction to the approving authority at least 30 days before the effective date of the cancellation or reduction. (The policy must state that any cancellation or reduction will not be effective until at least 30 days after such notice is sent.)

§ 855.16 Landing, parking, and storage fees.

(a) *Fees.* All fees are normally due and collectible at time of use of any U.S. Air Force airfield and are deposited with the accounting and finance officer using DD Form 1131, Cash Collection Voucher. In some instances, it may be necessary to bill the user for charges incurred. Guidance and assistance may be obtained from the installation accounting and finance officer. The landing, parking, and storage fees (tables 2 and 3) are based on the aircraft MGTOW. The installation commander may permit parking and storage on a nonexclusive, temporary, or intermittent basis, when compatible with military requirements. The time that an aircraft spends on an installation is at the discretion of the installation commander but should be linked to the type of use authorized. At those locations where there are U.S. Air Force aero clubs, parking and storage privileges may be permitted in the area designated for aero club use without regard for the type of use authorized, if consistent with aero club policies. Any such permission may be revoked upon notice, based on military needs and the installation commander's discretion.

(b) *Exceptions.* The landing, parking, and storage fees are not applicable for civil aircraft which are:

(1) Privately owned, leased, or operated by active duty military members, retired U.S. military members, CAP members, members of the Reserve Forces, or U.S. government civilian employees.

(2) Operated by aero club members (§ 855.11(i)).

(3) Operated in support of official government business, including those authorized use under § 855.11(b), or any use, the cost of which is subject to reimbursement by the U.S. government.

(4) Foreign government-owned aircraft as indicated in § 855.25.

(5) Foreign civil aircraft chartered for use by foreign heads of state on official state visits.

(6) Exempt from the requirement for a civil aircraft landing permit.

TABLE 2.—Landing Fees

Aircraft max. gross takeoff Wt (MGTOW)	Normal fee	Unauthorized fee	International fee	Minimum fee	U.S. Territories, & Possessions	Overseas
	$1.50/1,000 lb MGTOW or fraction thereof.			$20	X	
	$1.70/1,000 lb MGTOW or fraction thereof.			$25		X
Up to and including 12,500 lb.		$100			X	X
12,501 to 40,000 lb		$300			X	X
Over 40,000 lb		$500			X	X
			Increase unauthorized fee by 100% or 200%.		X	X

TABLE 3.—PARKING AND STORAGE FEES

Fee per aircraft for each 24-hour period of less	Minimum fee	Charge begins	Ramp	Hangar
$1.00/100,000	$20	6 hours after landing	X	
$2.00/100,000 lb MGTOW or fraction thereof.	$20	Immediately		X

§ 855.17 Aviation fuel and oil purchases.

When a user qualifies under the provisions of AFR 144–9, purchase of U.S. Air Force fuel and oil may be made on a cash basis, or on a credit basis after establishment of an Authorized Credit Letter (AFR 144–9, attachment 1). The Authorized Credit Letter must be submitted to HQ USAF/PRPJ and approved by SA–ALC/ACFMA, Kelly AFB TX 78241–5000, before products can be purchased on credit. Aviation fuel charges will be billed as prescribed in AFR 144–9 and AFM 67–1, volume I, part three, chapter 1.

§ 855.18 Supply and service charges.

Supplies and services furnished to a user will be charged for as prescribed in AFM 67–1, volume I, part one, chapter 10, section N, subsection 2, and AFR 177–102, paragraph 29.24. A personal check with appropriate identification, cashier's check, money order, or cash is an acceptable means of payment. Charges for handling FMS cargo are prescribed in AFR 170–3.

Subpart E—Foreign Government Aircraft

§ 855.19 General information.

All foreign military or foreign government-owned, noncommercially operated aircraft (§ 855.2(k)) must have authorization before using U.S. Air Force installations. Where agreements do not exist between the U.S. and a foreign government or between the U.S. Air Force and a foreign air force for reciprocal use by military aircraft, the foreign government must specifically request permission for its aircraft to land at U.S. Air Force installations.

Note.— Permission to land at U.S. Air Force installations in the U.S. or foreign countries does not constitute nor take the place of diplomatic or other overflight clearance requirements.

§ 855.20 Application procedures.

Foreign government aircraft are not required to submit DD Forms 2400, 2401, and 2402 for permission to land at a U.S. Air Force installation. Instead, the foreign government must:

(a) Complete and send a written request through its air attache to HQ USAF/CVAII, Washington, DC 20330–2006, a minimum of 72 hours, excluding Saturday, Sunday, and U.S. holidays, before first intended landing. (For use of U.S. Air Force installations in the Canal Zone, all Latin American countries are authorized to submit their requests direct to Commander, Southern Air Division (USAFSO), APO Miami 34001–5000. Requests must be submitted at least 24 hours in advance.)

(b) Submit a request for diplomatic clearance to the Department of State, if flight to U.S. territory is desired, unless flight in U.S. airspace is already authorized by an appropriate agreement.

(c) Submit a request for diplomatic or other required clearance to each appropriate foreign country which is to be overflown or in which a landing is to be made, when use of a U.S. Air Force installation in a foreign country is desired.

§ 855.21 Processing procedures.

When an application is received, the approving authority:

(a) Determines the availability of the installation and its capability to accommodate the user request.

(b) Ensures that the prospective foreign government user has a valid requirement.

§ 855.22 Approving authority.

(a) *Assistant Vice Chief of Staff, International Affairs Division (HQ USAF/CVAII).* HQ USAF/CVAII acts on all requests for use of a U.S. Air Force installation by foreign government aircraft except those specifically delegated to another approving authority. An aircraft landing authorization number (ALAN) is assigned each request approved for foreign government aircraft. HQ USAF/CVAII will obtain telephonic clearance from the consolidated command post at Howard AFB, Panama, before issuing an ALAN to any country whose aircraft are transiting Howard while en route to or from the U.S. Appropriate U.S. Air Force installations, MAJCOMs, and Air Staff offices will be notified by message.

(b) *Commander, USAFSO.* Commander, USAFSO may act on requests from any Latin American country for the country's military aircraft, or other government-owned aircraft not engaged in commercial operations, to use U.S. Air Force installations under USAFSO control, ensuring all authorizations are consistent with current directives. USAFSO will provide appropriate billing instructions and flight information in a landing authorization message.

§ 855.23 Aviation fuel and oil purchases.

U.S. Air Force aviation fuel and oil may be purchased for foreign government aircraft as authorized by separate agreement or as stated in the notification message. Aviation fuel and oil charges will be billed as prescribed in AFM 67–1, volume I, chapter 1.

§ 855.24 Foreign military sales (FMS) cargo.

(a) *FMS charges.* So that the U.S. Air Force may properly apply charges for loading and other services performed in support of foreign government aircraft transporting FMS cargo, the following informaton is required on each request:

(1) Description of cargo (nomenclature) to include requisition numbers, if available, applicable FMS case(s) number(s), and delivery term codes.

(2) U.S. Air Force agency with which prior arrangements have been made for provision of military terminal loading and/or other services.

(3) U.S. government FMS case management agency to which costs for services rendered are chargeable.

(4) Name, address, and telephone number of freight forwarder.

(5) Name, address, and telephone number of shipper.

(b) *Explosives and other hazardous material.* Aircraft transporting hazardous material must specify in paragraph 5 of the ALAN request the U.S. Department of Transportation proper shipping name and hazard class with respective number of pieces, weight, and cube. Additionally, in the case of explosives, provide net explosive weight of each explosive class and identify the U.S. facility where the hazardous material is to be loaded or unloaded.

(c) *Loading services.* When an aircraft picks up or delivers material at a U.S. Air Force base, it must be equipped with sufficient cargo pallets and/or tiedown materials to facilitate loading. Compatible 463L pallets and nets will be exchanged on a one-for-one basis for serviceable units. Nonstandard pallets and nets cannot be exchanged; however, they will be used to build-up cargo loads after arrival of the aircraft. Aircraft arriving without sufficient cargo loading and tiedown devices must be floor loaded and the aircraft crew will be responsible for purchasing necessary ropes, chains, etc.

§ 855.25 Supply and service charges.

(a) Supplies and services furnished to a foreign government aircraft which are not covered by an FMS case will be charged for as prescribed in AFM 67–1, volume I, part one, chapter 10, section N, subsection 2; AFR 177–102, paragraph 29.24; and AFR 170–3; or other applicable laws and regulations.

(b) Invoicing procedures for terminal services (aircraft loading or unloading) prescribed in AFR 177–112, paragraph 4–25, will be used except when loading or unloading services are chargeable to an FMS case; that is, material assigned delivery term code 8 in the DD Form 1513, U.S. DOD Offer and Acceptance. FMS Material assigned delivery term code 8 will be billed to the FMS case as prescribed in AFR 170–3.

(c) Communications services are normally provided only for official government business. If charges accrue to the U.S. government, reimbursement must be provided.

§ 855.26 Landing, parking, and storage fees.

Fees will not be charged for foreign military or foreign government aircraft unless specified in the HQ USAF/CVAII message granting authorization for landing.

§ 855.27 Waiver authority.

HQ USAF/CVAII reserves the right to waive the above procedures for any unusual or unique use not specifically authorized by this regulation for use of U.S. Air Force facilities by foreign government aircraft.

Subpart F—Joint Use of a U.S. Air Force Installation

§ 855.28 U.S. Air Force joint-use policy.

Joint-use of a U.S. Air Force installation will be considered only if there will be no compromise of military response, security, readiness, or safety and when requested by authorized local government representatives eligible to sponsor a public airport. Such requests are considered and evaluated on an individual basis by all reviewing levels. Generally, an airfield will be considered for joint-use if it does not have a nuclear alert force, pilot training, nuclear storage, or a major classified mission. Civil operations must begin within 5 years of formalizing an agreement.

§ 855.29 Procedures for sponsor.

To initiate consideration for joint-use of a U.S. Air Force installation, a formal proposal must be submitted by a local government agency eligible to sponsor a public airport to the installation commander, and include the following:

(a) Type of operation.

(b) Type and number of aircraft to be located on or operating at the installation.

(c) An estimate of the number of annual operations for the first 5 years.

§ 855.30 Procedures for U.S. Air Force.

(a) The installation commander, on receipt of the request, without precommitment or comment, will send the documents to the Air Force representative at the FAA regional office within the geographical area where the installation is located, with an information copy to HQ USAF/PRPJ.

(b) The U.S. Air Force representative at the FAA regional office will provide comments on the request regarding airspace, air traffic control, and other related areas, return the request with appropriate comments to the installation commander, and advise local FAA personnel of the proposal for joint-use. Operational considerations will be based on the premise that military aircraft will receive priority handling (except in emergencies), if traffic must be adjusted or resequenced. Manpower increases in air traffic control or related support activities required solely for the civil operation, normally will not be considered but if accommodated, must

be fully reimbursed by the joint-use sponsor. Additional equipment or relocation of equipment must be funded by the civil sponsor.

(c) The installation commander will comment on the request and send the comments and all related documents through channels to HQ USAF/PRPJ.

(d) The U.S. Air Force will act as lead agency for the preparation of the environmental analysis (Part 989 of this chapter). The community government representatives, working in coordination with local U.S. Air Force personnel and other concerned local or federal officials, must identify the proposal, develop conceptual alternatives, and provide planning, socioeconomic, and environmental information as specified by HQ USAF/LEEV. The information must be complete and accurate in order to serve as a basis for the preparation of U.S. Air Force environmental documents. The sponsor will normally fund the environmental studies required for the environmental impact analysis process. Environmental analysis requirements can be obtained from HQ USAF/LEEV, Washington, DC 20332–5000.

(e) In addition to the environmental analysis, HQ USAF/PRPJ will consider all of the following factors when evaluating a joint-use proposal:

(1) The current and programmed military activities at the installation.

(2) Runway and taxiway facilities. Joint-use will normally not be considered at locations with single runway capacity.

(3) Security. Joint-use increases the possibility for sabotage, terrorism, and vandalism. Joint-use will not be considered:

(i) If military and civil aircraft would be collocated.

(ii) When other than normal airfield facilities would be shared.

(iii) If access to the civil facilities would require routine transit through the base.

(4) Availability of supplies and maintenance services.

(5) Volume and type of military traffic.

(i) Compatibility of proposed civil operations with present and planned military operations.

(ii) Normally, aircraft must be certified for operation under instrument flight rules (IFR), equipped with a two-way radio, and operated by an IFR qualified crew.

(6) Fire, crash, and rescue services.

(7) The extent to which the proposed use might detract from the installation capability to meet national defense needs.

(8) Availability of public airports to accommodate the current and future civil aviation requirements of the community and the practicality of constructing or expanding a public airport.

(9) Availability of sufficient land for civil facilities. The majority of land for the civil facilities must be located on the perimeter of the U.S. Air Force installation or be segregatable in a manner which does not detract from security. Federal legislative jurisdiction should be retroceded to the State after joint-use is implemented. If the community does not already own the needed land, it must be acquired at no expense to the U.S. government. If land presently owned by the government is desired, the community must contact the General Services Administration regarding availability of excess U.S. government property and submit an application through FAA (50 U.S.C. 1622). Application for lease of U.S. Air Force property must be processed through channels to HQ USAF/LEER as prescribed in AFR 87–3. All real property outleased will be processed through the Corps of Engineers at fair market value.

(10) Whether the community would acquire, construct, and maintain all necessary facilities for civil aviation operations; for example, a terminal building, parking ramp, taxiways, and, if appropriate, a civil runway. The U.S. Air Force will not provide manpower to install, operate, maintain, alter, or relocate navigation equipment or aircraft arresting systems for the sole use of civil aviation. U.S. Air Force approval would be required on siting, design, and construction of the civil facilities.

(11) Terms for reimbursement. The civil sponsor must reimburse the U.S. Air Force a proportionate share for maintenance and operation of the government runway and other facilities used.

(f) The proposed joint-use agreement will be negotiated by HQ USAF/PRPJ and concluded on behalf of the Air Force by SAF/MI. The joint-use agreement will state the extent to which the provisions of this regulation will apply to all civil aviation use authorized.

(g) When processing major amendments to existing joint-use agreements, (a) through (f) of this section are applicable.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86–29061 Filed 12–30–86; 8:45 am]

BILLING CODE 3910-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–5–FRL–3124–7]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: USEPA is approving a revision to the carbon monoxide (CO) portion of the Minnesota State Implementation Plan (SIP), pertaining to the intersection of Snelling and University Avenues in the City of St. Paul (Ramsey County). USEPA is approving this SIP revision because it provides for attainment of the CO National Ambient Air Qualify Standards (NAAQS) as expeditiously as practicable.

EFFECTIVE DATE: This final rulemaking becomes effective on January 30, 1987.

ADDRESSES: Copies of the redesignation requests, technical support documents and the supporting air quality data are available at the following addresses: (It is recommended that you contact Steven D. Griffin, at (312) 353–3849 before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Minnesota Pollution Control Agency, Division of Air Quality, 1935 West County Road B–2, Roseville, Minnesota 55113.

Copies of this revision to the Minnesota SIP are available for inspection at:

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC.

The Office of the Federal Register 1100 L Street, NW. Room 8301 Washington, DC 20408

FOR FURTHER INFORMATION CONTACT: Steven D. Griffin, (312) 353–3849.

SUPPLEMENTARY INFORMATION: On June 16, 1980 (45 FR 40579), USEPA approved the CO SIP for air quality control region (AQCR) 131. AQCR 131 is comprised of the Counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington, which includes the Minneapolis-St. Paul area. The SIP included such measures as the Federal Motor Vehicle Control Program (FMVCP), along with a transportation control plan (TCP). The FMVCP allows for CO reduction allowances based on emissions controls for late-model

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vehicles. Minneapolis-St. Paul's TCP consists of reductions based on a bus-freeway project, computerized traffic management, a fringe parking program, stricter enforcement of traffic ordinances, improved transit system, and the development of Hennepin and First Avenue North as a one-way street pair. These measures were designed to ensure attainment and maintenance of the CO NAAQS by December 31, 1982.

Despite the implementation of the measures contained in the 1980 SIP, a monitor located at the intersection of University and Snelling Avenues in the City of St. Paul continued to record violations of the CO NAAQS after December 31, 1982. USEPA formally notified the State, in a February 24, 1984, letter to the Governor, that the CO SIP for the City of St. Paul (Ramsey County) was deficient, and a revised SIP was requested of the Minnesota Pollution Control Agency (MPCA).

This notice of SIP deficiency was issued pursuant to section 110(a)(2)(H) of the Act. In response to the notice of SIP deficiency, MPCA submitted two requests for rulemaking action to USEPA: (1) On June 18, 1984, MPCA submitted to USEPA a request to redesignate all of AQCR 131 to attainment for CO, excluding only the intersection of Snelling and University Avenues; and (2) on May 20, 1985, MPCA submitted a COSIP revision for the Snelling/University intersection. For the purposes of today's rulemaking, only the CO SIP revision for the Snelling-University intersection will be discussed. For a discussion of the redesignation request for AQCR 131, see 51 FR 33750 (September 23, 1986).

SIP Revision for the Snelling/University Intersection

A. Background

Snelling Avenue is a major north-south thoroughfare in the City of St. Paul and carries 30,000 to 35,000 vehicles per day. University Avenue is a major east-west thoroughfare connecting the Cities of Minneapolis and St. Paul and carries 17,000 to 25,000 vehicles per day. Due to the large amount of traffic on Snelling and University Avenues, MPCA began monitoring for CO near the intersection of these thoroughfares in August 1979. Since the start of this monitoring, the 8-hour CO standard has been consistently violated, despite implementation of the 1980 CO SIP. In 1982, the Snelling/University monitor recorded 30 exceedances of the 8-hour standard. The following contains a further discussion of the transportation control measures (TCMs) and the modeled attainment demonstration relating to the CO SIP. Review of this revision was based on USEPA's *Guidance Document for Correction of Part D SIPs for Nonattainment Areas*, January 27, 1984.

B. SIP Status

The Metropolitan Council of the Twin Cities Area (the Council) was the lead agency in the preparation of the revised TCP. The May 20, 1985, submittal included the Council's proposal to improve traffic flow along University and Snelling Avenues. The actions studied included signal timing upstream of the intersection, termed "GPGN progression", which was designed to allow good signal progression on northbound and southbound Snelling Avenue, perfect progression on westbound University Avenue and, if necessary, no progression for eastbound traffic. (For the purposes of this discussion, 'progression' is the relative flow of traffic from one signal to the next.) Also studied was a parking prohibition on University Avenue between Asbury and Fry (within 1 block in either direction of the Snelling Avenue intersection).

Based on the Council's proposal, on April 23, 1985, the MPCA Board approved the following:

(a) Implementation of the improved (GPGN) signal progression upstream of the Snelling/University intersection by December 31, 1987, to provide for attainment of the CO NAAQS; and

(b) Implementation of a parking ban on University Avenue by December 31, 1989, to ensure continuing maintenance of the CO NAAQS.

The City of St. Paul has agreed to implement any TCMs approved as part of the CO SIP. A letter dated April 17, 1986, from MPCA documents the City of St. Paul's commitment to implement the above measures.

On August 26, 1986 (51 FR 30378), USEPA proposed to approve Minnesota's plan for the Snelling/University intersection based on implementation of the 2 TCMs discussed above within the stated deadlines. A 30-day public comment period was provided, however, no public comments were received by USEPA. Therefore, USEPA is approving Minnesota's plan based on its technical merits as discussed in USEPA's technical support document. (Copies of this document as well as other materials relating to this rulemaking action may be obtained by contacting Minnesota or USEPA as described earlier in this notice.) USEPA believes that this SIP revision provides for attainment of the CO NAAQS at the University and Snelling intersection by December 31, 1987. In addition, USEPA believes that implementation of the parking ban will ensure continued maintenance of the CO NAAQS after the attainment date, as evidenced by the modeling analysis.

Conclusion

USEPA approves MPCA's request to revise the CO SIP for the Snelling/University intersection. This SIP revision includes a commitment to implement the following measures:

1. GPGN signal progression, no later than December 31, 1987.

2. The University Avenue parking ban, no later than December 31, 1989.

This action does not constitute approval of an attainment demonstration for intersections other than the Snelling/University intersection. Any future rulemaking on this area, or portions thereof, will be based on attainment demonstrations submitted by MPCA.

The Office of Management and Budget (OMB) has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 2, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Carbon monoxide, Intergovernmental relations.

Note.—Incorporation by reference of the State Implementation Plan for the State of Minnesota was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: November 28, 1986.

Lee M. Thomas,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart Y—Minnesota

Title 40 of the Code of Federal Regulations, Chapter I, Part 52, is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1220 is amended by adding paragraph (c)(23) to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

(23) On May 20, 1985, and on April 17, 1986, the State submitted a carbon monoxide plan for the intersection of Snelling and University Avenues in the City of St. Paul. The plan committed to improved signal progression through the intersection by December 31, 1987, and a parking ban on University Avenue within 1 block in either direction of the intersection with Snelling Avenue by December 31, 1989.

(i) Incorporation by reference.

(A) Amendment to Air Quality Control Plan for Transportation for the Metropolitan Council of the Twin Cities Area dated January 28, 1985.

(B) Letter from Minnesota Pollution Control Agency, dated April 17, 1986, and letter from the City of St. Paul, dated April 1, 1986, committing to implementing of transportation control measures.

[FR Doc. 86-27654 Filed 12-30-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-4-FRL-3134-4; TN-028]

Approval and Promulgation of Implementation Plans, Tennessee; Nonregulatory Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On January 28, 1986, the State of Tennessee submitted five Board Orders for approval by EPA. Today EPA approves Tennessee Board Orders 2–86, 3–86, and 5–86 in order to make them federally enforceable. Board Orders 1–86 and 4–86 cannot be approved by EPA because Tennessee does not have federally approved 111(d) plans for fluorides and total reduced sulfur. Order 1–86 grants Consolidated Aluminum Company a variance to operate without fluoride control equipment until January 15, 1987. Order 2–86 approves a revised State Implementation Plan permit for the Tennessee Eastman Company specifying allowable visible emissions during startup and shutdown. Order 3–86 grants a variance to the Tennessee Valley Authority to use six-minute opacity data averaging to demonstrate compliance. Order 4–86 granted a variance from January 22, 1986, until April 22, 1986, to Tennessee River Pulp and Paper Company to emit greater concentrations to total reduced sulfur than the regulations allow. Order 5–86 grants a variance until January 15, 1987, to the Texas Gas Transmission Corporation from Tennessee requirements for testing and monitoring for nitrogen oxides by new sources.

DATE: This action will be effective on March 2, 1987 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the materials submitted by the State may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland St., NE., Atlanta, Georgia 30365

Library, Office of the Federal Register, 1100 L Street, NW., Room 8301, Washington, DC

Division of Air Pollution Control, Tennessee Department of Health and Environment, Customs House, 4th Floor, 701 Broadway, Nashville, Tennessee 37219

FOR FURTHER INFORMATION CONTACT: Ms. Rosalyn Hughes, Air Programs Branch, EPA Region IV at the above address and telephone number 404/347-3286 or FTS 257-3286.

SUPPLEMENTARY INFORMATION: On January 29, 1986, the State of Tennessee submitted five nonregulatory revisions to their State Implementation Plan. The revisions were adopted by the State Board at the November 5, 1985, public hearing.

Board Order 1–86 grants a variance to the Consolidated Aluminum Company to operate without fluoride control equipment until January 15, 1987. The company is in the process of determining whether it is economically feasible to continue operations after 1986. The State felt it was unreasonable to force the company to install pollution control equipment because consolidated aluminum may decide to shut down at the end of 1986. If the company decides to remain in operation after January 15, 1987, without fluoride control equipment, a civil penalty will be assessed. The size of the civil penalty will be based upon both the number of pots operated versus the number of pots available prior to the present demolition project and the progress in installation of fluoride controls.

Board Order 2–86 approves a revised State Implementation Plan permit for the Tennessee Eastman Company. Four conditions have been added to the original permit regarding allowable visible emissions during startup and shutdown. Condition 5, the first addition, specifies the allowable visible emissions during startup and shutdown based on the federally approved State regulation on the choice of Visible Emission Standard for Certain Fuel Burning Equipment. Condition 6 refers to the particulate emissions source testing schedule of Boilers #23–29 as previously agreed upon in a letter between Harold Hodges of the Division of Air Pollution Control and J.C. Edwards of Tennessee Eastman. Conditions 7 and 8 refer to quality assurance conditions for opacity monitoring systems serving Boilers #23–29 and the operational availability conditions for opacity monitoring systems used in determining the compliance of Boilers #23–29.

Board Order 3–86 grants a variance to the Tennessee Valley Authority to use six-minute opacity data averaging to demonstrate compliance with the visible emission standard in a certificate of validation.

Presently the visible emissions from this fuel-burning installation are covered by the State regulation which requires that visible emissions from fuel burning be determined utilizing six-minute data averages. However, the company is operating under a certificate of validation which requires the visible emissions to be determined by utilizing one-minute data averages. The certificate of validation allows for a liberalization of a source's visible emission standards if compliance with the mass emission standards and certain other requirements are satisfied. The Tennessee Valley Authority is in compliance with the conditions of the certificate of validation and the variance is issued for regulation under the rule using a six-minute opacity data averaging for visible emission compliance.

Order 4–86 granted a variance from January 22, 1986, until April 22, 1986, to Tennessee River Pulp and Paper Company to emit greater concentrations of total reduced sulfur than the regulations allow. Tennessee River Pulp and Paper Company was installing air pollution control equipment to meet the emission limitations of total reduced sulfur from the lime kilns in excess of 40 ppm by volume. Unforeseen equipment delivery delays prevented the timely installation of the control equipment by the compliance deadline, January 22, 1986. The State investigated the situation and the conclusion reached was that by April 22, 1986, all the equipment should be installed and operational.

Order 5–86 grants a variance until January 15, 1987, to the Texas Gas Transmission Corporation from the Tennessee New Source Performance Standard (NSPS) requirement of testing

and monitoring for nitrogen oxides. A revision to the Tennessee NSPS, when effective, will remove this requirement of testing and monitoring. The revised federal NSPS, promulgated on January 27, 1986, in 47 FR 3770, deleted the requirement.

Final Action

Since Board Orders 2–86, 3–86, and 5–86 are consistent with EPA policy and requirements, they are hereby approved. No action will be taken on Board Orders 1–86 and 4–86 because they are being returned to the State. The public should be advised that this action will be effective 60 days from the date of this Federal Register notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under 5 U.S.C. 605(b), I certify that these SIP revisions will not have a significant economic impact on a substantial number of small entities.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 2, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

The Office of Management and Budget (OMB) has exempted this rule from the requirements of section 3 of Executive Order 12291.

Incorporation by reference of the State Implementation Plan for the State of Tennessee was approved by the Director of the Federal Register on July 1, 1982.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Particulate matter, Incorporation by reference.

Dated: December 19, 1986.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c)(72) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(72) Five Board Orders were submitted on January 29, 1986, by the Tennessee Department of Health and Environment.

(i) Incorporation by reference.

(A) Board Order 2–86 from Tennessee Department of Health and Environment, became State-effective on January 15, 1986.

(B) Board Order 3–86 from Tennessee Department of Health and Environment, became State-effective on January 15, 1986.

(C) Board Order 5–86 from Tennessee Department of Health and Environment, became State-effective on January 15, 1986.

(ii) Other material—none.

[FR Doc. 86–29352 Filed 12–30–86; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 180

[OPP–36135; FRL–3137–6]

Interim Policy for Sulfiting Agents on Grapes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Policy.

SUMMARY: This notice announces EPA's interim policy regarding the use of sulfiting agents on grapes. This policy is effective immediately. Until a tolerance is established for sulfur dioxide residues in or on grapes, EPA concludes that grapes treated with sulfiting agents can be allowed to be marketed provided it is certified by the shippers that the grapes contain no detectable residues of sulfur dioxide when tested by the modified Monier-Williams method.

EFFECTIVE DATE: December 31, 1986.

FOR FURTHER INFORMATION CONTACT: By mail:

Walter C. Francis, Disinfectants Branch, Registration Division (TS–767C) Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 711 CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA. (703–557–2148).

SUPPLEMENTARY INFORMATION: FDA announced in the Federal Register of July 9, 1986 (51 FR 25021) that it was revoking the Generally Recognized as Safe (GRAS) status for the use of sulfiting agents as preservatives on fruits and vegetables to be served or sold raw to consumers. This action by FDA did not include the pesticidal use of sulfiting agents on grapes (which also has historically been treated as a GRAS use) because this use is subject to EPA jurisdiction. Since that time EPA has completed a review of the FDA data and other available information to determine the status of this use under FIFRA and section 408 of the Federal Food, Drug, and Cosmetic Act.

In its July 9, 1986 Notice, FDA concluded that there is no longer a basis to find that the use of sulfites as preservatives on fruits and vegetables intended to be served raw or sold raw to consumers is GRAS and that this use poses a risk to that discrete and relatively small segment of the population which is sulfite sensitive. EPA has reviewed the data evaluted by FDA pertaining to sulfite sensitivity that were cited in the Federal Register of August 14, 1985 (50 FR 32834), and additional information set forth in the Federal Register of July 9, 1986 (51 FR 25012 and 25021), and agrees with the conclusions reached by FDA with respect to this potential adverse effect to individuals who are sulfite sensitive.

There are two intrastate registrations for the use in the State of California of sulfur dioxide as a fungicide on grapes. The registrants holding these intrastate registrations for sulfiting agents on grapes have complied with the applicable EPA requirements in 40 CFR 162.17. Thus, these registrations are valid for use in the State of California, even though no tolerance or exemption from the need for a tolerance exists for the sulfur dioxide residues resulting from this use. EPA has requested that the intrastate registrants supply the studies needed to support full Federal registration. Such registration would include the establishment of a tolerance under section 408 of the Federal Food, Drug, and Cosmetic Act for sulfur dioxide residues in or on grapes.

In addition to the use of sulfiting agents on grapes in California, sulfiting agents are also used to treat grapes imported into the United States from Chile and presumably from other countries.

EPA has reviewed a petition from a group of Chilean grape exporters and producers of sulfite-containing pads for a tolerance of 20 parts per million (ppm) for residues of sulfur dioxide on grapes. A review of the data submitted in support of the tolerance petition indicates that insufficient information is currently available to establish a tolerance. In particular, EPA needs additional information in the areas of validation of the residue method to support claims for a more sensitive method, cold storage dissipation, and the nature of the residue (bound vs. free residue). EPA has discussed these deficiencies with the petitioners and has asked them to submit additional data. The generation and review of these data will take at least 9 months.

Since the health effect of concern is sulfite sensitivity, no additional animal toxicity data are required under 40 CFR 158.135 to support this petition, or the registration of sulfur dioxide pesticide products, including gas and sulfite-containing pads. If EPA receives information indicating health concerns other than sulfite sensitivity, a reevaluation of the toxicological data base for sulfites will be undertaken.

The absence of a tolerance for residues of sulfur dioxide on grapes poses an immediate problem for the Chilean table grape importers who have been treating grapes with sulfiting agents for over a decade. Without treatment with sulfiting agents, it may be difficult for most grape shipments from Chile to arrive at United States ports in acceptable condition. Chilean grapes represent 20 to 30 percent of the fresh table grapes consumed in the United States and supplement the California grape supply, providing a year-round supply of this commodity to the American consumer.

The Chilean exporters and the producers of sulfite-containing pads have submitted information to EPA since they filed their tolerance petition that they believe demonstrates that, at time of entry into the United States, sulfite-treated grapes will have residues of less than 10 ppm sulfur dioxide as determined by the modified Monier-Williams method. This is the official method of the Association of Official Analytical Chemists and is used by FDA for its enforcement procedures as set forth in 21 CFR 101.100(a)(4).

In order to alleviate risk concern about sulfite sensitive reactions, while permitting the shipment of sulfite-treated grapes into and within the United States, EPA in consultation with FDA has developed an approach incorporating the following measures:

1. Residues of sulfites (determined as sulfur dioxide) on grapes must be below the current level of detection, i.e., less than 10 ppm when the grapes are offered for entry into the United States or are otherwise introduced into interstate commerce.

2. The shipping containers of both foreign and domestic grapes must be provisions of the Federal Food, Drug, and Cosmetic Act section 403(l) which requires shipping containers to be labeled when a raw agricultural commodity has received post-harvest pesticide treatment.

3. EPA requires domestic and foreign shippers to have a certification program acceptable to FDA to assure that residue levels will be less than 10 ppm. In most circumstances, shipments must be accompanied by a valid certificate of analysis documenting that the grapes do not contain detectable levels of sulfur dioxide. FDA will monitor this program to assure compliance.

4. Any shipment found to have detectable levels of sulfur dioxide residues (10 ppm or higher) will be deemed to be adulterated and subject to seizure or detention by FDA.

5. Any shipment of sulfite-treated grapes not covered by a certification program will be deemed to be adulterated and subject to seizure or detention by FDA.

EPA is aware that there may be some risks to sulfite sensitive individuals from the presence of low levels of sulfites in grapes; however, EPA believes that the measures announced in this notice will minimize this risk. In establishing this policy, EPA has given consideration to the importance of a year-round supply of grapes, the economic impact which would result from a curtailment of grape shipments, the many years that sulfites have been used to treat grapes without evidence of adverse effects, and the fact that only a discrete segment of the population is sulfite sensitive. Therefore, EPA has concluded based on current information the benefits from the use of sulfiting agents on grapes outweigh any risk associated with their use.

This policy is an interim measure to permit shipment of sulfite-treated grapes for one year, and takes effect immediately. During this period EPA and FDA will work jointly to assure that the foreign and domestic grape shippers adhere to this policy. In addition, EPA will move quickly to consider the establishment of a permanent tolerance for sulfur dioxide in or on grapes and registration under section 3 of FIFRA of sulfite pesticide products for the 1988 season.

Dated: December 24, 1986.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 86–29489 Filed 12–30–86; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 761

[OPTS–62035E; FRL–3136–4]

Polychlorinated Biphenyls; Clarification of Use of Electrical Transformers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Interpretation of Tranformer Fire Regulations.

SUMMARY: This notice clarifies several provisions of the EPA's regulations governing the use of electrical transformers containing polychlorinated biphenyls (PCBs). These clarifications/interpretations were requested by Mississippi Power Company (hereafter, Mississippi Power) in the context of settlement negotiations with EPA following the filing of a petition for review of the PCB Transformer Fires regulations published in the Federal Register of July 17, 1985 (50 FR 29170).

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, DC 20460, (202–554–1404).

SUPPLEMENTARY INFORMATION:

I. Background

The Environmental Protection Agency issued a final rule, published in the Federal Register of July 17, 1985 (50 FR 29170), amending the PCB Electrical Use Rule, published in the Federal Register of August 25, 1982 (47 FR 37342). The July 17, 1985 rule (hereafter, the PCB Transformer Fires Rule) placed additional restrictions and conditions on the use of PCB Transformers, particularly PCB Transformers located in or near commercial buildings. After the promulgation of the PCB Transformer Fires Rule, Mississippi Power filed a petition for review of the rule. During settlement negotiations with EPA, Mississippi Power raised 10 questions seeking clarification of various provisions of the PCB Transformer Fires Rule. EPA agreed to provide answers to these 10 questions and to issue the 10 questions and the answers to these questions for publication in the Federal Register.

The 10 questions concern: (1) The PCB Transformer registration requirements; (2) the requirement for the removal of stored combustibles; (3) the requirement for the reporting of fire-related incidents to the National Response Center; (4) the definition of commercial building; (5) the status of mineral oil transformers which

are found to contain over 500 parts per million (ppm) PCBs; (6) the ban on the installation of PCB Transformers in or near commercial buildings; and (7) the requirement for the labeling of the exterior of PCB Tranformer locations.

II. Questions and EPA Responses

A. PCB Transformer Registration Requirements

1. *Statement of requirement.* 40 CFR 761.30(a)(1)(vii) requires that:

> As of December 1, 1985, PCB Transformers in use in or near commercial buildings must be registered with building owners. For PCB Transformers located in commercial buildings, PCB Transformer owners must register the transformers with the building owner of record. For PCB Transformers located near commercial buildings, PCB Transformer owners must register the transformers with all owners of buildings located within 30 meters of the PCB Transformer(s). Information required to be provided to building owners by PCB Transformer owners includes, but is not limited to:
>
> (A) The specific location of the PCB Transformer(s).
>
> (B) The principal constituent of the dielectric fluid in the transformer(s) (e.g., PCBs, mineral oil, silicone oil).
>
> (C) The type of transformer installaton (e.g., 208/120 volt network, 208/120 volt radial, 208 volt radial, 480 volt network, 480/277 volt network, 480 volt radial, 480/277 volt radial).

2. *Questions and answers regarding the registration requirement—Question 1.* Does the owner of a PCB Transformer have to register a PCB Transformer located within the interior of, on the roof of, or attached to the exterior wall of a building with all building owners within 30 meters of the transformer?

Answer. Transformers located within the interior of buildings are only required to be registered with the building owner where the transformer is located. PCB Transformers attached to buildings, including those on roof tops, must be registered with all building owners of buildings within 30 meters of the PCB Transformer.

Question 2. For purposes of compliance with 40 CFR 761.30 (a)(1)(vii), is it sufficient to register a PCB Transformer with a building's property manager or managing agent in cases where determining the building owner of record would involve title searches, and with the building owner's association or managing agent when a condominium is involved?

Answer. Yes, registration of a PCB Transformer with the property manager, managing agent, or building owner's association under the circumstances described would be acceptable for compliance monitoring purposes. The principle objective of requiring building owner registration is to educate persons responsible for the operation of buildings. EPA did not assume that the costs involved in completing this registration would include conducting a title search. EPA believes that if persons responsible for operating buildings are aware that a fire in their building involves a PCB Transformer that it will be less likely for the building to be prematurely reopened for occupancy. Registration of PCB Transformers with a building's property manager or managing agent (in situations where the building owner is not readily identifiable) is acceptable and accomplishes the objective of the registration requirement.

Similarly, in the case of condominiums, EPA did not assume that a utility would be required to register a single transformer with hundreds of owners. Registration of PCB Transformers with the condominium owners association or managing agent is acceptable and accomplishes the objective of the registration requirement.

B. Removal of Stored Combustibles Requirement

1. *Statement of requirement.* 40 CFR 761.30(a)(1)(viii) requires that:

> As of December 1, 1985, combustible materials, including, but not limited to paints, solvents, plastics, paper, and sawn wood must not be stored within a PCB Transformer enclosure (i.e., in a transformer vault or in a partitioned area housing a transformer); within 5 meters of a transformer enclosure, or, if unenclosed (unpartitioned), within 5 meters of a PCB Transformer.

2. *Questions and answers regarding the removal of stored combustibles requirement—Question 3.* Does the provision restricting the storage of combustibles within 5 meters of a PCB Transformer or an enclosure containing such a transformer (40 CFR 761.30(a)(1)(viii)) apply when the combustible materials are within 5 meters of the PCB Transformer or its enclosure but are separated from the PCB Transformer or its enclosure by a wall?

Answer. EPA has required that combustibles not be stored within 5 meters of an enclosure containing a PCB Transformer to prevent persons from simply moving stored combustible from inside an enclosure to the other side of the enclosure. EPA believed that the moving of stored combustibles in this manner would do little to reduce the risk of the stored combustible starting a fire or feeding a fire involving a PCB Transformer. However, implicit in this was an assumption that the enclosure itself would not prevent a barrier to fire. For PCB Transformer fires, EPA believes that under certain circumstances a wall could present an adequate barrier to fire. However, the wall must be constructed in a manner which would reduce the risk of stored combustibles starting a fire or feeding a fire involving a PCB Transformer. For example, a 2 to 3 hour fire-rated enclosure could reduce such a risk. If a wall presents a similar barrier to fire, the 5 meter rule would not apply.

Question 4. Does the removal of stored combustibles requirement apply to bulk storage of fuel, such as gasoline, heating oil, and natural gas?

Answer. No. The Agency did not intend that the removal of stored combustibles requirement apply to bulk fuel storage. In some regions, local fire codes dictate that PCB equipment be used in such areas because of the risks of catastrophic explosions and fires in the event of a fire in the electrical equipment.

C. Requirement for the Reporting of Fire-Related Incidents

1. *Statement of requirement.* 40 CFR 761.30(a)(1)(xi) requires, among other things, that:

> If a PCB Transformer is involved in a fire-related incident, the owner of the transformer must immediately report the incident to the National Response Center (toll-free 1-800-424-8802; in Washington, DC 202-426-2675). A fire-related incident is defined as any incident involving a PCB Transformer which involves the generation of sufficient heat and/or pressure (by any source) to result in the violent or non-violent rupture of a PCB Transformer and the release of PCBs. . . .

2. *Question and answer regarding the reporting requirement—Question 5.* Does the requirement for the reporting of fire-related incidents apply to situations where PCBs have been spilled but no fire is present?

Answer. No. EPA recognizes that the term fire-related incident covers a broad spectrum of incident types. In defining "fire-related incident" broadly. EPA intended to have been seemingly minor "fires" reported. This is because even following "minor" incidents, polychlorinated dibenzofurans (PCDFs) have been found, sometimes in areas remote from the transformer location. EPA does recognize, however, that small leaks and spills do occur and that these leaks and spills are not associated with electrical faults or transformer rupture. These are not fire-related incidents and are not required to be reported as such. Small releases (less than 1 gallon of PCBs) from pressure relief devices are also not considered to be fire-related incidents.

D. The Definition of Commercial Building

1. *Statement of the definition.* In 40 CFR 761.3, "In or Near Commercial Buildings" is defined as:

> . . . within the interior of, on the roof of, attached to the exterior wall of, in the parking area serving, or within 30 meters of a non-industrial, non-substation building. Commercial buildings are typically accessible to both members of the general public and employees, and include: (1) Public assembly properties, (2) educational properties, (3) institutional properties, (4) residential properties, (5) stores, (6) office buildings, and (7) transportation centers (e.g., airport terminal buildings, subway stations, bus stations, or train stations).

2. *Question and answer regarding the definition of commercial building—Question 6.* How many units must there be in a residence for it to be considered a "commercial" building?

Answer. The definition of "commercial" building includes residential properties (e.g., apartments, hotels, dormitories, condominiums). In promulgating the rule, EPA was concerned with residential properties where groups of people live and not really single family homes and the like. Thus, all residential properties (notwithstanding the number of units involved) are covered by the rule, except single family homes.

Question 7. If a generating station or electrical substation has a few offices within the station, does this mean that the station is considered a "commercial" building?

Answer. No. PCB Transformers used in or near office buildings are operated in a fundamentally different manner from transformers used in or near industrial facilities and electrical substations. PCB Transformers used in or near commercial buildings are typically configured in a network fashion and are (currently) not typically equipped with special protective equipment such as current-limiting fuses or temperature/pressure sensors and disconnect equipment. The number of people potentially at risk of exposure is much higher in commercial buildings than in industrial facilities and electrical substations. EPA recognizes that industrial facilities and electrical substations may have a few offices on site used by workers responsible for monitoring plant/substation operations. The fact that an industrial facility or electrical substation may have a few such offices does not mean that the facility is considered a commercial building. However, if there is a building, such as an office building, on the site which is dedicated to uses other than the direct monitoring of plant/substation operations, these office buildings are considered to be commercial buildings. In situations where a building is clearly used for dual purposes, i.e., a substantial number of floors or amount of square footage is dedicated to other than the manufacture or storage of products, then the location must be carefully evaluated relative to the following:

a. Is the PCB Transformer in or near the building located in an area where it is clearly visible to workers during the routine conduct of their work? Commercial transformers are more likely to be in areas such as basements and sidewalk/underground vaults rather than in easily visible locations.

b. Is there disconnect equipment on site which provides the capability to de-energize the transformers from the location and are there people present who have been trained in the procedures for deenergizing the transformer? Commercial transformers are less likely to be able to be de-energized from an on-site location, and it is less likely that trained personnel are around to provide for the de-energization.

c. Is access to the building restricted? Commercial buildings are typically readily accessible to both members of the general public and workers.

E. The Status of Mineral Oil Transformers

1. *Statement of the requirement.* Under "PCB-Contaminated Electrical Equipment" in 40 CFR 761.3, "Oil-filled electrical equipment other than circuit breakers, reclosers, and cable whose PCB concentration is unknown must be assumed to be PCB-Contaminated Electrical Equipment. . ." (PCB-Contaminated Electrical Equipment means equipment containing 50–500 parts per million (ppm) PCBs).

2. *Question and answer regarding the status of mineral oil transformers—Question 8.* What is the regulatory status of a mineral oil transformer which is tested after the effective date of a phaseout requirement (or electrical protection requirement) and is found to contain over 500 ppm PCBs?

Answer. This issue is not unique to the PCB Transformer Fires Rule. For example, there is a PCB Transformer phaseout requirement in the August 25, 1982 PCB Electrical Equipment Rule for PCB Transformers (defined as transformers containing over 500 ppm PCBs) which pose an exposure risk to human food or animal feed. Since the regulations "allow" owners of mineral oil transformers which in reality may contain over 500 ppm PCBs to assume that these transformers are PCB contaminated, the discovery (after the effective date for phaseout or electrical protection) that a mineral oil transformer is a PCB Transformer does not (alone) mean that the transformer has been used in violation of the PCB regulations. But, once such a determination is made, efforts must be initiated immediately to bring the transformer into compliance in accordance with the following schedule:

a. Reporting of fire-related incidents: effective immediately after discovery.

b. Marking of the transformer: effective immediately after discovery.

c. Marking the vault door, machinery room door, fence, hallway or other means of access to the PCB Transformer: effective immediately after discovery.

d. Registering the PCB Transformer with fire response personnel with primary jurisdiction and with the building owner: Within 30 days of discovery.

e. Installation of electrical protective equipment on radial PCB Transformers and non-sidewalk vault, lower secondary voltage network transformers in or near commercial buildings: within 18 months of discovery or by October 1, 1990, whichever is later.

f. Removal of non-sidewalk vault, lower secondary voltage network transformers in or near commercial buildings if electrical protective equipment is not installed: within 18 months of discovery or by October 1, 1993, whichever is later.[1]

g. Removal of lower secondary voltage network PCB Transformers (located in sidewalk vaults) in or near commercial buildings: within 18 months of discovery or by October 1, 1993, whichever is later; [1]

h. Retrofill and reclassification of a radial PCB Transformer or a lower or higher secondary voltage network PCB Transformer (located in other than sidewalk vaults) in or near a commercial building: within 18 months or by October 1, 1990, whichever is later (this is an option in lieu of other requirements).

i. Retrofill and reclassification of a lower secondary voltage network PCB

[1] EPA is in the process of proposing an amendment to the PCB Transformer Fires Rule which would allow owners of lower secondary voltage network PCB Transformers (located in or near commercial buildings) an alternative to electrical protection by 1990. The alternative that EPA is considering proposing is removal of these transformers by October 1, 1993. Should EPA fail to promulgate this amendment, the operative date will be October 1, 1990.

Transformer (located in sidewalk vaults) in or near a commercial building: within 18 months or by October 1, 1993, whichever is later.[1]

F. The Ban on the Installation of PCB Transformers

1. *Statement of the requirement.* 40 CFR 761.30(a)(1)(iii) provides that: "As of October 1, 1985, the installation of PCB Transformers (which have been placed into storage for reuse or which have been removed from another location) in or near commercial buildings is prohibited."

2. *Question and answer regarding the ban on installation of PCB Transformers—Question 9.* Does the prohibition on installation of PCB Transformers after October 1, 1985 apply to installation in emergency situations when an alternative transformer is unavailable or where reclassification after retrofilling is involved?

Answer. The objective of the prohibition on the installation of PCB Transformers after October 1, 1985, is to: (1) Stop the installation of PCB Transformers in newly constructed buildings, (2) stop the installation of PCB Transformers in locations where they are presently not being used, and (3) stop the installation of PCB Transformers to replace PCB Transformers which have failed. However, in its assessment of the impact of item (3) above, EPA assumed that transformers other than PCB Transformers would be available for installation. EPA did not assume that one potential impact of the prohibition could be the denial of electrical service to utility customers following the failure of a transformer in the system. EPA perceives the problem of having only PCB Transformers available for installation to be a short-term problem. As soon as replacement transformers are available or retrofill and reclassification occurs, there will be no real possibility that compliance with this prohibition would result in denial of electric service to utility customers. EPA is in the process of issuing a proposed amendment to the October 1, 1985, prohibition to allow installation on an emergency basis until October 1, 1990, and the use of emergency installed PCB Transformers for one year from the date of installation or until October 1, 1990, whichever is earlier. An "emergency" would exist for purposes of this rule when no appropriate non-PCB or PCB contaminated transformer is available and there is not enough time to order new transformers or to retrofill the existing equipment and have it available for emergency use.

In addition, EPA recognizes the prohibition against installation of PCB Transformers may seriously impede the reclassification of many PCB Transformers. Therefore, EPA is in the process of issuing a proposed amendment to the October 1, 1985, prohibition to allow installation of retrofilled PCB Transformers after 1985 only for purposes of reclassification, as specified in 40 CFR 761.30(a)(2)(v).

G. The Labeling of PCB Transformer Locations

1. *Statement of the requirement for the labeling of the exterior of PCB Transformer locations.*

40 CFR 761.40(j) requires that: "As of December 1, 1985, the vault door, machinery room door, fence, hallway, or means of access (other than grates and manhole covers) to a PCB Transformer must be marked with the mark M_L. The mark must be placed so that it can be easily read by firemen fighting a fire involving this equipment."

2. *Question and answer regarding the requirement for the labeling of PCB Transformer locations—Question 10.* Are labeling systems devised prior to the rule adequate for compliance purposes?

Answer. The purpose of labeling the exterior of PCB Transformer locations is to provide emergency response personnel with warning that a PCB Transformer may be involved in a fire that they have been asked to extinguish. EPA required the use of one type of label to provide consistency and to facilitate compliance monitoring efforts. EPA required the use of the PCB identification label because EPA assumed that most PCB Transformer owners had these labels already and would not have to make special purchases.

EPA does not want to unfairly penalize owners who have taken the initiative and have already labeled exterior locations. EPA, therefore, is in the process of issuing a proposed amendment to permit the continued use of an alternative label if several conditions have been met. These include initiation of the program before August 15, 1985; coordination prior to that time between the owner and the emergency response personnel affected; the appropriate emergency response personnel's recognition of what the alternative mark means; and the Regional Administrator has been provided with information that these conditions have been met.

III. Record to Support Clarifications/Interpretations

1. Official rulemaking record from "Polychlorinated Biphenyls in Electrical Transformers, Final Rule, published in the **Federal Register** of July 17, 1985 (50 FR 29170).

2. USEPA, OPTS, EED, Evaluation of the Suffiency of Current and Projected PCB Disposal Capacity To Meet Demand Requirements. July 10, 1986. Prepared under Contract #68–02–4235 by Putnam, Hayes & Bartlett, Inc.

3. Correspondence.

The record is available for review and copying in Room NEG009 of the EPA Headquarters at the address given above.

List of Subjects in 40 CFR Part 761

Hazardous substances, Labeling, Polychlorinated biphenyls, Recordkeeping and reporting requirements, Environmental protection.

Dated: December 23, 1986.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 86–29355 Filed 12–30–86; 8:45 am]

BILLING CODE 6560–50–M

Proposed Rules

Federal Register
Vol. 51, No. 250
Wednesday, December 31, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 220 and 226

Revision of Infant Meal Pattern for Child Nutrition Programs

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food and Nutrition Service of the U.S. Department of Agriculture proposes to amend regulations governing the infant meal pattern requirements for the National School Lunch Program, the School Breakfast Program, and the Child Care Food Program. The infant meal pattern requirements currently differ among these meal service Child Nutrition Programs and do not reflect the most recent pediatric nutrition recommendations. The Department is proposing revisions that will establish consistency in the infant meal pattern requirements among these meal service Child Nutrition Programs and will reflect more recent information regarding infant feeding practices.

DATE: Comments must be postmarked on or before March 2, 1987.

ADDRESS: Comments may be mailed to Patricia N. Daniels, Branch Chief, Nutrition Science and Education Branch, Nutrition and Technical Services Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302. All written comments will be available for inspection in Room 602, Nutrition and Technical Services Division, 3101 Park Center Drive, Alexandria, Virginia, during regular business hours (8:30 a.m. to 5:00 p.m. Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Daniels at the address listed above or call (703) 756–3554.

SUPPLEMENTARY INFORMATION:

Classification

This proposed rule has been reviewed under Executive Order 12291 and has been classified nonmajor because it does not meet any of the three criteria of the Executive Order. It will not have an annual effect on the economy of $100 million, will not cause a major increase in costs or prices, and will not have a significant impact on competition, employment, investment, productivity, innovation or on the ability of U.S. enterprises to compete with foreign based enterprises in domestic or export markets. Thjis proposal provides greater flexibility to schools and institutions participating in the Child Nutrition Programs, rather than imposing more restrictive requirements upon them.

These programs are listed in the Catalog of Federal Domestic Assistance under Numbers 10.553, 10.555, and 10.558 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (Cite 7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985)

The proposal has also been reviewed with regard to the provisions of Pub. L. 96–354. Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that the proposal does not have a significant economic impact on a substantial number of small entities.

This proposed rule does not contain reporting and record keeping requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act.

Background

The requirements for the infant meal pattern differ among the meal service Child Nutrition Programs administered by the Food and Nutrition Service. These differences can be attributed to the fact that the meal patterns were developed and issued at different times. The agency has received requests to establish consistency in the infant meal pattern due to the potential for confusion in agencies which administer more than one meal service Child Nutrition Program. Also, same-aged infants in the National School Lunch Program, School Breakfast Program, and Child Care Food Program are now being offered different meal patterns. In addition, there have been requests from child care providers, parents, and health care providers to update the infant meal pattern requirements to reflect current recommended infant feeding practices. Recently comments were submitted during the 7 CFR Part 210 rewrite of the National School Lunch Program regulations. Commenters were concerned that the current infant meal pattern requirements are not consistent with current pediatric nutrition recommendations. New information on infant nutrition is available which should be incorporated into the infant meal pattern requirements. The proposed rule will serve the dual purpose of: (1) Providing a standard infant meal pattern that will be uniformly applicable to all meal service Child Nutrition Programs, and (2) incorporating the advice of leading authorities on infant nutrition into the infant meal pattern requirements.

The Summer Food Service Program regulations require that the infant meal pattern for that program be the same as the Child Care Food Program infant meal pattern. Therefore, the proposed rule is applicable to the Summer Food Service Program.

The proposed rule addresses changes in the infant meal pattern requirements under the five categories discussed below: (1) Age groupings, (2) type of milk, (3) introduction of solid foods, (4) use of juice, and (5) type of meat alternates. Unless otherwise noted, comments refer to infant meal patterns in all meal service Child Nutrition Programs.

1. Age Groupings

The Department is proposing two modifications in the infant meal pattern age groupings. The first is to reword the interval "month *up to* month" to read "month *through* month." Although this is a minor modification it will help avoid confusion and provide for a clearer delineation of age groups by month.

The second modification involves a change in the breakdown of age groupings by month. The current regulations specify three age groups to allow for both the changing nutritional needs of infants during the first year of life as well as the variation in infants' growth rates. The proposed rule maintains three age groups but modifies the breakdown by month to better facilitate the introduction of solid foods into the diets of infants.

During the period between 4 and 6 months of age, infants experience considerable physiological growth and changing nutritional needs as they develop the ability to swallow nonliquid foods. The proposed rule addresses the infant's needs during this period by providing for a shorter interval in the middle age grouping (4 through 5 months instead of 4 up to 8 months). This modification allows solid foods to be introduced to the infant at either 4, 5, or 6 months of age to coincide with the infant's developmental growth. The current age groupings do not provide such flexibility for introducing foods. The rationale for this proposed change in age groupings is further described below under "Introduction of Solid Foods."

In decreasing the length of the middle age group interval, the proposed rule increases the length of the third interval from "6 months up to 1 year" to "6 months through 11 months." The proposed meal pattern requirements for this age group are flexible enough to permit the proper sequence of introducing solid foods, the proper quantity of foods, and the proper consistency of foods to meet the needs of the growing infant. Guidance materials will be developed to help the provider interpret the regulations concerning the proper feeding of solid foods.

2. Type of Milk

Breast milk or iron-fortified infant formula meet all the known nutritional needs of the infant for the first 4 to 6 months of life (with the exception of vitamin D and fluoride in breast-fed infants) and continue to be an important source of nutrients as solid foods are added to the diet. The Department recommends that breast milk or iron-fortified formula be fed to the infant for the entire first year of life. Although breast milk may be served from birth until 1 year of age, a meal containing breast milk may only be claimed for reimbursement after 4 months of age when at least one other required meal component is supplied by the school or child care facility.

The current meal pattern allows whole milk from 8 months to 1 year of age. Due to the change in age groupings in the proposed rule, whole milk may be served from 6 months of age on, as long as the infants are consuming one-third of their calories as a balanced mixture of cereal, vegetables, fruits, and other foods, and do not have medical conditions such as anemia, gastrointestinal malfunction, or allergies. This requirement is intended to prevent iron-deficiency anemia and is consistent with the American Academy of Pediatrics recommendations. Although the proposed requirements allow infants to receive one-third of their calories from such a balanced mixture of foods from 6 months of age on, as stated above, it is recommended that the introduction of whole milk be delayed until 1 year of age.

To assist the provider, guidance will be developed to help identify when infants are consuming one-third of their calories from the prescribed mixture of solid foods. The guidance will also give instructions on how to gradually change from breast milk or formula to whole milk as the consumption of solid food increases.

Reduced-fat milk, either skim or 2 percent, may not be substituted for whole milk in the infant meal pattern. Reduced-fat milk is not recommended due to the low fat content, which could result in a low level of dietary essential fatty acids.

3. Introduction of Solid Foods

The most recent information on infant feeding shows that there are no nutritional advantages to introducing solid foods to infants before 4 months of age. Between 4 and 6 months of age, an infant's nervous system, intestinal tract and kidneys have developed enough to allow the introduction of solid foods. However, because each infant develops at a different rate, it is important to provide some flexibility in the infant meal pattern concerning the appropriate time for introducing solid foods.

The current infant meal pattern requirements do not provide flexibility in introducing solid foods. They require that solid foods be introduced to all infants at 4 months of age, regardless of their developmental readiness. The National School Lunch and School Breakfast regulations also have a provision for feeding solid foods in the 0 to 4 month age group. Introducing solid foods too early may have undesirable effects including allergic reactions, overfeeding, and the establishment of poor eating habits. Between 4 and 6 months of age, the infant is first able to sit with support, to have good neuromuscular control of the head and neck, and to convey a desire for food as well as indicate disinterest or satiety.

The proposed infant meal pattern requirements do allow flexibility in introducing solid foods. Solids may be introduced at either 4, 5, or 6 months of age, coinciding with the infant's neuromuscular development. In the proposed rule, solid foods are optional in the 4 through 5 month age group; 0–3 tablespoons of infant cereal are allowed at each meal and 0–3 tablespoons of fruit or vegetable are allowed at lunch and dinner. The proposed rule allows a provider to receive reimbursement during the 4 through 5 month interval, whether or not solid foods are provided, as long as the formula requirement is met. During the 4 through 5 month interval a meal or supplement containing breast milk may only be claimed for reimbursement when at least one other required meal component is provided by the school or child care facility.

The decision to introduce solid foods into an infant's diet may be made by the parent or the infant's physician. However, guidance materials will be developed to help the provider to recognize an infant's abilities and feeding skills development. The guidance will also instruct the provider on the proper sequence and timing of introducing single ingredient foods during the first year of life as well as the proper quantity and consistency of foods.

In the current meal pattern requirements, infant cereal may be substituted for fruit or vegetable in the 8 months to 1 year age group. In the proposed pattern, the fruit and/or vegetable requirement is separate from that for infant cereal in the 6 through 11 month age group. Infant cereal is not nutritionally equivalent to fruits and vegetables, particularly with respect to iron and vitamins A and C. Infant cereal is normally replaced in the older infant's diet by other solid foods, particularly table foods of appropriate consistency, at lunch and supper. With the reduced consumption of infant cereal, meat assumes more importance as a source of dietary iron. In order to facilitate this transition, meat and its alternates are included as a substitute for infant cereal in the 6 through 11 month age group at lunch and supper. Although the protein content of infant cereal and meat is not equivalent, the "and/or" relationship between the infant cereal and meat components will not compromise the infant's nutritional status. During the first year of life, infant formula, whole milk, or breast milk contribute the major portion of protein needed by the infant.

4. Use of Juice

The current infant meal pattern for the Child Care Food Program allows fruit juice as an optional item from 4 months up to 1 year of age. The infant meal pattern for the National School Lunch and School Breakfast Programs allows fruit juice as an optional item from 8 months up to 1 year of age. The proposed infant meal pattern allows fruit juice only after 6 months of age.

The Department recommends that juice be offered from a cup, not a bottle, as soon as the infant can drink in this manner. A joint statement by the American Academy of Pediatrics and the American Academy of Pedodontics discourages the feeding of juice from a bottle. Rather, feeding juice or other liquid from a cup is encouraged to develop behaviors that may prevent "nursing bottle caries."

Developmentally, an infant is usually not ready to drink from a cup before 6 months of age. In addition, the vitamin C requirement of an infant receiving formula is met without the addition of juice in the diet and there is thus no nutritional justification for allowing juice before 6 months of age for the average infant.

Infant formula is a good source of vitamin C but whole milk is not. When whole milk is introduced into the infant's diet, a good source of vitamin C is therefore needed. In order to meet this vitamin C requirement, and aid in the absorption of iron, the proposed rule will require fruit juice at meals from 6 months to 1 year of age when whole milk is provided. The Child Care Food Program infant meal pattern will also allow fruit juice as an optional item at the supplement from 6 months of age on.

5. Type of Meat Alternate

The current Child Nutrition infant meal pattern has an optional requirement for meat or a meat alternate beginning at 4 months of age. The proposed meal pattern allows meat or a meat alternate as an option at 6 months of age or older. Meat or meat alternates include "meat, fish, poultry, egg yolk, cheese, cottage cheese, cheese food, or cheese spread."

At 1 year of age, the current Child Nutrition meal pattern requirements allow cooked dry beans or peas, and peanut butter as a meat alternate. In response to requests, the proposed rule will include cooked dry beans or peas, in the appropriate consistencies, as a meat alternate for infants at 6 months of age or older. Peanut butter will not be allowed due to its association with choking in infants. Guidance will be developed to instruct providers on the procedures for preparing cooked dry beans and peas so that they are the appropriate consistency for infants.

In summary, the Department is proposing: (1) To modify the breakdown of age groups by month and more clearly delineate the age groupings; (2) to allow the substitution of whole milk for infant formula at 6 months of age, instead of at 8 months, as long as the infants are consuming one-third of their calories from a balanced mixture of foods; (3) to provide flexibility in introducing solid foods to infants by making solids optional in the 4 through 5 month age group; (4) to require that fruit juice be provided at meals from 6 months of age on when whole milk is provided, instead of allowing it as an optional item from 4 months of age on; (5) to allow meat or a meat alternate as an option from 6 months of age on, instead of from 4 months of age on; and (6) to allow cooked dry beans and peas in the appropriate consistencies as a meat alternate.

Comments Requested

There have been requests to allow a fruit or vegetable in the Child Care Food Program's supplemental meal pattern, for infants 6 through 11 months of age, to provide an additional type of finger food for this age group. Currently, the supplemental meal pattern includes infant formula or whole milk or fruit juice, and bread or a cracker product as optional items.

The Department solicits your comments regarding amendment of the regulations to include a serving of a fruit or vegetable of the appropriate consistency as an optional second component of the supplemental meal pattern for infants 6 through 11 months of age.

The Department recognizes that there is no nutritional rationale for including a fruit or vegetable in the supplemental meal pattern at this time since the proposed rule requires a fruit or vegetable at each meal for infants 6 months of age and older. Also, the rule does not prohibit the serving of optional foods, such as a fruit or vegetable at the supplement.

List of Subjects

7 CFR Part 210

Food assistance programs, National School Lunch Program, Grant programs—Social programs, Nutrition, Children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 220

Food assistance programs, School Breakfast Program, Grant programs—Social programs, Nutrition, Children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 226

Daycare, Food assistance programs, Grant programs—Health, Infants and Children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, Parts 210, 220, and 226 are proposed to be amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for Part 210 continues to read as follows:

Authority: Secs. 2–12, 60 Stat. 230, as amended; sec. 10, 80 Stat. 889, as amended; 84 Stat. 270, 42 U.S.C. 1751–1760, 1779, unless otherwise noted.

2. In Section 210.10 paragraph (h) is revised as follows:

§ 210.10 Requirements for lunches.

* * * * *

(h) *Infont lunch pattern.* When infants 0–1 year of age participate in the Program, an infant lunch pattern shall be served. Foods within the infant lunch pattern shall be of texture and consistency appropriate for the particular age group being served. For infants age 4 through 5 months, solid foods are optional and should be introduced only if the infant is developmentally ready. For infants 6 months to 1 year, the total amount of food authorized in the meal patterns set forth below must be served in order to qualify for reimbursement but may be offered to the infant during a span of time consistent with the infant's eating habits. Breast milk may be served in place of infant formula or whole milk from birth until 1 year of age. However, meals containing only breast milk do not quality for reimbursement. Meals containing breast milk served to infants 4 months or older may be claimed for reimbursement when at least one other required meal component is supplied by the school. Solid foods should be introduced one at a time on a gradual basis with the intent of ensuring health and nutritional well-being. Juice and other liquids should be offered to infants when they are ready to drink from a cup, in order to develop behaviors that may prevent "nursing bottle caries." The infant lunch pattern shall contain, as a minimum, each of the following components in the amounts indicated for the appropriate age group:

(1) 0 through 3 months—4 to 6 fluid ounces of iron-fortified infant formula.

(2) 4 through 5 months—4 to 8 fluid ounces of iron-fortified infant formula; 0 to 3 tablespoons of iron-fortified infant cereal; and 0 to 3 tablespoons of fruit or vegetable of appropriate consistency or a combination of both.

(3) 6 through 11 months—(i) 6 to 8 fluid ounces of iron-fortified infant formula, or 6 to 8 fluid ounces of whole milk and 1 to 3 fluid ounces of full strength fruit juice; (ii) 2 to 4

tablespoons of infant cereal; and/or 1 to 4 tablespoons meat, fish, poultry, egg yolk, or cooked dry beans or peas, or ½ to 2 ounces (weight) of cheese or 1 to 4 ounces (weight or volume) of cottage cheese, cheese food or cheese spread of appropriate consistency; and (iii) 1 to 4 tablespoons of fruit or vegetable of appropriate consistency or a combination of both.

* * * * *

PART 220—SCHOOL BREAKFAST PROGRAM

1. The authority citation for Part 220 continues to read as follows:

Authority: Secs. 4 and 10, 80 Stat. 886, 889 (42 U.S.C. 1773, 1779), unless otherwise noted.

2. In § 220.8 paragraph (b)(2) is revised as follows:

§ 220.8 Requirements for breakfast.

* * * * *

(b) * * *

(2) When infants up to 1 year of age participate in the Program, an infant breakfast shall be offered. Foods within the infant breakfast pattern shall be of texture and consistency appropriate for the particular age group being served. For infants age 4 through 5 months, solid foods are optional and should be introduced only if the infant is developmentally ready. For infants 6 months to 1 year, the total amount of food authorized in the meal patterns set forth below must be served in order to qualify for reimbursement but may be offered to the infant during a span of time consistent with the infant's eating habits. Breast milk may be served in place of infant formula or whole milk from birth until 1 year of age. However, meals containing only breast milk do not qualify for reimbursement. Meals containing breast milk served to infants 4 months or older may be claimed for reimbursement when at least one other required meal component is supplied by the school. Solid foods should be introduced one at a time on a gradual basis with the intent of ensuring health and nutritional well-being. Juice and other liquids should be offered to infants when they are ready to drink from a cup, in order to develop behaviors that may prevent "nursing bottle caries." The infant breakfast pattern shall contain, as a minimum, each of the following components in the amounts indicated for the appropriate age groups:

(i) 0 through 3 months—4 to 6 fluid ounces of iron-fortified infant formula.

(ii) 4 through 5 months—4 to 8 fluid ounces of iron-fortified infant formula; and 0 to 3 tablespoons of iron-fortified infant cereal.

(iii) 6 through 11 months—6 to 8 fluid ounces of iron-fortified infant formula, or 6 to 8 fluid ounces of whole milk and 1 to 3 fluid ounces of full strength fruit juice; 2 to 4 tablespoons of iron-fortified infant cereal; and 1 to 4 tablespoons of fruit or vegetable of appropriate consistency or a combination of both.

* * * * *

PART 226—CHILD CARE FOOD PROGRAM

1. The authority citation for Part 226 continues to read as follows:

Authority: Secs. 803, 810 and 820, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1758, 1766); sec. 2, Pub. L. 95-627, 92 Stat. 3603 (42 U.S.C. 1766); sec. 10, Pub. L. 89-642, 80 Stat. 889 (42 U.S.C. 1779), unless otherwise noted.

2. In § 226.20, paragraph (b) is revised as follows:

§ 226.20 Requirements for meals.

* * * * *

(b) *Infant meal pattern.* When infants aged up to 1 year participate in the Program, an infant meal shall be offered. Foods within the infant meal pattern shall be of texture and consistency appropriate for the particular age group being served. For infants age 4 through 5 months, solid foods are optional and should be introduced only if the infant is developmentally ready. For infants 6 months to 1 year, the total amount of food authorized in the meal patterns set forth below must be served in order to qualify for reimbursement but may be offered during a span of time consistent with the infant's eating habits. Breast milk may be served in place of infant formula or whole milk from birth until 1 year of age. However, meals containing only breast milk do not qualify for reimbursement. Meals containing breast milk served to infants 4 months or older may be claimed for reimbursement when at least one other required meal component is supplied by the child care facility. Solid foods should be introduced one at a time on a gradual basis with the intent of ensuring health and nutritional well-being. Juice and other liquids should be offered to infants when they are ready to drink from a cup, in order to develop behaviors that may prevent "nursing bottle caries." The infant meal shall contain, as a minimum, each of the following components in the amounts indicated for the appropriate age group:

(1) Age 0 through 3 months:

(i) Breakfast—4 to 6 fluid ounces of iron-fortified infant formula;

(ii) Lunch or supper—4 to 6 fluid ounces of iron-fortified infant formula;

(iii) Supplemental food—4 to 6 fluid ounces of iron-fortified infant formula;

(2) 4 through 5 months:

(i) Breakfast—4 to 6 fluid ounces of iron-fortified infant formula; and 0 to 3 tablespoons of iron-fortified infant cereal;

(ii) Lunch or supper—4 to 8 fluid ounces of iron-fortified infant formula; 0 to 3 tablespoons of iron-fortified infant cereal; and 0 to 3 tablespoons of fruit or vegetable of appropriate consistency or a combination of both.

(iii) Supplemental food—4 to 6 fluid ounces of iron-fortified infant formula.

(3) 6 through 11 months:

(i) Breakfast—6 to 8 fluid ounces of iron-fortified infant formula, or 6 to 8 fluid ounces of whole milk and 1 to 3 fluid ounces of full strength fruit juice; 2 to 4 tablespoons of iron-fortified infant cereal; and 1 to 4 tablespoons of fruit or vegetable of appropriate consistency or a combination of both.

(ii) Lunch or supper—6 to 8 fluid ounces of iron-fortifed infant formula, or 6 to 8 fluid ounces of whole milk and 1 to 3 fluid ounces of full strength fruit juice; 2 to 4 tablespoons of iron-fortified infant cereal and/or 1 to 4 tablespoons of meat, fish, poultry, egg yolk, or cooked dry beans or peas, or ½ to 2 ounces (weight) of cheese or 1 to 4 ounces (weight or volume) of cottage cheese or cheese food or cheese spread of appropriate consistency; and 1 to 4 tablespoons of fruit or vegetable of appropriate consistency or a combination of both.

(iii) Supplemental food—2 to 4 fluid ounces of iron-fortified infant formula or whole milk or full strength fruit juice and 0 to ½ slice of crusty bread or 0 to 2 cracker type products made from whole-grain or enriched meal or flour that are suitable for an infant for use as a finger food when appropriate.

(4) The minimum amount of food components to be served as breakfast, lunch, supper or supplement as set forth in paragraphs (b), (1), (2), and (3) of this section are as follows:

CHILD CARE INFANT MEAL PATTERN

0–3 months	4–5 months	6 months–1 year
Breakfast 4–6 oz. formula [1]	4–8 oz. formula [1]	6–8 oz. formula [1], or 6 to 8 oz. whole milk and 1–3 oz. fruit juice [2].

CHILD CARE INFANT MEAL PATTERN—Continued

0–3 months	4–5 months	6 months–1 year
Lunch or Supper 4–6 oz. formula [1]	0–3 Tbsp. infant cereal [3] 4–8 oz. formula [1] 0–3 oz. Tbsp. infant cereal [3] (Optional). 0–3 Tbsp. fruit and/or vegetable (Optional).	2–4 Tbsp. infant cereal [3]; 1–4 Tbsp. fruit and/or vegetable. 6–8 oz. formula [1], or 6 to 8 oz. whole milk and 1–3 oz. fruit juice [2]. 2–4 Tbsp. infant cereal [3] and/or 1–4 Tbsp. meat, fish, poultry, egg yolk, or cooked dry beans of peas, or ½–2 oz. cheese or 1–4 oz. cottage cheese, cheese food, or cheese spread 1–4 Tbsp. fruit and/or vegetable.
Supplements 4–6 oz. formula [1]	4–6 oz. formula [1]	2–4 oz. formula [1], or whole milk, or fruit juice [2]; 0–½ slice bread or 0–2 crackers [4].

[1] Shall be iron-fortified infant formula.
[2] Shall be full strength fruit juice.
[3] Shall be iron-fortified infant cereal.
[4] Shall be made from whole-grain or enriched meal or flour.

* * * * *

Dated: December 22, 1987.

Robert E. Leard,

Administrator.

[FR Doc. 86-29284 Filed 12-30-86; 8:45 am]

BILLING CODE 3410-30-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Request for Comments on Development of Policy for Nuclear Power Plant License Renewal

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement: Extension of request for comments period.

SUMMARY: On November 6, 1986 (51 FR 40334), the U.S. Nuclear Regulatory Commission published a notice requesting comments on development of policy for nuclear power plant license renewal. The notice established a comment closing date of January 5, 1987.

In response to numerous requests from the public, the NRC is extending the comment period for 30 days from the original comment closing date.

DATES: The comment period has been extended to February 2, 1987.

Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except to comments received on or before this date.

ADDRESSES: Send written comments or suggestions to the Secretary of the Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of comments received by the Commission may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Jerry E. Jackson, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492-8544.

Dated at Washington, DC this 23d day of December 1986.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 86-29379 Filed 12-30-86; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-CE-52-AD]

Airworthiness Directives; Champion Aircraft Company, Inc., Models 7 and 8 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Reopening of NPRM comment period.

SUMMARY: This action reopens the comment period of the subject NPRM which provides for inspection of the front and rear wing spars on Champion Models 7 and 8 airplanes for compression failures to preclude inflight structural failure of the wing.

DATES: Reopen comment period of Docket No. 86-CE-52-AD to April 5, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Efrain Esparza, Aerospace Engineer, Airplane Certification Branch, ASW-150, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101; Telephone (817) 624-5156.

SUPPLEMENTARY INFORMATION: The FAA issued an NPRM on October 24, 1986, applicable to Champion Aircraft Company, Inc., Models 7 and 8 airplanes, which was published in the Federal Register on November 13, 1986 (51 FR 41113). The comment period closed December 10, 1986. This Notice would require inspection of the front and rear wing spars for compression failures to preclude inflight structural failure of the wing.

Subsequent to the closing date for comments on this NPRM, a request was received from the Experimental Aircraft Association to extend the comment period to allow additional time to comment on the proposed rule. The FAA believes it is in the public interest to reopen and extend the comment period in order to allow any comments deemed necessary.

This document involves only reopene a comment period for a proposed regulation. Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A regulatory evaluation has not been prepared for this action as the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR by revising the effective date of the comment period for Docket No. 86-CE-52-AD as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new date for comment:

DATE: Comments must be received on or before April 5, 1987.

Issued in Kansas City, Missouri on December 18, 1986.

Jerold M. Chavkin,

Acting Director, Central Region

[FR Doc. 86-29367 Filed 12-30-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-CE-68-AD]

Airworthiness Directives; Gulfstream Aerospace Models 112, 112B, 112TC, 112TCA, 114, and 114A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new Airworthiness Directive (AD), applicable to the Gulfstream Aerospace Models 112 and 114 series airplanes, which would require inspections and repair as necessary of the forward wing spar. Reports have been received of cracks forming in the forward wing spar in the area of the main landing gear side brace fitting attachment. The proposed action will detect these cracks and provide repair instructions which will preclude failure of the spar and subsequent loss of the airplane.

DATE: Comments must be received on or before March 2, 1987.

ADDRESSES: Gulfstream Aerospace Service Bulletin Nos. SB-112-71B, Revision 1, and SB-114-22B, Revision 1, both dated September 19, 1986, applicable to this AD may be obtained from Gulfstream Aerospace Corporation, Wiley Post Airport, P.O. Box 22500, Oklahoma City, Oklahoma 73123; or the Rules Docket at the address below. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 86-CE-68-AD, Room 1158, 601 East 12th St., Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Tom Dragset, Airplane Certification Branch, ASW-150, FAA, Southwest Region, P.O. Box 1689, Forth Worth, Texas 76101; Telephone (817) 624-5155.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental, energy, and alternate methods of compliance aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of the proposed AD will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 86-CE-68-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

There have been reports of cracks in the forward wing spar in the area of the main landing gear side brace fitting attachment on Gulfstream Aerospace Model 112 and 114 series airplanes. There have been 224 aircraft inspected to date and cracks in the left-hand or right-hand forward wing spar or both have been detected in 110 of these aircraft. Should these cracks go undetected, the forward wing spar may fail and result in the loss of the airplane. Since this condition is likely to exist or develop on other Gulfstream Aerospace Model 112, 112B, 112TC, 112TCA, 114 or 114A airplanes of the same type design, FAA is proposing an AD based upon the information currently available which would require inspections and repair as necessary of the forward wing spar in accordance with Gulfstream Aerospace Service Bulletin Nos. SB-112-71B, Revision 1, or SB-114-22B, Revision 1, as applicable.

Informal communications with some operators have indicated there may be concern that the above Service Bulletins are not a final solution to this service problem. The FAA actively solicits comments and any information regarding alternate methods of complying with the intent of this proposed AD. Comments submitted regarding an alternative method or the adequacy of the proposed corrective action herein should be sufficiently detailed and substantiated to permit a complete and proper evaluation of their merit.

The FAA has determined there are approximately 1,064 airplanes affected by this proposal. The inspection cost imposed by the proposed AD would be $175 per airplane for a total estimated cost of $186,200 to the private sector. If cracks are found in either or both wings, repairs must be made at the owner's expense. This is not considered a regulatory cost to the AD since owners/operators are required by other regulations to maintain their aircraft to specific safety and airworthiness standards. The FAA views the economic impact of this proposed AD to be negligible and concludes that a full regulatory evaluation is not warranted.

Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and (3) if promulgated will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the FAA proposes to amend Section 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

Gulfstream Aerospace (Rockwell): Applies to Model 112 and 112B (S/N's 1 through 544 and 13000); 112TC and 112TCA (S/N's 13001 through 13309); and 114 and 114A (S/N's 14000 through 14540) airplanes certificated in any category.

Compliance: Required as indicated after the effective date of this AD unless already accomplished.

To prevent failure of the forward wing spar in the area of the main landing gear side brace fitting attachment, accomplish the following for both right and left wings:

(a) For all applicable airplane left and right wings that have not been modified or repaired in accordance with any part of Gulfstream Service Bulletins (S/B) SB-112-71 dated November 8, 1985, SB-112-71A dated April 9, 1986, SB-112-71B, Revision 1, dated September 19, 1986, SB-114-22 dated November 8, 1985, SB-114-22A dated April 9, 1986, or SB-114-22B, Revision 1, dated September 19, 1986, accomplish the following:

(1) Within the next 100 hours time-in-service (TIS) or at the next annual inspection, whichever occurs first, and thereafter at intervals not to exceed 100 hours TIS or at each annual inspection as applicable, visually inspect the left and right wing spars in the area of the main landing gear side brace fitting in accordance with Part I of Gulfstream S/B SB-112-71B, Revision 1, or Part I of S/B SB-114-22B, Revision 1, both dated September 19, 1986, as applicable.

(2) If cracks are found as a result of the inspection per paragraph (a)(1) above, and if these cracks do not extend past the cutout dimensions specified in Figure 4 of the referenced S/Bs, prior to further flight, repair the wing spar in accordance with Part II of Gulfstream S/B SB-112-71B, Revision 1, or Part II of S/B SB-114-22B, Revision 1, both dated September 19, 1986, as applicable.

(3) If cracks are found as a result of the inspection per paragraph (a)(1) above, and if these cracks do extend past the cutout dimensions specified in Figure 4 of the referenced S/Bs, prior to further flight, contact Gulfstream Aerospace Corporation, Wiley Post Airport, P.O. Box 22500, Oklahoma City, Oklahoma 73123, for a special FAA-approved repair disposition.

(4) The repetitive inspections specified in paragraph (a)(1) of this AD, for each wing, may be discontinued if the repairs specified in paragraphs (a)(2) or (a)(3) above have been accomplished on that wing spar.

(b) For all applicable airplane left and right wings that have been modified or repaired in accordance with Part IV of Gulfstream S/B SB-112-71B, Revision 1, dated September 19, 1986, or Part IV of SBS-114-22B, Revision 1, dated September 19, 1986, accomplish the following:

(1) Within the next 100 hours time-in-service (TIS) or at the next annual inspection, whichever occurs first, and thereafter at intervals not to exceed 100 hours TIS or at each annual inspection as applicable, visually inspect the left and right wing spars in the area of the main landing gear side brace fitting in accordance with Part I of Gulfstream S/B SB-112-71B, Revision 1, or Part I of S/B SB-114-22B, Revision 1, both dated September 19, 1986, as applicable.

(2) If cracks are found as a result of the inspection per paragraph (b)(1) above, and if these cracks do not extend past the cutout dimensions specified in Figure 4 of the referenced S/Bs, prior to further flight, repair the wing spar in accordance with Part V of Gulfstream S/B SB-112-71B, Revision 1, or Part V of S/B SB-114-22B, Revision 1, both dated September 19, 1986, as applicable.

(3) If cracks are found as a result of the inspection per paragraph (b)(1) above, and if these cracks do extend past the cutout dimensions specified in Figure 4 of the referenced S/Bs, prior to further flight, contact Gulfstream Aerospace Corporation, Wiley Post Airport, P.O. Box 22500, Oklahoma City, Oklahoma 73123, for a special FAA-approved repair disposition.

(4) The repetitive inspections specified in paragraph (b)(1) of this AD, for each wing, may be discontinued if the repairs specified in paragraphs (b)(2) or (b)(3) above have been accomplished on that wing spar.

(c) For all applicable airplane left and right wings that have been modified or repaired in accordance with Part II of Gulfstream S/B SB-112-71 dated November 8, 1985, or Part II of SB-114-22 dated November 8, 1985, within the next 100 hours time-in-service (TIS) or at the next annual inspection, whichever occurs first, modify the applicable wing spar(s) in accordance with Part III of Gulfstream S/B SB-112-71B, Revision 1, or Part III of S/B SB-114-22B, Revision 1, both dated September 19, 1986, as applicable.

(d) The airplane may be flown in accordance with 21.197 to a location where the repair can be performed, provided the following conditions are met:

(1) Existing cracks have not propagated together (in the event there are cracks above each bracket attachment bolts) and the cracks have not propagated beyond the limits of the service bulletin (see Figure 4 of Gulfstream Aerospace S/B Nos. SB-112-71B, Revision 1, or SB-114-22B, Revision 1, both dated September 19, 1986, as applicable).

(2) The landing gear side brace and bracket are firmly attached such that proper extension and retraction of the gear will occur.

(3) Pilot only on board.

(4) Day VFR only, avoiding, all rough weather possible, and with no intentional abrupt maneuvers.

(e) An equivalent method of compliance with this AD may be used if approved by the Manager, Airplane Certification Branch, ASW-150, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106, Telephone (817) 624-5150.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Gulfstream Aerospace Corporation, Wiley Post Airport, P.O. Box 22500, Oklahoma City, Oklahoma 73123; or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on December 15, 1986.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 86-29221 Filed 12-30-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-CE-70-AD]

Airworthiness Directives; Piper Aircraft Corporation (Ted Smith Aerostar) Models PA-60-600, PA-60-601, PA-60-601P, PA-60-602P and PA-60-700P Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to Piper Aircraft Corporation PA-60 Series airplanes which would require a one-time removal and inspection of the exhaust system for each engine, and replacement of failed parts. Reinstallation of the exhaust system requires special attention to the alignment, installation sequences and use of a high temperature lubricant. This action is prompted by occurrences of cracked or failed components which have caused substantial damage and an accident. The inspection and reinstallation will remove damaged parts and will result in a properly aligned system installation.

DATE: Comments must be received on or before January 30, 1987.

ADDRESSES: Piper Service Bulletin No. 818, dated February 25, 1986, applicable to this AD may be obtained from Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; or the Rules Docket at the address below. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 86-CE-70-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location beween 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Goodall, FAA, ACE-140A, Atlanta Aircraft Certification Office, Suite 201, 1669 Phoenix Parkway, Atlanta, Georgia 30349; Telephone (404) 763-7435.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified

above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 86–CE– 70–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

There have been six (6) reports of Piper PA–60 Series airplane exhaust system failures which have resulted in substantial airplane damage and at least one failure resulted in an accident. The failure often is a broken flange at the turbocharger allowing the tailpipe to fall away; consequently, hot exhaust gas impinges on controls and structures. In certain reports the engine controls seized as a result of the hot exhaust gases. Others report substantial airplane wing structure damages. The FAA evaluation indicates that the exhaust system should be installed in a specified sequence using a high temperature lubricant to prevent misalignment and the introduction of high stress into the system. Piper Aircraft Corporation has issued Service Bulletin 818 dated February 25, 1986, to describe removal, inspection, and reinstallation of the exhaust system on these airplanes. Since the condition described is likely to exist or develop in other Piper Model PA–60 Series airplanes of the same design, the proposed AD would require a one-time removal and inspection for cracks or deformed parts, the replacement of failed parts and proper reinstallation of the exhaust system on Piper Aircraft Corporation Model PA–60 Series airplanes.

The FAA has determined there are approximately 890 airplanes affected by the proposed AD. The cost of inspecting these airplanes as required by the proposed AD is estimated to be $1,000 per airplane. The total cost is estimated to be $890,000 to the private sector.

The cost of compliance with the proposed AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air Transportation, Aviation Safety, Aircraft, Safety

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Section 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

Piper Aircraft Corporation (Ted Smith Aerostar): Applies to the following models and serial numbers of airplanes certificated in any category:

Model	Serial Nos. affected
PA–60–600 (Aerostar 600).	60–0001–003 through 60–0933–8161262.
PA–60–601 (Aerostar 601).	61–0001–0004 through 61–0880–8162157.
PA–60–601P (Aerostar 601P).	61P–0157–001 through 61P–0860–8163455.
PA–600–602P (Aerostar 602P).	62P–0750–8165001 and 62P–0861–8165002 through 62P–0932–8165055 and 60–8265001 through 60–8365021.
PA–60–700P (Aerostar 700P).	60–8423001 through 60–8423025.

Compliance: Required within the next 50 hours time in service after the effective date of this AD, unless already accomplished.

To prevent failed exhaust system components, accomplish the following on each engine:

(a) For affected Model PA–60–600 airplanes, remove the exhaust system components by accomplishing the following steps:

(1) Remove engine cowling.

(2) Remove exhaust stack support clamp from stack.

(3) Disconnect all stack flanges and remove complete exhaust stack assembly from each side.

(b) For affected Model PA–60–601, –601P, –602P, and –700P airplanes, remove the exhaust system components by accomplishing the following steps:

(1) Remove engine cowling.

(2) Loosen clamp on turbocharger exhaust port and slide rear section of exhaust stack aft and out.

(3) Disconnect waste gate control linkage and remove clamp attaching turbocharger waste gate.

(4) Slide waste gate section aft and out.

(5) Loosen balance tube end and center clamps, and compress balance tube.

(6) Disconnect all stack flanges and remove forward section of exhaust stack from each side.

(c) For all affected airplanes, visually inspect all exhaust system components by accomplishing the following:

(1) Clean and inspect all welds for cracks and pin holes, using a dye penetrant procedure.

(2) Inspect clamps, clamp bolts, and supports for condition and security of attachment.

(3) Inspect slip joints for signs of leaks and/or binding.

(4) Inspect stack flange mating surfaces for cracks or burns.

(5) Inspect turbocharger mounting flange on waste gate for cracks or burns.

(6) Rotate waste gate control lever to insure proper operation.

(7) Inspect gaskets for signs of leaks. Discard gaskets at each disassembly.

(d) For all affected airplanes, inspect using dye penetrant procedures, the turbocharger attachment flange on aft section exhaust pipe for cracks, especially in the welds.

(e) Prior to further flight, replace all unserviceable parts including all used gaskets.

(f) For affected Model PA–60–600 airplanes, install the exhaust system by accomplishing the following steps:

(1) Prior to reassembly, clean all slip joints and apply Fel-Pro antiseize lubricant (type C5–A), Piper Part Number 912–012 to exhaust pipes at slip joints.

(2) Slide forward and aft sections together. Replace parts that do not assemble freely without binding.

(3) Place new flange gaskets into position and place exhaust system onto cylinder studs at exhaust ports. Install flange nuts loosely.

(4) Partially tighten all nuts. Never fully tighten any part of the exhaust system before proceeding to another part on the same side of the engine.

(5) Inspect slip joint after stacks are installed to assure proper alignment and freedom from binding when flange nuts are tightened.

(6) Tighten each part on one side of the engine uniformly until a torque of 205–215 inch pounds has been applied.

(7) Install exhaust stack support clamp onto stack, and adjust support rod end so that clamp can be moved along stack by hand. Distance between stack and tunnel surface should be .50 inch minimum to 1.60 inch maximum on left stack; .75 inch minimum to 1.60 inch maximum on right stack. Replace parts which do not fall within this range.

(8) Start and run engine in accordance with the appropriate flight manual, shut down engine and check for leaks and correct as required.

(9) Install cowling.

(g) For affected Model PA–60–601, –601P, 602P, and –700P airplanes, install the exhaust system by accomplishing the following:

(1) Prior to reassembly, clean all slip joints and apply Fel-Pro antiseize lubricant (type C5–A), Piper Part Number 912–012, to exhaust pipes and waste gates at all slip joints.

(2) Slide first and second sections of exhaust stack together. Replace parts that do not assemble freely without binding.

(3) Position stack flanges and new gaskets onto exhaust ports. Install flange nuts loosely.

(4) Install V-clamp onto turbocharger waste gate flange with opening aft.

(5) Position new gasket on waste gate turbocharger exhaust port. Spread V-clamp on turbocharger waste gate flange and install waste gate onto exhaust pipe and turbocharger. Install clamp nut loosely.

(6) Install V-clamp and new gasket on turbocharger exhaust port. Spread V-clamp and install aft section of exhaust stack onto turbocharger and waste gate. Install clamp nut loosely.

(7) Install balance tube, insuring that ends extend into clamps beyond slits in tube ends, and install end clamp bolts loosely.

(8) Starting at the front of the engine and working aft, partially tighten all nuts. Never fully tighten any part of the exhaust system before proceeding to another part on the same side of the engine.

(9) Reinspect all joints after parts are installed to assure proper alignment and freedom from binding when nuts are fully tightened.

(10) Tighten each part on one side of the engine uniformly starting at front of engine and working aft. Torque flange nuts to 205–215 inch pounds and V-clamp nuts to 45–50 inch pounds.

(11) After completing both sides of engine, tighten balance tube clamps.

(12) Reconnect and adjust waste gate control linkage per Aircraft Maintenance Manual.

(13) Start and warm engine in accordance with appropriate flight manual, shut down engine, check for evidence of leaks and correct as necessary. Retorque V-clamps to 45–50 inch pounds.

(14) Install cowling.

(h) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(i) An equivalent means of compliance with this AD may be used if approved by Manager, Atlanta Aircraft Certification Office, 1075 Inner Loop Road, College Park, Georgia 30337.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Note.—Piper Aircraft Corporation Service Bulletin No. 818, dated February 25, 1986, pertains to the subject addressed by this AD.

Issued in Kansas City, Missouri, on December 16, 1986.

Edwin S. Harris,

Director, Central Region.

[FR Doc. 86–29229 Filed 12–30–86; 8:45am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 86–AGL–34]

Proposed Establishment of Transition Area—Mobridge, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish the Mobridge, South Dakota, transition area to accommodate a new NDB Runway 12 Standard Instrument Approach Procedure (SIAP) to Mobridge Municipal Airport.

The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

DATE: Comments must be received on or before January 28, 1987.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL–7, Attn: Rules Docket No. 86–AGL–34, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7360.

SUPPLEMENTARY INFORMATION: The development of a new NDB Runway 12 SIAP requires that the FAA designate airspace to ensure that the procedure will be contained within controlled airspace.

The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace. Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86–AGL–34." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2, which describes the application procedure.

The Proposal

The FAA is considering an amendment § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a transition area airspace near Mobridge, South Dakota.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Mobridge, South Dakota [New]

The airspace extending upward from 700 feet above the surface within a 5 mile radius of Mobridge Municipal Airport (Lat. 45°33' 00" N., Long 100°24' 00" W.); and within 3 miles either side of the 297° bearing from the Mobridge NDB extending from the 5 mile radius to 8 miles northwest of the Mobridge NDB; and, that airspace extending upward from 1200 feet above the surface within 9.5 miles southwest of, and 4.5 miles northeast of the 297° bearing from the Mobridge NDB, extending from the Mobridge NDB to 18.5 miles northwest excluding the portions within V71.

Issued in Des Plaines, Illinois, on December 15, 1986.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 86–29219 Filed 12–30–86; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 86–AEA–6]

Proposed Establishment of Transition Area, Edgewood, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed ruelmaking.

SUMMARY: This notice proposes to establish a transition area at Edgewood, MD. Two new RNAV Runway 1 and 19 instrument approach procedures have been developed to the Weide Army Air Field, Edgewood, MD. The transition area is to provide protected airspace for aircraft departing/arriving under Instrument Flight Rules (IFR).

DATE: Comments must be received on or before February 6, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Glenn A. Bales, Manager, Airspace and Planning Branch, AEA–530, Federal Aviation Administration, Docket 86–AEA–6, Fitzgerald Federal Building (formerly Federal Building), John F. Kennedy International Airport, Jamaica, New York 11430.

The official dockets may be examined in the Office of Regional Counsel, Federal Aviation Administration, Fitzgerald Federal Building (formerly Federal Building), John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace and Planning Branch, AEA–530, Air Traffic Division, Federal Aviation Administration, Fitzgerald Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Telephone: (718) 917–1228.

FOR FURTHER INFORMATION CONTACT: Glenn A. Bales, Airspace and Planning Branch, AEA–530, Air Traffic Division, Federal Aviation Administration, Fitzgerald Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Telephone: (718) 917–1228.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86–AEA–6." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in the notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of Regional Counsel, AEA–7, Federal Aviation Administration, Fitzgerald Federal Building (formerly Federal Building), John F. Kennedy International Airport, Jamaica, New York 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a transition area at Edgewood, MD. Two new RNAV Runway 1 and 19 instrument approach procedures have been developed to the Weide Army Air Field, Edgewood, MD. The transition area is to provide protected airspace for aircraft departing/arriving under Instrument Flight Rules (IFR). Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7460.6 dated January 2, 1986.

The FAA has determined that this amendment only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Edgewood, MD [New]

That airspace extending upward from 700 feet above the surface within an 5-mile radius of the center (lat. 39°23'00" N, Long. 76°18'00" W) of Weide Army Airfield, Maryland, and within 4.5 miles either side of a line drawn between the center (Lat. 39°23'00" N, Long. 76°18'00" W) of Weide Army Airfield, MD, and a point (Lat. 39°09'05" N Long. 76°13'43.9" W), out to 12 miles from the airport center and within 4.0 miles either side of a line drawn between the center (lat. 39°23'00" N, Long. 76°18'00" W) of Weide Army Airfield, MD, and a point (Lat. 39°35'15.4" N Long. 76°18'02" W), out to 12 miles from the airport center; excluding the airspace in R–4001 A & B and the Martin and Phillips Airport Transition Areas.

Issued in Jamaica, New York, on December 18, 1986.

Edmund Spring,

Manager, Air Traffic Division.

[FR Doc. 86–29370 Filed 12–30–86; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 85–AEA–4]

Proposed Alteration of Transition Area, Ocean City, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of Notice of Proposed Rulemaking.

SUMMARY: This notice withdraws the Notice of Proposed Rulemaking (NPRM), Airspace Docket No. 85–AEA–4, which was published in the **Federal Register** on November 8, 1985. That NPRM proposed to alter the transition area at Ocean City, MD. This action was based on a proposed LDA Runway 14 instrument approach procedure to the Ocean City Municipal, MD, Airport. The transition area was to provide protected airspace for aircraft departing/arriving under Instrument Flight Rules (IFR).

EFFECTIVE DATE: December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Glenn A. Gales, manager, Airspace Planning Branch, AEA–530, Air Traffic Division, Federal Aviation Administration, Fitzgerald Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Telephone: (718) 917–1228.

The Proposed Rule

On November 8, 1985, a Notice of Proposed Rulemaking was published in the **Federal Register** to alter the transition area at Ocean City, MD. The proposed transition area was to provide protected airspace for aircraft departing/arriving under Instrument Flight Rules (IFR). (50 FR 46448).

Summary of Comments

Interested parties were invited to participate in this proposed rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Conclusions

The FAA has received notice that the proposed LDA Runway 14 instrument approach procedure has been canceled. Concurrently, a new centerline runway 14 instrument approach procedure has been submitted for approval. If additional airspace for air traffic control is required for this approach procedure, it will be the subject of a separate Notice of Proposed Rulemaking (NPRM) at a later date.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Withdrawal

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, The Notice of Proposed Rulemaking, Airspace Docket No. 85–AEA–4 as published in the **Federal Register** on November 8, 1985, (50 FR 46448), is hereby withdrawn.

Authority: 49 U.S.C 1348(a) 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

Issued in Jamaica, New York, on December 18, 1986.

Edmund Spring,

Manager, Air Traffic Division.

[FR Doc. 86–29371 Filed 12–30–86; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 86–ASO–28]

Proposed Designation of Transition Area, Walnut Cove, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate the Walnut Cove, North Carolina, transition area to accommodate Instrument Flight Rules (IFR) operations at Meadow Brook Field Airport. This action will lower the base of controlled airspace from 1200 to 700 feet above the surface in the vicinity of the airport. An instrument approach procedure based on the existing Greensboro, North Carolina, Very High Frequency Omnidirectional Radio Range/TACAN (VORTAC), is being developed to serve the airport and the controlled airspace is required for protection of IFR aeronautical activities.

DATE: Comments must be received on or before February 15, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO–530, Manager, Airspace and Procedures Branch, Docket No. 86–ASO–28, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763–7646.

FOR FURTHER INFORMATION CONTACT: Ronald T. Niklasson, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763–7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-ASO-28." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) that will designate the Walnut Cove, North Carolina, transition area. This action will provide controlled airspace for aircraft executing a new instrument approach procedure to the Meadow Brook Field Airport. If the designation of the proposed transition area is found acceptable, the operating status of the airport will be changed from VFR to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air taffic procedures and air naviation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Walnut Cove, NC [New]

That airspace extending upward from 700 feet above the surface within a 7.5 mile radius of Meadow Brook Field Airport (lat. 36°18'05" N., long. 80°08'55" W.); excluding the portion that coincides with the Greensboro, NC, transition area.

Issued in East Point, Georgia, on December 18, 1986.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 86-29373 Filed 12-30-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 86-AEA-7]

Proposed Establishment of Transition Area, Petersburg, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a transition area at Petersburg, WV. A new VOR/DME-A instrument approach procedures has been developed to the Grant County, Petersburg, WV Airport. The transition area is to provide protected airspace for aircraft departing/arriving under Instrument Flight Rules (IFR).

DATES: Comments must be received on or before February 6, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Glenn A. Bales, Manager, Airspace and Planning Branch, AEA-530, Federal Aviation Administration, Docket 86-AEA-7, Fitzgerald Federal Building (formerly Federal Building), John F. Kennedy International Airport, Jamaica, New York 11430.

The official dockets may be examined in the Office of Regional Counsel, Federal Aviation Administration Fitzgerald Federal Building (formerly Federal Building), John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace and Planning Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Fitzgerald Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Telephone: (718) 917-1228.

FOR FURTHER INFORMATION CONTACT: Glenn A. Bales, Airspace and Planning Branch, AEA-530, Air Traffic Division, Federal Aviation Administration Fitzgerald Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Telephone: (718) 917-1228.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal.

Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-AEA-7." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in the notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting the request to the Office of Regional Counsel, AEA-7, Federal Aviation Administration, Fitzgerald Federal Building (formerly Federal Building), John F. Kennedy International Airport, Jamaica, New York 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a transition area at Petersburg, WV. A new VOR/DME-A instrument approach procedure has been developed to the Grant County, Petersburg, WV Airport. The transition area is to provide protected airspace for aircraft departing/arriving under Instrument Flight Rules (IFR). Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7460.6 dated January 2, 1986.

The FAA has determined that this amendment only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Petersburg, WV [New]

That airspace extending upward from 700 feet above the surface within an 5-mile radius of the center (Lat. 38°59'35" N, Long. 78°08'34" W) of Grant County Airport, Petersburg, WV and within 4 miles each side of the 214 radial of the Kessel, WV VORTAC (Lat. 39°13'31" N, Long. 78°59'23" W) extending from the VORTAC to 15.6 NM of the VORTAC.

Issued in Jamaica, New York, on December 18, 1986.

Edmond Spring,

Manager, Air Traffic Division.

[FR Doc. 86-29372 Filed 12-30-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 86-AWP-27]

Proposed Alteration of Restricted Areas and Associated Military Operation Areas, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of Restricted Areas R-4803S, R-4804, R-4810, R-4812, R-4818N and R-4816S located in the state of Nevada. After reviewing the subject restricted areas, the FAA and the U.S. Navy have determined that the alteration of these areas will enable the using agency, U.S. Navy, to release previously restricted airspace for public use. In conjunction with these actions, several ancillary nonrulemaking actions would be taken to remove Military Operations Area (MOA) designated from other airspace.

DATE: Comments must be received on or before February 18, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No. 86-AWP-27, Federal Aviation Administration, P.O. Box. 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Andrew B. Oltmanns, Airspace and Aeronautical Information Requirements Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9245.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-AWP-27." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on

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the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to alter the descriptions of Restricted Areas R–4803S, R–4804, R–4810, R–4812, R–4816N and R–4816S located in the state of Nevada. After reviewing the subject restricted areas, the FAA and the U.S. Navy have determined that the alteration of these areas will enable the using agency, U.S. Navy, to release previously restricted airspace and return it to public use. The designated altitudes of R–4803S would be editorially changed to reflect the correct usage of the affected airspace. The designated altitudes and time of designation of R–4804 would be changed to provide additional access to that airspace by the flying public. The designated altitudes of R–4810 would be editorially changed to reflect the correct usage of the affected airspace. The designated altitudes and time of designation of R–4812 would be changed to provide additional access to the airspace by the public. The time of designation of R–4816N would be amended to reflect more accurately when the restricted area is being used for military operations. The boundaries and time of designation of R–4816S would also be amended to provide additional airspace for public use.

It should be noted that alterations to Restricted Areas R–4804, R–4812, and R–4816S are being proposed to permit the establishment of VFR corridors through the area for the use of the flying public in order to provide greater access through the affected airspace. Section 73.48 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Proposed Ancillary Nonrulemaking Actions

Several nonrulemaking airspace actions involving Military Operation Areas (MOA) are under consideration in conjunction with the proposed amendments to restricted airspace discussed above. MOA's are not regulatory airspace and, therefore, do not require public notice and comment before they are adopted and indicated on aeronautical charts. However, changes to MOA's associated with the proposed restricted area amendments are included in this preamble to provide additional information on the proposed amendments.

This proposal is intended to permit optimum use of the airspace by all users. A MOA is a nonregulatory designation of airspace of defined dimensions established outside positive control area to separate/segregate certain nonhazardous military activities from IFR traffic and to identify for VFR traffic where these activities are conducted.

In consideration of both civilian and military flying activities, the FAA and U.S. Navy have proposed amendments to the Austin 1, Austin 2, Ranch, Gabbs North, and the Gabbs South MOA's. In addition, the Gabbs Central MOA would be established as part of this action. VFR corridors would be established along these areas to provide civil air traffic access through the Fallon NAS restricted areas without entering MOA airspace. These corridors are expected to absorb and distribute a substantial amount of VFR traffic through the Fallon area while posing minimal impact on the military special use airspace.

The following changes to MOA's would be adopted if the proposed amendments to the Fallon restricted areas are adopted:

Austin 1 MOA, NV [Amended]

By removing the words "(3) That airspace 2 NM either side of Highway 50 below 2,000 feet AGL." and by substituting the words "That airspace 2 NM either side of State Route 722 to the town of Austin, then 2 NM either side of U.S. Highway 50 to the eastern boundary of the Austin 1 MOA between 2,000 feet AGL and 10,500 feet MSL."

Austin 2 MOA, NV [Amended]

By removing the words "that airspace 2 NM either side of Highway 50 below 2,000 feet AGL." and by substituting the words "that airspace 2 NM either side of U.S. Highway 50 between 2,000 feet AGL and 10,500 feet MSL."

Ranch MOA, NV [Amended]

By removing the present times of use and by substituting the following:

Times of use. 0715–2330 daily; other times by NOTAM.

Gabbs North MOA, NV [Amended]

By removing the present boundaries and times of use and by substituting the following:

Boundaries. Beginning at lat. 39°06'05" N., long. 118°33'34" W.; to lat. 39°10'00" N., long. 117°23'00" W.; to lat. 39°55'00" N., long. 117°26'00" W.; to lat. 40°06'00" N., long. 117°48'00" W.; to lat. 40°06'00" N., long. 118°15'00" W.; to lat. 39°57'00" N., long. 118°38'00" W.; to lat. 39°45'53" N., long. 118°37'52" W.; to lat. 39°25'00" N., long. 118°25'30" W.; to lat. 39°17'00" N., long. 118°21'00" W.; to the point of beginning; excluding R–4802, R–4804, R–4810, R–4812, R–4813, R–4816N, R–4816S, and those portions of the Fallon and Stillwater National Wildlife Refuge areas below 3,000 feet AGL. Also, excluding that airspace from the western boundary of Gabbs North MOA to lat. 39°17'20" N., long. 118°07'30" W.; within 1 NM north of U.S. Highway 50 between 2,000 feet AGL and 8,500 feet MSL; to lat. 39°18'00" N., long. 117°55'00" W.; within 1 NM north of U.S. Highway 50 and 2 NM south of U.S. Highway 50 and State Road 722 between 2,000 feet AGL and 10,500 feet MSL; to the eastern boundary of the Gabbs North MOA 2 NM either side of State Road 722 between 2,000 feet AGL and 10,500 feet MSL.

Times of use. 0715–2330 daily; other times by NOTAM.

Gabbs South MOA, NV [Amended]

By removing the present boundaries and times of use and substituting the following:

Boundaries. Beginning at lat. 38°43'00" N., long. 118°11'30" W.; to lat. 38°40'00" N., long. 118°05'10" W.; to lat. 38°40'00" N., long. 118°00'00" W.; to lat. 38°56'00" N., long. 117°23'00" W.; to lat. 39°10'00" N., long. 117°23'00" W.; to lat. 38°43'00" N., long. 118°02'00" W.; to the point of beginning; excluding that airspace encompassed by a 3 NM radius centered on the town of Gabbs, NV, located at lat. 38°52'12" N., long. 117°55'30" W.; below 2,000 feet AGL.

PART 73—[AMENDED]

Times of use. 0715–2330 daily; other times by NOTAM.

Gabbs central MOA, NV [New]

Boundaries. Beginning at lat. 39°06'05" N., long. 118°33'34" W.; to lat. 38°58'00" N., long. 118°42'50" W.; to lat. 38°43'00" N., long. 118°11'30" W.; to lat. 38°43'00" N., long. 118°02'00" W.; to lat. 39°10'00" N., long. 117°23'00" W.; to the point of beginning; excluding that airspace encompassed by a 3 NM radius centered on the town of Gabbs, NV, located at lat. 38°52'12" N., long. 117°55'30" W.; below 2,000 feet AGL.

Altitudes. 100 feet AGL up to but not including FL 180.

Times of use. 0715–2330 daily; other times by NOTAM.

Controlling agency. FAA, Oakland ARTCC.

Using agency. U.S. Navy, Fallon NAS, NV.

MOA designations are not published in the Federal Register but are included in FAA Handbook 7400.6B.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

The Proposed Amendment

PART 73—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 73 of the Federal Aviation Regulations (14 CFR Part 73) as follows:

1. The authority citation for Part 73 continues to read as follows:

Authority. 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 73.48 [Amended]

2. Section 73.48 is amended as follows:

R–4803S Fallon, NV [Amended]

By removing the present designated altitudes and by substituting the following:

Designated altitudes. Surface to FL 180.

R–4804 Twin Peaks, NV [Amended]

By removing the present designated altitudes and times of designation and by substituting the following:

Designated altitudes. Surface to but not including FL 180 excluding that portion from 2,000 feet AGL up to 8,500 feet MSL which lies north of and 1 NM from U.S. Highway 50, between the intersection of U.S. Highway 50 with long. 118°25'30" W., and long. 118°07'30" W.

Time of designation. 0715–2330 local time, daily.

R–4810 Desert Mountains, NV [Amended]

By removing the present designated altitudes and by substituting the following:

Designated altitudes. Surface to and including 17,000 feet MSL.

R–4812 Sand Springs, NV [Amended]

By removing the present designated altitudes and time of designation and by substituting the following:

Designated altitudes. Surface to but not including FL 180 excluding that portion from 2,000 feet AGL up to 8,500 feet MSL which lies north of and 1 NM from U.S. Highway 50, between the intersection of U.S. Highway 50 with long. 118°25'30" W., and long. 118°07'30" W.

Time of designation. 0715–2330 local time, daily.

R–4816N Dixie Valley, NV [Amended]

By removing the present designated altitudes and by substituting the following:

Time of designation. 0715–2330 local time, daily.

R–4816N Dixie Valley, NV [Amended]

By removing the present boudaries and time of designation and by substituting the following:

Boundaries. Beginning at lat. 39°17'00" N., long. 118°21'00" W.; to lat. 39°30'00" N., long. 118°15'30" W.; to lat. 39°34'00" N., long. 118°12'30" W.; to lat. 39°34'00" N., long. 118°39'30" W.; thence via a line 1 NM north of U.S. Highway 50; to the point of beginning.

Time of designation. 0715–2330 local time, daily.

Issued in Washington, DC, on December 23, 1986.

Harold H. Downey,

Acting Manager, Airspoce-Rules and Aeoronautical Information Division.

[FR Doc. 86–29369 Filed 12–30–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 73

[Airspace Docket No. 86–AWP–28]

Proposed Alteration of Restricted Area R–4813 Carson Sink, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of Restricted Area R–4813 located near Carson Sink, NV. After reviewing their overall training and operational requirements, the Department of the Navy has requested changes in Restricted Area R–4813 to accommodate planned flight activities. This action will provide the Navy additional airspace to conduct its training and operational requirements.

DATE: Comments must be received on or before February 18, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No. 86–AWP–28, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Andrew B. Oltmanns, Airspace and Aeronautical Information Requirements Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9245.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86–AWP–28." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM)

by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to alter the description of Restricted Area R-4813 located near Carson Sink, NV. The Department of Navy has requested changes in R-4813 to accommodate planned military flight activities, and this action will provide the additional airspace needed to fulfill Navy requirements. Additional related airspace actions are being proposed concurrently in Airspace Docket No. 86-AWP-27. These associated airspace actions will return previously restricted area airspace for public use. Section 73.48 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 73 of the Federal Aviation Regulations (14 CFR Part 73) as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority. 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.48 [Amended]

2. Section 73.48 is amended as follows:

R-4813 Carson Sink, NV—[Amended]

By removing the present boundaries and substituting the following:

Boundaries. Begining at lat. 39°51'00" N., long. 118°38'00" W.; to lat. 39°55'01" N., long. 118°28'49" W.; thence clockwise via the arc of a 5-nautical-mile radius circle centered at lat. 39°55'08" N., long. 118°22'19" W.; to lat. 39°59'21" N., long. 118°18'49" W.; to lat. 40°01'00" N., long. 118°15'00" W.; to lat. 40°01'00" N., long. 118°01'00" W.; to lat. 39°58'00" N., long. 118°01'00" W.; to lat. 39°37'50" N., long. 118°16'58" W.; thence clockwise via the arc of a 15-nautical-mile radius circle centered at lat. 39°52'36" N., long. 118°20'27" W.; to lat. 39°45'53" N., long. 118°37'52" W.; to the point of beginning.

Issued in Washington, DC, on December 23, 1986.

Harold H. Downey,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-29368 Filed 12-30-86; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC-15494; File No. S7-32-86]

Offers of Exchange Involving Open-end Investment Companies and Unit Investment Trusts

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Commission is proposing a rule that would permit a mutual fund or its principal underwriter to make certain exchange offers to its own shareholders or to shareholders of another fund in the same family of funds. The Commission is also proposing a rule that would permit a unit investment trust or its sponsor to make certain exchange offers to unitholders of the same series or another series of the same trust or to unitholders of another unit investment trust having the same sponsor. By codifying standards for a variety of exchanges, these proposed rules are intended to reduce significantly, if not eliminate, the number of exemptive applications filed with the Commission regarding such transactions.

DATE: Comments must be received on or before March 31, 1987.

ADDRESS: Send comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments should refer to File No. S7-32-86. All comments will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Brian M. Kaplowitz, Chief, (202) 272-2048, or Brian P. Kindelan, Attorney, (202) 272-2048, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is proposing rules 11a-3 and 11c-1 under sections 11(a) and 11(c), respectively, of the Investment Company Act of 1940 [15 U.S.C. 80a-1, *et seq.*] ("Act"). Proposed rule 11a-3 would permit a registered open-end investment company ("mutual fund") or its principal underwriter to make certain exchange offers to its own shareholders or to shareholders of another fund in the same family of funds. Proposed rule 11c-1 would permit a unit investment trust ("UIT") or its sponsor to make certain exchange offers to unitholders of the same series or another series of the same trust or to unitholders of another UIT having the same sponsor. This release, after describing the legislative and administrative history of section 11, discusses the provisions of proposed rules 11a-3 and 11c-1.

The Commission will issue a notice to each open-end investment company that has received an order under section 11(a) that permits it to impose an administrative fee on exchange transactions. The notice will inform the company that the Commission proposes to issue an order amending its exemptive order to conform it to the provisions of proposed rule 11a-3 when adopted.

Background

Section 11 was intended to prevent "switching", the practice of inducing security holders of one investment company to exchange their securities for those of a different investment company "solely for the purpose of exacting additional selling charges".[1] Finding that

[1] H. Rep. 2639, 76th Cong., 3d Sess., 8 (1940).

Continued

practice to be widespread in the 1930's[2] Congress provided in section 11(a) that the terms of an offer involving the exchange of mutual fund shares on any basis other than the relative net asset values of the securities to be exchanged shold be approved in advance by the Commission or made pursuant to rules adopted by the Commission.[3]

Investors in "fixed trusts", now known as unit investment trusts, were found to be particularly vulnerable to switching operations. In order to earn another sales commission, a UIT sponsor would often pressure unitholders into exchanging their units for those of another of the sponsor's trusts.[4] Therefore, section 11(c) provides that any exchange offer involving UIT securities must be approved in advance by the Commission or comply with whatever rules or regulations the Commission may have prescribed to govern such exchanges.[5]

There are presently two Commission rules under section 11.[6] Rule 11a-1 [17 CFR 270.11a-1] defines "exchange" to include, under certain circumstances, the issuance of a security upon the repurchase, termination, retirement or cancellation of an outstanding security.[7] Rule 11a-2 [17 CFR 270.11a-2] permits certain exchange offers by registered separate accounts.[8] The rule defines who may make and receive those exchange offers, and permits the offering account to charge an administrative fee and, under certain conditions, a sales load at the time of the exchange.

Under the authority granted in sections 11(a) and 6(c) [15 U.S.C. 80a-6(c)], the Commission has issued exemptive orders for exchange offers since 1947.[9] Applicants have represented that the purpose of an exchange offer is to permit a security holder to move securities from one investment company to another when market or tax considerations or changes in the holder's investment objectives warrant such a move.[10] Generally, the exemptive orders relating to the exchange of mutual fund shares allow a mutual fund or its principal underwriter to make an exchange offer to shareholders of the fund or another fund within the same complex. These exchanges are based on the relative net asset values of the securities to be exchanged subject to a fixed administrative fee and if the acquired securities are subject to a front-end sales load, a "sales load differential". The fixed administrative fee is typically $5.00 per exchange. The "sales load differential" is equal to the excess, if any, of the sales load that an investor would ordinarily have to pay when purchasing the acquired security over the sales load already paid on the security being exchanged. Many applicants permit a shareholder to exchange into a higher-load fund without paying the sales load differential, but only if the shareholder has owned the shares being exchanged for a minimum holding period (*e.g.*, five months).[11]

If the exchanged security was itself acquired through one or more exchanges, applicants have represented that the cumulative sales load paid will be used to calculate the sales load differential.[12] If the shareholder is exchanging less than all shares held of a particular fund, applicants have represented that in calculating the differential, the security upon which the highest load was paid will be considered exchanged first.[13] Where the securities being exchanged have been acquired through dividend reinvestment

During a 1940 House hearing on the Act, David Schenker, Chief Counsel of the Commission's report, *Investment Trusts and Investment Companies* (1940) (hereinafter "Investment Trust Study"), described a switching operation as follows:

> A promoter will organize one investment company. He will sell the securities of this company until they lose their sales appeal. He then organizes another investment company, and solicits the security holders of the first company to exchange their shares for the shares of the new company . . . saying, "Well, this new company I have set up is infinitely superior to the original company. I recognized my mistakes which I made in the old company. Why don't you switch from the first company into the new company". And in some instances the promoter then organizes a third investment company, and switches the investor from the second company into the third company. Every time he switches the investor, he takes a 9 or 10 percent sales load.

Hearings on H.R. 10065 Before a Subcommittee of the House Committee on Interstate and Foreign Commerce, 76th Cong., 3d Sess., 111 (1940).

[2] S. Rep. 1775, 76th Cong., 3d Sess., 7-8 (1940); Hearings on S. 3850 Before a Subcommittee of the Senate Committee on Banking and Currency, 76th Cong., 3d Sess., part 2, 951-57 (1940).

[3] Section 11(a) also states:

> For the purposes of this section, (A) an offer by a principal underwriter means an offer communicated to holders of securities of a class or series but does not include an offer made by such principal underwriter to an individual investor in the course of a retail business conducted by such principal underwriter, and (B) the net asset value means the net asset value which is in effect for the purpose of determining the price at which the securities, or class or series of securities involved, are offered for sale to the public either (1) at the time of the receipt by the offeror of the acceptance of the offer or (2) at such later time as is specified in the offer.

Section 11(b) excepts from the provisions of section 11 any offer of exchange made under a plan of reorganization that has been approved by at least a majority of the outstanding shares of the class or series owned by the offerees. As originally enacted, section 11(b)(2) also excepted any offer of exchange made under a right of conversion, at the option of the holder, from one class or series into another class or series of securities issued by the same company upon such terms as were specified in the charter, certificate of incorporation, articles of association, by-laws or trust indenture. That provision was deleted in 1970 in order to subject these exchange offers to the same standards that govern other exchange offers involving mutual fund shares. *See* Investment Company Amendments Act of 1970, section 6, 84 Stat. 1417; H. Rep. 91-1382, 91st Cong., 2d Sess., 22 (1970); S. Rep. 91-184, 91st Cong., 1st Sess., 21 (1969).

[4] S. Rep. 1775, 76th Cong., 3d Sess., 7-8 (1940); Investment Trust Study, "Fixed and Semifixed Investment Trusts", 181-82, 209-30 and Appendix Q (1940).

[5] Section 11(c) states:

> The provisions of subsection (a) shall be applicable, irrespective of the basis of exchange, (1) to any offer of exchange of any security of a registered open-end company for a security of a registered unit investment trust or registered face-amount certificate company; and (2) to any type of offer of exchange of the securities of registered unit investment trusts or registered face-amount certificate companies for the securities of any other investment company.

The Commission has decided to exclude face-amount certificate companies from the coverage of proposed rule 11c-1 because only a few face-amount certificate companies still exist and relief from section 11(c) can be handled through individual exemptive applications.

[6] After section 11(b) was amended to delete paragraph (b)(2), the Commission rescinded rule 11b-1 which had defined "class or series of securities issued by the same company" for purposes of that provision. *See* Investment Company Act Release No. 6440 (April 4, 1971) [36 FR 6729]; *see also supra* note 3.

[7] *See* Investment Company Act Release No. 5024 (July 12, 1967) [32 FR 10728].

[8] *See* Investment Company Act Release No. 13407 (July 26, 1983) [48 FR 36245].

[9] In the first exemptive order issued under section 11(a), the Commission stated that offers of exchange subject to that section "should be approved only when consummation of the exchanges will not have inequitable results to the security holder or investment companies concerned." *Hamilton Depositors Corporation*, 25 SEC 141, 148 (1947), (approval of exchange offer by mutual fund to UIT unitholders on the basis of the relative net asset values of the respective securities to be exchanged without the imposition of a sales charge or fee). *See also First Investors Shares Corporation*, 28 SEC 141 (1947) (approval of exchange offer by a UIT to unitholders of another UIT where exchanging unitholders would be charged a sales load of 1.5% of the offering price of the acquired units).

[10] *See, e.g.*, Principal World Fund, Inc., et al., Investment Company Act Release Nos. 15018 (March 27, 1986) [51 FR 11381] and 15071 (April 24, 1986).

[11] *See, e.g.*, IRI Stock Fund, Inc., et al., Investment Company Act Release Nos. 14914 (January 27, 1986) [51 FR 4054] and 14947 (February 20, 1986) (six month holding period); Heritage Capital Appreciation Trust, et al., Investment Company Act Release Nos. 14975 (March 7, 1986) [51 FR 8727] and 15032 (April 2, 1986) (30 day holding period).

[12] *See e.g.*, American Leaders Fund, Inc., Investment Company Act Release Nos. 13450 (August 22, 1983) and 13530 (September 26, 1983).

[13] *See, e.g.*, Industrial Series Trust, Investment Company Act Release Nos. 15043 (April 7, 1986) [51 FR 12755] and 15088 (May 6, 1986); IRI Stock Fund, Inc., et al., Investment Company Act Release Nos. 14911 (January 24, 1986) [51 FR 4055] and 14956 (February 25, 1986).

or capital gains distributions, applicants have represented that in calculating the differential, those securities will be considered to have been acquired with a sales load equal to that paid on the shares on which the dividend was paid or the distribution made.[14]

Where the acquired security is subject to a contingent deferred sales load (CDSL),[15] the orders provide that the CDSL will be calculated as if the acquired security were held from the date on which the exchanged security was acquired.[16] Some applicants have represented that if the exchanged security was subject to a front-end sales load and the acquired security is subject to a CDSL, the CDSL will not be charged for the acquired security.[17] Applicants have also represented that if both the exchanged security and the acquired security are subject to a CDSL, a CDSL will not be charged for the exchanged security.[18]

The exemptive orders relating to the exchange of UIT units permit a UIT or its sponsor to make an exchange offer to unitholders of the same series or another series of the offering trust or to unitholders of another UIT having the same sponsor. These orders allow exchanges at relative net asset value subject to a "reduced sales charge". The reduced sales charge is a fixed amount (typically $15 per $1000 unit exchanged or 1.5% of the offering price of the acquired unit) if the exchanging unitholder has held the exchanged units for more than a designated period of time (*e.g.*, five months). The reduced sales charge is the greater of the fixed charge or sales load differential if the exchanging unitholder has held the exchanged units for a shorter time.[19]

Given the frequency and routine nature of exemptive applications under section 11,[20] the Commission is proposing rules 11a–3 and 11c–1 to permit certain exchange offers to be made without advance Commission approval. As discussed below, these conditions are based on representations that have been included in the prior exemptive orders.

Discussion

A. Proposed Rule 11a–3

Proposed rule 11a–3 would exempt from section 11(a) certain exchange offers involving mutual fund shares.[21] The proposed rule would limit the recipient of an exchange offer to any person holding a security of the offering fund or of any other fund within the same "family of investment companies". "Family of investment companies" would be defined as "any two or more registered open-end investment companies that have the same investment adviser or principal underwriter and hold themselves out to investors as related companies for purposes of investment and investor services."[22] This approach is consistent with nearly all the exemptive orders, where the two mutual funds involved in an exchange transaction have either an investment adviser or principal underwriter in common.[23]

As in prior exemptive orders, the proposed rule would allow the exchanging security holder to be charged an administrative fee and a sales load under certain conditions.[24] Although prior exemptive orders specified the highest administrative fee that a fund could charge for an exchange transaction, the proposed rule would permit a "nominal" administrative fee and would not designate a fixed dollar limit on the amount that could be charged.[25] Any administrative fee or scheduled variation thereof[26] would have to be uniformly applied. The proposed rule would require that the prospectus of the offering company disclose any administrative fee imposed on an exchange transaction for its shares, as well as any fee imposed on its shareholders to acquire shares of any other funds in an exchange transaction. It would also require disclosure of any administrative fee in any sales literature or advertising that describes the exchange offer.[27] The Commission specifically requests comments on whether the provisions in proposed rule 11a–3 with respect to administrative fees are appropriate.

In addition to a nominal administrative fee, an exchanging security holder could be charged a sales load on the acquired security at the time of the exchange or when the acquired security is redeemed or exchanged. At either time, the sales load could not exceed the excess, if any, of the sales load that the exchanging security holder would ordinarily have to pay to purchase the acquired security over the sales load previously paid on the exchanged security (the "sales load differential"). The rule would define "exchanged security" to include the security actually exchanged and any security previously exchanged for that security or for any of its predecessors. Since the Rules of Fair Practice of the National Association of Securities Dealers set the maximum sales load that a fund may charge on a single transaction at 8½% of the offering price,[28] an exchanging shareholder could not be charged a *cumulative* sales load of more than 8½% of the offering price of the security being acquired. As in the exemptive orders, these provisions are intended to give an exchanging shareholder credit for any sales loads previously paid.

Where either no sales load is imposed on the exchange or the sales load imposed is less than the sales load differential, the proposed rule would permit the offering company to require the exchanging shareholder to have held the exchanged security for a minimum period of time prescribed by the offering company and uniformly applied to all offerees of the class specified. The minimum holding period provision found in many exemptive applications, prevents an investor from buying shares of one fund and then immediately exchanging them—without paying a sales load—for those of a higher-load fund.[29] The Commission specifically requests comment on whether proposed rule 11a–3 should *require* a minimum holding period and, if so, whether it should specify the length of the minimum holding period.

The proposed rule would also codify the representations found in the exemptive applications that address exchanges of less than all of a shareholder's shares of a particular fund and exchanges of securities acquired through dividend reinvestment or capital gains distributions. Specifically, the rule would provide that in calculating the sales load differential, when the exchanging shareholder is exchanging less than all shares held of a particular fund, the security upon which the highest sales load was previously paid would be considered to be exchanged first. Any securities acquired through dividend reinvestment or capital gains distributions would be considered to have been sold with a sales load equal to the sales load previously paid on the shares on which the dividend was paid or distribution made.

Where the sales load on the acquired security is deferred, the proposed rule would require that the load be calculated as if the acquired security had been held from the date on which the exchanged security was acquired. This tacking of time formula, which was developed in the exemptive application process,[30] is intended to ensure that an exchanging security holder receives credit for the length of time the exchanged security was held.[31]

B. Proposed Rule 11c–1

Proposed rule 11c–1 would exempt certain exchange offers involving unit investment trusts from section 11(c). The rule would allow a registered UIT[32] or its sponsor or principal underwriter (collectively, "the offering trust") to make an exchange offer to unitholders of the same series or another series of the same trust or to unitholders of a UIT having the same sponsor without prior Commission approval, provided certain conditions are met.[33]

As described above, the exemptive orders granted under section 11(c) have allowed an offering trust to charge a fixed "reduced sales charge" for an exchange of UIT units. The proposed rule, however, has been drafted to include the same type of sales load limitations that are found in proposed rule 11a–3.

As in rule 11a–3, proposed rule 11c–1 would allow the exchanging unitholder to be charged a sales load under certain conditions. Any sales load charged for the acquired units could be no more than the excess of the sales load ordinarily payable for the acquired units over any sales load paid for the exchanged units.[34] As in proposed rule 11a–3, the definition of "exchanged unit" would include the unit actually being exchanged and any unit previously exchanged for that unit or for any of its predecessors. Also, where either no sales load is imposed on the exchange or the sales load imposed is less than the sales load differential, the proposed rule would permit the following trust to require the exchanging unitholder to have held the exchanged unit for a minimum period of time.[35] When a unitholder exchanges less than all units held of a particular series, the unit upon which the highest sales load was previously paid would be considered exchanged first. Finally, unlike proposed rule 11a–3, proposed rule 11c–1 would not provide for the imposition of an administrative fee on an exchange transaction. To date UIT applicants have not requested exemptions to charge exchanging unitholders such fees. The Commission, however, specifically requests comment on whether it is necessary and appropriate to include an administrative fee provision in proposed 11c–1.

Cost/Benefit of Proposed Action

Proposed rules 11a–3 and 11c–1 would not impose any significant additional burdens on mutual funds or UITs and would reduce the costs that they already incur by virtually eliminating the need to file exemptive applications. The Commission would also benefit because its staff would have to review very few exemptive applicators in this area.

The Commission specifically invites comments on its assessments of the costs and benefits associated with the proposal, including estimates of any costs and benefits perceived by commentators.

Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding proposed rules 11a–3 and 11c–1. The Analysis explains that proposed rule 11a–3 would permit certain offers of exchange between mutual funds while

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[14] *See, e.g.*, RNC Liquid Assets Fund, Inc., Investment Company Act Release Nos. 15112 (May 23, 1986) [51 FR 20395] and 15158 (June 16, 1986).

[15] A contingent deferred sales load (CDSL) is usually charged if a shareholder redeems shares prior to a specified period of time, such as within five years of the date of purchase.

[16] *See, e.g.*, Pru-Bache Adjustable Rate Preferred Stock Fund, Inc., et al., Investment Company Act Release Nos. 14863 (December 20, 1985) [50 FR 53412] and 14902 (January 16, 1986).

[17] *See, e.g.*, Putnam Tax-Free Income Trust, Investment Company Act Release Nos. 14859 (August 6, 1985) [50 FR 32924] and 14703 (September 4, 1985).

[18] *See supra* note 16.

[19] *See, e.g.*, Dean Witter Reynolds Inc., et al., Investment Company Act Release Nos. 13654 (December 2, 1983) and 13702 (January 6, 1984).

[20] Twenty-seven notices of applications involving exchanges were published in the Federal Register during the first six months of 1986.

[21] Registered separate accounts are excepted from the proposed rule because rule 11a–2 already exempts that type of offeror. *See supra* note 8 and accompanying text.

[22] The definition closely follows that found in Form N–SAR, General Instructions, Part G, which states in part: *"Family of Investment Companies:* The term 'family of investment companies,' except for insurance company separate accounts, means any two or more registered investment companies which share the same investment adviser or principal underwriter *and* hold themselves out to investors as related companies for purposes of investment and investor services." (emphasis in original)

See also rule 2a19–1 [17 CFR 270.2a19–1], which conditionally exempts certain investment company directors from being considered interested persons. Rule 2a19–1(b) states: "For purposes of this rule, 'complex' shall mean the registered investment company, its investment adviser (including all accounts over which the adviser has brokerage placement discretion), and its principal underwriter and all other investment companies having the same investment adviser or principal underwriter."

[23] *But See* American Leaders Fund, Inc., Investment Company Act Release Nos. 13450 (August 22, 1983) and 13530 (September 26, 1983), permitting exchanges between funds that have neither an investment adviser nor principal underwriter in common, but which are sold through the same brokers or dealers.

[24] The proposed rule would not allow any redemption fee to be imposed with respect to the exchanged security.

[25] It should be noted that in exemptive orders the Commission has permitted administrative fees most commonly of $5.00 although ranging to $25.00 in certain situations. *See, e.g.*, Strong Total Return Fund, Inc., et al., Investment Company Act Release Nos. 15357 (October 14, 1986) [51 FR 37810] and 15411 (November 13, 1986) ($5.00 administrative fee); Kidder, Peabody Equity Income Fund, Inc., et al., Investment Company Act Release Nos. 15163 (June 23, 1986) [51 FR 23671] and 15222 (July 24, 1986) ($25.00 administrative fee for any exchange after the first exchange by a shareholder in any calendar year).

[26] Applicants have represented that scheduled variations can depend on the number of exchanges in a specific time period. *See, e.g.*, Continental U.S. Government Plus Fund Trust, et al., Investment Company Act Release Nos. 14973 (March 13, 1986) [51 FR 8725] and 15029 (April 2, 1986).

[27] *Cf.* Form N–1A, Item 7 (requires an investment company to disclose scheduled variations in, or elimination of, the sales load under an exchange privilege); Form N–1A, item 19 (requires an investment company to describe any exchange privilege).

[28] *See* section 26(d) of article III of the Rules of Fair Practice.

[29] The exemptive orders have permitted minimum holding periods ranging from 30 days to six months. *See supra* note 11 and accompanying text.

[30] *See supra* note 16; *cf.* exemptive applications cited *supra* in notes 17 and 18.

[31] *See* rule 11a–2(d) which also requires cumulative tacking of time in calculating a deferred sales load on an acquired security.

[32] The rule would except registered separate accounts in view of the relief from section 11 already available to those offerors under rule 11a–2. *See supra* note 8 and accompanying text.

[33] Although section 11(c) extends beyond exchanges of UIT units to include exchanges of UIT units for securities issued by mutual funds or closed-end investment companies, only a few exemptive applications have dealt with these offers. *See, e.g., In the Matter of Lexington Corporate Leaders, Fund, Inc.*, Investment Company Act Release No. 5509 (October 11, 1968) (exemptive application for offer to exchange UIT units for mutual fund shares). In view of the apparent rarity of these offers, they are not addressed by the proposed rule.

As drafted, the proposed rule would not codify several recent exemptive orders that have permitted a UIT or its sponsor to make an exchange offer known as a "conversion offer" to holders of units of UITs that have a different sponsor. Generally, under the terms of these orders, coverting unitholders pay the same reduced sales cherge that unitholders would pay for an exchange within the same UIT family. Given the relative novelty of this type of exchange offer, the Commission requests comment on whether the final version of the rule should make exemptive relief available for such offers and, if so, under what circumstances. *See e.g.*, Trust Southwest Tax Exempt Income Trust, et al., Investment Company Act Release Nos. 15082 (May 2, 1986) [51 FR 17432] and 15121 (May 29, 1986). *See also* Bear, Stearns & Co., et al., Investment Company Act Release Nos. 11143 (April 29, 1980) and 11184 (May 23, 1980) (conversion offer where the offerees are limited to unitholders of any registered UIT for which no secondary market is being maintained).

[34] The rule does not address exchange offers involving UIT units subject to deferred sales loads because, outside of the insurance products area, it is the Commission's understanding that sales loads are rarely deferred on UIT units.

[35] *See supra*, note 29 and accompaning text. The Commission seeks comment on whether proposed rule 11c–1 should *require* a minimum holding period and, if so, whether it should specify the length of the minimum holding period.

proposed rule 11c–1 would permit such offers between unit investment trusts (UITs). It states that the proposed rules are intended to protect investors from the abuses that led to the enactment of section 11, and to significantly reduce the number of exemptive applications filed with the Commission regarding exchange offers. The Analysis indicates that the proposed rules contain no reporting or recordkeeping requirements, but that approved rule 11a–3 requires disclosure of any administrative fee charged on an exchange transaction. To the extent that the proposed rules would eliminate the need for mutual funds and UITs to file applicators seeking exemption from section 11, they will reduce the costs incurred by smaller entities in preparing and filing exemptive applications. A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Brian P. Kindelan, Esq., Mail Stop 5–2, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed New Rules

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

Part 270 of Chapter II of Title 17 of the Code of Federal Regulations is amended as shown.

1. The authority citation for Part 270 continues to read as follows:

Authority: Secs. 38, 40, 54, 54 Stat. 841, 842, 15 U.S.C 80a–37, 80c–89 * * * §§ 270.11a–3 and 270.11c–1 also issued under sec. 6(c) [15 U.S.C. 80a–(6)(c)].

2. By adding § 270.11a–3 to read as follows:

§ 270.11a–3 Exemption from section 11(a) for certain offers of exchange.

(a) Notwithstanding section 11(a) of the Act [15 U.S.C. 80a–11(a)], a registered open-end investment company (other than a registered separate account) or any principal underwriter thereof (collectively, the "offering company") may make or cause to be made an offer to the holder of a security of that company or of another open-end investment company within the same family of investment companies as the offering company to exchange that security for a security of the offering company (the "acquired security") on the basis of the relative net asset values of the respective securities to be exchanged except that the security holder may be charged a nominal administrative fee or a sales load; *Provided that:*

(1) Any administrative fee or scheduled variation thereof is uniformly applied to all offerees of the class specified;

(2) Any sales load charged with respect to the acquired security is no greater than the excess, if any, of the sales load applicable to that security in the absence of an exchange over any sales load previously paid on the exchanged security;

(3) Any deferred sales load charged with respect to the acquired security is calculated as if the holder of the acquired security had held that security from the date on which he became the holder of the exchanged security;

(4) No redemption fee is imposed with respect to the exchanged security;

(5) The prospectus of the offering company discloses any administrative fee imposed on an exchange transaction for its securities, as well as any administrative fee imposed on its security holders to acquire the securities of other investment companies in an exchange transaction; and

(6) Any sales literature or advertising that describes the exchange offer discloses any administrative fee.

(b) Where either no sales load is imposed on the acquired security or the sales load imposed is less than the maximum allowed by paragraph (a)(2) of this section, the offering company may require the exchanging shareholder to have held the exchanged security for a minimum period of time previously established by the offering company and uniformly applied to all offerees of the class specified.

(c) For purposes of this rule:

(1) "Deferred sales load" means any sales load, including a contingent deferred sales load, deducted upon redemption of all or a portion of a security holder's interest in an open-end investment company;

(2) "Exchanged security" means (i) the security actually exchanged pursuant to an exchange offer and (ii) any security previously exchanged for such security or for any of its predecessors;

(3) "Family of investment companies" means any two or more registered open-end investment companies that have the same investment adviser or principal underwriter and hold themselves out to investors as related companies for purposes of investment and investor services; and

(4) In calculating any sales load charged with respect to the acquired security:

(i) Where a security holder exchanges less than all of his securities, the security upon which the highest sales load was previously paid is deemed exchanged first; and

(ii) Where the exchanged security was acquired through dividend reinvestment or capital gains distribution, that security is deemed to have been sold with a sales load equal to the sales load previously paid on the security on which the dividend was paid or distribution made.

3. By adding § 270.11c–1 to read as follows:

§ 270.11c–1 Exemption from section 11(c) for certain offers of exchange.

(a) Notwithstanding section 11(c) of the Act [15 U.S.C. 80a–11(c)], a registered unit investment trust (other than a registered separate account) or any sponsor or principal underwriter thereof (collectively the "offering trust") may make or cause to be made an offer to the holder of a unit of the same series or another series of the offering trust, or of any other registered unit investment trust having the same sponsor or sponsors as the offering trust to exchange that unit for a unit of the offering trust (the "acquired unit") on the basis of the relative net asset values of the respective units to be exchanged except that the unitholder may be charged a sales load; *Provided, that,* any sales load charged with respect to the acquired unit is no grater than the excess, if any, of the sales load applicable to the acquired unit in the absence of an exchange over any sales load previously paid on the exchanged unit.

(b) Where either no sales load is imposed on the acquired unit or the sales load imposed is less than the maximum allowed by paragraph (a) of this section, the offering trust may require the exchanging unitholder to have held the exchanged unit for a minimum period of time previously established by the offering trust and uniformly applied to all offerees of the class specified.

(c) For purposes of this rules:

(1) "Exchanged unit" means (i) the unit actually exchanged pursuant to an exchange offer and (ii) any unit previously exchanged for such unit or for any of its predecessors; and

(2) In calculating any sales load charged with respect to the acquired unit, where a unitholder exchanges less than all of his units, the units upon which the highest sales load was previously paid is deemed exchanged first.

By the Commission.
Jonathan G. Katz,
Secretary.
December 23, 1986.
[FR Doc. 86–29323 Filed 12–30–86; 8:45 am]
BILLING CODE 8010–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 763

[OPTS–62048A; FRL–3135–7]

Regulations Required by the Asbestos Hazard Emergency Response Act of 1986

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking (ANPR).

SUMMARY: EPA is soliciting comments on the development of regulations required by the Asbestos Hazard Emergency Response Act of 1986 (AHERA) to reduce asbestos exposure in public and private elementary and secondary schools. AHERA requires EPA to issue proposed regulations by April 20, 1987 and issue final regulations by October 17, 1987. EPA requests comments on a variety of technical and policy issues which must be addressed in order to develop these regulations.

DATE: Comments regarding this document must be submitted in triplicate by January 30, 1987.

ADDRESS: Comments should be submitted to: Public Information Office (TS–793), Office of Toxic Substances, Environmental Protection Agency, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

Comments should include the document control number (OPTS–62048A) and will be available for reviewing and copying from 8 a.m. to 4 p.m. Monday through Friday, excluding legal holidays, in Room NE–G004 at the address given above.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, Office of TSCA Assistance (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, DC 20460 (202–554–1404).

SUPPLEMENTARY INFORMATION:

I. Background

On October 22, 1986, President Reagan signed into law the Asbestos Hazard Emergency Response Act of 1986, Pub. L. 99–519. AHERA requires EPA to develop regulations which include requirements for local education agencies to conduct inspections of their school buildings for asbestos-containing materials (ACM), develop asbestos management plans and submit these plans to their State Governor, and implement appropriate response actions.

As required by section 203(a) of AHERA, Pa is issuing this advance notice of proposed rulemaking to solicit comments and information about the development of rules under AHERA. Interested persons may comment generally about the regulations, or they may wish to comment or provide information about the issues listed in Unit III of this notice.

Interested persons are also referred to EPA's advance notice of proposed rulemaking published in the Federal Register of August 12, 1986 (51 FR 28914), entitled "Asbestos-Containing Materials in Schools; Inspection, Notification, Management Plans and Technical Assistance." The Agency directs special attention to Unit II entitled "Data Requested" (51 FR 28914), and Unit III.B, entitled "Full Regulatory Approach" (51 FR 28917), and requests additional comment on these units in light of the passage of AHERA. Comments already submitted to EPA in response to the August notice will be incorporated as part of the record for this notice.

II. Major Requirements of AHERA

Under AHERA, EPA is directed to promulgate regulations which provide a framework for addressing asbestos problems in public and private schools. The statute sets deadlines of 180 days after enactment for EPA to issue proposed rules and 360 days for issuance of final rules. EPA must develop regulations which include requirements for: (1) The inspection of all public and private school buildings for ACM; (2) the identification of circumstances requiring response actions; (3) descriptions of the appropriate response actions; (4) the implementation of response actions; (5) the establishment of a periodic surveillance program for ACM; (6) the establishment of an operations and maintenance program for friable ACM; (7) the preparation and implementation of asbestos management plans by local educational agencies and the submission of the management plans to State Governors, who may review the plans and approve or disapprove them; and (8) the transportation and disposal of waste ACM from schools.

III. Issues

EPA is seeking comments and information from all persons potentially affected by the regulations. Specifically, the Agency encourages responses from school administrators and employees, environmental consulting or architectural and engineering firms that conduct asbestos inspections and assessments, asbestos abatement contractors, State and local officials that manage asbestos programs, and all associations, unions, and interest groups involved in the issue of asbestos in schools.

EPA would like to receive comments and information on all issues for which comment was requested in the ANPR of August 12, 1986 and on the following issues:

1. What is the average cost of inspecting a school for both friable and non-friable ACM? Are these costs calculated on the basis of square footage, per hour cost or other factors?

2. Should inspections include checking for ACM in products other than building materials (e.g., products used in laboratories or industrial arts shops)? What types of these products are found in schools?

3. What documentation of previous inspections should be necessary for exclusion from AHERA inspection regulations? Should a previously inspected school building be exempted if the inspection did not check for non-friable materials?

4. Should EPA require use of its revised sampling scheme for bulk sampling recommended in the EPA document "Asbestos in Buildings: Simplified Sampling Scheme for Friable Surfacing Materials?"

5. Should EPA allow a local education agency's (LEA) inspections and management plan development to be performed by the same person? Should EPA require an LEA to employ abatement contractors that have no financial relationship with the inspector or management plan developer so as to avoid potential conflicts to interest that could lead to unnecessary abatement projects or increased costs? In locations where only a limited number of such persons are available, what should be the consequences of this requirement?

6. What is the average time and cost for development of an asbestos management plan for a primary or secondary school?

7. What is the average time a latex paint-based encapsulation is effective? What is the average time an enclosure structure is effective? What are the major drawbacks associated with these methods? What are the recent developments in technology for these methods? How does the cost of an enclosure or encapsulation project

compare to the cost of a removal project for a given area?

8. What is the average cost associated with conducting operations and maintenance programs? Of the many practices which could be included in an operations and maintenance program, which should be required as part of the AHERA regulations? What procedures should an operations and maintenance program include for non-friable ACM?

9. Should EPA require its currently recommended procedure which compares indoor and outdoor levels statistically to clear the buildings? What has been the experience of abatement professionals in using the clearance testing recommended in the EPA document "Measuring Airborne Asbestos Levels following an Abatement Action" and the document "Guidance for Controlling Asbestos in Buildings?" Of particular concern to EPA are the actual air monitoring data obtained from the clearance of abatement jobs. Data, air volumes, sampling rates, description of site, detection limits, transmission electron microscopy analytical protocol, location of samplers, and any other pertinent information will be helpful to the Agency in determining the feasibility of requiring such a test.

10. Should EPA require a specific air-monitoring level for building clearance following abatement actions? Which air monitoring method should be required?

11. How should EPA apply the AHERA standard of "least burdensome methods which protect human health and the environment?"

12. What process should be established for determining whether all or part of a State asbestos program should be granted a waiver from AHERA requirements?

13. In the EPA model accreditation plan for States, what should be the length and content of the training courses for inspectors, management plan developers and abatement personnel? Should hands-on training be required for abatement pesonnel?

14 Should EPA require training for abatement workers in addition to supervisors? What should be the length and content of a training course for workers?

15. How frequently should re-training be required for inspectors, plan developers, and abatement personnel and what is the appropriate length of such a course?

IV. Public Record

EPA has established a record for this proceeding (docket control number OPTS–62048A).

The record includes information considered by EPA in developing this ANPR. EPA will supplement the record with additional information as it is received. The record now includes the following categories of information:

(1) Federal Register Notices.

(2) Support documents.

(3) Reports.

(4) Comments received from advance notice of rulemaking published in Federal Register of August 12, 1986 (51 FR 2894).

A public version of the record is available from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays in the Public Information Office, Rm. NE–G004 NE Mall, 401 M St., SW., Washington, DC.

Dated: December 20, 1986.

Lee M. Thomas,

Administrator.

[FR Doc. 86–29354 Filed 12–30–86; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[BERC–322–P]

Medicare Program; Review of Information Collection and Recordkeeping Requirements for Home Health Agencies, Independent Laboratories, and Providers of Outpatient Physical Therapy and/or Speech Pathology Service

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: The proposed rules change several regulations to reduce the information collection and recordkeeping requirements. The requirements identified by the Office of Management and Budget are contained primarily in the Medicare conditions of participation for home health agencies and providers of outpatient physical therapy and outpatient speech pathology services, and the Medicare conditions for coverage of the services of independent laboratories and physical therapists in independent practice. The purpose of this document is to propose removal or modification of certain information collection and recordkeeping requirements, to furnish rational for retaining others, and to solicit public comments on the proposals for elimination, change, or retention.

DATE: To ensure consideration, comments must be received by March 2, 1987.

ADDRESSES: Address comment in writing to:

Health Care Financing Administration, U.S. Department of Health and Human Services, Attention: BERC–322–P, P.O. Box 26678, Baltimore, Maryland 21207

Please address a copy of comments to:

Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Desk Officer for HCFA, Room 3208, New Executive Office Building, Washington, DC 20503

In commenting, please refer to file code BERC–322–P. If you prefer, you may deliver your comments to Room 309–G Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Comments will be available for public inspection as they are received, beginning approximately three weeks after publication, in Room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m., to 5:00 p.m. (202–245–7890).

FOR FURTHER INFORMATION CONTACT: Stefan Miller, (301) 597–6394.

SUPPLEMENTARY INFORMATION:

I. Background

The Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) authorizes the Office of Management and Budget (OMB) to review all information collection and recordkeeping requirements in Federal regulations. On March 31, 1983, at 48 FR 13666, OMB published regulations (5 CFR 1320.14) to implement this authority. Under § 1320.14(f) of the regulations, the agency responsible for the regulations is required to publish in the Federal Register a notice informing the public that OMB has proposed changes in the information collection or recordkeeping requirements be made and has approved continuation of the existing requirements for the time needed to consider proposed changes. On August 9, 1985 (50 FR 32238), we published a Federal Register notice to comply with the above stated requirements. In several clearance actions, OMB has required changes in the following information collection or recordkeeping requirements and has approved continuation of these requirements for the time needed to consider proposed changes: §§ 405.1221, 405.1223(b), 405.1229, 405.1315(f), 405.1316(f), 405.1720(b), and 405.1721(a). In addition, OMB required that we solicit public comments on all recordkeeping requirements in Subparts L, M, and O.

II. Specific Proposals

In accordance with OMB requirements, we are soliciting comments on all recordkeeping requirements in Subpart L, M, and O. We are also proposing to make changes in the sections identified above and any others where we feel recordkeeping requirements can be reduced or simplified. Below we provide a summary of the current provisions, a description of the statutory basis for each requirement, and our recommendation for removal, modification, or retention. We request comments on all three types of proposals.

A. 42 CFR 405, Subpart L—Conditions of Participation; Home Health Agencies

Most of the Subpart L requirements discussed below are not specified in the statute. Where there is such specificity in the law it is identified. Otherwise, as noted below, the provisions are issued under the authority of section 1861(o)(6) of the Act, which specifies that HHAs must meet other health and safety requirements the Secretary finds necessary; and, in some cases, as also noted below, under section 1861(o)(2) of the Act, which requires that HHAs have policies established by a group of professional personnel and provide for supervision of the services by a professional nurse.

• Section 405.1221(e) *Condition of participation: Organization, services, administration. Standard: Personnel policies.* This standard requires that HHA to develop personnel policies and to gather and maintain information relating to job descriptions, qualifications, licensure, health examinations, and performance evaluations.

Statutory Basis

Sections 1861(o) (2) and (6) of the Act.

Revision/Rationale

We propose to modify the detailed list of personnel records in § 405.1221(e) that must be maintained by deleting those requirements which do not directly impact patient care. We would, however retain the requirement that evidence of professional qualifications and licensure be included as part of the personnel record system because we believe that HHAs should continue to be responsible for ensuring that personnel who treat patients are professionally qualified.

Section 405.1221(f) *Condition of participation: Organization, services, administration. Standard: Personnel under hourly or per visit contracts.* This standard requires the HHA to enter into a written contract with those persons furnishing services other than salaried employees. The contract must specify the types of services furnished, the responsibilities of the contractors (including the submission of clinical records reports), and the procedures for determining charges and reimbursement.

Statutory Basis

Section 1861(o)(6) of the Act. Sections 1861(v)(5) and 1861(v)(1)(I) of the Act contain reimbursement provisions that are consistent with the last of the listed requirements.

Revision/Rationale

We propose to revise §405.1221(f) by removing the explicit contractual requirements such as designation of the procedures for submission of clinical record information, and the manner in which services will be controlled, coordinated and evaluated by the agency. We propose instead to require that personnel under contract be held accountable for meeting the same agency requirements as salaried personnel as set forth in this subpart.

• Section 405.1221(g) *Condition of participation: Organization, services, administration. Standard: Coordination of patient services.* This standard requires that the clinical record support the HHA's attempts to ensure a free flow of information exchange among all personnel furnishing services.

Statutory Basis

Sections 1861 (o)(3) and (o)(6) of the Act. Section 1861(o)(3) requires r n HHA maintain patient clinical records on all patients. However, there is no specific provision relating to content and structure of the records.

Revision/Rationale

We propose to clarify the language of § 405.1221(g) but do not propose to amend the standard substantively. We believe that where single or multiple services are furnished, it is important that coordination of patient care remain as an essential part of an agency's responsibility. This is necessary so that other professionals may be able to more effectively tailor patient treatment programs.

• Section 405.1221(i) *Condition of participation: Orgnaization, services, administration. Standard: Institutional planning.* This standard requires that each HHA conform to certain broad requirements relating to the formulation of an annual operating budget and an agency generated 3-year capital expenditure program for anticipated expenditures that exceed a set dollar amount.

Statutory Basis

Section 1861(o)(5) of the Act requires that an HHA have "• • • in effect an overall plan and budget that meets the requirements of • • • [section 1861[(z)."

Revision/Rationale

We propose only to increase from $100,000 to $600,000 the dollar amount of capital expenditures above which the plan must provide details. This change is required by section 1122(g) and 1861z of the Social Security Act, which were amended by section 607 of the Social Security Amendments of 1983, Pub. L. No. 98–21, to increase the threshold amount to $600,000. The other provisions of this section are explicitly required in section 1861(z) or are necessary for purposes of determining whether the statutory $600,000 threshold figure has been exceeded.

• Section 405.1223(a) *Condition of participation: Acceptance of patients, plan of treatment, medical supervision. Standard: Plan of treatment.* This standard specifies the development of a written plan of treatment established and periodically reviewed by a physician and details the requirements of the plan of treatment.

Statutory Basis

Section 1861(m) of the Act provides that a patient must be under the care of a physician who establishes and periodically reviews a plan of care.

Revision/Rationale

We propose to retain this standard as it is constructed. We believe it necessary to ensure inclusion of necessary information to protect patient health and provide adequate quality care. Further, we believe changes in its composition are unlikely to affect most HHA's information colection burdens since HHAs routinely attempt to obtain all information pertinent to patient care. However, we do request comments on the continued need for these requirements.

• Section 405.1223(b) *Condition of participation: Acceptance of patients, plan of treatment, medical supervision. Standard: Periodic review of plan treatment.* This standard requires that the status of every patient be reviewed at least once every 60 days by HHA staff and the attending physician.

Statutory Basis

Section 1861(m) of the Act requires that each patient be under the care of a physician who periodically review the plan of care.

Revision/Rationale

We propose to continue to require review of the plan of treatment periodically by a physician because it is required under section 1861(m) of the Act. We believe that the physician assessment of a patient's status periodically, can effectively identify and help to prevent potential problems which, if they remain unresolved, may lead to a more lengthy treatment program.

Currently, Federal regulations at 42 CFR 405.1223(b) implement section 1861(o) of the Act and require, as a health and safety condition of participation, that home health agencies have plans of treatment signed by the physician no less frequently than once every 60 days. Regulations at 42 CFR 405.1633(b) implement sections 1814(a)(2) and 1835(a)(2) of the Act and require that, for Medicare payment purposes, the home health agency acquire a signature on the physician certification no less frequently than every two months (i.e., 62 days). The intent of both of these regulations is embodied in the Medicare Uniform Plan Treatment (form HCFA 485 which must accompany the first bill and the bill closest to every 60 days thereafter) and uses one physician signature for both purposes. We believe that although these regulations implement different (but related) statutory provisions, they should be implemented in a consistent manner. This manner of implementation would prevent home health agencies which acquire the physician's signature only every 62 days rather than every 60 days from being cited for non-compliance with the conditions of participation, although patient health and safety are not being jeopardized.

We propose to change the timeframe for the physician review of the plan of treatment from 60 days to 62 days. We believe that making this change will not jeopardize patient health and safety, but will resolve a conflict within Federal regulations which causes home health agencies to be inappropriately penalized.

• Section 405.1224(a) *Condition of participation: Skilled nursing service. Standard: Duties of the registered nurse.* and section 405.1224(b)—*Standard: Duties of the licensed practical nurse.* These standards describe the duties of registered nurses and licensed practical nurses including the duties to prepare clinical and progress notes.

Statutory Requirement

Sections 1861 (m)(1) and (o)(6) of the Act. Section 1861(m)(1) provides that part-time or intermittent nursing care be under the supervision of a registered nurse.

Revision/Rationale

We propose no specific changes to § 405.1224 (a) and (b) at this time because the nursing duties and clinical record responsibilities cited therein are consistent with accepted professional standards of practice and, hence, should not be burdensome. However, we do request comments on the continued need for these requirements.

• Section 405.1225(a) *Condition of participation: Therapy services. Standard: Supervision of physical therapist assistant and occupational therapy assistant.* This section sets forth standards for supervision of physical therapist and occupational therapy assistants by a qualified physical or occupational therapist and the preparation of clinical and progress notes.

Statutory Basis

Section 1861(o)(6) of the Act.

Revision/Rationale

We propose no specific changes to § 405.1225(a) at this time because the duties and clinical record responsibilities of assistants are consistent with accepted professional standards of practice and therefore impose virtually no additional burden. However, we do request comments on the continued need for these requirements.

• Section 405.1226—*Condition of participation: Medical social services.* This section sets forth medical social services responsibilities including preparing clinical and progress notes on the patient's condition and assisting in the development of the plan of treatment.

Statutory Basis

Section 1861(m)(3) of the Act provides for the underlying statutory authority, coupled with Section 1861(o)(6) that medical social services be under the direction of a physician.

Revision/Rationale

We propose no specific changes to § 405.1226 at this time because the duties and responsibilities of social work personnel are consistent with accepted professional standards and therefore impose virtually no additional burden. However, we do request comments on the continued need for these requirements.

• Section 405.1228—*Condition of participation: Clinical records.* This section contains specific requirements for maintaining, retaining and protecting clinical records for every patient receiving home health services.

Statutory Basis

Section 1861(o)(3) of the Act specifies that an HHA must maintain clinical records on all patients.

Revision/Rationale

We believe that the current recordkeeping requirements in § 405.1228 are necessary to ensure that information pertinent to each patient's treatment program is made available to all personnel. We propose only a technical change to the existing language of the regulation and request comments on the continued need on each of the recordkeeping items.

• Section 405.1229(a)—*Condition of participation: Evaluation. Standard: Policy and administrative review.* This standard requires an HHA to assess the overall status of its patient care programs. One method of furthering this evaluation is to collect patient care and related data. This standard suggests selected data which an HHA might find useful in the course of its evaluation.

Statutory Basis

Sections 1861(o)(2) and 1861(o)(6) of the Act.

Revision/Rationale

We propose to delete from § 405.1229(a) the detailed list of data items. Each HHA's evaluation procedure may need to be tailored to its unique characteristics. Therefore, we believe that the selection of data is best made by the HHA concerned.

B. 42 CFR Part 405, Subpart M—Conditions for Coverage of Services of Independent Laboratories

There is no specific statutory requirement for the individual Subpart M requirements discussed below. The requirements were issued under the authority of section 1861(s)(12) of the Act, which provides that laboratories must meet other health and safety requirements that the Secretary finds necessary. The Center for Disease Control (CDC) of the United States Public Health Service, together with HCFA, share responsibility for these health and safety requirements. HCFA and CDC participated in a joint review of the requirements discussed below to ensure the appropriateness of standards, and will undertake a joint review of all laboratory comments received as a result of this publication. All comments should be submitted as indicated in the ADDRESS section of this preamble.

• Section 405.1314(a)(2)—*Condition—Clinical laboratory; tests performed. Standard: Proficiency testing.* This standard specifies requirements for maintaining records of all proficiency testing results in programs in which laboratories are participants and makes these records routinely available to all State survey agencies, with certain exceptions.

Statutory Basis

Section 1861(s)(12) of the Act.

Revision/Rationale

We propose no substantive changes to § 405.1314(a)(2) at this time because we believe that records of observations during testing of samples are critical because they allow laboratories to identify reasons for errors in testing and to identify trends in performance problems. However, we are making minor editorial revisions and deleting outdated references. We request comments on these requirements and suggestions regarding alternative approaches.

• Section 405.1315(f)—*Condition—clinical laboratory; technical personnel. Standard: Personnel policies.* This standard requires a laboratory to maintain personnel policies as well as maintain employee records to include training and experience, results of preemployment physical examinations, and accidents occurring while on duty.

Statutory Basis

Section 1861(s)(12) of the Act.

Revision/Rationale

We would revise the standard to require that records be maintained to demonstrate that (1) each employee is qualified for his or her position by means of training and experience, and (2) employees receive adequate health supervision. We believe that laboratories should be responsible for ensuring that personnel who perform services for patients are professionally qualified and screened for communicable diseases. However, we would not specify how these records are to be structured.

• Section 405.1316(a)—*Condition—clinical laboratory; management. Standard: Laboratory procedure manual.* This standard requires a laboratory to maintain records and a compilation of all automated and manual methods for tests which are performed in or offered by the laboratory.

Statutory Basis

Section 1861(s)(12) of the Act.

Revision/Rationale

As a result of our review we have identified requirements that are duplicated and can be deleted. We would delete the laboratory procedure manual standard at § 405.1316(a) since the procedure manual requirement is required in § 405.1317(a)(4). A laboratory procedure manual standard was included in the existing regulations because we believed it was important to assure that the staff is provided a predetermined plan of how to perform procedures and how to assure the accuracy and reliability of results. Section 405.1316(b), (c), (d), (e), (f) and (g) would be redesignated as § 405.1316 (a), (b), (d), (e) and (f) respectively.

• Section 405.1316(f)— Condition—clinical laboratory; management. Standard: Specimens-records. This standard requires a laboratory to maintain accurate records of specimens tested, and information identifying their subsequent disposition.

Statutory Basis

Section 1861(s)(12) of the Act.

Revision/Rationale

We would redesignate § 405.1316(f) as § 405.1316(e) and delete overly prescriptive information collection requirements that specify the types of records which must be maintained.

• Section 405.1316(g). *Condition—clinical laboratory; management. Standard: Laboratory report and record.* This standard requires a laboratory director to promptly send the laboratory report to the licensed physician or other authorized person who requested the test. It also requires that a suitable record of each test result be maintained for a period of at least 2 years after the date of submittal of the report or for a period of time required by State law for such records, whichever is longer.

Statutory Basis

Section 1861(s)(12) of the Act.

Revision/Rationale

We would redesignate § 405.1316(g) as § 405.1316(f), make an editorial change and delete reference to State law record retention requirements since the existing two year Federal requirement is adequate for purposes of the Medicare program. Federal regulations do not have to reinforce State law requirements; the State can enforce its own requirements.

• Sections 405.1317 (a)(4) (a)(5) and (a)(6). *Condition—quality control. Standard: General.* These sections require the availability at all times of certain manuals and other written instructions in the immediate bench area of personnel engaged in examining specimens and performing related procedures within a category; written approval by the director or supervisor of all changes in laboratory procedures; and the maintenance and availability of laboratory records to laboratory personnel as well as to the Secretary.

Statutory Basis

Section 1861(s)(12) of the Act.

Revision/Rationale

We would revise § 405.1317(a)(4) by combining in one location requirements relating to procedure manuals which are currently contained in both § 405.1316(g) and § 405.1317(a)(4)(i). The reference to automated test equipment would be removed from § 405.1316(a) and that paragraph would be revised and incorporated in § 405.1317(a)(4)(v), along with the current § 405.1317(a)(5). Since the term, "automated test equipment," has not been defined in the regulations, ambiguity exists concerning its applicability. As a result, the regulation would be modified to reflect that if any test system becomes inoperable, regardless of whether it is automated, manual, or involves equipment at all, the laboratory must have a protocol for maintaining alternative methods to either store the specimens or perform the test. Laboratories may not be able to perform tests for a variety of reasons other than automated equipment failure. Such reasons include power failures, insufficient reagents to perform the tests, absence of personnel to perform special procedures and related problems. Thus, for all test systems, the laboratory must define its alternative methods such as storing the specimens under appropriate conditions to ensure their integrity, sending the specimens to another laboratory, or whatever actions are necessary to assure that the laboratory can obtain valid test results. The critical consideration is not the degree of automation but the assurance of quality, and the revision would clarify this point. Section 405.1317(a)(6) would be redesignated as a new § 405.1317(a)(5). We propose no substantive revision to the requirements in redesignated § 405.1317(a)(5) at this time. Instead, we invite comments on which requirements are still needed to ensure reliable and accurate testing, and which may no longer be necessary.

• Section 405.1317(b)(3). *Condition—quality control. Standard: quality control system—methodologies. Clincal Chemistry.* This standard specifies the method and frequency for checking laboratory instruments used in clinical chemistry and the maintenance of records for this purpose.

Statutory Basis

Section 1861(s)(12) of the Act.

Revision/Rationale

We plan no revision to § 405.1317(b)(3) at this time. The requirement that the measurement of specimens be done on equipment that must be calibrated and controlled was originally included because it was believed necessary to ensure accurate and precise results. Maintenance of records of previous calibrations was believed to be necessary to assist in the recalibration effort. We invite review and specific comment on whether these recordkeeping requirements are still necessary.

C. 42 CFR Part 405 Subpart Q—Conditions of Participation: Clinics, Rehabilitation Agencies, and Public Health Agencies as Providers of Outpatient Physical Therapy and/or Speech Pathology Services; and Conditions for Coverage: Outpatient Physical Therapy Services Furnished by Physical Therapists in Independent Practice

• Section 405.1720(b). *Condition of Participation—rehabilitation program. Standard: Arrangements for social or vocational services.* This standard permits rehabilitation agencies to provide social or vocational adjustment services under a written contract with others (that is, other than salaried employees), provided the agency retains responsibility for, and control and supervision of, these services. The terms of the contract are specified in detail.

Statutory Basis

Section 1861(p)(4)(A)(i) of the Act requires that each clinic or agency have the necessary personnel to carry out the programs offered. Section 1861(p)(4)(A)(v) provides that clinics and agencies must meet other health and safety requirements that the Secretary finds necessary.

Revision/Rationale

We propose to revise the regulation at § 405.1720(b) by removing explicit contractual requirements such as the geographic areas in which services are to be furnished, the completion and submission of clinical record information, and the participation in conferences required to coordinate patient care. We propose instead to require that personnel under contract be held accountable for meeting the same agency requirements as salaried personnel as set forth in this subpart, and that the agency be responsible for control and supervision of the services.

• Section 405.1721(a). *Condition of participation—arrangements for physical therapy and speech pathology services to be performed by other than salaried organization personnel. Standard: Contract provisions.* This standard contains specific requirements for the terms of a contract under which an organization provides outpatient physical therapy or speech pathology services under an arrangement with others.

Statutory Basis

Section 1861(p)(4)(A)(i) of the Act requires that each clinic or agency have the necessary personnel to carry out the programs offered. Section 1861(p)(4)(A)(v) provides that clinics and agencies must meet the health and safety requirements the Secretary finds necessary.

Revision/Rationale

We propose to delete the list of contractual provisions and instead require that all nonsalaried personnel furnishing services meet the same requirements as salaried personnel. We are also proposing to make a conforming change to this section to make it consistent with other proposed changes published in the **Federal Register** on February 24, 1986, (51 FR 6429) that would include "podiatrist" in the definition of "physician".

• Section 405.1722. *Condition of participation—clinical records.* This section specifies requirements for maintaining clinical records for providers of outpatient physical therapy and speech pathology services.

Statutory Basis

Section 1861(p)(4)(A)(iii) of the Act requires that providers of outpatient physical therapy and outpatient speech pathology services must maintain clinical records on all patients.

Revision/Rationale

We plan no changes to § 405.1722 at this time, because the recordkeeping requirements are consistent with accepted standards of care. However, we request comments on which of the requirements are still needed to ensure that medically necessary services of acceptable quality are furnished to program beneficiaries.

• Section 405.1736 (b) and (d) *Condition for coverage—clinical records. Standard: Content and Standard: Retention and preservation.* These standards specify requirements for the content and retention of clinical records by physical therapists in independent practice.

Statutory Basis

Section 1861(p)(4)(A)(iii) of the Act provides that independently practicing physical therapists must maintain clinical records on all patients. This section also provides that the physical therapist must meet those requirements that the Secretary may find necessary.

Revision/Rationale

We plan no changes to § 405.1736 (b) and (d) at this time because we believe that these recordkeeping activities are consistent with standard business practices and therefore, are not burdensome. We request comments on which of the requirements are still necessary to ensure the quality and appropriateness of services and which may no longer be necessary.

III. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any regulations that are likely to have an annual effect on the economy of $100 million or more, cause a major increase in costs or prices, or result in significant adverse effects on competition, employment, investment, productivity, or innovation.

We examined each provision noted in the preamble for potential impacts (costs and benefits) on affected providers and suppliers. Several of the proposed changes would benefit providers and suppliers by reducing certain recordkeeping requirements (for example, those relating to personnel records and contractual provisions). We are proposing to retain several current requirements we believe are necessary to assure compliance with the intent of the standard. The cost effect of reduced reporting associated with this proposal would be very small. Compared to all other requirements, the time and manpower required by providers and suppliers during the survey process to demonstrate compliance with these requirements is minimal. We conclude, therefore, that the overall effect is negligible. Because no threshold criteria under E.O. 12291 would be exceeded, this proposal is not considered a major rule and an impact analysis is not required.

B. Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act (5 U.S.C. Section 601 through 612), we prepare and publish an initial regulatory flexibility analysis for proposed regulations unless the Secretary certifies that the regulations would not have a significant impact on a substantial number of small entities. While all providers and suppliers subject to these conditions of participation or conditions for coverage are considered small entities, the impact of these requirements would be minimal on each institution or service. Therefore, the Secretary certifies under 5 U.S.C. 605(b) that this proposed rule would not result in a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

All sections of these proposed rules contain information collection requirements that the Office of Management and Budget has requested us to review. A notice will be published in the **Federal Register** when approval is obtained. Other organizations and individuals desiring to submit comment on the information collection requirement should follow the directions in the ADDRESS section of this preamble.

IV. Response to Comments

Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments and discuss the issues in the preamble to that rule.

List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Certification of compliance, Clinics, Contracts (Agreements), End-Stage Renal Disease (ESRD), Health care, Health facilities, Health maintenance organizations (HMO), Health professions, Health suppliers, Home health agencies, Hospitals, Inpatients, Kidney diseases, Laboratories, Medicare, Nursing homes, Onsite surveys, Outpatient providers, Reporting requirements, Rural areas, X-rays.

42 CFR Part 405 would be amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

A. Subpart L is amended as follows:

Subpart L—Conditions of Participation; Home Health Agencies

1. The authority citation for Subpart L continues to read as follows:

Authority: Secs. 1102, 1842, 1861, 1862, 1870 and 1871 of the Social Security Act; 42 U.S.C. 1302, 1395u, 1395x, 1395y, 1395gg, and 1395hh.

2. Section 405.1221 is amended as follows:

a. Paragraphs (e), (f), and (g) are revised to make the recordkeeping requirements less specific, more general.

§ 405.1221 Condition of participation: Organization, services, administration.

* * * * *

(e) *Standard: Personnel policies and records.* Personnel and patient care practices are supported by written policies, that are kept current. Personnel records include the qualifications of all clinical personnel as well as evidence of State licensure, where applicable.

(f) *Standard: Personnel under hourly or per visit contracts.* If personnel under hourly or per visit contracts are utilized by the home health agency, there is a written contract between such personnel and the agency clearly designating:

(1) That patients are accepted for care only by the primary home health agency,

(2) The services to be provided,

(3) That personnel furnishing services must meet the same requirements, responsibilities and policies as salaried personnel as set forth in this subpart, and

(4) The procedures for determining charges and reimbursement.

(g) *Standard: Coordination of patient services.* All personnel providing services maintain liaison to assure that their efforts effectively complement one another and support the objectives outlined in the plan of treatment. The clinical record or minutes of case conferences establish that interchange, reporting, and coordination of care occur. A written summary report for each patient is sent to the attending physician at least every 60 days.

* * * * *

§ 405.1221 [Amended]

b. In § 405.1221(i)(2) the first and second sentences, the capital expenditure amount above which detailed description is required is changed from "$100,000" and "$600,000".

3. In § 405.1223, paragraph (a) is reprinted without change, for comment and in revised paragraph (b) "60" is changed to "62" to read as follows:

§ 405.1223 Condition of participation: Acceptance of patients, plan of treatment, medical supervision.

* * * * *

(a) *Standard: Plan of treatment.* The plan of treatment developed in consultation with the agency staff covers all pertinent diagnoses, including mental status, types of services and equipment required, frequency of visits, prognosis, rehabilitation potential, functional limitations, activities permitted, nutritional requirements, medications and treatments, any safety measures to protect against injury, instructions for timely discharge or referral, and any other appropriate items. If a physician refers a patient under a plan of treatment which cannot be completed until after an evaluation visit, the physician is consulted to approved additions or modifications to the original plan. Orders for therapy services include the specific procedures and modalities to be used and the amount, frequency, and duration. The therapist and other agency personnel participate in developing the plan of treatment.

(b) *Standard: Periodic review of plan of treatment.* The total plan of treatment is reviewed by the attending physician and home health agency personnel as often as the severity of the patient's condition requires, but at least once every 62 days. Agency professional staff promptly alter the physician to any changes that suggest a need to alter the plan of treatment.

* * * * *

4. Sections 405.1224 (a) and (b) are reprinted without change, for comment:

§ 405.1224 Condition of participation: Skilled nursing service.

* * * * *

(a) *Standard: Duties of the registered nurse.* the registered nurse makes the initial evaluation visit, regularly re-evaluates the patient's nursing needs, initiates the plan of treatment and necessary revisions, provides those services requiring substantial and specialized nursing skill, initiates appropriate preventive and rehabilitative nursing procedures, prepares clinical and progress notes, coordinates services, informs the physician and other personnel of changes in the patient's condition and needs, counsels the patient and family in meeting nursing and related needs, participates in in-service programs, and supervises and teaches other nursing personnel.

(b) *Standard: Duties of the licensed practical nurse.* The licensed practical nurse provides services in accordance

with agency policies, prepares clinical and progress notes, assists the physician and/or registered nurse in performing specialized procedures, prepares equipment and materials for treatments observing aseptic technique as required, and assists the patient in learning appropriate self-care techniques.

5. Section 405.1225(a) is reprinted without change, for comment:

§ 405.1225 Condition of participation: Therapy Services.

* * * * *

(a) *Standard: Supervision of physical therapist assistant and occupational therapy assistant.* Services provided by a qualified physical therapist assistant or qualified occupational therapy assistant may be furnished under the supervision of a qualified physical or occupational therapist. A physical therapist assistant or occupational therapy assistant performs services planned, delegated, and supervised by the therapist, assists in preparing clinical notes and progress reports, and participates in educating the patient and family, and inservice programs.

* * * * *

6. Section 405.1226 is reprinted without change, for comment:

§ 405.1226 Condition of participation: Medical social services.

Medical social services, when provided, are given by a qualified social worker or by a qualified social work assistant under the supervision of a qualified social worker, and in accordance with the plan the treatment. The social worker assists the physician and other team members in understanding the significant social and emotional factors related to the health problems, participates in the development of the plan of treatment, prepares clinical and progress notes, works with the family, utilizes appropriate community resources, participates in discharge planning and inservice programs, and acts as a consultant to other agency personnel.

7. Section 405.1228, the term "provided" is substituted for the term "rendered" in the introductory language, and paragraphs (a) and (b) are reprinted without change, for comment as revised, § 405.1228 reads as follows:

§ 405.1228 Condition of participation: Clinical records.

A clinical record containing pertinent past and current findings in accordance with accepted professional standards is maintained for every patient receiving home health services. In addition to the plan of treatment (see § 405.1223(a)), the record contains appropriate identifying information; name of physician; drug, dietary, treatment, and activity orders; signed and dated clinical and progress notes (clinical notes are written the day service is provided and incorporated no less often than weekly); copies of summary reports sent to the physician; and a discharge summary.

(a) *Standards: Retention of records.* Clinical records are retained for 5 years after the month the cost report to which the records apply is filed with the intermediary, unless State law stipulates a longer period of time. Policies provide for retention even if the home health agency discontinues operations. If a patient is transferred to another health facility, a copy of the record or abstract accompanies the patient.

(b) *Standards: Protection of records.* Clinical record information is safe guarded against loss or unauthorized use. Written procedures govern use and removal of records and conditions for release of information. Patient's written consent is required for release of information not authorized by law.

8. Section 405.1229 is amended by revising paragraph (a) to remove the last sentence which lists data suggested for inclusion in the review. As revised, § 405.1229(a) reads as follows:

§ 405.1229 Condition of participation—Evaluation.

* * * * *

(a) *Standard: Policy and administrative review.* As a part of the evaluation process the policies and administrative practices of the agency are reviewed to determine the extent to which they promote patient care that is appropriate, adequate, effective, and efficient. Mechanisms are established in writing for the collection of pertinent data to assist in evaluation.

* * * * *

B. Subpart M is amended as follows:

Subpart M—Conditions for Coverage of Services of Independent Laboratories

1. The authority citation for Subpart M continues to read as follows:

Authority: Secs. 1102, 1861(s)(10) and (11), 1864, 1871, of the Social Security Act; 49 Stat. 647 as amended, 79 Stat. 322, 79 Stat. 325–326, 79 Stat. 331; 42 U.S.C. 1302, 1395x(s)(10) and (11), 1395aa, and 1395hh.

2. In section 405.1314, paragraph (a) introductory text is reprinted for reader comprehension and paragraph (a)(2) is revised to remove outdated date references, with no change in the proficiency testing requirements, to read as follows:

§ 405.1314 Condition—clinical laboratory; tests performed.

* * * * *

(a) *Standard: Proficiency testing.* All clinical laboratories must successfully participate in a proficiency testing program as defined in § 405.1310(c) covering all clinical laboratory and anatomical pathology specialties and subspecialties as made available in which the laboratory is approved to perform tests. Laboratories shall:

* * * * *

(2) Maintain records of all proficiency testing results in programs it uses to meet the requirement in the first sentence of paragraph (a) of this section. Records, including results and interpretations, must be available to the State agency. An exception to the requirements of this paragraph may be made if an appropriate, approved proficiency testing program is not readily available. Such exception shall continue until the State agency or the Secretary determines that such a program has been developed and is available.

3. Section 405.1315 is amended by revising paragraph (f) to simplify the standard and substitute a general sentence for the three specific factors, to read as follows:

§ 405.1315 Condition—clinical laboratory; technical personnel.

* * * * *

(f) *Standard; personnel policies.* There are written personnel policies that adequately support sound laboratory practice. Records are maintained to demonstrate that each employee is qualified for his or her position and assignments by means of training and experience, and that employees receive adequate health supervision.

4. In § 405.1316, paragraph (a) is removed, paragraphs (b), (c), (d), (e), (f), and (g) are redesignated as (a), (b), (c), (d), (e), and (f) respectively, and redesignated (e) and (f) are revised. As revised paragraphs (a) through (f) read as follows:

§ 405.1316 Condition—clinical laboratory; management.

* * * * *

(a) *Standard; laboratory management.* Space and facilities are adequate to properly perform the services which are performed in or offered by the laboratory. The factors explaining the standards are as follows:

(1) Workbench space is ample, well-lighted, and convenient to sink, water, gas, and suction and electrical outlets as necessary.

(2) Work areas are arranged so as to minimize problems in transportation and communication.

(3) The laboratory is properly ventilated.

(4) Volatile chemicals and inflammable solvents are properly stored in areas unlikely to ignite same or restricted from open flame or heat.

(5) Temperature and humidity are controlled within limits required for proper performance of tests and operation of instruments affected by these variations.

(6) Voltage levels at electrical sources to which automated equipment is connected are monitored and recorded.

(7) Adequate fire precautions and occupational safety and health laws are known, posted, and observed insuring that there is freedom from unnecessary physical, chemical, and biological hazards.

(b) *Standard; collection of specimens.* No persons other than a licensed physician, or one otherwise authorized by law, manipulates a patient for the collection of specimens except that qualified technical personnel of the laboratory may collect blood or remove stomach contents and collect material for smears and culture under the direction or upon the written request of a licensed physician.

(c) *Standard; sterilization.* Syringes, needles, lancets, or other blood-letting devices capable of transmitting infection from one person to another are not reused unless they are properly sterilized prior to each use and wrapped in a manner which will insure that they remain sterile until used. Appropriate sterilization and disinfection techniques are utilized, as required, for tests performed on potentially contaminated material and for the protection of laboratory personnel. Disposable syringes, needles, pipettes, Petri dishes, and other disposable items are appropriately discarded immediately after use. Each sterilizing cycle contains a device which indicates proper sterilization or an adequate recording thermometer is used and records kept of temperature readings. Proper operation of the autoclave is checked monthly with viable spores or appropriate indicators.

(d) *Standard; examination and reports.* The laboratory examines specimens only at the request of a licensed physician, dentist, or other person authorized by law to use the findings of laboratory examinations and reports only to those authorized by law to receive such results. The factors explaining the standard are as follows:

(1) If the patient is sent to the laboratory, a written request for the desired laboratory procedures is obtained from a person authorized by law to use findings of laboratory examination.

(2) If only a specimen is sent, it is accompanied by a written request.

(3) If the laboratory receives reference specimens from another laboratory, it reports back to the laboratory submitting the specimens.

(e) *Standard; specimens—records.* The laboratory maintains records containing the following information:

(1) The laboratory number or other identification of the specimen.

(2) The name and other identification of the person from which the specimen was taken.

(3) The name of the licensed physician or other authorized person or clinical laboratory which submitted the specimen.

(4) The date the specimen was collected by the physician or other authorized person.

(5) The date the specimen was received in the laboratory.

(6) The condition of unsatisfactory specimens when received (e.g., broken, leaked, hemolyzed, or turbid, etc.).

(7) The type of test performed.

(8) The date that test was performed.

(9) The results of the laboratory test or cross-reference to results and the date of reporting.

(10) The name and address of the laboratory to which forwarded if the procedure is not performed at this laboratory.

(f) *Standard; laboratory report and record.* The laboratory report is sent promptly to the licensed physician or other authorized person who requested the test and a suitable record of each test result is preserved by the laboratory for a period of at least 2 years after the date of submission of the report. The factors explaining the standard are as follows:

(1) The laboratory director is responsible for the laboratory report.

(2) Duplicate copies or a suitable record of laboratory reports are filed in the laboratory in a manner which permits ready identification and accessibility.

(3) Tissue pathology reports utilize acceptable terminology of a recognized system of disease nomenclature.

(4) The results of laboratory tests or procedures or transcripts thereof are not sent to the patient concerned except with the written consent of the physician or other authorized person who requested the test.

(5) Pertinent "normal" ranges as determined by the laboratory performing the tests are available to the physician requesting such tests.

(6) A list of analytical methods employed by the laboratory and a basis for the listed "normal" range is maintained in the laboratory. The list shall be made available to any physician ordering an examination upon request.

(7) If the laboratory refers specimens to another laboratory, the laboratory receiving the specimens meets the applicable conditions under the health insurance program. Each physician ordering an examination is notified that the specimen was referred to another laboratory. Such notice must show the name and address or other identification of the laboratory to which the specimen is referred. If the physician so requests, the referring laboratory may authorize the testing laboratory to report directly to the physician or other authorized person who requested the test, in which event the testing laboratory must send a duplicate of the report to the referring laboratory.

5. In secton 405.1317, the introductory language of paragraphs (a) and (b) is reprinted for reader comprehension, paragraph (a)(4) is revised to read as follows, paragraph (a)(5) is removed, paragraph (a)(6) is redesignated as (a)(5), and (b)(3) is reprinted without change for comment:

§ 405.1317 Condition—quality control.

(a) *Standard; general.* Quality controls imposed and practiced by the laboratory must provide for and assure:

* * * * *

(4) The availability at all times, in the immediate bench area of personnel engaged in examining specimens and performing related procedures within a category (e.g., clinical chemistry, hematology, and pathology), of current laboratory manuals or other complete written descriptions and instructions relating to (i) the current analytical methods used by personnel, (ii) reagents, (iii) control and calibration procedures, (iv) pertinent literature references, and (v) alternative methods for performing tests or storing the test specimens in the event that a test system becomes inoperable.

Procedures and changes in procedures are approved, signed and dated by the technical supervisor. Textbooks may be used as supplements to such written descriptions but may not be used in lieu thereof.

(5) Maintenance and availability to laboratory personnel and to the Secretary of records reflecting dates and, where appropriate, the nature of inspection, validation, remedial action, monitoring, evaluation, and changes and

dates of changes in laboratory procedures.

* * * * *

(b) *Standard; quality control system—methodologies.* Provision is made for an acceptable quality control program covering all types of analysis performed by the laboratory for verification and assessment of accuracy, measurement of precision, and detection of error. The factors explaining the standard are as follows:

* * * * *

(3) *Clinical chemistry.* (i) Each instrument or other device shall be recalibrated or rechecked at least once on each day of use. Records which document the routine precision of each method, automated or manual, and its recalibration schedule shall be maintained and be available to laboratory personnel and the Secretary. At least one standard and one reference sample (control) shall be included with each run of unknown specimens where such standards and reference samples are available. Control limits for standards and reference samples shall be recorded and displayed and shall include the course of action to be instituted when the results are outside the acceptable limits.

(ii) Screening or qualitative chemical urinalysis shall be checked daily by use of suitable reference samples.

C. Subpart Q is amended as follows:

Subpart Q—Conditions of Participation: Clinics, Rehabilitation Agencies, and Public Health Agencies as Providers of Outpatient Physical Therapy and/or Speech Pathology Services; and Conditions for Coverage: Outpatient Physical Therapy Services Furnished by Physical Therapists in Independent Practice

1. The authority citation for Subpart Q continues to read as follows:

Authority: Secs. 1102, 1861(p), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x(p), 1395hh).

2. In § 405.1720, paragraph (b) is revised to remove the 6 numbered contract requirements, and to substitute a general statement, to read as follows:

§ 405.1720 Condition of participation—rehabilitation program.

* * * * *

(b) *Standard: Arrangements for social or vocational services.* If a rehabilitation agency does not provide social or vocational adjustment services through salaried employees, it may provide such adjustment services by means of a written contract with others who must meet the same requirements and responsibilities as salaried personnel as set forth in this subpart. The contract must specify the period of time the contract is to be in effect and the manner of termination or renewal, and provide for retention by the agency of responsibility for, and control and supervision of, the services.

3. In § 405.1721, the introductory text, and paragraph (a), introductory text, are republished, paragraphs (a)(1) through (a)(5) are removed, a new paragraph (a)(1) is added, paragraphs (a)(6), (a)(7), (a)(8) and (a)(9) are redesignated as (a)(2), (a)(3), (a)(4) and (a)(5) respectively, and redesignated (a)(5) is revised. As revised § 405.1721 reads as follows:

§ 405.1721 Condition of participation—arrangements for physical therapy and speech pathology services to be performed by other than salaried organization personnel.

When an organization provides outpatient physical therapy and/or speech pathology services under an arrangement with others, such services are to be furnished in accordance with the terms of a written contract, which provides for retention by the organization of professional and administrative responsibility for, and control and supervision of, such services.

(a) *Standard: Contract provisions.* The terms of the contract:

(1) Require that personnel furnishing services must meet the same requirements as salaried personnel as set forth in this subpart;

(2) Specify the financial arrangements which provide that the contracting outside resource may not bill the patient or the health insurance program for covered services, since pursuant to section 1861(w)(1) of the Act (42 U.S.C. 1395x(w)(1)), covered services furnished under arrangements must be billed through the provider exclusively and receipt of payment by the provider for such services on behalf of an entitled individual discharges the liability of such individual or any other person to pay for such services;

(3) Specify the period of time the contract is to be in effect and the manner of termination or renewal;

(4) Except as provided in paragraph (a)(5) of this section, provide that the services shall be performed in the patient's home, on the premises of the clinic, rehabilitation agency, or public health agency making the arrangements, or on the premises of an institution which meets the requirements of section 1861(e)(1) or section 1861(j)(1) of the Act; and

(5) In the case of a public health agency (including a public health agency which is certified by the health insurance program as a home health agency), may provide that physical therapy and/or speech pathology services may also be performed on the premises of the supplier of such services but only under the following circumstances:

(i) The public health agency does not have the capacity to provide on its premises all of the:

(A) Modalities of treatment, tests, and measurements as specified in § 405.1718(a) (in the case of outpatient physical therapy services), or

(B) Diagnostic and treatment services as specified in § 405.1719(a) (in the case of outpatient speech pathology services);

(ii) The services provided on the premises of the supplier include those as defined in § 405.1718(a) or § 405.1719(a), as appropriate, which the public health agency cannot provide on its premises, and these services are not provided on an outpatient basis in another accessible participating provider of services;

(iii) Services are provided on the premises of the supplier only in those instances in which the patient's treatment requires the use of modality or regimen which is not available on the premises of the public health agency;

(iv) The public health agency is responsible for advising the State agency of the name of each supplier with whom it contracts for the provision of services and makes the arrangements necessary in order for the State agency to survey the premises and organization of each supplier of services to determine compliance with applicable regulations; and

(v) A physician, or, as appropriate to the nature of the cases under review, a podiatrist, qualified physical therapist, qualified speech pathologist, or supervising nurse employed by the public health agency reviews at least every 2 weeks all records of the patients of the public health agency who have been treated on the premises of the supplier.

4. Section 405.1722 is reprinted without change, for comment:

§ 405.1722 Condition of participation—clinical records.

The organization maintains clinical records on all patients in accordance with accepted professional standards, and practices. The clinical records are completely and accurately documented, readily accessible, and systematically organized to facilitate retrieving and compiling information.

(a) *Standard: Protection of clinical record information.* The organization recognizes the confidentiality of clinical record information and provides safeguards against loss, destruction, or unauthorized use. Written procedures govern the use and removal of records and the conditions for release of information. The patient's written consent is required for release of information not authorized by law.

(b) *Standard: Content.* The clinical record contains sufficient information to identify the patient clearly, to justify the diagnosis(es) and treatment, and to document the results accurately. All clinical records contain the following general categories of data:

(1) Documented evidence of the assessment of the needs of the patient, of an appropriate plan of care, and of the care and sevices provided,

(2) Identification data and consent forms,

(3) Medical history,

(4) Report of physical examinations, if any,

(5) Observations and progress notes,

(6) Reports of treatments and clinical findings, and

(7) Discharge summary including final diagnosis(es) and prognosis.

(c) *Standard: Completion of records and centralization of reports.* Current clinical records and those of discharged patients are completed promptly. All clinical information pertaining to a patient is centralized in the patient's clinical record. Each physician's entries into the clinical record are signed by the appropriate physician.

(d) *Standard: Retention and preservation.* Clinical records are retained for a period of time not less than:

(1) That determined by the respective State statute, or the statute of limitations in the State, or

(2) In the absence of a State statute:

(i) Five years after the date of discharge, or

(ii) In the case of a minor, 3 years after the patient becomes of age under State law or 5 years after the date of discharge, whichever is longer.

(e) *Standard: Indexes.* Clinical records are indexed at least according to name of patient to facilitate acquisition of statistical medical information and retrieval of records for research or administrative action.

(f) *Standard: Location and facilities.* The organization maintains adequate facilities and equipment, conveniently located, to provide efficient processing of clinical records (reviewing, indexing, filing, and prompt retrieval).

5. Section 405. 1736(b) and (d) are reprinted without change for comment:

§ 405. 1736 Condition for coverage-clinical records.

* * * * *

(b) *Standard: Content.* The clinical record contains sufficient information to identify the patient clearly, to justify the diagnosis(es) and treatment, and to document the results accurately. All clinical records contain the following general categories of data:

(1) Documented evidence of the assessment of the needs of the patient, of an appropriate plan of care, and of the care and sevices provided,

(2) Identification data and consent forms,

(3) Medical history,

(4) Report of physical examination(s), if any,

(5) Observations and progress notes,

(6) Reports of treatments and clinical findings, and

(7) Discharge summary including final diagnosis(es) and prognosis.

* * * * *

(d) *Standard: Retention and preservation.* Clinical records are retained for a period of time not less than:

(1) That determined by the respective State statute or the statute of limitations in the State, or

(2) In the absence of a State statute:

(i) 5 years after the date of discharge or, (ii) in the case of a minor, 3 years after the patient becomes of age under State law, or 5 years after the date of discharge, whichever is longer.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare-Supplementary Medical Insurance Program; No. 13.714, Medical Assistance)

Dated: May 19, 1986.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: July 14, 1986.

Otis R. Bowen,

Secretary.

[FR Doc: 86-29173 Filed 12-30-86; 8:45am]

BILLING CODE 4120-01-M

Notices

Federal Register
Vol. 51, No. 250
Wednesday, December 31, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

Pedernales Electric Cooperative, Inc.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulations (40 CFR Parts 1500 through 1508), AND REA Environmental Policy and Procedures (7 CFR Part 1794), has made a Finding of No Significant Impact (FONSI) with respect to the construction of a 138 kV transmission line and substation upgrades in Comal County, Texas, by Pedernales Electric Cooperative, Inc. (Pedernales).

FOR FURTHER INFORMATION CONTACT: REA's FONSI and Environmental Assessment (EA) and Pedernales' Borrower's Environmental Report (BER) may be reviewed at the office of the Director, Southwest Area—Electric, Room 0207, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, Telephone (202) 328–8846, or at the office of Pedernales Electric Cooperative, Inc., (Bennie R. Fuelburg, Manager), P.O. Box 467, Johnson City, Texas 78636, Telephone (512) 868–7155, during regular business hours.

Copies of the EA and FONSI can be obtained from either of the contacts listed above. Any comments or questions should be directed to the REA contact.

SUPPLEMENTARY INFORMATION: REA, in conjunction with a request for construction approval from Pedernales, has reviewed the BER submitted by Pedernales and has determined that it represents an accurate assessment of the environmental impacts of the proposed project. The project consists of constructing 52.8 km (32.8 mi) of 138 kV transmission line within a 30 meter (100 ft) right-of-way (ROW). Approximately 19.3 km (12 mi) of 138 kV line will be constructed between Bergheim and Devil's Hill along a new ROW. The remainder of the project, Devil's Hill to Crane's Mill 16.5 km (10.25 mi) and Crane's Mill to Sattler 16.9 km (10.5) will involve the removal of an existing 69 kV transmission line which would be replaced by a 138 kV line that would utilize the same ROW to the extent possible.

REA determined that the proposed project will have no effect on wetlands, primeforestland or rangeland, threatened and endangered species or critical habitat, and any property listed or eligible for listing in the National Register of Historic Places. The floodplains of streams and areas defined as prime farmland are located in both the preferred and alternate corridors. A maximum of 10 structures would be located within the 100-year floodplain of the streams located within either the preferred or alternate corridor. Approximately 0.02 ha (0.06 ac) of prime farmland would be impacted by the project regardless of the corridor selected. The only land removed from crop production would be immediately adjacent to the line support structures. There is no alternative action that would satisfy the need for the project which would avoid or reduce the small amount of prime farmland that would be impacted or that avoids the placement of structures within the 100-year floodplain. No other matters of potential environmental concern have been identified.

Alternatives examined for the proposed project included no action, double circuiting the existing 69 kV system, repalacement of the existing system in the project area with 138 kV lines and alternative line routes. REA determined that the construction of a new 138 kV line between Bergheim and Devil's Hill and the replacement of existing 69 kV lines with 138 kV lines between Devil's Hill and Sattler is an environmentally acceptable alternative for Pedernales to maintain adequate service to present customers and to serve a substantial regional load growth.

Based upon the BER, REA prepared an EA concerning the proposed project and its impacts. REA has independently evaluated the proposed project and has concluded that project approval would not constitute a major Federal action significantly affecting the quality of the human environment. Consequently, no environmental impact statement is necessary.

In accordance with REA Environmental Policy and Procedures (7 CFR Part 1794) Pedernales advertised and requested comments on the environmental aspects of the proposed project in local newspapers. There were no comments.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.850—Rural Electrification Loans and Loan Guarantees. For the reasons set forth in the final rule related notice to 7 CFR Part 3015 Subpart V., this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

Dated: December 19, 1986.

Jack Van Mark,

Acting Administrator.

[FR Doc. 86–29318 Filed 12–30–86; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: Department of Commerce, International Trade Administration.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the certificate should be issued.

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97–290) authorizes the Secretary of Commerce to issue export Trade Certificates of Review. A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a certificate should be issued. An original and five (5) copies should be submitted not later than January 20, 1987 to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 86–00009."

Applicant: American Wood Chip Export Association, 900 SW. Fifth Avenue, 23rd Floor, Portland, Oregon 97204. Contact: David P. Miller, Secretary/Treasurer, Telephone: 503/294–9202.

Application #: 86–00009.

Date Deemed Submitted: December 15, 1986.

Members (in addition to applicant): Sun Studs, Inc. and RLC Fibre Co., Inc. of Roseburg, Oregon; Medford Corporation, Medford, Oregon; Bohemia, Inc., Eugene, Oregon; and North Coast Export Cooperative, Eureka, California.

Summary of the Application

A. Export Trade and Export Markets

The American Wood Chip Export Association ("AWCEA") intends to export wood chips, sawdust, shavings, and other wood fibers (other than pulp) on a worldwide basis.

B. Export Trade Activities and Methods of Operation

AWCEA seeks certification for the following export-related activities:

1. Members may discuss supply and demand for chips in export trade, including availability of chips for export, anticipated export prices and volumes desired by export customers.
2. Members may discuss and/or agree upon terms of export sales of the products to foreign buyers.
3. Members may discuss and/or agree upon export prices to be charged by members for the product in sales to foreign buyers.
4. Members may discuss domestic supply and demand for the products in the Pacific Northwest region. There will be no discussion of specific prices or volumes involved in domestic transactions by members, but such information can be furnished by members on a confidential basis to the secretary of the organization who will compute averages and trends regarding domestic prices and volumes for disclosure to members.
5. The association may limit membership to companies which export the products described above.
6. The association may exclude from its membership companies which are owned, controlled by, or affiliated with, foreign individuals, or corporations or governments.

Dated: December 23, 1986.

George Muller,

Deputy Director, Office of Export Trading Company Affairs.

[FR Doc. 86–29300 Filed 12–30–86; 8:45 am]

BILLING CODE 3510–DR–M

National Oceanic and Atmospheric Administration

1985 Survey of Strip Bass Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of survey results.

SUMMARY: NOAA publishes the results of a survey of Atlantic coast striped bass fisheries for 1985. The report of survey results is required under the Atlantic Striped Bass Conservation Act. The intended effect is to provide information on the status of the striped bass fisheries.

ADDRESS: Copies of the survey results are available from David G. Deuel, NOAA/NMFS, 1825 Connecticut Avenue, Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: David G. Deuel, 202–673–5359.

SUPPLEMENTARY INFORMATION:

Comprehensive Annual Survey Of The Atlantic Striped Bass Fisheries—Calendar Year 1985

Section 6 of the Atlantic Strip Bass Conservation Act (Pub. L. 98–613, 16 U.S.C. 1851) required the Secretary of Commerce and the Secretary of the Interior to conduct a comprehensive annual survey of the Atlantic striped bass fisheries. Each survey was to include, but not be limited to, a compilation and assessment of the recreational and commercial landings of striped bass in the coastal States during the period considered in the survey. The results of each annual survey were to be published in the Federal Register. This report presents data for calendar year 1985 as required by section 6 of the Atlantic Striped Bass Conservation Act (The Act).

The Act was signed into law on October 31, 1984. Under the Act, no funds were authorized for appropriation for activities in Fiscal Year 1985. For Fiscal Year 1986, funds were authorized but not appropriated. Thus, for calendar year 1985, no funds were appropriated for conduct of the comprehensive annual survey and no separate surveys were conducted on the Atlantic striped bass fisheries. However, the National Marine Fisheries Service of the U.S. Department of Commerce routinely collects data on all U.S. commercial fisheries and on marine recreational fishing on the Atlantic, Gulf, and Pacific coasts. Data from these surveys are used in this report to satisfy the requirements of Section 6 of the Act.

A description of the statistical survey procedures for the commercial landings may be found in "Fishery Statistics of the United States 1977" (U.S. Department of Commerce, 1964), and for the recreational fishery data in "Marine Recreational Fishery Statistics Survey, Atlantic and Gulf Coasts, 1983–1984" (U.S. Department of Commerce, 1985). The Act addresses striped bass from Maine through North Carolina; the data presented below are for the same area.

Commercial landings of striped bass in 1985 were 1.2 million pounds, the lowest on record, and 1.7 million pounds less than the 1984 landings. Part of the decline since 1982 has resulted from restrictive regulations on the commercial fishery. Maximum landings of 14.7 million pounds were recorded in 1973, and since then landings have steadily declined. Average landings for the 20 year period from 1966 to 1985 were 7.2 million pounds. However, from 1966 to 1975, landings averaged 10.7 million pounds, while from 1976 to 1985, landings averaged only 3.7 million pounds. For the last 5 years, an average of 2.5 million pounds were landed. Commercial landings by State from 1979 through 1985 are shown in Table 1. Figure 1 shows annual commercial landings from 1961 through 1985.

Estimates of catch and harvest of striped bass by recreational fishermen are available from the marine recreational fishery statistics surveys from 1979 through 1985. Catch is defined as the total number of fish caught,

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including those released alive. Harvest is the number of fish which are removed from the population. Estimated weights are available for the fish harvested. The reliability of the survey estimates is greater for species which occur more frequently in the catch than for those which occur infrequently in the catch. In recent years, with the striped bass stocks at low levels, the estimates for striped bass are less reliable than those for other species such as bluefish, winter flounder, or scup, which occur frequently in the catch. In addition, there is high variability of striped bass catch estimates by State from year to year. Although a separate survey of the recreational fishery for striped bass would likely provide more reliable estimates of the catch and harvest of striped bass, such a survey would be extremely expensive to conduct because of the low abundance of striped bass.

In 1985, recreational fishermen caught an estimated 618,000 striped bass, of which 198,000 were harvested. The remaining 420,000 were released alive. The total recreational catch of striped bass has declined from about 2.0 million fish in 1979 to about 600,000 fish in 1983–1985. As with the commercial fishery, restrictions on the recreational fishery contributed to part of the decrease in catch. The number of striped bass harvested has also declined, from about 1.3 million fish in 1979 to about 200,000 in 1982–1985. The estimated weight of the 1985 striped bass recreational harvest was 1.7 million pounds. Table 2 presents estimates of the total recreational catch of striped bass by State from 1979 through 1985.

The management measures imposed on striped bass fishing by the coastal States, as recommended by the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for the Striped Bass (as amended), have had a significant impact on the recreational harvest and the commercial landings. Most new management regulations were put in place between 1982 and 1985, with those having the most impact being implemented during 1984 and 1985. These regulations include closed seasons, closed areas, size limits, commercial gear restrictions and bag limits on the recreational fishery. Most significantly, a moratorium was imposed on striped bass fishing in Maryland and Delaware in January 1985.

Appropriate data on striped bass to calculate estimates of the population size have not been collected. Prior to 1982, striped bass commercial landings data were used as an indicator of the stock size. The commercial fishery has since been severely restricted by regulations, thus landings in recent years are not comparable to those in earlier years nor are they indicative of trends in stock size. Thus, caution should be used in interpreting the landings data in recent years. The recreational fishery for striped bass has been similarly impacted by management regulations.

There have been additional management restrictions placed on the striped bass fisheries from Maine through North Carolina during 1986 in response to a recent amendment to the Commission's Interstate Fishery Management Plan for the Striped Bass. Changes in regulations based on the amendment and other restrictions, such as closures due to high levels of PCB's, will result in landings data being of little or no use as an indicator of the condition of the striped bass stocks.

Dated: December 23, 1986.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

TABLE 1. REPORTED COMMERCIAL LANDINGS (THOUSANDS OF POUNDS) [1] OF STRIPED BASS IN ATLANTIC COASTAL STATES, 1979–1985

State	1979	1980	1981	1982	1983	1984	1985
Maine	**	**	1				1
New Hampshire							
Massachusetts	695	886	708	643	224	107	119
Rhode Island	54	20	235	270	196	54	61
Connecticut	45	29	5	6	2	2	6
New York	570	598	822	471	310	595	469
New Jersey	40	24	14	10	20	9	12
Delaware	26	17	23	26	7	37	
Maryland	947	2,101	1,641	518	446	1,106	43
Virginia	467	503	395	147	151	508	241
North Carolina	614	473	417	338	361	513	280
Total	3,458	4,651	4,261	2,429	1,717	2,933	1,232

[1] Source: National Fisheries Service, F/S21, unpublished data.
NOTE: Dash denotes none reported; ** denotes less than 500 pounds.

TABLE 2. Estimated Total Recreational Catch (Thousands of Fish) of striped bass by state, Maine to North Carolina, 1979–1985.[1]

State	1979	1980	1981	1982	1983	1984	1985
Maine	(–)	(–)	(–)	(–)	(–)	(–)	177
New Hampshire	(0)	(0)	(–)	(0)	(–)	(0)	(–)
Massachusetts	66	(–)	(–)	129	68	132	123
Rhode Island	31	(–)	(–)	(–)	(–)	72	50
Connecticut	81	42	(–)	555	45	41	41
New York	733	59	37	(–)	36	101	95
New Jersey	(–)	(–)	40	151	210	84	(–)
Delaware	(–)	(0)	(0)	(0)	(–)	(–)	(–)
Maryland	1,005	377	174	40	155	148	102

TABLE 2. Estimated Total Recreational Catch (Thousands of Fish) of striped bass by state, Maine to North Carolina, 1979–1985.[1]—Continued

State	1979	1980	1981	1982	1983	1984	1985
Virginia	(–)	(0)	(0)	(0)	(–)	(–)	(–)
North Carolina	57	(–)	576	(0)	(–)	(–)	(–)
Total	2,005	548	892	911	568	626	618

Estimates include both fish harvested and those released.
(–) = Less than 30,000 reported.
(0) = None reported.
[1] Sources: 1979–1980: USDOC, 1984 Current Fishery Statistics No. 8322. 1981–1982: USDOC, 1985 Current Fishery Statistics No. 8324. 1983–1984: USDOC, 1985 Current Fishery Statistics No. 8326. 1985: USDOC, 1985 Current Fishery Statistics No. 8327.

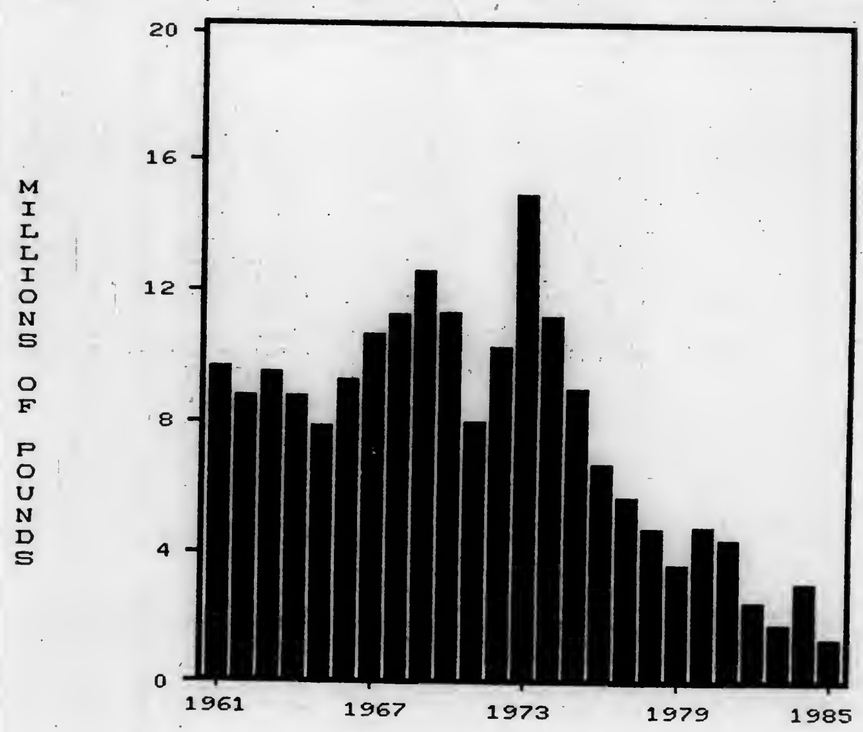


Figure 1. Reported commercial landings of striped bass along the Atlantic Coast, 1961-1985.

[FR Doc. 86-29279 Filed 12-30-86; 8:45 am]
BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing Import Limits for Certain Wool and Man-Made Fiber Textile Products From the Socialist Republic of Romania; Effective January 1, 1987

December 23, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1987. For further information contact Kathryn Cabral, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

Background

The Bilateral Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated November 7 and 16, 1984, between the Governments of the United States and the Socialist Republic of Romania established a group limit for Categories 431–459 and 630–659, and within the group, specific limits for individual Categories 433/434, 435/444, 443, 635, 638/639, 643/644pt. (only T.S.U.S.A. numbers 381.3162, 381.3164, 381.3166, 381.3168, 381.3561, 381.6976, 381.8670, 381.9560, 381.9562, 381.9564, 381.9566, 381.9568, 381.9972, 384.2327, 384.2328, 384.2329, 384.2331, 384.2332, 384.2333, 384.2334, 384.2336, 384.2337, 384.2774, 384.2775, 384.2776, 384.2777, 384.2778, 384.2779, 384.2780, 384.2781, 384.2782, 384.5673, 384.5674, 384.5675, 384.5677, 384.5678, 384.5679, 384.5680, 384.5681, 384.5683, 384.7863, 384.7865, 384.7866, 384.7867, 384.7869, 384.7870, 384.7871, 384.7873, 384.7875, 384.9156, 384.9157, 384.9158, 384.9159, 384.9161, 384.9162, 384.9163, 384.9164, 384.9166, 384.9674) and 645/646 and consultation levels for Categories 442, 448 and 640 and a specific limit for Category 604, produced or manufactured in Romania and exported during the twelve-month period beginning on January 1, 1987 and extending through December 31, 1987. The agreement also provides consultation levels for categories which are not subject to specific limits and which may be adjusted during the year. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs, in accordance with the terms of the bilateral agreement, to prohibit entry into the United States for cosumption and withdrawal from warehouse for consumption, of wool and man-made fiber textile products in the foregoing categories, exported during the twelve-month period which begins on January 1, 1987 and extends through December 31, 1987, in excess of the designated limits.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 23, 1986.

Commissioner of Customs
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as furthr extended on July 31, 1986; pursuant to the Bilateral Wool and Man-Made Fiber Textile Agreement of November 7 and 8, 1984, between the Governments of the United States and the Socialist Republic of Romania; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of wool and man-made fiber textile products in the following categories, produced or manufactured in Romania and exported during the twelve-month period beginning on January 1, 1987 and extending through December 31, 1987, in excess of the following restraint limits:

Category	12-Mo restraint limit
Group III-Apparel	
431–459 and 630–659	42,020,449 yd² equivalent.
433/434	278,181yd² equivalent.
435/444	7,545 doz.
443	8,022 doz.
442	5,556 doz.
448	5,556 doz.
604	3,219,546 lb.
635	56,364 doz.
638/639	4,917,881 yd² equivalent.
640	50,000 doz.
643/644pt.[1]	36,823 doz.
645/646	227,130 doz.

[1] In category 643/644 only T.S.U.S.A. numbers 381.3162, 381.3164, 381.3166, 381.3168, 381.3561, 381.6976, 381.8670, 381.9560, 381.9562, 381.9564, 381.9566, 381.9568, 381.9972, 384.2327, 384.2328, 384.2329, 384.2331, 384.2332, 384.2333, 384.2334, 384.2336, 384.2337, 384.2774, 384.2775, 384.2776, 384.2777, 384.2778, 384.2779, 384.2780, 384.2781, 384.2782, 384.5673, 384.5674, 384.5675, 384.5677, 384.5678, 384.5679, 384.5680, 384.5681, 384.5683, 384.7863, 384.7865, 384.7866, 384.7867, 384.7869, 384.7870, 384.7871, 384.7873, 384.7875, 384.9156, 384.9157, 384.9158, 384.9159, 384.9161, 384.9162, 384.9163, 384.9164, 384.9166, 384.9674.

In carrying out this directive, entries of textile products in the foregoing categories, with exception of Categories 442 and 448, produced or manufactured in the Socialist Republic of Romania, which have been exported to the United States on and after January 1, 1986 and extending through December 31, 1986, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during the period. In the event the levels of restraint established for the period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter.

The levels set forth above are subject to adjustment in the future according to the provisions of the Bilateral Wool and Man-Made Fiber Textile Agreement of November 7 and 16, 1984 between the Governments of the United States and the Socialist Republic of Romania which provide, in part, that: (1) Specific limits may be increased for carryover and carryforward; (2) consultations may be held to adjust levels for categories not subject to specific limits; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate adjustment under the bilateral agreement, referred to above, will be made to you by letter.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consomption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements had determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–29332 Filed 12–30–86; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on B–1B Defensive Avionics; Date Change; Advisory Committee Meeting

ACTION: Change in date of advisory committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on B–1B Defensive Avionics scheduled for January 13, 1987 as published in the **Federal Register** (Vol. 51, No. 230, Page 43236, Monday, December 1, 1986, FR Doc. 86–26880) will be held on January 20, 1987.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 24, 1986.

[FR Doc. 86–29339 Filed 12–30–86; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Strategic Air Defense R&D; Advisory Committee Meetings

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Strategic Air Defense R&D will meet in closed session on February 5–6, 1987 at the Naval Ocean Systems Center, San Diego, California.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will investigate the feasibility of defense against cruise missiles and their delivery platforms.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

December 23, 1986.

[FR Doc. 86–20340 Filed 12–30–86; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: 15–16 January 1987.

Times of meeting: 0830 hours, 15 January 1987; 1300 hours, 16, January 1987.

Places: Pentagon, Wash, D.C., Room 2E715B.

Agenda: The Army Science Board for the Human Engineering Laboratory Effectiveness Review will meet at the Pentagon for the purpose of interacting with members of the DCSRDA and DCSPER staffs and representatives of Human Engineering Laboratory user community. These interactions will afford the ASB panel the opportunity to gather additional data in the conduct of the HEL Effectiveness Review. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at, (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 86–29503 Filed 12–30–86; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: Thurs and Fri, 15–16 January 1987.

Times of meeting: 0800–1630 hours each day.

Place: Pentagon, Wash, DC, DCSOPS Conference Room 3E835.

Agenda: The proposal for the Army Science Board 1987 Summer Study on Force Cost Drivers is to determine if Army environmental specifications e.g. mechanical, natural, and battlefield, and their application to equipment and systems are valid in view of the costs. EMP, nuclear hardening, tempest and NBC contamination survivability are specifications of particular interest. This initial meeting will review the study terms of reference, receive selected classified and unclassified briefings and meet in executive session to determine study methodology and programmatics. This meeting will be closed to the public in accordance with section 552(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 86–29504 Filed 12–30–86; 8:45 am]

BILLING CODE 3710-08-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

December 23, 1986.

The USAF Scientific Advisory Board Ad Hoc Committee on Software Expertise will meet at the Pentagon, Washington DC, on January 22–23, 1987 from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to review, discuss and evaluate the effectiveness of software expertise being developed by the Air Force.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–8845.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 86–29298 Filed 12–30–86; 8:45 am]

BILLING CODE 3910–01–M

Air Force Activities for Conversion to Contract

ACTION: Notice.

The Air Force recently determined that Transient Aircraft Maintenance, Hurlburt Field, FL, will be examined for conversion to contract.

FOR FURTHER INFORMATION CONTACT: Mr. Noble Loucks, HQ MAC/XPMRS, Scott AFB, IL, telephone (618) 256–4105.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86–29304 Filed 12–30–86; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

Indian Education Act—Part A—Formula Grant Program; Fiscal Year 1987; Amendment of Notice; Applications

AGENCY: Department of Education.

ACTION: Notice of amendment to notice for transmittal of new applications for fiscal year 1987 under the Indian Education Act—Part A—Formula Grant Program (CFDA No. 84.060A).

SUMMARY: This notice amends the fiscal year 1987 notice inviting applications for new awards under the Indian Education Act—Part A—Formula Grant Program, published in the **Federal Register** on September 17, 1986 (51 FR 33005), to notify potential applicants that the statute authorizing this program has been amended specifically to include a new activity allowable under this program. The deadline for transmittal of these applications remains the same as under the original notice (February 13, 1987).

SUPPLEMENTARY INFORMATION: Section 4133 of the Drug-Free Schools and Communities Act of 1986 (Subtitle B of Title IV of Pub. L. 99–570), enacted October 27, 1986, amended section 304 of the Indian Education Act by adding a new paragraph (3) which permits the use of funds for "the training of counselors at schools eligible for funding under this title in counseling techniques relevant to the treatment of alcohol and substance abuse."

A technical amendment to the program regulations incorporating the changes made by this legislation will be published in the **Federal Register** at a later date.

FOR FURTHER INFORMATION CONTACT: Julie Lesceux, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2177, Washington, DC 20202. Telephone: (202) 245–7881.

Program Authority: 20 U.S.C. 241aa–241ff.

Dated: December 23, 1986.

Lawrence F. Davenport,

Assistant Secretary, Elementary and Secondary Education.

[FR Doc. 86–29351 Filed 12–20–86; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Proposed Consent Order With Shell Oil Company

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of execution of proposed consent order with Shell Oil Company and opportunity for public comment.

SUMMARY: The Economic Regulatory Administration (ERA) announces a proposed Consent Order, reproduced below, between the Department of Energy (DOE) and Shell Oil Company (Shell). The agreement proposes to resolve all remaining issues relating to Shell's compliance with the federal petroleum price and allocation regulations for the period January 1, 1973 through January 27, 1981. If this Consent Order is approved, Shell will pay $180 million, plus interest from the date the Consent Order was executed until paid, to the DOE. ERA will then petition the DOE Office of Hearings and Appeals (OHA) to implement a Special Refund Proceeding pursuant to 10 CFR Part 205, Subpart V, where any person who claims to have suffered injury from Shell's alleged overcharges would have the opportunity to submit a claim. Pursuant to 10 CFR 205.199J, ERA will receive written comments on the proposed Consent Order for thirty (30) days following publication of this Notice. Following this comment period, ERA will conduct a public hearing to provide interested persons an additional opportunity to present comments. ERA will consider the submissions received from the public in determining whether to reject the settlement, accept the settlement and issue a final Consent Order, or renegotiate the agreement. DOE's final decision will be published in the **Federal Register**, along with an analysis of significant written and oral comments, as well as any other considerations that were relevant to the decision.

FOR FURTHER INFORMATION CONTACT: Leslie Wm. Adams, Deputy Solicitor, Economic Regulatory Administration, Department of Energy (RG–44), Washington, DC 20585, Telephone: 202–252–4387.

Copies of the Consent Order may be received free of charge by writing to the address above, or may be obtained at the Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue SW., Room 1E–190, Washington, DC.

SUPPLEMENTARY INFORMATION:

I. Background
II. Resolution of Regulatory Issues
  A. Crude Oil Issues
  B. Refiner Pricing Issues
  C. Natural Gas Liquids Issues
  D. Effect of Allegations
III. Basis for Settlement
  A. Crude Oil Allegations
  B. Refiner Pricing Issues
IV. Terms and Conditions of the Consent Order

I. Background

Shell is a major petroleum refiner subject to the audit jurisdiction of ERA to determine compliance with the federal petroleum price and allocation regulations. During the period covered by the proposed Consent Order (January 1, 1973 through January 27, 1981), Shell engaged in, among other things, the production, importation, refining, and sale of crude oil; the sale of residual fuel oil, motor gasoline, middle distillates, aviation fuel, propane and other refined petroleum products; and the extraction, fractionation and sale of natural gas liquids (NGLs) and natural gas liquid products (NGLPs).

ERA conducted an intensified audit of Shell's compliance for the period beginning in 1973 to the date when federal price and allocation controls were ended by the President (January 28, 1981, Executive Order 12287, 46 FR 9909 January 30, 1981). During this audit, ERA identified areas in the pricing and sales of crude oil and refined petroleum products in which it believes that Shell had failed to comply with the requirements of the federal price and allocation regulations. ERA has initiated enforcement actions against Shell both administratively and in the courts. There are currently eight enforcement matters in litigation, including one crude oil Proposed Remedial Order (PRO), seven refiner pricing issues, as well as an NGL matter which would be the subject of a PRO if, for any reason, the Consent Order is not adopted as a final order.

ERA has engaged in negotiations with Shell over a period of years before reaching the settlement described here. The terms of this settlement, which has been approved within the Department of Energy, require Shell to pay $160 million for distribution by DOE. The portion reflecting resolution of crude oil issues is subject to DOE's modified restitutionary policy for crude oil cases, as described below.

For the reasons stated below, DOE believes the proposed Consent Order represents a fair settlement of the matters at issue, a reasonable resolution of the enforcement actions, and an appropriate remedy for the alleged violations.

II. Resolution of Regulatory Issues

There are nine enforcement actions to be resolved with Shell: One crude oil PRO; five refiner pricing PROs; two refiner pricing Remedial Orders (ROs); and a yet to be issued PRO concerning NGLs. These actions are described below.

A. Crude Oil Issues

ERA issued a PRO to Shell on November 9, 1984, alleging violations of the regulations governing the first sale of crude oil in the amount of $78.7 million, plus interest, for the period September 1973 through May 1979. ERA alleged that these errors continued throughout the period of controls and would be found on unaudited properties as well. The issues in the PRO primarily concern Shell's designation of "properties", plus posted price and other computational errors. Shell asserts a number of factual and legal errors in the PRO and that it has made refunds with regard to some of the allegations. ERA believes that the maximum liability that could be found is $96.7 million, with interest, $281 million. This matter is Pending in OHA in case number HRO–0271.

B. Refiner pricing Issues

1. Fee Free License Valuation/ Crude Oil Costs. OHA issued an RO to Shell on April 10, 1986, *Shell Oil Company*, 14 DOE ¶ 83,015 (1986), in which it found that Shell's attribution of a value to fee free licenses transferred from an affiliate was improper and that Shell's methodology for calculating crude oil costs was inconsistent with the regulations. As a result, Shell had claimed $11.7 million in excess costs.

2. Olefin Plant Nonproduct Costs. Shell claimed nonproduct costs associated with the construction of an olefin plant at its Norco complex. OHA issued an RO on this issue in 1984, *Shell Oil Company*, 12 DOE ¶ 83,024, finding that $40.7 million in costs were improperly claimed.

3. Retroactive Reallocation Of Costs. ERA alleged that Shell improperly refiled to reallocate costs between product categories after the period permitted by regulation. The PRO did not specify the amount of costs shifted between product categories. This matter is pending in case number HRO–0277.

4. Nonproduct Costs. ERA conducted an audit of the nonproduct costs claimed by Shell and challenged the calculation of costs claimed for a number of categories, alleging an overstatement of $158 million. This matter is pending in case number HRO–0278.

5. Jet Fuel May 15 Prices. ERA alleges that Shell improperly designated the classes of purchaser of jet fuel and, as a result, chose incorrect May 15, 1973 prices for the classes. The PRO did not allege an amount of violation. The audit was conducted on a sampling basis. If the PRO were to be affirmed by OHA, a determination of Shell's liability would be required. With Shell's assistance, ERA has computed an estimated recovery for this case. This matter is pending in case number HRO–0279.

6. May 15 Prices— Other Products. ERA alleges that Shell imputed the May 15 price for a number of products and classes of purchasers, rather than determine the actual May 15, 1973 price for each class. The PRO did not allege an amount of violation. As with the Jet Fuel case, the audit was based on a sample of Shell's prices, and, if successful, ERA would have to determine the amount of violation. For the purposes of negotiation, Shell and DOE estimated an amount of recovery for this case. This matter is pending in case number HRO–0280.

7. Retail Price Equalization. ERA alleges that Shell failed to compute its recoveries of costs for retail gasoline sales correctly in that Shell did not deem recoveries in retail sales at the highest cost increase increment charged. The PRO alleges an underrecovery of $12 million in costs. This matter is pending in case number HRO–0281.

C. Natural Gas Liquids Issues

ERA has not issued a PRO regarding NGLs. In its audit, ERA has identified a number of errors in Shell's calculation of NGL costs, including its use of transfer prices and in the calculation of shrinkage based on market prices of NGLs rather than actual prices in Shell transactions. The amounts attributable to these issues were included in the assessment of recovery from Shell.

D. Effect Of Allegations

1. Crude Oil Allegations. ERA alleges that Shell's alleged crude oil violations should result in a refund of the amount of the alleged overcharges, rather than a determination of the effect such pricing would have had on the prices of Shell's refined products.

2. Refiner Pricing and NGL Allegations. With regard to the two May 15 Price cases, B.5 and 6 above, ERA alleged in the PROs that any amount determined to be a violation results in an overcharge to be refunded to customers. In subsequent litigation in other cases, it has become apparent that neither OHA nor the Federal Energy Regulatory Commission are likely to uphold this position. As a result, ERA has analyzed all the refiner issues as cost or recovery adjustment matters. In addition, the NGL issues also result in an adjustment to Shell's claimed costs.

The premise of the Refiner Price Rule is that the maximum price that could be charged is limited to the price charged on May 15, 1973 plus increased costs incurred since May 1973. Thus, the determination of the May 15 price, and the calculation of increased costs, both of which are at issue here, is central to the regulations. In addition, refiners were allowed to carry over, or "bank", those increased costs not used to justify prices in a particular month. In other words, if a refiner charged less than its maximum allowable price, it could increase its price in later months. The nature of the costs that could be claimed, the manner of their calculation, the ability to reallocate costs among products, the computation of recoveries of costs, and the restrictions on the carry over and use of banks were all governed by the regulations. At the end of price controls in 1981, Shell had aggregated almost $700 million in banks.

ERA calculated the total of the adjustments to be made to Shell's reported costs and recoveries for the period of controls based on the allegations discussed above. Including NGL issues and the estimates discussed above, the total of the adjustments is $490 million. However, some of these adjustments are allocable to decontrolled products. Prior to making these adjustments, ERA computed an overrecovery of costs of $6 million. When the adjustments were made, an additional $22.8 million of overrecoveries occurred, for a total of $28.8 million, all attributable to the calculation of prices of gasoline. With interest, the total allegation against Shell for refiner pricing and NGL issues is $78.7 million.

II. Basis For Settlement

A. Crude Oil Allegations

The crude oil issues include both the allegations made with regard to audited properties but also include projections and extrapolations to unaudited properties. In the litigation and in the negotiations, Shell has maintained that ERA's estimate of overcharges on unaudited properties is overstated. Shell has supplied information in support of their position that minimal overcharges would be found on the unaudited properties and that ERA's extrapolations should be rejected. In addition, Shell maintains that it has made refunds with regard to some of the allegations, and that the amount in controversy should be reduced by the amount of the refunds. Based on the information exchanged in negotiations, ERA has reevaluated its likelihood of recovery on these issues. Furthermore, ERA has assessed the litigation risk in prevailing on every element of the crude oil PRO, including the interest component. As a result of these considerations, ERA has determined that a $160 million recovery on those issues is satisfactory.

B. Refiner Pricing Issues.

In determining a reasonable settlement amount for the allegations of regulatory violations concerning refined products discussed above, ERA reviewed its maximum overcharge and interest determination of $78.7 million. This amount, which is based on audit samples, estimates, projections and extrapolations, represents the estimated maximum recovery, including interest, that could result if all regulatory issues resolved by this settlement were adjudicated in ERA's favor and Shell's maximum allowable prices calculated on the basis of the effect of those issues. As noted above, the $28.8 million in overrecoveries occurred entirely in gasoline, and is the result of $490 million in cost and recovery adjustments.

The inherent risks in litigation make recovery of the entire amount problematic. The government must prevail on all of the issues in order to achieve the maximum overcharge recovery. Each of the eight cases discussed above in turn contains. subissues and each subissue presents factual and legal questions on which ERA must prevail to require the adjustment to Shell's costs or recoveries identified above. The failure to prevail fully on any issue that effects the calculation of Shell's gasoline prices renders the probability of recovering the entire $28.8 million in refinery pricing overrecoveries less likely. As a result, ERA believes that a recovery of $20 million for the alleged violations is satisfactory.

IV. Terms and Conditions of the Consent Order

Within thirty days of the effective date of the Consent Order, Shell will pay the principal amount of $180 million, plus interest from the date of execution until paid, to DOE. ERA will petition OHA to implement a Special Refund Proceeding under the provisions of 10 CFR Part 205, Subpart V. In the Proceeding, OHA will develop procedures for the receipt and evaluation of applications for refund in order to distribute the refund amount. To ensure that OHA has sufficient information to evaluate the claims, the proposed Consent Order requires that Shell make necessary information available to OHA.

That portion of the refund amount attributable to crude oil issues, as explained above, is subject to the Statement of Modified Restitutionary Policy in crude oil cases adopted by DOE pursuant to the Settlement Agreement in the *Department of Energy Stripper Well Exemption Litigation*, M.D.L. 378 (D. Kan.). *See* 51 FR 27899 (August 4, 1986). Under that policy, up to 20 percent of the amount received in a crude oil case will be set aside for the payment of claims and the balance will be divided between the states, territories and possessions of the United States, and the DOE for deposit in the U.S. Treasury.

The Consent Order constitutes neither an admission by Shell nor a finding by DOE of a violation of the federal petroleum price and allocation regulations. Shell and DOE mutually release each other from claims and actions with respect to the matters covered by the proposed Consent Order. The proposed Consent Order does not affect the right of any other party to take action against Shell, or of Shell or the DOE to take action against any other party.

Following the effective date of the Consent Order, Shell and DOE will seek to terminate the proceedings described above. DOE has determined that it is inappropriate to seek civil or criminal penalties for the matters covered by the Consent Order based on the information and evidence in its possession.

Submission of Written Comments

The proposed Consent Order cannot be made effective until the conclusion of the public review process, of which this Notice is a part.

Interested parties are invited to submit written comments concerning this proposed Consent Order to: Leslie Wm. Adams, Deputy Solicitor, Economic Regulatory Administration, U.S. Department of Energy, RG–44, 1000 Independence Avenue, SW., Washington, DC 20585.

In addition, a public hearing, beginning at 10:00 a.m. on February 11, 1987, will be held at the Department of Energy Auditorium, Room GE–086 in the Forrestal Building at the address above. Requests to appear should be addressed to Mr. Adams. All comments received by the thirtieth day following publication of this Notice in the **Federal Register**, and all statements made at the hearing, will be considered before determining whether to adopt the proposed Consent Order as a final Order. Any modifications of the proposed Consent Order which significantly alter its terms or impact will be published for additional comment. If ERA determines to issue the proposed Consent Order as a final Order, the proposed Order will be made final and effective by publication of a Notice in the **Federal Register**.

Any information or data considered confidential by the person submitting it must be identified as such in accordance with the provisions of 10 CFR 205.9(f).

Issued in Washington, DC, December 23, 1986.

Marshall A. Staunton,

Administrator, Economic Regulatory Administration.

Consent Order With Shell Oil Company; Case No. RSHA00001

I. Introduction

101. This Consent Order is entered into between Shell Oil Company (Shell) and the United States Department of Energy (DOE). This Consent Order settles and finally resolves all civil and administrative claims and disputes, whether or not heretofore asserted, between the DOE, as hereinafter defined, and Shell, as hereinafter defined, relating to Shell's compliance with the federal petroleum price and allocation regulations, as hereinafter defined, during the period January 1, 1973, through January 27, 1981 (all the matters settled and resolved by this Consent Order are referred to hereafter as "the matters covered by this Consent Order").

II. Jurisdiction, Regulatory Authority and Definitions

201. This Consent Order is entered into by the DOE pursuant to the authority conferred upon it by Sections 301 and 503 of the Department of Energy Organization Act (DOE Act), 42 U.S.C. 7151 and 7193, Executive Order No. 12009, 42 FR 46267 (1977); Executive Order No. 12038, 43 FR 4957 (1978); and 10 CFR 205.199J.

202. The Economic Regulatory Administration (ERA) was created by Section 206 of the DOE Act, 42 U.S.C. 7136. In Delegation No. 0204–4, the Secretary of Energy delegated responsibility for the administration of the federal petroleum price and allocation regulations to the Administrator of the ERA.

203. For purposes of this Consent Order, the phrase "federal petroleum price and allocation regulations" means all statutory requirements and administrative regulations and orders regarding the pricing and allocation of crude oil, refined petroleum products, natural gas liquids, and natural gas liquid products, including the entitlements and mandatory oil imports programs, administered by the DOE. The federal petroleum price and allocation regulations include (without limitation) the pricing, allocation, reporting, certification, and recordkeeping requirements imposed by or under the Economic Stabilization Act of 1970, the Emergency Petroleum Allocation Act of 1973, the Federal Energy Administration Act of 1974, Presidential Proclamation 3279, all applicable DOE regulations codified in 6 CFR Parts 130 and 150 and 10 CFR Parts 205, 210, 211, 212, and 213, and all rules, rulings, guidelines, interpretations, clarifications, manuals, decisions, orders, notices, forms, and subpoenas relating to the pricing and allocation of petroleum products. The provisions of 10 CFR 205.199J and the definitions under the federal petroleum price and allocation regulations shall apply to this Consent Order except to the extent inconsistent herewith. Reference herein to "DOE" includes, besides the Department of Energy, the Cost of Living Council, the Federal Energy Office, the Federal Energy Administration, the Office of Special Counsel the Economic Regulatory Administration and all predecessor and successor agencies. References in this Consent Order to "Shell" shall include: (1) Shell Oil Company and all of its subsidiaries and affiliates, and their predecessors and successors in interest, but only for the acts of such companies while they were subsidiaries or affiliates of Shell, (2) all of Shell's petroleum-related activities as refiner, producer, operator, working interest or royalty interest owner, reseller, retailer, natural gas processor, or otherwise and, except for purposes of Article IV, *infra*, (3) Shell's directors, officers, and employees.

III. Facts

The stipulated facts upon which this Consent Order is based are as follows:

301. During the period covered by this Consent Order, Shell was a "refiner," "producer," and "reseller" as those terms are defined in the federal petroleum price and allocation regulations and was subject to the jurisdiction of the DOE. Shell engaged in, among other things, the production, importation, sale, and refining of crude oil, the sale of residual fuel oil, motor gasoline, middle distillates, aviation fuel, propane, and other refined petroleum products, and the extraction, fractionation, and sale of natural gas liquids and natural gas liquid products.

302. In 1973, the DOE began an audit to determine Shell's compliance with the federal petroleum price and allocation regulations. In 1977, pursuant to the mandate of the Secretary of Energy, ERA continued the audit on an intensified basis. The audit encompassed an examination of Shell's policies and procedures pertaining to, and Shell's compliance with, the federal petroleum price and allocation regulations.

303. As part of its audit, the DOE examined Shell's books and records relating to Shell's compliance with the federal petroleum price and allocation regulations and the reporting requirements imposed by those regulations. At the DOE's request, Shell prepared and submitted to the auditors a substantial number of specific responses to audit inquiries not necessarily limited to, or readily available from, individual books or records.

304. During the course of the DOE's audit, the enforcement proceedings instituted by the DOE and the negotiations that led to this Consent Order, the DOE raised certain issues with respect to Shell's application of the federal petroleum price and allocation regulations. The DOE has taken various administrative enforcement actions against Shell, including the issuance of letters, Notices of Probable Violation, Proposed Remedial Orders, and Remedial Orders. Shell maintains, however, that it has calculated its costs, determined its prices, sold its crude oil and petroleum products, and operated in all other respects in accordance with the federal petroleum price and allocation regulations. The DOE and Shell disagree in several respects concerning the proper application of the federal petroleum price and allocation regulations to Shell's activities with respect to the matters covered by this Consent Order, and each believes that its respective legal and factual positions on the matters resolved by this Consent Order are meritorious. These positions were emphasized in the intensive review and exchange of information conducted during the audit and subsequent negotiation process. However, in order to avoid the expense of protracted and complex litigation and the disruption of its orderly business functions, Shell has agreed to enter into this Consent Order. The DOE believes this Consent Order constitutes a satisfactory resolution of the matters covered herein and is in the public interest.

Terms and Conditions

IV. Remedial Provisions

401. In full and final settlement of all matters covered by this Consent Order and in lieu of all other remedies which have been or might be sought by the DOE against Shell for such matters under 10 CFR 205.199I or otherwise, Shell shall pay a total of one hundred eighty million dollars ($180,000,000), plus interest, in the manner specified in paragraphs 402 and 403. Of this amount, the sum of $160 million is attributable to alleged crude oil violations and the sum of $20 million is attributable to alleged refined product violations.

402. Within thirty (30) days of the effective date of this Consent Order, Shell shall pay one-hundred eighty million dollars ($180,000,000), plus interest to be computed in accordance with paragraph 403, to DOE for distribution pursuant to the special refund procedures prescribed by 10 CFR Part 205, Subpart V.

403. Interest shall be earned from the date of execution of this Consent Order by DOE at an initial interest rate equal to the annual coupon equivalent for the average price bid at the most recent auction of 13-week U.S. Treasury Bills preceding said date of execution. Thereafter, the interest rate shall be periodically adjusted to the level of the annual coupon equivalent for the average price bid at the auction of 13 week Treasury Bills next following the first day of each calendar quarter, beginning with the calendar quarter next following said date of execution. The adjusted interest rate will apply on the first day after said auction and will continue to apply until and including the day of the next such auction following the first day of the next calendar quarter or until payment, whichever is earlier. Interest shall be deemed earned each day as of 2:00 p.m. Eastern Time at 1/365th of the rate then in force and shall

be compounded quarterly as of the date of each adjustment of the rate.

V. Issues Resolved

501. All pending and potential civil and administrative claims, whether or not known, demands, liabilities, causes of action or other proceedings by the DOE against Shell regarding Shell's compliance with and obligations under the federal petroleum price and allocation regulations during the period covered by this Consent Order, whether or not heretofore raised by an issue letter, Notice of Probable Violation, Proposed Remedial Order, Remedial Order, action in court or otherwise, are resolved and extinguished as to Shell by this Consent Order.

502. (a) Except as otherwise provided herein, compliance by Shell with this Consent Order shall be deemed by the DOE to constitute full compliance for administrative and civil purposes with all federal petroleum price and allocation regulations for matters covered by this Consent Order. In consideration for performance as required under this Consent Order by Shell, except as to those matters excluded by paragraph 505, the DOE hereby releases Shell completely and for all purposes from all administrative and civil judicial claims, demands, liabilities or causes of action, including without limitation claims for civil penalties, that the DOE has asserted or might otherwise be able to assert against Shell before or after the date of this Consent Order for alleged violations of the federal petroleum price and allocation regulations with respect to matters covered by this Consent Order. The DOE will not initiate or prosecute any such administrative or civil matter against Shell or cause or refer any such matter to be initiated or prosecuted, nor will the DOE or its successors directly or indirectly aid in the initiation of any such administrative or civil matter against Shell or participate voluntarily in the prosecution of such actions. The DOE will not assert voluntarily in any administrative or civil judicial proceeding that Shell has violated the federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order or otherwise take any action with respect to Shell in derogation of this Consent Order. However, nothing contained herein shall preclude the DOE from defending the validity of the federal petroleum price and allocation regulations.

(b) This Consent Order settles and finally resolves all aspects of Shell's liability to the DOE under the federal petroleum price and allocation regulations, including but not limited to its capacity as an operator or working interest or royalty interest owner of a crude oil producing property. In addition, if Shell was the operator of a property that produced crude oil for all or part of the period covered by this Consent Order, the DOE shall not initiate or prosecute any enforcement action against any person for noncompliance with the federal petroleum price and allocation regulations during such period relative to such property, except to the extent such person received its interest from such property in kind. However, the DOE reserves the right to initiate and prosecute enforcement actions, against any person other than Shell for noncompliance with the federal petroleum price and allocation regulations, including suits against operators for overcharges for crude oil when Shell was or is a working interest or royalty interest owner in such crude oil production. Shell and the DOE agree that the amount paid to the DOE pursuant to this Consent Order is not attributable to Shell's activities as a working interest or royalty interest owner on properties on which it was or is not the operator. Furthermore, Shell and the DOE agree that the Consent Order and the payments hereunder do not resolve, reduce or release the liability of any other person for violations on properties of which (but only for the times during which) Shell was or is a working interest or royalty interest owner (and not the operator) or affect any rights or obligations between Shell and the operator or any other working interest or royalty interest owner.

(c) The DOE has determined that it would be inappropriate to seek or recommend criminal fines or penalties based on the information and evidence presently in its possession for the matters covered by this Consent Order, provided, however, that nothing in this Consent Order precludes the DOE from (1) seeking or recommending such criminal fines or penalties if information subsequently coming to its attention indicates, either by itself or in combination with information or evidence presently known to the DOE, that a criminal violation may have occurred or (2) otherwise complying with its obligations under law with regard to forwarding information of possible criminal violations of law to appropriate authorities. Nothing contained herein may be construed as a bar, estoppel, or defense against any criminal or civil action brought by an agency of the United States other than the DOE under (i) Section 210 of the Economic Stabilization Act of 1970 or (ii) any statute or regulation other than the federal petroleum price and allocation regulations. Finally, this Consent Order does not prejudice the rights of any third party or Shell in any private action, including an action for contribution by or against Shell.

(d) Shell releases the DOE completely and for all purposes from all administrative and civil judicial claims, liabilities, or causes of action that Shell has asserted or may otherwise be able to assert against the DOE relating to the DOE's administration of the federal petroleum price and allocation regulations. This release, however, does not preclude Shell from asserting any factual or legal position or argument as a defense against any action, claim, or proceeding brought by the DOE, the United States, or any agency of the United States.

503. Commencing within thirty (30) days after the effective date of this Consent Order, Shell and the DOE will file or cause to be filed appropriate pleadings and will take all other steps necessary to withdraw all claims and dismiss with prejudice all proceedings against Shell covered by this Consent Order then pending or subsequently filed before the DOE's Office of Hearings and Appeals (OHA) or the Federal Energy Regulatory Commission (FERC) and to dismiss with prejudice any court proceeding then pending or subsequently filed involving an appeal from or seeking review of a decision by the OHA or the FERC in any such proceeding.

504. Execution of this Consent Order constitutes neither an admission by Shell nor a finding by the DOE of any violation by Shell of any statute or regulation. The DOE has determined that it is not appropriate to seek to impose civil penalties for the matters covered by this Consent Order, and the DOE will not seek any such civil penalties. The payment made by Shell pursuant to this Consent Order is not to be considered for any purpose as penalties, fines, or forfeitures or as payment in lieu of penalties, fines or forfeitures.

505. Notwithstanding any other provision herein, with respect to the matters covered by this Consent Order, the DOE reserves the right to initiate an enforcement proceeding or to seek appropriate penalties for any newly discovered regulatory violations committed by Shell, but only if Shell has concealed facts relating to such violations. The DOE and Shell also reserve the right to seek appropriate judicial remedies, other than full rescission of this Consent Order, for any misrepresentation of fact material to this Consent Order during the course of the audit or the negotiations that preceded this Consent Order.

VI. Recordkeeping, Reporting and Confidentiality

601. Shell shall maintain such records as are necessary to demonstrate compliance with the terms of this Consent Order. To assist DOE in the distribution of the monies paid pursuant to paragraph 402, Shell shall also maintain sales volume data and customers' names and addresses regarding its sales of crude oil and refined petroleum products for the transactions covered by this Consent Order until thirty (30) days after final distribution by DOE of the funds paid pursuant to paragraph 402, *supra*. If requested, Shell shall make such information available to DOE. Shell shall maintain such records as may be identified by DOE for its use pursuant to paragraph 602. Except as otherwise provided in this paragraph, upon completion of payment to DOE of the amount set forth in paragraph 402 of this Consent Order, Shell is relieved of its obligation to comply with the recordkeeping requirements of the federal petroleum price and allocation regulations relating to the matters covered by this Consent Order.

602. Except for formal requests for information regarding other firms subject to the DOE's information gathering and reporting authority, Shell will not be subject to any audit requests, report orders, subpoenas, or other administrative discovery by DOE regarding the matters covered by this Consent Order.

603. The DOE will treat the sensitive commercial and financial information provided by Shell or obtained by the DOE in its audit of Shell and related to the matters covered by this Consent Order as confidential and proprietary and will not disclose such information unless required to do so by law, including a request by a duly authorized committee or subcommittee of Congress. If a request or demand for release of any such information is made pursuant to law, the DOE will claim any privilege or exemption reasonably available to it. The DOE will provide Shell with ten (10) days actual notice, if possible, of any pending disclosure of such information, unless prohibited or precluded from doing so by law or request of Congress. The DOE will retain the audit information which it has acquired during its review of Shell's compliance with the federal petroleum price and allocation regulations in accordance with the DOE's established records retention procedures. Notwithstanding the otherwise confidential treatment afforded such information by the terms of this Consent Order, the DOE will make such information available to the Department of Justice (DOJ) in response to a request pursuant to the DOJ's statutory authority by a duly authorized representative of the DOJ. If requested by the DOJ, the DOE shall not disclose that such a request has been made. Nothing in this paragraph shall be deemed to waive or prejudice any right Shell may have independent of this Consent Order regarding the disclosure of sensitive commercial and financial information.

VII. Contractual Undertaking

701. It is the understanding and express intention of Shell and the DOE that this Consent Order constitutes a legally enforceable contractual undertaking that is binding on the parties and their successors and assigns. Nothwithstanding any other provision herein, Shell (and its successors and assigns) and the DOE each reserves the right to institute a civil action in an appropriate United States district court, if necessary, to secure enforcement of the terms of this Consent Order, and the DOE also reserves the right to seek appropriate penalties and interest for any failure to comply with the terms of this Consent Order. The DOE will undertake the defense of the Consent Order, as made effective, in response to any litigation challenging the Consent Order's validity in which the DOE is named a party. Shell agrees to cooperate with the DOE in the defense of any such challenge.

VIII. Final Order

801. Upon becoming effective, this Consent Order shall be a final order of DOE having the same force and effect as a remedial order issued pursuant to section 503 of the DOE Act, 42 U.S.C. 7139, and 10 CFR 205.199B. Shell hereby waives its right to administrative or judicial review of this Order.

IX. Effective Date

901. This Consent Order shall become effective as a final Order of the DOE upon notice to that effect being published in **Federal Register**. Prior to that date, the DOE will publish notice in the **Federal Register** that it proposes to make this Consent Order final and, in that notice, will provide not less than thirty (30) days for members of the public to submit written comments and an opportunity to appear at a public hearing conducted by ERA. The DOE will consider all written comments and statements made at the hearing to determine whether to adopt the Consent Order as a final order, to withdraw agreement to the Consent Order, or to attempt to renegotiate the terms of the Consent Order.

902. Until the effective date, the DOE reserves the right to withdraw consent to this Consent Order by written notice to Shell, in which event this Consent Order shall be null and void. If this Consent Order is not made effective on or before the one hundred twentieth (120th) day following execution by Shell, Shell may, at any time thereafter until the effective date, withdraw its agreement to this Consent Order by written notice to the DOE in which event this Consent Order shall be null and void.

I, the undersigned, a duly authorized representative, hereby agree to and accept the foregoing Consent Order on behalf of Shell Oil Company.

Dated: December 19, 1986.

John F. Bookout,

President and Chief Executive Officer, Shell Oil Company.

I, the undersigned, a duly authorized representative, hereby agree to and accept the foregoing Consent Order on behalf of the Department of Energy.

Dated: December 18, 1986.

Marshall A. Staunton,

Administrator, Economic Regulatory Administration.

[FR Doc. 86-29280 Filed 12-30-86; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 86-55-NG]

Direct Energy Marketing Limited; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Order Granting Blanket Authorization to Import Natural Gas From Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting authorization to Direct Energy Marketing Limited (DEML) to import natural gas from Canada. The order issued in ERA Docket No. 86-55-NG authorizes DEML to import into the U.S. from Canada up to 200 Bcf of Canadian gas over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural

Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585 (202) 252–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 16, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86–29281 Filed 12–30–86; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. QF87–120–000]

Badger Creek Cogen, Inc.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

December 24, 1986.

On December 3, 1986, Badger Creek Cogen, Inc. (Applicant), of P.O. Box 19398, Houston, Texas 77224, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Kern County, California. The facility will consist of a combustion turbine generator and a heat recovery steam generator (HRSG). Steam recovered from the HRSG will be used for enhanced oil recovery by the Cities Service Oil and Gas Corporation. The primary energy source will be natural gas. The net electric power production capacity of the facility will be 44,829 kW. Installation of the facility will begin in April 1987.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–29239 Filed 12–30–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF87–128–000]

Bear Mountain Cogen Inc.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

December 24, 1986.

On December 8, 1986, Bear Mountain Cogen, Inc. (Applicant), of P.O. Box 19398, Houston, Texas 77224, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Kern County, California. The facility will consist of a combustion turbine generator, a heat recovery steam generator (HRSG). Steam recovered from the HRSG will be used for enhanced oil recovery by the Cities Service Oil & Gas Corporation. The primary energy source will be natural gas. The net electric power production capacity of the facility will be 44,851 kW. Installation of the facility will begin in March 1988.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–29238 Filed 12–30–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF87–132–000]

Chalk Cliff Cogen, Inc.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

December 24, 1986.

On December 10, 1986, Chalk Cliff Cogen, Inc. (Applicant), of P.O. Box 19398, Houston, Texas 77224, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Kern County, California. The facility will consist of a combustion turbine generator, a heat recovery steam generator (HRSG). Steam recovered from the HRSG will be used for enhanced oil recovery by Cities Service Oil & Gas Corporation. The primary energy source will be natural gas. The net electric power production capacity of the facility will be 44,453 kW. Installation of the facility will begin in May 1988.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–29240 Filed 12–30–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF85–736–001]

Cogentrix of Virginia, Inc. (Allied Corporation); Application for Commission Recertification of Qualifying Status of a Cogeneration Facility

December 24, 1986.

On December 4, 1986, Cogentrix of Virginia, Inc. (Applicant), of Two Parkway Plaza, Suite 290, Charlotte, North Carolina 28210 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle cogeneration facility will be located at the Allied Corporation, Fibers Division plant in Hopewell, Virginia 23860. The facility will consist of six (6) stoker-fired boilers and two (2) extraction/condensing steam turbine-generators. The extracted steam will be utilized for process needs at the Allied Corporation chemical manufacturing plant. The primary energy source is coal. The net electric power production capacity of the facility is 77,800 kW. The facility is scheduled to start commercial operation on or about December 31, 1987.

By order issued February 7, 1986, the Director of Office of Electric Power Regulation granted certification of the facility as a cogeneration facility under Docket No. QF85–736–000.

The recertification is requested due to change of ownership. Under the instant application ownership will be transferred from Signal Capital Corporation, the original owner, to Cogentrix of Virginia, Inc.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–29241 Filed 12–30–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF87–121–000]

First Energy Associates; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

December 24, 1986.

On December 4, 1986, First Energy Associates (Applicant), of 71 Spit Brook Road, Nashua, New Hampshire 03060, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Hinesburg, Vermont and will consist of three combustion turbine generators, a heat recovery steam generator and an extraction/condensing steam turbine generator. Thermal energy recovered from the facility in the form of steam and chilled water will be sold to the International Cheese Company for process use. The electric power production capacity of the facility will be 25.1 MW. The primary source of energy will be fuel oil. Construction of the facility is expected to begin April 1987.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–29242 Filed 12–30–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER87–56–001]

Central Maine Power Co.; Amendment to Filing

December 24, 1986.

Take notice that Central Main Power Company ("CMP"), on December 12, 1986, tendered for filing an amendment to its previous filing of October 29, 1986, which proposed changes in its F.E.R.C. Electric Tariff, 8th Revised Volume No. 1, Wholesale Electric Rate for Other Utilities. Under the rate increase effective January 1, 1987, CMP would be permitted to increase its wholesale base rate by $325,000 for the twelve-month period ended June 30, 1985; effective October 1, 1987, CMP would be permitted to further revise its wholesale base rate by an additional $324,000 for the twelve-month period ended June 30, 1985.

The proposed tariff implements a Stipulation and Contracts between CMP and its wholesale customers, Kennebunk Light and Power District, Inhabitants of the Town of Madison (Madison Electric Works), and Fox Islands Electric Cooperative, Inc. Copies of the filing have been served on CMP's above-named wholesale customers, on the Main Public Utilities Commission, and on the Office of the Main Public Advocate.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385–214). All such motions or protests should be filed on or before January 5, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–29266 Filed 12–30–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CI87–115–000 and CI87–121–000]

Colorado Interstate Gas Co.; Applications on Behalf of Producer-Suppliers of Colorado Interstate Gas Company for Blanket Limited-Term Abandonment and Blanket Limited-Term Certificates of Public Convenience and Necessity With Pre-Granted Abandonment

December 24, 1986.

Take notice that on November 17, 1986, as supplemented on December 5, 1986, Colorado Interstate Gas Company,

P.O. Box 1087, Colorado Springs, Colorado 80944 (Applicant), filed in this proceeding applications pursuant to section 7 of the Natural Gas Act. Applicant requests, on behalf of producer-suppliers currently selling natural gas to Applicant pursuant to certificates of public convenience and necessity, an order: (1) Authorizing the blanket limited-term abandonment by Applicant's producer-suppliers of certain sales for resale of natural gas in interstate commerce; and (2) issuing a blanket limited-term certificate of public convenience and necessity with pre-granted abandonment authorizing the sale for resale of such natural gas in interstate commerce, all for a period of two years, as more fully set forth in the applications or file with the Commission in the subject dockets, and open for public inspection.[1]

Applicant states that the purpose of its applications is to provide Applicant and its customers with relief from the problem of currently escalating potential take-or-pay liability, while retaining the long-term reserves needed to meet customer requirements in the future. Also, the applications are intended to permit Applicant's producer-suppliers to compete for natural gas sales in the current market, thereby generating needed cash flow for such producer-suppliers. Accordingly, Applicant states that the authority requested herein will permit Applicant's producer-suppliers, upon release of natural gas by Applicant, to abandon sales of natural gas to Applicant for a limited-term. Applicant expects that in any negotiation with a producer-supplier in which gas is released pursuant to the authority requested herein, the net effect of such negotiation will be to lower Applicant's system weighted average cost of gas and/or reduce Applicant's take-or-pay exposure. All volumes actually released in any event will relieve Applicant of take-or-pay liability associated with those volumes. This will provide Applicant the flexibility to gain price concessions, where appropriate, on gas not released, in conjunction with released gas, and allow Applicant to gain take-or-pay relief to the benefit of both Applicant and its customers.

In further support of its applications, Applicant states that its natural gas sales markets are in a state of rapid decline, and that this decline has led to a situation in which Applicant has been unable to purchase available volumes of natural gas under existing agreements with Applicant's producer-suppliers in sufficient volumes to prevent an increase in its potential take-or-pay liability. A number of factors have contributed to this problem. Presently, under Applicant's FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 34, a Full Requirement Customer is defined as a customer which purchases from Applicant or other Full Requirement Customers of Applicant, at least 75 percent of its total gas requirements. Consequently, 25 percent of a customer's requirements may be purchased from sources other than Applicant, and the customer will still remain a Full Requirement Customer. As the price of natural gas on the spot market has declined, Applicant's customers, both full requirement and partial requirement, have reduced their purchases from Applicant in order to purchase spot market gas. In addition, conservation, fuel switching by industrial customers, and reduction in purchases by other pipelines have all acted to reduce the volumes of sales made by Applicant. The extent of this reduction has been dramatic, as the following chart indicates:

	Bcf (annual)			
	1979	1983	1985	1986 (est.)
CIG total sales	403	276	204	135
Public Service Group [1] (CIG's largest customers)	183	140	127	87
Natural Gas Pipeline Co. (CIG's major partial requirement customer)	79	60	9	1

[1] Consists of Public Service Company of Colorado, Cheyenne Light, Fuel and Power Company and Western Gas Supply Company.

Applicant further states that, in compliance with Commission policy, Applicant has been providing transportation for its customers, including its Full Requirement Customers. This, when coupled with the effects of conservation and competition from alternate fuels, has operated to reduce the volumes of natural gas sold by Applicant. The subject applications represent one tool which Applicant and its producer-suppliers may employ in a cooperative effort to attempt to cope with the situation.

As any abandonment will be by mutual agreement of both Applicant and the producer-supplier, it is impossible to determine which certificated sales will be abandoned. Applicant is currently providing transportation under NGA section 7 authorization, and under section 311 of the NGPA, and has applied for blanket transportation authority under Order No. 436. Consequently, producer-suppliers who abandon sales to Applicant should have access to transportation for selling the abandoned gas to others. Applicant therefore proposes to file a quarterly report, within 45 days of the end of each quarter, which report will provide details regarding the limited-term abandonment of any sale previously certificated by the Commission. The following volumes may be subject to the requested authorization:

NGPA price category		Estimated 1987 annual deliverability (MMcf)
104	(Post-1974—all producers)	11,795
104	(Post-1974—small producers).	1,900
104	(1973–1974—large producers).	2,035
104	(Replacement/recompletion—small producers).	1,172
104	(Replacement/recompletion—large producers).	8,845
104	(Pre-1973 flowing gas—small producers).	11,637
104	(Pre-1973 flowing gas—large producers).	92,850
104	(Rocky Mountain—small producers).	2,320
104	(Rocky Mountain—large producers).	1,904
104	(Minimum rate gas—all producers).	12,300
106	(Rollover—small producers)	241
106	(Rollover—large producers)	3,491
	Total	150,490

The above volumes do not include volumes subject to Applicant's Gas Search Program. Certain other volumes priced under NGPA sections 108 and 109 are also subject to NGA abandonment requirements and thus the abandonment requested here; however, these volumes are by their very natural minimal, and Applicant has not separately identified those volumes.

Applicant requests a waiver of those portions of Parts 154 and 271 of the Commission's Regulations as granted by the Commission to *Transcontinental Gas Pipe Line Corporation*, 36 FERC ¶ 61,403. Specifically, Applicant requests a waiver of the requirement under Part 154 of the Commission's Regulations that Applicant's producer-suppliers establish and maintain rate schedules for the sales of released gas. Applicant also requests that its producer-suppliers be permitted automatically to collect the monthly adjustment on released gas; that the requirement for filing a blanket affidavit to cover sales of released gas, in accordance with § 154.94[h] of the Regulations, be waived; and, to the extent Applicant's producer-suppliers qualify for collection of any allowance under section 110 of the NGPA, the requirements that they comply with § 154.94[k] and Part 271 of the Commission's Regulations be waived for released volumes.

Any person desiring to be heard or to make any protest with reference to said applications should on or before January 8, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-29265 Filed 12-30-86; 8:45 am]
BILLING CODE 6717-01-M

[1] It is not requested that the authorization sought in these applications apply to natural gas reserves discovered pursuant to the Gas Search Program authorized January 7, 1974, in Docket No. CP73-184, *et al.*

[Docket No. ER87-143-000]

Green Mountain Power Corp.; Filing

December 24, 1986.

Take notice that on December 8, 1986, Green Mountain Power Corporation (GMP) tendered for filing an Amendment to its Rate Schedule FERC No. 85 executed by Burlington Electric Department (Burlington).

GMP states that the Amendment extends the termination date of the Rate Schedule that was approved in Docket No. ER86-63-000. The original Schedule was to expire by its terms on December 31, 1985. The Amendment extends the termination date from year to year until either party gives appropriate notice of termination.

The Amendment also clarifies language in Paragraph 6 concerning Burlington's indemnification of GMP from liability in certain circumstances.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 5, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-29267 Filed 12-30-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER87-71-000]

Portland General Electric Co.; Filing

December 24, 1986.

Take notice that on December 8, 1986, Portland General Electric Company ("Company") tendered for filing an amendment to the above docket providing additional background information concerning the dispute and settlement referenced in the recitals of the Settlement Exchange Agreement previously filed with the Federal Energy Regulatory Commission

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 5, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-29269 Filed 12-30-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER86-630-000]

Utah Power & Light Co.; Filing

December 24, 1986.

Take notice that on December 4, 1986, Utah Power & Light Company (Company) tendered for filing a compliance report in accordance with the Commission's order issued November 7, 1986.

In compliance with the Commission's order the company submits its Average System Cost (ASC) rate for the Idaho jurisdiction as determined in the Bonneville Power Association (BPA) report, with modifications reflecting the Commission's finding on Fuel Stock.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 5,

[Docket No. ER87-66-000]

Puget Sound Power & Light Co.; Filing

December 24, 1986.

Take notice that on December 8, 1986, Puget Sound Power & Light Company ("Company") tendered for filing an amendment to the above docket providing additional background information concerning the dispute and settlement referenced in the recitals of the Settlement Exchange Agreement previously filed with the Federal Energy Regulatory Commission

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 5, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-29289 Filed 12-30-86; 8:45 am]
BILLING CODE 6717-01-M

1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29270 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-57-000]

The Washington Water Power Co.; Filing

December 24, 1986.

Take notice that December 8, 1986, Washington Water Power Company ("Company") tendered for filing an amendment to the above docket providing additional background information concerning the dispute and settlement referenced in the recitals of the Settlement Exchange Agreement previously filed with the Federal Energy Regulatory Commission.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 5, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29271 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF87-122-000]

Foster Wheeler Power Systems, Inc.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

December 24, 1986.

On December 4, 1985, Foster Wheeler Power System, Inc. (Applicant), of 110 South Orange Avenue, Livingston, New Jersey 07039, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located near Morgantown, West Virginia. The facility will consist of two (2) circulating fluidized bed steam generators and one (1) steam turbine generator. The steam recovered from the facility will be utilized for space heating and cooling of the West Virginia University's three campuses. The net electric power production capacity will be 165 megawatt. The primary energy source will be bituminous coal.The construction of the facility is scheduled for December 1, 1987.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29243 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF87-133-000]

Live Oak Cogen, Inc.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

December 24, 1986.

On December 10, 1985, Live Oak Cogen, Inc. (Applicant), P.O. Box 19398, Houston, texas 77224, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Kern County, California. The facility will consist of a combustion turbine generator and a heat recovery steam generator (HRSG). Steam recovered from the HRSG will be used for ehnanced oil recovery by the Cities Service Oil & Gas Corporation. The primary energy source will be natural gas. The net electric power production capacity will be 44,536 kW. Installation of the facility will begin May 1988.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29244 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF87-123-000]

Oxford Cogeneration Associates; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

December 24, 1986.

On December 4, 1986, Oxford Cogeneration Associates (Applicant), of 255 West 98th Street, Suite 7A—Dockrell, New York, New York 10025, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Oxford, Massachusetts. The facility will consist of a combustion turbine generator, a heat recovery steam generator, and an extraction/condensing turbine generator. Thermal energy recovered from the facility will be used for pasteurization, drying, heating and space heating and cooling. Installation of the facility is scheduled to begin in 1987. The primary energy source will be natural gas. The net electric power production capacity of the facility will be 99 MW.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29245 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF87-136-000]

Panhandle Eastern Pipe Line Co.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

December 24, 1986.

On December 12, 1986, Panhandle Eastern Pipe Line Company (Applicant), of 3444 Broadway, Kansas City, Missouri 64111, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Applicant's address. The facility will consist of two reciprocating engines and a heat recovery steam generator. The head energy recovered from the facility will be used for space heating and cooling of the office building. The electric power production capacity of the facility will be 700 kW. The primary energy source will be natural gas. The operation of the facility is expected to commence on or about May 1, 1987.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29246 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF87-129-000]

Ramapo Cogeneration Limited Partnership; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

December 24, 1986.

On December 9, 1986, Ramapo Cogeneration Limited Partnership (Applicant), of 25 Eagle Street, Albany, New York 12207, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Ramapo, New York. The facility will consist of a combustion turbine generator, a heat recovery steam generator, and a steam turbine generator. The primary energy source will be natural gas. The net electric power production capacity of the facility will be 79 MW. Thermal energy recovered from the facility will be used for baking, heating, drying and sanitizing in an industrial process. Installation of the facility will begin in 1987.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29247 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF87-124-000]

Rockville Cogeneration Associates; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

December 24, 1986.

On December 4, 1986, Rockville Cogeneration Associates (Applicant), c/o Kornmeier, McCarthy, Lepon & Harris, of 2011 Eye Street, NW., Suite 401, Washington, DC 20006, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Hunting Hill, Montgomery County, Maryland 20850. The facility will consist of a combustion turbine, a heat recovery steam generator, and an extraction/condensing turbine generator. The primary energy source will be natural gas. The net electric power production capacity of the facility will be 240 MW. Thermal energy recovered from the facility will be sold to a district heating and cooling system. Installation of the facility is scheduled to begin in 1987.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29248 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-155-000]

Allegheny Power Service Corp.; Notice of Filing

December 24, 1986.

Take notice that on December 12, 1986, Allegheny Power Service Corporation (APSC) on behalf of West Penn Power Company, tendered for filing Amendment No. 12 to its Interchange Agreement dated February 1, 1968, with Duquesne Light Company, West Penn Power Company Rate Schedule FPC No. 24. A Certificate of Concurrence by Duquesne Light Company was also filed. Amendment No. 12 terminates an interconnecton point at Bridgeville, Pennsylvania, between the parties. West Penn Power Company does not anticipate any significant revenue effects as a result of Amendment No. 12.

Copies of this filing were served upon Duquesne Light Company and the Pennsylvania Public Utility Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 7, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29249 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. EF85-2011-006 and EF85-2021-006]

Bonneville Power Administration; Notice of Filing

December 24, 1986.

Take notice that on December 22, 1986, Bonneville Power Administration (BPA) of the United States Department of Energy tendered for filing a proposed modification to the 1985 Surplus Firm Power (SP-85) rates currently under Commission consideration. This proposed modification has been identified as the SP-85 (Modified) rate schedule. BPA requests confirmation and approval of the SP-85 rate, as modified, pursuant to section 7(a)(2) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), 16 U.S.C. 839e(a)(2), and the Commission's rules for the confirmation and approval of rates for Federal power marketing agencies, 18 CFR 300 *et seq.* BPA proposes that its SP-85 (Modified) rate schedule be effective upon final Commission approval of BPA rates in the above entitled dockets.

This proposal is a modification of the "Availability" section (Section I) of the SP-85 rate to permit BPA's Direct Service Industrial customers (DSIs) in the Pacific Northwest who currently purchase under the IP rate schedule to purchase surplus firm power to serve "incremental" load. It is designed to permit BPA to gain experience in regional marketing during the near-term period of BPA's capacity and energy surplus.

Any person desiring to be heard or to protest this application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with section 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 8, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29263 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER86-704-002]

Canal Electric Co.; Notice of Filing

December 24, 1986.

Take notice that on December 9, 1986, Canal Electric Company (Canal) tendered for filing its termination Supplement to the Capacity Acquistion Agreement, eliminating therefrom a provision which would automatically permit Canal to earn a return on the unamortized balance of the Termination Cost in the event the Commission's existing Policy is changed.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 7, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29250 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EC87-7-000]

Consumers Power Co.; Notice of Filing

December 24, 1986.

Take notice that on December 18, 1986, Consumers Power Company (Consumers) submitted an application for Authority to Sell Facilities to the Wolverine Power Supply Cooperative (Wolverine).

Pursuant to the Blendon Interconnections Facilities Agreement dated February 1, 1986 between Consumers and Wolverine and the Pere Marquette Interconnection Facilities Agreement dated July 1, 1982 between Consumers and Wolverine, Consumers proposes to sell to Wolverine certain 138 kV electric substation facilities located at Consumers' Blendon Substation in the Southwest ¼ of section 8 of Blendon Township, Ottawa County, Michigan, and in the North ½ of section 20 of Amber Township, Ottawa County, Michigan. The Consideration for the proposed sales is $392,788.37 in the case of the Blendon Substation Facilities and $314,708.50 in the case of the Pere Marquett Substation Facilities, which is based upon consumers' actual original cost of providing, installing and placing in service such substation facilities.

Sale of the substation facilities will establish two 138 kV interconnections between Consumers and Wolverine, which will facilitate exchanges of electric energy between Consumers and Wolverine. Consumers requests approval of its Application pursuant to section 203(a) of the Federal Power Act.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 7, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29251 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-90-000]

The Dayton Power and Light Co.; Amendment to Filing

December 24, 1986.

Take notice that on December 19, 1986, the Dayton Power and Light Company (DP&L) tendered for filing in this docket amendments to page 3 of the Agreement and amended cost support relating to transmission charges. DP&L states in this filing that it is renewing its request for a waiver of notice requirements so that the filing may become effective December 1, 1986.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 7, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29252 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-171-000]

Florida Power & Light Co.; Notice

December 24, 1986.

Take notice, that, on December 18, 1986, Florida Power & Light Company (FPL) filed First Revised Sheet No. 9a to its FERC Electric Tariff, Second Revised Volume No. 1 and a Stipulation and Agreement as to Fuel Cost Billings. The tariff revision deletes reference to the one time election to pay a cents per kilowatt hour true up under FPL's fuel adjustment clause. FPL states that the five customers who had made that election now agree to pay fuel costs by the other method provided in FPL's tariff, and that the Stipulation resolves a disagreement as to unrecovered fuel costs.

Any person desiring to be heard or to protest the filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 before January 7, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29253 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-46-001]

Iowa Electric Light and Power Co.; Amendment to Filing

December 24, 1986.

Take notice that on December 19, 1986, Iowa Electric Light and Power Company (the Company) tendered for filing an amendment to its filing on October 24, 1986 of Service Agreements for customers who elect to take service under the Rate RES-3.

Iowa Electric states that the amended filing corrects contracts which had eight year terms rather than the proper six year terms and includes a superseded contract that was inadvertently not filed previously. In addition, Iowa Electric has filed two contracts with West Liberty, Iowa that have been signed since its earlier filing in this docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 7, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29254 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-757-002]

Pacific Power and Light Co.; Notice of Filing

December 24, 1986.

Take notice that on December 3, 1986, Pacific Power and Light Company (Pacific) tendered for filing Table No. 1 dated November 14, 1986 showing the effects of the Commission's Order Accepting Rates for Filing Subject to Refund or Adjustment, and Granting Interventions under Docket No. ER85-757-000 and dated August 1, 1986. The Commission's Order revises the Average System Cost (ASC) Rate for the state of Washington applicable to the exchange of power between Bonneville and Pacific.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 7, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29255 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-762-002]

Pacific Power and Light Co.; Notice of Filing

December 24, 1986.

Take notice that on December 8, 1986, Pacific Power and Light Company (Pacific) tendered for filing Table No. 1

dated November 13, 1986 showing the effects of the Commission's Order Accepting Rates for Filing Subject to Refund or Adjustment, and Granting Interventions under Docket No. ER85-762-000 and dated August 1, 1986. The Commission's Order revises the Average System Cost (ASC) Rate for the state of Oregon applicable to the exchange of power between Bonneville and Pacific.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. 385.211, 385.214). All such motions or protests should be filed on or before January 7, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29256 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-172-000]

Southern California Edison Co.; Notice of Filing

December 24, 1986.

Take notice that, on December 19, 1986, Southern California Edison Company ("Edison") tendered for filing a notice of extension of rate for the purchase of Replacement Capacity by the City of Vernon, California ("Vernon") from Edison under the provision of the following rate schedule:

	Rate schedule FERC No.
City of Vernon	154

Copies of this filing were served upon the Public Utilities Commission of the State of California and the City of Vernon, California.

Any person desiring to be heard or to protest this application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with section 211 and section 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 7, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29257 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-173-000]

Southern California Edison Co.; Notice of Filing

December 24, 1986.

Take notice that, on December 19, 1986, Southern California Edison Company ("Edison") tendered for filing a notice of extension of rate for the purchase of Replacement Capacity by the City of Riverside, California ("Riverside") from Edison under the provision of the following rate schedule:

	Rate Schedule FERC No.
City of Riverside	84

Copies of this filing were served upon the Public Utilities Commission of the State of California and the City of Riverside, California.

Any person desiring to be heard or to protest this application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with section 211 and section 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 7, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29258 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-174-000]

Southern California Edison Co.; Notice of Filing

December 24, 1986.

Take notice that, on December 19, 1986, Southern California Edison Company ("Edison") tendered for filing a notice of extension of rate for the purchase of Replacement Capacity by the City of Colton, California ("Colton") from Edison under the provision of the following rate schedule:

	Rate schedule FERC No.
City of Colton	146

Copies of this filing were served upon the Public Utilities Commission of the State of California and the City of Colton, California.

Any person desiring to be heard or to protest this application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with section 211 and section 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 7, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29259 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-175-000]

Southern California Edison Co.; Notice of Filing

December 24, 1986.

Take notice that, on December 19, 1986 , Southern California Edison Company ("Edison") tendered for filing a notice of extension of rate for the purchase of Replacement Capacity by the City of Banning, California ("Banning") from Edison under the provision of the following rate schedule:

	Rate schedule FERC No.
City of Banning	145

Copies of this filing were served upon the Public Utilities Commission of the State of California and the City of Banning, California.

Any person desiring to be heard or to protest this application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with section 211 and section 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 7, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29260 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-176-000]

Southern California Edison Co.; Notice of Filing

December 24, 1986.

Take notice that, on December 19, 1986 , Southern California Edison Company ("Edison") tendered for filing a notice of extension of rate for the purchase of Replacement Capacity by the City of Azusa, California ("Azusa"), from Edison under the provision of the following rate schedule:

	Rate schedule FERC No.
City of Azusa	144

Copies of this filing were served upon the Public Utilities Commission of the State of California and the City of Azusa, California.

Any person desiring to be heard or to protest this application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with section 211 and section 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 7, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29261 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-177-000]

Southern California Edison Co.; Notice of Filing

December 24, 1986.

Take notice that, on December 19, 1986, Southern California Edison Company ("Edison") tendered for filing a notice of extension of rate for the purchase of Replacement Capacity by the City of Anaheim, California ("Anaheim") from Edison under the provision of the following rate schedule:

	Rate schedule FERC No.
City of Anaheim	95

Copies of this filing were served upon the Public Utilities Commission of the State of California and the City of Anaheim, California.

Any person desiring to be heard or to protest this application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 6, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken but will not be considered by the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29262 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-28-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

December 24, 1986.

Take notice the Algonquin Gas Transmission Company ("Algonquin Gas"), on December 15, 1986, tendered for filing proposed changes in its FERC Gas Tariff, Second Revised Vol. No. 1. The revised tariff sheets reflect a change other than in rate level, as defined in 18 CFR 154.63.

Algonquin Gas states that the revised tariff sheets are being filed in order to conform the applicability and character of service under Algonquin Gas' Rate Schedules F-1 and WS-1 to underlying provisions of Texas Eastern Transmission Corporation's ("Texas Eastern") SS Rate Schedule required as a result of the Commission's order authorizing abandonment of Texas Eastern's Staten Island LNG facility used in conjunction with providing its SS service, issued in *Texas Eastern Transmission Corporation*, Docket No. CP85-859-000, 35 F.E.R.C. par. 61,061 (1986). The revised tariff sheets provide that service under Rate Schedules F-1 and WS-1 may be subject to interruption or curtailment on a pro rata basis upon imposition of Rate Schedule SS Curtailment by Texas Eastern as a result of the destruction and abandonment of the LNG facility. The duration of the proposed revisions is limited to the period that elapses prior to the date on which the capacity lost by virtue of the destruction of the LNG facility is restored to Texas Eastern's system.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 6, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken but will

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not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of the filling are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29274 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-137-003]

Florida Gas Transmission Co.; Motion To Make Revised Tariff Sheets Effective

December 24, 1986.

Take notice that on December 15, 1986, Florida Gas Transmission Company (FGT) tendered for filing a Motion To Make Revised Tariff Sheets Effective (motion). FGT has filed this motion, pursuant to § 154.67(a) of the Commission's regulations, because the instance proceeding will not be concluded nor will a Commission order be issued before December 31, 1986. The filing includes certain tariff sheets to Northwest's FERC Gas Tariff, First Revised Volume No. 1, Original Volume No. 2, and Original Volume No. 3, to become effective January 1, 1987.

The filed tariff sheets comply with Ordering Paragraph (B) of the Commission's November 10, 1986 order and contain adjustments to the rates originally proposed by FGT in its July 1, 1986 filing and incorporate: (1) The balancing adjustment and Order 94 surcharge included in FGT's October 1, 1986 purchase gas adjustment filing designated as TA87-1-34-000; (2) the cost of gas included in FGT's Flex-PGA filing in Docket No. TF87-2-34-000, effective December 1, 1986; and the GRI Funding Unit (TA87-2-34-000) to be effective January 1, 1987.

FGT has mailed copies of this filing to all customers affected by this filing and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 6, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of the filling are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29277 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-27-000]

Northwest Pipeline Corp.; Tariff Filing

December 24, 1986.

Take notice that on December 15, 1986, Northwest Pipeline Corporation (Northwest) tendered for filing Sixteenth Revised Sheet No. 10-A and Second Revised Sheet No. 71 to its FERC Gas Tariff, First Revised Volume No. 1.

Northwest states that it proposes a change in its Rate Schedule T-1 Facility Charge effective February 1, 1987, in accordance with section 13 of Rate Schedule T-1, as supported by its Cost-of-Service Study and to implement an Amortizing Adjustment effective February 1, 1987, in accordance with section 14 of Rate Schedule T-1.

Northwest has served copies of this filing on Pacific Interstate Transmission Company, all its jurisdictional customers and affected state agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 6, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of the filling are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29276 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-429-026]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 24, 1986.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on December 15, 1986 tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1 the following tariff sheets:

Substitute Fifth Revised Sheet No. 16
Substitute Twelfth Revised Sheet No. 97
Substitute Eleventh Revised Sheet No. 101
Substitute Eighth Revised Sheet No. 101B
Substitute Seventh Revised Sheet No. 101D.

Texas Eastern filed an application in Docket No. CP84-429-020 on September 8, 1986 requesting authorization to reduce expanded Rate Schedule DCQ firm sales to Algonquin Gas Transmission Company (Algonquin) from 69,084 dekatherms of gas per day to 62,243 dekatherms of gas per day through a period beginning on the in-service day of all facilities contemplated in Docket No. CP84-429 *et al.* and expiring October 31, 1987. In addition, Texas Eastern the same application also requested authorization to resell to Long Island Lighting Company (LILCO) for the same period the amount Algonquin reduced (6,841 dekatherms) plus Algonquin's allotment of 4,612 dekatherms in Docket No. CP84-429-015 which was approved by Commission order issued August 1, 1986.

On December 15, 1986 Texas Eastern filed tariff sheets which proposed to implement as of December 4, 1986 for the affected participants in Docket No. CP84-429 *et al.*, Contract Adjustment-Demand rates applicable to Rate Schedules DCQ, GS, SGS, and CTS and their respective billing determinants and sales entitlements at the 1986 program levels. The tariff sheets in the December 3, 1986 filing reflected billing determinants and sales entitlements for Algonquin and LILCO that had been approved prior to Texas Eastern's September 8, 1986 filing.

The Commission approved Texas Eastern's September 8, 1986 application in Docket No. CP84-429-020 on November 26, 1986. Therefore the purpose of this filing is to set out in the above listed sheets changes in Algonquin's and LILCO's billing determinants and sales entitlements in accordance with such September 8, 1986 application and the Commission's November 26, 1986 order approving the application.

In the event the tariff sheets filed on December 3, 1986 are not approved by the Commission or are revised in any way, Texas Eastern will refile the above listed tariff sheets to reflect the final determination.

The proposed effective date of the above listed tariff sheets is December 4, 1986, the same date service commenced for the 1986 Contract Adjustment Program.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 6, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29275 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-170-000]

Niagara Mohawk Power Corp.; Tariff Change

December 24, 1986.

Take notice that Niagara Mohawk Power Corporation (Niagara), on December 13, 1986, tendered for filing as a rate schedule, an agreement between Niagara and Central Hudson Gas and Electric Corporation (Central Hudson) dated November 20, 1986.

Niagara presently has on file an agreement with Central Hudson Gas and Electric Corporation dated November 17, 1967. This agreement is designated as Niagara Mohawk Power Corporation Rate Schedule F.E.R.C. No. 55. This new agreement is being transmitted as a supplement to the existing agreement.

The supplement revises the transmission rates for making transmission capacity on the Unionville-Catskill-Pleasant Valley 115 KV transmission available to Central Hudson commencing November 28, 1986. Niagara requests waiver of the Commission's prior notice requirements in order to allow said agreement to become effective as of November 28, 1986.

Copies of the filing were served upon the following:

Central Hudson Gas and Electric Corporation, 284 South Avenue, Poughkeepsie, New York 12602.
Public Services Commission, State of New York, Three Empire State Plaza, Albany, New York 12223.

Any persons desiring to be heard or to protest said application should file a motion to intervene or to protest with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practices and procedures (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 5, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29278 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-86-002]

Sabine Pipe Line Co.; Filing To Put Interim Rates Into Effect

December 24, 1986.

Take notice that on December 18, 1986, Sabine Pipe Line Company (Sabine) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1. Sabine requests a waiver of the Commission's § 154.22 notice requirements and proposes to implement the settlement rates of its First Revised Tariff Sheet No. 20 as interim rates until action is taken on the uncontested settlement in Docket No. RP86-86-000, which was certified to the Commission on December 16, 1986. The Staff and Sabine agreed in Article VII of the Stipulation and Agreement that Sabine could place the settlement rates and tariff sheets in effect as interim rates on December 1, 1986, the end of the suspension period in the Commission's June 30th Order. Sabine requests such waiver be granted since Sabine has commenced Order No. 436 transportation on December 13, 1986.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 6, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29272 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP87-118-000]

South Georgia Natural Gas Co.; Request Under Blanket Authorization

December 24, 1986.

Take notice that on December 9, 1986, South Georgia Natural Gas Company (South Georgia), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP87-118-000 a request pursuant to § 157.205 and § 157.212 of the Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to reassign volumes of natural gas from one delivery point to another and to increase the contract delivery pressure at two delivery points under authorization issued in Docket No. CP82-548-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

South Georgia states that Atlanta Gas Light Company (Atlanta) provides natural gas service to the City of Valdosta, Georgia, and the surrounding area, by purchases it makes from South Georgia at three Valdosta, Georgia, delivery points in the currently effective service agreement between South Georgia and Atlanta dated November 1, 1973. South Georgia proposes to increase the existing contract delivery pressure at its Valdosta No. 3 delivery point in Land Lot No. 48 in the 11th Land District of Lowndes County, Georgia, to a pressure of not less than 200 nor more than 250 pounds per square inch. South Georgia also requests permission to increase the pressure at Valdosta No. 1, located in Land Lot No. 18 in the 12th Land District of Lowndes County, Georgia, to not less than 190 nor more than 200 pounds per square inch. South Georgia states that Atlanta has informed South Georgia that the increase in pressure will improve Atlanta's ability to maintain pressure on its distribution system, thereby enhancing the reliability of service to its customers in or near the Valdosta, Georgia area.

South Georgia also proposes to reassign the total maximum daily

qualtity (MDQ) provided for in the service agreement between Atlanta and South Georgia among the three delivery points. South Georgia proposes to reduce the MDQ at Valdosta No. 1 to 8,670 Mcf from 9,090 Mcf and to increase the MDQ at Valdosta Nos. 2 and 3 to 330 Mcf from 260 Mcf and to 500 Mcf from 150 Mcf, respectively. South Georgia states that the total volumes to be delivered to Atlanta after completion of the reassignment would not exceed the total volumes authorized prior to the reassignment so that the proposed activities would not be prohibited by any existing tariff of South Georgia. South Georgia also states that it has sufficient capacity to accomplish the deliveries proposed by the reassignment and increase in delivery pressure without detriment or disadvantage to South Georgia's other customers and without the need for additional facilities.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214 a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29273 Filed 12-30-86; 8:45am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Proposed Decision and Order; Week of December 1 Through December 5, 1986

During the week of December 1 through December 5, 1986, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

Dated: December 22, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

E.E. Tullos, Groveton, Texas, KEE-0073 Reporting Requirement

E.E. Tullos filed an Application for Exception from the provisions of Form EIA-782B. The request, if granted, would permit E.E. Tullos to be relieved of its requirement to file Form EIA-782B, entitled "Reseller'/Retailers' Monthly Petroleum Product Sales Report." On December 2, 1986, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 86-29282 Filed 12-30-86; 8:45 am]

BILLING CODE 6450-01-M

Southwestern Power Administration

Potential Availability of Temporary Power Sales

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of proposed policy regarding temporary power sales.

SUMMARY: The Southwestern Power Administration (SWPA), Department of Energy, markets Federal hydroelectric power (hydro capacity) and energy from projects constructed and operated by the Corps of Engineers located in the States of Arkansas, Missouri, Oklahoma and Texas, under the provisions of section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s), as amended, in an area which includes the previously-mentioned States plus Kansas and Louisiana.

Since 1980, when SWPA adopted final power allocations, numerous additional public body and cooperative utility systems have indicated an interest in receiving an allocation of hydro capacity and energy from SWPA. While SWPA does not have any additional hydro power available for allocation at this time, SWPA has developed some revised operating criteria, including contract scheduling flexibility, which may result in hydro capacity, and possibly energy, being available for short periods of time to public body and cooperative utility systems in the SWPA marketing area. The revised operating criteria were developed and are explained in SWPA's Power Marketing Modification Study dated September 1985, which was prepared by SWPA's staff with substantial customer participation and was distributed to all customers after completion. Copies are available upon request.

Under this study, customers with temporary excesses of capacity may, at no financial gain, "loan" their allocated hydro capacity through SWPA to other customers which may be temporarily short of capacity or in need of replacing higher-priced thermal power. This initiative is intended to obtain the maximum use of Federal hydro capacity. An extension of this initiative is being made to provide for the availability of the energy associated with allocated hydro capacity "loaned," at the discretion of the allottee. This extension is a direct result of expressed customer interest. Some SWPA customers have indicated that amounts of allocated hydro capacity which exceed their immediate needs may be available for temporary sale to other utility systems.

Accordingly, SWPA hereby announces a proposed policy whereby existing SWPA customers may make allocated Federal hydro capacity and energy available to SWPA for temporary sale to others in the following priority: (1) Public body and cooperative utility systems who are present customers or potential customers (including joint action agencies and any other public body and/or cooperative utility organizations which may be able to distribute the benefits of Federal hydro power to such public body and cooperative utility systems) to be selected by SWPA based on the chronological receipt of written requests for the "loaned" Federal hydro capacity and energy, and (2) utilities other than public body or cooperative utility systems, to be selected on the same basis if no public body or cooperative utility systems are available to purchase such power. Such potential customers must have, or be able to arrange, the transmission rights to receive the power.

SWPA will review the comments received in connection with this notice and make a decision regarding the proposed policy. If the proposed policy is determined to be desirable based on comments received, a subsequent notice will be published in the **Federal Register** advising interested parties to notify SWPA of their interest in (1) making their allocated federal hydro capacity and/or energy available to SWPA for short-term "loan" to other utility organizations and (2) making short-term purchases of "loaned" federal hydro capacity and/or energy.

ADDRESS: Written comments regarding this proposed policy and/or requests for copies of the SWPA Power Marketing Modification Study should be submitted to the Director, Power Marketing, Southwestern Power Administration, P.O. Box 1619, Tulsa, Oklahoma 74101. Written comments should be submitted no later than January 30, 1987.

FOR FURTHER INFORMATION CONTACT: Francis R. Gajan, Director, Power Marketing, Southwestern Power Administration, Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101, (918) 581-7529.

Issued in Tulsa, Oklahoma, this 16th day of December, 1986.

Ronald H. Wilkerson,

Administrator, Southwestern Power Administration.

[FR Doc. 86-29283 Filed 12-30-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[A-2-FRL-3136-1]

Prevention of Significant Deterioration of Air Quality; (PSD) Final Determinations

AGENCY: United States Environmental Protection Agency.

ACTION: Notice of final actions.

SUMMARY: The purpose of this notice is to announce that between July 1, 1986 and October 31, 1986, the United States Environmental Protection Agency (EPA), Region II Office, issued four final determinations and the New York State Department of Environmental Consolidated Permit Regulations (40 CFR Part 124), judicial review of these determinations under section 307(b)(1) of the Clean Air Act (the Act) may be at 40 CFR 52.21. In addition, this notice also announces two final PSD determinations issued by the NYSDEC that were inadvertently omitted from our previous **Federal Register** notice on PSD final actions.

DATES: The effective dates for the above determinations are delineated in the following chart (See **SUPPLEMENTARY INFORMATION**).

Name of Applicant	Location	Project description	Reviewing agency	Final action	Date of final action
Pfizer, Inc.	Ticonderoga, New York.	Construction of a precipitated calcium carbonate plant.	NYSDEC	PSD Non-applicability Determination.	4/23/86
General Motors Corporation.	North Tarrytown, New York.	Replacement of existing topcoat facility.	NYSDEC	PSD Non-applicability Determination.	6/18/86
American Ref-Fuel Company of Hempstead.	Hempstead, New York.	Construction of 3 refuse-fired, mass-burn resource recovery incinerators.	NYSDEC	PSD Permit Approval.	7/20/86
The New York City Department of General Services.	Brooklyn, New York.	Construction of a cogeneration plant.	NYSDEC	PSD Non-applicability Determination.	8/6/86
Allen-Williams Corporation.	St. John, U.S. Virgin Islands.	Construction of two 900 KW diesel generators, one 600 KW diesel generator, and one incinerator.	EPA Region II	PSD Non-applicability Determination.	8/18/86
A.C.K. Corporation	St. Thomas, U.S. Virgin Islands.	Construction of one 1400 KW diesel generator, one 600 KW Diesel generator and one 200 Hp Cleaver Brooks boiler.	EPA Region II	PSD Non-applicability Determination.	8/18/86
Eli Lilly Industries, Inc.	Carolina, Puerto Rico	Construction of a 600 Hp boiler.	EPA Region II	PSD Non-applicability Determination.	9/30/86
Eli Lilly Industries, Inc.	Carolina, Puerto Rico	Construction of a cogeneration plant.	EPA Region II	PSD Permit approval.	10/22/86

This notice lists only the sources that have received final PSD determinations. Copies of these determinations and related materials may be available for public inspection at the following offices:

EPA REGION II ACTIONS

United States Environmental Protection Agency, Region II Office, Permits Administration Branch, 26 Federal Plaza, Room 432, New York, New York 10278.

NYSDEC ACTIONS

New York State Department of Environmental Conservation, Division of Air Resources, Source Review and Regional Support Section, 50 Wolf Road, Albany, New York 12233-0001.

If available pursuant to the Prevention of Significant Deterioration of Air Quality (PSD) regulations codified sought *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days from the date on which these determinations are published in the **Federal Register.** Under section 307(b)(2) of the Act, these determinations shall not be subject to later judicial review in civil or criminal proceedings for enforcement.

Dated: December 10, 1986.

Christopher J. Daggett,

Regional Administrator.

[FR Doc. 86-29356 Filed 12-30-86; 8:45 am]

BILLING CODE 6560-50-M

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Eng, Chief, Air and Environmental Applications Section, Permits Administration Branch, Office of Policy and Management, U.S. Environmental Protection Agency, Region II Office, 26 Federal Plaza, Room 432, New York, New York 10278, (212) 264-4711.

SUPPLEMENTARY INFORMATION: Pursuant to the PSD regulations, the NYSDEC have made final determinations relative to the sources listed below:

[AAA-FRL-3135-8]

EPA Master List of Debarred, Suspended or Voluntarily Excluded Persons

AGENCY: Environmental Protection Agency.

ACTION: EPA master list of debarred, suspended, or voluntarily excluded persons.

SUMMARY: 40 CFR 32.400 requires the Director, Grants Administration Division, to publish in the **Federal Register** each calendar quarter the names of, and other information concerning, those parties debarred, suspended, or voluntarily excluded from participation in EPA assisted programs by EPA action under Part 32. Assistance (grant and cooperative agreement) recipients and contractors under EPA assistance awards may not initiate new business with these firms or individuals on any EPA funded activity during the period of suspension, debarment, or voluntary exclusion.

This short list contains the names of those persons who have been listed as a result of EPA actions only. It is provided for general informational purposes only and is not to be relied on in determining a person's current eligibility status. A comprehensive list, updated weekly, is available in each Regional Office. Inquiries concerning the status of any individual, organization, or firm should be directed to EPA's Regional or Headquarters office for grants administration that normally serves you.

DATE: This short list is current as of December 22, 1986.

FOR FURTHER INFORMATION CONTACT: Frank Dawkins, of the EPA Compliance Staff, Grants Administration Division, at (202) 475-8025.

Dated: December 17, 1986.

Thomas Hadd,

Acting Director, Grants Administration Division (PM-216).

EPA MASTER LIST OF DEBARRED, SUSPENDED AND VOLUNTARILY EXCLUDED PERSONS

Name and jurisdiction	File No.	Status [1]	From	To	Grounds
A.C. Lawrence Leather Company, Inc. (Danvers, MA)	83-0007-00	D	04-12-84	04-11-87	§ 32.200(a)(c)(i).
A.F. Beil Electric Company, Inc. (Youngstown, OH)	85-0014-00	D	06-27-85	06-26-88	§ 32.200(a).
Altman, Larry L. (Charleston, SC)	85-0063-03	S	07-29-85	Open	§ 32.300(b).
American Recovery Co., Inc. (Glen Burnie, MD)	86-0011-00	D	02-20-86	08-19-89	§ 32.200(f)(i).
Averill, Ernest Jr. (Fort Myers, FL)	83-0086-06	D	12-02-83	10-29-88	§ 32.200(b).
Azzil Trucking Co., Inc. (Roslyn, NY)	85-0008-02	D	09-11-86	09-10-89	§ 32.200(a)(b).
Barber, Lawrence (Hazelwood, NC)	83-0007-05	D	04-12-84	04-11-87	§ 32.200(a)(c)(i).
Barnum, James Charles (Utica, MI)	86-0010-01	D	12-10-85	12-09-88	§ 32.200(a).
Batzer Construction Co., Inc. (St. Cloud, MN)	85-0052-00	S	03-07-86	Open	§ 32.300(b).
Batzer, Bruce (St. Cloud, MN)	85-0052-01	S	03-07-86	Open	§ 32.300(b).
Batzer, Robert (St. Cloud, MN)	85-0052-02	S	03-07-86	Open	§ 32.300(b).
Beckham, Charles (Detroit, MI)	84-0030-02	D	02-24-84	07-30-89	§ 32.200(a)(b).
BECO, Inc. (High Point, NC)	85-0017-01	VE	12-10-85	12-09-88	§ 32.200(a)(3).
Bell, Bobby (Sulphur, LA)	85-0071-01	D	03-06-86	03-05-89	§ 32.200(a)(b).
Bell, Edwin (Sulphur, LA)	85-0071-02	D	03-06-86	03-05-89	§ 32.200(a)(b).
Blackwelder, Ray Martin (Concord, NC)	84-0011-01	D	06-27-85	06-26-88	§ 32.200(a).
Bowers, Darralyn (Detroit, MI)	84-0030-01	D	02-24-84	05-11-89	§ 32.200(a)(b).
Boyette, Willie Eugene (Wilson, NC)	83-0044-01	D	04-15-85	04-14-87	§ 32.200(a).
Bridges, William D., Jr. (Wilmington, NC)	85-0069-01	D	04-09-86	04-08-89	§ 32.200(a).
Cannady, Nathaniel Ellis (Asheville, NC)	86-0047-01	D	03-18-86	07-15-89	§ 32.200(a)(i).
Carson, Charles (Grosse Point Woods, MI)	85-0066-00	D	03-18-86	04-25-89	§ 32.200(b).
Carson, E. Eugene (Statesville, NC)	85-0004-01	D	01-06-86	01-05-89	§ 32.200(a).
City Chemicals Company, Inc. (Orlando, FL)	86-0038-02	D	10-02-86	11-23-89	§ 32.200(a)(i).
City Environmental Services, Inc. (Orlando, FL)	86-0038-03	D	10-02-86	11-23-89	§ 32.200(e)(1).
City Fuel Oil Company (Orlando, FL)	86-0038-05	D	10-02-86	11-23-89	§ 32.200(a)(1).
City Industries, Inc. (Orlando, FL)	86-0038-01	D	10-02-86	11-23-89	§ 32.200(a)(1).
Commonwealth Companies Incorporated (Lincoln, NE)	86-0100-01	S	11-12-86	Open	§ 32.200(a)(1).
Commonwealth Electric Company, Inc. (Lincoln, NE)	86-0100-00	S	09-09-86	Open	§ 32.300(a).
Cooney Construction Co., Inc. (Waucon, IA)	86-0062-00	S	03-18-86	Open	§ 32.300(b).
Crane Creek Asphalt, Inc. (Owatonna, MN)	86-0024-00	VE	09-04-86	08-03-87	§ 32.200(i).
Croft, William A. (Madison, WI)	83-0047-00	D	06-20-84	06-19-87	§ 32.200(a).
Cryer, John P. (Baton Rouge, LA)	85-0062-03	S	07-29-85	Open	§ 32.300(b).
Cummins Construction Company, Inc. (Enid, OK)	86-0060-00	S	09-08-86	Open	§ 32.300(b).
Cusenza, Sam (Ypsilanti, MI)	85-0024-02	D	02-24-86	04-02-89	§ 32.200(a)(b).
Cuti, Vincent J., Jr. (Huntington, NY)	83-0040-03	D	04-30-85	04-29-88	§ 32.200(a).
Dellinger, Theodore C. (Monroe, NC)	84-0012-01	VE	09-12-85	09-11-88	§ 32.200(e).
Dobson, Arthur A. (Lincoln, NE)	83-0050-01	D	06-30-85	04-18-87	§ 32.200(i).
Domanski, Gary Henry (Utica, MI)	86-0010-02	D	12-10-85	12-09-88	§ 32.200(a).
Driscoll, John William (Dundalk, MD)	86-0011-02	D	10-15-86	10-14-89	§ 32.200(f)(i).
Dykes, Lamar D. (Nederland, TX)	85-0071-03	D	03-06-86	03-05-89	§ 32.200(a)(b).
Enmanco (Utica, MI)	86-0010-00	D	12-10-85	12-09-88	§ 32.200(a).
Environmental Management Corporation (Utica, MI)	86-0010-00	D	12-10-85	12-09-88	§ 32.200(a).
Fischbach & Moore, Inc. (Dallas, TX)	84-0023-00	D	01-15-86	10-19-87	§ 32.200(a).
Floyd D. Stuckey & Associate (Winfield, KS)	84-0028-00	D	06-26-85	06-25-88	§ 32.200(a).
Foley, Bancroft T. (Washington, DC)	86-0004-03	D	09-07-88	03-06-89	§ 32.200(a).
Franklin Wiring Co. (Youngstown, OH)	85-0044-00	D	09-04-85	08-08-88	§ 32.200(a)(3).
FSA Engineering Consultants (Winfield, KS)	84-0026-00	D	06-26-85	06-25-88	§ 32.200(a).
Geuther, Herbert G. (Philadelphia, PA)	86-0004-04	D	03-07-86	03-06-89	§ 32.200(a).
Goodspeed, Robert (North Hampton, NH)	83-0007-02	D	04-12-84	04-11-87	§ 32.200(c)(i).
Graves, George William (Wilmington, NC)	85-0069-02	D	03-05-88	03-04-89	§ 32.200(a).
Greer, Arthur (Maitland, FL)	86-0038-00	D	10-02-86	11-23-89	§ 32.200.
Gross, William R. (Big Spring, TX)	86-0082-01	D	10-06-86	10-05-89	§ 32.280(a).
Hansen, Leonard A. (St. Peter, MN)	85-0019-02	D	09-26-85	08-25-88	§ 32.200(a)(3).
Hector Construction Co., Inc. (Caledonia, MN)	85-0056-00	S	03-18-86	Open	§ 32.300(b).
Herring, Donald W. (Wilson, NC)	83-0044-01	D	10-11-84	10-10-87	§ 32.200(a).
Hi-Way Surfacing, Inc. (Marshall, MN)	85-0053-00	D	12-17-85	12-16-88	§ 32.200(a)(3).
Hochreiter, Herbert (Roslyn, NY)	85-0008-01	D	09-11-86	09-10-89	§ 32.200(a)(b).
Hodges Electric Company (Wilmington, NC)	85-0070-00	D	04-04-86	04-03-89	§ 32.200(a).
Hopper, Thomas G. (Bedford, MA)	86-0095-03	S	06-24-86	Open	§ 32.200(b).
Howard P. Foley, Company (Washington, DC)	86-0004-00	D	03-07-86	03-06-89	§ 32.200(a).
Hugo Schutz, Inc. (Lakefield, MN)	85-0047-03	D	05-01-86	04-30-89	§ 32.200(a).
Insultation Specialty and Supply, Inc. (Cleveland, OH)	84-0025-00	D	10-04-84	10-03-87	§ 32.200(c)(i).
J.A. LaPorte, Inc. (Arlington, VA)	86-0037-00	D	09-29-86	09-28-89	§ 32.200(a)(3).
Jerlow, John A. (Lakefield, MN)	85-0047-02	D	05-01-86	04-30-89	§ 32.200(a).
Jerpbak, Daniel R. (Owatonna, MN)	86-0024-01	D	09-25-86	09-24-89	§ 32.200(i).
Johnson, C. Theodore (Indianapolis, IN)	84-0023-04	D	03-04-86	03-03-89	§ 32.200(a)(f).

EPA MASTER LIST OF DEBARRED, SUSPENDED AND VOLUNTARILY EXCLUDED PERSONS—Continued

Name and jurisdiction	File No.	Status [1]	From	To	Grounds
Johnson, Richard (Hinsdale, NH)	83-0007-03	D	04-12-84	04-11-87	§ 32.200(c)(i).
Jopel Contracting & Trucking Corporation (Bronx, NY)	85-0022-00	S	07-30-85	Open	§ 32.200(b).
Komatz Construction Co., Inc. (St. Peter, MN)	85-0019-00	D	09-26-85	09-25-88	§ 32.200(a)(3).
Komatz, Thomas P. (St. Peter, MN)	85-0019-01	D	09-26-85	09-25-88	§ 32.200(a)(3).
Krueger, Joseph (Cleveland, OH)	84-0025-01	D	10-04-84	10-03-87	§ 32.200(c)(i).
Kruse, Lloyd C. (Lakefield, MN)	85-0047-01	D	05-01-86	04-30-89	§ 32.200(a).
Law, David P. (Greenwell Springs, LA)	85-0064-00	S	07-29-85	Open	§ 32.300(b).
Law, Theresa McBeth (Greenwell Springs, LA)	85-0064-01	S	07-29-85	Open	§ 32.300(b).
Lee, Herbert P., III (Sumter, SC)	84-0013-01	VE	02-14-85	12-31-87	§ 32.200(a).
Lench, Frank P. (Lafayette, CA)	86-0004-01	D	03-07-86	03-06-89	§ 32.200(a).
Leyendecker Highway Contractors, Inc. (Laredo, TX)	86-0014-00	D	07-17-86	03-25-88	§ 32.200(a).
Lizza Industries, Inc. (Roslyn, NY)	85-0008-00	D	09-11-86	09-10-89	§ 32.200(a)(b).
Lofgren, Sven (Lincoln, NE)	87-0014-01	S	11-12-86	Open	§ 32.200(i).
Marshall, Weymouth (Gloucester, MA)	83-0007-01	D	04-12-84	04-11-87	§ 32.200(c)(i).
Masselli, William P. (Bronx, NY)	85-0022-02	S	07-30-85	Open	§ 32.300(b).
McDowell Contractors, Inc. (Nashville, TN)	84-0014-00	VE	12-23-85	12-22-88	§ 32.200(a).
McGonagle, Joseph D. (Everett, MA)	86-0041-01	VE	11-17-86	11-16-87	§ 32.200(a).
Midhampton Asphalt (Roslyn, NY)	85-0008-03	D	09-11-86	09-10-89	§ 32.200(a)(b).
Modern Electric Co. (Statesville, NC)	85-0004-00	D	01-06-86	01-05-89	§ 32.200(a).
Moore, Gray E. (Jr.) (Greenwood, SC)	86-0108-00	D	08-19-86	08-18-89	§ 32.200.
Moorehead, Dennis L. (Graniteville, SC)	84-0006-01	D	01-11-85	01-10-88	§ 32.200(a).
Moorse, Lawrence (Marshall, MN)	85-0053-01	D	12-17-85	12-16-88	§ 32.200(a)(3).
Municipal & Industrial Pipe Services, Ltd. (Douglasville, GA)	82-0601	D	10-07-82	02-16-87	§ 32.200(b)(c)(e)(i).
	82-0408				
Mystic Bituminous Products Company, Inc. (Everett, MA)	86-0041-00	VE	11-17-86	11-16-87	§ 32.200(a).
Newt Solomon, Inc. (Nashville, TN)	85-0058-00	D	10-10-85	10-09-88	§ 32.200(e)(i).
Owens, Jerry B. (Southfield, MI)	85-0065-00	D	02-24-86	03-26-89	§ 32.200(b).
Peterson, Roger A. (Cloquet, MN)	85-0054-02	D	02-25-86	01-31-87	§ 32.200(a).
Pinney, J.A. Bruce (Bala Cnywyd, PA)	84-0023-06	D	01-15-86	03-03-89	§ 32.200(a)(f).
Pipeline Renovation Service, Inc. (Tacoma, WA)	86-0078-00	D	07-02-86	06-07-89	§ 32.200(c)(i).
Regenscheid, Charles E. (St. Peter, MN)	85-0019-03	VE	12-19-85	12-18-87	§ 32.200(a)(3).
Resource Conservation & Recovery of America, Inc. (Orlando, FL)	86-0038-04	D	10-02-86	11-23-89	§ 32.200(a)(i).
Rio Grande Construction Company (Bunkie, LA)	85-0063-00	S	07-29-85	Open	§ 32.300(b).
Rogers, Joseph J. (Pittsburgh, PA)	86-0004-02	D	03-07-86	03-06-89	§ 32.200(a).
Rothrock Construction, Inc. (Murrells Inlet, NC)	83-0064-00	D	05-17-84	05-16-87	§ 32.200(a).
Rothrock, Steve O. (Murrells Inlet, NC)	83-0064-01	D	05-18-84	05-17-87	§ 32.200(a).
Ruggles, Myron R. (Berlin Center, OH)	85-0016-02	VE	07-09-85	01-08-87	§ 32.200(a).
Rupp Construction Company, Inc. (Slayton, MN)	85-0048-00	D	07-17-86	07-16-89	§ 32.200(a).
Rupp, Douglas (Slayton, MN)	85-0048-01	D	07-17-86	07-16-89	§ 32.200(a).
Sarandos, Constantino (Gus) (Tacoma, WA)	86-0078-02	D	07-02-86	06-07-89	§ 32.200(c)(i).
Sarandos, Dolores K. (Tacoma, WA)	86-0078-01	D	07-02-86	06-07-89	§ 32.200(c)(i).
Sarandos, George (Tacoma, WA)	86-0078-03	D	07-02-86	06-07-89	§ 32.200(c)(i).
Sargent, Frederic B. (Pittsburgh, PA)	85-0020-01	VE	07-26-85	02-12-87	§ 32.200(a)(3).
Saunders, George F. (High Point, NC)	85-0017-02	VE	12-10-85	12-09-88	§ 32.200(a)(3).
Sausela, Roy (Bunkie, LA)	85-0063-02	D	07-29-85	10-13-89	§ 32.200(a)(i).
Schorr, Paul C., III (Lincoln, NE)	87-0014-00	S	11-12-86	Open	§ 32.200(i).
Schulze, Leland (Caledonia, MN)	85-0056-01	S	03-18-86	Open	§ 32.300(b).
Seale, Leonard M. (Bedford, MA)	86-0095-02	S	06-24-86	Open	§ 32.300(b).
Slattery, Edward J. (Youngstown, OH)	85-0015-01	D	09-15-85	03-14-87	§ 32.200(a)(3).
Smith, Paul F. (Lakefield, MN)	85-0047-03	D	05-01-86	04-30-89	§ 32.200(a).
Solomon, Newt (Nashville, TN)	85-0058-01	D	10-07-85	10-06-88	§ 32.200(e)(i).
Stone, Francis (Swanzey, NH)	83-0007-04	D	04-12-84	04-11-87	§ 32.200(a)(c)(i).
Stuckey, Floyd D. (Winfield, KS)	84-0028-01	D	06-26-85	06-26-88	§ 32.200(a).
Tow Brothers Construction, Company (Fairmont, MN)	85-0054-00	D	01-22-86	01-21-89	§ 32.200(a).
Tow, James (Fairmont, MN)	85-0054-01	D	01-22-86	01-21-89	§ 32.200(a).
Toy, Daniel Lee (Utica, MI)	86-0010-03	D	12-10-85	12-09-88	§ 32.200(a).
Tubre Enterprises (Bunkie, LA)	85-0062-01	S	07-29-85	Open	§ 32.300(b).
Tubre Enterprises, Inc. (Bunkie, LA)	85-0062-00	S	07-29-85	Open	§ 32.300(b).
Tubre, Charles (Baton Rouge, LA)	85-0062-02	S	07-29-85	Open	§ 32.300(b).
Tubre, Thomas (Bunkie, LA)	85-0063-01	S	07-29-85	Open	§ 32.300(b).
Tucker Brothers Contracting Co. (Pell City, AL)	83-0061-00	D	11-26-84	11-25-87	§ 32.200(a).
Tucker, Harold Ray (Pell City, AL)	83-0061-02	D	11-26-84	11-25-87	§ 32.200(a).
Tucker, Kenneth W. (Pell City, AL)	83-0061-01	D	11-26-84	11-25-87	§ 32.200(a).
Twedell, David Bruce (Gainesville, FL)	83-0020-01	D	08-30-85	08-29-87	§ 32.200(a).
Ulland Brothers, Inc. (Cloquet, MN)	85-0054-00	D	02-25-86	01-31-87	§ 32.200(a).
Ulland, Robert O. (Cloquet, MN)	85-0054-01	D	02-25-86	01-31-87	§ 32.200(a).
Universal Engineering & Supply, Inc. (Sulphur, LA)	85-0071-00	D	03-06-86	03-05-89	§ 32.200(a)(b).
Universal Engineering (Sulphur, LA)	85-0071-05	D	03-06-86	03-05-89	§ 32.200(a)(b).
Universal Wheels, Inc. (Sulphur, LA)	85-0071-06	D	03-06-86	03-05-89	§ 32.200(a)(b).
Valentini, Joseph (Ypsilanti, MI)	85-0024-01	D	02-24-86	04-02-89	§ 32.200(a)(b).
Vryenhoek, Ralph D. (Pittsburgh, PA)	85-0020-02	VE	07-26-85	02-13-87	§ 32.200(a)(3).
W.V. Pangborne & Co., Inc. (Bala Cynwyd, PA)	84-0023-05	D	01-15-86	10-19-87	§ 32.200(a)(f).
Watson Electrical Construction Co. (Wilson, NC)	83-0044-00	D	04-15-85	04-14-87	§ 32.200(a).
Watson-Flagg Electric, Co., Inc. (Indianapolis, IN)	84-0023-03	D	04-28-86	10-19-87	§ 32.200(a).
Williams, G. Marvin (Asheville, NC)	86-0047-02	D	03-18-86	07-15-89	§ 32.200(i).
Wirt, David (Douglasville, GA)	82-0601	D	10-07-82	02-16-87	§ 32.200(b)(c)(e)(i).
	82-0406				
Wirt, Gordon D. (Douglasville, GA)	82-0406	D	12-07-82	02-16-87	§ 32.200(c)(e).
Wirt, Judith C. (Douglasville, GA)	82-0408	D	12-07-82	02-16-87	§ 32.200(c)(e)(i).
Wolverine Disposal, Inc. (Ypsilanti, MI)	85-0024-00	D	02-24-86	04-02-89	§ 32.200(a)(b).
Young, Frank Paul (Sr.) (Glen Burnie, MD)	86-0011-01	D	06-20-86	08-19-89	§ 32.200(f)(i).

[1] D = Debarred; S = Suspended; VE = Volunarily Excluded.

[FR Doc. 86-29357 Filed 12-30-86; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3136-2]

Chesapeake Bay Executive Council; Open Meeting

The Chesapeake Bay Executive Council established in accordance with the Chesapeake Bay Agreement of December 1983, will be held from 9:30 a.m. to 3:00 p.m. on January 22, 1987, at the Virginia Marine Science Museum, 717 General Booth Boulevard, Virginia Beach, Virginia. This notice is published pursuant to section 10(a)(2) of Pub. L. 92-463, "The Federal Advisory Committee Act."

The agenda of the quarterly council meeting will include, but will not be limited to:

1. Approve minutes from October 16, 1986 meeting.
2. Communications Strategy.
3. Citizen Advisory Committee—Quarterly Report to the Executive Council.
4. Planning Process—Phase II.
5. Recommendations on controlling Tributyltin hull plants.
6. Executive Council Governance Issues.
7. New Business.

Comments from the public will be welcomed at the end of the meeting as time permits. Questions about the meeting may be directed to Ms. Patricia Bonner, U.S. EPA, Chesapeake Bay Liaison Office, Annapolis City Marina, Suite 109-110, Annapolis, Maryland 21403. The telephone number is: Area 301/266-6863.

Dated: December 19, 1986.

Charles S. Spooner,

Director, Chesapeake Bay Liaison Office.

[FR Doc. 86-29358 Filed 12-30-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180711; FRL-3136-5]

Emergency Exemptions; Metalaxyl, Etc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pest in the two States listed below, a public health exemption to Montana, and one quarantine exemption to the U.S. Department of Agriculture (USDA/APHIS). Also listed are three crisis exemptions initiated by three States and two denials of request for specific exemptions from the Florida Department of Agriculture and Consumer Services, and the Virginia Department of Agriculture and Consumer Services. The exemptions, issued of Agriculture and Consumer Services. The exemptions, issued during the months of October, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific, public health, quarantine, and crisis for its effective date.

FOR FURTHER INFORMATION CONTACT: See each exemption for the name of the contact person. The following information applies to all contact people: By mail:

Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Arkansas State Plant Board for the use of metalaxyl on blueberries to control phytophthora; October 2, 1986 to April 30, 1987. (Jim Tompkins)

2. California Department of Food and Agriculture for the use of methiocarb on artichokes to control snails and slugs; October 10, 1986 to December 31, 1986. (Jack E. Housenger)

EPA has granted a public health exemption to the Montana Department of Livestock for the use of strychnine in eggs to control rabid skunks; November 6, 1986 to November 5, 1987. A notice of receipt and solicitation of public comment was published in the **Federal Register** of October 8, 1986 (51 FR 36061); no comments were received. The Agency found that the conditions outlined in the **Federal Register** notice of June 13, 1986 (51 FR 21617) had been met, and an emergency situation could exist. (Jim Tompkins)

EPA issued a quarantine exemption to the United States Department of Agriculture (USDA/APHIS) for the use of methyl bromide on various foods and feed commodities to control quarantine pests; November 7, 1986 to November 6, 1989. (Jim Tompkins)

Crisis exemptions were initiated by the:

1. Florida Department of Agriculture and Consumer Services on October 27, 1986, for the use of sodium chlorate on southern peas to control volunteer corna and several other weeds and to aid in the harvest of peas. Since it was anticipated that this program would be needed for more than 15 days, Florida requested a specific exemption to continue it. The need for this program is expected to last until December 15, 1986. (Libby Pemberton)

2. Iowa Department of Agriculture on October 6, 1986, for the use of sodium chlorate on dry edible beans as a desiccant. The need for this program has ended. (Jim Tompkins)

3. Michigan Department of Agriculture on September 22, 1986, for the use of sodium chlorate on dry edible beans as a desiccant. The need for this program has ended. (Jim Tompkins)

EPA has denied specific exemptions requested by:

1. Florida Department of Agriculture and Consumer Services for the use of triflumizole on spathiphyllums to control cylindrocladium. A notice of receipt of this request was published in the **Federal Register** of August 20, 1986 (51 FR 29694). The Agency has denied this request because it had insufficient data to make a determination of the safety of the proposed use. (Jim Tompkins)

2. Virginia Department of Agriculture and Consumer Services for the use of a dichlorprop on apples to control premature abscission. A notice of receipt of this request was published in the **Federal Register** of August 28, 1986 (51 FR 30705). The Agency has denied this request because of unresolved questions concerning the oncogenic potential of dischlorprop. (Jim Tompkins)

Authority: 7 U.S.C. 136.

Dated: December 19, 1986.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 86-29359 Filed 12-30-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-64006; FRL-3135-5]

Intent To Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to cancel.

SUMMARY: EPA is issuing a notice of intent to cancel certain pesticide registrations under section 6(b) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). The registrations which the Agency intends to cancel are held by registrants whom the Agency, after a good faith effort, has been unable to contact. Persons adversely affected by this notice may request a hearing in accordance with the provisions of 40 CFR Part 164.

DATES: All registrations will be cancelled at the end of 30 days from the date of publication or receipt of this notice by registrants, unless a hearing has been requested by a person adversely affected by this notice, or the Agency is provided with a correct and current address of an affected registrant.

A request for a hearing by an affected registrant or the registrant's correct and current address must be received by the Agency on or before January 30, 1987, or 30 days after receipt by mail by the affected registrant of this notice, whichever is the later date.

A request for a hearing submitted by any other adversely affected person must be received on or before January 30, 1987.

ADDRESS: Hearing requests must be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Stanley J. Austin, Registration Support and Emergency Response Branch, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Office location and telephone number: Room 716C, Crystal Mall Building number 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-4360).

SUPPLEMENTARY INFORMATION: Over the years, EPA has been unable to contact certain pesticide registrants at the addresses on file at the Agency or appearing on current pesticide product labels. EPA's inability to communicate with these registrants impairs the Agency's ability to discharge its statutory mandate to regulate pesticide products and their impact on the environment. Furthermore, it creates an undesirable situation in that some registrants may unknowingly be in violation of the Act and escape burdens assumed by other registrants in compliance with the Act.

Section 6(b) of FIFRA allows the Administrator to issue a notice of intent to cancel a pesticide's registration if that ". . . pesticide or its labeling or other material required to be submitted does not comply with the provisions of this Act. . . .>

Section 3(c)(1)(A) of FIFRA and 40 CFR 162.10(a)(1)(ii) make it a condition of registration that a registrant's address be filed with the Agency and appear on the label of the registrant's pesticide product. In addition, section 12(a)(1)(E) of FIFRA makes it unlawful to distribute, sell, offer for sale, hold for sale, ship, deliver or offer for delivery to any person a misbranded pesticide. Under FIFRA section 2(q)(2)(C)(i), failure to have the registrant's correct address on the label of its pesticide product constitutes misbranding. Therefore, failure of a registrant to submit a correct and current address and include such address as part of the label of its pesticide products is in violation of the Act's provisions and is grounds for cancellation of that registrant's registrations.

EPA issued a policy statement, published in the **Federal Register** of March 5, 1986 (51 FR 7634), indicating that the Agency may decide to initiate cancellation proceedings for registrations held by registrants whom the Agency has, after good faith efforts, been unable to contact by mail. This notice implements that policy.

This notice will be sent to all affected registrants by certified mail to the most current addresses the Agency has in its files. For the purposes of this notice, the Agency will consider validated non-delivery as receipt and the date of validated non-delivery as the date of receipt in those instances where actual receipt is not accomplished.

The impact of these cancellations on the agricultural economy is difficult to determine. It is believed that some or all of the pesticide products subject to this cancellation action are no longer on the market. Some of the pesticide products have no agricultural uses. At worst, the impact on the agricultural economy is expected to be slight.

Pursuant to section 6(b), the Secretary of Agriculture has reviewed this notice and has no comments. The Science Advisory Panel has waived its right (under section 25(d)) to review this notice.

Registrations Subject to Cancellation

The following registrations are subject to cancellation under this notice.

Registrant	Registration Nos.
Aidex Corporation, I-29 & Hwy 370, Council Bluffs, IA 51501.	1029-6755.
Arizona Sulphur Company, 5340 West Bethany Home Rd., Box 863, Glendale, AZ 85311.	35377-01, 35377-02, 35377-5663, 35377-5664, and 35377-7184.
Atomic Chemical Company, Box 1111, Spokane, WA 99210.	6152-03 and 6152-04.
Doorenmus Chemical Company, 639 East 19th Street, Paterson, NJ 07514.	33013-01.
Dunham Company, 9425 Gidley Street, Temple City, CA 91780.	19215-01 and 19215-02.
Dyna Chemical Corporation, 56 Lincoln Highway, Penndel, PA 19047.	14799-01, 14799-02, and 14799-03.
Eco Chemical, Inc., P.O. Box 51476, New Orleans, LA 70151.	17870-01.
Ecology Interprises, Ltd., No. 5 Industrial Park, Haverstraw, NY 10926.	34761-02 and 34761-07
Eisele & Company, Inc., Subs of Shulton Inc., Nashville, TN 37208.	20062-01.
Enfield Enterprises, Inc., P.O. Box 5024, Esmond, RI 02917.	32341-01.
Environment Engineering, Inc., 1310 Headquarter Drive, Greenboro, NC 27405.	13442-01, 13442-10, 13442-11, 13442-12, 13442-13, 13442-14, and 13442-15.
Environmental Laboratories, Inc., 2304 Gulf Life Tower, Jacksonville, FL 32207.	15598-01.
Environment 2000, Ltd., 924 4th Ave. South, P.O. Box 239, Denison, IA 51442.	12454-01.
Fast Kill Pest Control Co., 18216 W. Seven Mile Rd., Detroit, MI 48219.	46481-01.
Feedwaters, Inc., 340 Evelyn Street, Paramus, NJ 07652.	11696-01, 11696-02, and 11696-03.
Flexo Chemical & Distributing Co., 47 Hartford Pike, Shrewsbury, MA 01545.	33261-01, 33261-02, and 33261-03.
Florasan Corporation, 9424 Roosevelt Way, NE., Seattle, WA 98115.	13370-7476, 13370-7477, and 13370-7478.
Folino Industries, Inc., P.O. Box 218, Winooski, VT. 05404.	42764-01 and 42764-02.
G & G Chemical Co., Inc., 1333 Van Dyke Avenue, San Francisco, CA 94124.	25581-01, 25581-02, 25581-03, 25581-04, 25581-07, and 25581-12.
Ghost Maker Products, 8928 W. 24th Street, Los Angeles, CA 90034.	35575-9553.
Gilbert Chemical Co., Bellville, NJ 07109.	33133-01.
Grain Conditioners, Inc., 2622 Poydras St., New Orleans, LA 70119.	10203-01.
Grove Chemicals, 2035 Fern Circle, Leesburg, FL 32748.	35308-9130.
Growers Service Company, P.O. Box 628, Watsonville, CA 95076.	11034-4486 and 11034-10997.
Hennigan Engineering Co., Inc., P.O. Box 430, Mansfield, MA 02048.	18676-01.
Highcourt Sales Company, P.O. Box 26090, Pasadena, CA 91105.	30322-01.
Hi-plains Sprayers, Inc. 701 S. Smokey Hill, Oakley, KS 67748.	35965-04 and 35965-3007.
Hollywood Laboratory Company, 1009 South 21st Avenue, Hollywood, FL 33020.	13473-9208.
Holt Mfg. Company, 2615 Fifth Ave. S., Birmingham, AL 35233.	16454-01.
Howland Chemical Products, Inc., 160 Passaic Avenue, Kearny, NJ 07032.	19673-03.
Imperal Pools & Supplies, 307 W. Genesee Street, Auburn, NY 13021.	46133-01.
Interiors By Marie, 6601 Norwood Ave., Jacksonville, FL 32208.	52500-01.
James W. Nielsen, 437 NE. 10th Street, Newport, OR 97365.	50019-01.
J.H. Robinson Exterminating Co., 2138 83rd Street, Cleveland, OH 44103.	36383-10343, 36383-10344, and 36383-10345.
J.W.T. Industry, P.O. Box 232, West Chicago, IL 60185.	21145-01 and 21145-03.
Kaiser/Naylor Nautical Research Company, 2503 McCue 7, Houston, TX 77027.	29774-01.
Kelles Energy Systems, Inc., 300 Maple Ave., South Plainfield, NJ 07080.	45993-01 and 45993-02.
Key Chemical Company, 669 Elmwood Ave., Providence, RI 02907.	32161-01.
Key 11 Chemical Company, 2682 Ventura Blvd., Camarillo, CA 93010.	11068-9171, 11068-9173, 11068-9174, 11068-9175, and 11068-9176.
Khan Laboratories, 639 W. Diversey Parkway, Chicago, IL 60614.	11324-01 and 11324-02.

Registrant	Registration Nos.
Kilrat Corporation, 400 N. 7th Street, Phoenix, AR 85014.	10741-01.
Kingwell Chemical, 3434 Browns Mill Rd. SE, Atlanta, GA 30315.	14157-01, 14157-02, and 14157-03.
Knud's Pool Service, Inc., 301 Dalton Avenue, Pittsfield, MA 01247	36479-01.
Kremer I.B. Company, P.O. Box 221, Southfield, MI 48037.	13683-07 and 13683-08.
La Quinoleine S.A., c/o Registration Consulting Associates, 127 Crestmoor Circle, Pacifica, CA 94044.	42567-01 and 42567-02.
Lloyd's Pool & Patio Shop, 1821 West Brandon Blvd., Brandon, FL 33511.	50767-01.
Looms Chemical Company, 2011 N. Columbia Blvd., P.O. Box 17342, Portland, OR 97217.	39769-01.
LRC Research & Development Company, Inc., 1703 Concord Pike, Wilmington, DE 19803.	34250-01.
Manchester Corporation, 521 Commerce Drive, Largo, FL 33540.	36226-9793, 36226-10370, and 36226-10371.
Manzone, Inc., P.O. Box 1949, Tifton, GA 31794.	44317-01, 44317-02, 44317-03, 44317-04, 44317-05, 44317-06, 44317-13, 44317-14, 44317-15, 44317-16, 44317-17, 44317-18, 44317-19, 44317-21, 44317-22, 44317-23, 44317-24, 44317-25, 44317-26, 44317-30, 44317-32, 44317-33, 44317-35, 44317-38, 44317-39, 44317-40, 44317-42, 44317-43, and 44317-46.
National Chemical, Inc., 940 W. Oakwood Road, Oak Creek, WI 53154.	36371-01.
NHR Chemical Corporation, 9601 Katy Freeway, Suite 400, Houston, TX 77024.	46390-01, 46390-02, 46390-03, 46390-04, 46390-05, and 46390-06.
Nox-weed, Inc., 6842 E. Live Oak Street, Bell Gardens, CA 90202.	11112-9635, 11112-9636, 11112-9637, 11112-9638, and 11112-9639.

Dated: December 17, 1986.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-29159 Filed 12-30-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59799; FRL-3136-6]

Certain Chemical Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of seventeen such PMNs and provides a summary of each.

DATES: Close of Review Period:

Y 87-63, 87-64, 87-65, 87-66, 87-67 and 87-68—January 1, 1987.
Y 87-69 and 87-70—January 4, 1987.
Y 87-71—January 5, 1987.
Y 87-72, 87-73, 87-75, 87-76 and 87-77—January 6, 1987.
Y 87-78 and 87-79) January 7, 1987.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: Effective with this notice, a nonsubstantive change in format is being initiated for information published under sections 5(d)(2) and 5(h)(6) of the Toxic Substances Control Act. Toxicity data will only appear in the notice when submitted with the PMN. Exposure and environmental release/disposal information will no longer be published in the notice. The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 87-63

Manufacturer. Confidential.
Chemical. (G) Alkyd resin.
Use/Production. (S) Conversion varnish vehicle (polywood finish). Prod. rang: 45,450 to 68,200 kg/yr.

Y 87-64

Manufacturer. Confidential.
Chemical. (G) Modified ethylene-butyl acrylate copolymer.
Use/Production. (S) Commercial hot melt adhesive tie-layer in multi-layer film constructions. Prod. range: Confidential.

Y 87-65

Manufacturer. Confidential.
Chemical. (G) Modified ethylene-butyl acrylate polymer.
Use/Production. (S) Commercial hot melt adhesive tie-layer in multi-layer film constructions. Prod. range: Confidential.

Y 87-66

Manufacturer. Confidential.
Chemical. (G) Ethylene terpolymer.
Use/Production. (S) Commercial component of packaging hot melt adhesive; tie coat for co-extruded film; extrusion lamination for metal/plastic. Prod. range: Confidential.

Y 87-67

Manufacturer. Confidential.
Chemical. (G) Modified ethylene-vinyl acetate polymer.
Use/Production. (S) Commerical component of packaging hot melt adhesive; tie coat for co-extruded film; extrusion lamination for metal/plastic. Prod. range: Confidential.

Y 87-68

Manufacturer. Confidential.
Chemical. (G) Modified polyethylene.
Use/Production. (S) Commercial saturation wax component, component of packaging hot melt adhesive; polymer intermediate. Prod range: Confidential.

Y 87-69

Manufacturer. Confidential.
Chemical. (G) Alkyd co-polymer.
Use/Production. (G) Binder in coatings. Prod. range: Confidential.

Y 87-70

Manufacturer. Confidential.
Chemical. (G) Oil modified polyester.
Use/Production. (G) Binder in coatings. Prod. range: Confidential.

Y 87-71

Manufacturer. Confidential.
Chemical. (S) 7-oxabicyclo [4.1.0.]heptane-3-carboxylic acid, 7-oxabicyclo[4.1.0]-hept-3-ylmethylester, Tall-oil fatty acids, Pamolyn 380 tall-oil fatty acids, 2-methyl-2-propenoicacidmethylester, 2-propenoic acid, 1,1-dimethylethyl hydroperoxide, N,N-diethyl-ethanamine.
Use/Production. (G) Industrial polymer used as the major vehicle component of a protective coating (paint) formulated for use on metal substrates.

Y 87-72

Manufacturer. Confidential.
Chemical. (G) Acrylic polymer.
Use/Production. (G) Printing inks. Prod. range: Confidential.

Y 87-73

Manufacturer. General Electric Company.
Chemical. (G) Carbonic acid and 1,3-(and/or 1,4-)benzenedicarboxylic acid, copolymer with 4,4'-(1-methylethylidene) bis(phenol) and hydroxy arene.
Use/Production. (G) Plastic components for electrical devices, for medical devices, for business machines, for information storage devices, for automobiles and for housewares. Prod. range: Confidential.

Y 87-74

Manufacturer. General Electric Company.
Chemical. (G) Carbonic acid and 1,3-(and/or 1,4-)benzenedicarboxylic acid, copolymer with 4,4'-(1-methylethylidene) bis(phenol) and 4-alkylphenol.
Use/Production. (G) Plastic components for electrical devices, for medical devices, for business machines, for information storage devices, for automobiles and for housewares. Prod. range: Confidential.

Y 87-75

Manufacturer. General Electric Company.
Chemical. (G) Carbonic acid and 1,3-(and/or 1,4-)benzenedicarboxylic acid, copolymer with 4,4'-(1-methylethylidene) bis(phenol) and 4-aralkylphenol.
Use/Production. (G) Plastic components for electrical devices, for medical devices, for business machines, for information storage devices, for automobiles and for housewares. Prod. range: Confidential.

Y 87-76

Manufacturer. General Electric Company.
Chemical. (G) Carbonic acid and 1,3-(and/or 1,4-)benzenedicarboxylic acid, copolymer with 4,4'-(1-methylethylidene) bis(phenol) and 4-arcycloalkylphenol.
Use/Production. (G) Plastic components for electrical devices, for medical devices, for business machines, for information storage devices, for automobiles and for housewares. Prod. range: Confidential.

Y 87-77

Manufacturer. General Electric Company.
Chemical. (G) Poly(oxy-1,4-butanediyloxycarbonyl-1,4-phenylene carbonyl) reaction product with hexa substituted heteromonocycle.
Use/Production. (S) Site-limited intermediate for manufacture of polymer product and industrial, commercial and consumer electric/electronic automotive and consumer goods. Prod. range: Confidential.

Y 87-78

Manufacturer. Westinghouse Electric Corporation.
Chemical. (G) Polyamide-imide polymer.
Use/Production. (S) Industrial wire enamel insulation to be applied to magnet wire and electrical insulating varnish for application on motors, generators and/or transformer. Prod. range: 50,000 to 100,000 kg/yr.

Y 87-79

Importer. Dynamit Nobel Chemicals.
Chemical. (G) Polyester resin of aryl dicaboxylic acids, alkane diols and ester.
Use/Import. (S) Industrial base for coil-coating paint for outdoor exposure. Import range: Confidential.

Dated: December 23, 1986.

Denise Devoe,

Acting Division Director, Information Management Division.

[FR Doc. 86-29360 Filed 12-30-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51655; FRL-3136-7]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of forty-five such PMNs and provides a summary of each.

DATES: Close of Review Period:

P 87-325 and 87-326—March 11, 1987.
P 87-327, 87-328, 87-329, 87-330, 87-331, 87-332, 87-333 and 87-334—March 14, 1987.
P 87-335, 87-336, 87-337, 87-338, 87-339, 87-340, 87-341, 87-342, 87-343, 87-344, 87-345, 87-346, 87-347, 87-348, 87-349, 87-350, 87-351, 87-352, 87-353, 87-354, 87-355, 87-356, 87-357, 87-358, 87-359, 87-360 and 87-361—March 15, 1987.
P 87-362, 87-363, 87-364, 87-365, 87-366, 87-367 and 87-368—March 16, 1987.
P 87-369—March 17, 1987.

Written comments by:

P 87-325 and 87-326—February 9, 1987.
P 87-327, 87-328, 87-329, 87-330, 87-331, 87-332, 87-333 and 87-334—February 12, 1987.
P 87-335, 87-336, 87-337, 87-338, 87-339, 87-340, 87-341, 87-342, 87-343, 87-344, 87-345, 87-346, 87-347, 87-348, 87-349, 87-350, 87-351, 87-352, 87-353, 87-354, 87-355, 87-356, 87-357, 87-358, 87-359, 87-360 and 87-361—February 13, 1987.
P 87-362, 87-363, 87-364, 87-365, 87-366, 87-367 and 87-368—February 14, 1987.
P 87-369—February 15, 1987.

ADDRESS: Written comments, identified by the document control number "[OPTS-51655]" and the specific PMN number should be sent to: Document Control Officer (TS-790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M Street, SW., Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: Effective with this notice, a non-substantive change in format is being initiated for information published under sections 5(d)(2) and 5(h)(6) of the Toxic Substances Control Act. Toxicity data will only appear in the notice when submitted with the PMN. Exposure and environmental release/disposal information will no longer be published in the notice. The following notice contains information extracted from the non-confidential version of the PMNs received by EPA. The complete non-confidential PMNs are available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 87-325

Manufacturer. Confidential.
Chemical. (G) Poly (isobutenyl)alkanolamine succinimide.
Use/Production. (G) Gasoline additive. Prod. range: Confidential.

P 87-326

Importer. MTC America, Incorporated.
Chemical. (G) Dimethyl/imidazolidinone.
Use/Import. (S) Solvent. Import range: Confidential.

P 87-327

Manufacturer. Confidential.
Chemical. (G) Polyester imide resin.
Use/Production. (G) Intermediate for electrical insulation coatings. Prod. range: Confidential.

P 87-328

Importer. CIBA-GEIGY Corporation.
Chemical. (G) Piperidinyl triazine derivative.
Use/Import. (S) Industrial light stabilizer for polymers, especially polypropylene fiber, ABS and other styrenics, and polyurethane. Import range: Confidential.
Toxicity Data. Acute oral: >5,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Minimal; Skin Sensitization: Strong; Ames test: Negative: LC_{50}: 96 hr. (Zebra fish): >119 parts per million (ppm); EC_{50} 24 hr (Daphnia magna): 73 ppm; COD: 1.84 g; Biodegradability: Not biodegradable; Micronucleus assay test: Negative.

P 87-329

Importer. CIBA-GEIGY Corporation.
Chemical. (S) Butanedioic acid, (2-benzothiazolylthio)-.
Use/Import. (S) Industrial, commercial corrosion inhibitor for protective coatings on metal surfaces. Import range: Confidential.
Toxicity Data. Acute oral: >5,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Skin Sensitization: Mild to moderate; Ames test: Negative; Nucleus anomaly test: Negative; Micronucleus assay test: Negative; NOEL: >1,000 mg/kg; LC_{50} 96 hr (Zerbra fish) >100 ppm; EC_{50} 24 hr. (Daphnia magna) 190 ppm; COD: 1:44 g; Biodegradability: Not biodegradable.

P 87-330

Manufacturer. Confidential
Chemical. (S) Aluminum, benzoate 2-ethyl hexanoate isopropyl alcohol complexes.
Use/Import. (G) Gelling agent in non-aqueous liquids. Import. range: Confidential.

P 87-331

Manufacturer. Jim Walter Research Corporation.
Chemical. (G) Mixed glycol aromatic polyester polyol.
Use/Production. (S) Industrial polyol for manufacture of cellular plastic insulation. Prod. range: 2,500,000 to 4,500,000 kg/yr.

P 87-332

Manufacturer. Confidential.
Chemical. (G) Substitute benzenesulfonamide.
Use/Production. (G) a component of a vehicle used in a printing ink. Prod. Range; Confidential.

P 87-333

Manufacturer. Confidential.
Chemical. (G) Carboxyphenylcarbonylindole.
Use/Production. (G) Captive intermediate use in manufacturing a minor component for paper coatings. Prod. range; Confidential.

P 87-334

Manufacturer. Confidential.
Chemical. (G) Substituted benzenesulfonyl chloride.
Use/Production. (G) Site-limited chemical intermediate consumed in the preparatin of a commercial product. Prod. range: Confidential.

P 87-335

Importer. Toyo Soda USA, Incorporated.
Chemical. (G) Polymethacrylate derivative with hydroxyalkylether.
Use/Import. (S) Industrial packings for liquid chromatography. Import range; 500 to 3,000 kg/yr.

P 87-336

Importer. Toyo Soda USA, Incorporated.
Chemical. (G) Polymethacrylate derivative with carboxyl grqup.
Use/Import. (S) Industrial packings for liquid chromatography. Import range: 300 to 1,500 kg/yr.

P 87-337

Importer. Toyo Soda USA, Incorporated.
Chemical. (G) Polymethacrylate derivative with phenyl group.
Use/Import. (S) Industrial packings for liquid chromatography. Import range: 300 to 1,500 kg/yr.

P 87-338

Importer. Toyo Soda USA, Incorporated.
Chemical. (G) Polymethacrylate derivative with butyl group.
Use/Import. (S) Industrial packings for liquid chromatography. Import range: 500 to 3,000 kg/yr.

P 87-339

Importer. Toyo Soda USA, Incorporated.
Chemical. (G) Polymethacrylate derivative with diethylaminoethyl group.
Use/Import. (S) Industrial packings for liquid chromatography. Import range: 300 to 1,500 kg/yr.

P 87-340

Manufacturer. Confidential.
Chemical. (G) Propoxylated quarternary ammonium compound.
Use/Production. (G) Textile treatment for industrial use. Prod. range: Confidential.

P 87-341

Manufacturer. Confidential.
Chemical. (G) Modified epoxy resin.
Use/Production. (S) Site/limited component of metal coating formulation. Prod. range; 50,000 to 100,000 kg/yr.

P 87-342

Manufacturer. Confidential.
Chemical. (G) Hydrophobic silica.
Use/Production. (S) Site-limited defoamer for pulp and paper. Prod. range; Confidential.

P 87-343

Manufacturer. Confidential.
Chemical. (S) Polymer of 7-oxobicyclo[4.1.0]heptane-3-carboxylic acid, 7-oxabicyclo[4.1.0]hept-3-ylmethyl ester; tall-oil fatty acid; Pamolyn 380 tall-oil fatty acids; 2-methyl-2-propenoic acid methyl ester; 2/propenoic acid; 1,1-dimethylethyl hydroperoxide; N,N-diethyl-ethanamine.
Use/Production. (S) Industrial polymer used as the major vehicle component of a protective coating (paint) formulated for use on metal substrates. Prod. range: Confidential.

P 87-344

Manufacturer. Confidential.
Chemical. (S) Polymer of 2-hydroxy ethyl acrylate; Jeffamine T-403, polyoxypropylene glycol; and isophorone diisocyante.
Use/Production. (S) Industrial radiation cure coating. Prod. range: Confidential.

P 87-345

Manufacturer. Confidential.
Chemical. (G) Styrenated acrylic with butyl acrylate.
Use/Production. (G) Printing ink component with an open use. Prod. range; 5,000 to 10,000 kg/yr.

P 87-346

Manufacturer. Confidential.
Chemical. (G) Polyurethane polymer.
Use/Production. (G) Non-dispersive formulation adhesive. Prod. range: Confidential.

P 87-347

Importer. Toyo Soda USA, Incorporated.
Chemical. (G) Polymethacrylate derivative with propylsulfonate group.
Use/Import. (S) Industrial packings for liquid chromatography. Import range: 300 to 1,500 kg/yr.

P 87-348

Manufacturer. Confidential.
Chemical. (G) Acrylic resin.

Use/Production. (G) Coating resin. Prod. range: Confidential.

P 87-349

Importer. Marubeni America Corporation.
Chemical. (G) Partially cross linked saturated polyester with medium number-average molecular weight.
Use/Import. (S) Commercial toner for electrophotography. Import range: 30,000 to 100,000 kg/yr.

P 87-350

Importer. Marubeni America Corporation.
Chemical. (G) Urethane acrylate.
Use/Import. (S) Commercial UV curable ink; UV curable coating; and UV curable adhesive. Import range: 10,000 to 30,000 kg/yr.

P 87-351

Importer. Marubeni America Corporation.
Chemical. (G) High molecular weight linear saturated polyester.
Use/Import. (S) Flexibility modifier for hard resins. Import range: 20,000 to 30,000 kg/yr.

P 87-352

Importer. Marubeni America Corporation.
Chemical. (G) Partially crosslinked saturated polyester with medium number-average molecular weight.
Use/Import. (S) Commercial toner for electrophotography. Import range: 30,000 to 100,000 kg/yr.

P 87-353

Importer. Marubeni America Corporation.
Chemical. (G) Urethane acrylate.
Use/Import. (S) Industrial UV curable ink; UV curable coating; and UV curable adhesive. Import range: 10,000 to 30,000 kg/yr.

P 87-354

Importer. Marubeni America Corporation.
Chemical. (G) Urethane acrylate.
Use/Import. (S) Industrial UV curable ink; UV curable coating; and UV curable adhesive. Import range: 10,000 to 30,000 kg/yr.

P 87-355

Importer. Marubeni America Corporation.
Chemical. (G) Urethane acrylate.
Use/Import. (S) Industrial UV curable ink, UV curable coating; and UV curable adhesive. Import range: 10,000 to 30,000 kg/yr.

P 87-356

Importer. Marubeni America Corporation.
Chemical. (G) Urethane acrylate.
Use/Import. (S) Industrial UV curable ink, UV curable coating; and UV curable adhesive. Import range: 10,000 to 30,000 kg/yr.

P 87-357

Importer. Marubeni America Corporation.
Chemical. (G) Urethane acrylate.
Use/Import. (S) Industrial UV curable ink, UV curable coating; and UV curable adhesive. Import range: 10,000 to 30,000 kg/yr.

P 87-358

Importer. Werner G. Smith Incorporated.
Chemical. (S) Ester of linseed oil, and linseed fatty acids; reacted with maleic anhydride, ethylene glycol and pentaerythrital.
Use/Production. (S) Industrial foundry sand binder. Prod. range: 10,000 kg/yr.

P 87-359

Importer. American Hoechst Corporation.
Chemical. (G) Polyvinylsulfonate.
Use/Production. (S) Industrial additive in water based drilling fluids and completion fluids. Prod. range: 5,000 to 10,000 kg/yr.
Toxicity Data. Acute oral: 5,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant.

P 87-360

Manufacturer. American Hoechst Corporation.
Chemical. (G) Polyperflouroalkylacrylate.
Use/Production. (G) Upholstery—oil and water repellent. Prod. range: Confidential.
Toxicity Data. Acute oral: 5 g/kg; Irritation: Skin—Minimal Eye—Mild.

P 87-361

Manufacturer. American Hoechst Corporation.
Chemical. (G) Substituted azo naphthalene sulfonic acid.
Use/Production. (G) Fiber reactive dye. Prod. range: Confidential.
Toxicity Data. Acute oral: 5 g/kg; Irritation: Skin—Minimal, Eye—Mild.

P 87-362

Importer. Shin-Etsu Silicones of America, Incorporated.
Chemical. (S) Trichloromethylsilane.
Use/Import. (G) Industrial varnish for electric insulation and vehicle for heat resistant or weather resistant paint. Import range: 1,500 to 3,500 kg/yr.

P 87/363

Importer. Shin-Etsu Silicones of America, Incorporated.
Chemical. (S) Trichloromethylsilane, dichlorodimethylsilane; trichlorophenylsilane, dichlorodiphenylsilane.
Use/Import. (G) Industrial varnish for electric insulation; vehicle for heat resistant or weather resistant paint and resin for modification. Import range: 2,000 to 4,000 kg/yr.

P 84-364

Importer. Shin-Etsu Silicones of America, Incorporated.
Chemical. (S) Dichlorodimethylsilane, trichlorophenylsilane.
Use/Import. (S) Industrial varnish for electric insulation and vehicle for heat resistant. Import range: 1,200 to 3,000 kg/yr.

P 87-365

Importer. Shin-Etsu Silicones of America, Incorporated.
Chemical. Trichloromethylsilane, dichlorodimethylsilane.
Use/Import. (S) Industrial varnish for electric insulation and vehicle for heat resistant. Import range: 1,200 to 4,000 kg/yr.

P 87-366

Importer. Shin-Etsu Silicones of America, Incorporated.
Chemical. Trichloromethylsilane, dichlorodimethylsilane, trichlorophenylsilane.
Use/Import. (S) Industrial varnish for electric insulation and vehicle for heat resistant or weather resistant paint. Import range: 1,200 to 4,000 kg/yr.

P 87-367

Manufacturer. Confidential.
Chemical. (G) Bicycloheptene diester poly(ethylene oxide).
Use/Produciton. (G) A component of formulations for open nondispersive use. Prod. range: Confidential.

P 87-368

Importer. Orient Chemical Corporation.
Chemical. (G) Diaminostilbene disulfonic acid derivative.
Use/Import. (S) Commercial dyestuff for printer ink. Import range: 1,000 to 3,000 kg/yr.

P 87-369

Manufacturer. Confidential.
Chemical. (S) Tris carbamodithioic acid compound with N-coco alkyl propylene diamine sodium salt tris carbamodithioic acid compound with ethyl aminopiperazine sodium salt

hexakis carbamodithioic acid compound with triethylene tetramine sodium salt.

Use/Production. (S) Industrial and commercial nonpotable water coagulant and flocculant. Import range: 48,000 to 73,500 kg/yr.

Dated: December 22, 1986.

Denise Devoe,

Acting Division Director, Information Management Division.

[FR Doc. 86-29361 Filed 12-30-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

Title of Information Collection

Consolidated Reports of Condition and Income (Insured State Nonmember Commercial Banks) (OMB No. 3064-0052).

Background

In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35),the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review for the information collection system identified above.

ADDRESS: Written comments regarding the submission should be addressed to Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to John Keiper, Assistant Executive Secretary (Administration), Federal Deposit Insurance Corporation, Washington, DC 20429.

Comments

Comments on this collection of information should be submitted on or before January 15, 1987.

FOR FURTHER INFORMATION CONTACT: Requests for a copy of the submission should be sent to John Keiper, Assistant Executive Secretary (Administration), Federal Deposit Insurance Corporation, Washington, DC 20429, telephone (202) 898-3810.

SUMMARY: The FDIC is submitting for OMB review changes to the Consolidated Reports of Condition and Income (Call Reports) filed quarterly by insured state nonmember commercial banks. Although the changes cover several areas of the Call Reports, the request is being made at this time because of the recent passage of the Tax Reform Act of 1986. Provisions of that statute will affect the tax treatment of certain bank assets and the types of such assets banks tend to acquire. In addition, the deregulation of deposit interest rates was completed as of April 1, 1986. Reporting changes in response to that event and the other revisions have been incorporated into this submission. As a result of the proposed changes it is estimated that 818,677 hours will be spent annually by insured state nonmember commercial banks, collectively, in preparing Call Reports.

Dated: December 23, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-29315 Filed 12-30-86; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-004067-003.

Title: Oakland Terminal Agreement.

Parties:

City of Oakland

Stevedoring Services of America.

Synopsis: The proposed amendment would extend the basic agreement on a month-to-month basis until no later than March 31, 1987.

Agreement No.: 217-011047.

Title: ELMA/A. Bottacchi Space Charter Agreement.

Parties:

Empresa Lineas Maritimas Argentians S.A.

A. Bottacchi S.A. de Navegacion C.R.I.I.

Synopsis: The proposed agreement would create a non-exclusive space charter arrangement between the parties in the trade between U.S. Atlantic and Gulf ports and ports in Brazil, Uruguay and Argentina. The parties have requested a shortened reveiew period.

Agreement No.: 202-010790-003.

Title: Israel Eastbound Conference.

Parties:

Zim Israel Navigation Co., Ltd.

Farrell Lines, Inc.

Lykes Bros. Steamship Company, Inc.

Synopsis: The proposed amendment would modify the independent action provisions of the agreement to comply with the Commission's regulations. The modification would remain in effect through March 31, 1987.

By Order of the Federal Maritime Commission.

Dated: December 24, 1986.

Joseph C. Polking,

Secretary.

[FR Doc. 86-29322 Filed 12-30-86; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 86M-0486]

Coherent, Inc.; Premarket Approval of Systems 9900, 8900, 7900, and 7910 Nd:YAG Lasers for Iridotomy

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the supplemental application by Coherent, Inc., for premarket approval, under the Medical Device Amendments of 1976, of the Systems 9900, 8900, 7900, and 7910 Nd:YAG Lasers for performing an iridotomy (hole in the iris). After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by January 30, 1987.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip J. Phillips, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301-427-8221.

SUPPLEMENTARY INFORMATION: On May 28, 1986, Coherent, Inc., Palo Alto, CA 94303, submitted to CDRH a supplemental application for premarket approval of the Systems 9900, 8900, 7900, and 7910 Nd:YAG Lasers. The Systems 9900, 8900, 7900, and 7910 Nd:YAG Lasers are neodymium:yttrium-aluminum-garnet (Nd:YAG) ophthalmic lasers that are indicated for performing an iridotomy (hole in the iris).

On July 17, 1986, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On November 7, 1986, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Philip J. Phillips (HFZ-460), address above.

Opportunity for Administration Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before January 30, 1987, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: December 18, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86-29216 Filed 12-30-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86F-0412]

FilmTec Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that FilmTec Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of the cross-linked polyamide reaction product of 1,3,5-benzenetricarbonyl trichloride and piperazine as a reverse osmosis membrane intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Thomas C. Brown, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 6B3904) has been filed by FilmTec Corp., 7200 Ohms Lane, Minneapolis, MN 55435, proposing that § 177.2550 *Reverse osmosis membranes* (21 CFR 177.2550) be amended to provide for the safe use of the cross-linked polyamide prepared by the polymerization of 1,3,5-benzenetricarbonyl trichloride with piperazine as a reverse osmosis membrane intended for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: December 18, 1986.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-29215 Filed 12-30-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-090-06-6310-12: GP7-051; 6-00151]

Emergency Closure of Public Lands and Access Roads; Lane County, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency closure of public lands and access roads in Lane County, Oregon.

SUMMARY: Notice is hereby given that certain public lar.ds and access roads in Lane County, Oregon are temporarily closed to all public use, including vehicle operation, camping, shooting, hiking, and sightseeing from December 16, 1986 through March 31, 1987. The closure is made under the authority of 43 CFR 8364.1.

The public lands affected by this emergency closure are specifically identified as Clear Cut Area No. 1 of the Timber Sale Contract No. OR090-TS9-44 and are located as follows:

Willamette Meridian, Oregon

T. 15 S., R. 1 W.,

Sec. 34, Metes and Bounds within the S½NW¼, N½SW¼.

Containing approximately 43 acres.

All roads on the public lands listed above are closed as specified above, as are BLM road No. 16-1-5.3 from its beginning in Section 5, T. 16 S., R. 1 W., W.M. to its junction with BLM road No. 16-1-3 in Section 3, T. 16 S., R. 1 W., W.M. and BLM road No. 16-1-3 from its beginning to its junction with BLM road No. 15-1-34.2 in Section 34, T. 15 S., R. 1 W., W.M. Road No. 16-1-3 is entirely located on public land, while road No. 16-1-

5.3 is located partially on public land and partially on private land.

The following persons, operating within the scope of their official duties, are exempt from the provisions of this closure order: Bureau employees; State, local and Federal law enforcement and fire protection personnel; the holders of BLM road use permits that include roads within the closure area; the purchasers of BLM timber within the closure area and their subcontractors. In addition, the owners of the non-Federal lands crossed by BLM road No. 18–1–5.3 and those residing full time on such lands are exempt from the closure to the extent necessary to access and manage their lands. Access by additional parties may be allowed, but must be approved in advance in writing by the Authorized Officer.

Any person who fails to comply with the provisions of this closure order may be subject to the penalties provided in 43 CFR 8360.0–7, which include a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

The public lands and roads temporarily closed to public use under this order will be posted with signs at points of public access. In addition, the boundaries of the closed Clear Cut Area are blazed, painted and posted.

The purpose of this emergency temporary closure is to protect valuable public timber resources from unauthorized damage, to facilitate authorized timber harvest operations, and to protect persons from potential harm from logging operations.

EFFECTIVE DATES: December 16, 1986 through March 31, 1987.

ADDRESSES: Copies of the closure order and maps showing the location of the closed lands and roads are available from the Eugene District Office, P.O. Box 10226 (1255 Pearl Street), Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Lee Lauritzen, Mohawk Area Manager, Eugene District Office, at (503) 687–6671.

Dated: December 16, 1986.

Jane Kollmeyer,

Area Manager (Acting).

[FR Doc. 86–29288 Filed 12–30–86; 8:45 am]

BILLING CODE 4310–33–M

[WY–920–07–4111–15–7001; W–69857]

Proposed Reinstatement of Terminated Oil and Gas Lease; Sublette County, WY

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease W–69857 for lands in Sublette County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $7 per acre, or fraction thereof, per year and 16–⅔ percent, respectively.

The lessee has paid the required $500.00 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–69857 effective January 1, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 86–29290 Filed 12–30–86; 8:45 am]

BILLING CODE 4310–22–M

California Desert District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting of the California Desert District Grazing Advisory Board.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94–579, Title IV, section 403, that a public meeting of the California Desert District Grazing Advisory Board will be held on Thursday, January 29, 1987 from 10:00 a.m. to 4:30 p.m. in the Conference Room, Barstow Resource Area Office, 150 Coolwater Lane, Barstow, California 92311.

The agenda for the meeting will include:

—Range Improvement Project Review for FY86
—Range Improvement Projects Funded for FY87
—FY 87 Range Management Budget
—Election of Chairman of the Board
—Rangeland Monitoring
—Wild Horse and Burro Management.

The meeting is open to the public, with time allocated for public comment after each subject has been presented.

Summary minutes of the meeting will be maintained in the California Desert District and will be available for public inspection during regular business hours within 30 days following the meeting.

FOR FURTHER INFORMATION AND MEETING CONFIRMATION CONTACT: Bureau of Land Management, California Desert District Office, 1695 Spruce Street, Riverside, California 92507 (714) 351–6671.

Dated: December 23, 1986.

Wesley T. Chambers,

Acting District Manager.

[FR Doc. 86–29329 Filed 12–30–86; 8:45am]

BILLING CODE 4310–40–M

[ID–050–07–4322–14]

Shoshone District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Advisory Board Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the Shoshone District Grazing Advisory Board.

DATE: Wednesday, January 28, 1987 at 9:00 a.m.

ADDRESS: BLM District Office, 400 West F Street, Shoshone, Idaho 83352.

FOR FURTHER INFORMATION CONTACT: Jon Idso, DM, Shoshone District Office, P.O. Box 2B, Shoshone, Idaho 83352. Telephone (208) 886–2206 or FTS 554–6576.

SUPPLEMENTARY INFORMATION: The proposed agenda for the meeting includes the following items: (1) Review of range monitoring program, (2) Review of Board financial status, (3) Initial distribution of Board funds, and (4) Project maintenance/Bureau maintained project assessment costs.

Operation and administration of the Board will be in accord with the Federal Advisory Committee Act of 1972 (Pub. L. 92–463; 5 U.S.C. Appendix 1) and Department of Interior regulations, including 43 CFR Part 1984.

The meeting will be open to the public. Anyone may present an oral statement between 10:00 and 11:00 a.m. or may file a written statement regarding matters on the agenda. Oral statements will be limited to ten minutes. Anyone wishing to make an oral statement should notify the Shoshone District Manager by January 27, 1987. Records of the meeting will be available in the Shoshone District Office for public inspection or copying within 30 days after the meeting.

Jon H. Idso,

District Manager.

[FR Doc. 86–29284 Filed 12–30–86; 8:30 a.m.]

BILLING CODE 4310–GG–M

[NV–020–07–4212–14; N–42562]

Realty Action Change; Public Land Sale Readvertisement; Humboldt County, NV

ACTION: Notice of Realty Action Change—Readvertisement of public land sale, N–42562 located in Humboldt County, Nevada

SUMMARY: This notice modifies in part, **Federal Register** Document 86–16483 (51 FR 26471) published on July 23, 1986.

EFFECTIVE DATE: January 30, 1987.

FOR FURTHER INFORMATION CONTACT: Hal Green, District Realty Specialist, Winnemucca District Office, Bureau of Land Management, 705 E. 4th Street, Winnemucca, NV 89445, (702) 623–3676.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management attempted to sell a parcel of public land by non-competitive land sale procedures. This parcel did not sell. Therefore, the Notice of Realty Action is being changed to re-offer the same public land under modified-competitive land sale procedures. Sale brochures containing information concerning the subject parcel, bidding procedures, etc., can be obtained by writing to the above address.

The information contained in the **Federal Register** document referenced above is hereby modified and changed to reflect the following:

1. All reference to *non-competitive sale* is to be changed to read *modified-competitive.*

2. The patent when issued will be subject to right-of-way, N–20694, 60 ft. access road easement.

3. Paragraph number 4 is to be deleted.

All other terms and conditions of the original Notice of Realty Action continue to apply.

Dated: December 11, 1986.

Frank C. Shields,

District Manager, Winnemucca.

[FR Doc. 86–29328 Filed 12–30–86; 8:45 am]

BILLING CODE 4310–HC–M

Minerals Management Service

Outer Continental Shelf Advisory Board; North, Mid, and South Atlantic Regional Technical Working Groups

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of meeting.

Notice of this meeting is issued in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463).

Name: Plenary Session of North, Mid, and South Atlantic Regional Technical Working Groups.

Date: January 30, 1987.

Place: Stouffer Concourse Hotel, Farragut Ballroom, 2399 Jefferson Davis Highway, Arlington, Virginia 22202.

Time: 8 a.m. to 5 p.m.

The plenary Regional Technical Working Group (RTWG) membership consists of representatives from Federal Agencies, the Coastal States of Maine through Florida, the petroleum industry, and other private interests. The Atlantic RTWG's are three of six such Committees that advise the Director of the Minerals Management Service on technical matters of Regional concern regarding offshore prelease and postlease sale activities.

Agenda items will include the following subjects: State Co-chair Elections; Nonenergy Minerals; the Role of the RTWG in the Atlantic Region; Oil and Gas and NonEnergy Minerals Activities Reports; Sale 96 (North Atlantic) Environmental Issues; Environmental Studies Advice, and Public Comment.

This meeting is open to the public. Individuals wishing to make oral presentations to the Committee concerning agenda items should contact Marsha Polk of the Atlantic OCS Regional Office at (703) 285–2165 by January 15, 1987. Written statements should be submitted by the same date to the Atlantic OCS Region, Minerals Management Service, 1951 Kidwell Drive, Suite 601, Vienna, Virginia 22180. Minutes of the meeting will be available for public inspection and copying by April 30, 1987, at the above address.

Dated: December 23, 1986.

Bruce G. Weetman,

Regional Director, Atlantic OCS Region.

[FR Doc. 86–29235 Filed 12–30–86; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document; Phillips Petroleum Co.

AGENCY: Minerals Management Service.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Phillips Petroleum Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 6842, Block 40, Chandeleur Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on December 19, 1986. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico Region, Minerals Management Service, 1201 Wholesalers Pkwy., Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert, Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section; Exploration/Development Plans Unit, Telephone (504) 736–2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected

local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: December 22, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-29292 Filed 12-30-86; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Determination of Concessioner Franchise Fees

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: This final policy changes the method used to determine franchise fees paid by concessioners for the privilege of operating commercial activities in areas administered by the National Park Service. The method links the determination of the fee to published industry statistics. The revised franchise fee system procedures are being incorporated into the Concessions Guideline, NPS-48.

EFFECTIVE DATE: December 31, 1986.

FOR FURTHER INFORMATION CONTACT: David E. Gackenback, Chief, Concessions Division, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Copies of the revised approved franchise fee procedures are available upon request.

SUPPLEMENTARY INFORMATION: On August 7, 1985, the National Park Service published in the **Federal Register** (Vol. 50, No. 152, pages 31926 and 31927) a notice of intention to revise the method used to determine franchise fees paid by concessioners. As a result of the notice, the National Park Service received 19 comments on the proposed revision to the franchise fee procedures. Seventeen comments were received from concessioners, one was received from the Chairman of the Conference of National Park Concessioners and one was received from the Conservation Foundation. The comments were evaluated by a franchise fee study group and several changes were made to the proposed franchise fee procedures.

William Penn Mott, Jr.,

Director, National Park Service.

[FR Doc. 86-29309 Filed 12-0-86; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-246]

Certain Xenon Lamp Dissolver Slide Projectors and Components Thereof; Commission Decision Not To Review an Initial Determination Granting Two Motions To Terminate Respondents, Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Nonreview of the presiding administrative law judge's initial determination granting a joint motion to terminate one respondent and granting complainant's motion to terminate the remaining respondent.

SUMMARY: On November 10, 1986, complainant Bergen Expo Systems, Inc. (Bergen) and respondent D.O. Industries, Inc. (D.O. Industries) jointly moved to terminate the investigation as to D.O. Industries based on a settlement and license agreement (Motion No. 246-18). Simultaneously, Bergen moved to terminate Hokushin Precision Co., Ltd. (Hokushin), the only other respondent, from the investigation (Motion No. 246-19)

On November 25, the ALJ issued an ID granting the two motions (Order No. 17). The ALJ found that terminating D.O. Industries and Hokushin from the investigation is in the public interest. The Commission has determined not to review the ID. The termination of both D.O. Industries and Hokushin from the investigation terminates the investigation.

FOR FURTHER INFORMATION CONTACT: Kristian E. Anderson, Esq., Office of the General Counsel, U.S. International Trade Commission, Washington, DC 20436, telephone 202-523-0074.

SUPPLEMENTARY INFORMATION:

Authority: This action is taken under the authority of section 337 of the Tariff Act of 1930 (10 U.S.C. 1337) and Commission rules 210.53 and 210.55 (19 CFR 210.53, 210.55).

Background

On April 3, 1986, complainant Bergen filed a a complaint with the Commission alleging that respondents D.O. Industries and Hokushin were violating section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Specifically, Bergen alleged that respondents were infringing claims 1, 2, 6-9, and 13 of U.S. Letters Patent 4,158,491 (the '491 patent) and failing to mark the country of origin on the imported projectors.

The Commission instituted the present investigation of May 7, 1986. 51 FR 16909. Subsequently, the Commission determined not to review an ID by the ALJ to eliminate the allegation of infringement of claims 2 and 9 of the '491 patent. 51 FR 41166.

Public Inspection

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, DC 20436, telephone 202-523-0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By Order of the Commission.

Issued: December 23, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-29311 Filed 12-30-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-250]

Certain Ventilated Motorcycle Helmets; Commission Decision Not To Review Initial Determination Granting Motion To Amend the Complaint

AGENCY: U.S. International Trade Commission.

ACTION: Nonreview of an initial determination (ID) granting a motion to amend the complaint.

SUMMARY: The Commission has determined not to review an ID (Order No. 14) granting a motion by complainant to amend the complaint in the above-referenced investigation to include the Vetter Advantage, a ventilated motorcycle helmet produced by complainant under U.S. Letters Patent 4,054,953, after institution of the investigation.

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0079.

SUPPLEMENTARY INFORMATION: The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in § 210.53 of the Commission's Rules of Practice and Procedure (19 CFR 210.53).

On November 24, 1986, the presiding administrative law judge (ALJ) issued Order No. 14 granting complainant's motion to include the Vetter Advantage, a ventilated motorcycle helmet alleged to be manufactured by complainant according to U.S. Letters Patent 4,054,953, one of the patents in issue in this investigation, after the institution of the investigation. Two petitions for review were filed by respondents. The Commission investigative attorney filed a response to the petitions for review supporting the ID. No comments from other government agencies were received.

Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing-impaired individuals are advised that information concerning this investigation can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.

Issued: December 23, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-29312 Filed 12-30-86; 8:45 am]

BILLING CODE 7020-02-M

[332-242]

Preshipment Inspection Programs and Their Effect on U.S. Commerce

AGENCY: Unites States International Trade Commission.

ACTION: Institution of investigation.

EFFECTIVE DATE: December 16, 1986.

FOR FURTHER INFORMATION CONTACT: Ms. Constance Hamilton, Office of Economics, U.S. International Trade Commission, Washington, DC, 20436, telephone 202-523-1179.

Background and Scope of Investigation

The Commission instituted the investigation, No. 332-242, on December 16, 1986, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) following receipt on October 24, 1986 of a request therefor from the U.S. Trade Representative. USTR requested the investigation at the direction of the President pursuant to section 332 of the Tariff Act and section 303(a) of the Trade and Tariff Act of 1984 (19 U.S.C. 2241(c) note).

USTR stated that it had received a petition with respect to such practices under section 301 of the Trade Act of 1974 (19 U.S.C. 2411) but that institution of a section 301 investigation was premature at this time. USTR stated that exporters had indicated that these inspections have delayed shipments and involved unreasonable requests for business proprietary information or unnecessarily extensive and detailed pricing information. USTR stated that several countries have contracted for the service and that the practice is spreading rapidly.

USTR stated that a public hearing in Florida appeared warranted. USTR asked that the Commission report the results of its investigation as expeditiously as possible.

Public Hearing

The Commission will hold a public hearing in connection with the investigation in Miami, Florida at a time and place to be announced. All interested persons shall have the right to appear by counsel or in person, to present information and to be heard. Procedures concerning requests to appear will be described in the notice announcing the time and place of the hearing.

Written Submissions

Interested persons are invited to submit written statements concerning the investigation. Written statements should be received by the close of business on March 20, 1967. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary, United States International Trade Commission, 701 E Street, NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724-0002.

By order of the Commission.

Kenneth R. Mason,

Secretary.

December 22, 1986.

[FR Doc. 86-29314 Filed 12-30-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-269 (Final) and 731-TA-311, 312, and 315 (Final)]

Certain Brass Sheet and Strip From Brazil, Canada, and the Republic of Korea

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)), that an industry in the United States is materially injured by reason of imports from Brazil (investigation No. 701-TA-269 (Final)) of certain brass sheet and strip,[3] provided for in item 612.39 of the Tariff Schedules of the United States, which have been found by the Department of Commerce to be subsidized by the Government of Brazil.

Further, the Commission determines,[4] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is materially injured by reason of imports from Brazil (investigation No. 731-TA-311 (Final)), Canada (investigation No. 731-TA-312 (Final)), and the Republic of Korea (investigation No. 731-TA-315 (Final)) of certain brass sheet and strip,[5]

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Chairman Liebeler and Vice Chairman Brunsdale determine that an industry in the United States is not materially injured or threatened with material injury, and that the establishment of an industry in the United States is not materially retarded, by reason of imports from Brazil which are being subsidized.

[3] For purposes of these investigations, the term "certain brass sheet and strip" refers to brass sheet and strip, other than leaded brass and tin brass sheet and strip, of solid rectangular cross section, over 0.006 inch but not over 0.188 inch in thickness, in coils or cut to length, whether or not corrugated or crimped, but not cut, pressed, or stamped to nonrectangular shape, provided for in items 612.3960, 612.3982, and 612.3986 of the *Tariff Schedules of the United States Annotated* (TSUSA). The chemical compositions of the products under investigation are currently defined in the Copper Development Association (C.D.A.) 200 series or the Unified Numbering System (U.N.S.) C20000 series. Products whose chemical compositions are defined by other C.D.A. or U.N.S. series are not covered by these investigations.

[4] Chairman Liebeler and Vice Chairman Brunsdale determine that an industry in the United States is not materially injured or threatened with material injury, and that the establishment of an industry in the United States is not materially retarded, by reason of imports from Brazil, Canada, or the Republic of Korea which are being sold at less than fair value.

[5] For purposes of these investigations, the term "certain brass sheet and strip" refers to brass sheet and strip, other than leaded brass and tin brass sheet and strip, of solid rectangular cross section, over 0.006 inch but not over 0.188 inch in thickness, in coils or cut to length, whether or not corrugated or crimped, but not cut, pressed, or stamped to

Continued

provided for in item 612.39 of the Tariff Schedules of the United States, which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted investigations Nos. 731–TA–311, 312, and 315 (Final) effective August 22, 1986, following preliminary determinations by the Department of Commerce that imports of certain brass sheet and strip from Brazil, Canada, and the Republic of Korea were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 10, 1986 (51 FR 32255). The Commission instituted investigation No. 701–TA–269 (Final) effective November 10, 1986, following a preliminary determination by the Department of Commerce that imports of certain brass sheet and strip from Brazil were being subsidized within the meaning of section 701 of the Act (19 U.S.C. 1671). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 21, 1986 (51 FR 42142). The hearing on the investigations was held in Washington, DC, on December 1, 1986, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on December 22, 1986. The views of the Commission are contained in USITC Publication 1930 (December 1986), entitled "Certain Brass Sheet and Strip from Brazil, Canada, and the Republic of Korea: Determinations of the Commission in Investigation No. 701–TA–269 (Final) and Investigations Nos. 731–TA–311, 312, and 315 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

By order of the Commission.

Issued: December 23, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–29313 Filed 12–30–86; 8:45 am]

BILLING CODE 7020–02–M

nonrectangular shape, provided for in items 612.3960, 612.3982, and 612.3986 of the *Tariff Schedules of the United States Annotated* (TSUSA). The chemical compositions of the products under investigation are currently defined in the Copper Development Association (C.D.A.) 200 series or the Unified Numbering System (U.N.S.) C20000 series. Products whose chemical compositions are defined by other C.D.A. or U.N.S. series are not covered by these investigations.

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 399]

Cost Recovery Percentage; Rail Carriers

AGENCY: Interstate Commerce Commission.

ACTION: Adoption of a 1985 cost recovery percentage and a 1986 cost recovery percentage and decision.

SUMMARY: The Commission has adopted a Cost Recovery Percentage (CRP) of 342.5 percent for the years 1985 and 1986. In doing so the Commission has has decided to fall back to the most recent valid CRP which was calculated for the year 1983 by applying 1981 Rail Form A unit costs to the movements from the 1981 ICC Waybill Sample. Calculations made for 1985 and 1986 using 1983 and 1984 data are invalid due to overstatement of revenues on waybills for traffic moving under contract rates. The threshold for rate regulation of market dominant traffic will remain at 180 percent. In light of falling back to a prior CRP calculation and the continuing problems caused by overstated contract rate revenues and other problems the Commission has decided not to issue final rules at this time. The Commission will conduct additional research to develop an alternate method of calculating the CRP from waybill data and will report its progress in later decisions.

DATE: Effective on December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Robert C. Hasek, (202) 275–0938

or

William T. Bono, (202) 275–7354.

SUPPLEMENTARY INFORMATION: Additional information is contained in the decision. To purchase a copy of the full decision, write T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, D.C. 20423, or telephone 289–4357 (Washington, DC Metropolitan Area) or toll free (800) 424–5403.

This action will not significantly affect either the quality of the human environment or energy conservation. It will not have significant economic impact on a substantial number of small entities.

Authority: 49 U.S.C. 10321, 10709, and 5 U.S.C. 553.

Decided: December 19, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Sterrett, and Lamboley. Vice Chairman Simmons dissented with a separate expression. Commissioner Lamboley concurred in the result.

Noreta R. McGee,

Secretary.

[FR Doc. 86–29381 Filed 12–30–86; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–19, Sub-No. 128X]

The Baltimore and Ohio Railroad Co.; Exemption Abandonment and Discontinuance of Trackage Rights Between Carton and Musselman in Fayette and Ross Counties, OH

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 10903, *et seq.*: (1) The discontinuance by the Baltimore and Ohio Railroad Company (B&O) of 13.97 miles of trackage rights over the line of Grand Trunk Western Railroad Company (GTW) between milepost 50.44, at or near Carton, OH, and milepost 65.41, at or near Frankfort, OH; and (2) the abandonment by B&O of 4.72 miles of rail line between milepost 64.41, at or near Frankfort, and milepost 6913, at or near Musselman, OH; subject to standard labor protection conditions, in both instances, and to the condition that abandonment of the 4.72-mile line not be consummated until GTW obtains authority or an exemption to discontinue its trackage rights, although B&O may discontinue its operations over the line. The Lines are in Fayette and Ross Counties, OH.

DATES: These exemptions will be effective on January 30, 1987. Petitions to stay must be filed by January 15, 1987, and petitions for reconsideration must be filed by January 26, 1987.

ADDRESSES: Send pleadings referring to Docket No. AB–19 (Sub-No. 128X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Lawrence H. Richmond, The Baltimore and Ohio Railroad Company 100 North Charles Street, Baltimore, MD 21201.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar; (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: December 19, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 86–29330 Filed 12–30–86; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. 393; Sub-No. 1]

Standards for Railroad Revenue Adequacy; Decision

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision.

SUMMARY: By this decision served December 31, 1986, the standards adopted in Ex Parte No. 393, *Standards for Railroad Revenue Adequacy*, 364 I.C.C. 803 (1981), for determining railroad revenue adequacy are revised in the following manner: (1) Subtract accumulated deferred tax reserves from the net investment base when calculating return on investment; (2) calculate return on investment using ratable depreciation accounting data, rather than retirement-replacement-betterment data; (3) calculate return on investment on a system basis by combining all class I railroads under common control if they form a unified, jointly-managed system; and (4) include in the return on investment calculation the results of majority-owned Class I subsidiaries that are integral to rail operations, taxes related only to rail operations and interest income associated with working capital investment. The guidelines and procedures necessary to accommodate the revisions described in (4) will be set forth in a separate rulemaking proceeding.

DATE: This decision shall be effective on December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr., (202) 275–7489.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

This action will not significantly affect either the quality of the human environment or energy conservation. Nor will it have a significant economic impact of a substantial number of small entities.

Authority: 49 U.S.C. 10704(a).

Decided: December 16, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Vice Chairman Simmons concurred with a separate expression. Commissioner Andre dissented in part with a separate expression. Commissioner Lamboley, dissented in part, adheres to his vote at the open conference on October 7, 1986. Commissioner Lamboley will submit a separate expression at a later date.

Noreta R. McGee,

Secretary.

[FR Doc. 86–29331 Filed 12–30–86; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Bureau of Justice Assistance

State Reimbursement Program for Incarcerated Mariel-Cubans

AGENCY: Bureau of Justice Assistance, Justice.

ACTION: Notice of issuance of solicitation for applications to reimburse states for the expenses incurred by the incarceration of Mariel-Cubans.

SUMMARY: The Bureau of Justice Assistance (BJA) is administering a program to reimburse states for expenses incurred by the incarceration of certain Mariel-Cubans in state facilities.

ADDRESS: Bureau of Justice Assistance, 633 Indiana Avenue, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Louise S. Lucas, (202) 272–4605. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: The Bureau of Justice Assistance (BJA) is publishing a notice of issuance of solicitation to implement a State Reimbursement Program for Incarcerated Mariel-Cubans. The Department of Justice Appropriation Act for 1987 (Pub L. 99–500) allocates up to $5 million for the purpose of making grants to states for their expenses for the incarceration of Mariel-Cubans in state facilities.

I. General Provisions

Statutory Authority

The statutory authority is the Department of Justice Appropriation Act for 1987 (Pub. L. 99–500).

Submission Date

The submission date for state applications is no later than February 1, 1987.

Eligible Applicants

All states are eligible to apply for and receive grants. *State*, means any state of the United States and includes the District of Columbia and the Commonwealth of Puerto Rico.

Participating States

It is expected that the 24 states that participated last year will participate again this year, specifically, Arkansas, California, Connecticut, Florida, Georgia, Iowa, Idaho, Illinois, Kansas, Louisiana, Minnesota, Nebraska, Nevada, New Jersey, New York, Ohio, Oregon, Pennsylvania, South Carolina, Texas, Utah, Virginia, Washington, and Wisconsin. There may be the possibility of a few additional states participating also.

II. Allocations and Uses of Funds

Fund Availability

The Act provides a total of $5 million for the purpose of making grants to states. The total amount of funds awarded will be on the basis that the certified number of incarcerated persons in a state bears to the total certified number of such incarcerated persons. The amount of reimbursement per prisoner, per annum, will not exceed $12,000.

Fund Use

The intent of the public law is to reimburse the states for their expenses by reason of Mariel-Cubans having to be incarcerated in state facilities. A budget or expenditure plan is not required as the award will be solely for reinbursement. No match funds are required.

III. Application Content

(a) All state applicants must submit Standard Form 424 (Application for Federal Assistance), and a *certified listing* of incarcerated Mariel-Cuban prisoners. We request that inmates previously verified be separated from newly submitted inmates. For those

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previously verified, there is no need to resubmit Items 13 and 14 below. The certified listing will include information in the following sequence:

(1) Name (last name first).
(2) AKA (also known as).
(3) Alien Identification Number (e.g., A24456789).
(4) Inmate Number.
(5) Date of birth.
(6) Incarceration date.
(7) Probable earliest release date.
(8) Conviction Offense (Criminal Offense Code No. not acceptable).
(9) Conviction date.
(10) Last known address.
(11) State facility housing the prisoner.
(12) State facility address.
(13) I–247 Form—Immigration Detainer Notice (If INS has filed a Detainer on this prisoner, submit a copy).
(14) Fingerprint card.

Submission of Mariel-Cuban data in an alternative format must be approved by the BJA prior to submission of an application. Please contact Louise S. Lucas, BJA, 202/272–4605.

Note.—We have limited electronic data transfer capabilities. If interested, please contact Tom Lintner at 202/272–6838.

(b) The certified listing *MUST* be signed by the Governor or his authorized representatives.

(c) The period of incarceration for reimbursement purposes is October 1, 1986 to September 30, 1987. The computation of funds will be based on an aggregate total of certified prisoners incarcerated for a twelve month period (e.g., if two prisoners are incarcerated for six months during the period, the state will be reimbursed the full amount for one year).

(d) The Act is specific in that the prisoner must have been paroled into the United States by the Attorney General during the 1980 influx of Mariel-Cubans. This means those Cubans who *Entered Without Inspection* (EWI), earlier arrivals (pre-boatlift), and/or later arrivals (post-boatlift), cannot be included and, thus, no expenses will be reimbursed.

(e) State law will prevail when a determination is required as to what constitutes a state facility and/or a state prisoner.

IV. Review of State Applications

State applications must be submitted in the form and at the time prescribed.

(a) The application and certified listing will be reviewed by BJA and a cross-check verification of prisoners will be made by the Immigration and Naturalization Service of the U.S. Department of Justice. This review will be accomplished no later than April 1, 1987 and grants will be immediately made to states.

(b) Compliance with Executive Order 12372, "Intergovernmental Review of Federal Programs." This program is covered by Executive Order 12372 and Department of Justice implementing regulations 28 CFR Part 30. States must submit grant applications to the state's *Single Point of Contact*, if there is a *Single Point of Contact*, and if this program has been selected for coverage by the state process, at the same time applications are submitted to the Federal agency. State processes have 60 days starting from the application deadline to comment on applications. Applicants should contact their state "Single Point of Contact" as soon as possible to alert them to the prospective application and receive instructions regarding the process.

(c) The BJA will notify the applicant in writing of the specific reasons for the disapproval of the application amendment, in whole or in part.

V. Civil Rights Assurances

The applicant State must specifically assure that it will comply, and that subgrantees and contractors will comply, with all applicable Federal non-discrimination laws and regulations, including the following:

(a) Title VI of the Civil Rights Act of 1964,

(b) Section 809(C) of Justice Assistance Act of 1984,

(c) Section 504 of the Rehabilitation Act of 1973, as amended,

(d) Title IX of the Education Amendments of 1972,

(e) The Age Discrimination Act of 1975, and,

(f) The Department of Justice Non-Discrimination Regulations, 28 CFR Part 42, Subparts, C, D, E, and G.

Any applications for $500,000 or more shall be accompanied by a copy of the current Equal Employment Opportunity Program of the corrections department in accordance with the provisions of 28 CFR 42.301 *et seq.* State applicants that previously applied for and received funding under this initiative, and had an Office of Justice Programs' approval of their Equal Employment Opportunity Program, need only submit a statistical update of the previously approved program.

Benjamin H. Renshaw,

Acting Director, Bureau of Justice Assistance.

[FR Doc. 86–29305 Filed 12–30–86; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, Washington, DC 20503 (telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Bureau of Labor Statistics

Occupational Wage Survey Program
1200–0007 BLS 2751A, BLS 2752A, BLS 2752B, BLS 2753F, BLS 2753G, 552
Annually; other
State or local governments; business or other for-profit; Federal agencies or employees; non-profit institutions; small businesses or organizations
27,900 responses; 72,683 hours; 6 forms

Occupational wage survey data serve a variety of uses, including wage administration, negotiations, mediation, plant location decisions, and general economic analysis. The data are also used in the administration of the Federal Pay Comparability Act of 1970 and related Congressionally-mandated research; the Service Contract Act of 1965; and the Social Security Act. Amendment is required because Congress has appropriated additional funding for research and testing leading to a future broad-based survey of white-collar workers rather than funding a full-scale salary survey in State and local governments in 1987.

Revision

Pension Welfare Benefits Administration

Prohibited Transaction Class Exemption 79–1 and Recapture Exemption
1210–0059
On occasion; quarterly; annually
Businesses or other for profit; small businesses or organizations
199,063 responses; 63,038 hours

This class exemption exempts from the prohibited transaction restrictions of ERISA the effecting or executing of securities transactions on behalf of an employee benefit plan by a person who is a fiduciary with respect to the plan and who is acting in such transactions as agent for the plan.

Extension

Employment Standards Administration

Service Contract Act—Recordkeeping and Reporting Requirements—29 CFR Part 4
1215–0150; SCA–4
On occasion
Businesses or other for profit; small businesses or organizations
13,900 responses; 10,658 hrs.; 0 forms

Recordkeeping and incidental reporting requirements in Service Contract Act regulations applicable to employers performing on service contracts with the Federal government.

Extension

Employment and Training Administration

Quarterly Narrative Reports for Test Development Program
1205–0220; ETA RC 66
Quarterly
State or local governments
20 respondents; 128 hours; no forms

The Employment Service Reimbursable Grant, pursuant to section 7(c) of the Wagner-Peyer Act, as amended, is one overall grant to the states to fund special responsibilities of the Secretary of Labor not specifically authorized under sections 7 (a) & (b) of the Act, such as Test Development.

Signed at Washington, DC, this 23rd day of December, 1986.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 86–29337 Filed 12–30–86; 8:45am]

BILLING CODE 4510–24–M

Mine Safety and Health Administration

[Docket No. M–86–211–C]

Barnes & Tucker Co.; Petition for Modification of Application of Mandatory Safety Standard

Barnes & Tucker Company, P.O. Box 176, Marion Center, Pennsylvania 15759–0176 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Tenoma Mine (I.D. No. 36–06967) located in Indiana County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of a locked padlock to secure battery plugs to machine-mounted battery receptacles on permissible, mobile battery-powered machines.

2. As an alternate method, petitioner proposes to use a coupling spring-loaded lock that is mounted directly on the receptacle in lieu of a padlock.

3. Petitioner states that the coupling spring-loaded lock will be easier to maintain because it would eliminate undue hazards, due to lost or misplaced padlock keys. All employees will be instructed on the use of this device.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 30, 1987. Copies of the petition are available for inspection at that address.

Dated: December 19, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health

[FR Doc. 86–29341 Filed 12–30–86; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–86–187–C]

Barnhart Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Barnhart Coal Company, R.D. #1, Box 104, Williamstown, Pennsylvania 17098 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its R & B Slope (I.D. No. 36–05593) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Petitioner states that no such safety catch or device is available for the steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of this anthracite mine.

3. Petitioner further believes that if "makeshift" safety devices were installed they would be activated on knuckles and curves when no emergency existed and caused a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope, above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as

determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 30, 1987. Copies of the petition are available for inspection at that address.

Dated: December 19, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-29342 Filed 12-30-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-204-C]

Blue Diamond Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Blue Diamond Coal Company, P.O. Box 278, Stearns, Kentucky 42647 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Justus Mine (I.D. No. 15-02363) located in McCreary County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that entries used as intake and return aircourses be separated from belt haulage entries, and that belt haulage entries not be used to ventilate active working places.

2. As an alternate method, petitioner proposes to use air that has passed over vonveyor belt haulage entries to ventilate the active working places.

3. In support of this request, petitioner proposes to install an early warning fire detection system. A low-level carbon monoxide (CO) detection system will be installed in all belt entries used as intake aircourses and at each belt drive and tailpiece located in intake air courses. The monitoring devices will be capable of giving warning of a fire for a minimum of four hours should the power fail; a visual alert signal will be activated when the CO level is 10 parts per million (ppm) above ambient air and an audible signal will sound at 15 ppm above ambient air. All persons will be withdrawn to a safe area at 10 ppm and evacuated at 15 ppm. The fire alarm signal will be activated at an attended surface location where there is two-way communication. The CO system will be capable of identifying any activated sensor and monitoring electrical continuity to detect any malfunctions.

4. The CO system will be visually examined at least once each coal producing shift and tested for functional operation weekly to insure the monitoring system is functioning properly. The monitoring system will be calibrated with known concentrations of CO and air mixtures at least monthly.

5. If the CO monitoring system is deenergized for routine maintenance or for failure of a sensor unit, the belt conveyor will continue to operate and qualified persons will patrol and monitor the belt conveyor using hand-held CO detecting devices.

6. The permanent stoppings separating the conveyor belt entries from the intake escapeway will be specifically approved in the Ventilation System and Methane and Dust Control Plan for the mine.

7. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 30, 1987. Copies of the petition are available for inspection at that address.

December 19, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-29343 Filed 12-30-86; 8:45am]

BILLING CODE 4510-43-M

[Docket No. M-86-205-C]

Blue Diamond Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Blue Diamond Coal Company, P.O. Box 278, Stearns, Kentucky 42647 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Justus Mine (I.D. No. 15-02363) located in McCreary County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly to the return.

2. In a separate petition (M-86-204-C), petitioner proposes to use the belt haulage air to ventilate active working places, and to install an early warning fire detection system using a low-level carbon monoxide system.

3. As an alternate method, petitioner proposes that underground substations, power centers, stationary battery charging stations, pumps, and rectifiers be ventilated with intake air. They will be housed in a fireproof structure equipped with fireproof doors and an automatic fire suppression system. When the temperature in the fireproof structure reaches 165' farenheit or when the carbon monoxide (CO) concentration reaches 15 parts per million (ppm) above the established ambient level for that area, the fireproof doors will close, incoming power to that structure will be deenergized, and a signal will be activiated.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 30, 1987. Copies of the petition are available for inspection at that address.

Dated: December 19, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-29344 Filed 12-30-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-206-C]

Blue Diamond Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Blue Diamond Coal Company, P.O. Box 278, Stearns, Kentucky 42647 has filed a petition to modify the application of 30 CFR 75.1103-4(a) (automatic fire sensor and warning device systems; installation; minium requirements) to its Justus Mine (I.D. No. 15-02363) located in McCreary County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that automatic fire sensor and warning device systems provide identification of fire within each belt flight.

2. In a separate petition (M-86-204-C), petitioner proposes to use the belt haulage air to ventilate active working places.

3. As a alternate method, petitioner proposes to install a carbon monoxide detection system which will provide identification of a fire within a distance of 2,000 feet or less.

4. In support of this request, petitioner states that the sensors will be of a type which will give early warning automatically when a fire occurs in the belt entry, and provide both audible and visual signs that will permit rapid location the fire. The automatic fire detection system will be calibrated to activate the warning signals should the carbon monoxide concentration reach 10 parts per million (ppm) above ambient. The alarm will be activated at an attended surface location where there is two-way communication. The system will be capable of identifying any activated sensor. All persons will be withdrawn to a safe area.

5. If the automatic fire detection system is affected by a power interruption or other malfunction, the belt conveyors will continue to operate only if a qualified person continues to monitor for carbon monoxide at each section loading point in by the malfunctioning sensor.

6. Each carbon monoxide sensor will be visually examined at least once each day during production periods to ensure proper functioning. At least every month the monitors will be checked for operating accuracy with a known concentration of carbon monoxide gas and will be calibrated as necessary.

7. Permanent stoppings will be used to separate the conveyor belt from the intake escapeway.

8. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 30, 1987. Copies of the petition are available for inspection at that address.

Dated: December 19, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-29345 Filed 12-30-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-208-C]

Clinchfield Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Clinchfield Coal Company, P.O. Box 4000, Lebanon, Virginia 24266 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Hurricane Creek Mine (I.D. No. 44-01773) located in Russel County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The mine was opened into the Jawbone coalbed by six drifts in 1974, and the coal height has varied from 74 to 120 inches. The mine is now retreating and portions of the mineable coal remaining are as low as 48 inches. Jeffrey 405M Ram-type shuttle cars are used in this mine and can be operated safely in mining heights of 60 inches or more, which height includes the canopies.

3. Petitioner states that the use of a canopy on the mine's equipment would result in a diminution of safety for the miners affected because it would cause roof support to be dislodged, decrease the operator's visibility and create discomfort to the operator.

4. For these reasons, petitioner requests a modification of the standard in mining heights less than 60 inches.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 30, 1987. Copies of the petition are available for inspection at that address.

Dated: December 19, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-29346 Filed 12-30-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-213-C]

Clinchfield Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Clinchfield Coal Company, P.O. Box 4000, Lebanon, Virginia 24266 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and conopies) to its Moss No. 3A-2 Portal (I.D. No.44-01642) located in Dickenson County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The mine is located in the Jawbone coalbed with consistent undulations in the height of the coal seam, which ranges from 24 to 96 inches in thickness. S & S battery powered scoops, model numbers 482 and 488, are used in this mine and can be operated safely in mining heights of 54 inches or more.

3. Petitioner states that the use of a canopy on the mine's equipment would result in a diminution of safety for the miners affected because it would cause roof support to be dislodged, decrease the operator's visibility and create discomfort to the operator.

4. For these reasons, petitioner a requests a modification of the standard in mining heights less than 54 inches.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson

Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 30, 1987. Copies of the petition are available for inspection at that address.

Dated: December 19, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-29347 Filed 12-30-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-203-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Ireland Mine (I.D. No. 46-01438) located in Marshall County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return air courses be examined in their entirety on a weekly basis.

2. Petitioner states that the southeast portion of the mine has been idle since November of 1979 and as a result, the air courses have deteriorated. All recovery of materials between 8-north and Richmond Shaft has been completed and minimal recovery work remains in the limited area of the southeast portion.

3. As an alternate method petitioner proposes to establish monitoring and bleeder evaluation stations at specified locations to take air and gas measurements. All monitoring stations and the approaches to the stations will be maintained in safe condition. Tests for methane and air quantity will be determined weekly by a certified person. A record of these examinations will be recorded and kept on surface.

4. During the recovery operation, a "Danger Board" will be maintained at the end of the trolley wire and weekly examinations made between the danger board and the 4-north seal area. The bleeder stations will be checked once each week until passed by the recovery operation.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 30, 1987. Copies of the petition are available for inspection at that address.

Dated: December 19, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-29348 Filed 12-30-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-219-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburg, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Franklin No. 125 Mine (I.D. No. 33-00963) located in Harrison County, Ohio. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A Summary of the petitioner's statements follows:

1. The petition concerns the requirement that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. Petitioner states that due to the ventilation scheme employed at the Franklin Mine, there are areas of the mine that are not immediately adjacent to return aircourses which makes compliance with the standard difficult.

3. Electrical distribution equipment in this situation have primary voltages of 7,200 VAC, with distribution voltages of 480 VAC. The locations of electrical distribution equipment and pumps are necessary for safe and efficient electrical distribution and for safe and efficient mining.

4. As an alternate method, petitioner proposes that:

a. The structures housing transformers, compressors, permanent pumps, battery-chargers, etc., will be fireproofed using concrete block stoppings on the ends, fireproof mine sealant protecting the roof, ribs, and floor. Stoppings will be provided with metal mandoors that are self-closing. If the mandoors are required to remain open to ventilate the structure, the mandoors will be arranged to automatically close upon occurrence of a fire;

b. An automatic fire suppression device, composed of either a water deluge system (in the case of pumps) or dry chemical system (in the case of electrical distribution equipment) will be installed;

c. No combustible materials will be stored or allowed to accumulate in the structure;

d. An alarm system which will provide both audible and visual alarms will be installed in a location adjacent to mine haulage or a location readily observed by persons working nearby; and

e. Fire-fighting equipment will be provided outside of the fire-proof strucures, on the intake side.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 30, 1987. Copies of the petition are available for inspection at that address.

Dated: December 19, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-29349 Filed 12-30-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-189-C]

Southern Ohio Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Southern Ohio Coal Company, P.O. Box 552, Fairmont, West Virginia 26554 has filed a petition to modify the application of 30 CFR 75.503 (permissible electic face equipment; maintenance) to its Martinka No. 1 Mine (I.D. No. 46-03805) located in Marion County. West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of a locked padlock to secure battery plugs to machine-mounted battery receptacles on permissible, mobile battery-powered machines.

2. As an alternate method, petitioner proposes to use a spring-loaded locking device in lieu of padlocks. The springloaded device will be designed, installed and used to prevent the threaded rings that secure the battery plugs to the battery receptacles from unintentionally loosening and will be attached to prevent accidental loss. In addition, the fabricated metal brackets will be securely attached to the battery receptacles to prevent accidental loss of the brackets.

3. Petitioner states that the spring-loaded metal locking devices will be easier to maintain than padlocks because there are no keys to be lost and dirt cannot get into the workings as with a padlock.

4. Operators of permissible, mobile, battery-powered machines affected by this modification will be trained in the proper use of the locking device, the hazards of breaking battery-plug connections under load, and the hazards of breaking battery-plug connections in areas of the mine where electric equipment is required to be permissible.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 30, 1987. Copies of the petition are available for inspection at that address.

Dated: December 19, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-29350 Filed 12-30-86; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL CREDIT UNION ADMINISTRATION

Agency Forms Submitted to the Office of Management and Budget for Clearance

The following packages are being submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Subject: Credit Committee Records—Act IX, section 3 and 4 of the FCU bylaws (OMB) No. 3133-0058).

Respondents: Federal Credit Unions.

Abstract: All federal credit unions must maintain records of the action taken regarding approval/disapproval of loans.

Subject: Federal Credit Union Bylaws and Certificate Article XIX, section 5 of FCU Bylaws (OMB No. 3133-0081).

Respondents: Federal Credit Unions.

Abstract: Each federal credit union is acquired to maintain a copy of its organization certificate, bylaws, amendments and special authorizations.

Subject: 12 CFR 724.1 Trustees and custodians of Pension Plan (OMB No. 3133-0035).

Respondents: Federal Credit Unions.

Abstract: A federal credit union acting as trustee or custodian of a Keogh plan or individual retirement account must maintain individual records for each participant showing all transactions in detail.

Subject: Special Meetings of Federal Credit Union Board (OMB No. 3133-0080).

Respondents: Federal Credit Unions.

Abstract: Federal credit union bylaws require that the credit union president call a special meeting of the board of directors upon receipt of a written request signed by a majority of the directors.

OMB Desk Officer: Robert Neal.

Copies of the above information collection clearance packages may be obtained by calling the National Credit Union Administration, Administrative Office on (202) 357-1055.

Written comments and recommendations for the listed information collection should be sent directly to the OMB Desk Officer designated above at following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: December 19, 1986.

Rosemary Brady,

Secretary of the NCUA Board.

[FR Doc. 86-29297 Filed 12-30-86; 8:45 am]

BILLING CODE 7535-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-320]

General Public Utilities; Availability of Draft Supplement to the Programmatic Environmental Impact Statement Related to Decontamination and Disposal of Wastes From March 28, 1979 Accident—Three Mile Island Nuclear Station Unit 2

Pursuant to the National Environmental Policy Act of 1969 and the United States Nuclear Regulatory Commission's regulations in 10 CFR Part 51, notice is hereby given that a Draft Supplement to the Programmatic Environmental Impact Statement (NUREG-0683, Supplement 2) related to decontaminated disposal of radioactive wastes resulting from March 28, 1979, accident, Three Mile Island, is available for inspection by the public in the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and in the NRC TMI Office, 100 Brown Street, Middletown, PA 17057. This draft supplement, prepared by the Commission's Office of Nuclear Reactor Regulation, addresses the environmental impacts associated with various proposals for the disposal of slightly contaminated water presently stored on the Three Mile Island site. Requests for copies of the Draft Supplement should be addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Technical Information and Document Control.

Pursuant to 10 CFR Part 51, interested persons may submit comments on the Draft Supplement to the Programmatic Environmental Impact Statement (PEIS) for the Commission's consideration. Federal, State, and Local agencies are being provided with copies of the Draft Supplement to the PEIS. Comments are due by February 28, 1987. Comments by Federal, State and Local officials, or other persons received by the Commission will be made available for public inspection at the Commission's Public Document Room in Washington, DC, and the NRC TMI Office, 100 Brown Street, Middletown, PA 17057. Upon consideration of comments, the Commission's staff will prepare a final Supplement to the PEIS, the availability of which will be published in the Federal Register.

Comments on the Draft Supplement to the PEIS should be addressed to Michael T. Masnik, Three Mile Island Cleanup Project Directorate, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Bethesda, Maryland, this 24th day of December 1986.

For the Nuclear Regulatory Commission.

Michael T. Masnik,

Acting Director, Three Mile Island-2 Cleanup Project Directorate, Office of Nuclear Reactor Regulation.

[FR Doc. 86-29385 Filed 12-30-86; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-277 and 50-278]

Philadelphia Electric Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC/the Commission) is considering issuance of an exemption from the requirements of Appendix R of 10 CFR Part 50 to the Philadelphia Electric Company (PECO/the Licensee), for the Peach Bottom Atomic Power Station, Units 2 and 3 located in York County, Pennsylvania.

Environmental Assessment

Identificotion of Proposed Action

The licensee would be exempted from the requirements of sections II.G.2.a and III.G.2.b of Appendix R to 10 CFR Part 50 to the extent that certain specific areas, cables or equipment will be separated by less than a 3 hour rated fire barrier, automatic fire suppression systems will not be required in part of two plant areas and certain structural steel members forming a part of or supporting fire barriers may have a fire resistance less than the barrier.

The Need for the Proposed Action

Because of low combustible loading in the locations being exempted from separation, barrier protection or automatic fire suppression, a fire in one of these areas would be of low intensity and short duration. Furthermore, safe shutdown could be effected if a fire occurred in one of these areas because of the passive protection afforded by such separation and barriers as exist, and because of the provision of detection systems to alert the fire brigade. The fire brigade could then take action to extinguish the fire. For all of the requested exemptions, the licensee has provided analyses which show that either the existing protection features, alternative modifications and mitigating features or compensatory measures provide adequate fire protection for the maximum potential combustible loading in the area. Application of the Appendix R regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule and would not significantly enhance the level of fire protection in the plant. Compliance with the regulation would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted and additional costs significantly in excess of those incurred by others similarly situated, without a corresponding increase in the level of improvement in fire protection for the facilities.

Environmental Impact of the Proposed Action

The proposed action would not impact the ability to effect safe shutdown of the plant in the event of a fire and would provide an acceptable level of safety, equivalent to that attained by compliance with Section III.G of Appendix R to 10 CFR Part 50. On this basis, the Commission concludes there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves features located entirely within the restricted areas as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternative Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statement (construction permit and operating license) for the Peach Bottom Atomic Power Station, Units 2 and 3.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated September 17, 1984, March 29, May 23, June 6, September 24, 1985 and March 7, 1986, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania, 17126.

Dated at Bethesda, Maryland, this 23rd day of December, 1986.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, BWR Project Directorate No. 2, Division of BWR Licensing.

[FR Doc. 86-29386 Filed 12-30-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-271]

Vermont Yankee Nuclear Power Corp.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-28, issued to Vermont Yankee Nuclear Power Corporation (the licensee), for operation of the Vermont Yankee Nuclear Power Station, located in Vernon, Vermont.

In accordance with the licensee's application dated April 25, 1986, the proposed amendment would revise the Vermont Yankee Technical Specifications to authorize the licensee to increase the storage capacity of the spent fuel pool from the present capacity of 2000 fuel assemblies to 2870 fuel assemblies. The change would be accomplished by the installation of high density fuel rack modules with center to center clearances between cells of 6.218 inches compared to the current design of 7.0 inches. The racks would utilize a neutron absorbing material between cells to assure a subcritical configuration.

On June 18, 1986, the Commission issued a Bi-Weekly Notice of Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations (51 FR 22226) which included notice concerning the proposed amendment of the Vermont Yankee license (51 FR 22246). That Notice contained the Commission's proposed determination that the requested amendment involved no significant hazards considerations, offered an opportunity for comments on the Commission's proposed determination and offered an opportunity for the applicant to request a hearing on the amendment and for persons whose interest may be affected to petition for leave to intervene. Comments on the proposed

determination were received from the New England Coalition on Nuclear Pollution.

Due to oversight, the June 18, 1986 Notice did not provide notice that this application involves a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982. Such notice is required by Commission regulations, 10 CFR 2.1107.

The Commission hereby provides such notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, is authorized to use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties."

The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules and the designation, following argument of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR Part 2, Subpart K, "Hybrid Hearing Procedures for Expansion of Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors" (published at 50 FR 41662 (October 15, 1985). Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. (As outlined above, the Commission's rules in 10 CFR Part 2, Subpart G continued to govern the filing of requests for a hearing or petitions to intervene, as well as the admission of contentions.) The presiding officer shall grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application shall be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding timely requests oral argument, and if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR Part 2, Subpart G apply.

By January 30, 1987, the licensee, if it wishes to invoke the hybrid hearing procedures, may file a request for such hearing with respect to issuance of the proposed amendment or any person whose interest may be affected by this proceeding and who wishes to invoke the hybrid hearing procedures and to participate as a party in such proceeding, must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene seeking to invoke hybrid hearing procedures in accordance with this notice is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order. Requests for hearing or petitions for leave to intervene which do not seek to invoke the hybrid hearing procedures are not authorized by this notice and would be considered nontimely.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significiant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for an opportunity for a hearing after issuance. The Commission expects

that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene that seeks to invoke the hybrid hearing procedures in accordance with this notice must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Daniel R. Muller: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to John A. Ritcher, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated April 25, 1986, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Dated at Bethesda, Maryland, this 23rd day of December, 1986.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, BWR Project Directorate No. 2, Division of BWR Licensing.

[FR Doc. 86–29384 Filed 12–30–86; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–280 and 50–281]

Virginia Electric and Power Co.; Surry Power Station, Units No. 1 and 2; Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating Licenses No. DPR–32 and No. DPR–37 issued to Virginia Electric and Power Company (the licensee), for the operation of Surry Power Station, Units No. 1 and 2, located in Surry County, Virginia.

Identification of Proposed Action

The amendment would consist of changes to the operating license authorizing an extension in the expiration date for the Unit 1 Facility Operating License DPR–32 from June 25, 2008, to May 25, 2012, and for the Unit 2 Facility Operating License DPR–37 from June 25, 2008, to January 29, 2013.

The amendment to the licenses is responsive to the licensee's application dated August 22, 1986, as supplemented by letters dated December 5, and December 10, 1986. The NRC staff has prepared an Environmental Assessment of the Proposed Action, "Environmental Assessment by the Office of Nuclear Reactor Regulation Relating to the Change in Expiration Dates of Facility Operating License Nos. DPR–32 and DPR–37 Virginia Electric Power Company, Surry Power Station, Units No. 1 and No. 2," dated December 24, 1986.

Summary of Environmental Assessment

The NRC staff has reviewed the potential environmental impacts of the proposed change in the expiration dates of the Operating Licenses for Surry Power Station, Unit Nos. 1 and 2. This evaluation considered the previous environmental studies, including the "Final Environmental Statements Related to Operation of Surry Power Station, Units 1 and 2", dated May 1972 and June 1972 and more recent NRC policy.

Radiological Impacts

Although the population in the vicinity of Surry, Units 1 and 2 has increased slightly, the site requirements of 10 CFR Part 100 are still met with regard to Exclusion Area Boundary, Low Population Zone, and nearest population center distances, and such changes do not significantly increase any environmental impacts. The net annualized environmental impacts attributable to the uranium fuel cycle, which form the basis for Table S3 of 10 CFR Part 51, remain essentially unchanged from those addressed in the FES. The annual environmental impacts attributable to transportation of fuel and waste to and from the Surry Power Station, with respect to normal conditions of transport and possible accidents in transport, will be bound by the impact estimates discussed in the Surry FES. In addition, the proposed additional years of reactor operation do not increase the annual public risk from reactor operation.

With regard to normal plant operation, the licensee complies with NRC guidance and requirements for keeping radiation exposures "as low as is reasonably achievable" (ALARA) for occupational exposures and for radioactivity in effluents. The licensee would continue to comply with these requirements during any additional years of facility operation and also apply advanced technology where available and appropriate. Accordingly, radiological impacts on man, both onsite and offsite, are not significantly more severe than previously estimated in the FES and our previous cost-benefit conclusions remain valid.

Non-Radiological Impacts

The NRC review identified no additional degradation of the habitat surrounding Surry Power Station with regard to indigenous plant and animal species for the additional years of facility operation. In addition, the National Pollutant Discharge Elimination System permit provides additional environmental protection.

Finding of No Significant Impact

The staff has reviewed the proposed change to the expiration dates of the Surry Power Station, Units 1 and 2 Facility Operating Licenses relative to the requirements set forth in 10 CFR Part 51. Based upon the environmental assessment, the staff concluded that there are no significant radiological or nonradiological impacts associated with the proposed action and that the proposed license amendments will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed amendments.

For further details with respect to this action, see (1) the request for amendments dated August 22, 1986 as supplemented by letters dated December 5, and December 10, 1986, (2) the Final Environmental Statements Related to the Operation of Surry Power Station, Units 1 and 2, dated May 1972 and June 1972, and (3) the Environmental Assessment dated December 24, 1986. These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Dated at Bethesda, Maryland, this 24th day of December, 1986.

For the Nuclear Regulation Commission.

Lester S. Rubenstein,

Director, PWR Project Directorate No. 2, Division of PWR Licensing-A, Office of Nuclear Reactor Regulation.

[FR Doc. 86–29383 Filed 12–30–86; 8:45 a.m.]

BILLING CODE 7590–01–M

[Docket No. 40–8502]

Westinghouse Electric Corp.; Draft Finding of No Significant Impact Regarding the Renewal of Source and Byproduct Material License SUA–1341 for Operation of Westinghouse Electric Corporation's, Irigaray Mine, Johnson County, WY

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of draft finding of no significant impact.

(1) Proposed Action

The proposed administrative action is to renew Source and Byproduct Material License SUA–1341 authorizing Westinghouse Electric Corporation to resume operation of their Irigaray Mine located in Johnson County, Wyoming.

(2) Reasons for Draft Finding of No Significant Impact

An Environmental Assessment was prepared by the staff at the U.S. Nuclear Regulatory Commission (NRC) and issued by the Commission's Uranium Recovery Field Office, Region IV. The Environmental Assessment performed by the Commission's staff evaluated potential impacts on-site and off-site due to radiological releases which may occur during the course of the operation. Documents used in preparing the assessment included operational data from the licensee's prior mining activities, the licensee's renewal application dated September 28, 1983, as revised by submittal dated October 13, 1985, and the Final Environmental Statement prepared by the Commission staff dated September 1978. Based on this assessment, the Commission has determined that no significant impact will result from the proposed action, and therefore, an Environmental Impact Statement is not warranted.

The following statements support the draft finding of no significant impact and summarize the conclusions resulting from the environmental assessment.

(a) The ground-water monitoring program in effect at the Irigaray mine is sufficient to monitor operations and will provide a warning system that will minimize any impact on ground water. Furthermore, additional aquifer testing indicates that the production zone is adequately confined, thereby assuring hydrologic control of mining solutions.

(b) Radiological effluents from the proposed operation of the well field and processing plant will be within regulatory limits and will be continuously monitored.

(c) The environmental monitoring program is comprehensive and will detect any radiological releases resulting from the operation.

(d) Radioactive wastes will be minimal and will be disposed of at an approved site in accordance with applicable Federal and state regulations.

(e) Ground water, based upon previous testing, can be restored to class of use standards.

In accordance with 10 CFR 51.33(a), the Director, Uranium Recovery Field Office, made the determination to issue a draft finding of no significant impact and to accept comments on the draft finding for a period of 30 days after issuance in the **Federal Register**.

This finding, together with the environmental assessment setting forth the basis for the finding, is available for public inspection and copying at the Commission's Uranium Recovery Field Office at 730 Simms Street, Golden, Colorado, and at the Commission's Public Document Room at 1717 H Street, NW., Washington, DC.

Dated at Denver, Colorado, this 16th day of December, 1986.

For the Nuclear Regulatory Commission.

Edward F. Hawkins,

Chief, Licensing Branch 1, Uranium Recovery Field Office Region IV.

[FR Doc. 86–29387 Filed 12–30–86; 8:45 am]

BILLING CODE 7590–01–M

State of Illinois; Staff Assessment of Proposed Agreement Between the NRC and the State of Illinois

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of proposed agreement with State of Illinois.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission is publishing for public comment the NRC staff assessment of a proposed agreement received from the Governor of the State of Illinois for the assumption of certain of the Commission's regulatory authority pursuant to section 274 of the Atomic Energy Act of 1954, as amended. Comments are requested on the public health and safety aspects of the proposal.

A staff assessment of the State's proposed program for control over sources of radiation is set forth below as supplementary information to this notice. A notice of the proposed agreement, program narrative, including the referenced appendices, applicable State legislation and Illinois regulations, is available for public inspection in the Commission's public document room at 1717 H Street NW., Washington, DC, the Commission's Region III Office, 799 Roosevelt Road, Building No. 4, Glen Ellyn, Illinois, and the Illinois Department of Nuclear Safety, 1035 Outer Park Drive, Springfield, Illinois. Exemptions from the Commission's regulatory authority, which would implement this proposed agreement, have been published in the **Federal Register** and codified as Part 150 of the Commission's regulations in Title 10 of the Code of Federal Regulations.

DATE: Comments must be received on or before January 30, 1987.

ADDRESSES: Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be delivered to Room 4000, Maryland National Bank Building, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Monday through Friday. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington DC.

FOR FURTHER INFORMATION CONTACT: Joel O. Lubenau, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: 301–492–9887.

SUPPLEMENTARY INFORMATION:

Assessment of Proposed Illinois Program to Regulate Certain Radioactive Materials Pursuant to section 274 of the Atomic Energy Act of 1954, as amended.

The Commission has received a proposal from the Governor of Illinois for the State to enter into an agreement with the NRC whereby the NRC would relinquish and the State would assume certain regulatory authority pursuant to section 274 of the Atomic Energy Act of 1954, as amended.

Section 274e of the Atomic Energy Act of 1954, as amended, requires that the

terms of the proposed agreement be published for public comment once each week for four consecutive weeks. Accordingly, this notice will be published four times in the Federal Register.

I. Background

A. Section 274 of the Atomic Energy Act of 1954, as amended, provides a mechanism whereby the NRC may transfer to the States certain regulatory authority over agreement materials [1] when a State desires to assume this authority and the Governor certifies that the State has an adequate regulatory program, and when the Commission finds that the State's program is compatible with that of the NRC and is adequate to protect the public health and safety. Section 274g directs the Commission to cooperate with the States in the formulation of standards for protection against radiation hazards to assure that State and Commission programs for radiation protection will be coordinated and compatible. Further, section 274j provides that the Commission shall periodically review such agreements and actions taken by the States under the agreements to ensure compliance with the provisions of this section.

B. In a letter dated October 2, 1986, Governor James P. Thompson of the State of Illinois requested that the Commission enter into an agreement with the State pursuant to section 274 of the Atomic Energy Act of 1954, as amended. The Governor certified that the State of Illinois has a program for control of radiation hazards which is adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement, and that the State of Illinois desires to assume regulatory responsibility for such materials. The text of the proposed agreement is shown in Appendix A.

The specific authority requested is for (1) byproduct material as defined in section 11e.(1) of the Act, (2) source material, (3) special nuclear material in quantities not sufficient to form a critical mass and (4) permanent disposal of low-level waste containing one or more of the foregoing materials but not containing uranium and thorium mill tailings (byproduct material as defined in section 11e.(2) of the Act. The State does not wish to assume authority over uranium recovery activities. The State, however, reserves the right to apply at a future date to NRC for an amended agreement to assume authority in this area. The nine articles of the proposed agreement cover the following areas:

I. Lists the materials covered by the agreement.

II. Lists the Commission's continued authority and responsibility for certain activities.

III. Allows for future amendment of the agreement.

IV. Allows for certain regulatory changes by the Commission.

V. References the continued authority of the Commission for common defense and security for safeguard purposes.

VI. Pledges the best efforts of the Commission and the State to achieve coordinated and compatible programs.

VII. Recognizes reciprocity of licenses issued by the respective agencies.

VIII. Sets forth criteria for termination or suspension of the agreement.

C. Ill. Rev. Stat. 1985, ch. 127, par 63b17, the enabling statute for the Illinois Department of Nuclear Safety authorizes the Department to issue licenses to, and perform inspections of, users of radioactive materials under the proposed agreement and otherwise carry out a total radiation control program. Illinois regulations for radiation protection were adopted on September 25, 1986 under authority of the enabling statute and provide standards, licensing, inspection, enforcement and administrative procedures for agreement and non-agreement materials. Pursuant to § 330.360 the regulations will apply to agreement materials on the effective date of the agreement. The regulations provide for the State to license and inspect users of naturally-occurring and accelerator-produced radioactive materials.

D. Illinois is one of two States with a cabinet-level agency devoted exclusively to radiation safety and control. Illinois' role in radiation safety is traceable to 1955 when the Illinois General Assembly created the Atomic Power Investigating Commission. The Illinois Department of Nuclear Safety Program provides a comprehensive program encompassing radiation protection regulation for radioactive materials and machine produced radiation, lasers, low-level radioactive waste management, surveillance of transportation of radioactive materials and environmental radiation, coordination of State government functions concerning nuclear power and emergency preparedness.

E. The proposed Illinois Agreement will cover several unique facets. It will include (1) regulation of a low-level waste disposal site which is no longer accepting low-level radioactive waste for disposal (Sheffield), (2) regulation of a new regional low-level waste disposal facility, (3) regulation of one of only two licensed uranium conversion plants in the United States (Allied-Chemical) and (4) assumption of regulatory responsibility for off-site source material resulting from operation of the Kerr-McGee West Chicago Rare Earths Facility (including such material which is, or may be, stored on the Kerr-McGee site). Jurisdiction over the tailings materials at this site (by-product material as defined by section 11e(2) of the Act) will remain with NRC. The State's proposed programs for low-level radioactive waste disposal and the Allied Chemical plant are assessed under Criteria nos. 9, "Radioactive Waste Disposal" and 20 "Personnel." The disposition of the regulatory responsibility for the Kerr-McGee radioactive materials resulting from the operation of the Rare Earths Facility is covered in the assessment under Crtierion 25, "Existing NRC Licenses and Pending Applications."

Under the proposed agreement jurisdiction for health and safety for Allied Chemical's plant would be transferred to Illinois. The Allied Chemical plant is one of 2 plants in the United States licensed to convert uranium "yellowcake" to UF_6. NRC staff is reviewing the common defense and security significance of the Allied Chemical plant in consultation with appropriate Federal agencies. Section 274 agreements are approved by the Commission when, among other things, the proposed State program is adequate to protect the public health and safety. The NRC staff assessment finds the proposed Illinois program will provide adequately for public health and safety. The Atomic Energy Act, as amended, however, states that such agreements shall not affect the Commission's authority to protect the common defense and security. The decision on whether to exclude the Allied Chemical plant from the Agreement will be made by the Commission concurrent with its decision on the Illinois request for an Agreement.

II. NRC Staff Assessment of Proposed Illinois Program for Control of Agreement Materials

Reference: Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement.[2]

Objectives

1. Protection. A State regulatory program shall be designed to protect the health and safety of the people against radiation hazards.

Based upon the analysis of the State's proposed regulatory program the staff believes the Illinois proposed regulatory program for agreement materials is adequately designed to protect the health and safety of the public against radiation hazards.

Reference: Illinois Program Statement, Application for Agreement State Status.

Radiation Protection Standards

2. *Standards.* The State regulatory program shall adopt a set of standards for protection against radiation which shall apply to byproduct, source and special nuclear materials in quantities not sufficient to form a critical mass.

Statutory authority to formulate and promulgate rules for controlling exposure to sources of radiation is contained in the enabling statute. In accordance with that authority, the State adopted radiation control regulations on September 25, 1986 which include radiation protection standards which would apply to byproduct, source and special nuclear materials in quantities not sufficient to form a critical mass upon the effective date of an agreement between the State and the Commission pursuant to section 274b of the Atomic Energy Act of 1954, as amended.

Reference: 32 ILL. ADM. CODE Parts 310, 320, 330, 340, 341, 350, 351, 370, 400 and 601.

3. *Uniformity in Radiation Standards.* It is important to strive for uniformity in technical definitions and terminology, particularly as related to such things as units of measurement and radiation dose. There shall be uniformity on maximum permissible doses and levels of radiation and concentrations of radioactivity, as fixed by 10 CFR Part 20 of the NRC regulations based on officially approved radiation protection guides.

Technical definitions and terminology contained in the Illinois Radiation Control Regulations including those related to units of measurement and radiation doses are uniform with those contained in 10 CFR Part 20.

Reference: 32 ILL. ADM. CODE 310.20, 3410.20, 350.30, 351.30, 370.20, and 601.20.

4. *Total Occupational Radiation Exposure.* The regulatory authority shall consider the total occupational radiation exposure of individuals, including that from sources which are not regulated by it.

The Illinois regulations cover all sources of radiation within the State's jurisdiction and provide for consideration of the total radiation exposure of individuals from all sources of radiation in the possession of a licensee or registrant.

Reference: 32 ILL. ADM. CODE 340.1010 to 340.1060.

5. *Surveys, Monitoring.* Appropriate surveys and personnel monitoring under the close supervision of technically competent people are essential in achieving radiological protection and shall be made in determining compliance with safety regulations.

The Illinois requirements for surveys to evaluate potential exposures from sources of radiation and the personnel monitoring requirements are uniform with those contained in 10 CFR Part 20. Additionally, for personnel dosimeters (except extremity dosimeters and pocket ionization chambers) that require processing, the accreditation criteria in the January 1, 1985 revision of 15 CFR 7b and in American National Standards Institute N13.11–1983, 1983 edition, must be met.

References: 32 ILL. ADM. CODE 340.2010, 340.2020 and 340.2070.

6. *Labels, Signs, Symbols.* It is desirable to achieve uniformity in labels, signs, and symbols, and the posting thereof. However, it is essential that there be uniformity in labels, signs, and symbols affixed to radioactive products which are transferred from person to person.

The prescribed radiation labels, signs and symbols are uniform with those contained in 10 CFR Parts 20, 30 thru 32 and 34. The Illinois posting requirements are also uniform with those of Part 20.

References: 32 ILL. ADM. CODE 330.220(g), 330.220(i), 330.280(d), 330.280(g), 340.2030 and .2040, 350.1050.

7. *Instruction.* Persons working in or frequenting restricted areas shall be instructed with respect to the health risks associated with exposure to radioactive materials and in precautions to minimize exposure. Workers shall have the right to request regulatory authority inspections as per 10 CFR 19, Section 19.16 and to be represented during inspections as specified in Section 19.14 of 10 CFR 19.

The Illinois regulation contain requirements for instruction and notices to workers that are uniform with those of 10 CFR Part 19.

Reference: 32 ILL. ADM. CODE Part 400.

8. *Storage.* Licensed radioactive material in storage shall be secured against unauthorized removal.

The Illinois regulations contain a requirement for security of stored radioactive material.

Reference: 32 ILL ADM. CODE 340.2060.

9. *Radioactive Waste Disposal.* (a) Waste disposal by material users. The standards for the disposal of radioactive References: 32 ILL. ADM. CODE 340.1060, 340.3010 to 340. 3110, Part 601; Section 151(a)(2), Pub. L. 97–425.

10. *Regulations Governing Shipment of Radioactive Materials.* The State shall to the extent of its jurisdiction promulgate regulations applicable to the shipment of radioactive materials, such regulations to be compatible with those established by the U.S. Department of Transportation and other agencies of the United States whose jurisdiction over interstate shipment of such materials necessarily continues. State regulations regarding transportation of radioactive materials must be compatible with 10 CFR Part 71.

The Illinois regulations are uniform with those contained in NRC regulations 10 CFR Part 71.

References: 32 ILL. ADM. CODE Part 341.

11. *Records and Reports.* The State regulatory program shall require that holders and users of radioactive materials (a) maintain records covering personnel radiation exposures, radiation surveys, and disaposals of materials; (b) keep records of the receipt and transfer of the materials; (c) report significant incidents involving the materials, as prescribed by the regulatory authority; (d) make available upon request of a former employee a report of the employee's exposure to radiation; (e) at request of an employee advise the employee of his or her annual radiation exposure; and (f) inform each employee in writing when the employee has received radiation exposure in excess of the prescribed limits.

The Illinois regulations require the following records and reports licensees and registrants:

(a) Records covering personnel radiation exposures, radiation surveys, and disposals of materials.

(b) Records of receipt and transfer of materials.

(c) Reports concerning incidents involving radioactive materials.

(d) Reports to former employees of their radiation exposure.

(e) Reports to employees of their annual radiation exposure.

[1] A. Byproduct materials as defined in 11e(1)
B. Byproduct materials as defined in 11e(2)
C. Source materials; and
D. Special nuclear materials in quantities not sufficient to form a critical mass

[2] NRC Statement of Policy published in the Federal Register January 23, 1961 (46 FR 7540–7546), a correction was published July 16, 1961 (46 FR 36969) and a revision of Criterion 9 published in the Federal Register July 21, 1983 (48 FR 33376).

(f) Reports to employees of radiation exposure in excess of prescribed limits.

Reference: 32 ILL. ADM. CODE 310.40, 340.4010, 340.4030, 340.4050 and 400.130.

12. *Additional Requirements and Exemptions.* Consistent with the overall criteria here enumerated and to accommodate special cases and circumstances, the State regulatory authority shall be authorized in individual cases to impose additional requirements to protect health and safety, or to grant necessary exemptions which will not jeopardize health and safety.

The Illinois Department of Nuclear Safety is authorized to impose upon any licensee or registrant by rule, regulation, or order such requirements in addition to those established in the regulations as it deems appropriate or necessary to minimize danger to public health and safety or property.

Reference: 32 ILL. ADM. CODE 310.70.

The Department may also grant such exemptions from the requirements of the regulations as it determines are authorized by law and will not result in undue hazard to public health and safety or property.

Reference: 32 ILL. ADM. CODE 310.30.

Prior Evaluation of Uses of Radioactive Materials

13. *Prior Evaluation of Hazards and Uses, Exceptions.* In the present state of knowledge, it is necessary in regulating the possession and use of byproduct, source and special nuclear materials that the State regulatory authority require the submission of information on, and evaluation of, the potential hazards and the capability of the user or possessor prior to his receipt of the materials. This criterion is subject to certain exceptions and to continuing reappraisal as knowledge and experience in the atomic energy field increase. Frequently there are, and increasingly in the future there may be, categories of materials and uses as to which there is sufficient knowledge to permit possession and use without prior evaluation of the hazards and the capability of the possessor and user. These categories fall into two groups—those materials and uses which may be completely exempt from regulatory controls, and those materials and uses in which sanctions for misuse are maintained without pre-evaluation of the individual possession or use. In authorizing research and development or other activities involving multiple uses of radioactive materials, where an institution has people with extensive training and experience, the State regulatory authority may wish to provide a means for authorizing broad use of materials without evaluating each specific use.

Prior to the issuance of a specific license for the use of radioactive materials, the Illinois Department of Nuclear Safety will require the submission of information on, and will make an evaluation of, the potential hazards of such uses, and the capability of the applicant.

References: 32 ILL. ADM. CODE 330.240 to 330.340 and Part 601; Illinois Program Statement, Sections II.B.1(a)(1) "Licensing," II.C.1(a)(3) "Regulating Low-Level Waste Disposal" and III.B. "Licensing."

Provision is made for the issuance of general licenses for byproduct, source and special nuclear materials in situations where prior evaluation of the licensee's qualifications, facilities, equipment and procedures are not required. The regulations grant general licenses under the same circumstances as those under which general licenses are granted in the Commission's regulations.

References: 32 ILL. ADM. CODE 330.210 and 330.220.

Provision is made for exemption of certain source and other radioactive materials and devices containing radioactive materials. The exemptions for materials covered by the Agreement are the same as those granted by NRC regulations.

References: 32 ILL. ADM. CODE 330.30 and 330.40.

14. *Evaluation Criteria.* In evaluating a proposal to use radioactive materials, the regulatory authority shall determine the adequacy of the applicant's facilities and safety equipment, his training and experience in the use of the materials for the purpose requested, and his proposed administrative controls. States should develop guidance documents for use by license applicants. This guidance should be consistent with NRC licensing and regulatory guides for various categories of licensed activities.

In evaluating a proposal to use agreement materials, the Illinois Department of Nuclear Safety will determine that:

(1) The applicant is qualified by reason of training and experience to use the material in question for the purpose requested in accordance with the regulations in such a manner as to minimize danger to public health and safety or property;

(2) The applicant's proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property; and

(3) The issuance of the license will not be inimical to the health and safety of the public.

Other special requirements for the issuance of specific licenses are contained in the regulations.

References: 32 ILL. ADM. CODE 330.250 to 330.280 and Part 601; Illinois Program Statement, Sections II.B.1.a(1) "Licensing" II.C.1.(a) "Low-Level Radioactive Waste Management" and III.B "Licensing."

15. *Human Use.* The use of radioactive materials and radiation on or in humans shall not be permitted except by properly qualified persons (normally licensed physicians) possessing prescribed minimum experience in the use of radioisotopes or radiation.

The Illinois regulations require that the use of radioactive materials (including sealed sources) on or in humans shall be by a physician having substantial experience in the handling and administration of radioactive material and, where applicable, the clinical management of radioactive patients.

Reference: 32 ILL. ADM. CODE 330.260(a), (b), and (c).

Inspection

16. *Purpose, Frequency.* The possession and use of radioactive materials shall be subject to inspection by the regulatory authority and shall be subject to the performance of tests, as required by the regulatory authority. Inspection and testing is conducted to determine and to assist in obtaining compliance with regulatory requirements. Frequency of inspection shall be related directly to the amount and kind of material and type of operation licensed, and it shall be adequate to insure compliance.

Illinois materials licensees will be subject to inspection by the Department of Nuclear Safety. Upon instruction from the Department, licensees shall perform or permit the Department to perform such reasonable tests and surveys as the Department deems appropriate or necessary. The frequency of inspections is dependent upon the type and scope of the licensed activities and will be at least as frequent as inspections of similar licensees by NRC. Generally, inspections will be unannounced.

References: 32 ILL. ADM. CODE 310.50, 310.60, 310.70 and 400.140(a); Illinois Program Statement, Section II.B.1.(a)(2) "Inspection and Compliance," Section III.C, "Inspection and Enforcement" and Section IV.C., "Division of Responsibilities."

17. *Inspections Compulsory.* Licensees shall be under obligation by law to provide access to inspectors.

Illinois regulations state that licensees shall afford the Department at all reasonable times opportunity to inspect sources of radiation and the premises and facilities wherein such sources of radiation are used or stored.

Reference: 32 ILL. ADM. CODE 310.50.

18. *Notification of Results of Inspection.* Licensees are entitled to be advised of the results of inspections and to notice as to whether or not they are in compliance.

Following Department inspections, each licensee will be notified in writing of the results of the inspection. The letters and written notices indicate if the licensee is in compliance and if not, list the areas of noncompliance.

Reference: Illinois Program Statement, Section II.B.1.(a)(2) "Inspection and Compliance," Section III.C, "Inspection and Enforcement" and Section IV.C., "Division of Responsibilities."

Enforcement

19. *Enforcement.* Possession and use of radioactive materials should be amenable to enforcement through legal sanctions, and the regulatory authority shall be equipped or assisted by law with the necessary powers for prompt enforcement. This may include, as appropriate, administrative remedies looking toward issuance of orders requiring affirmative action or suspension or revocation of the right to possess and use materials, and the impounding of materials; the obtaining of injunctive relief; and the imposing of civil or criminal penalties.

The Illinois Department of Nuclear Safety is equipped with the necessary powers for prompt enforcement of the regulations. Where conditions exist that create a clear presence of a hazard to the public health that requires immediate action to protect human health and safety, the Department may issue orders to reduce, discontinue or eliminate such conditions. The department actions may also include impounding of radioactive material, imposition of a civil penalty, revocation of a license, and requesting the State Attorney General to seek injunctions and convictions for criminal violations.

References: 32 ILL. ADM. CODE 310.70, 310.80, 310.90, 330.500; Ill. Rev. Stat. 1985, ch. 111½, pars. 219, 222, 223 and 224; Illinois Program Statement, Section II.B.1.(a)(2), "Inspection and Compliance," Section III.C, "Inspection and Enforcement" and Section IV.C., "Division of Responsibilities."

Personnel

20. *Qualifications of Regulatory and Inspection Personnel.* The regulatory agency shall be staffed with sufficient trained personnel. Prior evaluation of applications for licenses or authorizations and inspection of licensees must be conducted by persons possessing the training and experience relevant to the type and level of radioactivity in the proposed use to be evaluated and inspected.

To perform the functions involved in evaluation and inspection, it is desirable that there be personnel educated and trained in the physical and/or life sciences, including biology, chemistry, physics and engineering, and that the personnel have had training and experience in radiation protection. The person who will be responsible for the actual performance of evaluation and inspection of all of the various uses of byproduct, source and special nuclear material which might come to the regulatory body should have substantial training and extensive experience in the field of radiation protection.

It is recognized that there will also be persons in the program performing a more limited function in evaluation and inspection. These persons will perform the day-to-day work of the regulatory program and deal with both routine situations as well as some which will be out of the ordinary. These people should have a bachelor's degree or equivalent in the physical or life sciences, training in health physics, and approximately two years of actual work experience in the field of radiation protection.

The foregoing are considered desirable qualifications for the staff who will be responsible for the actual performance of evaluation and inspection. In addition, there will probably be trainees associated with the regulatory program who will have an academic background in the physical or life sciences as well as varying amounts of specific training in radiation protection but little or no actual work experience in this field. The background and specific training of these persons will indicate to some extent their potential role in the regulatory program. These trainees, of course, could be used initially to evaluate and inspect those applications of radioactive materials which are considered routine or more standardized from the radiation safety standpoint, for example, inspection of industrial gauges, small research programs, and diagnostic medical programs. As they gain experience and competence in the field, the trainees could be used progressively to deal with the more complex or difficult types of radioactive material applications. It is desirable that such trainees have a bachelor's degree or equivalent in the physical or life sciences and specific training in radiation protection. In determining the requirement for academic training of individuals in all of the foregoing categories, proper consideration should be given to equivalent competency which has been gained by appropriate technical and radiation protection experience.

It is recognized that radioactive materials and their uses are so varied that the evaluation and inspection functions will require skills and experience in the different disciplines which will not always reside in one person. The regulatory authority should have the composite of such skills either in its employ or at its command, not only for routine functions, but also for emergency cases.

a. *Radioactive Materials Program.*

i. *Personnel.*

There are approximately 890 NRC specific licenses in the State of Illinois. Under the proposed agreement, the State would assume responsibility for about 800 of these licenses. The Department's Division of Nuclear Materials is currently staffed with 13 professional persons and has one vacancy. Including the Manager of the Office of Radiation Safety (in which the Division of Nuclear Materials is located), four individuals will be assigned management and supervisory duties in the materials program. Exclusive of the low-level radioactive waste regulatory program and the regulatory oversight for a uranium conversion plant (discussed below) we estimate the State will need to apply between 7.9 to 12 staff-years of professional effort to the radioactive materials program. Illinois will apply about 14.4 staff-years to this program. The personnel together with summaries of their assigned responsibilities, training and experience are as follows (except as noted percentage of time devoted to the radioactive materials program will be 90% or more):

Terry R. Lash: Director, Illinois Department of Nuclear Safety, Governor's Designated Liaison to NRC. (10% of time devoted to materials program).

Training:

Ph.D.—Yale University (1970)
—Molecular Biophysics and Biochemistry, Yale University
M.Ph.—Molecular Biophysics and Chemistry
—Yale University (1967)
B.A.—Reed College (1965)
—Physics Major

Experience:

1984—Present: Director, Illinois Department of Nuclear Safety
1983—1984: Deputy Director, Illinois Department of Nuclear Safety
1983—1983: Independent Consultant

1982—1983: Science Director, Scientists' Institute for Public Information, New York City
1981—1982: Independent Consultant
1980—1981: Director, Science and Public Policy, The Keystone Center, Dillon, Colorado
1972—1980: Staff Scientist, Natural Resources Defense Council, San Francisco, California
1970—1972: Postdoctoral Research Fellow, Yale University Medical School, New Haven, Connecticut

Paul D. Eastvold: Manager, Office of Radiation Safety. Responsible for managing the programs, functions and activities of four technical divisions: Nuclear Materials, Electronic Products, Radiologic Technologist Accreditation and Medical Physics (33% of time devoted to materials program).

Training:

B.S.—University of Iowa (1970)
—General Science/Nuclear Medicine Technology
"Specific Topics in Licensing: Contingency Plans," US NRC, San Francisco, CA (1986)
"Impact of Proposed Changes to 10 CFR 20," Technical Management Services, Inc., Gaithersburg, Maryland (1986)
"Large Irradiation Radiation Safety Workshop," US NRC, New Jersey (1985)
"Incinertion of Radioactive Material Workshop," University of California (1984)
"Transportation of Radioactive Materials," US NRC, Illinois (1983)
"Recognition, Evaluation, and Control of Non-Ionizing Radiation," US Dept. of Labor, Illinois (1981)
"Inspection Procedures," US NRC, Illinois (1980)
"Safety Aspects of Industrial Radiography," US NRC, Louisiana (1980)
"Quality Assurance in Nuclear Medicine," US FDA, Maryland (1979)
"Health Physics in Radiation Accidents," Oak Ridge Associated Universities, Tennessee (1979)
"Laser Safety Seminar," US Food and Drug Admin., Wisconsin (1979)
"Radiological Response Operations Training Course," US NRC, Nevada (1978)
"Radiopharmacies—Problems and Solutions," Univ. of Southern California, California (1978)
"Radiological Emergency Response Planning Course," US NRC, Minnesota (1977)
"Health Physics and Radiation Protection," US NRC, Tennessee (1977)
"Fundamentals of Non-Ionizing Radiation Protection," U.S. Food and Drug Administration, Maryland (1973)
"Licensing Course—Byproduct, Source, and Special Nuclear Materials," US NRC, Maryland (1972)

Experience:

1980—Present: Illinois Department of Nuclear Safety
1971—1980: Illinois Department of Public Health, Division of Radiological Health
1970—1971: University of Iowa Radiation Protection Office

Michael Ewan: Chief, Division of Nuclear Materials. Manages the Division including supervision of staff and establishment of program objectives.

Training:

M.A.—Sangamon State University , IL (1980)
—Business Administration
B.S.—University of Iowa (1971)
—General Science/Nuclear Medicine Technology
"Uranium and Thorium: A Perspective on the Hazard," Radiation Safety Associates, Inc., Springfield, Illinois (1986)
"Special Topics in Licensing: Contingency Plans," US NRC, San Francisco, CA (1986)
"Incineration Basics," Univ. of California, Irvine, Charlotte, N.C. (1986)
"Basic Supervision," Keye Productivity Center, Springield, Illinois (1986)
"Impact of Proposed Changes to 10 CFR 20," Technical Management Services, Inc., Gaithersburg, Maryland (1986)
"Transportation of Radioactive Materials," US DOE, Illinois (1985)
"Technical Writing," Richmond Staff Development, Illinois (1985)
"Health Physics and Radiation Protection," Oak Ridge Associated Universities, Tennessee (1985)
"Gas and Oil Well Logging," US NRC, Texas (1984)
"Licensing Practices and Procedures," US NRC, Maryland (1984)
"Transportation of Radioactive Materials," US NRC, Illinois (1983)
"Current Applications of Nuclear Imaging," Siemens Gammasonics, Inc., Illinois (1981)
"Nuclear Cardiology," Univ. of Wisconsin, Wisconsin (1980)

Experience:

1982–Present: Illinois Department of Nuclear Safety
1973–1982: St. John's Hospital, Springfield, Illinois
1981: Lincoln Land Community College, Springfield, Illinois (Instructor)
1973–1977: Nuclear Medicine Institute, Ohio (Affiliate Instructor)
1971–1973: Wesley Medical Center, Kansas

Jou-Guong (Joe) Hwong: Licensing Section Head, Division of Nuclear Materials. Responsible for supervising the review of radioactive material license applications.

Training:

Ph.D.—Purdue University (1985)
—Health Physics
MSPH—University of South Carolina (1981)
—Industrial Hygiene and Environmental Quality Assessment
B.S.—National Taiwan University (1978)
—Pharmacy
"Uranium and Thorium: A Perspective on the Hazard," Radiation Safety Associates, Inc., Springfield, Illinois (1986)
"External Dosimetry," Health Physics Society, State College, Pennsylvania (1986)
"Introduction to Licensing Practices and Procedures," US NRC, Bethesda, Maryland (1986)
"Medical Uses of Radionuclides for State Regulatory Personnel," US NRC. Oak Ridge Tennessee (1986)

Experience:

1986–Present: Illinois Department of Nuclear Safety
1983–1986: Purdue University, Graduate Teaching Instructor, School of Pharmacy, Nursing and Health Sciences
1980–1982: Purdue University, Graduate Research Instructor, School of Health Sciences
1980–1981: University of South Carolina, Graduate Teaching Assistant, Department of Environmental Health Sciences
1980–1980: University of South Carolina, Graduate Research Assistant, Department of Environmental Health Sciences
1978–1979: The Church of Taipei, Minister, Taipei, Taiwan
1978–1979: Yun-Fu Pharmaceutical Ltd., Pharmacist, Taipei, Taiwan
1977–1977: National Taiwan University, Hospital, Pharmacy Intern, Taipei, Taiwan
1977–1977: Pfizer Pharmaceutical Company, Assistant Pharmacist (Intern), Tan-Shui, Taiwan ROC

Y. David La Touche: Radioactive Materials License Reviewer, Division of Nuclear Materials. Performs reviews of radioactive material license applications and performs inspections of radioactive materials licensees.

Training:

Ph.D.—Oregon State University (1981)
—Radiation Biology
M.S.—Oregon State University (1978)
—Biological Science

B.S.—Concordia University, Montreal, Canada (1976)
—Biology
"Special Topics in Licensing: Contingency Plans," US NRC, San Francisco, CA (1986)
"Health Physics and Radiation Protection," US NRC, Oak Ridge, Tennessee (1986)
"Uranium and Thorium: A Perspective on the Hazard," Radiation Safety Associates, Inc., Springfield, Illinois (1986)
"Introduction to Licensing Practices and Procedures," US NRC, Bethesda, Maryland (1986)

Experience:

1986—Present: Illinois Department of Nuclear Safety
1982–1986: Oregon State University, Corvallis, Oregon Research Associate
1979–1981: Oregon State University, Corvallis, Oregon Graduate Research Associate
1977–1979: Oregon State University, Corvallis, Oregon Graduate, Teaching Assistant

Yu-Ann Stephen Hsu: Radioactive Materials License Reviewer, Division of Nuclear Materials. Performs reviews of radioactive material license applications and performs inspections of radioactive materials licensees.

Training:

M.S.—Old Dominion University (1982)
—Norfolk, Virginia
—Physics
B.S.—Tam Kang college of Arts and Sciences
—Physics
"Introduction to Air Toxics," US EPA, Kansas City, Missouri (1985)
"Health Physics and Radiation Protection," US NRC, Oak Ridge, Tennessee (1984)
"Safety Aspects of Industrial Radiography for State Regulatory Personnel," US NRC, Baton Rouge, Louisiana (1984)
"Cobalt Teletherapy Calibration," US NRC, Houston, Texas (1984)
"Medical use of Radionuclides for State Regulatory Personnel," US NRC, Tennessee (1984)
"Gas and Oil Well-Logging for State Regulatory Personnel," US NRC, (1983)
"Hazardous Waste Management," Old Dominion University, Virginia Beach, Virginia (1982)
"Inspection Procedures," US NRC, Atlanta, Georgia (1986)

Experience:

1986—Present Illinois Department of Nuclear Safety
1985—1986: Iowa Electric Light & Power Company, Cedar Rapids, Iowa, Radiological Engineer
1982—1985: Kansas Department of Health and Environment, Topeka, Kansas, Radiation Control Inspector
1981—1982: Eastern Virginia Medical Authority, Norfolk, Virginia, Assistant Radiation Safety Officer
1980—1981: Eastern Virginia Medical Authority, Norfolk, Virginia, Radiation Safety Research Technician
1979—1980: Old Dominion University Norfolk, Virginia, Research Assistant

Steve Meiners: Radioactive Materials License Reviewer, Division of Nuclear Materials. Performs reviews of radioactive material license applications and performs inspections of radioactive materials licensees.

Training:

M.S.—University of Arkansas for Medical Sciences (1985)
—Radiation Health Physics
B.A.—Harding University (1981)
—Biology
"Medical Uses of Radionuclides for State Regulatory Personnel," US NRC, Oak Ridge, Tennessee (1986)

Experience:

1985—1985: Texas Tech University, Radiation Safety Officer
1984—1984: University of Arkansas, Graduate Assistant
1981—1984: University of Ankansas, Laboratory Technologist
1981—1983: University of Arkansas, Aquatic Ecologist
1980—1981: Harding University, Teaching Assistant

Sheryl O. Soderdahl: Support Services Section Head, Division of Nuclear Materials. Responsible for the Division's data processing system and registration program, assists in license reviews and inspections, assist in review and revision of regulations and standards and serves as the Department's Radiation Safety Officer.

Training:

B.S.—Purdue University, Indiana (1980) Health Physics
"Inspection Procedures," US NRC, Atlanta, Georgia (1985)
"Writing for Results," Sangamon State University, Springfield, Illinois (1985)
"Introduction to Licensing Practices and Procedures," US NRC, Washington, D.C. (1985)
"Environmental Health Practices," University of Massachusetts, Amherst, Massachusetts (1982)

Experience:

1985—Present: Illinois Department of Nuclear Safety
1980—1985: University of Massachusetts, Department of Environmental Health and Safety, Amherst, Massachusetts, Staff Health Physicist
1979—1979: Fermi National Accelerator Laboratory, Proton Department, Batavia, Illinois

Bruce J. Sonza: Inspection and Enforcement Section Head, Division of Nuclear Materials. Manages the inspection and enforcement program.

Trainin:

M.S.—Texas A & M University (1985)
—Nuclear Engineering (Health Physics)
B.S.—University of Virginia (1979)
—Nuclear Engineering
"Uranium and Thorium: A Perspective on the Hazard," Radiation Safety Associated, Springfield, Illinois (1986)
"Inspection Procedure," US NRC, Atlanta, Georgia (1986)
"Gas & Oil Well Logging for Regulatory Personnel," (Accepted for attendance at November, 1986 course, Houston, Texas)

Experience:

1986—Present: Illinois Department of Nuclear Safety
1983—1986: Texas A & M University, Health Physicist, College Station, Texas
1980—1983: Carolina Power & Light Company, Radiation Control Specialist, Hartsville, South Carolina

George E. Merrihew: Radioactive Materials License Inspector. Performs reviews of radioactive materials license applications and performs inspections of radioactive materials licensees.

Training:

M.A.—Sangamon State University (1972)
—Biology/Psychology
B.A.—Sangamon State University (1971)
—Biology/Psychology
A.A.—Springfield, College in Illinois (1969)
—General Secience
"Radiological Emergency Response Operation," FEMA, Las Vegas, Nevada (1986)
"Medical Uses of Radionuclides," US NRC, Oak Ridge, Tennessee (1986)
"Gas and Well Logging for Regulatory Personnel," US NRC, Houston, Texas (1985)
"Radioactive Material Training Course: Hazardous Material Regulations of the United States Department of Transportation," Chicago, Illinois (1985)
"Safety Aspects of Industrial Radiography," US NRC, Baton Rouge, Louisiana (1985)
"Introduction to Licensing Practices and Procedures," US NRC, Bethesda, Maryland (1984)
"Inspection Procedures," US NRC, Atlanta, Georgia (1984)
"Health Physics and Radiation Protection," US NRC, Oak Ridge, Tennessee (1984)

"Radiation Protection Technology," Rockwell International, Energy Systems Group (1983)
"Transportation of Nuclear Materials," US NRC Illinois (1983)
"Executive Development Academy," Illinois Department of Personnel, Illinois (1981)
"ANS Cobol Course," (1980); "Basic Systems Analysis: (1980); "General Introduction to Statistical Package for the Social Sciences" (1979): "DP Concepts" (1979); "IMS Environment Course" (1979); "Easytrieve/IMS Class" (1979); "Basics in Easytrieve," State of Illinois Data Processing Training Center (1977)
"Air Pollution Control Orientation," US EPA (1978)
"Community Hygiene," US HEW, Georgia (1978)
University of Illinois, School of Clinical Medicine, (1974)
University of Illinois, School of Basic Medical Sciences (1973)

Experience:

1983–Present: Illinois Department of Nuclear Safety
1974–1983: Illinois Department of Public Health, Division of Engineering
1971–1972: Sangamon State University, Department of Biology, Graduate Assistant
1965–1967: Memorial Medical Center, Clinical Laboratory

Lori Kim Podolak: Radioactive Materials License Inspector. Performs reviews of radioactive materials license applications and performs inspections of radioactive materials licensees.

Training:

M.S.—University of Lowell (1986)
—Radiological Sciences
B.S.—Kentucky Wesleyan College (1984)
—Physics

Experience:

1986–Present: Illinois Department of Nuclear Safety
1984–1986: University of Lowell
1985: Brookhaven National Laboratory
1983: Oak Ridge National Laboratory

Andrew S. Gulczynski: Chicago Inspection and Enforcement Section Head, Division of Nuclear Materials. Supervises Chicago office materials license inspectors.

Training:

B.S—Northeastern Illinois University (1981)
—Biology
"Five Week Health Physics and Radiation Protection Course," US NRC, Oak Ridge, Tennessee (1986)
"Internal Dose Assessment," Technical Management Services, Inc., Illinois (1985)
"Transportation of Radioactive Materials," US DOE, Chicago, Illinois (1985)
"Medical Uses of Radionuclides for State Regulatory Personnel," US NRC, Oak Ridge, Tennessee (1984)
"Safety Aspects of Industrial Radiography for State Regulatory Personnel," US NRC, Baton Rouge, Louisiana (1983)
"Inspection Procedures for State Regulatory Personnel," US NRC, Atlanta, Georgia (1983)
"Radiological Emergency Response Operations," FEMA, Las Vegas, Nevada (1983)

Experience:

1985–Present: Illinois Department of Nuclear Safety
1982–1985: Kansas Department of Health and Environment, Bureau of Radiation Control, Topeka, Kansas,
1981–1982: Argonne National Laboratory, Argonne, Illinois
1977–1981: Northeastern Illinois University, Chicago, Illinois

John D. Papendorf: Radiocative Materials License Inspector. Performs reviews of radiactive materials license applications and performs inspections of radioactive materials licensees.

Training:

N.M.T.—Oak Park Hospital (1975)
—Nuclear Medicine Technologist Certification
R.T.—Hines V.A. Hospital (1972)
—X-Ray Technologist Certification
A.S.—Central YMCA College (1972)
"Inspection of Transportation of Radioactive Materials," U.S. NRC, Glen Ellyn, Illinois (1985)
"Nuclear Transportation for State Regulatory Personnel," US NRC, Columbia South Carolina (1984)
"Hazardous Materials Training Course," U.S. DOE, Chicago, Illinois (1983)
"Radiation Safety," Northwestern University, Evanston, Illinois (1982)
"Radiation Therapy Workshop, Medical Linear Accelerators," US Public Health Service, Chicago, Illinois (1981)
"Acceptance Testing of Radiological Imaging Equipment," American Association of Physicists in Medicine, American College of Radiology and Society for Radiological Engineering, Chicago, Illinois (1981)
"Safety Aspects of Industrial Radiography for State Programs," US NRC, Baton Rouge, Louisiana (1981)
"Inspection Procedures," US NRC, Glen Ellyn, Illinois (1980)
"Quality Assurance in Nuclear Medicine Departments," US Food and Drug Administration, Rockville, Maryland (1979)
"Radiological Emergency Response Operations Training Course for State and Local Government Emergency Preparedness Personnel," FEMA, Las Vegas, Nevada (1979)
"Special Procedures on CT Scanners" US Public Health service, Chicago, Illinois (1976)
"Radiological Workshop," US Public Health Service, Chicago, Illinois (1976)

Experience:

1980–Present: Illinois Department of Nuclear Safety
1976–1980: Illinois Department of Public Health, Division of Radiological Health
1973–1976: Oak Park Hospital, Nuclear Medicine Technologist, Oak Park, Illinois
1972–1973: Oak Park Hospital, X-Ray Technologist, Oak Park, Illinois

Robin Gehrhardt Bauer: Radioactive Materials License Inspector. Performs reviews of radioactive materials license applications and performs inspections of radioactive materials licensees.

Training:

M.S.—Emory University (1985)
—Radiological Physics
B.S.—University of Miami (1983)
—Biology
"Health Physics and Radiation Protection," US NRC, Oak Ridge, Tennessee (1986)

Experience:

1986–Present: Illinois Department of Nuclear Safety
1985–1985: Georgia Baptist Hospital, Internship, Medical Physics, Atlanta, Georgia
1985–1985: Emory University, X-Ray, Nuclear Medicine, Calibration, Atlanta, Georgia
19893–1984: Loyola University, Research Technician, Maywood, Illinois

Joanne B. Kark: Radioactive Materials License Inspector. Performs reviews of radioactive materials license applications and performs inspections of radioactive materials licensees.

Training:

Graduate work toward M.S.—Colorado State University (1985)
—University of Tennessee (1982)
—Health Physics
B.S.—Villanova University (1975)
—Biology
Certificate—St. Joseph's Hospital and Medical Center School of Nuclear Medicine Technology Paterson, New Jersey (1977)
"Inspection Procedures," US NRC, Atlanta, Georgia (1986)

Experience:

1986–Present: Illinois Department of Nuclear Safety
1981–1984: Oak Ridge National Laboratory, Health and Safety Research Division, Senior Laboratory Technician
1979–1981: Oak Ridge National Laboratory, Biology Division, Biological Technician
1977–1979: Radiology Associates, Albert Einstein Medical Center, No. Division, Nuclear Medicine Technologist.
1976–1977: SpectroChem Laboratories, Inc., Analytical Chemistry Technician

John W. Cooper: Manager, Office of Environmental Safety. Provides technical support to the Division of Nuclear Materials on an as needed basis.

Training:

Ph.D—University of Iowa (1971)
—Radiation Biology
M.S.—University of Iowa (1966)
—Pharmacy
B.S.—Drake University (1960)
—Pharmacy
"Industrial Ventilation Systems," OSHA Training Institute, Illinois (1983)
"Respirator Safety for CSHO's," OSHA Training Institute, Illinois (1982)

Experience:

1981–Present: Illinois Department of Nuclear Safety
1975–1981: U.S. Nuclear Regulatory Commission, Region III, Inspector and license reviewer
1971–1975: Allegheny General Medical Center, Radiation Biology Laboratory
1964–1971: University of Iowa, Radiation research and teaching

Apparao Devata: Chief, Division of Medical Physics. Provides technical support to the Division of Nuclear Materials on an as needed basis.

Training:

Ph.D.—University of New Orleans (1975)—Physics
M.S.—University of New Orleans (1972)—Physics
MSc.—Andhra University (1968)—Applied Physics
BSc.—Andhra Loyola College (1965)—Mathematics

Experience:

1985–Present: Illinois Department of Nuclear Safety
1985: Medical Physics Consultant
1983–1985: St. James Hospital Medical Center, Chicago Heights, Illinois, Medical physicist
1975–1983: St. Joseph's Hospital, Elgin, Illinois, Medical physicist
1975: Mt. Sinai Hospital, Chicago, Illinois, Medical physicist
VA Hines Hospital, Hines, Illinois, Medical physicist
1969–1975: University of New Orleans Research and teaching

Reference: Illinois Program Statement, Section III, "Implementation of the Agreement State Program for Materials Licenses," Section IV.A.3, "Staff Requirements" and Appendix 5, "Current Agreement State Staff Positions: Byproduct Material, Source Material and Special Nuclear Materials in Quantities Not Sufficient to Form a Critical Mass."

b. Regulatory Oversight of Uranium Conversion Plant

i. *Personnel*

There are two plants in the United States which convert natural uranium oxide (yellowcake) to uranium hexafluoride. These activities are conducted pursuant to source materials licenses issued by the NRC. Under the proposed Agreement, the source material license for the Allied Chemical uranium conversion facility located in Metropolis will be transferred to Illinois.* The Office of Radiation Safety, Division of Nuclear Materials will be responsible for regulatory oversight with technical support from the Offices of Environmental Safety and Nuclear Facility Safety. Overall IDNS will commit 0.6 full-time equivalent professionals effort to this program. Key staff assigned to this program together with summaries of their duties and training and experience are:

(a) Staff previously identified in the materials program (Section 20.a)

Jou-Guang (Joe) Hwang, Y. David La Touche, Bruce J. Sanza, John W. Cooper.

(b) Other IDNS staff:

Lih-Ching Chu: Chief, Division of Radiochemistry Laboratories, Office of Environmental Safety. Supervises analytical support for all Department programs. Provides technical support in radiochemistry and radioanalysis.

Training:

Ph.D—Washington University (1981)—Chemistry
M.A.—Washington University (1981)—Chemistry
M.S.—East Texas State University (1976)—Chemistry
B.S.—Tamkang College of Arts and Sciences (1971)—Chemistry
"Vax Applications Manager," Canberra Industries, Inc., CT, 1984
"Introduction to S-90-VMS Apogee System Operations," Canberra Industries, Inc., CT, 1984

Experience:

1984–Present: Illinois Department of Nuclear Safety
1981–1984: Illinois Department of Energy and Natural Resources
1976–1981: Washington University, St. Louis, Missouri
1974–1976: East Texas State University, Commerce, Texas
1973–1974: Young-Ho Middle School, Young-Ho, Taiwan, ROC
1971–1973: Military Service, Taiwan, ROC

David A. Filler: Assistance Chief, Division of Radiochemistry Laboratories, Office of Environmental Safety. Provides radiochemistry support.

Training:

Ph.D.—University of Michigan, (1976)—Biochemistry
M.S.—University of Michigan, (1973)—Biochemistry
B.S.—Purdue University (1969)—Chemistry
"Vax Applications Manager," Canberra Industries, Inc., Connecticut (1984)
"Introduction to S-90-VMS Apogee System Operations," Canberra Industries, Inc., Connecticut (1984)
"Auditor Training," Gilbert/Commonweath (1984)
"Radiological Monitor," Indiana Department of Civil Defense and Emergency Management (1983)
"Radiochemistry for State Regulatory Personnel," NRC (1983)
"Radiological Monitoring, Sampling and Analysis of Nuclear Facilities," US DOE (1983)
"Radiological Emergency Response Training for State Government Emergency Preparedness Personnel," FEMA/US DOE (1982)

Experience:

1984–Present: Illinois Department of Nuclear Safety
1981–1984: Indiana State Board of Health, Radiochemistry Lab, Indianapolis, Indiana
1977–1981: Indiana University Medical Center, Indianapolis, Indiana
1976–1977: St. Jude Children's Research Hospital, Memphis, Tennessee

James F. Scheweitzer: Health Physicist, Office of Environmental Safety. Serves as a specialist in environmental monitoring and will provide technical support and guidance in this area.

Training:

Ph.D.—Purdue University (1985)—Environmental Toxicology
M.S.—Purdue University (1981)—Health Physics
B.S.—Randolph-Macon College (1976)—Biology
Environmental Laws and Compliance Course
Short Course: Uranium and Thorium: A Perspective on the Hazard (1986)

Experience:

1986–Present: Illinois Department of Nuclear Safety

1985–1986: Purdue University, Office of Radiological and Chemical Control
1980–1980: Purdue University, Office of Radiological and Chemical Control

Michael H. Momeni: Chief, Low-Level Waste Siting Section, Office of Environmental Safety. Provides radiological and environmental support for the Office of Environmental Safety and will provide technical support for Allied Chemical regulatory actions.

Training:

Ph.D—University of Iowa—Biophysics/Radiation Biology
M.S.—University of Iowa—Nuclear Physics
B.A.—Luther College—Physics-Mathematics

Experience:

1986–Present: Illinois Department of Nuclear Safety
1985–1986: Scientist, Oak Ridge Associated Universities, Oak Ridge, Tennessee
1983–1985: Professor-Director of Health Physics Program, San Diego State University, San Diego, California
1975–1983: Senior Scientist, Argonne National Laboratory, Argonne, Illinois
1970–1975: Biophysicist-Lecturer, The University of California, Davis, California
1962–1963: Science Teacher, Urbana Consolidated Schools, Iowa

Gary Wright: Manager, Office of Nuclear Facility Safety. Provides technical assistance concerning engineering principles and emergency planning and response.

Tranining:

—Sangamon State University (1974)
—Degree approx. half complete in Public Administration
M.S.—University of Illinois (1965)—Nuclear Engineering
B.S.—Millikin University (1964)—Physics/Mathematics
"Management Education Workshop," Ill. Dept. of Personnel, Champaign (1978)
"International Symposium on Migration of Tritium in the Environment," International Atomic Energy Agency, California (1978)
"Radiological Emergency Response Operations," US NRC, Nevada (1977)
"Workshop on Collective Bargaining for Public Employees," Ill. Dept. of Personnel (1976)
"Administrative and Organizational Behavior," Ill. Dept. of Public Health (1975)
"Professional Engineering Review," Univ. of Ill. (1974)
"Response of Structures to External Forces, i.e., Earthquakes, Tornados, etc.," Penn. State Univ. (1968)

Experience:

1980–Present: Illinois Department of Nuclear Safety
1973–1980: Illinois Department of Public Health
1967–1973: Sangamo-Weston Electronics Company, Springfield, Illinois
1965–1967: Westinghouse Electric Company, Forrest Hills, Pennsylvania

Reference: Illinois Program Statement, Section III.D." Allied Chemical Uranium Conversion Facility," Appendix 5, and Appendix 9, "Current Agreement State Staff Positions: Low-Level Radioactive Waste Management Program, Office of Environmental Safety."

c. Licensing and Regulation of Permanent Disposal of Low-Level Radioactive Waste

i. Personnel

The Office of Environmental Safety has responsibility for the low-level waste (LLW) management regulatory program which includes the Sheffield site and the regional waste disposal facility. The assessment of the regulatory framework is included under Criterion 9, "Radioactive Waste Disposal." The LLW and transportation management program is staffed by 13 technical staff members. The Manager of the Office of Environmental Safety will provide overall supevision and management and the Chief of the Office's Division of Nuclear Chemistry will provide laboratory support. Technical support will also be available from the Division of Nuclear Materials. These personnel and summaries of their duties are:

(a) Staff previously identified in the materials or uranium conversion plant regulatory oversight programs (Section 20 a and b):

Michael H. Momeni, Lih-Ching Chu, John W. Cooper, James F. Schweitzer.

(b) Other IDNS Staff:

Robert A. Lommler: Chief, Division of Waste and Transportation. Has responsibilities for implementing the Illinois LLW management act, supervises staff in the LLW program and manages the spent nuclear fuel and LLW shipment inspection program.

Training:

B.S.—Kent State University (1971)—Chemistry
"10 CFR 61," US NRC, Springfield, Illinois (1986)
"Incinerator Basics," Univ. of California, Charlotte, N.C. (1986)
"Radioactive Material Transportation Workshop," US DOE, Chicago, Illinois (1985)
"10 CFR 61 Compliance," TMS, Inc., Washington, D.C. (1984)
"Radiological Protection Officer Course," U.S. Army (1978)
"Chemical Officer Advanced Course," U.S. Army (1978–1979)
"Transportation of Hazardous Materials by Air," US DOT (1972)
"Chemical Officer Basic Course," U.S. Army (1971)

Experience:

1984–Present: Illinois Department of Nuclear Safety
1979–1983: U.S. Army, Radiation Safety Officer, Ft. Riley, Kansas
1975–1978: U.S. Army, Mannehim, West Germany
1971–1975: U.S. Army, Edgewood, Maryland

Michael Klebe: Nuclear Safety Engineer. Serves as technical resource on LLW management environmental problems, decomissioning and disposal facility siting.

Training:

M.S.—Montana College of Mineral Science and Technology (1982)—Mining Engineering
B.S.—Montana College of Mineral Science and Technology (1980)—Mining Engineering

Experience:

1986–Present: Illinois Department of Nuclear Safety
1982–1986: Shell Mining Company, Houston, Texas and Elkhart, Illinois, Mining Engineer

David Flynn: Geologist. Evaluates geological and hydrologic factors relating to LLW management.

Training:

B.S.—Southern Illinois University (1979)—Geology
"Uranium and Thorium: A Perspective on the Hazard," Radiation Safety Associates, Springfield, Illinois (1986)
"Corrective Actions for Containing and Controlling Ground Water Contamination," National Water Well Association, Columbus, Ohio (1986)
"A Standardized System for Evaluation of Groundwater Pollution Potential Using Hydrogeologic Setting," National Water Well Association, Denver, Colorado (1986)
"Groundwater Pollution and Hydrology," Princeton & Associates, Miami, Florida (1986)
"Engineering and Design of Waste Disposal Systems," Civil Engineering Department, Colorado State University, Fort Collins, Colorado (1985)
"Groundwater Monitoring Workshop," Illinois Department of Energy and Natural Resources, Champaign, Illinois (1984)

"Radiological Emergency Response Training for State and Local Government Emergency Preparedness Personnel," FEMA, Nevada Test Site (1983)

Experience:

1983–Present: Illinois Department of Nuclear Safety
1981–1983: Mine Geologist, Atlas Minerals Corporation, Moab, Utah
1980–1981: Associate Mine Geologist, Rancher's Exploration & Development Corporation, Albuquerque, New Mexico
1979–1980: Junior Geologist, Rancher's Exploration & Development Corporation, Albuquerque, New Mexico

Shannon M. Flannigan: Geologist. Reviews, interprets and evaluates geologic hydrologic, physical and environmental data related to environmental impact, design, location, construction and decommissioning of facilities.

Training:

B.S.–Drake University (1978) Geology
A.A.–Springfield College in Illinois (1976)–Business
"Radiological Emergency Response," FEMA, Nevada (1986)
"Groundwater Contaminant Transport Modeling," Princeton University, Princeton, New Jersey (1986)
"A standardized System for Evaluating Groundwater Pollution Using Hydrogeologic Setting," Denver, Colorado (1986)
"Groundwater Pollution & Hydrology," Princeton Associates, Princeton, New Jersey (1986)
"Borehole Geophysics Techniques for Solving Groundwater Problems," National Water Well Association, Denver, Colorado (1986)
"Soil Mechanics and Foundations," Lincoln Land Community College, Springfield, Illinois (1981)
"Environmental Risk Assessment," Sagamon State University, Springfield, Illinois (1985)
"Recognition, Evaluation, and Control of Ionizing Radiation," OSHA Training Institute, Illinois (1985)

Experience:

1985–Present: Illinois Department of Nuclear Safety
1984–1985: Hanson Engineers, Inc. Springfield, Illinois
1981–1984: Veesay Geoservice, Inc. Denver, Colorado
1978–1981: Hanson Engineers, Inc. Springfield, Illinois.

George T. FitzGerald: Nuclear Safety Engineer I. Principally responsible for geology.

Training:

B.A.–Humboldt State University, California (1968)–Geology
Post-Graduate Work: Education, Humboldt State University, Economic Evaluation, Colorado School of Mines, Golden, Colorado

Experience:

1986–Present: Illinois Department of Nuclear Safety
1984–1986: Boliden Minerals, Inc., Silver City, New Mexico
1980–1984: Minatome Corporation, Denver, Colorado
1975–1980: SOHIO, Seboyeta, New Mexico
1968–1975: Kerr McGee Corporation Grants, New Mexico

Dana M. Willaford: Nuclear Safety Supervisor. Responsible for overall operation of waste generator registration and inspection program.

Training:

M.P.A.–Sangamon State University (1983)
B.A.–University of Illinois (1981)–Political Science, Math/Physics Minor
"Radioactive Materials Transportation Course," US DOE, Kansas City, Missouri (1986)
"Uranium and Thorium: A Perspective on the Hazard," Radiation Safety Associates, Inc., Springfield, Illinois (1986)
"Recognition, Evaluation, and Control of Ionizing Radiation," OSHA, Des Plaines, Illinois (1985)
"Environmental Laws and Regulations Compliance Course," government institutes, Washington, D.C. (1985)
"Radiological Emergency Response Operations Course," FEMA, Nevada (1983)

Experience:

1983–Present: Illinois Department of Nuclear Safety
1981–1983: Illinois Department of Nuclear Safety/Sangamon State University (Graduate Public Service Intern)
1977–1981: University of Illinois (Student Worker)

Tim Runyon: Nuclear Safety Inspector. Assists the Chief, Waste & Transportation Management.

Training:

A.S.–Illinois Central College–Radiologic Technology
"Hazardous Materials Transportation Course," ISP, Illinois State Policy Academy, Springfield, Illinois (1985)
"Review of USDOT Regulations," US NRC, Hanford, Washington (1985)
"Evaluation and Control of Ionizing Radiation," OSHA, Argonne National Laboratory (1981)
"Emergency Response for Radiological Accidents," REECO, Las Vegas, Nevada (1981)

Experience:

1985–Present: Illinois Department of Nuclear Safety, Office of Environmental Safety
1979–1985: Illinois Department of Nuclear Safety, Office of Radiation Safety

Stephen B. Shafer: Nuclear Safety Inspector II. Performs inspections and health physics Surveys.

Training:

Graduate Classes (non-degree) University of Illinois (1984)
B.S.–Western Illinois University (1983)–Geophysics
Hazardous Materials Transportation Enforcement Course, Illinois State Police, Springfield, Illinois (1986)
Radiological Emergency Response Operations Course, FEMA, Nevada (1986)
Short Course: Uranium and Thorium: A Perspective on the Hazard (1986)

Experience:

1986–Present: Illinois Department of Nuclear Safety
1984–1984: Illinois Department of Nuclear Safety, Summer Intern

Eric Schwing: Attorney. Provides legal counsel to the Director and technical staff in low-level radioactive waste management.

Training:

Ph.D. Candidate (presently enrolled), Michigan State University, Resource Development/Environmental Toxicology
Doctor of Laws (1982), Thomas M. Cooley Law School
B.A.—Michigan State University (1976)—Chemistry

Experience:

1986–Present: Illinois Department of Nuclear Safety
1978–1986: Michigan Department of Public Health
1973–1978: Michigan State University
1971–1972: William Beaumont Geneal Hospital (U.S. Army)

Gregory P. Crouch: Chief, Division of Radioecology. Directs the Office's environmental surveillance program.

Training:

M.P.H.—University of Minnesota (1986)—Environmental Health
M.S.—Purdue University (1977)—Bionucleonics/Health Physics
B.S.—Purdue University (1975)—Biology
"Seminar on the Transportation of Nuclear Materials," US NRC, Springfield, Illinois (1983)
"Radiological Emergency Response Course," US DOE/FEMA, Nevada Test Site (1983)

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"Inspection Procedures Course," US NRC, Atlanta, Georgia (1982)

Experience:

1986–Present: Illinois Department of Nuclear Safety
1981–1984: Illinois Department of Nuclear Safety
1977–1978: Indiana University Medical Center, Assistant Radiation Safety Officer
1976–1977: Purdue University, Radiological Services, Graduate Assistant

Gregory J. Shott: Nuclear Safety Supervisor. Supervises the Department's—Mobile Radiochemistry Laboratory.

Training:

M.S.—University of Michigan (1985), Fisheries
B.S.—University of New Hampshire (1981), Biology

Experience:

1986–Present: Illinois Department of Nuclear Safety
1985–1986: Environmental & Chemical Sciences, Inc.; Environmental Scientist
1984: Lawrence Livermore National Laboratory; Research Associate, Environmental Intern Program
1981–1984: University of Washington, Laboratory of Radiation Ecology, Research Assistant

David D. Ed: Assistant Manager, Office of Environmental Safety.

Training:

B.S.—University of Illinois, Urbana (1971)
—Chemistry
"Radon Training for State Personnel," US EPA (1986)
"Comprehensive Health Physics," Rockwell International (1985)
"Biological Effects of Ionizing Radiation," Harvard University, School of Public Health (1962)
"Dose Projection, Accident Assessment and Protective Action Decision Making for Radiological Emergency Response," US NRC, FEMA (1980)
"Environmental Radiation Surveillance," Georgia Institute of Technology (1977)
"Radiological Emergency Response Operations Training," US NRC, ERDA (1977)
"Environmental Source Term Modeling," University of Chicago, Argonne National Laboratory (1971)

Experience:

1960–Present: Illinois Department of Nuclear Safety
1973–1980: Illinois Department of Public Health
1972–1973: Illinois Environmental Protection Agency

Abdul Khalique: Nuclear Safety Scientist I. Plans, implements and participates in radioanalytical programs.

Training:

Ph.D.—University of Birmingham, England (1976), Analytical Chemistry
M.S.—University of Karachi, Pakistan (1967), Chemistry
B.S.—University of Karachi, Pakistan (1964)
Quality Control Course, University of Business Administration, University of Karachi, Pakistan 1964)

Experience:

1986–Present Illinois Department of Nuclear Safety
1981–1986: Department of Pharmacology, Southern Illinois University School of Medicine
1975–1980: Glaxo Laboratories (Pakistan), Ltd.
1968–1970: Opal Laboratories, Ltd. (Pakistan)

Melanie A. Hamel: Health Physicist. Functions as a health physics specialist in the environmental monitoring division.

Training:

B.S.—University of Lowell, MA (1977), Health Physics
University of Lowell, MA (1977), Environmental Monitoring and Surveillance, Health Physics Certification Review, Medical Health Physics
"Environmental Law and the Citizen," Sangamon State University, Springfield, Illinois
"Post-Accident Radiation Assessment," Northwestern University, Illinois
"Radiation Protection Instrumentation," Harvard University, Boston, MA
"Radon Training Session for State Personnel," US EPA

Experience:

1982–Present: Illinois Department of Nuclear Safety
1977–1981: Yankee Atomic Electric Company
1975: University of Lowell, Research Reactor Facility, Health Physics Technician

Michael V. Madonia: Nuclear Safety Associate. Performs technical duties concerning nuclear facility monitoring and environmental radiation control.

Training:

B.S.—University of Illinois
—Nuclear Engineering, Radiation Protection and Shielding
"Air Sampling for Radioactive Materials," Oak Ridge Associated Universities; Oak Ridge, Tennessee (1986)
"Personal Computer Applications in Health Physics," TMS, Inc.; Boston, MA (1986)
Nuclear-General Employee Training (NGET), Commonwealth Edison, Chicago, Illinois (1985)
"Radiation Detection and Measurement—Advanced Course," Eberline Analytical, Albuquerque, New Mexico (1985)
"Fundamentals of Ground Water Contamination," Geraghty & Miller, Chicago, Illinois (1985)

Experience:

1985–Present: Illinois Department of Nuclear Safety
1983–1984 (Summers): Illinois Department of Nuclear Safety

Richard Walker: Nuclear Policy Analyst. Performs review and analysis of Federal and State regulations.

Training:

Ph.D—Purdue University (1976)
—Sociology (Research Methods and Statistics)
M.S.—Purdue University (1974)
—Sociology
B.S.—Marietta College (1972)
—Sociology
Environmental Radiation Surveillance, Harvard University, Massachusetts (1985)
"Fundamentals of Radiation Safety," Radiation Safety Associates (1985)

Experience:

1985–Present: Illinois Department of Nuclear Safety
1978–1984: Chairman, Department of Sociology, Blackburn College, Carlinville, Illinois
1976–1978: Department of Sociology Muhlenberg College, Allentown, Pennsylvania

Teresa A. Adams: Nuclear Policy Analyst. Performs staff functions coordinating and assisting with the direction of office programs.

Training:

B.A.—Wellesley College (1981)
—German
Massachusetts Institute of Technology, Department of Urban Studies and Planning (1982–1984)
University of Hanover, West Germany: Department of Planning and Architecture (1981–1982)
Additional coursework in decision analysis, fundamentals of radiation protection, hazardous waste minimization

Experience:

1985–Present: Illinois Department of Nuclear Safety
1984: Parliamentary Research Service; Bonn, West Germany
1982–1984: Worked on a variety of projects dealing with policy development and dispute resolution in environmental issues

Paul E. Seidler: Nuclear Policy Analyst. Responsible for implementing the Illinois public participation plan, also performs as liaison with local government groups.

Experience:

M.A.—University of Chicago (1986)
—Public Policy
B.A.—University of Illinois (1983)
—Political Science, Communications Studies
Urban & Regional Information Systems Association, 1986 Annual Conference (1986)

Experience:

1986–Present: Illinois Department of Nuclear Safety
1985–1986: University of Chicago, Office of the Comptroller
1985–1985: Illinois Bureau of the Budget
1984–1985: Compass Health Plans
1984–1984: U.S. Senator Paul Simon
1982–1982: Creative Research Associates

Reference: Illinois Program Statement, (Section II.C.1.a), "Low-Level Waste Management," (Section II.C.1.b) "Sheffield Low-Level Waste Disposal Facility," Section IV.B, "Low-Level Radioactive Waste Management Program," and Appendices 5 and 9.

21. *Conditions Applicable to Special Nuclear Material, Source Material, and Tritium.* Nothing in the State's regulatory program shall interfere with the duties imposed on the holder of the materials by the NRC, for example, the duty to report to the NRC, on NRC prescribed forms (1) transfers of special nuclear material, source material, and tritium; and (2) periodic inventory data.

The State's regulations do not prohibit or interfere with the duties imposed by the NRC on holders of special nuclear material owned by the U.S. Department of Energy or licensed by NRC, such as the responsibility of licensees to supply to the NRC reports of transfer and inventory.

Reference: 32 ILL. Adm. Code 310.10.

22. *Special Nuclear Material Defined.* The definition of special nuclear material in quantities not sufficient to form a critical mass, as contained in the Illinois regulations, is uniform with the definition in 10 CFR Part 150.

Reference: 32 ILL. Adm. Code 310.20, Definition of Special Nuclear Material in Quantities Not Sufficient to Form a Critical Mass.

Administration

23. *Fair and Impartial Administration.* The Illinois statute and regulations provide for administrative and judicial review of actions taken by the Department of Nuclear Safety.

Reference: 32 Ill. Adm. Code Parts 200, 310.90, 310.110, 330.500, Part 400.

24. *State Agency Designation.* The Illinois Department of Nuclear Safety has been designated as the State's radiation control agency.

References: Enabling statute for Illinois Department of Nuclear Safety, Ill. Rev. Stat. 1985, ch. 127, par. 63b17.

25. *Existing NRC Licenses and Pending Applications.*

The Department has made provision to continue NRC licenses in effect temporarily after the transfer of jurisdiction. Such licenses will expire on the date of expiration specified in the NRC license.

With respect to the radioactive materials covered by the NRC license issued to Kerr-McGee Chemical Corporation for the West Chicago Rare Earth's Facility (Docket No. 40–2061–SC) the NRC staff has determined that the radioactive materials at the facility are most appropriately treated as thorium mill tailings, i.e., byproduct materials are defined in Section 11e.(2) of the Atomic Energy Act of 1954, as amended, whereas the thorium-bearing materials recovered from off-site residential properties and sewer treatment plant in West Chicago and stored at the Kerr-McGee facility are source material. The former material [11e(2) by product material] will not be subject to the Agreement and NRC will retain regulatory jurisdiction. The latter material will be regulated by IDNS when the Agreement becomes effective.

Radiologically contaminated materials in Kress Creek and in Reed-Keppler Part, West Chicago have also been determined by NRC staff to be source material. The former is the subject of an Atomic Safety and Licensing Board (ASLB) Proceeding [Docket 40–2061–SC (ASLBP No 84–502–01–SC)]. In the Kress Creek proceeding, in which Kerr-McGee and the People of the State of Illinois are parties, the ASLB found that the presence of this material in Kress Creek and the West Branch of the DuPage River probably resulted from the conduct of an NRC (and AEC) licensed activity at the West Chicago Rare Earths Facility. The ASLB, however, declined to require clean-up of the Creek and River based upon its analysis of the hazard posed by the radiologically contaminated material. The NRC staff has appealed that decision to the Atomic Safety and Licensing Appeal Board, but a decision on appeal has not yet been issued. Jurisdiction over source material in Kress Creek and the West Branch of the DuPage River will be relinquished to Illinois when the Agreement becomes effective. At that time, the NRC staff will request termination of the ASLB proceeding. Jurisdiction over the source material in Reed-Keppler Park will also be relinquished to Illinois when the Agreement becomes effective.

With respect to the Sheffield low-level radioactive waste disposal site, jurisdiction will be relinquished by the NRC to Illinois when the Agreement becomes effective. At that time, NRC staff will request termination of the ASLB proceeding [Docket 27–39–SC (ASLB No. 78–374–01–OT)].

Reference: 32 ILL. ADM. CODE 330.360.

26. *Relations With Federal Government and Other States.* There should be an interchange of Federal and State information and assistance in connection with the issuance of regulations and licenses or authorizations, inspection of licensees, reporting of incidents and violations, and training and education problems.

The proposed agreement declares that the State will use its best efforts to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation and to assure that the State's program will continue to be compatible with the Commission's program for the regulation of like materials.

Reference: Proposed Agreement between the State of Illinois and the Nuclear Regulatory Commission, Article VI.

27. *Coverage, Amendments, Reciprocity.*

The proposed Illinois agreement provides for the assumption of regulatory authority over the following categories of materials within the State:

(a) Byproduct material, as defined by Section 11e(1) of the Atomic Energy Act, as amended.

(b) Source materials.

(c) Special nuclear materials in quantities not sufficient to form a critical mass.

(d) The land disposal of source, by-product and special nuclear material received from other persons.

Reference: Proposed Agreement, Article I.

Provision has been made by Illinois for the reciprocal recognition of licenses to permit activities within Illinois of persons licensed by other jurisdictions. This reciprocity is like that granted under 10 CFR Part 150.

Reference: 32 ILL. ADM. CODE 330.900.

28. *NRC and Department of Energy Contractors.*

The State's regulations provide that certain NRC and DOE contractors or subcontractors are exempt from the State's requirements for licensing and registration of sources of radiation which such persons receive, possess, use, transfer, or acquire.

Reference: 32 ILL. ADM. CODE 310.30.

III. Staff conclusion

Section 274d of the Atomic Energy Act of 1954, as amended, states;

The Commission shall enter into an agreement under subsection b of this section with any State if:

(1) The Governor of that State certifies that the State has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement, and that the State desires to assume regulatory responsibility for such materials; and

(2) The Commission finds that the State program is in accordance with the requirements of subsection o, and in all other respects compatible with the Commission's program for the regulation of such materials, and that the State program is adequate to protect the public health and safety with respect to the materials covered by the proposed amendment.

The staff has concluded that the State of Illinois meets the requirements of Section 274 of the Act. The State's statutes, regulations, personnel, licensing, inspection and administrative procedures are compatible with those of the Commission and adequate to protect the public health and safety with respect to the materials covered by the proposed agreement. Since the State is not seeking authority over uranium milling activities, subsection o, is not applicable to the proposed Illinois agreement.

Dated at Bethesda, Maryland, this 24th day of December 1986.

For the U.S. Nuclear Regulatory Commission.

G. Wayne Kerr,

Director, Office of State Programs.

Appendix A—Proposed Agreement Between the United States Nuclear Regulatory Commission and the State of Illinois for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant To Section 274 of the Atomic Energy Act of 1954, as Amended

WHEREAS, the United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under Section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7 and 8, and Section 161 of the Act with respect to byproduct materials as defined in Sections 11e.(1) and (2) of the Act, source materials and special nuclear materials in quantities not sufficient to form a critical mass; and,

WHEREAS, the Governor of the State of Illinois is authorized under Illinois Revised Statutes, 1985, ch. 111 ½, par. 216b and ch. 111 ½, par. 241–19 to enter into this Agreement with the Commission; and,

WHEREAS, the Governor of the State of Illinois certified on _____ that the State of Illinois (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by this Agreement, and that the State desires to assume regulatory responsibility for such materials; and,

WHEREAS, the Commission found on _____ that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect the public health and safety; and,

WHEREAS, the State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

WHEREAS, the Commission and the State recognize the desirability of reciprocal recognition of licenses and exemptions from licensing of those materials subject to this Agreement; and,

WHEREAS, this Agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

NOW, THEREFORE, IT IS HEREBY AGREED between the Commission and the Governor of the State, acting in behalf of the State as follows:

Article I

Subject to the exceptions provided in Articles II, IV and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7 and 8, and Section 161 of the Act with respect to the following:

A. Byproduct material as defined in section 11e.(1) of the Act;

B. Source materials;

C. Special nuclear materials in quantities not sufficient to form a critical mass; and,

D. The land disposal of source, byproduct and special nuclear material received from other persons.

Article II

This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with rspect to regulation of:

A. The construction and operation of any production or utilization facility;

B. The export from or import into the United States of byproduct, source or special nuclear material, or of any production or utilization facility;

C. The disposal into the ocean or sea of byproduct, source or special nuclear waste materials as defined in regulations or orders of the Commission;

D. The disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission; and,

E. The extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material.

Article III

This Agreement may be amended, upon application by the State and approval by the Commission, to include the additional area specified in Article II, paragraph E, whereby the State can exert regulatory control over the materials stated therein.

Article IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

Article V

This Agreement shall not affect the authority of the Commission under subsection 161 b. or i. of the Act to issue rules, regulations or orders to protect the common defense and security, to protect restricted data or to guard against the loss or diversion of special nuclear material.

Article VI

The Commission will use its best efforts to cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that State and Commission programs for protection against hazards of radiation will be coordinated and compatible. The State will use its best efforts to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of like materials. The State and the Commission will use their best efforts to keep each other informed of proposed changes in their respective rules and regulations and licensing, inspection and enforcement policies and criteria and to obtain the comments and assistance of the other party thereon.

Article VII

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any Agreement State. Accordingly, the Commission and the State agree to use their best efforts to develop appropriate rules, regulations and procedures by which such reciprocity will be accorded.

Article VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of the State, may terminate or suspend all or part of this Agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect the public health and safety, or (2) the State has not complied with one or more of the requirements of Section 274 of the Act. The Commission may also, pursuant to Section 274j of the Act, temporarily suspend all or part of this Agreement if, in the judgment of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take necessary steps. The Commission shall periodically review this Agreement and actions taken by the State under this Agreement to ensure compliance with Section 274 of the Act.

Article IX

This Agreement shall become effective on _____, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at _____, in triplicate, this _____ day of _____.

For the United States Nuclear Regulatory Commission.

Chairman

For the State of Illinois.

Governor

[FR Doc. 86–29382 Filed 12–30–86; 8:45 am]
BILLING CODE 7590–01–M

PENSION BENEFIT GUARANTY CORPORATION

Exemption From the Bond/Escrow Requirement Relating to the Sale of Assets by an Employer Who Contributes to a Multiemployer Plan; MDS Acquisition Corporation

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of exemption.

SUMMARY: This notice advises interested persons that the Pension Benefit Guaranty Corporation has granted a request from MDS Acquisition Corporation and Culbro Corporation for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974, as amended. A notice of the request for exemption from the requirement was published on November 18, 1986 (51 FR 41713). The effect of this notice is to advise the public of the decision on the exemption request.

ADDRESS: The non-confidential portions of the request for an exemption and the PBGC response to the request are available for public inspection at the PBGC Communications and Public Affairs Department, Suite 7100, at the above address, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: John Carter Foster, Attorney, Corporate Policy and Regulations Department (35100), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; telephone 202–778–8850 (202–778–8859 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

Section 4204 of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980, ("ERISA" or "the Act"), provides that a bona fide arm's-length sale of assets of a contributing employer to an unrelated party will not be considered a withdrawal if three conditions are met. These conditions, enumerated in section 4204(a)(1) (A)–(C), are that—

(A) The purchaser has an obligation to contribute to the plan with respect to the operations for substantially the same number of contribution base units for which the seller was obligated to contribute;

(B) The purchaser obtains a bond or places an amount in escrow, for a period of five plan years after the sale, in an amount equal to the greater of the seller's average required annual contribution to the plan for the three plan years preceding the year in which the sale occurred or the seller's required annual contribution for the plan year preceding the year in which the sale occurred (the amount of the bond or escrow is doubled if the plan is in reorganization in the year in which the sale occurred); and

(C) The contract of sale provides that if the purchaser withdraws from the plan within the first five plans years beginning after the sale and fails to pay any of its liability to the plan, the seller shall be secondarily liable for the liability it (the seller) would have had but for section 4204.

The bond or escrow described above would be paid to the plan if the purchaser withdraws from the plan or fails to make any required contributions to the plan within the first five plan years beginning after the sale.

Additionally, section 4204(b)(1) provides that if a sale of assets is covered by section 4204, the purchaser assumes by operation of law the contribution record of the seller for the plan year in which the sale occurred and the preceding four plan years.

Section 4204(c) of ERISA authorizes the Pension Benefit Guaranty Corporation ("PBGC") to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B) when warranted. The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions. The granting of an exemption or variance

from the bond/escrow requirement does not constitute a finding by the PBGC that a particular transaction satisfies the other requirements of section 4204(a)(1).

Under the PBGC's regulation on variances for sales of assets (29 CFR Part 2643), a request for a variance or waiver of the bond/escrow requirement under any of the tests established in the regulation (§§ 2643.12–2643.14) is to be made to the plan in question. The PBGC will consider waiver requests only when the request is not based on satisfaction of one of the four regulatory tests or when the parties assert the financial information necessary to show satisfaction of one of the regulatory tests is privileged or confidential financial information within the meaning of section 552(b)(4) of the Freedom of Information Act.

Under § 2643.3 of the regulation, the PBGC shall approve a request for a variance or exemption if it determines that approval of the request is warranted, in that it—

(1) Would more effectively or equitably carry out the purposes of Title IV of the Act; and

(2) Would not significantly increase the risk of financial loss to the plan.

Section 4204(c) of ERISA and § 2643.3(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or exempiton in the **Federal Register**, and to provide interested parties with an opportunity to comment on the proposed variance or exemption.

The Decision

On November 18, 1986 (51 FR 41713), the PBGC published a joint request from MDS Acquisition Corporation ("the Buyer") and the Culbro Corporation ("the Seller") for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) as it applies to the purchase of the assets of the Metropolitan Distribution Services, Inc. ("the Purchased Facility") from the Culbro Corporation. The sale of assets became effective on September 15, 1986. No comments were received in response to the notice.

Employees at the Purchased Facility are covered by the following multemployer pension plans: Trucking Employees of North Jersey (Local 60); Local 153 Pension Fund; IUE AFL-CIO Pension Fund (Local 332); Teamsters Pension Fund of Philadelphia and Vicinity (Local 331); and Local 805 Pension Fund. The Buyer has assumed the obligation to contribute to the multiemployer pension plans on behalf of the employees at the Purchased Facility and the Seller has agreed to be secondarily liable for any withdrawal liability should the Buyer withdraw from any of these Funds within five years of the sale. The Seller's potential withdrawal liability to these Funds is estimated to be $285,000. The amount of the bond/escrow that would be required of the Buyer under section 4204(a)(1)(B) is approximately $500,000 based on the 1985 contributions or the 3-year average of the contributions to each plan.

According to the pro forma financial statement and balance sheet submitted by the Buyer, the Buyer's net tangible assets immediately following the purchase were $1,000,000, exceeding the estimated withdrawal liability by more than $700,000. Further, the Buyer submitted projections of net income over the next five years that indicate after tax income growing from $491,000 to $1,465,000.

Based on the facts of this case and the representations and statements made in connection within the request for an exemption, the PBGC has determined that an exemption from the bond/escrow requirement is warranted, in that it would more effectively carry out the purposes of Title IV of ERISA and would not significantly increase the risk of financial loss to the plan. Therefore, the PBGC hereby grants the request for an exemption from the bond/escrow requirement. The granting of an exemption or variance from the bond/escrow requirement of section 4204(a)(1)(B) does not constitute a finding by the PBGC that the transaction satisfies the other requirements of section 4204(a)(1). The determination of whether the transaction satisifies such other requirements is a determination to be made by the plan sponsor.

Issued at Washington, DC, on this 22nd day of December, 1986.

Kathleen P. Utgoff,

Executive Director.

[FR Doc. 86–29307 Filed 12–30–86; 8:45 am]

BILLING CODE 7708–01–M

Multiemployer Pension Plans; Withdrawal Liability in Plans Without Unfunded Vested Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interpretation.

SUMMARY: On September 6, 1985, the Pension Benefit Guaranty Corporation ("PBGC") published (at 50 FR 36504) a notice soliciting public comment on its reconsideration of the position taken in PGBC Opinion Letter 83–19 that an employer withdrawing from a multiemployer pension plan may incur withdrawal liability to the plan under section 4201 of the Employee Retirement Income Security Act of 1974, as amended, even though the plan has no unfunded vested benefits at the end of the preceding plan year. This notice advises employers, multiemployer plan sponsors, and other interesterd persons that after reconsidering its proviou opinion, the PBGC has concluded that a plan does not have a right to assess withdrawal liability under such circumstances.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Corporate Policy and Regulations Department (35100), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; 202–778–8850 (202–778–8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

Under section 4201 of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), an employer that withdraws from a multiemployer pension plan covered under Title IV of ERISA may be required to pay the plan withdrawal liability, which is the employer's allocable share of the plan's unfunded vested benefits, as determined under section 4211 of ERISA, modified by various other provisions in sections 4201–4225. Section 4211 establishes four methods of computing the amount of unfunded vested benefits allocable to a withdrawing employer: the presumptive method, described in section 4211(b); the modified presumptive method, described in section 4211(c)(2); the rolling-5 method, described in section 4211(c)(3); and the direct attribution methods, described in section 4211(c)(4).

Under each of these methods, except for the rolling-5 method, a withdrawing employer's withdrawal liability is computed by adding up its share of various "pools" of charges and credits, representing unfunded vested benefits and changes in unfunded vested benefits (and, in the case of the direct attribution methods, plan assets). Because a particular employer will normally be charged or credited with differing proportions of each pool, the sum of its charges and credits may be greater than zero, even when the plan as a whole had no unfunded vested benefits as of the end of the plan year preceding the withdrawal.

In Opinion Letter 83–19 (August 11, 1983), the Pension Benefit Guaranty Corporation ("PBGC") took the position that, under the presumptive method described in section 4211(b) of ERISA, a withdrawing employer might incur withdrawal liability even though the plan had no unfunded vested benefits as of the end of the plan year preceding the date of withdrawal. Although the letter did not discuss other allocation methods, the same reasoning would apply to the modified presumptive and direct attribution methods. After receiving several requests for reconsideration of Opinion Letter 83–19, the PBGC published a notice (50 FR 36504 (September 6, 1985)) soliciting public comments on the proper application of the statutory allocation methods in a plan year when (as of the end of the preceding plan year) a plan has no unfunded vested benefits and in subsequent plan years. In particular, the PBGC requested responses to three questions:

1. Does section 4211 mandate or prohibit assessment of withdrawal liability against an employer that withdraws from a multiemployer plan with no unfunded vested benefits?
2. Does the answer to question 1 depend on the allocation method used?
3. If in a subsequent year a plan's unfunded vested benefits exceed zero, how should withdrawal liability for later withdrawals be calculated?

The PBGC received eighteen comments in response to the notice.

One commenter took the position that section 4211 mandates the assessment of withdrawal liability under all allocation methods without regard to whether a plan has unfunded vested benefits. That commenter pointed out that section 4219(c)(6) of ERISA deals specifically with the extinguishment of withdrawal liability based on a plan's funding status and sets a higher standard than full funding of vested benefits, namely, full funding of all plan obligations. The commenter also argued that to prohibit the assessment of withdrawal liability under the direct attribution method by plans with no unfunded vested benefits would mean that some employers would be subsidizing the benefits of other employers' employees.

Most of the commenters stated either that ERISA prohibits the assessment of withdrawal liability where there are no unfunded vested benefits or that the statute is unclear on this point. Some of those who considered the statute unclear on its face contended that, in view of the purposes of ERISA, plans should not assess withdrawal liability when they have no unfunded vested benefits. Commenters opposing the position taken in Opinion Letter 83–19 pointed out that it is illogical to allocate a share of unfunded vested benefits to an employer, no matter what the statutory formulas provide, if there are no unfunded vested benefits to allocate. They also noted that the *de minimis* reduction from withdrawal liability under ERISA section 4209 disappears when vested benefits become fully funded and concluded that this evidenced a Congressional expectation that plans with no unfunded vested benefits would not assess withdrawal liability. One commenter pointed out that the application of the presumptive method in the manner set forth in Opinion Letter 83–19 can result in the assessment of withdrawal liability even for employers who join a plan after it has become fully funded for vested benefits and have never contributed to the plan when it had unfunded vested benefits.

Only one commenter stated that section 4211 distinguishes between allocation methods with respect to whether withdrawal liability may be assessed when a plan has no unfunded vested benefits. That commenter took the position that the unfunded vested benefits referred to under the direct attribution method are those related to each individual employer, whereas other methods refer to the unfunded vested benefits of the plan as a whole. Thus the commenter concluded that under the direct attribution method—but not the other methods—the allocation of liability to an employer is mandated if unfunded vested benefits are attributable to that employer under the formula prescribed in section 4211, whether or not the plan as a whole has unfunded vested benefits.

New Interpretation

After reviewing the comments submitted in response to the notice and re-examining the statute in the light of those comments, the PBGC is not persuaded that it erred in stating in Option Letter 83–19 that ERISA requires the assessment of withdrawal liability by a plan that has no unfunded vested benefits at the end of the preceding plan year.

The PBGC believes that the references to an allocation of unfunded vested benefits to an employer in sections 4201(b) and 4211 of ERISA support the inference that no allocations are to be made when no unfunded vested benefits exist. Furthermore, "unfunded vested benefits" is defined in ERISA section 4213(c), and that definition refers to the status of a plan as a whole, not to an individual employer's status. Thus no basis appears for the distinction drawn by one of the commenters, and discussed above, between the direct attribution method and other methods.

The arguments advanced in favor of the view set forth in Opinion Letter 83–19 have been reviewed by the PBGC and have been found to be unpersuasive.

The principal basis for that opinion letter was that the result seemed to be compelled by a literal reading of the statutory language. Section 4201(b)(1) of ERISA states:

> The withdrawal liability of an employer to a plan is the amount determined under section 4211 to be the allocable amount of unfunded vested benefits. . . .

Section 4211(a) in turn provides that:

> The amount of the unfunded vested benefits allocable to an employer that withdraws from a plan shall be determined in accordance with subsection (b), (c), or (d) of this section.

For the reasons discussed above, the use of certain of these allocation formulas may produce a positive "amount of unfunded vested benefits allocable to an employer" despite the fact that the plan as a whole has no unfunded vested benefits.

This apparently straighforward reading does not, however, survive closer scrutiny. The use of the term "allocable" at least suggests the prior existence of unfunded vested benefits to be allocated. Further, the discussion of withdrawal liability in the legislative history of the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA), which added section 4201 *et seq.* to ERISA, strongly reinforces this suggestion. For example, Senator Javits, one of the Senate sponsor of MPPAA, stated:

> Under the bill, an employer who withdraws from a multiemployer plan would be liable to the plan for *a proportionate share of the unamortized amount of the plan's unfunded vested benefits.* In the absence of effective withdrawal liability, an employer could withdraw from a plan leaving unfunded benefit obligations for his employees which must be paid by the remaining employers in the plan. If the plan, or related industry in which it is located, is experiencing or in the foreseeable future will experience financial difficulty, the absence of effective withdrawal liability would encourage a "last man out" mentality, with employers withdrawing from plans to avoid possible plan termination liability.

(126 Cong. Rec. 20,178 (1980) (emphasis supplied).) If a plan has no unfunded vested benefits, each employer's "proportionate share" is necessarily zero, and withdrawals do not entail the evils cited by Senator Javits.

Moreover, the legislative record contains no indication that Congress intended or recognized that section 4211 might be applied to assess withdrawal liability against an employer withdrawing from a fully funded plan. Indeed, as one commenter pointed out, the manner in which the *de minimis* rule (ERISA section 4209) operates implies that Congress did not anticipate that

withdrawal liability could exist when a plan had no unfunded vested benefits.

Therefore, the PBGC finds that while section 4211 is ambiguous as to whether an employer that withdraws from a plan that has no unfunded vested benefits as of the end of the preceding plan year may incure withdrawal liability, reference to the legislative history and other provisions of Title IV clears up this ambiguity and compels the conclusion that no withdrawal liability is to be assessed in such as case.

This conclusion is buttressed when one examines the underlying rationale for imposing withdrawal liability. The fundamental purpose of withdrawal liability is to prevent the burden of unfunded benefits from falling on a shrinking contribution base and possibly accelerating the exodus of employers from the plan. In situations where this purposes is not served, the reason for withdrawal liability disappears.

As previously noted, one commenter argued that ERISA section 4219(c)(8) precludes relief from withdrawal liability when a plan is fully funded for vested benefits but not for "all obligations of the plan." The PBGC finds this argument misdirected because the PBGC takes the view that the "obligations of the plan" referred to in section 4219(c)(8) are in fact the plan's vested benefits. This interpretation is consistent with section 4041A(c)(2) of ERISA, which authorizes a terminated plan to close out if it is fully funded for vested benefits.

The PBGC also disagrees with the contention that barring fully funded plans from assessing withdrawal liability is tantamount to the "subsidization" by continuing employers of benefits attributable to a withdrawn employer's employees. Multiemployer plans, by their nature, do not attempt to equate a particular employer's contributions to the benefits earned by a particular group of workers. In particular, the amount of unfunded vested benefits allocated to an emloyer under section 4211 of ERISA may bear little relationship to its own employees' vested benefits. This it true even under the direct attribution method. Although one element of an employer's liability under that method is the vested benefits attributable to service in its employ, the allocation of plan assets and unattributable benefits destroys any precise link between the calculated liability and the employment and contribution history of the employer.

The fact that an employer has a positive section 4211 balance under a particular funding method does not imply that benefits attributable to its employees have not been fully funded by its own contributions, nor does the absence of a section 4211 balance imply the opposite. To the extent that the statutory allocation methods cause some employers to "subsidize" others, this would occur regardless of whether fully funded plans could assess withdrawal liability and would not be materially reduced by requiring or permitting them to do so.

The PBGC is aware that the U.S. Court of Appeals for the Eighth Circuit, in *Ben Hur Construction Co. v. Goodwin*, 784 F.2d 876 (8th Cir., 1986), took a position inconsistent with that set forth in this notice. For the reasons given above, the PBGC believes that the court's decision was erroneous. The PBGC also notes that the court's rationale would apply only to plans using the direct attribution method.

Accordingly, it is the PBGC's opinion that ERISA does not permit the assessment of withdrawal liability under any statutory allocation method against employers that withdraw from a plan when, as of the end of the preceding plan year, the plan has no unfunded vested benefits.

Finally the PBGC recognizes that the interpretation set forth above creates questions as to how the statutory allocation methods are to be applied when a plan that has been fully funded is no longer so. The PBGC intends to issue a notice of proposed rulemaking dealing with these questions in the near future.

Issued in Washington, DC, this 23rd day of December 1986.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 86-29310 Filed 12-30-86; 8:45 am]

BILLING CODE 7708-01-M

PHYSICIAN PAYMENT REVIEW COMMISSION

Commission Meeting

AGENCY: Physician Payment Review Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold a public meeting on January 8–9, 1987 in Room 800 of the Hubert H. Humphrey Building, 200 Independence Ave. SW., Washington, DC. Each day's meeting will begin at 8:30 am. The Commision was established by section 9305 of Pub. L. 99–272.

ADDRESS: The Commission's office in the Mary E. Switzer Building, 330 C Street SW., Washington, DC 20201 in Suite 7033. Its telephone number is 202/472–1364.

FOR FURTHER INFORMATION CONTACT: Lauren LeRoy, Deputy Director for Management and External Relations, 202/472–1364.

SUPPLEMENTARY INFORMATION: The meeting will begin with a one-hour executive session on January 8 from 8:30 to 9:30. From 9:30 to 12:15, the Commission will hear testimony from interested parties that have made arrangements to appear (see the announcement published in the **Federal Register** of December 23, 1986). The meeting will break for lunch at 12:15 and resume at 1:45 p.m. Once the hearing is completed, the remainder of the time on January 8 and all of the time on January 9 will be devoted to a discussion of what to include in the March 1 report.

Paul B. Ginsburg,

Executive Director.

[FR Doc. 86-29389 Filed 12-30-86; 8:45 am]

BILLING CODE 6820-SE-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-15489; 812-6501]

Arch Fund, Inc.; Application for Exemption

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("the 1940 Act").

Applicants: The Arch Fund, Inc., The Arch Tax-Exempt Trust.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from sections 18(f)(1), 18(g) and 18(i).

Summary of Application: Applicants seek an order to permit the issuance and sale of separate classes of securities representing interests in their existing and future investment portfolios (and the allocation of voting rights thereto and payment of dividends thereon) in the manner described below.

Filing Date: The application was filed on October 16, 1986 and amended on December 18, 1986.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by this SEC by 5:30 p.m., on January 12, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549.A*ERR20*pplicants, No. 6, The Commons, 3512 Silverside Road, Wilmington, Delaware 19810.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, (800) 231–3282 (in Maryland, (301) 253–4300).

FOR FURTHER INFORMATION CONTACT: Denis R. Molleur, Staff Attorney (202) 272–2363 or Brion R. Thompson, Special Counsel (202) 272–3016 (Office of Investment Company Regulation).

Applicant's Representations:

1. Each of the Applicants is registered under the 1940 Act as an open-end, management investment company, and has a currently effective registration statement under the Securities Act of 1933. At present, one of the Applicants offers a single class of shares representing interests in a single investment portfolio; the other Applicant is a "series" investment company offering two classes of shares representing interests in separate investment portfolios. (Applicants existing and future investment portfolios are referred to as "Portfolios," and the existing classes of shares representing interests in Applicants existing Portfolios, together with each initial class of shares that is created by Applicants in connection with any future Portfolios, are referred to as "Existing Shares.")

2. Applicants' shares are sold presently only to certain institutions, including Merchantile Bank, N.A., St. Louis, Missouri ("Mercantile") and its affiliated and correspondent banks (collectively, "Institutions"), acting on behalf of their customers. Mercantile also provies investment advisory or sub-advisory services to the Applicants.

3. All expenses of each Portfolio are currently borne pro rata by the shareholders of the Portfolio. Portfolio expenses consist of advisory, administration, custodial and transfer agency fees, as well as payments to Institutions pursuant to non-12b–1 Shareholder Services Plans (as described below) for support services provided to their customers who are the beneficial owners of Shares in the Portfolios. Neither of the Applicants has adopted a distribution plan pursuant to Rule 12b–1 under the 1940 Act ("12b–1 Plan"), and neither currently pays its distributor for distribution services.

4. As a result of increased competition for the short-term investments of institutional investors and their customers accounts, Applicants seek to tailor their services and expenses to the investment needs of the particular investor. In order to accomplish this, and to expand their marketing alternatives, Applicants are contemplating the creating of new classes of shares ("New Shares"). Like the Existing Shares, the New Shares would be offered only to or through Institutions and could not be purchased by individuals directly from Applicants. Further, except for its class designation and the allocation of certain expenses and voting rights as described below, each class of New Shares would be identical in all respects to one of the classes of Existing Shares. Among other things, the "matched" sets of New Shares and Existing Shares would be subject to the same investment objective, policies and limitations, the same dividend policies and the same purchase and redemption policies. They would differ, however in that certain classes of Shares would be offered in connection with (1) a 12b–1 Plan or (2) a non-12b–1 Shareholder Services Plan adopted by the Applicant pursuant to all the requirements of Rule 12b–1 except those relating to shareholder voting rights and automatic termination of the plan upon its assignment; or (3) no plan at all. (These 12b–1 plans and non-12b–1 Shareholder Services Plans are referred to as "Plans.") The adoption and implementation of a Plan by one Applicant would be made independently of, and would not be conditioned upon, the adoption or implementation of a Plan by the other Applicant. In addition, each Plan would relate only to the shares of a particular Applicant.

5. Under each type of Plan, an Applicant would enter into Servicing Agreements with Institutions concerning the provision of support services to the customers of Institutions who from time to time beneficially own shares which are offered in connection with the Plan ("Customers"). In addition, Servicing Agreements under a 12b–1 Plan would contemplated the provision of distribution assistance by an Institution in connection with the Plan. The provision of support services and distribution assistance under the Plans would augment (and not duplicate) the services that are currently provided to Applicants by Mercantile, and their distributor, administrator, advisors and sub-advisors, and transfer agents.

6. Under each type of Plan, an Applicant would pay participating Institutions for their support services and/or distribution assistance in accordance with the terms of the Plan and the relevant Servicing Agreement (such payments are referred to as "Service Payments"). Service Payments paid to an Institution would not exceed 0.75% (on an annualized basis) under a non-12b-1 Shareholder Servicing Agreement, or 0.50% (on an annualized basis) under a non-12b–1 Shareholder Servicing Agreement, of the average daily net asset value of those Shares beneficially owned by customers of the Institution with respect to which the Institution provides services and assistance under the Servicing Agreement. Because a Servicing Agreement necessarily contemplates the provision of services and assistance by an Institution to its customers, the Applicants would not knowingly enter into a Servicing Agreement with an Institution in those situations where the Institution invests for its own account.

7. Applicants believe that it would be inefficient, and in some instances economically or operationally infeasible, to organize a separate investment Portfolio for each class of New Shares created. Thus, Applicants propose that the New Shares would represent interests in the same Portfolios as the Existing Shares. Under this arrangement, each New and Existing Share in a particular Portfolio, regardless of class, would represent an equal pro rata interest in the Portfolio and would have identical voting, dividend, liquidation and other rights, preferences, powers, restrictions, limitations, qualifications, designations and terms and conditions, except that: (1) Each class of New Shares and Existing Shares would have different class designations; (2) each class of shares offered in connection with a Plan would bear the expense of the Service Payments that were made under the Servicing Agreements that have been entered into with respect to that class; (3) each class of shares would bear certain other expenses ("Class Expenses") that are directly attributable to that class as described below; and (4) only the holders of the shares of the class or classes involved would be entitled to vote on matters pertaining to the Plan, and the Servicing Agreements, relating to such class or classes.

8. The net asset value of all outstanding shares representing interests in the same Portfolio would be computed on the same days and at the same times by adding the value of all portfolio securities and other assets

belonging to the Portfolio and dividing the result by the number of that Portfolio's outstanding shares. Further, the gross income of a Portfolio would be allocated on a pro rata basis to each outstanding share in the Portfolio regardless of class, and all expenses incurred by the Portfolio (for example, advisory fees, custodial fees, taxes, interest, director's fees, officers' salaries, insurance premiums, costs of independent pricing service, if any, and costs of annual shareholders' meetings, as well as all other expenses that are not directly attributable to a particular class of shares) would be borne on a pro rata basis by such outstanding shares, except for Service Payments made under a Plan that has been adopted in connection with a class of shares and except for Class Expenses. Such Class Expenses would consist of those expenses that are directly attributable to a particular class of shares which an Applicant's board of directors determines should be borne solely by that class, and could include expenses such as registration, printing and mailing expenses, state registration expenses and transfer agency fees. Whether any particular type of expense is a Class Expense would depend, in the first instance, upon whether it is attributable to a particular class of shares. If an expense that originally qualifies as a Class Expense can no longer be attributed to a class of shares, it would be charged generally to the Portfolio or Applicant involved. Conversely, if a general expense becomes attributable to a particular class of shares, it would qualify as a Class Expense.

9. Because of the Service Payments and other Class Expenses that may be borne by a class of shares, the net income of that class may be somewhat different than the net income of the other "matched" classes of shares in the same Portfolio. Dividends paid to each class of shares in a Portfolio would, however, be declared and paid on the same days and at the same times, and, except as noted with respect to the expense of Service Payments and other Class Expenses, would be determined in the same manner and paid in the same amounts.

10. The proposed arrangement does not involve borrowings and does not affect Applicants' existing assets or reserves. Nor will the proposed arrangement increase the speculative character of the shares in a Portfolio, since all shares will participate pro rata in all of the Portfolio's income and all of the Portfolio's expenses (with the exception of the proposed Service Payments and other Class Expenses). All of the representations and conditions contained in the application will apply to any future investment Portfolio to which the exemptive relief will apply.

11. Under state law and under recent letters of the Comptroller of the Currency, the ability of a bank to accept a fee from an investment company in connection with the investment of the assest of its fiduciary accounts may be restricted. To the extent such investments are permitted, each Applicant will include in its prospectus relevant disclosure about the Comptroller's letters.

Applicant's Conditions

If the requested order is granted, each Applicant agrees to the following conditions:

1. The only difference between each class of shares representing interests in the same Portfolio will relate solely to priorities with respect to: (a) the payment of dividends and such priority will reflect only the impact of the Service Payments made by Applicants under the Plans relating to particular classes of shares and any other Class Expenses, and (b) voting rights on matters which pertain to Plans (and Servicing Agreements and Service Payments thereunder). In addition, the designation of each class of shares in a Portfolio would be different.

2. The Plans (including both 12b–1 Plans and non-12b-1 Shareholder Services Plans), Servicing Agreements and Service Payments relating to shares will be approved and reviewed by the relevant Applicant's governing board of directors in accordance with the procedures set forth in Rule 12b–1 and, in addition, the 12b–1 Plans (and, to the extent required, the Servicing Agreements and Service Payments thereunder) relating to Shares will be approved by those shareholders who are affected in accordance with that Rule. In addition, each governing board, in approving and reviewing payments to an Institution pursuant to any 12b–1 Plan or non-12b-1 Shareholder Services Plan, will conclude in good faith based on information available to them that such expenditures are competitive with those offered in the industry.

3. Dividends paid by an Applicant with respect to each class of shares in a Portfolio will be calculated in the same manner and will be in the same amount as dividends paid by the Applicant with respect to each other class of shares in the same Portfolio, except that the expenses of any Service Payments made by the Applicant under the Servicing Agreements, as well as any other Class Expenses relating to a class of shares will be borne exclusively by that class.

4. Each Prospectus relating to a class of shares that is offered in connection with a Plan will: (a) Describe the services rendered by Institutions under Servicing Agreements with respect to those shares and the fees payable by the Applicant involved for such services; and (b) state that the beneficial owners of those shares should read the prospectus in light of the terms governing their institutional accounts.

5. Each Servicing Agreement entered into by an Applicant will contain representations by the institution involved that: (a) The Institution will provide to its customers a schedule of any fees charged by it to the customers relating to the investment of their assets in the class of shares subject to the Servicing Agreement; and (b) the compensation paid to the Institution under the Servicing Agreement, together with any other compensation the Institution receives from its customers for services contemplated by the Servicing Agreement, will not be excessive or unreasonable under the laws and instruments governing the Institution's relationships with its customers.

6. Applicants acknowledge that the grant of the requested exemptive order does not imply Commission approval, authorization or acquiescence in any particular level of payments that Applicants may make to Institutions pursuant to Plans in reliance on the exemptive order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Dated: December 22, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–29325 Filed 12–30–86; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC–15493; 812–6534]

Cablevision Investment of Detroit, Inc.; Application for Exemption

Dated: December 22, 1986.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: Cablevision Investment of Detroit, Inc.

Relevant 1940 Act Section: Exemption requested under section 6(c).

Summary of application: Applicant seeks an order exempting it from all provisions of the 1940 Act in connection with the proposed offer of its shares pursuant to a cable television franchise agreement. Applicant alleges that it is not the type of company intended to be regulated by the 1940 Act.

Filing Date: The application was filed on November 12, 1986, and amended on December 5, 1986.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC no later than 5:30 p.m., on January 12, 1987. Request a hearing in writing giving the nature of your interest, the reasons for the request, and the issues contested. Serve Applicant with the request, either personally or by mail, and also send it to the Secretary, SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary, SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549; Applicant, The Book Building, 21st Floor, 1249 Washington Boulevard, Detroit, MI 48226.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Meryl Dewey (202) 272–3038 or Special Counsel H.R. Hallock, Jr. (202) 272–3030 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant, a newly formed Michigan corporation, purchased for $7,038,000 a 10.2% partnership interest in Barden Cablevision ("Franchisee"), a Michigan general partnership which holds a non-exclusive cable television franchise from Detroit, Michigan ("City"). The seller of that interest was Barden Cablevision of Detroit, Inc. ("Seller"). Applicant proposes to offer 1,000,000 shares ("Shares") of its common stock, at a price of $8.00 per Share, for the purpose of funding the purchase price of the partnership interest. As required by the franchise agreement with the City, Detroit-based investors are required to be able to own 10% of Franchisee and have preferential rights to purchase the Shares during the first 180 days of the offering. The Shares are being offered pursuant to a registration statement on Form S–1.

2. If the proceeds of the offering (net of offering expenses and a reserve fund for future expenses) are insufficient to pay Seller $7,038,000, Applicant will reassign to Seller the unpaid portion of the 10.2% partnership interest in Franchisee for $690,000 per 1% partnership interest.

3. No affiliate of Applicant, Franchisee or Seller will receive any commission in connection with the offering of the Shares.

4. Applicant will not participate in the management of Franchisee. Seller and Detroit Cable TV, Inc. are Franchisee's other general partners. Seller is 95% owned by Barden Communications, Inc., which is owned by Don H. Barden. Barden Communications, Inc. owns or controls three cable television systems in the Detroit area. Detroit Cable TV, Inc. is indirectly owned by Maclean Hunter Limited, a publicly held Canadian corporation which, through subsidiaries, conducts cable television operations in Canada, New Jersey and Michigan.

5. The 10.2% partnership interest in Franchisee is being offered through Applicant rather than Franchisee because it would be cumbersome for the Franchisee to have large numbers of general partners. Moreover, since Applicant, as a general partner of Franchisee, is jointly and severally liable for the liabilities of Franchisees, purchasers of the Shares will be protected by the corporate structure of Applicant. Applicant, though not participating in the management of Franchisee, has all the rights of a general partner under Michigan law such as the right to act against partners who fail to exercise their fiduciary duty. Further, purchasers of the Shares, though not participating directly or indirectly in the management of Franchisee, will have all the rights of shareholders under Michigan law such as the right to bring a shareholder derivative action against the management of Applicant should management fail to properly exercise its duties.

6. Applicant is currently subject to certain reporting requirements of the Securities Exchange Act of 1934. If and when Applicant is no longer subject to such reporting requirements, Applicant agrees to furnish copies of its annual report to shareholders of record.

7. Applicant's assets will consist of its partnership interest in Franchisee and a reserve fund that is expected to be initially between $170,000 and $542,000, depending upon the number of Shares sold. The primary source of cash for dividends by Applicant would be distributions from Franchisee. However, the loan agreement pursuant to which Franchisee expects to obtain approximately $30,000,000 of debt financing prohibits Franchisee from making distributions to its partners on account of their partnership interests so long as any borrowings under the loan agreement are outstanding. Under the terms of the loan agreement, such borrowing need not be repaid in full before the end of 1997. Accordingly, Applicant does not expect to pay any dividends in the foreseeable future.

8. Applicant is not the type of company which the 1940 Act was intended to regulate. It does not hold itself out as or consider itself to be an investment company, but it could be considered a closed-end investment company. Applicant's entire business will depend upon the business of Franchisee and Franchisee's ability to construct and operate effectively a cable television system in the City. Purchasers of the Shares will have the protection of the Securities Act of 1933, the Securities Exchange Act of 1934, and the Michigan Uniform Securities Act. Also, Franchisee is extensively regulated and supervised by the City. Thus, the requested exemption is necessary or appropriate in the public interest, consistent with the protection of investors and fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–29324 Filed 12–30–86; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC–15488; 812–6333]

Lutheran Brotherhood Variable Insurance Products; Application for Exemption

December 19, 1986.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Lutheran Brotherhood Variable Insurance Product Company ("Company"), LBVIP Variable Insurance Account ("Account"), Lutheran Brotherhood Securities Corp.

Relevant 1940 Act Sections: Exemption requested *under* section 6(c) *from* sections 2(a)(32), 22(c), 26(a)(2), 27(c)(1), 27(c)(2), and 27(d) of the 1940 Act, and Rules 6e–3(T)(b)(12), 6e–3(T)(b)(13), and 22c–1 thereunder.

Summary of Application: Applicants seek an order to permit the deduction of a deferred administrative charge in connection with the issuance of flexibile premium variable life contracts.

Filing Date: The application was filed on April 2, 1986, and amended on November 17, 1986 and December 15, 1986.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on January 13, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington DC 20549. Company, Account, and Lutheran Brotherdood Securities Corp., c/o Otis F. Hilbert, Lutheran Brotherhood Variable Insurance Products Company, 625 Fourth Avenue South, Minneapolis, Minnesota 55415.

FOR FURTHER INFORMATION CONTACT: Financial Analyst Margaret Warnken (202) 272– 2058 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 253–4300).

Applicants' Representations

1. Applicants propose to offer certain flexible premium variable life insurance contracts ("contracts") funded by the Account. The contracts allow the owner, subject to certain limitations, to vary the frequency and amount of premium payments. The death benefit under each contract will be either (i) the greater of (a) the minimum amount specified in the contract (the "Face Amount") plus the total amount available for investment under the contract (the "Accumulated Value") or (b) a specified percentage of Accumulated Value; or (ii) the greater of (a) the Face Amount or (b) a specified percentage of Accumulated Value, as the owner elects. The owner will have various rights under the contract, including rights to a contract loan, to a partial withdrawal of the contract's Accumulated Value, to a total surrender of the contract, and to cancel a requested increase in Face Amount.

2. The Account, registered as a unit investment trust under the 1940 Act, will invest in shares of LBVIP Series Fund, Inc. ("Fund"), which is registered under the 1940 Act as a management investment company. Lutheran Brotherhood Research Corp., an indirect subsidiary of Lutheran Brotherhood (of which the Company is also an indirect subsidiary), is the investment adviser of the Fund.

3. The contracts provide for various sales, risk and administrative charges deducted from premium payments or from Accumulated Value. Included among these charges is (i) an Intial Monthly Administrative Charge ("IMAC") that will be deducted from Accumulated Value as part of the first 120 Monthly Deductions following contract issuance and (ii) a deferred administrative charge ("DAC") that will be deducted from Accumulated Value if a surrender, lapse or decreease in Face Amount occurs during the first ten years after contract issuance. Similar charges arise after a requested increase in Face Amount. These charges reimburse the Company for administrative expenses related to the issuance of the contract, including medical exams, review of applications for insurance underwriting decisions, and processing of the applications and establishing contract records.

4. The DAC will be deducted in full upon surrender or lapse of the contract or in part upon a requested decrease in Face Amount. The DAC imposed for a requested decrease in Face Amount will be determined by using the DAC then applicable to various parts of the current Face Amount in the following order: (a) The DAC for the most recent increase; (b) the DAC for the next most recent increases successively; and (c) the DAC for the initial Face Amount.

5. Even though the same administrative expenses are covered by both charges, the Company will not be reimbursed twice for these issuance expenses. In general, these two charges have been calculated so that these administrative expenses will be collected either through the IMAC or through the DAC. Each of these charges applies for a ten-year period, and the scheduled reductions in the DAC over this ten-year period have been calculated to take into account the amont of the issuance expenses that would have already been collected through the IMAC. In effect, the collection of the DAC would be an "acceleration" of the amounts that otherwise would have been paid during the first ten years after contract issuance through the IMAC.

6. The amount of each of the IMAC and the DAC will equal an amount per $1,000 of Face Amount based upon the insured's Attained Age of contract issuance and, except for insureds with an Attained Age of contract issuance under 20, whether the insured is a smoker or nonsmoker. For contracts with a Face Amount less than $250,000 at issuance, examples of the maximum DAC per $1000 of Face Amount, which indicate the range of possible charges, are as follows: $3.60 for Attained Ages 0–4; $7.20 (smoker) and $4.80 (nonsmoker) for Attained Ages 30–39; and $8.40 (smoker and nonsmoker) for Attained Ages 60–75. Examples of the IMAC per $1000 Face Amount are: $0.03 for Attained Ages 0–4; $0.06 (smoker) and $0.04 (nonsmoker) for Attained Ages 30–39; and $0.07 (smoker and nonsmoker) for Attained Ages 60–75. For contracts with a Face Amount of $250,000 or more at issuance, examples of the maximum DAC per $1.000 of Face Amount, which indicate the range of possible charges, are as follows: $2.40 for Attained Ages 0–4; $6.00 (smoker) and $3.60 (nonsmoker) for Attained Ages 30–39; and $6.00 (smoker and nonsmoker) for Attained Ages 50–75. Examples of the IMAC per $1000 Face Amount are $0.02 for Attained Ages 0–4; $0.05 (smoker) and $0.03 (nonsmoker) for Attained Ages 30–39; and $0.05 (smoker and nonsmoker) for Attained Ages 50–75.

7. The maximum DAC, as determined at contract issuance, will be reduced as Monthly Deductions are made. Beginning on the Date of Issue and continuing or each Monthly Anniversary until 120 Monthly Deductions have been made, this DAC determined at contract issuance will be reduced in level amounts equal to approximately .83% of the maximum DAC (or a 10% reduction of the maximum DAC on an annual basis). In this way, the DAC will be reduced to zero as of the Monthly Anniversary on which the 120 Monthly Deduction is made.

8. The Company does not anticipate making a profit on the DAC. The DAC does not exceed the amount that would have been imposed under the contract if the expenses of issuing the contract had been recovered through a front-end or a periodic charge, nor does it take into account the time-value of money (which would increase the charge to factor in the investment cost to the Company of deferring the charge).

9. Applicants request exemption from sections 2(a)(32), 22(c), 26(a)(2), 27(c)(1), 27(c)(2) and 27(d) of the 1940 Act and Rules 6e–3(T)(b)(12), 6e–3(T) (b)(13) and 22c–1 thereunder to the extent necessary to permit the deduction of the DAC.

10. The combination of the IMAC and the DAC is intended to permit a substantial deferral of the payment of issuance expenses, while creating greater equity among contractowners by permitting the collection of a proportionate share of these expenses upon early lapse, surrender or requested decrease in Face Amount. First, permitting a substantial deferral of these charges means that contractowners can realize an advantage of increased earnings because they have more invested for them under the contract for a longer period of time. Second, permitting a substantial deferral of these charges means that deductions for the cost of insurance may be lower because the net amount at risk may be less due to a greater Accumulated Value. Third, if an insured dies before the IMAC has been collected in full, and if no lapse, surrender or requested decrease in Face Amount has occurred, these charges are not deducted from the death benefit; as a result, the contract owner would have received the primalry benefit of the contracts (insurance protection) without paying the additional amount that would have otherwise been collected through the IMAC or the DAC.

11. If the Company could not impose the DAC upon lapse, surrender or a requested decrease in Face Amount, it would be required to recover these charges over a shorter period of time (so as to increase the possibility of collection before surrender, lapse or a requested decrease in Face Amount) or to increase the amount of the IMAC for persisting contractowners (so as to fully recover these administrative expenses). If the Company recovered these charges over a shorter period of time, the advantages of a substantial deferral of these charges would be reduced. If the Company increased the amount of the IMAC for persisting contractowners, these persisting contractowners would pay a greater total charge, which would result in less Accumulated Value available for investment under the contracts and less equity between those contractowners who persist and those contractowners who lapse, surrender, or request a decrease in Face Amount. The combination of the IMAC and the DAC provided by the contract permits substantial deferral of these payments for persisting contractowners while permitting the recovery of a proportionate share of these issuance expenses upon and early surrender, lapse or requested decrease in Face Amount.

Applicants' Condition

If the requested order is granted, the Applicants agree that if to the extent Rule 6e–3(T) is amended to provide exemptive relief from any provision of the 1940 Act or the rules thereunder on terms and conditions different from any exemption from such provision granted in the order requested in this application, then Applicants shall take such steps as may be necessary to comply with Rule 6e–3(T), as amended, to the extent Rule 6e–(T) is applicable.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–29326 Filed 12–30–86; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–23931; File No. SR–OCC–86–25]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Options Clearing Corp.

On December 11, 1986, the Options Clearing Corporation ("OCC") filed a proposed rule change with the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), concerning the statement of foreign currency option exercises and assignments. The Commission is publishing this notice to solicit comment on the rule change.

The proposed rule change consists of a Credit and Security Agreement between Citibank, N.A. and OCC designed to effectuate Delivery-versus-Payment ("DVP") settlement [1] of exercises and assignments of Deutsche Mark options. OCC currently has a similar agreement in place with Bank of America for settlements of exercises and assignments of currency options. Under the proposed agreement, Citibank, N.A. would replace Bank of America for settlement of exercises of Deutsche Mark options.

Like the Bank of America agreement, the proposed agreement provides for an overdraft facility to ensure deliveries to Clearing Members notwithstanding the default of a Deliveries or Paying Clearing Member. These overdrafts would be secured by the U.S. dollar settlement amounts held in OCC's accounts at Citibank branches in New York and Frankfurt for Deutsche Mark overdrafts, and the Deutsche Marks held in OCC's account at the Frankfurt branch of Citibank for U.S. dollar overdrafts. Loans resulting from overdrafts would also be secured by OCC's right to apply a defaulting Clearing Member's margin or Clearing Fund deposits against the defaulting Clearing Member's outstanding obligations, as well as OCC's right to assess all Clearing Members' Clearing Fund deposits for related losses.

Because of the rapid growth of the foreign currency options market, OCC believes it is in the best interest of OCC, the industry and the investing public to use more than one bank for settlements of exercises and assignments of foreign currency options. OCC states in its filing that the proposed agreement will promote the and accurate settlement of foreign currency option exercises, while safeguarding securities and funds in OCC's custody or control, by diversifying OCC's foreign currency settlement activities.

The foregoing rule has become effective pursuant to section 19(a)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Securities exchange Act of 1934

Interested persons are invited to submit written data, views and arguments concerning the proposal. Persons making written submissions should file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. section 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number in the caption above and should be submitted by January 21, 1987.

[1] *See* OCC Rule 1606A.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-29327 Filed 12-30-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[CM-8/1029]

Study Group 2 of the U.S. Organization International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 2 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on January 22, 1987 in Room 521 of the National Aeronautics and Space Administration, 600 Independence Avenue, SW., Washington, DC. The meeting will begin at 10:00 a.m.

Study Group 2 deals with matters relating to the communications for scientific satellites, space probes, spacecraft, exploration satellites (e.g., meteorological and geodetic) and to interference problems concerning the radio astronomy and radar astronomy services. The purpose of the meeting is to discuss preparations for the Interim Meeting of international Study Group 2 in the Fall of 1987.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Requests for further information should be directed to Mr. Richard E. Shrum, State Department, Washington, DC 20520; telephone 202 647-2592.

Dated: December 16, 1986.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 86-29293 Filed 12-30-86; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/1026]

Study Group A of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group A of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on Tuesday, January 13, 1987 at 9:30 a.m. in Room 1105, Department of State, 2201 C Street, NW., Washington, DC.

Study Group A deals with international telecommunications policy and services.

The proposed agenda:

A. Debriefing of recent Study Group Meetings:

Study Group I, November, 1986
Study Group VIII, December, 1986
PC/WATTC, December, 1986

B. Discussion possible U.S. contributions for upcoming meetings of CCITT:

Study Group I,
Study Group III,
C. Other business.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC telephone (202) 647-5832. All attendees must use the C Street entrance to the building.

Dated: December 12, 1986.

Earl Barbely,

Director, Office of Technical Standards and Development.

[FR Doc. 86-29294 Filed 12-30-86; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/1027]

Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The meeting of Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on Tuesday, January 13, 1987, at 1:30 p.m. in Room 1105, Department of State, 2201 C Street, NW., Washington, DC.

The agenda for the meeting is as follows:

1. Debriefing of recent meetings of Study Group and/or working parties;
2. Consideration of contributions of upcoming CCITT Study Group and/or working parties of Study Group XVIII;
3. Any other business.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, D.C.; telephone (202) 647-5832. All attendees must use the C Street entrance to the building.

Dated: December 12, 1986.

Earl Barbely,

Director, Office of Technical Standards and Development.

[FR Doc. 86-29295 Filed 12-30-86; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/1028]

A Joint Meeting of the ISDN/JWP and Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that the ISDN Joint Working Party and Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on Thursday, January 15, 1987 in room 1205, State Department, 2201 C Street NW., Washington, DC. The meeting will begin at 9:30 a.m.

The proposed agenda for the meeting is as follows:

1. Report on CCITT Study Group XI meeting in Geneva, November, 1986.
2. Consideration of contributions to the Study Group XVIII ISDN Group of Experts meetings in Brasilia, February 1987.
3. Consideration of other contributions to the Study Groups XVIII and XI.
4. Any other business.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC.; telephone (202) 647-5832. All attendees must use the C Street entrance to the building.

Dated: December 12, 1986.

Dominic Iacovo,

Acting Director, Office of Technical Standards and Development.

[FR Doc. 86-29296 Filed 12-30-86; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular—Airworthiness Criteria for the Approval of Airborne Windshear Warning Systems in Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed Advisory Circular and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) which provides guidance for the airworthiness approval of airborne windshear warning systems in transport category airplanes.

DATE: Comments must be received on or before April 30, 1987.

ADDRESS: Send all comments on the proposed AC to: Federal Aviation Administration, Attention: Transport Standards Staff, ANM-110, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. Comments may be inspected at the above address between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Patricia Siegrist, Transport Standards Staff, at the above address, telephone (206) 431-2126.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the AC may be obtained by contacting the person named above under "**FOR FURTHER INFORMATION CONTACT.**" Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters must identify the subject of the AC and submit comments in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Transport Standards Staff before issuing the final AC.

Background

This advisory circular provides guidance for the airworthiness approval of both "annunciation only" and "annunciation with escape guidance" airborne windshear warning systems. The aspects of system criticality and the treatment of certain system failure cases are addressed. The advisory circular also provides guidance information regarding the scope of a ground based simulation program and discusses criteria for selecting the windfield models for such a program. In addition, the advisory circular discusses various aspects of system integration and provides equipment installation guidance and test criteria.

Issued in Seattle, Washington, on December 10, 1986.

Leroy A. Keith,

Manager, Aircraft Certification Division.

[FR Doc. 86-29375 Filed 12-30-86; 8:45 am]

BILLING CODE 4910-13-M

Noise Exposure Map Notice

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Sarasota-Manatee Airport Authority, Sarasota, Florida, for the Sarasota-Bradenton Airport under the provisions of Title I of the Aviation Safety and Noise abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is November 14, 1986.

FOR FURTHER INFORMATION CONTACT: Tommy J. Pickering, Plans and Programs Metro Area Manager, Federal Aviation Administration, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, Florida 32812, (305) 648-6583.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for the Sarasota-Bradenton Airport are in compliance with applicable requirements of Part 150, effective November 14, 1986.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979, hereinafter referred to as "the Act", an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations, Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Sarasota-Manatee Airport Authority, Sarasota, Florida. The specific maps under consideration are "1986 Noise Exposure Map" and "1991 Noise Exposure Map" in the submission. The FAA has determined that these maps for the Sarasota-Bradenton Airport are in compliance with applicable requirements. This determination is effective on November 14, 1986. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps, the FAA's evaluation of the maps are

available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591

Federal Aviation Administration, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, FL 32812

Mr. Albert L. McDill, Executive Director, Sarasota-Manatee Airport Authority, Sarasota-Bradenton Airport, 6121 Twining Boulevard, Sarasota, FL 33580

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Orlando, Florida, November 14, 1986.

James E. Sheppard,

Manager, Orlando Airports District Office.

[FR Doc. 86-29223 Filed 12-30-86; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 156—Potential Interference to Aircraft Electronic Equipment From Devices Carried Aboard; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of RTCA Special Committee 156 on Potential Interference to Aircraft Electronic Equipment from Devices Carried Aboard to be held on January 27-28, 1987, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) approval of minutes of the eleventh meeting; (3) review of task assignments; (4) review the first draft of the committee final report; (5) assignment of tasks; and (6) other business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 22, 1986.

S.B. Poritzky,

Designated Officer.

[FR Doc. 86-29225 Filed 12-30-86; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 160-406 MHz Emergency Locator Transmitters (ELT); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 160 on 406 MHz Emergency Locator Transmitters (ELT) to be held on January 20-22, 1987, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Introductory remarks; (2) approval of the first meeting's minutes; (3) review and discuss EUROCAE WG-29 activities; (4) report on potential problems of frequency interference in the 406 MHz band; (5) FCC NPRM review; (6) review of initial draft sections from task assignments; (7) task assignments; (8) other business; and (9) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 22, 1986.

S.B. Poritzky,

Designated Officer.

[FR Doc. 86-29226 Filed 12-30-86; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Holmes County, FL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed interchange addition on Interstate 10 at its intersection with County Road 181 near Westville.

FOR FURTHER INFORMATION CONTACT: David Van Leuven, District Engineer, Federal Highway Administration, 227 N. Bronough Street, Room 2015, Tallahassee, Florida 32301, Telephone: (904) 681-7231.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Florida Department of Transportation, will prepare an EIS for a proposal to add an interchange to I-10 at its intersection with County Road 181 near Westville, Holmes County, Florida. The proposed interchange would allow egress and ingress between traffic using I-10 and County Road 181, which is considered necessary to provide for unmet existing and future circulation demands.

Alternatives under consideration include: (1) Taking no action; (2) construction of a full diamond interchange; and (3) construction of a modified diamond interchange. No alternate corridors are being considered.

Early notification of the proposed action to Federal, State, and local agencies has been sent with a solicitation of comments. Informational meetings will be held as necessary to inform the public of progress on this proposal. Alternatives will be presented to the public and a formal public hearing will be conducted. Public notice will be given of all meetings and the public hearing. Adjacent property owners of record will be notified in writing as will all public officials, private organizations, and previously identified private citizens. The draft EIS will be made available for public and agency review and comment. A formal scoping meeting is planned at the project site during the early part of 1987.

To assure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued On: December 18, 1986.

James E. St. John,

Assistant Division Administrator, Tallahassee, Florida.

[FR Doc. 86-29299 Filed 12-30-86; 8:45 am]

BILLING CODE 4910-22-M

Corrections

Federal Register
Vol. 51, No. 250
Wednesday, December 31, 1986

This section of the FEDERAL REGISTER contains editorial corrections of previously published Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

48 CFR Parts 301, 302, 303, 304, 305, 306, 307, 313, 314, 315, 316, 319, 322, 325, 330, 332, 353

Acquisition Regulation; Administrative and Procedural Amendments

Correction

In rule document 86-27488 beginning on page 44292 in the issue of Tuesday, December 9, 1986, make the following corrections:

1. On page 44292, in the third column, in the **SUMMARY**, in the fourth line, "top" should read "to", and in **SUPPLEMENTARY INFORMATION**, third paragraph, in the fifth line, "1987" should read "1984".

§ 302.100 [Corrected]

2. On page 44293, in the first column, in amendatory instruction 4a, in the third line, "leading" should read "heading".

§ 322.604-2 [Corrected]

3. On page 44294, in the second column, insert the following heading above paragraph (c)(1), "

§ 322.604-2 Regulatory exemptions. "

§325.102 [Corrected]

4. On page 44294, in the second column, the paragraph following the heading

"325.102 Policy" should be designated as paragraph "(b)".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPO-056-GNC]

Medicare Program; Criteria and Standards for Evaluating Intermediary and Carrier Performance During Fiscal Year 1987

Correction

In notice document 86-27698 beginning on page 44524 in the issue of Wednesday, December 10, 1986, make the following corrections:

1. On page 44529, in the second column, in the 11th indented paragraph, in the fourth line, "3.0" should read "1.0".

2. On page 44529, in the third column, in the third indented paragraph from the bottom of the page, in the second line, "3.0" should read "1.0".

BILLING CODE 1505-01-D

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federal register

Wednesday
December 31, 1986

Part II

Office of Management and Budget

Budget Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, including Section 1014, I herewith report seven new deferrals of budget authority totaling $5,017,441,000 and four revised deferrals of budget authority now totaling $5,131,425,194.

The deferrals affect accounts in Funds Appropriated to the President, and the Departments of Defense—Military, Health and Human Services, and Transportation.

The details of these deferrals are contained in the attached report.

Ronald Reagan.

The White House,
December 15, 1986.

BILLING CODE 3110-01-M

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

RESCISSION NO.	ITEM	BUDGET AUTHORITY
	Funds Appropriated to the President:	
	International Security Assistance:	
D87-22	Foreign military sales credit.....	$ 4,040,441
D87-1A	Economic support fund.....	2,446,470
D87-23	Military assistance.....	847,000
D87-24	International military education and training.....	2,000
	Agency for International Development:	
D87-25	International disaster assistance.....	57,000
	Special Assistance for Central America	
D87-26	Assistance for the Nicaraguan Democratic Resistance.....	60,000
D87-27	Promotion of stability and security in Central America.....	1,000
	Department of Defense - Military:	
	Military Construction:	
D87-6A	Military construction, Defense.....	1,318,502
	Family Housing:	
D87-7A	Family housing, Defense.....	266,965
	Department of Health and Human Services:	
D87-28	Health Resources and Services Administration: Indian catastrophic health emergency Fund.....	10,000
	Department of Transportation:	
	Federal Aviation Administration:	
D87-16A	Facilities and equipment (Airport and airway trust fund).....	1,099,488
	Total, deferrals.....	10,148,866

BEST COPY AVAILABLE

2

SUMMARY OF SPECIAL MESSAGES
FOR FY 1987
(in thousands of dollars)

	RESCISSIONS	DEFERRALS
Second special message:		
New items	---	5,017,441
Revisions to previous special messages	---	4,153,255
Effects of second special message	---	9,170,696
Amounts from previous special messages that are changed by this message (changes noted above)	---	978,170
Subtotal, rescissions and deferrals	---	10,148,866
Amounts from previous special messages that are not changed by this message	---	857,443
Total amount proposed to date in all special messages	---	11,006,310

437

Deferral No: D87-22

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Funds Appropriated to the President

Bureau:
International Security Assistance

Appropriation title and symbol:
Foreign military sales credit 1/
1171082

OMB identification code:
11-1082-0-1-152

Grant program:
|___| Yes |_X_| No

Type of account or fund:
|_X_| Annual
|___| Multiple-year ___ (expiration date)
|___| No-Year

New budget authority..... $4,040,441,000
(P.L. 99-500 & 591)
Other budgetary resources ___

Total budgetary resources 4,040,441,000

Amount to be deferred:
Part of year $4,040,441,000
Entire year ___

Legal authority (in addition to sec. 1013):
|_X_| Antideficiency Act
|___| Other___

Type of budget authority:
|_X_| Appropriation
|___| Contract authority
|___| Other___

Justification: The President is authorized by the Arms Export Control Act to sell or finance by credit or guarantees articles and defense services to friendly countries to facilitate the common defense. Under Section 2 of the Act, the Secretary of State, under the direction of the President, is responsible for sales made under the Act, including determining whether there shall be a sale to a country and the amount thereof. Executive Order 11958 further requires the Secretary of State to obtain the prior concurrence of the Secretaries of Defense and Treasury, respectively, regarding standards and criteria for credit and guarantee transactions that are based upon national security and financial policies. These funds have been deferred pending approval of specific loans to eligible countries by the Departments of State, Defense and the Treasury. Consultation among these Departments will ensure that each approved program is consistent with the foreign national security and financial policies of the United States and will not exceed the limits of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1986 (D86-32).

D87-1A

Supplementary Report

Report pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D87-1 transmitted to the Congress on September 26, 1986.

This revised deferral of Funds Appropriated to the President for the Economic support fund increases the amount previously reported as deferred from $95,000,000 to $2,446,470,091. This increase of $2,351,470,091 is attributable to funds provided in the Foreign Assistance and Related Programs Appropriation Act, 1987, as included in Public Laws 99-500 and 99-591. Funds are deferred pending approval of specific grants and loans by the Secretary of State.

Deferral No: D87-1A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Funds Appropriated to the President

Bureau:
International Security Assistance

Appropriation title and symbol:

Economic support fund 1/

115/71037 11X1037 *117/81037
*1171037 116/71037

OMB identification code:

11-1037-0-1-152

Grant program:

[X] Yes [ ] No

Type of account or fund: *

[X] Annual

[X] Multiple-year 9/30/87 9/30/88 (expiration date)

[X] No-Year

New budget authority..... (P.L. 99-500 & 591)	*$3,250,000,000
Other budgetary resources *	396,470,091
Total budgetary resources	*$3,646,470,091
Amount to be deferred:	
Part of year	*$2,446,470,091
Entire year	

Legal authority (in addition to sec. 1013):

[X] Antideficiency Act

[ ] Other

Type of budget authority:

[X] Appropriation

[ ] Contract authority

[ ] Other

Coverage: 1/

Appropriation	Symbol	Identification Code	Amount Deferred
Economic Support Fund...	115/71037	11-1037-0-1-152	90,000,000
*Economic Support Fund...	11X1037	11-1037-0-1-152	6,470,091
Economic Support Fund...	116/71037	11-1037-0-1-152	---
*Economic Support Fund...	1171037	11-1037-0-1-152	300,000,000
*Economic Support Fund...	117/81037	11-1037-0-1-152	2,050,000,000
			2,446,470,091

Justification: This action defers funds pending approval of specific loans and grants to eligible countries by the Secretary of State. This will insure that each approved program is consistent with the foreign, national security and financial policies of the U.S. and will not exceed the limits of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1986 (D86-24A).

* Changed from previous report.

429

Deferral No: D87-23

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Funds Appropriated to the President

Bureau:
International Security Assistance

Appropriation title and symbol:

Military assistance 1/

1171080

OMB identification code:

11-1080-0-1-152

Grant program:
|__| Yes |X| No

Type of account or fund:
|X| Annual
|__| Multiple-year _____ (expiration date)
|__| No-Year

New budget authority..... $ 900,000,000
(P.L. 99-500 & 591)
Other budgetary resources _____
Total budgetary resources 900,000,000

Amount to be deferred:
Part of year $ 847,000,000
Entire year _____

Legal authority (in addition to sec. 1013):
|X| Antideficiency Act
|__| Other_____

Type of budget authority:
|X| Appropriation
|__| Contract authority
|__| Other_____

Justification: Pursuant to the Foreign Assistance Act (FAA) of 1961, as amended, the President is authorized to furnish grant military assistance to any friendly country or international organization if he finds that it will strengthen the security of the United States or promote world peace. Executive Order No. 12163 of September 29, 1979, as amended, delegates certain Presidential functions under the FAA to the Secretaries of State and Defense. These funds are being deferred until approval of specific programs by the Departments of State, Treasury, and Defense. Consultation among these Departments will ensure that each approved program is consistent with the foreign, national security and financial policies of the United States and will not exceed the limit of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1986 (D86-33).

429

Deferral No: D87-24

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Funds Appropriated to the President

Bureau:
International Security Assistance

Appropriation title and symbol:

International military education and training 1/

1171081

OMB identification code:

11-1081-0-1-152

Grant program:
|__| Yes |X| No

Type of account or fund:
|X| Annual
|__| Multiple-year _____ (expiration date)
|__| No-Year

New budget authority..... $ 56,000,000
(P.L. 99-500 & 591)
Other budgetary resources _____
Total budgetary resources 56,000,000

Amount to be deferred:
Part of year $ 2,000,000
Entire year _____

Legal authority (in addition to sec. 1013):
|X| Antideficiency Act
|__| Other_____

Type of budget authority:
|X| Appropriation
|__| Contract authority
|__| Other_____

Justification: Pursuant to the Foreign Assistance Act (FAA) of 1961, as amended, the President is authorized to furnish grant military training to friendly countries or international organizations. Executive Order No. 12163 of September 29, 1979, as amended, delegates certain of the President's functions under the FAA to the Secretaries of State and Defense. $2,000,000 is being deferred pending apportionment of the funds for training in anti-narcotics operations. It is anticipated that funds will be apportioned by December 5. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1986 (D86-34).

554 Deferral No: D87-25

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Funds Appropriated to the President
Bureau:
Agency for International Development
Appropriation title and symbol:
International Disaster Assistance, Executive 1/
11X1035
OMB identification code:
11-1035-0-1-151
Grant program:
[X] Yes [ ] No
Type of account or fund:
[ ] Annual
[ ] Multiple-year _____ (expiration date)
[X] No-Year

New budget authority..... $ 70,000,000
(P.L. 99-500 & 591)
Other budgetary resources 6,400,000
Total budgetary resources 76,400,000
Amount to be deferred:
Part of year 57,000,000
Entire year
Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other _____
Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other _____

Justification: The International disaster assistance account allows the President to respond to humanitarian disaster relief efforts throughout the world. The Foreign Assistance and Related Programs Appropriations Act, 1987 provided $70 million for disaster assistance activities, including not less than $50 million for earthquake relief, reconstruction, and rehabilitation in El Salvador. $57 million is deferred, including $45 million in aid to El Salvador, pending the development of country-specific plans to insure that aid is provided in an efficient manner to those most in need. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1986 (D86-59).

Deferral No: D87-26

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Funds Appropriated to the President
Bureau:
Special Assist. for Central America
Appropriation title and symbol:
Assistance for the Nicaraguan Democratic Resistance
1171090
OMB identification code:
11-1090-0-1-051
Grant program:
[X] Yes [ ] No
Type of account or fund:
[X] Annual
[ ] Multiple-year _____ (expiration date)
[ ] No-Year

New budget authority..... $ 100,000,000
(P.L. 99-500 & 591)
Other budgetary resources 100,000,000
Total budgetary resources 100,000,000
Amount to be deferred:
Part of year $ 60,000,000
Entire year
Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[X] Other P.L. 99-500 & 591
Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other _____

Justification: Section 206 of Title II of the Military Construction Appropriations Act, 1987, provided $100 million to provide assistance to the Nicaraguan Democratic Resistance. It provided that $60 million would not be available until necessary Presidential determinations have been made and reported to the Congress. It is anticipated that the funds will then be released. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

209

Deferral No: D87-27

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	New budget authority..... $ _____ (P.L. _____)
Bureau: Special Assist. for Central America	Other budgetary resources 2,000,000
Appropriation title and symbol: Promotion of Stability and Security in Central America 11X1091	Total budgetary resources 2,000,000
	Amount to be deferred: Part of year $ 1,000,000
	Entire year _____
OMB identification code: 11-1091-0-1-053	Legal authority (in addition to sec. 1013): |X| Antideficiency Act
Grant program: |X| Yes |___| No	|___| Other _____
Type of account or fund:	**Type of budget authority:**
|___| Annual	|X| Appropriation
|___| Multiple-year _____ (expiration date)	|___| Contract authority
|X| No-Year	|___| Other _____

Justification: The Military Construction appropriations section of the 1987 Continuing Resolution (P.L. 99-500 and 591) provided for the transfer to the President of funds previously appropriated for Assistance for Implementation of a Contadora agreement. The transferred funds are to facilitate the participation of Costa Rica, El Salvador, Guatemala, and Honduras in regional meetings and negotiations to promote peace, stablility, and security in Central America. Only a portion of the funds are needed to conduct this activity at this time and the amounts not needed are deferred. Ongoing negotiations among the Central American democracies or other developments may result in conditions that will require the expenditure of the deferred funds later in fiscal year 1987. The Department of State will monitor the progress of the negotiations and recommend further disposition of the funds as appropriate. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

D87-6A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D87-6 transmitted to Congress on September 26, 1986.

This increases by $1,316,152,000 the previous deferral of $2,350,000 in the Department of Defense, Military construction, resulting in a total deferral of $1,318,502,000. The increase in the amount deferred results from deferral of funds included in the 1987 Military Construction Appropriation Act.

Deferral No: D87-6A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Defense - Military

Bureau:
Military Construction

Appropriation title and symbol:
See Coverage Section below 2/

OMB identification code:
See Coverage Section below 2/

Grant program:
|___| Yes |_X_| No

Type of account or fund:
|___| Annual
|_X_| Multiple-year Sept. 30, 1987 / Sept. 30, 1988 (expiration date)
|_X_| No-Year Sept. 30, 1989 / Sept. 30, 1990 / *Sept. 30, 1991

New budget authority.....*$ 5,125,429,000
*(P.L. 99-500 & 591)
Other budgetary resources* 3,781,227,000
Total budgetary resources* 8,906,656,000 1/

Amount to be deferred:
Part of year _____
Entire year * 1,318,502,000

Legal authority (in addition to sec. 1013):
|_X_| Antideficiency Act
|___| Other_____

Type of budget authority:
|_X_| Appropriation
|___| Contract authority
|___| Other_____

Coverage: 2/

Appropriation	Symbol	OMB Identification Code	Deferred
*Military construction, Army.....	217/12050	21-2050-0-1-051	363,960,000
Military construction, Army.....	216/02050	21-2050-0-1-051	---
Military construction, Army.....	215/92050	21-2050-0-1-051	---
Military construction, Army.....	214/82050	21-2050-0-1-051	---
Military construction, Army.....	213/72050	21-2050-0-1-051	---
*Military construction, Navy.....	177/11205	17-1205-0-1-051	259,475,000
Military construction, Navy.....	176/01205	17-1205-0-1-051	---
Military construction, Navy.....	175/91205	17-1205-0-1-051	---
Military construction, Navy.....	174/81205	17-1205-0-1-051	---
Military construction, Navy.....	173/71205	17-1205-0-1-051	---
*Military construction, Air Force.	577/13300	57-3300-0-1-051	313,632,000
Military construction, Air Force.	576/03300	57-3300-0-1-051	---
Military construction, Air Force.	575/93300	57-3300-0-1-051	---
Military construction, Air Force.	574/83300	57-3300-0-1-051	---
Military construction, Air Force.	573/73300	57-3300-0-1-051	---

Appropriation	Symbol	OMB Identification Code	Deferred
*Military construction, Defense Agencies.....	977/10500	97-0500-0-1-051	128,110,000
Military construction, Defense Agencies.....	976/00500	97-0500-0-1-051	---
Military construction, Defense Agencies.....	975/90500	97-0500-0-1-051	---
Military construction, Defense Agencies.....	974/80500	97-0500-0-1-051	2,350,000
Military construction, Defense Agencies.....	973/70500	97-0500-0-1-051	---
*Military construction, Army National Guard.....	217/12085	21-2085-0-1-051	31,502,000
Military construction, Army National Guard.....	216/02085	21-2085-0-1-051	---
Military construction, Army National Guard.....	215/92085	21-2085-0-1-051	---
Military construction, Army National Guard.....	214/82085	21-2085-0-1-051	---
Military construction, Army National Guard.....	213/72085	21-2085-0-1-051	---
*Military construction, Air National Guard.....	577/13830	57-3830-0-1-051	20,885,000
Military construction, Air National Guard.....	576/03830	57-3830-0-1-051	---
Military construction, Air National Guard.....	575/93830	57-3830-0-1-051	---
Military construction, Air National Guard.....	574/83830	57-3830-0-1-051	---
Military construction, Air National Guard.....	573/73830	57-3830-0-1-051	---
*Military construction, Army Reserve.....	217/12086	21-2086-0-1-051	9,183,000
Military construction, Army Reserve.....	216/02086	21-2086-0-1-051	---
Military construction, Army Reserve.....	215/92086	21-2086-0-1-051	---
Military construction, Army Reserve.....	214/82086	21-2086-0-1-051	---
Military construction, Army Reserve.....	213/72086	21-2086-0-1-051	---
*Military construction, Naval Reserve.....	177/11235	17-1235-0-1-051	22,005,000
Military construction, Naval Reserve.....	176/01235	17-1235-0-1-051	---
Military construction, Naval Reserve.....	175/91235	17-1235-0-1-051	---
Military construction, Naval Reserve.....	174/81235	17-1235-0-1-051	---
Military construction, Naval Reserve.....	173/71235	17-1235-0-1-051	---

3
D87-6A

Appropriation	Symbol	OMB Identification Code	Deferred
*Military construction, Air Force Reserve.....	577/13730	57-3730-0-1-051	17,400,000
Military construction, Air Force Reserve.....	576/03730	57-3730-0-1-051	---
Military construction, Air Force Reserve.....	575/93730	57-3730-0-1-051	---
Military construction, Air Force Reserve.....	574/83730	57-3730-0-1-051	---
Military construction, Air Force Reserve.....	573/73730	57-3730-0-1-051	---
*North Atlantic Treaty Organization Infrastructure.....	97X0804	97-0804-0-1-051	150,000,000
*Total.....$			1,318,502,000

Justification: These funds are deferred due to lack of project authorization or to administrative delays, such as project designs not being completed and incomplete coordination of projects with other Federal agencies or local government agencies. Funds will be apportioned for individual projects throughout the year upon authorization or completion of project design and/or coordination. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ Includes all accounts included under this appropriation title.

2/ These accounts were the subject of a similar deferral in 1986 (D86-4A).

* Revised from previous report.

D87-7A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D87-7 transmitted to the Congress on September 26, 1986.

This increases by $190,022,000 the previous deferral of $76,943,000 in the Department of Defense, Family housing, resulting in a total deferral of $266,965,000. The increase in the amount deferred results from deferral of funds included in the 1987 Military Construction Appropriation Act.

Deferral No: D87-7A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Defense - Military

Bureau:
Family Housing, Defense

Appropriation title and symbol:

See Coverage Section below 1/

OMB identification code:
See Coverage Section below 1/

Grant program:
|___| Yes |_X_| No

Type of account or fund:

|___| Annual 9/30/87
9/30/88
|_X_| Multiple-year 9/30/89 (expiration date)
|___| No-Year 9/30/90
*9/30/91

New budget authority.....*$3,113,914,000
(P.L. 99-500 & 591)
Other budgetary resources* 371,897,000

Total budgetary resources* 3,485,811,000 2/

Amount to be deferred:
Part of year *$_____
Entire year * 266,965,000

Legal authority (in addition to sec. 1013):
|_X_| Antideficiency Act
|___| Other_____

Type of budget authority:
|_X_| Appropriation
|___| Contract authority
|___| Other_____

Coverage: 1/

Appropriation	Symbol	OMB Identification Code	Deferred
* Family housing, Navy.....	177/10703	17-0703-0-1-051	82,350,000
Family housing, Navy.....	176/00703	17-0703-0-1-051	---
* Family housing, Army.....	217/10702	21-0702-0-1-051	138,500,000
Family housing, Army.....	216/00702	21-0702-0-1-051	---
* Family housing, Air Force.....	577/10704	57-0704-0-1-051	34,315,000
* Family housing, Air Force.....	576/00704	57-0704-0-1-051	---
Family housing, Air Force.....	575/90704	57-0704-0-1-051	11,800,000
Family housing, Air Force.....	574/80704	57-0704-0-1-051	---
Family housing, Air Force.....	573/70704	57-0704-0-1-051	---
			*266,965,000

Justification: These funds are deferred due to administrative delays, such as project designs not being completed and incomplete coordination of projects with other Federal agencies or local government agencies. Funds will be apportioned for individual projects throughout the year upon completion of project design and/or coordination. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1986 (D86-27A).

2/ Includes all accounts included under this appropriation title.

* Revised from previous report.

215

Deferral No: D87-28

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Health & Human Services

Bureau:
Health Resources & Services Admin.

Appropriation title and symbol:

Indian Catastrophic Health Emergency Fund

75X0390

OMB identification code:
75-0390-0-1-551

Grant program:
|___| Yes |_X_| No

Type of account or fund:

|___| Annual
|___| Multiple-year _____ (expiration date)
|_X_| No-Year

New budget authority..... $ 10,000,000
(P.L. 99-500 & 591)
Other budgetary resources -0-

Total budgetary resources 10,000,000

Amount to be deferred:
Part of year $ 10,000,000
Entire year _____

Legal authority (in addition to sec. 1013):
|_X_| Antideficiency Act
|___| Other_____

Type of budget authority:
|_X_| Appropriation
|___| Contract authority
|___| Other_____

Justification: This program provides medical care, public health services, and health profession scholarships for American Indians and Alaska Natives. The 1987 Appropriation Act created an Indian Catastrophic Emergency Health Fund, administered by the Indian Health Service (IHS) in the Department of Health and Human Services (HHS). The general purpose of the fund as stated in Senate Report No. 99-397 is to "enable the IHS to meet the extraordinary costs associated with the treatment of catastrophic illnesses falling within the medical priorities of the IHS." To ensure that this fund is used for its intended purpose, HHS is preparing a set of administrative guidelines to govern the disbursement of catastrophic health care funds. These funds are being deferred pending completion of HHS' administrative guidelines. HHS expects that these administrative guidelines will be published in the Federal Register by early calendar year 1987. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

D87-16A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D87-16 transmitted to Congress on September 26, 1986.

This increases by $295,611,064 the previous deferral of $803,877,039 in the Department of Transportation's Facilities and equipment, FAA trust fund account, resulting in a total deferral of $1,099,488,103. The increase results from projects and equipment funded in the Department of Transportation Appropriation Act, 1987, that cannot be constructed or contracted for this year.

Deferral No: D87-16A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Transportation **Bureau:** Federal Aviation Administration **Appropriation title and symbol:** Facilities and equipment (Airport and airway trust fund) 1/ 69X8107 693/78107 695/98107 *697/18107 694/88107 696/08107 **OMB identification code:** 69-8107-0-7-402 **Grant program:** |__| Yes |X| No	**New budget authority.....** *$ 804,584,000 (P.L. 99-500 & 591) **Other budgetary resources** *1,404,321,486 **Total budgetary resources** *2,208,905,486 **Amount to be deferred:** **Part of year** $ ____ **Entire year** *$1,099,488,103 **Legal authority** (in addition to sec. 1013): |X| Antideficiency Act |__| Other ____

Type of account or fund:

|__| Annual	693/78107	9/30/87
	694/88107	9/30/88
|X| Multiple-year	695/98107	9/30/89
	(expiration date)	
|X| No-Year	696/08107	9/30/90
	*697/18107	9/30/91

Type of budget authority:

\|X\| Appropriation
\|__\| Contract authority
\|__\| Other ____

Justification: Funds from this account are used to continue to procure specific Congressionally-approved facilities and equipment for the expansion and modernization of the National Airspace System. The projects financed from this account include construction of buildings, the purchase of new equipment for new or improved air traffic control towers, automation of the en route airway control system, and expansion/improvement of navigational and landing aid systems. These activities were justified and provided for in the Department's regular budget submissions and were appropriated by Congress for the year in which requested. Due to the lengthy procurement and construction time for these interrelated facilities and complex equipment systems, it is not possible to obligate all the funds necessary to complete each project in the year funds were appropriated. Therefore, it is necessary to apportion funds so that sufficient resources will be available in future periods to complete these projects. This action is consistent with FAA's full funding approach and Congressional intent to provide multi-year funding for the total costs of projects. This action is taken under provisions of the Antideficiency Act (31 U.S.C. 1512), which authorizes the establishment of reserves for contingencies.

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1986 (D86-29A).

* Revised from previous report.

[FR Doc. 86-29442 Filed 12-30-86; 8:45 am]
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federal register

Wednesday
December 31, 1986

Part III

Department of Agriculture

Food and Nutrition Service

7 CFR Parts 271, 272, 273, and 277
Food Stamp Program; Employment and Training Requirements; Final Rule

BEST COPY AVAILABLE

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272, 273, and 277

[Amdt. No. 281]

Food Stamp Program; Employment and Training Requirements

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: On October 1, 1986 the Department published a rulemaking at 47 FR 35152 which proposed extensive changes in the work requirements of the Food Stamp Program based upon provisions in the Food Security Act of 1985 (Pub. L. 99–198). The Act requires that no later than April 1, 1987 every State agency shall implement an employment and training program designed by the State agency and approved by the Secretary of Agriculture. The intent of the new requirement is to ensure that able-bodied food stamp recipients are involved in meaningful work-related activities which will eventually lead to paid employment and a decreased dependency on assistance programs. This rule amends and finalizes the provisions of the October 1, 1986 rulemaking based on the extensive and detailed public comments received by the Department.

DATES: The provisions of this rulemaking are effective January 30, 1987. State employment and training plans must be received by the Department by March 2, 1987. An employment and training program shall be implemented in each State, pending FNS approval, by April 1, 1987.

ADDRESS: One copy of the plan should be sent to the FNS National Office at 3101 Park Center Drive, Alexandria, VA 22302 and one to the appropriate FNS Regional Office.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be addressed to Patricia Warner, Food and Nutrition Service, Chief, Administration and Design Branch, Family Nutrition Programs, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 756–3383.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This final action has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512–1. The Department has classified this action as non-major.

The effect of this action on the economy will be less than $100 million. This final action will have no effect on costs or prices. Competition, employment investment, productivity, and innovation will remain unaffected. There will be no effect on the competition of United States-based enterprises with foreign-based enterprises.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final rule related Notice of 7 CFR Part 3015, Subpart V (48 FR 29115), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, Stat. 1164, September 19, 1980). Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that this final action does not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the Program. Potential and current participants will be affected because they will have to fulfill the work requirements established by State agencies under the guidance set forth in this rulemaking.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under that Act. The OMB approval number for these requirements is 0584–0339.

Background

This rule puts into final regulatory form the work related amendments made to the Food Stamp Act of 1977 by the Food Security Act of 1985, Pub. L. 99–198, Title XV, 99 Stat. 1566, December 23, 1985 and some of the administrative provisions proposed by the Department in its October 1, 1986 proposed rule, 51 FR 35152 *et seq.* With this rule, food stamp job search is replaced as the major work related activity of the Food Stamp Program by employment and training (E&T) programs. As a result, States will be given greater flexibility in the choice of employment and training services they wish to offer food stamp work registrants, subject to approval by the Secretary.

The work provisions of Pub. L. 99–198 were enacted "for the purpose of assisting food stamp recipients in gaining skills, training or experience that will increase their ability to obtain regular employment." Section 1517(a)(2), 99 Stat. 1574. A major point of emphasis in the legislation is that States be given maximum flexibility in designing the programs they wish to operate. The role of the Department in approving State plans and monitoring State performance is to ensure that each State provides a meaningful avenue for its able-bodied food stamp recipients to increase their employment prospects. These goals are achieved through this final rulemaking.

The Department received a substantial number of comments on the proposed rulemaking. The comments were thorough, persuasive, and well documented and the Department appreciates the effort which went into their preparation and submission. All comments received by November 14 were reviewed and given full consideration for inclusion in this rulemaking. All others were read and considered.

In response to the suggestions of the majority of commenters, the Department has made a number of changes to the proposed rule which we believe will result in better, more efficient and effective employment and training programs. Because of the April 1, 1987 statutory implementation date the Department is eager to publish this final rule as early as possible and a number of discretionary provisions which appeared in the October 1, 1986 rule, specifically those pertaining to voluntary quit and workfare, will be published in a subsequent rulemaking. Comments received on these issues will receive full consideration.

Implementation

A number of comments were received addressing the implementation time frames in the proposed rule. A few commenters suggested that the 30-day comment period be extended. The Department does not feel such an extension is necessary or appropriate in light of the need of State agencies to have final rules in places as a basis for planning and implementing their employment and training programs to meet the statutory April 1, 1987 deadline. As of November 14, 1986, the Department received 50 comments from State agencies, 5 comments from localities, 19 from advocacy and other organizations, 5 from employment services, 5 from Members of Congress, and 8 from individuals.

Several commenters felt that the amount of time allowed States to submit their E&T plans is insufficient. The Department plans to allow States two-months to prepare and submit employment and training plans to FNS. The Department distributed $5 million in FY 1985 and $5 million in FY 1986 for States to begin to plan their programs. The Department has also provided two pieces of technical assistance to State agencies offering guidance on how to design and operate employment and training programs for food stamp recipients. In addition to these efforts to assist States in the planning process, this rulemaking also authorizes States to submit interim plans to the Department for the six months of program operation. Given these factors the Department believes a two-month preparation period is adequate. Moreover, the April 1, 1987 implementation date was established by Pub. L. 99–198 and the Department does not have any flexibility to adjust that date.

Definitions

In response to a number of comments received requesting clarification of the terminology used throughout the proposed rulemaking, the Department has added several definitions to this final rulemaking. Most of these definitions will be found in § 271.2 of the regulations. The others will be found within the text of § 273.7.

Applicant—a person or persons who applies in writing for food stamp benefits.

Assessment—an in-depth evaluation of employability skills coupled with counseling on how and where to search for employment. If combined with work experience, some form of employment search or training, an assessment of this nature could constitute part of an approvable employment and training component.

Base of eligibles—E&T mandatory participants (defined below) plus persons who volunteer for E&T participation.

Component—a work experience, work training or job search program, as described in section 6(d)(4)(B) of the Food Stamp Act of 1977 (7 U.S.C. 2014 (d)(4)(B)) designed to help food stamp recipients move promptly into unsubsidized employment.

Employment & training mandatory participant—a Food Stamp Program applicant or participant who is required to work register under 7 U.S.C. 2014(d)(1) or (2) and who the State determines should not be exempted from participation in an employment and training program.

Exempted—this term refers to a work registered person or persons excused by the State, under the conditions in § 273.7(f) from participation in an employment and training program.

Employment and training program—a program operated by each State agency consisting of one or more direct work, work training or job search components.

Newly work registered—food stamp participants work registered at the point of application or those registered for the first time in their current period of participation.

"Placed" in an employment and training program—a State agency may count a person as "placed" in an employment and training program when the individual commences a component or is sent a Notice of Adverse Action (NOAA) or denied certification due to non-compliance with a food stamp employment and training requirement. Persons who refuse to work register or who voluntarily quit a job and are sent a NOAA may not be considered "placed."

Screening—an evaluation by the eligibility worker as to whether a person should or should not be referred for participation in an E&T program. This activity would not be considered an approvable E&T component.

Work registrant—a Food Stamp Program participant subject to the provisions of section (d)(1) of the Food Stamp Act.

Work Registration

The proposed rule contained a provision that work registrants who move out of a project area reregister at their new location within ten days of a move. The purpose of the provision was to preclude a long period during which the work registrant's status is unaccounted for. Commenters objected to the 10 day requirement, contending that it limited State flexibility and was unnecessary. The Department agrees and the final rule eliminates the 10 day requirement. States may utilize their present information systems, if adequate, to register cases and follow existing procedures and timelines for transferring cases.

This rule finalizes the eligibility criteria specified in section 6(d) of the Food Stamp Act of 1977. The Act subjects persons age 16 and older to the work registration requirements. It also exempts from work registration 16 and 17 year olds who are not household heads, or who are attending school or enrolled in an employment and training program at least half-time.

This final rule eliminates the required use of the ES–511 form. This form was mandated through previous regulations at a time when food stamp work requirements were being administered jointly with the Department of Labor (DOL).

State agencies now will be able to record and keep track of work registration status through annotating application forms or worksheets, or by utilizing a method of their own design, as long as the State is able to fulfill the reporting requirements of § 273.7(c)(6).

This rulemaking does not alter the current policy of allowing the person who applies for the household to work register other household members. The October 1, 1986 rule proposed that State agencies provide each household with a statement which describes work registration rights and responsibilities, the consequences of failure to comply, and lists the names of those affected household members. A number of commenters urged that this statement be provided to each work registrant in the household, at the time of application and at recertification, and to the pertinent member whenever a previously exempted or new household member becomes subject to work requirements. This rule adopts the suggestions of the commenters that the form be provided to each work registrant while, also in response to comments, deleting the proposed requirement that the name of each work registrant in the household appear on the form. These requirements should not prove to be a significant burden to States since the statement will be on a standard form. The Department wants to ensure that each person on the Food Stamp Program who is not exempted from the work requirements receives a clear statement of his or her rights and responsibilities.

On commenter pointed out a difference in language between the food stamp regulations and section (6)(d)(2)(A) of the Food Stamp Act which exempts from food stamp work registration persons who are "currently subject to and complying with a work registration requirement under title IV of the Social Security Act . . .". The food stamp regulations at § 273.7(b) provide an exemption for persons "subject to and participating in the WIN program under title IV." The Department has received a number of policy inquiries about exactly what WIN activity will render a food stamp participant exempt from work registration. It is consistent with the language of the Act that the Department consider WIN registration as compliance with a work registration requirement under title IV and through this final relemaking current regulatory

language will be changed to identify WIN registration as an example.

State Agency Responsibilities

This final rule continues to assign to State agencies the responsibility of registering for work each household member not exempted by subsection 6(d)(2) of the Food Stamp Act of 1977, as amended. This activity must continue statewide regardless of whether all geographic areas are included in a State's employment and training program. The State agency will have the responsibility of screening each work registrant in areas which are covered by the State's E & T program to determine which registrants should be referred to an employment and training component.

State Employment and Training Plans

Many State commenters expressed concern about their ability to prepare and submit State plans by March 2 and begin full operations by April 1, 1987. The Department recognizes that this timeframe is a short one and that some of the information called for in the State plan will not be readily available to each State. The Department is planning to distribute to each State a handbook with guidance on how to prepare the plans. However, we recognize that even with technical assistance a number of States will not have the time to decide how to fully operationalize their programs. The Department therefore is asking that 6 month interim plans be submitted by those States which are not able to fully anticipate what their E & T program will look like in its final form. These interim plans will cover the first six months of operation. Interim plans will be evaluated carefully by the Department and must contain justifications for State granted exemptions, and the nature and location of the components the State plans to offer.

The proposed rule called for state E & T plans to be updated and submitted to FNS anjually. It also proposed that States must submit plan revisions to FNS for approval if they intend to alter the nature or location of components or the number or characteristics of persons served. Several commenters suggested that employment and training plans be submitted as frequently as they are for WIN demonstration projects which require updates and revisions only. Regular WIN and food stamp plans of operations are required annually. The Department believes that each state's total E & T program must be viewed as a whole if it is to be adequately monitored. Because of State concerns that it well require a considerable amount of time and money to submit a new plan annually the Department is requiring that plans be submitted biannually. However, because of the newness of the requirements of this rulemaking, and the amount of activity the Department anticipates will take place in the initial year and one half of operation, the Department is requiring that new plans be submitted for FY 1988 and FY 1989. After that, no plan need be submitted until the FY 1991 plan. All plans, with the exception of the initial plan which is due March 2, 1987, shall be submitted 45 days before the start of the appropriate Federal fiscal year.

The requirement that plan revisions be submitted for FNS approval before implementation remains unchanged, despite one comment that States should have the authority to alter their programs quickly and later submit a change request to FNS. The Department does not believe such a system would be workable and believes such a system would violate the Secretary's oversight responsibility. This rule finalizes the provision that a State's receipt of employment and training funds is contingent upon the Secretary's approval of the State's plan.

Employment and Training Plan Contents

A number of comments were received from State agencies which felt the level of detail the Department proposed to include in the State plans was too burdensome. After evaluation, we have eliminated several pieces of information we proposed to collect. Specifically, the requirement for a discussion of the employment and training needs of the State's work registrant population and the expected outcomes of its employment and training program was removed. One commenter said it would be very difficult and cumbersome to have to provide FNS with copies of all State contracts for employment and training services. We agree and have altered the proposed requirement and now ask that the contracts be available for FNS inspection.

This rule requires that plans must include a detailed description of the components the State chooses to operate, and why; the cost of operating the components for one full year including the methodology for State reimbursement for education components; the categories and types of individuals the State plans to exempt from participation and why, including cost information or other justification as to why such exemptions are advisable and the estimated percentage of work registrants the State plans to exempt; the characteristics of the population the State does intend to place; the geographic areas covered and not covered by the plan, and why, and the type and location of the services to be offered; the method the State will use to count all work registrants the first month of each fiscal year; the estimated number of volunteers; the relationship between the State agency and other organizations it plans to coordinate with for services; the organizational relationship between the units responsible for certification and those responsible for operating employment and training components; and the availability of employment and training programs to Indians living on reservations. If a State plans to operate components which are significantly more intensive than the minimum level of effort specified in § 273.7(f), requiring greater staff assistance or more costly equipment or facilities, or if the State plans to concentrate efforts on harder to place recipients, additional cost information and justification for the components should be included to assist FNS in determining whether an adjustment should be made in the State's performance standard.

One State asked that the Department specify what budgetary or cost information to include in the State plan. This guidance will be provided through the technical assistance handbook which will be distributed to States. State agencies are responsible for fulfilling the financial and non-financial reporting requirements specified later in this preamble and at § 273.7 (c)(6) and (d)(3).

Non-financial Reporting Requirements

The Department received many comments about the proposed State agency quarterly reporting requirements. The quantity of information was regarded as too extensive by most commenters. The issues of the cost of redesigning current information or data collection systems as well as the amount of time needed to do so were raised. The Department has made a concerted effort to condense the amount of information required of the States and to limit it to only that information necessary to monitor State activity toward its performance standard. A number of items which appeared in the data collection burden of the proposed rule have been removed in this final rulemaking.

Although the Department still needs to know the number of applicants each State places in a component (presumably job search) we are eliminating the requirement that applicant information be separated by those who were not subsequently work registered, applicants who were found ineligible for food stamp participation and those who were work registered. The Department is asking for this statistic so that States will receive credit for serving applicants. A number of States commented that they would have difficulty keeping track of the number of persons who complete their first, second or third components. Because this piece of data is not necessary to monitor State performance, the Department has deleted its proposed request for this information. Because this final rule will count all Notices of Adverse Action (NOAA) issued and certifications denied due to noncompliance with work requirements toward a State's performance standard, the two requirements for sanction information found in § 273.7(c)(b) (vii) and (ix) of the proposed rule are deleted and replaced by one requirement that all NOAAs and denied certifications for noncompliance with employment and training requirements be reported, regardless of whether they were imposed before or after E&T activity commenced.

The Department also has deleted the requirement for States to report the number of persons who become ineligible for food stamp benefits due to employment. Many of these items will be gathered during the Congressionally mandated evaluation of the E&T programs. The Department is planning to distribute to State agencies a new and comprehensive employment and training reporting form on which States should report non-financial information.

There are two pieces of information which the Department proposed to collect quarterly but which we are now requiring States to submit on their final annual report only. These data are the number of work registrants who were exempted by the State, separated by reasons for the exemption, and the number of persons placed in each specific E & T component. Although this information will not be used to monitor State performance, the Department views this information as necessary for overall policy evaluation.

This final rulemaking requires that each State submit quarterly reports to FNS no later than 45 days after the end of the quarter, containing the number of persons in the following categories:

1. FSP participants newly work registered;
2. Work registrants the State exempted from participation in employment and training;
3. Food Stamp Program participants who volunteer for and commence participation in an approved component;
4. E & T mandatory participants who actually commence a component including applicants in States which operate a component for applicants; and
5. The number of persons sent a Notice of Adverse Action for failure to comply with E & T requirements of the Food Stamp Program and the number of Food Stamp Program applicants who were denied eligibility for failure to comply with an E & T requirement.

On the first quarterly submission each year, States must report the number of food stamp participants who are work registered as of October of that year. Additional information may be required of individual State agencies on an as needed basis depending on the contents of the State's plan regarding the type of components offered and the characteristics of persons served. Such additional items and the timeframes under which they should be provided will be discussed with the State prior to plan approved by FNS.

Employment and Training Programs

The Department received a considerable number of comments addressing the nature of the employment and training programs which the Department proposed.

There was general support for the change from nationwide job search to the flexibility which could be achieved by State designed employment and training programs. Most of the commenters felt that the programs, as proposed by USDA, did not allow for the degree of flexibility they believe Pub. L. 99–198 provides.

Although most commenters did not suggest that FNS was attempting to dictate the specifics of the components they could choose to operate, a number felt that the Department proposal to provide guidance on the percentage of work registrants States could exempt from E & T participation, coupled with the proposed performance level and capped 100 percent funding, restricted the types of programs the States could initiate and operate. The Department agrees that these factors will influence program design. However, these factors as prescribed in the final rule represent appropriate oversight. In response to the input received, the Department is modifying the proposal in a number of areas.

Components

Each State shall operate at least one employment and training program which shall consist of one or more work experience, work training or job search programs which are defined as components. A State may vary the components offered within the State, or may choose to operate only one component. This rulemaking reflects the intent of Congress to permit each State to design an employment and training program which will best suit its needs. As stated in the preamble of the proposed rule, the Department expects that the employment and training programs will be continually evolving and improving as each State discovers through evaluation, which components are most successful in increasing the ability of food stamp recipients to obtain unsubsidized employment.

The components listed in the October 1, 1986 proposed rule for approval by the Secretary remain unchanged and are specified in this rulemaking. One of the approvable components is, "A job search program comparable to that required for the AFDC program under Part A of Title IV of the Social Security Act." In response to comments, this rulemaking expands on the description of the provisions of AFDC employment search. This rule specifies that the State may require that an individual participate in a job search program from the time an application is filed for an initial period of up to eight consecutive weeks. Following this initial period (which may extend beyond the date when eligiblity is determined) the State may require an additional job search period, not to exceed eight successive weeks (or their equivalent) in any period of 12 consecutive months. The first such period of 12 consecutive months shall begin at any time following the close of the initial period. States must not impose requirements which would delay the determination of an individual's eligibility for aid or in issuing benefits to any household which is otherwise eligible.

At the request of a number of commenters this final rule clarifies that placement of a food stamp recipient in an employment and training program being operated by a State, such as Job Training Partnership Act (JTPA) programs or a state-funded job program, may count as a placement for performance purposes if FNS approves the program as a meaningful component. The Department recognizes that there are work registrants who lack basic skills, such as reading or math, which may present barriers to their employability. Placing these persons in programs to address their needs could constitute an acceptable component and, if appropriate, the person could be counted as placed toward a performance standard. Education components are approvable to the extent that they directly enhance the employability of individual recipients. In reviewing State plans, the Department expects that any proposed education

activities would be designed to specifically address employability barriers of participants identified through individual assessment. This link between education and employment is based on the statute. The Department believes that while long-term, general education may indirectly promote employability, a more direct link between education and job-readiness must be established for a component to be approved. Funding for employment and training programs is limited, and we do not believe that it was the intent of Congress to use this funding to supplant currently operating State and local educational programs but rather, to supplement them, if necessary. When preparing their E&T plans States should clearly document how E&T monies are being distributed into educational components.

A number of commenters recommended that prior to an individual's participation in a specific E&T component the State should provide an explanation of the requirements of the component, the sanctions for noncompliance, and what will constitute noncompliance. The Department concurs that this information should be provided either verbally or in writing and has placed such a requirement in this final rule.

Minimum Level of Effort of Components

The October 1, 1986 rule proposed that for a component to be acceptable to FNS it should entail an average of 12 hours of activity per month per participant for two months. A number of comments were received opposing what commenters perceived to be a rigid minimum number of hours. This was not the intent of the Department.

The Department stated in the preamble of the proposed rule that because there will be so many variations in the nature of the components offered, it would be unrealistic to insist on a specific minimum level of effort for each participant. In an effort to provide guidance to State agencies in designing their employment and training components the Department offers a level of effort comparable to 12 hours per month per participant for two months as the type of effort we would like to see States use as a minimum. That is not to say that the Department will not consider and approve components which entail less time than this, if States can demonstrate in their plans that such components are meaningful. We recognize that the quality of a component cannot be determined by the number of hours a participant spends engaged in the activity.

Exemptions from Employment and Training Programs

The proposed regulations provided for different standards of justification for States to exempt work registrants or categories of work registrants from E&T depending on whether the exemptions proposed in the State plan exceeded 20 percent of its work registrants. The proposal required compelling justification for exemptions in excess of this benchmark, and the preamble indicated that States should not expect to be permitted to exempt more than this proportion. This proposal was opposed by 48 commenters who asserted that this limitation curtailed State flexibility in programs design and preferred exemptions to be evaluated on a case-by-case basis in the State plan approval process. In particular, commenters challenged the validity of the 20 percent benchmark because it was based on national data from job search programs which may not reflect current work registrant characteristics in individual States. Others argued that a national standard was inconsistent with the legislative intent to allow program design to be tailored as closely as possible to conditions in each State. The Department has reevaluated this issue and is deleting the 20 percent standard from the final rule. Types of exemptions will be considered on a case by case basis during the review and approval of each State plan for its employment and training program. All proposed exemptions will be evaluated in the same manner within the context of the overall plan.

While the Department intends that this change will allow for greater responsiveness to specific State circumstances, it remains committed to the statutory provision that exemptions are to be based on impracticability.

The law indicates several factors which may lead to the impracticability of providing an employment and training program in some geographic areas, to some groups of recipients, or to some individuals. These factors include availability of job opportunities, lack of job readiness and employability, the remote location of work opportunities, and unavailability of child care. On the other hand, the Act also refers to the need to evaluate the validity of exemptions. Moreover, the relevant legislative history indicates that exemptions must be rational and are not to result in shrinking the scope of the employment and training program to the point where it loses meaningfulness.

Therefore, in justifying proposed exemptions using these or other factors, States must show why implementing an employment and training program for areas and persons proposed for exemption is impracticable. Lack of State funds is not acceptable as a criterion of impracticability for exemption purposes.

In designing their E&T programs and proposing exemptions, States should review recent evidence that it is possible to effectively serve larger proportions of the work registrant population that has been our past national experience. The Department's job search and workfare demonstrations indicate that work programs are practical and effective under varying economic circumstances and for people with and without work experience. Moreover, employment and training programs can be designed to operate well in rural areas and to operate within the needs of those without automobiles or after-school child care.

Although situations may vary across the country, it appears that previously observed levels of exemptions and previously observed levels of implementation do not justify low service levels. The new law provides flexibility to design services in such a way as to make them appropriate for larger proportions of recipients.

Requests for all types of exemptions must be justified in State plans. The proposal specified and this rule retains the provisions that individual exemptions shall be evaluated at each recertification, and that exemptions granted to categories of work registrants undergo serious reconsideration by the State agency annually to ensure that the reason for the exemption is still valid. One commenter suggested that States be allowed to review exemptions for validity more frequently than at each certification. The Department has no objections to more frequent reevaluations of exemptions, either categorical or individual.

A number of commenters asked that the Department take into account changes in a State's economy when determining whether a State has complied with its exemption limit. Language has been added to this rule to take account of changes in a State's economy in either of two potential ways. If a State recognizes that because of changes in its caseload its approved exemption criteria are too low, it can either seek to amend its State plan, during the year, or show that it had good cause for not meeting its established performance standard at the end of the year.

The Department also received comments saying that the percentage of exemptions granted to a State should not affect the State's performance standards. The Department will view the exemption level it approves and the performance level it assigns separately and has removed the language which appeared in the proposed rule which said that exemptions granted could affect the performance standard.

Hours of Participation

A number of commenters took exception with the Department's interpretation of the provisions of section 6(d)(4)(F) of the Food Stamp Act which pertain to the hours of work and participation which may be required in an employment and training program. The commenters contended that an intentional distinction is drawn in the Act between the number of hours of work which may be required of a household and the hours of participation in the employment and training program which can be required of a household member.

Section 6(f)(4)(F)(i) provides that the total hours of *work* in an employment and training program . . . required of members of a household together with the hours of *work* of such members in any program carried out under section 20 (food stamp workfare) in any month collectively may not exceed a number of hours equal to the household's allotment for a month divided by the higher of the applicable State minimum wage or Federal minimum wage. Section 6(d)(4)(F)(ii) limits the total hours of *participation* in an employment and training program by any member of a household, in any month, together with any hours worked in another program carried out under section 20 and any hours worked for compensation to 120 hours per month.

The proposed rule applied the hourly limit of section 6(d)(4)(F)(i) to all participation in employment and training programs. We now believe this was a misinterpretation of the Act and have changed our interpretation through this final rulemaking. This rule specifies that E&T mandatory participants may be required to participate in employment and training programs for up to 120 hours per month regardless of allotment size, with the exception that household participation in work programs, including but not limited to those specified in § 273.7(f)(1) (iii), and (iv) cannot exceed the number of hours obtained by dividing the household's benefit level by the minimum wage. The decision of whether a component is a work component shall be made by the Secretary in the plan approval process. State agency recommendations will be considered at that time.

The Department regards this interpretation as a positive step toward meaningful programs and greater State flexibility. Several State commenters expressed concern that limiting the hours of employment and training participation to a ratio of the household's benefit level to the minimum wage would severely restrict the type of components they could offer. One State pointed out that it would be necessary to notify contract providers of allotment changes month to month so they could vary participation requirements accordingly. The Department's reinterpretation will eliminate this concern.

Voluntary Participation

A large number of commenters who addressed the participation of volunteers in E&T programs expressed their belief that it is important to serve volunteers and that providing E&T services to certain volunteers will prove to be more cost effective than serving other persons who are work registered. As stated in the preamble to the proposed rule, research suggests that it can be effective to serve persons who are exempt from work registration because they have children under the age of six. Many commenters contended that counting volunteers in the base of eligibles when determining a State performance level, makes it harder for States to meet their established standards and would create a disincentive to serving such persons. This issue is addressed later in this preamble in the discussion of performance standards.

Several commenters asked that the Department clarify the status of volunteers in an E&T program. Volunteers must be food stamp recipients, but they are not subject to sanction for noncompliance with E&T requirements. State agencies may decide which volunteers to serve. If, as one commenter mentioned, a particular volunteer continually refuses, after commencing a component, to fulfill the requirements of the component, it is the State's decision whether to offer continued E&T services to that individual. One commenter inquired about the number of hours of participation a person may volunteer for. The final rule provides that the same limitations on the number of hours of participation or work in an employment and training program that apply to E&T mandatory participants apply to volunteers. We believe that Congress did not intend to draw distinction between the types of E&T participants when it established maximum hour restrictions. Moreover, limiting the number of hours of participation in E&T programs by volunteers (as well as mandatory participants) allows time for independent efforts by such persons to seek non-subsidized employment.

Employment and Training Program Funding

Numerous State agencies stated that the Federal funding available would be insufficient to operate expanded employment and training programs and that State agencies will be required to invest their own funds in order to meet the performance standards proposed in the regulations. The legislation caps the amounts to be made available to States without any matching requirements at $40 million in Fiscal Year 1986, $50 million in Fiscal Year 1987, $60 million in Fiscal Year 1988 and $75 million in Fiscal Years 1989 and 1990. It also provides that the Department will match 50 percent of any costs incurred by a State above its grant level. There are no dollar limits to the amount of matching funds that will be available to State agencies. We expect that it will be necessary for many State agencies to spend more than their unmatched Federal grant to operate employment and training programs that satisfy the performance standards that will take effect in Fiscal Year 1989. Congressional budgetary estimates for the employment and training programs at the time of enactment recognized that the unmatched Federal grant would not be adequate to fund these programs. We consider administration of employment and training requirements an integral State responsibility in operating the Food Stamp Program and thus believe that it is reasonable to expect State agencies to assume some portion of the costs of these programs. The proposed regulation stated that, for the second half of Fiscal Year 1987 and for Fiscal Year 1988, funds appropriated for unmatched employment and training grants would be allocated on the basis of the estimated number of work registrants in each State as a percentage of the number of work registrants nationwide, based on the most recently available, reliable information. The preamble stated that the Department intended to use Integrated Quality Control System (IQCS) data on work registrants in conjunction with Food Stamp Program participation numbers to distribute funds for the second half of Fiscal Year 1987 and Fiscal Year 1988.

A number of commenters expressed opposition to this proposed method of allocation. They stated that the IQCS

system could not provide sufficiently reliable information on work registrant status and that its use would result in an inequitable distribution of funds among States. The commenters contended that some States universally registered participants beyond those required by law, while others failed to enter work registrant status codes into the IQCS form accurately since that data element was unnecessary for either the determination of an error rate or any State management information purpose. Several commenters suggested that the allocation methodology look instead at Food Stamp Program participation data, stating that this would be a more uniformly reported data base and that it would better recognize that States may choose to serve volunteers under their employment and training programs. Other commenters believed that the funding formula should guarantee a minimum grant level, regardless of the size of a State's caseload. Several proposed that the funding method provide that States currently operating job search programs be provided at least the same level of funding that they now receive. Several stated that the funding formula should give emphasis to successful outcomes, in terms of placement in employment. Still other commenters believed that the formula should provide for consideration of labor market factors and be periodically adjusted for downturns in State economic circumstances.

The final regulations will distribute the funding appropriated for umatched employment and training grants on the basis of Food Stamp Program participation in each State as a percentage of total nationwide participation. The Department will use average monthly participation for the most recent Fiscal Year for which complete data has been reported to allocate the employment and training program grants. Thus, for the second half of Fiscal Year 1987, participation figures for Fiscal Year 1985 will be used; for Fiscal Year 1988, participation figures for Fiscal Year 1986 will be used, and so forth. Although this method does not incorporate all suggestions offered by commenters, it will provide for a distribution of funds based on a source of data that is uniformly reported and related to potential food stamp employment and training program participants. While the IQCS data on State agency error rates is accurate, we could not ignore State arguments that work registrant status is inconsistently coded and that IQCS work registrant information is not reliable enough to use to allocate employment and training grants. Likewise, there is no other sufficiently reliable data base on work registrants currently available for use. We considered using as an approximate measure of work registrants the number of individuals between 18 and 59 years of age in each State, as coded in IQCS data. However, this option made little difference when compared to participation and was not selected because of the expressed concerns about the accuracy of coding nonfinancial information in the IQCS data base.

The Department acknowledges that the method contained in this final rule will result in less funding compared to current contract levels for some States which are currently operating job search programs. However, given the limits on the amount of unmatched funding that are authorized in the legislation, we did not feel that continuing to guarantee the same levels of funding would be an equitable approach, since it would reduce the total amount of funding available to all other States under the allocation formula. We chose not to guarantee minimum grant levels because there was no compelling evidence offered on what minimum level would be necessary to establish and operate an employment and training program.

Also, part of the stated need for minimum grants was to establish the detailed non-financial reporting system set forth in the proposed regulations. The reduced reporting requirements contained in this final rule should alleviate some of the anticipated cost increases associated with employment and training program implementation. We acknowledge that this method of allocation does not reflect the most recent economic conditions. However, we believe it to be of overriding concern that the method chosen allows States to know in advance the level of their employment and training grants for planning purposes and rely on actual, uniformly reported data rather than on estimates of changes in economic conditions. This method fulfills those criteria.

The proposed regulation stated that the Department would adjust the basic allocation formula for Fiscal Year 1989 and following fiscal years to take into account variations in program designs, characteristics of work registrants served, substantial amounts of unused funds in a previous fiscal year, program effectiveness or other factors determined necessary to effectively administer the program. The preamble to the proposed rule also spoke of the Department's intention to move as quickly as practicable to a funding allocation formula that rewards exemplary State performance, using information gathered in the first year and a half of program operations. There were numerous adverse comments on the regulatory language in the belief that it provided the Secretary with the ability to modify the funding allocation formula without publishing proposed regulations to enable State agencies and other interested parties to review and comment on the changes to the formula. It is the Department's firm intention to distribute $15 million of the total amount of employment and training grants in Fiscal Year 1989 based on State performance in Fiscal Year 1988. However, the Department will publish proposed and final regulations before making changes to the allocation formula contained in this final regulation to do so. In preparing the proposed rule, the Department will review suggestions offered by commenters to the proposed employment and training rule on how to use performance in allocating the grants. The Department however reserves the right to redistribute some portion of employment and training grants after the beginning of a fiscal year to reflect funds that are unlikely to be used during the fiscal year by one State and which could be used by another State or States, but such an adjustment would only be made with the concurrence of the States involved.

Several commenters requested that the final rule provide more detail on acceptable administrative costs. The regulations have been changed slightly to state that employment and training grants shall be used for any reasonable cost of administering employment and training requirements, including costs of planning, but that administrative funding shall not be available to subsidize a participant's wages. Also in response to comments, we have added a clarification about when the certification process is considered to end and employment and training activities eligible for unmatched employment and training funding are considered to begin, as well as a clarification that sanction activities undertaken after the agency operating an employment and training component informs the State agency of a participant's noncompliance are not eligible to be funded through the unmatched employment and training grant. Other commenters requested clarification on whether workfare programs, under section 20 of the Act, would be funded by the Federal government at the regular 50 percent match or with unmatched Federal grants. If a workfare program is included as part of a State's employment and training plan, it may be funded with the unmatched Federal grant or be 50 percent Federally-funded; the State should indicate the funding level at which it chooses to operate such workfare programs in its State plan. If a political subdivision of a State wishes to operate workfare outside the State plan, those workfare costs will be reimbursed at the standard 50 percent. However, only if workfare programs are being funded at the standard 50 percent rate may an enhanced workfare reimbursement be claimed when participants obtain employment during or 30 days after their first participation in the workfare program. Section 20(g)(2)(A) of the Food Stamp Act clearly limits enhanced workfare reimbursements to that half of workfare administrative costs that has not been reimbursed by the Federal government under standard 50 percent cost-sharing. Operators of workfare programs cannot receive through enhanced reimbursements more than the actual costs of operating workfare programs. Thus, in workfare programs funded with the unmatched Federal grant, enhanced reimbursements will not be provided.

A number of commenters asked the Department to be more specific in describing what costs will be reviewed in State plans. The final regulations have been revised to require States to justify any charges for education components and the methodology for deriving these charges. Current regulations at part 277 establish guidelines for the allowability of any costs charged under the Food Stamp Program. Costs must be necessary, reasonable, and properly allocated. While the allowability of all expenses will be reviewed, the Department will be particularly vigilant in scrutinizing any proposed education expenses to ensure that approved costs meet these guidelines and do not allow E & T funds to subsidize other activities.

The Department is highly concerned that Federal financial support for State activities be limited to components which represent new efforts to enhance the employability of food stamp participants, rather than supplant present State funding for existing activities. Any State agency which will request 50 percent federal reimbursement for state E & T administrative costs, other than those for participant reimbursement, shall include in its Employment and Training Plan of Operations, or in an amendment to it's plan, an itemized list of all activities and costs for which those federal funds will be claimed. Costs in excess of the federal grant shall be allowed only with the prior approval of the Department and must be adequately documented to assure that they are necessary, reasonable and properly allocated. This requirement will be removed once a future rulemaking has been promulgated clarifying the allowability of such costs.

A number of commenters noted that the discussion of participant reimbursements under § 273.7(d)(1)(ii) of the regulations was unclear and possibly incorrect in relation to the statute. That section has been revised to clarify that State agencies shall reimburse participants for actual costs of participating up to $25 per participant per month. The Federal government will match half of the cost of participant reimbursements up to $25, for a maximum of $12.50 in Federal reimbursement per participant per month. Several commenters noted that $25 per participant was insufficient to cover participant expenses. The legislation restricts Federal cost-sharing to this level. State agencies may reimburse participants for costs above $25 but any additional costs are not matchable.

There was a question about whether reimbursements can be provided out of the unmatched Federal grant. The legislation states that reimbursements are not to be made out of funds allocated from the Federal grants. 7 U.S.C. 2025(h)(3). Another commenter stated that the regulation was unclear in its restriction on participants claiming reimbursed child care costs when the Food Stamp Program's dependent care deduction is calculated. A clarification has been made to state that only the portion of child care expenses that has been reimbursed under the employment and training program cannot be claimed toward the dependent care deduction; costs that have not been reimbursed can be deducted.

Several commenters requested that State agencies be permitted to provide allowances to participants up to the maximum level allowed without having to document and match actual participant expenditures. They stated that providing an allowance would be administratively more feasible and more responsive to client needs, since the allowance could be provided in advance of the expense. We have modified the final rule to give State agencies the option of developing a method to provide allowance to participants in lieu of reimbursing actual expenses. The method must result in allowances that will reasonably reflect probable expenditures, up to the limit established by the State. State agencies will be required to offer participants the option of receiving a reimbursement of actual costs if they exceeded the allowance, up to the limit established by the State. The methodology States propose for providing allowances should be included in the State plan. In no case, however, will the Federal government match costs above 50 percent of reimbursement or allowance paid up to the maximum of $12.50 per participant per month as prescribed by law.

Some questions arose on procedures for accounting for employment and training program funds, in particular whether expenditures funded with the unmatched Federal grants and those funded at the 50 percent reimbursement level must be reported separately. The proposed regulation required that State agencies report on the SF-269 form the total amount of employment and training expenditures; and provide further details in an attachment to the form on total expenditures, expenditures funded from the unmatched Federal grant; expenditures for participant reimbursements; expenditures for other employment and training costs at the 50 percent reimbursement level; and expenditures for optional workforce programs funded at the 50 percent reimbursement level. The costs must be reported separately, in order for proper reimbursements to be made to the State agencies, and the final rule does not change the requirement for separating the expenditures in an attachment to the SF-269. Further instructions on the attachment will be provided.

Failure to Comply

The Agency received a number of comments about § 273.7(g), Failure to Comply. The most frequently mentioned concerns were the inconsistency in the length of sanctions provided by the AFDC and Food Stamp Programs, and the fact that the AFDC Program does not allow a cure once a household is sanctioned for noncompliance and the Food Stamp Program does. Both of these issues result from differences in the Social Security Act and the Food Stamp Act. The Department of Health and Human Services and USDA will explore legislative changes to achieve consistency in this area.

Several commenters asked that the requirements for Notices of Adverse Action, under § 273.7(g)(1) be made more explicit than those in the proposed rule. As proposed, a Notice of Adverse Action would contain the proposed period of disqualification, a statement of when the individual or household could

reapply for benefits, and a statement of the procedures to follow to reestablish eligibility. The commenters asked that each Notice identify the act of noncompliance committed and the particular action that must be taken to "cure" the noncompliance and end or avoid a sanction. This requirement has been added to the regulatory language in this final rule.

Another primary focus of comments in this area was the Department's proposal to define head of household as the primary wage earner in the household who is also subject to work registration. A number of commenters objected to the proposed definition. Several felt that the definition limited State flexibility. Others thought it violated Congressional intent. It was pointed out that including 16 and 17 year old work registrants increased the chances for a household's noncompliance and that an entire household should not be penalized if an unruly 16 year old refused to comply with program requirements.

The Department has interpreted the term "head of household" to mean the "primary wage earner over the age of 18" since 1979 in determining which household member would subject the entire household to a sanction if he/she voluntarily quit a job of 20 hours a week or more without good cause. The Department has redefined "head of household" and this rulemaking uses the term head of household, rather than primary wage earner throughout § 273.7, including paragraph (n) which pertains to voluntary quit. Head of household in this final rulemaking will be defined in § 273.1(d) as the person in the household who is the principal source of earned income in the 2 months prior to the month of the violation. This provision applies only if the employment involves 20 hours or more per week or provides weekly earnings at least equivalent to the Federal minimum wage multiplied by 20 hours. However, no person of any age living with a parent or person fulfilling the role of a parent who is employed (at least 30 hours per week) or work registered under food stamps, AFDC, or Unemployment Compensation can be considered the head of household. If there is no principal source of earned income in the household, the household may designate a head of household. This definition is more closely aligned with the traditional view of what person constitutes the head of the household.

The Department is continuing to focus its interpretation of head of household on the individual who provides the most earned income to the household, with the new exceptions noted above, because in most instances this is the only way to effectuate the primary congressional purpose behind the sanctions for work related violations, i.e., to discourage the practice of obtaining or increasing food stamp benefits by voluntarily foregoing income. In most instances this purpose would be thwarted if the economic heads of households were not the focus of the sanction. The exceptions provided in this rule are to take into account the special circumstances and concerns expressed by the commenters.

This rule finalizes in regulation the statutory provision that a sanction for noncompliance with food stamp work requirements shall apply to the individual who commits the violation rather than the entire household, unless the individual committing the violation is the head of the household, is physically and mentally fit and between the ages of sixteen and sixty. In such a case, the entire household will be sanctioned. This rule also finalizes the provision in Pub. L. 99-198 that if the person who committed a work requirement violation leaves the household that household may reestablish eligibility but any new household that person joins as head of household is ineligible for the balance of the individual's disqualification period. 7 U.S.C. 2015(d)(1). In response to comments seeking further guidance on the procedure to be followed if a disqualified household splits up, we are specifying that if any household member disqualified for non-compliance with food stamp work requirements joins a new household and is not the head of that household, that person shall be treated as an ineligible household member as described in § 273.1(b)(2). The rule also incorporates the statutory provision that eligibility may be reestablished if the household member who committed the violation complies with the requirement that has been violated. *Id.*

Several commenters pointed out that some of the appeals procedures contained in regulation were eliminated in the October 1, 1986 proposed rule. These procedures, which assure food stamp recipients basic due process rights during a fair hearing process were inadvertently omitted from the proposal and are included in this final rulemaking. The requirements are: (1) The agency running the employment and training component should have a representative available for the hearing, either in person or by phone, when the sanction is based on a report of noncompliance by that agency; (2) the household involved should be allowed to examine its casefile maintained by the agency running the component a reasonable time before the date of the fair hearing, except for confidential information that the employment and training agency determines should be protected from release, and (3) information not released to a household may not be used at the fair hearing.

The Department is retaining the provision in the proposed rule that would require State agencies to provide the noncomplying household or individual with a notice of adverse action no later than 10 days after determining noncompliance without good cause. This issue did not receive any comment. The Department believes it is crucial that State agencies act promptly to discover noncompliance and to initiate sanction action once the noncompliance has been established.

Voluntary Quit

A large number of comments addressed the voluntary quit provisions proposed in the October 1, 1986 rulemaking. The majority of those provisions were proposed to clarify or expand upon existing FNS policy. Because of the need for expediency in publishing this final rulemaking, we have decided not to address voluntary quit changes on which the Department has discretion, but only those mandated by the amendments made by Pub. L. 99-198. As mandated by the Act, this rulemaking provides that food stamp eligibility may be reestablished during a disqualification for voluntary quit if the members who caused the disqualification (the household head) secures new employment comparable in salary or hours to the job which was quit, or if that individual leaves the household or becomes exempt from work registration through reasons other than those in § 273.7(b)(1)(iii), or (b)(1)(v). As noted above, if the head of household who caused the disqualification joins another household as head of that household, the new household shall be ineligible for Food Stamp Program participation for the remainder of the disqualification period.

Performance Standards

The Department received numerous and extensive comments concerning the level of Federal prescription centering on the proposed performance standards. The Department has carefully assessed these comments in the context of striking a balance between State flexibility and the Federal responsibility to ensure meaningful work programs in all States, and is revising the

performance standards to address these concerns.

The comments focused on three major themes. First, 43 commenters argued that the imposition of performance standards should be delayed until October 1988 in order to allow States time for program implementation and to allow a review of program data. Second, 31 commenters asserted that the performance standards were too strict and could not be achieved because of the narrow definition of participation and the broad definition of the base. Third, 18 commenters argued that the standards would force States to design inexpensive, superficial components for large numbers of participants, thereby curtailing their ability to offer more intensive services to recipients with more severe barriers to employment.

The first issue is the appropriate time for implementing performance standards. A number of commenters believed that a delay until October 1988 would allow the Department to use program results to have a more informed basis for the establishment of standards. The Department proposed to begin phasing in performance standards beginning in October 1987 (after six months of program operations) based on its belief that standards would accelerate State efforts to implement meaningful work programs. This belief has not changed. The establishment of strong employment and training programs for food stamp recipients is an important goal of the Department. However, we recognize that implementing the standards with a relatively short lead time could prove counterproductive in terms of encouraging States to develop the most effective E & T programs. As a demonstration of the Department's sincere interest in the formulation and implementation of substantial employment and training programs, this final rulemaking uses the authority provided in the law (7 U.S.C. 2015(d)(4)(J)(iv)) Pub. L. 99-198 and implements performance standards beginning October 1, 1988. However, as a means of ensuring that States progressively improve E & T program coverage during FY 1988 we are requiring that States achieve a 35 percent placement rate in the first quarter of FY 1989. So that States will not be penalized twice for poor performance in the first quarter of that year, there will be two separate sanction periods for FY 1989, one for the first three months, and one for the subsequent nine months. State performance for both of these periods will be evaluated through the methods described in this rulemaking.

On the second issue, many commenters argued that States could not comply with the standards proposed for Fiscal Year 1988. The Department is delaying these standards until Fiscal Year 1989 and making changes in how they are computed. These specific revisions will be explained in the following discussion of other comments.

Percentage of Persons To Be Placed

Numerous commenters argued that the performance standards contained in the interim rule were arbitrary and unobtainable. Commenters said that the performance standards of 35 percent and 50 percent service levels for FY 88 and FY 89 were too high, in part because the regulation did not give States credit for services to persons who left the Food Stamp Program too quickly to either begin a component or be sanctioned. In evaluating these comments the Department has concluded that, indeed, there should be some adjustment to the required minimum service levels. The Department has taken into account considerations offered by States that should be part of setting and measuring performance standards. Rather than altering the actual numerical standards, the Department has adjusted the base of eligibles, made changes in what counts as a placement, and delayed implementation of performance standards until October 1, 1988. The changes in this rule address the problems identified by the States and the resulting levels of service are comparable to the implementation levels observed in demonstration projects. Given the changes in defining the base and the count of placements, the 35 and 50 percent performance levels required for FY 89 and FY 90 are appropriate and achievable.

A number of commenters argued that the base prescribed in the program regulations as overly broad. Specific concerns included limits on exemptions, the prevalence of short-term food stamp recipients, inclusion of volunteers in the base of eligibles, and the number of persons who were served in one fiscal year but counted in the base the following year. We believe the Department's removal of the requirement for additional justification for State exemptions greater than 20 percent will provide additional flexibility to States. Removal of this guideline was discussed earlier in this preamble.

Short-term Participants

Several commenters expressed concern about the difficulty in serving short-term participants who leave the Food Stamp Program before they can be enrolled in a work program. The commenters argued that the presence of such transient participants in the base exaggerates the size of the population that the State can be reasonably expected to serve. The Act, as amended, recognizes this problem and provides the Secretary authority to permit States to exempt members of households which have participated in the Food Stamp Program for 30 days or less. 7 U.S.C. 2015(d)(4)(D)(i). The Department agrees that an allowance should be made for persons with the briefest participation spells and has revised the regulations to offer States a choice of two methods of dealing with this situation.

With the first method, States will be permitted to exempt persons who participate in the program for 30 days or less from the date of application. This exemption would include all work registrants whose households receive benefits for 30 days or less. A State could measure this exemption either by exempting those households which receive only one allotment (including a prorated allotment) or by counting a household's actual number of days of participation. The Department has two reservations about these exemptions. First, tracking the exemptions will necessitate linking the work registration data base to household participation to verify when someone leaves the Food Stamp Program. This tracking may be cumbersome and raise administrative costs. Second, a policy of waiting to see which work registrants leave the Food Stamp Program may delay services to all recipients and lessen a State's ability to deal effectively with more long term participants. Two models in the Department's Work Registration and Job Search Demonstration Project indicate that work programs which provide services close to the beginning of program participation show attractive cost-benefit relationships.

Accordingly, the Department is offering States an alternative method of adjusting for very short-term participants. State which do not attempt work registrants who leave the Food Stamp Program within 30 days of their application will be allowed to adjust their base at the end of the year to reflect the problems of dealing with these persons. A standard adjustment of 10 percent may be used to reduce the base of eligibles without supporting documentation. This 10 percent proportion is based on a study performed by the Urban Institute for the Department entitled, "Effects of Legislative Changes in 1981 and 1982 on

the Food Stamp Program". If a State elects to use the adjustment factor it may not also exempt from employment and training programs work registrants who are in the program for 30 days or less from the time of their application. Such States may however attempt to place these persons in an E & T program, and may count such placements toward their performance standard. This is a method of recognizing that some E & T mandatory participants are difficult to serve and should be deducted from the State's base when compliance with a performance standard is assessed. For example, a State with 100 employment and training mandatory participants could attempt to serve any or all of these 100 persons. However, when the base of eligibles is computed for the purpose of measuring compliance with a standard, it will be automatically reduced to 90. This adjustment will not require maintaining individual records. Alternatively, a State which maintains an actual count of persons who left in their first 30 days or less could use the actual proportion of those participants in lieu of the standard adjustment. A State which elects to exempt work registrants who participate for less than 30 days may not require those persons to participate in an E & T program and must maintain individual records.

Treatment of Volunteers Toward Performance Standards

The treatment of volunteers was mentioned by many commenters. The proposed regulations would count volunteers who enter a component in the numerator and the denominator (base) when measuring compliance with performance standards. Commenters objected to including volunteers in the base. Many believed that the statute only intends that the base include work registrants. They objected to counting any volunteers in the base. Another interpretation of the Act can be made. The Act states, "The Secretary shall consider cost to the States in setting performance standards and the degree of participation in programs under this paragraph by exempt persons." This could be interpreted to mean that all volunteers should be counted in the base of eligibles, whether or not they were ever placed in a component. The Department through its proposed rule and this final rule, will count only those volunteers placed in an E & T component in the States' base of eligibles. Participation by a volunteer would never inflate the base, but would, instead help toward achievement of the performance standard. The statute requires the Department to base the performance standards on the number of nonexempt work registrants (E & T mandatory participants). Both this final rulemaking and the proposed rule follow this requirement. For example, if there were 1,000 nonexempt work registrants and a 50 percent performance standard, the proposal called for 500 placements of nonexempt work registrants. However, in considering whether or not this placement goal was achieved, services to volunteers would be considered by reducing the number of E & T mandatory participants work registrant placements. In the previous example, if 100 volunteers were served, the State could lower its work registrant placements to 450 and comply with the 50 percent performance standard. Volunteers are not considered in setting the standard. They are considered in determining compliance with the standard. The Department believes that this approach fully comports with the law.

The more prevalent concern of the commenters about the method for considering volunteers was a perceived adverse impact on State incentives to serve this group. The Food Stamp Act specifically identifies a category of persons—work registrants—who are subject to various work requirements. The Department believes that these persons have been so identified because of higher public expectations that they should seek employment, and the lack of other work programs to serve them. The Department agrees that many people who are not work registered could benefit from an employment and training program, however, States should not have the same incentive to serve persons who the law exempts from work requirements as persons who are subject to these requirements. The Department notes that the proposed treatment of volunteers offers States a positive incentive to serve volunteers. In no case would the placement of volunteers hurt a State in its efforts to meet a performance standard. If the Department adopted the position of the commenters, and did not count volunteers in the base of eligibles, the performance standard for mandatory participants would be reduced on a one to one basic for each volunteer served. However, the Department believes that in assessing State performance, the universe of work registrants defined by law—able-bodied persons without substantial caretaker responsibilities who are not served by work programs offered by other assistance programs—should receive priority. Consequently, the Department is retaining the provisions of the proposed rule in this area.

Counting E&T Mandatory Participants from Prior Year

Several commenters noted that the proposed method of counting the base of eligibles would include work registrants who were served in the prior fiscal year who may leave the Food Stamp Program early in the current year or may not be appropriate candidates for service in the current year. The Department believes that counting each E&T mandatory participant at the beginning of each fiscal year provides an accurate measure of the number of participants the State may attempt to serve over the course of the year. Not counting persons whose participation spans two fiscal years would artificially deflate the number of persons the State could provide services to. The counting of all mandatory E&T participants is included in this final rule as part of the performance measure system.

Placements

A number of commenters expressed concern about the definition of placement used to determine the numerator of the performance standard. The October 1, 1986 rule proposed that States may consider a person "placed" for performance standards purposes, if the person either commenced an E & T component or did not commence the component after being assigned to participate, and was sanctioned by the State agency. The proposed regulations would not have credited a State agency for beginning the disqualification process. A number of commenters noted that many persons leave the Food Stamp Program after receiving a Notice of Adverse Action (NOAA) for noncompliance with work program requirements but before a sanction can be implemented. Several commenters noted that people who receive a NOAA may delcine to seek recertification because the notice is pending. Several others argued that there should be no distinction between sanctions for failing to start a work component and sanctions for noncompliance after a person has begun a program. Other commenters asserted that the proposed definition of placement would be too complex and cumbersome to measure. The Department shares these concerns, and has simplified and expanded the definition of placement in this final rule.

The final regulations include all NOAAs issued for violating the requirements of an employment and training program in the definition of placement. A person may be considered placed if he/she is not certified or recertified because of failure to comply with an E & T responsibility. The intent is to recognize the efforts of States to initiate the sanction process and to avoid the expense of tracking the outcomes of all notices.

There are other program oversight procedures which will examine how States handle notices of adverse action. The management evaluation and quality control systems will review the outcomes of these notices with regard to program standards for timely action and due process. Only notices of adverse action for violating the rules of an employment and training program may count as a placement. Notices for voluntary quit shall not count as placements, nor shall notices for failure to comply with work registration provisions.

Several commenters argued that the definition of placement should not reflect State actions to disqualify persons who do not abide by program rules because these actions do not advance the goals of an employment and training program. The main purpose of the program is to assist the large majority of participants who willingly cooperate with endeavors aimed at increasing their ability to support themselves through employment. Another reason why the Department is counting disqualifications is because we believe that the measurement of State performance should acknowledge the administrative efforts of States to deal effectively with each E & T participant.

Several commenters requested that the definition of placement be expanded to include any person who finds employment. The commenters maintained that this revision would be consistent with the goals of the program and would reflect the administrative difficulty of serving persons who find jobs quickly. This suggestion was not incorporated in the final rule. The statute authorizes the Department to establish performance standards only for participation in an E & T program.

Outcomes such as employment will be considered in measuring compliance with the standards, but cannot be included in the standard. As for persons who find jobs prior to entering a component, the final regulation allows the base (denominator) to be reduced to reflect problems in serving short-term participants.

Levels of Performance Standards

Many commenters objected to the levels of the performance standards because they believed that these levels conflict with the legislative intent of State flexibility. While the Department has delayed implementation and modified the manner in which the performance standards are calculated, it is not revising the levels specified in the proposed rule. The Department believes that Congress intended that the enactment of Pub. L. 99-198 would result in substantially larger employment and training programs serving greater numbers of participants than had been reached under job search contracts. The performance standards in this final rule reflect this intent. When Congress authorized the Department to set a performance standard at the 50 precent level, it was well aware that the Department had consistently advocated broad-based work programs and intended to require that services be provided to substantial numbers of persons.

Variations in Performance Standards

This final rulemaking provides a mechanism for States to negotiate a performance standard lower than that established nationwide if the State can show that the intensity of the job components it plans to offer or the type of participant it plans to serve will require a greater level of effort by the State than that provided for in § 273.7(o)(5).

The Department received several comments on the proposal to limit the downward adjustment of a performance standard to no more than 40 percent of the nationwide performance standard. For example, if a nationwide performance standard is 35 percent, the guideline minimum is 14 percent. For a 50 percent standard the guideline minimum is 20 percent. Those who commented objected to any minimum standard being set and perceived such a minimum to be contrary to Congressional intent.

The Department contends that it is impracticable not to have any minimum at all. If no minimum were set, neither the Department nor the States would have any guidance on what will constitute an acceptable level of performance by a State. The Department believes that a reduction to 40 percent of the nationwide standard is adequate. No State, through the comment process, provided the Department with an example of the type of program it would like to operate but which would be thwarted by the minimum proposed level.

The proposal that States serve no less than 40 percent of the nationwide standard remains in this rulemaking as a guideline. If States can show the Department that the services they plan to offer are meaningful and substantial, yet necessitate a lower standard, the Department will evaluete such requests on a State by State basis.

Several commenters urged that no major adjustments to the nationwide formula for determining performance standards be made outside of the rulemaking process. The Department agrees that the rulemaking process is the appropriate forum for input on such changes and will publish proposed and final regulations if it becomes necessary.

State Agency Noncompliance

The October 1, 1986 rulemaking proposed that the Secretary withhold State administrative funds proportional to the percentage below its performance standard a State's performance falls. The Agency received a number of comments objecting to the proposed sanction formula. One commenter contended that rather than a strict sanction system to be applied if States simply failed to meet a particular numerical performance standard, the law intended that a more general test be applied to determine, after weighing a variety of factors, whether States are running meaningful and effective programs.

7 U.S.C. 2015(d)(K)(ii) states, "If the Secretary determines that a Stateagency has failed, without good cause, to comply with such a requirement, including any failure to meet a performance standard . . . the Secretary may withhold from such state in accordance with section 16(a), (c) and (h), such funds as the Secretary deems appropriate . . . ". This language indicates to the Department that the proposed sanction system is consistent with congressional intent, and it will remain in this final rule. The formula provides a clear standard by which the Department can measure the degree of States noncompliance. Provision of such a standard ensures that all States are treated equally. We do wish to point out, however, that when evaluating whether or not a State has performed adequately the Department will seriously consider the causes for the State's failure to meet its standard. If a State can show that it made an exemplary effort to place food stamp participants into its employment and training program or into paid employment, the Department will take this into account in determining whether good cause exists for the failure. The Department will also consider such factors as increases in food stamp recipient earnings, changes in the State agency's caseload and a reduction in the number of persons participating in the Food Stamp Program if the State can provide such information.

There was some question in the comments about the procedures FNS

will follow if a determination of State agency noncompliance is made. The proposed rule said that the formal warning, appeal and administrative review procedures will apply.

In this rule, a distinction will be made between cases in which State agency administration of the E & T requirements is out of compliance with regulations or the Food Stamp Act during the course of the year, and cases where States have met the program operation requirements but have fallen short of meeting their performance standards. In the first case, where there are operational deficiencies such as failure to implement an E & T program, the provisions of § 276.4 will apply. This entails written advance notification of a deficiency, followed by a formal warning of the possibility of a disallowance of funds if the deficiency is not corrected, and a disallowance of funds if necessary. In the second case, if it is determined after the close of a fiscal year, that a State has failed without good cause to meet its performance standard, the formal warning process will not be used, since once the fiscal year is over there is no remedy or corrective action which can be taken retrospectively to aid the State in meeting its standard. In this case the amount of funds determined by application of the formula described earlier will be disallowed from the current fiscal year administrative funds. At that point the State agency would be advised of its right to pursue administrative and judicial review of the disallowance under section 14 of the Food Stamp Act. 7 U.S.C. 2022.

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Food Stamps, Grant programs–social programs.

7 CFR Part 272

Alaska, Civil rights, Food Stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food Stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

7 CFR Part 277

Food Stamps, Government procedure, Grant programs-social programs, Investigations, Records, Reporting and recordkeeping requirements.

PART 271—GENERAL INFORMATION AND DEFINITIONS

Accordingly, 7 CFR Part 271, 272, 273, and 277 are amended as follows:

1. The authority citation for Parts 271, 272, 273, and 277 continues to read as follows:

Authority: 7 U.S.C. 2011–2029.

§ 271.2 [Amended]

2. In § 271.2 the following definitions are added in alphabetical order within the section:

"Assessment" an in-depth evaluation of employability skills coupled with counseling on how and where to search for employment. If combined with work experience, employment search or training, an assessment of this nature could constitute part of an approvable employment and training component.

"Base of Eligibles" Employment and training mandatory participants plus persons who volunteer for employment and training participation.

"Employment and training component" a work experience, work training or job search program, as described in section 6(d)(4)(B)(iv) of the Food Stamp Act of 1977 (7 U.S.C. 2014(2)(4)(B)) designed to help food stamp recipients move promptly into unsubsidized employment.

"Employment and training mandatory participant" a Food Stamp Program applicant or participant who is required to work register under 7 U.S.C. 2014(d)(1) or (2) and who the State determines should not be exempted from participation in an employment and training program.

"Employment and training program" a program operated by each State agency consisting of one or more work, training, education or job search components.

"Exempted" for purposes of § 273.7 excluding paragraphs (a) and (b)—this term refers to a work registered person or persons excused by the State, under the conditions in § 273.7(f) from participation in an employment and training program.

"Newly work registered" food stamp participants work registered at the point of application.

"Placed in an employment and training program" a State agency may count a person as "placed" in an employment and training program when the individual commences a component or is sent a Notice of Adverse Action (NOAA) for noncompliance with a food stamp employment and training requirement. Persons who refuse to work register or who voluntarily quit a job and are sent a NOAA may not be considered "placed".

"Screening" an evaluation by the eligibility worker as to whether a person should or should not be referred for participation in an employment and training program. This activity would not be considered an approvable E&T component.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

3. In § 272.1 a new paragraph (g)(82) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * * *

(g) Implementation. * * *

(82) Amendment No. 281 State agencies shall implement the provisions of this amendment no later than April 1, 1987.

4. In § 272.2 the seventh sentence of paragraph (a)(2) is amended by adding the words, "the Employment and Training Plan," after the words "(currently reserved)," in paragraph (c)(3)(ii) the text after the words "routine user status" is removed and a period is inserted after the word "status", and a new paragraph (d)(1)(v) is added to read as follows:

§ 272.2 Plan of operation.

* * * * * *

(d) * * *

(1) * * *

(v) Employment and Training Plan as required in §273.7 (c)(4) and (5)

* * * * * *

5. In § 272.3, paragraph (a)(1) is amended by removing the period at the end of paragraph (a)(1)(ix); adding a semi-colon in its place; and adding a new paragraph (a)(1)(x) to read as follows:

§272.3 Operating guidelines and forms.

a) *Coverage of operating guidelines.*

* * *

(1) * * *

(x) Work registration and employment and training requirements.

* * * * * *

PART 273—[AMENDED]

6. In § 273.1 a new paragraph (b)(2)(vii) is added; the text after the heading in paragraph (d) is redesignated as paragraph (d)(1) and a new paragraph (d)(2) is added. The addition reads as follows:

§ 273.1 Household concept.

* * * * * *

(b) *Nonhousehold members.* * * *

(2) * * *

(vii) Persons disqualified for noncompliance with the work requirements of § 273.7.

* * * * * *

(d) *Head of household.* * * *

(2) For purposes of failure to comply with §§ 273.7 and 273.22 head of household shall be considered to be the principal wage earner. The principal wage earner shall be the household member (including excluded members) who is the greatest source of earned income in the two months prior to the month of the violation. This provision applies only if the employment involves 20 hours or more per week or provides weekly earnings at least equivalent to the Federal minimum wage multiplied by 20 hours. No person of any age living with a parent or person fulfilling the role of a parent who is registered for work or exempt from work registration requirements because such parent or person fulfilling the role of a parent is subject to and participating in the work incentive program under Title IV of the Social Security Act, or is in receipt of unemployment compensation (or has registered for work as part of the unemployment compensation application process), or is employed or self employed and working a minimum of 30 hours weekly or receiving weekly earnings equal to the Federal minimum wage multiplied by 30 hours shall be considered the head of household. If there is no principal source of earned income in the household, the household may designate the head of household.

* * * * * *

7. In § 273.7 the title and paragraph (a) are revised to read as follows:

§ 273.7 Work requirements.

(a) *Persons required to register.* Each household member who is not exempt by paragraph (b)(1) of this section shall be registered for employment by the State agency at the time of application, and once every twelve months after initial registration, as a condition of eligibility. The registration form need not be completed by the member required to register.

* * * * * *

8. In § 273.7, paragraph (b)(1)(i) is amended by removing the number 18 in the first and second sentences and adding in its place the number 16; a new sentence is added to the end of paragraph (b)(1)(i); the first sentence of paragraph (b)(1)(iii) is revised; and paragraph (b)(2)(i) is revised;

* * * * * *

(b) *Exemptions from work registration.*

(1) * * *

(i) * * * A person age sixteen or seventeen who is not a head of a household or who is attending school, or enrolled in an employment training program on at least a half-time-basis is exempt.

* * * * * *

(iii) A household member subject to and complying with any work requirement under title IV of the Social Security Act, including WIN registration.

* * *

* * * * * *

(2)(i) Persons losing exemption status due to any changes in circumstances that are subject to the reporting requirements of § 273.12 (such as loss of employment that also results in a loss of income of more than $25 a month, or departure from the household of the sole dependent child for whom an otherwise nonexempt household member was caring) shall register for employment when the change is reported. If the State agency does not use a work registration form, it shall annotate the change to the member's exemption status. If a work registration form is used, the State agency shall be responsible for providing the participant with a work registration form when the change is reported. Participants shall be responsible for returning the form to the State agency within 10 calendar days from the date the form was handed to the household member reporting the change in person, or the date the State agency mailed the form. If the household fails to return the form, the State agency shall issue a notice of adverse action stating that the household is being terminated and why, but that the household can avoid termination by returning the form.

* * * * * *

9. In § 273.7 paragraph (c) is revised to read as follows:

* * * * * *

(c) *State agency responsibilities.* (1) The State shall register for work each household member not exempted by the provisions of § 273.7(b). Upon reaching a determination that an applicant or a member of the applicant's household is required to register, the State agency shall explain to the applicant the pertinent work requirements, the rights and responsibilities of work registered household members, and the consequences of failure to comply. The State agency shall provide a written statement of the above to each work registrant in the household. A notice shall also be provided when a previously exempt member or new household member becomes subject to a work requirement, and at recertification. The State agency shall permit the applicant to complete a record or form for each household member required to register for employment in accordance with paragraph (a) of this section. Household members are considered to have registered when an identifiable work registration form is submitted to the State agency or when the registration is otherwise annotated or recorded by the State.

(2) The State agency shall be responsible for screening each work registrant to determine whether or not it is appropriate, based on the State's criteria, to refer the individual to an employment and training program, and if appropriate, referring the individual to an employment and training program component. Upon entry into each component the registrant applicant or volunteer, should be told, either orally or in writing, the requirements of the component, what will constitute noncompliance and the sanctions for noncompliance. The State shall take appropriate sanction action within ten working days after learning of noncompliance. If States wish to use different intake and sanction systems which are compatible with title IV–A work programs such systems shall be proposed in the Senate's plan, and subject to the Secretary's approval.

(3) The State agency shall design and operate an employment and training program which may consist of one or more or a combination of employment and/or training components as described in § 273.7(f). The State agency must ensure that it is notified by the agency or agencies operating its E&T components within ten days if an E&T mandatory participant fails to comply with E&T requirements.

(4) By March 2, 1987 each State agency must prepare and submit an employment and training plan to its appropriate FNS Regional Office and to the FNS office in Alexandria, Virginia. This initial plan may be regarded as interim, to cover the first six months of operation if the State chooses. The plan shall be available for public inspection at the State agency headquarters. In its plan, the State shall detail the following:

(i) The nature of the employment and training components the State plans to offer and the reasons for such components, including cost information. The methodology for State reimbursement for education components shall be specifically addressed;

(ii) An operating budget for the Federal fiscal year with an estimate of the cost of operation for one full year. Any State which will request 50 percent federal reimbursement for State E & T

administrative costs, other than for participant reimbursements, shall include in its plan, or amendments to its plan, an itemized list of all activities and costs for which those Federal funds will be claimed. Costs in excess of the federal grant shall be allowed only with the prior approval of the Department and must be adequately documented to assure that they are necessary, reasonable and properly allocated;

(iii) The categories and types of individuals the State seeks to exempt from E&T participation, the basis used to determine these exemptions, including any cost information and the estimated percentage of work registrants the State plans to exempt;

(iv) The characteristics of the population the State does intend to place;

(v) The estimated number of volunteers the State expects to place in its employment and training program;

(vi) The geographic areas covered and not covered by the plan and why, and the type and location of services to be offered;

(vii) The method the State will use to count all work registrants the first month of each fiscal year;

(viii) If a State plans to offer components which are significantly more intensive than the minimum level of effort specified in § 273.7(f), or plans to concentrate its efforts on persons who may be difficult to place, due to employment obstacles, it shall be made clear in the State's employment and training plan. If, because of the nature of its components, or the population served, a State believes that an adjustment to the performance standard established in § 273.7(o) is appropriate, and wishes to request a revision in the standard, it shall specify the percentage of its work registered population it intends to serve, and provide the Department with detailed information about why it has chosen to operate such a component or components, or chosen to focus on certain persons, the intended benefits to be gained by the recipient and Federal and State governments, and the number of persons it plans to serve in the component. The information provided to the Department will be used in determining whether the State's performance standard will be affected;

(ix) The organizational relationship between the units responsible for certification and the units operating the employment and training components. FNS is specifically concerned that the lines of communication be efficient and that noncompliance be reported to the certification unit within ten working days after such noncompliance is determined;

(x) The relationship between the State agency and other organizations it plans to coordinate with for the provision of services. Copies of contracts shall be available for inspection;

(xi) The availability, if appropriate, of employment and training programs to Indians living on reservations.

(5) After the March 2, 1987 submission, E&T plans shall be submitted by August 15, 1987 for FY 1988 and August 15, 1988 for FY 1989. Beyond that, plans shall be submitted biannually, 45 days before the start of the fiscal year, beginning with FY 1991. States must submit plan revisions to the appropriate FNS regional office for approval if they plan to alter the nature or location of their components or the number or characteristics of persons served. The proposed changes shall be submitted for approval at least 30 days prior to planned implementation.

(6) The State shall submit quarterly reports to FNS no later than 45 days after the end of each Federal fiscal quarter containing monthly figures for the number of:

(i) Participants newly work registered;

(ii) Work registrants exempted by the State from participation in an employment and training program;

(iii) Participants who volunteer for and commence participation in an approved E&T component;

(iv) E&T mandatory participants who commence an approved E&T component including Food Stamp Program applicants in States which operate a component for applicants;

(v) Work registrants sent a Notice of Adverse Action for failure to comply with E&T requirements, and the number of applicants who were denied food stamp certification or recertification for failure to comply with an E&T component.

(7) States shall submit annually, on their first quarterly report the number of work registered persons in that State as in October of the new fiscal year.

(8) States shall submit annually, on their final quarterly report the following information:

(i) The number of Food Stamp Program work registrants who were exempted as part of a category of persons during the course of the year separated by the specific reasons for the exemptions.

(ii) The number of food stamp participants (E&T mandatory and volunteers) placed in each E&T component offered by the State agency.

(9) Additional information may be required of individual State agencies on an as needed basis depending on the contents of the State's plan regarding the type of components offered and the characteristics of persons served.

(10) States must ensure, to the maximum extent practicable, that employment and training programs are provided for Indians living on reservations.

* * * * *

10. In § 273.7 paragraph (d) including its title is revised in its entirety to read as follows:

* * * * *

(d) *Federal financial participation*—(1) *Federal cost-sharing.* (i) State agencies shall receive an employment and training program grant for each fiscal year or portion of the fiscal year in which they operate an employment and training program. The grant shall require no State matching.

(A) Except as otherwise provided in paragraph (B), the Secretary shall allocate the funding available each fiscal year or portion of the fiscal year for employment and training grants on the basis of the average monthly number of participants in each State as a percentage of the average monthly number of participants nationwide as averaged over the most recent Federal fiscal year for which complete data is available.

(B) The Secretary may adjust the level of grants during a fiscal year to take into account substantial amounts of funds for employment and training programs which are unlikely to be used by a State agency during the fiscal year and which could be productively used by another State agency or agencies, with concurrence of the State agencies involved.

(C) State agencies shall use employment and training program grants to fund the administrative costs of planning, implementing and operating employment and training programs in accordance with approved State agency plans. Employment and training grants shall not be used for the process of determining whether a participant shall be work registered, the work registration process, or any further screening performed during the certification process, nor for sanction activity which takes place after the operator of an employment and training component has reported noncompliance without good cause. For purposes of this paragraph, the certification process shall be considered to have ended when an individual is referred to an employment and training component for assessment or participation. Employment and training grants shall also not be used to subsidize the wages of participants, or to reimburse participants under paragraph (d)(1)(ii) of this section.

(D) A State's receipt of the employment and training program grant as allocated under subparagraph (d)(1)(i) (A) or (B) of this paragraph is contingent on the Secretary's approval of the State's employment and training plan. If an adequate plan is not submitted, the Secretary may reallocate a State's grant among other States with approved plans. Non-receipt of an employment and training program grant does not release a State from performance requirements under paragraph (o) or sanctions for insufficient performance.

(E) Employment and training funds shall not supplant State of local funds devoted to basic education programs. Education expenses are approvable to the extent that employment and training component costs exceed the normal cost of services provided to persons not participating in an employment and training program.

(ii) *Participant reimbursement.* (A) The State agency shall reimburse participants in employment and training programs, including volunteers and applicants required to perform job search, for costs of transportation or other costs that are reasonably necessary and directly related to participation in the employment and training program, up to $25 per participant per month. The State agency may reimburse participants for expenditures beyond $25 per month. Only costs which are up to but not in excess of $25 per month for any participant shall be subject to Federal cost sharing. Reimbursement shall not be provided from employment and training grants provided under paragraph (d)(1)(i) of this section.

(B) Such costs shall be the actual costs of participation, unless the State agency has a method approved in its State plan for providing allowances to participants to reflect approximate costs of participation. If a State agency has an approved method to provide allowances rather than reimbursements, it must provide participants an opportunity to claim actual expenses which exceed the standard, up to $25 or such other maximum level of reimbursements which is established by the State agency.

(C) No participant cost which has been reimbursed under a workfare program under § 273.22, title IV of the Social Security Act or other work program shall be reimbursed under this section.

(D) Any portion of child care costs which are reimbursed under this section may not be claimed as an expense and used in calculating the child care deduction under § 273.9(d)(4) for determining benefits.

(iii) Fifty percent of all other administrative costs incurred by State agencies in operating employment and training programs, above the costs referenced in paragraphs (1)(i) of this section, shall be funded by the Federal government.

(iv) Enhanced cost-sharing due to placement of workfare participants in paid employment is available only for workfare programs funded under § 273.22(g) at the 50 percent reimbursement level and reported as such.

(2) *Funding mechanism.* Employment and training program funding will be disbursed through States' Letters of Credit in accordance with § 277.5 of the regulations. The State agency shall ensure that records are maintained which support the financial claims being made to FNS.

(3) *Fiscal recordkeeping and reporting requirements.* Total employment and training expenditures shall be reported on the Financial Status Report (SF-269) in the column containing "other" expenses. Employment and training expenditures shall also be separately identified in an attachment to the SF-269 to show, as provided in instructions, total State and Federal employment and training expenditures; expenditures funded with the unmatched Federal grants; State and Federal expenditures for participant reimbursements; State and Federal expenditures for employment and training costs at the 50 percent reimbursement level; and State and Federal expenditures for optional workfare program costs, operated under section 20 of the Food Stamp Act and § 273.22 of the regulations. Claims for enhanced funding for placements of participants in employment after their initial participation in the optional workfare program shall be submitted in accordance with § 273.22.

* * * * *

11. In § 273.7 paragraph (e) including its title, is revised in its entirety to read as follows:

* * * * *

(e) *Work registrant requirements.* Work registrants shall:

(1) Participate in an employment and training program if assigned by the State agency;

(2) Respond to a request from the State agency or its designee for supplemental information regarding employment status or availability for work;

(3) Report to an employer to whom referred by the State agency or its designee if the potential employment meets the suitability requirements described in paragraph (i) of this section;

(4) Accept a bona fide offer of suitable employment at a wage not less than the higher of either the applicable State or Federal minimum wage;

* * * * *

12. In § 273.7 paragraph (f) including its title, is revised in its entirety to read as follows:

* * * * *

(f) *Employment and training programs.* Persons required to register for work and not exempted by the State agency from placement in an employment and training program shall be subject to the requirements imposed by the State agency for that individual. Such individuals are referred to in this section as E&T mandatory participants. Requirements may vary among participants. Failure to comply without good cause with the requirements imposed by the State agency shall result in disqualification as specified in § 273.7(g).

(1) *Components.* To be considered acceptable by FNS, any component offered by a State agency shall entail certain levels of effort by the participants. The level of effort should be comparable to spending approximately 12 hours a month for two months (or less in workfare or work experience components if the household's benefit divided by the minimum wage is less than this amount) making job contracts; however, FNS may approve components which do not meet this guideline which it determines will advance program goals. An initial screening by an eligibility worker to determine whom to place in an employment and training program does not constitute a component. An employment and training program offered by a State agency must offer one or more of the following components:

(i) A job search program comparable to that required for the AFDC program under Part A of title IV of the Social Security Act. The State may require that an individual participate in a job search program from the time an application is filed for an initial period of up to eight consecutive weeks. Following this initial period (which may extend beyond the date when eligibility is determined) the State may require an additional job search period, not to exceed eight weeks (or its equivalent) in any period of 12 consecutive months. The first such period of 12 consecutive months shall begin at any time following the close of the initial period. States must not

impose requirements which would delay the determination of an individual's eligibility for aid or in issuing benefits to any household which is otherwise eligible.

(ii) A job search training program that includes reasonable job search training and support activities. Such a program may consist of job skills assessments, job finding clubs, training in techniques for employability, job placement services, or other direct training or support activities, including educational programs determined by the State agency to expand the job search abilities or employability of those subject to the program. Education components are approvable if they directly enhance the employability of the participants. A direct link between the education and job-readiness must be established for a component to be approved.

(iii) A workfare program as described in § 273.22;

(iv) A program designed to improve the employability of household members through actual work experience or training, or both, and to enable individuals employed or trained under such programs to move promptly into regular public or private employment. Such an employment or training experience shall:

(A) Limit employment experience assignments to projects that serve a useful public purpose in fields such as health, social services, environmental protection, urban and rural development, welfare, recreation, public facilities, public safety, and day care;

(B) To the extent possible, use the prior training, experience, and skills of the participating member in making appropriate employment or training experience assignments;

(C) Not provide any work that has the effect of replacing the employment of an individual not participating in the employment or training experience program; and

(D) Provide the same benefits and working conditions that are provided at the job site to employees performing comparable work for comparable hours.

(v) A project, program or experiment such as a supported work program, or a JTPA or State or local program aimed at accomplishing the purpose of the employment and training program.

(2) *Exemptions.* Subject to the requirements for overall plan approval by the Secretary State agencies may exempt certain work registered individuals and categories of individuals from employment and training participation. Individual exemptions shall be evaluated at each recertification and exemptions granted to categories of persons should be reviewed no less frequently than annually to determine whether they remain valid. If a State recognizes that because of changes in its caseload the exemption limit set forth in its approved plan is insufficient, the State may seek to amend its State plan during the year. FNS will consider changes in a State's caseload in determining whether a State has complied with its exemption limit.

(i) Persons who have participated in the Food Stamp Program for 30 days or less may be exempted from participation.

(ii) Categories of persons for whom an employment and training requirement would be impracticable may be exempted. Factors such as the availability of work opportunities and the cost-effectiveness of the requirements may be considered. In making the determination of exemption, the State agency may designate a category of all households residing in a specific area of the State.

(iii) State agencies may exempt from participation individual household members for whom participation is impracticable because of personal circumstances such as lack of job readiness, the remote location of work opportunities, physical condition, and the unavailability of child care.

(iv) Persons who are assigned to a job or training component, do not commence the component and are determined to have good cause shall be considered exempted if the reason for good cause will last for 60 days or longer. When the reason for the exemption is no longer applicable, the person may be placed in a component.

(3) *Time spent in an employment and training program.* (i) The number of months a participant spends in an employment and training component shall be determined by the State agency with the exception of the limitations placed on job search in section (f)(1)(i). The State agency may also determine the number of successive components in which a participant may be placed.

(ii) The time spent by the members of a household collectively each month in an employment and training work program including, but not limited to those carried out under § 273.7(f)(1) (iii) and (iv), combined with any hours worked that month in a workfare program under § 273.22 shall not exceed the number of hours equal to the household's allotment for that month divided by the higher of the applicable State or Federal minimum wage. The total hours of participation in an E&T non-work component for any household member individually in any month, together with any hours worked in a workfare program under § 273.22 and any hours worked for compensation (in cash or in kind), shall not exceed 120.

(4) *Voluntary participation.* (i) A State agency may operate program components in which individuals elect to participate.

(ii) A State agency shall permit, to the extent it deems practicable, persons exempt from the work registration or employment and training requirements, or those not exempt who have complied or are complying with the requirements, to participate in any employment and training program it offers.

(iii) Voluntary participants in an employment and training component shall not be disqualified for failure to comply with employment and training requirements.

(iv) The hours of participation or work of a volunteer may not exceed the hours required of E&T mandatory participants, as specified in paragraph (3) of this section.

* * * * *

13. In § 273.7 paragraph (g)(1), including the title, is revised to read as follows:

* * * * *

(g) *Failure to comply*—(1) *Noncompliance with Food Stamp Program work regulations.* If the State agency determines that an individual other than the head of household as defined in § 273.1(d) has refused or failed without good cause to comply with the requirements imposed by this section and by the State agency, that individuals shall be ineligible to participate in the Food Stamp Program for two months, as provided in this paragraph and is treated as an ineligible household member, per § 273.1(b)(2). If the head of household fails to comply, the entire household is ineligible to participate as provided in this paragraph. Ineligibility in both cases shall continue either until the member who caused the violation complies with the requirement as specified in paragraph (h) of this section, leaves the household, becomes exempt from work registration through § 273.7(b) other than through the exemptions of sections (b)(1)(iii) or (b)(1)(v), or for two months, whichever occurs earlier. If any household member who failed to comply joins another household as head of the household, that entire new household is ineligible for the remainder of the disqualification period. If the member who failed to comply joins another household where he/she is not head of household, the individual shall be considered an ineligible household member per § 273.1(b)(2). The State

agency should determine whether good cause for the non-compliance exists, as discussed in paragraph (m) of this section. Within 10 days of the State determining the noncompliance was without good cause, the State agency shall provide the individual or household with a notice of adverse action, as specified in § 273.13. Such notification shall contain the particular act of noncompliance committed, the proposed period of disqualification and shall specify that the individual or household may reapply at the end of the disqualification period. Information shall also be included on or with the notice describing the action which can be taken to end or avoid the sanction, and procedures contained in paragraph (h) of this section. The disqualification period shall begin with the first month following the expiration of the adverse notice period, unless a fair hearing is requested. Each individual or household has a right to a fair hearing to appeal a denial, reduction, or termination of benefits due to a determination of nonexempt status, or a State agency determination of failure to comply with the work registration or employment and training requirements of this section. Individuals or households may appeal State agency actions such as exemption status, the type of requirement imposed, or State agency refusal to make a finding of good cause, if the individual or household believes that a finding of failure to comply has resulted from improper decisions on these matters. The State agency or its designee operating the relevant component shall receive sufficient advance notice to either permit the attendance of a representative or ensure that a representative will be available for questioning over the phone during the hearing. A representative of the appropriate agency shall be available through one of these means. A household shall be allowed to examine its employment component casefile at a reasonable time before the date of the fair hearing, except for confidential information (which may include test results) that the agency determines should be protected from release. Information not released to a household may not be used by either party at the hearing. The results of the fair hearing shall be binding on the State agency.

* * * * *

14. In § 273.7, introductory paragraph (h)(1) is redesignated as introductory paragraph (h) and the first sentence is revised; paragraphs (h)(1)(v) and (h)(2) are removed; paragraphs (h)(1)(i) through (h)(1)(iv) are redesignated as paragraphs (h)(1) through (h)(4); newly redesignated paragraph (h)(2) is revised; (h)(3) is amended by removing the words "by the State employment security office" and paragraph (h)(4) is amended by removing the words "by the SESA". The revisions read as follows:

* * * * *

(h) *Ending disqualification.* Following the end of the 2 month disqualification period for noncompliance with the work registration or employment and training requirements, participation may resume if a disqualified individual or household applies again and is determined eligible.

* * *

* * * * *

(2) Refusal to respond to a request from the State agency or its designee requiring supplemental information regarding employment status or availability for work—compliance with the request.

* * * * *

15. In § 273.7 introductory paragraph (i)(1) is revised to read as follows:

* * * * *

(i) *Suitable employment.* (1) In addition to any criteria established by State agencies, employment shall be considered unsuitable if:

* * * * *

16. In § 273.7 the first sentence of paragraph (m) is amended by removing the words "job search" and by adding the words "employment and training" in their place.

17. In § 273.7 paragraph (n) is amended by removing the words "primary wage earner" and adding, in their place, the words "head of household"; paragraph (n)(1)(iv) is revised; a new sentence is added to the end of paragraph (n)(1)(vi); and a new paragraph (n)(5) is added. The additions and revision read as follows:

* * * * *

(n) *Voluntary quit.* * * *

(1) *Determining whether a voluntary quit occurred and application processing.* * * *

(iv) If a determination of voluntary quit is established, the State agency shall then determine if the member who quit is the head of household as defined in § 273.1(d)(2).

* * * * *

(vi) * * * Persons who have been disqualified for quitting a job as head of household of one household will carry their sanction with them if they join a new household as its head. The new household will be ineligible for the remainder of the sanction period unless the person who caused the disqualification ends it per § 273.7(n)(5).

* * * * *

(5) *Ending a voluntary quit disqualification.* (i) Following the end of the disqualification period a household may begin participation in the program if it applies again and is determined eligible.

(ii) Eligibility may be reestablished during a disqualification period and the household shall, if otherwise eligible, be permitted to resume participation if the member who caused the disqualification secures new employment which is comparable in salary or hours to the job which was quit, or leaves the household. Eligibility may also be reestablished if the violator becomes exempt from the work registration requirements through § 273.7(b) other than paragraphs (b)(1)(iii) or (b)(1)(v) of that section. Should a household which has been determined to be noncompliant without good cause split into more than one household, the sanction shall follow the member who caused the disqualification. If a head of household who committed the violation joins another food stamp household as head of the household, that household shall be ineligible for the balance of the period of ineligibility.

* * * * *

18. In § 273.7 a new paragraph (o) is added to read as follows.

* * * * *

(o) *Performance standards.* The Secretary shall establish an annual performance standard for the minimum number of eligible persons that States must place in employment and training programs.

(1) *Performance Formula.* To ascertain a State's level of performance at the end of each fiscal year, FNS will divide the number of E&T mandatory participants plus volunteers the State has "placed" in its E&T program over the course of the year (the numerator) by the number of E&T mandatory participants who were eligible to have been placed in the program over the course of the year plus volunteers (the denominator). The denominator is herein referred to as the "base of eligibles."

(2) *Counting placements in an employment and training program.* State agencies may consider a person placed in an E&T program, for purposes of performance standards, if the person commences an employment and training component, or fails to comply with E&T requirements and is denied certification or is sent a Notice of Adverse Action for the noncompliance. NOAAs sent for noncompliance with work registration or voluntary quit shall not count as placements. Assigned persons who have good cause for noncompliance shall not

be counted as placed. If the good cause for the noncompliance is temporary (less than 60 days), the person shall be referred again to a component as soon as practicable. If the good cause represents a situation or condition which will continue for 60 days or more, the person shall be considered exempt by the State agency. If a participant reports to a component which involves several months, that individual would be counted as placed in the initial month only. Each time a participant is placed in a different component after having completed a prior component, he/she may be counted as placed. If participation in one type of E&T component is not continuous, the participant may be counted as having been placed more than once in the same component. If an E&T mandatory participant does not comply with E&T requirements, and a Notice of Adverse Action is sent, the person is counted as placed in the month the NOAA is mailed.

(3) *Counting the "base of eligibles".* The base of persons eligible to participate in an E&T program (the denominator) consists of all work registrants in the month of October plus newly work registered food stamp recipients who have not been exempted by the State under § 273.7(f)(2) of these regulations from participation in an E&T program, and food stamp program applicants who are assigned by the State to enter an E&T component at the time of application and are subsequently certified for food stamp participation. These groups are considered E&T mandatory participants. In addition, volunteers who are placed in an E&T component shall be counted in the base of eligibles. State agencies need not count any individual in the base of eligibles more than once in a fiscal year.

(4) *Applicant participation.* Some States may wish to operate a job search or other component which begins at the time of Food Stamp Program application. The applicants who are placed in this component (who either perform the job search or who do not and are denied eligibility for failure to comply with the E&T requirement) should be counted as "placed". These persons need be counted in the base of eligibles, or the denominator, only if their application is approved, they are certified for food stamp benefits and they are work registered. At that time, they should be counted as "newly work registered" if they have not been counted in this category in the previous 12 months. If an applicant performs a job search and is either denied eligibility, for causes other than non-compliance with the E&T requirements, or certified but exempted from work registration, the individual need not be counted in the base of eligibles.

(5) *Accounting for short-term participants.* There are a number of work registrants considered E&T mandatory who are counted in the base of eligibles but who remain on the Food Stamp Program for such a short period of time States are unable to place them in an E&T component. These short term recipients inflate the State's base of eligibles and make it more difficult for States to meet their performance standard. States may choose one or two methods to counteract the effects of short term participants.

(i) States may exempt from E&T participation persons who will leave the Food Stamp Program within 30 days of application. This may mean that States will not attempt to serve such persons unless they volunteer for E&T participation. States must count each individual as having been exempted under the reporting requirements of § 273.7(c)(6)(ii).

(ii) States may, at the close of the fiscal year, subtract 10 percent from their base of eligibles (denominator) to account for E&T mandatory participants who have left the program within 30 days of application. This 10 percent adjustment may be made without supporting documentation. Since the short term mandatory participants are not exempted from participation, States may attempt to place them in a component and may count them as placed (in their numerator) if they meet the placement criteria of paragraph (2) of this section.

(6) *Performance date collection.* To determine the annual total in the base of eligibles (denominator) State agencies shall count the actual number of work registered individuals in the first month of the fiscal year. Each subsequent month, the State shall add to that figure the number of E&T mandatory participants, and volunteers who were placed in an E&T component that month. Separate counts should be maintained for mandatory participants and volunteers. The method of measuring the number of persons "placed" (the numerator) shall be the same. A count of persons placed each month of the fiscal year shall be added cumulatively. A cumulative total shall be kept monthly for the base of eligibles and the number of persons placed, and the monthly totals shall be reported to FNS no later than 45 days after the end of each quarter per section (c)(6) of this paragraph.

(7) *Percentage of persons to be placed.* In the first quarter of Fiscal Year 1989, 35 percent of E&T mandatory participants shall be placed in an employment and training program; the percent of mandatory participants placed during the remainder of FY 1989 shall average 35; and in Fiscal Year 1990, 50 percent of E&T mandatory participants shall be placed. Beyond Fiscal Year 1990, State agencies will receive instructions and standards from FNS annually.

(8) *Variations in performance standards.* (i) The Department will adjust the performance standard for an individual State if the State can show, prospectively, that the components it plans to offer or the type of participant it plans to serve will require a significantly higher level of effort than the minimum level of effort described in § 273.7(f). If a State proposes that its performance standard be adjusted, it should propose the amount of the requested adjustment and provide a justification. The additional documentation called for in § 273.7(c) must be submitted to FNS in the State's employment and training plan. In determining whether an adjustment of the performance standard is warranted and the level of the adjustment, FNS will consider the number of persons who will be placed, the percentage of planned placements compared to the State's E&T mandatory population, the intensity and effectiveness of the components, and the cost.

(ii) Only in extraordinary circumstances should a State expect to have a performance standard approved which is lower than 40 percent of the nationwide standard.

* * * * *

19. In § 273.7 a new paragraph (p) is added to read as follows:

* * * * *

(p) State noncompliance with Employment and Training requirements.

(1) If a State agency fails to efficiently and effectively administer its employment and training program, the provisions of § 276.1(a)(3) shall apply.

(2) If a State has failed to meet its established performance standard, FNS shall determine whether there was good cause for the noncompliance. Good cause for State noncompliance is specified in § 276.6. In determining whether a State agency has met a performance standard, the Secretary will also consider factors such as the extent to which volunteers have participated in the employment and training program, placements in unsubsidized employment, increases in earnings and the reduction in the number of persons participating in the Food Stamp Program, and changes in the States caseload, if the State supplies the Agency with appropriate documentation. Lack of E & T funding at the 100 percent Federal level shall not constitute good cause.

(3) If the Agency finds that there was not sufficient good cause for the State's failure to meet its performance standards the Agency may disallow administrative funds. The dollar amount of the funds disallowed shall be calculated by reducing the amount of the State's 100 percent Federal employment and training allocation for the pertinent year proportionately to the percentage below its standard the State's performance fell. This amount shall then be disallowed from the State's administrative funds as specified in § 276.4(c) except that no formal warning is required. The Secretary may withhold a larger percentage of the allocation depending on the severity of the noncompliance. Appeal and administrative review provisions of §276.1(b), shall apply.

§ 273.8 [Amended]

19. In § 273.8 paragraph (h)(4)(iii) is amended by removing the words "job search criteria" and by adding the words "employment and training criteria" in their place.

PART 277—PAYMENT OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES

20. Section 277.4 is amended by adding a new paragraph (b)(9) to read as follows:

§ 277.4 Funding.

* * * * * *

(b) * * *

(9) Employment and training program grants, as outlined in § 273.7(f) shall be 100 percent Federally-funded.

* * * * * *

Dated: December 24, 1986.

Robert E. Leard,

Administrator.

FR Doc. 86-29431 Filed 12-30-86; 8:45 am]

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Wednesday
December 31, 1986

Part IV

Department of the Treasury

Fiscal Service

31 CFR Part 344

Regulations Governing United States Treasury Certificates of Indebtedness—State and Local Government Series, United States Treasury Notes—State and Local Government Series, and United States Treasury Bonds—State and Local Government Series; Interim Rule With Request for Comments

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 344

Regulations Governing United States Treasury Certificates of Indebtedness—State and Local Government Series, United States Treasury Notes—State and Local Government Series, and United States Treasury Bonds—State and Local Government Series

AGENCY: Fiscal Service, Bureau of the Public Debt, Department of the Treasury.

ACTION: Interim rule with request for comments.

SUMMARY: The Department of the Treasury is issuing revised regulations governing all United States Treasury Certificates of Indebtedness, Notes, and Bonds of the State and Local Government Series. These securities are available for purchase, as provided in this offering, by state and local governments and certain other entities with proceeds (or amounts treated as proceeds) which are subject to yield restrictions or arbitrage rebate requirements under the Internal Revenue Code.

The regulations are divided into Subparts A, B, and C. Subpart A lists provisions which apply generally to United States Treasury securities—State and Local Government Series. Subpart B revises existing regulations and characterizes the securities offered thereunder as being of the time deposit State and Local Government Series. Subpart C sets out regulations for a new demand deposit State and Local Government Series security.

Subpart B, "Time Deposit Securities," reflects changes made pursuant to the Tax Reform Act of 1986 as well as changes contained in a proposed rule published in the **Federal Register** (45 FR 57747) on August 29, 1980. These changes include a reduction in the minimum maturity period for securities, flexibility in the advance notice requirements, and a waiving of the penalty under certain circumstances for failure to complete a subscription. Other changes include a further definition of the type of funds that can be invested, and an elaboration of the type of entity eligible to invest, in accordance with the purpose for which these securities are offered for sale. Notices of investment and early redemption are prescribed to enable the Treasury to better monitor its cash management, as well as to handle transactions more efficiently. It is also provided that all payments in connection with securities for which subscriptions are submitted after February 1, 1987, will be made by direct deposit with a financial institution. Updated early redemption formulas with examples are appended. A number of minor changes have also been made to clarify existing provisions.

Subpart C, "Demand Deposit Securities," implements statutory provisions of the Tax Reform Act of 1986, Pub. L. 99–514, with respect to the offering of a one-day certificate of indebtedness. This security, to be offered in 1987, will be treated as a tax-exempt bond for purposes of sections 148 and 143(g)(3) of the Internal Revenue Code and, therefore, will enable entities to invest proceeds of tax-exempt bonds in an obligation which avoids the earning of rebatable arbitrage. The regulations published herein apply to an interim program which is being offered until such time as enhancements to the basic program can be made. Under this interim program, each deposit will be treated as a unique account. The enhanced program will provide for a single account for each bond issue to which additional deposits may be made.

DATES: Effective Date: The regulations are effective January 1, 1987. Implementation of the regulations will occur beginning February 1, 1987. Comments will be received on or before March 2, 1987.

ADDRESS: Send comments to the Office of the Chief Counsel, Bureau of the Public Debt, Room 503, E Street Building, Washington, DC 20239–0001.

FOR FURTHER INFORMATION CONTACT:

Sandy Dyson, Attorney-Adviser, (202–376–4320),

or

Margaret Marquette, Attorney-Adviser, (202–447–9859).

SUPPLEMENTARY INFORMATION:

Subpart A—General Information

Provisions included in the general information section apply to both time deposit and demand deposit State and Local Government Series securities. Changes from existing regulations are as follows:

(1) Section 344.0(b)—The definition of the term "government body" is expanded to include non-governmental bodies which hold funds subject to the arbitrage provisions of the Internal Revenue Code.

(2) Section 344.1(g)—The Department reserves the right to change provisions relating to issuance and redemption of securities when there are debt limit constraints.

Subpart B—Time Deposit Securities

Department of the Treasury Circular, Public Debt Series No. 3–72 (31 CFR, Part 344), pertains to an offering of time deposit Treasury securities issued to state and local government investors to enable these investors to satisfy yield restrictions in the Internal Revenue Code.

The major changes to this circular as contained in the revised regulations are as follows:

(1) Section 344.2(a)(1)—Certificates will be available for terms of 30 days to one year. This reduces the 45-day minimum heretofore provided.

(2) Section 344.2(a)(3)—The maximum term for Treasury bonds will be reduced to 30 years from 40 years.

(3) Section 344.2(c)(2)—All payments in connection with time deposit securities for which subscriptions are submitted after February 1, 1987, will be made by direct deposit (electronic funds transfer) to the investor's account at a financial institution.

(4) Section 344.3(b)—The 20-day notice of the intention to invest will be reduced to 15 calendar days. In addition, the subscriber may defer settlement up to seven calendar days after the date specified for issuance.

(5) Section 344.3(b)—A subscription may be amended on or before the proposed issue date for the purpose of changing the aggregate principal amount up or down by no more than ten percent, previously five percent, and changing the interest rate to any other rate, which does not exceed the maximum allowable rate, on the applicable table.

(6) Section 344.3(c)—Subscribers must certify that none of the proceeds submitted in payment is derived from the redemption before maturity of other securities of the State and Local Government Series.

(7) Section 344.4—The six-month penalty for failure to complete a subscription is modified to provide that the penalty applies if the failure to settle is due to a desire to take advantage of changes in the interest rate, but not if the change was necessitated by an adversity in the financing. Certification to this effect is required.

(8) Section 344.5(b)(2)—A minimum 15-calendar day notice will be required on early redemptions. This reduces the 20-day requirement currently imposed for most investments.

(9) Section 344.5(b)(3)(iii)—The calculation of penalties for early redemptions is clarified. Formulas for computing the penalties are provided in the Appendix.

Subpart C—Demand Deposit Securities

The Tax Reform Act of 1986 imposes arbitrage rebate requirements on issuers of tax-exempt bonds and directs the Treasury Department to modify its State and Local Government Series (SLGS) program to accommodate the new requirements and enable entities to invest qualifying funds into a Treasury money-market type investment vehicle. Accordingly, Treasury is expanding the program to include a new "demand deposit" security offering.

The major features of this offering include:

(1) Section 344.6(a)—The demand deposit securities will be issued in a minimum amount of $1,000 and any increment above that amount. The securities, defined as one-day certificates of indebtedness, will roll over each day until the day prior to redemption.

(2) Section 344.6(b)—Interest will be computed daily. The rate will be based on the weekly Federal Funds rate minus ¼ percent per annum, adjusted to produce a tax exempt equivalent rate, less administrative costs. Interest will be accrued and added to the principal daily.

(3) Section 344.7(a)—The securities will be issued upon a minimum three-day notice.

(4) Section 344.9(a)—The securities may be redeemed upon a minimum one-day notice.

General

This interim rule is not a major rule as defined in Executive Order 12291. Because no notice of proposed rule making is required for interim rules, the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164, 1167, does not apply. The rule reflects changes and a new offering made pursuant to the Tax Reform Act. Because the Act specifies that the changes and offering be effective January 1, 1987, the Agency has determined, pursuant to 5 U.S.C. 553 (b)(B) and (d)(3), that notice and public procedure and a delayed effective date are impracticable and contrary to the public interest.

List of Subjects in 31 CFR Part 344

Bonds, Government securities, Securities.

Dated: December 26, 1986.

Gerald Murphy,

Fiscal Assistant Secretary.

Part 344 of Title 31, Code of Federal Regulations, is revised as follows and issued as Department of the Treasury Circular, Public Debt Series No. 3–72, Third Revision:

PART 344—REGULATIONS GOVERNING UNITED STATES TREASURY CERTIFICATES OF INDEBTEDNESS—STATE AND LOCAL GOVERNMENT SERIES, UNITED STATES TREASURY NOTES—STATE AND LOCAL GOVERNMENT SERIES, AND UNITED STATES TREASURY BONDS—STATE AND LOCAL GOVERNMENT SERIES

Subpart A—General Information

Secs.
344.0 Offering of securities.
344.1 General provisions.

Subpart B—Time Deposit Securities

344.2 Description of securities.
344.3 Subscription for purchase.
344.4 Issue date and payment.
344.5 Redemption.

Subpart C—Demand Deposit Securities

344.6 Description of securities.
344.7 Subscription for purchase.
344.8 Issue date and payment.
344.9 Redemption.

Appendix—Formulas for Determining the Amount of Penalty for Early Redemption of Securities Under § 344.5(b)(3)(iii)

Authority: 31 U.S.C. 3101, *et seq.*; sec. 1301, Pub. L. 99–514, 100 Stat. 2657.

Subpart A—General Information

§ 344.0 Offering of securities.

(a) In order to provide issuers of state and local bonds described in section 103(a) of the Internal Revenue Code with investments tailored to their needs under Sections 141–150, the Secretary of the Treasury offers for sale the following State and Local Government Series securities:

(1) Time deposit securities

(i) United States Treasury Certificates of Indebtedness,

(ii United States Treasury Notes, and

(iii) United States Treasury Bonds.

(2) Demand deposit securities—United States Treasury Certificates of Indebtedness.

(b) The term "government body," as used in these regulations, refers to issuers of state or local bonds described in section 103(a), as well as to any other entity holding funds to which the yield restrictions in sections 141–150 or the arbitrage rebate requirements in section 148 or 143(g)(3) apply. This offering will continue until terminated by the Secretary of the Treasury.

§ 344.1 General provisions.

(a) *Regulations.* United States Treasury State and Local Government Series securities shall be subject to the general regulations with respect to United States securities, which are set forth in the Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), to the extent applicable. Copies of the circular may be obtained from the Bureau of the Public Debt, Department F, Washington, DC 20239–1200 or a Federal Reserve Bank or Branch.

(b) *Issuance.* The securities will be issued in book-entry form on the books of the Department of the Treasury, Bureau of the Public Debt, Washington, DC 20239–0001. Transfer of securities by sale, exchange, assignment or pledge, or otherwise will not be permitted.

(c) *Time/Demand Deposit Transfers.* Securities held under the time deposit system may not be transferred to the demand deposit system, and vice versa.

(d) *Fiscal agents.* Federal Reserve Banks and Branches, as fiscal agents of the United States, are authorized to perform such services as may be requested of them by the Secretary of the Treasury in connection with the purchase of, transactions involving, and redemption of the securities.

(e) *Authority of subscriber.* Where a commercial bank submits an initial or fina[1] subscription on behalf of a government body, it must certify that it is acting under the latter's specific authorization; ordinarily, evidence of such authority will not be required. Subscriptions submitted by an agent other than a commercial bank must be accompanied by evidence of the agent's authority to act. Such evidence must describe the nature and scope of the agent's authorization, the legal authority under which the agent was designated, and must relate by its terms to the investment action being undertaken. Subscriptions unsupported by such evidence will not be accepted.

(f) *Reservations.* Transaction requests, including requests for subscription and redemption, will not be accepted if unsigned, inappropriately completed, or not timely submitted. The Secretary of the Treasury reserves the right (1) to reject any application for the purchase of securities under this offering; (2) to refuse to issue any such securities in any case or any class(es) of cases; and (3) to revoke the issuance of any security, and to declare the subscriber ineligible thereafter to subscribe for securities under this offering, if any security is issued on the basis of an improper certification or other misrepresentation by the subscriber, if the Secretary deems such action to be in the public interest. Any of these actions shall be final. The authority of the Secretary to waive regulations under 31 CFR 306.126 applies to there regulations.

(g) *Debt limit contingency.* The terms and conditions of this offering, including

provisions relating to the acceptance of subscriptions and issuance of securities, the provisions relating to interest payments, redemptions, and rollovers, as well as notices relating thereto, are subject to change at any time that the Department of the Treasury finds that legislation affecting the public debt limit and the financing thereof may not be timely enacted. Announcement of such changes shall be provided by such means as the Treasury deems appropriate.

Subpart B—Time Deposit Securities

§ 344.2 Description of securities.

(a) *Terms*—(1) *Certificates of Indebtedness.* The certificates will be issued in a minimum of $1,000, or in any larger amount in multiples of $100, with maturity periods fixed, at the option of the government body, from 30 days up to one year, or for any intervening period.

(2) *Notes.* The notes will be issued in the minimum amount of $1,000, or in any larger amount in multiples of $100, with maturity periods fixed, at the option of the government body, from one year and one day up to and including 10 years, or for any intervening period.

(3) *Bonds.* The bonds will be issued in the minimum amount of $1,000, or in any larger amount in multiples of $100, with maturity periods fixed, at the option of the government body, from 10 years and one day up to and including 30 years, or for any intervening period.

(b) *Interest rate.* Each security shall bear such rate of interest as the government body shall designate, but the rate shall not exceed the maximum rate. The applicable maximum interest rates for each week are shown in tables which are available at Federal Reserve Banks and Branches on the first business day of that week. The applicable rate table for any subscription is the one in effect on the date the initial subscription is actually received during customary business hours by a Federal Reserve Bank or Branch, or if the initial subscription was mailed, the postmark date. The rates specified in the tables are one-eighth of one percent below the then current estimated Treasury borrowing rate for a security of comparable maturity.

(c) *Payment*—(1) *Interest computation and payment dates.* Interest on a certificate will be computed on an annual basis and will be paid at maturity with the principal. Interest on a note or bond will be paid semiannually on a schedule in which the first payment occurs within the first year and the final payment date coincides with its maturity date. (In the case of securities with an interest payment date of March 31, May 31, August 29, 30, and 31, October 31 or December 31, the alternate semiannual interest will be paid on September 30, November 30, February 28 or 29 (in a leap year), April 30, or June 30, respectively). If the first interest payment is less than six months from the date of issue, the government body may elect to receive the payment with the first full semiannual payment. Interest for other than a full period is computed on the basis of a 365-day or 366-day year (for certificates) or on the basis of the exact number of days in the half-year (for notes and bonds). See Appendix following 31 CFR 306.38 for rules regarding computation of interest.

(2) *Method of payment.* For securities for which subscriptions are submitted prior to February 1, 1987, payment will be made (i) by a direct credit to a Federal Reserve Bank or Branch for the account of the financial institution serving the investor; or (ii) by direct deposit for the owner's account at a financial institution; or (iii) by Treasury check; or (iv) in accordance with other prior arrangements made by the subscriber with the Bureau of the Public Debt. For securities for which subscriptions are submitted on or after February 1, 1987, payment will only be made by direct deposit for the owner's account at a financial institution designated by the owner. Provisions of § 357.26 on "Payments," as set forth in 31 CFR Part 357, shall apply to direct deposit payments made under this offering to the extent applicable.

§ 344.3 Subscription for purchase.

(a) *Subscription requirements.* Subscriptions for purchase of securities under this offering must be submitted to a Federal Reserve Bank or Branch. Subscriptions may be submitted in person, by mail, or by other carrier. All subscriptions submitted by mail, whether initial or final, must be sent by certified or registered mail. A subscription filed at a Federal Reserve Bank or Branch is accepted, subject to verification by the Bureau of the Public Debt.

(b) *Initial subscriptions.* An initial subscription, either on a Treasury form or in letter form, stating the principal amount to be invested and the issue date, must be received (or where mailed, must be postmarked) at least 15 calendar days before issue date. For example, if the securities are to be issued on March 16, the subscription must be postmarked no later than March 1. If the initial subscription is in letter form, it should read substantially as follows:

To: Federal Reserve Bank or Branch at

Pursuant to the provisions of Department of the Treasury Circular, Public Debt Series No. 3–72, current revision, the undersigned hereby subscribes for United States Treasury Time Deposit Securities—State and Local Government Series, to be issued as entries on the books of the Bureau of the Public Debt, Department of the Treasury, in the total amount and with the issue date shown below, which date is at least 15 calendar days after the date of this subscription:

Principal amount	Issue date
$.....	

The undersigned agrees that the final subscription, together with the remittance, will be submitted on or before the issue date.

Tax I.D. Number

(Name of State or Local Government Body or other entity eligible to purchase State and Local Government Series securities)

(Date)
by

(Signature and Title)

The provisions set out in paragraph (e) of § 344.1, dealing with the authority of the subscriber to act on behalf of a government body, and in § 344.4, relating to the failure to complete a subscription, apply to initial subscriptions. An initial subscription may be amended on or before the issue date, with the following exceptions: (1) the issue date may not be changed to require issuance more than seven calendar days later than originally specified, and, if such change is made, a letter of explanation shall be furnished; (2) the principal amount may not be changed by more than the ten percent limitation set out in paragraph (c) of this section; and (3) an interest rate may not be changed to a rate that exceeds the maximum interest rate in the applicable table. No initial subscription will be required where a final subscription is received or postmarked at least 15 calendar days before the issue date. Such final subscription will be treated as the initial subscription for purposes of determining the applicable interest rate table (see § 344.2(b)), and may be amended on or before the issue date subject to the exceptions noted above.

(c) *Final subscriptions.* On or before the issue date, a final subscription (Form PD 4144) must be submitted to the same Federal Reserve Bank or Branch to which the initial subscription was submitted. The final subscription must be for a total principal amount that is no more than ten percent above or below the amount specified in the initial subscription. The final subscription, dated and signed by an official authorized to make the purchase and showing the taxpayer identification number of the beneficial owner, must be accompanied by a copy of the initial subscription, where applicable. The various maturities, interest rates, and semiannual interest payment dates (in the case of notes and bonds), must be specified in the final subscription, as well as the title(s) of the designated official(s) authorized to request early redemption. Final subscriptions submitted for certificates, notes and bonds must separately itemize securities of each maturity and each interest rate. Authorization for the electronic credit (direct deposit) of interest and principal payments with a financial organization must accompany the final subscription. The final subscription must contain a certification by the subscriber that, as of the date of investment:

(1) The total investment consists only of proceeds (or amounts treated as proceeds) which are subject to yield restrictions under sections 141–150 of the Internal Revenue Code during the entire period of investment.

(2) The total investment is not less than the proceeds described in paragraph (c)(1) of this section except for—

(i) An amount not to exceed $100, and

(ii) Amounts required for payment due less than 30 days from the date of issue.

(3) None of the proceeds submitted in payment is derived from the redemption before maturity of other securities of the State and Local Government Series.

Where proceeds are subject to yield restrictions for a limited period of time, under paragraph (c)(1) of this section, no investment of such proceeds beyond such period may be made. For example, if a reserve fund of a refunding issue is subject to yield restrictions for a period of four years, the securities purchased as an investment of the reserve fund may not have a maturity longer than four years. With respect to obligations described in section 103 issued after January 31, 1987, paragraph (c)(2) of this section is satisfied only if on the date of investment, all the proceeds of the issue which are subject to yield restrictions are invested in State and Local Government Series securities. Paragraph (c)(2) of this section does not apply to purpose investments, such as mortgage notes or student loan obligations. See § 344.1(f) as to improper certifications.

§ 344.4 Issue date and payment.

(a) The subscriber shall fix the issue date of each security in the initial subscription. The issue date may not exceed by more than 60 calendar days either the date of receipt of the initial subscription at the Federal Reserve Bank or Branch to which it was submitted or, where mailed, the postmark date thereof. Full payment for each subscription must be available in an account for debit by a Federal Reserve Bank or Branch on or before the date of issue. Any subscriber which fails to complete an initial or final subscription shall be ineligible thereafter to subscribe for securities under this offering for a period of six months, beginning on the date the subscription is withdrawn or the proposed issue date, which ever occurs first, unless the Commissioner of the Public Debt determines that such failure is due to circumstances not foreseen or contemplated by the subscriber at time of subscription. Where failure to settle is due to adversity in the financing, reasonable accommodation will be made, provided the subscriber submits a certified statement to the Commissioner of the Bureau of the Public Debt with respect to those circumstances. The penalty will apply in other instances, for example, where failure to settle is due to a subscriber attempting to take advantage of changes in the interest rate.

(b) A subscriber may cancel the issuance of a security within 25 calendar days of the issue date, in which event the purchase price, without interest, will be refunded. No substitute subscription therefor will be accepted for a period of six months from the date of cancellation.

§ 344.5 Redemption.

(a) *General.* A security may not be called for redemption by the Secretary of the Treasury prior to maturity. Upon the maturity of a security, the Treasury will make payment of the principal amount and interest to the owner thereof.

(b) *Before maturity*—(1) *In general.* A security may be redeemed at the owner's option no earlier than 25 calendar days after the issue date in the case of a certificate and one year after the issue date in the case of a note or bond.

(2) *Notice.* Notice of redemption prior to maturity must be received by the Bureau of the Public Debt, Department L, Washington, DC 20239–0001. The notice must be provided, by letter or wire, by the official(s) authorized to redeem the securities, as shown on the final subscription form. The notice must show the subscription number and the maturities of the securities to be redeemed. This notice must be received no less than 15 days before the requested redemption date. However, owners are encouraged to provide as much notice of redemption as possible to assure that payment can be timely made.

(3) *Redemption proceeds—subscriptions after December 27, 1976.* For securities subscribed to after December 27, 1976, the amount of the redemption proceeds is calculated as follows:

(i) *Interest.* Interest for the entire period the security was outstanding shall be recalculated on the basis of the lesser of (A) the original interest rate at which the security was issued, or (B) the interest rate that would have applied to the initial subscription had the term for the security been for the shorter period. If a note or bond is redeemed before maturity on a date other than an interest payment date, no interest will be paid for the fractional interest period since the last interest payment date.

(ii) *Overpayment of interest.* If there have been overpayments of interest, as determined under paragraph (b)(3)(i) of this section, there shall be deducted from the redemption proceeds the aggregate amount of such overpayments, plus interest, compounded semiannually, thereon from the date of each overpayment to the date of redemption. The interest rate to be used in calculating the overpayment shall be one-eighth of 1 percent above the maximum rate that would have applied to the initial subscription had the term of the security been for the shorter period.

(iii) *Penalty.* A penalty shall be deducted from the redemption proceeds in all cases where the current borrowing rate of the Department of the Treasury for the remaining period to original maturity of the security prematurely redeemed exceeds the rate of interest originally fixed for such security. The amount of the penalty shall be the present value of the future increased borrowing costs to the Treasury. The annual increased borrowing cost for each interest period is determined by multiplying the principal by the difference between the two rates. For notes and bonds, the increased borrowing cost for each remaining interest period to original maturity is determined by dividing the annual cost by two. For certificates, the increased borrowing cost for the remaining period

to original maturity is determined by multiplying the annual cost by the number of days remaining until original maturity divided by the number of days in the calendar year. Present value shall be determined by using the current borrowing rate as the discount factor. The term "current borrowing rate" means the applicable rate shown in the table of maximum interest rates payable on United States Treasury securities—State and Local Government Series for the week of the early redemption date, plus one-eighth of 1 percentage point. Where redemption is requested as of a date less than 30 calendar days before the original maturity date, such applicable rate is the rate shown for a security with a maturity of 30 days. The amount of the penalty for bonds, notes and certificates of indebtedness can be determined by use of the formulas set forth in the Appendix.

(4) *Redemption proceeds—subscriptions on or before December 27, 1976.*

(i) For securities subscribed for on or before December 27, 1976, the amount of the redemption proceeds is calculated under this subparagraph.

(ii) The interest for the entire period the security was outstanding shall be calculated on the basis of the lesser of the original interest rate at which the security was issued, or an adjusted interest rate reflecting both the shorter period during which the security was actually outstanding and a penalty. The adjusted interest rate is the Treasury rate which would have been in effect on the date of issuance for a marketable Treasury certificate, note, or bond maturing on the quarterly maturity date prior to redemption (in the case of certificates), or on the semiannual maturity period prior to redemption (in the case of notes and bonds), reduced in either case by a penalty which shall be the lesser of one-eighth of one percent times the number of months from the date of issuance to original maturity, divided by the number of full months elapsed from the date of issue to redemption, or one-fourth of one percent. There shall be deducted from the redemption proceeds, if necessary, any overpayment of interest resulting from previous payments made at a higher rate based on the original longer period to maturity.

Subpart C—Demand Deposit Securities

§ 344.6 Description of securities.

(a) *Terms.* The securities are defined as one-day certificates of indebtedness. The securities will be issued in a minimum of $1,000 and any increment above that amount. Each subscription will be established as a unique account. Securities will be automatically rolled over each day unless redemption is requested.

(b) *Interest rate.* Each security shall bear a variable rate of interest based on an adjustment of the Federal Funds rate published weekly in the Federal Reserve Board's publication, H.15. A new rate, to be effective each Monday, will be shown in the table available at Federal Reserve Banks and Branches on the first business day of the week. Interest will be accrued and added to principal daily. Interest earned will be calculated by multiplying the interest rate by the amount of the outstanding principal daily, including the issue date but not the redemption date, and dividing by the number of days in the year. The interest rate is determined by the following formula:

$$\text{Annual Rate} = \frac{\left(\text{Federal Funds Rate} - \text{1/4 percent per annum}\right)\left(\text{1-estimated average marginal tax rate of purchasers of short-term tax exempt bonds}\right)}{360/Y} - \text{Treasury administrative costs}$$

where

Y=365 if year following date of issue does not contain a Leap Day and 366 if it does contain a Leap Day.

Information as to the estimated average marginal tax rate and costs for administering the Demand Deposit State and Local Government securities program, both to be determined by Treasury from time to time, will be published in a separate notice in the **Federal Register.**

(c) *Payment.* Interest earned on the securities will be added to the principal and will be rolled over daily until redemption. The Department reserves the right, under debt limit constraints, to pay accrued interest rather than add such interest to the principal balance.

§ 344.7 Subscription for purchase.

(a) *Subscription requirements.* Subscriptions for purchase of securities under this offering must be submitted to a Federal Reserve Bank or Branch. Subscriptions must be submitted on the designated Treasury form (Form PD 5237), must specify the principal amount to be invested and the issue date, and must be signed by an official authorized to make the purchase. The Federal Reserve Bank or Branch must receive the subscription by 1:00 p.m., Eastern time, at least three business days before the issue date. The principal amount to be invested may be changed without penalty so long as the notification of change is received by the Federal Reserve Bank or Branch by 1:00 p.m., Eastern time, at least one business day before the issue date.

(b) *Certification.* By completing the subscription form, subscribers certify to the following:

(1) That the total investment consists only of gross proceeds of a tax-exempt bond issue to which section 148(f) or 143(g)(3) of the Internal Revenue Code applies;

(2) That no portion of the investment consists of gross proceeds of an advance refunding issue to be used to discharge a prior issue;

(3) That no portion of the issue is being issued for the principal purpose of investing in one-day certificates of indebtedness;

(4) That all of the gross proceeds of the issue received on the date of issue were (or will be) invested on that date in one-day certificates of indebtedness; and

(5) That all of the gross proceeds of the issue, except gross proceeds described in paragraphs (b)(2) and (4) of this section and in exceptions one through six below, have and will be invested in one-day certificates of indebtedness within four business days of the receipt thereof.

(i) *Exception (1).* Gross proceeds invested in a bona fide debt service fund if the issuer reasonably expects that the gross earnings on such fund for the bond year will be less than $100,000.

(ii) *Exception (2).* Gross proceeds which are invested in tax-exempt bonds within two business days of the receipt thereof. Such gross proceeds must be expended for the purpose of the issue within one business day of the date they cease to be invested in tax-exempt bonds.

(iii) *Exception (3).* Gross proceeds which will not be gross proceeds of the issue for more than seven business days.

(iv) *Exception (4).* Gross proceeds invested in obligations the earnings on which are not subject to rebate under section 148 or 143(g)(3) (whichever applies).

(v) *Exception (5).* Gross proceeds not described in exceptions one through four if the total amount of such gross proceeds is less than $1,000.

(vi) *Exception (6).* Gross proceeds which are not invested in one-day certificates of indebtedness due to an inadvertent error.

See § 344.1(f) as to improper certifications.

§ 344.8 Issue date and payment.

The subscriber shall fix the issue date on the subscription, the issue date to be at least three business days after receipt of the subscription. Full payment for each subscription must be available in an account for debit by a Federal Reserve Bank or Branch on or before the date of issue. Any subscriber which fails to settle a subscription shall be ineligible thereafter to subscribe for securities under this offering for a period of six months, unless the Commissioner of the Public Debt determines that such failure is due to circumstances not foreseen or contemplated by the subscriber at time of subscription. Where failure to settle is due to adversity in the financing, reasonable accommodation will be made, provided the subscriber submits a certified statement to the Commissioner of the Public Debt with respect to the circumstances.

§ 344.9 Redemption.

(a) *General.* A security will be redeemed upon receipt of a request for redemption not less than one business day prior to redemption. Partial redemptions may be requested; however, an account balance of less than $1,000.00 will be redeemed in total. Payment will be made by crediting an account maintained at the Federal Reserve Bank or Branch by the financial institution servicing the subscriber.

(b) *Notice.* Notice of redemption must be received by a Federal Reserve Bank or Branch by 1:00 p.m., Eastern time, one business day prior to the requested redemption date. The notice must be provided on the designated Treasury redemption form (Form PD 5238) and must be signed by an official(s) authorized to redeem the securities.

(c) *Certification.* By completing the redemption form, subscribers certify to the fact that any amounts requested for redemption will be expended within one day of receipt thereof for the purpose of the tax-exempt bond issue used to fund the investment. The certification shall not apply if the administrative costs increase by 25 or more basis points. In such case, the securities may be redeemed within 30 days of notice of the increased costs.

Appendix—Formulas for Determining the Amount of Penalty for Early Redemption of Securities Under § 344.5(b)(3)(iii).

The amount of the penalty for bonds and notes can be determined through use of the following formula:

$$P = \frac{\left(\frac{b}{2}\right)\left(\frac{r}{s}\right) + \left(\frac{b}{2}\right)(a)}{1 + \left(\frac{r}{s}\right)\left(\frac{i}{2}\right)}$$

where

P=penalty

b=increased annual borrowing cost (i.e., principal multiplied by the excess of the current borrowing rate for the period from redemption to original maturity of note or bond over the rate for the security)

r=number of days from redemption to beginning of next semiannual interest period

s=number of days in current semiannual period

i=current borrowing rate for period from redemption to maturity (expressed in decimals)

n=number of remaining full semiannual periods to the original maturity date

$$a = \frac{\left(1 - v^n\right)}{\frac{i}{2}}$$

$$v^n = \frac{1}{\left(1 + \frac{i}{2}\right)^n}$$

The application of this formula may be illustrated by the following example:

(1) Assume that a $600,000 note is issued on July 1, 1985, to mature on July 1, 1995. Interest is payable at a rate of 8% on January 1 and July 1.

(2) Assume that the note is redeemed on February 1, 1989, and that the current borrowing rate for Treasury at that time for the remaining period of 6 years and 150 days is 11%.

(3) The increased annual borrowing cost is $18,000. ($600,000)×(11%−6%).

(4) The penalty is computed as follows:

$$P = \frac{\left(\frac{\$18,000}{2}\right)\left(\frac{150}{181}\right) + \left(\frac{\$18,000}{2}\right)(a)}{1 + \left(\frac{150}{181}\right)\left(\frac{.11}{2}\right)} =$$

$$\frac{\$7,458.56 + (\$9,000)(a)}{1.045580111} =$$

$$\frac{\$7,458.56 + (\$9,000)\left(1 - \frac{1}{(1 + \frac{.11}{2})^{12}}\right)\Big/\frac{.11}{2}}{1.045580111}$$

$$\frac{\$7,458.56 + (\$9,000)(8.618517849)}{1.045580111} =$$

$$\frac{\$7,458.56 + \$77,566.66}{1.045580111} =$$

$$\$81,318.71$$

The amount of the penalty for certificates can be determined through use of the following formula:

$$P = \frac{(b)\left(\frac{r}{s}\right)}{1 + \frac{r}{s}(i)},$$

where
P=penalty
b=increased borrowing cost for full period
r=number of days from redemption date to original maturity date
s=days in current annual period (365 or 366)
i=annual interest rate expressed in decimals (discount factor)

The application of this formula may be illustrated by the following example:

(1) Assume that a $50,000 certificate is issued on March 1, 1987, to mature on November 1, 1987. Interest is payable at a rate of 10%.

(2) Assume that the certificate is redeemed on July 1, 1987, and that the current borrowing cost to Treasury for the 123-day period from July 1, 1987 to November 1, 1987 is 11.8%.

(3) The increased borrowing cost is $900. ($50,000×(11.8%−10%).

(4) The penalty is computed as follows:

$$P = \$900\left(\frac{123}{365}\right)\Big/\left(1 + \left(\frac{123}{365}\right)(.118)\right) =$$

$$\frac{303.29}{1.039764384} =$$

$$\$291.69$$

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December 31, 1986

Part V

Department of Agriculture

Office of the Secretary

7 CFR Part 17

Regulations Governing the Financing of Commercial Sales of Agricultural Commodities; Final Rule

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 17

Financing of Commercial Sales of Agricultural Commodities; Public Law 480 Title I Regulations

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises that portion of the regulations applicable to the financing of the sale and exportation of agricultural commodities pursuant to Title I of the Agricultural Trade Development and Assistance Act of 1954, as amended (Pub. L. 480, 83rd Cong.) which is set forth in §§ 17.1 through 17.8 and 17.16 of Part 17 of Title 7 of the Code of Federal Regulations. The rule incorporates certain standard provisions in the purchase authorization and the provisions of "General Modification No. 1 to Appendix A and Appendix B of the Financing Regulations," changes the definition of "time of sale" for commodities purchased under the terms of an Invitation for Bids, and reflects the transfer of authority for the administration of the Pub. L. 480, Title I program from the Office of the General Sales Manager to the Foreign Agricultural Service. The rule also includes relevant provisions of the interim rule published January 23, 1985 (50 FR 2949) and adopted as a final rule January 17, 1986 (51 FR 2471) which provided that the Commodity Credit Corporation may finance ocean freight charges on foreign flag vessels for the carriage of commodities purchased under the program. Finally, the rule deletes obsolete provisions, reorganizes the regulations in a more logical order, revises many sections for clarity, and makes a number of minor editorial corrections. This revision will make the regulations clearer which could reduce the costs of the program by encouraging more commodity suppliers to participate.

EFFECTIVE DATE: January 30, 1987. (See Supplementary Information).

FOR FURTHER INFORMATION CONTACT: Robert S. Simpson, Director, P.L. 480 Operations Division, Export Credits, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, D.C. 20250, Telephone: (202) 447-3664.

SUPPLEMENTARY INFORMATION: On January 31, 1984, the Foreign Agricultural Service (FAS) published a proposed rule (49 FR 3866) to amend the regulations governing the financing of the sale and exportation of agricultural commodities made available under the Act.

Two comments were received endorsing the proposed rule; one comment from a banking institution requested that § 17.8(c)(5) be amended to clarify whether CCC would demand a refund from a banking institution of commissions paid in violation of § 17.8(c) (2) and (3).

Section 17.15(b)(3) of the regulations, now § 17.20(b)(3), sufficiently states the possible exposure of a banking institution in the event commissions are paid that are not eligible for financing. No further clarification is deemed necessary. Under this regulation, a banking institution would only be responsible for a refund if it honors an ineligible commission when disclosed by required documents other than Form CCC-329.

On January 23, 1985, FAS published an interim rule (50 FR 2949), adopted as a final rule January 17, 1986 (51 FR 2471), amending the regulations to provide that the cost of ocean transportation on foreign flag vessels would be financed by CCC when, and to the extent, specifically provided in the applicable purchase authorization. This final rule reflects those provisions in new §§ 17.1, 17.7 and 17.12.

Additionally, § 17.4(a) has been amended to reflect the fact that use of Form 480-A, "Application for Purchase Authorization," has been discontinued. To request that a purchase authorization be issued, the importing country, generally through its Embassy in Washington, D.C., now sends a letter to the P.L. 480 Operations Division.

The final rule includes changes to § 17.6(b)(4) which did not appear in the proposed rule. However, these provisions concern the criteria for approval of commodity awards and are unchanged from provisions that have appeared in purchase authorizations for all commodities since May 15, 1984.

"General Modification No. 1 to Appendix A and Appendix B of the Financing Regulations" will be withdrawn on the effective date of this final rule, as its provisions are now contained in the text of the regulations.

These regulations will apply to purchase authorizations issued on or after January 30, 1987.

This action has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been classified "not major." It has been determined that this proposed revision will not result in an annual effect on the economy of $100 million or more; will not cause a major increase in costs to consumers, individual industries, Federal, State or local government agencies or geographic regions; and will not have an adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the rule involves foreign affairs functions of the United States and therefore neither 5 U.S.C. 553 nor any other provision of law requires publication of a notice of proposed rulemaking with respect to the subject matter of this rule.

Information collection requirements contained in this regulation (§§ 17.5(c), 17.7(c), 17.10(a), 17.10(e), and 17.12(a)) have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980 and have been assigned OMB control number 0551-0005. Recordkeeping requirements contained in redesignated § 17.22 were included under OMB control number 0551-0005.

Sections affected by this revision cover general information; definitions of terms; eligible commodities; purchase authorizations and subauthorizations; approval of purchasing agents and shipping agents; contracts between commodity suppliers and importers; eligibility of suppliers and selling agents; fees, discounts, commissions, and brand names; notice of sale procedures for commodities; commodity price provisions; reports required from suppliers; refunds to CCC by the participant; and ASCS offices.

List of Subjects in 7 CFR Part 17

Agricultural commodities, Exports, Finance, Maritime carriers.

Accordingly, 7 CFR Part 17, Subpart A, is amended as follows:

PART 17—[AMENDED]

1. The authority citation for Part 17 is revised to read as follows:

Authority: Secs. 101-115, Pub. L. 480, 83rd Cong., as amended, 68 Stat. 455 (7 U.S.C. 1701 *et seq.*); E.O. 12220, 45 FR 44245.

2. The table of contents is revised to read as follows:

Sec.
17.1 General.
17.2 Definition of terms.

Sec.
17.3 Eligible commodities.
17.4 Purchase authorizations.
17.5 Approval of purchasing and shipping agents.
17.6 Contracts between commodity suppliers and importers.
17.7 Eligibility of suppliers and selling agents.
17.8 Fees, discounts, commissions, brand names.
17.9 Notice of sale procedures (tobacco and cotton).
17.10 Notice of sale procedures (commodities other than tobacco and cotton).
17.11 Commodity price provisions.
17.12 Reports required from suppliers of commodities and ocean transportation.
17.13 Refund to CCC by the participant for failure to comply.
17.14 Ocean transportation.
17.15 Letter of commitment method of financing.
17.16 Reimbursement method of financing.
17.17 Adjustment refunds and insurance.
17.18 Documentation.
17.19 Documents in support of drafts drawn on CCC by banking institutions.
17.20 Responsibilities of banking institutions for transactions under letters of commitment.
17.21 ASCS offices.
17.22 Supplier's records.
17.23 Effective date.

§§ 17.9-17.18 [Redesignated as §§ 17.14-17.23]

3. Sections 17.9-17.18 are redesignated as §§ 17.14-17.23, respectively.

4. Sections 17.1-17.5 and §§ 17.7-17.8 are revised, § 17.6(a)-(g) are revised, § 17.6(h)-(j) are removed, and §§ 17.9-17.13 are added as follows:

§ 17.1 General.

(a) *What this subpart covers.* This subpart contains the regulations governing the financing of the sale and exportation of agricultural commodities by the Commodity Credit Corporation, through private trade channels to the maximum extent practicable, under the authority of Title I of the Agricultural Trade Development and Assistance Act of 1954, as amended (hereinafter called "the Act").

(b) *Agricultural Commodities Agreements.* (1) Under the Act, the Government of the United States enters into Agricultural Commodities Agreements with governments of friendly foreign countries or with private trade entities. These agreements cover financing of the sale and exportation of agricultural commodities, including certain ocean transportation costs.

(2)(i) Government-to-government Agricultural Commodities Agreements may provide for (A) sales for dollars on credit terms, (B) sales for foreign currencies on credit terms which permit conversion to dollars, and (C) sales for foreign currencies.

(ii) Agreements with private trade entities are limited to sales for dollars on credit terms.

(c) *Purchase authorizations.* These regulations cover, among other things, the issuance by the General Sales Manager of purchase authorizations which authorize the participant to (1) purchase agricultural commodities and (2) procure ocean transportation therefor.

(d) *Financing.* Following issuance of a purchase authorization, and on application, the Controller, Commodity Credit Corporation, will issue letters of commitment to banking institutions designated by the participant and acceptable to CCC, unless the participant elects to procure the commodities under the reimbursement method of financing. The cost of ocean freight or ocean freight differential will be financed by CCC only when specifically provided for in the purchase authorization.

(1) Under the letter of commitment method of financing, the U.S. supplier of agricultural commodities will receive payment as provided in the regulations in this subpart under irrevocable letters of credit issued, confirmed or advised by a banking institution for the commodities and, when authorized in the purchase authorization and included as a part of the commodity cost, for the ocean freight or the ocean freight differential, and marine insurance.

(2) Notwithstanding any other provision of these regulations, if authorized by the purchase authorization, ocean freight or ocean freight differential shall be financed by CCC under the letter of commitment method of financing in cases where ocean freight is not included as a part of the commodity cost, subject to the applicable provisions of these regulations and such other provisions as may be specified in the purchase authorization. In such case, the supplier of ocean freight will receive payment for ocean freight or ocean freight differential as provided in these regulations and the purchase authorization under irrevocable letters of credit issued, confirmed or advised by a banking institution.

(3) Under the reimbursement method of financing, the U.S. supplier will obtain payment from the participant or its assignee as provided in the regulations in this subpart for the cost of commodities and, when authorized in the purchase authorization and included as a part of the commodity cost, for the ocean freight or the ocean freight differential, and marine insurance. When ocean freight or ocean freight differential is approved for financing on Form CCC-106 and is to be financed separately from the commodity cost, the supplier of ocean transportation will obtain payment from the participant or its assignee.

(4) To the extent provided in the regulations in this subpart, CCC will reimburse banking institutions for payments made under letters of commitment and CCC will reimburse the participant or its assignee for ocean freight or ocean freight differential financed separately from the commodity and for the commodities procured under the reimbursement method of financing.

(e) *Advice of amount financed.* Under the letter of commitment method of financing, the banking institutions will forward documents and advice of the amount financed by CCC to the approved applicant or to the bank or agency authorized by the approved applicant to open related letters of credit. Under the reimbursement method of financing, CCC will forward advice of payment to the participant or its assignee.

(f) Where information is available. The Foreign Agricultural Service issues a press release whenever a purchase authorization is issued. General information about purchase authorizations and operations under these regulations is available from the Director, P.L. 480 Operations Division, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, D.C. 20250. Information about financing operations under these regulations is available from the Controller, Commodity Credit Corporation, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. A copy of each press release is made available to the Small Business Administration to assist small business firms to have an adequate and a fair opportunity to participate as suppliers.

§ 17.2 Definition of terms.

Terms used in the regulations in this subpart are defined or identified as follows, subject to amplification in subsequent sections:

(a) *Terms relating to the United States, its agencies and officials.*

AMS means the Agricultural Marketing Service, U.S. Department of Agriculture.

ASCS means the Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

ASCS offices means the ASCS offices listed in § 17.21 and any other offices or agencies which may succeed to the functions of these offices.

CCC means the Commodity Credit Corporation, U.S. Department of Agriculture.

Controller means the Controller, Commodity Credit Corporation, or the Controller's designee.

FAS means the Foreign Agricultural Service, U.S. Department of Agriculture.

FGIS means the Federal Grain Inspection Service, U.S. Department of Agriculture.

General Sales Manager and *GSM* mean the General Sales Manager, FAS, or the General Sales Manager's designee.

Secretary means the Secretary of Agriculture of the United States, or the Secretary's designee.

USDA means the U.S. Department of Agriculture and includes all or any of the agencies mentioned in this paragraph (a).

United States means the 50 States, the District of Columbia, and Puerto Rico.

(b) *Terms relating to ocean transportation.*

Dry bulk carrier means a non-common carrier vessel, other than a tanker, commonly referred to as a "tramp." Rates are negotiated covering the movement of a specific quantity of a specific commodity, at a specific time from a specific port or ports to a specific destination port or ports.

Dry cargo liners and *liners* are interchangeable terms meaning regularly scheduled vessels on specific trade routes.

Form CCC–106 means the various forms entitled "Advice of Vessel Approval," and refers to either the Form CCC–106–1 (Supplier of Commodity); Form CCC–106–2 (Ocean Carrier); Form CCC–106–3 (Cotton); or any or all of them, as applicable. Colors of the original forms are: Form CCC–106–1, yellow; Form CCC 106–2, blue; Form CCC–106–3, white.

Notice of arrival means a written notice or copy of a cablegram in accordance with § 17.14(f) stating that the vessel has arrived at the first port of discharge.

Ocean bill of lading means

(1) *In the case of corgo corried on a vessel other thon LASH or Seabee borges:* An "on-board" bill of lading, or a bill of lading with an "on-board" endorsement, which is dated and signed or initialed on behalf of the carrier, or

(2) *In the cose of cargo corried in a LASH or Seabee borge:*

(i) For the purpose of financing commodity price, an "on-board" bill of lading showing the date the commodity was loaded on board barges, which is dated and signed or initialed on behalf of the carrier, or a bill of lading or a LASH or Seabee barge bill of lading with an "on-board barge" endorsement which is dated and signed or initialed on behalf of the carrier.

(ii) For the purpose of financing ocean freight or ocean freight differential, an "on-board" bill of lading which is dated and signed or initialed on behalf of the carrier indicating that the barge containing the cargo was placed aboard the vessel named in the Form CCC–106 not later than eight (8) running days after the last LASH or Seabee barge loading date (contract layday) specified in the Form CCC–106. A bill of lading or a LASH or Seabee barge bill of lading with an "on-board ocean vessel" endorsement which is dated and signed or initialed on behalf of the carrier indicating that the barge containing the cargo was placed aboard the vessel named in the Form CCC–106 not later than eight (8) running days after the last LASH or Seabee barge loading date (contract layday) specified in the Form CCC–106.

(3) Documentary requirements for a copy of an "ocean bill of lading" refer to a non-negotiable copy thereof.

Ocean transportation means and is interchangeable with the term "ocean freight".

Tonker means a vessel which is designed to carry full cargoes of liquids. Because of compartmentation, tankers can carry a combination of cargoes, including bulk grain. Rates are negotiated in the same manner as with dry bulk carriers.

(c) *Other terms.*

Affiliote and *associated company* mean any legal entity which owns or controls, or is owned or controlled by, another legal entity. For a corporation, ownership of the voting stock is the controlling criterion. A legal entity is considered to own or control a second legal entity if—

(i) The legal entity owns an interest of 50 percent or more in the second legal entity, or

(ii) The legal entity and one or more other legal entities, in which it owns an interest of 50 percent or more, together own an interest of 50 percent or more in the second legal entity, or

(iii) The legal entity owns an interest of 50 percent or more in another legal entity which in turn owns an interest of 50 percent or more in the second legal entity.

Approved opplicant means the bank in the importing country, or other agency acceptable to CCC, designated by the participant and named in a letter of commitment issued to a banking institution. This term includes any agent authorized to act on behalf of the approved applicant.

Bonking institution means a banking institution organized under the laws of the United States, any State, or the District of Columbia.

Commodity means an agricultural commodity produced in the United States, or product thereof produced in the United States, as specified in the applicable purchase authorization.

Copy means a photocopy or other type of copy of an original document showing all data shown on the original, including signature or the name of the person signing the original, or, if the signature or name is not shown on the copy, a statement that the original was signed.

Delivery means the transfer to or for the account of an importer of custody and right of possession of the commodity at U.S. ports or Canadian transshipment points in accordance with the delivery terms of the contract and purchase authorization. For purposes of financing, delivery is deemed to occur as of the on-board date shown on the ocean bill of lading.

Destination country means the foreign country to which the commodity is exported.

Foreign currency and *local currency* are interchangeable terms and mean the currency of the importing country.

Foreign currency sale means a sale for the currency of the importing country.

Form CCC–329 means the signed original of Form CCC–329, "Supplier's Certificate."

Importer means the person which contracts with the supplier for the importation of the commodity. The importer may be the participant or any person to which a participant has issued a subauthorization.

Importing country means any nation with which an agreement has been signed under the Act.

Invitation for bids and *IFB* mean a publicly advertised request for offers.

Legal entity includes, but is not limited to, an individual (except that an individual and his or her spouse and their minor children are considered as one legal entity), partnership, association, company, corporation and trust.

Letter of credit means an irrevocable commercial letter of credit issued, confirmed, or advised by a banking institution on behalf of an approved applicant.

Long-term credit sale is the collective term used to denote either or both of the following: (i) Sales to an importing country or a private trade entity for dollars on credit terms or (ii) sales to an importing country for local currency on credit terms and on terms which permit conversion to dollars.

Participant is the collective term used to denote the importing country or the private trade entity with which an agreement has been negotiated under the Act.

Person means an individual or other legal entity.

Purchase authorization means Form FAS–480 (Commodity), "Authorization to Purchase Agricultural Commodities," issued to a participant under these regulations.

Purchasing agent means any person engaged by a participant to procure agricultural commodities.

Private trade entity means the individual or other nongovernmental legal entity with which an agreement has been negotiated under the Act.

Selling agent means any person who operates as a bona fide representative for the supplier of the commodity and who is not employed by or otherwise connected with the importer or the importing country.

Shipping agent means any person engaged by a participant to arrange ocean transportation.

Ships broker means any person engaged by a supplier of ocean transportation to arrange employment of vessels.

Supplier means any person who sells a commodity to an importer under the terms of a purchase authorization, or who sells ocean transportation to an importer or supplier of the commodity under the terms of a purchase authorization.

§ 17.3 Eligible commodities.

(a) *General.* Commodities eligible for financing are those commodities determined by the Secretary to be available for disposition under the Act.

(b) *Commodity description and specification.* The commodity and quantity thereof to be financed shall be as described and specified in the relevant purchase authorization.

(c) *Cotton textiles.*

(1) Except as provided in paragraph (c)(2) of this section, financing of textiles under these regulations is limited to cotton yarns and fabrics processed up to and including the dyed and printed state, and preshrinking. Any processing of such yarns and fabrics beyond this stage will be at the expense of the participant.

(2) Purchase authorizations may permit cotton textiles processed beyond the stage described in paragraph (c)(1) of this section to be purchased, but the maximum financing by CCC is limited to the equivalent value of the cotton yarns and fabrics described in paragraph (c)(1) of this section, contained in the textiles, plus eligible ocean transportation costs.

(3) Financing is available only for textiles manufactured entirely of U.S. cotton in the United States. The General Sales Manager will not issue a purchase authorization for a textile of a specification not produced in the United States, but may issue a purchase authorization for the financing of a textile produced in the United States which has a specification reasonably close to that requested by the participant.

§ 17.4 Purchase authorizations.

(a) *Request.* For each purchase authorization, the participant shall submit to the General Sales Manager a written request for issuance, specifying the commodity and including any other information required by the General Sales Manager.

(b) *Issuance of purchase authorization.* When the request has been approved by the General Sales Manager, the GSM shall issue a purchase authorization to the participant. The form used is Form FAS–480 (Commodity), "Authorization to Purchase Agricultural Commodities."

(c) *Purchase authorizations.* Each purchase authorization includes the following information:

(1) The commodity to be purchased, approximate quantity and maximum dollar value;

(2) Contracting requirements in addition to or in lieu of those in Appendix A of this subpart, if any;

(3) The contracting period, during which suppliers and importers must enter into contracts; and the delivery period, during which the commodity must be delivered;

(4) The terms of delivery to the importer;

(5) Documentation required in support of drafts presented to banks by suppliers in addition to or in lieu of the documentation specified in Appendix B of this subpart;

(6) Provisions relating to payment to CCC, if applicable;

(7) The ASCS office which administers the financing operation on behalf of CCC;

(8) The method of financing;

(9) Any limitation relating to financing by CCC in addition to or in lieu of those specified in these regulations;

(10) Authorization to procure ocean transportation, and provisions relating to the financing of ocean freight or ocean freight differential, as applicable;

(11) Any other provisions considered necessary by the General Sales Manager.

(d) *Applicability of this subpart.* In addition to the provisions of a particular purchase authorization, each purchase authorization, unless otherwise provided, is subject to the provisions of this subpart to the same extent as if the provisions were fully set forth in the purchase authorization.

(e) *Modification or revocation.* The General Sales Manager reserves the right at any time for any reason or cause whatsoever to supplement, modify, or revoke any purchase authorization, including the termination of deliveries, if it is determined to be in the interest of the U.S. Government.CCC shall reimburse suppliers who would otherwise be entitled to be financed by CCC for costs which were incurred as a result of such action by the General Sales Manager in connection with firm sales or shipping contracts, and which were not otherwise recovered by the supplier after a reasonable effort to minimize such costs: *Provided, however,* That such reimbursement shall not be made to a supplier if the General Sales Manager determines that the GSM's action was taken because the supplier failed to comply with the requirements of the regulations in this subpart or the applicable purchase authorization; *Provided further,* That reimbursement to suppliers of ocean transportation shall not exceed the ocean freight differential when the purchase authorization provides only for financing the differential.

(f) *Extension of delivery period in a purchase authorization.* The General Sales Manager will consider a request for extension of the delivery period in a purchase authorization only if the participant submits the request. The request should be submitted as soon as the participant knows that delivery may not be completed, or was not completed, within the period specified in the purchase authorization. The request for extension must establish to the satisfaction of the GSM that failure to complete delivery was due to a cause other than the fault or negligence of the importer or the supplier. The GSM may also approve the request for extension if the GSM determines that an extension would be in the interest of the U.S. Government.

(g) *Subauthorizations.* (1) The participant may issue subauthorizations to importers consistent with the terms of the applicable purchase authorization. The participant, in subauthorizing, shall instruct importers to use the applicable purchase authorization number in placing orders, and shall specify to importers all the provisions of the

applicable purchase authorization which apply to the subauthorization.

(2) Each importer granted a subauthorization shall inform the supplier that the transaction is to be financed under the provisions of the regulations in this subpart. The importer shall also provide the supplier with the applicable purchase authorization number. The importer shall inform the supplier of any special provisions which affect the supplier in carrying out the transaction.

(h) *Letter of conditional reimbursement.* The General Sales Manager may choose to issue a letter of conditional reimbursement to an importing country or private trade entity with which an Agricultural Commodities Agreement is being considered. This letter authorizes the importing country or private trade entity to apply for a purchase authorization under which it may obtain reimbursement for certain costs it incurs in the procurement of the commodity and ocean freight before the Agricultural Commodities Agreement is signed. The reimbursement is conditioned on the signing of an Agricultural Commodities Agreement with the participant, providing for the financing of the commodity and ocean freight, and on the participant's complying with the terms and conditions set forth in the agreement, the letter of conditional reimbursement, and the purchase authorization.

§ 17.5 Approval of purchasing and shipping agents.

(a) *General.* A participant is not required to use a purchasing agent or shipping agent; however, if a purchasing or shipping agent is to be used, the participant shall submit the nomination(s) of the purchasing agent or shipping agent to the GSM in writing along with a copy of the proposed agency agreement. The participant shall also specify in the nomination the period of time for which such approval is requested. A person may not act as purchasing or shipping agent, or as both, if disapproved in writing by the Assistant General Sales Manager in accordance with the provisions of this section.

(b) *"Affiliate" defined.* For purposes of this section, the term "affiliate" has the meaning provided in § 17.2(c) and, in addition, persons will also be considered to be affiliates if any of the following conditions are met:

(1) There are any common officers or directors.

(2) There is any investment by ships brokers, ocean transportation suppliers, approved commodity suppliers, or selling agents, or their officers or directors, in the purchasing agent or shipping agent.

(3) There is any investment by the purchasing agent or shipping agent, or its officers or directors, in ships brokers, ocean transportation suppliers, approved commodity suppliers, or selling agents.

These conditions include those cases in which investment has been concealed by the utilization of any scheme or device to circumvent the purposes of this section but does not include investment in any mutual fund.

(c) *Information to be furnished.* A person whose nomination has been submitted to act as a purchasing agent or shipping agent, or both, shall furnish to the Assistant General Sales Manager the following information or documentation as may be applicable:

(1) The names of all incorporators;

(2) The names and titles of all officers and directors;

(3) The names and proportionate share interest of all stockholders;

(4) If beneficial interest in stock is held by persons other than the named shareholders, the names of the holders of the beneficial interest and the proportionate share of each;

(5) The amount of the subscribed capital;

(6) A written undertaking signed by such person agreeing that, if approved, neither the person nor any affiliates, as defined in this section, will act as ships broker, ocean transportation supplier, commodity supplier, or selling agent in any Title I transaction with the participant during the term of the agency agreement;

(7) A certification that the person has not arranged to give or receive any payment or other benefit in connection with the person's selection as agent.

(d) *Approval.* Consideration will be given to approval of a person to act as a shipping or purchasing agent, or both, when the documents required to be submitted by this section are received by the Assistant General Sales Manager. Approval of a nomination for purchasing agent or shipping agent may be withheld for a period not to exceed 30 calendar days pending completion of any investigation considered appropriate.

(e) *Duration of approval.* The approval of a purchasing agent or shipping agent to act for a participant shall remain in effect for the period of time requested by the participant or such shorter period as the Assistant General Sales Manager may determine. Generally, the Assistant General Sales Manager will not issue approvals extending beyond the supply period of the current Title I agreement. Such approval will be automatically terminated if the shipping or purchasing agent or any of the affiliates of such agent, acts as ships broker, ocean transportation supplier, commodity supplier or selling agent in connection with any Title I transaction for such participant during the term of the agency agreement.

(f) *Notification.* The Assistant General Sales Manager shall promptly notify persons seeking approval as purchasing or shipping agents of the determination or of the need for further investigation. If such person is disapproved, the notification shall state the reasons therefor. The determination of the Assistant General Sales Manager is effective immediately and continues in effect pending the result of any appeal to the General Sales Manager.

(g) *Disapproval or termination of approval.* Any person whose nomination has been disapproved or whose approval has been terminated pursuant to the provisions of this section may, within 30 calendar days, present to the General Sales Manager, orally or in writing, any reasons as to why such action should not stand. Nothing herein shall be construed as to prohibit a shipping agent or purchasing agent, whose application has been disapproved or whose approval has been terminated, from being nominated at a later time.

(h) *Unapproved purchasing agent.* If, in the procurement of commodities made available under Title I, Pub. L. 480, a participant uses a purchasing agent which has not been approved in writing by the Assistant General Sales Manager, USDA may withhold sales approval.

(i) *Unapproved shipping agent.* If, in the shipping of commodities made available under Title I, Pub. L. 480, a participant uses a shipping agent which has not been approved in writing by the Assistant General Sales Manager, USDA may withhold vessel approval or may deduct from the ocean freight differential to be paid, the amount of the shipping agent's commission in connection with the shipment.

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§ 17.6 Contracts between commodity suppliers and importers.

(a) *Contracts—eligibility for financing.* To be eligible for financing, commodity contracts must comply with the following requirements unless otherwise specified in the purchase authorization.

(1) Commodity contracts between suppliers and importers are considered

to be conditioned on the approval by USDA of the supplier; the selling agent, if any; the contract price; conformance of the sale to the provisions of the purchase authorization; and, whenever purchases are made on the basis of an IFB, responsiveness of the offer to IFB terms.

(2) Importers and suppliers must enter into contracts within the contracting period specified in the purchase authorization. The contracts must provide for deliveries to the importer in accordance with the delivery terms and during the delivery period specified in the purchase authorization, or any amendment or modification thereto. (See § 17.4(f).)

(3) Contracts for a commodity, under a purchase authorization which limits contracting to f.o.b. or f.a.s. terms, must be separate and apart from the contracts for ocean transportation of the commodity.

(4) The contracted price may not be on a cost plus a percentage-of-cost basis.

(b) *Contracting procedures—(1) Purchasing—general.* (i) Importers may purchase through negotiation with commodity suppliers of the importer's choice unless the regulations or the purchase authorization requires that purchases be made on the basis of Invitations for Bids (IFB's).

(ii) The participant shall maintain a record of all offers received from suppliers, either as a result of IFB's or negotiation, until the expiration of three years after final payment under contracts awarded under the purchase authorization. The GSM may examine these records or request specific information in connection with the offers.

(2) *Purchasing—food commodities.* The importer shall purchase food commodities on the basis of IFB's.

(3) *Invitations for bids.* The following conditions shall apply on all purchases of commodities on the basis of IFB's:

(i) The General Sales Manager must approve the terms of the IFB before it is issued by the importer.

(ii) The importer shall issue the IFB in the United States and shall open all offers in public in the United States at the time and place specified in the IFB.

(iii) The IFB must permit submission of offers from all suppliers who meet the requirements of the regulations.

(iv) The IFB may not preclude offers for shipment from any United States port(s) unless the purchase authorization provides for exportation only from certain ports.

(v) The IFB may not establish minimum quantities to be offered or which will be considered.

(vi) The IFB must be in compliance with the regulations, the purchase authorization, and sound commercial standards.

(4) *Contract awards.* (i) Whenever purchases are made on the basis of an IFB, the importer shall consider only offers which are responsive to the IFB and shall make awards either on the basis of the lowest commodity price(s) offered or on the basis of lowest landed cost, except as provided in paragraph (b)(4)(ii) of this section:

(ii) For purposes of this section, 'lowest commodity price(s)' means the lowest commodity price(s) offered for loading onto the type of vessel (dry bulk carrier, tanker, tween-deck, etc.) to be utilized to carry the commodity purchased. When vessels offered under the flag of the participant or importing country or vessels controlled by the participant or importing country are to be used, the participant must purchase commodities for shipment on such vessels only on the basis of the lowest commodity price(s) offered. This limitation may, however, be waived by the GSM:

(A) When the lowest commodity price(s) offered are in locations where vessels cannot reasonably be made available without a substantial increase in freight costs to the participant;

(B) For small quantities offered at additional loading points (in aggregate not more than 15 percent of the total tonnage offered by a vessel); or

(C) Where this limitation would conflict with the purposes of the program.

(iii) For purposes of this section, 'lowest landed cost' means the combination of commodity price and ocean freight rate resulting in the lowest total cost to deliver the commodity to the importing country. Lowest landed cost may be defined on either a foreign flag or U.S. flag basis. Awards may not be made on the lowest landed cost basis unless IFB's are issued for commodity and ocean freight so that all commodity and ocean freight offers are reviewed simultaneously.

(iv) Participants are encouraged to purchase commodities on the basis of lowest landed cost when U.S. flag vessels are to be used. If such commodity purchases are not made on the basis of lowest landed cost (U.S. flag), ocean freight differential payments will nonetheless be calculated on the rates of U.S. flag vessels which would represent the lowest landed cost. Participants are therefore cautioned to review the provisions in the purchase authorization relating to the method of computing ocean freight differential.

(v) Announcement of awards shall be made in the United States. The importer shall promptly submit to the P.L. 480 Operations Division, FAS, USDA, copies of all offers received with a copy of the IFB which was issued. No sale can be approved for financing until this information has been received by FAS. The decision of the GSM shall be final regarding the responsiveness of offers to IFB terms in the awarding of contracts.

(c) *Contract quantity eligible for financing.* The quantity eligible for financing in the contract between the supplier and the importer may not exceed that quantity approved by the P.L. 480 Operations Division, FAS, including any approved contract tolerance.

(d) *Contract disputes.* Contracts between suppliers and importers should stipulate the responsibility of each party for payment of any costs not eligible for financing by CCC. Questions as to payment of ineligible costs should be resolved between the contracting parties.

(e) *Special contracting provisions.* The general provisions for contracting set forth in this section are supplemented by special contracting provisions in Appendix A applicable to individual commodities. Each purchase authorization, unless otherwise provided, is subject to the special provisions of Appendix A for the specific commodity named in the purchase authorization as though such special provisions were fully set forth in the purchase authorization. Each contract entered into for financing under these regulations is deemed to include all terms and conditions required by the regulations in this subpart.

(f) *Export Trade Act (Webb-Pomerene Law).* A supplier who is a member of a Webb-Pomerene association and who enters into contracts with importers as a member of such an association shall so indicate in a statement on, or attached to, the copy of the supplier's detailed invoice referred to in § 17.18(c)(2).

(g) *Shipment before letter of credit.* If the supplier of the commodity permits shipment, or the supplier of ocean transportation accepts the commodity, before receipt of an acceptable letter of credit from a bank, the supplier takes such action at its own risk. This action in itself does not affect eligibility for CCC financing provided acceptable documentation is presented within the time limitations prescribed in the regulations in this subpart.

§ 17.7 Eligibility of suppliers and selling agents.

(a) *Suppliers of ocean transportation (requirements).* The supplier must be engaged in the business of furnishing ocean transportation from the United States and must have a person, principal or agent, on whom service of judicial process may be had in the United States.

(b) *Commodity suppliers (requirements).* (1) The commodity supplier must be engaged in the business of selling agricultural commodities for export from the United States.

(2) The commodity supplier must maintain a bona fide business office in the United States, and shall have a person, principal or agent, on whom service of judicial process may be had in the United States.

(3) A legal entity which is more than 50 percent owned by a foreign government, or which is controlled by a foreign government, may not act as a commodity supplier.

(c) *Commodity suppliers (approval).* (1) Commodity suppliers must be approved by USDA as eligible under the Pub. L. 480, Title I program in order for their contracts to be eligible for CCC financing.

(2) Persons who wish to participate as commodity suppliers may be required to submit the following information to USDA, which will determine their eligibility:

(i) A current financial statement of the person as evidence of financial responsibility.

(ii) A statement containing general background information about the person, with particular reference to experience as an exporter of U.S. agricultural commodities, and any other information requested relating to whether the person is a responsible person and able to perform its obligations under this subpart and the purchase authorization.

(3) A commodity supplier's sales will not be approved unless the supplier has submitted a statement listing name, address and chief executive officers of all legal entities, foreign and domestic, which the supplier owns or controls and similar information for all legal entities which own or control the supplier and for all legal entities which are owned or controlled by any legal entity which owns or controls the supplier.

(i) The term "chief executive officers" includes:

(A) The president, or if no president, the chairman of the board of directors, and

(B) The vice president, but in cases of multiple vice presidents only the principal vice president, and then only if one is so designated, and

(C) Any other person who is designated as, or who acts in the capacity of, a chief executive officer.

(ii) If a person has been approved as an eligible supplier, the statement required in (b)(3) of this section must be kept current; that is, all changes must be reported within three months after they have occurred. If an approved supplier does not keep this statement current, USDA may disapprove the supplier's sales.

(iii) A statement filed by a subsidiary is considered complete as to the legal entities which it owns or controls and any other legal entities owned or controlled by the parent (including the chief executive officers for all such companies) if the subsidiary certifies thereon that such information has been furnished to USDA in a separate statement filed by the parent.

(4) The supplier shall submit the information required in this section to the appropriate office listed below:

(i) For all commodities except tobacco and cotton, to the Director, P.L. 480 Operations Division, FAS, USDA, Washington, D.C. 20250.

(ii) For tobacco, to the Director, Tobacco and Peanuts Division, ASCS, USDA, P.O. Box 2415, Washington, D.C. 20013.

(iii) For cotton, to the Director, Kansas City ASCS Commodity Office, USDA, P.O. Box 8510. Kansas City, Missouri 64114.

(5) The General Sales Manager, FAS, is responsible for approval of suppliers of all commodities except tobacco and cotton. The Administrator, ASCS, is responsible for approval of suppliers of tobacco and cotton.

(6) USDA may permit a person to act as a commodity supplier only on submission of acceptable performance security in the form of a letter of credit which will assure that the person and the person's selling agents will perform the obligations required under this subpart and the purchase authorization.

(c) *Selling agents (requirements).* If, at the time the commodity supplier reports the sale for price approval, it is determined that an agent employed or engaged by a commodity supplier to obtain a contract is not a selling agent as defined in § 17.2(c), the sale will not be eligible for financing. (See § 17.8(c) regarding commissions to selling agents for food commodities.)

(d) *Disapproval; approval under certain conditions.* USDA shall notify promptly a prospective supplier or a selling agent who is not approved, or who is approved under certain conditions established under these regulations. The notification will state the reasons for the action taken or conditions established. The prospective supplier or selling agent may appeal the action to a designated USDA official and submit further information, orally or in writing, bearing on the determination.

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§ 17.8 Fees, discounts, commissions, brand names.

(a) *Consular fees.* CCC will not finance consular fees imposed for the issuance or legalization of consular invoices or certificates in connection with the importation of commodities into a foreign country.

(b) *Discounts.* If a contract provides for one or more discounts (including but not limited to trade or quantity discounts and discounts for prompt payment) whether expressed as such or as "commissions" to the importer, only the invoice amount after discount (supplier's contracted price less all discounts) is eligible for financing.

(c) *Commissions.* (1) (i) For non-food commodities, a commission to a selling agent as defined in § 17.2(c), employed or engaged by the supplier to obtain a contract, is eligible for financing to the extent that such commission is included in the contract price, except as stated in this paragraph.

(ii) For food commodities, a commission, fee or other payment to a selling agent as defined in § 17.2(c), employed or engaged by the supplier to obtain a contract, is prohibited.

(A) Any act by a person on behalf of a commodity supplier, which would influence or tend to influence a buyer to award a contract to the supplier, or which may result in the supplier's having a competitive advantage in relation to other potential suppliers, constitutes an act "to obtain a contract." Furthermore, any act by a person on behalf of a commodity supplier to influence USDA to approve a contract for financing constitutes an act "to obtain a contract."

(B) Services on behalf of a supplier which are purely ministerial in nature and do not require the exercise of personal influence, judgment, or discretion, such as attending bid openings or presenting offers at bid openings, would not in themselves be considered acts "to obtain a contract."

(C) Services to implement a contract after it has been entered into by the parties thereto, such as handling documentation problems or contract disputes, would not constitute acts "to obtain a contract."

(D) Payments of any kind to a person who has acted as a selling agent to obtain a contract, including payments for services that may be performed in connection with such contract which in themselves are not services to obtain a contract, are prohibited.

(2) A commission paid or to be paid to any agency, including a corporation, owned or controlled by the participant or the government of the destination country is not eligible for financing.

(3) A commission paid or to be paid to any agent, broker or other representative of the participant or the importer is not eligible for financing. This limitation applies to ocean transportation brokerage commissions which exceed 2½ percent of the freight financed.

(4) For ocean transportation, in addition to this paragraph, see also § 17.14(i)(6).

(5) If a commission is paid in violation of paragraph (c) (2) or (3) of this section, CCC may demand dollar refund of the entire amount financed by CCC under the contract.

(6) The supplier should be aware of § 17.12 regarding reports required on certain commissions paid.

(d) *Brand names.* Brand names are not required to be shown on packaged commodities. If, however, a brand name is used, it must be a bona fide U.S. brand. The container or attached label must show the name and U.S. business address of the supplier or the manufacturer. Any reference on the container or attached label to foreign addresses of suppliers or foreign brand names is prohibited and will make the sale ineligible for financing. If the markings on the shipping container include a brand name, such brand name must be identical with the brand name on the unit container.

§ 17.9 Notice of sale rocedures (tobacco and cotton).

The notice of sale procedures for tobacco and cotton are contained in Appendix A of the regulations and the purchase authorization.

§ 17.10 Notice of sale procedures (commodities other than tobacco and cotton).

(a) *Submission of notice of sale.* The supplier shall, immediately upon making a firm sale, telephone a notice of sale to P.L. 480 Operations Division, FAS, (202) 447-5780.

(1) A sale is considered firm under the regulations when the supplier has been notified by the importer of an award, even though the contract is conditioned on approval by FAS of the price; the supplier; the selling agent, if any; conformance of the sale to the provisions of the purchase authorization; and responsiveness of the offer to the IFB terms.

(2) The supplier shall not withhold the notice of sale because of the existence of contract provisions which make a contract conditional on the occurrence of certain events, i.e., on approval of the price by FAS, on the receipt of acceptable letter(s) of credit, or receipt of delivery instructions.

(3) Each notice of sale shall cover only a single sale contract. If a sale is made under two or more purchase authorizations, separate notices of sale shall be submitted for each purchase authorization.

(4) If the supplier fails to furnish a notice of sale within 5 calendar days after the date of sale, CCC has the right to refuse to finance the sale.

(5) The following information must be included in the notice of sale. (Contracts containing options for the items listed in this paragraph (a)(5) are acceptable only as provided in paragraph (a)(5)(vii) or the purchase authorization.)

(i) Purchase authorization number.

(ii) Name and address of supplier.

(iii) Date and time of sale. (See § 17.11(b)(2).)

(iv) Country to which export is to be made (destination).

(v) Name of importer.

(vi) Contract quantity expressed in the contract unit and in the quantity unit in which the commodity normally trades.

(vii) Contract tolerance, if any, expressed in percentage, but not in excess of 5 percent more or less. This tolerance must be at buyer's option and must include any loading tolerance. If the contract does not provide a tolerance, show "No tolerance."

(viii) Price per contract unit and per quantity unit in which the commodity normally trades.

(ix) Coast or port of export (e.g., East coast, West coast, Gulf coast, Great Lakes port) or Canadian transshipment point in the case of bulk grain.

(x) Delivery period specified in the contract.

(xi) Delivery terms (f.o.b., f.a.s., etc.).

(xii) Complete commodity description.

(xiii) Complete packaging description and packaging material specifications if export is other than in bulk.

(xiv) Supplier's contract number, sale number, or order number, if any.

(xv) Name and address of selling agent (supplier's agent) if any. If none, show "None."

(xvi) Import license number when required by the purchase authorization.

(xvii) Any other terms of the contract between the supplier and importer not specifically provided for in this paragraph (a)(5) which would affect the delivery of the commodity to be exported.

(xviii) Any additional information requested by the purchase authorization.

(b) *Sale approval.*

(1) P.L. 480 Operations Division, FAS, will notify the supplier by telephone as to whether it has been determined on the basis of the information submitted in the notice of sale:

(i) That the price is approved for financing;

(ii) That the supplier and the selling agent, if any, are approved under the program;

(iii) That the sale conforms to the provisions of the purchase authorization; and

(iv) That the offer is responsive to the terms of the IFB.

(2) The supplier shall prepare Form FAS-359 (or CCC-359), "Declaration of Sale," and shall mail or otherwise deliver it to P.L. 480 Operations Division, FAS, promptly as soon as FAS has provided the CCC Registration Number to the supplier.

(3) The supplier shall enter on the Declaration of Sale form the same information as provided in paragraph (a)(5) above. Each Declaration of Sale form covers only a single sale contract. The supplier shall submit the Declaration of Sale form in an original and 4 copies, and it must be signed by the supplier or the supplier's authorized representative.

(4) USDA will return two copies of the Declaration of Sale form to the supplier, signed for the General Sales Manager by an authorized official, confirming the telephonic approval given as provided in paragraph (b)(1) above.

(5) Declaration of Sale forms are available from P.L. 480 Operations Division, FAS, USDA, Washington, D.C. 20250. Telephone (202) 447-5780.

(c) *Sale disapproval.* (1) P.L. 480 Operations Division, FAS, will notify the supplier by telephone and telegraph when a sale is disapproved for financing. The related contract between the supplier and importer shall, for purposes of financing, be considered null and void.

(2) On receipt of a notice of disapproval, the supplier shall promptly notify the importer.

(d) *Contract delivery period.* Price approval is limited to exports made during the delivery period stated in the notice of sale or any amendment thereto submitted to P.L. 480 Operations Division, FAS, even though the purchase authorization may authorize a final delivery date later than that stated in the sale. If the supplier cannot complete

delivery on or before the terminal delivery date of the contract delivery period, the supplier shall submit a notice of contract amendment as provided in paragraph (e) of this section. If the supplier fails to comply, § 17.17(d) of the regulations shall apply.

(e) *Contract amendments.* (1) The supplier shall submit a notice of each contract amendment to the Director, P.L. 480 Operations Division, FAS/EC, by telephone or telegraph immediately after the amendment to the contract is made. This includes not only any change in the contract delivery period or any other terms and conditions of the contract as provided in the information given in the original notice of sale or any amendment thereto, but also any change in any other terms and conditions of the contract.

(2) If a notice of an amendment is made by telephone, the supplier shall confirm immediately in writing (by telegraph).

(3) The supplier shall include only amended items pertaining to a single sale in one amendment notice.

(4) The notice of contract amendment must contain the following:

(i) A request that USDA approve an amendment to the specifically identified sale contract between the Government of (country) and (commodity supplier).

(ii) A statement of what the amendment consists of (as, extension of delivery period through (date)) and a detailed explanation of the reasons for the amendment.

(iii) A statement that the contract amendment has been agreed to by both buyer and seller.

(5) Any amendment to a contract for which FAS has given price approval subjects the terms of the contract, as amended, to reexamination by FAS for the purpose of financing under Pub. L. 480.

(6) P.L. 480 Operations Division, FAS, will notify the supplier by telegraph and telephone as to whether the amendment is approved or disapproved.

(7) Any amendment must be consistent with the provisions of the purchase authorization and the regulations and must otherwise be acceptable to P.L. 480 Operations Division, FAS.

(8) The supplier shall furnish a copy of the USDA telegraphic approval of the amendment with other documentation submitted to obtain payment.

(9) If the supplier fails to furnish notice of a contract amendment to P.L. 480 Operations Division, FAS, within 5 calendar days after the date of such amendment, CCC has the right to refuse to finance the sale or to finance such portion of the contract price or contract quantity as it may determine to be in the interest of the U.S. Government.

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§ 17.11 Commodity price provisions.

(a) USDA price approval. In order for a sale to be eligible for CCC financing, the commodity price must be approved by USDA. (See §§ 17.9 and 17.10).

(b) Maximum price. (1) The supplier's sales price may not exceed the prevailing range of export market prices as applied to the terms of sale at the time of sale, as determined by USDA.

(2) The "time of sale," unless otherwise defined for specific commodities in Appendix A of this subpart or the purchase authorization, means

(i) For commodities purchased under an Invitation for Bids, the date and time specified in the IFB for submission of offers; or

(ii) For all other commodities, the date as of which the sales price is established in or under the contract between the importer and the suppler.

(iii) For contract amendments for all commodities, the "time of sale" means the date of any amendment if the amendment in any manner affects the sale price as determined by USDA.

(3) If USDA is unable to ascertain the prevailing range of export market prices for a specific commodity, USDA will determine a maximum export market price, representing the top of the range of export market prices, for the commodity at the time of sale for the time and place of delivery provided for in the contract. In so determining a maximum export market price USDA will use, as needed, available domestic or export market information for the same or other quality descriptions, packagings, locations, and dates; will apply appropriate market differentials and other factors as would be reflected in the export market price at the time of sale for the time and place of delivery; and will take into account CCC export sale prices when appropriate.

(4) When the purchase authorization provides for a maximum price, expressed in dollars and cents or computed on a stated basis, the supplier's sales price may not exceed this maximum price.

(c) Refund of excess price. If the sale has been financed and the sales price is determined to exceed the maximum price permissible under this section, the supplier shall refund the amount of the excess in accordance with § 17.17(d).

§ 17.12 Reports required from suppliers of commodities and ocean transportation.

(a) *General.* Suppliers of—

(1) Agricultural commodities financed under the Act and

(2) Vessels on which such commodities are transported, if ocean freight or ocean freight differential is financed by CCC with respect thereto,

shall report to the General Sales Manager any commission, fee or other compensation of any kind (hereinafter referred to as "payment") which, in connection with the supplying of such commodities or vessels, is paid or to be paid by the supplier to any agent, broker, or other representative of the importer or importing country, including a corporation owned or controlled by the importer or importing country, to which the supplier furnishes such commodities or vessels.

(b) *Compensation.* The term "other compensation of any kind" in paragraph (a) of this section means anything given in return for any consideration, services, or benefits received or to be received by the supplier in connection with the supplying of commodities or vessels financed under the Act.

(c) *Reporting.* The supplier shall report in writing as soon as the supplier knows that a payment as described in paragraph (a) of this section is made or to be made. Reports must be submitted to the General Sales Manager, Room 4073–S, Foreign Agricultural Service, Export Credits, U.S. Department of Agriculture, Washington, D.C. 20250.

(d) *Information to report.* The supplier shall include in the report the following information with respect to each payment reported under paragraph (a) of this section:

(1) The name and address of the person to whom the payment was made or is to be made, and the person's relationship to the importer or importing country.

(2) The date payment was made or the approximate date when payment is to be made, and the amount or the approximate amount of payment.

(3) An explanation of the transaction in connection with which the payment was made or is to be made.

(4) The number(s) of the purchase authorization(s) providing for the financing under the Act of the sale of agricultural commodities to the importer or importing country to whose agent, broker or other representative the payment was made or is to be made.

(e) *Knowledge imputed.* Knowledge of any fact material to obligations under this section shall be imputed to the supplier if the supplier should reasonably have known that such fact existed.

(f) *Information available for public inspection.* The information in reports filed hereunder will be available for public inspection by contacting the General Sales Manager, FAS, USDA, at the address given in paragraph (c) of this section.

(g) *Failure to file a report or filing a false report.* Failure to file a required report or the filing of a false report hereunder constitutes a cause for debarment pursuant to 7 CFR 1407.5(c). Whenever the GSM believes, or has reason to believe, that a supplier has failed to file a report as required by this section or has filed a false report thereunder, the GSM is authorized to institute suspension or debarment proceedings against the supplier in accordance with the provisions of 7 CFR Part 1407.

(h) *Debarment.* If a final determination has been made under 7 CFR Part 1407 that a supplier has failed to file a report as required by this section or has filed a false report thereunder, the supplier shall be debarred, for a period of five years from the date of such final determination, from furnishing—directly or indirectly—commodities financed under the Act or vessels on which such commodities are to be transported if ocean freight or ocean freight differential is to be financed by CCC with respect thereto. Such supplier may also be debarred (in accordance with 7 CFR Part 1407) from participating in other programs administered or financed by CCC.

(Approved by the Office of Management and Budget under control number 0551-0005)

§ 17.13 Refund to CCC by the participant for failure to comply.

The participant shall pay in U.S. dollars promptly to CCC on demand by the General Sales Manager the entire amount financed by CCC (or such lesser amount as the GSM may demand) whenever the GSM determines that the participant has failed to comply with any agreement or commitment made by the participant in connection with the transaction financed.

5. The terms "Office of the General Sales Manager" and "OGSM" are changed to read "Foreign Agricultural Service" and "FAS" respectively, wherever they appear in Part 17 and its Appendices A and B.

6. The terms "Ocean Transportation Division" and "Program Operations Division" are changed to read "P.L. 480 Operations Division" wherever they appear in Part 17 and its Appendices A and B.

7. In newly redesignated § 17.14, the first sentence of paragraph (a)(1) is revised to read as follows: "This section applies to the financing of ocean freight or ocean freight differential."

8. The address of the Director, ASCS Commodity Office, U.S. Department of Agriculture, is changed from "Wirth Building, 120 Marais Street, New Orleans, La. 70112" to "P.O. Box 8510, Kansas City, Missouri 64114" in newly redesignated § 17.14, paragraph (b)(1); and in Appendix A, Sections (W)(1) and (10), and Sections (V)(1) and (10).

9. In Appendix A, Section (V)(8), "New Orleans, La. 70112" is revised to read "P.O. Box 8510, Kansas City, Missouri 64114."

10. In Appendix A, Section (V)(10), and (W)(10), the reference "Attention: CO–8–JPD" is removed.

11. The term "New Orleans ASCS Commodity Office" is changed to read "Kansas City ASCS Commodity Office" in newly redesignated § 17.14, paragraphs (c)(1), (h)(i), (j)(3)(ii), (j)(4), and (j)(6); and in Appendix A, Sections (V)(3)(c), (V)(5) and (V)(9)(b), and Sections (W)(3)(c), (W)(5) and (W)(9)(b).

12. In newly redesignated § 17.14, paragraph (d)(4) is amended by changing "§ 17.9(l)" to "§ 17.14(l)."

13. In newly redesignated § 17.14, the fourth sentence of paragraph (j)(1) is removed.

14. In newly redesignated § 17.14, paragraph (k)(6) is amended by changing "§ 17.13(d)(2)" to "§ 17.18(d)(2)."

15. In newly redesignated § 17.14, paragraph (k)(8) is revised to read as follows:

§ 17.14 Ocean transportation.

* * * * * *

(k) * * *

(8) When the General Sales Manager determines that a force majeure has occurred, as specified in paragraph (k)(7) of this section, not to exceed 90 percent of the ocean freight or ocean freight differential, as appropriate, shall be eligible for reimbursement by CCC. Any despatch shall be divided in proportion to the ocean freight or ocean freight differential, as appropriate, financed respectively by the participant and CCC, and CCC's portion thereof shall be deducted in determining amounts to be reimbursed by CCC. The 10 percent balance of ocean freight or ocean freight differential shall not be eligible for financing.

* * * * *

16. In newly redesignated § 17.14, paragraph (k)(9) is amended by changing "(k)(8)(i)" to read "(k)(8)."

17. In newly redesignated § 17.15, paragraph (h)(4) is amended by changing "§ 17.13" to "§ 17.18."

18. In newly redesignated § 17.15, paragraph (j) is amended by changing "§ 17.7" to "§ 17.11" and "§ 17.15(b)(7)" to "§ 17.20(b)(7)."

19. In newly redesignated § 17.16, paragraph (a) is amended by changing the heading to read "(a) General." and changing "§ 17.13(c)" to read "§ 17.18 (c) and (d)."

20. In newly redesignated § 17.16, paragraph (b) is removed and reserved.

21. In newly redesignated § 17.17, paragraph (d) is amended by changing "§ 17.7" to "§ 17.11."

22. In newly redesignated § 17.18, paragraph (b)(1)(ii) is revised to read as follows:

§ 17.18 Documentation.

* * * * * *

(b) * * *

(1) * * *

(ii) Documents submitted to CCC to obtain reimbursement under a purchase authorization which provides financing for ocean freight, or ocean freight differential.

* * * * * *

23. In newly redesignated § 17.18, paragraph (d)(6) is amended by changing "§ 17.9(m)" to "§ 17.14(m)."

24. In newly designated § 17.18, paragraph (d)(7) is amended by changing "§ 17.9(j)(1)" to "§ 17.14(j)(1)."

25. In newly redesignated § 17.19, paragraph (a) is amended by changing "§ 17.13" to "§ 17.18."

26. In newly redesignated § 17.19, paragraph (b)(2) is amended by changing "§ 17.15(a)(7)" to "§ 17.20(a)(7)."

27. The introductory text of newly redesignated § 17.20 is amended by changing "§§ 17.10 and 17.14" to "§§ 17.15 and 17.19."

28. In newly redesignated § 17.20, paragraph (a)(1) is amended by changing "§ 17.13" to "17.18."

29. In newly redesignated § 17.20, paragraph (a)(6) is amended by changing "§ 17.10(h)(3)" to "§ 17.15(h)(3)."

30. In newly redesignated § 17.20, paragraph (a)(9)(ii) is amended by changing "§ 17.12" to "§ 17.17."

31. In newly redesignated § 17.20, paragraph (b)(4) is amended by changing "§ 17.13(c)(4)" to "§ 17.18(c)(4)."

32. In newly redesignated § 17.20, paragraph (b)(7) is amended by changing "§ 17.7" to "§ 17.11."

33. In newly redesignated § 17.20, paragraph (b)(8) is amended by changing "§ 17.9" to "§ 17.14."

34. In newly redesignated § 17.20, paragraph (c)(1) is amended by changing "§§ 17.15(a) and 17.15(b)" to "§§ 17.20(a) and 17.20(b)."

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35. In newly redesignated § 17.20, paragraph (c)(4) is amended by changing "§ 17.10(j)" to "§ 17.15(j)."

36. In newly redesignated § 17.20, paragraph (c)(6) is amended by changing "§§ 17.3 and 17.5" to "§§ 17.3 and 17.4."

37. Newly redesignated § 17.21 is revised to read as follows:

§ 17.21 ASCS Offices.

Kansas City ASCS Commodity Office, U.S. Department of Agriculture, P.O. Box 8510, Kansas City, Missouri 64114

Fiscal Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20001

38. Newly redesignated § 17.22 is amended by revising the OMB control number statement at the end of the section to read as follows:

(Approved by the Office of Management and Budget under control number 0551–0005)

39. Newly redesignated § 17.23 is revised to read as follows:

§ 17.23 Effective date.

The regulations in this subpart become effective as to financing of the sale and exportation of commodities pursuant to purchase authorizations issued on or after January 30, 1987. The financing of the sale and exportation of commodities pursuant to purchase authorizations issued before January 30, 1987 continues to be subject to the provisions of the regulations which were applicable before January 30, 1987 unless made subject to the regulations in this subpart by the applicable purchase authorization.

40. In Appendix A the following paragraphs are removed and reserved: (A) (1), (2) and (3); (B) (1), (4) and (5); (C) (1) and (2); (D) (1) and (2); (E) (1) and (2); (F) (1) and (2); (H) (1), (2) and (3); (I) (1) and (2); (J) (1) and (2); (K) (1) and (2); (L) (1) and (2); (M) (1) and (2); (N) (1) and (2); (O) (1) and (2); (P) (1) and (2); (Q) (1) and (2); (R) (1) and (2); (S) (1) and (2); (T) (1) and (2); and (U) (1) and (2).

41. In Appendix A, paragraphs (B)(2) and (B)(7) are amended by changing "Form CCC–362" to "Form CCC–359 or Form FAS–359."

42. The references to "Form NOCO–467" are changed to "Form KC–467" in Appendix A, Sections (V)(2)(a) and (W)(2)(a); and in Appendix B, Sections (V)(7) and (W)(7).

43. In Appendix A, the references to "§ 17.7" and "§ 17.7(a)" are changed to "§ 17.11(b)" in Sections (V)(2) introductory text, (V)(2)(a) and (b), (W)(2) introductory text, and (W)(2)(a) and (b).

44. In Appendix A, the references to "§ 17.12(a)" are changed to "§ 17.17(a)" in Sections (V)(3)(d) and (W)(3)(d).

45. In Appendix A, the references to "§ 17.12(b)" are changed to "§ 17.17(b)" in Sections (V)(3)(e) and (W)(3)(e).

46. In Appendix A, Sections (V)(3)(a) and (b) and (W)(3)(a) and (b) are revised to read as follows:

(a) *Contracts basis Form A Sample Classification Memorandum (USDA Form CN–354) or Form R Classificotion Memorandum (USDA Form CN–358.) (Such Forms are hereinafter referred to respectively as Form A, or Form R Certificates.)* If USDA Form A or Form R Certificates are required for all contract quality factors, i.e., grade, staple, micronaire, and strength (if strength is required in the contract), CCC will finance 100% of the f.a.s. invoice value.

(b) *Contracts basis foreign orbitration.* For contracts other than those which require USDA Form A or Form R for all contract quality factors, CCC will finance 98% of the f.a.s. invoice value.

47. In Appendix A, Section (W)(6), the reference to "New Orleans, La." is changed to "Kansas City, Mo."

48. In Appendix B, paragraphs (A)(1)(g) and (A)(2)(g), (B)(7), (C)(1)(g) and (C)(2)(g), (D)(7), (E)(7), (F)(1)(g) and (F)(2)(g), (H)(1)(g) and (H)(2)(g), (I)(7), (J)(7), (K)(1)(g) and (K)(2)(g), (L)(7), (M)(7), (N)(7), (O)(7), (P)(7), (Q)(7), (R)(7), (S)(7), (T)(7) and (U)(7), are revised to read as follows:

One copy of Form CCC–359 or Form FAS–359, 'Declaration of Sale,' signed for the General Sales Manager, by which the supplier was notified that the sale was approved for financing.

Signed at Washington, D.C. on Dec. 11, 1986.

William L. Davis,

Acting General Sales Manager, Foreign Agricultural Service.

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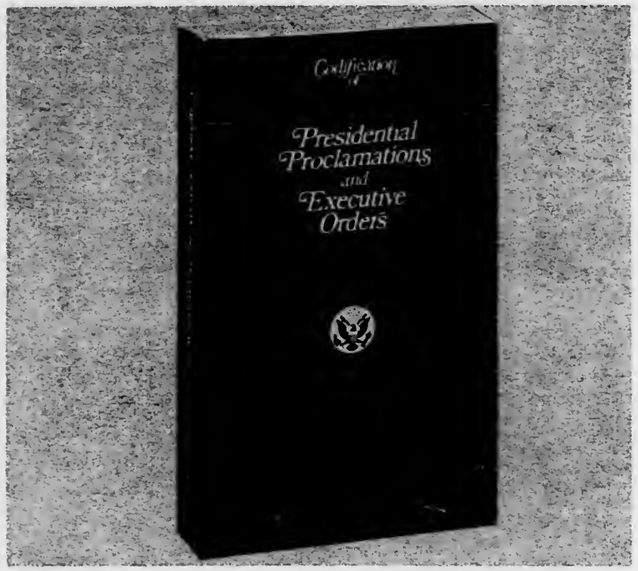
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Note: The listing of public laws enacted during the second session of the 99th Congress has been completed.

Last listing: November 20, 1986.

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